

1 MR. EGLET: Oh, come on. That's [inaudible].

2 MR. ROGERS: How can you have him vouch for  
3 credibility?

4 MR. WALL: [Inaudible] he can't cross [inaudible].

5 MR. ROGERS: Well, then I'm going to object for --  
6 this calls for vouching.

7 MR. WALL: [Inaudible] if it's incorrect, then  
8 [inaudible] incorrect, then [inaudible] that's incorrect.

9 MR. EGLET: Yeah.

10 MR. WALL: [Inaudible], because that would mean  
11 [inaudible].

12 MR. EGLET: Yeah, you will -- that'd mean you opened  
13 the door.

14 THE COURT: Well, first of all, here's the thing. I  
15 don't know that the question Mr. Eglet posed, whatever his  
16 answer would be, I don't know I would characterize that as  
17 [inaudible] the Doctor vouch for the credibility of the  
18 witness. I would imagine he assesses credibility of his  
19 patients all the time. It would seem to be, it'd be a pretty  
20 natural thing for a doctor to do. So, I think it's a fair  
21 question. Overrule the objection.

22 (End of bench conference at 4:34 p.m.)

23 \* \* \* \* \*

24 (Bench conference began at 5:02 p.m.)

25 MR. EGLET: What's this?

1 THE COURT: It doesn't relate to the witness.

2 MR. ROGERS: May I see it?

3 MR. EGLET: Sure. I thought you saw it.

4 THE COURT: You know, one of the things that we need  
5 to do, is to put on the record, in front of the jury, which  
6 exhibits have been stipulated into.

7 MR. EGLET: Right. We'll do that first thing  
8 tomorrow, Your Honor.

9 THE COURT: Okay. All right. Didn't want to  
10 forget.

11 MR. EGLET: I think Mr. Adams is working with the  
12 Clerk now [inaudible].

13 THE COURT: Who are we hearing from tomorrow?

14 MR. EGLET: Dr. McNulty.

15 THE COURT: Okay.

16 MR. ROGERS: And that's it?

17 MR. EGLET: Unless he goes quick.

18 (End of bench conference at 5:03 p.m.)  
19  
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

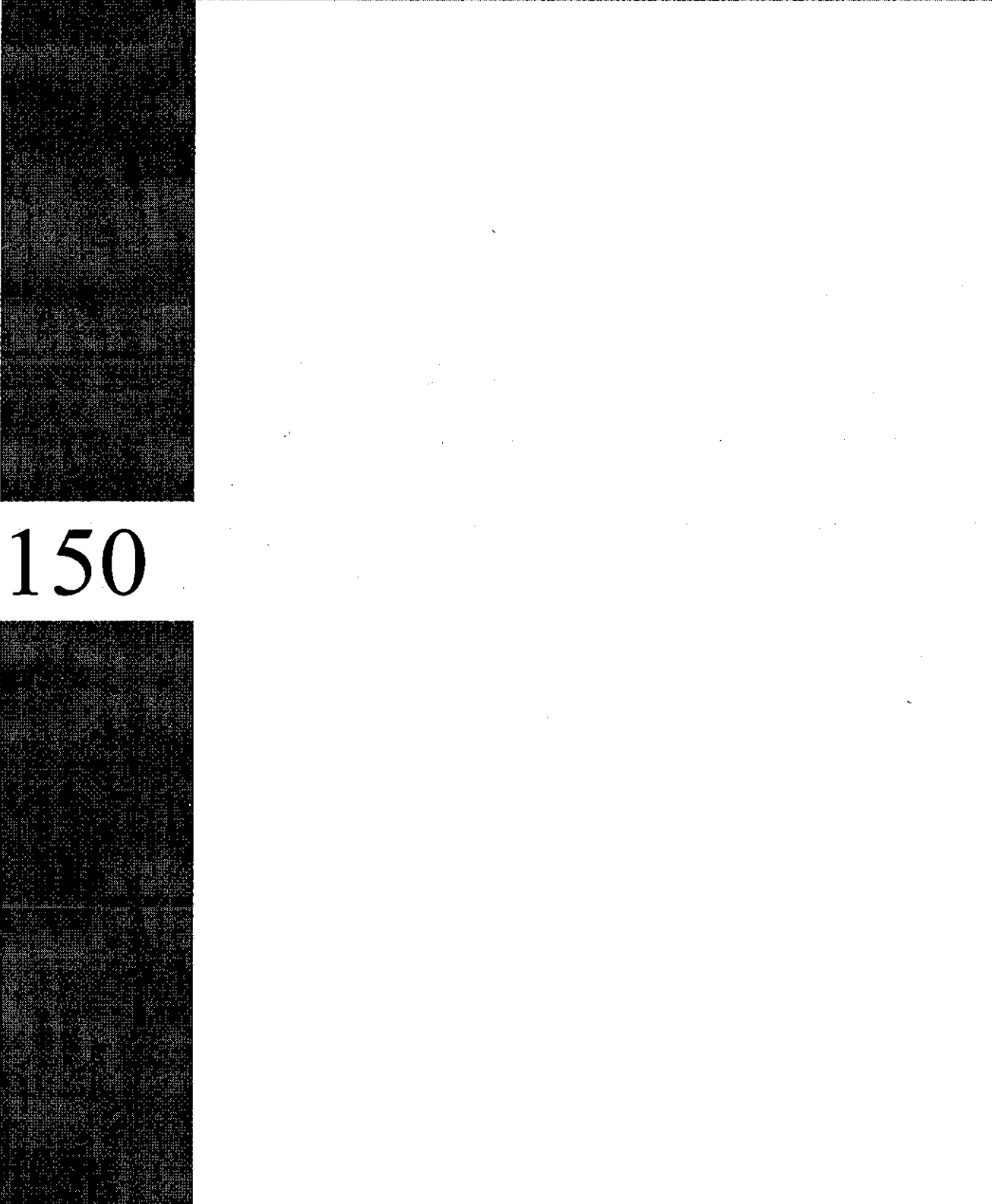
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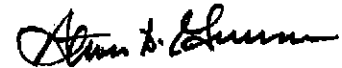
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CLERK OF THE COURT

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

WILLIAM SIMAO and	.	CASE NO. A-539455
CHERYL SIMAO,	.	
	.	DEPT. NO. X
Plaintiffs,	.	
vs.	.	TRANSCRIPT OF
JENNY RISH,	.	PROCEEDINGS
	.	
Defendant.	.	**Partial Transcript**


. . . . .  
BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGEPORTION OF JURY TRIAL - DAY 8  
(BENCH CONFERENCES)

WEDNESDAY, MARCH 23, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	DAVID T. WALL, ESQ.
	TRACY A. EGLET, ESQ.
	ROBERT M. ADAMS, ESQ.
	ROBERT T. EGLET, ESQ.

FOR THE DEFENDANT:	STEPHEN H. ROGERS, ESQ.
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COURT RECORDER:VICTORIA BOYD  
District CourtTRANSCRIPTION BY:VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110Proceedings recorded by audio-visual recording, transcript  
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004902

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 23, 2011, 1:34 P.M.

2 (This transcript contains bench conferences only)

3 \* \* \* \* \*

4 (Bench conference began at 1:34 p.m.)

5 MR. EGLET: He's going to say "no" so I don't know  
6 why you're objecting to it.

7 MR. ROGERS: Oh, he has.

8 MR. EGLET: He's going to say "no".

9 MR. ROGERS: But I'm -- okay. But there just hasn't  
10 been any discussion yet about it.

11 THE COURT: I was wondering how he could even can  
12 answer this question.

13 MR. EGLET: Because it's degenerative disease.

14 THE COURT: Hum.

15 MR. EGLET: That's what he's going to say.

16 THE COURT: All right.

17 MR. ROGERS: All right.

18 (End of bench conference at 1:34 p.m.)

19 \* \* \* \* \*

20 (Bench conference began at 1:37 p.m.)

21 THE COURT: I think his -- his answer came before  
22 your objection came.

23 MR. EGLET: It did. His answer did came [sic] so  
24 he's late. But second of all, I objected to speaking  
25 objection. If you just want to say "foundation" we can

1 approach. But he laid the foundation when he talked about the  
2 history he took from the patient, where the patient denied any  
3 preexisting symptoms or problems in his neck [inaudible].

4 MR. ROGERS: Well, then the question is based on the  
5 patient's history.

6 MR. EGLET: I don't have to say based on the  
7 patient's history. If you want to do it in cross-examination,  
8 go ahead and --

9 THE COURT: That's it.

10 MR. EGLET: -- do it.

11 THE COURT: I'll ask you -- I'll ask you to keep  
12 your voice down. Overrule the objection.

13 MR. EGLET: All right.

14 THE COURT: Let's proceed.

15 (End of bench conference at 1:37 p.m.)

16 \* \* \* \* \*

17 MR. EGLET: May we approach, Your Honor?

18 THE COURT: Yes.

19 (Bench conference began at 3:10 p.m.)

20 MR. EGLET: During Doctor -- and we laid the  
21 foundation for this, at the very beginning of their testimony.  
22 During the deposition of Dr. McNulty, Mr. Rogers started  
23 handing him all kinds of records, from all kinds of medical  
24 providers, including Southwest Medical, and asking him  
25 questions about treatment of the medical providers and what

1 occurred, and what happened, what happened subsequently, both  
2 before and after. He has opened the door, because the Doctor  
3 reviewed these records during the deposition. He has now  
4 opened the door for us to go into this.

5 MR. ROGERS: But not to these records. The records  
6 we discussed were the ones that -- that these guys have  
7 already commented on.

8 MR. EGLET: It doesn't --

9 MR. ROGERS: That's -- that's the prior records.  
10 And remember, we have a motion on this before you, with an  
11 order, that if they're going to offer any additional opinions  
12 they have to supplement under 26(e)(1).

13 MR. EGLET: Well, they're [inaudible]. There's no  
14 -- I don't know what he's talking about there. But we're not  
15 talking about different opinions. I'm asking him to review  
16 the medical procedure that was done. They opened the door to  
17 this during his deposition when they had him review all of  
18 these records.

19 He showed up with just his chart, and they started  
20 pulling all these records. And they can't selectively say,  
21 okay, we'll have you look at this one record that we think  
22 helps this guy. We're going to hold this one back, and then  
23 try to limit him from commenting on all the records.

24 And so that -- that isn't fair. They can't do that.  
25 They can't say [inaudible] open the door, but only to this



1 paragraph and this [inaudible] record here, which we thinks  
2 helps us. That doesn't give you the right, you know, to look  
3 at the other records from this medical provider and that's  
4 what he's arguing for right now.

5           They opened the door for this -- this medical doctor  
6 to comment on all these records, and that's what he's  
7 permitted to do.

8           Furthermore, under Nevada law, as a treating  
9 physician, he's permitted to comment on other medical  
10 providers' records so long as they affect his opinions and his  
11 treatment, which they do.

12           MR. ROGERS: No, they can't, because he's projecting  
13 into the future now. Remember, he said he last treated the  
14 plaintiff in March 2010. He's now being asked to comment on a  
15 record from April of 2010. This was the very point of the  
16 motion that was granted, and that is, look, we understand now  
17 what the medical providers' opinions are.

18           We discussed with Dr. McNulty the Southwest medical  
19 records, and we didn't select a paragraph or anything like  
20 that. We gave him the Southwest records. And his treatment  
21 concluded in March and he said, I don't have any opinions  
22 beyond this.

23           MR. EGLET: Is --

24           MR. ROGERS: Well, now they're getting into future  
25 care, future beyond Dr. McNulty's involvement in the case.

1 And this is basically getting into designating him as a trial  
2 expert. And that was the purpose of the motion for which we  
3 have an Order.

4 MR. EGLET: Dr. Lee [phonetic] is -- Dr. Lee, is Dr.  
5 McNulty's partner in the same group, our client has been  
6 treated with him. His records are in the same group as part  
7 of Dr. McNulty's records. And the Southwest medical records  
8 has come back into their chart to know what's going on.

9 Whether Dr. McNulty himself saw the patient after a  
10 period of time, I mean, his group is continuing to treat him,  
11 and been treating him as early as last month that  
12 counsel --

13 UNKNOWN SPEAKER: The last month.

14 MR. EGLET: -- counsel knows about. All of their  
15 treatment is relevant. He can talk about it. It's his group  
16 that's providing the treatment.

17 MR. ROGERS: It's a different person.

18 MR. EGLET: And it's all been produced and as a  
19 treating physician he's permitted to comment on future  
20 prognosis and future care.

21 MR. ROGERS: No, on his treatment.

22 THE COURT: I'm going to overrule the objection.

23 MR. EGLET: Thank you, Your Honor.

24 (End of bench conference at 3:14 p.m.)

25 \* \* \* \* \*

1 (Bench conference began at 3:44 p.m.)

2 MR. ROGERS: Our earlier objection was as to Dr.  
3 McNulty commenting on other providers. Again, this is an  
4 issue that we've briefed and a motion's been heard. And  
5 another layer of that very same motion was that no additional  
6 or new opinions should be sprung on the defense at trial. And  
7 this opinion has never been expressed by anyone. The Doctor  
8 didn't state it to a reasonable probability. But the question  
9 that was just asked, suggests that that is the opinion.

10 No one has ever said that the plaintiff suffers from  
11 a chronic or neuropathic pain syndrome, and that he requires  
12 any treatment for it. No one anywhere.

13 MR. EGLET: Your Honor, they are coming in with --  
14 first of all, those motions in limine he's talking about do  
15 not cover what we're talking about here. This is a treating  
16 physician, as the Court has already ruled, is entitled to  
17 discuss prognosis and potential future treatment.

18 Right now he's talking about prognosis. They are  
19 coming in with a defense. One of their defense doctors, his  
20 entire argument, his entire [inaudible] is that, well, if  
21 these discs were really injured they would have this --  
22 when he had the surgery, then why isn't he better. So these  
23 discs must not have been injured in the accident.

24 MR. ROGERS: That's just --

25 MR. EGLET: That's basically his whole opinion of

1 Dr. Fish. That's the sum and substance of his opinion. And  
2 he's accusing Dr. McNulty of doing an unnecessary surgery in  
3 this case, essentially, he won't say -- he won't say the words  
4 "malpractice" but when you say somebody did an unnecessary  
5 surgery, that's malpractice.

6 So he's in here -- he's going to be in here tomorrow  
7 accusing Dr. McNulty of doing unnecessary surgery, and that's  
8 the defense they've raised with their experts. So to suggest  
9 that the treating physician is not entitled to defend himself  
10 on that basis --

11 MR. ROGERS: He's not a party.

12 MR. EGLET: Excuse me, counsel. I didn't interrupt  
13 you. Is not entitled to defend himself on that basis and  
14 explain why the fact that this patient is continuing to have  
15 pain on -- on surgery he performed is -- it doesn't make it an  
16 unnecessary surgery and doesn't make it malpractice. It's  
17 simply why he's continuing to have pain.

18 It is appropriate. He is a treating physician.

19 MR. ROGERS: Well, Your Honor has already ruled on  
20 this one.

21 MR. EGLET: Not in the way he's arguing [inaudible],  
22 Your Honor.

23 MR. ROGERS: It absolutely and exactly.

24 THE COURT: As a treating physician he's entitled  
25 to give this particular testimony [inaudible] --

1 MR. ROGERS: But only if there's been --

2 THE COURT: -- treatment and prognosis.

3 MR. ROGERS: -- disclosure. I'm sorry.

4 THE COURT: I'm sorry?

5 MR. ROGERS: I didn't mean to interrupt you. Only  
6 if there's been a disclosure. There never has.

7 MR. EGLET: Well --

8 MR. ROGERS: The plaintiff has never once disclosed  
9 what Dr. McNulty is now saying.

10 MR. EGLET: Treating --

11 MR. ROGERS: That was the point of the motion is  
12 that, listen, you can't try these cases by ambush. If they  
13 knew that he was going to express this opinion -- and they  
14 did, because that last question was scripted -- they could've  
15 given us some advance notice so that we could prepare the  
16 defense for it. They didn't.

17 THE COURT: Isn't this treatment ongoing?

18 MR. EGLET: It is ongoing. We just talked about it.

19 MR. ROGERS: Not with --

20 MR. EGLET: It's ongoing.

21 MR. ROGERS: Not with Dr. McNulty.

22 THE COURT: Objection's overruled.

23 MR. EGLET: With his partner, it is.

24 THE COURT: Overruled.

25 (End of bench conference at 3:47 p.m.)

\* \* \* \* \*

(Bench conference began at 3:54 p.m.)

MR. ROGERS: And this is where the ambush runs.

MR. EGLET: Can you wait until we're up here before you start [inaudible]?

MR. ROGERS: This is where --

MR. EGLET: Can you wait until everybody's up here, please?

MR. ROGERS: I'll wait. This is where the ambush comes. They have never once even mentioned a suggestion of a spinal cord stimulator. This is absolutely inadmissible. And this is exactly what Your Honor ruled on in that Order, saying that, look, if something new is coming in, you have to disclose it before trial. That did not come in anywhere.

MR. EGLET: Not true.

MR. ADAMS: It was disclosed -- let me handle this one. It was disclosed first on August 20th, 2010, by Dr. Seigel [phonetic], a treating physician who walked through -- during his deposition with Mr. Rogers walked through several of his treatment, okay, including his past, and asked about his future.

At that time, Dr. Seigel says, look, I can't give you the future right now, because I need to do another pain management procedure, okay? He's now -- let's put this in context. Dr. Seigel's deposition was August 20th, 2010, okay?

1 That procedure, okay, that Dr. Seigel performed, was in  
2 November of 2010, okay?

3 Now, going back to Seigel's deposition, he said,  
4 determine on the outcome, whether it positive or negative,  
5 from that procedure, then I'll know the what the treatment  
6 options are. If there's a positive treatment -- if there's a  
7 positive effect that Mr. Simao receives from that, well, then  
8 there's certain treatment options. One of those was  
9 intrathecal morphine pump, or a spinal cord stimulator.

10 As the Doctor testified, that procedure that was  
11 performed by Dr. Seigel. He got 75 to 80 percent relief, and  
12 I can quote you that. That is at page 265 of Exhibit 18.

13 And that was documented on November 23rd, 2010. So,  
14 basically, on November 23rd of 2010, they had confirmation of  
15 a positive result. They knew the spinal cord stimulator was  
16 not now, just not -- it was more than a viable option. It was  
17 actually now diagnostically proven to be a recommendation.

18 So they initially got this as a viable option in  
19 August of 2010. The procedure done in November 2010. They  
20 got the records. They've read the records. They should've  
21 seen there was a positive outcome.

22 At that time, there was diagnostic evidence for  
23 Doctors to form a medical opinion that the spinal cord  
24 stimulator was now more than just an option; it was a medical  
25 necessity.

1 MR. EGLET: And Dr. McNulty is a treating physician.  
2 We do not require, under the Nevada rules, to do expert  
3 reports. This is an ongoing treatment. And he's entitled  
4 under Nevada law to talk about prognosis and future treatment.  
5 This is ongoing treatment. They [inaudible] this.

6 THE COURT: Overrule --

7 MR. ROGERS: Can --

8 THE COURT: -- the objection.

9 MR. ROGERS: -- can we -- but let me finish making  
10 this record, if you would.

11 The things that Mr. Adams didn't read to you is that  
12 in that testimony, Dr. Seibel testified, I don't know what the  
13 future is. He testified it could be pain medication. There  
14 were a lot of things that he skipped over. There was no  
15 suggestion anywhere that any one treatment in the future, if  
16 anything, was going to be recommended.

17 It is clear, that the plaintiff has shown up today  
18 ready to ambush, ready to pop new evidence on the defense.

19 THE COURT: I don't see how you can consider it an  
20 ambush if you were on notice.

21 MR. ROGERS: How was I on notice if the record never  
22 said he probably needs any of this?

23 MR. EGLET: I can pull -- I can give you a copy of  
24 the deposition. You can look at it yourself. It will take me  
25 three minutes.



1 MR. ADAMS: I think the Court's ruled.

2 THE COURT: I've made my ruling. You've made your  
3 record. Let's proceed.

4 (End of bench conference at 3:58 p.m.)

5 \* \* \* \* \*

6 (Bench conference began at 4:18 p.m.)

7 THE COURT: I think it's unlikely that we're going  
8 to finish with this witness today. And if that's the case,  
9 this is probably a good place to break.

10 MR. EGLET: But he's not going to be here tomorrow.

11 THE COURT: All right.

12 MR. ROGERS: [Inaudible]?

13 THE COURT: His expert's here tomorrow. This is the  
14 only time we can take him.

15 THE COURT: I understand that. But we only have  
16 about 35 minutes before --

17 MR. EGLET: No, I understand.

18 THE COURT: -- we have to break for the evening.

19 MR. EGLET: I just -- we're just putting the Court  
20 on notice that he's not going to be here tomorrow, because  
21 we've got his expert, which we expect to take all afternoon.  
22 So --

23 THE COURT: Well, then I would propose that we read  
24 these questions -- I don't know that he can even answer this  
25 one. But, you know, I can read it into the record anyway.

1 I'd prefer to address these, you know, if --

2 MR. EGLET: Does that -- did that come up in  
3 [inaudible] testimony?

4 THE COURT: It actually came up in yesterday's  
5 testimony.

6 MR. EGLET: I would object. Because we didn't  
7 address that. [Inaudible] before surgery. How can two discs  
8 have the same -- what is that?

9 UNKNOWN SPEAKER: [Inaudible].

10 MR. ROGERS: Fissure.

11 MR. EGLET: Fissure in about the same location  
12 [inaudible].

13 UNKNOWN MALE SPEAKER: That's a good question.

14 THE COURT: So, I'll ask these two. And then what I  
15 would suggest is to mention to the jury that --

16 MR. EGLET: I didn't see this one.

17 THE COURT: Oh, you didn't?

18 MR. EGLET: No.

19 THE COURT: Sorry.

20 MR. EGLET: That's the one from yesterday.

21 MR. ROGERS: Now, are we --

22 THE COURT: Yeah, these two -- I'll just hold onto  
23 these. And I don't know whether there will be another witness  
24 that can answer this one.

25 MR. EGLET: Yeah, that's an improper question.

1 MR. ROGERS: For the record, the defense requests  
2 that we somehow log the questions that the Court won't read.

3 MR. EGLET: Yeah.

4 THE COURT: We do what?

5 MR. EGLET: They are. They're all marked as court  
6 exhibits.

7 THE COURT: They're all marked.

8 MR. ROGERS: Oh, okay.

9 THE COURT: They're all marked. Even if the Court  
10 doesn't read them. Will there be a witness testify that can  
11 answer this one?

12 MR. EGLET: That question was asked yesterday, and  
13 that dealt with Dr. Rosler. He already addressed that. This  
14 witness didn't address that at all.

15 THE COURT: I know.

16 MR. EGLET: So --

17 THE COURT: But will there be another witness that  
18 can answer this question?

19 MR. EGLET: I don't know; maybe.

20 THE COURT: Okay. Well, then I'll just hang onto  
21 them for now.

22 UNKNOWN MALE SPEAKER: [Inaudible].

23 THE COURT: I'll ask that they all be marked, but  
24 I'm inclined to just set these aside and ask these two, and  
25 then we can stop for the day.

1 MR. EGLET: Okay.

2 THE COURT: All right. Who are we hearing from  
3 tomorrow?

4 MR. ROGERS: His name is David Fish. He's coming in  
5 from LA.

6 THE COURT: Okay.

7 MR. ROGERS: I guess, how would we schedule his  
8 return?

9 THE COURT: When can Dr. McNulty come -- come in?

10 MR. EGLET: He's going to have to check his -- his  
11 surgery schedule, but it's going to have to be sometime next  
12 week.

13 THE WITNESS: In general, Monday/Wednesday/Friday  
14 [inaudible].

15 MR. EGLET: We might be able to get him this Friday,  
16 because we [inaudible] or not. We have -- well, we're  
17 scheduled for Friday. And he should be [inaudible].

18 THE COURT: Are we stopping at 5:00?

19 MR. EGLET: [Inaudible] we stop at 5:00 if we start  
20 at 1:00?

21 THE COURT: Yes.

22 MR. EGLET: Okay.

23 THE COURT: Assuming Judge Wiese is finished, which  
24 I expect so.

25 MR. ROGERS: All right. If you -- if you want, I

1 can begin. Or we can just delay it until -- I won't finish  
2 today, but I can begin, or we can do it all at once  
3 [inaudible].

4 THE COURT: No, I'd just as soon break. It's been a  
5 long day.

6 Let me ask you this though. When we've -- if Dr.  
7 McNulty can come back Friday, why don't we start with him  
8 first and conclude him before you call the next witness.

9 MR. WALL: We just have to check with Dr. Grover.

10 MR. EGLET: We have to check with Dr. Grover first,  
11 because --

12 UNKNOWN MALE SPEAKER: [Inaudible].

13 MR. EGLET: -- he usually leaves -- he usually  
14 leaves at like 3:00 o'clock on Fridays, he leaves. If he's  
15 going to leave at 3:00 o'clock, we've got to start with him.

16 MR. WALL: He's got issues with -- they've got kids  
17 and stuff.

18 THE COURT: Whatever order it is, we have to stop by  
19 5:00.

20 MR. EGLET: I understand.

21 THE COURT: Okay.

22 MR. EGLET: I understand.

23 THE COURT: All right.

24 MR. ROGERS: And there are those couple of issues  
25 that Mr. Michalek wanted to address before we -- before we

1 leave, not the jury. I don't know what all they are.

2 THE COURT: Well, I'll say this. I hope he's not  
3 going to repeat these objections that have already been  
4 lodged, because that sounds like the direction he was headed.

5 MR. ROGERS: I'll say that to him. I don't know  
6 what all he's got in mind.

7 THE COURT: Mr. Rogers?

8 MR. ROGERS: Yes?

9 THE COURT: Mr. Rogers was telling me that Mr.  
10 Michalek wants to lodge some objections before the day is  
11 concluded and what I said to him is, what I don't want to hear  
12 is any repeated argument what the Court's already ruled on,  
13 which --

14 MR. EGLET: Okay. Right.

15 THE COURT: -- just sounds like where we were headed  
16 and he said he would relay that information.

17 MR. EGLET: All right.

18 (End of bench conference at 4:23 p.m.)

19 \* \* \* \* \*

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

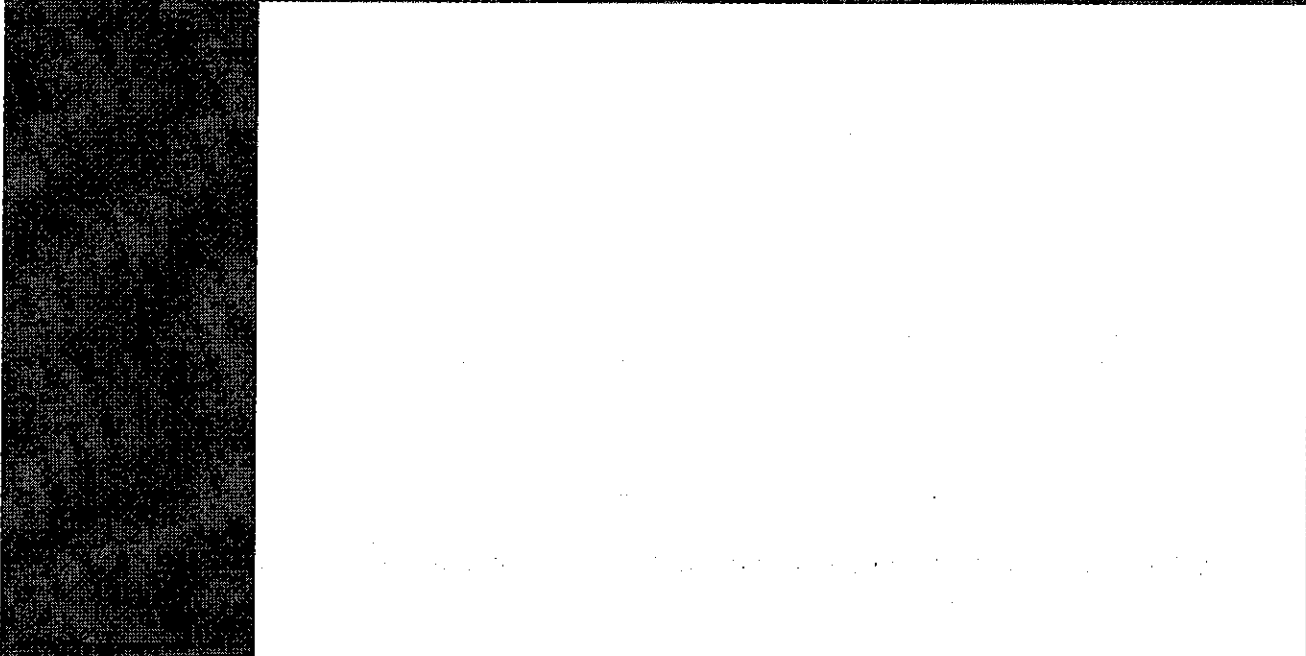
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*Julie Lord*

JULIE LORD, TRANSCRIBER

*7/12/12*

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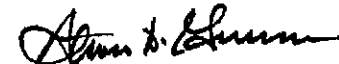
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CLERK OF THE COURT

 ORIGINAL

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

WILLIAM SIMAO and	.	CASE NO. A-539455
CHERYL SIMAO,	.	
	.	DEPT. NO. X
Plaintiffs,	.	
vs.	.	
	.	TRANSCRIPT OF
JENNY RISH,	.	PROCEEDINGS
	.	
Defendant.	.	<b>**Partial Transcript**</b>

.....

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

PORTION OF JURY TRIAL - DAY 9  
(BENCH CONFERENCES)

THURSDAY, MARCH 24, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	DAVID T. WALL, ESQ.
	TRACY A. EGLET, ESQ.
	ROBERT M. ADAMS, ESQ.
	ROBERT T. EGLET, ESQ.

FOR THE DEFENDANT:	STEPHEN H. ROGERS, ESQ.
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COURT RECORDER:

VICTORIA BOYD  
District Court

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1 LAS VEGAS, NEVADA, THURSDAY, MARCH 24, 2011, 2:01 P.M.

2 (This transcript contains bench conferences only)

3 \* \* \* \* \*

4 THE COURT: Counsel, approach, please.

5 (Bench conference began at 2:01 p.m.)

6 MR. EGLET: I want to address up at the bench.

7 There's no electrodiagnostic studies in this case. He didn't  
8 perform any electrodiagnostic studies on our client when he  
9 examined him.

10 MR. ROGERS: No, there -- there is [inaudible] study  
11 done after the surgery.

12 MR. EGLET: Okay. Well, he -- he didn't present any  
13 opinions on that in his reports [inaudible] electro diagnostic  
14 study. He did not present any [inaudible] his deposition, so  
15 I would object to him offering any opinions on  
16 electrodiagnostic studies. It wasn't -- it wasn't disclosed.  
17 He may very well have expertise in that area, but not in here.  
18 But that wasn't disclosed. It's not in his reports and it's  
19 not in his deposition.

20 MR. ROGERS: I think what was discussed was that --  
21 that what Dr. McNulty mentioned yesterday that an EMG, a nerve  
22 conduction study, was done and that showed positive finding  
23 for carpal tunnel, and I believe that was brought up by Dr.  
24 Fish. [Inaudible] deposition.

25 I don't have the record right in front of me but I'm

1 fairly confident that issue has come up, because it's been a  
2 running issue in the case.

3 MR. EGLET: I've read his -- I've read his reports.  
4 He has four or five of them. It's not in any of his reports,  
5 I can tell you that. And I don't believe it's in his  
6 deposition either.

7 THE COURT: Let's stick with new questions until we  
8 can confirm that.

9 MR. EGLET: Okay. [Inaudible] wait until the end  
10 until he's done.

11 THE COURT: Yeah, I think it's an issue we'll have  
12 to discuss later.

13 MR. ROGERS: Okay. Well, I may address it not as  
14 the jury [indiscernible].

15 THE COURT: All right.

16 (End of bench conference at 2:03 p.m.)

17 \* \* \* \* \*

18 (Bench conference began at 2:34 p.m.)

19 THE COURT: I thought we agreed on --

20 MR. EGLET: I apologize.

21 THE COURT: -- no speaking objections.

22 MR. EGLET: I apologize.

23 THE COURT: All right. It goes both ways.

24 MR. EGLET: The point is, it's vague and ambiguous  
25 and overbroad, because what this witness is talking about in

1 all of these questions when he asks him, well, what kind of  
2 symptoms would you expect? Well, bowel and bladder loss, you  
3 know, significant paresthesia, and stuff like that. I mean,  
4 there's a range of disc injuries, okay? And everybody here  
5 knows that, especially this doctor.

6 So, for him to suggest that if you're going to have  
7 any disc injury at all, I mean, like you're going to have  
8 bowel and -- you know, bowel and bladder loss, and all these  
9 significant symptoms, is ridiculous and it's improper.

10 So I asked that the question be narrowed. It's way  
11 too broad of a scope. He needs to narrow it to a specific  
12 type of injury. Because we're not talking about somebody who  
13 has a cord compression here. Nobody's said that. And that's  
14 essentially what he's talking about, is a major cord  
15 compression, or a major nerve compression.

16 Nobody suggested that, that it was that kind of --  
17 that amount of an injury. But when he's talking about those  
18 symptoms, that's what he's talking about. So, when he asks  
19 him, you know, significant numbness, bowel and bladder -- loss  
20 of bowel and bladder control, that that's what he would expect  
21 to see, yeah, if it was some major, major traumatic injury to  
22 the disc. Nobody has alleged that.

23 And so the question is overbroad.

24 THE COURT: Well, Mr. Rogers?

25 MR. ROGERS: Yes. Yes. My answer is that while

1 this might be interesting cross-examination, it is not  
2 improper on direct, because my question is limited to cervical  
3 traumatic injuries to cervical discs. And Bob can bring out  
4 all the different kinds there may be, but in this case,  
5 everybody knows that we're talking about the claim of  
6 traumatic injuries to internal disc disruption.

7 MR. EGLET: We're not --

8 MR. ROGERS: There's no mystery about that.

9 MR. EGLET: Yeah, yeah. But he's misleading the  
10 jury. We are not talking about somebody who has such a  
11 traumatic disc injury that they have a cord compression, or  
12 such an impingement on a major nerve that you're going to have  
13 significant numbness, you know, immediately from the accident  
14 or even shortly after.

15 That's what this witness is implying, Your Honor.  
16 This has got to -- the scope of the question has to be  
17 narrowed. Otherwise, it's just painting a picture that is a  
18 fantasy. It has nothing to do with this case. Nobody's  
19 claiming there's any type of injury like his.

20 THE COURT: Well, here's the thing. The Court's  
21 inclined to sustain the objection. The way that you posed the  
22 question, I think it is pretty vague and overbroad. And,  
23 frankly, the way you first posed the question with respect to  
24 his [inaudible] didn't really have anything to do with this  
25 particular plaintiff. That was -- it looked like the approach

1 that you were taking.

2 So, the Court's sustaining the objection. But  
3 here's the other thing. This witness is giving a lot of  
4 answers that call for possibilities and speculation. And the  
5 jury's not to consider that. So I hope we can proceed  
6 accordingly. I hope I don't have to keep striking his  
7 testimony because he offers lots of possibilities.

8 MR. EGLET: Thank you, Your Honor.

9 THE COURT: All right.

10 MR. ROGERS: Okay.

11 THE COURT: Sustain the objection, for the record.

12 (End of bench conference at 2:37 p.m.)

13 \* \* \* \* \*

14 (Bench conference began at 3:01 p.m.)

15 MR. EGLET: The witness just said that that would be  
16 really hard to do, and then he starts describing some of the  
17 symptoms and says, well, that may be a migraine headache, just  
18 like it's all -- he doesn't know one way or the other. His  
19 answer is, no, I don't know.

20 MR. ROGERS: I think he's explaining why, so this  
21 jury understands, because the plaintiff has been presenting  
22 this position that it's a occipital headache and he's saying,  
23 no, these are the symptoms associated with the different kinds  
24 of headaches.

25 MR. EGLET: He doesn't get to say, it could be this,

1 it could be that.

2 THE COURT: Right.

3 MR. EGLET: That's Morsicato [phonetic] Your Honor.  
4 That's a directive on --

5 THE COURT: That's --

6 MR. EGLET: -- Morsicato. Move to --

7 THE COURT: That's true.

8 MR. EGLET: -- strike.

9 THE COURT: Does he not -- does he not know that the  
10 jury's not interested in possibilities and that there's really  
11 no point in giving testimony that calls for speculation,  
12 because it seems like his last few answers call for  
13 speculation and that's why the Court's had to sustain the  
14 objections.

15 MR. ROGERS: I think all he's doing right now is  
16 explaining that the exact kind of headache is not known.  
17 That's all he's saying.

18 MR. EGLET: He's doing exactly what the doctor did  
19 in Morsicato. He's saying, it could be this, it could be  
20 that, it could be this. You can't do that.

21 THE COURT: Sustain the objection. I'm going to ask  
22 you to -- just a moment, Mr. Eglet. I'm going to ask you to  
23 focus your questions narrowly so that he doesn't speculate.  
24 Otherwise, we're going to have to take a break and we'll have  
25 to advise him.

1 MR. ROGERS: Okay.

2 THE COURT: All right?

3 Sustain the objection.

4 (End of bench conference at 3:02 p.m.)

5 \* \* \* \* \*

6 (Bench conference began at 3:03 p.m.)

7 MR. EGLET: This witness is about to violate a court  
8 order, okay? He's going into this -- can you ask him not to  
9 try to overhear our -- sit there and look at me and try to  
10 overhear our bench conferences? It's improper.

11 THE COURT: Yeah.

12 MR. ROGERS: I'll ask him.

13 (Pause in the proceedings)

14 MR. EGLET: He's about to get into what they do at  
15 UCLA, about it's multi-faceted. And what he's going to talk  
16 about is, psychological counseling to make sure that it's not  
17 psychological, that it's not all in their head, which gets  
18 into exactly what this Court has excluded, secondary gain  
19 stuff. That's exactly what he's talking about. This is what  
20 he did in his deposition. This is exactly where he's going  
21 with this answer.

22 And it's improper, Your Honor. And he's -- you  
23 know, he's -- and second of all, what he would've done if this  
24 had been his patient is not relevant here. He's not this  
25 patient's doctor. He can comment on whether he thinks this is



1 improper or not proper. But I don't care what he would've  
2 done. He's not my client's treating physician. It's not  
3 relevant.

4 MR. ROGERS: That's --

5 MR. EGLET: He didn't go to UCLA. He didn't get  
6 this treatment at UCLA. What he would've done -- he can sit  
7 there and say, I don't think the C4-5 blocks were appropriate.  
8 I wouldn't have done them. I don't think the discography is  
9 appropriate. I wouldn't have done it. But he doesn't get to  
10 say, well, if this was my patient, this is what I would've  
11 done. It's not relevant.

12 MR. ROGERS: Your Honor, what he would've done is --  
13 is he's saying would've been the more appropriate kind of way  
14 to address the plaintiff's presentation. The plaintiff has  
15 put on Doctors McNulty and Dr. Rosler, both of whom have  
16 testified that, what we did is appropriate, indicate, if  
17 necessary, and so forth.

18 And the defense is entitled to their theory of the  
19 case. He's saying, look, those injections weren't  
20 appropriate, and this is what would've been appropriate, he's  
21 entitled to say that.

22 MR. EGLET: And he's about to get into psychological  
23 counseling --

24 MR. ROGERS: I'll tell you [inaudible] --

25 MR. EGLET: I know what's what he's going to. He's

1 going to go into, that's what the whole thing is about, about  
2 how they have psychiatrists and psychologists who are all part  
3 of the team, and they evaluate whether there's secondary gain,  
4 all that stuff.

5 THE COURT: I hope he's not planning to violate the  
6 Court's orders, because I'll tell you what, I would not be  
7 [inaudible] striking his testimony altogether as a witness if  
8 he violates any of the Court's Orders, especially after we  
9 made a very formal record while we kept our jury waiting, I  
10 will have no [inaudible].

11 But with respect to what he would have done, or how  
12 he would have treated this patient, it isn't relevant as to  
13 whether or not -- well, it isn't relevant for any of the  
14 purposes that we're here for.

15 So, there's two things I want you to instruct --  
16 well, actually three. I want him to be instructed that  
17 possibilities and speculation are not appropriate for the jury  
18 to consider. And I want him to be instructed that if he's  
19 planning to go into this area, which Mr. Eglet seems to think  
20 he is -- I don't know if he is, or isn't -- that's strictly  
21 off limits and he has already been told that.

22 And third, it's not really relevant, I want you to  
23 tell him that too, that [inaudible] isn't particularly  
24 relevant.

25 MR. ROGERS: I'm sorry, I didn't hear the third

1 part.

2 THE COURT: What he would have done had this patient  
3 been his, it isn't particularly relevant. He learned how  
4 [inaudible] present your theory, no question about that. But  
5 his personal preference practices aren't particularly relevant  
6 for this case.

7 MR. ROGERS: The way that a doctor practices  
8 medicine is simply a way of expressing what his -- in their  
9 opinion, the appropriate method of treatment. Prefacing it by  
10 stating, this is the way I do it, is really no different than  
11 saying, this is what's appropriate. I don't understand --

12 MR. EGLET: Then he can ask him that.

13 MR. ROGERS: -- why that prefacing clause is -- is a  
14 problem.

15 MR. EGLET: He can ask him whether --

16 THE COURT: The objection, as it was articulated, is  
17 sustained by the Court on those three grounds, and I'd ask you  
18 to instruct your witness accordingly.

19 And we're going to take about a 10 minute break.

20 MR. EGLET: Thank you, Your Honor.

21 MR. ROGERS: All right.

22 (End of bench conference at 3:08 p.m.)

23 \* \* \* \* \*

24 (Bench conference began at 3:37 p.m.)

25 MR. EGLET: This opinion that this witness is about

1 to try to give was never disclosed by this witness at any  
2 time. This is an opinion that they hired Dr. Winkler  
3 [phonetic] for, who is a neuro radiologist, who has offered an  
4 opinion regarding what's in the post-CT discogram. This  
5 witness in neither any of his reports, nor in his deposition,  
6 gave this type of testimony.

7 What he's about to try to testify to is that the  
8 needles, based on this post-CT discogram, that the needles  
9 were not placed properly in the right place, and that that's  
10 why the contrast is not throughout the disc on this CT scan  
11 taken after the discogram.

12 He was not identified as an expert to talk about  
13 this, only Dr. Winkler was. So I would object for him now to  
14 try to bootstrap and try to give Dr. Winkler's expert  
15 testimony when he was not disclosed in any of his reports  
16 regarding this.

17 MR. ROGERS: Your Honor, yeah, he's -- he's actually  
18 written and been deposed on this one. And --

19 MR. EGLET: Show me his report where he says this.

20 MR. ROGERS: I mean, he has like five reports.

21 MR. EGLET: Yeah, well show --

22 MR. ROGERS: He's reviewed every single medical  
23 record [inaudible].

24 MR. EGLET: Show me his report where he gives this  
25 opinion. It's nowhere. It's not properly disclosed. It's

1 not there.

2 MR. ROGERS: Yeah, so [inaudible] discussed the  
3 discogram, because that was what he [inaudible].

4 MR. EGLET: I'm not saying he didn't discuss the  
5 discogram. He discussed the discogram, and basically his  
6 testimony in his deposition was he has no reason to believe  
7 that the discogram was not performed properly. That is his  
8 testimony, okay?

9 He doesn't think it's valid, because he thinks it's  
10 false positive, okay? But not because of the basis he's about  
11 to give. This is Dr. Winkler's expertise, or what they  
12 identified Dr. Winkler to give testimony on. He has never  
13 been disclosed in this area, ever.

14 MR. ROGERS: Disclosure is exactly the fact that  
15 he's been deposed on the issue and he's written about the  
16 issue.

17 MR. EGLET: He has not written about this specific  
18 issue.

19 THE COURT: You know, you don't seem to be  
20 responding specifically to Mr. Eglet's argument.

21 MR. ROGERS: And some of these objections, I -- I  
22 mean, this is a voluminous case. And all of the details of  
23 it, I don't recall. I mean, if he wants to go through every  
24 report, he can. But that's more for cross-examination. If  
25 he's addressed this issue, and plaintiff is on notice to

1 discuss it with him at his deposition, there's no surprise  
2 here at all. That's a full disclosure.

3 MR. EGLET: It was never disclosed in his reports,  
4 ever.

5 THE COURT: The objection is sustained.

6 MR. EGLET: Thank you.

7 (End of bench conference at 3:40 p.m.)

8 \* \* \* \* \*

9 MR. ROGERS: If we could approach briefly for just  
10 one follow-up.

11 (Bench conference began at 3:40 p.m.)

12 MR. ROGERS: Then am I permitted to ask him whether  
13 the pain generator was identified in the discogram and leave  
14 it at that. His concerns seem to be --

15 MR. EGLET: I'm sorry, I didn't hear you.

16 MR. ROGERS: Am I allowed to conclude then, by  
17 asking him, was a pain generator or an injury identified in  
18 this discogram and then leave it at that? It seems  
19 [inaudible].

20 MR. EGLET: I have no -- I have no problem with that  
21 question, okay, as long as he doesn't go into an explanation  
22 that it's based on this post-CT discogram, because that never  
23 was disclosed in his reports or his deposition. So I'd ask  
24 that post-CT discogram be taken down, and then if you want to  
25 ask him that question.

1 But if he starts to go into an explanation, I'm  
2 going to object and ask to strike that testimony, if he bases  
3 it on his review of the post-CT scan.

4 MR. ROGERS: No -- no --

5 MR. EGLET: He can -- he can say -- he can say -- he  
6 can offer the opinion that he -- that in his opinion, that the  
7 discogram did not show an injury at C3-4, C4-5, that's fine.  
8 But if he tries to explain it based on this, then that's  
9 improper.

10 MR. ROGERS: Well, let me tell him, or --

11 MR. EGLET: Okay.

12 MR. ROGERS: -- something so --

13 THE COURT: Do you have any objection?

14 MR. EGLET: No, I don't have any objection.

15 THE COURT: All right.

16 MR. ROGERS: All right.

17 (Bench conference ended at 3:41 p.m.)

18 \* \* \* \* \*

19 (Bench conference began at 3:42 p.m.)

20 THE COURT: Did you remove the -- did you -- have  
21 your people removed the slide then?

22 MR. ROGERS: Oh, yes.

23 THE COURT: Thank you.

24 MR. ROGERS: Dan, could you --

25 MR. ROGERS: Thank you.

1 (End of bench conference at 3:42 p.m.)

2 \* \* \* \* \*

3 (Bench conference began at 3:47 p.m.)

4 THE COURT: I'm not sure -- I'm not sure how much of  
5 this was in front of the jury and much it wasn't.

6 MR. EGLET: Well, all of it.

7 MR. ROGERS: Dr. McNulty testified to all of this.

8 MR. EGLET: No, no.

9 THE COURT: No, the objections about notice --

10 MR. EGLET: Yeah, none --

11 THE COURT: -- and the lengthy --

12 MR. EGLET: -- none of this was in front of the  
13 jury, okay? First of all, it's -- it's -- it misstates the  
14 record, which the Court -- Mr. Adams made very clear to the  
15 Court what the record was on this.

16 THE COURT: Um-hum.

17 MR. EGLET: It's argumentative. He's arguing in  
18 front of the jury that it wasn't disclosed --

19 THE COURT: Um-hum.

20 MR. EGLET: -- in the records, and it also is  
21 leading. So it's objectionable on three grounds.

22 THE COURT: Well, not only that, but we -- we know  
23 what happened with respect to this issue --

24 MR. EGLET: Right.

25 THE COURT: -- but the jury --



1 MR. EGLET: Yeah.

2 THE COURT: -- doesn't.

3 MR. WALL: So now are you suggesting that there was  
4 no [inaudible] ring that bell.

5 MR. EGLET: Yeah. So I would ask that Mr. -- that  
6 the objection would be sustained, and that Mr. Rogers'  
7 comments about whether or not anything was disclosed, be  
8 stricken from the record.

9 MR. WALL: I think maybe that it needs to come from  
10 [inaudible] put him in the position to say the wrong thing and  
11 then have us come back up here. I think that it needs to be  
12 the Court saying that not only is that stricken, but that --  
13 that -- I can't remember the exact word you used, beyond --  
14 after disclosure.

15 MR. ROGERS: But he -- he didn't know, is what I'm  
16 saying.

17 MR. EGLET: No, that -- that's not what you said.

18 MR. WALL: Saying it's not in -- not in any of the  
19 records or materials.

20 MR. EGLET: Yeah, he said it -- he said it was not  
21 in any of the medical records or materials and it was, it is.  
22 It's in Dr. Seigel's materials. So it's an incorrect  
23 statement.

24 MR. WALL: So -- so -- you're going to -- you're  
25 going to --

1 MR. EGLET: So there has to be a curative  
2 instruction that it was -- that there is notice of this in the  
3 records.

4 MR. WALL: Based on the fact that [inaudible] --

5 THE COURT: Notice of what?

6 MR. ROGERS: The guise of --

7 MR. EGLET: What?

8 THE COURT: Notice of the what?

9 MR. EGLET: That there was notice of potential  
10 spinal cord stimulator in the medical records.

11 MR. ROGERS: Okay. I -- all I'm trying to do is get  
12 through this so that you guys can get to it. And I am trying  
13 to get through it as fast as I can. I'm near the very end of  
14 my --

15 MR. EGLET: I understand you are, but you still have  
16 to do it properly, Steve, okay? And you're -- you're making a  
17 leading argumentative and a statement that's not true.

18 MR. WALL: I think --

19 MR. ROGERS: Let's just get this --

20 UNKNOWN MALE SPEAKER: What the says, I'm sustaining  
21 the objection, and asking the jury to disregard it, is the  
22 predicate of no notice, is not correct.

23 THE COURT: Um-hum.

24 MR. EGLET: That's fine.

25 UNKNOWN MALE SPEAKER: Ask your next question.

1 (End of bench conference at 3:50 p.m.)

2 \* \* \* \* \*

3 (Bench conference began at 3:53 p.m.)

4 MR. EGLET: If that happens again, I'm going to move  
5 to strike this witness.

6 THE COURT: Um-hum.

7 MR. ROGERS: You know, I'm not trying to get this.

8 MR. EGLET: I'm not saying you are, but he is.

9 THE COURT: You made the prediction that he would do  
10 this very thing.

11 MR. EGLET: Um-hum.

12 THE COURT: And when you made it, I was not at all  
13 certain that that was the case, but I'm beginning to think  
14 that you're right on this.

15 MR. ROGERS: I'm going to tell him to just -- don't  
16 even get close. I'm not trying to do this, Your Honor.

17 THE COURT: [Inaudible] he desires this.

18 MR. ROGERS: I don't -- I think he's just unclear.

19 THE COURT: Because the Court's been really clear.  
20 Oh, no. The Court's been really clear in the first 30 or 40  
21 minutes [inaudible] he's most definitely clear.

22 MR. ROGERS: Please allow me to tell him, don't get  
23 anywhere near that.

24 THE COURT: Sure. I don't have a problem with it.

25 MR. ROGERS: Thank you.

1 (End of bench conference at 3:54 p.m.)

2 \* \* \* \* \*

3 (Bench conference began at 3:57 p.m.)

4 MR. EGLET: The testimony when his -- first of all,  
5 his testimony -- his opinions completely changed from his --  
6 from his reports to his deposition. He abandoned his opinions  
7 from his reports when he got to his deposition.

8 Now, he's changing his testimony even from his  
9 deposition which wasn't disclosed in his reports. In his  
10 deposition, he said, I don't know -- when he was asked this  
11 question, what's causing all these problems. I don't know.  
12 Now, he's about to give us a big speech on what he thinks is  
13 causing all these problems, which has never been disclosed.

14 MR. ROGERS: If you can give me a moment so I can  
15 get a report.

16 THE COURT: Sure.

17 MR. WALL: I see -- I see [inaudible] --

18 MR. ROGERS: Dave, give me just one moment.

19 (Pause in the proceedings)

20 THE COURT: We did have a question submitted by one  
21 of the jurors during the last break. This is the first chance  
22 I've had to share it with you.

23 MR. WALL: [Inaudible] This was awhile ago.

24 MR. EGLET: All right. So, in his deposition he's  
25 asked this question about, you know, what's going on. And his

1 testimony essentially is, I don't see any objective evidence  
2 of any injuries that the injections didn't demonstrate any C3-  
3 4 [inaudible]. So I don't see -- I have no idea, okay? He's  
4 asked, on the carpal tunnel. This is interesting, because you  
5 saw, you know, as I suspected, he's about to go into the  
6 question by Mr. Wall.

7 Now, finally, the plaintiff testified he's been  
8 referred to a hand specialist who diagnosed carpal tunnel  
9 syndrome and he's been referred to a shoulder specialist. Have  
10 you been supplied with any of those records?

11 His answer is, This is the first I've heard of it.

12 You never did -- and this is a month ago. He's  
13 never done a supplemental report. There's been any -- no  
14 disclosure that he's going to discuss the carpal tunnel  
15 whatsoever. And he -- and Mr. Wall asked him in the  
16 deposition if he will prepare a supplemental report, if you  
17 have any additional opinions, or any opinions changed, and he  
18 says, yes, he would, he'd be happy to do that.

19 None of that occurred. So this is a retained expert  
20 who's required to disclose --

21 THE COURT: Um-hum.

22 MR. EGLET: -- in his reports. He didn't disclose  
23 anything. He didn't even know about the carpal tunnel until  
24 at the very end of the deposition Mr. Wall asked him one  
25 question about it. Now, he seems to be basing a big part of

1 his opinion on it.

2 So, we would object, because in his deposition he  
3 said he didn't know what was [inaudible]. If he wants to say,  
4 I don't know, [inaudible] saying he did in his deposition,  
5 that's fine. But he's -- that's obviously not what he's  
6 doing. He's about to give this long explanation about what he  
7 thinks, which was never disclosed, of what [inaudible].

8 THE COURT: Mr. Rogers?

9 MR. ROGERS: Yeah, very good. This is where I think  
10 he's going, and this is what he said in -- in this. His final  
11 -- which is -- has to do with headaches. And he said that in  
12 his first report.

13 MR. EGLET: What's the date of this report?

14 MR. WALL: Was this identified --

15 MR. ROGERS: This is the one that I think he  
16 attached to the --

17 MR. WALL: No, because this one's dated October,  
18 2010.

19 MR. EGLET: And here 2010. That was report was  
20 October, 2010.

21 MR. ROGERS: I got this one from 2-10-09. That's  
22 the IME. But that's what he said there as well.

23 MR. EGLET: The one you just showed us is October of  
24 2010, and the date's right up on it. October 18th, 2010.

25 MR. ROGERS: I don't have [inaudible].

1 MR. WALL: See this is -- this is 10 [inaudible].

2 MR. ROGERS: Well, this is an opinion that's been  
3 repeated repeatedly in his reports, and that's where I thought  
4 he was going.

5 MR. EGLET: No, that's not where --

6 MR. ROGERS: [Inaudible].

7 MR. EGLET: -- he's going. If he's saying there's  
8 this -- this -- this report says right here [inaudible] --  
9 this is what he says, Assuming the motor vehicle -- assuming  
10 the motor vehicle accident caused the strain -- strain.

11 MR. ROGERS: That's where I was going.

12 MR. EGLET: Well, that's not where he's going. He's  
13 going off -- he's going of the reservation. I'm telling you  
14 that right now.

15 THE COURT: Well, that's not the question you asked  
16 him though.

17 UNKNOWN MALE SPEAKER: What's [inaudible] you know,  
18 if he says he had pain [inaudible] or didn't have it before  
19 and had it after, this is -- explained it.

20 THE COURT: If this is the answer you're seeking --

21 MR. WALL: The other -- the other things --

22 THE COURT: -- I don't think this answer is  
23 responsive to the question that you posed.

24 MR. WALL: He also abandoned this [inaudible].

25 MR. EGLET: Yeah, he -- he totally abandoned this --

1 this opinion, number nine, in his deposition. I'm abandoning  
2 this opinion. If --

3 MR. WALL: [Inaudible].

4 MR. EGLET: -- he said that, and then Mr. Wall came  
5 back saying that, You're abandoning this position? And he  
6 goes, Well, I don't know if abandoning is the right word.  
7 Well, that's what you said. He goes, Okay, I'm abandoning the  
8 position.

9 He said it [inaudible] opinion. He's abandoned this  
10 opinion. And now he wants to come back to it?

11 MR. ROGERS: Let's just get him done with, and  
12 perhaps that was I can finish it is to say, Doctor, is there  
13 any objective evidence that -- to explain why the plaintiff is  
14 presenting with these complaints [inaudible]?

15 MR. EGLET: Well, that's a "yes" or "no" answer.

16 MR. ROGERS: And that's [inaudible].

17 THE COURT: Can he give a "yes" or "no" answer?

18 MR. WALL: Ask him for one.

19 MR. EGLET: Ask him for one.

20 MR. ROGERS: I hate to end it on that, because I've  
21 already asked it. It sounds so feeble. I'm trying to get him  
22 to say, this is my opinion about, you know, what might be  
23 causing it.

24 MR. EGLET: What might be causing it is speculation.

25 MR. ROGERS: And if he says, I don't know for sure,



1 that's fine.

2 MR. EGLET: No, he's -- you're asking what might be  
3 causing it, because he doesn't know. He's said in his  
4 deposition he doesn't know, and now you want him to say --  
5 speculate about it. And that's our point.

6 THE COURT: Wait. I didn't get a chance to show Mr.  
7 Rogers, this was one of the questions submitted by one of our  
8 jurors.

9 MR. ROGERS: Okay. Okay. That's actually kind of a  
10 smart question.

11 THE COURT: Um-hum.

12 MR. ROGERS: But I don't mind asking him that,  
13 unless you want to.

14 THE COURT: The Court usually asks those questions,  
15 but --

16 MR. EGLET: The Court asks -- the Court will ask the  
17 question.

18 THE COURT: -- you know, only until after you're  
19 done.

20 MR. ROGERS: All right.

21 THE COURT: Okay.

22 MR. ROGERS: Well, I'm not sure what I'm permitted  
23 to ask now, other than to ask, Doctor, what's -- what's  
24 causing the neck pain? And I don't think he's going to carpal  
25 tunnel, because he can't say carpal tunnel's causing neck

1 pain.

2 MR. EGLET: The point is, he said he didn't know, in  
3 his deposition. So, the question should be, do you know, yes  
4 or no. Or the other question, is there any objective evidence  
5 of a neck injury in this case, yes or no?

6 THE COURT: I think those are both fine questions.

7 MR. ROGERS: All right.

8 THE COURT: Sustain the objection.

9 (End of bench conference at 4:05 p.m.)

10 \* \* \* \* \*

11 (Bench conference began at 4:08 p.m.)

12 MR. ROGERS: He can't lay the foundation of any  
13 relevance to testimony on the treatment of a different  
14 patient, and there could be -- there could be -- obviously.

15 MR. EGLET: [Inaudible]. I'm not talking about  
16 treatment right now, I'm talking -- publishing depositions of  
17 prior testimony that this witness has made in other cases  
18 [inaudible] you. You were -- you've been on notice of these.

19 MR. ROGERS: No.

20 MR. EGLET: We -- these depositions were attached by  
21 Mr. Wall to this witness's deposition -- to this deposition.  
22 You've been on notice for a long time.

23 MR. ROGERS: It isn't simply a question of notice,  
24 though. This is a question of the relevance at all to --

25 MR. EGLET: Well, we haven't even got to that issue

1 yet.

2 THE COURT: Well, I suspect where we're going, but  
3 my question is, we'll just -- these are valid deposition  
4 transcripts. Do [inaudible].

5 MR. ROGERS: It's not an authentication objection.  
6 It's an objection as to -- I mean, is there even a prior  
7 inconsistent statement. Is there any relevant use of it --

8 THE COURT: I think you're about to find out.

9 MR. WALL: Yeah, because they're not admitted. The  
10 jury doesn't get to take them --

11 THE COURT: [Inaudible].

12 MR. WALL: -- back with them. Just have it --

13 THE COURT: Just moving for publication --

14 MR. WALL: -- just to go through them --

15 THE COURT: -- at this point.

16 MR. WALL: -- administerial process [inaudible].

17 MR. ROGERS: All right.

18 THE COURT: Motion's granted.

19 (Bench conference ended at 4:09 p.m.)

20 \* \* \* \* \*

21 (Bench conference began at 4:13 p.m.)

22 THE COURT: What was wrong with that question?

23 MR. ROGERS: No, the answer to this question bears  
24 no relevance at all to the plaintiff's burden of proof, which  
25 is to establish not to simply follow the doctor's

1 recommendations, but that the treatment was necessary.

2 MR. EGLET: No.

3 MR. ROGERS: That's a big difference.

4 THE COURT: That sounds like fair game for  
5 follow-up. Overrule the objection.

6 (End of bench conference at 4:14 p.m.)

7 \* \* \* \* \*

8 (Bench conference began at 4:23 p.m.)

9 MR. EGLET: Opens the door to what?

10 MR. ROGERS: You have asked that he not be allowed  
11 to offer any opinions relating to surgery. He's sitting there  
12 in --

13 MR. EGLET: No, no, I'm -- I'm not --

14 MR. ROGERS: -- his chair going, I don't even --

15 MR. EGLET: -- I'm not asking --

16 MR. ROGERS: -- know what to say now.

17 MR. EGLET: I'm not asking him opinion for cervical  
18 [inaudible]. I'm asking him, isn't it true that Mr. Simao  
19 followed the recommendations of his surgeons to have surgery.  
20 That's true. He knows that. That's not asking for an  
21 opinion.

22 MR. ROGERS: The doctor --

23 THE COURT: Why don't you --

24 MR. ROGERS: -- the doctor's --

25 THE COURT: I don't see how that's an improper

1 question, Mr. Rogers.

2 MR. ROGERS: Well, you can see that the doctor is  
3 saying, simply, he's looking at you going, okay, I don't want  
4 to get in contempt here.

5 MR. EGLET: He's not in contempt.

6 MR. ROGERS: That's what's happening answering that  
7 question.

8 THE COURT: I don't see how that question is  
9 improper --

10 MR. EGLET: Right. It's not.

11 THE COURT: -- based on the pretrial rulings.

12 MR. ROGERS: No, I'm just telling you that he  
13 doesn't know now whether he can even respond --

14 MR. EGLET: It's a "yes" or "no" --

15 MR. ROGERS: -- [inaudible].

16 MR. EGLET: -- it's a "yes" or "no" answer, Steve.  
17 He can respond to it.

18 THE COURT: Overrule the objection.

19 (End of bench conference at 4:24 p.m.)

20 \* \* \* \* \*

21 (Bench conference began at 4:26 p.m.)

22 MR. EGLET: I'm not asking him to comment on --

23 THE COURT: I know.

24 MR. EGLET: That's ridiculous.

25 THE COURT: I know. It is ridiculous.

1 MR. ROGERS: No, but he --

2 MR. EGLET: What he's saying is --

3 MR. ROGERS: He's confused. He doesn't know that he  
4 can talk about --

5 MR. EGLET: No.

6 MR. ROGERS: -- anything relating to surgery.  
7 That's why he's [inaudible].

8 MR. EGLET: I have -- I have read the deposition --  
9 I've read 10 depositions of this guy, and this is the games he  
10 plays every single time. He won't respond hypothetically, he  
11 won't answer questions. It goes on and on. I've read trial  
12 testimony. And this is his MO, okay? This is his MO. He  
13 wants to continue to look ridiculous up there. This is a  
14 simple question.

15 MR. ROGERS: Allow me to tell him that he can  
16 respond to these questions and not be in violation of an  
17 Order.

18 THE COURT: Well, wait a minute. The question is  
19 posed as a "yes" or "no". He can answer the question with a  
20 "yes" or "no". The question doesn't call for him to  
21 [inaudible].

22 MR. ROGERS: And I'll tell him just that. I'll say,  
23 no, not for an opinion.

24 THE COURT: The Court's told him a number of times.  
25 Here's the thing -- here's the thing I don't understand. This

1 guy is making it so much worse for himself. Does he have any  
2 idea?

3 MR. ROGERS: So many what?

4 THE COURT: Does he have any idea how he looks in  
5 front of the jury, or does he just not care?

6 MR. WALL: No, his -- his --

7 MR. EGLET: This is how he does it every time.

8 MR. WALL: There's a certain amount of --

9 MR. ROGERS: Look, I've never seen him here before.

10 THE COURT: I'd really like to know.

11 MR. WALL: I'm not going to -- there's a certain  
12 pendulunt aspect about him --

13 THE COURT: Um-hum.

14 MR. WALL: -- where if you're not going to let me  
15 say all the things I want, Judge, then I'm going to act as  
16 though I'm being restricted and I can't talk and [inaudible].

17 MR. ROGERS: I'm not going to do a character  
18 assessment. I'm just telling you that every question that  
19 relates to surgery, he's looking at me and you, and he's -- he  
20 just --

21 MR. EGLET: This question doesn't --

22 MR. ROGERS: -- doesn't seem to get it.

23 MR. EGLET: The question doesn't relate to surgery.

24 MR. ROGERS: I know.

25 MR. EGLET: And it relates to whether the patient

1 followed the instructions of his doctor.

2 MR. ROGERS: Let me tell him, don't offer an  
3 opinion.

4 MR. EGLET: Tell him to [inaudible].

5 MR. ROGERS: Yes.

6 THE COURT: Overrule the objection.

7 (End of bench conference at 4:29 p.m.)

8 \* \* \* \* \*

9 (Bench conference began at 4:29 p.m. - Court/Marshal)

10 THE COURT: Hum?

11 THE MARSHAL: What time are we breaking?

12 THE COURT: 5:00, I guess.

13 THE MARSHAL: Before?

14 THE COURT: Hum?

15 THE MARSHAL: [Inaudible].

16 THE COURT: Well, close to 5:00.

17 THE MARSHAL: All right.

18 (End of bench conference at 4:29 p.m.)

19 \* \* \* \* \*

20 (Bench conference began at 4:44 p.m.)

21 MR. ROGERS: It's one thing to exclude evidence of  
22 an unrelated accident. It's another thing to misrepresent to  
23 the jury that nothing ever happened.

24 MR. EGLET: Oh, no, no, no.

25 MR. ROGERS: But he's -- there's a subsequent



1 accident. They know it. Don't misrepresent it.

2 MR. EGLET: I'm not misrepresenting anything. This  
3 witness has testified and has stated under oath that no  
4 intervening act, even -- that's why the Court excluded those  
5 intervening acts because he wanted the defense expert to say  
6 it had no affect on his neck. That's the question.

7 MR. ROGERS: But --

8 MR. EGLET: There's been no intervening -- there's  
9 been no intervening event since the time of this accident  
10 which would have caused his neck injury. He agreed to that.

11 THE COURT: There's no evidence of one.

12 MR. EGLET: None.

13 MR. ROGERS: There's -- but there's a fact, or this  
14 event, and we're telling the jury it didn't happen.

15 THE COURT: Mr. Rogers, there's no -- there's no  
16 [inaudible] --

17 MR. ROGERS: No, I'm sorry.

18 MR. ROGERS: There's no [inaudible] that's  
19 [inaudible].

20 MR. ROGERS: Okay. If that's your Order.

21 THE COURT: Overrule the objection.

22 (End of bench conference at 4:45 p.m.)

23 \* \* \* \* \*

24 (Bench conference began at 4:45 p.m.)

25 MR. EGLET: This witness is being an obstructionist

1 beyond belief. He knows he can answer that question. He  
2 [inaudible] and he, in fact, specifically said that he cannot  
3 say that this intervening accident had any effect on his neck.  
4 For him to sit there now and try to say, I can't answer that  
5 question, why otherwise, he is being an obstructionist. He is  
6 evasive. I've never seen such an unprofessional expert  
7 witness in all my years.

8 THE COURT: Well, I haven't -- I haven't either,  
9 quite frankly. I'm really surprised that he would this to  
10 himself.

11 MR. EGLET: So I'm going to -- I'm going to -- hang  
12 on one second. Let me get my notes. I'll be right back.

13 THE COURT: Okay.

14 (Pause in the proceedings)

15 MR. EGLET: I'm going to go to another area. But I  
16 would like a hearing after this, real quick, then I'm going to  
17 be done. But I'm not anywhere near done. But I'm going to be  
18 done for the day. I'm going to go to another area real quick.  
19 Then I'd like a hearing with this witness before the Judge, to  
20 get this guy straight. Otherwise, I'm going to make a Motion  
21 to Strike this expert.

22 THE COURT: Well, then you need to -- to break now,  
23 because I have to leave here at 5:00 today.

24 MR. EGLET: All right.

25 THE COURT: Do you want to break now?

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MR. EGLET: One second, Your Honor.

(End of bench conference at 4:47 p.m.)

\* \* \* \* \*

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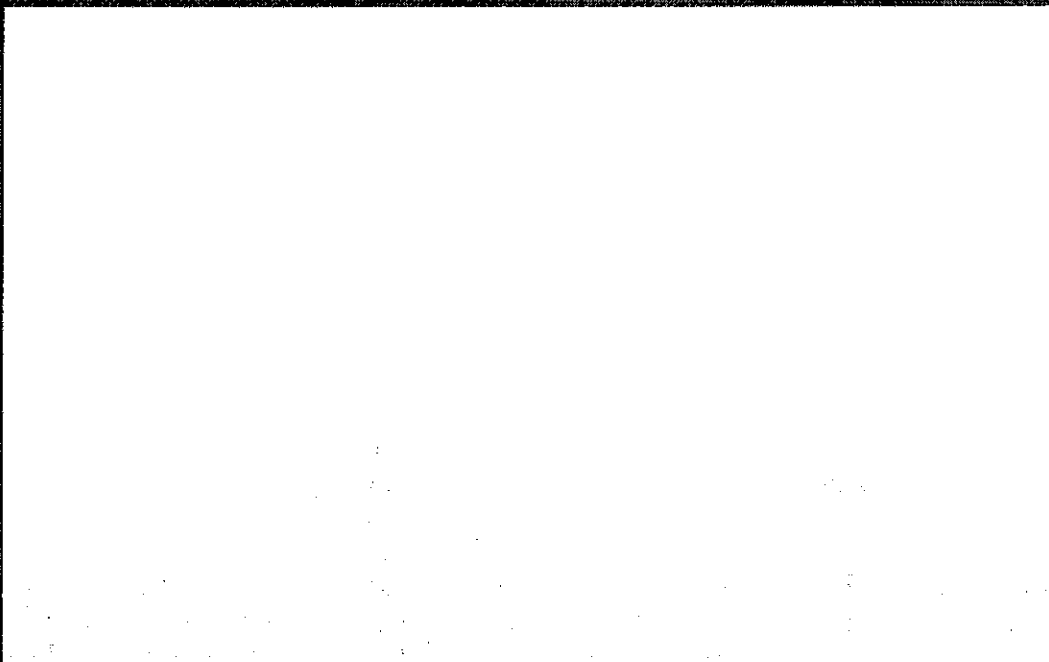
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DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

WILLIAM SIMAO and	.	CASE NO. A-539455
CHERYL SIMAO,	.	
	.	DEPT. NO. X
Plaintiffs,	.	
vs.	.	
	.	TRANSCRIPT OF
JENNY RISH,	.	PROCEEDINGS
	.	
Defendant.	.	**Partial Transcript**

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BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

PORTION OF JURY TRIAL - DAY 10  
(BENCH CONFERENCES)

FRIDAY, MARCH 25, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	DAVID T. WALL, ESQ.
	TRACY A. EGLET, ESQ.
	ROBERT M. ADAMS, ESQ.
	ROBERT T. EGLET, ESQ.

FOR THE DEFENDANT:	STEPHEN H. ROGERS, ESQ.
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COURT RECORDER:

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District Court

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1 LAS VEGAS, NEVADA, FRIDAY, MARCH 25, 2011, 12:05 P.M.

2 (This transcript contains bench conferences only)

3 \* \* \* \* \*

4 (Bench conference began at 12:05 p.m.)

5 MR. EGLET: We've already been down this road,  
6 whether anybody was injured or not injured in Jenny Rish's  
7 car, and their condition is not relevant. He's already tried  
8 this with, I think, Dr. Rosler, and the objection was  
9 sustained. It's the same thing, Your Honor, and it's not  
10 relevant.

11 MR. ROGERS: I'm -- I'm not sure how it is not  
12 relevant. Is this something that there's an Order on?

13 MR. EGLET: It doesn't matter whether it's an Order.

14 MR. WALL: It's what would be the relevance other  
15 than some argument of minor impact.

16 MR. EGLET: Yeah.

17 MR. WALL: Whether Jenny Rish was [inaudible].

18 MR. ROGERS: Well, it seems that if one of them were  
19 injured or were not, that would be relevant or probative to  
20 whether others --

21 MR. EGLET: No.

22 MR. ROGERS: -- were injured.

23 MR. EGLET: No, it's not. No, it's not. That's the  
24 whole point.

25 THE COURT: Sustain the objection.

1 (Bench conference ended at 12:06 p.m.)

2 \* \* \* \* \*

3 (Bench conference began at 12:25 p.m.)

4 MR. ROGERS: A standard part of the pre-surgical  
5 clearance for a spinal cord stimulator is a psychological  
6 clearance. I'm not sure if you'll allow me to ask that  
7 question.

8 MR. EGLET: That is not a standard. That is an  
9 option, depending on the patient. And there has been no  
10 indication in any of the records that he -- if they were going  
11 to do a psychological clearance before a spinal cord  
12 stimulator, they'd do a psychological clearance before they  
13 did the cervical surgery on this gentleman.

14 There was no request for psychological clearance,  
15 because there's no issues of psychology or secondary gain or  
16 issues like that in this case.

17 So it is not -- it's incorrect to say it is standard  
18 procedure to have a psychological clearance before spinal cord  
19 stimulator. That is up to the surgeon, and is only if he sees  
20 indications that he thinks there might be issues of secondary  
21 gain, or somatoform disorder, or some -- or something to that  
22 issue which there has been none in this case.

23 And this Court has ruled is not appropriate. So  
24 it's not an appropriate question.

25 MR. WALL: Right. And they already did it --



1 THE COURT: Hum?

2 MR. WALL: They did it way back when before his  
3 first objection and he cleared everything and then  
4 [inaudible].

5 MR. ROGERS: Dave, that's -- that's not accurate  
6 actually.

7 THE COURT: Did you name any witnesses -- did you  
8 name any psychiatrist --

9 MR. ROGERS: No.

10 THE COURT: -- or any psychologists or anybody like  
11 that --

12 MR. ROGERS: No, that's --

13 THE COURT: -- during the discovery process?

14 MR. ROGERS: No, and that's not actually the purpose  
15 of this question. The question is this. The plaintiff has  
16 presented a claim for a spinal cord stimulator. And the point  
17 of these questions isn't to -- to say that the plaintiff has a  
18 secondary gain, a malingering problem, but rather that there  
19 are criteria that must be met before the plaintiff is actually  
20 considered a candidate for the procedure that the plaintiff  
21 now wishes to board for damages.

22 I want to get a list of all of those criteria --

23 MR. EGLET: A psychological --

24 MR. ROGERS: -- before the jury.

25 MR. EGLET: -- clearance is not a criteria --

1 MR. ROGERS: [Inaudible].

2 MR. EGLET: -- that the plaintiff must meet.

3 Psychological issues have been specifically excluded in a  
4 Motion in Limine in this case. There are no psychological  
5 issues in this case. The only reason to do this is to  
6 suggest, just like he's suggesting throughout his doctors, by  
7 saying that there's no injury, there's nothing. That this is  
8 all -- you know, the only suggestion of any of that is that,  
9 oh, this just must be in Mr. Simao's head.

10 So the only -- the only reason he asked that  
11 question is to make that suggestion. It is -- there's no  
12 foundation that a psychological clearance is a requirement for  
13 a spinal cord stimulator. And that is not the case. That is  
14 absolutely not the case.

15 MR. ROGERS: The question really, during the  
16 foundation, that's the reason I approached. You know, I don't  
17 want to get in any trouble here, I just want to know whether I  
18 can ask him about all of the foundation.

19 THE COURT: It seems like an attempt to get around a  
20 previous pretrial ruling to me. Sustain the objection.

21 MR. EGLET: Okay.

22 (Bench conference ended at 12:28 p.m.)

23 \* \* \* \* \*

24 (Bench conference began at 12:30 p.m.)

25 MR. EGLET: If he has a deposition of prior

1 testimony of this doctor that he wants to impeach him with, or  
2 show that he's testified inconsistently with, that's fine.  
3 But to -- just to throw out there this -- what he's asking for  
4 is an opinion out of a treating physician that, oh, well,  
5 sometimes doctors testify differently in different  
6 depositions, you know, without having any foundation for it,  
7 without having an example of another deposition where that has  
8 occurred, is improper.

9 There's no -- there's no foundation.

10 MR. WALL: [Inaudible] doctors that [inaudible].

11 MR. EGLET: No.

12 MR. WALL: This is medical build-up.

13 MR. EGLET: Yeah, this is medical build-up. It's --  
14 he's like a trial doctor, like --

15 MR. WALL: You sustained --

16 MR. EGLET: -- with the slide he put up there.

17 MR. WALL: You sustained the objection during the  
18 opening of referring to it as a "trial doctor" --

19 THE COURT: Um-hum.

20 MR. WALL: -- because it merely reflects medical  
21 build-up [Inaudible].

22 THE COURT: Okay. And there's no foundation for  
23 this. I don't -- I mean, I'm not sure exactly where he's  
24 going. I think I have a good idea. But just to throw out  
25 there, you've testified in hundreds of other cases and blah,

1    blah, blah, what does that have to do, if he's got a  
2    deposition where he wants to show that the doctor testified  
3    inconsistently in some other case, that's fine. But just to  
4    throw this out there without any foundation for it, without  
5    having the -- having the doctor to have a deposition to be  
6    able to confirm one way or the other when that happened,  
7    that's inappropriate.

8           He, you know, we had -- we have 10 specific prior  
9    depositions --

10           THE COURT: Um-hum.

11           MR. EGLET: -- on different [inaudible] totally  
12    different.

13           THE COURT: Mr. Rogers, do you have any deposition  
14    testimony?

15           MR. ROGERS: Not related to this case. The reason I  
16    bring it up is you'll recall yesterday what happened was,  
17    plaintiff brought forward in a very, I guess, emphatic way, a  
18    long list of depositions in which Dr. Fish had testified.  
19    They read through each one of them and made quite a display of  
20    a long history. And I objected. And the objection was  
21    overruled.

22           There'd been no foundation laid that any of them  
23    would be used for impeachment. The point was to get across  
24    that this is a guy whose testified many times, and then after  
25    deciding about 9 or 10 cases, in which Dr. Fish had testified,

1 the plaintiff proceeded to use only two for impeachment. And  
2 that wasn't --

3 MR. EGLET: Well, I'm not finished with my  
4 cross-examination. I'll be using all of them, counsel.

5 THE COURT: We ran out of time, I thought.

6 MR. EGLET: Yeah, I'll be using all of them,  
7 counsel. But the point is, it's -- first of all, to suggest  
8 that there was no foundation, that we were going to use these  
9 depositions as impeachment is absolutely incorrect. On the  
10 day of Dr. Fish's deposition, Mr. Wall attached every one of  
11 these depositions as an exhibit, and specifically said on the  
12 record, that these will be used for impeachment purposes.

13 So they were on notice from Day 1, and they haven't  
14 done that with this doctor. Okay? And also, this is a  
15 treating physician, not an expert like Dr. Fish. It's a  
16 different situation.

17 THE COURT: [Inaudible].

18 MR. EGLET: And there's no foundation. He can't  
19 just say, well, you know, what about -- have you had cases in  
20 the past. There's no foundation for it. It's just -- he's  
21 shooting -- excuse me -- you know, he's shooting at ducks in  
22 the dark. There's nothing -- there's nothing -- you know --

23 MR. WALL: My question is, where is he going?

24 MR. EGLET: Yeah, where is going?

25 MR. WALL: After -- after he says, you've testified

1 a lot.

2 MR. EGLET: Yeah, what's -- what's --

3 MR. WALL: [Inaudible].

4 MR. EGLET: -- what's the offer of proof here?

5 THE COURT: Well, what other --

6 MR. ROGERS: I'll let you talk.

7 THE COURT: I wasn't at the deposition, of course.

8 But what I recall, is that we -- you objected when Mr. Eglet  
9 proceeded to ask that those depositions be marked. I think we  
10 had a sidebar, and I think at the sidebar, if memory serves  
11 me, you disclosed that your intent was to use the deposition  
12 transcript testimony to impeach the witness.

13 MR. EGLET: Correct.

14 THE COURT: -- that's what I recall.

15 MR. EGLET: Yes.

16 THE COURT: Is that what you recall?

17 MR. EGLET: Yes, and that's how they were disclosed  
18 at the time of the deposition. That's exactly what. They've  
19 been on notice of this. They have not -- they have not  
20 identified, presented any deposition transcripts, other than  
21 the deposition in this case, of Dr. McNulty. So they don't  
22 get to start asking about hypothetical depositions, or how  
23 many times has, you know, in other depositions where he's been  
24 deposed, where he hypothetically may have said something  
25 different.

1 He's asking this Doctor to speculate without  
2 refreshing his memory. We don't have the deposition here.  
3 It's entirely improper.

4 MR. ROGERS: Just to make my record on this.  
5 Actually, there is notice, because Dr. McNulty attached his  
6 testimony [inaudible].

7 THE COURT: There's no -- I'm sorry?

8 MR. ROGERS: Notice. Because --

9 THE COURT: There's no notice?

10 MR. ROGERS: There is notice, and foundation,  
11 because Dr. McNulty attached his testimony history to his  
12 deposition.

13 MR. EGLET: They have to provide the depositions.  
14 They have to put us on notice that these are the -- the rule  
15 is clear, any depositions you intend to use for impeachment  
16 purpose must be identified and produced to the other side.  
17 The fact that Dr. McNulty complied with the rule and set  
18 forth, these are the case he's giving deposition testimony, in  
19 fact, does not relieve them of their burden of identifying  
20 what depositions they intend to use for impeachment purposes.  
21 They did not do that.

22 MR. WALL: My question is, where is going next? Is  
23 he just going to throw out there, you've testified a lot?

24 THE COURT: Um-hum.

25 MR. WALL: Where is he going next?

1 MR. EGLET: Yeah, you've testified a lot. That  
2 becomes the issue of a trial doctor, and that's medical  
3 build-up. So there's two bases for the objection.

4 THE COURT: Sustain the objection.

5 (Bench conference ended at 12:35 p.m.)

6 \* \* \* \* \*

7 (Bench conference began at 12:55 p.m.)

8 MR. ROGERS: The last record of treatment that I'm  
9 aware of is --

10 THE COURT: I'm sorry?

11 MR. ROGERS: I'm sorry. The last record of  
12 treatment I'm aware of was in February.

13 MR. EGLET: Well, this is March. This is a few  
14 weeks ago. February -- what'd I say [inaudible].

15 MR. ROGERS: Is that where you're going?

16 MR. WALL: Yeah.

17 MR. ROGERS: Is there any record?

18 MR. EGLET: No, there's no record. I don't think  
19 so. I don't know. I mean, I know that Dan may have seen her  
20 in February.

21 MR. ROGERS: I think it was February 11, if I  
22 remember right.

23 MR. EGLET: I don't remember the date, but.

24 MR. ROGERS: I just don't want them to get into  
25 records that haven't been disclosed.



1 MR. WALL: What does it say an exact date on there?

2 THE COURT: Hum?

3 MR. WALL: Does it have a date on it?

4 MR. EGLET: February 24th.

5 THE COURT: Yeah, February 24th, and it shows to be  
6 [inaudible].

7 MR. ROGERS: And let me --

8 THE COURT: Sustained.

9 MR. EGLET: Do you have -- that's Dr. [inaudible]?

10 (Bench conference ended at 12:56 p.m.)

11 \* \* \* \* \*

12 (Bench conference began at 1:00 p.m.)

13 THE COURT: I'm trying -- I'm trying to recall  
14 exactly how you posed that question.

15 MR. WALL: He said -- he said -- he was asking, was  
16 the plaintiff hurt in any way by the motor vehicle accident,  
17 and said -- he said, it's hard to say that he was even truly  
18 injured by the motor vehicle accident.

19 MR. EGLET: That was his testimony. That was his  
20 testimony in his deposition to Mr. Rogers asking, was the  
21 plaintiff -- was Mr. Wall [inaudible], quote, was the  
22 plaintiff injured in any way in this accident, and he says,  
23 it's hard for me to believe that he was truly injured in any  
24 way. That was his testimony. [Inaudible].

25 THE COURT: That's what Fish said in there?

1 MR. EGLET: Dr. Fish said --

2 THE COURT: Yeah, he says [inaudible]. You don't  
3 recall that?

4 MR. ROGERS: I -- I don't.

5 THE COURT: Yeah, he did.

6 THE MARSHAL: [Inaudible].

7 THE COURT: Yeah. Let's take a 10 minute break --

8 (Bench conference ended at 1:01 p.m.)

9 \* \* \* \* \*

10 (Bench conference began at 1:22 p.m.)

11 THE COURT: We have a note from one of our jurors.  
12 I'm not sure, I think Marshal Diamond said it was Ms. Prince  
13 [phonetic].

14 MR. ROGERS: Yeah.

15 THE COURT: It was [inaudible] given the schedule.

16 MR. EGLET: Fine with me, but I know the Court's --  
17 whatever the Court's schedule.

18 MR. ROGERS: [Inaudible].

19 MR. WALL: [Inaudible].

20 MR. EGLET: That's your call. What'd you say?

21 THE COURT: It may -- it is possible?

22 MR. ROGERS: It's possible for me.

23 MR. EGLET: It's certainly possible for us. I mean,  
24 I don't know what the Court's schedule is. I know that  
25 another Judge has your courtroom on --

1 THE COURT: On Fridays.

2 MR. EGLET: -- on certain days. But --

3 THE COURT: On Friday mornings.

4 MR. EGLET: -- you know, I -- we certainly can do  
5 it.

6 THE COURT: The problem is, you know, our criminal  
7 calendar on Mondays and Wednesday quite often runs right up  
8 until --

9 MR. EGLET: Right.

10 THE COURT: -- noon.

11 MR. EGLET: What about Tuesdays --

12 THE COURT: [Inaudible].

13 MR. EGLET: -- and Thursdays?

14 THE COURT: Thursday morning we might have some  
15 flexibility. I'll have to check and see what I've got  
16 calendared. Tuesdays, a civil motion calendar. It's usually  
17 pretty full.

18 MR. EGLET: Well --

19 THE COURT: So.

20 MR. EGLET: -- we --

21 MR. ROGERS: It's your call.

22 MR. EGLET: It's your call, Judge.

23 THE COURT: All right. Thank you.

24 MR. ROGERS: No, because -- let's discuss this thing  
25 we were --

1 THE COURT: Hum?

2 MR. ROGERS: -- we were just discussing Dr. Fish's  
3 schedule.

4 THE COURT: Um-hum.

5 MR. ROGERS: And he's told me that he can be  
6 available tomorrow -- or Monday.

7 THE COURT: Tomorrow?

8 MR. ROGERS: Yeah. Monday is --

9 MR. EGLET: Why don't you tell him to come tomorrow,  
10 and sit here.

11 MR. ROGERS: He's -- he's doing something. It was  
12 -- I thought it was at Berkeley, until 12:30, which is the  
13 first flight he said he could get. That he can get here at  
14 2:00 on Monday. And -- but we've tried to get a little  
15 earlier so we could get here at 1:00. He said he just won't  
16 be able to finish whatever that task is. It was a class, or  
17 something, that he has to do.

18 MR. EGLET: Judge, you know, here's the thing.

19 THE COURT: I'll have to say, I guess he's got --

20 MR. EGLET: Here --

21 THE COURT: -- to come Tuesday. He's got to come  
22 before we hear from Doctor --

23 MR. EGLET: Here -- here --

24 THE COURT: -- Wang.

25 MR. WALL: Wang is Tuesday.

1 MR. EGLET: Wang is Tuesday.

2 MR. WALL: We're taking him out of order.

3 MR. EGLET: Here's -- here's the issue, Judge, okay?  
4 Again, we made this accommodation for them. Their witness has  
5 put us in this situation. We've got Dr. Arita scheduled for  
6 Tuesday --

7 MR. WALL: Monday.

8 MR. EGLET: -- Monday afternoon, after we expect him  
9 to come. We want him here at 1:00, so we could -- I can  
10 finish my -- I'm going to cut my cross-examination down. I  
11 think it's going to be a lot shorter.

12 We expect we can get him done in an hour. And then  
13 we've got Arita to put on. What we don't want is, totally  
14 unfair to us, is for us to have to put Arita on for an hour,  
15 and then have him sit out in the hall, while we pay him, for  
16 them to have their expert come in out of order and  
17 inconvenience us.

18 So it's their witness out of order. He needs to be  
19 here at 1:00 o'clock on Monday.

20 MR. ROGERS: That's not the way it would go though.  
21 We wouldn't break Arita. It would be one or the other goes  
22 first. And if Arita goes first, then --

23 MR. EGLET: Then you're going to risk -- this is  
24 what you're -- well, first of all, no, we want him finished.  
25 We talked about this yesterday. We want him finished before

1 we put Arita on the stand. That's -- it's our case-in-chief.  
2 We should be able to pick the order of the witnesses. We  
3 should be able to finish this witness before we put our  
4 witness on the stand.

5 But here's the other risk. If we put Arita on  
6 first, and he goes longer than expected, like all the  
7 witnesses have --

8 THE COURT: Um-hum.

9 MR. EGLET: -- then we're not -- again, we're not  
10 going to have time to finish him on Monday, and we're going to  
11 be in the same situation.

12 THE COURT: Um-hum.

13 MR. EGLET: If they can't move Fish from Tuesday,  
14 he's got to be here Monday at 1:00.

15 MR. ROGERS: If we put -- I don't know that we can  
16 do that. I -- Your Honor asked us to make him available  
17 Monday or Tuesday. He made himself available on Monday. And  
18 it seems that if we --

19 MR. EGLET: Court starts at 1:00 o'clock on Monday.

20 THE COURT: Yeah. He doesn't dictate the Court's  
21 schedule.

22 MR. ROGERS: I know. I know. Now, the --

23 THE COURT: Come on.

24 MR. ROGERS: -- but --

25 THE COURT: He wasted enough time yesterday. You

1 know, if he had simply answered the questions we might have  
2 gotten through his testimony.

3 MR. ROGERS: Yeah.

4 THE COURT: He was --

5 MR. ROGERS: I -- believe me, I told him so.  
6 Afterwards, I said, look, you've got to just answer the  
7 questions and get out. The fact of the matter is, while I  
8 think it was made to appear that he's been in court a lot, I  
9 don't believe he has. I think the -- he's a nervous wreck up  
10 there. I was surprised.

11 And so, that aside, if he already moved a lot of his  
12 clinic, and he did, to get here, he's gone at great lengths to  
13 do what the plaintiff wants. And it seems to me that the  
14 problem that they brought up yesterday was, they need him on  
15 before Wang [phonetic], not before -- Arita was -- I didn't  
16 even know Arita was coming --

17 MR. EGLET: No.

18 MR. ROGERS: -- Monday until now.

19 THE COURT: You know, here's the thing. I have to  
20 tell you, I find really frustrating as a Judge with some of  
21 these expert witnesses. They want to dictate when they're  
22 going to show up in the courtroom. We don't have that luxury  
23 to allow them to dictate when they're going to show up.

24 And it sounds like your witness is one of those  
25 people. So the Court's seen people like that before. I'm

1 sure counsel has seen people like that before.

2 MR. EGLET: Yeah.

3 MR. ROGERS: Okay. Well, where does that leave us?

4 THE COURT: I guess Fish needs to be here at 1:00  
5 o'clock. That's the time we start court on Monday.

6 MR. EGLET: Thank you, Your Honor.

7 THE COURT: And if he can't, can we move him to  
8 Tuesday, switch him out with Wang, because then at least he's  
9 done before Wall. That seemed to be the plaintiff's main  
10 concern.

11 MR. WALL: When's Wang?

12 MR. ROGERS: I don't know that Wang can move. But  
13 I'm trying to juggle these two experts right now. And I --

14 MR. EGLET: Look --

15 MR. ROGERS: -- don't know how it's going to play.

16 MR. EGLET: -- they need to have -- we have -- we  
17 have Arita -- I mean, we're already finishing Dr. McNulty,  
18 putting another of our treating physicians on before we get to  
19 cross Fish. Now, they want us to put yet another treating  
20 physician on before we cross Fish, okay?

21 I did bring up Arita yesterday. He needs to be here  
22 on Monday, before Arita testifies. Monday's the day he says  
23 he can come. He doesn't get to dictate what time on Monday he  
24 comes.

25 THE COURT: No, he does not.



1 MR. EGLET: Court starts at 1:00 o'clock on Monday.  
2 That's when he needs to be here.

3 MR. ROGERS: But what I'm not clear on --

4 MR. EGLET: This is a waste of time.

5 MR. ROGERS: -- and I get your -- I get your --

6 MR. EGLET: We're not going to get done today at the  
7 rate we're going. I promised Doctor --

8 THE COURT: Yeah.

9 MR. EGLET: -- Grover that we would finish him  
10 today, okay? All right? We've got to get going.

11 THE COURT: Yeah, we do. We do. We can discuss  
12 this later.

13 MR. ROGERS: Okay.

14 (Bench conference ended at 1:28 p.m.)

15 \* \* \* \* \*

16 (Bench conference began at 2:38 p.m.)

17 MR. EGLET: Yeah. He doesn't get to -- he doesn't  
18 get to testify about what the medicine is, Judge.

19 THE COURT: Keep your voice down, Mr. Eglet.

20 MR. EGLET: Okay. He may disagree with this, but he  
21 doesn't get to testify about what the medicine is. He may  
22 think it's the CT level, because that's what -- he -- that  
23 idiot on the stand yesterday said, but it's wrong. And this  
24 -- this guy is about to tell the truth.

25 THE COURT: Well, I think you need to specify what

1 [inaudible].

2 MR. EGLET: I said the other segments of the  
3 cervical spine.

4 THE COURT: [Inaudible].

5 MR. EGLET: And the cervical spine has seven levels,  
6 Judge. I said --

7 THE COURT: So he --

8 MR. EGLET: -- the upper seven. It's the C2-3, the  
9 C3-4 are part of the upper 7.

10 THE COURT: So then let's be specific about which  
11 ones.

12 MR. EGLET: All right.

13 THE COURT: Sustain the objection.

14 (Bench conference ended at 2:38 p.m.)

15 \* \* \* \* \*

16 (Bench conference began at 3:52 p.m.)

17 MR. EGLET: He didn't say that this represented a  
18 significant mechanism of injury. When he used the term  
19 "significant mechanism of injury" he was talking about a major  
20 car crash that tears the tendons and the muscles in the neck.

21 All he said was, mechanism of injury. He did not  
22 say significant mechanism of injury with respect to the  
23 history in this case.

24 THE COURT: I understood his testimony.

25 MR. ROGERS: He actually said it was a significant

1 mechanism of injury that caused his head to hyper extend and  
2 hit the cage and then to flex forward. That's exactly the  
3 context in which he said it.

4 MR. EGLET: Well, what he's trying to do, he's --  
5 obviously he's thinking that he's going to be able to get into  
6 the specifics of his accident and go into -- and violate the  
7 Court's ruling about the fact that he can't talk -- bring up  
8 any speeds, or the nature of this accident. That their claim  
9 that it was a minor impact, and that's where he's going with  
10 this.

11 THE COURT: Is that where you're attempting to go,  
12 Mr. Rogers?

13 MR. ROGERS: Here's where I'm going with, is that,  
14 it seems now that the Doctor is permitted to say things about  
15 this accident, characterizing that as a significant mechanism  
16 of injury. And the defense is not being permitted to respond.  
17 I mean, he's the one who said them -- the plaintiff is the one  
18 who introduced it.

19 MR. EGLET: All I --

20 MR. ROGERS: And the defense is entitled to answer  
21 that charge.

22 MR. EGLET: I don't --

23 MR. ROGERS: We didn't elicit that testimony  
24 [inaudible].

25 MR. EGLET: First of all, I don't -- I don't believe

1 he used the term "significant". I believe he used the term  
2 "mechanism of injury". But what he was -- what that in  
3 reference to was the fact that there was documentation in the  
4 Southwest medical records that there was a hyper -- hyper  
5 flexion and that he hit the back of his head on the cage.

6 Now, that's undisputed. That's in the records. And  
7 that's all he was talking about. He wasn't characterizing the  
8 accident like he knew what happened.

9 THE COURT: I didn't perceive --

10 MR. ROGERS: Those are his words.

11 THE COURT: I didn't perceive it that way at all. I  
12 mean, I think you can cross-examine him based upon the medical  
13 records that he reviewed, that gave him knowledge about his  
14 this incident occurred. But I don't think you can kind of  
15 twist his response allowing -- to try to get into an area  
16 that's been excluded.

17 MR. ROGERS: But I -- what I want to do is ask him  
18 where it was he got the impression that led him to testify as  
19 he did. And what is the basis --

20 MR. EGLET: Well, first of all --

21 MR. ROGERS: -- of that --

22 MR. EGLET: -- I'm --

23 MR. ROGERS: -- testimony.

24 MR. EGLET: All he -- all he said was -- he talked  
25 about what the hyper --

1 THE COURT: Um-hum.

2 MR. EGLET: -- hyper extension and flexion and that  
3 he hit his head. We know where he got it. He was reading the  
4 Southwest medical record. It was right up in front of him the  
5 first day.

6 THE COURT: I think you can follow-up in cross-  
7 examining him at that particular record that he reviewed.  
8 But, you know, I don't think -- I think what you stated him,  
9 well, is essentially a mischaracterization of the testimony  
10 that he gave.

11 MR. ROGERS: What -- what then do we do? If we get  
12 the transcript of his testimony, and I'm correct, and he has  
13 said those exact words, he has called this a significant  
14 mechanism.

15 MR. EGLET: He's --

16 MR. ROGERS: We can see then if that's correct, that  
17 there's --

18 THE COURT: I understood him to be describing the  
19 injury.

20 MR. EGLET: He's talking about the hyper flexion  
21 extension and hitting his head on the cage.

22 THE COURT: [Inaudible].

23 MR. EGLET: He's not talking about the damage to the  
24 vehicles or anything. He's not.

25 MR. ROGERS: And I'm not talking about the damage to

1 the vehicles.

2 MR. EGLET: But that's what you want to get into.  
3 You want to get into that this is a low speed --

4 MR. ROGERS: No, that --

5 MR. EGLET: -- and blah, blah, blah.

6 MR. ROGERS: It has --

7 MR. EGLET: That's what you want.

8 MR. ROGERS: -- nothing to do with the property  
9 damage. What it has to do with his the plaintiff's response  
10 to this impact. And he is describing that as significant.

11 MR. EGLET: And --

12 MR. ROGERS: And understand where he got that  
13 information.

14 MR. EGLET: -- and the nature of the impact is not  
15 -- is -- and you just used the right word, the impact, which  
16 is the collision between the vehicles. The nature of the  
17 impact has been excluded. What he was talking about was his  
18 head moving back and forth and hitting the metal cage behind  
19 his head.

20 THE COURT: He talked about --

21 MR. EGLET: That's what he was talking about.

22 THE COURT: He talked about the mechanism of the  
23 injury. But in any event, we've got the record, so you can  
24 pull the record out and cross-examine him as to what his  
25 understanding of the record was.

1 MR. ROGERS: Only of the medical record.

2 MR. EGLET: What?

3 MR. ROGERS: Only the --

4 MR. EGLET: The -- she's --

5 THE COURT: Well --

6 MR. EGLET: -- talking about the Southwest medical  
7 record.

8 MR. ROGERS: Right. Then what I want to know is if  
9 I can cross-examine what he said, not just the basis for what  
10 he said, but what he actually told the Jury.

11 THE COURT: Well --

12 MR. EGLET: What he told the jury was about the neck  
13 going back and forth and hitting the cage.

14 MR. ROGERS: I'm telling you, I wrote it as he spoke  
15 it, and I know what he said.

16 MR. EGLET: No, you're -- you're mistaken. You're  
17 taking it out of context.

18 MR. ROGERS: That's exactly what he said, Your  
19 Honor.

20 THE COURT: Well --

21 MR. EGLET: This does not open a door for them to  
22 get into that in any way, shape or form --

23 THE COURT: Well, I don't --

24 MR. EGLET: -- which is what he's trying to argue  
25 here.

1 THE COURT: -- think it opens the door. I think  
2 you're entitled to inquire of him. But I'm urging you not to  
3 violate any court orders [inaudible]. Okay. Proceed on that  
4 basis.

5 MR. ROGERS: Okay.

6 (Bench conference ended at 3:57 p.m.)

7 \* \* \* \* \*

8 (Bench conference began at 4:00 p.m.)

9 THE COURT: Didn't I sustain that?

10 MR. ROGERS: No, I'm getting into the -- he's  
11 talking about this motion back and forth --

12 MR. EGLET: You're arguing with the Court's --

13 MR. ROGERS: -- how far back did his head go. He  
14 [inaudible].

15 MR. EGLET: There's no foundation for any of that.

16 THE COURT: Right. But isn't that [inaudible]  
17 because he asked the very same question after I sustained Mr.  
18 Eglet's objection, and I'm wondering why you're doing that.

19 MR. ROGERS: I -- he's explaining that there's  
20 something there and it's becoming clear that he doesn't know  
21 what it is. And that's what I'm --

22 MR. EGLET: The reason [inaudible] --

23 MR. ROGERS: -- what I'm exploring.

24 MR. EGLET: -- you know, let me --

25 MR. ROGERS: It's the [inaudible].



1 MR. EGLET: -- let me tell you what he's getting --  
2 what he's opening up here, because now we're going to have to  
3 go into the fact that this is -- we're going to have to go  
4 into the fact that -- the fact that my client is 6 feet, 6  
5 inches tall, okay? And his head is well above any headrest,  
6 or cushion in this vehicle.

7 And so now we're going to start getting into all  
8 this stuff that the Court has excluded, and that's why this --  
9 he's doing exactly what I said he was going to try to do.  
10 He's trying to get into the mechanism of injury. He's talking  
11 about cushionings, whether there's a headrest. All of that is  
12 excluded, because now we start having to have testimony about  
13 how tall is your client, what's the height of the headrest,  
14 all of the stuff that's been excluded.

15 Because there's no testimony -- there's no expertise  
16 in this case on whether the force of this accident was not  
17 sufficient enough to cause his injuries. And that's the only  
18 reason for this line of testimony, and that's why he's going  
19 to get into it.

20 I'm going to ask the Court to instruct Mr. Rogers to  
21 stop doing that. He's trying to get around the Court's Order.

22 MR. ROGERS: That's not at all where I'm going. The  
23 question isn't about force. The question isn't how far did it  
24 flex.

25 MR. EGLET: It doesn't matter.

1 MR. ROGERS: [Inaudible].

2 MR. EGLET: It doesn't matter.

3 THE COURT: Yeah, but you couldn't -- you add in  
4 stuff into this trial that the jury has heard anything about.  
5 You just --

6 MR. ROGERS: Until Dr. Grover introduces it.

7 THE COURT: [Inaudible] they hadn't heard about it  
8 until you [inaudible].

9 MR. EGLET: He didn't introduce it. It's in the  
10 medical records that our client hit his head on the metal cage  
11 behind the seat. It's all over the medical records.

12 THE COURT: That's what I understand.

13 MR. EGLET: Every witness has testified about it.

14 THE COURT: Sustain --

15 MR. ROGERS: But then Doctor --

16 THE COURT: -- the objection.

17 MR. ROGERS: Can I explore then the question that  
18 he's introduced about hyperflexion and extension?

19 THE COURT: Yeah, I think you can.

20 MR. ROGERS: In other words --

21 MR. EGLET: Well, wait a minute. I want an -- I  
22 want an offer of proof, because I believe what he's going to  
23 try to is go into the issue of, well -- because this is what  
24 his question's going to be. Well, if there was a cushion back  
25 there, that would prevent his head from extending --

1 MR. ROGERS: [Inaudible] question.

2 MR. EGLET: -- or a headrest, or whatever the --

3 MR. ROGERS: I [inaudible] say headrest.

4 MR. EGLET: -- or anything back there on the seat.

5 See, he says --

6 MR. ROGERS: I --

7 MR. EGLET: -- I won't say this, I won't say that.

8 Well, if there's anything that would prevent that from  
9 hyperextending. We're getting into the mechanism of the  
10 injury, Your Honor.

11 MR. ROGERS: [Inaudible] is the space.

12 MR. EGLET: He's get -- the space. It's the same  
13 thing.

14 MR. ROGERS: No.

15 MR. EGLET: There's no expert testimony here that  
16 they have to establish that -- and that there -- it doesn't  
17 matter whether there was -- what space was there, because  
18 there's no blank. There's no expert testimony that have that  
19 said, well, if there's only three inches, that couldn't cause  
20 a hyperextension flexion injury, therefore, he couldn't have  
21 had these injuries. They can't --

22 MR. ROGERS: Well, I didn't --

23 MR. EGLET: -- link it up.

24 MR. ROGERS: -- I didn't catch that.

25 MR. EGLET: They can't link it up, and that's the

1 point.

2 THE COURT: Well, he can examine this witness. The  
3 statement about the hyperflexion, however, it [inaudible].

4 MR. EGLET: But he can't examine him on how much  
5 space was there --

6 THE COURT: Well, no, he can't.

7 MR. EGLET: -- or whether he could've -- okay.

8 THE COURT: And --

9 MR. ROGERS: That's -- that's where --

10 THE COURT: And the other thing --

11 MR. ROGERS: -- the extension is.

12 THE COURT: -- is -- the other thing is, this  
13 witness, presumably, actually apparently hasn't seen this  
14 thing. He's only read about it from the reports. So you  
15 can't ask him questions that are beyond his knowledge. He  
16 wasn't there in the car when this person was hit.

17 MR. EGLET: He hasn't inspected this car. He  
18 doesn't know any of this stuff.

19 THE COURT: So, you know, let's not have questions  
20 posed to him that he can't answer, because he's not seen this  
21 thing, and I don't want him speculating.

22 MR. ROGERS: Okay. Now, the question then becomes,  
23 if I am allowed to inquire about his testimony to this jury,  
24 that there was a hyperextension, then the only method to do  
25 that is to ask him, okay, if it's a hyperextension, how far

1 was the extension.

2 THE COURT: Well, you know --

3 MR. EGLET: Yeah, see, there you go.

4 THE COURT: -- it seems like Mr. Eglet may be  
5 correct, and you are trying to --

6 MR. EGLET: Yeah.

7 THE COURT: -- get into areas that aren't  
8 appropriate for the examination of this witness. So, carry on  
9 the best you can.

10 (Bench conference ended at 4:04 p.m.)

11 \* \* \* \* \*

12 (Bench conference began at 4:13 p.m.)

13 MR. ROGERS: All right. Dr. Grover has now  
14 testified --

15 MR. EGLET: I'm sorry, I can't hear you.

16 MR. ROGERS: Dr. Grover has now testified that he  
17 has roughly, I don't know, 18 or \$20,000 in charges in this  
18 case. And I want to inquire not only the amount he's charging  
19 to be here, but also the amount of those charges.

20 THE COURT: What charges?

21 MR. EGLET: What charges?

22 MR. ROGERS: For his treatment in the case.

23 MR. EGLET: Well, the amount of the charges for  
24 treatment, there's no -- there's no -- there's no issue on  
25 that. If you want to ask him how much he's charging for his

1 testimony, or how much he charged me to meet with me last  
2 night, that's fine. But the charges for his treatment has  
3 already been established as customary and reasonable, and they  
4 have not presented or identified, any witness to dispute that  
5 his -- that any of our medical treaters charges are customary  
6 and reasonable.

7 So, it's irrelevant.

8 MR. WALL: And you're not challenging that  
9 [inaudible].

10 MR. ROGERS: It's not about the reasonableness, it's  
11 about the extent of his charges in his case. That's it.

12 THE COURT: You know, it's --

13 MR. EGLET: No, no, you --

14 THE COURT: -- it's in evidence, isn't it? And, by  
15 the way, I think we have to make a record. We still haven't  
16 done that.

17 MR. EGLET: Yeah, but the point is, is they --  
18 they --

19 MR. ROGERS: Make a record of what?

20 THE COURT: Of those items being admitted and --

21 MR. EGLET: What's in evidence.

22 THE COURT: -- it needs to be [inaudible].

23 MR. EGLET: They have -- they agreed pretrial that  
24 the charges were customary and reasonable. So whatever his  
25 charges are, are not -- they don't -- they don't have anybody

1 to dispute that they're not customary and reasonable. So the  
2 only reason to bring this up is that they're not -- is for him  
3 to try to argue they're not customary and reasonable, which  
4 they agreed to.

5 THE COURT: Well, I think, you know, it sounds to me  
6 like some of what you propose may be appropriate for closing  
7 argument and what your witnesses say with respect to those  
8 medical expenses. But I think you're entitled to examine  
9 regarding the time and preparation, and expense --

10 MR. EGLET: Yeah, that -- he can do that.

11 THE COURT: -- [inaudible] in order to get  
12 [inaudible].

13 MR. ROGERS: Okay.

14 (Bench conference ended at 4:15 p.m.)

15 \* \* \* \* \*

16 (Bench conference began at 4:17 p.m.)

17 MR. EGLET: See, this is the problem of not using a  
18 deposition properly, which is what counsel is doing. Is when  
19 you want to try to impeach a witness with a deposition, you  
20 have to provide the witness with the original copy, and then  
21 actually read from the deposition.

22 And what Mr. Rogers just did is completely lied to  
23 this jury, and misrepresent what the testimony was in the  
24 deposition, because here's the question and the answer.

25

1           Question, "Let's start," this is Dr. Grover's  
2 deposition. "Let's start with, was he able to work when he  
3 came to see you in March of 2008?"

4           "It depends on the type of work that he would be  
5 doing. I certainly felt that he was able to walk, move  
6 around. He was complaining of pain in his neck, left shoulder  
7 blade area, and he felt that at times it was quite significant  
8 and unbearable to him. But he was able to talk, walk, speak,  
9 move his arms and legs. He could certainly work in some  
10 capacity, in all likelihood."

11           Question, "I don't mean in a generic sense. I mean,  
12 was this patient unable to do his work?"

13           "I do not know. I don't know what work he was  
14 doing. I do not have a reference to that in the chart."

15           So, there was no testimony that he could only do  
16 clerical work as counsel has represented.

17           MR. ROGERS: If -- I'm going to go get the  
18 transcript.

19           THE COURT: Sure.

20           MR. ROGERS: I don't know how that ended up in my  
21 notes, but.

22           THE COURT: Sure.

23                       (Pause in the proceedings)

24           MR. ROGERS: Okay. "If he wanted to return to work,  
25 I would not tell him necessarily not to. But I would



1 certainly probably have advised him not to perform strenuous  
2 activities that resulted in prolonged posturing or strain on  
3 his neck or his back. But, you know, he could work in some  
4 capacity. He could probably perform a clerical position."

5 I mean, that's -- I don't use the word "clerical".  
6 That's his word.

7 MR. EGLET: Okay. Now, listen -- listen to the  
8 question. The question was. [inaudible] --

9 MR. WALL: Yeah.

10 MR. EGLET: -- did he even know what they're doing  
11 with these things. And the answer was not that. The answer  
12 was, I would advise him, okay. And not that he couldn't do  
13 it, but that I would advise him. It's totally different.

14 THE COURT: Yeah. And --

15 MR. ROGERS: I don't -- you know what --

16 THE COURT: -- and it's been so long now I don't  
17 know if the jury even remembers the question. But I think you  
18 need to [inaudible]. While I have you up here, because  
19 [inaudible] eventually finished your questions with this  
20 witness.

21 MR. EGLET: This -- this is -- would be a question  
22 for McNulty. He didn't do the surgery. They're asking, is  
23 there a video of the surgery showing [inaudible].

24 THE COURT: Um-hum.

25 MR. EGLET: That should've been asked of Dr.

1 McNulty.

2 THE COURT: This came -- I think it came after  
3 McNulty was gone.

4 MR. EGLET: Probably, Judge, but he didn't do the  
5 surgery, so he wouldn't be able to answer that question.

6 THE COURT: Okay. What about this one. Mr. Rogers?

7 MR. ROGERS: That's fine.

8 THE COURT: Okay.

9 MR. EGLET: Your Honor --

10 THE COURT: All right.

11 MR. EGLET: -- so what's going to happen

12 [inaudible]?

13 THE COURT: I think this needs to be clarified.

14 MR. ROGERS: Okay.

15 THE COURT: I think you need to clarify.

16 (Bench conference ended at 4:21 p.m.)

17 \* \* \* \* \*

18 (Bench conference began at 4:35 p.m.)

19 THE COURT: I know we -- I know we discussed this  
20 issue. I want to discuss with you the possibility of, if we  
21 were to be able to make Tuesday and Thursday available all  
22 day, is that something you would like and want to do?

23 MR. EGLET: Yes.

24 MR. WALL: Yes.

25 THE COURT: I need to clear it with them and make

1 sure that --

2 MR. EGLET: Okay. Yes.

3 THE COURT: -- can [inaudible].

4 MR. EGLET: [Inaudible].

5 THE COURT: Okay. Well, then let's get a  
6 commitment. I can do it [inaudible].

7 MR. WALL: What about --

8 THE COURT: Yeah. I don't know how it affects your  
9 witness, but.

10 MR. WALL: How about --

11 THE COURT: I have -- you'd have from 9:00 to noon.

12 MR. WALL: How about potentially Friday [inaudible].  
13 Can they [inaudible] Jerry's calendar's somewhere else.

14 THE COURT: Say that again.

15 MR. WALL: What about potentially Friday? Can they  
16 move Jerry's calendar somewhere else?

17 THE COURT: If you guys want to call Jerry and ask,  
18 but I'm not -- I can't get in the middle of that. He's --

19 MR. WALL: I [inaudible].

20 THE COURT: -- got this courtroom Friday mornings.

21 MR. WALL: Okay.

22 THE COURT: If he's amenable to moving it, then we  
23 could do that, too.

24 MR. WALL: Okay.

25 THE COURT: All right?

1 MR. EGLET: And you're going to dismiss the jury.  
2 Can we have [inaudible] my understanding is you -- you've  
3 instructed counsel that Dr. Fish has got to be here Monday at  
4 1:00 o'clock?

5 THE COURT: Yes.

6 MR. EGLET: All right.

7 MR. ROGERS: I have a text. It's on my phone. I'll  
8 go check it.

9 THE COURT: Okay.

10 MR. WALL: But there's one other matter that I'd  
11 like to handle outside the presence.

12 THE COURT: And I hope it's not going to be lengthy,  
13 because I need to get out of here pretty quick today.

14 MR. WALL: I'd say my portion would be 60 seconds or  
15 less.

16 THE COURT: Okay. Good. I'll hold you to it.

17 (Bench conference ended at 4:37 p.m.)

18 \* \* \* \* \*

19

20

21

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25

\* \* \* \* \*

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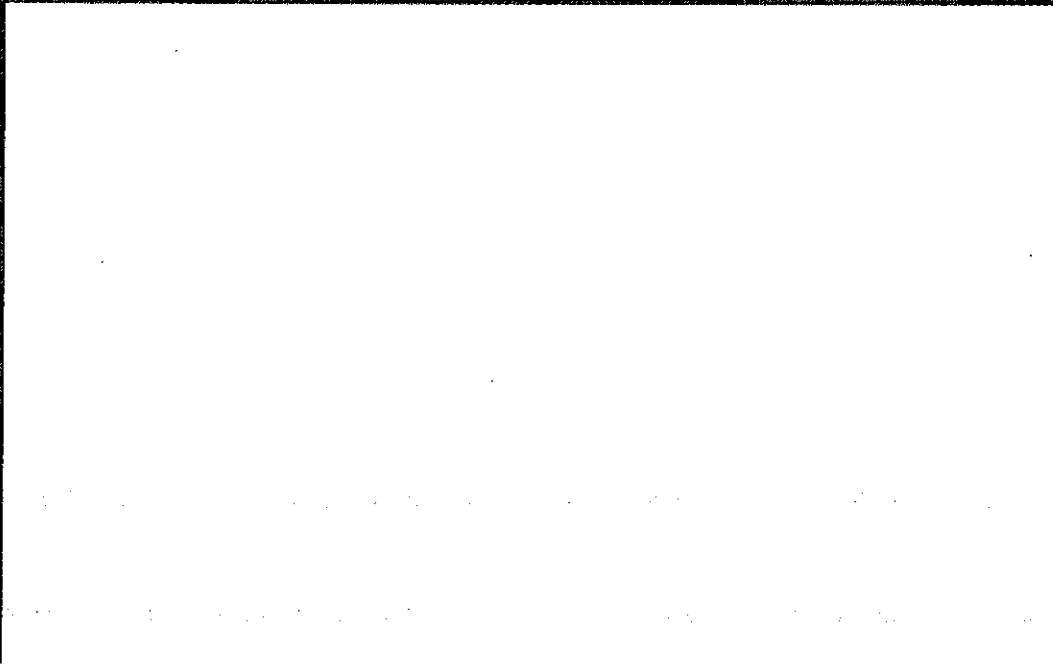
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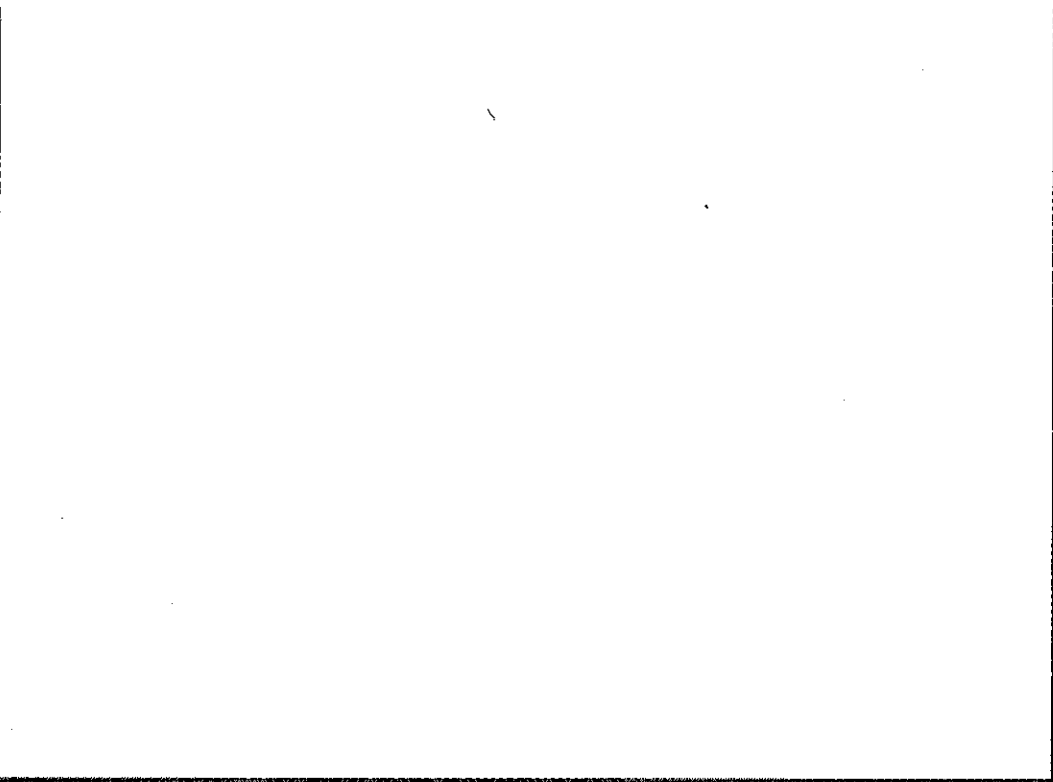
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DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

WILLIAM SIMAO and  
CHERYL SIMAO,

Plaintiffs,

vs.

JENNY RISH,

Defendant.

CASE NO. A-539455

DEPT. NO. X

TRANSCRIPT OF  
PROCEEDINGS

\*\*Partial Transcript\*\*

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

PORTION OF JURY TRIAL - DAY 11  
(BENCH CONFERENCES)

MONDAY, MARCH 28, 2011

APPEARANCES:

FOR THE PLAINTIFFS:

DAVID T. WALL, ESQ.  
TRACY A. EGLET, ESQ.  
ROBERT M. ADAMS, ESQ.  
ROBERT T. EGLET, ESQ.

FOR THE DEFENDANT:

STEPHEN H. ROGERS, ESQ.

COURT RECORDER:

VICTORIA BOYD  
District Court

TRANSCRIPTION BY:

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CLERK OF THE COURT

1 LAS VEGAS, NEVADA, MONDAY, MARCH 28, 2011, 2:10 P.M.

2 (This transcript contains bench conferences only)

3 \* \* \* \* \*

4 (Bench conference began at 2:10 p.m.)

5 THE COURT: There's no pending question now, right?

6 MR. EGLET: No, there is. I'm impeaching him -- I'm  
7 -- hang on a second.

8 (Pause in the proceedings)

9 MR. EGLET: I'm impeaching him on the testimony he  
10 gave last Thursday that this pain in my client's neck couldn't  
11 have had a delayed onset, and could not have been overshadowed  
12 by his head pain, and that's what this is. This is in direct  
13 contravention to that.

14 THE COURT: Did you ask him a specific question  
15 before you go to this?

16 MR. EGLET: I don't have to. He's already testified  
17 to this on direct. I'm simply -- I mean, identified the  
18 deposition. I'm simply showing him where he testified  
19 differently than he testified in his trial testimony last  
20 week, okay? The attorneys already heard his testimony. I can  
21 go right to it and impeach him. There's no requirement that I  
22 repeat the testimony, Your Honor.

23 THE COURT: Mr. Rogers?

24 MR. ROGERS: Well, he's mistaken. I think if he's  
25 going to use this as an impeachment tool, that he has to get



1 the testimony out first.

2 MR. EGLET: The testimony's already out, okay? Just  
3 because there was a four day delay, a three day delay cause of  
4 my cross-examination by this witness, doesn't mean I have to  
5 repeat his direct testimony. He testified -- if I'd have  
6 gotten to cross-examine him and finished him on Thursday, I  
7 could've gone right into this, because he just testified to  
8 this, without have -- reading the testimony.

9 It's just as if this occurred right afterwards.  
10 There's no requirement that I read the testimony. He's wrong.  
11 I've been doing this a long time. I know how to use  
12 depositions.

13 THE COURT: Overrule the objection.

14 (Bench conference ended at 2:12 p.m.)

15 \* \* \* \* \*

16 (Bench conference began at 2:52 p.m.)

17 MR. ROGERS: I was getting --

18 MR. WALL: Do you know where we're going?

19 MR. EGLET: You don't? I knew this was exactly  
20 what --

21 MR. WALL: This is going to be --

22 MR. EGLET: -- exactly what we predicted.

23 MR. WALL: Minor impact, just as he said it --

24 MR. EGLET: They're going to --

25 MR. WALL: -- on cross, tried to --

1 MR. EGLET: -- want to -- they want to --

2 MR. WALL: -- stick it in on cross.

3 MR. ROGERS: I was asking --

4 MR. EGLET: Let me finish.

5 MR. WALL: -- [inaudible] accident.

6 MR. EGLET: When you compare the significance of  
7 [inaudible] of accident [inaudible] to this accident, which is  
8 exactly what he's trying to do. He says [inaudible]. Well,  
9 okay, what does that have to do with this case, unless you're  
10 about to compare the differences between mechanisms and  
11 injuries and natures of the impact? That is excluded and is  
12 another violation of this Court Order.

13 It has nothing to do with this case. The mechanism  
14 of the injury, the nature of impact [inaudible] has nothing to  
15 do [inaudible] was the fact that there was a nine month gap  
16 between the time between when my client complained of pain of  
17 -- between the time of the accident until she complained of  
18 any pain [inaudible] on either her right or left shoulder.

19 And as the plaintiff's expert in that case, he never  
20 [inaudible] related to the accident. There was a four month  
21 gap, a five month gap between the time on -- at the initial  
22 accident scene she complained of low back pain. But there's  
23 no documentation about any low back pain five months  
24 [inaudible] accident.

25 That's where I brought up to compare [inaudible]

1 there was gaps in there and you, nevertheless [inaudible] that  
2 there's no gaps in there. The nature of the impact, the  
3 nature of the motor vehicle collisions has nothing to do with  
4 this, those issues, and that's where he's going.

5 MR. ROGERS: That's not where I'm going.

6 MR. EGLET: That's where your witness is going.

7 MR. ROGERS: Where I'm -- where I'm going is --

8 MR. WALL: Because he [inaudible] it on cross.

9 MR. ROGERS: No, where I'm going is, I saw as I was  
10 leafing through the transcript, that there was a full  
11 thickness tear of rotator cuff.

12 THE COURT: There was a what? I'm sorry.

13 MR. ROGERS: A full thickness tear of the rotator  
14 cuff. And -- and plaintiff's counsel inquired about the Gate  
15 Theory in Gilbert [phonetic]. And the Gate Theory is that  
16 theory about, your brain being able to process pain from  
17 different areas at the same time.

18 And the Gate Theory really is about whether a  
19 severe, immediate onset like a full thickness tear. Usually,  
20 you hear about this theory more in terms of a gunshot wound,  
21 where there's a secondary injury that isn't recognized,  
22 because you're overwhelmed by the severity of that primary  
23 injury. That's the difference that I'm inquiring about, not  
24 the --

25 MR. EGLET: See [inaudible] --

1 MR. ROGERS: -- accidents, but the full thickness  
2 tear. That's where I'm going.

3 MR. EGLET: Well, that doesn't make any difference,  
4 because that's not where his witness is going, okay? That  
5 wasn't his question. [Inaudible] what does it have to do with  
6 [inaudible]? Yeah, my client did have a full thickness tear.  
7 And she complained of no shoulder pain for nine months. It  
8 wasn't recognized --

9 MR. ROGERS: I thought it was the other shoulder.

10 MR. EGLET: No, you're wrong, okay? You don't know  
11 the case. I do.

12 MR. ROGERS: You know --

13 MR. EGLET: See, the problem [inaudible] --

14 MR. ROGERS: -- that's the problem with bringing up  
15 these unrelated depositions, is the facts--

16 MR. EGLET: No, [inaudible] --

17 MR. ROGERS: -- are not on point.

18 MR. EGLET: -- he testified diametrically  
19 inconsistent with the Gate Theory to pain -- pain and primary  
20 and secondary pain in this case, then you did in that case. I  
21 have every right to bring it up to show that what he does is,  
22 it depends on who hires him on the way he testifies. And  
23 that's [inaudible].

24 But the thing is, he, on cross-examination just a  
25 moment ago, he tried to get in the fact [inaudible] and I had

1 to move to strike --

2 THE COURT: Um-hum.

3 MR. EGLET: -- because [inaudible] I'm trying to --

4 MR. WALL: [Inaudible].

5 MR. EGLET: -- keep -- he -- he tried to get in the  
6 fact that he says, well, that was a much more significant  
7 accident. That's what he said. Now, he's trying to go there  
8 again, by talking about the airbags deploying. If he does  
9 this, we're going to ask for the sanctions we talked about,  
10 Judge. And that's where this witness is going.

11 So, you obviously have no control --

12 THE COURT: When --

13 MR. EGLET: -- over this witness whatsoever.

14 THE COURT: Who's [inaudible].

15 MR. ROGERS: I'm sorry?

16 THE COURT: If the Court -- if the Court allows this  
17 testimony --

18 MR. WALL: We're not going to ask for that.

19 THE COURT: -- the jury's going to be [inaudible].

20 MR. EGLET: [Inaudible] another sanction in mind.

21 MR. WALL: We have a far less --

22 MR. EGLET: Far less severe --

23 MR. WALL: -- severe sanction in mind.

24 THE COURT: Well, then I ask you to do so here at  
25 the --

1 MR. EGLET: All right.

2 THE COURT: -- sidebar.

3 MR. EGLET: All right.

4 THE COURT: Sustain the objection. Yeah, sustain  
5 the objection.

6 MR. EGLET: You want -- did you want us to ask for  
7 the sanction now?

8 THE COURT: Well, I guess you need to tell me what  
9 you have -- it might save some time if you tell me what you  
10 have in mind.

11 MR. WALL: It's going to be in the form of -- of an  
12 adverse inference instruction, essentially, that because they  
13 keep pushing, despite the Court's Order -- and I'll make a  
14 long record on it, a medium sized record, this minor impact,  
15 when there's no evidence to support it. And I would ask the  
16 Court, pursuant to Young and the other cases, to instruct this  
17 jury that there is an irrebuttable presumption, that the  
18 accident in question was sufficient to cause the type of  
19 injury that Mr. Simao suffered.

20 MR. EGLET: And that sanction --

21 MR. WALL: Not -- not necessarily that it did, but  
22 that it was sufficient in its severity to cause the injury.

23 MR. EGLET: And that sanction is -- is designed to  
24 address exactly the violations that have occurred here  
25 [inaudible] this minor impact and that's what the case law

1 says, is the sanction should be designed to cure exactly what  
2 their violations of the Orders have been. That's why that is  
3 the appropriate sanction here.

4 THE COURT: Well, we need to make a good record  
5 outside the jury's presence --

6 MR. WALL: Okay.

7 THE COURT: -- if it comes to that.

8 MR. WALL: Okay.

9 THE COURT: I hope it doesn't come to that, Mr.  
10 Rogers.

11 MR. ROGERS: Yes, indeed.

12 THE COURT: So, I think you need to keep this  
13 witness narrowly focused on the questions, because he  
14 attempted to answer your question -- he didn't really answer  
15 your question. He wants to go off in a direction he wants to  
16 go off in.

17 MR. ROGERS: Well, and maybe the way to do this then  
18 is to tell him, look, do not bring that up. Bring up simply  
19 [inaudible] --

20 THE COURT: Well, he's --

21 MR. ROGERS: -- there in terms of the attorneys.

22 THE COURT: -- been told that.

23 MR. EGLET: I don't know many times this guy has to  
24 be told.

25 THE COURT: Respectfully, he's been told that.

1 MR. EGLET: I don't want you -- I don't want now --  
2 I don't want Mr. Rogers whispering to him at sidebar, because  
3 I --

4 MR. WALL: I have my doubts about his ability to  
5 answer an open-ended question [inaudible].

6 THE COURT: Well, you didn't object the other day.

7 MR. WALL: [Inaudible].

8 MR. EGLET: What?

9 THE COURT: You didn't object the other day.

10 MR. EGLET: I'm objecting now. It's gotten out of  
11 hand. It's like, over and over and over again.

12 MR. ROGERS: Okay. I'll ask the question in this  
13 term, and we'll see if this will help us. I will ask, look,  
14 putting aside the nature of the accident in Gilbert --

15 MR. EGLET: That can't be [inaudible] --

16 MR. ROGERS: -- I mean, I don't --

17 MR. EGLET: -- can't be [inaudible] --

18 MR. ROGERS: -- how to secure the testimony.

19 MR. EGLET: That cannot be in question.

20 THE COURT: I think you need to even lead him. I  
21 think you need to narrowly focus your question so that he can  
22 give an answer that's appropriate to the question, at least.

23 MR. ROGERS: Okay. Then I will say, limiting the  
24 questions to the injuries presented in Gilbert, what is the  
25 difference, if any, in the plaintiff's pain presentation



1 there, versus here.

2 THE COURT: I think if you want to inquire on the --  
3 on the, what do you call it, a gateway -- what did you call  
4 it?

5 MR. EGLET: Gate Theory.

6 MR. ROGERS: The Gate Theory.

7 THE COURT: Gate Theory? Gate Theory? I mean,  
8 we've heard testimony with respect to that theory already in  
9 this trial. The jurors have heard it. It seems like we're  
10 getting kind of far afield, because this other case doesn't  
11 really have anything to do with this case, except for the fact  
12 that the witness has testified differently. I mean, I don't  
13 want to get too far afield here.

14 MR. ROGERS: I don't either. But I would like to  
15 ask him, you know, listen, Dr. Fish, limiting the response to  
16 the injuries presented, is there a difference between the two  
17 cases insofar as the gate theory applies.

18 MR. WALL: Here's the thing. If he wants to ask  
19 that question, let him ask it. But asking you for approval to  
20 ask him, and if the answer turns out bad, your approval isn't  
21 going to --

22 THE COURT: Well --

23 MR. WALL: -- mean anything.

24 THE COURT: -- I know, that's the thing.

25 MR. WALL: I mean, it's not going to ameliorate the

1 problem.

2 THE COURT: I know.

3 MR. WALL: So --

4 THE COURT: I don't know how he's going to answer.

5 There's -- I don't see anything wrong with the question --

6 MR. ROGERS: I don't --

7 THE COURT: -- but I don't know what he's going to  
8 answer.

9 MR. ROGERS: I'm sorry?

10 MR. EGLET: I mean, your first question wasn't  
11 necessarily wrong --

12 THE COURT: No.

13 MR. EGLET: -- but his answer was.

14 MR. WALL: Right.

15 MR. EGLET: That's the problem.

16 MR. WALL: Exactly. That's --

17 MR. EGLET: He's answering differently than your  
18 questions. He's not responding to your questions.

19 MR. WALL: [Inaudible].

20 MR. ROGERS: But, I mean, I'm leading him by saying,  
21 taking into consideration only the injuries presented, in  
22 those two cases.

23 THE COURT: Or like Mr. Wall said, I don't think  
24 there's anything inappropriate about that question. What kind  
25 of answer you get is an entirely other thing.

1 MR. ROGERS: True. I -- and I don't know the answer  
2 to this.

3 THE COURT: I believe you.

4 MR. WALL: You know, [inaudible].

5 MR. ROGERS: Yes. All right.

6 (Bench conference ended at 3:01 p.m.)

7 \* \* \* \* \*

8 (Bench conference began at 3:06 p.m.)

9 MR. WALL: Judge, we'd like to make our -- the  
10 motion on the record outside the presence.

11 THE COURT: Okay.

12 MR. EGLET: We're making a motion now. That's it.

13 THE COURT: Okay.

14 MR. ROGERS: Should we finish him and the do the  
15 motion, or?

16 MR. WALL: Not at the rate he's going.

17 MR. EGLET: Not at the rate he's going.

18 MR. ROGERS: No, I'm -- that's just about it for me.

19 THE COURT: What's left?

20 MR. ROGERS: That's -- that's just about it, is what  
21 I mean.

22 THE COURT: Well, what does that mean, one question?

23 MR. ROGERS: Well, I guess if he can't finish this  
24 answer, then --

25 MR. EGLET: Well --

1 MR. ROGERS: -- I'll look at my notes briefly, but  
2 [inaudible] yet.

3 THE COURT: Why don't you take a moment to do that.

4 MR. ROGERS: Thank you.

5 (Bench conference ended at 3:07 p.m.)

6 \* \* \* \* \*

7 (Bench conference began at 4:30 p.m.)

8 MR. ROGERS: The Court has already -- the Court has  
9 already ruled on whether comments about the accident can be  
10 made, and counsel is up here making it seem and characterizing  
11 it as a serious condition, and banging, and whipping, and  
12 doing things that the Court is not permitting the defense to  
13 address.

14 MR. WALL: Their defense is that, look, there's only  
15 treatment of head trauma during May of 2005. The reason why  
16 they addressed head trauma was because he banged his head and  
17 had a contusion on the back of his scalp, and addressed that  
18 first, and did a CT scan of his brain, an MRI of his brain.  
19 And that's why we're addressing why they -- why the doctors or  
20 the PA's addressed that first in May of 2005.

21 MR. ROGERS: The why isn't the concern. It's the  
22 how. It's the words that they're using to characterize this  
23 event now, that are opening the door to cross-examination  
24 about it.

25 MR. WALL: But I'm about to elicit from him that all

1 those tests came back negative.

2 THE COURT: Well, overrule the objection, I suppose.  
3 But I think it would've been sustained had it been a leading -  
4 - objection, leading. Let's proceed on --

5 MR. WALL: That's [inaudible].

6 THE COURT: -- that basis.

7 MR. ROGERS: Thank you.

8 (Bench conference ended at 4:31 p.m.)

9 \* \* \* \* \*

10 (Bench conference began at 4:51 p.m.)

11 THE COURT: I meant to talk to you about this issue  
12 before I excuse the panel.

13 MR. EGLET: Yeah. There was a noise going on when  
14 you were reading the instruction.

15 THE COURT: There was?

16 MR. EGLET: Yeah, there was some paper being  
17 shuffled and stuff. And so I didn't hear part of it either.  
18 So, I think you probably need to read the instruction again.  
19 That's what they're talking about.

20 MR. ROGERS: I would object to that.

21 MR. WALL: Just --

22 MR. EGLET: You've got a jury who's saying they  
23 didn't hear. We told this jury they're entitled to hear all  
24 the evidence. They are trying to hear everything in this  
25 case. This juror's entitled to hear that.

1 MR. WALL: [Inaudible].

2 MR. EGLET: So I --

3 MR. WALL: I think you just read the note and then  
4 read the instruction.

5 MR. EGLET: Yeah. Read the note, and read the  
6 instruction.

7 MR. ROGERS: I object to it, again.

8 THE COURT: Noted for the record.

9 (Bench conference ended at 4:51 p.m.)

10 \* \* \* \* \*

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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*Julie Lord*

JULIE LORD, TRANSCRIBER

*7/12/12*

DATE

**In the Supreme Court of Nevada**

Case Nos. 58504, 59208 and 59423

Electronically Filed  
Aug 15 2012 08:40 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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 21  
PAGES 4801-5016**

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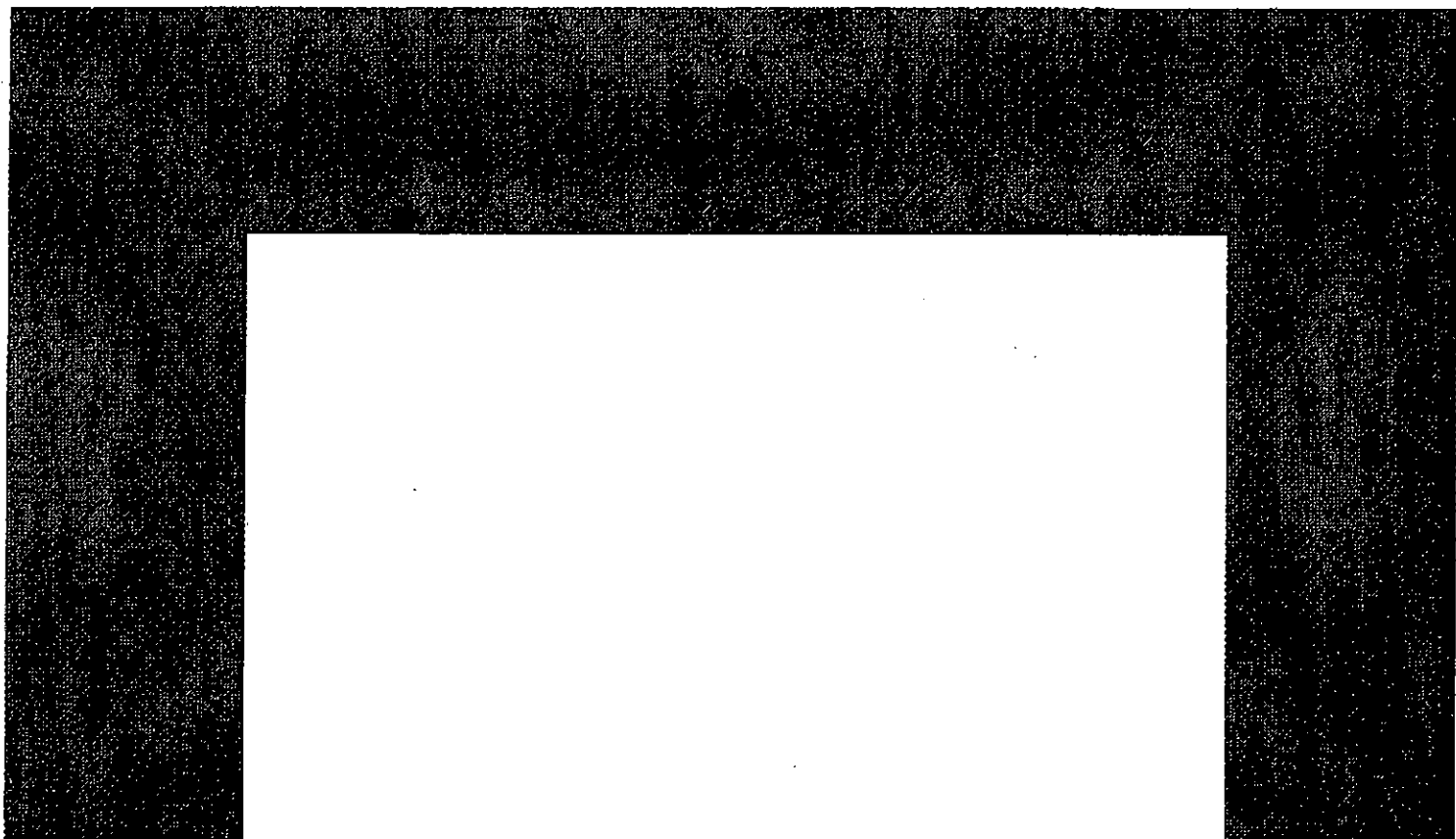
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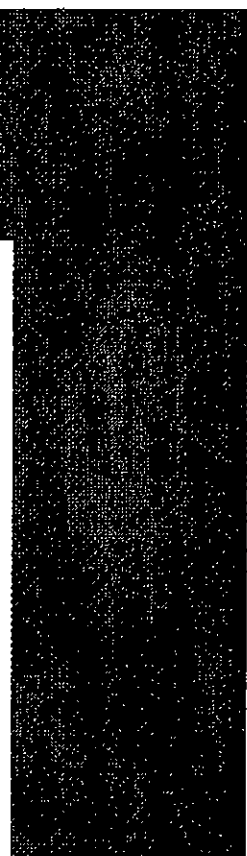
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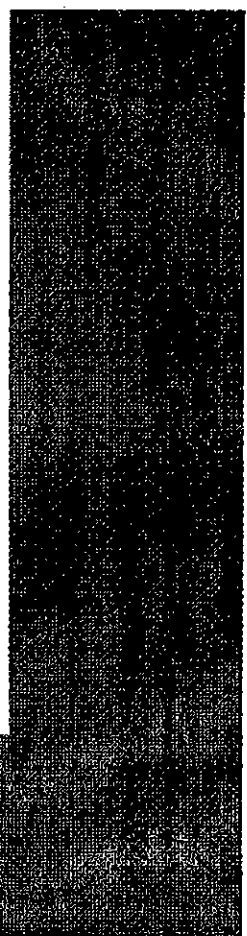
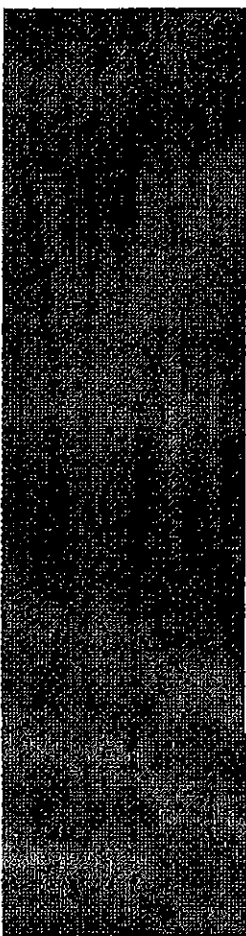




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11 *Attorneys for Defendant Jenny Rish*

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

12 WILLIAM JAY SIMAO, individually and  
13 CHERYL ANN SIMAO, individually and as  
14 husband and wife,

15 Plaintiffs,

16 vs.

17 JENNY RISH; JAMES RISH; LINDA RISH;  
18 DOES I through V; and ROE  
19 Corporations I through V, inclusive,

20 Defendants.

Case No. A539455

Dept. No. XX

21 **SECOND AMENDED NOTICE OF APPEAL**

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

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

1           5.     Order Denying Defendant's Motion for New Trial, filed August 24,  
2 2011, notice of entry of which was served by mail on August 25, 2011; and

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

5  
6           DATED this 14<sup>th</sup> day of September 2011.

7                               LEWIS AND ROCA LLP

8  
9                               By: s/ Joel D. Henriod  
10                               DANIEL F. POLSENBERG (SBN 2376)  
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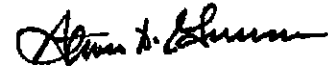
# EXHIBIT A

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# EXHIBIT A

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A539455

DEPT. NO.: X

**NOTICE OF ENTRY OF ORDER**

MAINOR EGLET

004806

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

4  
5 DATED this 25 day of August, 2011.

6 MAINOR EGLET

7   
8

9 ROBERT T. EGLET, ESQ.  
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11 DAVID T. WALL, ESQ.  
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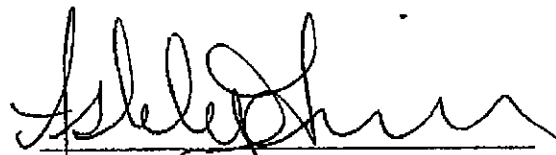
004807  
MAINOR EGLET

004807

**CERTIFICATE OF MAILING**

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

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

  
An employee of MAINOR EGLET

MAINOR EGLET



# **EXHIBIT "1"**

MAINOR EGLET

**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

[badams@mainorlawyers.com](mailto:badams@mainorlawyers.com)

MATTHEW E. AARON, ESQ.

Nevada Bar No. 4900

**AARON & PATERNOSTER, LTD.**

2300 West Sahara Avenue, Suite 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.

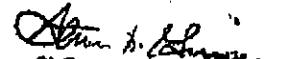
Defendants.

CASE NO.: A539455

DEPT. NO.: X

**ORDER DENYING DEFENDANT'S  
MOTION FOR NEW TRIAL****FILED**

AUG 24 10 35 AM '11

  
 CLERK OF THE COURT

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

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

4 **IT IS SO ORDERED.**

5 DATED this 23 day of August, 2011.  
6

7 **JESSIE WALSH**

8 **DISTRICT COURT JUDGE**  
9

10  
11 Respectfully submitted by:

12 **MAINOR EGLET**  
13

14  
15 **ROBERT T. EGLET, ESQ.**

16 Nevada Bar No. 3402

17 **DAVID T. WALL, ESQ.**

18 Nevada Bar No. 2805

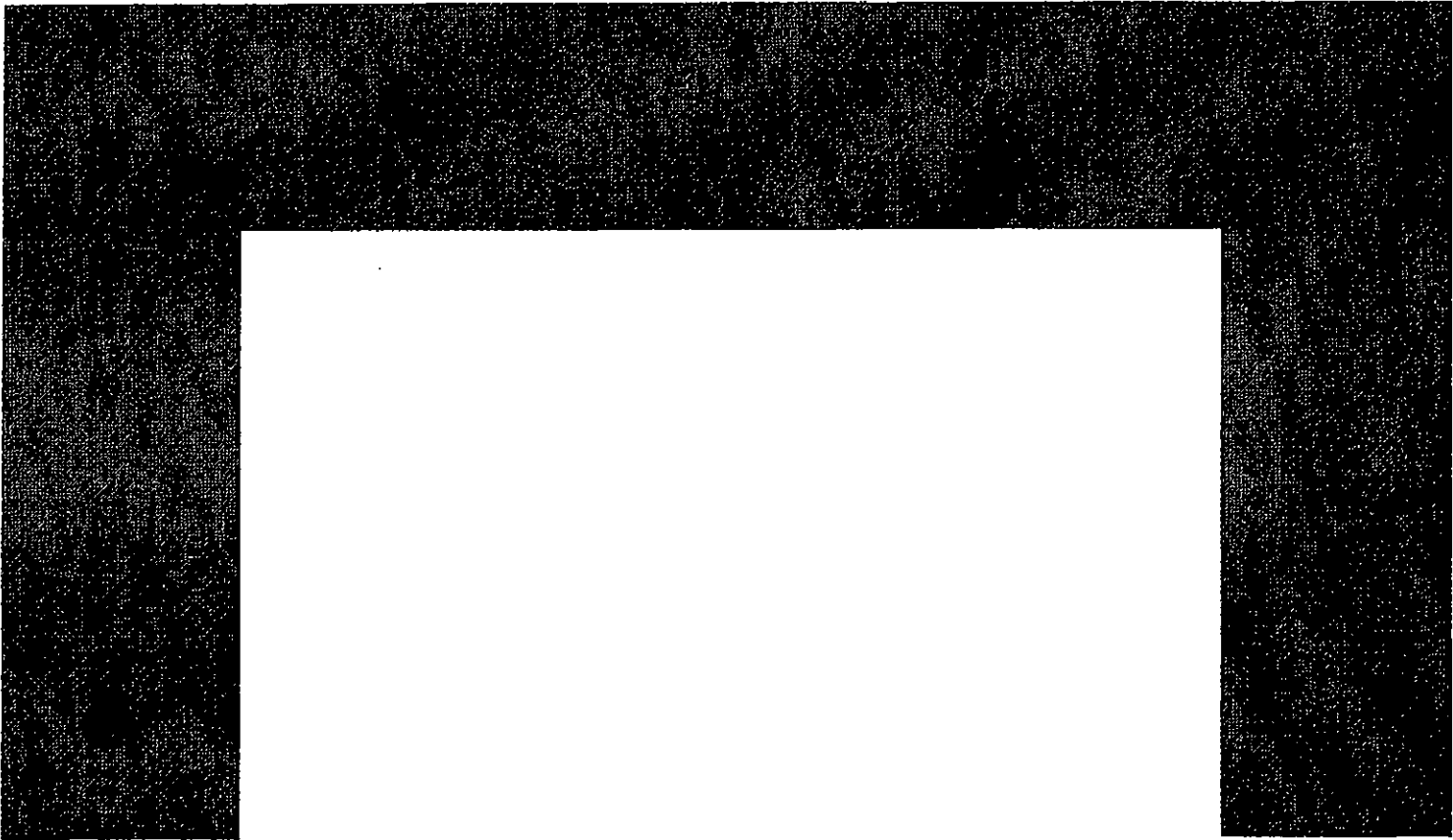
19 **ROBERT M. ADAMS, ESQ.**

20 Nevada Bar No. 6551

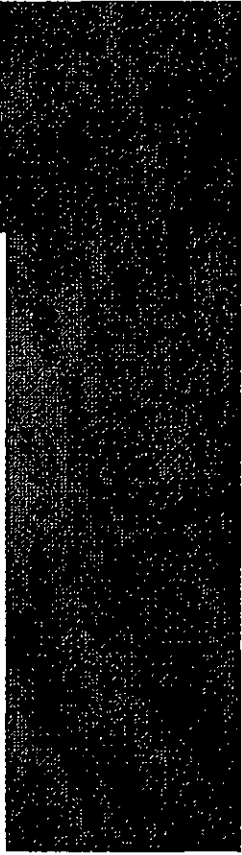
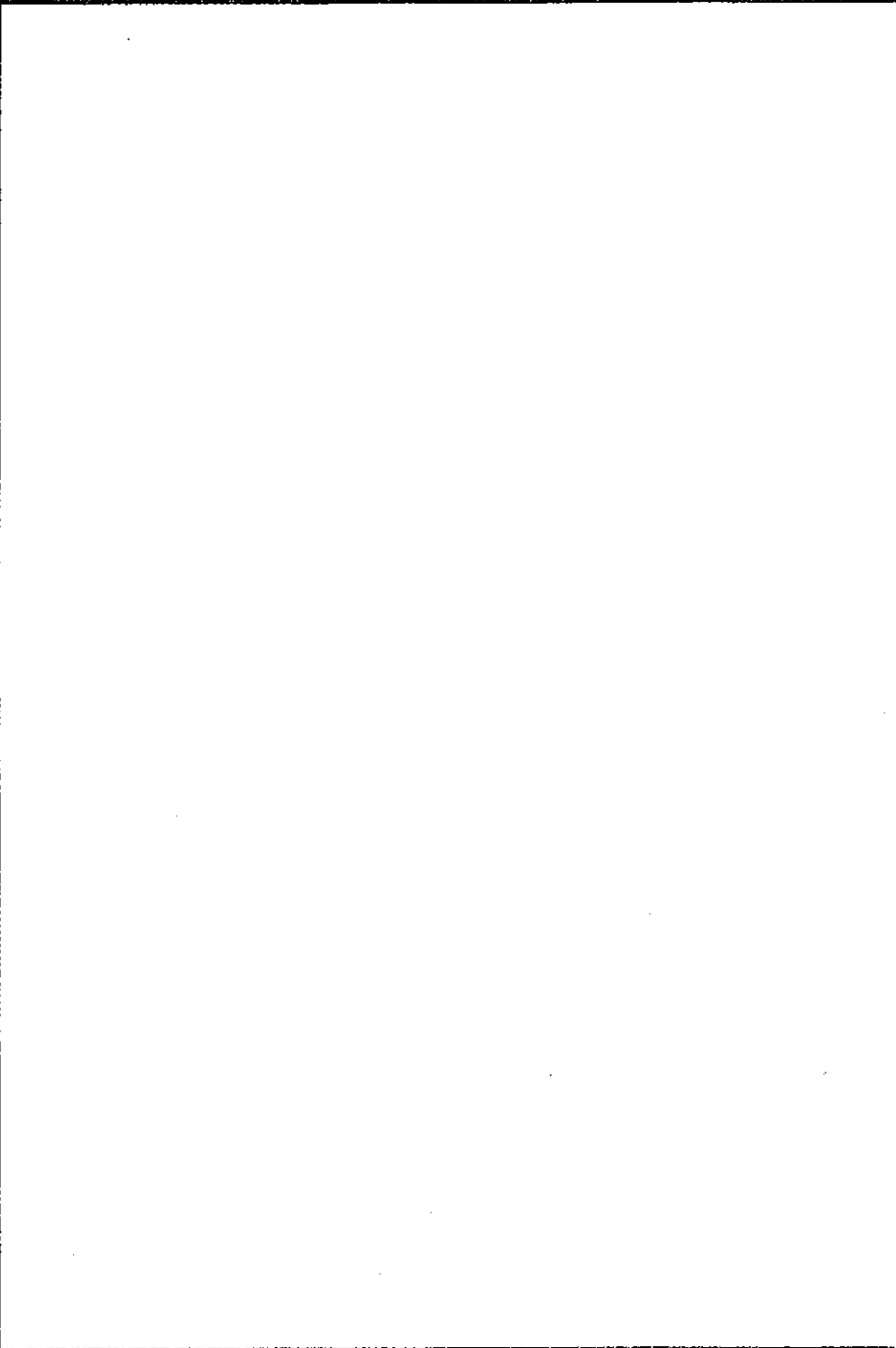
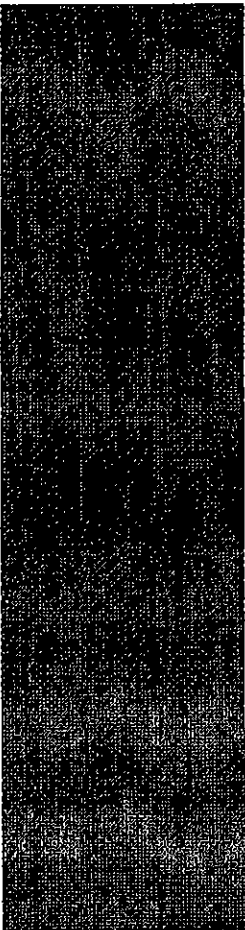
21 400 South Fourth Street, Suite 600

22 Las Vegas, Nevada 89101

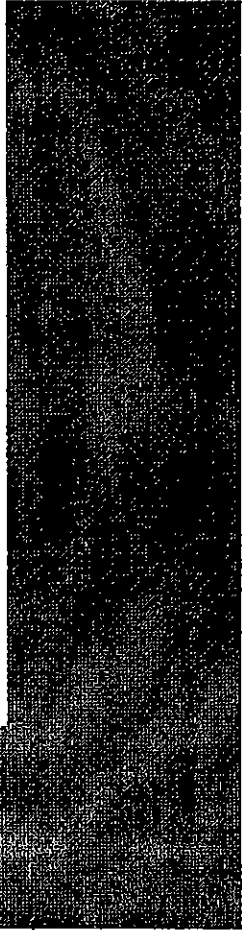
23 *Attorneys for Plaintiffs*  
24  
25  
26  
27  
28



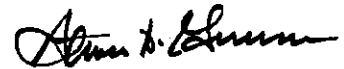
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CLERK OF THE COURT

1 ASTA  
2 DANIEL F. POLSENBERG  
3 State Bar No. 2376  
4 JOEL D. HENRIOD  
5 State Bar No. 8492  
6 LEWIS AND ROCA LLP  
7 3993 Howard Hughes Parkway, Suite 600  
8 Las Vegas, Nevada 89169  
9 (702) 474-2616

10 STEPHEN H. ROGERS (SBN 5755)  
11 ROGERS MASTRANGELO CARVALHO & MITCHELL  
12 300 South Fourth Street, Suite 170  
13 Las Vegas, Nevada 89101  
14 (702) 383-3400

15 *Attorneys for Defendant Jenny Rish*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 WILLIAM JAY SIMAO, individually and  
19 CHERYL ANN SIMAO, individually and as  
20 husband and wife,

Case No. A539455

Dept. No. XX

21 Plaintiffs,

22 vs.

23 JENNY RISH; JAMES RISH; LINDA RISH;  
24 DOES I through V; and ROE  
25 Corporations I through V, inclusive,

26 Defendants.

27 SECOND AMENDED CASE APPEAL STATEMENT

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

Defendant JENNY RISH

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

THE HONORABLE JESSIE WALSH

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

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

1 STEPHEN H. ROGERS  
2 ROGERS MASTRANGELO CARVALHO & MITCHELL  
3 300 South Fourth Street, Suite 170  
4 Las Vegas, Nevada 89101  
5 (702) 383-3400

6 *Attorneys for Appellant*

- 7 4. Identify each respondent and the name and address of appellate counsel, if  
8 known, for each respondent (if the name of a respondent's appellate counsel is  
9 unknown, indicate as much and provide the name and address of that  
10 respondent's trial counsel):

11 ROBERT T. EGLET  
12 DAVID T. WALL  
13 ROBERT M. ADAMS  
14 MAINOR EGLET  
15 400 South Fourth Street  
16 Sixth Floor  
17 Las Vegas, NV 89101  
18 (702) 450-5400

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

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

25 N/A

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

28 Retained counsel

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

Retained counsel

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

N/A

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

Complaint filed April 13, 2007.

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

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

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

7 N/A

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

9 N/A

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

12 No.

13 DATED this 14<sup>th</sup> day of September 2011.

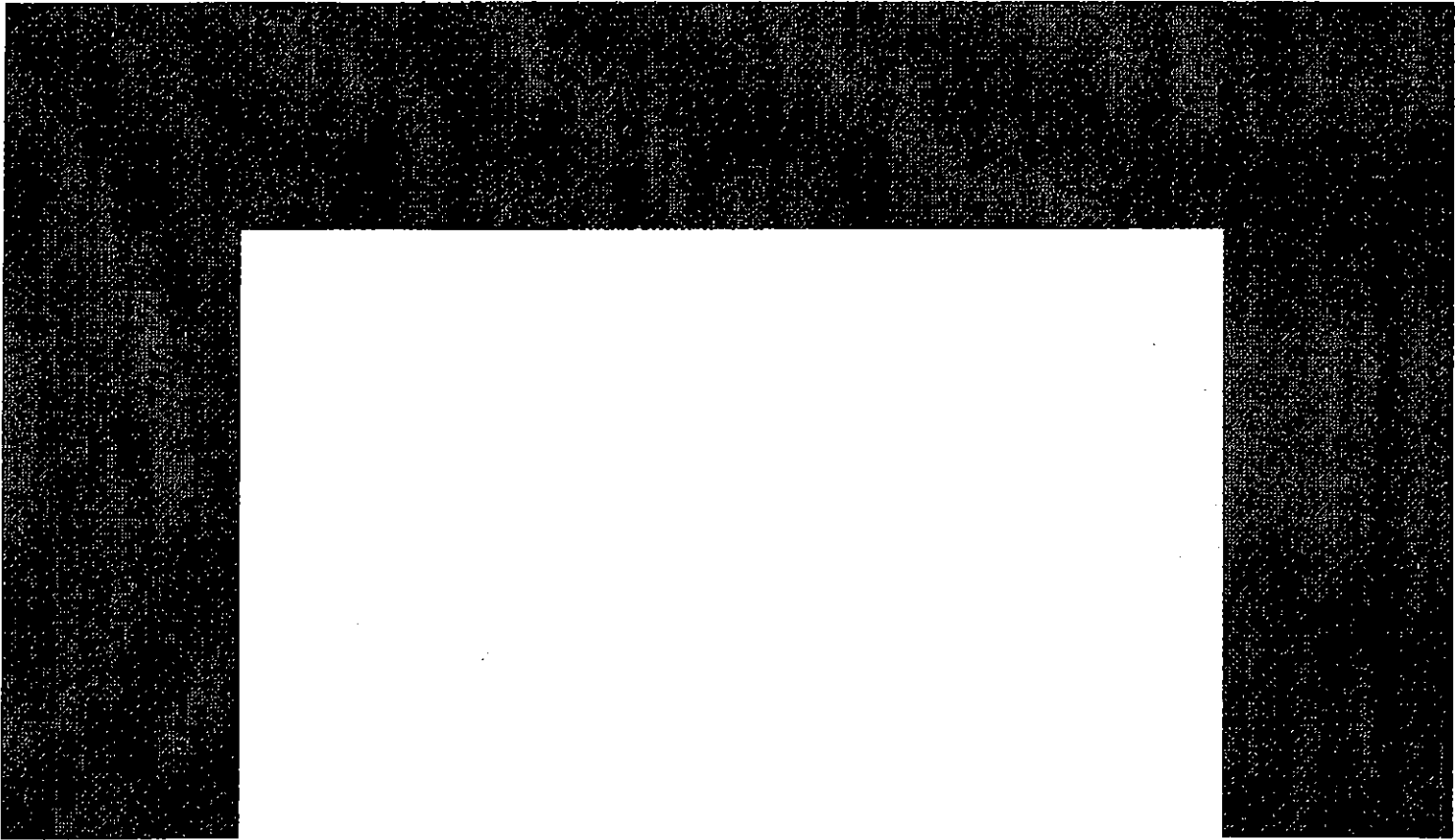
14 LEWIS AND ROCA LLP

15  
16 By: s/ Joel D. Henriod  
17 DANIEL F. POLSENBERG (SBN 2376)  
18 JOEL D. HENRIOD (SBN 8492)  
19 LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 474-2616

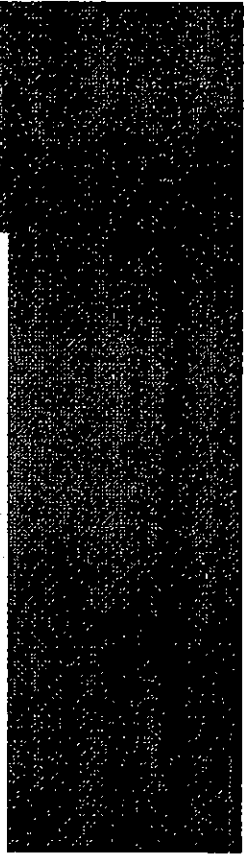
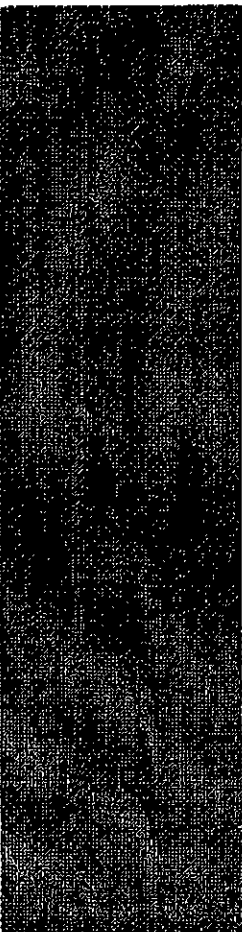
20 *Attorneys for Defendant Jenny Rish*



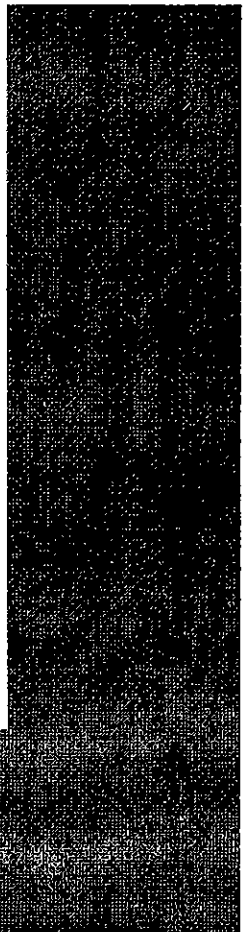




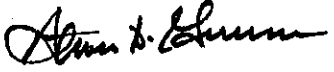
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CLERK OF THE COURT

**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

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Fx: (702) 450-5451

badams@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*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A539455

DEPT. NO.: X

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR ATTORNEY'S FEES**

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

MAINOR EGLET

004818

1 Plaintiffs' Motion for Attorney's Fees, the matter being heard in Chambers on July 21, 2011 for  
2 hearing, and good cause appearing therefore, hereby rules that Plaintiffs' Motion for Attorney's  
3 Fees is **GRANTED**. The Plaintiffs are entitled to attorney's fees pursuant to NRS 17.115 and  
4 NRCP 68, calculated from the date the offer was rejected, using the lodestar method with a  
5 multiplier of 2.5, which amounts to **\$1,078,125.00**. The plaintiffs are also entitled to  
6 prejudgment interest pursuant to NRCP 68(f)(2) and NRS 17.115.  
7

8 **IT IS SO ORDERED.**

9 DATED this 9<sup>th</sup> day of September, 2011.

10  
11  
12   
13 DISTRICT COURT JUDGE  
14

15 Respectfully submitted by:

16 **MAINOR EGLET**

17 

18 ROBERT T. EGLET, ESQ.

19 Nevada Bar No. 3402

20 DAVID T. WALL, ESQ.

21 Nevada Bar No. 2805

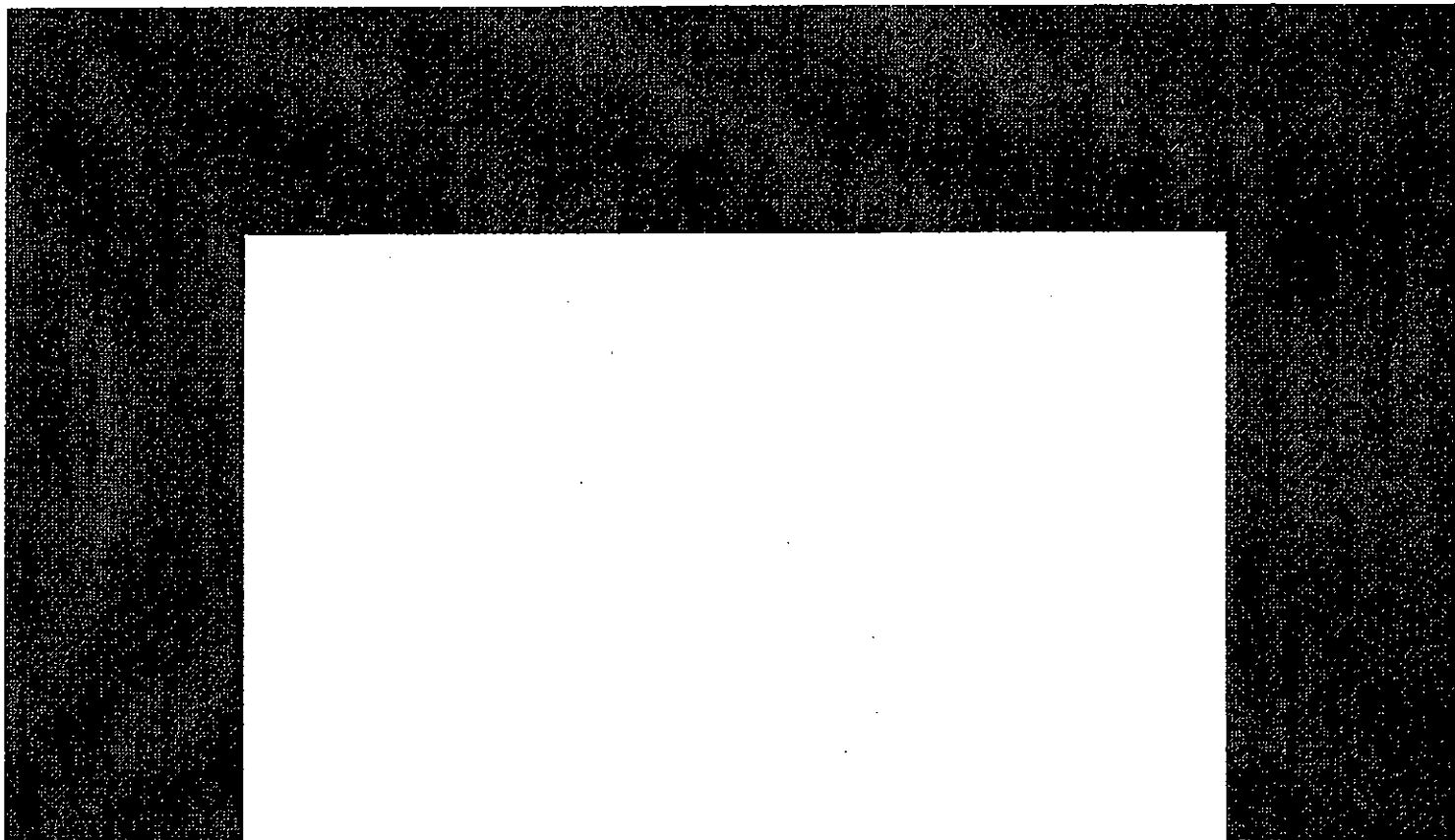
22 ROBERT M. ADAMS, ESQ.

23 Nevada Bar No. 6551

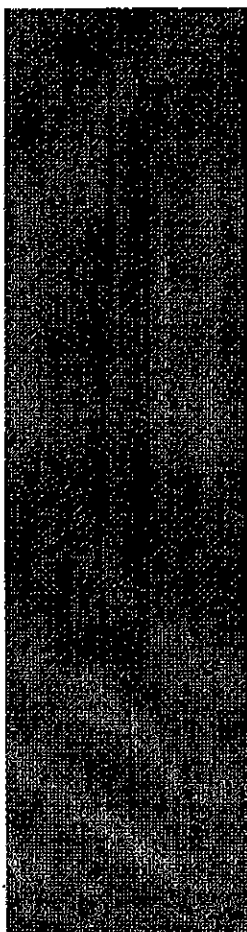
24 400 South Fourth Street, Suite 600

25 Las Vegas, Nevada 89101

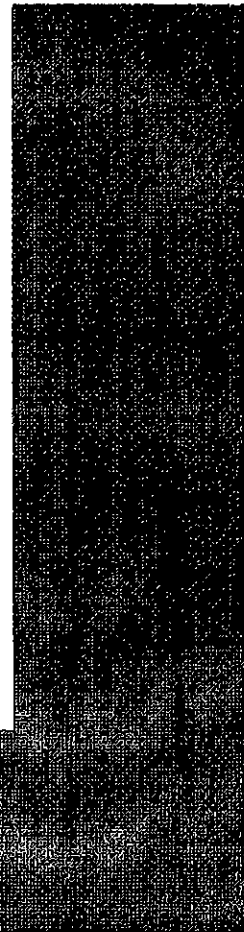
26 *Attorneys for Plaintiffs*  
27  
28



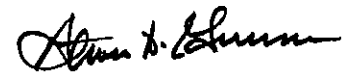
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CLERK OF THE COURT

**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**

MAINOR EGLET

004821

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Attorney's Fees was entered in the above-entitled matter on September 14, 2011 and is attached hereto as Exhibit "1".

DATED this 15 day of September, 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

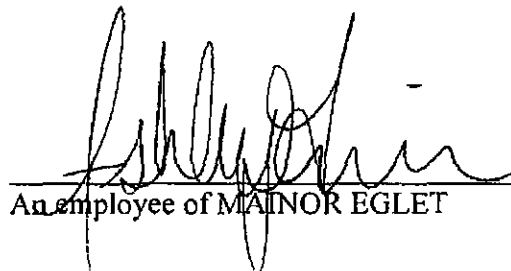
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 15 day of September, 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:

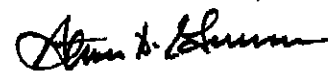
Stephen H. Rogers, Esq.  
**ROGERS, MASTRANGELO,  
 CARVALHO & MITCHELL**  
 300 South Fourth Street, Suite 710  
 Las Vegas, Nevada 89101  
 Attorneys for Defendants



An employee of MAINOR EGLET

# **EXHIBIT “1”**

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CLERK OF THE COURT

**ORDER**

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

DAVID T. WALL, ESQ.

Nevada Bar No. 2805

ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

**MAINOR EGLET**

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Fx: (702) 450-5451

badams@mainorlawyers.com

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Nevada Bar No. 4900

**AARON & PATERNOSTER, LTD.**

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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

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR ATTORNEY'S FEES**

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

MAINOR EGLET

004824



1 Plaintiffs' Motion for Attorney's Fees, the matter being heard in Chambers on July 21, 2011 for  
2 hearing, and good cause appearing therefore, hereby rules that Plaintiffs' Motion for Attorney's  
3 Fees is **GRANTED**. The Plaintiffs are entitled to attorney's fees pursuant to NRS 17.115 and  
4 NRCP 68, calculated from the date the offer was rejected, using the lodestar method with a  
5 multiplier of 2.5, which amounts to **\$1,078,125.00**. The plaintiffs are also entitled to  
6 prejudgment interest pursuant to NRCP 68(f)(2) and NRS 17.115.  
7

8 **IT IS SO ORDERED.**

9 DATED this 9<sup>th</sup> day of September, 2011.  
10

11   
12 **DISTRICT COURT JUDGE**  
13

14 Respectfully submitted by:  
15

16 **MAINOR EGLET**  
17

18   
19

20 **ROBERT T. EGLET, ESQ.**

21 Nevada Bar No. 3402

22 **DAVID T. WALL, ESQ.**

23 Nevada Bar No. 2805

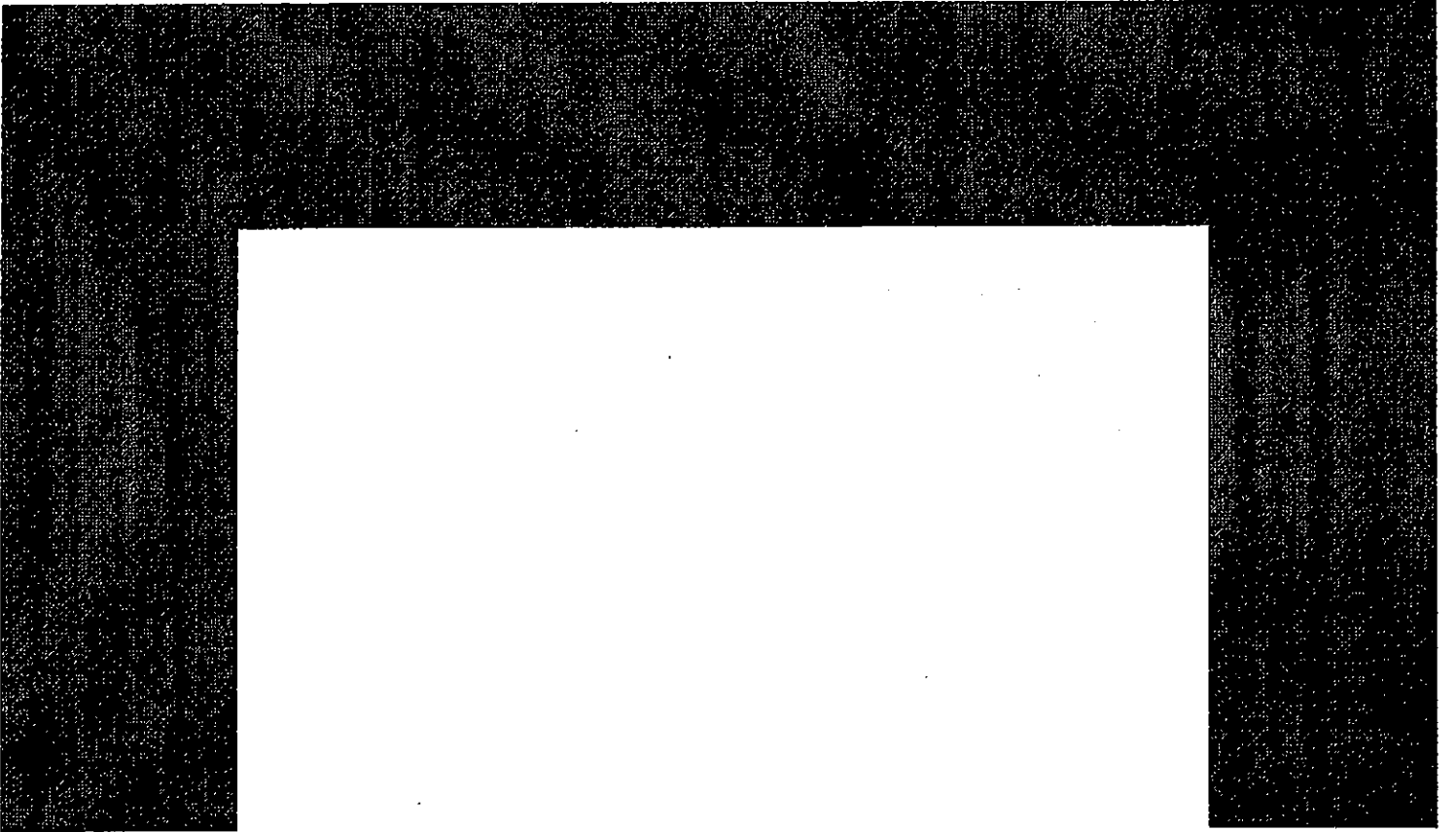
24 **ROBERT M. ADAMS, ESQ.**

25 Nevada Bar No. 6551

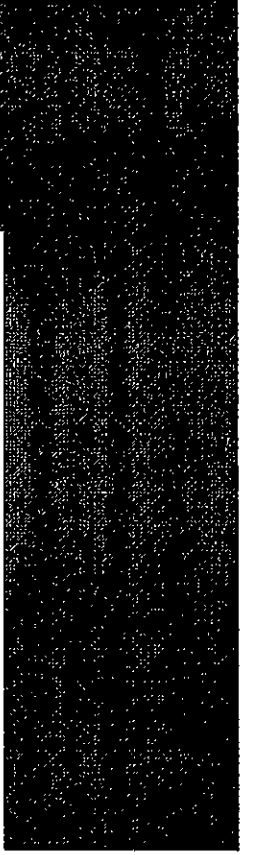
26 400 South Fourth Street, Suite 600

27 Las Vegas, Nevada 89101

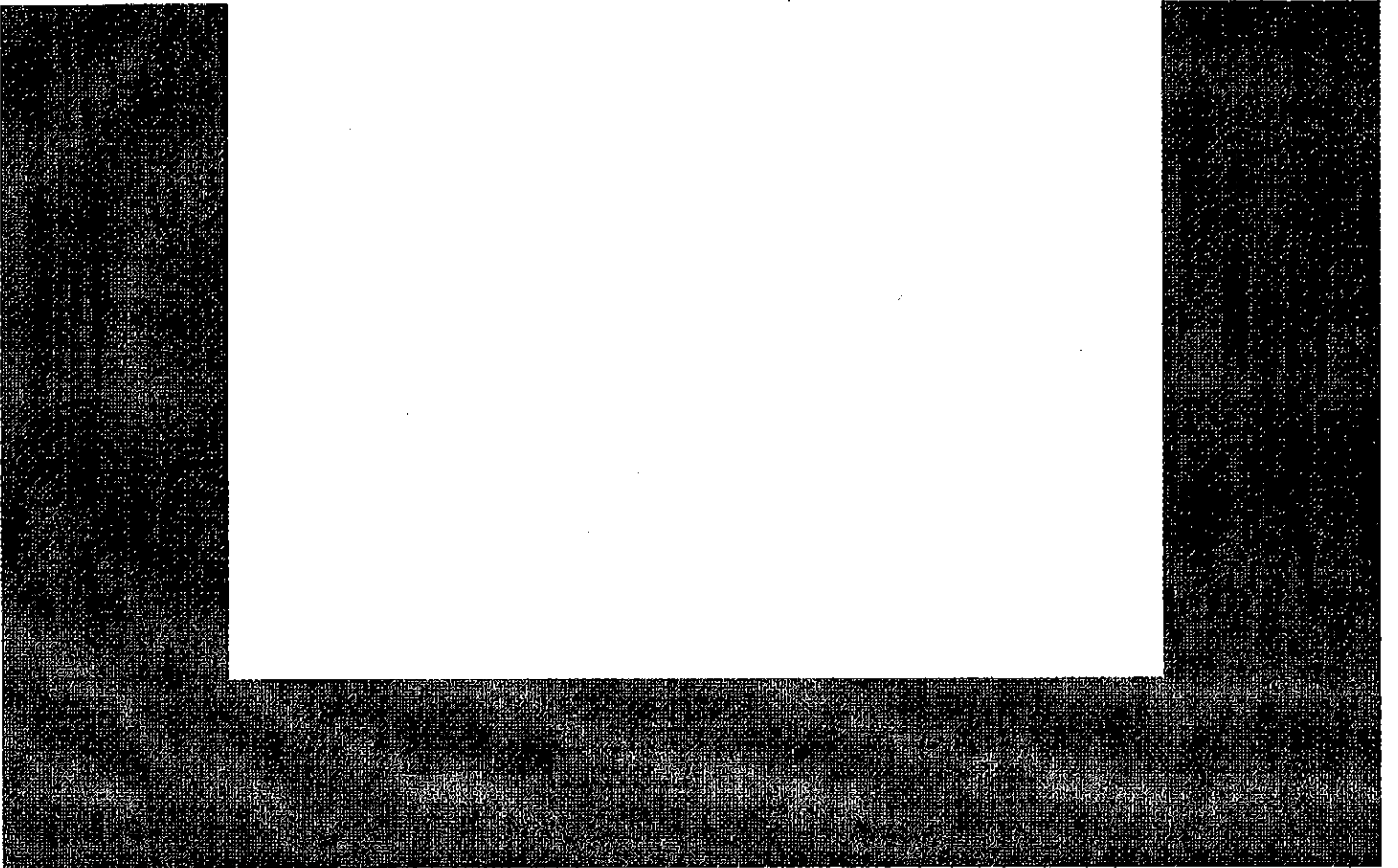
28 *Attorneys for Plaintiffs*

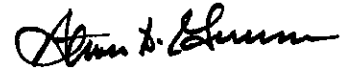


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CLERK OF THE COURT

**JUDGE**

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](mailto:reglet@mainorlawyers.com)[dwall@mainorlawyers.com](mailto:dwall@mainorlawyers.com)[badams@mainorlawyers.com](mailto:badams@mainorlawyers.com)

Attorneys for Plaintiffs

**DISTRICT COURT****CLARK COUNTY, NEVADA**WILLIAM JAY SIMAO, individually and  
CHERYL ANN SIMAO, individually, and as  
husband and wife,

Plaintiffs.

v.

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

Defendants.

CASE NO.: A539455  
DEPT. NO.: X**FINAL JUDGMENT**

This action came on for trial before the Court and the jury, the Honorable Jessie Waish

1 District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its  
2 verdict,

3 IT IS PREVIOUSLY ORDERED AND ADJUDGED, based upon the Jury Verdict and  
4 applicable pre-judgment and post-judgment interest that Plaintiff, WILLIAM SIMAO, have and  
5 recover of the Defendant, JENNY RISH, a judgment of Two Million, Seven Hundred Thirteen  
6 Thousand, One Hundred Fifty One and 96/100 Dollars (\$2,713,151.96), and CHERYL SIMAO, have  
7 and recover of the Defendant, JENNY RISH, a judgment of Six Hundred Eighty One Thousand, Two  
8 Hundred Eighty Six and 00/100 Dollars (\$681,286.00), respectively.  
9

10 Additionally, motions having come on for hearing before the above-entitled Court upon  
11 Plaintiffs' Motion for Attorneys' Fees, Defendant's Motion to Retax Costs, Defendant's Motion for  
12 New Trial, Plaintiffs' Motion to Quash Subpoena Duces Tecum to Hans Jorg Rosler, M.D. at  
13 Nevada Spine Clinic, and Defendant's Motion to Compel Production of Documents; Plaintiffs  
14 appearing by and through their counsel of record, Robert T. Eglet, Esq., David T. Wall, Esq., and  
15 Robert M. Adams, Esq., and Defendant appearing by and through her counsel of record, Stephen H.  
16 Rogers, Esq., and the Court having read the papers and pleadings on file herein, having heard the  
17 arguments of counsel and being fully advised in this matter;  
18

19  
20 IT WAS ORDERED that Plaintiffs be awarded and entitled to attorneys' fees in the amount  
21 of \$1,078,125.00, pursuant to the Lodestar method;  
22

23 IT WAS ORDERED that Plaintiffs be awarded and entitled to costs in the amount of  
24 \$99,555.49;  
25  
26  
27  
28

1 IT WAS ORDERED that Plaintiffs be awarded Pre-Judgment Interest from the date of the  
 2 service of the Summons and Complaint, July 23, 2007 through May 18, 2011, in the amount of  
 3 \$452,231.10;


4 IT WAS FURTHER ORDERED that Plaintiffs be awarded Post-Judgment interest from June  
 5 1, 2011 through September 20, 2011, in the amount of \$62,436.00;<sup>1</sup>  
 6

7 NOW, THEREFORE the Final Judgment in favor of the Plaintiffs, WILLIAM SIMAO and  
 8 CHERYL SIMAO, is hereby entered for Five Million, Eighty Six Thousand, Seven Hundred Eighty  
 9 Five and 55/100 Dollars (\$5,086,785.55), against Defendant which will bear post-judgment interest  
 10 at the current rate of 5.25% or \$731.66 per day, until the post-judgment interest is changed pursuant  
 11 to the provisions of NRS 17.130.  
 12

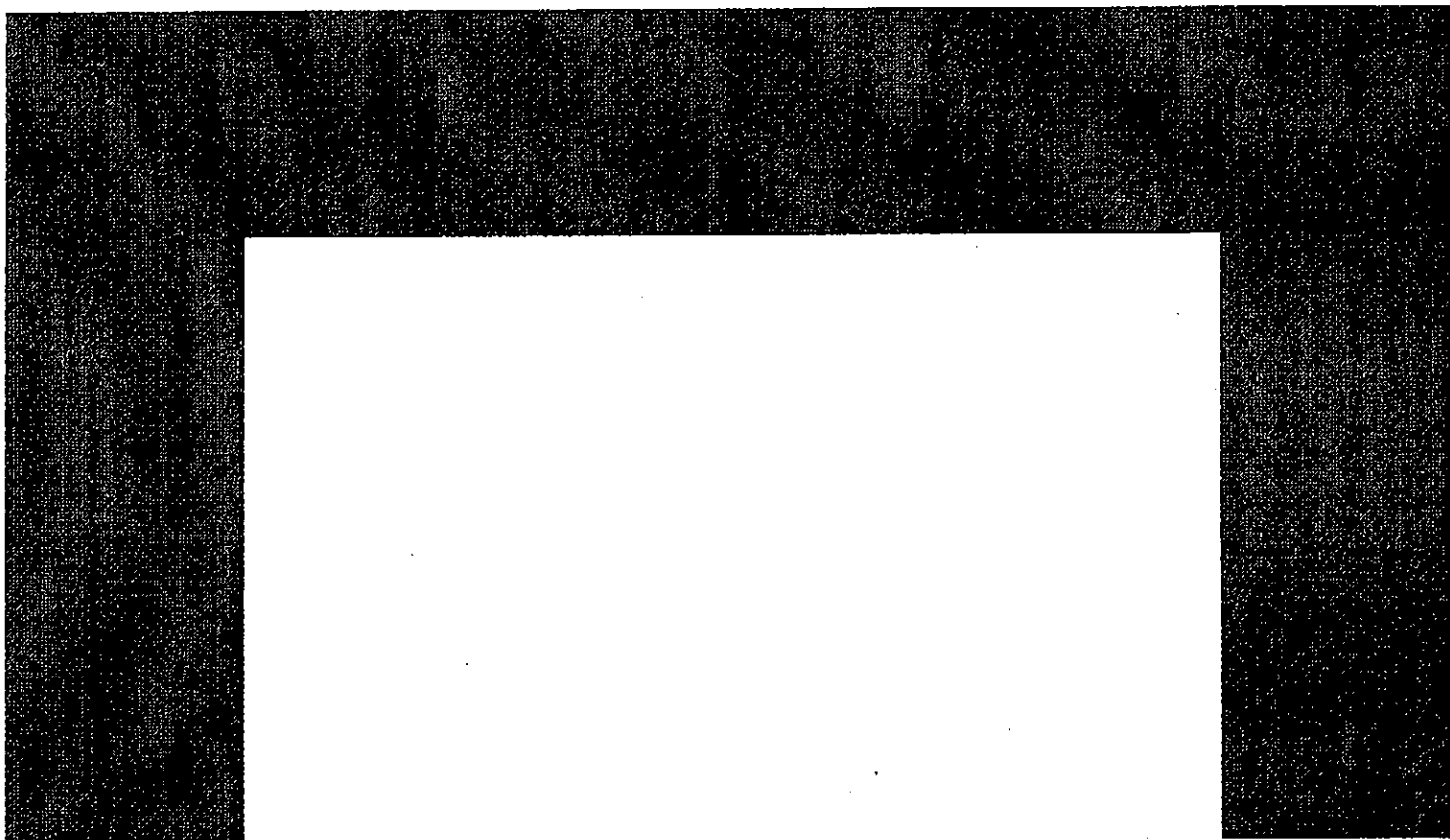
13 DATED this 21<sup>st</sup> day of September, 2011.

14   
 15 DISTRICT COURT JUDGE

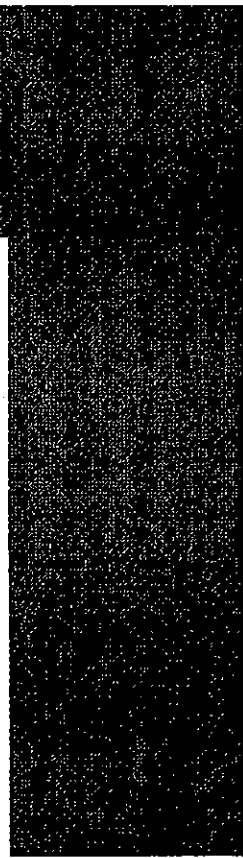
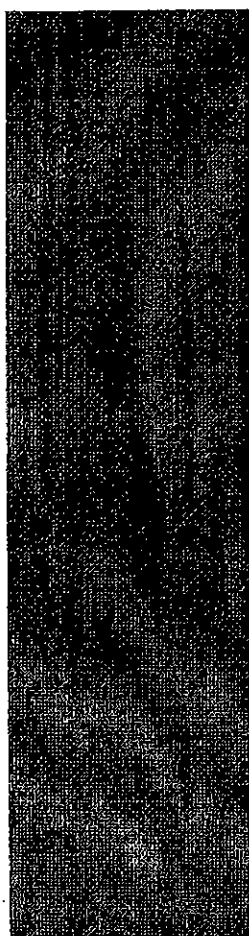
16 Prepared & Submitted by:  
 17 MAINOR EGLET

18 By:   
 19 ROBERT T. EGLET, ESQ.  
 20 Nevada Bar No. 3402  
 21 DAVID T. WALL, ESQ.  
 22 Nevada Bar No. 2805  
 23 ROBERT M. ADAMS, ESQ.  
 24 Nevada Bar No. 6551  
 25 400 South Fourth Street  
 26 Las Vegas, Nevada 89101  
 27 Attorneys for Plaintiffs  
 28

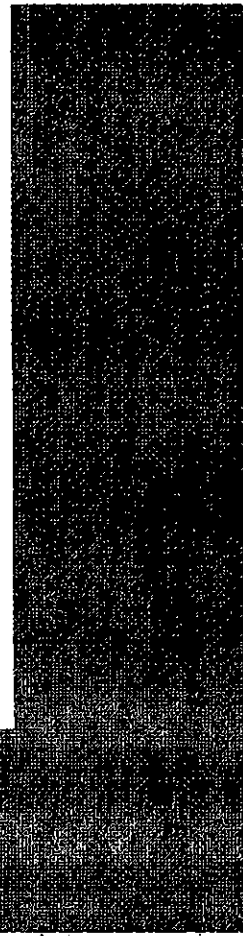
1 In accordance with Lee v. Ball, 116 P.3d 64 (2005) at the rate of 5.25% per annum from the date of service of the Summons and Complaint, on July 23, 2007, to present. June 1, 2011 to September 20, 2011 is 110 days at \$567.60 per day which amount to \$62,436.00.



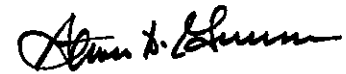
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CLERK OF THE COURT

**NJUD**

ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

DAVID T. WALL, ESQ.

Nevada Bar No. 2805

ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

**MAINOR EGLET**

400 South Fourth Street, Suite 600

Las Vegas, Nevada 89101

Ph: (702) 450-5400

Fx: (702) 450-5451

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 FINAL  
JUDGMENT**

MAINOR EGLET

004831

1 PLEASE TAKE NOTICE that a Final Judgment was entered in the above-entitled  
2 matter on September 23, 2011 and is attached hereto as Exhibit "1".

3 DATED this 28 day of September, 2011.

4  
5 MAINOR EGLET

6   
7  
8 ROBERT T. EGLET, ESQ.

9 Nevada Bar No. 3402

10 DAVID T. WALL, ESQ.

11 Nevada Bar No. 2805

12 ROBERT M. ADAMS, ESQ.

13 Nevada Bar No. 6551

14 400 South Fourth Street, Suite 600


15 Las Vegas, Nevada 89101

16 Attorneys for Plaintiffs

17 **CERTIFICATE OF MAILING**

18 The undersigned hereby certifies that on the 29 day of September, 2011, a copy of  
19 the above and foregoing NOTICE OF ENTRY OF FINAL JUDGMENT was served by  
20 enclosing same in an envelope with postage prepaid thereon, address and mailed as follows:

21 Stephen H. Rogers, Esq.  
22 **ROGERS, MASTRANGELO,**  
23 **CARVALHO & MITCHELL**  
24 300 South Fourth Street, Suite 710  
25 Las Vegas, Nevada 89101  
26 Attorneys for Defendants

27   
28 An employee of MAINOR EGLET



# **EXHIBIT "1"**

 ORIGINAL

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CLERK OF THE COURT

JUDGE

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](mailto:reglet@mainorlawyers.com)

[dwall@mainorlawyers.com](mailto:dwall@mainorlawyers.com)

[badams@mainorlawyers.com](mailto:badams@mainorlawyers.com)

Attorneys for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs.

v.

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

Defendants.

CASE NO.: A539455

DEPT. NO.: X

**FINAL JUDGMENT**

This action came on for trial before the Court and the jury, the Honorable Jessie Walsh

-1-

1 District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its  
2 verdict,

3 IT IS PREVIOUSLY ORDERED AND ADJUDGED, based upon the Jury Verdict and  
4 applicable pre-judgment and post-judgment interest that Plaintiff, WILLIAM SIMAO, have and  
5 recover of the Defendant, JENNY RISH, a judgment of Two Million, Seven Hundred Thirteen  
6 Thousand, One Hundred Fifty One and 96/100 Dollars (\$2,713,151.96), and CHERYL SIMAO, have  
7 and recover of the Defendant, JENNY RISH, a judgment of Six Hundred Eighty One Thousand, Two  
8 Hundred Eighty Six and 00/100 Dollars (\$681,286.00), respectively.

9  
10 Additionally, motions having come on for hearing before the above-entitled Court upon  
11 Plaintiffs' Motion for Attorneys' Fees, Defendant's Motion to Retax Costs, Defendant's Motion for  
12 New Trial, Plaintiffs' Motion to Quash Subpoena Duces Tecum to Hans Jorg Rosler, M.D. at  
13 Nevada Spine Clinic, and Defendant's Motion to Compel Production of Documents; Plaintiffs  
14 appearing by and through their counsel of record, Robert T. Eglet, Esq., David T. Wall, Esq., and  
15 Robert M. Adams, Esq., and Defendant appearing by and through her counsel of record, Stephen H.  
16 Rogers, Esq., and the Court having read the papers and pleadings on file herein, having heard the  
17 arguments of counsel and being fully advised in this matter;

18  
19 IT WAS ORDERED that Plaintiffs be awarded and entitled to attorneys' fees in the amount  
20 of \$1,078,125.00, pursuant to the Lodestar method:

21  
22 IT WAS ORDERED that Plaintiffs be awarded and entitled to costs in the amount of  
23 \$99,555.49;  
24  
25  
26  
27  
28

1 IT WAS ORDERED that Plaintiffs be awarded Pre-Judgment Interest from the date of the  
 2 service of the Summons and Complaint, July 23, 2007 through May 18, 2011, in the amount of  
 3 \$452,231.10;

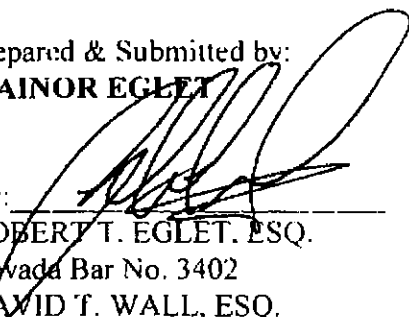
4 IT WAS FURTHER ORDERED that Plaintiffs be awarded Post-Judgment interest from June  
 5 1, 2011 through September 20, 2011, in the amount of \$62,436.00;<sup>1</sup>  
 6

7 NOW, THEREFORE the Final Judgment in favor of the Plaintiffs, WILLIAM SIMAO and  
 8 CHERYL SIMAO, is hereby entered for Five Million, Eighty Six Thousand, Seven Hundred Eighty  
 9 Five and 55/100 Dollars (\$5,086,785.55), against Defendant which will bear post-judgment interest  
 10 at the current rate of 5.25% or \$731.66 per day, until the post-judgment interest is changed pursuant  
 11 to the provisions of NRS 17.130.  
 12

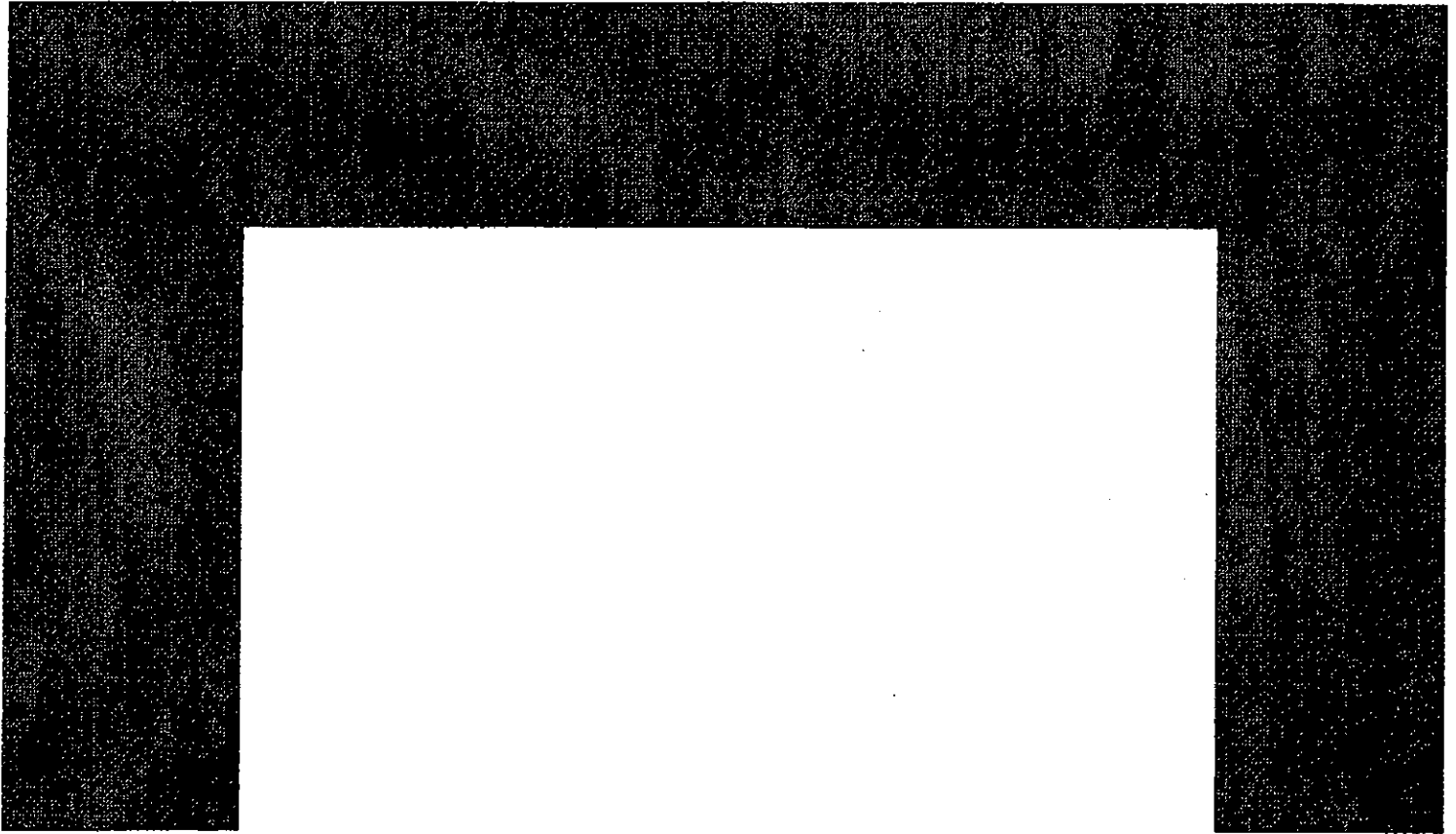
13 DATED this 21<sup>st</sup> day of September, 2011.

14   
 15 DISTRICT COURT JUDGE

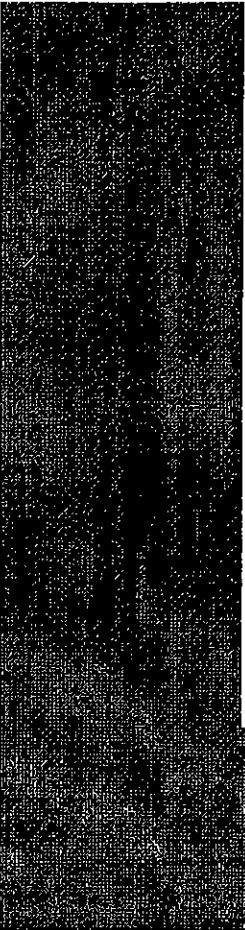
16 Prepared & Submitted by:  
 17 MAINOR EGLET

18 By:   
 19 ROBERT T. EGLET, ESQ.  
 20 Nevada Bar No. 3402  
 21 DAVID T. WALL, ESQ.  
 22 Nevada Bar No. 2805  
 23 ROBERT M. ADAMS, ESQ.  
 24 Nevada Bar No. 6551  
 25 400 South Fourth Street  
 26 Las Vegas, Nevada 89101  
 27 Attorneys for Plaintiffs  
 28

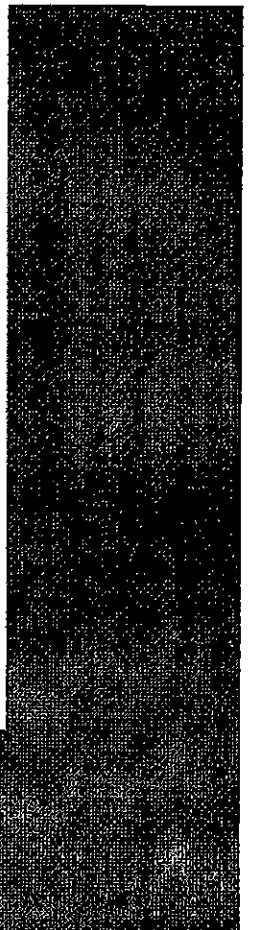
1 In accordance with Lee v. Ball, 116 P.3d 64 (2005) at the rate of 5.25% per annum from the date of service of the Summons and Complaint, on July 23, 2007, to present. June 1, 2011 to September 20, 2011 is 110 days at \$567.60 per day which amount to \$62,436.00.



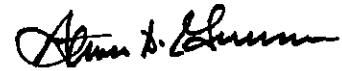
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CLERK OF THE COURT

NOTC  
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,

Case No. A539455

Dept. No. XX

Plaintiffs,

vs.

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

Defendants.

**NOTICE OF POSTING SUPERSEDEAS BOND**

Please take notice that defendant JENNY RISH, has posted the attached  
supersedeas bond with the clerk of the Clark County District Court.

DATED this 30<sup>th</sup> day of September 2011.

LEWIS AND ROCA LLP

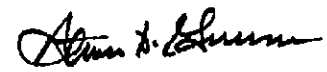
By: s/ Joel D. Henriod

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

*Attorneys for Defendant Jenny Rish*



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CLERK OF THE COURT

1 BOND  
2 DANIEL F. POLSENBERG  
3 State Bar No. 2376  
4 JOEL D. HENRIOD  
5 State Bar No. 8492  
6 LEWIS AND ROCA LLP  
7 3993 Howard Hughes Parkway, Suite 600  
8 Las Vegas, Nevada 89169  
9 (702) 474-2616

10 STEPHEN H. ROGERS (SBN 5755)  
11 ROGERS MASTRANGELO CARVALHO & MITCHELL  
12 300 South Fourth Street, Suite 170  
13 Las Vegas, Nevada 89101  
14 (702) 383-3400

15 *Attorneys for Defendant Jenny Rish*

DISTRICT COURT

CLARK COUNTY, NEVADA

16 WILLIAM JAY SIMAO, individually and  
17 CHERYL ANN SIMAO, individually and as  
18 husband and wife,

Case No. A539455

Dept. No. XX

Plaintiffs,

vs.

19 JENNY RISH; JAMES RISH; LINDA RISH;  
20 DOES I through V; and ROE  
21 Corporations I through V, inclusive,

Defendants.

SUPERSEDEAS BOND



BOND# 98 BA E193 6

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

JENNY RISH, et al.,

Defendants.

Case No. A539455

Dept. No. X

**SUPERSEDEAS BOND NO.**

WHEREAS an amended judgment was entered on June 1, 2011, against defendant Jenny Rish, in favor of the above plaintiffs, in the aggregate amount of Three Million, Nine Hundred Forty-Six Thousand, Two Hundred Twenty-four and 55/100 dollars (\$3,946,224.55);

WHEREAS an "Order Granting Plaintiffs' Motion for Attorney Fees" was entered on September 14, 2011, awarding plaintiff an additional One Million, Seventy-Eight Thousand, One Hundred Twenty-Five dollars (\$1,078,125); and

WHEREAS the defendant has appealed or intends to appeal this judgment and other orders to the Supreme Court of the State of Nevada:

Now, THEREFORE, **STATE FARM FIRE AND CASUALTY COMPANY**, a **ILLINOIS** corporation having its principal place of business in **BLOOMINGTON, ILLINOIS** and being worth more than the sum in this undertaking over and above all of its debt liabilities, and duly authorized to carry on a general surety business in the State of Nevada, is held and firmly bound unto plaintiffs, obligees herein, in the sum of Five Million, Five Hundred Fifty-One Thousand, Nine Hundred and Seven dollars (\$5,551,907) (representing the total principal amount of \$5,024,349.55, plus estimated post-judgment interest); to be paid for the obligation of this judgment to the obligees,

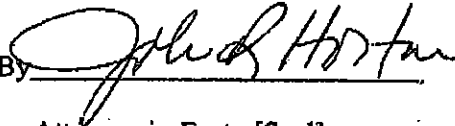
their administrators, executors, successors or assigns, to which payment it binds itself, its successors and assigns firmly by these presents.

Pursuant to N.R.A.P. 8(b), **STATE FARM FIRE AND CASUALTY COMPANY** submits itself to the jurisdiction of this Court and irrevocably appoints the Clerk of this Court as its agent upon whom any papers affecting its liability on this bond may be served. **STATE FARM FIRE AND CASUALTY COMPANY's** liability may be enforced on motion in this Court without the necessity of an independent action. The motion and such notice of motion as this Court prescribes may be served on the clerk of this Court, who shall forthwith mail copies to **STATE FARM FIRE AND CASUALTY COMPANY** at the following address:

**Surety Address: ONE STATE FARM PLAZA  
BLOOMINGTON IL 61710**

FURTHER, if the judgment and orders appealed from, or any part thereof, be affirmed, or such appeal dismissed or no appeal is taken, the defendant shall pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages, including interest and costs, which shall be awarded against any or all of them upon appeal, and that if defendant does not make such payment within thirty (30) days after the filing of the remittitur from the Supreme Court of the State of Nevada, the court in which the appeal is taken, or the time to appeal if no appeal is taken, judgment may be taken on motion for the plaintiffs in their favor against **STATE FARM FIRE AND CASUALTY COMPANY**, with interest that may be due on the judgment and the damages and costs which may be awarded against defendant on the appeal, up to, but not exceeding Five Million, Five Hundred Fifty-One Thousand, Nine Hundred and Seven dollars (\$5,551,907). If, however, the judgment is fully reversed, any contingent obligation of **STATE FARM FIRE AND CASUALTY COMPANY** to plaintiffs becomes null and void.

IN WITNESS WHEREOF, STATE FARM FIRE AND CASUALTY COMPANY has  
caused this obligation to be signed by its duly authorized attorneys-in-fact and the corporate seal to  
be hereunto affixed at BLOOMINGTON, IL  
this 28TH day of SEPTEMBER, 2011.

By   
Attorney-in-Fact [Seal]

(Acknowledgment)

AFFIDAVIT

STATE OF ILLINOIS )  
COUNTY OF MC LEAN ) ss.

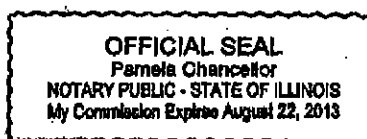
JOHN R HORTON, being first duly sworn, deposes and says that:

1. I am over the age of 18 and competent to make this affidavit;
2. The facts stated herein are true and stated upon personal knowledge except as to those facts expressly stated upon knowledge or belief, and as to those facts I believe them to be true.
3. This affidavit is made in support of the foregoing surety bond and pursuant to NRS 20.010.
4. **STATE FARM FIRE AND CASUALTY COMPANY** is an insurance company duly licensed to carry on business as an insurance company in the state of Nevada.
5. I am presently employed as the attorney-in-fact of **STATE FARM FIRE AND CASUALTY COMPANY**
6. **STATE FARM FIRE AND CASUALTY COMPANY** is worth \$5,551,907, the sum specified in the bond, over and above all its just debts and liabilities exclusive of property exempt from execution.

*John R Horton*

Subscribed and sworn to before me  
this 28<sup>th</sup> day of SEPTEMBER, 2011

*Pamela Chancellor*  
Notary Public



NOTARY PUBLIC  
POWER OF ATTORNEY

# Power of Attorney

## STATE FARM FIRE AND CASUALTY COMPANY

KNOW ALL PERSONS BY THESE PRESENTS: That STATE FARM FIRE AND CASUALTY COMPANY, an Illinois corporation, with its principal office in Bloomington, Illinois, does hereby constitute and appoint Jennifer Bless, Eugina Brant, Amanda Clifton, Christine Krulley, Ceola Campbell, Pamela Chancellor, Julie Fehrman, Mark Fink, Julie Freed, Matthew J. Gibbons, John R. Horton, Cynthia Johnson, Susan K. Johnson, Connie S. Knox, Christine Macdonnell, Lori McDowell, Melissa L. Morris, Amy C. Ogan, James Platt, Andrew G. Rader, Vicki Radman, Leann Rees, Linda Rieck, Suzanne M. Robertson, Alice Schuler, Mary Sleg, Tiffany Smith, Mary A. Spotts, Heidi Stevens, Sara L. Tackett, Perry Tracy, Justin Veach, Susan M. Wagoner, Karen Weber, B.J. Winsler, Jennifer Wyant, of Bloomington, Illinois its true and lawful Attorney(s)-In-Fact, to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in the nature of a bond as follows:

Any such obligation in any amount

This appointment is made under and by the authority of a resolution which was passed by the Executive Committee of the Board of Directors of State Farm Fire and Casualty Company on the 8th day of June, 2009, as is duly authorized by the Board of Directors in Article II, Section 6 of the By-Laws of the Company, which resolution is:

Resolved, that the Officer of the Company who works regularly with surety bonds is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in the nature of a bond, which the Company might execute through its officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected or appointed officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of any Officer of the Company noted above and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the any officer of the Company noted above, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power executed and sealed and certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, STATE FARM FIRE AND CASUALTY COMPANY has caused this instrument to be signed by its Assistant Secretary Treasurer, and its Corporate Seal to be affixed this 8th day of June, 2009.

This APPOINTMENT SHALL CEASE AND TERMINATE AUTOMATICALLY AS OF DECEMBER 31, 2013, UNLESS SOONER REVOKED AS PROVIDED.



STATE FARM FIRE AND CASUALTY COMPANY

By:

*Bradley M. Weaver*  
Assistant Secretary Treasurer

STATE OF ILLINOIS  
COUNTY OF McLEAN

On this 8th day of June 2009, before me personally came Bradley M. Weaver to me known, who being duly sworn, did depose and say that he is Assistant Secretary Treasurer of STATE FARM FIRE AND CASUALTY COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such Corporate Seal; and that he executed said instrument on behalf of the corporation by authority of his office under the By-Laws of said corporation.

OFFICIAL SEAL  
Karen Weber  
NOTARY PUBLIC - STATE OF ILLINOIS  
My Commission Expires July 24, 2014

*Karen Weber*  
Notary Public  
My commission expires July 24, 2014

### CERTIFICATE

I, the undersigned Officer of STATE FARM FIRE AND CASUALTY COMPANY, do hereby certify that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

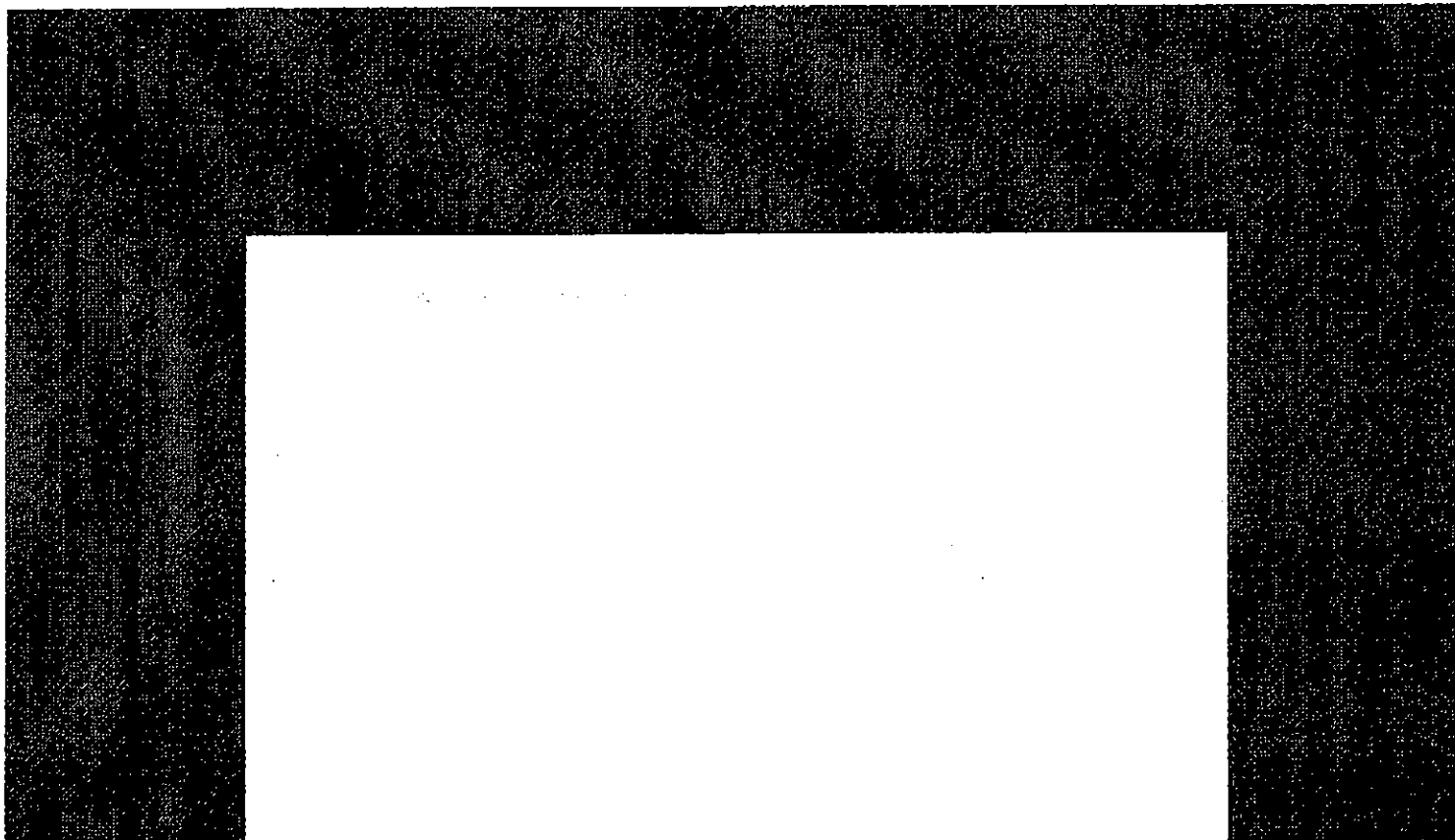
Signed and sealed at Bloomington, Illinois. Dated this 28TH day of SEPTEMBER, 2011.



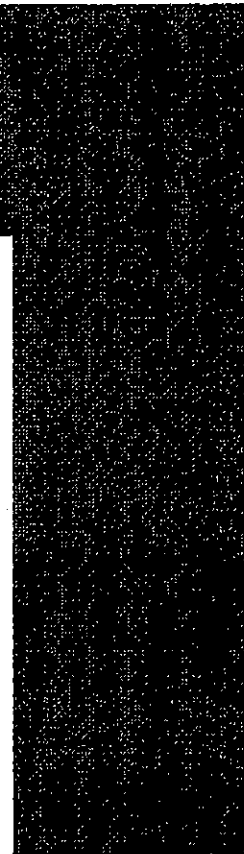
*Susan K. Johnson*  
Assistant Secretary Treasurer

If you have a question concerning the validity of this Power of Attorney, call (309) 766-2090.  
FB6-9043.44A  
(10-14-10)

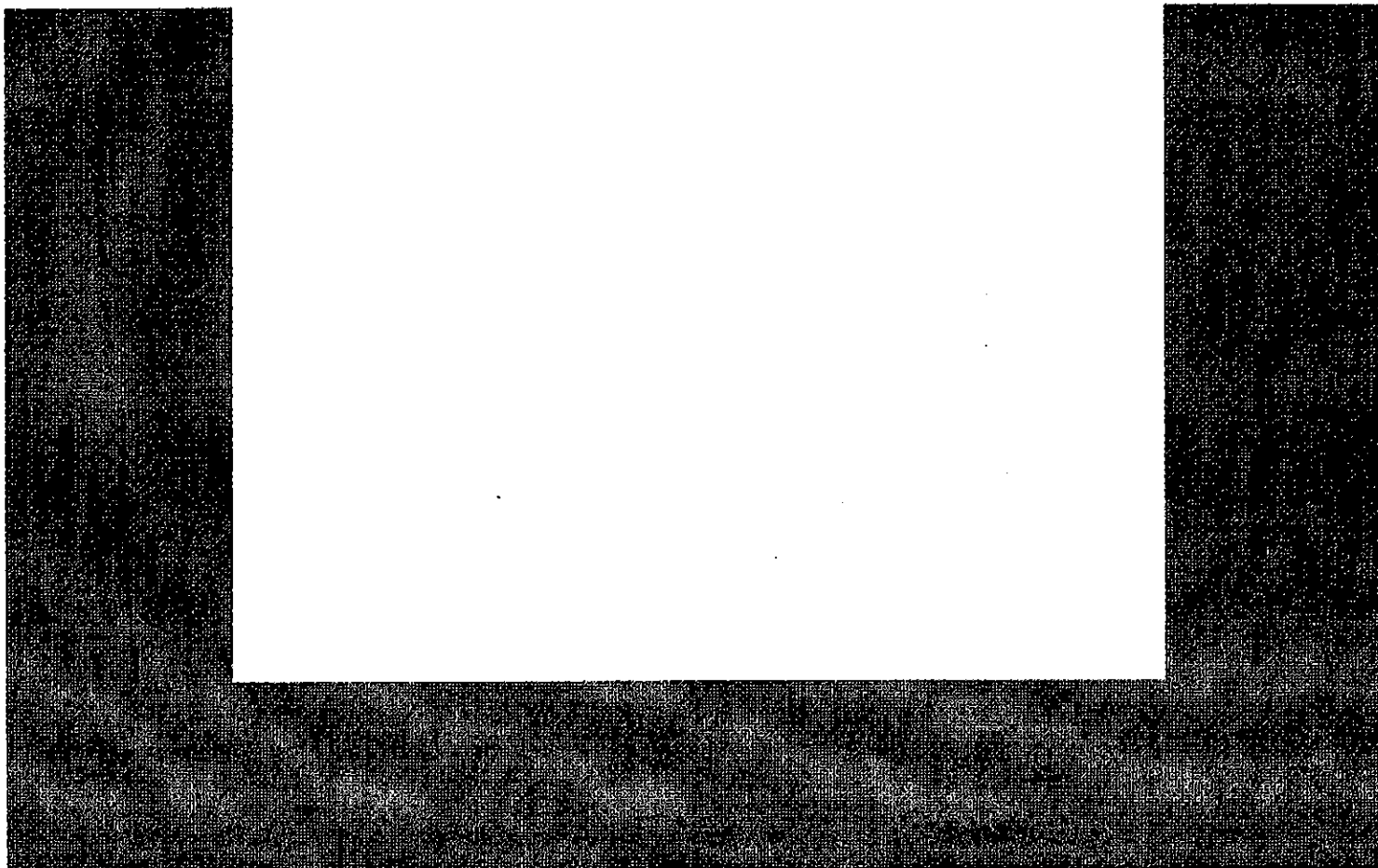
Printed in U.S.A.



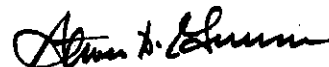
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CLERK OF THE COURT

1 REQT  
2 DANIEL F. POLSENBERG  
3 State Bar No. 2376  
4 JOEL D. HENRIOD  
5 State Bar No. 8492  
6 LEWIS AND ROCA LLP  
7 3993 Howard Hughes Parkway, Suite 600  
8 Las Vegas, Nevada 89169  
9 (702) 474-2616

10 STEPHEN H. ROGERS (SBN 5755)  
11 ROGERS MASTRANGELO CARVALHO & MITCHELL  
12 300 South Fourth Street, Suite 170  
13 Las Vegas, Nevada 89101  
14 (702) 383-3400

15 *Attorneys for Defendant Jenny Rish*

16 DISTRICT COURT

17 CLARK COUNTY, NEVADA

18 WILLIAM JAY SIMAO, individually and  
19 CHERYL ANN SIMAO, individually and as  
20 husband and wife,

Case No. A539455

Dept. No. X

21 Plaintiffs,

22 vs.

23 JENNY RISH; JAMES RISH; LINDA RISH;  
24 DOES I through V; and ROE  
25 Corporations I through V, inclusive,

26 Defendants.

# REQUEST FOR TRANSCRIPTS

27 Defendant requests preparation of transcripts of the proceedings before the  
28 district court, HON. JESSIE WALSH, as follows:

<u>Date</u>	<u>Hearing</u>
1/20/2011	Plaintiffs' Motion to Allow Plaintiffs to Present a Jury Questionnaire Prior to Voir Dire
2/15/2011	All Pending Motions
3/14/2011	<b>All Days of Jury Trial:</b> (At least 3/14, 2011, 3/15/2011, 3/16/2011, 3/17/2011, 3/18/2011, 3/21/2011, 3/22/2011, 3/23/2011, 3/24/2011, 3/25/2011, 3/28/2011, 3/29/2011, 3/30/2011, 3/31/2011, 4/1/2011)

1 4/1/2011 Hearing: Prove Up of Damages

2 6/7/2011 Plaintiffs' Motion to Quash Subpoena Duces Tecum to Jans-  
3 Jorg Rosler, M.D.

4 **Copies Required**

5 Two

6 I hereby certify that I ordered these transcripts from the court reporter and have  
7 made arrangements to pay the necessary deposit.

8 DATED this 3<sup>rd</sup> day of October 2011.

9 LEWIS AND ROCA LLP

10  
11 By: s/ Joel D. Henriod  
12 DANIEL F. POLSENBERG (SBN 2376)  
13 JOEL D. HENRIOD (SBN 8492)  
14 LEWIS AND ROCA LLP  
15 3993 Howard Hughes Parkway, Suite 600  
16 Las Vegas, Nevada 89169  
17 (702) 474-2616

18 *Attorneys for Defendant Jenny Rish*

19 **CERTIFICATE OF SERVICE**

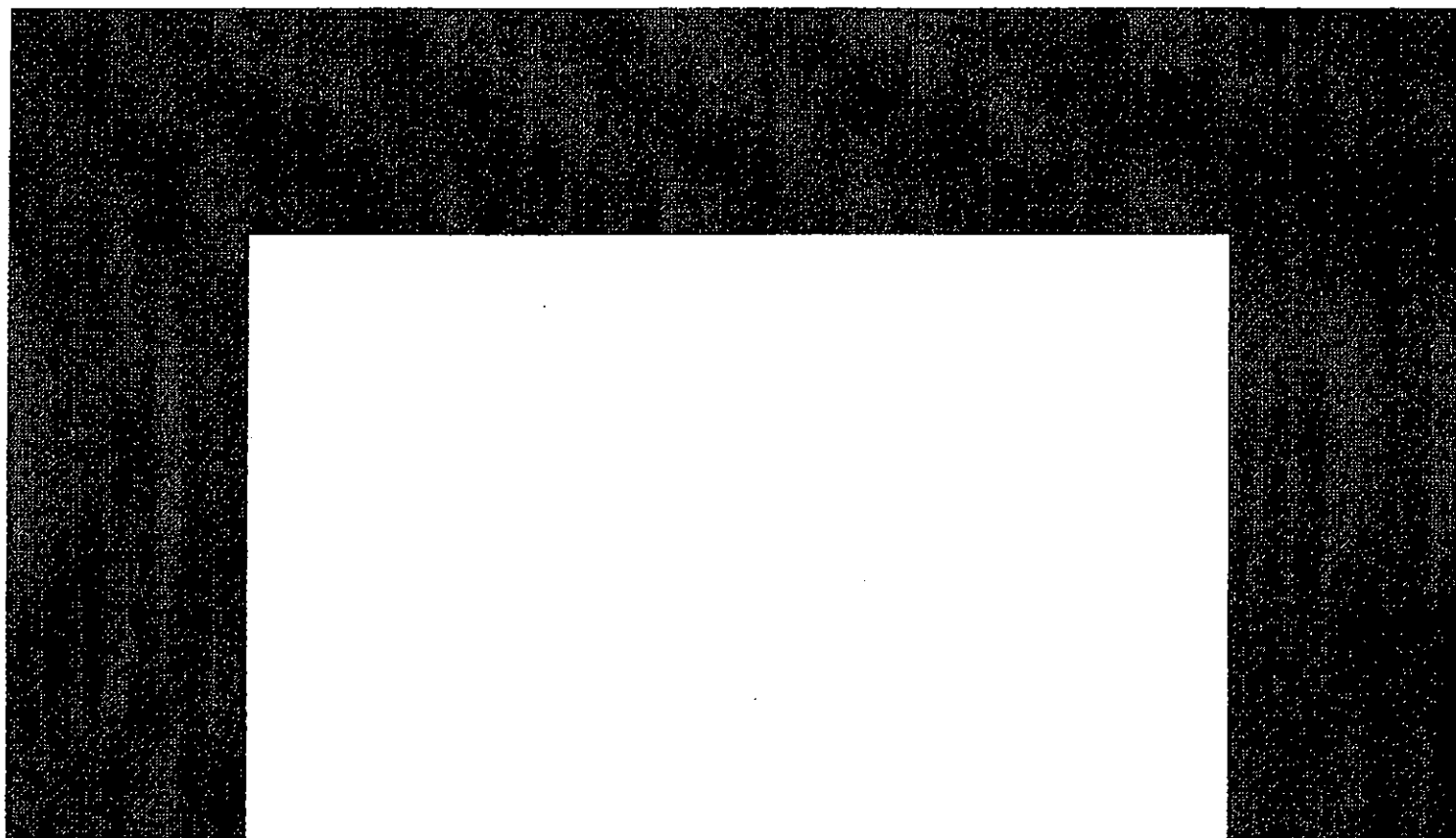
20 Pursuant to Nev. R. Civ. P. 5(b), I HEREBY CERTIFY that on the 3<sup>rd</sup> day of  
21 October, 2011, I served the foregoing REQUEST FOR TRANSCRIPTS by depositing a  
22 copy for mailing, first-class mail, postage prepaid, at Las Vegas, Nevada, to the  
23 following:

24 ROBERT T. EGLET  
25 DAVID T. WALL  
26 ROBERT M. ADAMS  
27 MAINOR EGLET  
28 400 South Fourth Street, Suite 600  
Las Vegas, NV 89101

Victoria Boyd, Court Reporter  
Department 10  
200 Lewis Avenue  
Las Vegas, NV 89155

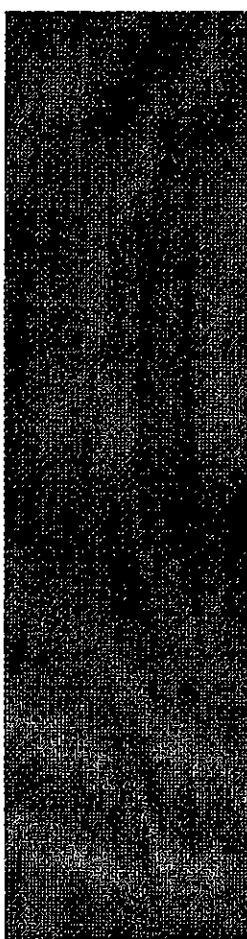
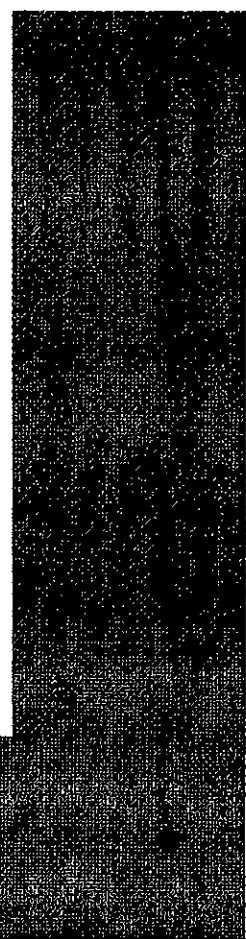
s/ Mary Kay Carlton  
An Employee of Lewis and Roca LLP





146

146



1 AMEN  
 2 DANIEL F. POLSENBERG  
 3 State Bar No. 2376  
 4 JOEL D. HENRIOD  
 5 State Bar No. 8492  
 6 LEWIS AND ROCA LLP  
 7 3993 Howard Hughes Parkway, Suite 600  
 8 Las Vegas, Nevada 89169  
 9 (702) 474-2616

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 10/10/2011 02:14:24 PM

  
 CLERK OF THE COURT

6 STEPHEN H. ROGERS (SBN 5755)  
 7 ROGERS MASTRANGELO CARVALHO & MITCHELL  
 8 300 South Fourth Street, Suite 170  
 9 Las Vegas, Nevada 89101  
 10 (702) 383-3400

11 *Attorneys for Defendant Jenny Rish*

DISTRICT COURT

CLARK COUNTY, NEVADA

12 WILLIAM JAY SIMAO, individually and  
 13 CHERYL ANN SIMAO, individually and as  
 14 husband and wife,

Plaintiffs,

vs.

15 JENNY RISH; JAMES RISH; LINDA RISH;  
 16 DOES I through V; and ROE  
 17 Corporations I through V, inclusive,

Defendants.

Case No. A539455

Dept. No. XX

**THIRD AMENDED NOTICE OF APPEAL**

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

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

- 1        5.    Order Denying Defendant's Motion for New Trial, filed August 24,
- 2                2011;
- 3        6.    Order Granting Plaintiffs' Motion for Attorney's Fees, filed September
- 4                14, 2011, notice of entry of which was served by mail on September 15,
- 5                2011;
- 6        7.    Final Judgment, filed September 23, 2011, notice of entry of which was
- 7                served by mail on September 29, 2011; and
- 8        8.    All rulings and interlocutory orders made appealable by any of the
- 9                foregoing.

10  
11        DATED this 10<sup>th</sup> ay of October 2011.

12                                LEWIS AND ROCA LLP

13  
14                                By: s/ Joel D. Henriod  
15                                DANIEL F. POLSENBERG (SBN 2376)  
16                                JOEL D. HENRIOD (SBN 8492)  
17                                LEWIS AND ROCA LLP  
18                                3993 Howard Hughes Parkway, Suite 600  
19                                Las Vegas, Nevada 89169  
20                                (702) 474-2616

21                                *Attorneys for Defendant Jenny Rish*  
22  
23  
24  
25  
26  
27  
28

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

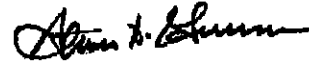
s/ Mary Kay Carlton  
An Employee of Lewis and Roca LLP

# EXHIBIT A

004853

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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.: AS39455  
DEPT. NO.: X

**NOTICE OF ENTRY OF ORDER**

MAINOR EGLET

004854

1 PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion for Attorney's  
2 Fees was entered in the above-entitled matter on September 14, 2011 and is attached hereto  
3 as Exhibit "1".

4 DATED this 15 day of September, 2011.

6 MAINOR EGLET

7 

9 ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

10 DAVID T. WALL, ESQ.

Nevada Bar No. 2805

11 ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

12 400 South Fourth Street, Suite 600

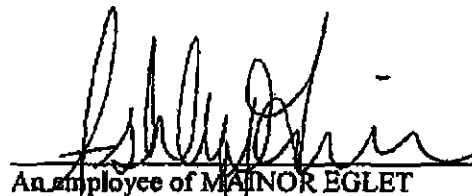
13 Las Vegas, Nevada 89101

14 Attorneys for Plaintiffs

15 CERTIFICATE OF MAILING

16 The undersigned hereby certifies that on the 15 day of September, 2011, a copy of  
17 the above and foregoing NOTICE OF ENTRY OF ORDER was served by enclosing same  
18 in an envelope with postage prepaid thereon, address and mailed as follows:

19 Stephen H. Rogers, Esq.  
20 ROGERS, MASTRANGELO,  
21 CARVALHO & MITCHELL  
22 300 South Fourth Street, Suite 710  
23 Las Vegas, Nevada 89101  
24 Attorneys for Defendants

25   
26 An employee of MAINOR EGLET  
27  
28

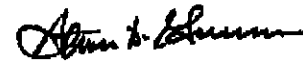
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# **EXHIBIT "1"**



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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

badams@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*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**Plaintiffs,**

**v.**

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

**Defendants.**

**CASE NO.: A539455**

**DEPT. NO.: X**

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR ATTORNEY'S FEES**

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

MAINOR EGLET

004857

# EXHIBIT B

004858

004858

MAINOR EGLET

**NJUD**

1 ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

2 DAVID T. WALL, ESQ.

Nevada Bar No. 2805

3 ROBERT M. ADAMS, ESQ.

4 Nevada Bar No. 6551

**MAINOR EGLET**

5 400 South Fourth Street, Suite 600

6 Las Vegas, Nevada 89101

Ph: (702) 450-5400

7 Fx: (702) 450-5451

8 reglet@mainorlawyers.com

9 dwall@mainorlawyers.com

badams@mainorlawyers.com

*Attorneys for Plaintiffs*

10 MATTHEW E. AARON, ESQ.

11 Nevada Bar No. 4900

**AARON & PATERNOSTER, LTD.**

12 2300 West Sahara Avenue, Ste. 650

13 Las Vegas, Nevada 89102

Ph.: (702) 384-4111

14 Fx.: (702) 384-8222

*Attorneys for Plaintiffs***DISTRICT COURT  
CLARK COUNTY, NEVADA**18 WILLIAM JAY SIMAO, individually and  
19 CHERYL ANN SIMAO, individually, and as  
husband and wife,20  
21 Plaintiffs,

22 v.

23 JENNY RISH; JAMES RISH; LINDA RISH;  
24 DOES I through V; and ROE CORPORATIONS I  
through V, inclusive,25  
26 Defendants.  
27  
28

CASE NO.: A539455

DEPT. NO.: X

**NOTICE OF ENTRY OF FINAL  
JUDGMENT**

PLEASE TAKE NOTICE that a Final Judgment was entered in the above-entitled matter on September 23, 2011 and is attached hereto as Exhibit "1".

DATED this 28 day of September, 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

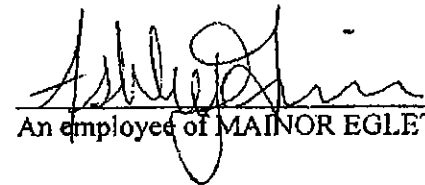
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 29 day of September, 2011, a copy of the above and foregoing NOTICE OF ENTRY OF FINAL JUDGMENT 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



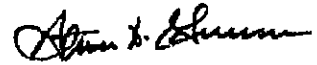
An employee of MAINOR EGLET

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004861

# **EXHIBIT "1"**

ORIGINAL

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CLERK OF THE COURT

JUDGE  
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  
Ex.: (702) 450-5451  
[reglet@mainorlawyers.com](mailto:reglet@mainorlawyers.com)  
[dwall@mainorlawyers.com](mailto:dwall@mainorlawyers.com)  
[badams@mainorlawyers.com](mailto:badams@mainorlawyers.com)  
Attorneys for Plaintiffs

## DISTRICT COURT

## CLARK COUNTY, NEVADA

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

Plaintiffs.

v.

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

Defendants.

CASE NO.: A539455  
DEPT. NO.: X

FINAL JUDGMENT

This action came on for trial before the Court and the jury, the Honorable Jessie Walsh

1 District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its  
2 verdict,

3 IT IS PREVIOUSLY ORDERED AND ADJUDGED, based upon the Jury Verdict and  
4 applicable pre-judgment and post-judgment interest that Plaintiff, WILLIAM SIMAO, have and  
5 recover of the Defendant, JENNY RISH, a judgment of Two Million, Seven Hundred Thirteen  
6 Thousand, One Hundred Fifty One and 96/100 Dollars (\$2,713,151.96), and CHERYL SIMAO, have  
7 and recover of the Defendant, JENNY RISH, a judgment of Six Hundred Eighty One Thousand, Two  
8 Hundred Eighty Six and 00/100 Dollars (\$681,286.00), respectively.

9  
10 Additionally, motions having come on for hearing before the above-entitled Court upon  
11 Plaintiffs' Motion for Attorneys' Fees, Defendant's Motion to Relax Costs, Defendant's Motion for  
12 New Trial, Plaintiffs' Motion to Quash Subpoena Duces Tecum to Hans Jorg Rosler, M.D. at  
13 Nevada Spine Clinic, and Defendant's Motion to Compel Production of Documents; Plaintiffs  
14 appearing by and through their counsel of record, Robert T. Eglet, Esq., David T. Wall, Esq., and  
15 Robert M. Adams, Esq., and Defendant appearing by and through her counsel of record, Stephen H.  
16 Rogers, Esq., and the Court having read the papers and pleadings on file herein, having heard the  
17 arguments of counsel and being fully advised in this matter;  
18

19  
20 IT WAS ORDERED that Plaintiffs be awarded and entitled to attorneys' fees in the amount  
21 of \$1,078,125.00, pursuant to the Lodestar method;  
22

23 IT WAS ORDERED that Plaintiffs be awarded and entitled to costs in the amount of  
24 \$99,555.49;  
25  
26  
27  
28

1 IT WAS ORDERED that Plaintiffs be awarded Pre-Judgment Interest from the date of the  
2 service of the Summons and Complaint. July 23, 2007 through May 18, 2011, in the amount of  
3 \$452,231.10;

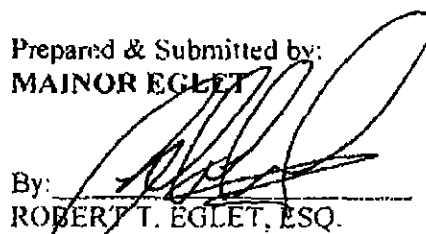
4 IT WAS FURTHER ORDERED that Plaintiffs be awarded Post-Judgment interest from June  
5 1, 2011 through September 20, 2011, in the amount of \$62,436.00;<sup>1</sup>  
6

7 NOW, THEREFORE the Final Judgment in favor of the Plaintiffs, WILLIAM SIMAO and  
8 CHERYL SIMAO, is hereby entered for Five Million, Eighty Six Thousand, Seven Hundred Eighty  
9 Five and 55/100 Dollars (\$5,086,785.55), against Defendant which will bear post-judgment interest  
10 at the current rate of 5.25% or \$731.66 per day, until the post-judgment interest is changed pursuant  
11 to the provisions of NRS 17.130.  
12

13 DATED this 21<sup>st</sup> day of September, 2011.

*Jessie Walsh*  
DISTRICT COURT JUDGE

14  
15 Prepared & Submitted by:  
16 MAINOR EGLET

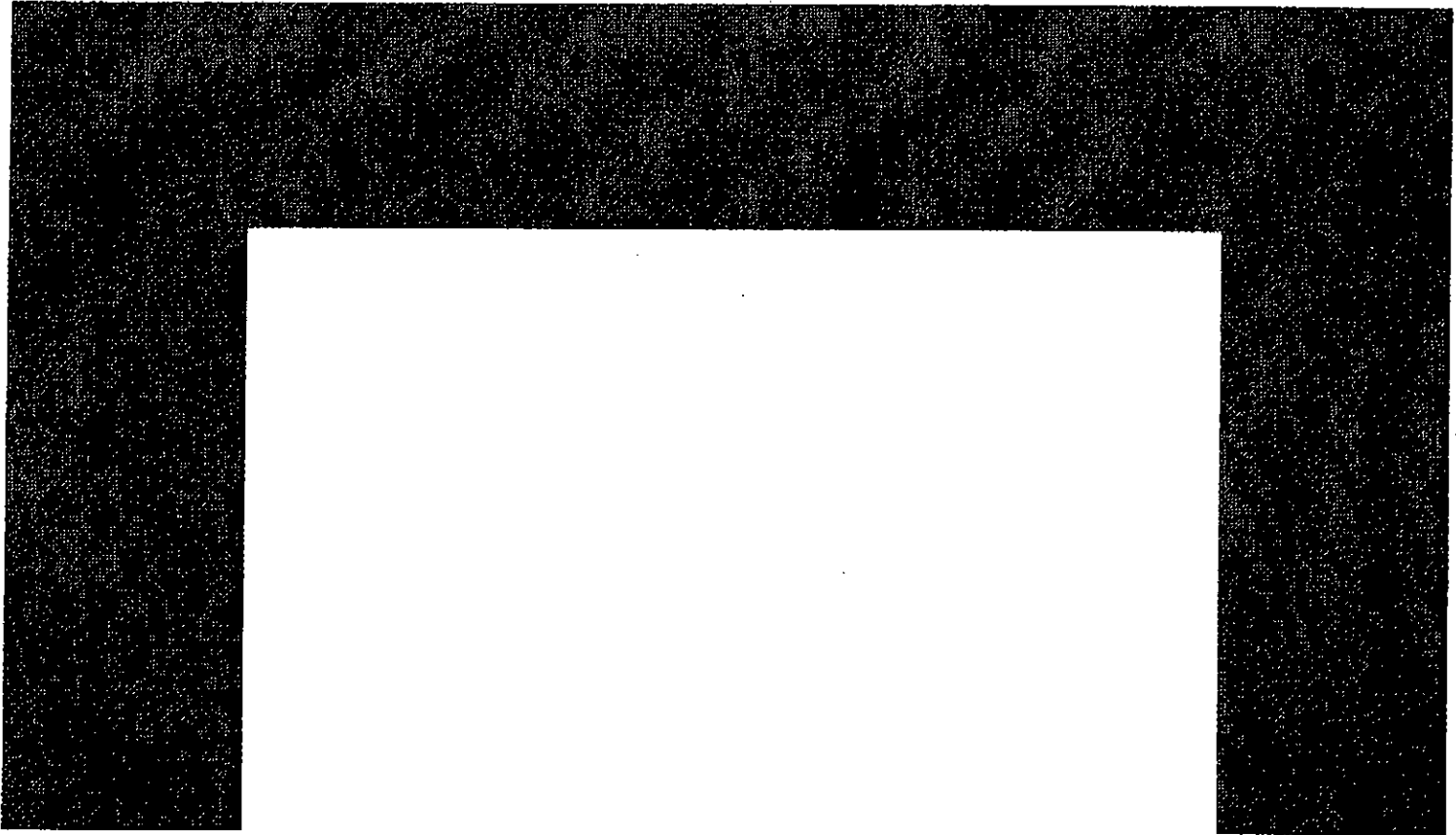
17  
18 By:   
19 ROBERT T. EGLET, ESQ.  
20 Nevada Bar No. 3402  
21 DAVID T. WALL, ESQ.  
22 Nevada Bar No. 2805  
23 ROBERT M. ADAMS, ESQ.  
24 Nevada Bar No. 6551  
25 400 South Fourth Street  
26 Las Vegas, Nevada 89101  
27 Attorneys for Plaintiffs  
28

1 In accordance with Lee v. Ball, 116 P.3d 64 (2005) at the rate of 5.25% per annum from the date of service of the Summons and Complaint, on July 23, 2007, to present. June 1, 2011 to September 20, 2011 is 110 days at \$567.60 per day which amount to \$62,436.00.

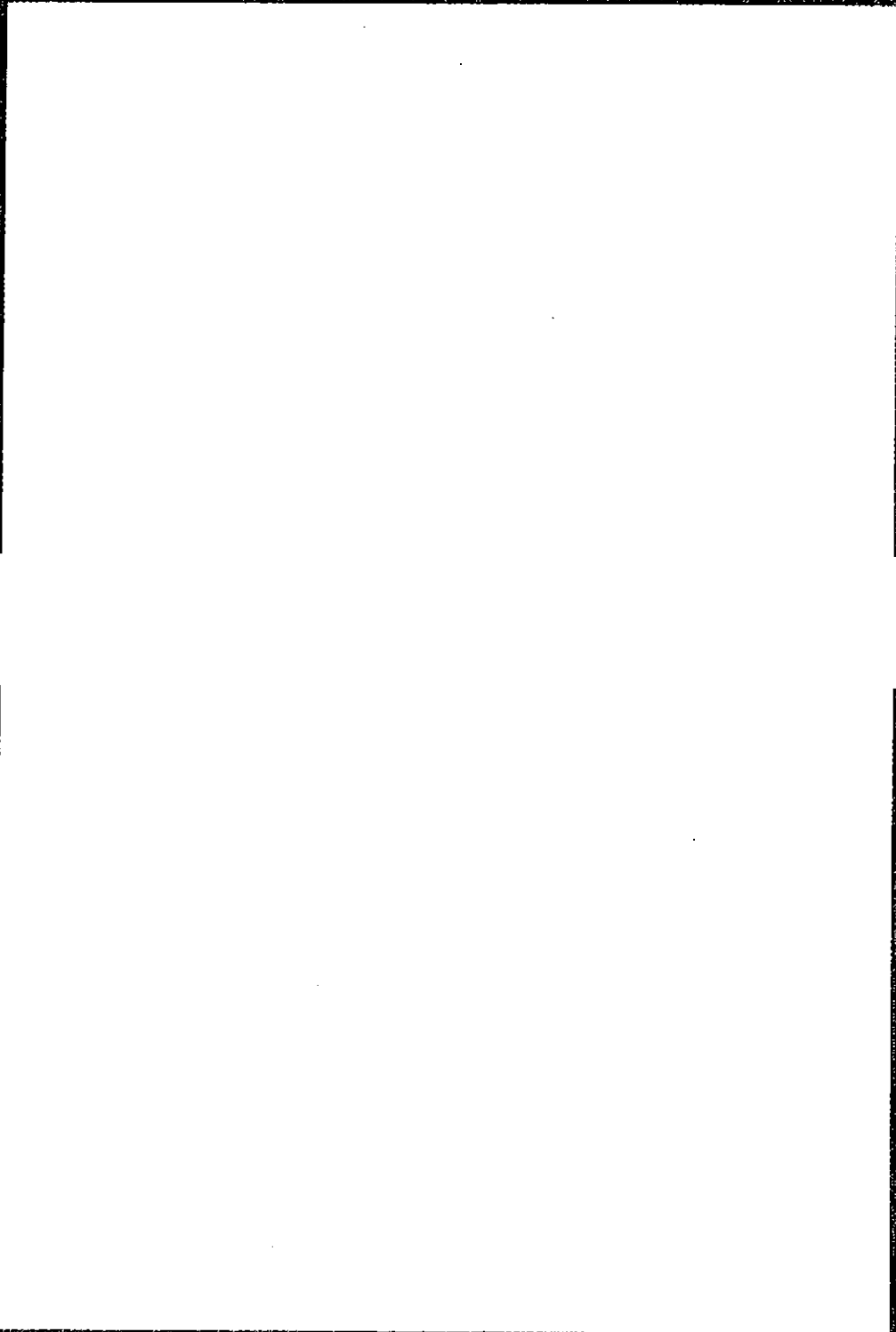
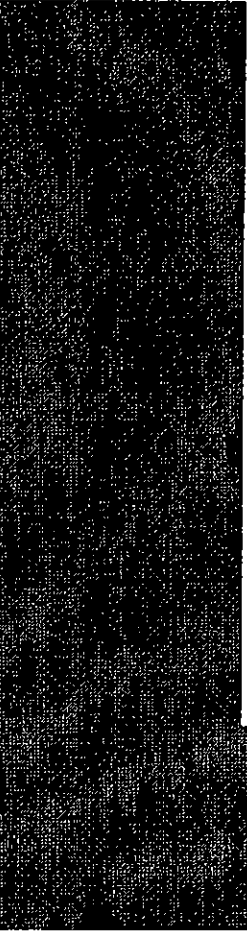
MAINOR EGLET

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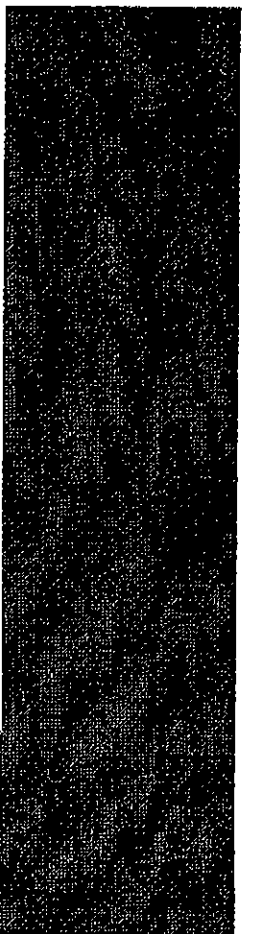




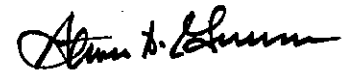
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CLERK OF THE COURT

1 ASTA  
2 DANIEL F. POLSENBERG  
3 State Bar No. 2376  
4 JOEL D. HENRIOD  
5 State Bar No. 8492  
6 LEWIS AND ROCA LLP  
7 3993 Howard Hughes Parkway, Suite 600  
8 Las Vegas, Nevada 89169  
9 (702) 474-2616

10 STEPHEN H. ROGERS (SBN 5755)  
11 ROGERS MASTRANGELO CARVALHO & MITCHELL  
12 300 South Fourth Street, Suite 170  
13 Las Vegas, Nevada 89101  
14 (702) 383-3400

15 *Attorneys for Defendant Jenny Rish*

DISTRICT COURT

CLARK COUNTY, NEVADA

16 WILLIAM JAY SIMAO, individually and  
17 CHERYL ANN SIMAO, individually and as  
18 husband and wife,

Case No. A539455

Dept. No. XX

Plaintiffs,

vs.

19 JENNY RISH; JAMES RISH; LINDA RISH;  
20 DOES I through V; and ROE  
21 Corporations I through V, inclusive,

Defendants.

**THIRD AMENDED CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

Defendant JENNY RISH

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

THE HONORABLE JESSIE WALSH

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

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

1 (702) 474-2616

2 STEPHEN H. ROGERS  
3 ROGERS MASTRANGELO CARVALHO & MITCHELL  
4 300 South Fourth Street, Suite 170  
Las Vegas, Nevada 89101  
(702) 383-3400

5 *Attorneys for Appellant*

- 6 4. Identify each respondent and the name and address of appellate counsel, if  
7 known, for each respondent (if the name of a respondent's appellate counsel is  
8 unknown, indicate as much and provide the name and address of that  
9 respondent's trial counsel):

10 ROBERT T. EGLET  
11 DAVID T. WALL  
12 ROBERT M. ADAMS  
13 MAINOR EGLET  
14 400 South Fourth Street  
15 Sixth Floor  
16 Las Vegas, NV 89101  
17 (702) 450-5400

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

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

24 N/A

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

27 Retained counsel

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

Retained counsel

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

N/A

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

Complaint filed April 13, 2007.

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

4 This is a motor vehicle accident occurring on April 15, 2005. Plaintiff's  
5 complaint alleged negligence and loss of consortium. The case presented for a  
6 jury trial on March 14, 2011. On March 31, 2011, plaintiff made an oral motion  
7 to strike defendant's answer which was granted. After a prove-up hearing on  
8 April 1, 2011, judgment was entered on April 28, 2011, in favor of plaintiff in  
9 the amount of \$3,493,983.45. The district court then granted plaintiff an award  
10 of attorney fees in the amount of \$1,078,125.

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

14 N/A

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

16 N/A

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

19 No.

20 DATED this 10<sup>th</sup> day of October 2011.

21 LEWIS AND ROCA LLP

22 By: s/ Joel D. Henriod

23 DANIEL F. POLSENBERG (SBN 2376)

24 JOEL D. HENRIOD (SBN 8492)

25 LEWIS AND ROCA LLP

26 3993 Howard Hughes Parkway, Suite 600

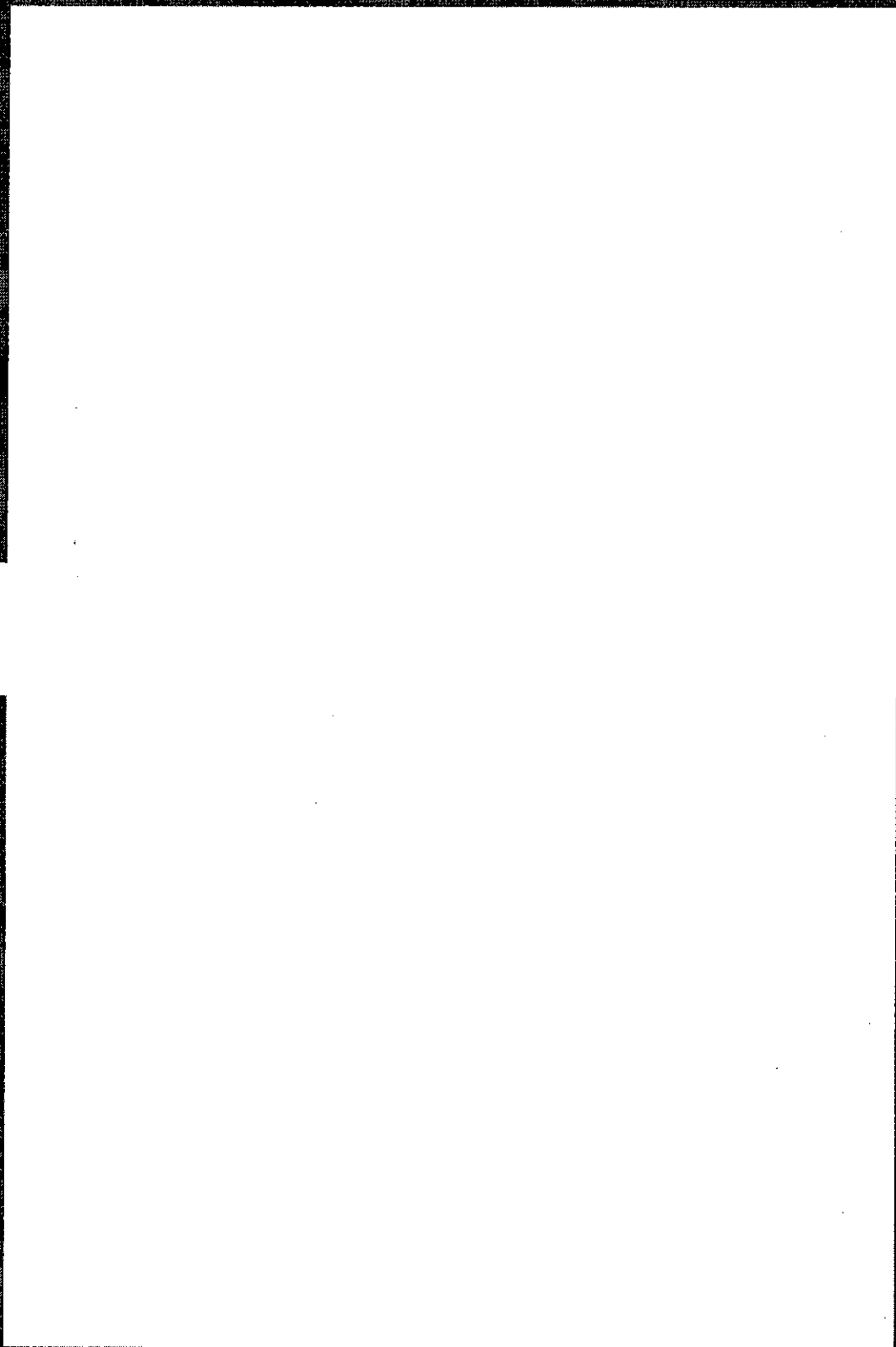
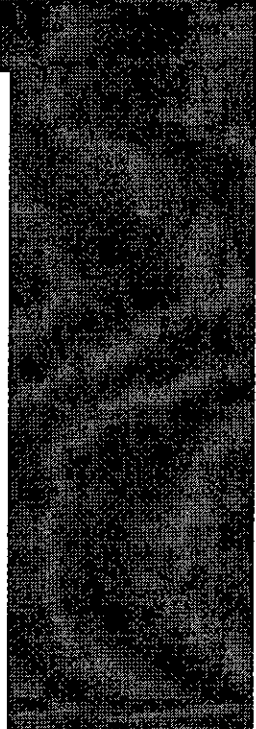
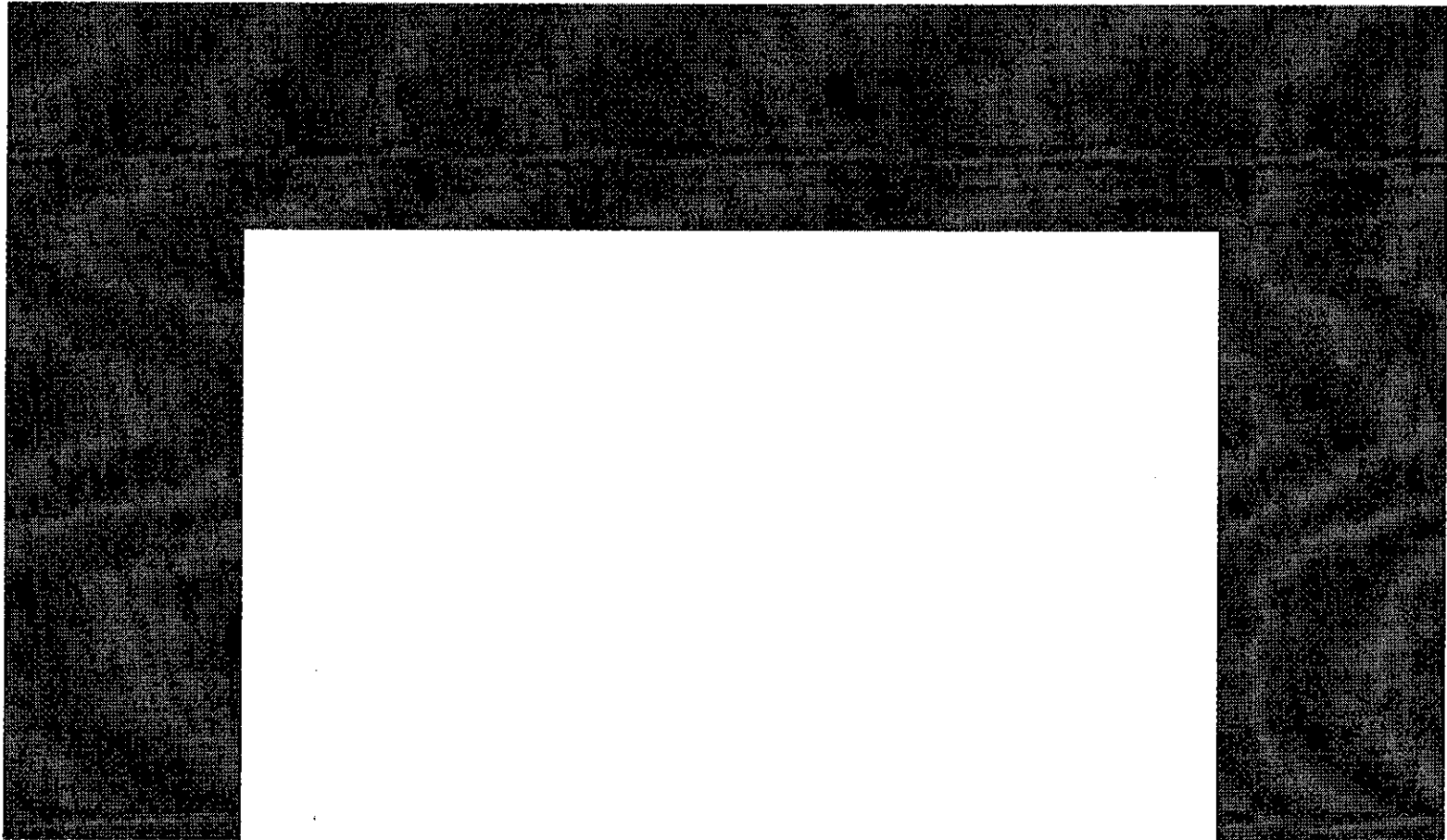
27 Las Vegas, Nevada 89169

28 (702) 474-2616

*Attorneys for Defendant Jenny Rish*

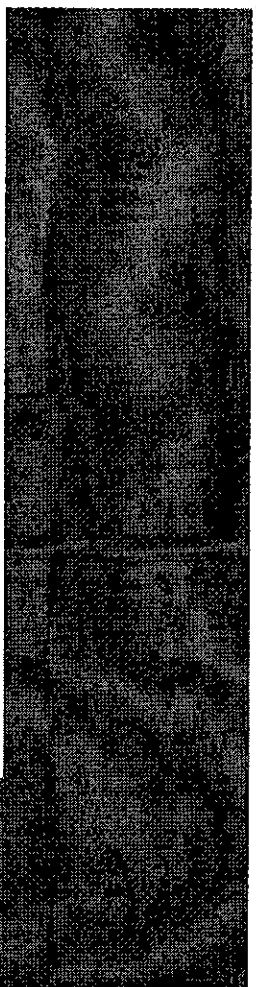
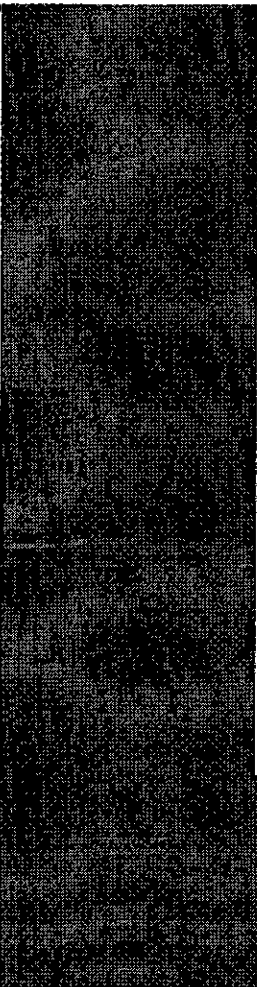
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s/ Mary Kay Carlton  
An Employee of Lewis and Roca LLP



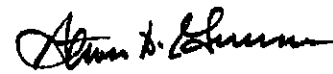
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 ORIGINAL



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

WILLIAM SIMAO and  
CHERYL SIMAO,

Plaintiffs,

vs.

JENNY RISH,

Defendant.

CASE NO. A-539455

DEPT. NO. X

TRANSCRIPT OF  
PROCEEDINGS

**\*\*Partial Transcript\*\***

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

PORTION OF JURY TRIAL - DAY 6  
(BENCH CONFERENCES)

MONDAY, MARCH 21, 2011

APPEARANCES:

FOR THE PLAINTIFFS:

DAVID T. WALL, ESQ.  
TRACY A. EGLET, ESQ.  
ROBERT M. ADAMS, ESQ.  
ROBERT T. EGLET, ESQ.

FOR THE DEFENDANT:

STEPHEN H. ROGERS, ESQ.

COURT RECORDER:

VICTORIA BOYD  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

RECEIVED

JUL 13 2012

CLERK OF THE COURT



1        LAS VEGAS, NEVADA, MONDAY, MARCH 21, 2011, 1:21 P.M.

2        (This transcript contains bench conferences only)

3                                \*   \*   \*   \*   \*

4                                (Bench conference began at 1:21 p.m.)

5                                MR. ROGERS: Are we on the record up here?

6                                THE COURT: [Inaudible].

7                                MR. WALL: That's completely inappropriate. They  
8 have not stipulated to liability. We presented them with a  
9 stipulation. They failed to sign it and they've never  
10 withdrawn those affirmative defenses.

11                                MR. ROGERS: We didn't sign your stip, but she  
12 admitted it under oath. We told them she's admitted it.

13                                MR. WALL: It doesn't [inaudible].

14                                MR. ROGERS: And plaintiff --

15                                MR. WALL: They had an opportunity in the Pretrial  
16 Memo to withdraw those affirmative defense [inaudible] they  
17 have not done so.

18                                THE COURT: I think it's fair game.

19                                MR. EGLET: Also, before we go, can we just make  
20 sure he puts his objection on the record and not speak about  
21 what the objection is?

22                                THE COURT: Yes.

23                                MR. ROGERS: Well, are these --

24                                THE COURT: [Inaudible].

25                                MR. EGLET: Thank you, Your Honor.



1 MR. ROGERS: Well, are these objections -- is this  
2 recorded up here?

3 THE COURT: Yes.

4 MR. ROGERS: Okay. Very good.

5 MR. WALL: This was recorded?

6 THE COURT: Yes.

7 (Bench conference ended at 1:22 p.m.)

8 \* \* \* \* \*

9 (Bench conference began at 2:45 p.m.)

10 MR. ROGERS: These are not the defenses. I don't  
11 know where they came up with them. But he's not allowed to  
12 comment on them regardless.

13 MR. WALL: Actually, Dr. Wang testified that  
14 [inaudible] he had migraines before the accident and  
15 [inaudible] afterwards [inaudible] migraines that he had.

16 THE COURT: [Inaudible] overrule the objection.

17 MR. ADAMS: Before we go, can you admonish him the  
18 second time, no speaking objections, Your Honor?

19 THE COURT: Yeah, I thought we were clear on that,  
20 Mr. Rogers.

21 MR. ROGERS: I am. I will be from here on.

22 THE COURT: Thank you.

23 MR. ADAMS: Thank you, Your Honor.

24 (Bench conference ended at 2:46 p.m.)

25 \* \* \* \* \*

1 (Bench conference began at 2:54 p.m.)

2 THE COURT: I think we maybe need to restate that  
3 last [inaudible].

4 UNKNOWN MALE SPEAKER: [Inaudible].

5 UNKNOWN MALE SPEAKER: [Inaudible] just saying what  
6 the evidence is going to show.

7 UNKNOWN MALE SPEAKER: Well, no --

8 THE COURT: Yeah --

9 UNKNOWN MALE SPEAKER: It's not that she's not  
10 allowed to testify, it's what she's [inaudible] certain things  
11 in the records that it may not be justified by the medical  
12 evidence as a future treatment. [Inaudible] testify what is  
13 [inaudible].

14 THE COURT: I think you just need to rephrase it.

15 MR. ROGERS: May I clarify the objection, though,  
16 Your Honor?

17 THE COURT: Yes.

18 MR. ROGERS: It's -- the concern is this. We have a  
19 -- the Motion in Limine that we filed was that she was  
20 projecting future care that no medical doctor had recommended  
21 and that she, as a nurse, wasn't qualified to project future  
22 or recommend future medical care. If he's going to ring this  
23 bell and discuss future medical care that no doctor has  
24 recommended, he's kind of getting around your order on the  
25 motion.

1 MR. EGLET: No, he's not getting around that order  
2 at all, Your Honor. All your order would -- your order was  
3 simply that their motion was denied and that Ms. Hartman  
4 [phonetic] could testify regarding this issue subject to  
5 proper foundation. That was your Order. All Mr. Wall is  
6 doing is saying, this is what the evidence is going to show.

7 If we don't lay the proper foundation for it and if  
8 she testifies, and you don't allow to -- to examine that, then  
9 we run the risk. But we're allowed to put in our opening  
10 statement what we reasonably expect the evidence will show and  
11 that's what he's doing.

12 THE COURT: I think you are. I just think you need  
13 to rephrase the last statement. So --

14 UNKNOWN MALE SPEAKER: Okay. Thank you.

15 UNKNOWN MALE SPEAKER: All right.

16 (Bench conference ended at 2:55 p.m.)

17 \* \* \* \* \*

18 (Bench conference began at 3:52 p.m.)

19 THE COURT: There is a specific Motion in Limine and  
20 Order in place that no lawyer is allowed to suggest,  
21 insinuate, argue or infer that this is a medical/legal  
22 build-up case. And they just put up on their screen "Trial  
23 Doctors" talking about the doctors who, you know, testify down  
24 here regularly. Okay, trial doctors. There's nothing --  
25 there can be no other reason for that, other than to infer

1 this is some sort of legal/medical build-up, a direct  
2 violation of this Court's order.

3 And I ask that that slide be --

4 UNKNOWN MALE SPEAKER: And at the time of his  
5 deposition he didn't even know there was a medical/legal  
6 case.

7 MR. EGLET: Right. And at the time of his  
8 deposition --

9 UNKNOWN MALE SPEAKER: Dr. McNulty's [phonetic]  
10 deposition.

11 MR. EGLET: -- Dr. McNulty didn't even know there  
12 was a legal/medical case. So, we would ask that slide be not  
13 shown to the jury again. That the jury be instructed to --  
14 not -- to ignore that last slide and that counsel be  
15 admonished not to violation anymore orders, which we expect  
16 him to continue to do.

17 THE COURT: Mr. Rogers?

18 MR. ROGERS: Yes. There has been no order, and  
19 certainly no law that precludes the defense from pointing out  
20 that a doctor has testified a number of times in trial. And  
21 the jury is allowed to take that into consideration. Your  
22 Honor didn't dismiss or exclude that evidence. Otherwise, why  
23 is it -- that we're entitled to that information of every  
24 doctor deposition that we take.

25 MR. EGLET: The --

1 UNKNOWN MALE SPEAKER: That's the -- that's the  
2 [inaudible].

3 UNKNOWN MALE SPEAKER: [Inaudible].

4 UNKNOWN MALE SPEAKER: No.

5 MR. EGLET: That's exactly what it is.

6 UNKNOWN MALE SPEAKER: It says the future  
7 [inaudible] testify in trial [inaudible] evidence [inaudible]  
8 what other [inaudible].

9 MR. EGLET: The motion --

10 UNKNOWN MALE SPEAKER: [Inaudible] trial doctor.

11 MR. EGLET: The motion was clear that there could be  
12 no argument, suggestion, inference, or insinuation by defense  
13 counsel that this case was in any way a medical build-up case  
14 by the doctors involved. By putting the term "Trial Doctor"  
15 up there, there's --

16 UNKNOWN MALE SPEAKER: [Inaudible] treating  
17 physician.

18 MR. EGLET: He's a treating physician. He's not a  
19 trial doctor. He's a treating physician. And so it is  
20 clearly a violation of this order. And we're going to have  
21 this, believe me, on throughout this trial, because counsel  
22 has made it very clear to us outside the presence of the  
23 Court, that he intends on violating these orders.

24 This is the first. It's going to continue, Judge.  
25 And I'm putting you on notice right now, that's exactly what

1 he said. It's going to continue, okay?

2 MR. ROGERS: That's not at all what I said, Your  
3 Honor.

4 MR. EGLET: And Mr. -- Mr. Rogers continuously  
5 misrepresents and lies to my office all the time about various  
6 things. And we expect this to continue, okay? I don't trust  
7 him one bit. And I will tell you right now, this is just the  
8 beginning. He's just violated this order. He's going to  
9 violate more, Your Honor.

10 THE COURT: Well, I hope that's not the case. The  
11 Court's inclined to sustain the objection. I think you have  
12 to remove this slide and we'll advise the jury to disregard  
13 it. Let's continue.

14 (Bench conference ended at 3:56 p.m.)

15 THE COURT: The jury will disregard the last slide  
16 presented by counsel.

17 \* \* \* \* \*

18 (Bench conference begins at 3:57 p.m.)

19 MR. EGLET: What'd I tell you? Number two.

20 THE COURT: Mr. Eglet, please keep your voice down.

21 MR. EGLET: What'd I tell you? Number two.

22 Violation number two. That's a --

23 MR. WALL: We kept that out.

24 MR. EGLET: -- order that motorcycle accident was  
25 excluded from this trial. That's violation number two. The

1 next time we come up, I'm going to start asking for monetary  
2 sanctions against defense counsel.

3 MR. WALL: I'm wondering if there's some intent to  
4 get a mistrial, frankly --

5 THE COURT: I don't know.

6 MR. WALL: -- to make -- to goad us into asking for  
7 one. That's what I'm concerned about at this point.

8 THE COURT: Um-hum.

9 MR. ROGER: Your order was that the motorcycle  
10 evidence -- or accident is not admissible as to the neck  
11 injury, but is admissible as to [inaudible].

12 THE COURT: As to the what?

13 MR. ROGERS: The migraine claim.

14 MR. WALL: No. That was -- that was argued.

15 THE COURT: Does anybody have a copy of the Order?

16 MR. WALL: Yes. That was argued, and that was  
17 actually not. It was kept out in its entirety, because  
18 there's nothing that connects it to an exacerbation of the  
19 migraines. I have a copy [inaudible].

20 MR. EGLET: I have this. Is it in here?

21 MR. WALL: It's this. It just says [inaudible]  
22 granted in all respects, the motion as for preclusion of the  
23 motorcycle accident.

24 MR. ROGERS: Which motion is it?

25 MR. WALL: [Inaudible].

1 MR. EGLET: It's the motion [inaudible] it's motion  
2 on the motorcycle accident.

3 THE COURT: That's basically what I recall the order  
4 being [inaudible].

5 MR. WALL: And I'm concerned that there's an intent  
6 to goat us into asking for a mistrial. So --

7 MR. ROGERS: I have no desire [inaudible].

8 MR. WALL: We've only been going for 10 minutes.

9 MR. EGLET: They've already violated two orders.

10 UNKNOWN SPEAKER: [Inaudible].

11 MR. EGLET: I wouldn't --

12 THE COURT: Do you need to take a [inaudible] other  
13 slides [inaudible]?

14 MR. EGLET: I think he's needs to look at his -- I  
15 think he needs a break to look at his slides, Your Honor.  
16 We're requesting --

17 THE COURT: I do, too.

18 MR. EGLET: -- that the jury be -- that counsel be  
19 admonished that the jury be admonished that they are to ignore  
20 the last slide, and that any and all evidence, or any and all  
21 evidence regarding any alleged motorcycle accident is  
22 specifically excluded from this trial, and the jury is not to  
23 consider it under any circumstances.

24 THE COURT: Let me see that ruling for a minute.

25 MR. WALL: Because it's unrelated to any condition.



1 MR. EGLET: It's unrelated to any condition in this  
2 case.

3 THE COURT: Do you have any objection if I just read  
4 this particular paragraph to the jury?

5 MR. ROGERS: The "it is hereby ordered?"

6 MR. EGLET: And -- but you need to say that it  
7 specifically includes this motorcycle accident.

8 THE COURT: Yeah.

9 MR. EGLET: -- because it's --

10 MR. WALL: Because it's unrelated.

11 MR. EGLET: -- because it's unrelated.

12 THE COURT: Okay. Sustain the objection for the  
13 record.

14 (End of bench conference at 4:00 p.m.)

15 \* \* \* \* \*

16 (Bench conference began at 4:33 p.m.)

17 MR. ROGERS: It seems they have two witnesses for  
18 tomorrow, but we're not going to be punched for time. If you  
19 -- if there's a chance this could go five minutes [inaudible].

20 MR. EGLET: Five minutes would be okay, right?

21 THE COURT: Well, I would think so.

22 MR. EGLET: Yeah, 5 or 10 minutes. I mean --

23 THE COURT: The county's -- the county's really  
24 cracked down on overtime issues. In fact, all of the  
25 departments are being audited to determine who's --

1 MR. EGLET: Oh, my gosh.

2 THE COURT: -- who's requiring overtime and who  
3 isn't. Anyway, I think we can probably get it done today.

4 MR. ROGERS: All right.

5 (Bench conference ends at 4:34 p.m.)

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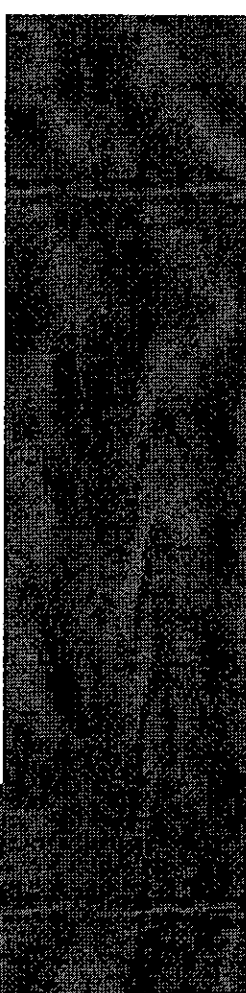
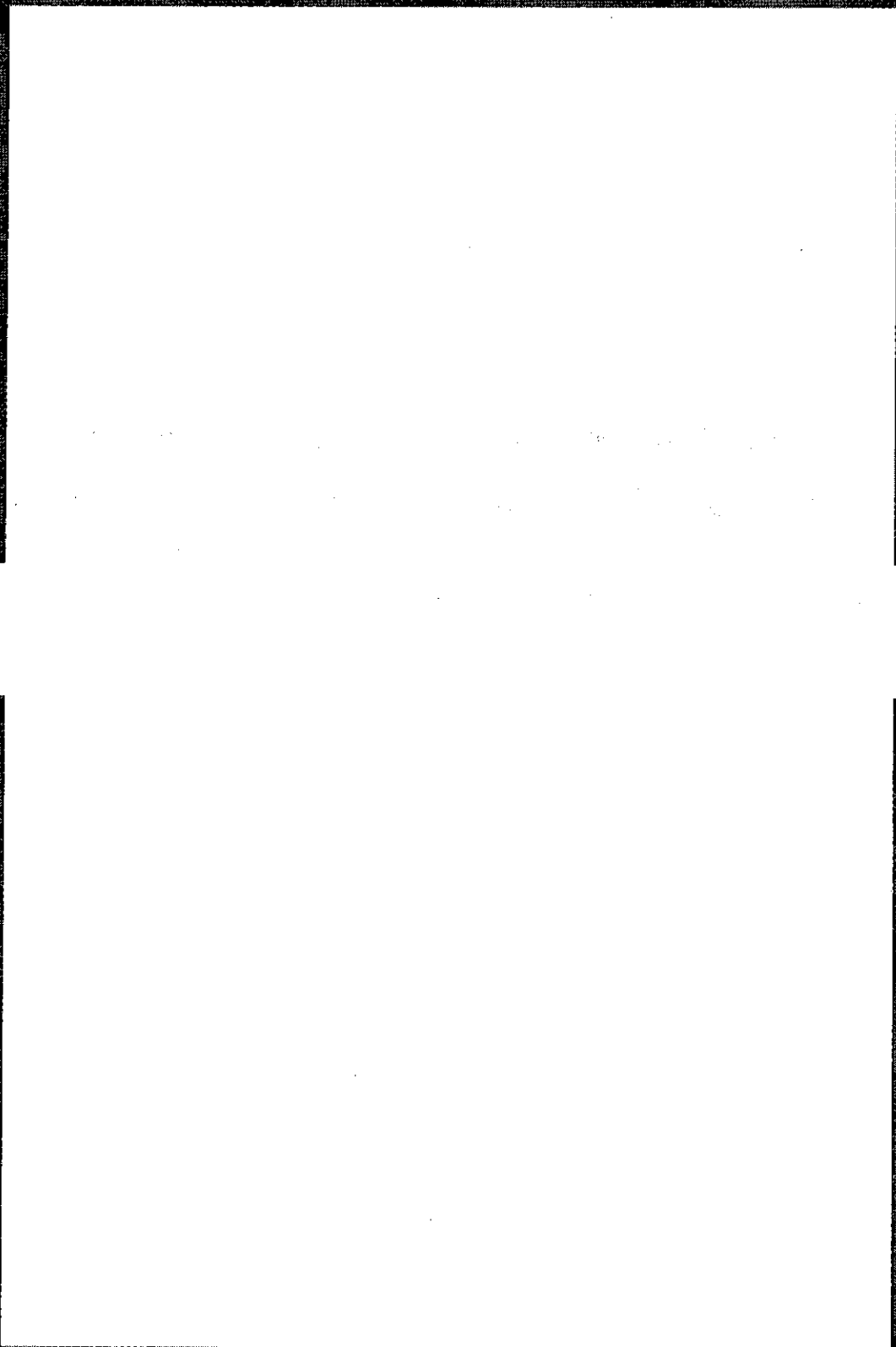
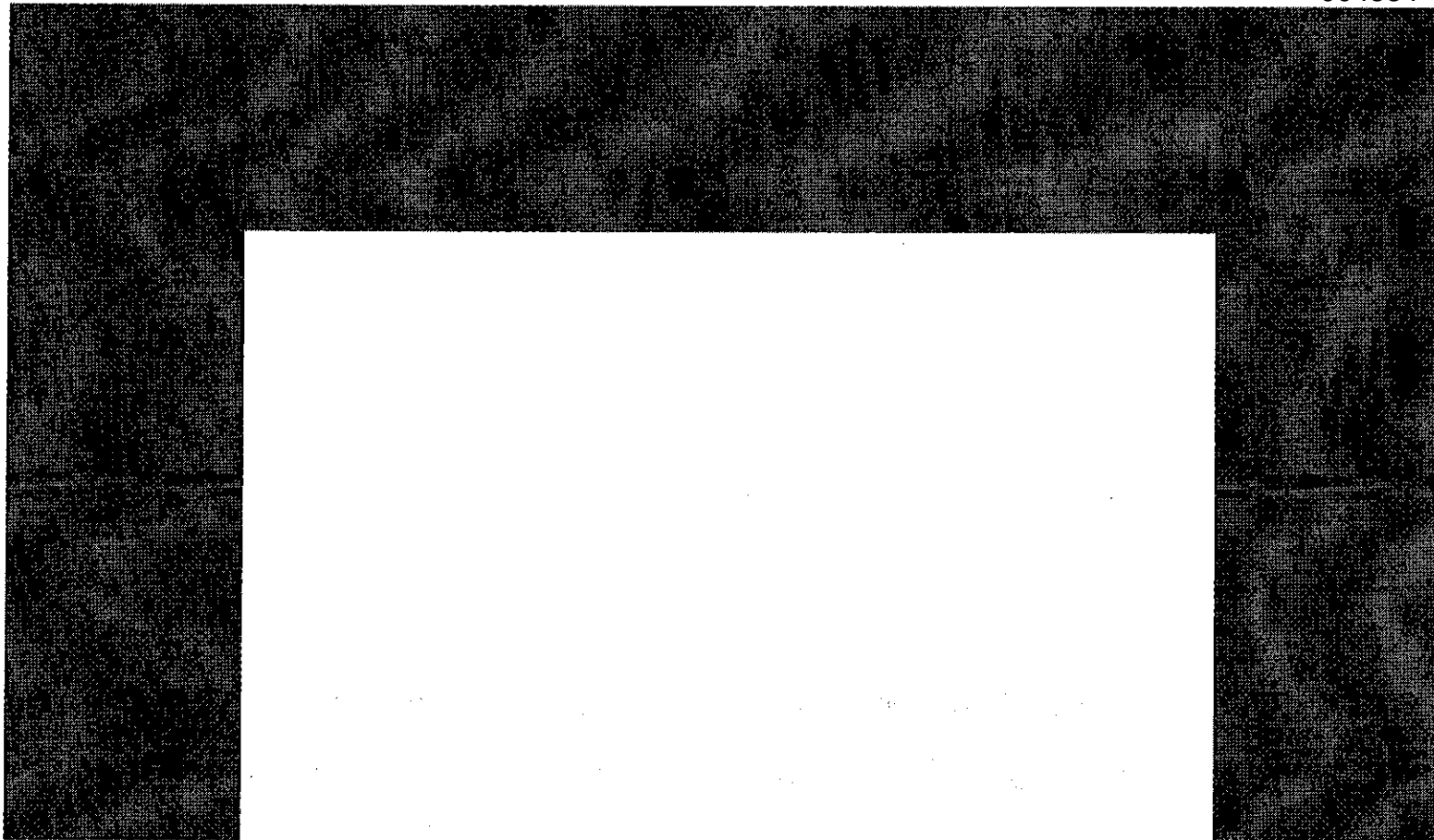
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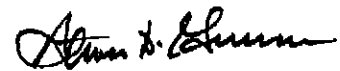


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DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

WILLIAM SIMAO and	.	CASE NO. A-539455
CHERYL SIMAO,	.	
	.	DEPT. NO. X
Plaintiffs,	.	
vs.	.	TRANSCRIPT OF
JENNY RISH,	.	PROCEEDINGS
	.	
Defendant.	.	<b>**Partial Transcript**</b>

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BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

PORTION OF JURY TRIAL - DAY 7  
(BENCH CONFERENCES)

TUESDAY, MARCH 22, 2011

APPEARANCES:

FOR THE PLAINTIFFS:	DAVID T. WALL, ESQ.
	TRACY A. EGLET, ESQ.
	ROBERT M. ADAMS, ESQ.
	ROBERT T. EGLET, ESQ.
FOR THE DEFENDANT:	STEPHEN H. ROGERS, ESQ.

COURT RECORDER:

VICTORIA BOYD  
District Court

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1        LAS VEGAS, NEVADA, TUESDAY, MARCH 22, 2011, 1:12 P.M.

2        (This transcript contains bench conferences only)

3                    \*   \*   \*   \*   \*

4                    (Bench conference began at 1:12 p.m.)

5                    MR. EGLET: Your Honor, my understanding is that the  
6        2.67, I wasn't in attendance. I was just talking to Mr. Adams  
7        about that. That a stipulation was reached to admit all the  
8        exhibits, pre-admit all the exhibits; correct?

9                    MR. ADAMS: Right. All the medical records.

10                   MR. EGLET: All the medical records, yes.

11                   MR. ROGERS: Defense disputes cause, the  
12        reasonableness and necessity, but the records can come in.

13                   THE COURT: Okay. So ordered.

14                   MR. EGLET: Thank you.

15                   (End of bench conference at 1:12 p.m.)

16                   \*   \*   \*   \*   \*

17                   (Bench conference began at 1:57 p.m.)

18                   MR. EGLET: I'm giving him a -- excuse me, I'm  
19        giving him a hypothetical on age-related changes in the spine  
20        that are asymptomatic, can they become symptomatic from a  
21        traumatic event. That's all this is. So I don't understand  
22        his objection.

23                   MR. ROGERS: It wasn't that. It was from a car  
24        accident --

25                   MR. EGLET: Yeah, from a car accident with a

1 trauma --

2 MR. ROGERS: No description of any kind.

3 MR. EGLET: It doesn't need a description of the car  
4 accident.

5 MR. ROGERS: Sure, it does.

6 THE COURT: And I don't think he does at this point.  
7 Overrule the objection.

8 (End of bench conference at 1:58 p.m.)

9 \* \* \* \* \*

10 (Bench conference began at 2:43 p.m.)

11 MR. EGLET: I'm not sure what the Court is looking  
12 for. We've already gone through the history that the patient  
13 gave him regarding the accident. We've already gone through  
14 any history of his -- or the -- his findings or his diagnostic  
15 studies which confirmed the pain generators and internal disc  
16 disruption. So I guess I'm trying to get the Court's --

17 THE COURT: Could you repeat the question?

18 MR. EGLET: Sure.

19 MR. ROGERS: Allow me to explain what the basis of  
20 the objection is.

21 They've arguably laid a foundation for a diagnosis  
22 and a prognosis, but not for a cause, because the doctor  
23 hasn't established that he knows the first thing about this  
24 accident. He hasn't established that he knows the first thing  
25 about attributing cause based on a given accident. None of

1 the foundational requirements are met.

2 MR. EGLET: Well, first of all, what he's trying to  
3 do, is he's trying to bait me into getting into opening the  
4 door on the mechanics of this accident, which the Court has  
5 excluded. And I'm not an idiot. I know exactly what he's  
6 doing. This is not my first rodeo.

7 Second of all, all doctors base their opinions on  
8 causation, on the patient's history, which he has explained,  
9 which I'm sure that Mr. Rogers is very capable of bringing out  
10 on cross-examination. So, he has laid the foundation. It's  
11 based on the history the patient gave him, which we reviewed  
12 very early in my direct examination of [inaudible].

13 THE COURT: You did.

14 MR. ROGERS: Well, the plaintiff's response, though,  
15 suggests that the defense will be prohibited from  
16 cross-examining the foundation by asking him any questions  
17 regarding what he knows about this incident.

18 MR. EGLET: You can ask him whether he based his  
19 opinion on causation based on the subjective history that the  
20 patient gave him regarding the accident, but you cannot go  
21 into, it's been precluded through pretrial motion, as to how  
22 extensive this motor vehicle accident is. It doesn't matter.  
23 He doesn't even know, just based on what the client told him.

24 MR. ROGERS: That's --

25 MR. EGLET: Just like every other doctor



1 [inaudible].

2 MR. ROGERS: That's the point of the --

3 THE COURT: It would be beyond --

4 MR. ROGERS: -- objection.

5 THE COURT: -- the scope anyway.

6 Let's take a break.

7 MR. EGLET: [Inaudible].

8 THE COURT: Okay. It's been awhile for our jurors  
9 to be sitting there.

10 MR. EGLET: Okay. Let's do.

11 THE COURT: Let's take a break and then [inaudible]  
12 this question and --

13 MR. EGLET: Well, can we do that after --

14 THE COURT: Yeah.

15 MR. EGLET: -- we're done with our examination?

16 THE COURT: Sure. [Inaudible] a second. Good  
17 questions. Do you agree they can be asked?

18 MR. ROGERS: They're fine with me.

19 MR. EGLET: They're fine so far. I just think  
20 procedurally they have to be asked until we're done --

21 THE COURT: Sure.

22 MR. EGLET: -- [inaudible] questioning.

23 MR. ROGERS: Can diagnose pain after [inaudible].

24 THE COURT: Okay. No objection?

25 MR. ROGERS: No.

1 (End of bench conference at 2:46 p.m.)

2 \* \* \* \* \*

3 (Bench conference began at 3:08 p.m.)

4 THE COURT: I wouldn't mind asking this questions --

5 MR. ROGERS: It was now or later.

6 THE COURT: -- if you don't object, I'll ask them  
7 now.

8 MR. ROGERS: Sure.

9 MR. EGLET: That's fine.

10 THE COURT: Okay. Is that what you wanted to ask?

11 MR. ROGERS: Yes.

12 THE COURT: Oh, thank you for the reminder.

13 MR. ROGERS: Yes.

14 (End of bench conference at 3:09 p.m.)

15 \* \* \* \* \*

16 THE COURT: Will counsel approach, please, off  
17 record?

18 (Off-record bench conference began at 3:14 p.m.)

19 Bench conference not recorded.

20 (End of bench conference at 3:15 p.m.)

21 \* \* \* \* \*

22 (Bench conference began at 3:22 p.m.)

23 MR. EGLET: Your Honor, the evidence is clear in  
24 this case that on the day of the accident, when he reported to  
25 Southwest Medical, that he complained of neck pain. It's

1 clear.

2 THE COURT: Um-hum.

3 MR. EGLET: Unambiguous. And every time he asks the  
4 question he says, that he complained of [inaudible] neck pain  
5 for the six months following the accident. That's an  
6 inaccurate statement. It misstates the evidence. He did  
7 complain of neck pain on the date of the accident.

8 MR. ROGERS: Actually, if you look at the record,  
9 every time I asked this question, it is phrased, "following  
10 the date of the accident." That is exactly how I say it.  
11 That is the truth.

12 MR. EGLET: Well, no, it's not the truth, because it  
13 misstates -- you have to say to say, other than the first day  
14 of the accident then you're fine.

15 THE COURT: I think that's misleading to the jury .  
16 If that's your position, I think that's misleading and  
17 confusing to the jury and that's not fair. Sustain the  
18 objection. Ask you to rephrase it.

19 MR. ROGERS: Okay.

20 (End of bench conference at 3:23 p.m.)

21 \* \* \* \* \*

22 (Bench conference began at 3:25 p.m.)

23 MR. EGLET: Here's the problem. Here's the problem  
24 with this line of questioning, okay? This gentleman's a  
25 treating physician, we did not retain him, especially retain

1 him as an expert in this case, to talk about anybody else's  
2 treatment but his own. He's never reviewed the Southwest  
3 Medical treatment. They're not part of his file. The only  
4 thing he's looked at is in his file.

5 MR. WALL: [Inaudible].

6 MR. EGLET: He was -- he was not with Southwest. He  
7 has no access to those records and he's asking him about  
8 Southwest records he's never seen before. There's no  
9 foundation for this testimony.

10 MR. ROGERS: He's talked about records he's looked  
11 at from other providers.

12 MR. EGLET: No, he has not. He has never mentioned  
13 a record, period. He did not mention a record. You asked  
14 him, has he --

15 UNKNOWN MALE SPEAKER: Was he made aware.

16 MR. EGLET: -- was he made aware, and he said, yes,  
17 he was made aware. But he didn't look at any records.

18 MR. ROGERS: Okay. Well, the last time we were up  
19 here, before the break, plaintiff's counsel asked for  
20 guidance. What am I supposed to do? We know what the  
21 evidence shows. Somehow I'm not being permitted to ask that  
22 -- about that period of time following the date of the  
23 accident during which there are no neck [inaudible] reported.

24 MR. EGLET: It's beyond the scope of the direct  
25 examination. This witness -- this witness was -- is only

1 being used as a treating physician. If everybody paid close  
2 attention, everybody knows that during my direct examination  
3 the only thing he talked about was his treatment of this  
4 patient, not anyone else's treatment.

5 He hasn't seen these records, he hasn't been asked  
6 to look at these records. He hasn't been paid to look at  
7 these records. He's not -- he's not an -- an all-encompassing  
8 expert witness in this case. He's just here as a treating  
9 physician.

10 So, it's beyond the scope of my direct. He can get  
11 into this in his own witnesses, that's fine. Or when we bring  
12 our comprehensive witness in to talk about all this, he can do  
13 that. But not with this witness. He's just a treating  
14 physician. He just relied on his own records.

15 MR. ROGERS: Well, once he formulated a causation  
16 opinion, he opened himself up --

17 MR. EGLET: No.

18 MR. ROGERS: -- to cross-examination on the  
19 foundation opinion.

20 MR. EGLET: No, he didn't.

21 MR. ROGERS: If this compromises that opinion in any  
22 way, the defense is entitled to just -- to that testimony.

23 MR. EGLET: No, no, it doesn't, Judge, because his  
24 -- the foundation, and he has admitted already in  
25 cross-examination that the foundation for his testimony is

1 based on the patient's history provided to him. He --

2 MR. ROGERS: That's --

3 MR. EGLET: -- hasn't opened anything.

4 MR. ROGERS: That's the point of it, is that  
5 adequate and is there other information.

6 THE COURT: Well, we've already addressed -- we've  
7 already addressed that objection. Sustain this one, ask you  
8 to move on.

9 (End of bench conference at 3:28 p.m.)

10 \* \* \* \* \*

11 (Bench conference began at 4:01 p.m.)

12 THE COURT: I think it is sort of vague and  
13 ambiguous.

14 (Recording ended at 4:01 p.m.)

15 \* \* \* \* \*

16 (Bench conference began at 4:16 p.m.)

17 MR. WALL: This is going to be secondary gain.

18 MR. ROGERS: I'm -- I'm not going to say the words.

19 MR. WALL: [Inaudible].

20 MR. EGLET: Yeah.

21 MR. WALL: That's where this is going. [Inaudible].

22 THE COURT: I'm wondering if we aren't getting a bit  
23 far afield.

24 MR. EGLET: It's secondary. And also --

25 UNKNOWN MALE SPEAKER: That has nothing to do --

1 MR. EGLET: -- there's no -- there's no worker's  
2 compensation claim here so I don't know --

3 UNKNOWN FEMALE SPEAKER: There's nothing --

4 MR. EGLET: -- what worker's compensation has to do  
5 with this. This is no a work comp claim. It's -- to me --  
6 because they already know he's driving his work van. It's  
7 almost like he's implying that this is -- there's a work comp  
8 claim involved in this, which is improper, because there is no  
9 work comp claim.

10 MR. WALL: [Inaudible] worker's comp [inaudible].

11 MR. ROGERS: Oh, goodness.

12 MR. WALL: [Inaudible] secondary gain issue.  
13 [Indiscernible].

14 THE COURT: It seems -- it seems [inaudible] since  
15 it's not an issue in this case. I'm wondering why you asked  
16 the question.

17 UNKNOWN MALE SPEAKER: Right.

18 MR. ROGERS: One, the compositives among the  
19 claimant demographic isn't limited to things like secondary  
20 gain. I already understand your Order on that, and I'll  
21 respect that.

22 The problem is something that most medical providers  
23 say, we don't exactly understand why this is. We just know  
24 that it is, that -- that there are these people who are  
25 involved in these claims. And they present with a higher

1 incidence of false positives. Without attributing any  
2 badness, or intent, to the plaintiff or claimant, that is what  
3 the medicine proves.

4 MR. EGLET: But there's -- it's irrelevant, first of  
5 all, because there's no -- there's no evidence that there's a  
6 false positive in this case; none. There's not -- they  
7 haven't laid the foundation that this was a false positive in  
8 any way, shape, or form --

9 THE COURT: [Inaudible].

10 MR. EGLET: -- with this witness.

11 THE COURT: [Inaudible].

12 MR. EGLET: So the application is clearly -- is  
13 clearly that this is second gain. And also, Mr. Wall's  
14 comment -- argument about work comp, it's the implication  
15 [inaudible]. So in three different bases, as -- three  
16 different -- three different bases to sustain this objection.

17 MR. WALL: And I would -- I would ask [inaudible].

18 THE COURT: Well, you know, the other thing is, I  
19 think, it may mislead the jury in the kind of case that it  
20 isn't. That's the concern that I have.

21 MR. WALL: That's why [inaudible] it's irrelevant to  
22 this case.

23 MR. ROGERS: Well, I don't need to establish through  
24 the defense -- or, pardon me, the plaintiff's medical  
25 providers that it's a false positive. All I need to do is



1 establish that there's a question about whether this is an  
2 accurate study. Otherwise, the jury is --

3 MR. EGLET: There's no question with this witness.

4 MR. ROGERS: Well, what we're doing is giving the  
5 jury a presumption that this test is valid. That's not --

6 MR. EGLET: You've got --

7 MR. ROGERS: -- that's not fair.

8 MR. EGLET: -- enough witnesses to come and testify  
9 on why they think it's a false positive, other than for  
10 secondary gain.

11 MR. ROGERS: Well, then -- then --

12 MR. WALL: And there's a difference --

13 MR. ROGERS: -- what I could do --

14 MR. WALL: -- there's a difference between saying  
15 sometimes there's false positives and there's false positives  
16 that [inaudible] --

17 THE COURT: Sure.

18 MR. WALL: -- [inaudible].

19 THE COURT: Okay.

20 (Bench conference ended at 4:19 p.m.)

21 \* \* \* \* \*

22 (Bench conference began at 4:33 p.m.)

23 MR. ROGERS: If counsel is going to have this doctor  
24 vouch for the plaintiff's credibility, then we're allowed to  
25 get into the possible secondary gain. You can't possibly --