

**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  
Mar 23 2022 02:02 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No. 83413

District Court Case: A-19-803425-C

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**RESPONSE TO ORDER TO SHOW CAUSE**

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LAW OFFICE OF MITCHELL STIPP  
MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)  
1180 N. Town Center Drive, Suite 100  
Las Vegas, Nevada 89144  
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[mstipp@stipplaw.com](mailto: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 Dkt. 22-04026 (Term Sheet, Exhibit 1 attached to Appellant’s Response (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 Dkt. 22-04026 (Second Amended Complaint, Exhibit 2 to Appellant's Response). Mr. Poli filed notices of attorney's liens on behalf of Merlin Law Group, P.A., and Poli, Moon & Zane, PLLC. Respondent 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 Respondent 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 Respondent and Mr. Poli (on behalf of Merlin Law Group, P.A., and Poli, Moon & Zane, PLLC). The notice of appeal was filed on August 20, 2021, and a copy of the order is attached to the notice. See Dkt. 21-24691.

## II. ARGUMENT

The Nevada Supreme Court issued an order to show cause, which was filed in this case on February 22, 2022. See Dkt. 22-05661. According to the order, the Nevada Supreme Court believes the order on appeal may not be a final order or judgment which can be appealed under NRAP 3A(b)(1). Id. (citing to Lee v. GNLV Corp., 116 Nev. 424 (Nev. 2000)). This position appears to be based on the view that “nothing in the district court’s order appears to dismiss [Appellant’s] third-party claims against Travelers.” Id. at 1. The order on appeal provides as follows:

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

**IT IS FURTHER ORDERED** that upon depositing the settlement proceeds, *Travelers shall be dismissed from this action, with prejudice*, and entitled to all release, indemnity, hold harmless, and protections as set forth in the April 9, 2021

Settlement Term Sheet. The Settlement Term Sheet is the binding settlement agreement. The Settlement Term Sheet along with this Order is proof of the agreement between the parties, including Painted Mirage's obligations to release, indemnify, and hold Travelers harmless from any and all claims as described in the Settlement Term Sheet.

See Dkt. 21-24691 (Order, p. 3 attached to Notice of Appeal) (emphasis added).

Respondent deposited the settlement proceeds with the clerk of the district court.

See Exhibit 1 attached hereto. Therefore, Appellant's claims against Respondent were dismissed with prejudice. The order constitutes a final judgment because it disposes of all the issues between Appellant and Respondent and leaves nothing for the future consideration of the court, except post-judgment issues such as the release of the settlement proceeds. See Lee, 116 Nev. 426 (clarifying "that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs."). The district court docket in Case No. A-19-803425-C reflects a notice of an amended complaint and summons pertaining to separate case in Department 27 (Case No. A-21-836489-C). See Exhibit 2.

///

DATED this 23rd day of March, 2022

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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MITCHELL STIPP, ESQ.  
Nevada Bar No. 7531  
1180 N. Town Center Drive  
Suite 100  
Las Vegas, Nevada 89144  
Telephone: (702) 602-1242  
mstipp@stipplaw.com  
*Counsel for Appellant*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 23rd day of March, 2022, I filed the foregoing **RESPONSE TO ORDER TO SHOW CAUSE**, 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](mailto:amy.samberg@clydeco.us)  
LEE H. GORLIN (NV Bar No. 13879)  
[lee.gorlin@clydeco.us](mailto: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

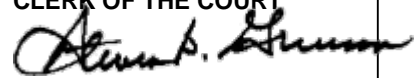
By: /s/ Amy Hernandez

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An employee of Law Office of Mitchell Stipp

# **EXHIBIT 1**





Amy M. Samberg (NV Bar No. 10212)  
[amy.samberg@clydeco.us](mailto:amy.samberg@clydeco.us)  
Lee H. Gorlin (NV Bar No. 13879)  
[lee.gorlin@clydeco.us](mailto:lee.gorlin@clydeco.us)  
CLYDE & CO LLP  
3960 Howard Hughes Parkway, Suite 500  
Las Vegas, NV 89169  
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;

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 DEPOSIT OF  
SETTLEMENT CHECKS PURSUANT  
TO COURT ORDER**

Please take notice that on July 28, 2021, Third-Party Defendant Travelers Property Casualty Company of America, ("Travelers") deposited two checks with the Clerk of the Court in the total of the entire confidential settlement amount. *See* Deposit Receipts attached hereto as **Exhibit A**. Accordingly, Travelers has satisfied its obligations under this Court's Order dated July 20, 2021. Pursuant to that very Order, Travelers is to be immediately "dismissed from this action, with

1 prejudice, and entitled to all release, indemnity, hold harmless, and protections as set forth in the  
2 April 9, 2021 Settlement Term Sheet” between Travelers and Third-Party Plaintiff 5550 Painted  
3 Mirage Rd., LLC.

4 Dated: August 2, 2021

6 CLYDE & CO LLP

7 By: /s/ Lee H. Gorlin

8 Amy M. Samberg, Esq.

9 Lee H. Gorlin, Esq.

3960 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

11 *Attorneys for Third-Party Defendant*

*Travelers Casualty Company of America*

1 **CERTIFICATE OF SERVICE**

2 As an employee of Clyde & Co LLP, I certify that a copy of the foregoing **NOTICE OF**  
3 **DEPOSIT OF SETTLEMENT CHECKS PURSUANT TO COURT ORDER** was served by  
4 the method indicated:

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

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

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

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

16  
17  
18 Dated: August 2, 2021

19  
20 /s/ Gina Brouse  
An Employee of Clyde & Co LLP

# EXHIBIT A

# OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor  
Travelers Property Casualty Company of America

Receipt No.  
**2021-46795-CCCLK**

Transaction Date  
07/28/2021

Description	Amount Paid
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On Behalf Of Travelers Property Casualty Company of America

A-19-803425-C

R & K Concrete Cutting Inc, Plaintiff(s) vs. 5550 Painted Mirage Rd LLC, Defendant(s)

Interplead Funds

Interplead Funds

SUBTOTAL

**PAYMENT TOTAL**

Check (Ref #891A 92036116) Tendered

Total Tendered

Change

0.00

07/28/2021

11:57 AM

Cashier

Station AIKO

Audit

37900585

**OFFICIAL RECEIPT**

# OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor  
Travelers Property Casualty Company of America

Receipt No.  
**2021-46797-CCCLK**

Transaction Date  
07/28/2021

Description	Amount Paid
-------------	-------------

On Behalf Of Travelers Property Casualty Company of America

A-19-803425-C

R & K Concrete Cutting Inc, Plaintiff(s) vs. 5550 Painted Mirage Rd LLC, Defendant(s)

Interplead Funds

Interplead Funds

SUBTOTAL

**PAYMENT TOTAL**

Check (Ref #891A92036117) Tendered  
Total Tendered  
Change

0.00

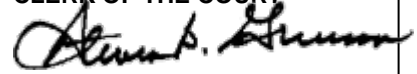
07/28/2021  
11:58 AM

Cashier  
Station AIKO

Audit  
37900588

**OFFICIAL RECEIPT**

## **EXHIBIT 2**



LAW OFFICE OF MITCHELL STIPP  
MITCHELL STIPP, ESQ.  
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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.

CASE NO.: A-19-803425-C

DEPT. NO.: 5

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.

**NOTICE OF AMENDED COMPLAINT  
AND SUMMONS**

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.

Defendant, 5550 PAINTED MIRAGE RD., LLC, a Nevada limited liability company  
("5550 Painted Mirage"), by and through its attorney-of-record, Mitchell D. Stipp, Esq., of the  
Law Office of Mitchell Stipp, hereby files the above-referenced notice.



1 Dated this 21st day of July, 2021.

2 LAW OFFICE OF MITCHELL STIPP

3 */s/ Mitchell Stipp*

4 MITCHELL STIPP, ESQ.

5 Nevada Bar No. 7531

6 1180 N. Town Center Drive

7 Suite 100

8 Las Vegas, Nevada 89144

9 Telephone: 702.602.1242

10 Facsimile: 866.220.5332

11 mstipp@stipplaw.com

12 *Counsel for 5550 Painted Mirage Rd., LLC*



**LAW OFFICE OF MITCHELL STIPP**  
MITCHELL STIPP, ESQ.  
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Facsimile: 866.220.5332  
mstipp@stippplaw.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

**SUMMONS**

**NOTICE! You have been sued. The Court may decide against you without your  
being heard unless you respond within 21 days.**

To the above-named Defendants, MICHAEL POLI, ESQ., an individual, MERLIN LAW  
GROUP, P.A., and POLI, MOON & ZANE, PLLC:

This action is brought by the Plaintiff, which asserts the causes of action against each of  
you as described in the complaint (as amended).

You are hereby summoned and required to serve upon the Plaintiff's attorney, whose

1 physical address is **1180 N. Town Center Dr., Suite 100, Las Vegas, Nevada 89144**, an answer  
2 (or other responsive pleading) to the complaint (as amended), which is hereby served upon you,  
3 **within 21 days** after service of this summons upon you, exclusive of the day of service. (The  
4 State Bar of Nevada, its political subdivisions, agencies, officers, employees, board members,  
5 commission members, and legislatures each has 45 days after service of this summons in which  
6 to file an answer (or other responsive pleading)). If you fail to do so, judgment by default will be  
7 taken against you and for the relief demanded in the complaint (as amended).  
8

9 STEVEN D. GRIERSON  
CLERK OF THE COURT

10  
11 7/21/2021

12 By: 

Deputy Clerk Ofelia David

13 Date

14 Regional Justice Center  
15 200 Lewis Avenue  
Las Vegas, Nevada 89155

16 DATED this 21st day of July, 2021.

17 LAW OFFICE OF MITCHELL STIPP

18 /s/ Mitchell Stipp

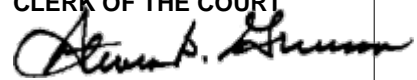
19 \_\_\_\_\_  
20 MITCHELL STIPP, ESQ.  
21 Nevada Bar No. 7531  
1180 N. Town Center Drive  
Suite 100  
Las Vegas, Nevada 89144  
22 Telephone: 702.602.1242  
23 Facsimile: 866.220.5332  
mstipp@stiplaw.com  
24 Counsel for Plaintiff

25 ///

26 ///

27 ///

28



**LAW OFFICE OF MITCHELL STIPP**  
MITCHELL STIPP, ESQ.  
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Las Vegas, Nevada 89144  
Telephone: 702.602.1242  
Facsimile: 866.220.5332  
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

**FIRST 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 in its dispute with Travelers Property Casualty Company of  
4 America (“Travelers”).

5  
6           3.       Plaintiff engaged Merlin Law to perform the services as set forth in the  
7 engagement letter attached hereto as **Exhibit 1** (“Merlin Engagement Letter”).

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

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

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

16          7.       DOES I through X and ROE CORPORATIONS I through X, inclusive, are  
17 individuals or business entities, who or which participated in the acts detailed below, and are  
18 responsible and liable to Plaintiff for their actions. The true names and capacities of those  
19 parties sued as DOES I through X and ROE CORPORATIONS I through X, inclusive, are  
20 presently unknown to Plaintiffs, who therefore sue said parties by such fictitious names. When  
21 the true names and capacities of such parties become known, Plaintiffs will seek leave of Court  
22 to amend their Complaint to replace one or more “Doe” and/or “Roe” parties with the true name,  
23 identity and capacity of each additional party to this action, together with the proper charges and  
24 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 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. A true and accurate copy of Merlin Law's letter is attached hereto as **Exhibit 2**.

13. On April 10, 2020, in response to the letter attached as Exhibit 2, Defendant advised Plaintiff that the lien "does not affect you or the total fee" and acknowledged that there was no deal in place between Merlin Law and the Poli Firm to share fees. A true and accurate copy of the communications are attached hereto as **Exhibit 3**.

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

4           15.     Rule 1.5(c) of the Nevada Rules of Professional Responsibility requires that a  
5 contingent fee agreement be in writing signed by the client.  
6

7           16.     Rule 1.5(e)(2) of the Nevada Rules of Professional Responsibility provides a  
8 division of a fee between lawyers who are not in the same firm may be made only if the client  
9 agrees to the arrangement, including the share each lawyer will receive, and the agreement is  
10 confirmed in writing.

11           17.     There is no written agreement with Plaintiff or the Poli Firm for the provision of  
12 legal services by Defendant through the Poli Firm in exchange for agreed upon compensation.  
13

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

16           19.     Among the many errors committed by Defendant representing Plaintiff in the  
17 Litigation Case, Defendant failed to demand a trial by jury on Plaintiff's claims against Travelers  
18 in accordance with NRCP 38(b).

19           20.     As a result of Defendant's failure to demand a jury trial, Plaintiff's right to have  
20 the issues in dispute with Travelers determined by a jury were waived pursuant to NRCP  
21 38(d)(1).  
22

23           21.     The failure to have the issues between Plaintiff and Travelers decided by a jury  
24 substantially reduced the recovery by Plaintiff from Travelers.

25           22.     Plaintiff and Travelers reached a settlement on or about April 9, 2021 after  
26 mediation, pursuant to which the absence of a trial by jury factored into the amount Travelers  
27 was willing to pay Plaintiff to avoid trial.  
28



1           23.     During the week before the settlement was reached, the Poli Firm demanded that  
2 Plaintiff sign a contingency fee agreement, which purportedly was the same substantively as the  
3 Merlin Engagement Letter. The Poli Firm represented to Plaintiff that the agreement was a  
4 “simple formality” (or “strictly a formality”) and any fee sharing arrangement with Merlin Law  
5 would not be disclosed because it was “highly proprietary in nature.” The Poli Firm further  
6 advised Plaintiff that it did not need Merlin Law to review or approve of any arrangements with  
7 the Poli Firm (despite the fact the Merlin Engagement Letter also contained a 28% contingency).  
8 Attached as **Exhibit 4** are true and accurate copies of emails regarding the matters described in  
9 this Paragraph.  
10

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

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

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

24           27.     Plaintiff did not execute, deliver or otherwise approve of the Poli Closing  
25 Statement.  
26

27           28.     Plaintiff did not approve of costs and expenses purportedly incurred by the Poli  
28 Firm and Merlin Law for which reimbursement by the Poli Firm is demanded.

1           29. As a condition to settlement with Travelers, Defendant demanded that all  
2 settlement proceeds from Travelers be paid to the Poli Firm.

3           30. Travelers refused to pay the settlement proceeds unless the dispute between  
4 Plaintiff and Defendant over payment of the settlement proceeds was resolved.

5           31. Defendant communicated to Travelers that he could not “trust the client” to  
6 receive the settlement proceeds and pay the parties which are owed any portion of the same.  
7 Defendant threatened Travelers with liability if any settlement proceeds were paid to Plaintiff (or  
8 to co-counsel) rather than the Poli Firm. Defendant asserted contrary legal positions to Plaintiff  
9 over the binding nature of settlement and the parties’ obligations thereto. A true and accurate  
10 copy of the communications is attached hereto as **Exhibit 5**.

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

16           33. Plaintiff did not agree to pay the Poli Firm 28% of the settlement proceeds or to  
17 reimburse the Poli Firm for its costs and expenses.

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

22           35. Merlin Law and the Poli Firm are liable for the acts of Defendant pursuant to the  
23 doctrine of respondeat superior. As an employee of Merlin Law and the Poli Firm, Defendant’s  
24  
25  
26  
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1 acts and/or omissions as described in this Company were within the course and scope of his  
2 employment with Merlin Law and/or the Poli Firm.

3  
4 **FIRST CAUSE OF ACTION**  
**(ATTORNEY MALPRACTICE)**

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

7  
8 37. In Nevada, a cause of action for attorney malpractice exists upon proof of the  
9 following elements: (a) the duty of the professional to use such skill, prudence, and diligence as  
10 other members of his profession commonly possess and exercise; (b) the breach of that duty; (c)  
11 a proximate causal connection between the negligent conduct and the resulting injury, and (d)  
12 actual loss or damage resulting from the professional's negligence.

13 38. Defendant had a duty to Plaintiff to use such skill, prudence, and diligence as  
14 other members of the legal profession commonly possess and exercise. Such skill, prudence, and  
15 diligence require attorneys to investigate the nature of their clients claims, demand a jury trial  
16 when a jury trial is more favorable to a bench trial (especially in a case against an insurance  
17 company), refrain from disparaging clients to others (especially while counsel of record), to  
18 follow the court's rules in the Litigation Case on substitution of counsel, and to comply with the  
19 Nevada Rules of Professional Conduct for contingency arrangements and fee sharing.  
20

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

23  
24 40. Defendant is licensed by the State Bar of Nevada to practice law in Nevada.

25 41. Defendant breached his duty to Plaintiff by failing to investigate the nature of  
26 Plaintiff's disputes with Travelers before filing the third-party complaint in the Litigation Case.  
27  
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1 Such investigation would have resulted in a claim to Plaintiff's prior insurer rather than to  
2 Travelers.

3 42. Defendant breached his duty to Plaintiff by failing to demand a trial by jury in the  
4 Litigation Case. Jury trials are preferred generally in cases involving claims against insurers.  
5 Despite learning of his failure to demand a trial by jury early in the Litigation Case, Defendant  
6 failed to take any action (including by motion in the Litigation Case) to remedy his error.  
7

8 43. Defendant breached his duty to Plaintiff by disparaging Plaintiff to Travelers.  
9 Defendant specifically communicated to Travelers that Plaintiff was not trustworthy.

10 44. Defendant breached his duty to Plaintiff by misrepresenting to Plaintiff the rights  
11 and obligations of the parties with respect to substitution of attorneys, settlement with Travelers,  
12 and payment of fees and costs due Merlin Law, the Poli Firm, and third-parties (including  
13 MAB).  
14

15 45. Plaintiff sustained damages proximately caused by Defendant's negligence in  
16 excess of fifteen thousand dollars (\$15,000.00).

17 46. Plaintiff has retained the services of an attorney to initiate this action and  
18 prosecute its cause of action for malpractice; therefore, Plaintiff is entitled to recover its  
19 reasonable attorney's fees and costs.  
20

21 **SECOND CAUSE OF ACTION**  
22 **(Intentional Interference with Contractual Relations)**

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

25 48. In Nevada, a cause of action for intentional interference with contractual relations  
26 exists upon proof of the following elements: (a) a valid and existing contract; (b) Defendant's  
27 knowledge of the contract; (c) intentional acts intended or designed to disrupt the contractual  
28

1 relationship; (d) actual disruption of the contract; and (e) resulting damage.

2 49. Plaintiff entered into a valid and existing agreement with Travelers to settle its  
3 claims against Travelers in the Litigation Case.

4 50. Defendant had knowledge of the agreement with Travelers as the attorney  
5 representing Plaintiff in its claims against Travelers in the Litigation Case.

6 51. Defendant argued to Travelers that settlement between Plaintiff and Travelers was  
7 binding and enforceable despite Plaintiff's initial objection.

8 52. Defendant demanded that Travelers pay settlement proceeds due Plaintiff to the  
9 Poli Firm (over the objection of Plaintiff).

10 53. Defendant threatened Travelers with liability if settlement proceeds were not paid  
11 to the Poli Firm.

12 54. Defendant through the Poli Firm filed a lien for 28% of the settlement proceeds  
13 due from Travelers to Plaintiff and for reimbursement of costs and expenses to which the Poli  
14 Firm was not entitled.

15 55. Defendant through the Poli Firm appeared as counsel for Merlin Law in the  
16 Litigation Case and filed a lien for 28% of the settlement proceeds due from Travelers to  
17 Plaintiff and for reimbursement of costs and expenses to which Merlin Law was not entitled.

18 56. The dispute with Defendant over payment of settlement proceeds caused the  
19 settlement with Travelers not to be consummated in accordance with the terms and conditions  
20 upon which the parties agreed.

21 57. Plaintiff sustained damages as a result of the intentional interference by  
22 Defendant with its settlement agreement with Travelers in excess of fifteen thousand dollars  
23 (\$15,000.00).

24 58. Plaintiff has retained the services of an attorney to initiate this action and  
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1 prosecute its cause of action for intentional interference with contractual relations; therefore,  
2 Plaintiff is entitled to recover its reasonable attorney's fees and costs.

3  
4 **THIRD CAUSE OF ACTION**  
**(Declaratory Relief)**

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

7 60. A justifiable controversy exists between Plaintiff and Defendant, the Poli Firm,  
8 and Merlin Law regarding their respective rights to proceeds from the settlement with Travelers.

9 61. Plaintiff's right to payment from Travelers pursuant to its settlement is a legally  
10 protected right.

11 62. The Poli Firm and Merlin Law have asserted separate claims and liens against  
12 settlement proceeds for compensation which should not together exceed 28% of the settlement  
13 amount plus approved costs and expenses.

14 63. The issue of any fees and costs owed to the Poli Firm and Merlin Law is ripe for  
15 judicial determination.

16 64. Plaintiff asks the court to determine the parties' relative rights to the settlement  
17 proceeds paid by Travelers.

18 65. Plaintiff has retained the services of an attorney to initiate this action and  
19 prosecute its cause of action for declaratory relief; therefore, Plaintiff is entitled to recover its  
20 reasonable attorney's fees and costs.

21 ///

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4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff pray for judgment as follows:

- 6 1. For damages in excess of fifteen thousand dollars (\$15,000.00) with an exact  
7 amount to be proven at trial.
- 8 2. For declaratory relief as described above.
- 9 3. For an award of attorney's fees and costs, as allowed by law or contract;
- 10 4. For a trial by jury on all issues; and
- 11 5. For such other and further relief as the Court may deem just and proper.
- 12

13 DATED this 21st day of July, 2021.

14

15 LAW OFFICE OF MITCHELL STIPP

16 /s/ Mitchell Stipp

17 

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MITCHELL STIPP, ESQ.  
18 Nevada Bar No. 7531  
1180 N. Town Center Drive  
Suite 100  
19 Las Vegas, Nevada 89144  
Telephone: 702.602.1242  
20 Facsimile: 866.220.5332  
mstipp@stiplaw.com  
21 *Counsel for Plaintiff*

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# EXHIBIT 1



# **MERLIN**

**LAW GROUP**

PHOENIX, AZ  
2999 N. 44TH STREET  
SUITE 520  
PHOENIX, AZ 85018  
TELEPHONE: (480) 315-9980  
FAX: (480) 315-9984

## **AMENDED CONTRACT FOR ATTORNEY REPRESENTATION**

This amended contract is entered into so as to correct the name of the relevant client and owner of the subject real property. This amended contract supersedes and replaces that certain contract signed on September 13, 2019 between Merlin Law Group and 2690 St. Rose Parkway, LLC.

We appreciate your confidence in our firm and the opportunity to represent you. Experience has shown that the attorney/client relationship works best when there is a mutual understanding about fees and payment terms. Accordingly, this agreement will explain our contract for legal representation with you. We encourage you to ask any questions you may have or have an independent attorney review this contract before signing.

The undersigned client, 5550 Painted Mirage Rd., LLC ("Client"), agrees to retain and employ MERLIN LAW GROUP, 2999 N. 44<sup>th</sup> Street, Suite 520, Phoenix, Arizona (collectively, "Attorney"), as Client's Attorney, to represent Client for potential claims for damages that occurred to Client's commercial building located at 5550 Painted Mirage Road, Las Vegas, Nevada, against Travelers Property & Casualty Company of America, any affiliates, and any other appropriate parties, for unpaid contract damages and all other appropriate damages or relief, including all extra-contractual or consequential damages and any appropriate punitive damages.

### **I. RESPONSIBILITY TO PAY ATTORNEY'S FEES**

#### **A. Attorney's Fees:**

Client agrees to hire Attorney in this matter on a contingency fee basis. The Client agrees to pay the Attorney by way of contingency fee. The contingency fee will be 28% of all amounts recovered, unless the claim/case settles/resolves within six months of signing this fee agreement, in which case the contingency fee will be reduced to 15%.

Client understands that the contingency fees set forth above are not negotiable. Any monies recovered from the date of this contract forward will be subject to the contingency fees. Client understands that there is no guarantee the monies paid to Client, if any, will completely compensate Client for the loss. Client understands that Attorney's job is to obtain the best possible recovery based on all of the facts and circumstances surrounding the claim.

T2381188.DOC;1

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[www.merlinlawgroup.com](http://www.merlinlawgroup.com)  
Blog: [propertyinsurancelawcoverage.com](http://propertyinsurancelawcoverage.com)

Client gives Attorney a Limited Power Of Attorney for the purpose of negotiating Client's claims, but Client must authorize any final settlement amount. Client further authorizes Attorney to negotiate any settlement checks through Attorney's State Bar Trust Account immediately upon receipt of any settlement check.

Client further agrees not to settle any represented claim in any manner without prior written notification to Attorney.

## **II. RESPONSIBILITY FOR COSTS AND EXPENSES**

### **A. Advanced Costs:**

Client understands and acknowledges that certain costs will be required to be incurred in the prosecution of the claim and any related litigation. Client expressly authorizes Attorney to advance such costs as are reasonable and necessary for the prosecution of this matter.

In the event of recovery, all advanced costs are to be paid from the Client's portion of any recovery, after reduction of the gross recovery by the contingency attorney's fees due. In other words, all advanced costs are repaid out of Client's portion of any recovery. *In the event that no recovery is had, or the recovery is insufficient to fully pay attorney's fees and costs, then Client shall have no further obligation to reimburse Attorney for costs.* As such, costs advanced will become contingent upon recovery.

### **B. Expert and Other Expenses:**

In addition to court costs, deposition fees, service fees, court reporter fees, and other costs of litigation, Client also expressly understands the need for and expressly agrees to the retention of expert witnesses. Such experts may include, but are not necessarily limited to, insurance experts, actuaries, meteorologists, engineers, researchers, economists, accountants, or other persons who will be retained by Attorney to assist in the prosecution of the claims. The expert expenses so advanced will be reimbursed by Client only out of any gross recovery, after calculation and payment of the contingency attorney's fees is made.

### **C. Closing Costs:**

Client understands and acknowledges that certain costs will be incurred in the prosecution of the claim and any related litigation. Client expressly authorizes Attorney to advance such costs as are reasonable and necessary for the prosecution of this matter. In the event of any recovery, such advanced costs are to be paid from the Client's portion of any recovery, after reduction of any gross recovery by the contingency attorney's fees due.



Costs include such things as filing fees, expert fees, administrative expenses, long distance phone calls and other costs normally associated with legal claims or litigation. Costs will only be charged to Client if a recovery is obtained on Client's behalf. In the event that no recovery is had, or the recovery is insufficient to fully pay attorney's fees and costs, then Client shall have no further obligation to reimburse Attorney for costs. As such, costs advanced become contingent upon recovery.

In lieu of specific individual charges for facsimiles, long distance phone calls, computerized research, overnight mailing and copying that occur after costs are gathered for the closing of any settlement or other recovery, Attorney charges a flat \$125.00 for these costs at the end of the case or claim or recovery.

### **III. RIGHT TO CONTROL THE LITIGATION AND SETTLEMENT**

Client authorizes Attorney to bring those actions and causes of actions that Attorney believes, in good faith, should be prosecuted in order to assert all proper claims against any offending party, including punitive damages, as may be applicable. Client retains the right to ultimately decide whether a settlement should be accepted, but agrees not to accept any settlement offer without first conferring with Attorney, and advising Attorney of Client's desire for acceptance.

It is understood that if the above named Client changes residences and/or telephone numbers, that Client will immediately notify the office of Attorney in writing. If such notification is not made, Attorney shall be absolved from further responsibility for legal representation.

### **IV. ATTORNEY'S RIGHT TO WITHDRAW**

Client understands that this Agreement is being entered into without all necessary due diligence on the part of Attorney. For this reason, if at any time the due diligence conducted by Attorney leads Attorney to believe that the claims are not viable, or are not recoverable, then Client understands that Attorney may then withdraw from further representation.

Client will fully cooperate with Attorney in the handling of this case. Even after a lawsuit is filed, Attorney may discover facts that lead Attorney to recommend that the case be dismissed, or that another attorney be hired to handle this case. Client agrees that Attorney may withdraw from this case if at any time Attorney recommends that this case be dismissed and the Client disagrees. Client further agrees that Attorney may withdraw if Client does not cooperate in the investigation or handling of this matter, or if the Rules of Professional Conduct applicable to Attorney permit or require such a withdrawal.

If Attorney decides to withdraw from this case, Attorney will try to protect Client's interests to the extent reasonably possible by giving reasonable notice, allowing Client to obtain another attorney, and giving Client any papers and property in Attorney's possession which belong to Client. Attorney is expressly acknowledged as having no duty to find a replacement attorney in the event Attorney withdraws from this matter.

#### **V. RIGHT TO FIRE ATTORNEY**

Client has the right to fire Attorney at any time, even if Client has no reason. If Client fires Attorney, Client agrees to pay Attorney the reasonable value of Attorney's services and to promptly repay all costs or expenses advanced on behalf of Client in the handling of this matter.

Should there be any disagreement or dispute concerning, arising out of, or relating to (a) any legal services provided or (b) fees or (c) costs or (d) the attorney-client relationship, and in the event that such dispute(s) cannot be resolved between Attorney and Client, both Attorney and Client agree to final and binding arbitration under the procedures of the State Bar of Arizona for resolving such matters. Any other action brought shall be in a court in the State of Arizona, with venue in Maricopa County, and not subject to transfer of venue. Arizona law shall govern this agreement and any disputes arising out of the terms and conditions of this agreement.

#### **VI. WHAT THIS AGREEMENT COVERS**

This Agreement states the entire agreement between Client and Attorney and takes the place of any prior oral or written agreements. The terms of this agreement may be changed only by a separate written agreement signed and dated by Client and Attorney. If a provision of this Agreement is, or may be, held by a court to be invalid, void, superseded or unenforceable, the remaining provisions nevertheless shall survive and continue in full force and effect without being impaired or invalidated in any way. The section headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

#### **VII. THE ATTORNEYS DO NOT GIVE TAX OR INVESTMENT ADVICE**

Attorney makes no representations or guarantees regarding the tax consequences of any recovery which may be obtained on behalf of Client. Accordingly, Client shall obtain independent advice from accountants, tax attorney or investment professionals regarding the tax and investment treatment of any settlement or recovery.

There have been no promises, agreements or guarantees made regarding the outcome of this case or claim. Any outcome or result which might be suggested to you in conversation is merely a possibility and we cannot promise any particular result.



During the course of the representation, Client will be provided with copies of all documents Attorney feels are relevant and related to Client's legal matter. Those copies should be kept as they constitute Client's copy of the file. Copies of the emails that are sent to or received from Attorney should be kept by Client to maintain in the file. At the end of Attorney's engagement, the Attorney, unless otherwise instructed, will return all originals to Client and make available all documents and materials for Client to retrieve. Client should assume that any hard copy of any document not retrieved by the Client within 30 days after the end of the Attorney's engagement may be destroyed and disposed of by Attorney. Digital copies may be destroyed after the files have been closed for five (5) years.

**READ CAREFULLY:**

**THIS IS YOUR CONTRACT; IT PROTECTS BOTH YOU AND YOUR ATTORNEY AND WILL PREVENT MISUNDERSTANDINGS IN THE FUTURE.**


**IF, AFTER HAVING READ THIS CONTRACT YOU DO NOT UNDERSTAND ANY PART OF IT, OR IF IT DOES NOT CONTAIN ALL OF THE AGREEMENTS BETWEEN THE PARTIES PERTAINING THERETO, PLEASE DO NOT SIGN THIS CONTRACT. BY SIGNING BELOW YOU INDICATE THAT YOU HAVE READ THE ABOVE AGREEMENT AND AGREE TO BE BOUND BY THE TERMS OF THE AGREEMENT.**

I have read this Agreement and agree to all of its terms.

5550 Painted Mirage Rd., LLC

  
Mehry Tahery  
Owner

Date: 1/8/20

  
Daniel Tahery  
Owner

Date: 1/8/20

MERLIN LAW GROUP, P.A.

  
Michael N. Poli

Date: 1/6/20

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# EXHIBIT 2

# MERLIN

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LAW GROUP

777 S. Harbour Island Blvd  
Suite 950  
Tampa, FL 33602  
813-229-1000

April 10, 2020

**VIA UPS and EMAIL:**  
**mstipp@stipplaw.com**

Mitchell Stipp  
1180 North Town Center Drive  
Suite 1000  
Las Vegas, NV 89144

Re: **5550 Painted Mirage Rd, LLC**

Dear Mr. Stipp:

Merlin Law Group, P.A. no longer represents 5550 Painted Mirage Rd, LLC regarding the above referenced matter. However, Merlin Law Group, P.A. retains a lien against any and all recoveries in the insurance claim. Please ensure that any checks issued in this matter include Merlin Law Group, P.A. as a payee. A copy of this letter is being sent to Michael Poli of Poli, Moon and Zane.

If you have any questions or concerns about the transition, please call me or my assistant, Catherine Finkenstadt at 813-229-1000.

Sincerely,  
Merlin Law Group

*Craig C. Kubiak, Esq* (Electronically signed)

Craig C. Kubiak, Esquire  
Managing Attorney for Merlin Law Group, P.A.

CCK/cf

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# EXHIBIT 3





Mitchell Stipp &lt;mstipp@stipplaw.com&gt;

**RE: Painted Mirage**

1 message

**Mike Poli** <mpoli@pmzlaw.com>  
To: Mitchell Stipp <mstipp@stipplaw.com>  
Cc: Daniel Taheri <dantaheri@gmail.com>

Fri, Apr 10, 2020 at 5:36 PM

Daniel,

The letter from Merlin is what is called a charging lien and is an issue between my old firm and the new firm. It does not affect you or the total fee. When there is a recovery, if no prior deal has been reached, then we will need to negotiate with the prior firm to allocate the fee equitably. But we are trying to work out a global deal with them on these charging lien issues for not just your case but all of the cases I took to the new firm.

If you have any questions, please give me a call on my mobile.

Thanks.

Mike



**Michael N. Poli**  
Poli, Moon & Zane, PLLC  
602-857-8160 (direct)  
602-320-4999 (mobile)  
602-857-7333 (fax)  
2999 N. 44<sup>th</sup> St. Ste 325  
Phoenix, AZ 85018  
[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)

**From:** Mitchell Stipp <mstipp@stipplaw.com>  
**Sent:** Friday, April 10, 2020 4:45 PM  
**To:** Mike Poli <mpoli@pmzlaw.com>  
**Cc:** Daniel Taheri <dantaheri@gmail.com>  
**Subject:** Fwd: Painted Mirage

Mike—

See below and attached. Advise us how you plan to address.

Mitchell Stipp

Law Office of Mitchell Stipp

(O) 702.602.1242 | (M) 702.378.1907 | mstipp@stipplaw.com

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

Plaintiff's Complaint Page 21 of 40

Website: [www.stipplaw.com](http://www.stipplaw.com)

----- Forwarded message -----

**From:** Catherine Finkenstadt <[CFinkenstadt@merlinlawgroup.com](mailto:CFinkenstadt@merlinlawgroup.com)>

**Date:** Apr 10, 2020, 4:31 PM -0700

**To:** [mstipp@stipplaw.com](mailto:mstipp@stipplaw.com) <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)>

**Subject:** Painted Mirage

Hi Mr. Stipp,

Please see the attached correspondence. Will follow via ups, as well.

Thank you,

*Pursuant to our Governor's COVID-19 order, our firm is doing its part to protect ourselves and others by working remotely.  
Please allow our office additional time to respond to emails and calls during this time.  
Thank you in advance for your patience and understanding.*



*The Policyholder's Advocate*®

Website | Property Blog | Condo Blog

Connect with us:    

Catherine Finkenstadt

Legal Assistant to Craig Kubiak

Merlin Law Group

[777 S. Harbour Island Blvd.](#)  
Suite 950  
Tampa, [FL 33602](#)

Tel: (813) 229-1000

Fax: (813) 229-3692

Privilege and Confidentiality Notice:

The information contained in this e-mail and any attachments may be legally privileged and confidential. If you are not the intended recipient or the employee or agent responsible for delivering the transmittal to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify the sender and permanently delete the e-mail and any attachment immediately. You should not retain, copy or use this e-mail or any attachment for any purpose, nor disclose all or any part of the content to any person. Thank you.

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# EXHIBIT 4

Mitchell Stipp <mstipp@stippalaw.com>

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**Re: Poli, Moon & Zane, PLLC Retention Agreement**

1 message

**Mitchell Stipp** <mstipp@stippalaw.com>

Wed, Apr 7, 2021 at 9:55 AM

To: Tom Carstarphen <tcarstarphen@pmzlaw.com>

Cc: Jeff Zane <jzane@pmzlaw.com>

Thanks, Tom.

We cannot sign the engagement letter as drafted. I will check in with MLG and advise of next steps.



[www.stippalaw.com](http://www.stippalaw.com)

**Mitchell D. Stipp**

**Law Office of Mitchell Stipp, P.C.**  
**1180 N. Town Center Drive, Suite 100**  
**Las Vegas, Nevada 89144**

**T: 702.602.1242 | M: 702.378.1907**

**E: [mstipp@stippalaw.com](mailto:mstipp@stippalaw.com)**

On Wed, Apr 7, 2021 at 9:23 AM Tom Carstarphen <tcarstarphen@pmzlaw.com> wrote:

Dear Mr. Stipp:

Since I work directly under attorney Jeff Zane at the Texas office of PMZ, I tend to speak to his arrangements. Since Mike Poli was never part of Callagy, then you are correct on that point. My apologies for the confusion.

Yes, this case went with Mike Poli after his departure from MLG. Jeff is now assisting on this AZ case, and it was only when I was asked to assist with various aspects of this case did I spot the PMZ fee agreement issue.

There is no need for you or your office to waste time composing a letter of engagement to affirm PMZ as a current counsel of record. As for arrangements with MLG, I'm sure that such was memorialized by Mike, but such a document would be highly proprietary in nature.

Let me reiterate that the PMZ agreement is strictly a formality. There is no stacking of attorney fees/expenses, and any fee-sharing with MLG is negotiated on a case-by-case basis, no matter who the lead attorney of record may be.

All I ask is that Dr. Taheri simply sign the PMZ agreement and send it to me as soon as possible.

**Tom Carstarphen**  
**Paralegal**  
**Poli, Moon & Zane, PLLC**  
**Cell: 512-921-0457**

---

**From:** Mitchell Stipp <mstipp@stippalaw.com>

**Sent:** Wednesday, April 7, 2021 11:06 AM

**To:** Tom Carstarphen <tcarstarphen@pmzlaw.com>

**Cc:** Jeff Zane <jzane@pmzlaw.com>; Mike Poli <mpoli@pmzlaw.com>

**Subject:** Re: Poli, Moon & Zane, PLLC Retention Agreement

Tom--

Thank you for your reply. I was under the impression Mike Poli was the originating attorney at MLG. We have no knowledge of any transition of this file to Callagy Law. Attached is the letter from MLG to me claiming a lien and requesting payment of any recovery be made to MLG. Attached is Mike's response to my inquiry. It does not appear any arrangement was "worked out" before the file ended up with your firm. I will reach out to MLG directly and find out the status.

If you want an engagement letter to memorialize your firm's existing representation, we can do that. However, any matters of compensation will have to refer to and incorporate the terms of MLG's engagement. As far as Callagy Law's involvement, I am not quite sure how to address that yet (assuming your facts are accurate).

**Mitchell D. Stipp**

**Law Office of Mitchell Stipp, P.C.**  
**1180 N. Town Center Drive, Suite 100**

Human Resources Complaint Page 24 of 40



**Las Vegas, Nevada 89144**

**T: 702.602.1242 | M: 702.378.1907**

**E: [mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)**

[www.stipplaw.com](http://www.stipplaw.com)

On Wed, Apr 7, 2021 at 8:48 AM Tom Carstarphen <[tcarstarphen@pmzlaw.com](mailto:tcarstarphen@pmzlaw.com)> wrote:

Dear Mr. Stipp:

Thank you for your response.

Yes, Dr. Taheri/Painted Mirage originally signed with Merlin Law Group ("MLG") and that agreement carried over with Mr. Zane's transition to Callagy Law, P.C. ("CL") in early 2019, and later to Poli, Moon & Zane, PLLC ("PMZ") in early 2020.

To address your points:

1. There is absolutely no stacking of attorney fees/expenses indicated and such an action is wholly unethical on its face. **Attorney fees and expenses are deducted only one time from the settlement payment** and Mr. Zane regularly negotiates the percentages paid to MLG and CL out of that single fee/expense pool.
2. As I stated to Dr. Taheri, this PMZ agreement is a *simple formality* acknowledging that the current law firm of record is PMZ, not MLG or CL. There is no subterfuge intended and we frequently request/receive new PMZ agreements on a regular basis.
3. There is no need for an "acknowledgement" or "notice of lien" from MLG. Mr. Zane worked out a lien agreement with MLG when he left that firm, and the same lien arrangement has been applied on every single case that Mr. Zane brought with him to CL and ultimately to PMZ.

At this point, I humbly and sincerely ask that you advise Dr. Taheri to sign off/email the executed agreement to me for the file.

Should you or Dr. Taheri wish to discuss this matter further, please feel free to call me at 512-921-0457 before 6:00 p.m. CST.

**Tom Carstarphen**  
**Paralegal**  
**Poli, Moon & Zane, PLLC**  
**Cell: 512-921-0457**

---

**From:** Mitchell Stipp <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)>

**Sent:** Tuesday, April 6, 2021 6:25 PM

**To:** Tom Carstarphen <[tcarstarphen@pmzlaw.com](mailto:tcarstarphen@pmzlaw.com)>

**Cc:** Mehry Tahery <[mehrytahery@gmail.com](mailto:mehrytahery@gmail.com)>; Jeff Zane <[jzane@pmzlaw.com](mailto:jzane@pmzlaw.com)>; Daniel Taheri <[dantaheri@gmail.com](mailto:dantaheri@gmail.com)>

**Subject:** Re: Poli, Moon & Zane, PLLC Retention Agreement

Tom: I received a copy of your firm's "new" engagement letter. I was traveling last week. As I understand it, the client signed an engagement letter with Merlin Law Group. Merlin Law Group also provided notice of a lien. What is the status of your fee sharing agreement with Merlin Law Group? My client cannot sign a new engagement letter which provides the same recovery (or arguably the same) fees to two (2) different firms. Any new engagement letter must include Merlin Law Group's acknowledgment and resolution of its attorney lien.

Let me know if you would like to discuss further.



**Mitchell D. Stipp**

**Law Office of Mitchell Stipp, P.C.**  
**1180 N. Town Center Drive, Suite 100**  
**Las Vegas, Nevada 89144**

**T: 702.602.1242 | M: 702.378.1907**

**E: [mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)**

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On Tue, Apr 6, 2021 at 3:00 PM Daniel Taheri <[dantaheri@gmail.com](mailto:dantaheri@gmail.com)> wrote:

tom, mitch is reviewing the agreement. it's upto him to approve or disapprove.

i wont sign anything else otherwise.

dan

On Tue, Apr 6, 2021 at 2:16 PM Tom Carstarphen <[tcarstarphen@pmzlaw.com](mailto:tcarstarphen@pmzlaw.com)> wrote:

Dear Dr. Taheri:

Tom Carstarphen from Poli, Moon & Zane, PLLC and following up on the PMZ retention agreement sent to you last week. You said you would have your other counsel, Mr. Stipp, look at it, but there has been no comment or communication about it. Please call me if possible today before 6:00 CST or on Wednesday morning to discuss this matter.

On the same day that I spoke with you last week, I also called Mr. Stipp's office about the PMZ retention agreement and left a message with his answering service, but have not heard back from him. If you're extremely busy, please speak to Mr. Stipp and ask him to call me asap at 512-921-0457 to discuss any concerns.

The terms of the PMZ retention agreement are the same as the Merlin Legal Group agreement which you signed over two years ago; only the names have changed. This new PMZ retention agreement is simply a formality and I respect your wishes in having Mr. Stipp review it, but we have several upcoming actions on your case, and as a paralegal for your other counsel, I simply want to put this matter to rest for all concerned.

**Tom Carstarphen**  
**Paralegal**  
**Poli, Moon & Zane, PLLC**  
**Cell: 512-921-0457**

# EXHIBIT 5

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Mitchell Stipp <mstipp@stipplaw.com>

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## Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

---

Mitchell Stipp <mstipp@stipplaw.com>

Thu, May 6, 2021 at 5:53 PM

To: Mike Poli <mpoli@pmzlaw.com>

Cc: "Gorlin, Lee H." <lgorlin@fgppr.com>, Jeff Zane <jzane@pmzlaw.com>, Lawrence Moon <lmoon@pmzlaw.com>, Linda Gundelach <lgundelach@pmzlaw.com>, "Michael W. Duffy (mduffy@merlinlawgroup.com)" <mduffy@merlinlawgroup.com>, "Samberg, Amy" <Amy.Samberg@clydeco.us>

Enough.



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On May 6, 2021, 5:40 PM -0700, Mike Poli <mpoli@pmzlaw.com>, wrote:

You are making false statements in the context of a spurious malpractice claim and I'm allowed to respond with the truth.

As for trying to kill the settlement, the only one doing that is you. I believe there is a binding deal and I expect the Judge will rule that way.

<image001.png>

**Michael N. Poli**

<image002.png>

Managing Attorney

**P : 602-857-8160 | M : 602-320-4999**

**F : 602-857-7333 | E : mpoli@pmzlaw.com**

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



---

**From:** Mitchell Stipp <mstipp@stipplaw.com>

**Sent:** Thursday, May 6, 2021 5:36 PM

**To:** Mike Poli <mpoli@pmzlaw.com>

**Cc:** Gorlin, Lee H. <lgorlin@fgppr.com>; Jeff Zane <jzane@pmzlaw.com>; Lawrence Moon <lmoon@pmzlaw.com>; Linda Gundelach <lgundelach@pmzlaw.com>; Michael W. Duffy (mduffy@merlinlawgroup.com) <mduffy@merlinlawgroup.com>; Samberg, Amy <Amy.Samberg@clydeco.us>

**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

That is correct. You do not represent 5550 Painted Mirage LLC. Yet, you are asserting claims inconsistent with your client's position. Why? If there is a settlement, we will address your claim and lien. As a plaintiff's lawyer, attacking the client and my character is beyond the pale given your conduct in this case. You can address any concerns you have regarding settlement or payment with the court. What more do you need? Your self-serving actions have killed any settlement with Travelers.

We have asserted a malpractice claim because of your failure to file a jury demand. That does not waive my client's privilege generally (including on settlement). Any waiver would exist only to defend the claim. That is not the case here.

Please do not communicate with Travelers or its representatives regarding this case. You have confirmed that you have been terminated. Any further communications should be through counsel appointed by your carrier or through the court.

Plaintiff's Complaint Page 28 of 40



 **Mitchell D. Stipp**

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On Thu, May 6, 2021 at 5:22 PM Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)> wrote:

I no longer represent Painted Mirage. And given the spurious allegations of malpractice, that is an implicit waiver of the privilege and I'm allowed to respond to falsehoods by telling the truth.

And I'm fine addressing issues with the court.

<image001.png>

**Michael N. Poli**

<image002.png>

Managing Attorney

**P :** 602-857-8160 | **M :** 602-320-4999

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

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



**From:** Mitchell Stipp <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)>

**Sent:** Thursday, May 6, 2021 5:20 PM

**To:** Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)>

**Cc:** Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)>; Jeff Zane <[jzane@pmzlaw.com](mailto:jzane@pmzlaw.com)>; Lawrence Moon <[lmooon@pmzlaw.com](mailto:lmooon@pmzlaw.com)>; Linda Gundelach <[lgundelach@pmzlaw.com](mailto:lgundelach@pmzlaw.com)>; Michael W. Duffy (<[mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com)> <[mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>

**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

Mike-- Let Travelers take whatever steps are necessary if it wants to enforce the term sheet. Again, you should consult counsel before continuing to take positions contrary to your client's interest. You have been terminated. You have filed a lien. You do not have any right to demand payment be made to your firm. At this point, I am done dealing with you on this. We will address your claim with the court.

 **Mitchell D. Stipp**

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On Thu, May 6, 2021 at 4:57 PM Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)> wrote:

Mitch,

The idea that the Term Sheet is not binding is ludicrous. In fact, this demonstrates why I was not comfortable with you holding any money. You will apparently take any position, no matter how strained, for this client.

Mike

<image001.png>

**Michael N. Poli**

<image002.png>

Managing Attorney

P : 602-857-8160 | M : 602-320-4999  
F : 602-857-7333 | E : [mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)  
A : 2999 N. 44th St., Ste 325, Phoenix, AZ 85018



**From:** Mitchell Stipp <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)>

**Sent:** Thursday, May 6, 2021 4:49 PM

**To:** Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)>

**Cc:** Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)>; Jeff Zane <[jzane@pmzlaw.com](mailto:jzane@pmzlaw.com)>; Lawrence Moon <[lmoon@pmzlaw.com](mailto:lmoon@pmzlaw.com)>; Linda Gundelach <[lgundelach@pmzlaw.com](mailto:lgundelach@pmzlaw.com)>; Michael W. Duffy <[mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com)> <[mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>

**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

The term sheet does not confirm your understanding. We do not need to extend discovery if the deal was final. If final, we do not need a separate document (because there is a release) and payment instructions are clear. Payment is NOT required to be made to Mike Poli's firm. Further, my client does not have a fee agreement with Mike Poli's firm. The fact that Travelers has not paid when required, has asked for a separate settlement and release agreement, and refuses to pay now (unless my client resolves the dispute with Mike Poli) suggests to me that there is no deal. Mike threatened Travelers with liability. Travelers caved. I am not sure what more to say but Travelers should reconsider its present position. If Travelers really wants to file a motion to enforce, it has every right to do that. However, my client will not sign a separate document, be responsible for your client's fees, or otherwise concede to Mike Poli's demands out of threats to disclose confidential settlement negotiations.

 **Mitchell D. Stipp**

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**E:** [mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)

On Thu, May 6, 2021 at 4:37 PM Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)> wrote:

Mitch, I'll address the rest shortly, but to respond to your comments re : paragraph 5. The "ongoing settlement discussions" referenced were the ones between Painted Mirage and R&K. Painted mirage specifically asked for two weeks before we notified anyone of settlement so as not to affect Painted Mirage's negotiation with R&K. Travelers obliged.

1. Paragraph 5 of the term sheet contemplates an extension of the discovery deadlines due to "ongoing settlement discussions." Why would we need to do that if settlement was binding?

**Lee H. Gorlin**

**FG FORAN GLENNON**

2200 Paseo Verde Parkway, Suite 280  
Henderson, Nevada 89052  
**Office:** 702.827.1514  
**Mobile:** 702.300.9476  
**Email:** [lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)


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On May 6, 2021, at 4:05 PM, Mitchell Stipp <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)> wrote:

Thank you for your reply. My client's comments are below in red. I will work with Mike Poli on a solution. If we do not have one in seven days, we will address Traveler's motion.

 **Mitchell D. Stipp**

  
[www.stipplaw.com](http://www.stipplaw.com)

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

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**E:** [mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)

On Thu, May 6, 2021 at 2:57 PM Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)> wrote:

Mike and Mitchell,

After reviewing all of your emails on this matter and conferring with my client, Travelers responds as follows:

1. Travelers agrees with Mike in that the Settlement agreed to at mediation is binding and complete as executed by Mitchell on behalf of Painted Mirage and by myself on behalf of Travelers. While the executed release is a necessary formality, it is not what binds the parties because the parties became bound upon execution of the Settlement Term Sheet. **We disagree. Paragraph 5 of the term sheet contemplates an extension of the discovery deadlines due to "ongoing settlement discussions." Why would**

we need to do that if settlement was binding? If the settlement is really binding, then there is no need for a separate settlement and release agreement. The term sheet does not contemplate a separate document, and the term sheet already has a release.

2. The release must reflect the terms previously agreed upon in the Settlement Term Sheet. Among those terms is that "Travelers will include Metropolitan Adjustment Bureau, the Merlin Law Group, and R&K Concrete Cutting on any settlement payment checks absent written confirmation, by email or otherwise, from each that they may be excluded from the settlement payment." The inclusion of these terms in the Settlement Term Sheet means that they are material terms to the settlement agreement. **No separate document is required if there is a binding settlement.**
3. Mitchell's most recent redlines removing this already agreed upon requirement cannot be accepted without written confirmation, by email or otherwise, from each of the affected parties. As per the Settlement Term Sheet, each must be included on the checks without written confirmation to the contrary. **This issue is moot because if there is a settlement, there is no further documentation required. Again, my client's position is there is no settlement.**
4. At the present time, Mitchell is counsel of record for Painted Mirage only in its capacity as the defendant to R&K's mechanic's lien whereas Poli, Moon & Zane is counsel of record for the third-party claim against Travelers. This means, that as it stands, only Poli, Moon, and Zane have the capacity to dismiss the third-party claim against Travelers, unless and until Mitchell Stipp appears as counsel of record for the third-party Plaintiffs. **A notice of termination of Mike Poli's firm has been filed. My office is sole counsel of record for 5550 Painted Mirage Rd., LLC**
5. It certainly appears that Poli, Moon, and Zane is asserting a lien against the settlement proceeds. In fact, it filed notice of its lien with the Court this afternoon. Travelers takes no position as to the lien's validity and/or effectiveness. However, Travelers has no intention of putting itself in a position where a potential lienholder is left out in the cold. **Travelers should not have a position on Mike Poli's lien. Further, no one has suggested that a potential claimant to any settlement proceeds (assuming there is a settlement) will not be paid.**

As a result, Travelers offers both of you seven days to figure out to whom you want to payment made out to (noting again that absent written confirmation to the contrary, any payment must include "Metropolitan Adjustment Bureau, the Merlin Law Group, and R&K Concrete Cutting") and where you want the payment sent. **My firm is more than willing to work with Mike Poli to resolve any dispute.**

If you are unable to come to a consensus within this timeframe, Travelers will be forced to file a Motion to Enforce Settlement, which could include depositing the settlement funds with the Court. Any such Motion would include as exhibits both the executed Settlement Term Sheet and the entirety of the email communications regarding the difficulty in finalizing the release. Travelers will also seek and receive its fees and costs associated with this process. Travelers would prefer to handle this matter professionally and courteously without the court's involvement. **Travelers can file a motion to enforce the settlement and my client will address the same. The term sheet is certainly admissible for that purpose. The remainder of the communications are part of "on-going settlement negotiations" referenced in paragraph 5 of the term sheet is not. You do not need more than the term sheet to file a motion.**

**Lee H. Gorlin**

**FG FORAN GLENNON**

2200 Paseo Verde Parkway, Suite 280  
Henderson, Nevada 89052  
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**Mobile:** 702.300.9476  
**Email:** lgorlin@fgppr.com

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London | Denver | Las Vegas | Phoenix

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**From:** Mitchell Stipp <mstipp@stiplaw.com>

**Sent:** Wednesday, May 5, 2021 7:04 PM

**To:** Mike Poli <mpoli@pmzlaw.com>

**Cc:** Gorlin, Lee H. <lgorlin@fgppr.com>; Jeff Zane <jzane@pmzlaw.com>; Lawrence Moon <lmoon@pmzlaw.com>; Linda

Plaintiff's Complaint Page 32 of 40

Gundelach <[lgundelach@pmzlaw.com](mailto:lgundelach@pmzlaw.com)>; Michael W. Duffy ([mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com)) <[mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>

**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

Termination has nothing to do with your lien rights.

On Wed, May 5, 2021 at 7:02 PM Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)> wrote:

We have a lien on the proceeds for our fee. Terminating us after we have achieved the settlement does not change that.

<image001.png>

**Michael N. Poli**

<image002.png>

Managing Attorney

<image003.gif> **P** : 602-857-8160 | **M** : 602-320-4999  
**F** : 602-857-7333 | **E** : [mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)  
**A** : 2999 N. 44th St., Ste 325, Phoenix, AZ 85018

<image004.png> <image005.png>

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**From:** Mitchell Stipp <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)>

**Sent:** Wednesday, May 5, 2021 7:00 PM

**To:** Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)>

**Cc:** Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)>; Jeff Zane <[jzane@pmzlaw.com](mailto:jzane@pmzlaw.com)>; Lawrence Moon <[lmooon@pmzlaw.com](mailto:lmooon@pmzlaw.com)>;

Linda Gundelach <[lgundelach@pmzlaw.com](mailto:lgundelach@pmzlaw.com)>; Michael W. Duffy ([mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com))

<[mduffy@merlinlawgroup.com](mailto:mduffy@merlinlawgroup.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>

**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

Proceeds don't need to be interpled. There is no deal unless Travelers and my client sign a separate release. Going forward, I will deal with Travelers. I would ask them to deal with me. Your position on settlement is not relevant. Since you and your firm have been terminated, I would ask that you respect the decision of my client on these matters.

On Wed, May 5, 2021 at 6:41 PM Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)> wrote:

Again, the settlement is binding and complete as of the execution of the term sheet (attached). There is simply a dispute on how the money is to be allocated and that is why there is an interpleader procedure under Nevada law.

As for negative statements re Painted Mirage, I don't think I've done that. I've simply responded to untrue statements by you. I'm allowed to do that.

<image001.png>

<image003.gif> **Michael N. Poli**

<image002.png>

Managing Attorney

**P** : 602-857-8160 | **M** : 602-320-4999  
**F** : 602-857-7333 | **E** : [mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)

Plaintiff's Complaint Page 33 of 40

<image004.png> <image005.png>

**From:** Mitchell Stipp

<mstipp@stippaw.com>

**Sent:** Wednesday, May 5, 2021 6:32 PM

**To:** Mike Poli <mpoli@pmzlaw.com>

**Cc:** Gorlin, Lee H. <lgorlin@fgppr.com>; Samberg, Amy <Amy.Samberg@clydeco.us>; Lawrence Moon <lmoon@pmzlaw.com>; Jeff Zane <jzane@pmzlaw.com>; Linda Gundelach <lgundelach@pmzlaw.com>; Michael W. Duffy <mduffy@merlinlawgroup.com> <mduffy@merlinlawgroup.com>

**Subject:** RE: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

Mike-

I'm not sure why you continue to make statements that harm [5550 Painted Mirage](#). There is no settlement if there is no separate release. I'm fairly certain Travelers won't close without that.

I understand you have a favorable view of your work. By the way, you would not needed some of these experts or to "find" the manifest loss rule if you had sued the right carrier.

Let's take this offline without Travelers.

<image006.jpg> <image006.jpg> **Mitchell D. Stipp**

[www.stippaw.com](http://www.stippaw.com)

**Law Office of Mitchell Stipp, P.C.  
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**T: 702.602.1242 | M: 702.378.1907**

**E: [mstipp@stippaw.com](mailto:mstipp@stippaw.com)**

On May 5, 2021, 6:21 PM -0700, Mike Poli <mpoli@pmzlaw.com>, wrote:

Mitch,

I can't control what you or Mr. Taheri might do, but any claim would be totally spurious. We got a great result for Painted Mirage. We knew the right experts to hire, we advanced tens of thousands of dollars in costs (including expert costs) on behalf of the client, we found the manifestation rule as adopted in Nevada, and we negotiated a very positive result. But apparently none of that matters if Painted Mirage can try to engineer a way to get a few extra dollars.

In any event, we will advise our carrier that what we view as a spurious claim has been asserted.

In my view, if money is to be disbursed, it needs to be held by a neutral party, and that is not you. As for the settlement, we have done nothing to interfere with it. In fact, the settlement is a binding deal as of the mediation. We just do not agree that you are a proper party to hold the disputed money.

In fact, there is a common procedure for a situation like this, namely, the money could be the subject of an interpleader action. And Painted Mirage (or we) could then seek a judicial declaration on the spurious malpractice claim in such a proceeding.

Mike

<image001.png>

**Michael N. Poli**

Managing Attorney

<image002.png>

<image003.gif> **P** : 602-857-8160 | **M** : 602-320-4999  
**F** : 602-857-7333 | **E** : [mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)  
**A** : 2999 N. 44th St., Ste 325, Phoenix, AZ 85018

<image004.png> <image005.png>

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**From:** Mitchell Stipp <[mstipp@stippplaw.com](mailto:mstipp@stippplaw.com)>  
**Sent:** Wednesday, May 5, 2021 5:52 PM  
**To:** Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)>  
**Cc:** Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>; Lawrence Moon <[lmooon@pmzlaw.com](mailto:lmooon@pmzlaw.com)>; Jeff Zane <[jzane@pmzlaw.com](mailto:jzane@pmzlaw.com)>; Linda Gundelach <[lgundelach@pmzlaw.com](mailto:lgundelach@pmzlaw.com)>  
**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

No money is being diverted. Is your firm going to sue Travelers (which cannot be liable). Mike-- you are making the situation worse. I have re-attached the term sheet (which I signed). The term sheet does NOT require payment to be made to your firm. Why? Because we have a dispute (which I preferred to keep quiet).

Mike--We can work this out in the way I suggested (or you can notify your carrier of my client's claim for malpractice). As you know, you failed to make a jury demand in this case (among other issues), and that failure resulted in a drastically different settlement dynamic (as confirmed by the mediator). If your demand to receive the proceeds causes the settlement not to be consummated (which now seems likely), we will need to find substitute counsel to replace your firm and take this case to trial. At this point, your firm is terminated and you no longer have any right to take any action on behalf of the client. You can file a lien, and we can deal with your claim.

The client has provided indemnification to Travelers (including for claims by Mike's firm). Payment is due by Traveler's after the client executes a separate release, and the third-party complaint is required to be dismissed only after payment is received. The client does not agree that payment be made to your firm and will not move forward unless funds are paid as now proposed.

<image006.jpg> <image006.jpg> **Mitchell D. Stipp**

[www.stippplaw.com](http://www.stippplaw.com)

**Law Office of Mitchell Stipp, P.C.**  
**1180 N. Town Center Drive, Suite 100**  
**Las Vegas, Nevada 89144**

**T:** 702.602.1242 | **M:** 702.378.1907

**E:** [mstipp@stippplaw.com](mailto:mstipp@stippplaw.com)

On Wed, May 5, 2021 at 5:20 PM Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)> wrote:

As I said, I don't agree with this and Travelers will be potentially responsible if money is diverted.

<image001.png>

**Michael N. Poli**

Managing Attorney

<image002.png>

<image003.gif> **P** : 602-857-8160 | **M** : 602-320-4999  
**F** : 602-857-7333 | **E** : mpoli@pmzlaw.com  
**A** : 2999 N. 44th St., Ste 325, Phoenix, AZ 85018

<image004.png> <image005.png>

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**From:** Mitchell Stipp <mstipp@stippplaw.com>  
**Sent:** Wednesday, May 5, 2021 5:19 PM  
**To:** Mike Poli <mpoli@pmzlaw.com>  
**Cc:** Gorlin, Lee H. <lgorlin@fgppr.com>; Samberg, Amy <Amy.Samberg@clydeco.us>; Lawrence Moon <lmoon@pmzlaw.com>; Jeff Zane <jzane@pmzlaw.com>; Linda Gundelach <lgundelach@pmzlaw.com>  
**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

I respectfully disagree with Mike. The revised settlement requires that my firm hold the proceeds for the benefit of all named beneficiaries. If the checks were issued as previously contemplated, Mike's firm could not deposit them without endorsements from these parties (including our mutual client). While I do not want to get into the specific issues with Travelers included, I am disappointed by Mike's view of my ability to handle the proceeds given the language of the agreement and open disparagement of our mutual client.

Lee-- Do you have any issues with the revised draft? If not, please remove Mike's approval of the form of the settlement agreement and replace with mine. I will get the document signed.

<image006.jpg> <image006.jpg> **Mitchell D. Stipp**

[www.stippplaw.com](http://www.stippplaw.com)

**Law Office  
of Mitchell  
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1180 N.  
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89144**

**T:** 702.602.1242 | **M:** 702.378.  
1907

**E:** mstipp@stippplaw.com

On Tue, May 4, 2021 at 9:11 PM Mike Poli <mpoli@pmzlaw.com> wrote:

Lee and Mitch,

I'm preparing for trial next week and I have very little time, but suffice it to say I will not agree with what Mitch has proposed. Mitch seems to do whatever this particular client tells him to and I do not believe he can act in



a neutral capacity to hold the money. And I certainly cannot trust the client. If the money is held by a truly neutral party, I'd potentially agree with that.

Mike

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**From:** Mitchell Stipp <[mstipp@stippplaw.com](mailto:mstipp@stippplaw.com)>  
**Sent:** Tuesday, May 4, 2021 6:46:59 PM  
**To:** Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)>  
**Cc:** Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>  
**Subject:** Re: Settlement and Release Agreement (Painted Mirage \_ Travelers)(1743963.1)

Lee--

There are some fee issues that need to be resolved by the client with Mike Poli's firm and his predecessor firm and with the public adjuster. For that reason, the client will not approve payment as previously provided. I have revised the settlement agreement to provide for payment to my firm and for the same to be held in trust for the benefit of the parties initially contemplated to be named in the joint checks. The client has provided Traveler's a release and indemnification for any claims by these third-parties as part of the settlement. I understand Mike is preparing for trial and these issues will not likely be resolved this week. To prevent further delay, please let me know if these tracked changes are acceptable to Travelers. I expect Mike (who is copied) will not be happy, but the money will be held as represented. I will work on behalf of the client to pay any of these claims.

If Mike will not sign off on the settlement agreement, I will (so we can close out the case). Mike-- if you want to discuss this further, let me know.

<image006.jpg> <image006.jpg> **Mitchell D. Stipp**

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**E:** [mstipp@stippplaw.com](mailto:mstipp@stippplaw.com)

On Tue, May 4, 2021 at 12:18 PM Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)> wrote:

Noted. Thanks!

**Lee H. Gorlin**

FGFORAN GLENNON

2200 Paseo Verde Parkway, Suite  
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On May 4, 2021, at 12:12 PM, Mitchell Stipp <mstipp@stipplaw.com> wrote:

I am waiting for client's approval. Thanks.

<image006.jpg> <image006.jpg> **Mitchell D. Stipp**

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**E:** mstipp@stipplaw.com

On Tue, May 4, 2021 at 12:11 PM Mike Poli <mpoli@pmzlzaw.com> wrote:

I'm fine with the language.

<image001.png>

**Michael N. Poli**

<image002.png>

Managing Attorney

<image003.gif>

**P :** 602-857-8160 | **M :** 602-320-4999  
**F :** 602-857-7333 | **E :** mpoli@pmzlzaw.com  
**A :** 2999 N. 44th St., Ste 325, Phoenix, AZ  
85018

<image004.png> <image005.png>

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**From:** Gorlin, Lee H. <[lgorlin@fgppr.com](mailto:lgorlin@fgppr.com)>  
**Sent:** Tuesday, May 4, 2021 11:56 AM  
**To:** Mitchell Stipp <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)>  
**Cc:** Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>  
**Subject:** RE: Settlement and Release Agreement (Painted Mirage \_ Travelers)  
(1743963.1)

Good morning all,

Just circling back to see if we are all set with the settlement and release language or if there is anything else we still need to work out. I'm available all afternoon if you have any questions. Thanks!

**Lee H. Gorlin**

FG FORAN GLENNON

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**From:** Gorlin, Lee H.  
**Sent:** Friday, April 30, 2021 8:49 AM  
**To:** Mitchell Stipp <[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)>  
**Cc:** Mike Poli <[mpoli@pmzlaw.com](mailto:mpoli@pmzlaw.com)>; Samberg, Amy <[Amy.Samberg@clydeco.us](mailto:Amy.Samberg@clydeco.us)>  
**Subject:** RE: Settlement and Release Agreement (Painted Mirage \_ Travelers)  
(1743963.1)

Mitchell and Mike,

Please see the attached redline draft. There was only one substantive proposed change that Travelers asked me to reject (as noted by a comment herein). The proposed added language is redundant of Paragraph III(2), making the change unnecessary. We are ok with your other redlines (and added a few more small redlines of our own).

Please let us know if this works for you.

Thanks!

**Lee H. Gorlin**

Plaintiff's Complaint Page 39 of 40

--

 **Mitchell D. Stipp**

  
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