

1 *Attorney Info*

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DISTRICT COURT
ANY COUNTY, NEVADA

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CAPTION

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Case No. A 123456
Dept. No. X
Docket No. Z

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**MOTION FOR PROTECTIVE ORDER; ORDER SHORTENING TIME; MOTION FOR
SANCTIONS; MEMORANDUM OF POINTS AND AUTHORITIES AND AFFIDAVIT
OF ARTHUR M. ATTORNEY IN SUPPORT THEREOF**

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Date of hearing: _____

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Time of hearing: _____

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COME NOW Plaintiffs, CAR CRASH VICTIM #1 and CAR CRASH VICTIM #2,
(hereinafter "VICTIM #1" and VICTIM #2"), by and through their counsel, LEGAL LAW OFFICE,
P.C., and hereby move this court for issuance of a Protective Order staying the taking of depositions
of Juror #1, Juror #2, and Juror #3, in the above-entitled action pursuant to NRCP 26(c) and staying
the depositions of any and all jurors of this jury.

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Plaintiffs VICTIM #1 and VICTIM #2 further move this court for issuance of sanctions for
the costs of preparing this motion and a letter of apology to each of the aforesaid jurors pursuant to

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1 NRCP 11 on the grounds that Defendant ACCOUNTABLE SON, (hereinafter "SON"), as personal
2 representative of the Estate of I.M. Liable, by and through his counsel, TENACIOUS LAWYER,
3 ESQ., of the law firm of WHO R. U. KIDDING LAW, LLP, served subpoenas upon these jurors,
4 and filed a Notice of Taking Deposition to each, without an order of this court and in bad faith.

5 This motion is made and based on all the pleadings and documents on file with the court
6 herein, the motion, the notice of motion, attached affidavit, memorandum of points and authorities,
7 including exhibits, attached herewith and in support hereof, and upon such further and other oral and
8 documented evidence as the court may allow at the hearing of this matter.

9 DATED this 16th day of September, 1997.

10 LEGAL LAW FIRM, P.C.

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13 By: ARTHUR M. ATTORNEY, ESQ.
14 Nevada Bar No. 000000
15 [Address]
16 Searchlight, Nevada 89000
17 ATTORNEYS FOR PLAINTIFFS

18 **STANDARD NOTICE OF MOTION**

19 **STANDARD ORDER SHORTENING TIME**

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21 **STANDARD AFFIDAVIT IN SUPPORT OF ORDER SHORTENING TIME**

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23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I.**

25 **STATEMENT OF RELEVANT FACTS**

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27 This case arises out of an automobile accident that occurred on U.S. 95 near Searchlight,
28 Nevada between VICTIM #1 and VICTIM #2 and I.M. Liable. As this court is aware, this action has

1 of jurors who have provided an invaluable service to this community and fulfilled their civic duty
2 as jurors, but it will create an undue burden and needless expense for VICTIM #1 and VICTIM #2
3 since their counsel must attend these depositions in order to protect their interests. Accordingly, a
4 Protective Order preventing the taking of these depositions should be granted by this court.

5 **B. JURORS ARE NOT PARTIES, NOR ARE THEY WITNESSES, TO THE INSTANT**
6 **LITIGATION AND, THEREFORE, IT IS IMPROPER AND BEYOND THE SCOPE**
7 **OF DISCOVERY TO TAKE ORAL TESTIMONY OF THESE JURORS.**

7 The Nevada Rules of Civil Procedure provide that the scope of discovery shall be as follows:

8 *In General.* Parties may obtain discovery regarding any matter, not privileged, which
9 is relevant to the subject matter involved in the pending action, whether it relates to
10 a claim or defense of the party seeking the discovery or to the claim or defense of any
11 other party ...

11 NRCP 26(b)(1) (Emphasis added.)

12 VICTIM #1 and VICTIM #2 maintain that any testimony that these jurors may offer is not
13 relevant since these jurors are neither parties nor are they witnesses to the litigation before this court.
14 Simply put, there is absolutely nothing that these jurors can testify to concerning the damages phase
15 of this litigation since they were merely finders of fact in the liability phase. They are not witnesses
16 to the automobile accident which is the very reason for this litigation and the pain and suffering
17 which VICTIM #1 and VICTIM #2 endured, and continue to endure to this day. They are not expert
18 witnesses. They are former jurors who found in favor of VICTIM #1 and VICTIM #2 in the liability
19 phase of this litigation. Succinctly, the oral testimony of these jurors is improper and goes beyond
20 the scope of discovery. For this reason alone, this court should not allow the taking of depositions
21 of these jurors.

22 **C. JURORS' ORAL TESTIMONY CANNOT BE UTILIZED TO IMPEACH THE**
23 **VERDICT.**

24 VICTIM #1 and VICTIM #2 can only surmise that SON intends to depose these jurors for
25 the purpose of impeachment of the verdict based upon the percentage of liability assigned to
26 VICTIM #1 and VICTIM #2 and to SON. Regardless of SON's reasoning, a juror's testimony,
27 whether oral testimony or in the form of affidavits, cannot be utilized to impeach a jury verdict in
28 this state.

1 The Nevada Supreme Court has stated time and again that “it is the well-recognized rule in
2 this state, both the criminal and civil cases, that jurors will not be permitted to impeach their own
3 verdict”. Estate of S. Peterson v. Flanary, 77 Nev. 87, 113-114, 360 P.2d 259, 273 (1961) (citing
4 Pinana v. State, 76 Nev. 274, 352 P.2d 824 (1960).) As a matter of public policy the reasons are
5 clear. If a juror were permitted to impeach his or her own verdict (1) it would tend to defeat a solemn
6 act which the juror has made under oath, (2) the admission would open the door to tamper with jury
7 members after they had given their verdict, and (3) it would be the means, in the hands of a
8 dissatisfied juror, to destroy a verdict at any time after he or she had assented to it. Southern Nevada
9 Gold & Silver Mining Co. V. Holmes Mining Co., 27 Nev. 107, 143, 73 P.759, 762 (1903). Wisely,
10 the courts of this state will not invade the domain of the jury and its deliberations for the purpose of
11 impeaching a verdict.

12 SON will undoubtedly argue that there was juror misconduct because the verdict was a
13 quotient verdict. However, the mere fact that the verdict involved percentages of liability does not
14 make this verdict a quotient verdict. More importantly, there is no evidence that this was a quotient
15 verdict. Quite the contrary. The jurors in the instant case simply adopted the computation of
16 percentages method of arriving at a percentage of liability before voting on the verdict. Indeed, each
17 juror was not bound by the result and was free to choose any percentage of liability.

18 This method of arriving at a verdict not only has been met with approval by the Nevada
19 Supreme Court, it has been endorsed. See, Kaltborn v. Bakerinck, 80 Nev. 16, 388 P.2d 572
20 (1964); Wilson v. Perkins, 82 Nev 42, 409 P.2d 976 (1966). Accordingly, the verdict is not an
21 improper quotient verdict. There is no jury misconduct.

22 Given the utter lack of jury misconduct, it would seem that SON, in his quest to depose these
23 jurors, is attempting to violate the public policy reason cited, *supra*, by the Nevada Supreme Court
24 which do not permit impeachment of a verdict by a juror’s oral testimony or affidavit. Specifically,
25 SON is on a search and seek mission which would open the door to tamper with jury members after
26 they had given their verdict.

27 The taking of depositions of these jurors does not comport with the case law of this state. It
28 is highly prejudicial to both VICTIM #1 and VICTIM #2 and could cause this matter to be tried yet

1 a third time. This court, with the case law provided by the Nevada Supreme Court as guidance,
2 should not allow the taking of depositions of these jurors.

3 **D. VICTIM #1 AND VICTIM #2 RESPECTFULLY REQUEST ATTORNEYS' FEES**
4 **AND EXPENSES FOR THE PREPARATION OF THIS MOTION AND THE**
5 **SANCTION OF A LETTER OF APOLOGY TO EACH JUROR TO BE DEPOSED.**

6 Rule 11 of the Nevada Rules of Civil Procedure provides in pertinent part:

7 The signature of an attorney or party constitutes ... the pleading, motion or other
8 paper ... is well grounded in law ... and that it is not interposed for any improper
9 purpose such as to harass or to cause unnecessary delay or needless increase in the
10 cost of litigation. ... If the pleading, motion, or other paper is signed in violation of
11 this rule, the court, upon motion or its own initiative shall impose upon the person
12 who signed it, a represented party, or both, ... reasonable expenses incurred because
13 of the filing of the pleading, motion, or other paper, including a reasonable attorney
14 fee.

15 Id. (Emphasis added.)

16 VICTIM #1 and VICTIM #2 maintain that there can be one reason and one reason alone that
17 SON would subpoena these jurors: to annoy, embarrass and oppress jurors who have faithfully
18 fulfilled their civic duty as jurors, to disrupt the orderly administration of justice and make a mockery
19 of the jury's decision rendered in VICTIM #1's and VICTIM #2's favor in the liability phase of this
20 litigation, and to cause needless delay and expense for VICTIM #1 and VICTIM #2. There can be
21 no other reason to depose these jurors since the case law is clear that jurors cannot impeach their own
22 verdict and there is absolutely no evidence of juror misconduct. If ever there were a set of facts for
23 which Rule 11 should be imposed against a party and his counsel, it is in the instant case with SON
24 and his counsel.

25 As anyone who has practiced law in any jurisdiction for more than five minutes will attest,
26 finding unbiased venirepersons willing to sit on a jury, without making elaborate excuses as to why
27 they should not be in the courtroom, is a tedious task at best. Should these depositions go forward
28 it cannot but have a chilling effect on jury voir dire, not only before this court, but before all the
29 courts in this state once citizens discover that even after meeting their civic duty as jurors, they in
30 turn can be subjected to a "mini-trial" in which jury members must testify concerning a verdict with
31 which counsel wishes had been otherwise.

32 Accordingly, VICTIM #1 and VICTIM #2 not only request reimbursement for the cost of

1 preparing this motion, but request that this court issue its order for a letter of apology to each juror
2 to be deposed from SON and his counsel. Anything less would reward SON and his counsel for their
3 flagrant disregard of the sanctity of the jury system and the orderly administration of justice in this
4 state.

5 **III.**

6 **CONCLUSION**

7 For all the foregoing reasons, VICTIM #1 and VICTIM #2 respectfully request that this court
8 grant their MOTION FOR PROTECTIVE ORDER and MOTION FOR SANCTIONS with respect
9 to the three jurors whose depositions have been noticed as of this date and with respect to each and
10 every juror empaneled on this jury, award reasonable attorneys' fees and costs in the amount of \$450
11 which includes the costs for preparation of this motion and issue its order requiring SON and his
12 counsel to write letters of apology to each juror who has been scheduled to be deposed.¹

13 DATED this 16th day of September, 1997.

14 LEGAL LAW FIRM, P.C.

15
16
17 By: _____
18 ARTHUR M. ATTORNEY, ESQ.
19 Nevada Bar No. 000000
20 [Address]
21 Searchlight, Nevada 89000
22 ATTORNEYS FOR PLAINTIFFS

23 **STANDARD CERTIFICATE OF SERVICE**

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27 _____
28 ¹See, Statement from Legal Law Firm, P.C. of costs attached hereto and incorporated by
reference as Exhibit "1". [Omitted.]