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;

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Supreme Court Case No.: 82701

Dist. Ct. Case No.: A-20-809963-B

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 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,

REAL PARTIES IN INTEREST THE SIX ELEVEN DEFENDANTS' ANSWER TO PETITION FOR WRIT OF MANDAMUS

L. CHRISTOPHER ROSE, ESQ.
Nevada Bar No. 7500
KIRILL V. MIKHAYLOV, ESQ.
Nevada Bar No. 13538
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, Nevada 89169

ATTORNEYS FOR REAL PARTIES IN INTEREST SIX ELEVEN LLC, QUOTE MY RIG, LLC, NEW TECH CAPITAL LLC, 195 GLUTEN FREE LLC, 10-4 PREFERRED RISK MANAGERS, INC., IRONJAB, LLC, FOURGOREAN CAPITAL LLC, CHELSEA HOLDING COMPANY, LLC AND CHELSEA FINANCIAL GROUP, INC.

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:

1. Real Parties in Interest Six Eleven, LLC, Quote My Rig, LLC, New Tech Capital, LLC, 195 Gluten Free, LLC, 10-4 Preferred Risk Managers, Inc., Ironjab, LLC, Fourgorean Capital, LLC, Chelsea Holding Company, LLC, and Chelsea Financial Group, Inc. (Missouri) (hereinafter referred to as the "Six Eleven Defendants") do not have parent companies and no publicly held companies own 10% or more of stock in any of the Six Eleven Defendants.

2. L. Christopher Rose, Esq. and Kirill V. Mikhaylov, Esq. of Howard and Howard Attorneys PLLC represented the Six Eleven Defendants in district court and have appeared and represent them in this Court.

DATED this 15th day of September, 2021.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ L. Christopher Rose
L. CHRISTOPHER ROSE, ESQ. #7500
KIRILL V. MIKHAYLOV, ESQ. #13538
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, Nevada 89169
Attorneys for Real Parties in Interest the Six Eleven Defendants

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INTRODUCTION

This case is a dispute over the alleged mismanagement of an insurance company named Spirit Commercial Auto Risk Retention Group, Inc. ("Spirit" or "Company"). Plaintiff Barbara D. Richardson ("Plaintiff") filed this action in her capacity as Spirit's statutory receiver. Plaintiff's claims focus on Defendants CTC and Criterion,[1] which Plaintiff blames for Spirit's alleged troubles.

For reasons Plaintiff has been unable to explain, she also alleged claims against a vast number of other individuals and entities – 32 of them – including the Six Eleven Defendants. Plaintiff claims the remaining Defendants owe money to Spirit although she does not allege why. While the 79-page Complaint asserts nineteen causes of action against the various Defendants, one characteristic of Plaintiff's Complaint is clear: all claims and allegations are entirely dependent upon Plaintiff proving the claims of mismanagement and misconduct against CTC and Criterion. In fact, Plaintiff even argues that "CTC, like a hub of a wheel, was at the center of the scheme that caused the insolvency of Spirit. . . ." APP0721.

Pursuant to the mandatory arbitration provisions in their agreements with Spirit, CTC and Criterion filed motions to compel arbitration of the claims against

[1] "CTC" refers collectively to Defendants CTC Transportation Insurance Services of Missouri, LLC, CTC Transportation Insurance Services, LLC and CTC Transportation Insurance Services of Hawaii, LLC (collectively "CTC") and "Criterion" refers to Defendant Criterion Claims Solutions of Omaha, Inc.

them, which the district court granted. Because Plaintiff's claims against the Six Eleven Defendants hinge on Plaintiff first prevailing on the claims against CTC and Criterion, the Six Eleven Defendants then filed a motion to stay the claims against them pending Plaintiff's arbitrations against CTC and Criterion, which the remaining Defendants joined. The Six Eleven Defendants demonstrated that Plaintiff's claims are so intertwined with and dependent upon Plaintiff's claims against CTC and Criterion that a stay pending arbitration was in the best interests of the parties and the court to avoid needless, duplicative litigation and a risk of inconsistent rulings. After careful consideration, the district court exercised its inherent discretion and ordered the claims against the remaining Defendants stayed pending the resolution of the CTC and Criterion arbitrations.

In the current Petition, Plaintiff repeatedly concedes that the district court had wide discretion to stay the case. But in an impossible leap of logic, Plaintiff then attempts to establish an abuse of discretion by relying on arguments it never raised to the district court. The Court should deny Plaintiff's Petition for this reason as well as several additional grounds. First, Plaintiff failed to demonstrate that extraordinary writ relief is available or proper for challenging an order compelling arbitration and staying the district court proceedings. As shown below, it is not. Second, contrary to Plaintiff's novel arguments raised for the first time here, the district court in fact had both inherent authority and statutory authority to

stay the district court proceedings pending arbitration. Third, it is undisputed that Plaintiff's claims against the Six Eleven (and remaining) Defendants are intertwined with and wholly dependent on Plaintiff's claims of breach and misconduct against CTC and Criterion. In these circumstances, it makes no sense for the remaining Defendants to needlessly engage in separate but duplicative litigation unless and until Plaintiff first completes arbitration of her claims against CTC and Criterion. The district court was correct that such duplicative proceedings would be inefficient, unnecessary, and create a risk of inconsistent rulings and judgments. For these and all the other reasons set forth herein, the Plaintiff's Petition should be denied.

STATEMENT OF RELEVANT FACTS

Spirit, CTC and Criterion

Spirit was a Nevada captive insurance company that operated a commercial auto-liability insurance business, which specialized in providing insurance to commercial truck owners. APP0004. Spirit conducted business in Nevada until approximately February 2019, when it was placed into receivership. *Id.*

Prior to Spirit's receivership, CTC served as the Program Administrator for Spirit pursuant to an agreement between Spirit and CTC signed on July 1, 2016 (the "CTC Agreement"). APP0012. Pursuant to the CTC Agreement, CTC owed various duties to Spirit, which included collecting payments and managing the

funds received from Spirit's policyholders. APP0017-18. According to Plaintiff, "CTC, like a hub of a wheel, was at the center of the scheme that caused the insolvency of Spirit." APP0721.

Criterion was a Third-Party Administrator that provided claims administration services to Spirit. APP0005. Under Criterion's agreement with Spirit, Criterion was responsible for establishing loss reserves, settling claims, and issuing loss payments (the "Criterion Agreement"). APP0012, APP0025-0028. According to Plaintiff, Criterion "played a critical role in the scheme" that allegedly caused Spirit's receivership. APP0671.

In summary, Plaintiff alleges that CTC and Criterion mismanaged Spirit and collected funds they were not entitled to collect under their respective agreements with Spirit. APP0014, APP0017, APP0025-28, APP0045-47. Plaintiff's first three claims as alleged in the Complaint are for breach of contract against CTC, Lexicon, and Criterion for breach of their contracts regarding Spirit's management and operations. APP0048-50.

Plaintiff's Claims Against the Other Defendants

Rather than limiting this case to Plaintiff, Criterion and CTC, Plaintiff unnecessarily and without basis expanded this matter by filing a 79-page Complaint asserting 19 causes of action against 32 other individuals and entities. *See generally* AP0001-79. Plaintiff appears to have sued anyone that ever worked

for or did business with Spirit. *See id*.

Plaintiff sued the Six Eleven Defendants despite the fact that they did not control or manage Spirit's operations. *Id.* Plaintiff alleged seven of the 19 causes of actions against the Six Eleven Defendants, including the (1) Eleventh Claim for unjust enrichment, (2) Twelfth Claim for fraud, (3) Thirteenth Claim for civil conspiracy, (4) Fifteenth Claim for avoidance of transfers under NRS 112, (5) Sixteenth Claim for voidable transfers under NRS 696B, (6) Seventeenth Claim for recovery of distributions and payments under NRS 696B, and (7) Eighteenth Claim for recovery of distributions and payments under NRS 692C.402. *Id.*

Plaintiff's Claims Against the Six Eleven Defendants are Inextricably Intertwined With and Dependent On the Claims Against CTC and Criterion

As shown by the allegations, Plaintiff's claims against the Six Eleven Defendants are intertwined with and dependent on the claims asserted against CTC and Criterion. First, Plaintiff asserts that the Six Eleven Defendants have been unjustly enriched by receiving funds from CTC that instead belonged to Plaintiff. APP0060-61. Second, Plaintiff asserts that the Six Eleven Defendants are somehow liable for fraud because of the alleged misconduct and mismanagement of CTC, Criterion, and others responsible for operating Spirit. APP0061-65. Third, Plaintiff asserts that the Six Eleven Defendants conspired with CTC, Criterion, and every other Defendant to remove funds from Spirit. APP0065-68. Lastly, Plaintiff seeks to avoid transfers and recover distributions and payments it

claims that CTC improperly made to the various Defendants, which include the Six Eleven Defendants. APP0069-76.

Based on Plaintiff's allegations, the claims alleged against the Six Eleven Defendants are entirely dependent upon and inextricably intertwined with the claims Plaintiff has alleged against CTC and Criterion. APP0060-68; APP0069-76.

CTC and Criterion's Motions to Compel Arbitration Are Granted

On May 14, 2020, CTC and Criterion each filed motions to compel arbitration pursuant to the applicable arbitration provisions in their respective agreements. APP0452-475, APP0476-536. In opposing the motions, Plaintiff argued, among other things, that the arbitration provisions should not be enforced and that not all claims were subject to the arbitration provisions. APP0670-718, APP0719-751.

The district court disagreed with Plaintiff's arguments and granted both motions, compelling arbitration between the parties to the CTC/Criterion Agreements on all claims. APP0997-1029, APP1030-1040. The district court specifically found that: (1) the arbitration provisions in the CTC/Criterion Agreements were valid and enforceable, (2) the arbitration agreements encompassed each of Spirit's claims against CTC and Criterion; (3) the Federal Arbitration Act ("FAA") applied to the CTC/Criterion Agreements; and (4) Spirit was bound by the arbitration agreements. *Id*. Plaintiff filed motions for

reconsideration, which the district court denied on September 4, 2020 (CTC) and September 14, 2020 (Criterion). APP1303-1316, APP1402-1410.

The Six Eleven Defendants Move to Stay the Action Pending Resolution of Plaintiff's Arbitrations Against CTC and Criterion

On August 28, 2020, after the district court granted CTC and Criterion's motions to compel arbitration, the Six Eleven Defendants filed a motion to stay the district court proceedings pending completion of the arbitrations between the Plaintiff, CTC, and Criterion. APP1181-1193. The Six Eleven Defendants argued and provided legal authorities showing that the district court should stay the proceedings because Plaintiff's claims against the Six Eleven Defendants are fundamentally dependent on, intertwined with, and premised on the claims against CTC and Criterion, which had recently been sent to arbitration. *Id.* All of the remaining Defendants joined the Six Eleven Defendants' motion to stay.[2]

In opposing the motion to stay, Plaintiff's main arguments were that: 1) a stay would damage the Spirit receivership; 2) the Defendants had not demonstrated a hardship or inequity in the event a stay were denied; and 3) a stay would not promote judicial economy.[3] APP1259-1289. More importantly, Plaintiff's opposition brief also contained several significant admissions, including:

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[2] APP1205-1215, APP1216-1219, APP1220-1231, APP1232-1238, APP1239-1247, APP1248-1257.

[3] It is worth highlighting that in the current Petition, Plaintiff has abandoned the first two arguments and only tangentially mentioned the third.

- Plaintiff conceded that the focus of her claims was CTC and Criterion, admitting that "the CTC Defendants controlled Spirit's finances and operations and Criterion managed Spirit's claims . . . ." APP1266.
- Plaintiff conceded the district court's broad discretion to stay the case against the remaining Defendants; APP1273 (stating "[e]ven the authority relied on by defendants indicates that a court has the discretionary power to choose to stay the litigation" and noting the court's "broad discretion" to stay) *Id.*;
- Plaintiff did not dispute the district court's power to stay the proceedings pursuant to its inherent authority, pursuant to 9 U.S.C. § 3 of the FAA, and pursuant to the Nevada Uniform Arbitration Act ("NUAA") APP1259-1289;
- Plaintiff did not explain how the claims alleged against the Six Eleven Defendants (or other Defendants) were *not* intertwined with and dependent upon Plaintiff's claims against CTC and Criterion. *Id.*

On October 2, 2020, after extensive briefing and oral argument, the district court granted the Six Eleven Defendants' motion to stay the district court proceedings as well as the remaining Defendants' joinders to that motion. APP1411. Almost seven months after the district court denied Plaintiff's motions for reconsideration of the orders regarding CTC and Criterion's motions to compel arbitration, Plaintiff filed the instant Petition for Writ of Mandamus.

ARGUMENT

I. PLAINTIFF DID NOT SATISFY THE BURDEN FOR EXTRAORDINARY WRIT RELIEF BECAUSE SHE HAS AN ADEQUATE LEGAL REMEDY.

Plaintiff was required, but failed, to demonstrate that the extraordinary remedy of a writ of mandamus is warranted here. As shown below, Plaintiff has an adequate remedy at law and is not entitled to writ relief.

A. The Standard For Writ Relief

An appellate court will exercise its original jurisdiction to issue an extraordinary writ only when the petitioner does not have a plain, speedy and adequate remedy in the ordinary course of law. *Club Vista Fin. Servs. v. Eighth Jud. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012). Generally, the appellate court will not entertain a petition for an extraordinary writ when the matter may be reviewed on appeal from final judgment. *See Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 223, 88 P.3d 840, 841 (2004) (recognizing that "an appeal is generally an adequate legal remedy that precludes writ relief"). Courts "will examine each case individually, granting extraordinary relief if the circumstances reveal urgency or strong necessity." *Mona v. Eighth Jud. Dist. Ct.*, 132 Nev. 719, 724, 380 P.3d 836, 840 (2016). The petitioner carries the burden of demonstrating that extraordinary relief is warranted. *Pan*, 120 Nev. at 228, 88 P.3d at 844.

A writ of mandamus is an extraordinary remedy that is available only "to compel the performance of an act that the law requires . . . or to control a manifest abuse or arbitrary or capricious exercise of discretion." *State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). In an ordinary appeal, this Court reviews a district court's decision whether to stay proceedings under the usual abuse-of-discretion standard. *See, e.g.*, *Petrilla v. Castillo*, No. 67566, 2016 WL 606010, at *1 (Nev. Feb. 12, 2016) (unpublished disposition). On a petition for a writ of mandamus, however, the standard of review is even more deferential as the Court reviews the district court's decision for "manifest" abuse of discretion, which this Court defined as "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *Armstrong*, 127 Nev. at 932, 267 P.3d at 780 (emphasis added) (citations omitted). In addressing whether that standard is satisfied, this Court "ordinarily may assume that the judge gave careful consideration to the motion and weighed the appropriate factors." *Aspen Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 643, 289 P.3d 201, 206 n.1 (2012) (citation omitted).

Under these standards, the extraordinary writ of mandamus will not issue simply to correct an erroneous decision. Any asserted legal error must be "clear and indisputable" and must "immediately" threaten to "wreak irreparable harm." *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev. 816, 820, 407 P.3d 702, 706

(2017) (citations omitted); *see generally Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 665 n.7 (1978). And even if the lower court has abused its discretion, "[u]ltimately, the decision to entertain an extraordinary writ petition lies within [this Court's] discretion," and the petition need not be considered unless "judicial economy and sound judicial administration militate for . . . issuing the writ." *Armstrong*, 127 Nev. at 931, 267 P.3d at 779-80 (citations omitted).

"[T]he right to appeal [a final judgment] is generally an adequate legal remedy that precludes writ relief." *Pan*, 120 Nev. at 224, 88 P.3d at 841. In the arbitration context, NRS 38.247(1)(a) "authorizes interlocutory appeals from orders denying arbitration but makes no provision for interlocutory appeals of orders compelling arbitration." *Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 718, 359 P.3d 113, 117 (2015).

"This legislative distinction supports that interlocutory writ review of orders compelling arbitration is not automatic but, rather, limited to cases that present exceptional circumstances." *State ex rel. Richardson v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 454 P.3d 1260 (Nev. 2019) (unpublished) (*citing Tallman*, 131 Nev. at 719, 359 P.3d at 117, n.1). A party seeking "extraordinary writ relief from an order compelling arbitration" must show,

> why an eventual appeal does not afford 'a plain, speedy and adequate remedy in the ordinary course of law,' NRS 34.170, and that the matter meets the other criteria for extraordinary writ relief, i.e., 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, 131 Nev. at 719, 359 P.3d at 117-18, *citing State ex rel. Masto v. Second Jud. Dist. Court*, 125 Nev. 37, 43-44, 199 P.3d 828, 832 (2009) (emphasizing that "the decision to entertain" a petition for mandamus challenging an order compelling arbitration is not automatic, but a matter "addressed solely to [the Supreme Court's] discretion"); *See also MHC Flamingo W., LLC v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 435 P.3d 651 (Nev. 2019) (unpublished) (denying petition for writ of mandamus because the Court was "not persuaded that petitioners have demonstrated that the order compelling arbitration qualifies for mandamus review").

B. Plaintiff Has Not Met the High Burden for Obtaining Writ Relief.

Plaintiff failed to demonstrate why an eventual appeal will not afford a plain, speedy and adequate remedy of the orders granting the Six Eleven Defendants' motion to stay and CTC and Criterion's motions to compel arbitration. For example, in opposing the motion to stay, Plaintiff argued that a stay would delay the judicial proceedings and that not all of the Defendants were compelled to arbitrate. APP1277-1285. But this Court has already rejected such an argument, ruling that these circumstances are inherent in any order compelling arbitration. *State ex rel Richardson v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 454 P.3d

1260 *1 (Nev. 2019) (unpublished) (hereinafter "*Milliman*"). In fact, this Court rejected that argument on this issue from this *very same Plaintiff*, finding that such arguments are insufficient to warrant writ relief. *See id*.

Milliman involved precisely the same Plaintiff as we have in this case, who, as here, was acting as the statutory receiver for an insurance company. The Plaintiff sought a writ of mandamus from this Court after the district court ordered the Plaintiff to arbitrate her claims. Rejecting Plaintiff's arguments, this Court explained, "Richardson chiefly complains that arbitration affords more limited discovery and appellate review than judicial proceedings and that not all parties to the case can be compelled to arbitrate. But these are characteristic of any arbitration and not themselves a basis to conclude that an eventual appeal will not be an adequate legal remedy." *Id.* This Court denied the Plaintiff's petition for a writ of mandamus challenging the order compelling arbitration.[4] *See id*.

Here, Plaintiff is attempting to manufacture writ necessity because she realizes the instant set of facts do not warrant extraordinary relief. "[A] remedy does not fail to be speedy and adequate, because, by pursuing it through the ordinary course of law, more time probably would be consumed than in a mandamus proceeding." *County of Washoe v. City of Reno*, 77 Nev. 152, 156, 360 P.2d 602, 603 (1961). Indeed, Plaintiff's seven-month delay in filing her Petition

further demonstrates a lack of urgency or any prejudice or harm by proceeding to arbitration in the ordinary course. Because writ relief is unavailable, this Court should deny Plaintiff's Petition.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN STAYING THE PROCEEDINGS AGAINST THE REMAINING DEFENDANTS PENDING ARBITRATION.

In the event the Court considers the merits of the Petition, it is clear that Plaintiff is not entitled to relief. Indeed, Plaintiff repeatedly admits that the district court's decision was discretionary (*see* Petition, at 2, 15, 17-18, 20, 22-23, 25-26, 33, 38) but fails to show that the district court abused its discretion. The district court's decision to stay the litigation against the remaining Defendants pending the outcome of the arbitrations was factually and legally sound, and does not come close to the "clear and indisputable" legal error needed to trigger mandamus relief.

A. The District Court Had Inherent and Statutory Authority to Stay the District Court Proceedings Pending Arbitration.

The district court properly relied on three independent bases to grant the stay in this case: (1) the court's inherent authority and power; (2) the FAA; and (3) the NUAA. APP1412-1430. In seeking a writ, Plaintiff entirely ignores the Court's inherent authority to stay proceedings and improperly manufactures new arguments about the FAA and NUAA. More specifically, Plaintiff argues for the

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[4] Plaintiff briefly attempted, but failed, to distinguish *Milliman* from this case. *See* Petition, at 31-32.

first time that 9 U.S.C. § 3 of the FAA and NRS 38.291(7)[5] of the NUAA do not authorize a stay against the remaining Defendants and that the district court therefore abused its discretion in granting the stay of proceedings. Plaintiff is incorrect.

1) Plaintiff Does Not Dispute (and Did Not Address) the Court's Inherent Authority to Stay Proceedings.

Plaintiff conveniently ignores perhaps the most important basis underlying the district court's stay order: the long-recognized inherent power of district courts to control the disposition of cases on their dockets. This Court has consistently recognized that Nevada courts possess broad discretion to stay proceedings pending before them. *Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (*citing Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants. *Landis*, 299 U.S. at 254. It is within the court's sole discretion to grant and lift a stay of proceedings, and it can do so for any reason it deems appropriate. *Id.*

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

[5] Plaintiff erroneously cites to NRS 38.291(7), which does not exist. Plaintiff is referring to NRS 38.221(7).

agreement, staying the former claims pending the conclusion of the arbitration is in the best interest of judicial economy. *Hansen v. Musk*, 319CV00413LRHWGC, 2020 WL 4004800, at *1 (D. Nev. July 15, 2020); *See also Hill v. G E Power Sys., Inc.*, 282 F.3d 343, 347 (5th Cir. 2002) (affirming order staying claims against non-signatories to arbitration agreements pending completion of arbitration between signatories, stating, "[w]e have long held that if a suit against a nonsignatory is based upon the same operative facts and is inherently inseparable from the claims against a signatory, the trial court has discretion to grant a stay if the suit would undermine the arbitration proceedings and thwart the federal policy in favor of arbitration"); *Sharp Corp. v. Hisense USA Corp.*, 17-CV-03341-YGR, 2017 WL 6017897, at *4 (N.D. Cal. Dec. 5, 2017) (where the Court stayed all trial proceedings of the non-signatories to the arbitration agreement pending arbitration as the facts, allegations, and claims asserted against the non-signatories were identical and intertwined with the claims asserted against the signatory to the arbitration agreement); *CPB Contractors Pty Ltd. v. Chevron Corp.*, C 16-5344 CW, 2017 WL 7310776, at *5 (N.D. Cal. Jan. 17, 2017) (where the court stayed the court proceedings pending arbitration between signatories to arbitration agreement as the "issues involved in the suit" were subject to arbitration); *Amisil Holdings Ltd. v. Clarium Capital Mgmt.*, 622 F. Supp. 2d 825, 842 (N.D. Cal. 2007) (where the Court stayed the proceedings pending arbitration because the

claims asserted against non-signatories to the arbitration agreement were based on the same facts as the claims asserted against the signatories to the arbitration agreement).

Because the district court had inherent authority to stay the district court proceedings against the other Defendants pending the CTC and Criterion arbitrations – a fact Plaintiff does not dispute or address – the Petition must be denied.

2) Plaintiff's Argument that the FAA Does Not Apply Was Waived Because it Was Not Raised with the District Court, and It Is Substantively Incorrect.

Plaintiff argues that Section 3 of the FAA, which authorizes a stay of proceedings, is a procedural rule and therefore does not apply in state courts. Petition, at 38. As a threshold matter, Plaintiff forfeited this argument by failing to raise it with the district court. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal."). There, Plaintiff conceded that the district court had discretion to make the stay determination and never argued (as she does now for the first time) that the statutory authority the district court relied on does not authorize a stay. In fact, in her opposition to the Six Eleven Defendants' motion to stay pending arbitration, Plaintiff conceded that "the authority relied on by

defendants indicates that a court has the discretionary power to choose to stay the litigation." APP1273. In the Six Eleven Defendants' reply in support of the stay, they point out, "Plaintiff also does not dispute that this Court has the power to stay the instant proceedings pursuant to the Federal Arbitration Act, 9 U.S.C. § 3 ("FAA"), the Nevada Uniform Arbitration Act ("NUAA"), and other relevant statutes and case law." APP1341. Finally, during the hearing of the Six Eleven Defendants' motion to stay pending arbitration, Plaintiff did not assert that the FAA or the NUAA did not authorize the district court to stay the proceedings. APP1359-1401.

Now, for the first time, Plaintiff argues that 9 U.S.C. § 3 of the FAA and NRS 38.221(7) of the NUAA do not authorize a stay of proceedings against the Defendants. Petition, at 38-39. Plaintiffs' failure to raise this argument earlier is a sufficient basis for rejecting it here – especially in light of this Court's deferential, manifest abuse-of-discretion review of the district court's decision.

In addition, Plaintiff's novel argument does not direct a different result. Plaintiff argues that the stay provisions of Section 3 of the FAA do not apply in state courts because it is a procedural rule. Petition, at 38. But Plaintiff ignores that in the Criterion Agreement, Plaintiff specifically agreed to be bound by 9 U.S.C. 1 through 15 of the FAA. APP0468. In fact, Plaintiff quotes that very language in full on page 11 of the Petition. Therefore, Plaintiff expressly agreed to

the application of Section 3. This alone defeats Plaintiff's argument that Section 3 of the FAA does not apply.

Moreover, Plaintiff's reliance on certain cases in an attempt to avoid Section 3 of the FAA is misplaced, as those cases do not support Plaintiff's argument. Plaintiff first cites *Volt Info. Scis. v. Bd. of Trs.*, 489 U.S. 468 (1989), which actually defeats Plaintiff's argument. In that case, the United States Supreme Court ruled that parties must arbitrate in the manner set forth in the parties' arbitration agreement. *See id*. at 473-74, 477. In fact, contrary to Plaintiff's characterization of that case, the Supreme Court refused to decide whether Section 3 of the FAA applied in state court because the arbitration agreement at issue set forth the procedure to follow. *See id*. at 476-77. Plaintiff also cites *Cronus Invs., Inc. v. Concierge Servs.*, 35 Cal. 4th 376 (2005), which likewise does not support Plaintiff's argument. That case involved a conflict between a California statute and the FAA, which does not exist in this case. *See id*. at 394. Neither of these cases expressly prohibit a district court from staying a case, generally or under Section 3 of the FAA.

In short, Plaintiff's belated argument that the FAA is not a basis for a stay is procedurally improper as it has been waived as well as substantively erroneous.

3) The Plaintiff's Argument Based on NRS 38.221(7) Is Similarly Waived and Incorrect.

Plaintiff's argument that NRS 38.221(7) does not provide a basis for a stay (Petition, at 39) likewise has been waived as Plaintiff did not raise this argument in district court. Furthermore, Plaintiff's argument that NRS 38.221(7) does not apply because the district court dismissed the claims that were subject to arbitration is nonsensical. The district court specifically granted CTC and Criterion's motions to compel arbitration and dismissed CTC and Criterion to allow Plaintiff to proceed with its arbitrations against them. APP0997-1029, APP1030-1040. The district court's dismissal of CTC and Criterion in no way prevents the district court from staying the case pursuant to NRS 38.221(7).

The district court's decision to stay this case was an entirely proper exercise of its discretion – and plainly not the type of manifest abuse of discretion required for Plaintiff to obtain writ relief from this Court.

B. The District Court Did Not Abuse its Discretion in Granting A Stay Because it is Undisputed that Plaintiff's Claims Against the Six Eleven Defendants Are Intertwined With and Dependent On Plaintiff's Claims Against CTC and Criterion.

In granting the stay, the district court exercised its discretion and considered that Plaintiff's claims against the Six Eleven Defendants are inherently dependent upon, intertwined with, and premised on the resolution of the claims ordered to arbitration. Plaintiff does not even challenge (or address) that her claims are all

intertwined and dependent on each other. Petition, at 38-41. Courts have routinely ordered stays in these circumstances. As the Ninth Circuit stated,

> A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case. This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court. . . In such cases the court may order a stay of the action pursuant to its power to control its docket and calendar and to provide for a just determination of the cases before it.

Leyva v. Certified Grocers of California, Ltd., 593 F.2d 857, 863-64 (9th Cir. 1979).

There are numerous cases across various jurisdictions that support staying a case pending the conclusion of an arbitration when claims that are subject to the arbitration are inextricably intertwined with those remaining in the litigation. *See Bischoff v. DirecTV, Inc.*, 180 F.Supp.2d 1097 (C.D. Cal. 2017); *Hill v. G E Power Sys., Inc.*, 282 F.3d 343, 347 (5th Cir. 2002); *Contracting Northwest, Inc. v. City of Fredericksburg, Iowa*, 713 F.2d 382 (8th Cir.1983); *American Home Assurance Co. v. Vecco Concrete Construction Co.*, 629 F.2d 961 (4th Cir.1980).

The Six Eleven Defendants clearly demonstrated to the district court how Plaintiff's claims against CTC and Criterion are intertwined with her claims against the Six Eleven Defendants. For example, Plaintiff's Eleventh Cause of

Action (unjust enrichment) asserts that CTC improperly and fraudulently transferred funds, property, and reclassified debt rightfully belonging to Spirit, for the benefit of the Defendants. APP0060-61. Whether or not Defendants were unjustly enriched is entirely dependent on whether CTC's actions were improper or fraudulent. Such a determination is now subject to arbitration proceedings.

Moreover, in the Twelfth and Thirteenth Causes of Action (fraud and civil conspiracy), Plaintiff asserts that every Defendant perpetrated a fraud and worked in concert by, among other assertions, siphoning money from Spirit for the benefit of the individual and entity Defendants. APP0061-68. These claims are directly tied to and dependent upon the determination as to whether CTC and Criterion, which controlled and operated Spirit, improperly managed or siphoned said funds allegedly belonging to Spirit. This determination is also subject to the arbitration proceedings.

Furthermore, the Plaintiff's Fifteenth, Sixteenth, Seventeenth, and Eighteenth Causes of Action (encompassing the allegedly fraudulent transfers of funds and recovery from the alleged transferees) are, again, entirely dependent on whether CTC and/or Criterion made fraudulent transfers, wrote off debts, reclassified debts, and improperly transferred funds to the Six Eleven Defendants and the rest of the Defendants. APP0069-76. This also requires a determination that is now subject to arbitration proceedings.

Although Plaintiff attempted to oppose the Six Eleven Defendants' motion to stay pending arbitration, Plaintiff had already conceded that her claims against CTC and Criterion were intertwined with her claims against the remaining Defendants. Plaintiff stated, "[n]early every fraudulent and unlawful act the Receiver has identified was transacted by or with the knowledge of CTC." APP0749. "Indeed, Criterion's role in the fraudulent scheme the Receiver seeks to unwind cannot be untangled from the scheme at large." APP0687. "CTC, like a hub of a wheel, was at the center of the scheme that caused the insolvency of Spirit. . . ." APP0721.

Extraordinary writ relief requires clear legal error. *See Archon v. Eighth Judicial Dist. Court*, 133 Nev. 816, 819-20, 407 P.3d 702, 706 (2017). Here, Plaintiff does not argue much less show that the district court made an error considering and determining the intertwined nature of Plaintiff's claims. The district court correctly exercised its inherent, judicially recognized, discretionary authority to the stay the state court action pending the resolution of the CTC and Criterion arbitrations because the Six Eleven Defendants' involvement and liability in this case is inherently dependent upon and intertwined with Plaintiff's claims against CTC and Criterion.

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C. The District Court Did Not Abuse its Discretion in Granting the Stay Because it Carefully Weighed the Relevant Competing Interests of the Court and the Parties, Which Favor A Stay.

In addition to considering the intertwined nature of the Plaintiff's claims against the remaining Defendants, the district court also weighed the competing interests of the court and the parties and decided in favor of a stay. APP1431-1454. For example, a stay is the only way to conserve judicial resources and avoid the inherent risk of inconsistent outcomes. *See Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 159, 445 P.3d 860, 871 (Nev. App. 2019) (*citing Univ. of Nev. v. Tarkanian*, 95 Nev. 389, 397, 594 P.2d 1159, 1164 (1979) (stating the importance of preserving judicial resources, reducing piecemeal litigation, and avoiding potentially inconsistent outcomes). Additionally, the Six Eleven Defendants demonstrated that allowing this case to continue would cause the Defendants to accrue an exorbitant amount of attorneys' fees in a proceeding that is entirely dependent on the outcome of other proceedings (the CTC and Criterion arbitrations) and would place an unnecessary burden on the district court's docket and the parties.

Plaintiff argued that a stay would delay the ability to recover funds from the remaining Defendants. APP1274-77. However, as this Court already explained in *Milliman*, this does not warrant extraordinary writ relief. *Milliman*, 454 P.3d 1260 at *1 (Nev. 2019) (unpublished). In fact, this Court noted that a stay would benefit

the parties to the prevent arbitration and litigation from proceeding simultaneously. *Id.* (denying petition for writ of mandamus challenging order compelling arbitration, stating, "[t]he burden of simultaneous arbitration and litigation arises where, as here, not all persons involved in a dispute are subject to arbitration, an inconvenience that may be mitigated by staying litigation while arbitration runs its course") (emphasis supplied).

Based on the intertwined and dependent nature of Plaintiff's claims and the interests of the district court and the parties, it simply makes no sense for Plaintiff to proceed with district court litigation against the remaining Defendants until Plaintiff first completes arbitration of its claims against CTC and Criterion. Thus, the district court properly stayed the district court action based on fairness, efficiency, and judicial economy.

D. Plaintiff's Argument Regarding Her Alleged Inability to Initiate Arbitration is Unfounded.

Plaintiff argues that she has no authority to initiate arbitration proceedings. *See* Petition, at 20. Plaintiff raises this argument for the first time in her Petition, and an argument or issue not raised before the district court is deemed waived and cannot be advanced on appeal. *See supra*, Section II(A)(2). Further, none of the Defendants dispute that Plaintiff has authority to initiate arbitration. Having moved to compel arbitration (CTC and Criterion) and moved to stay pending arbitration (the remaining Defendants), Defendants would be precluded if they

attempted to dispute Plaintiff's ability to arbitrate. It is important to note that the order appointing Plaintiff as the receiver in this case is almost identical to the order appointing her as the receiver in the *Milliman* case and grants the same broad powers to "initiate and main actions at law or equity" and to "institute … suits." APP0541-556, APP0834-846. Plaintiff is splitting hairs by arguing that she has authority to initiate a lawsuit but not to initiate arbitration proceedings.[6]

In summary, Plaintiff's elaborate arguments in opposing both the orders to arbitrate[7] and the order staying the district court proceedings pending arbitration do not change the outcome of her doomed Petition. Plaintiff has failed to demonstrate an entitlement to the extraordinary relief of a writ of mandamus.

CONCLUSION

Plaintiff failed to demonstrate why an eventual appeal will not afford a plain, speedy and adequate remedy. Plaintiff also failed to demonstrate that the district court abused its discretion in granting CTC and Criterion's motions to compel arbitration, the Six Eleven Defendants' motion to stay the district court proceedings pending arbitration, and the remaining Defendants' joinders in the motion to stay.

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[6] If Plaintiff was truly concerned with the scope of her authority, she could (and can) rectify that concern with the Receivership Court.

[7] The other Defendants adequately address Plaintiff's other arguments that are not discussed in this Answer. The Six-Eleven Defendants do not concede any of Plaintiffs' arguments.

Accordingly, the Court should deny Plaintiff's Petition.

DATED this 15th day of September, 2021.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ L. Christopher Rose

L. CHRISTOPHER ROSE, ESQ. #7500
KIRILL V. MIKHAYLOV, ESQ. #13538
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, Nevada 89169
Attorneys for Real Parties in Interest Six Eleven LLC, Quote My Rig, LLC, New Tech Capital LLC, 195 Gluten Free LLC, 10-4 Preferred Risk Managers, Inc., Ironjab, LLC, Fourgorean Capital LLC, Chelsea Holding Company, LLC and Chelsea Financial Group, Inc.

CERTIFICATE OF COMPLIANCE

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 2010 in 14 font size and Times New Roman font face.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 6002 words.

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 compiles 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 of appendix where the matter relied on is to be found. I understand that I may be subject to

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sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of September, 2021.

HOWARD & HOWARD ATTORNEYS PLLC

/s/ L. Christopher Rose

L. CHRISTOPHER ROSE, ESQ. #7500
KIRILL V. MIKHAYLOV, ESQ. #13538
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, Nevada 89169
Attorneys for Real Parties in Interest Six Eleven LLC, Quote My Rig, LLC, New Tech Capital LLC, 195 Gluten Free LLC, 10-4 Preferred Risk Managers, Inc., Ironjab, LLC, Fourgorean Capital LLC, Chelsea Holding Company, LLC and Chelsea Financial Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

I served the foregoing **REAL PARTIES IN INTEREST THE SIX ELEVEN DEFENDANTS' ANSWER TO PETITION FOR WRIT OF MANDAMUS** in this action or proceeding electronically with the Clerk of the Court via the E-Flex system, which will cause this document to be served upon the following counsel of record:

Mark E. Ferrario, Esq. Kara B. Hendricks, Esq. Tami D. Cowden, Esq. **GREENBERG TRAURIG, LLP** 10845 Griffith Peak Drive, Ste. 600 Las Vegas, Nevada 89135 *ferrariom@gtlaw.com* *hendricksk@gtlaw.com* *cowdent@gtlaw.com* *Attorneys for Petitioner State of Nevada, Ex Rel. Commissioner of Insurance; Barbara D. Richardson, in her Official Capacity as Receiver for Spirit Commercial Auto*	Matthew T. Dushoff, Esq. Jordan D. Wolff, Esq. **Satlzman Mugan Dushoff** 1835 Village Center Circle Las Vegas, Nevada 89134 *Mdushoff@nvbusinesslaw.com* *jwolff@nvbusinesslaw.com* *Attorneys for Real Parties in Interest CTC Transportation Insurance Services of Missouri, LLC, CTC Transportation Insurance Services, LLC and CTC Transportation Services of Hawaii, LLC*

John R. Bailey, Esq. Joshua M. Dickey, Esq. Rebecca L. Crooker, Esq. **Bailey Kennedy** 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148 *JBailey@BaileyKennedy.com* *JDickey@BaileyKennedy.com* *RCrooker@BaileyKennedy.com* *Attorneys for Real Parties in Interest Criterion Claim Solutions of Omaha, Inc.*	Tamara Beatty Peterson, Esq. Nikki L. Baker, Esq. David E. Astur, Esq. **Peterson Baker, PLLC** 701 S. 7th Street Las Vegas, Nevada 89101 *tpeterson@petersonbaker.com* *nbaker@petersonbaker.com* *dastur@petersonbaker.com* *Attorneys for Real Parties in Interest Matthew Simon Jr. and Scott McCrae*
Robert S. Larsen, Esq. Wing Yan Wong, Esq. **Gordon Rees Scully Mansukhani, LLP** 300 South Fourth Street, Suite 1550 Las Vegas, Nevada 89101 *rlarsen@grsm.com* *wwong@grsm.com* *Attorneys for Real Parties in Interest Lexicon Insurance Management LLC, Daniel George and ICAP Management Solutions, LLC*	Thomas E. McGrath, Esq. Russell D. Christian, Esq. **Tyson & Mendes LLP** 3960 Howard Hughes Parkway, #600 Las Vegas, Nevada 89169 *tmcgrath@tysonmendes.com* *rchristian@tysonmendes.com* *Attorneys for Real Parties in Interest Attorneys for Defendants Pavel Kapelnikov, Chelsea Financial Group, Inc., Chelsea Financial Group, Inc., Global Forwarding Enterprises, LLC, Kapa Management Consulting, Inc., Kapa Ventures, Inc., and Igor and Yanina Kapelnikov*
William R. Urga, Esq. David J. Malley, Esq. Michael R. Ernst, Esq. **Jolley Urga Woodbury & Holthus** 330 S. Rampart Blvd., Suite 380 Las Vegas, Nevada 89145 *wru@juwlaw.com; djm@juwlaw.com; mre@juwlaw.com* *Attorneys for Real Parties in Interest Thomas Mulligan*	

I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed by me on September 15, 2021, at Las Vegas, Nevada.

/s/ Susan A. Owens
An employee of HOWARD & HOWARD ATTORNEYS PLLC