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8 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

9 ROB QUIST, and BONNI QUIST,
10 wife,

11 Plaintiffs,

12 vs.

13 ROCH R. BOYER, M.D.,

14 Defendant.

) Cause No. DV-94-526A

) **DEFENDANT'S AMENDED**
) **IDENTIFICATION OF**
) **EXPERT WITNESSES**

15 COMES NOW, the Defendant, Roch R. Boyer, M.D., and identifies the
16 following expert witnesses pursuant to the Court's Scheduling Order of February 6, 1995.

17 EXPERT WITNESSES

18 Defendant's experts number 11, 12 and 13, Ben Farrell, James Yelich and
19 Bob Tilley, previously identified in Defendant's Identification of Expert Witnesses dated
20 November 6, 1995, are hereby amended to read instead James Harris and Steve Dahl.

21 JAMES HARRIS AND STEVE DAHL

22 SUBJECT MATTER

23 Steve Dahl and James Harris reside in Nashville, Tennessee. Steve Dahl is a
24 booking agent at Monterey Artists and James Harris is a music and entertainment attorney
25 with the law firm of Gordon, Martin, Jones and Harris. They have worked with a wide
26 variety of people and issues in the music and entertainment industries. Those include not
27



1 only entertainers but song writers, music publishers, producers, personal managers and
2 management companies.

3 To some extent, the opinions of Dahl and Harris can only be determined
4 after Defendant has deposed Plaintiffs' music expert Ron Baird. Dahl and Harris will be
5 asked to comment on the opinions given by Ron Baird. Dahl and Harris will also be
6 available for questioning on all subject matters that Plaintiffs' counsel cares to enquire
7 into.

8 FACTS AND OPINIONS

9 Counsel for the Defendant understands that it will be the opinions of Dahl
10 and Harris that prior to the surgery of April 21, 1992, Rob Quist faced overwhelming
11 odds in his quest to become a star as a country music recording artist. He was a man in
12 his forties trying to start a recording artist's career in a market whose demographics are
13 limited to eighteen to thirty-year-olds. His singing voice, while pleasant not without
14 talent, lacks the kind of distinctive quality or identity which would distinguish it from the
15 many other potential recording artists that are available at a moment's notice in Nashville.

16 Further opinions are that Mr. Quist's choice of production and songs limit
17 his artistic presentation to that of a cowboy or western plains and mountains life style.
18 This presentation, in the overall business of the country music industry, appeals only to a
19 very small niche market, does not appeal to mainstream radio, and does not generate
20 significant record sales. This appears to be confirmed by Mr. Quist's election to cast
21 himself in the mode of a Michael Martin Murphy and similar western singers, his choice
22 to confine himself geographically to Western Montana, and his emphasis on a potential
23 contract with a record label called Warner Western. Warner Western has been an effort
24 on the part of Warner Bros. Records to create a sub-label to appeal to this niche market,
25 and which has met with little or no chart success or air play.

26 Further opinions will be that regardless of Mr. Quist's apparent success as a
27 live performing artist, Mr. Quist was at the time of his surgery and for purposes of a

1 record career, an untried, starting artist. His chances of achieving anything approaching
2 stardom would always be virtually nil without first, a recording agreement with one of the
3 major recording companies, and second, at least one strong hit song that is followed
4 closely thereafter with an even stronger hit song. The recording company would have to
5 be willing to spend approximately \$500,000.00 or more to launch Mr. Quist as a new
6 artist, would have to commit a substantial portion of its market and distribution capacity
7 to Mr. Quist, and perhaps most importantly, would have to divert time, energy, and
8 money away from younger artists with distinctive looks and sounds that appeal to
9 mainstream radio and television, and to a very young segment of the record-buying public.

10 Given Mr. Quist's age and choice of the kind of singer he has chosen to be,
11 and the type of competition that exists in the country-music market today, it is extremely
12 unlikely that Mr. Quist could have become a country-music star, regardless of whether he
13 had suffered an injury.

14 SUMMARY OF GROUNDS FOR OPINIONS

15 These opinions are based upon the knowledge and experience that Dahl and
16 Harris have gained from working in the country-music industry and their association with
17 both new artists in search of their first major-label recording contract and established
18 recording artists, their professional associations with producers, personal managers,
19 booking agents and record label executives and listening to music of Rob Quist's that was
20 provided to them.

21 KARL A. ZUCKER, M.D.

22 In addition to the information previously provided as to Dr. Zucker, it is Dr.
23 Zucker's opinion that the manner in which Dr. Boyer performed the surgery in this case,
24 the lack of an intraoperative cholangiogram because of the unique facts and circumstances
25 of this case, the timeliness and manner in which the transected common bile duct was
26 identified and repaired, are all within the standard of care. Dr. Zucker will testify that at
27 the teaching center where he works he routinely does intraoperative cholangiograms but

1 that they are not the standard of care, that many qualified physicians do not routinely do
2 them and there is some risk, time and expense factor associated with doing them. Dr.
3 Zucker will further testify that given the findings at the time of repairing the transected
4 common bile duct that one very acceptable manner of repairing that common bile duct,
5 which was within the standard of care, was to do an end-to-end anastomosis over a T-tube
6 as was done by Dr. Boyer. Dr. Zucker will further testify that the thyroid problems that
7 Rob Quist have are not related to the common bile duct problems encountered in this
8 surgery. Finally, Dr. Zucker may offer further opinions based on the testimony offered by
9 Dr. Douglas Olsen and other areas of inquiry from Plaintiffs' counsel. Dr. Zucker is of
10 the opinion that the records would indicate that Rob Quist's prognosis is good and that
11 some of the problems of which he complains can be related to his thyroid.

12 MICHAEL E. FENOGLIO M.D.

13 In addition to the information previously provided as to Dr. Fenoglio, it is
14 Dr. Fenoglio's opinion that the manner in which Dr. Boyer performed the surgery in this
15 case, the lack of an intraoperative cholangiogram because of the unique facts and
16 circumstances of this case, the timeliness and manner in which the transected common bile
17 duct was identified and repaired, are all within the standard of care. Dr. Fenoglio will
18 testify that Dr. Boyer was one of the best residents that he has ever helped train. He will
19 testify that the manner in which Dr. Boyer performed his laparoscopic cholecystectomy
20 procedure was within the standard of care and that he converted at a time that is consistent
21 with the way he was trained during his residency training. Dr. Fenoglio will testify that it
22 is not the standard of care to routinely get an intraoperative cholangiogram, that Dr.
23 Fenoglio does not routinely get an intraoperative cholangiogram and that the performance
24 of an intraoperative cholangiogram can result in damage to ductal anatomy. Dr. Fenoglio
25 will testify that a weekly conference at his training hospital on Friday, January 12, 1996
26 he asked all 13 board certified surgeons who were present in that conference how many of
27 them routinely get intraoperative cholangiograms and only two out of the 13 said that they

1 did. He also asked the same 13 surgeons how many of them would, in this situation, have
2 done an end-to-end anastomosis as opposed to a Roux-en-Y hepaticojejunostomy and the
3 response was about evenly divided. Dr. Fenoglio will further testify that he asked one of
4 the senior surgeons who assisted in the training of Dr. Boyer if an end-to-end anastomosis
5 was an acceptable way of treating the injury in this case and was told that it would be if
6 the ends could be reunited without tension and the ends were viable. Dr. Fenoglio will
7 testify that he was present at a laparoscopic cholecystectomy training program that was
8 being presented by Dr. Olsen and Dr. Redick and Dr. Fenoglio asked if a cholangiogram
9 should be obtained in every operation and the advice given was that they should not. Dr.
10 Fenoglio does not feel that Rob Quist's thyroid problems are in any way related to the
11 common bile duct problems. Dr. Fenoglio is of the opinion that the records would
12 indicate that Rob Quist's prognosis is good and that some of the problems of which he
13 complains can be related to his thyroid.

14 Dated this 22nd day of January, 1996.

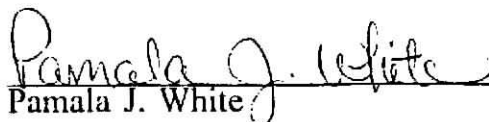
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20 By 
21 Larry E. Riley

22 **CERTIFICATE OF MAILING**

23 I, the undersigned, hereby certify that on the 22nd day of January, 1996, I
24 mailed a copy of the foregoing **DEFENDANT'S AMENDED IDENTIFICATION OF**
25 **EXPERT WITNESSES** postage prepaid, to the following:

26 Monte D. Beck, Esq.
27 BECK LAW OFFICES
1700 W. Koch, Ste. 2
Bozeman, MT 59715


Pamala J. White