

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

PETER GARDNER; AND CHRISTIAN
GARDNER, ON BEHALF OF MINOR
CHILD, LELAND GARDNER,
vs.
HENDERSON WATER PARK, LLC D/B/A
COWABUNGA BAY WATER PARK et al.

No. 71652

Electronically Filed
Nov 07 2016 04:03 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Eighth Department XXX
County Clark Judge The Honorable Jerry A. Wiese II
District Ct. Case No. A722259

2. Attorney filing this docketing statement:

Attorney Donald J. Campbell Telephone 702-382-5222
Firm Campbell & Williams
Address 700 South Seventh Street
Las Vegas, Nevada 89101

Client(s) Peter and Christian Gardner, on behalf of minor child, Leland Gardner

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Paul F. Eisinger Telephone 702-366-0622
Firm Thorndal Armstrong Delk Balkenbush & Eisinger
Address 1100 E. Bridger Avenue
Las Vegas, Nevada 89101

Client(s) Henderson Water Park, LLC d/b/a Cowabunga Bay Water Park et al.

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Peter and Christian Gardner, on behalf of minor child, Leland Gardner, Petitioners
v.

Eighth Judicial District Court of the State of Nevada, in and for the County of Clark; and the
Honorable Jerry A. Wiese II, District Judge
and

Henderson Water Park, LLC dba Cowabunga Bay Water Park, West Coast Water Parks,
LLC, and Double Ott Water Holdings, LLC, Real Parties in Interest
Supreme Court No. 70823

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case arises from the severe non-fatal drowning of six-year old Leland Gardner on May 27, 2015 in the wave pool at the Cowabunga Bay water park in Henderson, Nevada. Cowabunga Bay is owned and operated by Henderson Water Park, LLC. Henderson Water Park, LLC's membership is comprised of two limited liability companies, West Coast Water Parks, LLC and Double Ott Water Holdings, LLC. On October 10, 2016, the District Court granted Defendants' Motion for Summary Judgment as to Defendants West Coast and Double Ott Only on grounds that the member-LLCs of Henderson Water Park, LLC are immune from any liability under NRS 86.371 and NRS 86.381. Accordingly, the District Court dismissed West Coast Water Parks, LLC and Double Ott Water Holdings, LLC from the action. Thereafter, the District Court granted NRCP 54(b) certification of its order and Plaintiffs commenced the instant appeal.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the District Court erred by granting summary judgment on grounds that NRS 86.371 and NRS 86.381 constituted a complete bar to liability against the member-LLCs of Henderson Water Park, LLC where the Gardners alleged that the member-LLCs committed the tort of negligence by authorizing, directing, ratifying and participating in the illegal conduct that forms the basis of the Complaint.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

See Response to No. 6. This case is the subject of a pending original writ proceeding in the Supreme Court regarding the denial of Plaintiffs' Motion for Leave to File Amended Complaint wherein Plaintiffs sought to assert direct claims for negligence against seven (7) individuals who served on Henderson Water Park, LLC's Management Committee. The District Court denied Plaintiffs' Motion for Leave to File Amended Complaint for the exact same reasons that it granted Defendants' Motion for Summary Judgment. In other words, the pending original writ proceeding in the Supreme Court and this appeal present the identical legal issue. The parties completed the briefing related to the pending original writ proceeding on November 7, 2016.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☒ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Supreme Court should retain this writ proceeding because it is a matter raising as a principal issue questions of first impression involving common law as well as questions of statewide importance. NRAP 17(a)(13)-(14). In addition, the pending original writ proceeding referenced above has been retained by the Supreme Court and the Gardners intend to seek consolidation of the related matters.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? N/A _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Oct 13, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Oct 13, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Nov 2, 2016

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRCP 54(b)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The order granting summary judgment and dismissing Defendants West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC is a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. In that regard, the District Court granted NRCP 54(b) certification of the order granting summary judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs: Peter and Christian Gardner, on behalf of minor child, Leland Gardner

Defendants: Henderson Water Park, LLC d/b/a Cowabunga Bay Water Park,
West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

After the entry of the order granting summary judgment as to West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC, the District Court granted the Gardners leave to amend their Complaint to assert a claim for negligence against National Aquatic Safety Company, L.L.C. At the time of filing the instant Docketing Statement, the Gardners have not filed or served their Amended Complaint against National Aquatic Safety Company, L.L.C.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The Gardners brought claims for negligence against Henderson Water Park, LLC d/b/a Cowabunga Bay Water Park, West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC. The District Court granted summary judgment as to West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC, which is the basis of this appeal.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

The Gardners' claim for negligence against Henderson Water Park, LLC d/b/a Cowabunga Bay Water Park. Additionally, the Gardners will be filing an amended complaint that names National Aquatic Safety Company, L.L.C. as a defendant.

(b) Specify the parties remaining below:

Henderson Water Park, LLC d/b/a Cowabunga Bay Water Park. Additionally, the Gardners will be filing an amended complaint that names National Aquatic Safety Company, L.L.C. as a defendant.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

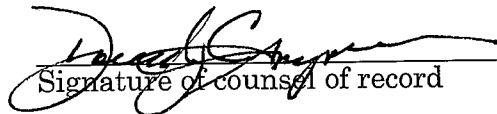
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Peter and Christian Gardner
Name of appellant

Donald J. Campbell
Name of counsel of record

Nov 7, 2016
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 7th day of November, 2016, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Thorndal Armstrong Delk Balkenbush & Eisinger
Paul F. Eisinger, Esq.
Alexandra B. McLeod, Esq.
1100 E. Bridger Avenue
Las Vegas, Nevada 89101

Dated this 7th day of November, 2016

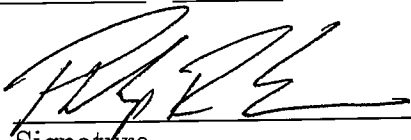

Signature

EXHIBIT 1

EXHIBIT 1

DISTRICT COURT CIVIL COVER SHEET

A-15-722259-C

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

XXX

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

PETER and CHRISTIAN GARDNER on behalf of minor child,

HENDERSON WATER PARK, LLC dba COWABUNGA

LELAND GARDNER

BAY WATER PARK; WEST COAST WATER PARKS, LLC;

DOUBLE OTT WATER HOLDING, LLC

Attorney (name/address/phone):

Donald J. Campbell, Esq. and Samuel R. Mirkovich, Esq.

Attorney (name/address/phone):

Campbell & Williams-700 S. 7th Street, Las Vegas, Nevada, 89101

(702) 382-5222 phone

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

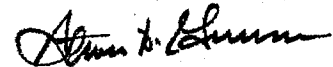
Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input checked="" type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil cover sheet.

7/28/15
Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

1 **COMP**
2 CAMPBELL & WILLIAMS
3 DONALD J. CAMPBELL, ESQ. (1216)
4 djc@cwlawlv.com
5 SAMUEL R. MIRKOVICH, ESQ. (11662)
6 srm@cwlawlv.com
7 PHILIP R. ERWIN, ESQ. (11563)
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9 700 South Seventh Street
10 Las Vegas, Nevada 89101
11 Telephone: (702) 382-5222
12 Facsimile: (702) 382-0540

13 *Attorneys for Plaintiffs*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 PETER GARDNER and CHRISTIAN GARDNER,)
17 on behalf of minor child, LELAND GARDNER,)

18 Plaintiffs,)

19 vs.)

20 HENDERSON WATER PARK, LLC dba)
21 COWABUNGA BAY WATER PARK, a Nevada)
22 limited liability company; WEST COAST WATER)
23 PARKS, LLC, a Nevada limited liability company;)
24 DOUBLE OTT WATER HOLDINGS, LLC, a Utah)
25 limited liability company; DOES I through X,)
26 inclusive; ROE Corporations I through X, inclusive;)
27 and ROE Limited Liability Company I through X,)
28 inclusive,)

29 Defendants.)

A-15-722259-C
Case No.:
Dept. No.: XXX

COMPLAINT

30 Plaintiffs Peter and Christian Gardner, on behalf of their minor son, Leland Gardner, and
31 through their undersigned counsel, hereby complain and allege against Defendants as follows:
32
33
34
35
36
37
38

IDENTIFICATION OF THE PARTIES

1. Plaintiff Peter Gardner ("Mr. Gardner") is an individual and a Nevada resident. Mr. Gardner is married to Christian Gardner and is the father of Leland Gardner ("Leland"), a minor child.

2. Plaintiff Christian Gardner ("Mrs. Gardner") is an individual and a Nevada resident. Mrs. Gardner is married to Mr. Gardner and is Leland's mother.

3. Leland Gardner is six (6) years old and a Nevada resident.

4. Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park is a Nevada limited liability company with its principal place of business in Clark County, Nevada.

5. Defendant West Coast Water Parks, LLC is a Nevada limited liability company that manages and/or owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and regularly conducts business in Clark County, Nevada.

6. Defendant Double Ott Water Holdings, LLC is a Utah limited liability company that manages and/or owns Defendant Henderson Water Park, LLC dba Cowabunga Bay Water Park and regularly conducts business in Clark County, Nevada.

7. Cowabunga Bay Water Park ("Cowabunga Bay") is a water park located at 900 Galleria Drive, Henderson, Nevada 89011 and is owned and operated by Defendants Henderson Water Park, LLC dba Cowabunga Bay Water Park, West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC (collectively "Defendants").

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Doe Defendants I through X, are unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are informed and believe and thereupon allege that each of the defendants designated as a Doe Defendant is responsible in some manner for the events and happenings described herein, including but not limited to the individuals and entities that provide or should have provided lifeguard and safety protection for Leland including but not limited to lifeguards, managers,

1 supervisors, contractors, other water park personnel, and the individual owners and operators of
2 Cowabunga Bay. As such, Plaintiffs will seek leave of the Court to amend this Complaint to insert the
3 true names and capacities of said defendants as they become identified and known to Plaintiff.

4 9. The true names and capacities, whether individual, corporate, associate, or otherwise,
5 of Defendants Roe Corporations I through X and Roe Limited Liability Companies I through X, are
6 unknown to Plaintiffs, who therefore sue said defendants by such fictitious names. Plaintiffs are
7 informed and believe and thereupon allege that each of the defendants designated as a Roe Corporation
8 or Roe Limited Liability Company is responsible in some manner for the events and happenings
9 described herein, including but not limited to the individuals and entities that provide or should have
10 provided lifeguard and safety protection for Leland including but not limited to swimming pool
11 management companies and employment staffing agencies. As such, Plaintiffs will seek leave of the
12 Court to amend this Complaint to insert the true names and capacities of said defendants as they
13 become identified and known to Plaintiff.
14

15 10. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it is
16 meant that such Defendant's officers, agents, servants, employees, or representatives did such act or
17 thing and at the time such act or thing was done, it was done with full authorization or ratification of
18 such Defendant or was done in the normal and routine course and scope of business, or with the actual,
19 apparent and/or implied authority of such Defendant's officers, agents, servants, employees, or
20 representatives. Specifically, Defendants are liable for the actions of its officers, agents, servants,
21 employees, and representatives.
22

23 GENERAL ALLEGATIONS

24 11. At all times material to this Complaint, the acts and omissions giving rise to this action
25 occurred in Clark County, Nevada.
26

27 12. Cowabunga Bay is a twenty-five (25) acre for-profit water park featuring dozens of
28 water slides and attractions. One of its marquee attractions is the Surf-A-Rama Wave Pool ("the Wave

1 Pool”), which is 35,000 square feet, holds up to 2,619 bathers and produces waves up to four (4) feet
2 high.

3 13. Before opening its doors to the public, Nevada law required Cowabunga Bay to first
4 obtain a permit to operate from the Southern Nevada Health District (“SNHD”). Nevada Revised
5 Statute Chapter 444 governs the operation of public swimming pools and dictates the procedures a
6 water recreation business such as Cowabunga Bay must follow to obtain such a permit.
7

8 14. In that regard, NRS 444.080 states that it is “unlawful for any person, firm,
9 corporation, institution or municipality to construct or to operate or continue to operate any public
10 swimming pool [] within the State of Nevada without a permit to do so from the health authority.”
11 In order to obtain the requisite permit, the operator must submit an application or “lifeguard plan” to the
12 health authority clarifying *inter alia* “[t]he lifesaving apparatus and measures to insure safety of
13 bathers.” *Id.* The health authority will only approve a permit when it determines that the public
14 swimming pool in question will not constitute a menace to public health. *Id.*
15

16 15. On February 19, 2014, Cowabunga Bay applied for its permit and submitted a lifeguard
17 plan to SNHD. In its lifeguard plan, Cowabunga Bay proposed posting only six (6) lifeguards to
18 monitor the Wave Pool. Due to the woefully deficient lifeguard coverage proposed for this banner
19 attraction, SNHD denied Cowabunga Bay’s application. In doing so, SNHD specified that seventeen
20 (17) lifeguards were required to safely operate the Wave Pool.
21

22 16. Thus, in order to obtain its permit, Cowabunga Bay submitted a revised lifeguard plan
23 in line with SNHD’s safety requirements for the Wave Pool, *i.e.*, that seventeen (17) lifeguards would
24 be posted to monitor the Wave Pool at all times. Based on Cowabunga Bay’s revised lifeguard plan,
25 SNHD granted its request for a permit.

26 17. Cowabunga Bay, however, had no intention of ever providing the lifeguard coverage
27 required by state law and instead knowingly, intentionally and willfully deviated from the prescribed
28 lifeguard plan for its Wave Pool and other attractions. Indeed, despite its public proclamations that

1 safety was its "number one priority," Cowabunga Bay habitually operated the Wave Pool with an
2 inadequate amount of lifeguards. In sum, Cowabunga Bay made the necessary representations
3 regarding lifeguard staffing to obtain the required permit and then summarily disregarded those
4 representations in order to operate the Wave Pool with the staffing levels that were previously rejected
5 by SNHD.

6
7 18. Moreover, Cowabunga Bay did not provide life poles used to rescue a drowning
8 swimmer, failed to post the appropriate safety signage, and did not maintain water quality in clear
9 violation of SNHD requirements.

10 19. During the 2014-2015 school year, Leland was a kindergarten student. After school on
11 May 27, 2015, Leland had a playdate with a classmate that would be hosted by the classmate's father,
12 William Ray ("Mr. Ray"), at a "water park."

13
14 20. While visiting Cowabunga Bay, Mr. Ray took his son and Leland to the Wave Pool.
15 There, Leland—who was not wearing a life vest—fell off of his inner tube and was submerged at the
16 bottom of the Wave Pool for a lengthy period of time. Leland suffered a non-fatal drowning and, as a
17 result, debilitating injuries that required weeks of hospitalization in the pediatric intensive care unit at
18 St. Rose Hospital—Siena Campus. Since the incident, Leland has required twenty-four (24) hour care
19 for his severe neurological impairments and his devastating injuries will necessitate extensive and
20 ongoing medical treatment and rehabilitative therapy for the rest of his life.

21
22 21. On May 27, 2015, Cowabunga Bay failed to adequately staff lifeguards at numerous
23 attractions throughout the water park, including the Wave Pool. Further, Cowabunga Bay failed to
24 provide safety signage, life poles, clean water with the appropriate levels of visibility, and otherwise
25 abide by the parameters of its permit. Finally, Cowabunga Bay did not require children of Leland's age
26 and size to wear life vests in the Wave Pool.

27
28 22. On or around 12:10 p.m. on May 29, 2015, SNHD reported to Cowabunga Bay to
investigate Leland's non-fatal drowning. SNHD observed that proper safety signage and lifepoles were

1 not present. In addition, although Cowabunga Bay was not scheduled to open for another hour, SNHD
2 still noted there were only fourteen (14) lifeguards on duty inside Cowabunga Bay at the time when
3 thirty-five (35) were required by the lifeguard plan.

4 23. SNHD returned to Cowabunga Bay on June 9, 2015 to conduct an additional
5 investigation while the park was open for business. Despite Cowabunga Bay's May 29, 2015
6 representations—and its absolute legal obligation to provide adequate staffing of lifeguards—SNHD
7 found only eight (8) lifeguards on duty at the Wave Pool instead of the seventeen (17) required by the
8 lifeguard plan. SNHD likewise found lifeguard staffing violations at other attractions in Cowabunga
9 Bar as well as additional problems with the water quality. SNHD ultimately cited and fined
10 Cowabunga Bay for its inadequate staffing of lifeguards and other violations of the permitting
11 requirements.
12

13 FIRST CAUSE OF ACTION

14 (Negligence – All Defendants)

15 24. Paragraphs 1 through 23 are hereby specifically incorporated herein as though fully set
16 forth.
17

18 25. Defendants, through their acts and omissions, owed multiple duties to Plaintiffs
19 including but not limited to:

- 20 a. The duty to keep Leland safe;
- 21 b. The duty to use reasonable care to protect Leland from known dangers such as
- 22 drowning;
- 23 c. The duty to adequately staff lifeguards throughout Cowabunga Bay;
- 24 d. The duty to properly train employees, lifeguards and managers/supervisors to
- 25 protect customers from dangers such as drowning;
- 26 e. The duty to provide ongoing training to employees, lifeguards and
- 27 managers/supervisors to protect customers from dangers such as drowning;
- 28

- 1 f. The duty to maintain clean and clear water within Cowabunga Bay;
2 g. The duty to use reasonable care in the hiring, supervision, training and retention
3 of its employees; and
4 h. The duty to act in a matter that does not violate State of Nevada, City of Las
5 Vegas and Clark County statutes, laws and ordinances.
6

7 26. Defendants breached their duties to Plaintiffs when they failed to provide adequate
8 lifeguard coverage and otherwise failed to take reasonable steps to protect Leland from drowning.

9 27. In addition, Defendants' violations of the law were criminal in nature and constituted
10 negligence *per se* as Leland's injuries are of the type which the statutes, laws, ordinances, and
11 regulations of the United States, State of Nevada—including but limited to NRS 444.080—Clark
12 County, and/or the Cities of Henderson and Las Vegas were intended to prevent.
13

14 28. As a direct and proximate result of Defendants' negligence and brazen violation of
15 the law, Plaintiffs have been damaged in an amount greater than \$10,000.
16

17 29. The conduct of the Defendants, and each of them, individually and in concert with
18 one another as herein alleged, was grossly negligent, reckless, willful, intentional, oppressive,
19 fraudulent, malicious, and done in reckless disregard of the safety and rights of Plaintiffs thereby
20 warranting the imposition of punitive damages.
21

22 30. Plaintiffs have been forced to retain the services of attorneys to prosecute this action
23 and are entitled to an award of reasonable attorneys' fees and costs.

24 JURY DEMAND

25 31. Plaintiff hereby demands a trial by jury for all issues so triable.

26 PRAYER FOR RELIEF

27 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- 28 1. For compensatory damages in excess of \$10,000.00;
2. For punitive damages to be determined by the jury;

3. For attorneys fees and costs of suit incurred herein;
4. For pre-judgment and post-judgment interest, as allowed by law; and
5. For such other and further relief as is appropriate under the circumstances.

DATED this 28th day of July, 2015.

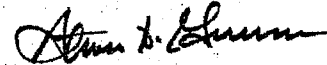
Respectfully submitted,
CAMPBELL & WILLIAMS

By /s/ Donald J. Campbell, Esq.
DONALD J. CAMPBELL, ESQ. (1216)
SAMUEL R. MIRKOVICH, ESQ. (11662)
PHILIP R. ERWIN, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222

Attorneys for Plaintiffs

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

1 **ORDR**

2 THORNDAL ARMSTRONG DELK

3 BALKENBUSH & EISINGER

4 PAUL F. EISINGER, ESQ.

5 Nevada Bar No. 1617

6 ALEXANDRA B. MCLEOD, ESQ.

7 Nevada Bar No. 8185

8 1100 East Bridger Avenue

9 Las Vegas, NV 89101-5315

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12 Tel: (702) 366-0622

13 Fax: (702) 366-0327

14 E-Mail: peisinger@thorndal.com

15 E-Mail: amcleod@thorndal.com

16 Attorneys for Defendants,

17 HENDERSON WATER PARK, LLC dba

18 COWABUNGA BAY WATER PARK,

19 WEST COAST WATER PARKS, LLC,

20 DOUBLE OTT WATER HOLDINGS, LLC

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

23 PETER GARDNER and CHRISTIAN GARDNER,
24 on behalf of minor child, LELAND GARDNER,

Plaintiffs,

vs.

HENDERSON WATER PARK, LLC dba

COWABUNGA BAY WATER PARK, a Nevada

limited liability company; WEST COAST WATER

PARKS, LLC, a Nevada limited liability company;

DOUBLE OTT WATER HOLDINGS, LLC, a Utah

limited liability company; DOES I through X,

inclusive; ROE CORPORATIONS I through X, and

ROE Limited Liability Company I through X,

inclusive,

Defendants.

CASE NO. A-15-722259-C

DEPT. NO. XXX

ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT AS
TO DEFENDANTS WEST COAST
AND DOUBLE OTT ONLY

1 Date of Hearing:

Sept. 13, 2016 at 9:00 a.m.

2 For Plaintiffs:

J. Colby Williams, Esq. and
Samuel R. Mirkovich, Esq. of
3 CAMPBELL & WILLIAMS

4 For Defendants:

Paul F. Eisinger, Esq. and
Alexandra B. McLeod, Esq. of
5 THORNDAL ARMSTRONG DELK
6 BALKENBUSH & EISINGER

7 Defendants' Motion for Summary Judgment as to Claims Against West Coast and Double
8 OTT, having come on for hearing before the above-entitled Court on the 13th day of September,
9 2016, at the hour of 9:00 a.m.; and this Honorable Court having considered all of the papers and
10 pleadings on file herein, as well as the argument of counsel for the parties hereto; and good cause
11 appearing therefor;

12 THE COURT HEREBY FINDS as follows:

13 **I. FINDINGS OF FACT**

14 1. Defendant, Henderson Water Park, LLC does business as Cowabunga Bay Water
15 Park, and oversees the water park's operations.

16 2. Defendants (Movants), West Coast Water Parks, LLC and Double OTT Water
17 Holdings, LLC are each members of Henderson Water Park, LLC.

18 3. Plaintiffs and Defendants each concur there are no facts about the company
19 structure in dispute and therefore, this legal issue is ripe for determination.

20 4. This Court finds that the Nevada Revised Statutes protect members of an LLC, not
21 only from debts incurred by an LLC, but also from liabilities incurred by the LLC. NRS 86.371
22 indicates that "...no member or manager of any limited-liability company formed under the laws
23 of this State is *individually liable* for the debts or liabilities of the company." (emphasis added).

24 ...

5. Nevada Revised Statute 86.381 states "*A member of a limited-liability company is not a proper party to proceedings by or against the company*, except where the object is to enforce the member's right against or liability to the company." (emphasis added)

Therefore, THE COURT HEREBY CONCLUDES as follows:

II. CONCLUSIONS OF LAW

1. NRS 86.381 is clear on its face and unambiguously sets forth that "A member of a limited-liability company is not a proper party to proceedings ... against the company..."

2. Defendants, West Coast and Double OTT, as members of a limited-liability company, specifically Henderson Water Park, LLC, fall within the scope of NRS Chapter 86 and the absolute statutory protection of NRS 86.381, and are not proper parties to the proceedings against Henderson Water Park, LLC dba Cowabunga Bay Water Park.

3. This Court has previously ruled in this case in favor of upholding the protections to members of LLCs. See this Court's July 5, 2016 Order Denying Plaintiffs' Motion for Leave to Amend Complaint, on file herein.

4. It is for the Nevada Legislature, if it so chooses, not the courts, to rewrite a clear and unambiguous statute dealing with limited-liability companies.

5. For these reasons, Summary Judgment is GRANTED in favor of Defendants, West Coast Water Parks, LLC and Double OTT Water Holdings, LLC.

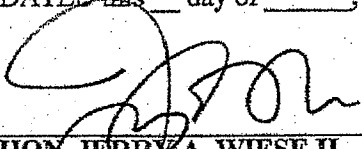
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6. The caption will be amended to reflect the dismissal of Defendants, West Coast Water Parks, LLC and Double OTT Water Holdings, LLC from this action.

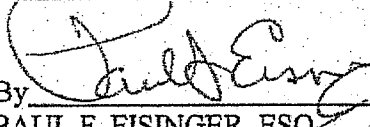
DATED this ____ day of ____, 2016.



HON. JERRY A. WIESE II
DISTRICT COURT JUDGE, DEPARTMENT 30
EB

Respectfully submitted by:

THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

By 

PAUL F. EISINGER, ESQ.
ALEXANDRA B. MCLEOD, ESQ.
1100 E. Bridger Avenue, P.O. Box 2070
Las Vegas, Nevada 89125
Attorneys for Defendants

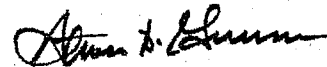
Approved as to form and content by:

CAMPBELL & WILLIAMS

By REFUSED TO SIGN
J. COLBY WILLIAMS, ESQ.
SAMUEL R. MIRKOVICH, ESQ.
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

1 **NEOJ**
2 **THORNDAL ARMSTRONG DELK**
3 **BALKENBUSH & EISINGER**
4 **PAUL F. EISINGER, ESQ.**
5 Nevada Bar No. 1617
6 **ALEXANDRA B. MCLEOD, ESQ.**
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15 E-Mail: peisinger@thorndal.com
16 E-Mail: amcleod@thorndal.com
17 Attorneys for Defendants,
18 **HENDERSON WATER PARK, LLC dba**
19 **COWABUNGA BAY WATER PARK,**
20 **WEST COAST WATER PARKS, LLC and**
21 **DOUBLE OTT WATER HOLDINGS, LLC**

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **PETER GARDNER and CHRISTIAN GARDNER,**
15 **on behalf of minor child, LELAND GARDNER,**

16 **Plaintiffs,**

17 **vs.**

18 **HENDERSON WATER PARK, LLC dba**
19 **COWABUNGA BAY WATER PARK, a Nevada**
20 **limited liability company; DOES I through X,**
21 **inclusive; ROE CORPORATIONS I through X, and**
22 **ROE Limited Liability Company I through X,**
23 **inclusive,**

24 **Defendants.**

CASE NO. A-15-722259-C
DEPT. NO. XXX

NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
SUMMARY JUDGMENT AS TO
DEFENDANTS WEST COAST AND
DOUBLE OTT ONLY

25 PLEASE TAKE NOTICE that on October 10, 2016, District Court Judge Jerry A. Wiese,
26 IL, executed the Order Granting Motion for Summary Judgment as to Defendants West Coast
27 and Double OTT Only. This Order was filed with the Clerk of the Court on October 10, 2016.
28 ...

1 A true and correct copy of that filed Order is attached hereto as Exhibit "A".

2 DATED this 13th day of October, 2016.

3 THORNDAL, ARMSTRONG, DELK,
4 BALKENBUSH & EISINGER

5 /s/ Paul F. Eisinger

6

PAUL F. EISINGER, ESQ.

7 Nevada Bar No. 1617

8 ALEXANDRA B. McLEOD, ESQ.

9 Nevada Bar No. 8185

10 1100 East Bridger Avenue, P.O. Box 2070

11 Las Vegas, NV 89125

12 Attorneys for Defendants,

13 HENDERSON WATER PARK, LLC

14 dba COWABUNGA BAY WATER PARK,

15 WEST COAST WATER PARKS, LLC and

16 DOUBLE OTT WATER HOLDINGS, LLC

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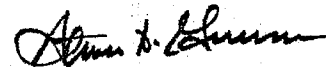
Donald J. Campbell, Esq.
Samuel R. Mirkovich, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, NV 89101
Attorneys for Plaintiffs,
PETER and CHRISTIAN GARDNER
on behalf of minor child,
LELAND GARDNER

An Employee of THORNDAL, ARMSTRONG, DELK,
BALKENBUSH & EISINGER



LAW OFFICES
**THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER**
A PROFESSIONAL CORPORATION
www.thorndal.com

EXHIBIT A



CLERK OF THE COURT

1 **ORDR**

2 THORNDAL ARMSTRONG DELK

3 BALKENBUSH & EISINGER

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14 Fax: (702) 366-0327

15 E-Mail: peisinger@thorndal.com

16 E-Mail: amcleod@thorndal.com

17 Attorneys for Defendants,

18 HENDERSON WATER PARK, LLC dba

19 COWABUNGA BAY WATER PARK,

20 WEST COAST WATER PARKS, LLC,

21 DOUBLE OTT WATER HOLDINGS, LLC

22 **DISTRICT COURT**

23 **CLARK COUNTY, NEVADA**

24 PETER GARDNER and CHRISTIAN GARDNER,
on behalf of minor child, LELAND GARDNER,

Plaintiffs,

vs.

HENDERSON WATER PARK, LLC dba
COWABUNGA BAY WATER PARK, a Nevada
limited liability company; WEST COAST WATER
PARKS, LLC, a Nevada limited liability company;
DOUBLE OTT WATER HOLDINGS, LLC, a Utah
limited liability company; DOES I through X,
inclusive; ROE CORPORATIONS I through X, and
ROE Limited Liability Company I through X,
inclusive,

Defendants.

CASE NO. A-15-722259-C
DEPT. NO. XXX

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT AS
TO DEFENDANTS WEST COAST
AND DOUBLE OTT ONLY**

1 Date of Hearing: Sept. 13, 2016 at 9:00 a.m.
2 For Plaintiffs: J. Colby Williams, Esq. and
3 Samuel R. Mirkovich, Esq. of
CAMPBELL & WILLIAMS
4 For Defendants: Paul F. Eisinger, Esq. and
5 Alexandra B. M^oLeod, Esq. of
THORNDAL ARMSTRONG DELK
6 BALKENBUSH & EISINGER

7 Defendants' Motion for Summary Judgment as to Claims Against West Coast and Double
8 OTT, having come on for hearing before the above-entitled Court on the 13th day of September,
9 2016, at the hour of 9:00 a.m.; and this Honorable Court having considered all of the papers and
10 pleadings on file herein, as well as the argument of counsel for the parties hereto; and good cause
11 appearing therefor;

12 THE COURT HEREBY FINDS as follows:

13 **I. FINDINGS OF FACT**

14 1. Defendant, Henderson Water Park, LLC does business as Cowabunga Bay Water
15 Park, and oversees the water park's operations.

16 2. Defendants (Movants), West Coast Water Parks, LLC and Double OTT Water
17 Holdings, LLC are each members of Henderson Water Park, LLC.

18 3. Plaintiffs and Defendants each concur there are no facts about the company
19 structure in dispute and therefore, this legal issue is ripe for determination.

20 4. This Court finds that the Nevada Revised Statutes protect members of an LLC, not
21 only from debts incurred by an LLC, but also from liabilities incurred by the LLC. NRS 86.371
22 indicates that "...no member or manager of any limited-liability company formed under the laws
23 of this State is *individually liable* for the debts or liabilities of the company." (emphasis added).

24 ...

5. Nevada Revised Statute 86.381 states "*A member of a limited-liability company is not a proper party to proceedings by or against the company, except where the object is to enforce the member's right against or liability to the company.*" (emphasis added)

Therefore, THE COURT HEREBY CONCLUDES as follows:

II. CONCLUSIONS OF LAW

1. NRS 86.381 is clear on its face and unambiguously sets forth that "A member of a limited-liability company is not a proper party to proceedings ... against the company..."

2. Defendants, West Coast and Double OTT, as members of a limited-liability company, specifically Henderson Water Park, LLC, fall within the scope of NRS Chapter 86 and the absolute statutory protection of NRS 86.381, and are not proper parties to the proceedings against Henderson Water Park, LLC dba Cowabunga Bay Water Park.

3. This Court has previously ruled in this case in favor of upholding the protections to members of LLCs. See this Court's July 5, 2016 Order Denying Plaintiffs' Motion for Leave to Amend Complaint, on file herein.

4. It is for the Nevada Legislature, if it so chooses, not the courts, to rewrite a clear and unambiguous statute dealing with limited-liability companies.

5. For these reasons, Summary Judgment is GRANTED in favor of Defendants, West Coast Water Parks, LLC and Double OTT Water Holdings, LLC.

...

...

...

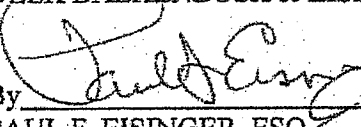
6. The caption will be amended to reflect the dismissal of Defendants, West Coast Water Parks, LLC and Double OTT Water Holdings, LLC from this action.

DATED this ____ day of ____, 2016.


HON. JERRY A. WIESE II
DISTRICT COURT JUDGE, DEPARTMENT 30
EB

Respectfully submitted by:

THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

By 
PAUL F. EISINGER, ESQ.
ALEXANDRA B. McLEOD, ESQ.
1100 E. Bridger Avenue, P.O. Box 2070
Las Vegas, Nevada 89125
Attorneys for Defendants

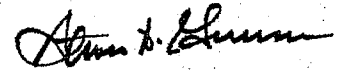
Approved as to form and content by:

CAMPBELL & WILLIAMS

By REFUSED TO SIGN
J. COLBY WILLIAMS, ESQ.
SAMUEL R. MIRKOVICH, ESQ.
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

EXHIBIT 4

EXHIBIT 4


CLERK OF THE COURT

ORDG

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
[djic@cwlawlv.com](mailto:djc@cwlawlv.com)
SAMUEL R. MIRKOVICH, ESQ. (11662)
srm@cwlawlv.com
700 South Seventh Street
Las Vegas, NV 89101
Tel: (702) 382-5222
Fax: (702) 382-0540

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN GARDNER,)
on behalf of minor child, LELAND GARDNER,)
Plaintiffs,)

vs.

HENDERSON WATER PARK, LLC dba)
COWABUNGA BAY WATER PARK, a Nevada)
limited liability company; WEST COAST WATER)
PARKS, LLC, a Nevada limited liability company;)
DOUBLE OTT WATER HOLDINGS, LLC, a Utah)
limited liability company; DOES I through X,)
inclusive; ROE Corporations I through X, inclusive;)
and ROE Limited Liability Company I through X,)
inclusive,)

Defendants.)

Case No.: A-15-722259-C
Dept. No.: XXX

**ORDER GRANTING PLAINTIFFS'
MOTION FOR NRCP 54(b)
CERTIFICATION OF ORDER
GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AS TO CLAIMS
AGAINST WEST COAST AND
DOUBLE OTT**

The matter before the Court is Plaintiffs' Motion for NRCP 54(b) Certification of Order Granting Motion for Summary Judgment as to Claims against Defendants West Coast and Double Ott and Order Shortening Time. The Court, having reviewed the papers and pleadings on file in this matter and having heard the oral argument of counsel on October 20, 2016, and good cause appearing and with no just reason for delay, hereby rules as follows:

I. FINDINGS

1. On October 10, 2016, the Court entered the Order Granting Defendants' Motion for Summary Judgment as to Claims against Defendants West Coast and Double Ott and Order Shortening Time.

2. Therein, the Court ruled that Defendants, West Coast and Double OTT, as members of a limited-liability company, specifically Henderson Water Park, LLC, fall within the scope of NRS Chapter 86 and the absolute statutory protection of NRS 86.381, and are not proper parties to the proceedings against Henderson Water Park, LLC dba Cowabunga Bay Water Park. As a result, the Court granted summary judgment in favor of Defendants, West Coast and Double OTT, and completely dismissed them from the case.

II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. There being no just reason for delay, the Court hereby determines, directs and certifies that final judgment is entered in favor of Defendants Double Ott Water Holdings, LLC and West Coast Water Parks, LLC pursuant to NRCP 54(b).

DATED this 31 day of October, 2016.

HON. JUDGE JERRY A. WIESE II

EB

Respectfully submitted by:
CAMPBELL & WILLIAMS

Approved as to form and content by:
THORNDAL ARMSTRONG et al.

Donald J. Campbell, Esq. (1216)
Samuel R. Mirkovich, Esq. (11662)
700 South Seventh Street
Las Vegas, Nevada 89101

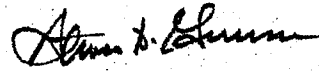
Paul F. Eisinger, Esq. (1617)
Alexandra B. McLeod, Esq. (8185)
1100 E. Bridger Ave.
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

Attorneys for Defendants

EXHIBIT 5

EXHIBIT 5


CLERK OF THE COURT

NEOJ
CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
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SAMUEL R. MIRKOVICH, ESQ. (11662)
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700 South Seventh Street
Las Vegas, NV 89101
Tel: (702) 382-5222
Fax: (702) 382-0540

Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN GARDNER,)
on behalf of minor child, LELAND GARDNER,)
Plaintiffs,)

Case No.: A-15-722259-C
Dept. No.: XXX

vs.

NOTICE OF ENTRY OF ORDER

HENDERSON WATER PARK, LLC dba)
COWABUNGA BAY WATER PARK, a Nevada)
limited liability company; WEST COAST WATER)
PARKS, LLC, a Nevada limited liability company;)
DOUBLE OTT WATER HOLDINGS, LLC, a Utah)
limited liability company; DOES I through X,)
inclusive; ROE Corporations I through X, inclusive;)
and ROE Limited Liability Company I through X,)
inclusive,)

Defendants.

Please take notice that on the 1st day of November, 2016, an Order Granting Plaintiffs' Motion for NRCP 54(b) Certification of Order Granting Defendants' Motion for Summary Judgment as to Claims Against West Coast and Double Ott, was duly entered in the above entitled

....

.....

.....

1 matter, a copy of which is attached as "Exhibit 1" and by this referenced made part hereof.

2 DATED this 2nd day of November, 2016.

3 CAMPBELL AND WILLIAMS

4
5 By: /s/ Sam Mirkovich
6 Samuel R. Mirkovich, Esq. (11662)
7 700 South 7th Street
8 Las Vegas, NV 89101
9 Telephone: (702) 382-5222
10 Facsimile: 702-382-0540

11 *Attorney for Plaintiffs*

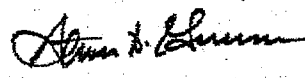
12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that
14 on this 2nd day of November, 2016, I caused the foregoing document entitled **NOTICE OF ENTRY**
15 **ORDER** to be served upon those persons designated by the parties in the E-Service Master List for
16 the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with
17 the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada
18 Electronic Filing and Conversion Rules.

19
20 By: /s/ Lucinda Martinez
21 An Employee of Campbell and Williams
22
23
24
25
26
27
28

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

ORDG

CAMPBELL & WILLIAMS

DONALD J. CAMPBELL, ESQ. (1216)

[dj@cwlawlv.com](mailto:djc@cwlawlv.com)

SAMUEL R. MIRKOVICH, ESQ. (11662)

srm@cwlawlv.com

700 South Seventh Street

Las Vegas, NV 89101

Tel: (702) 382-5222

Fax: (702) 382-0540

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

PETER GARDNER and CHRISTIAN GARDNER,)

on behalf of minor child, LELAND GARDNER,)

Plaintiffs,)

vs.)

HENDERSON WATER PARK, LLC dba)

COWABUNGA BAY WATER PARK, a Nevada)

limited liability company; WEST COAST WATER)

PARKS, LLC, a Nevada limited liability company;)

DOUBLE OTT WATER HOLDINGS, LLC, a Utah)

limited liability company; DOES I through X,)

inclusive; ROE Corporations I through X, inclusive;)

and ROE Limited Liability Company I through X,)

inclusive,)

Defendants.)

Case No.: A-15-722259-C

Dept. No.: XXX

ORDER GRANTING PLAINTIFFS'

MOTION FOR NRCP 54(b)

CERTIFICATION OF ORDER

GRANTING DEFENDANTS'

MOTION FOR SUMMARY

JUDGMENT AS TO CLAIMS

AGAINST WEST COAST AND

DOUBLE OTT

The matter before the Court is Plaintiffs' Motion for NRCP 54(b) Certification of Order Granting Motion for Summary Judgment as to Claims against Defendants West Coast and Double Ott and Order Shortening Time. The Court, having reviewed the papers and pleadings on file in this matter and having heard the oral argument of counsel on October 20, 2016, and good cause appearing and with no just reason for delay, hereby rules as follows:

I. FINDINGS

1. On October 10, 2016, the Court entered the Order Granting Defendants' Motion for Summary Judgment as to Claims against Defendants West Coast and Double Ott and Order Shortening Time.

2. Therein, the Court ruled that Defendants, West Coast and Double OTT, as members of a limited-liability company, specifically Henderson Water Park, LLC, fall within the scope of NRS Chapter 86 and the absolute statutory protection of NRS 86.381, and are not proper parties to the proceedings against Henderson Water Park, LLC dba Cowabunga Bay Water Park. As a result, the Court granted summary judgment in favor of Defendants, West Coast and Double OTT, and completely dismissed them from the case.

II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. There being no just reason for delay, the Court hereby determines, directs and certifies that final judgment is entered in favor of Defendants Double Ott Water Holdings, LLC and West Coast Water Parks, LLC pursuant to NRCP 54(b).

DATED this 31 day of October, 2016.

HON. JUDGE JERRY A. WIESE II
EB

Approved as to form and content by:
THORNDAL ARMSTRONG et al.

Respectfully submitted by:
CAMPBELL & WILLIAMS

Donald J. Campbell, Esq. (1216)
Samuel R. Mirkovich, Esq. (11662)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

Paul E. Eisinger, Esq. (1617)
Alexandra B. McLeod, Esq. (8185)
1100 E. Bridger Ave.
Las Vegas, Nevada 89101

Attorneys for Defendants