

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

THE STATE OF NEVADA  
COMMISSIONER OF INSURANCE,  
BARBARA D. RICHARDSON, IN HER  
OFFICIAL CAPACITY AS RECEIVER  
FOR SPIRIT COMMERCIAL AUTO  
RISK RETENTION GROUP, INC.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MARK R. DENTON, DISTRICT  
JUDGE,

Respondents,  
and

THOMAS MULLIGAN, AN  
INDIVIDUAL; CTC  
TRANSPORTATION  
INSURANCE SERVICES OF  
MISSOURI, LLC, A MISSOURI  
LIMITED LIABILITY COMPANY; CTC  
TRANSPORTATION INSURANCE  
SERVICES LLC, A CALIFORNIA  
LIMITED LIABILITY COMPANY; CTC  
TRANSPORTATION INSURANCE  
SERVICES OF HAWAII LLC, A  
HAWAII  
LIMITED LIABILITY COMPANY;  
CRITERION CLAIMS SOLUTIONS  
OF OMAHA, INC., A NEBRASKA  
CORPORATION; PAVEL  
KAPELNIKOV, AN INDIVIDUAL;  
CHELSEA FINANCIAL GROUP, INC.,  
A CALIFORNIA CORPORATION;  
CHELSEA FINANCIAL GROUP, INC.,  
A MISSOURI CORPORATION;  
CHELSEA FINANCIAL GROUP, INC.,  
A NEW JERSEY CORPORATION,  
D/B/A  
CHELSEA PREMIUM FINANCE  
CORPORATION; FOURGOREAN  
CAPITAL, LLC, A NEW JERSEY  
LIMITED LIABILITY COMPANY;  
KAPA MANAGEMENT  
CONSULTING,  
INC., A NEW JERSEY  
CORPORATION;  
KAPA VENTURES, INC., A NEW  
JERSEY CORPORATION; GLOBAL  
FORWARDING ENTERPRISES

No. 82701

District Court Case No. A-20-809963-C

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Aug 25 2021 04:53 p.m.

Elizabeth A. Brown

Clerk of Supreme Court

**REAL PARTIES IN INTEREST  
IGOR KAPELNIKOV'S; YANINA  
KAPELNIKOV'S; PAVEL  
KAPELNIKOV'S; CHELSEA  
FINANCIAL GROUP, INC.'S;  
GLOBAL FORWARDING  
ENTERPRISES LIMITED  
LIABILITY COMPANY'S; KAPA  
MANAGEMENT CONSULTING,  
INC.'S; AND KAPA VENTURES,  
INC.'S ANSWER TO PETITION  
FOR WRIT OF MANDAMUS**

LIMITED LIABILITY COMPANY, A  
NEW JERSEY LIMITED LIABILITY  
COMPANY; NEW TECH CAPITAL,  
LLC, A DELAWARE LIMITED  
LIABILITY COMPANY; LEXICON  
INSURANCE MANAGEMENT LLC, A  
NORTH CAROLINA LIMITED  
LIABILITY COMPANY; ICAP  
MANAGEMENT SOLUTIONS, LLC, A  
VERMONT LIMITED LIABILITY  
COMPANY; SIX ELEVEN LLC, A  
MISSOURI LIMITED LIABILITY  
COMPANY; 10-4 PREFERRED RISK  
MANAGERS INC., A MISSOURI  
CORPORATION; IRONJAB LLC, A  
NEW JERSEY LIMITED LIABILITY  
COMPANY; YANINA G.  
KAPELNIKOV,  
AN INDIVIDUAL; IGOR  
KAPELNIKOV,  
AN INDIVIDUAL; QUOTE MY RIG  
LLC, A NEW JERSEY LIMITED  
LIABILITY COMPANY; MATTHEW  
SIMON, AN INDIVIDUAL; DANIEL  
GEORGE, AN INDIVIDUAL; JOHN  
MALONEY, AN INDIVIDUAL; JAMES  
MARX, AN INDIVIDUAL; CARLOS  
TORRES, AN INDIVIDUAL; VIRGINIA  
TORRES, AN INDIVIDUAL; SCOTT  
MCCRAE, AN INDIVIDUAL; BRENDA  
GUFFEY, AN INDIVIDUAL; AND 195  
GLUTEN FREE LLC, A NEW JERSEY  
LIMITED LIABILITY COMPANY,  
Real Parties in Interest.

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Chelsea Financial Group, Inc. a California corporation; Global Forwarding  
Enterprises Limited Liability Company; Kapa Management Consulting, Inc.; and  
Kapa Ventures, Inc.*

### **NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made so the judges of this Court may evaluate possible disqualification or recusal.

1. Real Party in Interest *Igor Kapelnikov* is CEO of Global Forwarding Enterprises, Limited Liability Company;
2. Real Party in Interest *Yanina G. Kapelnikov* is an individual;
3. Real Party in Interest *Pavel Kapelnikov* is the President of Global Forwarding Enterprises, Limited Liability Company and officer and/or director of Kapa Management Consulting and Kapa Ventures;.
4. Real Party in Interest *Chelsea Financial Group, Inc.* is a New Jersey domestic profit corporation;
5. Real Party in Interest *Chelsea Financial Group, Inc.* is a dissolved, domestic stock California corporation;
6. Real Party in Interest *Global Forwarding Enterprises Limited Liability Company* is New Jersey domestic limited liability company;
7. Real Party in Interest *Kapa Management Consulting, Inc.* is a New Jersey domestic profit corporation;
8. Real Party in Interest *Kapa Ventures, Inc.* is a New Jersey domestic profit

corporation.

Thomas E. McGrath, Esq., of Tyson & Mendes LLP appeared on behalf of the foregoing Real Parties in Interest in district court. Thomas E. McGrath, Esq. will continue their representation of the foregoing Real Parties in Interest on appeal.

DATED this 25<sup>th</sup> day of August 2021.

/s/ Thomas E. McGrath

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Group, Inc. a California corporation; Global  
Forwarding Enterprises Limited Liability  
Company; Kapa Management Consulting, Inc.;  
and Kapa Ventures, Inc.*

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## **TABLE OF AUTHORITIES**

### **CASES**

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**REAL PARTIES IN INTEREST IGOR KAPELNIKOV’S; YANINA KAPELNIKOV’S; PAVEL KAPELNIKOV’S; CHELSEA FINANCIAL GROUP, INC.’S; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY’S; KAPA MANAGEMENT CONSULTING, INC.’S; AND KAPA VENTURES, INC.’S ANSWER TO PETITION FOR WRIT OF MANDAMUS**

Real Parties in Interest IGOR KAPELNIKOV and YANINA G. KAPELNIKOV; PAVEL KAPELNIKOV; CHELSEA FINANCIAL GROUP, INC., a New Jersey corporation; CHELSEA FINANCIAL GROUP, INC. a California corporation; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY; KAPA MANAGEMENT CONSULTING, INC. and; KAPA VENTURES, INC., (“these Respondents”) by and through counsel, Thomas E. McGrath, Esq. of the law firm Tyson & Mendes LLP, hereby file their Answer to Petitioner’s Request for Writ of Mandamus, only as to Petitioner’s Request related to the Trial Court’s Order staying the case against the remaining non-arbitration defendants, including these Respondents.

**SUMMARY OF THE ARGUMENT**

Petitioner STATE OF NEVADA, EX REL., COMMISSIONER OF INSURANCE, BARBARA D. RICHARDSON, IN HER OFFICIAL CAPACITY AS RECEIVER FOR SPIRIT COMMERCIAL AUTO RISK RETENTION GROUP, INC.’s (Petitioner) Opening Brief, primarily relates to its challenge regarding the Trial Court’s order compelling Petitioner to submit its claims against Respondents CTC and Criterion to contractual binding arbitration. Petitioner

devotes only the final two and half pages of its 50 plus page brief, to the Order staying the claims against the non-arbitration parties. But Petitioner fails to cite any supporting case law or statutory authority to support its assertion the Trial Court improperly stayed Petitioner's claims against the multiple remaining defendants, who will not be parties to the arbitration between Petitioner and Respondents CTC and Criterion but who will undoubtedly be called as witnesses. Petitioner's brief ignores completely the legitimate and primary reason the Trial Court stayed Petitioner's claims against the remaining non-arbitration parties: To avoid duplicative litigation and discovery and inconsistent results. And unless this Court overturns the Trial Court's order compelling Petitioner to submit its claims against CTC and Criterion to contractual arbitration, the Trial Court's order staying the remaining claims should not be overturned because Petitioner's claims against the remaining defendants, including these Respondents, are intertwined and overlapping with its claims against CTC and Criterion.

### **ARGUMENT**

Petitioner should concede these Respondents are peripheral parties to this litigation. Generally speaking, Petitioner alleges in its Complaint these Respondents improperly received funds from Spirit and/or for Spirit and through CTC and/or Criterion. These Respondents deny Petitioner's allegations but it is undisputed that



Petitioner's claims against these Respondents involve the same witnesses and evidence that will be offered in the arbitration.

Petitioner criticizes the Trial Court for its reliance upon Nevada Revised Statute 38.221, in agreeing to stay Petitioner's claims against the non-arbitration defendants. Subsections Six and Seven of NRS 38.221 provide in pertinent part as follows:

6. If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.
7. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Respondent CTC and Criterion properly moved to enforce the arbitration agreement in their written contract with Petitioner's predecessor, Spirit Insurance.

In *Continental Ins. Co. v. Hull* (1982) 98 Nev. 542; 654 P.2d 1024, this Court addressed a similar appeal/writ of mandate regarding NRS 38. The Court explained,

"NRS 38.215 expressly states that actions thereunder shall be submitted to arbitration 'in accordance with the provisions of NRS 38.015 to 38.205 [the Uniform Arbitration Act], inclusive.' The Uniform Arbitration Act provides for the situation here presented. Where an issue referable to arbitration is involved in an action or proceeding pending in a court having proper jurisdiction, the court shall stay the action or proceeding and order arbitration on application of a party. *Id* at 543 and 1025.

Unlike this case, the defendants in *Continental Ins. v Hull* did not timely file a motion to compel arbitration but nonetheless, this Court explained, “Had respondents made a proper application, the district court should have stayed the action below and ordered arbitration. *Id.* at 544 and 1026

In the Conclusions of Law section of the Trial Court’s November 17, 2020 written order related to its decision staying Petitioner’s remaining claims, the Court confirmed the following:

The Courts have repeatedly found that when claims not subject to an arbitration agreement arise out of the same conduct as claims subject to an arbitration agreement, staying the former claims pending the conclusion of the arbitration is in the best interest of judicial economy. See *Hill v. G E Power Sys., Inc.*, 282 F.3d 343, 347 (5th Cir. 2002); *RB Prod., Inc. v. Ryze Capital, LLC*, No. 3:19-CV-00105-MMD-WGC, 2019 WL 5722205, at \*2 (D. Nev. Nov. 4, 2019); *Bischoff v. DirecTV, Inc.*, 180 F.Supp.2d 1097 (C.D. Cal. 2017), *Hansen v. Musk*, 319CV00413LRHWGC, 2020 WL 4004800, at \*1 (D. Nev. July 15, 2020); *Sharp Corp. v. Hisense USA Corp.*, 17-CV-03341-YGR, 2017 WL 6017897, at \*4 (N.D. Cal. Dec. 5, 2017); *CPB Contractors Pty Ltd. v. Chevron Corp.*, C 16-5344 CW, 2017 WL 7310776, at \*5 (N.D. Cal. Jan. 17, 2017); *Amisil Holdings Ltd. v. Clarium Capital Mgmt.*, 622 F. Supp. 2d 825, 842 (N.D. Cal. 2007).

Petitioner’s brief offers no case law suggesting the Trial Court improperly relied on the case authority cited above.

The Trial Court also relied on the 9<sup>th</sup> Circuit decision in *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d (9th Cir. 1979), including the following explanation supporting the stay in *Leyva*.

It would waste judicial resources and be burdensome upon the parties if the district court in a case such as this were mandated to permit discovery, and upon completion of pretrial proceedings, to take evidence and determine the merits of the case at the same time as the arbitrator is going through a substantially parallel process. *Leyva* at 863-64.

Plaintiff's claims against the remaining Defendants, including these Respondents, are inextricably intertwined with and dependent upon the claims asserted against CTC and Criterion. Plaintiffs allege these Respondents improperly received or improperly handled/processed funds from and to CTC and Criterion and/or related to Spirit. These Respondents anticipate Petitioners will identify them as witnesses regarding its claims against CTC and Criterion and request an opportunity to depose these Respondents' witnesses for purposes of the arbitration. If this Court were to reverse the stay, these Respondents will be subject to duplicative discovery, including depositions and face the prospect of inconsistent findings in the rulings related to the arbitrated claims and the non-arbitration claims.

### **CONCLUSION**

As the Trial Court correctly found, Petitioner's claims against CTC and Criterion overlap with its claims against the remaining defendants, including these Respondents, because both sets of claims rest on the same alleged conduct and involve the same issues and facts. Petitioner's claims against these Respondents will involve the same witnesses and evidence offered in the CTC and Criterion

arbitrations. Therefore, the Trial Court properly determined a stay is in the best interests of the Court, the parties to the litigation and judicial economy.

DATED this 25<sup>th</sup> day of August 2021.

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Enterprises Limited Liability Company;  
Kapa Management Consulting, Inc.; and  
Kapa Ventures, Inc.*

|

## **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 Times New Roman.

2. I further certify that this brief complies with the length limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 1,154 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 in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 25<sup>th</sup> day of August 2021.

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## **CERTIFICATE OF SERVICE**

The undersigned, an employee of Tyson & Mendes LLP, hereby certifies that on the 25<sup>th</sup> day of August 2021, a copy of **REAL PARTIES IN INTEREST IGOR KAPELNIKOV’S; YANINA KAPELNIKOV’S; PAVEL KAPELNIKOV’S; CHELSEA FINANCIAL GROUP, INC’S; GLOBAL FORWARDING ENTERPRISES LIMITED LIABILITY COMPANY’S; KAPA MANAGEMENT CONSULTING, INC.’S; AND KAPA VENTURES, INC.’S ANSWER TO PETITION FOR WRIT OF MANDAMUS** was served by electronic service to all parties listed below via the Nevada Supreme Court’s electronic filing system:

GREENBERG TRAURIG, LLP  
PETERSON BAKER, PLLC  
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/s/ Kathryn Savage-Koehm

An employee of Tyson & Mendes LLP