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

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Aug 11 2020 06:46 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court

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.

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ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, CASE NO. A-16-746732-P

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**JOINT APPENDIX VOLUME VIII**

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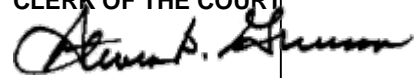
## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Boies Schiller Flexner LLP and that on the 11<sup>th</sup> day of August, 2020 I electronically filed the foregoing *Joint Appendix Volume I through Volume VIII* with the Clerk of the Court using the Supreme Court Electronic Filing System, which will send notification of such filing to the following attorneys of record:

J. Robert Smith, Esq.  
Joshua Halen, Esq.  
Attorneys for Respondents

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





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DISTRICT COURT  
CLARK COUNTY, NEVADA

CHINA YIDA HOLDING CO,

Petitioner(s),

vs.

ANNUITY & LIFE  
REASSURANCE LTD,

Respondent(s).

Case No. A-16-746732-P

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 6, 2019

***TRANSCRIPT OF PROCEEDINGS RE:***  
**RESPONDENTS' MOTION TO RETAX PETITIONER'S MEMORANDUM**  
**OF COSTS; PETITIONER'S MOTION FOR ATTORNEY'S FEES**

**APPEARANCES:**

For the Petitioner(s):

ROBERT J. SMITH, ESQ.

For the Respondent(s):

RICHARD J. POCKER, ESQ.

PETER L. CHASEY, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

1                   **LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 6, 2019**

2                   [Proceeding commenced at 1:23 p.m.]

3  
4                   THE COURT: All right. Then take China Yida first.

5                   And when you're ready, the appearances, please, from  
6 your right to left.

7                   MR. SMITH: Good morning -- or afternoon, Your Honor.  
8 Robert Smith on behalf of China Yida.

9                   THE COURT: Thank you.

10                  MR. POCKER: Your Honor, Richard Pocker on behalf of  
11 Pope Investments, Pope Investments II, and the life insurance, as  
12 well.

13                  THE COURT: Thank you.

14                  MR. CHASEY: And Peter Chasey also for the respondents.

15                  THE COURT: Thank you.

16                  All right. So we've got the -- let's see, the Petitioners'  
17 Motion for Attorneys' Fees, and then the Respondents' Motion to  
18 Retax. I would argue them in that order, unless there's a better  
19 way.

20                  MR. SMITH: That's fine, Your Honor.

21                  THE COURT: All right. Start with the petitioner's motion.

22                  MR. SMITH: Great. Thank you, Your Honor.

23                  Your Honor, we are requesting -- China Yida's requesting  
24 its reasonable attorneys' fees in this case pursuant to an offer of  
25 judgment that was made shortly after the Motion for Summary

1 Judgment upon which we prevailed -- or China Yida prevailed.

2 That motion -- or that offer --

3 THE COURT: Your motion also argued 18.010. Are you  
4 abandoning that argument today?

5 MR. SMITH: We're abandon -- I'm abandoning the 18.010  
6 for fees. I'm just looking at the offer of judgment, standard for --

7 THE COURT: Okay.

8 MR. SMITH: -- fees in this case.

9 The reason -- and we filed -- or we served, excuse me, we  
10 served an offer of judgment shortly after the Motion for Summary  
11 Judgment upon which we prevailed. That offer, though, was  
12 rejected. And then we did prevail and the respondents received  
13 nothing. And so we're moving on that basis.

14 We're seeking \$41,000 -- \$41,053.50. As you know, Your  
15 Honor, there are several factors that the Court should consider, the  
16 *Beede* factors, I know the Court's gone through these a hundred  
17 times in analyzing the offer of judgment. It's, basically, whether the  
18 claims were brought in good faith, whether the defendant's offer  
19 was reasonable in timing and amount, whether the plaintiffs'  
20 decision to reject the offer was grossly unreasonable or in bad faith.  
21 And then whether the attorneys are -- the attorneys' fees  
22 themselves are reasonable. And that would get into the *Brunzell*  
23 factors.

24 So, Your Honor, just briefly going through that, because I  
25 don't want to take up a lot of time, the question is, you know, the

1 first one is, Were these claims, you know, brought in good faith?  
2 The argument is -- well, I would argue, their -- the dissenters' rights  
3 claims were not brought in good faith, given the statute upon which  
4 we prevailed was that they had no right to dissent, but brought the  
5 dissenters' rights claim anyway. So we would argue, based on that,  
6 that that factor weighs in our favor.

7 Now, whether the offer was reasonable and made in good  
8 faith, I would also argue that that weighs in China Yida's favor. The  
9 amount was \$10,000. Recognizing that China -- or, excuse me, that  
10 Respondents Pope, they were seeking \$20 million. Okay. And I  
11 know they want to argue that, Hey, look, \$10,000 is not reasonable  
12 when we're seeking damages of \$20 million.

13 Well, I would argue, yeah, it's reasonable when you have  
14 no leg to stand on and you don't have a right to those fee -- or  
15 that -- those damages anyway as reflected in the summary  
16 judgment motion and order.

17 But I would also argue that a party who claims an  
18 outrageous amount of money to defeat or basically say, Hey you  
19 didn't offer me enough in an offer of judgment, my damages  
20 are 100 million, as ridiculous as that may be, they're 100 million,  
21 but you only offered me, you know, \$50,000, therefore you  
22 shouldn't get any fees under the Offer of Judgment Statute, that  
23 would make no sense.

24 And we would argue in this case that that excessive  
25 amount requested should not be the determinate factor on whether

1 the offer's reasonable. Instead, the offer -- what you -- what the  
2 Court should look at is the timing.

3 And we filed this Motion for Summary Judgment that  
4 gave the other side all the information necessary to decide, Hey,  
5 should we keep going forward on this or not? Because again, we're  
6 only seeking fees from that time, time forward. And we gave them  
7 the opportunity, they had all the information that they could look at  
8 and assess the risk of whether they were going -- whether they  
9 thought they were going to prevail or not. But the risk is out there.

10 And certainly, when you prevail after you've given an  
11 offer, that is presumptively a good-faith offer, because you've  
12 prevailed. And \$10,000 we were figuring at the time -- and again  
13 with timing -- is saying, Okay, we're done with discovery.  
14 Discovery's completed. We don't need -- we're not going to incur a  
15 lot more in expense and fees on a Motion for Summary Judgment,  
16 because what's going to happen after this point is we're going to go  
17 to trial -- if summary judgment fails, we go to a trial.

18 So we were thinking, this is how much money more it's  
19 really going to cost us to do -- to develop all the summary judgment  
20 arguments, and \$10,000 at the timing, given everything that was  
21 presented, discovery completed, \$10,000 was a reasonable offer in  
22 our view, Your Honor.

23 You know, and one of the arguments the Court, I'm sure,  
24 has read is that, Hey, China Yida, you should have brought you  
25 motion sooner for -- on summary judgment. I don't think that is --

1 there's any authority that says we were required to bring a Motion  
2 for Summary Judgment early in a case on a statute. In fact, had we  
3 brought that motion earlier, there's no question in my mind that the  
4 other -- Pope, the Pope parties, I'll describe them as, would have  
5 filed a 56(d) motion requesting that discovery be completed, and  
6 we would have ended up in the exact same position.

7           So saying we should have brought something earlier is  
8 not our obligation. In fact, they had the information. It's a statute.  
9 They -- it wasn't anything we were hiding, nothing we were keeping  
10 secret. The statute was there, they conducted discovery. They  
11 asked my client questions. Lots of discovery involved. So I would  
12 argue, Your Honor, that the amount and timing was appropriate  
13 and reasonable.

14           Now, was the offer to reject unreasonable? I would argue  
15 yes, I think the -- it was, given the language of the statute. It's a  
16 publicly traded company, it was clear. Publicly traded companies  
17 don't get to bring dissenter -- or shareholders of publicly traded  
18 companies don't get to bring dissenters' rights claim, period.

19           I think when you're getting an offer, based -- after that  
20 motion was filed and before your response was -- opposition was  
21 due, you get the offer and then you get to decide whether you want  
22 to accept that offer or not. You're aware of the statute, you're  
23 aware of the arguments. They rejected it. I think that the rejection  
24 was unreasonable given the circumstances, given the clear  
25 language of the statute.

1 And then finally, Your Honor, are the attorneys' fees  
2 reasonable? And again, those get to the *Brunzell* factors. I won't  
3 spend a lot of time on that. The quality of the advocate, I mean,  
4 you know our firm, Your Honor. My firm's a AV rated firm. I've  
5 been practicing 23 years. I primarily worked on the case, but I did  
6 have associates work on the case.

7 Then the character of the work performed, this was a  
8 relatively complex case, given that the company was in China. All  
9 the documents were in China, except for the SEC filings and things  
10 like that. There was a lot of financial information. We had to hire  
11 experts both in China and in the U.S. As you know, this is a case  
12 called the Battle of the Experts, it does involve a lot of expert  
13 information and analyses.

14 So the character of the work performed was relatively  
15 complex, but not super complex. The work actually performed,  
16 again, Your Honor, we did -- there was substantial written  
17 discovery, depositions, expert depositions, things like that.  
18 Standard, you know, commercial litigation case.

19 The -- and then finally, the result -- well, the result speaks  
20 for itself. When you prevail, you prevail. And we prevailed on a  
21 Motion for Summary Judgment. So I would argue that the  
22 reasonableness of \$40,000 is reasonable in this situation after the  
23 offer of judgment.

24 Of course, it wasn't solely related to -- those fees were not  
25 solely related to the summary judgment. We were preparing for

1 trial just in case. We had Motion to Strike their expert. We had  
2 some other things. So we were working diligently to prepare for  
3 trial in the event the Court declined our Motion for Summary  
4 Judgment.

5 So we are grouping those 41,000, but given the  
6 circumstances, \$41,000 is not an unreasonable amount in this case.  
7 And, Your Honor, we would ask that the Court award us attorneys'  
8 fees under the offer of judgment statute.

9 THE COURT: Thank you.

10 And Mr. Pocker or Mr. Chasey?

11 MR. POCKER: Thank you, Your Honor.

12 Picking up on some of the last things that Mr. Smith  
13 addressed, you know, he talked about all this work that they needed  
14 to do because it's a complicated case and an expert case and all the  
15 discovery involved. But again, in the end, he reaffirms that they're  
16 only seeking attorneys' fees after the date of the offer of judgment.

17 So I think it's important to look at this whole  
18 reasonableness issue, because it's always a question of  
19 reasonableness, no matter what the Rule 68 says, no matter what  
20 the case law says for a specific case. Every case is different and  
21 every reasonableness associate -- or analysis has to be unique.

22 In this case, what happened and the fees that they're  
23 seeking to get, deal with the time period after the filing of this  
24 Motion for Summary Judgment. Which, although we can debate  
25 whether it's a mixed question of fact and law or just an issue of law



1 or statutory interpretation, it was teed up for this Court's  
2 consideration when they filed that motion.

3 So the question now becomes after they serve an offer of  
4 judgment on us, what's the reasonable -- or what behavior on our  
5 part is reasonable with respect to our decision, whether to accept it  
6 or to reject it?

7 At that point in time, after all this work on this case, and  
8 all that has come out and all that is contained in the documents  
9 relative to the transaction, it is immanently reasonable for the Pope  
10 parties to sit there and say, You know, okay, you've brought that  
11 statute to our attention, but there are exceptions to that market-out  
12 exception. And as a result, we think the language of documents,  
13 the merger agreement, the way they interact, the way they are  
14 interpreted, we have a good-faith belief here that that's enough to  
15 satisfy the exception and allow us to go forward with a fair value  
16 determination.

17 That, plus the fact that we didn't file this action. We  
18 initiated the process, certainly, by exercising our dissenters' rights.

19 THE COURT: Right.

20 MR. POCKER: But China Yida for two and a half years  
21 treated this like any other fair value determination case, to the  
22 extent of engaging in discovery, engaging experts, spending a lot of  
23 money on their experts. I don't think they had a clue up until  
24 maybe a week before dispositive motions were due, that this is the  
25 way this case would ultimately resolve or that that would be their

1 argument.

2 And I say that based on the initial petition, our response --  
3 there was never any mention or debate about the market-out  
4 option. There's a Rule 16.1 case conference, which is -- typically  
5 talks about, you know, what subject areas will be subject to  
6 discovery, et cetera. No mention whatsoever of this question about  
7 whether or not it's a publicly traded company and how, under the  
8 statutory framework, that would affect the outcome.

9 So what we have here is at the last minute, I think they  
10 struck with -- or struck upon what they believed was a silver bullet  
11 to end this case.

12 But in light of -- and I'm not going to rehash the motion  
13 that's already been decided, Your Honor, but I think it's fair to say  
14 that some of the issues and -- factual issues attendant to how the  
15 merchant transaction went down did impact the ultimate decision  
16 there. It wasn't a straight Oh-my-God-you-win-for-sure type of  
17 analysis. But, you know, we'll leave that to the appellate courts.

18 That being the case, this close issue, all kinds of  
19 representations and then transactional documents that dissenters'  
20 rights exist, in fact, they have a -- it's all in our pleadings. But there  
21 was a question-and-answer page sent out to shareholders. And,  
22 you know, Do I have dissenters' rights? Yes, you do. I don't want  
23 to rehash all of that.

24 But suffice it to say that that makes this a closer issue, at  
25 least before you ruled, than the petitioner wants it to sound.

1           So given that context, was it reasonable for Pope to say,  
2 You know what? We don't think their motion's right, let's file our  
3 response, let's let the judge decide. And instead of foregoing the  
4 possibility that you may have disagreed with their position in  
5 exchange for an additional penny a share, it's imminently  
6 reasonable, Your Honor. And it's imminently reasonable in light of  
7 all the discovery and how the parties had treated this case right up  
8 to the date of that motion.

9           And I know they're not trying to get attorneys' fees for all  
10 of that activity, but that activity's importance is that it frames the  
11 context here that this was, even in their view, a very close case.

12           And Pope cannot be faulted for sitting there and saying,  
13 yeah, I just can't give up my day in court with the judge for  
14 additional penny a share. Of course, once those 14 days go by, we  
15 can't revisit that decision and things unveiled as they unveiled.

16           But I think it's important that that reasonableness be  
17 cabined around the actual decisions that are important here. Not  
18 whether or not we were reasonable in seeking our dissenters'  
19 rights, not whether or not we had the right expert or any of this  
20 other stuff. It's were we reasonable to insist on our right to at least  
21 respond to this motion and see what you had to say? And, you  
22 know, that 14 days is gone before all of that happened. So I think  
23 Pope behaved reasonably in that context.

24           As to the amount, you know, we've mentioned in our  
25 papers, it's -- their offer was the equivalent of saying we offer you

1 to stand up and say, We're wrong and we lose. And that's not the  
2 purpose of Rule 68. Rule 68 isn't there -- and we've had this debate  
3 for years in politics and law and everywhere else about the English  
4 rule and who should pay whose attorneys' fees and that kind of  
5 thing. This rule is set up to not just punish somebody or reward  
6 somebody based on who wins or loses in the litigation; it's  
7 designed to streamline the process so that reasonable settlements  
8 can occur so the resources of the court are not wasted. And in this  
9 context, nothing Pope did wasted any court resources.

10 On the other hand, what the petitioner -- and what they  
11 should not be rewarded for here is did they have to file their Motion  
12 for Summary Judgment the minute they had an inkling it might  
13 work? No. We all know that.

14 But they treated this proceeding as if it were a full-blown  
15 fair value determination for two and a half years. And there was a  
16 lot of waste on both sides in light of what the ultimate result was.  
17 And as a consequence, if we're looking at this from a, Oh, my God,  
18 those Pope people, they multiplied the proceedings and they need  
19 to pay attorneys' fees, compared to what happened before, it's  
20 nothing.

21 The -- I just wanted to comment on a couple of things that  
22 were in Mr. Smith's motion and reply. He seems to adopt the  
23 California position that it's prima facie reasonable that their offer  
24 meets the reasonableness test simply because in the end, we did  
25 not get a result as good as the offer. Well, that presumption flies in

1 the face of the reasonableness inquiry and we think it's worth very  
2 little assessment in the Court's decision today.

3 It's also important to remember that there is an ultimate  
4 prevailing legal argument was never really expressed until the time  
5 of the Motion for Summary Judgment. And again, that feeds into  
6 the reasonableness of my client's conduct.

7 The -- when you look back at what the basis of their  
8 summary judgment motion is, which is 92A.390, and the fact that it  
9 does raise these issues about whether or not China Yida actually  
10 gave us dissenters' rights, even if they didn't have to, it is enough  
11 of a factual legal question that Pope was justified moving forward  
12 with that.

13 Another fact -- or another consideration for determining  
14 whether everyone's behavior in this case is reasonable is -- and it'll  
15 be discussed in greater lengths, I'm sure, in the analysis of costs.  
16 But Title 92A.500(2) actually has a mechanism in these types of  
17 proceedings by which the Court can award expert fees and  
18 attorneys' fees. And one of the caveats in that section is that the --  
19 those exercising the dissenters' rights have to behave arbitrarily or  
20 in bad faith.

21 So they've already kind of thought about what instances --  
22 the legislature, when they adopted all this -- in which instances  
23 would an award of attorneys' fees be reasonable? And I think when  
24 you see there's no reason for that provision to be in existence if it  
25 weren't meant to guide a court in deciding whether a particular

1 situation, whether under Rule 68 or not, was reasonable with  
2 respect to an award of attorneys' fees.

3 And I think that -- I know we disagree with the petitioner  
4 on whether or not that provision precludes them from getting  
5 attorneys' fees. But at the very least, what it does is give us a flavor  
6 for what the statutory framework contemplates as being a situation  
7 in which attorneys' fees would be awarded.

8 The -- as to the specifics of their request, the post-offer  
9 work that they want to be reimbursed for, to the extent that they're  
10 talking about the Motion to Strike the expert witness, which is  
11 factored into that \$41,000, I think that their obligation to file such a  
12 motion is certainly not mandatory. It really isn't typical pretrial  
13 work in the sense that these are judge alone trials. You can always  
14 challenge whether or not an expert's opinion is admissible, whether  
15 or not there's a factual basis, whether or not that expert has come  
16 to the right conclusion.

17 So a Motion in Limine to exclude our expert, Joe  
18 Leauanae, was totally unnecessary. And if we really believe that  
19 they were acting reasonably after filing the Motion for Summary  
20 Judgment, they would have held off on the expenditure of their  
21 resources for something like that. It's not part of necessary trial  
22 preparation.

23 The -- they cited the *La Forge* case, but its impact in this  
24 case is really not that great. Mr. Smith has alluded to the fact that  
25 what we're trying to say is, Oh, you know, you didn't tell us you

1 were going to file this motion. We didn't know this was an issue,  
2 this was a defense, this was something that -- almost making it  
3 sound as if we're arguing that we were sandbagged; that's not the  
4 importance. And that's where *La Forge* kind of hones in on. But  
5 that's not the importance of the fact that they never raised this  
6 earlier.

7           The fact that they never raised it earlier is part of the  
8 context in which Pope is looking at this and thinking, you know,  
9 Well, is that a real argument? Is that a successful argument? And if  
10 so, why didn't they bring it years ago? And why do they never  
11 mention any of this? It colors the reasonableness as to whether or  
12 not Pope was right to insist on having that 92A.390 issue  
13 adjudicated.

14           The -- I take it if we do the Motion to Retax Costs, we'll  
15 address the --

16           THE COURT: Separately.

17           MR. POCKER: -- cost issues as well. But I just wanted to  
18 highlight that NRS 92A.500 does have this mention of --

19           THE COURT: It does.

20           MR. POCKER: -- provision -- of a provision in which it  
21 turn --

22           THE COURT: And I brought it in in case -- I have the  
23 statute with me if you -- I have the statute with me if you want to  
24 talk about it more.

25           MR. POCKER: Okay. All right. Thank you very much.

1 THE COURT: And the reply, please?

2 MR. SMITH: Very quickly, Your Honor.

3 And I apologize earlier if I don't stand at the lectern. I  
4 don't know what your --

5 THE COURT: Wherever --

6 MR. SMITH: -- the Court's preference is.

7 THE COURT: Wherever all of you are most comfortable.

8 MR. SMITH: But just really quickly.

9 First of all, just on the 500, the 92A.500, there is a specific  
10 carveout for Rule 68. I'll leave it at that.

11 With respect to -- if we're going to look at the history, then  
12 let's look at the history. My client had previously paid Pope over \$3  
13 million in this case. They weren't just asking, you know, it's not like  
14 they got nothing; they got \$3 million initially, over \$3 million for  
15 their shares.

16 This -- so when you say -- or when counsel indicates that  
17 was it worth an additional one cent per share? Yeah, maybe.  
18 Maybe it was worth -- because it's worth zero. You weren't entitled  
19 to anything. So yes, you know, that is reasonable. So I want to  
20 point that out, given the history of the amounts of money that have  
21 been paid, the fact that Pope didn't think that offer was reasonable  
22 because of a Motion for Summary Judgment, they thought they  
23 might prevail on a Motion for Summary Judgment or, you know,  
24 defeat it, I should say, yeah, that's what lots of -- most parties feel in  
25 Motions for Summary Judgment.



1           They roll the dice. They gamble despite all the risks. It's  
2 up to the Court to decide whether, at the timing and the amount,  
3 given the information that was presented to everyone, and the fact  
4 that this was an open schedule, we weren't -- again, and I  
5 appreciate that, that we were trying to hide anything, it's there. We  
6 have strategic reasons why we didn't bring it up early. And -- or  
7 earlier.

8           And so, you know, those strategic reasons should not  
9 impact or prevent us from recovering the attorneys' fees from the  
10 offer of judgment. The statute's clear it's authorized, if we make an  
11 offer and it's rejected, provided we meet all these other factors, we  
12 should be entitled to our attorneys' fees. Thank you, Your Honor.

13           THE COURT: Thank you both.

14           This is the Petitioner's Motion for Attorneys' Fees. The  
15 matter is submitted. This is the ruling of the Court.

16           The matter is considered only under NRCP 68. The  
17 motion will be granted for the following reasons:

18           The petition went back to November 15 of 2016. At the  
19 time the offer was made, the Motion for Summary Judgment had  
20 been filed after the close of discovery on May 22, 2019. The offer of  
21 judgment was done strategically so that you could accept the offer  
22 before you had to fill out an opposition. Your opposition was filed  
23 on June 26th.

24           So the timing -- I think the timing and amount were fair,  
25 especially given the result. The offer was made in good faith. The

1 decision to reject was unreasonable. It was not made in bad faith.  
2 It was just unreasonable given the fact that the plaintiff had set out  
3 the argument under the summary judgment that I found compelling  
4 at that point.

5 Now, with regard to the amount of the fees, let me -- with  
6 the amount of the fees, the Motion to Strike expert was filed on  
7 the 12th of July 2019, and again, that's after the expiration of the  
8 offer of judgment. Trial was set on August 26th, so the plaintiff had  
9 an obligation to move the case forward. And I do find that it was  
10 necessary for them to do that.

11 The fees sought here, \$41,053.50, are reasonable amount.  
12 I looked at the rates, I looked at the billings that were attached. It --  
13 the hourly rates for the partner of 435, the associate 250 and  
14 paralegal 205, while I would have liked to have seen more  
15 pyramided -- pyramiding so that less time was spent at the higher  
16 rate, this was a sophisticated litigation and it required sophisticated  
17 lawyers on both sides. To the hourly rate here I could justify very  
18 easily. And I would justify the same for the defendant if the tables  
19 were turned.

20 Especially since there were an effort made to dilute those  
21 hourly rates with use of the associate and the paralegal. The time  
22 and amount spent, I didn't like the block billing, you know, I had  
23 whole days, six and seven hours sometimes. But the billing  
24 themselves, even in those day-long activities was in 10th-of-an-hour  
25 rates. So I believe that the hours of the time was reasonable.

1           The skill necessary to litigate this case and the result  
2 obtained also justified the rates as they were incurred.

3           So for those reasons, the motion will be granted.

4           And Mr. Smith will prepare the order. Mr. Pocker and  
5 Chasey will have the – Mssrs. will have the ability to review and  
6 approve the form of that.

7           Let's now take that Motion to Retax.

8           MR. POCKER: Thank you, Your Honor.

9           I think the submissions so far, the motion, the response,  
10 and the reply certainly flesh out a lot of the arguments on both  
11 sides. I'm not going to go into huge detail. But I do want to  
12 highlight the effect --

13          THE COURT: You made an --

14          MR. POCKER: -- of NRS 92A, section --

15          THE COURT: You made an excellent record with your  
16 papers. But I don't want you to feel cut off here, either. Did you  
17 hear me?

18          MR. POCKER: Yes. Yes.

19          THE COURT: Okay. Because this beautiful courtroom, the  
20 sound bounces around. I feel like I'm screaming and half the time  
21 people don't hear me.

22          MR. POCKER: No, it is a little difficult in here. But I got  
23 that, yes. Thank you, Your Honor.

24          Well, the effect of NRS 92A.500(1) is just very clear that in  
25 matters such as these, the corporation bears such costs in the

1 absence of vexatious conduct, arbitrariness on the part of my client,  
2 or bad faith.

3 Now, the petitioner has argued that this provision isn't the  
4 final word with respect to the assessment of costs, hereby arguing  
5 that this was not a fair value determination within the meaning of  
6 the statute. It's just a completely ludicrous argument given the  
7 entire record of proceedings in this case. It was filed as a fair value  
8 determination in accordance with the dissenters' rights and the  
9 exercise of those rights.

10 The fact that it resolved itself by summary judgment does  
11 not change the character of the receipt. And as a result, if that's  
12 their only argument for getting outside of NRS 92A.500, it should  
13 fail.

14 It clearly proceeded as a fair value determination; it was  
15 filed by China Yida; it was litigated with no indication in the  
16 pleadings that the market out exception was somehow applicable in  
17 this case. There was never any assertion that the Court lacked  
18 jurisdiction, because there should have never been a fair value  
19 determination. And all of the notices that were sent to the  
20 respondent mentioned judicial appraisal proceedings and that  
21 phrase.

22 So the rationale behind -- it's consistent with the rationale  
23 behind this rule, that given that it's here to protect dissenting  
24 shareholders, it makes sense that when you have to go through this  
25 type of proceeding, no matter how it ends, that it's the corporation

1 that is in the best position to bear the costs, and unless you  
2 determine, of course, that the dissenting shareholders are acting  
3 inappropriately, vexatiously, and arbitrarily.

4 We've never seen an allegation from China Yida that we  
5 were acting in any of those three characterizations. So as a result,  
6 there's no basis for going outside of this provision.

7 The petitioner has also, in kind of the alternative -- and I  
8 think if the argument has to be made in the alternative, that if they  
9 are precluded from an award of costs pursuant to this statutory  
10 provision, that they must rely on the Rule 68 offer of judgment as a  
11 basis for costs. And certainly that's a different argument.

12 They can't have it both ways. They cannot have the costs  
13 under the normal cost statute or under Rule 68 and also argue that  
14 NRS 92A.500 applies. So it's really one or the other. And I think if  
15 you look at their Rule 68 argument, it's limited -- any recovery they  
16 have of costs there would be limited to costs after June 13th of  
17 the 2019. And that's a significantly smaller number. Now, the  
18 elephant in the room, of course, is the expert costs that they allege  
19 to have incurred.

20 Now, all of those were before the time of the offer of  
21 judgment. So there's no Rule 68 basis there. We're not looking at  
22 this as a usual costs case, where it's a garden variety type of  
23 litigation. We have specific cost provisions, which I've already  
24 highlighted and they're set forth in the pleadings. And there's a  
25 specific provision there too, which talks about expert costs. And it's

1 the next paragraph down. And it again is a situation in which the  
2 legislature advises the Court that in a situation where the dissenting  
3 shareholders may have behaved in a vexatious or bad faith manner,  
4 then you might think about hitting them with the expert costs. But  
5 that didn't happen here, and there's no real good-faith allegation  
6 that that's what happened here.

7           The fact that the expert costs are mentioned up in the  
8 extremely restrictive cost provision that we've just talked about is  
9 because it's consistent with the policy behind this whole  
10 framework, which is -- and this goes to their point about battle of  
11 the experts. They constantly say, Well, every one of these cases is  
12 a battle of the experts. And it's necessary to go out and hire  
13 expensive experts, because you've got to have a battle of the  
14 experts.

15           Well, the flip side of that is the legislature realizes that.  
16 And they realize you aren't going to do this kind of a case without  
17 having experts. Well, who's better positioned to bear the cost of  
18 the experts than the corporation whose shares must, first of all, as a  
19 matter of due course, be valued -- evaluated certainly by the  
20 corporation before it even engages in the transaction, because they  
21 know there will be dissenters that might want to contest the  
22 valuation.

23           So it makes sense that this cost structure puts those costs,  
24 including expert costs, on the corporation except in these extreme  
25 situations in which the shareholders are behaving vexatiously.

1           So it all hangs together that in these particular situations,  
2 it's not a Rule 68 analysis, it's not your typical case where, yeah,  
3 okay, the winner gets to file a bill of costs and collect. We've got a  
4 specific situation that was set up here, and under these  
5 circumstances, including expert costs, all these costs presumptively  
6 go to the corporation.

7           The -- we've had a discussion in the pleadings already  
8 about whether or not the expert costs were necessary, given that in  
9 the end, this whole thing wound up being simply summary  
10 judgment on -- based on statutory provision. I'll leave that to the  
11 Court's submission. But none of that \$51,000 worth of work had  
12 any impact whatsoever on how this case turned out.

13           The argument that they've made several times, in fact,  
14 when looking at the pleadings earlier, we were highlighting the  
15 words necessary and necessity, because they seem to occur  
16 throughout our opponent's briefing.

17           But the bottom line is this statutory regime already  
18 recognizes that yes, experts are necessary, and here's how we're  
19 going to deal with them. They're going to be amongst the costs  
20 that are wrapped up in the costs that are born by the corporation.

21           The -- I don't think it's an accident that the \$1,500  
22 limitation on expert fees continues to survive over all these years  
23 when almost every time people are coming in and say, Well, my  
24 expert was way more expensive than \$1,500. I think it is a -- almost  
25 a presumption that, you know, if you think you need experts, that's

1 fine. But they need to be reasonable, they need to be necessary,  
2 and the default position is that may be something you have to pick  
3 up your own costs on.

4 And that's the situation here. I think the legislature wisely  
5 saw what type of proceeding this is and they treat it a little  
6 differently than your typical civil case, and as a result you've  
7 already awarded them attorneys' fees, but as to costs, they should  
8 get none.

9 THE COURT: So the bottom line of what you're asking in  
10 your Motion to Retax is not to eliminate all costs, but just to -- are  
11 you -- do you admit --

12 MR. POCKER: No, I --

13 THE COURT: -- that they should be allowable after the  
14 offer of judgment? I'm a little confused by your argument.

15 MR. POCKER: Well, our argument is that --

16 THE COURT: No costs?

17 MR. POCKER: No costs, because that provision that we're  
18 relying upon is so specific as to costs in these type of proceedings  
19 that the Rule 68 carveout that Mr. Smith just talked about  
20 notwithstanding, an award of costs should not be made in this  
21 particular case.

22 I just -- I understand his argument to be that if -- even if  
23 that statute applies, then Rule 68 still gives him \$4,300 in costs. So.

24 THE COURT: Got it.

25 MR. POCKER: Thank you.



1 THE COURT: Okay. Opposition, please.

2 MR. SMITH: Thank you, Your Honor.

3 Your Honor, this is really an interesting argument, and it's  
4 almost academic in a way that -- and I guess I'll just call it academic  
5 in which comes first, the chicken or the egg kind of thing, with  
6 NRS 92A.500 with respect to costs.

7 That applies in a dissenters' rights proceeding, but what  
8 happens when the dissenter doesn't actually have the right to  
9 dissent?

10 THE COURT: So is that arbitrary, vexatious, or not in  
11 good faith under the statute?

12 MR. SMITH: I would argue it's not in good faith under the  
13 statute. If you don't have the right to dissent, then -- and the statute  
14 is there for you to read -- and by the way, these are not individual  
15 shareholders like individual people, these are investment bankers  
16 or investment managers.

17 THE COURT: No, it doesn't matter.

18 MR. SMITH: It's corporations.

19 THE COURT: There's an equal protection clause.

20 MR. SMITH: Correct.

21 THE COURT: Everybody's equal.

22 MR. SMITH: And let's -- I will get equal. Equal protection.  
23 Let's focus on that.

24 I look at the statute and I would argue, under 92A.500,  
25 that -- and I agree that it does say that with respect, if the

1 corporation wins, or if the -- why don't we do this: If the company  
2 wins, that you get costs only if it is vexatious, arbitrary, bad faith.  
3 That's what that statute says.

4 But the reverse -- it doesn't say the reverse, that if the  
5 shareholder wins, it automatically gets costs. I would argue on its  
6 face that's unconstitutional to say one party is treated completely  
7 differently on a standard and burden of getting cost than another  
8 party. That's odd to me. And I would argue there's a problem with  
9 that statute on its face.

10 But I would also argue that there's a question of whether  
11 that statute actually trumps the general cost statute of 18.020. Does  
12 or are they alternative methods that someone can use, the  
13 prevailing party can use to obtain costs? Or does it trump? That's a  
14 legal question, I'm not sure the answer to that, Your Honor, in all  
15 honesty. I don't know if 92A.500 with respect to costs  
16 trumps 18.020 or whether it's just an alternative way to get costs.

17 Be that as it may, I think you've correctly pointed out that  
18 in the event the Court decides 92A.500 applies and limits costs or  
19 allows the corporation to recover costs only if it can prove bad faith  
20 or if it's vexatious or arbitrary, then the NRCP 68 also allows costs  
21 and you've seen that and we'd ask for, like, \$4,000 under that as an  
22 alternative. And he's right, it is an alternative argument.

23 With respect to -- I just -- I'm going to be really quick here,  
24 because we promised 15 minutes and I know we're over that. And  
25 so I'm going to be even faster.

1 With respect to the costs, with respect to experts, this is  
2 an expensive -- experts in these types of cases are expensive. And  
3 if these expert fees were reasonable, in fact, if we look at -- we had  
4 to hire an expert in China, real estate expert in China, to rebut their  
5 real property expert that they -- that Pope retained. And the  
6 amount they paid for their expert was \$55,000 approximately, ours  
7 was 30. It's reasonable.

8 Their expert, their financial business valuation expert  
9 charged \$310 an hour; ours charged \$200 an hour for research  
10 and 300 for testimony. Reasonable.

11 The amounts fit -- are more in line with their experts or  
12 the same as ours, and I'm sure if the rules were reversed, they'd be  
13 asking for all their expert fees.

14 So, Your Honor, I guess the question is, really, you know,  
15 which statute applies? Does it trump 18.020? There's no legal  
16 authority that I find that says one statute trumps the other. To me  
17 they're the alternative.

18 But I would also argue that, Hey, 92A isn't applicable in  
19 this, because you didn't even have the right to dissent in the first  
20 place, and therefore it would be bad faith.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 The reply, and you may be brief.

24 MR. POCKER: Your Honor, just briefly, on that last point,  
25 there would be no purpose for the legislature to have created these

1 cost provisions if they didn't trump the general cost scenario. And I  
2 think it's -- to say that there are alternatives makes this statutory  
3 language almost duplicative or extraneous. So I think the -- if the  
4 Court is inclined to agree with our interpretation of 92A.500, then  
5 no costs are legitimately awarded in this case. And, of course, if the  
6 Court thinks that they can, as an alternative, proceed under Title 18,  
7 then we've made our arguments as to the reasonableness.

8           Again, I think the provisions of Section 500 and the fact  
9 that they specifically talk about expert costs being something that  
10 can be placed upon the dissenting shareholders in these extreme  
11 situations flavors this whole notion of whether or not these types of  
12 expert costs in these types of proceedings are reasonable or not.

13           THE COURT: Thank you.

14           MR. POCKER: And it reinforces our argument that this is  
15 no special case to go beyond \$1,500.

16           THE COURT: Thank you.

17           This the defendant's -- or Respondents' Motion to Retax.  
18 And it's a very unique legal issue. Under 92A.500, I can't find that  
19 the defense was arbitrary, vexatious, or not in good faith until after  
20 that offer of judgment was made.

21           So it's kind of a hybrid ruling. I'm going to grant the costs  
22 for after the time that the offer of judgment was made, because I've  
23 already ruled that it was an error not to accept the offer of  
24 judgment.

25           So the plaintiff will recover as a prevailing party, but only

1 as to the post-offer fees. And it's kind of a split the baby, but it  
2 seems like a reasonable response to me.

3 And if the appellate court determines that I'm wrong, I'll  
4 be happy to adopt whatever -- whatever they determine.

5 Thank you both.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: So Mr. Pocker to prepare the order on the  
8 Motion to Retax, Mr. Smith on the Motion for Attorneys' Fees.

9 MR. SMITH: Thank you.

10 MR. POCKER: Your Honor, just for clarification, I think you  
11 said the post-offer fees, but you meant the --

12 THE COURT: I meant costs.

13 MR. POCKER: -- post-offer costs?

14 THE COURT: I meant costs. Yes.

15 MR. POCKER: Thank you.

16 THE COURT: I apologize for that error.

17 MR. POCKER: No problem.

18 THE COURT: We've had a long day.


19 Thank you both.

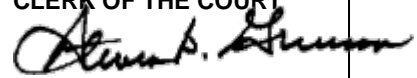
20 MR. SMITH: Thank you, Your Honor.

21 [Proceeding concluded at 2:07 p.m.]

22 ///

23 ATTEST: I do hereby certify that I have truly and correctly  
24 transcribed the audio/video proceedings in the above-entitled case  
25 to the best of my ability.

  
Shawna Ortega, CET\*562



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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  
ATTORNEYS' FEES**

22 PLEASE TAKE NOTICE that an Order Granting Petitioner China Yida Holding Co.'s  
23 Motion for Attorneys' Fees was entered in the above-captioned matter on January 28, 2020. A  
24 copy of said Order is attached hereto.

25 DATED this 29th day of January, 2020.

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*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of January, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PETITIONER CHINA YIDA HOLDING CO.'S MOTION FOR ATTORNEYS' FEES** was served by the following method(s):

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

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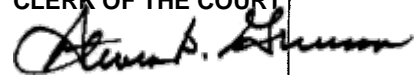
*Attorneys for Respondents*

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

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

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

/s/ Joyce Heilich  
An Employee of HOLLAND & HART LLP



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHINA YIDA HOLDING, CO. a Nevada  
corporation,

Petitioner,

v.

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,

Respondent.

Case No. A-16-746732-P  
Dept. No. XXVII

**[PROPOSED]  
ORDER GRANTING PETITIONER  
CHINA YIDA HOLDING CO.'S  
MOTION FOR ATTORNEYS' FEES**

THIS MATTER came before the Court on November 6, 2019 on Petitioner China Yida Holding Co.'s Motion for Attorneys' Fees following the Court's order granting Petitioner summary judgment. Respondents Pope Investments, LLC, Pope Investments II, LLC and Annuity & Life Reassurance, Ltd. (collectively "Respondents") filed their Opposition to the Motion on October 11, 2019, and China Yida Holding Co. (CYH) filed its Reply on October 16, 2019. At the hearing, J. Robert Smith of Holland & Hart, LLP appeared on behalf of CYH, and Richard J. Pocker of Boies Schiller Flexner, LLP and Peter L. Chasey of Chasey Law Offices appeared on behalf of the Respondents. The Court, having carefully considered the Motion,



1 Opposition, Reply, the exhibits attached thereto, and the oral argument of counsel, and being fully  
2 advised in the premises, hereby finds and concludes as follows:

3  
4 **I. FINDINGS AND CONCLUSIONS**

5 1. On May 22, 2019, CYH filed a Motion for Summary Judgment arguing that  
6 Respondents were not entitled to a fair value determination as CYH's stock was a covered security  
7 pursuant to 15 U.S.C. §77r(b)(1)(A) or (B) and related SEC regulations.

8 2. On June 13, 2019, and before Respondents' opposition to CYH's Motion for  
9 Summary Judgment was due, CYH served an Offer of Judgment on Respondents pursuant to  
10 NRCP 68. CYH offered to have judgment entered in favor of Respondents in the total amount of  
11 \$10,000, inclusive of all prejudgment interest, attorneys' fees, and costs.

12 3. Respondents rejected CYH's Offer of Judgment.

13 4. On July 19, 2019 the Court granted CYH's Motion for Summary Judgment.

14 5. On September 9, 2019, the Court entered judgment in favor of CYH and against  
15 Respondents.

16 6. Because judgment was entered in CYH's favor and against Respondents on all  
17 claims asserted against them, CYH is deemed the prevailing party.

18 7. On September 23, 2019, CYH, as the prevailing party, filed the instant Motion  
19 moving this Court, pursuant to its Offer of Judgment, for an award of attorneys' fees in the amount  
20 of \$41,053.50.

21 8. Pursuant to Rule 68 of the Nevada Rules of Civil Procedure ("NRCP"), a party is  
22 entitled to an award of attorneys' fees and costs whenever an offeree does not accept an offer of  
23 judgment and the offeree fails to obtain a more favorable judgment at trial. *See* NRCP 68(f)(2).

24 9. There are several factors the trial court should consider when deciding a motion for  
25 attorneys' fees and costs under NRCP 68. *See Beattie v. Thomas*, 99 Nev. 579, 587-89 (1983).  
26 These factors include: (1) whether the plaintiff's claims were brought in good faith; (2) whether  
27 the offeror's offer of judgment was brought in good faith; (3) whether the offeree's decision to  
28 reject the offer and proceed to trial was unreasonable or in bad faith; and (4) whether fees sought

1 by the offeror are reasonable and justified in amount. *Id.* The trial court does not have to find  
2 each of these factors to support an award of fees. Rather, the court may consider each of the  
3 factors and give weight to those most pertinent to the case. *Id.*

4 10. With respect to CYH's Offer of Judgment in the amount of \$10,000.00, the Court  
5 has carefully considered each of the *Beattie* factors above and concludes that at the time the offer  
6 was made that CYH's Offer was reasonable and in good faith as to timing and amount, and  
7 Respondent's decision to reject the offer was unreasonable.

8 11. The "well known basic elements to be considered in determining the reasonable  
9 value of an attorney's services . . . may be classified under four general headings." *Brunzell v.*  
10 *Golden Gate. Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Those four factors are:

11 (1) the qualities of the advocate: his ability, his training, education,  
12 experience, professional standing and skill; (2) the character of the work  
13 to be done: its difficulty, its intricacy, its importance, time and skill  
14 required, the responsibility imposed and the prominence and character  
15 of the parties where they affect the importance of the litigation; (3) the  
16 work actually performed by the lawyer: the skill, time and attention  
17 given to the work; (4) the result: whether the attorney was successful  
18 and what benefits were derived.

19 *Id.* (emphasis added). Although no one element controls, the district court should use "reason  
20 and fairness" in calculating attorneys' fees. *Albios*, 122 Nev. at 417; *Miller v. Wilfong*, 121 Nev.  
21 619, 623 (2005); *Brunzell*, 85 Nev. at 349. An analysis of reason and fairness includes  
22 consideration of the complexity of the matter, the amount of time spent, and therefore the  
23 reasonableness of the number of hours spent thereon. *See e.g., Salmon v. Davis Cty.*, 916 P.2d  
24 890, 893 (Utah 1996).

25 15. The Court has carefully considered the supporting documentation supplied by  
26 CYH in its Motion, and the factors set forth in *Brunzell v. Golden Gate. Nat. Bank*, 85 Nev. 345,  
27 349, 455 P.2d 31, 33 (1969) related to an award of attorneys' fees – the advocates' professional  
28 qualities, the character and nature of the litigation, the work actually performed, and the result  
achieved – and finds that the attorneys' fees identified below are reasonable and justified in  
amount.

16. Having carefully considered the *Beattie* factors and *Brunzell* factors, Court finds

HOLLAND & HART LLP  
9555 HILLWOOD DRIVE, 2ND FLOOR  
LAS VEGAS, NV 89134

1 that CYH is entitled to their attorney's fees pursuant to their Offer of Judgment, calculated from  
2 June 13, 2019 in the amount of \$41,053.50, and that such fees are reasonable and justified in  
3 amount.

4 **ORDER**

5 Based on the foregoing findings and conclusions, and other good cause appearing,

6 IT IS HEREBY ORDERED that:

- 7 1. China Yida Holding Co.'s Motion for Attorneys' Fees is **GRANTED**.  
8 2. China Yida Holding Co. is awarded its reasonable attorney's fees in the amount of  
9 \$41,053.50 against Respondents, jointly and severally.  
10 3. Interest on the amount of \$41,053.50 shall accrue at the statutory rate from the  
11 date of this Order until paid in full.

12 DATED this 24 day of Jan, 2019.

13  
14  
15 Nancy L. Allf  
16 THE HONORABLE NANCY ALLF  
17 DISTRICT COURT JUDGE *FD*

18 Respectfully submitted by:

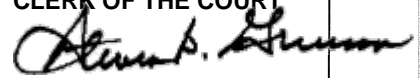
19 HOLLAND & HART, LLP

20 J. Robert Smith  
21 J. Robert Smith (SBN #10992)  
22 9555 HILLWOOD DRIVE, 2ND FLOOR  
23 LAS VEGAS, NV 89134  
24 *Attorneys for Petitioner China Yida Holding, Co.*

25 Approved as to form:

26 BOIES SCHILLER FLEXNER, LLP

27 Richard J. Pocker *7650 for*  
28 Richard J. Pocker (SBN #3568)  
300 South Fourth Street, Suite 800  
Las Vegas, Nevada 89101  
*Attorneys for Respondents*



**NOTC**

BOIES SCHILLER FLEXNER LLP  
RICHARD J. POCKER, ESQ.  
Nevada Bar No. 3568  
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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 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

**NOTICE OF ENTRY OF ORDER**

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**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 29<sup>th</sup> day of January, 2020 the attached Order Granting in Part and Denying in Part Respondents' Motion to Retax Costs was entered in the above-captioned case.

Dated this 30<sup>th</sup> day of January, 2020.

CHASEY LAW OFFICES



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Nevada Bar No. 007650  
3295 N. Fort Apache Road, Suite 110  
Las Vegas, Nevada 89129  
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**CERTIFICATE OF SERVICE**

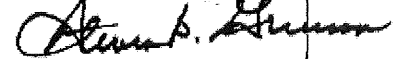
Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that on the 30<sup>th</sup> day of January, 2020, I served a true and complete copy of the foregoing **NOTICE OF ENTRY OF ORDER** upon those persons designated by the parties in the E-Service Master List for the above-referenced 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  
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Fax: (702) 382-2755  
*Attorneys for Respondents*



AN EMPLOYEE OF CHASEY LAW OFFICES



**ORDR**

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E-mail: peter@chaseylaw.com

Attorneys 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,	)	CASE NO.: A-16-746732-P
	)	DEPT NO.: XXVII
Petitioner,	)	
	)	
vs.	)	<b>ORDER GRANTING IN PART AND</b>
	)	<b>DENYING IN PART RESPONDENTS'</b>
POPE INVESTMENTS, LLC, a Delaware limited liability	)	<b>MOTION TO RETAX COSTS</b>
company; POPE INVESTMENTS II, LLC, a Delaware	)	
limited liability company; and ANNUITY & LIFE	)	
REASSURANCE, LTD., an unknown limited company;	)	
	)	
Respondents.	)	

Respondents Pope Investments, LLC, Pope Investments II, LLC and Annuity & Life Reassurance, Ltd. (collectively "Respondents") moved to Retax the Memorandum of Costs filed by Petitioner China Yida Holding Co. (hereinafter "CYH"). Respondents' Motion to Retax came before

1 this Court on November 6, 2019. At the hearing, J. Robert Smith of Holland & Hart, LLP appeared on  
2 behalf of CYH, and Richard J. Pocker of Boies Schiller Flexner, LLP and Peter L. Chasey of Chasey Law  
3 Offices appeared on behalf of the Respondents. The Court, having considered the Motion,  
4 Opposition, Reply, the exhibits attached thereto, and the oral argument of counsel, and being fully  
5 advised in the premises, hereby finds and concludes as follows:  
6

7 I.  
8

9 **FINDINGS AND CONCLUSIONS**

10 1. On November 15, 2016, CYH petitioned this Court to determine fair value of  
11 Respondents' 924,515 shares of CYH common stock pursuant to Chapter 92A of the Nevada Revised  
12 Statutes.  
13

14 2. On June 13, 2019, CYH served Respondents with an Offer of Judgment for \$10,000.00  
15 pursuant to NRCP 68. Respondents rejected CYH's Offer of Judgment.

16 3. On July 19, 2019 the Court granted CYH's Motion for Summary Judgment.

17 4. On September 16, 2019, CYH filed its Memorandum of Costs claiming \$60,116.72 in  
18 costs recoverable under Chapter 18 of the Nevada Revised Statutes.  
19

20 5. On September 19, 2019, Respondents timely moved to Retax Petitioner's  
21 Memorandum of Costs. On October 4, 2019, CYH timely opposed Petitioner's Motion to Retax.  
22

23 6. NRS 92A.500 provides that the corporation bears their costs incurred in fair value  
24 litigation pursuant to Chapter 92A of the Nevada Revised Statutes unless the dissenting  
25 shareholders acted vexatiously, arbitrarily, or in bad faith.

26 7. Respondents did not act vexatiously, arbitrarily or in bad faith until Respondents  
27 rejected Petitioner's Offer of Judgment.  
28

1 8. CYH incurred \$55,729.72 in costs *before* the expiration of CYH's Offer of Judgment  
2 and incurred costs of \$4,387.00 *after* the expiration of the Offer of Judgment.  
3

4 II.

5 ORDER

6 Based on the foregoing findings and conclusions, good cause appearing,

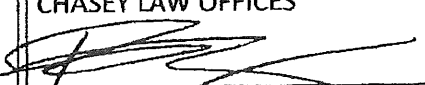
7 IT IS HEREBY ORDERED that:

- 8
- 9 1. Respondents' Motion to Retax CYH's Memorandum of Costs is granted in part and  
10 denied in part.
- 11 2. CYH shall not recover its pre-Off of Judgment costs in the amount of \$55,729.72.
- 12 3. CYH shall recover its post-Offer of Judgment costs in the amount of \$4,387.00.
- 13

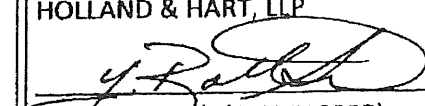
14 Dated this 24 day of Jan., 2020.

15 Nancy L. Allf  
16 THE HONORABLE NANCY ALLF  
17 DISTRICT COURT JUDGE JD

18 *Respectfully submitted by:*  
19 CHASEY LAW OFFICES

20   
21 Peter L. Chasey, Esq. (SBN# 7650)  
22 3295 N. Fort Apache Road, Suite 110  
23 Las Vegas, Nevada 89129  
24 Attorney for Respondents

25 *Approved as to form:*  
26 HOLLAND & HART, LLP

27   
28 J. Robert Smith (SBN #10992)  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
Attorneys for Petitioner





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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.	)	<b>RESPONDENTS'</b>
	)	<b>NOTICE OF APPEAL</b>
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") appeal to the Supreme Court of Nevada from the Order entered on January 28, 2020 Granting Petitioner China Yida Holding

1 Company's Motion for Attorney Fees, and the Notice of Entry regarding the same filed on  
2 January 29, 2020, as well as all orders, rulings, or decisions related thereto that are made  
3 appealable thereby.

4 Dated this 26<sup>th</sup> day of February, 2020.

5 BOIES SCHILLER FLEXNER LLP

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

10 - AND -

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

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of February, 2020, 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 The Petitioner filed its Motion for Attorneys Fees (the subject of this present Notice of  
8 Appeal), which the District Court granted. The Petitioners based its request for an award of  
9 attorneys fees upon a rejected offer of judgment. The Court's Order granting the Petitioner's  
10 Motion was filed on January 28, 2020, and the Notice of Entry was filed January 29, 2020.

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

14 On October 9, 2019 the Respondent appealed the District Court's Order granting  
15 summary judgment in favor of the Petitioner. That appeal is presently pending, and the case is  
16 denominated as Pope Invs., LLC vs. China Yida Holding, Co., and the Supreme Court docket  
17 number is 79807.

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

19 No.

20 ///

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22 ///

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

There is, as always, the possibility that this appeal could settle, but a settlement judge has already determined that the earlier appeal of the summary judgment Order was not resolvable through the Supreme Court's Settlement Program.

Dated this 26<sup>th</sup> day of February, 2020.

BOIES SCHILLER FLEXNER LLP

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

- AND -

CHASEY LAW OFFICES  
PETER L. CHASEY, ESQ.  
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Attorneys for Respondents



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of February, 2020, 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, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89134  
Attorneys for Petitioner, China Yida Holding, Co.

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