IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

JOHN S. WALKER, and RALPH ORTEGA,

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT and BARRY L. BRESLOW, as District Judge,

Respondents.

SHEILA MICHAELS, and KATHERYN FRITTER, real parties in interest.

_____/

DISTRICT COURT NOS.:

CV18-01798 and CV18-02032

ORIGINAL PETITION FOR WRIT OF MANDAMUS

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NRAP 26.1 DISCLOSURE STATEMENT

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

(a) The petitioners are John S. Walker and Ralph Ortega;

(b) The respondent is the Honorable Barry L. Breslow, Judge of Department 8;

(b) The real parties in interest are Sheila Michaels, and Katheryn Fritter;

(b) No corporations are parties;

(c) Law firms representing Petitioners: William R. Kendall;

(d) no pseudonyms.

Dated this 8th day of January, 2020

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1. RELIEF SOUGHT

In *Gittings v. Hartz,* 116 Nev. 386, 996 P.2d 898 (2000), this Court announced legal principles designed to protect Nevada's Alternative Dispute Resolution program from abuse by insurers who demand a trial de novo as a matter of course and without regard to the facts and circumstances of each individual case where they lost at arbitration. Here, Petitioners found that counsel working for Farmers Insurance Company ("Farmers") had demanded a trial de novo in nearly 100 % of the all of the cases in which arbitration awards for Plaintiffs were rendered. Based on this demonstrable track record, Petitions filed motions to strike the Farmers trial de novo demands.

The District Court convened an evidentiary hearing. Petitioners offered testimony of an expert in statistical analysis that the sample size (100 % of all Farmers cases in Washoe County available on the District Court's electronic filing system) was sufficient to establish a statistically relevant correlation. Farmers did not offer any expert testimony. Farmers made no evidentiary attempt to explain why it sought a trial de novo in any of its prior cases**.** Farmers made no attempt to explain why it had demanded a trial de novo for each of the Petitions' cases.

Yet, the District Court ignored the evidence, and substituted its own understanding of statistics for the un-rebutted expert testimony to conclude that the sample size (100 % of all cases in which Farmers had suffered an adverse arbitration award), and found that the sample size was too small.

The District Court effectively sidestepped the legal principles announced in *Gittings*, and ignored un-rebutted expert testimony to arrive at a conclusion that Farmers had not acted in bad faith by demanding, yet again, a trial de novo in the Petitioners' two cases.

An appeal will not vindicate the *Gittings* principles. In good faith, the two Petitioners litigated their claims to the entry of arbitration awards. In order to avoid further litigation expense, they seek the issuance of a writ of mandamus to the District Court to enter an order striking Farmers' requests for trial de novo in both cases.

2. ROUTING STATEMENT

The Supreme Court should retain jurisdiction for this petition under NRAP 17(a)(12) because it raises issues of statewide public importance concerning the integrity of Nevada's Alternative Dispute Resolution program. This case demonstrates that the lower courts and litigants (and, in particular, members of the bar who work exclusively for a single liability insurer) need this Court's guidance

about demanding a trial de novo in every case simply to drive up costs to injured plaintiffs versus the good faith exercise of more judicial procedure to reach justice in a particular case.

3. ISSUES PRESENTED

1. In *Gittings v. Hartz,* this Court noted that Allstate Insurance Company requests trial de novo in at least 52 % of the cases in which it is involved, and "this statistic raises a question in this court's mind as to whether this percentage constitutes bad faith per se in violation of Rule 2(A) of the Nevada Arbitration Rules." *Gittings,* at 391-392. Where the uncontroverted evidence is that Farmers requests trial de novo in nearly 100 % of cases in which an arbitration award in favor of the Plaintiff was rendered, did the District Court abuse its discretion by finding that Farmers had not per se acted in bad faith under Rule 2(A) of the Nevada Arbitration Rules?

2. Did the District Court abuse its discretion by rejecting the uncontroverted testimony of an expert in statistics, substituting the Court's own understanding of statistics, to conclude that Farmers' demands for trial de novo in nearly 100 % of its cases is not statistically meaningful because the sample size (100 % of cases in which Farmers is involved) is too small?

3. Should this Court issue an interlocutory writ to protect the Nevada

Arbitration program against bad faith and subversion for these two Petitioners and others similarly situated in the future?

4. FACTS AND PROCEDURAL HISTORY

A. Facts of the Walker case (CV18-01798)

This case stems from a collision between Plaintiff while riding his bicycle in a designated bicycle lane, and Defendant, operating a motor vehicle. On 3/13/2019, the case was arbitrated. On 3/18/2019, the Arbitration Award was filed, finding in favor of Plaintiff, assessing 20 % comparative negligence, and awarding total damages of $ 12,469.60. (Appendix Vol. 6 p. 009) The next day, 3/19/2019, Farmers' attorney Adam P. McMillen, filed a Request for Trial De Novo. (Appendix Vol. 6, p. 012)

B. Facts of the Ortega case (CV18-02032)

This case stems from a rear-end collision between Petitioner Ortega and Real Party in Interest, Fritter, which occurred on 11/6/2017. On 6/17/2019, the case was arbitrated.

Liability was admitted by the Defendant at the arbitration hearing. Plaintiff incurred medical expenses of $ 13,348.00, which were not contested by the Defendant. Plaintiff suffered a wage loss of $ 1,600.00 which was verified by his employer and was not refuted by Defendant at the arbitration.

On 6/19/2019, the Arbitration Award was filed, finding in favor of Plaintiff and awarding total damages of $ 20,448.00, broken down as: $ 13,448.00 in medical expenses, $ 1,600.00 in wage loss, and $ 5,500.00 in general damages. (Appendix, Vol. 1, p. 010) On 7/5/2019, Farmers' attorney Adam P. McMillen, filed a Request for Trial De Novo. (Appendix, Vol. 1, p. 018)

C. The Motions to Strike Defendants' trial de novos

Petitioners filed Motions to Strike Defendants' Requests for trial de novo. (Appendix Vol. 6, p. 015; Vol. 1, p. 018) Petitioners presented uncontroverted evidence that:

1. McMillen is an employee-attorney of Farmers Insurance Exchange, who insured and represented the Defendants in each of the underlying cases. (Appendix Vol. 6, p. 025; Vol. 1, p. 028);

2. Since McMillen began working for Farmers, there have been 10 cases (as of the 4/2/2019 filing of the Walker motion) which resulted in an arbitration award for the Plaintiff and McMillen requested trial de novo in every one of them[1]:

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[1] A "person search" on the official Second Judicial District Court website (www.washoecourts.com) searching the name "Adam McMillen" produced a list

of **all** cases in which Adam P. McMillen has been counsel of Appendix since he began working at Farmers in October of 2017. (Appendix Vol. 6, p. 030)

Plaintiff noted that the Court may take judicial notice of this official Appendix, pursuant to NRS 47.130, which states that "a judicially noticed fact must be (a) generally known within the territorial jurisdiction of the trial court, or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The list of cases contained on the Washoe Courts official website satisfies both (a) and (b).

After obtaining the listing of all of attorney McMillen's cases, a simple review of each case on the Washoe County District Court Eflex system revealed in which cases McMillen represented a Farmers insured, the outcome of each case, and the frequency of filing of requests for trials de novo. These are also facts for which judicial notice was appropriate.

Starting with McMillen's first arbitration case for Farmers, resulting in an arbitration award for the plaintiff, through the most recent case (as of the 4/2/2019

Case name and number	Outcome	De Novo
Castro-Avalos v. Porsow; ARB16-02521	award for plaintiff	by McMillen
Eckert v. Mickelson; ARB17-00623	award for plaintiff	by McMillen
Valdez v. Michel; ARB17-00534	award for plaintiff	by McMillen
Dalmacio v. Palomar; ARB17-01356	award for plaintiff	by McMillen
Elk v. Murphy; ARB17-01614	award for plaintiff	by McMillen
Hakansson v. Sloan; ARB17-01939	award for plaintiff	by McMillen
Hagen v. Green; ARB18-00457	award for plaintiff	by McMillen
Codman v. Gregory; ARB18-00744	award for plaintiff	by McMillen
Wright v. Pritchard; ARB18-01416	award for plaintiff	by McMillen
Walker v. Michaels; ARB18-01798	award for plaintiff	by McMillen

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filing of the Motion to Strike Trial De Novo) to result in an arbitration award for the plaintiff, the instant case, McMillen/Farmers filed a request for trial de novo in all of these cases. These are **all** of the cases in which McMillen/Farmers represented a defendant, suffered an arbitration award for the plaintiff, and then filed a request for trial de novo.

3. The above 10 cases constitute **all** of the cases arbitrated by McMillen/Farmers to-date (as of 4/2/2019) which resulted in an award for the plaintiff. McMillen/Farmers filed a request for trial de novo in **every single one of them, 100 %.** There are were no cases where McMillen/Farmers suffered a plaintiff's arbitration award in which they did not request a trial de novo. Attached to the Motion to Strike Trial De Novo as Exhibits 3-12 (Walker Appendix Vol. 1, pp. 040-142) are true and correct copies of the arbitration award, request for trial de novo, and, in some cases, the trial de novo verdict.

4. By the time the Motion to Strike had been filed in Ortega, there were 12 cases arbitrated by McMillen for Farmers which resulted in arbitration awards for the Plaintiff. (Appendix Vol. 1, p. 018) Of those 12 cases, McMillen/Farmers filed a request for trial de novo in **all but one of them, an astounding 91.66 %.**[2] Attached to the Ortega Motion as Exhibits 3-13 are true and correct copies of the arbitration award, request for trial de novo, and,

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[2] The only case where Farmers suffered a plaintiff arbitration award and did not de novo is McDonald v. Rothgeb, ARB18-01749. In *McDonald*, the arbitration award was only $ 8,490.00. It appears that the case was settled.

in some cases, the short trial verdict. (Appendix, Vol. 1, pp. 052-161)

5. The Annual Report of the Nevada Judiciary for the Fiscal Year 2015 shows that the long-term average (10 years) trial de novo rate for the Second Judicial District Court **was only 15 %**. (Appendix, Vol. 7, p. 331; Vol. 3, p. 556)

6. McMillen/Farmers did not contest these facts. (Appendix, Vol. , p. 166; Ortega Appendix, Vol. 1, p. 206).

7. McMillen/Farmers did not offer any evidence for why they filed a request for trial de novo in each case. (Appendix, Vol. 6A, p. 166; Vol. 1 p. 190; 206)

8. McMillen/Farmers has never revealed whether they ever discussed trial de novo tactics with their insureds. (Appendix, Vol. 6A, p. 166; Vol. 1 p. 190; 206)

D. The evidentiary hearing

At the evidentiary hearing, Petitioners presented the evidence contained in their motions and all of said evidence was admitted without objection. (Appendix Vol 4,Transcript at p. 25-6) During the presentation of the data evidence, throughout the hearing, and in questions posed by the Court, the Court made clear that it did not believe that the number of de novo cases being examined was

sufficient. For example, the Court stated:

> I'm concerned – "concerned" is the wrong word. I'm struggling with the limited sample of cases that movant believes exists that would prove their proposition that a hundred percent of seven or eight or nine or 10 or 11 would be enough to establish their point. Because I'm not sure the Court accepts that. It's modest. I realize that's all there is, so we come, after two years, with all you have. But it's just a concern.

(Appendix Vol 4, Transcript at p. 44)

In addition to the data admitted into evidence, Petitioners presented the expert testimony of Dr. Gilbert Coleman to provide the statistical analysis. (Appendix Vol 4, Transcript at p. 50)

Dr. Coleman earned a doctorate degree in economics from Stanford University. (Appendix Vol 4, Transcript at p. 51) Dr. Coleman has taught statistics at UNR, at both the undergraduate and graduate level. (Id.) McMillen/Farmers did not object to the expert qualifications of Dr. Coleman. (Id. at p. 52)

Dr. Coleman testified that the rate at which McMillen/Farmers requests trial de novo is significantly different from the average 15 % rate known to exist in the

Second Judicial District Court. (Id. at p. 54) He also testified that the number of cases in which McMillen/Farmers requested trial de novo is "enough" for statistical analysis. (Id. at p. 54) In fact, "it's not even close." Id. Dr. Coleman testified that "the Farmers cases handled by Mr. McMillen are trial de novo'd at a rate so much vastly higher than the normal process, that you cannot say that....the Farmers cases are handled in any way even reasonably close to the way it's normally handled in Washoe County." (Id. at p. 56-7)

The Court questioned Dr. Coleman about the Court's "concerns". (Id. at p. 57) Dr. Coleman responded:

> With all due respect, Your Honor, that's probably because you don't have a grasp of the way the statistical analysis works. It is a matter that you don't need a lot when they're far enough apart. And it would be, if you had a smaller number – it would take me a while to do some of your hypothetical calculations.
>
> ****
>
> But when you get to 13, then it is the case. It is the case that this is not only enough, but well more than enough of a sample to be able to say that what goes on with Farmers

> is very much significantly different that what goes on normally in Washoe County.

(Id. at p. 57-58)

Significantly, McMillen/Farmers did not offer any rebuttal expert testimony. McMillen/Farmers did not offer any evidence to rebut Dr. Coleman's opinions. Cross examination failed to impeach the testimony.

On this evidentiary record, the only possible finding is that McMillen/Farmers, in nearly 100 % of the Second Judicial District arbitration cases in which McMillen/Farmers were involved in, a request for trial de novo was filed by them. This should have led to the inescapable conclusion that such conduct constitutes per se bad faith under NAR 2(A) and the *Gittings* analysis.

Instead, the District Court reached a conclusion that was not only unsupported by the evidentiary record, but was diametrically contradicted by the undisputed evidence:

> In coming to this conclusion, the Court finds, while there was evidence to suggest that Farmers was getting dangerously close to the line, that, on balance, it hasn't quite been proven that its business practices, legal practices of seeking de novo on a very high majority of their cases, based on this fairly limited sample

for this limited time period, and taking into account the uniqueness of the individual cases, results obtained on those that went to trial, and other circumstances, the Court is not convinced that their actions arise to the level of bad faith.

(Appendix Vol 5,Transcript at p. 5)

5. STANDARDS OF REVIEW

A. Writ relief is the appropriate remedy

A writ to a District Court is an extraordinary remedy. This Court has sole discretion to determine whether to entertain a writ petition. *Smith v. Eighth Judicial District Court,* 107 Nev. 674, 677, 699, 818 P.2d 849, 851, 853 (1991). When an appeal is an adequate legal remedy, the right to appeal may preclude writ relief. *Pan v. Eighth Judicial District Court,* 120 Nev. 222, 224, 228, 88 P.3d 840, 841, 844 (2004).

Forcing each Petitioner to endure another trial on the merits, and then appeal cannot possibly remedy Farmer's bad faith. Assuming each injured Plaintiff's judgment after trial de novo is equal to or greater than the arbitration awards, Farmers would argue that the plaintiff has not been harmed and no appeal lies. Issuance of a writ is imperative to vindicate the purpose of Nevada's Alternative Dispute Resolution system – to reduce expenses for litigants and to reduce the

impact on judicial resources.

B. Abuse of Discretion

An abuse of discretion occurs if the court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason. *In the Matter of Eric A. L.,* 123 Nev. 26, 33 (2007)

The District Court abused its discretion by substituting its own misunderstanding of statistics for the uncontested expert opinion of a Doctor of Economics.

The District Court abused its discretion in failing to find that McMillen/Farmer's "practice of seeking de novo on a very high majority of their cases" (Appendix Vol 5,Transcript at p. 5) was not bad faith per se.

6. ARGUMENTS

A. The purpose of the Arbitration Program

"The purpose of the program is to provide a simplified procedure for obtaining a prompt and equitable resolution of certain civil matters." NAR 2(A) "The failure of a party or an attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to a trial de novo." NAR 22 (A) "If, during the proceedings in the trial de novo, the district court determines that a party or attorney engaged in conduct designed to

obstruct, delay or otherwise adversely affect the arbitration proceedings, it may impose, in its discretion, any sanction authorized by NRCP 11 or NRCP 37." NAR 22 (B).

B. *Gittings*

In *Gittings v. Hartz,* 116 Nev. 386, 394 (2000), the Court held:

> ...competent statistical information that demonstrates that an insurance company has routinely filed trial de novo requests without regard to the facts and circumstances of each individual case may be used to support a claim of bad faith.
>
> ****
>
> We recognize that the bare statistics create the impression that certain carriers are abusing the arbitration process, and we would have no problem with supporting the denial of a jury trial if a hearing produced competent evidence to substantiate such a conclusion. We are not, however, suggesting that an extensive evidentiary hearing would be necessary in each case. It is conceivable that a detailed statistical analysis, properly authenticated, could be used in more than one proceeding or

that testimony taken in one hearing might be admissible in other hearings involving the same carrier under the doctrine of collateral estoppel.

It is highly unlikely that there would ever be direct evidence of bad faith motivation for filing a request for trial de novo, such as a confession or written documentation of a plan or a memorandum from Farmers to McMillen instructing him to request trial de novo in every case that they loose. Therefore, the proof of bad faith must be circumstantial. Addressing the type of proof, the Supreme Court stated: "competent statistical information that demonstrates that an insurance company has routinely filed trial de novo requests without regard to the facts and circumstances of each individual case may be used to support a claim of bad faith." Id. at 394.

The *Gittings* Court held that statistical analysis should be used to provide that circumstantial evidence and support a conclusion that the insurer requests a trial de novo regardless of the arbitration process.

C. The District Court's rejection of Dr. Gilbert Coleman's unchallenged and uncontroverted expert testimony was an abuse of discretion

In *Ewing v. Sargent,* 87 Nev. 74, 78, (1971), the Nevada Supreme Court held

that where the burden of going forward with rebuttal evidence has not been sustained, credible, uncontradicted testimony may not be arbitrarily rejected.

Furthermore, in *Higgs v. State of Nevada,* 126 Nev. 1, 16-18 (2010), the Nevada Supreme Court explicitly reiterated its rejection of the Federal expert witness standards enunciated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993). The reason that *Higgs* is relevant to the rejection of uncontroverted expert testimony lies in the analysis of the difference between FRE 702 and NRS 50.275, provided by the Court.

NRS 50.275 states:

> If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge.

FRE 702 contains similar language, <u>but with additional conditions:</u>

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form

of an opinion or otherwise, **if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.** (Bolding added.)

The *Higgs* Court went on to hold that "Whereas the federal rule mandates three additional conditions that trial judges should consider in evaluating expert witness testimony, the Nevada statute mandates no such requirements." *Higgs,* at 18.

FRE 702 allows the court to reject expert testimony if the court believes that it is not based upon sufficient facts or data. NRS 50.275 does not contain such language. Therefore, the court is not permitted to reject uncontroverted expert testimony that there exists sufficient facts and data, and in these cases, a sufficient sample of cases to statistically analyze.

Here, Dr. Coleman's expert testimony was not contradicted, impeached, or inherently incredible. It stands unassailed. Nor did it conflict with any other evidence or inferences from other evidence. McMillen/Farmers did not offer any rebuttal expert statistical evidence at all. One can only contradict expert testimony with other competent expert testimony.

The District Court may not choose to reject competent, un-impeached and uncontradicted expert testimony based upon his own lay opinion of statistical analysis. It was an abuse of discretion.

D. The District Court's failure to find per se bad faith participation in the Arbitration Program as a matter of law was an abuse of discretion

In *Gittings v. Hartz,* 116 Nev. 386 (2000), the Court directly addressed an allegation that Allstate Ins. Co. was utilizing the mandatory arbitration program as a method of delay by filing requests for trial de novo in a high percentage of its cases. The Supreme Court noted that statistics showed that Allstate requested trials de novo in at least 52 % of its cases. Id. at 391. The Court held that "This statistic raises a question in this court's mind as to whether this percentage constitutes bad faith per se in violation of Rule 2(A) of the Nevada Arbitration Rules."
The Court characterized Allstate's 52 % rate as "the high percentage of trial de novo requests" (Id. at 392) and as "a comparatively high percentage of de novo requests" (Id. at 394).

The Annual Report of the Nevada Judiciary for fiscal year 2015, attached to Dr. Coleman's reports in both cases (Appendix Vol. 3, p. 556), demonstrates that the overall long-term trial de novo request rate for the Second Judicial District

Court has been **only 15 %**. Strikingly contrasting with that low rate is the uncontroverted nearly 100 % rate of McMillen/Farmers.

If 52 % makes the Court opine that question whether bad faith exists as a matter of law, then certainly McMillen/Farmers' rate that is nearly 100 % must constitute bad faith per se. The District Court's decision was arbitrary, capricious and exceeded the bounds of law and reason.

E. The District Court's failure to entertain motions for sanctions under NAR 22 (B) and NRCP 11 was an abuse of discretion

Where the uncontroverted statistical evidence showed that McMillen/Farmers routinely filed trial de novo requests in nearly 100 % of cases, a finding of bad faith was required. This is uncontroverted circumstantial evidence that McMillen/Farmers does so without regard to the facts and circumstances of each case, for the purpose of obstruction, delay and harassment. Pursuant to NAR 22 and NRCP 11, sanctions should have been entertained, as such conduct fall squarely within the prohibitions of said rules.

F. Correlation between trial de novo requests and verdicts

The *Gittings* Court also referenced analysis of the correlation between requests for trial de novo and verdicts for or against the party who filed the request. With regard to this issue, Petitioners presented evidence at the hearing that of the 5

cases de novo'd by McMillen/Farmers and taken to Short Trial verdict, in only one *(Wright v. Pritchard)* did McMillen/Farmers end up with a better result. (Appendix, Vol. 4,Transcript at p. 14) This fact was not competently disputed by McMillen/Farmers. (Appendix Vol. 4,Transcript at pp. 12-15) No evidence was submitted to contradict this fact.

The analysis of this correlation weighs heavily in favor of finding bad faith. It was evidence that the District Court could not arbitrarily ignore.

7. CONCLUSIONS

The unrefuted statistical data and analysis presented in the court below show as a matter of law that McMillen/Farmers has routinely filed a request for trial de novo in **nearly every** case resulting in an arbitration award for the Plaintiff, without regard to the facts and circumstances of each individual case.

Petitioners submit that the District Court abused its discretion in rejecting the uncontroverted expert testimony of Dr. Coleman and abused its discretion in failing to find as a matter of law that the McMillen/Farmers de novo rate of nearly 100 % is *per se* bad faith participation in the Arbitration Program.

WHEREFORE, Petitioners pray for the issuance of a Writ of Mandamus commanding:

1) Entry of an order, pursuant to NAR 22 (A), striking the requests for

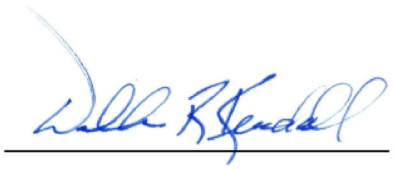
trial de novo in *Walker v. Michaels,* CV18-01798, and in *Ortega v. Fritter,* CV18-02032;

2) Entry of judgment in favor of Petitioners consistent with the arbitration awards in their cases;

3) Entry of an order mandating further proceedings on Petitioners' motions for sanctions pursuant to NAR 22 and NRCP 11, and NRS 7.085.

DATED this 8th day of January, 2020.

WILLIAM R. KENDALL, ESQ.



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VERIFICATION/DECLARATION

STATE OF NEVADA)

) ss.

COUNTY OF WASHOE)

WILLIAM R. KENDALL, under penalty of perjury, swears and declares as follows:

1. I am counsel of record in Walker v. Michaels, CV18-01798 and Ortega v. Fritter, CV18-02032;

2. Neither John Walker nor Ralph Ortega have personal knowledge of the statistical information and case histories presented in the Motions to Strike Trials De Novo and neither has personal knowledge of the facts alleged herein, except for the underlying facts of the nature of the automobile collisions and their injuries upon which the lawsuits were initially filed;

3. I have read and reviewed the within Petition before signing it, and aver that the allegations of fact stated therein are true and correct to the best of my knowledge, information, and belief.

Dated this 8th day of January, 2020.

CERTIFICATE OF SERVICE

The undersigned does hereby swear and declare under penalty of perjury that on the day and date set out below, a true and correct copy of the preceding document was served upon the relevant parties in interest via electronic service through the Court's E-flex system, addressed as follows:

Adam P. McMillen, Esq.

Law Offices of S. Denise McCurry

200 S. Virginia Street, 8th Floor

Reno, NV 89501

Attorney for real parties in interest Sheila Michaels

and Katheryn Fritter;

A true and correct copy of the preceding document was served by personal service upon:

Honorable Barry Breslow

Second Judicial District Court, Department 8

75 Court Street

Reno, NV 89501

Respondent Dated this 8th day of January , 2020.