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Nov 07 2019 07:22 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

8
9 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

10 FOREMOST INSURANCE COMPANY GRAND
11 RAPIDS MICHIGAN, a Michigan Corporation;
12 MID-CENTURY INSURANCE COMPANY, a
13 California Corporation; and FARMERS
14 INSURANCE EXCHANGE,

15 Appellants/Cross-Respondents,

16 vs.

17 FILIPPO SCIARRATTA, an individual,

18 Respondent/Cross-Appellant.

Supreme Court No. 79604

District Court Case No. A756368

**NRAP RULE 14(a) DOCKETING
STATEMENT – CIVIL APPEALS**

19 **1. Judicial District:** Eighth Judicial District

Department: 27

20 **County:** Clark County

Judge: The Honorable Nancy Allf

21 **District Ct. Case No.:** A-17-756368-C

22 **2. Attorney filing this docketing statement:**

23 Gena L. Sluga, Cara L. Christian
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The Feldman Firm
8831 West Sahara Ave.
Las Vegas, NV 89117
Tel: (702) 949-5096

28 **Clients:** Foremost Insurance Company Grand Rapids Michigan, Mid-Century Insurance Company
and Farmers Insurance Exchange (collectively, the "Farmers Entities")

1
2 **3. Attorney representing respondent:**

3 Jordan Schnitzer
4 The Schnitzer Law Firm
5 9205 W. Russell Road, Suite 240
6 Tel: (702) 960-4050

6 **Client:** Filippo Sciarratta

7 **4. Nature of disposition below:**

- 8 • Summary judgment
9 • Grant/Denial of NRCP 60(b) relief
10 • Grant/Denial of declaratory relief

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

12 N/A

13 **6. Pending and prior proceedings in this court**

14 Plaintiff Filippo Sciarratta has cross-appealed a ruling governing the (in)applicability of an
15 umbrella policy to the circumstances, which proceeds under the same appellate case number:
16 Supreme Court No. 79604

17 **7. Pending and prior proceedings in other courts**

18 N/A (other than district court action from which appeal is taken, as referenced in response
19 to #1 above)

20 **8. Nature of the action**

21 This litigation arises out of a 2015 motorcycle accident in which Filippo Sciarratta was
22 injured while riding as a passenger on his own motorcycle. It was a single-vehicle accident. Mr.
23 Sciarratta's wife's cousin, Jonas Stoss, was driving at the time of the accident, and Sciarratta alleges
24 that Mr. Stoss's negligence was the sole cause of the accident and bears all liability for that accident.
25 Mr. Stoss had his own automobile liability policy issued by non-party Progressive Insurance.
26 Progressive paid Mr. Sciarratta the \$25,000 limits of that policy, but Mr. Stoss's own coverage did
27 not sufficiently compensate Mr. Sciarratta for his injuries.
28

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2 Mr. Sciarratta presented his bodily injury claim to his insurers, the Farmers entities, for
3 payment under any policy that might apply. The Farmers Entities searched for available coverage
4 under each of three potentially-applicable policies: a Motorcycle Insurance Policy, including
5 UM/UIM coverage, issued by Foremost Insurance Company Grand Rapids Michigan ("the
6 Motorcycle Policy"); an Automobile Insurance Policy, including UM/UIM coverage, issued by
7 Mid-Century Insurance Company ("the Auto Policy"); and a Personal Umbrella Liability Policy
8 issued by Farmers Insurance Exchange ("the Umbrella Policy"). Mr. and Mrs. Sciarratta were the
9 insureds under the each of the three policies.

10 The Farmers Entities' coverage search was fruitful. They found \$500,000 in liability
11 coverage under the Motorcycle Policy. Even though Mr. Stoss was not named as an insured under
12 that policy, his liability for the accident was covered by virtue of his status as a permissive user of
13 the motorcycle. Foremost has paid the \$500,000 limits of that policy to Mr. Sciarratta.
14

15 The Farmers Entities examined the UM/UIM coverage afforded under the Motorcycle
16 Policy (limits of \$50,000 per accident) and the Auto Policy (limits of \$100,000 per accident). The
17 Farmers Entities concluded that Mr. Sciarratta's injuries were not covered under the terms of those
18 policies, but paid Mr. Sciarratta \$15,000 under the Motorcycle Policy's UIM coverage, in
19 recognition of Nevada's state minimum coverage laws. The Farmers Entities did not pay an
20 addition \$15,000 under the Auto Policy's UIM coverage at that time due to an anti-stacking
21 provision in that policy but has since extended that payment to Mr. Sciarratta.

22 The Umbrella Policy issued to the Sciarrattas did not afford coverage for the loss, as Mr.
23 Stoss simply was not an insured under the Sciarratta family's Umbrella Policy. Moreover, the
24 Umbrella Policy excluded coverage for damages "payable to any insured" or "whenever damages
25 are due directly or indirectly to an insured." Finally, the Sciarrattas chose to reject to offer of
26 UM/UIM coverage as part of that Umbrella Policy.
27
28

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2 Mr. Sciarratta disputed the Farmers Entities' positions. In sum, he asserted that NRS
3 §687B.147 invalidated the Farmers Entities' coverage positions with respect to UIM coverage
4 under the Motorcycle Policy, UIM coverage under the Auto Policy, and the Umbrella Policy. The
5 Farmers Entities disagreed. The express terms of NRS §687B.147 make clear that it applies only to
6 exclusions that limit "coverage for the *liability of any named insured* for bodily injury to another
7 named insured." Here, the policy provisions in question had nothing whatsoever to do with the
8 *liability* of a named insured. Mr. Sciarratta—the named insured—was not liable to anyone for his
9 injuries. The exclusions in question limited coverage for Mr. Stoss's liability, which is permitted
10 by Nevada statute because Mr. Stoss is not a named insured under these policies.
11

12 Mr. Sciarratta already had filed a personal injury Complaint against Mr. Stoss; he amended
13 that Complaint to include claims against Foremost and Mid-Century sounding (in pertinent part) in
14 breach of contract and insurance bad faith. The Farmers Entities counterclaimed for declaratory
15 relief with respect to their obligations under the Foremost Motorcycle Policy, the Mid-Century Auto
16 Policy and the Farmers Insurance Exchange Umbrella Policy.

17 In January 2019, the Farmers Entities moved for summary judgment on their counterclaims
18 for declaratory relief as well as Mr. Sciarratta's claims against Foremost and Mid-Century. In the
19 District Court's March 26, 2019 Order, the Court granted summary judgment in favor of the
20 Farmers Entities' with respect to the Umbrella Policy, finding that NRS §687B.147 did not require
21 coverage under that policy. The Court denied summary judgment with respect to the Motorcycle
22 Policy and the Auto Policy, finding that NRS §687B.147 did apply to invalidate that coverage
23 limitations under those policies. The Farmers Entities' filed a Notice of Appeal from the Order, as
24 they believe the Court misconstrued Nevada statutes when she pronounced the exclusions in the
25 Motorcycle Policy and the Auto Policy to be invalid. Mr. Sciarratta also has filed an appeal from
26 the ruling, asserting that he should be paid the limits of his own Umbrella Liability Policy.

27 ///
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2 **9. Issues on appeal**

3 A. The Farmers Entities' Appeal

4 Did the District Court err when it construed NRS 687B.147 to apply to Mr. Sciarratta's
5 UIM claim, when the statute in question is expressly limited to **named insured's liability for**
6 ***injuries to another named insured***—as expressly designated by the statute?

7 B. Mr. Sciarratta's Appeal

8 Was the District Court's determination that the umbrella policy's exclusion of "damages: .
9 . . Arising from liability . . . payable to any insured; or . . . whenever damages are due directly or
10 indirectly to an insured" is not invalidated by NRS 687B.147 clearly erroneous—even though the
11 Nevada legislature has signaled its intent to exclude umbrella policies from those policies of motor
12 vehicle insurance to which the statute applies?

13 **10. Pending proceedings in this court raising the same or similar issues**

14 N/A

15 **11. Constitutional issues**

16 N/A

17 **12. Other issues**

18 This appeal involves a substantial issue of first impression.

19 **13. Assignment to the Court of Appeals or retention in the Supreme Court**

20 This matter is presumptively retained by the Supreme Court under NRAP 17(a)(12)—as a
21 matter "raising as a principal issue a question of statewide public importance." At issue here is the
22 proper of application of NRS 687B.147, a statute that limits insurers' use of "family member
23 exclusions" in a set of narrowly defined circumstances. Here, the Court's Order with respect to the
24 Mid-Century Policy erroneously applies NRS 687B.147 to exclusions that did not limit coverage
25 for the liability of any named insured or family member.

26 **14. Trial**

27 The action has not yet proceeded to trial.
28

1
2 **15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice
3 recuse him/herself from participation in this appeal? If so, which Justice?

4 No.

5 **TIMELINESS OF NOTICE OF APPEAL**

6 **16. Date of entry of written judgment or order appealed from:**

7 August 28, 2019.

8 **17. Date written notice of entry of judgment or order was served:**

9 (via e-service) August 29, 2019

10 **18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP**
11 **50(b), 52(b), or 59)**

12 N/A

13 **NOTE:** Motions made pursuant to NRCP 60 or motions for rehearing or
14 reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v.*
Washington, 126 Nev. 578, 245 P.3d 1190 (2010).

15 N/A

16 **19. Date notice of appeal filed:**

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

19 A) Farmers Entities' Notice of Appeal: 9/9/19

20 B) Filippo Sciarratta's Notice of Appeal: 9/13/19

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

23 NRAP 4(a)

24 **SUBSTANTIVE APPEALABILITY**

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

27 (a) NRAP 3A(b)(1)
28

(b) Explain how each authority provides a basis for appeal from the judgment or order: NRAP 3A(b)(1) provides that “An appeal may be taken from the following judgments and orders of a district court in a civil action: (1) A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.

The parties stipulated to finality language in a proposed form of Order following the district court’s ruling on the Farmers Entities’ Motion for Summary Judgment, and the Order was entered consistent with NRCP Rule 54(b). There was final judgment entered with respect to the counts upon which the instant appeal has been taken: the Second Claim for Relief in the Counter/Cross Claim related to the Farmers Insurance Exchange umbrella policy and the Fourth Claim for Relief in the Counter/Cross Claim related to the Mid-Century auto policy with respect to NRS 687B.147.

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

(a) Parties: The Farmers Entities, Plaintiff Filippo Sciarratta, Defendant Jonas Stoss and now-dismissed Defendant Cynthia Sciarratta

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

The underlying action consists of two bodies of claims: motor vehicle tort claims against Jonas Stoss and insurance-related claims against the Farmers Entities. Because Jonas Stoss’ involvement in the arguments before the district court upon which the appeal has been taken was limited to a Limited Opposition and joinder on issues that were not afforded Rule 54(b) finality language, they are not before the Court at this time.

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

Filippo Sciarratta’s Amended Complaint:

Count 1: Negligence Per Se – Against Jonas Stoss (related to motor vehicle accident) – not disposed of

Count 2: Negligence – Against Jonas Stoss (related to motor vehicle accident) – not disposed of

Count 3 (the first): Breach of Contract-FOREMOST and MID-CENTURY (dispute as to amount owed under policies) – not disposed of

Count 3 (the second): Tortious Breach of the Covenant of Good Faith and Fair Dealing – FOREMOST and MID-CENTURY (dispute as to amount owed under policies) – not disposed of

Count 4: Contractual Breach of the Covenant of Good Faith and Fair Dealing – MID-CENTURY (dispute as to amount owed under policies) – not disposed of

Count 5: Fraudulent and Intentional Misrepresentation –MID-CENTURY (dispute as to amount owed under policies) – not disposed of

Count 6: Negligent Misrepresentation – MID-CENTURY (dispute as to amount owed under policies) – not disposed of

Count 7: Unjust Enrichment –MID-CENTURY and FOREMOST (dispute as to amount owed under policies) – not disposed of

The Farmers Entities' Counter/Cross-claims for Declaratory Relief:

Count 1: Declaratory Judgment – Construction of May 12, 2017 Release (declaration of effect of release obtained by Foremost on behalf of Jonas Stoss) – not disposed of

Count 2: Declaratory Judgment – Umbrella Policy (declaration of the absence of coverage under Mr. Sciarratta's ex-wife's umbrella policy) – resolved in favor of Farmers Entities on August 28, 2019

Count 3: Declaratory Judgment – Foremost Motorcycle Policy (declaration of the exhaustion of applicable benefits under Mr. Sciarratta's motorcycle policy) – not disposed of

Count 4: Declaratory Judgment – Mid-Century Auto Policy – (declaration of the exhaustion of applicable benefits under Mr. Sciarratta's auto policy) – resolved in favor of Filippo Sciarratta on August 28, 2019

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

No.

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

(a) Specify the claims remaining pending below:

Both of the motor vehicle tort claims against Jonas Stoss remain pending (Counts 1 and 2 of the Amended Complaint); each of the counts against the Farmers Entities (Counts 3 through 7 of the Amended Complaint) and Counts 1 and 3 of the Farmers Entities' Counter/Cross-claims for

1
2 **Declaratory Relief**

3 **(b) Specify the parties remaining below:**

4 Filippo Sciarratta, Jonas Stoss and the Farmers Entities

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

7 Yes.

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

10 Yes.

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

13 N/A

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

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

22 Please see Attachments 1 through 8.

1
2 **VERIFICATION**


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

6 Foremost Insurance Company Grand Rapids Michigan,
7 Mid-Century Insurance Company and Farmers Insurance Exchange
8 Name of appellants

8 11/6/19
9 Date

Cara L. Christian, Esq.
Name of counsel of record

10 Phoenix, AZ Maricopa County
11 State and county where signed


Signature of counsel of record

12 **VERIFICATION**

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

16 Foremost Insurance Company Grand Rapids Michigan,
17 Mid-Century Insurance Company and Farmers Insurance Exchange
18 Name of appellants

18 11/6/19
19 Date

David J. Feldman Esq.
Name of counsel of record

20 Nevada/Clark
21 State and county where signed


Signature of counsel of record


1
2 **CERTIFICATE OF SERVICE**

3 I certify that on the 6th day of November 2019, I served a copy of this completed docketing
4 statement upon all counsel of record by mailing it by first class mail with sufficient postage prepaid
5 to the following address:

6 Jordan P. Schnitzer, Esq.
7 THE SCHNITZER LAW FIRM
8 9205 W. Russell Road, Suite 240
9 Las Vegas, Nevada 89148
10 Telephone: (702) 960-4050
11 Facsimile: (702) 960-4092
12 jordan@theschnitzerlawfirm.com
13 Attorney for Respondent/Cross-Appellant Filippo Sciarratta

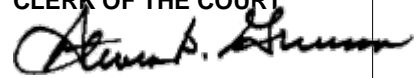
14 Dated this 6th day of November 2019

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28



An Employee of Christian, Kravitz, Dichter, Johnson &
Sluga, PLLC

Attachment 1



JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: (702) 960-4050
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Jordan@TheSchnitzerLawFirm.com
Attorney for Plaintiff,
Filippo Sciarratta

DISTRICT COURT

CLARK COUNTY, NEVADA

FILIPPO SCIARRATTA, an individual,

Plaintiff,

vs.

JONAS STOSS, an individual; FOREMOST
INSURANCE COMPANY GRAND RAPIDS
MICHIGAN, a Michigan Corporation; MID-
CENTURY INSURANCE, a California
Corporation; and DOES I through X, inclusive;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-17-756368-C

Dept. No.: 28

AMENDED COMPLAINT

COMES NOW, Plaintiff, FILIPPO SCIARRATTA, by and through his attorney of record,
The Schnitzer Law Firm, a Professional Limited Liability Company, prays and alleges against
Defendants, JONAS STOSS, FOREMOST INSURANCE COMPANY GRAND RAPIDS
MICHIGAN, and MID-CENTURY INSURANCE as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff, FILIPPO SCIARRATA, (hereinafter "FILIPPO") is, and at all times mentioned
herein, was a resident of the State of Nevada

2. Defendant, JONAS STOSS, (hereinafter "STOSS") is, and at all times mentioned herein,
was a resident of the State of Nevada.

3. Defendant, FOREMOST INSURANCE COMPANY GRAND RAPIDS MICHIGAN,



(hereinafter “FOREMOST”) is a Michigan Corporation, and at all relevant times, licensed and doing business in the State of Nevada.

4. Defendant, MID-CENTURY INSURANCE, (hereinafter “MID-CENTURY”) is a California Corporation, and at all relevant times, licensed and doing business in the State of Nevada.

5. The true names or capacities, whether individual, corporate, associate or otherwise of Defendants DOES I-X and/or ROES CORPORATIONS I-X, inclusive, are unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names. Plaintiff is informed, believe, and allege that Defendants designated herein as a DOE and/or ROE CORPORATION are any one of the following:

a. A party responsible in some manner for the events and happenings hereunder referred to, and in some manner proximately caused injuries and damages to the Plaintiff as herein alleged including, but not limited to, responsible for the vehicle at issue.

b. Parties that were agents, servants, authorities and contractors of the Defendants, each of them acting within the course and scope of their agency, employment, or contract;

c. Parties that own, lease, manage, operate, secure, inspect, repair, maintain and/or are responsible for the vehicle driven by STOSS at the time of this incident; and/or

d. Parties that have assumed or retained the liabilities of any of the Defendants by virtue of an agreement, sale, transfer, or otherwise.

e. Parties that are DBA’s, subsidiaries, parent corporations or otherwise related to Defendants.

GENERAL ALLEGATIONS

6. FILIPPO repeats and realleges each and every allegation contained in Paragraph 1 through 5 and incorporates herein by reference as fully set forth herein.

7. At all relevant times, FILIPPO and/or Cynthia Sciaratta was the registered owner of a Kawasaki motorcycle (“The Vehicle”).

8. On or about June 3, 2015, STOSS was driving The Vehicle, with FILIPPO as a passenger, on Desert Inn Road.

9. STOSS drove the motorcycle negligently and at excessive speed, causing him to lose

control and causing FILIPPO to fall off the motorcycle (“INCIDENT”).

FIRST CAUSE OF ACTION

(Negligence Per Se Against STOSS)

10. FILIPPO repeats and realleges each and every allegation contained in Paragraph 1 through 9 and incorporates herein by reference as fully set forth herein.

11. STOSS owed a duty of care to FILIPPO to ensure The Vehicle was operated in a reasonably safe manner.

12. STOSS breached that duty of care when he violated several statutes regarding operating motor vehicles and motorcycles.

13. FILIPPO, a passenger on a motorcycle at the time of the subject accident, belongs to the class of people that the statute was intended to protect.

14. That prior to the injuries complained of herein, FILIPPO was an able-bodied person who was readily gainfully employed and physically capable of engaging in all activities for which he was otherwise suited.

15. That as a direct and proximate result of the negligence of STOSS, FILIPPO sustained injuries.

16. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO further sustained injuries which include severe pain throughout his body.

17. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO further suffered a loss of enjoyment of life, having been prevented from attending to his usual activities.

18. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO has sustained injuries to his body which caused general damage in the form of physical and mental pain and suffering.

19. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO was required to incur medical and related expenses.

20. The injuries sustained by FILIPPO are of the type against which the statute STOSS breached was intended to protect.

21. FILIPPO’s damages as a direct and proximate result of the aforesaid negligence of STOSS

are in excess of \$15,000.00.

22. It has become necessary for FILIPPO to engage the services of an attorney to commence this action, and therefore, FILIPPO is entitled to reasonable attorneys' fees, costs, and interest and damage in this action pursuant to Nevada law.

SECOND CAUSE OF ACTION

(Negligence - STOSS)

23. FILIPPO repeats and realleges each and every allegation contained in Paragraph 1 through 22 and incorporates herein by reference as fully set forth herein.

24. STOSS owed a duty of care to FILIPPO to ensure that The Vehicle was operated in a reasonably safe manner.

25. STOSS breached his duty to FILIPPO by failing to safely operate The Vehicle as alleged above.

26. STOSS's negligence was the actual and proximate cause of the injuries and damages to FILIPPO.

27. That prior to the injuries complained of herein, FILIPPO was an able bodied person who was readily gainfully employed and physically capable of engaging in all activities for which he was otherwise suited.

28. That as a direct and proximate result of the negligence of STOSS, FILIPPO sustained injuries.

29. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO further sustained injuries which include severe pain throughout his body.

30. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO further suffered a loss of enjoyment of life, having been prevented from attending to his usual activities.

31. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO has sustained injuries to his body which caused general damage in the form of physical and mental pain and suffering.

32. That as a direct and proximate result of the aforesaid negligence of STOSS, FILIPPO was required to incur medical and related expenses.

1 33. FILIPPO's damages as a direct and proximate result of the aforesaid negligence of
2 STOSS are in excess of \$15,000.00.

3 34. It has become necessary for FILIPPO to engage the services of an attorney to commence
4 this action, and therefore, FILIPPO is entitled to reasonable attorneys' fees, costs, and interest and
5 damage in this action pursuant to Nevada law.

6 **THIRD CAUSE OF ACTION**

7 (Breach of Contract – Against FOREMOST and MID-CENTURY)

8 35. FILIPPO repeats and realleges each and every allegation contained in paragraphs 1
9 through 34 and incorporates herein by reference as though fully set forth herein.

10 36. FILIPPO entered into a valid and existing contract and/or was a third-party beneficiary
11 with FOREMOST, namely the motorcycle insurance policy ("FOREMOST POLICY") and MID-
12 CENTURY, namely the automobile liability, under insured motorist and umbrella insurance policy
13 ("MID-CENTURY POLICY").

14 37. All premiums were paid on the policies.

15 38. FILIPPO made valid, covered claims under the FOREMOST POLICY and MID-
16 CENTURY POLICY as a result of the INCIDENT.

17 39. FOREMOST and MID-CENTURY refused to pay monies owed under the policies.

18 40. FILIPPO sustained damages as a result of FOREMOST and MID-CENTURY's refusal
19 to pay monies owed under the policy.

20 41. It has become necessary for FILIPPO to engage the services of an attorney to commence
21 this action and therefore the FILIPPO is entitled to reasonable attorneys' fees, costs and interest as
22 damage in this action pursuant to Nevada law.

23 **THIRD CAUSE OF ACTION**

24 (Tortious Breach of the Covenant of Good Faith and Fair Dealing –

25 Against FOREMOST and MID-CENTURY)

26 42. FILIPPO repeats and realleges each and every allegation contained in paragraphs 1
27 through 41 and incorporates herein by reference as though fully set forth herein.

28 43. FILIPPO entered into a contract and/or was a third party beneficiary for motorcycle
insurance with FOREMOST.

1 44. FILIPPO entered into a contract and/or was a third party beneficiary for under insured
2 motorist coverage insurance with MID-CENTURY.

3 45. A special element of reliance or fiduciary duty existed between FILIPPO and
4 FOREMOST and FILIPPO and MID-CENTURY.

5 46. FOREMOST and MID-CENTURY owes FILIPPO a duty of good faith and fair dealing
6 arising from their relationship as insurer and beneficiary.

7 47. FOREMOST and MID-CENTURY breached the duty of good faith and fair dealing to
8 FILIPPO.

9 48. FOREMOST and MID-CENTURY failed to acknowledge and act reasonably promptly
10 upon communications with respect to claims arising under FILIPPO's insurance policy in violation
11 of N.R.S. § 686A.310(1)(b).

12 49. FOREMOST and MID-CENTURY failed to affirm or deny coverage of claims within a
13 reasonable time after FILIPPO completed and submitted proof of loss requirements, a violation of
14 N.R.S. § 686A.310(1)(d).

15 50. FOREMOST and MID-CENTURY failed to effectuate prompt, fair and equitable
16 settlement of claims in which liability of FOREMOST and MID-CENTURY became reasonably
17 clear, a violation of N.R.S. § 686A.310(1)(e).

18 51. FOREMOST and MID-CENTURY failed to settle FILIPPO's claims promptly, where
19 liability has become clear, FILIPPO, a violation of N.R.S. 686A.310.

20 52. FOREMOST and MID-CENTURY misrepresented to FILIPPO pertinent facts or
21 insurance policy provisions related to coverage, a violation of N.R.S. 686A.310.

22 53. FOREMOST and MID-CENTURY compelled FILIPPO to institute litigation to recover
23 amounts due under the insurance policy, a violation of N.R.S. 686A.310.

24 54. FOREMOST and MID-CENTURY intentionally took coverage positions which they
25 knew were unreasonable and inaccurate.

26 55. FOREMOST and MID-CENTURY attempted to settle FILIPPO's claim for less than the
27 amount to which a reasonable person would have believed he or she was entitled by reference to
28 written or printed advertising material accompanying or made part of the application, a violation
of N.R.S. 686A.310.

1 56. Because of these actions, FOREMOST and MID-CENTURY has acted in bad faith with
2 regards to FILIPPO's settlement claims; thus, breaching its duty of good faith and fair dealing.

3 57. FILIPPO has suffered damages as a result of FOREMOST and MID-CENTURY's bad
4 faith breach of its duty of good faith and fair dealing.

5 58. It has become necessary for FILIPPO to engage the services of an attorney to commence
6 this action and therefore FILIPPO entitled to reasonable attorneys' fees, costs and interest as
7 damage in this action pursuant to Nevada law.

8 **FOURTH CAUSE OF ACTION**

9 (CONTRACTUAL BREACH OF THE COVENANT OF GOOD FAITH AND FAIR
10 DEALING - Against MID-CENTURY)

11 59. FILIPPO repeats and realleges each and every allegation contained in paragraphs 1
12 through 58 and incorporates herein by reference as though fully set forth herein.

13 60. FILIPPO and MID-CENTURY were parties to the MID-CENTURY Policy, which is a
14 contract and/or FILIPPO is a third-party beneficiary of the MID-CENTURY Policy.

15 61. MID-CENTURY owed a duty of good faith to FILIPPO.

16 62. The MID-CENTURY policy included "under insured motorist" coverage.

17 63. STOSS is an under insured motorist as applied to this Incident.

18 64. MID-CENTURY refuses to pay monies owed pursuant to the under insured motorist
19 coverage because it claims the policy only covers "under insured vehicles" not "under insured
20 motorists."

21 65. As a result of MID-CENTURY's coverage position, MID-CENTURY breached its duty
22 to FILIPPO by performing in a manner that was unfaithful to the purpose of the contract.

23 66. FILIPPO's justified expectations that the MID-CENTURY Policy covering under
24 insured motorists would actually provide coverage when he was injured as a result of the
25 negligence of an under insured motorist has been denied.

26 67. FILIPPO has suffered damages as a result of MID-CENTURY's bad faith breach of its
27 contractual duty of good faith and fair dealing.

28 68. It has become necessary for FILIPPO to engage the services of an attorney to commence
this action and therefore FILIPPO entitled to reasonable attorneys' fees, costs and interest as

1 damage in this action pursuant to Nevada law.

2 **FIFTH CAUSE OF ACTION**

3 (Fraudulent and Intentional Misrepresentation - Against MID-CENTURY)

4 69. FILIPPO repeats and realleges each and every allegation contained in paragraphs 1
5 through 68 and incorporates herein by reference as though fully set forth herein.

6 70. MID-CENTURY communicated to FILIPPO before and when the umbrella portion of
7 the MID-CENTURY Policy was purchased, including, but not limited to sections Part III, items
8 14, 15 and 16, that the umbrella portion of the policy would cover drivers of The Vehicle.

9 71. MID-CENTURY communicated to FILIPPO before and when the MID-CENTURY
10 Policy was purchased that the MID-CENTURY Policy would provide “under insured motorist”
11 coverage.

12 72. MID-CENTURY claims the umbrella portion of the policy does not cover Mr. Stoss in
13 this Incident.

14 73. MID-CENTURY claims the MID-CENTURY Policy only provides “under insured
15 vehicle” coverage not “under insured motorist” coverage.

16 74. To the extent the MID-CENTURY’s positions regarding the coverage under the MID-
17 CENTURY Policy are accurate, then MID-CENTURY’s statements, as set forth above, are false
18 and misleading.

19 75. MID-CENTURY knew or believed that those representations were false, or had an
20 insufficient basis of information for making the representations.

21 76. MID-CENTURY intended to induce FILIPPO to purchase the MID-CENTURY Policy
22 based upon the representations.

23 77. FILIPPO justifiably relied upon MID-CENTURY’s representations.

24 78. FILIPPO has suffered damages as a result of MID-CENTURY’s fraudulent and
25 intentional misrepresentations.

26 79. It has become necessary for FILIPPO to engage the services of an attorney to commence
27 this action and therefore FILIPPO entitled to reasonable attorneys’ fees, costs and interest as
28 damage in this action pursuant to Nevada law.

//

SIXTH CAUSE OF ACTION

(Negligent Misrepresentation - Against MID-CENTURY)

80. FILIPPO repeats and realleges each and every allegation contained in paragraphs 1 through 79 and incorporates herein by reference as though fully set forth herein.

81. MID-CENTURY had a pecuniary interest in selling the MID-CENTURY Policy.

82. MID-CENTURY had a duty to exercise reasonable care and competence in communicating the coverages of the MID-CENTURY Policy.

83. MID-CENTURY communicated to FILIPPO before and when the umbrella portion of the MID-CENTURY Policy was purchased, including, but not limited to sections Part III, items 14, 15 and 16, that the umbrella portion of the policy would cover drivers of The Vehicle.

84. MID-CENTURY communicated to FILIPPO before and when the MID-CENTURY Policy was purchased that the MID-CENTURY Policy would provide “under insured motorist” coverage.

85. MID-CENTURY claims the umbrella portion of the policy does not cover Mr. Stoss in this Incident.

86. MID-CENTURY claims the MID-CENTURY Policy only provides “under insured vehicle” coverage not “under insured motorist” coverage.

87. To the extent the MID-CENTURY’s positions regarding the coverage under the MID-CENTURY policy are accurate, the MID-CENTURY’s statements, as set forth above, are false and misleading.

88. MID-CENTURY failed to exercise reasonable care or competence in making the representations to FILIPPO.

89. MID-CENTURY intended to induce FILIPPO to purchase the MID-CENTURY Policy based upon the representations.

90. FILIPPO justifiably relied upon MID-CENTURY’s representations.

91. FILIPPO has suffered damages as a result of MID-CENTURY’s misrepresentations.

92. It has become necessary for FILIPPO to engage the services of an attorney to commence this action and therefore FILIPPO entitled to reasonable attorneys’ fees, costs and interest as damage in this action pursuant to Nevada law.

SEVENTH CAUSE OF ACTION

(Unjust Enrichment - Against MID-CENTURY and FOREMOST)

93. FILIPPO repeats and realleges each and every allegation contained in paragraphs 1 through 92 and incorporates herein by reference as though fully set forth herein.

94. To the extent the trier of fact finds no contract exists between FILIPPO and MID-CENTURY or FILIPPO and FOREMOST, then those entities have unjustly retained the money of FILIPPO against fundamental principles of justice or equity and good conscience.

95. FILIPPO has suffered damages as a result.

96. It has become necessary for FILIPPO to engage the services of an attorney to commence this action and therefore FILIPPO entitled to reasonable attorneys' fees, costs and interest as damage in this action pursuant to Nevada law.


PRAYER FOR RELIEF

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

1. General, emotional, medical and other special damages in the amount in excess of \$15,000.00;
2. For Punitive Damages against FOREMOST and MID-CENTURY;
3. For reasonable attorneys' fees and costs of suit;
4. For prejudgment and post-judgment interest, and
5. For such other and further relief as this Court may deem just and proper under the circumstances.

DATED this 12th day of January 2018.

THE SCHNITZER LAW FIRM

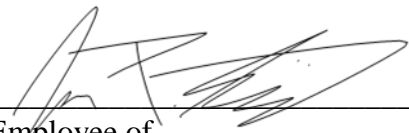
BY: 
JORDAN P. SCHNITZER, ESQ.
Nevada Bar No. 10744
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
*Attorney for Plaintiff,
Filippo Sciarratta*



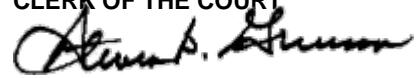
CERTIFICATE OF SERVICE

In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned, hereby certify that on the 12th day of January 2018, I served a true and correct copy of the foregoing **AMENDED COMPLAINT** to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case to the following:

Phillip R. Emerson, Esq.
Christine Atwood, Esq.
EMERSON LAW GROUP
1055 Whitney Ranch Drive, Suite 120
Henderson, NV 89104
Attorneys for Defendant,
Jonas Stoss


An Employee of
THE SCHNITZER LAW FIRM

Attachment 2



ANSC

David J. Feldman, Esq.
Nevada Bar No. 5947
THE FELDMAN FIRM
8831 West Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 949-5096
Facsimile: (702) 949-5097
dfeldman@feldmangraf.com
*Attorneys for Defendants Foremost
Insurance Company Grand Rapids
Michigan & Mid-Century Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

FILIPPO SCIARRATTA, an individual,

Plaintiff,

vs.

JONAS STOSS, an individual; FOREMOST
INSURANCE COMPANY GRAND RAPIDS
MICHIGAN, a Michigan corporation; MID-
CENTURY INSURANCE, a California
corporation; and DOES I through X, inclusive;
and ROES CORPORATIONS I through X,
inclusive,

Defendants.

FOREMOST INSURANCE COMPANY
GRAND RAPIDS MICHIGAN, a Michigan
corporation; MID-CENTURY INSURANCE
COMPANY, LLC, a California limited
liability company; and FARMERS
INSURANCE EXCHANGE, a California
inter-insurance exchange,

Counterclaimants,

vs.

FILIPPO SCIARRATA, an individual; and
JONAS STOSS, an individual,

Counter/Cross Defendants.

Case No.: A-17-756368-C

Dept. No. 28

**AMENDED ANSWER AND
COUNTER/CROSS CLAIMS FOR
DECLARATORY RELIEF**

DEFENDANTS' ANSWER TO AMENDED COMPLAINT

Defendants Foremost Insurance Company Grand Rapids Michigan and Mid-Century Insurance Company, (hereinafter, Defendants) by and through their attorney of record, David J. Feldman, of The Feldman Firm, hereby answer Plaintiff's Amended Complaint as follows:

JURISDICTIONAL ALLEGATIONS

1. Answering Paragraph 1 of Plaintiff's Amended Complaint, Defendants are without knowledge as to the averments in this paragraph.

2. Answering Paragraph 2 of Plaintiff's Amended Complaint, Defendants are without knowledge as to the averments in this paragraph.

3. Answering Paragraph 3 of Plaintiff's Amended Complaint, Defendants admit the averments in this paragraph.

4. Answering Paragraph 4 of Plaintiff's Amended Complaint, Defendants admit the averments in this paragraph.

5. Answering Paragraph 5 of Plaintiff's Amended Complaint, Defendants submit that the averments in this complaint appear to relate to Plaintiff's anticipated future request to amend the complaint to include the names of any fictitious defendants and does not contain any allegations against these responding Defendants; notwithstanding, to the extent an answer is required, Defendants are without knowledge as to the averments in this paragraph.

GENERAL ALLEGATIONS

6. Answering Paragraph 6 of Plaintiff's Amended Complaint, Defendants repeat and reallege their answers to Paragraphs 1 through 5, inclusive, of Plaintiff's Amended Complaint, as if fully set forth, and incorporate them herein by reference.

7. Answering Paragraph 7 of Plaintiff's Amended Complaint, Defendants are without knowledge as to what at all times relevant encompasses and are therefore without knowledge as to the averments in this paragraph.

8. Answering Paragraphs 8 of Plaintiff's Amended Complaint, Defendants are without

1 without knowledge as to the facts surrounding the accident, except for those contained in the
2 traffic accident report, and as relayed by Plaintiff.

3 9. Answering Paragraphs 9 of Plaintiff's Amended Complaint, Defendants are without
4 without knowledge as to the facts surrounding the accident, except for those contained in the
5 traffic accident report, and as relayed by Plaintiff.

6 **FIRST CAUSE OF ACTION**

7 **(Negligence Per Se Against STOSS)**

8 10. Answering Paragraph 10 of Plaintiff's Amended Complaint, Defendants repeat and
9 reallege their answers to Paragraphs 1 through 9, inclusive, of Plaintiff's Amended Complaint,
10 as if fully set forth, and incorporate them herein by reference.

11 11. Answering Paragraph 11 of Plaintiff's Amended Complaint, Defendants are
12 without knowledge as to the facts surrounding the accident, except for those contained in the
13 traffic accident report, and as relayed by Plaintiff.

14 12. Answering Paragraph 12 of Plaintiff's Amended Complaint, Defendants are
15 without knowledge as to the facts surrounding the accident, except for those contained in the
16 traffic accident report, and as relayed by Plaintiff.

17 13. Answering Paragraph 13 of Plaintiff's Amended Complaint, Defendants are
18 without knowledge as to the facts surrounding the accident, except for those contained in the
19 traffic accident report, and as relayed by Plaintiff.

20 14. Answering Paragraph 14 of Plaintiff's Amended Complaint, Defendants are
21 without knowledge as to the averments in this paragraph.

22 15. Answering Paragraph 15 of Plaintiff's Amended Complaint, Defendants are
23 without knowledge as to the facts surrounding the accident, except for those contained in the
24 traffic accident report, and as relayed by Plaintiff. Defendants further submit that the Plaintiff's
25 assertion regarding injuries is vague, ambiguous, subjective in nature, speculative, and subject
26

1 to multiple interpretations. As such, Defendants are without knowledge as to these averments.

2 16. Answering Paragraph 16 of Plaintiff's Amended Complaint, Defendants are
3 without knowledge as to the facts surrounding the accident, except for those contained in the
4 traffic accident report, and as relayed by Plaintiff. Defendants further submit that the Plaintiff's
5 assertion regarding injuries is vague, ambiguous, subjective in nature, speculative, and subject
6 to multiple interpretations. As such, Defendants are without knowledge as to these averments.

7 17. Answering Paragraph 17 of Plaintiff's Amended Complaint, Defendants are
8 without knowledge as to the facts surrounding the accident, except for those contained in the
9 traffic accident report, and as relayed by Plaintiff. Defendants further submit that the Plaintiff's
10 assertions regarding loss of enjoyment and difficulties with usual activities are vague,
11 ambiguous, subjective in nature, speculative, and subject to multiple interpretations. As such,
12 Defendants are without knowledge as to these averments.

13 18. Answering Paragraph 18 of Plaintiff's Amended Complaint, Defendants are
14 without knowledge as to the facts surrounding the accident, except for those contained in the
15 traffic accident report, and as relayed by Plaintiff. Defendants further submit that the Plaintiff's
16 assertion regarding injuries is vague, ambiguous, subjective in nature, speculative, and subject
17 to multiple interpretations. As such, Defendants are without knowledge as to these averments.

18 19. Answering Paragraph 19 of Plaintiff's Amended Complaint, Defendants are
19 without knowledge as to the facts surrounding the accident, except for those contained in the
20 traffic accident report, and as relayed by Plaintiff. Defendants further submit that the Plaintiff's
21 assertion regarding medical and related expenses is vague, ambiguous, subjective in nature,
22 speculative, and subject to multiple interpretations. As such, Defendants are without knowledge
23 as to these averments.

24 20. Answering Paragraph 20 of Plaintiff's Amended Complaint, Defendants submit
25 that the Plaintiff's assertion regarding injuries is vague, ambiguous, subjective in nature,
26 speculative, and subject to multiple interpretations. Additionally, although Plaintiff speaks to a
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1 statute's legislative intent, he has not identified the specific Nevada statute to which he refers.
2 Defendants are therefore without knowledge as to the averments in this paragraph.

3 21. Answering Paragraph 21 of Plaintiff's Amended Complaint, Defendants deny the
4 averments in this paragraph.

5 22. Answering Paragraph 22 of Plaintiff's Amended Complaint, Defendants deny the
6 averments in this paragraph.

7 **SECOND CAUSE OF ACTION**

8 **(Negligence - STOSS)**

9 23. Answering Paragraph 23 of Plaintiff's Amended Complaint, Defendants repeat and
10 reallege their answers to Paragraphs 1 through 22, inclusive, of Plaintiff's Amended Complaint,
11 as if fully set forth, and incorporate them herein by reference.

12 24. Answering Paragraph 24 of Plaintiff's Amended Complaint, Defendants are
13 without knowledge as to the facts surrounding the accident, except for those contained in the
14 traffic accident report and as relayed by Plaintiff.

15 25. Answering Paragraph 25 of Plaintiff's Amended Complaint, Defendants are
16 without knowledge as to the facts surrounding the accident, except for those contained in the
17 traffic accident report and as relayed by Plaintiff.

18 26. Answering Paragraph 26 of Plaintiff's Amended Complaint, Defendants are
19 without knowledge as to the facts surrounding the accident, except for those contained in the
20 traffic accident report and as relayed by Plaintiff. Defendants further submit that Plaintiff's
21 assertion regarding damages is vague, ambiguous, subjective in nature, and subject to multiple
22 interpretations. As such, Defendants are without knowledge as to the averments in this
23 paragraph.

24 27. Answering Paragraph 27 of Plaintiff's Amended Complaint, Defendants are
25 without knowledge as to the averments in this paragraph.

26 28. Answering Paragraph 28 of Plaintiff's Amended Complaint, Defendants are

1 without knowledge as to the facts surrounding the accident, except for those contained in the
2 traffic accident report and as relayed by Plaintiff. Defendants further submit that Plaintiff's
3 assertion regarding injuries is vague, ambiguous, subjective in nature, and subject to multiple
4 interpretations. As such, Defendants are without knowledge as to the averments in this
5 paragraph.

6 29. Answering Paragraph 29 of Plaintiff's Amended Complaint, Defendants are
7 without knowledge as to the facts surrounding the accident, except for those contained in the
8 traffic accident report and as relayed by Plaintiff. Defendants further submit that Plaintiff's
9 assertion regarding injuries is vague, ambiguous, subjective in nature, and subject to multiple
10 interpretations. As such, Defendants are without knowledge as to the averments in this
11 paragraph.

12 30. Answering Paragraph 30 of Plaintiff's Amended Complaint, Defendants are
13 without knowledge as to the facts surrounding the accident, except for those contained in the
14 traffic accident report and as relayed by Plaintiff. Defendants further submit that Plaintiff's
15 assertions regarding loss of enjoyment and usual activities are vague, ambiguous, subjective in
16 nature, and subject to multiple interpretations. As such, Defendants are without knowledge as to
17 the averments in this paragraph.

18 31. Answering Paragraph 31 of Plaintiff's Amended Complaint, Defendants are
19 without knowledge as to the facts surrounding the accident, except for those contained in the
20 traffic accident report and as relayed by Plaintiff. Defendants further submit that Plaintiff's
21 assertion regarding injuries and general damage is vague, ambiguous, subjective in nature, and
22 subject to multiple interpretations. As such, Defendants are without knowledge as to the
23 averments in this paragraph.

24 32. Answering Paragraph 32 of Plaintiff's Amended Complaint, Defendants are
25 without knowledge as to the facts surrounding the accident, except for those contained in the
26 traffic accident report and as relayed by Plaintiff. Defendants further submit that Plaintiff's

1 assertion regarding medical and related expenses is vague, ambiguous, subjective in nature, and
2 subject to multiple interpretations. As such, Defendants are without knowledge as to the
3 averments in this paragraph.

4 33. Answering Paragraph 33 of Plaintiff's Amended Complaint, Defendants deny the
5 averments in this paragraph.

6 34. Answering Paragraph 34 of Plaintiff's Amended Complaint, Defendants deny the
7 averments in this paragraph.

THIRD CAUSE OF ACTION

(Breach of Contract-Against FOREMOST AND MID-CENTURY)

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9
10 35. Answering Paragraph 35 of Plaintiff's Amended Complaint, Defendants repeat and
11 reallege their answers to Paragraphs 1 through 34, inclusive, of Plaintiff's Amended Complaint,
12 as if fully set forth, and incorporate them herein by reference.

13 36. Answering Paragraph 36 of Plaintiff's Amended Complaint, Defendants admit that
14 contracts exist between Plaintiff and Foremost as well as with Mid-Century Insurance Company.
15 Defendants deny that Plaintiff is a third-party beneficiary. Said contracts speak for themselves
16 and are the best evidence as to their contents. To the extent Plaintiff seeks to alter, modify, or
17 otherwise change their terms, conditions, or exclusions, Defendants deny the averments in this
18 paragraph.

19 37. Answering Paragraph 37 of Plaintiff's Amended Complaint, Defendants are
20 without knowledge as to the averments in this paragraph.

21 38. Answering Paragraph 38 of Plaintiff's Amended Complaint, Defendants deny the
22 averments in this paragraph as to Mid-Century Insurance Company.

23 39. Answering Paragraph 39 of Plaintiff's Amended Complaint, Defendants deny
24 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
25 statute, and further deny causing Plaintiff to incur any damages whatsoever.

26 40. Answering Paragraph 40 of Plaintiff's Amended Complaint, Defendants deny the
27
28

1 averments in this paragraph.

2 41. Answering Paragraph 41 of Plaintiff's Amended Complaint, Defendants deny the
3 averments in this paragraph.

4 **THIRD [sic] CAUSE OF ACTION**

5 **(Tortious Breach of the Covenant of Good Faith and Fair Dealing-**
6 **Against FOREMOST and MIC-CENTURY)**

7 42. Answering Paragraph 42 of Plaintiff's Amended Complaint, Defendants repeat and
8 reallege their answers to Paragraphs 1 through 41, inclusive, of Plaintiff's Amended Complaint,
9 as if fully set forth, and incorporate them herein by reference.

10 43. Answering Paragraph 43 of Plaintiff's Amended Complaint, Defendants admit
11 Plaintiff and Foremost are parties to an insurance contract. Defendants deny the remaining
12 averments in this paragraph.

13 44. Answering Paragraph 44 of Plaintiff's Amended Complaint, Defendants admit the
14 averments in this paragraph.

15 45. Answering Paragraph 45 of Plaintiff's Amended Complaint, Defendants deny the
16 averments in this paragraph as neither the Nevada Supreme Court, nor Nevada Revised Statutes
17 recognize the existence of a fiduciary duty between an insured and an insurer.

18 46. Answering Paragraph 46 of Plaintiff's Amended Complaint, Defendants admit that
19 a bilateral duty of good faith and fair dealing exists between the parties.

20 47. Answering Paragraph 47 of Plaintiff's Amended Complaint, Defendants deny
21 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
22 statute, and further deny causing Plaintiff to incur any damages whatsoever.

23 48. Answering Paragraph 48 of Plaintiff's Amended Complaint, Defendants deny the
24 averments in this paragraph.

25 49. Answering Paragraph 49 of Plaintiff's Amended Complaint, Defendants deny the
26 averments in this paragraph.

1 50. Answering Paragraph 50 of Plaintiff's Amended Complaint, Defendants deny the
2 averments in this paragraph.

3 51. Answering Paragraph 51 of Plaintiff's Amended Complaint, Defendants deny the
4 averments in this paragraph.

5 52. Answering Paragraph 52 of Plaintiff's Amended Complaint, Defendants deny the
6 averments in this paragraph.

7 53. Answering Paragraph 53 of Plaintiff's Amended Complaint, Defendants deny the
8 averments in this paragraph.

9 54. Answering Paragraph 54 of Plaintiff's Amended Complaint, Defendants deny the
10 averments in this paragraph.

11 55. Answering Paragraph 55 of Plaintiff's Amended Complaint, Defendants deny the
12 averments in this paragraph.

13 56. Answering Paragraph 56 of Plaintiff's Amended Complaint, Defendants deny
14 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
15 statute, and further deny causing Plaintiff to incur any damages whatsoever.

16 57. Answering Paragraph 57 of Plaintiff's Amended Complaint, Defendants deny
17 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
18 statute, and further deny causing Plaintiff to incur any damages whatsoever.

19 58. Answering Paragraph 58 of Plaintiff's Amended Complaint, Defendants deny
20 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
21 statute, and further deny causing Plaintiff to incur any damages whatsoever.

22 **FOURTH [sic] CAUSE OF ACTION**

23 **(Contractual Breach of the Covenant of Good Faith and**
24 **Fair Dealing - Against MID-CENTURY)**

25 59. Answering Paragraph 59 of Plaintiff's Amended Complaint, Defendants repeat and
26 reallege their answers to Paragraphs 1 through 58, inclusive, of Plaintiff's Amended Complaint,

1 as if fully set forth, and incorporate them herein by reference.

2 60. Answering Paragraph 60 of Plaintiff's Amended Complaint, Defendants admit the
3 Plaintiff and Mid-Century Insurance Company are parties to an insurance contract. Defendants
4 deny the remaining averments in this paragraph.

5 61. Answering Paragraph 61 of Plaintiff's Amended Complaint, Defendants admit that
6 a bilateral duty of good faith and fair dealing exists between the parties.

7 62. Answering Paragraph 62 of Plaintiff's Amended Complaint, Defendants submit
8 that the referenced policy speaks for itself and is the best evidence as to its contents. To the extent
9 Plaintiff seeks to alter, modify, or otherwise change its terms, conditions, or exclusions,
10 Defendants deny the averments in this paragraph.

11 63. Answering Paragraph 63 of Plaintiff's Amended Complaint, Defendants deny the
12 averments in this paragraph.

13 64. Answering Paragraph 64 of Plaintiff's Amended Complaint, Defendants submit
14 that the referenced policy speaks for itself and is the best evidence as to its contents. To the extent
15 Plaintiff seeks to alter, modify, or otherwise change its terms, conditions, or exclusions,
16 Defendants deny the averments in this paragraph. Further, Defendants deny breaching any
17 obligation or duty owed to Plaintiff, whether created by contract, tort law, or statute, and further
18 deny causing Plaintiffs to incur any damages whatsoever.

19 65. Answering Paragraph 65 of Plaintiff's Amended Complaint, Defendants deny
20 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
21 statute, and further deny causing Plaintiffs to incur any damages whatsoever.

22 66. Answering Paragraph 66 of Plaintiff's Amended Complaint, Defendants deny
23 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
24 statute, and further deny causing Plaintiffs to incur any damages whatsoever.

25 67. Answering Paragraph 67 of Plaintiff's Amended Complaint, Defendants deny
26 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or

1 statute, and further deny causing Plaintiffs to incur any damages whatsoever.

2 68. Answering Paragraph 68 of Plaintiff's Amended Complaint, Defendants deny the
3 averments in this paragraph.

4 **FIFTH [sic] CAUSE OF ACTION**

5 **(Fraudulent and Intentional Misrepresentations-Against Mid-Century)**

6 69. Answering Paragraph 69 of Plaintiff's Amended Complaint, Defendants repeat and
7 reallege their answers to Paragraphs 1 through 68, inclusive, of Plaintiff's Amended Complaint,
8 as if fully set forth, and incorporate them herein by reference.

9 70. Answering Paragraph 70 of Plaintiff's Amended Complaint, Defendants deny the
10 averments in this paragraph.

11 71. Answering Paragraph 71 of Plaintiff's Amended Complaint, Defendants deny the
12 averments in this paragraph.

13 72. Answering Paragraph 72 of Plaintiff's Amended Complaint, Defendants deny the
14 averments in this paragraph, and affirmatively allege that Mid-Century has not issued umbrella
15 coverage relevant to these claims to either Jonas Stoss or Filippo Sciarratta.

16 73. Answering Paragraph 73 of Plaintiff's Amended Complaint, Defendants submit
17 that the referenced policy speaks for itself and is the best evidence as to its contents. To the extent
18 Plaintiff seeks to alter, modify, or otherwise change its terms, conditions, or exclusions,
19 Defendants deny the averments in this paragraph.

20 74. Answering Paragraph 74 of Plaintiff's Amended Complaint, Defendants deny
21 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
22 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
23 incur any damages whatsoever.

24 75. Answering Paragraph 75 of Plaintiff's Amended Complaint, Defendants deny
25 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
26 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to

1 incur any damages whatsoever.

2 76. Answering Paragraph 76 of Plaintiff's Amended Complaint, Defendants deny
3 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
4 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
5 incur any damages whatsoever.

6 77. Answering Paragraph 77 of Plaintiff's Amended Complaint, Defendants deny
7 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
8 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
9 incur any damages whatsoever.

10 78. Answering Paragraph 78 of Plaintiff's Amended Complaint, Defendants deny
11 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
12 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
13 incur any damages whatsoever.

14 79. Answering Paragraph 79 of Plaintiff's Amended Complaint, Defendants deny
15 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
16 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
17 incur any damages whatsoever.

18 **SIXTH [sic] CAUSE OF ACTION**

19 **(Negligent Misrepresentation-Against MID-CENTURY)**

20 80. Answering Paragraph 80 of Plaintiff's Amended Complaint, Defendants repeat and
21 reallege their answers to Paragraphs 1 through 79, inclusive of Plaintiff's Amended Complaint,
22 as if fully set forth, and incorporate them herein by reference.

23 81. Answering Paragraph 81 of Plaintiff's Amended Complaint, Defendants admit the
24 averments in this paragraph.

25 82. Answering Paragraph 82 of Plaintiff's Amended Complaint, Defendants admit the
26

1 averments in this paragraph.

2 83. Answering Paragraph 83 of Plaintiff's Amended Complaint, Defendants deny
3 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
4 statute, and further deny causing Plaintiff to incur any damages whatsoever.

5 84. Answering Paragraph 84 of Plaintiff's Amended Complaint, Defendants deny
6 breaching any obligation or duty owed to Plaintiff, whether created by contract, tort law, or
7 statute, and further deny causing Plaintiff to incur any damages whatsoever.

8 85. Answering Paragraph 85 of Plaintiff's Amended Complaint, Defendants deny the
9 averments in this paragraph, and affirmatively allege that Mid-Century has not issued umbrella
10 coverage relevant to these claims to either Jonas Stoss or Filippo Sciarratta.

11 86. Answering Paragraph 86 of Plaintiff's Amended Complaint, Defendants submit that
12 the referenced policy speaks for itself and is the best evidence as to its contents. To the extent
13 Plaintiff seeks to alter, modify, or otherwise change its terms, conditions, or exclusions,
14 Defendants deny the averments in this paragraph.

15 87. Answering Paragraph 87 of Plaintiff's Amended Complaint, Defendants deny
16 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
17 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
18 incur any damages whatsoever.

19 88. Answering Paragraph 88 of Plaintiff's Amended Complaint, Defendants deny
20 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
21 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
22 incur any damages whatsoever.

23 89. Answering Paragraph 89 of Plaintiff's Amended Complaint, Defendants deny
24 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
25 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
26 incur any damages whatsoever.

1 90. Answering Paragraph 90 of Plaintiff's Amended Complaint, Defendants deny
2 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
3 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
4 incur any damages whatsoever.

5 91. Answering Paragraph 91 of Plaintiff's Amended Complaint, Defendants deny
6 making false statements to Plaintiff and further deny breaching any obligation or duty owed to
7 Plaintiff, whether created by contract, tort law, or statute, and further deny causing Plaintiff to
8 incur any damages whatsoever.

9 92. Answering Paragraph 92 of Plaintiff's Amended Complaint, Defendants deny the
10 averments in this paragraph.

11 **SEVENTH [sic] CAUSE OF ACTION**

12 **(Unjust Enrichment-Against MID-CENTURY and FOREMOST)**

13 93. Answering Paragraph 93 of Plaintiff's Amended Complaint, Defendants repeat and
14 reallege their answers to Paragraphs 1 through 92, inclusive of Plaintiff's Amended Complaint,
15 as if fully set forth, and incorporate them herein by reference.

16 94. Answering Paragraph 94 of Plaintiff's Amended Complaint, Defendants deny the
17 averments in this paragraph.

18 95. Answering Paragraph 95 of Plaintiff's Amended Complaint, Defendants deny the
19 averments in this paragraph.

20 96. Answering Paragraph 96 of Plaintiff's Amended Complaint, Defendants deny the
21 averments in this paragraph.

22 **AFFIRMATIVE DEFENSES**

23 First Affirmative Defense

24 Plaintiff has failed to state a claim upon which relief can be granted.

25 Second Affirmative Defense

26 The acts or omissions of third parties, including one or several tortfeasors, may have

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1 proximately caused or otherwise contributed to the losses alleged by Plaintiff.

2 Third Affirmative Defense

3 The negligence of Plaintiff contributed to any injuries that were sustained and the legal
4 concept of comparative fault must be assessed to the detriment of Plaintiff.

5 Fourth Affirmative Defense

6 The Plaintiff has failed to make a reasonable good faith effort to mitigate any alleged damages.

7 Fifth Affirmative Defense

8 To the extent that any contract between these parties is supported by adequate consideration,
9 Plaintiff has failed to fulfill and perform his obligations and duties to Defendants under the contract
10 and is therefore barred from enforcing the same against it.

11 Sixth Affirmative Defense

12 The NRS 42.005 exclusion of insurance companies from treble limits is unconstitutional and
13 in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States
14 Constitution as well as the Due Process Clause of the Fourteenth Amendment of the United States
15 Constitution

16 Seventh Affirmative Defense

17 The damages sustained by Plaintiff, if any, were caused by the acts of unknown third persons
18 who were not agent, servants, or employees of Defendants and who were not acting on behalf of
19 Defendant in any manner or form and, as such, Defendants are not liable in any manner to the
20 Plaintiff.

21 Eighth Affirmative Defense

22 The allegations alleged in the Amended Complaint, and the resulting damage if any, to
23 Plaintiff, were proximately caused or contributed to by Plaintiff's own negligence, and such
24 negligence may have been greater than the negligence, if any, of Defendants.

25 Ninth Affirmative Defense

26 Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have been

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28

1 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing
2 of this Answer, and therefore, Defendants reserve the right to amend this Answer to allege additional
3 affirmative defenses as subsequent investigation warrants.

4 Tenth Affirmative Defense

5 Plaintiff lacks legal entitlement to assert a bad faith claim as contemplated by the Nevada
6 Supreme Court in *Pemberton v. Farmers Insurance Exchange*, 109 Nev. 789, 8 P.2d 380 (1993).

7 Eleventh Affirmative Defense

8 Nevada's punitive damages statutes violate the Fourteenth Amendment of the United States
9 Constitution, including the Due Process clause and Equal Protection clause, to the extent such
10 statutes provide for unlimited recovery pursuant to the findings of *State Farm Mutual Automobile*
11 *Insurance Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513, 155 L.Ed. 2d 585 (2003). Further, the
12 Nevada punitive damages statutes are unconstitutional as they are vague and ambiguous, and
13 therefore enforcement under same is contrary to the Nevada State Constitution and the United States
14 Constitution.

15 Twelfth Affirmative Defense

16 Plaintiff's causes of action, as outlined in his Amended Complaint, is barred by the applicable
17 statute of limitations.

18 Thirteenth Affirmative Defense

19 Defendants further asserts the affirmative defense of payment, release and satisfaction.
20

21 **COUNTER/CROSS CLAIMS**

22 For their Counter/Cross Claims against Plaintiff-Counter Defendant Filippo Sciarratta and
23 Defendant-Cross Defendant Jonas Stoss, Counter/Cross Claimants Foremost Insurance Company,
24 Mid-Century Insurance Company and Farmers Insurance Exchange (erroneously identified as Mid-
25 Century Insurance Company in references to personal umbrella coverage in the Amended
26 Complaint) (collectively, the "Farmers Entities") state as follows:

27

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1 106. The original iteration of the Complaint contained the following counts: 1:
2 Negligence Per Se (against Stoss); 2: Negligence (against Stoss); and 3: Negligent Entrustment
3 (against Cynthia).

4 107. In Count 1, which incorporates the general allegation that Stoss was driving the
5 motorcycle at excessive speeds at the time of the accident, Filippo alleged that Stoss violated several
6 statutes governing the operation of motorcycles and motor vehicles that were designed to protect
7 passengers like Filippo from the kind of harm he experienced.

8 108. In Count 2, Filippo alleged that Stoss breached a duty of care owed to Filippo in
9 failing to safely operate the motorcycle, and that this breach was the actual and proximate cause of
10 Filippo's injuries and damages.

11 109. In Count 3 of the Original Complaint, Filippo claimed that Cynthia negligently
12 entrusted the vehicle to Stoss when "she knew or should have known [he] was likely to use it in a
13 manner involving unreasonable risk of harm to others." Earlier in the Complaint, Filippo alleged
14 that Cynthia was the registered owner of the motorcycle and that Stoss was operating it with her
15 express or implied permission. In the Amended Complaint, he has changed this assertion—stating
16 instead "FILIPPO and/or Cynthia Sciarratta was the registered owner of a Kawasaki motorcycle
17 ("the Vehicle")."

18 110. The Complaint's Prayer for Relief requested general and emotional damages,
19 medical expenses, special damages, attorneys' fees and costs, and any other relief deemed just and
20 proper under the circumstances.

21 111. On September 20, Filippo filed Plaintiff's Voluntary Dismissal Without Prejudice
22 of Defendant Cynthia Sciarratta—in which he dismissed all claims against Cynthia pursuant to
23 NRCP 41(a)(1).

24 112. Defendant Stoss filed his Answer on the same day—September 20, 2017—in
25 which he generally denied the allegations against him and raised the following affirmative defenses:
26 1) the Complaint fails to state a claim upon which relief can be granted; 2) Plaintiff Filippo failed to
27

1 mitigate his damages; 3) Plaintiff's negligence caused or contributed to his injuries; 4) the accident
2 was caused by a third party's acts or omissions (over whom Stoss had no control); 5) attorneys' fees
3 are unavailable for personal injury actions, and cannot recovered as requested; 6) that Stoss reserves
4 the right to raise additional affirmative defenses as warranted by subsequent investigations.

5 **B. The Insurance Coverage Dispute**

6 113. In April 2017, counsel for Filippo contacted Farmers Exchange and Foremost with
7 a \$1,515,000 demand—representing what was described as the total available limits under all
8 applicable policies of insurance. This consisted of the \$1,000,000 liability limits of Farmers
9 Insurance Exchange Special Personal Umbrella Policy No. 60521-70-05 (the “Umbrella Policy”)
10 issued to Cynthia Sciarratta, the \$500,000 liability limits of Foremost Motorcycle Insurance Policy
11 No. 276-0074215814 (the “Motorcycle Policy”) issued to Filippo, and what underlying Plaintiff's
12 counsel believed (at the time) were the \$15,000 bodily injury limits of Stoss' personal auto policy
13 with Progressive Insurance.

14 114. Farmers Exchange and Foremost alerted counsel for Filippo that he would have to
15 contact Progressive directly with the demand under Stoss' auto policy, but that they had found
16 \$500,000 in liability coverage under the Motorcycle Policy in partial payment of those damages
17 caused by Jonas (as a permissive user of the motorcycle) as well as \$15,000 in underinsured motorist
18 coverage under the Motorcycle Policy.

19 115. Farmers Exchange notified Plaintiff that Cynthia—the policyholder and named
20 insured to whom the Umbrella Policy was issued—had executed a UM/UIM waiver with respect to
21 coverage under that policy, it was not a source of additional UIM coverage for Filippo's injuries.

22 116. Farmers Exchange explained to Plaintiff that the Umbrella Policy is a form of third-
23 party coverage that protects Cynthia and Filippo from lawsuits filed against them—as opposed to a
24 first-party policy that provides payment directly to the insureds for their own damages. Farmers
25 Exchange also notified Plaintiff that Stoss is not an insured for purposes of the Umbrella Policy.

26 117. At this same time, the Farmers Exchange and Foremost sought clarification of
27

1 whether Plaintiff believed that Cynthia had also been negligent in some way that harmed Filippo—
2 and, if he did, asked that he help the Farmers Entities understand the factual basis for that claim.

3 118. Farmers Exchange and Foremost gave Plaintiff a fuller explanation of the operable
4 provisions in the Motorcycle and Umbrella Policies underlying their coverage analysis (as follows)
5 and asked that he engage them in dialogue if he disagreed with their analysis or had any additional
6 information of which they should be made aware.

7 **i. The Motorcycle Policy**

8 119. Plaintiff Foremost issued Motorcycle Insurance Policy No. 276-0074215814 with
9 effective dates of May 13, 2015 to May 13, 2016 to Filippo Sciarratta.

10 120. The Motorcycle Policy affords \$500,000 in liability coverage per accident, and
11 \$50,000 in Uninsured Motorist Coverage.

12 121. The Motorcycle Policy states:

13 **INSURING AGREEMENT**

14 A. We will pay damages for “bodily injury” or “property damage” for which any
15 “insured” becomes legally responsible because of a “motorcycle” accident. Damages
16 include prejudgment interest awarded against the “insured”. We will settle or defend, as
17 we consider appropriate, any claim or suit asking for these damages. In addition to our
18 limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends
19 when our limit of liability for this coverage has been exhausted by payment of judgments
20 or settlements. We have no duty to defend any suit or settle any claim for “bodily injury”
21 or “property damage” not covered under this policy.

22 B. “Insured” as used in this Part means:

- 23 1. You or any “family member” for the ownership, maintenance or use of “your covered
24 motorcycle”.
25 2. Any person using “your covered motorcycle”.
26

27 122. Under the Motorcycle Policy, the term “you” refers to Filippo Sciarratta (the
28 named insured shown in the policy’s declarations), his wife Cynthia (as a resident of the same
household) and Stoss, as a permissive use of the “covered motorcycle.”

1 123. Because Plaintiff indicated that his damages exceeded \$500,000, Foremost offered
2 the \$500,000 limits in settlement of Filippo's claims against Stoss and Cynthia—both of whom have
3 liability coverage under the Motorcycle Policy for those damages that they may have caused. Filippo
4 accepted this offer, and Foremost engaged his counsel in negotiation of an agreement to memorialize
5 the payment of the \$500,000 limits in exchange for a release of claims against their insureds, Cynthia
6 and Stoss.¹

7 124. The Motorcycle Policy also extends certain UM/UIM coverage through
8 Endorsement PP1412: Uninsured Motorist Coverage – Nevada. Although this policy form is entitled
9 “Uninsured Motorist Coverage,” the applicable definition of “uninsured motor vehicle” includes
10 vehicles “to which a bodily injury liability bond or policy applies at the time of the accident but the
11 amount paid for ‘bodily injury’ under that bond or policy to an ‘insured’ is not enough to pay the
12 full amount the ‘insured’ is legally entitled to recover as damages.”

13 125. Because Stoss' personal policy with Progressive extended only \$25,000 in
14 coverage for Filippo's injuries, the motorcycle at issue meets the threshold requirement of an
15 “uninsured motor vehicle,” as it is a vehicle to which there is an applicable bodily injury liability
16 policy that does not extend sufficient coverage to pay the full amount Filippo is legally entitled to
17 recover as damages.

18 126. The endorsement continues, however, to exclude from the definition of “uninsured
19 motor vehicle” “any vehicle or equipment: 1. Owned by or furnished or available for the regular use
20 of you or any ‘family member.’”

21 127. Because the Kawasaki motorcycle is owned by Filippo—the named insured under
22 the Motorcycle Policy (and therefore “you”)—this limitation excludes the motorcycle from those
23 utilized to extend coverage in the insuring clause.

24 128. However, in light of the construction afforded to UM/UIM coverage under Nevada
25

26 ¹ See May 12, 2017 Release of All Claims for further discussion of the settlement agreement, attached in its
27 entirety as Exhibit 1.

1 law to protect recovery of the minimum \$15,000 in coverage required by statute, Foremost paid
2 Filippo an additional \$15,000 in UIM benefits in partial satisfaction of his damages caused by Stoss.

3 **ii. The Umbrella Policy**

4 129. Farmers Insurance Exchange issued Personal Umbrella Policy No. 60521-70-05,
5 with effective dates of March 18, 2015 to May 5, 2016, to Cynthia Sciarratta.

6 130. Cynthia is the Named Insured on the declarations page, and both Cynthia and
7 Filippo are designated as “Covered” drivers in the Driver Information section.

8 131. The Schedule of Underlying Insurance for which the Umbrella Policy provides
9 umbrella coverage includes the Foremost Motorcycle Policy, three Farmers Insurance Exchange
10 Homeowners policies, and the Mid-Century Auto Liability policy. Each of the first four policies is
11 subject to a \$500,000 liability limit, and the fifth provides 500/500/100.

12 132. The Umbrella Policy has a \$1,000,000 per occurrence General Liability limit and
13 is subject to a \$250 Retained Limit.

14 133. The insuring clause in Part II – Coverage states (in pertinent part):

15

16 If a claim is made anywhere in the world against any **insured**, we will, subject to
17 definitions, exclusions, terms and conditions of this insurance, pay **damages** caused
18 by an **occurrence** in excess of the **retained limit** on the **insured’s** behalf. . . . We will
19 defend any **insured** for any claim or suit that is covered by this insurance but not
covered by other insurance as described in “Part IV – Defense of Suits Not Covered
By Other Insurance.” . . .

20 134. Additionally, as Farmers Exchange informed counsel for Plaintiff, the Umbrella
21 Policy makes use of the following defined terms in ways that inform its coverage analysis:

22 **i. DEFINITIONS**

23

24 In this policy, “you” and “your” mean the “named insured” in the Declarations and
spouse if a resident of your household. . . .

25 6. **Damages** - means “the total of damages that the insured must pay (legally or by
26 agreement with our written consent) because of bodily injury, personal injury or
property damage caused by an occurrence covered by this policy, and reasonable

27

28

1 expenses incurred by the insured at our request.

2 **7. Insured** - means:

3 a. you and the following residents of your household, except as respects **autos** and **watercraft**:

4 (1) your **relatives**, and

(2) any person under age 21 in the care of a person named above.

5 b. as respects **autos** and **watercraft**:

6 (1) any person using (with a reasonable belief that the person is entitled to use) a **watercraft** owned by, loaned to or hired for use by you or on your behalf;

7 (2) you and any person in 7.a. (1) and (2) above, using **autos** (with a reasonable belief that they are entitled to do so) not owned by you or furnished for your regular use; . . .

8
9 None of the following are **insureds**:

10 . . .
11 a. any person (other than those described in a(1) and a(2) above) using an **auto** (without reasonable belief that they are entitled to do so) owned by, loaned to, or hired for use by you or on your behalf.

12
13 135. Finally, the policy contains the following relevant exclusion:

14
15 23. We do not cover damages:

16 . . .
Arising from liability:

17 a. payable to any insured; or

18 b. whenever damages are due directly or indirectly to an insured.

19 136. With this policy language in mind, Farmers Exchange examined the question of
20 whose liability is covered under the terms of the Umbrella Policy, and the extent to which that
21 coverage is available for the claims as articulated.

22 137. Filippo and Cynthia are both insureds, as they are both enveloped in the definition
23 of “you,” and the definition of “insured” expressly includes “you.”

24 138. Stoss, however, is not within the scope of the definition of “insured”—as the
25 Umbrella Policy does not provide the same broad permissive use coverage as does the Motorcycle
26 Policy.

1 Sciarratta. In addition to the policy’s \$500,000 in liability coverage, it offers \$100,000 in UM/UM
2 Coverage.

3 147. When she affirmatively selected reduced UM/UM limits under the policy, Cynthia
4 Sciarratta executed a form entitled “Uninsured and Underinsured Motorist Election – Nevada” in
5 which she chose reduced limits of \$100,000 per person and \$300,000 per occurrence in exchange
6 for a reduction in premium.

7 148. The insuring clause of the Mid-Century Policy’s UIM coverage states:

8
9 We will pay all sums which an **insured person** is legally entitled to recover as
10 **damages** from the owner or operator of an **uninsured motor vehicle** because of
11 **bodily injury** sustained by the **insured person**. The **bodily injury** must be caused by
an **accident** and arise out of the ownership, maintenance or use of the **uninsured**
motor vehicle.

12
13 149. The applicable definition of uninsured motor vehicle in “**Part II – Uninsured**
14 **Motorist**” includes a vehicle which is “insured by a **bodily injury** liability bond or policy at the
15 time of the **accident** which provides coverage in amounts less than the damages which the **insured**
16 **person** is legally entitled from the owner or operator of that vehicle.”

17 150. The Mid-Century Policy contains several limitations and exclusions that eliminate
18 UIM coverage under the circumstances.

19 151. Among these is the “owned by or furnished or available for regular use” limitation
20 that excludes “a vehicle . . . b. owned by or furnished or available for regular use by your or any
21 **family member**” from the definition of “**uninsured motor vehicle**”.

22 152. Filippo and Cynthia—named insureds to whom the policy refers when it says
23 “you”—own the motorcycle involved in the accident, and this limitation excludes it from those
24 vehicles utilized to extend coverage in the insuring clause.

25 153. The Mid-Century Policy also contains the “occupying any vehicle owned by you
26 or a family member” exclusion, Exclusion 4, which provides:

1 This coverage does not apply while **occupying** any vehicle owned by you or a **family**
2 **member** for which insurance is not afforded under this policy or through being struck
3 by that vehicle. This exclusion only applies to those **damages** which exceed the
minimum limits of liability required by Nevada law for **Uninsured Motorist**
coverage.

4 154. Filippo, a named insured, owns the motorcycle he was occupying at the time of
5 the accident, and his damages exceed the minimum liability limits required by Nevada law (which
6 are satisfied by the UIM coverage extended under the Foremost Motorcycle Policy).

7 155. The Mid-Century Policy also contains an anti-stacking provision that states:
8

9 If you have more than one car insured by us, we will not pay any insured person more
10 than the single highest limit of uninsured motorist coverage which you have on any
11 one of those cars. This limit of coverage applies regardless of the number of policies,
insured persons, cars insured, claims made, claimants, or vehicles involved in the
12 occurrence. Coverages on your other cars insured with us cannot be added, combined
or stacked together.

13 156. The Mid-Century Policy defines “we”, “us” and “our” to mean “the Company
14 named in the Declarations providing this insurance and all of the members of the Farmers Insurance
15 Group of Companies, including Farmers Insurance Exchange, Mid-Century Insurance Co., Truck
16 Insurance Exchange, etc.”

17 157. In compliance with NRS 687B.145(1), the Mid-Century Policy supports this anti-
18 stacking language with endorsement NV011 – 1st Edition, which states:
19

20 **Part II – Uninsured Motorist Coverage**
21 **Coverage C – Uninsured Motorist Coverage**

22 **Limits of Coverage**

The **Limitations on Stacking Coverages** provisions have been changed as follows:

23 **Limitations on Stacking Coverages**

24 If you have more than one motor vehicle insured with us and, if you or any other
insured person is in an accident:

- 25 A) In your insured car – We will not pay more than the uninsured motorist limit
26 of coverage for that particular insured car.
27 B) In a motor vehicle other than your insured car or while a pedestrian – We

1 will not pay for more than the uninsured motorist limit of coverage which
2 you have on any one of your insured cars.

3 Coverage on other motor vehicles insured by us cannot be added to or stacked on the
4 coverage of your insured car that covers the loss.

5 These limits on coverage apply regardless of the number of policies, insured persons,
6 your insured cars, claims made, claimants, or motor vehicles involved in the accident.

7 We will pay no more than the maximum limits of this coverage, as shown in the
8 declarations of this policy, for any person or vehicle insured under this part for any
9 one accident or occurrence regardless of the number of:

- 10 1. Vehicles or premiums shown in the declarations;
- 11 2. Vehicles insured;
- 12 3. Insured persons;
- 13 4. Claims or claimants;
- 14 5. Policies; or
- 15 6. Vehicles involved in the accident or occurrence.

16 The limits provided by this policy for this coverage may not be stacked or combined
17 with the limits provided by any other policy issued to you or a family member by any
18 of the farmers insurance group of companies.

19 The limits are not increased by insuring additional vehicles, even though a separate
20 premium for each vehicle is shown on the declarations page.

21 158. This endorsement limits Filippo's UIM benefits under his Farmers Entities'
22 policies of insurance in a manner that comports with Nevada law.

23 **C. The May 12, 2017 Release of All Claims**

24 159. In consideration for the \$500,000 liability limits of the Motorcycle Policy, counsel
25 for Filippo negotiated an agreement entitled "Release of All Claims" in which the \$500,000 liability
26 limits were paid directly to Filippo in exchange for a release of all claims against Stoss and Cynthia
27 arising out of the accident.

28 160. Foremost required this as a condition of the \$500,000 payment to protect its
insureds, Stoss and Cynthia, from personal exposure arising out of the accident.

1 161. This release states,² in pertinent part, that Filippo agrees to
2 release, acquit and forever discharge JONAS STOSS, his spouse, Cynthia Sciaratta
3 and FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, as it
4 relates to Policy No: 0074215814, their agents, administrators, and all other persons,
5 firms, corporations, associations or partnerships connected therewith, (hereinafter
6 referred to as Releasees) from all known and unknown claims, actions, causes of
7 action and suits for damages, at law and in equity, filed or otherwise, including
8 personal injuries, property damage, loss of compensation or earning capacity, profits,
9 punitive damages, extra-contractual, interest and use, services, society, contribution
10 and support, which the undersigned now has or may hereafter acquire, by reason of
11 any loss of, or damage to, any property or property right or rights, or past, present or
12 future injuries to Plaintiff as a result of an accident or incident that occurred on or
13 about June 4, 2015.

14 This Release extends and applies to and also covers and includes all unknown,
15 unforeseen, unanticipated and unsuspected injuries, damages, loss and liability, and
16 the consequences thereof, as well as those not disclosed and known to exist; . . .
17 Each Releasee shall be held harmless from, and indemnified for and against all losses,
18 damages, costs and expenses, including reasonable attorney fees and all other sums
19 which said Releasee may hereafter incur, pay, be required or become obligated to pay
20 on account of any and every further, additional or other demand, claim, or suit by or
21 on behalf of the undersigned, or other party seeking subrogation or indemnification
22 against the Releasees as a result of the law suit herein brought by the undersigned or
23 payment to the undersigned by the Releasees herein.

24 162. The release, as Foremost construes it, resolves Filippo's claims against Stoss,
25 Cynthia and Foremost arising out of the accident, representing "a full and final compromise
26 settlement, release, accord and satisfaction and discharge of all claims, actions and causes of action
27 and suits regarding the alleged injury to Plaintiff."

28 163. Despite having executed this release and collected the \$500,000 limits if the
Motorcycle Policy as consideration, Filippo filed the original Complaint on June 3, 2017 against
Cynthia and Stoss. Filippo has since dismissed the claims against Cynthia (sounding in negligent
entrustment of Filippo's own vehicle) but retains claims against Stoss.

164. In light of the tension between the release of claims and the Amended Complaint,
the Farmers Entities seek the Court's assistance in determining the viability of the present claims

² See Exhibit 1 attached (emphasis added).

1 against Stoss as well as any outstanding obligations owed to Filippo under any of the three policies
2 of insurance at issue.

3 **FIRST CLAIM FOR RELIEF**

4 **DECLARATORY JUDGMENT – CONSTRUCTION OF MAY 12, 2017 RELEASE**
5 **(Against Filippo and Stoss)**

6 165. Counter/Cross Claimants reallege the statements in paragraphs 1–164 above and
7 incorporate them by reference as if set forth herein.

8 166. An actual controversy exists between Counter/Cross Claimants and Filippo and
9 Stoss concerning the effect of the May 12, 2017 Release of All Claims on Filippo Sciarratta’s claims
10 against Jonas Stoss in the instant action.

11 167. Counter/Cross Claimants respectfully request that this Court determine whether
12 the May 12, 2017 Release of All Claims constitutes a release of Filippo Sciarratta’s claims against
13 Jonas Stoss, Cynthia Sciarratta, and Foremost Insurance Company arising out of the June 2015
14 motorcycle accident.

15 **SECOND CLAIM FOR RELIEF**

16 **DECLARATORY JUDGMENT – UMBRELLA POLICY**
17 **(Against Filippo and Stoss)**

18 168. Counter/Cross Claimants reallege the statements in paragraphs 1–167 above and
19 incorporate them by reference as if fully set forth herein.

20 169. Plaintiff/Counter Defendant Filippo Sciarratta presented Farmers Insurance
21 Exchange with demands for payment under the underinsured motorist and liability coverage parts of
22 Personal Umbrella Policy No. 60521-70-05, with effective dates of March 18, 2015 to May 5, 2016.

23 170. Farmers Insurance Exchange was unable to find underinsured motorist coverage
24 under the policy, as it was rejected by the named insured Cynthia Sciarratta at the time of the policy’s
25 issuance.

26 171. Farmers Insurance Exchange was unable to find liability coverage under the
27 circumstances, as there were no claims against an insured under Personal Umbrella Policy No.
28 60521-70-05 as required by the insuring clause of this coverage part.

1 172. Farmers Insurance Exchange therefore requests a declaration that there is no
2 underinsured motorist coverage available to Filippo Sciarratta under Personal Umbrella Policy No.
3 60521-70-05 for injuries he sustained in the June 2015 motorcycle accident.

173. In addition, Farmers Insurance Exchange requests a declaration that Jonas Stoss is not an insured under Personal Umbrella Policy No. 60521-70-05 to whom it owes a defense or indemnity in the instant suit.

THIRD CLAIM FOR RELIEF
DECLARATORY JUDGMENT – FOREMOST MOTORCYCLE POLICY
(Against Filippo and Stoss)

9 174. Counter/Cross Claimants reallege the statements in paragraphs 1–173 above and
10 incorporate them by reference as if fully set forth herein.

11 175. Plaintiff/Counter Defendant Filippo Sciarratta demanded that Foremost pay him
12 the \$500,000 liability limits as well as \$50,000 in underinsured motorist coverage under Foremost
13 Motorcycle Policy No. 276-0074215814 issued to Filippo Sciarratta.

14 176. In light of applicable exclusions, Filippo’s underinsured motorist coverage was
15 limited to the minimum limits required by Nevada statute: \$15,000.

16 177. In addition to \$15,000 in underinsured motorist benefits, Foremost paid Filippo the
17 \$500,000 liability limits of Motorcycle Insurance Policy No. 276-0074215814 in exchange for a
18 release of all claims against Foremost, Jonas Stoss and Cynthia Sciarratta arising out of the June
19 2015 motorcycle accident, exhausting its limits under the liability coverage part.

178. Having paid Filippo the \$15,000 to which he was entitled, Foremost requests a
declaration that it has paid the entirety of the available underinsured motorist coverage under
Motorcycle Insurance Policy No. 276-0074215814.

23 179. Having exhausted all available coverage, Foremost requests a declaration that it
24 has no duty to defend or indemnify Jonas Stoss in the instant suit.

25 . . .

26 . . .

FOURTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT – MID-CENTURY AUTO POLICY
(Against Filippo)

180. Counter/Cross Claimants reallege the statements in paragraphs 1–180 above and incorporate them by reference as if fully set forth herein.

181. Plaintiff/Counter Defendant Filippo Sciarratta presented an underinsured motorist claim to Mid-Century under Mid-Century Insurance Auto Policy No. 19369-38-23, issued to named insureds Cynthia and Filippo Sciarratta.

182. Mid-Century was unable to find underinsured motorist coverage for Filippo under the policy in light of applicable limitations and exclusions—including an anti-stacking provision that precluded recovery above the \$15,000 in benefits paid under the Foremost Motorcycle Policy.

183. Mid-Century requests a declaration that there is no underinsured motorist coverage available to Filippo Sciarratta under Mid-Century Insurance Auto Policy No. 19369-38-23 for injuries he sustained in the June 2015 motorcycle accident.

PRAYER FOR RELIEF

WHEREFORE, Counter/Cross Claimants pray for judgment against Plaintiff/Counter Defendant and Defendant/Cross Defendant as follows:

184. For a judicial determination that the May 12, 2017 Release of All Claims released Filippo Sciarratta’s claims against Jonas Stoss, Cynthia Sciarratta and Foremost Insurance Company arising out of the June 2015 motorcycle accident.

185. For a declaration that Jonas Stoss is not an insured to whom it owes a defense or indemnity in the instant suit under the Farmers Insurance Exchange Personal Umbrella Policy No. 60521-70-05.

186. For a declaration that there is no underinsured motorist coverage available to Filippo Sciarratta under Personal Umbrella Policy No. 60521-70-05 for the injuries he sustained in the June 2015 motorcycle accident.

187. For a declaration that the \$15,000 in statutorily required underinsured motorist

1 benefits Foremost paid to Filippo constitutes the maximum underinsured motorist benefits available
2 to him under Foremost Motorcycle Policy No. 276-0074215814.

3 188. For a declaration that having exhausted all available coverage, Foremost has no
4 duty to defend or indemnify Jonas Stoss in the instant suit.

5 189. For a declaration that there is no underinsured motorist coverage available to
6 Filippo Sciarratta under the Mid-Century Auto Policy No. 19369-38-23 for the injuries he sustained
7 in the June 2015 motorcycle accident.

8 190. For such other and further relief as the Court may deem just and proper.

9

10 DATED this 26TH day of March, 2018.

11

THE FELDMAN FIRM

12

13

By: /s/ David J. Feldman
David J. Feldman, Esq.
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8831 West Sahara Avenue
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Facsimile: (702) 949-5097
dfeldman@feldmangraf.com
Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I am employee of The Feldman Firm, and that on the 26TH day of March, 2018, I served the above and foregoing **AMENDED ANSWER AND COUNTER/CROSS CLAIMS FOR DECLARATORY RELIEF** on the following parties in compliance with the Nevada Electronic Filing and Conversion Rules:

Jordan P. Schnitzer, Esq.
THE SCHNITZER LAW FIRM
9205 W. Russell Road, Suite 240
Las Vegas, Nevada 89148
Telephone: (702) 960-4050
Facsimile: (702) 960-4092
Attorney for Plaintiff Filippo Sciarratta

Phillip R. Emerson, Esq.
Emerson Law Group
1055 Whitney Ranch Drive, Suite 120
Henderson, Nevada 89014
receptionist@emersonlawgroup.com
Attorney for Defendant Jonas Stoss

/s/ Heather Villiard

An Employee of THE FELDMAN FIRM

Exhibit 1

RELEASE OF ALL CLAIMS

FOR AND IN CONSIDERATION OF THE ISSUANCE OF A DRAFT for the sum of FIVE HUNDRED THOUSAND AND 00/100 Dollars (\$500,000.00), which is the full policy limit regarding Policy No: 0074215814, payable to FILIPPO SCIARRATTA and THE SCHNITZER LAW FIRM, his attorney, the undersigned does hereby fully release, acquit and forever discharge JONAS STOSS, his spouse, Cynthia Sciarratta and FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, as it relates to Policy No: 0074215814, their agents, administrators, and all other persons, firms, corporations, associations or partnerships connected therewith, (hereinafter referred to as Releasees) from all known and unknown claims, actions, causes of action and suits for damages, at law and in equity, filed or otherwise, including personal injuries, property damage, loss of compensation or earning capacity, profits, punitive damages, extra-contractual, interest and use, services, society, contribution and support, which the undersigned now has or may hereafter acquire, by reason of any loss of, or damage to, any property or property right or rights, or past, present or future injuries to Plaintiff as a result of an accident or incident that occurred on or about June 4, 2015.

IT IS ALSO UNDERSTOOD AND AGREED, AND MADE A PART HEREOF:

That the issuance of said draft in the amount of \$500,000.00 to the undersigned and his attorney is not, nor is it to be construed as, an admission of liability on the part of any Releasee but is a full and complete settlement, accord and satisfaction and discharge of Releasees from any liability for all past, present and future liability, loss, damages, claims, actions, causes of action and suits arising out of the aforesaid incident on June 4, 2015 which are each and all uncertain, doubtful and disputed.

This Release extends and applies to and also covers and includes all unknown, unforeseen, unanticipated and unsuspected injuries, damages, loss and liability, and the consequences thereof, as well as those not disclosed and known to exist;

It is further understood and agreed between the Releasees and the undersigned that this settlement is the compromise of a doubtful and disputed claim and the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said Releasees deny liability therefore and intend merely to avoid litigation and buy their peace.

This Release is the entire, complete, sole, and the only agreement by and between the undersigned and Releasees pertaining to and concerning the subject matter and things expressed herein, and there are no independent, collateral, different, additional or other understandings or agreements, oral or written or obligations to be performed, things to be done, or payments to be made. Furthermore, no promise, inducement or consideration other than the issuance of said draft has been made or agreed upon by or on behalf of the Releasees, or any of them. Each Releasee

shall be held harmless from, and indemnified for and against all losses, damages, costs and expenses, including reasonable attorney fees and all other sums which said Releasee may hereafter incur, pay, be required or become obligated to pay on account of any and every further, additional or other demand, claim, or suit by or on behalf of the undersigned, or other party seeking subrogation or indemnification against the Releasees as a result of the law suit herein brought by the undersigned or payment to the undersigned by the Releasees herein.

IT IS ALSO UNDERSTOOD AND AGREED, AND MADE A PART HEREOF:

As a condition of the settlement and release the undersigned represents and warrants that as of the date of signing of this Release the undersigned has provided to Foremost Insurance Company Grand Rapids, Michigan (the "insurer") all information the undersigned knows about regarding any and all Medicare rights to recovery. The undersigned agrees to reimburse, indemnify and hold harmless each of the persons, firms and corporations released hereunder and their insurer, including their agents and assigns, with respect to all known and unknown Medicare rights to recovery related to the accident or incident on or about 6/4/2015 12:30:00 AM for which the federal government may seek repayment as well as any fine or penalty the federal government may seek resulting from the sufficiency and accuracy of the information the undersigned has provided to insurer regarding Medicare rights to recovery known as of the date of signing this Release.

BY SIGNING THIS RELEASE THE UNDERSIGNED DOES THEREBY ACKNOWLEDGE AND WARRANT:

That said Release was first carefully read in its entirety by him and is understood and known to be a full and final compromise settlement, release, accord and satisfaction and discharge of all claims, actions and causes of action and suits regarding the alleged injury to Plaintiff as found in the Complaint against the Releasees or connected therewith as above stated, regarding Policy No: 0074215814; that said Release was signed and executed voluntarily and without reliance upon any statement or representation of or by any Releasee, or any representative, agent or doctor of same, or any other person or doctor concerning the nature, degree and extent of said damages, loss or injuries, or legal liability therefore; that said Release contains the entire agreement of and between all of the parties mentioned therein, and that all the terms and provisions of said Release are contractual and not a mere recital;

///

///

//

THAT THE UNDERSIGNED IS OF LEGAL AGE AND CAPACITY AND COMPETENT TO SIGN AND EXECUTE SAID RELEASE AND HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL AND ACCEPTS FULL RESPONSIBILITY THEREOF, AND BY SIGNING THIS DOES SO.

READ AND SIGNED this 12 day of MAY, 2017.

Filippo Sciaratta

STATE OF NEVADA)
) s.s.
COUNTY OF CLARK)

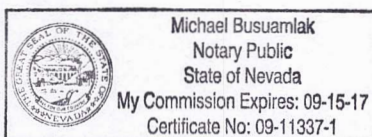
ON THIS 12 day of may, 2017, before me appeared Filippo Sciaratta to me personally known, and who acknowledged the execution of the foregoing instrument as his/her/their free act and deed, for the consideration set forth herein.

My commission expires: 09-15-2017

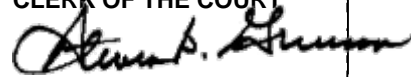
Michael Busuamlak

NOTARY PUBLIC in and for
said County and State

Notary Seal:



Attachment 3



DISTRICT COURT
CLARK COUNTY, NEVADA

FILIPPO SCIARRATTA

Plaintiff(s)

vs.

JONAS STOSS, *et al.*

Defendant(s)

CASE NO.: A-17-756368

DEPARTMENT 27

DECISION & ORDER

COURT FINDS after review that on January 25, 2019 Defendants/Counter- and Cross-Claimants Foremost Insurance Company, Mid-Century Insurance Company and Farmers Insurance Exchange's Motion for Summary Judgment ("Motion for Summary Judgment") was filed with the Court and the matter was set for hearing on February 28, 2019 at 10:30 a.m.

COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Summary Judgment on February 28, 2019. The Court took the matter under submission and set a Status Check for the Court to issue a Decision on March 12, 2019 on Chambers Calendar, which was thereafter continued to March 19, 2019.

COURT FURTHER FINDS after review that "[s]ummary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005).

COURT FURTHER FINDS after review that NRCP 56(d) provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Furthermore,

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MAR 26 2019

CLERK OF THE COURT

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

DEPT XXVII

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1 “NRCp 56[d] permits a district court to grant a continuance when a party opposing a motion for
2 summary judgment is unable to marshal facts in support of its opposition” and “the movant expresses
3 how further discovery will lead to the creation of a genuine issue of material fact.” *Aviation Ventures,*
4 *Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117–18 (2005).

5 **FIRST CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM - CONSTRUCTION OF**
6 **MAY 12, 2017 RELEASE**

7 **COURT FURTHER FINDS** after review that the May 12, 2017 Release provides that Plaintiff
8 agrees to “release, acquit and forever discharge JONAS STOSS, his spouse, Cynthia Sciarratta and
9 FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, as it relates to Policy No:
10 0074215814....”

11 **COURT FURTHER FINDS** after review that based upon the plain language of the Release, the
12 parties intended only to release the claims related to the Motorcycle Policy.

13 **THEREFORE, COURT ORDERS** for good cause appearing and after review that the Motion
14 for Summary Judgment is hereby **DENIED** with respect to the First Claim for Relief in the
15 Counter/Cross Claim related to the construction of May 12, 2017 Release.

16 **SECOND CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM – UMBRELLA POLICY**

17 **COURT FURTHER FINDS** after review that the Umbrella Policy does “not cover damages:
18 ... Arising from liability...payable to any insured; or ...whenever damages are due directly or indirectly
19 to an insured.” *Motion for Summary Judgment*, Exhibit 3A, pg. 88.

20 **COURT FURTHER FINDS** after review that the term “insured” is defined in the Umbrella
21 Policy as “you [Cynthia Sciarratta]” and “your relatives,” which definition includes Plaintiff.

22 **COURT FURTHER FINDS** after review that, since Plaintiff is an “insured” under the
23 Umbrella Policy, he is excluded from coverage in this matter since damages are due to him directly.

24 **COURT FURTHER FINDS** after review that while Plaintiff argues that the above exclusion to
25 the Umbrella Policy argued by Defendants is invalid under NRS 687B.147, such argument is belied by
26 the decision in *State Farm Fire & Cas. Co. v. Repke*, No. 2:06-CV-0366JCM(RJJ), 2007 WL 7121693,
27 at *5 (D. Nev. Feb. 27, 2007), which found that the Nevada “legislature ... intend[ed] to exclude
28

1 umbrella policies from the definition of 'a policy of motor vehicle insurance covering a private
2 passenger car' in NRS 687B.147." *See also State Farm Fire & Cas. Co. v. Repke*, 301 F. App'x 698, 699
3 (9th Cir. 2008).

4 **COURT FURTHER FINDS** after review that the provisions of NRS 687B.147 do not
5 invalidate the above exclusions under the Umbrella Policy.

6 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
7 the Motion for Summary Judgment is hereby **GRANTED** with respect to the Second Claim for Relief in
8 the Counter/Cross Claim related to the Umbrella Policy.

9
10 **THIRD CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM – FOREMOST**
11 **MOTORCYCLE POLICY**

12 **COURT FURTHER FINDS** after review that NRS 687B requires that any exclusion to
13 coverage must "be written in a manner which is easily understood, printed in at least 12-point type and
14 contain the statement 'I understand that this policy excludes, reduces and limits coverage for bodily
15 injury to members of my family and other named insureds, including the following persons:' (followed
16 by a list of the names of the family members and other named insureds whose coverage has been
17 excluded, reduced or limited). The list of names must be handwritten by the insured and followed by the
18 full signature of the insured." NRS 687B.147.

19 **COURT FURTHER FINDS** after review that the "insurer must disclose upon renewal of the
20 policy that coverage has been excluded, reduced or limited and that the named insured has the right to
21 reject the exclusion." *Id.*

22 **COURT FURTHER FINDS** after review that the Motorcycle Policy attached to the Motion for
23 Summary Judgment as Exhibit 1A does not comply with NRS 687B.147 with respect to exclusions of
24 underinsured motorist coverage.

25 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
26 the Motion for Summary Judgment is hereby **DENIED** with respect to the Third Claim for Relief in the
27 Counter/Cross Claim related to the Foremost Motorcycle Policy.

1 **FOURTH CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM – MID-CENTURY AUTO**
2 **POLICY**

3 **COURT FURTHER FINDS** after review that under Nevada law an anti-stacking clause “must
4 be in clear language and be prominently displayed in the policy.” NRS 687B.145(1).

5 **COURT FURTHER FINDS** after review the Nevada Supreme Court has held that under NRS
6 687B.145(1):

7 [A] valid anti-stacking clause must meet three requirements. First, the limiting provision
8 must be expressed in clear language. Second, the provision must be prominently
9 displayed in the document. Finally, the insured must not have purchased separate
10 coverage on the same risk nor paid a premium calculated for full reimbursement under
11 that coverage.

12 *Bove v. Prudential Ins. Co. of Am.*, 106 Nev. 682, 685 (1990).

13 **COURT FURTHER FINDS** after review that a question of fact exists as to whether the anti-
14 stacking provision at issue here is valid under NRS 687B.145(1) pursuant to the elements of *Bove*.

15 **COURT FURTHER FINDS** after review that the endorsement to the Mid-Century Policy
16 which limits coverage for stacked policies also fails to comply with the express disclosure requirements
17 for limitation of coverage set forth in NRS 687B.147.

18 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
19 the Motion for Summary Judgment is hereby **DENIED** with respect to the Fourth Claim for Relief in the
20 Counter/Cross Claim related to the Mid-Century Auto Policy.

21 **THIRD CAUSE OF ACTION – BREACH OF CONTRACT**

22 **COURT FURTHER FINDS** after review that “[t]o succeed on a breach of contract claim, a
23 plaintiff must show four elements: (1) formation of a valid contract; (2) performance or excuse of
24 performance by the plaintiff; (3) material breach by the defendant; and (4) damages.” *Laguerre v.*
25 *Nevada Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D. Nev. 2011).

26 ///

27 ///

1 **COURT FURTHER FINDS** after review that “[w]aiver occurs where a party knows of an
2 existing right and either actually intends to relinquish the right or exhibits conduct so inconsistent with
3 an intent to enforce the right as to induce a reasonable belief that the right has been relinquished.”
4 *Hudson v. Horseshoe Club Operating Co.*, 112 Nev. 446, 457 (1996).

5 **COURT FURTHER FINDS** after review that a genuine issue of fact remains regarding the
6 existence of a waiver of the Release related to the underinsured motorist coverage under the Motorcycle
7 Policy and regarding Plaintiff’s entitlement to the remainder such coverage.

8 **COURT FURTHER FINDS** after review that a genuine issue of fact exists as to whether the
9 exclusion of underinsured motorist coverage in the Mid-Century Policy is valid under NRS 687B.147
10 and the elements set forth in *Bove v. Prudential Ins. Co. of Am.*, 106 Nev. 682.

11 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
12 the Motion for Summary Judgment is hereby **DENIED** with respect to the Third Cause of Action in the
13 Amended Complaint for Breach of Contract.

14
15 **FOURTH AND FIFTH CAUSES OF ACTION – TORTIOUS AND CONTRACTUAL BREACH**
16 **OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

17 **COURT FURTHER FINDS** after review that a genuine issue of fact remains regarding
18 whether the Release was waived with respect to the remainder of the underinsured motorist coverage and
19 whether the stated exclusions of the underinsured motorist coverage are valid under NRS 687B.147 and
20 the elements set forth in *Bove v. Prudential Ins. Co. of Am.*

21 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
22 the Motion for Summary Judgment is hereby **DENIED** with respect to the Fourth and Fifth Causes of
23 Action in the Amended Complaint for Tortious and Contractual Breaches of the Covenant of Good Faith
24 and Fair Dealing.

25 ///

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1 **SIXTH AND SEVENTH CAUSES OF ACTION – FRAUDULENT AND INTENTIONAL**
2 **MISREPRESENTATION AND NEGLIGENT MISREPRESENTATION**

3 **COURT FURTHER FINDS** after review that, because neither Defendant Foremost nor
4 Defendant Mid-Century issued the Umbrella Policy, the Sixth and Seventh Causes of Action in
5 Plaintiff's Amended Complaint fail to state a claim for which relief may be granted.

6 **COURT FURTHER FINDS** after review that the "court may and should liberally allow an
7 amendment to the pleadings if prejudice does not result." *Schwartz v. Schwartz*, 95 Nev. 202, 205
8 (1979).

9 **THEREFORE, COURT ORDERS** for good cause appearing and after review that the Sixth
10 and Seventh Causes of Action set forth in the Amended Complaint are hereby **DISMISSED** under
11 NRCP 12(b)(5) and Plaintiff's request for leave to amend the same is hereby **GRANTED**.

12 **EIGHTH CAUSE OF ACTION – UNJUST ENRICHMENT**

13 **COURT FURTHER FINDS** after review that a genuine issue of fact exists as to whether
14 Plaintiff conferred a benefit on Defendants for the desired underinsured motorist coverage, which as
15 discussed hereinabove are in dispute under the policies at issue in this case.

16 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
17 the Motion for Summary Judgment is hereby **DENIED** with respect to the Eighth Cause of Action in the
18 Amended Complaint for Unjust Enrichment.

19 **COURT FURTHER FINDS** after review that Plaintiff's Opposition, and the Declaration of
20 Plaintiff's counsel attached thereto, sufficiently expresses the need for further discovery and how such
21 discovery will lead to the creation of a genuine issue of material fact with respect to the First, Third and
22 Fourth Claims for Relief in the Counter/Cross Claim and the Third, Fourth, Fifth and Eighth Causes of
23 Action in the Amended Complaint.

24 **COURT FURTHER ORDERS** for good cause appearing and after review that Plaintiff's
25 request for relief under NRCP 56(d) for a continuance to take additional discovery is hereby **GRANTED**
26 with respect to the First, Third and Fourth Claims for Relief in the Counter/Cross Claim and the Third,
27 Fourth, Fifth and Eighth Causes of Action in the Amended Complaint.
28

1 **COURT FURTHER ORDERS** for good cause appearing and after review that the Status
2 Check set for March 19, 2019 on Chambers Calendar is hereby **VACATED**.
3

4 DATED this 27 day of March, 2019.
5

6 Nancy L. Allf
7 NANCY ALLF
8 DISTRICT COURT JUDGE
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Attachment 4

Steven D. Grierson

DISTRICT COURT
CLARK COUNTY, NEVADA

FILIPPO SCIARRATTA

Plaintiff(s)

vs.

JONAS STOSS, *et al.*

Defendant(s)

CASE NO.: A-17-756368

DEPARTMENT 27

DECISION & ORDER

COURT FINDS after review that on April 23, 2019 Defendants/Counter-Claimants Foremost, Mid-Century and Farmers Insurance Exchange's Rule 60 Motion For Relief from March 26, 2019 Order and Request For Clarification ("Motion for Relief") was filed with the Court and on May 17, 2019 Plaintiff's Countermotion to Reconsider the Court's Decision and Order ("Countermotion to Reconsider") was filed with the Court. The Motion for Relief and the Countermotion to Reconsider were set for hearing on June 6, 2019 at 10:00 a.m.

COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Relief and Countermotion to Reconsider. The Court took the matter under submission and set a Status Check for June 18, 2019 on Chambers Calendar for the Court to issue a Decision.

COURT ORDERS for good cause appearing and after review that the Motion for Relief and the Countermotion to Reconsider are hereby **DENIED**, and the Status Check set for June 18, 2019 on Chambers Calendar is hereby **VACATED**.

DATED this 7 day of June, 2019.

Nancy L. Alf

NANCY ALF
DISTRICT COURT JUDGE

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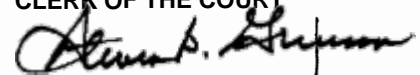
CLERK OF THE COURT

HONORABLE NANCY L. ALF

DISTRICT COURT JUDGE

DEPT XXVII

Attachment 5



1 **SAO**
2 David J. Feldman, Esq.
3 Nevada Bar No. 5947
4 John C. Dorame, Esq.
5 Nevada Bar No. 10029
6 **THE FELDMAN FIRM**
7 8831 West Sahara Avenue
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dfeldman@feldmangraf.com
jdorame@feldmanattorneys.com
*Attorneys for Defendants Foremost Insurance
Company/Mid-Century Insurance Company
Attorneys for Defendants Foremost Insurance*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **FILIPPO SCIARRATTA, an individual,**
13 **Plaintiff,**

Case No. A-17-756368-C

Dept. No. 27

14 vs.

15 **JONAS STOSS, an individual; FOREMOST**
16 **INSURANCE COMPANY GRAND RAPIDS**
17 **MICHIGAN, a Michigan Corporation; MID-**
18 **CENTURY INSURANCE, a California**
Corporation; and DOES I through X, inclusive; and
ROE CORPORATIONS I through X, inclusive,

19 **Defendants.**

20 **FOREMOST INSURANCE COMPANY GRAND**
21 **RAPIDS MICHIGAN, a Michigan Corporation;**
22 **MID-CENTURY INSURANCE, LLC, a California**
Limited Liability Company; and FARMERS
INSURANCE EXCHANGE, a California Inter-
Insurance Exchange,

23 **Counterclaimants,**

24 vs.

25 **FILIPPO SCIARRATA, an individual; and JONAS**
26 **STOSS, an individual,**

27 **Counter/Cross Defendants.**

STIPULATION AND PROPOSED
ORDER RE ENTRY OF FINAL
JUDGMENT ON SECOND AND
FOURTH CLAIMS FOR RELIEF IN
COUNTER/CROSS CLAIM

1 Plaintiff Filippo Sciarratta ("Plaintiff"), by and through his counsel of record, Jordan P. Schnitzer of
2 THE SCHNITZER LAW FIRM and Defendants/Counterclaimants, Foremost Insurance Company Grand
3 Rapids Michigan, Mid-Century and Farmers Insurance Exchange (collectively, the "Farmers Entities"), by
4 and through their counsel of record, Gena L. Sluga, Esq. of CHRISTIAN, KRAVITZ, DICHTER,
5 JOHNSON & SLUGA, PLLC and David J. Feldman, Esq. of THE FELDMAN FIRM, and Jonas Stoss
6 ("Stoss"), by and through his counsel of record, Philip R. Emerson of EMERSON LAW GROUP, hereby
7 stipulate as follows:
8

9
10 1. This action arises out of a June 3, 2015 motorcycle accident in which Plaintiff sustained
11 injuries while riding as a passenger on his own motorcycle. Defendant Stoss, the cousin of Plaintiff's wife,
12 Cynthia Sciarratta ("Cynthia") was driving the motorcycle at the time of the accident, and Plaintiff rode
13 behind him as a passenger.

14 2. The original June 2, 2017 Complaint included theories of tort liability against Cynthia and
15 Stoss, which included: 1: Negligence Per Se (against Stoss); 2: Negligence (against Stoss); and 3: Negligent
16 Entrustment (against Cynthia). On September 20, 2017, Plaintiff dismissed Cynthia from the action pursuant
17 to NCRP 41(a)(1).
18

19 3. In the January 12, 2018 Amended Complaint, Plaintiff introduced six claims against two of
20 the three Farmers Entities he had engaged in coverage discussions:

- 21 • Count three (the first): Breach of Contract- FOREMOST and MID-CENTURY
- 22 • Count three (the second): Tortious Breach of the Covenant of Good Faith and Fair Dealing – FOREMOST and MID-CENTURY
- 23 • Count four: Contractual Breach of the Covenant of Good Faith and Fair Dealing – MID-CENTURY
- 24 • Count five: Fraudulent and Intentional Misrepresentation – MID-CENTURY
- 25 • Count six: Negligent Misrepresentation – MID-CENTURY
- 26 • Count seven: Unjust Enrichment –MID-CENTURY and FOREMOST
- 27
- 28

1 4. In connection with their Answer to the Amended Complaint, the Farmers Entities brought
2 the following four cross- and counterclaims against Plaintiff and Stoss:

- 3 • DECLARATORY JUDGMENT – CONSTRUCTION OF MAY 12, 2017 RELEASE
- 4 • DECLARATORY JUDGMENT – UMBRELLA POLICY
- 5 • DECLARATORY JUDGMENT – FOREMOST MOTORCYCLE POLICY
- 6 • DECLARATORY JUDGMENT – MID-CENTURY AUTO POLICY

7 5. On January 25, 2019, the Farmers Entities brought before the Court their Motion for
8 Summary Judgment, in which they sought judgment in their favor on all claims at issue in this litigation.
9 The matter was heard on February 28, 2019, at which time this Court took the matter under advisement.

10 6. On March 26, 2019, this Court issued its Decision and Order on the Farmers Entities' Motion.
11 In so doing, this Court granted the Motion with respect to the Second Claim for Relief in the Counter/Cross
12 Claim related to the Farmers Insurance Exchange umbrella policy. In addition, this Court denied the Motion
13 with respect to Fourth Claim for Relief in the Counter/Cross Claim related to the Mid-Century Policy
14 involving the family exclusion codified in NRS 687B.147.

15 7. Plaintiff intends to appeal this Court's decision with respect to the Second Claim for Relief
16 in the Counter/Cross Claim related to the umbrella policy. The Farmers Entities intend to appeal this Court's
17 decision with respect to Fourth Claim for Relief in the Counter/Cross Claim related to the Mid-Century
18 Policy.
19

20 8. The parties agree that because an appeal will be filed from these final rulings, and the rulings
21 may impact remaining issues in the case, it is prudent to stay litigation on the remaining claims until after
22 appellate review has been completed. Therefore, the parties believe that entry of a final order pursuant to
23 Nevada Rule of Civil Procedure ("NRCP") 54(b) on the Second and Fourth Claims for Relief in the
24 Counter/Cross Claim is appropriate. The parties further agree that entry of a final order pursuant to NRCP
25 54(b) would enable Plaintiff and the Farmers Entities to appeal as of right.
26
27
28

1 9. The parties further ask this Court to enter a final judgment as to fewer than all the claims in
2 the case and to order that there is no just reason to delay appellate review. *See e.g. Hallicrafters Co. v.*
3 *Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986)(holding “NRCP 54(b) provides that a judgment or
4 order of the district court which completely removes a party or a claim from a pending action may be
5 certified as final ‘only upon an express determination that there is *no just reason for delay*....’” (Emphasis
6 in original.); *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d 196, 197 (1979)(“[t]he court may,
7 however, direct the entry of a final judgment as to fewer than all parties and make an express determination
8 that there is no reason for delay and direct the entry of judgment.”); *Mallin v. Farmers Ins. Exch.*, 106 Nev.
9 606, 610, 797 P.2d 978, 981 (1990), *overruled on other grounds by Matter of Estate of Sarge*, 134 Nev.
10 Adv. Op. 105, 432 P.3d 718 (2018)(holding “NRCP 54(b) clearly contemplates certification of a judgment
11 resolving a claim or removing a party.”)¹
12

13 10. Accordingly, the parties request the Court enter an order as follows:
14

- 15 a. Final judgment is entered in favor of the Farmers Entities with respect to the Second
16 Claim for Relief in the Counter/Cross Claim related to the Farmers Insurance
17 Exchange umbrella policy for the reasons set forth in the Court’s March 26, 2019
18 Decision and Order regarding the Farmers Entities’ Motion for Summary Judgment.
- 19 b. Final judgment is entered in favor of Plaintiff Filippo Sciarratta with respect to Fourth
20 Claim for Relief in the Counter/Cross Claim related to the Mid-Century Policy
21 regarding NRS 687B.147 for the reasons set forth in the Court’s March 26, 2019
22 Decision and Order regarding the Farmers Entities’ Motion for Summary Judgment.
23
24

25 ¹ In this regard, NRCP 54(b) provides in relevant part:
26

27 When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-
28 party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or
more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for
delay.

- 1 c. The Court expressly determines that there is no just reason to delay appellate review.
- 2 d. Further proceedings on all remaining claims in this litigation shall be stayed with
- 3 respect to all parties to this action, pending the conclusion of all appeals in this case.
- 4 This provision shall not preclude an action to enforce any other orders entered by
- 5 this Court. This provision also shall not preclude any negotiated settlement between
- 6 any or all of the parties, or entry of any court orders applicable to such a settlement.
- 7

8 WHEREFORE, the parties request that the Court enter the attached proposed order.

9 Dated: 8/15/19

Dated: 08/15/2019

10 By [Signature] ¹⁴⁹²⁷

11 PHILLIP R. EMERSON, ESQ.

12 Nevada Bar No. 5940

13 EMERSON LAW GROUP

14 1055 Whitney Ranch Drive

15 Suite 120

16 Henderson, Nevada 89014

By [Signature]

JORDAN P. SCHNITZER, ESQ.

Nevada Bar No. 10744

THE SCHNITZER LAW FIRM

9205 West Russell Road

Suite 240

Las Vegas, Nevada 89117

17 Dated: 8/15/19

Dated: 8/15/19

18 By [Signature]

19 DAVID J. FELDMAN, ESQ.

20 Nevada Bar No. 5947 ^{John C. Dorame}

21 THE FELDMAN FIRM ^{Bar #10029}

22 8831 West Sahara Avenue

23 Las Vegas, Nevada 89117

By [Signature]

GENA L. SLUGA, ESQ. ^{Cara Christian}

Nevada Bar No. 9910 ^{Bar # 014356}

CHRISTIAN, KRAVITZ, DICHTER,

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8985 Easter Avenue

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1 **ORDR**

2 David J. Feldman, Esq.

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4 John C. Dorame, Esq.

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Attorneys for Defendants Foremost Insurance

Company/Mid-Century Insurance Company

Attorneys for Defendants Foremost Insurance

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 FILIPPO SCIARRATTA, an individual,

13 Plaintiff,

14 vs.

15 JONAS STOSS, an individual; FOREMOST
16 INSURANCE COMPANY GRAND RAPIDS
17 MICHIGAN, a Michigan Corporation; MID-
18 CENTURY INSURANCE, a California
Corporation; and DOES I through X, inclusive; and
ROE CORPORATIONS I through X, inclusive,

19 Defendants.

20 FOREMOST INSURANCE COMPANY GRAND
21 RAPIDS MICHIGAN, a Michigan Corporation;
22 MID-CENTURY INSURANCE, LLC, a California
Limited Liability Company; and FARMERS
INSURANCE EXCHANGE, a California Inter-
Insurance Exchange,

23 Counterclaimants,

24 vs.

25 FILIPPO SCIARRATA, an individual; and JONAS
26 STOSS, an individual,

27 Counter/Cross Defendants.

Case No. A-17-756368-C

Dept. No. 27

**ORDER RE ENTRY OF FINAL
JUDGMENT ON SECOND AND
FOURTH CLAIMS FOR RELIEF IN
COUNTER/CROSS CLAIM**

1 This matter having come before the Court upon the parties' Stipulation re Entry of Final Judgment
2 on the Second and Fourth Claims for Relief in the Counter/Cross Claim pursuant to Nevada Rule of Civil
3 Procedure ("NRCPP") 54(b) and the Court being fully advised in the premises, IT IS HEREBY ORDERED
4 that:
5

6 1. Final judgment is entered in favor of the Farmers Entities with respect to the Second Claim
7 for Relief in the Counter/Cross Claim related to the Farmers Insurance Exchange umbrella policy for the
8 reasons set forth in the Court's March 26, 2019 Decision and Order regarding the Farmers Entities' Motion
9 for Summary Judgment.
10

11 2. Final judgment is entered in favor of Plaintiff with respect to Fourth Claim for Relief in the
12 Counter/Cross Claim related to the Mid-Century Policy for the reasons set forth in the Court's March 26,
13 2019 Decision and Order regarding the Farmers Entities' Motion for Summary Judgment.

14 3. The Court expressly directs that this judgment constitutes a final order of the Court with
15 respect to fewer than all of the claims in this case. This judgment is a final order with respect to the Second
16 Claim for Relief in the Counter/Cross Claim related to the umbrella policy and the Fourth Claim for Relief
17 in the Counter/Cross Claim related to the Mid-Century Policy only. All other claims in this litigation remain
18 pending.
19

20 4. The Court expressly determines that there is no just reason to delay appellate review. *See e.g.*
21 *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986)(holding "NRCPP 54(b) provides
22 that a judgment or order of the district court which completely removes a party or a claim from a pending
23 action may be certified as final 'only upon an express determination that there is no just reason for delay....'"
24 (Emphasis in original.); *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d 196, 197 (1979)("[t]he
25 court may, however, direct the entry of a final judgment as to fewer than all parties and make an express
26 determination that there is no reason for delay and direct the entry of judgment.");
27
28

1 *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 610, 797 P.2d 978, 981 (1990), *overruled on other grounds*
2 *by Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718 (2018)(holding “NRCp 54(b) clearly
3 contemplates certification of a judgment resolving a claim or removing a party.”)¹

4 5. Further proceedings on all remaining claims in this litigation shall be stayed with respect to
5 all parties to this action, pending the conclusion of all appeals in this case. This provision shall not preclude
6 an action to enforce any other orders entered by this Court. This provision also shall not preclude any
7 negotiated settlement between any or all of the parties, or entry of any court orders applicable to such a
8 settlement.
9

10 **IT IS SO ORDERED.**

11 DATED this 26 day of August, 2019.

12
13 Nancy L. Anf
14 DISTRICT COURT JUDGE

15 **Respectfully Submitted by:**

16
17 BY: John C. Dorame
18 David J. Feldman, Esq.
19 Nevada Bar No. 5947
20 John C. Dorame, Esq.
21 Nevada Bar No. 10029
22 THE FELDMAN FIRM
23 8831 West Sahara Avenue
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27 dfeldman@feldmangraf.com
28 jdorame@feldmanattorneys.com
Attorneys for Defendants Foremost Insurance

1 In this regard, NRCp 54(b) provides in relevant part:

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

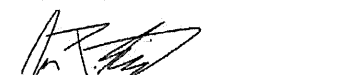
1 *Company/Mid-Century Insurance Company*

2 CHRISTIAN, KRAVITZ, DICHTER, JOHNSON
3 & SLUGA, PLLC

4 BY: 
5 Gena L. Sluga
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7 Cara L. Christian
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12 gsluga@cdslawfirm.com
13 cchristian@cdslawfirm.com

14 *Attorney for Defendants Foremost Insurance Company*
15 *Grand Rapids Michigan and Mid-Century Insurance Company*

16 **Approved as to Form and Content:**

17 BY: 
18 Jordan P. Schnitzer, Esq.
19 Nevada Bar No. 10744
20 THE SCHNITZER LAW FIRM
21 9205 W. Russell Road, Suite 240
22 Las Vegas, NV 89148
23 *Attorney for Plaintiff*

24 BY: _____
25 Phillip R. Emerson, Esq.
26 Nevada Bar No. 5940
27 Tiffany Auber, Esq.
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Henderson, NV 89104
Attorneys for Defendant Jonas Stoss

1 *Company/Mid-Century Insurance Company*

2 CHRISTIAN, KRAVITZ, DICHTER, JOHNSON
3 & SLUGA, PLLC

4 BY: _____

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12 gsluga@cdslawfirm.com

13 cchristian@cdslawfirm.com

14 *Attorney for Defendants Foremost Insurance Company*

15 *Grand Rapids Michigan and Mid-Century Insurance Company*

16 **Approved as to Form and Content:**

17 BY: _____

18 Jordan P. Schnitzer, Esq.

19 Nevada Bar No. 10744

20 THE SCHNITZER LAW FIRM

21 9205 W. Russell Road, Suite 240

22 Las Vegas, NV 89148

23 *Attorney for Plaintiff*

24 BY:  _____

25 Phillip R. Emerson, Esq.

26 Nevada Bar No. 5940

27 Tiffany Auber, Esq.

28 Nevada Bar No. 14821

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1055 Whitney Ranch Drive, Suite 120

Henderson, NV 89104

Attorneys for Defendant Jonas Stoss

Attachment 6

Steven D. Grierson

DISTRICT COURT
CLARK COUNTY, NEVADA

FILIPPO SCIARRATTA

Plaintiff(s)

vs.

JONAS STOSS, *et al.*

Defendant(s)

CASE NO.: A-17-756368

DEPARTMENT 27

NOTICE OF ENTRY OF DECISION AND ORDER

PLEASE TAKE NOTICE that a Decision and Order was entered in this action on or about March 25, 2019, a true and correct copy of which is attached hereto.

Dated March 25, 2019.

Nancy L. Allf

NANCY L. ALLF
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of the foregoing Order Setting Status Hearing was electronically served pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court's Electronic Filing Program.

Karen Lawrence

Karen Lawrence
Judicial Executive Assistant

RECEIVED

MAR 26 2019

CLERK OF THE COURT

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

FILIPPO SCIARRATTA

Plaintiff(s)

vs.

JONAS STOSS, *et al.*

Defendant(s)

CASE NO.: A-17-756368

DEPARTMENT 27

DECISION & ORDER

COURT FINDS after review that on January 25, 2019 Defendants/Counter- and Cross-Claimants Foremost Insurance Company, Mid-Century Insurance Company and Farmers Insurance Exchange's Motion for Summary Judgment ("Motion for Summary Judgment") was filed with the Court and the matter was set for hearing on February 28, 2019 at 10:30 a.m.

COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Summary Judgment on February 28, 2019. The Court took the matter under submission and set a Status Check for the Court to issue a Decision on March 12, 2019 on Chambers Calendar, which was thereafter continued to March 19, 2019.

COURT FURTHER FINDS after review that "[s]ummary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005).

COURT FURTHER FINDS after review that NRCP 56(d) provides that "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Furthermore,

1 "NRCp 56[d] permits a district court to grant a continuance when a party opposing a motion for
2 summary judgment is unable to marshal facts in support of its opposition" and "the movant expresses
3 how further discovery will lead to the creation of a genuine issue of material fact." *Aviation Ventures,*
4 *Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18 (2005).

5 **FIRST CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM - CONSTRUCTION OF**
6 **MAY 12, 2017 RELEASE**

7 **COURT FURTHER FINDS** after review that the May 12, 2017 Release provides that Plaintiff
8 agrees to "release, acquit and forever discharge JONAS STOSS, his spouse, Cynthia Sciaratta and
9 FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN, as it relates to Policy No:
10 0074215814...."

11 **COURT FURTHER FINDS** after review that based upon the plain language of the Release, the
12 parties intended only to release the claims related to the Motorcycle Policy.

13 **THEREFORE, COURT ORDERS** for good cause appearing and after review that the Motion
14 for Summary Judgment is hereby **DENIED** with respect to the First Claim for Relief in the
15 Counter/Cross Claim related to the construction of May 12, 2017 Release.

16 **SECOND CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM - UMBRELLA POLICY**

17 **COURT FURTHER FINDS** after review that the Umbrella Policy does "not cover damages:
18 ... Arising from liability...payable to any insured; or ...whenever damages are due directly or indirectly
19 to an insured." *Motion for Summary Judgment*, Exhibit 3A, pg. 88.

20 **COURT FURTHER FINDS** after review that the term "insured" is defined in the Umbrella
21 Policy as "you [Cynthia Sciaratta]" and "your relatives," which definition includes Plaintiff.

22 **COURT FURTHER FINDS** after review that, since Plaintiff is an "insured" under the
23 Umbrella Policy, he is excluded from coverage in this matter since damages are due to him directly.

24 **COURT FURTHER FINDS** after review that while Plaintiff argues that the above exclusion to
25 the Umbrella Policy argued by Defendants is invalid under NRS 687B.147, such argument is belied by
26 the decision in *State Farm Fire & Cas. Co. v. Repke*, No. 2:06-CV-0366JCM(RJJ), 2007 WL 7121693,
27 at *5 (D. Nev. Feb. 27, 2007), which found that the Nevada "legislature ... intend[ed] to exclude
28

1 umbrella policies from the definition of 'a policy of motor vehicle insurance covering a private
2 passenger car' in NRS 687B.147." *See also State Farm Fire & Cas. Co. v. Repke*, 301 F. App'x 698, 699
3 (9th Cir. 2008).

4 **COURT FURTHER FINDS** after review that the provisions of NRS 687B.147 do not
5 invalidate the above exclusions under the Umbrella Policy.

6 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
7 the Motion for Summary Judgment is hereby **GRANTED** with respect to the Second Claim for Relief in
8 the Counter/Cross Claim related to the Umbrella Policy.
9

10 **THIRD CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM – FOREMOST**
11 **MOTORCYCLE POLICY**

12 **COURT FURTHER FINDS** after review that NRS 687B requires that any exclusion to
13 coverage must "be written in a manner which is easily understood, printed in at least 12-point type and
14 contain the statement 'I understand that this policy excludes, reduces and limits coverage for bodily
15 injury to members of my family and other named insureds, including the following persons:' (followed
16 by a list of the names of the family members and other named insureds whose coverage has been
17 excluded, reduced or limited). The list of names must be handwritten by the insured and followed by the
18 full signature of the insured." NRS 687B.147.

19 **COURT FURTHER FINDS** after review that the "insurer must disclose upon renewal of the
20 policy that coverage has been excluded, reduced or limited and that the named insured has the right to
21 reject the exclusion." *Id.*

22 **COURT FURTHER FINDS** after review that the Motorcycle Policy attached to the Motion for
23 Summary Judgment as Exhibit 1A does not comply with NRS 687B.147 with respect to exclusions of
24 underinsured motorist coverage.

25 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
26 the Motion for Summary Judgment is hereby **DENIED** with respect to the Third Claim for Relief in the
27 Counter/Cross Claim related to the Foremost Motorcycle Policy.
28

1 **FOURTH CLAIM FOR RELIEF IN THE COUNTER/CROSS CLAIM – MID-CENTURY AUTO**
2 **POLICY**

3 **COURT FURTHER FINDS** after review that under Nevada law an anti-stacking clause “must
4 be in clear language and be prominently displayed in the policy.” NRS 687B.145(1).

5 **COURT FURTHER FINDS** after review the Nevada Supreme Court has held that under NRS
6 687B.145(1):

7 [A] valid anti-stacking clause must meet three requirements. First, the limiting provision
8 must be expressed in clear language. Second, the provision must be prominently
9 displayed in the document. Finally, the insured must not have purchased separate
10 coverage on the same risk nor paid a premium calculated for full reimbursement under
11 that coverage.

12 *Bove v. Prudential Ins. Co. of Am.*, 106 Nev. 682, 685 (1990).

13 **COURT FURTHER FINDS** after review that a question of fact exists as to whether the anti-
14 stacking provision at issue here is valid under NRS 687B.145(1) pursuant to the elements of *Bove*.

15 **COURT FURTHER FINDS** after review that the endorsement to the Mid-Century Policy
16 which limits coverage for stacked policies also fails to comply with the express disclosure requirements
17 for limitation of coverage set forth in NRS 687B.147.

18 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
19 the Motion for Summary Judgment is hereby **DENIED** with respect to the Fourth Claim for Relief in the
20 Counter/Cross Claim related to the Mid-Century Auto Policy.

21 **THIRD CAUSE OF ACTION – BREACH OF CONTRACT**

22 **COURT FURTHER FINDS** after review that “[t]o succeed on a breach of contract claim, a
23 plaintiff must show four elements: (1) formation of a valid contract; (2) performance or excuse of
24 performance by the plaintiff; (3) material breach by the defendant; and (4) damages.” *Laguerre v.*
25 *Nevada Sys. of Higher Educ.*, 837 F. Supp. 2d 1176, 1180 (D. Nev. 2011).
26

27 ///

28 ///

1 **COURT FURTHER FINDS** after review that “[w]aiver occurs where a party knows of an
2 existing right and either actually intends to relinquish the right or exhibits conduct so inconsistent with
3 an intent to enforce the right as to induce a reasonable belief that the right has been relinquished.”
4 *Hudson v. Horseshoe Club Operating Co.*, 112 Nev. 446, 457 (1996).

5 **COURT FURTHER FINDS** after review that a genuine issue of fact remains regarding the
6 existence of a waiver of the Release related to the underinsured motorist coverage under the Motorcycle
7 Policy and regarding Plaintiff’s entitlement to the remainder such coverage.
8

9 **COURT FURTHER FINDS** after review that a genuine issue of fact exists as to whether the
10 exclusion of underinsured motorist coverage in the Mid-Century Policy is valid under NRS 687B.147
11 and the elements set forth in *Bove v. Prudential Ins. Co. of Am.*, 106 Nev. 682.

12 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
13 the Motion for Summary Judgment is hereby **DENIED** with respect to the Third Cause of Action in the
14 Amended Complaint for Breach of Contract.

15 **FOURTH AND FIFTH CAUSES OF ACTION – TORTIOUS AND CONTRACTUAL BREACH**
16 **OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

17 **COURT FURTHER FINDS** after review that a genuine issue of fact remains regarding
18 whether the Release was waived with respect to the remainder of the underinsured motorist coverage and
19 whether the stated exclusions of the underinsured motorist coverage are valid under NRS 687B.147 and
20 the elements set forth in *Bove v. Prudential Ins. Co. of Am.*

21 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
22 the Motion for Summary Judgment is hereby **DENIED** with respect to the Fourth and Fifth Causes of
23 Action in the Amended Complaint for Tortious and Contractual Breaches of the Covenant of Good Faith
24 and Fair Dealing.

25 ///

26 ///

27 ///

28 ///

1 **SIXTH AND SEVENTH CAUSES OF ACTION – FRAUDULENT AND INTENTIONAL**
2 **MISREPRESENTATION AND NEGLIGENT MISREPRESENTATION**

3 **COURT FURTHER FINDS** after review that, because neither Defendant Foremost nor
4 Defendant Mid-Century issued the Umbrella Policy, the Sixth and Seventh Causes of Action in
5 Plaintiff's Amended Complaint fail to state a claim for which relief may be granted.

6 **COURT FURTHER FINDS** after review that the "court may and should liberally allow an
7 amendment to the pleadings if prejudice does not result." *Schwartz v. Schwartz*, 95 Nev. 202, 205
8 (1979).

9 **THEREFORE, COURT ORDERS** for good cause appearing and after review that the Sixth
10 and Seventh Causes of Action set forth in the Amended Complaint are hereby **DISMISSED** under
11 NRCP 12(b)(5) and Plaintiff's request for leave to amend the same is hereby **GRANTED**.

12 **EIGHTH CAUSE OF ACTION – UNJUST ENRICHMENT**

13 **COURT FURTHER FINDS** after review that a genuine issue of fact exists as to whether
14 Plaintiff conferred a benefit on Defendants for the desired underinsured motorist coverage, which as
15 discussed hereinabove are in dispute under the policies at issue in this case.

16 **THEREFORE, COURT FURTHER ORDERS** for good cause appearing and after review that
17 the Motion for Summary Judgment is hereby **DENIED** with respect to the Eighth Cause of Action in the
18 Amended Complaint for Unjust Enrichment.

19 **COURT FURTHER FINDS** after review that Plaintiff's Opposition, and the Declaration of
20 Plaintiff's counsel attached thereto, sufficiently expresses the need for further discovery and how such
21 discovery will lead to the creation of a genuine issue of material fact with respect to the First, Third and
22 Fourth Claims for Relief in the Counter/Cross Claim and the Third, Fourth, Fifth and Eighth Causes of
23 Action in the Amended Complaint.

24 **COURT FURTHER ORDERS** for good cause appearing and after review that Plaintiff's
25 request for relief under NRCP 56(d) for a continuance to take additional discovery is hereby **GRANTED**
26 with respect to the First, Third and Fourth Claims for Relief in the Counter/Cross Claim and the Third,
27 Fourth, Fifth and Eighth Causes of Action in the Amended Complaint.
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COURT FURTHER ORDERS for good cause appearing and after review that the Status
Check set for March 19, 2019 on Chambers Calendar is hereby **VACATED**.

DATED this 27 day of March, 2019.

Nancy L. Allf
NANCY ALLF
DISTRICT COURT JUDGE

Attachment 7

Steven D. Grierson

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * *

FILIPPO SCIARRATTA

Plaintiff(s)

vs.

JONAS STOSS, *et al.*

Defendant(s)

CASE NO.: A-17-756368

DEPARTMENT 27

NOTICE OF ENTRY OF DECISION & ORDER

PLEASE TAKE NOTICE that a Decision & Order was entered in this action on or about June 17, 2019, a true and correct copy of which is attached hereto.

DATED June 17, 2019

Nancy L Allf

NANCY ALLF
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of the foregoing was electronically served pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court's Electronic Filing Program.

Karen Lawrence

Karen Lawrence
Judicial Executive Assistant

RECEIVED
JUN 18 2019

CLERK OF THE COURT

HONORABLE NANCY L. ALLF

DISTRICT COURT JUDGE

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

FILIPPO SCIARRATTA

Plaintiff(s)

vs.

JONAS STOSS, *et al.*

Defendant(s)

CASE NO.: A-17-756368

DEPARTMENT 27

DECISION & ORDER

COURT FINDS after review that on April 23, 2019 Defendants/Counter-Claimants Foremost, Mid-Century and Farmers Insurance Exchange's Rule 60 Motion For Relief from March 26, 2019 Order and Request For Clarification ("Motion for Relief") was filed with the Court and on May 17, 2019 Plaintiff's Countermotion to Reconsider the Court's Decision and Order ("Countermotion to Reconsider") was filed with the Court. The Motion for Relief and the Countermotion to Reconsider were set for hearing on June 6, 2019 at 10:00 a.m.

COURT FURTHER FINDS after review that the Court heard oral arguments on the Motion for Relief and Countermotion to Reconsider. The Court took the matter under submission and set a Status Check for June 18, 2019 on Chambers Calendar for the Court to issue a Decision.

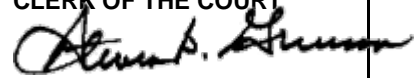
COURT ORDERS for good cause appearing and after review that the Motion for Relief and the Countermotion to Reconsider are hereby **DENIED**, and the Status Check set for June 18, 2019 on Chambers Calendar is hereby **VACATED**.

DATED this 7 day of June, 2019.



NANCY ALLF
DISTRICT COURT JUDGE

Attachment 8



David J. Feldman, Esq.
Nevada Bar No. 5947
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Facsimile: (702) 949-5097
dfeldman@feldmangraf.com
*Attorneys for Defendants Foremost Insurance
Company/Mid-Century Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

FILIPPO SCIARRATTA, an individual,

Plaintiff,

vs.

JONAS STOSS, an individual; FOREMOST
INSURANCE COMPANY GRAND RAPIDS
MICHIGAN, a Michigan Corporation; MID-
CENTURY INSURANCE, a California
Corporation; and DOES I through X, inclusive;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

FOREMOST INSURANCE COMPANY
GRAND RAPIDS MICHIGAN, a Michigan
Corporation; MID-CENTURY INSURANCE,
LLC, a California Limited Liability Company;
and FARMERS INSURANCE EXCHANGE, a
California Inter-Insurance Exchange,

Counterclaimants,

vs.

FILIPPO SCIARRATA, an individual; and
JONAS STOSS, an individual,

Counter/Cross Defendants.

Case No.: A-17-7568368-C

Dept. No. 28

**NOTICE OF ENTRY OF
ORDER**

1 PLEASE TAKE NOTICE that an an Order re Entry of Final Judgment on Second
2 and Fourth Claims for Relief in Counter/Cross Claim was entered on August 28, 2018. A
3 copy of said Order is attached.
4

5 DATED this 29th day of August, 2019.

6 THE FELDMAN FIRM
7

8 By: /s/ David Feldman

9 David J. Feldman, Esq.

10 Nevada Bar No. 5947

11 8831 West Sahara Avenue

12 Las Vegas, Nevada 89117

13 Telephone: (702) 949-5096

14 Facsimile: (702) 949-5097

15 dfeldman@feldmangraf.com

16 *Attorneys for Defendants Foremost Insurance*

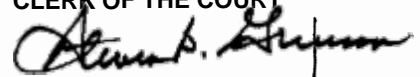
17 *Company/Mid-Century Insurance*

18 *Company*
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10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **FILIPPO SCIARRATTA, an individual,**
13 **Plaintiff,**

Case No. A-17-756368-C

Dept. No. 27

14 vs.

15 **JONAS STOSS, an individual; FOREMOST**
16 **INSURANCE COMPANY GRAND RAPIDS**
17 **MICHIGAN, a Michigan Corporation; MID-**
18 **CENTURY INSURANCE, a California**
Corporation; and DOES I through X, inclusive; and
ROE CORPORATIONS I through X, inclusive,

19 **Defendants.**

20 **FOREMOST INSURANCE COMPANY GRAND**
21 **RAPIDS MICHIGAN, a Michigan Corporation;**
22 **MID-CENTURY INSURANCE, LLC, a California**
Limited Liability Company; and FARMERS
INSURANCE EXCHANGE, a California Inter-
Insurance Exchange,

23 **Counterclaimants,**

24 vs.

25 **FILIPPO SCIARRATA, an individual; and JONAS**
26 **STOSS, an individual,**

27 **Counter/Cross Defendants.**

STIPULATION AND PROPOSED
ORDER RE ENTRY OF FINAL
JUDGMENT ON SECOND AND
FOURTH CLAIMS FOR RELIEF IN
COUNTER/CROSS CLAIM

1 Plaintiff Filippo Sciarratta ("Plaintiff"), by and through his counsel of record, Jordan P. Schnitzer of
2 THE SCHNITZER LAW FIRM and Defendants/Counterclaimants, Foremost Insurance Company Grand
3 Rapids Michigan, Mid-Century and Farmers Insurance Exchange (collectively, the "Farmers Entities"), by
4 and through their counsel of record, Gena L. Sluga, Esq. of CHRISTIAN, KRAVITZ, DICHTER,
5 JOHNSON & SLUGA, PLLC and David J. Feldman, Esq. of THE FELDMAN FIRM, and Jonas Stoss
6 ("Stoss"), by and through his counsel of record, Philip R. Emerson of EMERSON LAW GROUP, hereby
7 stipulate as follows:
8

9
10 1. This action arises out of a June 3, 2015 motorcycle accident in which Plaintiff sustained
11 injuries while riding as a passenger on his own motorcycle. Defendant Stoss, the cousin of Plaintiff's wife,
12 Cynthia Sciarratta ("Cynthia") was driving the motorcycle at the time of the accident, and Plaintiff rode
13 behind him as a passenger.

14 2. The original June 2, 2017 Complaint included theories of tort liability against Cynthia and
15 Stoss, which included: 1: Negligence Per Se (against Stoss); 2: Negligence (against Stoss); and 3: Negligent
16 Entrustment (against Cynthia). On September 20, 2017, Plaintiff dismissed Cynthia from the action pursuant
17 to NCRP 41(a)(1).
18

19 3. In the January 12, 2018 Amended Complaint, Plaintiff introduced six claims against two of
20 the three Farmers Entities he had engaged in coverage discussions:

- 21 • Count three (the first): Breach of Contract- FOREMOST and MID-CENTURY
- 22 • Count three (the second): Tortious Breach of the Covenant of Good Faith and Fair Dealing – FOREMOST and MID-CENTURY
- 23 • Count four: Contractual Breach of the Covenant of Good Faith and Fair Dealing – MID-CENTURY
- 24 • Count five: Fraudulent and Intentional Misrepresentation – MID-CENTURY
- 25 • Count six: Negligent Misrepresentation – MID-CENTURY
- 26 • Count seven: Unjust Enrichment –MID-CENTURY and FOREMOST
- 27
- 28

1 4. In connection with their Answer to the Amended Complaint, the Farmers Entities brought
2 the following four cross- and counterclaims against Plaintiff and Stoss:

- 3 • DECLARATORY JUDGMENT – CONSTRUCTION OF MAY 12, 2017 RELEASE
- 4 • DECLARATORY JUDGMENT – UMBRELLA POLICY
- 5 • DECLARATORY JUDGMENT – FOREMOST MOTORCYCLE POLICY
- 6 • DECLARATORY JUDGMENT – MID-CENTURY AUTO POLICY

7 5. On January 25, 2019, the Farmers Entities brought before the Court their Motion for
8 Summary Judgment, in which they sought judgment in their favor on all claims at issue in this litigation.
9 The matter was heard on February 28, 2019, at which time this Court took the matter under advisement.

10 6. On March 26, 2019, this Court issued its Decision and Order on the Farmers Entities' Motion.
11 In so doing, this Court granted the Motion with respect to the Second Claim for Relief in the Counter/Cross
12 Claim related to the Farmers Insurance Exchange umbrella policy. In addition, this Court denied the Motion
13 with respect to Fourth Claim for Relief in the Counter/Cross Claim related to the Mid-Century Policy
14 involving the family exclusion codified in NRS 687B.147.

15 7. Plaintiff intends to appeal this Court's decision with respect to the Second Claim for Relief
16 in the Counter/Cross Claim related to the umbrella policy. The Farmers Entities intend to appeal this Court's
17 decision with respect to Fourth Claim for Relief in the Counter/Cross Claim related to the Mid-Century
18 Policy.
19

20 8. The parties agree that because an appeal will be filed from these final rulings, and the rulings
21 may impact remaining issues in the case, it is prudent to stay litigation on the remaining claims until after
22 appellate review has been completed. Therefore, the parties believe that entry of a final order pursuant to
23 Nevada Rule of Civil Procedure ("NRCP") 54(b) on the Second and Fourth Claims for Relief in the
24 Counter/Cross Claim is appropriate. The parties further agree that entry of a final order pursuant to NRCP
25 54(b) would enable Plaintiff and the Farmers Entities to appeal as of right.
26
27
28

1 9. The parties further ask this Court to enter a final judgment as to fewer than all the claims in
2 the case and to order that there is no just reason to delay appellate review. *See e.g. Hallicrafters Co. v.*
3 *Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986)(holding “NRCP 54(b) provides that a judgment or
4 order of the district court which completely removes a party or a claim from a pending action may be
5 certified as final ‘only upon an express determination that there is *no just reason for delay*....’” (Emphasis
6 in original.); *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d 196, 197 (1979)(“[t]he court may,
7 however, direct the entry of a final judgment as to fewer than all parties and make an express determination
8 that there is no reason for delay and direct the entry of judgment.”); *Mallin v. Farmers Ins. Exch.*, 106 Nev.
9 606, 610, 797 P.2d 978, 981 (1990), *overruled on other grounds by Matter of Estate of Sarge*, 134 Nev.
10 Adv. Op. 105, 432 P.3d 718 (2018)(holding “NRCP 54(b) clearly contemplates certification of a judgment
11 resolving a claim or removing a party.”)¹
12

13 10. Accordingly, the parties request the Court enter an order as follows:
14

- 15 a. Final judgment is entered in favor of the Farmers Entities with respect to the Second
16 Claim for Relief in the Counter/Cross Claim related to the Farmers Insurance
17 Exchange umbrella policy for the reasons set forth in the Court’s March 26, 2019
18 Decision and Order regarding the Farmers Entities’ Motion for Summary Judgment.
- 19 b. Final judgment is entered in favor of Plaintiff Filippo Sciarratta with respect to Fourth
20 Claim for Relief in the Counter/Cross Claim related to the Mid-Century Policy
21 regarding NRS 687B.147 for the reasons set forth in the Court’s March 26, 2019
22 Decision and Order regarding the Farmers Entities’ Motion for Summary Judgment.
23
24

25 ¹ In this regard, NRCP 54(b) provides in relevant part:
26

27 When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-
28 party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or
more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for
delay.

- 1 c. The Court expressly determines that there is no just reason to delay appellate review.
- 2 d. Further proceedings on all remaining claims in this litigation shall be stayed with
- 3 respect to all parties to this action, pending the conclusion of all appeals in this case.
- 4 This provision shall not preclude an action to enforce any other orders entered by
- 5 this Court. This provision also shall not preclude any negotiated settlement between
- 6 any or all of the parties, or entry of any court orders applicable to such a settlement.
- 7

8 WHEREFORE, the parties request that the Court enter the attached proposed order.

9 Dated: 8/15/19

Dated: 08/15/2019

10 By *Phil M. Emerson* ¹⁴⁹²⁷

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Dated: 8/15/19

18 By *David J. Feldman*

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10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 FILIPPO SCIARRATTA, an individual,

13 Plaintiff,

14 vs.

15 JONAS STOSS, an individual; FOREMOST
16 INSURANCE COMPANY GRAND RAPIDS
17 MICHIGAN, a Michigan Corporation; MID-
18 CENTURY INSURANCE, a California
Corporation; and DOES I through X, inclusive; and
ROE CORPORATIONS I through X, inclusive,

19 Defendants.

20 FOREMOST INSURANCE COMPANY GRAND
21 RAPIDS MICHIGAN, a Michigan Corporation;
22 MID-CENTURY INSURANCE, LLC, a California
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Insurance Exchange,

23 Counterclaimants,

24 vs.

25 FILIPPO SCIARRATA, an individual; and JONAS
26 STOSS, an individual,

27 Counter/Cross Defendants.
28

Case No. A-17-756368-C

Dept. No. 27

**ORDER RE ENTRY OF FINAL
JUDGMENT ON SECOND AND
FOURTH CLAIMS FOR RELIEF IN
COUNTER/CROSS CLAIM**

1 This matter having come before the Court upon the parties' Stipulation re Entry of Final Judgment
2 on the Second and Fourth Claims for Relief in the Counter/Cross Claim pursuant to Nevada Rule of Civil
3 Procedure ("NRCPP") 54(b) and the Court being fully advised in the premises, IT IS HEREBY ORDERED
4 that:
5

6 1. Final judgment is entered in favor of the Farmers Entities with respect to the Second Claim
7 for Relief in the Counter/Cross Claim related to the Farmers Insurance Exchange umbrella policy for the
8 reasons set forth in the Court's March 26, 2019 Decision and Order regarding the Farmers Entities' Motion
9 for Summary Judgment.
10

11 2. Final judgment is entered in favor of Plaintiff with respect to Fourth Claim for Relief in the
12 Counter/Cross Claim related to the Mid-Century Policy for the reasons set forth in the Court's March 26,
13 2019 Decision and Order regarding the Farmers Entities' Motion for Summary Judgment.

14 3. The Court expressly directs that this judgment constitutes a final order of the Court with
15 respect to fewer than all of the claims in this case. This judgment is a final order with respect to the Second
16 Claim for Relief in the Counter/Cross Claim related to the umbrella policy and the Fourth Claim for Relief
17 in the Counter/Cross Claim related to the Mid-Century Policy only. All other claims in this litigation remain
18 pending.
19

20 4. The Court expressly determines that there is no just reason to delay appellate review. *See e.g.*
21 *Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986)(holding "NRCPP 54(b) provides
22 that a judgment or order of the district court which completely removes a party or a claim from a pending
23 action may be certified as final 'only upon an express determination that there is no just reason for delay....'"
24 (Emphasis in original.); *Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922, 605 P.2d 196, 197 (1979)("[t]he
25 court may, however, direct the entry of a final judgment as to fewer than all parties and make an express
26 determination that there is no reason for delay and direct the entry of judgment.");
27
28

1 *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 610, 797 P.2d 978, 981 (1990), *overruled on other grounds*
2 *by Matter of Estate of Sarge*, 134 Nev. Adv. Op. 105, 432 P.3d 718 (2018)(holding "NRCP 54(b) clearly
3 contemplates certification of a judgment resolving a claim or removing a party.")¹

4 5. Further proceedings on all remaining claims in this litigation shall be stayed with respect to
5 all parties to this action, pending the conclusion of all appeals in this case. This provision shall not preclude
6 an action to enforce any other orders entered by this Court. This provision also shall not preclude any
7 negotiated settlement between any or all of the parties, or entry of any court orders applicable to such a
8 settlement.
9

10 **IT IS SO ORDERED.**

11 DATED this 26 day of August, 2019.

12
13 Nancy L. Anf
14 DISTRICT COURT JUDGE

15 **Respectfully Submitted by:**

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When an action presents more than one claim for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

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