

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

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9                   WASTE MANAGEMENT OF  
10                  NEVADA, INC.

                  Supreme Court  
                  Case No.: 74876

11               Appellant,

12               vs.

13               WEST TAYLOR STREET, LLC

                  Second Judicial District Court  
                  Case No. CV12-02995

14               Respondent.  
15               \_\_\_\_\_ /

16                                   **RESPONDENT'S**  
17                                   **ANSWERING BRIEF**

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1 **I. NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are  
3  
4 persons and entities described in NRAP 26.1(a) and must be disclosed.

5 These representations are made in order that the justices of this Court may  
6  
7 evaluate possible disqualifications or recusal.

8 Respondent West Taylor Street, LLC is a Limited Liability Company.

9  
10 The undersigned counsel C. NICHOLAS PEREOS, LTD. Appears in  
11 these proceeding on behalf of West Taylor Street, LLC.  
12

13 DATED this 17<sup>th</sup> day of August, 2018  
14  
15  
16

17 BY: 

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#### IV. STATEMENT OF ISSUES

1. Whether the District Court erred in holding that NRS 444.520(3) requires there be affirmative action by the lien claimant in connection with the foreclosure of a lien?
2. Whether the statute of limitations in connection with debts apply to garbage lien debt created by statute?
3. Where is the District Court opinion faulty in its decision when applying Chapter 108 to NRS 444.520 (3)? Did the District Court apply too many requirements of Chapter 108?

#### V. BACKGROUND

In resolving the issues before the Court, Respondent submits the following rhetorical issues:

Does the statute creating a garbage lien provide an opportunity to resolve dispute?

Does the statute creating garbage liens provide for a time period for which these disputes are to be resolved?

Who is in a better position to file lawsuits to resolve these disputes?  
Should the property owner have the burden in resolving disputes with

1 regard to the garbage lien?

2 Is a lawsuit intended to be the only means or vehicle for a property  
3 owner when a property owner disputes the legitimacy of the lien?  
4

5 Does the Franchise Agreement with Waste Management permit  
6 Waste Management to stop service for non-payment? (See Volume 1, Joint  
7 Appendix 0184)  
8  
9

## 10 **VI. PROCEDURAL BACKGROUND**

11 Appellant misreads the District Court's Order for Partial Summary  
12 Judgment and places a "spin" on that reading. Nowhere did the District  
13 Court rule that the garbage lien is covered by all 62 individual statutes  
14 incorporated in the mechanic lien statutes. Nowhere did the District Court  
15 Order umbrella its ruling to include all other liens created by the Nevada  
16 Legislature. The effect of the Court's ruling is to breathe constitutionality  
17 into a statute by providing a procedural methodology that addresses  
18 recourse to property owners for the unchecked authority given to Waste  
19 Management. In other words, the District Court created a method of  
20 recourse to a property owner which was clearly missing from the statutory  
21 language with the exception of the language stating that the mechanic lien  
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1 statutes are to be applied in connection with the foreclosure of a lien,  
2 especially after considering the language of the second Franchise  
3 Agreement that permits Appellant to stop service at their discretion.  
4

5       Given the blatant ambiguity contained in the statute, Appellant seeks  
6 to place the burden on the property owner to pursue an action to remove the  
7 lien. How many property owners have the resources to engage an attorney  
8 to file a lawsuit to remove a garbage lien for residential garbage service that  
9 average fifty dollars a quarter? In fact, Appellant is hoping that the  
10 recorded garbage lien will mandate a payment without ever having to show  
11 accountability to the property owner. The incorporation of the language in  
12 NRS 444.520(3) that the lien may be foreclosed in the same manner as  
13 provided by the foreclosure of mechanic liens permits a mechanism on  
14 constitutionality that would not otherwise exist. There is no statutory lien in  
15 the statute books that give an unchecked authority for placing a lien on real  
16 property similar to that which has occurred in NRS 444.520. Accordingly,  
17 Appellant complains of the findings of the District Court and asks that this  
18 Court reject that finding but offers no viable alternatives.  
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26       The language of the Franchise Agreements specifically provides that  
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1 the garbage bill becomes delinquent the quarter when it is not paid by the 1<sup>st</sup>  
2 of the month of the next quarter. The Franchise Agreement creates the debt  
3 and the debt starts to accrue on the quarter following the delinquency.  
4  
5 Meanwhile, the evidence demonstrated that Appellant uses an alleged late  
6 payment for a garbage bill to first address late charges, interest,  
7 delinquencies and the last quarterly payment. In other words, if the  
8 homeowner does not pay the first quarter of the year for whatever reason  
9 (such as cancellation of service, property is vacant, etc.) and then pays the  
10 second quarter, Appellant then takes that second quarter payment and  
11 applies it to delinquency, late fees, interest and then garbage fees. The  
12 homeowner will never catch up on his payments! (See Plaintiff's Motion  
13 for Partial Summary Judgment of March 2014 which discusses these issues  
14 of payment - Volume 2, Joint Appendix 419-428)  
15  
16  
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19

## 20 **VII. SUMMARY OF ARGUMENTS**

21 Appellant is seeking unchecked authority in connection with the  
22 recording of a garbage lien without any accountability. There is nothing  
23 contained in NRS 444.520 that demands that Appellant's pursue a  
24 foreclosure process absent the decision of the District Court and Waste  
25  
26  
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1 Management can sit on its lien in perpetuity. In fact, the second Franchise  
2 Agreement permits Appellant to stop service!  
3

## 4 **VIII. STATEMENT OF FACTS**

### 5 **A. Background**

6  
7 The Second Amended Complaint filed on June 27, 2014 places at  
8 issue the legitimacy of garbage liens that were recorded as to Respondent's  
9 property. During discovery, Respondent secured the accounting records of  
10 Appellant as to the account on the property and discerned discrepancies in  
11 those accounting records in connection with the quantitative amount of the  
12 debt versus liens. A discussion of these issues was had in the briefing in the  
13 Motion for Partial Summary Judgment. (See Volume 1, Joint Appendix  
14 0026-47) (Volume 2 Joint Appendix 338-344) (Volume 3, Joint Appendix  
15 656-658) and (Volume 4, Joint Appendix 865-872) Respondent disputes  
16 contention that money was owed in connection with the garbage liens which  
17 was evidenced by the trial Court's decision denying Appellant's Motion for  
18 Summary Judgment on the slander of title claims. (See Volume 5, Joint  
19 Appendix 1050-1059) Meanwhile, this issue became moot as Respondents  
20 dismissed the slander of title claims and is not pertinent to the issues before  
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1 this Court.

2       After the filing of the Complaint and the recording of the first  
3  
4 garbage lien, the Franchise Agreement that enabled Appellant to pursue its  
5  
6 garbage liens and collect fees charged. The first Franchise Agreement was  
7  
8 dated August 9, 1994. (See Volume 3, Joint Appendix 628-652) There  
9  
10 was no vehicle for dispute resolution. A new Franchise Agreement was  
11  
12 dated November 7, 2012. (See Volume 1, Joint Appendix 168-223) There  
13  
14 was a vehicle for dispute resolution but only at the discretion of the  
15  
16 Appellant. The second two liens were recorded after the new Franchise  
17  
18 Agreement.

19       After the Summary Judgment was granted but before codified to  
20  
21 judgment form and after the denial of the Motion to Reconsider, Appellant  
22  
23 voluntarily released its liens. (See Appellant's Opening Brief Page 4, Line  
24  
25 6). Notwithstanding, we are dealing with two Franchise Agreements which  
26  
27 is obviously different from each other.

## 28                                   IX. ARGUMENT

### A.     The Appeal is Moot

          With Appellant having voluntarily realeased the liens, there is no

1 longer a case or controversy for resolution by this Court. The Appeal is  
2 moot! An appeal becomes moot when it is no longer a live issue as the case  
3 no longer presents a real or justiciable controversy because the issue  
4 involves becomes academic or nonexistent. *Roark v Roark*, 551 N.E.2d  
5 865, (Ind. 1990), *Jenkins v Branstad*, 421 N.W.2d 130 (1988). A moot  
6 question is an issue that has been deprived of practical significance or made  
7 abstract. *St. Charles Paris School Board v GAF Corp.*, 512 So.2d 1165  
8 (1987). Cases are moot when issues are presented that are no longer “live”  
9 where parties lack legally cognizable interes in the outcome. *City of Eerie v*  
10 *Paps A.M*, 120 S.Ct. 1382, 146 L. Ed. 2d 265 (2000). In *Ivey v District*  
11 *Court*, 129 Nev. Adv. Op.16 (2013), the Supreme Court observed that a case  
12 may become moot by the occurrence of subsequent events that eliminate any  
13 actual controversy. *Id* at Page 3. In *Bisch v Las Vegas Metro Police*  
14 *Department*, 129 Nev. Adv. Op. 36 (2013), our Court went on to observe  
15 that cases presenting real controversies at the time of commencement may  
16 become moot by the happening of subsequent events. In the case of *Holt v*  
17 *Regional Trustee Service Corp.*, 127 Nev. 80, 886, 266 P.3d 602 (2011) the  
18 Court observed that a notice of a rescission of a foreclosure renders moot  
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1 disputes concerning the foreclosure or its timing as the notice of the  
2 rescission cancels the foreclosure sale. When the parties reached the  
3  
4 settlement agreement, the issues before the Supreme Court became moot.  
5  
6 *Kahn v Morse & Mowbray*, 121 Nev. 464, 117 P.3d 227 (2005). There is no  
7 longer an issue between these parties regarding the legitimacy of the lien.  
8  
9 *The Matter of Guardianship of LS & HS*, 120 Nev. 157, 87 P.3d 521 (2004).  
10 A compromised payment of a judgment renders the appeal moot. *Wheeler*  
11 *Springs Plaza LLC v Beemon*, 119 Nev. 260, 71 P.3d 1258 (2003).  
12

13 B. The Decision of the District Court Does Not Incorporate the  
14  
15 Entirety of Chapter 108.

16 The issue may be one of semantics. Appellant argues that the  
17  
18 decision of the District Court incorporates all of Chapter 108 but the  
19  
20 decision of the District Court is not consistent with that position. The  
21  
22 decision states on page 18:

22 “Text, context and history support the constitutionally sound  
23 reading of NRS 444.520 that permits the incorporation of  
24 Chapter 108 mechanic liens statutes to the extent that they  
25 govern lien foreclosure procedures not addressed by the  
26 language in NRS 444.520.” (Volume 2, Joint Appendix 399-  
27 418)

28 This language is inconsistent with Appellant’s argument. Maybe Appellant

1 is suggesting that only NRS 108.239 should have been adopted and read  
2 into NRS 444.520. However, NRS 108.239 can not stand independently of  
3 the earlier statutes in Chapter 108 as is exemplified in detail when the  
4 District Court discusses the legislative history in its decision as to the  
5 incorporation of Chapter 108.  
6

7  
8 The District Court in its opinion did not include additional notice  
9 requirements. In order to make NRS 108.239 meaningful, the District Court  
10 applied the perfection requirements that also paralleled that which was  
11 required in NRS 444.520. In fact, the hearing minutes in connection with  
12 the passage of the statutes supports the District Courts decision that the  
13 intent was to incorporate foreclosure proceedings as dictated by mechanic  
14 lien statutes (Volume 1, Joint Appendix 236 - Volume 2, Joint Appendix  
15 328). The suggestion that it would impose additional burdens on Appellant  
16 mandating a shorter billing cycle is absurd. The perfection requirement is to  
17 require this corporate conglomerate to let a homeowner know that if it has  
18 not paid a bill it is facing lien foreclosure as required by the mechanic lien  
19 statutes.  
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26 C. Distinction with General Improvement Districts (NRS 318.197)  
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1 Appellant seeks to equate itself with General Improvement Districts  
2 under Chapter 318 of Nevada Revised Statutes. There is substantial  
3 differences between Appellant and a General Improvement District. First,  
4 legislature dictated the obligations of the Board of Directors of the General  
5 Improvement District. In those obligations, the County Commissioners  
6 provided certain guidelines to the Board of Directors to include the creation  
7 of a budget which clearly was a basis for the assessments. NRS 318.080.  
8 After the County Commissioners perform that function, they can then  
9 appoint five persons on the Board of Directors for the District. Members of  
10 the Board are under an obligation imposed by oath. NRS 318.085.  
11 Members of the Board are required to keep transcripts of records of their  
12 meetings and are to be made available to the public. There is a maximum  
13 compensation to be paid to the Board of Directors. NRS 318.085. District  
14 members are to be elected, NRS 318.095, by a plurality of vote, NRS  
15 318.0951. Persons within the district are eligible to vote. NRS 318.09525.  
16 They are subject to recall. NRS 318.0955. There is to be no conflict of  
17 interest. NRS 318.0956, NRS 318.0957. On the other hand Waste  
18 Management is a profit making corporation that is not subject to any of the  
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1 restrictions defined herein and is accountable to no one! To suggest that  
2 Appellant stands in the same position as the Board of Director of an  
3 Improvement District is contrary to enabling statutes for the Board of  
4 Directors for the Improvement District.  
5  
6

7 D. Rules of Statutory Construction

8 1. Statutory Interpretation  
9

10 Judicial construction and intervention in interpreting statutes  
11 arise from the intrinsic difficulties of language and the emergents situations  
12 after enactment of the statutes not anticipated by the most gifted  
13 legislatures. These situations demonstrate ambiguities in a statute that  
14 compel judicial intervention.  
15

16 The purpose of construction is to ascertain meaning of every consideration  
17 brought to bear with regard to the statute for the solutions of the problem at  
18 hand. (Some Reflections on the Reading of Statutes, by Justice Felix  
19 Frankfurter, presented at the Benjamin Cardozo Lecture before The  
20 Association of the Bar of the City of New York (1947) (See Exhibit "1",  
21 Page 215.)  
22  
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1 "Statutes within a scheme and provisions within a  
2 statute must be interpreted harmoniously with one  
3 another in accordance with the general purpose of  
4 those statutes and should not be read to produce  
unreasonable or absurd results." *Washington v.*  
*State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136  
(2001).

5 In other words, the judicial branch of the government interprets the statute  
6 in the context of the events before the Court and if the statute does not  
7 address those events, the statute is to be interpreted harmoniously with other  
8 statutes that are a part thereof. When Defendant advances a proposition that  
9 the lien exists in perpetuity without any limitations, is this harmonious with  
10 the statutes of Nevada? When the Defendant advances the proposition that  
11 the debt of the garbage lien lasts in perpetuity, is this harmonious with  
12 Nevada common law?

13  
14 The issue before the Court is not the public policy supporting  
15 the collection of refuse (garbage) in residential districts. The issue before  
16 the Court is a methodology for resolution of disputes created by the filing  
17 of a garbage lien. Waste Management wants unchecked authority to record  
18 a garbage lien against property and not be held accountable for the amount  
19 set forth in the garbage lien. Waste Management wants this Court to accept  
20 the proposition that the statute enabling it to record a garbage lien gives it

1 unchecked authority without accountability. Even a county government in  
2 regard to collection of real property taxes does not have such authority as is  
3 discussed hereinafter.  
4

5 In fact, the legislative hearing on the passage of NRS 444.520  
6 demonstrate that there was concerns about the placement of liens on the  
7 owners property. The comment of Assemblywoman Gerhardt, made on  
8 Page 15 of the Minutes (Volume 1, Joint Appendix, 278, 293) is  
9 informative:  
10  
11

12 "I'm always concerned about liens on a person's  
13 home; that's pretty sacred. I have a problem with  
14 putting someone's home in jeopardy for a bill that  
15 they are not really responsible for."

16 2. Statutory Language in NRS 444.520:

17 There is no dispute that NRS 444.520 enables Defendant to  
18 record a garbage lien. Now the issue is what happens with the lien after it's  
19 recorded? The statute tells us that the lien may be foreclosed consistent  
20 with the foreclosure mechanic's liens. However, a mechanic's lien cannot  
21 be foreclosed until there are certain events that occur prior to the  
22 foreclosure. If this "garbage lien" is to be foreclosed in the same manner as  
23 provided for the foreclosure of mechanic's liens, there are certain  
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1 prerequisites that have to be followed by lien holder.

2           The Nevada Supreme Court has repeatedly held that there must  
3  
4 be strict compliance by the moving party with statutes creating a remedy  
5 particularly the foreclosure of mechanic's lien. In the case of *Schofield v.*  
6  
7 *Copeland Lumber*, 101 Nev. 83, 692 P.2d 519 (1985), the Nevada Supreme  
8  
9 Court reversed the decision for summary judgment in an action filed by a  
10 contractor to foreclose the mechanic's lien. In discussing the complaint of  
11 foreclosure, the Supreme Court observed:

12           "The mechanic's lien is a creature of statute,  
13 unknown at common law. Strict compliance with  
14 the statute creating the remedy is therefore  
15 required before a party is entitled to any benefits  
16 occasion by its existence.... If one pursues his  
17 statutory remedy by filing a complaint to perfect a  
mechanic's lien, he necessarily implies full  
compliance with the statutory prerequisite giving  
rise to the cause of action." *Id.* at Page 84.

18 Although the Nevada Supreme Court has recognized that strict compliance  
19  
20 with the language of the mechanic's lien is not required in connection with  
21 the content of the lien, the same does not hold true in connection with  
22 compliance with the statute to perfect and foreclose the lien. In *Fisher*  
23  
24 *Bros., Inc. v. Harrah Realty Co.*, 92 Nev. 65, 545 P.2d 203 (1976). Harrah  
25  
26 contracted with Stolte, Inc. Stolte engaged Terry Construction.

1 Terry Construction engaged Fisher Brothers. Harrah paid Terry  
2 Construction. Terry Construction did not pay Fisher Brothers. In an action  
3  
4 to foreclose the lien, the Court observed:

5 “Strict compliance with the statutes creating the  
6 remedy is therefore required before a party is  
7 entitled to any benefits occasioned by its existence  
8 [citation omitted]. If one pursues his statutory  
9 remedy by filing a complaint to perfect a  
10 mechanic’s lien, he necessarily implies full  
11 compliance with the statutory prerequisites giving  
12 rise to the cause of action.” *Id.* at Page 67.

13 In *Hardy Companies, Inc. v. SNMARK, Inc.*, 126 Nev.Adv.Op.  
14 49, 240 P.3d 1149 (2010), the court noted:

15 “Failure to either fully or substantially comply  
16 with the mechanic’s lien statute will render a  
17 mechanic’s lien invalid as a matter of law.” *Id.* at  
18 Page 155.

19 There is additional case law from other jurisdictions that  
20 indicate that failure to comply with a mechanic’s lien statute’s procedural  
21 provisions will preclude the lien’s validity and enforcement. In *Rollar*  
22 *Construction and Demolition, Inc. v. Granite Rock Assoc’s, LLC*, 891 A.2d  
23 133, 135-36, (Conn. Ct. App. 2006), the Court stated:

24 “Although the mechanic’s lien statute creates a  
25 statutory right in derogation of the common law . .  
26 . its provisions should be liberally construed in  
27 order to implement its remedial purpose of  
28 furnishing security for one who provides services  
or materials. . . . Our interpretation, however, may  
not depart from reasonable compliance with the  
specific terms of the statute under the guise of a  
liberal construction.”

1 (Citations omitted.) The Court further noted:

2 “General Statutes Sec. 49-34 includes five  
3 requirements to filing a valid mechanic’s lien. If  
4 any of those requirements fail, the lien is invalid.  
Id. at FN 7. “

5 Similarly, in *Westcon/Dillingham Microtunnelling v. Walsh Constr. Co. of*  
6 *Illinois*, 747 N.E.2d 410 (Ill.Ct.App. 2001), the court stated:

8 “The purpose of the Act is to protect those who, in  
9 good faith, have furnished materials and labor for  
the construction of buildings or public  
10 improvements. Section 39 of this Act states that  
“[t]his act is and shall be liberally construed as a  
11 remedial act.” 770 ILCS 60/39 (West 1998).  
Nevertheless, because the rights created are  
12 statutory and in derogation of common law, the  
technical and procedural requirements necessary  
13 for a party to invoke the protection of the Act must  
be strictly construed. . . . Once a plaintiff has  
14 complied with the procedural requirements upon  
which a right to a lien is based, the Act should be  
15 liberally construed to accomplish its remedial  
purpose.

16 Id. at 416 (citations omitted). Further,

17 It is well established that the creation of a  
18 mechanic’s lien is entirely governed by the Act,  
19 and the rules of equity jurisprudence are irrelevant  
at this stage.

20 Id. See also *Crawford Supply Co. v. Schwartz*, 919 N.E.2d 5, 12 (2009):

22 Because the rights under the Act are in derogation  
23 of the common law, the steps necessary to invoke  
those rights must be strictly construed.

24 (Citing *Westcon/Dillingham*, *supra*.)

25 In *National Lumber Co. v. Inman*, 933 N.E.2d 675  
26 (Mass.Ct.App. 2010), the court noted that the  
27 purposes of the mechanic’s lien statute “include  
the protection of the owners’ real estate,” and that

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1 NRS 444.520 provides its own methodology for perfecting the lien by  
2 mailing and recording which would inherently include delivering and  
3 indexing. Let us assume that this Court accepts that proposition, to wit,  
4 NRS 444.520 provides its own methodology for perfection. It still does not  
5 address the issue of dispute resolution after the lien has been perfected? It  
6 does not address the issue as to the time periods of placement of a garbage  
7 lien? At least the Appellant acknowledges that it has a requirement to  
8 perfect the lien!  
9

10 As indicated previously, NRS 444.520 is sufficiently vague in  
11 connection with its dictate that the lien is to be foreclosed consistent with  
12 the mechanic lien statutes. The mechanic lien statutes paint a sequential  
13 order in which lien claimant is to follow in connection with foreclosing a  
14 lien. The District Court's decision incorporates those aspects of the  
15 sequential orders of the things to be performed before going forward with  
16 lien and its foreclosure in order that makes sense of the mechanic lien  
17 foreclosures. Contrary to the claim of Appellant, there is no built in  
18 mechanism for dispute resolution. (Appellant's Brief page 39, line 18)  
19

20 In the case of *Skyline Metropolitan District v Mountain West*  
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1 *Enterprises*, 184 P.3d 106, 116, Colorado Court of Appeals (2007) the issue  
2 involved density of the property in connection with the amount of  
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4 assessment that was due. In order to resolve that issue, the District filed a  
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6 lawsuit for judicial intervention. The landowner counterclaimed and the  
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8 trial court dismissed a good portion of the counterclaim based upon  
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10 procedural deficiencies. Not only is that case informative as demonstrating  
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12 the District filed a lawsuit as to the issue of the quantitative amount of the  
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14 debt owed to the District as a Special Assessment District created by the  
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16 Colorado legislature! Waste Management is not a Special Assessment  
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18 District created by the legislature. It also went on to discuss that the mere  
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20 failure to file a "Notice of Intent to File a Lien Statement" was not decisive  
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22 as there had been clients with other aspects of other statutory notices.  
23  
24 Nowhere in the opinion does the Colorado Court distance itself from the  
25  
26 mechanic lien statutes.  
27

28 E. Constitutionality of NRS 444.520

29 The Nevada Supreme Court has consistently ruled that a lien  
30  
31 against the property is a monetary encumbrance. *Nevada Association*  
32  
33 *Services v Eighth Judicial District Court*, 130 Nev. Adv. Op. 94 (2014) and

1 *Hamm v Arrowcreek Homeowners Association*, 124 Nev. 290 (2008) The  
2 Nevada Supreme Court observed that a lien is an encumbrance against  
3 property for the payment of a debt. In the case of *Gonzales - Alpizar v*  
4 *Griffith*, 130 Nev. Adv. Op. 2 (2014), our Supreme Court citing *Browning v*  
5 *Dixon* observed:

8           “The Court has stated that an elementary and  
9           fundamental requirement of due process...is notice  
10           reasonably calculated, under all circumstances, to  
11           apprise interested parties of the pendency of the  
12           action and afford them the opportunity to present  
13           their objections” Id at Page 8  
14           Where is the opportunity to be heard under NRS 444.520? On

15 the contrary Waste Management wants to keep the lien on the property in  
16 perpetuity so that it can force payment on the property if sold/finance. The  
17 argument that NRS 108.239 protects the property owner ignored the  
18 language in the statute that says “At the time of filing a complaint and  
19 issuing a summons, the lien claimant shall”. Clearly, NRS 108.239 places  
20 the burden on Appellant to file a complaint to foreclose its lien. Appellant  
21 is complaining because they don’t want time limitations based upon  
22 obligation to file a complaint. Meanwhile, how would this Court resolve a  
23 situation where Waste Management records a lien against a parcel of  
24 property and does nothing to demonstrate the legitimacy of the lien and  
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1 permits the lien to swell with assessments of late fees, late charges, interest,  
2 etc. Clear impact of the decision of the District Court is to place the burden  
3 on Waste Management to demonstrate accountability of the  
4 lien/encumbrance which constitutes the taking of the property to pay a debt.  
5

6  
7           The decision of the District Court does not diffuse the  
8 perpetual nature of the lien but took away its enforcement by foreclosure of  
9 property. Its still a debt in favor of Appellant but they can not foreclose  
10 against real estate until compliance with rulings of the District Court. To  
11 use as an analogy that the decisions relating to Special Assessment District  
12 ignores that Appellant is a profit oriented corporation with no accountability  
13 to the voters or anyone else! In connection with reference Nevada Attorney  
14 General Opinion, the author was able to find Nevada Attorney General  
15 Opinion 1999-24 pertaining for landfill fees wherein the Attorney General  
16 observed the methodology that is to be followed by landfill fees in  
17 connection with assessing garbage fees before it becomes a tax lien and then  
18 there is a lien requirement before they foreclose a tax lien which is  
19 mandated by the tax lien foreclosure statutes and the commencement of a  
20 lawsuit. This too places a burden on Waste Management to do more than  
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1 just record and mail a lien. More importantly, the ruling does not discuss a  
2 "garbage lien" but discusses "garbage fees" and their application as tax  
3  
4 liens. (See NRS 318.201) None of these protections are available to the  
5 public from Waste Management!  
6

7 F. Application of Two Year Statute

8 The two year statute has been applied because the recording of  
9  
10 the lien constitute a debt and encumbrance against the property which is the  
11 same as a forfeiture. A foreclosure is a procedural mechanism to collect a  
12 debt. The debt is a garbage lien. The garbage lien is the taking of a debt or  
13 the forfeiting of a debt by the landowner against its property. Furthermore,  
14 the limitation period runs from the date that the debt becomes delinquent  
15  
16 which is the first month of the following quarter in which is the last quarter  
17 was not paid (ignoring the methodology used by Appellant to apply  
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19 payments to interest, late fees and charges before service fees).  
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22 G. Effective Date of Garbage Liens

23 The District Court decision triggers the commencement of the  
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25 garbage lien to start on the first month of the next quarter following the  
26 delinquent quarter consistent with the Franchise Agreements. The decision  
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28

1 is based upon the Franchise Agreements. Appellant wants the Court to  
2 ignore the terms of the Franchise Agreements. The District Court is seeking  
3  
4 to reconcile the Franchise Agreements with the statutes!

## 5 6 **X. CONCLUSION**

7 Appellant wants this Court to permit the filing of the lien in  
8  
9 perpetuity without the necessity of providing remedial measure if there is a  
10 dispute between the owner of the property and Waste Management. There  
11 is nothing contained in Chapter 444 providing remedial measure should  
12  
13 such a dispute exist. The Court is now faced with the necessity of deciding  
14  
15 what was meant in NRS 444.520 that states that the lien is to be foreclosed  
16 in the same manner as provided for the foreclosure mechanic liens. Does  
17  
18 the statute for foreclosure of mechanic liens provide an opportunity to  
19 resolve disputes? Does the statute for foreclosure of mechanic liens provide  
20  
21 a time period for which these disputes are to be resolved? Does the  
22  
23 mechanic lien foreclosure statutes provide guidance on these issues?

## 24 **XI. CERTIFICATE OF COMPLIANCE** 25 **PURSUANT TO RULE 28.2**

26 1. I hereby certify that this brief complies with the formatting  
27  
28

1 requirement of NRAP 32 (a)(4), the typeface requirements of NRAP 32  
2 (a)(5) and the type style requirements of NRAP 32 (a)(6) because:  
3

4 This brief has been prepared in a proportionally spaced typeface using  
5 WordPerfect in 14 font and Times New Roman type.  
6

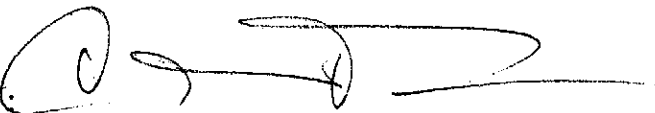
7 2. I further certify that this brief complies with the page- or type-  
8 volume limitations of NRAP 32 (a)(7) because, excluding the parts of the  
9 brief exempted by NRAP 32 (a)(7)(c), it does not exceed 30 pages.  
10

11 3. Finally, I certify that I have read this appellate brief, and the  
12 best of my knowledge, information, and belief, it is not frivolous or  
13 interposed for any improper purpose. I further certify that this brief  
14 complies with all applicable Nevada Rules of Appellate Procedure, in  
15 particular NRAP 28 (e)(1), which requires every assertion in the brief  
16 regarding matters in the record to be supported by a reference to the page  
17 and volume number, if any, of the transcript or appendix where the matter  
18 relied on is to be found, I understand that I may be subject to sanctions in  
19 the event that the accompanying brief is not in conformity with the  
20 requirements of the Nevada Rules of Appellate Procedure.  
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1 DATED this 17<sup>th</sup> day of August, 2018

2  
3 BY:

  
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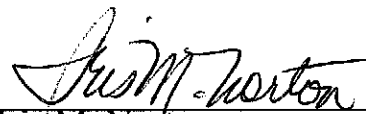
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8 **XII. CERTIFICATE OF SERVICE**

9  
10 **PURSUANT TO NEVADA RULES OF APPELLATE**

11 **PROCEDURE**, I certify that I am an employee of C. NICHOLAS PEREOS,  
12  
13 LTD., and that on the date listed below, I caused to be served a true copy of  
14 the RESPONDENT'S ANSWERING BRIEF on all parties to this action by  
15 electronically filing the foregoing with the Clerk of the Court by using the  
16 Supreme Court Electron Filing System which served the following parties  
17 electronically:  
18

19  
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24 DATED this 17<sup>th</sup> day of August, 2018

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