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 Corporation; CHELSEA FINANCIAL GROUP, INC., a

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Case No.: 82701

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

RESPONSE OF REAL PARTIES IN INTEREST ICAP MANAGEMENT SOLUTIONS, LLC, DANIEL GEORGE, AND LEXICON INSURANCE MANAGEMENT LLC TO PETITION FOR WRIT OF MANDAMUS

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 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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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 judges of this court may evaluate possible disqualification or recusal.

Real parties in interest Daniel George ("George"), Lexicon Insurance Management LLC ("Lexicon") and ICAP Management Solutions, LLC ("ICAP") each does not have a parent company, and no publicly held company owns ten percent or more of each such party's stock.

Lexicon, George and ICAP have been represented in this matter by the attorneys identified below with the law firm of GORDON REES SCULLY MANSUKHANI, LLP. No other firms are expected to appear on behalf of these real parties in interest.

DATED this 8th day of September, 2021.

GORDON REES SCULLY
MANSUKHANI, LLP

/s/ Robert S. Larsen

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Extraordinary relief is not warranted in this case because the District Court did not abuse its discretion to stay Petitioner's (the "Receiver") claims against some defendants pending arbitration of her claims against other defendants. The Receiver challenges the District Court's decision to stay this action pending arbitration on three asserted grounds: (1) the Receiver has no authority to initiate arbitration, (2) the District Court relied on incorrect authorities, and (3) the District Court abused its discretion to stay. Petition at pp. 38-40. All are incorrect, and none justifies extraordinary relief.

First, the Receiver did not argue to the District Court that she had no authority to initiate arbitration, so she should be deemed to have waived it and cannot argue it here for the first time. Even more fundamentally, she *has* the authority to initiate arbitration proceedings pursuant to the plain language of the Receivership Order, which does not prohibit the Receiver from commencing arbitration and allows the Receiver to seek further relief from the Receivership Court. The Receiver has a readily available remedy but failed to seek it; therefore, extraordinary relief is not warranted.

Second, the District Court exercised its inherent power to stay this action, and did not merely rely upon the statutory provisions the Receiver

challenges in her Petition, 9 U.S.C. § 3 and NRS 38.221.[1] Further, those statutory provisions bolster the District Court's power to stay cases while an action involves claims subject to arbitration.

Finally, the District Court did not abuse its discretion in balancing the competing interests to conclude that a stay is appropriate. The District Court reasonably determined that a stay would advance this litigation by simplifying the issues and conserving the parties' resources. The Receiver fails to show that the District Court's decision to stay was arbitrary or capricious.

II. FACTS

A. The Commissioner Was Appointed as the Receiver of Spirit with Powers Beyond Those Expressly Enumerated in the Receivership Order.

On February 27, 2019, the Receivership Court[2] entered the Receivership Order[3], appointing the Commissioner of the Division of Insurance as permanent receiver of Spirit Commercial Auto Risk Retention Group, Inc. ("Spirit"). APP0541-56. The Receivership Order vests in the Receiver

[1] In her Petition, Petitioner erroneously references NRS 38.291, which does not exist.

[2] The "Receivership Court" refers to the Court before which Spirit's receivership action is pending, in case no. A-19-787325-B.

[3] The "Receivership Order" refers to the Permanent Injunction and Order Appointing Commissioner as Permanent Receiver of Spirit Commercial Auto Risk Retention Group, Inc. issued in case no. A-19-787325-B. *See* Complaint, APP0004 at ¶ 9; Receivership Order at APP0541-56.

authority "to conserve and preserve the affairs of" Spirit. APP0544. To that end, the Receiver is vested, "***in addition to*** the powers set forth [therein], with all the powers and authority expressed or implied under the provisions of chapter 696B of the Nevada Revised Statute ("NRS"), and any other applicable law." APP0544 (emphasis added). Section 15 of the Receivership Order further delineates the Receiver's powers, in relevant part:

> (15) The Receiver shall have the power and is hereby authorized to:
> ….
> h. ….Institute and prosecute, in the name of SCARRG or in her own name, any and all suits,… to pursue further and to compromise suits, legal proceedings or claims on such terms and conditions as she deems appropriate;
> ….
> n. ***Perform such further and additional acts*** as she may deem necessary or appropriate for the accomplishment of or in aid of the purpose of the receivership, it being the intention of this Order that the aforestated enumeration of powers shall ***not*** be construed as a limitation upon the Receiver.

APP0550-51 (emphasis added).

The Receivership Order also permits the Receiver to seek additional relief from the Receivership Court: "(23) The Receiver may at any time make further application for such further and different relief as she sees fit." APP0554.

B. The Receiver Filed This Action, Alleging that All Defendants Acted in Concert to Improperly Funnel Away Funds Belonging to Spirit.

The Received filed her 77-page Complaint in this case, alleging that defendants acted in concert to siphon over $40 million dollars from Spirit. *See generally*, APP001-77. The Receiver ties Lexicon Insurance Management LLC ("Lexicon"), Daniel George ("George"), and ICAP Management Solutions, LLC ("ICAP") to the conduct of the CTC Defendants[4] and Criterion Claims Solutions of Omaha, Inc. ("Criterion"). For example, the Complaint states:

- The CTC Defendants commingled funds, allowing them "to provide preferential payments to… George" and entities affiliated with him. APP0013 at ¶ 62.
- The CTC Defendants purportedly failed to provide the Division of Insurance information pertaining to the loss portfolio transfer so they could continue to operate for the benefit of George at the detriment to Spirit and its policyholders. APP0015-16 at ¶¶ 73-75.
- George purportedly failed to disclose that the CTC Defendants owed Spirit more than $27.6 million. APP0017 at ¶¶ 83-85; APP0035 at ¶ 201; APP0037 at ¶ 217; APP0041 at ¶ 235.

[4] Defendants CTC Transportation Services of California, CTC Transportation Services of Missouri, and CTC Transportation Services of Hawaii are collectively referred to herein as the "CTC Defendants."

- To benefit himself, George purportedly instructed the CTC Defendants and/or Spirit not to cancel insurance policies when premiums were not paid by the insured. APP0021 at ¶¶ 113-14; APP0035-37 at ¶¶ 202, 210-11.
- The CTC Defendants improperly transferred millions of dollars to individuals and entities affiliated with Mulligan, including Lexicon. APP0023 at ¶¶ 129-31; APP0036-37 at ¶¶ 205, 213.
- The CTC Defendants operated with limited financial control, allowing Mulligan and George to override controls. APP0023-25 at ¶¶ 132, 139-40.
- Mulligan and George caused the CTC Defendants to loan $2.8 million to fund Criterion's operation. APP0025 at ¶ 146.
- Lexicon aided the improper transfers or withholdings of Spirit funds by the CTC Defendants, under the control of Mulligan and George. APP0032 at ¶¶ 183-84.

Notably, the Receiver does not allege that ICAP had a direct relationship with Spirit. Instead, the Receiver alleges that the CTC Defendants improperly retained funds that belonged to Spirit, and the CTC Defendants improperly distributed such "Spirit funds" to ICAP, which further funneled the "Spirit funds" to George. APP0007 at ¶ 32.

C. The District Court Granted Criterion and the CTC Defendants' Motions to Compel Arbitration.

On May 14, 2020, Criterion filed its Motion to Compel Arbitration to enforce a mandatory arbitration clause in its agreement with Spirit. APP0452. On the same day, the CTC Defendants filed their Motion to Compel Arbitration to enforce a mandatory arbitration provision in the Program Administration Agreements. APP0476; APP0480.

The Receiver opposed both motions to compel arbitration. The Receiver, however, did not argue that she did not have authority to initiate arbitration in either opposition. *See, generally*, APP0670-89; APP0719-51. The Receiver acknowledged that "CTC is a star witness." APP0749. The Receiver also agreed that "whether CTC remains a party to this case or becomes a third party, trying the issues in this matter, even as they relate to the Receiver's claims against the other Defendants, will require significant discovery of relevant information in CTC's possession, custody, or control." APP0749.

On July 16 and 22, 2020, the District Court granted the CTC Defendants and Criterion's respective motions to compel. APP997-1029; APP1030-40.

The Receiver moved the District Court to reconsider the orders, asserting the same arguments she made in her oppositions to the motions to compel arbitration. APP1041-61; APP1062-77. Again, the Receiver did not

argue that she had no authority to file for arbitration as a basis for reconsideration.

The District denied both motions for reconsideration. APP1303-16; APP1402-10.

D. The District Court Granted the Remaining Defendants' Motion to Stay and Joinders Thereto after Extensive Consideration of the Competing Interests in This Case.

After the District Court granted the motions to compel arbitration, nine of the remaining defendants filed a motion to stay this action pending completion of the arbitration. APP1181-93. Lexicon, George, and ICAP filed a joinder to the motion to stay, arguing that the Receiver's claims against the CTC Defendants and Criterion are so intertwined with the Receiver's claims against Lexicon, George, and ICAP that the latter claims should be stayed pending completion of arbitration. APP1248-57. If the Receiver's claims against the CTC Defendants and Criterion fail, then the Receiver necessarily would not be able to prove that Lexicon, George, and ICAP acted inappropriately, including funneling away "Spirit funds," through the CTC Defendants and Criterion. APP1253. Lexicon, George, and ICAP also argued that a stay will prevent the Receiver from needlessly duplicating discovery efforts to pursue the same set of allegations in two different forums. APP1254. Other defendants filed similar joinders.

After giving the Receiver an opportunity to oppose and be heard at a lengthy hearing, the District Court granted the motion to stay and joinders thereto. The Court was persuaded "that Plaintiff's claims against all of the Defendants are so intertwined with those against the parties subject to arbitration that a stay is warranted for the reasons advanced by Defendants…." APP1414. The District Court found that the Receiver's claims against the non-arbitrating Defendants "are fundamentally dependent on, intertwined with, and premised on Plaintiff's claims against CTC and Criterion, which claims will be determined in arbitration." APP1416 at ¶¶ 11-12. Based on the Receiver's allegations, the District Court determined that:

> [t]he threshold questions of whether CTC and/or Criterion engaged in wrongful conduct to misappropriate Spirit's money or otherwise breached any obligations to Spirit will be answered in the arbitrations. These threshold questions must be determined before the liability of the Defendants, if any, for allegedly participating in or benefitting from any misconduct of CTC or Criterion may be determined.

Id. at ¶ 13.

The District Court concluded a stay was appropriate after due consideration of the benefits and harms of a stay. Without a stay, "Plaintiff and the Defendants will expend unnecessary resources, including a substantial amount of attorney's fees and costs, on duplicative litigation that will involve nearly identical evidence to prove overlapping and intertwined claims."

APP1419 at ¶ 25. Without a stay, "there is a risk of inconsistent results under the same set of identical facts." *Id*. at ¶ 27. Further, the District Court concluded that "Plaintiff has not shown how a stay of proceedings against the Defendants would prejudice or harm Plaintiff. In fact, Plaintiff would ostensibly benefit from such a stay." *Id*. at ¶ 23. In conclusion, the "stay would further increase judicial economy and simplify the issues." *Id*.

III. ARGUMENTS

Writ Relief Is Not Appropriate, Because the Receiver Has A Plain, Speedy and Adequate Remedy Available and the District Court Did Not Abuse Its Discretion.

There are two requirements for writ relief, and the Petition meets neither.

First, a petitioner seeking a writ of mandamus must demonstrate that "there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; *Diaz v. Dist. Ct*., 116 Nev. 88, 93, 993 P.2d 50, 54 (2000). "[T]he issuance of a writ of mandamus or prohibition is purely discretionary with this court." *Smith v. Eighth Jud. Dist. Ct*., 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (citations omitted).

Second, the petitioner must also meet the high standard of demonstrating that "mandamus is needed 'to compel the performance of an act that the law requires or to control a ***manifest abuse of discretion***' by the district court."

Tallman v. Eighth Jud. Dist. Ct., 131 Nev. 713, 719, 359 P.3d 113, 117-18 (2015) (emphasis added and quotation omitted).

The Petition fails on both counts.

A. The Receiver Has a Plain, Speedy and Adequate Remedy in the Ordinary Course of Law.

The Receiver does not even argue how she does not have "a plain, speedy and adequate remedy in the ordinary course of law" with respect to the order granting the stay. The Receiver is challenging both the orders compelling arbitration and the order to stay. While the Receiver argues that she has no speedy remedy absent writ relief with respect to orders compelling arbitration, she makes no such specific argument with respect to the order granting a stay.

Here, the Receiver has "a plain, speedy and adequate remedy in the ordinary course of law" because she may proceed in this action once the arbitrations conclude. Any delay is caused by the Receiver's refusal to commence arbitration. The CTC Defendants and Criterion filed their motions to compel on May 14, 2020, placing the Receiver on notice of her obligation to arbitrate. The District Court granted the motions over a year ago on July 16 and 22, 2020. Yet, the Receiver still has not commenced arbitration. Extraordinary relief with respect to the stay is not warranted.

1. The Receiver Never Challenged the District Court's Authority to Stay This Action Based on the Receiver's Purported Lack of Authority to Arbitrate Its Claims against the CTC Defendants and Criterion.

With respect to the orders compelling arbitration, the Receiver argues that she has no plain, speedy and adequate remedy because she lacks authority to file arbitration. Petition at p. 16. The Receiver also briefly argues she lacked authority to file arbitration as to the order to stay. *Id*. at p. 39.

Because the Receiver did not make this argument below, this Court needs not address this argument. "[I]n the context of extraordinary writ relief, consideration of legal arguments not properly presented to and resolved by the district court will almost never be appropriate." *Archon Corp.*, 133 Nev. 816, 822, 407 P.3d 702, 708 (2017) (citing *Califano v. Moynahan*, 596 F.2d 1320, 1322 (6th Cir. 1979)) ("We decline to employ the extraordinary remedy of mandamus to require a district judge to do that which he was never asked to do in a proper way in the first place."); *also see United States v. U.S. Dist. Court for S. Dist. of Cal*., 384 F.3d 1202, 1205 (9th Cir. 2004) ("[W]e will not find the district court's decision so egregiously wrong as to constitute clear error where the purported error was never brought to its attention.").

Here, the Receiver never argued to the District Court that she lacked authority to file for arbitration. The Receiver had *at least* three opportunities to raise this argument below, but she failed to assert it.

2. The Receiver Has Authority to File Arbitration, If This Court Were Even Inclined to Consider This Argument.

The Receivership Order does not limit the Receiver's ability to file for arbitration. As with statutory interpretation, this Court evaluates the Receivership Order based on its plain language. *See Pindus v. Fleming Companies Inc*., 146 F.3d 1224, 1226 (10th Cir. 1998) ("The plain language of the order only restricts 'pleadings,' not motions. We have no reason to interpret this language to mean anything other than what it says…."); *also see*, *Bank of America v. SFR Invs. Pool 1, LLC*, 134 Nev. 604, 609, 427 P.3d 113, 119 (2018) ("If a statute is unambiguous, this court does not look beyond its plain language in interpreting it."). The Receivership Order is plain and unambiguous—it does not preclude the Receiver from filing for arbitration.

The Receivership Order's express language refutes the Receiver's argument. Section 15(n) of the Receivership Order states that the Receiver has authority to "[p]erform such further and additional acts as she may deem necessary or appropriate for the accomplishment of or in aid of the purpose of the receivership." APP0551. Importantly, "the intention of this Order [is] that the aforestated enumeration of powers ***shall not*** be construed as a limitation upon the Receiver." *Id*. (emphasis added). The language that the Receiver relies upon to support her position is never meant to be a restriction but an

illustration of the powers of the Receiver. Section 15(h) does not preclude the Receiver from initiating arbitrations.

Further, the Receiver may seek relief to initiate arbitration from the Receivership Court, and she failed to do so. The Receivership Order provides, "The Receiver may at any time make further application for such further and different relief as she sees fit." APP0554. Even if the Receiver believed she were without authority to file for arbitration, the Receiver has a remedy—she may petition the Receivership Court for relief.

There is no extraordinary circumstance here warranting extraordinary relief. The Receiver's Petition should be denied.

B. The District Court Did Not Abuse Its Discretion to Stay This Action Pending Completion of Arbitration.

The Receiver must show that the District Court's decision was "[a]n arbitrary or capricious exercise of discretion[…] 'founded on prejudice or preference rather than on reason,' Black's Law Dictionary 119 (9th ed. 2009) (defining "arbitrary"), or 'contrary to the evidence or established rules of law,' *id*. at 239 (defining "capricious")." *State v. Eighth Jud. Dist. Ct*., 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). "A manifest abuse of discretion is '[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.'" *Id*. (quoting *Steward v. McDonald,* 330 Ark. 837, 958 S.W.2d 297, 300 (1997)).

Here, the District Court did not abuse its discretion because it properly exercised its inherent authority to stay this action pending completion of the arbitration and properly weighed competing interests to conclude a stay was appropriate.

1. The District Court Has Discretion and Authority to Stay This Action Pending Completion of Arbitration.

The Receiver argues that the District Court erroneously relied upon 9 U.S.C. § 3 and NRS 38.221(7) to stay this action. This does not justify writ relief for at least two reasons. The District Court relied on its inherent authority, not just these two statutes, and those statutes do not deprive the District Court of its inherent power to stay cases.

First, the District Court justified its decision to stay on the grounds of its inherent powers, as reflected in its citation to the United States Supreme Court decision in *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936), which this Court approved in *Maheu v. Eighth Jud. Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973). APP1417-16; *also see* APP1253. The District Court recognized "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." APP1417 (citing *Landis*, 299 U.S. at 254-55). In fact, citing *Landis* and *Maheu*, the Receiver concurred in its Opposition to

the motion to stay that the District Court "has the discretionary power to choose to stay the litigation." APP1273.

Second, 9 U.S.C. § 3 and NRS 38.221(7) do not supersede the District Court's inherent power to control its docket and stay this action. 9 U.S.C. § 3 authorizes a United States District Court to stay an action pending completion of arbitration. Similarly, NRS 38.221(7) authorizes the District Court to "stay any judicial proceeding that involves a claim subject to the arbitration." These provisions do not prohibit the District Court from staying this action pending completion of arbitration. The Receiver identifies no authority to the contrary.

2. The District Court Properly Stayed This Action after Consideration of the Parties' Respective Positions.

The District Court appropriately weighed the competing interests to stay this action. The Receiver argues that she should be allowed to proceed with both arbitration and this litigation to conserve the Receiver's resources, Petition at p. 40, but the District Court reasonably rejected this argument based on the Receiver's own allegations.

To determine whether the stay was appropriate, the District Court "must weigh competing interests and maintain an even balance." APP1418. Stay of the claims not subject to arbitration is proper when "the discovery and the factual issues in [the litigation] would overlap and be duplicative of the discovery necessary in the arbitration." *Knights of Columbus v. Va. Trust*, 2:12-cv-688-JCM-

VCF, 2013 U.S. Dist. LEXIS 39437 (D. Nev. Mar. 21, 2013). "'[W]here the factual allegations underlying the arbitrable and nonarbitrable claims are identical, a stay may be warranted by considerations of judicial economy and convenience because a plaintiff's success at arbitration may render litigation of the nonarbitrable claims unnecessary.'" *Shepardson v. Adecco USA, Inc.*, 15-cv-05102-EMC, 2016 U.S. Dist. LEXIS 64754 (N.D.Calif. Apr. 5, 2016) (quoting *Gilmore v. Shearson/Am. Exp., Inc.*, 668 F. Supp. 314, 321 n.11 (S.D.N.Y. 1987)).

The Receiver fails to meet its heavy burden to show that the District Court abused its discretion to stay this action. The District Court reasonably found that permitting arbitration and this action to proceed simultaneously would be a waste of judicial and the parties' resources. The District Court pointed out that the Receiver's allegations against the CTC Defendants and Criterion overlapped with the allegations against the remaining defendants, including Lexicon, George, and ICAP.[5] APP1418.

Based on these allegations, the District Court agreed with defendants that a stay "would further increase judicial economy and simplify the issues."

[5] The Receiver has not cogently argued that the District Court's findings that the allegations against the CTC Defendants and Criterion are intertwined with the allegations against the remaining defendants. *See* Petition at p. 38-40. Therefore, this Court should not address any argument the Receiver may raise for the first time in its Reply that challenges such finding. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

APP1419. The Receiver's claims against ICAP are all derivative of the CTC Defendants' conduct, and many of the Receiver's claims against George and Lexicon are dependent on the allegations against the CTC Defendants and Criterion. If the CTC Defendants are found to have not committed any improper conduct, then Lexicon, George, and ICAP could not have committed any improper conduct through the CTC Defendants or improperly funneled any "Spirit funds" through the CTC Defendants. Allowing the arbitration to proceed first will streamline or eliminate entirely the issues for this action, thereby conserving both sides' resources.

Lexicon, ICAP, and George will suffer great harm without a stay. The Receiver names ICAP in this action because her investigator felt that the CTC Defendants' payment to ICAP (and other individuals and entities) "lacked specificity and back-up support" and that they were "unusual." APP0045 at ¶¶ 255-56. In other words, the Receiver has no evidence but a "hunch" that the CTC Defendants made improper payment to ICAP. Absent a stay, Lexicon, ICAP, and George will practically be forced to defend parties and claims which are subject to arbitration, addressing issues including the CTC Defendants and Criterion's obligations under their respective contracts with Spirit, the CTC Defendants and Criterion's internal controls, and the CTC Defendants and Criterion's accounting methodology and bookkeeping—all without the CTC

Defendants and Criterion's involvement in this litigation or any arbitration (the Receiver admits she still has not filed for arbitration yet).

In contrast, the Receiver fails to show harm as a result of the stay. First, the Receiver has not presented any evidence of harm. Second, if the Receiver's allegations bear any truth, the Receiver could recover against the CTC Defendants and Criterion pending the stay. The Receiver is seeking to recover $40 million from the CTC Defendants and over $101,566 from Criterion. APP0019 at ¶ 96; APP0025 at ¶ 143; APP0045 at ¶ 250. The only reason why the Receiver would face any difficulty recovering funds while this action is stayed is if she loses her arbitration against the CTC Defendants and Criterion. If the Receiver cannot recover from the CTC Defendants or Criterion in arbitration, the Receiver necessarily cannot recover from ICAP and certainly cannot hold Lexicon and George liable for the CTC Defendants or Criterion's conduct. The Receiver has not shown that a stay will create any realistic, undue hardship on Spirit.

IV. CONCLUSION

The Receiver fails to show that she is without a remedy, and the District Court reasonably exercised its inherent authority to stay this action pending arbitration of the Receiver's claims against the CTC Defendants and Criterion. For the foregoing reasons, real parties in interest Lexicon, George, and ICAP

respectfully request that the Court deny the petition for a writ of mandamus as to the order staying this action.

DATED this 8th day of September, 2021.

GORDON REES SCULLY
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CERTIFICATE OF COMPLIANCE WITH NRAP 28.2 AND 32

1. I hereby certify that this brief complies with the typeface and type style requirements of NRAP 32(a)(4)-(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in size 14 font of Times New Roman typeface.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) and 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 4,187 words and therefore does not exceed 7,000 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, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. 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 8th day of September, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, on the 8th day of September, 2021, the foregoing **RESPONSE OF REAL PARTIES IN INTEREST ICAP MANAGEMENT SOLUTIONS, LLC, DANIEL GEORGE, AND LEXICON INSURANCE MANAGEMENT LLC TO PETITION FOR WRIT OF MANDAMUS** was served upon those persons designated by the parties in the E-Service Master List, as follows:

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