

1 **ASTA**  
2 **IQBAL LAW PLLC**  
3 Mohamed A. Iqbal, Jr. (NSB 10623)  
4 101 Convention Center Drive, Suite 1175  
5 Las Vegas, Nevada 89109  
6 1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)  
7 [info@ilawlv.com](mailto:info@ilawlv.com); [mai@ilawlv.com](mailto:mai@ilawlv.com)

8 *Special Litigation Counsel for Mark J. Gardberg, Esq., in his capacity as Receiver for,*  
9 *and acting on behalf of, Flamingo-Pecos Surgery Center, LLC*

Electronically Filed  
Oct 14 2021 09:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 MARK J. GARDBERG, ESQ., in his capacity  
9 as Receiver for, and acting on behalf of,  
10 FLAMINGO-PECOS SURGERY CENTER,  
11 LLC a Nevada limited liability company;

12 Plaintiff,

13 vs.

14 William Smith MD et al.;

15 Defendants.

Case No.: A-17-750926-B  
[consolidated with A-18-769693-C]  
Dept. No.: XXII

**CASE APPEAL STATEMENT**

16 **1. Name of appellant filing this case appeal statement:**

17 Plaintiff Mark J. Gardberg, Esq., in his capacity as Receiver for, and acting on behalf of,  
18 Flamingo-Pecos Surgery Center, LLC.

19 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

20 The Honorable Elizabeth Gonzalez

21 **3. Identify each appellant and the name and address of counsel for each appellant:**

22 Appellant: Plaintiff Mark J. Gardberg, Esq., in his capacity as Receiver for, and acting  
23 on behalf of, Flamingo-Pecos Surgery Center, LLC  
24 Counsel: Mohamed A. Iqbal, Jr., Esq.  
25 IQBAL LAW PLLC  
26 101 Convention Center Dr., Suite 1175  
27 Las Vegas, Nevada 89109  
28 Tel: 702-750-2950

**4. Identify each respondent and the name and address of appellate counsel:**

Respondent: Defendant William Smith MD  
Counsel: Marc P. Cook, Esq.  
COOK & KELESIS, LTD.  
517 S. Ninth St.  
Las Vegas, Nevada 89101

Tel: 702-737-7702

Respondent: Defendant Sheldon Freedman MD  
Counsel: Marc P. Cook, Esq.  
COOK & KELESIS, LTD.  
517 S. Ninth St.  
Las Vegas, Nevada 89101  
Tel: 702-737-7702

**5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:**

All counsel listed above are licensed to practice in Nevada.

**6. Indicate whether appellant was represented by appointed or retained counsel in the district court:**

Appellant was represented by retained counsel in the District Court (listed above).

**7. Indicate whether appellant is represented by appointed or retained counsel on appeal:**

Appellant is represented by retained counsel on this appeal (listed above).

**8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:**

Not applicable.

**9. Indicate the date the proceedings commenced in the district court (e.g., date of complaint, indictment, information, or petition was filed):**

The original complaint was filed on February 10, 2017 and assigned to the Honorable Judge Joesph P. Hardy, Jr. of Department XV. (It was subsequently assigned to the Honorable Judge Elizabeth G. Gonzalez of Department XI and, very recently, reassigned to the Honorable Judge Susan H. Johnson of Department XXII).

**10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

This action involves duty of care and duty of loyalty violations and gross negligence on the part of board members who were asleep at the wheel while their employee robbed Plaintiff, an entity, blind for four (4) years—and which board members continued to fail their obligations to Plaintiff in the years following the discovery of the embezzlement.

1 Plaintiff, an entity, was created on or about January 1, 2002, pursuant to an operating  
2 agreement dated December 10, 2001. FPSC was a surgical center/medical services company,  
3 frequently operating under the name Surgery Center of Southern Nevada.

4 Robert Barnes (“Barnes”) was hired in 2006 and, as he would later admit in his criminal  
5 guilty plea agreement, embezzled \$1.3 million from FPSC from approximately 2010 to 2013.  
6 Defendants Smith and Freedman—both of whom served on Plaintiff’s board (the “Board”)—had  
7 duties of loyalty and care to Plaintiff that they failed completely. Freedman was part of the Board  
8 that hired Barnes and then failed to oversee him, ever. Smith joined Freedman in empowering and  
9 emboldening Barnes. Smith and the Board, among other things, failed to review the company’s  
10 finances and credit card statements for *four (4) years* before the embezzlement was discovered;  
11 failed to install safeguards and credit card policies before and after the discovery of the theft;  
12 vested in the embezzler (Barnes) such sweepingly broad authority that he was no longer managed  
13 or constrained by the Board, or even had to inform them of his actions; awarded sole authority for  
14 obtaining \$1.8 million in loan funds to the embezzler, violating the operating agreement’s  
15 requirement that the Board affirmatively approve any action to borrow money or otherwise obtain  
16 credit; demonstrated naked *self-dealing* by failing to pursue the grossly negligent management  
17 company responsible for the embezzler because, well, Defendants owned shares in the  
18 management company; allowed, for years following the discovery of the embezzlement, *seven-*  
19 *figures worth* of accounts receivable to go to waste, uncollected and rendered worthless; and failed  
20 to pursue the embezzler in any reasonable sense. Defendants stranded FPSC following the  
21 September 10, 2015 notice of dismissal of the chapter 11 bankruptcy Defendant Smith initiated  
22 (and represented FPSC in) December 31, 2014. (14-18480-ABL, U.S. Bankruptcy Court for the  
23 District of Nevada).

24 Plaintiff, the current Receiver appointed by the Honorable Judge Nancy L. Allf in 2017,<sup>1</sup>  
25 has maintained and/or initiated separate actions in the Eighth Judicial District Court, against

---

26  
27 <sup>1</sup> A-16-733627-B, *Patriot-Reading Associates, LLC v. Flamingo Pecos Surgery Center,*  
28 *LLC*. For the avoidance of confusion, the original receiver was appointed in 2016, and the current  
Receiver took his place pursuant to a July 20, 2017 Notice of Entry of Order (Ex. 5).

1 Robert Barnes individually, Robert Barnes and his ex-wife, and, in this case—initially—~~six~~  
2 individual defendants who led FPSC—during and after Barnes’ rampage—to ruin. The Receiver’s  
3 settlements with four of the six defendants were approved by the Court in the fall of 2019. The  
4 two remaining Defendants, Smith and Freedman, having failed to prevail on prior motions to  
5 dismiss and a motion for summary judgment, recently and finally prevailed on summary judgment.  
6 The trial court ignored the facts and erred in granting summary judgment to both Defendants, and  
7 Plaintiff appeals from both orders.

8 Plaintiff also appeals from: (1) a trial court order denying in part Plaintiff’s motion to  
9 extend discovery; (2) a trial court order denying Plaintiff’s motion for second deposition (which  
10 was brought on the basis of Defendant Smith’s obstructionist conduct during his first deposition);  
11 and (3) the trial court’s order granting Defendants’ motion for sanctions, as each motion was  
12 improperly decided by the trial court on legal bases antithetical to Nevada law.

13 **11. Indicate whether the case has previously been the subject of an appeal to or original writ**  
14 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**  
15 **number of the prior proceeding:**

16 Case No. 74726

17 Caption:

18 SHELDON FREEDMAN, M.D.; PANKAJ BHATANAGAR, M.D.; AND MATHEW NG,  
19 M.D., Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF  
20 NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JOSEPH  
21 HARDY, JR., DISTRICT JUDGE, Respondents, and MARK J. GARDBERG, ESQ., IN HIS  
CAPACITY AS RECEIVER FOR AND ACTING ON BEHALF OF, FLAMINGO-PECOS  
SURGERY CENTER, LLC, A NEVADA LIMITED LIABILITY COMPANY, Real Parties  
in Interest.

22 **12. Indicate whether this appeal involves child custody or visitation:**

23 This appeal does not involve child custody or visitation.

24  
25  
26  
27 ///

1 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

2 This appeal does involve the possibility of settlement, and Appellant is willing to engage in  
3 good faith settlement discussions.

4 Dated October 14, 2021.

Respectfully submitted by:

5 IQBAL LAW PLLC

6  
7 By: /s/ Mohamed A. Iqbal, Jr.  
8 Mohamed A. Iqbal, Jr. (NSB 10623)  
9 *Special Litigation Counsel for Mark J.*  
10 *Gardberg, Esq., in his capacity as Receiver*  
11 *for, and acting on behalf of, Flamingo-Pecos*  
12 *Surgery Center, LLC*

13 **CERTIFICATE OF SERVICE**

14 I certify that I served the foregoing **PLAINTIFF'S CASE APPEAL STATEMENT** on all  
15 counsel of record in this matter using the Court's e-file/e-service system on October 14, 2021.

16 By: /s/ Marie-Claire Alsanjakli  
17 An employee of IQBAL LAW PLLC  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28