

Exhibit 1

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Elizabeth A. Brown
Clerk of Supreme Court

Exhibit 1

1 Code No. STP

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 JOHN S. WALKER
9 Plaintiff
10 vs

Case No. CV18-01798
Dept. No. STP

11 SHEILA MICHAELS,
12 DOES I-V, inclusive,

13 ORDER ON MOTION TO STAY SHORT TRIAL PROCEEDINGS

14 Plaintiff, through counsel, has filed a motion asking the court to stay the pre-trial and
15 May 18, 2020 jury trial proceedings because Plaintiff has filed a Petition for Writ of Mandamus
16 in the Supreme Court. Defendant, through counsel has opposed the Motion and the matter has
17 been submitted for decision. The Supreme Court may deny the writ, grant the writ, or remand for
18 a further evidentiary proceeding. There is no timetable for the appeals court to act on the writ.

19 History of prior proceedings

20 On June 16, 2018 Plaintiff riding a bicycle, was involved in a collision with defendant
21 operating a motor vehicle in Washoe County. A complaint was filed, the damages claim met the
22 jurisdictional criteria for referral to Arbitration, and on March 18, 2019, an Arbitration Award
23 was filed in Case # ARB18-01798, awarding Plaintiff \$9,109.00 in medical expenses, \$478.00
24 lost wages, and \$6,000.00 general damages; Plaintiff was found 20% comparatively negligent
25 and therefore was awarded \$12,469.60 in total damages. On March 18, 2019, counsel for
26 Defendant filed a Request for Trial De Novo. On April 12, 2019 counsel for Plaintiff filed a
27 Motion to Strike the trial de novo request, and included therewith a Motion to Stay, a Motion for
28

1 Discovery, and a Motion for Sanctions. Plaintiff supported the Motions with fourteen (14)
2 exhibits. Defendant opposed those motions by pleading filed April 22, 2019. Defendant
3 supported the opposition with nine (9) exhibits. In an Order filed June 19, 2019, the court granted
4 the stay, denied discovery, and ordered the parties to set the Motion to Strike for an evidentiary
5 hearing. Plaintiff did not ask for review of the order that denied discovery.
6

7 On November 12, 2019 the court proceeded with an evidentiary hearing at which time
8 the court admitted all of the exhibits as filed by each party, a Plaintiff witness was sworn and
9 testified and the parties argued their cases. The court took the matter under submission, rendered
10 an oral decision, and the final order filed November 20, 2019 denied Plaintiff's motions to strike,
11 for sanctions, along with any other remedies the parties have sought. In its order the court at page
12 3 the court did find that the limited requests for trial de novo did not statistically demonstrate that
13 Farmers actions "rise to the level of bad faith." Defendant did not seek relief from the order that
14 denied discovery.
15
16

17 Plaintiff Exhibits admitted at the hearing included ten (10) Arbitration cases where
18 defendant requested a trial de novo. Of those ten cases it appears only two proceeded to trial, one
19 was remanded for no timely payment of Arbitrator fees, and the rest were settled after the
20 Request for trial de novo was filed.
21

22 Applicable law and Analysis

23 The Nevada cases of *Gittings v. Hartz*, 116 Nev. 386, 996 P.2d 898 (2000), *Hansen v.*
24 *Eighth Judicial District Court, ex. rel. County of Clark*, 116 Nev. 650, 6 P.3d. 986 (2000), and
25 NRAP Rule 8 provide decision making guidance.
26
27
28

1 Plaintiff has filed the stay motion in the district court first as it should, pursuant to NRAP
2 8(a)(1) when writ relief has been filed with the Supreme Court or Court of Appeals. In the event
3 that the lower court denies a stay Plaintiff may then petition the higher court. NRAP 8(a)(2).
4

5 In *Gittings*, the Supreme Court reversed and remanded for further proceedings and
6 hearing the district court order that did strike a request for trial de novo based upon statistics
7 presented to that court, as the lower court had not conducted an evidentiary hearing to consider
8 the meaning, relevancy and validity of the statistics presented; the supreme court also concluded
9 that the statistics as were cited were not sufficient. *Gittings, supra, p 394*.
10

11 In the case now before this court the Plaintiff did have an evidentiary hearing and the
12 court then decided in favor of Defendant.

13 Plaintiff cites no case authority as supporting the stay.

14 The *Hansen* case at page 657 cites these factors to be applied when deciding a stay
15 motion when there is a writ pending:
16

17 (1) Whether the object of the writ petition will be defeated if the stay is denied;

18 (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is
19 denied;

20 (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the
21 stay is granted; and
22

23 (4) Whether appellant/petitioner is likely to prevail on the merits of the writ petition.

24 Decision on factors:

25 1. Favors Petitioner/Plaintiff; the object of the Petition is to affirm the Arbitration
26 Award and not conduct a jury trial; this case will most likely proceed to a jury trial before a writ
27 decision.
28

2. Favors Respondent/Defendant; pursuant to the analysis in Hansen, page 658, needless participation in discovery, pre-trial and trial do not constitute “irreparable or serious injury”.

3. Favors Petitioner/Plaintiff; pursuant to the analysis in Hansen, page 658, it does not appear Respondent/Defendant would suffer “irreparable or serious injury” by a delay in the trial.

4. Has Petitioner/Plaintiff shown he is likely to prevail on the merits? No, because in this case Plaintiff was afforded an evidentiary hearing on November 12, 2019 and the court based its decision on the evidence presented, see Order filed November 20, 2019.

In order to prevail on the merits a moving party must produce evidence including 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. Such evidence may be used to support a claim of bad faith. *Gittings* supra p. 394.

CONCLUSION

Plaintiff had his day in court and evidentiary hearing. In the November 20, 2019 Order denying the initial motion the District Court concluded that it was not convinced that the limited sample of requests for the limited time period did statistically demonstrate bad faith in making the requests for trial de novo.

Although Plaintiff had initially requested leave to conduct discovery to get further statistical evidence so as to meet the burden of proof, that request was denied.

Based upon the foregoing, The MOTION FOR STAY IS DENIED.

Respectfully submitted this 16th day of March 2020


PRESIDING JUDGE PRO TEMPORE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), and N.E.F.R 9(b)(d) I certify that I am an employee of or the lawyer in the law office of Lance R. Van Lydegraf, Esq., appointed as Short Trial Judge herein, and that on this date I served the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States mail, at Reno, Nevada, by certified mail return receipt requested, postage prepaid, following ordinary business practices.
_____ Personal delivery via RCMS
_____ Facsimile
_____ Federal Express or other overnight delivery
xx _____ Email/E-flex

Addressed as follows:

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Dated this 16th day of March 2020



AFFIRMATION

Pursuant to NRS 239B.030 the undersigned does hereby affirm that the preceding document, does not contain the social security number of any person


