

IN THE SUPREME COURT OF THE STATE OF NEVADA

CAPRIATI CONSTRUCTION CORP.,  
INC., a Nevada Corporation  
Appellant,

v.

BAHRAM YAHYAVI, an individual,  
Respondent.

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CAPRIATI CONSTRUCTION CORP.,  
INC., a Nevada Corporation  
Appellant,

v.

BAHRAM YAHYAVI, an individual,  
Respondent.

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) Supreme Court No: 80107  
) District Court Case No: A718689  
) **Electronically Filed**  
) **Aug 12 2020 01:26 p.m.**  
) **Elizabeth A. Brown**  
) **Clerk of Supreme Court**

**MOTION FOR LEAVE TO FILE AN OPENING BRIEF  
THAT EXCEEDS THE WORD LIMIT NRAP 32(a)(7)(D)**

Pursuant to NRAP 32(a)(7)(D), appellants move for permission to file an opening brief in excess of 14,000 words; to wit, 15,103 words.

NRAP 32(a)(7)(D) allows this Court to grant permission for an oversized brief. Although such motions are looked on with disfavor, appellants submit that this case is sufficiently extraordinary and compelling to justify the minimal additional length requested. This motion is supported by the detailed Declaration of counsel, attached hereto, showing diligence and good cause as required by

NRAP 32(a)(7)(D)(i), and providing the information required by NRAP 32(a)(7)(D)(ii). The proposed opening brief is being submitted with this motion as required by NRAP 32(a)(7)(D)(iii).

Considering the complexity of case in district court, the facts need to be set forth in significant detail, and the issues need to be explained thoroughly to provide the court with sufficient information to properly resolve the appeal. This case involved a three week trial that ended in sanctions, a directed verdict, a jury instruction in direct derogation of established Nevada law, a judgment in excess of \$8 Million, and an attorney's fee award that is not warranted under Nevada law. This Court has consolidated two appeals, both of which now must be addressed in a single brief, and although many appeals from awards of attorney's fees are routine and require relatively limited briefing, the issue in this case is novel, and requires extensive briefing.

Appellant's attorneys have edited the brief several times over a several day's period, removing thousands of words and eliminating meritorious issues (much to the chagrin of trial counsel) to focus the Court's attention on the most significant issues. We have attempted to limit the length of the brief without harming its ability to provide the court with enough information, and we came

very close to the goal of 14,000 words. But we respectfully contend that the brief cannot be shortened any more, without negatively impacting its value to the court.

Accordingly, appellant requests permission to file an opening brief containing 15,103 words.

Respectfully submitted this 12 day of August, 2020.

HUTCHISON & STEFFEN, PLLC



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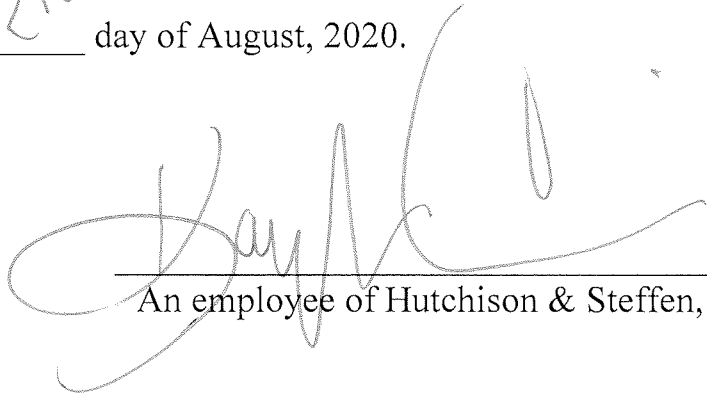
**CERTIFICATE OF SERVICE**

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **MOTION FOR LEAVE TO FILE AN OPENING BRIEF THAT EXCEEDS THE WORD LIMIT NRAP 32(a)(7)(D)** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Dennis M. Prince, Esq.  
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*Attorney for Respondent Bahram Yahyavi*

DATED this 12<sup>th</sup> day of August, 2020.

  
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An employee of Hutchison & Steffen, PLLC

## DECLARATION OF COUNSEL MICHAEL K. WALL

1. I am an attorney with Hutchison & Steffen, PLLC. I am counsel for appellant in this matter, and I have personal knowledge of the facts set forth herein.

2. The underlying case is a personal injury case arising from an automobile accident. After three weeks of trial, when appellant presented its first witness in its case-in-chief (appellant had presented two witnesses out of order due to scheduling issues during respondent's case-in-chief), in response to the first question, the district court concluded that the question and the seven word answer constituted attorney misconduct, and imposed severe sanctions. The severity of the sanction is the primary issue on appeal.

3. As part of the sanction, the district court instructed the jury on insurance issues in a manner appellant believes was plain error. This is also a significant issue on appeal.

4. The sanctions resulted in (or at the very least, contributed to) a jury verdict and judgment in excess of \$8 Million.

5. After entry of judgment, the district court awarded attorney's fees based on an offer of judgment in the amount of respondent's contingency fee agreement with his trial attorney. This raises significant issues never previously

addressed by this Court.

6. Although the appendix in this case will be moderate in size (12 volumes and 2,700 pages), most of the appendix is trial transcripts for a very long trial, which required close reading and explanation in the brief. The appendix documents have been carefully selected so as not to overburden the Court.

7. Appellants have raised substantial issues the district court's patent errors and abuses of discretion. Appellants have forgone other issues in order to heed this Courts admonitions in *Hernandez v. State*, 117 Nev. 463, 464–68, 24 P.3d 767, 768–70 (2001), including “that the weeding out of weaker issues is widely recognized as one of the hallmarks of effective appellate advocacy.” The issues raised are important, and each could have been the subject of a separate appeal and brief of substantial length, but must be fitted here into a single brief.

8. Appellant have heeded the instructions of *Blandino v. Eighth Judicial Dist. Court*, 466 P.3d 539 (Nev. 2020) (unpublished), to use diligence in editing the draft. The brief has been edited and re-edited numerous times to remove thousand of words (and entire issues) in an attempt to be concise without losing continuity. The post-judgment facts and issues consume a large part of the brief, but those issues are necessary. The fee award is excessive, more than \$2.5 Million, and it is based on a contingency agreement only.

9. It is counsel's belief that this case cannot be presented fairly with a shorter brief. Despite serious efforts and diligence, appellants do not believe the multiple separate issues can be effectively presented in fewer words.

10. I declare the foregoing to be true under penalty of perjury for the laws of the State of Nevada.

DATED this 12 day of August, 2020.

HUTCHISON & STEFFEN, PLLC.

A handwritten signature in cursive script that reads "Michael K. Wall". The signature is written in black ink and is positioned above a horizontal line.

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