

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2 PIERRE HASCHEFF, AN Case No. 86976
3 INDIVIDUAL,

4 Appellant/Cross-Appellant,

5 vs.

6 LYNDA HASCHEFF, AN
7 INDIVIDUAL,

8 Respondent/Cross-Appellant.

Electronically Filed
Jan 26 2024 02:05 PM
Elizabeth A. Brown
Clerk of Supreme Court

9 **AMENDED APPENDIX TO APPELLANT’S OPENING BRIEF**

10 Volume 1 of 5 – Pages AA 0001-0250

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ORIGINAL

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2013 APR 15 PM 2:44
JOEY GROUND HASTINGS
CLERK OF THE COURT
BY *[Signature]*
DEPUTY

CODE: 1435
Todd L. Torvinen, Esq.
Nevada Bar No: 3175
232 Court Street
Reno, NV 89501
(775) 825-6066
Attorney for Plaintiff

DV13-00656
DC-9900044744-046
PIERRE A HASSCHEFF VS LYNDIA 4 Pages
District Court 04/15/2013 02:44 PM
Washoe County \$1435
JARRAGE

IN THE FAMILY DIVISION OF
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Pierre A. Hascheff,

Plaintiff,

-vs-

Lynda L. Hascheff,

Defendant.

Case No:

Dept No: 18

DV13 00656

VERIFIED COMPLAINT FOR DIVORCE-NO PROPERTY NO CHILDREN
COMES NOW the Plaintiff, Pierre A. Hascheff, and for his cause of action
against the Defendant, states:

I.

JURISDICTION

That Plaintiff is now, and for a period of more than six (6) weeks preceding the
commencement of this action has been an actual, bona fide resident of the State of
Nevada, and has been for said period of time, physically and corporeally present in said
State.

1 II.

2 PLACE OF MARRIAGE AND CHILDREN

3 That Plaintiff and Defendant were married on or about September 8, 1990 in
4 Reno, Nevada, and ever since that date have been, and now are, husband and wife.
5 The parties have no minor children, but have two adult children; and Wife is not now
6 pregnant.

7 III.

8 PROPERTY AND DEBTS

9 The parties own community property and owe community debts. Plaintiff seeks a
10 division of these assets and debts pursuant to Nevada law. Plaintiff also seeks a
11 confirmation of separate property and debts, if any.

12 IV.

13 STATEMENT OF INCOMPATIBILITY

14 Since the marriage of Plaintiff and Defendant, the parties have become
15 incompatible and are no longer able to live in marital harmony.

16 V.

17 ATTORNEY FEES AND COSTS

18 Plaintiff affirmatively alleges that each party should bear his own attorney fees
19 and costs.

20 VI.

21 MARITAL WASTE

22 Plaintiff is informed and believes that the Defendant has committed a waste of
23 community assets, and therefore owes a sum to the Plaintiff in an amount equal to one-
24 half of the total as proved at Trial.

25 VII.

26 SPOUSAL SUPPORT

27 Plaintiff affirmatively alleges that the facts in this case support an award of
28 alimony to the Defendant.

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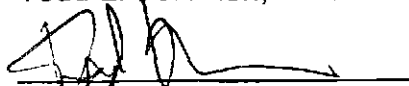
WHEREFORE, Plaintiff prays for Judgment against the Defendant as follows:

1. That he be granted a Decree of Divorce, dissolving the bonds of matrimony, now and heretofore existing between Plaintiff and the said Defendant, and restoring each of said parties to the status of unmarried persons.
2. That community property and debts the distributed pursuant to Nevada Law; and separate property be confirmed.
3. That each party bears his or her attorney fees and costs.
4. For an award related to marital waste as proved at trial.
5. For an award of spousal support to Defendant.
6. For such other and further relief as this Court deems just and proper.

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED THIS 15 day of April, 2013.

The Law Office of
Todd L. Torvinen, Chtd.



Todd L. Torvinen, Esq.

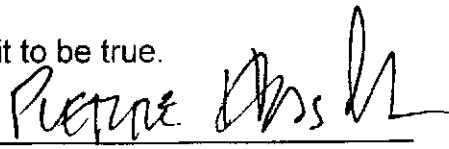
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VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

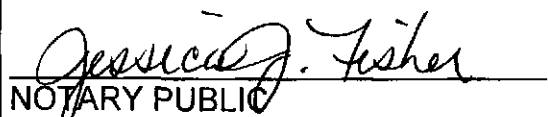
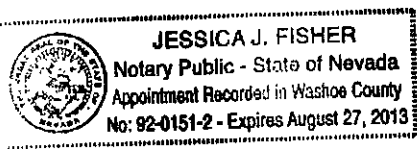
Plaintiff, being first duly sworn, under penalty of perjury, deposes and states:

That he is the Plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters he believes it to be true.



Pierre A. Hascheff

SUBSCRIBED AND SWORN to before me
this 12th day of April, 2013.


NOTARY PUBLIC

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

1 Code:
2 SHAWN B MEADOR
3 NEVADA BAR NO. 338
4 WOODBURN AND WEDGE
5 6100 Neil Road, Suite 500
6 Post Office Box 2311
7 Reno, Nevada 89505
8 Telephone: (775) 688-3000
9 Facsimile: (775) 688-3088
10 Marilyn Nederman, Plaintiff

11
12
13 IN THE FAMILY DIVISION
14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
15 IN AND FOR THE COUNTY OF WASHOE

16 PIERRE A. HASCHEFF,
17
18 Plaintiff,

16 Case No. DV13-00656
17
18 Dept. No. 12

19 vs.

20 LYNDA L. HASCHEFF
21
22 Defendant.

23
24
25 ANSWER AND COUNTERCLAIM

26 As and for his Answer to Plaintiff's Complaint for Divorce, Defendant, Lynda

27 Hascheff, admits, denies and alleges as follows:

- 28 1. Admits the allegations contained in paragraphs I, II, III, IV, and VII.
- 29 2. Answering paragraph V, Defendant denies that the parties should pay their own
30 attorney's fees.
- 31 3. Answering paragraph VI, Defendant denies that she has committed a waste of
32 community assets.

33 WHEREFORE, Defendant requests relief as set forth in more detail below.

34 As and for her counterclaim for divorce against Plaintiff and Counterdefendant, Pierre
35 Hascheff, Defendant and Counterclaimant, Lynda Hascheff, alleges as follows:

1 1. Defendant is a resident of the State of Nevada and has resided in and been
2 physically present in and domiciled in the State of Nevada for more than six weeks prior to the
3 filing of this counterclaim for divorce and intends to continue to reside in the State of Nevada
4 for an indefinite time in the future.

5 2. Plaintiff and Defendant were married on September 8, 1990 in Reno, Nevada,
6 and ever since that time have been and still now are husband and wife.

7 3. There are no minor children the issue of this marriage. Defendant is not now
8 pregnant.

9 4. There exist certain community assets and liabilities of the parties which should
10 be divided equally.

11 5. There may exist certain separate property assets and liabilities which should be
12 confirmed the separate property of the respective party.

13 6. Plaintiff should be required to pay spousal support to Defendant.

14 7. Plaintiff and Defendant are incompatible in marriage, and there is no hope of
15 reconciliation.

16 8. Plaintiff should be required to pay Defendant's attorney fees.

17 9. Defendant request that her former name be restored to Lynda Mason.

18 WHEREFORE, Defendant and Counterclaimant requests relief as follows:

19 1. That Plaintiff and Defendant be awarded a final decree of divorce, dissolving
20 the bonds of matrimony between the parties and restoring each of them to the status of a single
21 person;

22 2. That the Court make a distribution of the community property assets and
23 liabilities;

24 3. That the Court confirm each parties' separate property assets and liabilities;

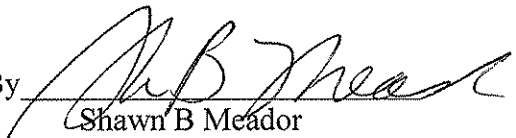
25 4. That Plaintiff be required to pay spousal support or alimony to the Defendant;

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- 5. That Plaintiff be required to pay Defendant's attorneys fees;
- 6. That Defendant be restored to her former name of Lynda Mason; and
- 7. For such other and further relief as the Court may deem just and proper in the premises.
- 8. The undersigned affirms that this document contains no social security numbers.

DATED this 9 day of May, 2013.

WOODBURN AND WEDGE

By 
Shawn B Meador
Attorneys for Defendant

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VERIFICATION

STATE OF NEVADA)
 : SS.
COUNTY OF WASHOE)

Lynda Hascheff, under penalties of perjury, being first duly sworn, deposes and says:

That she is the defendant and counterclaimant, and she has read the foregoing Answer and Counterclaim For Divorce, and knows the contents thereof; that the same is true of her own knowledge except for those matters therein alleged on information and belief, and as to those matters he believes them to be true.

Lynda Hascheff
Lynda Hascheff

Subscribed and sworn to before me
this 9 day of May, 2013.

Victoria Sayer
NOTARY PUBLIC



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CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as follows:

ANSWER AND COUNTERCLAIM

on the party set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.


 X Washoe District Court Eflex System

_____ Federal Express or other overnight delivery.

addressed as follows:

Todd L. Torvinen, Esq.
232 Court St.
Reno, NV 89501

Dated this 9 day of May 2013



Vicki Sayer

Code: 1540
1 Todd L. Torvinen, Esq.
2 Nevada Bar No. 3175
3 232 Court Street
4 Reno, NV 89501
5 (775) 825-6066
6 Attorney for Pierre A. Hascheff

7 **IN THE FAMILY DIVISION**
8 **OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WASHOE**

10 PIERRE A. HASCHEFF,
11
12 Plaintiff,

Case No: DV13-00656
Dept No: 12

13 -vs-

14 LYNDA L. HASCHEFF,
15 Defendant.

16
17 **FINDINGS OF FACT, CONCLUSIONS OF LAW**
18 **AND DECREE OF DIVORCE**
19

20 THIS MATTER having come before the Court pursuant to the Complaint for
21 Divorce, the Court finding that all issues have been resolved pursuant to the Martial
22 Settlement Agreement filed separately; the Court having before it the Affidavit of Resident
23 Witness; for such good cause appearing, this Court now finds and concludes as follows:

24 **FINDINGS OF FACT**

25 Residency: That Plaintiff, Pierre A. Hascheff, for more than six (6) weeks
26 immediately preceding the commencement of this action has been an actual and bona fide
27 resident of the State of Nevada and has been actually and physically present and
28

1 domiciled in the State during all of such time with the intention to make the State of
2 Nevada his residence and domicile.

3 Date and place of marriage: That the Plaintiff, Pierre A. Hascheff, and the
4 Defendant, Lynda L. Hascheff, were married in Reno, Nevada, on September 8, 1990,
5 and ever since that date have been and now are Husband and Wife.

6 Children: There are no minor children, and the Wife is not now pregnant to her
7 knowledge.

8 Grounds for Divorce: Petitioners allege and state they are incompatible in
9 marriage. There is no possibility for a reconciliation.

10 Maiden Name: That the Wife does not wish to return to her maiden name at this
11 time, but reserves the right to do so.

12 **CONCLUSIONS OF LAW**

13 From the foregoing facts, the Court makes its Conclusions of Law as follows:

14 1. The Court has jurisdiction over the subject matter and the parties and the
15 parties are entitled to an absolute and final Decree of Divorce from each other on the
16 grounds of incompatibility.

17 2. The Marital Settlement Agreement, filed separately on September 30, 2013,
18 settles all property, debt and support rights of the parties and all claims of each of them
19 against the other. The Agreement is fair, just and equitable and should be ratified,
20 approved and adopted by this Court and merged and incorporated by reference into the
21 Decree of Divorce entered by this Court and the parties ordered to comply with same.

22 **DECREE OF DIVORCE**

23 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

24 1. The parties are granted a Decree of Divorce final and absolute in form and
25 effect, from the bonds of matrimony now existing between them and restoring the parties
26 to the status of unmarried persons.

27 2. The Marital Settlement Agreement of the parties, dated September 30, 2013,
28 which is filed separately, is ratified, approved and adopted and is merged and incorporated

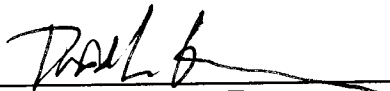
1 by reference into this Decree of Divorce and the parties are ordered to comply with the
2 terms set forth in such document.

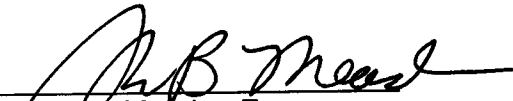
3 THIS IS A FINAL DECREE.

4 Dated this 15th day of November, 2013.

5
6 
DISTRICT JUDGE

7
8 APPROVED AS TO FORM AND CONTENT BY:

9
10 
11 Todd L. Torvinen, Esq.
12 Attorney for Pierre A. Hascheff

13 
14 Shawn B. Meador, Esq.
15 Attorney for Lynda L. Hascheff

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11 IN THE FAMILY DIVISION
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13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
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Plaintiff,

CASE NO. DV13-00656

v.

DEPT. NO. 12

LYNDA L. HASCHEFF,

Defendant.

MOTION FOR CLARIFICATION OR DECLARATORY RELIEF REGARDING
TERMS OF MSA AND DECREE

Defendant, Lynda Hascheff (hereafter "Ms. Hascheff"), moves this Court for an Order clarifying, interpreting and construing an indemnity clause in the Parties' Marital Settlement Agreement dated September 1, 2013, that was approved, adopted, merged and incorporated into the Parties' Decree of Divorce entered on November 15, 2013. This Motion is brought pursuant to the Court's inherent power to construe and enforce its Decrees and is supported by the accompanying memorandum of points and authorities.

DATED this 15 day of June, 2020.

By 
Shawn B. Meador

POINTS AND AUTHORITIES

I. THERE IS A DISPUTE REGARDING THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS PURSANT TO THEIR MARITAL SETTLEMENT AGREEMENT

A. Introduction

On January 15, 2020, Judge Hascheff sent his former wife, Lynda Hascheff, an undated letter demanding that she indemnify him for legal fees and costs he insisted he was incurring in an "on-going" malpractice action against him. See, Judge Hascheff's letter and accompanying summary invoice, true and correct copies of which are attached as Exhibit 1 hereto.

Section 40 of the Parties Marital Settlement Agreement ("MSA") dated September 1, 2013, that was incorporated and merged into their Decree of Divorce, entered on November 15, 2013, states:

In the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense and judgment.

After first attempting to resolve the issue on her own and with family assistance, and then retaining counsel, Ms. Hascheff ultimately discovered that the legal fees and costs at issue were not, in fact, incurred in an "on-going" malpractice action as Judge Hascheff falsely claimed. At the time he told her the malpractice action was "on-going" and he would be sending her "any additional invoices," the malpractice action had, in fact, been stayed and no fees or costs were being incurred in that action. To the contrary, the fees and costs for which Judge Hascheff sought indemnity were incurred in connection with Judge Hascheff's role as a percipient witness in a lawsuit to which he was not a named party.

The indemnity language quoted above, by its clear, express, and unambiguous terms, does not require Ms. Hascheff to finance Judge Hascheff's legal fees and costs he elected to incur as a percipient witness. Judge Hascheff now insists that it was "reasonable" or

1 “prudent” for him to have counsel to protect his interests as a percipient witness even though
2 no malpractice action had been filed. However, he did not have the right to make that
3 decision for Ms. Hascheff, and then demand that she finance his decision, without fully
4 advising her of the circumstances and gaining her agreement and consent in advance.

5
6 B. Procedural History

7 On July 31, 2018, a year and a half before he notified Ms. Hascheff of the malpractice
8 claim, Judge Hascheff was subpoenaed for his deposition in a lawsuit regarding an estate plan
9 (hereafter, the “Jaksick Action”). Judge Hascheff was not a party to the Jaksick Action. No
10 malpractice action had been filed (or even threatened to counsel’s knowledge). He later
11 testified as a percipient witness at trial of the Jaksick Action. Essentially all of the fees Judge
12 Hascheff now insists his former wife must pay were not incurred in the malpractice action,
13 but rather arise out of Judge Hascheff’s decision to retain a personal lawyer to protect him in
14 his role as a percipient witness in the Jaksick Action.

15
16 There can be no doubt the lawyer Judge Hascheff retained represented him personally
17 and did not represent the community estate or the parties’ jointly. Judge Hascheff’s lawyer
18 has provided a sworn declaration in which he states that the fees and costs were incurred “to
19 protect [Judge] Hascheff’s interests.” See, Declaration of Todd R. Alexander, Esq., a true and
20 correct copy of which is attached as Exhibit 2, at paragraphs 1 and 7.

21
22 Judge Hascheff and his lawyer further insist that his lawyer’s file, their discussions,
23 and the advice Judge Hascheff received from his lawyer, are protected by the attorney client
24 privilege, and thus, will not be disclosed to Ms. Hascheff. Id. at para. 10 and 11. The extent
25 to which Judge Hascheff’s lawyer is prepared to go to protect Judge Hascheff’s interests is
26 reflected in para. 12 of his declaration. He insists that the preparation of his declaration to
27 assist Judge Hascheff in seeking indemnity from Ms. Hascheff “is related to the malpractice
28 action and will be billed accordingly.” Id. at para. 12.

1 Judge Hascheff's counsel may certainly bill his client in any manner he deems
2 appropriate. That, however, does not make the time he devoted to assisting Judge Hascheff in
3 his efforts to obtain indemnity from his former wife, a defense of the malpractice claim for
4 which Ms. Hascheff would be responsible pursuant to the indemnity clause quoted above.
5 The indemnity clause requires Ms. Hascheff to indemnify Judge Hascheff for the defense of
6 the malpractice action; not for legal fees that he or his counsel claim are "related" to that
7 action. Neither Judge Hascheff nor his lawyer may rewrite the contract.
8

9 Judge Hascheff's lawyer now claims that he could tell from the July 2018 subpoena
10 that a malpractice claim was forthcoming. Id. at paragraphs 3 and 4. If true, Judge Hascheff
11 had a fiduciary obligation to notify Ms. Hascheff of his potential liability and his indemnity
12 claim against her. In breach of his fiduciary duty, he did not notify her of the subpoena or of
13 any concerns he may have had that his file and testimony could result in a viable malpractice
14 action against him.
15

16 Judge Hascheff either believed that the production of his file and his testimony about
17 his legal work would disclose facts that would support a viable malpractice claim against him,
18 or not.¹ If he feared his testimony and documents would implicate him, and create a risk of
19 liability for which he would seek indemnity, he had a fiduciary duty to notify his former wife
20 of the potential claim and her potential risk and liability. He chose not to notify her.
21

22 On December 26, 2018, Judge Hascheff was sued for malpractice by his former client,
23 Todd Jaksick, individually and as trustee of two trusts. A true and correct copy of the
24 malpractice complaint is attached as Exhibit 3 hereto.

25 Once again, notwithstanding her potential financial risk pursuant to the indemnity
26 clause, Judge Hascheff made the deliberate decision not to notify his former wife about the
27

¹ Judge Hascheff, of course, would have a legal obligation to produce his file and to testify honestly, regardless of whether he retained personal counsel to protect him. His retention of counsel would not change the underlying facts or documents in his file.

1 complaint. Rather, he waited for over a year, until January 15, 2020, to inform her. When he
2 finally notified her of the complaint, he did so in an incomplete and misleading way by
3 insisting that the malpractice action was “on-going” and that the fees he demanded she pay
4 were incurred in defending that malpractice action. His claims were misleading at best.
5

6 Immediately after the malpractice action was filed, Judge Hascheff and his former
7 client entered an agreement to stay the malpractice action until the Jaksick Action was
8 resolved. Thus, nothing in the malpractice suit was actively “on-going” and essentially no
9 fees or costs were incurred in defending the malpractice lawsuit. Ms. Hascheff has incurred
10 substantial legal fees simply trying to find out what fees were incurred in the malpractice
11 action as opposed to those incurred by Judge Hascheff as a percipient witness in the Jaksick
12 Action.
13

14 The indemnity clause at issue does not require Ms. Hascheff to finance Judge
15 Hascheff’s litigation choices as a percipient witness in a lawsuit to which he was not a party.
16 If Judge Hascheff believed he had done something wrong and was at risk of liability, so that it
17 would be “helpful” or “prudent” for him to have counsel to assist him as a percipient witness,
18 and that his former wife should share in that financial burden, at a bare minimum he had an
19 obligation to consult with her before incurring the expenses. She should have been advised of
20 the underlying facts, the litigation risks and why retention of counsel would be appropriate so
21 that she could make an informed decision about whether to share in the cost of Judge
22 Hascheff retaining personal counsel to protect his interests. That did not happen.
23

24 C. Judge Hascheff’s Misleading Demand for Indemnity

25 On January 15, 2020, after he had been incurring fees for a year and a half, Judge
26 Hascheff first notified Ms. Hascheff of the malpractice lawsuit and demanded that she pay
27 half of the alleged fees and expenses he incurred, ostensibly in defense of that lawsuit. See,
28 Exhibit 1. In his demand, he did not notify her about or provide her with a copy of the July

1 2018 subpoena. He did not provide her with a copy of the complaint in the malpractice
2 lawsuit. He did not provide her with itemized bills from his lawyer showing what work his
3 lawyer did on his behalf. He did not provide her with a copy of the stipulation to stay the
4 malpractice action. He did not tell her that he had incurred fees for months before the
5 malpractice suit was even filed. He did not provide her with any information about the
6 underlying facts and whether he believed there was a viable malpractice claim against him.
7

8 Rather, Judge Hascheff's letter claims the fees were incurred in the "on-going"
9 malpractice action – as if, in effect, he had filed an answer and engaged in discovery and other
10 pre-trial litigation regarding that lawsuit. Nothing in the letter reflects that the fees were
11 incurred for his personal lawyer to give him advice about his role as a percipient witness in
12 the Jaksick Action. He simply insisted that she owed him \$5,200.90. The only payment
13 reflected on the bill itself, as opposed to his handwritten notes, is a single payment of \$1,000.
14

15 Since that date, Ms. Hascheff has been forced to incur thousands of dollars in legal
16 fees in her attempt to obtain basic information from Judge Hascheff about the underlying facts
17 and circumstances. See, Email correspondence between Ms. Hascheff's counsel and Judge
18 Hascheff dated March 1, 2 and 3, 2020. True and correct copies of the email exchanges are
19 attached as Exhibit 4 hereto.
20

21 In his email of March 1, 2020, Judge Hascheff claimed the sum due from his former
22 wife was \$4,675.90 rather than the \$5,200.90 previously demanded. He falsely claimed that
23 he had provided all necessary information. He had not.

24 Judge Hascheff did not respond to counsel's email of March 3, 2020, until April 20,
25 2020. In that email, Judge Hascheff insisted that he had retained counsel to represent him in
26 his efforts to force Ms. Hascheff to pay half of the fees he insisted she owed. See, Email from
27 Judge Hascheff dated April 20, 2020, a true and correct copy of which is attached as Exhibit 5
28 hereto. Given Judge Hascheff's representation by counsel, Ms. Hascheff's counsel responded

1 to his lawyer. See, Email from counsel dated April 20, 2020. A true and correct copy of
2 counsel's email of April 20 is attached as Exhibit 6 hereto.

3 Judge Hascheff's counsel did not respond to counsel's email of April 20th until May
4 29, 2020. See, Letter from T. Torvinen dated May 29, 2020, a true and correct copy of which
5 is attached as Exhibit 7. That letter repeated Judge Hascheff's claims and demands but did
6 not address the issues and concerns raised in counsel's email of April 20th.

8 Counsel responded to the May 29th letter from Judge Hascheff's lawyer on June 2,
9 2020. See, Counsel's letter of June 2, 2020, a true and correct copy of which is attached as
10 Exhibit 8 hereto. Notwithstanding Ms. Hascheff's efforts to resolve this matter without
11 litigation and yet more legal fees, Counsel has not received a response to the June 2nd letter.
12 Counsel has recently requested additional information relevant to this matter. See, Counsel's
13 letter dated June 11, 2020, a true and correct copy of which is attached as Exhibit 9 hereto.
14 To date, no response has been forthcoming.²

16 II. JUDGE HASCHEFF DID NOT INCUR THE FEES FOR
17 WHICH HE DEMANDS PAYMENT IN THE MALPRACTICE
18 ACTION AND IS ESTOPPED FROM SEEKING INDEMNITY

19 The MSA does not authorize Judge Hascheff to keep the malpractice claim a secret
20 from his former wife. Nor does it authorize him to retain personal counsel to protect him in
21 his role as a percipient witness. It does not authorize him to make unilateral decisions about
22 how the claim should be addressed but then, over a year later, demand that Ms. Hascheff
23 indemnify him for half of the costs of his unilateral litigation choices.

24 Their interests are not identical. As an elected official, for example, Judge Hascheff
25 may have reputational issues and concerns he was motivated to protect. Ms. Hascheff would

26 _____
27 ² Counsel concedes that Judge Hascheff's counsel has had limited time to respond to this correspondence. Ms.
28 Hascheff's position, however, is that Judge Hascheff has an obligation to voluntarily provide this information
without being asked.

1 have no similar concerns about his reputation and would not be interested in paying his
2 personal lawyer's legal fees to obtain such advice and protection.

3 In every contract in Nevada there is an implied covenant of good faith and fair
4 dealing. Hilton Hotels, Corp. v. Butch Lewis Productions, Inc., 107 Nev. 226, 808 P.2d 919
5 (1991). Judge Hascheff's decisions are not consistent with his obligation to act in good faith
6 and treat his former wife fairly. He ignored her entirely and made whatever decisions he
7 deemed appropriate.

8
9 At a minimum, if the language of the MSA could otherwise reasonably be interpreted
10 to require Ms. Hascheff to pay these fees, Judge Hascheff should be equitably estopped from
11 asserting such a claim based on his breach of fiduciary duty and his breach of the covenant of
12 good faith and fair dealing. See, e.g., NGA No. 2 Ltd. Liability Co. v. Rains, 113 Nev. 1151,
13 946 P.2d 163 (1997); Vancheri v. GNLV. Corp., 105 Nev. 417, 777 P.2d 366 (1989); Pink v.
14 Buseh, 100 Nev. 684, 691 P.2d 456 (1984).

15
16 III. THIS COURT HAS JURISDICTION TO CONSTRUE AND
17 INTERPRET THE MSA AND DECREE OF DIVORCE

18 This Court has inherent power to construe and interpret its judgments and decrees.
19 Mizrachi v. Mizrachi, 132 Nev. Adv. Op. 66, 385 P.3d 982 (Ct. App. 2016). A settlement
20 agreement is a contract and in evaluating the language of the agreement, the court should
21 apply the principles of contract interpretation. Id., see also, May v. Anderson, 121 Nev. 668,
22 119 P.3d 1254 (2005) Shelton v. Shelton, 119 Nev. 492, 78 P.3d 507 (2003).

23 In interpreting a contract, the court may not modify the parties' agreement or create a
24 new contract. Mohr Park Manor Inc. v. Mohr, 83 Nev. 107, 424 P.2d 101 (1981). If the
25 agreement is not ambiguous, contractual interpretation is a question of law. Galardi v. Naples
26 Polaris, LLC., 129 Nev. 306, 301 P.3d 364 (2013). An agreement is not ambiguous simply
27

1 because the parties disagree regarding its meaning. Id. An agreement is ambiguous only if it
2 can reasonably be interpreted in more than one way. Id.; Mizrachi.

3 An interpretation that is reasonable is preferred to a result that would be harsh and
4 unreasonable. Mohr Park; Shelton. Contracts negotiated by a spouse who is a lawyer are
5 subject to close scrutiny due to the fiduciary relationship and potential attorney client
6 relationship between them.³ Williams v Waldman, 108 Nev. 466, 836 P.2d 614 (1992).

7
8 Bottom line, it is the court's duty to determine the parties' true intent. In doing so, the
9 court may take into account the circumstances surrounding its execution as well as subsequent
10 acts. Shelton.

11 The plain language of the MSA, incorporated in the Decree of Divorce, simply, clearly
12 and unambiguously requires Ms. Hascheff to pay one-half of the legal fees incurred in the
13 defense of the malpractice action (once it has been sued) but does not require her to pay Judge
14 Hascheff's legal fees in connection with his personal lawyer's efforts to protect him in his role
15 as a witness. If Judge Hascheff desired an indemnity clause that gave him unilateral authority
16 to make all decisions and that required Ms. Hascheff to indemnify him for any fees or costs in
17 any way related to a malpractice claim, whether filed or not, he could have had his lawyer
18 draft the MSA in that way rather than using the language included in section 40 his lawyer
19 drafted.
20

21
22 It would not be reasonable to interpret the simple language of the MSA to allow Judge
23 Hascheff to keep everything secret from his former wife, to make all decisions unilaterally for
24 his benefit, to keep the underlying facts and potential malpractice liability and legal advice he

25
26 ³ During negotiation of the MSA, Judge Hascheff prevailed upon his then wife to ignore her counsel, insisted her
27 counsel was incompetent, that she should file a bar complaint against him, that her counsel was simply trying to
28 run up her bill and churn the file, and that she should trust and rely on him rather than her counsel to protect her
and treat her fairly. He even insisted that he would pay her legal fees, only to have his counsel prepare an MSA
that did not honor that promise.

1 received secret from her, but to then require his former wife to pay half of his fees. That
2 would be a harsh and unreasonable result.⁴

3 As noted in Shelton, the parties' actions following execution of the agreement may
4 give the Court guidance with respect to the parties' intent. Here, in July of 2018, Judge
5 Hascheff did not notify Ms. Hascheff of his fear that he would be sued for malpractice when
6 the subpoena was served on him and he elected to retain counsel. One can reasonably infer
7 that he did not do so because he did not believe his fees for personal counsel to protect his
8 interests before any malpractice action was filed, were covered by the language of the
9 indemnity clause.

11 Judge Hascheff did not notify Ms. Hascheff for over a years after he was served with
12 the malpractice lawsuit. One can reasonably infer that he did not do so because the
13 malpractice action was immediately stayed, and he knew he was not incurring fees to defend
14 that action.

16 But then the parties' daughter made the decision not to invite Judge Hascheff to her
17 wedding, which took place in November of 2019. It appears that Judge Hascheff blamed his
18 former wife. Ms. Hascheff believes that her former husband demanded she pay his personal
19 legal fees, well over a year after he chose to incur them, not because he believes that section
20 40 requires her to pay those fees, but rather, to bully and punish her because he is estranged
21 from his daughter.

23 Furthermore, it is worth noting that the nature of the allegations in the malpractice
24 actions suggest that Judge Hascheff knew or should have known of potential problems with
25 his representation of the various Jaksick individuals and trusts prior to the date on which the

27
28 ⁴ If Judge Hascheff's position is that his former wife should simply trust him to make decisions that protect her
best interests it reinforces the fact of his fiduciary obligation to her.

1 parties signed the MSA. He did not, however, notify Ms. Hascheff of the risk of potential
2 malpractice notwithstanding his warranty of full disclosure.

3 The complaint alleges that Judge Hascheff simultaneously represented multiple parties
4 who had potentially conflicting interests. Ms. Hascheff is informed and believes that Judge
5 Hascheff may not have obtained written conflict waivers from those various clients before
6 simultaneously representing all of them. That alone, if nothing else, gave Judge Hascheff
7 knowledge of a potential malpractice claim, and thus, a duty to notify Ms. Hascheff before
8 she agreed to the indemnity clause. He did not do so.

9
10 If this Court determines that the indemnity language quoted above is ambiguous, and
11 that parol evidence is admissible, Ms. Hascheff will ask this Court to allow her to conduct
12 discovery, among other things, with respect to whether Judge Hascheff obtained written
13 conflict waivers and when he knew or should have known facts that put him on notice of the
14 potential risk of a claim against him. If such discovery shows he was aware of facts that
15 would put him on notice of a potential claim, contrary to his warranties in the MSA, Ms.
16 Hascheff will ask this Court to set aside this term of the MSA altogether.

17
18 IV. MS. HASCHEFF IS ENTITLED TO RECOVER HER FEES AND COSTS

19 The Parties' MSA contains a prevailing party fee clause. See, MSA at section 35. In
20 addition, this Court has authority to enter a fee award as part of its continuing jurisdiction.
21 See, NRS 125.150(3); Halbrook v. Halbrook, 114 Nev. 1455, 971 P.2d 1262 (1990); Mack-
22 Manley v. Mack, 122 Nev. 849, 138 P.2d 525 (2006).

23
24 Ms. Hascheff is not a lawyer. She cannot represent herself on a level playing field
25 with her former husband in connection with this matter. Judge Hascheff's skills and
26 reputation as a lawyer allowed him to become a member of the bench. Ms. Hascheff was
27 forced to incur legal fees simply to obtain accurate information her counsel believed was
28 necessary to allow him to give her thoughtful advice. It cost Judge Hascheff nothing to refuse

1 to provide the information her counsel believed was necessary. Ms. Hascheff believes that
2 Judge Hascheff had an obligation to voluntarily provide this accurate information without her
3 having to even ask. Rather than doing so, he still insists she is not entitled to the information
4 her counsel has requested, but that she must simply pay the bills he demands.

5 Ms. Hascheff has not refused to indemnify Judge Hascheff for fees covered by section
6 40 of the MSA. She refused to pay the fees he voluntarily and unilaterally elected to incur
7 (and keep secret from her) for his personal lawyer to protect him in connection with his role
8 as a percipient witness. She had to incur legal fees to discover that the fees he demanded she
9 pay were not incurred in the malpractice lawsuit. When Ms. Hascheff and her counsel sought
10 information on which they could evaluate, for themselves, whether Judge Hascheff's choices
11 were reasonable and prudent, they were told they were not entitled to such information and
12 that it was protected by Judge Hascheff and his counsel's attorney client privilege.
13

14 Ms. Hascheff never took the position that she would not pay her half of the fees and
15 costs incurred in defending the malpractice action. She has repeatedly asked Judge Hascheff
16 to share with her what those fees are. She has asked for information regarding the underlying
17 claim. She has asked Judge Hascheff to provide the authority on which he relies in making
18 his assertions and denying hers. She has done everything possible to resolve this issue
19 without the need for motion practice. And all she has accomplished by her efforts is a large
20 bill for legal fees.
21

22
23 V. RELEF REQUESTED

24 Based on the foregoing, Ms. Hascheff asks this Court to enter an Order clarifying that
25 Ms. Hascheff is only responsible for fees incurred in the malpractice action and that she is not
26 responsible for the fees or costs he chose to incur to have personal counsel protect his
27 interests in connection with his role as a percipient witness in the Jaksick Action.

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Judge Hascheff should be obligated to pay the costs and fees Ms. Hascheff incurred in connection with her attempts to obtain information, respond to his demands and engage in this motion practice to establish her rights and obligations.

AFFIRMATION

The undersigned affirms that this document does not contain the Social Security number of any person.

DATED this 15 day of June, 2020.

WOODBURN AND WEDGE

By 
Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

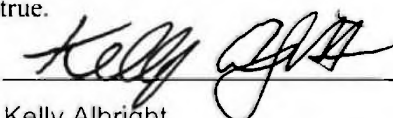
Pierre A. Hascheff)
)
)
 vs.)
)
 Lynda L. Hascheff)
)
)

FAMILY COURT MOTION/OPPOSITION NOTICE (REQUIRED)
CASE NO. DV13-00656
DEPT. NO. 12

NOTICE: THIS MOTION/OPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X .	YES	NO
	1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input type="checkbox"/>
	IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are exempt from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will not be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: June 16th, 2020 Signature: 
 Print Name: Kelly Albright
 Print Address: 6100 NEIL ROAD, SUITE 500
 RENO, NV 89511
 Telephone Number: 775-688-3000

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 10th day of June, 2020



Kelly Albright

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree

on the party set forth below by:


- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Nevada Supreme Court E-Filing
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 16 day of June, 2020.



Kelly Albright, Paralegal

EXHIBIT LIST

<u>Exhibit #</u>	<u>Description</u>	<u>No. of Pages</u>
1	Judge Hascheff's Letter & Accompanying Summary Invoice	4
2	Declaration of Todd R. Alexander Esq.	3
3	Malpractice Complaint	7
4	Email Correspondence between Ms. Hascheff's counsel And Judge dated March 1, 2, and 3, 2020	4
5	Email from Judge Hascheff dated April 20, 2020	3
6	Email from counsel dated April 20, 2020	3
7	Letter from T. Torvinen dated May 29, 2020	3
8	Counsel's response to the May 29, 2020 letter from Judge Hascheff's lawyer dated June 2, 2020	5
9	Counsel's letter dated June 11, 2020	3

FILED
Electronically
DV13-00656
2020-06-16 02:53:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 1

Lynda

I was sued by a client
for malpractice. The case is
on going.

The attorneys invoice is enclosed.

Section 40 of the Settlement
agreement requires you must
pay $\frac{1}{2}$ the Fees & costs. I don't
believe its fair that I pay the
whole bill. I paid off the balance
so I need you to send me a check
for \$200.90 by Jan. 24 & I'll send you
any additional invoices

Rec'd
1/15/20

P. It.

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World (*Malpractice Ins. Co.*)
 BILL THROUGH SERENGETI

Page: 1
 10/23/2019

OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 10

ATTN: Andy Kenney

INSUR. adjuster

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$7,351.80

Stmt Date	Stmt #	Billed	Due
02/13/2019	6	826.80	1.80
03/11/2019	7	7,425.00	7,350.00
			7,351.80

10/18/2019 Payment - Thank you PAH Limited LLC -1,000.00

BALANCE DUE \$6,351.80

FEES	EXPENSES	FINANCE CHARGE	PAYMENTS
11,850.00	1.80	0.00	5,500.00

\$6,351.80

*ATTYS Fees
 For legal malpractice
 claim*

*paid ck # 2308
 12/8/19*

11/11/11

11/11/11

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World
 BILL THROUGH SERENGETI

Page: 1
 08/27/2019
 OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 8

ATTN: Andy Kenney

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$11,851.80

<u>Stmt Date</u>	<u>Stmt #</u>	<u>Billed</u>	<u>Due</u>
10/10/2018	1	1,300.00	1,300.00
11/08/2018	3	150.00	150.00
12/07/2018	4	2,150.00	2,150.00
02/13/2019	6	826.80	826.80
03/11/2019	7	7,425.00	7,425.00
			<u>11,851.80</u>
03/25/2019	Payment - Thank you Allied World		-1,300.00
03/25/2019	Payment - Thank you Allied World		-150.00
04/08/2019	Payment - Thank you PAH Limited LLC		-1,000.00
04/16/2019	Payment - Thank you Allied World		-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC		-1,000.00
	TOTAL PAYMENTS		<u>-4,500.00</u>
	BALANCE DUE		<u>\$7,351.80</u>

<u>FEES</u>	<u>EXPENSES</u>	<u>FINANCE CHARGE</u>	<u>PAYMENTS</u>
11,850.00	1.80	0.00	4,500.00

$11851.80 - 1450.00 = 10401.80$
 $\times 50\%$

 5200.90
 6412.90 $\times \frac{1}{2}$

\$7,351.80

[REDACTED]

[REDACTED]

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2020-06-16 02:53:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 2

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
) ss.
3 COUNTY OF WASHOE)

4 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

5 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
6 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

7 2. I was retained by Hascheff once he received a multi-page subpoena requesting
8 any and all documents, correspondence, communications etc. with respect to his estate
9 planning and related advice to Samuel Jaksick and related parties.

10 3. It was prudent on Hascheff's part to retain counsel immediately because the
11 information requested clearly was aimed at undermining his estate plan and advice which
12 could lead to a malpractice action depending on the jury verdict.

13 4. It was clear that Hascheff was being accused of malfeasance and mishandling
14 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
15 their share of the estate.

16 5. There was also a possible claim by another beneficiary that Hascheff provided
17 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
18 brother and sister with a substantial damage claim against him.

19 6. Hascheff was clearly at risk depending on the outcome of the underlying
20 litigation.

21 7. There were two days of depositions and two days of trial testimony, not to
22 mention countless meetings with various attorneys to protect Hascheff's interests.

23 8. The fees and costs incurred in this case were necessary and reasonable to
24 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
25 million dollar claim against him outside the coverage limits of his applicable insurance policy.

26 9. It should be noted that malpractice actions are not typically filed until the
27 conclusion of the underlying litigation to determine whether the attorney is guilty of
28 malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
5005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
775) 786-6868

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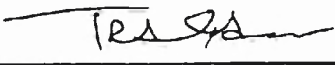
10. The time entries and description of the work conducted by my firm included in my billing invoices to Hascheff contain attorney-client privileged information. Certain entries do not include attorney-client information and therefore can be provided with privileged information redacted. These detail time entries can be provided without prejudice and waiver of the privilege. It is my understanding Hascheff has already provided only our billing summaries to you.

11. Any correspondence between Hascheff and my firm is protected by attorney-client privilege and will not be produced. Similarly, any correspondence and all communications between my firm and Jaksicks' attorneys are also privileged and/or confidential and will not be produced.

12. The time and work in preparing this affidavit and related work is related to the malpractice action and will be billed accordingly.

13. I declare under penalty of perjury the foregoing is true and correct.

Dated: this 10th day of April, 2020.


TODD R. ALEXANDER, ESQ.

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RRND, NV 89519
(775) 786-6868

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2020-06-16 02:53:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 3

1 **KENT R. ROBISON, ESQ. – NSB #1167**
2 krobison@rssblaw.com
3 **LINDSAY L. LIDDELL, ESQ. – NSB #14079**
4 lliddell@rssblaw.com
5 **Robison, Sharp, Sullivan & Brust**
6 71 Washington Street
7 Reno, Nevada 89503
8 Telephone: 775-329-3151
9 Facsimile: 775-329-7169
10 *Attorneys for Todd B. Jaksick, Individually, and as Trustee*
11 *of the Todd B. Jaksick Family Trust and as Trustee the TBJ Trust*

REC'D & FILED
2018 DEC 26 PM 1:28
SUSAN KENRIWETHER
C. TORRES CLERK
BY _____
DEC 26

8 **IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 TODD JAKSICK, Individually, and as Trustee
11 of the Todd B. Jaksick Family Trust and as
12 Trustee of the TBJ Trust,

13 Plaintiffs,

Case No. _____

Dept. No. _____

14 vs.

15 PIERRE HASCHEFF,

16 Defendant.
17 _____/

18 **COMPLAINT**

19 As and for their complaint against the Defendant, Plaintiffs allege as follows:

- 20 1. Todd Jaksick (“Todd”) is a Trustee of the SSJ’s Issue Trust (“Issue Trust”).
21 2. Todd is a Trustee of the Todd B. Jaksick Family Trust and the TBJ Trust.
22 3. Todd is Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (“Sam’s Family
23 Trust”).
24 4. Todd is a party to an Indemnification Agreement drafted for him by Defendant.
25 5. Todd is manager of Incline TSS LLC (“TSS”), a company that was devised by
26 Defendant for the purpose of receiving title to a house located on Lake Shore Boulevard, Incline
27 Village, Nevada (“the Lake Tahoe House”).
28 6. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and
membership are being challenged as a result of Defendant’s legal services.

1 7. The TBJ Trust is a 23% owner of TSS and its membership interest is being
2 challenged as a result of Defendant's legal services.

3 8. Defendant was an attorney, and as such, had a duty to use such skill, prudence, and
4 diligence as other members of his profession commonly possess and exercise.

5 9. As Plaintiffs' attorney, Defendant owed a duty to Plaintiffs to use skill, prudence,
6 and diligence as lawyers of ordinary skill and capacity possess in exercising and performing tasks
7 which they undertake.

8 10. Todd is Trustee of the Todd Jaksick Family Trust, a 23% owner of TSS, owner of
9 the Lake Tahoe House. As a result of Defendant's negligence, Todd has been sued in his capacity
10 as Trustee of the Todd Jaksick Family Trust.

11 11. Todd is Trustee of the TBJ Trust, a 23 % owner of TSS, owner of the Lake Tahoe
12 House. As a result of Defendant's negligence, Todd has been sued as Trustee of the TBJ Trust.

13 12. Todd is manager of various limited liability companies in which Sam's Family
14 Trust holds membership interests. As a result of the Defendant's negligence, Todd is being sued
15 in his capacity as manager of the various limited liability companies.

16 13. Defendant provided legal services to and for Todd and his father Samuel S. Jaksick
17 ("Sam") from 2007 through 2012.

18 14. Defendant's legal services, among others, included;

19 a. Drafting Todd's Indemnification Agreement;

20 b. Creating TSS for the purposes of having an option to buy the Lake Tahoe
21 House;

22 c. Drafting an option for TSS to acquire title to the Lake Tahoe House;

23 d. Drafting Sam's Second Amendment Trust, with Todd as a Co-Trustee and
24 beneficiary;

25 e. Facilitating TSS's exercise of the option it had to purchase the Lake Tahoe
26 House; and

27 f. Causing Todd's Family Trust and The TBJ Trust to be 23% owners of TSS.

28 15. Defendant's legal services provided to and for Todd, The TBJ Trust and Todd's

1 Family Trust were done in a negligent and careless manner. Those legal services caused Todd to
2 be sued in Second Judicial District Court, Case No. PR17-0045 and Case No. PR17-0046 filed in
3 Washoe County, Nevada.

4 16. Defendant's negligent legal services have resulted and caused the Plaintiffs to
5 sustain substantial damages well in excess of \$100,000. Stanley Jaksick and Wendy Jaksick have
6 both brought claims against Todd in Case No. PR17-00445 and Case No. PR17-00446.

7 17. As a proximate cause of Defendant's negligent and careless legal services provided
8 to and for Plaintiffs, Todd was sued in December of 2017 and February of 2018. Those lawsuits
9 were filed by beneficiaries of Sam's Family Trust and of The Issue Trust and the lawsuits gave
10 Todd first notice of the Defendant's negligence.

11 18. On December 17, 2018, expert reports were exchanged in the lawsuits filed by
12 Sam's daughter, Wendy. These reports first provided Todd, individually and as Trustee, with
13 actual notice of the Defendant's negligence. These reports appear to be based on misinformation
14 and wrongfully accusing Defendant of committing egregious and serious errors in performing
15 estate planning services for Samuel S Jaksick, Jr. Nonetheless, these reports gave Todd his first
16 actual notice of the alleged wrongdoing by the Defendant as follows:

17 a. The estate plan devised by Defendant was a bad one and subjected Todd to
18 lawsuits;

19 b. The Indemnification Agreement was poorly drafted and subjected Todd to
20 conflicts of interest;

21 c. The Lake Tahoe House documents were poorly devised and implemented
22 causing Todd to get sued; and

23 d. The Second Amendment was poorly drafted and implemented, causing
24 Todd to get sued.

25 19. Todd has been directly damaged by Defendant's negligence. The Plaintiffs also
26 contracted with Defendant requiring Defendant to provide competent legal advice and services.
27 Defendant breached the contracts.

28 20. Todd is entitled to be indemnified by Defendant for any sums he pays to Wendy

1 and/or Stanley Jaksick in the litigation filed by Wendy and Stanley.

2 21. Todd is entitled to recover all fees and costs incurred in defending Wendy's and
3 Stanley's lawsuits.

4 22. Todd is entitled to recover fees and costs incurred in this case.

5 **FIRST CLAIM—NEGLIGENCE**

6 23. Plaintiffs incorporate all prior paragraphs and allegations.

7 24. Defendant and Plaintiffs had a lawyer/client relationship from 2007 to January
8 2013.

9 25. Defendant was engaged as Plaintiffs' counsel and attorney.

10 26. Defendant provided legal services for the Plaintiffs as described hereinabove.

11 27. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and
12 membership are being challenged as a result of Defendant's legal services.

13 28. The TBJ Trust is a 23% owner of TSS and its membership interest is being
14 challenged as a result of Defendant's legal services.

15 29. Defendant breached his duty of care to the Plaintiffs as described hereinabove.

16 30. Defendant's breaches of duty constitute legal malpractice and professional
17 negligence.

18 31. Defendant's breaches of duties of care owed to the Plaintiffs, his malpractice and
19 his professional negligence as described herein above caused Plaintiffs to sustain damages in
20 excess of \$15,000.

21 32. Plaintiffs are entitled to recover all damages caused by Defendant's breaches of
22 duties, negligence and malpractice, according to proof, in addition to attorney's fees incurred
23 herein.

24 33. Plaintiffs did not know of and did not have information to be aware of Defendant's
25 negligence, breaches of duties and of the malpractice until December of 2017.

26 **SECOND CLAIM—BREACH OF CONTRACT**

27 34. Plaintiffs incorporate all prior paragraphs and allegations.

28 35. Plaintiffs and Defendant entered into contracts described hereinabove, whereby

1 Defendant was to and did provide legal services for Plaintiffs.

2 36. The contracts for professional services were supported by adequate consideration.

3 37. The contracts were breached by Defendant.

4 38. The Plaintiffs performed all aspects and requirements of the contracts.

5 39. As a result of Defendant's breaches of the contracts described hereinabove,
6 Plaintiffs have sustained consequential damages in excess of \$15,000 and are entitled to fees and
7 costs.

8 **THIRD CLAIM—INDEMNIFICATION**

9 40. Plaintiffs incorporate herein all prior paragraphs and allegations.

10 41. Defendant's negligence and breaches of contract have caused Plaintiffs to be sued
11 by Stanley Jaksick and Wendy Jaksick in Case Nos. PR17-00445 and PR17-00446.

12 42. Plaintiffs adamantly deny any wrongdoing regarding the issues raised in the
13 lawsuits filed by Wendy and Stanley. Plaintiffs are aware of the Defendant's substantial efforts to
14 protect Samuel S. Jaksick, Jr. and his heirs and beneficiaries, and Plaintiffs believe and allege
15 herein that the Defendant proceeded at all times in good faith and with the best interests of the
16 Plaintiffs and Samuel S. Jaksick, Jr. as his first priority. However, if Plaintiffs are found liable to
17 Stanley and/or Wendy or should Plaintiffs, or any one of them, be required to pay in any way
18 Stanley and/or Wendy, Plaintiffs are entitled to recover such amounts by way of indemnification
19 from Defendant.

20 43. Plaintiffs have been obligated to and have paid legal fees for defending Wendy and
21 Stanley's lawsuit in amounts in excess of \$100,000. Plaintiffs are entitled to be indemnified for all
22 fees and costs paid to date and for all fees and costs incurred in the future for defending Plaintiffs
23 in the Wendy and Stanley lawsuits. This indemnification claim has therefore accrued.

24 WHEREFORE, Plaintiffs seek judgment as follows;

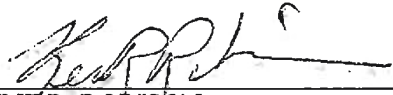
- 25 1. For consequential damages according to proof in excess of \$15,000;
26 2. For indemnification of any and all sums Plaintiffs must pay Wendy and/or Stanley;
27 3. For fees and costs incurred in the Wendy and Stanley lawsuits;
28 4. For fees and costs incurred in this action; and

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5. For such other relief as is appropriate under the circumstances.

DATED this 26th day of December 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503



KENT R. ROBISON
LINDSAY L. LIDDELL
*Attorneys for Todd B. Jaksick, Individually, and as
Trustee of the Todd B. Jaksick Family Trust and as
Trustee of the TBJ Trust*

FILED
Electronically
DV13-00656
2020-06-16 02:53:57 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 4

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Sunday, March 01, 2020 11:58 AM
To: Shawn Meador <smeador@woodburnandwedge.com>
Subject: [SPAM - keyword checking] - Indemnity

I was informed by Lucy Mason that I need to contact you regarding my reimbursement for attorneys fees and costs incurred pursuant to section 40 of the settlement agreement dated September 1, 2013.

The amount owed to date by Lynda is \$4675.90. I provided all the documentation that Lucy requested which I assume you have which includes the billing invoices. I intend to enforce the settlement agreement because I've been sued for malpractice. A subsequent action or set off is necessary because Lynda has refused to indemnify me pursuant to section 40. We can avoid this action by her simply making the payment referenced above within 10 days of this notice.

If the payment is not made within this 10 day I will proceed accordingly.

Thank you for your consideration in this matter.

Sent from my iPad

From: Shawn Meador
Sent: Monday, March 02, 2020 8:37 AM
To: Pierre Hascheff
Cc: Kelly C. Albright
Subject: RE: Indemnity

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

Lynda would certainly like to avoid the need for motion practice if possible. I need the requested information in order to give her thoughtful advice. If you elect, instead, to file a motion, I will ask the court to allow discovery with respect to these issues. I trust that I will receive the requested information within the ten days you have demanded that we respond.

Shawn

From: Shawn Meador
Sent: Tuesday, March 03, 2020 4:01 PM
To: Pierre Hascheff
Subject: RE: Indemnity

Pierre

We will have to agree to disagree. I believe that under these circumstances, you have a fiduciary duty to Lynda. I believe that, as a fiduciary, you had an obligation to notify Lynda of the malpractice claim as soon as you became aware of it, and that she is entitled to participate in decisions that impact her financial well-being. I do think she has been harmed by your decision to keep the claim secret from her for so long. How did doing so protect her? I am hopeful that any judge would have serious reservations about that decision. As a judicial officer, I believe the court should hold you to a strict fiduciary duty to Lynda in all of your dealings regarding litigation that impacts her, and I hope, give her the benefit of the doubt on these issues.

I do not believe Lynda is obligated to simply sit back, let you handle the claim in any manner you believe is in your best interests, and then simply pay you whatever you demand she owes you. Nothing in the language of the MSA gives you this authority and control over decisions that impact both of you.

I believe Lynda is entitled to full and complete transparency. I do not believe you have a viable attorney/client privilege claim. NRS 49.115(5). Furthermore, in your discussions with lawyers about the malpractice claim, you are necessarily doing so as her agent and fiduciary if you expect her to pay half the bill, and, thus, I do not believe the law allows you to keep secrets from her. As a fiduciary, how do you protect her interests by hiding the facts from her?

As I previously stated, I do not believe that she is responsible for your costs and fees in the underlying probate proceeding in which you were a percipient witness. Nor do I believe such fees fall within the language your lawyer drafted.

Lynda is prepared to honor her obligation to pay her share of the costs and fees incurred in the malpractice action that have not been covered by insurance. I do not have sufficient information on which to evaluate what she does or does not owe you at this time because you have objected to providing that information. Upon receipt of the requested documents and other information, I will evaluate your demands with Lynda and she will pay what she owes under the agreement your lawyer drafted.

If, instead, you chose to litigate, Lynda will ask the Court to require you to provide the information we have requested and will seek the fees and costs Lynda incurs in such litigation. While she would prefer to resolve this issue without the need for litigation, she is prepared to seek the court's protection if necessary. My gut reaction is that the court would not look on your positions favorably.

If you have any legal authority you believe demonstrates that I am mistaken in the legal positions I have outlined above, I am happy to review and evaluate your authorities with Lynda.

Shawn

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Jacqueline Bryant
Clerk of the Court
Transaction # 7928035 : mpurdy

EXHIBIT 5

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador <smeador@woodburnandwedge.com>
Cc: Todd@ToddIrtorvinenlaw.com
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you.

In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRCP 16.21 This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days Sent from my iPad

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EXHIBIT 6

From: Shawn Meador
Sent: Monday, April 20, 2020 1:03 PM
To: Todd@Toddltorvinenlaw.com; tra@lge.net
Cc: Kelly C. Albright
Subject: RE: Indemnity

Counsel

As you know, under ethical rules, I am not permitted to communicate with another party who I know to be represented by counsel. In prior communications, Judge Hascheff projected that he was acting as his own counsel and had not retained counsel in connection with his indemnity claim. He has now indicated that he has retained Mr. Torvinen in connection with that claim, and therefore, I will not respond directly to his email of today.

I would note that Judge Hascheff takes inherently contradictory positions. He insists that his potential liability for malpractice is a joint or community obligation for which his former wife is equally responsible and that she must pay half of Mr. Alexander's fees, while, at the same time, insisting that Mr. Alexander represents him alone and that he has an attorney client privilege with Mr. Alexander that prevents my client from having basic information in connection with Mr. Alexander's work and his communications with Mr. Alexander about the very claim he insists my client is responsible for.

If, as Judge Hascheff contends, the potential malpractice obligation is a joint or community obligation for which my client is equally responsible, several things flow from that contention. First, if it is a joint or community obligation, Mr. Alexander's professional obligations, and fiduciary duties, necessarily flow to Judge Hascheff and to his former wife jointly. If it is a joint or community obligation, as Judge Hascheff insists, my client's rights and interests are present, existing and equal to Judge Hascheff's rights and interests. In my opinion, there could be no attorney client privilege against my client under these circumstances.

If, as Judge Hascheff, contends, the potential malpractice obligation is a joint or community obligation, my client had a right to know about the claim as soon as Judge Hascheff was aware of it and had an equal and equivalent right to participate in management of the litigation. If Judge Hascheff insists that Mr. Alexander represents him alone, then my client had then, and now has, the right to her own representation in connection with the claim. If she must retain her own counsel because Mr. Alexander represents Judge Hascheff alone and his duties run solely to Judge Hascheff, then Judge Hascheff would be equally responsible for the fees my client is forced to incur to protect herself. They either have joint fees and representation or they each need and must pay separate legal fees for separate representation. Judge Hascheff election to keep the potential claim a secret from my client and then unilaterally determine the manner in which he would handle it, he did so, in my opinion, necessarily, with a fiduciary duty to my client. His choice not to notify her of the claim necessarily precluded her from obtaining her own counsel and protecting herself, thus, reinforcing Judge Hascheff's fiduciary duty to her. He is either acting to protect her interests or not. If he is, he has a fiduciary duty in connection with those efforts.

Nothing in the language of the divorce settlement supports a claim that my client is responsible for fees that Judge Hascheff incurred as a percipient witness. If Judge Hascheff believed that it was strategically valuable for him to have counsel defend him in that role and wanted those fees to be included within the indemnification language, he should have consulted with my client to determine if she agreed that approach was appropriate and in the community's best interests. He made a decision that he believed were in his own best interest without consulting her but now apparently demands that she pay half of the fees arising out of his unilateral decision.

I have previously outlined the information I need to review in order to provide my client with thoughtful and informed advice. Judge Hascheff's insistence that my client must simply accept his demands and that she is not entitled to basic and fundamental information about the very fees he insists she must share, is not supported by the law or common sense. Upon receipt of the information I have requested I will be happy to review and evaluate Judge Hascheff's claims and demands in good faith and will respond promptly.

At this time, I need to know if Mr. Alexander takes the position that his duties flow solely to Judge Hascheff or if his position is that he has an equal and identical obligation and duties to my client in connection with this claim so that my client can make thoughtful decisions about how to protect her rights and interests. Can she rely on Mr. Alexander to protect her interests or should she assume that his role is to protect Judge Hascheff's interests? I need to know if Mr. Alexander shares Judge Hascheff's contention that their communications are protected by an attorney client privilege and if their thought processes in connection with legal strategy are protected by an attorney client or work product privilege as against my client who is being asked to pay half of Mr. Alexander's bill.

I continue to look forward to receipt of the information I have previously requested so that I can give my client appropriate advice. If Judge Hascheff determines that it is in his best interest to initiate litigation against my client, I will, necessarily, be forced to raise these same issues with the court and will request discovery to obtain the information I have requested.

In the meantime, if you have any questions or concerns, please do not hesitate to contact me

Shawn

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EXHIBIT 7

**THE LAW OFFICE OF
TODD L. TORVINEN**

CHARTERED

232 COURT STREET RENO, NEVADA 89501
PHONE: (775) 825-6066 FAX: (775) 324-6063
E-MAIL: todd@toddtorvinenlaw.com

Certified Public Accountant (NV)
Certified Estate Planning Law Specialist (EPLS)

May 29, 2020

Via RCMS

Shawn B. Meador, Esq.
Woodburn and Wedge Attorneys
6100 Neil Rd., Suite 500
Reno, NV 89511

Re: Hascheff MSA Indemnity Clause

Dear Mr. Meador:

I write on behalf of my client, Judge Hascheff. Enclosed please find the redacted billing statements from Todd Alexander, Esq., who represents Judge Hascheff regarding the malpractice action. Judge Hascheff previously provided these billing statements to Lucy Mason, Lynda Hascheff's sister. Also enclosed please find Mr. Alexander's Declaration dated April 10, 2020, generally explaining the need for counsel given the real threat and close in time filed malpractice action. The Declaration also describes the significant legal services required in light of the gravity of the threat and the malpractice action.

It is my understanding that on February 5, 2020, Mr. Hascheff emailed your client's sister, Lucy Mason (also an attorney) the: (1) canceled checks for the payment of attorney fees related to the malpractice action, (2) the endorsement number showing malpractice tail coverage, (3), the actual policy and the tail coverage, (4) correspondence between him and the carrier's adjuster, (5) the Hascheff Marital Settlement Agreement, and (6) the 40 page subpoena demanding production of estate planning documents and other documents related to his estate planning advice. I also understand that at or near the same time in early February, Mr. Hascheff emailed Lucy Mason a copy of the malpractice complaint against him filed on December 26, 2018. I further understand that you received those documents.

Judge Hascheff forwarded his email to you dated March 1, 2020, invoking the 10-day notice and the required information triggering liability for attorney fees incurred for enforcement pursuant to Section 35.2 of the MARITAL SETTLEMENT AGREEMENT dated September 1, 2013 ("MSA"). You are probably also aware that MSA Section 40

Shawn Meador, Esq.
May 26, 2020
Page 2

specifically requires your client to indemnify Mr. Hascheff for "one half (1/2) the costs of any defense and judgment" relating to a malpractice action.

In the March 1, 2020, email to you, Mr. Hascheff indicated as of that date, one half (1/2) of the attorney fees incurred related to the malpractice defense due from Lynda amounted to the sum of \$4675.90. Since March 11, 2020, Mr. Hascheff has incurred fees with my office related to enforcement of Section 40 which now total \$1687.50. As a result, under the terms of the MSA, your client owes the sum of \$6363.40 (\$4675.90 + \$1687.50) to Judge Hascheff. This does not include Mr. Alexander's fees and costs not yet billed in preparation of the Declaration and other time related to the malpractice action.

Hopefully, your client has interest in resolving this matter now. Judge Hascheff is willing to accept payments of \$1500 per month commencing June 15, 2020, until fully paid. Note that Judge Hascheff is also willing to waive interest accrual on the balance due to which he is entitled under NRS 99.040 as an accommodation to your client if your client accepts the terms described above.

Judge Hascheff requests your client's response to me within 10 days of the date of this letter. If necessary, Judge Hascheff will seek enforcement of the MSA indemnity provision thereafter. Thank you for your professionalism and your courtesy in advance.

Respectfully,



Todd L. Torvinen, Esq.

Enclosures

Note: This writing contains an offer in compromise under NRS 48.105. As a result, it may not later be used as prohibited specifically by NRS 48.105.

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EXHIBIT 8



June 2, 2020

VIA Email & Regular USPS Mail

todd@toddlorvinenlaw.com

Law Office of Todd L. Torvinen
Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

Re: Hascheff MSA/Fiduciary Duties

Dear Mr. Torvinen:

I am in receipt of your letter of May 29, 2020, in which you repeat the demands Judge Hascheff's previously made. Unfortunately, from my perspective, you elected not to address the issues and concerns raised in my email of April 20, 2020.

I would note that Mr. Alexander did address some of my concerns indirectly in his Declaration dated April 10, 2020, which you included in your letter of May 29, 2020. Given that Mr. Alexander's declaration was signed ten days prior to my email, it was clearly not written to address the concerns raised in my April 20, 2020, email and projects that all of the fees my client has incurred in attempting to obtain basic information to allow her to make thoughtful decisions was just a waste of time and money and that Judge Hascheff was simply trying to create evidence for future motion practice.

In his declaration, however, Mr. Alexander unequivocally states that he represents Judge Hascheff and that his professional duty runs solely to Judge Hascheff. He asserts that there is an attorney client privilege between him and Judge Hascheff that shields him from disclosing information to my client, such as discussions he had with Judge Hascheff about his risk of liability. At the same time, however, you insist that Ms. Hascheff must pay half of his bill for those discussions and his advice. Mr. Alexander, in fact, incredibly suggests that his election to involve himself in the dispute between our clients regarding the Marital Settlement Agreement and Decree of Divorce is, in some way, related to the defense of the malpractice action. While I disagree, it reflects that Ms. Hascheff may not rely on Mr. Alexander to protect her interests in connection with the malpractice litigation, but instead will need her own lawyer.

Judge Hascheff insists that any liability arising out of the malpractice claim is a joint or community debt for which Ms. Hascheff is equally responsible. I am unaware of any legal theory or basis on which Judge Hascheff could claim that he has the unilateral right to make all litigation decisions regarding this alleged joint or community obligation. Similarly, I am



unaware of any authority that would support his claim that he may keep the facts and legal advice he received, on which he based his litigation decisions, a secret from Ms. Hascheff, but that Ms. Hascheff must pay half of this legal fees for obtaining the advice. If you are aware of such authority, I would be more than happy to review and evaluate the authority you cite.

This is particularly troubling in light of the opinions asserted in paragraphs 3, 4, 5, 6, 7 and 8 of Mr. Alexander's Declaration. What specific facts support his sworn conclusions that Judge Hascheff was clearly at risk of substantial, potentially multimillion-dollar damage award? Judge Hascheff is only clearly at risk of such damages if there are facts that suggest he breached his professional obligation and failed to exercise the requisite standard of care, and as a result a person to whom he owed professional duties was proximately harmed by his breach of duty. Is Mr. Alexander suggesting that such facts exist?

I would also note that the malpractice complaint alleges (I obviously have no knowledge if allegations are accurate) that Pierre represented Todd Jaksick individually and as trustee and beneficiary of his father's trust, that he represented Sam Jaksick, perhaps the trust itself and Todd's family trust. The potential conflicts of interest jump off the page. Did Judge Hascheff obtain written conflict waivers?

Ms. Hascheff cannot possibly evaluate whether Judge Hascheff's decision to retain counsel to represent him in connection with collateral litigation was "prudent" and in her best interest without knowing the facts and risks. In breach of his fiduciary duty, Judge Hascheff did not afford her the courtesy of providing her with this information. Rather, he unilaterally made all decisions and then sent her a bill, while insisting he had every right to keep everything secret from her. He did so for at least a year and potentially much longer.

I would note that the malpractice insurance company has determined that it is appropriate to spend up to \$2,500 in responding to subpoenas such as those at issue here. The insurance company has paid that sum. The insurance company clearly does not believe that all of these expenses that Judge Hascheff demands that my client pay, that are related to the subpoena, deposition and trial testimony, are "claim expenses" related to the malpractice claim. If the insurance company, whose business it is to address what conduct is necessary in connection with a potential malpractice claim, believes that \$2,500 is reasonable, I would rely more heavily on that decision than I would on secret decision-making between Judge Hascheff and his counsel.

Ms. Hascheff remains prepared to pay her one-half of the total fees and expenses related to the malpractice action. From my review of the bills provided by Mr. Alexander, the only fees I can see that are directly related to the malpractice action come to \$95. I appreciate, although disagree with, your claim that my client is responsible for any fees and costs Judge Hascheff elects to incur that he deems to be prudent in connection with collateral lawsuits. However, I need to know what the fees and costs have been that are directly related to the malpractice action, so that Ms. Hascheff can pay her share of the undisputed fees and costs.

Todd Torvinen, Esq.
June 2, 2020
Page 3



I would note that under the insurance policy, there is a \$10,000 retention. The limit of my client's obligation, therefore, would be \$5,000, unless there is ultimately a judgment in excess of policy limits. And yet, Judge Hascheff's position would potentially result in my client having a legal obligation well in excess of that \$5,000. That excess exposure, according to his position, is entirely within his control, based on decisions he unilaterally makes based on facts and legal advice that he insists he can keep secret from my client. Again, if you have authority in support of this extraordinary position, I am more than happy to review and evaluate that authority with my client.

In addition, Judge Hascheff deemed it necessary and prudent to have counsel in connection with his role as a percipient witness and with respect to legal advice about how best to approach the malpractice claim and litigation. He is well experienced lawyer. My client is not a lawyer and has no legal training. Her interests in obtaining legal advice are greater than, not less than Judge Hascheff's. Judge Hascheff's counsel has made it clear that his duty is to Judge Hascheff and that his discussions and the advice he gave Judge Hascheff is confidential. Thus, it is, necessarily, of no value to my client.

If she is responsible for the legal fees Judge Hascheff incurs to obtain such advice, he is, necessarily, equally responsible for fees that she incurs in connection with these matters. To date, she has incurred approximately \$5,600 in fees simply to try to obtain the basic information we have repeatedly requested. Any claim Judge Hascheff has should, therefore, be offset by one-half of her fees.

Thus, while it appears entirely possible that we may have to litigate the parties' respective rights and obligations under the language of the MSA you drafted, we do not have to litigate the issue of the fees directly related to the malpractice action as opposed to the fees your client made a strategic decision to incur as a percipient witness in a collateral lawsuit.

If litigation becomes necessary, I will, among other things, request that the Court allow me to conduct discovery with respect to when Mr. Hascheff knew or should have known of the facts on which the underlying malpractice claim is premised. The complaint in the malpractice action reflects that Judge Hascheff's attorney client relationship with the plaintiffs ended before the MSA was signed and Decree entered. The potential conflict issues noted above necessarily existed at the time the work was done. The discovery, necessarily, will focus on whether Judge Hascheff knew or should have known there was a potential risk of a malpractice claim that he did not disclose contrary to paragraph 29 of the MSA.

Should Judge Hascheff decide that finding resolution makes more sense than litigation, I might suggest that his demands on my client be stayed until the malpractice action is finally resolved and the total sums in dispute can be identified. If he believes that litigation of the issue noted above are in his best interest, so be it, my client is prepared to defend herself and seek to recover the legal fees she has and will incur.

Todd Torvinen, Esq.
June 2, 2020
Page 4



Pursuant to paragraph 35.2 of the parties' MSA, if we have not been able to reach an agreement within ten days of the date of this letter my client will file a declaratory relief action so that the court can determine my client's liability under these facts. To assure there is no confusion, my client's position is that she is responsible for one-half of the fees and costs associated with the malpractice action, that she is not responsible for Judge Hascheff's fees and costs as a percipient witness and that if Judge Hascheff knew or should have known the facts on which the malpractice claim was premised, this part of their MSA was obtained by fraud. If you have any questions please do not hesitate to ask.

Sincerely,

Dictated but not read

Shawn B Meador, Esq.

Cc: L. Hascheff

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Transaction # 7928035 : mpurdy

EXHIBIT 9



June 11, 2020

VIA EMAIL & REGULAR USPS MAIL

todd@toddltorvinenlaw.com

Law Office of Todd L. Torvinen
Todd Torvinen, Esq.
232 Court Street
Reno, NV 89501

Re: Hascheff

Dear Mr. Torvinen:

To assure the accuracy of our motion, I need the following information and documents:

1. To know the current status of the malpractice action;
2. To know the current status of the underlying lawsuit among the Jacsick siblings;
3. A copy of the "multi-page subpoena" referenced in paragraph 2 of Mr. Alexander's declaration that allowed him to speculate that the subpoena could lead to a malpractice action, given that there could only be a meaningful risk of malpractice liability if documents in the file reflected that the work Judge Hascheff did or the advice he gave was in breach of his professional obligations and duties to his clients – if those documents showed he did nothing wrong there would be no basis for such an opinion;
4. To know what documents or other information sought by that subpoena were such that they clearly reflected that they were attempting to undermine "his estate plan and advice which could lead to a malpractice action" as set forth in paragraph 3 of Mr. Alexander's declaration;
5. What facts, circumstances, and written documents led Mr. Alexander to conclude that Judge Hascheff was at risk of a multi-million dollar claim against him;
6. Whether Mr. Alexander still opines that Judge Hascheff is at risk of a multi-million dollar judgement in excess of policy limits.



7. Copies of the written conflict waivers that Judge Hascheff obtained when he was, at least according to the malpractice complaint, simultaneously representing multiple clients with potentially conflicting interests.

Sincerely,

Dictated not read

Shawn B Meador, Esq.

1 CODE: 2645
2 Todd L. Torvinen, Esq.
3 Nevada Bar No. 3175
4 232 Court Street
5 Reno, NV 89501
6 (775) 825-6066

7
8 IN THE FAMILY DIVISION OF
9 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF WASHOE

11 PIERRE A. HASCHEFF,
12
13 Plaintiff,

Case No: DV13-00656

14 -vs-

Dept. No: 12

15 LYNDA L. HASCHEFF,
16
17 Defendant.

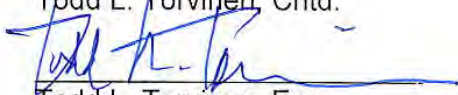
18
19 **OPPOSITION TO MOTION FOR CLARIFICATION OR DECLARATORY RELIEF**
20 **REGARDING TERMS OF MSA AND DECREE**

21 COMES NOW, Plaintiff, Pierre A. Hascheff by and through his attorney, Todd L.
22 Torvinen, Esq., and hereby files this OPPOSITION TO MOTION FOR
23 CLARIFICATION OR DECLARATORY RELIEF REGARDING TERMS OF MSA AND
24 DECREE.

25 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
26 affirm that the preceding document does not contain the social security number of any
27 person.

28 Dated: July 6, 2020.

The Law Office of
Todd L. Torvinen, Chtd.


Todd L. Torvinen, Esq.

1 **OPPOSITION POINTS AND AUTHORITIES**

2 ***1. Background and Procedure.***

3 On June 16, 2020, Lynda Hascheff ("Ms. Hascheff") through counsel filed a
4 Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree
5 ("Motion"). Ms. Hascheff's Motion refers to the marital settlement agreement ("MSA")
6 between the parties dated September 1, 2013, incorporated into the parties' Decree of
7 Divorce entered November 15, 2013.

8 Judge Hascheff's counsel asserts no objection to this Court interpreting section
9 40 of the MSA in part because the interpretation is a question of law for this court and
10 that the language is clear and unambiguous; and because Judge Hascheff
11 concurrently files with this Opposition his Motion for Order to Show Cause, or in the
12 Alternative, to Enforce the Court's Orders.

13 Unfortunately, Ms. Hascheff's Motion includes assertions of fact at variance with
14 the actual events of the malpractice action and the largely documented
15 communications between the parties. Also, unfortunately, the Motion contains patently
16 incorrect averments of law.

17 Judge Hascheff believes this Opposition will inform the Court as to the true
18 facts. The Motion needlessly repeats several arguments but in essence there are 6
19 primary objections: (1) the interpretation of the MSA's contractual indemnity, (2) that
20 Judge Hascheff's request for his costs incurred were misleading and false, (3) that
21 Judge Hascheff refused to provide information requested by Ms. Hascheff, (4) that
22 Judge Hascheff failed to disclose necessary information to Ms. Hascheff, (5) that the
23 malpractice action is a community obligation and an obligation giving rise to fiduciary
24 duties, and (6) that Judge Hascheff took advantage of Ms. Hascheff in negotiating the
25 MSA. This Opposition addresses each of these issues below.

26 ///

27 ///

28 ///

1 **2. Contractual indemnity.**

2 For the Court's ease and convenience, the indemnity clause, page 12, Section
3 40 is electronically reproduced:

4 **Indemnity and Hold Harmless**

5
6 40. Except for the obligations contained in or expressly arising out of this Agreement, each
7 party warrants to the other that he or she has not incurred, and shall not incur, any liability or
8 obligation for which the other party is, or may be, liable. Except as may be expressly provided
9 in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be
10 brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission
11 of the other, the warranting party shall, at his or her sole expense, defend the other against the
12 claim, action, or proceeding. The warranting party shall also indemnify the other and hold him
or her harmless against any loss or liability that he or she may incur as a result of the claim,
action, or proceeding, including attorney fees, costs, and expenses incurred in defending or
responding to any such action. In the event Husband is sued for malpractice, Wife agrees to
defend and indemnify Husband for one half (1/2) the costs of any defense and judgment
Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

13 Under Nevada law, the court must enforce an agreement as written when it is
14 clear as to its terms, and the court does not have authority to deviate from the written
15 terms of the agreement; see *Canfora v. Coast Hotels and Casinos, Inc.*, 121 Nev. 771,
16 121 P.3d 599 (2005) (when a contract is clear on its face, it will be construed from the
17 written language and enforced as written, and the court has no authority to alter the
18 terms of an unambiguous contract). The court is required to enforce the parties' intent
19 and the terms of the agreement; see *State ex rel. Masto v. Second Judicial Dist. Court*
20 *ex rel. County of Washoe*, 125 Nev. 37, 199 P.3d 828 (2009) (when interpreting a
21 contract, the court construes a contract that is clear on its face from the written
22 language, and it should be enforced as written). The court makes its
23 own independent judgment when interpreting the contract; see *Sheehan & Sheehan v.*
24 *Nelson Malley and Co.*, 121 Nev. 481, 117 P.3d 219 (2005) (interpretation of a
25 contractual term is a question of law, and the court shall effectuate the intent of the
26 parties when the terms are clear).

27 A party to a written contract accepts the contract and is bound by the
28 stipulations and conditions expressed in the contract whether he reads them or not,

1 and ignorance through negligence or inexcusable trustfulness will not relieve a party
2 from his contract obligations; *Campanelli v. Conservas Altamira, S.A.*, 86 Nev. 838,
3 477 P.2d 870 (1970) (a contracting party is conclusively presumed to know its
4 contents and to consent to them, and there can be no evidence for the jury as to her
5 understanding of its terms).

6 Ms. Hascheff asserts that her MSA obligation only reimburses fees and costs
7 incurred to defend the malpractice action but not fees Judge Hascheff incurred as a
8 percipient witness. Accordingly, she argues that her obligation for fees and costs arose
9 only after the filing of the malpractice action. See Motion, p. 9, lines 11-13; p. 12, lines
10 15-16. As such, she further asserts no obligation under the indemnity to pay for his
11 decision to retain an attorney to protect his personal interests.

12 Additionally, she asserts that Section 40 includes warranties applicable to
13 Judge Hascheff as he should have known that there may be a pending claim; and
14 therefore he breached the MSA for failing to disclose a potential malpractice action
15 that was filed more than 5 years after the MSA was executed. Ms. Hascheff also
16 argues that Judge Hascheff had no need to engage a lawyer to represent him; and he
17 could have and should have testified in the underlying trust litigation sans counsel
18 even though such litigation substantially questioned the advice he provided to Samuel
19 Jaksick allegedly depriving certain of the Jaksick children of their share of the estate
20 (trust) after the death of Samuel Jaksick.

21 Clearly, the last sentence of Section 40 must be read in conjunction with the
22 entire Section. Ms. Hascheff apparently agrees with said interpretation see Motion p.
23 10, lines 23-25; p. 11, lines 1-2 and p. 12, lines 6-7. Section 40 unambiguously
24 indicates that if any claim, action, or proceeding, whether or not well-founded shall
25 later be brought seeking to hold one party liable on account of any alleged debt,
26 liability, act, or omission the other party at his or her sole expense must defend the
27 other against said claim, action or proceeding. It also provides that in addition to this
28 defense obligation, the party must also indemnify the other and hold him or her

1 harmless against any loss or liability that he or she may incur as a result of the claim,
2 action or proceeding including attorney's fees, costs and expenses incurred in
3 defending or responding to such action. As a subset and part of that all-encompassing
4 language providing a full defense and complete unconditional indemnification a
5 provision was added that in the event said claim, action or proceeding, involved a
6 malpractice action whether or not well-founded, it obligated the other party to pay only
7 one-half (1/2) the defense costs and indemnify only one-half (1/2) of any judgment if
8 any, entered against said party.

9 Without this provision it would be unfair for Ms. Hascheff to pay for 100% of the
10 defense and 100% of any judgment entered against Judge Hascheff. She should only
11 be responsible for one half. The other reason this provision also involves fairness, as it
12 would be unfair and inequitable for the parties to equally divide the community estate
13 largely created through Judge Hascheff's law practice yet post-divorce only Judge
14 Hascheff's one half (1/2) would bear the entire risk from a malpractice action from legal
15 services rendered during the marriage. Hypothetically, a successful malpractice action
16 would simply wipe out one party's assets and inequitably leave the other party
17 untouched.

18 Unfortunately, Ms. Hascheff's counsel failed to comprehend the basic
19 mechanics of an obligation to defend and indemnify under a contractual indemnity
20 agreement. Contractual indemnity arises pursuant to a contract provision, where
21 parties agree that one party will reimburse the other party for liability resulting from the
22 former's work. See *Rayburn Lawn and Landscape Designers, Inc.* 127 Nev. 331, 255
23 P3d268 (2011). Further, when a duty to indemnify arises contractually it is enforced in
24 accordance with its terms and is **not** subject to equitable considerations. See *Rayburn*
25 *Lawn and Landscape Designer Inc.* id; and *United Rentals Highway TAC v. Wells*
26 *Cargo*, 128 Nev. 666, 289 P.3d 221 (2012) (when a duty to indemnify arises from a
27 contract it is not subject to equitable considerations, rather it is enforced in accordance
28 with the terms of the contracting parties agreement and intent).

1 It should also be noted that when an indemnity clause also imposes a duty to
2 defend that duty is broader than the duty to indemnify because it covers not just claims
3 under which the indemnitee is liable but also claims under which the indemnitee could
4 be found liable. *MT builders LLC v. Fisher Roofing, Inc.* 219 Ariz. 297 197 P.3d 758
5 (2008) (private indemnity clauses, like those in an insurance agreement, require the
6 insurance company to defend all claims against the insured regardless of the claims
7 merits). When a lawyer is sued for malpractice and the former client alleges
8 negligence in professional services, such clauses by definition require the indemnitor
9 to indemnify the indemnitee attorney and pay defense costs whether or not the
10 attorney is found to be negligent.

11 Because the courts will not entertain equitable considerations, Ms. Hascheff's
12 claims of breach of fiduciary duty and breach of the implied covenant of good faith are
13 not considered.¹ Unlike equitable indemnification which does not apply here,
14 contractual indemnity is enforced in accordance by its terms. See *United Rentals*, *id.*
15 The clear terms of this indemnity require Ms. Hascheff to pay one-half of the defense
16 costs at a minimum. There is no judgment against Judge Hascheff at this time
17 because the malpractice litigation is ongoing, as is the underlying trust litigation. See
18 below for the discussion of the courts dismissing claims of breach of the implied
19 covenants of good faith and fair dealing and breach of fiduciary duty when the
20 indemnitee enforces contractual indemnity against the indemnitor.

21 Ms. Hascheff impracticality argues that Judge Hascheff did not need to retain
22 counsel and he could have testified in the underlying litigation without an attorney.
23 Asserting that Judge Hascheff should have foolishly proceeded without counsel during
24 the depositions and a trial in the underlying trust action means that Judge Hascheff

25
26 ¹ Ms. Hascheff cites *Williams v. Waldman*, 108 Nev. 466, 836 P.2d 614,619 (Nev. 1992) re fiduciary
27 duty. However, *Williams* is inapplicable where the nonlawyer spouse has independent counsel. See
28 also *Cook v. Cook*, 912 P.2d 264, 112 Nev. 179 (Nev. 1996) (independent and competent counsel
required for nonlawyer spouse). Strangely, since opposing counsel represented Ms. Hascheff in the
divorce matter, *Williams* and *Cook* only apply if opposing counsel concedes his representation of Ms.
Hascheff in the divorce and negotiation of the MSA were otherwise.

1 would be defenseless without counsel to object to improper questioning, protect
2 against eliciting inadmissible evidence and raise other legitimate legal objections to
3 protect his interest and Ms. Hascheff's interest(s). After all, their interests align
4 because without a lawyer, Judge Hascheff exposes both himself and Ms. Hascheff to
5 extreme risk of increasing the probability of a malpractice judgement liability against
6 both against him and her. It was critical to defend the claims in the trust action as they
7 likely become res judicata and collateral estoppel defenses in the malpractice action
8 and eliminate Ms. Hascheff being required to pay one-half of the likely much higher
9 defense costs and the judgment. Judge Hascheff's need to engage counsel to early
10 address and cut off any possible claims arising out of or determined in the underlying
11 litigation should not be subject to question under the circumstances.

12 Ms. Hascheff also argues that any costs incurred by Judge Hascheff to enforce
13 the indemnity are not reimbursable. She argues she is only responsible for the fees
14 incurred in the malpractice action. The contrary is true. The basis for indemnity is
15 restitution that is one person is unjustly enriched when another discharges the liability
16 that should be his or her responsibility pursuant to the contract. It is just and fair that
17 the indemnitor should bear the loss rather than shifting it entirely to the indemnitee or
18 dividing it proportionately between the parties by contribution. See *Piedmont*
19 *Equipment Co., Inc. v. Eberhard, MFG. Co.* 99 Nev. 523 665 P. 2D 256 (1983). (An
20 indemnitee is not held harmless pursuant to an express or implied indemnity
21 agreement if the indemnitee must incur costs and attorney's fees to vindicate their
22 rights).

23 Therefore, the fees incurred by Todd Alexander in preparing his affidavit
24 justifying Judge Hascheff's retention of insurance defense counsel was prudent and
25 prepared in direct response to Ms. Hascheff's allegations that Mr. Alexander's
26 engagement was unnecessary and not covered by the indemnity. Mr. Alexander and
27 counsel's fees would therefore be reimbursable not only under the indemnity case law
28 but also Section 40 of the MSA. See Exhibit 1, Mr. Alexander's declaration.

1 Consistent with an equal division of property and liabilities, Section 40 modified
 2 the all-inclusive indemnity to limit Ms. Hascheff's exposure to only one half (1/2) of the
 3 cost of any defense and judgment. Otherwise, Section 40 could be interpreted to
 4 require her to pay the whole amount which was not appropriate since each party
 5 received 50% of the marital estate.

6 The concrete proof that the potential malpractice threat disclosed by the
 7 depositions and trial testimony from the underlying trust action sounded principally and
 8 substantially in malpractice comes from malpractice defense counsel's redacted billing
 9 records previously produced to Ms. Hascheff.

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World
 BILL THROUGH SERENGETI

 ATTN: Andy Kenney

Page: 1
 08/27/2019
 OUR ACCOUNT NO: 52-8603M
 STATEMENT NO. 8

Hascheff, Pierre re: Allied World
 2018018714

\$2500

	PREVIOUS BALANCE	\$11,851.80
03/25/2019	Payment - Thank you Allied World	-1,300.00
03/25/2019	Payment - Thank you Allied World	-150.00
04/08/2019	Payment - Thank you PAH Limited LLC	-1,000.00
04/16/2019	Payment - Thank you Allied World	-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC	-1,000.00
	TOTAL PAYMENTS	-4,500.00
	BALANCE DUE	\$7,351.80

22 Generally, the terms of Judge Hascheff's malpractice tail policy require him to
 23 pay the first \$10,000 of fees and costs, and then the insurance company, Allied World
 24 pays the rest. Nevertheless, the fact that the insurance company picked up the
 25 defense and paid defense fees in the trust litigation of \$2500, although not required
 26 under the policy, conclusively shows that Judge Hascheff's involvement in the
 27 underlying trust case primarily involved potential malpractice claims. See also
 28 Declaration of Judge Hascheff attached.

1 **3. Ms. Hascheff's fiduciary duty claims**

2 With respect to Judge Hascheff's breach of a fiduciary duty and the implied
3 covenant of good faith and fair dealing, such claims have routinely been denied in
4 contractual indemnification claims. See *Rayburn Lawn and Landscape Designers*
5 *supra*, *United Rentals Highway* *supra*. Indeed, a fiduciary duty jury instruction is
6 considered both erroneous and prejudicial with regard to litigation between and
7 indemnitee and indemnitor. See *Insurance Co. of the West v. Gibson Tile Co.*, 122
8 Nev. 455, 134 P.3d (2006).

9 Similarly, although every contract contains an implied covenant of good faith
10 and fair dealing, an action in tort for breach of the covenant arises only in rare and
11 exceptional cases when there is a special relationship between the victim and
12 tortfeasor which is characterized by elements of public interest, adhesion and fiduciary
13 responsibility. See *Kmart Corp. v. Ponsock*, 103 Nev. 39, 49, 732P. 2nd 1364, 1370
14 (1987) (abrogated on other grounds).

15 Examples of special relationships include those between insurers and insureds,
16 partners and partnerships and franchise agreements. See *Insurance Co. of the West*
17 *v. Gibson Tile Co., Inc.*, *supra* (fiduciary duty instruction not appropriate when
18 indemnitee brought indemnity action against the indemnitor). Although this case
19 involved a surety relationship the court clearly stated that the indemnitee had a right to
20 pursue its indemnification claim under the plain terms of the indemnity contract for
21 costs incurred in defending the action brought against it on the bond by the suppliers
22 regardless of whether any payment was ultimately made by the surety under the bond.
23 See also *Harvey v. United Pacific Ins. Co.*, 109 Nev. 621 856 P.2d 240 (1993)
24 (indemnitee's claims of bad faith, breach of fiduciary duty, breach of the implied
25 covenant of good faith and fair dealing and other claims were found to have no merit).
26 In that case the indemnity contract provided for the payment all of the plaintiff's costs
27 and attorney's fees incurred by the plaintiff in enforcing its rights under the indemnity
28 agreement against the indemnitor.

1 Ms. Hascheff's argument that when an indemnitee exercises a contractual right
2 of indemnity and triggers the indemnitor's duty to defend, it entitles her to assert
3 equitable defenses of fiduciary duty, breach of implied covenant of good faith and fair
4 dealing is not consistent with law of this State and other jurisdictions. Her argument
5 plainly leads to a nonsensical conclusion that whenever a party to a purchase
6 agreement, a lease or other contract exercises the right to indemnity and defense, it
7 creates a fiduciary duty and implied covenants simply by exercising their contractual
8 right. Further, an indemnitor and indemnitee by definition are adverse with "no special
9 relationship" only a contractual relationship and no implied covenant of good faith. See
10 *Insurance Co. of the West v. Gibson Tile Co., Inc.*, supra.

11 It is not uncommon for an indemnitee to remain involved for several years in
12 the underlying litigation and then once litigation is concluded and the damages are
13 ascertained; then and only then will the indemnitee notify the indemnitor for of the
14 obligation to pay said damages. Therefore, Judge Hascheff did not breach his fiduciary
15 duty, if any, by waiting to inform her of the malpractice action until after the jury
16 decided the legal claims in the underlying trust litigation. It should also be noted many
17 indemnity agreements include notice provisions but this one did not.

18 Finally, Ms. Hascheff argues that because this is a community debt that judge
19 Hascheff owes her some sort of fiduciary obligation. By definition, an indemnitee and
20 indemnitor are adverse parties since one party must pay part or all of an obligation or
21 costs paid or incurred by the other party. This indemnity obligation is also not a
22 community debt as no community property exists. Once the divorce was final the
23 community property became separate property of each spouse. Both spouses agreed
24 under the indemnity provision that his or her post-divorce separate property would be
25 pledged in the event a potential claim existed alleging malpractice whether the claim
26 had merit or not. To argue that the claim for indemnity is a community property
27 obligation with resulting fiduciary duties is simply not legally correct. See NRS
28 125.150.1 (equal division and distribution of community property), and NRS 125.150.3

1 (3-year statute of limitations from divorce for motion to divide community property
2 omitted through fraud or by mutual mistake). Here, the parties obtained their divorce
3 decree more than 7 years ago.

4
5 **4. Ms. Hascheff falsely alleges failure to disclose critical information to Ms.
6 Hascheff.**

7 Oposing counsel argues that Judge Hascheff failed to notify Ms. Hascheff of
8 the subpoena he received on or about July 2018; that he failed to disclose that a
9 complaint for malpractice was filed against him on December 26, 2018; and that he
10 intentionally withheld both events secret from Ms. Hascheff. Ms. Hascheff then argues
11 that Judge Hascheff therefore had a fiduciary duty to notify her of a potential claim and
12 the risk of her liability under the indemnification agreement. She also asserts that her
13 consent was a condition precedent to Judge Hascheff incurring any legal expenses so
14 she could decide whether or not to share in those costs; and with such knowledge she
15 could have protected herself in some fashion. Based on these assertions, she
16 conclusively determines that judge Hascheff breached a fiduciary duty to her and
17 breach the implied covenant of good faith and fair dealing and therefore equitable
18 estoppel applies and prevents Judge Hascheff from proceeding under the indemnity
19 agreement. This is not legally correct. See section 3 above.

20 First, Judge Hascheff did not keep the potential for a malpractice claim secret
21 from Ms. Hascheff. Judge Hascheff believed that the underlying trust action would be
22 resolved, and the malpractice action filed in December 2018 would eventually be
23 dismissed. See Judge Hascheff's affidavit attached.

24 The underlying trust litigation went to trial before a jury. The jury returned a
25 favorable verdict. The jury believed Judge Hascheff's testimony that the advice he
26 provided his client was legally sound and beneficial to his client. The jury also found
27 that he followed his client's wishes and did not intentionally or otherwise orchestrate
28 and execute an estate plan which deprived certain beneficiaries of their expected
share of their father's estate.

1 It is Judge Hascheff's understanding that there remain some pending equitable
2 claims in the underlying trust litigation to be decided by the trial judge. The underlying
3 litigation concerning the equitable claims remains pending and therefore the
4 malpractice action has been stayed until the disposition of the equitable claims. See
5 Judge Hascheff's Declaration attached.

6 Unfortunately, opposing counsel misunderstands the appropriate protocol in
7 filing a malpractice action. Typically, the client waits for resolution of the underlying
8 litigation and if the client is damaged by following his counsel's legal advice, the client
9 then possesses a potential claim for malpractice. Malpractice actions are generally not
10 asserted against the attorney first because the underlying litigation may result in the
11 client not incurring damages and not being harmed. See section 6 below.

12 Judge Hascheff had no choice but to wait and assist in the course and outcome
13 of the underlying action. He also had the right under the indemnity to wait until the
14 underlying action was concluded or substantially concluded before he made a claim
15 for indemnity.

16 There is nothing Ms. Hascheff could do to change the resolution of the
17 underlying trust action whether she knew at the outset or in January 2020. Hiring her
18 own counsel in the underlying trust action would have been factually and legally
19 nonsensical because her lawyer could only observe as her appearance and
20 involvement would not be relevant to the underlying trust action or the malpractice
21 action.

22 Indemnitors generally do not involve themselves in underlying litigation which
23 involves the indemnitee and the indemnitee is within his legal right to conclude the
24 litigation and determine actual losses prior to making a claim against the indemnitor.
25 See *Lund v. 8th Judicial District Court, Clark County* 127 Nev. 358, 255 P.3d 280
26 (2011) (defendant is permitted to defend the case and at the same time assert his right
27 of indemnity against the party ultimately responsible for the damage). Ms. Hascheff
28 cannot show that she faces substantial prejudice by receiving notice of the underlying

1 malpractice claim in January 2020, rather than earlier since the underlying legal claims
2 have been adjudicated in favor of Judge Hascheff substantially reducing the risk for
3 potential malpractice claims against him and a judgment against her.

4
5 ***5. Ms. Hascheff's allegation that Judge Hascheff's refused to provide
information justifying his claim.***

6 Ms. Hascheff argues that Judge Hascheff has refused to provide the
7 information requested so she could determine whether she should share the costs
8 required under the indemnity agreement. This allegation could not be farther from the
9 truth. After Judge Hascheff sent his request for payment under the indemnity for his
10 defense costs on January 15, 2020, (see p. 3 Ms. Hascheff's Motion Exhibit 1) he
11 received a letter from Ms. Hascheff on January 17, 2020, asserting equitable claims.

12 On February 4, 2020, Ms. Hascheff's sister, Lucy Mason, also an attorney
13 emailed a demand for certain documentation. Judge Hascheff immediately responded
14 to the demand and provided the documents. On February 5, 2020 Judge Hascheff
15 emailed the documents Lucy Mason requested including without limitation canceled
16 checks for the payment of the attorney's fees related to the action, endorsement
17 showing the malpractice tail coverage, the actual policy, correspondence between him
18 and the carrier's adjuster, the MSA, the 40 page subpoena from the underlying trust
19 action, the malpractice complaint and the invoices from defense counsel. Please see
20 Exhibit 2:

21 The only documents Judge Hascheff did not provide to Lucy Mason were the
22 detailed billing invoices which contained privileged and confidential attorney-client
23 communications. Judge Hascheff did provide detailed billing statements to Ms.
24 Hascheff's counsel upon his request with only a few redacted entries.

25 Although Judge Hascheff previously provided all documents requested by Lucy
26 Mason, Ms. Hascheff's counsel unconditionally rejected the indemnification request
27 and then demanded the same documents. Judge Hascheff informed opposing counsel
28 said documents were previously provided. See Exhibit 3.

1 Ms. Hascheff's counsel then later demanded all correspondence between
2 Judge Hascheff and his defense counsel and the plaintiff in the malpractice action.
3 See Exhibit 3 attached to Ms. Hascheff's Motion. Ms. Hascheff's counsel falsely
4 asserted that the indemnification created a community debt which somehow entitled
5 him access to sensitive, confidential, and attorney-client information. This is
6 particularly disturbing as the equitable claims are still pending with the trial judge in the
7 underlying trust litigation. Judge Hascheff does not intend to provide this attorney-
8 client correspondence even though much of what took place were oral conversations
9 at meetings with his attorneys, See the Declaration of Judge Hascheff attached.

10 In contractual indemnity the indemnitee need only provide documentation
11 showing that the obligation to indemnify is within the scope and terms of the indemnity
12 and the defense costs and/or damages incurred. Judge Hascheff did exactly that. To
13 ask for anything more especially privileged correspondence and communication
14 between Judge Hascheff and defense counsel simply aims at harassing and
15 intimidating Judge Hascheff in order to delay payment of a legitimate obligation from
16 the MSA. Judge Hascheff is not hiding as Ms. Hascheff suggests behind the attorney
17 client privilege. Judge Hascheff paid the obligation for which he is entitled to
18 indemnification and provided as proof of payment and the actual invoices showing
19 payment.

20
21 ***6. False assertion that Judge Hascheff's indemnity letter dated January 15, 2020
contained misleading information and statements.***

22 Ms. Hascheff argues that Judge Hascheff's letter requesting indemnity
23 contained misleading information. Judge Hascheff stated that the malpractice litigation
24 was ongoing, and he would be sending additional invoices. In this letter Judge
25 Hascheff attached the invoices showing the total amount due and Ms. Hascheff's one
26 half. Because the malpractice action was stayed, Ms. Hascheff argues he
27 misrepresented that the malpractice action was ongoing and he did not disclose that
28 the invoices and costs related to his testimony by deposition and at trial with respect to

1 the underlying litigation was in a capacity of a percipient witness and unrelated to any
2 malpractice action. Third, he demanded \$5200.90 when in fact he only paid \$1000. As
3 a related argument since Judge Hascheff paid most of the invoices, the insurance
4 carrier must have believed that the malpractice action and threat had no merit
5 otherwise they would have paid the invoices. Finally, Ms. Hascheff asserts that since
6 the malpractice action has been stayed and no costs have been incurred, therefore
7 she has no liability under the indemnity agreement. All such statements and
8 allegations are false.

9 First the malpractice action is ongoing. The attorneys stipulated that the action
10 be stayed because the equitable claims have not yet been resolved only legal claims
11 have been resolved. The equitable claims are still pending before Judge Hardy and
12 the attorneys are awaiting that decision. The lawyers do not want to proceed with the
13 malpractice action until these equitable claims are decided. Judge Hascheff has
14 incurred and will continue to incur costs both in the equitable claim litigation and the
15 malpractice litigation. He has and will continue to receive additional invoices.

16 As indicated in section 4 above, before a malpractice action is filed the plaintiff
17 will generally proceed with the underlying litigation first to determine the outcome and
18 if the plaintiff loses in the underlying litigation it will then have a sufficient factual basis
19 to proceed against the attorney whose advice cause damage to the plaintiff in the
20 malpractice action. Therefore, Judge Hascheff was not just a percipient witness in the
21 underlying litigation. He was there to substantiate his advice was accurate and met the
22 standard of care. The jury agreed with him and hopefully the judge will in the
23 underlying equitable claims. To argue that Ms. Hascheff is not liable for his testimony
24 for 4 days and countless hours of preparation is ridiculous.

25 The required elements of a legal malpractice claim are (1) an attorney-client
26 relationship; (2) a duty owed to the client by the attorney to use such skill, prudence
27 and diligence as lawyers of ordinary skill and capacity possess in exercising and
28 performing the tasks which they undertake; (3) a breach of that duty; (4) the breach

1 being the proximate cause of the client's damages; and (5) actual loss or damage
2 resulting from the negligence. *Sorensen v. Pavlikowski* 94 Nev. 440, 443, 581 P2d
3 2nd 851, 853 (1978). See also NRS 11.207 which provides the statute of limitations
4 will not commence to run against an attorney malpractice cause of action until the
5 claimant sustains damages. Therefore, the attorney's action or inaction must be the
6 proximate and actual cause of the damages to the client.

7 Several Nevada cases hold that the underlying litigation must conclude
8 including appeals when the legal malpractice action alleges errors in the course of the
9 underlying litigation. See *Hewitt v. Allen* 118 Nev. 216, 221, 43P 3rd 345, 348 (2002);
10 *Semenza v. Nevada Med. Liab. Ins. Co.* 104 Nev. 666, 668, 765P. 2D 184, 186 (1988)
11 (the purpose of the litigation malpractice tolling rule is to prevent malpractice litigation
12 where the underlying damage is speculative or remote since the apparent damage
13 may banish with a successful prosecution of an appeal and ultimate vindication of the
14 attorney's conduct by the appellate court); and *Kopicko v. Young* 114 Nev. 1333, 971P
15 2nd 789 (1998) (the malpractice action did not accrue until dismissal of the appeal on
16 the underlying litigation because no legal damages had yet been sustained as a result
17 of the alleged negligence). As a result, if at the commencement of the malpractice
18 action in the context of transactional legal malpractice there is the presence of a
19 separate litigation regarding the transaction, the malpractice action will be stayed
20 pending the resolution of the underlying action. It should also be noted that the stay is
21 effective for purposes of the 2- and 5-year provisions under NRCP Rule 41 (e).

22 The reason Judge Hascheff engaged counsel and substantial resources were
23 invested in the underlying trust litigation in order to show that his advice and
24 documents he prepared were correct and in the best interest of his client. The jury
25 agreed with respect to the legal claims of damages in the underlying litigation. Now
26 only the equitable claims are pending before the trial court. See *Kahn v. Mowbray* 121
27 Nev. 464, 117 P 3rd 227 (2005) (whenever any issues, claims or facts are decided in
28 the prior underlying litigation they are collaterally barred from relitigating even if a claim

1 of legal malpractice had not yet accrued discussing the applicability of collateral
2 estoppel, issue and claim preclusion i.e. res judicata). It should be noted in *Kahn* case
3 the court concluded that most of the issues involved in the malpractice suit were **not**
4 actually and necessarily litigated in the prior underlying prior action and therefore the
5 Nevada Supreme Court allowed the malpractice action to proceed. However, the
6 Nevada Supreme Court made it very clear that if the issues and facts were the same
7 or potentially said matters could have been brought up in the underlying litigation the
8 claimant will be barred in a subsequent malpractice action.

9 Judge Hascheff in fact paid the amount shown in the January 15, 2020 letter
10 and not just \$1000. The insurance carrier paid \$2500 towards Judge Hascheff's
11 attorney because they believed that the underlying litigation was a precursor to the
12 malpractice action and decided to pay \$2500 towards the outstanding invoices even
13 though they were not required to under the policy. There was also a \$10,000
14 deductible which caused the remaining invoices to be paid by Judge Hascheff. This
15 deductible did not kick in until the malpractice action was filed and therefore any legal
16 bills other than the \$2500 was paid by Judge Hascheff as shown in the invoices.

17 Although the malpractice action is stayed for the moment Judge Hascheff's
18 attorney is incurring fees and costs in appearances in front of that judge. The judge
19 agreed to the stay because he understands that the underlying litigation must be
20 concluded before proceeding with the malpractice action.

21 Ms. Hascheff admits in her motion that she should be responsible only for fees
22 incurred after Judge Hascheff is sued for malpractice. See Motion page 3, lines 1-4. A
23 review of the invoices clearly demonstrate that the \$1300, \$150, and \$2150 invoice
24 represent costs incurred prior to the filing of the malpractice action of which the
25 insurance company paid \$2500. The balance of the invoices representing \$8748.10 of
26 the fees and costs were incurred after the malpractice action was filed which means
27 Ms. Hascheff would be responsible by her own admission for \$4374.50 and any
28

1 ongoing invoices not paid by the carrier until the deductible is met. Please see the
 2 following spreadsheet/analysis:

Date	Amount Incurred (before malpractice suit filed)	Amount Incurred (after malpractice suit)	Total
9/14/2018	\$1,300.00		
10/5/2018	\$50.00		
10/18/2018	\$100.00		
11/16/2018	\$125.00		
11/17/2018	\$2,025.00		
1/24/2019		\$825.00	
1/31/2019		\$1.80	
2/5/2019		\$75.00	
2/19/2019		\$1,025.00	
2/20/2019		\$1,175.00	
2/21/2019		\$1,775.00	
2/22/2019		\$1,875.00	
2/24/2019		\$600.00	
2/25/2019		\$900.00	
3/22/2019		\$200.00	
6/21/2019		\$200.00	
7/1/2019		\$20.00	
9/25/2019		\$75.00	
3/31/2019		\$1.30	
Total Fees	\$3,600.00	\$8,748.10	
Paid by insurance	(\$2,500.00)		
Remaining Due from Ms. Hascheff (1/2)	\$1,100.00	\$8,748.10	\$9,848.10
			\$4,924.05

25 //
 26 //

1 **7. Ms. Hascheff is NOT entitled to attorney's fees.**

2 Section 35 clearly provides that any party intending to bring an action or
3 proceeding to enforce this agreement shall not be entitled to recover attorney's fees
4 and costs unless she first gives the other party at least 10 days written notice before
5 filing the action or proceeding. That written noticed must include (one) whether the
6 subsequent action or proceeding is to enforce the original terms of the agreement (2)
7 the reasons why the moving party believes the subsequent action or proceeding is
8 necessary (3) whether there is any action that the other party may take to avoid the
9 necessity for the subsequent action or proceeding and (4) a period of time within which
10 the other party may avoid the action or proceeding by taking the specified action. Ms.
11 Hascheff failed to provide the appropriate 10-day written notice as well as the section
12 35 disclosures and therefore she is not entitled to attorney's fees.

13 Judge Hascheff by contrast is entitled to attorney's fees on two fronts. First, he
14 sent a ten-day notice to Ms. Hascheff's attorney on March 1, 2020. See Ms. Hascheff's
15 motion Exhibit 4 and Exhibit 7. As provided by the above case law, the indemnity and
16 the duty to defend by their very definition include attorney's fees and costs incurred in
17 the underlying litigation and to enforce the indemnity otherwise the indemnitee is not
18 made a whole under the theory of restitution. In addition, Ms. Hascheff counsel was
19 advised early on he was wrong on the law but chose to proceed anyway. See Exhibit
20 4.

21 **8. Ms. Hascheff's remaining arguments**

22 Ms. Hascheff's remaining arguments are without merit and will not be
23 responded to because they have nothing to do with Judge Hascheff's contractual right
24 to be reimbursed for his defense costs and if a judgment is entered against him in the
25 malpractice action to also be reimbursed under the clear terms of the indemnity
26 agreement. The argument now asserted for the first time after 8 years that Judge
27 Hascheff took advantage of his wife in negotiating the MSA and convinced her to
28 ignore her lawyer is completely without merit. Ms. Hascheff's counsel fails to disclose

1 that he was her counsel throughout out and approved all of the drafts including the
2 final draft of the which included the indemnity language from the outset. Ms.
3 Hascheff's attorney advised her to sign it See *Companelli v. Conservas* supra (signing
4 party is conclusively presumed to know and consent to its contents). The cases cited
5 by Ms. Hascheff applied when the spouse was convinced by her attorney husband to
6 proceed without an attorney and therefore, she did not have competent and
7 independent counsel advising her. Those cases would not apply in this case unless
8 her counsel was not independent and incompetent.

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CONCLUSION

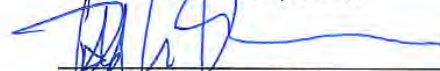
As a result of the foregoing, Judge Hascheff moves this Court for an order as follows

1. That Petitioner, Lynda Hascheff's, MOTION FOR CLARIFICATION OR DECLARATORY RELIEF REGARDING TERMS OF MSA AND DECREE be denied.
2. For such other relief that the Court deems appropriate.

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated July 1, 2020.

The Law Office of
Todd L. Torvinen, Chtd.



Todd L. Torvinen, Esq.
Attorney for Pierre Hascheff

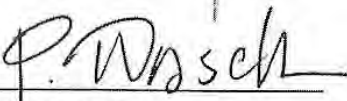
DECLARATION OF PIERRE A. HASCHEFF

I, Pierre A. Hascheff hereby make the following statements. I declare under penalty of perjury that the following is true and correct.

1. Pursuant to the billing statements and invoices previously send to Lucy Mason and Ms. Hascheff's attorney the total amount of the invoices is \$12,348.10. Of that amount \$3600 was incurred prior to the filing of the malpractice complaint on December 26,2018.
2. Allied world insurance company paid \$2500 of the \$3600 leaving \$1100 which I paid. The balance of the fees \$8748.10 was incurred after the filing of the malpractice complaint. I also paid that amount.
3. There is an outstanding bill which I have not yet received which should be approximately \$700. I anticipate that there will be additional attorneys' fees and costs until the underlying trust litigation and malpractice litigation is concluded.
4. Allied world insurance company is not required to pay any sums pursuant to the malpractice coverage. However Allied agreed to pay the \$2500 to allow my defense counsel to review the subpoena and start the defense.
5. The policy also provides that the insurance company retention/deductible of \$10,000 does not commence to accrue until after the malpractice complaint is filed. That is why I was required to continue to pay for the fees and costs prior to the filing of the complaint. We still have not exhausted the \$10,000 deductible and anticipate additional payments will be made by myself to the company until their obligation to pay the fees applies.
6. I did not keep any potential malpractice claim or the malpractice lawsuit secret from Ms. Hascheff. I understood and therefore anticipated there would be a quick resolution to the underlying trust litigation however it took longer to resolve than originally anticipated. My intent was to simply provide the final bills under the indemnity but when the underlying trust litigation appeared that it may go on for a substantial period of time I notified Ms. Hascheff of the indemnity agreement and included the invoices
6. At the time we signed the marital settlement agreement on September 1, 2013 I had no knowledge that they were any potential malpractice claims. In Almost 30 years of practicing law I never was sued for malpractice nor was I confronted with any claims.
7. Currently being legal claims have been decided by the jury in the underlying trust litigation and it is my understanding that there are equitable claims pending before the District Court. As a result, the malpractice litigation was placed on hold before that judge until the equitable claims can be concluded.
8. Because the resolution of the underlying trust litigation is critical in determining whether a malpractice action will proceed, I immediately retained defense counsel.
9. Many of my conversations and communications with my lawyer and or communications with other attorneys involved in the underlying trust litigation were done in person. I do not believe that any written documentation between myself and my lawyer involving deposition and trial strategy should be produced because it involves sensitive and confidential information.

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Executed on July 6, 2020.



Pierre A. Hascheff

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EXHIBIT INDEX

Exhibit 1	Declaration of Todd Alexander	2 pages
Exhibit 2	Email between Judge Hascheff and Lucy Mason	2 pages
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Exhibit 4	Email between Judge Hascheff and Shawn Meador	2 pages

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

Pierre A Hascheff }
vs. }
Lynda L. Hascheff }

FAMILY COURT MOTION/OPOSITION NOTICE (REQUIRED)	
CASE NO.	DV13-0016576
DEPT. NO.	12

NOTICE: THIS MOTION/OPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X .	YES	NO
	1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input type="checkbox"/>
	IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: 7-6-20

Signature:

Todd L. Torvinen

Print Name:

Todd L. Torvinen, Esq.

Print Address:

232 Court Street

Reno, NV 89501

Telephone Number:

(775) 825-6066

FILED
Electronically
DV13-00656
2020-07-08 02:44:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "1"

EXHIBIT "1"

AA 0091

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
3 COUNTY OF WASHOE) ss.
4

5 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

6 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
7 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

8 2. I was retained by Hascheff once he received a multi-page subpoena requesting
9 any and all documents, correspondence, communications etc. with respect to his estate
10 planning and related advice to Samuel Jaksick and related parties.

11 3. It was prudent on Hascheff's part to retain counsel immediately because the
12 information requested clearly was aimed at undermining his estate plan and advice which
13 could lead to a malpractice action depending on the jury verdict.

14 4. It was clear that Hascheff was being accused of malfeasance and mishandling
15 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
16 their share of the estate.

17 5. There was also a possible claim by another beneficiary that Hascheff provided
18 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
19 brother and sister with a substantial damage claim against him.

20 6. Hascheff was clearly at risk depending on the outcome of the underlying
21 litigation.

22 7. There were two days of depositions and two days of trial testimony, not to
23 mention countless meetings with various attorneys to protect Hascheff's interests.

24 8. The fees and costs incurred in this case were necessary and reasonable to
25 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
26 million dollar claim against him outside the coverage limits of his applicable insurance policy.

27 9. It should be noted that malpractice actions are not typically filed until the
28 conclusion of the underlying litigation to determine whether the attorney is guilty of
malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
5005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

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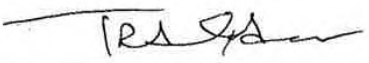
10. The time entries and description of the work conducted by my firm included in my billing invoices to Hascheff contain attorney-client privileged information. Certain entries do not include attorney-client information and therefore can be provided with privileged information redacted. These detail time entries can be provided without prejudice and waiver of the privilege. It is my understanding Hascheff has already provided only our billing summaries to you.

11. Any correspondence between Hascheff and my firm is protected by attorney-client privilege and will not be produced. Similarly, any correspondence and all communications between my firm and Jaksicks' attorneys are also privileged and/or confidential and will not be produced.

12. The time and work in preparing this affidavit and related work is related to the malpractice action and will be billed accordingly.

13. I declare under penalty of perjury the foregoing is true and correct.

Dated: this 10th day of April, 2020.


TODD R. ALEXANDER, ESQ.

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

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Jacqueline Bryant
Clerk of the Court
Transaction # 7956749 : yvioria

EXHIBIT "2"

EXHIBIT "2"

AA 0094

From: Pierre Hascheff pierre@pahascheff.com
Subject: Re: Attached Image
Date: Feb 5, 2020 at 4:41:58 PM
To: Lucy Mason lucy.masonsena@yahoo.com

EXHIBIT 2

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege.

There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to

enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

On Feb 11, 2020, at 11:24 AM, Diana Lechner <diana@nelwscott.com>

wrote:

Enclosed is the amount due and you should be

sent a check for

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Jacqueline Bryant
Clerk of the Court
Transaction # 7956749 : yvioria

EXHIBIT "3"

EXHIBIT "3"

AA 0097

Exhibit 3

Sent: Monday, March 02, 2020 2:47 PM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: Re: Indemnity

It will be quicker to get the documents from Lucy. Took me a lot of time to locate the documents and make the copies. I don't have that kind of time now to go back and do it all again.

I've already sent correspondence to Lucy explaining the delay. There has been absolutely no prejudice for notifying her after the underlying litigation was mostly concluded. There was absolutely nothing you or anyone could do during the underlying litigation. Also it is common practice to require a lawyer in the underlying litigation to testify first and determine if any errors were made then file a malpractice action. To suggest that I should be deposed for three days and a witness at trial for two days without the benefit of the lawyer to protect our interest and avoid a malpractice claim is simply foolish. The threat of malpractice was a common thread throughout the litigation. My lawyer was there to provide a defense for the pending malpractice action.

The time entries contain attorney-client communications. I am not going to waive the privilege. Lucy has all of the invoices showing what the insurance company paid. I believe it was only \$2500 the rest I had to pay. The information Lucy has is all you need to evaluate the claim. The indemnity agreement is very broad and does not say that the fees and costs must be incurred after the malpractice case is filed.

Sent from my iPad

On Mar 2, 2020, at 8:37 AM, Shawn Meador <smeador@woodburnandwedge.com> wrote:

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

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2020-07-08 02:44:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7961095 : sacordag

EXHIBIT "4"

EXHIBIT "4"

AA 0100

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador
Cc: Todd Torvinen
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you. In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRC 16.21

This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because

those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days

Sent from my iPad

1 CODE: 2145
2 Todd L. Torvinen, Esq.
3 Nevada Bar No. 3175
4 232 Court Street
5 Reno, NV 89501
6 (775) 825-6066

7
8 IN THE FAMILY DIVISION OF
9 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF WASHOE

11 PIERRE A. HASCHEFF,
12
13 Plaintiff,

Case No: DV13-00656
Dept No: 12

14 -vs-

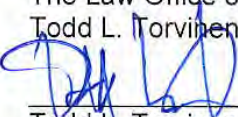
15 LYNDA L. HASCHEFF,
16
17 Defendant.

18
19 **MOTION FOR ORDER TO SHOW CAUSE, OR IN THE ALTERNATIVE,**
20 **TO ENFORCE THE COURT'S ORDERS**

21 COMES NOW, Plaintiff, by and through his attorney, Todd L. Torvinen, Esq.,
22 and hereby moves this Court to order Defendant to appear and show cause why he
23 should not be held in contempt of Court for violation of the FINDINGS OF FACT,
24 CONCLUSIONS OF LAW AND DECREE OF DIVORCE, filed on November 15, 2013.
25 In the alternative, Plaintiff requests an order enforcing the Court's orders. Plaintiff will
26 file a separate motion for attorney's fees and costs.

27 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
28 affirm that the preceding document does not contain the social security number of any
person.

Dated: July 8, 2020.

The Law Office of
Todd L. Torvinen, Chtd.


Todd L. Torvinen, Esq.

1 POINTS AND AUTHORITIES

2 **1. Background and Procedure.**

3 On June 16, 2020, Lynda Hascheff ("Ms. Hascheff") through counsel filed a
4 Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree
5 ("Motion"). Ms. Hascheff's Motion refers to the marital settlement agreement ("MSA")
6 between the parties dated September 1, 2013, incorporated into the parties' Findings
7 of Fact, Conclusions of Law and Decree of Divorce entered November 15, 2013.

8 Judge Hascheff's counsel asserts no objection to this Court interpreting section
9 40 of the MSA in part because the interpretation is a question of law for this Court and
10 that the language is clear and unambiguous; and because Judge Hascheff now files
11 this Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's
12 Orders. Judge Hascheff filed his Opposition to Ms. Hascheff's Motion on July 6, 2020,
13 and the facts and legal authorities are incorporated herein by reference.

14 **2. Indemnification Required by the Parties' MSA.**

15 In the event Judge Hascheff is sued for malpractice, Section 40 of the parties'
16 MSA requires Ms. Hascheff to indemnify him for one half (1/2) of the cost of any
17 defense and judgment irrespective of when the fees and costs are incurred. See
18 below.

19 **Indemnity and Hold Harmless**

20 40. Except for the obligations contained in or expressly arising out of this Agreement, each
21 party warrants to the other that he or she has not incurred, and shall not incur, any liability or
22 obligation for which the other party is, or may be, liable. Except as may be expressly provided
23 in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be
24 brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission
25 of the other, the warranting party shall, at his or her sole expense, defend the other against the
26 claim, action, or proceeding. The warranting party shall also indemnify the other and hold him
27 or her harmless against any loss or liability that he or she may incur as a result of the claim,
28 action, or proceeding, including attorney fees, costs, and expenses incurred in defending or
responding to any such action. In the event Husband is sued for malpractice, Wife agrees to
defend and indemnify Husband for one half (1/2) the costs of any defense and judgment
Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

1 In late July 2018, Judge Hascheff received a 41-page subpoena requiring his
2 response in a trust litigation dispute between beneficiaries for which Judge Hascheff
3 as a lawyer prepared an estate plan and rendered legal advice to Samuel Jaksick. The
4 subpoena received by Judge Hascheff requested information which clearly created a
5 possible malpractice claim against him.

6 Judge Hascheff hired counsel, through his malpractice carrier, Todd Alexander
7 to represent his interests in the Jaksick trust litigation matter. In early 2019, Judge
8 Hascheff was also deposed and testified at trial. At trial, the legal claims resulted in
9 favorable outcome regarding the advice and estate plan. There are equitable claims
10 asserted by in the trust litigation matter which remain under submission awaiting
11 judicial determination. See affidavit of Todd Alexander attached as Exhibit 1.

13 On December 26, 2018, one of the beneficiaries in the underlying trust litigation
14 described above, filed a malpractice complaint against Judge Hascheff relating to the
15 legal advice and estate planning he performed for Samuel Jaksick. This malpractice
16 action was stayed pending the outcome in the Jaksick trust litigation. It remains stayed
17 as the equitable claims asserted in the trust litigation await determination.

19 On or about January 15, 2020, Judge Hascheff contacted his ex-spouse, Lynda
20 Hascheff, and informed her of the indemnification required under Section 40 of the
21 MSA. Judge Hascheff requested the indemnity payment from Ms. Hascheff. She
22 refused to immediately indemnify him. Instead, Judge Hascheff was contacted by Ms.
23 Hascheff's sister, Lucy Mason (also a lawyer) regarding the indemnification.

25 On February 4th, 2020, Lucy Mason requested Judge Hascheff provide her with
26 information regarding the indemnification due from Ms. Hascheff. He did so. By
27 February 5, 2020 Lucy Mason received all the documents requested. See Exhibit 2
28

1 attached. Consistent with Section 40 of the MSA, Judge Hascheff requested through
2 Lucy Mason again that Ms. Hascheff reimburse him for one half of the costs and
3 lawyer fees incurred related to the malpractice action at the time in the sum of
4 \$4675.90 (one half of \$9351.80). See Exhibit 2.

5 **2. Enforcement Provisions Contained in the Parties' MSA.**

6 After Judge Hascheff emailed Lucy Mason all the requested documents and
7 information, he then received direction to contact Ms. Hascheff's lawyer, Shawn
8 Meador, Esq., in order to proceed further with the indemnification claim vis-à-vis Ms.
9 Hascheff again further delaying his reimbursement. On March 1, 2020, he emailed Mr.
10 Meador. Key to this email, are Sections 35.1 and 35.2 of the MSA. They are
11 reproduced below.
12
13

14 **Payment of Future Attorney Fees and Costs to Prevailing Party**

15 35.1. If either party to this Agreement brings an action or proceeding to enforce any provision
16 of this Agreement, or to enforce any judgment or order made by a court in connection with this
17 Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable
18 attorney fees and other reasonably necessary costs from the other party.

19 35.2. A party intending to bring an action or proceeding to enforce this Agreement shall not be
20 entitled to recover attorney fees and costs under this provision unless he or she first gives the
21 other party at least 10 written notice before filing the action or proceeding. The written notice
22 shall specify (1) whether the subsequent action or proceeding is to enforce the original terms of
23 the Agreement; (2) the reasons why the moving party believes the subsequent action or
24 proceeding is necessary; (3) whether there is any action that the other party may take to avoid the
25 necessity for the subsequent action or proceeding; and (4) a period of time within which the other
26 party may avoid the action or proceeding by taking the specified action. The first party shall not
27 be entitled to attorney fees and costs if the other party takes the specified action within the time
28 specified in the notice.

26 Perceiving that the indemnification matter seemed headed for the litigation
27 merry-go-round based upon the instruction to contact Ms. Hascheff's counsel, Judge
28

1 Hascheff emailed opposing counsel the following on March 1, 2020 in order to comply
2 with the requirements of Section 35.2:

3 From: Pierre Hascheff pierre@pahascheff.com
4 Subject: Indemnity
5 Date: Mar 1, 2020 at 11:57:43 AM
6 To: Shawn Meador smeador@woodburnandwedge.com

7 I was informed by Lucy Mason that I need to contact you regarding my
8 reimbursement for attorneys fees and costs incurred pursuant to
9 section 40 of the settlement agreement dated September 1, 2013.
10 The amount owed to date by Lynda is \$4675.90. I provided all the
11 documentation that Lucy requested which I assume you have which
12 includes the billing invoices. I intend to enforce the settlement
13 agreement because I've been sued for malpractice. A subsequent
14 action or set off is necessary because Lynda has refused to indemnify
15 me pursuant to section 40. We can avoid this action by her simply
16 making the payment referenced above within 10 days of this notice.
17 If the payment is not made within this 10 day I will proceed
18 accordingly.
19 Thank you for your consideration in this matter.
20 Sent from my iPad

21
22 **3. The Litigation Commences to Gain Leverage to Delay Payment.**

23 Unfortunately, opposing counsel then requested the very same documents
24 previously provided to Ms. Hascheff's sister, Lucy Mason (with the exception of the
25 attorney client privileged information requested). Further, by email correspondence
26 with Judge Hascheff, opposing counsel made irresponsible requests, non-applicable
27 legal assertions, and false accusations. These included: (1) production of attorney-
28 client privileged correspondence between Judge Hascheff and his defense/malpractice
lawyer and Jaksick's attorney, (2) asserting a fiduciary duty, and (3) accusing Judge
Hascheff of "keeping secrets." See opposing counsel's emails to Judge Hascheff of
March 2, and March 3, 2020, attached as Exhibit 3. Also note that the position taken

1 by Ms. Hascheff through opposing counsel appeared to be simply to “gain leverage
2 and delay the payment” of the indemnification required.

3 On April 20, 2020, Judge Hascheff emailed opposing counsel and pointed out
4 that indemnification claims generally do not include the indemnitor asserting a fiduciary
5 duty owed by the indemnitee or claims for breach of the implied covenant of good faith
6 and fair dealing. He respectfully provided a legal roadmap to resolve the case. See
7 Exhibit 4.

8 On June 16, 2020, Ms. Hascheff instead filed her Motion for Clarification or
9 Declaratory Relief regarding Terms of MSA and Decree. There she asserted additional
10 leverage gaining arguments/requests aimed at the delay noted above and also argued
11 that Judge Hascheff (4) made assertions in his request for indemnity which were
12 misleading and false, (5) refused to provide information requested by Ms. Hascheff, (6)
13 failed to disclose necessary information to Ms. Hascheff, (7) breached a fiduciary duty
14 because the malpractice action is a community obligation, and (8) that arguing for the
15 first time that Judge Hascheff seven years later took advantage of Ms. Hascheff in
16 negotiating the MSA.

17 Each of the leverage gaining delay arguments propounded by Ms. Hascheff are
18 addressed in Judge Hascheff’s Opposition to Motion for Clarification or Declaratory
19 Relief. He incorporates those herein by reference. Nevertheless, some brief discussion
20 may be appropriate.

21 First as to any fiduciary duty owed by Judge Hascheff to Ms. Hascheff
22 regarding indemnification, Ms. Hascheff cites *Williams v. Waldman*, 108 Nev. 466, 836
23 P.2d 614,619 (Nev. 1992). However, *Williams* is inapplicable where the nonlawyer
24 spouse has independent counsel. Further, *Cook v. Cook*, 912 P.2d 264, 112 Nev. 179
25 (Nev. 1996) holds that the fiduciary obligation requires independent and competent
26 counsel for a nonlawyer spouse. Strangely, since opposing counsel represented Ms.
27 Hascheff in the divorce matter, *Williams* and *Cook* only apply if opposing counsel
28

1 concedes his representation of Ms. Hascheff in the divorce and negotiation of the MSA
2 were otherwise.

3 Judge Hascheff believes he did not breach any fiduciary duty or implied
4 covenant(s) even if one existed. At its base, contractual indemnification like Section 40
5 of the parties' MSA is a straightforward contract matter. When a contract is clear on its
6 face, it will be construed from the written language and enforced as written, and the
7 court has no authority to alter the terms of an unambiguous contract. *Canfora v. Coast*
8 *Hotels and Casinos, Inc.*, 121 Nev. 771, 121 P.3d 599 (2005). Further, a fiduciary
9 obligation is not generally imposed with regard to and indemnification obligation in the
10 absence of an "special relationship." See *Insurance Co. of the West v. Gibson Tile*
11 *Co., Inc.*, 122 Nev. 455, 134 P.3d (2006). (fiduciary duty instruction not appropriate
12 when indemnitee brought indemnity action against the indemnitor). In light of these
13 cases, it would seem highly illogical to argue a "special relationship" raising a fiduciary
14 obligation unless Ms. Hascheff argues that opposing counsel was not independent
15 and/or not competent at the time he represented her in the negotiation and the
16 execution of the parties' MSA.

17 Ms. Hascheff also argued that Judge Hascheff breached the implied covenant
18 of good faith and fair dealing. However, an action in tort for breach of the covenant
19 arises only in rare and exceptional cases when there is a special relationship between
20 the victim and tortfeasor which is characterized by elements of public interest,
21 adhesion, and fiduciary responsibility. See *Kmart Corp. v. Ponsock*, 103 Nev. 39, 49,
22 732P. 2nd 1364, 1370 (1987) (abrogated on other grounds). Section 40 of the MSA
23 contains no notice provision in order to trigger indemnification and therefore notice is
24 not required.

25 Finally, and briefly, Ms. Hascheff accuses and accused Judge Hascheff of
26 communicating the malpractice risk and malpractice claim in a misleading fashion.
27 Unfortunately, she fails to understand the nature of a malpractice claim. The
28 underlying trust litigation case in which Judge Hascheff was a witness created the real

1 threat of malpractice litigation; and further the underlying trust litigation case requires
2 resolution prior to litigation of the malpractice issues. This is precisely why the
3 malpractice claim filed on December 26, 2018 is stayed by Court stipulation. See
4 *Hewitt v. Allen* 118 Nev. 216, 221, 43P 3d 345, 348 (2002); *Semenza v. Nevada Med.*
5 *Liab. Ins. Co.* 104 Nev. 666, 668, 765P. 2d 184, 186 (1988) (Holding that the
6 underlying litigation must first conclude including appeals when the legal malpractice
7 action alleges errors in the course of the underlying litigation).

8 Todd Alexander, in his declaration, asserts that the legal fees Judge Hascheff
9 incurred with his malpractice/defense counsel, Todd Alexander prior to the filing of the
10 actual malpractice complaint on December 26, 2018, sounded principally in and were
11 directly related to malpractice issues. See Exhibit 1 attached. Ms. Hascheff
12 nonsensically asserted in her Motion for Clarification or Declaratory Relief that Judge
13 Hascheff should have answered the subpoenas, attended the deposition, and
14 appeared at trial without counsel.

15 Judge Hascheff asserts that a four-corners reading and interpretation of the
16 entire MSA Section 40 reasonably requires the payment of all attorney fees and costs
17 relating to the underlying Jaksick trust litigation as it is directly related to the
18 malpractice action. Generally, the terms of Judge Hascheff's malpractice tail policy
19 requires him to pay the first \$10,000 of fees and costs, and then the insurance
20 company, Allied World pays the rest. Nevertheless, the fact that the insurance
21 company picked up the defense and paid defense fees in the trust litigation of \$2500,
22 although not required under the policy, gives compelling proof that Judge Hascheff's
23 involvement in the underlying trust case primarily involved potential malpractice
24 claims. See below.

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LEMONS, GRUNDY & EISENBERG
 6005 Plumas Street, Third Floor
 Reno, Nevada 89519-6000
 (775) 786-6868
 Tax I.D. #88-0122938

Page: 1
08/27/2019

Allied World
 BILL THROUGH SERENGETI

OUR ACCOUNT NO: 52-8603M
 STATEMENT NO. 8

ATTN: Andy Kenney

Hascheff, Pierre re: Allied World
 2018018714

	PREVIOUS BALANCE	\$11,851.80
03/25/2019	Payment - Thank you Allied World	-1,300.00
03/25/2019	Payment - Thank you Allied World	-150.00
04/08/2019	Payment - Thank you PAH Limited LLC	-1,000.00
04/16/2019	Payment - Thank you Allied World	-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC	-1,000.00
	TOTAL PAYMENTS	-4,500.00
	BALANCE DUE	\$7,351.80

\$2500

Notwithstanding the compelling proof above, she argues that Allied did not believe the threat of a malpractice claim existed and that's why Judge Hascheff was required to pay most of the fees. However, in her Motion, Ms. Hascheff apparently admits that fees incurred after the date of the filing of the malpractice complaint on December 26, 2018 are subject to the 40-indemnification clause. Approximately 89% of the uncovered fees incurred by Mr. Alexander were incurred and in fact occurred after the date of filing the malpractice complaint **and** therefore at a minimum she owes all fees and costs incurred and continuing to accrue after that date. Please see the following spreadsheet:

Date	Amount Incurred (before malpractice suit filed)	Amount Incurred (after malpractice suit)	Total
9/14/2018	\$1,300.00		
10/5/2018	\$50.00		
10/18/2018	\$100.00		
11/16/2018	\$125.00		
11/17/2018	\$2,025.00		

	Amount Incurred (before malpractice suit filed)	Amount Incurred (after malpractice suit)	Total
1/24/2019		\$825.00	
1/31/2019		\$1.80	
2/5/2019		\$75.00	
2/19/2019		\$1,025.00	
2/20/2019		\$1,175.00	
2/21/2019		\$1,775.00	
2/22/2019		\$1,875.00	
2/24/2019		\$600.00	
2/25/2019		\$900.00	
3/22/2019		\$200.00	
6/21/2019		\$200.00	
7/1/2019		\$20.00	
9/25/2019		\$75.00	
3/31/2019		\$1.30	
Total Fees	\$3,600.00	\$8,748.10	
Paid by insurance	(\$2,500.00)		
Remaining	\$1,100.00	\$8,748.10	\$9,848.10
Due from Ms. Hascheff (1/2)			\$4,924.05

As a result, one can only conclude that Ms. Hascheff chose and chooses to intentionally disobey the order of this Court.

4. Ms. Hascheff Should be Ordered to Appear and Show Cause

Pursuant to NRS 22.010, contempt includes acts of disobedience or resistance to any lawful writ, order, rule, or process issued by the Court. Any order meant to be the subject of a contempt proceeding must be clear, unambiguous, and set forth the details of compliance in clear, specific terms, so the parties will know what duties or obligations are imposed. *Cunningham v. Dist. Ct.*, 102 Nev. 551, 729 P.2d 1328

1 (1986). To that end, dispositional orders must be entered, in writing, prior to a person
2 being found in contempt. *Div. of Child and Family Serv. v. Eighth Jud. Dist. Ct.*, 120
3 Nev. 445, 454, 92 P.3d 1239, 1245 (2004).

4 The party moving for an order to show cause must make a prima facie showing
5 that the non-moving party had the ability to comply with the order and that his or her
6 violation was willful. See *Rodriguez v. Dist. Court*, 120 Nev. 798, 102 P.3d 41 (2004).
7 All motions requesting that a party be ordered to appear and show cause must be
8 accompanied by a detailed affidavit. NRS 22.010(2); see also *Award v. Wright*, 106
9 Nev. 407, 794 P.2d 713 (1990) (overruled on other grounds). WDCR 42(2) as
10 amended by ADKT 0544 on November 27, 2019, also requires the affidavit to include
11 the title and filing date of the order the moving party claims has been violated, the date
12 and method of service of the order on the party alleged to be in contempt, and specific
13 facts describing the alleged contempt.

14 Ms. Hascheff chooses to willfully disobey the Findings of Fact, Conclusions of
15 Law and Decree of Divorce entered November 15, 2013, which incorporated the terms
16 of the parties' MSA dated September 1, 2013. Even though she admitted at a
17 minimum that any fees incurred after December 26, 2018, the date of filing of the
18 malpractice complaint are subject to the indemnity requirements of MSA Section 40.
19 She continues to make ill-advised and even nonsensical arguments as a course of
20 conduct to "gain leverage and delay payment."

21 **5. In the Alternative, Ms. Hascheff Should be Ordered to Comply with the Court's**
22 **Orders**

23 WDCR 10(3)(a) permits parties to request alternative relief in one pleading. In
24 Nevada, NRS 125.240 grants district courts broad discretionary authority to enforce its
25 orders before or after judgment by any means "it deems necessary."

26 In the event the Court determines that Defendant's actions do not rise to the
27 level of contempt, Plaintiff asks that the Court enforce its orders by requiring
28 Defendant to pay the required one half indemnification amount to Judge Hascheff in

1 the sum of \$4924.05 (plus ½ of any later accrued and accruing fees and costs), and
2 award Judge Hascheff attorney's fees as ordered. Further, Judge Hascheff carefully
3 complied with Sections 35.1 and 35.2 of the MSA. After several attempts to resolve
4 and compromise the dispute, eventually he emailed opposing counsel the ten-day
5 writing triggering Ms. Hascheff's opportunity to end the matter gracefully and
6 economically at that point. Instead, she chose and continues to choose to litigate to
7 gain leverage and delay payment. Judge Hascheff is also entitled to attorney fees as
8 provided in Section 35.2 as he followed the procedure required to gain compliance.
9 Ms. Hascheff therefore received an additional opportunity to comply, and intentionally
10 chose not to comply. As a result, attorney fees should be ordered upon filing the
11 required affidavit.

12 For the foregoing reasons, Judge Hascheff moves this Court:

- 13 1. To issue an order for Ms. Hascheff to show cause as to why she intentionally
14 disobeys this Court's order (Findings of Fact, Conclusions of Law and Decree of
15 Divorce incorporating the terms of the parties' MSA, or in the alternative,
- 16 2. To enforce the terms of the parties' incorporated MSA, and order the
17 payment of the indemnification, and
- 18 3. Order Ms. Hascheff pay Judge Hascheff's attorney fees and costs whether
19 this matter proceeds as contempt, or as an order for enforcement upon affidavit from
20 counsel.

21 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
22 affirm that the preceding document does not contain the social security number of any
23 person.

24 Dated: July 8, 2020.

25
26
27
28

The Law Office of
Todd L. Torvinen, Chtd.


Todd L. Torvinen, Esq.

DECLARATION OF PIERRE A. HASCHEFF

I, Pierre A. Hascheff, hereby make the following statements. I declare under penalty of perjury that the following is true and correct.

1. On September 1, 2013, Lynda Hascheff and I signed the Marital Settlement Agreement. Section 40 required Ms. Hascheff to indemnify me for one half (1/2) of the cost of any defense and judgment irrespective of when the fees and costs are incurred. Further, notice is not required to trigger indemnification under Section 40.
2. Pursuant to this agreement, I contacted Ms. Hascheff and informed her of the indemnification. The billing statements and invoices were sent to Lucy Mason and Ms. Hascheff's attorney. The total amount of the invoices is \$12,348.10. Of that amount \$3600 was incurred prior to the filing of the malpractice complaint on December 26, 2018.
3. Allied World insurance company paid \$2500 of the \$3600 leaving \$1100 which I paid. The balance of the fees \$8748.10 was incurred after the filing of the malpractice complaint. I also paid that amount.
4. There is an outstanding bill which I have not yet received which should be approximately \$700. I anticipate that there will be additional attorneys' fees and costs until the cases are concluded.
5. Allied World insurance company is not required to pay any sums pursuant to the malpractice coverage. However Allied agreed to pay the \$2500 to allow my defense counsel to review the subpoena and start the defense in the trust litigation.
6. The policy also provides that the insurance company retention/deductible of \$10,000 does not commence to accrue until after the malpractice complaint is filed. That is why I was required to continue to pay for the fees and costs prior to and after the filing of the complaint. We still have not exhausted the \$10,000 deductible and anticipate additional payments will be made by myself to the company until their obligation to pay the fees applies.
7. I did not keep any potential malpractice claim or the malpractice lawsuit secret from Ms. Hascheff. I understood and therefore anticipated there would be a quick resolution to the underlying trust litigation however it took longer to resolve than originally anticipated. My intent was to simply provide the final bills under the indemnity but when the underlying trust litigation appeared that it may go on for a substantial period of time I notified Ms. Hascheff of the indemnity agreement and included the invoices
8. At the time we signed the marital settlement agreement on September 1, 2013 I had no knowledge that they were any potential malpractice claims. In almost 30 years of practicing law I never was sued for malpractice nor was I confronted with any claims.
9. The legal claims have been decided by the jury in the underlying trust litigation and it is my understanding that there are equitable claims pending before the District Court awaiting determination. As a result, the malpractice litigation was placed on hold before that judge until the equitable claims can be concluded.
10. Because the resolution of the underlying trust litigation is critical in determining whether a malpractice action will proceed, I immediately retained defense counsel.
11. Many of my conversations and communications with my lawyer and or communications with other attorneys involved in the underlying trust litigation were done in person. I do not believe that any written documentation between myself and my lawyer involving deposition and trial strategy should be produced because it involves sensitive and confidential information especially given the ongoing nature of both current actions.
12. I believe Ms. Hascheff's position is to gain leverage and delay payment of the indemnification required under the MSA as she has made irresponsible requests, non-applicable legal assertions, and false accusations through her email correspondence via her counsel and through her Motion for Clarification or Declaratory Relief regarding Terms of MSA and Decree filed with this Court.
13. I do not believe I breached any fiduciary duty to Ms. Hascheff as no fiduciary obligation was imposed nor did I breach an implied covenant of good faith and fair dealing by not giving notice to trigger the indemnification as Section 40 of the MSA contained no notice provision. I do not believe notice was required. I informed both Lucy

Mason and Ms. Hascheff's attorney these claims were not consistent with Nevada law but they continued to assert said claims.

14. I contacted Ms. Hascheff regarding the indemnification payment per our agreement in the MSA and she has willfully refused to abide by the Court order despite her recent admission that any fees incurred after the Malpractice claim was filed on December 26, 2018, are subject to the indemnification requirement.

AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Executed on July 8th, 2020.



Pierre A. Hascheff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Office of Todd L. Torvinen, and that on July 8, 2020, I served a copy of the foregoing document on the parties identified below by using the ECF system which will send a notice of electronic filing to the following:

Shawn B. Meador, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89511



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EXHIBIT INDEX

Exhibit 1	Declaration of Todd Alexander	2 pages
Exhibit 2	Email between Judge Hascheff and Lucy Mason	3 pages
Exhibit 3	Email between Judge Hascheff and Shawn Meador	2 pages
Exhibit 4	Email between Judge Hascheff and Shawn Meador	2 pages

IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

Pierre Hascheff
vs.
Lynda Hascheff

FAMILY COURT MOTION/OPPPOSITION NOTICE (REQUIRED)	
CASE NO.	DJ13-60656
DEPT. NO.	12

NOTICE: THIS MOTION/OPPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A. Mark the CORRECT ANSWER with an X .		YES	NO
1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.		<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.		<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Is this a motion or an opposition to a motion filed only to change the amount of child support?		<input type="checkbox"/>	<input type="checkbox"/>
4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?		<input type="checkbox"/>	<input type="checkbox"/>
IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.		Date	
B. If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.			

I affirm that the answers provided on this Notice are true.

Date: July 8 2020

Signature:

Todd L. Torvinen

Print Name:

Todd L. Torvinen, Esq.

Print Address:

232 Court Street

Reno, NV 89501

Telephone Number:

(775) 825-6066

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Transaction # 7961095 : sacordag

EXHIBIT "1"

EXHIBIT "1"

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
3 COUNTY OF WASHOE) ss.
4

5 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

6 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
7 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

8 2. I was retained by Hascheff once he received a multi-page subpoena requesting
9 any and all documents, correspondence, communications etc. with respect to his estate
10 planning and related advice to Samuel Jaksick and related parties.

11 3. It was prudent on Hascheff's part to retain counsel immediately because the
12 information requested clearly was aimed at undermining his estate plan and advice which
13 could lead to a malpractice action depending on the jury verdict.

14 4. It was clear that Hascheff was being accused of malfeasance and mishandling
15 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
16 their share of the estate.

17 5. There was also a possible claim by another beneficiary that Hascheff provided
18 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
19 brother and sister with a substantial damage claim against him.

20 6. Hascheff was clearly at risk depending on the outcome of the underlying
21 litigation.

22 7. There were two days of depositions and two days of trial testimony, not to
23 mention countless meetings with various attorneys to protect Hascheff's interests.

24 8. The fees and costs incurred in this case were necessary and reasonable to
25 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
26 million dollar claim against him outside the coverage limits of his applicable insurance policy.

27 9. It should be noted that malpractice actions are not typically filed until the
28 conclusion of the underlying litigation to determine whether the attorney is guilty of
malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
5005 PLUMAS ST.
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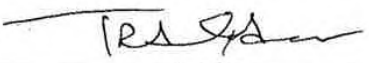
10. The time entries and description of the work conducted by my firm included in my billing invoices to Hascheff contain attorney-client privileged information. Certain entries do not include attorney-client information and therefore can be provided with privileged information redacted. These detail time entries can be provided without prejudice and waiver of the privilege. It is my understanding Hascheff has already provided only our billing summaries to you.

11. Any correspondence between Hascheff and my firm is protected by attorney-client privilege and will not be produced. Similarly, any correspondence and all communications between my firm and Jaksicks' attorneys are also privileged and/or confidential and will not be produced.

12. The time and work in preparing this affidavit and related work is related to the malpractice action and will be billed accordingly.

13. I declare under penalty of perjury the foregoing is true and correct.

Dated: this 10th day of April, 2020.



TODD R. ALEXANDER, ESQ.

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6005 PLUMAS ST.
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EXHIBIT "2"

EXHIBIT "2"

AA 0123

From: Pierre Hascheff pierre@pahascheff.com
Subject: Re: Attached Image
Date: Feb 5, 2020 at 4:41:58 PM
To: Lucy Mason lucy.masonsena@yahoo.com

EXHIBIT 2

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege.

There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to

enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

On Feb 11, 2020, at 11:24 AM, Diana Lechner <diana@nelwscott.com>

wrote:

Enclosed is the amount due and you should pay it.

Thank you,
Diana Lechner

From: Lucy Mason lucy.masonsena@yahoo.com
Subject: Your demand to Lynda Hascheff
Date: Feb 4, 2020 at 11:42:04 AM
To: Pierre Hascheff pierre@pahascheff.com
Cc: smeador@woodburnandwedge.com

EXHIBIT 2

Pierre –

Lynda forwarded me the invoices and letter you sent her in the mail. It appears that you are demanding that she pay half the entire amount billed in the malpractice matter, as opposed to half the amount you have actually paid. The invoices reflect that the insurance company (Allied World) has paid a large amount to date and you have paid \$3,000. There is a handwritten note that you have paid the balance of the remaining bill dated 10/23/19, but there is no canceled check or subsequent invoice reflecting that.

Please provide the following documentation so that we can assess your demand:

1. A copy of the insurance policy pursuant to which you have made a claim
2. All correspondence with your insurance company and adjuster about the claim
3. All detailed billings/invoices you have received to date from Lemons, Grundy or any other firm working on your behalf on this matter, including all time entries by attorneys working on the claim
4. All proof of payment you claim you have made on any bills reflected in 3) above
5. All relevant pleadings in this matter, including but not limited to your response to the complaint

Finally, you had notice of this potential claim for well over 16 months, and undoubtedly much longer. You have a fiduciary duty to Lynda as it relates to this claim to keep her apprised and in the loop. By asking me to send you this note in response to your demand, she is in no way waiving whatever recourse she may have for your breach of that duty. I am helping Lynda as her sister, not as an attorney. Should this require the need for legal services, she will hire an attorney.

Thank you.

Lucy

From: Pierre Hascheff [<mailto:pierre@pahascheff.com>]
Sent: Sunday, January 26, 2020 7:59 AM
To: Lucy Mason
Subject: Fwd: Attached Image

Here's a copy of the Page requiring reimbursement for attorneys fees and costs. I do not have Lynda's new email. So I'm forwarding these documents to you. If that's a problem let me know

Sent from my iPad

AA 0126

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EXHIBIT "3"

EXHIBIT "3"

AA 0127

Exhibit 3

Sent: Monday, March 02, 2020 2:47 PM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: Re: Indemnity

It will be quicker to get the documents from Lucy. Took me a lot of time to locate the documents and make the copies. I don't have that kind of time now to go back and do it all again.

I've already sent correspondence to Lucy explaining the delay. There has been absolutely no prejudice for notifying her after the underlying litigation was mostly concluded. There was absolutely nothing you or anyone could do during the underlying litigation. Also it is common practice to require a lawyer in the underlying litigation to testify first and determine if any errors were made then file a malpractice action. To suggest that I should be deposed for three days and a witness at trial for two days without the benefit of the lawyer to protect our interest and avoid a malpractice claim is simply foolish. The threat of malpractice was a common thread throughout the litigation. My lawyer was there to provide a defense for the pending malpractice action.

The time entries contain attorney-client communications. I am not going to waive the privilege. Lucy has all of the invoices showing what the insurance company paid. I believe it was only \$2500 the rest I had to pay. The information Lucy has is all you need to evaluate the claim. The indemnity agreement is very broad and does not say that the fees and costs must be incurred after the malpractice case is filed.

Sent from my iPad

On Mar 2, 2020, at 8:37 AM, Shawn Meador <smeador@woodburnandwedge.com> wrote:

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

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EXHIBIT "4"

EXHIBIT "4"

AA 0130

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador
Cc: Todd Torvinen
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you. In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRC 16.21

This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because

those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days

Sent from my iPad

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10
11 IN THE FAMILY DIVISION
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 PIERRE A. HASCHEFF ,
17
18 Plaintiff,
19
20 v.
21
22 LYNDA L. HASCHEFF ,
23
24 Defendant .

CASE NO. DV13-00656
DEPT. NO. 12

25 **REPLY IN SUPPORT OF MOTION FOR CLARIFICATION OR FOR**
26 **DECLARATORY RELIEF REGARDING TERMS OF MSA AND DECREE**

27
28 In his Opposition, Judge Hascheff quibbles, distracts, obfuscates, and seeks to mislead
this Court. He cites case law regarding disputes involving commercial litigants that have
entirely different factual scenarios, different contractual indemnity language, and that simply
do not support the arguments he makes in his Opposition. He fails to thoughtfully address the
authority cited by his former wife. He sets up false straw-man arguments and then knocks
them down; all while ignoring the merits of this dispute. In doing so, he drives up Ms.
Hascheff's legal fees for which he should be responsible.

1 THE MSA LANGUAGE IS UNAMBIGUOUS AND CANNOT
2 BE EXPANDED TO ENCOMPASS JUDGE HASCHEFF'S DEMANDS

3 The indemnity language in paragraph 40 of the Parties' Marital Settlement Agreement
4 ("MSA") is straightforward and unambiguous. It states:

5 In the event Husband is sued for malpractice, Wife agrees to defend and indemnify
6 Husband for one half (1/2) the costs of any defense and judgment.

7 Judge Hascheff spends countless pages arguing why being "sued for malpractice" and
8 the defense of that malpractice action mean so much more than the plain, straightforward
9 language of the contract drafted by his counsel. Without citation to any authority, Judge
10 Hascheff posits that "[O]pposing counsel misunderstands the appropriate protocol in filing a
11 malpractice action." If Judge Hascheff desired that any such protocol should enlarge Ms.
12 Hascheff's liability to indemnify him for his own allegedly negligent conduct, he should have
13 had his counsel include that protocol language in the MSA. He did not. This Court may not
14 enlarge Ms. Hascheff's contractual liability in the guise of interpreting this simple and
15 unambiguous language.

16 The indemnity demand arises out of Judge Hascheff's potential liability for his alleged
17 negligence. The case law Judge Hascheff cited, and on which he relies, provides that under
18 such circumstances, the indemnity clause shall be strictly construed, and enforced only to the
19 extent the terms are "specifically stated within the four corners of the contract." See, Reyburn
20 Lawn & Landscape Designers, Inc. v. Plaster Development Co., Inc., 255 P.3d 268, 274 (Nev.
21 2011); United Rentals Highway Technologies, Inc., v. Wells Cargo, Inc., 289 P.3d 221, 228
22 (Nev. 2012).

23 Thus, if Judge Hascheff is sued for malpractice, his former wife is responsible for one-
24 half of the costs specifically incurred in the defense of that malpractice lawsuit. Period. She
25 did not contractually agree to pay costs or fees he incurred in some other action, even if that
26 27

1 action is tangentially related to a malpractice action and even if he believed incurring fees in
2 that collateral action was reasonable.

3 Nor has Judge Hascheff offered any cogent argument as to why it would be reasonable
4 for this Court to interpret the contract in a way to afford him the implied rights to keep the
5 underlying facts of his alleged negligence and the legal advice he received from the lawyer he
6 hired to protect his interests, secret from her, to make any litigation decisions he believed
7 were in his best interest, and then send his former wife a bill for the fees to his personal
8 lawyer.
9

10 Judge Hascheff suggests that his malpractice carrier's response is one of the protocols
11 he would have this Court graft onto the simple language of the Parties' MSA. He falsely
12 claims that the insurance company appreciated how important it was for him to retain
13 personal counsel to represent him in his role as a percipient witness so the insurance company
14 voluntarily paid \$2,500 of his fees even though it was not contractually obligated to do so.
15 That claim is simply not true or consistent with Judge Hascheff's obligations pursuant to
16 NRCPC Rule 11.
17

18 Judge Hascheff provided counsel with a copy of his malpractice policy. Endorsement
19 No. 3 is entitled "Omnibus Endorsement." A true and correct copy of Endorsement No. 3 is
20 attached as **Exhibit 1 hereto**. Paragraph 4 of Endorsement 3 relates to "Subpoena
21 Coverage."
22

23 As this Court will see, Judge Hascheff's insurance carrier agreed that if he was
24 subpoenaed as a percipient witness in an action related to his legal services, but in which he is
25 not a named party, as here, the insurer will provide coverage up to \$2,500. Thus, his
26 suggestion the insurance company had no obligation to pay this \$2,500 and only did so
27 because his conduct was so reasonable, is simply false.
28

1 To the extent the insurance company's policy has any bearing whatsoever on whether
2 it was or was not reasonable for Judge Hascheff to retain personal counsel to represent him in
3 his role as a percipient witness, the insurance company's position was that the sum of \$2,500
4 was what was reasonable, sufficient and what it was contractually obligated to pay. It paid
5 that sum. More importantly, the legal issue in dispute is not whether Judge Hascheff's
6 unilateral decisions were "reasonable" but whether they are covered by a strict interpretation
7 of the express language of the indemnity clause. They are not.

9 Rather than providing his former wife with accurate information, consulting with her
10 and treating her with respect, Judge Hascheff implies that his former wife should simply trust
11 him. He insists, however, that he has no fiduciary duty to her. Their interests are not
12 identical. Judge Hascheff's lawyer made it very clear that his job was to protect Judge
13 Hascheff, not Ms. Hascheff, and thus, made it clear their interests are not identical. If their
14 interests were identical there would be no basis for insisting that the underlying facts and legal
15 advice he received from his personal lawyer, that he demands his former wife pay for, is
16 confidential from her.

18 Judge Hascheff claims that his retention of personal counsel to represent him in his
19 role as a percipient witness in the collateral lawsuit, in some way, benefited Ms. Hascheff.
20 Therefore, she should pay one-half of his personal legal fees. That position is not supported
21 by the plain language of Paragraph 40. Additionally, neither Ms. Hascheff nor this Court
22 have any ability to evaluate this inadmissible speculation.

24 Judge Hascheff has not admitted that he was negligent in his representation of his
25 former client. He has not disclosed facts that suggest there was a reasonable probability a jury
26 would determine he was negligent, thus exposing him and his former wife to liability. He has
27 not disclosed how his retention of private counsel to protect his interests as a percipient
28 witness impacted or altered his potential risk of liability. He has not disclosed any advice his

1 lawyer gave him that protected Ms. Hascheff from this probable risk. Rather, he insists that is
2 all a secret and that Ms. Hascheff must simply pay half of the costs.

3 Judge Hascheff has not identified a single thing he would have done differently had he
4 not retained personal counsel to represent him as a percipient witness in the collateral lawsuit.
5 Regardless of whether he had counsel or not, he had to produce his file and had to testify
6 truthfully at his deposition and at trial. He has not disclosed how his testimony at deposition
7 or trial would have been one word different than it would have been had he not retained
8 personal counsel. This Court and Ms. Hascheff can reasonably assume that Judge Hascheff
9 would honor his oath to tell the truth regardless of whether he had counsel and can further
10 reasonably assume that his lawyer advised him to testify truthfully.
11

12 Judge Hascheff correctly cites authority that requires this Court to base its decision on
13 a strict interpretation of the indemnity language of the Parties' MSA. A strict interpretation of
14 the indemnity clause in the MSA does not cover these expenses. The indemnity language
15 could have been written to say that Ms. Hascheff will indemnify Judge Hascheff for any fees
16 and costs that he, in his sole and unilateral discretion, believe are reasonable, necessary, and
17 related in any way to any potential malpractice action. That is not the language his lawyer
18 drafted, nor is it the agreement the Parties signed. Ms. Hascheff contractually agreed to pay
19 half the costs of defense of the malpractice action. That action was immediately stayed.
20 There were essentially no fees incurred in the defense of the malpractice action.
21

22 This Court's analysis should end here. The strict interpretation Judge Hascheff
23 acknowledges is appropriate, does not support his position. In his Opposition, however, he
24 makes a variety of arguments, almost as though he were throwing mud against the wall to see
25 if anything would stick.
26

27 Judge Hascheff falsely claims that Ms. Hascheff admitted she is responsible for any
28 fees he incurred after the malpractice action was filed. This Court will look in vain for any

1 such admission. She is not responsible for any fees Judge Hascheff incurred to his personal
2 lawyer in connection with his role as a percipient witness, regardless of when those fees were
3 incurred. She pointed out the unreasonableness and bad faith of Judge Hascheff claiming she
4 was responsible for fees he incurred before he was even sued for malpractice given that the
5 indemnity clause, by its express terms, comes into play, only if he is sued.
6

7 Judge Hascheff insists that when he finally notified his former wife of the situation,
8 his note to her was not misleading. This Court may decide whether it was or was not
9 misleading. At the very least, Judge Hascheff would have to concede it was incomplete.

10 He did not notify her that he had been subpoenaed a year and a half earlier, did not
11 provide her with a copy of the subpoena or with a copy of the malpractice complaint, he did
12 not provide any information about the underlying facts or risk of liability, or that the
13 malpractice action had been stayed. He did not share with her any of the legal advice he
14 received even though he demanded she pay half of the fees he incurred to receive such advice.
15 He did not tell her the fees he demanded she pay were incurred by his personal lawyer he
16 retained to protect his interests in his role as a percipient witness in a collateral lawsuit.
17 Rather, he stated the fees were incurred in the on-going malpractice action.
18

19 Judge Hascheff claims that his former wife has not been harmed by his failure to
20 provide her with full and accurate information in advance of incurring fees he claims she is
21 responsible for. He is mistaken. At a minimum, had he given her the common courtesy of
22 promptly informing her of the circumstances, sharing with her the underlying facts and risks
23 they faced, and consulting with her about the most appropriate way for them to jointly
24 approach the problem, they may have been able to reach agreement to avoid this dispute and
25 all of these fees. Further, his failure to provide her with full and accurate information has
26 forced her to incur substantial legal fees.
27

1 JUDGE HASCHEFF BREACHED HIS COVENANAT
2 OF GOOD FAITH AND FAIR DEALING

3 In an attempt to distract this Court from his failure to honor the implied covenant of
4 good faith and fair dealing arising out of the Parties' Marital Settlement Agreement, his
5 failure to act as a fiduciary to his former wife, and his failure to provide her with any
6 meaningful information or consult with her in any effort to make joint decisions, Judge
7 Hascheff argues that this Court may not evaluate any equitable considerations. The case law
8 he cites does not support his argument.

9 Dicta in Rayburn, 255 P.3d at 274, states: "When the duty to indemnify arises from
10 contractual language, it is generally not subject to equitable considerations; 'rather, it is
11 enforced in accordance with the terms of the contracting parties' agreement.'" quoting, Prince
12 v. Pacific Gas & Elec. Co., 45 Cal. 4th 1151, 90 Cal.Rptr.3d 732, 202 P.3d 405, 407 (2007).

13 As noted above, Rayburn, then holds that the contractual language will be strictly construed.
14 In Rayburn, there was no claim that the indemnitee had waived the right to indemnity due to a
15 breach of fiduciary duty or breach of the implied covenants of good faith and fair dealing.

16 Similarly, in Prince, on which Rayburn, relies, there are no similar facts. Rather, in
17 Prince, the claimant sought relief on a theory of implied contractual indemnity. The Court
18 summarized the law of indemnification noting that, in general, there is either contractual
19 indemnity or equitable indemnity and if there is contractual indemnity, the contract controls.
20 Like the Nevada Court, the California Court noted that the contractual indemnity "must be
21 particularly clear and explicit and will be construed strictly against the indemnitee." 202 P.2d
22 at 1158. Again, the Court did not address the issue of waiver.

23 Ms. Hascheff agrees with the rulings in both Rayburn and Prince, that the contractual
24 language must be construed strictly. She is not seeking equitable indemnity from her former
25 husband and thus, the dicta in both cases is inapposite. She does not claim that equity alters
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28

1 the language of the Parties' Agreement. She does assert that by virtue of Judge Hascheff's
2 breach of the implied covenant of good faith and fair dealing and his breach of fiduciary duty,
3 he has waived his right to seek indemnity. He has cited no authority to the contrary.

4 Judge Hascheff oddly cites cases in which the Court held that a party may assert a
5 claim for tortious breach of the implied covenant of good faith and fair dealing only in rare
6 circumstances. Ms. Hascheff has not filed suit against Judge Hascheff asserting such a tort
7 claim, although, under the circumstances of this case she believes the Court would find that
8 there was that special relationship between her and her husband at the time they signed the
9 MSA that would allow her to do so.

10
11 Judge Hascheff attempts to use the fact that his former wife had counsel when she
12 signed the MSA as his insurance policy that it is valid and enforceable. And yet, Ms.
13 Hascheff has not alleged that the MSA is unenforceable. She alleges that he has waived or is
14 estopped from asserting his contractual rights. Judge Hascheff's argument does not change
15 the fact that when she signed the MSA, Ms. Hascheff relied on her husband, the father of her
16 children who had recently become a judge, rather than on her lawyer, who her husband
17 demeaned and undermined. Nor does it change the fact that had Judge Hascheff's lawyer
18 drafted the indemnity clause to give Judge Hascheff the powers and authorities he now claims
19 he has, no independent lawyer would have advised her to sign the Agreement.

20
21 A strict interpretation of the indemnity clause necessarily precludes this Court from
22 accepting Judge Hascheff's argument that this Court may, in the guise of strict interpretation,
23 create an implied term that Judge Hascheff may retain personal counsel to protect his interests
24 as a percipient witness in a collateral lawsuit and then require his former wife to pay half of
25 those fees. Nor does a strict interpretation of the indemnity clause allow this Court to imply
26 that Ms. Hascheff is obligated to pay for legal advice that is kept secret from her.
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JUDGE HASCHEFF IS RESPONSIBLE FOR
MS. HASCHEFF'S ATTORNEY'S FEES

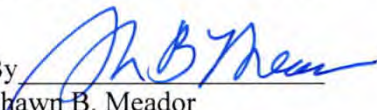
Judge Hascheff's demand for indemnity is without merit. His Opposition to Ms. Hascheff's motion is without merit and unsupported by law or fact. Ms. Hascheff, thus, asks this Court to clarify that the indemnity clause applies only to fees incurred specifically and directly in defense of the malpractice action. She further asks this Court to make a finding that Judge Hascheff has waived his right to seek indemnity with respect to the Jaksick matter. Finally, she requests that this Court require Judge Hascheff to pay the fees and costs she has incurred in connection herewith.

Affirmation Pursuant to NRS 239B.030

The undersigned affirms that this document does not contain the personal information of any party.

DATED this 13 day of July, 2020.

WOODBURN AND WEDGE

By 
Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Reply in Support of Motion for Clarification or Declaratory Relief

Regarding Terms of MSA and Decree

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 13 day of July, 2020



Kelly Albright

EXHIBIT LIST

<u>Exhibit #</u>	<u>Description</u>	<u>No. of Pages</u>
1	Endorsement No. 3	4

FILED
Electronically
DV13-00656
2020-07-13 10:47:39 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 7966977 : bblough

EXHIBIT 1

ENDORSEMENT NO. 3
OMNIBUS ENDORSEMENT

This Endorsement, effective at 12:01 a.m. on January 1, 2013, forms part of

Policy No.	[REDACTED]
Issued to	Pierre A. Hascheff CHTD
Issued by	Darwin National Assurance Company

In consideration of the premium charged, it is hereby agreed that this Policy is amended as follows:

1. Section I., INSURING AGREEMENT B., ADDITIONAL COVERAGES, is deleted in its entirety and replaced with the following:

B. ADDITIONAL COVERAGES

1. **Reimbursement for Lost Earnings Coverage**

The Insurer shall reimburse each Insured up to \$500 for personal earnings actually lost each day or part of a day such Insured, at the Insurer's express request, attends a trial, hearing or arbitration arising from a Claim first made during the Policy Period and reported to the Insurer in accordance with Section IV, Condition I. of this Policy. The maximum amount payable under this Additional Coverage 1. is \$10,000 per Claim and \$30,000 in the aggregate for all Claims, regardless of the number of Claims, the number of Insureds, or the number of days lost or trials, hearings or arbitrations attended. Any payment made by the Insurer under this Additional Coverage 1. shall be in addition to the applicable Limit of Liability and shall not be subject to the Retention.

This coverage shall not apply in the event of a Disciplinary Proceeding.

2. **Disciplinary Proceedings Coverage**

The Insurer will pay on behalf of an Insured, reasonable fees, costs and expenses incurred in responding to a Disciplinary Proceeding initiated against the Insured and reported to the Insurer during the Policy Period or any Extended Reporting Period. The maximum amount payable under this Additional Coverage 2. is \$20,000 per Disciplinary Proceeding and \$60,000 in the aggregate for all Disciplinary Proceedings, regardless of the number of Disciplinary Proceedings or Insureds. Any payment made by the Insurer under this Additional Coverage 2. shall be in addition to the applicable Limit of Liability and shall not be subject to the Retention.

3. **Non-Profit Director and Officer Coverage**

The Insurer will reimburse an Individual Insured lawyer, subject to the Limit of Liability as set forth in Item 3. of the Declarations, all amounts that such Insured becomes legally obligated to pay as Damages and Claim Expenses because of a Claim arising out of a Non-Profit Director or Officer Wrongful Act that is first made during the Policy Period or any Extended Reporting Period.

The coverage provided under this Additional Coverage 3. is excess of, and shall not contribute with, any other insurance plan or program of insurance or self-insurance carried by the **Non-Profit Organization**, and any contribution and indemnification to which the individual Insured lawyer is entitled to from such **Non-Profit Organization**.

The most the Insurer shall pay for Claims for which coverage is provided under this Additional Coverage 3. shall be an amount equal to the lesser of:

- (a) the per Claim Limit of Liability under the **Non-Profit Organization's** Directors and Officers Liability Insurance; or
- (b) the Limit of Liability set forth in Item 3.(a) of the Declarations,

up to the maximum amount of \$500,000 per Claim and in the aggregate for all such Claims. Any payment made by the Insurer under this Additional Coverage 3. shall be part of, and not in addition to, the applicable Limit of Liability.

It is a condition precedent to coverage under this Additional Coverage 3. that:

- (a) such Individual Insured lawyer is serving as a director, officer or committee member of the **Non-Profit Organization** with the express written consent or at the request of the **Named Insured**;
- (b) such **Non-Profit Organization** will have, in full force and effect during the **Policy Period** or any **Extended Reporting Period**, Directors and Officers Liability Insurance with Limits of Liability of at least \$500,000 per claim and in the aggregate for all claims; and
- (c) no more than ten percent (10%) of the **Named Insured's** annual gross revenues are derived directly or indirectly from **Legal Services** performed by any Insured for the **Non-Profit Organization**.

In the event that a **Wrongful Act** or **Related Act** or **Omission** gives rise to a Claim or multiple Claims under both this Additional Coverage 3. and Insuring Agreement I.A. of the Policy, then only one per Claim Limit of Liability and one Retention shall apply to all such Claims.

4. Subpoena Coverage

In the event the Insured receives a subpoena for documents or testimony arising out of **Legal Services**, the Insured may obtain the Insurer's assistance in responding to the subpoena by providing the Insurer with a copy of the subpoena. The Insurer will retain an attorney to provide advice regarding the production of documents, to prepare the Insured for sworn testimony, and to represent the Insured at the Insured's depositions, provided that:

- (a) the subpoena arises out of a lawsuit to which the Insured is not a party; and
- (b) the Insured has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the Insured provided such advice or testimony in the past.

The maximum amount payable under this Additional Coverage 4. is \$2,500, regardless of the number of subpoenas or Insureds. Any payment made by the Insurer under this Additional Coverage 4. shall be in addition to the applicable Limit of Liability and shall not be subject to the Retention.

Any notice the Insured gives the Insurer of such subpoena shall be deemed notification of a potential Claim under Section IV., Condition I. 3.

2. Section IV. CONDITIONS, E. CONSENT TO SETTLE, is deleted in its entirety and replaced with the following:

E. CONSENT TO SETTLE

The Insurer shall not settle any Claim without the consent of the Insured, which consent shall not be unreasonably withheld. If, however, the Insured refuses to consent to any settlement recommended by the Insurer and acceptable to the claimant, then, subject to the Limits of Liability set forth in Item 3. of the Declarations, the Insurer's liability for Damages and Claim Expenses relating to such Claim shall not exceed:

1. the amount for which the Claim could have been settled, plus all Claim Expenses incurred up to the time the Insurer made its recommendation (the "Settlement Amount"); plus
2. fifty percent (50%) of any Damages and/or Claims Expenses in excess of the Settlement Amount.

The remaining fifty percent (50%) of Damages and/or Claims Expenses in excess of the Settlement Amount will be borne by the Insured at its own risk and remain uninsured.

If the Insured refuses to consent to any Claim settlement recommended by the Insurer, as described above, then once the Insurer has paid the Settlement Amount, the Insurer shall have the right to withdraw from the further investigation and defense of such Claim by tendering control of such investigation or defense to the Insured. The Insured agrees, as a condition of the issuance of this Policy, to accept such tender and proceed at its own cost and expense.

If the Named Insured has not paid any premiums due or satisfied any applicable Retentions, the Insurer has the right, but not the obligation, to settle any Claim without the consent of the Insured.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

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11 IN THE FAMILY DIVISION
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15 IN AND FOR THE COUNTY OF WASHOE

16
17 PIERRE A. HASCHEFF ,

18 Plaintiff,

19 v.

20 LYNDA L. HASCHEFF ,

21 Defendant .

CASE NO. DV13-00656

DEPT. NO. 12

22
23 **OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, OR IN THE**
24 **ALTERNATIVE TO ENFORCE THE COURT'S ORDERS**

25
26 I. INTRODUCTION

27 Judge Hascheff's Motion for Order to Show Cause is without merit. His alternative
28 Motion to Enforce is unsupported by any admissible evidence, without merit and entirely
unnecessary. He should be ordered to pay the fees Ms. Hascheff incurs in responding thereto.

There are no clear and unambiguous "Orders" of this Court that Ms. Hascheff has
allegedly refused to honor. Rather, there is one Order, the Decree of Divorce, that
incorporates the parties' Marital Settlement Agreement ("MSA"). The dispute is whether the
very simple and unambiguous language of the parties' MSA and Decree, requires Ms.
Hascheff to pay the fees Judge Hascheff demands. Because the Decree does not clearly and

1 unambiguously require her to pay those fees, Ms. Hascheff could not be held in contempt as a
2 matter of law.

3 Judge Hascheff asserts that the language of Section 40 clearly and unambiguously
4 obligates his former wife to pay the fees he demands. However, he acknowledges that this
5 Court would have to interpret the language of Section 40 to reach that result. See, Motion at
6 p. 8, lns. 11-14. If interpretation is required to obtain the result Judge Hascheff seeks, the
7 language on which he relies cannot be so clear and unambiguous as to support a contempt
8 motion – no matter how reasonable Judge Hascheff believes his requested interpretation is.

9 Because there is a dispute about the meaning of their contract and the parties'
10 respective rights and obligations, Ms. Hascheff, in good faith, sought clarification so that she
11 would know exactly what her legal obligations are. She would have no reason to do so if her
12 intention would then be to ignore this Court's guidance. Judge's Hascheff's stated beliefs and
13 speculation about his former wife's motives are not accurate nor do they constitute admissible
14 evidence. Ms. Hascheff sought this Court's guidance not to flaunt this Court's Order, but to
15 comply with her legal obligations. Thus, Judge Hascheff's Motion to Enforce is without
16 merit and entirely unnecessary.

17 II. MS. HASCHEFF IS NOT IN CONTEMPT OF COURT

18 The Nevada Supreme Court noted: "an order on which a judgment of contempt is
19 based must be clear and unambiguous, and **must spell out the details of compliance in clear,
20 specific and unambiguous language** so that the person will **readily know exactly what
21 duties or obligations are imposed** on [her]." See, Div. of Child and Family Serv., v. Eighth
22 Judicial Dist. Court, 120 Nev. 445, 92 P.3d 1239 (2004) quoting, Cunningham v. Eighth
23 Judicial Dist. Court, 102 Nev. 551, 729 P.2d 1328 (1986)(emphasis added).

24 Section 40 of the parties' MSA requires Ms. Hascheff to indemnify her former
25 husband for the defense of the malpractice action. The malpractice action was immediately
26 stayed. Thus, there were essentially no fees incurred in the defense of that malpractice action.

27 Judge Hascheff's legal position, however, is that the language of Section 40
28 specifically and unambiguously states: i) that he may retain personal counsel to represent his

1 interests as a percipient witness in a collateral lawsuit; ii) that his communications with his
2 personal counsel for which he seeks indemnity and the underlying facts about whether he was
3 negligent, are confidential; and iii) that Ms. Hascheff must pay one-half of the fees he
4 incurred for his personal lawyer in that collateral lawsuit. That language cannot be found in
5 Section 40.

6 Judge Hascheff falsely claims that Ms. Hascheff insists that it was unreasonable for
7 him to retain counsel to represent his interests as a percipient witness in the collateral lawsuit.
8 She has not made that claim.

9 Neither Ms. Hascheff, nor her counsel, have any knowledge regarding the underlying
10 facts of Judge Hascheff's alleged negligence. They cannot know whether Judge Hascheff
11 would reasonably be in such fear of his own negligence that it was reasonable for him to
12 retain counsel to protect "his" interests. Nor can they know whether he risked substantial
13 liability, so that retention of personal counsel in his role as a percipient witness in the
14 collateral lawsuit was reasonable or necessary. Judge Hascheff's insistence that this
15 information is confidential necessarily precludes Ms. Hascheff, and this Court, from knowing
16 whether his decision was reasonable and necessary or not.¹

17 But the issue here is not whether Judge Hascheff's actions were reasonable. The issue
18 is whether Section 40 clearly and unambiguously requires Ms. Hascheff to pay Judge
19 Hascheff's fees in his role as a witness in a collateral lawsuit. It does not.

20 Rather, Judge Hascheff asks this Court, in the guise of strictly interpreting the MSA,
21 to imply those terms arise out of the simple language of Section 40. Even if this Court were
22 now to imply those terms, Ms. Hascheff could not be held in contempt of court for not
23 guessing correctly about whether the Court would or would not imply such terms.

24 Rather than quoting the language of section 40 verbatim, in his Motion and in his July
25 8th Declaration, Judge Hascheff states: "Section 40 required Ms. Hascheff to indemnify me
26 for one half (1/2) of the costs of any defense and judgment irrespective of when the fees and
27

28 ¹ Ms. Hascheff's counsel has been called as a percipient witness in a collateral lawsuit that involved work
counsel had done. Counsel did not retain personal counsel to represent him in his role as a percipient witness.
The mere fact that a lawyer is called as a witness related to his or her work does not demonstrate that retention of
counsel was reasonable or necessary.

1 costs are incurred.” And yet, that language, from “irrespective” on, cannot be found in the
2 MSA. Judge Hascheff knew the language he relies on was not in Section 40, so he simply
3 added it to his declaration as if it was.

4 Judge Hascheff elected to add that purported clarifier because he falsely argues that
5 Ms. Hascheff’s position is that she is not responsible for his personal fees as a percipient
6 witness in an collateral lawsuit before he was sued for malpractice, but admits that she is
7 responsible for his personal fees in that collateral suit after he was sued for malpractice. And
8 yet, Ms. Hascheff makes no such admission. See, Ms. Hascheff’s Reply in Support of Motion
9 for Clarification (filed herein on July 13, 2020 and incorporated herein by reference).

10 Judge Hascheff complains that Ms. Hascheff falsely accuses him of keeping secrets
11 from her. At the same time, he continues to insist that his discussions with his personal
12 lawyer and the underlying facts of his alleged negligence, remain confidential. The very point
13 of confidentiality is to allow Judge Hascheff to keep secrets. Similarly, Judge Hascheff
14 stridently complains that he produced all requested documents to Ms. Hascheff’s sister and
15 her counsel, all while insisting that the documents they requested are confidential and will not
16 be produced.

17 Judge Hascheff falsely claims that Ms. Hascheff argues that his malpractice insurance
18 carrier “did not believe the threat of a malpractice claim existed and that is why Judge
19 Hascheff was required to pay most of the fees.” Ms. Hascheff made no such claim. Judge
20 Hascheff, in his declaration, also falsely claims that his insurance carrier was not obligated to
21 pay the \$2,500. See, Ms. Hascheff’s Reply in Support of Motion for Clarification.

22 It is inappropriate for Judge Hascheff to falsely characterize Ms. Hascheff’s legal
23 positions. Cf., NRCP Rule 11; NRPC, Rule 3.3 (Candor Toward the Tribunal); see also,
24 Code of Judicial Conduct, Canons 1 and 2. It is easy to rebut arguments that make no sense
25 and that were not made. A litigant does not need to make such arguments if the facts and law
26 are on his side.

27 Judge Hascheff’s contempt motion has merit only if he can show this Court language
28 in the MSA that spells out the details of Ms. Hascheff’s legal obligation to pay these fees in

1 clear, specific and unambiguous terms, so that she could readily know exactly what duties or
2 obligations are imposed on her. He cannot do so. His Motion for Order to Show Cause is
3 without merit and should be denied.

4 III. MOTION TO ENFORCE IS UNNECESSARY AND MERITLESS

5 Ms. Hascheff has not refused to honor this Court's Order. She has asked this Court
6 for guidance and clarification about what her legal obligations under the Decree are. Judge
7 Hascheff has not offered, nor can he offer, any admissible evidence that Ms. Hascheff has not
8 or will not abide by this Court's Orders. His speculation, conjecture and beliefs are not
9 admissible evidence, and therefore, cannot form the basis for the relief he seeks. See, WDCR
10 Rule 12(1) and 42, DCR Rules 13(5) and 13(6) and NRCPC Rule 56(e).

11 Because Judge Hascheff has offered no admissible evidence to support his motion, as
12 required by Local Rules, his motion should be denied.

13 IV. REMAINING CLAIMS AND ARGUMENTS

14 Judge Hascheff then re-hashes many of the same arguments he made in his Opposition
15 to Ms. Hascheff's Motion for Clarification. This Court could undoubtedly evaluate his
16 arguments the first time. His decision to raise these arguments again does nothing other than
17 force his former wife to incur yet more legal fees. Doing so was entirely unnecessary.

18 Judge Hascheff's position forces Ms. Hascheff to "trust" him. At the same time,
19 however, he insists that he has no fiduciary duty to her. His position, taken to its logical
20 extreme, is that Section 40 authorizes him to do anything he wants, no matter how
21 unreasonable or unnecessary, and that Ms. Hascheff would still be responsible for one-half of
22 the costs of his decisions. Were he to admit that there are any limitations on his ability to
23 incur fees for which she is liable, he would, necessarily be admitting the language of Section
24 40 does not clearly and unambiguously pay the fees he demands she pay.

25 Judge Hascheff apparently misunderstood Ms. Hascheff's argument. She does not
26 argue that he breached his fiduciary duty and the implied covenant of good faith and fair
27 dealing by having his lawyer include Section 40 in the MSA at the time of divorce. Her
28 position is that Judge Hascheff has a duty to protect their joint interests, not just to protect his

1 own personal interests. Judge Hascheff has not articulated why he would have no obligation
2 to protect his former wife's interests under these circumstances. If he has that obligation, how
3 would he define his obligation to her other than as a fiduciary? She is not a major corporation
4 or insurance company; she is his former wife who is potentially liable for his negligence.

5 Whether called a fiduciary relationship or confidential relationship, fiduciary-like
6 duties arise when one person reposes confidence in another such that in equity and good
7 conscience, the other is bound to act in good faith and with due regard to the interest of the
8 one imposing the confidence. See, e.g., Long v. Towne, 98 Nev. 11, 639, P.2d 528 (1982);
9 Perry v. Jordan, 111 Nev. 943, 947 P.2d 335 (1995).

10 Ms. Hascheff had no ability to protect herself. Judge Hascheff made the decision not
11 to share the subpoena, the complaint, or the stipulation to stay the malpractice action with her.
12 He chose not to share the underlying facts with her so that she could evaluate her risk. He
13 chose not to consult with her about retaining personal counsel to protect his interests as a
14 percipient witness or whether doing so was reasonable or necessary. He just made all the
15 decisions unilaterally and sent her a bill.

16 Because Judge Hascheff's choice prevented Ms. Hascheff from protecting herself, he
17 necessarily must have an obligation of good faith and to act with due regard for her interests.
18 He could have easily met his obligations by exhibiting simple courtesy. He elected not to do
19 so. Ignoring her, making unilateral decisions, insisting everything is confidential, and then
20 sending her a bill is not good faith, nor does it show due regard for her interests. It shows a
21 complete disregard and contempt for her rights.

22 Once again Judge Hascheff makes the odd argument that the tort of breach of the
23 implied covenant of good faith and fair dealing is only available in rare circumstances. Due
24 to Ms. Hascheff's forced reliance on her former husband, this would be one of those rare
25 circumstances. The fact remains, however, that Ms. Hascheff has not asserted such a tort
26 claim against him. It is a red herring apparently offered to distract the Court from his
27 motion's lack of merit.

28

1 Judge Hascheff makes the irrelevant claim that he was never confronted with a
2 malpractice claim during the marriage. Ms. Hascheff's memory is that there was once a threat
3 of such a claim. The point Ms. Hascheff made in her Motion for Clarification, to which Judge
4 Hascheff is apparently responding, is that the allegations in the malpractice complaint suggest
5 that Judge Hascheff contemporaneously represented multiple clients who had potentially
6 conflicting interests. She asked whether he had obtained written conflict waivers to allow that
7 contemporaneous joint representation. She noted that if he had not obtained written conflict
8 waivers, he was, by definition, aware of a potential claim against him based on the alleged
9 conflict of interests and did not disclose those facts to her at the time of divorce. Judge
10 Hascheff has not addressed this concern. Apparently, it is yet another secret.

11 Judge Hascheff projects that he is offended that Ms. Hascheff keeps claiming that he
12 kept secrets from her. And yet, he continues to insist that the information she requested is
13 confidential. Neither Ms. Hascheff, nor this Court, can tell from his motion whether the
14 alleged "equitable" claims that remain in the Jaksick lawsuit could result in a finding that he
15 committed malpractice. Nor is it clear whether they still face a risk of liability based on his
16 negligence.

17 What is the current status of his potential risk of malpractice liability? Why has Judge
18 Hascheff elected not to share this information with this Court and his former wife who he
19 insists is equally at risk? How is keeping her in the dark consistent with his obligation to act
20 in good faith and with due regard for her interests?

21 V. ATTORNEYS' FEES

22 Judge Hascheff's motion is without merit and entirely unnecessary. His motion serves
23 absolutely no purpose other than to force Ms. Hascheff to incur legal fees. All of the issues
24 addressed in his Motion were fully and fairly briefed in connection with Ms. Hascheff's
25 Motion for Clarification. To the extent that the parties' beliefs and impressions are
26 admissible, Ms. Hascheff's perception is that this Motion is just part of Judge Hascheff's on-
27 going efforts to harass and intimidate her as she feels he has done since the parties'
28 separation.

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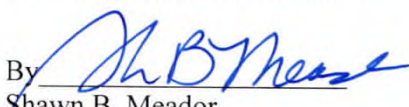
In addition to the prevailing party fee clause, this Court has continuing jurisdiction pursuant to NRS 125.150(3) to award Ms. Hascheff her fees.

Affirmation Pursuant to NRS 239B.030

The undersigned affirms that this document does not contain the personal information of any party.

DATED this 16 day of July, 2020.

WOODBURN AND WEDGE

By 
Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

AFFIDAVIT OF LYNDA L. HASCHEFF

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, Lynda L. Hascheff, being first duly sworn, depose and state as follows:

1. I am the Plaintiff and make this affidavit of my own personal knowledge.
2. I have read the accompanying Opposition to Motion for Order to Show Cause, or in The Alternative to Enforce the Court's Orders and know the contents thereof; that the same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I swear under penalty of perjury that the foregoing statements in this affidavit are true.

The undersigned affirms that this document contains no social security numbers.

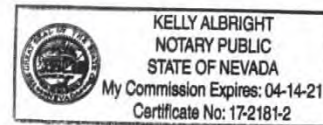
Dated this 16 day of July, 2020.


Lynda L. Hascheff

Subscribed and sworn to before me
this 16 day of July, 2020.



Notary Public



IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF

vs.

LYNDA L. HASCHEFF

FAMILY COURT
MOTION/OPPPOSITION NOTICE
(REQUIRED)

CASE NO. DV13-00656

DEPT. NO. 12

NOTICE: THIS MOTION/OPPPOSITION NOTICE **MUST BE ATTACHED AS THE LAST PAGE** to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X .	YES	NO
	1. Has a final decree or custody order been entered in this case? If yes , then continue to Question 2. If no , you do not need to answer any other questions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial and the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	IF the answer to Question 4 is YES , write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: July 17, 2020

Signature:

Kelly Albright

Print Name:

Kelly Albright

Print Address:

6100 NEIL ROAD, SUITE 500

Telephone Number:

RENO, NV 89511

775-688-3000

Rev. 10/24/2002

AA 0157

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Opposition to Motion for Order to Show Cause, or in the Alternative to Enforce the Court's Order

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 17 day of July, 2020



Kelly Albright

1 CODE: 2145
2 Todd L. Torvinen, Esq.
3 Nevada Bar No. 3175
4 232 Court Street
5 Reno, NV 89501
6 (775) 825-6066

7
8 IN THE FAMILY DIVISION OF
9 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10
11 IN AND FOR THE COUNTY OF WASHOE

12 PIERRE A. HASCHEFF,
13
14 Plaintiff,

Case No: DV13-00656

15 -vs-

Dept No: 12

16 LYNDA L. HASCHEFF,
17
18 Defendant.

19
20 **REPLY TO OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, OR IN**
21 **THE ALTERNATIVE, TO ENFORCE THE COURT'S ORDERS**

22 COMES NOW, Plaintiff, by and through his attorney, Todd L. Torvinen, Esq.,
23 and hereby files this REPLY TO OPPOSITION TO MOTION FOR ORDER TO SHOW
24 CAUSE, OR IN THE ALTERNATIVE, TO ENFORCE THE COURT'S ORDERS.

25 AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby
26 affirm that the preceding document does not contain the social security number of any
27 person.

28 Dated: July 24, 2020.

The Law Office of
Todd L. Torvinen, Chtd.

/S/ Todd L. Torvinen
Todd L. Torvinen, Esq.

1 REPLY POINTS AND AUTHORITIES

2 **1. Judge Hascheff Submitted a False Declaration Justifying Rule 11 Sanctions**

3 Defendant, Lynda Hascheff ("Ms. Hascheff"), argues that Plaintiff, Pierre
4 Hascheff ("Judge Hascheff"), falsely stated in his declaration that the insurance
5 company did not have an obligation to pay for the \$2500 subpoena coverage when in
6 fact his endorsement provides the company must contractually provide the subpoena
7 coverage. As a result, she requests NRCP Rule 11 sanctions against Judge Hascheff.
8 See Exhibit 1 attached; Motion for Declaratory Relief ("MDR") Ms. Hascheff Reply to
9 MDR page 3, lines 10-28; page 4, lines 1-8.

10 Lucy Mason (also an attorney) and Ms. Hascheff's counsel were provided a
11 copy of the entire policy and the policy endorsements from the inception and therefore
12 have had ample opportunity to review the policy and the endorsements to determine
13 whether the subpoena coverage applies in this case. They chose not to thoroughly
14 review these documents, or they did and still falsely asserted there was subpoena
15 coverage. In either case this court should impose sanctions for falsely accusing Judge
16 Hascheff of lying in his declaration. See NRCP Rule 11.

17 A review of Section 4 (subpoena coverage) clearly states there are two
18 conditions that must be met before subpoena coverage is provided. See Exhibit 1
19 attached. First, the subpoena must arise from a lawsuit in which the insured is not a
20 party. The second condition, Section 4 (b), arguably did not apply (i.e. Judge Hascheff
21 provided advice in the past to the client) and therefore disqualified the subpoena
22 coverage. More importantly the policy also provides there is no subpoena coverage if
23 the subpoena is issued during the "Extended Reporting Period" which is exactly when
24 this subpoena was issued. The coverage only applies if the subpoena is issued while
25 Judge Hascheff is currently practicing law which he was not since he had already
26 taken the bench in January 2013.

27 Relying on Section 4 (b) noted above, the insurance company initially denied
28 subpoena coverage. See Exhibit 2 attached, the email from the insurance company

1 adjuster, Andy Kenney denying coverage, and the relevant excerpt electronically
2 reproduced below.

3
4 As I mentioned, the ERP is for reporting Claims made during the ERP for acts allegedly
5 committed prior to the policy termination date, which in this case is 1/1/14. You cannot
6 report potential claims during the ERP. Also, there is no coverage for subpoenas received
7 during the ERP, as subpoenas are not Claims.

8
9 The adjuster's email (Exhibit 2) and the excerpt above strongly prove that
10 Judge Hascheff's declaration accurately stated the insurance company's position, yet
11 the insurance company nevertheless paid the \$2500 given the subpoena's direct
12 relationship to the threat of a pending malpractice claim. See Judge Hascheff's Motion
13 for Order to Show Cause ("OSC Motion") page 9, lines 1-11 (defense counsel's invoice
14 clearly shows the company paid the \$2500).

15 It is important to note the clear terms of the endorsement provide that once
16 Judge Hascheff provided notice of the subpoena it was deemed notification of the
17 "potential claim" under the policy. This confirms the existence of a "claim" consistent
18 with MSA Section 40 (if any 'claim' is brought...the other.....shall defend the other
19 against the 'claim'). See Exhibit 5 attached. See also affidavit of Todd Alexander
20 Exhibit 3 attached.

21 This is just one of several unsubstantiated claims made by Ms. Hascheff not
22 based in fact or in law. Also see MSA Section 38- (Release) provides an exception to
23 the parties' mutual release excluding Ms. Hascheff's defense and indemnity obligation
24 in MSA Section 40 for "any malpractice claims" triggering her duty to defend and
25 indemnify. See discussion in Section 3 "Contractual Indemnity" below.

26 ***2. Ms. Hascheff Legal Fees and Litigation Conduct***

27 Ms. Hascheff again argues that this OSC Motion and false assertions by Judge
28 Hascheff intentionally drives up her legal fees. She makes this same argument

1 throughout the papers she has filed with this Court. Unfortunately, she neglects to
2 mention that early on Judge Hascheff twice offered to resolve the dispute, first
3 through Lucy Mason, Ms. Hascheff's attorney sister and then again with her attorney
4 on April 26, 2020, before attorney's fees would be incurred or and fully two months
5 before the parties began filing motions. See Exhibit 4 attached. This Exhibit is provided
6 to the Court not to show an agreement, but rather to show Ms. Hascheff's
7 unreasonable conduct. See NRS 48.105 (2).

8 Rather than resolving a dispute of approximately \$5000, Ms. Hascheff
9 embarked on this unfortunate litigation tack where she undoubtedly already incurred
10 fees in excess of \$5000, and likely will incur attorney's fees and costs in multiple or
11 multiples of that amount, all of which result from her highly unfortunate choice, and is
12 certainly not Judge Hascheff's responsibility.

13 Ms. Hascheff also unnecessarily caused Judge Hascheff to incur substantial
14 legal fees. The clear terms of the policy provide there is a total \$10,000
15 retention/deductible. Most, if not all of the fees incurred to date accrued after the filing
16 date of the malpractice complaint December 26, 2018. See Judge Hascheff's
17 declaration attached to his OSC Motion. This means that the parties are very close to
18 the cap (policy deductible) amount and once Ms. Hascheff makes the payment in
19 accordance with the indemnity and defense obligation, in MSA Section 40, her
20 exposure (approximately \$5000) for additional defense costs ceases.

21 Pursuant to the terms of the policy the insurance company must pay for the
22 balance of the defense costs in excess of the deductible. Ms. Hascheff and her
23 counsel understood the benefit of this insurance coverage and limited exposure and
24 that is why the parties agreed they would jointly pay for the extended tail coverage
25 premium. See MSA Section 40; Exhibit 5. They jointly shared in the malpractice
26 coverage premium and the \$10,000 deductible and in turn, received \$2 million of
27 insurance protection against further fees and a potential judgement.

28

1 Quite unexplainably Ms. Hascheff chose instead to force Judge Hascheff (and
2 herself) to needlessly incur substantial legal fees rather than simply pay the modest
3 amount of approximately \$5000 as provided in the MSA (it may be a little more based
4 on policy terms). Judge Hascheff even offered to accept minimal payments without
5 interest and without incurring any legal fees. Ms. Hascheff unreasonably refused. See
6 Exhibit 4 attached. Therefore, any argument that Judge Hascheff is causing these
7 substantial legal fees is false and is of Ms. Hascheff's own doing.

8 **3. Contractual Indemnity.**

9 Ms. Hascheff argues that by Judge Hascheff requesting this Court to interpret
10 the four corners of the MSA by default he admits MSA section 40 is ambiguous
11 otherwise, he would not ask this court to interpret the document. See Ms. Hascheff's
12 Opposition to Motion for OSC page 2, lines 3-16. Interpretation of a contract is a
13 question of law for the court. See *United Rentals Hwy. Tech. v. Wells Cargo* 128
14 Nev.666 at 672, 289 P.3d 221 (2012). This means the court determines if the contract
15 is unambiguous and enforces the terms of the agreement or the court determines the
16 contract is ambiguous (i.e. is subject to more than one reasonable interpretation) and
17 considers extrinsic evidence. Judge Hascheff believes the MSA is clear regarding Ms.
18 Hascheff's obligation to defend and indemnify. However, if this court believes
19 otherwise it may consider extrinsic evidence to determine the intent of the parties. It
20 does not mean, as Ms. Hascheff suggests, when a court considers extrinsic evidence
21 that one side or the other admits it is ambiguous.

22 Ms. Hascheff admits that MSA Section 40 applies in its "entirety" to this dispute.
23 Ms. Hascheff's MDR page 10-11, lines 23-25, lines 1-2; Ms. Hascheff's Opposition to
24 Judge Hascheff's OSC Motion page 7, lines 3-10. She argues that he knew there was
25 a potential claim at the time the parties signed the MSA and he did not disclose a
26 potential malpractice claim five years prior to the action being filed. She argues he
27 should disclose whether he used conflict waivers in the underlying litigation to
28 determine if he breached his disclosures and therefore all of MSA Section 40 applies

1 to this dispute. See Ms. Hascheff's MDR pages 10-11 and Opposition page 7, lines 3-
2 10. The MSA Section 40 clearly provides if any "claim," "action," or "proceeding" well
3 founded or not shall later be brought the indemnitor shall at his or her sole expense
4 defend the other party against said "claim," "action" or "proceeding." The last sentence
5 with respect to malpractice includes claim, action or proceeding and limits Ms.
6 Hascheff's exposure to 1/2 of the cost of any defense and judgment (not covered by
7 insurance).

8 Section 38 of the MSA clearly states that "Except for the obligations contained
9 in or expressly arising out of this Agreement..... " the parties release all interspousal
10 claims that have accrued before or during marriage including claims sounding in tort.
11 The terms of the MSA specifically indicate that this release does not include Wife's
12 obligation to defend and indemnify Husband "for any malpractice claims." Judge
13 Hascheff's deposition is a "proceeding" and the company policy confirmed the
14 subpoena was deemed a "potential claim" and the underlying trust litigation is an
15 "action" consistent with MSA Section 40. See Exhibit 5 attached. Parenthetically, Ms.
16 Hascheff also continues to argue that Judge Hascheff breached a fiduciary duty to her.
17 By definition, this waiver also includes fiduciary duty claims based upon the marriage,
18 unless her assertion is that her representation during the divorce was not independent
19 and/or not competent. See *Cook v. Cook*, 912 P.2d 264, 112 Nev. 179 (Nev. 1996).

20 MSA Section 40 also provides that both parties shall pay 1/2 of the cost of
21 malpractice tail coverage insurance premium. Ms. Hascheff suggests that in order for
22 her to be responsible to defend and indemnify Judge Hascheff for one half the
23 deductible, additional language should have been added to the MSA. MSA Section 38
24 and entire Section 40 when read together requires Ms. Hascheff to pay 1/2 of the cost
25 of any defense and judgment not covered by insurance once a "claim, action or
26 proceeding" occurred. As pointed out above the modest cost of the defense by the
27 terms of the policy is approximately 1/2 of \$10,000 deductible with the insurance
28

1 company picking up the balance. The MSA does not say Judge Hascheff is liable for
2 the entire deductible amount.

3 If the court believes Ms. Hascheff's obligation to defend and indemnify is in fact
4 ambiguous the court is required to consider the parties intent and why they would
5 insert the defense/indemnity into the MSA in the first place. This explanation was
6 provided above. The only evidence in the record of the parties' intent is Judge
7 Hascheff's Declaration. Ms. Hascheff has not filed any affidavits in this dispute
8 regarding the parties' intent.

9 The mere issuance of the subpoena pursuant to the policy provides it
10 constitutes a potential malpractice "claim" which is consistent with MSA Section 38
11 and 40 covering any and all claims whether or not well-founded and irrespective of
12 when the costs and expenses were incurred in defending or responding to such
13 "action" (i.e. the underlying Jackisk action), and "proceeding" (i.e. Judge Hascheff
14 deposition). See Exhibit 1 and 5 attached. In construing the parties' contractual intent,
15 all parts must be considered to determine the intent of any particular part and the
16 whole. *Indenco Inc. v. Evans*, 201 Cal. App. 2d 369 20 Cal Rptr 90 (1962). See also
17 *Royal Indemnity v. Special Services* 82 Nev. 148, 150 413 P. 2d 500 (1966).

18 Ms. Hascheff argues that the caselaw cited by Judge Hascheff are commercial
19 cases, based on different facts and different indemnity and defense obligation
20 language. She also argues *Reyburn* and *United Rentals* supra do not apply because
21 those cases did not involve waivers of an indemnity/defense obligation. Ms. Hascheff's
22 Reply to MDR page 1, lines 19-23; page 7 lines 10-25. The *Reyburn* and *United*
23 *Rentals* cases hold that a contract to indemnify an indemnitee for his or her own
24 negligence must be strictly construed. Here indemnity for malpractice claim by
25 definition covers Judge Hascheff for negligence if any and therefore any ambiguity in
26 the MSA is not construed against Judge Hascheff.

27 The caselaw interpreting indemnity and defense obligations by the indemnitor
28 apply irrespective of the underlying transaction. The court simply interprets the parties'

1 agreement and applies the standard rules. Ms. Hascheff fails to cite any case where a
2 court would distinguish between a contractual indemnity in an MSA from any other
3 indemnity obligation. In fact, a settlement agreement is construed as any other
4 contract and governed by the principles of contract law. See *May vs. Anderson* 121
5 Nev. 668, 119 P. 3d1254 (2005). Indemnity and defense obligations are also
6 interpreted as any other contract. *Reyburn supra* page 344 (duty to defend). *Mt.*
7 *Builders LLC v. Fisher Roofing, Inc.* 219 Ariz. 297 197 P. 3d 758 (2008).

8 Further, the malpractice cases cited in Judge Hascheff's Opposition to MDR
9 clearly provide that a former client cannot bring a malpractice action without first
10 concluding the underlying litigation and typically, if there's a premature malpractice
11 complaint filing, it is stayed until the underlying litigation is complete. When the MSA is
12 read together with the policy, and the malpractice case law once the subpoena was
13 issued, a potential "claim" existed and the defense of the pending "claim" commenced
14 immediately in the underlying litigation (i.e. "action"). This Court does not have to imply
15 additional terms to enforce Section 40 and require payment to but even if these terms
16 were implied, they are consistent with the parties splitting the cost of the deductible
17 including the premium for the policy.

18 The duty to defend is much broader than the duty to indemnify requiring the
19 indemnitor to defend any and all claims even if they are without merit See *Reyburn*
20 *Supra* at p. 345 This duty to defend applies immediately and "from the outset" by virtue
21 of a demand or claim. *United Rental v. Wells Cargo* 128 Nev supra at 676.

22 Pursuant to a contractual duty to indemnify the indemnitee automatically has
23 the right from the outset to tender the defense to the Indemnitor. See *Reyburn supra*
24 127 Nev. at p. 345 and *Crawford v. Weather Shield Mfs.* 44 Cal. 4th 541, 187 P.3d 424,
25 431 (2008). Judge Hascheff could have tendered the defense to Ms. Hascheff
26 pursuant to Section 40 and let her pay for the entire defense of Judge Hascheff with
27 him paying her half the cost. That would make very little sense since he was in a better
28

1 position to defend his advice in the underlying trust litigation. Either way she would be
2 required to pay 1/2 of the costs.

3 Indemnity is not contribution. Indemnity requires one party to pay for all of the
4 costs of a certain event on behalf of another party. *United Rental v. Wells Cargo 128*
5 *Nev supra* at 673. Contribution is the equitable sharing of the same cost. *Medallion*
6 *Development Inc. v. Converse Consultants* 113 Nev. 27 930 P. 2d 115,119 (1997).
7 The MSA provides for indemnity not contribution.

8 Ms. Hascheff's assertion that she has no obligation to pay half the defense
9 costs and/or indemnify until her conditions are met are not expressed in the MSA.
10 Indemnity simply and strictly requires the indemnitee to request payment. It does not
11 require tendering of the subpoena or complaint as conditions to payment like other
12 detailed indemnity/ defense provisions, although such requests are reasonable, and
13 these documents were timely provided by Judge Hascheff. Ms. Hascheff's position
14 that she has some "implied" right or "conditions precedent" to her obligation to pay is
15 entirely inconsistent with the MSA or existing caselaw. Her demand that Judge
16 Hascheff must first provide her with: 1) confidential communications with his attorney,
17 2) facts explaining why he's negligent or not negligent i.e. admit liability, in the prior
18 trial and current equitable claims litigation, and 3) explain his confidential decisions will
19 not be found in the MSA nor any indemnity / defense case law. *United Rentals 128*
20 *Nev. p.676 supra* (indemnitor required to defend and pay the costs whether the
21 underlying litigation has merit or not). Further, as the equity claims in the underlying
22 trust action remain to be adjudicated, this would create an unreasonable risk that such
23 sensitive information would be released to adverse parties and create additional
24 exposure to Judge Hascheff which is not in anyone's best interest particularly since
25 Ms. Hascheff is required to pay half of any excess judgment. Notably, it could also
26 jeopardize Judge Hascheff's insurance coverage if the insurance company determines
27 these disclosures are prejudicial especially given the ongoing nature of the equitable
28 claims in the underlying litigation and malpractice action. Why would any attorney

1 publish this confidential and privileged information while there is pending actions?

2 Finally Judge Hascheff was not just a percipient witness in the trust litigation, but he
3 was continually questioned about his legal opinions and to justify his legal advice.

4 Ms. Hascheff's suggestion that somehow, she was substantially prejudiced
5 because of Judge Hascheff decisions in this case has simply not been shown, nor did
6 she provide any documents or evidence to support this assertion. There is nothing she
7 could have done to improve her situation or protect against or reduce her exposure
8 under the defense and indemnity obligation. She is not an additional insured under the
9 policy and her insurance rights are derivative in nature (i.e. through Judge Hascheff's
10 policy/ legal services) and she has no exposure other than the deductible and except
11 for a potential judgment in excess of policy limits. She was not working as a lawyer in
12 Judge Hascheff's firm nor does she have any information that could assist in the
13 underlying action or malpractice case

14 Unlike *Reyburn*, Judge Hascheff did not wait five years to disclose the potential
15 claim and wait two years after the indemnitee participated in the underlying litigation
16 before the indemnitee tendered the defense to the indemnitor in the ongoing litigation.

17 This court can simply rely on the legal authorities provided by Judge Hascheff in
18 order to make a finding that Ms. Hascheff must pay 1/2 of the defense costs until the
19 deductible is satisfied because to date Ms. Hascheff has not cited any contrary
20 authority. Her unreasonable demands for information as a condition precedent to
21 payment is without merit.

22 Ms. Hascheff argues Judge Hascheff's attorney drafted the MSA and any
23 ambiguity must be construed against the drafter. See MDR Reply page 2, lines 11-16,
24 page 5 lines 15-22. When both parties negotiate the provisions of an agreement and
25 have equal bargaining power the contract will not be construed against the drafter.
26 *Indenco Inc. v. Evans*, 201 Cal. App, 2d P. 376, supra p. 376. In this case both parties
27 negotiated for many months before the MSA was signed with substantial revisions
28 made at the request of Ms. Hascheff and her attorney. Ms. Hascheff makes this claim

1 even though MSA Section 36.1 plainly precludes this claim, as construction against
2 the drafter with regard to any ambiguity is prohibited. See Exhibit 5 attached.

3 **4. Fiduciary Duty and Implied Covenant of Fair Dealing and Good Faith.**

4 Originally Ms. Hascheff argued that Judge Hascheff breached his fiduciary duty
5 and covenant of good faith and fair dealing because: (1) he did not timely disclose the
6 subpoena, (2) the filing of the malpractice action, (3) refused to provide requested
7 documents, (4) made a unilateral decisions without consulting Ms. Hascheff, and (5)
8 did not disclose that the fees were related to the underlying trust litigation and (6) the
9 malpractice litigation was stayed. Ms. Hascheff's MDR page4-5 and pages 8-9.
10 However, Ms. Hascheff also argues that Judge Hascheff has waived and is collaterally
11 estopped from exercising his contractual right to a defense and indemnity because of
12 that breach and therefore, the defense and indemnity caselaw Judge Hascheff cited
13 do not apply. Once again, opposing counsel cites absolutely no authority for this
14 assertion. Ms. Hascheff's Reply to Motion OSC page 7, lines 9-27.

15 Judge Hascheff disclosed all this information to Lucy Mason, Ms. Hascheff's
16 attorney sister, prior to Ms. Hascheff obtaining her counsel. See Exhibit 6. He also
17 provided all of the documents requested within one day except privileged information
18 for the reasons stated above (but did provide detailed time entries from his attorney as
19 requested but redacted for confidential matters).

20 Judge Hascheff provided this court with legal authority where in the Nevada
21 supreme court determined there is no fiduciary duty or an implied covenant good faith
22 and fair dealing in contractual indemnity cases. Yet, Ms. Hascheff continues to make
23 the argument - again without any legal authority. The cases she cited in her reply are
24 not "indemnity/defense" obligation cases. *Long v. Towne*. 98 Nev. 11, 639 P. 2d 528
25 (1982) does not apply since Judge Hascheff did not commit a constructive fraud nor
26 did he have any confidential or fiduciary relationship with Ms. Hascheff when he
27 requested indemnity in January 2020. *Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335
28 (1995) also does not apply because Judge Hascheff did not act with intent to gain Ms.

1 Hascheff's confidence and purported to act or advise her, pretending to have her
2 interests in mind when he requested indemnity per MSA Section 40. His action in the
3 underlying trust case was beneficial to her, and indemnification is simply governed by
4 contract law.

5 Even if there is a fiduciary duty or implied covenant it was not breached under
6 any circumstances particularly since all the information, they requested was provided
7 within one day of the request. Ms. Hascheff argues Judge Hascheff should be
8 collaterally estopped from exercising his defense/ indemnity rights. It is not clear if she
9 is asserting issue preclusion (a form of collateral estoppel, or equitable estoppel,
10 and/or waiver). See *Kahn v. Morse & Mowbray*, 121 Nev. 464 117 p.3d 227 (2005). To
11 constitute equitable estoppel Ms. Hascheff must prove a promise was made to her by
12 Judge Hascheff and that she relied on the representation, which resulted in
13 detrimental reliance and damage *D.E. Shaw Laminar Portfolio Inc., LLC v. Achron*
14 *Corp.*, 570 F. Supp 2nd 1262 (2008); *In Re Harrison Living Trust*, 121 Nev. 217, 112 P.
15 3d 1058 (2005). *Mill-Spec, Inc. v. Pyramid Precast Corp*, 101 Nev. 820 710 P. 2d 1387
16 (1985) (no implied waiver from conduct which does not clearly reflect an intent to
17 waive). There was no conduct or promises or underlying facts which caused Ms.
18 Hascheff to act in a certain way to her detriment causing her damage to create any
19 such defense. In fact, she benefited when the underlying action concluded favorably.

20 In order to constitute a waiver of a right such as an indemnity or defense
21 obligation there must be a known right, a knowing voluntary waiver of that right and
22 intent to relinquish it. *In re Sports Restaurant & Saloon 64 B.R. 447 (D. Nev 1986)*.
23 Again, there are no facts justifying this defense.

24 Ms. Hascheff argues she is not pursuing the tort claim (i.e. breach of implied
25 covenant of good faith and fair dealing). If she is not pursuing the tort claim of a breach
26 of the implied covenant of good faith and fair dealing, then she abandoned and waived
27 it. Contract claims for the breach of the implied covenant typically do not provide the
28 nonbreaching party with her requested remedy.

1 **5. Attorneys Fees**

2 Ms. Hascheff argues she is entitled to attorney's fees as the prevailing party
3 and pursuant to NRS 125.150(3). This statute by its terms do not apply to this dispute
4 over a contractual indemnity. There is no prevailing party provision in the MSA except
5 for Section 35. As a condition precedent to claiming reasonable attorney's fees and
6 costs the prevailing party must first give a 10-day written notice specifying the
7 requirements and an opportunity to cure within the 10-day period. Failure to provide
8 this specific notice and opportunity to cure preclude attorney's fees and costs even if
9 they are the prevailing party. Ms. Hascheff did not provide this 10-day notice only
10 Judge Hascheff did. See Exhibit 7.

11 It should also be noted that Ms. Hascheff's Opposition to the instant Motion
12 does not directly address the fact that Judge Hascheff complied with the 10-day notice
13 requirement as required by Section 35 of the MSA. Postdivorce, the rights and
14 obligations of the parties are governed by contract principles. Judge Hascheff
15 complied with those contractual requirements.

16 For the foregoing reasons, Judge Hascheff moves this Court:

17 1. To issue an order for Ms. Hascheff to show cause as to why she intentionally
18 disobeys this Court's order (Findings of Fact, Conclusions of Law and Decree of
19 Divorce incorporating the terms of the parties' MSA, or in the alternative,

20 2. To enforce the terms of the parties' incorporated MSA, and order the
21 payment of the indemnification, and

22 3. Order Ms. Hascheff pay Judge Hascheff's attorney fees and costs whether
23 this matter proceeds as contempt, or as an order for enforcement upon affidavit from
24 counsel.

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AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: July 24, 2020.

The Law Office of
Todd L. Torvinen, Chtd.

/S/ Todd L. Torvinen
Todd L. Torvinen, Esq.

EXHIBIT INDEX

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Exhibit 1	Policy Endorsement	3 pages
Exhibit 2	Email from Andy Kenney	1 page
Exhibit 3	Declaration of Todd Alexander	2 pages
Exhibit 4	Email between Judge Hascheff and Shawn Meador	2 pages
Exhibit 5	MSA	18 pages
Exhibit 6	Email between Judge Hascheff and Lucy Mason	3 pages
Exhibit 7	Email & letter from Judge Hascheff to Shawn Meador	3 pages

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EXHIBIT "1"

EXHIBIT "1"

EN
OMN

This Endorsement, effective at 12:01 a.m.

Policy No.	0306-2628
Issued to	Pierre A. Hasch
Issued by	Darwin National

In consideration of the premium charge
follows:

1. Section I., INSURING AGREEMENT
and replaced with the following:

B. ADDITIONAL COVERAGES

1. Reimbursement for

The Insurer shall reimburse the Insured for actual loss, including reasonable expenses incurred, if first made during the period of coverage, in accordance with the terms of the policy. The amount payable under this Additional Coverage shall not exceed the number of claims, the number of hearings or arbitrations, or the number of arbitrations, as set forth in the policy. This coverage shall not apply to any liability and shall not

This coverage shall

2. Disciplinary Proceedings

The Insurer will reimburse the Insured for expenses incurred by the Insured in any Extended Reporting Period under this Additional Coverage. The amount payable under this coverage shall not exceed the number of disciplinary proceedings, as set forth in the policy, by the Insurer under the applicable limit of liability.

3. Non-Profit Directors

The Insurer will reimburse the Insured for expenses incurred by the Insured because of liability as set forth in the policy, when the Insured becomes a Non-Profit Director or Officer, Wrongful Act, or Extended Reporting Period.

The coverage provided under this Additional Coverage shall not contribute with any other coverage, including self-insurance, carried by the Insured, or contribution and indemnification provided to or from such Non-Profit Organization.

The most the insurer shall pay under this Additional Coverage shall be:

- (a) the per Claim Limit of Liability for the Organization's Directors and Officers;
- (b) the Limit of Liability for the Insured.

up to the maximum amount of such Claims. Any payment under Coverage 3 shall be part of the Limit of Liability.

It is a condition precedent to coverage that:

- (a) such individual Insured is a duly elected or appointed member of the Non-Profit Organization at the time of the occurrence giving rise to the claim and in the aggregate for all such claims, the total amount of such claims does not exceed the per claim and in the aggregate limit of liability;
- (b) such Non-Profit Organization is covered by the Policy Period or an extension of the Policy Period;
- (c) no more than ten percent of the total amount of such claims is covered by any other insurance.

In the event that a Wrongful Act gives rise to a Claim or multiple Claims, the Limit of Liability of this Additional Coverage shall apply to the aggregate of such Claims.

Subpoena Coverage

In the event the Insured is served with a subpoena requiring the production of documents or testimony, the Insured may, at its option, request the insurer to provide assistance in responding to the subpoena. The insurer shall provide such assistance, including the production of documents and testimony, and to represent the Insured in the event of a lawsuit.

- (a) the subpoena arises out of the Insured's business; and
- (b) the Insured has not been advised by the insurer to produce documents or testimony in the event of a lawsuit.

The maximum amount payable under this Additional Coverage shall be the applicable Limit of Liability and shall not exceed the applicable Limit of Liability.

Any notice the Insured gives the Insurer shall be deemed notification of a potential Claim.

2. Section IV. CONDITIONS, E. CONSENT TO SETTLE with the following:

E. CONSENT TO SETTLE

The Insurer shall not settle any Claim without the Insured's consent. The Insurer's consent shall not be unreasonably withheld. If the Insured consents to any settlement recommended by the Insurer, then, subject to the Limits of Declarations, the Insurer's liability for Damages under such Claim shall not exceed:

1. the amount for which the Claim is settled, plus Expenses incurred up to the time of settlement (the "Settlement Amount"); plus
2. fifty percent (50%) of any Damages in excess of the Settlement Amount.

The remaining fifty percent (50%) of any Damages in excess of the Settlement Amount will remain uninsured.

If the Insured refuses to consent to any settlement recommended by the Insurer, as described above, then, once the Insurer has tendered the Settlement Amount, the Insurer shall have the right to defend and defend of such Claim by tendering costs to the Insured. The Insured agrees, as a condition of such tender and proceeds at its own expense.

If the Named Insured has not paid any premium under this Policy, the Insurer has the right, but not the obligation, to defend and defend of such Claim without the consent of the Insured.

All other terms, conditions and limitations of this Policy shall apply.

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EXHIBIT "2"

EXHIBIT "2"

AA 0178

From: Kenney, Andy Andy.Kenney@awac.com
Subject: Jaksick Subpoena; Ref. 2018018714
Date: Aug 21, 2018 at 1:24:02 PM
To: Pierre Hascheff pierre@pahascheff.com

Pierre,

It was a pleasure speaking with you. Attached please find your 2013-2014 professional liability policy as well as Endorsement No. 5, which confirms you purchased an extended reporting period ("ERP") that went into effect upon termination of the policy and expires on 1/1/19.

For ease of reference, the pertinent sections I intend to focus on when we speak again are as follows: Endorsement No. 3, which amends Policy Section I.B.4. – Subpoena Coverage; Policy Section II.C. – Definition of Claim; Policy Section IV.G.2. – Optional Extended Reporting Period, and; Endorsement No. 5. ? step 183

As I mentioned, the ERP is for reporting Claims made during the ERP for acts allegedly committed prior to the policy termination date, which in this case is 1/1/14. You cannot report potential claims during the ERP. Also, there is no coverage for subpoenas received during the ERP, as subpoenas are not Claims.

Finally, I mentioned that I would be happy to refer you to some lawyers on our panel that we work with in the Las Vegas area. There are:

Elizabeth Skane – Skane Wilcox
Joe Garin – Lipson, Nielson
Rob Larson – Gordon & Rees

I am looking forward to continuing our discussion.

Andy

Andy Kenney, Esq.
Senior Claims Analyst
North American Claims Group
Allied World Insurance Company (U.S.), Inc.
1690 New Britain Avenue, Suite 101
Farmington, CT 06032
T: 860-284-4022
F: 860-284-1301
E: Andy.Kenney@awac.com
W: www.awac.com

EXH 2

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EXHIBIT "3"

EXHIBIT "3"

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA
3 COUNTY OF WASHOE } ss.
4

5 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

6 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
7 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

8 2. I was retained by Hascheff once he received a multi-page subpoena requesting
9 any and all documents, correspondence, communications etc. with respect to his estate
10 planning and related advice to Samuel Jaksick and related parties.

11 3. It was prudent on Hascheff's part to retain counsel immediately because the
12 information requested clearly was aimed at undermining his estate plan and advice which
13 could lead to a malpractice action depending on the jury verdict.

14 4. It was clear that Hascheff was being accused of malfeasance and mishandling
15 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
16 their share of the estate.

17 5. There was also a possible claim by another beneficiary that Hascheff provided
18 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
19 brother and sister with a substantial damage claim against him.

20 6. Hascheff was clearly at risk depending on the outcome of the underlying
21 litigation.

22 7. There were two days of depositions and two days of trial testimony, not to
23 mention countless meetings with various attorneys to protect Hascheff's interests.

24 8. The fees and costs incurred in this case were necessary and reasonable to
25 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
26 million dollar claim against him outside the coverage limits of his applicable insurance policy.

27 9. It should be noted that malpractice actions are not typically filed until the
28 conclusion of the underlying litigation to determine whether the attorney is guilty of
malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
EISENBERG
5 PLUMAS ST.
4TH FLOOR
SPRINGFIELD, NV 89519
PHONE: 786-6868

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EXHIBIT "4"

EXHIBIT "4"

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador
Cc: Todd Torvinen
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you. In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvinen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnity and payment is also additional evidence that your claims are without merit. See also NRC 16.21

This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement. Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because

EXH. 4

those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The Indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days

Sent from my iPad

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Transaction # 798478 ~~secretary~~

EXHIBIT "5"

EXHIBIT "5"

MARITAL SETTLEMENT AGREEMENT

This Marital Settlement Agreement is entered into effective September 1, 2013, between **Pierre A. Hascheff** (Husband) and **Lynda Lee Hascheff** (Wife) in order to resolve all issues between them with regard to the dissolution of their marriage. The parties intend this Agreement to be a final and complete settlement of all of their rights and obligations to each other arising out of their marriage, including without limitation, all past and present interspousal claims of any kind that either may have against the other, except as otherwise provided in this Agreement.

Therefore, Husband and Wife agree as follows:

RECITALS

Marriage and Separation

1. Husband and Wife were married on September 8, 1990 in Reno, Washoe County, Nevada, and have thereafter, been married to each other continuously. They have lived separate and apart since April 12, 2012. The duration of the marriage is 23 years.

Grounds for Divorce

2. Irreconcilable differences have arisen between Husband and Wife, which have led to an irreparable breakdown of the marriage. There is no possibility of saving the marriage through counseling or other means, and the parties have agreed to the dissolution their marriage.

Children of Marriage

The parties have no minor children. Wife may claim both children as dependents to the extent she is eligible to do so. Notwithstanding the previous, if wife receives no tax benefit from said dependents, then Husband may claim one or both.

Legal Proceedings

3. The original of this Agreement shall be filed with the Court. The court will be requested to (i) approve the entire Agreement as fair and equitable; (ii) order each party to comply with all of its executory provisions; and (iii) merge the provisions of the Agreement into the Decree of Divorce. This Agreement is not conditioned upon the merger with or entry of the Decree of Divorce.

PA *LL*

SPOUSAL SUPPORT

Payments of Spousal Support

4. Husband shall pay spousal support to Wife in the sum of \$4,400.00 per month for three (3) years until August 30, 2016. Commencing on September 1, 2016, Husband will pay spousal support of \$3,400.00 until he retires. Payments shall be due on or before the first day of the month. The alimony may be readjusted accordingly in the event of changed circumstances. Wife acknowledges the alimony and Wife's PERS survivor benefit is a material consideration and material part of this settlement.

Termination of Spousal Support

5. The payments of spousal support provided in this Agreement, and the court's jurisdiction to order spousal support, shall terminate on the death of either party or on the remarriage of Wife before the above termination date.

Modification of Amount of Spousal Support

6. The amount of the periodic payments of spousal support provided in this Agreement may be modified either upward or downward or terminated by any court in the future on a showing of change of circumstances.

Alimony Tax Treatment

7.1. All payments to or on behalf of Wife for her support, as set forth above, are intended to qualify as alimony under Internal Revenue Code sections 71 and 215, and are to be included in Wife's gross income and deducted by Husband as provided in those Code sections.

7.2. Wife agrees that she shall report as income on her federal and state income tax returns for the year of receipt all sums paid to her, or on her behalf, by Husband under this Agreement, and that she shall pay any resulting taxes due. Wife agrees to indemnify and hold Husband harmless from any federal and state income tax obligation that he may incur by reason of Wife's failure to report as income, and pay the taxes due on, sums paid to her or on her behalf as spousal support under this Agreement.

Spousal Support Provisions Contingent on Tax Laws

8. The parties have agreed on the spousal support provisions of this Agreement in light of the existing federal and state income tax laws, which provide that spousal support is deductible by the payor and taxable to the payee. If the laws are changed so that spousal support payments shall be taxable to the payor and not to payee, the issue of spousal support shall be subject to future negotiation, agreement, or order of court.

Notice of Occurrence of Contingencies

Husband PA Wife JH Page 2 of 16

9. Husband and Wife shall each notify the other promptly and in writing of the happening of any contingency that affects the right or duty of either party to receive or make spousal support payments under the terms of this Agreement. Any overpayments of spousal support made by Husband after the occurrence of such a contingency and before receipt of the notice shall immediately be refunded by Wife, or set off against future payments after first applying the overpayments to any support amounts that are in default.

10. Wife acknowledges Husband has no obligation to provide Wife with health insurance coverage. Husband will cooperate with Wife so she may obtain COBRA insurance coverage within sixty (60) days after entry of decree of divorce. Husband will pay one-half (1/2) the cost of the COBRA premium for a period of eighteen (18) months provided, however, if Wife obtains her own coverage through her employment, the COBRA payments shall cease. Husband's payment share of COBRA premium is not considered alimony. Wife acknowledges Husband can no longer carry health insurance on Wife after the divorce. In lieu of COBRA, Wife may obtain her own health insurance policy in the private market or through the exchange offered through the Affordable Care Act (So-Called Obamacare). In the event she does so, the same terms and conditions shall apply as if she had obtained COBRA continuation coverage.

DIVISION OF PROPERTY

Division of Community Assets

11. Husband and Wife agree that their community property shall be divided between them as set forth below.

11.1 The parties further agree that this Agreement effects a substantially equal division of their community property. Any equalization is forever waived.

11.2 Riverside Drive office and back house located at 1029 and 1029 ½ will be sold and the net proceeds less expenses, storage and relocation costs will be shared equally. Each party shall bear one half of the tax consequences as a result of the sale.

11.3 The Wife will receive the Alpine Meadows property and the Pineridge property valued at \$360,000.00 and \$120,000.00 respectively. The property at 120 Juanita Drive, Incline Village, Nevada will be sold. Husband will receive the 2555 Manzanita property valued at \$760,000.00. The Arizona property at 2128 Catamaran will be sold. The parties will jointly agree to the initial and any subsequent changes to the listing price and terms of any sale described above. If the parties are unable to agree on the terms of any sale, the respective realtor will mediate the dispute and if the parties still cannot agree, the Court will decide the issue. The net proceeds of any sales described above, after taxes, storages, other expenses and moving costs will be divided equally. Each party reserves the right to use their one-half (1/2) of the net proceeds in a tax free exchange under IRC 1031.

PKA *lh*

Assets Assigned to Wife

12. Husband releases, transfers, and assigns to Wife, as her sole and separate property, all of his right, title, and interest in and to the assets listed below. Husband further agrees to execute all documents that may be required to establish or confirm Wife's sole ownership of all listed assets as described on **Exhibit 1** attached hereto and incorporated by reference.

Assets Assigned to Husband

13. Wife releases, transfers, and assigns to Husband, as his sole and separate property, all of her right, title, and interest in and to the assets listed below. Wife further agrees to execute any and all documents that may be required to establish or confirm Husband's sole ownership of any listed asset as described on **Exhibit 1** attached hereto and incorporated by reference.

Encumbrances and Litigation

14. With regard to all property assigned under this Agreement, except as may otherwise be specifically provided in this Agreement, the assignee spouse assumes all encumbrances and liens on the property and agrees to indemnify and hold the other party free and harmless from any claim or liability that the other party may suffer or may be required to pay because of those encumbrances or liens, including the payment of reasonable attorney fees. Wife and Husband shall refinance their respective properties to remove and release the other from the existing loan and liability within one (1) year.

Insurance

15. The Husband's current group term life insurance with Washoe County and the NY Life insurance shall, as of the effective date of this Agreement, remain with Husband as owner and Wife shall receive 100% of the net proceeds of Husband's Washoe County and NY life insurance policy if ~~Husband dies on or before January 1, 2019.~~ Husband has no obligation to ^{PA} maintain the NY Life policy after December 31, 2014. Husband shall be considered the owner of the insurance policy, and shall pay all policy premiums coming due on and after that date, for so long as the policy is maintained in force. Wife acknowledges Husband's Washoe County policy will terminate if Husband is no longer a county employee.

Social Security

16. The Parties retain their respective Social Security benefits, including any derivative rights to which they might be entitled by virtue of their marriage to each other, as their separate property pursuant to federal law.

Pierre A. Hascheff, Chtd. Profit-Sharing Plan

Husband PA Wife lh Page 4 of 16

17.1. Wife's 1/2 interest in the Pierre A. Hascheff, Chtd., Profit-Sharing Plan shall be implemented by a separate Qualified Domestic Relations Order (QDRO). Wife shall have the right to elect to have her interest in the Pierre A. Hascheff, Chtd., Profit-Sharing Plan allocated to a separate account for her (if permitted by the Pierre A. Hascheff, Chtd., Profit-Sharing Plan); or distributed to her directly; or distributed to an IRA or eligible retirement plan of which she is a beneficiary. If Husband predeceases Wife, payment to Wife shall nonetheless be made under the terms of this Agreement. If Wife dies before full payment to her has been made, the amount unpaid shall be distributed to the beneficiary designated in writing by Wife to the plan administrator of the Pierre A. Hascheff, Chtd., Profit-Sharing Plan in the manner prescribed by the plan administrator, or if no beneficiary has been so designated, to Wife's estate.

17.2. Wife shall report, pay, and be responsible for all taxes due on amounts received by her from the Pierre A. Hascheff, Chtd., Profit-Sharing Plan. Under the Internal Revenue Code, the nonparticipant spouse shall be treated as the distributee of any distribution or payment made to her under a QDRO. As such, all amounts distributed to the nonparticipant from the Pierre A. Hascheff, Chtd., Profit-Sharing Plan are otherwise includible in income shall be taxable to the nonparticipant to the extent not rolled over to another qualified plan or Individual Retirement Account. The Wife shall indemnify Husband for any taxes (including interest and penalties, and "tax on the tax", if any) that he may be required to pay to any taxing authority in connection with any plan distribution. The parties agree to cooperate in filing consistent tax returns in connection with distributions received from Pierre A. Hascheff, Chtd., Profit-Sharing Plan. The court shall reserve jurisdiction to resolve any disputes in connection with any tax return. If either spouse should breach his or her reporting or payment obligations, he or she shall indemnify the other spouse for any cost, fee, or other expense (including but not limited to accounting and attorney's fees) incurred by the other spouse in connection with any audit or examination of the other spouse's tax return, relative to accomplishing the tax result described above.

Husband's PERS Benefits

18.1. Wife is entitled to, and awarded as her separate property, her community interest in and benefits of Husband's Public Employees' Retirement System Nevada ("PERS" or the "System") to which Husband is or may become entitled on account of his past, present, and future employment.

18.2. Husband will elect a form of benefit that would pay to Wife (in the event of Husband's death during pay status prior to that of Wife), a sum equal to the amount that would be paid to Wife under Option 6 with the specific sum payable to Wife if she survives Husband. The Wife's share of Husband's pension during the parties' joint lives shall be determined under the "wait and see" approach described in the *Gemma* and *Fondi* cases. The option 6 survivors amount payable to the Wife upon the death of the Husband shall be the sum of \$3,200.00 per month, adjusted for any COLA increases which occur after the date of the Husband's retirement. The parties agree to equally bear during their joint lives when Husband is retired, the premium cost (the reduction in the monthly benefit) between option 1 and option 6. By way of example, if Husband's unmodified option 1 benefit is \$8,200 per month, and the option 6 benefit is \$7,000 per month, the premium cost is therefore \$1,200 per month. Upon retirement, for example, if Husband receives 60% of the benefit and Wife receives 40% of the benefit, then without

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adjustment Husband would be paying 60% of the \$1,200 premium cost per month (\$720); and Wife would be paying 40% of the \$1,200 premium cost per month (\$480). In order to equally divide the premium cost of \$1,200, 10% of the total premium cost (\$120) would be subtracted from Wife's monthly benefit, and \$120 would be added to Husband's monthly benefit during the joint lives of the parties. In the event Wife predeceases the Husband, the benefits revert to the Husband.

18.3. In the event Husband dies before he retires and before starts receiving PERS benefits, Wife shall receive 100% of any survivor benefits provided Husband dies on or before January 1, 2019. If Husband dies after January 1, 2019, but before he retires, Wife will receive 75% and the children will receive 25% of said benefits to be shared equally by the children. Wife and Husband agree to establish an escrow and/or trust for the children's share of said survivor benefits.

18.4. Husband is awarded the balance of any and all the benefits as his separate property from PERS, whether fixed, accrued, contingent or otherwise.

18.5. During the joint lives of the parties, the System shall directly pay Wife her interest in the monthly retirement allowance.

18.6. Wife understands that she will be entitled to a distribution of retirement benefits under PERS although Husband is not yet retired. Wife acknowledges her right to make a "Gemma election" to obtain an immediate distribution of her interest in these retirement benefits on or after the date when Husband is first eligible to draw a retirement allowance from PERS (irrespective of his decision not to retire). Wife hereby waives her right to make a "Gemma election".

18.7. The Parties will enter into a stipulated Qualified Domestic Relations Order to divide the retirement benefits provided for by the Public Employees' Retirement System Nevada. The court shall retain jurisdiction to resolve any disputes concerning the content of the Qualified Domestic Relations Order or to implement or correct any nonqualifying provision by issuing an amended or subsequent order. Until a Qualified Domestic Relations Order is executed by the parties and qualified by the administrators or the court, Husband shall not make or accept any election, or take any action, under the Public Employees' Retirement System Nevada (nor shall the Plan accept any elections) that might adversely affect Wife's interest in the Plan without Wife's prior written consent or further court order upon ninety (90) days' notice to Wife (which notice may be shortened by the court upon a showing of good cause). Pending the preparation of the above order, the parties intend for this Agreement, when incorporated into a Decree of Divorce, to constitute a Qualified Domestic Relations Order for the Public Employees' Retirement System Nevada (if this becomes necessary). The parties stipulate that to the extent that any provision of this Agreement (when incorporated into a Decree of Divorce) pertaining to qualified plans is not found to constitute a Qualified Domestic Relations Order, the court shall retain jurisdiction to implement or correct any nonqualifying provision by issuing an amended or subsequent Qualified Domestic Relations Order.

Division of Personal Property

Husband PA Wife W Page 6 of 16

18.8. The parties will make a division of all remaining items of furniture, furnishings, and personal property to the extent they can agree. Thereafter, items will be allocated in the following manner. The parties shall flip a coin to determine which party will make the first choice of items. The other party will have the second and third choice of items. The party who made the first choice will have the fourth choice, and all choices after that will alternate between the parties until all items are selected. Selections shall be without regard to value. Parties will retain respective furniture in their residence.

Assets Assigned to Parties' Children

19. The following assets shall be owned as follows:

19.1 The 2011 Toyota RAV4 by Wife and insured by and paid for by Wife; and

19.2 The 2008 Jeep by Husband and insured by and paid for by Husband.

19.3 To the extent allowed, Wife's car and the daughter's car (RAV4) will remain under the current umbrella policy and Wife will reimburse Husband their respective share of the total premium.

19.4 Any other assets the parties allocated the children as described elsewhere in this Agreement.

The assets agreed to be owned by the children are not a part of the division of community property of the parties. Assets may be transferred to a minor under the Uniform Gifts to Minors Act, as agreed to by the parties.

Allocation of Community Debts

20. Husband and Wife agree that their community debts and obligations shall be allocated between them as set forth below. The parties further agree that this Agreement effects an equal division of their community debts and obligations.

Debts Assumed by Husband

21. Each party agrees to assume and pay the debts as disclosed on Exhibit 1. Husband further agrees (1) to indemnify and hold Wife harmless from the above debts, and (2) to defend Wife, at his own expense, against any claim, action, or proceeding that is hereafter brought seeking to hold Wife liable on account of these debts, including the payment of reasonable attorney fees incurred by Wife in defense of any such claim, action, or proceeding. Wife agrees Husband may payoff the Sam's Club debt with the community property funds and Wife will obtain her own Sam's Club account card. Husband will retain the current Sam's Club account. Husband will assume his credit card debt.



Debts Assumed by Wife

22. Each party agrees to assume and pay the debts as disclosed on Exhibit 1. Wife further agrees (1) to indemnify and hold Husband harmless from the above debts, and (2) to defend Husband, at her own expense, against any claim, action, or proceeding that is hereafter brought seeking to hold Husband liable on account of these debts, including the payment of reasonable attorney fees incurred by Husband in defense of any such claim, action, or proceeding. Husband will pay Wife's credit card debt up to \$6,000.00 from the parties joint account in accordance with **Exhibit 1**. Wife will assume her credit card debt in excess of \$6,000.00.

Division of Omitted Assets

23. If, after the execution of this Agreement, any asset is discovered to exist that was not listed in and disposed of by this Agreement and that would have been community or quasi-community property of the parties, that omitted asset shall be divided equally between the parties. If, however, the existence of the asset was known to one of the parties at the time of execution of this Agreement, the party with that knowledge shall transfer or pay to the party without knowledge of the asset ("the other party"), at the other party's option, one of the following: (1) if the asset is reasonably susceptible to division, a portion of the asset equal to the other party's interest in it; (2) the fair market value of the other party's interest in the asset on the effective date of this Agreement, plus interest at the legal rate from the effective date to the date of payment; or (3) the fair market value of the other party's interest in the asset on the date on which the other party discovers the existence of the asset, plus interest at the legal rate from the discovery date to the date of payment. This provision will not be deemed to impair the availability of any other remedy arising from nondisclosure of community assets.

Omitted Community Debts

24. The parties acknowledge that they have provided in this Agreement for the payment of all community debts of which each is aware. Any debt, claim, or obligation (including the cost of defending against it) not provided for in this Agreement and unknown by the parties at the time of the preparation of this Agreement, will be deemed a joint community obligation as long as the debt, claim, or obligation arose from the conduct of both parties, or from the conduct of one party and the marital community benefitted from that conduct, occurring during the marriage but before the effective date of this Agreement. If, however, an omitted claim, debt, or obligation arose from the conduct of only one party and the community did not benefit from it, then that claim, debt or obligation will be the sole and separate obligation of that party. This provision will not be deemed to impair the availability of any other remedy arising from nondisclosure of community debts.

Reimbursement and Equalizing Payment

25.1. To equalize the division of the parties' community assets and obligations, Husband agrees to pay Wife the \$82,000.00 equalization payment although the equalization payment shown on

Husband PH Wife JK Page 8 of 16

Exhibit 1 is \$80,697.00. Said equalization payment shall be paid from the net proceeds from the sale of the Incline property provided, however, if the Incline property is not sold within one (1) year of the property's listing date, then Husband will pay Wife the sum of \$82,000.00 equalization payment within ninety (90) days after the expiration of said one (1) year period.

Waivers Regarding Future Earnings and Acquisitions

26. The parties agree and acknowledge that all income, earnings, or other property received or acquired by Husband or Wife on or after September 4, 2013, the date of this agreement, is the sole and separate property of the receiving or acquiring party. Each party does forever waive, release, and relinquish all right, title, and interest in all income, earnings, or other property so received or acquired by the other.

Revocation of Trust

27. The parties have previously created the Pierre and Lynda Hascheff Revocable Trust, dated May 17, 2005, naming Husband and Wife as Trustees. The parties now revoke the Pierre and Lynda Hascheff Revocable Trust and agree that the remaining trust property shall be distributed one-half (1/2) to each according to the terms of this Agreement.

Post-Separation Debts

28. The parties agree that every debt incurred by either party after September 4, 2013, shall be the obligation of the party incurring the debt. The parties further agree that the party incurring a debt after that date shall (1) indemnify and hold the other party harmless from the debt, and (2) defend, at his or her own expense, the other party against any claim, action, or proceeding that is brought seeking to hold the other party liable on account of the debt, including the payment of reasonable attorney's fees incurred by the other party in defending against any such alleged liability.

Warranty of Disclosure of Assets and Debts

29. Each party warrants to the other that (1) all community assets and debts of which he or she has any knowledge have been addressed in this Agreement, (2) that he or she is not possessed of or entitled to any community assets of any kind or description that have not been disposed of by this Agreement, and (3) that he or she has not incurred any community debts or obligations other than those disposed of by this Agreement.

Warranty Against Additional Debts

30. Each party warrants to the other that he or she has not incurred, and will not incur, any debt as to which the other is, or may become, liable, other than those debts addressed in this Agreement.

PAYMENT OF TAXES

Joint Income Tax Returns

31.1. The parties shall file joint federal income tax return for the calendar year ending December 31, 2012.

31.2. Husband shall be responsible for the preparation of the joint tax return. Wife shall cooperate with Husband in the preparation of the joint tax return by providing all information necessary to prepare the joint return (including but not limited to, W-2 forms from all employers, statements of income from any source other than employment, interest from bank accounts, itemized deductions, and tax credits). This information shall be provided no later than thirty days before the deadline date for filing the return with the Internal Revenue Service.

31.3. Husband shall send the completed returns to Wife for approval and signature at least fifteen days before the deadline date for filing the return with the Internal Revenue Service. If the tax return as prepared are not acceptable to Wife, Wife shall notify Husband of her objections within ten days before the filing deadline.

31.4. Should either party fail to cooperate in the preparation and filing of the joint return, that party shall pay any additional tax liability, late penalties, interest, attorney's or accountants' fees, and any other fees or costs incurred as a result of the failure to cooperate.

31.5. Husband shall pay all expenses incurred in the preparation and filing of the joint return.

31.6. Husband and Wife shall equally pay all amounts owing, if any, in connection with the joint income tax return filed under this Agreement.

31.7. If either party fails to comply with the provisions of the paragraphs above, that party shall indemnify the other party for, and hold the other party harmless from, any increased tax liability, late penalties, interest, attorney's fees, accountant's fees, and any other fees or costs incurred by or assessed against the other party as a result of the first party's failure to comply.

Payment of Tax Deficiencies

32.1. Husband and Wife shall be equally responsible for paying all taxes, assessments, liabilities, deficiencies, penalties, interest, and expenses (including, but not limited to, accounting and legal fees) to any federal, state, or local taxing authorities arising out of any review of the parties' personal income tax returns for any period for which the parties filed joint returns.

32.2. Each party shall forward to the other party a copy of any tax deficiency notice or other correspondence or documentation received from any federal, state, or local taxing authority relating to any joint income tax returns. Each party agrees to cooperate fully with the other and to execute any document reasonably requested by the other, and to furnish information and testimony with respect to any tax liability asserted by taxing authorities on any joint return.

32.3. After the Divorce, each party shall be responsible for their own taxes, interest penalties and expenses.

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Allocation of Tax Refund

33. Any tax refund received in connection with any joint income tax return filed by the parties shall be divided equally between the parties.

COSTS AND ATTORNEY FEES

Payment of Attorney Fees and Costs

34. Each party shall be solely responsible for his or her own attorney fees and costs incurred in connection with the negotiation, preparation, and execution of this Agreement and in connection with any proceeding for Dissolution of Marriage that may be commenced by either party. Neither party shall be liable to the other party for any of the other party's attorney fees or costs.

Payment of Future Attorney Fees and Costs to Prevailing Party

35.1. If either party to this Agreement brings an action or proceeding to enforce any provision of this Agreement, or to enforce any judgment or order made by a court in connection with this Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable attorney fees and other reasonably necessary costs from the other party.

35.2. A party intending to bring an action or proceeding to enforce this Agreement shall not be entitled to recover attorney fees and costs under this provision unless he or she first gives the other party at least 10 written notice before filing the action or proceeding. The written notice shall specify (1) whether the subsequent action or proceeding is to enforce the original terms of the Agreement; (2) the reasons why the moving party believes the subsequent action or proceeding is necessary; (3) whether there is any action that the other party may take to avoid the necessity for the subsequent action or proceeding; and (4) a period of time within which the other party may avoid the action or proceeding by taking the specified action. The first party shall not be entitled to attorney fees and costs if the other party takes the specified action within the time specified in the notice.

GENERAL PROVISIONS

Representation by Counsel

36.1. Husband has been represented in the negotiation and preparation of this Agreement by his attorney of record Todd L. Torvinen, Esq., Esq. Wife has been represented in the negotiation and preparation of this Agreement by her attorney of record Shawn B. Meador. This Agreement was prepared by Husband's attorney. However, the rule of construction that ambiguities are to be construed in favor of the nondrafting party shall not be employed in the construction of this Agreement.

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Execution of Instruments and Further Assurances

37. Husband and Wife shall each execute and deliver promptly on request to the other any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary or proper to carry out their obligations under this Agreement. If either party fails or refuses to comply with the requirements of this paragraph in a timely manner, that party shall reimburse the other party for all expenses, including attorney fees and costs, incurred as a result of that failure, and shall indemnify the other for any loss or liability incurred as a result of the breach. Further, in case of a breach of the duties imposed by this paragraph, the court may, on ex parte application, order the county clerk to execute any document or other paper on behalf of the breaching party.

Release of All Claims

38. Except for the obligations contained in or expressly arising out of this Agreement, each party releases the other from all interspousal obligations, and all claims to the property of the other or otherwise. This release extends to all claims based on rights that have accrued before or during marriage, including, but not limited to, property and support claims and claims sounding in tort except Wife's obligation to defend and indemnify Husband for any malpractice claims.

Waiver of Rights on Death

39. Each party waives all right to inherit in the estate of the other party on his or her death, whether by testamentary disposition or intestacy, except under the terms of a will executed after the effective date of this Agreement. Each party further waives the right to claim a family allowance or probate homestead, or to act as personal representative of the estate of the other unless nominated by another person legally entitled to the right.

Indemnity and Hold Harmless

40. Except for the obligations contained in or expressly arising out of this Agreement, each party warrants to the other that he or she has not incurred, and shall not incur, any liability or obligation for which the other party is, or may be, liable. Except as may be expressly provided in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission of the other, the warranting party shall, at his or her sole expense, defend the other against the claim, action, or proceeding. The warranting party shall also indemnify the other and hold him or her harmless against any loss or liability that he or she may incur as a result of the claim, action, or proceeding, including attorney fees, costs, and expenses incurred in defending or responding to any such action. In the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense and judgment Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

Agreement Entered Into Voluntarily

Husband PA Wife WR Page 12 of 16

41. Husband and Wife represent that each, respectively:
- a. Is fully and completely informed as to the facts relating to the subject matter of this Agreement, and as to the rights and obligations of both parties;
 - b. Has entered into this Agreement freely and voluntarily, without any coercion, undue influence, duress, or threat from any person;
 - c. Has carefully read each provision of this Agreement; and
 - d. Fully and completely understands each provision of the Agreement.

Each party acknowledges that this Agreement is fair and equitable to both parties.

Modification and Revocation

42. Except as otherwise provided in this Agreement, the terms of this Agreement may be modified or revoked only by a writing signed by Husband and Wife that expressly refers to this Agreement. The parties understand that this limitation is subject to the power of a court to modify any provisions or orders at any time concerning the custody, visitation, and support of their children.

Effect of Reconciliation

43. If after the effective date of this Agreement, as set forth in Paragraph 44, but before entry of any order or judgment of the court based on it, Husband and Wife acknowledge and agree in writing that their marriage has been restored and that they have mutually rescinded their intent to Dissolution of Marriage, the executory provisions of this Agreement are to remain in force unless revoked or modified.

Effective Date

44. The effective date of this Agreement shall be the date on which it is last executed by either party, as set forth below.

Entire Agreement

45. This Agreement constitutes the entire agreement of Husband and Wife concerning the settlement of their respective rights and obligations arising out of their marriage. It is a full and final settlement of all of those rights and obligations, including spousal support, property rights, liabilities, and other interspousal claims that either may have against the other. This Agreement supersedes any and all other agreements, oral or written, entered into between the parties before the effective date of this Agreement concerning their respective rights and obligations arising out

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of their marriage. There are no enforceable representations or warranties other than those set forth in this Agreement.

Parties Bound

46. Except as otherwise expressly provided, this Agreement shall be binding on, and shall inure to the benefit of, the respective beneficiaries, legatees, devisees, heirs, representatives, executors, administrators, assigns, and successors in interest of Husband and Wife.

Effect of Partial Invalidity

If any provision of this Agreement is held by any court to be invalid, void, or unenforceable, that provision shall be deemed to be struck from the Agreement and the remainder of the Agreement shall be unaffected and shall remain in full force and effect.

Waiver of Breach

47. No waiver of any breach of this Agreement or default under it shall be deemed to be a waiver of any subsequent breach or default of the same or similar nature. No waiver of any rights under this Agreement shall be deemed to be a waiver for all time of those rights, but shall be considered only as to the specific events surrounding that waiver.

Paragraph Titles and Interpretation

48. Paragraph titles have been used throughout this Agreement for convenience and reference only. They are not intended to set forth substantive provisions, and shall not be used in any manner whatsoever in the interpretation of the Agreement.

Governing Law

49. This Agreement has been drafted, and shall be executed, entirely within the State of Nevada and shall be governed by and interpreted and enforced under the law of the State of Nevada as that law stands on the effective date of the Agreement. Interpretation shall not be affected by any changes in that law after that date. The parties understand, however, that child custody and child support orders are subject to state and federal laws that determine and limit state court jurisdiction to make and modify these orders, and do not, by this provision, intend to affect the application of those laws.

Advice Regarding Future Property Rights

50. The parties acknowledge that they have been advised to review their wills, insurance policies, retirement benefit plans, credit cards and other credit accounts and reports, and other matters that they may want to change in view of their dissolution of marriage. The parties

Husband PA Wife JW Page 14 of 16

further acknowledge that they have been advised to review all property rights and employment benefits that have survivorship or inheritance features, such as life insurance policies, pensions, inter vivos trusts, joint tenancies in real and personal property, and bank accounts, to ensure that their present intentions are accurately expressed in the governing instruments.

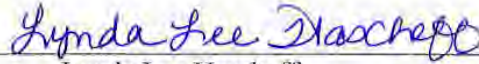
Each undersigned party agrees to the terms and conditions of this Agreement, effective as of the date the last party signs.

DATED this 30 day of Sept, 2013.



Pierre A. Hascheff

DATED this 30th day of Sept, 2013.



Lynda Lee Hascheff

ACKNOWLEDGMENTS

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 30th day of Sept., 2013, personally appeared before me, a Notary Public, PIERRE A. HASCHEFF, personally known (or proved) to me to be the person whose name is subscribed to the above *Marital Settlement Agreement*, who acknowledged that he executed the *Marital Settlement Agreement*.



Jessica J. Fisher
Notary Public

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

On this 25 day of Sept., 2013, personally appeared before me, a Notary Public, LYNDA LEE HASCHEFF, personally known (or proved) to me to be the person whose name is subscribed to the above *Marital Settlement Agreement*, who acknowledged that she executed the *Marital Settlement Agreement*.



Victoria Sayer
Notary Public

Husband PIA Wife LL Page 16 of 16

Section 7: Asset and debt Chart

		COMMUNITY			SEPARATE	
		TOTAL	HUSBAND	WIFE	HUSBAND	WIFE
ASSETS:						
CASH:						
1	PAH Chtd Checking US Bank (1596)	8,400	3,200	3,200		
2	PAH Savings US Bank (6551) & (3704)	34,000	17,000	17,000		
3	Riverside LLC US Bank (office) (3825)	4,000	2,000	2,000		
4	PAH LLC US Bank(Az house) (8156)	4,400	2,200	2,200		
5	PAH Justice Ct US Bank(6859)	434	217	217		
6	Revocable Trust US Bank (7113) & 9696	210,000	105,000	105,000		
7	Revocable Trust US Bank (9274) & 4371	18,000	9,000	9,000		
8	Lynda checking US Bank	3,000	1,500	1,500		
9	Subtotal	280,234	140,117	140,117	0	0
10 INVESTMENTS:						
11	LPL Financial (stock account) 3439	161,773	80,886	80,887		
12	Subtotal	161,773	80,886	80,887	0	0
13 RECEIVABLES, & DEPOSITS						
14	Acct Rec. (office)	5,000	2,500	2,500		
15	Subtotal	5,000	2,500	2,500	0	0
16 REAL PROPERTY						
17	Incline Condo	560,000	280,000	280,000		
18	6236 Alpine	360,000	0	360,000		
19	905 Pineridge	120,000	0	120,000		
20	1029 Riverside (less sell exp)	500,000	250,000	250,000		
21	2555 Manzanita	760,000	760,000	0		
22	Arizona	520,000	260,000	260,000		
23	Cancun Timeshare	0	0			
24	Subtotal	2,820,000	1,550,000	1,270,000		0
25 AUTOS & RECREATIONAL VEHICLES. Provide make, model, mileage, and vehicle identification number.						
26	2013 Jeep Cherokee	34,000	34,000			
27	2011 RAV 4	20,000	10,000	10,000		
28	2008 Jeep Liberty	12,000	6,000	6,000		
29	2006 Lexus RX330	18,000		18,000		
30	Subtotal	84,000	50,000	34,000	0	0
31 PERSONAL PROPERTY.						
32	Furniture "H" Manzanita	30,000	15,000	15,000		
33	Furniture "W" Alpine	26,000	13,000	13,000		
34	Football & Baseball Tickets	3,000	1,500	1,500		
35	Subtotal	59,000	29,500	29,500	0	0
36 RETIREMENT ACCOUNTS.						
37	ICMA (457 Plan)	11,610	5,805	5,805		
38	PAH Profit Sharing	328,478	164,239	164,239		
39	Lynda IRA	24,720	0	24,720		
40	Pierre IRA	20,114	20,114			
41	1 Yr Group Term Life Insurance (\$250,000) Value 0					
42	Subtotal	384,922	190,158	194,764	0	0
43						
44	TOTAL ASSETS	3,794,929	2,043,161	1,751,768	0	0
45						

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Section 7: Asset and debt Chart

		COMMUNITY			SEPARATE	
		TOTAL	HUSBAND	WIFE	HUSBAND	WIFE
46	DEBT					
47	Mortgages, notes & deeds of trust. (Indicate if debt is secured by particular asset above)					
48	Chase (Manzanita)	390,000	390,000	0		
49	Quicken Loan (Alpine)	265,000	0	265,000		
50						
51	Subtotal	655,000	390,000	265,000	0	0
52	Charge Accounts, Credit Cards, medical debts					
53	Chase Card (W)	6,000	3,000	3,000		
54	AMEX (Bus/Office)	5,000	5,000			
55	Visa	0				
56	Mastercard	0				
57	Sam's Club	3,600	1,800	1,800		
58						
59						
60						
61	Subtotal	14,600	9,800	4,800	0	0
62	TOTAL DEBT (add lines 23 and 26)	668,600	399,800	269,800	0	0
63	NET WORTH (TOTAL ASSETS, line 32 MINUS TOTAL DEBT, line 49)	\$3,126,329	\$1,643,361	\$1,481,968	\$0	\$0
	Equalization		(\$80,697)	\$80,697		
	Equalized		\$1,562,664	\$1,562,665		

Handwritten initials/signature

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "6"

EXHIBIT "6"

From: Lucy Mason lucy.masonsen@yahoo.com
Subject: Your demand to Lynda Hascheff
Date: Feb 4, 2020 at 11:42:04 AM
To: Pierre Hascheff pierre@pahascheff.com
Cc: smeador@woodburnandwedge.com

Pierre –

Lynda forwarded me the invoices and letter you sent her in the mail. It appears that you are demanding that she pay half the entire amount billed in the malpractice matter, as opposed to half the amount you have actually paid. The invoices reflect that the insurance company (Allied World) has paid a large amount to date and you have paid \$3,000. There is a handwritten note that you have paid the balance of the remaining bill dated 10/23/19, but there is no canceled check or subsequent invoice reflecting that.

Please provide the following documentation so that we can assess your demand:

1. A copy of the insurance policy pursuant to which you have made a claim
2. All correspondence with your insurance company and adjuster about the claim
3. All detailed billings/invoices you have received to date from Lemons, Grundy or any other firm working on your behalf on this matter, including all time entries by attorneys working on the claim
4. All proof of payment you claim you have made on any bills reflected in 3) above
5. All relevant pleadings in this matter, including but not limited to your response to the complaint

Finally, you had notice of this potential claim for well over 16 months, and undoubtedly much longer. You have a fiduciary duty to Lynda as it relates to this claim to keep her apprised and in the loop. By asking me to send you this note in response to your demand, she is in no way waiving whatever recourse she may have for your breach of that duty. I am helping Lynda as her sister, not as an attorney. Should this require the need for legal services, she will hire an attorney.

Thank you.

Lucy

From: Pierre Hascheff [mailto:pierre@pahascheff.com]
Sent: Sunday, January 26, 2020 7:59 AM
To: Lucy Mason
Subject: Fwd: Attached Image

Here's a copy of the Page requiring reimbursement for attorneys fees and costs. I do not have Lynda's new email. So I'm forwarding these documents to you. If that's a problem let me know

Sent from my iPad

EXH 6

AA 0206

From: Pierre Hascheff pierre@pahascheff.com
Subject: Re: Attached Image
Date: Feb 5, 2020 at 4:41:58 PM
To: Lucy Mason lucy.masonsen@yaho.com

You now have everything you requested. Time entries include narratives which include attorney-client communications. I am not waiving the attorney-client privilege.

There is no response to the complaint. The malpractice litigation is on hold until the underlying case is completed.

When I received the subpoena there was a concern that a malpractice action would follow so I immediately retained a lawyer through the insurance company. I was deposed for over two days and I was a witness at trial for two more days. There were countless meetings prior to the deposition in and the trial with my lawyer. My lawyer attended all sessions

As you know there is no breach of a fiduciary duty. This is a straight contract and indemnity agreement and there is nothing in the section that requires any notice. In fact Lynda benefits because I've been making the payments and she received an interest free loan. Even if she was notified there's nothing she could do to change the outcome. I've been sued and if I don't retain counsel to represent my interests then we would have bigger problems if they were able to get a judgment against me which requires Lynda to pay half.

Originally I thought I might just pay the bill and be done with it because The litigation would be completed in short order but it hasn't worked out that way. The litigation is continuing and they will be more bills.

There's nothing in the agreement requires that you receive any of the requested documents only that I prove that I paid the bill which I have. I only provided them to you so that we can just move on and with reservation of all rights and without prejudice. These documents other than the invoices and payments do not change the indemnity agreement and the liability. As you know there's an attorney fees provision to

EXHIBIT b

enforce the agreement and that means she will be responsible for attorneys fees.

You should know that there is a error in the calculation the amount owed is \$9351.80 and 50% of that amount is \$4675.90. We need to have this resolved no later than February 24, 2020

Sent from my iPad

FILED
Electronically
DV13-00656
2020-07-24 04:24:24 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7988178 : sacordag

EXHIBIT "7"

EXHIBIT "7"

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>

Sent: Sunday, March 01, 2020 11:58 AM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: [SPAM - keyword checking] - Indemnity

I was informed by Lucy Mason that I need to contact you regarding my reimbursement for attorneys fees and costs incurred pursuant to section 40 of the settlement agreement dated September 1, 2013. The amount owed to date by Lynda is \$4675.90. I provided all the documentation that Lucy requested which I assume you have which includes the billing invoices. I intend to enforce the settlement agreement because I've been sued for malpractice. A subsequent action or set off is necessary because Lynda has refused to indemnify me pursuant to section 40. We can avoid this action by her simply making the payment referenced above within 10 days of this notice. If the payment is not made within this 10 day I will proceed accordingly. Thank you for your consideration in this matter.
Sent from my iPad

EXH. 7

**THE LAW OFFICE OF
TODD L. TORVINEN**

CHARTERED

232 COURT STREET RENO, NEVADA 89501
PHONE: (775) 825-6066 FAX: (775) 324-6063
E-MAIL: ttodd@toddtorvinenlaw.com

Certified Public Accountant (NV)
Certified Estate Planning Law Specialist (EPLS)

May 29, 2020

Via RCMS

Shawn B. Meador, Esq.
Woodburn and Wedge Attorneys
6100 Neil Rd., Suite 500
Reno, NV 89511

Re: Hascheff MSA Indemnity Clause

Dear Mr. Meador:

I write on behalf of my client, Judge Hascheff. Enclosed please find the redacted billing statements from Todd Alexander, Esq., who represents Judge Hascheff regarding the malpractice action. Judge Hascheff previously provided these billing statements to Lucy Mason, Lynda Hascheff's sister. Also enclosed please find Mr. Alexander's Declaration dated April 10, 2020, generally explaining the need for counsel given the real threat and close in time filed malpractice action. The Declaration also describes the significant legal services required in light of the gravity of the threat and the malpractice action.

It is my understanding that on February 5, 2020, Mr. Hascheff emailed your client's sister, Lucy Mason (also an attorney) the: (1) canceled checks for the payment of attorney fees related to the malpractice action, (2) the endorsement number showing malpractice tail coverage, (3), the actual policy and the tail coverage, (4) correspondence between him and the carrier's adjuster, (5) the Hascheff Marital Settlement Agreement, and (6) the 40 page subpoena demanding production of estate planning documents and other documents related to his estate planning advice. I also understand that at or near the same time in early February, Mr. Hascheff emailed Lucy Mason a copy of the malpractice complaint against him filed on December 26, 2018. I further understand that you received those documents.

Judge Hascheff forwarded his email to you dated March 1, 2020, invoking the 10-day notice and the required information triggering liability for attorney fees incurred for enforcement pursuant to Section 35.2 of the MARITAL SETTLEMENT AGREEMENT dated September 1, 2013 ("MSA"). You are probably also aware that MSA Section 40

Exh. 7

Shawn Meador, Esq.
May 26, 2020
Page 2

specifically requires your client to indemnify Mr. Hascheff for "one half (1/2) the costs of any defense and judgment" relating to a malpractice action.

In the March 1, 2020, email to you, Mr. Hascheff indicated as of that date, one half (1/2) of the attorney fees incurred related to the malpractice defense due from Lynda amounted to the sum of \$4675.90. Since March 11, 2020, Mr. Hascheff has incurred fees with my office related to enforcement of Section 40 which now total \$1687.50. As a result, under the terms of the MSA, your client owes the sum of \$6363.40 (\$4675.90 + \$1687.50) to Judge Hascheff. This does not include Mr. Alexander's fees and costs not yet billed in preparation of the Declaration and other time related to the malpractice action.

Hopefully, your client has interest in resolving this matter now. Judge Hascheff is willing to accept payments of \$1500 per month commencing June 15, 2020, until fully paid. Note that Judge Hascheff is also willing to waive interest accrual on the balance due to which he is entitled under NRS 99.040 as an accommodation to your client if your client accepts the terms described above.

Judge Hascheff requests your client's response to me within 10 days of the date of this letter. If necessary, Judge Hascheff will seek enforcement of the MSA indemnity provision thereafter. Thank you for your professionalism and your courtesy in advance.

Respectfully,



Todd L. Torvinen, Esq.

Enclosures

Note: This writing contains an offer in compromise under NRS 48.105. As a result, it may not later be used as prohibited specifically by NRS 48.105.

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IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,
Plaintiff,
vs.
LYNDA HASCHEFF,
Defendant.

Case No. DV13-00656
Dept. No. 12

**ORDER SETTING MOTION RE: MSA FOR HEARING;
ORDER HOLDING IN ABEYANCE
MOTION FOR ORDER TO ENFORCE AND OR FOR AN ORDER TO SHOW CAUSE**

The Court considers two motions for purposes of this Order.

First, before this Court is Defendant Lynda Hascheff's Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("MSA Motion") filed on June 16, 2020. Plaintiff Pierre A. Hascheff filed an Opposition to Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Opposition to MSA Motion") on July 6, 2020. Ms. Hascheff then filed a Reply in Support of Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Reply to MSA Motion") on July 13, 2020, and the matter was submitted thereafter.

Second, before this Court is Judge Hascheff's Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("OSC Motion") filed on July 8, 2020. Ms. Hascheff filed an Opposition to Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("Opposition to OSC Motion") filed on July 17, 2020. Judge Hascheff then filed a Reply to Opposition to Motion for Order to Show Cause, or in the Alternative, to Enforce the

1 Court's Orders ("Reply to OSC Motion"), and the matter was submitted thereafter.

2 On September 30, 2013, Ms. Hascheff and Judge Hascheff entered into a Marital Settlement
3 Agreement ("MSA") that was approved, adopted, merged and incorporated into the Decree of
4 Divorce ("Decree") on November 15, 2013. Specifically, the MSA contains an indemnification
5 clause in the event of a malpractice claim against Judge Hascheff ("MSA § 40").

6 **A. Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree**

7 In her MSA Motion, Ms. Hascheff asks this Court to enter an Order clarifying MSA § 40
8 that she is only responsible for fees incurred in a malpractice action against Judge Hascheff, and
9 that she is not responsible for the fees or costs he chose to incur to have personal counsel protect his
10 interests in connection with his role as a percipient witness in the Jaksick Action. Moreover, Ms.
11 Hascheff asks that Judge Hascheff be obligated to pay the costs and fees Ms. Hascheff incurred in
12 connection with her attempts to obtain information, respond to his demands and engage in motion
13 practice to establish her rights and obligations.

14 Ms. Hascheff contends on January 15, 2020, Judge Hascheff sent her an undated letter
15 demanding that she indemnify him for legal fees and costs incurred in connection with Judge
16 Hascheff's role as a percipient witness in the Jaksick Action, a lawsuit to which he was not a named
17 party. Ms. Hascheff asserts the language in MSA § 40, by its clear, express, and unambiguous
18 terms, does not require Ms. Hascheff to finance Judge Hascheff's legal fees and costs he elected to
19 incur as a percipient witness. Ms. Hascheff contends Judge Hascheff did not have the right to
20 make the decision to protect his interests as a percipient witness, and then demand that she finance
21 his decision, without fully advising her of the circumstances and gaining her agreement and consent
22 in advance.

23 Ms. Hascheff alleges on December 26, 2018, Judge Hascheff was sued for malpractice by
24 his former client, Todd Jaksick, individually and as trustee of two trusts. Ms. Hascheff claims
25 Judge Hascheff made the deliberate decision not to notify her despite the potential financial risk
26 pursuant to MSA § 40, but rather waited for over a year, until January 15, 2020, to inform her. Ms.
27 Hascheff asserts Judge Hascheff and his former client eventually entered an agreement to
28 stay the malpractice action until the Jaksick Action was resolved.

1 Ms. Hascheff posits MSA § 40 does not require her to finance Judge Hascheff's
2 litigation choices as a percipient witness in a lawsuit to which he was not a party. Ms.
3 Hascheff states if Judge Hascheff believed it would be "helpful " or "prudent " for him to
4 have counsel to assist him as a percipient witness, he had an obligation to consult with
5 her before incurring the expenses while being advised of the underlying facts, the
6 litigation risks and why retention of counsel would be appropriate so that she could
7 make an informed decision about whether to share in the costs .

8 In his Opposition to MSA Motion, Judge Hascheff highlights MSA § 40 must be read in
9 conjunction with the entire section, and MSA § 40 unambiguously indicates that if any claim,
10 action, or proceeding, whether or not well-founded shall later be brought seeking to hold one party
11 liable on account of any alleged debt, liability, act, or omission the other party at his or her sole
12 expense must defend the other against said claim, action or proceeding. Judge Hascheff asserts
13 MSA § 40 requires a party must also indemnify the other and hold him or her harmless against any
14 loss or liability that he or she may incur as a result of the claim, action or proceeding including
15 attorney's fees, costs and expenses incurred in defending or responding to such action. Judge
16 Hascheff also notes as a subset and part of that all-encompassing language providing a full defense
17 and complete unconditional indemnification a provision was added that in the event said claim,
18 action or proceeding, involved a malpractice action whether or not well-founded, it obligated the
19 other party to pay only one-half the defense costs and indemnify only one-half of any judgment if
any, entered against said party.

20 Judge Hascheff maintains MSA § 40 does not include a notice provision. Judge Hascheff
21 maintains it was critical to defend the claims in the trust action as they likely become res judicata
22 and collateral estoppel defenses in the malpractice action and eliminate Ms. Hascheff being
23 required to pay one-half of the likely much higher defense costs and the judgment. Judge Hascheff
24 claims he needed to engage counsel early to address and cut off any possible claims arising out of
25 or determined in the underlying litigation should not be subject to question under the circumstances.
26 Judge Hascheff alleges he did not keep the potential for a malpractice claim secret from Ms.
27 Hascheff because he believed that the underlying trust action would be resolved, and the
28 malpractice action filed in December 2018 would eventually be dismissed.

1 Judge Hascheff contends the fact that Allied World insurance company picked up the
2 defense and paid defense fees in the trust litigation of \$2,500, although not required under his
3 insurance policy, conclusively shows that Judge Hascheff's involvement in the underlying trust
4 case primarily involved potential malpractice claims.

5 Judge Hascheff asserts it is not uncommon for an indemnitee to remain involved for several
6 years in the underlying litigation and then once litigation is concluded and the damages are
7 ascertained; then and only then will the indemnitee notify the indemnitor for of the obligation to
8 pay said damages. Therefore, Judge Hascheff claims he did not breach his fiduciary duty, if any, by
9 waiting to inform Ms. Hascheff of the malpractice action until after the jury decided the legal
10 claims in the underlying trust litigation.

11 Judge Hascheff also argues Ms. Hascheff has violated Section 35 ("MSA § 35") which
12 clearly provides that any party intending to bring an action or proceeding to enforce the MSA shall
13 not be entitled to recover attorney's fees and costs unless she first gives the other party at least 10
14 days written notice before filing the action or proceeding.

15 In her Reply to MSA Motion, Ms. Hascheff emphasizes a strict interpretation of MSA § 40
16 does not cover Judge Hascheff's incurred legal expenses. Ms. Hascheff states the indemnity
17 language could have been written to say that she will indemnify Judge Hascheff for any fees and
18 costs that he, in his sole and unilateral discretion, believe are reasonable, necessary, and related in
19 any way to any potential malpractice action, but that is not the language his lawyer drafted, nor is it
20 the agreement the parties signed. As a result, Ms. Hascheff states she contractually agreed to pay
21 half the costs of defense of the malpractice action which was immediately stayed with no fees
22 incurred.

23 Ms. Hascheff asserts had Judge Hascheff given her the common courtesy of promptly
24 informing her of the circumstances, sharing with her the underlying facts and risks they faced, and
25 consulting with her about the most appropriate way for them to jointly approach the problem, they
26 may have been able to reach agreement to avoid this dispute and all of these fees.

27 **B. Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders**

28 In his OSC Motion, Judge Hascheff moves this Court: (1) To issue an order for Ms.
Hascheff to show cause as to why she intentionally disobeys the Decree; (2) To enforce the terms of

1 the parties' incorporated MSA, and order the payment of the indemnification; and, (3) Order Ms.
2 Hascheff pay Judge Hascheff's attorney fees and costs whether this matter proceeds as contempt, or
3 as an order for enforcement upon affidavit from counsel.

4 Judge Hascheff asserts Ms. Hascheff chooses to willfully disobey the Decree and MSA by
5 making "ill-advised and even nonsensical arguments" in her MSA Motion as a course of conduct to
6 "gain leverage and delay payment."

7 Judge Hascheff states in the event the Court determines Ms. Hascheff's actions do not rise
8 to the level of contempt, Judge Hascheff asks the Court to enforce its orders by requiring Judge
9 Hascheff to pay the required one half indemnification amount to Judge Hascheff in the sum of
10 \$4,924.05 (plus a percentage of any later accrued and accruing fees and costs) pursuant to MSA §
11 40, and award Judge Hascheff attorney's fees pursuant to MSA § 35.

12 In her Opposition to OSC Motion, Ms. Hascheff contends there are no clear and
13 unambiguous Orders of this Court that she has allegedly refused to honor. Ms. Hascheff
14 emphasizes the dispute is whether the simple and unambiguous language of the parties' MSA and
15 Decree, requires Ms. Hascheff to pay the fees Judge Hascheff demands.

16 Ms. Hascheff asserts since the Decree does not clearly and unambiguously require her to
17 pay those fees, Ms. Hascheff could not be held in contempt as a matter of law. Ms. Hascheff
18 asserts if interpretation is required to obtain the result Judge Hascheff seeks, the language on which
19 he relies cannot be so clear and unambiguous as to support a contempt motion - no matter how
20 reasonable the requested interpretation. Ms. Hascheff claims since there is a dispute about the
21 meaning of their contract and the parties' respective rights and obligations, Ms. Hascheff, in good
22 faith, sought clarification through her MSA Motion so that she would know exactly what her legal
23 obligations are.

24 In his Reply to OSC Motion, Judge Hascheff maintains rather than resolving a dispute of
25 approximately \$5,000, Ms. Hascheff has embarked on an unfortunate litigation track where she
26 undoubtedly already incurred fees in excess of \$5,000, and likely will incur attorney's fees. Judge
27 Hascheff contends Ms. Hascheff also unnecessarily caused him to incur substantial legal fees, and
28 has even offered to accept minimal payments without interest and without incurring any legal fees.

Judge Hascheff posits Ms. Hascheff fails to cite any case where a court would distinguish

1 between a contractual indemnity in an MSA from any other indemnity obligation, and a settlement
2 agreement is construed as any other contract and governed by the principles of contract law. Judge
3 Hascheff maintains Ms. Hascheff's assertion that she has no obligation to pay half the defense costs
4 and/or indemnify until her conditions are met are not expressed in the MSA, and Ms. Hascheff's
5 position that she has some "implied" right or "conditions precedent" to her obligation to pay is
6 entirely inconsistent with the MSA or existing caselaw.

7 Law

8 **A. Declaratory Relief Standard**

9 A party must meet four elements before declaratory relief can be granted:

- 10 1) there must exist a justiciable controversy; that is to say, a
11 controversy in which a claim of right is asserted against one who
12 has an interest in contesting it; (2) the controversy must be
13 between persons whose interests are adverse; (3) the party seeking
14 declaratory relief must have a legal interest in the controversy,
that is to say, a legally protectable interest; and (4) the issue
involved in the controversy must be ripe for judicial
determination.

15 *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1291 (2016).
16 Moreover, any person whose rights, status, or other legal relations "are affected by a statute . . . may
17 have determined any question of construction" of that statute. NRS 30.040(1); *Prudential Ins. Co.*
18 *of Am. v. Ins. Comm'r*, 82 Nev. 1, 5, 409 P.2d 248, 250 (1966) (declaratory relief is available when
19 a controversy concerning the meaning of a statute arises). "Whether a determination is proper in an
20 action for declaratory relief is a matter within the trial judge's discretion that will not be disturbed
21 on appeal unless abused." *El Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev. 65, 68, 506 P.2d
22 426, 428 (1973).

23 **B. Interpretation of MSA Standard.**

24 A settlement agreement, which is a contract, is governed by principles of contract law.
25 *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). As such, a settlement
26 agreement will not be an enforceable contract unless there is "an offer and acceptance, meeting of
27 the minds, and consideration." *Id.* Generally, when a contract is clear on its face, it "will be
28 construed from the written language and enforced as written." *Buzz Stew, LLC v. City of N. Las*

1 Vegas, 131 Nev. 1, 7, 341 P.3d 646, 650 (2015) (citing *Canfora v. Coast Hotels & Casinos, Inc.*,
2 121 Nev. 771, 776, 121 P.3d 599, 603 (2005)). The court has no authority to alter the terms of an
3 unambiguous contract. *Canfora*, 121 Nev. at 776, 121 P.3d at 603.

4 Whether a contract is ambiguous likewise presents a question of law. *Galardi v. Naples*
5 *Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (citing *Margrave v. Dermody Props.*,
6 110 Nev. 824, 827, 878 P.2d 291, 293 (1994)). A contract is ambiguous if its terms may reasonably
7 be interpreted in more than one way, but ambiguity does not arise simply because the parties
8 disagree on how to interpret their contract. *Id.* (citing *Anvui, L.L.C. v. G.L. Dragon, L.L.C.*, 123
9 Nev. 212, 215, 163 P.3d 405, 407 (2007); *Parman v. Petricciani*, 70 Nev. 427, 430–32, 272 P.2d
10 492, 493–94 (1954)).

11 Marital agreements are “enforceable unless unconscionable, obtained through fraud,
12 misrepresentation, material nondisclosure or duress.” *Furer v. Furer*, 126 Nev. 712, 367 P.3d 770
13 (2010) (citing *Sogg v. Nevada State Bank*, 108 Nev. 308, 312, 832 P.2d 781, 783–84 (1992)).

14 After merger, the district court may enforce the provisions of the divorce decree by using its
15 contempt power. *Friedman v. Friedman*, 128 Nev. 897, 381 P.3d 613 (2012) (citing *Hildahl v.*
16 *Hildahl*, 95 Nev. 657, 662–63, 601 P.2d 58, 61–62 (1979)). The district court may interpret the
17 language of the divorce decree in order to resolve ambiguity. *Id.* (citing *Kishner v. Kishner*, 93 Nev.
18 220, 225, 562 P.2d 493, 496 (1977)).

19 **C. Order to Show Cause for Contempt of Court Standard.**

20 Pursuant to NRS 22.030(2), if a contempt is not committed in the immediate view and
21 presence of the court or judge at chambers, an affidavit must be presented to the court or judge of
22 the facts constituting the contempt, or a statement of the facts by the masters or arbitrators. The
23 requirement of an affidavit is confirmed by case law, specifically requiring an affidavit must state
24 facts specific enough to allow the Court to proceed to be submitted at the Contempt proceeding,
25 which is necessary to give the court subject matter jurisdiction. *See Awad v. Wright*, 106 Nev. 407,
26 794 P.2d 713 (1990) (overruled on other grounds); *Philips v. Welch*, 12 Nev. 158 (1887); *Strait v.*
27 *Williams*, 18 Nev. 430 (1884). Contempt statutes are to be strictly construed based upon the
28 criminal nature of a contempt proceeding. *Ex Parte Sweeney*, 18 Nev. 71 (1883).

1 The penalties for contempt include a monetary fine, not to exceed \$500.00, or
2 imprisonment, not to exceed 25 days, or both. *See* NRS 22.100(2). In addition to the penalties set
3 forth above the Court may require the person to pay to the party seeking to enforce the writ, order,
4 rule or process the reasonable expenses incurred by the party as a result of the contempt. *See* NRS
5 22.100(3).

6 The moving party must make a *prima facie* showing that the non-moving had the ability to
7 comply with the Court order and that the violation of the order was willful. *Rodriguez v. District*
8 *Court*, 120 Nev. 798, 809, 102 P.3d 41, 49 (2004). In order for contempt to be found, the Court
9 order “must be clear and unambiguous, and must spell out the details of compliance in clear,
10 specific, and unambiguous terms so that the person will readily know exactly what duties or
11 obligations are imposed on him.” *Cunningham v. District Court*, 102 Nev. 551, 559-60, 729 P.2d
12 1328, 1333-34 (1986).

13 Order

14 The Court shall hold the MSA Motion for a hearing. After reviewing the operative MSA,
15 filed papers, and exhibits, the Court finds argument regarding MSA § 35, § 37, and § 40 necessary
16 to resolve the ongoing issues articulated in the MSA Motion and OSC Motion.

17 Pursuant to the MSA, MSA § 35, § 37, and § 40 provide:

18 35.1. If either party to this Agreement brings an action or proceeding to enforce any provision of this Agreement, or to
19 enforce any judgment or order made by a court in connection with
20 this Agreement, the prevailing party in that action or proceeding
21 shall be entitled to reasonable attorney fees and other reasonably
22 necessary costs from the other party.

23 35.2. A party intending to bring an action or proceeding to
24 enforce this Agreement **shall not** be entitled to recover attorney
25 fees and costs under this provision **unless he or she first gives the**
26 **other party at least 10 [sic] written notice before filing the**
27 **action or proceeding.** The written notice shall specify (1)
28 **whether the subsequent action or proceeding is to enforce the**
original terms of the Agreement; (2) the reasons why the
moving party believes the subsequent action or proceeding is
necessary; (3) whether there is any action that the other party
may take to avoid the necessity for the subsequent action or
proceeding; and (4) a period of time within which the other
party may avoid the action or proceeding by taking the
specified action. The first party shall not be entitled to attorney

1 fees and costs if the other party takes the specified action within the
2 time specified in the notice.

3 ...

4 37. Husband and Wife shall each execute and **deliver promptly on**
5 **request to the other any and all additional papers, documents,**
6 **and other assurances, and shall do any and all acts and things**
7 **reasonably necessary or proper to carry out their obligations**
8 **under this Agreement.** If either party fails or refuses to comply with
9 the requirements of this paragraph in a timely manner, **that party**
10 **shall reimburse the other party for all expenses, including**
11 **attorney fees and costs, incurred as a result of that failure, and**
12 **shall indemnify the other for any loss or liability incurred as a**
13 **result of the breach.** Further, in case of a breach of the duties
14 imposed by this paragraph, the court may, on ex parte application,
15 order the county clerk to execute any document or other paper on
16 behalf of the breaching party.

17 ...

18 40. Except for the obligations contained in or expressly arising out of
19 this Agreement, **each party warrants to the other that he or she**
20 **has not incurred, and shall not incur, any liability or obligation**
21 **for which the other party is, or may be, liable.** Except as may be
22 expressly provided in this Agreement, **if any claim, action, or**
23 **proceeding, whether or not well founded,** shall later be brought
24 seeking to hold one party liable on account of any alleged debt,
25 liability, act, or omission of the other, the warranting party shall, at
26 his or her sole expense, defend the other against the claim, action, or
27 proceeding. The warranting party shall also indemnify the other and
28 hold him or her harmless against any loss or liability that he or she
may incur as a result of the claim, action, or proceeding, including
attorney fees, costs, and expenses incurred in defending or
responding to any such action. In the event Husband is sued for
malpractice, Wife agrees to defend and indemnify Husband for one
half (1/2) the costs of any defense and judgment Husband may
purchase tail coverages of which Wife shall pay one half (1/2) of such
costs.

29 The Court highlights aspects of these sections to guide counsel where the Court is directing
30 its attention. The Court is of the impression MSA § 40 does encompass legal fees incurred by
31 Judge Hascheff as a witness in the Jaksick Action, and the stayed lawsuit where he is sued
32 individually. However, the Court takes issue with Judge Hascheff's unilateral decision to
33 not provide notice to Ms. Hascheff of his exposure to malpractice liability until January

1 2020.

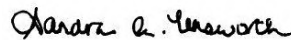
2 Counsel should be prepared to argue, *inter alia*, the following issues: (1) whether notice
3 pursuant to MSA § 35 was properly provided by both parties to collect attorney's fees regarding
4 enforcement of the MSA; (2) whether both parties promptly delivered information to each other
5 pursuant to MSA § 37 to effectuate, specifically, MSA § 40; and (3) whether MSA § 40 contains an
6 ongoing obligation for Judge Hascheff to provide notice to Ms. Hascheff of any malpractice claim,
7 action, or proceeding.

8 Furthermore, the disposition of the OSC Motion is inextricably linked to the ruling in the
9 MSA Motion. As a result, the Court shall hear argument on the OSC at the same time and hold in
10 abeyance its ruling on the OSC Motion until adjudication of the MSA Motion.

11 Counsel for the parties shall contact Department 12's Judicial Assistant, Amy Hodgson, to
12 set the matter at amy.hodgson@washocourts.us within ten days of the date of this order.

13 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

14 DATED this 9th day of September, 2020.

15 

16 _____
17 Sandra A. Unsworth
18 District Judge

19 DV13-00656

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on September 9, 2020, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**SHAWN MEADOR, ESQ., for LYNDA HASCHEFF
TODD TORVINEN, ESQ., for PIERRE HASCHEFF**



Judicial Assistant

STATUS CONFERENCE

**DECEMBER 7,
2020
HONORABLE
SANDRA A.
UNSWORTH
DEPT. NO. 12
C. COVINGTON
(Clerk)
C. WOLDEN
SUNSHINE
REPORTING
(Recording)**

Hearing conducted by Zoom video conferencing.

Plaintiff, Pierre Hascheff, was not present but was represented by Todd L. Torvinen, Esq.
Defendant, Lynda Hascheff, was not present but was represented by Shawn B. Meador, Esq.

This hearing was held remotely because of the closure of the courthouse at 1 South Sierra Street, Reno, Washoe County, Nevada due to the National and Local emergency caused by COVID-19. The Court and all the participants appeared by simultaneous audiovisual transmission. The Court was physically located in Reno, Washoe County, Nevada, which was the site of the court session. Counsel/Parties acknowledged receipt of Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules- Part 9 relating to simultaneous audiovisual transmissions and all counsel/parties had no objection to going forward in this manner.

The Court explained the purpose of today's hearing.

Counsel Torvinen stated he is prepared to go forward with the hearing.

Counsel Meador stated he is prepared to go forward.

THE COURT ORDERED: The evidentiary hearing set for December 21, 2020 at 9:00 a.m. is hereby confirmed. The Court waives exhibit binders for this hearing. Any exhibits shall be filed in at least 48 hours in advance.

Court shall prepare the order.

The clerk's minutes are not an order of the Court. They may be altered, amended or superseded by a written order. If the matter was recorded via JAVS, a copy of the proceeding may be request through the Second Judicial District Court Filing Office located at 75 Court Street, Reno, NV 89501. If the matter was reported via Court Reporter, a transcript must be requested directly from the Court Reporter.

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

10
11 IN THE FAMILY DIVISION
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE
16

17 PIERRE A. HASCHEFF,

18 Plaintiff,

19 v.

20 LYNDA L. HASCHEFF,

21 Defendant.

CASE NO. DV13-00656

DEPT. NO. 12

22
23 **LYNDA L. HASCHEFF NOTICE OF HEARING WITNESSES AND EXHIBITS**

24 Pursuant to NRCPC 47, Defendant, LYNDA L. HASCHEFF, hereafter known as
25 Defendant, through her undersigned counsel provides Plaintiff, PIERRE A. HASCHEFF,
26 notice of intended witnesses and exhibits for the Evidentiary Hearing scheduled for December
27 21, 2020, at 9:00 a.m.

28 **WITNESSES:**

1. Lynda L. Hascheff
c/o Woodburn and Wedge
6100 Neil Road, Ste. 500
Reno, Nevada 89511
(775) 688-3000

Ms. Hascheff is the Defendant in this action and has knowledge of all issues.

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2. Pierre A. Hascheff
c/o Todd Torvinen, Esq.
232 Court Street
Reno, Nevada 89501
(775) 825-6066

Pierre A. Hascheff is the Plaintiff in this action and has knowledge of all issues.

3. Lucy Mason
3351 Kincheloe Ct.
Lafayette, CA 94549
(925-) 808-1088

Lucy Mason is the sister to the Defendant in this action and can authenticate email communications, and testify about Defendant's efforts to obtain underlying information and Plaintiff's refusal to provide requested information and insistence that Defendant is not in need of or entitled to the requested information.

4. Todd Torvinen, Esq.
232 Court Street
Reno, Nevada 89501
(775) 825-6066

Todd Torvinen is the Plaintiff's Attorney and can authenticate email communications, and testify about Defendant's efforts to obtain underlying information and Plaintiff's refusal to provide requested information and insistence that Defendant is not in need of or entitled to the requested information.

HEARING EXHIBITS:

Defendant produces and identifies electronic copies of the following documents to Plaintiff's counsel:

EXHIBIT	PARTY	DESCRIPTION	MARKED	OFFERED	ADMITTED
1.	DEFT	Judge Hascheff's Letter & Accompanying Summary Invoice			
2.	DEFT	Declaration of Todd R. Alexander, Esq.			
3.	DEFT	Malpractice Complaint			
4.	DEFT	Email Correspondence between Ms. Hascheff's Counsel and Judge Dated March 1, 2, & 3, 2020			
5.	DEFT	Email from Judge Hascheff Dated April 20, 2020			

6.	DEFT	Email from Counsel Dated April 20, 2020			
7.	DEFT	Letter from Todd Torvinen Dated May 29, 2020			
8.	DEFT	Counsel's Response to the May 29, 2020 Letter from Judge Hascheff's Lawyer Dated June 2, 2020			
9.	DEFT	Counsel's Letter Dated June 11, 2020			
10.	DEFT	Email Between Judge Hascheff and Lucy Mason			
11.	DEFT	Email Between Judge Hascheff and Shawn Meador			
12.	DEFT	Email Between Judge Hascheff and Lucy Mason			
13.	DEFT	Marital Settlement Agreement			
14.	DEFT	Subpoena Duces Tecum			
15.	DEFT	Todd Alexander's Billing Statements			
16.	DEFT	Various Pleadings from Jaksick Case No. PR17-0446 & PR17-00445			

REBUTTAL AND IMPEACHMENT DOCUMENTS; RIGHT TO SUPPLEMENT

Defendant reserves the right to introduce any documents produced by either party for rebuttal and/or impeachment as an exhibit at the Evidentiary Hearing.

Affirmation Pursuant to NRS 239B.030

The undersigned affirms that this document does not contain the personal information of any party.

DATED this 17th day of December, 2020.

WOODBURN AND WEDGE

By Trangie M. Kelly #14555
 Shawn B. Meador
 Attorneys for Defendant
 Lynda L. Hascheff

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Lynda L. Hascheff Notice of Hearing Witnesses and Exhibits

on the party set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

 X Personal delivery.

 X Second Judicial E flex

_____ Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 17 day of December, 2020



Kelly Albright

EXHIBIT 1

Lynda

I was sued by a client
for malpractice. The case is
on going.

The attorney's invoice is enclosed.

Section 40 of the settlement
agreement requires you must
pay $\frac{1}{2}$ the fees & costs. I don't
believe its fair that I pay the
whole bill. I paid off the balance
so I need you to send me a check
for \$200.90 by Jan. 24 & I'll send you
any additional invoices

Rec'd
1/15/20

P. It.

LH000001

AA 0230

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World *(Malpractice Ins. Co.)*
 BILL THROUGH SERENGETI

Page: 1
 10/23/2019

OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 10

ATTN: Andy Kenney
Insur. adjuster

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$7,351.80

<u>Stmt Date</u>	<u>Stmt #</u>	<u>Billed</u>	<u>Due</u>
02/13/2019	6	826.80	1.80
03/11/2019	7	7,425.00	7,350.00
			<u>7,351.80</u>

10/18/2019 Payment - Thank you PAH Limited LLC -1,000.00

BALANCE DUE \$6,351.80

<u>FEES</u>	<u>EXPENSES</u>	<u>FINANCE CHARGE</u>	<u>PAYMENTS</u>
11,850.00	1.80	0.00	5,500.00

\$6,351.80

*Attys Fees
 For legal malpractice
 claim*

*paid cr \$ 2300
 12/8/19*

LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, Nevada 89519-6000
(775) 786-6868
Tax I.D. #88-0122938

Allied World
 BILL THROUGH SERENGETI

Page: 1
 08/27/2019

OUR ACCOUNT NO: [REDACTED]
 STATEMENT NO. 8

ATTN: Andy Kenney

REMINDER BILL

Hascheff, Pierre re: Allied World
 [REDACTED]

PREVIOUS BALANCE \$11,851.80

<u>Stmt Date</u>	<u>Stmt #</u>	<u>Billed</u>	<u>Due</u>
10/10/2018	1	1,300.00	1,300.00
11/08/2018	3	150.00	150.00
12/07/2018	4	2,150.00	2,150.00
02/13/2019	6	826.80	826.80
03/11/2019	7	7,425.00	7,425.00
			<u>11,851.80</u>
03/25/2019	Payment - Thank you Allied World		-1,300.00
03/25/2019	Payment - Thank you Allied World		-150.00
04/08/2019	Payment - Thank you PAH Limited LLC		-1,000.00
04/16/2019	Payment - Thank you Allied World		-1,050.00
05/16/2019	Payment - Thank you PAH LIMITED II LLC		-1,000.00
	TOTAL PAYMENTS		<u>-4,500.00</u>
	BALANCE DUE		<u>\$7,351.80</u>

<u>FEES</u>	<u>EXPENSES</u>	<u>FINANCE CHARGE</u>	<u>PAYMENTS</u>
11,850.00	1.80	0.00	4,500.00

11851.80 - 1450.00 = 10401.80
x 50%
5200.90
4901.90

\$7,351.80

LH000003

EXHIBIT 2

DECLARATION OF TODD R. ALEXANDER, ESQ.

1
2 STATE OF NEVADA)
) ss.
3 COUNTY OF WASHOE)

4 I, TODD R. ALEXANDER, hereby declare the following under the penalty of perjury:

5 1. I am an attorney and partner at Lemons, Grundy & Eisenberg, licensed in the
6 State of Nevada and in good standing, and I represent Pierre Hascheff ("Hascheff").

7 2. I was retained by Hascheff once he received a multi-page subpoena requesting
8 any and all documents, correspondence, communications etc. with respect to his estate
9 planning and related advice to Samuel Jaksick and related parties.

10 3. It was prudent on Hascheff's part to retain counsel immediately because the
11 information requested clearly was aimed at undermining his estate plan and advice which
12 could lead to a malpractice action depending on the jury verdict.

13 4. It was clear that Hascheff was being accused of malfeasance and mishandling
14 the Jaksick estate, resulting in certain beneficiaries receiving less of what they perceived was
15 their share of the estate.

16 5. There was also a possible claim by another beneficiary that Hascheff provided
17 incorrect advice to that beneficiary which could result in said beneficiary being sued by his
18 brother and sister with a substantial damage claim against him.

19 6. Hascheff was clearly at risk depending on the outcome of the underlying
20 litigation.

21 7. There were two days of depositions and two days of trial testimony, not to
22 mention countless meetings with various attorneys to protect Hascheff's interests.

23 8. The fees and costs incurred in this case were necessary and reasonable to
24 protect Hascheff's interests. An adverse result to Hascheff could have resulted in a multi-
25 million dollar claim against him outside the coverage limits of his applicable insurance policy.

26 9. It should be noted that malpractice actions are not typically filed until the
27 conclusion of the underlying litigation to determine whether the attorney is guilty of
28 malfeasance and/or negligence. The underlying Jaksick estate litigation is still ongoing.

LEMONS, GRUNDY
& EISENBERG
1005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6068

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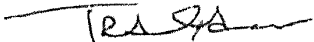
10. The time entries and description of the work conducted by my firm included in my billing invoices to Hascheff contain attorney-client privileged information. Certain entries do not include attorney-client information and therefore can be provided with privileged information redacted. These detail time entries can be provided without prejudice and waiver of the privilege. It is my understanding Hascheff has already provided only our billing summaries to you.

11. Any correspondence between Hascheff and my firm is protected by attorney-client privilege and will not be produced. Similarly, any correspondence and all communications between my firm and Jaksicks' attorneys are also privileged and/or confidential and will not be produced.

12. The time and work in preparing this affidavit and related work is related to the malpractice action and will be billed accordingly.

13. I declare under penalty of perjury the foregoing is true and correct.

Dated: this 10th day of April, 2020.



TODD R. ALEXANDER, ESQ.

LEMONS, GRUNDY
& EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RANO, NV 89519
(775) 786-6868

EXHIBIT 3

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KENT R. ROBISON, ESQ. – NSB #1167
krobison@rssblaw.com
LINDSAY L. LIDDELL, ESQ. – NSB #14079
lliddell@rssblaw.com
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503
Telephone: 775-329-3151
Facsimile: 775-329-7169
*Attorneys for Todd B. Jaksick, Individually, and as Trustee
of the Todd B. Jaksick Family Trust and as Trustee the TBJ Trust*

REC'D & FILED
2010 DEC 26 PM 1:28
SUSAN HENNINGER
C. TORRES CLERK
BY _____

IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR CARSON CITY

TODD JAKSICK, Individually, and as Trustee
of the Todd B. Jaksick Family Trust and as
Trustee of the TBJ Trust,

Plaintiffs,

Case No. _____
Dept. No. _____

vs.

PIERRE HASCHEFF,

Defendant.

COMPLAINT

As and for their complaint against the Defendant, Plaintiffs allege as follows:

1. Todd Jaksick ("Todd") is a Trustee of the SSJ's Issue Trust ("Issue Trust").
2. Todd is a Trustee of the Todd B. Jaksick Family Trust and the TBJ Trust.
3. Todd is Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust ("Sam's Family Trust").
4. Todd is a party to an Indemnification Agreement drafted for him by Defendant.
5. Todd is manager of Incline TSS LLC ("TSS"), a company that was devised by Defendant for the purpose of receiving title to a house located on Lake Shore Boulevard, Incline Village, Nevada ("the Lake Tahoe House").
6. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and membership are being challenged as a result of Defendant's legal services.

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Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

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1 7. The TBJ Trust is a 23% owner of TSS and its membership interest is being
2 challenged as a result of Defendant's legal services.

3 8. Defendant was an attorney, and as such, had a duty to use such skill, prudence, and
4 diligence as other members of his profession commonly possess and exercise.

5 9. As Plaintiffs' attorney, Defendant owed a duty to Plaintiffs to use skill, prudence,
6 and diligence as lawyers of ordinary skill and capacity possess in exercising and performing tasks
7 which they undertake.

8 10. Todd is Trustee of the Todd Jaksick Family Trust, a 23% owner of TSS, owner of
9 the Lake Tahoe House. As a result of Defendant's negligence, Todd has been sued in his capacity
10 as Trustee of the Todd Jaksick Family Trust.

11 11. Todd is Trustee of the TBJ Trust, a 23 % owner of TSS, owner of the Lake Tahoe
12 House. As a result of Defendant's negligence, Todd has been sued as Trustee of the TBJ Trust.

13 12. Todd is manager of various limited liability companies in which Sam's Family
14 Trust holds membership interests. As a result of the Defendant's negligence, Todd is being sued
15 in his capacity as manager of the various limited liability companies.

16 13. Defendant provided legal services to and for Todd and his father Samuel S. Jaksick
17 ("Sam") from 2007 through 2012.

18 14. Defendant's legal services, among others, included;

19 a. Drafting Todd's Indemnification Agreement;

20 b. Creating TSS for the purposes of having an option to buy the Lake Tahoe
21 House;

22 c. Drafting an option for TSS to acquire title to the Lake Tahoe House;

23 d. Drafting Sam's Second Amendment Trust, with Todd as a Co-Trustee and
24 beneficiary;

25 e. Facilitating TSS's exercise of the option it had to purchase the Lake Tahoe
26 House; and

27 f. Causing Todd's Family Trust and The TBJ Trust to be 23% owners of TSS.

28 15. Defendant's legal services provided to and for Todd, The TBJ Trust and Todd's

1 Family Trust were done in a negligent and careless manner. Those legal services caused Todd to
2 be sued in Second Judicial District Court, Case No. PR17-0045 and Case No. PR17-0046 filed in
3 Washoe County, Nevada.

4 16. Defendant's negligent legal services have resulted and caused the Plaintiffs to
5 sustain substantial damages well in excess of \$100,000. Stanley Jaksick and Wendy Jaksick have
6 both brought claims against Todd in Case No. PR17-00445 and Case No. PR17-00446.

7 17. As a proximate cause of Defendant's negligent and careless legal services provided
8 to and for Plaintiffs, Todd was sued in December of 2017 and February of 2018. Those lawsuits
9 were filed by beneficiaries of Sam's Family Trust and of The Issue Trust and the lawsuits gave
10 Todd first notice of the Defendant's negligence.

11 18. On December 17, 2018, expert reports were exchanged in the lawsuits filed by
12 Sam's daughter, Wendy. These reports first provided Todd, individually and as Trustee, with
13 actual notice of the Defendant's negligence. These reports appear to be based on misinformation
14 and wrongfully accusing Defendant of committing egregious and serious errors in performing
15 estate planning services for Samuel S Jaksick, Jr. Nonetheless, these reports gave Todd his first
16 actual notice of the alleged wrongdoing by the Defendant as follows:

- 17 a. The estate plan devised by Defendant was a bad one and subjected Todd to
18 lawsuits;
- 19 b. The Indemnification Agreement was poorly drafted and subjected Todd to
20 conflicts of interest;
- 21 c. The Lake Tahoe House documents were poorly devised and implemented
22 causing Todd to get sued; and
- 23 d. The Second Amendment was poorly drafted and implemented, causing
24 Todd to get sued.

25 19. Todd has been directly damaged by Defendant's negligence. The Plaintiffs also
26 contracted with Defendant requiring Defendant to provide competent legal advice and services.
27 Defendant breached the contracts.

28 20. Todd is entitled to be indemnified by Defendant for any sums he pays to Wendy

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Sullivan & Brust
71 Washington St
Reno, NV 89503
(775) 329-3151

1 and/or Stanley Jaksick in the litigation filed by Wendy and Stanley.

2 21. Todd is entitled to recover all fees and costs incurred in defending Wendy's and
3 Stanley's lawsuits.

4 22. Todd is entitled to recover fees and costs incurred in this case.

5 **FIRST CLAIM—NEGLIGENCE**

6 23. Plaintiffs incorporate all prior paragraphs and allegations.

7 24. Defendant and Plaintiffs had a lawyer/client relationship from 2007 to January
8 2013.

9 25. Defendant was engaged as Plaintiffs' counsel and attorney.

10 26. Defendant provided legal services for the Plaintiffs as described hereinabove.

11 27. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and
12 membership are being challenged as a result of Defendant's legal services.

13 28. The TBJ Trust is a 23% owner of TSS and its membership interest is being
14 challenged as a result of Defendant's legal services.

15 29. Defendant breached his duty of care to the Plaintiffs as described hereinabove.

16 30. Defendant's breaches of duty constitute legal malpractice and professional
17 negligence.

18 31. Defendant's breaches of duties of care owed to the Plaintiffs, his malpractice and
19 his professional negligence as described herein above caused Plaintiffs to sustain damages in
20 excess of \$15,000.

21 32. Plaintiffs are entitled to recover all damages caused by Defendant's breaches of
22 duties, negligence and malpractice, according to proof, in addition to attorney's fees incurred
23 herein.

24 33. Plaintiffs did not know of and did not have information to be aware of Defendant's
25 negligence, breaches of duties and of the malpractice until December of 2017.

26 **SECOND CLAIM—BREACH OF CONTRACT**

27 34. Plaintiffs incorporate all prior paragraphs and allegations.

28 35. Plaintiffs and Defendant entered into contracts described hereinabove, whereby

1 Defendant was to and did provide legal services for Plaintiffs.

2 36. The contracts for professional services were supported by adequate consideration.

3 37. The contracts were breached by Defendant.

4 38. The Plaintiffs performed all aspects and requirements of the contracts.

5 39. As a result of Defendant's breaches of the contracts described hereinabove,
6 Plaintiffs have sustained consequential damages in excess of \$15,000 and are entitled to fees and
7 costs.

8 **THIRD CLAIM—INDEMNIFICATION**

9 40. Plaintiffs incorporate herein all prior paragraphs and allegations.

10 41. Defendant's negligence and breaches of contract have caused Plaintiffs to be sued
11 by Stanley Jaksick and Wendy Jaksick in Case Nos. PR17-00445 and PR17-00446.

12 42. Plaintiffs adamantly deny any wrongdoing regarding the issues raised in the
13 lawsuits filed by Wendy and Stanley. Plaintiffs are aware of the Defendant's substantial efforts to
14 protect Samuel S. Jaksick, Jr. and his heirs and beneficiaries, and Plaintiffs believe and allege
15 herein that the Defendant proceeded at all times in good faith and with the best interests of the
16 Plaintiffs and Samuel S. Jaksick, Jr. as his first priority. However, if Plaintiffs are found liable to
17 Stanley and/or Wendy or should Plaintiffs, or any one of them, be required to pay in any way
18 Stanley and/or Wendy, Plaintiffs are entitled to recover such amounts by way of indemnification
19 from Defendant.

20 43. Plaintiffs have been obligated to and have paid legal fees for defending Wendy and
21 Stanley's lawsuit in amounts in excess of \$100,000. Plaintiffs are entitled to be indemnified for all
22 fees and costs paid to date and for all fees and costs incurred in the future for defending Plaintiffs
23 in the Wendy and Stanley lawsuits. This indemnification claim has therefore accrued.

24 WHEREFORE, Plaintiffs seek judgment as follows;

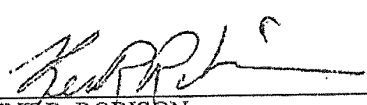
- 25 1. For consequential damages according to proof in excess of \$15,000;
26 2. For indemnification of any and all sums Plaintiffs must pay Wendy and/or Stanley;
27 3. For fees and costs incurred in the Wendy and Stanley lawsuits;
28 4. For fees and costs incurred in this action; and

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5. For such other relief as is appropriate under the circumstances.

DATED this 26th day of December 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503



KENT R. ROBISON
LINDSAY L. LIDDELL
*Attorneys for Todd B. Jaksick, Individually, and as
Trustee of the Todd B. Jaksick Family Trust and as
Trustee of the TBJ Trust*

Robison, Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

EXHIBIT 4

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>

Sent: Sunday, March 01, 2020 11:58 AM

To: Shawn Meador <smeador@woodburnandwedge.com>

Subject: [SPAM - keyword checking] - Indemnity

I was informed by Lucy Mason that I need to contact you regarding my reimbursement for attorneys fees and costs incurred pursuant to section 40 of the settlement agreement dated September 1, 2013.

The amount owed to date by Lynda is \$4675.90. I provided all the documentation that Lucy requested which I assume you have which includes the billing invoices. I intend to enforce the settlement agreement because I've been sued for malpractice. A subsequent action or set off is necessary because Lynda has refused to indemnify me pursuant to section 40. We can avoid this action by her simply making the payment referenced above within 10 days of this notice.

If the payment is not made within this 10 day I will proceed accordingly.

Thank you for your consideration in this matter.

Sent from my iPad

From: Shawn Meador
Sent: Monday, March 02, 2020 8:37 AM
To: Pierre Hascheff
Cc: Kelly C. Albright
Subject: RE: Indemnity

Pierre

Please provide me with copies of the documents that Lucy requested so that I can evaluate your claim. Lynda is not responsible for payment of any fees related to your deposition etc., in the Jaksick probate matter. I need to determine what fees have actually been charged and paid, without contribution from insurance company, in the malpractice action that appears to be on hold. I cannot do that without seeing the actual bills and time entries.

I would like to review all correspondence between you (and your counsel) and the plaintiff, Mr. Jaksick, and/or plaintiff's counsel, Kent Robison, in the malpractice action. I would like to review all correspondence between you and your counsel in the malpractice action. I do not believe that you can reasonably take the position that this is a community debt for which Lynda is equally responsible while insisting that you may keep secrets from her about the litigation. If it is a community obligation her rights are present, existing and equal to yours. If you have greater rights, you must necessarily accept greater responsibility.

As Lucy noted, we believe that in handling this matter you have a fiduciary duty to Lynda and your failure to notify her of the claim or your proposal for how to address the claim in a timely manner, is a breach of your fiduciary duty. If it should turn out (and I trust and hope this is not the case) that you have sought to recover fees from her for your time and efforts in the probate matter that would, in my opinion, be an additional breach of your fiduciary duty to her.

Lynda would certainly like to avoid the need for motion practice if possible. I need the requested information in order to give her thoughtful advice. If you elect, instead, to file a motion, I will ask the court to allow discovery with respect to these issues. I trust that I will receive the requested information within the ten days you have demanded that we respond.

Shawn

LH000013

AA 0245

From: Shawn Meador
Sent: Tuesday, March 03, 2020 4:01 PM
To: Pierre Hascheff
Subject: RE: Indemnity

Pierre

We will have to agree to disagree. I believe that under these circumstances, you have a fiduciary duty to Lynda. I believe that, as a fiduciary, you had an obligation to notify Lynda of the malpractice claim as soon as you became aware of it, and that she is entitled to participate in decisions that impact her financial well-being. I do think she has been harmed by your decision to keep the claim secret from her for so long. How did doing so protect her? I am hopeful that any judge would have serious reservations about that decision. As a judicial officer, I believe the court should hold you to a strict fiduciary duty to Lynda in all of your dealings regarding litigation that impacts her, and I hope, give her the benefit of the doubt on these issues.

I do not believe Lynda is obligated to simply sit back, let you handle the claim in any manner you believe is in your best interests, and then simply pay you whatever you demand she owes you. Nothing in the language of the MSA gives you this authority and control over decisions that impact both of you.

I believe Lynda is entitled to full and complete transparency. I do not believe you have a viable attorney/client privilege claim. NRS 49.115(5). Furthermore, in your discussions with lawyers about the malpractice claim, you are necessarily doing so as her agent and fiduciary if you expect her to pay half the bill, and, thus, I do not believe the law allows you to keep secrets from her. As a fiduciary, how do you protect her interests by hiding the facts from her?

As I previously stated, I do not believe that she is responsible for your costs and fees in the underlying probate proceeding in which you were a percipient witness. Nor do I believe such fees fall within the language your lawyer drafted.

Lynda is prepared to honor her obligation to pay her share of the costs and fees incurred in the malpractice action that have not been covered by insurance. I do not have sufficient information on which to evaluate what she does or does not owe you at this time because you have objected to providing that information. Upon receipt of the requested documents and other information, I will evaluate your demands with Lynda and she will pay what she owes under the agreement your lawyer drafted.

If, instead, you chose to litigate, Lynda will ask the Court to require you to provide the information we have requested and will seek the fees and costs Lynda incurs in such litigation. While she would prefer to resolve this issue without the need for litigation, she is prepared to seek the court's protection if necessary. My gut reaction is that the court would not look on your positions favorably.

If you have any legal authority you believe demonstrates that I am mistaken in the legal positions I have outlined above, I am happy to review and evaluate your authorities with Lynda.

Shawn

LH000014

AA 0246

EXHIBIT 5

-----Original Message-----

From: Pierre Hascheff <pierre@pahascheff.com>
Sent: Monday, April 20, 2020 12:12 PM
To: Shawn Meador <smeador@woodburnandwedge.com>
Cc: Todd@ToddIrtorvnenlaw.com
Subject: Indemnity

I trust you now have had an opportunity to review the documents Lucy sent you. In the meantime I have engaged Todd Alexander my malpractice defense attorney to respond to your allegations concerning the malpractice action. I have also engaged Todd Torvnen to represent me should we have to enforce the settlement agreement in Family Court and seek contempt proceedings. I have previously notified you pursuant to the settlement agreement any costs incurred including attorneys fees in enforcing the indemnity agreement will be assessed against your client for failure to honor her obligations under the agreement. I have given you an opportunity to resolve this matter without incurring fees and costs but this option has been declined.

The terms of the indemnity in the agreement are clear and unambiguous and your response to my request for payment in my opinion is only to gain leverage and delay the payment. As you know a delay in payment will only accrue statutory interest. Your demand for documentation which contain attorney-client privilege information as a condition to indemnify and payment is also additional evidence that your claims are without merit. See also NRCP 16.21 This duty to indemnify arises from the contractual language and is not subject to equitable considerations and will be enforced in accordance with its terms like any other contract. The basis for indemnity is restitution and the indemnitee is not held harmless pursuant to the agreement if he must incur costs and fees to vindicate his rights irrespective of the outcome in the underlying litigation. That's why Courts will award costs and fees not only in defending the malpractice action but also enforcing the terms of the indemnity agreement.

Courts also routinely reject any claims by the indemnitor for bad faith, breach fiduciary duty, breach of the implied covenant of good faith and fair dealing or punitive damages because those claims have no merit in this context. Any such instruction to the jury has been deemed wrong and prejudicial. To suggest somehow a fiduciary duty exists is not appropriate in this context. Nor is it appropriate in other situations such as buyer, landlord or other contractual indemnity claims.

Similarly indemnity claims are generally brought after the underlying litigation is concluded or substantially concluded and no prior notice was given to the indemnitor of the underlying claim. The indemnitor simply defends the action and then tenders the claim for indemnity and payment irrespective of the outcome. This can be years after the underlying litigation is concluded.

I am willing to take payments of \$1500.00 a month to resolve this matter now without further costs. Please let me know your response within 10 days Sent from my iPad

EXHIBIT 6