

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

MARCUS A. REIF, an incompetent person by
and through his Conservator CINDY REIF,

Appellant

vs.

ARIES CONSULTANTS, INC.,

No. 76121

DOCKETING

CIVIL APPEALS

Electronically Filed
Jul 09 2018 12:40 p.m.
Elizabeth N. Brown
Clerk of Supreme Court

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.

1. Judicial District Eighth Department 22
County Clark Judge Susan H. Johnson
District Ct. Case No. A-18-770951-C

2. Attorney filing this docketing statement:

Attorney Randall L. Westbrook III Telephone 702-877-1500
Firm Glen Lerner Injury Attorneys
Address 4795 S. Durango Drive
Las Vegas, NV 89147

Client(s) Marcus A. Reif

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 Craig J. Mariam Telephone 702-577-9300
Firm Gordon Rees Scully Mansikhani, LLP
Address 300 S. Fourth Street
Suite 1550
Las Vegas, NV 89101

Client(s) Aries Consultants, Inc.

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 checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input 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 checked="" type="checkbox"/> Other (specify): <u>NRS 11.258 compliance</u> |
| <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:

None.

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:

There are no proceedings pending before any other court related to this appeal.

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

This is a personal injury action. On March 16, 2016, plaintiff suffered catastrophic and life-threatening injuries when the vehicle he was driving fell five floors because a barrier wall on the fifth floor of the Edgewater Casino parking structure gave way upon slight impact. Appellant filed his complaint against Respondent on March 12, 2018. The Court failed to upload the attachments to the Complaint and Appellant refiled the Complaint on March 13, 2018. Appellant properly served the corrected Complaint on Respondent. Appellant never served the deficient complaint on the Respondent. Respondent moved to dismiss the case and the District Court erroneously granted Respondent's Motion based on a perceived failure to comply with NRS 11.258.

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

Whether the District Court erroneously dismissed Plaintiff-Appellant's case for failure to comply with NRS 11.258.

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:

Appellants are not aware of any proceedings in this court raising the same or similar issues as this appeal.

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: Whether NRS 11.258 requires a plaintiff to file the required attorney affidavit and expert report at the same time that the complaint is originally filed or when the complaint is served upon a defendant.

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 Nevada Supreme Court should retain this matter because the matter raises a question of statewide public importance: Whether NRS 11.258 requires a plaintiff to file an attorney affidavit and expert report simultaneously with the filing of the original complaint. Where the court electronic filing system suffers a failure should the filer be punished for "failing to comply with NRS 11.258."

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

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?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from May 11, 2018

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 May 11, 2018

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 June 8, 2018

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:

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 checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input checked="" type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) grants this court jurisdiction to review this matter because appellant is appealing a final judgment that was entered in an action or proceeding commenced in the court in which the judgment was rendered.

NRS 233B.150 provides jurisdiction to review the judgment because it was a final judgment entered in the district court.

NRS 703.376 provides jurisdiction for this court to review the judgment because appellant timely filed his notice of appeal.

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

(a) Parties:

Plaintiff- Appellant -Marcus A. Reif, an incompetent Person by and through his
Conservator Cindy Reif

Defendant- Respondent- Aries Consultants, Inc.

(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:

All parties in Paragraph 22(a) are parties to this appeal.

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.

Plaintiff-Appellant MARCUS A. REIF sued Defendant-Respondent for personal injuries. The Court dismissed the action alleging Plaintiff-Respondent did not comply with NRS 11.258. Defendant-Respondent did not assert any counterclaims.

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:

(b) Specify the parties remaining below:

(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)):

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.

Marcus A. Reif
Name of appellant

Randolph L. Westbrook, III
Name of counsel of record

July 9, 2018
Date

/s/ Randolph L. Westbrook
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 9th day of July, 2018, 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.)

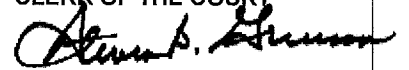
Craig J. Mariam, Esq.
Robert E. Schumacher, Esq.
Brian K. Walters, Esq.
GORDON REES SCULLY MANSUKHANI, LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101
Attorney for Defendant-Respondent Aries Consultants, Inc.

Dated this 9th day of July, 2018

/s/ Miriam Alvarez
Signature

EXHIBIT A

EXHIBIT A



COMP

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Nevada Bar No. 4314
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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person by
and through his Conservator CINDY REIF,

Plaintiff,

vs.

ARIES CONSULTANTS. INC., a Nevada
Corporation, DOES 1 through 5, and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

Case No.: A-18-770951-C
Dept No.: 22

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff MARCUS A. REIF, an incompetent person by and through his
Conservator CINDY REIF, (hereinafter "Plaintiff"), and by and through his attorneys of record,
GLEN LERNER INJURY ATTORNEYS and NAPOLI SHKOLNIK PLLC, for his Complaint against

1 Defendants ARIES CONSULTANTS INC., a Nevada Corporation, (hereinafter "ARIES"), DOES 1
2 through 5, and ROE CORPORATIONS 1 through 5, inclusive, (hereinafter referred to collectively as
3 "Defendants") allege and aver as follows:
4

5 **JURISDICTION AND VENUE**

6 1. The incident complained of herein occurred in Clark County, Nevada, on March 16,
7 2016, granting jurisdiction and venue upon this Honorable Court (hereinafter the "subject incident").

8 2. That all requirements set forth pursuant to applicable Nevada law have been adhered to
9 and are further substantiated by the affidavit of attorney with exhibits attached hereto.

10 3. At all times mentioned herein, MARCUS A. REIF was over eighteen years old and
11 resided in San Bernardino County, California.

12 4. At all times relevant, CINDY REIF is over eighteen years old, resided in San
13 Bernardino County, California, is the mother and CONSERVATOR of the PERSON and ESTATE of
14 MARCUS REIF, an incompetent person, with foreign guardianship for MARCUS REIF registered in
15 Nevada.

16 5. At all times mentioned herein, Defendant ARIES was a Nevada Corporation duly
17 organized under the laws of the State of Nevada and authorized to conduct business in the State of
18 Nevada.

19 6. The true names and capacities, whether individual, corporate, associate or otherwise, of
20 Defendants DOES 1 through 5 and/or ROE CORPORATIONS 1 through 5, inclusive, are unknown to
21 Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed, believes
22 and thereupon alleges that the Defendants designated herein as DOES 1 through 5 and/or ROE
23 CORPORATIONS 1 through 5, inclusive, are any one of the following:

24 (a) Parties responsible in some manner for the events and happenings herein referred to
25 that caused injuries and damages proximately thereby to MARCUS A. REIF as herein
26 alleged;

27 (b) Parties that are the agents, servants, employees, and/or contractors of the Defendants,
28 each of them acting within the course and scope of their agency, employment or
contract;

- 1 (c) Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are
2 responsible for the premises referred to hereinafter;
3
4 (d) Parties that have assumed or retained the liabilities of any of the Defendants by virtue
5 of an agreement, sale, transfer or otherwise; and/or
6
7 (e) Parties responsible for the design, manufacture, and/or installation of the vehicle barrier
8 wall on the north side of the fifth floor of the parking garage at issue herein.

9 Plaintiff will ask leave of the Court to amend this Complaint to insert the true names and
10 capacities of said Defendants, DOES 1 through 5 and ROE CORPORATIONS 1 through 5, inclusive,
11 when the same has been ascertained by the Plaintiff, together with appropriate charging allegations,
12 and to join said Defendants in the action.

13 GENERAL ALLEGATIONS

14 7. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
15 incorporates the same by reference as though fully set forth at length herein.

16 8. On or about March 16, 2016, MARCUS A. REIF was the operator of a 1998 Ford
17 Expedition, bearing California license plate number 5PKT385 (hereinafter the "subject vehicle").

18 9. At all times relevant, Edgewater Gaming, LLC was the owner, controller, manager, and
19 maintainer of the premises and subject parking structure, located at 2020 South Casino Drive, Laughlin,
20 NV 89029 (hereinafter "parking structure"), that is classified as nonresidential construction.

21 10. On or about 2002, a vehicle exited the side of the parking structure and fell several floors
(hereinafter the "first prior incident").

22 11. On or about December 8, 2014, a vehicle impacted and dislodged a barrier wall segment
23 on the fifth level of the parking structure (hereinafter the "second prior incident").

24 12. Subsequent to the second prior incident and before the subject incident, Defendants
25 ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 inspected each individual barrier wall segment in
26 the parking structure, including the specific barrier wall segment that gave way and resulted in subject
27 incident, in accordance with the applicable building codes of Clark County, Nevada in place in 2015
28 (hereinafter the "parking structure remodel").

1 13. Defendants ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 contracted with
2 Edgewater Gaming, LLC to provide special inspection and quality assurance services in conjunction
3 with the parking structure remodel.

4 14. Defendants ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 provided special
5 inspection and quality assurance services in conjunction with the parking structure remodel.

6 15. On or about March 23, 2015, ARIES, DOES 1-5, and ROE CORPORATIONS 1-5 issued
7 a Final Quality Assurance Report certifying the inspection of the parking structure remodel.

8 16. On or about March 16, 2016, MARCUS A. REIF traveled in the subject vehicle
9 northbound through the parking structure, and as a result of the Defendants' conduct, the subject vehicle
10 exited the side of the fifth level of parking structure and fell several floors causing severe injuries to
11 MARCUS A. REIF (the subject incident).

12 17. On or about September 23, 2017, an independent inspection of the parking structure
13 revealed that installation of connection anchors to the barrier walls did not meet specified embedment
14 depth.

15
16 **FIRST CLAIM FOR RELIEF**
 (Negligence)

17 18. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
18 incorporates the same by reference as though fully set forth at length herein.

19 19. Defendant owed Plaintiff a duty of care to warn Plaintiff of the non-obvious and
20 dangerous condition.

21 20. Defendant breached this duty of care by failing to warn Plaintiff of the dangerous, non-
22 obvious condition.

23 21. Defendant's negligence directly and proximately caused Plaintiff serious injury.

24 22. As a direct and proximate result of the negligence, Plaintiff incurred damages in excess
25 of ten thousand dollars (\$15,000.00).

26 **SECOND CLAIM FOR RELIEF**
27 **(Negligence Per Se)**

28 23. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
incorporates the same by reference as though fully set forth at length herein.

1 24. Defendant violated Nevada Revised Statutes and/or county building codes governing
2 the building, maintenance, and/or repair of the parking structure.

3 25. As a result of Defendant's violations, Plaintiff sustained injuries.

4 26. Plaintiff was and is a member of the class persons that the statutes and/or county
5 building codes were intended to protect.

6 27. Plaintiff sustained the type of injuries that the statutes and/or county building codes
7 were intended to prevent.

8 28. As a direct and proximate result of Defendant's violations, Plaintiff incurred damages
9 in excess of ten thousand dollars (\$15,000.00).

10
11 **THIRD CLAIM FOR RELIEF**
12 **(Negligent Performance of an Undertaking)**

13 29. Plaintiff repeats and realleges each and every foregoing paragraph set forth above and
14 incorporates the same by reference as though fully set forth at length herein.

15 30. Defendant undertook, gratuitously or for consideration, to render services to Edgewater
16 Gaming, LLC, which Defendant should have recognized as necessary for the Plaintiff's protection.

17 31. Defendant undertook to perform a duty that Edgewater Gaming, LLC owed to the
18 Plaintiff.

19 32. Defendant failed to exercise reasonable care in its undertaking.

20 33. Defendant's failure to exercise reasonable care increased the risk of harm to Plaintiff.

21 34. Plaintiff suffered harm because of his and/or Edgewater Gaming, LLC's reliance on
22 Defendant's undertaking.

23 35. As a direct and proximate result of Defendant's failure to exercise reasonable care,
24 Plaintiff incurred damages in excess of ten thousand dollars (\$15,000.00).

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

27 (a) For general damages in an amount in excess of ten thousand dollars (\$15,000.00) for
28 each claim for relief;

 (b) For special damages in an amount in excess of ten thousand dollars (\$15,000.00) for

1 each claim for relief;

- 2 (c) For pecuniary and economic losses according to proof;
- 3 (d) For past and future medical and related expenses according to proof;
- 4 (e) For damage to personal property according to proof;
- 5 (f) For Plaintiff's cost of suit herein, including attorneys' fees; and
- 6 (d) For such other and further relief as the Court may deem just and proper.
- 7

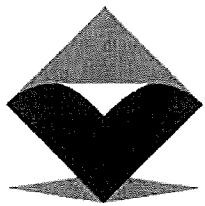
8 GLEN LERNER INJURY ATTORNEYS

9 /s/ Glen J. Lerner

10 Glen J. Lerner, Esq.
11 Nevada Bar No. 4314
12 4795 South Durango Drive
13 Las Vegas, Nevada 89147
14 Attorneys for Plaintiff
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EXHIBIT 1

EXHIBIT 1




**NAPOLI
SHKOLNIK PLLC**
ATTORNEYS AT LAW

Mark Twain Plaza II
103 West Vandalia Street, Suite 125
(212) 397-1000
www.NapoliLaw.com

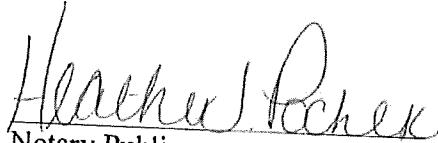
AFFIDAVIT OF F. PHILLIP PECHE, ESQUIRE

Before me, a notary, appear F. Phillip Peché, Esquire, being duly deposed and sworn does as follows:

1. I am an attorney in good standing and admitted to the courts in the State of California, State Bar Number 300198.
2. I am admitted Pro Hac Vice in the Eighth Judicial District Court, Clark County, Nevada for the action *REIF v. EDGEWATER GAMING, LCC et al.*, case number A-17-752432.
3. I, as a member of the law firm NAPOLI SHKOLNIK PLLC and along with Hunter J. Shkolnik and Joseph P. Napoli, personally represent Plaintiff MARCUS A. REIF as co-counsel with Glen Lerner (Nevada Bar Number 4314), GLEN LERNER INJURY ATTORNEYS, in the instant action.
4. I have reviewed the facts of this case, and pursuant to NRS 11.258 requirements for bringing an "Action involving nonresidential construction" against a "design professional," shall file this affidavit concurrently with service of the First Amended Complaint, which names design professional BARKER DROTTAR ASSOCIATES, LLC ("Barker Drottar") as a Defendant in this case. Defendant ARIES CONSULTANTS, INC. ("Aries") has moved to dismiss the instant action against it on grounds that it is a design professional within the meaning of NRS 11.256 *et seq.* and that Plaintiff did not comply with the pre-filing requirements set forth in the same. Independent of the Court's ruling on this pending legal issue, this Affidavit and attached expert report comport with the spirit and legislative intent of NRS 11.256 *et seq.* such that Aries pending motion to dismiss will become moot upon the filing and service of Plaintiff's First Amended Complaint.
5. I have consulted with engineering expert, Jerry L. Miles, P.E., Bert L. Howe & Associates, Inc., regarding the facts of this case and the alleged tortious conduct arising therefrom.
6. I reasonably believe Jerry L. Miles, P.E. to be an expert knowledgeable in the relevant discipline—professional engineering—which is the subject of Mr. Miles' report, and which is also readily apparent from the contents of his Curriculum Vitae attached hereto.
7. I have concluded on the basis of my review and my consultation with expert professional engineer Jerry L. Miles that the instant action has a reasonable basis in law and fact.


F. Phillip Peche, Esq.

Sworn to and subscribed this 28st day of September, 2017, in the City of Edwardsville and the State of Illinois.


Notary Public



ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Jennifer Liakos (SBN 207487), F. Phillip Pecho (SBN 300198) FIRM NAME: Napoli Shkolnik PLLC STREET ADDRESS: 525 South Douglas Street, Suite 260 CITY: El Segundo STATE: CA ZIP CODE: 90245 TELEPHONE NO.: (310) 331-8224 FAX NO.: (646) 843-7603 E-MAIL ADDRESS: jliakos@napolilaw.com; ppecho@napolilaw.com ATTORNEY FOR (name): Cindy G. Reif	FOR COURT USE ONLY FILED SUPERIOR COURT COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT MAY 15 2017 BY <u>Connie Cortes</u> DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Bernardino STREET ADDRESS: 247 West Third Street MAILING ADDRESS: CITY AND ZIP CODE: San Bernardino, CA 92415-0212 BRANCH NAME: Probate Division of the San Bernardino District	CASE NUMBER: CONPS 1700114
CONSERVATORSHIP OF (name): MARCUS REIF ORDER APPOINTING <input type="checkbox"/> SUCCESSOR PROBATE CONSERVATOR OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE <input type="checkbox"/> Limited Conservatorship	CONSERVATEE
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.	

1. The petition for appointment of ☐ successor conservator came on for hearing as follows
 (check boxes c, d, e, and f or g to indicate personal presence):
- a. Judicial officer (name): Cynthia Ludvigsen
- b. Hearing date: May 10, 2017 Time: 9:30am ☒ Dept.: S26 ☐ Room:
- c. ☒ Petitioner (name): Cindy G. Reif
- d. ☒ Attorney for petitioner (name): F. Phillip Pecho
- e. ☒ Attorney for ☒ person cited ☐ the conservatee on petition to appoint successor conservator:
 (Name): Sherri Kestilahn (Telephone): (760) 948-0927
 (Address): 18950 Covina Street
Hesperia, CA 92345
- f. ☒ Person cited was ☒ present. ☐ unable to attend. ☐ able but unwilling to attend. ☐ out of state.
- g. ☐ The conservatee on petition to appoint successor conservator was ☐ present. ☐ not present.

THE COURT FINDS

2. All notices required by law have been given.
3. Granting the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
4. (Name): Marcus Reif
- a. ☒ is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.
- b. ☒ is substantially unable to manage his or her financial resources or to resist fraud or undue influence.
- c. ☐ has voluntarily requested appointment of a conservator and good cause has been shown for the appointment.
5. The conservatee
- a. ☒ is an adult.
- b. ☐ will be an adult on the effective date of this order.
- c. ☐ is a married minor.
- d. ☐ is a minor whose marriage has been dissolved.
6. ☒ There is no form of medical treatment for which the conservatee has the capacity to give an informed consent.
☐ The conservatee is an adherent of a religion defined in Probate Code section 2355(b).
7. ☐ Granting the ☐ successor conservator powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and in the best interest of the conservatorship estate.
8. ☐ The conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

Do NOT use this form for a temporary conservatorship:

CONSERVATORSHIP OF (name):	MARCUS REIF CONSERVATEE	CASE NUMBER: CONPS 1700114
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9. ☐ The conservatee has dementia as defined in Probate Code section 2356.5, and the court finds all other facts required to make the orders specified in item 28.
10. ☒ Attorney (name): Shemi Kastilahn has been appointed by the court as legal counsel to represent the conservatee in these proceedings. The cost for representation is: \$
The conservatee has the ability to pay ☐ all ☐ none ☐ a portion of this sum (specify): \$
11. ☒ The conservatee need not attend the hearing.
12. ☒ The appointed court investigator is (name):
(Address and telephone):
13. ☐ (For limited conservatorship only) The limited conservatee is developmentally disabled as defined in Probate Code section 1420.
14. ☐ The ☐ successor conservator is a professional fiduciary as defined by Business and Professions Code section 6501(f).
15. ☐ The ☐ successor conservator holds a valid, unexpired, unsuspended license as a professional fiduciary issued by the Professional Fiduciaries Bureau of the California Department of Consumer Affairs under chapter 6 (commencing with section 6500) of division 3 of the Business and Professions Code.
License no.: Issuance or last renewal date: Expiration date:
16. (Either a, b, or c must be checked):
- a. ☒ The ☐ successor conservator is not the spouse of the conservatee.
- b. ☐ The ☐ successor conservator is the spouse of the conservatee and is not a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
- c. ☐ The ☐ successor conservator is the spouse of the conservatee and is a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
It is in the best interest of the conservatee to appoint the spouse as ☐ successor conservator.
17. (Either a, b, or c must be checked):
- a. ☒ The ☐ successor conservator is not the domestic partner or former domestic partner of the conservatee.
- b. ☐ The ☐ successor conservator is the domestic partner of the conservatee and has neither terminated nor intends to terminate their domestic partnership.
- c. ☐ The ☐ successor conservator is the domestic partner or former domestic partner of the conservatee and intends to terminate or has terminated their domestic partnership. It is in the best interest of the conservatee to appoint the domestic partner or former domestic partner as ☐ successor conservator.

THE COURT ORDERS

18. a. (Name): Cindy G. Reif (Telephone): (951) 999-7285
(Address): 31 S. Valley Mesa
Needles, CA 92363
Is appointed ☐ successor ☒ conservator ☐ limited conservator of the PERSON of (name): Marcus Reif
and Letters of Conservatorship shall issue upon qualification. (Telephone): (951) 999-7285
- b. (Name): Cindy G. Reif
(Address): 31 S. Valley Mesa
Needles, CA 92363
Is appointed ☐ successor ☒ conservator ☐ limited conservator of the ESTATE of (name): Marcus Reif
and Letters of Conservatorship shall issue upon qualification.
19. ☒ The conservatee need not attend the hearing.
20. a. ☒ Bond is not required.
- b. ☐ Bond is fixed at: \$ to be furnished by an authorized surety company or as otherwise provided by law.
- c. ☐ Deposits of: \$ are ordered to be placed in a blocked account at (specify institution and location):

and receipts shall be filed. No withdrawals shall be made without a court order.

☒ Additional orders in attachment 20c.

CONSERVATORSHIP OF
(name):MARCUS REIF
CONSERVATEE

CASE NUMBER:

CONPS 1700114

20. (cont.)

d. ☒ The ☐ successor conservator is not authorized to take possession of money or any other property without a specific court order.21. ☐ For legal services rendered, ☐ conservatee ☐ conservatee's estate shall pay the sum of: \$
to (name):☐ forthwith ☐ as follows (specify terms, including any combination of payors):☐ Continued in attachment 21.22. ☐ The conservatee is disqualified from voting.23. ☒ The conservatee lacks the capacity to give informed consent for medical treatment and the conservator of the person is granted the powers specified in Probate Code section 2355.☐ The treatment shall be performed by an accredited practitioner of a religion as defined in Probate Code section 2355(b).24. ☐ The ☐ successor conservator of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in attachment 24 ☐ subject to the conditions provided.25. ☐ Orders relating to the capacity of the conservatee under Probate Code sections 1873 or 1901 as specified in attachment 25 are granted.26. ☐ Orders relating to the powers and duties of the ☐ successor conservator of the person under Probate Code sections 2351-2358 as specified in attachment 26 are granted. (Do not include orders under Probate Code section 2356.5 relating to dementia.)27. ☐ Orders relating to the conditions imposed under Probate Code section 2402 on the ☐ successor conservator of the estate as specified in attachment 27 are granted.28. ☐ a. ☐ The ☐ successor conservator of the person is granted authority to place the conservatee in a care or nursing facility described in Probate Code section 2356.5(b).b. ☐ The ☐ successor conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2356.5(c).29. ☒ Other orders as specified in attachment 29 are granted.30. ☐ The probate referee appointed is (name and address):Paulick B. Wright, Probate Referee
306 W 2nd Street, Ste. 200
San Bernardino, CA 92401
(909) 885-519431. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the person under Probate Code section 2351.5 as specified in attachment 31 are granted.32. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the estate under Probate Code section 1830(b) as specified in attachment 32 are granted.33. ☐ (For limited conservatorship only) Orders limiting the civil and legal rights of the limited conservatee as specified in attachment 33 are granted.34. ☒ This order is effective on the ☒ date signed ☐ date minor attains majority (specify):

35. Number of boxes checked in items 18-34: 9

36. Number of pages attached: 1

Date:

XXXXXX
JUDICIAL OFFICER☒ SIGNATURE FOLLOWS LAST ATTACHMENT

Attachment 20 c and 29

1. Petitioner is appointed as Conservator of the Estate for the purposes of representation of Marcus Reif in the personal injury litigation in Nevada.

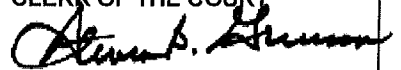
2. Petitioner is appointed as the Guardian ad Litem for Marcus Reif, in the Estate of Dale Milton Reif.

May 15, 2017



IT IS SO ORDERED

Cynthia Ludvigsen
Judge Cynthia Ludvigsen



1 NOE

Glen J. Lerner, Esq.

2 Nevada Bar No. 4314

GLEN LERNER INJURY ATTORNEYS

3 4795 South Durango Drive

Las Vegas, Nevada 89147

4 Telephone: (702) 877-1500

Facsimile: (702) 877-0110

5 glerner@glenlerner.com

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

9 MARCUS A. REIF, an individual;

Plaintiff,

CASE NO.: A-17-752432-C

DEPT NO.: XXX

10 vs.

11 EDGEWATER GAMING, LLC, a Nevada
Limited Liability Company, doing business as
12 EDGEWATER HOTEL AND CASINO,
GILLETT CONSTRUCTION LLC, a Nevada
13 Limited Liability Company, ARIES
CONSULTANTS INC., a Nevada Corporation,
14 DOES 1 through 40, and ROE CORPORATIONS
1 through 40, inclusive,

15 Defendants.

16 AND ALL RELATED CLAIMS.

NOTICE OF ENTRY OF ORDER
GRANTING APPLICATION TO
REGISTER FOREIGN
GUARDIANSHIP ORDER

18 PLEASE TAKE NOTICE that an Order Granting Application to Register Foreign
19 Guardianship Order, was entered and filed on the 23rd day of October, a copy of the Order is
20 attached hereto.

21 GLEN LERNER INJURY ATTORNEYS

22 /s/ Glen J. Lerner

23 Glen J. Lerner, Esq.

24 Nevada Bar No. 4314

4795 South Durango Drive

25 Las Vegas, Nevada 89147

Attorneys for Plaintiff

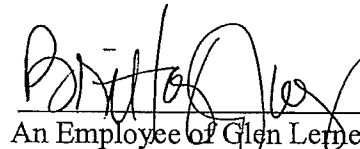
CERTIFICATE OF SERVICE BY MAIL

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on 25 day of October, 2017, I served the foregoing **Notice of Entry of Order Granting Application to Register Foreign Guardianship Order** was served by electronic copy via the Court's electronic service system WIZNET, to the following counsel of record:

M. Craig Murdy, Esq.
Nausheen K. Peters, Esq.
LEWIS BRISBOIS BISGAARD & SMITH
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorney for Defendant/Cross Claimant Edgewater Gaming, LLC

Theodore Parker III, Esq.
PARKER, NELSON, & ASSOCIATES, CHTD.
2460 Professional Court, Suite 200
Las Vegas, NV 89128
*Attorney for Defendant
Gillett Construction, LLC*

Craig J. Mariam, Esq.
Robert S. Larsen, Esq.
Wing Yan Wong, Esq.
GORDON & REES, LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101
*Attorney for Defendant
Aries Consultants, Inc.*


An Employee of Glen Lerner Injury Attorneys

Steven D. Grierson

1 **ORDR**

2 Glen J. Lerner, Esq.
3 Nevada Bar No. 4314
4 GLEN LERNER INJURY ATTORNEYS
5 4795 South Durango Drive
6 Las Vegas, Nevada 89147
Telephone: (702) 877-1500
Facsimile: (702) 877-0110
glerner@glenlerner.com
Attorneys for Plaintiff

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 MARCUS A. REIF, an individual;
10 Plaintiff,
11 vs.

CASE NO.: G-17-048624-A

CLARK DISTRICT FAMILY
DOMESTIC

12 EDGEWATER GAMING, LLC, a Nevada
13 Limited Liability Company, doing business as
14 EDGEWATER HOTEL AND CASINO,
15 GILLET CONSTRUCTION LLC, a Nevada
16 Limited Liability Company, ARIES
CONSULTANTS INC., a Nevada Corporation,
DOES 1 through 40, and ROE CORPORATIONS
1 through 40, inclusive,

Defendants.

17 AND ALL RELATED CLAIMS.

18 **ORDER GRANTING APPLICATION TO REGISTER FOREIGN GUARDIANSHIP ORDER**

19 The Application to Register Foreign Guardianship Order filed by the law firm of GLEN LERNER
20 INJURY ATTORNEYS, the Court, having reviewed the pleadings and papers on file herein and no
21 Opposition or other pleading having been filed; and good cause appearing therefore,
22

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

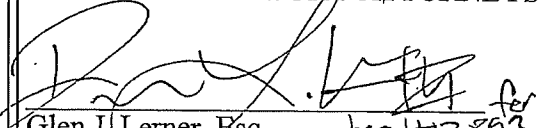
1 IT IS HEREBY ORDERED that the Application to Register Foreign Guardianship Order by the law
2 firm of Glen Lerner Injury Attorneys is hereby GRANTED.
3

4
5 DATED this 19th day of October 2017
6

7 
8 DISTRICT COURT JUDGE

9 Submitted by:

10 GLEN LERNER INJURY ATTORNEYS
11

12 
13 Glen J. Lerner, Esq. ber #2893
14 Nevada Bar No. 4314
15 4795 S. Durango Dr.
16 Las Vegas, Nevada 89147
17 Attorneys for Plaintiff
18
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22
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Preliminary Report of Findings for Spandrel Vehicle Barrier Anchors on Parking Structure of the Edgewater Hotel Casino at 2020 Casino Drive in Laughlin, Nevada

Prepared by:

Jerry L. Miles, P.E.

Bert L. Howe & Associates, Inc.

5415 East La Palma Avenue

Anaheim Hills CA 92807

(714) 701-9180

Prepared for:

Napoli Shkolnik, PLLC

525 South Douglas Street, Suite 260

El Segundo, California 90245

(310) 331-8224

Scope of Evaluation

This evaluation report is being prepared for Napoli Shkolnik PLLC to evaluate the failure of anchors in a vehicle barrier spandrel on the fifth level of the parking structural at the Edgewater Hotel Casino in Laughlin. The installed anchors failed during a collision/crash with the spandrel when a vehicle driven by Marcus Reif struck the spandrel acting as a vehicle barrier at the end of a drive lane on the north side of the subject parking structure.

Documents Analyzed

As part of this evaluation, the following documents were reviewed and analyzed:

- *State of Nevada Traffic Crash Report (Crash Date: March 16, 2016)*, prepared by the Las Vegas Metro PD, Crash Number LVM160316001078; Investigator – Freeman (ID Number 4487), dated August 23, 2016, Reviewed by Robert Stauffer, dated September 1, 2016.
- *Collision Investigation Supplement*, prepared by the Las Vegas Metro PD, Event Number 160316-1078; Primary Investigator – Detective David Freeman.
- *Sections of the 2012 International Building Code (IBC)*, including Section 406.4.3 and Sections 1607.8.3 & 1607.9.
- *Section 4.5.3 of ASCE 7-10, Minimum Design Loads and Associated Criteria for Buildings and Other Structures*.
- *Parking Garage Repairs Edgewater Hotel Casino Plans*, prepared by Marnell Architecture and Barker Drott Associates, L.L.C., Dated February 5, 2015.
- *ICC-ES Evaluation Report ESR-2508*, Reissued 07/2017 – Evaluation Subject: Simpson Strong-Tie® SET-XP® Epoxy Adhesive Anchors for Cracked and Uncracked Concrete.
- *Letter from Barker Drott to Mr. David Howryla, AIA, Marnell Companies*, dated December 22, 2014, with Attached SK1 and SK2 (Spandrel Anchor Details), dated 12/18/2014.
- *Consulting Agreement between Aries Consultants and Edgewater Gaming, LLC*, dated February 6, 2015.
- *Final Quality Assurance Report, Edgewater Hotel Casino – Garage (CCDB Permit # 15-6880 BUI)*, prepared by Aries Consultants, dated March 23, 2015.
- *Ten (10) Scene Photos taken after Reif Crash Incident*, Unknown Origins.

Background Information

The Edgewater Hotel Casino in Laughlin, Nevada has a six (6) level parking structure/garage near the northwest corner of the site. The garage is a concrete reinforced structure with suspended concrete slabs at each level supported by rectangular and round concrete columns. The structure contains parking stalls, drive aisles, ramps, stairwells and an elevator.

Mr. Kris Barker in his above mention letter to Mr. Howryla with Marnell Companies discusses a prior incident where an unmanned pickup truck rolled from its parked position down a ramp, impacted a barrier spandrel on the east side of the 5th level of the Edgewater Hotel Casino's

parking garage. This impact broke the spandrel from its anchors and the spandrel fell to the ground below. Mr. Barker states that this incident led to concerns about the structural integrity of the spandrel connections to their supporting members. Mr. Barker concludes that the existing spandrel connections were inadequate and that the welded floor slab connection in his opinion had “practically no strength.” Attached to Mr. Barker’s letter, he provided SK1 and SK2 which are stamped and signed engineered, new proposed spandrel connection to adjacent support columns.

Repair plans were prepared by Marnell Architecture and Barker Drott Associates consisting of the repair of the missing (broken) spandrel on the 5th level of the garage, installation of a temporary barrier at the missing spandrel location on the 5th level, strengthening of the spandrel connections to the columns on level 2 through 6, installation of pipe bollard near the elevators on level 2 through 6 and cutting spandrel to spandrel connections on the east side of level 2. These plans were stamped by Kurt Guidice (State of Nevada PE No. 21312) and dated February 5, 2015.

These plans were submitted to Clark County and the county issued a building permit for the repairs. The county required special inspection for portions of the construction including the installation of the retrofit epoxy anchors at the spandrel to column connections. Edgewater Gaming contracted with Aries Consultants to provide special inspection services for the repairs to the parking garage, including the retrofit epoxy anchors at the new spandrel connection to the columns. Aries Consultants’ Final Quality Assurance Report indicates that the repairs to the Edgewater’s parking garage were performed in February and March of 2015.

Per the Las Vegas Metro PD’s Traffic Crash Report, Marcus Reif was driving a vehicle on the 5th level of the Edgewater parking garage on the morning of March 16, 2016. This report indicates that Mr. Reif’s vehicle impacted to low speed a spandrel/vehicle barrier at the end of a drive aisle on the north side of the garage. Mr. Reif then accidentally pushed on the gas pedal in lieu of the brake pedal. The barrier broke away from the installed retrofit epoxy anchors and fell to the ground in the alley adjacent to the north side of the garage. Mr. Reif’s vehicle was unable to stop and also fell to the alley below, landing on the roof of the vehicle.

Observations

The author of this report attended a site inspection at the Edgewater parking garage (including examination of the concrete spandrel that fell, the failed retrofit epoxy anchors still attached to the angle braces and various failed concrete pieces, the site of the failed spandrel connections at the repaired Reif crash site on the north side of the 5th level of the parking garage and the repaired spandrel section and connections at the prior failed spandrel barrier on the east side of the 5th level parking garage) on August 18, 2017. I photographed the inspected items and took pertinent measurements of those items and areas. Sample photographs presented in the Photo Index (pages 8 – 16) are representative examples of the photographs taken of pertinent information.

Spandrel Panel lying in Alley along North Side of Parking Garage: (see Photos 2 through 13 of the Photo Index) The fallen spandrel panel had been pushed from its original fallen position to

a position parallel to the north side of the parking garage along the chain link fence. The fallen spandrel was mostly intact but was cracked and broken in several areas. A cone shaped area of pulled out concrete was observed at the east end retrofitted epoxy anchor. Pieces of this cone shaped concrete were preserved and were provided for observation. Measurements showed the base of the cone (at the interior face of the panel) was estimated to be 12" by 10" and 4" by 3" at the bottom of the hole. Measurement of the depth of this hole varied from 3-1/2" to 3-5/8".

The upper east end of the panel was broken off. A triangular portion of the concrete at the upper portion of the spandrel was broken leaving the reinforcing bars exposed. The center of this triangular portion of missing concrete was located approximately seven (7) feet from the east end of the spandrel and was approximately four (4) wide at the top. The total length of the panel was measured to be approximately 29'-7" with a width of approximately 6" deep. The edges of the panel were beveled with a 3/4" chamfer. The interior spandrel panel face measured approximately 42" tall. The exterior face of the panel had a 3" thick slab cover leg that extends approximately 8" below the interior panel height. Much of the concrete slab cover leg was broken off, especially along the east end.

The concrete failed in an edge blowout type failure at west end retrofitted epoxy anchor. The location of the west end failed retrofit epoxy anchor had been despoiled when discarded concrete was placed near this location. It appears that some of this discarded concrete flowed over and covered the failed concrete at the failed west end anchor. This discarded concrete has hardened and no observations of the concrete immediately around the anchor location could be made. Five (5) embedded weld angles were observed along the bottom of the interior face of the panel. These weld angles were welded to weld angles installed in the 5th floor slab edge. Observed weld plate connections failures were weld failures or the floor slab weld angle pulled out of the slab.

The steel angle connections installed to connect the spandrel panel to the columns were also preserved and provided for observation. The retrofit anchors that broke away from the spandrel panel were still attached to the angles. Since the west end anchor location on the spandrel panel was despoiled, the anchor depth from the angle connection plate used on the west end of the spandrel was measured to be 4-3/4".

Repaired spandrel location at the Reif crash site on the 5th level of the garage: (see Photos 14 through 17 of the Photo Index) A replacement concrete spandrel panel had been installed at this location. A temporary barrier consisting of a HSS 12x6 was still in place and spanned between the east and west columns. The spandrel barrier had two steel angle connections with epoxy anchors to the columns at each end of the spandrel, one above and one below the originally installed angle connection. The original epoxy anchors installed in the columns had been cut off at the face of the columns. New slab weld angles had been installed using epoxy anchors into the slab at locations where the weld angles had broken free of the slab.

Evaluation

The repairs plans prepared by Marnell Architecture and Barker Drott Associates for the parking garage at the Edgewater Hotel Casino specified the use of retrofit epoxy anchors for connections of the concrete spandrel panels to the structural columns for all of the spandrel panel on levels 2 through 6 of the garage. In the General Structural Notes on Sheet S1.00, it states that the design and construction of the repairs were to comply with the 2012 International Building Code (IBC). The spandrel connection to column details on S1.00 specify that a 3/4" Simpson SET-XP epoxy anchor to be used at each spandrel-column connection and embedded 6" per ESR-2508. These details nor anywhere on these plans is the spandrel panel thickness called out. "Special Inspection" of the installation of the specified epoxy anchors was required per the plans. Edgewater contracted with Aries Consultants to provide the required special inspection of the installation of the anchors and other special inspection services.

In Section 406.4.3 of the 2012 IBC states that vehicle barriers shall be placed at the ends of drive lanes and at the end of parking spaces where the vertical distance to the ground or surface directly below is greater than 1 foot. It further states that vehicle barriers shall comply with the loading requirements of Section 1607.8.3 of the 2012 IBC. The spandrel panel barrier at the Reif crash site was on the fifth level of the garage and at the end of a drive lane. Therefore, the subject spandrel panels was required to be designed and constructed as a vehicle barrier and comply with the vehicle barrier loading requirements of IBC Section 1607.8.3. Section 1607.8.3 requires vehicle barrier to resist a concentrated load of 6,000 pounds in accordance with Section 4.5.3 of ASCE 7, which stated that the required 6,000 pound load is to be applied horizontally at a height of between 1 ft 6 in and 2 ft 3 in in height above the floor located to produce the maximum load effects.

The IBC requires building products and/or systems to be tested and evaluated to insure compliance with the code and to provide structural capacities through standard testing practices and scientific/engineering evaluation processes. An ESR (evaluation report) is then issued with the results and code compliant structural capacities of the products or systems. The ESR also contains installation guidelines and requirements in an effort to insure that the products/systems are installed in a manner that complies with the testing performed on the products.

Simpson Strong-Tie Company issued an approved ESR-2508 on their SET-XP Epoxy Adhesive Anchors for Cracked and Uncracked Concrete. Table 1 of ESR-2508 is titled "SET-XP Epoxy Adhesive Anchor Installation Information". Table 1 specifies that the permitted embedment depth range of a 3/4" diameter rod is a minimum of 3-1/2" and a maximum of 15". It also states that the minimum concrete thickness is required to be $h_{ef} + 5d_o$. Simpson defines h_{ef} as the embedment of the anchor and d_o indicates the nominal diameter of the specified anchor. This indicates that the repair plans specified 3/4" diameter spandrel to column connection anchors with a 6" embedment would have required a minimum concrete thickness of $[6" + (5 \times 0.75")]$ 9-3/4". The existing spandrel panels of the parking garage had an approximate thickness of 6". The specified 6" embedment depth would have required drilling through the entire panel thickness and won't have left any concrete below the anchors.

Aries Consulting's *Final Quality Assurance Report* contained a Non-Compliance Report, Report #: NCR-X-1, dated 2/27/15 that stated that the embedment depth of 6" minimum was changed to

4" minimum because the spandrels are only 6" thick. It further states that an engineering fix is required approving this change of anchor embedment depth. Aries's Report also contains a Report of Corrections, Report #: ROC-X-1, dated 3/20/15 and states this report clears NCR # X-1, dated 2/27/15. It further states the changed epoxy embedment depth (6" to 4") per Clark County Department of Building approved plan revision, dated March 9, 2015. Aries provided Post-Installed Adhesive Anchor Clearance Reports (dated 2/27/15, 3/3/15 & 3/4/15) with 4"x1" hole depth & diameter for the epoxy anchors. These reports state that the minimum anchor embedment depth was required to be 4" minimum. Examination of the failed spandrel panel and anchors from the Reif crash site indicated anchor embedment depths of less than the minimum 4" required. Aries was certifying the changed anchor depth prior to Clark County's approval of the revised embedment depth.

Clear copies of the above mentioned County approved, revised repair plans specifying the epoxy anchor depth as 4" was not available when this report was prepared. However, it appears that Marnell Architecture/Barker Drottar's repair plans were modified and approved by the County for the change of anchor embedment. The specified change to 4" anchor embedment still violated Simpson's mandated minimum concrete thickness [$4" + (5 \times 0.75")$] of 7-3/4" with 6" minimum spandrel panels. Simpson provides free anchor design software to assist engineers and other anchor designers design appropriate and code compliant anchors. Simpson's software allows for a variety of anchor designs including their SET-XP epoxy anchors. Evaluation of the specified and installed anchors with Simpson's software indicates that the software will not calculate SET-XP anchor capacity without the mandated minimum concrete thickness, which neither the originally specified 6" anchor embedment nor the revised 4" anchor embedment provided with the 6" thick spandrel panels. The failure of Simpson's software to calculate the anchor capacity without the mandated concrete thickness is an indication of the importance of the minimum concrete thickness in the SET-XP epoxy manufacturer's installation requirements.

It would appear the Mr. Barker in his letter to Mr. Howryla with Marnell Companies was correct in his assertion that the slab to panel weld plate connections had little to no strength. Examination of the subject spandrel and anchors from the Reif crash site indicate that the anchors most likely failed as a result of a combination of inadequate concrete thickness and inadequate anchor capacity.

Conclusions

1. Marnell Architecture/Barker Drottter and Kurt Guidice, P.E. negligently designed and specified inappropriate spandrel to column connection SET-XP epoxy anchor depth on their original Parking Garage Repair plans. They further failed in their duties as design professionals when their modified design of 4" SET-XP epoxy anchor embedment depth still violated the manufacturer's required minimum concrete thickness when installed on a 6" thick spandrel panel.
2. Observed and measured embedment depths on the connection anchors installed on the spandrel panel involved in the Reif crash incident did not meet the modified repair plans specified 4" embedment depth. Since Aries Consulting provided code mandated special inspection of these anchors and certified the installation of these anchors, they failed in their duty to ensure that these anchors were installed with the minimum specified embedment depth.

The opinions and conclusions expressed in this preliminary report are based upon our visual inspection of the incident site and failed spandrel panel and connection anchors, evaluation of the documentation that we have received and our understanding of applicable engineering practices that are standard in the industry. We reserve the right to re-evaluate our opinions and conclusions if we are presented with further documentation or evidence that would be of such a nature that would warrant revising our opinions and conclusion.



Photo Index

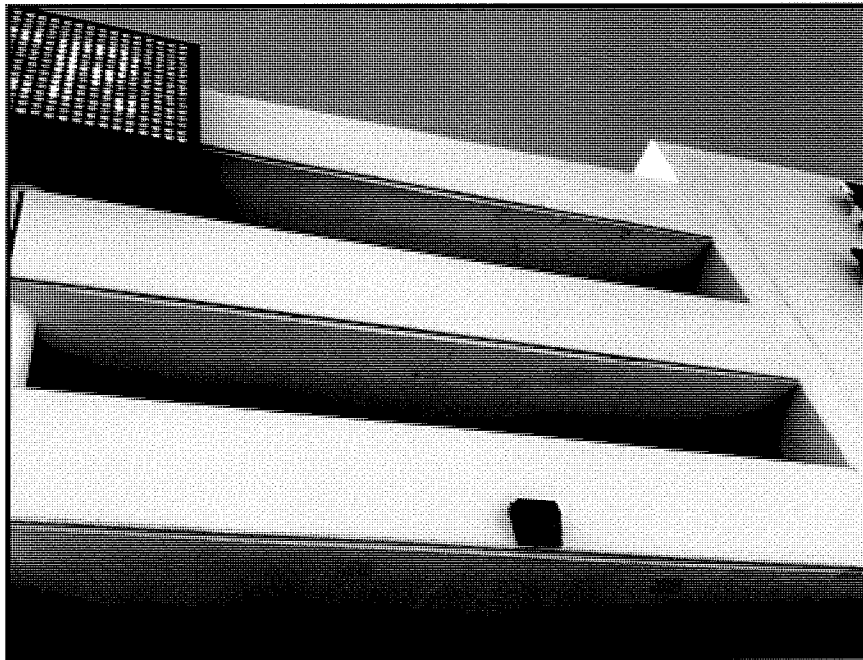


Photo 1: Replacement Spandrel Barrier on North Side of Garage



Photo 2: Eastern End of Spandrel Barrier in Alley on North side of Garage

Photo Index



Photo 3: View of Spandrel Barrier in Alley Looking West



Photo 4: West End of Spandrel Barrier – Despoiled Anchor Failure Location

Photo Index

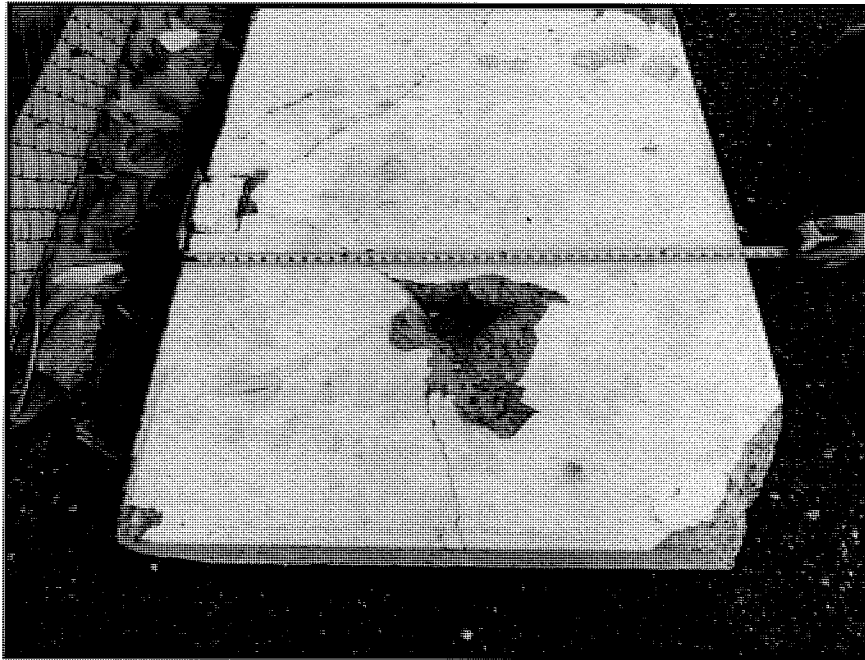


Photo 5: East End Retrofit Anchor Failure Location



Photo 6: East End Retrofit Anchor Failure Location

Photo Index



Photo 7: View of East End Spandrel Concrete Failure Depth at Retrofit Epoxy Anchor



Photo 8: Approximate Depth Measurement of Concrete Failure

Photo Index

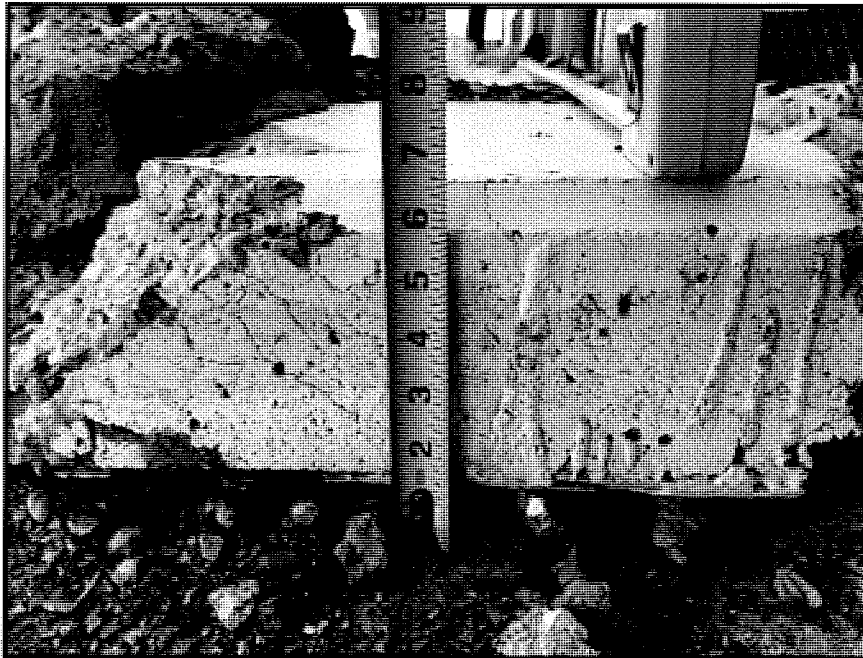


Photo 9: Measurement of Panel Thickness at West End of Spandrel



Photo 10: Approximate Total Length Measurement of Spandrel Panel

Photo Index

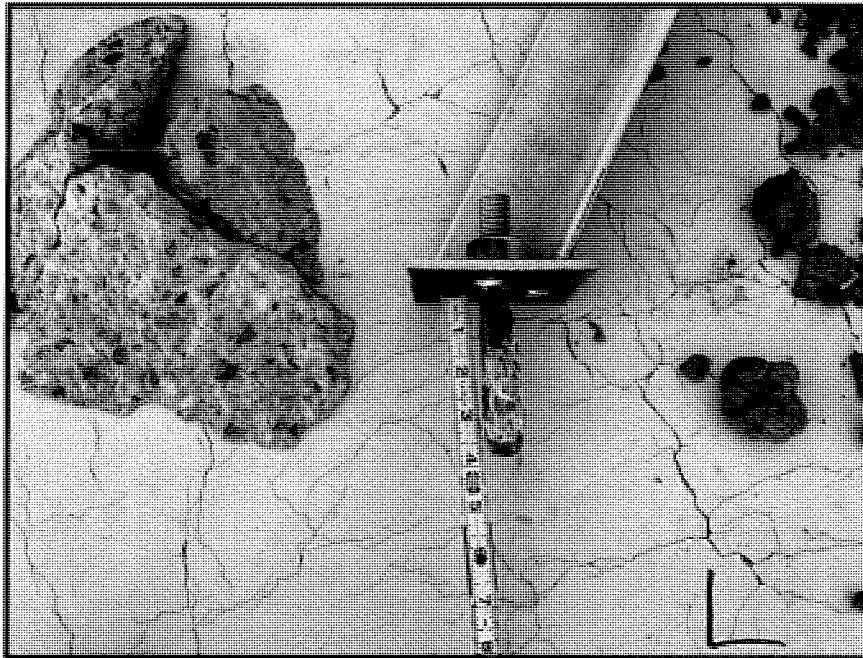


Photo 11: Retrofit Epoxy Anchor Embedment Depth at West End of Spandrel

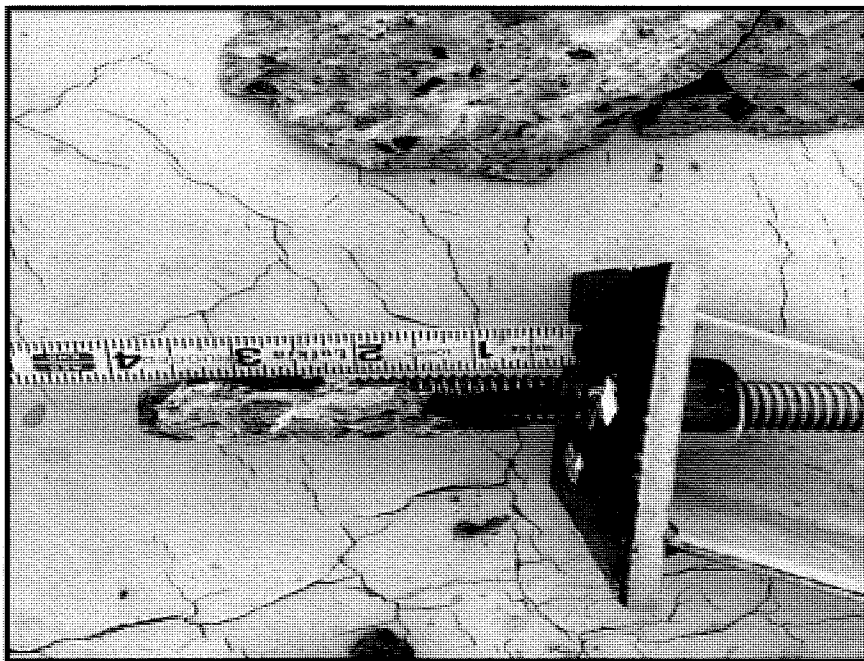


Photo 12: Close-up of Measurement of Retrofit Epoxy Anchor Embedment

Photo Index

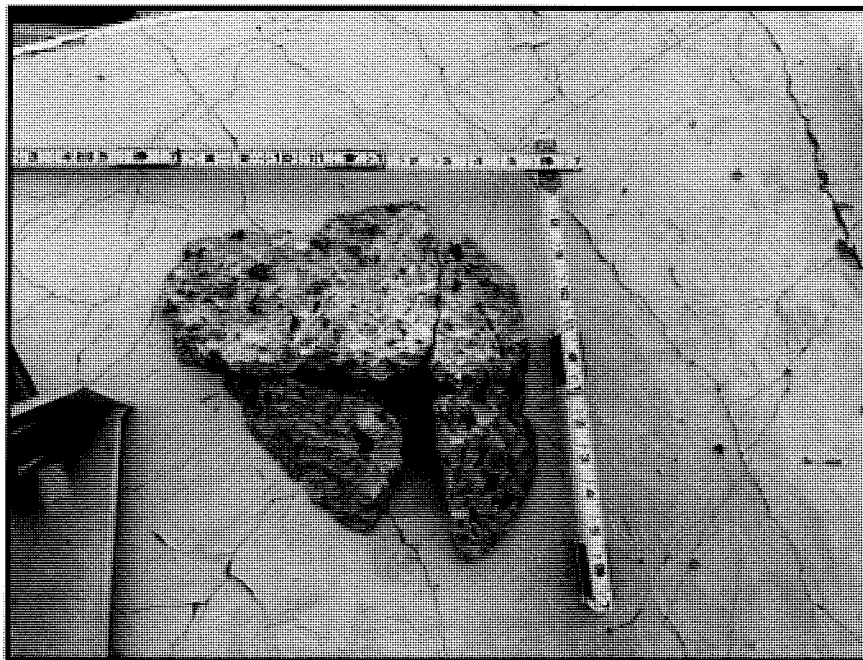


Photo 13: Preserved Failed Concrete at East End Anchor of Spandrel

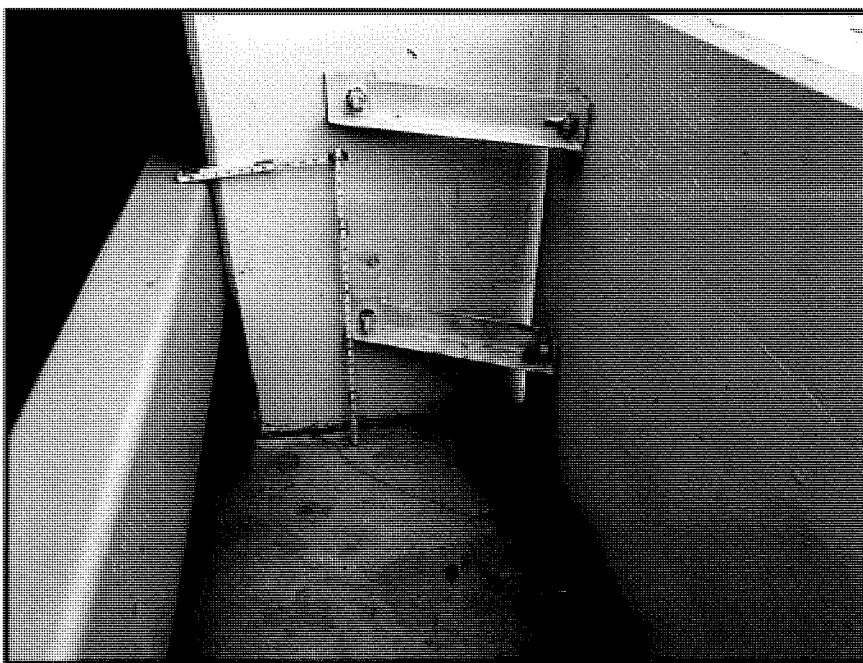


Photo 14: Repaired West End of Spandrel Barrier at Reif Crash Site

Photo Index



Photo 15: Cut-off Anchor in Rectangular Column at West End of Spandrel



Photo 16: Repaired Spandrel Connections Configuration at Round Column (East End)

Photo Index



Photo 17: Repaired Lower Angle Panel Support at East End Round Column





Bert L. Howe & Associates, Inc.

Construction Consultants

Construction and Design Professionals

www.berthowe.com
800.482.1822

Jerry L. Miles, P.E. **Civil Engineer**

jerrymiles@berthowe.com
800.482.1822

Brigham Young University, Provo, UT; BS Civil Engineering
(1984)



Professional Engineer's License
(Civil #88865) in Texas
Professional Engineer's License
(Civil #42593) in California
Professional Engineer's License
(Civil - Inactive) in Nevada
Professional Engineer's License
(Civil - Inactive) in Louisiana
Professional Engineer's License
(Civil - Inactive) in Oklahoma
Professional Engineer's License
(Civil - Inactive) in Arkansas

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9th Floor
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800.248.4096

Houston
800 Town and
Country Boulevard
Suite 300
77024
713.264.8221

Miami
1111 Lincoln Road
Suite 400
33139
800.783.1822

EXPERIENCE

Mr. Miles has a diverse engineering background in design, fieldwork, and forensic work on a variety of different projects, ranging from custom residential homes to large scale commercial projects. His more than 26 years of engineering experience includes geotechnical evaluations, structural design of wood-framed, masonry, and concrete tilt-up buildings, small and large subdivision engineering construction/improvements plans, hydrology/hydraulic reports and design, forensic investigation and expert witness testimony. Mr. Miles has qualified as an expert in numerous jurisdictions and Federal court. He has given deposition testimony more than twenty-five times and has successfully testified at arbitration and trial.

Mr. Miles has been a licensed civil engineer in California since 1987, and has served as the lead civil engineer on many projects in several states. His experience includes contract administration services as the owner's representative on a variety of projects including mastered planned communities, residential subdivisions, shopping centers and multi-family residential projects. He has also been involved in providing water quality management plans and storm water pollution prevention plans. Mr. Miles has served on the Town of Apple Valley's Building Department Dispute Resolution Board.

Miles's career as an engineer saw him as a lead design civil engineer on several high profile projects throughout the US including the site engineering construction/improvement plans for the Monte Carlo Hotel/Casino in Las Vegas, Nevada; Raysor Ranch Planned Community ($\pm 1,200$ -acre mixed use community) in Denton County, Texas; Trophy Club Shopping Center (Award winning shopping center for design) in Trophy Club, Texas; and Sultana High School (± 20 -acre high school



campus through the Department of the State Architect) in Hesperia, California.

His forensic experience ranges from determining cause and repair recommendation for foundation problems on single family residence to large commercial buildings. As a Construction Specialist for Bert L. Howe & Associates Inc., Mr. Miles conducts investigations and database occurrence analysis, analysis of construction documents, comparative analysis between as designed to as-built conditions, development of repair protocols, contracts and mediation/settlement negotiations. He has provided expert witness testimony for metal building failures, collapsed roofs, construction defects, handicap accessibility issues, and building storm damage.

Mr. Miles spent several months in the New Orleans and east Texas area providing building damage assessments and repair recommendations after the Katrina and Rita hurricanes. He is also an Adjunct Faculty instructor at Victor Valley Community College teaching a CADD based course in civil engineering and surveying design and drafting.

AREAS OF SPECIALIZATION

- ✦ Mediation Support
- ✦ Allocation of Subcontractor Liability
- ✦ Land Acquisition Disputes
- ✦ Land Entitlement Issues
- ✦ Land Development Delay/Stoppage
- ✦ Development Agreement Liability
- ✦ Architectural Design Defects
- ✦ Specification Non-Compliance
- ✦ On-Site Construction Defects
- ✦ Off-Site Construction Failures
- ✦ AIA Contract(s) Analysis
- ✦ Subcontract Agreement Analysis
- ✦ Scope of Work Determination
- ✦ Change Order Analysis
- ✦ Construction Scheduling
- ✦ RFI Analysis/Construction Delay/Acceleration Claims
- ✦ Construction Means and Methods
- ✦ Billing Procedure Standards
- ✦ SB 800 Repair Recommendations
- ✦ New Construction Estimating



AREAS OF SPECIALIZATION *(continued)*

- ✦ Repair Estimating
- ✦ Water Intrusion Analysis
- ✦ Concrete Defect Analysis
- ✦ Framing Defect Analysis
- ✦ Stucco Defect Analysis
- ✦ EIFS Systems Evaluation
- ✦ Roofing And Waterproofing Defects
- ✦ Project Management Performance
- ✦ Job Site Personal Injuries
- ✦ Insurance Policy Conformance
- ✦ Fire Reconstruction
- ✦ Industry Breech of Standards Care
- ✦ Site Inspections and Analysis
- ✦ Personal Injury Responsibility

PROJECT EXPERIENCE

Condominiums/Multifamily
Medical Facilities
Public Universities
Schools/Educational
Production Homes
Hotels/Hospitality
Institutional Projects
Custom Homes
Commercial Developments
Mid-Rise
Retail/Regional Malls



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Construction Consultants

Construction and Design Professionals

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800.482.1822

CONTINUING EDUCATION

Slope Stability Course, Cal-Poly, Pomona University - 1986
Hydrology Software Seminar - 1990
Municipal Planning and Land Use Seminar - 1992
Softdesk Software Training - 1999
Foundation Engineering Seminar, University of Wisconsin, Madison,
Wisconsin - 2003

PROFESSIONAL AFFILIATIONS

ASCE Wind Engineering Seminar, Las Vegas, NV - 2006
American Society of Civil Engineers - Member
American Concrete Institute - Associate

REPRESENTATIVE TESTIMONY EXPERIENCE

Case Name: Karifi v Inland Engineering

Location: Carlsbad, CA

Type: Deposition

Party: Inland (surveyor)

Description: Property Line Dispute

Case Name: Stater Bros v Hi-Desert Concrete

Location: Phelan, CA

Type: Deposition

Party: Stater Bros

Description: Concrete Wall Defect

Case Name: Gonzalez v Residence Inn

Location: Addison, TX

Type: Deposition

Party: Gonzalez

Description: Construction Defect

Case Name: Williams v State Farm Ins.

Location: Mesquite, TX

• Expert Testimony / Trial Support Services • Cost Estimating & General Contracting • Professional Engineering Services
• Building Envelope Specialists • Roofing & Waterproofing • Forensic Architecture



REPRESENTATIVE TESTIMONY EXPERIENCE (continued)

Type: Deposition

Party: State Farm Ins.

Description: Foundation Damage

Case Name: Bryce v 21st Century Insurance

Location: Garland, TX

Type: Deposition

Party: 21st Century Ins.

Description: Wind/Storm Damage

Case Name: Muscate v Warner Utilities

Location: Richland Hills, TX

Type: Deposition

Party: Warner Utilities

Description: Wall/Slope Failure

Case Name: Garland Auto v CNA

Location: Garland, TX

Type: Deposition

Party: CAN

Description: Concrete Defect

Case Name: City of Texoma v Mercury Ins.

Location: Texoma, TX

Type: Deposition

Party: City of Texoma

Description: Wind/Hail Damage

Case Name: Sheraton Hotel v Century Ins.

Location: Irving, TX

Type: Deposition

Party: Century Ins.

Description: Construction Defect

Case Name: Hickory Hill Baptist Church v Arkansas Erectors

Location: Texarkana, TX

Type: Deposition

Party: Arkansas Erectors

Description: Metal Building Collapse

Case Name: Montgomery v Liberty Ins.



REPRESENTATIVE TESTIMONY EXPERIENCE *(continued)*

Location: Longview, TX

Type: Deposition

Party: Liberty Ins.

Description: Pool Damage

Case Name: McAllen Produce v CNA Ins.

Location: McAllen, TX

Type: Deposition

Party: CNA Ins.

Description: Metal Building Damage

Case Name: Gomez v Allstate Insurance

Location: Farmer's Branch, TX

Type: Deposition

Party: Allstate Ins.

Description: Foundation Damage

Case Name: Deli Management v Allweather Roofs

Location: Arlington, TX

Type: Deposition

Party: Allweather Roofs

Description: Roof Collapse

Case Name: Pebblebrook Baptist v Foremost

Location: El Paso, TX

Type: Deposition

Party: Foremost Ins.

Description: Fire Damage Repairs

Case Name: Ft. Worth Art Museum v Gallego Construction

Location: Ft Worth, TX

Type: Deposition

Party: Gallego Construction

Description: Construction Defect

Case Name: Johnson v Farmer's Insurance

Location: Bedford, TX

Type: Deposition

Party: Farmer's Insurance

Description: Foundation Damage



REPRESENTATIVE TESTIMONY EXPERIENCE (continued)

Case Name: Hadley v State Farm Ins.

Location: Carrollton, TX

Type: Deposition

Party: State Farm Ins.

Description: Foundation Damage

Case Name: Marian v All-State Inspections

Location: Victorville, CA

Type: Deposition

Party: Marian

Description: Foundation Damage

Case Name: Potter v Frontier Homes

Location: Hesperia, CA

Type: Deposition

Party: Potter

Description: Construction Defects

Case Name: Tulsa Schools v Sooner Const.

Location: Tulsa, OK

Type: Deposition

Party: Sooner Const.

Description: Metal Building Collapse

Case Name: Franks v Mercedes Homes

Location: Plano, TX

Type: Arbitration

Party: Franks (Owner)

Description: Construction Defect/Backfill

Case Name: McAllen Produce v CNA Ins.

Location: McAllen, TX

Type: Trial

Party: CNA Ins

Description: Metal Building Damage

Case Name: Hickory Hill Baptist Church v Arkansas Erectors

Location: Texarkana, TX

Type: Trial

Party: Arkansas Erectors



REPRESENTATIVE TESTIMONY EXPERIENCE *(continued)*

Description: Metal Building Collapse

Case Name: Palmer v Farmers

Location: Waco, TX

Type: Arbitration

Party: Farmers

Description: Foundation Damage

Case Name: Hadley v State Farm Insurance

Location: Carrollton, TX

Type: Arbitration

Party: State Farm Insurance

Description: Foundation Damage

Case Name: Potter v Frontier Homes

Location: Hesperia, CA

Type: Arbitration

Party: Potter

Description: Construction Defects

EXHIBIT B

EXHIBIT B



OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person
by and through his Conservator CINDY
REIF,

Case No. A-18-770951-C
Dept. No. XXII

Plaintiff,

Vs.

ARIES CONSULTANTS, INC., a Nevada
Corporation; DOES 1 through 5; and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

**ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

This matter concerning Defendant ARIES CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 came on for hearing on the 10th day of May 2018 at the hour of 10:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiff MARCUS A. REIF appeared by and through his attorney, RANDOLPH WESTBROOK, ESQ. of the law firm, GLEN LERNER INJURY ATTORNEYS; and Defendant ARIES CONSULTANTS, INC. appeared by and through its attorney, BRIAN K. WALTERS, ESQ. of the law firm, GORDON REES SCULLY MANSUKHANI. Having reviewed the papers and pleadings on file herein, heard oral arguments of the attorneys and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

...

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

FINDINGS OF FACT AND PROCEDURAL HISTORY

1
2 1. On March 14, 2017, MARCUS A. REIF filed his Complaint against EDGEWATER
3 GAMING, LLC, EDGEWATER HOTEL AND CASINO, GILLETT CONSTRUCTION LLC and
4 ARIES CONSULTANTS INC.¹ as a result of personal injuries he sustained on March 16, 2016
5 when, while operating his 1998 Ford Expedition northbound in a hotel-casino's parking structure,
6 the vehicle exited or drove off the facility and fell several floors. *See Reif v. Edgewater Gaming,*
7 *LLC*, Case No. A-17-752432-C, assigned to Department XXX of the Eighth Judicial District Court.
8
9 "Upon information and belief," all defendants are alleged to be owners, managers, developers,
10 builders, maintainers, inspectors, supervisors and controllers of the premises and subject parking
11 structure. There are twelve claims for relief of which the Third (negligence), Sixth (negligence *per*
12 *se*), Ninth (premises liability) and Twelfth (punitive damages) are asserted against ARIES
13 CONSULTANTS INC.
14

15 2. On July 11, 2017, ARIES CONSULTANTS, INC. filed a motion to dismiss and
16 alternatively to strike in that case upon the basis its only involvement in the construction of the
17 parking structure at issue was that as a quality assurance inspector or "design professional." ARIES
18 CONSULTANTS, INC. argued, as the action involved non-residential construction, and is
19 commenced against it as a design professional, Plaintiff's counsel was required to, but did not file an
20 affidavit concurrently with the service of the first pleading in the action stating (1) the lawyer had
21 reviewed the facts of the case, (2) consulted with an expert, (3) reasonably believes the expert is
22 knowledgeable in the relevant discipline and (4) has concluded on the basis of the review and
23 consultation the action has a reasonable basis in law and fact. *See NRS 11.258.* Given such failure,
24 the case lodged against ARIES CONSULTANTS, INC. should be dismissed. *See NRS 11.259.*
25
26

27 ¹Within the paperwork filed with the Eighth Judicial District Court, there are some references to ARIES
28 CONSULTANTS INC. and others to ARIES CONSULTANTS, INC. with the difference being the submission of a
comma in the name. This Court will treat them as one and the same.

1 JUDGE JERRY WIESE of Department XXX heard the matter on August 15, 2017, and found a
2 genuine issue of material fact remained regarding whether ARIES CONSULTANTS INC. was,
3 indeed, a “design professional” and thus, if the requirements of NRS 11.258 applied. He denied the
4 motion without prejudice and granted MR. REIF’S request for NRCP 56(f) relief to conduct
5 discovery regarding ARIES CONSULTANTS INC.’S status as a “design professional.”²

6
7 3. This Court understands the parties did conduct such discovery, and ultimately, both
8 parties now concede ARIES CONSULTANTS INC. is a “design professional,” whereby the
9 requirements of NRS 11.258 apply.

10 4. On March 12, 2018, just four days before the pertinent statute of limitations period
11 would have run,³ MR. REIF filed a separate action against ARIES CONSULTANTS INC. in Case
12 No. A-18-770951-C, which is assigned to this Court, i.e. Department XXII of the Eighth Judicial
13 District Court, in and for Clark County, Nevada. Plaintiff asserts claims for negligence, negligence
14 *per se*, and negligent performance of an undertaking. Although it is alleged ARIES
15 CONSULTANTS INC. is being sued given its performance as a quality assurance inspector in this
16 non-residential construction action, no affidavit was filed concurrently with the original complaint as
17 required by NRS 11.258. However, the next day, March 13, 2018, MR. REIF filed an amended
18 complaint which attached such an affidavit of his California lawyer, F. PHILLIP PECHE, ESQ.,
19 who has been admitted to practice *pro hac vice* in the case assigned to JUDGE WIESE.⁴ The
20 affidavit is dated September 28, 2017.

21
22 5. ARIES CONSULTANTS INC. now moves this Court to dismiss the complaint
23 pursuant to NRS 11.259 as the pleading here “violates the Single Cause of Action Rule.”⁵ Further,
24
25

26
27 ²See Order filed September 14, 2017 in Case No. A-17-752432-C.

28 ³See NRS 11.190(4)(e).

⁴MR. PECHE has not been admitted to practice *pro hac vice* in this case.

⁵See Defendant ARIES CONSULTANTS, INC.’S Motion to Dismiss Plaintiff’s Complaint filed April 3, 2018.

1 and notwithstanding the first point, the California lawyer, MR. PECHE, is not authorized or licensed
2 to represent MR. REIF in this case, whereby the affidavit, which must be submitted by "the attorney
3 for the complainant" is insufficient. See NRS 11.258(1). Plaintiff opposes, arguing the "single
4 action" rule does not apply as the litigation here is the matter is similar to that already being heard in
5 Department XXX, and no final judgment dismissing the action has been filed there. Further,
6 California counsel⁶ has been admitted *pro hac vice* in the case before Department XXX and is
7 working alongside local attorneys, GLEN LERNER INJURY ATTORNEYS, whereby the affidavit
8 is not insufficient.
9

10 CONCLUSIONS OF LAW

11 1. Rule 12(b) of the Nevada Rules of Civil Procedure (NRCP) provides every defense,
12 in law or fact, to a claim for relief shall be asserted in the responsive pleading thereto if one is
13 required, except that certain defenses, including plaintiff's failure to state a claim upon which relief
14 may be granted,⁷ may be made by motion.
15

16 2. As noted above, all parties now agree ARIES CONSULTANTS, INC. is being sued
17 as a quality assurance inspector or "design professional" in this non-residential construction action
18 whereby the requirements of NRS 11.258 apply. This statute provides in salient part:
19

20 1. Except as otherwise provided in subsection 2, in an action involving
21 nonresidential construction, the attorney for the complainant shall file an affidavit with the
22 court concurrently with the service of the first pleading in the action stating that the attorney:

- 23 (a) Has reviewed the facts of the case;
- 24 (b) Has consulted with an expert;
- 25 (c) Reasonably believes the expert who has consulted is knowledgeable in
26 the relevant discipline involved in the action; and
- 27 (d) Has concluded on the basis of the review and the consultation with the
28 expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to
subsection 1 at a later time if the attorney could not consult with an expert and prepare the

⁶This Court understands MR. PECHE employed by NAPOLI SHKOLNIK, PLLC, the California law firm that
still represents MR. REIF along with local counsel, GLEN LERNER INJURY ATTORNEYS.

⁷See NRCP 12(b)(5).

1 affidavit before filing the action without causing the action to be impaired or barred by the
2 statute of limitations or repose, or other limitations prescribed by law. If the attorney must
3 submit the affidavit late, the attorney shall file an affidavit concurrently with the service of
4 the first pleading in the action stating the reason for failing to comply with subsection 1 and
5 the attorney shall consult with an expert and file the affidavit required pursuant to subsection
6 1 not later than 45 days after filing the action.

3. In addition to the statement included in the affidavit pursuant to subsection 1,
a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the
report must be prepared by the expert consulted by the attorney and must include, without
limitation:

- (a) The resume of the expert;
- (b) A statement that the expert is experienced in each discipline which is
the subject of the report;
- (c) A copy of each nonprivileged document reviewed by the expert in
preparing the report, including, without limitation, each record, report and related
document that the expert has determined is relevant to the allegations of negligent
conduct that are the basis for the action;
- (d) The conclusions of the expert and the basis for the conclusions; and
- (e) A statement that the expert has concluded that there is a reasonable
basis for filing the action.

3. NRS 11.259 describes the effect of the complainant's failure to comply with NRS
11.258. It states in part:

1. The court shall dismiss an action involving nonresidential construction if the
attorney for the complainant fails to:

- (a) File an affidavit required pursuant to NRS 11.258;
- (b) File a report required pursuant to subsection 3 of NRS 11.258; or
- (c) Name the expert consulted in the affidavit required pursuant to
subsection 1 of NRS 11.258.

4. The Nevada Supreme Court has recently held, because the phrase in NRS 11.259
"shall dismiss" is clear and unambiguous, it must give "effect to that meaning and will not consider
outside sources beyond the statute." Otak Nevada, LLC v. District Court, 127 Nev. 593, 598, 260
P.3d 408, 411 (2011), *quoting* City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 272, 236
P.3d 10, 16 (2010), *in turn, quoting* NAIW v. Nevada Self-Insurers Association, 126 Nev. 74, 84,
225 P.3d 1265, 1271 (2010). The use of the word "[s]hall" imposes a duty to act." Otak Nevada,
LLC, 127 Nev. at 598, 260 P.3d at 411, *quoting* NRS 0.025(1)(d). Thus, the Nevada Legislature's
use of "shall" in NRS 11.259 demonstrates its intent to prohibit judicial discretion and,

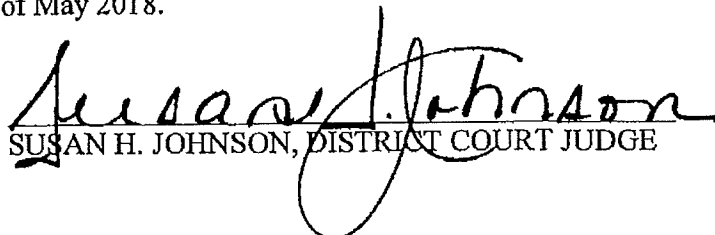
1 consequently, mandates automatic dismissal if the pleading is served without the complaining party
2 concurrently filing the required affidavit and report. Id.

3
4 5. In the case before this Court, the first pleading, or original complaint, was filed
5 March 12, 2018 and asserted a non-residential construction negligence claim against ARIES
6 CONSULTANTS, INC. without concurrently filing the required attorney affidavit and expert report
7 in direct violation of NRS 11.258. While there is an affidavit submitted with the amended
8 complaint filed the following day, the September 28, 2017 document does not set forth the reason
9 for California lawyer's failure to comply with NRS 11.258(1) when the original complaint was filed
10 in this case over five months later. As a consequence, the first pleading or original complaint filed
11 without the required affidavit and expert report is void *ab initio* and is of no legal effect. The
12 complainant's failure to comply with NRS 11.258 cannot be cured by amendment. Otak, 127 Nev.
13 at 599, 260 P.3d at 412. In other words, this Court has no discretionary authority to allow MR. REIF
14 to amend his pleading.
15

16
17 6. Given this its factual findings and conclusions above, this Court does not reach the
18 issues raised by the parties, and notably whether the "single action" rule applies. Accordingly, based
19 upon the foregoing Findings of Fact and Conclusions of Law,
20

21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant ARIES
22 CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 is granted,
23 and Case No. A-18-770951-C is dismissed.
24

25 DATED this 11th day of May 2018.

26 
27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
28

CERTIFICATE OF SERVICE

I hereby certify, on the 11th day of May 2018, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT to the following counsel of record with first-class postage fully prepaid thereon:

GLEN J. LERNER, ESQ.
GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
Las Vegas, Nevada 89147
glerner@glenlerner.com

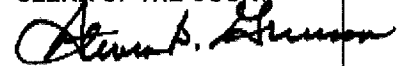
ROBERT E. SCHUMACHER, ESQ.
BRIAN K. WALTERS, ESQ.
GORDON REESE SCULLY MANSUKHANI, LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
rschumacher@grsm.com
bwalters@grsm.com



Laura Banks, Judicial Executive Assistant

EXHIBIT C

EXHIBIT C



1 **NEOJ**
CRAIG J. MARIAM, ESQ.
2 Nevada Bar No. 10926
ROBERT E. SCHUMACHER, ESQ.
3 Nevada Bar No. 7504
BRIAN K. WALTERS, ESQ.
4 Nevada Bar No. 9711
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6 Telephone: (702) 577-9300
Facsimile: (702) 255-2858
7 E-Mail: cmariam@grsm.com
rschumacher@grsm.com
8 bwalters@grsm.com

9 *Attorneys for Defendant,*
10 **ARIES CONSULTANTS, INC.**

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 MARCUS A. REIF, an incompetent person by and
through his Conservator CINDY REIF,

14 Plaintiff,

15 vs.

16 ARIES CONSULTANTS, INC., a Nevada
17 Corporation, DOES 1 through 5, and ROE
CORPORATIONS 1 through 5, inclusive,

18 Defendants.

) Case No.: A-18-770951-C
) Dept. No.: XXII
)

) **NOTICE OF ENTRY OF ORDER**
) **GRANTING DEFENDANT ARIES**
) **CONSULTANTS, INC.'S MOTION**
) **TO DISMISS PLAINTIFF'S**
) **COMPLAINT**
)

19
20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT ARIES CONSULTANTS,
INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

PLEASE TAKE NOTICE that, on May 11, 2018, the Court entered an Order Granting Defendant Aries Consultants, Inc.'s Motion to Dismiss Plaintiff's Complaint in this matter. A copy of the Court's Order is attached hereto as **Exhibit "1."**

DATED this 11th day of May, 2018.

**GORDON REES SCULLY
MANSUKHANI, LLP**

/s/ Brian K. Walters

CRAIG J. MARIAM, ESQ.

Nevada Bar No. 10926

ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 9711

300 South 4th Street, Suite 1550

Las Vegas, Nevada 89101

Attorneys for Defendant

ARIES CONSULTANTS, INC.

CERTIFICATE OF SERVICE

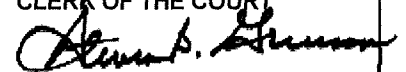
I HEREBY CERTIFY that on the 11TH day of May, 2018, I served a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT** via the Court's Electronic Filing/Service system upon all parties on the E-Service Master List:

Glen J. Lerner, Esq.
GLEN LERNER INJURY ATTORNEYS
4795 S. Durango Drive
Las Vegas, NV 89147
Attorneys for Plaintiff

/s/ Andrea Montero
An Employee of GORDON REES SCULLY
MANSUKHANI, LLP

EXHIBIT 1

EXHIBIT 1



OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCUS A. REIF, an incompetent person
by and through his Conservator CINDY
REIF,

Case No. A-18-770951-C
Dept. No. XXII

Plaintiff,

Vs.

ARIES CONSULTANTS, INC., a Nevada
Corporation; DOES 1 through 5; and ROE
CORPORATIONS 1 through 5, inclusive,

Defendants.

**ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT**

This matter concerning Defendant ARIES CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 came on for hearing on the 10th day of May 2018 at the hour of 10:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, with JUDGE SUSAN H. JOHNSON presiding; Plaintiff MARCUS A. REIF appeared by and through his attorney, RANDOLPH WESTBROOK, ESQ. of the law firm, GLEN LERNER INJURY ATTORNEYS; and Defendant ARIES CONSULTANTS, INC. appeared by and through its attorney, BRIAN K. WALTERS, ESQ. of the law firm, GORDON REES SCULLY MANSUKHANI. Having reviewed the papers and pleadings on file herein, heard oral arguments of the attorneys and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

...

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

FINDINGS OF FACT AND PROCEDURAL HISTORY

1
2 1. On March 14, 2017, MARCUS A. REIF filed his Complaint against EDGEWATER
3 GAMING, LLC, EDGEWATER HOTEL AND CASINO, GILLETT CONSTRUCTION LLC and
4 ARIES CONSULTANTS INC.¹ as a result of personal injuries he sustained on March 16, 2016
5 when, while operating his 1998 Ford Expedition northbound in a hotel-casino's parking structure,
6 the vehicle exited or drove off the facility and fell several floors. *See Reif v. Edgewater Gaming,*
7 *LLC*, Case No. A-17-752432-C, assigned to Department XXX of the Eighth Judicial District Court.
8 "Upon information and belief," all defendants are alleged to be owners, managers, developers,
9 builders, maintainers, inspectors, supervisors and controllers of the premises and subject parking
10 structure. There are twelve claims for relief of which the Third (negligence), Sixth (negligence *per*
11 *se*), Ninth (premises liability) and Twelfth (punitive damages) are asserted against ARIES
12 CONSULTANTS INC.
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15 2. On July 11, 2017, ARIES CONSULTANTS, INC. filed a motion to dismiss and
16 alternatively to strike in that case upon the basis its only involvement in the construction of the
17 parking structure at issue was that as a quality assurance inspector or "design professional." ARIES
18 CONSULTANTS, INC. argued, as the action involved non-residential construction, and is
19 commenced against it as a design professional, Plaintiff's counsel was required to, but did not file an
20 affidavit concurrently with the service of the first pleading in the action stating (1) the lawyer had
21 reviewed the facts of the case, (2) consulted with an expert, (3) reasonably believes the expert is
22 knowledgeable in the relevant discipline and (4) has concluded on the basis of the review and
23 consultation the action has a reasonable basis in law and fact. *See* NRS 11.258. Given such failure,
24 the case lodged against ARIES CONSULTANTS, INC. should be dismissed. *See* NRS 11.259.
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27 ¹Within the paperwork filed with the Eighth Judicial District Court, there are some references to ARIES
28 CONSULTANTS INC. and others to ARIES CONSULTANTS, INC. with the difference being the submission of a
comma in the name. This Court will treat them as one and the same.

1 JUDGE JERRY WIESE of Department XXX heard the matter on August 15, 2017, and found a
2 genuine issue of material fact remained regarding whether ARIES CONSULTANTS INC. was,
3 indeed, a “design professional” and thus, if the requirements of NRS 11.258 applied. He denied the
4 motion without prejudice and granted MR. REIF’S request for NRCP 56(f) relief to conduct
5 discovery regarding ARIES CONSULTANTS INC.’S status as a “design professional.”²

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7 3. This Court understands the parties did conduct such discovery, and ultimately, both
8 parties now concede ARIES CONSULTANTS INC. is a “design professional,” whereby the
9 requirements of NRS 11.258 apply.

10 4. On March 12, 2018, just four days before the pertinent statute of limitations period
11 would have run,³ MR. REIF filed a separate action against ARIES CONSULTANTS INC. in Case
12 No. A-18-770951-C, which is assigned to this Court, i.e. Department XXII of the Eighth Judicial
13 District Court, in and for Clark County, Nevada. Plaintiff asserts claims for negligence, negligence
14 *per se*, and negligent performance of an undertaking. Although it is alleged ARIES
15 CONSULTANTS INC. is being sued given its performance as a quality assurance inspector in this
16 non-residential construction action, no affidavit was filed concurrently with the original complaint as
17 required by NRS 11.258. However, the next day, March 13, 2018, MR. REIF filed an amended
18 complaint which attached such an affidavit of his California lawyer, F. PHILLIP PECHE, ESQ.,
19 who has been admitted to practice *pro hac vice* in the case assigned to JUDGE WIESE.⁴ The
20 affidavit is dated September 28, 2017.

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22 5. ARIES CONSULTANTS INC. now moves this Court to dismiss the complaint
23 pursuant to NRS 11.259 as the pleading here “violates the Single Cause of Action Rule.”⁵ Further,
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27 ²See Order filed September 14, 2017 in Case No. A-17-752432-C.

28 ³See NRS 11.190(4)(e).

⁴MR. PECHE has not been admitted to practice *pro hac vice* in this case.

⁵See Defendant ARIES CONSULTANTS, INC.’S Motion to Dismiss Plaintiff’s Complaint filed April 3, 2018.

1 and notwithstanding the first point, the California lawyer, MR. PECHE, is not authorized or licensed
2 to represent MR. REIF in this case, whereby the affidavit, which must be submitted by "the attorney
3 for the complainant" is insufficient. See NRS 11.258(1). Plaintiff opposes, arguing the "single
4 action" rule does not apply as the litigation here is the matter is similar to that already being heard in
5 Department XXX, and no final judgment dismissing the action has been filed there. Further,
6 California counsel⁶ has been admitted *pro hac vice* in the case before Department XXX and is
7 working alongside local attorneys, GLEN LERNER INJURY ATTORNEYS, whereby the affidavit
8 is not insufficient.
9

10 CONCLUSIONS OF LAW

11 1. Rule 12(b) of the Nevada Rules of Civil Procedure (NRCP) provides every defense,
12 in law or fact, to a claim for relief shall be asserted in the responsive pleading thereto if one is
13 required, except that certain defenses, including plaintiff's failure to state a claim upon which relief
14 may be granted,⁷ may be made by motion.
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16 2. As noted above, all parties now agree ARIES CONSULTANTS, INC. is being sued
17 as a quality assurance inspector or "design professional" in this non-residential construction action
18 whereby the requirements of NRS 11.258 apply. This statute provides in salient part:
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20 1. Except as otherwise provided in subsection 2, in an action involving
21 nonresidential construction, the attorney for the complainant shall file an affidavit with the
22 court concurrently with the service of the first pleading in the action stating that the attorney:

- 23 (a) Has reviewed the facts of the case;
- 24 (b) Has consulted with an expert;
- 25 (c) Reasonably believes the expert who has consulted is knowledgeable in
26 the relevant discipline involved in the action; and
- 27 (d) Has concluded on the basis of the review and the consultation with the
28 expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to
subsection 1 at a later time if the attorney could not consult with an expert and prepare the

⁶This Court understands MR. PECHE employed by NAPOLI SHKOLNIK, PLLC, the California law firm that
still represents MR. REIF along with local counsel, GLEN LERNER INJURY ATTORNEYS.

⁷See NRCP 12(b)(5).

1 affidavit before filing the action without causing the action to be impaired or barred by the
2 statute of limitations or repose, or other limitations prescribed by law. If the attorney must
3 submit the affidavit late, the attorney shall file an affidavit concurrently with the service of
4 the first pleading in the action stating the reason for failing to comply with subsection 1 and
5 the attorney shall consult with an expert and file the affidavit required pursuant to subsection
6 1 not later than 45 days after filing the action.

3. In addition to the statement included in the affidavit pursuant to subsection 1,
a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the
report must be prepared by the expert consulted by the attorney and must include, without
limitation:

- (a) The resume of the expert;
- (b) A statement that the expert is experienced in each discipline which is
the subject of the report;
- (c) A copy of each nonprivileged document reviewed by the expert in
preparing the report, including, without limitation, each record, report and related
document that the expert has determined is relevant to the allegations of negligent
conduct that are the basis for the action;
- (d) The conclusions of the expert and the basis for the conclusions; and
- (e) A statement that the expert has concluded that there is a reasonable
basis for filing the action.

3. NRS 11.259 describes the effect of the complainant's failure to comply with NRS
11.258. It states in part:

1. The court shall dismiss an action involving nonresidential construction if the
attorney for the complainant fails to:

- (a) File an affidavit required pursuant to NRS 11.258;
- (b) File a report required pursuant to subsection 3 of NRS 11.258; or
- (c) Name the expert consulted in the affidavit required pursuant to
subsection 1 of NRS 11.258.

4. The Nevada Supreme Court has recently held, because the phrase in NRS 11.259
"shall dismiss" is clear and unambiguous, it must give "effect to that meaning and will not consider
outside sources beyond the statute." Otak Nevada, LLC v. District Court, 127 Nev. 593, 598, 260
P.3d 408, 411 (2011), *quoting* City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 272, 236
P.3d 10, 16 (2010), *in turn, quoting* NAIW v. Nevada Self-Insurers Association, 126 Nev. 74, 84,
225 P.3d 1265, 1271 (2010). The use of the word "[s]hall" imposes a duty to act." Otak Nevada,
LLC, 127 Nev. at 598, 260 P.3d at 411, *quoting* NRS 0.025(1)(d). Thus, the Nevada Legislature's
use of "shall" in NRS 11.259 demonstrates its intent to prohibit judicial discretion and,

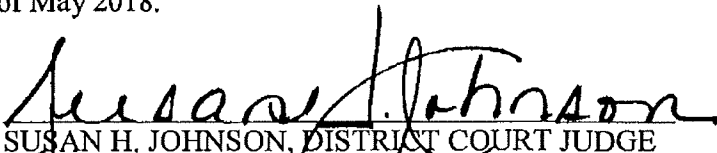
1 consequently, mandates automatic dismissal if the pleading is served without the complaining party
2 concurrently filing the required affidavit and report. Id.

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4 5. In the case before this Court, the first pleading, or original complaint, was filed
5 March 12, 2018 and asserted a non-residential construction negligence claim against ARIES
6 CONSULTANTS, INC. without concurrently filing the required attorney affidavit and expert report
7 in direct violation of NRS 11.258. While there is an affidavit submitted with the amended
8 complaint filed the following day, the September 28, 2017 document does not set forth the reason
9 for California lawyer's failure to comply with NRS 11.258(1) when the original complaint was filed
10 in this case over five months later. As a consequence, the first pleading or original complaint filed
11 without the required affidavit and expert report is void *ab initio* and is of no legal effect. The
12 complainant's failure to comply with NRS 11.258 cannot be cured by amendment. Otak, 127 Nev.
13 at 599, 260 P.3d at 412. In other words, this Court has no discretionary authority to allow MR. REIF
14 to amend his pleading.
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17 6. Given this its factual findings and conclusions above, this Court does not reach the
18 issues raised by the parties, and notably whether the "single action" rule applies. Accordingly, based
19 upon the foregoing Findings of Fact and Conclusions of Law,
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21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Defendant ARIES
22 CONSULTANTS, INC.'S Motion to Dismiss Plaintiff's Complaint filed April 3, 2018 is granted,
23 and Case No. A-18-770951-C is dismissed.
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25 DATED this 11th day of May 2018.

26 
27 SUSAN H. JOHNSON, DISTRICT COURT JUDGE
28

CERTIFICATE OF SERVICE

I hereby certify, on the 11th day of May 2018, I electronically served (E-served), placed within the attorneys' folders located on the first floor of the Regional Justice Center or mailed a true and correct copy of the foregoing ORDER GRANTING DEFENDANT ARIES CONSULTANTS, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT to the following counsel of record with first-class postage fully prepaid thereon:

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