

Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
DUBOWSKY LAW OFFICE, CHTD.  
300 South Fourth Street  
Suite 1020  
Las Vegas, Nevada 89101  
(702) 360-3500  
Fax (702) 360-3515  
Attorney for Appellant

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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PLATTE RIVER INSURANCE)	Case No.: 81974
COMPANY	)
	)
Appellant,	)
	)
vs.	)
SUSAN JACKSON; and LANCE)	
JACKSON	)
	)
Respondents	)
_____	)

**APPELLANT’S PETITION FOR EN BANC RECONSIDERATION**

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APPEAL

From the Ninth Judicial District Court, Douglas County  
The Honorable THOMAS W. GREGORY, District Judge  
District Court Case No. 19CV0197

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## **TABLE OF CONTENTS**

<u>Table of Authorities</u> .....	iii, iv
I. <u>Introduction</u> .....	1
II. <u>Legal Argument</u> .....	4
A. <u>Standard for En Banc Reconsideration</u> .....	4
B. <u>The Panel’s Opinion Leads to Unintended Absurd Results</u> .....	5
C. <u>The Panel’s Interpretation of the Wildcard is Contrary to the Plain Language, Legislative Intent, Legislative History and Renders Part of the Statue Meaningless</u> .....	10
III. <u>CONCLUSION</u> .....	13
CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 40.....	14
CERTIFICATE OF SERVICE.....	15

## **TABLE OF AUTHORITIES**

### **Cases**

<u>C. Nicholas Pereos, Ltd. v. Bank of Am.</u> , 131 Nev. 436 (2015).....	11
<u>Galloway v. Truesdell</u> , 83 Nev. 13 (1967).....	12
<u>Naiw v. Nevada Self-Insurers Association</u> , 126 Nev. 74 (2010).....	12
<u>Sheriff, Washoe County v. Smith</u> , 91 Nev. 729 (1975).....	5

### **Statutes**

N.R.S. §10.045.....	10
N.R.S. §21.090(1)(g).....	6, 8
N.R.S. §21.090(1)(z).....	1
N.R.S. §21.112(1).....	2, 5
N.R.S. §21.112(2).....	7 n.5
N.R.S. §21.112(3).....	6 n.4, 7
N.R.S. §21.112(4).....	7 n.5
N.R.S. §21.112(6).....	8 n.6
N.R.S. §21.112(7).....	5 n.2
N.R.S. §31.290(1).....	5 n.1
N.R.S. §31.296(1).....	6 n.3
N.R.S. §31.297.....	9 n.7

N.R.S. §31.298.....	9 n.8
---------------------	-------

**Oregon Statute**

O.R.S. 18.345(p).....	11 n.10
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**Rules**

N.R.A.P. 40A(a).....	4
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## **APPELLANT’S PETITION FOR EN BANC RECONSIDERATION**

### **I. Introduction**

This interpretation of the judgment exemption statute presents an important first impression public policy issue of general statewide significance and is of substantial precedential importance.

The Panel’s December 23, 2021 interpretation that the \$10,000.00 Wildcard Exemption (N.R.S. §21.090(1)(z)) can be applied to the attachable portion of garnished earnings is, respectfully, a mis-interpretation of that statute that will lead to chaos and hardship in the exemption litigation space for courts, debtors, employers, among others. Attempting to apply the Panel’s interpretation would produce *unintended*, absurd and unreasonable results, not merely “intended-but-unwise.” Further, the Panel’s interpretation is contrary to the plain language of the statute, the Legislative Intent and the Legislative History.

With all due respect to the venerable Panel, the only correct interpretation of the Wildcard statute, in language and result, is that the \$10,000.00 Wildcard Exemption cannot apply to a garnishment on earnings.

Although the Panel acknowledged “the administrative burdens on the courts and litigants, complicates wage garnishment calculation,” the full extent of those “burdens” cannot be overstated.

In summary, the exemption statute (N.R.S. §21.112(1)) states in pertinent part, “If the property that is levied on is the earnings of the judgment debtor, the judgment debtor must file the claim of exemption pursuant to this subsection within 10 days after the date of each withholding of the judgment debtor’s earnings.” (emphasis added) A Wildcard claim on wages requires that a claim be filed, served, and set for hearing for every withholding period, every paycheck. This will create a Wildcard claim litigation explosion where none existed before. This Wildcard litigation explosion could not have been the intent of the Legislature.

As this Petition will show, under the Panel’s interpretation, a judgment debtor claiming the \$10,000.00 Wildcard Exemption on their earnings would have to do the following for every weekly, biweekly, semimonthly, or monthly withholding period:

- Draft a Wildcard claim of exemption for that withholding period and file the Wildcard claim with the court;
- Serve that Wildcard claim of Exemption on their employer, the Sheriff, and the judgment creditor;

The Judgment Creditor would then have to do the following in response to multiple serial claims of exemption filed by the judgment debtor for each and every withholding period:

- File an objection to the claim of exemption because the judgment creditor would need an accounting of the portion of wages to which the Wildcard applies;
- Serve the objection on the debtor's employer (among other parties);
- Obtain an expedited court hearing date on each objection.

Following the order of the court on each Wildcard claim, the debtor's employer would then have to:

- Perform double-entry accounting on the debtor's paycheck. After calculating the attachable amount under the Earnings Exemption, the employer would have to keep a ledger of that amount that applies to the Wildcard Exemption and withhold that amount and keep a tally, until it tops out at \$10,000.00, and then remit to the Sheriff. That may take months, or even years of paycheck-by-paycheck compliance.
- The employer's compliance duties are in addition to receiving and processing the frequent stream of exemption hearings notices, claims and objections that they receive for each paycheck.

This is the judgment debtor's practical benefit for exempting earnings under the Wildcard:

- The debtor will be consumed with Wildcard claims filings and hearings for each withholding period that they will also have to serve on their employer;
- For each wage withholding and garnishment for which attachable wages are applied to the Wildcard, the judgment accrues additional post-judgment interest, and the judgment creditor incurs more post-judgment costs for the months or years it takes to exhaust the \$10,000.00 Wildcard. All of the interest and costs are tacked on to the judgment balance.

Without rehearing of the Panel's interpretation, the above process will occur for every wage garnishment in every court in Nevada where the Wildcard Exemption is invoked.

## II. Legal Argument

### A. Standard for En Banc Reconsideration

Pursuant to N.R.A.P. 40A(a), "En banc reconsideration of a decision of a panel of the Supreme Court [is available where] the proceeding involves a substantial precedential . . . public policy issue." The interpretation of the \$10,000.00 Wildcard Exemption and its alleged application to Earnings is a substantial precedential and public policy issue affecting judgment enforcement in



Nevada, beyond the parties herein. The Panel denied rehearing on January 18, 2022 and therefore this Petition is appropriate.

B. The Panel's Opinion Leads to Unintended Absurd Results.

“A fundamental rule of statutory interpretation is that the unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another that would produce a reasonable result.” Sheriff, Washoe County v. Smith, 91 Nev. 729 (1975)

Pursuant to N.R.S. §21.112(1), in order for a debtor to claim the Wildcard Exemption on earnings, the debtor is required to file claims of exemption 10 days after each withholding pay period. In addition, the debtor must also serve all of those weekly, biweekly, semimonthly, or monthly<sup>1</sup> Wildcard claims on the sheriff, their employer, the judgment creditor, and file everything with the court. It is absurd and unreasonable that the Legislature intended to introduce this dynamic into the employer/employee relationship for every earnings garnishment. Pursuant to N.R.S. §21.112(7), if the debtor does not serve the sheriff and their employer a claim of exemption after each withholding, the property is released to the judgment creditor.<sup>2</sup>

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<sup>1</sup> These withholding periods are stated in the Garnishment Interrogatory form contained in N.R.S. §31.290(1).

<sup>2</sup> N.R.S. §21.112(7) states, “If the sheriff or garnishee does not receive a copy of a claim of exemption from the judgment debtor within 25 calendar days after the property is levied on, the garnishee must release the property to the sheriff or, if the property is held by the sheriff, the sheriff must release the property to the judgment creditor.”

These withholding periods could be as frequent as weekly, biweekly, semimonthly, or monthly for every 180-day<sup>3</sup> duration of an earnings garnishment.

Under the interpretation where the Wildcard Exemption did not apply to earnings, the debtor would only need to file an exemption claim on earnings where their employer makes a withholding error, because the earnings exemption is “non-judicial.” However, the Wildcard exemption cannot be administered without court intervention and hearing. Therefore, for the Wildcard to apply to earnings, the debtor would be statutorily required to burden their employer and the courts with Wildcard claims for every withholding. The unreasonable and unintended results of applying the Wildcard to earnings do not end there.

The creditor is then required to file and serve objections<sup>4</sup> to each withholding exemption claim on the employer, sheriff and debtor. In attempting to apply the Wildcard to earnings, an objection is an essential part of the process, because there must be an evidentiary showing of what portion of the debtor’s earnings for each paycheck is exempt under N.R.S. §21.090(1)(g), and what portion is “attachable”

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<sup>3</sup> N.R.S. §31.296(1) (“[I]f the garnishee indicates in the garnishee’s answer to garnishee interrogatories that the garnishee is the employer of the defendant, the writ of garnishment served on the garnishee shall be deemed to continue for 180 days . . .”)

<sup>4</sup> N.R.S. §21.112(3) states, “An objection to the claim of exemption and notice for a hearing must be filed with the court within 8 judicial days after the claim of exemption is served on the judgment creditor... The judgment creditor shall also serve notice of the date of the hearing on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing.”

and applicable to the \$10,000.00 Wildcard. Each creditor's objection must be filed and served within 8 days after each claim of exemption, which claims of exemption are required to be filed 10 days after each withholding period. Under the Panel's interpretation, the debtor and the creditor would be required to "paper" the debtor's employer with claims and notices of hearings on objections for each paycheck during their 180-day garnishment period, for each 180-day earnings garnishment period. However, being "papered" with claims and objections and hearing dates is not necessarily the least of the employer's burdens. The employer also has to comply with the infeasible chore of applying the Wildcard to earnings.

Pursuant to N.R.S. §21.112(3), each of the creditor's objections on each of the claims of exemption for each withholding period requires an expedited hearing. The creditor must object to each of the debtor's Wildcard claims, and get an expedited hearing on each Wildcard claim to avoid losing their right to the property<sup>5</sup>. The unintended unreasonable result of applying the Wildcard to earnings means a flurry of claims and frequent expedited hearings on every paycheck for the debtor, creditor

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<sup>5</sup> N.R.S. §21.112(2) states, "[T]he property must be released to the judgment debtor if no objection to the claim of exemption is filed and an order to be used by the court to grant or deny an exemption." Further, N.R.S. §21.112(4) states, "If an objection to the claim of exemption and notice for a hearing are not filed within 8 judicial days after the claim of exemption has been served, the property of the judgment debtor must be released . . ."

and employer. There is no evidence that the Legislature intended to create such an unreasonable result.

Not only that, but at each expedited hearing on each Wildcard claim of exemption for each weekly, biweekly, semimonthly, or monthly paycheck withholding, it is the debtor's burden<sup>6</sup> to prove the extent to which they are entitled to the Wildcard exemption for each paycheck withholding period. Compounding that, the debtor must rely upon their employer's "double-ledger accounting," as to N.R.S. §21.090(1)(g) deductions and Wildcard deductions for disposable earnings for each paycheck. For each paycheck withholding, it will also be the duty of the judge, the judgment debtor, the employer, the sheriff or the judgment creditor to review the accounting dollar-for-dollar, cent-for-cent, for exempt and "attachable" earnings under the Wildcard for each and every paycheck for the 180-day duration of each and every garnishment on the disposable earnings. Further, if the Wildcard were to apply to earnings, the statute would also have needed to address accounting issues that arise where debtor changes employment before the \$10,000.00 Wildcard is exhausted. A change of employment not only means a new garnishee employer, but perhaps even a different sheriff who serves the writ. The fact that the exemption statute is silent as to all the immediate absurd ramifications of applying the Wildcard

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<sup>6</sup> N.R.S. §21.112(6) states in pertinent part, "The judgment debtor has the burden to prove that he or she is entitled to the claimed exemption at such a hearing."

to earnings, is just but another proof that the Wildcard was not intended to apply to earnings.

Perforce, the process of applying the Wildcard to earnings will trigger an exponential increase in serial Wildcard exemption claims, serial expedited hearings, consume vast judicial resources, the debtor's time and resources, the employer's time and resources, and cause unnecessary post-judgment costs and interest to accrue on garnishment renewals and judgment renewals until the "attachable" portion of the disposable earnings reach \$10,000.00.

Further, with the Panel's new burdens to be imposed on employers, the employer's risk of non-compliance increases because there is now greater exposure for the employer's withholding errors<sup>7</sup>. Even worse, an employer may wish to "wash their hands of it all" and attempt to discharge or discipline the debtor for having to comply with Panel's interpretation. However, discharge or discipline of debtor due to a garnishment is illegal.<sup>8</sup> Notwithstanding, the Panel's interpretation imposes every employer who is served a wage garnishment with new business compliance pressures. The new pressures will likely hit lower-earning debtors the hardest, who would be most vulnerable to discharge or discipline for forcing their employers to

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<sup>7</sup> N.R.S. §31.297 (employer liability for refusal to withhold or misrepresentation earnings)

<sup>8</sup> N.R.S. §31.298 (unlawful for an employer to discharge or discipline an employee due to a writ of garnishment.)

be flooded with, and likely confused by, hearing notices claims and objections every paycheck withholding.

Without rehearing, the Panel's Opinion will result in an exemption claim litigation explosion that is unintended by the Legislature, imposing unintended drain of resources in the exemption program for judgment debtors, judges, employers, and judgment creditors. The unreasonable and absurd results of applying the Wildcard to Earnings are unintended by the Legislature, not merely "intended-but-unwise."

C. The Panel's Interpretation of the Wildcard is Contrary to the Plain Language, Legislative Intent, Legislative History and Renders Part of the Statue Meaningless.

Under the Panel's interpretation, the debtor can exempt any personal property, including attachable earnings, under the Wildcard. The plain language of the statute does not appear to say that. If the Panel's interpretation were true to the statutory language, the Legislature need only have stated that the \$10,000.00 Wildcard applied to "**Any personal property . . . not to exceed \$10,000 in total value. . .**" The term "personal property" is already broadly defined in N.R.S. §10.045. However, the Legislature added language to the Wildcard subsection, the only effect of which would be to qualify "any personal property" and limit its application, not expand.

The subsection states:

Any personal property **not otherwise exempt from execution pursuant to this subsection** belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a

financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor. (emphasis added)

The Panel's Opinion renders most of language the Wildcard statute meaningless.<sup>9</sup>

The language **“not otherwise exempt from execution pursuant to this subsection”** has no meaning if the entire universe of the debtor's personal property holdings is eligible for exemption. The plain language of “not otherwise exempt from execution pursuant to this subsection” is intended to exclude its application to enumerated exemptions in the subsection,<sup>10</sup> such as earnings.

If “not otherwise exempt pursuant to this subsection” is describing the surplus of partially exempted property, then the Panel's interpretation would then exclude “wild” personal property that is not surplus property of an enumerated exemption. Further, the clause cannot simply be an instruction to the debtor that they may exempt property that “is not already removed from the legal process,” or personal property that doesn't “already qualify as exempt” because that would be redundant to “any personal property.”

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<sup>9</sup> C. Nicholas Pereos, Ltd. v. Bank of Am., 131 Nev. 436, 441 (2015) (“We will not interpret a statute in a way that would render any part of [the] statute meaningless.”) (citations omitted) (alteration in original)

<sup>10</sup> As pointed out in the Appellant's Opening Brief (page 13), it is customary that Wildcard exemptions apply to “wild” property, and not apply to other enumerated exemptions. For example, in Oregon, O.R.S. 18.345(p) that its Wildcard “may not be used to increase the amount of any other exemption.”

Further, if the additional statutory language of the Wildcard is intended to be instructive or illustrative as to what can be exempted (which would also be redundant if simply “any personal property” is exempt), then this is proof that the Legislature did not intend to apply the Wildcard to earnings. All parties will agree that the most helpful and relevant instruction the Wildcard statutory language could offer is to express its application to the ubiquitous earnings garnishment. The Legislature’s choice not to state “earnings” in this crucial context must be deliberate, consequential, and pivotal to this issue. Although the statute uses the undefined term “money,” this could only be interpreted as “earnings,” through exegetical somersaults. The Legislature chose to avoid “earnings” in the Wildcard statute. “We presume that the Legislature enacted [a] statute ‘with full knowledge of existing statutes relating to the same subject.’...” Naiw v. Nevada Self-Insurers Association, 126 Nev. 74, 84 (2010) See also Galloway v. Truesdell, 83 Nev. 13, 26 (1967)(stating the canon of statutory construction ‘*expressio unius est exclusio alterius*.’ “the expression of one thing is the exclusion of another.”)

Still further proof of Legislative Intent, the same Legislature that increased the Wildcard from \$1,000.00 to \$10,000.00 in 2017 also legislated minor increases to the Earnings Exemption from 75% to 82% for those earning less than \$770 per week. If the Legislature intended for the \$10,000.00 Wildcard to apply to earnings, the minimal earnings exemption increase would have been pointless.



Finally, the Legislative History is conclusory: the Bill's sponsor, Assemblywoman Barbara Buckley, testified that "this modest amount of protection has only a minor impact on creditors. Nothing eliminates [a judgment creditor's] just claims to garnish wages."<sup>11</sup> However, the application of the \$10,000.00 Wildcard to the "attachable" portions of wages would do just that, causing more than "little injury" to creditors, and potentially eliminating a creditor's ability to garnish wages. Much worse, the Panel's interpretation could even render judgments unenforceable, or take additional years to enforce, which is to no party's benefit. Although the Panel's Opinion states, "the creditor continues to accrue interest on its judgment until complete satisfaction," this is of little comfort for the creditor who incurs costs for every weekly, biweekly, semimonthly, or monthly garnishment and every Wildcard objection hearing.

### III. CONCLUSION

Based on the foregoing, this Court En Banc should allow rehearing of the Panel's Opinion.

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<sup>11</sup> Cited in Appellant's Opening Brief Page 15 Note 14 (Hearing before Assembly Comm. On Judiciary, 74th Session (April 10, 2007)(statement of Barbary Buckley, Assemblywoman)).

**CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 40**

I hereby certify that this Petition for Rehearing En Banc 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 it has been prepared in a proportionally spaced typeface using Word in 14 point; I further certify that this brief complies with the page- or type-volume limitations of NRAP 40A(d) because it contains approximately 3,340 words.

Dated this January 26, 2022

DUBOWSKY LAW OFFICE, CHTD.

By: /s/Peter Dubowsky  
Peter Dubowsky, Esq.  
Nevada Bar No. 4972  
300 South Fourth Street  
Suite 1020  
Las Vegas, Nevada 89101  
(702) 360-3500  
Fax (702) 360-3515  
Attorney for Appellant

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of January 2022, I filed the foregoing  
**APPELLANT’S PETITION FOR REHEARING**, which shall be served via  
electronic service from the Court's eFlex system to:

### **Master Service List**

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<b>Docket Number and Case Title:</b>	81974 – PLATTE RIVER INSURANCE COMPANY VS. SUSAN JACKSON AND LANCE JACKSON
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### **Electronic notification will be sent to the following:**

Peter Dubowsky  
William Thompson  
Michael G. Millward

/s/William Thompson  
An employee of Dubowsky Law Office, Chtd.