

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 GENEVA M. SIMMONS, an Individual)

4 Appellant,)

5 vs.)

6
7 JESUS M. BRIONES, an Individual)

8 Respondent.)

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CASE NO. 69060
Tracie K. Lindeman
Clerk of Supreme Court

**BRIEF OF AMICUS
CURIAE OF THE
NEVADA JUSTICE
ASSOCIATION IN
SUPPORT OF
RESPONDENT**

10
11 Appeal from the Eighth Judicial District Court, Clark County, Nevada

12 The Honorable Rob Bare, District Court Judge

13
14 District Court Case No. A-14-706955-J

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The Nevada Justice Association (“NJA”) is a non-profit organization of independent lawyers in the State of Nevada who represent consumers and shares the common goal of improving the civil justice system. NJA also works to advance the science of jurisprudence, to promote the administration of justice for the public good, and to uphold the honor and dignity of the legal profession.

Dated this 9th day of June, 2016.

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TABLE OF AUTHORITIES

Statutes and Rules:

NRS Chapter 485	1,2,3,4,5
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1 **IDENTITY AND INTEREST OF *AMICI CURIAE***

2 The Nevada Justice Association (“NJA”) is a non-profit organization of
3
4 independent lawyers in the State of Nevada who represent consumers and shares
5 the common goal of improving the civil justice system. NJA also works to
6
7 advance the science of jurisprudence, to promote the administration of justice for
8 the public good, and to uphold the honor and dignity of the legal profession.
9

10 NJA has an interest in insuring the proper interpretation and application of
11 Nevada’s Motor Vehicle Insurance and Financial Responsibility Act statutes.
12
13 NJA has submitted to this Court a motion for leave to file this brief.
14
15

16 **SUMMARY OF ARGUMENT**

- 17 1. NRS 485.035 defines “Judgment” for purposes of NRS Chapter 485
18
19 as
20
21 a “judgment . . . upon a cause of action arising out of the ownership,
22 maintenance or use of any motor vehicle for damages,”
23
24 2. A judgment for attorneys fees and costs only is not a “judgment upon
25 a cause of action arising out of the ownership, maintenance or use of
26 an automobile for damages.”
27

1 verdict at the short trial / trial de novo was less than Simmons' Offer
2 of Judgment and also because the verdict failed to exceed the
3 arbitration award by at least 20% percent.
4

5 2. There is no mention, claim or argument by either party in the opening
6 briefs that the Simmons judgment was for anything other than
7 **attorneys fees and costs.**
8

9
10 3. There is no mention, claim or argument by either party in the opening
11 briefs that Geneva Simmons made any counter-claim or asserted any
12 cause of action of her own in the underlying car accident lawsuit.
13
14

15
16 Chapter 485 of the Nevada Revised Statutes is the Motor Vehicle Insurance
17 and Financial Responsibility Act.
18

19 **NRS 485.301 (1)** provides:

20 Whenever any person fails within 60 days to satisfy any judgment
21 that was entered as a result of an accident involving a motor vehicle,
22 the judgment creditor or the judgment creditor's attorney may forward
23 to the Department immediately after the expiration of the 60 days a
24 certified copy of the judgment.
25
26
27

1 NRS 485.302 (1) provides:

2
3
4 **Suspension for nonpayment of judgment;exception.**

5 The Department shall, upon the receipt of a certified copy of a judgment,
6
7 suspend the license, all registrations and any nonresidents operating
8 privilege of any person against whom the judgment was rendered,

9
10
11 NRS 485.028 to 485.120 contain the definitions of terms as used in NRS
12
13 Chapter 485.

14 NRS 485.020 states: **Definitions.** As used in this chapter, unless the
15
16 context otherwise requires, the words and terms defined in NRS 485.028 to
17
18 NRS 485.120, inclusive, have the meanings ascribed to them in those
19
20 sections.

21 **I.**

22 **NRS 485.035 DEFINES “JUDGMENT” FOR PURPOSES**
23 **OF CHAPTER 485 AS A JUDGMENT UPON A CAUSE OF**
24 **ACTION ARISING FROM THE OWNERSHIP, MAINTENANCE**
25 **OR USE OF A MOTOR VEHICLE FOR DAMAGES.**
26
27

1 NRS 485.035 specifically defines “judgment” for purposes of the NRS
2 Chapter 485:
3

4 **NRS 485.035 “Judgment” defined.** “Judgment means any judgment
5 which shall have become final by expiration without appeal of the time within
6 which an appeal might have been perfected, or by final affirmation on appeal
7 rendered by a court of competent jurisdiction of any state or of the United States,
8 *upon a cause of action arising out of the ownership, maintenance or use of any*
9 *motor vehicle for damages*, including damages for care and loss of services
10 because of injury to or destruction of property, including the loss of use thereof, or
11 upon a cause of action upon an agreement of settlement for such damages.
12
13 (emphasis added)
14
15
16

17 II. 18 19

20 **A JUDGMENT FOR ATTORNEYS FEES AND COSTS ONLY IS NOT A** 21 **JUDGMENT UPON A CAUSE OF ACTION ARISING OUT OF THE** 22 **OWNERSHIP, MAINTENANCE OR USE OF A MOTOR VEHICLE FOR** 23 **DAMAGES** 24 25

26 The Simmons judgment was only for attorneys fees and costs. The
27

1 judgment that Simmons obtained was NOT for damage to her car or for her
2 medical bills or for any physical injuries to herself.
3

4 The judgment that was granted to Appellant Simmons was not for any cause
5 of action for damages that was asserted by Simmons.
6

7 More particularly, the judgment that was granted to Appellant Simmons was
8 not for any cause of action for damages **arising out of the ownership,**
9 **maintenance or use of a motor vehicle.** The judgment was only for attorneys
10 fees and costs, based upon the offer of judgment rules contained in NRCP 68,
11 Nevada Arbitration Rule 20 and Short Trial Rule 27. Simmon's judgment was
12 based upon fee-shifting and cost-shifting procedural rules, not upon any cause of
13 action for damages.
14
15
16

17 III. 18

19 **THE SUSPENSION OF DRIVER'S LICENSE AND REGISTRATION**

20 **UNDER NRS 485.302 DO NOT APPLY IN THIS CASE BECAUSE**

21 **A JUDGMENT FOR FEES AND COSTS ONLY IS NOT A**

22 **"JUDGMENT" AS NRS 485.035 DEFINES JUDGMENT FOR**

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Because the judgment obtained by Appellant Simmons was not a “*judgment* ... upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle for damages,,” it is not a “judgment” as that word is defined by NRS 485.035 for the purposes of NRS Chapter 485. Therefore, the penalties prescribed by NRS 485.301 and NRS 485.302, such as the suspension of drivers license and vehicle registrations, for failing to pay a “judgment” cannot apply in this case.

IV.

**NEVADA’S OFFER OF JUDGMENT RULES PROVIDE ONLY FOR
MONETARY SANCTIONS, NOT DMV SANCTIONS**

NRCP 68 provides that a party who fails to obtain a better result than an offer of judgment may be ordered to pay the opposing party's court costs and attorneys fees. Nevada Arbitration Rule 20 and Short Trial Rule 27 provide that parties who request a Trial de Novo from an arbitration award and do not obtain a result at least 20% better at Trial de Novo may be ordered to pay the opposing party's court costs and attorneys fees. Neither NRCP 68 nor Nevada Arbitration Rule 20 nor Short Trial Rule 27 provide for suspension of drivers license or

1 vehicle registrations.

2 **IV.**

3 **CONCLUSION**

4
5 The authority of the DMV Hearing Officer and the Courts to apply the
6
7 sanctions provided by NRS Chapter 485 are limited by the terms and definitions
8
9 set forth in that Chapter.

10 It would have been an abuse of authority in this case if the DMV Hearing
11
12 Officer had imposed sanctions under NRS 485.302 based upon a judgment that
13
14 does not meet the NRS 485.035's definition of a "judgment" for the purposes of
15
16 NRS Chapter 485.

17 Likewise, it would have been an abuse of discretion if the District Court had
18
19 over-turned the hearing officer's decision and expanded the definition of
20
21 "judgment beyond how NRS 485.035 defines "judgment."

22 What is being attempted in this case is to deny ordinary citizens access to
23
24 justice by threatening to take away their driver's licenses if they pursue personal
25
26 injury cases and lose or win, but not by enough.

27 The suspension of a drivers license and vehicle registration is a severe
sanction which imposes enormous practical hardship on most people. Such severe

1 sanctions should only be imposed in strict conformity with the statute which
2 authorizes it.
3

4 In this case, both the DMV Hearing Officer and the District Court correctly
5 recognized that GEICO Insurance Company is trying to deny people access to
6 justice by ignoring NRS 485.035 and mis-using NRS 485.302 for a purpose which
7 the Legislature never intended.
8
9

10 Wherefore, the Nevada Justice Association respectfully requests that the
11 Judgment of the District Court be affirmed.
12
13

14 Dated this 9th day of June, 2016.
15

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this proposed brief complies with the formatting requirements of NRAP 32(a)(5) and the type style requirements of NRAP32(a)(6) because this brief was prepared in a proportionally-spaced typeface (14-point Times New Roman font) using Word Perfect.
2. I further certify that this brief complies with the page-or-type-volume limitations of NRAP 32(a)(7) and NRAP 29(e) for an Amicus brief, because excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages.
3. I hereby certify that I have read this amicus curiae brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the records to be supported by a reference to the page and volume number, if any, of the transcript of appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the

1 Nevada Rules of Appellate Procedure.

2 Dated this 9th day of June, 2016.

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1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to N.R.A.P. 31 I certify that I am an employee of Thomas &
4 Springberg and on this 9th day of June, 2016, I electronically filed and
5
6 served a true and correct copy of the foregoing

7 **BRIEF OF AMICUS CURIAE OF THE NEVADA JUSTICE**

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