

7-18-2012

# Advanced Med. v. Imaging Center of Idaho Clerk's Record Dckt. 39753

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VIX 1-2

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

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**ADVANCED MEDICAL DIAGNOSTICS,  
LLC., a Delaware limited liability co.,**

**Plaintiff-Appellant,**

**-vs-**

**IMAGING CENTER OF IDAHO, LLC.,  
an Idaho limited liability co.,**

**Defendant-Respondent.**

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Appealed from the District of the Third Judicial District  
for the State of Idaho, in and for Canyon County

Honorable JUNEAL C. KERRICK, District Judge

---

Allen B. Ellis  
ELLIS, BROWN & SHEILS, CHTD.,  
P.O. Box 388  
Boise, Idaho 83701-0388

Attorney for Appellant

Jeffrey R. Townsend  
TOWNSEND LAW, PC.,  
3006 E. Goldstone Dr., Ste. 120  
Meridian, Idaho 83642

Attorney for Respondent

---



**SEE AUGMENTATION RECORD**

**39753**

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC., a Delaware limited liability company, )

Plaintiff-Appellant, )

-vs- )

IMAGING CENTER OF IDAHO, LLC., )  
an Idaho limited liability company, )

Defendant-Respondent. )

Supreme Court No. 39753-2012

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE JUNEAL C. KERRICK, Presiding

Allen B. Ellis, ELLIS, BROWN & SHEILS, CHTD.,  
P.O. Box 388, Boise, Idaho 83701-0388

Attorney for Appellant

Jeffrey R. Townsend, TOWNSEND LAW, PC.,  
3006 E. Goldstone Dr., Ste. 120, Meridian, Idaho 83642

Attorney for Respondent



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## Other Claims

Date		Judge
12/22/2009	New Case Filed-Other Claims	Juneal C. Kerrick
	Summons Issued	Juneal C. Kerrick
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Ellis, Allen B (attorney for Advanced Medical Diagnostics Llc) Receipt number: 0436122 Dated: 12/22/2009 Amount: \$88.00 (Check) For: Advanced Medical Diagnostics Llc (plaintiff)	Juneal C. Kerrick
12/24/2009	Affidavit Of Service 12-23-09 (fax)	Juneal C. Kerrick
1/8/2010	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: West, J Kevin (attorney for Imaging Centerof Idaho LLC) Receipt number: 0001547 Dated: 1/8/2010 Amount: \$58.00 (Check) For: Imaging Centerof Idaho LLC (defendant)	Juneal C. Kerrick
	Answer	Juneal C. Kerrick
2/2/2010	Note of Issue (fax)	Juneal C. Kerrick
2/5/2010	def imaging center response to pltf's note of issue	Juneal C. Kerrick
2/9/2010	Motion for partial summary judgment	Juneal C. Kerrick
	Affidavit of eric fox	Juneal C. Kerrick
	Memorandum in support of motion	Juneal C. Kerrick
	Notice Of Hearing 03/11/2010	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 03/11/2010 09:00 AM) pltf motn partial summary judg	Juneal C. Kerrick
2/11/2010	Amended Notice Of Hearing (fax)	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 03/11/2010 09:00 AM: Hearing Vacated pltf motn partial summary judg	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 04/08/2010 09:00 AM) PLN Motn for Partial Summ Judge	Juneal C. Kerrick
3/15/2010	Motion to Continue Plaintiff's Hearing on Motion for Partial Summary Judgment (fax)	Juneal C. Kerrick
	Affidavit of Counsel in Support of Motion to Continue Plaintiff's Hearing on Motion for Partial Summary Judgment (fax)	Juneal C. Kerrick
	Memorandum in Support of Motion to Continue Plaintiff's Hearing on Motion for Partial Summary Judgment (fax)	Juneal C. Kerrick
3/23/2010	Memorandum in Opposition to Motn for Rule 56(c) Continuance (fax)	Juneal C. Kerrick
	Second Affidavit of Eric Fox (fax)	Juneal C. Kerrick
3/24/2010	Affidavit of Marc J Miller MD	Juneal C. Kerrick
3/26/2010	Notice Of Hearing on Def Motion to Continue Plt hearing on Mo for Partial Sum Judgment 4-1-10 1:30pm	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 04/01/2010 01:30 PM) PLN Motn for Partial Summ Judge	Juneal C. Kerrick
4/1/2010	Hearing result for Motion Hearing held on 04/01/2010 01:30 PM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick

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## Other Claims

Date		Judge
4/1/2010	Hearing result for Motion Hearing held on 04/01/2010 01:30 PM: Motion Held Defendant's Motion to Continue the hearing onPLN Motn for Partial Summ Judge (Telephone	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 04/01/2010 01:30 PM: Motion Granted Defendant's Motion to Continue the hearing onPLN Motn for Partial Summ Judge (Telephone---- Defense to prepare order	Juneal C. Kerrick
4/6/2010	Amended Note of Issue (fax)	Juneal C. Kerrick
4/8/2010	Defendant Imaging Center of Idaho, LLC's Response to Plaintiff's Amended Note of Issue (fax)	Juneal C. Kerrick
4/9/2010	Notice Of Service	Juneal C. Kerrick
4/14/2010	Notice Of Service (fax)	Juneal C. Kerrick
4/19/2010	Order Granting Defn's Motn to Continue Plnt's Hearing on Motn for Partial Summary Jdmt - GRANTED	Juneal C. Kerrick
5/3/2010	Notice Of Service (fax)	Juneal C. Kerrick
5/10/2010	Notice Of Service (fax)	Juneal C. Kerrick
5/14/2010	Notice Of Service (fax)	Juneal C. Kerrick
5/21/2010	Notice Of Service (fax0	Juneal C. Kerrick
	Notice Of Service (fax0	Juneal C. Kerrick
6/3/2010	Notice Of Service	Juneal C. Kerrick
	Imaging Center of Idaho LLCs Motion to Amend Answer to Complaint	Juneal C. Kerrick
	Imaging Center of Idaho LLCs Memorandum in Support of Motion to Amend Answer to Complaint	Juneal C. Kerrick
6/16/2010	Memorandum in Opposition to Motion to Amend Answer (fax)	Juneal C. Kerrick
	Notice Of Hearing 9-9-10 (fax)	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 09/09/2010 09:00 AM) defs motn to amend answer	Juneal C. Kerrick
6/29/2010	Motion for Order Overruling Certain Discovery Objections	Juneal C. Kerrick
	Memorandum in Support of Motion for Order Overruling Certain Discovery Objections	Juneal C. Kerrick
	Motion for Status Conference	Juneal C. Kerrick
	Memorandum in Support of Motion for Status Conference	Juneal C. Kerrick
	Affidavit of Allen B Ellis	Juneal C. Kerrick
	Notice Of Hearing 9-9-10	Juneal C. Kerrick
7/1/2010	Application for Order Shortening Time	Juneal C. Kerrick
7/2/2010	Notice Of Service (fax)	Juneal C. Kerrick
7/7/2010	Hearing Scheduled (Conference - Telephone 07/08/2010 01:30 PM) Court to Initiate	Juneal C. Kerrick
7/8/2010	Hearing result for Conference - Telephone held on 07/08/2010 01:30 PM: District Court Hearing Held Court Reporter: NONE Number of Transcript Pages for this hearing estimated:	Juneal C. Kerrick

## Other Claims

Date		Judge
7/8/2010	Hearing result for Conference - Telephone held on 07/08/2010 01:30 PM: Interim Hearing Held Court to Initiate	Juneal C. Kerrick
7/20/2010	Order Setting Case for trial and pretrial	Juneal C. Kerrick
	Order for preparaton jury instructios and verdict form	Juneal C. Kerrick
	Hearing Scheduled (Jury Trial 01/31/2011 09:00 AM) 5 day jury trial	Juneal C. Kerrick
	Hearing Scheduled (Pre Trial 11/23/2010 08:30 PM) pretrial conf in chambers	Juneal C. Kerrick
7/29/2010	Stipulation for Scheduling and Planning (fax)	Juneal C. Kerrick
8/3/2010	Notice Of Service (fax)	Juneal C. Kerrick
8/18/2010	Defendants reply to plaintiffs memorandum in opposition to motion to amend answer (fax)	Juneal C. Kerrick
	Affidavit of Counsel in Opposition to Plaintiff's Motion for Order Overruling Certain Discovery Objections (fax)	Juneal C. Kerrick
	Memorandum in Opposition to Plaintiff's Motion for order Overruling Certain Discoveryr Objections (fax)	Juneal C. Kerrick
8/19/2010	Notice Of Service (fax)	Juneal C. Kerrick
8/23/2010	Notice of withdrawal of motion for order overruling certain discovery objections (fax)	Juneal C. Kerrick
9/9/2010	Hearing result for Motion Hearing held on 09/09/2010 09:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 09/09/2010 09:00 AM: Motion Held ---- {{ Motion to Amend on Contract Claim-GRANTED}} {{Court reserved ruling as to the negligence issue}} Written Decision to be issued.	Juneal C. Kerrick
9/16/2010	Notice Of Service (fax)	Juneal C. Kerrick
9/17/2010	Order on defendant's motion for leave to amend its answer	Juneal C. Kerrick
9/24/2010	Imaging Center of Idaho LLCs First Amended Answer to Complaint and Counterclaim (fax)	Juneal C. Kerrick
10/4/2010	Plaintiff's expert witness disclosure	Juneal C. Kerrick
10/8/2010	reply to counterclaim and demand for jury trial (fax)	Juneal C. Kerrick
10/12/2010	Notice Of Service (fax)	Juneal C. Kerrick
10/26/2010	Hearing Scheduled (Pre Trial 11/23/2010 08:30 AM) pretrial conf in chambers	Juneal C. Kerrick
10/29/2010	Notice of Rule 30(b)(6) Depostion (fax)	Juneal C. Kerrick
	Notice of Deposition of Eric Fox (fax)	Juneal C. Kerrick
	Notice of Deposition of Marc J Miller MD (fax)	Juneal C. Kerrick
11/4/2010	Notice of Deposition of William Cary (fax)	Juneal C. Kerrick
11/5/2010	Stipulation and order for modification of pretrial scheduling deadlines	Juneal C. Kerrick
11/10/2010	Order of Court	Juneal C. Kerrick
	Notice of Service (fax)	Juneal C. Kerrick
11/15/2010	Stipulation and Order for Re-Scheduling of Pre-Trial Conference Date	Juneal C. Kerrick

## Other Claims

Date		Judge
11/15/2010	Hearing Scheduled (Pre Trial 12/06/2010 08:30 AM) pretrial conf in chambers	Juneal C. Kerrick
11/24/2010	Notice Of Service (fax)	Juneal C. Kerrick
	Notice Of Taking Deposition of Charles Eldredge (fax)	Juneal C. Kerrick
	Notice of Service (fax) West	Juneal C. Kerrick
	Notice of Service (fax) Townsend	Juneal C. Kerrick
11/29/2010	Defendant Imaging Center of Idaho LLCs Trial Witness List (fax)	Juneal C. Kerrick
	Defendant Imaging Center of Idaho LLCs Trial Exhibit List (fax)	Juneal C. Kerrick
	Defendant Imaging Center of Idaho LLCs Statement of Case (fax)	Juneal C. Kerrick
	Notice Of Taking Deposition of Gary Bodily (fax)	Juneal C. Kerrick
	Pre-trial Memorandum (fax)	Juneal C. Kerrick
12/2/2010	Imaging Center of Idaho LLCs Motion to File Second Amended Answer to Complaint (fax)	Juneal C. Kerrick
	Imaging Center of Idaho LLCs Memorandum in Support of Motion to File Second Amended Answer to Complaint (fax)	Juneal C. Kerrick
12/3/2010	defendant's expert witness disclosure (fax)	Juneal C. Kerrick
12/6/2010	Hearing result for Pre Trial held on 12/06/2010 08:30 AM: District Court Hearing Held Court Reporter: NO COURT REPORTER Number of Transcript Pages for this hearing estimated: pretrial conf in chambers	Juneal C. Kerrick
	Hearing result for Pre Trial held on 12/06/2010 08:30 AM: Interim Hearing Held pretrial conf in chambers	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 12/21/2010 09:00 AM) def motn amend answer	Juneal C. Kerrick
	Notice Of Hearing 12/21/2010 (fax)	Juneal C. Kerrick
12/9/2010	Memorandum in opposition to def's Second Motion to Amend answer (fax)	Juneal C. Kerrick
	Second Affidavit of Allen B Ellis (fax)	Juneal C. Kerrick
12/13/2010	Notice Of Service (fax)	Juneal C. Kerrick
12/14/2010	Notice Of Service (fax)	Juneal C. Kerrick
12/15/2010	Notice Of Taking Deposition bonnie carns (fax)	Juneal C. Kerrick
	deposition subpoena (fax)	Juneal C. Kerrick
12/21/2010	Hearing result for Jury Trial held on 01/31/2011 09:00 AM: Hearing Vacated 5 day jury trial	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 12/21/2010 09:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 12/21/2010 09:00 AM: Motion Heid def motn amend answer	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 12/21/2010 09:00 AM: Motion Granted def motn amend answer	Juneal C. Kerrick

## Other Claims

Date		Judge
12/21/2010	Hearing Scheduled (Jury Trial 06/20/2011 09:00 AM) 4 days- following date to be blocked in case	Juneal C. Kerrick
	Notice Of Hearing	Juneal C. Kerrick
12/22/2010	Notice of Deposition of Gary Bodily (fax)	Juneal C. Kerrick
	Subpoena Returned (fax)	Juneal C. Kerrick
12/30/2010	Order granting Imaging Center of Idaho motn to file second amended answer to complaint and continuing trial date	Juneal C. Kerrick
1/19/2011	Notice Of Service (fax)	Juneal C. Kerrick
	Notice Of Service (fax)	Juneal C. Kerrick
1/20/2011	Order Setting Case for Trial and PT	Juneal C. Kerrick
	Hearing Scheduled (Pre Trial 04/26/2011 08:30 AM)	Juneal C. Kerrick
1/21/2011	Stipulation for scheduling and planning (fax)	Juneal C. Kerrick
	Stipulation for Scheduling and Planning (fax)	Juneal C. Kerrick
1/25/2011	Subpoena Returned	Juneal C. Kerrick
	Notice of deposition of Julie Mellinger	Juneal C. Kerrick
1/28/2011	Notice of deposition of Greg Clark (fax)	Juneal C. Kerrick
2/1/2011	Affidavit Of Service 01-24-2011 Mellinger (fax)	Juneal C. Kerrick
	Motion to File Amended Complaint (fax)	Juneal C. Kerrick
	Memorandum in support of Motion to file Amended Complaint (fax)	Juneal C. Kerrick
	Third Affidavit of Allen B Ellis (fax)	Juneal C. Kerrick
	Notice Of Hearing (fax)	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 03/10/2011 09:00 AM) Amended complaint	Juneal C. Kerrick
2/16/2011	Motion to Compel Discovery	Juneal C. Kerrick
	Fourth Affidavit of Allen B Ellis	Juneal C. Kerrick
	Memorandum in Support of Motion to Compel Discovery	Juneal C. Kerrick
	Notice Of Hearing 3-10-11	Juneal C. Kerrick
3/2/2011	Defendant Imaging Center of Idaho Llc's Opposition to Plaintiff's Motion to Compel Discovery (fax)	Juneal C. Kerrick
	Affidavit of Jeffrey R Townsend in Support of Defendant Imaging Center of Idaho Llc's Opposition to Plaintiff's Motion to Compel Discovery (fax)	Juneal C. Kerrick
3/10/2011	Hearing result for Motion Hearing held on 03/10/2011 09:00 AM: District Court Hearing Held	Juneal C. Kerrick
	Court Reporter: Kathy Klemetson	
	Number of Transcript Pages for this hearing estimated: Less than 100	
	Hearing result for Motion Hearing held on 03/10/2011 09:00 AM: Motion Held Amended complaint/plts motn to compel	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 03/10/2011 09:00 AM: Motion Granted << Motion to Amend Complaint and Motion to Compel Discovery (Plaintiff's)- Plaintiff Atty to prepare order>>> <<< Court reserved ruling with respect to attorney fees>>	Juneal C. Kerrick
3/18/2011	Notice Of Service (fax)	Juneal C. Kerrick

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## Other Claims

Date		Judge
3/18/2011	Order Granting Motion for Leave to File First Amended Complaint	Juneal C. Kerrick
	Order Compelling Discovery	Juneal C. Kerrick
3/22/2011	Amended Complaint Filed (fax)	Juneal C. Kerrick
3/23/2011	Imaging Center of Idaho Llc's Answer to Amended Complaint (fax)	Juneal C. Kerrick
	Notice Of Service (fax)	Juneal C. Kerrick
	Notice Of Service (fax)	Juneal C. Kerrick
3/24/2011	Imaging Center of Idaho Llc's Amended Answer to Amended Complaint and Counterclaim (fax)	Juneal C. Kerrick
4/14/2011	Reply to Amended Counterclaim and Demand for JT (fax)	Juneal C. Kerrick
4/15/2011	Notice Of Service (fax)	Juneal C. Kerrick
4/19/2011	Stipulation RE: Pretrial Motions in Limine (fax)	Juneal C. Kerrick
	Plaintiffs Witness and Exhibit List (fax)	Juneal C. Kerrick
	Defendant Imaging Center of Idaho LLCs Amended Statement of Case (fax)	Juneal C. Kerrick
	Def Imaging Center of Idaho Amended trial Witness List (fax)	Juneal C. Kerrick
4/20/2011	Defendant Imaging Center of Idaho LLC's Amended Trial Exhibit List (fax)	Juneal C. Kerrick
4/26/2011	Hearing result for Pre Trial held on 04/26/2011 08:30 AM: District Court Hearing Held	Juneal C. Kerrick
	Court Reporter: No Court Reporter	
	Number of Transcript Pages for this hearing estimated:	
	Hearing result for Pre Trial held on 04/26/2011 08:30 AM: Interim Hearing Held	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 05/27/2011 10:00 AM) Pre-Trial Motions/Motion in Limine-- Counsel to notice matters up for hearing- Reserved for 1 hour--BLOCK MORNING	Juneal C. Kerrick
4/27/2011	Stipulation to Dismiss Count I of ICI'S Counterclaim (Fax)	Juneal C. Kerrick
5/2/2011	Order RE: Stipulation to Dismiss Count I of ICI's Counterclaim	Juneal C. Kerrick
5/3/2011	Pre trial order	Juneal C. Kerrick
	Notice Of Taking Video Deposition of Brian Kelly to Perpetuate Trial Testimony (fax)	Juneal C. Kerrick
5/4/2011	Amended Notice Of Taking Video Deposition of Brian Kelly to Perpetuate Trial Testimony (Time Change Only) (fax)	Juneal C. Kerrick
5/13/2011	Def Imaging Center of Idaho LLC's Motion in Limine RE: Member Information and Memorandum in support	Juneal C. Kerrick
	Def Imaging Center LLC's Motion in Limine Re: Unrelated ICi Payments and Memorandum in support	Juneal C. Kerrick
	Affidavit of counsel in support of Def Imaging Center of IDaho LLC's Motion in Limine RE; Settlement Negotiations	Juneal C. Kerrick
	Def Imaging Center of IDaho LLCs's Motion in Limine RE: Settlement Negotiations and Memo in support	Juneal C. Kerrick
	Affidavit of counsel in support of Def imaging Center of Idaho LLC's Motion in Limine RE: Damages and Memo in support	Juneal C. Kerrick
	Def Imaging Center of IDaho LLCs's Motion in Limine RE: Damages and Memorandum in support	Juneal C. Kerrick

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## Other Claims

Date		Judge
5/16/2011	Notice Of Service (fax)	Juneal C. Kerrick
	Plaintiff's Amended Witness and Exhibit List (fax)	Juneal C. Kerrick
5/17/2011	Motion for Relief from Order to Mediate (fax)	Juneal C. Kerrick
	Fifth Affidavit of Allen B Ellis (fax)	Juneal C. Kerrick
5/20/2011	Notice of Substitution Of Counsel-Jeffrey Townsend (fax)	Juneal C. Kerrick
	Plaintiff's Amended Witness and Exhibit List (fax)	Juneal C. Kerrick
5/25/2011	Memorandum in Opposition to Defendant's Motions in Limine (fax)	Juneal C. Kerrick
5/27/2011	Hearing result for Motion Hearing held on 05/27/2011 10:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 05/27/2011 10:00 AM: Motion Held Reserved for PT Motions/Motion in Limine--Counsel to notice matters up. Reserved for 1 hour (10-11) but BLOCK Morning	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 05/27/2011 10:00 AM: Motion Denied- Motion in Limine Re: Damages- denied on what had been raised in the pleadings	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 05/27/2011 10:00 AM: - Reserved ruling on Motion in Limine re: Settlement Negotiations.	Juneal C. Kerrick
	Hearing result for Motion Hearing held on 05/27/2011 10:00 AM: Motion Granted << Motion in Limine re: Unrelated ICI payments>> Motion in Lim. re: Salary info of members>>motion in lim re: member dissociation>> Motion for Relie from Order for Mediation>>	Juneal C. Kerrick
6/6/2011	Jointly Agreed Upon Jury Instructions	Juneal C. Kerrick
	Defendant laging Center of Idahos Separate Jury Instructions	Juneal C. Kerrick
	Defendant Imaging Center of Idaho LLC's Motion in Limine RE: Settlement Negotiations	Juneal C. Kerrick
	Plaintiff's Proposed Jury Instructions (fax)	Juneal C. Kerrick
6/10/2011	Defendant Imaging Center of Idaho Llcs Objections to Plaintiff's Separate Jury Instructions (fax)	Juneal C. Kerrick
6/13/2011	Plaintiff's Supplemental Trial Brief (fax)	Juneal C. Kerrick
	Plaintiff's Objection to Defendant's Proposed Jury Instructions (fax)	Juneal C. Kerrick
	Plaintiff's Brief in Opposition to Defendant's Motion in Limine Re Settlement Negotiations (fax)	Juneal C. Kerrick
6/14/2011	Order on Defendants Motions in Limine	Juneal C. Kerrick
6/20/2011	Hearing result for Jury Trial scheduled on 06/20/2011 09:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Over 500 (5 day Jury Trial)	Juneal C. Kerrick
	Hearing result for Jury Trial scheduled on 06/20/2011 09:00 AM: Jury Trial Started 5days- - #1 Set-	Juneal C. Kerrick
6/21/2011	Order on Def Second Motion in Limine RE: Settlement Negotiations	Juneal C. Kerrick

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## Other Claims

Date		Judge
6/24/2011	Hearing result for Jury Trial scheduled on 06/20/2011 09:00 AM: Miscellaneous - Estimated Costs on Appeal- \$ 2925.00	Juneal C. Kerrick
	Hearing result for Jury Trial scheduled on 06/20/2011 09:00 AM: Miscellaneous - Verdict Form	Juneal C. Kerrick
	Hearing result for Jury Trial scheduled on 06/20/2011 09:00 AM: Miscellaneous Question No.1	Juneal C. Kerrick
	Hearing result for Jury Trial scheduled on 06/20/2011 09:00 AM: Miscellaneous -Jury Instructions	Juneal C. Kerrick
	Response to Question No.2	Juneal C. Kerrick
	Miscellaneous- Question No. 2	Juneal C. Kerrick
7/21/2011	Defendant's Memorandum of Costs and Fees	Juneal C. Kerrick
	Affidavit of Jeffrey Townsend in Support of Costs and Fees	Juneal C. Kerrick
8/1/2011	Civil Disposition Judgment entered for: Imaging Center of Idaho LLC, Defendant; Advanced Medical Diagnostics LLC, Plaintiff. Filing date: 8/1/2011	Juneal C. Kerrick
	Case Status Changed: Closed	Juneal C. Kerrick
8/2/2011	Motion to Disallow Attorney Fees and Costs (fax)	Juneal C. Kerrick
	Sixth Affidavit of Allen B Ellis (fax)	Juneal C. Kerrick
	Memorandum in Support of Motion to Disallow Attorney Fees and Costs (fax)	Juneal C. Kerrick
8/3/2011	Notice Of Hearing 9-8-11 (fax)	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 09/08/2011 09:00 AM) plts motn to disallow fees and costs	Juneal C. Kerrick
	Case Status Changed: Closed pending clerk action	Juneal C. Kerrick
8/26/2011	Defendant Imaging Center of Idaho Llcs Opposition to Plaintiffs Motion to Disallow Attorney Fees and Costs (fax)	Juneal C. Kerrick
9/8/2011	Hearing result for Motion Hearing scheduled on 09/08/2011 09:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Motion Hearing scheduled on 09/08/2011 09:00 AM: Motion Held plts motn to disallow fees and costs *** Written Decision to be issued by the Court***	Juneal C. Kerrick
10/31/2011	Order on Plaintiffs Objection to Defendants Claimed Costs amd Attorney Fees \$125,942.50	Juneal C. Kerrick
11/14/2011	Motion for Reconsideration (fax)	Juneal C. Kerrick
	Memorandum in Support of Motion for Reconsideration of Order Imposing Attorney Fees and Costs (fax)	Juneal C. Kerrick
11/15/2011	Notice Of Hearing 2-9-12 9:00 (fax)	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 02/09/2012 09:00 AM) Mo to reconsider	Juneal C. Kerrick
11/30/2011	Amended Notice Of Hearing 1-12-12 (fax)	Juneal C. Kerrick
	Hearing Scheduled (Motion Hearing 01/12/2012 09:00 AM) Mo to reconsider	Juneal C. Kerrick

## Other Claims

Date		Judge
12/29/2011	Defendant Imaging Center of Idaho, LLC's Opposition to Plaintiff's Motion for Reconsideration of Order Imposing Attorney Fees and Costs	Juneal C. Kerrick
1/10/2012	Reply Brief in support of Plt Motion for Reconsideration (costs & fees (fax	Juneal C. Kerrick
1/12/2012	Hearing result for Motion Hearing scheduled on 01/12/2012 09:00 AM: District Court Hearing Held Court Reporter: Kathy Klemetson Number of Transcript Pages for this hearing estimated: Less than 100	Juneal C. Kerrick
	Hearing result for Motion Hearing scheduled on 01/12/2012 09:00 AM: Motion Held Mo to reconsider <<<Written Decision to be issued by the Court>>>	Juneal C. Kerrick
1/30/2012	Order on Plaintiffs Motion for Reconsideration	Juneal C. Kerrick
3/7/2012	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Ellis, Allen B (attorney for Advanced Medical Diagnostics LLC) Receipt number: 0015703 Dated: 3/7/2012 Amount: \$101.00 (Check) For: Advanced Medical Diagnostics LLC (plaintiff)	Juneal C. Kerrick
	Bond Posted - Cash (Receipt 15705 Dated 3/7/2012 for 100.00)	Juneal C. Kerrick
	Notice of Appeal	Juneal C. Kerrick
	Appealed To The Supreme Court	Juneal C. Kerrick
3/20/2012	Request for Additional Transcript and Record (fax	Juneal C. Kerrick



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(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

Attorneys for Plaintiff

**F I L L E D**  
8:49 A.M. P.M.

DEC 22 2009

CANYON COUNTY CLERK  
K CANNON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant. )  
\_\_\_\_\_ )

Case No. CV-09-13504-C

COMPLAINT

Comes now plaintiff, Advanced Medical Diagnostics, LLC, through its attorneys of record,  
and complains and alleges against defendant Imaging Center of Idaho, LLC, as follows:

GENERAL ALLEGATIONS

I

Plaintiff Advanced Medical Diagnostics, LLC, ("AMD") is a Delaware limited liability  
company.

II

Defendant Imaging Center of Idaho, LLC, (“ICI”) is an Idaho limited liability company with its principal place of business located in Canyon County, state of Idaho.

III

Plaintiff AMD is in the business of providing physician education, marketing (direct-to-physician and direct-to-consumer), advertising services, and consulting services to companies nationwide.

IV

Defendant ICI is a diagnostic imaging center, including the utilization of computed tomographic (“CT”) exams and magnetic resonance imaging (“MRI”).

V

Plaintiff AMD has retained the services of Ellis, Brown & Sheils, Chartered, to prosecute this matter and is entitled to attorney fees pursuant to Idaho Code section 12-120(3).

Wherefore plaintiff prays for relief as hereinafter set forth.

COUNT ONE  
(Breach of Contract)

VI

Plaintiff incorporates the allegations of the General Allegations as though set forth in full herein.

VII

On or about October 7, 2008, plaintiff AMD and defendant ICI entered into a Master Services Agreement (“Agreement”) which is attached hereto as Exhibit A and incorporated herein by reference.

VIII

Pursuant to the terms of the Agreement, plaintiff AMD provided various physician education services and marketing and promotional services for defendant ICI.

IX

Pursuant to the terms of the Agreement, defendant ICI agreed to pay plaintiff AMD a monthly Base Service Fee of \$2,000. In addition, defendant ICI agreed to pay AMD a Volume Fee as follows: (a) \$200 per exam for all CT exams above 54 exams per month; and (b) \$350 per exam for all MRI exams above 82 exams per month. Payment of the Base Service Fee and the Volume Fee were to be paid by ICI to AMD every month. If payment was not timely, defendant ICI agreed to pay plaintiff AMD a late fee as well as all legal fees and costs incurred by plaintiff AMD in securing such payments.

X

On or about September 2, 2009, defendant ICI paid plaintiff AMD \$10,000, which was applied to the Base Fees due for the months of April, May, June, July, and August 2009.

XI

As of December 1, 2009, defendant ICI owed plaintiff AMD \$192,250 for Volume Fees for CT exams and MRI exams performed during the preceding months.

XII

Pursuant to the Agreement, defendant ICI owes plaintiff AMD late fees for failure to make timely payments of Base Service Fees and Volume Service Fees.

/

/

XIII

Defendant ICI breached the Agreement by failing to pay AMD the Base Service Fees and Volume Service Fees due in a timely manner as set forth in the Agreement.

XIV

As a result of ICI's breach of the Agreement, AMD has suffered damages in excess of \$192,250.00.

WHEREFORE, plaintiff, AMD prays for relief as hereinafter set forth.

COUNT TWO  
(Unjust Enrichment)

XV

Plaintiff AMD incorporates the allegations of the General Allegations and Count One as though set forth in full herein.

XVI

Plaintiff AMD conferred a benefit upon defendant ICI in providing ICI with the aforementioned physician education, marketing and promotional services.

XVII

Defendant ICI received and retained the benefits of the services provided by plaintiff AMD including the income and profits generated therefrom.

XVIII

As a result of defendant ICI's actions, it has been unjustly enriched and plaintiff AMD has suffered damages in excess of \$192,250.00.

WHEREFORE, plaintiff AMD prays for relief as hereinafter set forth.

COUNT THREE  
(Account Stated)

XIX

Plaintiff AMD incorporates the allegations of the General Allegations, Count One and Count Two as though set forth in full herein.

XX

Plaintiff AMD has provided defendant ICI with monthly invoices, and ICI has taken no issue or objected to the amounts stated therein.

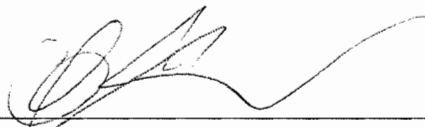
XXI

Defendant ICI has failed to pay plaintiff AMD the amounts stated in the aforesaid invoices.

WHEREFORE, plaintiff Advanced Medical Diagnostics, LLC, prays for relief as follows:

1. As to Counts One, Two and Three, for compensatory damages in excess of \$192,250;
2. For late fees and penalties according to proof;
- 2 For costs and reasonable attorney fees; and
3. For such other and further relief as the Court deems appropriate.

DATED this 22<sup>nd</sup> day of December, 2009.



---

Allen B. Ellis  
Attorney for plaintiff

**MASTER SERVICES AGREEMENT**

This MASTER SERVICES AGREEMENT, consisting of the terms and conditions set forth below and any attached schedules or amendments, each of which is incorporated into and made a part hereof by this reference (the "Agreement"), is entered into by and between Advanced Medical Diagnostics ("AMD"), a Delaware Limited Liability Company, with its principal offices at 21682 Flamenco, Mission Viejo, California 92692, and Imaging Center of Idaho ("ICI"), located at 4519 Enterprise Way, Caldwell, Idaho 83605, effective as of October 7th, 2008 (the "Effective Date").

**WITNESSETH**

WHEREAS, AMD has developed a confidential, comprehensive and unique business method that provides continuous physician education, direct-to-physician and direct-to-consumer marketing and advertising services, and consulting services.

WHEREAS, ICI is a state licensed diagnostic imaging center located in Idaho, in the city of Caldwell, and wishes to expand its range of radiology services that it currently offers.

WHEREAS, AMD and ICI desire to enter into this Agreement whereby AMD and ICI will work together to optimize the number and quality of diagnostic imaging studies, specifically CT and MR exams, performed by ICI, to increase ICI's notoriety within its communities, and to improve ICI's patient care.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AMD and ICI agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 Unless otherwise specified herein, all billing and medical terms shall have the meanings set forth in the most current edition of the Medicare Claims Processing Manual or its equivalent. All other terms shall be afforded their plain and ordinary meanings.

1.2 The term "Exam" as used in this Agreement shall be defined as "a single billable examination" using the current CPT Code terminology; however, "Exam" does not include 3-D reconstruction procedures.

**ARTICLE 2. TERM AND EXCLUSIVITY**

2.1 ICI hereby acknowledges and agrees that AMD is providing extensive educational, marketing, and consulting services, and expending countless hours to provide the Professional Services described herein, in entering into this Agreement. Services provided by AMD to ICI shall commence immediately upon the signing of this Agreement by representatives



000015

1  
*[Handwritten signature]*

of both AMD and ICI. In consideration, therefore, ICI hereby agrees that the Term of this Agreement shall commence on October 7, 2008 and end on October 6, 2011.

2.2 During the Term of this Agreement (the "Exclusivity Period"), ICI shall not purchase, contract, or otherwise acquire from any third party, services similar to the Professional Services described or naturally flowing from this Agreement, including, but not limited to any computed tomography ("CT") imaging services or the equivalent, or any magnetic resonance ("MR") imaging services without the express written consent of AMD.

### ARTICLE 3. AMD SERVICES AND OBLIGATIONS

#### 3.1 PHYSICIAN EDUCATION SERVICES

3.1.1 AMD shall provide qualified ICI personnel a reasonable amount of training and marketing relating to the Professional Services as required during the Term. Specifically, AMD commits to provide ICI with the following physician education services through the Term of the Agreement:

(a) Shortly after ICI signs this Agreement, Marc J. Miller, M.D. ("Dr. Miller") will spend two (2) full days (conducted Monday through Friday) at ICI providing educational training for ICI's medical staff and community physicians.

(b) Within seven (7) months of the initiation of the Agreement, Dr. Miller, or one of his qualified associates, will spend two (2) full days at ICI, or a mutually-agreed upon location, reinforcing the proper utilization of ICI's CT and MR diagnostic equipment.

(c) Between the initial and second phase of the physician education program, Dr. Miller will be available for up to two (2) one-hour conference calls with physicians and or technologists practicing within ICI's service area. These conference calls will be for the purpose of answering questions, clarifying key points of interest and reinforcing the proper use of ICI's CT and MR diagnostic equipment.

(d) Thereafter, an AMD radiologist will visit ICI at least one (1) day each year, repeating the process outlined above. Dr. Miller will determine the appropriate AMD specialist or sub-specialist radiologist for the lectures, based on an assessment of the current imaging volumes and potential to drive increased utilization.

(e) AMD will develop and deliver to ICI a physician education program, and the materials necessary, to reinforce the content presented in Dr. Miller's lectures for area physicians.

(f) AMD will create and distribute, via direct or electronic mail, a clinical imaging educational supplement regarding the proper utilization of advanced imaging technology every week for twelve (12) months following the initiation of this Agreement. After the first twelve (12) months, these materials will be delivered once per month for the remainder of the Term.

? Call  
next available  
time

go to  
meetings

(g) Dr. Miller will record lectures on DVD or CD-ROM to be distributed to the medical staff as new information relevant to the use of ICI's CT and MR systems becomes available.

(h) Dr. Miller will prepare and deliver a series of pre-formatted physician lectures to be used by ICI's radiologist(s) for on-going marketing and physician education efforts.

(i) ICI may purchase additional direct and specialized consulting services beyond what is provided above for a fee of five thousand dollars (\$5,000.00) per day up to a maximum of five (5) additional days, provided a minimum of six (6) weeks advance notice is provided. AMD reserves the right to fulfill this request from a group of qualified radiologists selected solely by Dr. Miller.

### 3.2 MARKETING AND PROMOTIONAL SERVICES

3.2.1 AMD will provide, at no additional cost to ICI, the following marketing services:

(a) Design, print and distribute, via direct or electronic mail, physician educational supplements for CT and MR imaging, customized with ICI's logo, promoting the advanced protocols and superior imaging technology to a maximum of two hundred (200) local physicians. ICI may purchase additional mailings from AMD at a cost of \$3.70/physician/ mailing.

(b) Design and format marketing and advertising materials for CT and MR imaging that can be utilized in direct-mail or periodical advertising. These marketing materials will be customized to utilize ICI's logo and the unique aspects of its patient services. Printing and mailing of patient-direct mail advertising shall be an additional charge or may be performed by ICI.

(c) Design, print and deliver patient-education and information brochures that discuss CT and MR technology, CT and MR imaging exams and etc to be used ~~as~~ hand-outs for patients that may need CT or MR exams. These patient-information materials will be customized with ICI's logo.

(d) Design and deliver up to eight (8) days of consumer-based newspaper advertising, placed in local and area newspapers during the twelve (12) months of the Term. If ICI desires more than eight (8) days of advertisements during the first twelve (12) months, more than sixteen (16) days of advertisements within twenty-four (24) months, or any newspaper advertisements for the specific purpose of promoting the CT and MR services after the second year of the Term, all costs shall be at ICI's sole expense.

(e) Design and develop consumer-based marketing brochures for CT and MR that can be distributed via direct mail or as hand-outs. These materials will be customized to include ICI's logo. Printing and mailing of patient-direct mail advertising shall be an additional charge or may be performed by ICI.





(f) Up to five (5) days of direct physician marketing assistance conducted by an AMD representative on behalf of or in conjunction with an ICI representative. All relevant physicians practicing within a twenty (20) mile radius of Caldwell, Idaho will receive an office visit and promotional materials regarding ICI's CT and MR technology and capabilities. This service is offered Monday through Friday during normal business hours.

#### ARTICLE 4. ICI RESPONSIBILITIES AND OBLIGATIONS

##### 4.1 SITE PREPARATIONS

4.1.1 ICI shall, at its sole expense, make all necessary and/or recommended site preparations, including, but not limited to:

(a) Maintaining and/or installing all recommended network, internet, and intranet specifications; and

(b) Causing any imaging equipment to be operated in accordance with any applicable safety precautions, operating manuals, and manufacturer's instructions.

##### 4.2 DISCLAIMER

4.2.1 AMD expressly assumes no risk or liability whatsoever from any harm or damages resulting from, relating to, or arising from, any negligent use of the CT and/or MR equipment. ICI shall be solely responsible for, and shall indemnify and hold AMD harmless for, any physical damage or damages resulting from abuse, misuse, negligence, modification in hardware, software, or performance, improper maintenance, accidents, acts of God, unauthorized servicing, or usage in any unsuitable or abnormal operating environment. AMD expressly assumes no risk or liability whatsoever from any harm or damages resulting from any malfunction of the CT and/or MR equipment. AMD expressly assumes no risk or liability whatsoever from any harm or damages resulting from, relating to, or arising from, any of ICI's officer's, employee's, agent's, physician's, or independent contractor's use or misuse of CT and/or MR equipment; or medical malpractice resulting from, relating to, or arising from any of ICI's officer's, employee's, agent's, physician's, or independent contractor's use or misuse of the CT equipment.

C.E. Initial.

##### 4.3 ICI ASSISTANCE

4.3.1 ICI shall make its best effort to assist AMD in accessing local physicians, customers, marketing personnel, and other professionals, employees, representatives, and agents throughout the Term of the Agreement, as is necessary to render, improve, expand, or market the Professional Services described herein.

4.3.2 ICI shall make every reasonable effort to service the CT and MR equipment, and to maintain the CT and MR equipment in proper working order so as to maximize the equipment's up-time and availability to perform medically appropriate exams.

## ARTICLE 5. SERVICE FEES

5.1 For the services outlined in this Agreement, ICI shall pay to AMD the following fees:

### 5.1.1 Monthly Base Service Fee

(a) ICI will pay to AMD a monthly base service fee of \$2,000 payable on or before the twenty first (21<sup>st</sup>) day of every month for a period of thirty six (36) months from the date of signing this Agreement.

(b) Upon receipt of the balance of the program initiation fees, in the amount of seventy five hundred dollars (\$7,500.00), AMD will provide ICI with a credit of seventy five hundred dollars (\$7,500) to be applied to the first three and three quarters (3.75) months of base monthly service fee.

### 5.1.2 Volume Fees

(a) ICI shall pay to AMD a volume fee (the "Volume Fee"). The Volume Fee shall be calculated from the first day of the month after AMD initiates the provision of services pursuant to this Agreement ("Start Date"). All Exams performed from the Start Date to the end of the applicable month will be prorated and included in the total count of Exams performed in the first full month this Agreement is in effect.

(b) For all CT Exams above fifty four (54) Exams per month, ICI shall pay AMD a Volume Fee of two hundred dollars (\$200.00) per Exam throughout the Term of this Agreement.

(c) For all MR Exams above eighty two (82) Exams per month, ICI shall pay AMD a Volume Fee of three hundred fifty (\$350) dollars per Exam throughout the Term of this Agreement.

(d) ICI will provide to AMD as soon as possible following the end of the preceding month a CT exam and MR exam report that tallies the total number of CT and MR exams (by CPT code) performed by ICI during that month.

(e) Payments of all Base Fees and Volume Fees shall be made monthly; said payments must arrive at AMD's office no later than the twenty-first (21<sup>st</sup>) day of every month.

5.2 ICI hereby acknowledges and agrees that AMD is exposing itself to significant financial risk in that AMD is providing extensive services, and expending countless hours to provide the Professional Services described herein, in entering into this Agreement. In consideration, therefore, ICI hereby agrees to pay AMD all Service Fees in a timely manner or, if delinquent, it shall pay AMD an additional 0.4 percent (.4%) late fee per day, which shall begin accumulating on the twenty second (22<sup>nd</sup>) day of each month, as well as all legal and collection fees that AMD incurs in securing such payments.

## ARTICLE 6. ACCOUNTING

6.1 AMD may request revenue and usage reports from ICI. If Exam volumes are questionable, or in the circumstances of a dispute, AMD may, at its own expense, directly audit ICI's books and records relating to this Agreement that report the technical billing fees for which percentages are payable hereunder.

6.2 AMD may make such audit only for the purpose of verifying the accuracy of statements sent to it hereunder and only as provided herein. AMD shall have the right to audit said books by notice to ICI at least thirty (30) days prior to the date it intends to commence its audit. Said audit shall be conducted by a reputable independent certified public accountant experienced in medical industry audits, shall be conducted in such a manner so as not to disrupt ICI's other functions, and shall be completed promptly.

6.3 Any such audit shall be conducted only during ICI's usual business hours and at the place where it keeps the books and records to be examined. AMD's auditor shall review its tentative findings with a member of ICI's finance staff designated and made available by ICI before rendering a report to AMD so as to remedy any factual errors and clarify any issues that may have resulted from misunderstanding.

## ARTICLE 7. FREEDOM OF ACTION

7.1 AMD shall be free to support and provide Professional Services to any and all competitors to ICI, except as described in Article 8, and to retain any and all revenues and relationships resulting there from.

## ARTICLE 8. NON-COMPETE

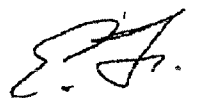
8.1 AMD agrees that it will not provide CT or MR services as specified in Article 3.1.1 above with any competitor of ICI or any other provider of CT or MR imaging services that is within a fifty (50) mile radius of ICI's location as listed in the first paragraph of this Agreement.

## ARTICLE 9. NOTICES

9.1 Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

### 9.1.1 AMD CONTACT FOR NOTICES:

(a)	Name:	Eric Fox
	Title:	Chief Operating Officer
	Address:	21682 Flamenco, Mission Viejo, CA. 92692
	Tel:	(800) 218-8810
	Fax:	(949) 951-7654



9.1.2 ICI CONTACT FOR NOTICES:

(a) Name: Charles Eldredge  
Title: Chief Operating Officer

Address: 4519 Enterprise Way, Caldwell, Idaho 83605  
Tel: (208) 455-7482  
Fax: (208) 455-7538

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip.

ARTICLE 10. THE AGREEMENT

10.1.1 This Agreement and all other agreements, exhibits, and schedules referred to in this Agreement constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement.

10.2 MODIFICATION OF AGREEMENT

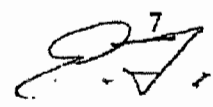
10.2.1 This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by all parties.

10.3 SEVERABILITY OF AGREEMENT

10.3.1 If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Article, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

10.4 AMBIGUITIES

10.4.1 Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language



in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 10.5 WAIVER

10.5.1 No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

#### 10.6 HEADINGS

10.6.1 The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

#### 10.7 NECESSARY ACTS, FURTHER ASSURANCES

10.7.1 The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

#### 10.8 EXECUTION

10.8.1 This Agreement may be executed in counterparts and by facsimile.

#### 10.9 SPECIFIC PERFORMANCE

10.9.1 The parties acknowledge that it will be impossible to measure in money the damage to them caused by any failure to comply with the covenants set forth herein, that each such covenant is material, and that in the event of any such failure, the injured party will not have an adequate remedy at law or in damages. Therefore, the parties consent to the issuance of an injunction or the enforcement of other equitable remedies against them at the suit of the other, without bond or other security, to compel performance of all of the terms set forth herein, and waive the defense of the availability of relief in damages.

### ARTICLE 11. DEFAULT

#### 11.1 EVENT OF DEFAULT

11.1.1 The occurrence of any of the following shall constitute an Event of Default:

(a) Failure of ICI to pay any amounts due or to perform any of the terms or conditions required of ICI under this Agreement and such failure continues for a period of five (5) days after written notice from AMD;

- (b) ICI becomes:
- (i) Insolvent or bankrupt;
  - (ii) Is unable to pay its obligations as they mature;
  - (iii) Suffers dissolution or termination of its existence or the disposition of all or a substantial portion of its assets;
  - (iv) Makes an assignment for the benefit of creditors;
  - (v) Makes application for appointment of a receiver of ICI or any of ICI's property;
  - (vi) Files, or has filed against it, a petition in any proceeding in bankruptcy or for reorganization, composition, arrangement or liquidation.
- (c) Failure of AMD to perform any of the services required of AMD under this Agreement and such failure continues for a period of fourteen (14) days after receiving written notice from ICI.

## 11.2 AMD REMEDIES

11.2.1 Upon the occurrence of an Event of Default, AMD may, without notice, exercise one or more of the following remedies:

- (a) Exercise any other right or remedy available under applicable law to enforce the terms of this Agreement or recover damages for the breach of any of the terms of this Agreement;
- (b) ICI shall be liable for all charges and payments accruing to the date of termination and damages, including but not limited to, a Premature Cancellation Charge equaling the sum total of the balance of monthly Base Fees due under this Agreement from the date of the cancellation until the end of the Agreement Term, plus \$5,000 per month for the remaining term of the contract if ICI is purchased between October 2008 and September 2009. If ICI is purchased anytime after September 2009 ICI would pay AMD \$10,000 per month for the remaining term of the contract, all payable to AMD in one lump sum. Should ICI be acquired within the term of this Agreement and the acquiring entity agrees to accept assignment of this Agreement and continue all of the Base Fee and Volume Fee payments for the remaining term of the Agreement there would be no Premature Cancellation Charge.

### 11.3 ADDITIONAL

11.3.1 ICI shall be liable for all costs and expenses, including reasonable attorney's fees, incurred by AMD by reason of any event described in this paragraph and the exercise of any remedy by AMD.

11.3.2 Regardless of whether AMD exercises any of the above remedies, or declares a default under this Agreement, ICI shall be responsible to AMD for, and will indemnify and hold AMD harmless from, all damages, liabilities, and claims resulting from ICI's breach of any of the terms of this Agreement.

### ARTICLE 12. REPRESENTATION ON AUTHORITY OF PARTIES/SIGNATORIES

12.1 Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

### ARTICLE 13. BINDING EFFECT

13.1 This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of ICI. ICI agrees it will not be a party to any merger, consolidation or reorganization, unless and until its obligations hereunder shall be expressly assumed by its successors. Notwithstanding the foregoing, any assignment by ICI of any of its rights or obligations arising under this Agreement, and any change in the ownership or ownership structure of ICI, shall require AMD's prior written approval, which will not be unreasonably withheld.

### ARTICLE 14. ASSIGNMENT

14.1 AMD may, without notice, assign any and all of its rights, but none of its obligations, arising under this Agreement

14.2 ICI ("you" or "your") reasonably believes that funds can be obtained sufficient to make all Service Fee Payments and other payments during the Term of this Agreement. You agree that your chief executive or administrative officer (or your administrative officer that has the responsibility of preparing the budget submitted to your B.O.D., as applicable) shall provide for funding for such payment in your annual budget.

14.3 You represent and agree that: (a) the entering into and performance of this Agreement is authorized under your state laws and constitution and does not violate or contradict any judgment, law, order, or regulation, or cause any default under any agreement to which you are a party; (b) you have complied with all applicable bidding requirements if any, and, where necessary, have properly presented this Agreement for approval and adoption as a valid obligation on your part and have obtained such approval and effected such adoption; and (c) you have sufficient appropriated funds or other moneys available from unexhausted and unencumbered appropriations and/or funds within your budget to pay all amounts due under this



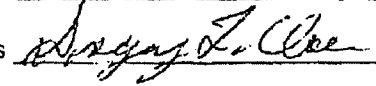
Agreement for your current fiscal period and that such applications and/or funds have been designated for the payment of those Service Fees that may come due under this Agreement for your current fiscal period. Upon AMD's request you agree to provide AMD with an opinion of counsel as to clauses (a) through (d) above, an incumbency certificate, evidence of due authorization to enter into this Agreement, in form and substance satisfactory to AMD, and other documents that we request with all such documents being in a form satisfactory to AMD.

**AGREED AND ACCEPTED:**

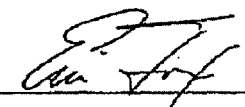
Imaging Center of Idaho 

Print name(s) Charles Eldridge <sup>e.c.</sup> Chief Operating Officer

Address 4519 Enterprise Way, City: Caldwell, State: Idaho, Zip: 83605

Witness  | GREGORY F. CLARK Date 10/9/08  
(Please Print Name)

\*\*\*\*\*

Advanced Medical Diagnostics, LLC 

Print name(s) Eric Fox Date: 10-23-08

Company Chief Operating Officer, Advanced Medical Diagnostics, LLC

Address 21682 Flamenco, City: Mission Viejo, State: California Zip: 92692





**FILED**  
A.M. 3:40 P.M.

JAN 08 2010

CANYON COUNTY CLERK  
T EARLS, DEPUTY

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
Noah G. Hillen, ISB #7690  
E-mail: [ngh@hallfarley.com](mailto:ngh@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\44-424.1\Answer to complaint.doc

Attorneys for Defendant Imaging Center of Idaho, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS,  
LLC, a Delaware limited liability company,

Plaintiff,

vs.

IMAGING CENTER OF IDAHO, LLC,  
an Idaho limited liability company,

Defendant.

Case No. CV-09-13504-C

**IMAGING CENTER OF IDAHO,  
LLC'S ANSWER TO COMPLAINT**

ORIGINAL

COMES NOW defendant Imaging Center of Idaho, LLC ("ICI"), by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and in answer to plaintiff Advanced Medical Diagnostics, LLC's Complaint on file herein, answers, alleges and states as follows:

**FIRST DEFENSE**

Plaintiff's Complaint, and each and every allegation contained therein, fails to state a claim upon which relief can be granted.

IMAGING CENTER OF IDAHO, LLC'S ANSWER TO COMPLAINT - 1

## SECOND DEFENSE

ICI denies each and every allegation in plaintiffs Complaint, except those specifically admitted herein.

## THIRD DEFENSE

With respect to the specific allegations contained in plaintiffs' Complaint, ICI admits, denies, and/or alleges as follows:

1. ICI is without sufficient information or belief to either admit or deny the allegations contained in paragraphs I and V of plaintiff's Complaint.
2. ICI admits the allegations in paragraph II, III, IV and VII of plaintiff's Complaint.
3. With regard to paragraph VIII of plaintiff's Complaint, ICI admits only that pursuant to the terms of the Master Services Agreement ("Agreement") entered into between plaintiff and ICI, plaintiff was required to provide ICI various physician education services and marketing and promotional services for ICI.
4. With regard to paragraph IX of plaintiff's Complaint, the Agreement speaks for itself and no response is necessary by ICI regarding the specific terms found within the Agreement.
5. With regard to paragraph X of plaintiff's Complaint, ICI admits only that ICIC paid AMD \$10,000 on September 2, 2009.
6. With regard to paragraph XVI of plaintiff's Complaint, ICI admits only that ICI received some benefit through the Agreement.
7. With regard to paragraph XVII of plaintiff's Complaint, ICI admits only that ICI retained some benefits acquired through the Agreement.

8. With regard to paragraph XX of plaintiff's Complaint, ICI admits only that AMD provided ICI with monthly invoices.

9. With regard to paragraph XXI of plaintiff's Complaint, ICI admits only that it has not paid disputed amounts found in plaintiff's invoices.

### **AFFIRMATIVE DEFENSES**

By pleading certain defenses as in "Affirmative Defenses," ICI does so for the purpose of completeness and does not intend to suggest that it has the burden of proof for any such defense. Furthermore, as ICI has not had the opportunity to conduct discovery in this case, by failing to raise an affirmative defense, it does not intend to waive any such defense and specifically reserves the right to amend this Answer to include additional defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

The allegations of plaintiff's Complaint fail to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to take reasonable steps to mitigate its alleged damages, if any, and to protect it from avoidable consequences; its right to recovery, if any, is thereby reduced or barred.

#### **THIRD AFFIRMATIVE DEFENSE**

Some or all of the plaintiff's claims are barred by the doctrine of laches, waiver and/or estoppel.

#### **FOURTH AFFIRMATIVE DEFENSE**

Some or all of plaintiff's claims are barred by the doctrine of unclean hands.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff was not injured in the manner or to the extent alleged.

**SIXTH AFFIRMATIVE DEFENSE**

The Agreement is void under the doctrine of unilateral or mutual mistake.

**REQUEST FOR ATTORNEY'S FEES**

ICI has been required to retain the services of counsel and is entitled to recover its reasonable attorney fees and costs incurred in the defense of this matter pursuant to Idaho Code §§ 12-120, 12-121 and Idaho Rule of Civil Procedure 54.

WHEREFORE, ICI prays for judgment as follows:

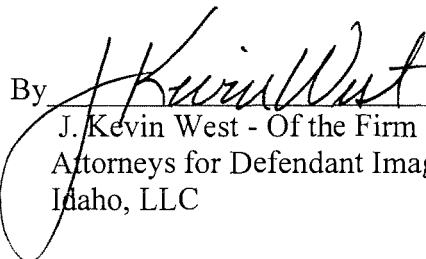
1. That plaintiffs take nothing against ICI by way of their Complaint, and that this Court dismiss the Complaint with prejudice;
2. That this Court award ICI its costs and reasonable attorney fees incurred in the defense of this action; and
3. Such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Idaho Rules of Civil Procedure 38(b), ICI hereby demands a trial by jury of not less than twelve (12) persons on all issues so triable.

DATED this 8 day of January, 2010.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.


By  \_\_\_\_\_  
J. Kevin West - Of the Firm  
Attorneys for Defendant Imaging Center of  
Idaho, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8 day of January, 2010, I caused to be served a true copy of the foregoing **Answer to Complaint**, by the method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy

  
\_\_\_\_\_  
J. Kevin West

**FILED**  
A.M. 330 P.M.

**SEP 24 2010**

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
Jeffrey R. Townsend, ISB #7647  
E-mail: [jrt@hallfarley.com](mailto:jrt@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
W:\44-424.1\PLEADINGS\Answer - 1st Amended - CC Breach.doc

Attorneys for Defendant Imaging Center of Idaho, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS,  
LLC, a Delaware limited liability company,

Plaintiff,

vs.

IMAGING CENTER OF IDAHO, LLC,  
an Idaho limited liability company,

Defendant.

Case No. CV-09-13504-C

**IMAGING CENTER OF IDAHO,  
LLC'S FIRST AMENDED  
ANSWER TO COMPLAINT  
AND COUNTERCLAIM**

COMES NOW defendant Imaging Center of Idaho, LLC ("ICI"), by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and in answer to plaintiff Advanced Medical Diagnostics, LLC's ("AMD") Complaint on file herein, answers, alleges and states as follows:

**FIRST DEFENSE**

Plaintiff's Complaint, and each and every allegation contained therein, fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

ICI denies each and every allegation in plaintiffs Complaint, except those specifically admitted herein.

**THIRD DEFENSE**

With respect to the specific allegations contained in plaintiffs' Complaint, ICI admits, denies, and/or alleges as follows:

1. ICI is without sufficient information or belief to either admit or deny the allegations contained in paragraphs I and V of plaintiff's Complaint.
2. ICI admits the allegations in paragraph II, III, IV and VII of plaintiff's Complaint.
3. With regard to paragraph VIII of plaintiff's Complaint, ICI admits only that pursuant to the terms of the Master Services Agreement ("Agreement") entered into between plaintiff and ICI, plaintiff was required to provide ICI various physician education services and marketing and promotional services for ICI.
4. With regard to paragraph IX of plaintiff's Complaint, the Agreement speaks for itself and no response is necessary by ICI regarding the specific terms found within the Agreement.
5. With regard to paragraph X of plaintiff's Complaint, ICI admits only that ICI paid plaintiff \$10,000 on September 2, 2009.
6. With regard to paragraph XVI of plaintiff's Complaint, ICI admits only that ICI received some benefit through the Agreement.

7. With regard to paragraph XVII of plaintiff's Complaint, ICI admits only that ICI retained some benefits acquired through the Agreement.

8. With regard to paragraph XX of plaintiff's Complaint, ICI admits only that AMD provided ICI with monthly invoices.

9. With regard to paragraph XXI of plaintiff's Complaint, ICI admits only that it has not paid disputed amounts found in plaintiff's invoices.

### **AFFIRMATIVE DEFENSES**

By pleading certain defenses as in "Affirmative Defenses," ICI does so for the purpose of completeness and does not intend to suggest that it has the burden of proof for any such defense. Furthermore, as ICI has not had the opportunity to conduct discovery in this case, by failing to raise an affirmative defense, it does not intend to waive any such defense and specifically reserves the right to amend this Answer to include additional defenses or withdraw any defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

The allegations of plaintiff's Complaint fail to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to take reasonable steps to mitigate its alleged damages, if any, and to protect it from avoidable consequences; its right to recovery, if any, is thereby reduced or barred.

#### **THIRD AFFIRMATIVE DEFENSE**

Some or all of the plaintiff's claims are barred by the doctrine of laches, waiver and/or estoppel.

#### **FOURTH AFFIRMATIVE DEFENSE**

Some or all of plaintiff's claims are barred by the doctrine of unclean hands.



**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff was not injured in the manner or to the extent alleged.

**SIXTH AFFIRMATIVE DEFENSE**

The Agreement is void under the doctrine of unilateral or mutual mistake.

**COUNTERCLAIM**

As and for a counterclaim by the defendant/counterclaimant against the plaintiff/counterdefendant, ICI alleges as follows:

**I. PARTIES**

1. AMD is a limited liability company, organized under the laws of the State of Delaware.
2. ICI is a limited liability company, organized under the laws of the State of Idaho.

**II. JURISDICTION AND VENUE**

3. This District Court has original jurisdiction over the subject matter of this case as the amount in controversy exceeds the minimum amount of this Court's jurisdiction.
4. Venue is proper in Ada County pursuant to Idaho Code Section § 5-404.

**III. COMMON ALLEGATIONS**

5. AMD provides physician education, marketing, advertising, and consulting services to hospitals and physicians.
6. ICI is a diagnostic imaging center, and independent diagnostic testing facility.
7. On October 7, 2008, AMD and ICI entered into a Master Services Agreement ("Agreement").
8. AMD recommended that ICI purchase a SURECardio Prospective Kit and a RADIANCE Breast Imaging Package to increase the volume of imaging scans that ICI

performed. ICI relied upon the purported expertise of AMD in following these recommendations.

9. AMD had recommended that other hospitals, doctors, and businesses in other areas of the United States purchase similar equipment.

10. The use of SURECardio Prospective Kits and a RADIANCE Breast Imaging Packages are not covered by insurance companies in Idaho.

11. AMD did not inquire whether Idaho insurance companies cover the use of SURECardio Prospective Kits and RADIANCE Breast Imaging Packages, or similar equipment, before recommending that ICI purchase such equipment.

#### **IV. CAUSES OF ACTION**

##### **Count I – Breach of Contract**

12. ICI incorporates all previous allegations as though fully set forth herein.

13. Section 4.11 of the Agreement required AMD to “make all necessary and/or recommended site preparations.”

14. AMD gave ICI a site recommendation to purchase additional imaging equipment.

15. AMD recommended that ICI purchase a SURECardio Prospective Kit for the Aquilion 32 and 64.

16. ICI purchased a SURECardio Prospective Kit for the Aquilion 32 and 64.

17. AMD recommended that ICI purchase a RADIANCE Breast Imaging Package for the Aquilion 32 and 64.

18. ICI purchased a RADIANCE Breast Imaging Package for the Aquilion 32 and 64.

19. ICI also purchase a V3.x Software Upgrade Kit for the Aquilion 32 and 64 so it could use the SURECardio Prospective Kit and a RADIANCE Breast Imaging Package.

20. ICI paid \$88,658.40 for the V3.x Software Upgrade Kit, SURECardio Prospective Kit, and RADIANCE Breast Imaging Package (together referred to as the "Equipment") for the Aquilion 32 and 64.

21. Insurance companies in Idaho do not cover the costs associated with diagnostic imaging tests performed by the Equipment.

22. ICI has performed approximately 18 imaging scans for patients using the RADIANCE Breast Imaging Package for the Aquilion 32 and 64 during the approximately one year period after purchasing the Equipment.

23. ICI has performed approximately 11 imaging scans for patients using the SURECardio Prospective Kit for the Aquilion 32 and 64 during the approximately one year period after purchasing the Equipment.

24. Consequently, the Equipment is underutilized.

25. AMD breached the Agreement by making an unreasonable site recommendation to ICI.

26. ICI has suffered damages as a result of AMD's breach of the Agreement.

#### **V. COST AND ATTORNEY FEES**

27. ICI incorporates all previous allegations as though fully set forth herein.

28. As a direct result of AMD's actions, ICI has been required to retain the services of counsel and is entitled to recover its reasonable attorney fees and costs incurred in the defense and prosecution of this matter pursuant to Idaho Code §§ 12-120, 12-121 and Idaho Rule of Civil Procedure 54.

**VI. PRAYER FOR RELIEF**

WHEREFORE, ICI prays for judgment as follows:

1. That plaintiffs take nothing against ICI by way of its Complaint, and that this Court dismiss the Complaint with prejudice;
2. For judgment against AMD regarding ICI's counterclaims for an amount to be proven at trial; with prejudgment interest accruing thereon at the rate of 12% per annum beginning January 27, 2009, until judgment is entered herein;
3. For ICI's costs and expenses, including reasonable attorney fees;
4. For post-judgment interest against AMD to accrue at the legal rate on the entire amount from the judgment from the date judgment is entered herein;
5. For ICI's costs and expenses, including reasonable attorney fees, incurred to pursue collection on the judgment;
6. For such other and further relief as the Court deems just and equitable.

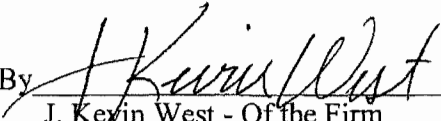
**VII. DEMAND FOR JURY TRIAL**

Pursuant to Idaho Rules of Civil Procedure 38(b), ICI hereby demands a trial by jury of not less than twelve (12) persons on all issues so triable.

DATED this 24 day of September, 2010.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By

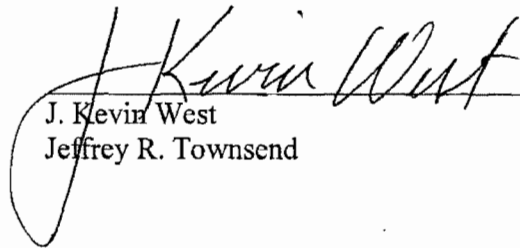
  
\_\_\_\_\_  
J. Kevin West - Of the Firm  
Jeffrey R. Townsend - Of the Firm  
Attorneys for Defendant Imaging Center of  
Idaho, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of September, 2010, I caused to be served a true copy of the foregoing IMAGING CENTER OF IDAHO, LLC'S FIRST AMENDED ANSWER TO COMPLAINT AND COUNTERCLAIM, by the method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy

  
 \_\_\_\_\_  
 J. Kevin West  
 Jeffrey R. Townsend

ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

**F I L E D**  
AM PM  
OCT 08 2010 ✓  
CANYON COUNTY CLERK  
D. BUTLER, DEPUTY

Attorneys for Plaintiff/Counterdefendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )  
Plaintiff/Counterdefendant, )  
v. )  
IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )  
Defendant/Counterclaimant. )

Case No. CV-09-13504-C  
REPLY TO COUNTERCLAIM  
AND DEMAND FOR JURY TRIAL

Comes now plaintiff/counterdefendant Advanced Medical Diagnostics, LLC, through its attorney of record, and replies to and denies the allegations of the counterclaim as follows:

I

Answering paragraphs 8, 9 and 11 of the Common Allegations, counterdefendant denies the allegations contained therein.

REPLY TO COUNTERCLAIM AND DEMAND FOR JURY TRIAL - 1

II

Answering paragraphs 13, 14, 15, 17, 25, and 26 of Count I, counterdefendant denies the allegations contained therein.

III

Counterdefendant denies the allegations of paragraph 28 of the counterclaim.

IV

Answering paragraphs 12 and 27, counterdefendant incorporates its responses to the referenced allegations as though set forth in full herein.

V

Answering paragraphs 10, 16, and 18 through 24, counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein

Wherefore, the counterdefendant prays for relief as hereinafter set forth.

FIRST AFFIRMATIVE DEFENSE

Counterclaimant has failed to take reasonable steps to mitigate its alleged damages, and, accordingly, its entitlement to damages is reduced or barred.

SECOND AFFIRMATIVE DEFENSE


That counterdefendant has incurred expenses, including attorney fees and costs, in the defense of the counterclaim and is entitled to the reimbursement of those expenses pursuant to Rule 54, Idaho Rules of Civil Procedure and Idaho Code §§12-120(3) and 12-121.

Wherefore, counterdefendant prays for relief as follows:

1. That counterclaimants take nothing by the counterclaim;

- 2. That counterdefendant be awarded its costs and reasonable attorney fees;
- 3. For such other and further relief as the Court deems appropriate.

Dated this 8<sup>th</sup> day of October, 2010.

  
 \_\_\_\_\_  
 Allen B. Ellis  
 Attorney for plaintiff/counterdefendant

DEMAND FOR JURY TRIAL


Plaintiff/counterdefendant hereby demands a trial by jury in accordance with the provisions of Rule 38(b) of the Idaho Rules of Civil Procedure.

  
 \_\_\_\_\_  
 Allen B. Ellis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 8<sup>th</sup> day of October, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

J. Kevin West	<input type="checkbox"/> U.S. Mail, postage prepaid
Hall, Farley, Oberrecht	<input type="checkbox"/> Hand delivery
and Blanton, P.A.	<input type="checkbox"/> Overnight delivery
P.O. Box 1271	<input checked="" type="checkbox"/> Facsimile (395-8585)
Boise, Idaho 83701	

  
 \_\_\_\_\_  
 Allen B. Ellis



FILED  
A.M. 3:25 P.M.

MAR 22 2011

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant. )

Case No. CV-09-13504-C

AMENDED COMPLAINT

Comes now plaintiff, Advanced Medical Diagnostics, LLC, through its attorneys of record,  
and complains and alleges against defendant Imaging Center of Idaho, LLC, as follows:

GENERAL ALLEGATIONS

I

Plaintiff Advanced Medical Diagnostics, LLC, ("AMD") is a Delaware limited liability  
company.

II

Defendant Imaging Center of Idaho, LLC, ("ICI") is an Idaho limited liability company with its principal place of business located in Canyon County, state of Idaho.

III

Plaintiff AMD is in the business of providing physician education, marketing (direct-to-physician and direct-to-consumer), advertising services, and consulting services to companies nationwide.

IV

Defendant ICI is a diagnostic imaging center, including the utilization of computed tomographic ("CT") exams and magnetic resonance imaging ("MRI").

V

Plaintiff AMD has retained the services of Ellis, Brown & Sheils, Chartered, to prosecute this matter and is entitled to attorney fees pursuant to Idaho Code section 12-120(3).

Wherefore plaintiff prays for relief as hereinafter set forth.

COUNT ONE  
(Breach of Contract)

VI

Plaintiff incorporates the allegations of the General Allegations as though set forth in full herein.

VII

On or about October 7, 2008, plaintiff AMD and defendant ICI entered into a Master Services Agreement ("Agreement") which is attached hereto as Exhibit A and incorporated herein by reference.

## VIII

Pursuant to the terms of the Agreement, plaintiff AMD provided various physician education services and marketing and promotional services for defendant ICI.

## IX

Pursuant to the terms of the Agreement, defendant ICI agreed to pay plaintiff AMD a monthly Base Service Fee of \$2,000. In addition, defendant ICI agreed to pay AMD a Volume Fee as follows: (a) \$200 per exam for all CT exams above 54 exams per month; and (b) \$350 per exam for all MRI exams above 82 exams per month. Payment of the Base Service Fee and the Volume Fee were to be paid by ICI to AMD every month. If payment was not timely, defendant ICI agreed to pay plaintiff AMD a late fee as well as all legal fees and costs incurred by plaintiff AMD in securing such payments.

## X

On or about September 2, 2009, defendant ICI paid plaintiff AMD \$10,000, which was applied to the Base Fees due for the months of April, May, June, July, and August 2009.

## XI

As of December 1, 2009, defendant ICI owed plaintiff AMD \$192,250 for Volume Fees for CT exams and MRI exams performed during the preceding months.

## XII

Pursuant to the Agreement, defendant ICI owes plaintiff AMD late fees for failure to make timely payments of Base Service Fees and Volume Service Fees.

## XIII

Defendant ICI breached the Agreement by failing to pay AMD the Base Service Fees and Volume Service Fees due in a timely manner as set forth in the Agreement.

AMENDED COMPLAINT - 3

XIV

As a result of ICI's breach of the Agreement, AMD has suffered damages in excess of \$192,250.00.

WHEREFORE, plaintiff, AMD prays for relief as hereinafter set forth.

COUNT TWO  
(Unjust Enrichment)

XV

Plaintiff AMD incorporates the allegations of the General Allegations and Count One as though set forth in full herein.

XVI

Plaintiff AMD conferred a benefit upon defendant ICI in providing ICI with the aforementioned physician education, marketing and promotional services.

XVII

Defendant ICI received and retained the benefits of the services provided by plaintiff AMD including the income and profits generated therefrom.

XVIII

As a result of defendant ICI's actions, it has been unjustly enriched and plaintiff AMD has suffered damages in excess of \$192,250.00.

WHEREFORE, plaintiff AMD prays for relief as hereinafter set forth.

COUNT THREE  
(Account Stated)

XIX

Plaintiff AMD incorporates the allegations of the General Allegations, Count One and Count Two as though set forth in full herein.

## XX

Plaintiff AMD has provided defendant ICI with monthly invoices, and ICI has taken no issue or objected to the amounts stated therein.

## XXI

Defendant ICI has failed to pay plaintiff AMD the amounts stated in the aforesaid invoices.

COUNT FOUR  
(Reformation of Contract)

## XXII

Plaintiff AMD incorporates the allegation of the General Allegations and Counts One through Three as though set forth in full herein.

## XXIII

The volume service fees identified in paragraph IX may have been based upon data respecting defendant ICI's reimbursements which data were not accurate. In the event that such inaccurate data, in fact, existed and in the event the parties committed a mutual mistake with respect to the utilization of such data, then the contract should be reformed so that the volume service fees are adjusted to reflect defendant ICI's actual and historical reimbursements at the time the contract was entered into.

## XXIV

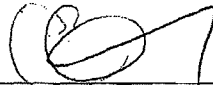
Upon a determination that volume fees should be adjusted as set forth in paragraph XXIII, plaintiff has sustained damages for breach of contract to the extent that defendant ICI has failed to pay the adjusted Volume Service Fees as well as the Base Service Fees.

WHEREFORE, plaintiff Advanced Medical Diagnostics, LLC, prays for relief as follows:

1. As to Counts One, Two and Three, for compensatory damages in excess of \$192,250;

- 2. In the event that volume service fees in the Agreement were set as a result of mutual mistake, plaintiff is entitled to compensatory damages calculated in accordance with the adjusted volume service fees
- 3. For late fees and penalties according to proof;
- 4. For costs and reasonable attorney fees; and
- 5. For such other and further relief as the Court deems appropriate.

DATED this 12 day of March, 2011.


  
 \_\_\_\_\_  
 Allen B. Ellis  
 Attorney for plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 12 day of March, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jeffrey R. Townsend  
 Hall, Farley, Oberrecht  
 and Blanton, P.A.  
 P.O. Box 1271  
 Boise, Idaho 83701

- U.S. Mail, postage prepaid
- Hand delivery
- Overnight delivery
- Facsimile (395-8585)

  
 \_\_\_\_\_  
 Allen B. Ellis

**FILED**  
A.M. 7:40 P.M.

**MAR 23 2011**

**CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY**

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
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HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
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Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
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Attorneys for Defendant/Counterclaimant Imaging Center of Idaho, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS,  
LLC, a Delaware limited liability company,

Plaintiff/Counterdefendant,

vs.

IMAGING CENTER OF IDAHO, LLC,  
an Idaho limited liability company,

Defendant/Counterclaimant.

Case No. CV-09-13504-C

**IMAGING CENTER OF IDAHO,  
LLC'S ANSWER TO AMENDED  
COMPLAINT**

COMES NOW defendant Imaging Center of Idaho, LLC ("ICI"), by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and in answer to plaintiff Advanced Medical Diagnostics, LLC's Amended Complaint on file herein, answers, alleges and states as follows:

**FIRST DEFENSE**

Plaintiff's Amended Complaint, and each and every allegation contained therein, fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

ICI denies each and every allegation in plaintiff's Amended Complaint, except those specifically admitted herein.

**THIRD DEFENSE**

With respect to the specific allegations contained in plaintiffs' Amended Complaint, ICI admits, denies, and/or alleges as follows:

1. ICI is without sufficient information or belief to either admit or deny the allegations contained in paragraphs I and V of plaintiff's Amended Complaint.
2. ICI admits the allegations in paragraph II, III, IV and VII of plaintiff's Amended Complaint.
3. With regard to paragraph VIII of plaintiff's Amended Complaint, ICI admits only that pursuant to the terms of the Master Services Agreement ("Agreement") entered into between plaintiff and ICI, plaintiff was required to provide ICI various physician education services and marketing and promotional services for ICI.
4. With regard to paragraph IX of plaintiff's Amended Complaint, the Agreement speaks for itself and no response is necessary by ICI regarding the specific terms found within the Agreement.
5. With regard to paragraph X of plaintiff's Amended Complaint, ICI admits only that ICIC paid AMD \$10,000 on September 2, 2009.



6. With regard to paragraph XVI of plaintiff's Amended Complaint, ICI admits only that ICI received some benefit through the Agreement.

7. With regard to paragraph XVII of plaintiff's Amended Complaint, ICI admits only that ICI retained some benefits acquired through the Agreement.

8. With regard to paragraph XX of plaintiff's Amended Complaint, ICI admits only that AMD provided ICI with monthly invoices.

9. With regard to paragraph XXI of plaintiff's Amended Complaint, ICI admits only that it has not paid disputed amounts found in plaintiff's invoices.

10. With regard to paragraph XXII of plaintiff's Amended Complaint, see ICI's response above to preceding paragraphs.

11. With regard to paragraph XXIII of plaintiff's Amended Complaint, ICI admits only that the contract was based upon a mistake (unilateral or mutual), and/or that AMD fraudulently induced ICI to enter into the agreement. If the contract was based on a mutual mistake, the proper remedy is revocation, not reformation. To the extent AMD fraudulently induced ICI to enter into the contract, AMD is not entitled to equitable relief.

12. With regard to paragraph XXIV of plaintiff's Amended Complaint, plaintiff has not set forth any facts that require a response. Nonetheless, ICI denies the statements contained within paragraph XXIV of plaintiff's Amended Complaint.

#### **AFFIRMATIVE DEFENSES**

By pleading certain defenses as in "Affirmative Defenses," ICI does so for the purpose of completeness and does not intend to suggest that it has the burden of proof for any such defense. Furthermore, as ICI has not had the opportunity to conduct discovery in this case, by failing to

raise an affirmative defense, it does not intend to waive any such defense and specifically reserves the right to amend this Answer to include additional defenses.

**FIRST AFFIRMATIVE DEFENSE**

The allegations of plaintiff's Amended Complaint fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to take reasonable steps to mitigate its alleged damages, if any, and to protect it from avoidable consequences; its right to recovery, if any, is thereby reduced or barred.

**THIRD AFFIRMATIVE DEFENSE**

Some or all of the plaintiff's claims are barred by the doctrine of laches, waiver and/or estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

Some or all of plaintiff's claims are barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff was not injured in the manner or to the extent alleged.

**SIXTH AFFIRMATIVE DEFENSE**

The Agreement is void under the doctrine of unilateral or mutual mistake.

**REQUEST FOR ATTORNEY'S FEES**

ICI has been required to retain the services of counsel and is entitled to recover its reasonable attorney fees and costs incurred in the defense of this matter pursuant to Idaho Code §§ 12-120, 12-121 and Idaho Rule of Civil Procedure 54.

WHEREFORE, ICI prays for judgment as follows:

1. That plaintiffs take nothing against ICI by way of their Amended Complaint, and that this Court dismiss the Amended Complaint with prejudice;
2. That this Court award ICI its costs and reasonable attorney fees incurred in the defense of this action; and
3. Such other and further relief as this Court may deem just and proper.

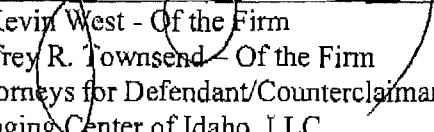
**DEMAND FOR JURY TRIAL**

Pursuant to Idaho Rules of Civil Procedure 38(b), ICI hereby demands a trial by jury of not less than twelve (12) persons on all issues so triable.

DATED this 23 day of March, 2011.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By

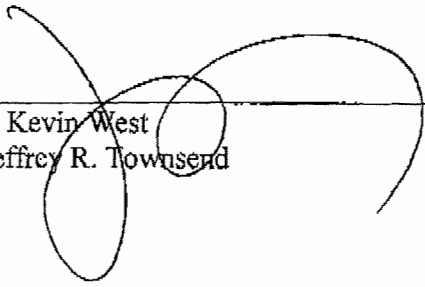
  
\_\_\_\_\_  
J. Kevin West - Of the Firm  
Jeffrey R. Townsend - Of the Firm  
Attorneys for Defendant/Counterclaimant  
Imaging Center of Idaho, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of March, 2011, I caused to be served a true copy of the foregoing IMAGING CENTER OF IDAHO, LLC'S ANSWER TO AMENDED COMPLAINT, by the method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Telecopy

  
\_\_\_\_\_  
J. Kevin West  
Jeffrey R. Townsend

FILED  
A.M. 1230 P.M.

MAR 24 2011

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

J. Kevin West, ISB #3337  
E-mail: [jkw@hallfarley.com](mailto:jkw@hallfarley.com)  
Jeffrey R. Townsend, ISB #7647  
E-mail: [jrt@hallfarley.com](mailto:jrt@hallfarley.com)  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701  
Telephone: (208) 395-8500  
Facsimile: (208) 395-8585  
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Attorneys for Defendant/Counterclaimant Imaging Center of Idaho, LLC

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS,  
LLC, a Delaware limited liability company,

Plaintiff/Counterdefendant,

vs.

IMAGING CENTER OF IDAHO, LLC,  
an Idaho limited liability company,

Defendant/Counterclaimant.

Case No. CV-09-13504-C

**IMAGING CENTER OF IDAHO,  
LLC'S AMENDED ANSWER TO  
AMENDED COMPLAINT  
AND COUNTERCLAIM**

COMES NOW Defendant Imaging Center of Idaho, LLC ("ICI"), by and through its counsel of record, Hall, Farley, Oberrecht & Blanton, P.A., and in answer to Plaintiff Advanced Medical Diagnostics, LLC's ("AMD") Amended Complaint on file herein, answers, alleges and states as follows:

**FIRST DEFENSE**

Plaintiff's Amended Complaint, and each and every allegation contained therein, fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

ICI denies each and every allegation in Plaintiff's Amended Complaint, except those specifically admitted herein.

**THIRD DEFENSE**

With respect to the specific allegations contained in Plaintiff's Amended Complaint, ICI admits, denies, and/or alleges as follows:

1. ICI is without sufficient information or belief to either admit or deny the allegations contained in paragraphs I and V of Plaintiff's Amended Complaint.
2. ICI admits the allegations in paragraph II, III, IV and VII of Plaintiff's Amended Complaint.
3. With regard to paragraph VIII of Plaintiff's Amended Complaint, ICI admits only that pursuant to the terms of the Master Services Agreement ("Agreement") entered into between Plaintiff and ICI, Plaintiff was required to provide ICI various physician education services and marketing and promotional services for ICI.
4. With regard to paragraph IX of Plaintiff's Amended Complaint, the Agreement speaks for itself and no response is necessary by ICI regarding the specific terms found within the Agreement.
5. With regard to paragraph X of Plaintiff's Amended Complaint, ICI admits only that ICI paid Plaintiff \$10,000 on September 2, 2009.

6. With regard to paragraph XVI of Plaintiff's Amended Complaint, ICI admits only that ICI received some benefit through the Agreement.

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10. With regard to paragraph XXII of Plaintiff's Amended Complaint, see ICI's response above to preceding paragraphs.

11. With regard to paragraph XXIII of Plaintiff's Amended Complaint, ICI admits only that the contract was based upon a mistake (unilateral or mutual), and/or that AMD fraudulently induced ICI to enter into the agreement. If the contract was based on a mutual mistake, the proper remedy is revocation, not reformation. To the extent AMD fraudulently induced ICI to enter into the contract, AMD is not entitled to equitable relief.

12. With regard to paragraph XXIV of Plaintiff's Amended Complaint, Plaintiff has not set forth any facts that require a response. Nonetheless, ICI denies the statements contained within paragraph XXIV of Plaintiff's Amended Complaint.

#### **AFFIRMATIVE DEFENSES**

By pleading certain defenses as in "Affirmative Defenses," ICI does so for the purpose of completeness and does not intend to suggest that it has the burden of proof for any such defense. Furthermore, as ICI has not had the opportunity to conduct discovery in this case, by failing to

raise an affirmative defense, it does not intend to waive any such defense and specifically reserves the right to amend this Answer to include additional defenses or withdraw any defenses.

#### **FIRST AFFIRMATIVE DEFENSE**

The allegations of Plaintiff's Amended Complaint fail to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff has failed to take reasonable steps to mitigate its alleged damages, if any, and to protect it from avoidable consequences; its right to recovery, if any, is thereby reduced or barred.

#### **THIRD AFFIRMATIVE DEFENSE**

Some or all of the Plaintiff's claims are barred by the doctrine of laches, waiver and/or estoppel.

#### **FOURTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claims are barred by the doctrine of unclean hands.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff was not injured in the manner or to the extent alleged.

#### **SIXTH AFFIRMATIVE DEFENSE**

The Agreement is void under the doctrine of unilateral or mutual mistake.

#### **SEVENTH AFFIRMATIVE DEFENSE**

The Agreement is void, or voidable, under the doctrine of fraud in the inducement.

#### **COUNTERCLAIM**

As and for a counterclaim by the Defendant/Counterclaimant against the Plaintiff/Counterdefendant, ICI alleges as follows:



## I. PARTIES

1. AMD is a limited liability company, organized under the laws of the State of Delaware.

2. ICI is a limited liability company, organized under the laws of the State of Idaho.

## II. JURISDICTION AND VENUE

3. This District Court has original jurisdiction over the subject matter of this case as the amount in controversy exceeds the minimum amount of this Court's jurisdiction.

4. Venue is proper in Ada County pursuant to Idaho Code Section § 5-404.

## III. COMMON ALLEGATIONS

5. AMD provides physician education, marketing, advertising, and consulting services to hospitals and physicians.

6. ICI is a diagnostic imaging center and independent diagnostic testing facility.

7. On October 7, 2008 AMD and ICI entered into a Master Services Agreement ("Agreement").

8. AMD recommended that ICI purchase a SURECardio Prospective Kit and a RADIANCE Breast Imaging Package to increase the volume of imaging scans that ICI performed. ICI relied upon the purported expertise of AMD in following these recommendations.

9. AMD had recommended that other hospitals, doctors, and businesses in other areas of the United States purchase similar equipment.

10. The use of SURECardio Prospective Kits and a RADIANCE Breast Imaging Packages are not covered by insurance companies in Idaho.

11. AMD did not inquire whether Idaho insurance companies cover the use of SURECardio Prospective Kits and RADIANCE Breast Imaging Packages, or similar equipment, before recommending that ICI purchase such equipment.

12. Prior to ICI signing the Agreement on October 7, 2008, AMD made multiple representations to ICI that were false. AMD made the representations knowing that they were false, and with the intent that ICI rely on AMD's misrepresentations to enter into the Agreement. ICI was unaware of the falsity of AMD's misrepresentations, and was justified in relying on AMD's misrepresentations as AMD held itself out as an expert. ICI was damaged as a result of relying on AMD's misrepresentations.

#### **IV. CAUSES OF ACTION**

##### **Count I – Breach of Contract**

13. ICI incorporates all previous allegations as though fully set forth herein.

14. Section 4.11 of the Agreement required AMD to "make all necessary and/or recommended site preparations."

15. AMD gave ICI a site recommendation to purchase additional imaging equipment.

16. AMD recommended that ICI purchase a SURECardio Prospective Kit for the Aquilion 32 and 64.

17. ICI purchased a SURECardio Prospective Kit for the Aquilion 32 and 64.

18. AMD recommended that ICI purchase a RADIANCE Breast Imaging Package for the Aquilion 32 and 64.

19. ICI purchased a RADIANCE Breast Imaging Package for the Aquilion 32 and 64.

20. ICI also purchase a V3.x Software Upgrade Kit for the Aquilion 32 and 64 so it could use the SURECardio Prospective Kit and a RADIANCE Breast Imaging Package.

21. ICI paid \$88,658.40 for the V3.x Software Upgrade Kit, SURECardio Prospective Kit, and RADIANCE Breast Imaging Package (together referred to as the "Equipment") for the Aquilion 32 and 64.

22. Insurance companies in Idaho do not cover the costs associated with diagnostic imaging tests performed by the Equipment.

23. ICI has performed approximately 18 imaging scans for patients using the RADIANCE Breast Imaging Package for the Aquilion 32 and 64 during the approximately one year period after purchasing the Equipment.

24. ICI has performed approximately 11 imaging scans for patients using the SURECardio Prospective Kit for the Aquilion 32 and 64 during the approximately one year period after purchasing the Equipment.

25. Consequently, the Equipment is underutilized.

26. AMD breached the Agreement by making an unreasonable site recommendation to ICI.

27. ICI has suffered damages as a result of AMD's breach of the Agreement.

**Count II – Misrepresentation/Fraud**

28. ICI incorporates all previous allegations as though fully set forth herein.

29. Prior to ICI signing the Agreement on October 7, 2008, AMD made multiple representations to ICI that were false, including but not limited to the following:

- a. AMD had prior experience assisting free-standing diagnostic testing centers in growing revenue;
- b. AMD had experience in calculating a free-standing diagnostic testing center's average revenue;
- c. That ICI's average global revenue was \$1198 for MRI's and \$673 for CT's;
- d. AMD considered actual payments in calculating ICI's average revenue; and,
- e. That ICI would receive \$1,200 for each breast MRI it performed.

30. AMD made the representations knowing that they were false or without reason to believe them to be true, and with the intent that ICI rely on AMD's misrepresentations to enter into the Agreement. ICI was unaware of the falsity of AMD's misrepresentations, and was justified in relying on AMD's misrepresentations as AMD held itself out as an expert.

31. As a proximate result of relying on AMD's misrepresentations ICI was damaged in an amount to be proved at trial.

#### V. COST AND ATTORNEY FEES

32. ICI incorporates all previous allegations as though fully set forth herein.

33. As a direct result of AMD's actions, ICI has been required to retain the services of counsel and is entitled to recover its reasonable attorney fees and costs incurred in the defense and prosecution of this matter pursuant to Idaho Code §§ 12-120, 12-121 and Idaho Rule of Civil Procedure 54.

#### VI. PRAYER FOR RELIEF

WHEREFORE, ICI prays for judgment as follows:

1. That Plaintiff takes nothing against ICI by way of its Amended Complaint, and that this Court dismiss the Amended Complaint with prejudice;
2. For judgment against AMD regarding ICI's counterclaims for an amount to be proven at trial; with prejudgment interest accruing thereon at the rate of 12% per annum beginning October 7, 2008, until judgment is entered herein;
3. For ICI's costs and expenses, including reasonable attorney fees;
4. For post-judgment interest against AMD to accrue at the legal rate on the entire amount of the judgment from the date judgment is entered herein;
5. For ICI's costs and expenses, including reasonable attorney fees, incurred to pursue collection on the judgment;

6. For such other and further relief as the Court deems just and equitable.

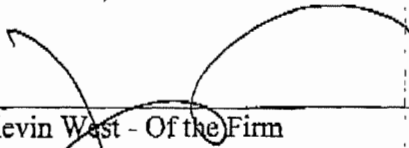
**VII. DEMAND FOR JURY TRIAL**

Pursuant to Idaho Rules of Civil Procedure 38(b), ICI hereby demands a trial by jury of not less than twelve (12) persons on all issues so triable.

DATED this 24<sup>th</sup> day of March, 2011.

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

By

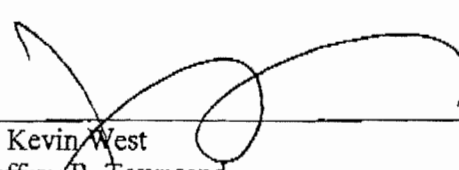
  
\_\_\_\_\_  
J. Kevin West - Of the Firm  
Jeffrey R. Townsend - Of the Firm  
Attorneys for Defendant/Counterclaimant  
Imaging Center of Idaho, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24<sup>th</sup> day of March, 2011, I caused to be served a true copy of the foregoing IMAGING CENTER OF IDAHO, LLC'S AMENDED ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM, by the method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

\_\_\_ U.S. Mail, Postage Prepaid  
\_\_\_ Hand Delivered  
\_\_\_ Overnight Mail  
 Telecopy

  
\_\_\_\_\_  
J. Kevin West  
Jeffrey R. Townsend

IMAGING CENTER OF IDAHO, LLC'S AMENDED ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM - 9

000062

ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

Attorneys for Plaintiff/Counterdefendant

4-26 Ken  
**FILED**  
A.M. 4:10 P.M.

APR 14 2011

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff/Counterdefendant, )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant/Counterclaimant. )

Case No. CV-09-13504-C

REPLY TO AMENDED COUNTERCLAIM  
AND DEMAND FOR JURY TRIAL

Comes now plaintiff/counterdefendant Advanced Medical Diagnostics, LLC, through its attorney of record, and replies to and denies the allegations of the counterclaim as follows:

I

Answering paragraphs 8, 9, 11 and 12 of the Common Allegations, counterdefendant denies the allegations contained therein.

REPLY TO AMENDED COUNTERCLAIM AND DEMAND FOR JURY TRIAL - 1

000063

II

Answering paragraph 10 of the Common Allegations and paragraphs 19 through 25 of Count I, counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the matters alleged.

III

Answering paragraph 13, 28 and 32, counterdefendant incorporates its reply to the referenced allegations as though set forth in full herein.

IV

Answering paragraphs 14 through 18, 26, and 27 of Count I, counterdefendant denies the allegations contained therein.

V

Answering paragraphs 29, 30 and 31 of Count II, counterdefendant denies the allegations contained therein.

Wherefore, the counterdefendant prays for relief as hereinafter set forth.

FIRST AFFIRMATIVE DEFENSE

Counterclaimant has failed to take reasonable steps to mitigate its alleged damages, and, accordingly, its entitlement to damages is reduced or barred.

SECOND AFFIRMATIVE DEFENSE

That counterdefendant has incurred expenses, including attorney fees and costs, in the defense of the counterclaim and is entitled to the reimbursement of those expenses pursuant to Rule 54, Idaho Rules of Civil Procedure and Idaho Code §§12-120(3) and 12-121.

REPLY TO AMENDED COUNTERCLAIM AND DEMAND FOR JURY TRIAL - 2

000064

Wherefore, counterdefendant prays for relief as follows:

1. That counterclaimants take nothing by the counterclaim;
2. That counterdefendant be awarded its costs and reasonable attorney fees;
3. For such other and further relief as the Court deems appropriate.

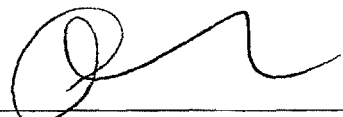
Dated this 14<sup>th</sup> day of April, 2011.

  
Allen B. Ellis

Attorney for plaintiff/counterdefendant

DEMAND FOR JURY TRIAL

Plaintiff/counterdefendant hereby demands a trial by jury in accordance with the provisions of Rule 38(b) of the Idaho Rules of Civil Procedure.

  
Allen B. Ellis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 14<sup>th</sup> day of April, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Randall L. Schmitz  
Hall, Farley, Oberrecht  
and Blanton, P.A.  
P.O. Box 1271  
Boise, Idaho 83701

U.S. Mail, postage prepaid  
 Hand delivery  
 Overnight delivery  
 Facsimile (395-8585)

  
Allen B. Ellis

REPLY TO AMENDED COUNTERCLAIM AND DEMAND FOR JURY TRIAL - 3

000065



FILED  
10:50 A.M. P.M.

MAY 02 2011

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS,  
LLC, a Delaware limited liability company,

Plaintiff/Counterdefendant,

vs.

IMAGING CENTER OF IDAHO, LLC,  
an Idaho limited liability company,

Defendant/Counterclaimant.

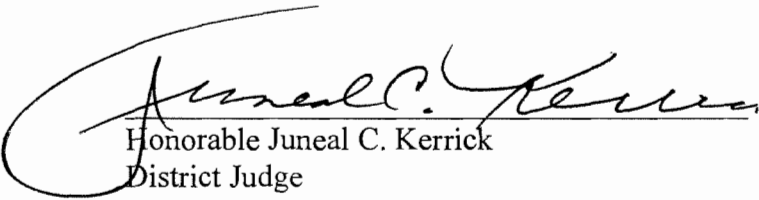
Case No. CV-09-13504-C

**ORDER RE: STIPULATION TO  
DISMISS COUNT I OF ICI'S  
COUNTERCLAIM**

THIS MATTER having come before this Court through the parties' Stipulation To  
Dismiss Count I of ICI's Counterclaim, and good cause appearing therefor;

IT IS HEREBY ORDERED that Count I of ICI's Counterclaim is hereby DISMISSED.

DATED this 30<sup>th</sup> day of April, 2011.

  
Honorable Juneal C. Kerrick  
District Judge

ORDER RE: STIPULATION TO DISMISS COUNT I OF ICI'S COUNTERCLAIM - 1

000066

CLERK'S CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 2 day of <sup>May</sup> April, 2011, I caused to be served a true copy of the foregoing document, by the method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy

Randy L. Schmitz  
HALL, FARLEY, OBERRECHT &  
BLANTON, P.A.  
702 West Idaho, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy

  
\_\_\_\_\_  
Deputy Clerk

**ORDER RE: STIPULATION TO DISMISS COUNT I OF ICI'S COUNTERCLAIM - 2**

**000067**

**F I L E D**  
A.M. 130 P.M.

JUN 24 2011

CANYON COUNTY CLERK  
S BRITTON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

vs. )

IMAGING CENTER OF IDAHO, LLC, an )  
Idaho limited liability company, )

Defendant. )

**SPECIAL VERDICT FORM**

Case No. CV 2009-13504-C

We, the Jury, answer the special interrogatories as follows:

**COUNT I: BREACH OF CONTRACT**

**Question No. 1:** Did the defendant breach the contract between the plaintiff and the defendant?

**Answer to Question No. 1:** Yes X No \_\_\_\_\_

SPECIAL VERDICT FORM

1

**ORIGINAL**

000068

If you answered this question "Yes," please continue to Question No. 2. If you answered this question "No," please proceed to Question No. 7.

**Question No. 2:** Did the defendant prove the affirmative defense of mutual mistake?

**Answer to Question No. 2:** Yes X No \_\_\_\_\_

After answering Question No. 2, please continue to Question No. 3.

**Question No. 3:** Did the defendant prove the affirmative defense of fraud?

**Answer to Question No. 3:** Yes \_\_\_\_\_ No X

If you answered "Yes" to Question No. 2 or Question No. 3, please proceed to Question No. 5. If you answered "No" to both Question No. 2 and Question No. 3, please continue to Question No. 4.

**Instruction for Question No. 4:** You will reach this question if you have found that the defendant breached the contract with the plaintiff and that the defendant did not prove any affirmative defense.

**Question No. 4:** What is the total amount of damages sustained by the plaintiff as the result of the defendant's breach of contract?

**Answer to Question No. 4:** We assess the plaintiff's damages as follows:

\$ \_\_\_\_\_

After answering Question No. 4, please proceed to Question No 7.

## COUNT TWO: UNJUST ENRICHMENT

**Instruction for Question No. 5:** You will answer Question No. 5 only if you

SPECIAL VERDICT FORM

answered "Yes" to Question No. 1 and "Yes" to Question No. 2 and/or Question No. 3.

**Question No. 5:** Did the plaintiff prove that the defendant was unjustly enriched by the actions of the plaintiff?

**Answer to Question No. 5:** Yes \_\_\_\_\_ No X

If you answered this question "Yes," please proceed to Question No. 6. If you answered this question "No," please proceed to Question No. 7.

**Question No. 6:** What is the total amount of damages sustained by the plaintiff on its claim for unjust enrichment?

**Answer to Question No. 6:** We assess the plaintiff's damages as follows:

\$ \_\_\_\_\_

After answering Question No. 6, please proceed to Question No. 7.

**COUNTERCLAIM: INTENTIONAL MISREPRESENTATION/FRAUD**

**Question No. 7:** Did the defendant prove, by clear and convincing evidence, that it was damaged by an intentional misrepresentation on the part of the plaintiff?

**Answer to Question No. 7:** Yes X No \_\_\_\_\_

If you answered this question "Yes," please proceed to Question No. 8. If you answered this question "No," you are done. Please sign the verdict as instructed and advise the Bailiff.

**Question No. 8:** What is the total amount of damages sustained by the defendant on its claim for intentional misrepresentation *and fraud?* *Jek 6/24/11*

**Answer to Question No. 8:** We assess the defendant's damages as follows:

\$ 0

After answering Question No. 8, you are done. Please sign the verdict as instructed and advise the Bailiff.

Dated: 6-24-11

<u>Daphne Blouin</u> Foreperson	<u>3041</u> Juror No.	<u>Adam Benjamin</u> Name	<u>187</u> Juror No.
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<u>[Signature]</u> Name	<u>276</u> Juror No.	<u>Shane Welch</u> Name	<u>254</u> Juror No.
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<u>[Signature]</u> Name	<u>244</u> Juror No.	<u>[Signature]</u> Name	<u>220</u> Juror No.
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<u>Vickie Caldwell</u> <del>Selvin Martinez</del> Name	<u>281</u> <del>180</del> Juror No.	<u>[Signature]</u> Name	<u>180</u> Juror No.
--	---	----------------------------	-------------------------

<u>COET PETERSON</u> Name	<u>179</u> Juror No.	<u>Norma Kelley</u> Name	<u>207</u> Juror No.
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<u>Barbara Bate</u> Name	<u>194</u> Juror No.	<u>[Signature]</u> Name	<u>166</u> Juror No.
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SPECIAL VERDICT FORM

**F I L E D**  
A.M. 3:55 P.M.

JUL 21 2011

CANYON COUNTY CLERK  
DEPUTY

Jeffrey R. Townsend, ISB #7647  
E-mail: TownsendLaw@q.com  
TOWNSEND LAW, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, ID 83642  
Telephone: (208) 350-7310  
Facsimile: (208) 350-7311

Attorney for Defendant

IN THE DISTRICT COURT OF THIRD JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )	
LLC, )	CASE NO. CV-2009-13504-C
)	
Plaintiff, )	DEFENDANT IMAGING CENTER
)	OF IDAHO, LLC'S VERIFIED
vs. )	MEMORANDUM OF COSTS AND
)	FEES
IMAGING CENTER OF IDAHO, LLC )	
)	
Defendant. )	
)	

COMES NOW, defendant Imaging Center of Idaho, LLC ("ICI"), by and through its counsel of record, Townsend Law, P.C., and submits the following Verified Memorandum of Costs and Fees.

**I. INTRODUCTION**

This matter was tried before a jury commencing on June 20, 2011. On June 24, 2011, the jury returned a verdict in favor of defendant on plaintiff's causes of action for 'Breach of Contract' and 'Unjust Enrichment.' The jury also returned a verdict in favor of defendant on defendant's counterclaim for 'Misrepresentation.' Defendant is the prevailing party and is entitled to an award of costs and fees.

## II. ARGUMENT

Pursuant to Rule 54(d)(1) of the Idaho Rules of Civil Procedure, and Idaho Code Section 12-120(3), the prevailing party in any civil action to recover on a contract for services, or any commercial transaction, is entitled to an award of costs, including a reasonable attorney fee. For the reasons set forth below, defendant requests an award of cost and fees as the prevailing party.

### A. *Attorneys fees.*

Idaho Code § 12-120(3) provides that “[i]n any civil action to recover on [a] . . . contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction . . . the prevailing party shall be allowed a reasonable attorney’s fee to be set by the court to be taxed and collected as costs.” Section 12-120(3) further defines “commercial transaction” as “all transactions except transactions for personal or household purposes.” This matter arose out of a contract for services. The contract, titled ‘Master Services Agreement,’ specifically states that AMD was to provide “physician education” and “marketing” services to ICI. The contract also constitutes a “commercial transaction” as defined in section 12-120(3)

Defendant, ICI is the prevailing party. In considering a request for attorneys’ fees the court must determine if there is a “prevailing party.” Pursuant to Rule 54(d)(1)(B), in determining which party is the prevailing party the court shall consider the final judgment in relation to the relief sought by the parties. The court may determine that a party prevailed in part, and did not prevail in part, and may award costs (including attorneys’ fees) in a fair and equitable manner. ICI is the “prevailing party” in this matter as it obtained judgment in its favor on both of plaintiff’s causes of action, as well as on its



own counterclaim for misrepresentation. The fact that ICI did not recover damages despite prevailing on its counterclaim for misrepresentation does not preclude an award of attorneys' fees.

"In reaching the decision as to whether a party "prevailed," Rule 54(d)(1)(B) requires the court to consider three areas of inquiry: (a) the final judgment or result obtained in the action in relation to the relief sought by the respective parties; (b) whether there were multiple claims or issues between the parties; and (c) the extent to which each of the parties prevailed on each of the issues or claims." Chadderdon v. King, 104 Idaho 406, 411 (Idaho App. 1983). In Chadderdon the plaintiff filed a breach of contract action arising out of construction of a building, seeking nearly \$60,000 in damages. Approximately 2 years after the complaint was filed, the defendant filed a counterclaim to recover damages of \$9,588 representing the costs of additional work and material. The jury denied recovery to both parties. After judgment was entered the trial court awarded costs, including attorney's fees, to the defendant. The trial court determined that the defendant prevailed on the "main issue of the case," which was plaintiff's breach of contract claim. The trial court's award of costs and attorney's fees was upheld on appeal.

As was the situation in Chadderdon, the main issue in this lawsuit was plaintiff's breach of contract claim, and defendant's affirmative defense of mutual mistake. Plaintiff filed its complaint in December of 2009. Trial was set for January 31, 2011. In December of 2010, defendant moved to amend its answer to assert an affirmative defense and counterclaim for fraud. At that time defendant expressed its willingness and preparedness to proceed with trial in January of 2011. However, at plaintiff's request, the court reset the trial date for June, 2011. It is significant to note that no additional

discovery occurred after the court postponed the trial date and prior to trial, which in any way related to defendant's allegations of fraud. Essentially all costs and fees prior to trial related exclusively to plaintiff's cause of action for breach of contract and the defensive of mutual mistake.

Similarly, the trial focused predominantly on mutual mistake – whether AMD calculated and determined the amount of ICI's average reimbursements for CT and MR exams, and whether at the time the contract was signed AMD believed ICI's average reimbursements were \$1,198 for MRI's and \$673 for CT's. The evidence related to the allegation of fraud, based on plaintiff's representation regarding reduced payments on multiple exams, was a minor issue in relation to the issue of "mutual mistake." Furthermore, the damages sought by defendant in relation to the fraud allegation were significantly less than the damages sought by plaintiff on the breach of contract claim. In September of 2010, approximately 4 months prior to trial, plaintiff was seeking in excess of \$825,000 from defendant to settle this dispute. At trial plaintiff was asking for damages of between \$710,500 and \$1,179,614 (Plaintiff Exhibit 128 and 138). Since December of 2009 the main issue in this case has always been plaintiff's breach of contract claim and the amount of alleged damages. Defendant unequivocally prevailed on the breach of contract cause of action.

In determining the amount of attorney fees to award a party in a civil action, the court shall consider the following factors pursuant to Rule 54(e)(3):

- (a) The time and labor required
- (b) The novelty and difficulty of the questions
- (c) The skill required to perform the legal services properly

- (d) The prevailing charges for like work
- (e) Whether the fee was fixed or contingent
- (f) The time limitations imposed by the client or circumstances
- (g) The amount involved and the result obtained
- (h) The undesirability of the case
- (i) The nature and length of the professional relationship with the client
- (j) Awards in similar cases
- (k) Cost of automated research
- (l) Any other factor which the court deems appropriate in the particular case.

ICI has incurred \$125,942.50, in attorney and paralegal fees in defending this matter. (Affidavit of Jeffrey R. Townsend In Support of Defendant's Verified Memorandum of Costs and Fees ("Townsend Affd.") ¶¶ 2-3) The \$125,942.50 in fees incurred by ICI in defending this matter is reasonable when the above factors and the overall circumstances of this case are considered.

First, the attorneys' hourly rates are commensurate with the experience and qualifications of each attorney. Mr. West's hourly rate of \$225 is very reasonable for an attorney who has 24 years of experience as a private attorney and litigator. Mr. Townsend's and Mr. Shcimtz's hourly rates of \$175 are very reasonable as each has over 10 years experience practicing law. The hourly rate of all attorneys and paralegals is reasonable and customary for this area. (Townsend Affd. ¶ 5-7)

Second, the background and context of this case justifies the fees incurred. Prior to trial plaintiff demanded in excess of \$825,000 to settle this case. Plaintiff offered to settle the case for over \$100,000. In light of plaintiff's demand, and the potential

exposure presented by this case, defense counsel was obligated to prepare an appropriate and thorough defense. (Townsend Affd. ¶ 9)

The result obtained was undoubtedly in defendant's favor. As stated above, plaintiff was seeking in excess of \$825,000, and defendant was willing to settle for over \$100,000. The defendant prevailed on all causes of action, and avoided paying any sum to plaintiff.

Attorneys' fees of \$125,942.50 is consistent with attorney fee awards in other cases with significant exposure. In April of 2010 Judge Hansen, of the Fourth Judicial District for the County of ADA, awarded attorney fees of \$123,365 (plus costs of approximately \$50,000) in a personal injury suit in which the plaintiff was seeking damages of \$490,000.

The attorney fee provision of section 12-120(3) is "mandatory." Sanders v. Lankford 134 Idaho 322 (Idaho App. 2008); Nelson v. Anderson Lumber Co. 140 Idaho 702 (Idaho App. 2004). Accordingly, as the prevailing party ICI is entitled to an award of reasonable attorneys' fees.

The attorneys' fees and paralegal's fees in the amount of \$125,942.50 should be deemed by this court as reasonable and necessarily incurred, and this court should order plaintiff, AMD, to pay these fees in their entirety to ICI.

***B. Costs***

Costs are allowed to the prevailing party pursuant to Rule 54(d)(1). Certain costs must be awarded to the prevailing party as a matter of right pursuant to Rule 54(d)(1)(C). Other costs are discretionary under Rule 54(d)(1)(D). Defendant, ICI, requests an award of costs as set forth below.

1. **Costs As A Matter Of Right**

Pursuant to Rule 54(d)(1)(C) ICI requests the costs as a matter of right.

1. Court filing fee . . . . .	\$58.00	
2. Preparation of trial exhibits . . . . .	\$90.91	
3. Expert witness fees (\$2,000 maximum allowed as of right) . . . . .	\$2,000.00	
4. Cost of reporting and transcribing depositions, including the original and one copy of the transcript:		
Erik Fox . . . . .	\$873.75	
Bill Cary . . . . .	\$1,393.40	
Mark Miller . . . . .	\$1,060.75	
Brian Kelly . . . . .	\$1,068.60	
Charles Eldridge (copy only) . . . . .	\$181.68	
Greg Clark (copy only) . . . . .	\$120.20	
Julie Mellinger (copy only) . . . . .	\$123.38	
	TOTAL . . . . .	\$6,970.67

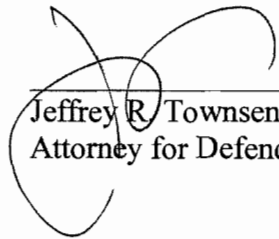
Defendant ICI requests \$6,970.67 in costs as a matter of right. The above costs are supported in the Affidavit of Jeffrey R. Townsend in Support of Defendant's Verified Memorandum of Costs and Fees.

**CONCLUSION**

For the reasons set forth above, ICI respectfully requests an award of attorneys' fees in the amount of \$125,942.50, and an award of costs as a matter of right in the amount of \$6,970.67.

Dated this 20<sup>th</sup> day of July, 2011.

TOWNSEND LAW, P.C.



---

Jeffrey R. Townsend  
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21 day of July, 2011, I caused to be served a true and correct copy of the foregoing document, by method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Telecopy

  
\_\_\_\_\_  
Jeffrey R. Townsend

**F I L E D**  
 A.M. 3:55 P.M.  
**JUL 21 2011**  
 CANYON COUNTY CLERK  
 KC DEPUTY

Jeffrey R. Townsend, ISB #7647  
 E-mail: TownsendLaw@q.com  
 TOWNSEND LAW, P.C.  
 3006 E. Goldstone Dr., Ste. 120  
 Meridian, ID 83642  
 Telephone: (208) 350-7310  
 Facsimile: (208) 350-7311

Attorney for Defendant

IN THE DISTRICT COURT OF THIRD JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, ) LLC, ) ) Plaintiff, ) ) vs. ) ) IMAGING CENTER OF IDAHO, LLC ) ) Defendant. ) _____ )	CASE NO. CV-2009-13504-C  AFFIDAVIT OF JEFFREY R. TOWNSEND IN SUPPORT OF DEFENDANT'S VERIFIED MEMORANDUM OF COSTS AND FEES
---	--

STATE OF IDAHO            )  
   ) ss.  
 County of Ada                )

I, Jeffrey R. Townsend, being first duly sworn upon oath, depose and say:

1. I am one of the attorneys representing defendant Imaging Center of Idaho ("ICI") in the above-captioned matter and, as such, I have personal knowledge of the matters stated herein.

2. Attached to this affidavit as Exhibit A are the billing statements from Hall Farley Oberrecht & Blanton, P.A. ("Hall Farley") in the above captioned matter. The billing statements reflect all of the time spent by Hall Farley personnel in defending this matter, but are redacted to protect privileged information. Attorneys' fees incurred by defendant



from Hall Farley total \$92,372.50. This figure was calculated by reviewing all of the time entries, and adding each "Subtotal for Fees" amount from each monthly statement.

3. Attached to this affidavit as Exhibit B are the billing statements from Townsend Law, P.C. ("Townsend Law") in the above captioned matter. The billing statements reflect all of the time spent by Townsend Law personnel in defending this matter, but are redacted to protect privileged information. Attorneys' fees incurred by defendant from Townsend Law total \$33,570.

4. Ken Hooper's witness fee in this matter far exceeded the statutory maximum limit of \$2,000 allowed as a matter of right to the prevailing party. Attached to this affidavit as Exhibit C are the billing statements from HC Healthcare Consulting, LLC in the above captioned matter reflecting all of the time spent by Ken Hooper and HC Healthcare Consulting, LLC personnel in providing expert witness services in this matter.

5. I have been in practice as an attorney and litigator for over ten years. J. Kevin West has been in practice since 1986 as an attorney and litigator, and Randy Shmitz has over 10 years experience as an attorney and litigator. Brenda Veloz has been a paralegal for over 15 years.

6. I am familiar with charges for legal services in the Boise area. The hourly rates reflected above are commensurate with the experience and qualifications of each attorney and paralegal listed above, and in my opinion, the rates reflected above are consistent with reasonable rates charged for professional services such as those provided in this matter. The hours set forth above reflect actual time spent and work performed in furtherance of defending ICI against the claims and allegations of plaintiff.


7. The total amount of attorney fees and expenditures reflected in the Verified Memorandum of Costs and Fees are reasonable and were necessarily incurred in the defense of this action.

8. Attorneys' fees of \$125,942.50 is consistent with attorney fee awards in other cases with significant exposure. In April of 2010, in the matter of Casebolt v. Darmody Enterprises, case no. CV PI 0802748, Judge Hansen, of the Fourth Judicial District for the County of ADA, awarded the defendant attorney fees of \$123,365 (plus costs of approximately \$50,000) in a personal injury suit in which the plaintiff was seeking damages of \$490,000.

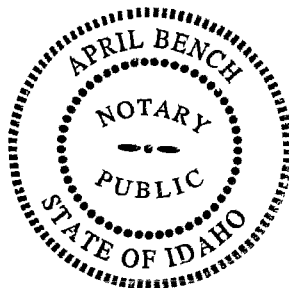
9. Prior to trial plaintiff demanded in excess of \$825,000 to settle this case. Plaintiff offered to settle the case for over \$100,000. In light of plaintiff's demand, and the potential exposure presented by this case, defense counsel was obligated to prepare an appropriate and thorough defense.


10. Attached hereto as Exhibit D are the deposition invoices for Erik Fox, Bill Cary, Mark Miller, Brian Kelly, Charles Eldridge, Greg Clark and Julie Mellinger.

FURTHER YOU AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Jeffrey R. Townsend

SUBSCRIBED AND SWORN TO before me on this 21 day of July, 2011.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at MERIDIAN Idaho  
Commission expires: 02-02-16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2<sup>1</sup> day of July, 2011, I caused to be served a true and correct copy of the foregoing document, by method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Telecopy

  
\_\_\_\_\_  
Jeffrey R. Townsend

**Detail Transaction File List**  
 HALL, FARLEY, OBERRECHT & BLANTON, P.A.

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 02/05/2010</b>							
4424.001	12/31/2009	JKW	A	225	225.00	0.30	67.50 Receive and review legal complaint from Charles Eldredge;
4424.001	01/04/2010	JKW	A	80	225.00	0.20	45.00 Telephone conference with Charles Eldredge regarding [REDACTED]
4424.001	01/04/2010	NGH	A	236	175.00	0.70	122.50 Review summons, complaint, and master services agreement between Advanced Medical Diagnostics and Imaging Center of Idaho; Conference with JKW regarding same; Send electronic correspondence to JKW regarding discovery;
4424.001	01/05/2010	JKW	A	80	225.00	0.30	67.50 Telephone conference with Charles Eldredge; Finalize answer;
4424.001	01/05/2010	NGH	A	236	175.00	1.80	315.00 Review electronic correspondence between ICI and AMD in file; Research regarding venue, jurisdiction, statute of limitations and service of process; Draft answer to complaint; Conference with JKW regarding answer to complaint; Draft electronic correspondence with JKW to Mr. Eldredge regarding answer to complaint;
4424.001	01/07/2010	NGH	A	236	175.00	0.50	87.50 Review electronic correspondence from Mr. Eldredge regarding answer to complaint and demand for jury trial, including attached PDF documents concerning AMD projections; Telephone conversation with Mr. Eldredge regarding same and our request for jury trial; Determine if information provided by Mr. Eldredge in electronic correspondence will necessitate modification of answer;
4424.001	01/09/2010	JKW	A	225	225.00	0.20	45.00 Receive and review documents from Charles Eldredge;
4424.001	01/22/2010	NGH	A	236	175.00	0.30	52.50 Review electronic correspondence from Mr. Eldredge to JKW regarding December volume reports; Draft and review electronic correspondence to/from JKW regarding same; Draft electronic correspondence to Mr. Eldredge regarding same;
4424.001	01/26/2010	BLV	A	374	100.00	0.30	30.00 Prepare index of client records relating to alleged breach of contract;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>4.60</b>	<b>832.50</b>
4424.001	12/31/2009	NA	A	531	0.500		1.50 Telecopy to Charles Eldredge;
4424.001	01/08/2010	NA	A	530			45.00 Messenger to Canyon County;
4424.001	01/25/2010	NA	A	532	0.250		8.75 Photocopies/Images for the month of January (35 @ .25);
<b>Subtotal for Expenses</b>					<b>Billable</b>	<b>0.00</b>	<b>55.25</b>
4424.001	01/07/2010	NA	A	500			58.00 Expenditure for filing fee for answer; Check to Canyon County Clerk;
<b>Subtotal for Advances</b>					<b>Billable</b>	<b>0.00</b>	<b>58.00</b>
<b>Total for Statement Date 02/05/2010</b>					<b>Billable</b>	<b>4.60</b>	<b>945.75</b>

000085

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 03/08/2010</b>							
4424.001	02/04/2010	NGH	A	236	175.00	0.30	52.50 Review electronic correspondence from Mr. Eldredge to JKW regarding [REDACTED]; Conference with JKW regarding same; Draft electronic correspondence to Mr. Eldredge regarding same;
4424.001	02/08/2010	NGH	A	9	175.00	0.20	35.00 Conference with JKW regarding [REDACTED]
4424.001	02/09/2010	NGH	A	76	175.00	0.40	70.00 Telephone conference with plaintiff's counsel regarding amending hearing date on motion for partial summary judgment; Draft electronic correspondence to JKW regarding same; Further telephone conference with plaintiff's counsel regarding hearing date; Prepare further electronic correspondence to JKW regarding same; Telephone conference with plaintiff's counsel's assistant regarding contacting plaintiff's counsel;
4424.001	02/09/2010	NGH	A	179	175.00	1.60	280.00 Draft motion to vacate hearing on plaintiff's motion for partial summary judgment and memorandum and affidavits in support thereof;
4424.001	02/10/2010	NGH	A	9	175.00	0.40	70.00 Conference with JKW; Conference with plaintiff's counsel regarding motion for partial summary judgment and scheduled hearing; Conference with plaintiff's counsel regarding hearing on motion for partial summary judgment;
Subtotal for Fees					Billable	2.90	507.50
4424.001	02/22/2010	NA	A	532	0.250		20.25 Photocopies/Images for the month of February (81 @ .25);
Subtotal for Expenses					Billable	0.00	20.25
<b>Total for Statement Date 03/08/2010</b>					Billable	2.90	527.75

000086

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 04/06/2010</b>								
4424.001	03/01/2010	NGH	A	135	175.00	1.80	315.00	Review and analyze documents; Research and analyze caselaw; Draft opposition motion;
4424.001	03/05/2010	NGH	A	135	175.00	0.80	140.00	Research regarding mutual mistake doctrine for purposes of preparing opposition motion to plaintiff's motion for partial summary judgment and determining what kind of evidence is needed from Mr. Eldrege in our affidavit in support of opposition motion;
4424.001	03/05/2010	NGH	A	179	175.00	0.20	35.00	Draft electronic correspondence to Mr. Eldredge regarding evidence needed in our affidavit in support of opposing plaintiff's motion for partial summary judgment;
4424.001	03/05/2010	NGH	A	61	175.00	0.20	35.00	Review and analyze court rules for purposes of continuing hearing on plaintiff's motion for partial summary judgment until further discovery has been completed;
4424.001	03/08/2010	NGH	A	80	175.00	0.40	70.00	Telephone conference with opposing counsel regarding voluntarily continuing plaintiff's motion for partial summary judgment due to defendant's ability to file a motion to continue in order to conduct discovery;
4424.001	03/08/2010	NGH	A	135	175.00	0.40	70.00	Research and analyze Idaho Court rules and caselaw regarding requirement to continue hearing on motion for summary judgment until adequate discovery has been conducted;
4424.001	03/08/2010	NGH	A	10	175.00	4.00	700.00	Continue to prepare motion to continue plaintiff's motion for partial summary judgment for purpose of delaying hearing until adequate discovery has been conducted;
4424.001	03/09/2010	NGH	A	220	175.00	3.90	682.50	Continue to prepare memorandum in support of motion to continue plaintiff's hearing on motion for partial summary judgment;
4424.001	03/09/2010	NGH	A	13	175.00	0.20	35.00	E-mail to JKW regarding clerk matter;
4424.001	03/09/2010	NGH	A	76	175.00	0.50	87.50	Telephone conference with Mr. Eldredge regarding average reimbursement per modality and basis of affirmative defenses;
4424.001	03/10/2010	JKW	A	238	225.00	0.30	67.50	Revisions to Rule 56(f) motion;
4424.001	03/11/2010	NGH	A	220	175.00	2.00	350.00	Further prepare motion to continue plaintiff's motion for partial summary judgment;
4424.001	03/11/2010	JKW	A	361	225.00	0.40	90.00	E-mail to Charles Eldredge regarding summary judgment; Revisions to rule 56(f) motion;
4424.001	03/12/2010	NGH	A	1	175.00	1.70	297.50	Further prepare memorandum in support of motion to continue plaintiff's motion for summary judgment;
4424.001	03/12/2010	NGH	A	1	175.00	0.20	35.00	Further prepare affidavit of Charles Eldredge; Draft electronic correspondence to Mr. Eldredge regarding the same;
4424.001	03/13/2010	JKW	A	238	225.00	0.20	45.00	Revisions to Rule 56(f) motion;
4424.001	03/15/2010	JKW	A	66	225.00	0.30	67.50	Revise and final rule 56(f) motion;
4424.001	03/15/2010	NGH	A	1	175.00	1.20	210.00	Further prepare and finalize same motion to continue plaintiff's motion for summary judgment and supporting affidavit;
4424.001	03/18/2010	NGH	A	13	175.00	0.10	17.50	Exchange correspondence with Mr. Eldredge regarding Rule 56(f) motion and opposition motion to AMD's motion for summary judgment;
4424.001	03/22/2010	NGH	A	220	175.00	1.80	315.00	Further prepare opposition motion to ICI's motion for summary judgment;
4424.001	03/23/2010	NGH	A	1	175.00	1.30	227.50	Further prepare opposition memorandum to plaintiff's motion for partial summary judgment and affidavit of Charles Eldredge regarding the same;
4424.001	03/23/2010	NGH	A	1	175.00	0.40	70.00	Review opposition memorandum and supporting affidavit to ICI's motion to continue plaintiff's hearing on motion for partial summary judgment;
4424.001	03/23/2010	JKW	A	225	225.00	0.30	67.50	Receive and review e-mails regarding status of pending motions;
4424.001	03/24/2010	NGH	A	1	175.00	0.10	17.50	Review and analyze affidavit of Marc Miller submitted in support of plaintiff's opposition

000087

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>
<b>Statement Date 04/06/2010</b>							
							memorandum to defendant's motion to continue hearing on plaintiff's motion for summary judgment;
4424.001	03/24/2010	NGH	A	1	175.00	0.50	87.50 Prepare reply brief in support of plaintiff's Rule 56(f) motions;
4424.001	03/25/2010	NGH	A	1	175.00	0.10	17.50 Telephone conference with judge's clerk regarding hearing on motion to continue hearing on plaintiff's motion for partial summary judgment;
4424.001	03/25/2010	NGH	A	1	175.00	0.10	17.50 Telephone conference with opposing counsel regarding hearing on motion to continue hearing on plaintiff's motion for partial summary judgment and briefing schedule for plaintiff's motion for summary judgment;
4424.001	03/25/2010	NGH	A	1	175.00	0.30	52.50 Prepare correspondence to opposing counsel memorializing amended briefing schedule regarding plaintiff's motion for partial summary judgment, so that we may first proceed on our motion to continue hearing;
4424.001	03/25/2010	NGH	A	1	175.00	0.10	17.50 Conference with Mr. Eldrege regarding hearing on motion to continue hearing on motion for partial summary judgment;
4424.001	03/26/2010	JKW	A	66	225.00	0.80	180.00 Revise and final briefing on pending motions;
4424.001	03/29/2010	NGH	A	1	175.00	0.40	70.00 Further prepare opposition memorandum to plaintiff's motion for partial summary judgment;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>25.00</b>	<b>4,490.00</b>
4424.001	03/15/2010	NA	A	531	0.500		4.00 Telecopy to Canyon County;
4424.001	03/15/2010	NA	A	531	0.500		4.00 Telecopy to Allen B. Ellis;
4424.001	03/15/2010	NA	A	531	0.500		5.50 Telecopy to Canyon County;
4424.001	03/15/2010	NA	A	531	0.500		5.50 Telecopy to Allen B. Ellis;
4424.001	03/25/2010	NA	A	531	0.500		1.00 Telecopy to Allen B. Ellis;
<b>Subtotal for Expenses</b>					<b>Billable</b>	<b>0.00</b>	<b>20.00</b>
4424.001	03/31/2010	NA	A	504			50.76 Westlaw access for research during period 03/01/2010 - 03/31/2010;
<b>Subtotal for Advances</b>					<b>Billable</b>	<b>0.00</b>	<b>50.76</b>
<b>Total for Statement Date 04/06/2010</b>					<b>Billable</b>	<b>25.00</b>	<b>4,560.76</b>

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 04/30/2010</b>								
4424.001	04/01/2010	NGH	A	1	175.00	0.60	105.00	Prepare for Court hearing regarding motion to continue hearing on plaintiff's motion for partial summary judgment;
4424.001	04/01/2010	NGH	A	1	175.00	0.60	105.00	Attend same hearing on motion to continue hearing on plaintiff's motion for partial summary judgment;
4424.001	04/01/2010	NGH	A	1	175.00	0.10	17.50	Prepare electronic correspondence to Mr. Eldredge regarding results of same hearing;
4424.001	04/01/2010	NGH	A	1	175.00	0.30	52.50	Prepare order for signature of Court granting defendant's motion to continue plaintiff's hearing on motion for partial summary judgment;
4424.001	04/05/2010	NGH	A	1	175.00	0.30	52.50	Prepare defendant's second response to plaintiff's note of issue, per Court's instructions, to determine if trial can be scheduled on this matter;
4424.001	04/05/2010	NGH	A	1	175.00	1.30	227.50	Prepare defendant's first set of interrogatories and requests for production of documents to plaintiff;
4424.001	04/06/2010	NGH	A	1	175.00	0.10	17.50	Review and analyze amended note of issue filed by plaintiff;
4424.001	04/06/2010	NGH	A	1	175.00	0.20	35.00	Further prepare second response to note of issue, in light of plaintiff's amended note of issue;
4424.001	04/06/2010	NGH	A	1	175.00	1.00	175.00	Further prepare same request for discovery;
4424.001	04/06/2010	NGH	A	1	175.00	0.30	52.50	Review and analyze contract between AMD and ICI for purposes of researching potential negligence counterclaim against AMD;
4424.001	04/06/2010	NGH	A	1	175.00	0.60	105.00	Research and analyze case law regarding same potential negligence counterclaim;
4424.001	04/06/2010	NGH	A	1	175.00	1.50	262.50	Prepare memorandum regarding same potential counterclaim;
4424.001	04/08/2010	NGH	A	1	175.00	0.10	17.50	Finalize same note of issue for filing with Court;
4424.001	04/10/2010	JKW	A	236	225.00	0.30	67.50	Review research regarding possible counterclaims;
4424.001	04/12/2010	NGH	A	236	175.00	0.40	70.00	Review plaintiff's first discovery request, for purpose of formulating discovery response strategy;
4424.001	04/12/2010	NGH	A	220	175.00	0.50	87.50	Prepare correspondence to Mr. Eldredge regarding plaintiff's discovery request, and ICI's requests for interrogatories and requests for production for AMD;
4424.001	04/14/2010	BLV	A	374	100.00	0.20	20.00	Prepare witness materials for Eric Fox and Marc Miller, MD;
4424.001	04/14/2010	BLV	A	374	100.00	0.20	20.00	Initial review of AMD invoices and master services agreement;
4424.001	04/14/2010	NGH	A	1	175.00	0.60	105.00	Telephone conference with Mr. Eldredge regarding communications and negotiations with AMD regarding volume fees;
4424.001	04/14/2010	NGH	A	1	175.00	0.20	35.00	Finalize first request for discovery to AMD;
4424.001	04/15/2010	NGH	A	1	175.00	0.20	35.00	Review documents from Mr. Eldredge regarding SURECardio Prospective Kit & Breast Package for Aquilion 32 & 64, and payment terms of same; Draft electronic correspondence to Mr. Eldredge regarding underlying contract regarding same equipment;
4424.001	04/15/2010	NGH	A	1	175.00	0.60	105.00	Review electronic correspondence between Mr. Eldredge and AMD representatives regarding retroactive reduction in volume fees, and understanding that volume fees were capped at 29% of MRI and CT Exam revenue per scan;
4424.001	04/15/2010	NGH	A	1	175.00	0.30	52.50	Review and analyze AMD's supplemental discovery request; prepare electronic correspondence to Mr. Eldredge regarding same;
4424.001	04/16/2010	NGH	A	298	175.00	0.10	17.50	Exchange email with Mr. Eldredge regarding AMD's recommendation to purchase the SURECardio Prospective Kit and Breast Package for the Aquilion 32 and 64, for purposes of

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**Detail Transaction File List**  
 HALL, FARLEY, OBERRECHT & BLANTON, P.A.

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 04/30/2010</b>							
4424.001	04/17/2010	JKW	A	225	225.00	0.30	67.50 preparing counterclaim;
4424.001	04/19/2010	NGH	A	236	175.00	0.10	17.50 Receive and review e-mails and related documents from Charles Eldredge;
4424.001	04/22/2010	NGH	A	1	175.00	1.30	227.50 Review e-mail from Mr. Eldredge regarding response to plaintiff's supplemental discovery response;
4424.001	04/22/2010	NGH	A	1	175.00	2.10	367.50 Prepare first amended answer to complaint and counterclaim for purposes of alleging counterclaim against plaintiff;
4424.001	04/22/2010	NGH	A	1	175.00	1.10	192.50 Prepare motion to amend answer to complaint to allege counterclaim, together with memorandum in support thereof, and proposed order granting same motion to amend;
4424.001	04/22/2010	NGH	A	1	175.00	0.40	70.00 Prepare responses to plaintiff's first set of interrogatories and requests for production of documents;
4424.001	04/22/2010	NGH	A	1	175.00	0.10	17.50 Prepare responses to plaintiff's supplemental requests for interrogatories and requests for production;
4424.001	04/22/2010	NGH	A	1	175.00	0.10	17.50 Prepare e-mail to Mr. Eldredge regarding e-mail sent to AMD regarding volume fees, for purposes of responding to AMD's supplemental discovery requests;
4424.001	04/26/2010	JKW	A	67	225.00	0.30	67.50 Revise and final motion to amend and supporting documents;
4424.001	04/28/2010	NGH	A	1	175.00	0.10	17.50 Exchange correspondence with Mr. Eldredge regarding pricing associated with Cardiac and Breast CT exam equipment;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>16.40</b>	<b>2,885.00</b>
4424.001	04/01/2010	NA	A	531	0.500		1.50 Telecopy to Allen B. Ellis;
4424.001	04/05/2010	NA	A	531	0.500		1.50 Telecopy to Allen B. Ellis;
4424.001	04/08/2010	NA	A	531	0.500		3.50 Telecopy to Canyon County;
4424.001	04/08/2010	NA	A	531	0.500		3.50 Telecopy to Allen B. Ellis;
4424.001	04/15/2010	NA	A	531	0.500		9.00 Telecopy to Allen B. Ellis;
<b>Subtotal for Expenses</b>					<b>Billable</b>	<b>0.00</b>	<b>19.00</b>
<b>Total for Statement Date 04/30/2010</b>					<b>Billable</b>	<b>16.40</b>	<b>2,904.00</b>

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>	
<b>Statement Date 06/08/2010</b>								
4424.001	05/04/2010	NGH	A	191	175.00	1.90	332.50	Further prepare ICI's reponse to plaintiff's first discovery request, regarding potential witnesses to be called at trial, potential exhibits to be introduced at trial, and facts concerning ICI's mutual mistake defense;
4424.001	05/04/2010	NGH	A	236	175.00	1.50	262.50	Review electronic correspondence from Mr. Eldredge for purpose of answering AMD's discovery requests;
4424.001	05/04/2010	NGH	A	1	175.00	0.20	35.00	Review and analyze plaintiff's second supplemental discovery requests;
4424.001	05/04/2010	NGH	A	1	175.00	0.10	17.50	Prepare e-mail to Mr. Eldredge regarding documnts evidencing imaging volumes and plaintiff's first supplemental discovery requests;
4424.001	05/04/2010	NGH	A	1	175.00	0.90	157.50	Further prepare ICI's response to plaintiff's first discovery requests, regarding potential modification of master services agreement;
4424.001	05/04/2010	NGH	A	1	175.00	0.20	35.00	Prepare e-mail to Mr. Eldredge regarding plaintiff's second supplemental discovery requests and documents needed;
4424.001	05/05/2010	NGH	A	1	175.00	0.40	70.00	Telephone conference with Mr. Eldredge regarding AMD's three discovery requests;
4424.001	05/06/2010	BLV	A	374	100.00	0.10	10.00	Receive and review plaintiff's second supplemental discovery requests;
4424.001	05/10/2010	BLV	A	374	100.00	0.60	60.00	Prepare witness materials for Gary Bodily, Charles Eldredge, Michael Johnson, Scott Halladay, Val Hill, Mark Paskett, and William Carey;
4424.001	05/10/2010	BLV	A	374	100.00	1.80	180.00	Assist with preparation of response to plaintiff's first discovery requests;
4424.001	05/10/2010	JKW	A	236	225.00	0.40	90.00	Review proposed discovery responses;
4424.001	05/10/2010	NGH	A	1	175.00	0.30	52.50	Prepare correspondence to opposing counsel regarding defendant's response to plaintiff's first requests for discovery;
4424.001	05/11/2010	BLV	A	374	100.00	1.30	130.00	Update witness materials regarding preparation materials and exhibits from depositions of Mary Wheatley, Lloyd Forbes, Paul Leary;
4424.001	05/11/2010	NGH	A	1	175.00	0.20	35.00	Review and analyze rule 37(a) IRCP correspondence from opposing counsel regarding ICI's response to plaintiff's first set of discovery;
4424.001	05/12/2010	NGH	A	1	175.00	0.10	17.50	Strategy regarding response to opposing counsel's discovery;
4424.001	05/12/2010	JKW	A	225	225.00	0.20	45.00	Receive and review correspondence from opposing counsel;
4424.001	05/13/2010	BLV	A	374	100.00	5.10	510.00	Assist with preparation of response and documents responsive to defendant's response to plaintiff second requests for production and first supplemental response to first requests for production;
4424.001	05/13/2010	NGH	A	1	175.00	0.20	35.00	Telephone conference with Mr. Eldredge regarding plaintiff's first supplemental requests for discovery;
4424.001	05/13/2010	NGH	A	1	175.00	1.30	227.50	Prepare report of MR and CT scan volumes from November 2008 through April 2010 for purpose of answering plaintiff's first supplemental request for discovery;
4424.001	05/13/2010	NGH	A	1	175.00	0.30	52.50	Prepare objection to plaintiff's first supplemental request for discovery regarding documnts noting number of CT and MR exams performed by ICI from November 2008 through April 2010, regarding HIPAA privacy rule;
4424.001	05/13/2010	NGH	A	1	175.00	1.00	175.00	Prepare first supplemental responses to plaintiff's first set of discovery;
4424.001	05/13/2010	NGH	A	1	175.00	0.20	35.00	Telephone conference with opposing counsel regarding AMD's rule 37 correspondence regarding ICI's objections to AMD's requests for discovery;
4424.001	05/13/2010	NGH	A	1	175.00	0.20	35.00	Exchange correspondence with Mr. Eldredge

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Client	Trans Date	Tmkr	H P	Code/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 06/08/2010</b>							
4424.001	05/13/2010	NGH	A	1	175.00	0.30	52.50 regarding producing report of volume scans for purposes of responding to discovery;
4424.001	05/13/2010	NGH	A	1	175.00	0.20	35.00 Further prepare counterclaim to include updated information received from Mr. Eldredge regarding the utilization for the breast MRI and cardiac CTA;
4424.001	05/13/2010	NGH	A	1	175.00	0.60	105.00 Exchange e-mails with Mr. Eldredge regarding whether AMD made a site recommendation to ICI regarding the breast MRI and cardiac CTA;
4424.001	05/13/2010	JKW	A	225	225.00	0.20	45.00 Telephone conference with Mr. Eldredge regarding counterclaim, and permitting AMD electronic access to ICI's imaging reports;
4424.001	05/13/2010	NGH	A	374	175.00	1.30	227.50 Receive and review e-mails to and from Charles Eldredge;
4424.001	05/13/2010	NGH	A	1	175.00	1.30	227.50 Produce documents responsive to plaintiff's first supplemental request for discovery regarding documents noting number of CT and MR exams performed by ICI from November 2008 through April 2010, regarding HIPAA privacy rule;
4424.001	05/14/2010	NGH	A	298	175.00	0.10	17.50 Produce documents responsive to plaintiff's first supplemental request for discovery, regarding documents noting number of CT and MR exams performed by ICI from November 2008 through April 2010;
4424.001	05/14/2010	NGH	A	158	175.00	1.80	315.00 Exchange electronic correspondence with Mr. Eldredge regarding notarization of ICI discovery response;
4424.001	05/14/2010	NGH	A	80	175.00	0.10	17.50 Compile MR and CT reports from IMPAX, and mark information that must be redacted, for purpose of complying with HIPAA privacy requirements;
4424.001	05/17/2010	BLV	A	374	100.00	2.80	280.00 Telephone conference with opposing counsel regarding response to same first supplemental discovery request deadline;
4424.001	05/18/2010	BLV	A	374	100.00	5.10	510.00 Extensive redacting of Imaging Center of Idaho CT/MRI screen printouts to remove all patient personal information prior to production to opposing counsel;
4424.001	05/18/2010	JKW	A	236	225.00	0.20	45.00 Complete voluminous redactions to CT/MRI screen printouts to remove all patient personal information prior to production to opposing counsel;
4424.001	05/19/2010	BLV	A	374	100.00	0.80	80.00 Review our discovery responses and documents;
4424.001	05/19/2010	BLV	A	374	100.00	0.70	70.00 Receive and review plaintiff's answers to interrogatories and requests for production of documents;
4424.001	05/19/2010	BLV	A	374	100.00	0.50	50.00 Prepare witness files for individuals identified by plaintiff in written discovery responses;
4424.001	05/19/2010	BLV	A	374	100.00	1.80	180.00 Incorporate witness information and anticipated testimony disclosed by plaintiff in discovery responses into witness files for Fox, Halliday, Cary, Eldredge, Hurst, Miller, McSweeney and Woodhouse;
4424.001	05/21/2010	NGH	A	18	175.00	1.00	175.00 Continued preparation of documents response to plaintiff's first supplemental discovery response;
4424.001	05/21/2010	NGH	A	18	175.00	0.30	52.50 Finalize redactions for inclusion with response to plaintiff's first supplemental discovery request, to ensure compliance with HIPAA privacy rule;
4424.001	05/21/2010	NGH	A	18	175.00	0.30	52.50 Finalize response to plaintiff's first supplemental discovery request;
4424.001	05/22/2010	JKW	A	236	225.00	0.40	90.00 Finalize response to defendant's first supplemental response to plaintiff's first discovery request;
4424.001	05/28/2010	NGH	A	1	175.00	0.10	17.50 Review discovery responses from AMD;
							17.50 Conference with Mr. Eldredge regarding discovery responses and status of

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 06/08/2010</b>							
4424.001	05/28/2010	NGH	A	1	175.00	0.30	52.50 counterclaim;
4424.001	05/28/2010	NGH	A	1	175.00	0.30	52.50 Finalize ICI Counterclaim against AMD;
4424.001	05/28/2010	JKW	A	225	225.00	0.20	45.00 Prepare response to plaintiff's second supplemental discovery request;
							45.00 Receive and review discovery documents;
Subtotal for Fees					Billable	39.20	5,395.00
4424.001	05/10/2010	NA	A	531	0.500		1.50 Telecopy to Canyon County;
4424.001	05/10/2010	NA	A	531	0.500		1.50 Telecopy to Allen B. Ellis;
4424.001	05/18/2010	NA	A	513	5.000		5.00 Copy CD/DVD (1 @ \$5.00);
4424.001	05/21/2010	NA	A	531	0.500		2.50 Telecopy to Canyon County;
4424.001	05/21/2010	NA	A	531	0.500		2.50 Telecopy to Allen B. Ellis;
4424.001	05/21/2010	NA	A	530			10.00 Messenger to Allen B. Ellis;
4424.001	05/25/2010	NA	A	532	0.250		162.75 Photocopies/Images for the month of May (651 @ .25);
Subtotal for Expenses					Billable	0.00	185.75
<b>Total for Statement Date 06/08/2010</b>					Billable	39.20	5,580.75

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 06/30/2010</b>							
4424.001	06/03/2010	NGH	A	1	175.00	0.10	17.50 Review electronic correspondence from Mr. Eldredge regarding June Base Fee Invoice from AMD;
4424.001	06/04/2010	NGH	A	1	175.00	0.10	17.50 Telephone conference with Mr. Eldredge regarding MRL contract negotiation;
4424.001	06/04/2010	NGH	A	1	175.00	0.80	140.00 Review and analyze AMD's responses to our first request for discovery;
4424.001	06/07/2010	JKW	A	220	225.00	0.20	45.00 Prepare correspondence to Steve Schossberg regarding his letter;
4424.001	06/16/2010	NGH	A	1	175.00	0.10	17.50 Telephone conference with opposing counsel regarding documents AMD must produce;
4424.001	06/21/2010	NGH	A	1	175.00	1.50	262.50 Review documents produced by plaintiff in response to first request for discovery;
4424.001	06/22/2010	BLV	A	374	100.00	6.80	680.00 Initial review and organization to voluminous documents produced by plaintiff with response to defendant's first discovery requests;
4424.001	06/24/2010	BLV	A	374	100.00	0.10	10.00 Receive and review memorandum in opposition to motion to amend answer;
4424.001	06/24/2010	BLV	A	374	100.00	2.90	290.00 Continued analysis of documents produced by plaintiff and preparation of index of records;
4424.001	06/30/2010	BLV	A	374	100.00	0.10	10.00 Receive and review motion for order overruling certain discovery objections and memorandum and affidavit in support of motion;
4424.001	06/30/2010	BLV	A	374	100.00	0.10	10.00 Receive and review motion for status conference and supporting memorandum;
Subtotal for Fees					Billable	<u>12.80</u>	<u>1,500.00</u>
4424.001	06/16/2010	NA	A	531	0.500		1.50 Telecopy to Canyon County;
4424.001	06/16/2010	NA	A	531	0.500		1.50 Telecopy to Allen Ellis;
4424.001	06/22/2010	NA	A	532	0.250		98.75 Photocopies/Images for the month of June (395 @ .25);
Subtotal for Expenses					Billable	<u>0.00</u>	<u>101.75</u>
<b>Total for Statement Date 06/30/2010</b>					Billable	<u>12.80</u>	<u>1,601.75</u>

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 07/31/2010</b>								
4424.001	07/01/2010	NGH	A	1	175.00	0.30	52.50	Review and analyze AMD's motion regarding discovery objection;
4424.001	07/01/2010	NGH	A	1	175.00	0.20	35.00	Review plaintiff's motion for status conference and memorandum in support thereof;
4424.001	07/01/2010	NGH	A	1	175.00	0.20	35.00	Review plaintiff's motion for status conference and memorandum in support thereof;
4424.001	07/06/2010	BLV	A	374	100.00	0.10	10.00	Receive and review plaintiff motion for order overruling certain discovery objections and supporting memorandum;
4424.001	07/06/2010	BLV	A	374	100.00	0.10	10.00	Receive and review plaintiff motion for status conference and supporting memorandum;
4424.001	07/06/2010	BLV	A	374	100.00	0.10	10.00	Receive and review plaintiff application for order shortening time and notice of telephonic hearing;
4424.001	07/06/2010	BLV	A	374	100.00	0.10	10.00	Receive and review plaintiff third supplemental discovery request;
4424.001	07/06/2010	NGH	A	236	175.00	0.20	35.00	Review AMD's third supplemental discovery request;
4424.001	07/06/2010	NGH	A	220	175.00	0.20	35.00	Prepare electronic correspondence to Mr. Eldredge regarding same discovery request and MR and CT records;
4424.001	07/08/2010	NGH	A	101	175.00	0.30	52.50	Attend telephonic scheduling hearing with Court;
4424.001	07/08/2010	NGH	A	220	175.00	0.90	157.50	Prepare opposition memorandum in response to plaintiff's motion for overruling discovery objections;
4424.001	07/08/2010	NGH	A	220	175.00	0.30	52.50	Prepare affidavit in support of same opposition memorandum;
4424.001	07/08/2010	NGH	A	220	175.00	0.20	35.00	Prepare correspondence to Mr. Eldredge regarding same trial setting;
4424.001	07/08/2010	NGH	A	220	175.00	0.10	17.50	Prepare electronic correspondence to Mr. Eldredge regarding [REDACTED]
4424.001	07/09/2010	NGH	A	220	175.00	0.70	122.50	Prepare memorandum regarding litigation strategy;
4424.001	07/12/2010	JKW	A	80	225.00	0.30	67.50	Telephone conference with Charles Eldredge regarding status;
4424.001	07/12/2010	JRT	A	54	175.00	2.00	350.00	Review and analyze file in preparation for pre-trial motions and further handling;
4424.001	07/14/2010	BLV	A	374	100.00	0.10	10.00	Update witness materials for Charles Eldredge regarding schedule for 2011 trial;
4424.001	07/29/2010	BLV	A	374	100.00	0.20	20.00	Receive and review order setting trial and pretrial, order for preparation of jury instructions and verdict form, and proposed stipulation for scheduling and planning;
4424.001	07/29/2010	JRT	A	220	175.00	0.50	87.50	Prepare responses to plaintiff's third set of discovery requests;
4424.001	07/29/2010	JRT	A	220	175.00	2.50	437.50	Review and analysis of pleadings and legal authorities in preparation for drafting reply to motion to amend;
Subtotal for Fees					Billable	9.60	1,642.50	
4424.001	07/26/2010	NA	A	532	0.250		107.75	Photocopies/Images for the month of July (431 @ .25);
4424.001	07/29/2010	NA	A	531	0.500		2.50	Telecopy to Allen B. Ellis;
Subtotal for Expenses					Billable	0.00	110.25	
<b>Total for Statement Date 07/31/2010</b>					Billable	9.60	1,752.75	

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 08/31/2010</b>							
4424.001	08/03/2010	JRT	A	236	175.00	1.80	315.00 Review and analyze authorities cited in AMD's opposition, and authorities regarding contract and tort duties;
4424.001	08/03/2010	JRT	A	220	175.00	1.60	280.00 Prepare reply to opposition to motion to amend answer;
4424.001	08/12/2010	JRT	A	220	175.00	0.50	87.50 Preparation of opposition to motion to compel;
4424.001	08/12/2010	JRT	A	220	175.00	1.30	227.50 Finalize reply to plaintiff's opposition to motion to amend answer;
4424.001	08/16/2010	BLV	A	374	100.00	0.10	10.00 Receive and review correspondence from opposing counsel regarding loan payment due August 16, 2010;
4424.001	08/23/2010	JRT	A	80	175.00	0.20	35.00 Telephone conference with plaintiff's counsel regarding discovery motion;
4424.001	08/26/2010	BLV	A	374	100.00	0.10	10.00 Receive and review plaintiff notice of withdrawal of motion for order overruling certain discovery objections;
4424.001	08/26/2010	BLV	A	374	100.00	0.10	10.00 Receive and review plaintiff fourth supplemental discovery request;
4424.001	08/31/2010	JKW	A	80	225.00	0.20	45.00 Telephone conference with Charles Eldredge regarding settlement offer;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>5.90</b>	<b>1,020.00</b>
4424.001	08/02/2010	NA	A	531	0.500		3.50 Telecopy to Allen B. Ellis;
4424.001	08/03/2010	NA	A	531	0.500		2.00 Telecopy to Canyon County;
4424.001	08/18/2010	NA	A	531	0.500		2.00 Telecopy to Canyon County;
4424.001	08/18/2010	NA	A	531	0.500		2.00 Telecopy to Allen B. Ellis;
4424.001	08/18/2010	NA	A	531	0.500		2.50 Telecopy to Allen B. Ellis;
4424.001	08/18/2010	NA	A	531	0.500		2.50 Telecopy to Canyon County;
4424.001	08/18/2010	NA	A	531	0.500		4.00 Telecopy to Canyon County;
4424.001	08/18/2010	NA	A	531	0.500		4.00 Telecopy to Allen B. Ellis;
<b>Subtotal for Expenses</b>					<b>Billable</b>	<b>0.00</b>	<b>22.50</b>
<b>Total for Statement Date 08/31/2010</b>					<b>Billable</b>	<b>5.90</b>	<b>1,042.50</b>

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 10/05/2010</b>								
4424.001	09/01/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with plaintiff's attorney regarding monthly volume tallies;
4424.001	09/01/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with client regarding meeting;
4424.001	09/03/2010	JRT	A	220	175.00	0.50	87.50	Prepare for client meeting;
4424.001	09/03/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with plaintiff's attorney;
4424.001	09/07/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with C. Eldredge regarding discovery;
4424.001	09/07/2010	JRT	A	220	175.00	0.50	87.50	Prepare response to requests for production;
4424.001	09/09/2010	JRT	A	101	175.00	2.20	385.00	Argue motion to amend answer to complaint;
4424.001	09/09/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with client regarding hearing on motion to amend;
4424.001	09/09/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with plaintiff's counsel regarding monthly volume fees;
4424.001	09/10/2010	JRT	A	76	175.00	0.40	70.00	Telephone conference with C. Eldredge regarding monthly tallies, response to requests for production;
4424.001	09/10/2010	JRT	A	54	175.00	0.30	52.50	Receive and analyze documents from C. Eldredge for document production;
4424.001	09/10/2010	JRT	A	8	175.00	0.20	35.00	Conference with JKW;
4424.001	09/14/2010	JRT	A	80	175.00	0.30	52.50	Multiple telephone conferences with C. Eldredge regarding cost and acquisition of equipment;
4424.001	09/14/2010	JRT	A	80	175.00	0.30	52.50	Correspondence with C. Eldredge regarding documents for lease of equipment and monthly volume tallies;
4424.001	09/20/2010	BLV	A	374	100.00	0.10	10.00	Receive and review plaintiff settlement offer;
4424.001	09/20/2010	BLV	A	374	100.00	0.10	10.00	Receive and review order regarding defendant's motion for leave to amend its answer;
4424.001	09/20/2010	JRT	A	225	175.00	0.20	35.00	Receive and review order regarding motion to amend;
4424.001	09/20/2010	JRT	A	220	175.00	0.40	70.00	Prepare amended answer and counterclaim;
4424.001	09/20/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with client regarding hearing and volume tallies to plaintiff;
4424.001	09/22/2010	JRT	A	54	175.00	2.80	490.00	Receive and analyze demand from plaintiff's attorney and develop strategy for resolution;
4424.001	09/22/2010	JRT	A	8	175.00	0.30	52.50	Conference with JKW;
4424.001	09/24/2010	JKW	A	236	225.00	0.30	67.50	Review analysis memorandum and forward to Charles Eldredge;
4424.001	09/24/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with C. Eldredge regarding volume fees;
4424.001	09/27/2010	JKW	A	41	225.00	0.20	45.00	Office conference regarding response to client e-mail;
4424.001	09/27/2010	JRT	A	243	175.00	2.30	402.50	Receive and analyze contract, correspondence and discovery responses and develop plan for future handling and resolution;
4424.001	09/27/2010	JRT	A	8	175.00	0.20	35.00	Conference with JKW;
Subtotal for Fees					Billable	13.80	2,425.00	
4424.001	09/16/2010	NA	A	531	0.500		3.50	Telecopy to Allen B. Ellis;
4424.001	09/16/2010	NA	A	531	0.500		2.00	Telecopy to Canyon County;
4424.001	09/16/2010	NA	A	531	0.500		2.00	Telecopy to Allen B. Ellis;
4424.001	09/24/2010	NA	A	531	0.500		4.50	Telecopy to Canyon County;
4424.001	09/24/2010	NA	A	531	0.500		4.50	Telecopy to Allen B. Ellis;
Subtotal for Expenses					Billable	0.00	16.50	
<b>Total for Statement Date 10/05/2010</b>					Billable	13.80	2,441.50	



Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 11/04/2010</b>								
4424.001	10/04/2010	JKW	A	41	225.00	0.20	45.00	Office conference regarding trial preparation;
4424.001	10/04/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with client regarding conference;
4424.001	10/04/2010	JRT	A	220	175.00	1.70	297.50	Prepare action plan and budget;
4424.001	10/04/2010	JRT	A	54	175.00	0.50	87.50	Receive and analyze plaintiff's expert witness disclosure statement;
4424.001	10/04/2010	JRT	A	220	175.00	2.70	472.50	Receive and analyze documents;
4424.001	10/04/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with plaintiff's attorney regarding discovery responses;
4424.001	10/05/2010	JKW	A	221	225.00	2.00	450.00	Preparation for meeting with clients; Meeting with Charles and Scott Halladay regarding status of case; Receive and review letter from opposing counsel;
4424.001	10/05/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with plaintiff's attorney regarding discovery and depositions;
4424.001	10/05/2010	JRT	A	54	175.00	2.50	437.50	Receive and analyze documents produced by plaintiff;
4424.001	10/05/2010	JRT	A	208	175.00	1.70	297.50	Meeting with client regarding strategy and further handling;
4424.001	10/06/2010	JRT	A	54	175.00	2.50	437.50	Review and analyze documents from AMD
4424.001	10/06/2010	JRT	A	11	175.00	0.40	70.00	Correspondence with plaintiff's attorney regarding document production;
4424.001	10/07/2010	JRT	A	54	175.00	2.30	402.50	Receive and analyze documents from AMD and ICI;
4424.001	10/08/2010	JRT	A	54	175.00	5.30	927.50	Receive and analyze documents;
4424.001	10/08/2010	JRT	A	17	175.00	1.50	262.50	Investigation of whereabouts of B. Cary;
4424.001	10/08/2010	JRT	A	54	175.00	0.20	35.00	Receive and analyze plaintiff's response to counterclaim;
4424.001	10/08/2010	JRT	A	220	175.00	2.30	402.50	Prepare interrogatories and request for production of documents to plaintiff;
4424.001	10/08/2010	JRT	A	54	175.00	0.20	35.00	Correspondence with client regarding demand;
4424.001	10/11/2010	BLV	A	374	100.00	0.60	60.00	Conduct Internet search for updated contact information for William Cary;
4424.001	10/11/2010	JRT	A	11	175.00	0.30	52.50	Correspondence to plaintiff's attorney regarding discovery and depositions;
4424.001	10/11/2010	JRT	A	54	175.00	3.30	577.50	Receive and analyze documents provided by C. Eldredge;
4424.001	10/12/2010	BLV	A	374	100.00	0.70	70.00	Continued efforts to locate William E. Cary;
4424.001	10/12/2010	JRT	A	80	175.00	0.70	122.50	Telephone conference with C. Eldredge;
4424.001	10/12/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with plaintiff's attorney regarding discovery and depositions;
4424.001	10/12/2010	JRT	A	54	175.00	6.50	1,137.50	Receive and analyze reports, correspondence and other documents provided by ICI;
4424.001	10/13/2010	JKW	A	41	225.00	0.20	45.00	Office conference with JRT regarding litigation issues;
4424.001	10/13/2010	JRT	A	17	175.00	1.80	315.00	Locate B. Cary and leave voice message;
4424.001	10/13/2010	JRT	A	220	175.00	0.50	87.50	Prepare deposition notices for E. Fox, Dr. Miller, and AMD;
4424.001	10/14/2010	BLV	A	374	100.00	0.10	10.00	Update witness materials for William Cary to include updated contact information;
4424.001	10/14/2010	JRT	A	11	175.00	0.40	70.00	Correspondence to plaintiff's attorney regarding discovery and depositions;
4424.001	10/14/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with K. Hooper regarding case;
4424.001	10/14/2010	JRT	A	11	175.00	1.70	297.50	Expert discovery;
4424.001	10/14/2010	BLV	A	374	100.00	1.00	100.00	Assist with expert discovery;
4424.001	10/15/2010	JKW	A	80	225.00	0.30	67.50	Telephone conference with potential expert Ken Hooper;
4424.001	10/15/2010	JRT	A	208	175.00	0.30	52.50	Meeting with K. Hooper;
4424.001	10/15/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with plaintiff's attorney regarding discovery and depositions;
4424.001	10/15/2010	JRT	A	220	175.00	1.20	210.00	Receive and analyze client files and documents;
4424.001	10/18/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with plaintiff's attorney;
4424.001	10/18/2010	JRT	A	220	175.00	1.80	315.00	Document review and deposition preparation;
4424.001	10/19/2010	BLV	A	374	100.00	1.60	160.00	Review and analysis of additional records produced with supplemental response to defense discovery;
4424.001	10/19/2010	BLV	A	374	100.00	1.20	120.00	Assist with identification and preparation of

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 11/04/2010</b>							
							records for expert review by economic expert Ken Hooper;
4424.001	10/19/2010	JRT	A	80	175.00	0.20	35.00 Telephone conference with D. Duffey;
4424.001	10/19/2010	JRT	A	80	175.00	0.30	52.50 Telephone conference with B Kelley from Cobalt;
4424.001	10/19/2010	JRT	A	220	175.00	0.70	122.50 Prepare correspondence and exhibits for expert;
4424.001	10/19/2010	JRT	A	80	175.00	0.30	52.50 Telephone conference with D. Duffey;
4424.001	10/20/2010	BLV	A	374	100.00	0.20	20.00 Receive and review plaintiff expert disclosure and prepare expert witness materials for Bruce Zeilinger;
4424.001	10/20/2010	BLV	A	374	100.00	0.10	10.00 Receive and review plaintiff revised settlement offer;
4424.001	10/20/2010	BLV	A	374	100.00	0.10	10.00 Receive and review plaintiff reply to counterclaim and demand for jury trial;
4424.001	10/20/2010	BLV	A	374	100.00	3.10	310.00 Continued review and analysis of additional records and e-mails produced with supplemental response to defense discovery;
4424.001	10/20/2010	JRT	A	80	175.00	0.30	52.50 Telephone conference with B. Kelley;
4424.001	10/20/2010	JRT	A	54	175.00	1.30	227.50 Research regarding reimbursement statistics;
4424.001	10/21/2010	JRT	A	80	175.00	0.20	35.00 Telephone conference with A. Ellis
4424.001	10/21/2010	JRT	A	80	175.00	0.30	52.50 Telephone conference with C. Eldredge;
4424.001	10/21/2010	JRT	A	220	175.00	0.40	70.00 Prepare engagement letter to K. Hooper;
4424.001	10/25/2010	JRT	A	11	175.00	0.40	70.00 Correspondence to B. Cary;
4424.001	10/26/2010	JRT	A	80	175.00	0.20	35.00 Telephone conference with C. Eldredge;
4424.001	10/26/2010	JRT	A	208	175.00	0.40	70.00 Prepare for meeting with client;
4424.001	10/26/2010	JRT	A	11	175.00	0.20	35.00 Correspondence with plaintiff's attorney regarding depositions;
4424.001	10/26/2010	JRT	A	220	175.00	0.30	52.50 Prepare deposition notices for E. Fox and AMD;
4424.001	10/26/2010	JRT	A	220	175.00	0.50	87.50 Prepare stipulation regarding scheduling;
4424.001	10/26/2010	JRT	A	208	175.00	1.60	280.00 Meeting with client;
4424.001	10/26/2010	JRT	A	80	175.00	1.20	210.00 Telephone conference with B. Cary;
4424.001	10/26/2010	JRT	A	220	175.00	0.50	87.50 Prepare summary of conference with B. Cary;
4424.001	10/26/2010	JRT	A	220	175.00	0.30	52.50 Correspondence to client regarding status;
4424.001	10/26/2010	JRT	A	95	175.00	1.50	262.50 Begin preparation for examination of witnesses;
4424.001	10/26/2010	JKW	A	208	225.00	0.50	112.50 Meeting with ICI personnel and Rick Smith regarding status of case;
4424.001	10/27/2010	JRT	A	11	175.00	0.20	35.00 Correspondence with plaintiff's attorney regarding deposition of Dr. Miller;
4424.001	10/27/2010	JRT	A	220	175.00	0.30	52.50 Prepare deposition notices and stipulation for scheduling change;
4424.001	10/27/2010	JRT	A	80	175.00	0.30	52.50 Telephone conference with B. Cary;
4424.001	10/27/2010	JRT	A	8	175.00	0.20	35.00 Conference with JKW regarding depositions;
4424.001	10/27/2010	BLV	A	374	100.00	2.50	250.00 Organize and analyze voluminous AMD invoices regarding base and volume fees;
4424.001	10/28/2010	BLV	A	374	100.00	1.20	120.00 Continued organization and analysis of voluminous AMD invoices regarding base and volume fees;
4424.001	10/28/2010	JRT	A	220	175.00	1.30	227.50 Prepare for depositions of witnesses;
4424.001	10/29/2010	JRT	A	1	175.00	4.20	735.00 Prepare for depositions of Fox and Miller;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>72.10</b>	<b>11,847.50</b>
					<b>Non-billable</b>	<b>5.20</b>	<b>910.00</b>
					<b>Total</b>	<b>77.30</b>	<b>12,757.50</b>
4424.001	10/06/2010	NA	A	530			10.00 Messenger to Ellis, Brown & Sheils;
4424.001	10/06/2010	NA	A	530			10.00 Messenger to Ellis, Brown & Sheils;
4424.001	10/12/2010	NA	A	531	0.500		2.00 Telecopy to Canyon County;
4424.001	10/12/2010	NA	A	531	0.500		2.00 Telecopy to Allen B. Ellis;
4424.001	10/12/2010	NA	A	531	0.500		4.50 Telecopy to Allen B. Ellis;
4424.001	10/20/2010	NA	A	530			10.00 Messenger to Kenneth Hooper;
4424.001	10/26/2010	NA	A	532	0.250		195.75 Photocopies/Images for the month of October (783 @ .25);
4424.001	10/29/2010	NA	A	531	0.500		5.50 Telecopy to Canyon County;
4424.001	10/29/2010	NA	A	531	0.500		4.00 Telecopy to Associated Reporting;
4424.001	10/29/2010	NA	A	531	0.500		8.00 Telecopy to Allen B. Ellis;

**Detail Transaction File List**  
 HALL, FARLEY, OBERRECHT & BLANTON, P.A.

<u>Client</u>	<u>Trans Date</u>	<u>Tmkr</u>	<u>H P</u>	<u>Tcode/ Task Code</u>	<u>Rate</u>	<u>Hours to Bill</u>	<u>Amount</u>
<b>Statement Date 11/04/2010</b>							
Subtotal for Expenses					Billable	0.00	251.75
4424.001	10/26/2010	NA	A	510		5.54	Expenditure for certified mailing to Bill Lary; Paid to USPS;
4424.001	10/29/2010	NA	A	504		90.22	Westlaw access for research during period October 1, 2010 - October 31, 2010;
Subtotal for Advances					Billable	0.00	95.76
<b>Total for Statement Date 11/04/2010</b>					Billable	72.10	12,195.01
					Non-billable	5.20	910.00
					Total	77.30	13,105.01

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 11/30/2010</b>								
4424.001	11/01/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with C. Eldredge;
4424.001	11/01/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with K. Hooper;
4424.001	11/01/2010	JRT	A	277	175.00	2.50	437.50	Settlement negotiations with plaintiff;
4424.001	11/02/2010	BLV	A	374	100.00	0.10	10.00	Update Hooper expert witness materials regarding execution of formal retention;
4424.001	11/02/2010	JRT	A	11	175.00	0.30	52.50	Correspondence to clients regarding settlement negotiations;
4424.001	11/02/2010	JRT	A	54	175.00	0.20	35.00	Receive and analyze correspondence from C. Eldredge regarding teleradiology;
4424.001	11/02/2010	JRT	A	54	175.00	0.50	87.50	Receive and analyze teleradiology agreements;
4424.001	11/02/2010	JRT	A	54	175.00	0.80	140.00	Analyze potential claim against AMD based on teleradiology recommendations;
4424.001	11/02/2010	JRT	A	11	175.00	0.30	52.50	Correspondence to C. Eldredge regarding teleradiology;
4424.001	11/02/2010	JRT	A	220	175.00	1.30	227.50	Prepare for meeting with K. Hooper;
4424.001	11/02/2010	JRT	A	208	175.00	0.70	122.50	Meet with K. Hooper regarding assignment and exhibits;
4424.001	11/03/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with Ken Hooper;
4424.001	11/03/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with B. Carns;
4424.001	11/04/2010	JRT	A	80	175.00	0.20	35.00	Telephone conference with K. Hooper;
4424.001	11/04/2010	JRT	A	17	175.00	1.80	315.00	Research, study, and analysis of procedure for taking deposition in Nebraska;
4424.001	11/09/2010	JRT	A	220	175.00	1.50	262.50	Prepare for depositions and travel;
4424.001	11/09/2010	JRT	A	80	175.00	0.40	70.00	Telephone conference with C. Eldredge;
4424.001	11/09/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with C. Eldredge regarding reports;
4424.001	11/09/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with C. Eldredge regarding exhibits;
4424.001	11/09/2010	JRT	A	11	175.00	2.50	437.50	Prepare deposition checklist for deposition of E. Fox;
4424.001	11/10/2010	JRT	A	11	175.00	4.20	735.00	Continue preparation for depositions, including deposition checklist and exhibits;
4424.001	11/10/2010	JRT	A	220	175.00	3.20	560.00	Begin preparation of witness list, exhibit list, and statement of case;
4424.001	11/10/2010	JRT	A	54	175.00	1.50	262.50	Receive and analyze plaintiff's responses to written discovery;
4424.001	11/10/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with B. Cary regarding deposition;
4424.001	11/10/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with Court regarding pre-trial conference;
4424.001	11/10/2010	JRT	A	54	175.00	0.20	35.00	Receive and analyze discovery requests from plaintiff;
4424.001	11/11/2010	JKW	A	41	225.00	0.30	67.50	Office conference regarding trial preparation issues;
4424.001	11/11/2010	JRT	A	54	175.00	5.50	962.50	Receive and analyze over one hundred e-mails with multiple attachments, reports, and spreadsheets;
4424.001	11/11/2010	JRT	A	80	175.00	0.60	105.00	Telephone conference with B. Carns;
4424.001	11/12/2010	JKW	A	101	225.00	1.20	270.00	Attend deposition of Eric Fox; Meeting with client;
4424.001	11/12/2010	JRT	A	54	175.00	0.70	122.50	Receive and analyze documents provided by plaintiff;
4424.001	11/12/2010	JRT	A	268	175.00	6.80	1,190.00	Take deposition of Eric Fox;
4424.001	11/15/2010	JRT	A	80	175.00	0.20	35.00	Telephone conference with Court regarding pre-trial conference;
4424.001	11/15/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with A. Ellis regarding depositions and pre-trial conference;
4424.001	11/15/2010	JRT	A	220	175.00	2.50	437.50	Prepare for travel and depositions of Miller and Cary;
4424.001	11/16/2010	BLV	A	374	100.00	0.10	10.00	Receive and review order regarding modification of pretrial scheduling deadlines;
4424.001	11/16/2010	JRT	A	84	175.00	6.50	1,137.50	Travel to Wisconsin for deposition of Dr. Miller;
4424.001	11/16/2010	JRT	A	220	175.00	2.00	350.00	Prepare for deposition of Dr. Miller;
4424.001	11/17/2010	BLV	A	374	100.00	0.10	10.00	Update witness materials following deposition of Rule 30(b)(6) designee, Eric Fox;
4424.001	11/17/2010	JRT	A	268	175.00	2.50	437.50	Take deposition of Dr. Miller;
4424.001	11/17/2010	JRT	A	220	175.00	3.50	612.50	Prepare for deposition of B. Cary;
4424.001	11/17/2010	BLV	A	374	100.00	1.10	110.00	Assist with preparation of materials for

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 11/30/2010</b>							
4424.001	11/18/2010	JRT	A	84	175.00	7.00	1,225.00 November 18 deposition of Bill Cary;
4424.001	11/18/2010	JRT	A	268	175.00	2.50	437.50 Travel to Nebraska for deposition of B. Cary;
4424.001	11/18/2010	JRT	A	83	175.00	6.00	1,050.00 Take deposition of B. Cary;
4424.001	11/22/2010	BLV	A	374	100.00	0.20	20.00 Travel from Nebraska to Boise following depositions;
4424.001	11/22/2010	BLV	A	374	100.00	0.10	10.00 Update witness materials following deposition of Eric Fox;
4424.001	11/22/2010	BLV	A	374	100.00	3.10	310.00 Receive and review order rescheduling pretrial conference date;
4424.001	11/23/2010	BLV	A	374	100.00	1.30	130.00 Continued review and organization of voluminous ICI base and volume fee invoices, mailers, field notes provided by client;
4424.001	11/23/2010	BLV	A	374	100.00	2.30	230.00 Begin preparing defense trial exhibits;
4424.001	11/24/2010	JKW	A	80	225.00	0.20	45.00 Continued review and organization of voluminous ICI base and volume fee invoices, mailers, field notes provided by client;
4424.001	11/29/2010	BLV	A	374	100.00	1.30	130.00 Telephone conference with Ken Hooper regarding his report;
4424.001	11/29/2010	JRT	A	80	175.00	0.50	87.50 Additional preparation of defense trial exhibits;
4424.001	11/29/2010	JRT	A	80	175.00	0.20	35.00 Telephone conference with K. Hooper;
4424.001	11/29/2010	JRT	A	220	175.00	1.80	315.00 Telephone conference with C. Eldredge;
4424.001	11/29/2010	JRT	A	54	175.00	0.40	70.00 Continued preparation of pre-trial memorandum, witness list, and exhibit list;
4424.001	11/29/2010	JKW	A	63	225.00	1.30	292.50 Receive and analyze discovery from plaintiff;
4424.001	11/30/2010	BLV	A	374	100.00	0.10	10.00 Review and revise pretrial statement to the Court; Office conference regarding same;
4424.001	11/30/2010	BLV	A	374	100.00	0.60	60.00 Receive and review plaintiff's pretrial memorandum;
4424.001	11/30/2010	JRT	A	54	175.00	0.40	70.00 Begin preparation of defense trial notebook and update witness materials for trial;
4424.001	11/30/2010	JRT	A	54	175.00	0.10	17.50 Receive and analyze plaintiff's pretrial memorandum, witness list, and exhibit list;
4424.001	11/30/2010	JRT	A	220	175.00	1.50	262.50 Receive and analyze deposition notice for G. Bodily;
							Begin preparation of expert witness disclosure;
Subtotal for Fees					Billable	89.30	14,997.50
4424.001	11/02/2010	NA	A	531	0.500	1.00	1.00 Telecopy to Allen B. Ellis;
4424.001	11/03/2010	NA	A	531	0.500	2.50	2.50 Telecopy to Honorable Juneal Kerrick;
4424.001	11/08/2010	NA	A	531	0.500	3.50	3.50 Telecopy to Allen B. Ellis;
4424.001	11/10/2010	NA	A	531	0.500	1.00	1.00 Telecopy to Honorable Juneal Kerrick;
4424.001	11/15/2010	NA	A	531	0.500	3.00	3.00 Telecopy to Allen B. Ellis;
4424.001	11/15/2010	NA	A	531	0.500	3.00	3.00 Telecopy to Canyon County;
4424.001	11/15/2010	NA	A	531	0.500	3.00	3.00 Telecopy to Honorable Juneal Kerrick;
4424.001	11/15/2010	NA	A	531	0.500	3.00	3.00 Telecopy to Allen B. Ellis;
4424.001	11/16/2010	NA	A	531	0.500	3.50	3.50 Telecopy to Jeff Townsend;
4424.001	11/17/2010	NA	A	531	0.500	1.50	1.50 Telecopy to Jeff Townsend;
4424.001	11/17/2010	NA	A	531	0.500	6.50	6.50 Telecopy to Jeff Townsend;
4424.001	11/22/2010	NA	A	532	0.250	168.75	168.75 Photocopies/Images for the month of November (675 @ .25);
4424.001	11/29/2010	NA	A	531	0.500	9.50	9.50 Telecopy to Canyon County Court (19 pgs @ .50);
4424.001	11/29/2010	NA	A	531	0.500	9.50	9.50 Telecopy to Allen B. Ellis (19 pgs @ .50);
Subtotal for Expenses					Billable	0.00	219.25
4424.001	11/16/2010	JRT	A	500		591.20	591.20 Expenditure for airfare for JRT to Appleton, WI and Omaha, NE on 11/16 - 11/18/10; Check to Global Travel;
4424.001	11/16/2010	JRT	A	500		257.73	257.73 Expenditure for reimbursement for JRT for lodging while in Appleton, WI on 11/16 - 11/18/10 and auto rental while in Lincoln, NE on 11/18/10;
Subtotal for Advances					Billable	0.00	848.93

000102

**Detail Transaction File List**  
HALL, FARLEY, OBERRECHT & BLANTON, P.A.

<u>Client</u>	<u>Trans</u> <u>Date</u>	<u>Tmkr</u>	<u>H</u> <u>P</u>	<u>Tcode/</u> <u>Task Code</u>	<u>Rate</u>	<u>Hours</u> <u>to Bill</u>	<u>Amount</u>
Statement Date 11/30/2010							
Total for Statement Date 11/30/2010					Billable	89.30	16,065.68

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 12/31/2010</b>								
4424.001	12/01/2010	BLV	A	374	100.00	3.10	310.00	Continued preparation of defense trial exhibits regarding ICI reimbursement spreadsheets, financial class activity reports, charge type analysis reports, Cobalt billing analysis report, revised confidential AMD proposal to ICI and e-mails to and from Fox, Cary and Eldredge ;
4424.001	12/01/2010	BLV	A	374	100.00	0.30	30.00	Receive and review plaintiffs' answers to second interrogatories and requests for production and incorporate documents produced with response into existing e-mails relating to Cobalt;
4424.001	12/01/2010	BLV	A	374	100.00	0.10	10.00	Receive and review Court order regarding stipulation for modification of pretrial scheduling deadlines;
4424.001	12/01/2010	BLV	A	374	100.00	0.10	10.00	Update witness materials regarding receipt of Eric Fox deposition transcript;
4424.001	12/01/2010	BLV	A	374	100.00	0.20	20.00	Update defense trial notebook with amended exhibit list and statement of case;
4424.001	12/01/2010	JRT	A	80	175.00	0.30	52.50	Telephone conference with C. Eldredge regarding OnDemand and business association agreement;
4424.001	12/01/2010	JRT	A	80	175.00	0.20	35.00	Telephone conference with K. Hooper;
4424.001	12/01/2010	JRT	A	80	175.00	0.20	35.00	Telephone conference with B. Carns;
4424.001	12/01/2010	JRT	A	220	175.00	0.50	87.50	Prepare business association agreement;
4424.001	12/01/2010	JRT	A	11	175.00	0.30	52.50	Correspondence to K. Hooper;
4424.001	12/01/2010	JRT	A	220	175.00	1.50	262.50	Prepare motion for leave to file amended answer and counterclaim;
4424.001	12/02/2010	BLV	A	374	100.00	0.10	10.00	Receive and review stipulation requesting telephonic pretrial conference;
4424.001	12/02/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with plaintiff's attorney regarding pre-trial hearing;
4424.001	12/02/2010	JRT	A	54	175.00	0.20	35.00	Receive and analyze stipulation regarding pre-trial hearing;
4424.001	12/02/2010	JRT	A	80	175.00	0.10	17.50	Telephone conference with C. Eldredge;
4424.001	12/02/2010	JRT	A	220	175.00	2.20	385.00	Continue preparation of motion for leave to amend pleadings;
4424.001	12/02/2010	JRT	A	80	175.00	0.20	35.00	Telephone conference with B. Carns;
4424.001	12/02/2010	JRT	A	80	175.00	0.40	70.00	Multiple telephone conference with K. Hooper regarding expert report;
4424.001	12/02/2010	JRT	A	54	175.00	0.50	87.50	Receive and analyze K. Hooper's expert report;
4424.001	12/02/2010	JRT	A	220	175.00	1.80	315.00	Prepare expert witness disclosure;
4424.001	12/03/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with K. Hooper;
4424.001	12/06/2010	JRT	A	11	175.00	0.20	35.00	Correspondence to A. Ellis regarding mediation;
4424.001	12/08/2010	BLV	A	374	100.00	1.40	140.00	Review and evaluation of additional e-mails and spreadsheets for amended exhibit list;
4424.001	12/08/2010	JKW	A	41	225.00	0.20	45.00	Office conference with Jeff regarding mediation;
4424.001	12/08/2010	JRT	A	11	175.00	0.50	87.50	Multiple telephone conferences with A. Ellis regarding mediation and settlement;
4424.001	12/08/2010	JRT	A	11	175.00	0.30	52.50	Correspondence with R. Schilling regarding mediation;
4424.001	12/08/2010	JRT	A	11	175.00	0.20	35.00	Correspondence with C. Eldredge regarding mediation;
4424.001	12/08/2010	JRT	A	178	175.00	3.50	612.50	Preparation of exhibits;
4424.001	12/09/2010	BLV	A	374	100.00	0.30	30.00	Assist with preparation of materials for Eldredge deposition;
4424.001	12/09/2010	BLV	A	374	100.00	2.80	280.00	Assist with preparation of materials responsive to plaintiff's fifth supplemental discovery requests;
4424.001	12/09/2010	JRT	A	220	175.00	3.20	560.00	Preparation of discovery responses;
4424.001	12/10/2010	JKW	A	570	225.00	0.30	67.50	Deposition preparation meeting with Charles Eldredge;
4424.001	12/10/2010	JRT	A	207	175.00	3.00	525.00	Meet with C. Eldredge in preparation for mediation;
4424.001	12/11/2010	JRT	A	220	175.00	4.50	787.50	Receive and analyze documents in preparation for producing documents to plaintiff;
4424.001	12/13/2010	BLV	A	374	100.00	1.90	190.00	Further review and analysis of extensive

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 12/31/2010</b>							
4424.001	12/13/2010	BLV	A	374	100.00	0.10	10.00 additional emails from Charles Eldredge; Receive and review plaintiff's memorandum in opposition to defendant's second motion to amend complaint and affidavit in support of memorandum;
4424.001	12/13/2010	BLV	A	374	100.00	0.80	80.00 Continued review and evaluation of additional e-mails and spreadsheets for amended exhibit list;
4424.001	12/13/2010	JRT	A	220	175.00	1.00	175.00 Prepare for C. Eldredge deposition;
4424.001	12/13/2010	JRT	A	570	175.00	3.00	525.00 Deposition of C. Eldredge;
4424.001	12/13/2010	JRT	A	570	175.00	0.80	140.00 Receive and analyze documents from client in reponse to plaintiff's document request;
4424.001	12/14/2010	JRT	A	570	175.00	0.70	122.50 Preparation for deposition of B. Carns;
4424.001	12/17/2010	JRT	A	76	175.00	0.50	87.50 Multiple telephone conferences, and e-mail exchanges, with counsel to B. Carns regarding business association agreement and/or deposition;
4424.001	12/21/2010	BLV	A	374	100.00	0.30	30.00 Update witness materials regarding receipt of deposition transcripts and exhibits for William Cary, Marc Miller and Eric Fox;
4424.001	12/21/2010	JRT	A	101	175.00	1.90	332.50 Attend hearing on motion to amend counterclaim;
4424.001	12/21/2010	JRT	A	11	175.00	0.20	35.00 Correspondence with client regarding hearing and new trial date;
4424.001	12/21/2010	JRT	A	11	175.00	0.20	35.00 Correspondence with K. Hooper regarding new trial date;
4424.001	12/21/2010	JRT	A	11	175.00	0.40	70.00 Correspondence and telephone conferences with counsel for B. Carns regarding new trial date, and vacating deposition;
4424.001	12/22/2010	JRT	A	11	175.00	0.30	52.50 Telephone conference with plaintiff's attorney regarding mediation and discovery;
4424.001	12/27/2010	JRT	A	80	175.00	0.30	52.50 Telephone conference with C. Eldredge regarding status;
4424.001	12/28/2010	JRT	A	220	175.00	4.50	787.50 Prepare mediation statement;
4424.001	12/29/2010	JRT	A	220	175.00	4.40	770.00 Continue preparation of mediation statement;
4424.001	12/30/2010	JRT	A	220	175.00	2.20	385.00 Complete preparation of mediation statement;
4424.001	12/30/2010	JKW	A	63	225.00	0.80	180.00 Review and revise mediation agreement;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>57.40</b>	<b>9,247.50</b>
4424.001	12/02/2010	NA	A	531	0.500		2.00 Telecopy to Allen B. Ellis;
4424.001	12/02/2010	NA	A	531	0.500		9.00 Telecopy to Canyon County;
4424.001	12/02/2010	NA	A	531	0.500		9.00 Telecopy to Allen B. Ellis;
4424.001	12/03/2010	NA	A	531	0.500		5.50 Telecopy to Canyon County;
4424.001	12/06/2010	NA	A	531	0.500		1.50 Telecopy to Canyon County;
4424.001	12/06/2010	NA	A	531	0.500		1.50 Telecopy to Honorable Juneal Kerrick;
4424.001	12/06/2010	NA	A	531	0.500		1.50 Telecopy to Allen B. Ellis;
4424.001	12/14/2010	NA	A	531	0.500		1.50 Telecopy to Canyon County;
4424.001	12/14/2010	NA	A	531	0.500		3.00 Telecopy to Allen B. Ellis;
4424.001	12/15/2010	NA	A	531	0.500		3.00 Telecopy to Canyon County;
4424.001	12/15/2010	NA	A	531	0.500		3.00 Telecopy to Allen B. Ellis;
4424.001	12/15/2010	NA	A	531	0.500		3.00 Telecopy to Associated Reporting;
4424.001	12/24/2010	NA	A	532	0.250		655.00 Photocopies/Images for the month of December 2010 (2620 pages @ .25);
<b>Subtotal for Expenses</b>					<b>Billable</b>	<b>0.00</b>	<b>698.50</b>
4424.001	12/19/2010	NA	A	500			49.00 Expenditure for process service upon Bonnie Carns; Check to Tri-County Process Serving;
<b>Subtotal for Advances</b>					<b>Billable</b>	<b>0.00</b>	<b>49.00</b>
<b>Total for Statement Date 12/31/2010</b>					<b>Billable</b>	<b>57.40</b>	<b>9,995.00</b>



Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 01/31/2011</b>							
4424.001	01/03/2011	JRT	A	220	175.00	1.30	227.50 Prepare mediation statement;
4424.001	01/03/2011	JRT	A	80	175.00	0.20	35.00 Telephone conference with counsel regarding depositions;
4424.001	01/03/2011	JRT	A	220	175.00	0.40	70.00 Prepare stipulation for scheduling and planning;
4424.001	01/03/2011	JRT	A	11	175.00	0.50	87.50 Correspondence with plaintiff attorney regarding scheduling order and discovery;
4424.001	01/04/2011	JKW	A	361	225.00	0.20	45.00 E-mails to and from Charles Eldredge regarding advertising by IDTF;
4424.001	01/04/2011	JRT	A	11	175.00	0.20	35.00 Correspondence with plaintiff's attorney regarding discovery and scheduling order;
4424.001	01/06/2011	BLV	A	374	100.00	0.20	20.00 Update witness materials regarding receipt of deposition transcripts and exhibits for Eric Fox, Charles Eldredge;
4424.001	01/10/2011	JRT	A	220	175.00	1.70	297.50 Preparation for mediation;
4424.001	01/11/2011	JRT	A	101	175.00	7.00	1,225.00 Participate in mediation;
4424.001	01/12/2011	JRT	A	17	175.00	2.70	472.50 Research, study, and analysis of Idaho case law regarding revocation and reformation;
4424.001	01/12/2011	JRT	A	54	175.00	1.80	315.00 Receive and analyze deposition transcripts of E. Fox, M. Miller, and B. Cary with respect to issues of revocation and reformation;
4424.001	01/12/2011	JRT	A	11	175.00	0.20	35.00 Correspondence to A. Ellis regarding discovery;
4424.001	01/12/2011	JRT	A	80	175.00	0.30	52.50 Telephone conference with A. Ellis regarding AGR, documents used to calculate AGR, and confidential records;
4424.001	01/12/2011	JRT	A	76	175.00	0.20	35.00 Telephone conference with C. Eldredge regarding changing password on dashboard;
4424.001	01/18/2011	JRT	A	220	175.00	0.80	140.00 Prepare discovery responses to plaintiff;
4424.001	01/18/2011	JRT	A	220	175.00	2.00	350.00 Continue preparation of purchase agreement, shareholder agreement, and employment agreements;
4424.001	01/20/2011	JRT	A	11	175.00	0.20	35.00 Correspondence with plaintiff's attorney regarding depositions;
4424.001	01/20/2011	JRT	A	11	175.00	0.20	35.00 Correspondence with client regarding depositions;
4424.001	01/21/2011	JRT	A	11	175.00	0.10	17.50 Correspondence with client regarding depositions;
4424.001	01/27/2011	JRT	A	11	175.00	0.30	52.50 Correspondence with plaintiff's counsel regarding discovery and trial;
4424.001	01/27/2011	JRT	A	11	175.00	0.20	35.00 Correspondence with client regarding depositions;
4424.001	01/28/2011	JRT	A	225	175.00	0.20	35.00 Receive and review discovery from plaintiff;
4424.001	01/28/2011	JRT	A	11	175.00	0.20	35.00 Correspondence with client regarding depositions;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>21.10</b>	<b>3,687.50</b>
4424.001	01/21/2011	NA	A	531	0.500		2.50 Telecopy to Canyon County;
4424.001	01/21/2011	NA	A	531	0.500		2.50 Telecopy to Honorable Juneal Kerrick;
4424.001	01/21/2011	NA	A	531	0.500		2.50 Telecopy to Allen B. Ellis;
4424.001	01/24/2011	NA	A	532	0.250		62.25 Photocopies/Images for the month of January (249 @ .25);
<b>Subtotal for Expenses</b>					<b>Billable</b>	<b>0.00</b>	<b>69.75</b>
4424.001	01/11/2011	NA	A	525			44.00 Petty cash expenditure for lunch for mediation participants;
4424.001	01/31/2011	NA	A	504			94.05 Westlaw access for research during period January 1, 2011 - January 31, 2011;
<b>Subtotal for Advances</b>					<b>Billable</b>	<b>0.00</b>	<b>138.05</b>
<b>Total for Statement Date 01/31/2011</b>					<b>Billable</b>	<b>21.10</b>	<b>3,895.30</b>

**000106**

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 02/28/2011</b>								
4424.001	02/01/2011	JRT	A	11	175.00	0.30	52.50	Correspondence with A. Ellis regarding discovery;
4424.001	02/01/2011	JRT	A	54	175.00	0.50	87.50	Receive and analyze plaintiff's motion to file amended complaint;
4424.001	02/02/2011	BLV	A	374	100.00	0.20	20.00	Prepare witness materials for February 15, 2011 deposition of Greg Clark;
4424.001	02/08/2011	BLV	A	374	100.00	0.10	10.00	Receive and review correspondence from court reporter regarding Eldredge failure to sign deposition verification page;
4424.001	02/09/2011	BLV	A	374	100.00	0.30	30.00	Prepare materials for February 14, 2011 deposition preparation conference with Greg Clark;
4424.001	02/11/2011	JRT	A	220	175.00	1.80	315.00	Prepare for conference with G. Clark and C. Eldredge;
4424.001	02/14/2011	BLV	A	61	100.00	6.00	600.00	Review and analyze voluminous e-mails relating to Greg Clark from 2008 through 2010, removing unrelated content in preparation for February 15, 2011 deposition;
4424.001	02/14/2011	JRT	A	9	175.00	2.40	420.00	Conference with G. Clark and C. Eldredge to prepare for deposition;
4424.001	02/15/2011	BLV	A	374	100.00	2.60	260.00	Continue review and analysis of voluminous e-mails relating to Greg Clark from 2008 through 2010 for use as exhibits for deposition;
4424.001	02/15/2011	JRT	A	150	175.00	2.30	402.50	Attend deposition of G. Clark;
4424.001	02/15/2011	JRT	A	54	175.00	0.50	87.50	Receive and analyze plaintiff's motion to compel discovery responses;
4424.001	02/23/2011	JRT	A	220	175.00	1.60	280.00	Prepare for deposition of J. Mellinger;
4424.001	02/23/2011	JRT	A	54	175.00	1.70	297.50	Review and analyze monthly billing reports pertaining to average global reimbursement;
4424.001	02/24/2011	JRT	A	150	175.00	1.70	297.50	Attend deposition of J. Mellinger;
4424.001	02/25/2011	JRT	A	220	175.00	3.20	560.00	Prepare opposition to motion to compel;
Subtotal for Fees					Billable	<u>25.20</u>	<u>3,720.00</u>	
4424.001	02/22/2011	NA	A	532	0.250		97.75	Photocopies/Images for the month of February (391 @ .25);
Subtotal for Expenses					Billable	<u>0.00</u>	<u>97.75</u>	
<b>Total for Statement Date 02/28/2011</b>					Billable	<u>25.20</u>	<u>3,817.75</u>	

000107

**Detail Transaction File List**  
 HALL, FARLEY, OBERRECHT & BLANTON, P.A.

Client	Trans Date	Tmkr	H Tcode/ P Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 03/31/2011</b>							
4424.001	03/03/2011	JRT	A 11	175.00	0.40	70.00	Receive and respond to correspondence from Allen Ellis regarding discovery;
4424.001	03/08/2011	BLV	A 374	100.00	0.20	20.00	Update witness materials following receipt of deposition transcript and Exhibit 1 for Julie Mellinger;
4424.001	03/09/2011	JRT	A 220	175.00	1.60	280.00	Prepare for hearing on motion to compel and motion to amend complaint;
4424.001	03/10/2011	JRT	A 101	175.00	2.30	402.50	Attend hearing on motion to compel and motion to amend complaint;
4424.001	03/16/2011	JRT	A 220	175.00	0.30	52.50	Prepare discovery to plaintiff's regarding costs;
4424.001	03/18/2011	JRT	A 17	175.00	2.20	385.00	Research, study, and analysis of STARK regulations;
4424.001	03/21/2011	JRT	A 220	175.00	1.20	210.00	Prepare supplemental responses to discovery;
4424.001	03/21/2011	JRT	A 220	175.00	0.20	35.00	Prepare response to amended complaint;
4424.001	03/21/2011	JRT	A 220	175.00	1.50	262.50	Locate and prepare documents for production to plaintiff;
4424.001	03/22/2011	BLV	A 374	100.00	0.10	10.00	Receive and review order compelling discovery, and order granting motion for leave to file first amended complaint;
4424.001	03/22/2011	JRT	A 220	175.00	1.50	262.50	Complete preparation of supplemental discovery and document production;
4424.001	03/23/2011	BLV	A 374	100.00	0.10	10.00	Receive and review plaintiff amended complaint;
4424.001	03/23/2011	BLV	A 374	100.00	4.00	400.00	Assist with preparation of voluminous spreadsheets for production to plaintiff (HFOB 1-537);
4424.001	03/24/2011	BLV	A 374	100.00	3.40	340.00	Review status of plaintiff and defense discovery responses for purposes of identifying outstanding or supplemental responses needed;
4424.001	03/24/2011	BLV	A 374	100.00	3.50	350.00	Review defense proposed trial exhibits for purposes of verifying prior production to plaintiff of all proposed exhibits;
4424.001	03/24/2011	JKW	A 208	225.00	0.80	180.00	Transition meeting;
4424.001	03/24/2011	RLS	A 236	175.00	4.00	700.00	Review file materials, complaint, amended complaint and answer to amended complaint; attend meeting with litigation team regarding transferring case and organization of file and records; analyze issues regarding reorganization of documents and strategy for moving forward;
4424.001	03/25/2011	RLS	A 236	175.00	7.00	1,225.00	Review all pleadings and Court orders, including discovery responses; Analyze issues regarding claim made in counterclaim; Analyze issues regarding witnesses and begin reviewing deposition transcript of Eric Fox;
4424.001	03/26/2011	RLS	A 10	175.00	1.50	262.50	Continue reviewing deposition transcript of Eric Fox;
4424.001	03/29/2011	RLS	A 189	175.00	3.00	525.00	Finish reviewing deposition transcript of Eric Fox and deposition exhibits;
4424.001	03/30/2011	RLS	A 236	175.00	2.00	350.00	Review deposition transcript of Dr. Miller;
4424.001	03/30/2011	RLS	A 80	175.00	0.10	17.50	Telephone conference with Charles Eldredge regarding meeting to discuss case;
4424.001	03/30/2011	RLS	A 80	175.00	0.10	17.50	Telephone conference with AMD's attorney regarding substituting as counsel for JRT;
4424.001	03/30/2011	RLS	A 236	175.00	2.80	490.00	Review deposition transcript of William Cary and deposition exhibits;
4424.001	03/31/2011	RLS	A 236	175.00	2.00	350.00	Review deposition transcript of Charles Eldredge and attached depositions;
4424.001	03/31/2011	RLS	A 236	175.00	1.00	175.00	Review deposition transcript of Greg Clark and attached exhibits;
4424.001	03/31/2011	RLS	A 236	175.00	1.00	175.00	Review deposition transcript of Julie Mellinger;
<b>Subtotal for Fees</b>				<b>Billable</b>	<b>22.50</b>	<b>3,090.00</b>	
				<b>Non-billable</b>	<b>25.30</b>	<b>4,467.50</b>	
				<b>Total</b>	<b>47.80</b>	<b>7,557.50</b>	

Client	Trans Date	Tmkr	H Tcode/ P Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 03/31/2011</b>						
4424.001	03/02/2011	NA	A 531	0.500	6.00	Telecopy to Canyon County;
4424.001	03/02/2011	NA	A 531	0.500	6.00	Telecopy to Allen B. Ellis;
4424.001	03/18/2011	NA	A 531	0.500	2.00	Telecopy to Canyon County;
4424.001	03/18/2011	NA	A 531	0.500	2.00	Telecopy to Allen B. Ellis;
4424.001	03/18/2011	NA	A 531	0.500	3.50	Telecopy to Allen B. Ellis;
4424.001	03/18/2011	NA	A 531	0.500	3.50	Telecopy to Allen B. Ellis;
4424.001	03/22/2011	NA	A 532	0.250	262.50	Photocopies/Images for the month of March 2011 (1050 @ .25);
4424.001	03/23/2011	NA	A 531	0.500	3.50	Telecopy to Canyon County;
4424.001	03/23/2011	NA	A 531	0.500	3.50	Telecopy to Allen B. Ellis;
4424.001	03/23/2011	NA	A 531	0.500	1.50	Telecopy to Canyon County;
4424.001	03/23/2011	NA	A 531	0.500	1.50	Telecopy to Allen B. Ellis;
4424.001	03/23/2011	NA	A 531	0.500	1.50	Telecopy to Canyon County;
4424.001	03/23/2011	NA	A 531	0.500	1.50	Telecopy to Allen B. Ellis;
4424.001	03/23/2011	NA	A 530		10.00	Messenger to Allen B. Ellis;
4424.001	03/24/2011	NA	A 531	0.500	5.00	Telecopy to Canyon County;
4424.001	03/24/2011	NA	A 531	0.500	5.00	Telecopy to Allen B. Ellis;
Subtotal for Expenses				Billable	0.00	318.50
<b>Total for Statement Date 03/31/2011</b>				Billable	22.50	3,408.50
				Non-billable	25.30	4,467.50
				Total	47.80	7,876.00

000109

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 04/30/2011</b>							
4424.001	04/01/2011	RLS	A	95	175.00	2.30	402.50 Analyze issues regarding the universe of documents produced in this case, which ones have been produced, which ones have been withheld, which ones still need to be source coded, and putting all documents in chronological order;
4424.001	04/01/2011	RLS	A	189	175.00	0.50	87.50 Finish reviewing deposition transcript of Julie Mellinger;
4424.001	04/04/2011	BLV	A	374	100.00	7.00	700.00 Continued review and analysis of voluminous e-mails from Eldredge for purposes of verifying production to plaintiff prior to discovery cutoff;
4424.001	04/04/2011	RLS	A	207	175.00	0.50	87.50 Meet with BLV, KAT and LAE regarding document organization, source coding remaining documents, and preparing chronological document binders;
4424.001	04/04/2011	RLS	A	236	175.00	1.20	210.00 Review and analyze documents produced by AMD;
4424.001	04/04/2011	RLS	A	135	175.00	1.50	262.50 Research Idaho case law regarding mutual mistake of fact;
4424.001	04/04/2011	RLS	A	95	175.00	1.40	245.00 Analyze claims and defenses;
4424.001	04/05/2011	RLS	A	10	175.00	6.20	1,085.00 Continue reviewing and analyzing documents, claims and defenses;
4424.001	04/05/2011	CJF	A	374	100.00	2.00	200.00 QC all images; Format spreadsheets;
4424.001	04/06/2011	BLV	A	374	100.00	9.80	980.00 Continued comprehensive review of e-mails for purposes of verifying production to plaintiff and cross referencing with e-mails produced by plaintiff;
4424.001	04/06/2011	RLS	A	91	175.00	2.20	385.00 Begin reviewing e-mails between the parties and developing a timeline of events;
4424.001	04/06/2011	BLV	A	374	100.00	0.40	40.00 Continued review and analysis of voluminous e-mails from Eldredge for purposes of verifying production to plaintiff prior to discovery cutoff;
4424.001	04/07/2011	BLV	A	374	100.00	1.30	130.00 Perform comparison analysis of MRI and CT forecasts and billing analysis reports for purposes of identifying differences and most current reports;
4424.001	04/08/2011	RLS	A	207	175.00	3.90	682.50 Meet with Charles Eldredge, Dr. Johnson, and Scott Halladay at ICI in Caldwell to discuss facts and trial strategy;
4424.001	04/08/2011	RLS	A	10	175.00	2.00	350.00 Continue reviewing e-mail correspondence between the parties and preparing timeline of events;
4424.001	04/09/2011	RLS	A	10	175.00	5.80	1,015.00 Continue reviewing e-mail correspondence between the parties and preparing a timeline of events;
4424.001	04/10/2011	RLS	A	10	175.00	5.80	1,015.00 Continue reviewing e-mails between the parties and preparing timeline of events;
4424.001	04/11/2011	BLV	A	374	100.00	0.80	80.00 Assist with preparation of timeline of events;
4424.001	04/11/2011	RLS	A	10	175.00	7.50	1,312.50 Continue reviewing e-mails between the parties and preparing timeline of events;
4424.001	04/12/2011	RLS	A	236	175.00	2.50	437.50 Review correspondence boards;
4424.001	04/13/2011	BLV	A	374	100.00	4.10	410.00 Begin identification of materials for reference during trial and preparation of trial notebook;
4424.001	04/13/2011	RLS	A	135	175.00	1.00	175.00 Research Idaho case law regarding measure of damages for partially performed service contract;
4424.001	04/13/2011	RLS	A	80	175.00	0.10	17.50 Telephone conference with Bonnie Carns at OnDemand regarding involvement with Advanced Medical Diagnostics and documents prepared by OnDemand;
4424.001	04/13/2011	RLS	A	80	175.00	0.10	17.50 Telephone conference with Brian Kelly at Cobalt Health regarding reviewing of OnDemand's work and reports for average global reimbursement;
4424.001	04/13/2011	RLS	A	80	175.00	0.30	52.50 Telephone conference with Ken Hooper regarding sufficiency of information received and initial opinions;

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date</b> 04/30/2011								
4424.001	04/13/2011	RLS	A	80	175.00	0.10	17.50	Telephone conference with plaintiff's attorney regarding Advanced Medical Diagnostics' request for 10 day extension of time to respond to latest discovery requests;
4424.001	04/13/2011	RLS	A	236	175.00	0.20	35.00	Review and analyze Ken Hooper's expert report;
4424.001	04/13/2011	RLS	A	95	175.00	2.50	437.50	Analyze previous discovery between the parties to determine whether additional discovery requests need to be propounded;
4424.001	04/13/2011	RLS	A	220	175.00	0.80	140.00	Prepare Imaging Center of Idaho's fourth set of interrogatories and requests for production of documents;
4424.001	04/14/2011	RLS	A	188	175.00	0.20	35.00	Final preparation of defendant's fourth set of interrogatories and requests for production of documents;
4424.001	04/14/2011	RLS	A	220	175.00	0.20	35.00	Prepare letter to plaintiff's attorney regarding defendant's fourth set of discovery requests, willingness to sign a non-disclosure/confidentiality agreement, and stipulating to filing deadline for motions in limine;
4424.001	04/14/2011	RLS	A	236	175.00	0.10	17.50	Review plaintiff's reply to defendant's amended counterclaim;
4424.001	04/15/2011	RLS	A	236	175.00	3.50	612.50	Review plaintiff's invoices and analyze issues regarding plaintiff's potential damages and begin preparing spreadsheets for damage calculations;
4424.001	04/18/2011	RLS	A	220	175.00	0.10	17.50	Prepare and review electronic correspondence with expert Ken Hooper regarding meeting to discuss his report;
4424.001	04/18/2011	RLS	A	95	175.00	1.20	210.00	Analyze issues regarding plaintiff's costs to perform services under the agreement;
4424.001	04/18/2011	RLS	A	236	175.00	0.10	17.50	Review and analyze plaintiff's answers to third set of interrogatories and requests for production;
4424.001	04/18/2011	RLS	A	95	175.00	0.50	87.50	Analyze issues regarding payer information plaintiff used to calculate average global reimbursement;
4424.001	04/18/2011	RLS	A	95	175.00	0.80	140.00	Analyze issues regarding revising and filing new statement of the case to the Court;
4424.001	04/18/2011	RLS	A	95	175.00	5.50	962.50	Analyze issues regarding and prepare spreadsheets for plaintiff's potential damages;
4424.001	04/18/2011	RLS	A	220	175.00	0.10	17.50	Prepare and review electronic correspondence with Charles Eldredge and Scot Halladay regarding plaintiff's costs and updated MR and CT volume data;
4424.001	04/19/2011	RLS	A	80	175.00	0.20	35.00	Telephone conference with plaintiff's attorney regarding outstanding discovery issues and providing plaintiff's costs for performing the program for defendant;
4424.001	04/19/2011	RLS	A	220	175.00	0.50	87.50	Prepare defendant's statement of the case;
4424.001	04/19/2011	RLS	A	236	175.00	0.40	70.00	Review and analyze plaintiff's trial brief;
4424.001	04/19/2011	RLS	A	236	175.00	0.20	35.00	Review and analyze plaintiff's witness and exhibit list;
4424.001	04/19/2011	RLS	A	220	175.00	0.20	35.00	Prepare defendant's amended witness list;
4424.001	04/19/2011	RLS	A	220	175.00	1.50	262.50	Prepare defendant's amended exhibit list;
4424.001	04/20/2011	RLS	A	10	175.00	1.50	262.50	Continue preparing amended exhibit list;
4424.001	04/20/2011	RLS	A	220	175.00	0.20	35.00	Prepare and review documents, plaintiff's damage calculations, and whether plaintiff will stipulate to dismissing defendant's breach of contract claim related to the "site preparation" clause;
4424.001	04/20/2011	RLS	A	236	175.00	1.00	175.00	Review and analyze plaintiff's proposed exhibits and whether any objections apply to their admissibility;
4424.001	04/20/2011	RLS	A	220	175.00	0.10	17.50	Prepare electronic correspondence to plaintiff's attorney requesting clarification on certain trial exhibits;
4424.001	04/20/2011	RLS	A	135	175.00	0.50	87.50	Research information regarding plaintiff's

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 04/30/2011</b>							
4424.001	04/21/2011	BLV	A	374	100.00	0.10	10.00 references; Receive and review plaintiff's answers to third set of interrogatories and requests for production;
4424.001	04/21/2011	RLS	A	77	175.00	0.10	17.50 Telephone conference with Erik Fox regarding Advanced Medical Diagnostics;
4424.001	04/21/2011	RLS	A	77	175.00	0.10	17.50 Telephone conference with Mike Anderson regarding Advanced Medical Imaging;
4424.001	04/21/2011	RLS	A	77	175.00	0.10	17.50 Telephone conference with Benewah Community Hospital regarding Advanced Medical Diagnostics;
4424.001	04/21/2011	RLS	A	80	175.00	0.10	17.50 Telephone conference with Denise Christopherson at Avera Marshall Regional Medical Center regarding Advanced Medical Diagnostics;
4424.001	04/21/2011	RLS	A	77	175.00	0.10	17.50 Telephone conference with Bob Dailey at Black River Memorial Hospital regarding Advanced Medical Diagnostics;
4424.001	04/21/2011	RLS	A	80	175.00	0.30	52.50 Telephone conference with OnDemand's attorney regarding scheduling meeting with Bonnie Carns to discuss conversations with and documents prepared for Imaging Center of Idaho and Advanced Medical Diagnostics;
4424.001	04/21/2011	RLS	A	77	175.00	0.10	17.50 Telephone conference with Brian Kelly at Cobalt Health regarding review of OnDemand's work and calculations of average global reimbursement;
4424.001	04/21/2011	RLS	A	220	175.00	0.20	35.00 Prepare electronic correspondence to Charles Eldredge and Scot Halladay regarding obtaining updated volume information, calculations that support position Imaging Center of Idaho would not have entered agreement with Advanced Medical Diagnostics knowing true average global reimbursement, and update on obtaining Advanced Medical Diagnostics' cost information;
4424.001	04/21/2011	RLS	A	10	175.00	0.60	105.00 Continue reviewing correspondence;
4424.001	04/21/2011	RLS	A	91	175.00	1.30	227.50 Begin preparing jury instructions;
4424.001	04/21/2011	RLS	A	236	175.00	0.80	140.00 Review transcript of telephone conversation between Jeff Townsend and Bill Cary;
4424.001	04/21/2011	RLS	A	95	175.00	1.50	262.50 Analyze Bill Cary's deposition testimony and foundation for exhibits used in preparation for meeting with Bonnie Carns and for trial;
4424.001	04/21/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to OnDemand's attorney requesting Bonnie Carns to search for any e-mails between Imaging Center of Idaho or Advanced Medical Diagnostics;
4424.001	04/22/2011	RLS	A	80	175.00	0.30	52.50 Telephone conference with Mike Anderson, former CFO of Benewah Community Hospital regarding Advanced Medical Diagnostics;
4424.001	04/22/2011	RLS	A	80	175.00	0.60	105.00 Telephone conference with Brian Kelly from Cobalt regarding work for Imaging Center of Idaho and how average reimbursement is calculated and posted on dashboard;
4424.001	04/22/2011	RLS	A	236	175.00	0.50	87.50 Review and prepare electronic correspondence with plaintiff's attorney regarding our contact with plaintiff's past and present clients;
4424.001	04/22/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to Charles Eldredge regarding correspondence with plaintiff's attorney regarding our contact with plaintiff's past and present clients;
4424.001	04/22/2011	RLS	A	220	175.00	0.10	17.50 Prepare stipulation to dismiss Count I of defendant's counterclaim;
4424.001	04/23/2011	RLS	A	10	175.00	2.50	437.50 Continue analyzing Bill Cary's deposition testimony and foundation for exhibits used in preparation for meeting with Bonnie Carns and for trial;
4424.001	04/23/2011	RLS	A	236	175.00	1.50	262.50 Review videotaped deposition of Bill Cary to

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 04/30/2011</b>							
4424.001	04/23/2011	RLS	A	236	175.00	0.10	17.50 analyze use of video for trial; Review electronic correspondence from plaintiff's attorney regarding plaintiff's re-inventorying the pre-litigation e-mail and providing new set of trial exhibits;
4424.001	04/24/2011	RLS	A	236	175.00	2.00	350.00 Review and identify documents and spreadsheets to discuss with Bonnie Carns;
4424.001	04/25/2011	BLV	A	374	100.00	0.10	10.00 Receive and review correspondence from Judge Kerrick regarding pretrial deadlines;
4424.001	04/25/2011	BLV	A	374	100.00	0.40	40.00 Prepare correspondence to Eldgredge, Halladay, Ken Hooper and Dr. Johnson regarding availability for trial;
4424.001	04/25/2011	BLV	A	374	100.00	6.10	610.00 Assist with adding documents produced by plaintiff to master database for access during trial with testimony from witnesses Eric Fox, Bill Cary, Marc Miller, Carol Redman, Bonnie Carns, Sean McSweeney and Brian Kelly;
4424.001	04/25/2011	BLV	A	374	100.00	0.50	50.00 Receive and review spreadsheets documenting ICT's payments to AMD and incorporate into existing database for reference at trial;
4424.001	04/25/2011	JFS	A	380	55.00	0.30	16.50 Create batch file for E-ScanIt;
4424.001	04/25/2011	JFS	A	374	55.00	0.50	27.50 OCR on document set AMD01;
4424.001	04/25/2011	JFS	A	374	55.00	0.40	22.00 QC batch and match Bates range;
4424.001	04/25/2011	JFS	A	374	55.00	0.30	16.50 Export from E-ScanIt and create Summation load file document set (AMD01);
4424.001	04/25/2011	JFS	A	374	55.00	0.40	22.00 Import Summation load file;
4424.001	04/25/2011	JFS	A	374	55.00	0.40	22.00 QC Summation import for needed coding and OCR accuracy;
4424.001	04/25/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to Charles Eldredge and Scot Halladay requesting telephone conference to discuss status and strategy;
4424.001	04/25/2011	RLS	A	236	175.00	0.10	17.50 Review and prepare electronic correspondence with Scot Halladay regarding payments made to plaintiff;
4424.001	04/25/2011	RLS	A	95	175.00	0.40	70.00 Analyze payments made to plaintiff and for which invoices payments were made;
4424.001	04/25/2011	RLS	A	95	175.00	0.50	87.50 Analyze issues regarding reports and spreadsheets provided by Carol Redman from OnDemand to Charles Eldredge;
4424.001	04/25/2011	RLS	A	207	175.00	2.30	402.50 Meet with Bonnie Carns and her attorney to discuss factual history and reports prepared by OnDemand;
4424.001	04/25/2011	RLS	A	80	175.00	0.20	35.00 Telephone conference with Brian Kelly regarding willingness to give deposition but not willing to testify at trial;
4424.001	04/25/2011	RLS	A	95	175.00	1.00	175.00 Analyze issues regarding potential damages in light of updated volume information and payment information provided by defendant;
4424.001	04/25/2011	RLS	A	95	175.00	3.30	577.50 Analyze Eric Fox deposition testimony and foundation for exhibits used in preparation for meeting with Bonnie Carns and for trial;
4424.001	04/25/2011	RLS	A	95	175.00	0.60	105.00 Analyze issues regarding the coding and production of documents that may be needed as exhibits at trial;
4424.001	04/26/2011	BLV	A	374	100.00	0.50	50.00 Further review and analysis of records and information relating to ICI payments to AMD;
4424.001	04/26/2011	JFS	A	380	55.00	0.30	16.50 Create Summation load file (AMD01);
4424.001	04/26/2011	JFS	A	374	55.00	0.30	16.50 Load changes to database;
4424.001	04/26/2011	JFS	A	374	55.00	0.30	16.50 QC changes;
4424.001	04/26/2011	RLS	A	84	175.00	1.70	297.50 Travel to Canyon County Courthouse and attend pre-trial conference;
4424.001	04/26/2011	RLS	A	80	175.00	0.20	35.00 Telephone conference with plaintiff's attorney regarding potential mediators, average global reimbursement, and extent of damages;
4424.001	04/26/2011	RLS	A	95	175.00	0.80	140.00 Analyze issues regarding potential damages and settlement in light of representations made by plaintiff's attorney that they are not seeking damages for payments after December 2009;

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 04/30/2011</b>							
4424.001	04/26/2011	RLS	A	80	175.00	0.90	157.50 Telephone conference with Charles Eldredge and Scot Halladay regarding Court ordered mediation, settlement strategy, and trial strategy;
4424.001	04/26/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to Brian Kelly at Cobalt regarding taking his deposition on May 10, 2011;
4424.001	04/26/2011	RLS	A	10	175.00	3.10	542.50 Continue analyzing Eric Fox's deposition testimony and foundation for exhibits used in preparation for trial;
4424.001	04/26/2011	RLS	A	95	175.00	0.60	105.00 Analyze issues regarding amending exhibit list to include additional exhibits;
4424.001	04/26/2011	RLS	A	220	175.00	0.10	17.50 Prepare stipulation to dismiss Count I of defendant's counterclaim and proposed order;
4424.001	04/26/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to plaintiff's attorney attaching stipulation to dismiss Count I and proposed order for his review;
4424.001	04/26/2011	RLS	A	95	175.00	0.20	35.00 Analyze issues regarding potential mediators for second mediation;
4424.001	04/27/2011	BLV	A	374	100.00	0.70	70.00 Continued review of records produced for purposes of identifying records appropriate for including with supplemental defense discovery responses prior to trial;
4424.001	04/27/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to OnDemand's attorney regarding contact with Carol Redman;
4424.001	04/27/2011	RLS	A	10	175.00	2.40	420.00 Continue analyzing Eric Fox's deposition testimony and foundation for exhibits used in preparation for trial;
4424.001	04/27/2011	RLS	A	80	175.00	0.40	70.00 Telephone conference with Carol Redman regarding discussions with plaintiff and reports prepared for defendant;
4424.001	04/27/2011	RLS	A	80	175.00	1.80	315.00 Telephone conference with Charles Eldredge, Scot Halladay, Rick Smith, and Dr. Johnson regarding strengths and weaknesses of each parties' case, settlement strategy, trial strategy, and making initial settlement offer to plaintiff;
4424.001	04/27/2011	RLS	A	236	175.00	0.10	17.50 Review and prepare electronic correspondence with plaintiff's attorney regarding language of stipulation to dismiss Count I of defendant's counterclaim;
4424.001	04/27/2011	RLS	A	66	175.00	0.10	17.50 Revise stipulation to dismiss Count I and forward to plaintiff's attorney;
4424.001	04/27/2011	RLS	A	95	175.00	0.20	35.00 Analyze issues regarding source of production of plaintiff's cost estimate used during Dr. Miller's deposition;
4424.001	04/27/2011	RLS	A	95	175.00	0.30	52.50 Analyze potential additional trial exhibits;
4424.001	04/28/2011	BLV	A	374	100.00	4.40	440.00 Continued review of plaintiff and defense proposed trial exhibits to verify formal production of all exhibits;
4424.001	04/28/2011	BLV	A	374	100.00	0.10	10.00 Update witness materials regarding conference with expert Ken Hooper regarding trial testimony;
4424.001	04/28/2011	RLS	A	236	175.00	1.00	175.00 Review documents provided to expert Ken Hooper and his report in preparation for meeting to discuss trial strategy;
4424.001	04/28/2011	RLS	A	207	175.00	0.80	140.00 Meet with expert Ken Hooper regarding his report, industry average profit margins, and trial strategy;
4424.001	04/28/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to Charles Eldredge and Scot Halladay regarding meeting with Ken Hooper;
<b>Subtotal for Fees</b>					<b>Billable</b>	<b>67.20</b>	<b>10,815.00</b>
					<b>Non-billable</b>	<b>78.00</b>	<b>11,338.50</b>
					<b>Total</b>	<b>145.20</b>	<b>22,153.50</b>

000114

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 04/30/2011</b>							
4424.001	04/04/2011	NA	A	534	0.050		131.85 Electronically discovered (2,637) for import into Summation;
4424.001	04/06/2011	NA	A	534	0.050		131.85 Electronically discovered (2,637) for import into Summation;
4424.001	04/20/2011	NA	A	531	0.500		3.50 Telecopy to Canyon County;
4424.001	04/20/2011	NA	A	531	0.500		3.50 Telecopy to Allen B. Ellis;
4424.001	04/25/2011	NA	A	532	0.250		1,063.25 Photocopies/Images for the month of April 2011 (4253 @ .25);
4424.001	04/26/2011	NA	A	531	0.500		3.50 Telecopy to Carlton Ericson;
4424.001	04/27/2011	NA	A	530			0.00 Messenger to Ada County;
Subtotal for Expenses					Billable	0.00	1,337.45
4424.001	04/30/2011	NA	A	504			27.01 Westlaw access for research during period April 1, 2011 - April 30, 2011;
Subtotal for Advances					Billable	0.00	27.01
<b>Total for Statement Date 04/30/2011</b>					Billable	67.20	12,179.46
					Non-billable	78.00	11,338.50
					Total	145.20	23,517.96

000115

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 05/19/2011</b>								
4424.001	05/02/2011	RLS	A	220	175.00	2.80	490.00	Prepare spreadsheets of volume fees based on actual adjusted gross revenue for October 2008 through November 2009 for settlement purposes;
4424.001	05/02/2011	RLS	A	94	175.00	0.10	17.50	Analyze issues regarding availability of potential mediators John Magel and Merlyn Clark;
4424.001	05/02/2011	RLS	A	220	175.00	0.90	157.50	Prepare draft letter to plaintiff's counsel regarding mediation and proposed settlement offer;
4424.001	05/02/2011	RLS	A	220	175.00	0.10	17.50	Prepare electronic correspondence to Charles Eldredge and Scot Halladay attaching draft letter with proposed settlement offer for their review;
4424.001	05/02/2011	RLS	A	95	175.00	1.80	315.00	Analyze issues regarding potential motions in limine;
4424.001	05/02/2011	RLS	A	95	175.00	2.20	385.00	Analyze issues regarding exhibits to use in Brian Kelly's deposition;
4424.001	05/02/2011	RLS	A	95	175.00	0.50	87.50	Analyze issues regarding amending trial exhibit list;
4424.001	05/02/2011	RLS	A	220	175.00	0.10	17.50	Prepare notice of deposition of Brian Kelly;
4424.001	05/03/2011	BLV	A	374	100.00	0.20	20.00	Update witness materials for Brian Kelly regarding May 10, 2011 video deposition;
4424.001	05/03/2011	BLV	A	374	100.00	0.10	10.00	Receive and review order regarding stipulation to dismiss count 1 of ICI counterclaim;
4424.001	05/03/2011	BLV	A	374	100.00	7.50	750.00	Update database to include all records produced to and from plaintiff in preparation for reference during trial;
4424.001	05/03/2011	RLS	A	220	175.00	0.10	17.50	Prepare and review electronic correspondence with Charles Eldredge, Scot Halladay, Dr. Johnson and Rick Smith regarding the proposed settlement offer to plaintiff;
4424.001	05/03/2011	RLS	A	220	175.00	0.10	17.50	Prepare electronic correspondence to Brian Kelly at Cobalt Health attaching notice of trial perpetuation deposition;
4424.001	05/03/2011	RLS	A	135	175.00	0.30	52.50	Research all exhibits which reference Brian Kelly in preparation for his deposition;
4424.001	05/03/2011	RLS	A	91	175.00	2.00	350.00	Begin preparing outline for deposition of Brian Kelly;
4424.001	05/03/2011	RLS	A	236	175.00	0.10	17.50	Review electronic correspondence from Charles Eldredge attaching screen print of dashboard;
4424.001	05/04/2011	BLV	A	374	100.00	2.20	220.00	Prepare exhibits for use at Brian Kelly deposition;
4424.001	05/04/2011	BLV	A	374	100.00	3.30	330.00	Continued comprehensive review and analysis of entire client file for purposes of identifying and preparing additional records and information for formal production to plaintiff in advance of mediation;
4424.001	05/04/2011	RLS	A	220	175.00	0.10	17.50	Prepare and review electronic correspondence with Charles Eldredge authorizing settlement letter to plaintiff;
4424.001	05/04/2011	RLS	A	236	175.00	0.10	17.50	Review electronic correspondence from Scot Halladay attaching spreadsheets of costs per scan;
4424.001	05/04/2011	RLS	A	236	175.00	0.10	17.50	Review electronic correspondence from Brian Kelly regarding preparation for deposition;
4424.001	05/04/2011	RLS	A	95	175.00	0.70	122.50	Analyze issues regarding potential jury instructions;
4424.001	05/04/2011	RLS	A	95	175.00	0.80	140.00	Analyze issues regarding potential verdict forms;
4424.001	05/05/2011	BLV	A	374	100.00	0.60	60.00	Continued preparation of exhibits for use at Brian Kelly deposition;
4424.001	05/05/2011	RLS	A	236	175.00	1.50	262.50	Review and prepare electronic correspondence with plaintiff's counsel regarding rejection of our settlement offer and our renewed request for plaintiff's cost information;
4424.001	05/05/2011	RLS	A	236	175.00	0.20	35.00	Review electronic correspondence from Scot Halladay attaching amended spreadsheet showing costs per CT and MR exams;
4424.001	05/05/2011	RLS	A	220	175.00	0.20	35.00	Prepare electronic correspondence to Charles

000116

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount
<b>Statement Date 05/19/2011</b>							
							Eldredge, Scot Halladay, Dr. Johnson, and Rick Smith regarding settlement conversations with plaintiff's counsel and requesting information which might show plaintiff did not contribute to growth;
4424.001	05/05/2011	RLS	A	236	175.00	0.40	70.00 Review and prepare electronic correspondence with Charles Eldredge regarding potentially limiting plaintiff's damages;
4424.001	05/05/2011	RLS	A	95	175.00	0.90	157.50 Analyze issues regarding potential motions in limine;
4424.001	05/05/2011	RLS	A	95	175.00	0.80	140.00 Analyze issues regarding potential demonstrative exhibits showing costs per CT and MR exams and profit margins;
4424.001	05/05/2011	RLS	A	236	175.00	0.40	70.00 Review Rules of Evidence for admission of exhibits to be used in Brian Kelly's deposition;
4424.001	05/06/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to Brian Kelly at Cobalt regarding areas of testimony for trial perpetuation deposition;
4424.001	05/06/2011	RLS	A	220	175.00	0.10	17.50 Prepare electronic correspondence to Charles Eldredge and Scot Halladay regarding previous discussions with Brian Kelly and suggested questions for upcoming deposition;
4424.001	05/06/2011	RLS	A	10	175.00	2.40	420.00 Continue preparing outline for trial perpetuation deposition of Brian Kelly;
4424.001	05/07/2011	BLV	A	374	100.00	0.50	50.00 Prepare additional exhibits for Brian Kelly deposition;
4424.001	05/07/2011	RLS	A	220	175.00	7.00	1,225.00 Prepare for trial perpetuation deposition of Brian Kelly;
4424.001	05/08/2011	BLV	A	374	100.00	2.50	250.00 Prepare additional records for supplemental production to opposing counsel;
4424.001	05/09/2011	BAN	A	287	175.00	0.50	87.50 Develop strategy for needed motions in limine;
4424.001	05/09/2011	RLS	A	95	175.00	1.20	210.00 Analyze issues regarding additional exhibits needed for trial perpetuation deposition of Brian Kelly;
4424.001	05/09/2011	RLS	A	80	175.00	0.10	17.50 Telephone conference with plaintiff's counsel regarding Brian Kelly deposition and attempting to get a counter settlement offer;
4424.001	05/09/2011	RLS	A	95	175.00	0.70	122.50 Analyze issues regarding possible motions in limine;
4424.001	05/09/2011	RLS	A	84	175.00	5.50	962.50 Travel to Los Angeles, California for trial perpetuation deposition of Brian Kelly;
4424.001	05/09/2011	RLS	A	95	175.00	0.50	87.50 Analyze possible themes for trial;
4424.001	05/10/2011	BLV	A	374	100.00	0.30	30.00 Update deposition transcript with changes to testimony made by Greg Clark;
4424.001	05/10/2011	BAN	A	220	175.00	2.30	402.50 Prepare motion in limine regarding scope of plaintiff's damage claim;
4424.001	05/10/2011	RLS	A	220	175.00	2.50	437.50 Prepare for trial perpetuation deposition of Brian Kelly;
4424.001	05/10/2011	RLS	A	248	175.00	7.50	1,312.50 Take trial perpetuation deposition of Brian Kelly and return to Boise;
4424.001	05/10/2011	RLS	A	95	175.00	2.50	437.50 Analyze issues regarding themes, labels, closing argument, and opening statement for trial;
4424.001	05/11/2011	BAN	A	66	175.00	0.60	105.00 Further preparation of draft motion in limine regarding plaintiff's damages;
4424.001	05/11/2011	RLS	A	95	175.00	0.20	35.00 Analyze issues regarding motion in limine limiting damages plaintiff can seek;
4424.001	05/11/2011	RLS	A	220	175.00	0.80	140.00 Prepare motion in limine precluding introduction of evidence pertaining to settlement negotiations;
4424.001	05/11/2011	RLS	A	135	175.00	0.50	87.50 Research regarding proving value of benefit for unjust enrichment claim;
4424.001	05/11/2011	RLS	A	236	175.00	1.20	210.00 Review and analyze documents produced by plaintiff to determine evidence that could be used to prove unjust enrichment claim;
4424.001	05/11/2011	RLS	A	95	175.00	0.50	87.50 Analyze issues regarding whether to file motion in limine or motion for directed verdict as to plaintiff's unjust enrichment

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Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 05/19/2011</b>								
4424.001	05/11/2011	RLS	A	236	175.00	0.90	157.50	claim; Review and analyze spreadsheets prepared by Scot Halladay regarding costs of performing CT and MR exams to determine profit and loss margins and whether edits need to be made before use at trial;
4424.001	05/12/2011	BLV	A	374	100.00	4.40	440.00	Further update to master database of records and information produced by both plaintiff and defendant in preparation for trial;
4424.001	05/12/2011	BLV	A	374	100.00	1.10	110.00	Begin review of documents and information related to defense trial witnesses for purposes of reference at trial;
4424.001	05/12/2011	RLS	A	236	175.00	0.50	87.50	Review and analyze electronic correspondence from plaintiff's attorney regarding counter settlement offer and attached spreadsheet of damages;
4424.001	05/12/2011	RLS	A	220	175.00	0.10	17.50	Prepare electronic correspondence to Charles Eldredge, Scot Halladay, Dr. Johnson, and Rick Smith regarding plaintiff's settlement offer;
4424.001	05/12/2011	RLS	A	80	175.00	0.90	157.50	Telephone conference with Charles Eldredge regarding Gary Bodily's anticipated testimony, deposition of Brian Kelly, trial strategy, and plaintiff's settlement offer;
4424.001	05/12/2011	RLS	A	191	175.00	4.50	787.50	Further preparation of motions in limine regarding damages, settlement negotiations, and payments to other companies;
4424.001	05/13/2011	RLS	A	191	175.00	4.20	735.00	Further preparation of motions in limine regarding damages, settlement negotiations, payments to other companies, contributions/disassociation by members of the defendant, and affidavits in support;
4424.001	05/14/2011	RLS	A	95	175.00	2.60	455.00	Analyze plaintiff's responses to interrogatories to identify positions and inconsistencies with deposition testimony in preparation for trial;
4424.001	05/14/2011	RLS	A	252	175.00	0.50	87.50	Analyze issues regarding trial preparations;
4424.001	05/16/2011	BLV	A	374	100.00	0.40	40.00	Further update to trial materials regarding pending motions in limine;
4424.001	05/16/2011	RLS	A	236	175.00	0.10	17.50	Review and prepare electronic correspondence with plaintiff's counsel regarding updating actual volume information;
4424.001	05/16/2011	RLS	A	236	175.00	0.30	52.50	Review discovery responses and correspondence to determine last volume date provided to plaintiff;
4424.001	05/16/2011	RLS	A	220	175.00	0.10	17.50	Prepare electronic correspondence to Scot Halladay regarding conference call to discuss exhibits;
4424.001	05/16/2011	RLS	A	95	175.00	0.20	35.00	Analyze issues regarding technology resources needed for trial;
4424.001	05/16/2011	RLS	A	95	175.00	0.50	87.50	Analyze issues regarding second amended exhibit list;
4424.001	05/16/2011	RLS	A	236	175.00	1.30	227.50	Review and analyze plaintiff's answers to fourth set of interrogatories and response to request for production and exhibits attached thereto and analyze whether to file a motion to compel more adequate responses and documentation;
4424.001	05/16/2011	RLS	A	220	175.00	0.10	17.50	Prepare electronic correspondence to Charles Eldredge regarding providing April volume and information reflecting growth as a result of plaintiff's services;
4424.001	05/16/2011	RLS	A	220	175.00	0.40	70.00	Prepare and review electronic correspondence with plaintiff's counsel regarding its discovery responses being inadequate and possibly filing a motion to compel;
4424.001	05/16/2011	RLS	A	169	175.00	0.10	17.50	Coordinate preparation of witness binders for trial;
4424.001	05/16/2011	RLS	A	169	175.00	0.10	17.50	Coordinate issuance of subpoenas to Bonnie Carns and Carol Redman for trial;

Client	Trans Date	Tmkr	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount	
<b>Statement Date 05/19/2011</b>								
4424.001	05/16/2011	RLS	A	236	175.00	0.80	140.00	Review and analyze plaintiff's amended witness and exhibit list, adding 89 additional exhibits and compare it with previous exhibit list;
4424.001	05/16/2011	RLS	A	236	175.00	0.90	157.50	Review documents listed as new exhibits in plaintiff's amended witness and exhibit list;
Subtotal for Fees					Billable	96.20	15,102.50	
4424.001	05/13/2011	NA	A	530			45.00	Messenger to Canyon County;
Subtotal for Expenses					Billable	0.00	45.00	
4424.001	05/09/2011	RLS	A	500			637.09	Expenditure for airfare, lodging, meals, and parking for RLS while in Los Angeles, CA on 5/9 - 5/10/11;
Subtotal for Advances					Billable	0.00	637.09	
<b>Total for Statement Date 05/19/2011</b>					Billable	96.20	15,784.59	

**GRAND TOTALS**

Billable	581.20	98,698.80
Non-billable	108.50	16,716.00
Total	689.70	115,414.80



**Townsend Law, P.C.**  
**3006 E. Goldstone Dr., Ste. 120**  
**Meridian, ID 83642**

June 27, 2011  
 Invoice Number: 1004

Charles Eldredge  
 Chief Operating Officer  
 Imaging Center of Idaho  
 4519 Enterprise Way  
 Caldwell, ID 83605

Date	Description	Hours	Rate	Total
	<b>Previous Balance</b>			<b>\$0.00</b>
5/18/2011	Begin preparation of jury instructions	5.10	\$150.00	\$765.00
5/19/2011	Continue preparation of Jury Inst.	4.50	\$150.00	\$675.00
5/19/2011	Telephone conference with A. Ellis	0.30	\$150.00	\$45.00
5/19/2011	Telephone conference with C.E. re file and exhibits	0.30	\$150.00	\$45.00
5/20/2011	Prepare for examination of E. Fox;	4.00	\$150.00	\$600.00
5/20/2011	Prepare for MIL hearing;	1.80	\$150.00	\$270.00
5/20/2011	Review and analyze exhibits and demonstrative aids;	1.80	\$150.00	\$270.00
5/20/2011	Review and analyze plaintiff's proposed exhibits;	0.20	\$150.00	\$30.00
5/20/2011	Telephone conference with A. Ellis;	0.30	\$150.00	\$45.00
5/23/2011	Preparation of documents for trial;	3.80	\$150.00	\$570.00
5/23/2011	Preparation of exhibits;	1.50	\$150.00	\$225.00
5/23/2011	Telephone conference with court regarding hearings;	0.20	\$150.00	\$30.00
5/23/2011	Telephone conference with ICI re exhibits/spreadsheets;	0.30	\$150.00	\$45.00
5/23/2011	Telephone conference with K. Hooper;	0.30	\$150.00	\$45.00
5/24/2011	Continue preparation of Jury Inst.	3.00	\$150.00	\$450.00
5/24/2011	Telephone conference with K. Hooper;	0.30	\$150.00	\$45.00
5/25/2011	Prepare for hearing on MIL;	2.00	\$150.00	\$300.00
5/25/2011	Receive and analyze plaintiff's opposition to MIL;	2.50	\$150.00	\$375.00
5/27/2011	Attend hearing on MIL;	2.80	\$150.00	\$420.00
5/27/2011	Continue preparation of Jury Inst.	2.20	\$150.00	\$330.00
5/27/2011	Prepare for examination of witnesses;	2.90	\$150.00	\$435.00
5/31/2011	Correspondence with A. Ellis regarding B. Carey depo;	0.50	\$150.00	\$75.00
5/31/2011	Correspondence with A. Ellis regarding order;	0.20	\$150.00	\$30.00
5/31/2011	Preparation of witness examination;	1.00	\$150.00	\$150.00
5/31/2011	Prepare order from hearing on MIL;	0.80	\$150.00	\$120.00
5/31/2011	receive and analyze plaintiff's jury instructions	1.80	\$150.00	\$270.00
5/31/2011	Review and analyze plaintiff's cost documentation;	1.50	\$150.00	\$225.00
5/31/2011	Review, analyze and develop demonstrative aids;	1.20	\$150.00	\$180.00

000120

Date	Description	Hours	Rate	Total
5/31/2011	Telephone conference with A. Ellis	0.40	\$150.00	\$60.00
5/31/2011	Telephone conference with client and court reporter re: B. Kelley depo	0.40	\$150.00	\$60.00
5/31/2011	Telephone conference with S. Holladay re: graphs	0.30	\$150.00	\$45.00
6/1/2011	Review and analyze B. Kelley's deposition transcript and video	4.20	\$150.00	\$630.00
6/1/2011	retainer			(\$2,500.00)
6/2/2011	Prepare jury instructions;	2.50	\$150.00	\$375.00
6/2/2011	Telephone conference with A. Ellis	0.50	\$150.00	\$75.00
6/3/2011	Preparation of documents for trial;	10.50	\$75.00	\$787.50
6/3/2011	prepare for witness examination;	4.50	\$150.00	\$675.00
6/4/2011	Preparation of trial exhibits;	4.50	\$75.00	\$337.50
6/4/2011	Preparation of Jury Instructions;	3.00	\$150.00	\$450.00
6/5/2011	Review Plaintiff's proposed jury instructions and prepare opposition;	7.50	\$150.00	\$1,125.00
6/9/2011	Prepare for examination of trial witnesses;	4.50	\$150.00	\$675.00
6/10/2011	Exhibit preparation;	8.50	\$75.00	\$637.50
6/11/2011	Exhibit preparation;	5.00	\$75.00	\$375.00
6/13/2011	Receive and analyze plaintiff's amended trial brief;	3.70	\$150.00	\$555.00
6/13/2011	Receive and analyze plaintiff's opposition to MIL	5.50	\$150.00	\$825.00
6/14/2011	IT preparation for trial	3.50	\$75.00	\$262.50
6/15/2011	Prepare trial exhibits;	10.00	\$75.00	\$750.00
6/16/2011	Meet with Charles and Scot for trial prep;	3.80	\$150.00	\$570.00
6/16/2011	Prepare for hearings on MIL and arguments re rescission;	4.80	\$150.00	\$720.00
6/17/2011	Preparation of opening argument and media presentation	12.80	\$150.00	\$1,920.00
6/17/2011	Preparation of trial exhibits (copy of exhibits and poster)			\$90.91
6/18/2011	Prepare exhibits, bidners, notes for trial;	9.80	\$150.00	\$1,470.00
6/20/2011	Attend trial, and evening trial prep	14.00	\$150.00	\$2,100.00
6/21/2011	Attend trial, and evening trial prep	17.00	\$150.00	\$2,550.00
6/22/2011	Attend trial, and evening trial prep	19.00	\$150.00	\$2,850.00
6/23/2011	Attend trial, and evening trial prep	20.00	\$150.00	\$3,000.00
6/23/2011	Retainer			(\$7,500.00)
6/24/2011	Attend trial, and evening trial prep	12.00	\$150.00	\$1,800.00
6/27/2011	Meet with K. Hooper;	2.50	\$150.00	\$375.00
6/27/2011	Paralegal/tech support for trial			\$500.00
6/27/2011	witness and exhibit preparation;	6.00	\$75.00	\$450.00
	<b>Amount Due</b>	<b>247.80</b>		<b>\$24,160.91</b>

000121



# HC Healthcare Consulting LL

HC Healthcare Consulting LLC  
250 Bobwhite Court Suite 350  
Boise, ID 83706

Phone: 208-319-0074      FAX: 208-344-1215

Hall Farley - Imaging Center  
c/o Jeffrey R. Townsend, Esq.  
702 W. Idaho Street, Suite 700  
Boise, ID 83702

**Invoice Date:** April 30, 2011  
**Invoice Number:** 00100699  
**Client Number:** 73103 001

*For professional services rendered for the period ending April 30, 2011*

Detail Description	Hours/Units	Amount
Date      Activity Performed		
<p>4/28/2011      <b>Services</b> General Consulting Review file for meeting</p>	1.25	412.50
<p>4/28/2011      General Consulting Meeting with Randy Schmitz</p>	1.00	330.00
		742.50
<b>Total Invoice Amount</b>		2.25      742.50
Beginning Balance		0.00
Current Activity:		
Billings		742.50
Net Due		<b>\$ 742.50</b>

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5-9

Accounts Receivable Aging					
Current	31 - 60 Days	61 - 90 Days	91 - 120 Days	Over 120 Days	Total
742.50	0.00	0.00	0.00	0.00	742.50

**HC Healthcare Consulting LLC**  
 HC Healthcare Consulting LLC  
 250 Bobwhite Court Suite 350  
 Boise, ID 83706  
 Phone: 208-319-0074 FAX: 208-344-1215

7185  
 11-9  
 CR 7142

Hall Farley - Imaging Center  
 c/o Jeffrey R. Townsend, Esq.  
 702 W. Idaho Street, Suite 700  
 Boise, ID 83702

**Invoice Date:** October 31, 2010  
**Invoice Number:** 00100508  
**Client Number:** 73103 001

*For professional services rendered for the period ending October 31, 2010*

Detail Description		Hours/Units	Amount
Date	Activity Performed		
	<b>Services</b>		
10/22/2010	Commercial Litigation Document review and analysis	2.00	154.00
10/25/2010	Commercial Litigation	3.00	231.00
10/26/2010	Commercial Litigation Document review and analysis	2.50	192.50
10/15/2010	Commercial Litigation Conference call regarding case including preparation	0.50	165.00
			<u>742.50</u>
<b>Total Invoice Amount</b>		<b>8.00</b>	<b><u>742.50</u></b>
		<b>Beginning Balance</b>	<b>0.00</b>
		<b>Current Activity:</b>	
		<b>Billings</b>	<b>742.50</b>
		<b>Net Due</b>	<b><u>\$ 742.50</u></b>

# HC Healthcare Consulting LLC

HC Healthcare Consulting LLC  
250 Bobwhite Court Suite 350  
Boise, ID 83706  
Phone: 208-319-0074 FAX: 208-344-1215

Hall Farley - Imaging Center  
c/o Jeffrey R. Townsend, Esq.  
702 W. Idaho Street, Suite 700  
Boise, ID 83702

RECEIVED BY MAIL

DEC 08 2010

HALL, FARLEY, OBERRECHT  
& BLANTON, P.A.

Invoice Date: November 30, 2010

Invoice Number: 00100549

Client Number: 73103 001

*Handwritten:* 1-10 JL 9332

For professional services rendered for the period ending November 30, 2010

<u>Date</u>	<u>Activity Performed</u>	<u>Hours/Units</u>	<u>Amount</u>
	<b>Services</b>		
11/1/2010	Commercial Litigation Document review and analysis	2.25	173.25
11/2/2010	Commercial Litigation Document review and analysis	1.75	134.75
11/2/2010	Commercial Litigation Meeting at Hall Farley	1.25	96.25
11/4/2010	Commercial Litigation Document review and analysis	0.25	19.25
11/9/2010	Commercial Litigation Document review and research	1.75	134.75
11/11/2010	Commercial Litigation Document review and research	2.50	192.50
11/12/2010	Commercial Litigation Document review and research	4.25	327.25
11/16/2010	Commercial Litigation Document review and analysis	1.00	77.00
11/16/2010	Commercial Litigation Document review and analysis	0.50	38.50
11/29/2010	Commercial Litigation Document review and analysis	0.75	57.75
11/1/2010	Commercial Litigation Coverage research	2.00	660.00
11/12/2010	Commercial Litigation Coverage research	1.50	495.00

000124

Detail Description			
Date	Activity Performed	Hours/Units	Amount
11/1/2010	Commercial Litigation Review documents	3.00	990.00
11/1/2010	Commercial Litigation Review complaint and 1st amended counter complaint	1.00	330.00
11/2/2010	Commercial Litigation Prepare for meeting and meet with Jeffrey Townsend	1.50	495.00
11/18/2010	Commercial Litigation Analysis for charges	4.25	1,402.50
11/24/2010	Commercial Litigation Review procedure results and revise draft comments document	0.75	247.50
11/24/2010	Commercial Litigation Talk with Kevin West and set something up for Monday 11/29	0.25	82.50
11/29/2010	Commercial Litigation Review information for conference call with Kevin West and conference call	1.00	330.00
11/29/2010	Commercial Litigation Review results of On Demand settled claims	1.00	330.00
11/30/2010	Commercial Litigation Talk with Bonnie about data required, review CPT code effective dates, revise comments	1.50	495.00
11/30/2010	Commercial Litigation Deposition of Eric Fox	0.75	247.50
11/4/2010	General Consulting Review On Demand claims spreadsheet and call Cobalt and On Demand with data questions	1.25	412.50
11/4/2010	General Consulting Discuss data needed with Bonnie at On Demand	0.25	82.50

Total Invoice Amount

36.25

7,851.25

7,851.25

000125

# HC Healthcare Consulting LLC

HC Healthcare Consulting LLC  
 250 Bobwhite Court Suite 350  
 Boise, ID 83706  
 Phone: 208-319-0074      FAX: 208-344-1215

**Invoice Date:** December 31, 2010

**Invoice Number:** 00100591

**Client Number:** 73103 001

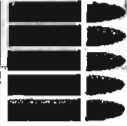
Hall Farley - Imaging Center  
 c/o Jeffrey R. Townsend, Esq.  
 702 W. Idaho Street, Suite 700  
 Boise, ID 83702

*JH*  
 1-19

*For professional services rendered for the period ending December 31, 2010*

Date	Detail Description Activity Performed	Hours/Units	Amount
12/2/2010	<b>Services</b> Clerical Services Review and finalize report	1.00	50.00
12/1/2010	Commercial Litigation Report preparation	1.25	96.25
12/2/2010	Commercial Litigation Report preparation	1.00	77.00
12/1/2010	Commercial Litigation Report	6.50	2,145.00
12/2/2010	Commercial Litigation Report preparation	3.00	990.00
			3,358.25
<b>Total Invoice Amount</b>			<b>3,358.25</b>
			782
<b>Beginning Balance</b>			7,851.25 <i>pd</i>
<b>Current Activity:</b>			
Billings			3,358.25
Finance Charges			117.77
			3,476.02
<b>Net Due</b>			<b>\$ 11,327.27</b>

**ASSOCIATED  
REPORTING, INC.**



Associated Reporting  
1618 W. Jefferson St.  
Boise, ID 83702

**www.AssociatedReportingInc.com**

p: 208-343-4004 f: 208-343-4002

Federal ID #82-0436903

# INVOICE

DATE INVOICE #

11/23/2010 20101004

**BILL TO**

**PAID**

Jeffrey R. Townsend  
Hall Farley Oberrecht & Blanton, P.A.  
702 West Idaho Street, Suite 700  
Post Office Box 1271  
Boise, Idaho 83701-127

**ITEM - DESCRIPTION**

**AMOUNT**

Case: Advanced Medical Diagnostic v. Imaging Center of Idaho  
Case No: CV-09-135P04-C  
Date Taken: 11/16/10  
Location: Boise, Idaho  
Deponent: Eric Fox  
Reporter: Amy E. Simmons, CSR No. 685, RPR, CRR

Reporting services rendered in the above-entitled matter:

Appearance	155.00
Transcript - Original	663.75
Exhibits	55.00
State Sales Tax	0.00

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**TOTAL:**

**\$873.75**

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Invoice Date	12/31/2010
Terms	NET 30
Payment Due	02/02/2011
Date of Loss	
Name of Insured	
Adjustor	
Claim Number	

Assignment	Case	Assignment #	Shipped	Shipped Via
11/18/2010	ADVANCE MEDICAL DIAGNOSTICS vs. IMAGING	185831	12/30/2010	UPS

Description	Amount
Services Provided on 11/18/2010, WILLIAM CARY (LINCOLN, NE)	
ORIGINAL TRANSCRIPT/WORD INDEX (112 Pages)	\$ 498.40
EXHIBITS	\$ 0.00
VIDEO	\$ 715.00
APPEARANCE FEE HOURLY (3 Hours)	\$ 90.00
FLAT FEE EXHIBITS	\$ 35.00
LITIGATION SUPPORT DISK	\$ 15.00
CONDENSED TRANSCRIPT	\$ 10.00
	<hr/>
	\$ 1,363.40
DELIVERY - AFFILIATE	\$ 30.00
	<hr/>
	\$ 30.00
 <i>PLEASE NOTE: THE ABOVE AMOUNT INCLUDES VIDEO CHARGES.</i>	
	Tax: \$ 0.00
	Paid: \$ 1,393.40
	<b>Amount Due On/Before Due Date \$ 0.00</b>
	Amount Due After Due Date \$ 0.00

Tax Number: 45-0470336

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Invoice #: DP223369  
 Payment Due: 02/02/2011

**Amount Due On/Before Due Date \$ 0.00**  
 Amount Due After Due Date \$ 0.00

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**Invoice # DP218672**

Invoice Date	12/17/2010
Terms	NET 30
Payment Due	01/16/2011
Date of Loss	
Name of Insured	
Adjustor	
Claim Number	

JEFFREY TOWNSEND  
 HALL, FARLEY, OBERRECHT & BLANTON, PA  
 SUITE 700, KEY FINANCIAL CENTER,  
 702 WEST IDAHO STREET,  
 BOISE, ID 83701

Assignment	Case	Assignment #	Shipped	Shipped Via
11/17/2010	ADVANCE MEDICAL DIAGNOSTICS vs. IMAGING	184869	12/08/2010	UPS

Description	Amount
Services Provided on 11/17/2010, MARC MILLER (APPLETON, WI)	
ORIGINAL & ONE COPY OF TRANSCRIPT/WORD INDEX (128 Pages)	\$ 582.40
EXHIBITS	\$ 8.60
APPEARANCE FEE HALF DAY	\$ 135.00
LITIGATION SUPPORT DISK	\$ 15.00
CONDENSED TRANSCRIPT	\$ 10.00
READ & SIGN PROCESSING FEE	\$ 9.75
SUMMARY	\$ 90.00
	<hr/>
	\$ 850.75
DELIVERY - UPS	\$ 30.00
MILEAGE	\$ 30.00
CONFERENCE ROOM	\$ 150.00
	<hr/>
	\$ 210.00

**CONTINUED ON NEXT PAGE ...**

Tax Number: 45-0470336

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Invoice #: DP218672  
 Payment Due: 01/16/2011

**Amount Due On/Before Due Date \$ 0.00**

Amount Due After Due Date \$ 0.00

JEFFREY TOWNSEND  
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074 0000218672 12172010 6 000000000 0 01162011 01172011 6 000000000 03

000129



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**Invoice # DP218672**

Invoice Date	12/17/2010
Terms	NET 30
Payment Due	01/16/2011
Date of Loss	
Name of Insured	
Adjustor	
Claim Number	

JEFFREY TOWNSEND  
 HALL, FARLEY, OBERRECHT & BLANTON, PA  
 SUITE 700, KEY FINANCIAL CENTER,  
 702 WEST IDAHO STREET,  
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Assignment	Case	Assignment #	Shipped	Shipped Via
11/17/2010	ADVANCE MEDICAL DIAGNOSTICS vs. IMAGING	184869	12/08/2010	UPS

Description	Amount
<p>PLEASE NOTE: THE CONFERENCE ROOM CHARGE IS INCLUDED IN THE ABOVE AMOUNT.</p> <p style="text-align: right;">Tax: \$ 0.00                      Paid: \$ 1,060.75  <b>Amount Due On/Before Due Date \$ 0.00</b>                      Amount Due After Due Date \$ 0.00</p>	

Tax Number: 45-0470336

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Invoice #: DP218672  
 Payment Due: 01/16/2011

**Amount Due On/Before Due Date \$ 0.00**  
 Amount Due After Due Date \$ 0.00

JEFFREY TOWNSEND  
 HALL, FARLEY, OBERRECHT & BLANTON, PA  
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3006 E. Goldstone Dr.  
Suite 120  
Meridian, ID 83642

Invoice Number: 103071  
Invoice Date: 05/25/2011

---

In RE: Advanced Medical Diagnostics, LLC vs. Imaging Center of Idaho, LLC  
Brian Kelly  
Attendance Date: 05/10/2011 Reporter: Deborah Stough

---

Qty Description	Ext
93 Original & 1 Certified Copy Pages	530.10
32 Exhibit Pages Copied	16.00
1 Transcript Handling, condensed, key word index, ASCII	65.00
1 Parking	12.50
1 Videographer, Videotaped DVD	25.00
1 Court Reporter surcharge, Videotaped Deposition, 1/2 day	50.00
1 Videographer setup fee	50.00
1 Videotaped Deposition, minimum charge	320.00

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**DESCRIPTION**

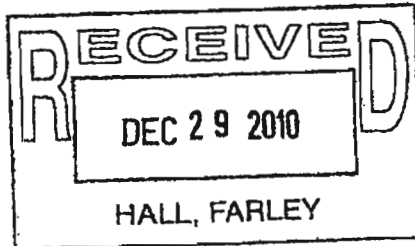
**AMOUNT**

Case: Advanced Medical Diagnostics vs. Imaging Center of Idaho  
Case No: CV 09-135P04-C  
Date Taken: December 13, 2010  
Location: Boise, Idaho  
Deponent: Charles Eldredge  
Reporter: Amy E. Simmons, CSR No. 685, RPR, CRR

*Handwritten notes:*  
yq  
1-5  
CL 9315

Reporting services rendered in the above-entitled matter:

Transcript - Copy	169.40T
Exhibits	2.00T
State Sales Tax	10.28



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**TOTAL**      **\$181.68**

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4/11  
5.3

Case: Advanced Medical Diagnostics vs. Imaging Center of Idaho  
Case No: CV 09-13504-C  
Date Taken: February 15, 2011  
Location: Boise, Idaho  
Deponent: Gregory F. Clark  
Reporter: Janet French, CSR No. 946, RPR

**Reporting services rendered in the above-entitled matter:**

Transcript - Copy	107.80T
Exhibits	5.60T
State Sales Tax	6.80

\$120.20

000133

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Boise, Idaho 83701-127**

*JH  
5.3*

**Case: Advanced Medical Diagnostics vs. Imaging Center of Idaho  
Case No: CV 09 13504 C  
Date Taken: 02/24/2011  
Location: Boise, Idaho  
Deponent: Julie Mellinger  
Reporter: Susan L. Sims, CSR No. 739, RPR**

**Reporting services rendered in the above-entitled matter:**

<b>Transcript - Copy</b>	<b>114.40T</b>
<b>Exhibits</b>	<b>2.00T</b>
<b>State Sales Tax</b>	<b>6.98</b>

**\$123.38**

**000134**

IN THE DISTRICT COURT OF THIRD JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
IMAGING CENTER OF IDAHO, LLC )  
 )  
Defendant. )  
\_\_\_\_\_ )

CASE NO. CV-2009-13504

JUDGMENT

FILED  
8:30 A.M. P.M.

AUG 01 2011

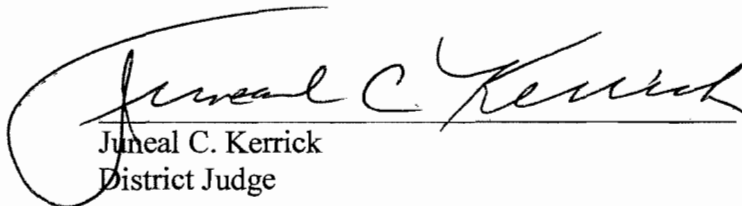
CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

This matter having been tried before a jury commencing on June 20, 2011, the Plaintiff having been represented by Mr. Allen Ellis and the Defendant having been represented by Mr. Jeff Townsend, and upon verdict of the jury rendered on June 24, 2011, JUDGMENT IS HEREBY ENTERED AS FOLLOWS:

1. On Plaintiff's cause of action for Breach of Contract judgment is entered in favor of Defendant, Plaintiff to take nothing thereby;
2. On Plaintiff's cause of action for Unjust Enrichment judgment is entered in favor of Defendant, Plaintiff to take nothing thereby;
3. On Defendant's counterclaim for Misrepresentation judgment is entered in favor of Defendant, Defendant to take nothing thereby.

IT IS SO ORDERED

Dated this 28<sup>th</sup> day of July, 2011.

  
Juneal C. Kerrick  
District Judge

000135

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of July, 2011, I caused to be served a true and correct copy of the foregoing document, by method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

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\_\_\_\_\_  
Jeffrey R. Townsend



010/011  
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AUG 02 2011

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ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant. )

Case No. CV-09-13504-C

SIXTH AFFIDAVIT  
OF ALLEN B. ELLIS

STATE OF IDAHO )  
)ss.  
County of Ada )

I, Allen B. Ellis, being first duly sworn, depose and state as follows:

1. I am the attorney for the plaintiff in the herein matter and make this affidavit upon my own personal knowledge and am competent to testify to the matters contained here.


SIXTH AFFIDAVIT OF ALLEN B. ELLIS - 1

000137

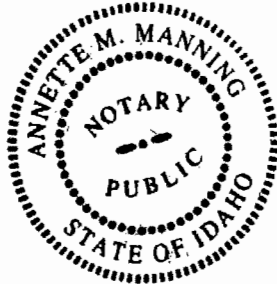


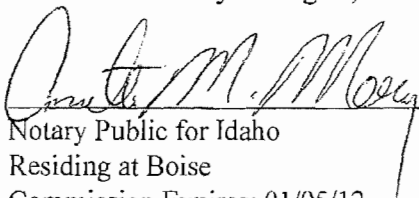
2. Two or three weeks prior to attorney Townsend's re-entry into this matter in May of this year, I was advised by predecessor counsel Randall Schmitz, of Hall, Farley, that his client Imaging Center of Idaho, LLC ("ICI") was abandoning its breach of contract claim (Count I of defendant's counterclaim).

3. In reasonable reliance on the permanency of that claim, my client, Advanced Medical Diagnostics, had retained an expert, Bruce Zeilinger, to testify as to certain aspects of ICI's claim for breach of contract.

  
\_\_\_\_\_  
Allen B. Ellis  
Attorney for Plaintiff

SUBSCRIBED AND SWORN To before me this 2<sup>nd</sup> day of August, 2011.



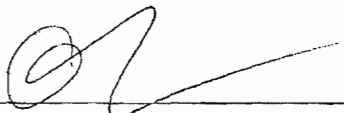
  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Boise  
Commission Expires: 01/05/12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 2<sup>nd</sup> day of August, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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\_\_\_\_\_  
Allen B. Ellis

FILED  
A.M. 4:35 P.M.

AUG 02 2011

ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant. )

Case No. CV-09-13504-C

MEMORANDUM IN SUPPORT  
OF MOTION TO DISALLOW  
ATTORNEY FEES AND COSTS

Basis of claimed entitlement of fees/costs: Defendant Imaging Center of Idaho ("ICI") argues that its entitlement to fees/costs is based upon the following: (1) ICI is the "prevailing party" and (2) the lawsuit involved a "commercial transaction", i.e., a contract for services, entitling defendant ICI to fees under Idaho Code §12-120(3).

Summary of opposition: (1) No prevailing party: Defendant ICI failed to prevail as to the following claims: (a) that Advanced Medical Diagnostics ("AMD") was in breach of contract (Count I of counterclaim abandoned); (b) that ICI was not in breach of contract; (c) that AMD's fraud was

a defense to ICI's contract breach; and (d) that ICI was entitled to damages by reason of AMD's intentional misrepresentation.

That is, plaintiff AMD did not prevail on its complaint and defendant ICI failed to prevail on its counterclaim. There is no prevailing party in this action.

(2) No fees respecting fraud claim: Moreover, even had ICI prevailed on its fraud claim, attorney fees are not awardable in fraud cases, absent frivolous prosecution or defense.

(3) Failure to segregate contract fees: Finally, defendant ICI has failed to meaningfully segregate which fees pertain to the contract breach and which pertain to the fraud allegations.

*Weaver v. Searle Bros*, 129 Idaho 497, 502, 927 P.2d 887 (1996).

THE AWARD OF COSTS/FEEES, OR NOT, IS LEFT TO  
THE SOUND DISCRETION OF THE TRIAL COURT

As noted in *J.R. Simplot v. Chemetics Int'l, Inc.* 130 Idaho 255, 939 P.2d 574 (1997):

The determination as to the prevailing party in an action is a matter committed to the sound discretion of the trial court, and the trial court's determination will not be disturbed absent an abuse of that discretion.

*Id.* 130 Idaho at 257.

The guidelines for identifying whether or not there is a prevailing party is set forth in Rule 54(d)(1)(B):

Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

I.R.C.P. 54(d)(1)(B)

In the case at bench, both parties sought compensatory damages which the jury denied.

A REVIEW OF THE SPECIAL VERDICT FORM REQUIRES THE  
CONCLUSION THAT NEITHER PARTY PREVAILED IN THIS MATTER

<u>Issue Resolved</u>	<u>For Plaintiff AMD</u>	<u>For Defendant ICI</u>
ICI contract breach	X	
Mutual mistake		X
AMD's fraud	X	
Unjust enrichment		X
Fraud damages	X	
AMD breach (abandoned by ICI)	X	

In considering "result of the action . . . in relation to the relief sought", the clear conclusion is that neither side prevailed.

THE PARTIES LITIGATED ICI'S BREACH OF CONTRACT CLAIM  
FOR NINE MONTHS PRIOR TO ITS ABANDONMENT OF THAT CLAIM

In Count I of the Counterclaim, filed September 2010, ICI alleged that AMD breached the Master Services Agreement by making "unreasonable site recommendations to ICI". That Count was asserted again in conjunction with ICI's Second Amended Answer and Counterclaim filed in December, 2010. Just prior to attorney Townsend's re-entry into the case in May of this year (a month before trial) ICI announced that it was abandoning its breach of contract count (Count I) in the Counterclaim. See affidavit of Allen B. Ellis.

Plaintiff AMD recognizes that a voluntary dismissal does not necessarily force the conclusion that a claim is frivolous. On the other hand, requiring an adversary to endure nine months of

MEMORANDUM IN SUPPORT OF MOTION TO DISALLOW ATTORNEY FEES AND COSTS - 3

**000141**

litigation prior to abandonment of a claim on the eve of trial is relevant to the Court's analysis of who is the prevailing party. That is, the "result of the action" (abandonment of claim) as compared to the "relief sought" (contract damages) corroborates ICI's status as a non-prevailing party.

ICI HAS NOT SEGREGATED THE FEES ARISING FROM ITS FRAUD ALLEGATIONS FROM THOSE FEES CONNECTED WITH ITS PROSECUTION AND DEFENSE OF THE BREACH OF CONTRACT CLAIMS WHICH CAUSES ITS CLAIM TO FAIL

The Idaho Supreme Court recognizes the need to segregate and identify fees incurred which are covered by Idaho Code §12-120(3) from those fees which are not so covered.

Recently, we have upheld a trial court's denial of attorney fees under this statute where the party claiming entitlement to the fees had not isolated or separated the fees attributable to the contract claim from those attributable to another claim not covered by I.C. § 12-120(3). *Brooks v. Gigray Ranches, Inc.*, 128 Idaho 72, 78-79, 910 P.2d 744, 750-51 (1996). *In Brooks*, we pointed out that the record supported the trial court's conclusion that the party claiming attorney fees had not sufficiently isolated the fees attributable to the claim covered by the statute. *Id.* At 78, 910 P.2d at 750. From our review of the documentation submitted in support of Rosalia's request for attorney fees in the present case, we find the same to be true here.

*Weaver v. Searle Bros*, 129 Idaho 497, 502, 927 P.2d 887 (1996).

ICI's claim of fees fails to make the requisite segregation of fraud-induced fees from contract-induced fees. Additionally the claim fails to segregate out the fees incurred from its breach of contract claim (which it abandoned) from those fees incurred in defending AMD's breach of contract claim.

DATED this 2<sup>nd</sup> day of August, 2011.



Allen B. Ellis  
Attorney for plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 2<sup>nd</sup> day of August, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Townsend Law, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, Idaho 83642

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\_\_\_\_\_  
Allen B. Ellis

Jeffrey R. Townsend, ISB #7647  
E-mail: TownsendLaw@q.com  
TOWNSEND LAW, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, ID 83642  
Telephone: (208) 350-7310  
Facsimile: (208) 350-7311

**F I L E D**  
A.M. 2:20 P.M.

**AUG 26 2011**  
CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

Attorney for Defendant

IN THE DISTRICT COURT OF THIRD JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )	
LLC, )	CASE NO. CV-2009-13504-C
)	
Plaintiff, )	DEFENDANT IMAGING CENTER
)	OF IDAHO, LLC'S OPPOSITION
vs. )	TO PLAINTIFF'S MOTION TO
)	DISALLOW ATTORNEY FEES
IMAGING CENTER OF IDAHO, LLC )	AND COSTS
)	
Defendant. )	
)	

COMES NOW, defendant Imaging Center of Idaho, LLC ("ICI"), by and through its counsel of record, Townsend Law, P.C., and submits the following memorandum in opposition to plaintiff's motion to disallow attorney fees and costs. Plaintiff's argument is principally based on the mistaken premise that attorney fees are not recoverable under Idaho Code section 12-120(3) for claims based on fraud. Contrary to plaintiff's contention, the Idaho Supreme Court has stated "attorney fees are awardable under section 12-120(3) on a claim alleging that fraud induced the prevailing party to enter into a commercial transaction." Triad Leasing & Financial, Inc. v. Rocky Mountain Rogues, Inc., 148 Idaho 503 (2009). Therefore, as the prevailing party, ICI is entitled to an award of costs and fees.

**I. INTRODUCTION**

Plaintiff’s motion to strike costs and fees is premised on three faulty arguments, and fails to establish any legal basis for this court to deny defendant’s request for costs and fees. As set forth below, defendant was the prevailing party on the main issues in the case, and attorney fees are awardable under section 12-120(3) on claims alleging that fraud induced the prevailing party to enter into a commercial transaction. Segregation of fees related to the fraud claim is not necessary because fraud is a claim for which fees may be awarded to the prevailing party. Accordingly, this court should award defendant its costs and fees, as set forth in its Memorandum of Costs and Fees.

**II. ARGUMENT**

a. ***Prevailing Party.***

Idaho Code § 12-120(3) provides that “[i]n any civil action to recover on [a] . . . contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction . . . the prevailing party shall be allowed a reasonable attorney’s fee to be set by the court to be taxed and collected as costs.” Section 12-120(3) further defines “commercial transaction” as “all transactions except transactions for personal or household purposes.” This matter arose out of a contract for services. The contract, titled ‘Master Services Agreement,’ specifically states that AMD was to provided “physician education” and “marketing” services to ICI. The Master Services Agreement is a contract for services, **and** constitutes a “commercial transaction” as defined in section 12-120(3)

Defendant, ICI is the prevailing party. In considering a request for attorneys’ fees the court must determine if there is a “prevailing party.” Pursuant to Rule 54(d)(1)(B), in



determining which party is the prevailing party the court shall consider the final judgment in relation to the relief sought by the parties. The court may determine that a party prevailed in part, and did not prevail in part, and may award costs (including attorneys' fees) in a fair and equitable manner.

The determination of who is the prevailing party for purposes of awarding attorney fees is committed to the sound discretion of the trial court. In exercising its discretion the court must carefully consider the factual circumstances and legal principles of law, and may not arbitrarily disregard those facts and principles of justice. Decker v. Homeguard Sys., 105 Idaho 158 (Ct. App. 1983)

Legal principles, and factual circumstances of this matter, lead to the inescapable conclusion that ICI is the prevailing party.

1. This lawsuit was initiated by the plaintiff;
2. Had plaintiff not filed this lawsuit there would have been no litigation and neither side would have incurred attorneys' fees;
3. Plaintiff was seeking over \$1,000,000 and recovered nothing, but could have recovered \$106,650 had it settled;
4. Defendant defeated plaintiff's claims, thereby coming out over \$700,000 ahead by trying the case instead of settling;
5. Defendant should be deemed the prevailing party even though it was not awarded damages on its counterclaim because the plaintiff's breach of contract claim was the "main issue" of the lawsuit;
6. In this case plaintiff's breach of contract claim was the "main issue" – had there been no breach of contract claim there would have been no lawsuit.

“In reaching the decision as to whether a party “prevailed,” Rule 54(d)(1)(B) requires the court to consider three areas of inquiry: (a) the final judgment or result obtained in the action in relation to the relief sought by the respective parties; (b) whether there were multiple claims or issues between the parties; and (c) the extent to which each of the parties prevailed on each of the issues or claims.” Chadderdon v. King, 104 Idaho 406, 411 (Idaho App. 1983).

In Chadderdon the plaintiff filed a breach of contract action arising out of construction of a building, seeking nearly \$60,000 in damages. Approximately 2 years after the complaint was filed, the defendant filed a counterclaim to recover damages of \$9,588 representing the costs of additional work and material. The jury denied recovery to both parties. After judgment was entered the trial court awarded costs, including attorney’s fees, to the defendant. The trial court determined that the defendant prevailed on the “main issue of the case,” which was plaintiff’s breach of contract claim. The trial court’s award of costs and attorney’s fees was upheld on appeal.

As was the situation in Chadderdon, the main issue in this lawsuit was plaintiff’s breach of contract claim, and defendant’s affirmative defense of mutual mistake. Plaintiff filed its complaint in December of 2009. Trial was set for January 31, 2011. In December of 2010, defendant moved to amend its answer to assert an affirmative defense and counterclaim for fraud. At that time defendant expressed its willingness and preparedness to proceed with trial in January of 2011. *Defendant did not need any additional time to prepare for trial based on its fraud allegation, which was a minor issue in relation to the overall case.* However, at plaintiff’s request, the court reset the trial date for June, 2011. Essentially all of defendant’s costs and fees prior to trial related

exclusively to plaintiff's cause of action for breach of contract and the defense of mutual mistake. Similarly, the trial focused predominantly on defendant's defenses to plaintiff's breach of contract claim, including the defenses of mutual mistake and fraud.

In looking at the results (the final judgment) of the trial defendant came out far ahead of plaintiff. In September of 2010, approximately 4 months prior to the original trial date, plaintiff was seeking in excess of \$825,000 from defendant to settle this dispute. At trial plaintiff was asking for damages of between \$710,500 and \$1,179,614 (Plaintiff Exhibit 128 and 138). Defendant saved at least \$710,000 by trying the case. On the other hand, defendant was willing to pay plaintiff \$106,650 to settle this claim. By trying the case plaintiff lost at least \$106,650.

There were multiple claims and issues involved in this litigation. Plaintiff's complaint contained claims of 'breach of contract', 'unjust enrichment' and 'account stated.' Defendant had counterclaims for "breach of contract" and 'fraud.' However, the "main issues" were plaintiff's breach of contract and unjust enrichment claims. Had plaintiff not brought the claims for breach of contract and unjust enrichment there would have been no lawsuit. Shortly before trial plaintiff abandoned its cause of action for account stated, and defendant abandoned its claim for breach of contract. Defendant dismissed its claim for breach of contract to simplify the issues at trial and because the value of the claim was less than \$40,000. Defendant's breach of contract claim was a tangential issue at best, and was certainly not the main issue of the case. Furthermore, in determining the prevailing party the court is to look at the "final judgment" - plaintiff has cited no authority that claims dismissed prior to trial are at all relevant to determining the prevailing party.

As expressed in Chadderdon v. King, 104 Idaho 406, 411 (Idaho App. 1983), in situations where there are multiple claims and the jury denies affirmative relief to both parties, the defendant should be deemed the prevailing party when the “main issue” in the case is plaintiff’s breach of contract cause of action and the defendant prevails on that claim.

The attorney fee provision of section 12-120(3) is “mandatory” once the court determines the prevailing party. Sanders v. Lankford 134 Idaho 322 (Idaho App. 2008); Nelson v. Anderson Lumber Co. 140 Idaho 702 (Idaho App. 2004). Accordingly, as the prevailing party ICI is entitled to an award of reasonable attorneys’ fees.

b. Segregation of Fees.

Defendant is not required to segregated fees associated with the affirmative claim for fraud from the fees associated with the other claims or defenses. Plaintiff contends that defendant’s cause of action for fraud is not a claim for which attorney fees may be awarded under section 12-120(3), and that the fees associated with that claim must be segregated from defendant’s other fees. Plaintiff’s contention is without merit. Plaintiff’s argument is based on dicta found in the decision of Weaver v. Searle Bros., 129 Idaho 497 (1996). The Weaver matter involved an ‘indemnity’ claim and is not relevant to this case.

In the *recent* Idaho Supreme Court case of Blimka v. My Web Wholesaler, LLC., 143 Idaho 723 (2007) the Court held that attorney fees are awardable under section 12-120(3) based on a fraud claim where the claimant is seeking damages sustained as a result of a ‘commercial transaction.’ The Idaho Supreme Court reaffirmed the Blimka decision in 2009 when it stated “attorney fees are awardable under section 12-120(3) on a

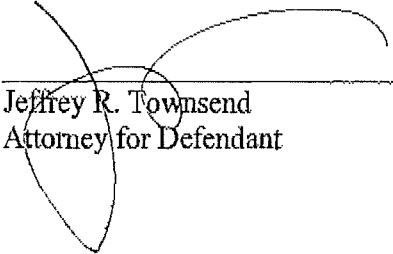
claim alleging that fraud induced the prevailing party to enter into a commercial transaction.” Triad Leasing & Financial, Inc. v. Rocky Mountain Rogues, Inc., 148 Idaho 503 (2009). ICI’s claim for fraud was based on the allegation that AMD fraudulently induced ICI to enter into a “commercial transaction” (the Master Services Agreement). Therefore, ICI’s fraud claim is a claim for which attorney fees may be awarded to the prevailing party under section 12-120(3). Additionally, all the fees associated with the fraud claim are equally attributable to the fraud defense, which would be awardable under 12-120(3). Accordingly, there is no obligation to segregate out the fees associated with the fraud claim.

#### CONCLUSION

For the reasons set forth above, ICI respectfully requests that this court deny plaintiff’s motion to strike, and requests an award of attorneys’ fees in the amount of \$125,942.50 and costs in the amount of \$6,970.67.

Dated this 26<sup>th</sup> day of August, 2011.

TOWNSEND LAW, P.C.

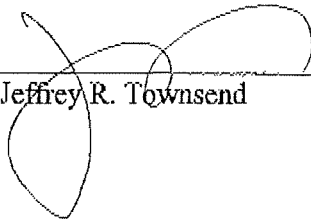
  
\_\_\_\_\_  
Jeffrey R. Townsend  
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26<sup>th</sup> day of August, 2011, I caused to be served a true and correct copy of the foregoing document, by method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy



\_\_\_\_\_  
Jeffrey R. Townsend



The parties tried this matter before a jury from June 20 through June 24, 2011. On June 24, 2011, the jury returned a special verdict finding that: (1) ICI breached the parties' agreement; (2) ICI proved the affirmative defense of mutual mistake with respect to the agreement; (3) AMD failed to prove that ICI was unjustly enriched; (4) ICI did not prove that it was damaged in any amount by an intentional misrepresentation on the part of AMD.

On July 21, 2011, Defendant filed its Verified Memorandum of Costs and Fees seeking \$6,970.67 in costs as a matter of right and \$125,942.50 in attorney fees, pursuant to Idaho Code section 12-120(3).

On August 2, 2011, Plaintiff filed its Motion to Disallow Costs and Attorney Fees and Memorandum in Support.

On August 26, 2011, ICI filed its Opposition to Plaintiff's Motion to Disallow Attorney Fees and Costs.

Plaintiff's Motion came before the court for hearing on September 8, 2011. Mr. Allen B. Ellis appeared on behalf of AMD in support of the Motion and Mr. Jeffrey R. Townsend appeared for ICI in opposition to the Motion. After considering the Verified Memorandum of Costs and Fees and supporting papers filed by ICI, AMD's Motion and supporting papers, and ICI's opposition papers, the arguments of counsel, the file in this action and the applicable law, the court determines AMD's Motion as follows.

## **PLAINTIFF'S MOTION TO DISALLOW COSTS AND FEES**

### **I. Statutory Authority for an Award of Attorney Fees**

I.R.C.P. 54(e)(1) authorizes the court, in any civil action, to award reasonable attorney fees to the prevailing party when provided for by any statute or contract. Idaho Code Section 12-

ORDER ON POST JUDGMENT MOTIONS

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120(3) requires the court to allow a reasonable attorney fee to the prevailing party in a civil action regarding a commercial transaction, unless otherwise provided by law. The term “commercial transaction” is defined in the statute as “all transactions except transactions for personal or household purposes.” An award of attorney fees under Section 12-120(3) is proper when the commercial transaction is integral to the claim and constitutes the basis upon which the party is attempting to recover. *Beco Construction Co., Inc. v. J-U-B Engineers, Inc.*, 145 Idaho 719, 726 (2008). The “critical test is whether the commercial transaction comprises the gravamen of the lawsuit; the commercial transaction must be integral to the claim and constitute the basis upon which the party is attempting to recover.” *Esser Electric, Inc. v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 921, 188 P.3d 854, 863 (2008) (quoting *Ervin Construction Co. v. Van Orden*, 125 Idaho 695, 704, 874 P.2d 506, 515 (1993)). When a commercial transaction between the parties is integral to a claim for fraud, attorney fees are proper awarded, pursuant to section 12-120(3), to the party prevailing on that claim. *Id.*

Here, the commercial transaction between the parties – the agreement for the provision of physician education and marketing services – was the basis of both AMD’s breach of contract claim and ICI’s intentional misrepresentation claim. Accordingly, Section 12-120(3) authorizes an award of costs and attorney fees to ICI, if ICI is the prevailing party.

## **II. Prevailing Party**

As noted above, pursuant to I.R.C.P. 54(e)(1), in order to recover costs and attorney fees in this action, ICI must establish that it is the prevailing party.

### **A. Legal Standard**

ORDER ON POST JUDGMENT MOTIONS

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**000154**

A trial court's determination regarding whether a party prevailed in an action is a matter of discretion. I.R.C.P. 54(d)(1)(B); *Shore v. Peterson*, 204 Idaho 1114, 1125, 204 P.3d 1114, 1125 (2009). In making a discretionary determination, this court must: (1) correctly perceives the issue as one of discretion; (2) acts within the outer boundaries of that discretion and consistently with the applicable legal standards; and (3) reaches its determination by an exercise of reason. *Id.*, 146 Idaho at 915.

The boundaries of this court's discretion, in determining whether Defendant prevailed in this action, are established by the language of Rule 54(d)(1)(B) which states:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

“In determining which party prevailed in an action where there are claims and counterclaims between opposing parties, the court determines who prevailed ‘in the action.’ That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis.” *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 719, 117 P.3d 130, 133 (2005). “Avoiding liability is a significant benefit to a defendant.” *Id.* “In litigation, avoiding liability is as good for a defendant as winning a money judgment is for a plaintiff.” *Id.*

Here, the court determines that ICI is the prevailing party, for purposes of an award of costs pursuant to I.R.C.P. 54(d)(1) and attorney fees pursuant to I.R.C.P. 54(e)(1) and Idaho Code section 12-120(3). ICI prevailed on the primary issue in this litigation: Whether ICI was

ORDER ON POST JUDGMENT MOTIONS

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liable to AMD for damages for breach of the parties' agreement for the provision of physician education and marketing services. Furthermore, since the claims asserted by the parties arise out of the same transaction, the court concludes that it would be improper to analyze the prevailing party issue on a claim-by-claim basis, rather than the overall result obtained in the action as a whole.

### **III. Costs**

ICI seeks an award of costs as a matter of right, pursuant to I.R.C.P. 54(d)(1)(C) in the amount of \$6,970.67.

The court finds that the amount requested is proper and awards ICI costs in the amount of \$6,970.67.

### **III. Attorney Fees**

Defendant seeks attorney fees in the amount of \$125,942.50, including paralegal fees.

The calculation of reasonable attorney fees is within the discretion of the trial court. *Lettunich v. Lettunich*, 145 Idaho 746, 749, 185 P.3d 258, 261 (2008). The court has already set forth the standards it must satisfy in properly exercising its discretion.

When awarding attorney fees, the court must consider the applicable factors set forth in Rule 54(e)(3):

1. The time and labor required;
2. The novelty and difficulty of the issues;
3. The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
4. The prevailing charges for like work;

ORDER ON POST JUDGMENT MOTIONS

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5. Whether the fee is fixed or contingent;
6. The time limitations imposed by the client or the circumstances of the case;
7. The amount involved and the results obtained;
8. The undesirability of the case;
9. The nature and length of the professional relationship with the client;
10. Awards in similar cases;
11. The reasonable cost of automated legal research, if the court finds it was reasonably necessary in preparing the party's case; and
12. Any other factor the court deems appropriate in a particular case.

*Lettunich*, 145 Idaho at 749-750. The rule does not require the court to make specific findings in the record, only to consider the stated factors in determining the amount of the fees. *Id.* at 750. When considering the factors, the court need not demonstrate how it employed any of the factors in reaching an amount awarded. *Id.*

The party seeking an award of fees bears the burden of convincing the district court of the reasonableness of the amount claimed for attorney fees. *Id.* The party seeking an award of fees may satisfy the initial burden of production by submitting affidavits itemizing and explaining the basis for the claim and the amount. *Id.* The party objecting to a claim for fees must file a motion stating with particularity the objections to the claimed fees and provide any other information the party wishes the court to consider in support of the objections. *Id.*

The court may not base its award or denial of attorney fees to vindicate its sense of justice beyond the judgment rendered on the underlying dispute, to provide indirect relief from an adverse judgment, or to penalize a party for misdeeds during the litigation. *Action Collection*

ORDER ON POST JUDGMENT MOTIONS

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*Services, Inc. v. Bigham*, 146 Idaho 286, 290, 192 P.3d 1110, 1114 (Ct. App. 2008).

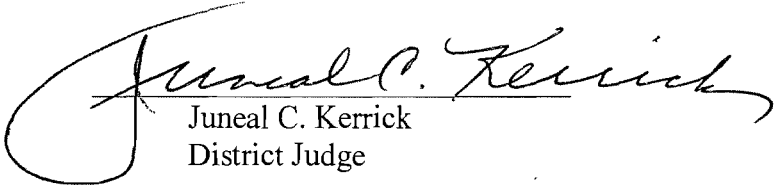
Nevertheless, the court “need not blindly accept the figures advanced by the attorney and may disallow fees that were unnecessarily and unreasonably incurred.” *Id.* “Thus, although the time and labor actually expended by an attorney is to be considered, it is also to be evaluated under a standard of reasonableness.” *Id.*

Here, ICI has satisfied its initial burden of production on the amount and reasonableness of the claimed fees in the form of an affidavit of counsel with attached time records. AMD has not identified any specific objection to the reasonableness of the fees claimed by ICI. The court’s review of ICI’s evidence did not reveal any fees that were unnecessarily or unreasonably incurred by ICI in this action.

Based on the foregoing, AMD’s Motion to Disallow Attorney Fees and Costs is denied and ICI is awarded reasonable attorney fees in the amount of \$125,942.50.

IT IS SO ORDERED.

Dated this 27<sup>th</sup> day of October, 2011.

  
Juneal C. Kerrick  
District Judge

ORDER ON POST JUDGMENT MOTIONS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the following, either by U.S. Mail, first class postage prepaid; by hand delivery; by courthouse basket; or by facsimile copy:

Allen B. Ellis  
Ellis, Brown & Sheils, Chartered  
P.O. Box 388  
707 North 8<sup>th</sup> Street  
Boise, Idaho 83701-0388

Jeffrey R. Townsend  
Townsend Law, P.C.  
3006 E. Goldstone Dr., Suite 120  
Meridian, Idaho 83642

Dated this 31 day of October, 2011.

CHRIS YAMAMOTO  
Clerk of the Court

By  \_\_\_\_\_  
Deputy Clerk

ORDER ON POST JUDGMENT MOTIONS

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**F I L E D**  
A.M. 2:50 P.M.

**NOV 14 2011**

**CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY**

ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant. )

Case No. CV-09-13504-C

MOTION FOR RECONSIDERATION

Comes now the plaintiff Advanced Medical Diagnostics, LLC, through its attorney of record, and moves the Court for an order vacating the Order on Post Judgment Motions. This motion is made pursuant to Rule 59(e), I.R.C.P., on the following grounds:

1. Having been found in breach of contract and having failed to prevail on both counts of its counterclaim, defendant ICI is not a prevailing party as that term is defined in Rule 54(d)(1)(B), I.R.C.P.

2. Because defendant ICI was exonerated from its adjudicated breach of contract by an

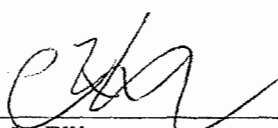
equitable principle, i.e., mutual mistake (and not as a matter of contract law) Idaho Code §12-120(3) is not applicable. This result is particularly appropriate where the mistake was "mutual", i.e., as much ICI's fault as the fault of AMD.

3. The Court failed to make an apportioned award of attorney fees, i.e., awarding to defendant ICI only those attorney fees related to claims upon which it prevailed.

4. Defendant ICI's memorandum of costs and attorney fees failed to isolate the fees on the claim on which it prevailed (mutual mistake) from those claims on which it did not prevail (affirmative defense of fraud, fraud in the inducement, and breach of contract).

This motion is based upon the memorandum of law filed herewith, the pleadings and records in this action and upon such oral and documentary evidence as may be presented at the hearing.

DATED this 14<sup>th</sup> day of November, 2011.

  
\_\_\_\_\_  
Allen B. Ellis  
Attorney for plaintiff

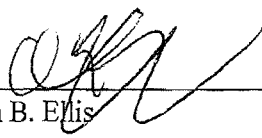


CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 14<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jeffrey R. Townsend  
Townsend Law, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, Idaho 83642

U.S. Mail, postage prepaid  
 Hand delivery  
 Overnight delivery  
 Facsimile (350-7311)

  
\_\_\_\_\_  
Allen B. Ellis

FILED  
A.M. 050 P.M.

NOV 14 2011

CANYON COUNTY CLERK  
J HEIDEMAN, DEPUTY

ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
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(208) 345-9564 (Facsimile)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant. )

Case No. CV-09-13504-C

MEMORANDUM IN SUPPORT OF  
MOTION FOR RECONSIDERATION  
OF ORDER IMPOSING ATTORNEY  
FEES AND COSTS (RULE 59(e),  
I.R.C.P.)

Plaintiff's position on fees and costs: In its motion to disallow fees and costs, plaintiff Advanced Medical Diagnostics ("AMD") argued that there was no prevailing party as that term is defined in Rule 54(d)(1)(B), I.R.C.P. The jury found that defendant Imaging Center of Idaho ("ICI") was in breach of contract. Earlier, ICI's claim of breach of contract against AMD had been abandoned. ICI's affirmative allegation of AMD's fraud as a defense to AMD's breach of contract claim was rejected by the jury. The jury did find that *both* parties were mistaken as to "a vital fact

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF  
ORDER IMPOSING ATTORNEY FEES AND COSTS (RULE 59(e), I.R.C.P. - 1

upon which the bargain was based”, thereby excusing defendant ICI from its contract breach. *Hughes v. Fisher*, 142 Idaho 474, 482, 52 P.3d 307 (2006). “Mistake”, in the context of contract law, “is an unintentional act or omission arising from ignorance, surprise, or misplaced confidence”. *Leydet v. City of Mountain Home*, 119 Idaho 1041, 812, P.2d 755 (Ct. App. 1991).

Order on costs and fees: Notwithstanding ICI’s contract breach, its failure to prevail on the counterclaim, and the shared (and innocent), error of the parties explicit in the defense of “mutual mistake”, the Court found that defendant ICI was the prevailing party. The Court ruled:

In determining which party prevailed in an action where there are claims and counterclaims between opposing parties, the court determines who prevailed ‘in the action’. That is, the prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis. . . . Here the court determines that ICI is the prevailing party, for the purposes of an award of costs pursuant to I.R.C.P. 54(d)(1) and attorney fees pursuant to I.R.C.P. 54(e)(1) and Idaho Code section 12-120(3).

Order on Post Judgment Motions, p. 4.

Standard of review: The appellate courts are constrained to review the trial court’s identification of the prevailing party by utilizing an abuse-of-discretion standard. However, the trial court has a duty to apportion to each of the parties only the attorney fees related to the claims upon which each party prevailed. If this legal standard has not been met, the trial court has committed an abuse of discretion. *Schroeder v. Partin*, 2011 Opinion No. 89. Additionally, in the absence of apportionment by the party seeking fees, the request for fees must be denied. *Brooks v. Gigray Ranches*, 128 Idaho 72, 78, 910 P.2d 744 (1996).

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF  
ORDER IMPOSING ATTORNEY FEES AND COSTS (RULE 59(e), I.R.C.P. - 2

Issues presented:

(1) Because defendant ICI was found to be in breach of contract but was exculpated based upon a mutual mistake in which mistake, by definition, it had participated, can ICI be the “prevailing party”, particularly where it failed to recover on its breach of contract and fraud counterclaims? Distinguish *Eighteen Mile Ranch, LLC v. Nord Excavating*, 141 Idaho 716, 117 P.3d 130 (2005).

(2) Is Idaho Code §12-120(3) applicable where ICI was found to be in breach of contract but was exculpated based upon an equitable concept (mutual mistake), not because it adhered to the terms of a contract or because plaintiff AMD breached the contract? *Holscher v. James*, 124 Idaho 443, 886 P.2d 646 (1993).

(3) In the absence of the failure of the Court to apportion the award of fees based upon those legal services respecting the claim on which ICI prevailed (mutual mistake) and by the failure of ICI to identify which fees are allocable to the affirmative defense of mutual mistake, is defendant ICI entitled to fees (whether it is the prevailing party or not)? *Schroeder v. Partin*, slip. op. p. 9; *Brooks v. Gigray Farms, supra.*

UNLIKE THE COURT’S CITATION (*EIGHTEEN MILE RANCH*) THE  
PLAINTIFF HERE PROVED THAT DEFENDANT ICI WAS IN BREACH  
OF CONTRACT AND DEFEATED ICI’S COUNTERCLAIMS

The case relied upon by the Court, *Eighteen Mile Ranch v. Nord, supra*, was a somewhat straightforward case of the plaintiffs failing to prevail on their breach of contract claim and were themselves found to be in breach of contract with the counterclaimant. In reversing the district court’s ruling that there was no prevailing party, the Supreme Court opined that the district court “focused too much attention” on the modest nature of the recovery on the counterclaim, i.e., “the

district court improperly undervalued the Company's [counterclaimant's] successful defense". *Id.*, 141 Idaho at 719.

In stark contrast to *Eighteen Mile Ranch*, plaintiff AMD proved that defendant ICI was in breach of contract and defeated ICI's counterclaim for fraud and breach of contract. That is, the result in the case at bench is a mirror-image reversal to *Eighteen Mile Ranch*.

The significance of defendant ICI's exculpation of the contract breach based upon mutual mistake is discussed below.

BECAUSE DEFENDANT ICI WAS FOUND EXCULPATED FROM ITS  
CONTRACT BREACH BASED UPON THE EQUITABLE CONCEPT OF  
MUTUAL MISTAKE, THIS RESULT WAS NOT EX CONTRACTU  
AND IDAHO CODE §12-120(3) IS NOT APPLICABLE

It cannot be disputed that the concept of "mutual mistake" is rooted in equitable principles and not on express or implied contract terms. *Boise Junior College District v. Mattefs Const. Co.*, 92 Idaho 757, 759, 450 P.2d 604 (1969). As opined by the Idaho Supreme Court:

Equitable remedies are not dependent upon contractual authorization, but apply precisely because there is no adequate remedy at law under the contract's terms, and because sufficient grounds to invoke equity, such as *mutual mistake*, fraud, or impossibility, are present.

*Holscher v. James*, 124 Idaho 445, 447, 860 P.2d 646 (1993) (emphasis added).

In *Holscher*, the Supreme Court concluded that because the defendant had the right "under the contract to void the contract at their option" they did not have to satisfy common law requirements for equitable rescission. By the same reasoning, defendant ICI escaped liability for its contract breach under equitable principles, not by adherence to contract terms or by virtue of plaintiff AMD's breach of contract terms. That is, not only was plaintiff AMD the "prevailing party" on the breach-of-contract issue, ICI's exoneration from liability was equity-based and not contract-based,

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF  
ORDER IMPOSING ATTORNEY FEES AND COSTS (RULE 59(e), I.R.C.P. - 4

rendering Idaho Code §12-120(3) inapplicable.

THE COURT ERRED IN AWARDING DEFENDANT ICI FEES  
RESPECTING CLAIMS ON WHICH IT DID NOT PREVAIL

The record reflects that the jury found that defendant ICI was in breach of contract and that AMD did not commit fraud which fraud would have either neutralized the contract breach or resulted in damages. Earlier in the litigation, defendant ICI had abandoned its breach of contract counterclaim against AMD.

The only claims on which ICI prevailed were in defeating AMD's unjust enrichment claim and prevailing on its claim of mutual mistake. Nevertheless, the Court awarded defendant ICI fees for all services rendered.

Under Idaho law, where there are multiple claims and some of which do not prevail or some of which do not carry an attorney fee entitlement, it is incumbent on the Court to award fees related to the claims on which the party prevailed and which carried a fee entitlement.

. . . [T]he court had a duty to apportion to each of the parties only the attorney fees related to the claims upon which each party prevailed. [case cited] . . . The trial court's decision to award all attorney fees incurred by each party in connection with the litigation, without attempting to apportion those fees based upon the respective claims upon which each party prevailed, was inconsistent with the governing legal standard. Thus, the district court abused its discretion.

*Schroeder v. Partin, supra*, slip op. p. 9.

See also *Ramco v. H-K Contractors, Inc.*, 118 Idaho 108, 113, 794 P.2d 1381 (1990). In the next section, plaintiff addresses the challenge which the Court faced in segregating fees attributable to successful claims and defenses and fees attributable to unsuccessful claims and defenses.

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF  
ORDER IMPOSING ATTORNEY FEES AND COSTS (RULE 59(e), I.R.C.P. - 5

BY REASON OF DEFENDANT ICI'S FAILURE TO ISOLATE ITS FEES  
ATTRIBUTABLE TO ITS SUCCESSFUL CLAIM AND DEFENSE, ICI'S  
ATTORNEY FEE CLAIM SHOULD BE DENIED *IN TOTO*

Insufficiency of ICI's costs/fees documentation: Defendant ICI did not successfully defend the breach of contract claim against it but avoided liability by arguing that both itself and AMD were laboring under a mistake of fact. Also, defendant ICI did not successfully prosecute its fraud and breach of contract counterclaim against plaintiff AMD. ICI did successfully defend against AMD's unjust enrichment claim.

Notwithstanding these successes and failures, defendant ICI sought as awardable fees the entirety of its legal costs incurred in this litigation, including those fees incurred in the unsuccessful prosecution of its counterclaim (breach of contract and fraud) and its affirmative defense of fraud.

As noted above, the Court is required to apportion fees based on claims upon which a party prevailed and upon which claims it did not prevail. However, ICI, in its claim for fees and costs, fails to segregate its fees and costs in this manner, leaving to pure speculation which fees are attributable to its successful mutual mistake claim and unjust enrichment defense.

Impact of insufficient costs/fees documentation: In *Brooks v. Gigray Ranches, Inc.*, 128 Idaho 72, 910 P.2d 744 (1996), the prevailing party submitted a memorandum of fees and costs which did not segregate the fees/costs attributable to defending against contract breach from the fees/costs attributable to the prosecution, by way of counterclaim, for conversion. In 1996, even in a commercial setting, the conversion claim did not carry an entitlement to attorney fees. Given the absence of such segregation, the district court denied the claim for fees. The Supreme Court affirmed:

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF  
ORDER IMPOSING ATTORNEY FEES AND COSTS (RULE 59(e), I.R.C.P. - 6

The district court did not award attorney fees on the defense of the contract claim because the memorandum of costs was insufficient to isolate the fees attributable to that defense from the fees attributable to prosecution of the counterclaim for conversion. . . . [T]he denial of fees here resulted from the fact that the fees attributable to the contract claim could not be separated from the conversion claim, which the district court found to be outside the scope of I.C. §12-120(3). . . . The district court properly denied Gigray Ranches' claim for attorney fees.

*Id.*, 128 Idaho at 78, 79

Just so here. Defendant ICI's failed to itemize its fees attributable to its two successful claims, thereby "isolating" such fees from attorney fees on the four issues on which it was not successful. This failure should result in a denial of ICI's attorney fee claim.

#### CONCLUSION

Given the panoply of wins and losses presented by the jury verdict, this litigation did not result in the emergence of a prevailing party. Because defendant ICI's escape from a finding of contract breach was equity-based, i.e., a mutual mistake, Idaho Code §12-120(3) is not applicable. Also, in view of the "mutuality" of the mistake, considerations of basic fairness militate against awarding fees against AMD.

Assuming that the Court identifies ICI as the prevailing party, there remains the task of awarding fees "related to the claims on which the party prevailed". *Schroeder v. Partin, supra*. However, this task cannot be accomplished given the failure of ICI to submit a memorandum of costs/fees identifying the costs/fees "related to the claims upon which [ICI] prevailed". *Id.* Accordingly, under *Brooks v. Gigray Ranches*, defendant ICI's claim for costs/fees should be denied.



DATED this 14<sup>th</sup> day of November, 2011.



\_\_\_\_\_  
Allen B. Ellis  
Attorney for plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 14<sup>th</sup> day of November, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jeffrey R. Townsend  
Townsend Law, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, Idaho 83642

\_\_\_\_ U.S. Mail, postage prepaid  
\_\_\_\_ Hand delivery  
\_\_\_\_ Overnight delivery  
 Facsimile (350-7311)



\_\_\_\_\_  
Allen B. Ellis

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF  
ORDER IMPOSING ATTORNEY FEES AND COSTS (RULE 59(e), I.R.C.P. - 8

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**FILED**  
 A.M. 1256 P.M.  
**DEC 29 2011**  
**CANYON COUNTY CLERK**  
**K CANNON, DEPUTY**

Attorney for Defendant

IN THE DISTRICT COURT OF THIRD JUDICIAL DISTRICT OF THE STATE OF  
 IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )	
LLC, )	CASE NO. CV-2009-13504-C
)	
Plaintiff, )	DEFENDANT IMAGING CENTER
)	OF IDAHO, LLC'S OPPOSITION
vs. )	TO PLAINTIFF'S MOTION FOR
)	RECONSIDERATION OF ORDER
IMAGING CENTER OF IDAHO, LLC )	IMPOSING ATTORNEY FEES
)	AND COSTS
Defendant. )	
)	

COMES NOW, defendant Imaging Center of Idaho, LLC ("ICI"), by and through its counsel of record, Jeffrey R. Townsend of Townsend Law, P.C., and submits the following memorandum in opposition to plaintiff's Motion For Reconsideration Of Order Imposing Attorney Fees and Costs. This court's order awarding attorneys' fees and costs to ICI was within the court's discretion; the court perceived the determination of attorneys' fees as an issue within its discretion; and the Court acted within the boundaries of its discretion and within the applicable legal standards in reaching its determination. Accordingly, ICI respectfully requests that this court deny plaintiff's Motion for Reconsideration.

## **I. INTRODUCTION**

Plaintiff's motion is based on three faulty arguments – two of which have already been argued by plaintiff and decided by this court. Plaintiff's new argument, that attorneys' fees are not awardable under I.C.S. 12-120(3) when the defendant avoids contractual liability pursuant to an equitable defense, is contrary to the plain meaning of section 12-120(3), and contrary to well established Idaho law. For the reasons set forth in ICI's opposition to plaintiff's motion to tax costs, and for the reasons set forth below, this court should deny plaintiff's motion for reconsideration.

## **II. ARGUMENT**

### **a. *Prevailing Party.***

The determination of a prevailing party for purposes of awarding attorney fees is committed to the sound discretion of the trial court. In exercising its discretion the court must carefully consider the factual circumstances and legal principles of law, and may not arbitrarily disregard those facts and principles of justice. Decker v. Homeguard Sys., 105 Idaho 158 (Ct. App. 1983). This court's order clearly reflects that the court recognized the issue of determining whether there was a "prevailing party" as an issue within the Court's discretion.

In its order for costs and fees this Court determined that ICI prevailed on the main issue of the case – whether ICI was liable to AMD for damages for breach of contract. As noted by the Court, the "prevailing party" is determined by an "overall view, not on a claim-by-claim analysis."

Plaintiff argues that ICI should not be considered the prevailing party because it did not prevail on all claims. A claim-by-claim analysis is not necessary. ICI prevailed

on the main issue of lawsuit – liability under the contract – and avoided damages in excess of a million dollars. The overall outcome of the litigation was far more favorable to ICI than to plaintiff.

This court properly recognized that the issue of “prevailing party” was within the court’s discretion, and the court’s order reflects that the court acted within the parameters of its discretion and within the appropriate legal standards. As noted in the court’s order, “a trial court’s determination regarding whether a party prevailed in an action is a matter of discretion,” and that the boundaries of that discretion are set forth in Rule 54(d)(1)(B).

Rule 54(d)(1)(B) states:

In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

This court recognized that it had the discretion to find that ICI prevailed in part and did not prevail in part. In fact, during oral argument this court specifically stated that one of its options was to make such a determination. However, in exercising its discretion, this Court determined that ICI was the prevailing party “in the action” because ICI prevailed on the primary issue in the case. A claim-by-claim analysis is not necessary to determine the prevailing party. Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc 141 Idaho 716, 719, 117 P.3d 130,133 (2005).

In determining that ICI was the prevailing party in this matter, the court acted within the parameters of its discretion and within the appropriate legal standards.

Accordingly, there is no basis for the court to reconsider its ruling based upon its determination that ICI was the prevailing party.

b. **Applicability of I.C.S. 12-120(3).**

Plaintiff argues that Idaho Code § (“I.C.S.”) 12-120(3) is not applicable when a defendant avoids contractual liability by prevailing on an equitable defense, as opposed to a contractual defense. Plaintiff’s argument is without any legal support. The only authority cited by plaintiff is Holscher v. James, 124 Idaho 443, 860 P.2d 646 (1993). *Holscher* does not even address I.C.S. 12-120. In *Holscher* the Idaho Supreme Court merely concluded that the defendant did not have to establish the equitable requirements of ‘equitable rescission’ because the contract itself gave the defendant the right to void the contract. *Holscher* does not stand for the proposition that an action is not contractual simply because the defendant defeats liability on an equitable defense.

Plaintiff’s unsupported position is contrary to established Idaho law. There are two scenarios under which fees may be awarded under the “commercial transaction” prong of I.C.S. 12-120(3).

In Garner v. Povey, 151 Idaho 462, 259 P.3d 608 (2011) the Idaho Supreme Court stated “In determining whether attorney fees should be awarded under I.C. § 12-120(3), the Court has conducted a two-step analysis: (1) there must be a commercial transaction that is integral to the claim; and (2) the commercial transaction must be the basis upon which recovery is sought.” [ . . . ] In other words, the relevant inquiry is whether the commercial transaction constituted “ the gravamen of the lawsuit,” and was the basis on which a party is attempting to recover.”

In Harris, Inc. v. Foxhollow Const. & Trucking, Inc., (36601 IDSCCI 2011) the Idaho Supreme Court reiterated the standard for determining whether I.C.S. 12-120(3) is applicable: “In order to recover fees under the commercial transaction prong of I.C. § 12-120(3), one party must allege that a commercial transaction occurred or a commercial transaction must be the actual basis of the lawsuit.”

This court was cognizant of the standard for determining the applicability of I.C.S. 12-120(3). As reflected in this court’s order, “The critical test is whether the commercial transaction compromises the gravamen of the lawsuit; the commercial transaction must be integral to the claim and constitute the basis upon which the party is attempting to recover.” (citing Essser Electric, Inc. v. Lost River Ballistics Technologies, Inc., 145 Idaho 912 (2008). This court correctly concluded that the commercial transaction between the parties – the agreement for the provision of physician education and marketing services – was the basis of both AMD’s breach of contract claim and ICI’s intentional misrepresentation claim.

Accordingly, this court understood, and correctly applied, the appropriate standard for determining whether attorneys’ fees were recoverable in this action. Accordingly, there is no basis for this court to reconsider its award to attorney fees to ICI based on the determination that this matter fell within the scope of I.C. § 12-120(3).

c. **Apportionment of Fees.**

Plaintiff contends that this court erred in awarding ICI its attorneys’ fees without apportioning fees on a claim by claim basis. Plaintiff’s position is without merit. A claim-by-claim analysis for the purpose of apportioning attorney fees is not required unless **both** parties prevailed on their asserted claims.

As noted above, this court had the discretion to find that both parties prevailed in part, and did not prevail in part. This court made no such finding. Absent a determination that a party prevailed in part and did not prevail in part, the court is under no obligation to consider which party prevailing on which claims in determining a reasonable award of attorneys' fees. Rule 54(d)(1)(B) provides that the court may apportion the costs between and among the parties "upon so finding" that a party to the action prevailed in part and did not prevail in part. In cases such as the one at bar, where only one party is determined to be the prevailing party, the court determines the reasonableness of the award of attorney fees by considering the factors set forth in Rule 54(e)(3). (Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc., 141 Idaho 716 (2005)).

As support for its argument plaintiff relies upon the Idaho Supreme Court cases of Schroeder v. Partin, 151 Idaho 471(2011) and RAMCO v. H-K Contractors, Inc., 118 Idaho 108 (1990). Neither of the Court's decisions supports plaintiff's position.

The issues in *RAMCO* arose out of a reorganization agreement between the parties. The reorganization plan provided that plaintiff would receive a percentage of the company's tax savings, and also provided for a sale of company equipment. The plaintiff sued the defendant to recover a percentage of the company's tax savings, and the defendant countersued to recover profits from the sale of equipment. The jury found in favor of each party on its respective claims. The trial court awarded costs to Ramco, but denied Ramco's request for attorney fees.

On appeal the Idaho Supreme Court stated “where both parties have successfully asserted claims, the claims should be severed and costs analyzed separately for each.” In the case at bar AMD did not successfully assert any claims – it lost on both its breach of contract claim and its unjust enrichment claim.

In the *Schroeder* matter the plaintiff contracted with the defendant to build an engine for an automobile. The plaintiff filed suit against defendant for improperly assembling the engine, and the defendant countersued for unpaid parts and services. The jury returned a verdict in favor of each party on its respective claims. Each party submitted a request for costs and attorneys’ fees as the prevailing party. The district court found that each party prevailed on its separate claims, and because neither party objected to the amount of attorneys’ fees sought by the other the court awarded each party all attorneys’ fees requested in their cost bills.

The Idaho Supreme Court stated that the district court had the discretion to award costs and fees to both the plaintiff and the defendant as prevailing parties, but upon making such a determination the court had a duty to apportion to each party only the fees related to the claims upon which it prevailed. The Court’s decision in *Schroeder* is inapplicable to this case because AMD did not prevail on any of the claims it asserted, and the district court did not make a determination that both parties prevailed in part.

Contrary to plaintiff’s assertions, there is simply no obligation to “isolate” fees. Plaintiff’s argument is premised on the Idaho Supreme Court case of Brooks v. Gigray Ranches, Inc., 128 Idaho 72 (1996). In the plaintiff sued defendant for breach of contract, and the defendant countersued for conversion. The defendant prevailed on both claims, but was awarded less damages on its conversion claim than it had sought. The



district court concluded that defendant's defense of the breach of contract claim was "inseparably intertwined" with the conversion claim, and that the conversion claim was outside the scope of section 12-120(3). Accordingly, the district court denied attorney fees to defendant.

On appeal the Idaho Supreme Court upheld the district court's decision, stating:

The fact that the conversion claim arose out of a commercial transaction is not sufficient to apply I.C. § 12-120(3): 'the commercial transaction must be integral to the claim and constitute the basis upon which the party is attempting to recover.' [cites omitted] The basis of Gigray Ranches' claim was the tort of conversion. The district court properly denied Gigray Ranches' claim for attorney fees.

The *Brooks* matter is not applicable to this case for multiple reasons. First, in contrast to *Brooks*, a commercial transaction **was** integral to the claim and constituted a basis upon which a party was seeking to recover. Furthermore, **all** of the claims in this matter fall within the scope of section 12-120(3). In *Blimka v. My Web Wholesaler, LLC.*, 143 Idaho 723 (2007) the Idaho Supreme Court held that attorney fees **are** awardable under section 12-120(3) based on a fraud claim where the claimant is seeking damages sustained as a result of a 'commercial transaction.' The Idaho Supreme Court reaffirmed the *Blimka* decision in 2009 when it stated "attorney fees are awardable under section 12-120(3) on a claim alleging that fraud induced the prevailing party to enter into a commercial transaction." *Triad Leasing & Financial, Inc. v. Rocky Mountain Rogues, Inc.*, 148 Idaho 503 (2009). ICI's claim for fraud was based on the allegation that AMD fraudulently induced ICI to enter into a "commercial transaction" (the Master Services Agreement). Therefore, ICI's fraud claim is a claim for which attorney fees may be awarded to the prevailing party under section 12-120(3).

Plaintiff has no authority for the position that attorney fees have to be “isolated” by claim when all the claims are within the scope of I.C. § 12-120(3). To the contrary, when a court determines that a party prevailed “in the action” and is entitled to attorney fees, the court determines the amount of a reasonable award by evaluating the factors set forth in Idaho R. Civ. P. 54(e)(3).

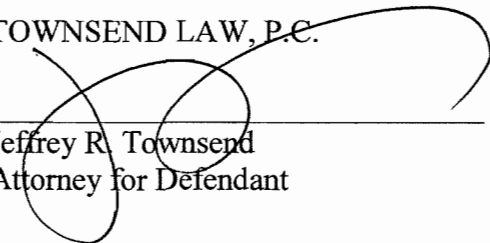
As reflected in this court’s order, the court determined that ICI was the prevailing party “in the action” and determined the reasonableness of the award of attorney fees by evaluating the factors set forth in Idaho R. Civ. P. 54(e)(3).

**CONCLUSION**

This court acted within the parameters of its discretion, and according to appropriate legal standards, in determining ICI was the prevailing party “in the action.” Upon so finding the court properly determined a reasonable attorney fee by evaluating the factors set forth in Idaho R. Civ. P. 54(e)(3). Accordingly, this court’s award of attorney fees to ICI was appropriate in all respects. For the reasons set forth above, ICI respectfully requests that this court deny plaintiff’s motion for reconsideration.

Dated this 28<sup>th</sup> day of December, 2011.

TOWNSEND LAW, P.C.

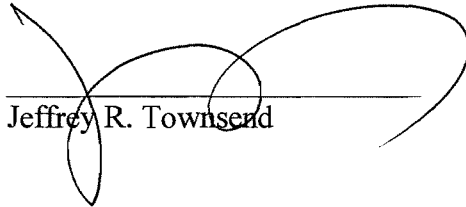
  
\_\_\_\_\_  
Jeffrey R. Townsend  
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29<sup>th</sup> day of December, 2011, I caused to be served a true and correct copy of the foregoing document, by method indicated below, and addressed to each of the following:

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Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
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Boise, ID 83701-0388

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy

  
\_\_\_\_\_  
Jeffrey R. Townsend

ALLEN B. ELLIS, ISB No. 1626  
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**FILED**  
A.M. 1:30 P.M.  
JAN 10 2012  
CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )  
Plaintiff, )  
v. )  
IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )  
Defendant. )

Case No. CV-09-13504-C  
REPLY BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION (COSTS  
AND FEES)

IN ARGUING THAT IT WAS THE PREVAILING PARTY, ICI  
IGNORES TWO MAJOR ISSUES RESOLVED BY THE JURY

(1) ICI was found by the jury to be in breach of contract: ICI characterizes "the main issue of the lawsuit" to be "liability under the contract" (ICI brief, p. 3). Another "main issue" is whether ICI was in breach of contract. The jury answered this question in the affirmative.

(2) The jury decided that ICI was relieved of contract liability because both it and AMD were laboring under a factual mistake. Thus, not only was ICI in breach of contract, its conduct was

REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION  
FOR RECONSIDERATION (COSTS AND FEES - 1

qualitatively identical to AMD respecting their conduct in the formation of the contract. More to the point, the jury found that defendant ICI did not prove its defense of fraud. The jury verdict is attached hereto for ease of reference.

THE ABSENCE OF A PREVAILING PARTY IS FURTHER CORROBORATED  
BY ICI'S ABANDONMENT OF ITS CONTRACT COUNTERCLAIM AND THE  
JURY'S FINDING OF NO DAMAGE ON ITS FRAUD COUNTERCLAIM

When the above points are considered in conjunction with (1) ICI's abandonment of its breach of contract counterclaim (which was litigated for nine months), (2) and the absence of damages for intentional misrepresentation on its fraud counterclaim, the total picture presents a "cogent challenge" to the Court's finding that ICI was the prevailing party. *U.S. National Bank of Oregon v. Cox*, 126 Idaho 733, 736, 889 P.2d 1123.

ICI'S FAILURE TO ISOLATE ITS CONTRACT DEFENSE FEES FROM THE FEES  
FROM ITS FAILED PROSECUTION OF CONTRACT AND FRAUD CLAIMS  
REQUIRES ICI'S FEE CLAIM BE DENIED IN ITS ENTIRETY

As noted above, ICI failed to prevail on its contract and fraud claims.

ICI argues that absent a finding that ICI only prevailed in part (which the record reflects) the Court has finessed its "obligation to consider which party prevailing (sic) on which claims in determining a reasonable award of attorney fees". (ICI brief, p. 6). That is, argues ICI, the Court's obligation is limited to considering the factors set forth in Rule 54(e)(3), I.R.C.P.


Apart from the absurdity of the Court, thusly, being able to bulletproof itself from appeal, as ICI's would have it, one of the factors set forth in Rule 54(e)(3) is "the results obtained". ICI was found in breach of contract, abandoned its contract claim against AMD, and recovered no fraud damages against AMD. Only by a mutual mistake with AMD, did ICI avoid contract liability.

The Court's award to ICI the entirety of its claimed fees does not survive the "cogent

challenge" presented by this record in which ICI failed or abandoned its proofs in several respect. In effect, the Court is awarding ICI its fees for prosecution of a contract claim which it abandoned and its fees for fraud claim on which it recovered nothing.

The failure of ICI to isolate its fees attributable to claims which carry a fee entitlement requires a denial of the entirety of ICI's fees. *Brooks v. Gigray Ranches, Inc.*, 128 Idaho 72, 78, 910 P.2d 744 (1996).

DATED this 10<sup>th</sup> day of January, 2012.



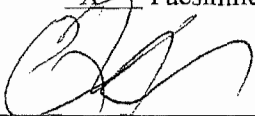
Allen B. Ellis  
Attorney for plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 10<sup>th</sup> day of January, 2012, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jeffrey R. Townsend  
Townsend Law, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, Idaho 83642

- U.S. Mail, postage prepaid
- Hand delivery
- Overnight delivery
- Facsimile (350-7311)



Allen B. Ellis

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, )

vs. )

IMAGING CENTER OF IDAHO, LLC, an )  
Idaho limited liability company, )

Defendant. )

**SPECIAL VERDICT FORM**

Case No. CV 2009-13504-C

We, the Jury, answer the special interrogatories as follows:

**COUNT I: BREACH OF CONTRACT**

**Question No. 1:** Did the defendant breach the contract between the plaintiff and the defendant?

**Answer to Question No. 1:** Yes  No

SPECIAL VERDICT FORM

If you answered this question "Yes," please continue to Question No. 2. If you answered this question "No," please proceed to Question No. 7.

**Question No. 2:** Did the defendant prove the affirmative defense of mutual mistake?

**Answer to Question No. 2:** Yes X No \_\_\_\_\_

After answering Question No. 2, please continue to Question No. 3.

**Question No. 3:** Did the defendant prove the affirmative defense of fraud?

**Answer to Question No. 3:** Yes \_\_\_\_\_ No X

If you answered "Yes" to Question No. 2 or Question No. 3, please proceed to Question No. 5. If you answered "No" to both Question No. 2 and Question No. 3, please continue to Question No. 4.

**Instruction for Question No. 4:** You will reach this question if you have found that the defendant breached the contract with the plaintiff and that the defendant did not prove any affirmative defense.

**Question No. 4:** What is the total amount of damages sustained by the plaintiff as the result of the defendant's breach of contract?

**Answer to Question No. 4:** We assess the plaintiff's damages as follows:

\$ \_\_\_\_\_

After answering Question No. 4, please proceed to Question No 7.

**COUNT TWO: UNJUST ENRICHMENT**

**Instruction for Question No. 5:** You will answer Question No. 5 only if you

SPECIAL VERDICT FORM



answered "Yes" to Question No. 1 and "Yes" to Question No. 2 and/or Question No. 3.

**Question No. 5:** Did the plaintiff prove that the defendant was unjustly enriched by the actions of the plaintiff?

**Answer to Question No. 5:** Yes \_\_\_\_\_ No X

If you answered this question "Yes," please proceed to Question No. 6. If you answered this question "No," please proceed to Question No. 7.

**Question No. 6:** What is the total amount of damages sustained by the plaintiff on its claim for unjust enrichment?

**Answer to Question No. 6:** We assess the plaintiff's damages as follows:

\$ \_\_\_\_\_

After answering Question No. 6, please proceed to Question No. 7.

**COUNTERCLAIM: INTENTIONAL MISREPRESENTATION/FRAUD**

**Question No. 7:** Did the defendant prove, by clear and convincing evidence, that it was damaged by an intentional misrepresentation on the part of the plaintiff?

**Answer to Question No. 7:** Yes X No \_\_\_\_\_

If you answered this question "Yes," please proceed to Question No. 8. If you answered this question "No," you are done. Please sign the verdict as instructed and advise the Bailiff.

**Question No. 8:** What is the total amount of damages sustained by the defendant on its claim for intentional misrepresentation?

**Answer to Question No. 8:** We assess the defendant's damages as follows: \_\_\_\_\_

SPECIAL VERDICT FORM

\$ 0

After answering Question No. 8, you are done. Please sign the verdict as instructed and advise the Bailiff.

Dated:

Foreperson Juror No. Name Juror No.

Name Juror No. Name Juror No.

Name Juror No. Name Juror No.

Name Juror No. Name Juror No.

Name Juror No. Name Juror No.

Name Juror No. Name Juror No.

SPECIAL VERDICT FORM

FILED  
11 9 A.M. P.M.

JAN 30 2012

CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, LLC )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 IMAGING CENTER OF IDAHO, LLC, )  
 )  
 Defendant. )  
 )

**ORDER ON PLAINTIFF'S  
MOTION FOR  
RECONSIDERATION**

**CV-2009-13504-C**

**INTRODUCTION**

In this action, Plaintiff Advanced Medical Diagnostics, LLC (AMD) sought damages based upon Defendant Imaging Center of Idaho, LLC's (ICI) alleged breach of an agreement for the provision of physician education and marketing services and reformation of such agreement, based upon mutual mistake. ICI counterclaimed for damages based upon fraud/intentional misrepresentation on the part of AMD.<sup>1</sup>

<sup>1</sup> ICI had also asserted a counterclaim for breach of contract, but voluntarily dismissed that claim prior to trial.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

The parties tried this matter before a jury from June 20 through June 24, 2011. On June 24, 2011, the jury returned a special verdict finding that: (1) ICI breached the parties' agreement; (2) ICI proved the affirmative defense of mutual mistake with respect to the agreement; (3) AMD failed to prove that ICI was unjustly enriched; (4) ICI did not prove that it was damaged in any amount by an intentional misrepresentation on the part of AMD.

On July 21, 2011, Defendant filed its Verified Memorandum of Costs and Fees seeking \$6,970.67 in costs as a matter of right and \$125,942.50 in attorney fees, pursuant to Idaho Code section 12-120(3).

On August 2, 2011, Plaintiff filed its Motion to Disallow Costs and Attorney Fees and Memorandum in Support.

On August 26, 2011, ICI filed its Opposition to Plaintiff's Motion to Disallow Attorney Fees and Costs.

On October 31, 2011, the court entered its Order on Plaintiff's Objection to Defendant's Claimed Costs and Attorney Fees. In its Order, the court determined that ICI was the prevailing party in this action, for purposes of an award of costs and fees, and awarded ICI reasonable attorney fees in the amount of \$125,942.50.

Plaintiff now moves for reconsideration of the court's October 31, 2011 Order and, upon reconsideration, "for an order vacating the Order on Post Judgment Motions."<sup>2</sup>

---

<sup>2</sup> Plaintiff's Motion is captioned "Motion for Reconsideration." However, in the body of the motion itself Plaintiff states that the "motion is made pursuant to Rule 59(e), I.R.C.P." Since Plaintiff's Motion is addressed directly to the court's October 31, 2011 Order, the court will treat it as a motion for reconsideration pursuant to I.R.C.P. 11(a)(2)(B).

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

Plaintiff's Motion came before the court for hearing on January 12, 2012. Mr. Allen B. Ellis appeared on behalf of AMD in support of the Motion and Mr. Jeffrey R. Townsend appeared for ICI in opposition to the Motion.

### **I. Legal Standard**

A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen days from the entry of such order. I.R.C.P. 11(a)(2)(B). Plaintiff timely filed its Motion for Reconsideration.

The decision whether to grant or deny a motion for reconsideration generally rests in the sound discretion of the trial court. *Spur Products v. Stoel Rives, LLP*, 143 Idaho 812, 815, 153 P.3d 1158, 1161 (2007). In making a discretionary determination, this court must: (1) correctly perceive the issue as discretionary; (2) act within the outer boundaries of its discretion and consistently with the applicable legal standards and choices available to the court; and (3) reach its decision by an exercise of reason. *Id.*, 143 Idaho at 817, 153 P.3d at 1163.

### **II. Analysis**

AMD contends that the court's October 31, 2011 Order is improper in two respects: (1) the court erred in determining that ICI was the prevailing party in this action; and (2) the court erred in awarding ICI costs and fees, because ICI failed to apportion such costs and fees among claims on which it prevailed and did not prevail.

With respect to AMD's assertion that the court erred in determining that ICI was the prevailing party in this litigation, the court adheres to the determination and reasoning set forth in the October 31, 2011 Order.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

- 3 -

**000190**

With respect to AMD's assertion that the court erred in awarding ICI costs and fees because ICI failed to apportion such costs and fees among claims upon which it prevailed and did not prevail, the court does not agree. I.R.C.P. 54(d)(1)(B) authorizes the court to "apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgment obtained" in the event the court determines that "a party to the action prevailed in part and did not prevail in part." I.R.C.P. 54(d)(1)(B); *See Schroeder v. Partin*, 151 Idaho 471, \_\_\_, 259 P.3d 617, 624 (2011) ("Thus, although the district court had discretion to award costs and fees to both Schroeder and Partin as prevailing parties, the court had a duty to apportion to each of the parties only the attorney fees related to the claims upon which each party prevailed."). In the instant case, unlike *Schroeder*, the court did not determine that both AMD and ICI prevailed in part. In fact, AMD never requested an award of costs and/or fees as the prevailing party in this case. Instead, AMD contended that there was no prevailing party in this action for purposes of Rule 54. Having rejected that assertion, the court finds no basis for requiring ICI to apportion its costs and fees among different claims at issue in this action.

#### **ORDER**

In light of the foregoing, Plaintiff AMD's Motion for Reconsideration is DENIED.

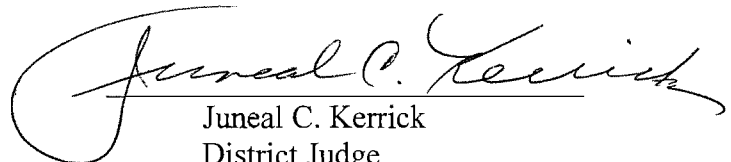
IT IS SO ORDERED.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

- 4 -

**000191**

Dated this 30 day of January, 2012.

  
Juneal C. Kerrick  
District Judge

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

- 5 -

**000192**

CERTIFICATE OF SERVICE

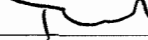
I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the following, either by U.S. Mail, first class postage prepaid; by hand delivery; by courthouse basket; or by facsimile copy:

Allen B. Ellis  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, Idaho 83701

Jeffrey R. Townsend  
Townsend Law, P.C.  
3006 E. Goldstone Dr., Suite 120  
Meridian, Idaho 83642

Dated this 3<sup>rd</sup> day of January, 2012.

CHRIS YAMAMOTO  
Clerk of the Court

By:   
Deputy Clerk

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

- 6 -

**000193**



FILED  
8:10 A.M. P.M.

MAR - 7 2012

CANYON COUNTY CLERK  
K CANO, DEPUTY

ALLEN B. ELLIS, ISB No. 1626  
MAX M. SHEILS, ISB No. 1772  
ELLIS, BROWN & SHEILS, CHARTERED  
Attorneys-at-Law  
707 North 8th Street  
P.O. Box 388  
Boise, Idaho 83701-0388  
(208) 345-7832 (Telephone)  
(208) 345-9564 (Facsimile)

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, a Delaware limited liability company, )

Plaintiff, Appellant )

v. )

IMAGING CENTER OF IDAHO, LLC, )  
an Idaho limited liability company. )

Defendant/Respondent. )

Case No. CV-09-13504-C

NOTICE OF APPEAL

TO: THE ABOVE-NAMED DEFENDANT, ITS ATTORNEY OF RECORD, AND THE  
CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named plaintiff/appellant, Advanced Medical Diagnostics, appeals against the above-named respondents, to the Idaho Supreme Court from the Order on Plaintiff's Objection to Defendant's Claimed Costs and Attorney Fees and the Order on Plaintiff's Motion for Reconsideration entered January 30, 2012, the Honorable Juneal C. Kerrick presiding.

2. The appellant has a right to appeal to the Idaho Supreme Court, and the Judgment and

Order identified in paragraph 1 above are appealable under and pursuant to Rule 11(a)(1), I.A.R.

3. A preliminary statement of the issue on appeal which the appellant intends to assert in the appeal is as follows: whether the aforesaid Orders appealed from are against the law.

4. There has been no order entered sealing all or any portion of the record.

5. The appellant does not request the preparation of reporter's transcript.


6. The appellant requests those portions of the clerk's record automatically included under Rule 28, Idaho Appellate Rules, as well as the following:

- a. Complaint dated December 22, 2009;
- b. Imaging Center of Idaho, LLC's Answer to Complaint dated January 8, 2010;
- c. Imaging Center of Idaho's First Amended Answer to Complaint & Counterclaim
- d. Reply to Counterclaim and Demand for Jury Trial
- e. Amended Complaint dated March 22, 2011;
- f. Answer to Amended Complaint dated March 24, 2011;
- g. Reply to Amended Counterclaim & Demand for Jury Trial;
- h. The Special Verdict Form
- i. ICI's Verified Memorandum of Costs and Fees dated July 21, 2011;
- j. ICI's Affidavit in Support of Memorandum of Costs and Fees;
- k. Memo. in Support of Mtn. To Disallow Attorney Fees and Costs;
- l. Sixth Affidavit of Allen Ellis;
- m. Motion for Reconsideration
- n. Memorandum in Support of Mtn. For Reconsideration;
- o. Reply Brief in Support of Motion for Reconsideration.

7. I certify:

- (a) That the estimated fee for preparation of the clerk's record has been paid.
- (b) That the appellate filing fee has been paid.
- (c) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 7 day of March, 2012.

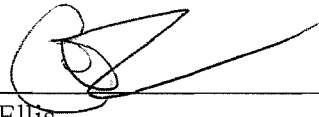
  
\_\_\_\_\_  
Allen B. Ellis  
Attorney for plaintiff/appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 7 day of March, 2012, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Jeffrey R. Townsend  
Townsend Law, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, Idaho 83642

- U.S. Mail, postage prepaid
- Hand delivery
- Overnight delivery
- Facsimile (350-7311)

  
\_\_\_\_\_  
Allen B. Ellis

Jeffrey R. Townsend, ISB #7647  
TOWNSEND LAW, P.C.  
3006 E. Goldstone Dr., Ste. 120  
Meridian, ID 83642  
Telephone: (208) 350-7310  
Facsimile: (208) 350-7311  
E-mail: TownsendLaw@q.com

**FILED**  
A.M. 1:30 P.M.

**MAR 20 2012**

**CANYON COUNTY CLERK  
T. CRAWFORD, DEPUTY**

Attorney for Defendant/Respondent

IN THE DISTRICT COURT OF THIRD JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, )  
LLC, )  
 )  
Plaintiff/Appellant )  
 )  
vs. )  
 )  
IMAGING CENTER OF IDAHO, LLC )  
 )  
Defendant/Respondent )  
 )

CASE NO. CV-2009-13504-C

REQUEST FOR ADDITIONAL  
TRANSCRIPT AND RECORD

TO: THE ABOVE NAMED APPELLANT AND THE PARTY'S ATTORNEY, AND  
THE REPORTER AND 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 I.A.R. and the notice of appeal:

1. Clerk's record:

- a. Defendant Imaging Center of Idaho's Opposition to Plaintiff's Motion to  
Disallow Fees and Costs, filed August 26, 2011

b. Defendant Imaging Center of Idaho's Opposition to Plaintiff's Motion for Reconsideration of Order Imposing Attorney Fees and Costs, filed December 29, 2011.

2. Reporter's transcript:

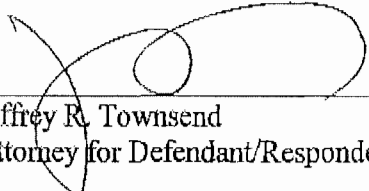
- a. The transcript from the hearing on plaintiff's Motion to Disallow Fees and Costs, hearing date of September 8, 2011
- b. The transcript from the hearing on plaintiff's Motion for Reconsideration of Order Imposing Attorney Fees and Costs, hearing date of January 12, 2012.

3. I certify that a copy of this request for additional transcripts has been served on each court reporter of whom a transcript is requested as named below at the address set out below:

Kathy Klemetson - Court Reporter, 1115 Albany St., Caldwell, ID 83605.

4. I further certify that this request for additional record has been served up the clerk of the district court and upon all parties required to be served.

Dated this 20<sup>th</sup> day of March, 2012.




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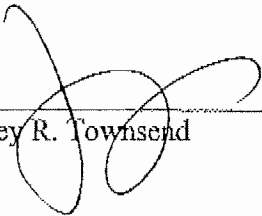
Jeffrey R. Townsend  
Attorney for Defendant/Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20<sup>th</sup> day of March, 2012, I caused to be served a true and correct copy of the foregoing document, by method indicated below, and addressed to each of the following:

Allen B. Ellis  
Max M. Sheils  
Ellis, Brown & Sheils, Chartered  
707 North 8<sup>th</sup> Street  
P.O. Box 388  
Boise, ID 83701-0388

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Telecopy



\_\_\_\_\_  
Jeffrey R. Townsend

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, etal.,	)	
	)	
Plaintiff-Appellant,	)	Case No. CV-09-13504*C
	)	
-vs-	)	CERTIFICATE OF EXHIBIT
	)	
IMAGING CENTER OF IDAHO, LLC., etal.,	)	
	)	
Defendant-Respondent,	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the following is being sent as an exhibit:

**NONE**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 15 day of June, 2012.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.

By: *K Waldemer* Deputy

CERTIFICATE OF EXHIBIT

000200

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, etal.,	)	
	)	
Plaintiff-Appellant,	)	
	)	Case No. CV-09-13504*C
-vs-	)	
	)	CERTIFICATE OF CLERK
IMAGING CENTER OF IDAHO, LLC., etal.,	)	
	)	
Defendant-Respondent.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules, including documents requested.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 15 day of June, 2012.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.  
By: *K Waldamer* Deputy

CERTIFICATE OF CLERK



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

ADVANCED MEDICAL DIAGNOSTICS, etal.,	)	
	)	
Plaintiff-Appellant,	)	Supreme Court No. 39753-2012
	)	
-vs-	)	CERTIFICATE OF SERVICE
	)	
IMAGING CENTER OF IDAHO, LLC., etal.,	)	
	)	
Defendant-Respondent.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcript to the attorney of record to each party as follows:

Allen B. Ellis, ELLIS BROWN & SHEILS, CHTD.  
Jeffrey R. Townsend, TOWNSEND LAW, PC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 15 day of June, 2012.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.  
By: *K Waldemer* Deputy

CERTIFICATE OF SERVICE