

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

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,
Appellants,

vs.

CHINA YIDA HOLDING, CO., A NEVADA CORPORATION,
Respondent.

No. 79807

Electronically Filed
Nov 04 2019 04:36 p.m.
Elizabeth N. Brown
Clerk of Supreme Court
**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXVII

County Clark Judge Nancy L. Allf

District Ct. Case No. A-16-746732-P

2. Attorney filing this docketing statement:

Attorney Richard J. Pocker Telephone 702-382-7300

Firm Boies Schiller Flexner LLP

Address 300 S. Fourth St., Suite 800
Las Vegas, Nevada 89101

Client(s) Pope Investments, Llc; Pope Investments II, Llc; Annuity & Life Reassurance, Ltd.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney J. Robert Smith Telephone 702-669-4600

Firm Holland & Hart LLP

Address 9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Client(s) China Yida Holding, Co.

Attorney Joshua M. Halen Telephone 702-669-4600

Firm Holland & Hart LLP

Address 9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Client(s) China Yida Holding, Co.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

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

The present action is a dissenter's rights action commenced on November 15, 2016 by China Yida Holding Co. (CYH) pursuant to Chapter 92A of the Nevada Revised Statutes, as a 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 summary judgment, arguing that the appellants had no dissenter's rights due to the provisions of Section 92A.390 of the Nevada Revised Statutes, despite the company having represented to the appellants that dissenter's rights were available and having litigated the fair value petition for two and one-half years. The District Court granted the Petitioner's Motion for Summary Judgment, filing and entering its Order on September 9, 2019. The Notice of Entry of the Court's Order was filed on that same date.

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

Did the District Court err as a matter of both fact and law, in determining under the facts and circumstances of the corporate transaction at issue that the appellants did not have dissenters' rights with respect to that transaction, under the provisions of Section 92.390 of the Nevada Revised Statutes?

Did CYH waive by its own conduct its argument that Section 92.390 of the Nevada Revised Statutes serves to deprive the appellants of their dissenters rights, and/or is it estopped from applying such statutory provisions?

Is the District Court's ruling, given the facts and circumstances of the transaction at issue, contrary to Nevada public policy?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: N/A

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The present matter is presumptively assigned to the Court of Appeals pursuant to NRAP 17 (b)(7).

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

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from September 9, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served September 9, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

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

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed October 9, 2019

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
The Order entered by the District Court granting summary judgment constitutes a final judgment entered in that same Court.

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

(a) Parties:

1. China Yida Holding, Co., Petitioner in the District Court proceedings
2. Pope Investments, LLC, a Respondent in the District Court proceedings
3. Pope Investments II, LLC, a Respondent in the District Court proceedings
4. Annuity & Life Reassurance, Ltd., a Respondent in the District Court proceedings

(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:

N/A

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.

1. China Yida Holding Co., Petitioner in the proceeding below, alleged a single claim seeking a fair value determination of \$3.32 per share of its stock.
2. Appellants, Respondents in the proceeding below, sought in response a fair value determination of \$23.28 per share.

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:
N/A

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Pope Investments, LLC, et al.
Name of appellant

Richard J. Pocker
Name of counsel of record

November 4, 2019
Date

/s/ Richard J. Pocker
Signature of counsel of record

State of Nevada, County of Clark
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 4th day of November, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

J. Robert Smith, Esq.
Joshua M. Halen, Esq.
Holland & Hart LLP
9555 Hillwood Dr., 2nd Floor
Las Vegas, Nevada 89134

Thomas J. Tanksley, Esq.
Settlement Judge
10161 Park Run Dr., #150
Las Vegas, Nevada 89145

Peter Chasey, Esq.
Chasey Law Offices
3925 N. Fort Apache Rd., Suite 110
Las Vegas, Nevada 89129

Dated this 4th day of November, 2019

/s/ Shilah Wisniewski
Signature

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,
Appellants,

vs.

CHINA YIDA HOLDING, CO., A NEVADA
CORPORATION,
Respondent.

Case No. 79807

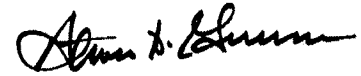
Docketing Statement Attachments

- Attachment 1:** First Amended Petition for Fair Value Determination (Jan. 6, 2017)
- Attachment 2:** Response to First Amended Petition for Fair Value Determination (Feb. 6, 2017)
- Attachment 3:** Order Granting Petitioner China Yida Holding, Co.'s Motion for Summary Judgment (Sept. 9, 2019)
- Attachment 4:** Notice of Entry of Order Granting Petitioner China Yida Holding Co.'s Motion for Summary Judgment (Sept. 9, 2019)

Attachment 1

First Amended Petition for Fair Value Determination

Jan. 6, 2017



CLERK OF THE COURT

1 **APET**

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

3 Andrea Champion, Esq. (SBN 13461)

4 **HOLLAND & HART LLP**

5 9555 Hillwood Drive, 2nd Floor

6 Las Vegas, NV 89134

7 Phone: (702) 669-4600

8 Fax: (702) 669-4650

9 *Attorneys for Petitioner*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **CHINA YIDA HOLDING, CO., a Nevada**
13 **corporation,**

14 **Petitioner,**

15 **v.**

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

22 **Respondents.**

Case No. A-16-746732-P

Dept. No. XXVII

**FIRST AMENDED PETITION FOR
FAIR VALUE DETERMINATION**

23 Petitioner China Yida Holding, Co., alleges as follows:

24 **I. PARTIES**

25 1. Petitioner China Yida Holding, Co. ("CYH") is a Nevada domestic corporation
26 headquartered in China.

27 2. Respondent Pope Investments, LLC ("Pope") is a Delaware limited liability
28 company, and claims to be the beneficial owner of a total of 223,080 shares of CYH stock.

3. Respondent Pope Investments II, LLC ("Pope II") is a Delaware limited liability
company, and claims to be the beneficial owner of a total of 678,713 shares of CYH stock.

4. Respondent Annuity & Life Reassurance, Ltd., is a limited company, whose
place of domestication is currently unknown, but that on information and belief is

1 headquartered in Bermuda. Annuity & Life Reassurance, Ltd. claims to be the beneficial
2 owner of a total of 22,722 shares of CYH stock.

3 **II. JURISDICTION AND VENUE**

4 5. Jurisdiction in this Court is appropriate under Article 6 of the Nevada
5 Constitution and NRS 92A.490(4).

6 6. The amount in controversy is in excess of \$10,000.

7 7. Venue is proper in the Eighth Judicial District Court pursuant to NRS
8 92A.490(2) because CYH's registered office is located in Clark County, Nevada.

9 **III. GENERAL ALLEGATIONS**

10 8. CYH is a diversified entertainment enterprise focused on China's media and
11 tourism industries. CYH is headquartered in Fuzhou City, Fujian Province, China.

12 9. On or about April 12, 2016, CYH and China Yida Holding Acquisition Co.
13 entered into an Amended and Restated Agreement and Plan of Merger.

14 10. On July 8, 2016, CYH effectuated the merger transaction in which China Yida
15 Holding Acquisition Co. was merged with and into CYH, with CYH continuing as the
16 surviving entity.

17 11. Prior to the merger, CYH stock was publicly traded on the NASDAQ under the
18 ticker symbol CNYD.

19 12. Each Respondent in this action was, or claims to be, a beneficial owner of CYH
20 stock.

21 13. Cede & Co. operates a clearing house that holds shares of stock in its name in
22 order to expedite stock transfers.

23 14. Some, or all, of Respondents' shares were held in the name of Cede & Co.

24 15. On July 15, 2016, CYH caused a dissenter's rights notice to be sent to
25 Respondents.

26 16. On August 2, 2016, CYH received Demands for Payment from each of the
27 Respondents.

28 17. The Demands for Payment from Respondents certified that each of the

Respondents acquired beneficial ownership of all shares of CYH stock held by Respondents.

18. Respondents also delivered stock certificates representing Respondents' shares of CYH stock.

19. Although Pope II claims to be a beneficial owner of 678,713 shares of CYH stock, Pope II delivered a single stock certificate to CYH for 302,713 shares of CYH stock.

20. Pursuant to NRS 92A.460, CYH estimated the fair value of its common stock, based upon an independent third party valuation, to be \$3.32 per share, and paid Respondents the fair value of their purported shares.

21. On September 21, 2016, Respondents sent CYH a Dissenter's Estimate of Fair Value and Demand for Payment, estimating the fair value of CYH stock to be \$23.28 per share, and demanding payment based on their estimated fair value, less payments already received.

FIRST CLAIM FOR RELIEF
(Fair Value Determination)

22. CYH incorporates by reference each of the allegations previously stated in this Petition as though set forth fully herein.

23. Pursuant to NRS 92A.490, if a demand for payment remains unsettled, the subject corporation shall commence a proceeding within sixty (60) days after receiving the demand and petition the court to determine the fair value of the shares and accrued interest.

24. Each Respondent has demanded payment in varying amounts from CYH.

25. This Petition is timely because each Respondent's demand was made less than sixty (60) days prior to the date of this Petition.

26. Prior to the merger with China Yida Holding Acquisition Co., an independent third party calculated the fair value of CYH stock as \$3.32 per share.

27. As a result, CYH stockholders are entitled to be paid \$3.32 per share.

28. CYH seeks a judicial determination of the fair value of CYH stock prior to the merger and confirmation from the Court that the fair value prior to the merger was \$3.32 per share.

29. As a result of Respondents' actions, CYH was forced to initiate this action.

1 CYH is entitled to an award of its reasonable attorney's fees and costs associated with this
2 action.

3 **IV. PRAYER FOR RELIEF**

4 WHEREFORE, CYH prays for relief against Respondents as follows:

- 5 1. For a judicial determination that the fair value of CYH stock prior to the merger
6 was \$3.32 per share.
- 7 2. For all of CYH's attorney's fees, costs and interest according to law; and
- 8 3. For such other and further relief in CYH's favor as this Court deems just and
9 proper.

10 DATED this 6th day of January, 2017.

11 HOLLAND & HART LLP

12 /s/J. Robert Smith

13 J. Robert Smith, Esq. (SBN 10992)
14 Andrea Champion, Esq. (SBN 13461)
15 9555 Hillwood Drive, 2nd Floor
16 Las Vegas, NV 89134
17 *Attorneys for Petitioner*
18
19
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28

PROOF OF SERVICE

Pursuant to NRCP 5(b), I, Gaylene Ball, certify as follows:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

I am readily familiar with Holland & Hart's practice for collection and processing of: HAND DELIVERIES, FACSIMILES and OUTGOING MAIL. Such practice in the ordinary course of business provides for the delivery or faxing and/or mailing with the United States Postal Service, to occur on the same day the document is collected and processed.

On January 6, 2017, I caused the foregoing **FIRST AMENDED PETITION FOR FAIR VALUE DETERMINATION** to be served by the following method:

☒ U.S. Mail: a true copy was placed in Holland & Hart LLP's outgoing mail in a sealed envelope addressed as follows:

Peter L. Chasey, Esq.
Casey Law Offices
3295 N. Fort Apache Road
Suite 110
Las Vegas, NV 89129

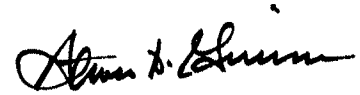
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct, and that this declaration was executed on January 6, 2017.

/s/Gaylene Ball
Gaylene Ball

Attachment 2

Response to First Amended Petition for Fair Value Determination

Feb. 6, 2017


CLERK OF THE COURT

RESP

PETER L. CHASEY, ESQ.
Nevada Bar No. 007650

CHASEY LAW OFFICES

3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129
Tel: (702) 233-0393 Fax: (702) 233-2107
email: peter@chaseylaw.com

Attorney for Respondents

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHINA YIDA HOLDING CO., a Nevada corporation,

Petitioner,

vs.

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.

) CASE NO.: A-16-746732-P

) DEPT NO.: XXVII

**RESPONSE TO FIRST AMENDED
PETITION FOR FAIR VALUE
DETERMINATION**

Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life
Reassurance, Ltd. (collectively "Pope Investments") hereby respond to Petitioner China Yida
Holding Co.'s (hereinafter "China Yida") First Amended Petition for Fair Value Determination.

PARTIES

1. Responding to Paragraph 1, Pope Investments admits the allegations made therein
and alleges that, on information and belief, China Yida's assets, officers, and directors, are all
located in China.

1 2. Responding to Paragraph 2, Pope Investments, LLC was, at the time of the merger at
2 issue in this case, the beneficial owner of 223,080 shares of China Yida common stock.

3
4 3. Responding to Paragraph 3, Pope Investments II, LLC was, at the time of the merger
5 at issue in this case, the beneficial owner of 678,713 shares of China Yida common stock.

6 4. Responding to Paragraph 4, Annuity & Life Reassurance, Ltd. was at the time of the
7 merger at issue in this case, the beneficial owner of 22,722 shares of China Yida common stock.

8
9 **JURISDICTION AND VENUE**

10 5. Responding to Paragraph 5, Pope Investments admits that the Eighth Judicial District
11 Court of Clark County, Nevada has jurisdiction to hear this case.

12 6. Responding to Paragraph 5, Pope Investments admits the amount in controversy is
13 more than \$10,000.

14 7. Responding to Paragraph 6, Pope Investments admits that venue for this matter is
15 proper in the Eighth Judicial District Court of Clark County, Nevada.

16
17 **GENERAL ALLEGATIONS**

18
19 8. Responding to Paragraph 7, Pope Investments admits that China Yida is
20 headquartered in Fujian Province in China. Pope admits and alleges that China Yida develops,
21 operates, and manages properties in the Fujian and Jiangxi provinces in China, including natural,
22 cultural, and historical tourist destinations and theme parks.

23 9. Responding to Paragraph 9, Pope Investments admits the allegations therein.

24 10. Responding to Paragraph 10, Pope Investments admits the allegations therein.

25 11. Responding to Paragraph 11, Pope Investments admits the allegations therein.

1 12. Responding to Paragraph 12, Pope Investments admits and alleges that the
2 Respondents herein are the beneficial owners of 924,515 shares of China Yida common stock.

3
4 13. Responding to Paragraph 13, Pope Investments admits the allegations therein.

5 14. Responding to Paragraph 14, Pope Investments admits that at the time of the merger
6 at issue in this case:

7 a. Pope Investments, LLC was the beneficial owner of 223,080 shares of China
8 Yida common stock, all of which was held in the name of nominee, Cede & Co.

9
10 b. Pope Investments II, LLC was the beneficial owner of 678,713 shares of China
11 Yida common stock, with 302,713 shares held in the name of nominee, Cede
12 & Co. and 376,000 shares held in book entry form with China Yida's transfer
13 agent, American Stock & Transfer Company.
14

15 c. Annuity & Life Reassurance, Ltd. was the beneficial owner of 22,722 shares of
16 China Yida common stock, all of which was held in the name of nominee,
17 Cede & Co.
18

19 15. Responding to Paragraph 15, Pope Investments admits the allegations therein.

20 16. Responding to Paragraph 16, Pope Investments admits the allegations therein.

21 17. Responding to Paragraph 17, Pope Investments admits the allegations therein.

22 18. Responding to Paragraph 18, Pope Investments admits depositing stock certificates
23 representing all shares of common stock in China Yida beneficially held by all Respondents, with the
24 exception that no stock certificates were deposited or needed to be deposited for the 376,000
25 uncertificated shares of China Yida stock owned by Pope Investments II, LLC held in book entry form
26 with China Yida's transfer agent, American Stock & Transfer Company.
27
28

1 19. Responding to Paragraph 19, Pope Investments admits depositing stock certificates
2 representing all shares of common stock in China Yida beneficially held by all Respondents, with the
3 exception that no stock certificates were deposited or needed to be deposited for the 376,000
4 uncertificated shares of China Yida stock owned by Pope Investments II, LLC held in book entry form
5 with China Yida's transfer agent, American Stock & Transfer Company.
6

7 20. Responding to Paragraph 20, Pope Investments admits that China Yida estimates the
8 fair value of China Yida stock to be \$3.32 per share, but denies that \$3.32 per share is the fair value
9 of China Yida common stock pursuant to NRS 92A.320.
10

11 21. Responding to Paragraph 21, Pope Investments admits demanding \$23.28 per share,
12 less payments already received from China Yida. Pope Investments alleges that \$23.28 per share is
13 the fair value of China Yida common stock pursuant to NRS 92A.320.
14

15 **FIRST CLAIM FOR RELIEF**
16 **(Fair Value Determination)**

17 22. Responding to Paragraph 22, Pope Investments repeats its responses set forth above.

18 23. Responding to Paragraph 23, Pope Investments admits the allegations therein.

19 24. Responding to Paragraph 24, Pope Investments admits the allegations therein.
20

21 25. Responding to Paragraph 25, Pope Investments admits the allegations therein.

22 26. Responding to Paragraph 26, Pope Investments denies the allegations therein.

23 27. Responding to Paragraph 27, Pope Investments denies the allegations therein.
24

25 28. Responding to Paragraph 28, Pope Investments denies the allegations therein and
26 seeks a judicial determination that the fair value of China Yida's common stock was \$23.28 per
27 share immediately prior to the merger at issue in this case and requests that judgment be entered
28 in favor of Pope Investments and against China Yida for the fair value of all 924,515 shares

1 beneficially owned by Pope Investments immediately prior to the merger at issue in this case, with
2 interest, costs, and attorneys' fees.

3
4 29. Responding to Paragraph 29, Pope Investments denies the allegations therein and
5 requests that judgment be entered in favor Pope Investments and against China Yida for fair value
6 of all shares beneficially owned by Pope Investments with interest, costs, and attorneys' fees.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity &
10 Life Reassurance, Ltd. pray for relief and judgment as follows:

- 11 A. For a judicial determination that the fair value of shares of China Yida common stock
12 was \$23.28 per share,
13
14 B. For judgment against China Yida representing the fair value of the 924,515 shares of
15 China Yida common stock beneficially owned by Respondents at the time of the
16 merger at issue in this case,
17
18 C. For an award of interest, costs, and attorneys' fees according to Nevada law,
19 including but not limited to NRS 92A.500, and
20
21 D. For such other and further relief as this Court finds just and proper.

22 Dated this 6th day of February, 2017.

23 CHASEY LAW OFFICES

24 

25 Peter L. Chasey, Esq.

26 Nevada Bar No. 007650

27 3295 N. Fort Apache Rd., Ste. 110

28 Las Vegas, NV 89129

Tel: (702) 233-0393 Fax: (702) 233-2107

Email: peter@chaseylaw.com

Attorney for Respondents

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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that on the 6th day of February, 2017, I served a true and complete copy of the foregoing **RESPONSE TO FIRST AMENDED PETITION FOR FAIR VALUE DETERMINATION** upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules:

J. Robert Smith, Esq.
Andrea Champion, Esq.
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
(702) 669-4600 Phone
(702) 669-4650 Fax
Attorneys for Petitioner
CHINA YIDA HOLDING CO.


AN EMPLOYEE OF CHASEY LAW OFFICES

1 **IAFD**

2 PETER L. CHASEY, ESQ.

3 Nevada Bar No. 007650

4 **CHASEY LAW OFFICES**

5 3295 N. Fort Apache Road, Suite 110

6 Las Vegas, Nevada 89129

7 Tel: (702) 233-0393 Fax: (702) 233-2107

8 email: peter@chaseylaw.com

9 Attorney for Respondents

10 POPE INVESTMENTS, LLC, POPE INVESTMENTS II, LLC, and

11 ANNUITY LIFE & REASSURANCE, LTD.

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CHINA YIDA HOLDING CO., a Nevada corporation,

) CASE NO.: A-16-746732-P

) DEPT NO.: XXVII

15 Petitioner,

16 vs.

) **INITIAL APPEARANCE FEE DISCLOSURE**
) **(NRS CHAPTER 19)**

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

21 Respondents.

22 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties
23 appearing in the above entitled action as indicated below:

24 POPE INVESTMENTS, LLC \$223.00
25 POPE INVESTMENTS II, LLC \$ 30.00
26 ANNUITY & LIFE REASSURANCE, LTD. \$ 30.00
27 **TOTAL REMITTED: \$283.00**

28 Dated this 6th day of February, 2017.

CHASEY LAW OFFICES

Peter L. Chasey, Esq.

Nevada Bar No. 007650

3295 N. Fort Apache Rd., Ste. 110

Las Vegas, NV 89129

Attachment 3

Order Granting Petitioner China Yida Holding Co.'s Motion for Summary Judgment

Sept. 9, 2019



1 **OGSJ**

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

3 HOLLAND & HART LLP

4 9555 Hillwood Drive, 2nd Floor

5 Las Vegas, Nevada 89134

6 Phone: (702) 669-4619

7 Fax: (702) 475-4199

8 jrsmith@hollandhart.com

9 *Attorneys for Petitioner China*

10 *Yida Holding, Co.*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CHINA YIDA HOLDING, CO., a Nevada
14 corporation,

15 Petitioner,

16 v.

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

23 Respondents.

Case No. A-16-746732-P

Dept. No. XXVII

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

27 This matter came before the Court on a Motion for Summary Judgment (the "Motion")
28 filed by Petitioner China Yida Holding, Co. (hereinafter "CYH"). On July 18, 2019, this Court
heard oral argument on the Motion. J. Robert Smith, Esq. of Holland & Hart, LLP appeared on
behalf of CYH. Peter L. Chasey, Esq. of the law firm Chasey Law Offices, appeared on behalf
of the Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life
Reassurance, Ltd. (collectively "Respondents"). After carefully considering the pleadings,
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
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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:

18
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:

8
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
14 Provisions will result in an irrevocable loss of such right. Shareholders seeking
15 to exercise their statutory right of dissent are encouraged to seek advice from
16 legal counsel. Please see "Dissenters' Rights for Holders of Common Stock"
17 beginning on page 66 for additional information.

18 14. The notice to stockholders also included a "Questions and Answers" section to
19 "address briefly some question [stockholders] may have regarding the special meeting and the
20 Merger." Included within the Questions and Answers section was the following:

21 Q: Am I entitled to exercise dissenters' or appraisal rights instead
22 of receiving the Merger Consideration for my shares of
23 Company Common Stock?

24 A: Yes, Nevada law provides that you may dissent from the
25 disposal of assets. If you do not comply with the procedures
26 governing dissenters' rights set forth in the Nevada Revised
27 Statutes and explained elsewhere in this proxy statement, you
28 may lose your dissenters' and appraisal rights. Shareholders
considering exercising dissenter's rights should consult legal
counsel. You are urged to review the section of this proxy
statement entitled "Dissenters' Rights for Holders of Common
Stock beginning on page 66 and Annex E for a more complete
discussion of dissenters' rights.

1 15. On June 14, 2016, each of the Respondents sent a letter to CYH notifying it of
2 their intent to demand payment for their shares if the proposed merger transaction was approved
3 at the special meeting of the stockholders.

4 16. At the special meeting on June 28, 2016, the Merger was approved and adopted
5 by CYH's stockholders.

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 _____ 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.

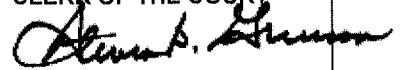
Approved as to form:

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

Attachment 4

Notice of Entry of Order Granting Petitioner China Yida Holding Co.'s
Motion for Summary Judgment

Sept. 9, 2019



1 **NEOJ**

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

3 **HOLLAND & HART** LLP

4 9555 Hillwood Drive, 2nd Floor

5 Las Vegas, NV 89134

6 Phone: (702) 669-4600

7 Fax: (702) 669-4650

8 *Attorneys for Petitioner*

9 **DISTRICT COURT**

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

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

10 Peter L. Chasey, Esq.
11 CHASEY LAW OFFICES
3295 N. Fort Apache Road, Suite 110
Las Vegas, Nevada 89129

12 *Attorneys for Respondents*

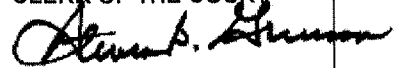
13 ☐ U.S. Mail: by depositing same in the United States mail, first class postage fully
14 prepaid to the persons and addresses listed below:

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

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

17
18 /s/ Yalonda Dekle
19 An Employee of HOLLAND & HART LLP

20
21
22 13522897_v1
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25
26
27
28



1 **OGSJ**

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

3 HOLLAND & HART LLP

4 9555 Hillwood Drive, 2nd Floor

5 Las Vegas, Nevada 89134

6 Phone: (702) 669-4619

7 Fax: (702) 475-4199

8 jrsmith@hollandhart.com

9 Attorneys for Petitioner China

10 Yida Holding, Co.

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CHINA YIDA HOLDING, CO., a Nevada
14 corporation,

15 Petitioner,

16 v.

17 POPE INVESTMENTS, LLC, a Delaware
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21 REASSURANCE, LTD., an unknown limited
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23 Respondents.

Case No. A-16-746732-P

Dept. No. XXVII

24 **ORDER GRANTING PETITIONER**
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26 **MOTION FOR SUMMARY JUDGMENT**

27 This matter came before the Court on a Motion for Summary Judgment (the "Motion")
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behalf of CYH. Peter L. Chasey, Esq. of the law firm Chasey Law Offices, appeared on behalf
of the Respondents Pope Investments, LLC, Pope Investments II, LLC, and Annuity & Life
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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
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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13 and Restated Agreement and Plan of Merger ("Amended Merger Agreement").

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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:

8
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
14 Provisions will result in an irrevocable loss of such right. Shareholders seeking
15 to exercise their statutory right of dissent are encouraged to seek advice from
16 legal counsel. Please see "Dissenters' Rights for Holders of Common Stock"
17 beginning on page 66 for additional information.

18 14. The notice to stockholders also included a "Questions and Answers" section to
19 "address briefly some question [stockholders] may have regarding the special meeting and the
20 Merger." Included within the Questions and Answers section was the following:

21 Q: Am I entitled to exercise dissenters' or appraisal rights instead
22 of receiving the Merger Consideration for my shares of
23 Company Common Stock?

24 A: Yes, Nevada law provides that you may dissent from the
25 disposal of assets. If you do not comply with the procedures
26 governing dissenters' rights set forth in the Nevada Revised
27 Statutes and explained elsewhere in this proxy statement, you
28 may lose your dissenters' and appraisal rights. Shareholders
considering exercising dissenter's rights should consult legal
counsel. You are urged to review the section of this proxy
statement entitled "Dissenters' Rights for Holders of Common
Stock beginning on page 66 and Annex E for a more complete
discussion of dissenters' rights.

15. On June 14, 2016, each of the Respondents sent a letter to CYH notifying it of their intent to demand payment for their shares if the proposed merger transaction was approved at the special meeting of the stockholders.

16. At the special meeting on June 28, 2016, the Merger was approved and adopted by CYH's stockholders.

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

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.

DATED this 5 day of Sept., 2019.

Submitted by:

Approved as to form:

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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:

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