

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNITED SERVICES AUTOMOBILE
ASSOCIATION, an Unincorporated
Association;

Petitioner,

v.

EIGHTH JUDICIAL DISTRICT COURT FOR
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF CLARK; THE HONORABLE
NADIA KRALL, DISTRICT COURT JUDGE,

Respondents,

and

JOHN ROBERTS

Real Party in Interest.

Supreme Court No. ~~20-00000~~
Electronically Filed
Aug 11 2021 02:43 p.m.
District Court Case No. ~~20-00000~~-C
Elizabeth A. Brown
Clerk of Supreme Court

PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

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NRAP 26.1 DISCLOSURE

Undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1) Petitioner UNITED SERVICES AUTOMOBILE ASSOCIATION (“USAA”) is a reciprocal interinsurance exchange domiciled in Texas and is an unincorporated association. USAA has no parent corporation and is not a publicly traded company.

2) USAA is represented by the undersigned counsel of record for the claims alleged against it in the Complaint(s) filed in this action by John Roberts

DATED this 10th day of August, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Priscilla L. O’Briant
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JURISDICTIONAL STATEMENT

This Court has jurisdiction to issue a writ of mandamus pursuant to NRS 34.150, *et seq.*, NRS 34.320, *et. seq.*, NRAP 21, and Nev. Const. art. VI, § 4.

ROUTING STATEMENT

Pursuant to NRAP 21(a)(1), this matter falls within one of the categories presumptively assigned to the Nevada Court of Appeals pursuant to NRAP 17(b) as it involves a pretrial challenge to a discovery order.

DATED this 10th day of August, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Priscilla L. O'Briant
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PETITION FOR WRIT OF MANDAMUS

I. INTRODUCTION

This action arises from a claim by USAA insured Real Party in Interest, John Roberts (“Roberts”) for damages arising from a May 9, 2014 automobile accident that occurred in Las Vegas. Petitioner’s Appendix (“PA.”), Vol. I, No. 3, 0011-0016.

In the course of discovery, Roberts served written discovery on USAA to which USAA objected in part on the basis of relevance and proportionality. PA, Vol. I, Nos. 5, 6, 7, 8, 9 and 10, 0017-184. USAA also objected to the production of confidential information without a protective order but Plaintiff refused to enter a confidentiality agreement. PA, Vol. I, No. 6, 0060-0101. Plaintiff thereafter filed a *Motion to Compel Defendant’s Request for Production Responses* and *Motion to Compel Defendant’s Responses to Interrogatories and Requests for Admission* (the “motions”). PA, Vol. I, Nos. 11 and 12, 0185-0232. Defendant opposed the motions. PA, Vol. II, Nos. 13 and 14, 0233-0264. After a hearing on the motions, the Discovery Commissioner found that the lawsuit involved claims of breach of contract and extra-contractual insurance claims and that some of the material sought was proprietary and confidential in nature. PA, Vol. II, Nos. 16 and 17, 0273-0279. The Discovery Commissioner’s Report and Recommendations (“DCCR”) granted in part and denied in part the motions. PA, Vol. II, No. 17,

0275-0279. On April 29, 2021, USAA filed an objection (“Objection”) to portions of the DCCR. PA, Vol. II, No. 18, 0280-0301. On May 12, 2021, the District Court entered an order affirming and adopting the DCCR. PA, Vol. II, No. 19, 0302-0309. The Order was entered prior to any opposition by Roberts to Petitioner’s Objection, without a hearing, and did not include any analysis of how the disputed discovery was relevant and proportional, given the claims and defenses in the litigation. PA, Vol. II, No. 20, 0310-0311.

Accordingly, circumstances necessitate the filing of this writ to clarify important issues of law and to right the injustice involved in requiring Petitioners to participate in discovery that is not relevant to the claims and defenses involved in this litigation and proportional to the needs of the case.

II. RELIEF SOUGHT

Pursuant to Nev. Const. art. VI, § 4, NRS 34.150, *et seq.* or NRS 34.320, *et seq.*, and NRAP 21, Petitioner requests that this Court issue a Writ of Mandamus and/or Writ of Prohibition instructing Respondent, the Eighth Judicial District Court of the State of Nevada and the Honorable Judge Krall to:

1. Vacate the May 12, 2021 Order affirming the DCCR as it relates to document requests 2, 7, 9, 15, 16, 28, 32, 36, and 39; and
2. Vacate the May 12, 2021 Order affirming the DCCR as it relates to Interrogatory numbers 12, 13, and 14.

3. Enter findings as to the relevance of the disputed discovery to the parties' claims and defenses and whether the disputed discovery is necessary for Roberts to prove his claims.
4. Enter findings as to the proportionality of the disputed discovery given: 1) the importance of the issues at stake in the action, 2) the amount in controversy, 3) the parties' relative access to relevant information, 4) the parties' resources, 5) the importance of the discovery in resolving the issues, and 6) whether the burden or expense of the proposed discovery outweighs its likely benefit.

III. ISSUES PRESENTED

1. Whether the District Court abused its discretion when it failed to analyze relevance in light of the revisions to NRCP 26(b)(1) and make findings related to relevance in affirming the DCCR Order granting in part Roberts' motions to compel?
2. Whether the District Court abused its discretion when it failed to analyze proportionality in light of the revisions to NRCP 26(b)(1) and make findings related to proportionality in affirming the DCCR Order granting in part Roberts' motions to compel?
3. Whether the failure of the District Court to hold a hearing or issue findings on the above constitutes an abuse of discretion?

IV. STATEMENT OF FACTS

On May 9, 2014, Plaintiff was traveling southbound on Nellis Blvd. in the number one left turn lane entering the intersection on a green light. PA, Vol. I, No. 3, 0012, ¶ 10. A vehicle driven by Oscar Zazueta-Espinoza (the “tortfeasor”) was traveling west on Russell Road in the number 2 travel lane approaching the intersection of Nellis on a red traffic signal. PA, Vol. I, No. 3, 0012, ¶ 11. The tortfeasor failed to stop and continued traveling into the intersection where the front of his vehicle struck the left side of Robert’s vehicle. PA, Vol. I, No. 3, 0012, ¶ 12. The traffic accident report indicates moderate damage to the left side of Roberts’ vehicle. PA, Vol. I, No. 2, 0008. Roberts was transported from the scene of the accident to Sunrise Hospital. PA, Vol. I, No. 2, 0008.

On the date of the reported loss, Plaintiff was insured under a policy of insurance with USAA, Policy No. 00562 55 57U 7101 3. PA, Vol. I, No. 1, 0002. Robert’s USAA policy includes UIM limits of \$300,000 per person/\$500,000 per occurrence with \$10,000 in medical payments benefits. PA, Vol. I, No. 1, 0002.

Plaintiff made a claim under his USAA automobile policy for underinsured motorists (“UM”) and medical payments benefits for injuries claimed sustained in the May 9, 2017 MVA. PA, Vol. I, No. 3, 0012, ¶¶ 16-17. USAA investigated the claim and evaluated the claim for an amount less than the full policy and offered to

settle the claim. PA, Vol. I, No. 3, 0012, ¶ 18. Plaintiff disputed USAA's claim evaluation and filed the instant action on March 8, 2019. PA, Vol. I, No. 3, 0011.

Plaintiff's complaint alleges that he "made a valid covered claim under his USAA insurance policy." PA, Vol. I, No. 3, 0013, ¶ 25. The Complaint further alleges that "USAA refused to pay monies owed under the policy." PA, Vol. I, No. 3, 0013, ¶ 26. The complaint further alleges that Plaintiff "sustained damages as a result of USAA's refusal to pay monies owed under the policy." PA, Vol. I, No. 3, 0013, ¶ 27.

The complaint alleges claims against USAA for 1) Breach of Contract; (2) Breach of the Implied Duty of Good Faith and Fair Dealing - Tortious and 3) Tortious Breach of the Implied Duty of Good Faith and Fair Dealing. PA, Vol. I, No. 3, 0011-0016. Within the claims for tortious bad faith claims handling, Roberts alleges upon information and belief:

- 1) that USAA failed to acknowledge and act reasonably promptly upon communications with respect to claims arising under Plaintiff's insurance policy in violation of NRS 686A.310(1)(b). PA, Vol. I, No. 3, 0015, ¶ 50;
- 2) that USAA failed to affirm or deny coverage of claims within a reasonable time after Plaintiff completed and submitted proof of loss requirements, a violation of NRS 686A.310(1)(d). PA, Vol. I, No. 3, 0015, ¶ 51;
- 3) that USAA failed to effectuate prompt, fair and equitable settlement of claims in which liability of USAA became reasonably clear, a violation of NRS 686A.310(1)(e). PA, Vol. I, No. 3, 0015, ¶ 52;
- 4) that USAA failed to settle Plaintiff's claims promptly, where liability has become clear, under Plaintiff's portion of the insurance policy coverage in order

to influence settlement under his portion of the insurance policy, a violation of NRS 686A.310. PA, Vol. I, No. 3, 0015, ¶ 53;

Petitioner's Answer to the Complaint admits that it issued the policy to Roberts which was in effect on the date of the accident and provided UM coverage subject to the terms conditions, provisions, limitations and exclusions of the policy. PA, Vol. I, No. 4, 0018, ¶ 7. Petitioner further admits that it investigated Roberts' claim, placed a value range on the claim based on the information known to it, and made an initial offer of \$46,000. PA, Vol. I, No. 4, 0019, ¶ 12.

V. STATEMENT OF THE REASONS THE WRIT SHOULD ISSUE

A. Standards for Writ Review and Relief.

The Nevada Supreme Court has original jurisdiction to issue writs of prohibition and mandamus. Nev. Const. art. VI, § 4. Mandamus is available to compel performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion. *Ivey v. Dist. Ct.*, 299 P.3d 354 (2013). A manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule. *State v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). See also NRS 34.160. “[W]here an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified.” *Mineral County v. State Dep’t. of Conserv.*, 117 Nev. 235, 243, 20 P.3d

800, 805 (2001) (internal citations omitted).

Discovery matters are within the district court's sound discretion and this court will not disturb a district court's discovery ruling absent a clear abuse of discretion. *See Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 2020 Nev. App. LEXIS 2, *5, 467 P.3d 1, 4, 136 Nev. Adv. Rep. 26, 2020 WL 2510923. Thus, although "a writ of mandamus may be issued to compel the district court to vacate or modify a discovery order, extraordinary writs are generally not available to review discovery orders." *Valley Health Sys., LLC v. Eighth Judicial Dist. Court*, 127 Nev. 167, 171, 252 P.3d 676, 678 (2011). Accordingly, the appellate courts have typically only issued writs to prevent improper, blanket discovery orders that fail to consider relevancy; discovery orders improperly compelling the disclosure of privileged information; or, sometimes, if an important issue of law needs clarification and public policy would be served by the issuance of a writ. *Okada v. Eighth Judicial Dist. Court*, 131 Nev. 834, 839-40, 359 P.3d 1106, 1110 (2015).

B. Reasons Why the Writ Should Issue

Petitioner contends that the District Court has clearly abused its discretion by failing to make findings of fact regarding whether the discovery sought is 1) relevant to any party's claims or defenses, and 2) proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in

controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

In addition, the Nevada Court of Appeals is the proper forum to assess whether Petitioner is entitled to the relief being sought. Therefore, Petitioner seeks to protect its right to not undertake discovery which falls outside the scope of discovery allowed by NRCP 26(b)(1). Petitioner has no other available avenue for relief. This is a matter of great importance to Petitioner not only as to this litigation, but as to all future litigation in Nevada.

This issue is also appropriate for interlocutory review because it involves a recurring and important issue regarding the construction and application of NRCP 26(b)(1). Both the 2000 and 2015 amendments to the Federal Rules of Civil Procedure (“Federal Rules”), which were thereafter incorporated into Nevada’s Rules of Civil Procedure, were undertaken specifically to *limit* the scope of allowable discovery and the Advisory Committee provided guidance on how these limitations should be applied. However, in practice, there has been little impact on the discovery allowed by courts in Nevada. Additional guidance by this Court as to the discovery allowed under NRCP 26(b)(1) will assist the District Courts in properly following the dictates of NRCP 26(b)(1), benefitting all litigants in Nevada.

Based on all of the above, this Court should exercise its discretion and consider this writ.

VI. SUMMARY OF ARGUMENT

1. The District Court abused its discretion by allowing discovery that is not relevant to any parties claims or defenses and is unnecessary for Roberts to prove his claims.
2. The District Court abused its discretion by allowing discovery that is not proportional to the needs of the case.
3. The District Court abused its discretion by failing to make findings that the requested discovery was relevant to any parties claims or defenses and proportional to the needs of the case.

VII. LEGAL ARGUMENT

Prior to the 2000 amendments to the Federal Rules, FRCP 26(b)(1) permitted the discovery of any matter, not privileged, which was relevant to the subject matter involved in the pending action. FRCP 26(b)(1).

The Advisory Committee reviewed the scope of discovery in 2000, in part, because it had heard:

that in some instances, particularly cases involving large quantities of discovery, parties seek to justify discovery requests that sweep far beyond the claims and defenses of the parties on the ground that they nevertheless have a bearing on the “subject matter” involved in the action.

FRCP 26, advisory committee's note (2000 amendment). As such, FRCP 26(b)(1) was amended to provide that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." In revising the rule, the advisory committee "intend[ed for] the parties and the court [to] focus on the actual claims and defenses involved in the action," FRCP 26, advisory committee's note (2000 amendment). The rule change was a message to courts and litigants:

The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings.

FRCP 26, advisory committee's note (2000 amendment). Of course, "[t]his does not mean that a fact must be alleged in a pleading for a party to be entitled to discovery of information concerning that fact." 6 James Wm. Moore, Moore's Federal Practice ¶ 26.41 (3d ed. 2008). Rather, "the fact must be germane to a specific claim or defense asserted in the pleadings for information concerning it to be a proper subject of discovery." *Id.*

The committee reviewed the scope of discovery again in 2015, in part, because it had "been told repeatedly that courts were not using [discovery]

limitations as originally intended.”¹ The committee noted that the provisions of [26(b)(2)(C)(iii)] were added in 1983 to:

deal with the problem of overdiscovery. The objective is to guard against redundant or disproportionate discovery by giving the court authority to **reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry**. The new sentence is intended to encourage judges to be more aggressive in identifying and discouraging discovery overuse. The grounds mentioned in the amended rule for limiting discovery reflect the existing practice of many courts in issuing protective orders under Rule 26(c). . . . **On the whole, however, district judges have been reluctant to limit the use of the discovery devices.**

FRCP 26, advisory committee note (2015 amendment) (emphasis added). As such, the committee revised FRCP 26(b)(1) to restore the proportionality factors to their original place in defining the scope of discovery. The scope of discovery under current FRCP 26(b)(1) is as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to

¹ The committee is referring to FRCP 26(b)(2)(C)(iii) which at that time provided that a court must limit the frequency or extent of discovery if it determines any of the following: (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

FRCP 26(b)(1).

In revising the rule, the committee also commented on the burden of proof in discovery disputes as well as the duty of the courts:

A party claiming undue burden or expense ordinarily has far better information—perhaps the only information—with respect to that part of the determination. **A party claiming that a request is important to resolve the issues should be able to explain the ways in which the underlying information bears on the issues as that party understands them.** The court's responsibility, using all the information provided by the parties, is to consider these and all the other factors in reaching a case-specific determination of the appropriate scope of discovery.

FRCP 26, advisory committee note (2015 amendment) (emphasis added).

The purpose behind the renewed emphasis on proportionality is set forth best by Chief Justice Roberts:

The amended rule states, as a fundamental principle, that lawyers must size and shape their discovery requests to the requisites of a case. **Specifically, the pretrial process must provide parties with efficient access to what is needed to prove a claim or defense, but eliminate unnecessary or wasteful discovery. The key here is careful and realistic assessment of actual need.** That assessment may, as a practical matter, require the active involvement of a neutral arbiter—the federal judge—to guide decisions respecting the scope of discovery.

John Roberts, Chief Justice, 2015 Year-End Report on the Federal Judiciary (Dec.

31, 2015), available at <http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>) (emphasis added).

In 2019, Nevada revised NRCP 26(b)(1) to “redefine the scope of allowable discovery consistent with the proportionate discovery provision in FRCP 26(b)” and the rule tracks the language of the federal rule. NRCP 26, advisory committee's note (2019 amendment).

A. The Disputed Discovery is Not Relevant to the Parties’ Claims or Defenses

For a court to determine whether discovery is proper it should look at whether the requested discovery is germane to a specific claim or defense asserted in the pleadings. 6 Moore *et al.*, *supra*, ¶ 26.41. Thus, a court must look to the allegations of the Complaint and Petitioner’s Answer thereto. Here, the Court did not. The Discovery Commissioner’s Report and Recommendations (“DCCR”) include the finding that “this is a lawsuit involving claims of breach of contract and extracontractual insurance claims.” PA, Vol. II, No. 17, 0276. In other words, the Discovery Commissioner focused on the “subject matter” of the litigation rather than the specific claims and defenses. The District Court adopted the DCCR without a hearing and without a written order. PA, Vol. II, No. 20, 0310-0311. Here, Roberts’ causes of action are premised on allegations that USAA owed coverage for but did not pay Roberts’ claim and did not timely communicate with

Roberts. PA, Vol. I, No. 3, 0011-0016. The discovery sought by Roberts is not relevant to these claims and is not necessary for Roberts to prove these claims.

As an example, Roberts' Interrogatories 12, 13, and 14 seek information regarding other lawsuits filed against Petitioner for violations of the Unfair Claims Practices Act, "bad faith", or violation of the covenant of good faith and fair dealing. PA, Vol. I, No. 5, 0038-0040. Information regarding other lawsuits against Petitioner is not relevant to any of Roberts' claims as any such lawsuits contain only allegations, not facts. Moreover, the existence of these other lawsuits will not prove or disprove Petitioner's mishandling of Roberts' claim. Roberts claims this is relevant to his allegation that Petitioner failed to adopt appropriate standards for the resolution of claims. It is not. The standards themselves are relevant, which Petitioner has produced.² Therefore, additional discovery into what other insureds of Petitioner have **alleged** is unnecessary and wasteful discovery.

As another example, Roberts sought production of information related to underwriting. PA, Vol. I, No. 6, 0062-0063. Although coverage is not in dispute and this information is therefore not relevant to the claim or defense of any party or

² Petitioner did not produce this information in its initial response to Roberts' written discovery as Roberts' refused to maintain the confidentiality of these company documents.

necessary for Roberts to prove any of his claims, USAA has requested this information and will produce upon receipt. However, Roberts' Request for Production 2 goes even further and seeks:

all documents, writings, and communications that are used by field, regional, and home office **underwriters** for reference, training, and guidelines for the underwriting of your policies.

PA, Vol. I, No. 6, 0063-0064. Plaintiff has made no reasonable explanation how the training or guidelines for **underwriting** of claims is relevant to any of his claims or necessary for him to prove any of his claims. This is the epitome of unnecessary and wasteful discovery. Allowing this discovery, as the District Court did without making any findings, is therefore an abuse of discretion because it ignores the steady track of limitations as to what is relevant under NRCP 26(b)(1). Training documents for underwriters in a case where no underwriting issues are pending, or even alleged, violates these limitations. Such discovery seeks irrelevant information.

Due to the fact that this type of discovery continues to be ordered by Nevada courts, Petitioner requests this Court provide additional guidance and clarify the standard for determination of relevance under current NRCP 26(b)(1).

B. The Disputed Discovery is Not Proportional to the Needs of the Case

For a court to determine whether discovery is proper, it should look at whether the requested discovery is proportional to the needs of the case,

considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Upon consideration of these factors, "a court can—**and must**—limit proposed discovery that it determines is not proportional to the needs of the case" *Venetian*, 2020 Nev. App. LEXIS 2, *8, 467 P.3d at 5, 136 Nev. Adv. Rep. 26, 2020 WL 2510923 (emphasis added).

Here, the Court did not. The issues involved in this litigation are whether Petitioner 1) owed UM benefits for this loss based on the value of Roberts' claim and 2) properly handled Roberts' claim. The discovery sought by Roberts is not only not relevant to these claims and not necessary for Roberts to prove these claims, but is also not proportional to the needs of the case.

As an example, Roberts' Request for Production 36 seeks:

any and all copies of documents that reference bonus programs or employee award programs applicable to any and all departments or sections involved in the handling of the Plaintiff's claim for five (5) years prior to the claim through the present.

PA, Vol. I, No. 6, 0083-0084. Petitioner substantively responded to this request that it has a company wide bonus program that is not tied to the payment or non-payment of claims. PA, Vol. I, No. 6, 0083-0084. Requiring Petitioner to produce documentation regarding its bonus programs, notwithstanding the above, is not

only irrelevant it is not proportional to the needs of the case applying the factors set forth in NRCP 26(b)(1). Petitioner does not dispute that the issues at stake in the action are important, but the requested discovery has **no bearing** on the issues at stake in the action - the value of Roberts' claim and whether Petitioner properly handled the claim. As such, where the requested discovery has no relation to the issues involved in the action, the burden or expense of the proposed discovery necessarily outweighs its likely benefit and it is not proportional to the **needs** of the case.

C. The District Court abused its discretion by failing to make findings that the requested discovery was relevant to any parties claims or defenses and proportional to the needs of the case.

The district court abused its discretion when it failed to analyze relevance and proportionality in light of the revisions to NRCP 26(b)(1). In *Venetian*, this Court found that a district court abused its discretion when it considered and made findings only as to relevance:

The district court abused its discretion when it failed to analyze proportionality in light of the revisions to NRCP 26(b)(1) and make findings related to proportionality.

Venetian, 2020 Nev. App. LEXIS 2, *8, 467 P.3d at 5-6, 136 Nev. Adv. Rep. 26, 2020, WL 2510923.

Here, the District Court's order does not include findings on either relevance or proportionality. As such, writ relief is appropriate.

VIII. CONCLUSION

Accordingly, Petitioner respectfully petitions this Court for a Writ of Prohibition or Mandamus directing Respondent to Vacate the May 12, 2021 Order affirming the DCCR and enter findings as to the relevance of the disputed discovery to the parties' claims and defenses, its necessity in proving Roberts' claims, and the proportionality of the discovery to the needs of the case. Petitioner also respectfully requests this Court take the opportunity to provide further guidance to the district courts as to the appropriate inquiry into relevance under NRCPC 26(b)(1) based on the 2019 revisions to the rule.

DATED this 10th day of August, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Priscilla L. O'Briant
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**DECLARATION OF VERIFICATION IN SUPPORT OF PETITION FOR
WRIT OF MANDAMUS**

I, Priscilla L. O'Briant, being first duly sworn, deposes and states:

1. I am an attorney of record for Petitioner and make this Affidavit pursuant to NRAP 21(a)(5).

2. The facts contained in the following Petition for Writ of Prohibition or Mandamus are based upon my own personal knowledge as counsel for Petitioner.

3. The contents of the foregoing Petition for Writ of Mandamus are true and based upon my personal knowledge, except as to those matters stated on information and belief.

4. All documents contained in the Petitioner's Appendix, filed herewith, are true and correct copies of the pleadings and documents they are represented to be in the Petitioner's Appendix and as cited herein.

5. This Petition complies with NRAP 21(d) and NRAP 32(c)(2).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 10th day of August, 2021 at Las Vegas, Nevada.

/s/ Priscilla L. O'Briant
PRISCILLA L. O'BRIANT, ESQ.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this PETITION FOR WRIT OF PROHIBITION OR MANDAMUS, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I also certify that this brief conforms to NRAP 32(c)(2). The brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style required by NRAP 32(a)(6), as the brief includes double spaced, Times New Roman typeface at 14 point. The brief also complies with NRAP 21(d) in that it contains 3,376 words, less than the maximum of 7,000 words (calculated using the Word Count feature within Microsoft Word).

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Priscilla L. O'Briant, Esq.
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP, that, in accordance therewith, I caused a copy of the PETITION FOR WRIT OF PROHIBITION OR MANDAMUS to be delivered by United States Postal Service, First Class mail, in a sealed envelope, on the date and to the addressee(s) shown below:

The Honorable Nadia Krall
The Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

Jordan P. Schnitzer, Esq.
THE SCHNITZER LAW FIRM
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Dated this 10th date of August, 2021.

By: /s/ Anne Cordell
An employee of
Lewis Brisbois Bisgaard & Smith LLP