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IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN NATIONAL MUTUAL
INSURANCE COMPANY, a
Minnesota corporation,

Appellant,

v.

WILLIAM HARRY RESH,

Respondent.

Supreme Court No. 82475
District Court Case No. A775815

**WESTERN NATIONAL MUTUAL
INSURANCE COMPANY'S
MOTION TO REISSUE SUPREME
COURT ORDER AS A PUBLISHED
OPINION PURSUANT TO NRAP
36(f)**

COMES NOW, Western National Mutual Insurance Company ("Western"), by and through its counsel, The Faux Law Group, and hereby moves this Court, pursuant to Nevada Rules of Appellate Procedure 36, for reissuance of the decision and order entered on June 30, 2022, as an opinion to be published in the *Nevada Reports*.

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This Motion is brought pursuant to NRAP 36(f) and is based on the attached Memorandum of Points and Authorities, the moving papers in support of this Motion, any exhibits to this Motion, and the Court file herein.

DATED this 11th day of July 2022.

THE FAUX LAW GROUP

By: /s/ Jordan F. Faux
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This matter was an appeal from a NRCP 54(b) certified final judgment and an award of attorney fees and costs in an action filed in the Eighth Judicial District Court (“District Court”) to recover on a bond.

The underlying lawsuit involved whether a consignor/vehicle seller qualifies as a “consumer” as defined under NRS 482.345(10) and is therefore entitled to make a claim on a Motor Vehicle Dealer Bond. The Motor Vehicle Dealer Bond statute, NRS 482.345, limits recovery from the Bond to “consumers” which are defined as “any

person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale.” NRS 482.345(10).

The District Court issued its Findings of Facts and Conclusions of Law and found that a consignor does fall under the statutory definition of “consumer” and granted Summary Judgment and Attorney’s Fees and costs in favor of Resh. *See* Joint Appendix to Appellant’s Opening Brief at Exhibit 33, JA507-513 and Exhibit 38, JA 629-635. Western filed the appeal of the District Court’s decision to the Supreme Court. *See* Joint Appendix to Appellant’s Opening Brief at Exhibit 31, JA 470-501 and Exhibit 34, JA 514-555.

After completion of the parties briefing, on June 30, 2022, this Court issued its decision and Order Reversing in Part, Vacating in Part, and Remanding. (“Order”). Exhibit 1. The Court pointed out two factors of first impression of significant importance, first, that sellers/consignors are not consumers under the definition set forth in NRS 482.345(10) and second, that the transactions that matters is the one that gave rise to the claim and not past transactions. *Id.* Accordingly, the Court determined that the claimant in the instant case was not a consumer and could not recover on the Bond issued by Western for losses or attorney fees and costs. *Id.*

Western respectfully requests this Court reissue its Order as an opinion published in the *Nevada Reports* pursuant to NRAP 36(f).

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II. GROUNDS FOR THE MOTION (NRAP 36(f) and NRAP 36(c))

This Motion is filed in accordance with Nevada Rules of Appellate

Procedure 36(f), which provides in pertinent part:

A motion to reissue an unpublished disposition or order as an opinion to be published in the *Nevada Reports* may be made under the provisions of this subsection by any interested person.

...

(1) Time to File. Such a motion shall be filed within 14 days after the filing of the order. Parties may not stipulate to extend this time period, and any motion to extend this time period must be filed before the expiration of the 14-day deadline.

NRAP 36(f) allows a court to decide a case by published opinion if the case meets the criteria outlined in NRAP 36(c)(1)(A) – (C):

A published disposition is an opinion designated for publication in the *Nevada Reports*. The Supreme Court or Court of Appeals will decide a case by published opinion if it:

(A) Presents an issue of first impression;

(B) Alters, modifies, or significantly clarifies a rule of law previously announced by either the Supreme Court or the Court of Appeals; or

(C) Involves an issue of public importance that has application beyond the parties.

On June 30, 2022, this Court entered the Order setting forth its opinion on the appealable issue of whether Resh’s Vehicle transaction qualified Resh as a “consumer”

as defined under NRS 482.345(10) such that he may make claim upon the Bond and recover attorney fees and costs from the Bond.

For the reasons set forth below and as the Appellant, an interested party, Western timely files the instant Motion within the requisite 14-day period, seeking reissuance of the Court's Order as a published disposition.

III. RELIEF SOUGHT (NRAP 36(f))

Pursuant to NRAP 36(f), Western respectfully requests the Court reissue the Order as a published opinion as the case meets one or more of the requisite criteria set forth in NRAP 36(c)(1).

IV. LEGAL ARGUMENT (NRAP 36(c)(1)(A) and (C))

In accordance with NRAP 36(c)(1), an opinion designated for publication in the *Nevada Reports* is a published disposition. To obtain publication, one or more of the criteria set forth in subsections (A) – (C) must be met.

1. This Case Presents an Issue of First Impression (NRAP 36(c)(1)(A)).

Publication of this Court's opinion is warranted under NRAP 36(c)(1)(A). This case is an issue of first impression regarding the interpretation of the term "consumer" in the Motor Vehicle Industry License Bond statute, NRS 482.345, as only "consumers" may make claim upon the Bond. The specific question in this case was whether a vehicle seller or consignor qualifies as a "consumer" under the statute, which is a question of

first impression in Nevada and has a large impact on who may recover from Motor Vehicle Dealer Bonds.

In 2011, this Court held that a company that provided a motor vehicle dealer with a line of credit to purchase vehicles at auction to sell later, commonly called a “flooring agreement” could make claim upon Motor Vehicle Dealer License Bonds under NRS 482.345. In 2013, in response, the Nevada legislature revised NRS 482.345 and limited recovery from Motor Vehicle Dealer Bonds to consumers only, defining a “consumer” as “any person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale”. NRS 482.345(10); *See* A.B. 282, Legislative Counsel’s Digest, 77th Leg., 27th Spec. Sess (Nev. 2013; *see also* Joint Appendix to Appellant’s Opening Brief at Exhibit 15A, JA00097 – 000101.

This is the first time that the issue of whether a consignor or vehicle seller can fall under the definition of consumer under the 2013 version of NRS 482.345 has reached the Court and is an issue of first impression. This case gives the Court an opportunity to address this issue and firmly establish that the Bond is meant to protect consumers only and no other type of claimant. Not flooring creditors, not sellers, wholesalers, nor consignors.

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2. The Case Involves an Issue of Public Importance That Has Application Beyond the Parties (NRAP 36(c)(1)(C)).

In Nevada, a Motor Vehicle Dealer Bond is statutorily required to obtain a license as a motor vehicle dealer. Every car dealer in the State of Nevada is required to obtain a license bond in order to get a license to sell cars to the public. NRS 482.345. The statute determines the bond's metes and bounds. NRS 482.345. Per the statute, the bond is "for the use and benefit of the consumer. . . ." NRS 482.345(5), (6).

The purpose of the Bond statute is to protect consumers in the State of Nevada from unlawful acts, deceptive trade practices, fraud, and fraudulent misrepresentations by motor vehicle dealers when consumers purchase or lease or otherwise come into possession of a motor vehicle for consumer use. The bond penal sum of \$100,000 is set aside specifically for consumers and not other types of claimants who may do business with motor vehicle dealers.

The issue of who may make claim upon the bond is a matter of general public interest that goes beyond the interests of the parties in this specific instance. For example, in this case had Resh, a vehicle seller, been permitted to make claim upon the Bond, the entire penal sum would have been consumed leaving no funds remaining for consumers who may have been harmed by the motor vehicle dealer. Because the bond funds are set aside for consumers, it is very important that the general public know who may assert claim. It is even more important that businesses

or individuals that do business with motor vehicle dealers who are not consumers know with certainty that they are not entitled to recover from the motor vehicle dealer's license bond and that those funds are specifically reserved for consumers only.

This Court's opinion provides further necessary explanation to assist in clarifying the interpretation of the term "consumer" as defined in NRS 482.345 so that vehicle sellers know they are not proper claimants on the bonds. The opinion is of importance to the general public because it ensures that bond funds are specifically retained and reserved for consumers and not anyone that does business with motor vehicle dealers. The Court's decision is important to sureties, motor vehicle dealers, and the public generally.

With regard to sureties and motor vehicle dealers, a surety considers many factors when determining whether to issue a bond, including what will be covered by the bond. Bond premiums are calculated taking these factors into account. Where there is certainty in who may assert claim upon the bond, especially here where claims are limited to consumers, the surety can use this information to price bond premiums accordingly. Where there is uncertainty, bond premiums must be priced in order to account for that uncertainty. Greater uncertainty means greater risk. This translates into higher premiums and for motor vehicle dealers which may create a barrier for entry into business, especially for smaller businesses. Certainty in who is and is not a

consumer benefits both the surety and the motor vehicle dealer. The clarification of the Court's decision is also beneficial to consumers.

The purchase or lease of a motor vehicle is often a consumer's largest or second largest expenditure after lodgings. Vehicle transportation is vital for many people as a means to get to work, buy groceries, take children to school, and other vital and important tasks of daily living. The Court's decision makes clear that the bond funds are reserved for consumers and no other claimants. As a consumer protection matter, it is vital that the Court's decision be published. Because the Court's decision provides greater clarity and has application beyond just the parties to the instant action, Western seeks publication of the Court's disposition of this case.

V. CONCLUSION

Based upon the foregoing and pursuant to Nevada Rule of Appellate Procedure 36, Western respectfully requests the Court to reissue the Order dated June 30, 2022, as an opinion to be published in the *Nevada Reports*.

DATED this 11th day of July 2022.

THE FAUX LAW GROUP

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CERTIFICATE OF SERVICE

The undersigned, an employee of The Faux Law Group, hereby certifies that on the 11th day of July 2022, I served a copy of the foregoing document, **WESTERN NATIONAL MUTUAL INSURANCE COMPANY'S MOTION TO REISSUE SUPREME COURT ORDER AS A PUBLISHED OPINION PURSUANT TO NRAP 36(f)**, on the parties listed below via the Court's electronic service system:

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/s/ Arielle Navarro

An Employee of The Faux Law Group

EXHIBIT 1

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IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN NATIONAL MUTUAL
INSURANCE COMPANY, A
MINNESOTA CORPORATION,
Appellant,
vs.
WILLIAM HARRY RESH, AN
INDIVIDUAL,
Respondent.

No. 82475

FILED

JUN 30 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER REVERSING IN PART,
VACATING IN PART, AND REMANDING*

This an appeal from a judgment certified as final under NRCP 54(b) and an award of attorney fees and costs in an action to recover on a bond. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Respondent Dr. William Resh had a friend, Robert Larson, assist him in selling his car. Larson registered the car with a car dealership, Compadres Auto Sales, to list and sell the car at an auction.¹ When the car was sold, Larson received the proceeds via a check made out to the dealership. He provided the check to the dealership, which deposited it into its bank account, but never gave Dr. Resh any of the money. Dr. Resh sued to recover on a vehicle industry license bond issued for the dealership by appellant Western National Mutual Insurance Company ("Western National"). The district court found that Dr. Resh was a "consumer" pursuant to NRS 482.345, entered summary judgment for Dr. Resh against the bond amount and awarded him attorney fees and costs. Western

¹We recount the facts only as necessary for our disposition.

National appeals, arguing that Dr. Resh is not a “consumer” for the purposes of NRS 482.345 and therefore should not be able to recover on the bond.

“This court reviews a district court’s grant of summary judgment de novo.” *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). “Statutory interpretation is a question of law, which this court reviews de novo.” *Branch Banking v. Windhaven & Tollway, LLC*, 131 Nev. 155, 158, 347 P.3d 1038, 1040 (2015) (internal quotations omitted). “[I]f a statute’s language is clear and unambiguous, it must be given its plain meaning, unless doing so violates the spirit of the act.” *Griffith v. Gonzales-Alpizar*, 132 Nev. 392, 394, 373 P.3d 86, 87-88 (2016) (internal quotations omitted).

Vehicle dealers must keep a bond on file “for the use and benefit of the consumer” in instances where the “consumer” has been wronged. NRS 482.345. “Consumer” as used in NRS 482.345 “means any person who comes into possession of a vehicle as a final user for any purpose other than offering it for sale.” NRS 482.345(10). In the transaction at issue, Dr. Resh was not coming into possession of the vehicle at all; rather, he was *dispossessing* himself of the vehicle. Although he may have been a “consumer” during his *purchase* of the vehicle, his purchase of the vehicle is not the transaction at issue in this case, and is therefore irrelevant. By its plain language, NRS 482.345 does not include vehicle sellers like Dr. Resh in the definition of “consumer.” Thus, he cannot recover on the bond that Western National issued and the district court’s judgment must be reversed. Furthermore, because we reverse the district court’s grant of

summary judgment, the award of attorney fees and costs must be vacated.²
Accordingly, we

ORDER the judgment of the district court REVERSED,
VACATE the district court's award of attorney fees and costs, AND
REMAND this matter to the district court for proceedings consistent with
this order.

, J.
Hardesty

, J.
Stiglich

, J.
Herndon

cc: Hon. Eric Johnson, District Judge
The Faux Law Group
Sklar Williams LLP
Eighth District Court Clerk

²To the extent the parties' additional arguments are not addressed herein, we have reviewed such arguments and we conclude they do not warrant a different result.