

12-14-2011

Hansen v. Roberts Clerk's Record v. 1 Dckt. 38904

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Hansen v. Roberts Clerk's Record v. 1 Dckt. 38904" (2011). *Idaho Supreme Court Records & Briefs*. 3692.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3692

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

Vol. 1 of 5

LAW CLERK IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

LARRY HANSEN

Plaintiff and

VOL. I of III

Appellant vs.

MATTHEW ROBERTS

Defendant and

Respondent

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. William H. Woodland, District Judge

Jordan S. Ipsen/Brent Gordon, GORDON LAW FIRM

477 Shoup Ave., Ste. 101, Idaho Falls, ID 83402

Attorney for Appellant

Jennifer Brizee, POWERS TOLMAN, PLLC

PO Box 1276, Twin Falls, ID 83303-1276

Attorney for Respondent

Filed this day of 20

DEC 14 2011

38904

Clerk

Supreme Court By

Deputy

IN THE SUPREME COURT OF THE STATE OF IDAHO

LARRY HANSEN,)	
)	
Plaintiff/Appellant,)	Supreme Court Docket No. 38904-2011
)	
vs.)	Bonneville County Case No. CV-2009-3163
)	Madison County Case No. CV-2009-585
MATTHEW ROBERTS,)	
)	VOLUME I of III
Defendant/Respondent.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE WILLIAM H. WOODLAND, District Judge.

Attorney for Appellant

Attorney for Respondent

Jordan S. Ipsen
GORDON LAW FIRM
477 Shoup Ave., Ste. 101
Idaho Falls, ID 83402

Jennifer Brizee
POWERS TOLMAN, PLLC
PO Box 1276
Twin Falls, ID 83303-1276

TABLE OF CONTENTS

	Page
ROA Report, printed October 20, 2011	Vol. I - 1
CV-09-585 Claim, filed August 3, 2009	Vol. I - 11
CV-09-585 Answer, filed September 18, 2009	Vol. I - 12
Complaint, filed May 26, 2009	Vol. I - 13
Stipulation and Order to Consolidate, entered October 14, 2009	Vol. I - 17
Notice of Service of Discovery Document, filed December 22, 2009	Vol. I - 19
Notice of Service of Discovery Document, filed December 22, 2009	Vol. I - 21
Answer to Complaint and Demand for Jury Trial, filed January 12, 2010	Vol. I - 23
Notice of Service of Discovery Document, filed February 9, 2010	Vol. I - 30
Notice of Service of Discovery Document, filed February 9, 2010	Vol. I - 32
Order Setting Trial and Pre-trial Conference, filed April 2, 2010	Vol. I - 34
Defendant’s Disclosure of Expert Witnesses, filed July 21, 2010	Vol. I - 38
Defendant’s Supplemental Disclosure of Expert Witnesses, filed August 4, 2010	Vol. I - 43
Notice of Taking Deposition Duces Tecum of Larry Hansen, filed August 19, 2010	Vol. I - 48
Amended Notice of Taking Deposition Duces Tecum of Larry Hansen, filed August 24, 2010 ..	Vol. I - 53
Second Amended Notice of Taking Deposition Duces Tecum of Larry Hansen, filed August 31, 2010	Vol. I - 59
Motion to Strike Plaintiff’s Experts, or, in the Alternative, Motion to Compel Discovery Responses, filed September 7, 2010	Vol. I - 64
Memorandum in Support of Defendant’s Motion to Strike Experts, or, in the Alternative, to Compel Discovery Responses, filed September 7, 2010	Vol. I - 66

Affidavit of Jennifer K. Brizee in Support of Motion to Strike Plaintiff’s Experts, or, in the Alternative, Motion to Compel Discovery Responses filed on or about September 7, 2010..... Vol. I - 71

Notice of Hearing on Motion to Strike Plaintiff’s Experts, or, in the Alternative, Motion to Compel Discovery Responses filed on or about September 7, 2010 Vol. I - 79

Minute Entry, dated September 13, 2010 Vol. I - 81

Order Compelling Supplemental Expert Witness Discovery filed on or about September 15, 2010 Vol. I - 83

Certificate of Service, filed September 22, 2010 Vol. I - 85

Notice of Service of Discovery Document, filed September 24, 2010 Vol. I - 86

Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or in the Alternative, to Compel Discovery Responses, filed October 1, 2010 Vol. I - 88

Memorandum in Support of Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Responses, filed October 1, 2010..... Vol. I - 90

Affidavit of Jennifer K. Brizee in Support of Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Reponses, filed October 1, 2010 Vol. I - 96

Affidavit of Judy Graf in Support of Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Reponses, filed October 1, 2010 Vol. I - 105

Notice of Hearing on Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Reponses, filed October 1, 2010 Vol. I - 108

Defendant’s Second Supplemental Disclosure of Expert Witnesses, filed October 1, 2010..... Vol. I - 110

Notice of Service of Discovery Document, filed October 1, 2010..... Vol. I - 115

Minute Entry, dated October 5, 2010 Vol. I - 117

Notice of Service of Discovery Document, filed October 5, 2010..... Vol. I - 119

Defendant’s Motion in Limine, filed October 5, 2010 Vol. I – 121

Notice of Hearing on Defendant’s Motions in Limine, filed October 5, 2010..... Vol. I - 125

Joinder, filed October 5, 2010 Vol. I - 127

Defendant’s Requested Jury Instructions and Special Verdict, filed October 5, 2010..... Vol. I - 129

Notice of Taking Deposition Duces Tecum of Heidi Michelsen-Jost, M.D., filed October 6, 2010	Vol. I - 131
Plaintiff's First Motion in Limine, filed October 8, 2010.....	Vol. I - 134
Amended Minute Entry, dated October 5, 2010	Vol. I - 139
Notice of Service of Discovery Document, filed October 12, 2010.....	Vol. I - 141
Defendant's Memorandum in Opposition to Plaintiff's First Motion in Limine, filed October 12, 2010	Vol. I - 143
Defendant's Amended Requested Jury Instructions, filed October 12, 2010	Vol. I - 151
Order Denying Defendant's Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, and Order Compelling Plaintiff to Produce Requested Tax Returns, filed October 12, 2010	Vol. I - 153
Minute Entry on Pre-trial Conference, dated October 13, 2010	Vol. I - 155
Plaintiff's Objections to Defendant's Proposed Jury Instructions, filed October 15, 2010.....	Vol. I - 158
Defendant's Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement, filed October 18, 2010	Vol. I - 162
Affidavit of Douglas G. Abenroth in Support of Defendant's Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement, filed October 18, 2010.....	Vol. I - 168
Order, entered October 22, 2010	Vol. I - 176
Order Regarding Defendant's Motions in Limine, filed October 24, 2010	Vol. I - 178
Notice of Audio-Visual Deposition of Matthew Roberts to Perpetuate Trial Testimony, filed November 9, 2010	Vol. I - 181
Motion to Strike Portion of Matthew Roberts' Video Trial Testimony, filed December 3, 2010.....	Vol. I - 183
Memorandum in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony, filed December 3, 2010	Vol. I - 185
Affidavit of Jennifer K. Brizee in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony, filed December 3, 2010.....	Vol. I - 191
Notice of Hearing on Motion to Strike Portion of Matthew Roberts' Video Trial Testimony, filed December 3, 2010.....	Vol. I - 202

Special Verdict Form, entered December 15, 2010	Vol. I - 204
Affidavit of Jennifer K. Brizee in Support of Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees, filed March 21, 2011.....	Vol. II - 207
Objection to Allowance of Attorney Fees and Costs, filed April 5, 2011	Vol. III - 459
Judgment Upon Special Verdict, filed April 26, 2011.....	Vol. III - 472
Notice of Appeal, filed June 3, 2011	Vol. III - 475
Memorandum Decision and Order RE; Motion for Fees and Costs, entered May 20, 2011....	Vol. III - 482
Clerk's Certificate of Appeal, dated June 9, 2011	Vol. III -487
Request for Additional Reporter's Transcript and Clerk's Record on Appeal, filed June 17, 2011	Vol. III - 488
Amended Request for Additional Reporter's Transcript and Clerk's Record on Appeal, filed July 13, 2011	Vol. III - 494
Amended Judgment Upon Special Verdict, entered July 15, 2011.....	Vol. III - 500
Lodging Letter, dated October 13, 2011	Vol. III - 503
Lodging Letter, dated October 14, 2011	Vol. III - 504
Certification of Exhibits, dated October 20, 2011	Vol. III - 505
Clerk's Certificate, dated October 20, 2011	Vol. III - 507
Certificate of Service	Vol. III - 508

INDEX

Page

Affidavit of Douglas G. Abenroth in Support of Defendant’s Memorandum in Opposition to Plaintiff’s Motion in Limine/Objection to Opening Statement, filed October 18, 2010..... Vol. I - 168

Affidavit of Jennifer K. Brizee in Support of Matthew Roberts’ Memorandum of Costs, Disbursements and Attorney’s Fees, filed March 21, 2011..... Vol. II - 207

Affidavit of Jennifer K. Brizee in Support of Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Reponses, filed October 1, 2010 Vol. I - 96

Affidavit of Jennifer K. Brizee in Support of Motion to Strike Plaintiff’s Experts, or, in the Alternative, Motion to Compel Discovery Responses filed on or about September 7, 2010..... Vol. I - 71

Affidavit of Jennifer K. Brizee in Support of Motion to Strike Portion of Matthew Roberts’ Video Trial Testimony, filed December 3, 2010..... Vol. I - 191

Affidavit of Judy Graf in Support of Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Reponses, filed October 1, 2010 Vol. I - 105

Amended Judgment Upon Special Verdict, entered July 15, 2011..... Vol. III - 500

Amended Minute Entry, dated October 5, 2010 Vol. I - 139

Amended Notice of Taking Deposition Duces Tecum of Larry Hansen, filed August 24, 2010.. Vol. I - 53

Amended Request for Additional Reporter’s Transcript and Clerk’s Record on Appeal, filed July 13, 2011 Vol. III - 494

Answer to Complaint and Demand for Jury Trial, filed January 12, 2010 Vol. I - 23

Certificate of Service Vol. III – 508

Certificate of Service, filed September 22, 2010 Vol. I - 85

Certification of Exhibits, dated October 20, 2011 Vol. III - 505

Clerk’s Certificate of Appeal, dated June 9, 2011 Vol. III -487

Clerk’s Certificate, dated October 20, 2011 Vol. III - 507

Complaint, filed May 26, 2009..... Vol. I - 13

CV-09-585 Answer, filed September 18, 2009	Vol. I - 12
CV-09-585 Claim, filed August 3, 2009	Vol. I - 11
Defendant’s Amended Requested Jury Instructions, filed October 12, 2010	Vol. I - 151
Defendant’s Disclosure of Expert Witnesses, filed July 21, 2010	Vol. I - 38
Defendant’s Memorandum in Opposition to Plaintiff’s First Motion in Limine, filed October 12, 2010	Vol. I - 143
Defendant’s Memorandum in Opposition to Plaintiff’s Motion in Limine/Objection to Opening Statement, filed October 18, 2010	Vol. I - 162
Defendant’s Motion in Limine, filed October 5, 2010	Vol. I – 121
Defendant’s Requested Jury Instructions and Special Verdict, filed October 5, 2010.....	Vol. I - 129
Defendant’s Second Supplemental Disclosure of Expert Witnesses, filed October 1, 2010.....	Vol. I - 110
Defendant’s Supplemental Disclosure of Expert Witnesses, filed August 4, 2010	Vol. I - 43
Joinder, filed October 5, 2010	Vol. I - 127
Judgment Upon Special Verdict, filed April 26, 2011.....	Vol. III - 472
Lodging Letter, dated October 13, 2011	Vol. III - 503
Lodging Letter, dated October 14, 2011	Vol. III - 504
Memorandum Decision and Order RE; Motion for Fees and Costs, entered May 20, 2011....	Vol. III - 482
Memorandum in Support of Defendant’s Motion to Strike Experts, or, in the Alternative, to Compel Discovery Responses, filed September 7, 2010	Vol. I - 66
Memorandum in Support of Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Responses, filed October 1, 2010.....	Vol. I - 90
Memorandum in Support of Motion to Strike Portion of Matthew Roberts’ Video Trial Testimony, filed December 3, 2010	Vol. I - 185
Minute Entry on Pre-trial Conference, dated October 13, 2010	Vol. I - 155
Minute Entry, dated October 5, 2010	Vol. I - 117

Minute Entry, dated September 13, 2010	Vol. I - 81
Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or in the Alternative, to Compel Discovery Responses, filed October 1, 2010	Vol. I - 88
Motion to Strike Plaintiff’s Experts, or, in the Alternative, Motion to Compel Discovery Responses, filed September 7, 2010.....	Vol. I - 64
Motion to Strike Portion of Matthew Roberts’ Video Trial Testimony, filed December 3, 2010.....	Vol. I - 183
Notice of Appeal, filed June 3, 2011	Vol. III - 475
Notice of Audio-Visual Deposition of Matthew Roberts to Perpetuate Trial Testimony, filed November 9, 2010	Vol. I - 181
Notice of Hearing on Defendant’s Motions in Limine, filed October 5, 2010.....	Vol. I - 125
Notice of Hearing on Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, or, in the Alternative, to Compel Discovery Responses, filed October 1, 2010	Vol. I - 108
Notice of Hearing on Motion to Strike Plaintiff’s Experts, or, in the Alternative, Motion to Compel Discovery Responses filed on or about September 7, 2010	Vol. I - 79
Notice of Hearing on Motion to Strike Portion of Matthew Roberts’ Video Trial Testimony, filed December 3, 2010.....	Vol. I - 202
Notice of Service of Discovery Document, filed December 22, 2009	Vol. I - 19
Notice of Service of Discovery Document, filed December 22, 2009	Vol. I - 21
Notice of Service of Discovery Document, filed February 9, 2010	Vol. I - 30
Notice of Service of Discovery Document, filed February 9, 2010	Vol. I - 32
Notice of Service of Discovery Document, filed October 1, 2010.....	Vol. I - 115
Notice of Service of Discovery Document, filed October 12, 2010.....	Vol. I - 141
Notice of Service of Discovery Document, filed October 5, 2010.....	Vol. I - 119
Notice of Service of Discovery Document, filed September 24, 2010	Vol. I - 86

Notice of Taking Deposition Duces Tecum of Heidi Michelsen-Jost, M.D., filed October 6, 2010	Vol. I - 131
Notice of Taking Deposition Duces Tecum of Larry Hansen, filed August 19, 2010	Vol. I - 48
Objection to Allowance of Attorney Fees and Costs, filed April 5, 2011	Vol. III - 459
Order Compelling Supplemental Expert Witness Discovery filed on or about September 15, 2010	Vol. I - 83
Order Denying Defendant’s Motion to Strike Dr. Jost and Plaintiff’s Wage Loss Claim, and Order Compelling Plaintiff to Produce Requested Tax Returns, filed October 12, 2010	Vol. I - 153
Order Regarding Defendant’s Motions in Limine, filed October 24, 2010	Vol. I - 178
Order Setting Trial and Pre-trial Conference, filed April 2, 2010	Vol. I - 34
Order, entered October 22, 2010	Vol. I – 176
Plaintiff’s First Motion in Limine, filed October 8, 2010.....	Vol. I - 134
Plaintiff’s Objections to Defendant’s Proposed Jury Instructions, filed October 15, 2010.....	Vol. I – 158
Request for Additional Reporter’s Transcript and Clerk’s Record on Appeal, filed June 17, 2011	Vol. III - 488
ROA Report, printed October 20, 2011.....	Vol. I - 1
Second Amended Notice of Taking Deposition Duces Tecum of Larry Hansen, filed August 31, 2010	Vol. I - 59
Special Verdict Form, entered December 15, 2010	Vol. I - 204
Stipulation and Order to Consolidate, entered October 14, 2009	Vol. I - 17

Larry Hansen vs. Matthew Roberts

Date	Code	User	Judge
5/26/2009	SMIS	ROBBINS	Summons Issued Gregory S. Anderson
	NCOC	ROBBINS	New Case Filed-Other Claims Gregory S. Anderson
	NOAP	ROBBINS	Plaintiff: Hansen, Larry Notice Of Appearance Jordan S. Ipsen Gregory S. Anderson
		ROBBINS	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Ipsen, Jordan S. (attorney for Hansen, Larry) Receipt number: 0023577 Dated: 5/27/2009 Amount: \$88.00 (Check) For: Hansen, Larry (plaintiff) Gregory S. Anderson
9/22/2009	NOAP	KESTER	Defendant: Roberts, Matthew Notice Of Special Appearance Jennifer Kauth Brizee Gregory S. Anderson
		KESTER	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Brizee, Jennifer Kauth (attorney for Roberts, Matthew) Receipt number: 0043672 Dated: 9/22/2009 Amount: \$58.00 (Check) For: Roberts, Matthew (defendant) Gregory S. Anderson
9/25/2009	MOTN	DOOLITTL	Motion to Consolidate and Memorandum in Support Gregory S. Anderson
10/14/2009	STIP	LMESSICK	Stipulation and Order to Consolidate Gregory S. Anderson
10/21/2009		DOOLITTL	MADISON COUNTY CASE CV-09-585 IS CONSOLIDATED WITH CV-09-3163. PUT ALL FILINGS IN DISTRICT CASE Gregory S. Anderson
11/23/2009	MISC	WOOLF	Certificate of Service (P's Interrogatories and Request for Production of Documents) Gregory S. Anderson
11/24/2009	NOTC	WOOLF	Notice of Change of Firm Name from Tolman & Brizee, P.C. to Powers Tolman, PLLC Gregory S. Anderson
2/22/2009	NTOS	DOOLITTL	Notice Of Service of Discovery Document (Defendant's Responses to Plaintiff's 1st Set of Requests for Admissions) Gregory S. Anderson
	NTOS	DOOLITTL	Notice Of Service of Discovery Document (Defendant's Answers and Responses to Plaintiff's 1st Set of Interrogatories and Requests for Production of Documents) Gregory S. Anderson
1/12/2010	ANSW	WOOLF	Answer to Complaint and Demand for Jury Trial Gregory S. Anderson
1/9/2010	NTOS	KESTER	Notice Of Service of Discovery Documents (Defendant's First Set of Interrogatories and Rrquests for Production of Documents) Gregory S. Anderson
	NTOS	KESTER	Notice Of Service of Discovery Document (Defendant's Supplemental Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents) Gregory S. Anderson
1/18/2010	ORDR	LMESSICK	Order for Status Conference Gregory S. Anderson
	HRSC	LMESSICK	Hearing Scheduled (Status Conference 03/17/2010 09:15 AM) Gregory S. Anderson

Larry Hansen vs. Matthew Roberts

Date	Code	User		Judge
3/11/2010	CERT	DOOLITTL	Certificate Of Service (Plaintiff's Answers to Defendant's Interrogatorise, Responses to Requests for Production of Documents and Responses to Requests for Admissions)	Gregory S. Anderson
3/17/2010	CONT	LMESSICK	Hearing result for Status Conference held on 03/17/2010 09:15 AM: Continued	Gregory S. Anderson
3/19/2010	HRSC	LMESSICK	Hearing Scheduled (Status Conference 03/31/2010 08:15 AM)	Gregory S. Anderson
	ORDR	LMESSICK	2nd Order for Status Conference	Gregory S. Anderson
3/31/2010	DCHH	LMESSICK	Hearing result for Status Conference held on 03/31/2010 08:15 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: 50 pages	Gregory S. Anderson
4/2/2010	HRSC	LMESSICK	Hearing Scheduled (Pretrial Conference 10/13/2010 08:30 AM)	Gregory S. Anderson
	HRSC	LMESSICK	Hearing Scheduled (Jury Trial 10/19/2010 10:00 AM)	Gregory S. Anderson
	MINE	LMESSICK	Minute Entry Hearing type: Status Conference Hearing date: 3/31/2010 Time: 10:29 am Courtroom: Court reporter: Karen Konvalinka Minutes Clerk: Lettie Messick Tape Number:	Gregory S. Anderson
	ORPT	LMESSICK	Order Setting Pretrial Conference/trial	Gregory S. Anderson
	MEDI	LMESSICK	Order Referring Case to Mediation	Gregory S. Anderson
	JTSC	LMESSICK	Jury Trial Scheduled	Gregory S. Anderson
7/21/2010		SBARRERA	Defendant's Disclosure Of Expert Witnesses	Gregory S. Anderson
3/4/2010		DOOLITTL	Defendant's Supplemental Disclosure of Expert Witnesses (fax)	Gregory S. Anderson
3/12/2010		LYKE	Certificate of Service	Gregory S. Anderson
3/18/2010	NDDT	SBARRERA	Notice Of Taking Deposition Duces Tecum Of Larry Hansen	Gregory S. Anderson
3/24/2010	NDDT	SBARRERA	Amended Notice Of Deposition Duces Tecum Of Larry Hansen	Gregory S. Anderson
3/31/2010	NDDT	SBARRERA	Second Amended Notice Of Deposition Duces Tecum Of Larry Hansen	Gregory S. Anderson
3/7/2010	HRSC	LMESSICK	Hearing Scheduled (Motion 09/13/2010 01:00 PM) Motion to Compel	Gregory S. Anderson
	MOTN	SBARRERA	Ex-Parte Motion To Shorten Time, And Memorandum In Support	Gregory S. Anderson
	MOTN	SBARRERA	Motion To Strike Plaintiff's Experts, Or, In The Alternative Motion To Compel Discovery Responses	Gregory S. Anderson

Larry Hansen vs. Matthew Roberts

Date	Code	User		Judge
9/7/2010	AFFD	SBARRERA	Affidavit Of Jennifer K. Brizee In Support Of Motion To Strike Plaintiff's Experts, Or, In the Alternative To Compel Discovery Responses	Gregory S. Anderson
	MEMO	SBARRERA	Memorandum In Support Of Defendant's Motion To Strike Experts, Or, In The Alternative To Compel Discovery Responses	Gregory S. Anderson
	NOTC	SBARRERA	Notice Of Hearing On Defendant's Motion To Strike Plaintiff's Experts, Or, In The Alternative, Motion To Compel Discovery Responses (09/13/2010 1:00PM)	Gregory S. Anderson
9/13/2010	MINE	GWALTERS	delete	Jon J. Shindurling
	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 9/13/2010 Time: 1:03 pm Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Skye Ipsen Jennifer Brizee	Jon J. Shindurling
	DCHH	GWALTERS	Hearing result for Motion held on 09/13/2010 01:00 PM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: under 50 Motion to Compel (Shindurling)	Jon J. Shindurling
9/15/2010	ORDR	GWALTERS	Order Compelling Supplemental Expert Witness Discovery	Gregory S. Anderson
9/22/2010	CERT	DOOLITTL	Certificate Of Service 9/10 (Plaintiff's Supplemental Answers to Defendant's Interrogatories, Responses to Requests for Production of Documents and Responses to Requests for Admissions)	Gregory S. Anderson
9/24/2010	NTOS	DOOLITTL	Notice Of Service of Discovery Document (Defendant's 2nd Supplemental Answers and Responses to Plaintiff's 1st Set of Interrogatories and Requests for Production of Documents) (fax)	Gregory S. Anderson
9/30/2010	HRSC	GWALTERS	Hearing Scheduled (Motion 10/05/2010 01:30 PM) Mtn to Compel - Brizee to Ntc	Jon J. Shindurling
10/1/2010	AFFD	SBARRERA	Affidavit Of Jennifer K. Brizee In Support Of Motion To Strike Dr. Jost And Plaintiff's Wage Loss Claim, Or, In The Alternative, To Compel Discovery Responses	Gregory S. Anderson
	MEMO	SBARRERA	Memorandum In Support Of Defendant's Motion To Strike Dr. Jost And Plaintiff's Wage Loss Claim, Or, In The Alternative, To Compel Discovery Responses	Gregory S. Anderson

Larry Hansen vs. Matthew Roberts

Date	Code	User		Judge
10/1/2010	AFFD	SBARRERA	Affidavit Of Judy Graff In Support Of Motion To Strike Dr. Jost And Plaintiff's Wage Loss Claim, Or, In The Alternative, To Compel Discovery Responses	Gregory S. Anderson
	MOTN	SBARRERA	Motion To Strike Dr. Jost And Plaintiff's Wage Loss Claim, Or In The Alternative, To Compel Discovery Responses	Gregory S. Anderson
	MOTN	SBARRERA	Ex-Parte Motion To Shorten Time For Hearing Motion To Strike Dr. Jost And Plaintiff's Wage Loss Claim, Or, In The Alternative, To Compel Discovery Responses, And Memorandum In Support	Gregory S. Anderson
	NOTH	SBARRERA	Notice Of Hearing On Motion To Strike Dr. Jost And Plaintiff's Wage Loss Claim, Or In The Alternative, To Compel Discovery Responses (10/05/2010 1:30PM)	Gregory S. Anderson
	ORDR	GWALTERS	Order Shortening Time for Hrg D's Mtn to Strike or ITA to Compel (see doc for details).	Jon J. Shindurling
	MOTN	LYKE	Motion for Relief from Order Referring Case to Mediation, and Memorandum in Support	Gregory S. Anderson
	AFFD	LYKE	Affidavit of Jennifer K. Brizee in Support of Motion for Relief from Order Referring Case to Mediation	Gregory S. Anderson
	NOTH	LYKE	Notice Of Hearing on Motion for Relief from Order Referring Case to Mediation (10/05/10@1:30PM)	Gregory S. Anderson
	MOTN	LYKE	Ex Parte Motion to Shorten Time for Hearing Motion for Relief from Order Referring Case to Mediation	Gregory S. Anderson
	NTOS	LYKE	Notice Of Service of Discovery Documents	Gregory S. Anderson
		SBARRERA	Defendant's Second Supplemental Disclosure Of Expert Witnesses	Gregory S. Anderson
10/4/2010	ORDR	GWALTERS	Order Shortening Time for Hrg Mtn for Relief frm Order Referring Case to Mediation	Jon J. Shindurling
	MOTN	SOLIS	Motion To Continue Trial	Gregory S. Anderson
		SOLIS	Plaintiff's Response To Defendant's Motion To Compel Tax Returns And the Deposition Of Heidi E Michelsen-Jost MD	Gregory S. Anderson
10/5/2010	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 10/5/2010 Time: 1:43 pm Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number: Skye Ipsen Jennifer Brizee	Jon J. Shindurling

Larry Hansen vs. Matthew Roberts

Date	Code	User	Judge	
10/5/2010	DCHH	GWALTERS	Hearing result for Motion held on 10/05/2010 01:30 PM: District Court Hearing Held Court Reporter: Nancy Marlow Number of Transcript Pages for this hearing estimated: under 50 Mtn to Compel - Brizee to Ntc: Mtn for relief from mediate order - Brizee to ntc	Jon J. Shindurling
	MINE	GWALTERS	Minute Entry Hearing type: Motion Hearing date: 10/5/2010 Time: 2:26 pm Courtroom: Court reporter: Nancy Marlow Minutes Clerk: Grace Walters Tape Number:	Jon J. Shindurling
	MINE	LMESSICK	Defendant's Motions in Limine	Gregory S. Anderson
	NOTH	LMESSICK	Notice of Hearing on Defendant's Motions in Limine	Gregory S. Anderson
	NOTC	LMESSICK	Notice of Service of Discovery Document	Gregory S. Anderson
	DPJI	LMESSICK	Defendant's Requested Jury Instructions and Special Verdict	Gregory S. Anderson
		LMESSICK	Defendant's Witness List	Gregory S. Anderson
		LMESSICK	Defendant's Trial Exhibits	Gregory S. Anderson
	MEMO	LMESSICK	Defendant's Trial Memorandum	Gregory S. Anderson
		LMESSICK	Defendant's Pre-trial Statement	Gregory S. Anderson
		SOLIS	Plaintiff's Exhibit List	Gregory S. Anderson
		SOLIS	Plaintiff's Witness List	Gregory S. Anderson
		SOLIS	Plaintiff's Proposed Jury Instructions	Gregory S. Anderson
		SBARRERA	Joinder	Gregory S. Anderson
10/6/2010		LYKE	Withdraw of Motion to Strike Dr. Jost	Gregory S. Anderson
	MISC	LYKE	Defendant's Amended Trial Exhibits	Gregory S. Anderson
	NDDT	DOOLITTLE	Notice Of Deposition Duces Tecum of Heidi Michelsen-Jost, M.D.	Gregory S. Anderson
10/8/2010	MINE	GWALTERS	AMENDED Minute Entry re Mtn hrg held 11/05/10 at 1:30 PM (re Jury trial NOT VACATED). (faxed to ptys).	Jon J. Shindurling
	MOTN	SOLIS	Plaintiff's First Motion In Limine	Gregory S. Anderson
	NOTH	SOLIS	Notice Of Hearing 10/13/2010 @8:30AM RE:Plaintiff's First Motion In Limine	Gregory S. Anderson
10/12/2010	ORDR	GWALTERS	Order for Relief from Order Referring Case to Mediation: This does Order that the parties are relieved from the Order Referring Case to Mediation.	Jon J. Shindurling
	ORDR	GWALTERS	Order Denying D's Mtn to Strike and P's Wage Loss Claim, and Order Compelling P to Produce Requested Tax Returns	Jon J. Shindurling

Larry Hansen vs. Matthew Roberts

Date	Code	User		Judge
10/12/2010	NTOS	LYKE	Notice Of Service of Discovery Document	Gregory S. Anderson
	SUBR	LYKE	Subpoena Returned - Corporal Ray Hermosillo	Gregory S. Anderson
	MISC	LYKE	Defendant's Amended Requested Jury Instructions	Gregory S. Anderson
		LYKE	Defendant's Second Amended Trial Exhibits	Gregory S. Anderson
		LYKE	Defendant's Third Amended Trial Exhibits	Gregory S. Anderson
	MEMO	DOOLITTL	Defendant's Memorandum in Opposition to Plaintiff's 1st Motion In Limine (fax)	Gregory S. Anderson
10/13/2010		LMESSICK	Ex Parte Motion to Shorten Time for Hearing Motion for Order Compelling Plaintiff to Execute a Release for Unemployment Documents and for Department of Family Services Documents	Gregory S. Anderson
	NOTH	LMESSICK	Notice Of Hearing on Motion to Shorten Time for Hearing Motion for Order Compelling Plaintiff to Execute a Release for Unemployment Documents and for Department of Family Services Documents-	Gregory S. Anderson
	MOTN	LMESSICK	Motion to Shorten Time for Hearing Motion for Order Compelling Plaintiff to Execute a Release for Unemployment Documents and for Department of Family Services Documents	Gregory S. Anderson
	AFFD	LMESSICK	Affidavit of Jennifer K. Brizee in Support of Motion to Shorten Time for Hearing Motion for Order Compelling Plaintiff to Execute a Release for Unemployment Documents and for Department of Family Services Documents	Gregory S. Anderson
	MINE	LMESSICK	Minute Entry Hearing type: Pretrial Conference Hearing date: 10/13/2010 Time: 8:30 am Courtroom: Court reporter: Karen Konvalinka Minutes Clerk: Lettie Messick Tape Number:	Gregory S. Anderson
		LMESSICK	Defendant's Objection to Plaintiff's Jury Instructions	Gregory S. Anderson
10/15/2010	MOTN	LMESSICK	Defendant's Motion in Limine Re: photos and Memorandum in Support	Gregory S. Anderson
	MOTN	LMESSICK	Motion	Gregory S. Anderson
	AFFD	LMESSICK	Affidavit of Jennifer K. Brizee in Support of Defendant's Motion in Limine Re: Photos	Gregory S. Anderson
		KBAIRD	Plaintiff's objections to defendant's proposed jury instructions	Gregory S. Anderson
10/18/2010	MOTN	SBARRERA	Motion In Limine/Objection To Opening Statement	Gregory S. Anderson
		LMESSICK	Defendant's Amended Special Verdict Form	Gregory S. Anderson

Larry Hansen vs. Matthew Roberts

Date	Code	User		Judge
10/18/2010	MEMO	LMESSICK	Defendant's Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement	Gregory S. Anderson
10/19/2010	MINE	LMESSICK	Minute Entry Hearing type: Jury Trial Hearing date: 10/19/2010 Time: 10:36 am Courtroom: Court reporter: Karen Konvalinka Minutes Clerk: Lettie Messick Tape Number:	Gregory S. Anderson
10/22/2010	ORDR	LMESSICK	Order	Gregory S. Anderson
10/25/2010	ORDR	LMESSICK	Order Requiring Plaintiff to Sign Released for Wyoming Department of Employment, Wyoming Department of Family Services, and Rudd & Company, PLLC	Gregory S. Anderson
	ORDR	LMESSICK	Order Regarding Defendant's Motions in Limine	Gregory S. Anderson
11/9/2010	HRHD	GWALTERS	Hearing result for Pretrial Conference held on 10/13/2010 08:30 AM: Hearing Held	Gregory S. Anderson
	HRHD	GWALTERS	Hearing result for Jury Trial held on 10/19/2010 10:00 AM: Hearing Held	Gregory S. Anderson
	HRSC	GWALTERS	Hearing Scheduled (Jury Trial 12/15/2010 09:00 AM)	William H. Woodland
	HRSC	GWALTERS	Hearing Scheduled (Hearing 12/08/2010 10:30 AM) Jury Instruction Conference	William H. Woodland
		GWALTERS	Notice of Hearings - Conf & JT set	Gregory S. Anderson
	NOTC	LYKE	Notice of Audio-Visual Deposition of Matthew Roberts to Perpetuate Trial Testimony	Gregory S. Anderson
12/3/2010	JUDGE	MESSICK	Judge Change (batch process)	
	MOTN	LYKE	Ex Parte Motion to Shorten Time for Hearing to Strike Portion of Matthew Roberts' Video Trial Testimony	Dane H Watkins Jr
	AFFD	DOOLITTL	Affidavit of Jennifer K. Brizee in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony (fax)	Dane H Watkins Jr
	MOTN	DOOLITTL	Motion to Strike Portion of Matthew Roberts' Video Trial Testimony (fax)	Dane H Watkins Jr
	MEMO	DOOLITTL	Memorandum in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony (fax)	Dane H Watkins Jr
	NOTH	DOOLITTL	Notice Of Hearing on Motion to Strike Portion of Matthew Roberts' Video Trial Testimony (fax) 12-8-10 @ 10:30 a.m. (fax)	Dane H Watkins Jr
12/7/2010	ORDR	LMESSICK	Order Shortening Time for Hearing Motion to Strike Portion of Matthew Roberts' Video Trial Testimony	William H. Woodland

Larry Hansen vs. Matthew Roberts

Date	Code	User	Judge
12/8/2010	DCHH	SOUTHWIC	Hearing result for Hearing held on 12/08/2010 10:30 AM: District Court Hearing Held in District Jury Room (not digitally recorded) Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: Jury Instruction Conference Motion to Strike -- under 100 William H. Woodland
12/15/2010	TLST	SOUTHWIC	Hearing result for Jury Trial held on 12/15/2010 09:00 AM: Trial Started 2 day trial William H. Woodland
12/16/2010		LMESSICK	Estimate for Appeal Transcript placed in file Dane H Watkins Jr
1/4/2011		LYKE	Objection to Entry of Judgment and Motion to Strike Trial Proceedings Dane H Watkins Jr
1/10/2011	AFFD	DOOLITTL	Affidavit of Jennifer K. Brizee in Support of Defendant's Memorandum in Opposition to Plaintiff's Objection to Entry of Judgment and Motion to Strike Trial Proceedings 9fax) Dane H Watkins Jr
	MEMO	DOOLITTL	Defendant's Memorandum in Opposition to Plaintiff's Objection to Entry of Judgment and Motion to Strike Trial Proceedings (fax) Dane H Watkins Jr
1/11/2011	HRSC	LMESSICK	Hearing Scheduled (Hearing 02/03/2011 09:30 AM) Objection to Judge Dane H Watkins Jr
	HRVC	LMESSICK	Hearing result for Hearing held on 02/03/2011 09:30 AM: Hearing Vacated Objection to Judge Dane H Watkins Jr
	NOTC	LMESSICK	Notice Vacating Hearing Dane H Watkins Jr
3/1/2011	MOTN	LYKE	Motion for Entry of Judgment Dane H Watkins Jr
	NOTH	LYKE	Notice Of Hearing Re: Motion for Entry of Judgment (04/06/11@11:00AM) Dane H Watkins Jr
3/7/2011	HRSC	LMESSICK	Hearing Scheduled (Hearing 04/06/2011 11:00 AM) Post Trial Motions Dane H Watkins Jr
3/21/2011	AFFD	DOOLITTL	Affidavit of Jennifer K. Brizee in Support of Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees Dane H Watkins Jr
	MEMO	DOOLITTL	Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees Dane H Watkins Jr
	MEMO	DOOLITTL	Memorandum in Support of Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees Dane H Watkins Jr
	NOTH	DOOLITTL	Notice Of Hearing Regarding Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees Dane H Watkins Jr
4/5/2011		DOOLITTL	Objection to Allowance of Attorney Fees and Costs Dane H Watkins Jr

Larry Hansen vs. Matthew Roberts

Date	Code	User	Judge
4/6/2011	MINE	LMESSICK	Dane H Watkins Jr
			Minute Entry Hearing type: motions Hearing date: 4/6/2011 Time: 11:03 am Courtroom: Court reporter: Minutes Clerk: Lettie Messick Tape Number: Party: Larry Hansen, Attorney: Jordan Ipsen Party: Matthew Roberts, Attorney: Jennifer Brizee
	DCHH	LMESSICK	Dane H Watkins Jr
			Hearing result for Hearing held on 04/06/2011 11:00 AM: District Court Hearing Held Court Reporter: Karen Konvlinka Number of Transcript Pages for this hearing estimated: Post Trial Motions 50 pages
4/26/2011	JDMT	LMESSICK	Dane H Watkins Jr
	CDIS	LMESSICK	Dane H Watkins Jr
			Civil Disposition entered for: Roberts, Matthew, Defendant; Hansen, Larry, Plaintiff. Filing date: 4/26/2011
5/20/2011	MEMO	LMESSICK	Dane H Watkins Jr
			Memorandum Decision and Order Re: Motion for Fees and Costs
6/3/2011	NOTC	SOLIS	Dane H Watkins Jr
	APDC	SOLIS	Dane H Watkins Jr
		SOLIS	Dane H Watkins Jr
			Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Gordon Law Firm Receipt number: 0025948 Dated: 6/6/2011 Amount: \$101.00 (Check) For: Roberts, Matthew (defendant)
3/9/2011	BNDC	LMESSICK	Dane H Watkins Jr
	STATUS	LMESSICK	Dane H Watkins Jr
		LMESSICK	Dane H Watkins Jr
			Bond Posted - Cash (Receipt 26988 Dated 6/9/2011 for 100.00) Gordon Law Firm
			Case Status Changed: Closed pending clerk action
			Clerk's Certificate of Appeal mailed to SC
3/17/2011		DOOLITTL	Dane H Watkins Jr
			Request for Additional Reporter's Transcript and Clerk's Record on Appeal (fax)
7/13/2011		LYKE	Dane H Watkins Jr
		LYKE	Dane H Watkins Jr
			Amended Request for Additional Reporter's Transcript and Clerk's Record on Appeal Amended Request for Additional Reporter's Transcript and Clerk's Record on Appeal **fax**
7/15/2011	JDMT	LMESSICK	Dane H Watkins Jr
		LMESSICK	Dane H Watkins Jr
		LMESSICK	Dane H Watkins Jr
			Amended Judgment Upon Special Verdict Record Due 10/14/11 Notice of Appeal Filed (SC)
12/21/2011		LMESSICK	Dane H Watkins Jr
			Document(s) Filed (SC) Request for Additional Reporter's Transcript and Clerk's Record on Appeal; and Amended Request for Additional Reporter's Transcript and Clerk's Record on Appeal

Date: 10/21/2011

Seventh Judicial District Court - Bonneville County

User: LMESSICK

Time: 10:40 AM

ROA Report

Page 10 of 10

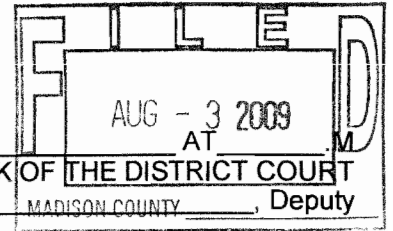
Case: CV-2009-0003163 Current Judge: Dane H Watkins Jr

Larry Hansen vs. Matthew Roberts

Larry Hansen vs. Matthew Roberts

Date	Code	User		Judge
7/26/2011		LMESSICK	Clerk's Certificate Filed (SC)	Dane H Watkins Jr
8/8/2011		LMESSICK	(SC) Order Conditionally Dismissing Appeal	Dane H Watkins Jr
8/16/2011	BNDC	LMESSICK	Bond Posted - Cash (Receipt 38218 Dated 8/16/2011 for 537.50)	Dane H Watkins Jr
10/13/2011		LMESSICK	Notice of Lodging: Reporter's Transcript 10/5/10	Dane H Watkins Jr
10/14/2011		LMESSICK	Notice of Lodging: Reporter's Transcript 9/13/10, 10/13/10, 10/19/10, 10/19/10, 12/08/10, 12/15/10	Dane H Watkins Jr

SEVENTH JUDICIAL DISTRICT, STATE OF IDAHO
MADISON COUNTY
SMALL CLAIMS DEPARTMENT



Matthew N. Roberts,
PLAINTIFF,
vs.
Larry W. Hansen,
DEFENDANT.

CASE NO. W-09-585
ISTARS ROA CODE: CA15

CLAIM		
\$	<u>3,776.82</u>	Claim
\$	<u>41.00</u>	Filing Fee
\$	<u>11.79</u>	Service Fee
\$		Another Notice
\$		
\$	<u>3,829.61</u>	TOTAL

Matthew N. Roberts	851 W. 260 S. Orem, Utah 84058	(208) 521-1153
Larry W. Hansen	139 N. 3rd W. Rexburg, Idaho 83440	(208) 346-3552

If you are seeking a judgment for money, fill out this portion.

AMOUNT OF CLAIM: \$3,776.82 (not including filing and service fees)

DATE CLAIM AROSE: December 2008 (month and year)

BASIS FOR YOUR CLAIM: Car accident, where defendant has not paid for damages.

If you are seeking a judgment for the return of personal property, fill out this portion.

PERSONAL PROPERTY: I am the owner, or I am entitled to possess, the following personal property, which is being held by the defendant (specifically describe the property):

N/A

VALUE OF THE PROPERTY: \$N/A

Service of process by certified mail requested: Yes No

BY SIGNING THIS CLAIM, THE PLAINTIFF VERIFIES THAT 1) the plaintiff is the true owner of the claim, 2) the defendant resides in or the claim arose in Madison County and 3) the information above is true and correct to the plaintiff's best knowledge.

[Signature]

Plaintiff)

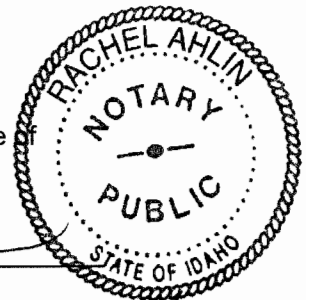
Subscribed and sworn to before me 7/14/2009
(date)

Signature (Plaintiff or Employee)

[Signature]

Deputy Clerk or Notary Public

If Notary, my commission expires: 12/26/2014



SEVENTH JUDICIAL DISTRICT, STATE OF IDAHO
MADISON COUNTY
SMALL CLAIMS DEPARTMENT

SEP 18 2009

SEVENTH JUDICIAL DISTRICT, STATE OF IDAHO
MADISON COUNTY
SMALL CLAIMS DEPARTMENT

FILED _____ AT _____ M
CLERK OF THE DISTRICT COURT
BY _____, Deputy

MATTHEW N. ROBERTS,
PLAINTIFF,

vs.

LARRY W. HANSEN,
DEFENDANT.

CASE NO. C7-2009-585
ISTARS ROA CODE: CA116

ANSWER

No Filing Fee

1. If the defendant's name is not spelled correctly on the plaintiff's Claim, or if the defendant's address or phone number are not correct or are omitted on the plaintiff's Claim, fill out this portion. Defendant's current address and phone number are:

Larry W. Hansen
P.O. box 12168
Jackson, WY 83002
Phone number: (307) 203-2211

2. Judgment for money. Do you agree that you owe money to the plaintiff? No
If you believe that you do not owe the plaintiff the amount claimed or any money, state briefly why you do not owe the money:

Not at fault for accident

3. Judgment for the return of personal property. N/A

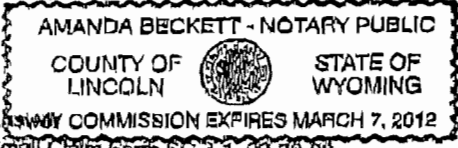
BY SIGNING THIS ANSWER, THE DEFENDANT VERIFIES THAT the information above is true and correct to the defendant's best knowledge.

Subscribed and sworn to before me _____
(date)

Larry W. Hansen
Defendant's Signature

Amanda Beckett
Deputy Clerk of Notary Public

If Notary, my commission expires: 3-7-12



2009 OCT 26 11:18:14

CLERK OF DISTRICT COURT
SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY
IDAHO

Jordan S. Ipsen (ISB #7822)
GORDON LAW FIRM, INC.
477 Shoup Ave, Suite 101
Idaho Falls, ID 83402
Telephone: (208) 552-0467
Facsimile: (866) 886-3419

CASE ASSIGNED TO
JUDGE GREGORY S. ANDERSON

Attorney for Plaintiff

**IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR BONNEVILLE COUNTY, STATE OF IDAHO**

LARRY HANSEN,	Case No. CV- <i>09-3163</i>
Plaintiff,	COMPLAINT
vs.	Fee Category: A1 Filing Fee: \$88.00
MATTHEW ROBERTS,	
Defendant.	

Plaintiff, by and through his undersigned counsel of record, hereby alleges and complains as follows:

1. Plaintiff, Larry Hansen ("Plaintiff"), is a resident of Idaho.
2. This Court has jurisdiction over the claims and parties to this action by virtue of Idaho Code § 1-705 and Idaho Code § 5-514.
3. Venue in this County is proper pursuant to Idaho Code § 5-405.
4. This Court has subject matter jurisdiction over the claims asserted in this matter because the amount at issue in this case exceeds \$10,000.

5. Defendant and Larry Hansen were involved in a motor vehicle collision that occurred on or about December 12, 2008.

6. Defendant's conduct violates Idaho law and constitutes negligence per se.

7. Defendant owed a duty of care to Larry Hansen to operate Defendant's vehicle in a reasonable and safe manner, to maintain a proper lookout, control Defendant's vehicle, drive at a safe speed, and follow the rules of the road and traffic laws.

8. Defendant breached Defendant's duty of care to Larry Hansen by:

- a. Operating Defendant's vehicle without maintaining a proper lookout;
- b. Failing to adequately control Defendant's vehicle;
- c. Failing to stop or slow down in obedience to the existing traffic conditions;
- d. Failing to follow the rules of the road and controlling traffic laws in this instance; and
- e. Failing to act with reasonable care as required under the circumstances.

9. Defendant's negligence caused Larry Hansen to sustain personal injuries.

10. Defendant's negligence directly and proximately caused Larry Hansen to suffer special and general damages, which include, but are not limited to, out-of-pocket expenses, loss of earnings, medical expenses, loss of employment, loss of business or

employment opportunities, cost of obtaining substitute domestic services, pain, suffering, inconvenience, mental anguish, disability or disfigurement, emotional distress, and loss of enjoyment of life. The damages incurred by Larry Hansen are in an amount greater than \$10,000, to be proven at trial.

11. Larry Hansen is entitled to interest on the amount incurred on special damages pursuant to the applicable statutes of the State of Idaho.

12. As a further direct and proximate result of the negligence of the Defendant, as set forth more fully above, Plaintiff has been obliged to obtain the services of an attorney to represent his interests, and has retained the services of Gordon Law Firm to prosecute this action.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

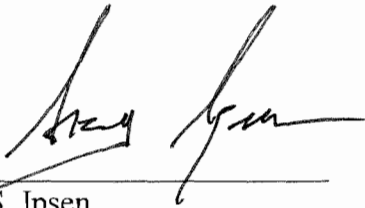
1. For a judgment against Defendant for special damages in a sum subject to proof at trial and interest thereon, pursuant to the applicable statutes of the State of Idaho.

2. For a judgment against Defendant for general damages in a sum subject to proof at trial.

3. For Plaintiff's reasonable attorney's fees, which are in the amount of \$1,500.00 if judgment is entered herein by default and are in a greater amount if this matter be contested; and

4. For such other and further relief as the Court deems just and proper.

DATED May 21, 2009.



Jordan S. Ipsen

Brent Gordon (ID# 7489, UT# 8794)
GORDON LAW FIRM, INC.
477 Shoup Ave, Suite 101
Idaho Falls, ID 83402
Telephone: (208) 552-0467
Facsimile: (866) 886-3419

Attorney for Plaintiff

IN THE SEVENTH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

LARRY HANSEN,

Plaintiff,

vs.

MATTHEW ROBERTS,

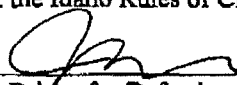
Defendant.

Case No. CV-09-3163

STIPULATION AND ORDER TO
CONSOLIDATE

STIPULATION

The parties hereby stipulate to consolidate the small claim lawsuit filed in Madison County small claims department, case number CZ-2009-585, with this case pursuant to rule 81(c) of the Idaho Rules of Civil Procedure.



Jennifer Brizee for Defendant



Brent Gordon for Plaintiff

STIPULATION AND ORDER TO CONSOLIDATE - 1

ORDER

Based on the parties' stipulation and good cause showing, this Court hereby orders the consolidation of the small claims action between the parties, case number CZ-2009-585, with this case.

DATED October 14, 2009.

Gregory S. Anderson
DISTRICT COURT JUDGE

cc. Brent Gordon
Jennifer Brunze

BONNEVILLE COUNTY
IDAHO
2009 DEC 22 AM 10:54

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

CONFIDENTIAL

Attorney for Defendant Matthew Roberts

IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR BONNEVILLE COUNTY, STATE OF IDAHO

Larry Hansen,
Plaintiff,
vs.
Matthew Roberts
Defendant.

Case No. CV-09-3163


**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, upon the plaintiff, with the original to counsel for the plaintiff, on the 21st day of December, 2009, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to his attorney of record.

DATED this 21st day of December, 2009.

POWERS TOLMAN, PLLC


BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2009, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO

2009 DEC 22 AM 10:54

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

ORIGINAL

IN THE SEVENTH JUDICIAL DISTRICT COURT
IN AND FOR BONNEVILLE COUNTY, STATE OF IDAHO

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163


**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's Responses to Plaintiff's First Set of Requests for Admissions, upon the plaintiff, with the original to counsel for the plaintiff, on the 21st day of December, 2009, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to his attorney of record.

DATED this 21st day of December, 2009.

POWERS TOLMAN, PLLC

BY: 


Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2009, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- | | |
|-------------------------------------|------------------|
| <input checked="" type="checkbox"/> | First Class Mail |
| <input type="checkbox"/> | Hand Delivered |
| <input checked="" type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | Overnight Mail |



Jennifer K. Brizee

ORIGINAL

JENNIFER K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

BONNEVILLE COUNTY, IDAHO
2010 JUL 12 AM 10:07

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, and in answer to plaintiff's complaint, admits, denies and alleges as follows:

INTRODUCTION

The following defenses are not stated separately as to each claim for relief or allegation of the plaintiff. Nevertheless, the following defenses are applicable, where appropriate, to any and all of plaintiff's claims for relief. This answering defendant, in asserting the following defenses, does not admit the burden of proving the allegations or denials contained in the defenses are upon defendant, but, to the contrary, assert that

S

by reason of said denials, and by reason of relevant statutory and judicial authority, the burden of proving the facts relevant to many of the defenses and the burden of proving the inverse of the allegations contained in many of the defenses is upon the plaintiff. Moreover, defendant does not admit, in asserting any defense, any responsibility or liability on his part but, to the contrary, specifically denies any and all allegations of responsibility and liability contained in plaintiff's complaint.

FIRST DEFENSE

I.

Plaintiff's complaint fails to state a cause of action upon which relief may be granted and as such, should be dismissed pursuant to I.R.C.P. 12(b)(6).

II.

Defendant denies each and every allegation and/or paragraph contained within plaintiff's complaint unless specifically admitted herein.

III.

In answering paragraph 5 of plaintiff's complaint, defendant admits that on December 12, 2008, a collision occurred between a vehicle driven by plaintiff and a vehicle driven by defendant.

REQUEST FOR ATTORNEY'S FEES

The defendant has been required to retain the services of an attorney in order to defend against plaintiff's complaint and is entitled to reasonable attorney's fees and costs of suit pursuant to Idaho Code §§ 12-120, 12-121 and Rule 54 of the Idaho Rules of Civil Procedure and other state and federal statutes and/or regulations which may be applicable.

FIRST AFFIRMATIVE DEFENSE

The damages alleged to have been suffered by plaintiff, if any, were caused by superseding and/or intervening causes for which defendant is not responsible.

SECOND AFFIRMATIVE DEFENSE

The acts or omissions of plaintiff and/or others constitute comparative negligence which, pursuant to Idaho Code § 6-801 and/or other applicable laws, bars or reduces plaintiff's recovery, if any, against this answering defendant.

THIRD AFFIRMATIVE DEFENSE

Plaintiff failed to take appropriate action to mitigate the alleged damages he claims to have sustained.

FOURTH AFFIRMATIVE DEFENSE

The negligence of plaintiff in connection with the matters and damages at issue herein proximately caused and contributed to said matters and resultant damages, and said negligence is greater than or equal to the negligence of defendant, if any. By asserting this defense, defendant does not admit any negligence or breach of duty, and to the contrary, denies all allegations of negligence or breach of duty.

FIFTH AFFIRMATIVE DEFENSE

This answering defendant alleges that the plaintiff's damages, if any, were proximately caused by the superseding, intervening, negligence, omissions or actions of other third persons or parties and that any negligence or breach of duty on the part of this answering defendant if any, was not a proximate cause of the alleged loss to the plaintiff. In asserting this defense, this answering defendant does not admit any negligence or breach of duty, and to the contrary, denies all allegations of negligence or breach of duty.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff was guilty of negligence and fault in connection with the occurrence alleged in the complaint, which proximately caused and contributed to the damages and loss complained of, if any, which negligence and fault bars, or pursuant to the doctrine of comparative negligence and comparative responsibility, reduces the recovery, if any, to which the plaintiff might otherwise be entitled. By asserting this defense, defendants do not admit any negligence or breach of duty, and to the contrary, deny all allegations of negligence or breach of duty.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover from defendant because the alleged damages stem from the conduct of plaintiff, and not from the conduct of defendant.

EIGHTH AFFIRMATIVE DEFENSE

Any negligence or breach of duty on the part of defendant, if any, is or may be excused. By asserting this defense, defendant does not admit any negligence or breach of duty, and to the contrary, denies all allegations of negligence or breach of duty.

NINTH AFFIRMATIVE DEFENSE

Defendant alleges that some or all of the injuries claimed by plaintiff pre-existed the incident alleged in the complaint and were the result of medical factors and conditions, or other emotional or mental disorders, not proximately caused by any action of defendant.

TENTH AFFIRMATIVE DEFENSE

If defendant has any liability to plaintiff, which liability defendant denies, any award made to plaintiff in this action must be reduced by the court, pursuant to Idaho Code §6-1606, the Collateral Source Doctrine and/or Idaho Code §6-1603 and Idaho Code §6-1604, in the event any such award includes compensation for damages for which plaintiff have been compensated independently. Defendant is entitled to a set off against plaintiff's damages, if any, for the amount he has been compensated by any other person, entity, corporation, insurance fund or governmental program, as a result of the payments for plaintiff's care, treatment or other injuries or alleged damages.

ELEVENTH AFFIRMATIVE DEFENSE

The doctrines of waiver, estoppel and/or laches may apply to bar or limit plaintiff's causes of action, as well as the potential statute of limitations.

TWELFTH AFFIRMATIVE DEFENSE

As of the date of this answer, discovery is not complete and defendant has had little or no opportunity to ascertain in full, the nature and extent of plaintiff's allegations. Subsequently, discovery may disclose the existence of further and additional affirmative defenses, the right to assert, as the Court may allow by amendment of this answer, which defendant expressly claims and reserves. Defendant further reserves the right to supplement, modify and/or delete defenses as may be warranted.

WHEREFORE, defendant prays for judgment as follows:

1. That plaintiff's complaint be dismissed with prejudice and plaintiff takes nothing thereby;

2. For costs incurred herein, including reasonable attorney's fees; and
3. For such other and further relief as may be deemed just and proper.

DATED this 11th day of January, 2010.

POWERS TOLMAN, PLLC

BY: 

JENNIFER K. BRIZEE

DEMAND FOR JURY TRIAL

COMES NOW defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee, and demands a twelve-person jury trial pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure.

DATED this 11th day of January, 2010.

POWERS TOLMAN, PLLC

BY: 

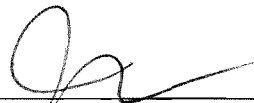
JENNIFER K. BRIZEE

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2010, I caused a true and correct copy of the foregoing ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail



Jennifer K. Brizee

ORIGINAL

BONNEVILLE COUNTY
IDAHO

10 FEB -9 P2:51

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

Larry Hansen,
Plaintiff,

vs.

Matthew Roberts
Defendant.

Case No. CV-09-3163

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff, upon the plaintiff, with a copy of the original to counsel for the plaintiff, on the 9th day of February, 2010, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to his attorney of record.

DATED this 8th day of February, 2010.

POWERS TOLMAN, PLLC

BY: 


Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2010, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail



Jennifer K. Brizee

ORIGINAL

BONNEVILLE COUNTY
IDAHO

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

10 FEB -9 P2:51

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's Supplemental Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, upon the plaintiff, with the original to counsel for the plaintiff, on the 09th day of February, 2010, by depositing same

in the United States mail, postage prepaid, in an envelope, addressed to his attorney of record.

DATED this 3rd day of February, 2010.

POWERS TOLMAN, PLLC

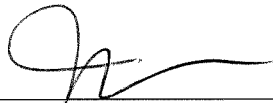
BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2010, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

2010 APR -2 AM 9:34
DISTRICT OF THE
JUDICIAL COURT
BONNEVILLE DISTRICT
COUNTY ID

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

LARRY HANSEN,)
)
Plaintiff,)
vs.)
)
MATTHEW ROBERTS,)
)
Defendant.)
)
_____)
MATTHEW ROBERTS,)
)
Plaintiff,)
vs.)
)
LARRY HANSEN,)
)
Defendant.)
_____)

Case No. CV-2009-3163
ORDER SETTING TRIAL AND
PRE-TRIAL CONFERENCE

Madison County Small Claims
Case No. CV-2009-585

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following pre-trial schedule shall govern all proceedings in this case:

I. IT IS HEREBY ORDERED¹:

1. A pre-trial conference shall be held at 8:30 A.M., on October 13, 2010.
2. Jury trial shall commence at 10:00 A.M., on October 19, 2010.
3. No later than ninety (90) days before the date set for trial, counsel shall disclose the names, addresses, and telephone numbers of expert witnesses that may be called to testify at trial.

¹The disclosure cut-off date, discovery completion date and motion dates are for the benefit of the Court in managing this case. They will be enforced at the Court's discretion. The disclosure date should not be relied on by the parties for discovery purposes. The disclosure, discovery and motion dates will not be modified by the Court without a hearing and assurance from the parties that the modification will not necessitate continuance of the trial.

4. All discovery shall be completed seventy (70) days prior to trial.²
5. All Motions for Summary Judgment must be filed sixty (60) days prior to trial in conformance with Rule 56(a), I.R.C.P.
6. All Motions for Summary Judgment must be heard at least twenty-eight (28) days prior to trial.

II. IT IS FURTHER ORDERED that each attorney shall, no later than fourteen (14) days before trial:

1. Submit a list of names to the court of persons who may be called to testify.
2. Submit a descriptive list of all exhibits proposed to be offered into evidence to the court indicating which exhibits counsel have agreed will be received in evidence without objection and those to which objections will be made, including the basis upon which each objection will be made.
3. Submit a brief to the court citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. If this is a jury trial, counsel shall submit proposed jury instructions to all parties to the action and the court. All requested instructions submitted to the court shall be in duplicate form as set out in Idaho Rule of Civil Procedure 51(a)(1).
5. Submit that counsel have in good faith tried to settle this action.
6. State whether liability is disputed.

III. IT IS FURTHER ORDERED that each attorney shall no later than seven (7) days before trial:

1. Submit any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.
2. Deposit with the clerk of the court all exhibits to be introduced, except those for impeachment. The clerk shall mark plaintiff's exhibits in numerical sequence as requested by plaintiff and shall mark all defendant's exhibits in alphabetical sequence as requested by defendant.


² Discovery requests must be served so that timely responses will be due prior to the discovery cutoff date.

3. A duplicate set of all exhibits to be introduced, except those for impeachment, shall be placed in binders, indexed, and deposited with the clerk of the court.

IV. IT IS FURTHER ORDERED that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.
2. No exhibits shall be admitted into evidence at trial other than those disclosed, listed and submitted to the clerk of the court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.
3. This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice.
4. The court may impose appropriate sanctions for violation of this order.

DATED this 31st day of March, 2010.



GREGORY S. ANDERSON
District Judge

CERTIFICATE OF SERVICE

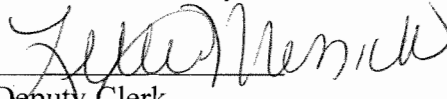
I hereby certify that on this 2nd day of June, 2010, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Jordan Ipsen
GORDON LAW FIRM
477 Shoup Ave., Ste. 101
Idaho Falls, ID 83402

Jennifer Brizee
POWERS TOLMAN
123 3rd Avenue East
PO Box 1276
Twin Falls, ID 83303-1276

Matthew Roberts
851 W. 260 S.
Orem, UT 84058

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho


Deputy Clerk

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

BONNEVILLE COUNTY
CLERK
2010 JUL 21 PM 4:56

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163

**DEFENDANT'S DISCLOSURE
OF EXPERT WITNESSES**

COMES NOW the defendant, Matthew Roberts, by and through his counsel of record, Jennifer K. Brizee of Powers Tolman, PLLC, and in accordance with this Court's Order Setting Trial and Pretrial Conference dated the 31st day of March, 2010, hereby discloses the following individuals, who may be called as an expert witness at the trial of this matter:

Scott Kimbrough
MRA Forensic Sciences
125 W. Burton Avenue
Salt Lake City, UT 84115-2610
(801) 746-1170

Thomas W. Broderick, M.D.
P.O. Box 3735
Hailey, ID 83333
(208) 727-8238

James A. Retmier, M.D.
Intermountain Orthopaedic Clinic
738 N. College Rd., Suite A
Twin Falls, ID 83301
(208) 734-7291

Any and all individuals identified as an expert witness by plaintiff in his present and future discovery answers or formal disclosure documents.

Any and all individuals called to testify as an expert witness by plaintiff.

Any and all individuals identified as an expert witness by the defendant in his discovery answers or formal disclosure documents.

Any and all individuals called to testify as an expert witness by defendant.

In addition to the foregoing individuals, defendant reserves the right to call and hereby identifies those individuals who may be qualified to render expert opinion testimony but who have not been retained as expert witnesses by plaintiff or defendant, including but not limited to, health care providers and the other parties to this litigation.

These individuals include, but are not limited to:

Ray Hermosillo, PPC #654
Rexburg Police Department
25 East Main Street
Rexburg, ID 83440
(208) 359-3008

Madison Memorial Hospital
450 East Main Street
Rexburg, ID 83440
(208) 356-3691

Ronald G. Mills, M.D.
10 Madison Professional Plaza
Rexburg, ID 83440
(208) 356-9666

Madison Physician Services
P.O. Box 700
Rexburg, ID 83440
(208) 359-9898

Mountain Valley Imaging
P.O. Box 31
Rexburg, ID 83440
(208) 356-8404

Teton Outpatient Services
P.O. Box 12530
Jackson, WY 83002
(307) 733-8677

Any and all individuals and health care providers who provided medical care and treatment to Larry Hansen, and whose true and correct identities are set forth in the medical records.

As discovery on these matters is continuing, this disclosure may be updated as depositions are taken and additional facts become known.

Plaintiff may have failed to disclose the identity of all of Larry Hansen's treating health care providers, and defendant has not had the opportunity to depose Larry Hansen's treating health care providers. Also, plaintiff may have failed to provide all of the medical records and films requested by defendant in discovery. Accordingly, defendant reserves the right to supplement this disclosure of expert witnesses in the event information and facts become known subsequent to taking the depositions of said health care providers or otherwise through discovery, written reports, deposition testimony, or written discovery answers relative to opinions held by said health care

providers or other expert witnesses of plaintiff, if any, which would require and necessitate defendant to retain additional expert witnesses.

Defendant reserves the right to supplement this disclosure in the event additional facts and information become known prior to trial that would necessitate defendant to retain additional expert witnesses.

Plaintiff has failed to respond to defendant's discovery requests seeking information regarding plaintiff's expert witnesses. Since plaintiff has the burden of proof in this case, defendant's expert witnesses essentially are rebuttal expert witnesses. Therefore, defendant reserves the right to supplement this discovery response and provide information regarding rebuttal expert witnesses once plaintiff has responded to defendant's discovery requests.

Defendant reserves the right to supplement this disclosure in the event the testimony and opinions rendered by any expert witnesses retained by the plaintiff, either through written reports, depositions, or written discovery answers, requires defendant to retain additional expert witnesses.

Defendant reserves the right to supplement this disclosure in the event the individuals identified herein become unavailable to testify at trial.

Any expert witnesses defendant elects not to call at trial are declared to be consulting witnesses only, whether deposed or not. No other party may call such consulting experts without defendant's permission.

By making this disclosure, defendant does not represent that he will call all the disclosed witnesses or that any of the disclosed witnesses will be present at trial.

DATED this 21st day of July, 2010.

POWERS TOLMAN, PLLC


BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2010, I caused a true and correct copy of the foregoing DEFENDANT'S DISCLOSURE OF EXPERT WITNESSES to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE
10 AUG -4 P2:43

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163

**DEFENDANT'S SUPPLEMENTAL
DISCLOSURE OF
EXPERT WITNESSES**

COMES NOW the defendant, Matthew Roberts, by and through his counsel of record, Jennifer K. Brizee of Powers Tolman, PLLC, and in accordance with this Court's Order Setting Trial and Pretrial Conference dated the 31st day of March, 2010, hereby discloses the following individuals, who may be called as an expert witness at the trial of this matter:

Scott Kimbrough
MRA Forensic Sciences
125 W. Burton Avenue
Salt Lake City, UT 84115-2610
(801) 746-1170

Thomas W. Broderick, M.D.
P.O. Box 3735
Hailey, ID 83333
(208) 727-8238

James A. Retmier, M.D.
Intermountain Orthopaedic Clinic
738 N. College Rd., Suite A
Twin Falls, ID 83301
(208) 734-7291

Louis E. Murdock, M.D.
Intermountain Orthopaedics
600 N. Robbins Rd. #401
Boise, ID 83702-4567
(208) 383-0201

Any and all individuals identified as an expert witness by plaintiff in his present and future discovery answers or formal disclosure documents.

Any and all individuals called to testify as an expert witness by plaintiff.

Any and all individuals identified as an expert witness by the defendant in his discovery answers or formal disclosure documents.

Any and all individuals called to testify as an expert witness by defendant.

In addition to the foregoing individuals, defendant reserves the right to call and hereby identifies those individuals who may be qualified to render expert opinion testimony but who have not been retained as expert witnesses by plaintiff or defendant, including but not limited to, health care providers and the other parties to this litigation.

These individuals include, but are not limited to:

Ray Hermosillo, PPC #654
Rexburg Police Department
25 East Main Street
Rexburg, ID 83440
(208) 359-3008

Madison Memorial Hospital
450 East Main Street
Rexburg, ID 83440
(208) 356-3691

Ronald G. Mills, M.D.
10 Madison Professional Plaza
Rexburg, ID 83440
(208) 356-9666

Madison Physician Services
P.O. Box 700
Rexburg, ID 83440
(208) 359-9898

Mountain Valley Imaging
P.O. Box 31
Rexburg, ID 83440
(208) 356-8404

Teton Outpatient Services
P.O. Box 12530
Jackson, WY 83002
(307) 733-8677

Any and all individuals and health care providers who provided medical care and treatment to Larry Hansen, and whose true and correct identities are set forth in the medical records.

As discovery on these matters is continuing, this disclosure may be updated as depositions are taken and additional facts become known.

Plaintiff may have failed to disclose the identity of all of Larry Hansen's treating health care providers, and defendant has not had the opportunity to depose Larry Hansen's treating health care providers. Also, plaintiff may have failed to provide all of the medical records and films requested by defendant in discovery. Accordingly, defendant reserves the right to supplement this disclosure of expert witnesses in the

event information and facts become known subsequent to taking the depositions of said health care providers or otherwise through discovery, written reports, deposition testimony, or written discovery answers relative to opinions held by said health care providers or other expert witnesses of plaintiff, if any, which would require and necessitate defendant to retain additional expert witnesses.

Defendant reserves the right to supplement this disclosure in the event additional facts and information become known prior to trial that would necessitate defendant to retain additional expert witnesses.

Plaintiff has failed to respond to defendant's discovery requests seeking information regarding plaintiff's expert witnesses. Since plaintiff has the burden of proof in this case, defendant's expert witnesses essentially are rebuttal expert witnesses. Therefore, defendant reserves the right to supplement this discovery response and provide information regarding rebuttal expert witnesses once plaintiff has responded to defendant's discovery requests.

Defendant reserves the right to supplement this disclosure in the event the testimony and opinions rendered by any expert witnesses retained by the plaintiff, either through written reports, depositions, or written discovery answers, requires defendant to retain additional expert witnesses.

Defendant reserves the right to supplement this disclosure in the event the individuals identified herein become unavailable to testify at trial.

Any expert witnesses defendant elects not to call at trial are declared to be consulting witnesses only, whether deposed or not. No other party may call such consulting experts without defendant's permission.

By making this disclosure, defendant does not represent that he will call all the disclosed witnesses or that any of the disclosed witnesses will be present at trial.

DATED this 4th day of August, 2010.

POWERS TOLMAN, PLLC


BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2010, I caused a true and correct copy of the foregoing DEFENDANT'S SUPPLEMENTAL DISCLOSURE OF EXPERT WITNESSES to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

BONNEVILLE COUNTY

10 AUG 18 AM 9:37

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**NOTICE OF TAKING DEPOSITION
DUCES TECUM OF LARRY HANSEN**

**TO: Plaintiff, LARRY HANSEN, and his attorney of record, JORDAN S. IPSEN of
Gordon Law Firm, Inc.:**

YOU WILL PLEASE TAKE NOTICE the defendant will take the testimony upon oral examination of **LARRY HANSEN** before a qualified Court Reporter, on **Tuesday, the 24th day of August, 2010, at the hour of 10:00 o'clock a.m.**, at the law offices of Gordon Law Firm, Inc., 477 Shoup Avenue, Suite 101, Idaho Falls, Idaho, 83402, telephone number: (208) 552-0467, pursuant to Rule 30(a) and 30(b)(6) of the Idaho Rules of Civil Procedure.

Said deponent is required to bring with him the following documents:

1. Please produce all medical records, reports, notes, memoranda or other documents evidencing medical care provided to the plaintiff for the last ten (10) years prior to the accident to present by any and all individual or institutional health care providers, including, but not limited to, medical care allegedly arising as a result of the subject incident. This also shall be deemed to include all psychiatric, psychological, counseling and social worker records relating to mental health care provided to plaintiff. This request shall be deemed to include, but not be limited to x-rays, x-ray reports, CT scans, ultrasounds, MRI's and other films, CT scan reports, emergency room records, admission records, physicians' histories and physicals, physicians' summaries, physicians' consultation reports and summaries, nurses' notes, physicians' orders and progress notes, surgical reports, laboratory reports, anesthesia reports and records, discharge summaries, clinic reports, office notes, physical therapy reports, respiratory therapy reports, medical bills and any and all other records of any kind whatsoever relating to or generated as a result of medical care and treatment rendered to plaintiff.

2. Please produce all bills, statements, invoices or other documents evidencing the cost of plaintiff's medical care provided for the injuries or condition which you contend resulted from the incident which is the basis of this lawsuit.

3. Please produce all statements previously made by the plaintiff, which in any way refer to the facts of the subject incident and plaintiff's injuries and claim for damages. By this request defendant is not seeking any statements protected by the attorney/client privilege.

4. Please produce each document or communication which was sent by plaintiff or plaintiff's representatives to a third person or received by plaintiff or plaintiff's

representatives from a third person which in any way relates to the subject of this action, excluding communication subject to the attorney/client privilege.

5. Please produce the items that were tested, analyzed or examined by an expert and each report of the expert's findings, opinions or conclusions.

6. Please produce each and every photograph, film, videotape, including any "day in the life" videotapes, or other recording generated by plaintiff pertaining to the incidents involved in this litigation, excluding communications solely between plaintiff and his attorneys.

7. Please produce each statement, diary, note, memorandum, or other document upon which are recorded the recollections, impressions, or opinions of any individual other than your attorney who has knowledge of the facts of the subject incident and plaintiff's alleged damages. This request does not seek information protected by the attorney/client privilege or attorney work product.

8. Please produce each exhibit that you intend to offer into evidence at the trial of this action, either for evidentiary or illustrative purposes.

9. Please produce any and all journal articles, text or other medical literature which plaintiff relies upon and/or intends to utilize at the trial of this matter either by way of exhibit, reference to by plaintiff's experts or cross-examination of defendant's experts.

10. If you are alleging a loss of earnings, earning capacity or profits in the past or future, please produce copies of all state and federal income tax returns (and schedules and attachments thereto) filed by you in the five-year period immediately preceding the incident which is the basis of this lawsuit and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

11. If you are alleging a loss of earnings, earning capacity or profits in the past or future, please produce copies of all state and federal income tax returns and schedules and attachments thereto, of your income tax returns filed or prepared for filing since the date of the subject incident and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

12. If you are claiming lost wages, please produce all punch cards, time slips, payroll records, please produce copies of any documents or other verification of your rate of pay and actual time missed from work since the date of the occurrence which is the basis of this lawsuit.

13. Please produce all W-2 forms, 1099 forms or any and all other documents or forms showing or depicting any type of compensation paid to plaintiffs, filed by plaintiff for the years 1999 to present.

14. Please produce all documents, if any, that plaintiff will rely on in testifying at the trial of this action.

15. Please produce each and every document or other tangible item generated by plaintiff's employer regarding his employment from 1999 to present.

16. Please produce each and every document or other tangible item constituting and/or pertaining to each and every release, settlement, agreement, compromise, covenant or any other type of agreement, if any, plaintiffs have entered into with any person, firm, corporation or other entity as a result of the matters referred to in plaintiff's Complaint.

17. Please produce each and every statement, whether written, oral or recorded, taken of any of the persons who may have knowledge pertaining to the allegations set forth in plaintiff's Complaint.

18. Please produce each and every tape or other recording, if any, of conversations between plaintiff and defendant.

19. Please produce each and every document or other tangible item supporting or tending to support plaintiff's claims for special damages, excluding written communications solely between plaintiff and his attorneys.

20. Please produce each and every document or other tangible item generated by plaintiff pertaining to the incidents involved in this litigation, excluding communications solely between plaintiff and his attorneys.

21. Please produce any and all written reports or documents of any kind whatsoever generated, relied upon, reviewed or possessed by treating or consulting expert witnesses of any type retained to render expert testimony on issues of liability and/or damages in the above-entitled matter.

DATED this 17th day of August, 2010.

POWERS TOLMAN, PLLC

BY: ISB #7131
Jennifer K. Brizee
JENNIFER K. BRIZEE

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2010, I caused a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION DUCES TECUM OF LARRY HANSEN to be served by the method indicated below, to the following:

Larry Hansen
c/o Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Paul or Jean Buchanan
c/o M & M Court Reporting
P.O. Box 2636
Boise, ID 83701-2636

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

ESB 07/18/10

J.K. Brizee

Jennifer K. Brizee

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

BONNEVILLE COUNTY
IDAHO
10 AUG 24 PM 4:45

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**AMENDED NOTICE OF TAKING
DEPOSITION DUCES TECUM
OF LARRY HANSEN**

**TO: Plaintiff, LARRY HANSEN, and his attorney of record, JORDAN S. IPSEN of
Gordon Law Firm, Inc.:**

YOU WILL PLEASE TAKE NOTICE the defendant will take the testimony upon oral examination of **LARRY HANSEN** before a qualified Court Reporter, on **Tuesday, the 7th day of September, 2010, at the hour of 10:00 o'clock a.m.**, at the law offices of Gordon Law Firm, Inc., 477 Shoup Avenue, Suite 101, Idaho Falls, Idaho, 83402, telephone number: (208) 552-0467, pursuant to Rule 30(a) and 30(b)(6) of the Idaho Rules of Civil Procedure.

Said deponent is required to bring with him the following documents:

1. Please produce all medical records, reports, notes, memoranda or other documents evidencing medical care provided to the plaintiff for the last ten (10) years prior to the accident to present by any and all individual or institutional health care providers, including, but not limited to, medical care allegedly arising as a result of the subject incident. This also shall be deemed to include all psychiatric, psychological, counseling and social worker records relating to mental health care provided to plaintiff. This request shall be deemed to include, but not be limited to x-rays, x-ray reports, CT scans, ultrasounds, MRI's and other films, CT scan reports, emergency room records, admission records, physicians' histories and physicals, physicians' summaries, physicians' consultation reports and summaries, nurses' notes, physicians' orders and progress notes, surgical reports, laboratory reports, anesthesia reports and records, discharge summaries, clinic reports, office notes, physical therapy reports, respiratory therapy reports, medical bills and any and all other records of any kind whatsoever relating to or generated as a result of medical care and treatment rendered to plaintiff.

2. Please produce all bills, statements, invoices or other documents evidencing the cost of plaintiff's medical care provided for the injuries or condition which you contend resulted from the incident which is the basis of this lawsuit.

3. Please produce all statements previously made by the plaintiff, which in any way refer to the facts of the subject incident and plaintiff's injuries and claim for damages. By this request defendant is not seeking any statements protected by the attorney/client privilege.

4. Please produce each document or communication which was sent by plaintiff or plaintiff's representatives to a third person or received by plaintiff or plaintiff's

representatives from a third person which in any way relates to the subject of this action, excluding communication subject to the attorney/client privilege.

5. Please produce the items that were tested, analyzed or examined by an expert and each report of the expert's findings, opinions or conclusions.

6. Please produce each and every photograph, film, videotape, including any "day in the life" videotapes, or other recording generated by plaintiff pertaining to the incidents involved in this litigation, excluding communications solely between plaintiff and his attorneys.

7. Please produce each statement, diary, note, memorandum, or other document upon which are recorded the recollections, impressions, or opinions of any individual other than your attorney who has knowledge of the facts of the subject incident and plaintiff's alleged damages. This request does not seek information protected by the attorney/client privilege or attorney work product.

8. Please produce each exhibit that you intend to offer into evidence at the trial of this action, either for evidentiary or illustrative purposes.

9. Please produce any and all journal articles, text or other medical literature which plaintiff relies upon and/or intends to utilize at the trial of this matter either by way of exhibit, reference to by plaintiff's experts or cross-examination of defendant's experts.

10. If you are alleging a loss of earnings, earning capacity or profits in the past or future, please produce copies of all state and federal income tax returns (and schedules and attachments thereto) filed by you in the five-year period immediately preceding the incident which is the basis of this lawsuit and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

11. If you are alleging a loss of earnings, earning capacity or profits in the past or future, please produce copies of all state and federal income tax returns and schedules and attachments thereto, of your income tax returns filed or prepared for filing since the date of the subject incident and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

12. If you are claiming lost wages, please produce all punch cards, time slips, payroll records, please produce copies of any documents or other verification of your rate of pay and actual time missed from work since the date of the occurrence which is the basis of this lawsuit.

13. Please produce all W-2 forms, 1099 forms or any and all other documents or forms showing or depicting any type of compensation paid to plaintiffs, filed by plaintiff for the years 1999 to present.

14. Please produce all documents, if any, that plaintiff will rely on in testifying at the trial of this action.

15. Please produce each and every document or other tangible item generated by plaintiff's employer regarding his employment from 1999 to present.

16. Please produce each and every document or other tangible item constituting and/or pertaining to each and every release, settlement, agreement, compromise, covenant or any other type of agreement, if any, plaintiffs have entered into with any person, firm, corporation or other entity as a result of the matters referred to in plaintiff's Complaint.

17. Please produce each and every statement, whether written, oral or recorded, taken of any of the persons who may have knowledge pertaining to the allegations set forth in plaintiff's Complaint.

18. Please produce each and every tape or other recording, if any, of conversations between plaintiff and defendant.

19. Please produce each and every document or other tangible item supporting or tending to support plaintiff's claims for special damages, excluding written communications solely between plaintiff and his attorneys.

20. Please produce each and every document or other tangible item generated by plaintiff pertaining to the incidents involved in this litigation, excluding communications solely between plaintiff and his attorneys.

21. Please produce any and all written reports or documents of any kind whatsoever generated, relied upon, reviewed or possessed by treating or consulting expert witnesses of any type retained to render expert testimony on issues of liability and/or damages in the above-entitled matter.

DATED this 24th day of August, 2010.

POWERS TOLMAN, PLLC

BY: 

JENNIFER K. BRIZEE

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August, 2010, I caused a true and correct copy of the foregoing AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF LARRY HANSEN to be served by the method indicated below, to the following:

Larry Hansen
c/o Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

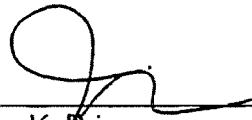
- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Paul or Jean Buchanan
c/o M & M Court Reporting
P.O. Box 2636
Boise, ID 83701-2636

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail



Jennifer K. Brizee

BONNEVILLE COUNTY
10 AUG 31 AM 8:16

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**SECOND AMENDED NOTICE OF
TAKING DEPOSITION DUCES TECUM
OF LARRY HANSEN**

**TO: Plaintiff, LARRY HANSEN, and his attorney of record, JORDAN S. IPSEN of
Gordon Law Firm, Inc.:**

YOU WILL PLEASE TAKE NOTICE the defendant will take the testimony upon oral examination of **LARRY HANSEN** before a qualified Court Reporter, on **Monday, the 6th day of September, 2010, at the hour of 10:00 o'clock a.m.**, at the law offices of Gordon Law Firm, Inc., 477 Shoup Avenue, Suite 101, Idaho Falls, Idaho, 83402, telephone number: (208) 552-0467, pursuant to Rule 30(a) and 30(b)(6) of the Idaho Rules of Civil Procedure.

Said deponent is required to bring with him the following documents:

1. Please produce all medical records, reports, notes, memoranda or other documents evidencing medical care provided to the plaintiff for the last ten (10) years prior to the accident to present by any and all individual or institutional health care providers, including, but not limited to, medical care allegedly arising as a result of the subject incident. This also shall be deemed to include all psychiatric, psychological, counseling and social worker records relating to mental health care provided to plaintiff. This request shall be deemed to include, but not be limited to x-rays, x-ray reports, CT scans, ultrasounds, MRI's and other films, CT scan reports, emergency room records, admission records, physicians' histories and physicals, physicians' summaries, physicians' consultation reports and summaries, nurses' notes, physicians' orders and progress notes, surgical reports, laboratory reports, anesthesia reports and records, discharge summaries, clinic reports, office notes, physical therapy reports, respiratory therapy reports, medical bills and any and all other records of any kind whatsoever relating to or generated as a result of medical care and treatment rendered to plaintiff.

2. Please produce all bills, statements, invoices or other documents evidencing the cost of plaintiff's medical care provided for the injuries or condition which you contend resulted from the incident which is the basis of this lawsuit.

3. Please produce all statements previously made by the plaintiff, which in any way refer to the facts of the subject incident and plaintiff's injuries and claim for damages. By this request defendant is not seeking any statements protected by the attorney/client privilege.

4. Please produce each document or communication which was sent by plaintiff or plaintiff's representatives to a third person or received by plaintiff or plaintiff's

representatives from a third person which in any way relates to the subject of this action, excluding communication subject to the attorney/client privilege.

5. Please produce the items that were tested, analyzed or examined by an expert and each report of the expert's findings, opinions or conclusions.

6. Please produce each and every photograph, film, videotape, including any "day in the life" videotapes, or other recording generated by plaintiff pertaining to the incidents involved in this litigation, excluding communications solely between plaintiff and his attorneys.

7. Please produce each statement, diary, note, memorandum, or other document upon which are recorded the recollections, impressions, or opinions of any individual other than your attorney who has knowledge of the facts of the subject incident and plaintiff's alleged damages. This request does not seek information protected by the attorney/client privilege or attorney work product.

8. Please produce each exhibit that you intend to offer into evidence at the trial of this action, either for evidentiary or illustrative purposes.

9. Please produce any and all journal articles, text or other medical literature which plaintiff relies upon and/or intends to utilize at the trial of this matter either by way of exhibit, reference to by plaintiff's experts or cross-examination of defendant's experts.

10. If you are alleging a loss of earnings, earning capacity or profits in the past or future, please produce copies of all state and federal income tax returns (and schedules and attachments thereto) filed by you in the five-year period immediately preceding the incident which is the basis of this lawsuit and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

11. If you are alleging a loss of earnings, earning capacity or profits in the past or future, please produce copies of all state and federal income tax returns and schedules and attachments thereto, of your income tax returns filed or prepared for filing since the date of the subject incident and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

12. If you are claiming lost wages, please produce all punch cards, time slips, payroll records, please produce copies of any documents or other verification of your rate of pay and actual time missed from work since the date of the occurrence which is the basis of this lawsuit.

13. Please produce all W-2 forms, 1099 forms or any and all other documents or forms showing or depicting any type of compensation paid to plaintiffs, filed by plaintiff for the years 1999 to present.

14. Please produce all documents, if any, that plaintiff will rely on in testifying at the trial of this action.

15. Please produce each and every document or other tangible item generated by plaintiff's employer regarding his employment from 1999 to present.

16. Please produce each and every document or other tangible item constituting and/or pertaining to each and every release, settlement, agreement, compromise, covenant or any other type of agreement, if any, plaintiffs have entered into with any person, firm, corporation or other entity as a result of the matters referred to in plaintiff's Complaint.

17. Please produce each and every statement, whether written, oral or recorded, taken of any of the persons who may have knowledge pertaining to the allegations set forth in plaintiff's Complaint.

18. Please produce each and every tape or other recording, if any, of conversations between plaintiff and defendant.

19. Please produce each and every document or other tangible item supporting or tending to support plaintiff's claims for special damages, excluding written communications solely between plaintiff and his attorneys.

20. Please produce each and every document or other tangible item generated by plaintiff pertaining to the incidents involved in this litigation, excluding communications solely between plaintiff and his attorneys.

21. Please produce any and all written reports or documents of any kind whatsoever generated, relied upon, reviewed or possessed by treating or consulting expert witnesses of any type retained to render expert testimony on issues of liability and/or damages in the above-entitled matter.

DATED this 20th day of August, 2010.

POWERS TOLMAN, PLLC

BY: 
JENNIFER K. BRIZEE

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2010, I caused a true and correct copy of the foregoing SECOND AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF LARRY HANSEN to be served by the method indicated below, to the following:

Larry Hansen
c/o Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Paul or Jean Buchanan
c/o M & M Court Reporting
P.O. Box 2636
Boise, ID 83701-2636

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail



Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO
10 SEP -7 PM 4:50

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**MOTION TO STRIKE PLAINTIFF'S
EXPERTS, OR, IN THE ALTERNATIVE,
MOTION TO COMPEL DISCOVERY
RESPONSES**


COMES NOW the defendant, Matthew Roberts, by and through his attorney of record, Powers Tolman, PLLC, and moves the court, pursuant to Idaho Rule of Civil Procedure 37 and 26 for an order striking plaintiff's expert witnesses and precluding them from testifying at trial, or in the alternative, for an order compelling plaintiff to respond to defendant's discovery requests regarding expert witnesses.

This motion is based upon the records, files and pleadings in the above-entitled action, together with the Affidavit of Jennifer K. Brizee in Support of Motion to Strike Plaintiff's Experts, Or In The Alternative, Motion to Compel Discovery Responses; and the Memorandum in Support of Motion to Strike Plaintiff's Experts, Or In The Alternative, Motion to Compel Discovery Responses, all filed contemporaneously herewith.

Oral argument is requested.

DATED this 7th day of September, 2010.

POWERS TOLMAN, PLLC

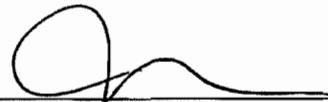
By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2010, I caused a true and correct copy of the foregoing MOTION TO STRIKE PLAINTIFF'S EXPERTS, OR, IN THE ALTERNATIVE, MOTION TO COMPEL DISCOVERY RESPONSES to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402
Attorney For: Larry Hansen

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Judge: Anderson
Date: 9-7-10
Time: 4:50
Deputy Clerk: JW

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO STRIKE
EXPERTS, OR, IN THE ALTERNATIVE,
TO COMPEL DISCOVERY RESPONSES**

COMES NOW, defendant Matthew Roberts, by and through his counsel of record, Powers Tolman, PLLC, and respectfully submits this Memorandum in Support of his Motion to Strike Plaintiff's Experts, or in the Alternative, Motion to Compel Discovery Responses.

I.
INTRODUCTION/BACKGROUND

On February 8, 2010, defendant propounded discovery requests to plaintiff. A copy of the pertinent pages of said discovery requests are attached as Exhibit A to the Affidavit of Jennifer K. Brizee in Support of Motion to Strike Plaintiff's Experts, or in the Alternative, Motion to Compel Discovery Responses (hereinafter "Brizee Affidavit"). In

these requests, defendant asked plaintiff for all of the information outlined in Idaho Rule of Civil Procedure 26(b) regarding his experts. See Exhibit A to Brizee Affidavit.

Plaintiff responded to these discovery responses on or about March 11, 2010. A copy of the pertinent pages of plaintiff's responses are attached to the Brizee Affidavit as Exhibit B. Plaintiff failed to provide any of the information requested regarding expert witnesses. Plaintiff merely voiced unfounded objections, and stated, in response that "Plaintiff has not made a decision regarding which experts he intends to utilize at the trial of this matter. Plaintiff reserves the right to update this response in accordance with the Court's scheduling order, if necessary." See Exhibit B to Brizee Affidavit.

However, the pre-trial order of this Court does not require Rule 26(b)(4) disclosures of the parties. Instead, the parties must rely on discovery requests to obtain the information regarding expert witnesses, as allowed per Rule 26(b)(4).

Therefore, plaintiff's statement that he will disclose the requested information "in accordance with the pretrial order of this Court" is in complete disregard for the discovery process, and for the right of a defendant to obtain information regarding plaintiff's expert witnesses via the only potential avenue when it is not required by the pre-trial order – through these very same discovery responses.

The following additional information is relevant:

1. Per the Court's order, the plaintiff did file a disclosure document with the Court on or about July 21, 2010. In this document, plaintiff provided no opinions, or any of the other information requested in defendant's discovery requests. Instead, all "disclosures" are phrased in terms of what the witnesses will testify "regarding." There are no set opinions.

2. Plaintiff did supplement discovery response and provide the same information contained within the disclosure document filed with the Court. See Exhibit C to the Brizee Affidavit. Again, there are no "opinions," contained within this document, only areas where each proposed expert will testify.

Trial in this matter is scheduled for October 19, 2010. Since defendant's experts essentially are rebuttal expert witnesses, defendant cannot fully disclose his experts until such time as he has plaintiff's expert's opinions.¹

Defendant has not yet been able to fully disclose his experts by this date, which could impact the trial date in this matter.

II.

PLAINTIFF'S FAILURE TO PROPERLY SUPPLEMENT DISCOVERY REQUESTS IS GROUNDS FOR STRIKING HIS EXPERT WITNESSES

A trial court has the authority to sanction a party for non-compliance with either a pre-trial order, or for failure to properly answer discovery requests. See e.g., Priest v. Landon, 135 Idaho 898, 900, 26 P.3d 1235, 1237 (Ct.App. 2001). One such sanction is to disallow the evidence that is the subject of the motion. *Id.* See also, I.R.C.P. 37(b)(2)(B). The determination of imposition of such sanctions is vested with the sound discretion of the trial court. See e.g. Priest, *supra*.

Plaintiff has had more than ample time to retain experts, supply them with necessary information to formulate opinions, and to provide the same to defendant.

Without this information, defendant cannot proceed with disclosure of the opinions of his expert. Defendant cannot even make a determination as to whether he

¹ It should be noted, plaintiff produced numerous new medical records at his deposition yesterday, and testified to a potential pre-existing condition, for which no medical records have been produced. Also, plaintiff has failed to produce the films required by defendant's medical expert so that he can complete his review and finalize his opinions. Some of these films were produced yesterday at plaintiff's deposition.

needs to depose these experts. Due to the timing of this matter, plaintiff's failure to fully disclose the opinions of his expert witnesses is highly prejudicial to defendant, as it precludes him from properly prepare this case for trial.

Therefore, defendant respectfully requests this Court strike plaintiff's expert witnesses for failure to properly disclose and/or failure to properly supplement discovery responses regarding expert witnesses. Defendant requests an Order prohibiting plaintiff's expert from testifying at trial of this matter. Defendant submits this is a proper sanction for plaintiff's failure to provide this information requested to him per the Court's pre-trial order and discovery requests.

IV.

IN THE ALTERNATIVE, DEFENDANT REQUESTS AN ORDER COMPELLING PLAINTIFF TO SUPPLEMENT DISCOVERY AND PROVIDE THE OPINIONS OF ALL HIS EXPERTS, AND OTHER INFORMATION REQUESTED

In the alternative, if this Court is not inclined to strike plaintiff's expert witnesses, despite his failure to timely disclose all opinions of the same, then defendant requests an Order compelling plaintiff to fully supplement defendant's discovery requests to him regarding expert witnesses within three days of the hearing on this matter, or incur the sanction of having said experts stricken and prohibited from testifying at trial of this matter.


CONCLUSION

Based upon the foregoing, defendant respectfully requests an order from this Court, striking plaintiff's expert witnesses and precluding them from testifying at trial of this matter. In the alternative, defendant requests an order from this Court compelling

plaintiff to respond to defendant's discovery requests regarding expert witnesses within three days of the hearing on this matter, or by September 16, 2010.

DATED this 7th day of September, 2010.

POWERS TOLMAN, PLLC

By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2010, I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE EXPERTS, OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402
Attorney For: Larry Hansen

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Judge Anderson
Date 9-7-10
Time 4:50
Deputy Clerk JM

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**AFFIDAVIT OF JENNIFER K. BRIZEE IN
SUPPORT OF MOTION TO STRIKE
PLAINTIFF'S EXPERTS, OR, IN THE
ALTERNATIVE TO COMPEL
DISCOVERY RESPONSES**

STATE OF IDAHO)
) ss.
County of Twin Falls)

JENNIFER K. BRIZEE, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys of record for defendant, Matthew Roberts, in the above-captioned matter, and I make this affidavit on the basis of my own personal knowledge, information and belief.

2. Attached hereto as Exhibit A is a true and correct copy of the pertinent pages of Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff, propounded on plaintiff on February 8, 2010.

3. Attached hereto as Exhibit B is a true and correct copy of the pertinent pages of Plaintiff's Answers to Defendant's First Set of Interrogatories, Responses to Requests for Production of Documents, and Responses to Requests for Admissions submitted March 11, 2010.

4. Attached hereto as Exhibit C is a true and correct copy of Plaintiff's Supplemental Answers to Defendant's First Set of Interrogatories, Responses to Requests for Production of Documents, and Responses to Requests for Admissions, submitted August 10, 2010.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 7th day of September, 2010.

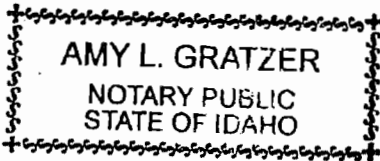
Jennifer K. Brizee

SUBSCRIBED AND SWORN To before me this 7th day of September, 2010.

NOTARY PUBLIC FOR IDAHO

Residing at: Twin Falls

My commission expires: 12-12-12



CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September 2010, I caused a true and correct copy of the foregoing AFFIDAVIT OF JENNIFER K. BRIZEE IN SUPPORT OF MOTON TO STRIKE PLAINTIFF'S EXPERTS, OR, IN THE ALTERNATIVE TO COMPEL DISCOVERY RESPONSES to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

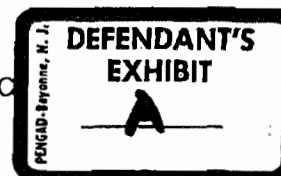
Jennifer K. Brizee

- (b) The type of statement which was taken (whether written, recorded or transcribed);
- (c) The name and address of the present custodian of each statement so taken;
- (d) The date on which the statement was taken;
- (e) The content and subject matter of each statement given;
- (f) Please attach a copy of each statement to your answers to these interrogatories, or in the alternative, indicate your willingness to allow defendant's attorney to inspect and copy each such statement.

INTERROGATORY NO. 6: Please set forth the name, address and telephone number of persons having knowledge of any facts of this case whom you may call as witnesses at the trial, and for each person state the substance of his/her knowledge.

INTERROGATORY NO. 7: State the name and address of each person whom the plaintiff expects to call as an expert witness at the trial. For each such person:

- (a) State the subject matter on which the expert is expected to testify;
- (b) A complete statement of all opinions to be expressed and the basis and reasons therefore;
- (c) The facts, data or other information considered by the witness in forming the opinions;
- (d) Any exhibits to be used by the expert witness as a summary of or support for the opinions; and
- (e) Any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years, the compensation to be paid for the testimony, and a list of any other cases in which the witness



- (b) The type of statement which was taken (whether written, recorded or transcribed);
- (c) The name and address of the present custodian of each statement so taken;
- (d) The date on which the statement was taken;
- (e) The content and subject matter of each statement given;
- (f) Please attach a copy of each statement to your answers to these interrogatories, or in the alternative, indicate your willingness to allow defendant's attorney to inspect and copy each such statement.

INTERROGATORY NO. 6: Please set forth the name, address and telephone number of persons having knowledge of any facts of this case whom you may call as witnesses at the trial, and for each person state the substance of his/her knowledge.

INTERROGATORY NO. 7: State the name and address of each person whom the plaintiff expects to call as an expert witness at the trial. For each such person:

- (a) State the subject matter on which the expert is expected to testify;
- (b) A complete statement of all opinions to be expressed and the basis and reasons therefore;
- (c) The facts, data or other information considered by the witness in forming the opinions;
- (d) Any exhibits to be used by the expert witness as a summary of or support for the opinions; and
- (e) Any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years, the compensation to be paid for the testimony, and a list of any other cases in which the witness

INTERROGATORY NO. 6: Please set forth the name, address and telephone number of persons having knowledge of any facts of this case whom you may call as witnesses at the trial, and for each person state the substance of his/her knowledge.

ANSWER TO INTERROGATORY NO. 6: Plaintiff objects to this interrogatory to the extent it call for the disclosure of impeachment witnesses. Without waiving said objection, Plaintiff answers discovery is only in its formative stages and Plaintiff has not yet had the opportunity to determine who he will call as witnesses at trial of this matter. However, it is likely he will call those individuals identified in Answer to Interrogatory No. 2. Plaintiff reserves the right to supplement the answer to this interrogatory in accordance with the Court's scheduling order, if necessary.

INTERROGATORY NO. 7: State the name and address of each person whom the plaintiff expects to call as an expert witness at the trial. For each such person:

- (a) State the subject matter on which the expert is expected to testify;
- (b) A complete statement of all opinions to be expressed and the basis and reasons therefore;
- (c) The facts, data or other information considered by the witness in forming the opinions;
- (d) Any exhibits to be used by the expert witness as a summary of or support for the opinions; and

DISCOVERY RESPONSES - 7



- (e) Any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years, the compensation to be paid for the testimony, and a list of any other cases in which the witness has testified as an expert at trial or by deposition within the four (4) preceding years.

ANSWER TO INTERROGATORY NO. 7: Plaintiff has not made a decision regarding which experts he intends to utilize at the trial of this matter. Plaintiff reserves the right to update this response in accordance with the Court's scheduling order, if necessary.

INTERROGATORY NO. 8: Please describe each document, object or thing intended to be introduced or utilized as an exhibit at the trial of this cause.

ANSWER TO INTERROGATORY NO. 8: Plaintiff has not made a final decision regarding which documents, objects or things he intends to introduce into evidence at the trial of this matter. At this time, Plaintiff intends on introducing his medical records, medical bills, a medical expense summary, photographs, and a diagram of the scene into evidence.

INTERROGATORY NO. 9: Identify by title, author, publication and date of publication any and all journal articles, text or other medical literature which plaintiff relies upon and/or intend to utilize at the trial of this matter either by way of exhibit, reference to plaintiff's experts or cross-examination of defendant's experts.

ANSWER TO INTERROGATORY NO. 9: Plaintiff has not made a decision regarding which publications, articles, texts, or medical literature Plaintiff will rely upon or

08/10/10 06:42PM MDT '86 53419' -> 12087335444

Pg 7/11

INTERROGATORY NO. 6: Please set forth the name, address and telephone number of persons having knowledge of any facts of this case whom you may call as witnesses at the trial, and for each person state the substance of his/her knowledge.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 6: See Supplemental Answer to Interrogatory No. 2.

INTERROGATORY NO. 7: State the name and address of each person whom the plaintiff expects to call as an expert witness at the trial. For each such person:

- (a) State the subject matter on which the expert is expected to testify;
- (b) A complete statement of all opinions to be expressed and the basis and reasons therefore;
- (c) The facts, data or other information considered by the witness in forming the opinions;
- (d) Any exhibits to be used by the expert witness as a summary of or support for the opinions; and
- (e) Any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years, the compensation to be paid for the testimony, and a list of any other cases in which the witness has testified as an expert at trial or by deposition within the four (4) preceding years.

DISCOVERY RESPONSES - 30

377



08/10/10 06:42PM MDT '8 3419' -> 12087335444

Pg 8/11

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7: Plaintiff's medical providers may be considered experts under the Idaho Rules of Evidence and are expected to testify regarding the nature and extent of Plaintiff's injuries, the treatment rendered to Plaintiff following the automobile collision, the connection between the collision and the treatment, the amount of the charges incurred by Plaintiff for his treatment, the reasonableness of the charges, the necessity of the treatment, the probable treatment necessary in the future, including a second hand surgery. The opinions are based upon a review of Plaintiff's medical records, examination of Plaintiff, history taken from Plaintiff, and education, training and experience in the medical profession.

To the extent that David Kessel, Tregg Scott, and agents and employees of Idavada Claims, Inc. are considered experts under the Idaho Rules of Evidence, they are expected to testify regarding measurements taken at the scene of the collision and a diagram created based on those measurements.

INTERROGATORY NO. 8: Please describe each document, object or thing intended to be introduced or utilized as an exhibit at the trial of this cause.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 8: Plaintiff intends on offering his medical records, medical bills, a medical expense summary, photographs, a diagram of the scene of the collision, and estimates of future medical expenses.

INTERROGATORY NO. 18: State the name and address of each physician, surgeon,

DISCOVERY RESPONSES - 30

BONNEVILLE COUNTY
IDAHO
10 SEP -7 PM 4:50

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

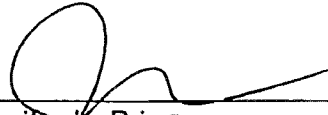
**NOTICE OF HEARING ON
DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S EXPERTS, OR, IN THE
ALTERNATIVE, MOTION TO COMPEL
DISCOVERY RESPONSES**

**TO: LARRY HANSEN, ABOVE-NAMED PLAINTIFF, AND HIS ATTORNEY OF
RECORD, JORDAN IPSEN OF GORDON LAW FIRM:**

YOU WILL PLEASE TAKE NOTICE That the undersigned will bring defendant's Motion to Strike Plaintiff's Expert Witness, or In the Alternative, Motion to Compel Discovery Responses for hearing before this court on Monday, the 13th day of September, 2010, at 1:00 o'clock p.m., or as soon thereafter as counsel can be heard, at the Bonneville County Courthouse.

DATED this 7th day of September, 2010.

POWERS TOLMAN, PLLC


By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2010, I caused a true and correct copy of the foregoing NOTICE OF HEARING ON DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S EXPERTS, OR, IN THE ALTERNATIVE, MOTION TO COMPEL DISCOVERY RESPONSES to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402
Attorney For: Larry Hansen

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

LARRY HANSEN,)
)
 Plaintiff,)
)
 -vs.-)
)
 MATTHEW ROBERTS,)
)
 Defendant.)
 _____)

Case No. CV-2009-3163

MINUTE ENTRY

10 SEP 13 P 3:41

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

On September 13, 2010, at 1:00 PM, a Motion to Compel came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Karen Konvalinka, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present. Mr. Jordan Skye Ipsen appeared on behalf of the plaintiff. Ms. Jennifer Brizee appeared on behalf of the defendant.

Ms. Brizee presented argument on the defendant's Motion to Strike or in the alternative, Motion to Compel.

Mr. Ipsen opposed the motion and does not plan on calling any experts at trial, just medical providers.

The Court discussed what comprises "opinion testimony" with the parties.

Ms. Brizee discussed the problem of a second surgery and the need for disclosure of expert opinion. Ms. Brizee requested a tight timeline to compel or to strike the experts on the accident reconstruction and medical experts purposed by the plaintiff.

The Court informed the parties that witnesses should be disclosed by the plaintiff. The Court will require disclosure by September 20, 2010 according to IRCP Rule 26(b)(4). Ms. Brizee will prepare an order for the Court's signature.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Jennifer Brizee
Skye Ipsen

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COURT, IDAHO

10 SEP 15 09:05

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

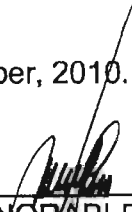
Case No. CV-09-3163

**ORDER COMPELLING SUPPLEMENTAL
EXPERT WITNESS DISCOVERY**

This cause coming on for hearing in this matter on September 13, 2010, and good cause appearing therefore;

IT IS HEREBY ORDERED and this does ORDER that the plaintiff shall supplement, on or before September 20, 2010, his responses to defendant's Rule 26 discovery requests regarding expert witnesses to specifically disclose the opinions that will be testified to by plaintiff's treating medical care providers and personnel of Idavada Claims, Inc., as well as any other opinions to be testified to by any additional witnesses to be called by plaintiff at trial of this matter. Any opinions not disclosed by plaintiff on or before September 20, 2010, will be subject to preclusion at trial.

DATED this 14 day of September, 2010.


HONORABLE JON J. SHINDURLING
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of September, 2010, I caused a true and correct copy of the foregoing ORDER COMPELLING SUPPLEMENTAL EXPERT WITNESS DISCOVERY to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jennifer K. Brizee
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, ID 83303-1276

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Clerk of the Court

By Grace Walter
Deputy Clerk

BONNEVILLE COUNTY
IDAHO

2010 SEP 22 PM 12:38

Jordan S. Ipsen (ISB #7822)
GORDON LAW FIRM, INC.
477 Shoup Ave, Suite 101
Idaho Falls, ID 83402
Telephone: (208) 552-0467
Facsimile: (866) 886-3419

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

LARRY HANSEN,

Plaintiff,

vs.

MATTHEW ROBERTS,

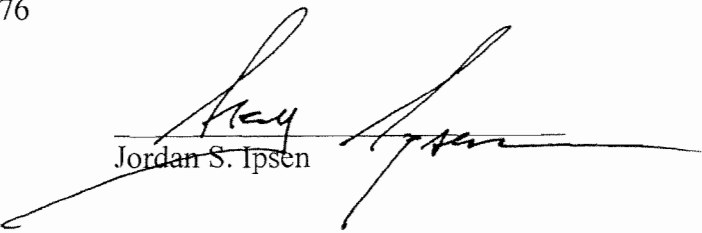
Defendant.

Case No. CV-09-3163

CERTIFICATE OF SERVICE

Plaintiff, by and through Plaintiff's counsel, hereby certifies that on September, 2010 Plaintiff prepared and placed for service upon counsel for Defendant, Plaintiff's Supplemental Answers to Defendant's Interrogatories, Responses to Requests for Production of Documents, and Responses to Requests for Admissions by faxing a copy to the following:

Jennifer Brizee
Powers Tolman, PLLC
132 3rd. Avenue East , P.O. Box 1276
Twin Falls, ID 83303


Jordan S. Ipsen

CERTIFICATE OF SERVICE - 1

555

9/30 SHAWMUT
9/30 CE

BONNEVILLE COUNTY
10 SEP 24 PM 3:54

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**


TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's Second Supplemental Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, upon the plaintiff, with the original to counsel for the plaintiff, on the 24th day of September, 2010, by depositing

same in the United States mail, postage prepaid, in an envelope, addressed to his attorney of record.

DATED this 24th day of September, 2010.

POWERS TOLMAN, PLLC


BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2010, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO
10 OCT -1 AM 8:40

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**MOTION TO STRIKE DR. JOST AND
PLAINTIFF'S WAGE LOSS CLAIM, OR
IN THE ALTERNATIVE, TO COMPEL
DISCOVERY RESPONSES**

COMES NOW the defendant, Matthew Roberts, by and through his attorney of record, Powers Tolman, PLLC, and moves the court, pursuant to the Idaho Rules of Civil Procedure, including Rule 37, for an order striking Dr. Jost as a witness and precluding her from testifying at trial and striking plaintiff's wage loss claim, or in the alternative for an order compelling plaintiff to produce Dr. Jost for deposition, and to produce copies of his 2005-2009 federal and state tax returns, including W2 forms.

This motion is based upon the records, files and pleadings in the above-entitled action, together with the Affidavit of Jennifer K. Brizee in Support of Defendant's Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery

Responses; and the Memorandum in Support of Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses all filed contemporaneously herewith.

Oral argument is requested.

DATED this 30th day of September, 2010.

POWERS TOLMAN, PLLC


By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2010, I caused a true and correct copy of the foregoing MOTION TO STRIKE DR. JOST AND PLAINTIFF'S WAGE LOSS CLAIM, OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES, to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO
10 OCT -1 AM 8:39

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO STRIKE DR.
JOST AND PLAINTIFF'S WAGE LOSS
CLAIM, OR, IN THE ALTERNATIVE, TO
COMPEL DISCOVERY RESPONSES**

COMES NOW, defendant Matthew Roberts, by and through his counsel of record, Powers Tolman, PLLC, and respectfully submits this Memorandum in Support of his Motion to Strike Dr. Jost, and Plaintiff's Wage Loss Claim, or in the Alternative, Motion to Compel Discovery Responses.

I.
ARGUMENT

A. Defendant Is Entitled To The Deposition Of Dr. Jost, And Plaintiff's Conduct In Precluding The Same Is Unreasonable And Prejudicial

This Court is already aware of the fact defendant had to file a motion to strike, or in the alternative, motion to compel in order to persuade plaintiff to disclose the

opinions of his experts. The Court declined to strike plaintiff's experts, and instead offered plaintiff a one-week window to provide opinions of his experts. The same were required to be disclosed on September 20, 2010. At 9:37 p.m., on September 20, 2010, a supplemental discovery document was faxed to defense counsel's office. See Brizee Affidavit. Therefore, the document was not viewed by defense counsel until Tuesday, September 21, 2010. Id. On September 23, 2010, defendant's counsel wrote to plaintiff's counsel and requested the deposition of Dr. Jost, and provided a list of her available dates for the same. See Exhibit C to Brizee Affidavit. She also requested available dates be provided to her on Friday, September 24, 2010. Id.

When no response was forthcoming, defense counsel's assistant, Judy Graf, began calling plaintiff's counsel to obtain available dates for this deposition. See Affidavit of Judy Graf (hereinafter "Graf Affidavit"). On Tuesday, September 28, 2010, Ms. Graf was told by plaintiff's counsel that he did not yet have available dates for the deposition Dr. Jost. See Graf Affidavit. On Wednesday, September 29, 2010, Ms. Graf telephoned plaintiff's counsel again, but was only able to leave a message asking for a call back (although she originally was told he was available). See Graf Affidavit. Her message was never returned. See Graf Affidavit. This message was followed up with a letter from defense counsel to plaintiff's counsel, reiterating the need for available dates, stating the dates were needed by 3:00 o'clock p.m., or she would be forced to file a motion to compel. See Exhibit E to Brizee Affidavit.

No available dates for the deposition of Dr. Jost have been provided by plaintiff's counsel.

Dr. Jost is a treating physician, who is also an expert witness. Therefore, defense counsel cannot contact Dr. Jost directly, but must rely on plaintiff's counsel to actively and diligently obtain dates for her deposition. At the very least, plaintiff's counsel should have had available dates to provide to defendant immediately following the September 23, 2010 letter. There has not been any indication from plaintiff's counsel that there is any issue that has precluded him, during the past four business days from obtaining unavailable dates from Dr. Jost.

Trial in this matter is fast approaching. Trial is scheduled for October 19, 2010. Defendant previously had to file a motion to strike/compel just to get opinions of plaintiff's experts. Now defendant has had to file an additional motion to strike/compel to get deposition dates for plaintiff's main damages witness. This is not reasonable, and not how the process is supposed to work.

At this point, due to the need to file a second motion to strike/compel, defendant seeks to have Dr. Jost precluded from testifying, both as a sanction for the further delay and apparent lack of diligence, and due to the lack of sufficient time to prepare for trial in this matter. Even if Dr. Jost can be deposed between now and trial, there are too few days left to obtain her transcript, provide it to defendant's experts and be prepared for trial.

A trial court has the authority to sanction a party for non-compliance with either a pre-trial order, or for failure to properly answer discovery requests. See e.g., Priest v. Landon, 135 Idaho 898, 900, 26 P.3d 1235, 1237 (Ct.App. 2001). One such sanction is to disallow the evidence that is the subject of the motion. *Id.* See also, I.R.C.P.

37(b)(2)(B). The determination of imposition of such sanctions is vested with the sound discretion of the trial court. See e.g. Priest, supra.

B. Since Plaintiff Is Pursuing a Wage-Loss Claim, Defendant Is Entitled To View His Tax Returns; Failure To Produce The Same Has Been Unreasonable

On February 8, 2010, defendant propounded discovery requests to plaintiff. A copy of the pertinent pages of said discovery requests are attached as Exhibit A to the Affidavit of Jennifer K. Brizee in Support of Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses (hereinafter "Brizee Affidavit"). In these requests, defendant asked plaintiff to produce tax returns, including his W2 forms, if he was pursuing a wage loss claim. See Exhibit A to Brizee Affidavit, request for production No. 13.

Plaintiff responded to these discovery responses on or about March 11, 2010. A copy of the pertinent pages of plaintiff's responses are attached to the Brizee Affidavit as Exhibit B. Plaintiff failed to produce any documents in response to this request for production. Plaintiff merely voiced unfounded objections, and stated, in response that See Exhibit B to Brizee Affidavit.

On September 6, 2010, after the deposition of plaintiff had been completed, I discussed with plaintiff and plaintiff's counsel the need for the subject tax returns. Plaintiff and plaintiff's counsel stated the 2005-2009 tax returns would be produced. See Brizee Affidavit.

On September 24, 2010, defense counsel sent plaintiff's counsel a letter requesting these tax returns. See Exhibit D to Brizee Affidavit. On September 29, 2010, defense counsel sent a second letter to plaintiff's counsel requesting the tax returns be

produced by 3:00 p.m. that day, and stating she would be forced to file a motion to compel if the returns were not forthcoming. See Exhibit E to Brizee Affidavit.

However, no tax returns have ever been produced.

Again, trial in this matter is scheduled for October 19, 2010. Defendant has a right to view plaintiff's tax returns to determine whether a wage loss actually occurred. This is standard in any personal injury case. There has not been any indication these documents cannot be produced, and certainly, at the very least, plaintiff could have obtained duplicates from his accountant.

Once again, defendant has been forced to file a motion to obtain information that should have been provided. Once again, defendant has been prejudiced, as this crucial information has not been produced, and now, if it is produced, will leave nearly no time for evaluation, or follow-up. Defendant requests plaintiff's wage loss claim be stricken as a sanction for this unreasonable conduct.

In the alternative, if this Court is not inclined to strike Dr. Jost as a witness, or plaintiff's wage-loss claim, despite his failure to timely respond to discovery requests, then defendant requests an Order compelling plaintiff to provide available deposition dates for Dr. Jost and to produce the requested tax returns (including W2 forms) within 24 hours of the hearing on this matter, or incur the sanction of having Dr. Jost prohibited from testifying at trial of this matter, and of plaintiff being precluded from pursuing a wage loss claim in this matter at trial.

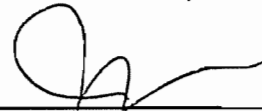
CONCLUSION

Based upon the foregoing, defendant respectfully requests an order from this Court, striking Dr. Jost as a witness, and precluding her from testifying at trial of this

matter, and striking plaintiff's wage loss claim. In the alternative, defendant requests an order from this Court compelling plaintiff to provide available dates for Dr. Jost's deposition (for October 5, 6, 7, or 11) within 24 hours of the hearing on these issues, and plaintiff's tax returns, including W2 forms, within 24 hours of the hearing on these issues.

DATED this 30th day of September, 2010.

POWERS TOLMAN, PLLC

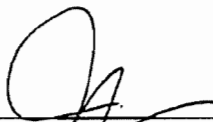
By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2010, I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE DR. JOST AND PLAINTIFF'S WAGE LOSS CLAIM, OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES, to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402
Attorney For: Larry Hansen

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO
10 OCT -1 AM 8:38

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**AFFIDAVIT OF JENNIFER K. BRIZEE
IN SUPPORT OF MOTION TO STRIKE
DR. JOST AND PLAINTIFF'S WAGE
LOSS CLAIM, OR, IN THE
ALTERNATIVE, TO COMPEL
DISCOVERY RESPONSES**

STATE OF IDAHO)
) ss.
County of Twin Falls)

JENNIFER K. BRIZEE, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys of record for defendant, Matthew Roberts, in the above-captioned matter, and I make this affidavit on the basis of my own personal knowledge, information and belief.

2. Attached hereto as Exhibit A is a true and correct copy of the pertinent pages of Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff, propounded on plaintiff on February 8, 2010.

3. Attached hereto as Exhibit B is a true and correct copy of the pertinent pages of Plaintiff's Answers to Defendant's First Set of Interrogatories, Responses to Requests for Production of Documents, and Responses to Requests for Admissions submitted March 11, 2010.

4. On September 6, 2010, I discussed with plaintiff and plaintiff's counsel the need for the subject tax returns. Plaintiff and plaintiff's counsel informed me at that time the tax returns would be produced.

5. Attached hereto as Exhibit C is a true and correct copy of my September 23, 2010, letter to plaintiff's counsel requesting deposition dates for Heidi E. Michelsen-Jost, M.D.

6. Attached hereto as Exhibit D is a true and correct copy of my September 24, 2010, letter to plaintiff's counsel requesting plaintiff's tax returns.

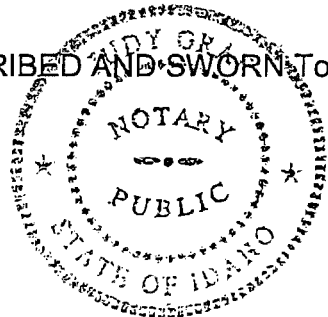
7. Attached hereto as Exhibit E is a true and correct copy of my September 29, 2010, letter to plaintiff's counsel again requesting deposition dates for Heidi E. Michelsen-Jost, M.D., and plaintiff's tax returns.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 30th day of September, 2010.

Jennifer K. Brizee

SUBSCRIBED AND SWORN To before me this 30th day of September, 2010.



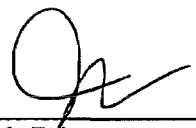
NOTARY PUBLIC FOR IDAHO
Residing at: Turn Falls, Id
My commission expires: 6-14-2014

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2010, I caused a true and correct copy of the foregoing AFFIDAVIT OF JENNIFER K. BRIZEE IN SUPPORT OF MOTION TO STRIKE DR. JOST AND PLAINTIFF'S WAGE LOSS CLAIM, OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail



Jennifer K. Brizee

verification of your rate of pay and actual time missed from work since the date of the occurrence which is the basis of this lawsuit.

REQUEST FOR PRODUCTION NO. 13: Please produce all W-2 forms, 1099 forms or any and all other documents or forms showing or depicting any type of compensation paid to plaintiffs, filed by plaintiff for the years 1999 to present.

REQUEST FOR PRODUCTION NO. 14: Please produce all documents, if any, that plaintiff will rely on in testifying at the trial of this action.

REQUEST FOR PRODUCTION NO. 15: Please produce each and every document or other tangible item generated by plaintiff's employer regarding his employment from 1999 to present.

REQUEST FOR PRODUCTION NO. 16: Please produce each and every document or other tangible item constituting and/or pertaining to each and every release, settlement, agreement, compromise, covenant or any other type of agreement, if any, plaintiffs have entered into with any person, firm, corporation or other entity as a result of the matters referred to in plaintiff's Complaint.

REQUEST FOR PRODUCTION NO. 17: Please produce each and every statement, whether written, oral or recorded, taken of any of the persons who may have knowledge pertaining to the allegations set forth in plaintiff's Complaint.

REQUEST FOR PRODUCTION NO. 18: Please produce each and every tape or other recording, if any, of conversations between plaintiff and defendant.

REQUEST FOR PRODUCTION NO. 19: Please produce each and every document or other tangible item supporting or tending to support plaintiff's claims for

preceding the incident which is the basis of this lawsuit and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

PRODUCTION NO. 10: Objection; the request is overly broad and unduly burdensome; seeks information that is not relevant to any claim or defense asserted in this matter; the information sought is more readily available from other sources.

REQUEST FOR PRODUCTION NO. 11: If you are alleging a loss of earnings, earning capacity or profits in the past or future, copies of all state and federal income tax returns or schedules and attachments thereto, of your income tax returns filed or prepared for filing since the date of the subject incident and all other records and documentation pertaining to or regarding any loss of wages, loss of earning capacity or loss of profits.

PRODUCTION NO. 11: Objection; the request is overly broad and unduly burdensome; seeks information that is not relevant to any claim or defense asserted in this matter; the information sought is more readily available from other sources.

REQUEST FOR PRODUCTION NO. 12: If you are claiming lost wages, please produce all punch cards, time slips, payroll records, a copy of any documents or other verification of your rate of pay and actual time missed from work since the date of the occurrence which is the basis of this lawsuit.

PRODUCTION NO. 12: See attached letter from the Department of the Interior.

REQUEST FOR PRODUCTION NO. 13: Please produce all W-2 forms, 1099 forms

DISCOVERY RESPONSES - 24

or any and all other documents or forms showing or depicting any type of compensation paid to plaintiffs, filed by plaintiff for the years 1999 to present.

PRODUCTION NO. 13: Objection; the request is overly broad and unduly burdensome; seeks information that is not relevant to any claim or defense asserted in this matter; the information sought is more readily available from other sources.

REQUEST FOR PRODUCTION NO. 14: Please produce all documents; if any, that plaintiff will rely on in testifying at the trial of this action.

PRODUCTION NO. 14: Objection; the request is vague; and overly broad and unduly burdensome. Without waiving the objection, see attached documents.

REQUEST FOR PRODUCTION NO. 15: Please produce each and every document or other tangible item generated by plaintiff's employer regarding his employment from 1999 to present.

PRODUCTION NO. 15: Objection; the request is overly broad and unduly burdensome; and seeks information that is not relevant to any claim or defense asserted in this matter.

REQUEST FOR PRODUCTION NO. 16: Please produce each and every document or other tangible item constituting and/or pertaining to each and every release, settlement, agreement, compromise, covenant or any other type of agreement, if any, plaintiffs have entered into with any person, firm, corporation or other entity as a result of the matters referred to in

POWERS • TOLMAN

PLLC
ATTORNEYS

Boise Office:
Powers • Thomson, PC

Raymond D. Powers
James S. Thomson, II
Portia L. Rauer
Mark J. Orlor
Joyce A. Hemmer

Webpage: www.powerstolman.com
Email: contact@powerstolman.com

Twin Falls Office:
Tolman • Brizee, PC

Steven K. Tolman
Jennifer K. Brizee
Nicole L. Cannon
Douglas G. Abenroth

345 Bobwhite Court, Suite 150
Boise, Idaho 83706
Post Office Box 9756
Boise, Idaho 83707
Telephone (208) 577-5100
Facsimile (208) 577-5101

132 Third Avenue East
Twin Falls, Idaho 83301
Post Office Box 1276
Twin Falls, Idaho 83303
Telephone (208) 733-5566
Facsimile (208) 733-5444

September 23, 2010

Sent via fax only to: (866) 886-3419

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

RE: Hansen v. Roberts

Dear Sky:

I would like to request available dates for depose Dr. Heidi Michelsen-Jost within the next two weeks. My available dates for taking Dr. Michelsen-Jost's deposition are September 28, 29, and 30, and October 5, 6 and 7, 2010.

Please contact Dr. Michelsen-Jost to obtain her available dates for a deposition and let me know as soon as possible. I am hopeful you can get back to me by tomorrow.

Thank you for your cooperation.

Sincerely yours,

Dictated by Ms. Brizee,
transcribed and mailed in
her absence to avoid delay

JENNIFER K. BRIZEE

:jg

EXHIBIT C

With Attorneys Admitted to Practice
Law in Idaho and Washington

POWERS • TOLMAN
PLLC
ATTORNEYS

Boise Office:
Powers • Thomson, PC

Raymond D. Powers
James S. Thomson, II
Portia L. Rauer
Mark J. Orler
Joyce A. Hemmer

345 Bobwhite Court, Suite 150
Boise, Idaho 83706
Post Office Box 9756
Boise, Idaho 83707
Telephone (208) 577-5100
Facsimile (208) 577-5101

Webpage: www.powerstolman.com
Email: contact@powerstolman.com

Twin Falls Office:
Tolman • Brizee, PC

Steven K. Tolman
Jennifer K. Brizee
Nicole L. Cannon
Douglas G. Abenroth

132 Third Avenue East
Twin Falls, Idaho 83301
Post Office Box 1276
Twin Falls, Idaho 83303
Telephone (208) 733-5566
Facsimile (208) 733-5444

September 24, 2010

Sent via fax only to: (866) 886-3419

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

RE: Hansen v. Roberts

Dear Sky:

As we discussed at plaintiff's deposition, you promised to send me copies of the plaintiff's federal and state tax returns for 2005-2009. To date, I have not received these tax returns.

With trial scheduled to begin October 19, 2010, I need to receive copies of these tax returns by Monday, September 27, 2010, or I will be forced to file a motion to compel, as I cannot adequately prepare for trial without the tax returns.

Thank you for your cooperation.

Sincerely yours,

Dictated by Ms. Brizee,
transcribed and mailed in
her absence to avoid delay

JENNIFER K. BRIZEE

:jg

EXHIBIT D

*With Attorneys Admitted to Practice
Law in Idaho and Washington*

POWERS • TOLMAN
 PLLC
 ATTORNEYS

Boise Office:
 Powers • Thomson, PC

Raymond D. Powers
 James S. Thomson, II
 Portia L. Rauer
 Mark J. Orler
 Joyce A. Hemmer

345 Bobwhite Court, Suite 150
 Boise, Idaho 83706
 Post Office Box 9756
 Boise, Idaho 83707
 Telephone (208) 577-5100
 Facsimile (208) 577-5101

Webpage: www.powerstolman.com
 Email: contact@powerstolman.com

Twin Falls Office:
 Tolman • Brizee, PC

Steven K. Tolman
 Jennifer K. Brizee
 Nicole L. Cannon
 Douglas G. Abenroth

132 Third Avenue East
 Twin Falls, Idaho 83301
 Post Office Box 1276
 Twin Falls, Idaho 83303
 Telephone (208) 733-5566
 Facsimile (208) 733-5444

September 29, 2010

Jordan S. Ipsen
 GORDON LAW FIRM, INC.
 477 Shoup Ave., Suite 101
 Idaho Falls, ID 83402

Sent via fax only to: (866) 886-3419

RE: Hansen v. Roberts

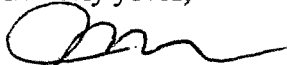
Dear Sky:

On September 21, 2010, I received your supplemental discovery responses in which you finally provided to me the opinions of your experts. On September 23, 2010, I wrote to you requesting available dates to depose Dr. Heidi Michelsen-Jost, and my assistant, Judy, contacted you yesterday to inquire if you were able to obtain Dr. Jost's available dates. You advised Judy that you had not yet heard back from Dr. Jost. This letter is to again request available dates for taking Dr. Jost's deposition. If I have not heard from you regarding these dates by 3:00 p.m. today, I will be forced to file a motion to compel.

During the deposition of Mr. Hansen, which was taken on September 6, 2010, you and Mr. Hansen agreed Mr. Hansen's tax returns for the past five years (2005-2009) would be produced. None have been produced. On September 24, 2010, I wrote to you requesting copies of the plaintiff's federal and state tax returns for 2005-2009. I had Judy ask you about the tax returns yesterday as well. You advised Judy that Mr. Hansen was attempting to obtain copies of his tax returns, but you had not received copies yet. Again, I will need to receive copies of these tax returns by 3:00 p.m. today, or I will be forced to file a motion to compel. Please note, Mr. Hansen's W-2 forms are part of his tax returns and should be included.

Thank you for your cooperation.

Sincerely yours,



JENNIFER K. BRIZEE

jg

EXHIBIT E

With Attorneys Admitted to Practice
 Law in Idaho and Washington

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Judge Anderson
Date 10-1-10
Time 8:40
Deputy Clerk M

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**AFFIDAVIT OF JUDY GRAF
IN SUPPORT OF MOTION TO STRIKE
DR. JOST AND PLAINTIFF'S WAGE
LOSS CLAIM, OR, IN THE
ALTERNATIVE, TO COMPEL
DISCOVERY RESPONSES**

STATE OF IDAHO)
) ss.
County of Twin Falls)

JUDY GRAF, being first duly sworn on oath, deposes and says:

1. I am the assistant to Jennifer Brizee, the attorney of record for defendant, Matthew Roberts, in the above-captioned matter, and I make this affidavit on the basis of my own personal knowledge, information and belief.

2. On September 28, 2010, Jennifer Brizee asked me if I had received a response from Mr. Ipsen regarding our request for available dates for Dr. Jost's deposition and I informed Ms. Brizee I had not heard from Mr. Ipsen, either verbally or in writing. Ms. Brizee asked me to telephone Mr. Ipsen to inquire if he had been able to obtain available dates for Dr. Jost's deposition. When I telephoned Mr. Ipsen, he stated that he had not yet received available dates for Dr. Jost's deposition.

3. Also, on September 28, 2010, Jennifer Brizee asked me if I had received a response from Mr. Ipsen regarding our request for production of plaintiff's tax returns, and I informed Ms. Brizee I had not heard from Mr. Ipsen, either verbally or in writing. Ms. Brizee asked me to telephone Mr. Ipsen to inquire when he would be providing plaintiff's tax returns. When I telephoned Mr. Ipsen, he stated he had not received copies of plaintiff's tax returns, and said the plaintiff was looking for his tax returns.

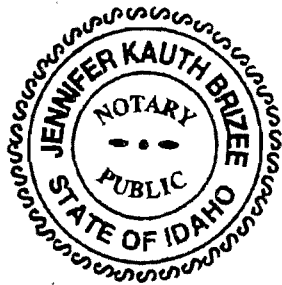
4. On September 29, 2010, Jennifer Brizee asked me if I had received a response from Mr. Ipsen regarding our written request for production of plaintiff's tax returns and our written request to provide available dates for Dr. Jost's deposition. I informed her I had not heard from Mr. Ipsen, either verbally or in writing. Ms. Brizee asked me to telephone Mr. Ipsen again. When I telephone Mr. Ipsen's office, the receptionist said Mr. Ipsen was in the office and transferred my call. After several minutes, a generic announcement came on requesting that I leave a message. I left a message Mr. Ipsen wherein I stated my name and telephone number, and requested that Mr. Ipsen to return my call regarding the Hansen v. Roberts case. Mr. Ipsen did not return my telephone call yesterday or today.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 30th day of September, 2010.

Judy Graf
Judy Graf

SUBSCRIBED AND SWORN To before me this 30th day of September, 2010.



Jennifer K. Brizee
NOTARY PUBLIC FOR IDAHO
Residing at: Idaho Falls
My commission expires: 1/18/13

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2010, I caused a true and correct copy of the foregoing AFFIDAVIT OF JUDY GRAF IN SUPPORT OF MOTION TO STRIKE DR. JOST AND PLAINTIFF'S WAGE LOSS CLAIM, OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jennifer K. Brizee
Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO
10 OCT -1 AM 8:41

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

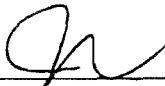
**NOTICE OF HEARING ON MOTION
TO STRIKE DR. JOST AND PLAINTIFF'S
WAGE LOSS CLAIM, OR IN THE
ALTERNATIVE, TO COMPEL
DISCOVERY RESPONSES**

**TO: LARRY HANSEN, ABOVE-NAMED PLAINTIFF, AND HIS ATTORNEY OF
RECORD, JORDAN IPSEN OF GORDON LAW FIRM:**

YOU WILL PLEASE TAKE NOTICE That the undersigned will bring defendant's Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses for hearing before this court on Tuesday, the 5th day of October, 2010, at 1:30 o'clock p.m., or as soon thereafter as counsel can be heard, at the Bonneville County Courthouse.

DATED this 30th day of September, 2010.

POWERS TOLMAN, PLLC


By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2010, I caused a true and correct copy of the foregoing NOTICE OF HEARING ON DEFENDANT'S MOTION TO STRIKE DR. JOST AND PLAINTIFF'S WAGE LOSS CLAIM, OR, IN THE ALTERNATIVE, TO COMPEL DISCOVERY RESPONSES to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO

10 OCT -1 PM 3:13

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163

**DEFENDANT'S SECOND
SUPPLEMENTAL DISCLOSURE OF
EXPERT WITNESSES**

COMES NOW the defendant, Matthew Roberts, by and through his counsel of record, Jennifer K. Brizee of Powers Tolman, PLLC, and in accordance with this Court's Order Setting Trial and Pretrial Conference dated the 31st day of March, 2010, hereby discloses the following individuals, who may be called as an expert witness at the trial of this matter:

Scott Kimbrough, Ph.D.
MRA Forensic Sciences
125 W. Burton Avenue
Salt Lake City, UT 84115-2610
(801) 746-1170

Thomas W. Broderick, M.D.
P.O. Box 3735
Hailey, ID 83333
(208) 727-8238

James A. Retmier, M.D.
Intermountain Orthopaedic Clinic
738 N. College Rd., Suite A
Twin Falls, ID 83301
(208) 734-7291

Louis E. Murdock, M.D.
Intermountain Orthopaedics
600 N. Robbins Rd. #401
Boise, ID 83702-4567
(208) 383-0201

John Droge, Ph.D. (retained 9/29/10; determined will testify at trial 10/1/10)
MRA Forensic Sciences
125 West Burton Ave.
Salt Lake City, Utah 84115
(801) 746-1145

Any and all individuals identified as an expert witness by plaintiff in his present and future discovery answers or formal disclosure documents.

Any and all individuals called to testify as an expert witness by plaintiff.

Any and all individuals identified as an expert witness by the defendant in his discovery answers or formal disclosure documents.

Any and all individuals called to testify as an expert witness by defendant.

In addition to the foregoing individuals, defendant reserves the right to call and hereby identifies those individuals who may be qualified to render expert opinion testimony but who have not been retained as expert witnesses by plaintiff or defendant, including but not limited to, health care providers and the other parties to this litigation. These individuals include, but are not limited to:

Ray Hermosillo, PPC #654
Rexburg Police Department
25 East Main Street
Rexburg, ID 83440
(208) 359-3008

Madison Memorial Hospital
450 East Main Street
Rexburg, ID 83440
(208) 356-3691

Ronald G. Mills, M.D.
10 Madison Professional Plaza
Rexburg, ID 83440
(208) 356-9666

Madison Physician Services
P.O. Box 700
Rexburg, ID 83440
(208) 359-9898

Mountain Valley Imaging
P.O. Box 31
Rexburg, ID 83440
(208) 356-8404

Teton Outpatient Services
P.O. Box 12530
Jackson, WY 83002
(307) 733-8677

Any and all individuals and health care providers who provided medical care and treatment to Larry Hansen, and whose true and correct identities are set forth in the medical records.

As discovery on these matters is continuing, this disclosure may be updated as depositions are taken and additional facts become known.

Plaintiff may have failed to disclose the identity of all of Larry Hansen's treating health care providers, and defendant has not had the opportunity to depose Larry

Hansen's treating health care providers. Also, plaintiff may have failed to provide all of the medical records and films requested by defendant in discovery. Accordingly, defendant reserves the right to supplement this disclosure of expert witnesses in the event information and facts become known subsequent to taking the depositions of said health care providers or otherwise through discovery, written reports, deposition testimony, or written discovery answers relative to opinions held by said health care providers or other expert witnesses of plaintiff, if any, which would require and necessitate defendant to retain additional expert witnesses.

Defendant reserves the right to supplement this disclosure in the event additional facts and information become known prior to trial that would necessitate defendant to retain additional expert witnesses.

Plaintiff has failed to respond to defendant's discovery requests seeking information regarding plaintiff's expert witnesses. Since plaintiff has the burden of proof in this case, defendant's expert witnesses essentially are rebuttal expert witnesses. Therefore, defendant reserves the right to supplement this discovery response and provide information regarding rebuttal expert witnesses once plaintiff has responded to defendant's discovery requests.

Defendant reserves the right to supplement this disclosure in the event the testimony and opinions rendered by any expert witnesses retained by the plaintiff, either through written reports, depositions, or written discovery answers, requires defendant to retain additional expert witnesses.

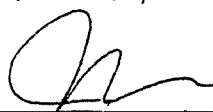
Defendant reserves the right to supplement this disclosure in the event the individuals identified herein become unavailable to testify at trial.

Any expert witnesses defendant elects not to call at trial are declared to be consulting witnesses only, whether deposed or not. No other party may call such consulting experts without defendant's permission.

By making this disclosure, defendant does not represent that he will call all the disclosed witnesses or that any of the disclosed witnesses will be present at trial.

DATED this 15th day of October, 2010.

POWERS TOLMAN, PLLC

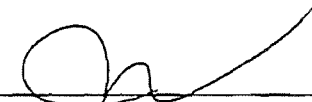
BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2010, I caused a true and correct copy of the foregoing Defendant's Second Supplemental Disclosure of Expert Witnesses to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402
Attorney For: Larry Hansen

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

9/30 Shurtluff

10/5 CE

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

BONNEVILLE COUNTY
2010 OCT -1 PM 4:44

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

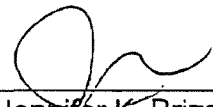
TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's Third Supplemental Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, upon the plaintiff, with the original to counsel for the plaintiff, on the 1st day of October, 2010, by depositing same in

the United States mail, postage prepaid, in an envelope, addressed to his attorney of record.

DATED this 15th day of October, 2010.

POWERS TOLMAN, PLLC

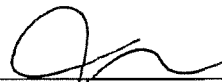
BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2010, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

LARRY HANSEN,)	
)	
Plaintiff,)	Case No. CV-2009-3163
)	
-vs.-)	MINUTE ENTRY
)	
MATTHEW ROBERTS,)	
)	
Defendant.)	
_____)	

On October 5, 2010, at 1:30 PM, defendant's Motion to Compel, and Motion for Relief came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present.

Mr. Jordan Ipsen appeared on behalf of the plaintiff.

Ms. Jennifer Brizee appeared on behalf of the defendant.

Ms. Brizee presented argument on the defendant's Motion to Compel, or in the alternative, Motion to Strike Testimony of Dr. Jost.

Mr. Ipsen stated he had called Dr. Jost's office twice and cannot speak with the contact person for her depositions for a date. Mr. Ipsen opposed the Motion to Compel.

Ms. Brizee rebutted the opposition argument.

The Court discussed the issues with the parties and made the parties aware that there is an obligation to prepare for trial. The trial date is VACATED.

Ms. Brizee presented issues of vacating the trial to the Court.

Ms. Brizee presented argument on the issues of tax returns.

Mr. Ipsen opposed turning over the tax returns.

Ms. Brizee rebutted the opposition argument.

The Court suggested Mr. Ipsen and Ms. Brizee sit down and call Dr. Jost together and set a time for deposition.

The Court discussed the issue of tax returns with the parties, and GRANTED the Motion to Compel as to the tax returns. Ms. Brizee will prepare the order for signature.

A new possible trial date of February 8, 2011 at 10:00 AM. Discovery will be open as to the two issues of Dr. Jost and the tax returns.

The Court GRANTED the Motion for Relief from Mediation.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Jordan Ipsen
Jennifer Brizee

ORIGINAL

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

2010 OCT -5 PM 2:20
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

Larry Hansen,
Plaintiff,

vs.

Matthew Roberts
Defendant.

Case No. CV-09-3163

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's Fourth Supplemental Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, upon the plaintiff, with the original to counsel for the plaintiff, on the 5th day of October, 2010, by hand delivering the same in an envelope, addressed to his attorney of record.

DATED this 5th day of October, 2010.

POWERS TOLMAN, PLLC

BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2010, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

2010 OCT -5 PM 2:20
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

ORIGINAL

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,
Plaintiff,

vs.

Matthew Roberts,
Defendant.

Case No. CV-09-3163

DEFENDANT'S MOTIONS IN LIMINE

COMES NOW the defendant, Matthew Roberts, by and through his attorney of record, Powers Tolman, PLLC, and moves this Court for an Order prohibiting plaintiff, his counsel, representatives and witnesses, from making any mention, directly or indirectly, in any manner whatsoever during voir dire, opening statement, interrogation of witnesses, objections, arguments, closing statement, or in any manner whatsoever, concerning the following matters: (A) learned treatises; (B) pleading for sympathy; and (C) reference to the insurance industry.¹

¹ It should be noted, defendant has filed a motion to strike Dr. Jost as a witness, and a motion to strike plaintiff's lost wages claim. If these motions are granted, then these will also be added as motions in limine. Therefore, defendant reserves the right to file subsequent motions in limine.

These motions are made and based upon the record herein, the Idaho Rules of Evidence, and the following law and argument:

ARGUMENT

A. Except Upon Motion And Order For Good Cause Shown, Learned Treatises, Scientific And Medical Texts And Publications Should Not Be Received As Exhibits.

In certain circumstances, learned treatises may be admissible. Rule 803(18), Idaho Rules of Evidence, specifically lists the circumstances in which learned treatises may be excepted from the hearsay rule. The relevant portion of Rule 803, Idaho Rules of Evidence, states:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by expert witnesses in direct examination, statements contained in public treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or arts, established as a reliable authority by testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but **may not be received as exhibits, except upon motion and order for good cause shown.**

Id. (Emphasis added).

On the basis of the foregoing, defendant submits any treatises and publications are allowed into evidence only in accordance with Rule 803(13), and should not be received as an exhibit unless good cause is shown to this Court. On these bases, except as set forth hereinabove, those items should be excluded by this Court pursuant to Rule 802, Idaho Rules of Evidence.

B. It Is Proper For This Court To Prohibit Plaintiff From Seeking Sympathy From The Jury.

Defendant respectfully requests this Court prohibit plaintiff from seeking sympathy from the jury on the basis it is improper to purposefully inflame or impassion the jury. Further, any attempt to do so is prejudicial and not relevant to the facts at issue in this case, and therefore, should be excluded in accordance with Rules 402 and/or 403, Idaho Rules of Evidence.

C. Pursuant To Rule 411, Idaho Rules of Evidence, An Order Preventing Plaintiff From Making Any Mention Related To The Insurance Industry Is Proper.

Rule 411, Idaho Rules of Evidence, provides:

Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Id.

There is no indication any exception to this rule is at issue in this matter. Therefore, defendant respectfully submits plaintiff should be directed to refrain from making any mention of insurance or the insurance industry during the course of trial, including during voir dire.

**III.
CONCLUSION**

On the basis of the foregoing, together with the record herein defendant respectfully requests this Court grant his motions in limine, in whole.

DATED this 5 day of October, 2010.

POWERS TOLMAN, PLLC

By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of October, 2010, I caused a true and correct copy of the foregoing DEFENDANT'S MOTIONS IN LIMINE to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402
Attorney For: Larry Hansen

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

ORIGINAL

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

2010 OCT -5 PM 2:20
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**NOTICE OF HEARING ON
DEFENDANT'S MOTIONS IN LIMINE**


**TO: LARRY HANSEN, ABOVE-NAMED PLAINTIFF, AND HIS ATTORNEY OF
RECORD, JORDAN IPSEN OF GORDON LAW FIRM:**

YOU WILL PLEASE TAKE NOTICE That the undersigned will bring Defendant's
Motions in Limine for hearing before this court on Wednesday, the 13th day of October,
2010, at 8:30 o'clock a.m., or as soon thereafter as counsel can be heard, at the
Bonneville County Courthouse.

123

DATED this 5th day of October, 2010.

POWERS TOLMAN, PLLC


By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2010, I caused a true and correct copy of the foregoing NOTICE OF HEARING ON DEFENDANT'S MOTIONS IN LIMINE to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO
10 OCT -5 PM 3:00

Matthew Roberts, pro-se
851 West 260 South
Orem, Utah 84058
(208) 521-1153

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

JOINDER

Matthew Roberts,

Plaintiff,

vs.

Larry Hansen,

Defendant.

COMES NOW, plaintiff Matthew Roberts, and joins in the following documents filed on his behalf, as a defendant: Defendant's Disclosure of Expert Witnesses, Defendant's Supplemental Disclosure of Expert Witnesses, Defendant's Second Supplemental Disclosure of Expert Witnesses Defendant's Trial Exhibits, Defendant's Witness List, Defendant's Requested Jury Instructions, Defendant's Special Verdict

JOINDER, PAGE 1

Form, Defendant's Motions in Limine, Defendant's Trial Memorandum, and Defendant's Pre-Trial Statement.

DATED this 5th day of October, 2010.


By: 
Matthew Roberts

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2010, I caused a true and correct copy of the foregoing JOINDER to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Matthew Roberts

2010 OCT -5 PM 2:20
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

ORIGINAL


IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**DEFENDANT'S REQUESTED JURY
INSTRUCTIONS AND SPECIAL
VERDICT**

COMES NOW the defendant Matthew Roberts, by and through his counsel of record, Jennifer K. Brizee of Powers Tolman PLLC, and requests standard Idaho Jury Instruction Nos. 1.00, 1.01, 1.03, 1.03.1, 1.04, 1.05, 1.09, 1.11, 1.13, 1.13.1, 1.15.1, 1.17, 1.20.1, 1.22, 1.24.1, 1.24.2, 1.28, 2.00.2, 2.20, 2.30.2, 9.00, 9.02, 9.14.

Defendant also requests modified instructions 1.07, 1.41.4.1, 1.41.4.2, 1.43.1, 2.22 (two of them), 9.01 (only to change "the plaintiff" to "a plaintiff" since there are two plaintiffs), additional instructions and special verdict, all of which are attached hereto.

Defendant reserves the right to supplement, modify or withdraw any of these instructions.

DATED this 5th day of October, 2010.

POWERS TOLMAN, PLLC


By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2010, I caused a true and correct copy of the foregoing DEFENDANT'S REQUESTED JURY INSTRUCTIONS AND SPECIAL VERDICT to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

9/30 Stauderling

b/3 CE

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

50 COUNTY
2009 OCT -6 PM 1:36

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**NOTICE OF TAKING DEPOSITION
DUCES TECUM OF HEIDI
MICHELSEN-JOST, M.D.**

**TO: Plaintiff, LARRY HANSEN, and his attorney of record, JORDAN S. IPSEN of
Gordon Law Firm, Inc.:**

YOU WILL PLEASE TAKE NOTICE the defendant will take the testimony upon oral examination of **HEIDI MICHELSEN-JOST, M.D.**, before a qualified Court Reporter, on **Monday, the 11th day of October, 2010, at the hour of 4:30 o'clock p.m.**, at Teton Orthopaedics, 555 East Broadway, Jackson, Wyoming 83002, telephone number: (307) 733-3900, pursuant to Rule 30(a) and 30(b)(6) of the Idaho Rules of Civil Procedure.

Said deponent is required to bring with her the originals plus one copy of the following:

Any and all documents concerning LARRY HANSEN and/or the subject matter of this litigation. The term "document" means and includes any and all records, notes, reports, consultations, invoices, analyses, charts, or any other document relative to this matter provided to or received by you, whether or not generated by you, contained within your file or in your possession, as well as all documents relied upon, referred to or consulted by you in rendering your opinions in this matter or generated by you. The term "document" also means and includes any kind of written, typewritten, or printed material whatsoever, including, but not limited to, papers, agreements, notes, memoranda, correspondence, letters, telegrams, statements, books, reports, studies, minutes, records, analyses, surveys, transcriptions, and recordings of which you have any knowledge or information, whether in your possession or control or not, relating to or pertaining in any way to the instant subject matter, and includes, but without limitation, originals, all file copies, and all other copies, no matter how or by whom prepared, and all drafts prepared in connection with such writing, whether used or not.

DATED this 6th day of October, 2010.

POWERS TOLMAN, PLLC

BY: 
 JENNIFER K. BRIZEE

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2010, I caused a true and correct copy of the foregoing NOTICE OF TAKING DEPOSITION DUCES TECUM OF **HEIDI MICHELSEN-JOST, M.D.**, to be served by the method indicated below, to the following:

Heidi Michelsen-Jost, M.D.
c/o Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

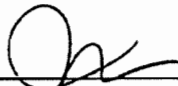
- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

M & M Court Reporting
P.O. Box 2636
Boise, ID 83701-2636

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail



Jennifer K. Brizee

10 OCT -8 PM 102

Jordan S. Ipsen (ISB #7822)
GORDON LAW FIRM, INC.
477 Shoup Ave, Suite 101
Idaho Falls, ID 83402
Telephone: (208) 552-0467
Facsimile: (866) 886-3419

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

LARRY HANSEN,

Plaintiff,

vs.

MATTHEW ROBERTS,

Defendant.

Case No. CV-09-3163

**PLAINTIFF'S FIRST MOTION IN
LIMINE**

Plaintiff, by and through his undersigned counsel, hereby moves the Court for an order excluding any evidence that Plaintiff received a traffic citation in connection with the automobile collision at issue in this case and limiting Officer Hermosillo's testimony to facts that he observed and statements made by the parties.

FACTUAL BACKGROUND

Plaintiff and Defendant were involved in a motor vehicle collision that occurred on

December 12, 2008. Officer Ray Hermosillo of the Rexburg Police Department was dispatched to the scene of the collision. Officer Hermosillo did not witness the collision but arrived at the scene shortly after it had occurred. Officer Hermosillo issued a traffic citation to Larry Hansen. The infraction was later dismissed in Madison County Case No. CR-08-3640.

Defendant has listed "Citation of Larry Hansen" as his first trial exhibit. (Defendant's Amended Trial Exhibits at 1.) Defendant has also listed Officer Ray Hermosillo as a witness who is expected to testify at the trial of this matter. (Defendant's Witness List at 2.) Thus, it appears that Defendant intends on introducing evidence regarding the fact that Officer Hermosillo issued a traffic citation to Larry Hansen.

LEGAL ARGUMENT

The Evidence is Improper Opinion Testimony

"The mere fact of receiving a traffic citation, by itself, is not admissible evidence in a subsequent proceeding arising out of the same accident." *LaRue v. Archer*, 130 Idaho 267, 270, 939, P.2d 586, (1997) (overruled on other ground); *Martin v. Hackworth*, 127 Idaho 68, 70, 896 P.2d 976, 978 (1995). "A citation constitutes a police officer's conclusion that a driver has violated a statute or an ordinance." *Martin v. Hackworth*, 127 Idaho 68, 70, 896 P.2d 976, 978 (1995). The fact that Hansen was issued a citation constitutes improper opinion testimony from Officer Hermosillo that Hansen violated the law. The act of issuing a citation is Hermosillo's opinion or conclusion that Hansen violated the law, which is distinguishable from a statement of

fact and represents statements made by someone else which were given to Hermosillo rather than his own observations.

The Evidence is Unduly Prejudicial

Furthermore, the mere fact that Larry Hansen was issued a citation should be precluded under Rule 403 of the Idaho Rules of Evidence. Rule 403 provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

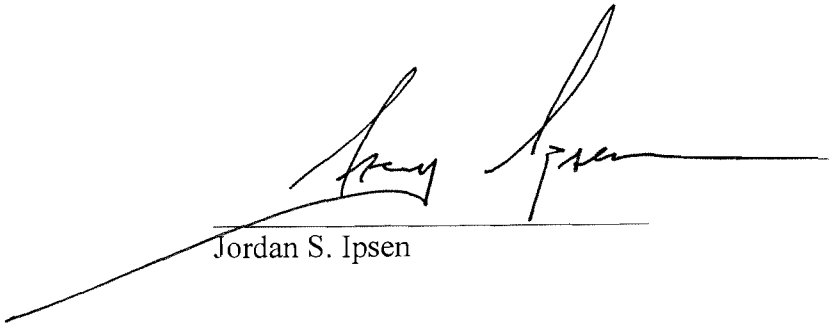
Evidence regarding the issuance of a traffic citation carries an enormous risk of prejudicing and/or misleading the jury on the issue of liability and is unnecessary to resolution of the civil dispute. This risk is further compounded by (1) the reality that many jurors view a police officer's testimony as gospel; and (2) the infraction in this case was later dismissed by the prosecutor. Allowing jurors to hear evidence that Hansen was given a traffic citation or see the actual citation may mislead them into believing that the issues of negligence have been resolved. However, in a personal injury lawsuit, the determination of whether a party was negligent, is a question for the jury. *Burgess v. Salmon River Canal Co.*, 119 Idaho 299, 309, 805 P.2d 1223, 1233 (1991) ("The determination and apportionment of negligence is for the trier of fact to determine....")

CONCLUSION

Evidence that a citation was issued to Hansen is not permitted under Idaho decisional law

and constitutes improper opinion testimony by a lay witness. Furthermore, such evidence only serves to unfairly prejudice Hansen. The only way to avoid tainting this civil litigation is to disallow any evidence that Hansen was issued a citation and limit Officer Hermosillo's testimony to evidence based on personal knowledge and which is not hearsay, i.e. his observations and statements taken from the parties, and to limit any mention of the citation at any stage of the trial.

DATED October 8, 2010.

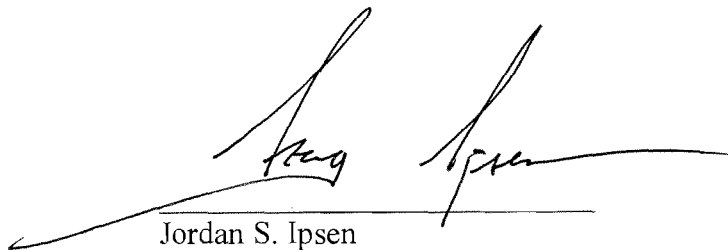


Jordan S. Ipsen

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2010, I faxed a copy of the foregoing to the following:

Jennifer Brizee
Powers Tolman, PLLC
132 3rd. Avenue East , P.O. Box 1276
Twin Falls, ID 83303



Jordan S. Ipsen

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

LARRY HANSEN,)
)
 Plaintiff,)
)
 -vs.-)
)
 MATTHEW ROBERTS,)
)
 Defendant.)
 _____)

Case No. CV-2009-3163
AMENDED
MINUTE ENTRY

10 OCT -8 AM 1:01

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

On October 5, 2010, at 1:30 PM, defendant's Motion to Compel, and Motion for Relief came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter, and Ms. Grace Walters, Deputy Court Clerk, were present.

Mr. Jordan Ipsen appeared on behalf of the plaintiff.

Ms. Jennifer Brizee appeared on behalf of the defendant.

Ms. Brizee presented argument on the defendant's Motion to Compel, or in the alternative, Motion to Strike Testimony of Dr. Jost.

Mr. Ipsen stated he had called Dr. Jost's office twice and cannot speak with the contact person for her depositions for a date. Mr. Ipsen opposed the Motion to Compel.

Ms. Brizee rebutted the opposition argument.

The Court discussed the issues with the parties and made the parties aware that there is an obligation to prepare for trial.

Ms. Brizee presented issues of vacating the trial to the Court.

Ms. Brizee presented argument on the issues of tax returns.

Mr. Ipsen opposed turning over the tax returns.

Ms. Brizee rebutted the opposition argument.

The Court suggested Mr. Ipsen and Ms. Brizee sit down and call Dr. Jost together and set a time for deposition.

The Court discussed the issue of tax returns with the parties, and GRANTED the Motion to Compel as to the tax returns. Ms. Brizee will prepare the order for signature.

A new possible trial date of February 8, 2011 at 10:00 AM. Discovery will be open as to the two issues of Dr. Jost and the tax returns.

The Court GRANTED the Motion for Relief from Mediation.

Court was thus adjourned.

Signature authorized by
Judge Shindurling via telephone
on Oct. 8, 2010

By Shaco Watson
for JON J. SHINDURLING
District Judge

c: Jordan Ipsen
Jennifer Brizee

BONNEVILLE COUNTY
IDAHO

10 OCT 12 AM 8:50

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts

Defendant.

Case No. CV-09-3163


**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

TO: Clerk of the above-entitled court.

YOU WILL PLEASE TAKE NOTICE that defendant, Matthew Roberts, by and through his attorney of record, Jennifer K. Brizee of Powers Tolman, PLLC, served Defendant's Sixth Supplemental Answers And Responses To Plaintiff's First Set Of Interrogatories And Requests For Production Of Documents, upon the plaintiff, with the original to counsel for the plaintiff, on the 8th day of October, 2010, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to his attorney of record.

DATED this 9th day of October, 2010.

POWERS TOLMAN, PLLC


BY: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2010, I caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY DOCUMENT to be served by the method indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

9/30 Shindurling SPM;

10/15 CE

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

BONNEVILLE COUNTY
OCT 12 PM 4:18

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,
Plaintiff,

vs.

Matthew Roberts,
Defendant.

Case No. CV-09-3163

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S FIRST
MOTION IN LIMINE**

COMES NOW, Defendant Matthew Roberts (hereinafter referred to as "Mr. Roberts") and files this Memorandum in Opposition to Plaintiff's First Motion in Limine. This Memorandum is made and based upon the record herein, and the following law and argument.

INTRODUCTION

Mr. Larry Hansen claims the subject accident was the fault of Matt Roberts. See Complaint, ¶¶ 5-10. However, Mr. Hansen has now filed Plaintiff's First Motion in Limine requesting the Court to exclude evidence of the traffic citation issued to him as a result of the collision, and to limit the officer's testimony to his personal observations stemming from his investigation of the underlying automobile collision.

Mr. Roberts objects to plaintiff's motion in limine. The issuance of a traffic citation to Mr. Hansen is highly probative to the issue of liability and not unduly prejudicial to the plaintiff. The officer issued Mr. Hansen a citation based upon his investigation of the accident. The officer's observations of the scene, and his subsequent investigation, are admissible facts and cannot be excluded as evidence at trial.

At a minimum, Mr. Roberts should be permitted to question both parties, either during direct or cross-examination, as to whether he was issued a citation as a result of the collision. Questioning each party to determine whether a citation was issued is highly probative evidence and is not prejudicial to either party. Mr. Roberts should be entitled to tell the jury, in defense of his claims, that he was not issued a citation as a result of the accident. Therefore, such evidence should not be excluded.

Furthermore, Mr. Roberts' expert witness, Scott Kimbrough, formed his opinion, in part, on the basis of facts contained within the police officer's investigation and collision report. Mr. Roberts' expert witness is permitted to rely upon the information contained within the officer's report in forming his opinions and cannot be prohibited from testifying regarding facts contained within the report which formed the basis of his opinion, including the officer's issuance of a citation to Mr. Hansen.

Thus, evidence regarding the issuance of a citation should be admitted.

ARGUMENT

- 1. The Trial Court Should Permit The Police Officer To Testify Regarding His Personal Observations, His Investigation And Conclusions, His Issuance Of A Traffic Citation To Mr. Hansen, And The Basis For The Same**

The testimony of Rexburg Police Officer Ray Hermosillo regarding his investigation of the automobile collision between Mr. Hansen and Mr. Roberts should be

admissible as evidence, including the fact Officer Hermosillo issued a traffic citation to Mr. Hansen as a result of the crash. Mr. Roberts named Officer Hermosillo as a witness in the above-entitled case and listed the citation issued to Mr. Hansen as a trial exhibit. See Defendant's Witness List, p. 2 and Defendant's Trial Exhibits, p. 1.

A police officer may testify regarding his observations which led the officer to issue a traffic citation. *Martin v. Hackworth*, 127 Idaho 68, 70, 896 P.2d 976, 978 (1995). Officer Hermosillo will testify that after arriving at the crash site, he personally observed the scene and conducted an investigation. The officer's investigation necessarily required him to observe the facts, and based upon those facts, determine whether to issue citations to one or both of the parties. Based upon the facts he observed during his investigation, Officer Hermosillo issued a traffic citation to Mr. Hansen. The officer's issuance of a citation to Mr. Hansen was based upon his personal observations of the scene and the vehicles, the statements of the parties, and his cumulative experience as a police officer enforcing the traffic laws of Idaho.

Therefore, pursuant to *Martin v. Hackworth, supra*, the Court must allow Officer Hermosillo to testify regarding his crash investigation, including his personal observations which led him to issue a traffic citation to Mr. Hansen. The officer's investigation and his issuance of a citation to Mr. Hansen are not mutually exclusive. The officer's issuance of a citation is inextricably linked to his investigation and personal observations of the crash scene. It is factually impossible for the officer to testify regarding his personal observations of the collision site which caused him to issue the plaintiff a traffic citation, while simultaneously prohibiting him from testifying that he **actually** issued a citation. Therefore, the trial court should permit Officer Hermosillo to

testify regarding his investigation and the "fact" he issued a traffic citation to Mr. Hansen.

Moreover, evidence that the officer issued the plaintiff a traffic citation is admissible pursuant to Rule 403, Idaho Rules of Evidence. Rule 403 provides that evidence may be excluded if its probative value substantially outweighs the danger of unfair prejudice, confusion of the issues, misleading of the jury, or by considerations of undue delay, waste of time, or the presentation of cumulative evidence. I.R.E. 403. Admission of the subject evidence does not confuse the issues in the case, mislead the jury, unduly delay or waste time, or present cumulative evidence. Evidence of the officer's issuance of a traffic citation to Mr. Hansen is relevant and highly probative on the issue of fault in this case and is not substantially outweighed by any prejudicial effect of such evidence.

Mr. Hansen argues he would be prejudicially affected if evidence of the traffic citation is admitted because many jurors view a police officer's testimony is "gospel." This assertion lacks merit. It is just as likely that many jurors discount the testimony of a police officer merely because he or she is involved in law enforcement. Thus, the fact that a police officer is testifying in a civil case is insufficient to show that any prejudicial effect of admitting the issuance of a traffic citation into evidence outweighs the probative value of such evidence.

The fact the citation was ultimately dismissed by the prosecutor is not prejudicial to either party or misleading the jury regarding the issues of negligence. The citation's dismissal further shows that the issue of liability and negligence must be resolved by the trier of fact – i.e. the jury, and therefore, evidence of the officer's issuance of a traffic

citation to Mr. Hansen is highly relevant and its probative value outweighs any prejudicial effect.

Further, Mr. Roberts should be allowed to question both parties, during either direct or cross-examination, as to whether each party was issued a citation as a result of the collision. Such questioning is not prejudicial to either party, nor does it confuse the issues in the case, mislead the jury, unduly delay or waste time, or present cumulative evidence.

Thus, this Court should deny plaintiff's motion in limine requesting the exclusion of any reference of the traffic citation during trial and seeking to limit the scope of Officer Hermosillo's trial testimony.

2. Mr. Robert's Expert Witness, Scott Kimbrough, Must Be Allowed To Opine And Testify Regarding The Police Officer's Crash Investigation And Issuance Of A Traffic Citation To The Plaintiff

Notwithstanding the Court's decision whether to limit the police officer's testimony at trial, the Court cannot limit all references of the traffic citation at all stages of the proceedings. Mr. Robert's expert witness, Scott Kimbrough, must be allowed to provide his opinions and testimony regarding the automobile collision between the parties, including the facts associated with the officer's investigation and the ultimate issuance of a citation to Mr. Hansen.

Idaho Rule of Evidence 703 provides that the facts or data of a specific case in which an expert bases an opinion may be made known to the expert prior to trial, and if such facts or data are of a type reasonably relied upon by experts in the particular field in forming expert opinions, said facts or data do not need to be admissible in evidence in order for the opinion or inference to be admitted. I.R.E. 703. Furthermore, in its

discretion, the Court may permit an expert to provide an opinion based in part upon hearsay or other inadmissible evidence, as long as the expert witness testifies to the specific basis of his opinion and reaches the opinion through his own independent judgment. *Doty v. Bishara*, 123 Idaho 329, 336, 848 P.2d 387, 394 (1992). If the requirements of Idaho Rule of Evidence 703 are satisfied, then the trial court does not need to consider whether the underlying evidence would be independently admissible. *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 429, 95 P.3d 34, 47 (2004).

In the present case, Mr. Roberts' expert witness, Scott Kimbrough, satisfies the foundational requirements of Rule 703. Specifically, Mr. Kimbrough has been made known of the underlying facts of the case prior to trial. In doing so, Mr. Kimbrough has relied upon the police officer's investigation report, including the officer's issuance of a traffic citation to Mr. Hansen, in formulating his expert opinion(s) regarding the case. Reliance upon police officers to gather facts and data is routine among experts in Mr. Kimbrough's field of accident reconstruction. Thus, Mr. Kimbrough satisfies the requirements of Rule 703.

Moreover, any objection to Mr. Kimbrough's use or reliance upon the officer's police report in forming his opinions because said report contains hearsay lacks merit. Mr. Kimbrough will testify to the specific basis of his expert opinion, and therefore, he may base his opinion, in whole or in part, on hearsay or other inadmissible evidence contained within Officer Hermosillo's police report.

Mr. Kimbrough's expert opinion is based upon Officer Hermosillo's personal observations of the crash site as well as the officer's subsequent issuance of a citation to Mr. Hansen. Even if the Court deems evidence of the traffic citation inadmissible,

pursuant to Rule 703 and Idaho case law, the Court should not limit Mr. Kimbrough's expert opinion which is based upon the officer's investigation and issuance of the citation. Mr. Kimbrough must be allowed to testify and propound his expert opinions regarding causation of the accident in the present case, which opinions are based, in part, upon the police report, including the issuance of a citation to Mr. Hansen. See *Lawton v. City of Pocatello*, 126 Idaho 454, 463-464, 886 P.2d 330, 339-340 (1994).¹

Therefore, this Court should deny plaintiff's motion in limine requesting the exclusion of any reference of the traffic citation during any stage of the trial.

CONCLUSION

Based upon the preceding arguments, Mr. Roberts requests the Court deny plaintiff's Motion in Limine in its entirety.

DATED this 12th day of October, 2010.

POWERS TOLMAN, PLLC

By: _____

Jennifer K. Brizee

¹ *Lawton v. City of Pocatello, supra*, was a negligence action by a motorist against a city involving the negligent design of intersection at which a collision occurred. The trial court allowed expert testimony by an expert who based his opinion on accident reports detailing other crashes at the subject intersection. *Id.*, 126 Idaho at 463-464, 886 P.2d at 339-340. The Idaho Supreme Court affirmed the trial court's decision to admit the expert testimony. *Id.*, 126 Idaho at 464, 886 P.2d at 340. The *Lawton* court held as follows:

The City's first contention, that 'the accident reports were clearly hearsay,' is without merit. The reports were not, as the City contends, admitted into evidence. Rather, the accidents reported were referred to by the Lawton's expert, Kenneth Cottingham, as a basis for his opinion that the design of the accident site was dangerous and did not meet existing standards. An expert may rely on hearsay to form an opinion provided that it is of a type reasonably relied upon by experts in the particular field in forming opinions on the subject. A trial court has discretion in allowing an expert to render an opinion based on inadmissible evidence so long as the opinion is reached through independent judgment. Accordingly, we find no error in the trial court's dismissal of the City's hearsay objection.

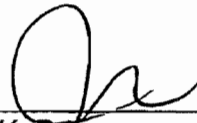
Id.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2010, I caused a true and correct copy of the foregoing DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S FIRST MOTION IN LIMINE to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail



Jennifer K. Brizee

BONNEVILLE COUNTY
IDAHO
10 OCT 12 AM 8:48

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**DEFENDANT'S AMENDED REQUESTED
JURY INSTRUCTIONS**

COMES NOW the defendant Matthew Roberts, by and through his counsel of record, Jennifer K. Brizee of Powers Tolman PLLC, and requests standard Idaho Jury Instruction No. 2.30.2 previously requested by this defendant be withdrawn and Idaho Jury Instruction No. 2.30.1 be used in its stead, a copy of which is attached hereto.

This request is made for the reason that defendant Matthew Roberts, as plaintiff in the underlying small claims matter filed in Madison County, case number CZ 2009-585, previously consolidated with the above-captioned matter by this Court following stipulation by the parties, needs the "but for" proximate cause language as his cause of action in his plaintiff's case.

Defendant maintains his request for the remaining jury instructions as previously

submitted, but reserves the right to supplement, modify or withdraw any of these instructions.

DATED this 17th day of October, 2010.

POWERS TOLMAN, PLLC

By: *Jennifer K. Brizee*
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2010, I caused a true and correct copy of the foregoing DEFENDANT'S AMENDED REQUESTED JURY INSTRUCTIONS to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jennifer K. Brizee
Jennifer K. Brizee

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

10 OCT 12 P 1:12

Larry Hansen,

Plaintiff,

Vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**ORDER DENYING DEFENDANT'S
MOTION TO STRIKE DR. JOST AND
PLAINTIFF'S WAGE LOSS CLAIM, AND
ORDER COMPELLING PLAINTIFF TO
PRODUCE REQUESTED TAX RETURNS**

The Court having heard oral argument on Defendant's Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim or in the Alternative, to Compel Discovery Responses, and good cause thereby appearing, the Court enters the following ruling:

1. The Court DENIES defendant's motion to strike Dr. Jost as a witness;
 2. The Court DENIES defendant's motion to strike plaintiff's wage loss claim;
- and
3. The Court ORDERS that plaintiff produce the requested tax returns within a reasonable time period.

DATED this 12 day of October, 2010.



HONORABLE JON J. SHINDURLING
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of October, 2010, I caused a true and correct copy of the foregoing ORDER DENYING DEFENDANT'S MOTION TO STRIKE DR. JOST AND PLAINTIFF'S WAGE LOSS CLAIM, AND ORDER COMPELLING PLAINTIFF TO PRODUCE REQUESTED TAX RETURNS to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jennifer K. Brizee
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, ID 83303-1276

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Clerk of the Court

By *Grace Watson*
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

LARRY HANSEN,)	
)	
Plaintiff,)	Case No. CV-2009-3163
)	
vs.)	MINUTE ENTRY ON
)	PRE-TRIAL CONFERENCE
MATTHEW ROBERTS,)	
)	
Defendant.)	
_____)	

October 13, 2010, at 8:30 A.M., a pre-trial conference came on for hearing before the Honorable Gregory S. Anderson, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Karen Konvalinka, Court Reporter, and Ms. Lettie Messick, Deputy Court Clerk, were present.

Mr. Jordan Ipsen appeared on behalf of the plaintiff. Ms. Jennifer Brizee appeared on behalf of the defendant. Mr. Robert appeared on his own behalf relating to the small claims action.

The Court and counsel discussed the order of evidence to be presented at trial. The plaintiff Hansen will put on his case. The defendant Roberts will follow. Plaintiff Hansen will have the opportunity to respond. Mr. Roberts will then put on his case, followed by Hansen, and then Mr. Roberts will have an opportunity to respond.

Ms. Brizee presented argument supporting defendant's motion in limine.

Mr. Ipsen responded.

Ms. Brizee responded with additional argument supporting the motion.

The Court granted defendant's motion in limine relating to exclusion of witnesses and the mention of insurance. Defendant's motion in limine relating to 24-hour notice for disclosure of witnesses that will be called to testify will be treated as a request and will not be included in the order. The Court denied the motion in limine relating to presenting testimony as a plea for help.

Ms. Brizee presented argument supporting defendant's motion for plaintiff to execute a release.

Mr. Ipsen responded.

The Court granted defendant's motion for an order compelling the plaintiff to execute a release for the defendant to obtain the plaintiff's tax documents.

Ms. Brizee presented argument supporting plaintiff's motion for order compelling plaintiff to execute a release for unemployment documents and for Department of Family Services documents.

Mr. Ipsen responded.

The Court granted defendant's motion for order compelling plaintiff to execute a release for unemployment documents and for Department of Family Services documents. The release shall be provided by Friday at 12:00 p.m.

Mr. Ipsen presented argument supporting plaintiff's motion in limine.

Ms. Brizee opposed the motion in limine.

Mr. Ipsen presented additional argument supporting plaintiff's motion.

The Court granted plaintiff's motion in limine to the extent that deals with testimony and or admission of the citation.

The Court instructed Ms. Brizee to prepare the appropriate order for the Court's signature.

Court was thus adjourned.

G S A

GREGORY S. ANDERSON
District Judge

c: Jordan Ipsen
Jennifer Brizee

BONNEVILLE COUNTY
2010 OCT 15 PM 4:39

Jordan S. Ipsen (ISB #7822)
GORDON LAW FIRM, INC.
477 Shoup Ave, Suite 101
Idaho Falls, ID 83402
Telephone: (208) 552-0467
Facsimile: (866) 886-3419

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

LARRY HANSEN,

Plaintiff,

vs.

MATTHEW ROBERTS,

Defendant.

Case No. CV-09-3163

**PLAINTIFF'S OBJECTIONS TO
DEFENDANT'S PROPOSED JURY
INSTRUCTIONS**

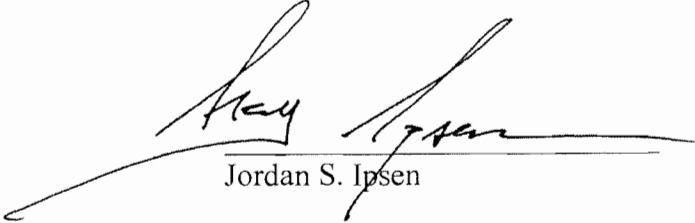
Plaintiff, by and through his undersigned counsel, hereby objects to the following jury instructions proposed by Defendant:

1. Defendant's proposed jury instructions 1-24 are based on IDJI. Plaintiff objects to using instructions from IDJI when IDJI2d provides an instruction on the same matter.
2. Defendant's proposed jury instruction number 2, cited as IDJI 101, is better stated in IDJI2d. 1.04

3. Defendant's proposed jury instruction number 3 is argumentative and impartial and should be phrased only in terms of undisputed facts as suggested by IDJI2d. 1.07.
4. Defendant's proposed jury instruction number 11 contains unnecessary and potentially misleading language. The instruction regarding the burden of proof in the case is succinctly and sufficiently contained in IDJI2d. 1.20.1.
5. Defendant's proposed jury instruction number 16 is unnecessary and potentially misleading.
6. Defendant's proposed jury instruction number 17 is unnecessary; IDJI2d. 1.20.1 properly instructs the jury on the burden of proof and IDJI2d. properly instructs the jury on damages.
7. Defendant's proposed jury instruction number 18 misstates the law regarding Plaintiff's burden of proof. Plaintiff's burden in the case is a preponderance of evidence. Defendant incorrectly states the standard for allowing the admission of expert testimony regarding medical opinions (reasonable degree of medical probability or sometimes referred to as reasonable degree of medical certainty) as the plaintiff's burden of proof. The burden of proof is sufficiently stated in IDJI2d. 1.20.1.
8. Defendant's proposed jury instruction number 19 is unnecessary; the burden of proof is properly contained within IDJI2d. 1.20.1.

9. Defendant's proposed jury instruction number 20 is unnecessary; IDJI2d. 9.01 properly and sufficiently instructs the jury regarding damages.
10. Defendant's proposed jury instruction number 21 is unnecessary
11. Defendant's proposed jury instruction number 22 is better stated in IDJI2d. 9.02.
12. Defendant's proposed jury instruction number 23 is unnecessary.

DATED October 12, 2010.

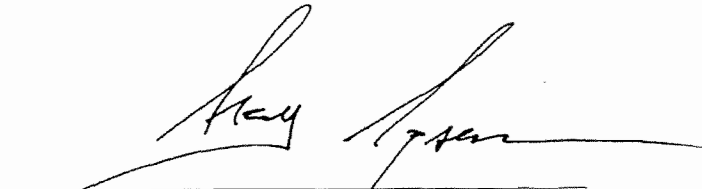


Jordan S. Ipsen

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2010, I faxed a copy of the foregoing to the following:

Jennifer Brizee
Powers Tolman, PLLC
132 3rd. Avenue East , P.O. Box 1276
Twin Falls, ID 83303



Jordan S. Ipsen

Jennifer K. Brizee (ISB #5070)
Douglas G. Abenroth (ISB #7181)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

2010 OCT 18 PM 4:58
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Attorneys for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION
IN LIMINE/OBJECTION TO OPENING
STATEMENT**

COMES NOW, Defendant Matthew Roberts (hereinafter referred to as "Mr. Roberts") and files this Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement. This Memorandum is made and based upon the record herein, and the following law and argument.

INTRODUCTION

Mr. Larry Hansen filed his Motion in Limine/Objection to Opening Statement requesting the Court limit comments in the opening statement and limiting the testimony from Mr. Roberts' expert witnesses at trial from any reference to the law, application of the law, or the facts of the case, or the issue of fault during all stages of the trial.

Mr. Roberts objects to plaintiff's motion in limine. Mr. Hansen impermissibly seeks to limit the opening statement of Mr. Roberts. Mr. Roberts must be allowed to reference all material facts in the case, including any facts which are relevant to his defense. His defense necessarily includes causation of the accident, and whether Mr. Hansen caused the accident and any alleged damages resulting therefrom.

The testimony of Mr. Roberts' expert witnesses, Scott Kimbrough, Ph.D., P.E. and John Droge, Ph.D, specifically opine regarding the subject accident, including causation of the same. Mr. Roberts properly and timely disclosed the content of each expert witness to counsel for Mr. Hansen. See Affidavit of Douglas G. Abenroth, Ex. A. Mr. Roberts' expert witnesses properly base their respective opinions upon the underlying facts of the accident, and their opinions will assist the trier of fact in understanding the evidence and determine facts in question, including facts pertaining to causation of the accident.

As such, the testimony of Mr. Roberts' expert witnesses regarding causation is admissible. Mr. Roberts should be permitted to reference, discuss, and solicit expert witness opinions and testimony regarding causation and fault during the trial, including opening statement. Therefore, the Court should deny Mr. Hansen's motion in limine.

ARGUMENT

1. The Trial Court Should Allow Mr. Roberts To Set Forth His Theory Of The Case During Opening Statement

Mr. Roberts should be permitted to discuss and reference the underlying facts of the case during opening statement, including specific evidence which Mr. Roberts intends to produce in his defense of the case. The proper function of an opening statement is to outline the defense and the evidence which the defendant intends to

produce in support of the defense. *State v. Mills*, 117 Idaho 534, 536, 789 P.2d 530, 532 (Ct. App. 1990). Thus, the purpose of Mr. Roberts' opening statement is for him to outline and discuss his defense to the case to the trier of fact, i.e. the jury. He must be permitted to reference facts which support his defense.

Moreover, the opening statement is Mr. Robert's opportunity to reference, discuss, and outline the evidence he intends to produce in support of his defense. Mr. Roberts' evidence includes the expert testimony of Scott Kimbrough and John Droge, including their opinions regarding the causation of the accident. Their respective opinions are necessarily based upon the underlying facts of the accident. Therefore, Mr. Roberts' outlining and referencing their proffered testimony during opening statement is proper because it is evidence which supports his defense and is factual, rather than, legal in nature.

Thus, Mr. Hansen's motion in limine is improper because it impermissibly seeks to limit Mr. Robert's ability to discuss, reference, and outline the facts and evidence which support his defense to the present action during opening statement. As such, Mr. Roberts respectfully requests the Court to deny Mr. Hansen's motion in limine.

2. The Testimony of Mr. Roberts' Expert Witnesses Is Admissible Even If It Embraces An Ultimate Issue To Be Decided By The Jury

The respective testimony of Mr. Roberts' expert witnesses do not invade the province of the trier of fact in determining an ultimate issue in question at trial nor the Court's duty to instruct the trier of fact regarding the applicable law. Mr. Hansen seeks to limit testimony from Mr. Roberts' expert witnesses, via his motion in limine, at this extremely late stage of the trial's proceedings. Mr. Hansen's motion is untimely. Mr. Roberts timely disclosed to Mr. Hansen the basis of each expert witness opinion in his

Third Supplemental Answers and Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents prior to trial. See Affidavit of Douglas G. Abenroth, Ex. A. Mr. Hansen had adequate opportunity to object to and argue for the limitation of Mr. Roberts' expert witness' testimony long before trial. Mr. Hansen failed to object to the admission of the testimony of Mr. Roberts' expert witnesses until this motion in limine filed the day before trial. As a result, Mr. Hansen's motion in limine is improper and the Court should deny his request.

However, if the Court addresses the merits of Mr. Hansen's motion, then the Court should deny said motion because the testimony of Mr. Roberts' expert witness does not improperly invade the provinces of the trier of fact or the Court. The admissibility of expert testimony is discretionary with trial court and is generally limited to matters requiring special skills and knowledge regarding information beyond the understanding of ordinary untrained citizens. *State v. Crawford*, 110 Idaho 577, 581, 716 P.2d 1349, 1353 (Ct. App. 1986).

Expert testimony in the form of an opinion or inference, which is otherwise admissible, is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. I.R.E. 704. "[E]xperts may give opinions on subjects even though the opinion itself may be on an ultimate fact to be decided by the trier of fact." *State v. Crawford*, 110 Idaho at 581, 716 P.2d at 1353. See also *State v. Corwin*, 147 Idaho 893, 896-897, 216 P.3d 651, 654-655 (Ct. App. 2009). After such evidence is admitted, the trier of fact may then believe the testimony or reject it as unreliable. *State v. Crawford*, 110 Idaho at 581, 716 P.2d at 1353. Mr. Roberts' expert witnesses do not invade an ultimate issue or fact which is to be decided by the trier of fact. Such

testimony will remain within the purview of the jury to weigh the experts' testimony and accord it the weight the jury sees fit.

Thus, Mr. Roberts' expert witness testimony is admissible as evidence and the trier of fact must determine the amount of weight to give such testimony in deciding the issues in the present case. The Court should deny Mr. Hansen's motion in limine and allow Mr. Roberts to discuss, reference, and solicit opinions of experts and other witnesses regarding Mr. Roberts' defense, including causation and fault.

Mr. Hansen fails to provide any proof that testimony by Mr. Roberts' expert witnesses regarding causation impermissibly infringes upon the duties of the trier of fact. Rather, Mr. Hansen merely provides a blanket objection, in the form of a motion in limine, to Mr. Roberts' ability to discuss, reference, or solicit opinions from his expert witnesses or other witnesses regarding which party is at fault. Mr. Hansen fails to provide an adequate factual or legal basis for his motion in limine, and therefore, the Court should deny his motion in limine.

Mr. Roberts expert witnesses do not usurp the authority of the Court to instruct the jury regarding the relevant law. Mr. Hansen's argument to the contrary is erroneous. An expert witness certainly may review and rely upon the law in formulating his opinions relative to negligence. Thus, the Court should deny Mr. Hansen's motion in limine.

CONCLUSION

Based upon the preceding arguments, Mr. Roberts requests the Court deny plaintiff's Motion in Limine in its entirety.

DATED this 18th day of October, 2010.

POWERS TOLMAN, PLLC

By: *Jennifer K. Brizee*
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October, 2010, I caused a true and correct copy of the foregoing DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE/OBJECTION TO OPENING STATEMENT to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jennifer K. Brizee
Jennifer K. Brizee

Jennifer K. Brizee (ISB #5070)
 Douglas G. Abenroth (ISB #7181)
 POWERS TOLMAN, PLLC
 132 3rd Avenue East
 P.O. Box 1276
 Twin Falls, Idaho 83303-1276
 Telephone: (208) 733-5566

Attorney for Defendant Matthew Roberts

FILED IN CHAMBERS
 at Idaho Falls
 Bonneville County
 Honorable Judge Anderson
 Date 10-18-10
 Time 5:00
 Deputy Clerk [Signature]

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,
 Plaintiff,

vs.

Matthew Roberts,
 Defendant.

Case No. CV-09-3163

**AFFIDAVIT OF DOUGLAS G.
 ABENROTH IN SUPPORT OF
 DEFENDANT'S MEMORANDUM
 IN OPPOSITION TO PLAINTIFF'S
 MOTION IN LIMINE/OBJECTION TO
 OPENING STATEMENT**

STATE OF IDAHO)
) ss.
 County of Twin Falls)

DOUGLAS G. ABENROTH, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys of record for defendant, Matthew Roberts, in the above-captioned matter, and I make this affidavit on the basis of my own personal knowledge, information and belief.

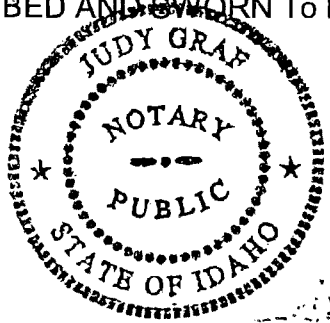
2. Attached hereto as Exhibit A is a true and correct copy of the pertinent pages of Defendant's Third Supplemental Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 18th day of October, 2010.

Dye G. Abenroth
DOUGLAS G. ABENROTH

SUBSCRIBED AND SWORN To before me this 18th day of October, 2010.



Judy Graf
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Id
My commission expires: 6-8-2014

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October, 2010, I caused a true and correct copy of the foregoing AFFIDAVIT OF DOUGLAS G. ABENROTH IN SUPPORT OF DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE/OBJECTION TO OPENING STATEMENT to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Dye G. Abenroth
Douglas G. Abenroth

INTERROGATORY NO. 17: *Identify* each *Person* or entity that has investigated the *Collision* in any way and state whether each such *Person* or entity has a written report or other tangible item as a result of such investigation.

ANSWER TO INTERROGATORY NO. 17: Please see objections and answer to interrogatory No. 16, which are incorporated herein by reference. In addition, the police investigated the collision, as plaintiff is aware, and issued a written report, which is as accessible to plaintiff as it is to defendant. Also, Scott Kimbrough and John Droge have investigated the accident, as retained expert witnesses for Matthew Roberts. They will not be issuing written reports.

INTERROGATORY NO. 22: Identify all experts you intend to call at trial, and for each expert: state all opinions to be expressed by the witness and the basis and reasons therefore; identify the data or other information considered by the witness in forming the opinions; identify any exhibits to be used as a summary of or support for the opinions; state the qualifications of the witness; state the compensation already paid to the witness and the amount the witness intends to charge for future testimony; and state all cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

ANSWER TO INTERROGATORY NO. 22: Please see objections and answer to interrogatory No. 4, which are incorporated herein by reference as if stated in full. Without waiving said objections, defendant refers plaintiff to his July 21, 2010, Defendant's Disclosure of Expert Witnesses and his August 4, 2010, Defendant's Supplemental Disclosure of Expert Witnesses. Further, defendant provides the following additional information.

Scott Kimbrough, Ph.D., P.E.
Motion Research Associates
125 West Burton Avenue
Salt Lake City, UT 84115

Dr. Kimbrough will provide expert opinion testimony regarding the subject incident, investigation and reconstruction of the same, and causation of the same. He

will opine the roadway where the accident occurred contained three lanes, and the cause of the accident was Mr. Hansen's illegal right-hand turn into the BMC Lumber parking lot. He will testify Mr. Hansen had prior knowledge of the accident location, based upon his deposition testimony that he had driven this route on many occasions. He will testify to his observations of the roadway and accident location, which show the roadway widens to multiple lanes prior the accident location. He will also rely upon the diagram from Idavada Claims, which also shows the roadway at the accident site widens to multiple lanes. He will testify to his opinion, based upon his review of the police photographs, and Mr. Hansen's testimony, that the accident occurred at a location between the telephone pole located in front of BMC Lumber, and the intersection. He will testify the existence or non-existence of painted lane lines at the accident location is irrelevant. Whether there are multiple lanes on a roadway depends upon the width of the roadway.

He will opine Mr. Hansen's conduct was the cause of this accident. This is based upon the fact Mr. Hansen directed his vehicle to the center of the roadway, leaving a lane-width to his right prior to attempting his right-hand turn. This fact is established based upon the positioning of the vehicles, and the fact Mr. Hansen left sufficient room for Matthew Roberts' vehicle to pass on the right, when Mr. Hansen failed to move his vehicle to the right side of the roadway after the roadway widened to multiple lanes. This opinion is also based upon Scott Kimbrough's consultation with a retired police officer, and the police officer's reference to Idaho Code §§49-633 and 49-644. Per these code sections, if an individual is going to be making a right-hand turn, he is supposed to approach the turn as close as practicable to the right-hand curb or edge of

the roadway. Mr. Hansen did not do this. Further, the right-hand turn itself is supposed to be made as close as practicable to the right-hand curb or edge of the roadway. Again, Mr. Hansen did not do this. A videotape of other drivers who traveled this section of roadway shows other drivers following the law, and keeping to the right if they intended to make a right-hand turn. Drivers intending to continue forward (i.e. not turn right) maintained their vehicles in the center of the roadway, like Mr. Hansen had done.

It is also Mr. Kimbrough's opinion a driver such as Matthew Roberts has a right to rely on other drivers to follow the rules of the road, and to act reasonably in their driving maneuvers. Mr. Hansen did not act reasonably when he attempted to turn right into the BMC Lumber parking lot from the center lane of a three-lane roadway.

He will also opine Matthew Roberts followed the rules of the road at all relevant times, and his conduct did not cause the accident, or contribute to the cause of the accident in any manner.

Dr. Kimbrough's testimony will be based upon his education, training, and experience, his review of the accident site, his review of the police report and his review of court documents regarding the citation issued to Mr. Hansen, his review of the deposition testimony of Mr. Hansen, his site inspection and review of the police photographs of the incident area and vehicles, as well as his personal observations, and supporting videotape, of traffic traveling this section of roadway, which shows that a reasonable driver intending to turn right into either the BMC Lumber parking lot, or at the intersection, steers his vehicle so that it travels along the right-hand side of the roadway. His opinions and testimony are also based upon his conversations with a consulting police officer, as well as his review of Idaho Code §§ 49-633 and 49-644, and

his review of pertinent medical records, discovery answers and responses, documents produced by the parties (formally or informally), Plaintiff's Expert Witness Designation, the deposition testimony of Larry Hansen, as well as the anticipated testimony of Matthew Roberts.

Dr. Kimbrough will also testify, generally, regarding matters within his expertise, such as typical roadway widths; lane widths; identification and classification of road markings; engineering principals related to road design; nature and function of various mechanical components of vehicles, such as: wheel alignment, steering alignment, turn signals, brake lights, side panels, bumpers, etc.; movement of the body in the vehicle during collisions, etc.

Defendant reserves the right to supplement Dr. Kimbrough's opinions relative to any future discovery answers and responses, disclosures and depositions taken in this case. Specifically, defendant has requested the deposition of Dr. Jost from plaintiff, but has not yet received a response to this request. Also, numerous medical records are still being obtained via a release finally produced by plaintiff, and a bio-mechanical review may be undertaken in this matter to determine the force of the impact, and whether it could have elicited enough force to cause the injury plaintiff now alleges resulted from this accident, as well as to determine whether plaintiff's hitting his hand on the headrest could have resulted from a force or conduct not related to the accident.

John Droge, Ph.D.
Motion Research Associates
125 West Burton Avenue
Salt Lake City, UT 84115

Dr. Droge will provide expert opinion testimony regarding the subject incident, investigation and reconstruction of the same, and causation of the same, as well as causation of

plaintiff's claimed injuries. Dr. Droge has performed a bio-mechanical review of the accident, which included simulations and an accident reconstruction.

It is Dr. Droge's opinion, based upon his education, experience, and training, as well as upon his review of pertinent records, and his simulations and accident reconstruction, that the subject accident involved low speeds, with a change in velocity consistent with 3 to 5 mph (2.7 to 4.6 g's), with approximately 50 percent of the forces directed in the left lateral direction and 50 percent in the forward direction. The resulting lateral forces (approximately 1.4 to 2.3 g's) would be comparable to an individual being jostled in a crowd. He will testify, in comparison, a fall of only four feet would result in higher impact forces than the subject accident (approximately 11 mph upon impact to the ground). He will testify it is his opinion that plaintiff's pathologies are more consistent with a fall, than with the subject type of automobile accident, and, more probably than not, plaintiff's injuries were not caused by the subject accident. He will also testify the type of injury being claimed by plaintiff can be caused by overuse.

Dr. Droge's opinions and testimony are based upon his education, training, and experience, his review of the damage to the vehicles, his review of the police report pertinent medical records, discovery answers and responses, documents produced by the parties (formally or informally), Plaintiff's Expert Witness Designation, the deposition testimony of Larry Hansen, as well as the anticipated testimony of Matthew Roberts.

Dr. Droge will also testify, generally, regarding matters within his expertise, such as biomechanical engineering, the anatomy of the wrist and hand, energy transfer, inertia, velocity, engineering principals related to vehicle design, movement of the body in the vehicle during collisions, forces of various activities, etc.

Defendant reserves the right to supplement Dr. Droge's opinions relative to any future discovery answers and responses, disclosures and depositions taken in this case. Specifically, defendant has requested the deposition of Dr. Jost from plaintiff, but has not yet received a

response to this request. Also, numerous medical records are still being obtained via a release finally produced by plaintiff, and these may impact Dr. Droge's opinions in this matter.

INTERROGATORY NO. 25: If it is the contention of the Defendant that the alleged occurrence was caused or contributed to by some act or omission of the Plaintiff, or that Plaintiff assumed liability for the alleged occurrence, please state and describe in detail all acts or omissions of the Plaintiff by which the Defendant claims or contends to be relieved of liability.

ANSWER TO INTERROGATORY NO. 25: Defendant objects to this interrogatory on the grounds it is overly broad, vague and potentially misleading, in part because it presupposes liability on the part of the defendant, which is denied. Without waiving said objections, defendant answers discovery is only in its formative stages and defendant has not yet had the opportunity to complete his investigation or to take any depositions, including the depositions of the plaintiff, treating physicians, medical care providers or witnesses to the subject incident. Defendant further states in answer to this interrogatory that he has asserted the affirmative defense to which this interrogatory is directed to preserve and otherwise avoid waiving such affirmative defense to the claims of the plaintiff in this action. It is defendant's position the plaintiff caused this collision when he negligently attempted to make a right-hand turn across defendant's lane of travel. Defendant reserves the right to supplement the answer to this interrogatory at such time as facts and information become known with which to answer this interrogatory. Please also see opinions of Scott Kimbrough and John Droge.

REQUEST FOR PRODUCTION NO. 15: For each expert witness you intend to call at trial, produce a C.V., a list of cases in which the witness has testified as an expert at trial or by deposition within the preceding four years, a list of all publications authored by the witness within the preceding ten years, all materials furnished to the expert witness, and all exhibits to be used as a summary or support for the witness' opinions.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

See objections and answer to interrogatory Nos. 4 and 22, which are incorporated

2010 OCT 22 AM 10:49
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Jordan S. Ipsen (ISB #7822)
GORDON LAW FIRM, INC.
477 Shoup Ave, Suite 101
Idaho Falls, ID 83402
Telephone: (208) 552-0467
Facsimile: (866) 886-3419

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

LARRY HANSEN,

Plaintiff,

vs.

MATTHEW ROBERTS,

Defendant.

Case No. CV-09-3163

ORDER

This matter comes before the Court on Plaintiff's First Motion in Limine. Oral argument was presented in connection with the Motion on October 13, 2010. The Court grants the motion in part. IT IS HEREBY ORDERED that all evidence, questioning, and mention that Larry Hansen was issued a traffic citation in connection with the automobile collision at issue shall be precluded at the trial of this matter.

Dated this 22nd day of October, 2010.

G S A
GREGORY S. ANDERSON
District Judge

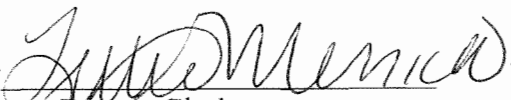
CERTIFICATE OF SERVICE

I certify that on the 22nd day of October, 2010, I served a true and correct copy of the forgoing Order upon the following by U. S. mail postage prepaid, or by hand delivery, or by depositing at recipients' courthouse box:

Jennifer Brizee
Powers Tolman, PLLC
132 3rd. Avenue East , P.O. Box 1276
Twin Falls, ID 83303

Jordan S. Ipsen
Gordon Law Firm, Inc.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

2010 OCT 25 AM 11:28
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**ORDER REGARDING DEFENDANT'S
MOTIONS IN LIMINE**

This cause coming on for hearing in this matter on October 13, 2010, and good cause appearing therefore;

IT IS HEREBY ORDERED and this does ORDER that the defendant's motion in limine relative to insurance is GRANTED, and the parties, counsel, representatives and witnesses, are prohibited from making any mention, directly or indirectly, in any manner whatsoever during voir dire, opening statement, interrogation of witnesses, objections, arguments, closing statement, or in any manner whatsoever, of insurance, or of the insurance industry during the course of trial. This shall be deemed to include exhibits, which must be redacted to preclude insurance information. The exception to this ruling will be in the instance a juror questionnaire does not include employment information for the

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2010, I caused a true and correct copy of the foregoing **ORDER REGARDING DEFENDANT'S MOTIONS IN LIMINE** to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Jordan S. Ipsen
GORDAN LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Jennifer K. Brizee
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, ID 83303-1276

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

Clerk of the Court

By *[Signature]*
Deputy Clerk

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

BONNEVILLE COUNTY
IDAHO
10 NOV -9 PM 4:11

Attorney for Defendant Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**NOTICE OF AUDIO-VISUAL
DEPOSITION OF MATTHEW ROBERTS
TO PERPETUATE TRIAL TESTIMONY**

TO: Plaintiff, LARRY HANSEN, and his attorney of record, BRENT GORDON of
Gordon Law Firm, Inc.:

YOU WILL PLEASE TAKE NOTICE the defendant will take the trial deposition of
MATTHEW ROBERTS to perpetuate his trial testimony before a certified Court
Reporter and video camera operated by an agent of CitiCourt, LLC, or before another
officer authorized by law to video tape and report depositions, on **Friday, the 19th
day of November, 2010, at the hour of 2:00 o'clock p.m.**, at the offices of CitiCourt,
LLC, 170 South Main Street, Suite 300, Salt Lake City, Utah 84101, telephone number:
(801) 532-3441, pursuant to the Idaho Rules of Civil Procedure.

DATED this 9th day of November, 2010.

POWERS TOLMAN, PLLC

BY: 
JENNIFER K. BRIZEE

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2010, I caused a true and correct copy of the foregoing NOTICE OF AUDIO-VISUAL DEPOSITION OF MATTHEW ROBERTS TO PERPETUATE TRIAL TESTIMONY to be served by the method indicated below, to the following:

Brent Gordon
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

CitiCourt, LLC
170 South Main Street, Suite 300
Salt Lake City, UT 84101

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
NOV 23 3 41 PM '09

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**MOTION TO STRIKE PORTION OF
MATTHEW ROBERTS' VIDEO TRIAL
TESTIMONY**

COMES NOW Matthew Roberts, by and through his attorney of record, Powers Tolman, PLLC, and moves the court, pursuant to Idaho Rule of Civil Procedure 32 for an order striking portion of Matthew Roberts' video trial testimony.

This motion is based upon the records, files and pleadings in the above-entitled action, together with the Affidavit of Jennifer K. Brizee in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony; and the Memorandum in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony, all filed contemporaneously herewith.

Oral argument is requested.

DATED this 2nd day of December, 2010.

POWERS TOLMAN, PLLC

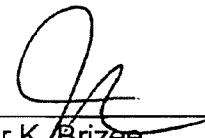
By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2010, I caused a true and correct copy of the foregoing MOTION TO STRIKE PORTION OF MATTHEW ROBERTS' VIDEO TRIAL TESTIMONY to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Brent Gordon
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

BONNEVILLE COUNTY
JAN 03 2010 3 PM 4:41

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE PORTION OF
MATTHEW ROBERTS' VIDEO TRIAL
TESTIMONY**

COMES NOW, Matthew Roberts, by and through his counsel of record, Powers Tolman, PLLC, and respectfully submits this Memorandum in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony.

I.
ARGUMENT

Due to his significant health issues -- namely a liver transplant -- and the restrictions placed upon him as a result of the same, defendant/plaintiff Matthew Roberts will be unable to attend the continued trial in this matter. Therefore, his video

trial testimony was taken in Salt Lake City, Utah, on November 19, 2010, in order to perpetuate his testimony. Said video will be played for the jury at the continued trial in the place of live testimony.

The purpose of this motion is to obtain rulings from this Court on certain and specific objections made by counsel for Matthew Roberts, so that the video can be edited before being played for the jury.

Mr. Roberts provides notice he plans to play all portions of his video testimony, in his case in chief, with the exception of those portions he requests be stricken from the record, as follows, for the following reasons:

1. **Pg. 31, LL. 14-21:** One basis for the objection was the use of the word "overtaking" and its potentially misleading definition in the context of this matter. Also, this objection was made on the basis it misstates the evidence in the record, since this was not a situation where Matthew Roberts was "overtaking" Mr. Hansen's vehicle, as in passing on the left. Also, the way the question was phrased was confusing and misleading as it was compound, and included two potentially different questions, and it did not include any time parameters. Finally, it misstated the evidence in the record. See e.g., 18, L. 21 through pg. 19, L. 6, wherein Matthew Roberts testified he "merged to the right as Larry Hansen went straight." The use of the word "overtaking" implies Matthew Roberts testified he "overtook" Mr. Hansen's vehicle when he testified he merged to the right.
2. **Pg. 32, LL. 8-23:** The same basis as above.
3. **Pg. 33, LL. 2-23:** In this question, plaintiff's counsel has made the statement that Larry Hansen did not slow down before Mr. Roberts' vehicle began to go past Mr.

Hansen's vehicle. However, Mr. Roberts had previously testified he was not sure whether this had happened. He had testified as follows:

Q: So he had never slowed down at all until you were on the right side of the vehicle?

A: I don't know exactly. He might have stopped pushing the gas and slowed down that way. I can't be positive. Pg. 31, LL. 9-13.

The rest of the questions in this section are an effort to "confirm" with Mr. Roberts that Mr. Hansen's vehicle had not slowed down prior to Mr. Roberts' vehicle coming up alongside his vehicle. However, Mr. Roberts had already testified as above. Therefore, the questions misstate the evidence already in the record.

4. **Pg. 34, LL. 9-25:** Again, plaintiff's counsel's questions in this section misstate the evidence in the record, as stated above. In addition, now plaintiff's counsel's questions have become argumentative, as he argues with Mr. Roberts about his prior testimony.

5. **Pg. 36, LL. 1-7:** Same as No. 4, above. Also, Mr. Roberts had previously testified he had seen Mr. Hansen's brake lights prior to the impact. See pg. 18, L. 21 through pg. 19, L. 6, wherein Mr. Roberts testified in part: "As the road widened, I merged to the right as Larry Hansen went straight. I continued on the side, and saw Mr. Hansen's brake lights as he was slowing down because there was a couple of vehicles in front of him...."

6. **Pg. 36, L. 13 through pg. 37, L. 1:** Same as No. 5.

7. **Pg. 37, L. 7 through pg. 38, L. 7:** Same as No. 5. In addition, now this same question has been asked and answered numerous times. The witness has answered the question to the best of his ability. To allow counsel for Larry Hansen to

continue to ask the question is inconsistent with the Idaho Rules of Evidence and should not be allowed.

8. **Pg. 41, L. 20 through pg. 43, L. 24:** In this line of questioning, counsel for Larry Hansen is attempting to have Matthew Roberts testify about a medical record of Mr. Hansen's. Clearly, the point he is trying to make is that one of the records received from the hospital is marked "draft" and is not signed. However, he can do this in closing argument, as it is merely argument. He has asked Matthew Roberts to confirm these two things by showing him the document and asking him those questions. Matthew Roberts objects to this line of questioning both on the grounds of lack of foundation and on relevancy. Matthew Roberts is not familiar with this document, and many of the questions were specifically aimed to show the jury that he has a lack of foundation, in direct contravention to the Idaho Rules of Evidence. Also, many of these questions are objectionable on the grounds they are argumentative, as voiced by counsel for Matthew Roberts.

9. **Pg. 45, L. 4 through pg. 48, L. 25:** This process was noticed to preserve Matthew Roberts' testimony for trial due to his health issues and inability to attend the continued trial. As such, the questioning allowed, as in trial, is direct, cross-examination, and re-direct. At the end of re-direct, counsel for Larry Hansen continued to ask questions. Counsel for Matthew Roberts objected. It is Matthew Roberts' position counsel for Larry Hansen had his opportunity for cross-examination, and his time for asking questions had ended. Therefore, this portion of the video should not be played to the jury.

10. Pg. 46, L. 15 through 20: Matthew Roberts has asked the Court to strike this portion of the trial testimony. However, if No. 9, above, is not granted, then Matthew Roberts requests this portion of the video be struck. If the Court has already struck those portions outlined in No. 9, above, then No. 10 is moot and does not need to be addressed by the Court. During this portion, counsel for Matthew Roberts has asked counsel for Larry Hansen to let Matthew Roberts finish his answer, and there is a heated discussion relative to whether a witness should be allowed to finish his answer. During this particular portion, counsel for Larry Hansen is arguing the basis for his question, and the reason why he believes he has the right to cut off the witness' answer. Specifically, he argues the witness has been inconsistent in his testimony. Had Matthew Roberts' testimony taken place during trial, this type of argument to the jury would not have been allowed. At the most, it would have been, or should have been, preserved for a sidebar conference with the Court, out of the presence of the jury. In addition to the statement being argumentative, it misstates the evidence in the record, and will only serve to confuse and mislead the jury.

CONCLUSION

Based upon the foregoing, Matthew Roberts respectfully requests an order from this Court, striking those portions of Matthew Roberts' video trial testimony outlined and discussed above.

DATED this 31st day of December, 2010.

POWERS TOLMAN, PLLC

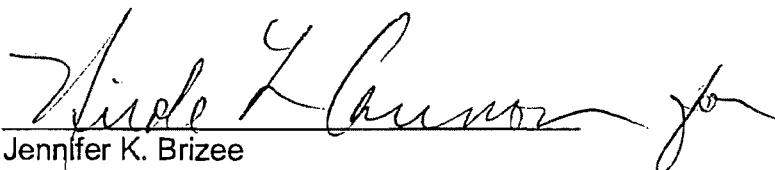
By: Jennifer K. Brizee
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2010, I caused a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO STRIKE PORTION OF MATTHEW ROBERTS' VIDEO TRIAL TESTIMONY to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Brent Gordon
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

12/10 11:24 PM
12/7 CE

2 / 12
f filed 12-3-10
Chamber copy e-mailed to
Judge Woodland

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**AFFIDAVIT OF JENNIFER K. BRIZEE IN
SUPPORT OF MOTION TO STRIKE
PORTION OF MATTHEW ROBERTS'
VIDEO TRIAL TESTIMONY**

STATE OF IDAHO)
) ss.
County of Twin Falls)

JENNIFER K. BRIZEE, being first duly sworn on oath, deposes and says:

1. I am one of the attorneys of record for defendant, Matthew Roberts, in the above-captioned matter, and I make this affidavit on the basis of my own personal knowledge, information and belief.

2. Attached hereto as Exhibit A is a true and correct copy of the pertinent pages of the transcript of Defendant Matthew Roberts' Video Trial Testimony.

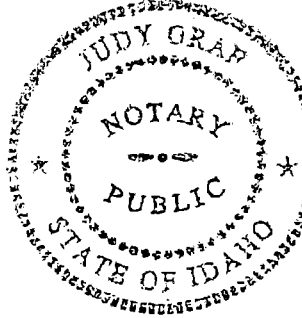
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 3rd day of December, 2010.

[Handwritten Signature]

Jennifer K. Brizee

SUBSCRIBED AND SWORN To before me this 3rd day of December, 2010.



[Handwritten Signature]

NOTARY PUBLIC FOR IDAHO

Residing at: Tuna Falls, ID

My commission expires: 6-8-2014

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 2010, I caused a true and correct copy of the foregoing AFFIDAVIT OF JENNIFER K. BRIZEE IN SUPPORT OF MOTION TO STRIKE PORTION OF MATTHEW ROBERTS' VIDEO TRIAL TESTIMONY to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Brent Gordon
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail

[Handwritten Signature]

Jennifer K. Brizee

Matthew Roberts * November 19, 2010

SHEET 3

17

1 Q. Okay. Why haven't you had the rest of the
 2 work done on the car to repairs it?
 3 A. I haven't been able to afford it.
 4 Q. Okay. Are you still driving this vehicle?
 5 A. I am.
 6 Q. All right, Matt, let's talk about the
 7 accident of December 12, 2008.
 8 Do you have a recollection of this
 9 accident?
 10 A. I do.
 11 Q. Do you recall what time of day the
 12 accident occurred?
 13 A. About three o'clock.
 14 Q. All right. Do you recall where the
 15 accident occurred?
 16 A. It happened on 2nd West as I was heading
 17 south by the BMC West building.
 18 Q. Okay. Were you physically injured in the
 19 accident?
 20 A. I was not injured.
 21 Q. Okay. Where were you going? Where were
 22 you headed to when the accident occurred?
 23 A. I was going to the Mother Hibbard's gas
 24 station.
 25 Q. Okay. What was the purpose of your trip

18

1 to Mother Hibbard's gas station?
 2 A. I was going to get snacks and fill up on
 3 gas.
 4 Q. Okay. What were your plans for the rest
 5 of the day and evening?
 6 A. I had some homework to finish up, and
 7 other than that, I didn't have anything else planned.
 8 Q. Okay. So did you have any classes or
 9 appointments that afternoon?
 10 A. No.
 11 Q. Did you have any classes or appointments
 12 that evening?
 13 A. No.
 14 Q. Okay. Where were you coming from when the
 15 accident occurred? Where had you last been?
 16 A. I was at Kentucky Fried Chicken. I got
 17 something to eat.
 18 Q. Okay. At the time of the accident, were
 19 you in a hurry to get anywhere?
 20 A. No.
 21 Q. Okay. What do you recall of the accident?
 22 A. I was heading south on 2nd West behind
 23 Larry Hansen. As the road widened, I merged to the
 24 right as Larry Hansen went straight. I continued on
 25 the side and saw Mr. Hansen's brake lights as he was

19

1 slowing down because there was a couple of vehicles
 2 in front of him. I was also slowing down as I was
 3 coming up to the intersection. As I was on the right
 4 side of the road, Larry Hansen crossed my path of
 5 travel and hit me as he continued into the BMC West
 6 parking lot.
 7 Q. Okay. Were there any vehicles in front of
 8 you in your lane of travel prior to the accident
 9 occurring?
 10 A. There wasn't.
 11 Q. Okay. Did Mr. Hansen's vehicle at any
 12 time have its right-hand turn signal initiated?
 13 A. No, it did not.
 14 Q. Did you have any indication prior to the
 15 accident that Mr. Hansen intended to turn right into
 16 BMC West?
 17 A. There was no indication.
 18 Q. Matt, I'm going to hand to you trial
 19 Exhibit F001 through 003.
 20 Can you take a minute to look at that
 21 document, and actually let me ask you this question:
 22 Have you been back to the accident scene since the
 23 accident occurred?
 24 A. I have.
 25 Q. Okay. Do you recall when the last time

20

1 would have been that you've been back at the accident
 2 scene?
 3 A. Just before the first day of trial.
 4 Q. Okay. Do these photographs in Exhibit F
 5 that I handed to you, do they accurately depict the
 6 accident scene as it was on December 12, 2008, the
 7 date of the accident?
 8 A. They do.
 9 MS. BRIZEE: I move for admission of these
 10 photographs.
 11 MR. GORDON: I have no objection.
 12 Q. (By Ms. Brizee) Matt, you're going to
 13 have to take the staple out again. I apologize.
 14 Would you go ahead and hold each page of
 15 those up for our videographer so he can zoom out on
 16 those.
 17 A. (Witness indicating.)
 18 Q. Okay. Thank you, Matt. Let me go back to
 19 the accident.
 20 At the time that the actual impact
 21 occurred between the two vehicles, you were on the
 22 right-hand side of Mr. Hansen's vehicle; correct?
 23 MR. GORDON: Objection. Leading.
 24 THE WITNESS: That's correct.
 25 Q. (By Ms. Brizee) Do you have a

Matthew Roberts * November 19, 2010

29

1 **A. No, he did not.**
2 Q. Did the police officer also talk to
3 Mr. Hansen at the accident scene?
4 **A. He did.**
5 Q. Did you personally observe Mr. Hansen and
6 the police officer talking together?
7 **A. I did.**
8 Q. Did you overhear any of the statements
9 made by Mr. Hansen to the police officer?
10 **A. I did.**
11 Q. What did you hear?
12 **A. He said he was sorry and he didn't know**
13 **how that could have happened.**
14 Q. Okay, Matt, did you receive a citation as
15 a result of this accident?
16 MR. GORDON: Objection. Irrelevant.
17 THE WITNESS: I did not --
18 MR. GORDON: Overly prejudicial.
19 THE WITNESS: I did not receive a
20 citation.
21 Q. (By Ms. Brizee) Okay, Matt, my final
22 question for you: Do you believe you have any fault
23 for this accident?
24 **A. No, I do not.**
25 MS. BRIZEE: Okay. Thank you, Matt.

30

1 Those are all the questions I have for you. We'll
2 let Mr. Gordon ask questions if he has some.
3 MR. GORDON: Can we take a quick break?
4 MS. BRIZEE: Sure.
5 THE VIDEOGRAPHER: We are off the record.
6 The time is 2:33.
7 (Recess from 2:33 p.m. to 2:39 p.m.)
8 (EXHIBIT-6 WAS MARKED.)
9 THE VIDEOGRAPHER: We are back on the
10 record. 2:39 p.m. is the time. Counsel.
11 MR. GORDON: Matthew, I just have a couple
12 of questions to ask you about this crash.
13
14 EXAMINATION
15 BY MR. GORDON:
16 Q. Prior to the crash, you indicated that you
17 had seen Larry Hansen's vehicle as you were
18 approaching the intersection.
19 How far away from the intersection were
20 you when you first saw the vehicle driven by Larry
21 Hansen?
22 **A. Well, I was following him as we were**
23 **heading up, so I had lots of time to see Larry.**
24 Q. You state that -- well, let me ask you
25 this: Where was your vehicle -- how far away from

31

1 the intersection were you when you first saw Larry's
2 vehicle slow down?
3 **A. I don't know an exact distance.**
4 Q. Where was your vehicle in relationship to
5 Larry Hansen's vehicle when you first saw him slow
6 down?
7 **A. When I first saw him slow down, I was on**
8 **the right side and coming up past him.**
9 Q. So he had never slowed down at all until
10 you were on the right side of his vehicle?
11 **A. I don't know that exactly. He might have**
12 **stopped pushing the gas and slowed down that way. I**
13 **can't be positive.**
14 Q. And you were overtaking, meaning you were
15 going faster than, Mr. Hansen on the right of him;
16 isn't that correct?
17 MS. BRIZEE: Object to form.
18 THE WITNESS: He was slowing down because
19 he had two vehicles in front of him. I was also
20 slowing down but not as fast because I just needed to
21 slow down for the intersection.
22 Q. (By Mr. Gordon) At what point did you
23 start to merge to the right -- well, let me ask you
24 this: Had Mr. Hansen's vehicle started to slow down
25 before you started to merge to the right?

32

1 **A. No, it hadn't slowed down yet.**
2 Q. And how fast were you traveling before
3 Mr. Hansen's vehicle started to slow down?
4 **A. When we were both going down the road, I**
5 **was going probably about 25 miles per hour, but as we**
6 **came up on the intersection, I was slowing down. I**
7 **don't know an exact speed.**
8 Q. But you were overtaking Mr. Hansen on the
9 right; right?
10 MS. BRIZEE: Object to form.
11 Q. (By Mr. Gordon) As you approached the
12 intersection, you overtook him on the right; correct?
13 MS. BRIZEE: Same objection.
14 THE WITNESS: I don't know what you mean
15 by overtook. I merged to the right as --
16 Q. (By Mr. Gordon) You were passing --
17 **A. -- it widened.**
18 Q. You were passing him on the right;
19 correct?
20 MS. BRIZEE: Object to form.
21 THE WITNESS: I was on the right lane and
22 he was going in the middle, and I was going faster
23 than him.
24 Q. (By Mr. Gordon) So you were passing him;
25 correct?

SHEET 5

33

1 **A. Yes, I was in the process of passing him.**
 2 Q. But he hadn't slowed down at all before
 3 you started to pass him; correct?
 4 MS. BRIZEE: Object to the form.
 5 Misstates the evidence in the record.
 6 THE WITNESS: I don't know when exactly
 7 you would consider passing. As I was on the right
 8 side, I saw his brake lights.
 9 Q. (By Mr. Gordon) My question is: He
 10 hadn't slowed down before you started to pass him;
 11 right?
 12 MS. BRIZEE: Objection. Misstates the
 13 evidence in the record.
 14 THE WITNESS: Again, I don't know exactly
 15 when the passing occurred. I know that I saw his
 16 brake lights as he was on my left side.
 17 Q. (By Mr. Gordon) But you said he hadn't
 18 slowed down before you started to pass him; right?
 19 MS. BRIZEE: Object to form. Misstates
 20 the evidence in the record.
 21 THE WITNESS: He might have started
 22 slowing down by not pushing the gas and just slowing
 23 down that way. I can't be positive.
 24 Q. (By Mr. Gordon) But you were saying that
 25 you were going 25 miles an hour.

34

1 By the time the collision took place, you
 2 said earlier that you were going five to ten miles an
 3 hour.
 4 **A. Yes; that's correct. I was going 25 miles**
 5 **per hour earlier on the street, and as we came closer**
 6 **to the intersection, I started slowing down, and then**
 7 **right as he was going into my path of travel, I**
 8 **slowed down even more. I hit the brakes.**
 9 Q. This is what I'm trying to figure out.
 10 You slowed down from 25 miles an hour to five miles
 11 an hour, and you were behind Mr. Hansen, but you're
 12 suggesting he never slowed down?
 13 MS. BRIZEE: Object to the form.
 14 Misstates the evidence in the record, argumentative
 15 as well.
 16 THE WITNESS: I didn't say he never slowed
 17 down. I said I saw his brake lights, so I imagine he
 18 was slowing down.
 19 Q. (By Mr. Gordon) But he didn't -- you're
 20 saying he didn't slow down until you started to pass
 21 him.
 22 MS. BRIZEE: Objection. Misstates the
 23 evidence in the record again, argumentative.
 24 THE WITNESS: Again, I don't know exactly
 25 when he started slowing down.

35

1 Q. (By Mr. Gordon) Was he -- did he start to
 2 slow down while he was in front of you?
 3 **A. Not that I know of.**
 4 Q. Because you didn't see his brakes?
 5 **A. I hadn't seen his brake lights when he**
 6 **was --**
 7 Q. So he was still going 25 miles an hour;
 8 right?
 9 MS. BRIZEE: Could we let the witness
 10 finish his answer?
 11 THE WITNESS: Could you say it again,
 12 please.
 13 Q. (By Mr. Gordon) So he was going 25 miles
 14 an hour while he was ahead of you; correct?
 15 **A. I don't know exactly what his speed was.**
 16 **I know -- I think we were going about 25 miles an**
 17 **hour earlier on in the road --**
 18 Q. And --
 19 **A. -- slowing down as we approached the**
 20 **intersection.**
 21 Q. And how were you slowing down? Did you
 22 use your brakes?
 23 **A. I don't remember exactly as we were coming**
 24 **up on it, but as we got closer, yes, I was using my**
 25 **brakes.**

36

1 Q. So you had to use your brakes, but you're
 2 suggesting Larry Hansen didn't have to use his brakes
 3 to slow down?
 4 MS. BRIZEE: Object. Argumentative, A,
 5 and, B, misstates the evidence in the record.
 6 THE WITNESS: Again, I saw his brake
 7 lights, so I imagine he was slowing down.
 8 Q. (By Mr. Gordon) Well, let me ask you
 9 this: Before you started to pass him, how fast were
 10 you going?
 11 **A. I don't know exactly what my speed was as**
 12 **I was going past him.**
 13 Q. What I'm trying to figure out is you went
 14 from 25 miles an hour to five miles an hour within a
 15 period of time, and you were going faster than
 16 Mr. Hansen at the time, or just shortly before the
 17 impact as you were passing him, but you're
 18 suggesting, and I want to know if it's true or not,
 19 that he never touched his brakes at all to slow down
 20 until you were passing him on the right?
 21 MS. BRIZEE: Object to the form.
 22 Misstates the evidence in the record and also
 23 argumentative.
 24 THE WITNESS: I feel I've already answered
 25 this question a couple times. I seen his brake

Matthew Roberts * November 19, 2010

37

1 lights as I was -- as I was driving.
 2 Q. (By Mr. Gordon) As you were passing him?
 3 A. **I saw it as I was coming up behind him. I**
 4 **saw him and saw his brake lights.**
 5 Q. And --
 6 A. **I refer to my previous statements.**
 7 Q. Where was your vehicle when you first saw
 8 his brake lights?
 9 MS. BRIZEE: Objection. Asked and
 10 answered.
 11 THE WITNESS: I refer to my previous --
 12 Q. (By Mr. Gordon) I'm confused. Just tell
 13 me where.
 14 MS. BRIZEE: Same objection.
 15 THE WITNESS: I refer to my previous
 16 statements. I've already answered this several
 17 times, I think.
 18 MR. GORDON: He has to answer.
 19 MS. BRIZEE: Well, I think he's already
 20 given you the answer, but --
 21 MR. GORDON: Well, you can make the
 22 objection. If the judge agrees, fine, he's going to
 23 strike the answer, but for purposes of this
 24 deposition, I objected to the question lots of time
 25 and we still allowed the answer.

38

1 How are we supposed to know whether it's
 2 objectionable and whether the judge is going to
 3 sustain it or not? Answer the question, and then if
 4 the judge says it's sustainable, then he can strike
 5 the answer.
 6 THE WITNESS: Could you repeat the
 7 question, please.
 8 Q. (By Mr. Gordon) Where was your vehicle at
 9 the time you first saw the brake lights?
 10 A. **I was on the right side.**
 11 Q. So at no point before that -- as you were
 12 approaching the intersection, at no point as you were
 13 slowing down did you see Mr. Hansen's brake lights
 14 come on until you were actually on the right side
 15 passing him; correct?
 16 A. **I was on the right side. I don't know --**
 17 Q. It's a yes or no question.
 18 MS. BRIZEE: Would you let him finish his
 19 answer.
 20 MR. GORDON: It's a yes or no question.
 21 MS. BRIZEE: It is not.
 22 MR. GORDON: He's being evasive.
 23 MS. BRIZEE: He is trying to answer your
 24 question.
 25 MR. GORDON: It's a yes or no question.

39

1 MS. BRIZEE: Matt, go ahead and get your
 2 answer in the record.
 3 THE WITNESS: I was on the right side, and
 4 I don't know if I was passing him yet. I saw his
 5 brake lights, and I was slowing down as well.
 6 Q. (By Mr. Gordon) How many vehicles were in
 7 front of Mr. Hansen's?
 8 A. **Two.**
 9 Q. And where were those vehicles?
 10 A. **They were up by the intersection.**
 11 Q. Were they stopped or were they moving?
 12 A. **I saw the brake lights. I don't know if**
 13 **they were moving or if they were stopped.**
 14 Q. How much distance was between Mr. Hansen's
 15 vehicle and the vehicle directly in front of him?
 16 A. **Well, that depends how far along we were.**
 17 **He was moving towards it, but it became --**
 18 Q. At the time of the impact?
 19 A. **At the time of the impact there wasn't a**
 20 **whole lot of room. I don't know an exact distance.**
 21 Q. Now, you'd agree that the impact occurred
 22 before there were any lines on the road indicating
 23 multiple lanes?
 24 A. **The accident occurred just before the**
 25 **white lines on the road.**

40

1 Q. What color was the light at the
 2 intersection?
 3 MS. BRIZEE: Objection. At what point in
 4 time?
 5 MR. GORDON: At any time you were
 6 approaching it.
 7 THE WITNESS: I believe it was probably
 8 red. That would be my guess as to why they were
 9 slowing down.
 10 Q. (By Mr. Gordon) Now, on Exhibit T, it's
 11 there to your left, the police statement that you
 12 filled out, isn't it true that that police statement
 13 asks how fast you were traveling, and you put about
 14 25 miles per hour, or you put about 25?
 15 A. **Yeah. I was traveling about 25 miles per**
 16 **hour --**
 17 Q. I'm just asking a question.
 18 Doesn't the statement say, when it asks
 19 how fast were you traveling, about 25?
 20 A. **That's what it says.**
 21 Q. And that's your handwriting that says
 22 about 25?
 23 A. **That is my handwriting.**
 24 Q. Are you a doctor?
 25 A. **No, I am not a doctor.**

SHEET 6

41

1 Q. Have you had any sort of training in
2 emergency care of individuals?
3 **A. I was CPR certified and an Eagle Scout, so
4 I've had some.**
5 Q. Did you conduct an examination of
6 Mr. Hansen after the crash?
7 **A. No, I did not.**
8 Q. Are you aware that there was an
9 examination that was conducted of Mr. Hansen after
10 the crash?
11 **A. I don't know when after the crash, but,
12 yes, I've heard of his doctors' appointments that we
13 went over in trial.**
14 Q. And you were present at trial when the
15 emergency room documents were introduced; correct?
16 **A. Yes, I was in trial.**
17 Q. Okay. I want to show Mr. Roberts the
18 exhibit that we've marked.
19 **A. Is that this one (indicating)?**
20 Q. Yes; correct. Now, I've handed you an
21 exhibit that's marked as Plaintiff's Exhibit --
22 MS. BRIZEE: Six.
23 Q. (By Mr. Gordon) -- 6, and that's an
24 emergency room document that's from Madison Memorial
25 Hospital.

42

1 Up at the top, doesn't it say Draft on
2 that at the top?
3 MS. BRIZEE: I'm going to object to any
4 line of questioning regarding this document on the
5 basis of foundation for this witness.
6 Q. (By Mr. Gordon) Doesn't it say Draft
7 there?
8 **A. It says it about a third to a fourth of
9 the way down, yes.**
10 Q. Look at the very back page. At the very
11 bottom it says, "Unsigned dictated reports are
12 considered preliminary and do not represent a
13 medicolegal document."
14 Do you see where that's written?
15 MS. BRIZEE: Same objection.
16 THE WITNESS: I see that.
17 MS. BRIZEE: And relevancy.
18 Q. (By Mr. Gordon) Is that document signed?
19 MS. BRIZEE: Same objection.
20 THE WITNESS: No. It has a name
21 underneath, but it is not signed.
22 Q. (By Mr. Gordon) Are you aware of whether
23 that document has ever been signed?
24 MS. BRIZEE: Objection. Lack of
25 foundation.

43

1 THE WITNESS: I don't have any idea.
2 Q. (By Mr. Gordon) Who's Adams, William,
3 William Adams?
4 MS. BRIZEE: Same objection. Lack of
5 foundation.
6 THE WITNESS: I don't know who he is.
7 Q. (By Mr. Gordon) Now, this is a document
8 that you introduced in support of your defense of
9 your case and you don't even know who the doctor is?
10 MS. BRIZEE: Oh, objection.
11 Argumentative, relevancy.
12 Q. (By Mr. Gordon) You did have this
13 document introduced at trial in support of the
14 defense of your case; isn't that correct?
15 MS. BRIZEE: Same objection.
16 THE WITNESS: My lawyer, Jennifer, might
17 have introduced it. I don't remember this document
18 particularly. It might have been introduced.
19 Q. (By Mr. Gordon) Do you know what kind of
20 physician Dr. William, or Dr. Adams is?
21 MS. BRIZEE: Objection. Argumentative,
22 lack of foundation.
23 THE WITNESS: I don't know off the top of
24 my head, no.
25 MR. GORDON: Okay. I don't have any other

44

1 questions. Thank you.
2 MS. BRIZEE: Matt, I just have one
3 follow-up question.
4
5 **FURTHER EXAMINATION**
6 **BY MS. BRIZEE:**
7 Q. I'd like you to go to the police report,
8 Exhibit T, that first page, and I'd like to ask you
9 the question there how fast were you traveling, and
10 then you've written "About 25."
11 What was your understanding of what this
12 question was asking you at the time that you
13 completed this form?
14 **A. I thought it was asking how fast we were
15 traveling down the road.**
16 Q. Okay. And can you tell us for how long
17 you were traveling behind Mr. Roberts' vehicle before
18 the road opened up and widened to three lanes in
19 front of BMC West?
20 **A. You mean Mr. Hansen's vehicle?**
21 Q. I'm sorry if I misspoke, yes. How long
22 were you traveling behind Mr. Hansen's vehicle?
23 **A. I don't recall exactly how long. It had
24 to have been from at least from 1st North, so over
25 half a block.**

45

1 MS. BRIZEE: Okay. Thank you. Those are
 2 all the questions I have.
 3
 4 FURTHER EXAMINATION
 5 BY MR. GORDON:
 6 Q. Going back to that exhibit, it also says,
 7 "Were you going straight, turning or stopping," and
 8 you put straight; right?
 9 MS. BRIZEE: I'm sorry, Counsel. Where
 10 does it say that?
 11 MR. GORDON: Right above "How fast were
 12 you traveling?" It says, "Were you going straight,
 13 turning or stopping?" You put straight.
 14 THE WITNESS: Yeah.
 15 MS. BRIZEE: Actually, I'm going to
 16 object. I think we've had direct, we've had cross,
 17 we've had redirect. I'm just going to object that
 18 we're beyond trial testimony. Your time to ask
 19 questions is over. I'm going to allow it, and we'll
 20 have to deal with it later with the judge, but that's
 21 my objection.
 22 MR. GORDON: You don't get to allow or not
 23 allow it when I make an objection.
 24 MS. BRIZEE: Well, we'll deal with it
 25 later with the judge.

46

1 Q. (By Mr. Gordon) It says you were going
 2 straight, but wasn't it your testimony that you were
 3 merging off to the right?
 4 A. Yeah, I had merged to the right --
 5 Q. No other questions.
 6 MS. BRIZEE: Let him finish.
 7 MR. GORDON: I'm just asking a yes or no
 8 question.
 9 MS. BRIZEE: Will you let him answer the
 10 question.
 11 MR. GORDON: No. It's a closed answered
 12 [sic] question. It's either yes or no. I can ask
 13 leading questions and I can ask closed-ended
 14 questions.
 15 His testimony was that he was turning.
 16 This statement says he was going straight. There's a
 17 conflict in the testimony. If you wanted to ask
 18 further follow-up questions, that's your right to do
 19 it, but I can ask him leading closed-ended questions
 20 on cross examination.
 21 MS. BRIZEE: I just object to you not
 22 letting him finish his answer, but are those all the
 23 questions --
 24 MR. GORDON: All right.
 25 MS. BRIZEE: -- you have?

47

1 MR. GORDON: No.
 2 MS. BRIZEE: Okay.
 3 Q. (By Mr. Gordon) What time of the -- when
 4 you read that question "Were you going straight,
 5 turning or stopping," where do you think that that
 6 referred to? What part of the road?
 7 MS. BRIZEE: I'm going to have a -- I'm
 8 going to put a continuing objection in the record
 9 just to any further questions by Mr. Gordon, and I'm
 10 not going to object every time, but for the same
 11 reason I just stated before, we've had direct, we've
 12 had cross and we've had redirect.
 13 Go ahead, Matt.
 14 THE WITNESS: I'm sorry. Could you repeat
 15 it, please.
 16 Q. (By Mr. Gordon) When you answered that
 17 question "Were you going straight, turning or
 18 stopping," where on the road did you think that they
 19 were referring to, the question referred to?
 20 A. I thought it was talking about at the
 21 exact time of the accident which direction was my
 22 vehicle heading, which I was heading straight and
 23 then going to make a right-hand turn.
 24 Q. Thank you. So for purposes of answering
 25 that question, you thought it was at the time of the

48

1 crash, but the second -- the very next question, how
 2 fast you were traveling, about 25, you thought that
 3 question asked a different location of the road;
 4 isn't that true?
 5 A. I thought it was asking about the general
 6 travel on that road.
 7 MR. GORDON: Thank you. No other
 8 questions.
 9 MS. BRIZEE: So, Matt, let me just
 10 clarify.
 11
 12 FURTHER EXAMINATION
 13 BY MS. BRIZEE:
 14 Q. This question on the statement "Were you
 15 going straight, turning or stopping," again, what was
 16 your understanding of what that question --
 17 MR. GORDON: Asked and answered. Asked
 18 and answered.
 19 THE WITNESS: I thought it was asking
 20 where, or during the time of the accident which
 21 direction I was heading, which I was heading straight
 22 and then going to make a right-hand turn at the
 23 intersection.
 24 MS. BRIZEE: Okay. Thank you, Matt.
 25 Those are all the questions I have.

Feb 06 2009 3:37PM

MADISON HOSPITAL BILLING

12083596764

P. 13

MADISON MEMORIAL HOSPITAL
Telephone (208) 359-6508
Rexburg, Idaho 83440

EMERGENCY DEPARTMENT HISTORY & PHYSICAL

Patient: HANSEN, LARRY W Unit #: M000051502
Acct #: V00053393500
DOB: [REDACTED] Age/Sex: 54, M
Location: ER
E.D. Dr:
E.D. Arrival Date/Time: /
Report Number: 1212-0088

Draft

Clinical Report- Physicians
Madison Memorial Hospital
Emergency Department
450 East Main Street, Rexburg, ID, 83440
12/12/2008 20:40

Patient Name: HANSEN, LARRY W
MRN: 05-15-02 Acct#: 00053393500 54y, M
PCP: PACKER, MICHAEL

Time Seen: 20:49.
Arrived- By private vehicle. Historian- patient and family.

HISTORY OF PRESENT ILLNESS

Chief Complaint- Injury to the right hand. The injury happened today. He sustained a direct blow. This was not an incised wound, caused by a puncture wound or a crush injury or twisting injury. Patient did not fall. Occurred on a street. MVA today. Has had steadily worsening R hand pain today. No other c/o.. Patient is experiencing mild pain. Patient denies injury to the head or neck. No other injury.

REVIEW OF SYSTEMS

No swelling, tingling, numbness, weakness or foreign body. No skin laceration. All systems otherwise negative, except as recorded above.

PAST HISTORY

See nurses notes.

Medications: The patient's medications have been reviewed.

Allergies: The patient's allergies have been reviewed.

SOCIAL HISTORY

Nonsmoker. No alcohol use.

ADDITIONAL NOTES

The nursing notes have been reviewed.

PHYSICAL EXAM

Appearance: Alert. No acute distress.

EXHIBIT 6
WIT: Roberts
DATE: 11-19-10
CitiCourt, LLC

Feb 06 2009 3:37PM

MADISON HOSPITAL BILLING

12083596764

p. 14

Vital Signs: Have been reviewed.

Head: Head atraumatic.

ENT: Ears normal.

Neck: Normal inspection.

CVS: Normal heart rate and rhythm. Heart sounds normal.

Respiratory: No respiratory distress. Breath sounds normal.

Abdomen: Abdomen soft and nontender.

Back: Normal inspection.

Skin: Skin intact.

Extremities: Dorsal right hand: mild tenderness of the proximal aspect of the dorsal hand. Limited extension of the index, middle and ring finger secondary to pain. No erythema, swelling or laceration. Soft tissue tenderness present over the dorsal aspect of the right hand. Bony tenderness present over the dorsal aspect of the right hand. No signs of infection present. No wrist injury. Hand and wrist exam otherwise negative. Extremities otherwise negative.

Neuro, Vascular and Tendons: Vascular status intact. Sensation intact. Motor intact. Tendon function intact.

Neuro: No motor deficit. No sensory deficit.

LABS, X-RAYS, AND EKG

X-Rays: Right hand. The X-rays were independently viewed by me, interpreted by the radiologist and discussed with the radiologist.

Rt Hand X-ray: Probable widening between proximal 3-4 metacarpals. Possible C-MC dislocation. The X-rays were independently viewed by me, interpreted by the radiologist and discussed with the radiologist.

PROGRESS AND PROCEDURES

Splint Application: Volar splint and cock-up splint applied to right upper extremity. Splint applied by nurse with direct supervision by me. Reassessed extremity following splint application. Neurovascular intact. Follow-up recommended within 3 days.

Patient/family counseled. Additional history sought.

Discharge decision based on the following: patient's condition is stable; patient is ambulatory; stable condition on multiple repeat evaluations; social support is adequate; transportation is available; follow-up is available.

Disposition: Discharged home in good condition and stable condition.

CLINICAL IMPRESSION

Contusion right hand.

Possible dislocated C-MC jt or R 3-4. Clinical picture does not suggest laceration, abrasion, crush injury, tendonitis or tendon laceration. Clinical picture does not suggest radius fracture or ulna fracture.

INSTRUCTIONS

Apply ice intermittently (15-20 minutes at a time 4-6 times daily). Wear splint for three days. Rest. Limit use of your hand. (Follow up w/ Dr. Mills on Monday in his office.)

Warnings:

GENERAL WARNINGS: Return or contact your physician immediately if your

Feb 06 2009 3:38PM MADISON HOSPITAL BILLING 12083596764

p.15

condition worsens or changes unexpectedly, if not improving as expected, or if other problems arise.

Prescription Medications:

Darvocet-N 100 mg: take 1 orally every 6 hours as needed for pain. Dispense ten (10). No refill.

OTC Medications:

Acetaminophen (available over the counter): take according to label instructions.

Motrin IB 200 mg (available over the counter): take 4 orally every 8 hours as needed for pain or stiffness.

Follow-up:

Return to the emergency department as needed. Follow up with your doctor Monday if not better.

Understanding of the discharge instructions verbalized by patient and family.

Adams, William D, D.O.

D: 12/12/08 2201
T: 12/12/08 2201

Dictated By: _____

ADAMS, DAVID D

Unsigned dictated reports are considered preliminary
and do not represent a medicolegal document.

BONNEVILLE COUNTY
2010 DEC -3 PM 4:41

Jennifer K. Brizee (ISB #5070)
POWERS TOLMAN, PLLC
132 3rd Avenue East
P.O. Box 1276
Twin Falls, Idaho 83303-1276
Telephone: (208) 733-5566

Attorney for Matthew Roberts

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

Larry Hansen,

Plaintiff,

vs.

Matthew Roberts,

Defendant.

Case No. CV-09-3163

**NOTICE OF HEARING ON MOTION TO
STRIKE PORTION OF MATTHEW
ROBERTS' VIDEO TRIAL TESTIMONY**

**TO: LARRY HANSEN, ABOVE-NAMED PLAINTIFF, AND HIS ATTORNEY OF
RECORD, BRENT GORDON OF GORDON LAW FIRM:**

YOU WILL PLEASE TAKE NOTICE That the undersigned will bring Matthew
Roberts' Motion to Strike Portion of Matthew Roberts' Video Trial Testimony for hearing
before this court on Wednesday, the 8th day of December, 2010, at 10:30 o'clock a.m., or
as soon thereafter as counsel can be heard, at the Bonneville County Courthouse.

DATED this 30th day of December, 2010.

POWERS TOLMAN, PLLC

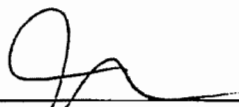
By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2010, I caused a true and correct copy of the foregoing NOTICE OF HEARING ON MOTION TO STRIKE PORTION OF MATTHEW ROBERTS' VIDEO TRIAL TESTIMONY to be forwarded with all required charges prepared, by the method(s) indicated below, to the following:

Brent Gordon
GORDON LAW FIRM, INC.
477 Shoup Ave., Suite 101
Idaho Falls, ID 83402

- First Class Mail
- Hand Delivered
- Facsimile
- Overnight Mail


Jennifer K. Brizee

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

2010 DEC 15 PM 7:05

DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE ID
Case No. CV-09-3163

Larry Hansen,)
)
 Plaintiff,)
)
 vs.)
)
 Matthew Roberts,)
)
 Defendant.)
 _____)

SPECIAL VERDICT FORM

We, the Jury, answer the special interrogatories as follows:

QUESTION NO. 1: Was Larry Hansen negligent in his conduct immediately prior to the accident?

ANSWER: Yes X No ___

If you answered 'Yes' to the above question, then proceed to question No. 2.

If you answered 'No' to the above question, skip question No. 2 and proceed to question No. 3.

QUESTION NO. 2: Was Larry Hansen's negligence a proximate cause of the damage to the vehicle owned by Matthew Roberts?

ANSWER: Yes X No ___

If you answered 'Yes' to the above question, then proceed to question No. 3.

If you answered 'No' to the above question, then proceed to question No. 3.

QUESTION NO. 3: Was Matthew Roberts negligent in his conduct immediately prior to the accident?

ANSWER: Yes X No ___

If you answered 'Yes' to the above question, then proceed to question No. 4.

If you answered 'No' to the above question, then proceed to question No. 5.

QUESTION NO. 4: Was Matthew Roberts' negligence a proximate cause of the damages claimed by Larry Hansen ?

ANSWER: Yes _____ No X

If you answered 'Yes' to the above question, then proceed to question No. 5.

If you answered 'No' to the above question, then proceed to question No. 5.

Instruction for Question No. 5: You will answer this question only if you have found that the conduct of one or both of the parties was (a) negligent and (b) the proximate cause of any damages claimed by the other party. In this question, you are to apportion the fault between any parties for whom you found (a) negligence and (b) that his negligence was the proximate cause of the damages claimed by the other party. As to each party or entity to which you answered "Yes" to the proximate cause questions (question Nos. 2 and 4), you must determine the percentage of fault for that party or entity, and enter the percentage on the appropriate line. If you answered "No" to the negligence or to the proximate cause questions for a party, insert a "0" or "Zero" as to that party or entity.

QUESTION NO. 5: What is the percentage of fault (if any) you assign to each of the following:

To Larry Hansen	<u>90</u> %	
To Matthew Roberts	<u>10</u> %	
<hr/>		
Total must equal 100%		100%

If the percentage of fault you assigned to the parties is equal you are done. Sign the verdict and advise the Bailiff.

If the percentage of fault assigned to Larry Hansen is greater than Matthew Roberts, then proceed to question No. 6 (and do not answer question No. 7).

If the percentage of fault assigned to Matthew Roberts is greater than Larry Hansen's, then skip question No. 6 and proceed to question No. 7

QUESTION NO. 6: What is the amount of property damage incurred to the vehicle owned by Matthew Roberts ?

ANSWER: \$ 3,776 ⁸².

QUESTION NO. 7: What is the amount of damages incurred by Larry Hansen?

ANSWER:

1. Economic damages:

a. Medical Expenses: \$ _____.

b. Property Damage: \$ _____.

c. Lost Wages: \$ _____.

2. Non-economic damages: \$ _____.

Sign the verdict and advise the Bailiff.

DATED This 15th day of December, 2010.

Shawn Alford
Foreperson

Jeremy Michael Aclon
Juror

JM
Juror

Melanie Swanson
Juror

Minnie Crow
Juror

Cody Phillips
Juror

Wesley Roberts
Juror

Juror

Orl Olsen
Juror

Juror

Audi Carlson
Juror