

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRO PETROLEUM, LLC; RIP GRIFFIN  
TRUCK SERVICE CENTER, INC.; AND  
DAVID YAZZIE, JR.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK;  
AND THE HONORABLE SUSAN H.  
JOHNSON, DISTRICT COURT JUDGE,

Respondents,

and

DAKOTA JAMES LARSEN,

Real Party in Interest.

No. 83536

Electronically Filed  
Dec 13 2021 05:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

*REAL PARTY IN INTEREST'S MOTION TO DISMISS PETITION AS MOOT*

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*Attorneys for Real Party in Interest, Dakota Larsen*

## *INTRODUCTION*

Petitioners Pro Petroleum, LLC, Rip Griffin Truck Service Center, Inc., and David Yazzie, Jr., (collectively Pro Petroleum) filed a petition for a writ of mandamus or, alternatively, prohibition seeking this court's extraordinary intervention in a discovery dispute. Specifically, Pro Petroleum requested that this court issue a writ of mandamus, commanding the district court to vacate its order allowing real party in interest Dakota Larsen to record and have a party observe Pro Petroleum's NRCP 35 medical examination of her. Pet. 1. Five days later, Pro Petroleum served a notice of an NRCP 35 medical examination of Larsen to occur on November 11, 2021. Ex. 1. Dr. James S. Forage, M.D., conducted the examination, and Larsen had an observer present to record the examination. Given that the at-issue NRCP 35 medical examination has occurred and given that there is no relief that this court may now provide, Larsen respectfully moves this court to dismiss Pro Petroleum's petition as moot.<sup>1</sup> See NRAP 27(a)(1) (providing that a party

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<sup>1</sup>Given the legal question before this court is moot, Larsen asked Pro Petroleum to stipulate to dismissal. Pro Petroleum acknowledged receipt of the proposed stipulation and did not raise any objections, but has not agreed. Ex. 2. Thus, Larsen necessarily files the instant motion.

may move this court for relief); *see also Nat'l Collegiate Athletic Ass'n v. Univ. of Nev., Reno*, 97 Nev. 56, 57, 624 P.2d 10 (1981) (noting that this court generally declines “to give opinions upon moot questions . . . , or to declare principles of law which cannot affect the matter in issue before it).

## *ARGUMENT*

### *I. Standard of review*

A writ of mandamus is available to, among other uses, “control an arbitrary or capricious exercise of discretion.”<sup>2</sup> *Int'l Game Tech., Inc. v. Second Jud. Dist. Ct.*, 122 Nev. 132, 142, 127 P.3d 1088, 1096 (2006); NRS 34.160. Given the discretionary nature of discovery rulings, Nevada appellate courts rarely entertain writ petitions

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<sup>2</sup>Alternatively, a writ of prohibition is available “to prevent improper discovery.” *State ex rel. Tidvall v. Eighth Jud. Dist. Ct.*, 91 Nev. 520, 524, 539 P.2d 456, 458 (1975); NRS 34.320. However, despite labeling its petition as one for mandamus or prohibition, Pro Petroleum provides no argument regarding the appropriateness of a writ of prohibition. *See* Pet. 8-17. Accordingly, Pro Petroleum has failed to cogently argue why this court should issue a writ of prohibition. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that Nevada appellate courts will not consider claims that a petitioner failed “to cogently argue” or “present relevant authority” in support thereof).

challenging pretrial discovery orders. *Cotter v. Eighth Jud. Dist. Ct.*, 134 Nev. 247, 249, 416 P.3d 228, 231-32 (2018).

As this court sagely stated, “Extraordinary relief should be extraordinary.” *Walker v. Second Jud. Dist. Ct.*, 136 Nev., Adv. Op. 80, 476 P.3d 1194, 1195 (2020). Indeed, this court recognizes two appropriate uses of a writ of mandamus. *Id.* at 1196-99. The first is traditional mandamus, in which the petitioner must substantially “demonstrate a clear legal right to a particular course of action,” which the district court manifestly abused, and the petitioner must demonstrate that the requested writ will remedy the alleged error. *Id.* at 1196. Here, the underlying petition will not avail Pro Petroleum. Pro Petroleum conducted its NRCP 35 physical examination and consented to the presence of Larsen’s observer and recordation of the same. Ex. 1. Accordingly, Pro Petroleum may not now complain of any error given that it chose to conduct the medical examination as the district court ordered. *See Los Angeles & Salt Lake R.R. Co. v. Umbaugh*, 61 Nev. 214, 244, 123 P.2d 224, 237 (1942) (noting that a party may not complain on appeal where it consented to the challenged district court order). Even if it could, Pro Petroleum does not, nor can it, cogently argue how the underlying

petition will give it relief given that the NRCP 35 examination occurred.<sup>3</sup> Larsen has since had surgery; thus, the petitioner cannot conduct the examination again. Accordingly, the underlying petition is now moot, *see Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (holding that an appeal was moot where this court could not grant relief because the at-issue petition deadline had passed and the at-issue election had occurred), and Larsen respectfully urges this court to enter dismissal.

The second appropriate form of mandamus relief is advisory mandamus. *Walker*, 136 Nev., Adv. Op. 80, 476 P.3d at 1198-99. Advisory mandamus is appropriate where the petitioner asks this court to clarify a legal issue of statewide importance, and such an answer will promote judicial economy and administration. *Id.* This court seriously considers the judicial limitations of advisory mandamus, as it poses a risk of nullifying the final judgment rule and invites expansive interlocutory review. *Id.* at 1199. Here, the underlying petition is moot given that Pro

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<sup>3</sup>Indeed, this court recognized that Pro Petroleum would not suffer any irreparable harm if the NRCP 35 examination occurred under the conditions that the district court ordered. *See Pro Petroleum, LLC v. Eighth Jud. Dist. Ct.*, No. 83536 (Nev. Nov. 10, 2021) (order denying stay).

Petroleum consented to the district court order regarding the at-issue NRCP 35 examination. Accordingly, Pro Petroleum, as the petitioner requesting this court's extraordinary relief, had the burden of demonstrating that this court's extraordinary intervention in a moot interlocutory matter was appropriate.<sup>4</sup> Given that its petition fails to engage in the appropriate analysis under controlling Nevada caselaw, *see* Pet. 8-17, Larsen respectfully urges this court to enter the dismissal.

#### CONCLUSION

Given that Pro Petroleum consented to district court order governing the at-issue NRCP 35 physical examination and given that the NRCP 35 examination occurred and rendered the underlying petition

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<sup>4</sup>Any argument by Pro Petroleum that it did not know the underlying petition would become moot before the petition completed briefing is unavailing. Pro Petroleum filed the underlying petition on September 24, 2021. It served a notice of an NRCP 35 medical examination five days later, scheduled to occur on November 11, 2021. Thus, Pro Petroleum knew or should have known that the underlying petition would be moot by the time briefing was complete. Accordingly, this court should treat Pro Petroleum's failure to argue why this court should entertain the underlying moot petition as waiver, *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that this court deems waived arguments that the appellant did not raise in the opening brief), or decline to address the same for want of cogent argument, *Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

moot, Larsen respectfully urges this court to dismiss the underlying petition. Should this court conclude otherwise, Larsen respectfully requests that this court grant her an extension to file an answer to the underlying petition 30 days after this court's order resolving this motion to dismiss.

DATED this 13th day of December 2021.

CLAGGETT & SYKES LAW FIRM

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*Attorneys for Real Party in Interest,  
Dakota James Larsen*

*CERTIFICATE OF SERVICE*

I hereby certify that I electronically filed the foregoing Real Party in Interest's Motion to Dismiss Petition as Moot with the Supreme Court of Nevada on the 13th day of December 2021. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

Annalisa N. Grant, Esq.  
Sonya C. Watson, Esq.  
Grant & Associates  
7455 Arroyo Crossing Pkwy., Ste. 220  
Las Vegas, Nevada 89113  
*Attorneys for Petitioners, Pro Petroleum, LLC;  
Rip Griffin Truck Service Center, Inc.; and David Yazzie, Jr.*

I further certify that I emailed the foregoing document to the following:

Hon. Susan H. Johnson, D.J.  
Dept22LC@clarkcountycourts.us

/s/ Anna Gresl  
Anna Gresl, an employee of  
Claggett & Sykes Law Firm

**EXHIBIT 1**

**EXHIBIT 1**

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**NOTC**

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Attorneys for Defendants,  
PRO PETROLEUM, LLC,  
RIP GRIFFIN TRUCK SERVICE CENTER, INC., &  
DAVID YAZZIE, JR.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAKOTA JAMES LARSEN,

Plaintiff,

vs.

PRO PETROLEUM, LLC, a Texas Limited  
Liability Company; RIP GRIFFIN TRUCK  
SERVICE CENTER, INC., a Texas  
Corporation; DAVID YAZZIE, JR., an  
individual; DOES I-X; ROE BUSINESS  
ENTITIES XI-XX,

Defendants.

**Case No.: A-20-826907-C**

**Dept. No.: 22**

**NOTICE OF NRCP 35 MEDICAL  
EXAMINATION OF PLAINTIFF  
DAKOTA JAMES LARSEN**

TO: DAKOTA JAMES LARSEN; and

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE, that pursuant to NRCP 35, and by agreement between the parties herein, a Rule 35 Medical Examination of Plaintiff, DAKOTA JAMES LARSEN ("Plaintiff"), will be conducted as follows:

**Date:** Thursday, November 11, 2021.

**Time:** Arrival time is 3:15 p.m., and the appointment is at 3:30 p.m.

**Place:** The office of James S. Forage, M.D., F.A.C.S., located at The Spine & Brain Institute, 861 Coronado Center Drive, Suite 200, Henderson, NV 89052; (702) 896-0940.

1 **Person Performing Exam:** Dr. James S. Forage (a copy of his CV is attached hereto as **EXHIBIT**  
2 **A.**) A copy of the Order Re: Discovery Commissioner's Report and Recommendations ("DCRR")  
3 and DCRR attachment pertaining to the Rule 35 Examination is attached hereto as **EXHIBIT B.**

4 **Report:** Defendant will furnish a copy of the Examination Report to Plaintiff, via counsel,  
5 pursuant to the Court Scheduling Order expert disclosure deadline.

6 **Manner:** The examination will be conducted by a licensed medical doctor according to accepted  
7 medical procedures, protocols, tests, and standards. The examination will not be videotaped but  
8 may be audio recorded. The examination may be observed by a member Dr. Forage's medical  
9 staff, along with a representative of Plaintiff's counsel and a representative of Defendants'  
10 counsel.

11 **Conditions:** The examination will be conducted indoor in a medical office. It will not be  
12 conducted in a hospital.

13 **Scope:** The examination may include verbal medical questions from the doctor to the Plaintiff.  
14 Questions not typically part of a customary medical examination shall not be discussed by the  
15 examining doctor or any agent or representative of the examining doctor (i.e., the examining  
16 doctor shall not discuss liability with Plaintiff.) The examination will involve a physical  
17 examination of the Plaintiff's body by Dr. Forage, according to accepted medical procedures,  
18 protocols, and standards. The examination shall be limited to the parts of the body which bear a  
19 reasonable relationship to the body parts Plaintiff has placed in controversy, as a result of the  
20 alleged subject incident. Plaintiff may be required to disrobe, however, not beyond the extent  
21 necessary for an examination of the body part(s) in question. The examination will not involve  
22 any invasive procedures, treatment, or the extraction or testing of any bodily fluids of the Plaintiff.  
23 The Plaintiff will not be anesthetized during the examination and will remain conscious. The  
24 examination will consist of a standard orthopedic examination.

25 **Duration:** The examination will last approximately 90 to 120 minutes.

26 **Plaintiff is to arrive at Dr. Forage's office on time and bring with him a valid state**  
27 **photo identification card.**

28 . . .

DATED this 29<sup>th</sup> day of September, 2021.

GRANT &amp; ASSOCIATES

/s/ Sonya C. Watson, Esq.

SONYA C. WATSON, ESQ.  
Nevada Bar No. 13195  
7455 Arroyo Crossing Pkwy., Suite 220  
Las Vegas, Nevada 89113  
Attorneys for Defendants,  
PRO PETROLEUM, LLC,  
RIP GRIFFIN TRUCK SERVICE CENTER, INC.,  
& DAVID YAZZIE, JR.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 29<sup>th</sup> day of September, 2021, I caused a true and correct copy of the foregoing **NOTICE OF NRCP 35 MEDICAL EXAMINATION OF PLAINTIFF DAKOTA JAMES LARSEN** to be served as follows:

\_\_\_\_\_ By placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

\_\_\_\_\_ Pursuant to EDCR 7.26, to be sent via facsimile; and/or

  X   Pursuant to EDCR 7.26, by transmitting via the Court's electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

Sean K. Claggett, Esq.  
William T. Sykes, Esq.  
Brian Blankenship, Esq.  
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4101 Meadows Lane, Suite 100  
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Brian Shelley, Esq.  
Jake R. Spencer, Esq.  
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107 South 1470 East, Suite 201  
St. George, UT 84790  
***Attorneys for Plaintiff***

*/s/ Denisse Girard-Rubio*

\_\_\_\_\_  
An Employee of GRANT & ASSOCIATES

EXHIBIT “A”



THE SPINE & BRAIN  
INSTITUTE

**JAMES S. FORAGE, M.D., FACS**

Neurological Surgery

861 Coronado Center Drive, Suite 200  
Henderson, NV 89052  
702-896-0940

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## **CURRICULUM VITAE**

### **Board Certification**

- American Board of Neurological Surgery: *Board Certified* in Neurological Surgery  
November 2006

### **Fellowship**

- Barrow Neurological Institute, Phoenix, AZ
  - Spine Fellowship, 2002 - 2003

### **Residency**

- UCLA Medical Center, Los Angeles, CA
  - Residency, Neurological Surgery, 1996 - 2002

### **Internship**

- UCLA Medical Center, Los Angeles, CA
  - Internship, Neurological Surgery, 1996 – 1997

### **Medical School**

- Washington University, St. Louis, MO
  - Doctorate of Medicine, 1996

### **College**

- University of Arizona, Tucson, AZ
  - B.S. Biochemistry – *Summa cum laude* with Honors, 1992
  - B.A. Spanish – *Summa cum laude* with Honors, 1992

# **CURRICULUM VITAE**

**James S. Forage, MD**

**Page Two**

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## **Boards**

- United States Medical Licensing Exam
  - Step I: 06/94
  - Step II: 03/96
  - Step III: 12/96
- Written Boards in Neurosurgery
  - Passed 03/2001
- Medical License, State of Arizona
  - Issued 02/15/02

## **Licensure**

- Nevada – Active
- California – Active
- Arizona - Active

## **Memberships**

- American Medical Association
- American Association of Neurological Surgeons
- Congress of Neurological Surgeons
- American College of Surgeons

## **Honors and Awards**

- *Alpha Omega Alpha* Research Grant
- *Phi Beta Kappa*
- National Merit Scholar
- Most Outstanding Graduate, Faculty of Science, May 1992
- Deans List 1989, 1990, 1991, 1992

## **Additional Training**

- Proclaim DRG Neurostimulation System Physician Training: A Case Based Learning Program  
December 9-10, 2017  
National BioSkills Laboratories  
Farmers Branch, TX 75234

## CURRICULUM VITAE

James S. Forage, MD

Page Three

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### Research/Publications/Presentations

1. Forage, J., Cabatan-Awang, C., Wallace, R., Solberg, T., Ford, J., Selch, M., and DeSalles, A., "Stereotactic Radiotherapy versus Single and Hypo-Fractionated LINAC-Based Stereotactic Radiosurgery for Acoustic Neuromas," *2000 Annual Meeting Congress of Neurological Surgeons*, San Antonio, Texas, September 2000, Oral Presentation.
2. Forage, J., Cabatan-Awang, C., Wallace, R., Solberg, T., Kelly, D., Selch, M., Becker, D., and DeSalles, A., "LINAC Stereotactic Radiosurgery for Previously Operated Pituitary Adenomas," *2000 Annual Meeting Congress of Neurological Surgeons*, San Antonio, Texas, September 2000, Poster Presentation.
3. Forage, J., Cabatan-Awang, C., Wallace, R., Solberg, T., Selch, M., and DeSalles, A., "Technical Aspects of Stereotactic Radiosurgery for the Treatment of Atypical Facial Pain," *2000 Annual Meeting Congress of Neurological Surgeons*, San Antonio, Texas, September 2000, Poster Presentation.
4. Forage, J., Cabatan-Awang, C., Wallace, R., Solberg, T., Ford, J., Selch, M., and DeSalles, A., "Comparison of LINAC-based Stereotactic Radiotherapy and Stereotactic Radiosurgery for Acoustic Neuromas," *Neurosurgery+Science+Management Seminar*, New Orleans, Louisiana, October 12, 2000, Oral Presentation.
5. Forage, J., "Stereotactic Radiosurgery for Pituitary Adenomas," *Los Angeles Multi-Disciplinary Pituitary Conference*, Los Angeles, California, December 15, 2000, Oral Presentation.
6. Forage, J., Pouratian, N., Cannestra, A., Oertel, M., Toga, A., Bookheimer, S., and Martin, N., "Functional MRI, Electroconvulsive Stimulation Mapping, Optical Imaging, and 'Asleep-Awake-Asleep' Craniotomy for Dominant Hemisphere Peri-Sylvian Arteriovenous Malformations," *2001 Annual Meeting of the American Association of Neurological Surgeons*, Toronto, Ontario, April 2001, Poster Presentation.
7. Forage, J., Cabatan-Awang, C., and DeSalles, A., "Radiosurgery for Acoustic Neuromas: SRS vs. SRT," *2001 International Stereotactic Radiosurgery Society Annual Meeting*, Las Vegas, Nevada, June 2001, Abstract (Submitted).
8. Forage, J., Virella, A., Cabatan-Awang, C., and DeSalles, A., "Radiosurgery of the Sphenopalatine Ganglion," *2001 International Stereotactic Radiosurgery Society Annual Meeting*, Las Vegas, Nevada, June 2001, Abstract.
9. Forage, J. and Sonntag, V. Acute Treatment of Patients with Spinal Cord Injury. In Herkowitz, H., Garfin, S., Eismont, F., and Bell, G. (eds): *Rothman-Simeone The Spine*. Philadelphia: W.B. Saunders, 2004, Chapter 73. (In preparation).
10. Abbott **TARGET**- A Post Approval Study to Evaluate Targeted SCS (DRG) Stimulation for the management of Moderate to Severe Chronic, Intractable, Pain of the Lower Limbs due to CRPS types I and II (Co-Investigator) (3/2019-Present)

## **CURRICULUM VITAE**

**James S. Forage, MD**

**Page Four**

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### **Affiliations**

The Spine and Brain Institute  
861 Coronado Center Dr., Suite 200  
Henderson, NV 89052  
(702) 896-0940

Advanced Pain Care  
2865 Siena Heights Dr. Suite #120  
Henderson, NV 89052  
(702) 932-0606

Siena Surgery Center  
2865 Siena Heights Dr. Suite #200  
Henderson, NV 89052  
(702) 586-3211

### **Hospital Privileges**

- Sunrise Hospital and Medical Center
- Summerlin
- University Medical Center
- Valley Hospital
- Desert Springs
- Mountain View
- St. Rose Delima
- St. Rose Siena
- San Martin
- Spring Valley
- Southern Hills
- Centennial

EXHIBIT “B”

*Heather S. Linn*

CLERK OF THE COURT

**ORDR**

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DAVID YAZZIE, JR.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAKOTA JAMES LARSEN,  
  
Plaintiff,

vs.

PRO PETROLEUM, LLC, a Texas Limited  
Liability Company; RIP GRIFFIN TRUCK  
SERVICE CENTER, INC., a Texas  
Corporation; DAVID YAZZIE, JR., an  
individual; DOES I-X; ROE BUSINESS  
ENTITIES XI-XX,

Defendants.

**Case No.: A-20-826907-C**  
**Dept. No.: 22**

**ORDER RE:  
DISCOVERY COMMISSIONER'S  
REPORT AND  
RECOMMENDATIONS**

**HEARING DATE: August 13, 2021**  
**HEARING TIME: 9:30 a.m.**

This Court, having reviewed the above report and recommendations prepared by the  
Discovery Commissioner and,

\_\_\_\_\_ No timely objection having been filed,

XX  
\_\_\_\_\_ After reviewing the objections to the Report and Recommendations and good cause  
appearing,

\_\_\_\_\_ IT IS HEREBY ORDERED the Discovery Commissioner's Report and  
Recommendations are affirmed and adopted.

GRANT & ASSOCIATES  
7455 Arroyo Crossing Parkway, Suite 220  
Las Vegas, Nevada 89113  
Telephone No. (702) 940-3529  
Facsimile No. (855) 429-3413

1 IT IS HEREBY ORDERED the Discovery Commissioner's Report and  
2 Recommendations are affirmed and adopted as modified in the following manner.  
(attached hereto)

3 If Defendant so chooses, it may also have a representative  
4 present at the NRCP 35 Examination.

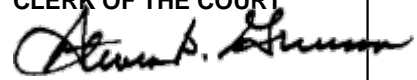
5 IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner for  
6 reconsideration or further action.

7 IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is  
8 set for \_\_\_\_\_, 2021 at \_\_\_\_\_:\_\_\_\_\_ a.m.

9 Dated this 9th day of September, 2021

10 

11 DISTRICT COURT JUDGE  
12 B0B CF1 4563 60AB  
13 Susan Johnson  
14 District Court Judge  
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**DCRR**

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DAVID YAZZIE, JR.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAKOTA JAMES LARSEN,  
  
Plaintiff,

vs.

PRO PETROLEUM, LLC, a Texas Limited  
Liability Company; RIP GRIFFIN TRUCK  
SERVICE CENTER, INC., a Texas  
Corporation; DAVID YAZZIE, JR., an  
individual; DOES I-X; ROE BUSINESS  
ENTITIES XI-XX,

Defendants.

Case No.: A-20-826907-C  
Dept. No.: 22

**DISCOVERY COMMISSIONER'S  
REPORT AND  
RECOMMENDATIONS**

Date of Hearing: August 13, 2021

Time of Hearing: 9:30 a.m.

Attorney for Plaintiff: Brian Blankenship, Esq.

Attorney for Defendants: Sonya C. Watson, Esq.

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## I.

**FINDINGS**

On August 13, 2021, counsel for Plaintiff and Defendants in the above-captioned matter appeared telephonically before the Honorable Discovery Commissioner Jay Young on Defendants' Motion to Compel Physical Examination of Plaintiff Pursuant to NRCP 35 and Execution of Employment Releases on an Order Shortening Time. Defendants seek Plaintiff's submission to a physical examination prior to his lumbar surgery scheduled for September 13, 2021. Defendants request that Plaintiff be required to submit to the examination absent a recording of the examination and absent the presence of an observer. Defendants further seek execution of employment releases for each of Plaintiff's employers for the five years preceding the subject incident.

Upon the Court's review of the Motion and all other pleadings and papers on file with this court, and oral arguments made by counsel, and for good cause appearing, the Discovery Commissioner hereby recommends that Plaintiff is compelled to submit to a physical examination pursuant to NRCP 35 but is permitted to record the examination and have an observer present pursuant to NRS 52.380. The Commissioner further recommends that Plaintiff is required to produce his employee file for each of his employers for the five years preceding the subject incident, subject to a confidentiality log limiting the records produced to those that relate to Plaintiff's wages, job performance, and disciplinary history.

## II.

**RECOMMENDATIONS**

IT IS THEREFORE RECOMMENDED Defendants' Motion to Compel Physical Examination of Plaintiff Pursuant to NRCP 35 and Execution of Employment Releases on an Order Shortening Time is GRANTED IN PART and DENIED IN PART,

IT IS FURTHER RECOMMENDED THAT that Plaintiff submit to a Rule 35

1 examination. Plaintiff may record the examination and have an observer of his choosing present  
2 at the examination.

3 IT IS FURTHER RECOMMENDED that Defendants are entitled to employment  
4 records, but only for wage information, and performance and disciplinary history as they are  
5 relevant going back 5 years.

6 IT IS FURTHER RECOMMENDED THAT Plaintiff will obtain the entirety of the  
7 employment files requested and produce employee files for each of his employers for the five  
8 years preceding the subject incident, subject to a confidentiality and redaction log limiting the  
9 records produced to those that relate to Plaintiff's wages, job performance, and disciplinary  
10 history.

11 IT IS FURTHER RECOMMENDED THAT the Discovery Commissioner will conduct  
12 an in camera review if necessary.

13 The Discovery Commissioner, having met with counsel for the parties, having discussed  
14 the issues noted above and having reviewed any materials proposed in support thereof, hereby  
15 submits the above recommendations.

16 DATED this 25th day of August, 2021.

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21   
22 DISCOVERY COMMISSIONER

23 Submitted by:  
24 GRANT & ASSOCIATES

25 */s/ Sonya C. Watson*

26 \_\_\_\_\_  
27 SONYA C. WATSON, ESQ.  
28 Nevada Bar No. 13195  
7455 Arroyo Crossing Parkway, Suite 220  
Las Vegas, Nevada 89113  
Attorneys for Intervenor,  
THE INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA

1 Approved as to form and content by:

2 */s/ Brian Blankenship*

3 BRIAN BLANKENSHIP, ESQ.  
4 Nevada Bar No. 11522  
5 CLAGGETT & SYKES LAW FIRM  
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7 Las Vegas, NV 89107  
8 brian@claggettlaw.com  
9 Attorneys for Plaintiff,  
10 DAKOTA LARSEN

11 **NOTICE**

12 Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being  
13 served with a report any party may file and serve written objections to the recommendations.  
14 Written authorities may be filed with objections but are not mandatory. If written authorities are  
15 filed, any other party may file and serve responding authorities within seven (7) days after being  
16 served with objections.

17 **Objection time will expire on September 9 2021.**

18 A copy of the foregoing Discovery Commissioner's Report was:

19 \_\_\_\_\_ Mailed to Plaintiff at the following address on the \_\_\_\_\_ day of August 2021.

20 XX Electronically filed and served to counsel on the 26th day of August 2021, Pursuant to  
21 N.E.F.C.R. Rule 9.

22 By: /s/ Sandy Gerety  
23 COMMISSIONER DESIGNEE  
24  
25  
26  
27  
28

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Dakota Larsen, Plaintiff(s)

CASE NO: A-20-826907-C

7 vs.

DEPT. NO. Department 22

8 Pro Petroleum LLC,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/9/2021

15 Jackie Abrego

jabrego@claggettlaw.com

16 Maria Alvarez

malvarez@claggettlaw.com

17 Reception E-File

reception@claggettlaw.com

18 Diana Smith

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19 Denisse Girard-Rubio

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20 Shannon Jory

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