

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

5550 PAINTED MIRAGE RD., LLC,
Appellant,

vs

TRAVELERS PROPERTY
CASUALTY COMPANY OF
AMERICA,
Respondent.

Electronically Filed
Feb 07 2022 09:48 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 83413

District Court Case: A-19-803425-C

**RESPONSE TO RENEWED MOTION TO DISMISS APPEAL
FOLLOWING CONCLUSION OF SETTLEMENT PROGRAM**

LAW OFFICE OF MITCHELL STIPP
MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)
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mstipp@stipplaw.com
Counsel for Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

I. Facts.

Appellant, 5550 Painted Mirage Rd., LLC, a Nevada limited liability company (“Appellant”), entered into a term sheet with Respondent, Travelers Property Casualty Company of America (“Respondent”), during private mediation of the parties’ disputes before the district court (which primarily concerned the failure of Respondent to cover damages to Appellant’s 5-Story Class A Office Building from wind/rainstorm). See **Exhibit 1** attached hereto (redacted to protect settlement amount per request of Respondent). After execution and delivery of the term sheet, Respondent requested that Appellant negotiate, execute and deliver a settlement and release agreement. Appellant did not object to such request, provided, that the terms and conditions of the proposed settlement and release agreement did not alter the general terms set forth in the term sheet.

In the district court and during the mediation, Appellant was represented by Michael Poli of Merlin Law Group, P.A., and subsequently by Mr. Poli, when he formed Poli, Moon & Zane, PLLC. Mr. Poli is an attorney licensed to practice by the State Bar of Nevada. Mr. Poli insisted that Appellant accept the settlement amount Respondent was willing to pay because he believed Appellant would not

fare better at the bench trial in the case (i.e., Mr. Poli failed to demand a jury trial). In Mr. Poli's view, the representative of the Appellant, Dr. Daniel Taheri, was not likeable or trustworthy and in his opinion engaged in "shady" business practices. Based on Mr. Poli's assessment, Appellant executed and delivered the term sheet.

During negotiation of the settlement and release agreement, Mr. Poli insisted the settlement sum be paid to his new firm's trust account. Appellant objected (specifically because Appellant did not have a new contingency fee agreement with Poli, Moon & Zane, PLLC, Appellant did not approve costs and expenses requested for reimbursement by Mr. Poli, and there was no agreement between Merlin Law Group, P.A. and Poli, Moon & Zane, PLLC to share any fees). Due to disagreement over these issues, Mr. Poli's representation was terminated by Appellant and a malpractice case filed against him. See Exhibit 2. Mr. Poli filed notices of attorney's liens on behalf of Merlin Law Group, P.A., and Poli, Moon & Zane, PLLC. Travelers filed a motion to enforce the settlement, adjudicate the liens, and interplead the settlement proceeds with the court. Mr. Poli filed a motion to adjudicate the attorney's liens and asserted that the settlement with Travelers was enforceable (despite the Appellant's contention otherwise). The order on appeal is

the decision of the district court at the hearing on these motions by Travelers and Mr. Poli (on behalf of Merlin Law Group, P.A., and Poli, Moon & Zane, PLLC).

II. ARGUMENT

The notice of appeal was filed on August 20, 2021. See Exhibit 3. Notice of entry of the order subject to appeal was filed on July 21, 2021. Id. However, the order entered by the court was filed on July 20, 2021. Id. Respondent contends the notice of appeal was untimely by one (1) day. NRAP 4(a)(1) provides as follows:

(1) Time and Location for Filing a Notice of Appeal. In a civil case in which an appeal is permitted by law from a district court, the notice of appeal required by Rule 3 shall be filed with the district court clerk. Except as provided in Rule 4(a)(4), *a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served.* If an applicable statute provides that a notice of appeal must be filed within a different time period, the notice of appeal required by these Rules must be filed within the time period established by the statute.

Nev. R. App. P. 4(a)(1) (emphasis added). Respondent cites to In re Herrmann, 100 Nev. 1, 20-22, 677 P.2d 594, 606-608 (1984), as the only support for its position that Appellant's notice of appeal was untimely. In Herrmann, the Nevada Supreme Court addressed the timeliness of a motion, filed pursuant to NRCP 52(b), purportedly seeking to alter or amend an order of the district court awarding attorney's fees in a probate proceeding. The order that was the subject of the motion to alter or amend at issue in Herrmann had been entered many months prior to the filing of the motion.

The Nevada Supreme Court in Herrmann rejected as "totally untenable" respondent Herrmann's contention that the time within which a party must file a NRCP 52(b) motion to alter or amend an interlocutory probate order designated as appealable in NRS 155.190 does not begin to run until the party has been served with notice of entry of the order. The Nevada Supreme Court specifically held as follows:

NRS 155.190 explicitly directs that an appeal may be taken "within 30 days after its entry " from any order or decree mentioned therein, including any "[d]irecting or allowing the payment of a debt, claim, legacy or attorney's fee." (Emphasis added.) And this court has specifically held that unless appeal is taken within 30 days, an order of the kinds mentioned in NRS 155.190 is not

thereafter subject to attack. Luria v. Zucker, 87 Nev. 471, 488 P.2d 1159 (1971). Thus, it appears obvious from the probate code itself that the time for respondent Herrmann to challenge Judge Waters' order, either by appeal or otherwise, had expired many months before the "motion" was filed.

Herrmann, 100 Nev. at 21-22, 677 P.2d at 607. The Nevada Supreme Court specifically observed in Herrmann, that "[i]n the case of In re Estate of Riddle, 99 Nev. 632, 634, 668 P.2d 290 (1983), ***this court explicitly rejected identical contentions that the notice-of-entry provisions of NRCP and NRAP should be superimposed on NRS 155.190.***" Herrmann, 100 Nev. at 22, 677 P.2d at 607 (emphasis added). Thus, in both Herrmann and Riddle, the Nevada Supreme Court concluded that the "notice-of-entry provisions" of NRAP 4(a) **cannot** be engrafted upon the statutory appeal period provided in NRS 155.190, and do not operate so as to extend the time for filing a notice of appeal. As the Nevada Supreme Court is likely aware (but Respondent fails to recognize), the decision in Herrmann does not apply here because the timing of this appeal is governed by NRAP 4(a)---not NRS 155.190.

The filing fee of \$250.00 was paid to the Nevada Supreme Court on September 7, 2021. While the Nevada Supreme Court had the right to dismiss the appeal for failure to pay the required filing fee (or if the payment was untimely), it

elected not to do so in this case. Such decision is within the sound discretion of the Nevada Supreme Court. There is no basis to dismiss the case after the fee was paid and accepted, the parties participated in the settlement program, and the court has set a briefing schedule. Respondent has not cited to any statute, case, or rule which would require a different result.

DATED this 7th day of February, 2022

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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mstipp@stipplaw.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of February, 2022, I filed the foregoing **REPLY**, using the court's electronic filing system.

Notice of the filing of the Reply was made upon acceptance by the Nevada Supreme Court to the following e-service participants:

CLYDE & CO US LLP
AMY M. SAMBERG (NV Bar No. 10212)
amy.samberg@clydeco.us
LEE H. GORLIN (NV Bar No. 13879)
lee.gorlin@clydeco.us
7251 W. Lake Mead Boulevard, Suite 430
Las Vegas, Nevada 89128
Telephone: 725-248-2900
Facsimile: 725-248-2907
Attorneys for Respondent

By: /s/ Amy Hernandez

An employee of Law Office of Mitchell Stipp

EXHIBIT 1

Settlement Term Sheet

Date: **April 9, 2021**

ARM Case Number: **2020-235719785**

Case Name: **R&K Development vs. 5550 Painted Mirage Rd., LLC vs. Travelers Property Casualty Company of America**

1. In exchange for payment of [REDACTED] (in addition to the [REDACTED] previously paid from Travelers Property Casualty Company of America ("Travelers")), 5550 Painted Mirage Rd., LLC ("Painted Mirage"), agrees to a full and complete release from any and all claims arising from losses or damage to the subject property, both claimed and unclaimed, known or unknown, occurring on or before the date of Mediation (April 9, 2021). Notwithstanding this language, the release does not apply to General Liability coverage under any and all policies issued by Travelers or any of its affiliates, including but not limited to Policy 680-8M462207.
2. The amount paid by Travelers to Painted Mirage will be paid via two (2) checks (because this matter involves two separate claims). The two (2) checks combined will add up to [REDACTED] as set forth above in paragraph 1.
3. Painted Mirage agrees to indemnify, defend, and hold Travelers harmless from any and all claims or liens resulting from any work performed on the property and/or to any claims related to the settlement proceeds, including claims arising out of any mitigation, remediation, or repair of any property damage at the subject property, and including but not limited to any claims or liens by R&K Concrete Cutting, Inc., Metropolitan Adjustment Bureau or the Merlin Law Group.
4. Painted Mirage (including their respective agents, employees, assigns, or other persons) further agree to maintain full confidentiality for the amount of the settlement. Travelers agrees not to disclose to or advise any party to the subject lawsuit as to the fact of the existence of a settlement for at least two weeks following the date of this mediation absent a Court Order. No party will file any notice of settlement with the Court for at two weeks from the date of this mediation.
5. The parties will jointly request an extension of the current discovery deadlines for 30 days citing ongoing settlement discussions.
6. Subject to payment of the consideration described above, Painted Mirage will dismiss its Third-Party Lawsuit with prejudice.
7. Travelers will include Metropolitan Adjustment Bureau, the Merlin Law Group, and R&K Concrete Cutting, Inc. on any settlement payment checks absent written confirmation, by email or otherwise, from each that they may be excluded from the settlement payment. Settlement payment will be delivered within 14 business days of Travelers' counsel's receipt of the fully executed release.
8. All parties are to bear their own fees and costs.
9. The terms and conditions of this Settlement Term Sheet are governed by Nevada law.

10. Counsel hereby confirms that their clients agree to the above general terms of the settlement and have authorized their counsel to execute this term sheet on behalf of their respective clients.

Dated this 9th Day of April 2021

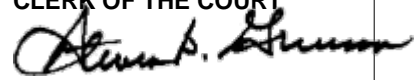


Mitchell D. Stipp, Esq.
On behalf of 5550 Painted Mirage Road



Lee H. Gorlin, Esq.
on behalf of Travelers Property Casualty
Company of America

EXHIBIT 2



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mstipp@stipplaw.com
Counsel for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

MICHAEL POLI, an individual; MERLIN
LAW GROUP, P.A., a foreign entity; POLI,
MOON & ZANE, PLLC, a foreign entity;
DOES I and X, and ROE CORPORATIONS I
through X inclusive,

Defendants.

Case No: A-21-836489-C

Department No.: 27

SECOND AMENDED COMPLAINT FOR
ATTORNEY MALPRACTICE

ARBITRATION EXEMPTION CLAIMED:
Rule 3(A): Probably Jury Award in Excess of
\$50,000.00

DEMAND FOR JURY TRIAL

Plaintiff, 5550 Painted Mirage Rd., LLC, a Nevada limited liability company ("5550
LLC" or "Plaintiff"), by and through its attorney, Mitchell D. Stipp, Esq., of the Law Office of
Mitchell Stipp, alleges as follows:

PARTIES

1. Michael Poli ("Poli" or "Defendant") is an attorney licensed by the State Bar of
Nevada and employed by the firm of Poli, Moon & Zane, PLLC ("Poli Firm").

1 2. Metropolitan Adjustment Bureau, a public insurance adjuster (“MAB”), referred
2 Plaintiff to Defendant, who was employed at the time by Merlin Law Group, P.A. (“Merlin
3 Law”), to represent Plaintiff.

4 3. Plaintiff engaged Merlin Law to investigate and prosecute its claims for insurance
5 coverage with respect to losses that resulted from wind and/or rain damage to Plaintiff’s 5-story,
6 class A office building, addressed as 5550 Painted Mirage Rd., Las Vegas, Nevada 89149.

7 4. After Plaintiff engaged Merlin Law, Defendant resigned from Merlin Law and
8 formed the Poli Firm with other attorneys.

9 5. Defendant through Merlin Law and the Poli Firm provided legal services to
10 Plaintiff in Case No. A-19-8034250-C of the Eighth Judicial District Court, State of Nevada (the
11 “Litigation Case”), before being terminated.

12 6. Plaintiff is a Nevada limited liability company organized under Chapter 86 of the
13 NRS.

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

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JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter. At all relevant times, Defendant practiced law in Las Vegas, Nevada through Merlin Law and/or the Poli Firm. Defendant represented Plaintiff in the Litigation Case through Merlin Law and the Poli Firm. Such practice of law in Las Vegas, State of Nevada, establishes the minimum contacts with the forum by Defendant, Merlin Law and Poli Law. Therefore, Defendant, Merlin Law, and Poli Law are subject to personal jurisdiction in the State of Nevada on claims arising out of Defendant's representation of Plaintiff through Merlin Law and Poli Law in the Litigation Case.

9. This Court has subject matter jurisdiction as the matter in controversy exceeds \$15,000.00, exclusive of attorney's fees, interest, and costs.

10. Venue is proper because a substantial portion of the acts, events, and transactions complained of herein occurred in Las Vegas, State of Nevada.

GENERAL ALLEGATIONS

11. On November 18, 2019, Defendant, through Merlin Law, filed a third-party complaint on behalf of Plaintiff against Travelers Property Casualty Company of America ("Travelers") in the Litigation Case.

12. On April 10, 2020, Merlin Law resigned as counsel for Plaintiff but claimed a lien against any and all recoveries from Travelers.

13. On April 20, 2020, Defendant filed a notice of change of firm name and address in the Litigation Case purportedly to substitute Defendant through Poli Firm as the attorney of record for Plaintiff against Travelers.

14. There is no written agreement with Plaintiff or the Poli Firm for the provision of legal services by Defendant through the Poli Firm in exchange for agreed upon compensation.

1 15. There is no written agreement with Plaintiff pursuant to which Plaintiff approved
2 of any fee sharing arrangement between Defendant, Poli Firm and Merlin Law.

3 16. Among the many acts of malpractice committed by Defendant while representing
4 Plaintiff in the Litigation Case, Defendant advised Plaintiff to settle its claims against Travelers
5 rather than proceeding to trial.
6

7 17. Plaintiff and Travelers reached a settlement on or about April 9, 2021.

8 18. Before settlement, Defendant failed to prepare the case for trial (including
9 conducting meaningful discovery and engaging in substantive motion practice).

10 19. Defendant advised Plaintiff that Plaintiff would likely not prevail at trial because
11 the principal of Plaintiff, Dr. Daniel Taheri, was not “likeable as a person” and had “questionable
12 business practices.”
13

14 20. After settlement, Defendant through the Poli Firm prepared and submitted to
15 Plaintiff a closing statement dated April 19, 2021, which required Plaintiff to approve of the
16 distribution of settlement proceeds payable by Travelers and confirm Plaintiff’s satisfaction with
17 the services provided by the Poli Firm.
18

19 21. According to the Poli Closing Statement, Merlin Law is owed \$18,715.00 (plus
20 reimbursement of costs and expenses in the amount of \$301.69) from the settlement with
21 Travelers.

22 22. According to the Poli Closing Statement, the Poli Firm is owed \$66,285.00 (plus
23 reimbursement of costs and expenses in the amount of \$44,244.04) from the settlement with
24 Travelers.

25 23. Plaintiff did not execute, deliver or otherwise approve of the Poli Closing
26 Statement.
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1 24. Plaintiff did not approve of costs and expenses purportedly incurred by the Poli
2 Firm and Merlin Law for which reimbursement by the Poli Firm is demanded.

3 25. After settlement was reached, Defendant demanded that all settlement proceeds
4 from Travelers be paid to the Poli Firm.

5 26. Travelers refused to pay the settlement proceeds unless the dispute between
6 Plaintiff and Defendant over payment of the settlement proceeds was resolved.

7 27. Defendant communicated to Travelers that he could not “trust the client” to
8 receive the settlement proceeds and pay the parties which are owed any portion of the same.
9 Defendant falsely claimed MAB was owed 10% of the settlement proceeds when MAB’s
10 agreement provided to the contrary. Defendant threatened Travelers with liability if any
11 settlement proceeds were paid to Plaintiff (or to co-counsel) rather than the Poli Firm. Defendant
12 asserted contrary legal positions to Plaintiff over the binding nature of settlement and the parties’
13 obligations thereto.

14 28. Defendant through the Poli Firm filed a notice of lien on May 6, 2021 in the
15 Litigation Case asserting a claim for 28% of the settlement proceeds and reimbursement of costs
16 and expenses in the amount of at least \$44,545.73 despite the fact the Defendant claims the Poli
17 Firm is owed \$66,285.00 (plus reimbursement of costs and expenses in the amount of
18 \$44,244.04).

19 29. Plaintiff did not agree to pay the Poli Firm 28% of the settlement proceeds or to
20 reimburse the Poli Firm for its costs and expenses.

21 30. Defendant through the Poli Firm filed a lien as counsel for Merlin Law in the
22 amount of 28% of the settlement proceeds and reimbursement of costs and expenses in the
23 amount of at least \$301.69 despite the fact the Defendant claims Merlin Law is owed \$18,715.00
24 (plus reimbursement of costs and expenses in the amount of \$301.69).

1 31. To date, Plaintiff has not received any portion of the settlement sum paid by
2 Travelers.

3 32. Merlin Law and the Poli Firm are liable for the acts of Defendant pursuant to the
4 doctrine of respondeat superior. As an employee of Merlin Law and the Poli Firm, Defendant's
5 acts and/or omissions as described in this Complaint were within the course and scope of his
6 employment with Merlin Law and/or the Poli Firm.

7
8 **CAUSE OF ACTION FOR ATTORNEY MALPRACTICE**

9 33. Plaintiff repeats and re-alleges the allegations contained in the preceding
10 paragraphs of this Complaint as though said paragraphs were fully set forth herein.

11 34. In Nevada, a cause of action for attorney malpractice exists upon proof of the
12 following elements: (a) the duty of the professional to use such skill, prudence, and diligence as
13 other members of his profession commonly possess and exercise; (b) the breach of that duty; (c)
14 a proximate causal connection between the negligent conduct and the resulting injury, and (d)
15 actual loss or damage resulting from the professional's negligence.

16 35. Defendant had a duty to Plaintiff to use such skill, prudence, and diligence as
17 other members of the legal profession commonly possess and exercise. Such skill, prudence, and
18 diligence require attorneys to act in the interests of their clients when advising their clients on the
19 settlement of their claims.

20 36. Defendant is an experience attorney who focuses his practice in part on insurance
21 bad faith and coverage disputes.

22 37. Defendant is licensed by the State Bar of Nevada to practice law in Nevada.

23 38. Defendant breached his duty to Plaintiff by failing to exercise the degree of skill
24 and learning required of attorneys in the circumstances of settlement.

25 39. Defendant's personal dislike for Dr. Taheri and his business practices was the
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1 primary motivation for his advice to settle the claims against Travelers.

2 40. The settlement proceeds from Travelers do not cover the losses sustained by
3 Plaintiff.

4 41. Plaintiff sustained damages proximately caused by Defendant's malpractice in
5 excess of fifteen thousand dollars (\$15,000.00).
6

7 42. Plaintiff has retained the services of an attorney to initiate this action and
8 prosecute its cause of action for malpractice; therefore, Plaintiff is entitled to recover its
9 reasonable attorney's fees and costs.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff pray for judgment as follows:

13 1. For damages in excess of fifteen thousand dollars (\$15,000.00) with an exact
14 amount to be proven at trial.

15 2. For an award of attorney's fees and costs, as allowed by law or contract;

16 3. For a trial by jury on all issues; and

17 4. For such other and further relief as the Court may deem just and proper.
18

19 DATED this 22nd day of November, 2021.

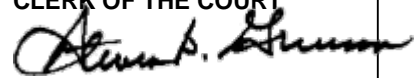
20 LAW OFFICE OF MITCHELL STIPP

21 /s/ Mitchell Stipp

22

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26 Facsimile: 866.220.5332
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27 Counsel for Plaintiff
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EXHIBIT 3



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Lee H. Gorlin (NV Bar No. 13879)
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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
below.

15 ☒ **BY ELECTRONIC SERVICE:** submitted to the above-entitled Court for electronic service
upon the Court's Registered Service List for the above-referenced case.

16 ☒ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the
individual(s) listed below.

17 R&K Concrete Cutting, Inc.
18 c/o Cary Domina, Esq.
cdomina@peelbrimley.com

Merlin Law Group
c/o Mike Poli, Esq.
mpoli@pmz.law.com

19 Metropolitan Adjustment Bureau
20 c/o Glenn Nahmais
glenn@metroadjusters.com

21
22
23 Dated: July 21, 2021

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

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Lee H. Gorlin (NV Bar No. 13879)
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*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 ORDERED** 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 STIPP¹

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

23 By: _____
24 Mitchell D. Stipp, Esq.
25 1180 N. Town Center Drive, Suite 100
26 Las Vegas, Nevada 89144

27 By: /s/ Michael N. Poli
28 Michael N. Poli, Esq.
29 2999 N. 44th Street, #325
30 Phoenix, Arizona 85018

31 *Attorneys for Third-Party Plaintiff*
32 *5550 Painted Mirage Rd., LLC*

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

35
36
37
38 ¹ Counsel for Painted Mirage did not provide consent to e-sign to either approve or disapprove of
39 the form and contents of this Proposed Order. Based on the discussions between the parties, it
40 appears that Painted Mirage disapproves of the contents of this Order.

Gorlin, Lee

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

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



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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26
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