

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

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

Petitioner,

v.

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,  
DEPT. 13,

Respondents,

And Concerning,

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

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**Supreme Court No.: 82701**

**District Court Case No.: A-20-  
809963-B**

**REAL PARTY IN INTEREST  
BRENDA GUFFEY'S  
ANSWER TO PETITION FOR  
WRIT OF MANDAMUS**

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 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 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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## **NRAP 26.1 DISCLOSURE**

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

BRENDA GUFFEY, an individual, is represented in the District Court and this Court by Kurt Bonds, Esq. of the law firm of Alverson Taylor & Sanders.

DATED this 7th day of September, 2021.

ALVERSON TAYLOR & SANDERS



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# **MEMORANDUM OF POINTS AND AUTHORITIES**

## **I.**

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

This case arises out of claims against Defendants for breach of contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, Nevada RICO claims, fraud, civil conspiracy, avoidance of transfers, voidable transfers, recovery of distributions and payment, and recovery of unlawful distribution. In accordance with applicable agreements between the parties that include valid and enforceable arbitration clauses, it is required that any such disputes in relation to these agreements must go to an arbitrator. Due to these agreements, Defendants filed Motions to Compel Arbitration, which the District Court granted. The District court also later granted Defendants' Motion to Stay the case Pending Arbitration. Plaintiff opposed these Motions and ultimately filed the present Petition for Writ of Mandamus, claiming that the District Court erred in granting those Motions. Petitioner's claims against CTC and Criterion overlap with the claims against Real Party in Interest, Brenda Guffey, as they involve the same or similar issues, facts, and alleged misconduct.

In compliance with federal law, as well as Nevada law, the underlying case was required to go to an arbitrator to seek resolution of the alleged claims related to the agreements between the parties. Accordingly, the District Court properly granted

the Motions to Compel Arbitration. Furthermore, in accordance with applicable case law, the court should grant a Motion to Stay the case pending arbitration, which the District Court properly did, in this case.

Ultimately, the District Court was correct to grant Defendants' Motions to Compel Arbitration and Motion to Stay Pending Arbitration.

## **II.**

### **STATEMENT OF RELEVANT FACTS**

On February 6, 2020, a Complaint was filed by Plaintiff/Petitioner, Barbara D. Richardson, Receiver ("Petitioner" or "Receiver") for Spirit Commercial Auto Risk Retention Group, Inc. ("Spirit") against the listed Defendants/Real Parties in Interest, which includes Brenda Guffey, an individual ("Real Party in Interest").<sup>1</sup> In that Complaint, Plaintiff/Petitioner alleged claims of breach of contract; breach of fiduciary duty; breach of the implied covenant of good faith and fair dealing; Nevada RICO claims; fraud; civil conspiracy; N.R.S. § 112 – avoidance of transfers; N.R.S. § 696B – voidable transfers; N.R.S. § 696B – recovery of distributions and payment; N.R.S. § 692C.402 – recovery of distributions and payments; and N.R.S. § 78.300 – recovery of unlawful distribution.<sup>2</sup>

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<sup>1</sup> Complaint, February 6, 2020 (attached hereto as Exhibit "A").

<sup>2</sup> Id. at 48-77.

### **Motions to Compel Arbitration**

On May 14, 2020, Defendants, CTC Transportation Insurance Services of Missouri, LLC; CTC Transportation Insurance Services LLC; and CTC Transportation Insurance Services of Hawaii LLC (“CTC”) and Criterion Claim Solutions of Omaha, Inc. (“Criterion”) filed separate Motions to Compel Arbitration. CTC’s Motion was premised on the Arbitration clauses contained in an Agreement between Spirit and CTC-CA in November of 2011, and an extended amended Agreement between Spirit and CTC-MO in July of 2016. Criterion’s Motion was premised on the arbitration clause contained in its September 2011 Agreement with Spirit. Plaintiff/Petitioner opposed those Motions to Compel, and CTC and Criterion submitted their Replies. The District Court ultimately granted those Motions to Compel. It also later denied Plaintiff/Petitioner’s Motion for Reconsideration.

### **Motion to Stay Arbitration and Joinders thereto**

On August 28, 2020, Defendant, Six Eleven, LLC; Quote My Rig, LLC; New Tech Capital LLC; 195 Gluten Free LLC; 10-4 Preferred Risk managers, Inc.; Iron jab, LLC; Fourgorean Capital LLC; Chelsea Holding Company, LLC; and Chelsea Financial Group, Inc. (Missouri), filed its Motion to Stay Pending Arbitration with the District Court. The remaining Defendants filed Joinders in support of the Motion to Stay. Plaintiff/Petitioner opposed the Motion to Stay and supporting Joinders. Ultimately, the District Court granted the Motion to Stay Pending Arbitration and

Joinders thereto.

### **Petition for Writ of Mandamus**

On April 1, 2021, Petitioner/Receiver filed a Petition for Writ of Mandamus as to the Motion to Stay Pending Arbitration. Real Party in Interest, Brenda Guffey (“Real Party in Interest”) now brings forth her Answer to Petitioner’s Writ of Mandamus.

### **III.**

#### **LEGAL ARGUMENT**

#### **A. THE DISTRICT COURT PROPERLY GRANTED THE MOTIONS TO COMPEL ARBITRATION.**

##### **1. Standard of Review.**

The standard of review of a trial court’s ruling on a Motion to Compel Arbitration is *de novo* when deciding a factual or legal issue.<sup>3</sup> An appellate court will not reverse the lower court’s denial of a Motion to Compel Arbitration unless that ruling is clearly erroneous.<sup>4</sup>

##### **2. Federal Law Preempts State Law.**

The Supremacy Clause states that the United States Constitution is the supreme law of the land and that all states must abide by this.<sup>5</sup> When the FAA applies,

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<sup>3</sup> Standard of Review of Order on Motion to Compel Arbitration, 21 Williston on Contracts, § 57:68 (4th ed.).

<sup>4</sup> *Id.*

<sup>5</sup> U.S.C.A. Const. Art. 6, cl. 2.

it preempts contrary state law, both in state and federal court.<sup>6</sup> Furthermore, “the Supreme Court has made it unmistakably clear that, when the FAA applies, it preempts state laws that single out and disfavor arbitration.”<sup>7</sup>

The FAA states that an arbitration agreement is valid, irrevocable, and enforceable, under contract law.<sup>8</sup> Specifically, the FAA provides:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties **stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement**, providing the applicant for the stay is not in default in proceeding with such arbitration.<sup>9</sup>

**3. There are valid, enforceable agreements between the parties that contain valid and applicable arbitration clauses.**

If an agreement contains a valid arbitration clause, a motion to compel arbitration should be granted in almost all cases.<sup>10</sup>

In this case, there are valid, enforceable contracts between the parties—specifically, (1) the agreement between Spirit and CTC-CA in November of 2011;

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<sup>6</sup> *Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 725 (2015).

<sup>7</sup> *U.S. Home Corporation* at 188; and *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 343 (2011).

<sup>8</sup> *U.S. Home Corporation v. Michael Ballesteros Trust*, 134 Nev. 180, 189 (2018); 9 Federal Arbitration Act, U.S.C.A. § 2.

<sup>9</sup> Federal Arbitration Act, 9 U.S.C.A. § 3 (emphasis added).

<sup>10</sup> Standard of Review of Order on Motion to Compel Arbitration, § 57:68.

(2) the extended amended agreement between Spirit and CTC-CA in July of 2016; and (3) the agreement between Spirit and Criterion in October of 2011. Each of the foregoing contain valid, enforceable arbitration clauses. The arbitration clause in the Amended CTC Agreement states, in pertinent part:

Any controversy or claims of either of the parties arising out of or relating to this Agreement, or the breach of any term, condition, or obligation, may, upon the mutual consent of all parties, be submitted to non-binding mediation under the supervision of the American Arbitration Association or any other agent for alternative dispute resolution...<sup>11</sup>

Moreover, the arbitration clause in the Criterion Agreement states, in relevant part:

Binding arbitration shall be the exclusive method for resolving disputes between the parties. Any dispute concerning the terms of this agreement or performance by the parties under this agreement which cannot be resolved by agreement of the parties shall be submitted to binding arbitration before an arbitrator agreed upon by the parties... this agreement to arbitrate is governed by the Federal Arbitration Act, 9 U.S.C. 1 through 15 (1988).<sup>12</sup>

Each of the above arbitration clauses require that arbitration take place before an arbitrator when the parties are in dispute as to the contents of the above Agreements.

In this case, Petitioner has alleged claims against Defendants for breach of contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, Nevada RICO claims, fraud, civil conspiracy, avoidance of transfers, voidable transfers, recovery of distributions and payment, and recovery of unlawful

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<sup>11</sup> CTC's Motion to Compel at 54, Section 17 (attached hereto as Exhibit "B").

<sup>12</sup> Criterion's Motion to Compel at 17, Section 13 (attached hereto as Exhibit "C").

distribution. These claims are related to the contracts between the parties. Pursuant to those contracts, Petitioner is required to participate in arbitration to resolve such disputes, and so the case must be submitted to an arbitrator for resolution of these matters. Pursuant to the FAA, as well as N.R.S. § 38.221, the court must order the parties to arbitrate the case. The court must also stay the case until there is a final decision in the underlying arbitration. Thus, the FAA will preempt Nevada law.

**4. Even if the FAA did not apply, the same conclusion would result under Nevada law.**

Regardless, even if the FAA was preempted by Nevada state law, Nevada still requires that the court stay a case pending arbitration, and so the District Court would have reached the same legal conclusion.

N.R.S. § 38.221, Motion to Compel or Stay Arbitration, states:

1. On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:
  - (a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
  - (b) **If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.**
2. On motion of a person alleging that an arbitral proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. **If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.**
3. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection 1 or 2, order the parties to arbitrate.

4. The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.
5. **If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in N.R.S. § 38.246.**
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.<sup>13</sup>

Here, both federal law and Nevada law are similar in that they would each come to the same result, specifically, in this case, that the District Court must stay the case pending completion of the underlying arbitration proceedings. The District Court properly found that the arbitration clauses in the agreements were valid and enforceable, pursuant to the Federal Arbitration Act, and that the result would have been the same under both District of Columbia and Nevada law. Thus, Petitioner's arguments would not suffice, as the results are the same under both federal and state law.

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<sup>13</sup> N.R.S. § 38.221, *et seq.* (emphasis added).



**B. THE DISTRICT COURT PROPERLY GRANTED THE MOTION TO STAY ARBITRATION.**

**1. Standard of Review.**

Denial of a motion to stay in civil proceedings is reviewed for abuse of discretion.<sup>14</sup> Abuse of discretion occurs when the district court bases its decision on a clearly erroneous factual determination, or it disregards controlling law.<sup>15</sup>

**2. The District Court was correct to stay the case until after arbitration proceedings.**

The FAA states, in pertinent part:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court... shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement...<sup>16</sup>

Moreover, N.R.S. § 38.221 states, in pertinent part:

- ...
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

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<sup>14</sup> *Aspen Financial Services v. Dist. Ct.*, 128 Nev. 635, 639 (2012); *Wowor v. Ross*, 132 Nev. 1048 (2016) (unpublished); and *State ex rel. Dept. of Corrections v. Linstrom*, 373 P.3d 963 \*2 (Nev. 2011) (unpublished).

<sup>15</sup> *MB America, Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 87 (2016).

<sup>16</sup> Federal Arbitration Act, 9 U.S.C.A. § 3.

to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.<sup>17</sup>

Furthermore, in *Continental Ins. Co. v. Hull*, 98 Nev. 542 (1982), the Supreme Court of Nevada found that there was an arbitration clause in an agreement which precluded defendants from proceeding to trial until after arbitration.<sup>18</sup> Ultimately, the Nevada Supreme Court held that the District Court should have stayed the action and ordered arbitration.<sup>19</sup>

In this case, Petitioner's claims against CTC and Criterion overlap with the claims against remaining Defendants, including this Real Party in Interest, as they involve the same or similar issues, facts, and alleged misconduct. As discussed above, under either the FAA and/or N.R.S. § 38.221, it is required that the court stay the case until arbitration is complete, as there are valid, enforceable agreements which contain applicable arbitration clauses that require the case to go to arbitration and that the case be stayed until completion of those arbitration proceedings. Thus, the District Court was correct to stay the case pending arbitration.

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<sup>17</sup> N.R.S. § 38.221(6)-(7).

<sup>18</sup> *Continental Ins. Co. v. Hull*, 98 Nev. 542 (1982).

<sup>19</sup> *Id.*

#### **IV.**

#### **CONCLUSION**

For the foregoing reasons, Real Party in Interest respectfully requests that this Court deny Petitioner's Writ of Mandamus, as the District Court properly granted the underlying Motions to Compel Arbitration and Motion to Stay pending completion of those arbitration proceedings.

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this Answer 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 2007 in 14-point Times New Roman font.

2. I further certify that this Answer complies with the page- or type-volume limitations of NRAP 21(d) 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 2,624 words, and/or does not exceed 15 pages.

3. I hereby certify that I have read this Reply 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 Answer 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.

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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 7th day of September, 2021.

ALVERSON TAYLOR & SANDERS

A handwritten signature in blue ink, appearing to read "Kurt Bonds", is positioned above a horizontal line.

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*Attorneys Real Party in Interest*

*Brenda Guffey*

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, I hereby certify that on this 7th day of September, 2021, I did cause a true and correct copy of the above and foregoing **REAL PARTY IN INTEREST BRENDA GUFFEY'S ANSWER TO PETITION FOR WRIT OF MANDAMUS** to be filed and served via electronic filing on the following:

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With a courtesy copy via email (pursuant to March 20, 2020 Order of the Chief Judge of the EDJC that courtesy copies be submitted via email):

Judge Mark R. Denton  
Eighth Judicial District Court  
Clark County, Nevada  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

Via email on **September 7, 2021** to [Dept131c@clarkcountycourts.us](mailto:Dept131c@clarkcountycourts.us)

*/s/ Rosemarie Frederick*

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An Employee of  
ALVERSON TAYLOR & SANDERS