

**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
Sep 09 2022 04:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 83413

District Court Case: A-19-803425-C

RESPONSE TO MOTION TO DISMISS

LAW OFFICE OF MITCHELL STIPP
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

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant, 5550 PAINTED MIRAGE RD., LLC, A NEVADA LIMITED LIABILITY COMPANY (“Appellant”), has applied to the district court for the release of settlement proceeds paid by Respondent, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA (“Respondent”). See Exhibit 1 attached. Respondent filed a notice of non-opposition to Appellant’s request. See Exhibit 2. Under these circumstances, Appellant does not believe continued pursuit of this appeal is in its best interests (given the cost and expense and the strength/weaknesses of Appellant’s positions on the issues). The district court’s decision to order settlement funds be deposited with the clerk of the court was one of the issues which caused Appellant to appeal the district court’s order. Therefore, Appellant requests that the appeal be dismissed (with each party to bear its own attorney's fees and costs).

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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 9th day of September, 2022, I filed the foregoing **Response to Motion**, using the court's electronic filing system.

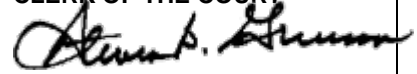
Notice of the filing was made upon acceptance by the Nevada Supreme Court to the following e-service participants:

CLYDE & CO US LLP
AMY M. SAMBERG (NV Bar No. 10212)
amy.samberg@clydeco.us
LEE H. GORLIN (NV Bar No. 13879)
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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



LAW OFFICE OF MITCHELL STIPP
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mstipp@stippplaw.com
Counsel for Defendant, 5550 Painted Mirage Rd., LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendant.

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

Third-Party Plaintiff,

vs.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a Minnesota
corporation

Third-Party Defendant.

CASE NO.: A-19-803425-C

DEPT. NO.: 5

**MOTION FOR PARTIAL RELEASE OF
SETTLEMENT PROCEEDS DEPOSITED
WITH THE CLERK OF THE COURT BY
TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA**

HEARING REQUESTED

**NOTICE OF APPEARANCE VIA
BLUEJEANS AT HEARING**

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 motion to release in part settlement

proceeds paid by Travelers Property Casualty Company of America (“Travelers”) to the clerk of the court.

This motion is based on the papers and pleadings in this action, the memorandum of points and authorities that follows, any exhibits attached or filed separately herewith, and the argument of counsel at the hearing.

Dated this 26th day of August, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

MITCHELL STIPP, ESQ.
Nevada Bar No. 7531
1180 N. Town Center Drive
Suite 100
Las Vegas, Nevada 89144
Telephone: 702.602.1242
Facsimile: 866.220.5332
mstipp@stiplaw.com
Counsel for 5550 Painted Mirage Rd., LLC

DECLARATION OF MITCHELL STIPP

The undersigned, Mitchell Stipp, certifies to the court as follows:

1. I am counsel-of-record for 5550 Painted Mirage Rd., LLC in the above referenced case.

2. I submit the above-titled declaration in support of my client’s motion, which has been filed concurrently herewith. I have personal knowledge of the facts contained therein (unless otherwise qualified by my information and belief or such knowledge is based on the record in this case), I am competent to testify thereto, and such facts are true and accurate to the best of my knowledge and belief.

Dated this 26th day of August, 2022.

/s/ Mitchell Stipp

Mitchell Stipp, Attorney for 5550 Painted Mirage Rd., LLC

MEMORANDUM OF POINTS AND AUTHORITIES

1. Facts.

5550 Painted Mirage entered into a term sheet with Travelers during private mediation of the parties' disputes before the district court (which primarily concerned the failure of Travelers to cover damages to 5550 Painted Mirage's 5-Story Class A Office Building from wind/rainstorm). See Exhibit A attached hereto (redacted to protect settlement amount per request of Travelers). After execution and delivery of the term sheet, Travelers requested that 5550 Painted Mirage negotiate, execute and deliver a settlement and release agreement. 5550 Painted Mirage 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, 5550 Painted Mirage 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 5550 Painted Mirage accept the settlement amount Travelers was willing to pay because he believed 5550 Painted Mirage would not fare better at the bench trial in the case. In Mr. Poli's view, the representative of the 5550 Painted Mirage, Dr. Daniel Taheri, was not likeable or trustworthy. Dr. Taheri believed Mr. Poli's view was the result of racism (i.e., based on stereotype of Middle Eastern Jews). Based on Mr. Poli's assessment of trial prospects, 5550 Painted Mirage 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. 5550 Painted Mirage objected (specifically because (i) 5550 Painted Mirage did not have a new contingency fee agreement with Poli, Moon & Zane, PLLC, (ii) 5550 Painted Mirage did not approve costs and expenses requested for reimbursement by Mr. Poli, and (iii) 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 5550 Painted Mirage and a malpractice case filed against him. 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

1 settlement proceeds with the court. Mr. Poli filed a motion to adjudicate the attorney's liens and
2 asserted that the settlement with Travelers was enforceable (despite 5550 Painted Mirage's
3 contention otherwise). After a brief hearing, the court (via Senior Judge Crockett) granted the
4 motion by Travelers. Dkt. No. 60. Travelers and Mr. Poli prepared the order from the hearing,
5 and it was entered by the court over 5550 Painted Mirage's objections (including findings never
6 made by Judge Crockett at the hearing).

7 5550 Painted Mirage has appealed the order. See Skt. No. 65. Per the order, Travelers
8 deposited the settlement proceeds with the clerk of the court. See Dkt. No. 62. A portion of the
9 funds on deposit was designated to pay Plaintiff, R&K Development, and the public insurance
10 adjuster, Metropolitan Adjustment Bureau ("MAB"). See **Exhibit A** (paragraph 7).

11 The dispute between 5550 Painted Mirage and Plaintiff was resolved. See Dkt. No. 43.
12 The stipulation and order was filed after the parties entered into a settlement/release agreement.
13 See **Exhibit B** attached hereto ("Settlement Agreement"). Pursuant to Section 2 of the Settlement
14 Agreement, 5550 Painted Mirage agreed to pay Plaintiff \$48,000.00 in exchange for mutual
15 releases, dismissal of the case, and recordation by Plaintiff of a discharge and/or release of its Lis
16 Pendens. 5550 Painted Mirage paid the money to Plaintiff, the parties entered into the stipulation
17 and order (Dkt. No. 43), and Plaintiff recorded the release/discharge of the Lis Pendens. See
18 **Exhibit C**.

19 Subject to approval of the court and an order to pay MAB from funds on deposit with the
20 clerk of the court, 5550 Painted Mirage reached a settlement to pay MAB \$10,000.00. See **Exhibit**
21 **D**. Mr. Poli's firms still maintain a lien on the settlement proceeds on deposit in an amount not to
22 exceed 28%. Dkt. No. 60 (page 5, lines 1-5). Therefore, all settlement proceeds should be released
23 except for 28%.

24 **2. 5550 Painted Mirage Requests Release of Funds on Deposit Except 28%.**

25
26 5550 Painted Mirage respectfully requests an order to release the settlement proceeds on
27 the deposit with the clerk of the court except the amount equal to 28% subject to the lien of Mr.
28 Poli's firms. While a perfected appeal divests the district court of jurisdiction as to issues that are

1 pending on appeal, "the district court retains jurisdiction to enter orders on matters that are
2 collateral to and independent from the appealed order, i.e., matters that in no way affect the
3 appeal's merits." Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006). In
4 addition, the Nevada Supreme Court has adopted a procedure whereby, if a party to an appeal
5 believes a basis exists to alter, vacate, or otherwise modify or change an order or judgment
6 challenged on appeal after an appeal from that order or judgment has been perfected in this court,
7 the party can seek to have the district court certify its intent to grant the requested relief, and
8 thereafter the party may move the Nevada Supreme Court to remand the matter to the district court
9 for the entry of an order granting the requested relief. Huneycutt v. Huneycutt, 94 Nev. 79, 575
10 P.2d 585 (1978). Here, there is no basis to retain the settlement proceeds on deposit with the clerk
of the court because *all claims have been resolved except for the lien of Mr. Poli's firms*.

11 As for the remand procedure, if the district court is inclined to grant the relief requested by
12 5550 Painted Mirage, then it may certify its intent to do so. Mack-Manley, 122 Nev. at 855, 138
13 P.3d at 530; Huneycutt, 94 Nev. at 81, 575 P.2d at 586. At that point, it would be appropriate for
14 5550 Painted Mirage to file a motion (to which the district court's certification of its intent to grant
15 relief is attached) with the Nevada Supreme Court seeking a remand to the district court for entry
16 of an order releasing all funds except 28%. Mack-Manley, 122 Nev. at 855-56, 138 P.3d at 530;
17 Huneycutt, 94 Nev. at 81, 575 P.2d at 586.

18 For the reasons set forth above, 5550 Painted Mirage requests that the district court certify
19 its intention to grant the relief requested.

20 Dated this 26th day of August, 2022

21 LAW OFFICE OF MITCHELL STIPP

22 /s/ Mitchell Stipp

23

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mstipp@stiplaw.com
Counsel for 5550 Painted Mirage Rd., LLC

EXHIBIT A

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 B

SETTLEMENT AGREEMENT & MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Settlement Agreement”) is entered on April 30, 2021 (“Effective Date”), by and between R & K CONCRETE CUTTING, INC. dba R & K DEVELOPMENT (“R&K”) and 5550 PAINTED MIRAGE RD., LLC (“Painted Mirage”). R&K and Painted Mirage are referred to in this Settlement Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Painted Mirage is the owner of real property located at 5550 Painted Mirage Rd., Las Vegas, NV 89149 and more particularly described as Clark County Assessor Parcel No. 125-34-116-004 (the “Property”).

B. R&K entered into one or more agreements (collectively, the “Agreement”) with Painted Mirage wherein R&K agreed to provide certain labor, materials, and other construction and remediation services (the “Work”) to the Property, and Painted Mirage agreed to pay R&K for the same (subject to coverage by Painted Mirage’s insurance carrier).

C. R&K allegedly performed the Work, but a payment dispute arose between the Parties when Painted Mirage’s insurance carrier refused to cover the amounts demanded by R&K.

D. On or about August 12, 2019, R&K recorded a Notice of Lien against the Property as Instrument No. 20190812-0000722 (the “Original Lien”) in the amount of \$43,010.58.

E. On or about September 9, 2019, R&K recorded its Amended and/or Restated Notice of Lien (the “Amended Lien,” and together with the Original Lien, the “Liens”)¹ as Instrument No. 20190906-0001932. The amounts due subject to the Liens or any other amounts for which a lien could have been filed under NRS 108 shall be referred to herein as the “Lienable Amount.”

F. On or about October 10, 2019, R&K filed its Mechanic’s Lien Foreclosure Complaint (“Complaint”) in the Eighth Judicial District Court, Clark County, Nevada as Case No. A-19-803425-C (the “Action”).

G. On or about October 11, 2019, R&K recorded a Notice of Lis Pendens against the Property as Instrument No. 20191011-0000992 (the “Lis Pendens”).

H. On or about November 18, 2019, Painted Mirage filed its Answer and Counterclaim alleging various claims against R&K (the “Counterclaims”).

I. The Parties desire and intend to fully settle and release all claims, rights and demands they may now possess or hereafter acquire with respect to, arising out of or related to the Property, the Agreement, the Work, the Liens, the Lienable Amount, the Action (including the Complaint and Counterclaims), the Lis Pendens (collectively, the “Dispute”) in accordance with the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing factual recitals, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to the terms, provisions and covenants contained below, the Parties agree as follows:

¹ The Original Lien and the Amended Lien are collectively referred to herein as the “Liens.”

AGREEMENT

1. **Recitals.** The foregoing recitals are incorporated herein, as if set forth in full.

2. **Payment Terms and Settlement Documents.**

a. Within fourteen (14) calendar days of the execution of this Settlement Agreement, Painted Mirage shall deliver to Peel Brimley LLP at 3333 E. Serene Ave., Suite 200, Henderson, NV 89074, a Cashier's Check made payable to R&K in the amount of \$48,000.00 (the "Settlement Payment"), which R&K shall deposit in its bank within three (3) business days.

b. Within three (3) business days of the Settlement Payment being made available to R&K by its bank:

- i. R&K shall record a discharge and/or release of the Liens;
- ii. R&K shall provide an executed Unconditional Waiver and Release to Painted Mirage (including unconditional waivers and releases from each subcontractor, laborer, or materialman which provided any portion of the Work);
- iii. R&K shall record a discharge and/or release of the Lis Pendens; and
- iv. The Parties shall submit to the Court a Stipulation and Order to Dismiss the claims asserted by the Parties against each other in the Action with Prejudice.

3. **Mutual Releases.** Subject to the provisions in Section 2 of this Settlement Agreement being satisfied, the Parties (and each of their trustees, assigns, partnerships, business entities, affiliates, agents, directors, officers, shareholders, employees, representatives, partners, members, owners, predecessors, and successors and each of them, as well as their insurance carriers and surety carriers), shall have fully released, waived and discharged each other, from and against any and all claims, actions, causes of action, demands, rights, agreements, promises, warranties, guarantees, liabilities, losses, damages, costs and expenses, of every nature and character, description and amount, known or unknown, without limitation or exception, whether based on theories of contract, breach of contract, breach of warranty, breach of the covenant of good faith and fair dealing, tort, violation of statute or ordinance, fraud, conversion, or any other theory of liability or declaration of rights (the "Claims"), arising from or in any way related to the Dispute (the "Release").

The Parties acknowledge that they may hereafter discover claims or facts now unknown or unsuspected from those which the Parties now know or believe to be true with respect to the Dispute and/or any other items contained in this Settlement Agreement. Nevertheless, subject to the provisions in Sections 2 and 5 herein, by way of this Settlement Agreement the Parties intend to fully, finally, and forever waive, discharge and release any and all Claims even those that may be unknown as of the Effective Date of this Settlement Agreement as provided in this Section 3. This Settlement Agreement is intended to be final and binding regardless of any claims of misrepresentations, of promises made without the intention of performance, of concealment of facts, of mistake of fact or law or of any other circumstances.

4. **No Admission of Liability.** This Settlement Agreement is intended as a compromise of disputed claims. This Settlement Agreement and compliance with its terms shall not be construed as an

admission of any liability, misconduct, or wrongdoing whatsoever, or of any violation of any order, law, statute, duty, or contract whatsoever as to any of the Parties to this Settlement Agreement.

5. **Non-Disparagement.** The Parties agree not to engage at any time in any form of conduct or make any statements or representations, or direct any other person or entity to engage in any conduct or make any statements or representations, that disparage, criticize or otherwise impair the reputation of a party, its affiliates and subsidiaries and their respective past and present officers, directors, stockholders, partners, members, agents and employees.

6. **Non-Disclosure.** The Parties agree not to disclose, directly or indirectly, the terms of this Settlement Agreement except: (1) as may be required by law (including to Painted Mirage's insurance carrier); (2) as required to effect execution and enforcement of this Settlement Agreement; and (3) as to the attorneys, accountants, and financial advisors of the Parties.

7. **Additional Representations & Warranties.** The Parties hereby acknowledge, covenant and agree that as of the date of this Settlement Agreement, (i) the Parties have not sold, assigned or transferred any part or portion of the Claims, (ii) other than those claims that are the subject of the Action, they have not filed, nor will they file any other complaints, claims, administrative charges or lawsuits pertaining or related to the Dispute, (iii) they have not made a general assignment for the benefit of creditors, (iv) filed any voluntary petition in bankruptcy, nor will they do so within at least 90 days of the date the Settlement Payment is made, or (v) suffered the filing of an involuntary petition in bankruptcy.

8. **Time of Essence.** The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

9. **Entire Agreement.** This Settlement Agreement sets forth the entire understanding between the Parties in connection with the subject matter discussed herein and may not be modified except by an instrument in writing signed by all Parties.

10. **Construction.** This Settlement Agreement has been jointly prepared by all Parties hereto. The Parties and their respective advisors believe that this Settlement Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor or against any Party.

11. **Attorney Representation.** In negotiation, preparation and execution of this Settlement Agreement, the Parties hereby acknowledge that each Party has been represented by counsel, that each Party has had an opportunity to consult with an attorney of its own choosing prior to the execution of this Settlement Agreement, and has been advised that it is in its best interests to do so. The Parties have read this Settlement Agreement in its entirety and fully understand the terms and provisions contained herein. The Parties execute this Settlement Agreement freely and voluntarily and accept the terms, conditions and provisions of this Settlement Agreement, and state that the execution by each of them of this Settlement Agreement is free from any coercion whatsoever.

12. **Governing Law.** This Settlement Agreement is intended to be performed in the State of Nevada, and the laws of Nevada shall govern its interpretation and effect. The Parties hereto consent to the exclusive jurisdiction of any Federal or State court located in the County of Clark, State of Nevada, for any action commenced hereunder.

13. **Severability.** If any term or provision of this Settlement Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Settlement Agreement will not be affected thereby, and each remaining term and provision of this Settlement Agreement will be valid and be enforced to the fullest extent permitted by law.

14. **Prevailing Party.** In the event of the bringing of any action or suit by a Party hereto because of any breach of any of the covenants, agreements or provisions arising out of this Settlement Agreement, then in that event, the prevailing Party shall be entitled to recover all costs and expenses of the action or suit, reasonable attorneys' fees, witness fees and any other professional fees resulting therefrom.

15. **Counterparts; Facsimile Signatures.** This Settlement Agreement may be executed in one or more counterparts, each which shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties. The Parties agree that facsimile or electronic signatures will be treated in all manner and respects as a binding and original document, and the signature of any Party shall be considered for these purposes as an original signature.

16. **Successors and Assigns.** This Settlement Agreement is binding upon and inures to the benefit of the successors, assigns, and nominees of the Parties hereto.

17. **Titles and Headings.** Titles and headings of Sections of this Settlement Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Settlement Agreement.

18. **Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural as the identity of the person or persons may require.

19. **Further Documents.** Each Party agrees to perform any further acts and to execute and deliver any further documents reasonably necessary or proper to carry out the intent of this Settlement Agreement.

20. **Acknowledgment.** The Parties acknowledge and agree that they were supplied a copy of this Settlement Agreement, that they or their authorized representative has carefully read and understands the Settlement Agreement, that they have been advised as to the content of this Settlement Agreement by counsel of their own choice, and that they voluntarily accept the terms and conditions of this Settlement Agreement.

21. **Authority.** The Parties, and each of them, represent and warrant that each Party hereto holds the requisite power and authority to enter into this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the Effective Date.

**R & K CONCRETE CUTTING, INC. dba
R & K DEVELOPMENT**

5550 PAINTED MIRAGE RD., LLC

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

DocuSigned by:
Daniel Taheri
D428D0AA509B486...
Daniel Taheri
Authorized Signatory

14. **Prevailing Party.** In the event of the bringing of any action or suit by a Party hereto because of any breach of any of the covenants, agreements or provisions arising out of this Settlement Agreement, then in that event, the prevailing Party shall be entitled to recover all costs and expenses of the action or suit, reasonable attorneys' fees, witness fees and any other professional fees resulting therefrom.

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R & K CONCRETE CUTTING, INC. dba
R & K DEVELOPMENT

5550 PAINTED MIRAGE RD., LLC

By:
Name:
Its:

Donald L. Pike II
Donald L. Pike II
President

By:
Name:
Its:

EXHIBIT C

Mitchell Stipp <mstipp@stipplaw.com>

RE: FW: FW: FW: Potential Mediation - MAB adv. Painted Mirage

1 message

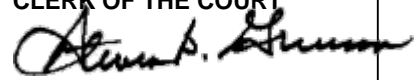
William Schuller <wschuller@litigatorlaw.com>

Sat, Jun 4, 2022 at 10:05 AM

To: Mitchell Stipp <mstipp@stipplaw.com>

Metropolitan Adjustment Bureau ("MAB") accepts **\$10,000** to settle any and all amounts MAB alleges [5550 Painted Mirage Rd.](#), LLC owes MAB pursuant to the public insurance adjuster contract(s) the parties entered into (claim nos. FEY1031 and/or FEY6085) and as set forth in MAB Invoice #9866-19-B3 (dated July 12, 2021). Please make the settlement check payable to "Litigator Law IOLTA" and send it to my firm: Litigator Law, [11830 Tevare Lane #1062, Las Vegas, NV 89138](#).

EXHIBIT 2



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 Third Party Defendant
Travelers Property Casualty Company
of America*

DISTRICT COURT

CLARK COUNTY, NEVADA

R&K CONCRETE CUTTING, INC.	Case No. A-19-803425-C
Plaintiff,	Dept. No. ,V
v.	
5550 PAINTED MIRAGE RD., LLC,	TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA'S NON- OPPOSITION TO MOTION FOR PARTIAL RELEASE OF SETTLEMENT PROCEEDS DEPOSITED WITH THE CLERK OF THE COURT
Defendant.	
5550 PAINTED MIRAGE RD., LLC,	HEARING DATE: October 4, 2021 HEARING TIME: 9:00 a.m.
Third-Party Plaintiff,	
v.	NOTICE OF APPEARANCE VIA BLUEJEANS
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,	
Third-Party Defendant.	

Third-Party Defendant Travelers Casualty Company of America ("Travelers"), by and through its counsel of record, the law firm of Clyde & Co US LLP, hereby submits its Non-Opposition to Defendant 5550 Painted Mirage Rd., LLC's ("Painted Mirage's") Motion For Partial Release of Settlement Proceeds Deposited With The Clerk Of The Court.

The Settlement reached between Painted Mirage and Travelers on April 9, 2021 is a valid, binding, and final settlement between the parties. *See* July 20, 2021 Order Granting *inter alia* Travelers' Motion to Enforce Settlement (the "Order"). The amount paid in that settlement, which as per its binding terms is to remain confidential, was deposited with the Court on July 28, 2021. As such, Travelers has no issue with the Court's disbursement of the amounts deposited pursuant to

1 the Order, which expressly addresses the interests of the lienholders identified in Painted Mirage's
2 Motion for Partial Release.¹

3 However, Travelers files this Non-Opposition to address Painted Mirage's invitation to this
4 Court to certify to the Nevada Supreme Court the district court's intention to change the Order and
5 to have the matter remanded, in order for the district court to disburse the deposited settlement
6 funds.² Painted Mirage is not asking the Court to alter, vacate, or otherwise modify the Order.
7 Rather, it is asking the Court to disburse funds pursuant to the Order. A remand is not necessary.

8 Travelers submits that the Court, if it is so inclined, can disburse settlement funds without
9 certifying to the Supreme Court that the district court intends to modify its prior order and without
10 asking the Supreme Court to remand the appeal. *See Mack-Manley v. Manley*, 122 Nev. 849, 855,
11 138 P.3d 525, 529-30 (2006) ("the district court retains jurisdiction to enter orders on matters that
12 are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the
13 appeal's merits."). In fact, this Court retains jurisdiction to enforce the Order, even while it is on
14 appeal. *Klabacka v. Nelson*, 133 Nev. 164, 182, 394 P.3d 940, 954 (2017). Neither the amount of
15 the settlement nor the apportionment thereof is being appealed before the Supreme Court. If it was,
16 Painted Mirage would not be asking for its purported portion of the settlement funds. Travelers
17 agrees with Painted Mirage's citation to *Mack-Manley* that this Court retains jurisdiction sufficient
18 to determine whether any portion of the deposited funds can be allocated to Painted Mirage at this
19 time.

20 *Huneycutt's* rule regarding remand does not apply here. *Huneycutt v. Huneycutt*, 94 Nev.
21 79, 81, 575 P.2d 585, 586 (1978), (disapproved of by *Foster v. Dingwall*, 126 Nev. 49, 228 P.3d
22 453 (2010)). In *Huneycutt*, the district court motion was a Rule 60(b) motion for relief from
23

24 ¹ Travelers notes that the Order states "in no event will [Merlin and PMZ's] combined fees exceed
25 the single 28% contingency fee plus Merlin's and/or PMZ's expenses incurred in prosecuting
26 Painted Mirage's third-party claims." Order at 5:1-5. Travelers takes no position as to how the
27 Court should allocate any funds pursuant to the terms provided in the Order but would be remiss if
28 it did not bring the issue of expenses to the Court's attention.

² Nothing in this Non-Opposition to the Motion for Partial Release of Settlement Proceeds shall be
construed as Travelers accepting or admitting the accuracy of any specific fact stated in Painted
Mirage's Motion.

1 judgment and a Rule 59(a) motion for new trial. *Id.*; *see also Foster* (seeking a remand to allow the
2 district court to address a Rule 60(b) motion for relief from a judgment). The *Foster* Court
3 reaffirmed that remand is only appropriate where the request is to “alter, vacate, or otherwise modify
4 or change an order.” 126 Nev. at 52, 228 P.3d at 455. Painted Mirage is not asking this Court for
5 a new trial or relief from the Order. Rather, Painted Mirage is asking this Court to disburse funds
6 pursuant to the Order. Disbursing the funds pursuant to the Order is akin to enforcing the Order,
7 which this Court retains jurisdiction to do. *Klabacka*, 133 Nev. at 182, 394 P.3d at 954. Therefore,
8 this Court already has jurisdiction to adjudicate Painted Mirage’s instant request. As such, certifying
9 to the Supreme Court that the district court intends to modify its Order and to ask the Supreme Court
10 for a remand would be “unnecessary and improper.” *See, Huneycutt*, 94 Nev. at 80, 575 P.2d at
11 586.

12 Because Travelers’ obligations have been satisfied upon its deposit of the settlement funds,
13 and because Painted Mirage has moved pursuant to the Order as written, Travelers has no claim or
14 issue with this Court’s disbursement of funds pursuant to the Order. Therefore, Travelers does not
15 oppose Painted Mirage’s request for partial disbursement of funds. However, because this Court
16 already has the authority to grant or deny Painted Mirage’s request, as it is not being asked to change
17 the Order that is the subject of the appeal whatsoever, it is neither necessary nor appropriate for this
18 Court to ask the Supreme Court to remand its case. Travelers respectfully submits that there is no
19 need to overcomplicate this request by asking the Supreme Court for a remand. Otherwise,
20 Travelers has no opposition to Painted Mirage’s request for partial release of funds.

21 Dated: September 7, 2022

CLYDE & CO US LLP

22 By: /s/ Lee H. Gorlin

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

1 **CERTIFICATE OF SERVICE**

2 As an employee of Clyde & Co US LLP, I certify that a copy of the foregoing **TRAVELERS**
3 **PROPERTY CASUALTY COMPANY OF AMERICA'S NON-OPPOSITION TO MOTION**
4 **FOR PARTIAL RELEASE OF SETTLEMENT PROCEEDS DEPOSITED WITH THE**
5 **CLERK OF THE COURT** was served by the method indicated:

6 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set
7 forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed
8 transmission record is attached to the file copy of this document(s).

9 ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage
10 thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth
11 below.

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

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

16 Michael N. Poli
17 Poli, Moon, & Zane, PLLC
18 mpoli@pmzlaw.com
19

20 Dated: September 7, 2022

21 /s/ Gina Brouse
22 An employee of Clyde & Co US LLP
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