

CASE NOS. 79807 & 80709

IN THE SUPREME COURT OF THE STATE OF NEVADA

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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.

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

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
II. ARGUMENT	2
A. CHINA YIDA’S ARGUMENTS TO THE CONTRARY NOTWITHSTANDING, THE DISTRICT COURT DID, IN FACT, ERR IN GRANTING SUMMARY JUDGMENT AGAINST POPE	2
1. CHINA YIDA’s Arguments in the Answering Brief Distract From and Overcomplicate the Issues and Analysis Dispositive to the Present Appeal ..	3
2. CHINA YIDA’s Plan of Merger, as Incorporated Into the Resolution Approving the Merger Serves to Provide Dissenters Rights to its Shareholders	6
3. CHINA YIDA’s Interpretation of the Plan of Merger and the Relevant Nevada Statutes Contradicts the Public Policy Which Protects Dissenting or Minority Shareholders	8
B. POPE’S FAILURE TO ACCEPT CHINA YIDA’S UNREASONABLE RULE 68 OFFER OF JUDGMENT WAS NOT AN UNREASONABLE ACT ON POPE’S PART, AND CONSEQUENTLY THE DISTRICT COURT ERRED IN AWARDING ATTORNEYS FEES	9
1. The Statutory Framework of Chapter 92A is Relevant and Probative as to Whether an Award of Attorney’s Fees is Reasonable or Fair in the Absence of Vexatious or Bad Faith Conduct	10
2. China Yida’s Arguments Regarding the Reasonableness of its Offer of Judgment and the Unreasonableness of POPE’s Rejection of the Offer Do Not Properly Take Into Consideration the Facts and Circumstances in the Present Case	11
3. Should the Court Decide to Uphold the District Court’s Award of Attorney’s Fees, That Award Should Be Reduced as Requested, CHINA YIDA’s Arguments Notwithstanding	17
III. CONCLUSION	19

RULE 28.2 CERTIFICATE OF COMPLIANCE	21
CERTIFICATE OF SERVICE	23

TABLE OF AUTHORITIES

Cases

<u>American Ethanol, Inc. v. Cordillera Fund</u> , 127 Nev. 147, 252 P.3d 663 (2011)...	12
<u>Beattie v. Thomas</u> , 99 Nev. 579, 588, 668 P.2d 268, 274 (1983)	9, 11, 19
<u>Brunzell v. Golden State National Bank</u> , 85 Nev. 345, 349, 124 P.2d. 530, 533 (1969).....	9, 19
<u>La Forge v. State, University & Community College System of Nevada</u> , 116 Nev. 415, 997 P.2d. 130 (2000).....	13
<u>Smith v. Kisorin USA, Inc.</u> , 127 Nev. 444, 252 P.3d 636 (2011).....	12

Statutes

Nev. Rev. Stat. § 92A	1, 5, 7, 10
Nev. Rev. Stat. § 92A.300	8
Nev. Rev. Stat. § 92A.390(1).....	2, 4, 5, 18
Nev. Rev. Stat. § 92A.500	10, 11
Nev. Rev. Stat. § 92A.500(2).....	10, 11

Rules

Nev. R. Civ. P. 16.1	18
Nev. R. Civ. P. 37(c).....	18
Nev. R. Civ. P. 68	passim

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By way of this appeal, the Appellants POPE INVESTMENTS, LLC, POPE INVESTMENTS II, LLC and ANNUITY & LIFE REASSURANCE, LTD (hereinafter, “POPE”) seek the reversal of the district court’s Order granting summary judgment in favor of Respondent CHINA YIDA HOLDING CO. (hereinafter, “CHINA YIDA”), in addition to a reversal of the district court’s subsequent Order granting CHINA YIDA an award of \$41,053.50 in attorneys fees. POPE filed the Appellants’ Opening Brief on August 11, 2020.

On December 9, 2020, following a short series of stipulated extensions of the filing deadline, CHINA YIDA filed its Answering Brief, disputing POPE’s factual and legal arguments in support of reversal, contending that the record in the district court supported judgment against POPE as a matter of law, and that the district court acted within its sound discretion in granting CHINA YIDA’s request for attorneys fees.

CHINA YIDA’s arguments are without merit, and nothing contained in its Answering Brief detracts from the soundness of POPE’s arguments in support of reversal in the Opening Brief. As set forth herein, CHINA YIDA’s arguments are inconsistent with both the factual record below and the appropriate legal analysis of the provisions of Chapter 92A of the Nevada Revised Statutes. In addition,

POPE has already demonstrated that the district court erred in awarding attorneys fees, and nothing CHINA YIDA contends negates the district court's abuse of discretion.

By way of two stipulated extensions of the deadline for filing POPE's Reply Brief, and a pending Unopposed Motion to Extend the deadline, POPE has requested that the Reply Brief be due on or before February 10, 2021.

II. ARGUMENT

A. CHINA YIDA'S ARGUMENTS TO THE CONTRARY NOTWITHSTANDING, THE DISTRICT COURT DID, IN FACT, ERR IN GRANTING SUMMARY JUDGMENT AGAINST POPE

CHINA YIDA successfully argued to the district court that because its shares of stock were "covered securities" within the meaning of the federal securities laws, Section 92A.390(1) of the Nevada Revised Statutes dictated that, under the facts and circumstances of this case, POPE did not legally have dissenters rights with respect to the merger transaction at issue. Due no doubt to its desire to preserve the award of attorneys fees it received from the district court, CHINA YIDA characterizes POPE's lack of entitlement to dissenters rights as being so obvious and clear cut (despite its own willingness to litigate the valuation of CHINA YIDA's shares for more than two (2) years, at significant cost to the parties, before raising this argument with the district court) that summary judgment was predestined from the very moment the district court case was filed, ironically

by CHINA YIDA itself. The factual record in this case and the appropriate application of the relevant statutory provisions to that record are anything but as clear cut and favorable to CHINA YIDA as it contends. POPE applied the correct statutory and factual analysis in the Opening Brief in demonstrating the district court's error in granting summary judgment, and nothing advanced by CHINA YIDA in opposition detracts from POPE's position. As noted further below, CHINA YIDA's arguments are largely either incorrect, irrelevant or ineffective, and the present case must be returned to the district court for further proceedings to determine the fair value of CHINA YIDA stock.

1. CHINA YIDA's Arguments in the Answering Brief Distract From and Overcomplicate the Issues and Analysis Dispositive to the Present Appeal

While the briefing in the present case included extensive citation to statutory and case authority, laced with both interpretation and policy analysis of Nevada's corporate statutory framework, the questions presented to this Court for resolution are more direct and straightforward than one would gather from reading CHINA YIDA's Answering Brief. POPE stands by the arguments and analysis contained in the Opening Brief, and hereby "expressly" asserts that none of CHINA YIDA's arguments in support of the summary judgment in the district court have a negative impact on the merits of POPE's position. POPE submits that the essence of the present case is a largely factual mistake made by the district court.

CHINA YIDA's effort to sustain the premature termination of POPE's quest for a fair value determination, while detailed in its legal research and selective attacks on POPE's characterizations of the corporate maneuvering and scheming of CHINA YIDA and its two major controlling shareholders, cloud the record unnecessarily and distract from the central facts and questions. All parties agree that CHINA YIDA's stock was publicly traded on NASDAQ. All parties agree that CHINA YIDA's Board of Directors passed a resolution approving the merger that is at the heart of the case. The parties essentially debate only whether that resolution is a sufficient instrument to remove the present case from the impact of Section 92A.390(1) of the Nevada Revised Statutes. Clearly, by its own language and that of the corporate decision it approves, it is. (See Opening Brief, pages 6 and 7)

CHINA YIDA's "analysis" of its own statements, communications and corporate plans and documents, whether intentionally or through misunderstanding, directs the Court's focus away from the point POPE has been consistently making. The "resolution" necessary to make the statutory "market out" provision inapplicable to POPE's right to a fair value determination exists, and that resolution, by approving the Plan of Merger, also necessarily approves its terms, which include the representations by CHINA YIDA to its shareholders that dissenters rights were available to them. CHINA YIDA's attack on the resolution

is, in essence, an argument that the terms of the approved Plan of Merger (the subject of the resolution) must be ignored in construing what the resolution means. This proposition is untenable and makes sense only if one is attempting to restrict the meaning of the word “expressly” to obtain a litigation advantage or an unfair disposition of the case contrary to the spirit of the statutes governing the rights of dissenting shareholders.

The error the district court committed in the proceedings below was to conclude that the resolution approving the merger was not “express” enough to satisfy the exception identified in Section 92A.390(1). By reaching this conclusion, the district court ignored the clear fact that the resolution, by its very nature, incorporated by reference the Plan of Merger, which POPE has demonstrated amounts to an agreement and corporate document which provides POPE and other dissenting shareholders the right to a fair value determination in the district court, the “covered securities” nature of CHINA YIDA’s stock notwithstanding. POPE is not attempting to rewrite Chapter 92A of the Nevada Revised Statutes, it is simply arguing that the district court with its overly restrictive understanding of “expressly” did not reach the correct factual determination. Reversal is warranted.

2. CHINA YIDA's Plan of Merger, as Incorporated Into the Resolution Approving the Merger Serves to Provide Dissenters Rights to its Shareholders

The Plan of Merger has been extensively quoted by both sides in their respective Briefs. CHINA YIDA emphasizes the verbiage which it contends serves only to persuade shareholders to seek legal advice as to their rights under the merger, after teasing them with numerous references and statements in the Plan of Merger and related communications referencing their dissenters' rights to a fair value determination. POPE has demonstrated how CHINA YIDA's own language consistently refers to the shareholders' dissenters rights, which unless designed to mislead the shareholders, has no other purpose or impact other than to explicitly grant such rights. CHINA YIDA's argument is, at best, that despite how confusing or contradictory were it's discussions and representations in the Plan of Merger and related communications it was "clear" that the sum total of its pronouncements could not constitute the provision of dissenters' rights to shareholders. It is anything but "clear" that this CHINA YIDA representation is true.

The crux of CHINA YIDA's argument as to the existence of dissenters' rights is that, even if the resolution of the board of directors is deemed to have expressly incorporated the terms of the Plan of Merger, that Plan does not provide anything more to shareholders than the advice to "go see a lawyer" if they want to know about dissenters' rights. All of the discussion of such rights by CHINA

YIDA in the Plan of Merger, “frequently asked questions” materials, and other communications to shareholders, are treated as irrelevant surplusage by CHINA YIDA in its Answering Brief. This is not surprising, given the company’s intent to escape any accountability for the statements and impressions given to shareholders. Yet to the extent the representations contained in the Plan of Merger may be unclear, contradictory or confusing, CHINA YIDA, as the author of the Plan of Merger, must bear the responsibility and the consequences of sowing ambiguity and confusion. This is especially true when the Plan of Merger explicitly states that the dissenting shares are to be cancelled and will cease to exist “in consideration for the right to receive fair value of such Dissenting Share”. (Volume 2, APP0268 - APP0269, Opening Brief, page 15). Whatever ambiguity may exist as to the meaning of the language of the Plan of Merger is construed against CHINA YIDA, and this clear representation that dissenters rights constitute “consideration” under the Plan of Merger cannot be ignored, and manifests CHINA YIDA’s obvious intention to grant such rights.

Equally unhelpful to CHINA YIDA is its argument that dissenters’ rights are not available to any shareholder who has “lost” it’s rights to dissent from the merger. Chapter 92A does, in fact, identify situations in which a shareholder can, through its own conduct, “lose” its dissenters’ rights. But CHINA YIDA’s argument goes too far in equating the alleged lack of jurisdiction stemming from

Section 92A.300 with the “loss” of such rights contemplated by the statute and the references in the Plan of Merger. (See Volume 2, APP0268 – APP0269) CHINA YIDA argues that POPE never had dissenters rights because of the district court’s lack of jurisdiction under the “market out” exception. It is axiomatic that one cannot “lose” what one never had. CHINA YIDA’s contention that POPE lost its dissenters rights is without merit.

3. CHINA YIDA’s Interpretation of the Plan of Merger and the Relevant Nevada Statutes Contradicts the Public Policy Which Protects Dissenting or Minority Shareholders

As explained in POPE’s Opening Brief, the Nevada statutes addressing the rights of minority shareholders are to be construed so as to advance the interest of protecting the rights of those shareholders to receive fair value when they dissent from corporate actions such as those undertaken by CHINA YIDA in the present case. CHINA YIDA’s restrictive definition of what qualifies as an express resolution for purposes of avoiding the application of the “market out” exception does not advance the objective of protecting dissenters rights, especially when applied to the facts of the present case. CHINA YIDA’s Answering Brief contains no justification for a statutory interpretation of the word “expressly” which serves to deny its dissenting shareholders the right to a fair value determination under the circumstances of the present case. As noted earlier herein and in the Opening Brief, CHINA YIDA’s representations and statements regarding dissenters rights

are so plentiful and strong that to fail to construe them as sufficient enough to satisfy the exception to the “market out” provision would encourage the misleading of shareholders as to their rights and be anything but favorable to the strong policy favoring fairness to minority shareholders. CHINA YIDA’s interpretation and analysis, in the context of the present case, can be rejected on this basis alone.

**B. POPE’S FAILURE TO ACCEPT CHINA YIDA’S
UNREASONABLE RULE 68 OFFER OF JUDGMENT WAS NOT
AN UNREASONABLE ACT ON POPE’S PART, AND
CONSEQUENTLY THE DISTRICT COURT ERRED IN
AWARDING ATTORNEYS FEES**

While a district courts’ award of attorneys fees premised upon a party’s rejection of a valid offer of judgment made pursuant to Rule 68 of the Nevada Rules of Civil Procedure is evaluated on appeal under an abuse of discretion standard, the district court’s decision must always be evaluated in the specific factual context of the underlying litigation, without deference to any formulaic assessment beyond an individualistic application of the factors set forth in Beattie v. Thomas, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983) and Brunzell v. Golden State National Bank, 85 Nev. 345, 349, 124 P.2d. 530, 533 (1969). Each attorneys fee determination is necessarily unique, and while consideration of other reported cases may be illustrative of approaches other courts have applied, it is seldom, if ever, controlling with respect to a new set of facts.

In the Opening Brief, POPE set forth the facts and considerations of record which demonstrated that the district court abused its discretion in punishing POPE's eminently reasonable conduct with an award of attorneys fees. Nothing set forth or argued in CHINA YIDA's Answering Brief in support of the award is persuasive in overcoming the conclusion that an abuse of discretion occurred.

1. The Statutory Framework of Chapter 92A is Relevant and Probative as to Whether an Award of Attorney's Fees is Reasonable or Fair in the Absence of Vexatious or Bad Faith Conduct

CHINA YIDA takes issue with POPE's discussion of Section 92A.500 of the Nevada Revised Statutes and denies the manifest relevance of that provision to a district court's evaluation of a request for attorneys fees in a statutory fair value case. CHINA YIDA asserts that POPE is attempting to "incorporate sections 1 and 2 of NRS 92A.500 into section 6 . . ." of Section 92A.500. (Answering Brief, at 41). This contention misapprehends the point which POPE was making with respect to the language of Section 92A.500(2), which permits an award of fees against a dissenting shareholder when the court finds the dissenter "acted vexatiously or not in good faith". Nor is POPE incorporating a "vexatious or arbitrary standard into NRCP 68." (Answering Brief, at 41). Since the context in which a request for attorney's fees is made is always a relevant consideration, Section 92A.500(2) and the way attorneys fees requests are generally resolved in fair value litigation are highly relevant and informative as to how the district court

should exercise its discretion, even though the statutory framework also permits a party to make an offer of judgment pursuant to Rule 68.

CHINA YIDA's fear that POPE's emphasis on Section 92A.500(2) somehow constitutes an improper effort to amend Rule 68 or to alter the Beattie factors is misplaced. The Beattie factors and the language of Rule 68 are what they are. Nevertheless, the statutory provisions regarding the award of costs or fees in dissenters' rights fair value proceedings are certainly part of the relevant context in which to evaluate offers of judgment and their suitability, especially with respect to the reasonableness of such an offer and the reasonableness of a decision to refuse to accept an offer. The statutory goal of Section 92A.500 was clearly in favor of having the corporation bear the expense of attorneys fees, except in situations involving especially vexatious or bad faith conduct by the dissenters. A district court must clearly take this goal into consideration when evaluating the context of an attorneys fee request, and in the present case consideration of this preference against an award of such fees in the typical dissenters' rights case weighs against the district court's decision.

2. China Yida's Arguments Regarding the Reasonableness of its Offer of Judgment and the Unreasonableness of POPE's Rejection of the Offer Do Not Properly Take Into Consideration the Facts and Circumstances in the Present Case

CHINA YIDA describes POPE's factual recitations and arguments concerning its decision to reject the Offer of Judgment as rationalizations, casting

aspersions on POPE's observation that it was CHINA YIDA which filed the litigation in the district court, a fact which weighs heavily against any conclusion that POPE acted in bad faith, having not commenced the litigation in question. CHINA YIDA argues that it was required to file the Petition based upon POPE's initiation of the "dissenter's rights process". Such an excuse directly contradicts CHINA YIDA's persistent contention that dissenters' rights did not even exist in connection with the merger at issue, a situation which CHINA YIDA has even gone so far as to characterize as one in which the district court did not have jurisdiction to hear and adjudicate the Petition. Were the "jurisdictional" issue as obvious and clear cut as CHINA YIDA now contends, surely it would not be required to file a case over which the district court did not have jurisdiction. It could simply have responded to POPE's invocation of dissenters rights by pointing out the lack of such rights and declining to commence a court action. The next move would presumably been up to POPE. In the very case authorities it cites in the Answering Brief, CHINA YIDA references American Ethanol, Inc. v. Cordillera Fund, 127 Nev. 147, 252 P.3d 663 (2011) and Smith v. Kisorin USA, Inc., 127 Nev. 444, 252 P.3d 636 (2011), cases in which the corporation denied the existence of dissenters rights and the dissenting shareholders commenced litigation to contest that position. CHINA YIDA was not forced to commence litigation and

engage in two and one-half years of motions and discovery, all the while allegedly knowing the district court could not properly hear the case.

CHINA YIDA's actions in resorting to the courts is, in fact, a clear demonstration that the "market out" issue was not so clear cut and definitive as now described by CHINA YIDA. This reinforces the reasonableness of POPE's rejection of the Offer of Judgment in a situation in which even CHINA YIDA lacked confidence in the argument that the "market out" provision barred the proceedings below. CHINA YIDA's wholehearted engagement in the district court litigation for two and one-half years also erodes the persuasiveness of its argument that offering a few pennies more per share of stock was a fair and reasonable offer to advance settlement in light of the factual and legal issues in the case. If CHINA YIDA believed the issues to be contestable, and uncertain enough to justify expensive, contentious litigation, it could not have expected POPE to settle for so little.

CHINA YIDA misapprehends POPE's argument with respect to the "timing" of the Offer of Judgment. The Answering Brief analyzes the timing of the Offer with reference to the Court's opinion in La Forge v. State, University & Community College System of Nevada, 116 Nev. 415, 997 P.2d. 130 (2000).

CHINA YIDA vigorously denies that any improper calculation or gamesmanship was involved in the timing of the Offer of Judgment, emphasizing that both parties

had equal access to the relevant law and facts underpinning the statutory argument for summary judgment. But POPE is not so much concerned with whether CHINA YIDA was engaged in “hiding the ball”, so to speak, but instead is emphasizing that CHINA YIDA wasn’t even aware that it had the ball. The timing of CHINA YIDA’s Offer of Judgment is indicative of its lack of confidence in (or perhaps its initial unawareness of) the argument upon which it ultimately obtained summary judgment. If the proponents of an argument are uncertain of its persuasiveness, it stands to reason that the other party would be acting reasonably in having its own doubts about the proponent’s position and insisting upon a ruling from the district court, as did POPE.

As CHINA YIDA correctly notes in the Answering Brief, the parties’ calculations as to the fair value of CHINA YIDA’s stock differed significantly. CHINA YIDA attributes this large difference between respective valuations to the alleged unreasonableness of POPE’s expert opinion, while emphasizing the supposed validity of its own experts’ significantly lower valuations. It is hardly surprising, given the different perspectives of the parties and the adversarial relationship between them that the valuations differed. Each sides’ expert employed different valuation techniques and methodologies, contributing to the difference in valuations, and contrary to CHINA YIDA’s contention that the trading history of the stock and the opinions of its own experts makes POPE an

unreasonable outlier in its valuation, the factual record shows otherwise. The prior stock splits and transactions referenced in POPE's Opening Brief (See Opening Brief, pages 2 and 3) and their impact on stock value, validate POPE's belief that the shares did indeed, have the high value it demanded. Moreover, POPE's expert took into consideration the valuable assets and real estate interests owned by CHINA YIDA, which clearly support the fact the company was undervalued.

CHINA YIDA's argument that the disparity in valuations (more specifically POPE's higher valuation) is not relevant to the reasonableness of its Offer of Judgment is erroneous. As a threshold observation, the district court has not yet reached the point in the fair value litigation where it would be required to consider and perhaps choose between the competing values. And because CHINA YIDA obtained summary judgment on a ground which had nothing to do with the actual value of the stock, there has been no determination that CHINA YIDA's position as to valuation is correct. The significance of the wide gap in the different valuations, supported by expert analysis on both sides, is that it demonstrates that a good faith effort to actually settle or resolve the case would have, of necessity, generated a higher offer of judgment. The prime purpose of the Rule 68 offer of judgment process is to encourage resolution of cases, and spare the parties and the system from expense. And the secondary objective of "punishing" a party that rejects a reasonable offer does not even come into consideration if the offer was

not reasonable. An offer not crafted to be appealing, reasonable or acceptable enough in amount so as to seriously advance settlement is not “reasonable” for Rule 68 offer of judgment purposes. If the objective of an offer is to pursue a different result, in this case a bare minimum settlement offered in the hope of rejection such as to trigger a potential attorneys fee award, it is not a reasonable offer in the spirit of Rule 68, and POPE was right to reject it.

CHINA YIDA’s Answering Brief also advances two other arguments in support of its contention that the amount of its Offer of Judgment was reasonable. First, it cites to California cases analyzing that state’s statutory framework addressing the use of offers of judgment to shift costs in civil litigation, emphasizing the decisions which have opined that obtaining a judgment more favorable than its offer of judgment, establishes that the offering party’s offer of judgment was prima facie “reasonable” when awarding costs. While it is not hard to see the attractiveness of those cases to CHINA YIDA’s preferred disposition of this issue, they are not consistent with the contextual and discretionary analysis that Nevada courts are required to apply to awards of attorneys fees. The California cases reflect a far more formulaic approach to “costs”, which lends little assistance to discretionary rulings on attorneys fees. A scenario which would support an award of costs does not automatically entitle its recipient to attorneys fees. CHINA YIDA’s attempt to argue a presumptive entitlement to a

determination of reasonableness flies in the face of the fact specific reasonableness approach required of Nevada courts.

Secondly, CHINA YIDA's fear that adoption of POPE's arguments concerning the significance of the disparity between the parties valuation calculations for attorney's fee analysis would eviscerate the effectiveness of Rule 68 offers of judgment is unwarranted. The present case is unlike the egregious scenarios envisioned by CHINA YIDA, where a plaintiff will intentionally or preemptively make a exorbitant settlement demand or damages calculation for purposes of skewing the Court's assessment of the reasonableness of the defendants' offers of judgment. POPE's valuation of CHINA YIDA's stock is based upon expert analysis, and CHINA YIDA's allegations that this analysis has been discredited are simply that: allegations alone. The district court made no such determination. (See also Opening Brief, pages 2, 3 and 7). The problematic situation CHINA YIDA fears is simply not part of the present case.

3. Should the Court Decide to Uphold the District Court's Award of Attorney's Fees, That Award Should Be Reduced as Requested, CHINA YIDA's Arguments Notwithstanding

CHINA YIDA disputes POPE's request in the Opening Brief that any award of attorneys fees upheld in the present appeal be reduced by \$9,715.00, an amount reflecting the work its counsel devoted to a motion to strike the expert opinions of

POPE's valuation expert. CHINA YIDA defends the challenged work and fees as having been essential to its trial preparation, and faults POPE for taking a "hindsight" approach to determining the necessity of legal work conducted after the date of the Offer of Judgment. Nothing argued by CHINA YIDA detracts from POPE's demonstration that the motion to strike was unnecessary and POPE should not be held responsible for its cost.

CHINA YIDA disagrees with POPE's characterization of the issue addressed in the motion to strike as "merely an admissibility issue" (CHINA YIDA's words: see Answering Brief, page 49). It instead described the motion to strike as involving CHINA YIDA's right to seek exclusion of POPE's expert report on the basis of POPE's alleged violation of Rule 16.1 of the Nevada Rules of Civil Procedure. Nonetheless, the fact that it sought relief pursuant to Rule 37(c) of the Nevada Rules of Civil Procedure does not make the motion any more "necessary" or critical to preparation for trial. Including fees relative to the preparation of this motion was improper, in that POPE was saddled with an attorneys fees award in an amount beyond that which could be justified by reasonable trial preparation.

CHINA YIDA complains that it "could not just assume that (it's) motion for summary judgment would be granted, regardless of how clear the application of NRS 92A.390(1) was." (Answering Brief, page 49). But CHINA YIDA can not

have it both ways. If CHINA YIDA and its attorneys could not assume that it would prevail on an issue which it has consistently argued is one of clear cut statutory interpretation which deprives the district court of jurisdiction, then POPE was justified in believing that this very same summary judgment issue could be decided in its favor, illustrating why POPE's choice in not accepting the Offer of Judgment was eminently reasonable. If the summary judgment motion was not the proverbial "slam dunk", a proper analysis of the Beattie and Brunzell factors leads to an award of no fees, let alone the amount incurred for preparing the motion to strike.

III. CONCLUSION

For the reasons set forth herein, this Court must reverse the district court's Order granting summary judgment to CHINA YIDA, and send the present case back to the district court for the completion of the fair value litigation already commenced. The district court's award of attorneys fees to CHINA YIDA was an abuse of discretion and should also be reversed.

Dated this 10th day of February, 2021.

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RULE 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point, double-spaced Times New Roman font.

2. I further certify that his brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(1)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,521 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 10th day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Boies Schiller Flexner LLP and that on the 10th day of February, 2021, I electronically filed the foregoing *APPELLANTS' REPLY BRIEF* 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