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LAW CLERK

IN THE

Vol. 3 of 5

SUPREME COURT

COPY

OF THE

STATE OF IDAHO

LARRY HANSEN

Plaintiff and

VOL. III 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

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Attorney for Appellant

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PO Box 1276, Twin Falls, ID 83303-1276

Attorney for Respondent

Filed this day of 20

DEC 14 2011

By Clerk

Deputy

38904

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 III 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

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**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

**OBJECTION TO ALLOWANCE OF
ATTORNEY FEES AND COSTS**

Plaintiff, by and through his attorney, pursuant to Idaho Rules of Civil Procedure 54(d)(6) and 54(e)(6) hereby submits the following Objection to Allowance of Attorney Fees and Costs and submits the following memorandum of law in support of the Objection.

FACTUAL AND PROCEDURAL BACKGROUND

The undisputed facts of this case as presented at the trial of this matter are that Plaintiff and Defendant were involved in a motor vehicle collision on N. 2nd West in Rexburg, Idaho in

front of BMC West. Plaintiff and Defendant collided as Plaintiff made a right hand turn into the parking lot of BMC West. The street where the accident took place, N. 2nd West, begins with one lane of travel in each direction and widens to three lanes of travel near the intersection of W. Main St. Defendant was traveling behind Plaintiff and was in the process of passing Plaintiff on the right when Plaintiff made a right hand turn intending to turn into the parking lot of BMC West. The collision occurred where the road had begun to widen but before where the painted lane markers divide the road into three lanes. Plaintiff claimed that Defendant made an improper pass on the right before the road had widened into three lanes. Defendant claimed that Plaintiff turned across Defendant's lane and that the road had already widened to three lanes. Plaintiff sought treatment to his wrist following the collision and claimed that this treatment was related to the collision.

STANDARD OF ADJUDICATION

The trial court has discretion whether to award attorney fees and discretionary costs. *Burns v. Baldwin*, 138 Idaho 480, 65 P.3d 502 (2003). The trial court exercises its discretion by perceiving the issue as one of discretion, acting within the outer bounds of its discretion consistent with applicable legal standards, and reaching its decision by an exercise of reason. *Id.*

LEGAL ANALYSIS

DISCRETIONARY COSTS

Pursuant to Rule 54(d)(1)(D), costs other than those enumerated in Rule 54(d)(1)(C) may

be allowed only upon a showing that the costs were (1) necessary; (2) exceptional; (3) reasonably incurred; and (4) should in the interest of justice be assessed against the adverse party.

Travel Costs

Defendant first requests that the Court award his attorney's travel costs in the amount of \$2,189.90. These costs were not necessary or reasonably incurred. Defendant's automobile insurer, Allied Insurance, chose to hire an attorney whose office is located in Twin Falls, Idaho despite the fact that the subject automobile collision occurred in Southeast Idaho, all the witnesses live in Southeast Idaho, Plaintiff's case was filed in Southeast Idaho, and Defendant's small claims case (later consolidate into this case) was filed in Southeast Idaho. Allied Insurance is certainly able to hire whom ever it chooses, but Larry Hansen should not have to pay for travel costs when there are plenty of competent attorneys located in Southeast Idaho.

Copying Costs

Defendant next requests reimbursement for copying costs. These costs are not exceptional as required by Rule 54(d)(1)(D). The Idaho Supreme Court has defined exceptional costs as "not common," *Fish v. Smith*, 131 Idaho 492, 960 P.2d 175 (1998), and "not ordinarily part of litigation." *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 397, 109 P.3d 161 (2005). There is nothing exceptional or unusual about copying costs for medical records, discovery requests, or motions, in a personal injury case. These are costs that are ordinarily part of

litigation. Indeed, in *Fish*, the Idaho Supreme Court held that photocopying expenses are not exceptional, but on the contrary, are common in a personal injury case. *Fish*, 131 Idaho 492. Furthermore, the costs for Plaintiff's prior medical records should not in the interest of justice be allocated to Plaintiff. Defendant had offered to obtain these records with a release and do the "leg work" needed to obtain the records, which were solely for the benefit of Defendant's defense and not needed for Plaintiff's case in chief.

Dr. Jost's Deposition

Defendant next requests reimbursement for Dr. Jost's deposition. Defendant claims that this costs should be allocated to Plaintiff since Defendant filed a motion to compel the opinions of Dr. Jost and compel her attendance at a deposition. This argument is nonsensical since those actions have nothing to do with the cost of Dr. Jost's deposition and whether the cost was necessary, reasonably incurred, exceptional, and should in the interest of justice be allocated to Defendant. Furthermore, Defendant had to file a motion to compel the deposition of Dr. Jost only because he waited until right before trial after the discovery deadline had passed to schedule the deposition of Plaintiff's treating physician. This delay made it difficult to schedule a time with Dr. Jost since she normally requires notice of more than one month. In any event, the cost is not exceptional. Plaintiff claimed one injury in this case – an injury to his wrist, which required surgery performed by Dr. Jost. Dr. Jost was in the best position to testify regarding Plaintiff's injury, the cause of the injury, and the nature of the treatment provided. A deposition

of Plaintiff's primary treating medical provider and expert witness is not unusual but rather an ordinary and common part of any personal injury case.

Plaintiff's Medical Records

Defendant next requests reimbursement for obtaining Plaintiff's medical records. This cost is not exceptional, but is a cost that is common and ordinary in a personal injury case. Furthermore, Plaintiff had previously provided many of these records but Defendant sought duplicate copies directly from the medical provider after Plaintiff provided a release for medical records to Defendant.

Lodging

Defendant also requests costs for lodging. As discussed above, Allied Insurance chose to hire an attorney located in Twin Falls to defend the case despite the fact that there are competent attorneys located in Southeast Idaho. These costs are not necessary nor are they exceptional. Neither should the costs, in the interest of justice, be awarded against Plaintiff since the Defendant chose to file his small claims case in Southeast Idaho.

Shipping Charges

The request for shipping costs are not exceptional. As discussed above, there is nothing exceptional about shipping charges in a personal injury action. Furthermore, any express shipping was due to Defendant's own dilatory actions in obtaining documents and scheduling

depositions necessary for his defense after the discovery deadline had passed.

Witness Fee

The request for a witness fee is not exceptional. Indeed, the witness fee is mandated by the Idaho Rules of Civil Procedure.

DVDs and Photographs

The request for photographs and DVDs are not exceptional. Photographs and videos are common in any personal injury action. Furthermore, the request is not reasonable in amount.

Faxing Costs

Faxing costs are not exceptional but are common in any personal injury case. Furthermore, Defendant requested these records after the discovery deadline had passed and that is the reason the releases had to be faxed to Plaintiff.

Copying Costs

Copying costs are not exceptional. Furthermore, it is not even clear from the request what the copying costs were for.

Expert Witness Fees

The itemization of discretionary costs in Defendant's Memorandum for Costs, Disbursements and Attorney's Fees includes \$10,068.60 for expert witness fees. However, the Memorandum in Support of Matthew Robert's Memorandum of Costs, Disbursements and Attorney's Fees does not include any argument as to why these costs should be assessed against

Plaintiff or even why the costs were incurred. Plaintiff should not have to guess or speculate as to why these costs should be assessed against him. By not referencing the specific basis for attorney fees and utterly failing to explain the grounds for the request, Defendant has failed to give Plaintiff the notice required for him to formulate a specific response. The United States Supreme Court has stated, “attorney’s fees certainly should not be assessed lightly or without fair notice and an opportunity for a hearing on the record.” *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 100 S.Ct. 2455, 2464, 65 L.Ed.2d 488 (1980). Similarly, the Idaho Supreme Court has stated that “due process considerations require “limitations” to awarding attorney fees. *Bingham v. Montane Resource Assoc.*, 133 Idaho 420, 424, 987 P.2d 1035, 1039 (1999). The Idaho Supreme Court went on to state:

At the very least, a statutory or contractual justification for an award of fees must be advanced below by the party seeking such an award. Without such a limitation, a party may be subject to an award against it while being given no opportunity to raise relevant facts or to argue applicable legal principles. The opportunity to be heard and advance legal argument on dispositive issues is essential to proper procedure.

Id. By providing no legal argument whatsoever in Defendant’s memo, motion, or affidavit, Plaintiff is denied a fair opportunity to advance legal principles and raise relevant facts to oppose the request for the allowance of the discretionary costs. There is no indication that the costs were necessary, reasonably incurred, exceptional or uncommon, or should be assessed against the Plaintiff in the interest of justice.

ATTORNEY FEES UNDER IDAHO CODE § 12-121

Defendant claims that he is entitled to attorney fees pursuant to Idaho Code § 12-121. Attorney fees may be awarded by the Court under Idaho Code § 12-121 “only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation.” I.R.C.P., 54(e)(1). “The district court should evaluate whether ‘all claims brought or all defenses asserted are frivolous or without foundation’ before awarding attorney fees under I.C. § 12-121.” *Puckett v. Verska*, 144 Idaho 161, 170, 158 P.3d 937 (2007) (citation and internal quotation omitted). The ***entire course of the litigation*** must be taken into account when deciding whether the case was brought, pursued, or defended frivolously, unreasonably, or without foundation. *McGrew v. McGrew*, 139 Idaho 551, 562, 82 P.3d 833, 844 (2003); *Nampa & Meridian Irr. Dist. v. Washington Fed. Sav.*, 135 Idaho 518, 524, 20 P.3d 702, 708 (2001). Attorney fees are not appropriate under Idaho Code § 12-121 unless ***all claims*** asserted are frivolous and without foundation. *Management Catalysts v. Turbo W. Corpac, Inc.*, 119 Idaho 626, 809 P.2d 487 (1991). If there is a legitimate, triable issue of fact, attorney fees may not be awarded to the prevailing party even though the losing party has asserted factual or legal claims that are frivolous, unreasonable, or without foundation. *Nampa & Meridian Irr. Dist. v. Washington Fed. Sav.*, 135 Idaho 518, 524-25, 20 P.3d 702, 708-09 (2001).

The evidence presented at trial showed that there was an automobile collision that occurred at a point where a one-lane road began to widen into three lanes. The Defendant attempted to pass the Plaintiff on the right despite the fact that the Plaintiff had his right turn

signal on. There was a legitimate, triable issue as to who was at fault for causing the collision. In fact, during deliberations the jury asked the Court if Defendant could recover 90% of his property damage if it found that Plaintiff was 51% at fault for causing the collision. After receiving an answer in the negative, the jury found that both parties were negligent in causing the collision, but apportioned the negligence ten percent to Defendant and 90 percent to Plaintiff. The fact that the jury found that Defendant was partially at fault for causing the collision definitively demonstrates that there was a triable issue as to liability. Although the jury eventually apportioned more fault to Plaintiff, there was a legitimate, triable issue on this fact.

Defendant further argues that this was a frivolous case because Plaintiff was cited by the responding police officer. Prior to trial, Judge Anderson ruled that this evidence was not admissible under Rule 403 because the police officer did not witness the incident and it was the jury's duty to determine liability. The jury ultimately found that Defendant was partially at fault despite the fact that he was not cited for causing the collision.

Defendant next argues that attorney fees should be awarded under Idaho Code § 12-121 because Plaintiff failed to provide sufficient expert testimony. This argument is factually incorrect and legally invalid. Plaintiff introduced the deposition transcript of his treating physician who stated several times that the accident was the sole cause of Plaintiff's injury. Expert testimony was not needed regarding the cause of the collision since the facts were essentially undisputed and easily understood by the jury. The argument is legally invalid

because the Idaho Supreme Court has held that the failure to call expert testimony on questions of causation when there are eyewitnesses to the incident causing damage “does not render the case so plainly fallacious that attorney fees should be awarded under I.C. Section 12-121.” *Lanham v. Idaho Power Co.*, 130 Idaho 486, 943 P.2d 912 (1997) (citing *Sun Valley Shopping Center, Inc. v. Idaho Power Co.*, 119 Idaho 87, 803 P.2d 993 (1991)).

ATTORNEY FEES UNDER RULE 37

Attorney fees may not be awarded under Rule 37(c) for failing to admit a request when there is a reasonable belief in prevailing. Rule 37(c), I.R.C.P. Defendant requested that Plaintiff admit that he was negligent in causing the collision. Plaintiff had a reasonable belief in prevailing on the issue of liability. Plaintiff had his right blinker on a street where the lanes were painted for only one lane. The Defendant passed on the right just as the road began to widen. Under these facts, Plaintiff had a reasonable belief in prevailing on the issue. In *Ruge v. Possey*, 114 Idaho 890, 761 P.2d 1242 (Ct. App. 1988), the defendant was found 100 percent at fault for an automobile collision yet the appellate court still held that there may have been a reasonable belief in prevailing on the issue.

ATTORNEY FEES FOR THE DEPOSITION OF DR. JOST

Finally, Defendant requests attorney fees and costs for attending the deposition of Dr. Jost and for alleged misrepresentations in Plaintiff’s expert witness disclosure. Defendant fails to specify what rule or statute entitles him to fees or costs under this argument.

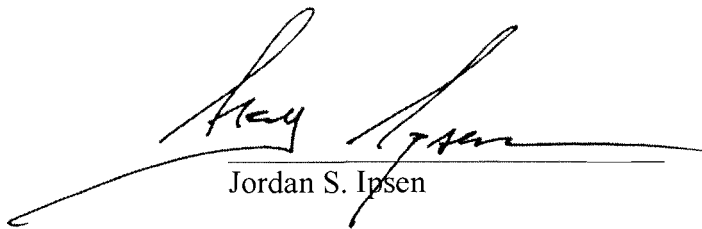
Each party is to bear their own costs and fees in litigating a matter unless a specific statute or contract provision states otherwise. *Fournier v. Fournier*, 125 Idaho 789, 791, 874 P.2d 600, 602 (Ct. App. 1994). The party asserting the claim for attorney fees has the burden of directing the court's attention to the *specific* statute or contract authorizing the award of attorney fees. *Id.* If the party does not refer to a statute or contract they may be denied. *Id.* ("This failure to state the grounds upon which the motion was based, along with the failure to offer authority for the award of attorney fees itself, renders it impossible to determine on what basis Barbara was seeking attorney fees."). The court cannot "grant fees pursuant to party's general request." *Bingham v. Montane Resource Assoc.*, 133 Idaho 420, 424, 987 P.2d 1035, 1039 (1999). Fees cannot be awarded as an "equity" determination; the trial court is constrained to award attorney fees based on contractual or statutory authority. *Fournier v. Fournier*, 125 Idaho 789, 791, 874 P.2d 600, 602 (Ct. App. 1994).

Defendant's failure to specify the basis for fees and costs precludes him from recovering fees under this argument. Furthermore, the specious argument is factually incorrect. Plaintiff's treating physician was in the best position to testify regarding Plaintiff's treatment and injuries following the accident. Furthermore, Plaintiff offered into evidence the entire transcript of Dr. Jost's testimony at trial. Except for some minor objections, the vast majority of the testimony was admitted into evidence, including several instances where Dr. Jost opined that the automobile collision was the sole cause of Plaintiff's injuries and the need for his wrist surgery.

CONCLUSION

This case involved a routine automobile collision involving a fairly simple fact patter and where Plaintiff only incurred one injury. Allied Insurance spent over \$96,000 defending this case. The amount of fees and costs spent were unreasonable and excessive. This case revolved almost exclusively on who was at fault for a car accident that happened on a road that had begun to change from a one-lane road into a three-lane road where the lanes were still painted for one lane and where the Plaintiff had his right blinker activated. There was a legitimate, triable issue on this regarding who was at fault. Therefore, there is no basis to award attorney fees to Defendant. Finally, Defendant's claimed discretionary costs fail to meet the requirement that they are (1) exceptional, (2) necessary, (3) reasonably incurred, and (4) in the interest of justice be assessed against Plaintiff.

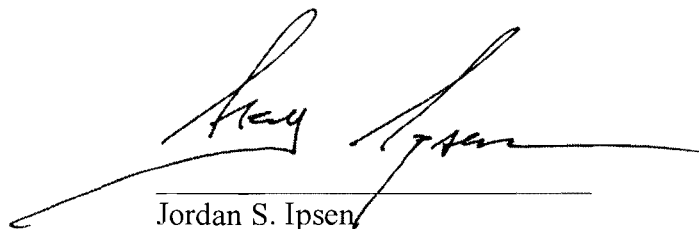
DATED March 31, 2011.


Jordan S. Ipsen

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2011, 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

ORIGINAL

APR 26 PM 4:49
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE 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.

Case No. CV-09-3163

JUDGMENT UPON SPECIAL VERDICT

MATTHEW ROBERTS,

Plaintiff,

vs.

LARRY HANSEN,

Defendant.

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

This action came on regularly for trial on the 19th day of October, 2010, and continued on the 15th day of December, 2010, said parties appearing by and through their counsel, Brent Gordon for the plaintiff Larry Hansen, and Jennifer K. Brizee for the defendant Matthew Roberts, a jury of twelve (12) persons was regularly impaneled and sworn to try said cause; witnesses on the part of the plaintiff and defendant were sworn and examined; after hearing the evidence, the arguments of counsel and instructions of


the Court, the issues having been submitted to the 11-person jury via stipulation of the parties and by way of a special verdict containing questions therein, said questions having been answered, and the special verdict being returned by the jury on December 15, 2010, finding as follows:

1. Larry Hansen was negligent in his conduct immediately prior to the accident.
2. Larry Hansen's negligence was a proximate cause of the damage to the vehicle owned by Matthew Roberts.
3. Matthew Roberts was negligent in his conduct immediately prior to the accident.
4. Matthew Roberts' negligence was not a proximate cause of the damages claimed by Larry Hansen.
5. Larry Hansen was 90% at fault for the subject accident. Matthew Roberts was 10% at fault for the subject accident.
6. The amount of property damage incurred to the vehicle owned by Matthew Roberts was \$3,776.82.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid, it is ORDERED, ADJUDGED, AND DECREED that defendant Matthew Roberts is awarded judgment against plaintiff Larry Hansen in the amount of \$3,399.14.

The issues of attorneys' fees and costs will be determined at a later date upon proper application, hearing and decision.

DATED this 22 day of April, 2011.



HONORABLE WILLIAM H. WOODLAND
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of April, 2011, I caused a true and correct copy of the foregoing JUDGMENT UPON SPECIAL VERDICT 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
POWERS TOLMAN, PLLCC
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

11 JUL 2009 2:23

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

LARRY HANSEN,

Plaintiff and Appellant,

vs.

MATTHEW ROBERTS,

Defendant and Respondent.

Case No. CV-09-3163

NOTICE OF APPEAL

MATHEW ROBERTS,

Plaintiff,

vs.

LARRY HANSEN,

Defendant.

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

TO: THE ABOVE NAMED RESPONDENT, MATTHEW ROBERTS AND THE

PARTY'S ATTORNEY, JENNIFER K. BRIZEE, POWERS TOLMAN PLLC, P.O. BOX 1276, TWIN FALLS, IDAHO, 83303-1276, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Larry Hansen, appeals against the above named respondent to the Idaho Supreme Court from the final judgment entered in the above-entitled action on the 26 day of April, 2011, Honorable Judge William H. Woodland presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.
3. Appellant intends on appealing the following issues:
 - a) Whether the court erred in precluding Plaintiff from questioning the voir dire panel regarding employment or association with insurance companies or risk management;
 - b) Whether the court erred in allowing expert opinion testimony from an accident reconstructionist, biomechanical engineer, and police officer when the expert disclosures were untimely and insufficient, the testimony was speculative, invaded the jury's province, and there was a lack of foundation to support the opinions;

- c) Whether the court erred in not permitting Plaintiff to make objections to Defendant's video deposition during the trial;
- d) Whether the court erred in admitting into evidence hearsay contained in medical records, a repair estimate, and testimony regarding what Defendant stated after the collision;
- e) Whether the court erred in excluding testimony from Defendant;
- f) Whether the court erred in admitting testimony regarding a citation issued to Plaintiff;
- g) Whether the court erred in informing the jury that Defendant requested a continuance of the trial because he had fortuitously been selected for a liver transplant that he had been awaiting for a significant period of time;
- h) Whether the court erred in instructing the jury;
- i) Whether the court erred in admitting into evidence opinion testimony regarding application of the law to the facts of the case;
- j) Whether the court erred in excluding as irrelevant testimony from Plaintiff's treating physician that her opinions were based on a reasonable degree of medical certainty.

4. No order has been entered sealing any portion of the record.

5.

- a) A reporter's transcript is requested.

- b) The appellant requests the reporter's transcript in hard copy. Appellant requests the entire reporter's standard transcript supplemented by the following:
- i. Voir dire examination of jury;
 - ii. Closing arguments of counsel;
 - iii. Opening statements of counsel;
 - iv. Pre-trial Conference held October 13, 2010;
 - v. Jury instruction conference held December 8, 2010.
 - vi. Hearing on Plaintiff's Motion in Limine/Objection to Opening Statement;
 - vii. Hearing on Defendant's Motion to Strike held December 8, 2010;
 - viii. All conferences, motions, or hearings held on the date of trial.
6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:
- a) The Court's Order Setting Trial and Pre-trial Conference dated April 2, 2010;
 - b) Defendant's Disclosure of Expert Witnesses filed July 21, 2010;
 - c) Defendant's Supplemental Disclosure of Expert Witnesses filed August 4, 2010;
 - d) Defendant's Second Supplemental Disclosure of Expert Witnesses filed October 1, 2010;
 - e) Plaintiff's First Motion in Limine on October 8, 2010;

- f) Defendant's Memorandum in Opposition to Plaintiff's 1st Motion in Limine filed October 12, 2010;
- g) Defendant's Requested Jury Instructions and Special Verdict filed October 5, 2010;
- h) Defendant's Amended Requested Jury Instructions filed October 12, 2010;
- i) Plaintiff's Objections to Defendant's Proposed Jury Instructions filed October 15, 2010.


7. I certify:

- a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Karen Konvalinka
605 N. Capital Ave.
Idaho Falls, Idaho 83402
- b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
- c) That the estimated fee for preparation of the clerk's record has been paid.
- d) That the appellate filing fee has been paid.
- e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 3 day of June, 2011.

NOTICE OF APPEAL - 5



Brent Gordon
Gordon Law Firm
Attorney for the Appellant

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2011 I mailed a copy of the foregoing to the following:

Jennifer K. Brizee
POWERS TOLMAN, PLLC
P.O. Box 1276
Twin Falls, ID 83303-1276

Karen Konvalinka
605 N. Capital Ave.
Idaho Falls, Idaho 83402



Brent Gordon

DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

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

Case No. CV-2009-3163

**MEMORANDUM DECISION AND
ORDER RE: MOTION FOR FEES AND
COSTS**

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff and Defendant were involved in a motor vehicle collision in Rexburg, Idaho on December 12, 2008. Both parties alleged the other was at fault for the collision. The case proceeded to trial on October 19, 2010, and the jury returned a special verdict in favor of Defendant on October 22, 2010.

On March 21, 2011, Defendant filed a Memorandum of Costas, Disbursements and Attorney's Fees together with the Affidavit of Jennifer K. Brizee in support thereof. On April 5, 2011, Plaintiff filed an Objection to Allowance of Attorney Fees and Costs. At a hearing held on April 6, 2011, this Court granted Defendant's motion for costs as a matter of right, but took under advisement Defendant's motion for discretionary costs and attorney fees.

II. STANDARD OF ADJUDICATION

An award of attorney fees must be supported by statutory or other authority. *See Webb v. Webb*, 143 Idaho 521, 526, 148 P.3d 1267, 1272 (2006). The amount of attorney fees and costs awarded is generally discretionary. *Lettunich v. Lettunich*, 141 Idaho 425, 435, 111 P.3d 110, 120 (2005).

III. DISCUSSION

A. Discretionary Costs

Pursuant to Rule 54(d)(1)(D) of the Idaho Rules of Civil Procedure, a prevailing party may seek “[a]dditional items of cost not enumerated in, or in an amount in excess of that listed in subparagraph (C), may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party.”

The two-vehicle accident which gave rise to this lawsuit occurred in Madison County. Defendant, originally as plaintiff filed a small claims action seeking property damage only. Plaintiff filed a personal injury and damage action in Bonneville County where Plaintiff’s counsel had offices, and the cases were consolidated in Bonneville County. Defendant’s attorney, hired by his insurance carrier, has offices in Twin Falls, Idaho.

Defendant was clearly the prevailing party, but all issues were to be tried to the jury by earlier court ruling.

Defendant seeks travel and lodging costs for his counsel’s attendance at depositions, hearings, and trial in Idaho Falls. These expenses though necessary were not exceptional, but quite ordinary in the process of this type of litigation. In addition, the insurance carrier, by its own choice, hired an attorney with offices some distance from the place of trial. These costs are therefore denied.

Defendant also seeks copying and faxing costs, expenses incurred obtaining medical records, and additional fact and expert witness fees. These costs are not exceptional and are therefore denied.

Defendant also seeks costs in relation to Dr. Jost's deposition in Jackson, Wyoming. Dr. Jost was Plaintiff's treating physician who practiced in Jackson, Wyoming where Plaintiff went for surgery. The testimony of Dr. Jost was critical regarding the issue of causation of Plaintiff's claimed injuries. Where Dr. Jost was Plaintiff's choice of a treating physician in another state, the deposition and travel costs incurred by defendant were necessary and exceptional costs reasonably incurred in trial preparation and should, in the interest of justice, be granted in the amount of \$1,250.00.

Unknown to Defendant's counsel, when the jury was selected and testimony began on the first day of trial, Defendant, a college age young man, was on an organ transplant list. He received a telephone notice the evening or night after the first day of trial that a matching organ was available. By stipulation of counsel, the trial was suspended and the jury was advised that trial may continue at a later date. After a successful operation, Defendant was available for a trial deposition. By stipulation of counsel, that deposition took place in Salt Lake City, Utah where the transplant operation took place and where Defendant was under continued medical care. Later, that video deposition along with live testimony of other witnesses was presented to the jury. Included in Defendant's previous award of costs as a matter of right were expenses incurred videotaping, editing, and transcribing Defendant's deposition in Salt Lake. Regarding that deposition, Defendant also seeks discretionary costs for travel expenses incurred by his counsel in making the trip to and from Salt Lake City. Under the circumstances of this case, such costs were exceptional, necessary and reasonably incurred and, in the interest of justice, should be awarded in the amount of \$242.00.

Except as otherwise indicated, Defendant's motion for discretionary fees should be denied.

B. Attorney Fees under Idaho Code § 12-121 and Rule 37(c)

Idaho Code § 12-121 and Rule 54(e)(1) provide for the award of attorney fees to a prevailing party defending an action brought or pursued frivolously, unreasonably, or without foundation. In this case, there were legitimate triable issues of fact regardless of independent evaluation before trial by defense counsel that a jury might allocate substantial negligence to plaintiff. Attorney fees under § 12-121 are therefore denied.

Rule 37(c) of the Idaho Rules of Civil Procedure allows for attorney fees to be assessed against a party as a sanction relating to the discovery process. In this case, Plaintiff's earlier denial of negligence and his position on causation had some basis in the evidence though the jury concluded otherwise. Attorney fees under Rule 37(c) are therefore denied.

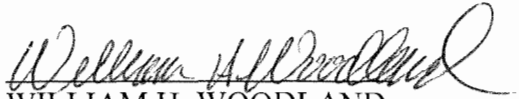
IV. CONCLUSION

In addition to the costs previously awarded as a matter of right, Defendant is awarded discretionary costs in the amount of \$1,492.00.

Defendant's motion for fees and costs is otherwise denied.

IT IS SO ORDERED

DATED this 20th day of May 2011.


WILLIAM H. WOODLAND
District Judge

CERTIFICATE OF SERVICE

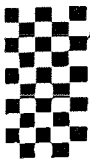
I hereby certify that on this 20 day of May 2011, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

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

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

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By *Stephania*
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/Appellant,)
)
 vs.)
)
 MATTHEW ROBERTS,)
)
 Defendant/Respondent.)

Case No. CR-2009-3163
Madison County
Case No. CV-2009-585

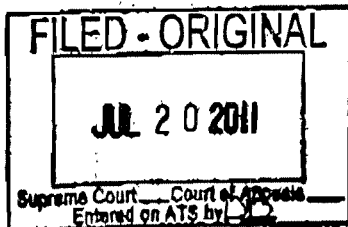
Docket No. 38904

**CLERK'S CERTIFICATE
OF APPEAL**

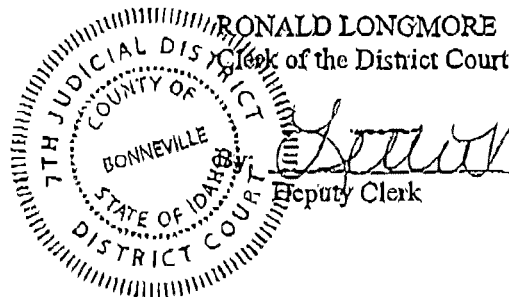
Appeal from: Seventh Judicial District, Bonneville County
Honorable William H. Woodland, District Judge, presiding.

Case number from Court: CV-2009-3163/CR-2009-585
Order or Judgment appealed from: Judgment Upon Special Verdict, entered April 26, 2011

Attorney for Appellant: Brent Gordon
Attorney for Respondent: Jennifer Brizee
Appealed by: Larry Hansen
Appealed against: Matthew Roberts
Notice of Appeal Filed: June 3, 2011
Appellate Fee Paid: Yes
Was District Court Reporter's Transcript requested? Yes
If so, name of reporter: Karen Konvalinka, estimated 550 pages
Nancy Marlow, estimated 50 pages
Dated: June 9, 2011



CLERK'S CERTIFICATE OF APPEAL



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

BONNEVILLE COUNTY, IDAHO
2011 JUN 17 PM 3:47

Attorneys for Defendant Matthew Roberts

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

LARRY HANSEN,

Plaintiff/Appellant,

vs.

MATTHEW ROBERTS,

Defendant/Respondent.

MATTHEW ROBERTS,

Plaintiff,

vs.

LARRY HANSEN,

Defendant.

Case No. CV-09-3163

**REQUEST FOR ADDITIONAL
REPORTER'S TRANSCRIPT AND
CLERK'S RECORD ON APPEAL**

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

**TO: THE ABOVE-NAMED APPELLANT, LARRY HANSEN, AND HIS ATTORNEY
OF RECORD, THE REPORTER AND THE CLERK OF THE ABOVE-ENTITLED
COURT:**

NOTICE IS HEREBY GIVEN that the respondent in the above-entitled
proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following

REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT
AND CLERK'S RECORD ON APPEAL, PAGE 1

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material in the reporter's transcript and the clerk's record in addition to that required to be included by the Idaho Appellate Rules and the notice of appeal:

A. Reporter's Transcript:

1. Respondent hereby requests a standard transcript of the complete trial proceedings for this matter.

2. In addition to the standard transcript, respondent also requests the following:

- a. Transcript from the hearing on Defendant's Motion to Strike Plaintiff's Experts, or in the Alternative, Motion to Compel Discovery Responses held on September 13, 2010, before the Honorable Jon J. Shindurling;
- b. Transcript from the hearing on Defendant's Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses held on October 5, 2010, before the Honorable Jon J. Shindurling;
- c. Transcript from the hearing on Defendant's Motion in Limine and Pretrial Conference held on October 13, 2010, before the Honorable Jon J. Shindurling; and
- d. Transcript from the hearing on Motion to Strike Portion of Matthew Roberts' Video Trial Testimony and the jury instruction conference held on December 8, 2010, before the Honorable William H. Woodland.

B. Clerk's Record:

1. In addition to the standard record pursuant to I.A.R. 28, respondent requests the following documents:

- a. Complaint filed in Madison County Small Claims Division, Case No. CZ-2009-585, filed on or about August 3, 2009;
- b. Stipulation and Order to Consolidate filed on or about October 14, 2009;
- c. Notice of Service of Discovery Document filed on or about December 22, 2009;

REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT
AND CLERK'S RECORD ON APPEAL, PAGE 2

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- d. Notice of Service of Discovery Document filed on or about February 9, 2010;
- e. Order Setting Trial and Pre-Trial Conference filed on or about April 2, 2010;
- f. Defendant's Disclosure of Expert Witnesses filed on or about July 21, 2010;
- g. Defendant's Supplemental Disclosure of Expert Witnesses filed on or about August 4, 2010;
- h. Notice of Taking Deposition Duces Tecum of Larry Hansen filed on or about August 18, 2010;
- i. Amended Notice of Taking Deposition Duces Tecum of Larry Hansen filed on or about August 24, 2010;
- j. Second Amended Notice of Taking Deposition Duces Tecum of Larry Hansen filed on or about August 30, 2010;
- k. Motion to Strike Plaintiff's Experts, or, in the Alternative, Motion to Compel Discovery Responses filed on or about September 7, 2010;
- l. Memorandum 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;
- m. 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;
- n. 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;
- o. Minute Entry filed on or about September 13, 2010;
- p. Order Compelling Supplemental Expert Witness Discovery filed on or about September 15, 2010;
- q. Certificate of Service filed on or about September 20, 2010;
- r. Notice of Service of Discovery Document filed on or about September 24, 2010;

REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT
AND CLERK'S RECORD ON APPEAL, PAGE 3

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- s. Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses filed on or about September 30, 2010;
- t. Memorandum in Support of Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses filed on or about September 30, 2010;
- u. 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 filed on or about September 30, 2010;
- v. 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 filed on or about September 30, 2010;
- w. Notice of Hearing on Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses filed on or about September 30, 2010;
- x. Defendant's Second Supplemental Disclosure of Expert Witnesses filed on or about October 1, 2010;
- y. Notice of Service of Discovery Document filed on or about October 1, 2010;
- z. Notice of Service of Discovery Document filed on or about October 5, 2010;
- aa. Minute Entry filed on or about October 5, 2010;
- bb. Defendant's Motions in Limine filed on or about October 5, 2010;
- cc. Notice of Hearing on Defendant's Motions in Limine filed on or about October 5, 2010;
- dd. Joinder filed on or about October 5, 2010;
- ee. Notice of Taking Deposition Duces Tecum of Heidi Michelsen-Jost, M.D. filed on or about October 6, 2010;
- ff. Amended Minute Entry filed on or about October 8, 2010;
- gg. Notice of Service of Discovery Document filed on or about October 8, 2010;

REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT
AND CLERK'S RECORD ON APPEAL, PAGE 4

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- hh. Defendant's Memorandum in Opposition to Plaintiff's First Motion in Limine filed on or about October 12, 2010;
- ii. 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 on or about October 12, 2010;
- jj. Minute Entry on Pre-Trial Conference filed on or about October 13, 2010;
- kk. Defendant's Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement filed on or about October 18, 2010;
- ll. Affidavit of Douglas G. Abenroth in Support of Defendant's Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement filed on or about October 18, 2010;
- mm. Order filed on or about October 22, 2010;
- nn. Order Regarding Defendant's Motions in Limine filed on or about October 25, 2010;
- oo. Notice of Audio-Visual Deposition of Matthew Roberts to Perpetuate Trial Testimony filed on or about November 9, 2010;
- pp. Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010;
- qq. Memorandum in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010;
- rr. Affidavit of Jennifer K. Brizee in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010;
- ss. Notice of Hearing on Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010; and
- tt. Affidavit of Jennifer K. Brizee in Support of Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees filed on or about March 21, 2011.

REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT
AND CLERK'S RECORD ON APPEAL, PAGE 5

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I certify that a copy of this request for additional transcript and record has been served upon the clerk of the district court, the reporter, and upon all parties required to be served pursuant to Rule 20 of the Idaho Appellate Rules.

DATED this 17th day of June, 2011.

POWERS TOLMAN, PLLC

By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2011, I caused a true and correct copy of the foregoing REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT AND CLERK'S RECORD ON APPEAL 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

Karen Konvalinka
Court Reporter
Bonneville County District Court
605 N. Capital Avenue
Idaho Falls, ID 83402

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

Nancy Marlow
Court Reporter
Bonneville County District Court
605 N. Capital Avenue
Idaho Falls, ID 83402

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


Jennifer K. Brizee

REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT
AND CLERK'S RECORD ON APPEAL, PAGE 6

WAKING

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

11 JUL 13 11:03:48

Attorneys for Defendant Matthew Roberts

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

LARRY HANSEN,
Plaintiff/Appellant,

vs.

MATTHEW ROBERTS,
Defendant/Respondent.

Case No. CV-09-3163

**AMENDED REQUEST FOR ADDITIONAL
REPORTER'S TRANSCRIPT AND
CLERK'S RECORD ON APPEAL**

MATTHEW ROBERTS,
Plaintiff,

vs.

LARRY HANSEN,
Defendant.

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

**TO: THE ABOVE-NAMED APPELLANT, LARRY HANSEN, AND HIS ATTORNEY
OF RECORD, THE REPORTER AND THE CLERK OF THE ABOVE-ENTITLED
COURT:**

NOTICE IS HEREBY GIVEN that the respondent in the above-entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the reporter's transcript and the clerk's record in addition to that required to be included by the Idaho Appellate Rules and the notice of appeal:

AMENDED REQUEST FOR ADDITIONAL REPORTER'S
TRANSCRIPT AND CLERK'S RECORD ON APPEAL, PAGE 1

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A. Reporter's Transcript:

1. Respondent hereby requests a standard transcript of the complete trial proceedings for this matter.
2. In addition to the standard transcript, respondent also requests the following:
 - a. Transcript from the hearing on Defendant's Motion to Strike Plaintiff's Experts, or in the Alternative, Motion to Compel Discovery Responses held on September 13, 2010, before the Honorable Jon J. Shindurling;
 - b. Transcript from the hearing on Defendant's Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses held on October 5, 2010, before the Honorable Jon J. Shindurling;
 - c. Transcript from the hearing on Defendant's Motion in Limine and Pretrial Conference held on October 13, 2010, before the Honorable Jon J. Shindurling; and
 - d. Transcript from the hearing on Motion to Strike Portion of Matthew Roberts' Video Trial Testimony and the jury instruction conference held on December 8, 2010, before the Honorable William H. Woodland.
 - e. Transcript from Trial Day 1, held on October 19, 2010.
 - f. Transcript from Trial Day 2, held on December 15, 2011.

B. Clerk's Record:

1. In addition to the standard record pursuant to I.A.R. 28, respondent requests the following documents:
 - a. Complaint filed in Madison County Small Claims Division, Case No. CZ-2009-585, filed on or about August 3, 2009;
 - b. Stipulation and Order to Consolidate filed on or about October 14, 2009;
 - c. Notice of Service of Discovery Document filed on or about December 22, 2009;

- d. Notice of Service of Discovery Document filed on or about February 9, 2010;
- e. Order Setting Trial and Pre-Trial Conference filed on or about April 2, 2010;
- f. Defendant's Disclosure of Expert Witnesses filed on or about July 21, 2010;
- g. Defendant's Supplemental Disclosure of Expert Witnesses filed on or about August 4, 2010;
- h. Notice of Taking Deposition Duces Tecum of Larry Hansen filed on or about August 18, 2010;
- i. Amended Notice of Taking Deposition Duces Tecum of Larry Hansen filed on or about August 24, 2010;
- j. Second Amended Notice of Taking Deposition Duces Tecum of Larry Hansen filed on or about August 30, 2010;
- k. Motion to Strike Plaintiff's Experts, or, in the Alternative, Motion to Compel Discovery Responses filed on or about September 7, 2010;
- l. Memorandum 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;
- m. 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;
- n. 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;
- o. Minute Entry filed on or about September 13, 2010;
- p. Order Compelling Supplemental Expert Witness Discovery filed on or about September 15, 2010;
- q. Certificate of Service filed on or about September 20, 2010;
- r. Notice of Service of Discovery Document filed on or about September 24, 2010;

AMENDED REQUEST FOR ADDITIONAL REPORTER'S
TRANSCRIPT AND CLERK'S RECORD ON APPEAL, PAGE 3

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- s. Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses filed on or about September 30, 2010;
- t. Memorandum in Support of Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses filed on or about September 30, 2010;
- u. 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 filed on or about September 30, 2010;
- v. 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 filed on or about September 30, 2010;
- w. Notice of Hearing on Motion to Strike Dr. Jost and Plaintiff's Wage Loss Claim, or in the Alternative, to Compel Discovery Responses filed on or about September 30, 2010;
- x. Defendant's Second Supplemental Disclosure of Expert Witnesses filed on or about October 1, 2010;
- y. Notice of Service of Discovery Document filed on or about October 1, 2010;
- z. Notice of Service of Discovery Document filed on or about October 5, 2010;
- aa. Minute Entry filed on or about October 5, 2010;
- bb. Defendant's Motions in Limine filed on or about October 5, 2010;
- cc. Notice of Hearing on Defendant's Motions in Limine filed on or about October 5, 2010;
- dd. Joinder filed on or about October 5, 2010;
- ee. Notice of Taking Deposition Duces Tecum of Heidi Michelsen-Jost, M.D. filed on or about October 6, 2010;
- ff. Amended Minute Entry filed on or about October 8, 2010;
- gg. Notice of Service of Discovery Document filed on or about October 8, 2010;

AMENDED REQUEST FOR ADDITIONAL REPORTER'S
TRANSCRIPT AND CLERK'S RECORD ON APPEAL, PAGE 4

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- hh. Defendant's Memorandum in Opposition to Plaintiff's First Motion in Limine filed on or about October 12, 2010;
- ii. 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 on or about October 12, 2010;
- jj. Minute Entry on Pre-Trial Conference filed on or about October 13, 2010;
- kk. Defendant's Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement filed on or about October 18, 2010;
- ll. Affidavit of Douglas G. Abenroth in Support of Defendant's Memorandum in Opposition to Plaintiff's Motion in Limine/Objection to Opening Statement filed on or about October 18, 2010;
- mm. Order filed on or about October 22, 2010;
- nn. Order Regarding Defendant's Motions in Limine filed on or about October 25, 2010;
- oo. Notice of Audio-Visual Deposition of Matthew Roberts to Perpetuate Trial Testimony filed on or about November 9, 2010;
- pp. Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010;
- qq. Memorandum in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010;
- rr. Affidavit of Jennifer K. Brizee in Support of Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010;
- ss. Notice of Hearing on Motion to Strike Portion of Matthew Roberts' Video Trial Testimony filed on or about December 3, 2010; and
- tt. Affidavit of Jennifer K. Brizee in Support of Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees filed on or about March 21, 2011.

AMENDED REQUEST FOR ADDITIONAL REPORTER'S
TRANSCRIPT AND CLERK'S RECORD ON APPEAL, PAGE 5

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I certify that a copy of this request for additional transcript and record has been served upon the clerk of the district court, the reporter, and upon all parties required to be served pursuant to Rule 20 of the Idaho Appellate Rules.

DATED this 13th day of July, 2011.

POWERS TOLMAN, PLLC

By: 
Jennifer K. Brizee

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2011, I caused a true and correct copy of the foregoing AMENDED REQUEST FOR ADDITIONAL REPORTER'S TRANSCRIPT AND CLERK'S RECORD ON APPEAL 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

Karen Konvalinka
Court Reporter
Bonneville County District Court
605 N. Capital Avenue
Idaho Falls, ID 83402

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

Nancy Marlow
Court Reporter
Bonneville County District Court
605 N. Capital Avenue
Idaho Falls, ID 83402

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


Jennifer K. Brizee

AMENDED REQUEST FOR ADDITIONAL REPORTER'S
TRANSCRIPT AND CLERK'S RECORD ON APPEAL, PAGE 6

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ORIGINAL

JUL 15 AM 11:10
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE 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.

Case No. CV-09-3163

**AMENDED JUDGMENT UPON
SPECIAL VERDICT**

MATTHEW ROBERTS,

Plaintiff,

vs.

LARRY HANSEN,

Defendant.

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

This action came on regularly for trial on the 19th day of October, 2010, and continued on the 15th day of December, 2010, said parties appearing by and through their counsel, Brent Gordon for the plaintiff Larry Hansen, and Jennifer K. Brizee for the defendant Matthew Roberts, a jury of twelve (12) persons was regularly impaneled and sworn to try said cause; witnesses on the part of the plaintiff and defendant were sworn and examined; after hearing the evidence, the arguments of counsel and instructions of the Court, the issues having been submitted to the 11-person jury via stipulation of the

parties and by way of a special verdict containing questions therein, said questions having been answered, and the special verdict being returned by the jury on December 15, 2010, finding as follows:

1. Larry Hansen was negligent in his conduct immediately prior to the accident.
2. Larry Hansen's negligence was a proximate cause of the damage to the vehicle owned by Matthew Roberts.
3. Matthew Roberts was negligent in his conduct immediately prior to the accident.
4. Matthew Roberts' negligence was not a proximate cause of the damages claimed by Larry Hansen.
5. Larry Hansen was 90% at fault for the subject accident. Matthew Roberts was 10% at fault for the subject accident.
6. The amount of property damage incurred to the vehicle owned by Matthew Roberts was \$3,776.82.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid, it is ORDERED, ADJUDGED, AND DECREED that defendant Matthew Roberts is awarded judgment against plaintiff Larry Hansen in the amount of \$3,399.14, plus interest at the rate of 5.375% pursuant to Idaho Code §28-22-104 from the date of original judgment, the 26th day of April, 2011.

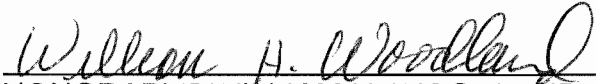
FURTHERMORE, The issue of costs and fees having come before the Court upon submission of defendant Matthew Roberts' Memorandum of Costs, Disbursements and Attorney's Fees submitted on March 21, 2011, and plaintiff's Objection to Allowance of Attorney Fees and Costs submitted on April 5, 2011, and the

Court having heard oral argument thereon on April 6, 2011; by virtue of the law and by reason of the premises aforesaid, it is ORDERED, ADJUDGED, AND DECREED that defendant Matthew Roberts have and recover from plaintiff as follows:

1. Costs as a Matter of Right under 54(d)(1)(C): \$6,733.36
2. Discretionary Costs allowed under Rule 54(d)(1)(D): \$1,492.00

in the sum of \$8,225.36, plus interest at the rate of 5.375% pursuant to Idaho Code §28-22-104 from the date of the amended judgment, the 15 day of July, 2011.

DATED this 14 day of July, 2011.


HONORABLE WILLIAM H. WOODLAND
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of July, 2011, I caused a true and correct copy of the foregoing AMENDED JUDGMENT UPON SPECIAL VERDICT 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
POWERS TOLMAN, PLLCC
P.O. Box 1276
Twin Falls, ID 83303-1276

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

CLERK OF THE COURT

By 
Deputy Clerk

NANCY MARLOW, CSR
Official Court Reporter
Post Office Box 1671
Idaho Falls, Idaho 83403-1671
Tele: 208-529-1350 Ext. 1194
FAX: 208-528-8348

October 13, 2011

NOTICE OF LODGING

Clerk of the Court
Supreme Court
Post Office Box 83720
Boise, Idaho 83720-0101
FAX: 208-334-2616

RE: Larry Hansen vs Matthew Roberts
Bonneville County Case No. CV-09-3163
Supreme Court No. 38904-2011
Hearing Dates: Defendant's Motion to Strike Dr. Jost and
Plaintiff's Wage Loss Claim or, in the
alternative, to Compel Discovery
Responses
October 5, 2010 – Total Pages - 31

Please be advised that the Reporter's Transcript in the above-entitled matter will be filed this date with the Clerk of the District Court, Bonneville County.

This completes all hearings requested of me in this appeal.

Sincerely,

Nancy Marlow, CSR
Official Court Reporter

✓ Cc: Clerk of the Court

KAREN KONVALINKA, CSR

Official Court Reporter
Bonneville County Courthouse
605 N. Capital
Idaho Falls, Idaho 83402
October 14, 2011

(208) 529-1350 Ext 1329

Clerk of the Courts
Idaho Supreme Court/Court of Appeals
P.O. Box 83720
Boise, Idaho 83720-0101

Re: Docket No. 38904-2011
Larry Hansen
v.
Matthew Roberts

Be advised an appeal transcript in the above-captioned case consisting of 506 pages and reflecting the following hearings has been lodged with the Bonneville County District Court Clerk on this date:

	Pages
09/13/10 – Hearing on Motion to Strike	1 - 13
10/13/10- Pretrial Conference	14-55
10/19/10- Pretrial Motions	56-67
10/19/10- Trial	68-232
12/08/10- Hearing on Motion to Strike	233-255
12/15/10- Trial (Cont'd)	256-500

These were the only hearings I was requested to do in this case.

Sincerely,

✓ Karen Konvalinka
cc: District 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/Appellant,	)	Supreme Court Docket No. 38904-2011
)	
vs.	)	Bonneville County Case No. CV-2009-3163
	)	Madison County Case No. CV-2009-585
MATTHEW ROBERTS,)	
)	
Defendant/Respondent.	)	CLERK'S CERTIFICATION
	)	OF EXHIBITS

STATE OF IDAHO)
)
County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the foregoing Exhibits were marked for identification and offered in evidence, admitted, and used and considered by the Court in its determination: please see attached sheets (75 pages).

- District Court Exhibit and Witness List (1 page)
- Ex. 1: Larry Hansen Medical Expenses (1 page)
- Ex. 2: Diagram of Intersection (1 page)
- Ex. 3: Picture of MBC West Building (1 page)
- Ex. 4: Picture of Black Car (1 page)
- Ex. 5: Picture of Grand Wagoneer (1 page)
- Ex. I: Medical Records of Larry Hansen (4 pages)
- Ex. N 167-186: Madison Memorial Medical Records of Larry Hansen (22 pages)
- Ex. N 217-223: Madison Memorial Medical Records of Larry Hansen (7 pages)
- Ex. N 512-520: Madison Memorial Medical Records of Larry Hansen (9 pages)
- Ex. N 527-535: Madison Memorial Medical Records of Larry Hansen (9 pages)
- Ex. W: Majestic Auto Estimate (5 pages)
- Ex. B: Accident Photos (2 pages)
- Ex. X: Kimbrough's Diagram (1 page)
- Ex. F: Photos of BMC West (3 pages)

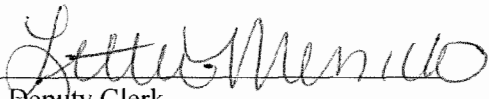
Ex. T: Accident Statement (2 pages)
Ex. R: Repair Estimate (6 pages)

Deposition of Larry Wayne Hansen, September 6, 2010, published October 19, 2010 (83 pages)

And I further certify that all of said Exhibits are on file in my office and are part of this record on Appeal in this cause, and are hereby transmitted to the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court
this 21st day of October, 2011.

RONALD LONGMORE
Clerk of the District Court

By 
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/Appellant,	)	Supreme Court Docket No. 38904-2011
)	
vs.	)	Bonneville County Case No. CV-2009-3163
	)	Madison County Case No. CV-2009-585
MATTHEW ROBERTS,)	
)	
Defendant/Respondent.	)	CLERK'S CERTIFICATE
_____)	

STATE OF IDAHO)
)
County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript (if requested) and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand affixed the seal of the District Court this

21st day of October, 2011.

RONALD LONGMORE
Clerk of the District Court
By: *[Signature]*
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/Appellant,)
)
 vs.)
)
 MATTHEW ROBERTS,)
)
 Defendant/Respondent.)
 _____)

Supreme Court Docket No. 38904-2011

Bonneville County Case No. CV-2009-3163

Madison County Case No. CV-2009-585

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20 day of ^{Nov} ~~October~~, 2011, I served a copy of the Reporter's

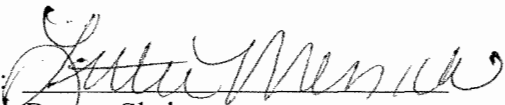
Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled cause upon the following attorneys:

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

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk