CAUSE NO. GN 303407

COURTNEY (CRAWFORD) BONHAM, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF RILEY CRAWFORD, A MINOR,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
	§	**TRAVIS COUNTY, TEXAS**
VS.	§	
COLUMBIA/ST. DAVID'S HEALTH-CARE SYSTEM, L.P. d/b/a ROUND ROCK MEDICAL CENTER a/d/b/a ST. DAVID'S MEDICAL CENTER, COLUMBIA/HCA HEALTHCARE CORP., ST. DAVID'S MEDICAL CENTER, ST. DAVID'S HEALTH CARE SYSTEM, INC., ST. DAVID'S HEALTH-CARE PARTNERSHIP, OAKWOOD WOMEN'S CENTRE, P.A., GEORGE SHASHOUA, M.D. and MARK MAUNDER, M.D.,	§	
Defendants.	§	**201st JUDICIAL DISTRICT**

PLAINTIFFS' MOTION TO REVOKE THE *PRO HAC VICE* ADMISSION OF SCOTT JOHNSON

Plaintiffs Courtney (Crawford) Bonham, individually and as parent and next friend of Riley Crawford, a minor child, ask the Court to revoke the *pro hac vice* admission of A. Scott Johnson in this case pursuant to Rules Governing Admission to the Bar of Texas, Rule XIX(e).

A. Introduction

1. A. Scott Johnson is an attorney licensed in Oklahoma but not in Texas and who resides outside of Texas. Mr. Johnson filed a sworn motion for admission *pro hac vice* seeking permission of this court to allow him to participate in this case and was admitted

pro hac vice by order of this court. [1]

2. In accordance with Rule XIX(e) of the Rules Governing Admission to the Bar of Texas, the plaintiffs file this motion asking the court to revoke Mr. Johnson's permission to participate in the plaintiffs' lawsuit pending in Travis County, Texas, and specifically, the trial set for March 27, 2006. Rule XIX(e) provides:

> **If, after being granted permission to participate in the proceedings of any particular cause in Texas, the non-resident attorney engages in professional misconduct as that term is defined by the State Bar Act, the State Bar Rules, or the Texas Disciplinary Rules of Professional Conduct, the court may revoke such non-resident attorneys permission to participate in the Texas proceeding and may cite the non-resident attorney as for contempt. In addition, the court may refer the matter to the Grievance Committee of the Bar District wherein the court is located for such action by the Committee as it deems necessary and desirable.**

3. Scott Johnson was admitted *pro hac vice* in this case on November 1, 2004.[2] Prior to and since the date of his admission he has engaged in professional misconduct in Texas courtrooms as that term is defined by the State Bar Act, the State Bar Rules, and/or the Texas Disciplinary Rules of Professional Conduct. Mr. Johnson's continued professional misconduct threatens the integrity of the trial of the case brought by Courtney Crawford on behalf of her daughter, Riley Crawford, and subjects the plaintiffs to irreparable harm because of the continued flagrant insubordinate conduct of this attorney during his practice of law in Texas courts. The plaintiffs, therefore, withdraw their consent to Mr. Johnson's participation in the Crawford case and ask that his *pro hac vice* admission be revoked.

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[1] *Motion for Admission Pro Hac Vice,* September 29, 2004, Cause No. GN-303407, *Courtney (Crawford) Bonham, et al v. Columbia/St. David's Healthcare System, L.P., et al,* In the 201st Judicial District Court of Travis County, Texas, attached to this motion as Exhibit "A" and incorporated fully by reference.

[2] *Order on Admission Pro Hac Vice,* November 1, 2004, Cause No. GN-303407, *Courtney (Crawford) Bonham, et al v. Columbia/St. David's Healthcare System, L.P., et al,* In the 201st Judicial District Court of Travis County, Texas, attached to this motion as Exhibit "B" and incorporated fully by reference.

1. Mr. Johnson has not complied with the Rules governing pro hac vice admission.

4. Rule XIX of the Rules Governing Admission to the Bar of Texas methodically sets out the specific requirements of a non-resident attorney's motion to appear *pro hac vice.* Mr. Johnson has not complied with the rules governing the content of the written, sworn motion requesting permission to participate in the *Crawford* case. Rule XIX(a)(2) provides that the motion shall contain the name and State Bar card number of an attorney licensed in Texas, with whom the non-resident attorney will be associated in the Texas proceedings, and that attorney's office address, telephone number and telecopier number. Mr. Johnson does not provide the State Bar card number, telephone number or telecopier number for Missy Atwood, the Texas attorney associated with Mr. Johnson in the Crawford case.[3]

5. Rule XIX(a)(3) requires that the motion for admission shall contain a list of all cases and causes, including cause number and caption, in Texas courts in which the non-resident attorney has appeared or sought leave to appear or participate within the past two years. The motion for pro hac vice admission was filed on September 29, 2004. Mr. Johnson did not list one Texas case despite the fact that he was, at the time of his motion, actively involved in the following Texas cases all within two years from September 29, 2004:

1. ***Notice of Appearance*** **by A. Scott Johnson, April 7, 2004, Cause No. 03-08-652, *Bryan & Jennifer Huschke, Individually and as Next Friends of Hayden & Hailey Huschke v. Columbia Medical Center, L.P., et al,* in the 271st Judicial District Court of Wise County, Texas.**

2. ***Motion for Admission Pro Hac Vice*** **by A. Scott Johnson, August 20, 2003, Cause No. 00-4057-A, *McShane v. Bay Area***

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[3] *See*, Exhibit "A" at p. 2.

***Healthcare Group*, in the 28th Judicial District Court of Nueces County, Texas. Mr. Johnson appeared in the trial of this case from October 30, 2003 to November 14, 2003.**

3. ***Order on Pro Hac Vice Admission for Scott Johnson*, January 21, 2004, Cause No. 02-683-E, *Oliveira, et al. v. Bay Area Healthcare Group, Ltd., et al.*, in the 148th Judicial District Court, Nueces County, Texas.**

Clearly, Mr. Johnson omitted this crucial material because he was, and is, appearing in Texas courts on a frequent basis.

6. Further review of Mr. Johnson's motion demonstrates non-compliance with Rule XIX(a)(4) as well. He was required to provide a list of jurisdictions in which he is licensed ***and a statement that the non-resident attorney is/is not an active member in good standing in each of those jurisdictions.*** Scott Johnson's motion recites only that he is in good standing with Oklahoma Bar Association while at the same time noting that he as been admitted to the U.S. District Courts of Oklahoma (Eastern and Western), to the Tenth Circuit Court of Appeals and U.S. Court of Appeals. Rule XIX(5) calls for a statement that the non-resident attorney is familiar with the *State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct*. Mr. Johnson says only that he is familiar with and will abide by Texas Disciplinary Rules of Professional Conduct. This attorney's failure to follow the Texas rule on admission to the Bar is a *prima facie* case of either his inability to do so or his total disregard for the proscribed procedure.

2. Scott Johnson is appearing in Texas courts on a frequent basis and, in case after case, he has engaged in professional misconduct.

7. Pursuant to Rule XIX, a court in which a motion for *pro hac vice* admission is pending may examine the non-resident attorney to determine if the attorney is aware of

and will observe ethical standards and "to determine whether the non-resident attorney is appearing in courts in Texas on a frequent basis." The record in this case indicates that Mr. Johnson, a non-resident attorney, is appearing in Texas courts on a frequent basis and that in case after case he has engaged in professional misconduct and failed to follow ethical standards.

3. Mr. Johnson has engaged in professional misconduct.

8. There is a pattern and practice of behavior by Mr. Johnson exhibited in courtrooms in Texas and Oklahoma, in both state and federal courts, that provide ample support for the revocation of his *pro hac vice* status in the trial of the *Crawford* case. In October of 2005, the case of *McClure v. Denton Regional* was tried in the 383rd Judicial District Court in Denton County, Texas. Mr. Johnson violated key provisions of the Texas State Bar Rules during the course of that trial by the deliberate and calculated violations of motions in limine regarding the mother's genital herpes infection (HSV-2) during the pregnancy and her history of smoking while pregnant. No instruction to disregard could cure the prejudicial effect of the implications arising from these violations of the court's orders. His actions at this trial are factually and legally sufficient to require revocation of his *pro hac vice* status in this case. *See* Rules Governing Admission To The Bar Of Texas, Rule XIX(e)(if a nonresident attorney engages in professional misconduct, the court may revoke his permission to participate in the Texas proceedings).

9. The case of *McShane, et al v. Bay Area Healthcare Group, LTD.* was tried over a period of 26 days in the 28th Judicial District Court of Nueces County, Texas, A. Scott Johnson of Oklahoma City was one of the defense counsel representing the hospital by

pro hac vice admission. The entire trial was permeated by misconduct on the part of A. Scott Johnson that included a deliberate reference to attorneys' fees, an attempted physical altercation with plaintiff's counsel and, as the Corpus Christi Court of Appeals noted in its reversal of the judgment of the trial court in favor of the hospital, a "distinct pattern" of defense counsels' use of inadmissible evidence to relieve the hospital of liability.

10. In the case of *Andrea Locke v. Cimarron Memorial Hospital*, filed in federal court in Oklahoma City, Oklahoma, A. Scott Johnson represented the hospital defendant. He engaged in a continuing pattern of disruption and disrespect during the discovery process. Judge West ordered defense counsel to pay the plaintiff's expenses for traveling to and from depositions that never took place. The Court also granted the plaintiff's motion for sanctions regarding the defendants' failure to timely submit reports and ordered Mr. Johnson and his firm to pay the attorneys' fees and expenses the plaintiff reasonably incurred as a result of the defendants' failure to comply with the Court's orders.

11. A. Scott Johnson, admitted *pro hac vice*, was the attorney for Riverside Hospital in a case set in County Court at Law No. 3, Nueces County, Texas, Cause No. 03-61778-3, styled S*anchez, et al v. Riverside Hospital, Inc., et al.* The plaintiffs asked the trial court to revoke Mr. Johnson's *pro hac vice* status because of misconduct on the part of both Mr. Johnson and his retained expert that included violations of HIPAA regulations. Additionally, Mr. Johnson failed to inform the Court during a hearing that his retained expert had, while under oath, provided incorrect testimony. In that same hearing, Mr. Johnson, while under oath, sought to mislead the court by failing, until challenged by the court, to answer questions directed to him.

12. In Cause No. 01-60213-1 styled *Sylvia Ponce, et al v. Doctors Regional Medical Center, et al*, in County Court at Law No. 1, Nueces County, Texas, the plaintiffs filed a motion to revoke Scott Johnson's pro had vice status because of his failure to abide by and comply with the Texas Disciplinary Rules of Professional Conduct. Mr. Johnson subsequently withdrew his motion for *pro hac vice* admission.

13. In this motion, the plaintiffs detail, with corroborative documentation, each of these instances of professional misconduct on the part of Mr. Johnson and will supplement with additional materials as they become available.

B. The McClure Trial

1. Facts

14. The trial of Cause No. 2003-60081-393, *Jessica McClure vs. Denton Regional Medical Center*, began on October 18, 2005, in the 393rd Judicial District Court of Denton County, Texas. The jury returned a 10-2 verdict in favor of the medical center defendant. The plaintiff was represented by Mark R. Mueller and Sean Lyons of the Mueller Law Offices in Austin, Texas. The trial involved a complex medical malpractice cause of action brought by James McClure and Lanette McClure on behalf of their minor daughter, Jessica Elise McClure. Plaintiff contended that multiple breaches of the standard of care by medical personnel at Denton Regional Hospital Center were the direct cause of the brain injury suffered by Jessica McClure and that her hypoxic ischemic injury occurred in the period shortly before delivery at Denton Regional Hospital Center on December 17, 1994.

15. Prior to trial, the plaintiff filed a motion in limine that identified certain

evidentiary rulings for consideration by the trial court.[4] As set out under established Texas law and practice, the purpose of filing the motion in limine was to prevent the presentation of potentially prejudicial information in front of the jury before a ruling on admissibility could be obtained. *See Hartford Acc. & Indem. Co. v. McCardell,* 369 S.W.2d 331, 335 (Tex. 1963); s*ee also Weidner v. Sanchez*, 14 S.W.3d 353, 363 (Tex. App.--Houston [14 Dist.] 2000, no pet.)(purpose of a motion in limine is to prevent other party from asking prejudicial questions and introducing prejudicial evidence in front of the jury without first asking the court's permission). The plaintiff specifically asked that counsel for the defense be instructed by order from the trial court to refrain from making any mention of certain matters without first approaching the Bench and obtaining a ruling outside the presence and outside the hearing of all prospective jurors.[5] The motion in limine contained the following request which was granted by the trial court:

> **Any question or reference that mentions either Lanette or James McClure having herpes, or having passed herpes to Jessica or Jennifer McClure at birth, or of any findings in the medical records of Jessica McClure that show an exposure to the *herpes virus or a virus in the herpes family*, as it is not relevant given there is no reliable scientific testimony by a qualified expert that any alleged [sic][herpes] caused the injuries to Jessica Elise McClure.[6]**

16. The plaintiff was made keenly aware at the pretrial conference that Mr. Johnson was intent on alluding to a medical history provided by Mrs. McClure upon admission to Denton Hospital that included a reference to herpes simplex virus-2 (HSV-2), an incurable and highly contagious sexually transmitted disease. Despite the fact that there was no evidence that Mrs. McClure had an outbreak of genital herpes (HSV-2) or that the

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4 *Plaintiffs'*[sic] *Motion in Limine*, October 14, 2005, attached to this motion as Exhibit "C" and incorporated fully by reference.

5 *Id.*

6 *Id.*

virus was active at any time during her pregnancy, Mr. Johnson represented to the court in a pre-trial hearing that that Mrs. McClure's maternal history included the fact that she had ***"exposed the fetus to herpes on three different occasions during this pregnancy"*** and included this factor as one of a constellation of factors for a genetic abnormality that could rule out an hypoxic ischemic injury as the cause of injury.[7]

17. This statement by Scott Johnson is completely unfounded, misleading and prejudicial. There is simply no evidence from the medical records or from the testimony of any medical expert that provides support for Scott Johnson's statement concerning the fetus' exposure to herpes virus on three different occasions. The medical records reflect that Mrs. McClure was never treated for herpes during her pregnancy with Jessica and that any outbreaks for which she was treated occurred outside the pregnancy.[8]

18. Furthermore, even the hospital's own experts testified under oath that there was no causal link between Jessica McClure's injuries and the herpes virus. The plaintiff deposed defendants' maternal-fetal medicine expert, Dr. Scott Nelson MacGregor, on September 16, 2005. During the course of that deposition, Dr. MacGregor was asked about any possible connection between herpes and the injury to Jessica McClure:

> **Q. Is there any evidence that the herpes that Miss McClure has caused a cord prolapse?**
>
> **A. No, there's no association between herpes and cord prolapse.**
>
> **Q. Is there any evidence that the herpes caused injury to this infant?**
>
> **A. Not that I'm aware of.** [9]

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[7] 1 Reporter's Record, *Pre-trial Motions*, October 14, 2005, at p. 38, attached to this motion as Exhibit "D" and incorporated fully by reference.

[8] Medical Records on Lanette McClure, attached to this motion as Exhibit "E" and incorporated fully by reference.

[9] *Deposition of Dr. Scott Nelson MacGregor*, September 16, 2005, at p. 112, lls. 23-24; p. 113, lls. 1-5, attached to this motion as Exhibit "F" and incorporated fully by reference.

19. At the deposition of another of defendants' experts, attended by Scott Johnson, Dr. Donald K. Nelms testified that there was no evidence from any titers or cultures or proven tests of Jessica McClure that she actually contracted herpes or had herpes as an infant at the time of birth.[10] He further testified that he saw *no clinical signs or symptoms* that would have indicated the need for testing for herpes. Dr. Nelms' testimony is in keeping with what Jessica's medical records reflected as well as relevant medical literature on this subject. For example, Joseph J. Volpe, in NEUROLOGY OF THE NEWBORN, (4th ed.) at page 737, states that "essentially all examples of neo-natal herpes simplex infection are symptomatic, often with serious neurological concomitants apparent in the newborn period." Herpes as a cause of Jessica's injuries was a non-issue. Mr. Johnson's blatant attempt to make herpes an issue was fraudulent and inherently damaging to the plaintiff's case.

20. The trial court in *McClure* considered the plaintiff's motion in limine regarding any mention of the herpes virus or any virus in the herpes family. The motion was granted. Nevertheless, in flagrant disregard of the court's order, Scott Johnson asked questions during his cross examination at trial of plaintiff's expert, Dr. Robert Zimmerman, that directly referenced Jessica's alleged exposure to the herpes virus, i.e., HSV-2. The exchange is as follows:

> Q. And do you recall also telling me that some other issues that may attack the basal ganglia of a child are viral in nature?
>
> A. Sure. Viral encephalitis will give you typically asymmetric involvement, the thalami and occasionally the basal ganglia. But, again, it's not the ventral lateral nucleus, the thalamus, specifically which is something sensitive referred to as asphyxia.

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[10] *Deposition of Dr. Donald K. Nelms*, September 19, 2005, at p. 6, lls. 19-25; p. 7, lls. 1-6; p. 8, lls. 2-11, attached to this motion as Exhibit "G" and incorporated fully by reference.

Q. And viral disorders in that regard that you are talking about there include HSV 1 and 2?

A. Well, in a neonate it's HSV 2, not HSV 1. HSV 1 is what you or I are likely to come down with.

Q. And also included viral exposure, like Epstein bar [sic]?

A. Epstein bar [sic] can give you basal ganglionic but again it's not very specific to the posterior putamen. It involves more the caudate, the globus pallidus and it's an asymmetric type of lesion.

Q. Are you aware that she was diagnosed with EP STAOEPB [sic] virus?

A. I was aware of it, but I don't see any evidence of the type of damage that EP STAOEPB bar [sic] virus produces in the basal ganglia.

Q. Are you aware that she was exposed to HSV 2?

A. I was not aware of that. But, again, she does not have the lesion that would say HSV 2. It's the medial temporal element to your frontal lobes, and for the most part spares the basal ganglia.[11]

Plaintiff's attorney, Mark Mueller, asked to approach the bench. The court excused the jury. Mr. Mueller objected as follows:

MR. MUELLER: Yes, Your Honor. I have previously given the Court notice that we had problems with Mr. Johnson, not only us but other lawyers have had problems with Mr. Johnson who has been forced to withdraw this pro hoc in other cases, has been reprimanded in federal court for altercations with lawyers. I have had a case reversed and is going to have to be retried in Corpus because of mentioning outdated supersedes pleadings.

I made the Court aware of these things. . . And now he's broke the Motion in Limine on herpes. This is just the first witness. Now, I personally –

MR. LYONS: It's the second violation of the Motion in Limine.

MR. MUELLER: Second violation in the Motion for Limine. **We move for a mistrial, Your Honor.** And I don't think he should be allowed to

[11] Reporter's Record, *Trial Transcript of Robert Zimmerman, M.D.* at pp. 58-59, attached to this motion as Exhibit "H" and incorporated fully by reference .

practice in this court if he's going to act like that. I'm tired of spending hundreds of thousands of dollars and having things routinely busted and violated by Mr. Johnson.

MR. JOHNSON: Can I respond?

THE COURT: Go ahead.

MR. JOHNSON: First of all, Your Honor, as I recall in direct, Mr. Mueller went into the genetic anomalies and other things that would show up as lesions in this young lady's head, number one. Number two, I did not say one word about any herpes. I talked about virus exposure, viral exposure. I did not say herpes. I did not say anything about smoking. And Mr. Mueller went through all of these various mitochondrial problems and all of the various things that were subject to this limine and opened this door for cross. And even so, I didn't go into any kind of herpes afflictions. I stuck strictly with viral complications, and that's exactly what happened here. That's it.

MR. MUELLER: This is why we have this problem. Everybody in the courtroom knows. . . .

MR. MUELLER: I'm sorry, Your Honor. This is the problem I'm having. He knows exactly what it is. He's being completely dishonest about it. And he's violating, just throwing stuff out there to try to smear the case again, okay. I had Mr. Johnson sanctioned in federal court in Oklahoma in my case for violation of repeated discovery orders with Judge West.

THE COURT: Sir, you will get your chance. Anything else?

MR. LYONS: If I may, Your Honor. My understanding of the statistics is 1 in 5 or 1 in 6 people have herpes. We have probably 2 jurors by those statistics that have herpes. When they hear HSV, those 2 jurors just heard herpes simplex virus.

MR. MUELLER: Exposed to.

MR. LYONS: Exposed to. That is a violation of the Motion in Limine, Number 30, which says any mention regarding herpes. That is the second violation because there is also a Motion in Limine regarding asking–asking for agreements with counsel. And we have been here half a day.

. . .

THE COURT: All right. I do find the defense has violated the Motion in

> Limine, Number 29. I am going to deny the request for a mistrial. I will instruct the jury to disregard any testimony regarding HSV 1 or 2.
> Mr. Johnson, I will instruct you that in the future you are to approach the bench. You do not have the opportunity to make unilateral decisions about whether the door has been opened to this testimony. If you think the door has been opened, approach the bench and we'll have a hearing outside the jury's presence.
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> MR. JOHNSON: Yes, Your Honor.
>
> THE COURT: If this happens again, there will be monetary sanctions. If I end up having to mistrial this case, you can look forward to having to pay the cost of putting this trial on.[12]

21. Clearly, the trial court was cognizant of the potential ramifications of the improper injection of herpes into the trial and was not misled by Mr. Johnson's effort to evade responsibility by saying he had not mentioned the word "herpes." Similarly, the trial court was not deceived by Mr. Johnson's protestations that he had not violated another order on the plaintiff's motion in limine because he did not use the word smoking. The trial court had previously granted the plaintiff's motion in limine as to number 28 which referred to the mother's smoking during her pregnancy with Jessica:

> **Any question or reference that mentions that Lanette McClure smoked during her pregnancy with either Jessica Elise McClure or Jennifer McClure, or at any time, as it is not relevant given there is no reliable scientific testimony by a qualified expert that any alleged smoking caused the injuries to Jessica Elise McClure.**[13]

22. During his cross-examination of plaintiff's nursing expert, Barbara True-Driver, Scott Johnson displayed to the jury a medical record, Dr. Davidson's admission note, with a clear reference to **TOB** (tobacco use) by the mother of Jessica McClure. The plaintiff objected and again asked the court for a mistrial based upon the violation of the court's order and for sanctions against Mr. Johnson for the repeated violation of the order

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12 *Id.* at pp. 60-65.

13 Exhibit "C," *Plaintiffs'* [sic] *Motion in Limine*, October 14, 2005.

on plaintiff's motion in limine on subject matter that was clearly prejudicial to the plaintiff.[14] The following exchange took place during a bench conference:

> **MR. MUELLER: Your Honor, we would again make a Motion for Mistrial based on violation of the Motion in Limine and sanctions against Mr. Johnson for again violating the Motion in Limine on an issue that was prejudicial to the Plaintiffs.**
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> **THE COURT: Motion for Mistrial is denied.**
>
> **MR. JOHNSON: Just for the record, Your Honor, I did block off how many packages of cigarettes.**
>
> **THE COURT: Mark out any reference whatsoever to tobacco.**
>
> **MR. MUELLER: Mr. Johnson, I'm talking to you. Your Honor, Mr. Johnson has tried more cases than my whole office combined. This is a repeated problem we incur with him in trials that we have with him. So I would ask the Court to hold him in contempt for a second violation of Motion in Limine.**
>
> **MR. JOHNSON: Your Honor, I blocked off the number of packages of cigarettes. And I can no more read that than you can, Judge. It says social history.**
>
> **MR. MUELLER: Social history, TOB. He knows exactly what that means just like he knows what HSV is.**

23. Mr. Johnson also knew that there was expert testimony, from his own maternal-fetal medicine specialist, Dr. Scott Nelson MacGregor, that there was no evidence in this case that Lanette McClure's smoking caused the cord prolapse or caused the injury to the infant.[15] Once again, however, he was keenly aware of the prejudice associated with smoking while pregnant and how any suggestion of it would prejudice the jury.

2. Mr. Johnson's conduct calls for revocation of his *pro hac vice* status.

24. As part of his application to appear *pro hac vice* before this court and the trial

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[14] Reporter's Record, *Trial Transcript of Barbara Ann True-Driver Transcript, R.N.,* October 26, 2005 at pp. 60-61, attached to this motion as Exhibit "I" and incorporated fully by reference.

[15] Exhibit "F," *Deposition of Dr. Scott Nelson MacGregor*, September 16, 2005 at p. 112, lls. 16-22.

court in the *McClure* case, A. Scott Johnson averred that he had familiarized himself with the Texas Rules of Professional conduct. Nevertheless, he knowingly violated these rules on more than one occasion in the *McClure* trial. Rule 3.03(a)(1)(5) of the Texas Rules of Professional Conduct provides that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or offer or use evidence that the lawyer knows to be false. Mr. Johnson knowingly represented to the court in a pre-trial hearing that Mrs. McClure *"exposed the fetus to herpes on three different occasions during this pregnancy"*[16] This representation was made by Mr. Johnson despite the fact that he had in his possession Lanette McClure's medical records which noted a herpes outbreak on February 22, 1994 (a month prior to her last menstrual cycle before she became pregnant with Jessica); another on December 20, 1994 (three days after Jessica was born), and another on February 21, 1995 (over a year after Jessica's birth).[17] His statement was knowingly false and related to a material fact in the case.

25. The State Bar rule governing fairness in adjudicatory proceedings states that in representing a client before a tribunal a lawyer shall not "state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence." State Bar Rules, Rule 3.04 (c)(2). In making the representation to the court regarding Jessica's exposure to herpes in utero, Mr. Johnson knew from the testimony of his own experts, Dr. Nelms and Dr. MacGregor, that there was no evidence that herpes caused the injury to Jessica McClure and that the interjection of this subject had no relevance to any issue before the court. He knew, too, that his statement could not be supported by admissible evidence, i.e., the medical records plainly

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16 Exhibit "D," 1 Reporter's Record, *Pre-trial Motions*, October 14, 2005 at p.38.

17 Exhibit "E," Medical Records on Lanette McClure.

show that Mrs. McClure did not experience a herpes outbreak at any time during her pregnancy. The questions by Mr. Johnson about HSV during the cross examination of Dr. Zimmerman were intended to, and did, disrupt the proceedings in the *McClure* trial. The plaintiff was compelled to approach the bench and ask that the jury be dismissed to bring her objections before the court. The trial court had to ask the jury to disregard any reference to HSV. Trial was disrupted by the misconduct of Mr. Johnson. *See*, State Bar Rules, Rule 3.04(c)(5)("a lawyer shall not . . . engage in conduct intended to disrupt the proceedings").

26. In further violation of the State Bar Rules, Mr. Scott Johnson knowingly disobeyed a ruling of the trial court. Rule 3.04(d) states that a lawyer shall not "knowingly disobey, or advise the client to disobey, an obligation under the standing rules of or a ruling by a tribunal." The trial court found and stated on the record that Mr. Johnson had violated the Motion in Limine, Number 29 by his mention of HSV ("I do find the defense has violated the Motion in Limine, Number 29"). When Mr. Johnson, in violation of Motion in Limine No. 28, displayed to the jury a medical record referencing Mrs. McClure's use of tobacco during her pregnancy, he attempted to justify his actions by telling the court that, "[j]ust for the record, Your Honor, I did block off how many packages of cigarettes." However, the court cautioned him at that time "to mark out *any reference* whatsoever to tobacco" thus acknowledging that this subterfuge did not excuse his obvious violation of the order on the Motion in Limine.[18]

3. Mr. Scott Johnson's violations of the court's order on motions in limine resulted in incurable error.

a. Legal Standard

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[18] Exhibit "I," Reporter's Record, *Trial Transcript of Barbara Ann True-Driver Transcript, R.N.*, October 26, 2005, pp. 61.

27. During the trial of this case, Mr. Johnson asked the plaintiff's expert, Dr. Robert Zimmerman, if he knew that Jessica was exposed to HSV-2 during her mother's pregnancy. Mr. Johnson also displayed a medical record with an unmistakable reference to the mother's use of tobacco during her pregnancy. Each of these was in direct violation of motions in limine, affected the fairness of the trial and influenced the verdict. First, because the jury heard that Lanette McClure's fetus was exposed to genital herpes infection (HSV-2) during the pregnancy and because they knew from the medical record displayed by Scott Johnson that she had smoked during pregnancy, no instruction to disregard could cure the prejudicial effect of the implications arising from these violations of the court's orders.

28. Secondly, the record is clear that these violations were not innocent slips of the tongue. Mr. Johnson's untruthful assertions during the pre-trial conference, that exposure to herpes was one of a myriad of causative factors to be considered in determining the cause of the injury to Jessica, was an explicit roadmap to his intentions. This is, then, not simply a case of the reference to evidence whose probative value is outweighed by the danger of unfair prejudice. Tex. R. Evid. 403. It is a case of deliberate and calculated violations of an order of the court addressed to the central issue at trial – the proximate cause of the injury to Jessica McClure. Mr. Johnson did not approach the bench and obtain a ruling from the trial court before interjecting either smoking or herpes into the lawsuit. He would risk a mistrial to get this prejudicial matter before the jury.

29. The Texas Supreme Court, in addressing the issue of incurable jury argument, has often reversed judgments because counsel used the medium of argument for getting before the jury new or different evidence. *Texas Employers' Ins. Ass'n v. Haywood,* 153

Tex. 242, 266 S.W.2d 856, 858 (1954). Reversal for incurability has occurred even though objection was not timely made. *Id.* The Texas Supreme Court articulated the test for the determination of an incurable argument as follows:

> **The true test [for incurability] is the degree of prejudice flowing from the argument-whether the argument, considered in its proper setting, was reasonably calculated to cause such prejudice to the opposing litigant that a withdrawal by counsel or an instruction by the court, or both, could not eliminate the probability that it resulted in an improper verdict.**

Id. A reviewing court will reverse the trial court's judgment if there is a probability that the argument caused harm which exceeds the probability that the verdict was based upon proper proceedings and evidence. *Austin v. Shampine*, 948 S.W.2d 900 (1997), 906-907 (Tex. App.--Texarkana, 1997) *citing Haryanto v. Saeed,* 860 S.W.2d 913, 919 (Tex. App.--Houston [14th Dist.] 1993, writ denied). Additionally, in arriving at this determination, the reviewing court may properly inquire into the duration of the argument, whether it was repeated or abandoned, and whether there was cumulative error. *Id. citing Williams v. Lavender,* 797 S.W.2d 410, 413 (Tex. App.--Fort Worth 1990, writ denied). The record in this case shows a consistent pattern of disregard for the court's orders that began with the very first witness called at trial (Dr. Zimmerman) and extended to closing argument.

30. There is support in Texas law for a finding that the violation of a motion in limine constitutes incurable error even where, as in this case, the trial court instructed the jury to disregard. In *Dove v. Director, State Employees Workers' Compensation Division*, 857 S.W.2d 577, 578-579 (Tex. App.--Houston [1st Dist.] 1993, writ denied), the defendant violated a motion in limine on three separate occasions by referring to collateral source benefits. The First Court of Appeals agreed with the plaintiff that the cumulative effect

of the violations of the trial court's order caused the rendition of an improper verdict and calls for reversal. *Id.* at 580. The appeals court noted that this was a case where violations of an order on a motion in limine were incurable because *instructions would not eliminate the danger of prejudice. Id.* (emphasis added) Given the magnitude of the prejudice engendered by the reference to Jessica's exposure to herpes and her mother's continued smoking during pregnancy, Scott Johnson's violation of the applicable motions in limine constitute reversible error.

31. In *Kendrix v. Southern Pac. Transp. Co.,* 907 S.W.2d 111, 112 (Tex. App.--Beaumont 1995, writ denied), defense counsel first violated an order on a motion in limine by a purposeful reference to collateral source benefits. The Beaumont Court of Appeals pointed out that "the words 'worker's compensation' were not inadvertently uttered by a witness on the stand, they were *directly injected* by experienced defense counsel." In a second instance in the same case, defense counsel improperly and in violation of the motion limine, told the jury that the plaintiff's brother-in-law sued the plaintiff for injuries in the same collision that formed the basis of the suit against the railroad. *Id.* at 113. Holding that the violations of the court's rulings on the motion in limine did cause the rendition of an improper judgment, the *Kendrix* court stated :

> **No instructions could cure the improper impression this allegation left on the minds of the jurors.** The jurors, who knew that Mr. Virnau was probably in the best position to see who was at fault, were left with the impression that Mr. Virnau sued Kendrix because he felt Kendrix was at fault for the collision. Furthermore, the jury could believe that Mr. Virnau did not testify live, not because he was ill, but because he would testify against his brother-in-law.
>
> We conclude this caused the rendition of an improper verdict by improperly impeaching Kendrix with false hearsay of a relative who purportedly ascribed causation to the appellant. ***This was such a blatant violation of the rules of evidence as to alone necessitate a new trial.***

> The question was so prejudicial that before the appellant's attorney could object, the court had already sustained the objection. The court, obviously, was well aware that this was in violation of the motion in limine and highly prejudicial to the appellant, injecting this issue where the matter of comparative negligence was to be submitted before the jury. The appellant's attorney made a motion for mistrial. The trial court denied the motion.
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> . . .
>
> The court of appeals further observed that:
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> **The presentation of excluded matter to the jury by suggestion, by the wording of a question, or by indirection, violates professional standards and counsel's duty to the court.**

907 S.W.2d at 113-114 *citing* Canon 19, State Bar Rules, 1A Vernon's Tex.Civ.Stat., p. 236.

32. In the *McClure* trial, A. Scott Johnson purposefully presented excluded matter to the jury on subjects crucial to a finding on causation. This was incurable error. *See Rainbow Express, Inc. v. Unkenholz*, 780 S.W.2d 427, 433 (Tex. App.--Texarkana 1989, writ denied)("[a]ll of the evidence must be closely examined to determine the argument's probable effect on a material finding.") Furthermore, the very content of the matter presented to the jury, i.e., the specter of a mother endangering her unborn child by smoking and exposure to herpes, was so highly prejudicial that no instruction could cure the impression left on the minds of the jurors. *Kendrix v. Southern Pacific*, 907 S.W.2d at 113.

b. References to herpes and tobacco use by Mrs. McClure resulted in incurable prejudice to the plaintiff.

(1) Introduction

33. Few subjects in this country arouse passionate feelings and unyielding opinions than motherhood and babies. Societal attitudes toward a woman's responsibilities to her

unborn child during pregnancy are reflected in the evolution and development of maternal and fetal rights in both state and federal law. *See* Michelle Hyanes, "Notes and Comments: Inner Turmoil: Redefining the Individual and the Conflict of Rights Between Woman and Fetus Created by the Prenatal Protection Act," 11 TEX. WESLEYAN L. REV. 131, 136-137 (2004). In Texas, the supreme court recognized a cause of action for prenatal injuries to an unborn child if the child was subsequently born alive in *Yandell v. Delgado*, 471 S.W.2d 569, 570 (Tex. 1971)(per curiam). In *Cuellar v. State,* 957 S.W.2d 134, 140 (Tex. App.--Corpus Christi 1997, pet. ref'd), the Corpus Christi Court of Appeals held that a defendant could be prosecuted for intoxication manslaughter when a fetus was injured in utero and subsequently died after birth. The El Paso Court of Appeals overturned a conviction for injury to a child finding that the defendant did not have adequate notice that voluntarily smoking crack cocaine while pregnant would subject her to prosecution after her child was born showing signs of cocaine withdrawal. *Collins v. State*, 890 S.W.2d 893, 897-98 (Tex. App.--El Paso 1994, no pet.).

34. Recently, the Texas legislature passed a bill entitled the Prenatal Protection Act which went into effect on September 1, 2003. Tex. Civ. Prac. & Rem. Code § 71.001-71.002 (2005). This statute provides criminal and civil penalties to third parties that injure a fetus and amends the wrongful death statutes to include "an unborn child at every stage of gestation from fertilization until birth" in the definition of 'individual' covered by the statutes. *Id.* Clearly, there is an express concern among citizens of this state, as reflected in both case law and legislation, for the protection of an unborn child even if it means penalizing the mother and punishing third parties.

35. Texas is not alone. A brief survey of law review and law journal articles reveals

national attitudes toward mothers who smoke, drink alcohol or use drugs while pregnant. There is even a term for these behaviors – "fetal abuse." As Jean Reith Schroedel and Paul Peretz observe, the view of mothers as primarily responsible for children is deeply embedded in our culture.[19] Given this, the authors say, it is hardly surprising that when society asked who should be blamed for harm to the fetus, it turned first to the mother and that in a relatively brief period, fetal abuse became defined as adverse birth outcomes caused by the mother's substance abuse.[20]

(2) Herpes

36. The jurors in the *McClure* trial were representatives of their community as well as their state and subject to the same attitudes and prejudices – including the stigma attached to a pregnant woman who has herpes. Mr. Johnson's mention of HSV and the discussion of HSV by the witness was, as pointed out by plaintiff's counsel, an unmistakable reference to herpes and one that would certainly be understood by some, if not all the jurors, given the statistics on the prevalence of herpes in this county.[21] A December 15, 2005 report from the Center for Disease Control (CDC) tells us that:

> **Results of a nationally representative study show that genital herpes infection is common in the United States. Nationwide, at least 45 million people ages 12 and older, *or one out of five adolescents and adults*, have had genital HSV infection. Between the late 1970s and the early 1990s, the number of Americans with genital herpes infection increased 30 percent.[22]**

37. In an article by J. Dennis Fortenberry, M.D., M.S., the author reviewed the stigma

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19 "A Gender Analysis Of Policy Formation: The Case of Fetal Abuse," 19 J. Health Pol. Pol'y & L. 335, 337 (1994).

20 *Id.*

21 Exhibit "H," Reporter's Record, *Trial Transcript of Robert Zimmerman, M.D.* at pp. 58-59.

22 http: //www.cdc.gov/std/Herpes/STDFact-Herpes.htm accessed on December 30, 2005.

associated with genital herpes on the part of both infected and uninfected people.[23] He says that "stigma refers to social judgment and discrimination" and plays an important role in both the social and public health response to herpes. *Id.* at 3. According to Dr. Fortenberry, genital herpes is considered to be the "stain" that links a person infected with the virus to an undesirable characteristic, i.e., irresponsible sexual behavior. *Id.* at 1. There can be no doubt that the jury heard that Jessica McClure was exposed to HSV-2 and, without more information, could well have blamed her mother for this alleged exposure and attributed causation to a herpes infection. This was no subtle exploitation of a societal bias but a blatant attempt on Mr. Johnson's part to prejudice the juror's decision-making process with an extraneous and highly explosive issue fraught with social stigma.

(3) Smoking

38. Mr. Johnson's efforts to deflect the jurors from consideration of the relevant evidence of causation did not stop with his interjection of herpes and the potential "fault" of the mother in exposing her unborn child to this virus. In another attempt to assign blame to Jessica's mother, the defense introduced Mrs. McClure's medical record that showed a social history of tobacco use. The prejudicial effect of this reference is immediately apparent. The awareness of the dangers of maternal smoking to the unborn child is widespread and has become increasingly so in the recent years. In 1964 general knowledge about the health consequences of smoking during pregnancy mostly concerned the increased risk of low-birthweight babies.[24] By the 1980 Surgeon General's Report, smoking was identified as an important cause of premature births,

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[23] J. Dennis Fortenberry, M.D., "The Effects of Stigma on Genital Herpes Care-seeking Behaviours, 11 HERPES 1 (2004).

[24] "Smoking and Health," United States. Public Health Service. Office of the Surgeon General (1964).

miscarriages, and stillbirths.[25] The National Health Interview Survey in 1987 showed that 89 percent of respondents believed that smoking during pregnancy "may" harm the baby.[26] In 2002, smoking during pregnancy was reported by 11.4% of all women giving birth in the United States. This represented a decrease of 38% from 1990, when 18.4% reported smoking.[27]

39. Since a mother who smokes during pregnancy makes the decision to smoke during pregnancy and thus risk the health of her fetus, there is considerable, documented evidence of negative feelings for such mothers. A Gallup poll found that 48% of those responding believed that a woman who smokes during pregnancy should be held liable for any ill effects suffered by her baby.[28] This societal attitude is mirrored in a multitude of legal, health and sociological opinions on the subject. The following publications provide a representative list:

> Anderson, Jon. D. "Parental Smoking: A Form of Child Abuse?" Marquette Law Review 77 (1994): 360.
>
> Balisy, Sam S. "Maternal Substance Abuse: The Need to Provide Legal Protection for the Fetus." Southern California Law Review 60 (May 1987): 1209.
>
> Butler, Mireille O. "Parental Autonomy Versus Children's Health Rights: Should Parents be Prohibited from Smoking in the presence of their Children?" Washington University Law Quarterly 74 (1996): 223.
>
> Chinnok, Judge William F. "No Smoking Around Children: The Family Courts' Mandatory Duty to Restrain Parents and Other Persons from Smoking Around Children." Ariz. L. Rev. 45 (Fall 2003): 801.
>
> Flannery, Michael T. "Court-Ordered Prenatal Intervention: A Final

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25 "The Health Consequences of Smoking for Women" A Report of the Surgeon General (1980).

26 "National Health Interview Survey, 1987" United States Department of Health and Human Services. National Center for Health Statistics (1987).

27 http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5339a1.htm

28 Kristin L. Johnson, "An Argument for Consideration of Prenatal Smoking in Neglect and Abuse Determinations," 46 Emory L.J. 1661, (Fall 1997) at FN 2 *citing* Pamela Warrick, "The Pregnancy Police", L.A. Times, at E1, Oct. 30, 1991.

Means to the End of Gestational Substance Abuse." Journal of Family Law 30 (1991/92): 519.

Hall, Jeffrey L. "Secondhand Smoke as an Issue in Child Custody/Visitation Disputes." W. Va. L. Rev. 97 (115).

Johnson, Kristin L. "An Argument for Consideration of Prenatal Smoking in Neglect and Abuse Determinations." Emory Law Journal 46 (Fall 1997): 1661.

Kraft, Larry. "Smoking in Pubic Places: Living with a Dying Custom." N.D. L. Rev. 64 (1988): 329.

Lippert, Julie E. "Prenatal Injuries from Passive Tobacco Smoke: Establishing a Cause of Action for Negligence." Ky. L.J. 78 (Summer, 1989/1990): 865.

Mills, Michelle D. "Fetal Abuse Prosecutions: The Triumph of Reaction Over Reason." DePaul Law Review 47 (Summer 1998):989

Rimer, Darren S. "Secondhand Smoke Damages: Extending a Cause of Action for Battery Against a Tobacco Manufacturer." Sw. U. L. Rev. 24 (1995): 1237.

Rippey, Susan E. "Criminalizing Substance Abuse During Pregnancy." New Eng. J. on Crim. & Civ. 17 (1991): 69.

Uhlich, Wanda. "Best Interests of the Child: considering the Effects of Passive Smoking When Making a Custody Adjudication." N.D. L. Rev. 68 (1992): 727.

(4) Impact on the Plaintiff

40. Valerie P. Hans & Juliet Dee reported on a substantial body of empirical research indicating that people sometimes blame victims for negative outcomes. According to psychologist Melvin Lerner, as well as a body of experimental research on attribution theory, there is ample evidence of victim blaming.[29] Lerner hypothesized that people's

[29] Valerie P. Hans & Juliet Dee, "Why Blame the Whiplash Victim? Psychological Factors," 68 Brook. L. Rev. 1093, 1100-1101 (Summer 2003) at FN36 *citing* Melvin Lerner, Belief in a Just World: A Fundamental Delusion (1990); Howard Tennen & Glenn Affleck, "Blaming Others for Threatening Events," 108 Psychol. Bull. 209 (1990); Kelly G. Shaver, The Attribution of Blame: Causality, Responsibility, and Blameworthiness (1985); Bernard Weiner, An Attributional Theory of Motivation and Emotion (1986); Sharon Lamb, "The Psychology of Condemnation: Underlying Emotions and their Symbolic Expressions in Condemning and Shaming," 68 Brook. L. Rev. 929 (2003).

need to believe in a just, predictable and controllable world created considerable discomfort when they observed suffering.[30] In response to this need, people engage in strategies to minimize their own discomfort, including derogating innocent victims, minimizing their injuries and reinterpreting injuries as victim-precipitated.[31] One strategy in blaming the victim is to attribute unfortunate circumstances to a character flaw or other negative feature of the victim.[32] This strategy is played out in juries across the country:

> **Thus, juries are most likely to attribute responsibility when (1) a particular person can be identified as the source of the action; (2) the jurors believe the that person should have foreseen the outcome of the action; (3) the person's actions were unjustified by the situation; and (4) the person operated under the condition of free choice.[33]**

Because of Scott Johnson's deliberate and calculated violations of the motions in limine regarding herpes and smoking, the jury could well have attributed Jessica's injuries to Mrs. McClure's actions during her pregnancy. This is exactly the scenario in which violations of an order on a motion in limine are incurable because instructions cannot eliminate the danger of prejudice. *See Kendrix v. Southern Pacific*, 907 S.W.2d at 113.

C. Mr. Johnson's Pattern and Practice of Misconduct

1. *McShane, et al v. Bay Area Healthcare Group, LTD.*

41. Regrettably, Scott Johnson's behavior in the *McClure* trial was not a solitary action on his part. Mark R. Mueller represented the plaintiffs in another medical malpractice case styled *McShane, et al v. Bay Area Healthcare Group, LTD.*, et al, that was tried over a period of 26 days in the 28th Judicial District Court of Nueces County,

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30 *Id.* at FN 37 *citing* Lerner.
31 *Id.* at FN 38.
32 *Id.* at FN 40 *citing* Fritz Heider, The Psychology of Interpersonal Relations 235 (1958).
33 *Id.* at FN 56.

Texas. A. Scott Johnson of Oklahoma City was one of the defense counsel representing the hospital. The trial court rendered a take nothing verdict and overruled the plaintiffs' motion for new trial. The Court of Appeals for the Thirteenth District of Texas, in a written opinion delivered on October 6, 2005, reversed the judgment of the trial court and remanded for a new trial.[34] The court ruled that the admission of superseded pleadings was not harmless error and that the court had discerned **"a distinct pattern in counsel's use of the inadmissible evidence to relieve appellees of liability simply because the doctors had been dropped from the suit."**[35] The court of appeals further noted that this error pervaded all stages of the trial, from jury selection, expert witness testimony, to closing argument.[36]

42. In the appeal of the *McShane* case, the plaintiffs argued that the entire trial was permeated by attorney misconduct (on the part of Scott Johnson and his co-counsel) so pervasive and egregious that no action by the trial court could have mitigated its impact on the jury and the prejudice to the plaintiffs.[37] For example, during the cross-examination of Dr. Ken McCoin, the plaintiffs' expert economist, A. Scott Johnson engaged in an egregious sidebar comment, while literally pointing at the McShane's attorneys:

> **SCOTT JOHNSON: I keep thinking, we've put all these millions and millions and millions of dollars up here. And I keep thinking about my passport account. *I keep wondering who all these millions and millions of dollars are really for.***

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34 *Opinion*, October 6, 2005, Cause No. 13-04-174-CV, *McShane v. Bay Area Healthcare Group, LTD, et* al, In the Court of Appeals, Thirteenth District of Texas, attached to this motion as Exhibit "J" and incorporated fully by reference.

35 *Id.*

36 *Id.*

37 *Appellants Brief, McShane v. Bay Area Healthcare Group, LTD, et al*, No. 13-04-174-CV, In the Court of Appeals, Thirteenth District of Texas, attached to this motion as Exhibit "K" and incorporated fully by reference at p. 8.

MR. MCCOIN: I couldn't hear you.

SCOTT JOHNSON: *Who are all these millions and millions of dollars really for?* I mean, if you get a little bit of money in the bank, you can make a little bit of money.[38]

The plaintiffs' objections to this obvious reference to attorney's fees were sustained by the court and the jury ordered to disregard. Such inflammatory remarks in the presence of the jury are wholly improper. *See Texas Emp. Ins. Ass'n v. Hatton*, 255 S.W.2d 848, 849 (Tex. 1953)(holding that an improper discussion of contingent attorney's fees before the jury is material misconduct and will justify reversal).[39] Nonetheless, Mr. Johnson knowingly and deliberately referred to attorney's fees with an intent to prejudice the plaintiffs' case.

43. In the *McShane* motion for new trial, the plaintiffs recounted further egregious action on the part of Mr. Scott Johnson. During trial Mr. Mueller asked that defense counsel be instructed not to show things to the witness or get things from plaintiffs' file and informed the court that defense counsel was interrupting his questioning and that:

> Mr. Mueller: [T]here's mumbling and talking between these two in disparaging terms about me and about what we're doing in front of the jury where the jury can hear that. I've heard it a couple of times. I think it's inappropriate.
>
> Mr. Rodolf: We'd never do that. I mean, we might think it, but we don't do that.
>
> Mr. Mueller: You did -- you did do that and I heard it. So don't give me that.
>
> The Court: Excuse me. If you could address the Court.
>
> Mr. Mueller: I'm sorry, Your Honor. I will tell you, Your Honor, that I heard them say that. And I heard them -- I heard Mr. Johnson back there muttering he's lying about this, he's lying about that.

At this point, Mr. Johnson literally charged to the bench and had to be physically

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38 *Id.* at pp. 12-13.

39 *Id.*

restrained by local counsel for the defendants.[40] The appellate brief filed with this motion provides additional information on the misconduct of the Oklahoma defense attorneys, including A. Scott Johnson.

2. *Andrea Locke v. Cimarron Memorial Hospital*

44. Andrea Locke was represented by the Mueller Law Offices in a wrongful death lawsuit arising out of the negligence of her health care providers during the events surrounding her daughter's birth and subsequent death at Cimarron Memorial Hospital in Boise City, Oklahoma. Once again, A. Scott Johnson of the firm of Johnson, Hanan, Heron and Trout, P.C. of Oklahoma City, Oklahoma represented the defendant hospital. This case was filed on January 30, 2001, in the Oklahoma Federal Court.

45. As set out in the court documents attached to this motion, counsel for the plaintiff, Hunter T. Hillin, encountered considerable difficulties in conducting discovery in this case. The defendant hospital refused to produce witnesses properly noticed for deposition on December 5th through 7th of 2001 despite the fact that this was the ***third*** time depositions of these defense witnesses had been noticed since they were first requested in July of 2001. Defendant Cimarron Memorial Hospital had noticed the plaintiff's deposition for December 5, 2001 at 1:00 p.m. As set out in *Plaintiff's Response To Defendant's Multiple Motions For Protection And Memorandum In Support Of Motion For Discovery Sanctions*, Mr. Johnson engaged in a continuing pattern of disruption and disrespect:

> Rather than going forward with the Plaintiff's deposition as scheduled at 1:00 pm on December 5, 2001, Cimarron Memorial Hospital, by and through their attorney's of record, Johnson, Hanan, Herrin and Trout were

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[40] *Plaintiffs' Motion for New Trial,* January 26, 2004, Cause No. 04-00716-E, *McShane v. Bay Area Healthcare Group, LTD, et al*, In the 148th Judicial District Court of Nueces County, Texas, attached to this motion as Exhibit "L" and incorporated fully by reference at p. 37.

at the court house seeking a hearing. The undersigned counsel of record indicated that unless they began the deposition by 3:00 pm, he would send his client, the Plaintiff, Ms. Andrea Locke, back to her home in Liberal, Kansas due to the four hour car ride it would entail. Defendant's counsel did appear for the deposition at 3:00 pm, but continually argued on the record about moving forward with the deposition until the undersigned insisted that they begin the deposition at 3:20 or cancel her deposition. Counsel for Defendants began the Plaintiff's deposition at that time and insisted on recessing for the day at 5:00 pm and resuming again at 9:00 am the following morning. Therefore, Ms. Andrea Locke stayed over in Oklahoma City for an additional night and began her deposition again at 9:00 am the following morning. **During the course of her deposition, Mr. Scott Johnson continually objected and interrupted the examination of this witness with a protracted argument regarding whether there was proper diversity in the case. Counsel objected to Mr. Johnson's comments in form as he was not examining the witness on behalf of the Defendants (the interrogation was being handled by Mr. Jeremy Rowland of his firm), and for interrupting with non-relevant comments which were calculated to harass and upset the Plaintiff, who had appeared for deposition concerning the death of her newborn child.**

During an intervening brief recess to make a record on the non-appearance of Dr. Manuel J. Ramirez, M.D. for his deposition as noticed, Mr. Christopher Liebman made an appearance and handed a Motion for Protection to Plaintiff's counsel and indicated that Manuel J. Ramirez, M.D. would not appear for his deposition as scheduled. **Whereupon, Mr. Scott Johnson indicated the Plaintiff's deposition would not continue at that time, but rather be suspended until a ruling had been obtained from the court on their Motions for Protection. He then advised that none of the hospital witnesses noticed for December 6 and 7, 2001, would be produced for their depositions.**[41]

46. By order of United States District Judge Lee R. West, all defense counsel were directed to respond to the plaintiff's motion for sanctions by December 18, 2001, and the matter was heard by the court on January 9, 2002. After hearing testimony from the parties' counsel, the Court found that it was obvious "there was not a clear meeting of the minds that would vary the requirement of the noticed depositions" thus clearly finding

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[41] *Plaintiff's Response To Defendant's Multiple Motions For Protection And Memorandum In Support Of Motion For Discovery Sanctions*, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al*, In the United States District Court for the Western District of Oklahoma, attached to this motion as Exhibit "M" and incorporated fully by reference.

that Mr. Johnson and his colleagues did not have the unilateral right to cancel the scheduled depositions as they had done.[42] Judge West ordered defense counsel to pay the plaintiff's expenses for traveling to and from depositions that never took place.[43]

47. At the hearing on January 9, 2002, the Court re-set the trial date until October and designation of experts for July. When the deadline for expert designation occurred, the hospital filed a list of experts but did not provide expert reports. The plaintiff filed a motion for sanctions asserting that the defendants had failed to comply with the Court's orders and with Federal Rule of Civil Procedure 26 because they submitted only the names of the proposed expert witnesses.[44] Despite the fact that (1) all previous written scheduling orders had included submission of final list of expert witnesses and their reports on the day of designation and (2) Rule 26(a)(2)(B) requires written reports from experts, Mr. Johnson and his colleagues argued that they were not obligated to provide reports because the January order made no reference to expert reports.[45] In response to that argument, the Court wrote:

> **The Court disagrees. The relief, however, requested by Locke is harsh. *It would substantially penalize the defendants for the misconduct of their attorneys.* Accordingly, the Court finds such relief is not an appropriate sanction in this case. Rather, *the Court finds any sanction to be imposed should be inflicted upon counsel for the defendants, not upon the defendants themselves.*[46]**

48. The Court ordered the defendants to submit reports of all experts within 15 days and to pay the attorneys' fees and expenses the plaintiff reasonably incurred as a result of

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42 *Reporter's Transcript of Hearing,* January 9, 2002, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al,* In the United States District Court for the Western District of Oklahoma attached to this motion as Exhibit "N" and incorporated fully by reference.

43 *Id.* at 64-66.

44 *Order,* July 19, 2002, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al,* In the United States District Court for the Western District of Oklahoma attached to this motion as Exhibit "O" and incorporated fully by reference.

45 *Id.*

46 *Id.* at p. 3.

the defendants' failure to comply with the Court's orders.[47] The Court ultimately awarded plaintiffs' counsel attorney's fees to be recovered from A. Scott Johnson and Mary B. Hanan and the law firm of Johnson, Hanan, Heron and Trout, P.C.[48]

3. *Sanchez, et al v. Riverside Hospital, Inc., et al*

49. A. Scott Johnson, admitted *pro hac vice*, was the attorney for Riverside Hospital in a case set in County Court at Law No. 3, Nueces County, Texas, Cause No. 03-61778-3, styled S*anchez, et al v. Riverside Hospital, Inc., et al.* The plaintiffs were represented by William R. Edwards of the Edwards Law Firm in Corpus Christi, Texas. The plaintiffs filed objections to the motion for *pro hac vice* admission of A. Scott Johnson and an amended motion to revoke the *pro hac vice* admission of A. Scott Johnson.[49]

50. The plaintiffs alleged that A. Scott Johnson, an Oklahoma attorney, violated Texas Rule of Civil Procedure 194.2(e) by refusing to disclose the date on which he "retained" Jack Cortese, M.D., a treating physician of the decedent in the case, as a testifying expert. When asked to disclose the date, Mr. Johnson indicated that it was "none of your business" and further refused to disclose matters required to be disclosed under Rule 194.2(e) with regard to "retained" experts.[50]

51. The plaintiffs also expressed their belief that Mr. Johnson had disregarded the Texas Rules of Professional Conduct, 3.01, 3.04(a),(e) and 8.04(3), (4) and (12) relating to his conduct involving the witness, Jack Cortese, M.D. Specifically, that Mr. Johnson

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47 *Id.* at p. 4.

48 Order, August 22, 2002, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al*, In the United States District Court for the Western District of Oklahoma attached to this motion as Exhibit "P" and incorporated fully by reference.

49 *Plaintiffs' Objections to the Motion for Pro Hac Vice Admission of A. Scott Johnson*, June 30, 2005, Cause No. 03-61778-3, *Sanchez, et al. v. Riverside Hospital, Inc., et al.*, In the County Court of At Law No. 3 in Nueces County, Texas, attached as Exhibit "R" and incorporated fully by reference. See also, *Plaintiffs' Amended Motion to Revoke Pro Hac Vice Admission of A. Scott Johnson*, August 13, 2005, Cause No. 03-61778-3, *Sanchez, et al. v. Riverside Hospital, Inc., et al.*, In the County Court of At Law No. 3 in Nueces County, Texas attached to this motion as Exhibit "Q" and incorporated fully by reference.

50 Exhibit "Q," at p. 2-3.

had induced Dr. Cortese to violate HIPAA regulations with regarding to the decedent, Mrs. Rodriguez, and had violated those regulations himself by the manner in which he obtained the health information of the decedent.[51] Neither Dr. Cortese nor Mr. Johnson requested authorizations from the plaintiffs to discuss Mrs. Rodriguez's health information with each other nor discussed these conversations with the plaintiffs' attorneys.

52. At a hearing on that motion, Dr. Cortese, the expert witness hired by Mr. Johnson testified under oath, in Mr. Johnson's presence, that he had given Mr. Johnson "just a copy of an article."[52] At his deposition following the hearing, Dr. Cortese testified that he had given Mr. Johnson "a group of papers" that were ultimately revealed to be five articles instead of the one he had testified to at the hearing. The plaintiffs filed a first supplemental motion to their amended motion to revoke the *pro hac vice* admission of A. Scott Johnson asserting that:

> Scott Johnson was present in Court when Dr. Cortese testified that he had provided Mr. Johnson with "just a copy of an article." Mr. Johnson had to know that that testimony was incorrect. Notwithstanding that fact, Mr. Johnson failed to inform the Court that his 'retained expert' was in error and that, in fact, he had provided several more documents than he testified to. Mr. Johnson did nothing to provide Plaintiffs with all the literature provided to him by his 'retained expert' following the hearing. Had it not been for the court's ordering the taking of Dr. Cortese's deposition, Plaintiffs would undoubtedly never have known of more than 'just a copy of an article,' at least before Dr. Cortese was called as a witness.[53]

53. During that same hearing, Mr. Johnson was asked if, anywhere in the first supplemental designation and response to disclosure filed by Mr. Johnson, he ever

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51 *Id.* at p. 3.

52 *Plaintiffs' First Supplemental Motion to Plaintiffs' Amended Motion to Revoke the Pro Hac Vice Admission of A. Scott* Johnson, August 19, 2005, Cause No. 03-61778-3, *Sanchez, et al. v. Riverside Hospital, Inc., et al.*, to this motion as Exhibit " S" and incorporated fully by reference at attached Exhibit "1."

53 Exhibit "S," *Plaintiffs' First Supplemental Motion to Plaintiffs' Amended Motion to Revoke the Pro Hac Vice Admission of A. Scott* Johnson, August 19, 2005.

indicated that Dr. Cortese was a "retained" expert.[54] Mr. Johnson, testifying under oath, made this response:

> My question is this: Mr. Johnson, is this entire list – and I'm just getting down on – I think it's the third page – the question to them is: Are they all *retained* experts, sir?
>
> They're all listed as testifying –
>
> THE COURT: Mr. Johnson
>
> They're testifying experts.
>
> > THE COURT: No, sir. That's not the question, Mr. Johnson, and I don't intend to sit here and play this game all morning. There is a question before you, and the question is pretty straightforward.
>
> The only one I've *retained* is Dr. Cortese.[55]

54. No hearing was held on the plaintiffs' first supplemental motion to revoke the *pro hac vice* admission of A. Scott Johnson because the *Sanchez* case settled prior to the hearing on the supplemental motion. Accordingly, the court took no action with respect to the plaintiffs' motion.

4. *Sylvia Ponce, et al v. Doctors' Regional Medical Center, et al*

55. The Edwards Law Firm filed objections to the *pro hac vice* motion of A. Scott Johnson and John Hill in a lawsuit Cause No. 01-60213-1 styled *Sylvia Ponce, et al v. Doctors Regional Medical Center, et al*, in County Court at Law No. 1, Nueces County, Texas. The plaintiffs alleged that Mr. Johnson failed to list the *Sanchez* case as a cause by which he appeared or sought leave to appear in Texas courts in the last two (2) years. They also alleged that A. Scott Johnson had failed to swear to the facts contained in his *pro hac vice* motion in the *Ponce* case as required by Rule XIX of the Texas Rules

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54 *Id.* at attached Exhibit "2," *Transcript of A. Scott Johnson*, pp. 6-8.
55 *Id.* at attached Exhibit "2," *Transcript of A. Scott Johnson*, p. 10.

Governing Admission to the Bar and that:

> Plaintiff would show that not withstanding the fact that A. Scott Johnson stated in his application that he was familiar with the "State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct" governing the conduct of members of the Bar of Texas and agreed to at all times abide by and comply with those Rules so long as he was engaged in any way in the *Sanchez* case, by his conduct in the *Sanchez* case, the filing of an unverified Motion in the present case, Mr. Johnson has demonstrated that he was and is not familiar with those Rules and that he would not at all times abide by and comply with those Rules. XV. There is no reason to believe that he is any more familiar with those Rules today than he was in August of 2005, or that he would be any more likely to abide by those Rules today than he was likely to abide by those Rules in August of 2005.[56]

Mr. Johnson subsequently withdrew his motion for *pro hac vice* status in the *Ponce* case.

D. Argument & Authorities

56. *Pro hac vice* admission is not a novel concept; state and federal courts across this country routinely require it, as does the state of Texas. *Shields* v. *Bridgestone/Firestone, Inc.*, 2004 WL 546883 at 36 (Tex. Dist. Ct. March 12, 2004)(unpublished opinion). *Pro hac vice* is Latin for "this time only" and refers, in universal usage and comity, to the *privilege* granted to a licensed attorney from one state to practice in a court of another state in a particular case without going through the formality of an admission and license. 7 C.J.S. Attorney & Client § 25. *See also*, *Lies v. Flynt*, 439 U.S. 438, 99 S.Ct. 698, 58 L.Ed. 717 (1979). By his actions in Texas courts and in Texas cases, A. Scott Johnson has forfeited his nonresident privileges. Pursuant to Rule XIX (e) this court may rightly find that Mr. Johnson has engaged in professional misconduct as that term is defined by the State Bar Act, the State Bar Rules, or the Texas Disciplinary Rules of Professional Conduct and so revoke his permission to participate in the *Crawford* proceedings.

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[56] *Plaintiffs' Opposition to A. Scott Johnson's Motion Requesting Permission To Participate Pro Hac Vice*, Cause No. 01-60213-1, *Ponce, et al., v. Doctors' Regional, et al.*, attached to this motion as Exhibit "T" and incorporated fully by reference.

57. In *Kohlmayer v. National Railroad Passenger Corp.*. 124 F. Supp. 2d 877 (D.N.J. 2000), the court considered an appeal of the denial of an application for *pro hac vice* admission of a Pennsylvania lawyer, Marvin Barish, based on his past record, finding that his conduct fell below the expectations of the court. *Id.* at 878. The District Court framed the issue on appeal as whether an attorney who is a member in good standing of the bar of one state must necessarily be admitted to practice *pro hac vice* in New Jersey where his past behavior has been uncivilized and unprofessional and has resulted in reprimands, mistrials and wasted judicial time. *Id.* The court said, **"[t]he question here is whether the hands of this Court are tied, such that it must admit Mr. Barish *pro hac vice* and then hold its breath for the duration of trial in hopes that a mistrial will not result."** *Id.* at 882.

58. Ultimately, the court determined that it had discretion to deny an application, regardless of the applicant's "good standing" in his home state, if that attorney consistently acted in an uncivilized manner. *Id.* at 883. The court concluded:

> **Where a court is made aware of a pattern of uncivilized behavior by an attorney, bordering on the unethical, which has resulted in the waste of judicial time in the past, it must have discretion to deny the otherwise leniently granted *pro hac vice* applications in the interest of judicial economy.**

Kohlmayer, 124 F. Supp. at 883. The plaintiffs are aware, from first-hand trial experience with Mr. Johnson, that his conduct, in trial after trial, results in a waste of judicial time and resources as well as justice delayed for the parties seeking relief.

E. Prayer

59. For the reasons set out in this motion, the plaintiffs ask that the court revoke the *pro hac vice* admission of A. Scott Johnson in the case and for such other and further

relief to which the plaintiffs may be entitled.

Respectfully submitted,

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Kathleen McCartan
State Bar No. 03783450

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on this the 24th day of January, 2006 to the following counsel of record via certified mail, return receipt requested:

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Kathleen McCartan

CAUSE NO. GN 303407

COURTNEY (CRAWFORD) BONHAM, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF RILEY CRAWFORD, A MINOR,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	**TRAVIS COUNTY, TEXAS**
VS.	§	
COLUMBIA/ST. DAVID'S HEALTH-CARE SYSTEM, L.P. d/b/a ROUND ROCK MEDICAL CENTER a/d/b/a ST. DAVID'S MEDICAL CENTER, COLUMBIA/HCA HEALTHCARE CORP., ST. DAVID'S MEDICAL CENTER, ST. DAVID'S HEALTH CARE SYSTEM, INC., ST. DAVID'S HEALTH-CARE PARTNERSHIP, OAKWOOD WOMEN'S CENTRE, P.A., GEORGE SHASHOUA, M.D. and MARK MAUNDER, M.D.,	§	
Defendants.	§	**201st JUDICIAL DISTRICT**

AFFIDAVIT OF KATHLEEN McCARTAN

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned notary public, on this day personally appeared Kathleen McCartan, who, after being duly sworn, deposed and stated as follows:

1. My name is Kathleen McCartan. I am over the age of eighteen (18) years and have never been convicted of a felony. I am of sound mind and suffer no legal disabilities. I am capable, fully competent, and duly qualified in all respects to make this Affidavit. I have personal knowledge of the facts stated herein and they are all true and correct.

2. I am an attorney with the law firm of Mueller Law Offices, and am one of the attorneys representing Courtney (Crawford) Bonham, Individually and as Next Friend of Riley Crawford, a Minor in the above-captioned case.

3. This Affidavit is submitted in support of *Plaintiffs' Motion to Revoke the Pro Hac Vice Admission of Scott Johnson*

4. Attached to this Affidavit is a true and correct copies of the following documents and depositions:

Exhibit A	*Motion for Admission Pro Hac Vice,* September 29, 2004, Cause No. GN-303407, *Courtney (Crawford) Bonham, et al v. Columbia/St. David's Healthcare System, L.P., et al*, In the 201st Judicial District Court of Travis County, Texas
Exhibit B	*Order on Admission Pro Hac Vice,* November 1, 2004, Cause No. GN-303407, *Courtney (Crawford) Bonham, et al v. Columbia/St. David's Healthcare System, L.P., et al*, In the 201st Judicial District Court of Travis County, Texas
Exhibit C	*Plaintiffs'*[sic] *Motion in Limine*, October 14, 2005
Exhibit D	1 Reporter's Record, *Pre-trial Motions*, October 14, 2005
Exhibit E	Medical Records on Lanette McClure
Exhibit F	*Deposition of Dr. Scott Nelson MacGregor*, September 16, 2005
Exhibit G	*Deposition of Dr. Donald K. Nelms*, September 19, 2005
Exhibit H	Reporter's Record, *Trial Transcript of Robert Zimmerman, M.D.*
Exhibit I	Reporter's Record, *Trial Transcript of Barbara Ann True-Driver Transcript, R.N.,* October 26, 2005
Exhibit J	*Opinion*, October 6, 2005, Cause No. 13-04-174-CV, *McShane v. Bay Area Healthcare Group, LTD, et* al, In the Court of Appeals, Thirteenth District of Texas
Exhibit K	*Appellants Brief, McShane v. Bay Area Healthcare Group, LTD, et al*, No. 13-04-174-CV, In the Court of Appeals, Thirteenth District of Texas

Exhibit L — *Plaintiffs' Motion for New Trial,* January 26, 2004, Cause No. 04-00716-E, *McShane v. Bay Area Healthcare Group, LTD, et al*, In the 148th Judicial District Court of Nueces County, Texas

Exhibit M — *Plaintiff's Response To Defendant's Multiple Motions For Protection And Memorandum In Support Of Motion For Discovery Sanctions*, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al*

Exhibit N — *Reporter's Transcript of Hearing,* January 9, 2002, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al*, In the United States District Court for the Western District of Oklahoma

Exhibit O — *Order,* July 19, 2002, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al*, In the United States District Court for the Western District of Oklahoma

Exhibit P — Order, August 22, 2002, No. CIV-01-0213-W, *Andrea Locke, et al v. Cimarron Memorial Hospital, et al*, In the United States District Court for the Western District of Oklahoma

Exhibit Q — *Plaintiffs' Amended Motion to Revoke Pro Hac Vice Admission of A. Scott Johnson*, August 13, 2005, Cause No. 03-61778-3, *Sanchez, et al. v. Riverside Hospital, Inc., et al.*, In the County Court of At Law No. 3 in Nueces County, Texas

Exhibit R — *Plaintiffs' Objections to the Motion for Pro Hac Vice Admission of A. Scott Johnson*, June 30, 2005, Cause No. 03-61778-3, *Sanchez, et al. v. Riverside Hospital, Inc., et al.*, In the County Court of At Law No. 3 in Nueces County, Texas

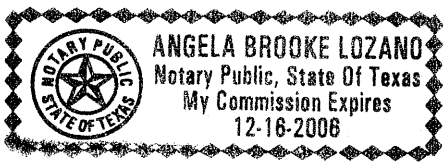
Exhibit S — *Plaintiffs' First Supplemental Motion to Plaintiffs' Amended Motion to Revoke the Pro Hac Vice Admission of A. Scott* Johnson, August 19, 2005, Cause No. 03-61778-3, *Sanchez, et al. v. Riverside Hospital, Inc., et al.*,

Exhibit T — *Plaintiffs' Opposition to A. Scott Johnson's Motion Requesting Permission To Participate Pro Hac Vice*, Cause No. 01-60213-1, *Ponce, et al., v. Doctors' Regional, et al*

FURTHER, AFFIANT SAYETH NOT.

Kathleen McCartan

SWORN TO AND SUBCRIBED before me on this 26th day of January 2006 to certify which witness my hand and seal of office.



Angela Brooke Lozano
Notary Public - State of Texas

CAUSE NO. GN 303407

COURTNEY (CRAWFORD) BONHAM, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF RILEY CRAWFORD, A MINOR,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
	§	**TRAVIS COUNTY, TEXAS**
VS.	§	
COLUMBIA/ST. DAVID'S HEALTH-CARE SYSTEM, L.P. d/b/a ROUND ROCK MEDICAL CENTER a/d/b/a ST. DAVID'S MEDICAL CENTER, COLUMBIA/HCA HEALTHCARE CORP., ST. DAVID'S MEDICAL CENTER, ST. DAVID'S HEALTH CARE SYSTEM, INC., ST. DAVID'S HEALTH-CARE PARTNERSHIP, OAKWOOD WOMEN'S CENTRE, P.A., GEORGE SHASHOUA, M.D. and MARK MAUNDER, M.D.,	§	
Defendants.	§	**201st JUDICIAL DISTRICT**

ORDER GRANTING PLAINTIFFS' MOTION TO REVOKE THE *PRO HAC VICE* ADMISSION OF SCOTT JOHNSON

After considering plaintiffs' motion to revoke the *pro hac vice* admission of Scott Johnson, the defendants' response, the evidence on file, and arguments of counsel, the Court **GRANTS** the motion and revokes the *pro hac vice* admission of A. Scott Johnson.

Signed this _____ day of _____, 2006.

_____
DISTRICT JUDGE PRESIDING