

Electronically Filed
Oct 15 2019 11:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

BOIES SCHILLER FLEXNER LLP
RICHARD J. POCKER, ESQ.
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300 South Fourth Street, Suite 800
Las Vegas, Nevada 89101
Telephone: (702) 382-7300
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CHASEY LAW OFFICES
PETER L. CHASEY, ESQ.
Nevada Bar No. 7650
3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129
Telephone: (702) 233-0393
E-mail: peter@chaseylaw.com

Attorneys for Respondents
POPE INVESTMENTS, LLC,
POPE INVESTMENTS II, LLC, and
ANNUITY & LIFE REASSURANCE, LTD.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|--|---|-------------------------|
| CHINA YIDA HOLDING CO., a Nevada |) | CASE NO.: A-16-746732-P |
| corporation, |) | DEPT NO.: XXVII |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | RESPONDENTS' |
| |) | NOTICE OF APPEAL |
| POPE INVESTMENTS, LLC, a Delaware |) | |
| limited liability company; POPE |) | |
| INVESTMENTS II, LLC, a Delaware |) | |
| limited liability company; and ANNUITY |) | |
| & LIFE REASSURANCE, LTD., |) | |
| an unknown limited company; |) | |
| |) | |
| Respondents. |) | |

Notice is hereby given that Pope Investments, LLC, Pope Investments II, LLC and Annuity & Life Reassurance, Ltd. (the "Respondents") appeals to the Supreme Court of Nevada from the September 9, 2019 Order Granting Petitioner China Yida Holding Company's

1 Motion for Summary Judgment, and the Notice of Entry regarding the same, as well as all
2 orders, rulings, or decisions related thereto that are made appealable thereby.

3 Dated this 9th day of October, 2019.

4 BOIES SCHILLER FLEXNER LLP

5
6 By: /s/ Richard J. Pocker
7 RICHARD J. POCKER, ESQ.
8 Nevada Bar No. 3568
300 S. Fourth St., Suite 800
Las Vegas, Nevada 89101

9 - AND -

10
11 CHASEY LAW OFFICES
12 PETER L. CHASEY, ESQ.
13 Nevada Bar No. 7650
3295 N. Fort Apache Rd., Suite 110
Las Vegas, Nevada 89129
14 Attorneys for Respondents
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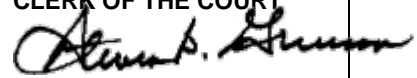
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2019, a true and correct copy of the foregoing ***RESPONDENTS’ NOTICE OF APPEAL*** was served by electronically submitting and filing with the Eighth Judicial District Court’s e-filing system and by mailing a true and correct copy to the party below:

J. Robert Smith, Esq.
Joshua M. Halen, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Petitioner, China Yida Holding, Co.

/s/ Shilah Wisniewski
An employee of Boies Schiller Flexner LLP



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E-mail: peter@chaseylaw.com

Attorneys for Respondents
POPE INVESTMENTS, LLC,
POPE INVESTMENTS II, LLC, and
ANNUITY & LIFE REASSURANCE, LTD.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|----------------------------------|---|-------------------------|
| CHINA YIDA HOLDING CO., a Nevada |) | CASE NO.: A-16-746732-P |
| corporation, |) | DEPT NO.: XXVII |

| | |
|-------------|---|
| Petitioner, |) |
|-------------|---|

| | |
|----|---|
| v. |) |
|----|---|

**RESPONDENTS' CASE APPEAL
STATEMENT**

| | |
|--|---|
| POPE INVESTMENTS, LLC, a Delaware |) |
| limited liability company; POPE |) |
| INVESTMENTS II, LLC, a Delaware |) |
| limited liability company; and ANNUITY |) |
| & LIFE REASSURANCE, LTD., |) |
| an unknown limited company; |) |

| | |
|--------------|---|
| Respondents. |) |
|--------------|---|

1. Name of appellants filing this case appeal statement:

Pope Investments, LLC
Pope Investments II, LLC

1 Annuity & Life Reassurance, Ltd.

2 **2. Name of the judge issuing the decision, judgment, or order appealed from:**

3 Judge Nancy L. Allf

4 **3. Each appellant and the name and address of counsel for each appellant:**

5 (1) Pope Investments, LLC

6 Counsel: Peter L. Chasey, Esq.
7 Chasey Law Offices
8 3295 N. Forth Apache Rd., Suite 110
9 Las Vegas, Nevada 89129

10 -and-

11 Richard J. Pocker, Esq.
12 Boies Schiller Flexner LLP
13 300 S. Fourth St., Suite 800
14 Las Vegas, Nevada 89101

15 (2) Pope Investments II, LLC

16 Counsel: Peter L. Chasey, Esq.
17 Chasey Law Offices
18 3295 N. Forth Apache Rd., Suite 110
19 Las Vegas, Nevada 89129

20 -and-

21 Richard J. Pocker, Esq.
22 Boies Schiller Flexner LLP
23 300 S. Fourth St., Suite 800
24 Las Vegas, Nevada 89101

25 (3) Annuity & Life Reassurance, Ltd.

26 Counsel: Peter L. Chasey, Esq.
27 Chasey Law Offices
28 3295 N. Forth Apache Rd., Suite 110
29 Las Vegas, Nevada 89129

30 -and-

31 Richard J. Pocker, Esq.
32 Boies Schiller Flexner LLP
33 300 S. Fourth St., Suite 800
34 Las Vegas, Nevada 89101

1 **4. Each respondent and the name and address of appellate counsel, if known,**
2 **for each respondent:**

3 (1) China Yida Holding, Co.

4 Counsel: J. Robert Smith, Esq.
5 Joshua M. Halen, Esq.
6 Holland & Hart LLP
7 9555 Hillwood Drive, 2nd Floor
8 Las Vegas, Nevada 89134

9 **5. Whether any attorney identified above in response to question 3 through 5**
10 **is not licensed to practice law in Nevada:**

11 All attorneys are licensed to practice law in Nevada.

12 **6. Whether appellant is represented by appointed or retained counsel in the**
13 **district court:**

14 Retained counsel.

15 **7. Whether appellant was represented by appointed or retained counsel in the**
16 **appeal:**

17 Retained counsel.

18 **8. Whether appellant was granted leave to proceed in forma pauperis:**

19 No.

20 **9. The date the proceedings commenced in the district court (e.g., date**
21 **complaint, indictment, information, or petition was filed):**

22 November 15, 2016

23 **10. A brief description of the nature of the action and result in the district**
24 **court, including the type of judgment or order being appealed and the relief granted by**
25 **the district court:**

26 The present action is a dissenter's rights action commenced on November 15, 2016 by
27 China Yida Holding Co. (CYH) pursuant to Chapter 92A of the Nevada Revised Statutes, as a
28 consequence of the decision by the appellants (stockholders in CYH) to exercise their rights to
dissent from a CYH corporate action characterized by the company as a "merger", and to seek a
fair value determination as to the value of the appellants CYH stock. CYH moved for

1 summary judgment, arguing that despite the company having represented to the appellants that
2 dissenter's rights were available and having litigated the fair value petition for two and one-half
3 years, the appellants had no dissenter's rights due to the provisions of Section 92A.390 of the
4 Nevada Revised Statutes. The District Court granted the Petitioner's Motion for Summary
5 Judgment, filing and entering its Order on September 9, 2019. The Notice of Entry of the
6 Court's Order was filed on that same date.

7 **11. Whether the case has previously been the subject of an appeal to or original**
8 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
9 **number of the prior proceeding:**

10 No.

11 **12. Whether this appeal involves child custody or visitation:**

12 No.

13 **13. If this is a civil case, indicate whether this appeal involves the possibility of**
14 **settlement:**

15 There is the possibility that this appeal could settle, but the respondents' interest in
16 pursuing settlement has not been ascertained.

17 Dated this 9th day of October, 2019.

18 BOIES SCHILLER FLEXNER LLP

19
20 By: /s/ Richard J. Pocker
21 RICHARD J. POCKER, ESQ.
22 Nevada Bar No. 3568
23 300 S. Fourth St., Suite 800
24 Las Vegas, Nevada 89101

25 - AND -

26 CHASEY LAW OFFICES
27 PETER L. CHASEY, ESQ.
28 Nevada Bar No. 7650
3295 N. Fort Apache Rd., Suite 110
Las Vegas, Nevada 89129
Attorneys for Respondents

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October, 2019, a true and correct copy of the foregoing ***RESPONDENTS' CASE APPEAL STATEMENT*** was served by electronically submitting and filing with the Eighth Judicial District Court's e-filing system and by mailing a true and correct copy to the party below:

J. Robert Smith, Esq.
Joshua M. Halen, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134
Attorneys for Petitioner, China Yida Holding, Co.

/s/ Shilah Wisniewski
An employee of Boies Schiller Flexner LLP

CASE SUMMARY**CASE NO. A-16-746732-P**

China Yida Holding Co, Petitioner(s)
vs.
Annuity & Life Reassurance Ltd, Respondent(s)

§
§
§
§
§

Location: **Department 27**
 Judicial Officer: **Allf, Nancy**
 Filed on: **11/15/2016**
 Cross-Reference Case Number: **A746732**

CASE INFORMATION**Statistical Closures**

09/09/2019 Summary Judgment

Case Type: **Other Civil Filings (Petition)**

Case Status: **09/09/2019 Closed**



DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-16-746732-P
 Court Department 27
 Date Assigned 11/15/2016
 Judicial Officer Allf, Nancy

PARTY INFORMATION

| | | |
|-------------------|---|---|
| Petitioner | China Yida Holding Co | <i>Lead Attorneys</i> Smith, J. Robert, ESQ <i>Retained</i> 775-327-3000(W) |
| Respondent | Annuity & Life Reassurance Ltd | Pocker, Richard J. <i>Retained</i> 7023827300(W) |
| | Pope Investments II LLC | Pocker, Richard J. <i>Retained</i> 7023827300(W) |
| | Pope Investments LLC | Pocker, Richard J. <i>Retained</i> 7023827300(W) |

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

| | |
|------------|--|
| 11/15/2016 |  Petition Filed by: Petitioner China Yida Holding Co <i>Petition for: (1) Declaratory Relief and; (2) Fair Value Determination</i> |
| 11/15/2016 |  Initial Appearance Fee Disclosure Filed By: Petitioner China Yida Holding Co <i>Initial Appearance Fee Disclosure</i> |
| 12/01/2016 |  Summons Filed by: Petitioner China Yida Holding Co <i>Summons</i> |
| 12/01/2016 |  Summons Filed by: Petitioner China Yida Holding Co <i>Summons - Civil and Acceptance of Service</i> |

CASE SUMMARY
CASE NO. A-16-746732-P

| | |
|------------|---|
| 12/01/2016 |  Summons Filed by: Petitioner China Yida Holding Co <i>Summons-Civil</i> |
| 01/06/2017 |  Amended Petition Filed By: Petitioner China Yida Holding Co <i>First Amended Petition for Fair Value Determination</i> |
| 02/06/2017 |  Answer to Complaint Filed by: Respondent Pope Investments LLC <i>Response to First Amended Petition for Fair Value Determination</i> |
| 04/14/2017 |  Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request for Exemption - Granted</i> |
| 04/17/2017 |  Arbitration File <i>Arbitration File</i> |
| 06/06/2017 |  Joint Case Conference Report Filed By: Petitioner China Yida Holding Co <i>Joint Case Conference Report</i> |
| 06/23/2017 |  Scheduling Order <i>Scheduling Order</i> |
| 06/29/2017 |  Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial, Pre-Trial/Calendar Call</i> |
| 10/12/2017 |  Stipulation and Order <i>Stipulation and Order to Continue Discovery</i> |
| 10/13/2017 |  Notice of Entry of Stipulation and Order Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd <i>Notice of Entry of Stipulation and Order to Continue Discovery</i> |
| 12/08/2017 |  Stipulation and Order Filed by: Petitioner China Yida Holding Co <i>Stipulation and Order to Extend Rebuttal Expert Disclosure Deadline</i> |
| 12/11/2017 |  Notice of Entry of Stipulation and Order Filed By: Petitioner China Yida Holding Co <i>Notice of Entry of Stipulation and Order to Extend Rebuttal Expert Disclosure Deadline</i> |
| 01/24/2018 |  Order Setting Civil Bench Trial <i>Order Re-Setting Civil Bench Trial, Pre-Trial/Calendar Call</i> |
| 01/25/2018 |  Stipulation and Order <i>Stipulation and Order to Continue Discovery and Trial</i> |
| 01/30/2018 |  Notice of Entry of Stipulation and Order Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II |

CASE SUMMARY

CASE NO. A-16-746732-P

LLC; Respondent Annuity & Life Reassurance Ltd
Notice of Entry of Stipulation and Order to Continue Discovery and Trial

05/11/2018



Stipulation and Order

Stipulation and Order to Continue Discovery and Trial (Fourth Request)

05/14/2018



Notice of Entry of Stipulation and Order

Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd

Notice of Entry of Stipulation and Order to Continue Discovery and Trial

05/14/2018



Order Setting Civil Non-Jury Trial and Calendar Call

Filed By: Petitioner China Yida Holding Co

Order Re-Setting Civil Bench Trial, Pre-Trial/Calendar Call

09/07/2018



Stipulation and Order

Stipulation and Order to Continue Discovery (Fifth Request)

09/11/2018



Notice of Entry of Stipulation and Order

Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd

Notice of Entry of Stipulation and Order to Continue Discovery

09/20/2018



Stipulation and Order

Amended Stipulation and Order to Continue Discovery (Fifth Request)

09/21/2018



Notice of Entry of Stipulation and Order

Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd

Notice of Entry of Amended Stipulation and Order to Continue Discovery

12/14/2018



Stipulation and Order

Filed by: Petitioner China Yida Holding Co

Stipulation and Order to Continue Trial Date and Certain Discovery Deadlines

12/17/2018



Notice of Entry of Stipulation and Order

Filed By: Petitioner China Yida Holding Co

Notice of Entry of Stipulation and Order to Continue Trial Date and Certain Discovery Deadlines

12/19/2018



Order Setting Civil Non-Jury Trial and Calendar Call

Order Re-Setting Civil Bench Trial, Pre-Trial / Calendar Call

03/22/2019



Stipulation and Order

Filed by: Petitioner China Yida Holding Co

Stipulation and Order to Continue Trial Date and Certain Discovery Deadlines

03/22/2019



Notice of Entry of Stipulation and Order

Filed By: Petitioner China Yida Holding Co

Notice of Entry of Stipulation and Order to Continue Trial Date and Certain Discovery Deadlines

04/24/2019



Order Setting Civil Non-Jury Trial and Calendar Call

Order Re-Setting Civil Bench Trial, Pre-Trial/Calendar Call

CASE SUMMARY

CASE NO. A-16-746732-P

| | |
|------------|--|
| 05/22/2019 |  Motion for Summary Judgment Filed By: Petitioner China Yida Holding Co <i>Petitioner China Yida Holdings, Co.'s Motion for Summary Judgment</i> |
| 05/22/2019 |  Declaration Filed By: Petitioner China Yida Holding Co <i>Declaration of Minhua Chen in Support of Motion for Summary Judgment</i> |
| 05/22/2019 |  Declaration Filed By: Petitioner China Yida Holding Co <i>Declaration of J. Robert Smith, Esq. in Support of Petitioner's Motion for Summary Judgment</i> |
| 05/22/2019 |  Appendix Filed By: Petitioner China Yida Holding Co <i>Appendix of Exhibits to Petitioner China Yida Holding, Co.'s Motion for Summary Judgment</i> |
| 05/22/2019 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 06/03/2019 |  Stipulation and Order Filed by: Petitioner China Yida Holding Co <i>Stipulation and Order Re-Noticing Petitioner's Motion for Summary Judgment</i> |
| 06/03/2019 |  Notice of Entry of Stipulation and Order Filed By: Petitioner China Yida Holding Co <i>Notice of Entry of Stipulation and Order Re-Noticing Petitioner's Motion for Summary Judgment</i> |
| 06/26/2019 |  Opposition to Motion For Summary Judgment Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd <i>Respondents' Opposition to Motion for Summary Judgment</i> |
| 07/10/2019 |  Reply in Support Filed By: Petitioner China Yida Holding Co <i>Petitioner China Yida Holding, Co.'s Reply in Support of Motion for Summary Judgment</i> |
| 07/12/2019 |  Motion to Strike Filed By: Petitioner China Yida Holding Co <i>Petitioner's Motion to Strike Respondent's Experts Reports and Exclude Respondents' Expert Joseph Leauanae</i> |
| 07/12/2019 |  Declaration Filed By: Petitioner China Yida Holding Co <i>Declaration of J. Robert Smith in Support of Petitioner's Motion to Strike</i> |
| 07/12/2019 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 09/09/2019 |  Order Granting Summary Judgment Filed By: Petitioner China Yida Holding Co <i>Order Granting Petitioner China Yida Holding, Co.'s Motion for Summary Judgment</i> |

CASE SUMMARY

CASE NO. A-16-746732-P

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|------------|--|
| 09/09/2019 |  Notice of Entry of Order Filed By: Petitioner China Yida Holding Co <i>Notice of Entry of Order Granting Petitioner China Yida Holding Co.'s Motion for Summary Judgment</i> |
| 09/16/2019 |  Memorandum of Costs and Disbursements Filed By: Petitioner China Yida Holding Co <i>Petitioner's Memorandum of Costs and Disbursements</i> |
| 09/19/2019 |  Motion to Retax Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd <i>Respondents' Motion to Retax Petitioner's Memorandum of Costs</i> |
| 09/19/2019 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 09/23/2019 |  Motion for Attorney Fees Filed By: Petitioner China Yida Holding Co <i>Petitioner's Motion for Attorneys' Fees</i> |
| 09/23/2019 |  Declaration Filed By: Petitioner China Yida Holding Co <i>Declaration of J. Robert Smith in Support of Motion for Attorneys' Fees</i> |
| 09/24/2019 |  Clerk's Notice of Hearing <i>Notice of Hearing</i> |
| 10/03/2019 |  Stipulation and Order <i>Stipulation and Order Regarding Petitioner's Opposition to Motion to Retax Costs & Respondent's Opposition to Motion for Attorney's Fees</i> |
| 10/04/2019 |  Opposition to Motion Filed By: Petitioner China Yida Holding Co <i>Petitioner's Opposition to Respondents' Motion to Retax</i> |
| 10/08/2019 |  Notice of Appearance Party: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd <i>Notice of Appearance and Association of Counsel</i> |
| 10/08/2019 |  Notice of Entry of Order Filed By: Petitioner China Yida Holding Co <i>Notice of Entry of Stipulation and Order Regarding Petitioner's Opposition to Motion to Retax Costs and Respondent's Opposition to Motion for Attorney's Fees (First Request)</i> |
| 10/09/2019 |  Notice of Appeal Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd <i>Respondents' Notice of Appeal</i> |
| 10/09/2019 |  Case Appeal Statement Filed By: Respondent Pope Investments LLC; Respondent Pope Investments II LLC; Respondent Annuity & Life Reassurance Ltd <i>Respondents' Case Appeal Statement</i> |

CASE SUMMARY

CASE NO. A-16-746732-P

DISPOSITIONS

09/09/2019 **Summary Judgment** (Judicial Officer: Allf, Nancy)
Debtors: Pope Investments LLC (Respondent), Pope Investments II LLC (Respondent), Annunity & Life Reassurance Ltd (Respondent)
Creditors: China Yida Holding Co (Petitioner)
Judgment: 09/09/2019, Docketed: 09/09/2019

HEARINGS

05/10/2018 **CANCELED Pretrial/Calendar Call** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - per Stipulation and Order

05/14/2018 **CANCELED Bench Trial** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - per Stipulation and Order
Order Setting Civil Bench Trial, Pre-Trial/Calendar Call

08/30/2018 **CANCELED Pretrial/Calendar Call** (10:31 AM) (Judicial Officer: Allf, Nancy)
Vacated - Superseding Order


09/04/2018 **CANCELED Bench Trial** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - Superseding Order

01/10/2019 **CANCELED Pretrial/Calendar Call** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - Superseding Order

01/14/2019 **CANCELED Bench Trial** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - Superseding Order

06/27/2019 **CANCELED Calendar Call** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - per Stipulation and Order

07/01/2019 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated - per Stipulation and Order

07/18/2019  **Motion for Summary Judgment** (10:30 AM) (Judicial Officer: Allf, Nancy)
Events: 05/22/2019 Motion for Summary Judgment
Petitioner China Yida Holding, Co.'s Motion for Summary Judgment
Granted;
Journal Entry Details:
Arguments by counsel regarding the merits of and opposition to the pending motion. Colloquy regarding the provision in the merger agreement as it applies to the minutes. Court stated its findings and ORDERED, Petitioner China Yida Holding, Co.'s Motion for Summary Judgment GRANTED. Mr. Smith to prepare the findings of fact and conclusions of law which are to be incorporated into the order and submitted to Mr. Chasey for approval. COURT FURTHER ORDERED, all future hearings VACATED. ;

08/15/2019 **CANCELED Motion to Strike** (9:30 AM) (Judicial Officer: Allf, Nancy)
Vacated
Petitioner's Motion to Strike Respondents' Expert Reports and Exclude Respondents' Expert Joseph Leauanae

08/22/2019 **CANCELED Calendar Call** (10:31 AM) (Judicial Officer: Allf, Nancy)
Vacated

08/26/2019 **CANCELED Bench Trial** (10:30 AM) (Judicial Officer: Allf, Nancy)
Vacated

10/23/2019 **Motion to Retax** (9:00 AM) (Judicial Officer: Allf, Nancy)
Respondents' Motion to Retax Petitioner's Memorandum of Costs

CASE SUMMARY**CASE NO. A-16-746732-P**

11/06/2019

Motion for Attorney Fees (9:00 AM) (Judicial Officer: Allf, Nancy)
Petitioner's Motion for Attorney's Fees

DATE

FINANCIAL INFORMATION

Petitioner China Yida Holding Co

Total Charges

540.00

Total Payments and Credits

540.00

Balance Due as of 10/10/2019**0.00****Respondent** Annuity & Life Reassurance Ltd

Total Charges

30.00

Total Payments and Credits

30.00

Balance Due as of 10/10/2019**0.00****Respondent** Pope Investments II LLC

Total Charges

30.00

Total Payments and Credits

30.00

Balance Due as of 10/10/2019**0.00****Respondent** Pope Investments LLC

Total Charges

257.50

Total Payments and Credits

257.50

Balance Due as of 10/10/2019**0.00****Respondent** Pope Investments LLC

Appeal Bond Balance as of 10/10/2019

500.00

DISTRICT COURT CIVIL COVER SHEET

Case No.

County, Nevada

XXVII

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

China Yida Holding, Co., a Nevada corporation

Defendant(s) (name/address/phone):

Pope Investments, LLC; Pope Investments II, LLC;
Annuity & Life Reassurance, Ltd.

Attorney (name/address/phone):

J. Robert Smith, Holland & Hart LLP
5441 Kietzke Lane, Second Floor
Reno, NV 89511
775-327-3000

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

| Real Property | Negligence | Torts |
|--|---|---|
| Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property | <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice | Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort |
| Probate | Construction Defect & Contract | Judicial Review/Appeal |
| Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500 | Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract | Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal |
| Civil Writ | | Other Civil Filing |
| Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ | | Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input checked="" type="checkbox"/> Other Civil Matters |

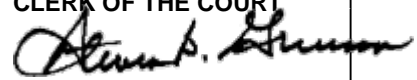
Business Court filings should be filed using the Business Court civil coversheet.

Nov. 15, 2016

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 **OGSJ**

2 J. Robert Smith, Esq. (SBN 10992)
3 HOLLAND & HART LLP
4 9555 Hillwood Drive, 2nd Floor
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9 *Attorneys for Petitioner China*
10 *Yida Holding, Co.*

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11 CHINA YIDA HOLDING, CO., a Nevada
12 corporation,

13 Petitioner,

14 v.

15 POPE INVESTMENTS, LLC, a Delaware
16 limited liability company; POPE
17 INVESTMENTS II, LLC, a Delaware limited
18 liability company; and ANNUITY & LIFE
19 REASSURANCE, LTD., an unknown limited
20 company;

21 Respondents.

Case No. A-16-746732-P

Dept. No. XXVII

**ORDER GRANTING PETITIONER
CHINA YIDA HOLDING, CO.'S
MOTION FOR SUMMARY JUDGMENT**

22 This matter came before the Court on a Motion for Summary Judgment (the "Motion")
23 filed by Petitioner China Yida Holding, Co. (hereinafter "CYH"). On July 18, 2019, this Court
24 heard oral argument on the Motion. J. Robert Smith, Esq. of Holland & Hart, LLP appeared on
25 behalf of CYH. Peter L. Chasey, Esq. of the law firm Chasey Law Offices, appeared on behalf
26 of the Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life
27 Reassurance, Ltd. (collectively "Respondents"). After carefully considering the pleadings,
28 briefs, exhibits, and arguments of counsel, and good cause appearing therefore, this Court hereby

| | |
|---|--|
| <input type="checkbox"/> Voluntary Dismissal | <input checked="" type="checkbox"/> Summary Judgment |
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1 makes the following findings and conclusions, and issues this Order granting Summary
2 Judgment in favor of CYH.

3 **I. FINDINGS OF FACT**

4 1. CYH is a Nevada domestic corporation.

5 2. At all relevant times herein, CYH's stock was listed and traded on the NASDAQ
6 Capital Market under the ticker symbol "CNYD."

7 3. Respondents were stockholders of CYH.

8 4. On March 10, 2016, CYH issued a press release announcing its entry into a
9 Merger Agreement with China Yida Holding Acquisition Co. (hereinafter "Acquisition").

10 5. CYH and Acquisition subsequently agreed to amend the Merger Agreement.

11 6. On April 13, 2016, CYH filed its Form 8-K with the United States Securities and
12 Exchange Commission (SEC) disclosing that CYH and Acquisition entered into an Amended
13 and Restated Agreement and Plan of Merger ("Amended Merger Agreement").

14 7. The Amended Merger Agreement declared that Acquisition "shall be merged
15 with and into [CYH], the separate corporate existence of Acquisition shall thereupon cease and
16 [CYH] shall continue as the surviving company of the Merger."

17 8. The Amended Merger Agreement also stated that:

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19 "Each Company Share other than Excluded Shares that is issued and
20 outstanding immediately prior to the Effective Time shall be canceled
21 and cease to exist and automatically converted, subject to Section 2.7(b),
22 into the right to receive \$3.32 in cash without interest

23 Each Dissenting Share that is issued and outstanding immediately
24 prior to the Effective Time shall be cancelled and cease to exist, in
25 consideration for the right to receive the fair value of such Dissenting
26 Share as provided in Section 2.7(c). . . . [and]

27 Each Principal Share that is issued and outstanding immediately prior to
28 the Effective Time shall remain in effect as issued and outstanding
shares of the Company. . . ."

9. The Amended Merger Agreement also called for a special meeting of the CYH's
stockholders for a vote on the Merger.

1 10. The stockholders would be notified of the special meeting if they held CYH stock
2 as of the record date, which was to be set by CYH's board.

3 11. As disclosed to the SEC and the CYH stockholders, the record date was set as
4 the close of business on May 24, 2016.

5 12. The stockholders of record as of May 24, 2016 were then notified of the special
6 meeting of the stockholders to take place on June 28, 2016 to vote on the merger.

7 13. Included within the notice to the stockholders was a paragraph stating that:

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9 You have a statutory right to dissent from the Merger and demand payment of
10 the fair value of your shares of Company Common Stock as determined in a
11 judicial appraisal proceeding in accordance with Chapter 92A (Section 300
12 through 500 inclusive) of the NRS A copy of Dissenters' Rights Provisions
13 is attached as Annex E hereto. Any failure to comply with the Dissenters' Rights
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to exercise their statutory right of dissent are encouraged to seek advice from
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16 "address briefly some question [stockholders] may have regarding the special meeting and the
17 Merger." Included within the Questions and Answers section was the following:

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21 disposal of assets. If you do not comply with the procedures
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discussion of dissenters' rights.

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6 17. The Meeting Minutes from the June 28, 2016 special meeting of stockholders
7 identified a resolution by CYH's Board of Directors authorizing, approving and adopting the
8 Amended Merger Agreement.

9 18. On July 8, 2016, CYH's stock was removed from listing on the NASDAQ
10 Capital Market.

11 19. On July 25, 2016, each of the Respondents sent CYH a signed "Demand for
12 Payment Form" notifying CYH that each of the Respondents:

13 [E]lects to exercise dissenter's rights pursuant to Section 92A.300
14 to 92A.500, inclusive, of the Nevada Revised Statutes (the "NRS")
15 with respect to the Merger, and demands payments for all shares of
 Company capital stock beneficially owned by the undersigned.

16 20. On August 30, 2016, CYH, through its counsel, sent a letter to each of the
17 Respondents notifying them that pursuant to NRS 92A.460(1) CYH would pay the amount CYH
18 estimates to be the fair value of Respondents' shares, plus accrued interest.

19 21. CYH valued its stock at \$3.32 per share.

20 22. CYH then paid Respondents for their shares based on the price of \$3.32 per share.

21 23. On September 21, 2016, each of the Respondents served CYH with a
22 "Dissenter's Estimate of Fair Value and Demand for Payment" pursuant to NRS 92A.480.

23 24. Respondents estimated the fair value of the CYH's stock to be \$23.28 per share.

24 25. On November 15, 2016, CYH commenced this action pursuant to NRS 92A.490,
25 which requires the subject corporation within 60 days after a demand is received to petition the
26 District Court to determine the fair value of the company's shares.

II. CONCLUSIONS OF LAW

1. NRS 92A.380 generally authorizes a stockholder of a corporation to dissent from certain corporate actions and have the District Court determine the fair value of the corporation's stock. Consummation of a plan of merger in which the domestic corporation is a constituent entity is a corporate action authorizing dissenter's rights. NRS 92A.380(1)(a).

2. NRS 92A.380(1), however, only authorizes dissenter's rights "[e]xcept as otherwise provided in NRS 92A.370 and 92A.390"

3. NRS 92A.390(1) prohibits a stockholder from pursuing dissenter's rights with respect to a plan of merger if the corporation's stock is a "covered security." As that statute expressly states:

There is no right of dissent with respect to a plan of merger, conversion or exchange in favor of stockholders of any class or series which is:

(a) covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. §77r(b)(1)(A) or (B), as amended;

unless the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

4. 15 U.S.C. §77r explains that a covered security is "a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof)"

5. Simply stated, a "covered security" is one that is traded on a national securities exchange.

6. The SEC lists the NASDAQ Capital Market as a covered security. 17 C.F.R. §230.146(b)(1)(v).

7. It is undisputed that securities traded on the NASDAQ Capital Market are covered securities.

1 8. Because securities traded on the NASDAQ Capital Market are covered
2 securities, NRS 92A.390(1)(a) applies to a plan of merger involving such stocks and there is no
3 right of dissent pursuant to NRS 92A.380, absent certain exceptions. This is known as the
4 market-out exception. *See City of N. Miami Gen. Emps. Ret. Plan v. Dr Pepper Snapple Grp.,*
5 *Inc.*, 189 A.3d 188, 201 (Del. Ch. 2018) (explaining that the market-out exception provides that
6 stockholders are not entitled to dissenter's rights when stock is listed on a national securities
7 exchange); *see also Klotz v. Warner Commc's, Inc.*, 674 A.2d 878, 879 (Del. 1995) (holding
8 that "appraisal is not available if the shares to be appraised were widely held or traded on a
9 national securities exchange.").

10 9. It is undisputed that CYH's stock was traded on the NASDAQ Capital Market
11 until July 8, 2016, when the NASDAQ Stock Market LLC filed SEC Form 25 to remove CYH's
12 stock from listing.

13 10. It is also undisputed that CYH's stock was listed and traded on the NASDAQ
14 Capital Market on the record date of May 24, 2016.

15 11. Thus, it is undisputed that CYH's stock was a covered security at all relevant
16 times herein.

17 12. Because CYH's stock is a covered security and was traded on the NASDAQ at
18 the time the stockholders were entitled to receive notice of and to vote at the meeting of
19 stockholders to act upon the Merger, the market-out exception in NRS 92A.390(1)(a) applies
20 unless an exception to the market-out exception exists.

21 13. One such exception to the market-out exception is if the corporation required
22 stockholders of any class or series of shares to accept anything other than cash or shares for their
23 stock. NRS 92A.390(3).

24 14. It is undisputed that CYH offered, and Respondents accepted, cash for their
25 shares of CYH stock. Accordingly, the Court finds this exception is inapplicable in this case.

26 15. The other exceptions to the market-out exception are set forth in NRS 92A.390.
27
28

1 16. Although a stockholder has no right to dissent if the corporation's stock is a
2 covered security, a stockholder may still dissent if "the articles of incorporation of the
3 corporation issuing the class or series or the resolution of the board of directors approving the
4 plan of merger, conversion or exchange expressly provide otherwise." NRS 92A.390(1).

5 17. It is undisputed that CYH's articles of incorporation did not provide its
6 stockholders with the right of dissent. Accordingly, an exception based on the articles of
7 incorporation is inapplicable.

8 18. The only remaining exception to the market-out exception that would permit
9 Respondents to exercise dissenter's rights is if "a resolution of the board of directors approving
10 the plan of merger, conversion or exchange expressly provide otherwise."

11 19. The June 28, 2016 Special Meeting Minutes identified a resolution that
12 authorized, approved and adopted the Amended Merger Agreement, but such resolution did not
13 expressly provide CYH's stockholders dissenter's rights or waive the market-out exception
14 pursuant to NRS 92A.390(1)(a).

15 20. In addition, neither the Special Meeting Minutes nor the resolution identified
16 therein discussed, mentioned or referenced any statute under NRS Chapter 92A, dissenter's
17 rights, a stockholder's right to dissent, a stockholder's right to a fair value determination, or the
18 market-out exception under NRS 92A.390(1), therefore, the Court finds that the CYH Board of
19 Directors did not expressly provide its stockholders with dissenter's rights or that CYH was
20 waiving the market-out exception.

21 21. Therefore, the market-out exception applies.

22 22. Despite the applicability of the market-out exception, Respondents raise several
23 arguments that they still maintain dissenter's rights.

24 23. First, Respondents argue that the Amended Merger Agreement provides CYH's
25 stockholders with dissenter's rights, which the CYH Board of Directors authorized, approved,
26 and adopted. Respondents' argument is misplaced.

1 24. The plain language of NRS 92A.390(1) requires a resolution from a
2 corporation's board of directors expressly providing its shareholders with dissenter's rights
3 despite the market-out exception afforded to the corporation under NRS 92A.390(1)(a).
4 *Knickmeyer v. State ex. rel. Eighth Judicial Dist. Ct.*, 408 P.3d 161, 166 (Nev. Ct. App. 2017)
5 ("In interpreting a statute, [courts] begin with its plain meaning and consider the statute as a
6 whole, awarding meaning to each word, phrase, and provision, while striving to avoid
7 interpretations that render any words superfluous or meaningless."). Black's Law Dictionary
8 defines express to mean "[c]learly and unmistakably communicated; stated with directness and
9 clarity." *Express*, Blacks' Law Dictionary (11th ed. 2019).

10 25. The Amended Merger Agreement is not a resolution by the Board.

11 26. For this reason alone, Respondents' argument fails.

12 27. Respondents' argument also fails because the language in the Amended Merger
13 Agreement does not expressly provide for dissenter's rights and/or waive the provisions of
14 NRS 92A.390(1)(a).

15 28. Respondents also point to statements in a May 25, 2016 Proxy Statement
16 (Schedule 14A) filed with the SEC to support their argument that CYH informed its
17 stockholders that they had dissenter's rights. But like the Amended Merger Agreement, the
18 Proxy Statement is not a resolution by the Board, and therefore does not meet the exception set
19 forth in NRS 92A.390(1).

20 29. Respondents maintain that Nevada dissenter's rights statutes are meant to protect
21 minority shareholders from being unfairly impacted by the majority shareholders' decision to
22 approve a merger, and such statutes should be liberally construed. Respondents argue that CYH
23 waived the market-out exception and is estopped from relying on the market-out exception
24 based on the terms of the plan of merger as disclosed and summarized in CYH's notice of
25 shareholders meeting to approve the plan of merger such that notions of justice and fairness
26 should allow Respondents to pursue dissenter's rights. Respondents' argument is unavailing.

1 30. The Nevada Legislature included the market-out exception for publicly traded
2 companies, with certain limited exceptions. To the extent Respondents believe the market-out
3 exception codified in NRS 92A.390(1) to be unjust or unfair, their remedy lies with the
4 Legislature, not this Court.

5 31. Respondents also argue that CYH affirmatively represented in the Amended
6 Merger Agreement and Proxy Statement that its shareholders had dissenter's rights, and that
7 such affirmative representations constitute a waiver or an estoppel preventing CYH from
8 asserting the market-out exception. Respondents' argument fails for several reasons.

9 32. First, waivers of statutory rights are not favored. To waive statutory rights, a
10 party's waiver must be clearly and unmistakably established. *DRG/Beverly Hills, Ltd. v.*
11 *Chopstix Dim Sum Cafe & Takeout III, Ltd.*, 35 Cal.Rptr.2d 515, 518 (1994); *see also* 28
12 Am.Jur.2d *Estoppel and Waiver* §200. The language cited by Respondents in the Amended
13 Merger Agreement and Proxy Statement do not constitute a clear and unmistakable waiver of
14 CYH's statutory right to the market-out exception codified in NRS 92A.390.

15 33. Second, where the Legislature permits a particular limited waiver upon the
16 satisfaction of a set of conditions, it intends that no other related waivers are permitted. *In re*
17 *Marriage of Fell*, 64 Cal.Rptr.2d 522, 526–27 (1997); *see also* 28 Am. Jur. 2d *Estoppel and*
18 *Waiver* §200.

19 34. Here, the Legislature permitted corporations covered by the market-out
20 exception to waive their statutory right to the market-out exception by the corporation's board
21 of directors passing a resolution expressly providing that its stockholders are entitled to pursue
22 dissenter's rights despite the market-out exception. Because the Legislature already provided a
23 method of waiver upon the satisfaction of a set of conditions, no other related waivers are
24 permitted.

25 35. The Court has carefully considered Respondents' remaining arguments and
26 deems them to be without merit.

36. Given the foregoing, the Court concludes that pursuant to NRS 92A.390, stockholders of a corporation do not have the right to dissent when the corporation's stock is a covered security absent certain exceptions.

37. CYH's stock was a covered security because the stock traded on the NASDAQ Capital Market at all relevant times herein.

38. Because CYH's stock was a covered security, Respondents do not have the right to dissent.

39. Respondents have not identified any exceptions that would entitle them to pursue dissenter's rights with respect to CYH.

40. No genuine issues of material fact remain that would preclude entry of summary judgment.

41. CYH is therefore entitled to judgment as a matter of law.

III. ORDER

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Petitioner China Yida Holding, Co.’s Motion for Summary Judgment is GRANTED.

2. Judgment is hereby entered as a matter of law in favor of Petitioner China Yida Holding, Co. and against Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life Reassurance, Ltd.

3. Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life Reassurance, Ltd. do not have the right to dissent pursuant to NRS 92A.390 and are therefore precluded from pursuing dissenter's rights or a fair value determination of their stock of China Yida Holding, Co.

4. Petitioner may file an Application for Attorney's Fees to the extent it believes it has a basis to do so within 14 days of entry of this Order.

DATED this 5 day of Sept., 2019.

Nancy L. Alf
DISTRICT COURT JUDGE

Submitted by:

~~J. Robert Smith, NSB #10992~~
Susan M. Schwartz, NSB #14270
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Attorneys for Petitioner China Yida Holding, Co.

Approved as to form:

Peter L. Chasey
Chasey Law Offices
3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129
Attorneys for Respondents

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DATED this _____ day of _____, 2019.

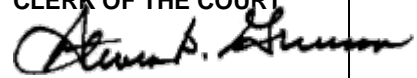
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Case No. A-16-746732-P

Dept. No. XXVII

**NOTICE OF ENTRY OF ORDER
GRANTING PETITIONER CHINA
YIDA HOLDING CO.'S MOTION FOR
SUMMARY JUDGMENT**

22 PLEASE TAKE NOTICE that an Order Granting Petitioner China Yida Holding Co.'s
23 Motion for Summary Judgment was entered in the above-captioned matter on September 9,
24 2019. A copy of said Order is attached hereto.

25 DATED this 9th day of September, 2019.

26 HOLLAND & HART LLP

27 /s/ J. Robert Smith

28 J. Robert Smith, Esq. (SBN 10992)

9555 Hillwood Drive, 2nd Floor

Las Vegas, NV 89134

Attorneys for Petitioner

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 9th day of September, 2019, a true and correct copy of the
3 foregoing **NOTICE OF ENTRY OF ORDER GRANTING PETITIONER CHINA YIDA**
4 **HOLDING CO.'S MOTION FOR SUMMARY JUDGMENT** was served by the following
5 method(s):

6
7 ☒ Electronic: by submitting electronically for filing and/or service with the Eighth
8 Judicial District Court's Odyssey eFileNV Electronic Filing system and serving all
9 parties with an email address on record, as indicated below, pursuant to Administrative
10 Order 14-2 and Rule 9 of the .N.E.F.C.R. That date and time of the electronic proof of
11 service in place of the date and place of deposit in the U.S. Mail.

12 Peter L. Chasey, Esq.
13 CHASEY LAW OFFICES
14 3295 N. Fort Apache Road, Suite 110
15 Las Vegas, Nevada 89129

16 *Attorneys for Respondents*

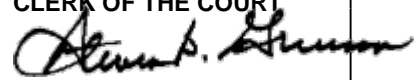
17
18 ☐ U.S. Mail: by depositing same in the United States mail, first class postage fully
19 prepaid to the persons and addresses listed below:

20 ☐ Email: by electronically delivering a copy via email to the following e-mail address:

21 ☐ Facsimile: by faxing a copy to the following numbers referenced below:

22 /s/ Yalonda Dekle
23 An Employee of HOLLAND & HART LLP

24
25
26
27
28
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9 You have a statutory right to dissent from the Merger and demand payment of
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12 through 500 inclusive) of the NRS A copy of Dissenters' Rights Provisions
13 is attached as Annex E hereto. Any failure to comply with the Dissenters' Rights
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to exercise their statutory right of dissent are encouraged to seek advice from
legal counsel. Please see "Dissenters' Rights for Holders of Common Stock"
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18. On July 8, 2016, CYH's stock was removed from listing on the NASDAQ Capital Market.

19. On July 25, 2016, each of the Respondents sent CYH a signed “Demand for Payment Form” notifying CYH that each of the Respondents:

[E]lects to exercise dissenter's rights pursuant to Section 92A.300 to 92A.500, inclusive, of the Nevada Revised Statutes (the "NRS") with respect to the Merger, and demands payments for all shares of Company capital stock beneficially owned by the undersigned.

20. On August 30, 2016, CYH, through its counsel, sent a letter to each of the Respondents notifying them that pursuant to NRS 92A.460(1) CYH would pay the amount CYH estimates to be the fair value of Respondents' shares, plus accrued interest.

21. CYH valued its stock at \$3.32 per share.

22. CYH then paid Respondents for their shares based on the price of \$3.32 per share.

23. On September 21, 2016, each of the Respondents served CYH with a “Dissenter’s Estimate of Fair Value and Demand for Payment” pursuant to NRS 92A.480.

24. Respondents estimated the fair value of the CYH's stock to be \$23.28 per share.

25. On November 15, 2016, CYH commenced this action pursuant to NRS 92A.490, which requires the subject corporation within 60 days after a demand is received to petition the District Court to determine the fair value of the company's shares.

II. CONCLUSIONS OF LAW

1. NRS 92A.380 generally authorizes a stockholder of a corporation to dissent from certain corporate actions and have the District Court determine the fair value of the corporation's stock. Consummation of a plan of merger in which the domestic corporation is a constituent entity is a corporate action authorizing dissenter's rights. NRS 92A.380(1)(a).

2. NRS 92A.380(1), however, only authorizes dissenter's rights "[e]xcept as otherwise provided in NRS 92A.370 and 92A.390"

3. NRS 92A.390(1) prohibits a stockholder from pursuing dissenter's rights with respect to a plan of merger if the corporation's stock is a "covered security." As that statute expressly states:

There is no right of dissent with respect to a plan of merger, conversion or exchange in favor of stockholders of any class or series which is:

(a) covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. §77r(b)(1)(A) or (B), as amended;

unless the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

4. 15 U.S.C. §77r explains that a covered security is "a security designated as qualified for trading in the national market system pursuant to section 78k-1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof)"

5. Simply stated, a "covered security" is one that is traded on a national securities exchange.

6. The SEC lists the NASDAQ Capital Market as a covered security. 17 C.F.R. §230.146(b)(1)(v).

7. It is undisputed that securities traded on the NASDAQ Capital Market are covered securities.

1 8. Because securities traded on the NASDAQ Capital Market are covered
2 securities, NRS 92A.390(1)(a) applies to a plan of merger involving such stocks and there is no
3 right of dissent pursuant to NRS 92A.380, absent certain exceptions. This is known as the
4 market-out exception. *See City of N. Miami Gen. Emps. Ret. Plan v. Dr Pepper Snapple Grp.,*
5 *Inc.*, 189 A.3d 188, 201 (Del. Ch. 2018) (explaining that the market-out exception provides that
6 stockholders are not entitled to dissenter's rights when stock is listed on a national securities
7 exchange); *see also Klotz v. Warner Commc's, Inc.*, 674 A.2d 878, 879 (Del. 1995) (holding
8 that "appraisal is not available if the shares to be appraised were widely held or traded on a
9 national securities exchange.").

10 9. It is undisputed that CYH's stock was traded on the NASDAQ Capital Market
11 until July 8, 2016, when the NASDAQ Stock Market LLC filed SEC Form 25 to remove CYH's
12 stock from listing.

13 10. It is also undisputed that CYH's stock was listed and traded on the NASDAQ
14 Capital Market on the record date of May 24, 2016.

15 11. Thus, it is undisputed that CYH's stock was a covered security at all relevant
16 times herein.

17 12. Because CYH's stock is a covered security and was traded on the NASDAQ at
18 the time the stockholders were entitled to receive notice of and to vote at the meeting of
19 stockholders to act upon the Merger, the market-out exception in NRS 92A.390(1)(a) applies
20 unless an exception to the market-out exception exists.

21 13. One such exception to the market-out exception is if the corporation required
22 stockholders of any class or series of shares to accept anything other than cash or shares for their
23 stock. NRS 92A.390(3).

24 14. It is undisputed that CYH offered, and Respondents accepted, cash for their
25 shares of CYH stock. Accordingly, the Court finds this exception is inapplicable in this case.

26 15. The other exceptions to the market-out exception are set forth in NRS 92A.390.
27
28

1 16. Although a stockholder has no right to dissent if the corporation's stock is a
2 covered security, a stockholder may still dissent if "the articles of incorporation of the
3 corporation issuing the class or series or the resolution of the board of directors approving the
4 plan of merger, conversion or exchange expressly provide otherwise." NRS 92A.390(1).

5 17. It is undisputed that CYH's articles of incorporation did not provide its
6 stockholders with the right of dissent. Accordingly, an exception based on the articles of
7 incorporation is inapplicable.

8 18. The only remaining exception to the market-out exception that would permit
9 Respondents to exercise dissenter's rights is if "a resolution of the board of directors approving
10 the plan of merger, conversion or exchange expressly provide otherwise."

11 19. The June 28, 2016 Special Meeting Minutes identified a resolution that
12 authorized, approved and adopted the Amended Merger Agreement, but such resolution did not
13 expressly provide CYH's stockholders dissenter's rights or waive the market-out exception
14 pursuant to NRS 92A.390(1)(a).

15 20. In addition, neither the Special Meeting Minutes nor the resolution identified
16 therein discussed, mentioned or referenced any statute under NRS Chapter 92A, dissenter's
17 rights, a stockholder's right to dissent, a stockholder's right to a fair value determination, or the
18 market-out exception under NRS 92A.390(1), therefore, the Court finds that the CYH Board of
19 Directors did not expressly provide its stockholders with dissenter's rights or that CYH was
20 waiving the market-out exception.

21 21. Therefore, the market-out exception applies.

22 22. Despite the applicability of the market-out exception, Respondents raise several
23 arguments that they still maintain dissenter's rights.

24 23. First, Respondents argue that the Amended Merger Agreement provides CYH's
25 stockholders with dissenter's rights, which the CYH Board of Directors authorized, approved,
26 and adopted. Respondents' argument is misplaced.

1 24. The plain language of NRS 92A.390(1) requires a resolution from a
2 corporation's board of directors expressly providing its shareholders with dissenter's rights
3 despite the market-out exception afforded to the corporation under NRS 92A.390(1)(a).
4 *Knickmeyer v. State ex. rel. Eighth Judicial Dist. Ct.*, 408 P.3d 161, 166 (Nev. Ct. App. 2017)
5 ("In interpreting a statute, [courts] begin with its plain meaning and consider the statute as a
6 whole, awarding meaning to each word, phrase, and provision, while striving to avoid
7 interpretations that render any words superfluous or meaningless."). Black's Law Dictionary
8 defines express to mean "[c]learly and unmistakably communicated; stated with directness and
9 clarity." *Express*, Blacks' Law Dictionary (11th ed. 2019).

10 25. The Amended Merger Agreement is not a resolution by the Board.

11 26. For this reason alone, Respondents' argument fails.

12 27. Respondents' argument also fails because the language in the Amended Merger
13 Agreement does not expressly provide for dissenter's rights and/or waive the provisions of
14 NRS 92A.390(1)(a).

15 28. Respondents also point to statements in a May 25, 2016 Proxy Statement
16 (Schedule 14A) filed with the SEC to support their argument that CYH informed its
17 stockholders that they had dissenter's rights. But like the Amended Merger Agreement, the
18 Proxy Statement is not a resolution by the Board, and therefore does not meet the exception set
19 forth in NRS 92A.390(1).

20 29. Respondents maintain that Nevada dissenter's rights statutes are meant to protect
21 minority shareholders from being unfairly impacted by the majority shareholders' decision to
22 approve a merger, and such statutes should be liberally construed. Respondents argue that CYH
23 waived the market-out exception and is estopped from relying on the market-out exception
24 based on the terms of the plan of merger as disclosed and summarized in CYH's notice of
25 shareholders meeting to approve the plan of merger such that notions of justice and fairness
26 should allow Respondents to pursue dissenter's rights. Respondents' argument is unavailing.

1 30. The Nevada Legislature included the market-out exception for publicly traded
2 companies, with certain limited exceptions. To the extent Respondents believe the market-out
3 exception codified in NRS 92A.390(1) to be unjust or unfair, their remedy lies with the
4 Legislature, not this Court.

5 31. Respondents also argue that CYH affirmatively represented in the Amended
6 Merger Agreement and Proxy Statement that its shareholders had dissenter's rights, and that
7 such affirmative representations constitute a waiver or an estoppel preventing CYH from
8 asserting the market-out exception. Respondents' argument fails for several reasons.

9 32. First, waivers of statutory rights are not favored. To waive statutory rights, a
10 party's waiver must be clearly and unmistakably established. *DRG/Beverly Hills, Ltd. v.*
11 *Chopstix Dim Sum Cafe & Takeout III, Ltd.*, 35 Cal.Rptr.2d 515, 518 (1994); *see also* 28
12 Am.Jur.2d *Estoppel and Waiver* §200. The language cited by Respondents in the Amended
13 Merger Agreement and Proxy Statement do not constitute a clear and unmistakable waiver of
14 CYH's statutory right to the market-out exception codified in NRS 92A.390.

15 33. Second, where the Legislature permits a particular limited waiver upon the
16 satisfaction of a set of conditions, it intends that no other related waivers are permitted. *In re*
17 *Marriage of Fell*, 64 Cal.Rptr.2d 522, 526–27 (1997); *see also* 28 Am. Jur. 2d *Estoppel and*
18 *Waiver* §200.

19 34. Here, the Legislature permitted corporations covered by the market-out
20 exception to waive their statutory right to the market-out exception by the corporation's board
21 of directors passing a resolution expressly providing that its stockholders are entitled to pursue
22 dissenter's rights despite the market-out exception. Because the Legislature already provided a
23 method of waiver upon the satisfaction of a set of conditions, no other related waivers are
24 permitted.

25 35. The Court has carefully considered Respondents' remaining arguments and
26 deems them to be without merit.

36. Given the foregoing, the Court concludes that pursuant to NRS 92A.390, stockholders of a corporation do not have the right to dissent when the corporation's stock is a covered security absent certain exceptions.

37. CYH's stock was a covered security because the stock traded on the NASDAQ Capital Market at all relevant times herein.

38. Because CYH's stock was a covered security, Respondents do not have the right to dissent.

39. Respondents have not identified any exceptions that would entitle them to pursue dissenter's rights with respect to CYH.

40. No genuine issues of material fact remain that would preclude entry of summary judgment.

41. CYH is therefore entitled to judgment as a matter of law.

III. ORDER

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Petitioner China Yida Holding, Co.’s Motion for Summary Judgment is GRANTED.

2. Judgment is hereby entered as a matter of law in favor of Petitioner China Yida Holding, Co. and against Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life Reassurance, Ltd.

3. Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life Reassurance, Ltd. do not have the right to dissent pursuant to NRS 92A.390 and are therefore precluded from pursuing dissenter's rights or a fair value determination of their stock of China Yida Holding, Co.

4. Petitioner may file an Application for Attorney's Fees to the extent it believes it has a basis to do so within 14 days of entry of this Order.

DATED this 5 day of Sept., 2019.

Nancy L. Alf
DISTRICT COURT JUDGE

Submitted by:

~~J. Robert Smith, NSB #10992~~
Susan M. Schwartz, NSB #14270
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Attorneys for Petitioner China Yida Holding, Co.

Approved as to form:

Peter L. Chasey
Chasey Law Offices
3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129
Attorneys for Respondents

13491354_v2

4. Petitioner may file an Application for Attorney's Fees to the extent it believes it has a basis to do so within 14 days of entry of this Order.

DATED this _____ day of _____, 2019.

DISTRICT COURT JUDGE

Submitted by:

J. Robert Smith, NSB #10992
Susan M. Schwartz, NSB #14270
Holland & Hart, LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Attorneys for Petitioner China Yida Holding, Co.

Approved as to form:

Peter L. Chasey
Chasey Law Offices
3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129
Attorneys for Respondents

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filings (Petition)

COURT MINUTES

July 18, 2019

A-16-746732-P China Yida Holding Co, Petitioner(s)
vs.
Annuity & Life Reassurance Ltd, Respondent(s)

**July 18, 2019 10:30 AM Motion for Summary
Judgment**

HEARD BY: Allf, Nancy

COURTROOM: RJC Courtroom 03A

COURT CLERK: Nicole McDevitt

RECORDER: Brynn Griffiths

REPORTER:

PARTIES

PRESENT: Chasey, Peter L. Attorney
 Smith, J. Robert, ESQ Attorney

JOURNAL ENTRIES

- Arguments by counsel regarding the merits of and opposition to the pending motion. Colloquy regarding the provision in the merger agreement as it applies to the minutes. Court stated its findings and ORDERED, Petitioner China Yida Holding, Co.'s Motion for Summary Judgment GRANTED. Mr. Smith to prepare the findings of fact and conclusions of law which are to be incorporated into the order and submitted to Mr. Chasey for approval. COURT FURTHER ORDERED, all future hearings VACATED.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

RESPONDENTS' NOTICE OF APPEAL; RESPONDENTS' CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PETITIONER CHINA YIDA HOLDING, CO.'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING PETITIONER CHINA YIDA HOLDING CO'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES

CHINA YIDA HOLDING, CO.,

Petitioner(s),

vs.

POPE INVESTMENTS, LLC; POPE INVESTMENTS II, LLC; ANNUITY & LIFE REASSURANCE, LTD.,

Respondent(s),

Case No: A-16-746732-P

Dept No: XXVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 10 day of October 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

DATE: 10/8/2019

TO: Clerk of the Nevada Supreme Court

FOR: Filing of Notice of Appeal

AMOUNT: \$ 250.00

C/M: 09911.0003

BOIES SCHILLER FLEXNER LLP
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300 S 4TH ST STE 800
LAS VEGAS, NV 89101
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DATE
10/8/2019

AMOUNT

\$

250.00

TWO HUNDRED FIFTY DOLLARS AND NO/100*****

PAY
TO THE
ORDER
OF:

CLERK of the NEVADA SUPREME COURT



AUTHORIZED SIGNATURE

⑈0000004112⑈ ⑆021101108⑆ 3520711643⑈

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