

ST. PAUL FIRE & MARINE
INSURANCE COMPANY

Appellant,

v.

NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA; ROOF DECK
ENTERTAINMENT, LLC, D/B/A
MARQUEE NIGHTCLUB,

Respondents.

) Supreme Court No: 81344
) District Court Case No: A758902
) Electronically Filed
) Feb 18 2021 05:18 p.m.
) Elizabeth A. Brown
) Clerk of Supreme Court

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 issues in the case, and that the case presents important issues of first impression in Nevada, 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 involves two separate appeals from the same district court case. The district court issued summary judgment in favor of two of three defendants in separate orders, denying summary judgment to the third, and certified the separate orders as final pursuant to NRCP 54(b). The two appeals are both docketed under No. 81344.

Although the underlying facts of the case are the same for both appeals, the legal issues are different. One defendant is an insurance company against which claims of bad faith are asserted by subrogation; the other is a nightclub, the employees of which assaulted and seriously injured a patron. The nightclub owes contractual and implied indemnity and contribution to their insured, Cosmopolitan, which claims now belong to appellant St. Paul by subrogation. The amount in the multi-millions of dollars. The issues in this appeal are complex, and require extensive briefing.

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:

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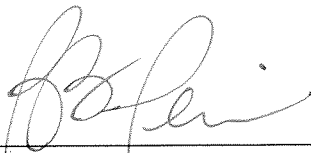
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DATED this 18th day of February, 2021.



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. This case arises from an underlying personal injury action, that resulted in an excess verdict in favor of the plaintiff. Several insurance carriers entered into and funded a settlement in the personal injury action, reserving their rights as against each other. Appellant St. Paul then brought this action against two of the other insurers, and against the nightclub where the torts were committed that resulted in the personal injury action. St. Paul's claims arise through subrogation to the rights of its insured, Cosmopolitan, against each of the defendants. The district court granted summary judgment in favor of one insurer, and in favor of the nightclub.

3. This appeal presents several issues of first impression and significance importance to the jurisprudence of Nevada. The issues are complex, and require full briefing so as to equip this Court with important information and arguments necessary to proper resolution.

4. The amount of the settlement in the underlying personal injury action is confidential, but the amount in controversy in this litigation is substantial.

5. Although the appendix in this case will be moderate in size, the issues are complex, and close examination of the documents was required. The appendix documents have been carefully selected so as not to overburden the Court.

6. Appellant has raised substantial issues regarding the district court's errors. Appellant has forgone other issues in order to heed this Court's 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.

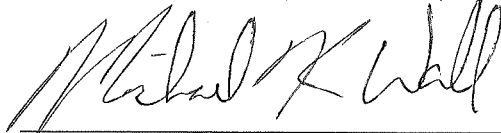
7. Appellant has heeded the instructions of *Blandino v. Eighth Judicial Dist. Court*, 466 P.3d 539 (Nev. 2020) (unpublished), to use diligence in editing the draft. The brief has been edited and re-edited numerous times to remove thousand of words (and entire issues) in an attempt to be concise without losing continuity.

8. It is counsel's belief that this case cannot be presented fairly with a shorter brief. Despite serious efforts and diligence, appellants does 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 18 day of February, 2021.

HUTCHISON & STEFFEN, PLLC.

A handwritten signature in black ink, appearing to read "Michael K. Wall", written over a horizontal line.

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