

APPENDIX EXHIBIT 15

APPENDIX EXHIBIT 15



JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
T. (702) 383-6000
F. (702) 477-0088
jorr@pyattsilvestri.com

Attorneys for Defendant
JAMES MCNAMEE

DISTRICT COURT
CLARK COUNTY, NEVADA

GIANN BIANCHI, individually, DARA
DELPRIORE, individually

Plaintiffs

v.

JAMES MCNAMEE, individually, DOES I - X,
and ROE CORPORATIONS I - X, inclusive

Defendants.

Case No.: A-13-691887-C
Dept. No.: VIII

Hearing Date: April 10, 2018
Hearing Time: 8:00 a.m.

DEFENDANT JAMES MCNAMEE'S MOTION TO AMEND ORDER
ON ORDER SHORTENING TIME

COMES NOW, Defendant James McNamee, by and through his attorneys of record, Jeffrey J. Orr, Esq. of Pyatt Silvestri and hereby submits his Motion to Amend Order on Order Shortening Time. Because this matter is set for trial on an April 16, 2018 trial stack, Defendant requests that this motion should be heard on a shortened time on or before the date currently set for trial.

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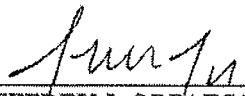
PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-6941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

1 This Motion is made and based upon NRCP 60(b), EDCR 2.24(b), the declaration of Jeffrey
2 J. Orr, Esq., the papers and pleadings on file herein, as well as the Memorandum of Points and
3 Authorities and any oral argument at the time of hearing of this matter.
4

5 DATED this 29 day of March, 2018.

6 PYATT SILVESTRI


7
8 
9 JEFFREY J. ORR, ESQ.
10 Nevada Bar No. 7854
11 701 Bridger Avenue, Suite 600
12 Las Vegas, Nevada 89101
13 Attorneys for Defendant
14 JAMES MCNAMEE

15 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

16 Through this motion, Defendant seeks to amend the order filed on March 27, 2018. (See
17 Order Denying Defendant James McNamee's Motion to Substitute Special Administrator in place
18 and stead of Defendant James McNamee and to Amend Caption, attached as Exhibit A). Because
19 trial is set on an April 16, 2018 trial stack, Defendant requests that this motion be heard on a shortened
20 time on or before the date currently set for trial.

21 DATED this 29 day of March, 2018.

22 PYATT SILVESTRI

23 
24 JEFFREY J. ORR, ESQ.
25 Nevada Bar No. 7854
26 701 Bridger Avenue, Suite 600
27 Las Vegas, Nevada 89101
28 Attorneys for Defendant
JAMES MCNAMEE

///

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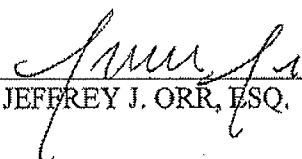
PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 363-6000 FAX (702) 477-0088

**AFFIDAVIT OF JEFFREY J. ORR, ESQ. IN SUPPORT OF DEFENDANT JAMES
MCNAMEE'S MOTION TO AMEND ORDER ON ORDER SHORTENING TIME**

I Jeffrey J. Orr, Esq, declare under the penalties of perjury of the laws of the State of Nevada,
the following:

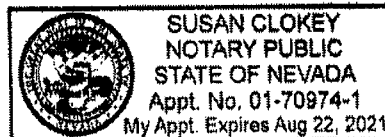
1. I am an attorney at the law firm Pyatt Silvestri and am counsel for Defendant James
McNamee.
2. That an order denying Defendant James McNamee's Motion to Substitute Special
Administrator in Place and Stead of Defendant James Allen McNamee and to Amend
Caption was recently filed on March 27, 2018. (See Exhibit A).
3. That the instant Motion is being brought in a timely fashion as the Motion denying
Defendant's Motion to Substitute, Exhibit A, was only recently filed.
4. That Defendant requests that this Motion be heard on a Shortened Time period as trial is
set for a trial stack beginning on April 16, 2018.
5. Defendant requests that the instant Motion be heard on or before April 16, 2018.
6. Defendant makes this request in good faith.

FURTHER AFFIANT SAYETH NOT.


JEFFREY J. ORR, ESQ.

SUBSCRIBED AND SWORN TO before
me this 27th day of March, 2018.


NOTARY PUBLIC



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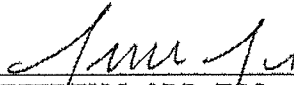
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ORDER SHORTENING TIME

Based on the declaration of Jeffrey J. Orr, Esq. and Defendant's Application for Order Shortening Time, and good cause appearing, Defendant James McNamee's Motion to Amend Order will be heard before the above-captioned Court on the 10 day of April 2018 at 8:00 am or as soon thereafter as counsel may be heard.


DISTRICT COURT JUDGE *nap*

Submitted By:


JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
Attorneys for Defendant
JAMES MCNAMEE

I.

FACTUAL BACKGROUND

This matter is a negligence action by Plaintiffs Gianni Bianchi and Dara Delpriore against Defendant James McNamee. On July 17, 2013, a vehicle driven by Defendant McNamee collided with Plaintiffs' vehicle. As a result of the collision, both Plaintiffs claim personal injury damages.

James McNamee passed away on August 12, 2017. A Suggestion of Death was filed in this matter on September 20, 2017. On December 14, 2017, Defendant filed a Motion to Substitute the Special Administrator of the Estate of James McNamee in place and stead of Defendant James McNamee and to amend the caption. (See Defendant's Motion to Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend Caption, attached as Exhibit B). In that motion, Defendant states that the Probate Court appointed a Special Administrator of the Estate

of James McNamee and found that the Special Administrator was qualified to serve as the Defendant in this matter.

Plaintiff filed a Limited Opposition on January 3, 2018. The Limited Opposition merely requests the Court to defer ruling on that Motion until the Probate Court hears Plaintiffs' Motion in Probate Court. "In light of the foregoing and the arguments set forth in Plaintiff's Petition, Plaintiffs request that this Court defer ruling on the present Motion to Substitute Special Administration until the Probate Court rules on Plaintiff's Petition." (See Page 4 of Plaintiff's Opposition to Defendant's Motion to Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend Caption, attached as Exhibit C). Nowhere in Plaintiffs' Opposition do Plaintiffs argue that a general administration should be opened. In fact, by filing that request in Probate Court, Plaintiffs seem to acknowledge that only the Probate Court can open a general administration.

Defendant's Reply points out that pursuant to NRCPP 25(a)(1) the ninety (90) day period to move to substitute deceased parties had already passed and as such, any future Motions to Substitute parties were precluded. (See Defendant's Reply to Opposition to Motion to Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend Caption, attached as Exhibit D).

There was no oral argument on this Motion. The Minutes state that the Motion is denied and that the Court requested proposed names of candidates to serve as the administrator of the estate. The Minutes never state that the Court opened a general administration. (See Court Minutes regarding Defendant's Motion to Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend Caption, attached as Exhibit E).

The Order states that, "...Fred Wade is hereby named as the general administrator of the Estate of James McNamee. (See Exhibit A). Defendant believes that word "general" is not appropriate because nobody requested that this Court open a general administration of the Estate of James McNamee. Neither the Motion, the Opposition or the Reply ever requested this Court to open

1 a general administration. The Court Minutes do not state that a general administration is to be opened.
2 Because the opening of a general administration was not requested by the parties and was not ordered
3 by the Court in the Court Minutes, the Order (Exhibit A) should not state that anybody is named as a
4 "general administrator".
5

6 **II.**

7 **THE ORDER SHOULD BE AMENDED TO REFLECT THE PLEADINGS**
8 **AND THE COURT MINUTES**

9 NRCP 60(b) states that Orders can be amended pursuant to Motion when there has been
10 mistake or inadvertence. EDCR 2.24(b) states, "A party seeking reconsideration of a ruling of the
11 Court, other than any order which may be addressed by Motion pursuant to NRCP 50b), 52(b), 59 or
12 60, must file a Motion for such relief within ten (10) days after service of written notice of the order
13 or judgment unless the time is shortened or enlarged by order. A Motion for rehearing or
14 reconsideration must be served, noticed, filed and heard as is any other Motion. A Motion for
15 Reconsideration does not toll the 30-day period for filing a Notice of Appeal from a final order or
16 judgment." EDCR 2.24(b).
17

18 In this case Defendant moved the court to substitute the Special Administrator of the Estate
19 of James McNamee in place and stead of James McNamee who is deceased. Although the Court is
20 free to deny that Motion, neither the Motion, the Opposition or the Reply ever requested or even
21 suggested that the Court should appoint a General Administrator. Additionally, the Court Minutes
22 do not state that the Court would appoint a General Administrator. There was no oral argument on
23 this Motion and it was decided in chambers. Therefore, the issue of a General Administration was
24 never before this Court and was not requested by any party.
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III.

CONCLUSION

Because neither party requested this court to open a general administration of the estate of James McNamee and because the Court Minutes do not state that a general administration was to be opened, the Order should not state that a general administration should be opened. Defendant requests that the Court issue an Amended Order which makes no reference to a general administration.

DATED this 29 day of March, 2018

PYATT SILVESTRI



JEFFREY J. ORR, ESQ.

Nevada Bar No. 7854

PYATT SILVESTRI

701 Bridger Ave., Suite 600

Las Vegas, Nevada 89101

Attorney for Defendant

JAMES MCNAMEE

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

1
2
3 CERTIFICATE OF SERVICE

4 Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the
5 30th day of March, 2018, I caused the above and foregoing document DEFENDANT JAMES
6 MCNAMEE'S MOTION TO AMEND ORDER ON ORDER SHORTENING TIME, to be served as follows:
7 Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District
8 Court's electronic filing system, with the date and time of the electronic service substituted for the
9 date and place of deposit in the mail; to the attorney(s) listed below:

10 Corey M. Eschweiler, Esq.
11 Glen J. Lerner & Associates
12 4795 South Durango Drive
13 Las Vegas, NV 89147
14 Attorney for Plaintiffs

15 D. Lee Roberts, Esq.
16 Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
17 6385 S. Rainbow Blvd., #400
18 Las Vegas, NV 89118
19 Attorney for Plaintiff

20
21
22
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An Employee of PYATT SILVESTRI

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-6541
PHONE (702) 393-6009 FAX (702) 477-0088

Exhibit A

Steven D. Grierson

1 **ORDR**

2 Corey M. Eschweiler, Esq.
3 Nevada Bar No. 6635
4 Craig A. Henderson, Esq.
5 Nevada Bar No. 10077
6 Joshua L. Benson, Esq.
7 Nevada Bar No. 10514
8 GLEN J. LERNER & ASSOCIATES
9 4795 South Durango Drive
10 Las Vegas, Nevada 89147
11 Telephone: (702) 877-1500
12 Facsimile: (702) 933-7043
13 ceschweiler@glenlerner.com
14 chenderson@glenlerner.com
15 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

11 GIANN BIANCHI, individually,
12 DARA DELPRIORE, individually,

13 Plaintiff,

14 vs.

15 JAMES McNAMEE, individually, DOES I - X,
16 and ROE CORPORATIONS I - X, inclusive,

17 Defendants.

CASE NO.: A-13-691887-C
DEPT NO.: VIII

**ORDER DENYING DEFENDANT
JAMES McNAMEE'S MOTION TO
SUBSTITUTE SPECIAL
ADMINISTRATOR IN PLACE AND
STEAD OF DEFENDANT JAMES
ALLEN McNAMEE AND TO AMEND
CAPTION**

**Date of hearing: January 22, 2018
Time of hearing: In chambers**

19 Defendant James Allen McNamee's Motion to Substitute Special Administrator In Place and
20 Stead of Defendant James Allen McNamee and To Amend Caption came before this Court on
21 January 22, 2018. The Court having considered the motion, opposition, and reply, and good cause
22 appearing, it is hereby

23 ORDERED, ADJUDGED, and DECREED that Defendant James Allen McNamee's Motion
24 to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and To
25 Amend Caption is DENIED.

26 The court directed the parties to submit three (3) proposed names to the Court for
27 consideration as to who they want to serve as Administrator of the Estate. The Court has reviewed
28 those submissions and further ORDERS that *Fred Wade* is hereby named as the

1 General Administrator of the Estate of James Allen McNamee.

2 Dated this 19 day of March, 2018.

3
4
5 
6 DISTRICT COURT JUDGE
7 DOUGLAS E. SMITH
8 *ndp*

9 Respectfully submitted by:

10 GLEN J. LERNER & ASSOCIATES

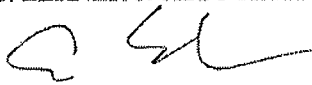
11 By: 
12 COREY M. ESCHWEILER, ESQ.
13 CRAIG A. HENDERSON, ESQ,
14 4795 South Durango Drive
15 Las Vegas, Nevada 89147
16 *Attorneys for Plaintiffs*
17
18
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Exhibit B

Steven D. Grierson

1 JEFFREY J. ORR, ESQ.
2 Nevada Bar No. 7854
3 PYATT SILVESTRI
4 701 Bridger Avenue, Suite 600
5 Las Vegas, Nevada 89101
6 T. (702) 383-6000
7 F. (702) 477-0088
8 jorr@pyattsilvestri.com

9 Attorneys for Defendant
10 JAMES MCNAMEE

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 GIANN BIANCHI, individually, DARA
14 DELPRIORE, individually

Case No.: A-13-691887-C
Dept. No.: VIII

15 Plaintiffs

16 v.

17 JAMES MCNAMEE, individually, DOES I-X,
18 and ROE CORPORATIONS I-X, inclusive

Hearing Date: 1-22-18
Hearing Time: IN CHAMBERS

19 Defendants.

20 DEFENDANT JAMES MCNAMEE'S MOTION TO SUBSTITUTE SPECIAL
21 ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE AND
22 TO AMEND CAPTION

23 COMES NOW, Defendant James McNamee, by and through its attorneys of record, Jeffrey
24 J. Orr, Esq. of Pyatt Silvestri and hereby submits this Motion to Substitute Special Administrator of
25 Susan Clokey in place and stead of James McNamee as the Defendant in this action. Defendant
26 also requests that the caption be amended to reflect the substitution of the new Defendant in this
27 matter.

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PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-9941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8911
PHONE (702) 383-6000 FAX (702) 477-0388

1 This Motion is made and based upon the papers and pleadings on file herein, as well as the
2 Memorandum of Points and Authorities and any oral argument at the time of hearing of this matter.

3 DATED this 14 day of December, 2017.

4 PYATT SILVESTRI

5
6 
7 JEFFREY J. ORR, ESQ.
8 Nevada Bar No. 7854
9 701 Bridger Avenue, Suite 600
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant
12 JAMES MCNAMEE

13 NOTICE OF MOTION

14 TO: PLAINTIFFS GIANN BIANCHI & DARA DELPRIORE

15 TO: PLAINTIFF'S COUNSEL, COREY ESCHWEILER ESQ. & D. LEE ROBERTS, ESQ.

16 PLEASE TAKE NOTICE that the undersigned will bring the foregoing

17 DEFENDANT JAMES MCNAMEE'S MOTION TO SUBSTITUTE SPECIAL


18 ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE

19 AND TO AMEND CAPTION for hearing in Department VIII on the 22 day of

20 January , 2018, at the hour of m., or as soon thereafter as counsel may
21 be heard.

22 DATED this 14 day of December, 2017.

23 PYATT SILVESTRI

24 
25 JEFFREY J. ORR, ESQ.
26 Nevada Bar No. 7854
27 701 Bridger Avenue, Suite 600
28 Las Vegas, Nevada 89101
Attorneys for Defendant
JAMES MCNAMEE

**I.
FACTUAL BACKGROUND**

This matter is a negligence action by Plaintiffs Gianni Bianchi and Dara Delpriore against Defendant James McNamee. On July 17, 2013, a vehicle driven by Defendant McNamee collided with Plaintiffs' vehicle. As a result of the collision, both Plaintiffs claim personal injury damages.

James McNamee passed away on August 12, 2017. On November 15, 2017, this Court granted a petition for Special Letters of Administration to appoint Special Administrator Susan Clokey as the Special Administrator of the Estate of James McNamee. (See Order Granting Petition for Special Letters of Administration, attached as Exhibit A).

A Suggestion of Death was filed in this matter on September 20, 2017. Trial is set for April 16, 2018. This motion seeks to substitute Special Administrator Susan Clokey as the Special Administrator of the Estate of James McNamee as Defendant in this action in place and stead of Defendant James McNamee who is deceased. This court has already determined that Special Administrator Susan Clokey has the authority to act as the Special Administrator and to defend this action. (Exhibit A).

**II.
SUBSTITUTION OF THE PROPER DEFENDANT IS NECESSARY**

Because Defendant James McNamee has passed, this matter can no longer proceed against James McNamee. NRCP 25 (a)(1) states:

"If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party." NRCP 25(a)(1)

This court has already appointed Susan Clokey as Special Administrator of the Estate of James McNamee and has already determined that Ms. Clokey is the appropriate representative to

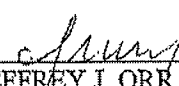
1 defend this action and allow it to proceed as to the insurance proceeds of the GEICO automobile
2 insurance policy. NRCP 25(a)(1) states that the court may order substitution of the proper parties
3 upon the death of a party. Because Defendant McNamee has passed, the Special Administrator of
4 his estate is the proper party to this action.

5
6 **III.**
CONCLUSION

7 This Court has already granted Special Letters of Administration and has appointed Susan
8 Clokey as the Special Administrator. Because Mr. McNamee has passed, he can no longer be the
9 Defendant in this matter. Pursuant to NRS 140.040(3)(b) and NRCP 25(a)(1), this court should order
10 that Susan Clokey, Special Administrator of the Estate of James McNamee be substituted as the
11 Defendant in this matter in place and stead of James McNamee. It is also requested that the caption
12 be amended to reflect the new Defendant. (See proposed new caption, attached as Exhibit B).

13 DATED this 14 day of December, 2017

14
15 **PYATT SILVESTRI**

16
17 
18 **JEFFREY J. ORR, ESQ.**
19 Nevada Bar No. 7854
20 **PYATT SILVESTRI**
21 701 Bridger Ave., Suite 600
22 Las Vegas, Nevada 89101
23 Attorney for Defendant
24 James McNamee
25
26
27
28

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 497-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6900 FAX (702) 477-0688

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 14th day of December, 2017, I caused the above and foregoing document **DEFENDANT JAMES MCNAMEE'S MOTION TO SUBSTITUTE SPECIAL ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE AND TO AMEND CAPTION,** to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to the attorney(s) listed below:

Corey M. Eschweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs

D. Lee Roberts, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Attorney for Plaintiffs

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

Exhibit A

ORIGINAL

Electronically Filed
11/16/2017 4:41 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 ORDER
2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 PYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 In the Matter of the Estate of James Allen) Case No.: P-17-093041-E
11 McNamee, Deceased) Dept No.: S
12)
13)
14)
15)

16 ORDER GRANTING
17 PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

18 Upon submission of the Petition for Special Letters of Administration, representing
19 as follows:

20 1. That Decedent, James Allen McNamee died on the 12th day of August, 2017, in
21 the County of Mohave, State of Arizona.

22 2. That Decedent was a resident of Mohave County, Arizona, at the time of his
23 death.

24 3. That at the time of Decedent's death, Decedent was a Defendant in a personal
25 injury lawsuit, *Bianchi et. al v. James Allen McNamee*, Eighth Judicial District Court, Clark
26 County, Nevada Case No. A-13-691887-C.

27 4. Petitioner has conducted a search of assets for James Allen McNamee,
28 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
to satisfy any judgment other than an automobile insurance policy with GEICO. That

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

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PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-3941
PHONE (702) 363-0000 FAX (702) 477-9088

insurance policy, GEICO policy #4180457162 provides automobile liability insurance coverage of \$30,000 per person and \$60,000 per accident.

5. Petitioner is a resident of the State of Nevada, and is employed at the law firm of Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

6. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to continue and substitute the real party in interest, the Special Administrator.

7. Petitioner is willing to act as Special Administrator of the estate to defend *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C.

8. Petitioner has never been convicted of a felony. Petitioner is qualified under NRS 139.010 to serve as Special Administrator of the Estate.

NOW, THEREFORE, IT IS HEREBY ORDERED that Susan Clokey is appointed as Special Administrator and that Special Letters of Administration be issued, without bond, pursuant to Nevada Revised Statutes 140(2)(a) and 140(3)(b).

The sole purpose of this order is to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner intends to defend that action as the real party in interest.

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1 The Special Administrator does not have any other authority beyond Nevada
2 Revised Statutes 140(2)(a) and 140(3)(b) and may not distribute any property other than the
3 GEICO automobile insurance policy with automobile liability insurance coverage of \$30,000
4 per person and \$60,000 per accident.

5 Any funds will be held in a blocked account or attorney trust account.

6 IT IS FURTHER ORDERED that the settlement of the decedent's lawsuit is subject to
7 this court's approval.

8 DATED this 15th day of NOV. ~~October~~ 2017.

9 *Vincent Ochoa*
10 _____
11 DISTRICT COURT JUDGE *su*

12 Submitted by:

13 *Jeffrey J. Orr*
14 _____
15 Jeffrey J. Orr, Esq.
16 Nevada Bar No. 7854
17 PYATT SILVESTRI
18 701 Bridger Avenue, Suite 600
19 Las Vegas, NV 89101
20 T. (702) 383-6000
21 jorr@pyattsilvestri.com
22 Attorney for Petitioner,
23 Special Administrator Susan Clokey
24
25
26
27
28

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-8088

EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in

NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86] - (NRS A 1971, 647; 1983, 668; 1999, 2276)

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 INDEPENDENT AVENUE, SUITE 500
LAS VEGAS, NEVADA 89101-4391
PHONE (702) 353-6000 FAX (702) 477-0088

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 16th day of November, 2017, I caused the above ORDER GRANTING PETITION FOR SPECIAL LETTERS OF ADMINISTRATION, to be served pursuant to NRCP 5(b) to be electronically served through the *Eighth Judicial District Court's electronic filing system* and via U.S. Mail to the following party listed below:

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

Exhibit B

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-4941
PHONE (702) 383-6000 FAX (702) 477-0088

1 JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
2 PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
3 T. (702) 383-6000
4 F. (702) 477-0088
jorr@pyattsilvestri.com

5 Attorneys for Defendant
6 SUSAN CLOKEY, Special
Administrator of the Estate of
7 James McNamee

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 GIANN BIANCHI, individually, DARA
11 DELPRIORE, individually

Case No.: A-13-691887-C
Dept. No.: VIII

12 Plaintiffs

13 v.

14 SUSAN CLOKEY, Special Administrator of the
Estate of James McNamee, DOES I - X, and ROE
15 CORPORATIONS I - X, inclusive

16 Defendants.
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Exhibit C



1 MOT
2 Corey M. Eschweiler, Esq.
3 Nevada Bar No. 6635
4 Craig A. Henderson, Esq.
5 Nevada Bar No. 10077
6 Joshua L. Benson, Esq.
7 Nevada Bar No. 10514
8 GLEN LERNER INJURY ATTORNEYS
9 4795 South Durango Drive
10 Las Vegas, Nevada 89147
11 Telephone: (702) 877-1500
12 Facsimile: (702) 933-7043
13 E-mail: ceschweiler@glenlerner.com
14 chenderson@glenlerner.com

15 Lee D. Roberts, Esq.
16 Nevada Bar No. 8877
17 WEINBERG WHEELER HUDGINS GUNN & DIAL
18 6385 South Rainbow Blvd., Suite 400
19 Las Vegas, NV 89118
20 Telephone: (702) 938-3838
21 Facsimile: (702) 938-3864
22 Email: LRoberts@wwhgd.com

23 *Attorneys for Plaintiffs Gianni Bianchi*
24 *and Dara Del Priore*

25 EIGHTH JUDICIAL DISTRICT COURT

26 CLARK COUNTY, NEVADA

27 GIANN BIANCHI, individually,
28 DARA DELPRIORE, individually,

Plaintiff,

vs.

JAMES McNAMEE, individually, DOES I - X,
and ROE CORPORATIONS I - X, inclusive,

Defendants.

CASE NO.: A691887
DEPT NO.: VIII

**OPPOSITION TO DEFENDANT JAMES
ALLEN McNAMEE'S MOTION TO
SUBSTITUTE SPECIAL
ADMINISTRATOR IN THE PLACE
AND STEAD OF DEFENDANT JAMES
McNAMEE AND TO AMEND CAPTION**

Date of Hearing: Jan. 22, 2018
Time of Hearing: In chambers

Plaintiffs Gianni Bianchi and Dara Del Priore, through their attorneys of record, Corey M. Eschweiler, Esq., Craig A. Henderson, Esq., and Joshua L. Benson, Esq., of GLEN LERNER INJURY ATTORNEYS, and Lee D. Roberts, Esq., of WEINBERG WHEELER HUDGINS GUNN

1 & DIAL, file this Opposition to Defendant James McNamee's Motion to Substitute Special
2 Administrator in Place and Stead of Defendant James McNamee and To Amend Caption. As set
3 forth in detail in the attached Petition, Plaintiff has petitioned the Probate Court to appoint the public
4 administration to administer McNamee's estate. See Petition for Issuance of General Letters of
5 Administration and For Appointment of *Cumtis* Counsel for the Estate of James Allen McNamee,
6 attached as Exhibit 1. This, because a special administrator is proper only if the estate's sole asset is
7 a liability insurance policy. *Jacobson v. Estate of Clayton*, 121 Nev. 518, 522, 119 P.3d 132, 134
8 (2005). That is not the case here, as the Estate of James Allen McNamee has assets in the form of
9 bad faith causes of action against McNamee's automobile liability insurer, GEICO. As explained
10 below, Plaintiffs, therefore, request this court defer ruling on this instant motion to substitute special
11 administrator until the Probate Court adjudicates Plaintiff's Petition.

12 **PLAINTIFF'S OPPOSITION TO MOTION TO SUBSTITUTE SPECIAL**
13 **ADMINISTRATION IN PLACE AND STEAD OF DEFENDANT JAMES ALLEN**
14 **McNAMEE**

15 Plaintiffs' allegations are detailed in their Petition, but by way of brief background, Plaintiffs
16 Gianni Bianchi and Dara DeLPriore were injured when the decedent, Defendant James Allen
17 McNamee, crashed his vehicle into the rear of Plaintiffs vehicle on July 17, 2013. Since then,
18 decedent's automobile liability insurer, GEICO, exposed decedent, and, now, decedent's Estate, to
19 liability well in excess of the available automobile liability insurance coverage. This, by GEICO
20 refusing to compromise Plaintiffs' negligence claims against decedent within the liability insurance
21 policy limits. In fact, GEICO has since admitted that Plaintiffs' damages exceed the available
22 liability insurance coverage. In other words, the Estate's assets consist not only of decedent's
23 liability insurance policy through GEICO, but the Estate's causes of action against GEICO for
24 breach of contract and tortious breach of the implied covenant of good faith and fair dealing, or
25 insurance "bad faith."

26 Notwithstanding all of this, decedent's insurance-appointed defense counsel, the Pyatt
27 Silverstri law firm, came before the probate court seeking to have a special administrator appointed
28 claiming, inaccurately, that the Estate possesses no assets, other than the insurance policy, to satisfy

1 Plaintiffs' negligence claims. In other words, the Petition for Letters of Special Administration did
2 not disclose the true extent of the Estate's liability to Plaintiffs, or that the Estate's liability to
3 Plaintiffs already exceeds the GEICO insurance policy. The Petition for Letters of Special
4 Administration also did not identify the true nature of the Estate's assets, assets that include causes
5 of action for bad faith against GEICO. The Petition for Letters of Special Administration also did
6 not advise the court of the actual conflict of interest that exists between GEICO and the Estate of
7 James Allen McNamee that requires appointment of *Cumis* counsel for the Estate pursuant to recent
8 Nevada Supreme Court jurisprudence.

9 More problematic, the law firm sought appointment of its own employee as the special
10 administrator to make decisions regarding the litigation. This only further compounds the conflict
11 where the law firm being paid by GEICO to represent the insured now has decision making
12 authority on behalf of the estate for the underlying personal injury litigation. In short, because the
13 decedent's Estate does possess assets beyond the liability insurance policy, the Estate must be
14 generally administrated, and the administrator substituted in place of the decedent McNamee under
15 NRCP 25(a)(1). Further, because of the actual conflict of interest that exists between the Estate of
16 James Allen McNamee and GEICO, the Estate is entitled to *Cumis* counsel at GEICO's expense, to
17 advise the Estate of its rights against GEICO. *See State Farm v. Hansen*, 131 Nev. Adv. Rep. 74,
18 357 P.3d 338, 341 (Sep. 24, 2015). Otherwise, the interests of the Estate will continue to be placed
19 behind the financial interests of GEICO.

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1 In light of the foregoing and the arguments set forth in Plaintiffs' Petition, Plaintiffs request
2 that this Court defer ruling on the present motion to substitute special administration until the
3 Probate Court rules on Plaintiffs' Petition.

4
5
6 GLEN LERNER INJURY ATTORNEYS

7
8 By: /s/ Craig A. Henderson
Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
9 Craig A. Henderson, Esq.
Nevada Bar No. 10077
10 4795 South Durango Drive
Las Vegas, NV 89147
11 (702) 877-1500

12 WEINBERG WHEELER HUDGINS
13 GUNN & DIAL

14 Lee D. Roberts, Esq.,
Nevada Bar No. 8877
6385 South Rainbow Blvd., Suite 400
15 Las Vegas, NV 89118
16 *Attorneys for Plaintiffs Glenn Bianchi*
and Dara Del Priore

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of GLEN LERNER INJURY ATTORNEYS and that on the 3rd day of January, 2018, I caused the above **OPPOSITION TO DEFENDANT JAMES ALLEN McNAMEE'S MOTION TO SUBSTITUTE SPECIAL ADMINISTRATOR IN THE PLACE AND STEAD OF DEFENDANT JAMES McNAMEE AND TO AMEND CAPTION** to be served pursuant to NRCP 5(b) to be electronically served through the Eighth Judicial District Court's electronic filing system and via US Mail to the following parties listed below:

(VIA US MAIL)
Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034

Jeffrey J. Orr, Esq.
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, NV 89101
Attorneys for Special Administrator Susan Clokey

/s/ Miriam Alvarez
An employee of Glen Lerner Injury Attorneys

EXHIBIT 1

EXHIBIT 1

1 PET
Corey M. Eschweiler, Esq.
2 Nevada Bar No. 6635
Craig A. Henderson, Esq.
3 Nevada Bar No. 10077
Joshua L. Benson, Esq.
4 Nevada Bar No. 10514
GLEN LERNER INJURY ATTORNEYS
5 4795 South Durango Drive
Las Vegas, Nevada 89147
6 Telephone: (702) 877-1500
Facsimile: (702) 933-7043
7 E-mail: ceschweiler@glenlerner.com
chenderson@glenlerner.com

8
Lee D. Roberts, Esq.
9 Nevada Bar No. 8877
WEINBERG WHEELER HUDGINS GUNN & DIAL
10 6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
11 Telephone: (702) 938-3838
Facsimile: (702) 938-3864
12 Email: LRoberts@wwhgd.com

13 *Attorneys for Petitioners Glenn Bianchi*
and Dara Del Priore

14 EIGHTH JUDICIAL DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 In the matter of the Estate of JAMES ALLEN
17 MCNAMEE, Deceased.

CASE NO.: P-17-093041-E
DEPT NO.: PC-1

PETITION FOR ISSUANCE OF
GENERAL LETTERS OF
ADMINISTRATION AND FOR
APPOINTMENT OF CUMIS COUNSEL
FOR THE ESTATE OF JAMES ALLEN
McNAMEE

Date of Hearing:
Time of Hearing:

24
25 ///

26 ///

27

28

Petitioners Gianni Bianchi and Dara Del Priore, through their attorneys of record, Corey M. Eschweiler, Esq., Craig A. Henderson, Esq., and Joshua L. Benson, Esq., of GLEN LERNER INJURY ATTORNEYS, and Lee D. Roberts, Esq., of WEINBERG WHEELER HUDGINS GUNN & DIAL, petition this court:

(1) pursuant to NRS 139.040 (g)-(h), NRS 139.050, and NRS 139.090, issue letters of general administration to John J. Cahill, the Clark County Public Administrator, for the Estate of James Allen McNamee;

(2) pursuant to NRCp 25(a) order substitution of the proper parties in place of the decedent,
James Allen McNamee and

(2) pursuant to *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338 (Sep. 24, 2015), order appointment of *Cumis* counsel for the Estate of James Allen McNamee based on the actual conflict of interest that exists between the Estate of James Allen McNamee, and GEICO (Decedent James Allen McNamee's automobile liability insurer).

This Petition is based upon the following memorandum of points and authorities, the Declaration of Corey M. Eschweiler, Esq., the papers and Pleadings on file with the court, and the oral argument of the parties.

GLEN LERNER INJURY ATTORNEYS

By: /s/ Craig A. Henderson

Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Craig A. Henderson, Esq.
Nevada Bar No. 10077
4795 South Durango Drive
Las Vegas, NV 89147
(702) 877-1500

WEINBERG WHEELER HUDGINS
GUNN & DIAL

Lee D. Roberts, Esq.,
Nevada Bar No. 8877
6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
*Attorneys for Petitioners Gianni Bianchi
and Dara Del Priore*

1 policy, the Estate must be generally administrated. Further, because of the actual conflict of interest
2 that exists between the Estate of James Allen McNamee and GEICO, the Estate is entitled to *Cumis*
3 counsel at GEICO's expense, to advise the Estate of its rights against GEICO. *See State Farm v.*
4 *Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338, 341 (Sep. 24, 2015). Otherwise, the interests of the
5 Estate will continue to be placed behind the financial interests of GEICO.

6 II. FACTS

7 A. Background of the underlying negligence litigation.

8 On July 17, 2013, decedent James Allen McNamee, was driving a Ford van on East Sahara
9 Avenue approaching a red light at the intersection of Sahara and McLeod. Decedent failed to slow
10 the van in time and the van crashed into the rear of a Nissan Pathfinder that was stopped at the red
11 traffic signal. The Nissan Pathfinder was driven by Petitioner Gianni Bianchi. Petitioner Dara
12 DelPriore occupied the front passenger seat of the Nissan. Both Gianni and Dara suffered severe
13 injuries in the collision.

14 B. GEICO has exposed decedent's estate to excess liability.

15 At the time of the July 17, 2013, collision, decedent was covered by an automobile liability
16 insurance policy issued by GEICO, policy number 4180457162. *See* Petition for Letters of Special
17 Administration, at 2 ¶ 6, filed with this Court Sep. 20, 2017. The GEICO policy provided decedent
18 with liability insurance coverage of \$30,000 per person up to \$60,000 per occurrence. *Id.* Since the
19 collision on July, 2013, decedent's automobile liability insurer, GEICO, has repeatedly refused to
20 settle Gianni and Dara's claims within decedent's policy limits, despite knowing Gianni and Dara's
21 damages far exceed the \$30,000 per person liability insurance coverage. By way of brief
22 background:

23 • On October 25, 2013, Gianni and Dara each served GEICO with a demand requesting
24 decedent's \$30,000 per person policy limit in exchange for a release of all claims against
25 decedent. At the time, Gianni had incurred \$10,707.78 in medical bills and was
26 recommended for pain management medical treatment at an estimated cost of \$12,050. Dara
27 had incurred \$10,797.25 in medical bills and had also been recommended for pain
28 management treatment at an estimated cost of \$12,050. GEICO did not tender decedent's
policy limits. Gianni and Dara, then, proceeded with the recommended injections.

1 • On November 19, 2013, Gianni and Dara sued decedent for damages arising out of the July
2 17, 2013, crash. *See Bianchi and Del Priore v. James McNamee*, Case Number A-13-
691887-C, Eighth Judicial District Court, Clark County, Nevada.

3 • On April 3, 2014, decedent served Dara, only, with an offer to settle in the amount of
4 \$30,000. Dara rejected this offer, as her medical bills, alone, totaled \$36,214.35. Shortly
5 thereafter, Gianni and Dara's counsel advised GEICO to appoint separate counsel to advise
6 decedent of his potential bad faith claim against GEICO. Less than three months later,
decedent filed a substitution of attorney retaining new, outside counsel (the Pyatt Silvestri
law firm).

7 • By spring of 2015, Gianni's medical bills had increased to \$329,494, including the cost of
8 the spinal surgery Gianni's doctor recommended. This, in addition to \$348,948 for Gianni's
9 future medical care; \$277,832 for Gianni's loss of household services; and \$1,867,000 for
10 Gianni's loss of enjoyment of life -- a total of more than \$2,800,000 in damages.
Consequently, on April 21, 2015, Gianni served McNamee with an offer to settle for
\$435,000. Decedent did not accept Gianni's offer.

11 • Also by Spring, 2015, Dara's medical bills had increased to \$93,980. This, in addition to
12 \$296,537 in lost wages; \$384,361 in loss of household services; and \$1,700,000 in loss of
13 enjoyment of life -- a total of more than \$2,470,000 in damages. On April 21, 2015, Dara
served decedent with an offer to settle in the amount of \$345,000. Decedent did not accept
the offer.

14 In other words, despite knowing Gianni and Dara's medical special damages were going to exceed
15 decedent's policy limits, GEICO refused to pay the policy to petitioners.

16 **C. GEICO admits Petitioners' damages exceed decedent's liability insurance**
17 **coverage.**

18 By July, 2015, Gianni's total damages had increased to \$2,850,136.97, including \$356,306 in
19 medical special damages alone. Dara's total damages had increased to \$2,481,097, including
20 \$99,280 in medical special damages. On July 13, 2015, decedent offered to settle Gianni and Dara's
21 claims, each for an amount in excess of McNamee's automobile liability insurance policy limit.¹
22 Petitioners rejected these offers that did not even compensate them for their medical special
23 damages. The two offers are critical, however, because through the offers, GEICO admitted
24 the value of Gianni and Dara's claims exceed decedent's \$60,000 of insurance coverage. Put
25 differently, GEICO has already admitted the Estate of James Allen McNamee will be exposed

26
27
28 ¹ Defendant's written offers to Plaintiffs and Plaintiffs' written correspondence to Defendant's counsel's insurer will be
provided to the court for in camera review upon request.

1 to excess liability as a result of GEICO's bad faith refusal to compromise Petitioners' claims
2 for the policy limits.

3 **D. Decedent died before Petitioners' claims went to trial in the Eighth Judicial**
4 **District Court.**

5 On September 20, 2017, decedent's counsel in the *Bianchi v. McNamee* litigation, Pyatt
6 Silvestri, served a Suggestion of Death on the Record indicating decedent had passed on August 12,
7 2017. See Suggestion of Death Upon the Record, attached as Ex. 1-A; see also Death Certificate,
8 attached as Ex. 1-B. This, five days before Gianni and Dara's negligence claims against decedent
9 were scheduled to proceed to trial on September 25, 2017, in the Eighth Judicial District Court. The
10 District Court trial in *Bianchi v. McNamee* has since been continued to April 16, 2018.

11 **E. GEICO sought appointment of a special administrator.**

12 Also on September 20, 2017, Pyatt Silvestri filed a Petition for Special Letters of
13 Administration. The Petition sought to have Susan Clokey, an employee of Pyatt Silvestri,
14 appointed as the Special Administrator of the Estate of James Allen McNamee based on Pyatt
15 Silvestri's representations to this Court that "the Estate of James Allen McNamee has no assets to
16 satisfy any judgment other than an automobile policy with GEICO [providing] automobile liability
17 insurance coverage of \$30,000 per person and \$60,000 per accident." See Petition for Letters of
18 Special Administration, at 2 ¶ 6, filed with this Court Sep. 20, 2017.

19 **F. A general administrator must be appointed.**

20 To the contrary, based on GEICO's failure to settle Gianni and Dara's claims within
21 decedent's policy limits, GEICO, admittedly, has exposed the Estate of James Allen McNamee to
22 liability in excess of decedent's \$60,000 liability insurance policy. In other words, the Estate of
23 James Allen McNamee has causes of action against GEICO for, *inter alia*, breach of contract and
24 tortious breach of the implied covenant of good faith and fair dealing. As important, there exists,
25 and has existed for some time, an actual conflict of interest between GEICO and the Estate of James
26 Allen McNamee, both of whom are currently represented by the same law firm, Pyatt Silvestri. See
27 *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338, 340 (Sep. 24,

1 2015) ("Nevada, in contrast, is a dual-representation state: Insurer-appointed counsel represents both
2 the insurer and the insured.")

3 It is patently obvious that Pyatt Silvestri is not representing the interests of the Estate of
4 James Allen McNamee, including failing to advise the Estate of its excess liability and failing to
5 advise the Estate or even this Court, regarding the Estate's bad faith rights against GEICO. See
6 Petition for Letters of Special Administration, at 2 ¶ 6, filed with this Court Sep. 20, 2017 ("the
7 Estate of James Allen McNamee has no assets to satisfy any judgment other than an automobile
8 policy with GEICO [providing] automobile liability insurance coverage of \$30,000 per person and
9 \$60,000 per accident"). Consequently, Petitioners' counsel sent Pyatt Silvestri a second letter on
10 November 8, 2017, advising them of these developments and that the Estate of James Allen
11 McNamee is entitled to separate counsel. Petitioners' counsel has received no response to the letter.

12 **G. The special administrator must be removed and separate *Cumis* counsel**
13 **appointed for the Estate of James Allen McNamee.**

14 This Court, having not been fully apprised of the facts and circumstances surrounding the
15 Estate's liability to Giann and Dara, or the true nature of the Estate's assets, granted the petition and
16 issued an Order Granting Petition for Special Letters of Administration to Susan Clokey. See Nov.
17 16, 2017, Order Granting Petition for Special Letters of Administration, on file with this Court. The
18 purpose of this petition, therefore, is (1) appoint the Clark County Public Administrator John J.
19 Cahill, as the general administrator of the Estate of James Allen McNamee, and (2) order the
20 retention by GEICO of *Cumis* counsel for the Estate of James Allen McNamee pursuant to the
21 Nevada Supreme Court's holding in *State Farm v. Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338,
22 341 (Sep. 24, 2015).

23 **III. ARGUMENT**

24 **A. A general administrator must be appointed to administer decedent's estate.**

25 Pursuant to NRS 140.040(3)(b), a special administrator is not liable "[f]or any claim against
26 the decedent except a claim involving wrongful death, personal injury or property damage if the
27 estate contains no assets other than a policy of liability insurance." NRS 140.040(3)(b) (emphasis
28

1 added). As the Nevada Supreme Court has made clear, however, this statute is applicable only
2 when the estate's sole asset is a liability insurance policy:

3 [A]fter the 1971 amendment, NRS 140.040(3) permits the special administrator to
4 pay wrongful death, personal injury, and property damage claims when the
5 estate's only asset is a liability insurance policy. NRS 140.040(3) promotes
6 judicial economy and efficient resolution of claims by enabling a plaintiff with
such claims to avoid lengthy, costly, formal probate procedures when the sole
asset is a liability insurance policy.

7 *Jacobson v. Estate of Clayton*, 121 Nev. 518, 522, 119 P.3d 132, 134 (2005). If, however, the estate
8 has other assets, or the claim exceeds the insurance coverage and will diminish the estate, the estate
9 must be administered by a general administrator:

10 The claim procedure specified by ch. 147 must be followed whenever the estate of
11 the deceased may be diminished if the creditor is successful. This, of course,
12 might happen in a wrongful death action against the estate of a deceased
13 tortfeasor. The loss for which damages are claimed may not be covered by
liability insurance. If covered, the insurance limits might prove to be inadequate.
In either instance the estate is diminished if the claimant is successful.

14 *Bodine v. Stinson*, 85 Nev. 657, 661, 461 P.2d 868, 871 (1969) (superseded by statute on other
15 grounds as explained in *Jacobson v. Estate of Clayton*, 121 Nev. 518, 522, 119 P.3d 132, 134
16 (2005)). Here, Giann and Dara's negligence claims against decedent exceed the available liability
17 insurance and will diminish the Estate. Furthermore, the Estate of James Allen McNamee has assets
18 above and beyond the \$60,000 liability insurance policy issued by GEICO, i.e., claims for breach of
19 contract and tortious breach of the implied covenant of good faith and fair dealing against GEICO.
20 Consequently, special administration of the McNamee Estate is not authorized by the special
21 administrator statutes. *Id.*

22 **B. The Estate of James Allen McNamee possesses claims for insurance bad faith**
23 **against GEICO.**

24 It is well settled that:

25 Nevada law recognizes the existence of an implied covenant of good faith and fair
26 dealing in every contract. An insurer fails to act in good faith when it refuses
27 'without proper cause' to compensate the insured for a loss covered by the policy.
Such conduct gives rise to a breach of the covenant of good faith and fair dealing.
28 This breach or failure to perform constitutes 'bad faith' where the relationship
between the parties is that of insurer and insured.

1 See *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 792-93, 858 P.2d 380, 382 (1993) (internal
2 citations omitted). As the court has further explained, "[t]he law, not the insurance contract,
3 imposes this covenant on insurers. A violation of the covenant gives rise to a bad-faith tort claim.
4 This court has defined bad faith as an actual or implied awareness of the absence of a reasonable
5 basis for denying benefits of the [insurance] policy." See *Allstate Ins. Co. v. Miller*, 125 Nev. 300,
6 308, 212 P.3d 318, 324 (2009) (internal citations omitted); see also *United States Fid. & Guar. Co.*
7 *v. Peterson*, 91 Nev. 617, 619-20, 540 P.2d 1070, 1071 (1975) ("We approve and adopt the rule that
8 allows recovery of consequential damages where there has been a showing of bad faith by the
9 insurer. Where an insurer fails to deal fairly and in good faith with its insured by refusing without
10 proper cause to compensate its insured for a loss covered by the policy such conduct may give rise
11 to a cause of action in tort for breach of an implied covenant of good faith and fair dealing. The
12 duty violated arises not from the terms of the insurance contract but is a duty imposed by law, the
13 violation of which is a tort"). An insurer who fails to settle a claim in good faith and exposes its
14 insurer to excess liability is liable for the full amount of the judgment: "since the insurer has
15 reserved control over the litigation and settlement it is liable for the entire amount of a judgment
16 against the insured, including any portion in excess of the policy limits, if in the exercise of such
17 control it is guilty of bad faith in refusing a settlement." See *Comunale v. Traders & Gen. Ins. Co.*,
18 50 Cal. 2d 654, 660, 328 P.2d 198, 201 (1958) (emphasis added).² This case is no different.

19 **C. GEICO acted in bad faith when it exposed decedent and his estate to excess**
20 **liability.**

21 Petitioners provided GEICO with opportunities to compromise their negligence claims
22 against decedent for the \$60,000 liability insurance policy. GEICO refused. This, even when
23 GEICO was well aware the value of Gianni and Dara's claims exceeded decedent's insurance
24 coverage:

25 Obviously, it will always be in the insured's interest to settle within the policy
26 limits when there is any danger, however slight, of a judgment in excess of those
27 limits. Accordingly the rejection of a settlement within the limits where there is
any danger of a judgment in excess of the limits can be justified, if at all, only on

28 ² "Nevada looked to California law when it established the implied covenant of good faith and fair dealing in the insurance context." See *Landow v. Medical Ins. Exch.*, 892 F. Supp. 239, 240 (D. Nev. 1995).

1 the basis of interests of the insurer, and, in light of the common knowledge that
2 settlement is one of the usual methods by which an insured receives protection
3 under a liability policy, it may not be unreasonable for an insured who purchases
4 a policy with limits to believe that a sum of money equal to the limits is available
5 and will be used so as to avoid liability on his part with regard to any covered
6 accident. In view of such expectation an insurer should not be permitted to further
7 its own interests by rejecting opportunities to settle within the policy limits unless
8 it is also willing to absorb losses which may result from its failure to settle.

9 *Crisci v. Sec. Ins. Co.*, 66 Cal. 2d 425, 430-31, 58 Cal. Rptr. 13, 17, 426 P.2d 173, 177 (1967).

10 Since then, GEICO has admitted Gianna and Dara's damages exceed decedent's insurance coverage
11 by extending settlement offers to both Giann and Dara, each, in amounts that exceed the available
12 insurance coverage. This confirms GEICO's bad faith:

13 whenever it is likely that the judgment against the insured will exceed policy
14 limits so that the most reasonable manner of disposing of the claim is a settlement
15 which can be made within those limits, a consideration in good faith of the
16 insured's interest requires the insurer to settle the claim... Moreover, in deciding
17 whether or not to compromise the claim, the insurer must conduct itself as though
18 it alone were liable for the entire amount of the judgment. Thus, the only
19 permissible consideration in evaluating the reasonableness of the settlement offer
20 becomes whether, in light of the victim's injuries and the probable liability of the
21 insured, the ultimate judgment is likely to exceed the amount of the settlement
22 offer.

23 *Johansen v. Cal. State Auto. Ass'n Inter-Ins. Bureau*, 15 Cal. 3d 9, 16, 123 Cal. Rptr. 288, 292, 538
24 P.2d 744, 748 (1975). In this case, GEICO refused to tender decedent's insurance limits when
25 Giann and Dara's damages clearly exceeded \$60,000. Once Giann and Dara's medical bills did
26 exceed \$60,000, GEICO made a series of low ball offers concluding with offers to Giann, and Dara,
27 each in amounts that exceed the \$30,000 per-person insurance coverage available to decedent.
28 GEICO has always known the value of Giann and Dara's claims exceed decedent's policy limits,
and GEICO has always known the value of Giann and Dara's claims exceeded every settlement
offer GEICO has extended to Giann and Dara.

**D. Petitioners nominate the Clark County Public Administrator for appointment
as the general administrator of McNamee's Estate.**

Based on the foregoing, and pursuant to NRS 139.050 and NRS 139.040(g), Petitioners
nominate the Clark County Public Administrator John J. Cahill for appointment as general
administrator of the Estate of James Allen McNamee. See NRS 139.040(h) (authorizing "Creditors

1 who have become such during the lifetime of the decedent" to seek letters of general
2 administration); *see also* NRS 139.050 ("Administration may be granted upon petition to one or
3 more qualified persons, although not otherwise entitled to serve, at the written request of the person
4 entitled, filed in the court."). Mr. Cahill has not been convicted of a felony, is over the age of
5 majority, is a resident of the State of Nevada, and is otherwise qualified. *See* NRS 139.010(1)-(4).

6 This court has jurisdiction because James Allen McNamee left an estate that consists of, at a
7 minimum, the liability insurance policy issued by GEICO, and the Estate's potential bad faith
8 claims against GEICO. *See Bodine v. Stinson*, 85 Nev. 657, 659, 461 P.2d 868, 870 (1969) ("It is
9 well established that a deceased insured's potential right of exoneration under an insurance policy is
10 a sufficient estate to justify a grant of administration, and we think, satisfies the requirement of *In*
11 *re Dickerson's Estate*, 51 Nev. 69, 268 P. 769 (1928), that an estate exist before administration is
12 justified."). A listing of all of James Allen McNamee's known heirs is attached to this petition.³

13 **E. The Estate of James Allen McNamee has not been advised of its rights against**
14 **GEICO.**

15 The Nevada Supreme Court recently confirmed the applicability in Nevada of the California
16 Supreme Court's seminal decision in *San Diego Navy Federal Credit Union v. Cumis Insurance*
17 *Society, Inc.*, 162 Cal. App. 3d 358, 208 Cal. Rptr. 494, 506 (Ct. App. 1984). In *State Farm v.*
18 *Hansen*, the Nevada Supreme Court confirmed that "[b]ecause Nevada is a dual-representation
19 state, counsel may not represent both the insurer and the insured when their interests conflict and no
20 special exception applies. RPC 1.7. This suggests that the *Cumis* rule, where the insurer must
21 satisfy its contractual duty to provide counsel by paying for counsel of the insured's choosing, is
22 appropriate for Nevada." *See State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Rep. 74,
23 357 P.3d 338, 341 (Sep. 24, 2015). As the court further explained:

24 In sum, Nevada, like California, recognizes that the insurer and the insured are
25 dual clients of insurer-appointed counsel. Where the clients' interests conflict, the
26 rules of professional conduct prevent the same lawyer from representing both
clients. California's *Cumis* rule is well-adapted to this scenario. It requires

27 ³ The Division of Health Care Financing and Policy for the Department of Health and Human Services of the State of
28 Nevada filed a Waiver of Notice required by NRS 155.020 on October 18, 2017. *See* Waiver of Notice, on file with this
Court.

1 insurers to fulfill their duty to defend by allowing insureds to select their own
2 counsel and paying the reasonable costs for the independent counsel's
representation.

3 *Id.* Under NRPC 1.7(a)(1), "[a] concurrent conflict of interest exists if: The representation of one
4 client will be directly adverse to another client." Here, GEICO is obviously adverse to decedent's
5 Estate. While GEICO has admittedly exposed decedent's estate to excess liability giving rise to
6 causes of action for bad faith against GEICO, GEICO's counsel, Pyatt Silvestri, did not disclose
7 any of these critical facts to this Court when seeking appointment of a special administrator.
8 Instead, GEICO, in collusion with Pyatt Silvestri, represented to this Court that the "the Estate of
9 James Allen McNamee has no assets to satisfy any judgment other than an automobile policy with
10 GEICO," something that is clearly inaccurate. In reality, Pyatt Silvestri is only looking out for
11 GEICO's interests, and is clearly taking action to benefit GEICO in total disregard of the rights of
12 decedent's estate. Indeed, the Estate has not even been advised of its potential excess liability, its
13 potential bad faith claims against GEICO as a result of that excess liability, or the actual conflict of
14 interest between GEICO and the Estate. Because neither GEICO nor Pyatt Silvestri is properly
15 advising the Estate of James Allen McNamee of its rights against GEICO, and because there is an
16 actual conflict of interest between the insurer and the insured, the Estate is entitled to *Cumis*
17 counsel of its choosing at GEICO's expense.

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VI. CONCLUSION

For the reasons set forth above, Petitioners request that the Clark County Public Administrator John J. Cahill be issued letters of general administration over the Estate of James Allen McNamee. Petitioners further request an order from this Court requiring the appointment of separate counsel for the Estate of James Allen McNamee, to be chosen by the Estate and at the expense of the decedent's insurer, GEICO. *See State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338, 341 (Sep. 24, 2015).

GLEN LERNER INJURY ATTORNEYS

By: /s/ Craig A. Henderson
Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Craig A. Henderson, Esq.
Nevada Bar No. 10077
4795 South Durango Drive
Las Vegas, NV 89147
(702) 877-1500
Attorneys for Plaintiffs

- 1
- 2
- 3
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Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Craig A. Henderson, Esq.
Nevada Bar No. 10077
Joshua L. Benson, Esq.
Nevada Bar No. 10514
GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
Las Vegas, Nevada 89147
Telephone: (702) 877-1500
Facsimile: (702) 933-7043
E-mail: ceschweiler@glenlerner.com
 chenderson@glenlerner.com

Lee D. Roberts, Esq.
Nevada Bar No. 8877
WEINBERG WHEELER HUDGINS GUNN & DIAL
6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Email: LRoberts@wwhgd.com

*Attorneys for Petitioners Gianni Bianchi
and Dara Del Priore*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the matter of the Estate of JAMES ALLEN
MCNAMEE, Deceased.

CASE NO.: P-17-093041-E
DEPT NO.: PC-1

LISTING OF ALL HEIRS

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1	Name	Relationship to Decedent	Age	Address
2	Robert McNamee	Father	Unknown	2472 230 th St.
3				Mahnomen, MN
4	Other heirs unknown			56557-9034

GLEN LERNER INJURY ATTORNEYS

By: /s/ Craig A. Henderson
 Corey M. Eschweiler, Esq.
 Nevada Bar No. 6635
 Craig A. Henderson, Esq.
 Nevada Bar No. 10077
 4795 South Durango Drive
 Las Vegas, NV 89147
 (702) 877-1500

WEINBERG WHEELER HUDGINS
 GUNN & DIAL

Lee D. Roberts, Esq.,
 Nevada Bar No. 8877
 6385 South Rainbow Blvd., Suite 400
 Las Vegas, NV 89118
*Attorneys for Petitioners Gianni Bianchi
 and Dara Del Priore*

1 Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
2 Craig A. Henderson, Esq.
Nevada Bar No. 10077
3 Joshua L. Benson, Esq.
Nevada Bar No. 10514
4 GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
5 Las Vegas, Nevada 89147
Telephone: (702) 877-1500
6 Facsimile: (702) 933-7043
E-mail: ccschweiler@glenlerner.com
7 chenderson@glenlerner.com

8 Lee D. Roberts, Esq.
9 Nevada Bar No. 8877
WEINBERG WHEELER HUDGINS GUNN & DIAL
10 6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
11 Telephone: (702) 938-3838
Facsimile: (702) 938-3864
12 Email: L.Roberts@wwhgd.com

13 *Attorneys for Petitioners Gianni Bianchi*
and Dara Del Priore

14 EIGHTH JUDICIAL DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 In the matter of the Estate of JAMES ALLEN
17 MCNAMEE, Deceased.

CASE NO.: P-17-093041-E
DEPT NO.: PC-1

18 NOTICE OF HEARING FOR
19 APPOINTMENT OF GENERAL
20 ADMINISTRATOR
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1 Notice is hereby given that Petitioners Gianni Bianchi and Dara DelPriore, by and through
2 their counsel Corey M. Eschweiler, Esq., Craig A. Henderson, Esq., and Joshua D. Benson, Esq., of
3 GLEN LERNER INJURY ATTORNEYS, and Lee D. Roberts, Esq., of WEINBERG WHEELER
4 HUDGINS GUNN & DIAL, have filed in this court a petition for letters of general administration,
5 of the Estate of JAMES ALLEN MCNAMEE, deceased, and a hearing has been set for the ____
6 day of the month of _____, of the year 2018, at _____ (a.m. or p.m.) at the
7 courthouse of the above-entitled court, Phoenix Building, 330 South 3rd Street Las Vegas, NV
8 89101. All persons interested in the estate are notified to appear and show cause why the petition
9 should not be granted. Further details concerning this Petition can be obtained by reviewing the
10 Court file and the Office of the County Clerk, Clark County Courthouse, or by contacting the
11 attorney for the Petitioners.

12
13 GLEN LERNER INJURY ATTORNEYS

14
15 By: /s/ Craig A. Henderson
16 Corey M. Eschweiler, Esq.
17 Nevada Bar No. 6635
18 Craig A. Henderson, Esq.
19 Nevada Bar No. 10077
20 4795 South Durango Drive
21 Las Vegas, NV 89147
22 (702) 877-1500

23 WEINBERG WHEELER HUDGINS
24 GUNN & DIAL

25
26 Lee D. Roberts, Esq.,
27 Nevada Bar No. 8877
28 6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
*Attorneys for Petitioners Gianni Bianchi
and Dara Del Priore*

Exhibit D

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
T. (702) 383-6000
F. (702) 477-0088
jorr@pyattsilvestri.com

Attorneys for Defendant
JAMES MCNAMEE

DISTRICT COURT
CLARK COUNTY, NEVADA

GIANN BIANCHI, individually, DARA
DELPRIORE, individually

Plaintiffs

v.

JAMES MCNAMEE, individually, DOES I-X,
and ROE CORPORATIONS I-X, inclusive

Defendants.

Case No.: A-13-691887-C
Dept. No.: VIII

DATE: January 22, 2018
TIME: In Chambers

**DEFENDANT JAMES MCNAMEE'S REPLY TO PLAINTIFF'S OPPOSITION TO
MOTION TO SUBSTITUTE SPECIAL ADMINISTRATOR IN PLACE AND STEAD OF
DEFENDANT JAMES MCNAMEE AND TO AMEND CAPTION**

COMES NOW, Defendant James McNamee, by and through its attorneys of record, Jeffrey J. Orr, Esq. of Pyatt Silvestri and hereby submits his Reply to Opposition to Motion to Substitute Special Administrator of Susan Clokey in place and stead of James McNamee as the Defendant in this action. Defendant also requests that the caption be amended to reflect the substitution of the new Defendant in this matter.

This Reply is made and based upon the papers and pleadings on file herein, as well as the Memorandum of Points and Authorities and any oral argument at the time of hearing of this matter.

I.
FACTUAL BACKGROUND

Defendant James McNamee passed away on August 12, 2017. As such, James McNamee can no longer be the Defendant in this matter. A Suggestion of Death was filed in this matter on September 20, 2017. (See Suggestion of Death Upon the Record, attached as Exhibit A). The pending motion to substitute the Special Administrator as the Defendant in place and stead of James McNamee was filed on December 14, 2017. As such, Defendant's motion to substitute the Special Administrator as the Defendant in place and stead of James McNamee was filed within the 90 day time period mandated in NRCP 25 (a)(1).

It has been more than 90 days since the Suggestion of Death was filed in this matter and there have not been any other motions to substitute the Defendant in this matter. In fact, the Petition to appoint a General Administrator in probate court was not even filed until January 3, 2018. (See Page 1 of Petition for Issuance of General Letters of Administration and for Appointment of Cumis Counsel for the Estate of James Allen McNamee, attached as Exhibit B). This petition to appoint a General Administrator may or may not be granted by the probate court. Trial is set for April 16, 2018, which is in approximately 90 days.

II.
ANY FUTURE MOTION TO SUBSTITUTE DEFENDANT WOULD BE UNTIMELY

Plaintiffs' opposition implies that Plaintiffs intend to move to substitute the general administrator as the Defendant in this action. However, NRCP 25 (a)(1) clearly states that any motion to substitute a deceased party must be filed within 90 days of the suggestion of death:

"If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party." NRCP 25(a)(1)

1 Notably, NRCP 25(a)(1) uses the word "shall" as it states that the action shall be dismissed
2 if the motion is not filed within 90 days of the Suggestion of Death. The Nevada Supreme Court
3 has held that the failure to move to substitute a deceased party within the 90 day time period
4 mandates dismissal: "...Wharton's counsel failed to comply with NRCP 25(a)(1) by not moving the
5 court to substitute Wharton's surviving spouse as his personal representative within the 90-day
6 period. Therefore, we conclude that the district court erred in granting Wharton's counsel's untimely
7 motion for substitution of parties and by denying the defendant's motions to dismiss the action.
8 Accordingly, we reverse the district court's judgment and remand this matter with instructions to
9 enter judgment in favor of respondents." *Wharton v. City of Mesquite*, 113 Nev. 796, 798, 942 P.2d
10 155 (1997).

12 As such, the rule is mandatory, not discretionary. Pursuant to NRCP 25(a)(1), the court
13 cannot consider any future motion to substitute any other Defendant in place and stead of the
14 deceased Defendant. Therefore, there is no reason to defer ruling on the instant motion as requested
15 by Plaintiffs.

17 **III.**
18 **PLAINTIFF'S REQUEST TO DEFER THIS MOTION IS NOT A VIABLE OPTION**

19 Trial is set for April 16, 2018, which is in approximately 90 days. Currently, there is no
20 Defendant in this action. There is no set timetable upon which the probate court will rule on the
21 petition for General Letters of Administration. Moreover, the petition in probate court may or may
22 not be granted. At this time, there is no other motion to bring any other party into this action. Given
23 the upcoming trial date and the uncertainty regarding the petition for General Letters of
24 Administration, deferring the instant motion is not feasible.

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IV.
THERE IS NO BAD FAITH OR CONFLICT OF INTEREST

Although not pertinent to the instant motion to substitute, Plaintiffs' Opposition incorrectly states that there are "bad faith causes of action" against Mr. McNamee's insurance carrier. Defendant is not aware of any such causes of action. The Complaint on file in this action only alleges Negligence and Negligence Per Se and makes no reference to "bad faith". Additionally, no fact finder has made any determination as to the amount of damages, if any, sustained by Plaintiffs. Plaintiffs' claim that the damages exceed the insurance policy limits are, at a minimum, premature and speculative. Contrary to Plaintiffs' contention, Defendant has never admitted that there is bad faith in this matter. In fact, there hasn't even been a determination as to the amount of damages in this matter. As such, Plaintiffs' claim that there is an asset above and beyond the insurance policy is not true. For these reasons, Plaintiffs' contention that there are assets beyond the liability insurance policy is not accurate.

Plaintiffs also incorrectly allege that the Special Administrator has a "conflict" because the Special Administrator has decision making authority on behalf of the estate. The order granting the Special Administration does not give such authority. Instead, the order granting the Special Administration only permits the Special Administrator to defend the instant litigation and to distribute the insurance proceeds should there be a judgment against the Special Administrator. (See Order Granting Petition for Special Letters of Administration, attached as Exhibit C). The Special Administrator does not have any other authority to deal with the estate. Because the Special Administrator has such limited authority, there is no potential for any conflict as alleged by Plaintiffs.

Nevada case law specifically states that the special administrator can defend personal injury lawsuits when the only asset is a liability insurance policy. "... NRS 140.040(3) permits the special administrator to pay wrongful death, personal injury, and property damage claims when the estate's only asset is a liability insurance policy. NRS 140.040(3) promotes judicial economy and efficient

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-9341
PHONE (702) 330-9000 FAX (702) 477-0088

1 resolution of claims by enabling a plaintiff with such claims to avoid lengthy, costly, formal probate
2 procedures when the sole asset is a liability insurance policy. *Jacobson v. Estate of Clayton*, 121
3 Nev. 518, 522, 119 P.3d 132 (2005).


4 In this case, the only asset available to satisfy any judgment is the liability insurance policy.
5 Although Plaintiffs claim that there is a bad faith claim, such a claim is speculative at this time as
6 there has not been any determination as to the amount of Plaintiffs' damages.

7
8 **V.
CONCLUSION**

9 Plaintiffs' Opposition implies that Plaintiffs may move to bring a Defendant into this action
10 sometime in the future. However, pursuant to NRCF 25(a)(1) and *Wharton v. City of Mesquite*, 113
11 Nev. 796, 798, 942 P.2d 155 (1997) the Court cannot consider any future motion to bring a
12 Defendant into this action because more than 90 days has passed since the Suggestion of Death was
13 filed. As a practical matter, trial is in approximately 90 days and there is currently no Defendant.
14 For these reasons, it is requested that this Court grant Defendant's Motion to substitute the Special
15 Administrator of the Estate of James McNamee in place and stead of Defendant James McNamee.
16

17 DATED this 12 day of January, 2018

18 **PYATT SILVESTRI**

19
20 
21 **JEFFREY J. ORR, ESQ.**

22 Nevada Bar No. 7854

23 **PYATT SILVESTRI**

24 701 Bridger Ave., Suite 600

25 Las Vegas, Nevada 89101

26 Attorney for Defendant

27 James McNamee
28

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-B941
PHONE (702) 383-6060 FAX (702) 477-4068

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 12th day of January, 2018, I caused the above and foregoing document **DEFENDANT JAMES MCNAMEE'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO SUBSTITUTE SPECIAL ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE AND TO AMEND CAPTION**, to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to the attorney(s) listed below and via U.S. Mail:

Corey M. Eschweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs

D. Lee Roberts, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., #400
Las Vegas, NV 89118
Attorney for Plaintiff

Robert McNamee
2472 230th Street
Mahnomon, MN 56557-9034

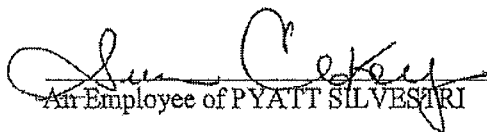

An Employee of PYATT SILVESTRI

Exhibit A

Steven D. Grierson

1 JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
2 PYATT SILVESTRI
701 Bridger Avenue, Suite 600
3 Las Vegas, Nevada 89101
T. (702) 383-6000
4 F. (702) 477-0088
jorr@pyattsilvestri.com

5 Attorney for Defendant
6 JAMES MCNAMEE

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 GIANN BIANCHI, individually, DARA)
10 DELPRIORE, individually)

CASE NO. A-13-691887-C
DEPT. NO.: VIII

Plaintiffs,

11 vs.

12 JAMES MCNAMEE, individually,
DOES I - X, and ROE CORPORATIONS
13 I - X, inclusive

14 Defendants.

15 SUGGESTION OF DEATH UPON THE RECORD

16 Pursuant to Rule 25(a)(1) of the Nevada Rules of Civil Procedure, Jeffrey J. Orr, Esq.,
17 of the law firm of Pyatt & Silvestri, suggests on the record the death of Defendant, JAMES
18 McNAMEE, during the pendency of this litigation. The date of death of Defendant, JAMES
19 McNAMEE was August 12, 2017.
20

21 DATED this 20 day of September, 2017.

22 PYATT SILVESTRI

23
24 *Jeffrey J. Orr*

25 JEFFREY J. ORR, ESQ.

26 Nevada Bar No. 7854

27 701 Bridger Avenue, Suite 600

Las Vegas, NV 89101

28 Attorneys for Defendant

JAMES MCNAMEE

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-4041
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 N. Durango Avenue, Suite 600
Las Vegas, Nevada 89101-3941
PHONE (702) 383-5000 FAX (702) 477-0088

CERTIFICATE OF MAILING

Pursuant to NRCF 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 20th day of September, 2017, I caused the above and foregoing document, SUGGESTION OF DEATH, to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; to the attorney(s) listed below:

Corey M. Eshweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs
GIANN BIANCHI and
DARA DELPRIORE


Employee of PYATT SILVESTRI

Exhibit B

Electronically Filed
1/3/2018 2:27 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 PET
2 Corey M. Eschweiler, Esq.
3 Nevada Bar No. 6635
4 Craig A. Henderson, Esq.
5 Nevada Bar No. 10077
6 Joshua L. Benson, Esq.
7 Nevada Bar No. 10514
8 GLEN LERNER INJURY ATTORNEYS
9 4795 South Durango Drive
10 Las Vegas, Nevada 89147
11 Telephone: (702) 877-1500
12 Facsimile: (702) 933-7043
13 E-mail: ceschweiler@glenlerner.com
14 ohenderson@glenlerner.com

15 Lee D. Roberts, Esq.
16 Nevada Bar No. 8877
17 WEINBERG WHEELER HUDGINS GUNN & DIAL
18 6385 South Rainbow Blvd., Suite 400
19 Las Vegas, NV 89118
20 Telephone: (702) 938-3838
21 Facsimile: (702) 938-3864
22 Email: LRoberts@wwhgd.com

23 *Attorneys for Petitioners Gianni Bianchi*
24 *and Dara Del Priore*

25 EIGHTH JUDICIAL DISTRICT COURT

26 CLARK COUNTY, NEVADA

27 In the matter of the Estate of JAMES ALLEN
28 MCNAMEE, Deceased.

CASE NO.: P-17-093041-E
DEPT NO.: PC-1

PETITION FOR ISSUANCE OF
GENERAL LETTERS OF
ADMINISTRATION AND FOR
APPOINTMENT OF CUMIS COUNSEL
FOR THE ESTATE OF JAMES ALLEN
McNAMEE

Date of Hearing:
Time of Hearing:

///

///

Exhibit C

ORIGINAL

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11/16/2017 4:41 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 ORDR
2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 FYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

13
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of James Allen) Case No.: P-17-093041-E,
McNamee, Deceased) Dept No.: S
)
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ORDER GRANTING
PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

Upon submission of the Petition for Special Letters of Administration, representing
as follows:

1. That Decedent, James Allen McNamee died on the 12th day of August, 2017, in the County of Mohave, State of Arizona.
2. That Decedent was a resident of Mohave County, Arizona, at the time of his death.
3. That at the time of Decedent's death, Decedent was a Defendant in a personal injury lawsuit, *Bianchi et. al v. James Allen McNamee*, Eighth Judicial District Court, Clark County, Nevada Case No. A-13-691887-C.
4. Petitioner has conducted a search of assets for James Allen McNamee, decedent. Upon information and belief, the Estate of James Allen McNamee has no assets to satisfy any judgment other than an automobile insurance policy with GEICO. That

PYATT SILVESTRI
Attorneys at Law
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101-4541
Phone (702) 383-6000 Fax (702) 477-0088

insurance policy, GEICO policy #4180457162 provides automobile liability insurance coverage of \$30,000 per person and \$60,000 per accident.

5. Petitioner is a resident of the State of Nevada, and is employed at the law firm of Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

6. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to continue and substitute the real party in interest, the Special Administrator.

7. Petitioner is willing to act as Special Administrator of the estate to defend *Bianchi et. al.v. McNamee*, Case No. A-13-691887-C.

8. Petitioner has never been convicted of a felony. Petitioner is qualified under NRS 139.010 to serve as Special Administrator of the Estate.

NOW, THEREFORE, IT IS HEREBY ORDERED that Susan Clokey is appointed as Special Administrator and that Special Letters of Administration be issued, without bond, pursuant to Nevada Revised Statutes 140(2)(a) and 140(3)(b).

The sole purpose of this order is to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner intends to defend that action as the real party in interest.

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1 The Special Administrator does not have any other authority beyond Nevada
2 Revised Statutes 140(2)(a) and 140(3)(b) and may not distribute any property other than the
3 GEICO automobile insurance policy with automobile liability insurance coverage of \$30,000
4 per person and \$60,000 per accident.

5 Any funds will be held in a blocked account or attorney trust account.

6 IT IS FURTHER ORDERED that the settlement of the decedent's lawsuit is subject to
7 this court's approval.

8 DATED this 15th day of ^{NOV.} ~~October~~, 2017.

Vincent Ochoa

DISTRICT COURT JUDGE *SA*

Submitted by:

Jeffrey J. Orr

Jeffrey J. Orr, Esq.
Nevada Bar No. 7854
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, NV 89101
T. (702) 383-6000
jorr@pyattsilvestri.com
Attorney for Petitioner,
Special Administrator Susan Clokey

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PYATT SILVESTRI
A Professional Law Corporation
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101-4524
PHONE (702) 383-6000 FAX (702) 477-0035

EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in

NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86] – (NRS A 1971, 647; 1983, 668; 1999, 2276)

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGE AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-8088 FAX (702) 477-0888

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 10th day of November, 2017, I caused the above ORDER GRANTING PETITION FOR SPECIAL LETTERS OF ADMINISTRATION, to be served pursuant to NRCP 5(b) to be electronically served through the *Eighth Judicial District Court's electronic filing system* and via U.S. Mail to the following party listed below:

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

Exhibit E

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)
[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE No. A-13-691887-C

Glenn Bianchi, Plaintiff(s) vs. James McNamee, Defendant(s)

Case Type: Negligence - Auto
Date Filed: 11/19/2013
Location: Department 8
Cross-Reference Case Number: A691887

Case Type: Negligence - Auto
Date Filed: 11/19/2013
Location: Department 8
Cross-Reference Case Number: A691887

PARTY INFORMATION

	Lead Attorneys
Defendant Estate of James McNamee	
Defendant McNamee, James	James P.C. Silvestri Retained 7023836000(W)
Plaintiff Bianchi, Glenn	D Lee Roberts, Jr. Retained 702-938-3838(W)
Plaintiff Delpriore, Dara	D Lee Roberts, Jr. Retained 702-938-3838(W)

EVENTS & ORDERS OF THE COURT

01/22/2018 Motion (3:00 AM) (Judicial Officer Smith, Douglas E.)
 Defendant James McNamee's Motion to Substitute Special Administrator In Place and Stead of Defendant James McNamee and to Amend Caption

Minutes

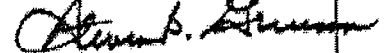
01/22/2018 3:00 AM

- Defendant James McNamee's Motion to Substitute Special Administrator In Place and Stead of Defendant James McNamee and to Amend Caption came before the Court on the January 22, 2018, Chamber Calendar. Having reviewed the Motion, its Opposition, and Reply thereto, COURT ORDERED, this Motion is DENIED. Court directed the parties to submit three (3) proposed names to the Court for consideration as to who they want to serve as Administrator of the Estate.
 CLERK'S NOTE: A copy of this minute order was placed in the attorney folders of Jeffrey Orr, Esq., (Pyatt Silvestri) and Craig A. Henderson, Esq., (Glen Lerner Injury Attorneys).

[Return to Register of Actions](#)

APPENDIX EXHIBIT 16

APPENDIX EXHIBIT 16



ORDR

Judge Douglas E. Smith
Eighth Judicial District Court
Department VIII
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
(702)671-4338

**DISTRICT COURT
CLARK COUNTY, NEVADA**

GIANN BIANCHI, individually,
DARA DELPRIORE, individually,

Plaintiff,

vs.

JAMES McNAMEE, individually,
DOES I - X, and ROE CORPORATIONS
I - X, inclusive,

Defendants.

CASE NO: A-13-691887-C

DEPT NO: VIII

**ORDER DENYING DEFENDANT JAMES McNAMEE'S MOTION TO
DISMISS AND GRANTING IN PART AND DENYING IN PART DEFENDANT
JAMES McNAMEE'S MOTION TO AMEND ORDER**

Defendant James Allen McNamee's Motion to Dismiss and Motion to Amend Order came before this Court on April 10, 2018. Plaintiffs were represented by their counsel of record, Corey M. Eschweiler, Esq. of GLEN LERNER INJURY ATTORNEYES, and D. Lee Roberts, Esq., of WEINBERG WHEELER HUDGINS GUNN & DIAL. Defendant James McNamee, deceased, appeared through his counsel of record, James P.C. Silvestri, Esq., and Jeffrey J. Orr, Esq., of PYATT SILVESTRI. Special Administrator Susan Clokey appeared through her counsel Alexander G. LeVeque, Esq., of SOLOMON DWIGGINS & FREER. The Court having considered the motions, Plaintiffs' opposition, and Defendant's reply, the good cause appearing, it is hereby:

ORDERED, ADJUDGED, and DECREED that Defendant's Motion to Dismiss pursuant to NRCP 25(a)(1) is DENIED;

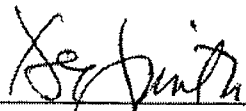
It is further ORDERED, ADJUDGED, and DECREED that Defendant's Motion to

DOUGLAS E. SMITH
DISTRICT JUDGE

DEPARTMENT EIGHT
LAS VEGAS NV 89155

1 Amend Order is GRANTED in part and DENIED in part. The Motion is GRANTED in part
2 to appoint Fred Waid as general and special administrator, and to substitute Mr. Ward in his
3 capacity as special and general administrator of the Estate of James Allen McNamee as party
4 Defendant in the place and stead of the decedent, James Allen McNamee. The Motion is
5 DENIED to the extent it seeks to have Susan Clokey substituted as party Defendant in the
6 place and stead of the decedent James Allen McNamee.

7 It is so ordered this 14th day of May 2018.

8
9 

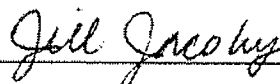
10 DOUGLAS E. SMITH
11 DISTRICT COURT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May 2018, a copy of this Order was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties or per the attached list as follows:

Corey Eschweiler, ceschweiler@glenlerner.com
Brittany Jones, Paralegal, bjones@glenlerner.com
Craig Henderson, chenderson@glenlerner.com
Jeffrey J. Orr, jorr@pyattsilvestri.com
Lisa Titolo, Paralegal, ltitolo@glenlerner.com
Miriam Alvarez, Paralegal, ma@glenlerner.com
Barbara Abbott, babbott@pyattsilvestri.com
James Silvestri, jsilvestri@pyattsilvestri.com
Susan Clokey, sclokey@pyattsilvestri.com
Audra Bonney, abonney@wwhgd.com
Brian P. Eagan, beagan@sdfnlaw.com
Renee L. Guastafarro, rguastafarro@sdfnlaw.com
Esther Ibarra, eibarra@wwhgd.com
Alexander G. LeVeque, aleveque@sdfnlaw.com
Gretta G. McCall, gmccall@sdfnlaw.com
D. Lee Roberts, lroberts@wwhgd.com
Justin Carley, jcarley@swlaw.com
Docket Docket, docket_las@swlaw.com
Ruby Lengsavath, rlengsavath@swlaw.com
Holly Longe, hlonge@swlaw.com
Janine Prupas, jprupas@swlaw.com



Jill Jacoby, Judicial Executive Assistant

APPENDIX EXHIBIT 12

APPENDIX EXHIBIT 12

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNVLAW.COM

SOLOMON
DWIGGINS & FREER
ATTORNEYS AND LITIGATE ATTORNEYS

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2/23/2018 4:16 PM
Steven D. Grierson
CLERK OF THE COURT



1 Alexander G. LeVeque (#11183)
2 aleveque@sdfnvlaw.com
3 Brian P. Eagan (#9395)
4 beagan@sdfnvlaw.com
5 SOLOMON DWIGGINS & FREER, LTD.
6 9060 West Cheyenne Avenue
7 Las Vegas, Nevada 89129
8 Telephone: 702.853.5483
9 Facsimile: 702.853.5485

6 James P.C. Silvestri (#3603)
7 jsilvestri@syattsilvestri.com
8 Jeffrey J. Orr (#7854)
9 jorr@pyattsilvestri.com
10 PYATT SILVESTRI
11 701 Bridger Avenue, Suite 600
12 Las Vegas, Nevada 89101
13 Telephone: 702.383.6000
14 Facsimile: 702.477.0088

11 Attorneys for Susan Clokey,
12 Special Administrator for the Estate
13 of James Allen McNamee

13 EIGHTH JUDICIAL DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 GLANN BIANCHI, individually, DARA
16 DELPRIORE, individually,

17 Plaintiffs,

18 vs.

18 JAMES MCNAMEE, individually, DOES I-X, and
19 ROE CORPORATIONS, I-X, inclusive,

20 Defendants.

Case No.: A-13-691887-C
Dept. No.: VIII

SPECIAL ADMINISTRATOR'S
BRIEF CONCERNING THE
PROBATE COURT'S EXCLUSIVE
JURISDICTION OVER THE ESTATE
OF JAMES MCNAMEE

21
22 On February 13, 2018, during the hearing on Plaintiffs' Motion for Appointment of Cumis
23 Counsel for the Estate of James Allen McNamee, this Department requested that Plaintiffs and
24 Defendant each provide the Court with the names of persons to serve as the Special Administrator
25 of the Estate of James Allen McNamee. In response, counsel for the Defendant requested leave,
26 which the Court granted, to brief the issue of whether it is appropriate for this Department to
27 intervene in the probate proceedings already pending before Department S and modify or
28 otherwise amend orders already entered by Judge Ochoa. As set forth in detail herein, the answer

1 is respectfully no. The Eighth Judicial District Court Rules prevent this Department from entering
2 any orders which relate to the probate proceeding, including any order removing and/or replacing
3 the duly authorized Special Administrator. Accordingly, this Department should defer all such
4 issues to the Probate Court.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I.**

7 **STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY**

8 Defendant James Allen McNamee ("Decedent") died on August 12, 2017. On September
9 20, 2017, Decedent's counsel filed a Petition for Special Letters of Administration in the probate
10 court (the "Probate Petition") which sought the appointment of Susan Clokey, his paralegal, to
11 carry on the defense of the Decedent's Estate in the instant tort proceeding.¹ The Probate Petition
12 was granted by the Probate Commissioner and signed by Judge Ochoa in Department S, a
13 department designated by the Chief Judge of the Eighth Judicial District Court as a probate court.²
14 Accordingly, Susan Clokey is the duly authorized Special Administrator of the Decedent's Estate
15 and is charged with the duty of defending the Estate in the instant proceeding.³

16 On January 3, 2018, Plaintiffs filed their *Petition for Issuance of General Letters of*
17 *Administration* (the "Plaintiff's Petition") in the probate proceeding before Department S which
18 seeks to convert the special administration into a general administration and to appoint a general
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25 ¹ See Probate Petition, a true and correct copy being attached hereto as **Exhibit A**.

26 ² See Order Granting Probate Petition, a true and correct copy being attached hereto as **Exhibit B**.

27 ³ *Id.*, see also Letters of Special Administration, a true and correct copy being attached hereto as
28 **Exhibit C**.

1 administrator in the place and stead of the current Special Administrator.⁴ That petition is
2 scheduled to be heard by the Probate Commissioner on March 16, 2018.⁵

3
4 **II.**

5 **GIVEN THAT (1) THE PROBATE COURT HAS ALREADY APPOINTED A SPECIAL**
6 **ADMINISTRATOR FOR THE DECEDENT'S ESTATE; AND (2) THE PLAINTIFFS'**
7 **PETITION FOR ISSUANCE OF GENERAL LETTERS OF ADMINISTRATION IS**
8 **CURRENTLY PENDING BEFORE DEPARTMENT S AND THE PROBATE**
9 **COMMISSIONER, EDCR 7.10 PRECLUDES THIS DEPARTMENT FROM**
10 **INTERVENING IN THOSE PROCEEDINGS**

11 The Eighth Judicial District Court Rules, which are approved by the Supreme Court of
12 Nevada, "govern the procedure and administration of the Eighth Judicial District Court and all
13 actions or proceedings cognizable therein." EDCR 1.10. Accordingly, all parties, hearing masters
14 and district court judges are bound by the same.⁶

15 EDCR 7.10 provides in relevant part:

16 (a) Except as provided in these rules or in an emergency, no judge
17 except the judge having charge of the cause or proceeding may
18 enter any order therein. If the matter is of an emergency nature
19 and both the judge to whom the case is assigned and the judge's
20 designee are absent or otherwise unavailable, applications must be

21 ⁴ See Petition for Issuance of General Letters of Administration, a true and correct copy being
22 attached hereto as **Exhibit D**.

23 ⁵ The Plaintiffs' Petition was originally scheduled to be heard on February 9, 2018. However,
24 Plaintiffs failed to publish notice of the Petition as required under NRS 155.020(1)(b), which
25 caused the delay and continuance of the hearing.

26 ⁶ See also NRS 3.020, which states:

27 **Judicial districts with more than one judge; Concurrent jurisdiction of judges.** In
28 judicial districts where more than one judge has been provided for, the judges have
concurrent and coextensive jurisdiction within the district, under such rules as may be
prescribed by law, and the district judges therein may make additional rules, not
inconsistent with law, which will enable them to transact judicial business in a
convenient and lawful manner. (Emphasis added).

See also *Halverson v. Hardcastle*, 123 Nev. 245, 163 P.3d 428, at n. 93 (2007) (where Supreme Court of Nevada found unavailing Judge Halverson's argument that the removal of her criminal cases pursuant to EDCR 1.33 violated her "equal coextensive and concurrent jurisdiction and power" because NRS 3.020 permits judicial districts creating divisions to transact judicial business in a convenient and lawful manner).

made to the chief judge, or in a case assigned to the family division, the presiding judge.

(b) When any district judge has begun a trial or hearing of any cause, proceeding or motion, or made any ruling, order or decision therein, no other judge may do any act or thing in or about such cause, proceeding or motion, unless upon the request of the judge who has begun the trial or hearing of such cause, proceeding or motion. (Emphasis added).

In this case, Judge Ochoa in Department S and the Probate Commissioner preside over the probate proceedings concerning the Decedent's Estate. Judge Ochoa has already entered an order appointing Ms. Clokey as the Special Administrator. Moreover, the Clerk of the Court, pursuant to that order, has issued Letters of Special Administration. Accordingly, EDCR 7.10(a) and (b) prohibit this Department from entering any orders and doing any acts in the probate proceeding which would include an order or act removing and replacing the current Special Administrator.

Similarly, the Plaintiffs are seeking relief in the probate proceeding which has not yet been heard; namely, an order converting the special administration into a general administration and the appointment of a different general administrator. Thus EDCR 7.10(a) and (b) also prohibit this Court from taking any action on that petition as well.

Accordingly, this Department cannot and should not intervene in the probate proceedings.

II.

EVEN IF THERE WERE NO PENDING PROBATE PROCEEDINGS, ONLY THE PROBATE COMMISSIONER OR A PROBATE JUDGE CAN HEAR AN ADJUDICATE PROBATE MATTERS IN THE EIGHTH JUDICIAL DISTRICT COURT

"Part IV [of the EDCR] governs the practice and procedure of all proceedings under Title 12 and Chapters 162 through 167 of Title 13 of the NRS."⁷

"The chief judge for the Eighth Judicial District Court of Nevada shall be designated as the probate judge."⁸ "The chief judge may, however, in the chief judge's discretion, appoint one district court judge to serve as the probate judge in the chief judge's stead."⁹ "The chief judge

⁷ See EDCR 4.01.

⁸ See EDCR 4.02.

⁹ *Id.*

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFINLAY.COM

SOLOMON
DWIGINS & FREER
18551 AND SEANE ATTORNEYS



1 shall also have the discretion to designate one or more district court judges as alternate probate
2 judge(s) to hear probate matters in the event that the probate judge is disqualified from hearing a
3 matter or if the probate judge is unable to accommodate a matter for any good cause in the
4 discretion of the probate judge.”¹⁰

5 “All probate and trust proceedings under Title 12 and Chapters 162 through 167 of Title
6 13 of the NRS are automatically referred to the probate commissioner, subject to Rule 4.08.”¹¹ “In
7 any matters referred to the probate commissioner, each party is entitled, as a matter of right, to
8 have any contested matter heard before the probate judge provided that the probate commissioner
9 has not made any ruling on such contested matter or commenced hearing on any contested
10 matter.”¹² “The probate judge may, upon resolution of the contested matter, return the case to the
11 probate commissioner’s calendar or retain the case at the discretion of the probate judge.”¹³

12 The foregoing Rules require all probate proceedings to be heard either by the Probate
13 Commissioner, the Chief Judge, or a district court judge appointed by the Chief Judge to hear
14 probate matters. This Department has not been appointed to hear probate matters. Accordingly, it
15 cannot and should not hear and adjudicate any matters relating to the Decedent’s Estate.

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25 ¹⁰ *Id.*

26 ¹¹ *See* EDCR 4.03(a) (emphasis added).

27 ¹² *See* EDCR 4.08.

28 ¹³ *Id.*

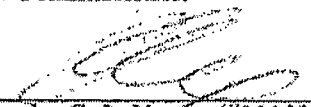
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III.

CONCLUSION

Judge Ochoa has already taken jurisdiction of the probate proceedings and has entered orders in the same. Moreover, this Department has not been appointed by the Chief Judge to handle probate cases. Accordingly, this Department should defer all matters relating to the Estate of James Allen McNamee to Judge Ochoa and the Probate Commissioner.

Dated this 16th day of February, 2018.


Alexander G. LeVeque (#11183)
Brian P. Eagan (#9395)
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

-and-

James P.C. Silvestri (#3603)
Jeffrey J. Orr (#7854)
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101

*Attorneys for the Special Administrator for
the Estate of James Allen McNamee*

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SOLAW.COM

 SOLOMON
DWIGGINS & FREER
ATTORNEYS

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2018, a true and correct copy of the foregoing **SPECIAL ADMINISTRATOR'S BRIEF CONCERNING THE PROBATE COURT'S EXCLUSIVE JURISDICTION OVER THE ESTATE OF JAMES MCNAMEE** was served by the following method(s):

☒ **Electronic:** by submitting electronically for filing and/or service with the Eighth Judicial District Court's Odyssey eFileNV Electronic Filing system and serving all parties with an email address on record, as indicated below, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R. That date and time of the electronic proof of service in place of the date and place of deposit in the U.S. Mail.

Corey M. Eschweiler, Esq.
Craig A. Henderson, Esq.
Joshua Benson, Esq.
GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
Las Vegas, Nevada 89147
Email: ceschweiler@glenlerner.com
chenderson@glenlerner.com
jbenson@glenlerner.com

-and-

Lee D. Roberts, Esq.
WEINBERG WHEELER HUDGINS GUNN & DIAL
6385 South Rainbow Boulevard, Suite 400
Las Vegas, Nevada 89118
Email: lroberts@wwhgd.com

Attorneys for Plaintiffs

Janine C. Prupas, Esq.
Justin L. Carley, Esq.
SNELL & WILMER L.L.P.
50 West Liberty Street, Suite 510
Reno, Nevada 89501
Email: jprupas@swlaw.com
jcarley@swlaw.com

Attorneys for GEICO


An Employee of Solomon Dwiggin & Freer, Ltd.

EXHIBIT "A"

Steven D. Grierson

1 PET
2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 PYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NEVADA

P-17-093041-E

10 In the Matter of the Estate of James Allen) Case No.: PC-1
11 McNamee, Deceased) Dept No.:
12)
13)
14)
15)

16 PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

17 1. Petitioner, Susan Clokey, by and through her attorney, Jeffrey J. Orr, Esq., of
18 the law firm of Pyatt Silvestri, (hereinafter "Petitioner"), alleges and shows as follows:

19 2. Petitioner files this request pursuant to Nevada Revised Statutes 140(2)(a) and
20 140(3)(b), and requests this Court enter an Order authorizing the appointment of a Special
21 Administrator over the estate of James Allen McNamee, (hereinafter "Decedent").

22 3. Petitioner is a resident of the State of Nevada, and is employed at the law firm of
23 Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

24 4. Decedent, James Allen McNamee, died on August 12, 2017. A certified copy of
25 Decedent's death certificate is attached as Exhibit A.

26 5. The Decedent was at the time of death a defendant in a pending civil action,
27 *Bianchi et. al v. James Allen McNamee*, Case No. A-13-691887-C. This case is set for trial
28 beginning September 25, 2017 before the Honorable Judge, Douglas Smith in Dept. VIII.

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-4941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 353-6000 FAX (702) 477-0668

1 6. Petitioner has conducted a search of assets for James Allen McNamee,
2 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
3 to satisfy any judgment other than an automobile insurance policy with GEICO. That
4 insurance policy, GEICO policy #4180457162 provides automobile liability insurance
5 coverage of \$30,000 per person and \$60,000 per accident.

6 7. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No.
7 A-13-691887-C to continue and substitute the real party in interest, the Special
8 Administrator.

9 8. Petitioner is willing to act as Special Administrator of the estate to defend *Bianchi*
10 *et. al. v. McNamee*, Case No. A-13-691887-C.


11 9. Petitioner has never been convicted of a felony. Petitioner is qualified under
12 NRS 139.010 to serve as Special Administrator of the Estate.

13 10. The sole purpose of this petition is to allow *Bianchi et. al. v. McNamee*, Case No.
14 A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance
15 policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner
16 intends to defend that action as the real party in interest.

17 WHEREFORE, Petitioner prays that a Special Administrator of the Estate of James
18 Allen McNamee, be appointed to defend Case No. A-13-691887-C, to be substituted as the
19 real party in interest Case No. A-13-691887-C for the sole purposes noted in
20 NRS140.040(2)(a) and 140.040(3)(b).

21 DATED this 20 day of September, 2017.

22 Respectfully submitted,

23
24 
25 Jeffrey J. Orr, Esq.
26 Nevada Bar No. 7854
27 PYATT SILVESTRI
28 701 Bridger Avenue
Suite 600
Las Vegas, NV 89101
Attorney for Petitioner,
Special Administrator Susan Clokey

PHYLL SILVERSTEIN
APPROPRIATE LAW CORPORATION
7811 UNIVERSITY AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-0591
PHONE (702) 383-6000 FAX (702) 677-0068

VERIFICATION IN SUPPORT OF
PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

STATE OF NEVADA }
COUNTY OF CLARK } ss

Susan Clokey, being first duly sworn, declares under penalty of perjury under the law of the State of Nevada that the foregoing and following is true and correct:

I am the Petitioner in the above-entitled action. I have read the foregoing Petition for Special Letters of Administration, and know the contents thereof. The Petition is true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

DATED this 28th day of September, 2017.


Signature

Susan Clokey

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-3541
PHONE (702) 363-6800 FAX (702) 477-0888

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EXHIBIT A

(Death Certificate)

State File NO. 102- 2017-035221

DATE ISSUED: 09/19/2017



PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGES AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6088 FAX (702) 477-8888

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EXHIBIT B

(Nominations and/or Affidavits in Support of Petition)

AFFIDAVIT OF SUSAN CLOKEY
IN SUPPORT OF PETITION FOR SPECIAL LETTERS
OF ADMINISTRATION

STATE OF NEVADA)
)ss
COUNTY OF CLARK)


SUSAN CLOKEY, being first duly sworn, under oath, deposes and says that:

1. I am employed with the law firm of Pyatt Silvestri located at 701 Bridger Avenue, Suite 600, Las Vegas, Nevada 89101;
2. That I am familiar with Case No. A-13-691887-C entitled *Bianchi et al. v. James McNamee* in Department VIII. The matter is set for trial on September 25, 2017.
3. Due to the death of James Allen McNamee, I make this request pursuant to NRS 140.040(2)(a) and NRS 140.040(3)(b) to allow the Special Administrator to be substituted as the real party in interest and to defend that action.
4. That I have reviewed an asset search for James Allen McNamee and upon information and belief, his estate contains no assets.
5. That James McNamee had an automobile insurance policy with GEICO, policy #4180457162 which provides liability coverage in the amount of \$30,000 per person and \$60,000 per accident.
6. The sole purpose of the appointment of the Special Administrator is to allow the Special Administrator to defend that action and to be substituted as the real party in interest.


///

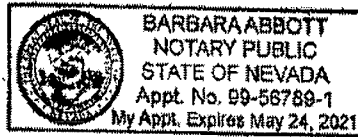
1 7. I declare under penalty of perjury that the foregoing is true and correct and
2 this affidavit is executed this 28th day of September, 2017.

3 FURTHER AFFIANT SAYETH NAUGHT.

4
5 
6 SUSAN CLOKEY

7 SUBSCRIBED AND SWORN to before me
8 this 20th day of September, 2017.

9 
10 NOTARY PUBLIC, in and for
11 said County and State.



PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE - SUITE 600
LAS VEGAS, NEVADA 89101-3941
PHONE (702) 383-6000 FAX (702) 477-0988

1 Jeffrey J. Orr, Esq.
2 Nevada Bar No. 7854
3 PYATT SILVESTRI
4 701 Bridger Avenue
5 Suite 600
6 Las Vegas, NV 89101
7 T. (702) 383-6000
8 jorr@pyattsilvestri.com
9 Attorney for Petitioner
10 Special Administrator, Susan Clokey

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA


In the Matter of the Estate of James Allen) Case No.: PC-1
McNamee, Deceased) Dept No.:
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)

NOMINATION OF SPECIAL ADMINISTRATOR

I, Jeffrey J. Orr, Esq., whose address is 701 Bridger Avenue, Suite 600, Las Vegas, Nevada 89101 declare under penalty of perjury that I hereby nominate Susan Clokey, who works at Pyatt Silvestri located at 701 Bridger Avenue, Suite 600, Las Vegas, Nevada 89101, to serve as Special Administrator of the Estate of James Allen McNamee.

DATED this 20 day of September, 2017.

Respectfully submitted,



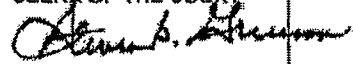
Jeffrey J. Orr, Esq.
Nevada Bar No. 7854
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, NV 89101
T. (702) 383-6000
Attorney for Petitioner
Special Administrator, Susan Clokey

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0086

EXHIBIT “B”

ORIGINAL

Electronically Filed
11/16/2017 4:41 PM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDER**
2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 **FYATT SILVESTRI**
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the Matter of the Estate of James Allen) Case No.: P-17-093041-E
11 McNamee, Deceased) Dept No.: S
12)
13)
14)
15)

16 **ORDER GRANTING**
17 **PETITION FOR SPECIAL LETTERS OF ADMINISTRATION**

18 Upon submission of the Petition for Special Letters of Administration, representing
19 as follows:

20 1. That Decedent, James Allen McNamee died on the 12th day of August, 2017, in
21 the County of Mohave, State of Arizona.

22 2. That Decedent was a resident of Mohave County, Arizona, at the time of his
23 death.

24 3. That at the time of Decedent's death, Decedent was a Defendant in a personal
25 injury lawsuit, *Bianchi et. al v. James Allen McNamee*, Eighth Judicial District Court, Clark
26 County, Nevada Case No. A-13-591887-C.

27 4. Petitioner has conducted a search of assets for James Allen McNamee,
28 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
to satisfy any judgment other than an automobile insurance policy with GEICO. That

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-3941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-1641
PHONE (702) 383-5003 FAX (702) 477-0038

1 insurance policy, GEICO policy #4180457162 provides automobile liability insurance
2 coverage of \$30,000 per person and \$60,000 per accident.

3 5. Petitioner is a resident of the State of Nevada, and is employed at the law firm of
4 Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

5 6. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No.
6 A-13-691887-C to continue and substitute the real party in interest, the Special
7 Administrator.

8 7. Petitioner is willing to act as Special Administrator of the estate to defend
9 *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C.

10 8. Petitioner has never been convicted of a felony. Petitioner is qualified under
11 NRS 139.010 to serve as Special Administrator of the Estate.

12 NOW, THEREFORE, IT IS HEREBY ORDERED that Susan Clokey is appointed as
13 Special Administrator and that Special Letters of Administration be issued, without bond,
14 pursuant to Nevada Revised Statutes 140(2)(a) and 140(3)(b).

15 The sole purpose of this order is to allow *Bianchi et. al. v. McNamee*, Case No.
16 A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance
17 policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner
18 intends to defend that action as the real party in interest.

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1 The Special Administrator does not have any other authority beyond Nevada
2 Revised Statutes 140(2)(a) and 140(3)(b) and may not distribute any property other than the
3 GEICO automobile insurance policy with automobile liability insurance coverage of \$30,000
4 per person and \$60,000 per accident.

5 Any funds will be held in a blocked account or attorney trust account.

6 IT IS FURTHER ORDERED that the settlement of the decedent's lawsuit is subject to
7 this court's approval.

8 DATED this 15th day of ^{NOV.} ~~October~~ 2017.

Vincent Ochoa

DISTRICT COURT JUDGE *sa*

11 Submitted by:

12 *[Signature]*
13
14 Jeffrey J. Orr, Esq.
15 Nevada Bar No. 7854
16 PYATT SILVESTRI
17 701 Bridger Avenue, Suite 600
18 Las Vegas, NV 89101
19 T. (702) 383-6000
20 jorr@pyattsilvestri.com
21 Attorney for Petitioner,
22 Special Administrator Susan Clokey
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PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-4941
PHONE (702) 383-6000 FAX (702) 477-0088

EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in

NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or
(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86] – (NRS A 1971, 647; 1983, 668; 1999, 2276)

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BODICEA AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-5841
PHONE (702) 383-6000 FAX (702) 477-0888

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 10th day of November, 2017, I caused the above ORDER GRANTING PETITION FOR SPECIAL LETTERS OF ADMINISTRATION, to be served pursuant to NRCP 5(b) to be electronically served through the *Eighth Judicial District Court's electronic filing system* and via U.S. Mail to the following party listed below:

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of FYATT SILVESTRI

EXHIBIT "C"

ORIGINAL

Electronically Filed
2/7/2018 4:26 PM
Steven D. Grierson
CLERK OF THE COURT



1 Jeffrey J. Orr, Esq.
2 Nevada Bar No. 7854
3 PYATT SILVESTRI
4 701 Bridger Avenue, Suite 600
5 Las Vegas, Nevada 89101
6 T. (702) 383-6000
7 F. (702) 477-0088
8 jorr@pyattsilvestri.com

9 *Attorney for Susan Clokey,*
10 *Special Administrator*

11 EIGHTH JUDICIAL DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 In the Matter of the Estate of
14 JAMES ALLEN MCNAMEE,

15 Deceased.

16 Case No.: P-17-093041-E
17 Dept. No.: S

18 LETTERS OF SPECIAL ADMINISTRATION

19 On the 16th day of November, 2016, the Court entered an ORDER GRANTING PETITION FOR
20 SPECIAL LETTERS OF ADMINISTRATION ("Order"). The Order appoints Susan Clokey as
21 Special Administrator and legal representative of the Estate of JAMES ALLEN MCNAMEE,
22 Decedent. The Order includes:

- 23 ■ A directive for no bond;
24 □ A directive that all liquid assets be held in the Solomon Dwiggins & Freer, Ltd. Attorney Client
25 Trust Account;
26 □ A directive for the posting of a bond in the sum of \$_____; or
27 □ A directive for the establishment of a blocked account.

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1 The Special Administrator, having duly qualified, may act and have the authority and duties of
2 Special Administrator as set forth in such Order.

3 In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

4 STEVEN D. GRIERSON, CLERK OF COURT

5 By: 

6 Deputy Clerk

7 Date

VIVIAN A. CANELA

8 Respectfully Submitted by:

9 PYATT SILVESTRI

10 By: 

11 Jeffrey A. Orr, Esq.
12 Nevada Bar No. 7854
13 701 Bridger Avenue, Suite 600
14 Las Vegas, Nevada 89101
15 T. (702) 383-6000
16 F. (702) 477-0088
17 jorr@pyattsilvestri.com
18 Attorney for Susan Clokey,
19 Special Administrator
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Executed this 7th day of February, 2018.

18. 
SUSAN CLOKEY

COUNTY OF CLARK

५३.

Barbara Abbott

NOTARY PUBLIC, in and for said
State and County

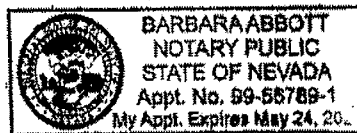


EXHIBIT “D”

Electronically Filed
1/3/2018 2:27 PM
Steven D. Grierson
CLERK OF THE COURT



1 PET

Corey M. Eschweiler, Esq.

2 Nevada Bar No. 6635

Craig A. Henderson, Esq.

3 Nevada Bar No. 10077

Joshua L. Benson, Esq.

4 Nevada Bar No. 10514

GLEN LERNER INJURY ATTORNEYS

5 4795 South Durango Drive

Las Vegas, Nevada 89147

6 Telephone: (702) 877-1500

Facsimile: (702) 933-7043

7 E-mail: ceschweiler@glenlerner.com

chenderson@glenlerner.com

8 Lee D. Roberts, Esq.

9 Nevada Bar No. 8877

WEINBERG WHEELER HUDGINS GUNN & DIAL

10 6385 South Rainbow Blvd., Suite 400

Las Vegas, NV 89118

11 Telephone: (702) 938-3838

Facsimile: (702) 938-3864

12 Email: LRoberts@wwhgd.com

13 *Attorneys for Petitioners Glenn Bianchi*

and Dara Del Priore

14 EIGHTH JUDICIAL DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 In the matter of the Estate of JAMES ALLEN
17 MCNAMEE, Deceased.

CASE NO.: P-17-093041-E

DEPT NO.: PC-1

18
19 PETITION FOR ISSUANCE OF
20 GENERAL LETTERS OF
21 ADMINISTRATION AND FOR
22 APPOINTMENT OF *CUMIS* COUNSEL
23 FOR THE ESTATE OF JAMES ALLEN
24 McNAMEE

Date of Hearing:

Time of Hearing:

25 ///

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28

1 policy, the Estate must be generally administrated. Further, because of the actual conflict of interest
2 that exists between the Estate of James Allen McNamee and GEICO, the Estate is entitled to *Cumis*
3 counsel at GEICO's expense, to advise the Estate of its rights against GEICO. *See State Farm v.*
4 *Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338, 341 (Sep. 24, 2015). Otherwise, the interests of the
5 Estate will continue to be placed behind the financial interests of GEICO.

6 II. FACTS

7 A. Background of the underlying negligence litigation.

8 On July 17, 2013, decedent James Allen McNamee, was driving a Ford van on East Sahara
9 Avenue approaching a red light at the intersection of Sahara and McLeod. Decedent failed to slow
10 the van in time and the van crashed into the rear of a Nissan Pathfinder that was stopped at the red
11 traffic signal. The Nissan Pathfinder was driven by Petitioner Gianni Bianchi. Petitioner Dara
12 DelPriore occupied the front passenger seat of the Nissan. Both Gianni and Dara suffered severe
13 injuries in the collision.

14 B. GEICO has exposed decedent's estate to excess liability.

15 At the time of the July 17, 2013, collision, decedent was covered by an automobile liability
16 insurance policy issued by GEICO, policy number 4180457162. *See* Petition for Letters of Special
17 Administration, at 2 ¶ 6, filed with this Court Sep. 20, 2017. The GEICO policy provided decedent
18 with liability insurance coverage of \$30,000 per person up to \$60,000 per occurrence. *Id.* Since the
19 collision on July, 2013, decedent's automobile liability insurer, GEICO, has repeatedly refused to
20 settle Gianni and Dara's claims within decedent's policy limits, despite knowing Gianni and Dara's
21 damages far exceed the \$30,000 per person liability insurance coverage. By way of brief
22 background:

23 • On October 25, 2013, Gianni and Dara each served GEICO with a demand requesting
24 decedent's \$30,000 per person policy limit in exchange for a release of all claims against
25 decedent. At the time, Gianni had incurred \$10,707.78 in medical bills and was
26 recommended for pain management medical treatment at an estimated cost of \$12,050. Dara
27 had incurred \$10,797.25 in medical bills and had also been recommended for pain
28 management treatment at an estimated cost of \$12,050. GEICO did not tender decedent's
policy limits. Gianni and Dara, then, proceeded with the recommended injections.

1 • On November 19, 2013, Gianni and Dara sued decedent for damages arising out of the July
2 17, 2013, crash. *See Bianchi and Del Priore v. James McNamee*, Case Number A-13-
691887-C, Eighth Judicial District Court, Clark County, Nevada.

3 • On April 3, 2014, decedent served Dara, only, with an offer to settle in the amount of
4 \$30,000. Dara rejected this offer, as her medical bills, alone, totaled \$36,214.35. Shortly
5 thereafter, Gianni and Dara's counsel advised GEICO to appoint separate counsel to advise
6 decedent of his potential bad faith claim against GEICO. Less than three months later,
decedent filed a substitution of attorney retaining new, outside counsel (the Pyatt Silvestri
law firm).

7 • By spring of 2015, Gianni's medical bills had increased to \$329,494, including the cost of
8 the spinal surgery Gianni's doctor recommended. This, in addition to \$348,948 for Gianni's
9 future medical care; \$277,832 for Gianni's loss of household services; and \$1,867,000 for
10 Gianni's loss of enjoyment of life -- a total of more than \$2,800,000 in damages.
Consequently, on April 21, 2015, Gianni served McNamee with an offer to settle for
\$435,000. Decedent did not accept Gianni's offer.

11 • Also by Spring, 2015, Dara's medical bills had increased to \$93,980. This, in addition to
12 \$296,537 in lost wages; \$384,361 in loss of household services; and \$1,700,000 in loss of
13 enjoyment of life -- a total of more than \$2,470,000 in damages. On April 21, 2015, Dara
14 served decedent with an offer to settle in the amount of \$345,000. Decedent did not accept
the offer.

15 In other words, despite knowing Gianni and Dara's medical special damages were going to exceed
16 decedent's policy limits, GEICO refused to pay the policy to petitioners.

17 **C. GEICO admits Petitioners' damages exceed decedent's liability insurance
coverage.**

18 By July, 2015, Gianni's total damages had increased to \$2,850,136.97, including \$356,306 in
19 medical special damages alone. Dara's total damages had increased to \$2,481,097, including
20 \$99,280 in medical special damages. On July 13, 2015, decedent offered to settle Gianni and Dara's
21 claims, each for an amount in excess of McNamee's automobile liability insurance policy limit.¹
22 Petitioners rejected these offers that did not even compensate them for their medical special
23 damages. The two offers are critical, however, because through the offers, GEICO admitted
24 the value of Gianni and Dara's claims exceed decedent's \$60,000 of insurance coverage. Put
25 differently, GEICO has already admitted the Estate of James Allen McNamee will be exposed
26

27
28 ¹ Defendant's written offers to Plaintiffs and Plaintiffs' written correspondence to Defendant's counsel's insurer will be
provided to the court for in camera review upon request.

1 to excess liability as a result of GEICO's bad faith refusal to compromise Petitioners' claims
2 for the policy limits.

3 **D. Decedent died before Petitioners' claims went to trial in the Eighth Judicial**
4 **District Court.**

5 On September 20, 2017, decedent's counsel in the *Bianchi v. McNamee* litigation, Pyatt
6 Silvestri, served a Suggestion of Death on the Record indicating decedent had passed on August 12,
7 2017. See Suggestion of Death Upon the Record, attached as Ex. 1-A; see also Death Certificate,
8 attached as Ex. 1-B. This, five days before Giann and Dara's negligence claims against decedent
9 were scheduled to proceed to trial on September 25, 2017, in the Eighth Judicial District Court. The
10 District Court trial in *Bianchi v. McNamee* has since been continued to April 16, 2018.

11 **E. GEICO sought appointment of a special administrator.**

12 Also on September 20, 2017, Pyatt Silvestri filed a Petition for Special Letters of
13 Administration. The Petition sought to have Susan Clokey, an employee of Pyatt Silvestri,
14 appointed as the Special Administrator of the Estate of James Allen McNamee based on Pyatt
15 Silvestri's representations to this Court that "the Estate of James Allen McNamee has no assets to
16 satisfy any judgment other than an automobile policy with GEICO [providing] automobile liability
17 insurance coverage of \$30,000 per person and \$60,000 per accident." See Petition for Letters of
18 Special Administration, at 2 ¶ 6, filed with this Court Sep. 20, 2017.

19 **F. A general administrator must be appointed.**

20 To the contrary, based on GEICO's failure to settle Giann and Dara's claims within
21 decedent's policy limits, GEICO, admittedly, has exposed the Estate of James Allen McNamee to
22 liability in excess of decedent's \$60,000 liability insurance policy. In other words, the Estate of
23 James Allen McNamee has causes of action against GEICO for, *inter alia*, breach of contract and
24 tortious breach of the implied covenant of good faith and fair dealing. As important, there exists,
25 and has existed for some time, an actual conflict of interest between GEICO and the Estate of James
26 Allen McNamee, both of whom are currently represented by the same law firm, Pyatt Silvestri. See
27 *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338, 340 (Sep. 24,

1 2015) (“Nevada, in contrast, is a dual-representation state: Insurer-appointed counsel represents both
2 the insurer and the insured.”)

3 It is patently obvious that Pyatt Silvestri is not representing the interests of the Estate of
4 James Allen McNamee, including failing to advise the Estate of its excess liability and failing to
5 advise the Estate or even this Court, regarding the Estate’s bad faith rights against GEICO. See
6 Petition for Letters of Special Administration, at 2 ¶ 6, filed with this Court Sep. 20, 2017 (“the
7 Estate of James Allen McNamee has no assets to satisfy any judgment other than an automobile
8 policy with GEICO [providing] automobile liability insurance coverage of \$30,000 per person and
9 \$60,000 per accident”). Consequently, Petitioners’ counsel sent Pyatt Silvestri a second letter on
10 November 8, 2017, advising them of these developments and that the Estate of James Allen
11 McNamee is entitled to separate counsel. Petitioners’ counsel has received no response to the letter.

12 **G. The special administrator must be removed and separate *Cumis* counsel**
13 **appointed for the Estate of James Allen McNamee.**

14 This Court, having not been fully apprised of the facts and circumstances surrounding the
15 Estate’s liability to Glenn and Dara, or the true nature of the Estate’s assets, granted the petition and
16 issued an Order Granting Petition for Special Letters of Administration to Susan Clokey. See Nov.
17 16, 2017, Order Granting Petition for Special Letters of Administration, on file with this Court. The
18 purpose of this petition, therefore, is (1) appoint the Clark County Public Administrator John J.
19 Cahill, as the general administrator of the Estate of James Allen McNamee, and (2) order the
20 retention by GEICO of *Cumis* counsel for the Estate of James Allen McNamee pursuant to the
21 Nevada Supreme Court’s holding in *State Farm v. Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338,
22 341 (Sep. 24, 2015).

23 **III. ARGUMENT**

24 **A. A general administrator must be appointed to administer decedent’s estate.**

25 Pursuant to NRS 140.040(3)(b), a special administrator is not liable “[f]or any claim against
26 the decedent except a claim involving wrongful death, personal injury or property damage if the
27 estate contains no assets other than a policy of liability insurance.” NRS 140.040(3)(b) (emphasis
28

1 added). As the Nevada Supreme Court has made clear, however, this statute is applicable only
2 when the estate's sole asset is a liability insurance policy:

3 [A]fter the 1971 amendment, NRS 140.040(3) permits the special administrator to
4 pay wrongful death, personal injury, and property damage claims when the
5 estate's only asset is a liability insurance policy. NRS 140.040(3) promotes
6 judicial economy and efficient resolution of claims by enabling a plaintiff with
7 such claims to avoid lengthy, costly, formal probate procedures when the sole
8 asset is a liability insurance policy.

9 *Jacobson v. Estate of Clayton*, 121 Nev. 518, 522, 119 P.3d 132, 134 (2005). If, however, the estate
10 has other assets, or the claim exceeds the insurance coverage and will diminish the estate, the estate
11 must be administered by a general administrator:

12 The claim procedure specified by ch. 147 must be followed whenever the estate of
13 the deceased may be diminished if the creditor is successful. This, of course,
14 might happen in a wrongful death action against the estate of a deceased
15 tortfeasor. The loss for which damages are claimed may not be covered by
16 liability insurance. If covered, the insurance limits might prove to be inadequate.
17 In either instance the estate is diminished if the claimant is successful.

18 *Bodine v. Stinson*, 85 Nev. 657, 661, 461 P.2d 868, 871 (1969) (superseded by statute on other
19 grounds as explained in *Jacobson v. Estate of Clayton*, 121 Nev. 518, 522, 119 P.3d 132, 134
20 (2005)). Here, Giann and Dara's negligence claims against decedent exceed the available liability
21 insurance and will diminish the Estate. Furthermore, the Estate of James Allen McNamee has assets
22 above and beyond the \$60,000 liability insurance policy issued by GEICO, i.e., claims for breach of
23 contract and tortious breach of the implied covenant of good faith and fair dealing against GEICO.
24 Consequently, special administration of the McNamee Estate is not authorized by the special
25 administrator statutes. *Id.*

26 **B. The Estate of James Allen McNamee possesses claims for insurance bad faith
27 against GEICO.**

28 It is well settled that:

Nevada law recognizes the existence of an implied covenant of good faith and fair
dealing in every contract. An insurer fails to act in good faith when it refuses
'without proper cause' to compensate the insured for a loss covered by the policy.
Such conduct gives rise to a breach of the covenant of good faith and fair dealing.
This breach or failure to perform constitutes 'bad faith' where the relationship
between the parties is that of insurer and insured.

1 See *Pemberton v. Farmers Ins. Exch.*, 109 Nev. 789, 792-93, 858 P.2d 380, 382 (1993) (internal
2 citations omitted). As the court has further explained, "[t]he law, not the insurance contract,
3 imposes this covenant on insurers. A violation of the covenant gives rise to a bad-faith tort claim.
4 This court has defined bad faith as an actual or implied awareness of the absence of a reasonable
5 basis for denying benefits of the [insurance] policy." See *Allstate Ins. Co. v. Miller*, 125 Nev. 300,
6 308, 212 P.3d 318, 324 (2009) (internal citations omitted); see also *United States Fld. & Guar. Co.*
7 *v. Peterson*, 91 Nev. 617, 619-20, 540 P.2d 1070, 1071 (1975) ("We approve and adopt the rule that
8 allows recovery of consequential damages where there has been a showing of bad faith by the
9 insurer. Where an insurer fails to deal fairly and in good faith with its insured by refusing without
10 proper cause to compensate its insured for a loss covered by the policy such conduct may give rise
11 to a cause of action in tort for breach of an implied covenant of good faith and fair dealing. The
12 duty violated arises not from the terms of the insurance contract but is a duty imposed by law, the
13 violation of which is a tort"). An insurer who fails to settle a claim in good faith and exposes its
14 insurer to excess liability is liable for the full amount of the judgment: "since the insurer has
15 reserved control over the litigation and settlement it is liable for the entire amount of a judgment
16 against the insured, including any portion in excess of the policy limits, if in the exercise of such
17 control it is guilty of bad faith in refusing a settlement." See *Comunale v. Traders & Gen. Ins. Co.*,
18 50 Cal. 2d 654, 660, 328 P.2d 198, 201 (1958) (emphasis added).² This case is no different.

19 **C. GEICO acted in bad faith when it exposed decedent and his estate to excess**
20 **liability.**

21 Petitioners provided GEICO with opportunities to compromise their negligence claims
22 against decedent for the \$60,000 liability insurance policy. GEICO refused. This, even when
23 GEICO was well aware the value of Giann and Dara's claims exceeded decedent's insurance
24 coverage:

25 Obviously, it will always be in the insured's interest to settle within the policy
26 limits when there is any danger, however slight, of a judgment in excess of those
27 limits. Accordingly the rejection of a settlement within the limits where there is
any danger of a judgment in excess of the limits can be justified, if at all, only on

28 ² "Nevada looked to California law when it established the implied covenant of good faith and fair dealing in the insurance context." See *Landow v. Medical Ins. Exch.*, 892 F. Supp. 239, 240 (D. Nev. 1995).

1 the basis of interests of the insurer, and, in light of the common knowledge that
2 settlement is one of the usual methods by which an insured receives protection
3 under a liability policy, it may not be unreasonable for an insured who purchases
4 a policy with limits to believe that a sum of money equal to the limits is available
5 and will be used so as to avoid liability on his part with regard to any covered
6 accident. In view of such expectation an insurer should not be permitted to further
7 its own interests by rejecting opportunities to settle within the policy limits unless
8 it is also willing to absorb losses which may result from its failure to settle.

9 *Crisci v. Sec. Ins. Co.*, 66 Cal. 2d 425, 430-31, 58 Cal. Rptr. 13, 17, 426 P.2d 173, 177 (1967).

10 Since then, GEICO has admitted Gianna and Dara's damages exceed decedent's insurance coverage
11 by extending settlement offers to both Giann and Dara, each, in amounts that exceed the available
12 insurance coverage. This confirms GEICO's bad faith:

13 whenever it is likely that the judgment against the insured will exceed policy
14 limits so that the most reasonable manner of disposing of the claim is a settlement
15 which can be made within those limits, a consideration in good faith of the
16 insured's interest requires the insurer to settle the claim. . . . Moreover, in deciding
17 whether or not to compromise the claim, the insurer must conduct itself as though
18 it alone were liable for the entire amount of the judgment. Thus, the only
19 permissible consideration in evaluating the reasonableness of the settlement offer
20 becomes whether, in light of the victim's injuries and the probable liability of the
21 insured, the ultimate judgment is likely to exceed the amount of the settlement
22 offer.

23 *Johansen v. Cal. State Auto. Ass'n Inter-Ins. Bureau*, 15 Cal. 3d 9, 16, 123 Cal. Rptr. 288, 292, 538
24 P.2d 744, 748 (1975). In this case, GEICO refused to tender decedent's insurance limits when
25 Giann and Dara's damages clearly exceeded \$60,000. Once Giann and Dara's medical bills did
26 exceed \$60,000, GEICO made a series of low ball offers concluding with offers to Giann, and Dara,
27 each in amounts that exceed the \$30,000 per-person insurance coverage available to decedent.
28 GEICO has always known the value of Giann and Dara's claims exceed decedent's policy limits,
and GEICO has always known the value of Giann and Dara's claims exceeded every settlement
offer GEICO has extended to Giann and Dara.

**D. Petitioners nominate the Clark County Public Administrator for appointment
as the general administrator of McNamee's Estate.**

Based on the foregoing, and pursuant to NRS 139.050 and NRS 139.040(g), Petitioners
nominate the Clark County Public Administrator John J. Cahill for appointment as general
administrator of the Estate of James Allen McNamee. *See* NRS 139.040(h) (authorizing "Creditors

1 who have become such during the lifetime of the decedent" to seek letters of general
2 administration); *see also* NRS 139.050 ("Administration may be granted upon petition to one or
3 more qualified persons, although not otherwise entitled to serve, at the written request of the person
4 entitled, filed in the court."). Mr. Cahill has not been convicted of a felony, is over the age of
5 majority, is a resident of the State of Nevada, and is otherwise qualified. *See* NRS 139.010(1)-(4).

6 This court has jurisdiction because James Allen McNamee left an estate that consists of, at a
7 minimum, the liability insurance policy issued by GEICO, and the Estate's potential bad faith
8 claims against GEICO. *See Bodine v. Stinson*, 85 Nev. 657, 659, 461 P.2d 868, 870 (1969) ("It is
9 well established that a deceased insured's potential right of exoneration under an insurance policy is
10 a sufficient estate to justify a grant of administration, and we think, satisfies the requirement of *In*
11 *re Dickerson's Estate*, 51 Nev. 69, 268 P. 769 (1928), that an estate exist before administration is
12 justified."). A listing of all of James Allen McNamee's known heirs is attached to this petition.³

13 **E. The Estate of James Allen McNamee has not been advised of its rights against**
14 **GEICO.**

15 The Nevada Supreme Court recently confirmed the applicability in Nevada of the California
16 Supreme Court's seminal decision in *San Diego Navy Federal Credit Union v. Cumis Insurance*
17 *Society, Inc.*, 162 Cal. App. 3d 358, 208 Cal. Rptr. 494, 506 (Ct. App. 1984). In *State Farm v.*
18 *Hansen*, the Nevada Supreme Court confirmed that "[b]ecause Nevada is a dual-representation
19 state, counsel may not represent both the insurer and the insured when their interests conflict and no
20 special exception applies. RPC 1.7. This suggests that the *Cumis* rule, where the insurer must
21 satisfy its contractual duty to provide counsel by paying for counsel of the insured's choosing, is
22 appropriate for Nevada." *See State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Rep. 74,
23 357 P.3d 338, 341 (Sep. 24, 2015). As the court further explained:

24 In sum, Nevada, like California, recognizes that the insurer and the insured are
25 dual clients of insurer-appointed counsel. Where the clients' interests conflict, the
26 rules of professional conduct prevent the same lawyer from representing both
clients. California's *Cumis* rule is well-adapted to this scenario. It requires

27 ³ The Division of Health Care Financing and Policy for the Department of Health and Human Services of the State of
28 Nevada filed a Waiver of Notice required by NRS 155.020 on October 18, 2017. *See* Waiver of Notice, on file with this
Court.

1 insurers to fulfill their duty to defend by allowing insureds to select their own
2 counsel and paying the reasonable costs for the independent counsel's
representation.

3 *Id.* Under NRPC 1.7(a)(1), "[a] concurrent conflict of interest exists if: The representation of one
4 client will be directly adverse to another client." Here, GEICO is obviously adverse to decedent's
5 Estate. While GEICO has admittedly exposed decedent's estate to excess liability giving rise to
6 causes of action for bad faith against GEICO, GEICO's counsel, Pyatt Silvestri, did not disclose
7 any of these critical facts to this Court when seeking appointment of a special administrator.
8 Instead, GEICO, in collusion with Pyatt Silvestri, represented to this Court that the "the Estate of
9 James Allen McNamee has no assets to satisfy any judgment other than an automobile policy with
10 GEICO," something that is clearly inaccurate. In reality, Pyatt Silvestri is only looking out for
11 GEICO's interests, and is clearly taking action to benefit GEICO in total disregard of the rights of
12 decedent's estate. Indeed, the Estate has not even been advised of its potential excess liability, its
13 potential bad faith claims against GEICO as a result of that excess liability, or the actual conflict of
14 interest between GEICO and the Estate. Because neither GEICO nor Pyatt Silvestri is properly
15 advising the Estate of James Allen McNamee of its rights against GEICO, and because there is an
16 actual conflict of interest between the insurer and the insured, the Estate is entitled to *Cumis*
17 counsel of its choosing at GEICO's expense.

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VI. CONCLUSION

For the reasons set forth above, Petitioners request that the Clark County Public Administrator John J. Cahill be issued letters of general administration over the Estate of James Allen McNamee. Petitioners further request an order from this Court requiring the appointment of separate counsel for the Estate of James Allen McNamee, to be chosen by the Estate and at the expense of the decedent's insurer, GEICO. *See State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Rep. 74, 357 P.3d 338, 341 (Sep. 24, 2015).

GLEN LERNER INJURY ATTORNEYS

By: /s/ Craig A. Henderson
Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Craig A. Henderson, Esq.
Nevada Bar No. 10077
4795 South Durango Drive
Las Vegas, NV 89147
(702) 877-1500
Attorneys for Plaintiffs

- 1
- 2
- 3
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1 Corey M. Eschweiler, Esq.
2 Nevada Bar No. 6635
3 Craig A. Henderson, Esq.
4 Nevada Bar No. 10077
5 Joshua L. Benson, Esq.
6 Nevada Bar No. 10514
7 GLEN LERNER INJURY ATTORNEYS
8 4795 South Durango Drive
9 Las Vegas, Nevada 89147
10 Telephone: (702) 877-1500
11 Facsimile: (702) 933-7043
12 E-mail: ceschweiler@glenlerner.com
13 chenderson@glenlerner.com
14

9 Lee D. Roberts, Esq.
10 Nevada Bar No. 8877
11 WEINBERG WHEELER HUDGINS GUNN & DIAL
12 6385 South Rainbow Blvd., Suite 400
13 Las Vegas, NV 89118
14 Telephone: (702) 938-3838
15 Facsimile: (702) 938-3864
16 Email: L.Roberts@wwhgd.com

17 *Attorneys for Petitioners Gianni Bianchi*
18 *and Dara Del Priore*

15 EIGHTH JUDICIAL DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 In the matter of the Estate of JAMES ALLEN
18 MCNAMEE, Deceased.

CASE NO.: P-17-093041-E
DEPT NO.: PC-1

LISTING OF ALL HEIRS

24 ///
25 ///
26 ///
27 ///
28 ///

1	Name	Relationship to Decedent	Age	Address
2	Robert McNamee	Father	Unknown	2472 230 th St.
3				Mahnomcn, MN
4	Other heirs unknown			56557-9034

GLEN LERNER INJURY ATTORNEYS

By: /s/ Craig A. Henderson

Corey M. Eschweiler, Esq.
Nevada Bar No. 6635
Craig A. Henderson, Esq.
Nevada Bar No. 10077
4795 South Durango Drive
Las Vegas, NV 89147
(702) 877-1500

WEINBERG WHEELER HUDGINS
GUNN & DIAL

Lee D. Roberts, Esq.,
Nevada Bar No. 8877
6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
*Attorneys for Petitioners Gianni Bianchi
and Dara Del Priore*

APPENDIX EXHIBIT 13

APPENDIX EXHIBIT 13

Steven D. Grierson

1 Brian P. Eagan
Nevada Bar No. 09395
2 Email: beagan@sdfnlaw.com
Alexander G. LeVeque
3 Nevada Bar No. 11183
Email: aleveque@sdfnlaw.com
4 SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
5 Las Vegas, Nevada 89129
Telephone: (702) 853-5483
6 Facsimile: (702) 853-5485

7 *Attorneys for GEICO and*
Susan Clokey, Special Administrator

8
Jeffrey J. Orr
9 Nevada Bar No. 07854
Email: jorr@pyattsilvestri.com
10 PYATT SILVESTRI
701 Bridger Avenue, Suite 600
11 Las Vegas, Nevada 89101
Telephone: (702) 383-6000
12 Facsimile: (702) 477-0088

13 *Attorneys for Susan Clokey,*
Special Administrator

14
15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 In the Matter of the Estate of

18 JAMES ALLEN MCNAMEE,

19
20 Deceased.

Case No.: P-17-093041-E
Dept. No.: PC-1

Date of Hearing: February 9, 2018
Time of Hearing: 9:30 a.m.

21 **OBJECTION TO PETITION FOR ISSUANCE OF GENERAL LETTERS**
22 **OF ADMINISTRATION AND FOR APPOINTMENT OF CUMIS**
23 **COUNSEL FOR THE ESTATE OF JAMES ALLEN MCNAMEE**

24 Petitioners, Giann Bianchi and Dara Del Priore (hereinafter "Petitioners"), requested relief
25 - to open a general administration for the purposes of administering a speculative bad faith personal
26 injury claim before such cause of action has even accrued - is wholly improper under both legal
27 and factual grounds. In so doing, Petitioners misread Nevada law to reach the conclusion that a
28 special administrator cannot defend a lawsuit when an estate has assets in the form of future legal
claims. Petitioners' position is, however, entirely misplaced because: (1) the purpose of a special

1 administrator is to act as the real party in interest in lawsuits involving an estate; and (2) Nevada
2 does not recognize a hypothetical, contingent and unripe claim for bad faith as an estate asset.
3 Moreover, Nevada law precludes this Court from initiating a general administration because James
4 Allen McNamee (hereinafter, "Decedent") died as a resident of Arizona without holding any
5 property in this State. Thus, this Court properly limited the instant proceeding to a special
6 administration for the sole purpose of allowing Petitioners to properly adjudicate their pending
7 claims against Decedent after his death.

8 Petitioners' claim that a removable conflict of interest exists should also be rejected by this
9 Court. There is no actual conflict of interest between GEICO and the Special Administrator. To the
10 contrary, GEICO and the Special Administrator are presently aligned and share an interest in
11 defending the Petitioners' tort claims, the primary duty of a special administrator under Nevada
12 law. Accordingly, the Petitioners' Petition should be denied and the special administration already
13 in place should be preserved to allow the Special Administrator to defend the Estate against the
14 Petitioners' pending lawsuit.

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I.

17 FACTUAL BACKGROUND

18 The instant probate matter stems from an action for negligence brought by Petitioners
19 against Decedent prior to his death. In July 2013, Decedent's vehicle and the vehicle driven by
20 Petitioners collided. On November 19, 2013, Petitioners initiated a lawsuit against Decedent for
21 personal injury damages allegedly caused by such collision. Such action is currently pending before
22 Department VIII of the Eighth Judicial District Court, Case No. A-13-691887-C (hereinafter, the
23 "MVA Lawsuit"), and is set on a five-week trial stack commencing April 16, 2018. GEICO is
24 Decedent's automobile liability insurer. During 2014 and 2015, Petitioners and Decedent
25 exchanged offers to settle; however, the Parties were ultimately unable to compromise Petitioners'
26 claims.

27 On August 12, 2017, Decedent died in and as a resident of in Mohave County, Arizona.
28 Decedent left no property in the State of Nevada. Because of the unresolved MVA Lawsuit, this



1 Court appointed Susan Clokey as the Estate's Special Administrator to substitute the Estate as the
2 real party in interest.¹ Ms. Clokey is an employee of Pyatt Silversetri, the Decedent's attorney in
3 the MVA Lawsuit. Counsel for Decedent then filed a motion to substitute the Special Administrator
4 as Defendant in the MVA Lawsuit in place and stead of Decedent. Petitioners opposed such motion
5 in the MVA Lawsuit and herein filed the instant Petition for Issuance of General Letters of
6 Administration and For Appointment of Cumis Counsel for the Estate of James Allen McNamee
7 (hereinafter, "Petition"). Ms. Cokey and GEICO now jointly oppose the Petition, with GEICO
8 making a special appearance herein for such purposes.²

9
10 **II.**

ARGUMENT

11 **A. The Current Special Administration is the Only Proper Probate Proceeding that**
12 **Applies to the Estate of James Allen McNamee.**

13 1. The Special Administrator's Sole Purpose is to Defend the MVA Lawsuit.

14 This Court properly limited the instant proceeding to a special administration initiated for
15 the sole purpose of adjudicating Petitioners' claims against Decedent's Estate. This Court has the

16
17 ¹ The Special Administrator's authority is limited to defending the MVA Lawsuit and distributing insurance
18 proceeds to Petitioners if they prevail at trial. Indeed, in establishing the special administration, on November
15, 2017, this Court entered the following orders:

19 The sole purpose of this order is to allow Bianchi et al. v. McNamee, Case No.
20 A-13-691887-C to proceed as to the insurance proceeds of the GEICO
21 automobile insurance policy pursuant to Nevada Revised Statutes
140.040(2)(a) and 140.040(3)(b). Petitioner intends to defend that action as the
22 real party in interest.

23 The Special Administrator does not have any other authority beyond Nevada
24 Revised Statutes 140(2)(a) [sic] and 140(3)(b) [sic] and may not distribute any
property other than the GEICO automobile insurance policy with automobile
liability insurance coverage of \$30,000 per person and \$60,000 per accident.

25 See Order Granting Special Letters of Administration, attached hereto as Exhibit A.

26 ² As a preliminary matter, the Petition is not properly before this Court as Petitioners failed to issue GEICO
27 a citation as required under NRS 155, *et seq.* Out of an abundance of caution, however, GEICO and the
28 Special Administrator hereby object to the Petition as it relates to Petitioners' request to initiate a general
administration and issue letters of administration. Janine C. Prupas, Esq., of the law firm of Snell & Wilmer
will be opposing Petitioners' request for the appointment of Cumis counsel on GEICO's behalf.



1 authority to appoint a special administrator in any proper case to exercise powers as may be
2 necessary for the estate's preservation. NRS 140.010. Such appointment may occur where, as here,
3 no assets are subject to administration, but good cause nevertheless exists for the appointment of a
4 personal representative of the decedent.³ NRS 140.010(6) and (7). A special administrator, at her
5 discretion, may, for all necessary purposes, defend actions and other legal proceedings as a personal
6 representative of the Estate. NRS 140.040(1)(b).

7 As a general rule, special administrators cannot accept, reject or negotiate creditor claims.
8 NRS 140.040(3). A general administration is necessary for such a procedure or an order from the
9 Court granting a special administrator such power. The exception to this rule is when an estate's
10 sole asset is a policy of liability insurance and a claim is made where such liability insurance would
11 cover the loss. NRS 140.040(3)(b).

12 Petitioners' argument that the Special Administrator cannot defend the MVA Lawsuit
13 because the Estate has another asset – namely, a speculative bad faith claim against GEICO – is
14 entirely misplaced. As an initial matter, defending a lawsuit and satisfying creditors are two separate
15 and distinct functions a personal representative performs. A special administrator is not divested of
16 his or her authority under NRS 140.040(1)(b) to defend a civil action as the personal representative
17 of the Estate if the Estate has more than one asset.⁴ That is not the purpose and effect of NRS
18 140.040(1)(b). Rather, its purpose is to permit a special administrator – who otherwise has no
19 powers to compromise and pay creditors – to pay a claim when such a claim would be satisfied
20 with proceeds from a liability insurance policy that covered the loss.⁵

21
22 ³ "Personal Representative" includes an executor, an administrator, a successor personal representative, a
23 special administrator and persons who perform substantially the same function under the law governing their
status. NRS 132.265.

24 ⁴ Indeed, NRS 140.140(2)(a) expressly authorizes a special administrator to "commence" and "maintain"
25 legal proceedings as the personal representative of the estate. How could a special administrator pursue an
asset of the estate through litigation if he or she is divested of power because the asset exists?

26 ⁵ Ironically, the Petitioners are attacking a statute that was enacted for their benefit. Indeed, as recognized
27 by the Nevada Supreme Court, NRS 140.040(3) promotes judicial economy and efficient resolutions of
28 claims by enabling a plaintiff with such claims to avoid lengthy, costly, formal probate procedures when the
sole asset is a liability insurance policy. *See Jacobsen v. Estate of Clayton*, 121 Nev. 518, 522, 119 P.3d 132,
134 (2005).

1 Moreover, the Petitioners' reliance on *Bodine* for the proposition that the Estate must be
2 converted to a general administration is misguided and otherwise misleading as it fails to account
3 for subsequently enacted law. Despite Petitioners' claim to the contrary, the entire *Bodine* decision
4 was superseded by NRS 140.040(3).⁶ Moreover, even if *Bodine* were good law, which it is not, it
5 merely stands for the proposition that "[t]he claim procedure specified by Ch. 147 must be followed
6 whenever the estate of the deceased may be diminished if the creditor is successful."⁷

7 First, the claim procedure is not necessary at this time. Second, even if it were necessary, a
8 special administrator can initiate such a procedure. The claim procedure involving notice to
9 creditors need not be followed under the current circumstances because, unlike in *Bodine*, the Estate
10 has no current assets that can be diminished by a creditor thereby rendering any notice to creditors
11 an exercise in futility. Indeed, the general administration procedure could only potentially be
12 beneficial to the Estate and its creditors if and when (1) the Petitioners successfully obtain a
13 judgment in the underlying MVA Litigation which creates excess liability for the Estate; and (2)
14 the Estate obtains a judgment against GEICO under an insurance bad faith theory.

15 Moreover, NRS 143.335, a statute enacted in 2011, further belies the Petitioners' argument
16 that a special administrator cannot exist when an estate has assets other than a policy of liability
17 insurance. NRS 143.335 provides: "[a] special administrator may be granted authority to administer
18 the estate pursuant to NRS 143.300 to 143.815, inclusive, if the special administrator is appointed
19 with, or has been granted, the power of a general personal representative." A special administrator
20 can, therefore, initiate a claims process and independently administer an estate if the Court so orders
21 it. Accordingly, this Court should summarily dismiss Petitioners' claims for want of any legal
22 support.

23 ///

24 ///

26 ⁶ See *Jacobsen*, 121 Nev. at 519, 119 P.3d at 132 (concluding that "*Bodine* is superseded by the Legislature's
27 1971 amendment of NRS 140.040 to specifically allow suits against a special administrator, in place of
probate proceedings, when the estate's sole asset is a liability insurance policy.") (emphasis added).

28 ⁷ See *Jacobsen*, 121 Nev. at 521, 119 P.3d at 134.

2. The Alleged Bad Faith Insurance Claim has Not Accrued and, Therefore, Cannot be a Basis to Establish a General Administration Where no Proper Basis Otherwise Exists.

Petitioners' allegation that the Estate has an interest in yet-to-be accrued bad faith claims does not somehow provide this Court with the jurisdiction to generally administer Decedent's Estate where no proper basis otherwise exists. As this Court is well aware, "[a] claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Texas v. United States*, 523 U.S. 296, 300, 118 S.Ct. 1257, 140 L.Ed.2d 406 (1998). In the case of Petitioners' purported claim for bad faith, such claim only ripens upon a determination that claimants suffered damages in excess of the benefits available under the controlling insurance policy and such determination is affirmed on appeal.⁸

Even if the Petitioners' erroneous interpretation of NRS 140.040(3)(b) were accepted by this Court, the purported bad faith claim is neither a claim nor an asset of the Estate. Petitioners have not even taken the MVA Lawsuit to trial yet. Petitioners still have to win and obtain judgments in excess of the policy limit of \$30,000.00 for even a prima facie "refusal to settle" claim to exist. Such claim would also require a showing that: (1) GEICO has no reasonable basis for disputing coverage; (2) GEICO knew or recklessly disregarded the fact that there was no reasonable basis for disputing coverage.⁹ The Court should then need to find that the damages sustained by Petitioners exceeded the limits available under the GEICO policy and the affirmation of such determination on appeal. This fact has been conceded by the Petitioners.¹⁰ Thus, as this matter has yet to even go to trial, absolutely no basis exists to establish a general administration at this time.

⁸ See *Branch Baking and Trust Co. v. Nevada Title Co.*, 2011 WL 1399810 (D.Nev.2011) (holding that a claim for insurance bad faith for denying a claim "without any reasonable basis" and with "knowledge that no reasonable basis exists to deny the claim" does not become ripe until after a determination of the underlying claim is final); *Western Nat. Ins. Group v. Halon*, 2017 WL 6614258 (D.Nev.2017) (distinguishing ripeness of an insurance bad faith claim and a legal malpractice claim); *Vest v. Travelers Ins. Co.*, 753 So.2d 1270, 1276 (Fla.2000) ("a cause of action in court for [bad faith] is premature until there is a determination of liability and extent of damages owed on the first-party insurance contract."); *Lausell v. GEICO*, 2017 WL 3720890 (M.D.Fla.2017) ("a claim for bad faith requires: (1) a determination of liability and (2) a judgment awarding damages in excess of the policy limits.").

⁹ See *Powers v. United Servs. Auto. Ass'n*, 114 Nev. 690, 730, 962 P.2d 596, 621 (1998).

¹⁰ See Petition at 11:7-8 ("James Allen McNamee left an estate that consist of...the Estate's potential bad faith claims against GEICO.") (emphasis added).



Moreover, in addition to the extreme unripeness of the alleged bad faith claim, Petitioners seem to forget that they have no standing to complain about the contractual relationship between GEICO and the Decedent. Indeed, Nevada law “does not recognize a right a right of action on the part of a third-party claimant against an insurance company for bad-faith refusal to settle.”¹¹ Thus, Petitioners – third parties to the relationship between the insurance and the insured -- have absolutely no standing to request that this Court open a general administration for the purposes of administering claims that can only be asserted by Decedent against GIECO.

B. This Court Lacks Jurisdiction to Administer the Estate of James Allen McNamee Because he was not a Nevada Resident at the Time of his Death and Died Without Holding any Property in the State of Nevada.

The initiation of a general administration is fundamentally improper because, at the time of this death, Decedent was not a Nevada resident and did not own any assets in this State as expressly required under Nevada law. NRS 132.275 defines “probate” as “a legal proceeding in which the court has jurisdiction to administer, pay out and distribute the assets of a decedent to the persons entitled to them, including devisees, heirs, creditors and others.” Nevada’s probate jurisdiction is set forth in NRS 136.010. Under that statute, Nevada district courts sitting in probate may hear and make rulings on cases where: (1) the decedent was a resident of Nevada at the date of death [NRS 136.010(1)]; or (2) the decedent was a non-resident but owns property located within the State of Nevada [NRS 136.010(2)].

The Decedent died on August 12, 2017, in Mohave County, Arizona.¹² At the time of his death, the Decedent was a resident of Arizona.¹³ Accordingly, this Court has no jurisdiction to entertain a general probate administration under NRS 136.010(1). Notwithstanding the Decedent being a resident of Arizona at the time of his death, this Court could still open a general probate administration if an interested party establishes that the Decedent died with property located within

¹¹ *AAA Nevada Ins. Co. v. Chau*, 463 Fed. Appx. 627, 628 (9th Cir. 2011) (unpublished) (citing *Tweet v. Webster*, 610 F.Supp. 104, 105 (D.Nev.1985) and *Hunt v. State Farm Mut. Auto. Ins. Co.*, 655 F.Supp. 284, 286–88 (D.Nev.1987)).

¹² See Ex. A at ¶¶ 1-2.

¹³ *Id.*



1 the State of Nevada.¹⁴ "Property" in this context is defined as "anything that may be the subject of
2 ownership, and includes both real and personal property and any interest therein." NRS 132.285.

3 The Petitioners argue that the Estate's nonexistent bad faith claim is "property" and,
4 therefore, a general probate administration is appropriate. For the reasons already explained, a
5 theoretical, unripe and contingent claim for bad faith is not property. You cannot own something
6 that does not exist.¹⁵ A general probate administration, therefore, is unavailable.

7 **C. There is no Conflict of Interest Between the Special Administrator and the Estate.**


8 As no conflict of interest presently exists between the Special Administrator and GEICO,
9 no grounds exist to disqualify Ms. Clokey from so serving. Only an actual conflict of interest can
10 justify disqualification of the Special Administrator. The suggestion of a potential conflict of
11 interest is not sufficient.¹⁶ The Estate and the Petitioners are adverse; the Petitioners are suing the
12 Estate's personal representative for tort damages. GEICO and the Estate are presently aligned: they
13 both have an interest in defending the Petitioners' claim for more than \$5.27 million of damages
14 allegedly caused by the Decedent in the MVA Litigation. There is no present conflict between
15 GEICO and its insured.

16
17
18 ¹⁴ NRS 136.010(2) states that "[t]he estate of a nonresident decedent may be settled by the district court of
19 any county in which any part of the estate is located." "'Estate' includes the property of the decedent or trust
20 whose affairs are subject to [Title of the NRS] as it is originally constituted and as it exists from time to time
during administration." NRS 132.120.

21 ¹⁵ Moreover, an estate that has no assets cannot be damaged by an insurer that fails to protect the interests
22 of the estate. See *McDaniel v. GEICO*, 55 F.Supp.3d 1244 (E.D.Cal.2014) ("an insolvent estate that becomes
23 subject to an excess judgment due to the insurer's unreasonable refusal to settle has no bad faith claim
because the estate has no interests to be damaged.") (reversed in part on unrelated grounds) (citing *Shapero*
v. Allstate, 14 Cal.App.3d 433, 92 Cal.Rptr. 244 (1971)).

24 ¹⁶ See e.g. *Frank Seitelmeier & Sons, Inc. v. Smith & Harmer, Ltd.*, 124 Nev. 1206, 197 P.3d 1051, n. 33
25 (2008) (declining to disqualify an attorney because a suggestion of a potential conflict was not sufficient);
26 *State Farm v. Hansen*, 131 Nev. Adv. Op. 74, 357 P.3d 342-43 ("The *Cumis* rule is not based on insurance
27 law but on the ethical duty of an attorney to avoid representing conflicting interests. For independent counsel
28 to be required, the conflict of interest must be significant, not merely theoretical, actual, not merely
potential.") (quotations omitted); *In re Shaw*, 186 A.D. 809, 589 N.Y.S.2d 97 (1992) ("A potential conflict
of interest between a fiduciary and a party interested in the estate does not warrant the denial of letter to, or
removal of, a fiduciary. Rather, it is the actual misconduct, not a conflict of interest, that justifies the removal
of a fiduciary.") (quotations omitted).

3040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNVIAV.COM

SOLOMON
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TRUST AND ESTATE ATTORNEYS


1 Petitioners claim that a hypothetical, unripe and contingent bad faith claim that the Estate
2 may have against GEICO divests the Special Administrator of her ability aggressively defend the
3 MVA Lawsuit. This is nonsensical. At best, the Special Administrator has a potential conflict of
4 interest which only becomes actual if and when (1) the Petitioners obtain judgments in excess of
5 the policy limits in the MVA Litigation which are upheld on appeal; and (2) the Estate has assets
6 other than the potential bad faith claim, which it does not.

7 Again, the Petitioners are putting the cart before the horse. The Special Administrator has
8 no actual conflict of interest with the Estate. If anything, under the Petitioners' theory of conflict,
9 the Estate and GEICO share the goal of defending the Petitioners' claim for damages. The Estate's
10 primary interest is to minimize and/or eliminate creditor claims for the benefit of beneficiaries;
11 GEICO's primary interest is also to minimize and or eliminate the Petitioners' claim for damages
12 because it will have to pay at least a portion of such claim if adjudicated in the Petitioners' favor.

13 The elephant in the room is the Petitioners' end-game: to seek the assignment of the
14 purported bad faith claim from the Estate because Nevada law prohibits a right of action on the part
15 of a third-party claimant against an insurance company for bad-faith refusal to settle. Petitioners,
16 however, have a lot of hurdles to jump over before there is an assignable claim, the highest of which
17 is convincing this Court that Nevada should not follow *McDaniel and Shapero* which hold that a
18 "refusal to settle" bad faith claim does not exist when an estate has no assets that are subject to
19 creditors.

20 The conflicts complained of by the Petitioners are potential and highly speculative.
21 Accordingly, the Special Administrator should not be removed and replaced by the Public
22 Administrator. Moreover, the Petitioners are asking this Court for Clark County and its taxpayers
23 to shoulder the expense of hiring the Public Administrator because there are no assets in the Estate
24 to pay the Public Administrator. Indeed, the current special administration is being paid for
25 voluntarily by GEICO in order to properly dispense the Estate's duty to substitute in as the real
26 party of interest as a result of Decedent's death.

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III.

CONCLUSION

WHEREFORE, GEICO and the Special Administrator respectfully request that the Court deny Gianni Bianchi and Dara Del Priore's Petition for Issuance of General Letters of Administration and for Appointment of *Cumis* Counsel for the Estate of James Allen McNamee in its entirety.

DATED January 24, 2018.



Brian P. Eagan
Nevada Bar No. 09395
Email: beagan@sdfnvlaw.com
Alexander G. LeVeque
Nevada Bar No. 11183
Email: aleveque@sdfnvlaw.com
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

-- and --

Jeffrey J. Orr
Nevada Bar No. 07854
Email: jorr@pyattsilvestri.com
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 383-6000
Facsimile: (702) 477-0088

*Attorneys for Susan Clokey,
Special Administrator*

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE: (702) 853-5483
FACSIMILE: (702) 853-5485
WWW.SDFNVLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNYLAW.COM

SOLOMON
DWIGGINS & FREER
P.C.
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on January 24, 2018, I served a true and correct copy of the OBJECTION TO PETITION FOR ISSUANCE OF GENERAL LETTERS OF ADMINISTRATION AND FOR APPOINTMENT OF CUMIS COUNSEL FOR THE ESTATE OF JAMES ALLEN MCNAMEE the following in the manner set forth below:

Via:

☐ Hand Delivery
☐ U.S. Mail, Postage Prepaid
☐ Certified Mail, Receipt No.: _____
☐ Return Receipt Request
☒ E-Service through Wiznet as follows:

Corey M. Eschweiler, Esq. (ceschweiler@glenlerner.com)

Craig A. Henderson, Esq. (chenderson@glenlerner.com)

Counsel for Gianni Bianchi and Dara Del Priore

Jeffrey J. Orr, Esq. (jorr@pyattsilvestri.com)

Counsel for Susan Clokey, Special Administrator of the Estate of James Allen McNamee and GEICO

Via:

☐ Hand Delivery
☐ U.S. Mail, Postage Prepaid
☐ Certified Mail, Receipt No.: _____
☐ Return Receipt Request
☒ E-Service through Wiznet as follows:

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An employee of SOLOMON DWIGGINS & FREER, LTD.

EXHIBIT "A"

EXHIBIT "A"

Steven D. Grierson

1 **ORDR**

2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 PYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 In the Matter of the Estate of James Allen) Case No.: P-17-093041-E
11 McNamee, Deceased) Dept No.: 5
12)
13)
14)
15)

16 **ORDER GRANTING**
PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

17 Upon submission of the Petition for Special Letters of Administration, representing
18 as follows:

- 19 1. That Decedent, James Allen McNamee died on the 12th day of August, 2017, in
20 the County of Mohave, State of Arizona.
- 21 2. That Decedent was a resident of Mohave County, Arizona, at the time of his
22 death.
- 23 3. That at the time of Decedent's death, Decedent was a Defendant in a personal
24 injury lawsuit, *Bianchi et. al v. James Allen McNamee*, Eighth Judicial District Court, Clark
25 County, Nevada Case No. A-13-691887-C.
- 26 4. Petitioner has conducted a search of assets for James Allen McNamee,
27 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
28 to satisfy any judgment other than an automobile insurance policy with GEICO. That

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NV 89101-4941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-6841
PHONE (702) 383-6000 FAX (702) 477-9008

1 insurance policy, GEICO policy #4180457162 provides automobile liability insurance
2 coverage of \$30,000 per person and \$60,000 per accident.

3 5. Petitioner is a resident of the State of Nevada, and is employed at the law firm of
4 Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

5 6. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No.
6 A-13-691887-C to continue and substitute the real party in interest, the Special
7 Administrator.

8 7. Petitioner is willing to act as Special Administrator of the estate to defend
9 *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C.

10 8. Petitioner has never been convicted of a felony. Petitioner is qualified under
11 NRS 139.010 to serve as Special Administrator of the Estate.

12 NOW, THEREFORE, IT IS HEREBY ORDERED that Susan Clokey is appointed as
13 Special Administrator and that Special Letters of Administration be issued, without bond,
14 pursuant to Nevada Revised Statutes 140(2)(a) and 140(3)(b).

15 The sole purpose of this order is to allow *Bianchi et. al. v. McNamee*, Case No.
16 A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance
17 policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner
18 intends to defend that action as the real party in interest.

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1 The Special Administrator does not have any other authority beyond Nevada
2 Revised Statutes 140(2)(a) and 140(3)(b) and may not distribute any property other than the
3 GEICO automobile insurance policy with automobile liability insurance coverage of \$30,000
4 per person and \$60,000 per accident.

5 Any funds will be held in a blocked account or attorney trust account.

6 IT IS FURTHER ORDERED that the settlement of the decedent's lawsuit is subject to
7 this court's approval.

8 DATED this 15th day of ^{NOV.} ~~October~~ 2017.

9 *Vincent Ochoa*
10 _____
11 DISTRICT COURT JUDGE *sa*

12 Submitted by:

13 *Jeffrey J. Orr*
14 _____
15 Jeffrey J. Orr, Esq.
16 Nevada Bar No. 7854
17 PYATT SILVESTRI
18 701 Bridger Avenue, Suite 600
19 Las Vegas, NV 89101
20 T. (702) 383-6000
21 jorr@pyattsilvestri.com
22 Attorney for Petitioner,
23 Special Administrator Susan Clokey
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PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-6941
PHONE (702) 383-6000 FAX (702) 477-8088

EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in

NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86] – (NRS A 1971, 647; 1983, 668; 1999, 2276)

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 16th day of November, 2017, I caused the above ORDER GRANTING PETITION FOR SPECIAL LETTERS OF ADMINISTRATION, to be served pursuant to NRCP 5(b) to be electronically served through the *Eighth Judicial District Court's electronic filing system* and via U.S. Mail to the following party listed below:

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

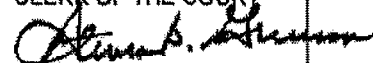
PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGE AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-5941
PHONE (702) 383-6000 FAX (702) 477-0089

APPENDIX EXHIBIT 14

APPENDIX EXHIBIT 14

ORIGINAL

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Steven D. Grierson
CLERK OF THE COURT



JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
T. (702) 383-6000
F. (702) 477-0088
jorr@pyattsilvestri.com

Attorneys for Defendant
JAMES MCNAMEE

DISTRICT COURT
CLARK COUNTY, NEVADA

GIANN BIANCHI, individually, DARA
DELPRIORE, individually

Plaintiffs

v.

JAMES MCNAMEE, individually, DOES I-X,
and ROE CORPORATIONS I-X, inclusive

Defendants.

Case No.: A-13-691887-C
Dept. No.: VIII

Hearing Date: April 10, 2018
Hearing Time: 8:00 a.m.

DEFENDANT JAMES MCNAMEE'S MOTION TO DISMISS
ON ORDER SHORTENING TIME

COMES NOW, Defendant James McNamee, by and through his attorneys of record, Jeffrey J. Orr, Esq. of Pyatt Silvestri and hereby submits his Motion to Dismiss Plaintiffs' Complaint on Order Shortening Time. Because this matter is set for trial on an April 16, 2018 trial stack, Defendant requests that this Motion should be heard on a shortened time on or before the date currently set for trial.

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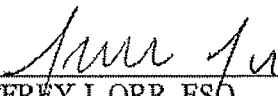
PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-9088

1 This Motion is made and based upon NRCP 25(a)(1), the declaration of Jeffrey J. Orr, Esq.,
2 the papers and pleadings on file herein, as well as the Memorandum of Points and Authorities and
3 any oral argument at the time of hearing of this matter.

4 DATED this 29 day of March, 2018.

5
6 PYATT SILVESTRI


7
8 
9 JEFFREY J. ORR, ESQ.
10 Nevada Bar No. 7854
11 701 Bridger Avenue, Suite 600
12 Las Vegas, Nevada 89101
13 Attorneys for Defendant
14 JAMES MCNAMEE

15 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME**

16 Through this Motion, Defendant seeks to dismiss Plaintiffs' lawsuit for failure to comply with
17 NRCP 25(a)(1). Because trial is set on an April 16, 2018 trial stack, Defendant requests that this
18 Motion be heard on a shortened time on or before the date currently set for trial.

19 DATED this 29 day of March, 2018.

20 PYATT SILVESTRI

21 
22 JEFFREY J. ORR, ESQ.
23 Nevada Bar No. 7854
24 701 Bridger Avenue, Suite 600
25 Las Vegas, Nevada 89101
26 Attorneys for Defendant
27 JAMES MCNAMEE

28 ///

///

///


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**AFFIDAVIT OF JEFFREY J. ORR, ESQ. IN SUPPORT OF DEFENDANT JAMES
MCNAMEE'S MOTION TO DISMISS ON ORDER SHORTENING TIME**

I Jeffrey J. Orr, Esq, declare under the penalties of perjury of the laws of the State of Nevada, the following:

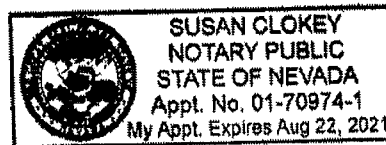
1. I am an attorney at the law firm Pyatt Silvestri and am counsel for Defendant James McNamee.
2. That an order denying Defendant James McNamee's Motion to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and to Amend Caption was recently filed on March 27, 2018. (See Exhibit A).
3. That the instant Motion is being brought in a timely fashion as the Motion denying Defendant's Motion to substitute, Exhibit A, was only recently filed.
4. That Defendant requests that this Motion be heard on a Shortened Time period as trial is set for a trial stack beginning on April 16, 2018.
5. Defendant requests that the instant Motion be heard on or before April 16, 2018.
6. Defendant makes this request in good faith.

FURTHER AFFIANT SAYETH NOT.


JEFFREY J. ORR, ESQ.

SUBSCRIBED AND SWORN TO before
me this 27th day of March, 2018.


NOTARY PUBLIC



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ORDER SHORTENING TIME

Based on the declaration of Jeffrey J. Orr, Esq. and Defendant's Application for Order Shortening Time, and good cause appearing, Defendant James McNamee's Motion to Dismiss will be heard before the above-captioned Court on the 10th day of April 2018 at 9:00 am or as soon thereafter as counsel may be heard.


DISTRICT COURT JUDGE

Submitted By:


JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
Attorneys for Defendant
JAMES MCNAMEE

I.

FACTUAL BACKGROUND

This matter is a negligence action by Plaintiffs Gianni Bianchi and Dara Delpriore against Defendant James McNamee. On July 17, 2013, a vehicle driven by Defendant McNamee collided with Plaintiffs' vehicle. As a result of the collision, both Plaintiffs claim personal injury damages.

James McNamee passed away on August 12, 2017. A Suggestion of Death was filed in this matter on September 20, 2017. Pursuant to NRCP 25(a)(1), the ninety (90) day deadline to file a Motion to substitute the deceased Defendant was December 19, 2017. To date, Plaintiffs have not filed any Motion to substitute the deceased Defendant.

Although Defendant filed a Motion to Substitute the Special Administrator in Place and Stead of Defendant James McNamee, the Court denied that Motion. The minutes state that the Motion was

1 denied and that the Court requested "proposed names to the to the Court for consideration as to who
2 they want to serve as Administrator of the Estate." (See Court Minutes for Defendant's Motion to
3 Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend
4 Caption, in chambers, attached as Exhibit B). Neither the Court Minutes nor the order state that any
5 new party is substituted in place and stead of deceased Defendant James McNamee. (See Exhibits A
6 and B). To date, there has not been a substitution of the Defendant.

8 II.

9 NRCP 25(A)(1) MANDATES DISMISSAL OF THIS CASE

10 Because Defendant James McNamee has passed, this matter can no longer proceed against
11 James McNamee. NRCP 25 (a)(1) states:

12 "If a party dies and the claim is not thereby extinguished, the Court may order
13 substitution of the proper parties. The Motion for substitution may be made by
14 any party or by the successors or representatives of the deceased party and,
15 together with the notice of hearing, shall be served on the parties as provided
16 in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the
17 service of a summons. Unless the Motion for substitution is made not later
18 than ninety (90) days after the death is suggested upon the record by service
19 of a statement of the fact of the death as provided herein for the service of the
20 Motion, the action shall be dismissed as to the deceased party." NRCP 25(a)(1)
(emphasis added)

21 This statute mandates dismissal of the action unless a Motion for Substitution is submitted
22 within ninety (90) days of the Suggestion of Death. Plaintiff has not filed any such Motion. Notably,
23 the statute uses the phrase "shall be dismissed" indicating that the statute is not discretionary but
24 mandates dismissal.

25 In *Wharton v. City of Mesquite*, 113 Nev. 796, 942 P.2d 155 (1997) Plaintiff died during the
26 pendency of the litigation. A Suggestion of Death was filed. One hundred and twenty-five (125)
27 days after the Suggestion of Death was filed, Plaintiff's counsel filed a Motion to Substitute
28 Wharton's surviving spouse as his personal representative. The Trial Court denied Defendant's
Motion to Dismiss and granted Plaintiff's Motion to Substitute.

1 The Nevada Supreme Court reversed and held that it was error to deny Defendant's Motion
2 to Dismiss because NRCP 25(a)(1) mandates dismissal unless the Motion to Substitute is filed within
3 ninety (90) days of the Suggestion of Death. The Court held, "Although a trial on the merits is favored
4 over a mechanical application of a ninety-day rule, this Court has strictly interpreted the language of
5 NRCP 25 (a)(1)." *Wharton v. City of Mesquite*, 113 Nev. 796, 798, 942 P.2d 155 (1997) (citing *Barto*
6 *v. Weishaar*, 101 Nev. 27, 692 P.2d 498 (1985). "The rule is quite clear that unless the Motion for
7 Substitution is made within ninety (90) days after the death is suggested upon the record, the action
8 'shall be dismissed as to the deceased party.' The district judge was required to dismiss the deceased
9 party." *Id.* at 798. "In the instant case, Wharton's counsel failed to comply with NRCP 25(a)(1) by
10 not moving the Court to substitute Wharton's surviving spouse as his personal representative within
11 the 90-day period. Therefore, we conclude that the District Court erred in granting Wharton's
12 counsel's untimely Motion for Substitution of parties and denying the Defendant's Motions to
13 Dismiss the action." *Id.* at 798.

14 The Suggestion of Death of James McNamee was filed on September 20, 2017. (See
15 Suggestion of Death of James McNamee, attached as Exhibit C). As such, any Motions to substitute
16 Defendant James McNamee as Defendant must have been filed on or before December 19, 2017.
17 Because this was not done, pursuant to NRCP 25(a)(1) and *Wharton v. City of Mesquite*, 113 Nev.
18 796, 798, 942 P.2d 155 (1997), the Court does not have discretion and must dismiss this action.

22 III.

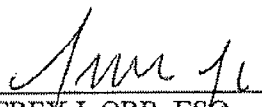
23 CONCLUSION

24 *Wharton v. City of Mesquite*, 113 Nev. 796, 798, 942 P.2d 155 (1997) is clear. It states that
25 the Court does not have discretion and must dismiss an action if a Motion to Substitute a deceased
26 party is not filed within ninety (90) days of the Suggestion of Death. In this case, it has been over
27 one hundred eighty (180) days since Defendant James McNamee's Suggestion of Death was filed and
28

1 served upon the parties. Plaintiff has not filed a Motion to Substitute. As such, pursuant to *Wharton*
2 and NRCP 25(a)(1), this Court must dismiss this action.

3 DATED this 29 day of March, 2018

4 PYATT SILVESTRI

5 
6 JEFFREY J. ORR, ESQ.

7 Nevada Bar No. 7854

8 PYATT SILVESTRI

9 701 Bridger Ave., Suite 600

10 Las Vegas, Nevada 89101

11 Attorney for Defendant

12 JAMES MCNAMEE

13 PYATT SILVESTRI
14 A PROFESSIONAL LAW CORPORATION
15 701 BRIDGER AVENUE SUITE 600
16 LAS VEGAS, NEVADA 89101-8941
17 PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 353-6000 FAX (702) 477-0088

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 30th day of March, 2018, I caused the above and foregoing document **DEFENDANT JAMES MCNAMEE'S MOTION TO DISMISS ON ORDER SHORTENING TIME**, to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; to the attorney(s) listed below:

Corey M. Eschweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs

D. Lee Roberts, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., #400
Las Vegas, NV 89118
Attorney for Plaintiff


An Employee of PYATT SILVESTRI

Exhibit A



1 **ORDER**

2 Corey M. Eschweiler, Esq.
3 Nevada Bar No. 6635
4 Craig A. Henderson, Esq.
5 Nevada Bar No. 10077
6 Joshua L. Benson, Esq.
7 Nevada Bar No. 10514
8 GLEN J. LERNER & ASSOCIATES
9 4795 South Durango Drive
10 Las Vegas, Nevada 89147
11 Telephone: (702) 877-1500
12 Facsimile: (702) 933-7043
13 ceschweiler@glenlerner.com
14 chenderson@glenlerner.com
15 Attorneys for Plaintiffs

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 GIANN BIANCHI, individually,
12 DARA DELPRIORE, individually,

13 Plaintiff,

14 vs.

15 JAMES McNAMEE, individually, DOES I - X,
16 and ROE CORPORATIONS I - X, inclusive,

17 Defendants.

CASE NO.: A-13-691887-C
DEPT NO.: VIII

ORDER DENYING DEFENDANT
JAMES McNAMEE'S MOTION TO
SUBSTITUTE SPECIAL
ADMINISTRATOR IN PLACE AND
STEAD OF DEFENDANT JAMES
ALLEN McNAMEE AND TO AMEND
CAPTION

Date of hearing: January 22, 2018
Time of hearing: In chambers


19 Defendant James Allen McNamee's Motion to Substitute Special Administrator In Place and
20 Stead of Defendant James Allen McNamee and To Amend Caption came before this Court on
21 January 22, 2018. The Court having considered the motion, opposition, and reply, and good cause
22 appearing, it is hereby

23 ORDERED, ADJUDGED, and DECREED that Defendant James Allen McNamee's Motion
24 to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and To
25 Amend Caption is DENIED.

26 The court directed the parties to submit three (3) proposed names to the Court for
27 consideration as to who they want to serve as Administrator of the Estate. The Court has reviewed
28 those submissions and further ORDERS that Fred Waite is hereby named as the

1 General Administrator of the Estate of James Allen McNamee.

2 Dated this 19 day of March, 2018.

3
4
5 
6 DISTRICT COURT JUDGE
7 DOUGLAS E. SMITH
8 *ndlp*

9 Respectfully submitted by:

10 GLEN I. LERNER & ASSOCIATES

11 By: 

12 COREY M. ESCHWEILER, ESQ.
13 CRAIG A. HENDERSON, ESQ.,
14 4795 South Durango Drive
15 Las Vegas, Nevada 89147
16 Attorneys for Plaintiffs
17
18
19
20
21
22
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26
27
28

Exhibit B

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)
[Search](#) [Refine Search](#) [Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-13-691887-C

Glenn Blanchi, Plaintiff(s) vs. James McNamee, Defendant(s)

Case Type: Negligence - Auto
 Date Filed: 11/19/2013
 Location: Department 8
 Cross-Reference Case Number: A691887

PARTY INFORMATION

	Lead Attorneys
Defendant Estate of James McNamee	
Defendant McNamee, James	James P.C. Silvestri Retained 7023836000(W)
Plaintiff Blanchi, Glenn	D Lee Roberts, Jr. Retained 702-938-3838(W)
Plaintiff Delpratore, Dara	D Lee Roberts, Jr. Retained 702-938-3838(W)

EVENTS & ORDERS OF THE COURT

01/22/2018 Motion (3:00 AM) (Judicial Officer Smith, Douglas E.)
 Defendant James McNamee's Motion to Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend Caption

Minutes

01/22/2018 3:00 AM

- Defendant James McNamee's Motion to Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend Caption came before the Court on the January 22, 2018, Chamber Calendar. Having reviewed the Motion, its Opposition, and Reply thereto, COURT ORDERED, this Motion is DENIED. Court directed the parties to submit three (3) proposed names to the Court for consideration as to who they want to serve as Administrator of the Estate.
 CLERK'S NOTE: A copy of this minute order was placed in the attorney folders of Jeffrey Orr, Esq., (Pyatt Silvestri) and Craig A. Henderson, Esq., (Glen Lerner Injury Attorneys).

[Return to Register of Actions](#)

Exhibit C



1 JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
2 PYATT SILVESTRI
701 Bridger Avenue, Suite 600
3 Las Vegas, Nevada 89101
T. (702) 383-6000
4 F. (702) 477-0088
jorr@pyattsilvestri.com

5 Attorney for Defendant
6 JAMES MCNAMEE

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 GIANN BIANCHI, individually, DARA)
10 DELPRIORE, individually)

CASE NO. A-13-691887-C
DEPT. NO.: VIII

Plaintiffs,

11 vs.

12 JAMES MCNAMEE, individually,
13 DOES I - X, and ROE CORPORATIONS
I - X, inclusive

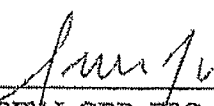
14 Defendants,
15

16 SUGGESTION OF DEATH UPON THE RECORD

17 Pursuant to Rule 25(a)(1) of the Nevada Rules of Civil Procedure, Jeffrey J. Orr, Esq.,
18 of the law firm of Pyatt & Silvestri, suggests on the record the death of Defendant, JAMES
19 McNAMEE, during the pendency of this litigation. The date of death of Defendant, JAMES
20 McNAMEE was August 12, 2017.

21 DATED this 20 day of September, 2017.

22 PYATT SILVESTRI

23
24 
25 JEFFREY J. ORR, ESQ.

26 Nevada Bar No. 7854
27 701 Bridger Avenue, Suite 600
28 Las Vegas, NV 89101
Attorneys for Defendant
JAMES MCNAMEE

PYATT SILVESTRI
ATTORNEYS AT LAW
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-4841
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGE AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-0941
PHONE (702) 383-5000 FAX (702) 477-0888

CERTIFICATE OF MAILING

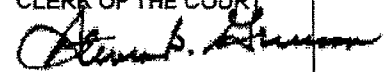
Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 20th day of September, 2017, I caused the above and foregoing document, **SUGGESTION OF DEATH**, to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; to the attorney(s) listed below:

Corey M. Eshweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs
GIANN BIANCHI and
DARA DELPRIORE


Employee of PYATT SILVESTRI

APPENDIX EXHIBIT 9

APPENDIX EXHIBIT 9



1 JEFFREY J. ORR, ESQ.
2 Nevada Bar No. 7854
3 PYATT SILVESTRI
4 701 Bridger Avenue, Suite 600
5 Las Vegas, Nevada 89101
6 T. (702) 383-6000
7 F. (702) 477-0088
8 jorr@pyattsilvestri.com

9 Attorneys for Defendant
10 JAMES MCNAMEE

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 GIANN BIANCHI, individually, DARA
14 DELPRIORE, individually

Case No.: A-13-691887-C
Dept. No.: VIII

15 Plaintiffs

16 v.

17 JAMES MCNAMEE, individually, DOES I-X,
18 and ROE CORPORATIONS I-X, inclusive

Hearing Date: 1-22-18
Hearing Time: IN CHAMBERS

19 Defendants.

20 **DEFENDANT JAMES MCNAMEE'S MOTION TO SUBSTITUTE SPECIAL**
21 **ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE AND**
22 **TO AMEND CAPTION**

23 COMES NOW, Defendant James McNamee, by and through its attorneys of record, Jeffrey
24 J. Orr, Esq. of Pyatt Silvestri and hereby submits this Motion to Substitute Special Administrator of
25 Susan Clokey in place and stead of James McNamee as the Defendant in this action. Defendant
26 also requests that the caption be amended to reflect the substitution of the new Defendant in this
27 matter.

28 ///

///


PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-3991
PHONE (702) 383-6000 FAX (702) 477-0088

1 This Motion is made and based upon the papers and pleadings on file herein, as well as the
2 Memorandum of Points and Authorities and any oral argument at the time of hearing of this matter.

3 DATED this 14 day of December, 2017.

4 PYATT SILVESTRI

5
6 
7 JEFFREY J. ORR, ESQ.
8 Nevada Bar No. 7854
9 701 Bridger Avenue, Suite 600
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant
12 JAMES MCNAMEE

13 **NOTICE OF MOTION**

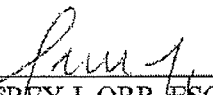
14 TO: PLAINTIFFS GIANN BIANCHI & DARA DELPRIORE

15 TO: PLAINTIFF'S COUNSEL, COREY ESCHWEILER ESQ. & D. LEE ROBERTS, ESQ.

16 PLEASE TAKE NOTICE that the undersigned will bring the foregoing
17 DEFENDANT JAMES MCNAMEE'S MOTION TO SUBSTITUTE SPECIAL
18 ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE
19 AND TO AMEND CAPTION for hearing in Department VIII on the 22 day of
20 January, 2018, at the hour of In Chambers .m., or as soon thereafter as counsel may
21 be heard.

22 DATED this 14 day of December, 2017.

23 PYATT SILVESTRI

24 
25 JEFFREY J. ORR, ESQ.
26 Nevada Bar No. 7854
27 701 Bridger Avenue, Suite 600
28 Las Vegas, Nevada 89101
Attorneys for Defendant
JAMES MCNAMEE

I.
FACTUAL BACKGROUND

This matter is a negligence action by Plaintiffs Gianni Bianchi and Dara Delpriore against Defendant James McNamee. On July 17, 2013, a vehicle driven by Defendant McNamee collided with Plaintiffs' vehicle. As a result of the collision, both Plaintiffs claim personal injury damages.

James McNamee passed away on August 12, 2017. On November 15, 2017, this Court granted a petition for Special Letters of Administration to appoint Special Administrator Susan Clokey as the Special Administrator of the Estate of James McNamee. (See Order Granting Petition for Special Letters of Administration, attached as Exhibit A).

A Suggestion of Death was filed in this matter on September 20, 2017. Trial is set for April 16, 2018. This motion seeks to substitute Special Administrator Susan Clokey as the Special Administrator of the Estate of James McNamee as Defendant in this action in place and stead of Defendant James McNamee who is deceased. This court has already determined that Special Administrator Susan Clokey has the authority to act as the Special Administrator and to defend this action. (Exhibit A).

II.
SUBSTITUTION OF THE PROPER DEFENDANT IS NECESSARY

Because Defendant James McNamee has passed, this matter can no longer proceed against James McNamee. NRCP 25 (a)(1) states:

"If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party." NRCP 25(a)(1)

This court has already appointed Susan Clokey as Special Administrator of the Estate of James McNamee and has already determined that Ms. Clokey is the appropriate representative to

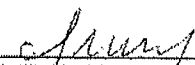
1 defend this action and allow it to proceed as to the insurance proceeds of the GEICO automobile
2 insurance policy. NRCP 25(a)(1) states that the court may order substitution of the proper parties
3 upon the death of a party. Because Defendant McNamee has passed, the Special Administrator of
4 his estate is the proper party to this action.

5 **III.**
6 **CONCLUSION**

7 This Court has already granted Special Letters of Administration and has appointed Susan
8 Clokey as the Special Administrator. Because Mr. McNamee has passed, he can no longer be the
9 Defendant in this matter. Pursuant to NRS 140.040(3)(b) and NRCP 25(a)(1), this court should order
10 that Susan Clokey, Special Administrator of the Estate of James McNamee be substituted as the
11 Defendant in this matter in place and stead of James McNamee. It is also requested that the caption
12 be amended to reflect the new Defendant. (See proposed new caption, attached as Exhibit B).

13 DATED this 14 day of December, 2017

14 **PYATT SILVESTRI**

15
16 
17 _____
18 JEFFREY J. ORR, ESQ.
19 Nevada Bar No. 7854
20 PYATT SILVESTRI
21 701 Bridger Ave., Suite 600
22 Las Vegas, Nevada 89101
23 Attorney for Defendant
24 James McNamee
25
26
27
28

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 14th day of December, 2017, I caused the above and foregoing document **DEFENDANT JAMES MCNAMEE'S MOTION TO SUBSTITUTE SPECIAL ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE AND TO AMEND CAPTION,** to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to the attorney(s) listed below:

Corey M. Eschweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs

D. Lee Roberts, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Attorney for Plaintiffs

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

Exhibit A

ORIGINAL

Electronically Filed
11/16/2017 4:41 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 ORDR
2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 PYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 In the Matter of the Estate of James Allen) Case No.: P-17-093041-E,
11 McNamee, Deceased) Dept No.: S
12)
13)
14)
15)

15 ORDER GRANTING
16 PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

17 Upon submission of the Petition for Special Letters of Administration, representing
18 as follows:

- 19 1. That Decedent, James Allen McNamee died on the 12th day of August, 2017, in
20 the County of Mohave, State of Arizona.
21 2. That Decedent was a resident of Mohave County, Arizona, at the time of his
22 death.
23 3. That at the time of Decedent's death, Decedent was a Defendant in a personal
24 injury lawsuit, *Bianchi et. al v. James Allen McNamee*, Eighth Judicial District Court, Clark
25 County, Nevada Case No. A-13-691887-C.
26 4. Petitioner has conducted a search of assets for James Allen McNamee,
27 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
28 to satisfy any judgment other than an automobile insurance policy with GEICO. That

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-4541
PHONE (702) 363-8000 FAX (702) 477-0088

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Pyatt Silvestri
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 363-6000 FAX (702) 477-9088

insurance policy, GEICO policy #4180457162 provides automobile liability insurance coverage of \$30,000 per person and \$60,000 per accident.

5. Petitioner is a resident of the State of Nevada, and is employed at the law firm of Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

6. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to continue and substitute the real party in interest, the Special Administrator.

7. Petitioner is willing to act as Special Administrator of the estate to defend *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C.

8. Petitioner has never been convicted of a felony. Petitioner is qualified under NRS 139.010 to serve as Special Administrator of the Estate.

NOW, THEREFORE, IT IS HEREBY ORDERED that Susan Clokey is appointed as Special Administrator and that Special Letters of Administration be issued, without bond, pursuant to pursuant to Nevada Revised Statutes 140(2)(a) and 140(3)(b).

The sole purpose of this order is to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner intends to defend that action as the real party in interest.

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1 The Special Administrator does not have any other authority beyond Nevada
2 Revised Statutes 140(2)(a) and 140(3)(b) and may not distribute any property other than the
3 GEICO automobile insurance policy with automobile liability insurance coverage of \$30,000
4 per person and \$60,000 per accident.

5 Any funds will be held in a blocked account or attorney trust account.

6 IT IS FURTHER ORDERED that the settlement of the decedent's lawsuit is subject to
7 this court's approval.

8 DATED this 15th day of ^{NOV.} ~~October~~, 2017.

Vincent Ochoa

DISTRICT COURT JUDGE *sa*

11 Submitted by:

Jeffrey J. Orr

14 Jeffrey J. Orr, Esq.
15 Nevada Bar No. 7854
16 PYATT SILVESTRI
17 701 Bridger Avenue, Suite 600
18 Las Vegas, NV 89101
19 T. (702) 383-6000
20 jorr@pyattsilvestri.com
21 Attorney for Petitioner,
22 Special Administrator Susan Clokey
23
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EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in

NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86] – (NRS A 1971, 647; 1983, 668; 1999, 2276)

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89102-0541
PHONE (702) 383-6000 FAX (702) 477-0888

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 16th day of November, 2017, I caused the above ORDER GRANTING PETITION FOR SPECIAL LETTERS OF ADMINISTRATION, to be served pursuant to NRCP 5(b) to be electronically served through the *Eighth Judicial District Court's electronic filing system* and via U.S. Mail to the following party listed below:

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

Exhibit B

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

1 JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
2 PYATT SILVESTRI
701 Bridger Avenue, Suite 600
3 Las Vegas, Nevada 89101
T. (702) 383-6000
4 F. (702) 477-0088
jorr@pyattsilvestri.com

5 Attorneys for Defendant
6 SUSAN CLOKEY, Special
Administrator of the Estate of
7 James McNamee

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 GIANN BIANCHI, individually, DARA
11 DELPRIORE, individually

Case No.: A-13-691887-C
Dept. No.: VIII

12 Plaintiffs

13 v.

14 SUSAN CLOKEY, Special Administrator of the
Estate of James McNamee, DOES I-X, and ROE
15 CORPORATIONS I-X, inclusive

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX EXHIBIT 10

APPENDIX EXHIBIT 10



1 JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
2 PYATT SILVESTRI
701 Bridger Avenue, Suite 600
3 Las Vegas, Nevada 89101
T. (702) 383-6000
4 F. (702) 477-0088
jorr@pyattsilvestri.com

5 Attorneys for Defendant
6 JAMES MCNAMEE

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 GIANN BIANCHI, individually, DARA
11 DELPRIORE, individually

12 Plaintiffs

13 v.

14 JAMES MCNAMEE, individually, DOES I-X,
and ROE CORPORATIONS I-X, inclusive

15 Defendants.
16

Case No.: A-13-691887-C
Dept. No.: VIII

DATE: January 22, 2018
TIME: In Chambers

17
18
19 **DEFENDANT JAMES MCNAMEE'S REPLY TO PLAINTIFF'S OPPOSITION TO**
20 **MOTION TO SUBSTITUTE SPECIAL ADMINISTRATOR IN PLACE AND STEAD OF**
DEFENDANT JAMES MCNAMEE AND TO AMEND CAPTION

21 COMES NOW, Defendant James McNamee, by and through its attorneys of record, Jeffrey
22 J. Orr, Esq. of Pyatt Silvestri and hereby submits his Reply to Opposition to Motion to Substitute
23 Special Administrator of Susan Clokey in place and stead of James McNamee as the Defendant in
24 this action. Defendant also requests that the caption be amended to reflect the substitution of the
25 new Defendant in this matter.

26
27 This Reply is made and based upon the papers and pleadings on file herein, as well as the
28 Memorandum of Points and Authorities and any oral argument at the time of hearing of this matter.

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

I.
FACTUAL BACKGROUND

Defendant James McNamee passed away on August 12, 2017. As such, James McNamee can no longer be the Defendant in this matter. A Suggestion of Death was filed in this matter on September 20, 2017. (See Suggestion of Death Upon the Record, attached as Exhibit A). The pending motion to substitute the Special Administrator as the Defendant in place and stead of James McNamee was filed on December 14, 2017. As such, Defendant's motion to substitute the Special Administrator as the Defendant in place and stead of James McNamee was filed within the 90 day time period mandated in NRCP 25 (a)(1).

It has been more than 90 days since the Suggestion of Death was filed in this matter and there have not been any other motions to substitute the Defendant in this matter. In fact, the Petition to appoint a General Administrator in probate court was not even filed until January 3, 2018. (See Page 1 of Petition for Issuance of General Letters of Administration and for Appointment of Cumis Counsel for the Estate of James Allen McNamee, attached as Exhibit B). This petition to appoint a General Administrator may or may not be granted by the probate court. Trial is set for April 16, 2018, which is in approximately 90 days.

II.
ANY FUTURE MOTION TO SUBSTITUTE DEFENDANT WOULD BE UNTIMELY

Plaintiffs' opposition implies that Plaintiffs intend to move to substitute the general administrator as the Defendant in this action. However, NRCP 25 (a)(1) clearly states that any motion to substitute a deceased party must be filed within 90 days of the suggestion of death:

"If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party." NRCP 25(a)(1)

1 Notably, NRCP 25(a)(1) uses the word "shall" as it states that the action shall be dismissed
2 if the motion is not filed within 90 days of the Suggestion of Death. The Nevada Supreme Court
3 has held that the failure to move to substitute a deceased party within the 90 day time period
4 mandates dismissal: "... Wharton's counsel failed to comply with NRCP 25(a)(1) by not moving the
5 court to substitute Wharton's surviving spouse as his personal representative within the 90-day
6 period. Therefore, we conclude that the district court erred in granting Wharton's counsel's untimely
7 motion for substitution of parties and by denying the defendant's motions to dismiss the action.
8 Accordingly, we reverse the district court's judgment and remand this matter with instructions to
9 enter judgment in favor of respondents." *Wharton v. City of Mesquite*, 113 Nev. 796, 798, 942 P.2d
10 155 (1997).

12 As such, the rule is mandatory, not discretionary. Pursuant to NRCP 25(a)(1), the court
13 cannot consider any future motion to substitute any other Defendant in place and stead of the
14 deceased Defendant. Therefore, there is no reason to defer ruling on the instant motion as requested
15 by Plaintiffs.

17 **III.**
18 **PLAINTIFF'S REQUEST TO DEFER THIS MOTION IS NOT A VIABLE OPTION**

19 Trial is set for April 16, 2018, which is in approximately 90 days. Currently, there is no
20 Defendant in this action. There is no set timetable upon which the probate court will rule on the
21 petition for General Letters of Administration. Moreover, the petition in probate court may or may
22 not be granted. At this time, there is no other motion to bring any other party into this action. Given
23 the upcoming trial date and the uncertainty regarding the petition for General Letters of
24 Administration, deferring the instant motion is not feasible.

25 ///

26 ///

27 ///

IV.
THERE IS NO BAD FAITH OR CONFLICT OF INTEREST

Although not pertinent to the instant motion to substitute, Plaintiffs' Opposition incorrectly states that there are "bad faith causes of action" against Mr. McNamee's insurance carrier. Defendant is not aware of any such causes of action. The Complaint on file in this action only alleges Negligence and Negligence Per Se and makes no reference to "bad faith". Additionally, no fact finder has made any determination as to the amount of damages, if any, sustained by Plaintiffs. Plaintiffs' claim that the damages exceed the insurance policy limits are, at a minimum, premature and speculative. Contrary to Plaintiffs' contention, Defendant has never admitted that there is bad faith in this matter. In fact, there hasn't even been a determination as to the amount of damages in this matter. As such, Plaintiffs' claim that there is an asset above and beyond the insurance policy is not true. For these reasons, Plaintiffs' contention that there are assets beyond the liability insurance policy is not accurate.

Plaintiffs also incorrectly allege that the Special Administrator has a "conflict" because the Special Administrator has decision making authority on behalf of the estate. The order granting the Special Administration does not give such authority. Instead, the order granting the Special Administration only permits the Special Administrator to defend the instant litigation and to distribute the insurance proceeds should there be a judgment against the Special Administrator. (See Order Granting Petition for Special Letters of Administration, attached as Exhibit C). The Special Administrator does not have any other authority to deal with the estate. Because the Special Administrator has such limited authority, there is no potential for any conflict as alleged by Plaintiffs.

Nevada case law specifically states that the special administrator can defend personal injury lawsuits when the only asset is a liability insurance policy. "... NRS 140.040(3) permits the special administrator to pay wrongful death, personal injury, and property damage claims when the estate's only asset is a liability insurance policy. NRS 140.040(3) promotes judicial economy and efficient

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0888

1 resolution of claims by enabling a plaintiff with such claims to avoid lengthy, costly, formal probate
2 procedures when the sole asset is a liability insurance policy. *Jacobson v. Estate of Clayton*, 121
3 Nev. 518, 522, 119 P.3d 132 (2005).


4 In this case, the only asset available to satisfy any judgment is the liability insurance policy.
5 Although Plaintiffs claim that there is a bad faith claim, such a claim is speculative at this time as
6 there has not been any determination as to the amount of Plaintiffs' damages.

7 V.
8 CONCLUSION

9 Plaintiffs' Opposition implies that Plaintiffs may move to bring a Defendant into this action
10 sometime in the future. However, pursuant to NRCP 25(a)(1) and *Wharton v. City of Mesquite*, 113
11 Nev. 796, 798, 942 P.2d 155 (1997) the Court cannot consider any future motion to bring a
12 Defendant into this action because more than 90 days has passed since the Suggestion of Death was
13 filed. As a practical matter, trial is in approximately 90 days and there is currently no Defendant.
14 For these reasons, it is requested that this Court grant Defendant's Motion to substitute the Special
15 Administrator of the Estate of James McNamee in place and stead of Defendant James McNamee.
16

17 DATED this 12 day of January, 2018

18 PYATT SILVESTRI

19
20 
21 JEFFREY J. ORR, ESQ.

22 Nevada Bar No. 7854

23 PYATT SILVESTRI

24 701 Bridger Ave., Suite 600

25 Las Vegas, Nevada 89101

26 Attorney for Defendant

27 James McNamee
28

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGE AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-4911
PHONE (702) 383-6080 FAX (702) 477-0088

CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 12th day of January, 2018, I caused the above and foregoing document **DEFENDANT JAMES MCNAMEE'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO SUBSTITUTE SPECIAL ADMINISTRATOR IN PLACE AND STEAD OF DEFENDANT JAMES MCNAMEE AND TO AMEND CAPTION**, to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail to the attorney(s) listed below and via U.S. Mail:

Corey M. Eschweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs

D. Lee Roberts, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., #400
Las Vegas, NV 89118
Attorney for Plaintiff

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

Exhibit A

Steven D. Grierson

1 JEFFREY J. ORR, ESQ.
2 Nevada Bar No. 7854
3 PYATT SILVESTRI
4 701 Bridger Avenue, Suite 600
5 Las Vegas, Nevada 89101
6 T. (702) 383-6000
7 F. (702) 477-0088
8 jorr@pyattsilvestri.com

Attorney for Defendant
JAMES MCNAMEE

DISTRICT COURT
CLARK COUNTY, NEVADA

9 GIANN BIANCHI, individually, DARA)
10 DELPRIORE, individually)

CASE NO. A-13-691887-C
DEPT. NO.: VIII

Plaintiffs,

11 vs.

12 JAMES MCNAMEE, individually,
13 DOES I - X, and ROE CORPORATIONS
14 I - X, inclusive

Defendants.

SUGGESTION OF DEATH UPON THE RECORD

17 Pursuant to Rule 25(a)(1) of the Nevada Rules of Civil Procedure, Jeffrey J. Orr, Esq.,
18 of the law firm of Pyatt & Silvestri, suggests on the record the death of Defendant, JAMES
19 McNAMEE, during the pendency of this litigation. The date of death of Defendant, JAMES
20 McNAMEE was August 12, 2017.

21 DATED this 20 day of September, 2017.

22 PYATT SILVESTRI

23
24
25 *Jeffrey J. Orr*
26 JEFFREY J. ORR, ESQ.

Nevada Bar No. 7854

701 Bridger Avenue, Suite 600

Las Vegas, NV 89101

Attorneys for Defendant

JAMES MCNAMEE

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-4941
PHONE (702) 383-6000 FAX (702) 477-0088

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 20th day of September, 2017, I caused the above and foregoing document, **SUGGESTION OF DEATH**, to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; to the attorney(s) listed below:

Corey M. Eshweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs
GIANN BIANCHI and
DARA DELPRIORE


Employee of PYATT SILVESTRI

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
7011 BIGGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89131-6941
Phone: (702) 383-6080 Fax: (702) 477-0085

Exhibit B



1 PET
Corey M. Eschweiler, Esq.
2 Nevada Bar No. 6635
Craig A. Henderson, Esq.
3 Nevada Bar No. 10077
Joshua L. Benson, Esq.
4 Nevada Bar No. 10514
GLEN LERNER INJURY ATTORNEYS
5 4795 South Durango Drive
Las Vegas, Nevada 89147
6 Telephone: (702) 877-1500
Facsimile: (702) 933-7043
7 E-mail: ceschweiler@glenlerner.com
chenderson@glenlerner.com

8
Lee D. Roberts, Esq.
9 Nevada Bar No. 8877
WEINBERG WHEELER HUDGINS GUNN & DIAL
10 6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
11 Telephone: (702) 938-3838
Facsimile: (702) 938-3864
12 Email: LRoberts@wwhgd.com

13 *Attorneys for Petitioners Gianni Bianchi*
and Dara Del Priore

14
15 EIGHTH JUDICIAL DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 In the matter of the Estate of JAMES ALLEN
MCNAMEE, Deceased.

CASE NO.: P-17-093041-E
DEPT NO.: PC-1

PETITION FOR ISSUANCE OF
GENERAL LETTERS OF
ADMINISTRATION AND FOR
APPOINTMENT OF CUMIS COUNSEL
FOR THE ESTATE OF JAMES ALLEN
McNAMEE

Date of Hearing:
Time of Hearing:

25 ///

26 ///

28

Exhibit C

ORIGINAL

Electronically Filed
11/16/2017 4:41 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **ORDER**

2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 PYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the Matter of the Estate of James Allen) Case No.: P-17-093041-E,
11 McNamee, Deceased) Dept No.: S
12)
13)
14)
15)

16 **ORDER GRANTING**
17 **PETITION FOR SPECIAL LETTERS OF ADMINISTRATION**

18 Upon submission of the Petition for Special Letters of Administration, representing
19 as follows:

20 1. That Decedent, James Allen McNamee died on the 12th day of August, 2017, in
21 the County of Mohave, State of Arizona.

22 2. That Decedent was a resident of Mohave County, Arizona, at the time of his
23 death.

24 3. That at the time of Decedent's death, Decedent was a Defendant in a personal
25 injury lawsuit, *Blanchi et. al v. James Allen McNamee*, Eighth Judicial District Court, Clark
26 County, Nevada Case No. A-13-691887-C.

27 4. Petitioner has conducted a search of assets for James Allen McNamee,
28 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
to satisfy any judgment other than an automobile insurance policy with GEICO. That

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-3941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-9941
PHONE (702) 353-6200 FAX (702) 477-0088

insurance policy, GEICO policy #4180457162 provides automobile liability insurance coverage of \$30,000 per person and \$60,000 per accident.

5. Petitioner is a resident of the State of Nevada, and is employed at the law firm of Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

6. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to continue and substitute the real party in interest, the Special Administrator.

7. Petitioner is willing to act as Special Administrator of the estate to defend *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C.

8. Petitioner has never been convicted of a felony. Petitioner is qualified under NRS 139.010 to serve as Special Administrator of the Estate.

NOW, THEREFORE, IT IS HEREBY ORDERED that Susan Clokey is appointed as Special Administrator and that Special Letters of Administration be issued, without bond, pursuant to Nevada Revised Statutes 140(2)(a) and 140(3)(b).

The sole purpose of this order is to allow *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner intends to defend that action as the real party in interest.

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1 The Special Administrator does not have any other authority beyond Nevada
2 Revised Statutes 140(2)(a) and 140(3)(b) and may not distribute any property other than the
3 GEICO automobile insurance policy with automobile liability insurance coverage of \$30,000
4 per person and \$60,000 per accident.

5 Any funds will be held in a blocked account or attorney trust account.

6 IT IS FURTHER ORDERED that the settlement of the decedent's lawsuit is subject to
7 this court's approval.

8 DATED this 15th day of ^{NOV.} ~~October~~ 2017.

Vincent Ochoa

DISTRICT COURT JUDGE *sa*

11 Submitted by:

Jeffrey J. Orr

14 Jeffrey J. Orr, Esq.
15 Nevada Bar No. 7854
PYATT SILVESTRI
16 701 Bridger Avenue, Suite 600
Las Vegas, NV 89101
17 T. (702) 883-6000
jorr@pyattsilvestri.com
18 Attorney for Petitioner,
Special Administrator Susan Clokey

19 ///

20 ///

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PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-3961
PHONE (702) 883-6000 FAX (702) 477-0058

EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in

NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86] - (NRS A 1971, 647; 1983, 668; 1999, 2276)

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 16th day of October, 2017, I caused the above ORDER GRANTING PETITION FOR SPECIAL LETTERS OF ADMINISTRATION, to be served pursuant to NRCP 5(b) to be electronically served through the *Eighth Judicial District Court's electronic filing system* and via U.S. Mail to the following party listed below:

Robert McNamee
2472 230th Street
Mahnomon, MN 56557-9034


An Employee of PYATT SILVESTRI

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGES AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 583-6388 FAX (702) 477-0088

APPENDIX EXHIBIT 11

APPENDIX EXHIBIT 11



1 **ORDER**

Corey M. Eschweiler, Esq.

2 Nevada Bar No. 6635

Craig A. Henderson, Esq.

3 Nevada Bar No. 10077

Joshua L. Benson, Esq.

4 Nevada Bar No. 10514

GLEN J. LERNER & ASSOCIATES

5 4795 South Durango Drive

Las Vegas, Nevada 89147

6 Telephone: (702) 877-1500

Facsimile: (702) 933-7043

7 ceschweiler@glenlerner.com

chenderson@glenlerner.com

8 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

9
10
11 **GIANN BIANCHI, individually,**
DARA DELPRIORE, individually,

12 Plaintiff,

13 vs.

14 **JAMES McNAMEE, individually, DOES I - X,**
15 **and ROE CORPORATIONS I - X, inclusive,**

16 Defendants.

CASE NO.: A-13-691887-C
DEPT NO.: VIII

**ORDER DENYING DEFENDANT
JAMES McNAMEE'S MOTION TO
SUBSTITUTE SPECIAL
ADMINISTRATOR IN PLACE AND
STEAD OF DEFENDANT JAMES
ALLEN McNAMEE AND TO AMEND
CAPTION**

Date of hearing: January 22, 2018
Time of hearing: In chambers

17
18
19 Defendant James Allen McNamee's Motion to Substitute Special Administrator In Place and
20 Stead of Defendant James Allen McNamee and To Amend Caption came before this Court on
21 January 22, 2018. The Court having considered the motion, opposition, and reply, and good cause
22 appearing, it is hereby

23 ORDERED, ADJUDGED, and DECREED that Defendant James Allen McNamee's Motion
24 to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and To
25 Amend Caption is DENIED.

26 The court directed the parties to submit three (3) proposed names to the Court for
27 consideration as to who they want to serve as Administrator of the Estate. The Court has reviewed
28 those submissions and further ORDERS that Fred Wade is hereby named as the

1 General Administrator of the Estate of James Allen McNamee.

2 Dated this 19 day of March, 2018.

3
4
5 
6 DISTRICT COURT JUDGE
7 DOUGLAS E. SMITH
8 *ndp*

9 Respectfully submitted by:

10 GLEN J. LERNER & ASSOCIATES

11 By: 

12 COREY M. ESCHWEILER, ESQ.
13 CRAIG A. HENDERSON, ESQ.,
14 4795 South Durango Drive
15 Las Vegas, Nevada 89147
16 *Attorneys for Plaintiffs*
17
18
19
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MCNAMEE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; and THE HONORABLE
DOUGLAS E. SMITH, DISTRICT
JUDGE,

Respondent,

and

GIANN BIANCHI and DARA
DELPRIORE,

Real Parties in Interest.

Electronically Filed
Sep 11 2018 10:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

No.: 76904

District Court
No. A-13-691887-C

APPENDIX OF EXHIBITS TO PETITION FOR WRIT OF MANDAMUS

VOL. 1 OF 1

JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
PYATT SILVESTRI
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 383-6000
Facsimile: (702) 477-0088
jorr@pyattsilvestri.com
Attorneys for Petitioner
JAMES MCNAMEE

ALPHABETICAL INDEX TO PETITIONER'S APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
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2 .	Answer to Plaintiff's Complaint	12/23/13	1	4-8
1.	Complaint	11/19/13	1	1-3
15.	Defendant James McNamee's Motion to Amend Order on Order Shortening Time	03/30/18	1	141-210

Ex A – Order Denying Defendant James McNamee's Motion to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and to Amend Caption
[Appx. Pg. Nos. 150-151]

Ex B – Defendant James McNamee's Motion to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and to Amend Caption
[Appx. Pg. Nos. 152-165]

Ex C – Opposition to Defendant James McNamee's Motion to Substitute Special Administrator in the Place and Stead of Defendant James Allen McNamee and to Amend Caption
[Appx. Pg. Nos. 166-190]

Ex D – Defendant James McNamee's Reply to Plaintiff's Opposition to Motion to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and to Amend Caption
[Appx. Pg. Nos. 191-208]

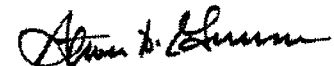
<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
	Ex E – Court Minutes from Hearing on January 22, 2018 [Appx. Pg. Nos. 209-210]			
14.	Defendant James McNamee's Motion to Dismiss on Order Shortening Time	03/30/18	1	125-140
	Ex A – Order Denying Defendant James McNamee's Motion to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and to Amend Caption [Appx. Pg. Nos. 133-135]			
	Ex B – Court Minutes from Hearing on January 22, 2018 [Appx. Pg. Nos. 136-137]			
	Ex C – Suggestion of Death Upon the Record [Appx. Pg. Nos. 138-140]			
9.	Defendant James McNamee's Motion to Substitute Special Administrator in Place and Stead of Defendant James McNamee and to Amend Caption	12/14/17	1	32-44
	Ex A – Order Granting Petition for Special Letters of Administration [Appx. Pg. Nos. 37-42]			
	Ex B – Proposed Caption [Appx. Pg. Nos. 43-44]			
10.	Defendant James McNamee's Reply to Plaintiff's Opposition To Motion to Substitute Special Administrator in place and stead of Defendant James McNamee and to amend Caption	01/12/18	1	45-61
	Ex A – Suggestion of Death Upon the Record [Appx. Pg. Nos. 51-53]			

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
	Ex B – Petition for Issuance of General Letters of Administration and for Appointment of Cumis Counsel for the Estate of James Allen McNamee [Appx. Pg. Nos. 54-55]			
	Ex C – Order Granting Petition for Special Letters of Administration [Appx. Pg. Nos. 56-61]			
8.	Letters of Special Administration	02/07/18	1	29-31
13.	Objection to Petition for Issuance of General Letters of Administration and for the Appointment of Cumis Counsel for the Estate of James Allen McNamee	01/24/18	1	108-124
	Ex A – Order Granting Petition for Special Letters of Administration [Appx. Pg. Nos. 119-124]			
16.	Order Denying Defendant James McNamee’s Motion to Dismiss and Granting in Part and Denying in part Defendant James McNamee’s Motion to Amend Order	05/14/18	1	211-213
11.	Order Denying Defendant James McNamee’s Motion to Substitute Special Administrator in Place and Stead of Defendant James Allen McNamee and to Amend Caption	03/27/18	1	62-63
7.	Order Granting Petition for Special Letters of Administration	11/16/17	1	24-28

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
6.	Petition for Special Letters of Administration Ex A – Death Certificate [Appx. Pg. Nos. 18-19] Ex B – Affidavit and Nomination in Support of Petition [Appx. Pg. Nos. 20-23]	09/20/17	1	15-23
12.	Special Administrator's Brief Concerning the Probate Court's Exclusive Jurisdiction over the Estate of James McNamee Ex A – Petition for Special Letters of Administration [Appx. Pg. Nos. 71-80] Ex B – Order Granting Petition for Special Letters of Administration [Appx. Pg. Nos. 81-86] Ex C – Letters of Special Administration [Appx. Pg. Nos. 87-90] Ex D – Petition for Issuance of General Letters of Administration and for the Appointment of Cumis Counsel for the Estate of James Allen McNamee [Appx. Pg. Nos. 91-107]	02/23/18	1	64-107
4.	State of Arizona, Certification of Vital Record	08/12/17	1	12
3.	Substitution of Attorneys	07/09/14	1	9-11
5.	Suggestion of Death Upon The Record	09/20/17	1	13-14

APPENDIX EXHIBIT 1

APPENDIX EXHIBIT 1



CLERK OF THE COURT

COMP

Corey M. Eschweiler, Esq.
Nevada Bar No. 6635

Adam D. Smith, Esq.
Nevada Bar No. 9690

GLEN LERNER INJURY ATTORNEYS

4795 South Durango Drive
Las Vegas, Nevada 89147

Telephone: (702) 877-1500

Facsimile: (702) 933-7043

E-mail: ceschweiler@glenlerner.com
asmith@glenlerner.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

GIANNI BIANCHI, individually,
DARA DELPRIORE, individually,

Plaintiff,

vs.

JAMES McNAMEE, individually, DOES I - X,
and ROE CORPORATIONS I - X, inclusive,

Defendants.

CASE NO.: A-13-691887-C

DEPT NO.: VIII

COMPLAINT

ARBITRATION EXEMPT

[Amount in Controversy Exceeds \$30,000]

Plaintiffs complain as follows:

GENERAL ALLEGATIONS

1. Plaintiffs are, and at all times relevant herein, were, residents of Clark County, Nevada.

2. The actions complained of herein took place in Clark County, Nevada.

3. The true names and capacities of the Defendants designated herein as Doe or Roe Corporations are presently unknown to Plaintiffs at this time, who therefore sues said Defendants by such fictitious names. When the true names and capacities of these defendants are ascertained, Plaintiffs will amend this Complaint accordingly.

4. At all times pertinent herein, Defendants were agents, servants, employees or joint venturers of every other Defendant, and at all times mentioned herein were acting within the scope and course of said agency, employment, or joint venture, with knowledge and permission and consent of all other named Defendants.

5. Plaintiff GIANN BIANCHI was at all times mentioned herein the operator of a 2008 Nissan Pathfinder.

6. Plaintiff DARA DELPRIORE was at all times mentioned herein a passenger in and owner of the vehicle operated by Plaintiff GIANN BIANCHI.

7. Defendant JAMES McNAMÉE was at all times mentioned herein the owner and operator of a 1989 Ford Econoline Van (hereinafter referred to as the "Vehicle").

8. On July 17, 2013, Defendant JAMES McNAMEE negligently operated the Vehicle, causing a collision with the vehicle containing Plaintiffs.

9. As a direct and proximate result of the negligence of Defendants, Plaintiffs sustained injuries to their necks, backs, bodily limbs, organs and systems, all or some of which conditions may be permanent and disabling, and all to Plaintiffs' damage in a sum in excess of \$10,000.

10. As a direct and proximate result of the negligence of Defendants, Plaintiffs received medical and other treatment for the aforementioned injuries, and said services, care, and treatment are continuing and shall continue in the future, all to the damage of Plaintiffs.

11. As a direct and proximate result of the negligence of Defendants, Plaintiffs have been required to, and have, limited occupational and recreational activities, which has caused and shall continue to cause Plaintiffs loss of earning capacity, lost wages, physical impairment, mental anguish, and loss of enjoyment of life, in a presently unascertainable amount.

12. As a direct and proximate result of the negligence of Defendants, Plaintiff DARA DELPRIORE's vehicle was damaged and she lost the use of that vehicle.

13. As a direct and proximate result of the aforementioned negligence of all Defendants, Plaintiffs have been required to engage the services of an attorney, incurring attorney's fees and costs to bring this action.

FIRST CAUSE OF ACTION

(Negligence Against Defendant JAMES McNAMLEE)

14. Plaintiffs incorporate paragraphs 1 through 13 of the Complaint as though said paragraphs were fully set forth herein.

1 15. Defendant JAMES McNAMEE owed Plaintiffs a duty of care to operate the Vehicle in a
2 reasonable and safe manner. Defendant JAMES McNAMEE breached that duty of care by striking the
3 vehicle containing Plaintiffs on the roadway. As a direct and proximate result of the negligence of
4 Defendant JAMES McNAMEE, Plaintiffs have been damaged in an amount in excess of \$10,000.00.

5 SECOND CAUSE OF ACTION

6 (Negligence Per Se Against Defendant JAMES McNAMEE)

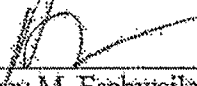
7 16. Plaintiffs incorporate paragraphs 1 through 15 of the Complaint as though said paragraphs
8 were fully set forth herein.

9 17. The acts of Defendant JAMES McNAMEE as described herein violated the traffic laws of
10 the State of Nevada and Clark County, constituting negligence per se, and Plaintiffs have been damaged
11 as a direct and proximate result thereof in an amount in excess of \$10,000.00.

12 WHEREFORE, Plaintiffs expressly reserving the right to amend this complaint prior to or at the
13 time of trial of this action, to insert those items of damage not yet fully ascertainable, pray judgment
14 against all Defendants, and each of them, as follows:

- 15 1. For general damages in an amount in excess of \$10,000.00;
16 2. For special damages in an amount in excess of \$10,000.00;
17 3. For property damages sustained by Plaintiff DARA DELPRIORE;
18 4. For attorney's fees and costs;
19 5. For interest at the statutory rate; and
20 6. For such other relief as the Court deems just and proper.

21 GLEN BERNER INJURY ATTORNEYS

22 
23 Corey M. Eschweiler, Esq.
24 Nevada Bar No. 6635
25 Adam D. Smith, Esq.
26 Nevada Bar No. 9690
27 4795 South Durango Drive
Las Vegas, Nevada 89147
Attorneys for Plaintiffs

APPENDIX EXHIBIT 2

APPENDIX EXHIBIT 2

DEC 23 2013


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CLERK

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ANS
ROBERT EATON, ESQ.
Nevada Bar No.: 9547
LAW OFFICE OF KATHERINE M. BARKER
823 South Las Vegas Boulevard, Suite 300
Las Vegas, NV 89101
Telephone: (702) 233-9303
Facsimile: (702) 233-9343
Attorney for Defendant
JAMES MCNAMEE

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12/23/2013 10:44:39 AM


CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

GIANN BIANCHI, individually, DARA
DELPRIORE, individually,

Plaintiffs,

vs.

JAMES MCNAMEE, individually, DOES I-X,
and ROE CORPORATIONS I-X, inclusive,

Defendants.

Case No.: A-13-691887-C
Dept. No.: VIII

Arbitration No.:

ANSWER TO COMPLAINT

Defendant James McNamee, by and through his attorney, Robert Eaton, Esq.,
of the Law Office of Katherine M. Barker, and for his Answer to Plaintiff's Complaint on
file herein, admits, denies and alleges as follows:

Defendant denies each and every paragraph contained within the Plaintiff's
Complaint on file herein, except for those matters that are expressly addressed
hereinafter.

I.

Answering Paragraphs 1, 2, 3, 4, 5, 6 and 7 of Plaintiff's Complaint, Defendant
is without sufficient knowledge to form a belief as to the truth or falsity of the
allegations contained therein and, therefore, denies same.

1
2 II.

3 Answering Paragraphs 8 and 13 of the Plaintiff's Complaint, Defendant denies
4 the allegations contained therein.

5 III.

6 Answering Paragraphs 9, 10, 11, and 12 of the Plaintiff's Complaint, Defendant
7 states that the allegations contained therein constitute conclusions of law and thus
8 require no answer; however, to the extent that they contain allegations of fact,
9 Defendant denies the allegations contained therein.

10 IV.

11 Answering Paragraph 14 of the Plaintiffs' Complaint, Defendant repeats and
12 realleges his answers to Paragraphs 1 through 13 of the Plaintiffs' Complaint as
13 though fully set forth herein and incorporates the same herein by reference.

14 V.

15 Answering Paragraph 15 of the Plaintiff's Complaint, Defendant states that the
16 allegations contained therein constitute conclusions of law and thus require no answer;
17 however, to the extent that they contain allegations of fact, Defendant denies the
18 allegations contained therein.

19 VI.

20 Answering Paragraph 16 of the Plaintiffs' Complaint, Defendant repeats and
21 realleges his answers to Paragraphs 1 through 13 of the Plaintiffs' Complaint as
22 though fully set forth herein and incorporates the same herein by reference.

23 VII.

24 Answering Paragraph 17 of the Plaintiff's Complaint, Defendant states that the
25 allegations contained therein constitute conclusions of law and thus require no answer;
26 however, to the extent that they contain allegations of fact, Defendant denies the
27 allegations contained therein.
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FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint on file herein fails to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his/her damages, if any.

THIRD AFFIRMATIVE DEFENSE

The incident alleged in the Complaint and the resulting damage, if any, to the Plaintiff was proximately caused or contributed to by the Plaintiff's own negligence and such negligence was greater than the negligence, which is specifically denied, of this answering Defendant.

FOURTH AFFIRMATIVE DEFENSE

The damages, if any, suffered by Plaintiff(s) were caused by new, independent, intervening and superseding causes, and not by this Answering Defendant's alleged negligence or other actionable conduct, the existence of which is specifically denied.

FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party over whom Defendant had no control.

SIXTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been alleged insofar as sufficient facts were not available after reasonable inquiry upon filing of Defendant's Answer and therefore, Defendant reserves the right to amend this Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

SEVENTH AFFIRMATIVE DEFENSE

All or part of the damages being claimed in this matter are barred by the doctrine of accord and satisfaction.

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EIGHTH AFFIRMATIVE DEFENSE

Plaintiff was not the owner of the vehicle she was driving which was involved in the subject accident and, therefore, lacks standing to assert a claim for property damage and/or loss of use.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs failed to prove all alleged medical expenses were properly billed and the charges billed were in amounts customary and reasonable within the community and were for examinations and treatments that were medically indicated and necessary.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to prove all alleged injuries were causally related to the July 17, 2013 accident alleged in Plaintiffs' Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

Third Party Plaintiff's claims are barred by the doctrine of laches.
WHEREFORE, Defendant James McNamee prays for judgment as follows:

1. That Plaintiff take nothing by way of his/her Complaint on file herein;
2. For reasonable attorney's fees and costs incurred herein; and
3. For such other and further relief as this Court deems just and proper in the premises.

DATED this 27th day of December, 2013

LAW OFFICE OF KATHERINE M. BARKER



Robert Eaton, Esq.
Nevada Bar No. 9547
823 South Las Vegas Boulevard, Suite 300
Las Vegas, NV 89101
Telephone: (702) 233-9303
Facsimile: (702) 233-9343
Attorneys for Defendant
James McNamee

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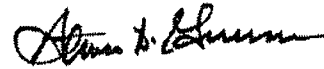
Corey M. Eschweiler, Esq.
Adam Smith, Esq.
GLEN J. LERNER & ASSOCIATES
4795 South Durango Drive
Las Vegas, NV 89147

EMPLOYEE OF LAW OFFICE OF
KATHERINE M. BARKER

DATED: 12/30/2013

APPENDIX EXHIBIT 3

APPENDIX EXHIBIT 3



CLERK OF THE COURT

1 SUBT

2 JAMES P.C. SILVESTRI, ESQ.

3 Nevada Bar No. 3603

4 PYATT SILVESTRI

5 701 Bridger Avenue, Suite 600

6 Las Vegas, Nevada 89101

7 (702) 383-6000

8 Attorneys for Defendant

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 GIANN BIANCHI, individually, DARA

12 DELPRIORE, individually,

13 Plaintiffs,

14 vs.

15 JAMES McNAMEE, individually, DOES I-X,
16 and ROE CORPORATIONS I-X, inclusive,

17 Defendants.

) CASE NO.: A-13-691887-C

) DEPT NO.: VIII

18 SUBSTITUTION OF ATTORNEYS

19 Defendant, JAMES McNAMEE, hereby Substitutes James P.C. Silvestri, Esq. of the law
20 offices of Pyatt Silvestri, 701 Bridger Avenue, Suite 600, Las Vegas, NV 89101, as his attorney in
21 the above-entitled action in the place and stead of Robert Eaton, Esq., of the law offices of
22 Katherine M. Barker, 823 S. Las Vegas Blvd, Suite 300, Las Vegas, Nevada 89101.
23

24
25 7/8/14
26 DATE

27
28 
JAMES McNAMEE

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 Fax (702) 477-0088

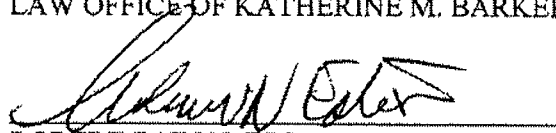
PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

CONSENT TO SUBSTITUTION

Robert Eaton, Esq., of the law offices of Katherine M. Barker, does hereby agree to the substitution of James P.C. Silvestri, Esq. as counsel for Defendant, JAMES McNAMEE, in the above-entitled action in my place and stead.

DATED this 9th day of June, 2014.

LAW OFFICE OF KATHERINE M. BARKER



ROBERT EATON, ESQ.

Nevada Bar No. 9547

823 S. Las Vegas Blvd. Suite 300

Las Vegas, Nevada 89101

ACCEPTANCE TO SUBSTITUTION

I, James P.C. Silvestri, Esq., of the law offices of Pyatt Silvestri hereby agrees to be substituted in the place of Robert Eaton, Esq., of the law offices of Katherine M. Barker, in the above-entitled action as attorney for Defendant, JAMES McNAMEE.

DATED this 9th day of June, 2014.

PYATT SILVESTRI



JAMES P.C. SILVESTRI, ESQ.

Nevada Bar No. 3603

701 Bridger Avenue, Suite 600

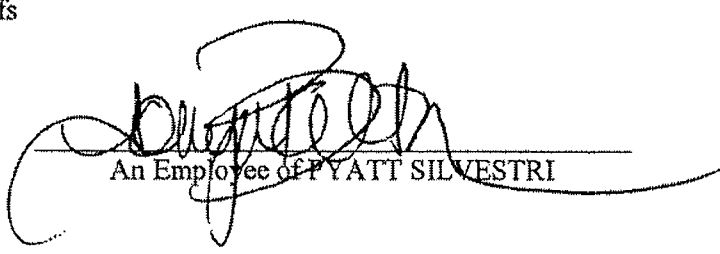
Las Vegas, NV 89101

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of July, 2014, I served a true and correct copy of the
above and foregoing **SUBSTITUTION OF ATTORNEYS**, by depositing same in the United
States Mail, first class postage fully prepared thereon, addressed as follows:

Robert Eaton, Esq.
Law Office of Katherine M. Barker
823 S. Las Vegas Blvd., Suite 300
Las Vegas, Nevada 89101

Adam Smith, Esq.
Glen Lerner Injury Attorneys
4795 S. Durango Drive
Las Vegas, Nevada 89147
F: 702-933-7043
Attorneys for Plaintiffs


An Employee of PYATT SILVESTRI

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

APPENDIX EXHIBIT 4

APPENDIX EXHIBIT 4

STATE OF ARIZONA

CERTIFICATION OF VITAL RECORD

STATE OF ARIZONA DEPARTMENT OF HEALTH SERVICES - OFFICE OF VITAL RECORDS CERTIFICATE OF DEATH

State File NO. 102- 2017-035221

1. DECEDENT'S LEGAL NAME (FIRST, MIDDLE, LAST) JAMES ALLEN MONAMEE			2. AKA'S (IF ANY)			3. DATE OF DEATH 08/12/2017				
4. SEX MALE		5. SOCIAL SECURITY NUMBER		6. DATE OF BIRTH 48		7. AGE UNDER 1 YEAR		8. MONTHS 9. DAYS		
12. PLACE OF DEATH - HOSPITAL <input type="checkbox"/> INPATIENT <input type="checkbox"/> E.R./OUTPATIENT <input type="checkbox"/> DEAD ON ARRIVAL		10. PLACE OF DEATH - OTHER THAN HOSPITAL <input type="checkbox"/> NURSING HOME OR LONG TERM CARE FACILITY <input checked="" type="checkbox"/> RESIDENCE <input type="checkbox"/> HOSPICE FACILITY <input type="checkbox"/> OTHER		14. FACILITY NAME (OR STREET ADDRESS IF NOT A FACILITY) 3309 N BRYCE RD		15. CITY, TOWN & ZIP CODE OR LOCATION OF DEATH GOLDEN VALLEY 86413		16. COUNTY OF DEATH MOHAVE		
17. BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY) ADA, MINNESOTA			18. MARITAL STATUS AT TIME OF DEATH WIDOWED			19. NAME OF SURVIVING SPOUSE (MAIDEN NAME IF WIFE)			20. DECEDENT'S USUAL RESIDENCE STREET ADDRESS 3309 N BRYCE RD	
21. CITY AND COUNTY GOLDEN VALLEY, MOHAVE			22. STATE ARIZONA			23. ZIP CODE 86413			24. EVER IN THE ARMED FORCES NO	
25. WAS DECEDENT OF HISPANIC ORIGIN? <input type="checkbox"/> YES, MEXICAN, MEXICAN AMERICAN, CHICANO <input type="checkbox"/> YES, PUERTO RICAN <input type="checkbox"/> YES, CUBAN <input type="checkbox"/> YES, OTHER (SPECIFY) <input type="checkbox"/> UNKNOWN			26. DECEDENT'S RACE(S) <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> BLACK, AFRICAN AMERICAN <input type="checkbox"/> NATIVE HAWAIIAN <input type="checkbox"/> ASIAN INDIAN <input type="checkbox"/> CHINESE <input type="checkbox"/> FILIPINO <input type="checkbox"/> JAPANESE <input type="checkbox"/> GUAMANIAN OR CHAMORRO <input type="checkbox"/> KOREAN <input type="checkbox"/> VIETNAMESE <input type="checkbox"/> SAMOAN <input type="checkbox"/> AMERICAN INDIAN OR ALASKA NATIVE			27. IF AMERICAN INDIAN OR ALASKA NATIVE, SPECIFY UP TO 4 TRIBES, PRIMARY OR ENROLLED TRIBE: ADDITIONAL TRIBE: ADDITIONAL TRIBE: ADDITIONAL TRIBE:			28. OCCUPATION: DIESEL MECHANIC	
29. FATHER'S NAME (FIRST, MIDDLE, LAST) ROBERT GERAY MONAMEE			30. MOTHER'S NAME (FIRST, MIDDLE, & LAST NAME PRIOR TO FIRST MARRIAGE) KATHLEEN LOUISE ADAMS			31. INFORMANT'S NAME BARBARA KAY MEIERHOFER			32. RELATIONSHIP SISTER	
33. NAME AND ADDRESS OF FUNERAL FACILITY: LIEZT-FAZE FUNERAL HOME & CREMATORY - KINGMAN 1701 N. STOCKTON HILL RD., KINGMAN, AZ			34. FUNERAL DIRECTOR: KRISTEN L. LIEZT, FUNERAL DIRECTOR			35. LICENSE NUMBER: F0966			36. NAME AND LOCATION OF 2nd DISPOSITION FACILITY: NONE	
37. METHOD(S) OF DISPOSITION: CREMATION			38. NAME AND LOCATION OF 1st DISPOSITION FACILITY: LAKEVIEW CREMATORY, LAKE HAVASU CITY, ARIZONA			39. NAME AND LOCATION OF 2nd DISPOSITION FACILITY: NONE			40. A ARTERIOSCLEROTIC CARDIOVASCULAR DISEASE	
41. APPROXIMATE INTERVAL: 42. B			43. APPROXIMATE INTERVAL: 44. C			45. APPROXIMATE INTERVAL: 46. D			47. APPROXIMATE INTERVAL:	
48. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSES GIVEN ABOVE:			49. INJURY?			50. INJURY AT WORK?			51. MANNER OF DEATH 1916	
52. TIME OF DEATH			53. WAS AN AUTOPSY PERFORMED? NO			54. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?			55. NAME OF PERSON COMPLETING CAUSE OF DEATH: ARCHAUS MOSLEY, M.D.	
56. DATE CERTIFIED: 08/14/2017			57. CERTIFIER'S ADDRESS: 1146 AVIATION DRIVE STE. 101 LAKE HAVASU CITY, AZ 86404			58. NAME OF REGISTRAR: PATTY MEAD			59. DATE REGISTERED: 08/17/2017	

DATE ISSUED: 09/19/2017



This is a true certification of the facts on file with the Arizona Department of Health Services, Bureau of Vital Records, PHOENIX, ARIZONA.
Revised 07/2016

Krystal Colburn
KRISTAL COLBURN
ASSISTANT STATE REGISTRAR

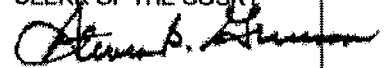
ARIZONA DEPARTMENT OF HEALTH SERVICES

P. App. 12

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

APPENDIX EXHIBIT 5

APPENDIX EXHIBIT 5



1 JEFFREY J. ORR, ESQ.
Nevada Bar No. 7854
2 PYATT SILVESTRI
701 Bridger Avenue, Suite 600
3 Las Vegas, Nevada 89101
T. (702) 383-6000
4 F. (702) 477-0088
jorr@pyattsilvestri.com

5 Attorney for Defendant
6 JAMES MCNAMEE

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 GIANN BIANCHI, individually, DARA)
10 DELPRIORE, individually)

CASE NO. A-13-691887-C
DEPT. NO.: VIII

11 Plaintiffs,

12 vs.

13 JAMES MCNAMEE, individually,
DOES I - X, and ROE CORPORATIONS
I - X, inclusive

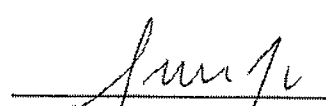
14 Defendants.

15
16 SUGGESTION OF DEATH UPON THE RECORD

17 Pursuant to Rule 25(a)(1) of the Nevada Rules of Civil Procedure, Jeffrey J. Orr, Esq.,
18 of the law firm of Pyatt & Silvestri, suggests on the record the death of Defendant, JAMES
19 McNAMEE, during the pendency of this litigation. The date of death of Defendant, JAMES
20 McNAMEE was August 12, 2017.

21 DATED this 20 day of September, 2017.

22 PYATT SILVESTRI

23
24 
25 JEFFREY J. ORR, ESQ.

26 Nevada Bar No. 7854
701 Bridger Avenue, Suite 600
27 Las Vegas, NV 89101
Attorneys for Defendant
28 JAMES MCNAMEE

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

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CERTIFICATE OF MAILING

Pursuant to NRCF 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 20th day of September, 2017, I caused the above and foregoing document, **SUGGESTION OF DEATH**, to be served as follows: Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; to the attorney(s) listed below:

Corey M. Eshweiler, Esq.
Glen J. Lerner & Associates
4795 South Durango Drive
Las Vegas, NV 89147
Attorney for Plaintiffs
GIANN BIANCHI and
DARA DELPRIORE


Employee of PYATT SILVESTRI

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-5941
PHONE (702) 383-6000 FAX (702) 477-0066

APPENDIX EXHIBIT 6

APPENDIX EXHIBIT 6



1 PET
2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 PYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY, NEVADA

P-17-093041-E

10 In the Matter of the Estate of James Allen) Case No.: PC-1
11 McNamee, Deceased) Dept No.:
12)
13)
14)
15)

16 PETITION FOR SPECIAL LETTERS OF ADMINISTRATION

17 1. Petitioner, Susan Clokey, by and through her attorney, Jeffrey J. Orr, Esq., of
18 the law firm of Pyatt Silvestri, (hereinafter "Petitioner"), alleges and shows as follows:

19 2. Petitioner files this request pursuant to Nevada Revised Statutes 140(2)(a) and
20 140(3)(b), and requests this Court enter an Order authorizing the appointment of a Special
21 Administrator over the estate of James Allen McNamee, (hereinafter "Decedent").

22 3. Petitioner is a resident of the State of Nevada, and is employed at the law firm of
23 Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

24 4. Decedent, James Allen McNamee, died on August 12, 2017. A certified copy of
25 Decedent's death certificate is attached as Exhibit A.

26 5. The Decedent was at the time of death a defendant in a pending civil action,
27 *Bianchi et. al v. James Allen McNamee*, Case No. A-13-691887-C. This case is set for trial
28 beginning September 25, 2017 before the Honorable Judge, Douglas Smith in Dept. VIII.

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-5941
PHONE (702) 383-6000 FAX (702) 477-0088

1 6. Petitioner has conducted a search of assets for James Allen McNamee,
2 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
3 to satisfy any judgment other than an automobile insurance policy with GEICO. That
4 insurance policy, GEICO policy #4180457162 provides automobile liability insurance
5 coverage of \$30,000 per person and \$60,000 per accident.

6 7. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No.
7 A-13-691887-C to continue and substitute the real party in interest, the Special
8 Administrator.

9 8. Petitioner is willing to act as Special Administrator of the estate to defend *Bianchi*
10 *et. al. v. McNamee*, Case No. A-13-691887-C.

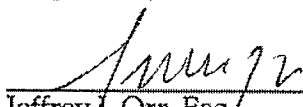
11 9. Petitioner has never been convicted of a felony. Petitioner is qualified under
12 NRS 139.010 to serve as Special Administrator of the Estate.

13 10. The sole purpose of this petition is to allow *Bianchi et. al. v. McNamee*, Case No.
14 A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance
15 policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner
16 intends to defend that action as the real party in interest.

17 WHEREFORE, Petitioner prays that a Special Administrator of the Estate of James
18 Allen McNamee, be appointed to defend Case No. A-13-691887-C, to be substituted as the
19 real party in interest Case No. A-13-691887-C for the sole purposes noted in
20 NRS140.040(2)(a) and 140.040(3)(b).

21 DATED this 20 day of September, 2017.

22
23 Respectfully submitted,

24 
25 Jeffrey J. Orr, Esq.
26 Nevada Bar No. 7854
27 PYATT SILVESTRI
28 701 Bridger Avenue
Suite 600
Las Vegas, NV 89101
Attorney for Petitioner,
Special Administrator Susan Clokey

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COUNTY OF CLARK

SS

I am the Petitioner in the above-entitled action. I have read the foregoing Petition for Special Letters of Administration, and know the contents thereof. The Petition is true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters, I believe them to be true.

DATED this 20th day of September, 2017.

Signature _____

Susan Clokey

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

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EXHIBIT A

(Death Certificate)

STATE OF ARIZONA

CERTIFICATION OF VITAL RECORD

STATE OF ARIZONA
DEPARTMENT OF HEALTH SERVICES - OFFICE OF VITAL RECORDS
CERTIFICATE OF DEATH

State File NO. 102- 2017-085221

1. DECEDENT'S LEGAL NAME (FIRST, MIDDLE, LAST) JAMES ALLEN MCNAMEE				2. SEX OF ANY MALE		3. DATE OF DEATH 08/12/2017	
4. SEX MALE		5. SOCIAL SECURITY NUMBER		6. DATE OF BIRTH 08/28/1968		7. AGE 48	
8. PLACE OF DEATH - HOSPITAL <input type="checkbox"/> INPATIENT <input type="checkbox"/> ER/OUTPATIENT <input type="checkbox"/> DEAD ON ARRIVAL		9. PLACE OF DEATH - OTHER THAN HOSPITAL <input type="checkbox"/> NURSING HOME OR LONG TERM CARE FACILITY <input checked="" type="checkbox"/> RESIDENCE <input type="checkbox"/> HOME FACILITY <input type="checkbox"/> OTHER					
10. FACILITY NAME (OR STREET ADDRESS IF NOT A FACILITY) 3309 N BRYCE RD				11. CITY, TOWN & ZIP CODE OR LOCATION OF DEATH GOLDEN VALLEY 86413		12. COUNTY OF DEATH MOHAVE	
13. BIRTHPLACE (CITY AND STATE OR FOREIGN COUNTRY) ADA MINNESOTA				14. MARITAL STATUS AT TIME OF DEATH WIDOWED		15. NAME OF SURVIVING SPOUSE (MAIDEN NAME IF WIFE) NO	
16. DECEDENT'S USUAL RESIDENCE STREET ADDRESS 3309 N BRYCE RD				17. CITY AND COUNTY GOLDEN VALLEY, MOHAVE		18. STATE ARIZONA	
19. ZIP CODE 86413				20. EVER IN THE ARMED FORCES NO			
21. WAS DECEDENT OF HISPANIC ORIGIN? <input checked="" type="checkbox"/> NO, NOT SPANISH, HISPANIC OR LATINO <input type="checkbox"/> YES, MEXICAN, MEXICAN AMERICAN, CHICANO <input type="checkbox"/> YES, PUERTO RICAN <input type="checkbox"/> YES, CUBAN <input type="checkbox"/> YES, OTHER (SPECIFY)				22. DECEDENT'S RACE (1) <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK, AFRICAN AMERICAN <input type="checkbox"/> NATIVE HAWAIIAN <input type="checkbox"/> ASIAN INDIAN <input type="checkbox"/> CHINESE <input type="checkbox"/> JAPANESE <input type="checkbox"/> GUAMANIAN OR CHAMORRO <input type="checkbox"/> KOREAN <input type="checkbox"/> VIETNAMESE <input type="checkbox"/> SAMOAN <input type="checkbox"/> AMERICAN INDIAN OR ALASKA NATIVE			
23. OCCUPATION DIESEL MECHANIC				24. AMERICAN INDIAN OR ALASKA NATIVE (SPECIFY UP TO 4 TRIBES) NO			
25. FATHER'S NAME (FIRST, MIDDLE, LAST) ROBERT GERAY MCNAMEE				26. MOTHER'S NAME (FIRST, MIDDLE, & LAST NAME PRIOR TO FIRST MARRIAGE) KATHLEEN LOUISE ADAMS			
27. INFORMANT'S NAME BARBARA KAY MEIERHOFFER				28. RELATIONSHIP TO DECEDENT SISTER			
29. NAME AND ADDRESS OF FUNERAL FACILITY LIEZT, FRAZE FUNERAL HOME & CREMATORY - KINGMAN 1701 N. STOCKTON HILL RD., KINGMAN, AZ				30. FUNERAL DIRECTOR KRISTEN L. LIEZT, FUNERAL DIRECTOR			
31. METHOD OF DISPOSITION CREMATION				32. NAME AND LOCATION OF 2nd DISPOSITION FACILITY NONE			
33. IMMEDIATE CAUSE OF DEATH 40. A ARTERIOSCLEROTIC CARDIOVASCULAR DISEASE				34. APPROXIMATE INTERVAL 41. APPROXIMATE INTERVAL			
35. DUE TO OR AS A CONSEQUENCE OF 42. B 43. C				36. APPROXIMATE INTERVAL 44. APPROXIMATE INTERVAL			
37. DUE TO OR AS A CONSEQUENCE OF 45. D				38. APPROXIMATE INTERVAL 46. APPROXIMATE INTERVAL			
39. CAUSE OF DEATH PART II 47. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSES GIVEN ABOVE				48. INJURY AT WORK? NO			
49. INJURY AT WORK? NO				50. MANNER OF DEATH? NATURAL DEATH			
51. TIME OF DEATH 1915				52. TIME OF DEATH 1915			
53. WAS AN AUTOPSY PERFORMED? NO				54. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? NO			
55. CAUSE AND MANNER OF DEATH CERTIFICATION 56. NAME OF PERSON COMPLETING CAUSE OF DEATH: ARCHAUS MOSLEY, M.D.				57. DATE CERTIFIED: 08/04/2017			
58. CERTIFIER'S ADDRESS: 118 AVIATION DRIVE STE. 101 LAKE HAVASU CITY, AZ 86404				59. NAME OF REGISTRAR PATTY MEAD			
60. DATE REGISTERED 08/17/2017							

DATE ISSUED: 09/19/2017



This is a true certification of the facts as filed with the Arizona Department of Health Services, Bureau of Vital Records, PHOENIX, ARIZONA
Revised 07/2016

Kristal Colburn
KRISTAL COLBURN
ASSISTANT STATE REGISTRAR



ARIZONA DEPARTMENT OF HEALTH SERVICES

P. 01

This copy is not valid unless prepared on a form displaying the State Seal and impressed with the raised seal of the issuing agency.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE, SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

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EXHIBIT B

(Nominations and/or Affidavits in Support of Petition)

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-8088

SUSAN CLOKEY, being first duly sworn, under oath, deposes and says that:

2. That I am familiar with Case No. A-13-691887-C entitled *Bianchi et al. v. James McNamee* in Department VIII. The matter is set for trial on September 25, 2017.


4. That I have reviewed an asset search for James Allen McNamee and upon information and belief, his estate contains no assets.

6. The sole purpose of the appointment of the Special Administrator is to allow the Special Administrator to defend that action and to be substituted as the real party in interest.

1. *Chlorophyll a*
 2. *Chlorophyll b*
 3. *Chlorophyll c*

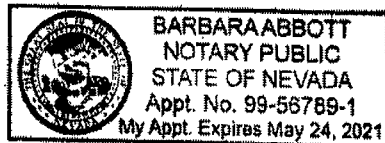
7. I declare under penalty of perjury that the foregoing is true and correct and this affidavit is executed this 28th day of September, 2017.

FURTHER AFFIANT SAYETH NAUGHT.


SUSAN CLOKEY

SUBSCRIBED AND SWORN to before me
this 20th day of September, 2017.

Barbara Abbott
NOTARY PUBLIC, in and for
said County and State.



PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

1 Jeffrey J. Orr, Esq.
2 Nevada Bar No. 7854
3 PYATT SILVESTRI
4 701 Bridger Avenue
5 Suite 600
6 Las Vegas, NV 89101
7 T. (702) 383-6000
8 jorr@pyattsilvestri.com
9 Attorney for Petitioner
10 Special Administrator, Susan Clokey
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8 EIGHTH JUDICIAL DISTRICT COURT
9 CLARK COUNTY, NEVADA


10 In the Matter of the Estate of James Allen) Case No.: PC-1
11 McNamee, Deceased) Dept No.:
12)
13)
14)
15)

15 NOMINATION OF SPECIAL ADMINISTRATOR

16 I, Jeffrey J. Orr, Esq., whose address is 701 Bridger Avenue, Suite 600, Las Vegas,
17 Nevada 89101 declare under penalty of perjury that I hereby nominate Susan Clokey, who
18 works at Pyatt Silvestri located at 701 Bridger Avenue, Suite 600, Las Vegas, Nevada 89101,
19 to serve as Special Administrator of the Estate of James Allen McNamee.

20 DATED this 20 day of September, 2017.

21 Respectfully submitted,

22 
23 _____
24 Jeffrey J. Orr, Esq.
25 Nevada Bar No. 7854
26 PYATT SILVESTRI
27 701 Bridger Avenue, Suite 600
28 Las Vegas, NV 89101
T. (702) 383-6000
Attorney for Petitioner
Special Administrator, Susan Clokey

APPENDIX EXHIBIT 7

APPENDIX EXHIBIT 7

ORIGINAL

Electronically Filed
11/16/2017 4:41 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **ORDER**
2 Jeffrey J. Orr, Esq.
3 Nevada Bar No. 7854
4 PYATT SILVESTRI
5 701 Bridger Avenue
6 Suite 600
7 Las Vegas, NV 89101
8 T. (702) 383-6000
9 F. (702) 477-0088
10 jorr@pyattsilvestri.com
11 Attorney for Petitioner,
12 Special Administrator Susan Clokey

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the Matter of the Estate of James Allen) Case No.: P-17-093041-E
11 McNamee, Deceased) Dept No.: S
12)
13)
14)
15)

16 **ORDER GRANTING**
17 **PETITION FOR SPECIAL LETTERS OF ADMINISTRATION**

18 Upon submission of the Petition for Special Letters of Administration, representing
19 as follows:

- 20 1. That Decedent, James Allen McNamee died on the 12th day of August, 2017, in
21 the County of Mohave, State of Arizona.
22 2. That Decedent was a resident of Mohave County, Arizona, at the time of his
23 death.
24 3. That at the time of Decedent's death, Decedent was a Defendant in a personal
25 injury lawsuit, *Bianchi et. al v. James Allen McNamee*, Eighth Judicial District Court, Clark
26 County, Nevada Case No. A-13-691887-C.
27 4. Petitioner has conducted a search of assets for James Allen McNamee,
28 decedent. Upon information and belief, the Estate of James Allen McNamee has no assets
to satisfy any judgment other than an automobile insurance policy with GEICO. That

PYATT SILVESTRI
A PROFESSIONAL LAW CORPORATION
701 BRIDGER AVENUE SUITE 600
LAS VEGAS, NEVADA 89101-8941
PHONE (702) 383-6000 FAX (702) 477-0088

1 insurance policy, GEICO policy #4180457162 provides automobile liability insurance
2 coverage of \$30,000 per person and \$60,000 per accident.

3 5. Petitioner is a resident of the State of Nevada, and is employed at the law firm of
4 Pyatt Silvestri located at 701 Bridger Avenue, Suite, 600, Las Vegas, NV 89101.

5 6. Special Administration is needed to allow *Bianchi et. al. v. McNamee*, Case No.
6 A-13-691887-C to continue and substitute the real party in interest, the Special
7 Administrator.

8 7. Petitioner is willing to act as Special Administrator of the estate to defend
9 *Bianchi et. al. v. McNamee*, Case No. A-13-691887-C.

10 8. Petitioner has never been convicted of a felony. Petitioner is qualified under
11 NRS 139.010 to serve as Special Administrator of the Estate.

12 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Susan Clokey is appointed as
13 Special Administrator and that Special Letters of Administration be issued, without bond,
14 pursuant to Nevada Revised Statutes 140(2)(a) and 140(3)(b).

15 The sole purpose of this order is to allow *Bianchi et. al. v. McNamee*, Case No.
16 A-13-691887-C to proceed as to the insurance proceeds of the GEICO automobile insurance
17 policy pursuant to Nevada Revised Statutes 140.040(2)(a) and 140.040(3)(b). Petitioner
18 intends to defend that action as the real party in interest.

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1 The Special Administrator does not have any other authority beyond Nevada
2 Revised Statutes 140(2)(a) and 140(3)(b) and may not distribute any property other than the
3 GEICO automobile insurance policy with automobile liability insurance coverage of \$30,000
4 per person and \$60,000 per accident.

5 Any funds will be held in a blocked account or attorney trust account.

6 IT IS FURTHER ORDERED that the settlement of the decedent's lawsuit is subject to
7 this court's approval.

8 DATED this 15th day of NOV. ~~October~~, 2017.

Vincent Ochoa
DISTRICT COURT JUDGE *SO*

11 Submitted by:

12 *Jeffrey J. Orr*
13 _____
14 Jeffrey J. Orr, Esq.
15 Nevada Bar No. 7854
16 PYATT SILVESTRI
17 701 Bridger Avenue, Suite 600
18 Las Vegas, NV 89101
19 T. (702) 383-6000
20 jorr@pyattsilvestri.com
21 Attorney for Petitioner,
22 Special Administrator Susan Clokey
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EXHIBIT A

NRS 140.040 Powers, duties and immunity from liability for certain claims.

1. A special administrator shall:

(a) Collect and preserve for the executor or administrator when appointed all the goods, chattels and receivables of the decedent, and all incomes, rents, issues, profits, claims and demands of the estate.

(b) Take charge and management of the real property and enter upon and preserve it from damage, waste and injury.

2. A special administrator may:

(a) For all necessary purposes, commence, maintain or defend actions and other legal proceedings as a personal representative.

(b) Without prior order of the court, sell any perishable property of the estate, as provided in

NRS 148.170.

(c) Exercise such other powers as have been conferred by the order of appointment.

(d) Obtain leave of the court to borrow money or to lease or mortgage real property in the same manner as an executor or administrator.

3. A special administrator is not liable:

(a) To any creditor on any claim against the estate; or

(b) For any claim against the decedent except a claim involving wrongful death, personal injury or property damage if the estate contains no assets other than a policy of liability insurance.

[Part 86:107:1941; 1931 NCL § 9882.86] – (NRS A 1971, 647; 1983, 668; 1999, 2276)

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Pyatt Silvestri and that on the 16th day of November, 2017, I caused the above **ORDER GRANTING PETITION FOR SPECIAL LETTERS OF ADMINISTRATION**, to be served pursuant to NRCP 5(b) to be electronically served through the *Eighth Judicial District Court's electronic filing system* and via *U.S. Mail* to the following party listed below:

Robert McNamee
2472 230th Street
Mahnomen, MN 56557-9034


An Employee of PYATT SILVESTRI

APPENDIX EXHIBIT 8

APPENDIX EXHIBIT 8

ORIGINAL

Electronically Filed
2/7/2018 4:26 PM
Steven D. Grierson
CLERK OF THE COURT



1 Jeffrey J. Orr, Esq.
2 Nevada Bar No. 7854
3 PYATT SILVESTRI
4 701 Bridger Avenue, Suite 600
5 Las Vegas, Nevada 89101
6 T. (702) 383-6000
7 F. (702) 477-0088
8 jorr@pyattsilvestri.com

9 *Attorney for Susan Clokey,*
10 *Special Administrator*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 In the Matter of the Estate of
14 JAMES ALLEN MCNAMEE,

Case No.: P-17-093041-E
Dept. No.: S

15 Deceased.

16 **LETTERS OF SPECIAL ADMINISTRATION**

17 On the 16th day of November, 2016, the Court entered an ORDER GRANTING PETITION FOR
18 SPECIAL LETTERS OF ADMINISTRATION ("Order"). The Order appoints Susan Clokey as
19 Special Administrator and legal representative of the Estate of JAMES ALLEN MCNAMEE,
20 Decedent. The Order includes:

- 21 ■ A directive for no bond;
- 22 □ A directive that all liquid assets be held in the Solomon Dwiggins & Freer, Ltd. Attorney Client
23 Trust Account;
- 24 □ A directive for the posting of a bond in the sum of \$_____; or
- 25 □ A directive for the establishment of a blocked account.

26 ///

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///

1 The Special Administrator, having duly qualified, may act and have the authority and duties of
2 Special Administrator as set forth in such Order.

3 In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

4 STEVEN D. GRIERSON, CLERK OF COURT

5 By: 

6 Deputy Clerk

Date

FEB 07 2018

7 VIVIAN A. CANELA

8 Respectfully Submitted by:

9 PYATT SILVESTRI

10 By: 

11 Jeffrey J. Orr, Esq.
12 Nevada Bar No. 7854
13 701 Bridger Avenue, Suite 600
14 Las Vegas, Nevada 89101
15 T. (702) 383-6000
16 F. (702) 477-0088
17 jorr@pyattsilvestri.com
18 Attorney for Susan Clokey,
19 Special Administrator
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Executed this 7th day of February, 2018.

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

Barbara Abbott
NOTARY PUBLIC, in and for said
State and County

