9-12-2008

# Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP Appellant's Brief Dckt. 34885

COPY

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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| SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation, *Plaintiff–Appellant*, v. MRI ASSOCIATES, LLP, an Idaho limited liability partnership, *Defendant–Respondent* | Supreme Court Docket No. 34885 |
| MRI ASSOCIATES, LLP, an Idaho limited liability partnership, on its own behalf, and on behalf of MRI Limited, an Idaho limited partnership, and MRI Mobile Limited, an Idaho limited partnership, *CounterClaimant–Respondent* v. SAINT ALPHONSUS DIVERSIFIED CARE, INC., an Idaho nonprofit corporation; SAINT ALPHONSUS REGIONAL MEDICAL CENTER, INC. *CounterDefendants–Appellants* | |

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**APPELLANTS' BRIEF**

**Appeal from the District Court of the Fourth Judicial District for Ada County**
**Honorable Michael R. McLaughlin, District Judge, Presiding**

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## STATEMENT OF THE CASE

### A. Nature of the Case

Appellants Saint Alphonsus Regional Medical Center, Inc., and its wholly owned subsidiary Saint Alphonsus Diversified Care, Inc. (collectively, "Saint Alphonsus") appeal an award in the amount of $36.3 million (plus fees and costs of $2.1 million) on contract and tort claims asserted by Respondent MRI Associates, LLP ("MRIA"), a business partnership created in 1985 by Saint Alphonsus, two other hospitals and a consortium of doctors for the purpose of acquiring and operating magnetic resonance imaging ("MRI") equipment.

The central issue in this case is whether Saint Alphonsus violated MRIA's legal rights by its interactions with Intermountain Medical Imaging ("IMI"), a full-service imaging center created in 1999 by the group of radiologists that had served the radiology needs of Saint Alphonsus's patients for more than twenty years, and by its decision in 2004 to dissociate from MRIA and formally affiliate with IMI in the provision of MRI services. At trial, Saint Alphonsus presented evidence that its actions were motivated by a desire to promote optimal patient care and were entirely consistent with the MRIA partnership agreement and Saint Alphonsus's other legal duties. For its part, MRIA argued that Saint Alphonsus had acted with bad-faith indifference to its obligations to MRIA and had improperly helped divert MRI business from MRIA's affiliates to IMI.

Saint Alphonsus contends on appeal that the jury's verdict for MRIA resulted from a series of critical legal errors that preordained the result. Specifically, Saint Alphonsus contends that the district court incorrectly granted summary judgment for MRIA on its claim that Saint

Alphonsus "wrongfully" dissociated from the partnership in 2004, and that the court should instead have granted summary judgment for Saint Alphonsus on that claim. Further, the repeated references to this legally incorrect holding by the court and MRIA's counsel during trial prevented the jury from fairly and impartially evaluating the evidence, and virtually compelled a finding of liability on all other claims. This prejudice was compounded, Saint Alphonsus contends, by the court's erroneous admission of privileged attorney-client communications advising Saint Alphonsus about the legal risks of dissociation and evidence of Saint Alphonsus's rejection of an MRIA settlement offer, both of which MRIA used in conjunction with the court's holding of "wrongful" dissociation to support the claim of bad-faith conduct. Finally, Saint Alphonsus submits that, entirely apart from these errors, it is entitled to judgment notwithstanding the verdict because MRIA's proof of damages under two alternative theories is legally and factually insufficient, and the amounts claimed and awarded under each bear no relationship to injuries actually caused by Saint Alphonsus or suffered by MRIA.

### B. Statement of Facts and Course of the Proceedings

Saint Alphonsus is a hospital that has served the medical needs of the greater Boise area for more than a century. It provides its patients with a full range of medical care, including access to top-level radiology services. (Tr., Vol. II, p. 2022, L. 23 to p. 2023, L. 17; Tr., Vol. III, p. 4214, L. 14-25.) Radiology is a medical specialty involving the use of medical imaging technologies, such as x-ray, fluoroscopy, ultrasound, CT scan, and MRI, for diagnostic and other treatment purposes. (Tr., Vol. II, p. 1093, L. 12 to p. 1095, L. 9.) Typically, a patient in need of medical imaging is referred by the patient's treating physician to an imaging facility where technicians use imaging equipment to produce images or "scans" of the patient's body. (*Id.*) These scans are then interpreted by a radiologist in consultation with the patient's treating physician. (*Id.*) At Saint Alphonsus, the interpretation of medical images has for decades been performed by the Saint Alphonsus Radiology Group, also known as Gem State Radiology ("SARG/GSR"), an organized group of radiologists under an exclusive contract to serve the professional radiological needs of Saint Alphonsus's patients. (R., Vol. V, pp. 907, 911.)

MRIA is an Idaho general partnership formed on April 26, 1985, by Saint Alphonsus, two other hospitals and Doctors Magnetic Resonance, Inc. ("DMR"), a corporation created by five specialist physicians for the purpose of holding a partnership interest in MRIA. (R., Vol. V., p. 909 ¶ 10.) (A fourth hospital joined the partnership in 1995.) The purpose of MRIA was to acquire and operate equipment for the then-emerging medical imaging technology known as magnetic resonance imaging or MRI. (App. 3 (Trial Ex. 4023 § 1.6).)[1] To this end, MRIA formed two limited partnerships: MRI Limited Partnership, doing business as MRI Center of Idaho ("Center"), which owned and operated an MRI device at a facility located on the Saint Alphonsus hospital campus, and MRI Mobile Limited Partnership ("Mobile"), which owned and operated mobile MRI devices throughout the region. (Tr., Vol. II, p. 1786, L. 11-14; Tr., Vol. III, p. 2944, L. 17 to p. 2945, L. 11.) Profits from these operations were distributed to the respective owners of the Center and Mobile limited partnerships. (Trial Ex. 4024 § 3.2; Trial Ex. 4028 § 3.2.) MRIA owned 30% of each limited partnership, and served as the general partner of both.

[1] Citations to "App. __" refer to the pages of the Appendix attached to this brief. The Appendix contains pertinent excerpts of the trial exhibits cited herein.

(App. 7, 11, 14, 39 (Trial Ex. 4024 §§ 1.3.2, 4.2; Trial Ex. 4028 § 1.3.2; Trial Ex. 4247, p. 7).)[2] MRIA provides no MRI services directly, but rather derives all of its revenues from the distribution of profits based on its ownership interests in Center and Mobile and from a "management fee" equal to 7.5% of their revenues. (App. 9, 11, 15-16, 28 (Trial Ex. 4024 §§ 3.2.2, 4.2; Trial Ex. 4028 §§ 3.2.2, 4.2; Trial Ex. 4118, p. 3).)

For years following the creation of MRIA, doctors at Saint Alphonsus used Center for the technical service of producing MRI scans, while relying on the radiologists from SARG/GSR for the professional service of interpreting those scans. (Tr., Vol. II, p. 2383, L. 4-15.) By 1998, SARG/GSR was led by Dr. David Giles, one of the five shareholders of DMR, and had under his leadership recruited several of the nation's top radiologists. (Tr., Vol. II, p. 2654, L. 14 to p. 2655, L. 11; Tr. Vol. III, p. 3026, L. 5-8; Tr., Vol. III, p. 3280, L. 1 to p. 3281, L. 2.) These radiologists—who with the exception of Dr. Giles did not share in the ownership of MRIA—began to formulate plans for an outpatient imaging center that would provide a full range of medical imaging services, including both MRI and a variety of other imaging services (*e.g.*, CT scan) not provided by Center. (Tr., Vol. II, p. 2655, L. 22 to p. 2656, L. 9.) Once SARG/GSR acquired land in downtown Boise for this purpose, in August 1998, Dr. Giles disclosed the plans to Saint Alphonsus and encouraged Saint Alphonsus to get involved. (Tr., Vol. III, p. 3054, L. 13 to p. 3057, L. 15; *id.* p. 3061, L. 10 to p. 3062, L. 3.)

[2] The remaining ownership interests in Center and Mobile differ from one another, with non-identical groups of limited partners owning shares. (*See* App. 7, 14, 39 (Trial Ex. 4024; Trial Ex. 4028; Trial Ex. 4247 p. 7).) Saint Alphonsus is a limited partner owning 14% of Center and 11% of Mobile. (*Id.*)

In response, Saint Alphonsus sought to facilitate a combination of Center's operations with those of the SARG/GSR imaging center, first, by arranging a merger of SARG/GSR's and MRIA's respective interests, and, when that effort failed, by working out a deal whereby Saint Alphonsus would exchange its interest in Mobile for additional ownership interest in Center and purchase the rest of Center outright. (Tr., Vol. III, p. 3067, L. 25 to p. 3068, L. 14; *id.* p. 4014, L. 15 to p. 4026, L. 3; App. 18, 21-23 (Trial Ex. 4062, p. 2; Trial Ex. 4072, pp. 2-3; Trial Ex. 4085).) By 2000, it appeared a deal would be reached, but in April or May of that year, DMR decided not to support the deal on the terms proposed. (Tr., Vol. III, p. 4023, L. 1 to p. 4025, L. 14.)

The SARG/GSR facility, by then known as IMI, began operations on September 1, 1999. (Tr., Vol. III, p. 3088, L. 2-4.) Treating physicians at Saint Alphonsus and elsewhere—often due to their preexisting relationships with the SARG/GSR radiologists operating IMI—began referring some patients needing MRI scans to IMI instead of Center. (Tr., Vol. III, p. 3909, L. 5 to p. 3910, L. 1; *id.* p. 3994, L. 8 to p. 3995, L. 16; *id.* p. 4138, L. 6 to p. 4140, L. 4.) On July 1, 2001, Saint Alphonsus entered into an operating agreement that by its terms made Saint Alphonsus a partner in "the non-MRI portion of [IMI]." (App. 30-31 (Trial Ex. 4226 § 1.1).) At the same time, notwithstanding the failure of its efforts in 1999 and 2000, Saint Alphonsus continued to seek a mutually beneficial arrangement between the parties, and was advised by investment banking firm Shattuck Hammond in connection with that endeavor. (Tr., Vol. III, p. 3789, L. 16-20; *id.* p. 3791, L. 19 to p. 3792, L. 10.) Shattuck Hammond suggested that Saint Alphonsus try to purchase Center and merge it with IMI. (App. 41 (Trial Ex. 4272).) Efforts in that direction foundered, however, when MRIA refused to allow Shattuck Hammond to share business valuation data with IMI, and repeated efforts to revive the discussions were abandoned in late 2003. (Tr., Vol. III, p. 3810, L. 25 to p. 3812, L. 17; *id.* p. 3815, L. 20 to p. 3822, L. 16.) With negotiations at an impasse, Saint Alphonsus gave notice on February 24, 2004, of its intent to dissociate from MRIA. (*See* App. 43 (Trial Ex. 4329).)

Saint Alphonsus's dissociation became effective on April 1, 2004, and on October 18, 2004, Saint Alphonsus brought this lawsuit seeking a judicial determination of the amount owed to it for its interest in the partnership pursuant to Idaho Code § 53-3-701. (R., Vol. I, pp. 55-62.) On May 20, 2005, MRIA filed counterclaims alleging that the 2004 dissociation was wrongful and that, prior to dissociation, Saint Alphonsus had breached its fiduciary duties to the partnership and breached the partnership agreement's covenant of good faith and fair dealing by allegedly assisting IMI and thereby causing Center and Mobile to lose business to IMI. (*Id.* pp. 63-79.) On January 31, 2006, MRIA filed additional counterclaims against Saint Alphonsus, including claims for breach of the partnership agreement's non-compete clause, interference with prospective contractual relations or business expectations, and civil conspiracy, as well as a third-party complaint against SARG/GSR, IMI and one of their affiliates (all of whom settled with MRIA prior to trial). (*Id.* pp. 141-78.)

On July 24, 2006, in response to cross-motions for summary judgment, the court held that Saint Alphonsus's dissociation had been wrongful as a matter of law. (R., Vol. II, p. 396.) The court rejected Saint Alphonsus's argument that its dissociation was proper under the 1998 Idaho Revised Uniform Partnership Act ("RUPA"), which created—and made retroactive to all existing partnerships—a right of all partners to dissociate absent an "express provision" limiting that right. In doing so, the court relied on Section 6.1 of the 1985 partnership agreement, which provides that "[a]ny Hospital Partner may withdraw . . . if" it reasonably believes that "continued participation" in the partnership jeopardizes the Hospital Partner's tax exempt status or its ability to secure reimbursement, is contrary to ethical principles of the Catholic Church, or is in violation of law. (App. 4 (Trial Ex. 4023 § 6.1).) The court reasoned that this withdrawal right under the 1985 contract is synonymous with the right to dissociate subsequently created by RUPA in 1998, and that the parties intended the enumerated grounds for withdrawal (none of which was applicable here) to be exclusive. (R., Vol. II, pp. 394-95.) The court rejected the argument that Section 6.1—drafted before the RUPA-created power to dissociate even existed—did not eliminate dissociation rights, holding that even "assuming . . . that [Section 6.1] was an addition of rights under the U[niform] P[artnership] A[ct], [it] is clearly restrictive viewed in the context of the RUPA, which applies retroactively to all Idaho partnership agreements." (*Id.* p. 394.) According to the court, Section 6.1 was thus an "express provision" making dissociation "wrongful" within the meaning of RUPA. (*Id.*) On Saint Alphonsus's motion for reconsideration, the court rejected the argument that RUPA retroactively created a new power to dissociate that was applicable to pre-RUPA partnership agreements. It held that the "decision to include section 6.1 in the Partnership Agreement is . . . properly characterized as the replacement of a default provision," even though the RUPA provision allowing partners to dissociate without causing dissolution did not even exist at the time. (R., Vol. III, p. 541.)

On December 20, 2006, MRIA moved to add a claim for breach of fiduciary duty brought "on behalf of" limited partnerships Center and Mobile. (R., Vol. III, p. 586.) Saint Alphonsus opposed the filing of this counterclaim on the grounds that MRIA could not state a claim "on behalf of" the limited partnerships, which had the power to sue in their own names, and that Saint Alphonsus owed no fiduciary duties to those entities. (Exhibit to R. #57, pp. 4-5.) On February 6, 2007, the court allowed MRIA's new counterclaims, reasoning that MRIA had the authority to bring claims on behalf of the limited partnerships pursuant to the limited partnership agreements. (R., Vol. V, pp. 868-71.) Then, on June 13, 2007, the court denied Saint Alphonsus's motion for summary judgment on the fiduciary duty claim asserted on behalf of the limited partnerships. (R., Vol. X, p. 1880.) The court acknowledged that Saint Alphonsus owed no statutory fiduciary duties to Center or Mobile, but concluded that a question of fact remained whether a common-law fiduciary duty might exist based on the nature of the relationship between Saint Alphonsus and the limited partnerships. (*Id.* pp. 1876-80.) The court ruled that this issue would be decided by the jury. (*Id.* p. 1880.)

As trial approached, both parties filed numerous motions *in limine*, three of which are relevant here. *First*, Saint Alphonsus moved to exclude, on the grounds of attorney-client privilege, portions of an internal memorandum (App. 32 (Trial Ex. 4239)) prepared by investment banking firm Shattuck Hammond. (R., Vol. VIII, pp. 1453-55; Confidential Exhibit to R. #4, at Ex. A.) Shattuck Hammond had been retained in 2001 by Givens Pursley, Saint Alphonsus's counsel, to assist in providing legal advice, and the memorandum summarized advice given to Saint Alphonsus by Givens Pursley regarding the "likely. . . litigation" and "risk of . . . breaching" a fiduciary duty if Saint Alphonsus dissociated. (R., Vol. XI, p. 2184.) The court held that these statements were not privileged. (R., Vol. XI, pp. 2116-18.)

*Second*, Saint Alphonsus filed a motion *in limine* regarding MRIA's so-called "purchase price" damage theory. (R., Vol. VIII, pp. 1462-65.) Under this theory, MRIA claimed that recoverable damages for wrongful dissociation should be measured by the estimated value or hypothetical purchase price of Center. (R., Vol. IX, pp. 1694-97.) Saint Alphonsus argued that the value of Center—the price a purchaser would have had to pay to buy the whole business—was not a proper measure of the *diminution* of Center's profits or value as a result of the dissociation. (Exhibit to R. #137, pp. 5-7.) The court initially filed an order appearing to grant Saint Alphonsus's motion (R., Vol. XI, pp. 2120-22), but after MRIA filed a "Request for Clarification," the court reversed itself and held that the purchase price evidence could be used if "further foundation [was] established" as to the 2001 valuation's "relevance and probative value as to damages or the value of the partnership." (R., Vol. XI, p. 2164.)

*Third*, and finally, Saint Alphonsus moved that MRIA be "prohibit[ed] . . . from asserting at trial that [Saint Alphonsus'] withdrawal was 'unlawful,' 'wrongful,' 'misconduct,' or otherwise contrary to law." (Exhibit to R. #136, pp. 2-3.) The court ruled that MRIA could refer to the dissociation as "wrongful" because that term was "technically and legally accurate," but could not argue that dissociation was "unlawful, illegal, or a violation of law" because such descriptions were "inflammatory" and created an "undeniable danger of unfair prejudice to Saint Alphonsus." (R., Vol. XI, p. 2123.)

On August 6, 2007, MRIA's counterclaims proceeded to trial on the issues of (1) damages from the already determined "wrongful" dissociation; (2) an alternative theory that the dissociation was wrongful because it occurred prior to expiration of a definite partnership term; (3) breach of the partnership agreement's non-compete clause; (4) breach of the partnership agreement's implied covenant of good faith and fair dealing; (5) interference with prospective contractual relations or business expectations; (6) breach of fiduciary duty to MRIA, Center, or Mobile; and (7) civil conspiracy.

MRIA made the court's summary judgment ruling that Saint Alphonsus had wrongfully dissociated the centerpiece of its case before the jury. MRIA first raised the topic during jury *voir dire*.[3] In MRIA's opening statement to the jury, its counsel reminded the jury repeatedly of the court's ruling:

- "Now, the court has said that it has found that Saint Alphonsus wrongfully withdrew from the partnership . . . it's been discussed during jury selection. It will be discussed in opening statement. You'll hear a lot about that." (Tr., Vol. I, p. 997, L. 21 to p. 998, L. 1.)
- "'Wrongful withdrawal' is something that I want you to look for when I take you through the story of this case. Okay?" (Tr., Vol. I, p. 998, L. 19-20.)
- "You recall the court has found that Saint Alphonsus wrongfully withdrew. Our experts will testify that the lost scans, as a result of wrongful withdrawal—$29,500,000." (Tr., Vol. I, p. 1044, L. 15-18.)

[3] MRIA's attorney told the venire panel that the case was "about a partnership that ultimately failed when Saint Alphonsus walked away from it. The court has determined in this case, already, that Saint Alphonsus wrongfully withdrew from this partnership in 2004." (Tr., Vol. I., p. 616, L. 12-17; *see also id.* p. 922, L. 9-11 ("you're going to hear that Judge McLaughlin has entered an order that finds that St. Alphonsus breached its contract with MRI Associates").)

MRIA also emphasized this ruling during the testimony of several key witnesses, including its own experts. (Tr., Vol. II, p. 2734, L. 10-13; Tr., Vol. III, p. 2875, L. 4-9.)

To address these repeated references to "wrongful" conduct, Saint Alphonsus attempted to argue, as suggested by the court's pretrial ruling (*see supra* p. 9), that its dissociation was not "unlawful." (Tr., Vol. I, p. 620, L. 6-13.) However, the court forbid any such statements. (Tr., Vol. III, p. 3960, L. 16 to p. 3962, L. 1.) Saint Alphonsus also proposed jury instructions clarifying the meaning of "wrongful" as not necessarily implying misconduct (Exhibit to R. #230, Instr. 3), but that instruction was rejected. The court instead instructed the jury that "Saint Alphonsus breached [the MRIA partnership agreement] when it wrongfully withdrew from MRIA on April 1, 2004," and that it "ha[d] been determined by the court to be a wrongful dissociation." (Tr., Vol. III, p. 4271, L. 10 to p. 4275, L. 4; *id.* p. 4283, L. 6-15.) MRIA emphasized these instructions and the court's ruling in closing argument:

- "[W]e talked about three betrayals. And the first one, really, the simplest in that it's the wrongful dissociation. Okay? And I've got some good news, and I've got some bad news for you. The good news is that you don't have to worry about liability on wrongful dissociation. Okay? The bad news is that if you don't like that decision, there isn't anything you can do about it. That's the court's order. The court looked at the evidence. The court looked at the contract. The court looked at the testimony of the witnesses and concluded as a matter of law that there was a breach of the contract. That's it." (Tr., Vol. III, p. 4310, L. 1-12.)

- "Let me show you [Jury] Instruction 39 . . . what I want you to focus on—we can read through this. 'The court has determined that Saint Alphonsus has dissociated, and it was wrongful.'" (Tr., Vol. III, p. 4381, L. 17-21.)

- "[Y]ou were told [Saint Alphonsus] wrongful[ly] dissociated . . . ." (Tr., Vol. III, p. 4385, L. 20-21.)

In addition to focusing on the court's holding that Saint Alphonsus had acted wrongfully, MRIA's counsel during trial repeatedly relied on the privileged communications memorialized in the Shattuck Hammond memorandum—which counsel characterized as one of "the most critical documents in the case" (Tr., Vol. III, p. 4302, L. 20)—to argue that Saint Alphonsus and its officers had acted in bad faith and with indifference to their lawyers' advice about Saint Alphonsus's legal obligations to MRIA. (*See, e.g.*, Tr., Vol. II, p. 1861, L. 21 to p. 1866, L. 1; *id.* p. 1874, L. 13 to p. 1878, L. 16; Tr., Vol. III, p. 3593, L. 22 to p. 3596, L. 8; *id.* p. 4302, L. 7-23; *id.* p. 4317, L. 10-19; *id.* p. 4321, L. 10-18.) MRIA also introduced, over Saint Alphonsus's objection (Tr., Vol. II, p. 1239, L. 9 to p. 1246, L. 24), a settlement offer that had been proffered by MRIA and rejected by Saint Alphonsus. (*See* App. 4 (Trial Ex. 4332).) MRIA told the jury that Saint Alphonsus's rejection of this settlement offer was a "telltale" sign of Saint Alphonsus's alleged bad faith. (Tr., Vol. III, p. 4322, L. 1-15; *see also id.* p. 4296, L. 11-20; *id.* p. 4390, L. 9-14.)

With respect to damages, MRIA was allowed to present alternative theories to the jury. The first, the "lost scan" theory, focused exclusively on the number of MRI scans that were allegedly "diverted" from Center or Mobile to IMI. (Tr., Vol. II, p. 2741, L. 7 to p. 2753, L. 7.) The second was the "purchase price" damage theory (*see supra* p. 9), which the district court allowed to be introduced over Saint Alphonsus's objection. (Tr., Vol. III, p. 2887, L. 10 to p. 2892, L. 4.) This theory was explicitly presented to the jury as the measure of damages resulting from the wrongful dissociation, while the "lost scan" theory was presented as measuring damages on all other claims. (Tr., Vol. III, p. 2887, L. 10 to p. 2892, L. 4; *see also id.* p. 4310, L. 15 to p. 4312, L. 4; *id.* p. 4383, L. 9-16.)

The jury was given several disputed instructions. First, in connection with the claims for breach of fiduciary duty, Saint Alphonsus proposed instructions that would have distinguished between the statutory duties owed by Saint Alphonsus to MRIA as one of its general partners, and the separate common-law fiduciary duty, if any, owed to the limited partnerships, Center and Mobile. (Exhibit to R. #231, Instrs. 29-30 & Special Verdict Question 12.) The district court denied this request, and instead gave a combined jury instruction on fiduciary duty that made no distinction between MRIA and the limited partnerships, and stated that "[a] fiduciary is a person or entity with a duty to act primarily for the benefit of another." (Tr., Vol. III, p. 4281, L. 21 to p. 4822, L. 4.)

Rather than submit to the jury the question whether Saint Alphonsus owed any fiduciary duties to the limited partnerships, as the court had earlier stated it would (*see supra* p. 8), the district court instructed the jury that Saint Alphonsus owed a fiduciary duty to the limited partnerships (Tr., Vol. III, p. 4281, L. 21 to p. 4822, L. 4), later stating that there was no reasonable basis on which the jury could doubt that conclusion (R., Vol. XIII, p. 2442-43). The court submitted only the single question whether Saint Alphonsus had breached a fiduciary duty owed to MRIA, Center "or" Mobile (Tr., Vol. III, p. 4281, L. 21 to p. 4822, L. 4), and provided the jury with a verdict form that allowed no alternative but to award any damages to "MRIA" rather than to the limited partnerships (Exhibit to R. #202, Instr. 44, Question 11).

The jury, after deliberating for approximately ninety minutes, returned a verdict for MRIA on all of the counterclaims, awarding damages in the amount of $63.5 million. (R., Vol. XII, pp. 2293-96.) After determining that the jury had improperly cumulated MRIA's two alternative damages theories, as MRIA conceded, the court issued a remittitur, reducing the verdict to $36.3 million. (R., Vol. XIII, p. 2435.) Sitting in equity, the court also determined that Saint Alphonsus's interest in the partnership was $4.6 million, and ordered that amount offset from MRIA's award. (R., Vol. XII, p. 2311.) The court also concluded that MRIA's claims arose out of a "commercial transaction" within the meaning of Idaho Code § 12-120(3) and accordingly awarded MRIA attorney fees and costs of $2.1 million (R., Vol. XIII, pp. 2448-49, 2519-20), resulting in a final judgment for MRIA of $33,872,677.63 (R., Vol. XIII, p. 2534).

On October 3, 2007, Saint Alphonsus moved for judgment notwithstanding the verdict and for a new trial, arguing that the errors described above, among others, required the court to set aside the jury's verdict. (Exhibit to R. #208.) The district court denied the motions (R., Vol. XIII, pp. 2426-52), and this appeal followed.

## ISSUES PRESENTED ON APPEAL

1. Did the district court err in holding, as a matter of law, that a section of a 1985 partnership agreement is an "express provision" prohibiting a partner from exercising a retroactively applicable power to dissociate that was created in 1998, where the contractual language does not mention "dissociation" or affirmatively prohibit anything?

2. Did the district court's ruling that Saint Alphonsus had wrongfully dissociated, which the court and opposing counsel repeatedly emphasized to the jury throughout the trial, so prejudice the jury's assessment on the remaining issues as to require a new trial?

3. Did the district court err in allowing the jury to decide whether the 1985 partnership was for a definite term of years, where a section of the partnership agreement entitled "Effective Date and Term" defined the term in a way that made it indefinite?

4. Did the district court prejudicially err in allowing MRIA to show the jury a memorandum containing legal advice from Saint Alphonsus's attorneys, and a settlement offer expressly marked as a "Confidential Settlement Offer Made Pursuant to I.R.E. 408," in order to establish that Saint Alphonsus acted in bad faith?

5. Must the damage award to MRIA of $36.3 million in lost scan profits be reversed because:

a. MRIA, as the general partner of the limited partnerships, itself provided no scanning services, and any alleged lost scan profits belonged to the limited partnerships, Center and Mobile?

b. This award cannot be upheld on the ground that it was actually an award to Center and/or Mobile, given that the jury did not determine whether Saint Alphonsus was liable to the limited partnerships, and, in any event, Saint Alphonsus owed them no fiduciary duty as a matter of law?

c. MRIA offered no evidence to prove that Saint Alphonsus actually caused all or any specific portion of the changes in patient referrals upon which the damage award depends?

d. The damage award includes $6.0 million for the period 2015 to 2023, based on a factually unsupported assertion that the term of the Center limited partnership agreement had been extended for that period?

6. Was MRIA's alternative theory of damages, based on the hypothetical full value of the Center limited partnership in 2001, a legally and factually improper measure of "benefit of the bargain" damages for the alleged wrongful dissociation from the MRIA partnership?

7. Given the district court's conclusion that MRIA's claims arose from a commercial transaction, is Saint Alphonsus entitled to an award of attorneys fees both on appeal and at trial pursuant to Idaho Code § 12-120(3)?

## ARGUMENT

### I. SAINT ALPHONSUS'S DISSOCIATION FROM MRIA DID NOT BREACH THE PARTNERSHIP AGREEMENT, AND THE DISTRICT COURT'S ERRONEOUS GRANT OF SUMMARY JUDGMENT TO THE CONTRARY PREJUDICED THE ENTIRE TRIAL

#### A. The District Court Incorrectly Ruled That Saint Alphonsus Had Dissociated In Violation Of An Express Provision Of The Partnership Agreement

The district court erred when it granted summary judgment for MRIA on its claim that Saint Alphonsus breached the MRIA partnership agreement by dissociating from MRIA in 2004. The court made this ruling notwithstanding the fact that Idaho's Revised Uniform Partnership Act, enacted in 1998, created a new general power of partners to dissociate without causing dissolution of the partnership, Idaho Code § 53-3-602(a), and made that power retroactively applicable to all existing partnerships, *id.* § 53-3-1204(b). The court reasoned that this 1998 power to dissociate was limited by an "express provision" of the 1985 agreement and that the dissociation was thus "wrongful" under Idaho Code § 53-3-602(b)(1). In so holding, the district court misunderstood both the impact of RUPA's retroactive changes to the background rules governing Idaho partnerships, and the sort of "express provision" necessary to render "wrongful" the exercise of RUPA's later-granted statutory rights.[4]

### 1. The Revised Uniform Partnership Act Fundamentally Altered Idaho Law By Retroactively Allowing All Partners To Dissociate Without Causing Dissolution Of The Partnership, And Letting Partnerships Adopt An "Express Provision" Of The Partnership Agreement Making Such Dissociation A Breach Of Contract

In 1998, the Idaho legislature adopted RUPA and, effective July 1, 2001, retroactively applied it to "all partnerships" existing at the time of enactment. Idaho Code § 53-3-1204(b). As this Court recently noted, "RUPA dramatically change[d] [the] aspect of partnership law" dealing with the essential legal structure of the partnership and the consequences of a partner's departure. *Costa v. Borges*, 145 Idaho 353, 179 P.3d 316, 319-20 (2008). Before RUPA, under the Uniform Partnership Act ("UPA"), partnerships were entities defined by the particular aggregation of individual partners. *See id.*; Idaho Code §§ 53-329, -330, -331 (repealed effective July 1, 2001); Paul Powell, Comment, *Dissociating the Fiduciary: Duty Revisions and the Resulting Confusion in Idaho's New Partnership Law*, 36 Idaho L. Rev. 145, 147 & n.14 (1999).

[4] As explained below in Part I.C, the district court also erred in allowing the jury to consider MRIA's alternative theory that Saint Alphonsus wrongfully dissociated in violation of a definite term of years.

As a result, a single partner's departure caused the original legal entity to dissolve, even where such departure violated a provision of the contract (in which event the departure and resulting dissolution would be remediable in damages). *See* Idaho Code § 53-331(1)(b), (2) (repealed effective July 1, 2001) ("Dissolution is caused [either consistent with the partnership agreement or in contravention of it] by the express will of any partner at any time.").

The drafters of RUPA deemed this state of affairs intolerable, because the UPA rule "that a partnership is dissolved every time a member leaves" "fail[ed] to recognize the stability of many partnerships." Donald J. Weidner & John W. Larson, *The Revised Uniform Partnership Act: The Reporters' Overview*, 49 Bus. Law. 1, 5 (1993). Thus, to enhance the legal and practical continuity of partnerships, RUPA provides that "[a] partnership is an entity distinct from its partners," Idaho Code § 53-3-201, and that every "partner can be dissociated from a partnership without causing the dissolution of the partnership or requiring the winding up of its affairs." *Costa*, 179 P.3d at 320; *see also* Larry E. Ribstein, *The Revised Uniform Partnership Act: Not Ready For Prime Time*, 49 Bus. Law. 45, 62 (1993) ("The UPA provides that any partner dissociation causes dissolution. . . . RUPA Articles 6, 7, and 8 appear to change this by clearly separating partner dissociation and dissolution . . . .").

Because the ability of partners to dissociate without causing dissolution of a partnership was essential to the RUPA drafters' concept of partnerships as continuous entities transcending the make-up of their members, that power is enshrined in § 53-3-103(b)(6) as one of the ten basic features of a partnership that cannot be altered by agreement of the partners. *See id.* ("[t]he partnership agreement may not: . . . [v]ary the power to dissociate as a partner under section 53-

3-602(a), Idaho Code, except to require [written notice of dissociation]"). This fundamental change in partnership law, which allowed any partner to leave the partnership without causing it to dissolve, effectively amended all existing partnership agreements and altered the expectations of the parties as they existed at the time of execution. After RUPA's effective date, any partner could dissociate simply by giving notice to the partnership of that partner's "express will" to do so. *Id.* §§ 53-3-601(1), -602(a).

At the same time, though, RUPA allows partners to agree that such a dissociation would be "wrongful" by, among other things, including an "express provision of the partnership agreement" making dissociation a breach of contract. *Id.* § 53-3-602(b). RUPA thus created a legal framework in which partners could come and go at will from a continuing partnership entity, while providing that "[a] partner who wrongfully dissociates [in breach of an express provision of the agreement] is liable to the partnership and to the other partners for damages caused by the dissociation." *Id.* § 53-3-602(c).

There is no dispute among the parties or the district court that these RUPA provisions, which revolutionized the nature and continuity of partnerships, were made retroactively applicable to all existing partnerships, including MRIA, notwithstanding that its partnership agreement was executed in 1985 and Idaho's RUPA was not enacted until 1998. *Id.* § 53-3-1204(b). The statute's retroactive application only became effective, however, after "a transition period [ending July 1, 2001] . . . . [t]hat afford[ed] existing partnerships and partners an opportunity to consider the changes effected by RUPA and to amend their partnership agreements, if appropriate." Idaho Code § 53-3-1204, official cmt.

### 2. Section 6.1 Of The 1985 Partnership Agreement Is Not An "Express Provision" That Makes Wrongful Any Exercise Of The Power To Dissociate Conferred By RUPA In 1998

The district court concluded that Saint Alphonsus's dissociation violated an "express provision" of the partnership agreement, namely Section 6.1. That provision states:

> 6.1 Conditions for Withdrawal. Any Hospital Partner may withdraw from the Partnership at any time if, in a Hospital Partner's reasonable judgment, continued participation in this partnership: (i) jeopardizes the tax-exempt status of such Hospital Partner or its parent or its subsidiaries; or (ii) jeopardizes Medicare/Medicaid or insurance reimbursements or participations; (iii) if the business activities of the Partnership are contrary to the ethical principles of the Roman Catholic Church as designated from time to time; or (iv) is or may be in violation of any local, state or federal laws, rules or regulations.

(App. 4 (Trial Ex. 4023 § 6.1).)[5] The district court reasoned that this section's "may withdraw . . . if" language necessarily reflected an expectation that withdrawal would be limited to the four enumerated circumstances, and that Section 6.1 is therefore an "express provision" making Saint Alphonsus's dissociation under RUPA a breach of contract. (R., Vol. II, pp. 394-95.) This is wrong.

An "express" provision is one that is "'[c]lear; definite; explicit; plain; direct; unmistakable; not dubious or ambiguous. Declared in terms; set forth in words. Directly and distinctly stated. Made known distinctly and explicitly, and not left to inference.'" *Sweeney v. Otter*, 119 Idaho 135, 140, 804 P.2d 308, 313 (1990) (quoting *Black's Law Dictionary* (6th ed. 1990)); *see also* V *Oxford English Dictionary* 582 (2d ed. 1989) (defining "express," when

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[5] The agreement defines "Hospital Partner" as including Saint Alphonsus and the other hospitals, but not DMR. (App. 2 (Trial Ex. 4023 § 1.3.3).)

referring to a "meaning, purpose, stipulation, law, etc." as one that is "not merely implied; definitively formulated; definite, [or] explicit"). An "express provision" making it a breach of contract to exercise the RUPA-conferred power to dissociate without causing dissolution must therefore do so affirmatively and unambiguously, without resort to inferences or speculation about what the parties might have intended.

Section 6.1 is not such an "express provision" because it says nothing at all about the parties' intentions regarding the RUPA power to dissociate without causing dissolution. Most fundamentally, Section 6.1 *does not mention or address "dissociation" at all. How could it, since* the power to dissociate without causing dissolution of the partnership was an entirely new concept that did not exist when Section 6.1 was written in 1985? That power was created by RUPA in 1998 and made retroactively applicable to existing partnerships in 2001. Without a crystal ball to foretell RUPA's change in the law, there is no way that the parties in 1985 could have included a provision addressing whether exercise of the RUPA power to dissociate while leaving the partnership intact was or was not a breach of contract.

In addition, the language of Section 6.1 is entirely permissive. It provides that a hospital partner "may withdraw" under certain conditions, but does not *expressly* limit or restrict anything. It certainly does not, as the district court effectively held, expressly reject any and all subsequent legislative modifications of a partner's right to leave the partnership.

Beyond the fact that Section 6.1 is not an "express" limitation of any sort, it also does not support any inference about how the parties would have regarded the new RUPA power to dissociate without dissolving the existing partnership, had they somehow thought to consider it in 1985. That is because Section 6.1 was adopted against a UPA background rule that did not contain any notion of partnership "withdrawal." Rather, under UPA, a single partner's decision to leave the partnership would cause its dissolution. In that context, Section 6.1 was solely an *affirmative grant* to the hospital partners of a contractual right to "withdraw" for specified urgent reasons relating to the hospital partners' legal and ethical duties. That provision was coupled with provisions in Sections 6.2 and 6.3 that would avoid a forced liquidation of partnership assets, provide a defined and limited payout of the withdrawing partner's interests, and facilitate continued operation of the business. (*See* Exhibit to R. #8, pp. 8-9; Exhibit to R. #15, pp. 5-7; Exhibit to R. #23, pp. 4-9.) Section 6.1, in other words, was included as a safety valve to provide a contractual mechanism to meet the parties' needs within the legal framework as it existed in 1985. The provision's permissive "may withdraw . . . if" language is thus an assurance to the hospitals of minimum withdrawal rights that were essential to them. It says nothing about how the parties would regard rights granted by a future law to dissociate without causing dissolution.[6]

[6] The district court's error in reading this pre-existing contractual provision as an "express" limitation of the subsequently enacted RUPA right is illustrated by cases from other jurisdictions that have adopted RUPA. In *Warnick v. Warnick*, 76 P.3d 316 (Wyo. 2003), for example, the court addressed an agreement that contained express terms governing liquidation of the partnership, but—since the concept did not exist when the agreement was made—was "silent as to dissociation." *Id.* at 318, 322. Explaining that "RUPA dramatically change[d] the law governing partnership breakups and dissolution" by creating an "entirely new concept, 'dissociation,'" *id.* at 321 (citation and internal quotation marks omitted), the court concluded that a partner's expression of his desire to withdraw from the partnership was governed by RUPA's default provisions for the buyout of a dissociating partner, rather than by the agreement's express provisions for liquidation. *Id.* at 322.

Similarly, in *McCormick v. Brevig*, 96 P.3d 697 (Mont. 2004), a partner in a UPA-era partnership sought to rely on UPA-era case law in an effort to obtain a buyout in lieu of liquidation following a judicial dissolution of the partnership. *Id.* at 703-05. The court rejected

The conclusion that Section 6.1 is not an "express provision" limiting RUPA's general right of dissociation is even clearer when one considers the rights granted by RUPA to DMR, the consortium of doctors that partnered with the hospitals to form MRIA. As a safety valve responsive to the unique needs of Saint Alphonsus and the other hospitals, Section 6.1, by its terms, applies *only* to the "Hospital Partner[s]," and not to DMR. Indeed, Section 6.1 says nothing at all about DMR. Thus: (i) when the partnership was first formed, DMR had *no* ability to withdraw or otherwise leave the partnership without causing its dissolution; (ii) effective July 1, 2001, RUPA retroactively gave DMR the power to dissociate while leaving the partnership intact; and (iii) Section 6.1 obviously does not restrict *DMR's* RUPA-granted ability to dissociate in the way the district court held that Saint Alphonsus's dissociation rights were limited. But Section 6.1 was written as an unambiguous grant to the hospital partners of *more favorable* withdrawal rights than were given to their partner DMR, and imposed no limitation at all. To now read Section 6.1 as giving the hospital partners a *less favorable* right to dissociate than DMR now has under RUPA is incongruous and contrary to anything the parties ever intended. It is easily avoided by recognizing that RUPA gave *all* partners the power to dissociate without causing dissolution, and no amendment to the agreement—no "express provision"—was ever adopted to make its exercise a breach of contract under any circumstance.

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(continued...)

these cases, however, because "[u]nlike the UPA, RUPA now provides two separate tracks for the exiting partner"—dissociation and dissolution—and specifically requires liquidation in cases of dissolution by judicial decree. *Id.* The court thus applied the new legal framework created by RUPA to a preexisting partnership, even though the consequence was to alter the outcome that would have been contemplated by the parties when the partnership agreement was executed.

In holding otherwise, the district court reasoned that, when the partnership agreement was signed, the parties did not expect that Saint Alphonsus and the other hospitals would be able to withdraw from the partnership except for the reasons enumerated in Section 6.1. (Neither, of course, did they believe DMR had any withdrawal rights.) But these facts are beside the point, precisely because RUPA made retroactive its fundamental changes in partnership law and thus effectively amended the 1985 agreement contract and altered the expectations of the parties. Indeed, RUPA's retroactive change in the nature of partnerships was made with full knowledge that "[i]n a number of key areas, the Revised Act contains substantive changes in partnership law that directly undo the historical bargains incorporated into existing partnership agreements." Allan W. Vestal, *Should the Revised Uniform Partnership Act of 1994* Really *Be Retroactive?*, 50 Bus. Law. 267, 274 (1994). "Because of th[is] retroactive application," it was understood that a party could be "left with a set of partnership termination provisions far different from those upon which he counted at the inception of the partnership," including a right to "dissociate from the partnership—a concept and term new to partnership law." Allan W. Vestal, *"Wide Open": Nevada's Innovative Market in Partnership Law*, 35 Hofstra L. Rev. 275, 278 (2006).

The legislature chose to account for these effects not by giving courts the power to mitigate them by finding "express provisions" where there are none, but rather by providing the parties to existing partnerships with a three-year grace period during which they could amend their agreements to adjust to some of these changes, including by expressly making specified acts of dissociation an actionable breach of contract. *See* Idaho Code § 53-3-1204(b)-(c); *supra* p. 19. Critically, however, the MRIA partners let this opportunity pass, and have adopted no amendments to limit or qualify any of the new rules RUPA retroactively made applicable to MRIA. In particular, they never amended their agreement to provide that a partner's exercise of the newly created power to dissociate without causing dissolution would constitute a breach of contract.

In sum, the Idaho legislature conferred on all partners in existing partnerships a power to dissociate without causing dissolution, and, at the same time, allowed such partnerships to adopt an "express provision" making such dissociation a breach of contract. The court below erred in concluding that Section 6.1 of the 1985 agreement is such a provision. It should instead have held that no such express provision exists and accordingly entered summary judgment for Saint Alphonsus on MRIA's claim for wrongful dissociation.[7]

### B. Communication To The Jury Of The Court's Erroneous Summary Judgment Ruling Prejudiced The Jury's Consideration Of The Entire Case

The district court's erroneous holding on summary judgment that Saint Alphonsus "wrongfully" dissociated from the partnership, coupled with its subsequent denial of Saint Alphonsus's motions to prohibit MRIA from referring to that holding during trial or otherwise to clarify the holding's import, prevented Saint Alphonsus from having a fair trial on MRIA's other claims. These rulings enabled MRIA's counsel to repeatedly trumpet to the jury—as the centerpiece of MRIA's case—the court's pre-trial ruling binding the jury to the conclusion that Saint Alphonsus had acted "wrongfully" towards MRIA. (*See, e.g.*, Tr., Vol. I, p. 616, L. 15-17; *id.* p. 922, L. 9-24; *id.* p. 997, L. 21 to p. 998, L. 1; *id.* p. 998, L. 19-21; *id.* p. 1044, L. 15-18; Tr.,

[7] Even if there were ambiguity about the meaning of Section 6.1, the court should have submitted this question to the jury rather than decided it in favor of MRIA on summary judgment.

Vol. III, p. 4310, L. 1-12.) This made it impossible from the very beginning of the trial for the jury to fairly and impartially consider MRIA's remaining claims. The court's instructions to the jury that Saint Alphonsus's dissociation was wrongful also amounted to a directed verdict on critical elements of the remaining claims, and thus all but eliminated the possibility of verdicts for Saint Alphonsus on these other claims. This crippling prejudice requires the remaining verdicts to be set aside and a new trial granted.

Rule 59(a) of the Idaho Rules of Civil Procedure provides for the grant of a new trial based on any "[i]rregularity in the proceedings of the court, jury or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial" or an "[e]rror in law, occurring at the trial." I.R.C.P. 59(a)(1), (7). This is true regardless of the court's view of the likelihood of a different outcome upon retrial, so long as any party was "deprived . . . of a fair trial." *Cook v. Skyline Corp.*, 135 Idaho 26, 32, 13 P.3d 857, 863 (2000); *see also Sherwood v. Carter*, 119 Idaho 246, 262, 805 P.2d 452, 468 (1991). Moreover, "where prejudicial errors of law have occurred at the trial," the court has a "*duty* to grant a new trial" even if "the verdict is supported by substantial evidence." *Davis v. Sun Valley Ski Educ. Found., Inc.*, 130 Idaho 400, 405, 941 P.2d 1301, 1306 (1997) (emphasis added; citation and quotation marks omitted); *accord* 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2805 (2d ed. 1995) ("[a]ny error of law, if prejudicial, is a good ground for a new trial"). The test for prejudice requiring a new trial is "whether the [improperly admitted] information *reasonably could have produced prejudice*, when evaluated in light of all the events and evidence at trial."

*Dachlet v. State*, 136 Idaho 752, 760, 40 P.3d 110, 118 (2002) (emphasis added; citations and internal quotation marks omitted).

The test for prejudice under Rule 59(a) is met here. As a general matter, the communication to the jury of an incorrect summary-judgment ruling on one theory of liability obviously has the potential to result in severe prejudice as to claims tried to the jury. The case of *Steele v. Kelley*, 710 N.E.2d 973 (Mass. App. Ct. 1999), is instructive. In *Steele*, the trial court had erroneously failed to dismiss one of the plaintiff's claims, on which the jury subsequently found liability. *See id.* at 984-85. This error, of course, required the appellate court to order judgment for the defendant on that specific claim. But "[t]he impact of the judge's error with respect to th[at] count was not confined . . . to an improper resolution of that discrete claim." *Id.* at 985. Rather, "by focusing the jury's attention on" issues that should not have been before it, the improper submission of the claim "effectively tainted the whole case against [the defendant]." *Id.* Not only that, but the "taint of this fundamental error over the entire proceeding was spread by [the plaintiff's] attorney," who focused on the improper claim in her closing argument, and the "contamination" was made "decisive" by "the judge's charge" to the jury to focus on the elements of that claim. *Id.* The legal error with respect to the one cause of action therefore "justifies reversal of the entire judgment . . . and the allowance of a new trial." *Id.*; *accord 2200 Commercial St. Warehousing, L.L.C. v. Hastings Dev. Co.*, 255 S.W.3d 488, 490 (Ark. Ct. App. 2007) (holding that "erroneous grant of summary judgment" on certain claims "tainted" the findings made at subsequent trial and therefore required a new trial).

Here, even more clearly than in *Steele*, the district court's legal error in concluding that Saint Alphonsus had "wrongfully" dissociated—along with MRIA's opportunistic use of that error to bias the jury against Saint Alphonsus—created prejudice requiring a new trial on all other claims. Unlike the error in *Steele*, which simply allowed an invalid claim to be heard by the jury, the district court in this case informed the jury that the defendant was liable on a meritless claim. Indeed, the court's holding was the very heart of MRIA's trial strategy on its remaining claims, pursuant to which MRIA sought to portray Saint Alphonsus as a court-adjudicated wrongdoer and Saint Alphonsus's "wrongful" *dissociation as the culmination of a* scheme, begun years earlier, to "betray" MRIA. *See supra* pp. 10-11. This strategy began with *voir dire*, continued through MRIA's opening statement, infected the testimony of key witnesses, and culminated in counsel's closing argument. *See supra* pp. 10-11. These mischaracterizations were backed by the authority of the district court, which not only instructed the jury that it had already determined that Saint Alphonsus had dissociated "wrongfully" (Tr., Vol. III, p. 4271, L. 4-11), but also denied Saint Alphonsus's request to explain to the jury that a "wrongful dissociation" is not necessarily illegal or blameworthy, *see Patton v. Mid-Continent Sys., Inc.*, 841 F.2d 742, 750 (7th Cir. 1988) ("[e]ven if the breach is deliberate, it is not necessarily blameworthy"). (Tr., Vol. III, pp. 3960-62.)

The message that Saint Alphonsus was an adjudicated wrongdoer also made it possible for MRIA to discredit testimony that Saint Alphonsus had dealt with MRIA in good faith and had made generous concessions to MRIA when it attempted to negotiate a deal that would have involved MRIA in the operations of IMI or otherwise resolved the parties' impasse. (*See, e.g.*, Tr., Vol. III, p. 3809, L. 17 to p. 3822, L. 4; *id.* p. 4014, L. 15 to p. 4026, L. 11.) Having already been told that Saint Alphonsus had no right to leave the partnership, the jury quite naturally accepted MRIA's competing characterization of these negotiations as a bad-faith sham. (*See, e.g.*, Tr., Vol. III, p. 4307, L. 2-23; *id.* p. 4321, L. 10-25.) MRIA also used the court's holding to undermine the general credibility of Saint Alphonsus's witnesses, such as CEO Sandra Bruce, whom it mocked in closing argument on the ground that she "thought it was okay" for Saint Alphonsus to withdraw from the partnership. (*See, e.g.*, Tr., Vol. III, p. 4317, L. 10-19.)[8]

As a result, for the jury, the question of liability on MRIA's other claims was never more than an afterthought. This alone requires a new trial, but there is even more prejudice here. In light of the admonition that Saint Alphonsus had "wrongfully" breached the partnership agreement, the court's instructions on those other claims were effectively tautological and virtually compelled the jury to find liability. Specifically:

- On MRIA's claim for wrongful dissociation in breach of a partnership term, the jury was asked to find whether Saint Alphonsus had "breached" the partnership agreement "by dissociating" before the end of the alleged partnership term (Tr., Vol. III, p. 4275), after having already been told that the court had already determined that the dissociation was wrongful and a breach.

- On MRIA's claim for breach of the covenant of good faith and fair dealing, the jury was instructed that Saint Alphonsus was liable if "[a]ction by Saint Alphonsus violated . . . the contract." (Tr., Vol. III, p. 4278, L. 1-14.) Obviously, no reasonable juror could think that a dissociation that was a "wrongful" breach of the partnership agreement did not also "violat[e] . . . the contract."

[8] This trial tactic was especially effective because MRIA also relied on erroneously admitted privileged legal advice to argue that counsel had advised Saint Alphonsus beforehand that withdrawal was wrongful. *See infra* Part II.A.

- In connection with MRIA's claim for breach of the partnership agreement's non-compete clause, MRIA's counsel and witnesses told the jury that Saint Alphonsus's wrongful dissociation necessarily gave rise to a breach of that clause. (*See* Tr., Vol. II, p. 1875, L. 11-14 ("if withdrawal is wrongful, then Saint Alphonsus cannot compete"); *id.* p. 2221, L. 24 to p. 2222, L. 1 ("[i]f you withdraw wrongfully, my understanding is that your noncompete [obligation] would be for the period of the Partnership Agreement").)

- On the claims for breach of fiduciary duty, the jury was instructed that Saint Alphonsus was liable if it failed "to act primarily for the benefit" of MRIA and the limited partnerships or if it "act[ed] adversely to the partnership." (Tr., Vol. III, p. 4281, L. 21 to p. 4283, L. 10.) A party who willfully breached the contract by its withdrawal would obviously violate these standards as well. Indeed, MRIA's counsel argued that legal advice given to Saint Alphonsus gave it advance notice of that fact. (Tr., Vol. III, p. 3594, L. 9 to p. 3596, L. 3; *see also* Tr., Vol. II, p. 1876, L. 13-16.)

- On MRIA's claim for civil conspiracy, the jury was instructed to find liability if Saint Alphonsus had agreed "[t]o accomplish an 'unlawful' objective or accomplish a lawful objective through 'unlawful means,'" and was told that the "essence" of a civil conspiracy is a "civil wrong." (Tr., Vol. III, p. 4283, L. 16 to p. 4284, L. 11.) Without Saint Alphonsus being allowed to explain that "wrongful" dissociation was *not* equivalent to an "unlawful" act, the jury had the court's ruling as proof of this element of civil conspiracy. Indeed, the jury would plainly understand a "wrongful" dissociation to be a civil "wrong."

- On MRIA's claim that Saint Alphonsus tortiously interfered with prospective contractual relations, the jury was instructed to find Saint Alphonsus liable if the interference was "wrongful." (Tr., Vol. III, p. 4280, L. 11 to p. 4281, L. 11.) Of course, the jury had already been reminded over and over again that Saint Alphonsus's dissociation—one of the acts allegedly interfering with MRIA's prospective relations—had already been held to be "wrongful."

In short, on each one of the remaining claims, the jury was led to believe that the court's prior ruling on wrongful dissociation was a sufficient predicate for finding liability. Indeed, the fact that the jury returned a verdict for MRIA on each one of its claims in this complex case in just ninety minutes demonstrates the prejudicial sway that the court's ruling on wrongful dissociation held over the jury. Because that ruling was incorrect as a matter of law, Saint Alphonsus is entitled to a new trial on all of MRIA's other claims.

### C. The Grant Of Summary Judgment Cannot Be Justified On The Alternative Ground That Saint Alphonsus Dissociated Before The Expiration Of A Definite Term Of Years

A partner's exercise of its RUPA power to dissociate without causing dissolution is wrongful not only if it is in breach of an express provision of the partnership agreement, but also if the partnership is "for a definite term," and the dissociation occurs "before the expiration of the term." Idaho Code § 53-3-602(b)(2).[9] MRIA claimed that the partnership agreement here was for a definite term, but cited no provision of the agreement to support that assertion. Instead, MRIA argued that other agreements between different entities—Center's and Mobile's limited partnership agreements and Center's September 1985 building lease—had fixed terms and raised an issue of fact whether the MRIA partnership agreement also had a fixed term. (Exhibit to R. #11, pp. 14-15; R., Vol. XII p. 2390-91.) Submitting this issue to the jury was error.[10] The MRIA partnership agreement, in a section entitled "Effective Date and Term," expressly addresses the term of the partnership in a manner that, as a matter of law, renders the term indefinite. The parol evidence rule bars admission of extrinsic evidence to modify this provision.

"To find that [a] partnership is formed for a definite term . . . there must be clear evidence of an agreement among the partners that the partnership . . . has a minimum or maximum

[9] Dissociation is also wrongful if the partnership is for a "particular undertaking" and the dissociation occurs before the undertaking is complete, *id.*, but such a theory was not submitted to the jury in this case.

[10] Saint Alphonsus unsuccessfully moved for both summary judgment (Exhibit to R. #8, pp. 14-16) and judgment notwithstanding the verdict (Exhibit to R. # 208, pp. 31-33) on this issue.

duration . . . ." Idaho Code § 53-3-101 cmt. In contrast, a partnership has an indefinite term if the parties agree that the partnership will continue until an uncertain future date, *i.e.*, if they "have not agreed to remain partners until the expiration of a definite term." *Id.* § 53-3-101(10). Such a partnership that "may last indefinitely" is for an indefinite term, moreover, "even though there may be an obligation of the partnership, such as a mortgage, which must be repaid by a certain date, absent a specific agreement that no partner can rightfully withdraw until the obligation is repaid." *Id.* § 53-3-101 cmt.

Applying these principles, courts have consistently focused on express contractual language and concluded, for example, that a partnership is for an indefinite term as a matter of law where the partnership agreement provided that the partnership "shall continue until dissolved either by mutual agreement or by operation of law," *Courdy v. Paycom Billing Servs., Inc.*, No. B162421, 2006 WL 847212, at *8 (Cal. Ct. App. Apr. 3, 2006), or where the agreement provided that a partnership to operate a parcel of real property shall "continue until the real property is sold," *Harshman v. Pantaleoni*, 741 N.Y.S.2d 348, 349 (N.Y. App. Div. 2002). In an analogous context, this Court, too, has recognized that a contract is not for "a definite term of duration" where it provides for contractual obligations to continue "as long as" certain circumstances exist. *Gen. Auto Parts Co. v. Genuine Parts Co.*, 132 Idaho 849, 856-57, 979 P.2d 1207, 1214-15 (1999) (applying statute of frauds).

Here, similarly, the MRIA partnership agreement expressly and unambiguously sets an indefinite term. Section 1.1. of the agreement governs its "Effective Date and Term," and Section 1.1.2 provides that, in the event certain formative steps were completed by a set date, as they were here, "then the term of this Partnership shall end on the date which is within a reasonable time after the business of the Partnership is wound up and dissolved under Article 10." (App. 1 (Trial Ex. 4023, §§ 1.1, 1.1.2).) The agreement provides, in other words, that after December 31, 1985, the partnership shall last until the partners decide to end it *at any time*. Like the "as long as" language of *General Auto Parts* and the "shall continue until dissolved" language of *Courdy*, the "shall end [when] . . . wound up and dissolved" language of Section 1.1.2 embodies an agreement to leave open-ended the duration of the partnership. This is so, moreover, "even though there may be an obligation," such as Center's lease, that itself has a defined term. Idaho Code § 53-3-101 cmt. Saint Alphonsus thus did not wrongfully dissociate "before the expiration of" a "definite term."

MRIA argued below that the contract's language was capable of being supplemented by extrinsic evidence purporting to show that the parties intended MRIA's partnership term to be defined by the allegedly fixed terms of the Center and Mobile limited partnership agreements and Center's building lease, thus making the partnership term a question of fact for the jury. (Exhibit to R. #11, pp. 12-15 (citing a treatise and a number of pre-RUPA cases from various jurisdictions).) But such a claim is directly at odds with the parol evidence rule, which provides that "when a contract has been reduced to a writing that the parties intend to be a final statement of their agreement, evidence of any prior or contemporaneous agreements or understandings which relate to the same subject matter is not admissible to vary, contradict, or enlarge the terms of the written contract." *Simons v. Simons*, 134 Idaho 824, 828, 11 P.3d 20, 24 (2000). The MRIA partnership agreement was just such "a writing that the parties intend[ed] to be a final statement of their agreement." The parol evidence rule is therefore applicable to it, and thus bars consideration of the evidence relied upon by MRIA.[11]

The authorities cited by MRIA below to support the use of extrinsic evidence to modify contract provisions (*see* Exhibit to R. #11, pp. 12-15) are wholly unavailing. All of the cited cases arise in situations where there was no "written contract" of the sort that "the parties [would have] intend[ed] to be a final statement of their agreement," *Simons*, 134 Idaho at 828, 11 P.3d at 24, and thus the parol evidence rule excluding such evidence did not apply. A majority of the cited cases involved an agreement that was entirely oral.[12] The others involved a written agreement that was completely silent on the issue of the partnership's durational term, thus leaving wholly unaddressed the parties' intentions on that essential point.[13] These cases thus stand only for the unexceptional proposition that extrinsic evidence of parties' contractual

[11] The separate lease and limited partnership agreements likewise are not admissible as subsequent oral modifications of the terms of the MRIA partnership agreement. The MRIA partnership agreement allows amendment "only through written instrument [*sic*] executed by all the Partners." (App. 6 (Trial Ex. 4023, § 12.1).) The lease and limited partnership agreements, however, were executed by a different collection of investor parties for entirely different reasons. *See supra* note 2.

[12] *Owen v. Cohen*, 119 P.2d 713 (Cal. 1941); *Zeibak v. Nasser*, 82 P.2d 375, 381 (Cal. 1938); *Meherin v. Meherin*, 209 P.2d 36, 37 (Cal. Ct. App. 1949); *Zimmerman v. Harding*, 227 U.S. 489, 490 (1913); *68th St. Apts., Inc. v. Lauricella*, 362 A.2d 78, 80 (N.J. Super. Ct. Law Div. 1976).

[13] *Vangel v. Vangel*, 254 P.2d 919, 925 (Cal. Ct. App. 1953) (noting that "the agreement does not mention the term of the partnership"); *Shannon v. Hudson*, 325 P.2d 1022, 1023 & n.1 (Cal. Ct. App. 1958) (informal written agreement with no specific mention of a term); *Drashner v. Sorenson*, 63 N.W.2d 255, 257-58 (S.D. 1954) (no specific mention of term); *Pemberton v. Ladue Realty & Constr. Co.*, 180 S.W.2d 766, 771 (Mo. Ct. App. 1944) ("no express stipulation as to the duration of the partnership agreement").

intentions is admissible where the predicate for the parol evidence rule—an integrated writing intended as a final statement of the agreement—is missing.[14]

In sum, where, as here, a written partnership agreement expressly defines "the term of this Partnership" as ending at an indefinite point in the future, resort to extrinsic evidence to set a definite term of the partnership is prohibited. For these reasons, the MRIA partnership agreement lacked a definite term, and the district court's entry of judgment on the claim of wrongful dissociation cannot be affirmed on the alternative theory that dissociation occurred before the expiration of a definite term. Rather, the district court should have granted summary judgment to Saint Alphonsus on this claim.[15]

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[14] Careful adherence to the parol evidence rule, excluding evidence which might supplement terms of a complete written partnership agreement, is especially important following the adoption of RUPA in 1998. As explained above, RUPA radically (and retroactively) redefined the nature of partnerships, so that a partnership no longer depends strictly on the continuity of a specific collection of individuals, but instead is a continuing entity made up of partners who may come and go. *See supra* pp. 17-19. The implication of partnership terms based on oral understandings outside the four corners of a partnership agreement would be entirely unworkable under this "entity" theory of partnership, because any oral understandings that may exist between the original partners cannot fairly or practically be imposed on late joiners with no notice of them. *See Walter E. Wilhite Revocable Living Trust v. Nw. Yearly Meeting Pension Fund*, 128 Idaho 539, 548, 916 P.2d 1264, 1273 (1996) (party's "contractual rights . . . [may] not be taken away by a contract between [different parties]"). And it is plainly unworkable for a partnership to have a definite term with respect to some partners, but not others.

[15] Even if the durational term of the partnership agreement were properly a question of fact for the jury, Saint Alphonsus would still be entitled to a new trial on that issue based on the prejudicial effects of the district court's erroneous grant of summary judgment for MRIA on the claim for wrongful dissociation. *See supra* Part I.B.

## II. THE ADMISSION OF TWO PIECES OF INADMISSIBLE, MISLEADING, AND HIGHLY PREJUDICIAL EVIDENCE INDEPENDENTLY REQUIRES A NEW TRIAL.

The severe prejudice suffered by Saint Alphonsus as a result of the court's erroneous entry of summary judgment on the wrongful dissociation claim was compounded by the court's improper admission of two highly significant pieces of evidence—a memorandum containing privileged attorney-client communications and an offer of settlement. The district court permitted MRIA to use this evidence to argue, misleadingly and prejudicially, that Saint Alphonsus had acted in bad faith in its dealings with MRIA. Separately and together with the court's ruling on wrongful dissociation, these evidentiary errors entitle Saint Alphonsus to a new trial.

### A. Privileged Attorney-Client Communications Summarized In The Shattuck Hammond Memorandum Were Erroneously Admitted And Relied Upon To Argue That Saint Alphonsus Acted In Bad Faith

The district court erred when it admitted into evidence, after denying Saint Alphonsus's motions *in limine* to exclude it,[16] a summary of legal advice of Saint Alphonsus's retained counsel, Givens Pursley, that "there would likely be litigation" if Saint Alphonsus dissociated from MRIA and that "there may be a risk of Saint Alphonsus breaching" a fiduciary duty if it did

[16] Saint Alphonsus twice moved prior to trial to exclude this evidence as protected by the attorney-client privilege (*see* Exhibit to R. #54, pp. 5-12; Exhibit to R. #131, p. 5), and moved again after the verdict for a new trial based on the improper admission of this evidence (*see* Exhibit to R. #208, pp. 17-20). The district court denied all three motions. (*See* R., Vol. V, pp. 848-50; R., Vol. XI, pp. 2116-18; R., Vol. XIII, pp. 2439-41.)

so. (App. 34 (Trial Ex. 4239, p. 11).)[17] This privileged communication was memorialized in an internal memorandum prepared by two junior associates at the investment banking firm Shattuck Hammond, which had been retained by Givens Pursley in 2001 to "act as a consultant" to the law firm in connection with its representation of Saint Alphonsus in "evaluating what legal rights or options Saint Alphonsus may have with respect to its partnership interest." (Confidential Exhibit to R. #4, at Ex. A.)[18] At trial, MRIA repeatedly used Givens Pursley's assessment that litigation was "likely" in the event of dissociation to portray Saint Alphonsus as an intentional wrongdoer indifferent to its legal obligations and the rights of MRIA. Such misuse of privileged legal advice is clearly prejudicial and therefore warrants a new trial.

Rule 502 of the Idaho Rules of Evidence extends the attorney-client privilege to "confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." I.R.E. 502(b). The Rule protects not only direct communications between a client and its counsel, but also communications "between the client's lawyer and the lawyer's representative." I.R.E. 502(b)(2).

[17] The memorandum containing these opinions states that Saint Alphonsus "has been advised by counsel that this option [withdrawing from the partnership] would likely engender litigation with MRIA" (App. 33 (Trial Ex. 4239, p. 2)), and explains that "Givens Pursley believes that there would likely be litigation as to whether the termination was wrongful and that there may be a risk of St. Alphonsus breaching its fiduciary responsibility to the LPs" (App. 34 (Trial Ex. 4239, p. 11)). An earlier version of the memorandum with identical language was also admitted at trial. (*See* Trial Ex. 4234, pp. 2, 8.)

[18] The retention letter provided that Shattuck Hammond would "be in direct contact with representatives of Saint Alphonsus," but that "any conclusions, preliminary or final, will be addressed to [Givens Pursley] and used by th[e] firm in connection with th[e] firm's rendering of legal advice to Saint Alphonsus." (*Id.*)

As an assessment of the litigation and liability risks of alternative courses of action available to Saint Alphonsus, the legal advice described in the memorandum plainly constitutes the rendition of legal services by Givens Pursley to Saint Alphonsus. As noted in the memorandum, Shattuck Hammond had "reviewed [Saint Alphonsus's options] with Givens Pursley" in order to obtain Givens Pursley's "thoughts on the potential litigation involved with each alternative." (App. 34 (Trial Ex. 4239, p. 11).) The communication of this legal advice "between" Givens Pursley ("the client's lawyer") and Shattuck Hammond ("the lawyer's representative") about the litigation risks of various courses of action is privileged by the plain terms of Rule 502(b)(2).[19]

The district court refused to exclude the statement because it was embodied not in a memorandum from Givens Pursley to Shattuck Hammond (or vice versa), but rather appeared within an internal Shattuck Hammond document circulated among Shattuck Hammond employees. (R., Vol. XIII, pp. 2439-41.) In doing so, the district court misconceived the rules of privilege. It is well-settled that writings memorializing privileged communications, as well as communications about the privileged communications *among* attorneys or representatives, are "entitled to the same degree of protection from disclosure" as the original communications *between* attorneys and clients (or their respective representatives). *Natta v. Zletz*, 418 F.2d 633, 637 n.3 (7th Cir. 1969); *see also United States v. DeFonte*, 441 F.3d 92, 95 (2d Cir. 2006)

[19] MRIA has suggested that privilege should not apply because Shattuck Hammond was actually acting as Saint Alphonsus's representative. But Rule 502(b)(1) also privileges communications "between the . . . client's representative and the client's lawyer." As a result, even on MRIA's view, the sharing of legal advice by Givens Pursley ("the client's lawyer") with Shattuck Hammond ("the client's representative") would fall within the plain terms of Rule 502.

("memorializations of [privileged] conversations . . . are protected from disclosure by the attorney-client privilege"); *Alexander v. FBI*, 186 F.R.D. 154, 161 (D.D.C. 1999) ("[T]he attorney-client privilege applies to [writings] that describe communications from attorneys or are based on such communications. This principle has been followed by each court to have addressed this matter." (internal quotation marks omitted)). As one court has explained, a contrary rule would "penalize[] those" who write or consult with others in their firms and "would make a mockery of both the privilege and the realities of current legal assistance." *Natta*, 418 F.2d at 637 n.3. Here, Shattuck Hammond recorded in a confidential internal writing both Givens Pursley's privileged communications with Saint Alphonsus and Shattuck Hammond's own privileged communication with Givens Pursley. This did not strip the communications of their privileged nature, and the court therefore erred when it admitted these portions of the memorandum.

Finally, notwithstanding the district court's ruling after trial that admitting this evidence (even if error) was harmless (R., Vol. XIII, p. 2440), there is no doubt that the admission of the privileged portions of the memorandum prejudiced Saint Alphonsus. MRIA's counsel told the jury that the Shattuck Hammond memorandum (referred to as the "Finnerty memo") was one of "the most critical documents in the case." (Tr., Vol. III, p. 4302, L. 20.) Even though Givens Pursley had simply offered advice about litigation risks, and had not concluded that withdrawal was in fact wrongful, MRIA's counsel repeatedly used Givens Pursley's opinion to underscore the "wrongful" nature of Saint Alphonsus's conduct, undermine the credibility of Saint Alphonsus's witnesses and excoriate Saint Alphonsus and its officers (including CEO Sandra

Bruce) for acting in bad faith and with indifference to counsel's advice and the hospital's legal obligations. (*See, e.g.*, Tr., Vol. II, p. 1861, L. 21 to p. 1866, L. 1; Tr., Vol. II, p. 1874, L. 13 to p. 1878, L. 16; Tr. Vol. III, p. 3593, L. 22 to p. 3596, L. 8; Tr. Vol. III, p. 4302, L. 7-23; Tr., Vol. III, p. 4317, L. 10-19; Tr. Vol. III, p. 4321, L. 10-18.) A lay juror would likely not have understood that parties in a commercial context routinely seek and consider the opinions of counsel regarding legal and appropriate conduct, and that the liability risks and potential for litigation identified by counsel are not indicative of actual liability or fault. This error thus enabled MRIA to substantially predispose the jury and the outcome against Saint Alphonsus. A new trial is therefore required.

### B. A Settlement Letter Sent By MRIA Containing An Offer To Sell Its Interest In Center At A Stated Price Was Erroneously Admitted And Relied Upon To Justify Damages And To Argue That Saint Alphonsus Acted In Bad Faith

The district court also erred when it allowed MRIA to introduce into evidence a confidential settlement offer made by MRIA to Saint Alphonsus. (*See* App. 45 (Trial Ex. 4332).) The court admitted the evidence, over Saint Alphonsus's objection, for the "limited purpose" of showing MRIA's "belief or their opinion as to what they felt the fair market [value] of the MRIA partnership was." (Tr., Vol. II, p. 1239, L. 9 to p. 1246, L. 24; R., Vol. XIII, pp. 2441-42.)

The admission of this document was improper under Rule 408 of the Idaho Rules of Evidence, which categorically provides that settlement offers are "not admissible to prove liability for, invalidity of, or amount of the claim or any other claim." I.R.E. 408; *see also Idaho First Nat'l Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 276 n.8, 824 P.2d 841, 851 n.8 (1991) (settlement offers "clearly inadmissible" to show bad faith in settlement bargaining). All agree that the letter is a settlement offer. It even bears the caption "CONFIDENTIAL SETTLEMENT OFFER MADE PURSUANT TO I.R.E. 408." (App A45 (Trial Ex. 4332).)

The use to which the court permitted MRIA to put the letter falls squarely within the Rule's prohibition on the admissibility of settlement offers to prove the "amount of" a party's claim. MRIA contended at trial that the damages for Saint Alphonsus's dissociation from the partnership should be measured by the price Saint Alphonsus would have had to pay to purchase Center's business. (R., Vol. IX, pp. 1693-94.) To prove that value, MRIA presented the settlement letter as evidence corroborating the value of Center as established by third-party Shattuck Hammond. (Tr., Vol. II, p. 1953, L. 1 to p. 1956, L. 6; *id.* p. 2063, L. 20 to p. 2064, L. 17.) Relying in part on the settlement offer, the jury awarded such damages. This is precisely what Rule 408 is meant to disallow.

The improper admission of the settlement letter prejudiced Saint Alphonsus, even beyond its improper use to prove value. MRIA was able to use Saint Alphonsus's rejection of the offer as evidence that Saint Alphonsus was purportedly negotiating in bad faith. Indeed, MRIA's counsel emphasized in his closing argument that the settlement offer (and Saint Alphonsus's rejection thereof) was "the telltale" sign of Saint Alphonsus's purported bad faith. (Tr., Vol. III, at 4322:1-15; *see also id.* p. 4296, L. 11-20; *id.* p. 4390, L. 9-14.) This "admi[ssion] of settlement negotiations between the parties, based on the claim that [one party] negotiated . . . in bad faith" is precisely the sort of use for which this Court has held settlement offers are "clearly inadmissible." *Bliss Valley Foods*, 121 Idaho at 276 n.8, 824 P.2d at 851 n.8. When compounded with the district court's other prejudicial mistakes—allowing MRIA to tell the jury that Saint Alphonsus had ignored the advice of its attorneys and had already been adjudicated a wrongdoer by the court—Saint Alphonsus stood no chance of having a fair trial. The crippling prejudice caused by these errors, separately and in combination, requires a new trial.

## III. HOWEVER THIS COURT RESOLVES THE SUMMARY JUDGMENT AND EVIDENTIARY ISSUES, IT MUST REVERSE THE DAMAGES AWARD FOR MULTIPLE, INDEPENDENT REASONS

Apart from the previously described errors, no damages award could be sustained in any event due to improper instructions and legally inadequate proof.[20]

The award to MRIA of $36.3 million for "lost profits" must be reversed on multiple grounds. *First*, the profits at issue were lost, if at all, by the limited partnerships, Center and/or Mobile, which owned the MRI business, and not by MRIA, which received as its income much more modest management fees for serving as the general partner of the limited partnerships. *See infra* Part III.A. *Second*, this Court cannot ignore this incongruity and assume the award was really intended for the limited partnerships, because such an inference is belied by the jury verdict form and the law of fiduciary duty. *See infra* Part III.B. *Third*, the "lost profits" damages award cannot be sustained in any event because MRIA failed to prove that Saint Alphonsus caused all or any particular portion of the "lost scans" whose proceeds constitute the jury award. *See infra* Part III.C. *Fourth*, it was error for the district court to permit MRIA to

[20] At trial, MRIA sought $27.3 million in "lost benefit of the bargain" damages for its claim of wrongful dissociation, and in the alternative sought an award of $36.3 million in "lost profits" damages for "*all other theories of liability*." (R., Vol. XII, pp. 2350-52.) Although the jury awarded the sum of both measures, MRIA conceded that they are duplicative and consented to a remittitur fixing damages at the higher alternative of $36.3 million. (R., Vol. XIII, at 2435.)

introduce evidence of lost profits beyond December 31, 2015, the date on which the Center partnership was set to expire. *See infra* Part III.D.

Finally, if the award of $36.3 million for "lost profits" is set aside, it would be error to substitute in its place the jury's alternative award of "purchase price" damages of $27.3 million. This theory of damages for breach of contract finds no basis in the law and is unsupported by the evidence. *See infra* Part III.E.

### A. The Award Of Lost Scan Profits To MRIA Cannot Stand Because MRIA Had No Such Profits To Lose

It is indisputable that the award of $36.3 million in damages represents profits allegedly lost by one or both of the limited partnerships, Center and Mobile. MRIA, which owns just a fraction of Center and Mobile, therefore did not suffer these damages, and the jury award to MRIA in its own name and on its own behalf was improper.

Center and Mobile are the two limited partnerships established by MRIA for the purpose of engaging in the business of providing MRI services. *See supra* pp. 3-4. MRIA "provides no services directly" (App. 37 (Trial Ex. 4247, p. 5)), but rather receives a management fee of 7.5% of Center's and Mobile's annual cash receipts for overseeing their operations (App. 11 (Trial Ex. 4024 § 4.2)). MRIA owns just 30% of Center and Mobile; Saint Alphonsus and other investors own the remaining interests. (App. 37-40 (Trial Ex. 4247, pp. 5-8).)

In presenting evidence of lost profits, MRIA's two damages experts relied exclusively on allegations of injury to Center and Mobile's business. Specifically, Bruce Budge estimated the number of scans diverted from the limited partnerships to IMI and applied their revenue and cost figures in order to calculate the profits that were thus lost. (Tr., Vol. II, p. 2732, L. 6 to p. 2754, L. 16.) MRIA's other expert, Charles Wilhoite, used Budge's calculations to predict diverted lost future scans and resulting lost profits. (Tr., Vol. III, p. 2861, L. 6 to p. 2870, L. 21.)

The $36.3 million in damages thus represents profits allegedly lost by Center and/or Mobile—the entities actually providing MRI scanning services—rather than any conceivable injury to MRIA itself. And because MRIA owns just 30% of the limited partnerships, the separate legal identity of these entities obviously cannot be ignored. Accordingly, this jury award to "MRIA" cannot be affirmed on the theory that MRIA actually suffered such damages.

### B. The Award Of Lost Scan Profits Cannot Be Sustained On The Theory That It Should Be Regarded As An Award To Center And/Or Mobile

Since MRIA did not suffer the lost profits damages that constitute the present award, the award could only be sustained if this Court were to regard it as an award to one or both of the limited partnerships, Center and/or Mobile. However, the *only* claims submitted to the jury on behalf of Center and Mobile were causes of action for breach of the fiduciary duty allegedly owed to those entities. (R., Vol. XII, pp. 2293-96.) For two separate and independent reasons, this Court cannot reasonably regard the damage award as one made to the limited partnerships on that cause of action. *First*, because the claims of the limited partnerships were improperly combined in a single, disjunctive special-verdict question with MRIA's own claim for breach of fiduciary duty, there is no basis for concluding that the jury found Saint Alphonsus liable to either Center or Mobile. *Second*, Center's and Mobile's claims fail as a matter of law because Saint Alphonsus owed no fiduciary duties to them.

### 1. The Jury Verdict Provides No Basis For Concluding That The Jury Actually Found Saint Alphonsus Liable To Center And/Or Mobile

Contrary to ordinary practice, the district court allowed MRIA to assert claims "on behalf of" Center and Mobile without joining these distinct legal entities as parties. (R., Vol. V, pp. 868-71.)[21] This created a substantial risk that the jury would fail to distinguish between MRIA and the two limited partnerships and therefore not properly evaluate the separate legal rights, claims asserted, and damages suffered by those entities. This risk came to fruition when the court refused Saint Alphonsus's request for a special-verdict interrogatory that would have distinguished the separate fiduciary duty claims of the three entities (*see* Exhibit to R. #230, Instr. 41, p. 3), and instead submitted a single special-verdict question (No. 9) asking the jury whether "Saint Alphonsus breached a fiduciary duty owed to MRIA, MRI Center *or* MRI Mobile" (R., Vol. XII, p. 2296 (emphasis added)). This was the *only* claim on behalf of Center and Mobile submitted to the jury (R., Vol. XII, pp. 2293-96), and because the court combined it with MRIA's own claim for breach of fiduciary duty, the jury was left with no way to indicate whether or not it had found liability to Center and Mobile—as distinguished from MRIA.

This indeterminate character of the verdict arises from the disjunctive nature of the single jury interrogatory (No. 9) dealing with this issue. That interrogatory required the jury to enter a

[21] No legal authority permitted MRIA, as a general partner, to sue in a representative capacity "on behalf of" the limited partnerships. A limited partnership is a distinct legal entity, with a legal existence separate and apart from its partners, including its general partner. *See* Idaho Code § 53-2-104. Further, a limited partnership has "the power to sue, be sued, and defend in its own name," *id.* § 53-2-105, and limited partnerships routinely do so in the courts of this State, *see, e.g.*, *Brandon Bay, LP v. Payette County*, 142 Idaho 681, 132 P.3d 438 (2006). The district court thus erred when it allowed MRIA to proceed "on behalf of" the limited partnerships, without naming those legal entities as distinct parties.

finding of fiduciary duty liability if it concluded that Saint Alphonsus breached a fiduciary duty owed to any one of the three claimants—MRIA, Center "or" Mobile. (R., Vol. XII, p. 2296.) As to MRIA, under the instructions as given, the jury had no choice but to find a breach of the duty. It was instructed that Saint Alphonsus was liable if it failed "to act primarily for the benefit" of MRIA, if it "act[ed] adversely" to MRIA, or if it knowingly "violat[ed] the law." (Tr., Vol. III, p. 4281, L. 21 to p. 4283, L. 10.) It was also instructed that Saint Alphonsus's dissociation from MRIA was "wrongful." (Tr., Vol. III, p. 4271, L. 4-11; *id.* p. 4273, L. 23 to p. 4275, L. 4; *id.* p. 4283, L. 6-15.) By definition, such "wrongful" conduct toward MRIA fell far short of acting "primarily for [MRIA's] benefit" and constituted "adverse" action toward MRIA. The conclusion that Saint Alphonsus violated its fiduciary duty to MRIA was thus unavoidable.

Given that conclusion, the jury was required to answer special-verdict question No. 9 in the affirmative, *even if it found no fiduciary duty liability to either of the limited partnerships.* There was therefore no reason for the jury to proceed any further once it found a breach of duty to MRIA—since question No. 9 would be answered "yes" however the separate claims of the limited partnerships were resolved. Indeed, there is nothing in the verdict to suggest that the jury ever even thought about the question of liability to Center and Mobile. There was absolutely no reason for it to do so because, as noted above, the court had rejected Saint Alphonsus's request for jury instructions and special-verdict interrogatories distinguishing among the three entities' separate fiduciary duty claims. Accordingly, there is no basis on which to affirm the award of damages on the theory that the jury really intended it to go to Center and/or Mobile.

### 2. The Limited Partnerships' Sole Claims—For Breach Of Fiduciary Duty—Fail As A Matter Of Law Because Saint Alphonsus Owed No Fiduciary Duties To Center And Mobile

Apart from the failure of the verdict form to communicate any decision by the jury on the fiduciary duty claims of Center and Mobile, those claims fail as a matter of law. The district court should have granted Saint Alphonsus's motions for summary judgment and judgment notwithstanding the verdict on those claims because Saint Alphonsus did not owe the limited partnerships any fiduciary duties.

"Whether a fiduciary relationship exists is a question of law over which this Court exercises free review." *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 388, 401, 111 P.3d 73, 86 (2005). Duties owed by parties in a commercial relationship are generally defined by the agreements between them. *See, e.g.*, *Wooden v. First Sec. Bank of Idaho, N.A.*, 121 Idaho 98, 100, 822 P.2d 995, 997 (1991). For some relationships, such as officers and directors of a corporation, or partners in a partnership, a pertinent statute defines the applicable duties. *See, e.g.*, Idaho Code § 30-1-830. In some special circumstances in which one party has placed his property, interests or authority in the charge of another, or reposed special trust and confidence in him, the common law may give rise to fiduciary obligations. *See Bliss Valley Foods*, 121 Idaho at 277-78, 824 P.2d at 852-53.

Saint Alphonsus was both a limited partner in Center and Mobile and a partner in the general partnership (MRIA) that was the general partner of both entities. As the court below correctly held, neither of these relationships gave rise to any statutory fiduciary duties owed by Saint Alphonsus to the limited partnerships. (R., Vol. X, pp. 1876-77.) RUPA defines with specificity the duties that Saint Alphonsus owed to MRIA, but it nowhere suggests that those duties in any way extend further to other entities in which MRIA, but not Saint Alphonsus, is a general partner. *See* Idaho Code § 53-3-404 ("a partner owes [fiduciary duties] to the partnership and the other partners"). And the Limited Partnership Act makes clear that only MRIA, as general partner, and not Saint Alphonsus, as a limited partner, owed fiduciary duties to Center and Mobile. *See* Idaho Code § 53-224 (repealed effective July 1, 2006).[22]

The district court nonetheless looked past these governing statutes to find a common-law fiduciary duty implied from the factual circumstances surrounding the relationship between Saint Alphonsus and the limited partnerships. As this Court has explained, however, common-law fiduciary duties arise only where one party places a "peculiar confidence" in another due to the "condition of superiority" of one of the parties over the other. *Bliss Valley Foods*, 121 Idaho at 277, 824 P.2d at 852. In other words, "in a fiduciary relationship, the property, interest or authority of the other is placed in the charge of the fiduciary." *Id.* (citation, emphasis, and internal quotation marks omitted). By contrast, arms-length relationships—especially involving sophisticated business entities—do not give rise to fiduciary duties. *See id.* (lender-borrower relationship did not give rise to common-law fiduciary duty).

[22] The conduct at issue in this case occurred prior to July 1, 2006, when the Revised Uniform Limited Partnership Act replaced the Limited Partnership Act as the law applicable to existing limited partnerships. *See* Idaho Code § 53-2-1204. Accordingly, the breach of duty claim brought on behalf of Center and Mobile is governed by the Limited Partnership Act. In any event, the fiduciary standards set forth in the old and new versions of the Act are identical in all relevant respects. *Compare* Idaho Code § 53-2-408 *with* Idaho Code § 53-3-404 (made applicable to limited partnerships by Idaho Code § 53-224 (repealed)).

The district court held that Saint Alphonsus owed such common-law duties to Center and Mobile because of "the unique manner in which [the limited partnerships] were organized, structured, and operated." (R., Vol. X, p. 1880.) According to the court, this "unique" manner consisted of the fact that two Saint Alphonsus "representatives . . . sat on the [ten-member] MRIA Board of Partners" and that this Board "conducted" the "business and affairs" of MRIA, including the management of Center and Mobile. (*Id.*, p. 1879.)

These facts do not remotely satisfy the requirements for a common-law fiduciary duty. It is of course true that the agreements creating the limited partnerships vested MRIA with "all authority and responsibility" over the management of the businesses (App. 10, 16 (Trial Ex. 4024 § 4.1; Trial Ex. 4028 § 4.1)), and that *MRIA* owed them on that account a statutory fiduciary duty. But Saint Alphonsus had only two votes out of ten on the MRIA board, and thus had no ability to compel any action by MRIA, especially over the opposition of the five votes held by DMR. Thus, no reasonable jury could conclude that Saint Alphonsus's possession of two out of ten votes on the MRIA board established a "condition of superiority" over Center and Mobile or showed that the limited partnerships had placed a "peculiar confidence" in Saint Alphonsus. *Bliss Valley Foods*, 121 Idaho at 277, 824 P.2d at 852.

Indeed, the district court's holding that Saint Alphonsus owed common-law fiduciary duties to the limited partnerships, including the duty "to act primarily for the[ir] benefit" and to refrain from competing with them, had the effect of imposing on Saint Alphonsus, in its role as a minority stakeholder, a greater level of duty vis-à-vis Center and Mobile than the statutory duty that MRIA itself owed to Center and Mobile as their general partner. This is because the duties owed by a general partner to a limited partnership are *less strict than* the fiduciary duties owed in a common-law fiduciary relationship. As explained in the official comment to Idaho Code § 53-3-404, which sets forth the duties of the general partner to the limited partnerships in this case, *see* Idaho Code § 53-224 (repealed); *supra* note 22, "the term 'fiduciary' [arguably] is inappropriate when used to describe the duties of a partner because a partner may legitimately pursue self-interest and not solely the interest of the partnership and the other partners, as must a true trustee." Idaho Code § 53-3-404 cmt.

In sum, having found no statutory basis for holding that Saint Alphonsus owed a fiduciary duty to the limited partnerships, the district court should also have concluded, as a matter of law, that no common-law fiduciary duty could be inferred from that relationship.[23]

### C. MRIA's Proof Of Lost Scan Profits Was Fatally Deficient Because It Relied On The Unsupported Assumption That Saint Alphonsus Caused Every Single Change In Physician Referrals From Center To IMI

The damages claim also fails as a matter of law because MRIA produced no evidence to connect its alleged $36.3 million in lost-scan damages, or any specific portion thereof, to Saint Alphonsus's alleged misconduct. This claim rested on the premise that *every* referral of a patient to IMI by *any* doctor who either had previously made referrals to Center or was affiliated only with Saint Alphonsus resulted from that alleged misconduct. But MRIA and its experts simply

[23] Even if the facts viewed most favorably to MRIA could support such an inference, a reasonable juror could also have found an absence of the sort of relationship needed to give rise to a common-law fiduciary duty. Indeed, the district court originally stated an intention to leave this issue for resolution by the jury. (R., Vol. X, pp. 1877-80.) However, without warning at the end of the trial, the court removed that question from the purview of the jury and held that the duty was owed as a matter of law. (Tr., Vol. III, p. 4201, L. 23 to p. 4203, L. 21.) This was an error of law that, at a minimum, requires a new trial.

"assumed" that the assistance Saint Alphonsus provided to IMI caused all of these referrals to go to IMI. This assumption has no basis in law, logic or fact. The district court therefore erred when it denied Saint Alphonsus's motion for summary judgment on the issue of damage causation (Exhibit to R. #102, pp. 12-16; R., Vol. XI, p. 2076), and erred again when it denied Saint Alphonsus's motion for JNOV on that same issue (R., Vol. XIII, pp. 2435-36).

"The burden is upon the plaintiff to prove not only that it was injured, but that its injury was the result of the defendant's breach; both amount and causation must be proven with reasonable certainty." *Griffith v. Clear Lakes Trout Co.*, 143 Idaho 733, 740, 152 P.3d 604, 611 (2007). Moreover, "the trier of fact must be able to find, reasonably, that the inference linking the defendant's conduct to the damage is more probable than an inference connecting the loss to other causes." *Wing v. Hulet*, 106 Idaho 912, 919, 684 P.2d 314, 321 (Ct. App. 1984); *see also Nw. Bec-Corp v. Home Living Serv.*, 136 Idaho 835, 41 P.3d 263 (2002) (affirming district court's grant of summary judgment on the basis that the plaintiff had failed as a matter of law to establish damage causation). In the context of claims for lost business or lost profits, a plaintiff may not presume that its loss is equivalent to its competitor's gain; instead, there must be substantial proof of what this Court has called a "correspondence between what its profit would have been and [the competitor's] actual profit." *Trilogy Network Sys., Inc. v. Johnson*, 144 Idaho 844, 847, 172 P.3d 1119, 1122 (2007).

This Court has thus rejected the idea that *all* of a plaintiff's lost business can be attributed to a defendant's actionable conduct without specific proof of causation. In *Pope v. Intermountain Gas Co.*, for example, the trial court awarded lost-profit damages for antitrust violations based on the defendant's total revenues during the period that the violations occurred. 103 Idaho 217, 222, 646 P.2d 988, 993 (1982). This Court reversed because "[s]uch a method of figuring damages assumes, without any support in the record, that the [competitor's] operation would not have won any portion of the . . . market absent antitrust violations." 103 Idaho at 234, 646 P.2d at 1005. Put another way, it is improper to assume "that 100% of [a company's] business losses" are attributable to a competitor's misconduct where the plaintiff "never attempted to isolate the effect of other causes on the volume of sales," including, for example, "the entry of [the competitor] into the competitive marketplace." *Synthes Spine Co. v. Walden*, No. 04-CV-4140, 2006 WL 3053317, at *16 (E.D. Pa. Oct. 23, 2006); *see also Twin Falls Farm & City Distrib., Inc. v. D & B Supply Co.*, 96 Idaho 351, 360, 528 P.2d 1286, 1295 (1974) (noting that damages may not be awarded for "loss of customers" where "the evidence does not support a finding that *all* of the losses . . . were the result of the [defendants'] breaches" (emphasis added)).[24]

Measured against these well-settled principles, MRIA's proof of damages causation is inadequate as a matter of law. MRIA relied on two witnesses to support its lost-scan damages calculation: Bruce Budge, who testified about damages from 1999 to 2006, and Charles Wilhoite, who extrapolated from Budge's numbers to estimate future losses from 2007 to 2023. In calculating how many scans Center "lost" as a result of the assistance allegedly provided to

[24] As one court has explained, to accept a damages award based on the difference between the plaintiff's revenues before and after the defendant's misconduct would "make a joke of the concept of expert knowledge" where the plaintiff's expert "ascribe[s] the *entire* difference between these revenue streams . . . to [the defendant's] misconduct, and none to . . . lawful competition." *Schiller & Schmidt, Inc. v. Nordisco Corp.*, 969 F.2d 410, 415 (7th Cir. 1992).

IMI by Saint Alphonsus, Budge included *every* scan from *every* doctor who had previously referred scans to Center but then switched to IMI, as well as *every* scan from *every* doctor who was affiliated only with Saint Alphonsus. (Tr., Vol. II, p. 2738, L. 25 to p. 2739, L. 12; *id.* p. 2741, L. 23 to p. 2742, L. 23.) He did not explain how or why all these changes in referrals were caused by Saint Alphonsus's alleged misconduct, but rather "assum[ed]" it, as though some other expert would establish causation:

> A. [Budge:] I'm assuming that without that course of conduct, that migration would not have occurred.
>
> Q. And you're not here to say that the bad acts caused it; you're assuming that they caused it?
>
> A. I'm not offering testimony on that. Logically, I need to understand the causation, and it seems reasonable. But I'm not weighing in on that."

(Tr., Vol. II, p. 2785, L. 25 to p. 2786, L. 9.)

Budge's approach plainly fails to establish that Saint Alphonsus actually caused all of the changed referrals or to show what portion of those changed referrals were caused by Saint Alphonsus's conduct. Budge did not dispute that IMI would have existed regardless of Saint Alphonsus's actions. (Tr., Vol. II, p. 2732, L. 25 to p. 2734, L. 17; *id.* p. 2764, L. 1 to p. 2765, L. 3.) But he nevertheless completely ignored the effects of "the entry of [IMI] into the competitive marketplace," *Synthes Spine Co.*, 2006 WL 3053317, at *16, and simply "assume[d] . . . that [IMI] would not have won any portion of [this business] absent [Saint Alphonsus's conduct]," *Pope*, 103 Idaho at 234, 646 P.2d at 1005. This was not enough. Budge (or another expert) "should have tried to separate the damages that resulted from the lawful entry of a powerful competitor [IMI] . . . from the damages that resulted from particular forms of misconduct allegedly committed by" IMI and Saint Alphonsus. *Schiller*, 969 F.2d at 415-16; *see also Pope*, 103 Idaho at 234, 646 P.2d at 1005; *Twin Falls*, 96 Idaho at 360, 528 P.2d at 1295.

Nor did any other witness fill the evidentiary gap. MRIA did not show that a single physician actually changed his referring practices as a result of Saint Alphonsus's actions. To the contrary, several physicians gave unrebutted testimony that they began referring to IMI because of the identity and reputation of the IMI radiologists reading the scans, not because of any conduct by Saint Alphonsus. (*See* Tr., Vol. III, p. 3910, L. 11 to p. 3911, L. 7; *id.* p. 3994, L. 8 to p. 3995, L. 16; *id.* p. 4138, L. 6 to p. 4140, L. 4.)

Indeed, the idea that Saint Alphonsus's conduct, including assistance it gave to IMI, could have caused *all* of the identified IMI referrals defies common sense. Budge testified that MRIA "had a monopoly" before IMI opened, "[a]nd when IMI came in, all of the sudden that referral base was diverted." (*See* Tr., Vol. II, p. 2790, L. 12-14.) When a monopolist faces a new competitor, some of its business is going to shift to the competitor, as Budge conceded. (*See* Tr., Vol. II, p. 2792, L. 10-15 ("Doesn't logic dictate that if MRI ran into a very formidable competitor, IMI, in 1999, logic certainly follows as to why IMI's business would flourish and MRI's business would begin to tail off? [Budge:] It could explain it.").) More specifically, IMI was owned and operated by the group of radiologists who had, for many years, been serving the needs of patients at Saint Alphonsus and reading the scans generated at Center, and thus had long-standing consulting relationships with the treating physicians who worked at Saint Alphonsus. (Tr., Vol. II, p. 2425, L. 4-12; Tr. Vol. III, p. 3461, L. 10-24.) It is absurd to suggest—and thus improper to allow the jury to infer—that *none* of the doctors that previously referred to Center would have sent *any* referrals to the people they trusted at IMI, if only Saint Alphonsus had refrained from providing some technical support to IMI. Indeed, as noted above, the evidence actually presented at trial showed that the identity of the radiologists and their established relationships and reputations were the main reasons that IMI took business away from Center. (*See* Tr., Vol. III, p. 3911, L. 1 to p. 3911, L. 7; *id.* p. 3994, L. 8 to p. 3995, L. 16; *id.* p. 4138, L. 6 to p. 4140, L. 4.)[25]

In sum, to recover for lost profits, it was incumbent upon MRIA "to isolate the effect of other causes" for its lost scans, including "the entry of [IMI] into the competitive marketplace." *Synthes Spine Co.*, 2006 WL 3053317, at *16. Because it did not do so, its claim for lost profits fails as a matter of law.

### D. The Damages Award Is Also Defective Because It Includes $6.0 Million For Injuries Allegedly Incurred After The Center Limited Partnership Agreement Was Set To Expire

The district court also erred in allowing MRIA to seek recovery for "lost scan" damages beyond December 31, 2015, the date on which the Center limited partnership was set to expire pursuant to its limited partnership agreement. MRIA acknowledged this December 31, 2015 termination date for Center, but argued that Center's term had been extended to December 31, 2023. MRIA did not make any evidentiary showing to support its claim that the extension did, in fact, occur, and the district court thus erred in allowing the jury to determine the question. As a

[25] This case is thus unlike *Griffith v. Clear Lakes Trout Co.*, in which there was no evidence of alternative causation and every lost opportunity was "more likely than not attributable to" the defendant's conduct. 143 Idaho 733, 741, 152 P.3d 604, 612 (2007).

result, Saint Alphonsus was found liable for an additional $6.0 million in future lost profits, as calculated by MRIA's expert, between January 1, 2016, and December 31, 2023—a period of time when Center, by the terms of its limited partnership agreement, would have ceased to exist. (*Compare* Tr., Vol. III, p. 2860, L. 11-16 *with* Exhibit to R. #118, Ex. J (Expert Op. of C. Wilhoite) at 14.)

Section 1.1 of the limited partnership agreement expressly provides that the Center partnership "shall continue . . . through December 31, 2015," unless terminated earlier. (App. 7 (Trial Ex. 4024 § 1.1).) Section 9.1 of the agreement provides that the agreement "may be amended only through [a] written instrument executed by the General Partner and the Limited Partners owning 75% of the outstanding Units" of limited partnership interests. (App. 13 (Trial Ex. 4024 § 9.1).) Although MRIA pointed to evidence of a vote on the question allegedly taken in 1998, it presented no evidence that any such written instrument was ever executed by the general partner and the limited partners, as required by the agreement.[26]

Furthermore, it is undisputed that on August 18, 2000—long after the extension allegedly occurred—MRIA filed with the Secretary of State an Amended Certificate of Limited

[26] MRIA effectively conceded its failure to produce such evidence, but instead claimed that the limited partnership agreement was ambiguous and could be read to allow MRIA to extend Center's term at will. (R., Vol. XII, at 2391.) The contract's "interpretation and legal effect are questions of law," *Commercial Ventures, Inc. v. Lea Family Trust*, 145 Idaho 208, 177 P.3d 955, 960 (2008) (citation and quotation marks omitted), and as a matter of law, there is no ambiguity here. MRIA relied on Section 4 of the agreement, which gives MRIA the exclusive right to *manage* the limited partnership, and deemed it to be in conflict with the requirements of Section 9.1 for modifying the limited partnership agreement. But the two provisions are entirely consistent because the power to manage Center's business pursuant to the terms of the limited partnership agreement is separate and distinct from the power to change the very terms of that agreement.

Partnership for Center, which indicated that the limited partnership term was to end in 2015. (App. 50 (Trial Ex. 104); *see also* Tr., Vol. III, p. 3523, L. 10 to p. 3525, L. 2.) Thus, not only was there *no* evidence showing that the steps necessary to extend Center's term were completed, but the only evidence from the post-vote period shows that no extension was ever finalized.

In short, the unambiguous terms of the limited partnership agreement required a 75% vote of the limited partnership interests *and* a writing to be effective. The complete absence of any evidence of such steps is thus fatal to MRIA's extension claim, as no reasonable jury could have found, on the evidence presented, that Center's term had been extended to 2023. For this reason also, the $6.0 million in damages for the period between 2016 and 2023 must be set aside.

### E. MRIA Is Not Entitled To The Claimed Alternative Measure Of Damages Based On The Hypothetical Purchase Price Of Center

If the $36.3 million lost-profits measure of damages is set aside, MRIA will likely seek reinstatement of the $27.3 million award based on the "purchase price" of Center, which was set aside by the district court's remittitur. (R., Vol. XIII, p. 2435.) MRIA has maintained throughout the proceedings that this latter measure of damages is being asserted solely for the wrongful dissociation claim brought by MRIA, and that this measure of damages in theory represents the money that Saint Alphonsus would have had to pay to MRIA to rightfully withdraw from the partnership. (Tr., Vol. I, p. 574, L. 13 to p. 584, L. 9; Tr., Vol. III, p. 4382, L. 6 to p. 4385, L. 25.) However, even if Saint Alphonsus were liable on the claim for wrongful dissociation, *but see supra* Parts I.A & I.C, MRIA's purchase-price theory of damages is not a legally sound way to measure damages for breach of contract because it does not even purport to measure any injury allegedly suffered by MRIA as a result of Saint Alphonsus's dissociation.

"[T]he proper measure of damages is a question of law which is reviewed *de novo*." *Gen. Auto Parts Co. v. Genuine Parts Co.*, 132 Idaho 849, 854, 979 P.2d 1207, 1212 (1999). The correct measure of damages for a claimed breach of contract is "the loss in the value . . . of [the breaching party's] performance . . . plus any loss, including incidental or consequential, caused by the breach." *Gilbert v. Tony Russell Constr.*, 115 Idaho 1035, 1039, 772 P.2d 242, 245 (Ct. App. 1989) (quoting *Restatement (Second) of Contracts* § 347 (1981)). In the specific context of partnership contracts, RUPA specifies that "[a] partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation," Idaho Code § 53-3-602(c), such as "replacing the partner's expertise or obtaining new financing," *id.* § 53-3-602 cmt. 3.

MRIA's "purchase price" theory of damages violates these fundamental principles. Instead of trying to show the extent of the harm caused to MRIA by Saint Alphonsus's dissociation in 2004, MRIA advanced a convoluted theory that resulted in an award far greater than any plausible amount of actual injury. Specifically, MRIA argued that dissociating allowed Saint Alphonsus to impermissibly compete against MRIA. (R., Vol. IX, p. 1687.) But rather than trying to quantify *the harm to MRIA* from this competition, MRIA argued that it should recover "the fair market value of a transaction"—Saint Alphonsus's hypothetical purchase of Center's entire business from MRIA—"that [would have] rightfully accomplished what [Saint

Alphonsus] has, to date, secured wrongfully." (*Id.*; *see also* Tr., Vol. III, p. 4310, L. 22-23) ("The $27.3 million represents what it would have cost Saint Al's to do this the right way.").)

The price that Saint Alphonsus would have paid for Center bears no relation to any harm suffered by MRIA as a result of Saint Alphonsus's dissociation. In particular, MRIA has never claimed that this dissociation totally destroyed Center or rendered it valueless, such that the "purchase price" accurately measures actual injury. Nor did MRIA have any contractual right to the "purchase price" that was lost as a result of the dissociation, for the simple reason that Saint Alphonsus had no contractual obligation to purchase Center, whether or not it stayed in the partnership. Indeed, MRIA's "purchase price" theory of damages is all the more absurd given that MRIA only owns 30% of Center (*see supra* note 2) and therefore cannot possibly have suffered damages equivalent to the full value of Center.

In sum, because the supposed price of purchasing Center has nothing to do with any injury to MRIA caused by Saint Alphonsus's dissociation, MRIA cannot recover that "purchase price" as a measure of damages.

## IV. SAINT ALPHONSUS IS ENTITLED TO ATTORNEY FEES

Idaho Code § 12-120(3) provides that "[i]n any civil action" arising out of "any commercial transaction . . . , the prevailing party shall be allowed a reasonable attorney's fee to be set by the court." This provision "compels an award of attorney fees to the prevailing party in a civil action to recover in any commercial transaction," *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust*, 145 Idaho 208, 177 P.3d 955, 965 (2008), and provides for the recovery of fees incurred both at trial and on appeal, *see, e.g.*, *Fox v. Mountain W. Elec., Inc.*, 137 Idaho 703, 712, 52 P.3d 848, 857 (2002).

After trial, the district court awarded fees to MRIA under § 12-120(3), holding that MRIA's claims arose out of a commercial transaction because they relate to the alleged "breach of express terms contained within a partnership agreement — a contract." (R., Vol. XIII, p. 2448.) This holding reflects the general rule that fees are appropriate under § 12-120(3) where the claims at issue are "integral" to a business relationship, such as claims for the breach of a commercial contract like the one that existed between MRIA and Saint Alphonsus. *Esser Elec. v. Lost River Ballistics Techs., Inc.*, 145 Idaho 912, 188 P.3d 854, 863 (2008).

Accordingly, if this Court rules for Saint Alphonsus, it should award Saint Alphonsus its attorney fees on appeal to be determined in accordance with Idaho Appellate Rules 40 and 41. In addition, because Saint Alphonsus rather than MRIA will be the "prevailing party" in this civil action, the district court's award of fee and costs for MRIA should be vacated along with the judgment for MRIA, and the case remanded with instructions that the district court calculate and award the fees and costs incurred by Saint Alphonsus at trial.

## CONCLUSION

1. For the foregoing reasons, Saint Alphonsus requests entry of judgment as follows:

    a. Saint Alphonsus is entitled to judgment on MRIA's claims for wrongful dissociation because, as a matter of law, Saint Alphonsus's dissociation breached neither an express term of the partnership agreement (*see* Part I.A) nor a term of years (*see* Part I.C), and also because MRIA's theory of "purchase price" damages in support of this claim is legally inadequate and unsupported by the evidence (*see* Part III.E).

b. Saint Alphonsus is entitled to judgment on MRIA's claims for breach of the non-compete clause, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, tortious interference with prospective business relations and conspiracy because MRIA offered no evidence of damages that were even arguably suffered by MRIA, as distinct from the limited partnerships, Center and Mobile (*see* Part III.A), and also because MRIA failed in any event to prove that Saint Alphonsus caused all or any particular portion of the claimed lost profits (*see* Part III.C).

c. Saint Alphonsus is entitled to judgment on the claims for breach of fiduciary duty brought "on behalf" of Center and Mobile because the jury verdict cannot reasonably be construed as finding liability to Center and Mobile on those claims (*see* Part III.B.1), because Saint Alphonsus as a matter of law owed no fiduciary duties to Center and Mobile (*see* Part III.B.2), and also because MRIA failed to prove that Saint Alphonsus actually caused all or any specific portion of the claimed lost profits (*see* Part III.C).

2. In the alternative, Saint Alphonsus is entitled to a new trial on all of the claims asserted in the district court because (a) the district court's erroneous grant of summary judgment on the claim for wrongful dissociation (*see* Part I.A) and the court's evidentiary errors (*see* Part II), separately and cumulatively, prejudiced the jury against Saint Alphonsus and denied Saint Alphonsus a fair trial (*see* Parts I.B & II), and also because (b) whether Saint Alphonsus breached an express term of the partnership agreement by dissociating and whether Saint

Alphonsus owed any fiduciary duty to Center and Mobile are questions that, at a minimum, should have been submitted to the jury rather than resolved against Saint Alphonsus as a matter of law. (*See* Parts I.A n.7 & IV.B.2 n.23.)

3. In the alternative, Saint Alphonsus is entitled to a $6 million reduction in the damages assessed because any award of lost profits should not have included profits allegedly lost after 2015. (*See* Part III.D.)

4. Saint Alphonsus further requests that this Court award Saint Alphonsus its attorney fees on appeal, and also reverse the district court's award of costs and fees to MRIA and remand for calculation and award of the costs and fees incurred by Saint Alphonsus at trial. (*See* Part IV.)

Dated: September 12, 2008

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2008, two true and correct copies of the foregoing APPELLANT'S BRIEF were served upon the following counsel for Respondent by hand delivery:

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Jack S. Gjording

Jack S. Gjording

# Appendix

**APPENDIX**
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## EXHIBITS FILED BY MRI ASSOCIATES

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## EXHIBIT FILED BY SAINT ALPHONSUS

**Description** **App. Page**

Copy of executed Articles

# ARTICLES OF PARTNERSHIP

# OF

# MRI ASSOCIATES

THESE ARTICLES OF PARTNERSHIP have been entered into effective this 26th day of April, 1985, by and among DOCTORS MAGNETIC RESONANCE, INC., an Idaho corporation ("DMR"), SAINT ALPHONSUS MAGNETIC RESONANCE, INC., an Idaho nonprofit corporation ("SAMR"), MEDNOW, INC., an Idaho corporation ("MN"), and HCA OF IDAHO, INC., an Idaho corporation ("HCA").

Except as modified hereunder, the parties hereto hereby form a general partnership pursuant to the Uniform Partnership Law of the State of Idaho. The parties agree that the conduct of the Partnership shall be in accordance with the terms and provisions herein set forth.

## ARTICLE 1

## GENERAL PROVISIONS

Section 1.1 Effective Date and Term. The effective date of these Articles of Partnership is the twenty-sixth day of April, 1985, and shall terminate as follows:

1.1.1 If the Limited Partnership contemplated pursuant to Section 1.6 is not formed and the limited partnership interests sold in accordance with the Private Placement Memorandum, or this Partnership does not otherwise acquire financing acceptable to all Partners to replace the funds which were to be acquired by the limited partnership offering, on or before December 31, 1985, then the term of this Partnership shall end on December 31, 1985.

1.1.2 If the Limited Partnership contemplated by Section 1.6 is formed and the limited partnership interests sold, and/or other financing mutually acceptable to all Partners to replace all or a portion of the funds which were to be acquired by the limited partnership offering is acquired on or before December 31, 1985, then the term of this Partnership shall end on the date which is within a reasonable time after the business of the Partnership is wound up and dissolved under Article 10.

In the event the Partnership terminates due to a failure of the conditions set forth in Section 1.1.1, all debts and obligations incurred by or on behalf of the Partnership shall be



EXHIBIT 4023

Section 1.6 Purpose. The purpose of this Partnership is to purchase, lease or otherwise acquire, finance, manage operate, use, control, hold, sell and otherwise transfer medical diagnostic devices, equipment and accessories and therapeutic devices, equipment and accessories related to such diagnostic devices and equipment, together with buildings and other facilities associated therewith, and to transact any and all business matters incident thereto. The initial diagnostic equipment to be acquired shall be a magnetic resonance imaging device.

This Partnership intends to promote and organize an Idaho limited partnership (the "Limited Partnership"). Limited partnership interests in the Limited Partnership shall be offered for sale pursuant to a Private Placement Memorandum approved by the Board of Partners as provided in Section 5.4.5 and prepared and presented in accordance with applicable federal and state securities laws and exemptions. When formed, the Limited Partnership shall have the same purpose as this Partnership.

This Partnership and any entity in which it has an ownership interest shall not engage in any other business activity except those set forth above without the approval of the Board of Partners required by Section 5.4.4.

ARTICLE 2

MANAGEMENT FEE

Section 2.1 Management Fee. When the Limited Partnership is formed, the Limited Partnership Agreement will provide for an annual management fee payable by the Limited Partnership to the Partnership of $90,000 or 7.5% of the Limited Partnership's annual cash receipts from operations, whichever is greater. The management fee will be paid to the Partnership in monthly installments of $7,500 each, with an annual adjustment to be made at the time the annual audit of the Limited Partnership is completed, if such audit shows that annual cash receipts from operations exceed $1,200,000.

2.1.1 Unless and until a Partner's interest in this Partnership is terminated or transferred as authorized in Articles 6, 7 and 8, or a new Partner is admitted, when received by the Partnership, the management fee will be forthwith allocated among and paid to the Partners, as follows:

| | |
|---|---|
| DMR | 5/9 |
| SAMR | 2/9 |
| MN | 1/9 |
| HCA | 1/9 |

Catholic Church as designated from time to time; or (iv) is or may be in violation of any local, state or federal laws, rules or regulations. In the event that a Hospital Partner withdraws, such Hospital Partner's interest in the Partnership shall terminate on the date of withdrawal, and that interest, including, without limitation, the Hospital Partner's vote on the Board of Partners and its interest in the Partnership management fee, shall be reallocated among the remaining Hospital Partners. (If there are no remaining Hospital Partners, the reallocation shall be among the remaining Partners). Unless otherwise agreed, the withdrawing Hospital Partner shall only be entitled to receive for its interest in the Partnership an amount which is equal to the balance in such Hospital Partner's capital account at the time of withdrawal.

6.2 Payment for Interest. The price for the withdrawing Hospital Partner's interest in the Partnership shall be paid to such Hospital Partner by the Partners to which its interest in the Partnership has been allocated, without interest, in installments equal to, and due at the same time as, distributions of the Net Cash Flow which the Hospital Partner would have received had it remained a Partner in the Partnership.

6.3 Loans and Other Liabilities. Loans payable to the withdrawing Hospital Partner shall be paid as provided herein. Withdrawal shall not relieve the Hospital Partner from its contingent liability for its Capital Ratio share of Partnership liabilities in existence on the date of withdrawal.

## ARTICLE 7

## TRANSFERS OF PARTNERSHIP INTERESTS

Section 7.1 Restrictions. No Partner shall sell, assign, transfer, pledge or hypothecate its interest in the Partnership, including all of its property and assets, or agree to do the same, except in accordance with the provisions of this Article.

Section 7.2 Transfers Between Partners. A Partner may sell, assign and transfer its interest in the Partnership to the Partnership or to another Partner for such price and on such terms and conditions as they may agree subject to the following rights of refusal. In the event that any Hospital Partner receives an offer to purchase its interest in the Partnership and desires to accept such offer, that Hospital Partner first shall give written notice of such offer to all the other Partners. The notice shall set forth all the terms of such offer, including the name and address of the proposed purchaser. The Hospital Partners receiving such notice shall have forty-five (45) days after they have received notice to elect to purchase such

LIMITED PARTNERSHIP AGREEMENT

OF

MRI LIMITED PARTNERSHIP

THIS LIMITED PARTNERSHIP AGREEMENT of MRI LIMITED PARTNERSHIP (the "Partnership") has been entered into effective this 2nd day of AUGUST, 1985, by and among the persons and entities whose names appear on Exhibit A hereto as the General Partner and as the Limited Partners respectively.

The parties hereto hereby form a limited partnership pursuant to the Idaho Limited Partnership Act. The parties agree that the conduct of the Partnership shall be in accordance with the terms and provisions herein set forth.

ARTICLE 1

GENERAL PROVISIONS

Section 1.1 Effective Date and Term. The effective date of this Agreement and the Partnership shall be the date that the Certificate of Limited Partnership is filed with the office of the Idaho Secretary of State on behalf of the Partnership. The Partnership shall continue from the effective date through December 31, 2015, unless earlier dissolved in accordance with the provisions of Article 6 hereof.

Section 1.2 Offices; Registered Agent. The office of the Partnership shall be maintained in the City of Boise, County of Ada, State of Idaho, and such other locations in the State of Idaho as may be selected by the General Partner. The registered agent of the Partnership for service of process shall be such individual or corporation as shall be selected by the General Partner.

Section 1.3 Partners.

1.3.1 The term "Partners" shall refer, collectively and individually, to those persons and entities who are parties to this Agreement and those persons and entities hereafter admitted to partner status, excluding those whose status as a Partner has been terminated as provided in Article 5.

1.3.2 The term "General Partner" shall refer to MRI ASSOCIATES, an Idaho general partnership.

1.3.3 The term "Limited Partners" shall refer individually and collectively to those persons and entities whose names appear on Exhibit A hereto as Limited Partners



EXHIBIT 4024

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and shall mean the cash on hand at the beginning of a fiscal year plus total cash receipts of the Partnership for such fiscal year (excluding capital contributions for such fiscal year) from which there shall be deducted: (i) all current operating expenses of the Partnership (excluding any expense not involving a cash expenditure, such as any amount charged for depreciation); (ii) all payments made on Partnership obligations during such fiscal year; (iii) any amounts spent by the Partnership for capital expenditures during such fiscal year; (iv) the amounts due during such fiscal year to Partners (principal and interest) on any loans made to the Partnership; and (v) a reserve for working capital, the amount of which shall be determined by the General Partner in its absolute discretion.

Section 3.2 Distribution of Excess Net Cash Flow.

3.2.1 Unless and until the Limited Partners have received cash distributions, pursuant to this Section 3.2, equal to their total capital contributions made pursuant to Sections 2.1.3 and 2.1.5, the General Partner shall distribute Net Cash Flow among the Partners in the following proportions (hereinafter referred to as "Sharing Ratios") not later than 120 days after the end of each fiscal year:

| | |
|---|---|
| General Partner | 1% |
| Limited Partners | 99% |

3.2.2 After the Limited Partners have received cash distributions, pursuant to this Section 3.2, equal to their total capital contributions made pursuant to Sections 2.1.3 and 2.1.5, the General Partner shall distribute Net Cash Flow among the Partners in the following Sharing Ratios not later than 120 days after the end of each fiscal year:

| | |
|---|---|
| General Partner | 30% |
| Limited Partners | 70% |

3.2.3 At all times, the Net Cash Flow distributed to the Limited Partners collectively shall be distributed among the various Limited Partners in the same relationship of the amounts of their respective capital contributions made pursuant to Sections 2.1.3 and 2.1.5.

3.2.4 Anything to the contrary herein notwithstanding, no distributions of Net Cash Flow shall be made at any time that payments on any Partnership obligation shall be delinquent. No Partner shall be entitled to any Net Cash Flow distributions or any other distributions if such Partner is in material default of the terms of this Agreement. Material default shall include, without limitation, the failure to make a capital contribution required pursuant to Section 2.1.3.

under the Idaho Limited Partnership Act, the General Partner shall have the power, on behalf of the Partnership:

4.1.1 To expend the capital of the Partnership for the acquisition, establishment, operation and management of a medical diagnostic facility, including without limitation the acquisition of any real or personal property, in fee or lease, or any rights therein, necessary or appropriate for the operation of such facility;

4.1.2 To negotiate, and enter into, agreements of every nature necessary or incidental to the accomplishment of the Partnership's purpose, including without limitation agreements with the General Partner or the partners that comprise the General Partner;

4.1.3 To employ from time to time at the expense of the Partnership, persons, firms or corporations to render services generally needed to accomplish the Partnership's purposes;

4.1.4 To borrow monies for and on behalf of the Partnership upon such terms and conditions as it may deem advisable and proper by secured or unsecured indebtedness and, in connection therewith, to issue evidences of indebtedness and execute and deliver mortgages, deeds of trust, assignments, and other security instruments of every nature and kind as security therefor, and to prepay or refinance any Partnership debt; and

4.1.5 To execute, acknowledge and deliver any and all instruments, and to take such other steps as are necessary, to effectuate the foregoing and as are consistent therewith.

Section 4.2. Management Fee. For its services in the management of the Partnership, the General Partner shall receive an annual fee equal to the greater of Ninety Thousand and No/100 Dollars ($90,000.00) or seven and one-half percent (7.5%) of the Partnership's cash receipts from operations. For its services during 1985, the General Partner shall receive a management fee of Ninety Thousand and No/100 Dollars ($90,000.00). The management fee will be paid in monthly installments of Seven Thousand Five Hundred and No/100 Dollars ($7,500.00) each, with an annual adjustment to be made at the time that the annual audit of the Partnership is completed, if such audit shows that annual cash receipts from operations exceed One Million Two Hundred Thousand and No/100 Dollars ($1,200,000.00). Such management fee shall be a guaranteed payment, shall be treated as a current operating expense of the Partnership, and shall be in addition to any distribution of Net Cash Flow that the General Partner receives, based upon its Sharing Ratio In addition to the annual management fee, the Partnership shall reimburse the General otherwise determined by the General Partner, and shall be kept at the offices of the Partnership. Within 75 days after the close of each fiscal year of the Partnership, the General Partner shall furnish to each Limited Partner all the information necessary for the preparation of his federal, state, local or other tax returns. Within 120 days after the close of each fiscal year of the Partnership, the General Patner shall furnish to each Limited Partner audited financial statements prepared in accordance with then generally accepted accounting principles by the independent certified public accountants of the Partnership. All financial statements shall be accurate in all material respects and shall present fairly the financial position and results of the operations of the Partnership.

Section 8.3 Other Restrictions. No Partner shall become a surety, guarantor or accommodation party as a Partner or in such manner as would impose an obligation thereunder upon the Partnership or the remaining Partners.

Section 8.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when personally delivered or when deposited in the United States mail, postage prepaid, registered or certified with return receipt requested, or sent by telegram or mailgram, or by recognized courier delivery (i.e., Federal Express, Airborne, Burlington, etc.), addressed to the Partners as the case may be, at the address set forth on Exhibit A, or at such other addresses as a Partner subsequently designates by written notice given in the manner provided in this section.

## ARTICLE 9

## AMENDMENT--SEVERABILITY

Section 9.1 Amendments. This Agreement may be amended only through written instrument executed by the General Partner and the Limited Partners owning 75% of the outstanding Units.

Section 9.2 Severability. It is agreed that the invalidity or unenforceability of any Article, Section, paragraph or provision of shall not affect the validity or enforceability of any one or more of the other Articles, Sections, paragraphs or provisions thereof.

IN WITNESS WHEREOF, this Limited Partnership Agreement has been executed the day and year herein first above written.

GENERAL PARTNER: MRI Associates

By [signature]

2.2.2 Partnership borrowings and all other Partnership obligations shall be paid from funds of the Partnership available for and subject to distribution to the Partners. If such Partnership funds are insufficient, the General Partner may loan funds to the Partnership or make a contribution to Partnership capital in the amount of such deficiency.

## ARTICLE 3

## DISTRIBUTION OF NET CASH FLOW AND ALLOCATION OF PROFIT AND LOSS

Section 3.1 Net Cash Flow Defined. As used in this Article, the term "Net Cash Flow" shall be determined for each fiscal year and shall mean the cash on hand at the beginning of a fiscal year plus total cash receipts of the Partnership for such fiscal year (excluding capital contributions for such fiscal year) from which there shall be deducted: (i) all current operating expenses of the Partnership (excluding any expense not involving a cash expenditure, such as any amount charged for depreciation); (ii) all payments made on Partnership obligations during such fiscal year; (iii) any amounts spent by the Partnership for capital expenditures during such fiscal year; (iv) the amounts due during such fiscal year to Partners (principal and interest) on any loans made to the Partnership; and (v) a reserve for working capital, the amount of which shall be determined by the General Partner in its absolute discretion.

Section 3.2 Distribution of Excess Net Cash Flow.

3.2.1 Unless and until the Limited Partners have received cash distributions, pursuant to this Section 3.2, equal to 50% of their total capital contributions made pursuant to Section 2.1.3, the General Partner shall distribute Net Cash Flow among the Partners in the following proportions (hereinafter referred to as "Sharing Ratios") not later than 120 days after the end of each fiscal year:

| | |
|---|---|
| General Partner | 1% |
| Limited Partners | 99% |

3.2.2 After the Limited Partners have received cash distributions, pursuant to this Section 3.2, equal to 50% of their total capital contributions made pursuant to Section 2.1.3, the General Partner shall distribute Net Cash Flow among the Partners in the following Sharing Ratios not later than 120 days after the end of each fiscal year:

| | |
|---|---|
| General Partner | 30% |
| Limited Partners | 70% |

3.2.3 At all times, the Net Cash Flow distributed to the Limited Partners collectively shall be distributed among

MRI CENTER OF IDAHO

| | |
|---|---|
| DATE: | October 22, 1998 |
| TIME AND PLACE: | Dining Room B, at 5:30 P.M., Saint Alphonsus Regional Medical Center |
| PRESENT: | Sandra Bruce, President & CEO,<br>Saint Alphonsus Regional Medical Center<br>Mark Adams, Chief Executive Officer,<br>West Valley Medical Center<br>Milt Kutsurelis, Executive Vice President,<br>Mercy Medical Center<br>Marty Hutson, CFO, Holy Rosary Medical Center<br>John M. Havlina, Jr., M.D.<br>David J. Giles, M.D.<br>Roger J. Curran, M.D.<br>Thomas E. Henson, M.D.<br>James M. Prochaska, M.D.<br>Tim Gilliam, MRICI Chief Operations Officer<br>Lyndee Chatterton, MRICI Chief Operations Officer<br>Jeff Cliff, Practice Management<br>Paul DeWitt, Practice Management<br>Tim Hall, M.D.<br>Paul Traughber, M.D. |
| RECORDING: | Paul DeWitt, Practice Management |
| EXCUSED: | Karl Kurtz, Vice President of Finance ,<br>Saint Alphonsus Regional Medical Center<br>Mike Czech, Director, MRICI |

CALL TO ORDER:

MOTION: The meeting was opened at 5:30 P.M., with a brief discussion of the minutes dated September 10, 1998. Motion was moved, seconded and carried to approve the minutes dated September 10, 1998.

EXHIBIT 4062

COMMITTEE REPORTS: Equipment, Building and Personnel

James M. Prochaska, M.D. requested a formal written policy be incorporated regarding the handling of hospital STAT MRI cases. Lyndee Chatterton will meet with VP of nursing and report to the board.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 8:40 P.M.

The next meeting will be held Wednesday, November 18, 1998, 5:30 P.M., Sister Patricia , Saint Alphonsus Regional Medical Center.

Sandra Bruce

Sandra Bruce, President & CEO,
Saint Alphonsus Regional Medical Center

David J. Giles

David J. Giles, M.D.

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4) VISION STATEMENT: The Vision Statement was affirmed It is a goal to have this same quality service ten years from now in all subsequent Imaging Centers.

B. ARCHITECTURAL IMAGES: Dr. Seabourn met with Mike Falash. The room sizes have been determined and Toshiba's electrical drawings are in. Siemens drawings should be in by the end of the month. Mike would like to submit the final drawings to the Planing and Zoning Committee by the first of March if all goes well. Dr. Seabourn will ask Mike to fit the recovery room area with diagonal doors. Dr. Seabourn will also talk to Mike regarding if doors are necessary to protect the workers from radiation dose between rooms. The storage area will be left as is.

C. LOGO: Dr. Newton has spoken with Tom Foerstel from Foerstel Design regarding a logo for the center. Dr. Newton stated that Tom preferred to have a condensed list of suggestions and a discussion was held to compile a list of ideas for Tom to begin working with. (See attachment).

D. PHONE: The deadline for space in the phonebook is 9-99. Dr. Murray stated that an account will need to be established. Dr. Murray will also check with the other phonebook companies. Dr. Murray stated that the Group has a choice of 14 prefixes. Dr. Murray will check to see what prefixes are available to allow 9729 (x-ray) to be used as the last four digits. The need for an 800 number was also raised. Dr. Murray questioned if the Group would like to advertise to the more remote regions such as Mountain Home, Ontario, etc. It was decided that Mountain Home, Caldwell, McCall and Nampa should be included. Advertisements will run approximately $425.00 per month for ¼ page ad, $850.00 per month for ½ page ad and $1,800.00 per month for a full-page ad. It was felt that a ¼ page ad could be used in the beginning. Dr. Murray will get back with the Executive Committee regarding the prices for the remote regions. Mike Falash will need to know where the phones are being installed for the final plans. Dr. Seabourn will send a copy of the plans to Gary Westcott to help finalize the phone locations.

E. MARKETING: This issue will be addressed at a later date.

F. MRI NEGOTIATIONS: A formal proposal has not yet been offered. The recently scheduled meeting was cancelled due to Paul DeWitt's surgery. Dr. Prochaska stated that he would look at the basic points of the proposed contract and meet with Drs. Traughber, Hall and Seabourn to discuss them. It is difficult for Dr. Prochaska to discuss too much due to his position on the MRI Board. He did state that the process of obtaining an agreement is as important as the end result. Dr. Seabourn would like the Group to give a set of goals and desires to obtain with the MRI Board. Dr. Hall felt that the Group will be competing with the MRI Center of Idaho and this will either tear them apart or bring them closer. Dr. Prochaska stated that the Group needs to be unified so as not to tear them apart and casting a vote twice in a voting and decision making process may help in this endeavor. Both the Group and the MRI Board must be willing to give up certain things to work together. Dr. Giles raised the question as to what can the Group bring to the MRI Board that will help to persuade the Board that it is important to partner with the Group. The Group felt that they

# MRI EXECUTIVE MEETING MINUTES

DATE: June 16, 1999

PRESENT: Marty Hutson, CFO, Holy Rosary Hospital
James M. Prochaska, M.D.
Thomas E. Henson, M.D.
David J. Giles, M.D.
J. Roger Curran, M.D.
John M. Havlina, Jr., M.D.
Jeffrey Cliff, Practice Management, Inc.
Paul DeWitt, Practice Management, Inc.
Sandra Bruce, President & CEO, Saint Alphonsus Regional Medical Center
Cindy Schamp, COO, Saint Alphonsus Regional Medical Center
Milt Kutsurelis, Executive Vice President, Mercy Medical Center
Mark Adams, CEO, West Valley Medical Center

ABSENT:

RECORDING: Paul DeWitt, Practice Management, Inc.

DISCUSSION: The board discussed the ongoing negotiations with Saint Alphonsus Radiology Group for the MRI portion of an independent imaging center located in Boise.

The items discussed included:

1: The purchase of an equity position in MRI Associates by SARG.
2: The lease of space for the MRI portion of the imaging center.
3: Additional imaging centers.
4: Management fee for the imaging center.
5: Shift in management of the imaging center.
6: Amortization of capital improvements paid out of cash flow.

**The purchase of an equity position in MRI Associates by SARG**:

The board was asked to consider a purchase price for SARG to obtain an ownership percentage equivalent to a member in Doctors Corp. after the buy in. It was noted that the four physician partners have tendered an offer to Dr. Tom Henson for his general partner share in the amount of $1,200,000. One possible method suggested was to use 900,000 or 1,000,000 as a base purchase price and increase or decrease that amount by 20% depending on an appraisal to be obtained by the hospital partners. The hospitals stated that they could not agree to any number without an independent appraisal. The hospitals are required to have an independent appraisal for any joint venture with physicians to determine proper FMV. Cindy Schamp stated she could have an appraisal by next board meeting. The hospitals also raised a concern about who should pay for the

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J. Roger Curran, M.D.
CEO, MRI of Idaho

David J. Giles, M.D.
Medical Director, MRI Center of Idaho

## Confidential Draft for Discussion

### Restructuring of MRI Associates General Partnership

**Summary of Key Findings**

1) To ensure the stability of its imaging business, SARMC needs to provide a long-term equity incentive opportunity for its radiologists; at present, this objective can only be achieved within the framework of MRI Associates (the "Partnership")

2) Current staff radiologists do not view participation in MRI Associates as an attractive long-term equity incentive due to economic uncertainty with MRI Mobile ("Mobile") and political concerns regarding Doctors Magnetic Resonance, Inc. ("DMR")

3) The key to restructuring the Partnership is control of Board of Directors, of which DMR currently has 50 percent of the available votes

4) Any restructuring of the Partnership is unlikely to occur without a buy-out of *100 percent of DMR's Partnership interest*

5) Purchase of DMR's partnership interest appears financially attractive, albeit potentially inflated given the aggressive rate/volume projections of Mobile's management

6) Developing a restructuring plan is complicated by differing economic and/or political objectives of the General Partner ("GP") members, and potential legal challenges by Limited Partner ("LP") members of Mobile and MRI Idaho ("Idaho")

7) Depending on the specific restructuring plan, Mobile may no longer be a financial viable entity with its current capital structure

8) A complete liquidation of the Partnership may prove to be an attractive alternative to a restructuring scenario, although the financial implications to GP members have not been fully assessed

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# OPERATING AGREEMENT

OF

# INTERMOUNTAIN MEDICAL IMAGING, LLC

EXHIBIT

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OFFICE OF THE CFO

interest in the MRI operation as provided in Section 7.3.2. If and when Diversified Care acquires a 50% interest in the MRI operation, this Agreement will apply to the ownership, operation and management of both the MRI and non-MRI operations of the Company.

**1.2. Formation.** ICR formed the Company pursuant to the Act by filing Articles of Organization on July 23, 1999. By execution of this Agreement, Diversified Care is admitted as a Member of the Company effective as of the date of this Agreement. Upon the request of the Managing Committee or as required by law, the parties shall promptly execute all amendments of the Articles of Organization and all other documents that are needed to enable the Managing Committee to accomplish all filing, recording, publishing and other acts necessary or appropriate to comply with all requirements for the operation of the Company under the Act.

**1.3. Intent.** It is the intent of the Members that the Company be operated in a manner consistent with its treatment as a "partnership" for federal and state income tax purposes. It is also the intent of the Members that the Company not be operated or treated as a "partnership" for purposes of Section 303 of the Federal Bankruptcy Code. No Member shall take any action inconsistent with the express intent of the parties hereto as set forth herein.

**1.4. Definitions.** Capitalized terms used in this Agreement are defined in Article 2.

## ARTICLE 2 DEFINITIONS

The following terms used in this Agreement shall have the meanings described below:

**2.1. "Act"** shall mean the Idaho Limited Liability Company Act, Idaho Code, Title 53, Chapter 6, as may be amended from time to time.

**2.2. "Adjusted Basis"** shall have the meaning given such term in Section 1011 of the Code.

**2.3. "Adjusted Capital Account Deficit"** means with respect to any Member, the deficit balance, if any, in that Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (i) credit to that Capital Account the amount by which that Member is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and (i)(5); and (ii) debit to that Capital Account the items described in paragraphs (4), (5) and (6) in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations. This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted and applied consistently therewith.

vote. MRIA provides MRI services through two limited partnerships, MRI Center of Idaho LP ("MRICI") whose primary operations are the provision of MRI services on the campus of SARMC and MRI Mobile LP ("MRIM") which provides mobile MRI imaging on routes throughout Idaho and into Oregon, Washington and Nevada.

The radiology group associated with St. Alphonsus, Gem State Radiology ("GSR"), does the reads for the magnets on the SARMC campus but does not share in the profitability of the facility, which is a source of significant aggravation to GSR. This situation may be further exacerbated by the fact that two of the physician general partners were founding members of GSR. SARMC would like to share ownership of the magnets on its campus with GSR and enter into additional joint ventures in adjoining communities with the practice. Unfortunately, the non-compete agreement contained in General Partnership Agreement for MRIA precludes SARMC from doing so.

SARMC has been exploring ways to exit MRIA but has met resistance from the other general partners, particularly the physicians, and from Jack Floyd, the recently appointed CEO of MRIA. (Reasons for this resistance are discussed later in the memorandum.) From the correspondence provided, SARMC is frustrated with the situation and is strongly considering simply withdrawing from MRIA and competing with the exiting MRI facilities on its own campus after the end of the one-year non-compete agreement. *SARMC has been advised by* counsel that this option would likely engender litigation with MRIA.

SHP has been engaged by SARMC to prepare a Strategic Options Assessment ("SOA") regarding the options available for achieving their objectives of owning the facilities on their campus and being permitted to enter into additional joint venture MRI facilities with GSR. Further, SARMC has made it clear that they cannot use any funds of St. Alphonsus, nor can they incur debt, to achieve these objectives. As per the engagement agreement, SHP must deliver the SOA by October 21, 2001. Following the completion of the SOA, SHP will advise SARMC on a potential transaction involving that ownership stake.

## Ownership and Operations of MRI Associates GP and Affiliates

*Ownership Structure*

Shattuck Hammond Partners

Presentation of Strategic Options of
MRIA Ownership Interest for

**St. Alphonsus**
**Regional Medical Center**

November 6, 2001

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Office of the CFO

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EXHIBIT
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## Overview of MRIA and Affiliates

### Overview

- MRIA is a general partnership that delivers fixed and mobile MRI services through two limited partnerships, MRICI and MRIM.
  - MRIA has no assets and provides no services directly. Instead, MRIA derives revenue from management fees charged to MRICI and MRIM equal to approximately 7.5% of revenue. In addition, MRIA receives distributions for its direct ownership interests in MRICI and MRIM.
  - MRICI's operations consist, primarily, of the provision of MRI services on the SARMC campus, where it owns two magnets. MRIM (discussed below) leases services from employees of MRICI.
  - MRIM began by offering mobile MRI services to the other hospitals within the general partnership. These mobile magnets have since been replaced with fixed magnets but the relationship remains with MRIM. In addition, MRIM runs routes throughout Idaho and into Oregon, Washington and Nevada and plans further expansion in Montana.

### Ownership

- MRIA, MRICI and MRIM (collectively the "Entities") are principally owned by four area health systems (including SARMC), and a physician investor group, Doctors Magnetic Resonance, Inc. ("DMR") A brief description of each shareholder follows.
  - **St. Alphonsus Regional Medical Center:** SARMC primarily consists of a 281-bed facility in Boise, ID. It is a member of Trinity Health (formerly a member of Holy Cross Health System prior to its merger with Mercy) and is the designated trauma center in the Boise region.
  - **MedNow:** MedNow is a for-profit, wholly-owned subsidiary of Mercy Medical Center, Nampa, a Catholic Health Initiatives facility.

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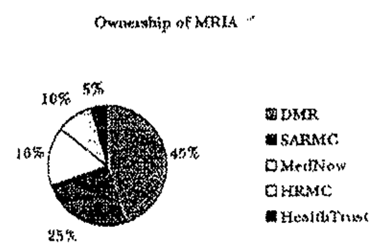
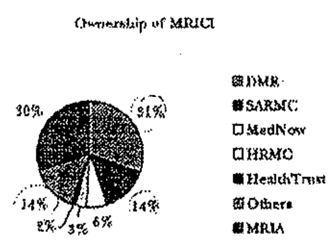
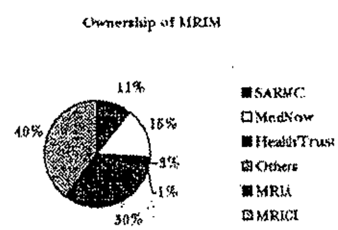
## Overview of MRIA and Affiliates (cont'd)

- The ownership structures of MRIA and its affiliates are presented below:

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St. Alphonsus – MRIA
Restructure Proposal
Discussion Outline w/ Dr. Curran

1. Objective:

   - SARMC desires to make an offer to acquire all non-SARMC interests in MRICI. Discuss process of MRIA collapse and exchange of MRIM units (collectively, the "Transaction").

   - As previously described, SARMC's primary motivation in pursuing the process to restructure the MRIA partnerships, is to allow SARMC to enter into a fully aligned partnership with the radiology group, IMI.

   - In order for SARMC to execute the Transaction that gives it complete ownership of MRICI, it must have simultaneously negotiated a transaction with the IMI physicians to buy into/merge their facilities with MRICI.

   - Therefore, the valuation of MRICI must be agreed upon by SARMC, DMR and IMI, as well as the other MRIA partners.

2. Desired Process:

   - Shattuck Hammond needs to update its financial model with the final year-end results for MRIA, MRICI and MRIM.

   - Shattuck Hammond needs to reconfirm its forecast assumptions given current market conditions.

   - In order to assure that the forecast assumptions are in line with what would be acceptable to IMI to buy into MRICI, Shattuck Hammond would like to get the permission of the DMR physicians to review our conclusions on forecasted volume trends, reimbursement trends, expense assumptions, discount rates and terminal values – and consequently a derived valuation range – with Jeff Cliff.

   - If this range is generally agreeable to Jeff Cliff, SARMC would present the values of MRIA, MRICI and MRIM to DMR and present a proposal of how the partnerships could be restructured to provide SARMC complete ownership of MRICI and dispose of its ownership interest in MRIM.

   - Consummation of the transaction will still be dependent upon SARMC and IMI simultaneously effecting a merger transaction of the MRICI and IMI businesses.

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**Saint Alphonsus**
Regional Medical Center

February 24, 2004

**Via Hand Delivery**

J. Roger Curran, M.D.
Chairman, Board of Partners
MRI Associates
4227 Tio Lane
Nampa, Idaho 83686

Re: Notice of Withdrawal

Dear Dr. Curran:

For numerous reasons Saint Alphonsus Diversified Care, Inc. ("SADC") has decided to withdraw as a partner in MRI Associates, Inc. Saint Alphonsus has on four occasions tried to buy the MRI Center of Idaho operations and achieve a mutual agreeable withdrawal from MRI Associates. This has been done at great expense to Saint Alphonsus and without success. Recent experience suggests that further attempts will likewise not be successful.

Saint Alphonsus therefore concludes that it is compelled to withdraw from the MRI Associates. Please consider this letter as notice, pursuant to Idaho Code Section 53-3-601 as Saint Alphonsus' express will to withdraw effective as of April 1, 2004. Upon Saint Alphonsus' dissociation on the date described above, MRI Associates is obligated to purchase Saint Alphonsus' interest in compliance with Idaho Code Section 53-3-701. The buyout price is equal to the greater of the amount that would be distributed to Saint Alphonsus if the partnership were liquidated as of withdrawal date or the value based on a sale of the entire business as a going concern without Saint Alphonsus as a partner and the business wound up as of that date. Please consider this letter as a demand for payment at that price.

Pursuant to Idaho Code Section 53-3-701(e), if we are unable to agree upon a price for Saint Alphonsus' interest within 120 days from the date of this demand for payment, then MRI Associates is obligated to pay to Saint Alphonsus the amount MRI Associates estimates is due, plus interest. That estimate must be accompanied by the items identified



EXHIBIT
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021657

MRI Mobile
MRI Center of Idaho
The Image of Excellence

March 5, 2004

CONFIDENTIAL SETTLEMENT
OFFER MADE PURSUANT TO I.R.E 408

Sandra Bruce
Chief Executive Officer
St. Alphonsus Regional Medical Center
1055 North Curtis Road
Boise, ID 83706

**Re: MRI Associates**

Dear Sandra:

MRI Associates ("MRIA") has received your letter of withdrawal from MRIA which discussed your perception that the transaction you desire could not be achieved. We are concerned that the withdrawal of St. Alphonsus Regional Medical Center ("SARMC") from MRIA could lead to litigation. In order to avoid such a result, and before MRIA responds formally to that letter, MRIA wanted to offer SARMC the opportunity to purchase the MRI Center of Idaho ("MRI Center") and to sell its interest in MRI Mobile Limited Partnership ("MRI Mobile"). This is the transaction that you proposed and the one that we have been investigating. As you know, MRIA has employed professionals to analyze its business in order to determine a reasonable and fair value for both MRI Center and MRI Mobile. That analysis has now been completed and the MRIA Board of Partners has unanimously directed us to present this offer to SARMC.

MRI Center. MRIA hereby offers to sell the MRI Center to SARMC based on a valuation of MRI Center of $35,000,000 exclusive of its interest in MRI Mobile. After adjustment for SARMC's combined partnership interests (i.e., GP and LP interests) this would require a $27,440,000 payment by SARMC. That payment would be reduced by the purchase price for MRI Mobile discussed in the next paragraph. The valuation was determined on an "as is" basis with SARMC as a partner and without consideration of the savings that SARMC may experience from its existing infrastructure.

MRI Mobile. MRIA hereby offers, in conjunction with the sale of the MRI Center to SARMC, to purchase SARMC's interests in MRI Mobile based on a valuation of MRI Mobile of $15,000,000. Therefore, the amount that MRIA

849 North Curtis Road
Boise, ID 83706
(208) 947-7000
(800) 657-6674
Fax: 208 947-7001
Fax: 800 657-6410
www.mrimobile.com
www.mricenterofidaho.com

EXHIBIT
4332

FTI

# Expert Report of Bruce P. Budge

*Saint Alphonsus Diversified Care, Inc., Plaintiff*
*v.*
*MRI Associates, LLP, Defendant*

*MRI Associates, LLP, Counterclaimant*
*v.*
*Saint Alphonsus Diversified Care, Inc. et al., Counterdefendants*

*MRI Associates, LLP, Third Party Plaintiff*
*v.*
*Intermountain Medical Imaging, LLC et al., Third Party Defendants*

District Court of the Fourth Judicial District of the State of Idaho, In and For the County of ADA
No. CV OC 0408219D

March 12, 2007

EXHIBIT
4417

Confidential

## MRIA Damages – From IMI Downtown

| | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | Total |
|---|---|---|---|---|---|---|---|---|---|
| **Lost Scans** | 434 | 2,033 | 3,011 | 2,600 | 2,180 | 1,950 | 1,667 | 1,548 | 15,423 |
| **Lost Profits** | $ 252,749 | $ 1,254,972 | $ 1,927,852 | $ 1,566,169 | $ 1,375,115 | $ 1,274,214 | $ 963,754 | $ 805,507 | $ 9,420,332 |

## MRIA Damages – From IMI Meridian

| | 2002 | 2003 | 2004 | 2005 | 2006 | Total |
|---|---|---|---|---|---|---|
| **Lost Scans** | 1,184 | 2,340 | 2,832 | 2,989 | 3,069 | 12,414 |
| **Lost Profits** | ($1,542,722) | $ 1,249,386 | $ 1,608,108 | $ 1,711,793 | $ 1,523,221 | $ 4,549,786 |

## MRIA Damages – From IMI SARMC

| | 2005 | 2006 | Total |
|---|---|---|---|
| **Lost Scans** | 62 | 2,922 | 2,984 |
| **Lost Profits** | $ 29,420 | $ 1,383,649 | $ 1,413,069 |

# CERTIFICATE OF ASSUMED BUSINESS NAME

**(Please type or print legibly. See instructions on reverse.)**

To the SECRETARY OF STATE, STATE OF IDAHO
Pursuant to Section 53-504, Idaho Code, the undersigned gives notice of adoption of an Assumed Business Name.

1. The assumed business name which the undersigned use(s) in the transaction of business is:

   MRI Center of Idaho

2. The true name(s) and business address(es) of the entity or individual(s) doing business under the assumed business name is/are:

| Name | Complete Address |
|---|---|
| MRI Limited Partnership | 949 North Curtis Road |
| | Boise, Idaho 83706 |

3. The general type of business transacted under the assumed business name is:
   (mark only those that apply)

| | | |
|---|---|---|
| [x] Retail Trade | [ ] Manufacturing | [ ] Transportation and Public Utilities |
| [x] Wholesale Trade | [ ] Agriculture | [ ] Finance, Insurance, and Real Estate |
| [X] Services | [ ] Construction | [ ] Mining |

4. The name and address to which future correspondence should be addressed: Phone number (optional): ____________

   Jeffrey R. Cliff
   P.O. Box 8359
   Boise, Idaho 83707

5. Name and address for this acknowledgment copy is (if other than # 4 above):

   Same

Signature: Karl Kurtz

Printed Name: Karl Kurtz

Capacity: Member, Board of Partners

(see instruction # 8 on back of form)

Submit Certificate of Assumed Business Name and **$20.00** fee to:

Secretary of State
700 West Jefferson
Basement West
PO Box 83720
Boise ID 83720-0080
208 334-2301

**Secretary of State use only**

Revision 1/98

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