Case No. 77668

IN THE SUPREME COURT OF NEVADA

JANETTE BYRNE, as TRUSTEE OF THE UOFM TRUST,

Appellant,

vs.

SUNRIDGE BUILDERS, INC.; a Nevada Corporation; LANDS WEST BUILDERS, INC., a Nevada Corporation; BRYANT MASONRY, LLC, a Nevada Limited Liability Company; DMK CONCRETE, INC., a Nevada Corporation; CIRCLE S DEVELOPMENT DBA DECK SYSTEMS OF NEVADA, a Nevada Corporation; GREEN PLANET LANDSCAPING, LLC, a Nevada Limited Liability Company; LIFEGUARD POOL MAINT. dba LIFEGUARD POOLS, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; PYRAMID PLUMBING, a Nevada Corporation; RIVERA FRAMING INC. DBA RIVERA FRAMERS, a Nevada Corporation; S&L ROOFING, INC., a Colorado Corporation,

Respondents.

APPELLANT'S PETITION FOR REHEARING

Eighth Judicial District Court
The Honorable Richard Scotti, District Judge
District Court Case A-16-742143-D

Robert C. Vohl, Esq., SBN 2316
Molof & Vohl
301 Flint Street
Reno, NV 89501
(775) 329-9229

Wendy Walker, Esq., SBN 10791
Adam Springel, Esq., SBN 7187
Springel & Fink, LLP
10655 Park Run Drive, Suite 275
Las Vegas, NV 89144
(702) 804-0706

Attorneys for Appellant

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

RELATED ENTITIES:

None

LAW FIRMS APPEARING FOR APPELLANT IN THE CASE OR EXPECTED TO APPEAR IN THIS COURT:

Counsel on Appeal:

Robert C. Vohl, Esq.
Molof & Vohl
301 Flint Street
Reno, Nevada 89501
(775) 329-9229

Trial Counsel:

Wendy L. Walker, Esq.
Adam Springel, Esq.
Springel & Fink, LLP10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
(702) 804-0706

Timothy S. Menter, Esq.
Menter & Witkin, LLP
19900 MacArthur Blvd., Suite 800
Irvine, California, 92612, (949) 250-9000

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES **Page**

STATUTES AND RULES

I. INTRODUCTION

Appellant Janette Byrne hereby petitions this Court for rehearing pursuant to NRAP 40 with respect to this Court's October 29, 2020 Published Opinion. The issue in this appeal is whether NRS 40.695, which tolls the statute of repose for construction defect claims from the time a prelitigation notice of the claim is served on the contractor pursuant to NRS 40.645, applies to a notice of claim served within the one-year grace period established by AB 125, 2015 Nev. Stat., ch. 2, § 21(6), but more than six years after the date of accrual of the claim. Succinctly stated, the resolution of this issue depends on whether § 21(6) extended the new six-year statute of repose created by AB 125. This Court held, in effect, that § 21(6) unambiguously does not constitute an extension of the new six-year period of repose.

The sole reason why this Court determined that § 21(6) is unambiguous is that it misapprehended and improperly relied upon NRS 40.647(2)(b), a statute that is irrelevant to the issue on appeal. NRS 40.647(2)(b) protects a claimant against the loss of a claim when the claimant has filed an action without complying with the mandatory prelitigation requirements of Chapter 40. That statute neither applies to claimants in Byrne's position nor contains any language that affects the meaning of § 21(6). Nor does NRS 40.647(2)(b) have any bearing upon the questions of: (1) whether § 21(6) extended the statute of repose or; (2) whether a prelitigation notice

served within the one-year grace period tolls the statute of repose for construction defect claims. Accordingly, it is respectfully submitted that this Court's reliance on NRS 40.647(2)(b) was wholly misplaced and has resulted in a decision that is not supported by Nevada law.

Several statements in this Court's opinion highlight the flaws in the Court's reasoning. First, the Opinion's statement that "NRS 40.647(2)(b) specifically contemplates the scenario in which a claimant must choose between completing the prelitigation process and filing an action before it is time-barred" is patently wrong. The only purpose of that statute is to protect a claimant who has commenced an action "without complying with" the Chapter 40 prelitigation requirements. However, Byrne indisputably did comply with all prelitigation requirements.

Second, the very first sentence of the Opinion indicates that this Court began its discussion with the assumption that the grace period did not extend the statute of repose. But the central issue on appeal is whether the grace period extended the statute of repose. Thus, it appears that this Court mistakenly predetermined the very issue to be decided on appeal.

Third, in ruling that § 21(6) is susceptible to just one interpretation, this Court apparently overlooked the fact that several district courts, both State and Federal, have interpreted § 21(6) to mean that tolling applies to notices served prior to the end

of the grace period**.** The fact that other Nevada Courts have seen fit to construe § 21(6) in the manner urged by Byrne strongly militates against the conclusion that the section is unambiguous.

II. FACTUAL BACKGROUND

In December 2015, approximately six years and seven months after the home was built, Byrne served notice of completion of a construction defect pursuant to NRS 40.645 (the "prelitigation notice") on the general contractor, Sunridge. In August 2016, after completing the prelitigation process (including mediation) Byrne filed her construction defect lawsuit against Sunridge. As the Opinion notes, Byrne's prelitigation notice was served during the grace period and her lawsuit was filed outside of that period. Although Byrne filed her action within the period allowed for tolling under NRS 40.695, this Court held that the tolling statute does not apply to a prelitigation notice served more than six years after the action accrued, even if it was served during the grace period.

III. PERTINENT RULES OF STATUTORY CONSTRUCTION

The issue on appeal involves statutory construction. A statute must be construed in order to "render it meaningful within the context and purpose of the legislation." *Coast Hotels v. Nev. State Labor Commn*., 117 Nev. 835,841, 34 P.3d 546,550 (2001). "It is a fundamental canon of statutory construction that the words

of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Dezzani v. Kern & Associates*, 134 Nev. Adv. Rep. 9, 412 P.3d 56, 60 (2018), quoting *David v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989).

"Whenever possible, this Court interprets a statute in harmony with other rules or statutes, so that the act as a whole is given effect." *N.J. v. State,* 134 Nev. Adv. Rep. 48, 420 P.3d 1029, 1032 (2018); *C. Nicholas Pereos v. Bank of Am.*, 131 Nev. 436, 352 P.3d 1133, 1136 (2015) ("When interpreting a statue, this court considers the statute's multiple legislative provisions as a whole."); *Kulic v. Hunter's Ridge Homeowner's Ass'n*, 126 Nev. 731, 367 P.3d 791 (2010) (interpretation should not "undermine the statutory scheme and the purpose of the statute"); *Berkson v. Lapome,* 126 Nev. 492,497, 245 P.3d 560, 563 (2010) (words in a statute are to be given their plain meaning "unless such an approach would violate the spirit of the act.").

When interpreting a statute, courts must not confine themselves "to examining a particular statutory provision in isolation." *FDA v. Brown & Williamson*, 529 U.S. 120,132 (2000). "The meaning – or ambiguity – of certain words or phrases may only become evident when placed in context." *Id*. A court must therefore interpret a statute as part of "a symmetrical and coherent regulatory scheme" and "fit, if possible, all parts into a harmonious whole." *Id*. at 133.

When a statute "is susceptible to more than one natural or honest

interpretation," in light of such considerations, it is ambiguous. *See Tam v. District Court*, 131 Nev. 792,799-800, 358 P.3d 234 (2015). Where alternative interpretations of a statute are possible, the one producing the most reasonable result should always be favored. *See G & H Associates v. Ernest W. Hahn,* 113 Nev. 265, 272, 934 P.2d 229 (1997). Interpretations leading to absurd results must be avoided. *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599, 959 P.2d 519 (1998). For the reasons discussed below, this Court's Opinion in this case contravenes many of the foregoing principles of statutory construction and has produced an absurd result.

IV. LEGAL ARGUMENT

A. NRS 40.647(2)(b) Provides No Support For This Court's Decision

Nevada construction defect law is governed by a comprehensive statutory scheme established by NRS 40.600 to 40.695, commonly referred to as Chapter 40. One of the "primary purposes of our construction defect statutory scheme is to protect the rights of home buyers. *Gunderson v. D.R. Horton*, 130 Nev. 67,84, 319 P.3d 606 2014). In 2015, the Legislature passed AB 125, which shortened the statute of repose for latent construction defects from ten years to six years. Assembly Bill 125, 78th Leg. (Nev. 2015). AB 125 also provided that the new six-year statute of repose would apply retroactively to all actions involving improvements that were substantially completed before the effective date of the act (February 24, 2015). 2015

Nev. Stat., ch. 2, § 21(5).

Since the Legislature recognized that the retroactive shortening of the statute of repose would extinguish some existing construction defect claims and adversely impact others, it created a one-year grace period for the filing of claims. 2015 Nev. Stat., ch. 2, § 21(6). Section § 21(6) provides, in pertinent part, that "The provisions of subsection 5 do not limit an action: (a) That accrued before the effective date of this act, and was commenced within 1 year after the effective date of this act." Under § 21(6), the grace period ended on February 24, 2016.

As noted, the issue in this appeal is whether NRS 40.695, which tolls the statute of repose for construction defect claims from the time a prelitigation notice is served on the contractor pursuant to NRS 40.645, applies to a notice of claim served within the one-year grace period established by § 21(6), but more than six years after the accrual of the claim.

Byrne contended on appeal that, at minimum, § 21(6) is reasonably susceptible to the interpretation that it extends the statute of repose, and therefore that the filing of a prelitigation notice during the grace period tolls the statute of repose pursuant to NRS 40.695. AOB at 14-27. Byrne further argued that, even if § 21(6) is ambiguous with respect to the tolling effect of a notice filed more than six years after the accrual date, it cannot reasonably be interpreted to bar Byrne's claim. AOB at 16-17. As

Byrne explained, Chapter 40 contains numerous provisions that absolutely require claimants to comply with prelitigation procedures before they are permitted to file suit. AOB at 22-27. This Court recognized as much in its Opinion, stating that "Chapter 40 *requires a claimant* to follow an extensive prelitigation process prior to filing his or her lawsuit, including serving an NRS Chapter 40 Notice on the builder." (Emphasis added) Opinion, p. 8; NRS 40.647(1). The tolling provisions of NRS 40.695 are expressly designed to allow the parties complete their settlement efforts before resorting to judicial remedies.

Nevertheless, this Court held that § 21(6) unambiguously provides that tolling does not apply to any prelitigation notice served more than six years after the accrual date. Further, this Court impliedly held that the grace period provided in § 21(6) was not intended as an extension of the statute of repose. However, in reaching that result, the Court manifestly failed to apply the controlling rules of statutory construction, failed to properly consider how its holding conflicts with other sections of Chapter 40, and failed to give due consideration to the issue of whether § 21(6) is reasonably susceptible to Byrne's interpretation.

It is indisputable that, if Byrne had filed a lawsuit before she served her prelitigation notice, that action would have violated the letter of NRS 40.645, requiring a claimant to serve a prelitigation notice before commencing an action. It

is also incontrovertible that, if Byrne had filed a lawsuit after serving her prelitigation notice, but prior to the February 24, 2016 bar date, such a filing would have violated NRS 40.647(1) (mandatory prelitigation allowance of inspection) and NRS 40.680 (mandatory prelitigation mediation).

In ruling that § 21(6) is unambiguous, this Court did not directly address Byrne's argument that § 21(6) is ambiguous in light of: (1) the mandatory nature of the prelitigation requirements and the spirit of those provisions; (2) the effect of the tolling provisions of NRS 40.695, and; (3) the specific reasons why the Legislature was required to create the grace period. If this Court had done so, it would have been compelled to recognize that an interpretation of § 21(6) that eliminates the tolling effect of a prelitigation notice served during the grace period blatantly conflicts with the prelitigation notice requirements under NRS 40.645, as well as with the numerous other parts of Chapter 40 requiring that the prelitigation process be completed before a lawsuit may be filed.

The only reason why this Court did not consider the merits Byrne's arguments was that it erroneously believed NRS 40.647(2)(b) harmonized the conflicts between § 21(6) and the rest of Chapter 40. NRS 40.647(2)(b) provides that, if dismissal of an action would prevent the claimant from filing another lawsuit due to the statute of repose, the court shall stay the proceeding pending compliance with the prelitigation

process. According to this Court's Opinion, § 21(6) unambiguously made NRS 40.695 tolling inapplicable to notices served more than six years after accrual of the claim because NRS 40.647(2)(b) provides a safety net for claimants who have wrongfully filed a lawsuit without first complying with NRS 40.645, 40.647 or 40.680. However, this Court's reliance on NRS 40.647(2)(b) as a basis for holding that § 21(6) unambiguously disallows tolling as to Byrne's claim is manifestly unsupportable. RAB at 9-10.

First, the fact that, under NRS 40.647(2)(b), a district court may stay an action that has been filed prematurely in violation of the mandatory prelitigation provisions of Chapter 40 does nothing to negate the fact that compliance with the prelitigation requirements remains compulsory in all cases. Since nothing contained in NRS 40.467(2)(b) purports to excuse a claimant from complying with the mandatory prelitigation requirements, nothing in that section suggests that tolling does not apply to all claimants who have begun to comply with the prelitigation requirements during the grace period. Nor does anything in NRS 40.647(2)(b) imply that § 21(6) was not intended to extend the statute of repose. Accordingly, notwithstanding anything contained in NRS 40.647(2)(b), an interpretation of § 21(6) that required Byrne to file an action to preserve her claim directly conflicts with the mandatory prelitigation requirements of Chapter 40.

Second, the fact that this Court found it necessary to reach outside the four corners of § 21(6) in order to justify its interpretation of that section demonstrates, in itself, that § 21(6) is ambiguous. If there were no ambiguity created by the conflict between this Court's interpretation of § 21(6) and the mandatory prelitigation provisions of Chapter 40, there would have been no need for this Court to resort to NRS 40.647(2)(b) in an effort to parse the meaning of § 21(6).

Third, NRS 40.647(2)(b) has nothing to do with the scope of the grace period under§ 21(6), the effect of that section as an extension of the statute of repose, or the scope of the tolling provisions in NRS 40.695. As Byrne explained in her appeal briefs, the manifest purpose of NRS 40.647(2)(b), which was on the books long before the 2015 amendments, was to avoid prejudice to a claimant who mistakenly filed an action without properly complying with the prelitigation mandates. Thus, the statute had a purely remedial purpose – one that was directly aimed at ensuring that the prelitigation mandates be followed in all cases – and was certainly not intended to operate as an adjunct to the new grace period established by § 21(6). The Legislature did not change a single word of NRS 40.647(2)(b) in the 2015 amendments and did not reference that section at any other juncture.

Accordingly, there is no indication that the Legislature might have intended to rely on the existing language of NRS 40.647(2)(b) for the purpose of clarifying the

meaning of § 21(6). Nor is there any plausible reason why it might have intended such a result. Moreover, it is not reasonable to conclude that the Legislature would have assumed that claimants, such as Byrne, could determine, solely by dint of the preexisting provisions of NRS 40.647(2)(b), that § 21(6) was meant to eliminate tolling as to their notices.

Fourth, and most importantly, NRS 40.647(2)(b), on its face, is inapplicable to Byrne. NRS 40.647(2)(b) begins by stating "if a claimant commences an action *without complying with subsection 1 or NRS 40.645*, the court shall" dismiss the action without prejudice or, if necessary to avoid the statute of repose, stay the proceeding pending compliance. (Emphasis added). Thus, NRS 40.647(2)(b) expressly applies only to claimants who, unlike Byrne, have failed to properly serve a prelitigation notice or complete the process. Since NRS 40.695 tolls the statute of repose upon service of the notice, and since NRS 40.647(2)(b) solely contemplates a situation where the claimant has not commenced or completed the prelitigation process, it has absolutely no bearing on the running of the statute of repose with respect to a claim that is already being administered within the prelitigation process.

Prior to the time when Byrne could have commenced an action within the grace period (February 24, 2016), she had already complied with NRS 40.645 by serving her prelitigation notice and proceeding to satisfy the requirements of the Chapter 40

prelitigation process. As such, Byrne obviously could not have commenced an action *without complying with* the process, as contemplated by NRS 40.647(2)(b), because she had already complied. There is no logical reason why she would have interpreted that statute to provide otherwise.

Even if there were a question about the scope of NRS 40.647(2)(b), it would only underscore the significance of the ambiguity in § 21(6). Accordingly, the language of NRS 40.647(2)(b) makes it more likely – not less – that a claimant, such as Byrne, who had already begun to dutifully comply with the prelitigation requirements would be misled into believing that she was not required to file a lawsuit in the middle of the prelitigation process in order to avoid the statute of repose.

B. This Court's Whole Analysis Was Based on its Erroneous Interpretation of NRS 40.647(2)(b).

The error in this Court's interpretation of NRS 40.647(2)(b) is highlighted by the statement that "NRS 40.647(2)(b) specifically contemplates the scenario in which a claimant must choose between completing the prelitigation process and filing an action before it is time-barred." Opinion, p. 9. That statement is patently wrong. The sole purpose of NRS 40.647(2)(b) is to protect a claimant who has mistakenly failed to comply with the prelitigation requirements by either failing to properly initiate the

process or complete it before filing suit. Contrary to this Court's dictum, there is no scenario in which a claimant "must choose" between completing the process or filing suit before it is time-barred. That is because all statutes of repose applicable to construction defect cases have always been tolled pursuant to NRS 40.695 by the service of the prelitigation notice.

Thus, nothing in the history or language of NRS 40.647(2)(b) remotely suggests that it was ever intended to protect a claimant who was in the middle of the prelitigation process from the bar of the statute of repose. NRS 40.695 directly eliminated that hypothetical dilemma by providing for tolling. Accordingly, nothing in Chapter 40 or NRS 40.647(2)(b) contemplates that a claimant might need to make a choice as to how to proceed, provides that a claimant should make a choice as to how to proceed, or countenances a claimant's failure to fully comply with mandatory prelitigation requirements under any circumstances.

For all of these reasons, this Court's conclusion that NRS 40.647(2)(b) clarified any ambiguities in AB 125 and provided notice to a claimant as to what was required in order to avoid the effect of the statute of repose is not legally tenable. On the contrary, the language of NRS 40.647(2)(b) could only be viewed as supporting Byrne's interpretation of § 21(6). Since NRS 40.647(2)(b) is only implicated by a claimant's *noncompliance* with NRS 40.645, it is clear that NRS 40.647(2)(b)

contemplates, like the rest of Chapter 40, that all claims must begin with the service of notice and that such notice will always toll the statute of repose.

NRS 40.647(2)(b) was clearly the linchpin of this Court's analysis. This Court's statement that Byrne could have filed an action before February 24, 2016, despite having already commenced the prelitigation process in compliance with NRS 40.645, *is the only reason* why this Court concluded that § 21(6) is unambiguous and that this court's interpretation did not conflict with the Chapter 40 prelitigation mandates. Those mandates, however, are the backbone of Chapter 40's policy of resolving claims extrajudicially and there is no reason why the Legislature might have wanted to overhaul the procedures applicable to claimants like Byrne. Since NRS 40.647(2)(b) does not arguably support this Court's conclusion that § 21(6) is unambiguous (indeed, quite the contrary), there is nothing in the Opinion that justifies the Court's holding in this case.

C. This Court Overlooked the Fact That The Issue on Appeal Was Whether § 21(6) Extended the Statute of Repose.

Another indication that this Court failed to apprehend one of the key issues is the fact that the Opinion, in the very first sentence, states that "when the Legislature retroactively shortened the statute of repose for construction defect lawsuits with the enactment of Assembly Bill (A.B.) 125 in 2015, it created a grace period for a

claimant to 'commence' an action *even after the statute of repose had run*." (Emphasis added). Byrne contended that, in view of the prelitigation mandates and the policy behind tolling in NRS 40.695, the most logical interpretation of § 21(6) is that the grace period established an extension of the 6-year statute of repose as to claims that accrued prior to February 24, 2010. Indeed, as Byrne took pains to point out in her appeal briefs, there is no conceivable reason why the Legislature might have intended to drastically change the dispute resolution procedures that were so integral to the statutory scheme by compelling a certain minority of claimants to file lawsuits before completing the prelitigation process. AOB, 24-27.

As Byrne further pointed out, the fact that § 21(6) was intended to function as an extension of the statute of repose was explicitly expressed in the Legislative Counsel's Digest, which states that § 21(6) "establishes a 1-year grace period during which a person may commence an action *under existing statutes of repose*, if the action accrued before the effective date of this bill." (Emphasis added) A.B. 125, 2015 Nev. Stat., ch. 2, Legislative Counsel's Digest at 3. There is no way to construe that language to mean anything other than that the 1-year grace period was intended to serve as an extension of any applicable statute of repose (regardless of whether the reference was intended to apply to the former statutes of repose or to the amended

statute of repose).[1] If the 1-year grace period set the limit of the statute of repose under the amendments, a prelitigation notice served during that period indisputably would have had tolling effect under NRS 40.695.

Despite the fact that the ultimate issue on appeal was whether the statute of repose ran on February 24, 2016 for claims accruing prior to February 24, 2010 (as stated by the Legislative Counsel Bureau and implied by § 21(6)), the first sentence of the Opinion simply assumes that the grace period was intended to apply "*even after* the statute of repose had run." (Emphasis added). Thus, this Court apparently began its analysis with the unexamined assumption that the grace period did not extend the statute of repose. The question of whether the grace period extended the statute of repose, however, was the ultimate issue to be resolved on appeal. There is no way that this Court could properly analyze the issue on appeal or evaluate the merits of Byrne's arguments after setting off with this erroneous premise.

Moreover, contrary to this Court's interpretation, the Legislature drafted § 21(6) statute in the form that is consistent with the type of verbiage one would expect to find in any statute of repose or extension thereof. AOB at 17; ARB at 2. By

---

[1] Significantly, although this Court referred to the explanation in the Digest in recognizing that the Legislature established the grace period, the Opinion failed to note that the Legislative Counsel made clear that the grace period constituted an extension of the statute of repose.

definition, statutes of repose (as well as statutes of limitation) are always based on a time frame that starts with the "commencement" of an action. In establishing a bar date for commencing an action, the Legislature employed terminology in § 21(6) that is perfectly consistent with the conclusion that the repose period applicable to Byrne's claim was extended by one-year.

This Court also apparently overlooked the fact that § 21(5) begins by stating "except as otherwise provided in subsection 6, the period of limitations set forth in NRS 11.202" applies to construction defect actions. As Byrne explained in her opening brief, the exception made clear that the new statute of repose did not apply to claims that could be filed within the grace period. AOB at 17. If § 21(6) is an exception to the new statute of repose in NRS 11.202, § 21(6) must have been intended to prescribe the period of repose applicable to such actions. Accordingly, the language in § 21(5) and § 21(6), at a bare minimum, creates an ambiguity as to whether § 21(6) was intended to constitute an extension of the statute of repose. But here again, the Opinion does not indicate why it overlooked such crucial language in determining the issue of ambiguity.

D. Interpretations of § 21(6) Given by District Court Judges Are Relevant to the Issue of Ambiguity.

In addition to failing to consider the meaning of § 21(6) in light of the statutory

scheme and mistakenly assuming that NRS 40.647(2)(b) controls the analysis, this Court apparently overlooked the highly significant fact that several district courts, both State and Federal, have interpreted § 21(6) to mean that tolling applies to any notices served prior to the end of the grace period. AOB, 24. *See, e.g.*, *Lopez v. U.S. Home Corp*., 2016 U.S. Dist. LEXIS 163571 (D. Nev. 2017) and *Sky Las Vegas Condominiums, Inc. v. Sky Las Vegas Condominium Unit Owners Association*, Case No. A-16-738730-D, Dept No. XXII, Clark County (both of which construed NRS 40.695 and § 21(6) as providing that notices served during the grace period tolled the statute of repose, even if they were served beyond six years) (3 AA 526); *see also Sun City Anthem Comm'y v. Del Webb*, Case No. A-16-744756-D, Dept. No. XXXI (April, 2019); *Laurent Hallier v. Panorama Towers*, Case No. A-16-744146-D, Dept. No. XXII (May, 2019). As a practical matter, the fact that four lower court judges who were fully briefed and heard oral arguments on the issue determined that § 21(6) extends the statute of repose and does not preclude tolling as to notices served during the grace period should, at the very least, demonstrate that reasonable minds can differ as to the meaning of the statute and therefore that § 21(6) is not unambiguous.

In view of the provisions of AB 125, the history of Chapter 40 and the numerous other lower court cases involving the same issue, it is entirely possible that every other claimant in Byrne's position after the enactment of AB 125 interpreted

the amendments in exactly the same way that Byrne did. It also seems likely that this court will be requested to revisit these issues and overrule its holding in future appeals.

Finally, it should be noted that Byrne made many other arguments that demonstrated why the interpretation given by this Court is inimical to the spirit of Chapter 40, defies fundamental rules of statutory construction, and deprives claimants of fair notice that their claims could be extinguished despite their best efforts to comply with the letter of Chapter 40. But from the language and tenor of the Opinion, it appears that this Court found it unnecessary to address any of Byrne's additional arguments as a result of its erroneous and decisive reliance on NRS 40.647(2)(b).

V. CONCLUSION

The holding of this Court is solely based on its misapprehension of the effect of NRS 40.647(2)(b) and its relationship to other provisions in Chapter 40. As a result of that misapprehension, this Court did not follow Nevada law governing the determination of ambiguity and the interpretation of statutes.

Byrne is a published opinion. The flaws in this Court's analysis appear on the face of the decision and were the basis of the holding. It is respectfully submitted that the decision should be revised out of fairness to Byrne, in the interest of maintaining

the integrity of past Nevada precedent, and in order to ensure that this appeal does not establish unsound precedent for future cases.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in proportionally spaced typeface using WordPerfect 9 in 14-point Times New Roman.

2. The brief consists of 4,666 words.

3. I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 30th day of December, 2020.

/s/ Robert C. Vohl, Esq.

Nevada Bar No. 2316
Molof & Vohl, *attorneys for Appellant*
301 Flint Street, Reno, NV 89501

CERTIFICATE OF SERVICE

I certify that on this date, I electronically filed the foregoing *Petition for Rehearing*, thereby serving notice of the filing to:

Resnick & Lewis / Melissa L. Alessi

Gordon & Rees Scully Mansukhani LLP / Robert E. Schumacher

Morris Sullivan Lemkul / Will A. Lemkul

Pitegoff Law Office / Jeffrey I. Pitegoff

Morris Sullivan Lemkul / Christopher Turtzo

Brown, Bonn & Friedman, LLP / Kevin A. Brown and Aaron Young

Wolfe & Wyman LLP / Jarad D. Beckman

Wolfenzon Rolle / Bruno Wolfenzon and Jonathan P. Rolle

Stephenson & Dickinson / Marsha L. Stephenson

Keating Law Group / Bryce B. Buckwalter

Law Offices of David R. Johnson, PLLC / David R. Johnson

Springel & Fink, LLP / Wendy L. Walker and Adam Springel

DATED this 30th day of December, 2020.

/s/ Robert C. Vohl