

## IN THE SUPREME COURT OF THE STATE OF NEVADA

### INDICATE FULL CAPTION:

5550 Painted Mirage Rd. LLC, Appellant  
v.  
Travelers Property Casualty Company of  
America, Respondent

No. 83413

Electronically Filed  
Oct 11 2021 02:25 p.m.  
Elizabeth A. Brown  
DOCKETING Clerk of Supreme Court  
CIVIL APPEALS

### GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Judicial District Department 5  
County Clark Judge Jim Crockett (Senior Judge)  
District Ct. Case No. A-19-803425-C

**2. Attorney filing this docketing statement:**

Attorney Mitchell Stipp, Esq. Telephone 702-602.1242

Firm Law Office of Mitchell Stipp

Address 1180 N. Town Center Drive, Suite 100  
Las Vegas, Nevada 89144

Client(s) 5550 Painted Mirage Rd., LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Lee H. Gorlin Telephone 213-358-7600

Firm CLYDE & CO LLP

Address 3960 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169

Client(s) Travelers Property Casualty Company of America

Attorney Telephone

Firm

Address

Client(s)

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                                   |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                               |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                                   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify):                                       |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification         |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): Final Judgment |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None



**8. Nature of the action.** Briefly describe the nature of the action and the result below:

The third-party action concerns the failure of Respondent to pay covered losses suffered by Appellant under the terms of insurance policies. The District Court granted Respondent's request to enforce settlement, adjudicate rights to enforce an attorney's lien of former counsel for Appellant, and to seal and/or redact financial terms of settlement. The District Court made factual findings without an evidentiary hearing on breach of the settlement.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the district court erred by making a factual finding of breach of the settlement term sheet by Appellant without an evidentiary hearing?
2. Whether the district court erred by making a factual finding that Respondent did not breach the settlement term sheet without an evidentiary hearing?
3. Whether the district court erred by enforcing a settlement without an evidentiary hearing when there were factual matters in dispute?
4. Whether the district court erred by ordering Respondent to deposit settlement proceeds with the clerk of the court?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None



**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Due process requires the district court to conduct an evidentiary hearing to resolve factual disputes before enforcement of a settlement. "The fundamental requisite of due process is the opportunity to be heard." *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998).

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The disposition of this case is not included in the cases listed in NRAP 17(a). Therefore, it should be assigned to the Court of Appeals in accordance with NRCP 17(b).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 0

Was it a bench or jury trial? No. Motion Hearing

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.



## TIMELINESS OF NOTICE OF APPEAL

### 16. Date of entry of written judgment or order appealed from Jul 21, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

### 17. Date written notice of entry of judgment or order was served Jul 21, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

### 18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing

☐ NRCP 52(b)      Date of filing

☐ NRCP 59      Date of filing

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Aug 20, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(1).

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify)          |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
The order on appeal is a final judgment entered in an action commenced in the court in which the judgment was entered.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

R&K CONCRETE CUTTING, INC., d/b/a R&K DEVELOPMENT, a Nevada corporation;  
5550 PAINTED MIRAGE RD., LLC, a Nevada limited liability company; and  
TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, a Minnesota corporation

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

R&K CONCRETE CUTTING, INC., d/b/a R&K DEVELOPMENT, a Nevada corporation (Stipulation and Order of Dismissal with Prejudice)

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

R&K CONCRETE CUTTING, INC., d/b/a R&K DEVELOPMENT, a Nevada corporation (breach of contract/mechanics lien)  
5550 PAINTED MIRAGE RD., LLC, a Nevada limited liability company (breach of insurance contract/bad faith); and  
TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, a Minnesota corporation (no claims)

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Order is independently appealable under NRAP 3A(b).

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order



## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

5550 Painted Mirage Rd. LLC  
Name of appellant

Mitchell Stipp  
Name of counsel of record

Oct 11, 2021  
Date



Signature of counsel of record

Clark County  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 11th day of October, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Law Office of Kathleen M. Paustian, Chartered  
1912 Madagascar Lane  
Las Vegas, NV 89117

Lee H. Gorlin  
CLYDE & CO LLP  
3960 Howard Hughes Parkway, Suite 500  
Las Vegas, NV 89169

Dated this 11th day of October, 2021



Signature





**SUMM**

**CARY B. DOMINA, ESQ.**

Nevada Bar No. 10567

**JEREMY D. HOLMES, ESQ.**

Nevada Bar No. 14379

**PEEL BRIMLEY LLP**

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[jholmes@peelbrimley.com](mailto:jholmes@peelbrimley.com)

*Attorneys for R&K Concrete Cutting, Inc.*

*d/b/a R & K Development*

CASE NO: A-19-803425-C

Department 8

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**R & K CONCRETE CUTTING, INC., d/b/a R  
& K DEVELOPMENT, a Nevada corporation,**

**Plaintiff,**

**vs.**

**5550 PAINTED MIRAGE RD., LLC, a Nevada  
limited liability company; DOES I through X;  
LOE LENDERS I through X; ROE  
CORPORATIONS I through X; TOE TENANTS  
I through X, inclusive,**

**Defendants.**

CASE NO.:

DEPT. NO.:

**SUMMONS - CIVIL**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ  
THE INFORMATION BELOW.**

**TO THE DEFENDANT: A civil Complaint has been filed by the Plaintiff(s) against you  
for the relief set forth in the Complaint.**

**5550 PAINTED MIRAGE RD., LLC**

**///**

**///**


**///**

PEEL BRIMLEY LLP  
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HENDERSON, NEVADA 89074  
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1. If you intend to defend this lawsuit, within 21 days after this Summons is served on you, exclusive of the day of service, you must do the following:
  - a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
  - b. Serve a copy of your response upon the attorney whose name and address is shown below.
2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:  
PEEL BRIMLEY LLP

  
CARY B. DOMINA, ESQ.  
Nevada Bar No. 10567  
JEREMY D. HOLMES, ESQ.  
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*Attorneys for R&K Concrete  
Cutting, Inc. d/b/a R & K Development*

STEVEN D. GRIERSON  
CLERK OF COURT

By:  10/10/2019  
Deputy Clerk Date  
Chaunte Pleasant  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155





CASE NO: A-19-803425-C  
Department 8

1 **COMP**  
2 CARY B. DOMINA, ESQ.  
3 Nevada Bar No. 10567  
4 JEREMY D. HOLMES, ESQ.  
5 Nevada Bar No. 14379  
6 **PEEL BRIMLEY LLP**  
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12 [jholmes@peelbrimley.com](mailto:jholmes@peelbrimley.com)  
13 Attorneys for R&K Concrete Cutting, Inc.  
14 d/b/a R & K Development

9 **EIGHTH JUDICIAL DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 R & K CONCRETE CUTTING, INC., d/b/a R  
12 & K DEVELOPMENT, a Nevada corporation,

CASE NO.:  
DEPT. NO.:

13 Plaintiff,

14 vs.

15 5550 PAINTED MIRAGE RD., LLC, a Nevada  
16 limited liability company; DOES I through X;  
17 LOE LENDERS I through X; ROE  
18 CORPORATIONS I through X; TOE TENANTS  
19 I through X, inclusive,

[Arbitration Exemption: Involves Title to  
Real Property]

20 Defendants.

21 **MECHANIC'S LIEN FORECLOSURE COMPLAINT**

22 Plaintiff, R & K CONCRETE CUTTING, INC. d/b/a R & K DEVELOPMENT ("R&K")  
23 by and through its attorneys of record, the law firm of PEEL BRIMLEY LLP, as and for its  
24 Mechanic's Lien Foreclosure Complaint ("Complaint") against the above-named defendants  
25 complains, avers and alleges as follows:

26 ///

27 ///

28 ///

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HENDERSON, NEVADA 89074  
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**THE PARTIES**

1. R&K is and was at all times relevant to this action (i) a Nevada corporation, duly authorized and qualified to do business in the state of Nevada, and (ii) a contractor, holding a Nevada State Contractor's license, which license is in good standing.

2. R&K is informed, believes and therefore alleges that Defendant 5550 PAINTED MIRAGE RD., LLC ("Owner") is and was at all times relevant to this action:

a. a Nevada limited liability company duly authorized to conduct business in Nevada; and

b. The owner, reputed owner or the person, individual and/or entity who claims an ownership interest in or with respect to that certain work of improvement located in Clark County, Nevada and more particularly described as follows:

Common Address:	5550 Painted Mirage Rd., 250 Las Vegas, NV 89149
County Assessor Description:	Ann Road-US 95 COML Park Plat Book 99 Page 16 PT Lot 1

and more particularly described as Assessor Parcel Number 125-34-116-004 (the "Property"), including all easements, rights-of-way, common area and appurtenances thereto, and surrounding space as may be required for the convenient use and occupation thereof, upon which the Owner caused or allowed to be constructed certain improvements to be made (the "Work of Improvement").

3. The entire Property is reasonably necessary for the convenient use and occupation of the Work of Improvement.

4. R&K does not know the true names of the individuals, corporations, partnerships and entities sued and identified in fictitious names as DOES I through X, LOE LENDERS I through X, ROE CORPORATIONS I through X, and TOE TENANTS I through X (collectively, "Doe Defendants"). R&K alleges that such Doe Defendants are responsible for damages suffered

1 by R&K as more fully discussed under the claims for relief set forth below. R&K will request  
2 leave of this Honorable Court to amend this Complaint to show the true names and capacities of  
3 each such fictitious Doe Defendant when R&K discovers such information.

4  
5 5. As used in this Complaint, the term "Defendants" shall mean Owner and the Doe  
6 Defendants.

7 **JURISDICTION AND VENUE**

8 6. Jurisdiction is proper in this Court because (i) the acts and omissions complained  
9 of herein occurred and caused harm primarily within Clark County, Nevada, and (ii) the amount  
10 in controversy exceeds \$15,000.00

11 7. Venue is proper in this Court pursuant to NRS 13.010.

12 **FIRST CAUSE OF ACTION**  
13 **(Breach of Contract Against Owner)**

14 8. R&K repeats and realleges each and every allegation contained in the preceding  
15 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

16 9. R&K entered into an agreement (the "Agreement") with Owner, wherein R&K  
17 agreed to provide certain work, materials and/or equipment (the "Work") for the Work of  
18 Improvement.  
19

20 10. Pursuant to the Agreement, R&K was to be paid an amount in excess of Fifteen  
21 Thousand and no/100 Dollars (\$15,000.00) for the Work ("Agreement Price").

22 11. R&K furnished the Work and has otherwise performed its duties and obligations  
23 as required by the Agreement.

24 12. Owner breached the Agreement by, among other things:

25 a. Failing and/or refusing to pay the Agreement Price and other monies owed  
26 to R&K for the Work;  
27  
28



b. Failing to adjust the Agreement Price to account for extras and/or changed work, as well as suspensions, delays, acceleration and/or disruption of the Work caused or ordered by Owner and/or its agents or representatives;

6 13. R&K is owed an amount in excess of Fifteen Thousand and no/100 Dollars  
7 (\$15,000.00) (the "Outstanding Balance") from Owner for the Work.

12 **SECOND CAUSE OF ACTION**  
**(Breach of Implied Covenant of Good Faith & Fair Dealing Against Owner)**

13 15. R&K repeats and realleges each and every allegation contained in the preceding  
14 paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:  
15

16 16. There is a covenant of good faith and fair dealing implied in every agreement,  
17 including the Agreement between R&K and Owner.

18 17. Owner breached its duty to act in good faith by performing the Agreement in a  
19 manner that was unfaithful to the purpose of the Agreement, thereby denying R&K's justified  
20 expectations

21 18. Due to the actions of Owner, R&K suffered damages in an amount in excess of the  
22 Outstanding Balance, for which R&K is entitled to judgment in an amount to be determined at  
23 trial.

19. R&K has been required to engage the services of an attorney to collect the Outstanding Balance, and R&K is entitled to recover its reasonable costs, attorney's fees and interest therefor.

4



**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment Against All Defendants)**

20. R&K repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

21. This cause of action is being pled in the alternative as to Owner.

22. R&K furnished the Work for the benefit of and/or at the specific instance and request of Defendants.

23. Defendants accepted, used and enjoyed the benefit of the Work.

24. Defendants knew or should have known that R&K expected to be paid for the Work.

25. R&K has demanded payment of the Outstanding Balance.

26. To date, Defendants have failed, neglected, and/or refused to pay the Outstanding Balance.

27. Defendants have been unjustly enriched, to the detriment of R&K.

28. R&K has been required to engage the services of an attorney to collect the Outstanding Balance, and R&K is entitled to recover its reasonable costs, attorney's fees and interest therefor.

**FOURTH CAUSE OF ACTION**  
**(Foreclosure of Mechanic's Lien)**

29. R&K repeats and realleges each and every allegation contained in the preceding paragraphs of this Complaint, incorporates them by reference, and further alleges as follows:

30. R&K's provision of the Work was at the special instance and/or request of Owner for the Work of Improvement as a whole.

///

///

1           31. As provided in NRS 108.245, (i) Owner knew or should have known of R&K's  
2 provision of the Work, and/or (ii) R&K served Owner and/or their authorized agents with a  
3 Notice of Right to Lien, as prescribed by Nevada law.

4           32. R&K demanded payment of the Outstanding Balance, which amount remains past  
5 due and owing.  
6

7           33. On or about August 12, 2019, R&K timely recorded a Notice of Lien in the  
8 Official Records of Clark County, Nevada, as Instrument No. 20190812-0000722 against the  
9 Property (the "Original Lien").

10           34. On or about September 3, 2019, R&K timely recorded an Amended Notice of Lien  
11 in the Official Records of Clark County, Nevada, as Instrument No. 20190906-0001932 against  
12 the Property (the "Amended Lien").  
13

14           35. The Original Lien and the Amended Lien are collectively referred to herein as the  
15 "Liens."

16           36. The Liens were in writing and were recorded against the Property and the Work of  
17 Improvement for the Outstanding Balance due to R&K in the total amount of Forty-Three  
18 Thousand and Ten and 58/100 Dollars (\$43,010.58—the "Lienable Amount").  
19

20           37. As applicable, the Liens were served upon Owner and/or its authorized agent(s), as  
21 required by law.

22           38. R&K is entitled to an award of its attorney's fees, costs and interest on the  
23 Outstanding Balance, as provided in Chapter 108 of the Nevada Revised Statutes.

24 **WHEREFORE, R&K prays that this Honorable Court:**

25           1. Enters judgment against Defendants, and each of them, jointly and severally, in the  
26 amount of the Outstanding Balance;  
27  
28

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2. Enters a judgment against Defendants, and each of them, jointly and severally, for R&K's reasonable costs and attorney's fees incurred in the collection of the Outstanding Balance, as well as an award of interest thereon;

3. Enters judgment declaring that R&K has valid and enforceable notice of lien against the Property and Work of Improvement in the amount of the Lienable Amount together with costs, attorneys' fees and interest in accordance with NRS Chapter 108;

4. Adjudge a lien upon the Property and the Work of Improvement for the Lienable Amount, plus reasonable attorneys' fees, costs and interest thereon, and that this Honorable Court enter an Order that the Property and the Work of Improvement, and improvements, such as may be necessary, be sold pursuant to the laws of the State of Nevada, and that the proceeds of said sale be applied to the payment of sums due R&K herein; and

5. For such other and further relief as this Honorable Court deems just and proper.

Dated this 10<sup>th</sup> day of October 2019.

PEEL BRIMLEY LLP



CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

JEREMY D. HOLMES, ESQ.

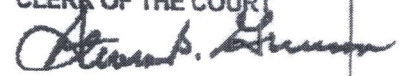
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Attorneys for R & K Concrete Cutting, Inc.  
d/b/a R & K Development





CASE NO: A-19-803425-C  
Department 8

1 **DSST**  
2 CARY B. DOMINA, ESQ.  
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12 [jholmes@peelbrimley.com](mailto:jholmes@peelbrimley.com)  
13 Attorneys for R&K Concrete Cutting, Inc.  
14 d/b/a R & K Development

9 **EIGHTH JUDICIAL DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 R & K CONCRETE CUTTING, INC., d/b/a R &  
12 K DEVELOPMENT, a Nevada corporation,

CASE NO.:  
DEPT. NO.:

13 Plaintiff,

14 vs.

15 5550 PAINTED MIRAGE RD., LLC, a Nevada  
16 limited liability company; DOES I through X; LOE  
17 LENDERS I through X; ROE CORPORATIONS I  
18 through X; TOE TENANTS I through X, inclusive,

19 Defendants.

20 **PLAINTIFF'S NEV. R. CIV. P. 7.1 DISCLOSURE STATEMENT**

21 Plaintiff, R & K CONCRETE CUTTING, INC., d/b/a R & K DEVELOPMENT, by and  
22 through its attorneys of record, Cary B. Domina, Esq. and Jeremy D. Holmes, Esq. of the law firm  
23 PEEL BRIMLEY LLP, hereby submits its disclosure statement pursuant to Nev. R. Civ. P. 7.1 as  
24 follows:

25 ///

26 ///

27 ///

28


PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

PEEL BRIMLEY LLP  
3333 E. SERENE AVENUE, STE. 200  
HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

1 R & K CONCRETE CUTTING, INC., d/b/a R & K DEVELOPMENT does not have a  
2 parent entity or any publicly held entities that own ten (10%) percent or more of its stocks and  
3 further states that there are no known interested parties other than those participating in this case  
4 who have a direct, pecuniary interest in the outcome of this case.

5 Dated this 10<sup>th</sup> day of October, 2019.

6 PEEL BRIMLEY LLP

7   
8 CARY B. DOMINA, ESQ.  
9 Nevada Bar No. 10567  
10 JEREMY D. HOLMES, ESQ.  
11 Nevada Bar No. 14379  
12 3333 E. Serene Avenue, Suite 200  
13 Henderson, Nevada 89074-6571  
14 Telephone: (702) 990-7272  
15 [cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)  
16 [jholmes@peelbrimley.com](mailto:jholmes@peelbrimley.com)  
17 Attorneys for R&K Concrete  
18 Cutting, Inc. d/b/a R & K Development  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Steven D. Grierson*

CASE NO: A-19-803425-C  
Department 8

1 APN: 125-34-116-004  
2 CARY B. DOMINA, ESQ.  
3 Nevada Bar No. 10567  
4 JEREMY D. HOLMES, ESQ.  
5 Nevada Bar No. 14379  
6 PEEL BRIMLEY LLP  
7 3333 E. Serene Avenue, Suite 200  
8 Henderson, Nevada 89074-6571  
9 Telephone: (702) 990-7272  
10 Facsimile: (702) 990-7273  
11 [cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)  
12 [jholmes@peelbrimley.com](mailto:jholmes@peelbrimley.com)  
13 Attorneys for R&K Concrete Cutting, Inc.  
14 d/b/a R & K Development

15 EIGHTH JUDICIAL DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 R & K CONCRETE CUTTING, INC., d/b/a R &  
18 K DEVELOPMENT, a Nevada corporation,

CASE NO.:  
DEPT. NO.:

19 Plaintiff,

20 vs.

21 5550 PAINTED MIRAGE RD., LLC, a Nevada  
22 limited liability company; DOES I through X; LOE  
23 LENDERS I through X; ROE CORPORATIONS I  
24 through X; TOE TENANTS I through X, inclusive,

25 Defendants.

26 NOTICE OF LIS PENDENS

27 PLEASE TAKE NOTICE that an action was commenced and is pending in the above-  
28 entitled Court to enforce that certain Notice of Lien recorded by Lien Claimant R & K  
DEVELOPMENT, ("R & K"), in the Official Records of Clark County, Nevada on August 12,  
2019, as Instrument No. 20190812-0000722, as Amended on September 6, 2019, in the Official  
Records of Clark County, Nevada as Instrument No. 20190906-0001932, affecting certain real  
property or portions thereof, including but not limited to the improvements that are/were being  
constructed upon the property identified as the 5550 Painted Mirage Rd, LLC Project, owned or

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HENDERSON, NEVADA 89074  
(702) 990-7272 • FAX (702) 990-7273

1 reputedly owned by Defendants and described as follows:

2 Common Address: 5550 Painted Mirage Rd., 250  
3 Las Vegas, NV 89149

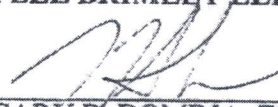
4 Clark County Assessor Description: Ann Road-US 95 COML Park  
5 Plat Book 99 Page 16  
6 PT Lot 1

7 and more particularly described as Clark County Assessor Parcel Number 125-34-116-004.

8 Pursuant to Nevada Mechanics Lien Statute, a R & K DEVELOPMENT claims priority  
9 over the rights, claims and interests of the named defendants in and to the property.

10 Dated this 10 day of October, 2019.

11 PEEL BRIMLEY LLP

12   
13 CARY B. DOMINA, ESQ.  
14 Nevada Bar No. 10567  
15 JEREMY D. HOLMES, ESQ.  
16 Nevada Bar No. 14379  
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21 [jholmes@peelbrimley.com](mailto:jholmes@peelbrimley.com)  
22 Attorneys for R&K Concrete  
23 Cutting, Inc. d/b/a R & K Development

24 WHEN RECORDED RETURN TO:

25 CARY B. DOMINA, ESQ.  
26 PEEL BRIMLEY LLP  
27 3333 E. Serene Avenue, Suite 200  
28 Henderson, NV 89074-6571

*Steven D. Grierson*

CASE NO: A-19-803425-C  
Department 8

1 NOF  
2 CARY B. DOMINA, ESQ.  
3 Nevada Bar No. 10567  
4 JEREMY D. HOLMES, ESQ.  
5 Nevada Bar No. 14379  
6 **PEEL BRIMLEY LLP**  
7 3333 E. Serene Avenue, Suite  
8 200 Henderson, Nevada  
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13 Attorneys for R&K Concrete Cutting, Inc.  
14 d/b/a R & K Development

9 EIGHTH JUDICIAL DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 R & K CONCRETE CUTTING, INC., d/b/a R &  
12 K DEVELOPMENT, a Nevada corporation,

CASE NO.:  
DEPT. NO.:

13 Plaintiff,

14 vs.

15 5550 PAINTED MIRAGE RD., LLC, a Nevada  
16 limited liability company; DOES I through X; LOE  
17 LENDERS I through X; ROE CORPORATIONS I  
18 through X; TOE TENANTS I through X, inclusive,

18 Defendants.

19 NOTICE OF FORECLOSURE

20 TO: ALL PERSONS HOLDING MECHANIC'S LIENS UPON THE PROPERTY AS  
21 DESCRIBED HEREIN:

22 ANY AND ALL PERSONS holding or claiming a lien or liens under the provisions of NRS  
23 108.221 through 108.246, inclusive, upon that real property in Clark County, Nevada, more  
24 particularly described as follows:

25 ///

26 ///

27 ///

28

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(702) 990-7272 • FAX (702) 990-7273

Common Address:

5550 Painted Mirage Rd., 250  
Las Vegas, NV 89149

Clark County Assessor Description:

Ann Road-US 95 COML Park  
Plat Book 99 Page 16  
PT Lot 1

and more particularly described as Clark County Assessor Parcel Number 125-34-116-004.

Pursuant to Nevada Mechanics Lien Statute, you are hereby notified to file with the Clerk of the District Court of Clark County, Nevada, and serve on Plaintiff, in care of CARY B. DOMINA, ESQ. or JEREMY D. HOLMES, ESQ., PEEL BRIMLEY LLP, 3333 E. Serene Avenue, Suite 200, Henderson, Nevada, 89074-6571, a written statement of facts constituting their liens, including the dates and amounts thereof, within ten (10) days after the last publication of this Notice.

Dated this 15<sup>th</sup> day of October, 2019.

PEEL BRIMLEY LLP

CARY B. DOMINA, ESQ.

Nevada Bar No. 10567

JEREMY D. HOLMES, ESQ.

Nevada Bar No. 14379

3333 E. Serene Avenue, Suite 200

Henderson, Nevada 89074-6571

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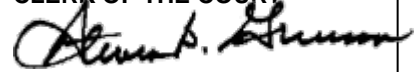
[jholmes@peelbrimley.com](mailto:jholmes@peelbrimley.com)

Attorneys for R&K Concrete

Cutting, Inc. d/b/a R & K Development







LAW OFFICE OF MITCHELL STIPP  
MITCHELL STIPP, ESQ.  
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Telephone: 702.602.1242  
Facsimile: 866.220.5332  
mstipp@stippplaw.com  
*Counsel for Defendant, 5550 Painted Mirage Rd., LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

R&K CONCRETE CUTTING, INC., d/b/a  
R&K DEVELOPMENT, a Nevada corporation

Plaintiff,

vs.

5550 PAINTED MIRAGE RD., LLC, a  
Nevada limited liability company; DOES I  
through X; LOE LENDERS I through X; ROE  
CORPORATIONS I through X; TOE TENANTS I  
through X, inclusive

Defendant.

5550 PAINTED MIRAGE RD., LLC, a  
Nevada limited liability company,

Third-Party Plaintiff,

vs.

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, a Minnesota  
corporation

Third-Party Defendant.

CASE NO.: A-19-803425-C

DEPT. NO.: 8

**ANSWER TO COMPLAINT AND  
COUNTERCLAIMS**

Defendant, 5550 PAINTED MIRAGE RD., LLC, a Nevada limited liability company  
("Defendant"), by and through its attorney, Mitchell D. Stipp, Esq., of the Law Office of  
Mitchell Stipp, answers the Complaint, filed by Plaintiff, R&K CONCRETE CUTTING, INC.,  
d/b/a R&K DEVELOPMENT, a Nevada corporation ("Plaintiff"), as follows:

1           1.       Defendant admits the averment contained within paragraph 2 of the Complaint.

2           2.       Defendant denies the averments contained within paragraphs 9-13, 17, 18, 22-24,  
3 26, 30, and 31 of the Complaint.

4           3.       Defendant denies the averments contained within paragraphs 1, 3, 25, 32-34, 36,  
5 and 37 of the Complaint because it is without knowledge or information sufficient to form a  
6 belief as to the truth of the matters contained therein.

7           4.       As to paragraphs 4, 6, 7, 14, 16, 19, and 27 of the Complaint, Defendant denies  
8 them as they contain legal arguments and conclusions of law, which do not call for admission or  
9 denial. To the extent that these paragraphs are deemed to contain averments, Defendant denies  
10 them.

11          5.       Defendant denies paragraphs 5, 8, 15, 20, 21, 28, 29, 35, and 38 of the Complaint  
12 because they do not call for an admission or denial. To the extent that these paragraphs are  
13 deemed to contain averments that have not otherwise been answered herein, Defendant denies  
14 them.

15          6.       Defendant denies any other averments in the Complaint not specifically admitted.

16                   \* \* \*

17                   **AFFIRMATIVE DEFENSES**

18  
19          1.       **FIRST AFFIRMATIVE DEFENSE**

20               Plaintiff does not state a claim upon which relief can be granted.

21          2.       **SECOND AFFIRMATIVE DEFENSE**

22               Plaintiff is comparatively negligent.

23  
24          3.       **THIRD AFFIRMATIVE DEFENSE**

25               Plaintiff's claims for damages, if any, are limited by its own negligence.

26  
27          4.       **FOURTH AFFIRMATIVE DEFENSE**

28               Plaintiff's claims are barred by the doctrine of unclean hands.



1  
2 5. FIFTH AFFIRMATIVE DEFENSE

3 Plaintiff's claims are barred by the doctrine of laches.  
4

5 6. SIXTH AFFIRMATIVE DEFENSE

6 Plaintiff's claims are barred by the doctrine of estoppel.  
7

8 7. SEVENTH AFFIRMATIVE DEFENSE

9 Plaintiff's claims are barred by the doctrine of waiver.  
10

11 8. EIGHTH AFFIRMATIVE DEFENSE

12 Some or all damages allegedly sustained by Plaintiff are the result of the actions of  
13 Plaintiff or a third party or parties over whom Defendant has no control, and not the result of acts  
14 or omissions of Defendant.

15 9. NINTH AFFIRMATIVE DEFENSE

16 Plaintiff's claims are barred in whole or in part to the extent it failed to mitigate its  
17 damages.  
18

19 10. TENTH AFFIRMATIVE DEFENSE

20 Plaintiff's claims are barred in whole or in part by its failure to perform its contractual  
21 obligations in good faith and/or in a commercially reasonable manner.  
22

23 11. ELEVENTH AFFIRMATIVE DEFENSE

24 Defendant did not breach the agreement with Plaintiff, assuming, *arguendo*, that the one  
25 referenced by Plaintiff in the Complaint exists.  
26  
27  
28

1 12. TWELFTH AFFIRMATIVE DEFENSE

2 Plaintiff's claims are barred in whole or in part because Defendant acted with good cause  
3 and in good faith.  
4

5 13. THIRTEENTH AFFIRMATIVE DEFENSE

6 Plaintiff's claims are barred because it has been properly and fully compensated.  
7

8 14. FOURTEENTH AFFIRMATIVE DEFENSE

9 Plaintiff's claims are barred by fraud.  
10

11 15. FIFTEENTH AFFIRMATIVE DEFENSE

12 Plaintiff's claims are barred by mistake.  
13

14 16. SIXTEENTH AFFIRMATIVE DEFENSE

15 Plaintiff's claims are barred by the statute of limitations.  
16

17 17. SEVENTEENTH AFFIRMATIVE DEFENSE

18 Plaintiff's claims are barred by the statute of frauds.  
19

20 18. EIGHTEENTH AFFIRMATIVE DEFENSE

21 Plaintiff's claims are barred by the doctrine of accord and satisfaction.  
22

23 19. NINETEENTH AFFIRMATIVE DEFENSE

24 Plaintiff has released its claims against Defendant.  
25

26 20. TWENTIETH AFFIRMATIVE DEFENSE

27 Payments Plaintiff has received bar its claims.  
28

21. TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff lacks standing.

1 22. TWENTY-SECOND AFFIRMATIVE DEFENSE

2 Plaintiff's contributory negligence bars its claims.

3  
4 Pursuant to Nev. R. Civ. P. 11, all possible affirmative defenses may not have been  
5 alleged herein insofar as sufficient facts are not available after a reasonable inquiry, Defendant  
6 reserves the right to allege additional affirmative defenses if subsequent investigation warrants.

7  
8 Dated this 18th day of November, 2019.

9 LAW OFFICE OF MITCHELL STIPP

10 /s/ Mitchell Stipp

11 MITCHELL STIPP, ESQ.

12 Nevada Bar No. 7531

13 1180 N. Town Center Drive

14 Suite 100

15 Las Vegas, Nevada 89144

16 Telephone: 702.602.1242

17 Facsimile: 866.220.5332

18 mstipp@stipplaw.com

19 Counsel for 5550 Painted Mirage Rd., LLC



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## COUNTERCLAIMS

Defendant, 5550 PAINTED MIRAGE RD., LLC, a Nevada limited liability company (“Defendant”), by and through its attorney, Mitchell D. Stipp, Esq., of the Law Office of Mitchell Stipp, alleges as follows:

### PARTIES

1. Defendant is a Nevada limited liability company doing business at all relevant times in Clark County, Las Vegas, State of Nevada.

2. Plaintiff, R&K CONCRETE CUTTING, INC. is a Nevada corporation doing business at all relevant times in Clark County, Las Vegas, State of Nevada as R&K DEVELOPMENT (“Plaintiff”).

3. DOES I through X and ROE CORPORATIONS I through X, inclusive, are individuals or business entities, who or which participated in the acts detailed below, and are responsible and liable to Defendant for their actions. The true names and capacities of those parties sued as DOES I through X and ROE CORPORATIONS I through X, inclusive, are presently unknown to Defendant, who therefore sue said parties by such fictitious names. When the true names and capacities of such parties become known, Defendant will seek leave of Court to amend their counterclaims to replace one or more “Doe” and/or “Roe” parties with the true name, identity and capacity of each additional party to this action, together with the proper charges and allegations, and to authorize service of process on such additional parties.

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## JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the counterclaims and the amount of damages sought by Defendant exceeds the minimum jurisdictional amount of \$15,000.00 established for filing in this Court.

5. This Court has general and specific personal jurisdiction over Plaintiff. The assertion of both general and specific jurisdiction over Plaintiff is consistent with the Nevada Constitution and the United States Constitution.

6. Venue is proper in the Eighth Judicial District Court in accordance with NRS 13.010 through NRS 13.040.

## GENERAL ALLEGATIONS

7. Defendant owns certain real property and improvements addressed as 5550 Painted Mirage Rd., in Las Vegas, Nevada 89149 (“Painted Mirage Property”).

8. The Painted Mirage Property is covered by a policy of insurance (the “Policy”) issued by Travelers Property Casualty Company of America (“Travelers”).

9. On or about February 14, 2019, a wind and rainstorm caused significant damage to the roof of the building on the Painted Mirage Property and resulted in water intrusion to the interior space of the building (“Loss No. 1”).

10. Defendant timely submitted a claim to Travelers regarding Loss No. 1, and Travelers assigned that claim number FEY1031 (“Claim No. 1”) to that loss.

11. Defendant promptly engaged Cross Construction Company (“Cross Construction”) to install a tarp over the openings in the roof of the Building to prevent further water intrusion.

12. Shortly after the occurrence of Loss No. 1, Bert Craig of Cross Construction performed an inspection of the Painted Mirage Property with Travelers adjuster, Roderick Powe.

1 During this inspection, Mr. Craig informed Mr. Powe that the damage to the roof of the building  
2 was caused by wind.

3 13. On or about March 23, 2019, Travelers' adjuster, Mr. Powe, emailed Defendant's  
4 representative, Mehry Taheri, an estimate for Claim No. 1 in the amount of \$16,196.34 for  
5 Replacement Cost Value ("RCV").  
6

7 14. On or about April 3, 2019, the following events occurred:

8 (a) Plaintiff's representative, Mark Baraga, emailed Defendant's  
9 representative, Ms. Taheri, a written authorization for Defendant to sign in order to permit  
10 Plaintiff to commence mitigation and remediation work.  
11

12 (b) Ms. Taheri emailed Mr. Baraga to object to the form of work authorization  
13 proposed by Plaintiff.  
14

15 (c) Given the objection, Ms. Taheri revised the form of work authorization  
16 proposed by Plaintiff so that Defendant's authorization to proceed was made expressly  
17 conditional on payment to Plaintiff if and when received by Travelers.  
18

19 (d) Mr. Baraga accepted the form of work authorization revised by Ms. Taheri  
20 as a condition to performing the mitigation and remediation work.  
21

22 (e) After accepting the revised form of work authorization, Mr. Baraga  
23 emailed Mr. Powe seeking approval from Travelers to begin the mitigation and remediation  
24 work.  
25

26 (f) Mr. Powe emailed Mr. Baraga confirming Plaintiff could commence work  
27 for Claim No. 1 because mitigation and remediation had been approved by Travelers.  
28



1           15.     On or about April 29, 2019, a second wind and rainstorm occurred, blowing off  
2 the recently installed tarping on the roof of the building at the Painted Mirage Property and  
3 allowing water to enter the building.

4           16.     Defendant promptly and timely notified Travelers about the event described  
5 above on April 29, 2019.

6           17.     Despite vigorous objections by Defendant and its Public Adjuster, Metropolitan  
7 Adjustment Bureau, Inc. (“MAB”), Travelers insisted on treating the April 29, 2019 event as a  
8 second loss (“Loss No. 2”) and opened a second claim, Claim No. FEY 6058 (“Claim No. 2”).

9           18.     On or about April 30, 2019, Plaintiff began the mitigation and remediation work  
10 on the Painted Mirage Property.

11           19.     Travelers was made aware of the work by Plaintiff on the Painted Mirage  
12 Property during its inspection for Loss No. 2. Travelers informed Plaintiff to proceed with the  
13 work for Loss No. 2, but Travelers would open a new, separate claim (i.e., Claim No. 2).

14           20.     On or about April 30, 2019, MAB rejected Travelers’ contention that Claim No. 1  
15 had been closed and fully resolved, and MAB informed Travelers that Loss No. 2 was an  
16 extension of Loss No. 1 and should be handled as part of the same claim (i.e., Claim No. 1).  
17 Travelers, however, insisted that the April 29, 2019 event be handled separately from Loss No. 1,  
18 and it assigned a separate adjuster for Claim No. 2.

19           21.     Loss No. 1 and Loss No. 2 are referred to as the “Losses” and Claim No. 1 and  
20 Claim No. 2 are referred to as the “Claims.”

21           22.     At the time of the Losses, the Policy was in full force and effect.

22           23.     The Losses are covered events under the Policy.

23           24.     Defendant timely responded to all reasonable inquiries and requests from  
24 Travelers and its agents or representatives regarding the Claims.

25. With regard to the Losses and the Claims, Defendant took all actions required of it under the Policy, and it performed all of its obligations and responsibilities under the Policy.

26. On or about August 8, 2019, MAB submitted an invoice from Plaintiff for the mitigation and remediation work for both Claims, totaling \$42,030.12.

27. Travelers failed and refused to pay the amounts owed to Plaintiff.

**FIRST CAUSE OF ACTION**

**(Declaratory Relief)**

28. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs of these counterclaims as though said paragraphs were fully set forth herein.

29. Plaintiff claims the pay when and if paid terms of the work authorization form as revised by Defendant are not enforceable under Nevada law.

30. A justifiable controversy exists between the parties, whether Plaintiff has the right to recover from Defendant amounts owed to it by Travelers, if Travelers failed and refused to pay under the Policy.

31. Defendant's reliance on the terms of the Plaintiff's work authorization form as revised by Defendant is a legally protected contract right under Nevada law.

32. The issue between the parties is ripe for judicial determination.

33. Defendant is entitled to declaratory judgment concerning the proper interpretation and enforcement of the pay if and when paid provisions of Plaintiff's work authorization form as revised by Defendant.

## SECOND CAUSE OF ACTION

**(Slander of Title)**

34. Defendant repeats and re-alleges the allegations contained in the preceding paragraphs of these counterclaims as though said paragraphs were fully set forth herein.

35. Plaintiff recorded a lien against the Painted Mirage Property.

36. The lien recorded by Plaintiff against the Painted Mirage Property is false because Defendant does not owe any money to Plaintiff.

37. Plaintiff knew the lien was false or acted in reckless disregard of its truth or falsity because Defendant agreed to accept payment only from Travelers and when denied filed a lien against the Painted Mirage Property.

38. Defendant specifically authorized Plaintiff to perform work on the condition that payment would be made by Travelers (not Defendant).

39. The lien impairs the marketability of the Painted Mirage Property.

40. Defendant has been required to engage the services of an attorney to remove the cloud on Defendant's title caused by the lien and is entitled as special damages to recover the costs, expenses and fees therefor.

## PRAAYER FOR RELIEF

WHEREFORE, Defendant requests judgment against Plaintiff, as follows:

A. For compensatory damages in a just and reasonable amount (including both contractual damages and extra-contractual or consequential damages);

B. For punitive or exemplary damages in a just and reasonable amount;

C. For attorneys' fees and costs;

D. For pre- and post-judgment interest;

E. For taxable costs;

F. For declaratory relief; and

G. For such other relief as the Court deems just and proper.

///

///

///

1  
2 DATED this 18th day of November, 2019.  
3

4 LAW OFFICE OF MITCHELL STIPP

5 */s/ Mitchell Stipp*

6 MITCHELL STIPP, ESQ.  
7 Nevada Bar No. 7531  
8 1180 N. Town Center Drive  
9 Suite 100  
10 Las Vegas, Nevada 89144  
11 Telephone: 702.602.1242  
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13 mstipp@stipplaw.com  
14 *Counsel for 5550 Painted Mirage Rd., LLC*

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**CERTIFICATE OF SERVICE**

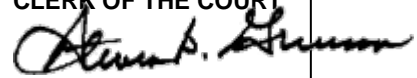
I HEREBY CERTIFY that on the 18th day of November, 2019, I filed the foregoing using the Court's E-filing system, which provided notice to the e-service participants registered in this case:

By: */s/ Amy Hernandez*

An employee of the Law Office of Mitchell Stipp







TPC  
Michael N. Poli (Bar No. 005461)  
mpoli@merlinlawgroup.com  
MERLIN LAW GROUP, P.A.  
403 Hill Street  
Reno, Nevada 89501  
(775) 229-8021

Attorneys for Third-Party Plaintiff

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

R & K CONCRETE CUTTING, INC.,  
d/b/a R & K DEVELOPMENT, a  
Nevada Corporation,

Plaintiff,

vs.

5550 PAINTED MIRAGE RD., LLC, a  
Nevada limited liability company; DOES  
I through X; ROE CORPORATIONS  
I through X; TOE TENANTS I through X,  
Inclusive,

Defendants.

5550 PAINTED MIRAGE RD., LLC, a  
Nevada limited liability company,

Third-Party Plaintiff,

vs.

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, a  
Minnesota corporation

Third-Party Defendant.

Case No. A-19-803425-C

Department 8

**DEFENDANT 5550 PAINTED MIRAGE RD., LLC'S THIRD-PARTY**  
**COMPLAINT AGAINST THIRD-PARTY DEFENDANT TRAVELERS**  
**PROPERTY CASUALTY COMPANY OF AMERICA**

1 Pursuant to Rule 14(a), Nev. R. Civ. P, Defendant / Third-Party Plaintiff 5550  
2 Painted Mirage Rd., LLC (“Painted Mirage” or the “Insured”) hereby files its Third-  
3 Party Complaint against Third-Party Defendant Travelers Property Casualty Company  
4 of America (“Travelers”). In that regard, the Insured alleges as follows:

5 **JURISDICTION AND VENUE ALLEGATIONS**

6 1. Painted Mirage is a Nevada limited liability company organized and  
7 existing under the laws of Nevada, which is qualified to do business and is doing  
8 business in Nevada. Painted Mirage is the owner of that certain real property located at  
9 5550 Painted Mirage Road, in Las Vegas, Nevada (the “Painted Mirage Property”).

10 2. Travelers is a Minnesota corporation engaged in the business of insurance  
11 in Clark County, Nevada.

12 3. The insurance policy that is the subject of this action, Travelers Policy  
13 No. 680-8M462207 (the “Policy”), covers the Painted Mirage Property and the  
14 commercial office building on that property (the “Painted Mirage Building”).

15 4. This Court has subject matter jurisdiction over the claims asserted in this  
16 Third-Party Complaint and the amount of damages sought by the Insured exceeds the  
17 minimum jurisdictional amount established for filing in this Court.

18 5. This Court has general and specific personal jurisdiction over Travelers.  
19 The assertion of both general and specific jurisdiction over Travelers is consistent with  
20 the Nevada Constitution and the United States Constitution.

21 6. Venue is proper in the Eighth Judicial District Court in accordance with  
22 NRS 13.010 through NRS 13.040.

23 **FACTUAL ALLEGATIONS**

24 7. At all relevant times, Painted Mirage owned (and still owns) the Painted  
25 Mirage Property.

26 8. At all relevant times, the Painted Mirage Property was insured by  
27 Travelers under the Policy.  
28

1           9.     On or about February 14, 2019, a wind and rain storm occurred at the  
2 Painted Mirage Property, causing significant damage to the roof from the wind and  
3 resulting in water intrusion to the interior space (“Loss No. 1”).

4           10.    Painted Mirage timely submitted a claim to Travelers regarding Loss No.  
5 1 and Travelers assigned that claim number FEY1031 (“Claim No. 1”) to that loss.

6           11.    The Insured promptly had Cross Construction Company (“Cross  
7 Construction”) tarp the openings in the roof to prevent further water intrusion.

8           12.    Shortly after the occurrence of Loss No. 1, Bert Craig of Cross  
9 Construction performed an inspection of the Painted Mirage Property with Travelers  
10 adjuster Roderick Powe. During this inspection, Bert Craig informed Roderick Powe it  
11 was obvious that the damage to the roof was caused by wind.

12           13.    On or about March 23, 2019, adjuster Powe of Travelers emailed Mehry  
13 Taheri of Painted Mirage an estimate for Claim No. 1 in the amount of \$16,196.34 for  
14 Replacement Cost Value (“RCV”).

15           14.    On or about March 29, 2019, Painted Mirage signed a Limited Waiver  
16 and Release Agreement for Claim No. 1 in exchange for \$5,721.41 (the above-  
17 referenced RCV number less the deductible and depreciation), which document was  
18 solely related to the undisputed funds (\$5,721.41).

19           15.    On or about April 3, 2019, adjuster Powe of Travelers emailed contractor  
20 Mark Baraga of Plaintiff R & K Development (“R & K”), stating that R & K could  
21 begin the mitigation repairs for Claim No. 1 because mitigation / remediation had been  
22 approved by Travelers.

23           16.    On or about April 29, 2019, a second wind and rain storm occurred at the  
24 Painted Mirage Property, blowing off the tarping, and allowing water to enter the  
25 Painted Mirage Building.

26           17.    The Insured promptly and timely notified Travelers about the April 29,  
27 2019 wind event.  
28



1           18.   Despite vigorous objections by the Insured and its Public Adjuster (the  
2   “PA”), Travelers insisted on treating the April 29, 2019 wind event as a second loss  
3   (“Loss No. 2”) and opening a second claim, Claim No. FEY 6058 (“Claim No. 2”).

4           19.   On or about April 30, 2019 R & K Development began the emergency  
5   mitigation work on the Painted Mirage Property, including but not limited to demolition  
6   and mold remediation.

7           20.   Travelers was made aware of the mitigation work being done on the  
8   Painted Mirage Property during its inspection for Loss No. 2. Travelers informed R&K  
9   to proceed with the mitigation repairs for Loss No. 2, but that Travelers would need to  
10   open it as a new, separate claim (Claim No. 2, defined above).

11          21.   On or about April 30, 2019, the Insured’s Public Adjuster, Metropolitan  
12   Adjustment Bureau, Inc (“MAB”), rejected Travelers’ contention that Claim No. 1 had  
13   been closed and fully resolved, and he informed Travelers that what it was treating as  
14   Loss No. 2 was really just an extension of Loss No. 1 and should be handled as part of  
15   the same claim (Claim No. 1). Travelers, however, insisted that the April 29, 2019 wind  
16   event be handled separately from Loss No. 1, and it assigned a different adjuster for  
17   what it opened as Claim No. 2. Loss No. 1 and Loss No. 2 will sometimes be referred  
18   to as the “Losses” and Claim No. 1 and Claim No. 2 will sometimes be referred to as  
19   the “Claims.”

20          22.   At the time of the Losses, the Policy was in full force and effect.

21          23.   The Losses are covered events under the Policy.

22          24.   The Insured timely responded to all reasonable inquiries and requests  
23   from Travelers and its agents or representatives regarding the Claims.

24          25.   With regard to the Losses and the Claims, the Insured took all actions  
25   required of it under the Policy, and it performed all of its obligations and responsibilities  
26   under the Policy.

27          26.   Between March 29, 2019 and August 20, 2019, Travelers issued three  
28   checks totaling \$64,825.20 for Loss No. 1.

1           27.    On or about August 8, 2019, MAB, the PA, submitted an invoice from R  
2   & for the remediation work for both Claims, totaling \$42,030.12.

3           28.    Upon information and belief, the necessary repairs to the interior and  
4   exterior of the structure resulting from the Losses are expected to be well into a mid-  
5   six figure range, and possibly higher.

6           29.    At all relevant times, Travelers failed and refused to pay sufficient money  
7   to properly indemnify the Insured for the damages from the Losses.

8           30.    As one example of this, but without limiting other examples, the roof  
9   needed to be completely replaced as a result of Loss No. 1, but Travelers failed and  
10   refused to pay enough money to the Insured for this indemnity for its loss.

11          31.    In addition to the physical damages to the Painted Mirage Property, a  
12   tenant, L.A. Laser Center, had signed a five-year lease agreement for an approximate  
13   14,000 square foot space in the Painted Mirage Building. But both windstorms damaged  
14   the premises for that tenant and caused this tenant to vacate the premises and break its  
15   lease more than four and one-half years early. Moreover, the Insured was forced to  
16   refund this tenant \$99,002.40, and the Insured has been unable to re-lease these  
17   premises, resulting in consequential / extra-contractual damages.

18          32.    As a direct and proximate result of the acts and omissions of Travelers,  
19   the Insured has suffered both contract damages and extra-contractual / consequential  
20   damages.

21          33.    With regard to Claim No. 2, Travelers took the position that even though  
22   it had collected premiums on the Policy, there was no coverage for the damage caused  
23   by the second windstorm because, supposedly, there was no storm-created opening, but  
24   rather, according to Travelers, the massive water intrusion from the April 29, 2019 wind  
25   event was simply the result of wear and tear and deterioration of the roof.

26          34.    Notably, this position was taken by Travelers without it having first  
27   conducted an adequate investigation. In part, and without limitation, despite the PA  
28

pleading with Travelers to hire either a building consultant or a general contractor to evaluate the damages and the causation, Travelers adamantly refused to do so.

35. Specifically, in its denial of coverage letter for Claim No. 2, dated August 8, 2019, Travelers wrote:

All other observed roofing area is consistent with wear and tear/deterioration from repeated exposure to the elements. There is no evidence showing a weather created opening to the interior of the building/structure which allowed wind/rain driven water to enter the building. However, the interior water damage is consistent with a roof leak from wear and tear/deterioration from repeated exposure to the elements over an extended period. Since your policy is predicated on an open peril basis, with limitations and exclusions, we must evaluate the damage to the policy language and applicable endorsements. Since the policy specifically outlines that it does not cover loss or damage to the interior of any building or structure caused by rain unless the building or structure first sustains damage by a covered cause of loss to its roof or walls through which wind/rain driven water enters, your policy does not provide coverage.

36. This denial of coverage by Travelers was wrongful.

37. Because Travelers refused to properly and promptly process the Claims, on or about August 12, 2019, R & K placed a lien in the amount of \$42,000 on the Painted Mirage Property. Plaintiff R & K later filed this lawsuit against the Insured.

38. The facts here are sufficient to justify an award of punitive damages against Travelers. In that regard, Travelers has been guilty of fraud, malice, or oppression. Under Nevada law, oppression has been defined as ““a conscious disregard for the rights of others which constitute[s] an act of subjecting plaintiffs to cruel and unjust hardship.”” *Ainsworth v. Combined Ins. Co. of America*, 104 Nev. 587, 590-91, 763 P.2d 673, 675 (1988). In *Ainsworth*, the Nevada Supreme Court upheld a punitive damage award, and it noted that the insurer / insured relationship is one of special confidence, and “[t]he insurer may not rely on its own ambiguous contract as the sole basis for denial.” *Id.* at 592, 763 P.2d at 676.

### **COUNT ONE**

#### **(Breach of Contract; Implied Duty of Good Faith and Fair Dealing)**

39. The foregoing allegations are hereby incorporated by reference.

1           40. Travelers agreed to provide property insurance coverage for the Insured  
2 and for the Painted Mirage Property.

3           41. Travelers was paid premiums in exchange for its indemnity obligations  
4 to the Insured for the Painted Mirage Property.

5           42. The Policy, like all contracts in the State of Nevada, contains an implied  
6 covenant of good faith and fair dealing.

7           43. The Insured has fulfilled all of its obligations under the Policy.

8           44. Travelers has failed to perform its obligations pursuant to the Policy and,  
9 alternatively, Travelers is subject to a waiver and/or estoppel.

10          45. By wrongfully failing to process the Claims in good faith and pay the  
11 Claims, Travelers breached the Policy, including, without limitation, the implied  
12 covenant of good faith and fair dealing in that Policy, thereby depriving the Insured of  
13 the benefits it was to have received under the Policy.

14          46. Travelers failed to handle the Claims in a reasonable manner and it has  
15 failed to make payments owed under the Policy.

16          47. As a direct and proximate result of Travelers' breach of contract and  
17 breach of the implied covenant of good faith and fair dealing, the Insured has sustained  
18 reasonably foreseeable damages, and continues to sustain such damages, in an amount  
19 to be proven at trial.

20          48. The Insured is entitled to an award of attorneys' fees.

21          WHEREFORE, on this claim, Third-Party Plaintiff requests judgment against  
22 Travelers as follows:

23           A. For compensatory damages in a just and reasonable amount (including  
24 both contractual damages and extra-contractual or consequential damages);

25           B. For attorneys' fees and costs and, in the event of a default judgment, for  
26 attorneys' fees in the sum of \$10,000.00;

27           C. For pre- and post-judgment interest;

28           D. For taxable costs; and



1 E. For such other relief as the Court deems just and proper.

2 **COUNT TWO**

3 **(Tortious Bad Faith Claims Handling)**

4 49. The foregoing allegations are hereby incorporated by reference.

5 50. Under Nevada, law, insurance policies are subject to additional  
6 protections for the insured, because the insured pays premiums in advance, without ever  
7 knowing if they will need the insurance, and, in return, they receive (and rely upon) a  
8 promise that if they ever need the insurance, they will be dealt with fairly and in good  
9 faith.

10 51. An insurer in Nevada acts in bad faith when it refuses without proper  
11 cause to compensate the insured for a loss covered under the policy of insurance. Such  
12 conduct gives rise to a breach of the implied duty of good faith and fair dealing in the  
13 insurance policy and is actionable as a tort.

14 52. Consistent with Nevada law, Travelers owed and continues to owe the  
15 Insured a duty of good faith and fair dealing.

16 53. In this case, Travelers has denied the Insured the benefits of the Policy  
17 without a reasonable basis for doing so, and without conducting a reasonable  
18 investigation, and Travelers either knew or recklessly disregarded the lack of a  
19 reasonable basis for its denial of benefits under the Policy.

20 54. In addition, Travelers has engaged in an attempt to pay less on the Claims  
21 than was reasonably owed on those claims, a practice sometimes referred to in the  
22 insurance industry as “lowballing.”

23 55. Pursuant to the terms of the Policy, Travelers is obligated to pay the  
24 Insured for all of the covered losses associated with and arising from the wind damage.

25 56. Without a reasonable justification for doing so, Travelers has failed to  
26 make proper payments to the Insured for the full amount due under the Policy for the  
27 losses sustained as a result of the wind damage.

1           57. Travelers has breached its contractual obligations to the Insured and  
2 Travelers has refused to perform its duty to cooperate with the Insured to, *inter alia*,  
3 adjust and negotiate the insurance claim fairly and in good faith.

4           58. As described herein, Travelers breached its contractual and quasi-  
5 fiduciary obligations to the Insured.

6           59. As set forth above, the Insured has sustained both direct damages under  
7 the contract (the "Policy") and other foreseeable consequential damages, sometimes  
8 referred to in the insurance industry as extra-contractual damages.

9           60. Upon information and belief, Travelers' conduct has been self-serving  
10 and a ploy to protect Travelers' own financial interests, at the expense of the Insured's  
11 rights in this matter.

12           61. Also upon information and belief, Travelers has consciously pursued a  
13 course of conduct knowing that it created a substantial risk of significant harm to others.  
14 Furthermore, Travelers has acted to serve its own economic interests, rather than the  
15 interests of the Insured. Moreover, in its actions in this matter, Travelers is guilty of  
16 oppression, fraud, or malice, express or implied. Thus, the Insured is entitled to an  
17 appropriate award of punitive damages.

18           WHEREFORE, on this claim, Third-Party Plaintiff requests judgment against  
19 Travelers as follows:

20           A. For compensatory damages in a just and reasonable amount (including  
21 both contractual damages and extra-contractual or consequential damages);

22           B. For punitive or exemplary damages in a just and reasonable amount;

23           C. For attorneys' fees and costs, and in the event of a default judgment, for  
24 attorneys' fees in the sum of \$10,000.00;

25           D. For pre- and post-judgment interest;

26           E. For taxable costs; and

27           F. For such other relief as the Court deems just and proper.  
28

1 **COUNT THREE**

2 **(Breach of Nevada Unfair Claims Settlement Practices Act)**

3 62. The foregoing allegations are hereby incorporated by reference.

4 63. Travelers' conduct as alleged herein breached the provisions of NAC  
5 686A.600 *et seq.* and NRS 686A.310 by, among other things: (1) misrepresenting  
6 pertinent facts relating to the insurance coverage available; (2) misrepresenting or  
7 concealing the benefits of the Policy that would provide for property damage coverage  
8 to the Painted Mirage Property; (3) failing to acknowledge and act reasonably promptly  
9 on communications with respect to the Claims; (4) failing to affirm or deny coverage  
10 of the Claims within a reasonable time after the Insured submitted the Claims; (5)  
11 failing to effectuate prompt, fair and equitable settlement of the Claims when the  
12 liability of Travelers had become reasonably clear; and (6) failing to properly  
13 investigate the Claims and to consider all evidence supporting coverage for the Losses,  
14 failing to place the Insured's interests on an equal footing to that of its own, failing to  
15 investigate the Claims with an eye towards covering the Losses, and failing to conduct  
16 an objectively reasonable, thorough, fair, and unbiased investigation.

17 64. Nevada recognizes a private cause of action for insureds for violations of  
18 NRS 686A.310. *See Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh,*  
19 *Pennsylvania*, 863 F. Supp. 1237, 1243 (D. Nev. 1994).

20 65. As a proximate and foreseeable result of Travelers' violations of NRS  
21 686A.310 and NAC 686A.600, *et. seq.*, Painted Mirage has suffered general and special  
22 damages, including economic losses, attorneys' fees, loss of use and costs in an amount  
23 in excess of \$10,000.

24 66. In violating NRS 686A.310 and NAC 686A.600 *et. seq.*, Travelers acted  
25 fraudulently, oppressively, and in malicious disregard for the rights of Painted Mirage.  
26 Therefore, as set forth above, Painted Mirage seeks punitive damages by way of  
27 punishment and deterrence in an amount to be determined at trial.  
28

1           WHEREFORE, on this claim, Third-Party Plaintiff requests judgment against  
2 Traveler, as follows:

3           A.   For compensatory damages in a just and reasonable amount (including  
4 both contractual damages and extra-contractual or consequential damages);

5           B.   For punitive or exemplary damages in a just and reasonable amount;

6           C.   For attorneys' fees and costs, and in the event of a default judgment, for  
7 attorneys' fees in the sum of \$10,000.00;

8           D.   For pre- and post-judgment interest;

9           E.   For taxable costs; and

10          F.   For such other relief as the Court deems just and proper.

11          DATED this 18<sup>th</sup> day of November, 2019.

12   MERLIN LAW GROUP, P.A.

13  
14   By /s/ Michael N. Poli  
15   Michael N. Poli  
16   403 Hill Street  
17   Reno, Nevada 89501  
18   Attorneys for Third-Party Plaintiff  
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**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document,  
**COMPLAINT**, filed in this case number:

☒ Document not contain the social security number of any person.

- OR -

☐ Document contains the social security number of a person as required by:

☐ A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific state or federal law)

- or -

☐ For the administration of a public program.

- or -

☐ For an application for a federal or state grant.

- or -

☐ Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230, NRS 125B.255)

DATED this 18<sup>th</sup> day of November, 2019.

MERLIN LAW GROUP, P.A.

By /s/ Michael N. Poli  
Michael N. Poli  
403 Hill Street  
Reno, Nevada 89501  
Attorneys for Third-Party Plaintiff

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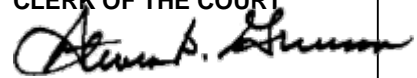
**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of November, 2019, a true and correct copy of the foregoing Third-Party Complaint was e-mailed and mailed via U.S. mail, to:

Cary P. Domina  
Jeremy D. Holmes  
PEEL BRIMLEY LLP  
3333 E. Serene Avenue, Suite 200  
Henderson, Nevada 89074  
[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)  
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Attorneys for Plaintiff

/s/ Linda M. Gundelach





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CLYDE & CO LLP  
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Telephone: 213-358-7600  
Facsimile: 213-358-7650

*Attorneys for Third Party Defendant  
Travelers Property Casualty Company  
of America*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

R&K CONCRETE CUTTING, INC., d/b/a  
R & K Development, a Nevada  
Corporation,

Plaintiff,

v.

5550 PAINTED MIRAGE RD., LLC, a  
limited Nevada liability company; DOES I  
through X; ROE CORPORATIONS I  
through X; TOE TENANTS I through X,  
inclusive

Defendants.

5550 PAINTED MIRAGE RD., LLC, a  
limited Nevada liability company,

Third-Party Plaintiff,

v.

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, a Minnesota  
corporation,

Third-Party  
Defendant.

Case No. A-19-803425-C

Dept. No. V

**NOTICE OF ENTRY OF ORDER:**

**1) GRANTING TRAVELERS' MOTION  
TO ENFORCE SETTLEMENT AND  
MOTION TO ADJUDICATE PARTIES'  
RIGHTS TO ENFORCE LIEN;**

**2) GRANTING POLI, MOON, & ZANE'S  
MOTION TO ADJUDICATE  
ATTORNEY'S RIGHTS AND TO  
ENFORCE ATTORNEY'S LIEN;**

**3) GRANTING ALL RELATED  
MOTIONS TO SEAL AND/OR REDACT  
AND MOTION TO CONSOLIDATE  
HEARINGS; AND**

**4) DIRECTING TRAVELERS TO  
DEPOSIT SETTLEMENT FUNDS WITH  
THE COURT**



1 Please take notice the Order 1) Granting Travelers' Motion To Enforce Settlement And  
2 Motion To Adjudicate Parties' Rights To Enforce Lien; 2) Granting Poli, Moon, & Zane's Motion  
3 To Adjudicate Attorney's Rights And To Enforce Attorney's Lien; 3) Granting All Related Motions  
4 To Seal and/or Redact And Motion To Consolidate Hearings; and 4) Directing Travelers To Deposit  
5 Settlement Funds With The Court was entered July 20, 2021, a copy of said Order is attached hereto.

6 Dated: July 21, 2021  
7

8 CLYDE & CO LLP

9 By: /s/ Lee H. Gorlin

10 Amy M. Samberg, Esq.

11 Lee H. Gorlin, Esq.

12 3960 Howard Hughes Parkway, Suite 500

13 Las Vegas, Nevada 89169

14 *Attorneys for Third-Party Defendant*

15 *Travelers Casualty Company of America*  
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1 **CERTIFICATE OF SERVICE**

2 As an employee of Clyde & Co LLP, I certify that a copy of the foregoing **NOTICE OF**  
3 **ENTRY OF ORDER: 1) GRANTING TRAVELERS' MOTION TO ENFORCE**  
4 **SETTLEMENT AND MOTION TO ADJUDICATE PARTIES' RIGHTS TO ENFORCE**  
5 **LIEN; 2) GRANTING POLI, MOON, & ZANE'S MOTION TO ADJUDICATE**  
6 **ATTORNEY'S RIGHTS AND TO ENFORCE ATTORNEY'S LIEN; 3) GRANTING ALL**  
7 **RELATED MOTIONS TO SEAL AND/OR REDACT AND MOTION TO CONSOLIDATE**  
8 **HEARINGS; AND 4) DIRECTING TRAVELERS TO DEPOSIT SETTLEMENT FUNDS**  
9 **WITH THE COURT** was served by the method indicated:

- 10 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set  
11 forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed  
12 transmission record is attached to the file copy of this document(s).
- 13 ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage  
14 thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth  
15 below.
- 16 ☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service  
17 upon the Court's Registered Service List for the above-referenced case.
- 18 ☒ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the  
19 individual(s) listed below.

20 R&K Concrete Cutting, Inc.  
21 c/o Cary Domina, Esq.  
22 [cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)

Merlin Law Group  
c/o Mike Poli, Esq.  
[mpoli@pmz.law.com](mailto:mpoli@pmz.law.com)

Metropolitan Adjustment Bureau  
c/o Glenn Nahmais  
[glenn@metroadjusters.com](mailto:glenn@metroadjusters.com)

23 Dated: July 21, 2021

24  
25 /s/ Gina Brouse  
26 An Employee of Clyde & Co LLP  
27  
28

Amy M. Samberg (NV Bar No. 10212)  
[amy.samberg@clydeco.us](mailto:amy.samberg@clydeco.us)  
Lee H. Gorlin (NV Bar No. 13879)  
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Telephone: 213-358-7600  
Facsimile: 213-358-7650

*Attorneys for Third Party Defendant  
Travelers Property Casualty Company  
of America*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

R&K CONCRETE CUTTING, INC., d/b/a  
R & K Development, a Nevada  
Corporation,

Plaintiff,

v.  
5550 PAINTED MIRAGE RD., LLC, a  
limited Nevada liability company; DOES I  
through X; ROE CORPORATIONS I  
through X; TOE TENANTS I through X,  
inclusive  
Defendants.

5550 PAINTED MIRAGE RD., LLC, a  
limited Nevada liability company,

Third-Party Plaintiff,

v.

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, a Minnesota  
corporation,

Third-Party Defendant.

Case No. A-19-803425-C

Dept. No. ,V

**~~PROPOSED~~ ORDER:**

**1) GRANTING TRAVELERS' MOTION  
TO ENFORCE SETTLEMENT AND  
MOTION TO ADJUDICATE PARTIES'  
RIGHTS TO ENFORCE LIEN;**

**2) GRANTING POLI, MOON, & ZANE'S  
MOTION TO ADJUDICATE  
ATTORNEY'S RIGHTS AND TO  
ENFORCE ATTORNEY'S LIEN;**

**3) GRANTING ALL RELATED  
MOTIONS TO SEAL AND/OR REDACT  
AND MOTION TO CONSOLIDATE  
HEARINGS; AND**

**4) DIRECTING TRAVELERS TO  
DEPOSIT SETTLEMENT FUNDS WITH  
THE COURT**

**HEARING DATE: June 24, 2021**

**HEARING TIME: 9:00 a.m.**

These matters having come before the Court on June 24, 2021, with appearances by Mitchell Stipp, Esq. on behalf of Third-Party Plaintiff 5550 Painted Mirage Rd. LLC ("Painted Mirage"), Amy Samberg, Esq. and Lee Gorlin, Esq. on behalf of Third-Party Defendant Travelers Property Casualty Company of America ("Travelers"), and Michael Poli, Esq. on behalf of Poli, Moon &

1 Zane, PLLC (“PMZ”) and Merlin Law Group, P.A. (“Merlin”). The Court heard argument from the  
2 moving parties and the opposing party and Orders as follows:

3 **IT IS HEREBY ORDERED** that all Motions to Seal and/or Redact are hereby **GRANTED**  
4 as unopposed. Travelers’ Motion to Enforce Settlement and Motion to Adjudicate Parties’ Rights  
5 to Enforce Lien shall remain sealed. PMZ’s Motion to Adjudicate Attorney’s Rights and to Enforce  
6 Attorney’s Lien shall be sealed, and the clerk is ordered to remove PMZ’s Motion to Adjudicate  
7 Attorney’s Rights and to Enforce Attorney’s Lien from the public docket.

8 **IT IS FURTHER ORDERED** that the Motion to Consolidate Hearings is hereby  
9 **GRANTED** as unopposed.

10 **IT IS FURTHER ORDERED** that Travelers’ Motion to Enforce Settlement and Motion to  
11 Adjudicate Parties’ Rights to Enforce Lien, as well as PMZ’s Motion to Adjudicate Attorney’s  
12 Rights and to Enforce Attorney’s Lien are hereby **GRANTED**, as detailed below.

13 **IT IS FURTHER ORDERED** that the Settlement Term Sheet executed on April 9, 2021  
14 by Mitchell Stipp on behalf of and with the full authority of Painted Mirage and by Lee Gorlin on  
15 behalf of and with the full authority of Travelers is a valid and binding Settlement Agreement. The  
16 third-party action between Painted Mirage and Travelers is settled.

17 **IT IS FURTHER ORDERD** that because this third-party action is settled, Travelers’  
18 request to extend discovery dates is hereby **DENIED AS MOOT**.

19 **IT IS FURTHER ORDERED** that Travelers has not breached the Settlement Term Sheet.  
20 The express terms of the Settlement Term Sheet provide that the “Settlement payment will be  
21 delivered within 14 business days of Travelers’ counsel’s receipt of the fully executed release.”  
22 Travelers’ counsel has yet to receive a fully executed release, thus its obligation to deliver payment  
23 has not been triggered.

24 **IT IS FURTHER ORDERED** that Painted Mirage has breached the Settlement Term  
25 Sheet. The Settlement Term Sheet required Painted Mirage to keep the amount of the settlement  
26 confidential. Painted Mirage breached its obligation when it 1) commenced a new action (case No.  
27 A-21-836489-C) and attached the amount of the settlement to that Complaint; and 2) when it filed  
28 an Objection in this action, which included an exhibit with the confidential amount of the settlement.

1 Rather than opt to void the Settlement, Travelers has opted to have the offending portion of the  
2 attachments redacted.

3 **IT IS FURTHER ORDERED** that the settlement amount included in Exhibit A-5 to  
4 Painted Mirage’s “Objection to Reply to Opposition to Motion to Adjudicate Attorney’s Rights and  
5 to Enforce Attorney’s Lien and Notice of Malpractice Action Against Michael Poli, Esq. (labeled  
6 “Plaintiff’s Complaint Page 26 of 41 and 27 of 41) shall be redacted. The clerk is ordered to ensure  
7 this redaction appears on the public filing.

8 **IT IS FURTHER ORDERED** that Painted Mirage, within 14 days of entry of this Order,  
9 file the appropriate Motion (or Stipulation) in case No. A-21-863489-C to redact the same  
10 confidential material in that action, (Exhibit 5 to the Complaint, labeled “Plaintiff’s Complaint Page  
11 26 of 41 and 27 of 41). Said Motion (or Stipulation) shall attach this Order as an exhibit. Painted  
12 Mirage shall contemporaneously file a proof of filing of said Motion (or Stipulation) in this action.

13 **IT IS FURTHER ORDERED** Travelers shall, within 14 days of entry of this Order, deposit  
14 the settlement proceeds, in the form of two checks as specified in the Settlement Term Sheet, with  
15 the Clark County Court Clerk for the benefit of all lienholders named in the April 9, 2021, Settlement  
16 Term Sheet, which include Merlin and Metropolitan Adjustment Bureau. The deposit is also to be  
17 for the benefit of PMZ.

18 **IT IS FURTHER ORDERED** that upon depositing the settlement proceeds, Travelers shall  
19 be dismissed from this action, with prejudice, and entitled to all release, indemnity, hold harmless,  
20 and protections as set forth in the April 9, 2021 Settlement Term Sheet. The Settlement Term Sheet  
21 is the binding settlement agreement. The Settlement Term Sheet along with this Order is proof of  
22 the agreement between the parties, including Painted Mirage’s obligations to release, indemnify,  
23 and hold Travelers harmless from any and all claims as described in the Settlement Term Sheet.

24 **IT IS FURTHER ORDERED** that Travelers does have standing to seek adjudication of  
25 PMZ’s lien pursuant to NRS 18.015(6), which provides that “any party who has been served with  
26 notice of the lien” may file a motion to “adjudicate the rights of the attorney, client or other parties  
27 and enforce the lien.” Travelers is a party. Travelers has been served with the notice of PMZ’s lien  
28 that was filed in this Action on May 6, 2021.



1           **IT IS FURTHER ORDERED** that both Merlin and PMZ have valid liens against the  
2 settlement proceeds. *See Michel v. Eighth Judicial Dist. Court*, 117 Nev. 145, 17 P.3d 1003 (2001).  
3 The Court finds that PMZ did not file a substitution of attorney to take the place of Merlin. However,  
4 the Court also finds that Mr. Poli represented Painted Mirage while he worked for Merlin and  
5 continued to represent Painted Mirage after Mr. Poli changed firms to PMZ. Thus, while the firm  
6 representing Painted Mirage changed, the attorney did not. EDCR 7.40(b)(1) provides for  
7 substituting attorneys where “a new attorney is to be substituted in place of the attorney  
8 withdrawing.” No attorney withdrew, and no new attorney substituted in when Mr. Poli changed  
9 firms from Merlin to PMZ. Moreover, Painted Mirage undisputedly allowed Mr. Poli to continue  
10 to process its third-party claim after Mr. Poli moved to PMZ. Accordingly, the Court finds that the  
11 absence of a filed substitution of attorney does not jeopardize or prejudice either Merlin’s or PMZ’s  
12 lien rights.

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1       **IT IS FURTHER ORDERED** that Merlin and PMZ are entitled to no more than their  
2 respective shares of a single 28% contingency fee. The exact amounts that Merlin and PMZ are  
3 entitled to receive from the settlement proceeds will be resolved at a later time, but in no event will  
4 their combined fees exceed the single 28% contingency fee plus Merlin's and/or PMZ's expenses  
5 incurred in prosecuting Painted Mirage's third-party claims.

Dated this 20th day of July, 2021

6       **IT IS SO ORDERED**



7  
8       **F7A CD6 FA1B 782E**  
9       **Veronica M. Barisich**  
10       **District Court Judge**

11       Respectfully Submitted by:  
12       CLYDE & CO LLP

13       By: /s/ Lee H. Gorlin

Amy M. Samberg, Esq.

Lee H. Gorlin, Esq.

3960 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169

16       *Attorneys for Third-Party Defendant*  
17       *Travelers Casualty Company of America*

18       Approved/Disapproved as to form  
19       and content by:  
20       LAW OFFICE OF MITCHELL STIPP<sup>1</sup>

**Approved** as to form and content by:  
      POLI, MOON & ZANE

21       By: \_\_\_\_\_  
22       Mitchell D. Stipp, Esq.  
23       1180 N. Town Center Drive, Suite 100  
      Las Vegas, Nevada 89144

21       By: /s/ Michael N. Poli  
22       Michael N. Poli, Esq.  
23       2999 N. 44<sup>th</sup> Street, #325  
      Phoenix, Arizona 85018

24       *Attorneys for Third-Party Plaintiff*  
25       *5550 Painted Mirage Rd., LLC*

24       *Attorneys for Non-Party Claimants Poli, Moon*  
25       *& Zane, PLLC and Merlin Law Group*

26  
27       \_\_\_\_\_  
28       <sup>1</sup> Counsel for Painted Mirage did not provide consent to e-sign to either approve or disapprove of  
the form and contents of this Proposed Order. Based on the discussions between the parties, it  
appears that Painted Mirage disapproves of the contents of this Order.

## Gorlin, Lee

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**From:** Mike Poli <mpoli@pmzlaw.com>  
**Sent:** Monday, July 5, 2021 4:58 PM  
**To:** Gorlin, Lee; Mitchell Stipp  
**Cc:** Samberg, Amy; Linda Gundelach; Lawrence Moon; Michael Duffy  
**Subject:** RE: Proposed Order Granting Motions (DUE TOMORROW) [CC-US2.FID874874]

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Yes, you have my approval as to form and content.



### Michael N. Poli

Partner

**P :** [602-857-8160](tel:602-857-8160) | **M :** [602-320-4999](tel:602-320-4999)

**F :** [602-857-7333](tel:602-857-7333) | **E :** [mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)

**A :** 2999 N. 44th St., Ste 325, Phoenix, AZ 85018



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**From:** Gorlin, Lee <Lee.Gorlin@clydeco.us>  
**Sent:** Monday, July 5, 2021 4:56 PM  
**To:** Mike Poli <mpoli@pmzlaw.com>; Mitchell Stipp <mstipp@stipplaw.com>  
**Cc:** Samberg, Amy <Amy.Samberg@clydeco.us>; Linda Gundelach <lgundelach@pmzlaw.com>; Lawrence Moon <lmoon@pmzlaw.com>; Michael Duffy <mduffy@merlinlawgroup.com>  
**Subject:** RE: Proposed Order Granting Motions (DUE TOMORROW) [CC-US2.FID874874]

Thank you, Mike. Do I have your consent to e-sign, signifying your approval of form and content?

Mitchell, we need a final answer from you as to whether you will approve or disapprove as to the form and content of the most recently circulated draft of the proposed order. Please let me know either way and we will so signify on the proposed order before submitting it to the Court tomorrow.

Thanks everyone.

**Lee Gorlin**  
Associate | Clyde & Co US LLP  
**Direct Dial:** +1 213 358 7664 | **Mobile:** +1 702 300 9476

**CLYDE&CO**

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 R & K Concrete Cutting Inc,  
7 Plaintiff(s)

CASE NO: A-19-803425-C

8 vs.

DEPT. NO. Department 5

9 5550 Painted Mirage Rd LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 7/20/2021

16 Linda Lieber

llieber@pmzlaw.com

17 Mitchell Stipp

mstipp@stipplaw.com

18 Michael Poli

mpoli@pmzlaw.com

19 Linda Gundelach

lgundelach@pmzlaw.com

20 Lee Gorlin

lee.gorlin@clydeco.us

21 Amy Samberg

amy.samberg@clydeco.us

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