

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 02 2021 07:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JUDITH SALTER, INDIVIDUALLY;
JOSHUA KANER, INDIVIDUALLY;
AND JOSHUA KANER AS
GUARDIAN AND NATURAL
PARENT OF SYDNEY KANER, A
MINOR,

Appellants,

vs.

EDWARD RODRIGUEZ MOYA, AN
INDIVIDUAL; AND BERENICE
DOMENZAIN-RODRIGUEZ, AN
INDIVIDUAL,

Respondents.

District Court Case No.:
A-20-827003-C

**APPELLANT'S APPENDIX,
VOLUME 3 (Nos. 500-556)**

Price Beckstrom, PLLC

Daniel R. Price, Esq.

Nevada Bar No. 13564

Christopher Beckstrom, Esq.

Nevada Bar No. 14031

1404 South Jones Boulevard

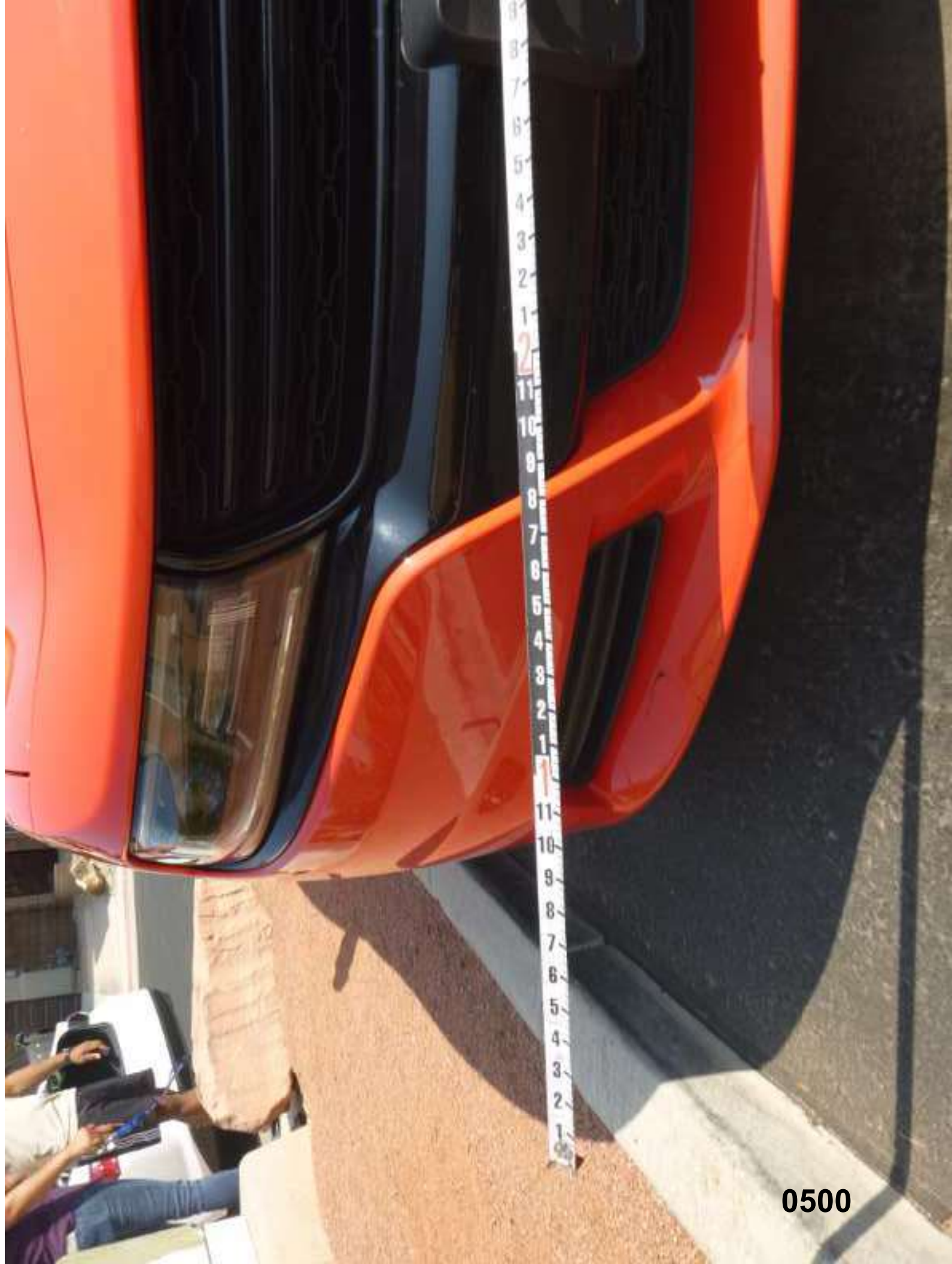
Las Vegas, NV 89146

Attorneys for Appellants

INDEX TO PETITIONER'S APPENDIX

DOCUMENT DESCRIPTION	LOCATION
Defendants' Motion to Enforce Settlement Agreement	Vol. 1, 1–112
Opposition to Defendants' Motion to Enforce Settlement Agreement	Vol. 1, 113–37
Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion to Enforce Settlement Agreement	Vol. 1, 138–250 Vol. 2, 251–5
Court Minutes, dated March 15, 2021	Vol. 2, 256–7
Order Denying Defendants' Motion to Enforce Settlement Agreement	Vol. 2, 258–61
Notice of Entry of Order Denying Defendants' Motion to Enforce Settlement Agreement	Vol. 2, 262–8
Motion for Reconsideration of Court's March 15, 2021 Minute Order Denying Defendants' Motion to Enforce Settlement Agreement	Vol. 2, 269–392
Opposition to Defendants' Motion for Reconsideration of Court's March 15, 2021 Minute Order Denying Defendants' Motion to Enforce Settlement Agreement	Vol. 2, 393–412
Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion for Reconsideration of Court's March 15, 2021 Minute Order Denying Defendants' Motion to Enforce Settlement Agreement	Vol. 2, 413–500 Vol. 3, 501–41

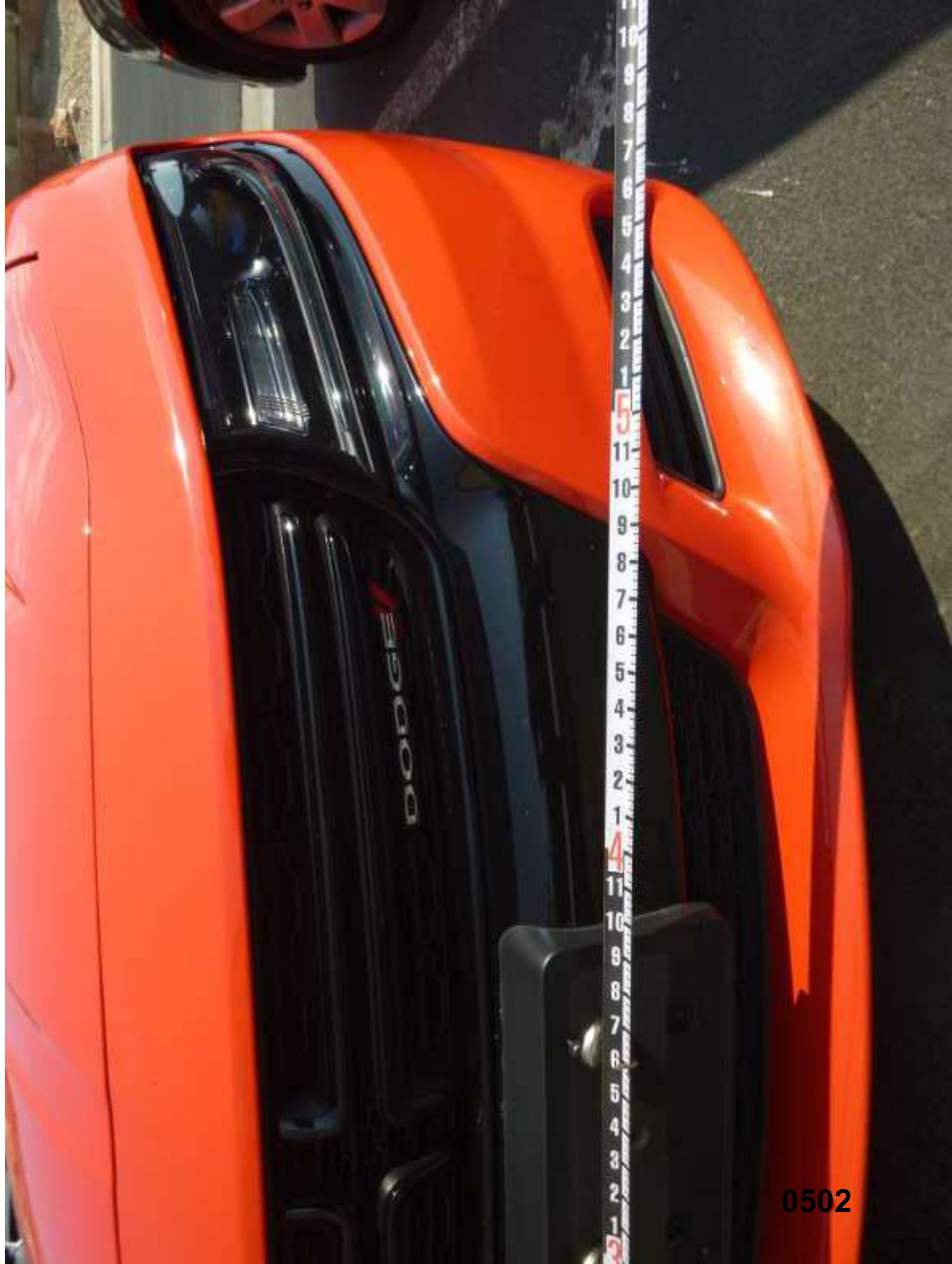
Order, dated July 10, 2012 ¹ , Granting Motion for Reconsideration	Vol. 3, 542–7
Notice of Entry of Order Granting Motion for Reconsideration	Vol. 3, 548–56
Transcript from Hearing on Motion for Reconsideration	Vol. 3, 557–79



0500



0501



0502



0503



0504

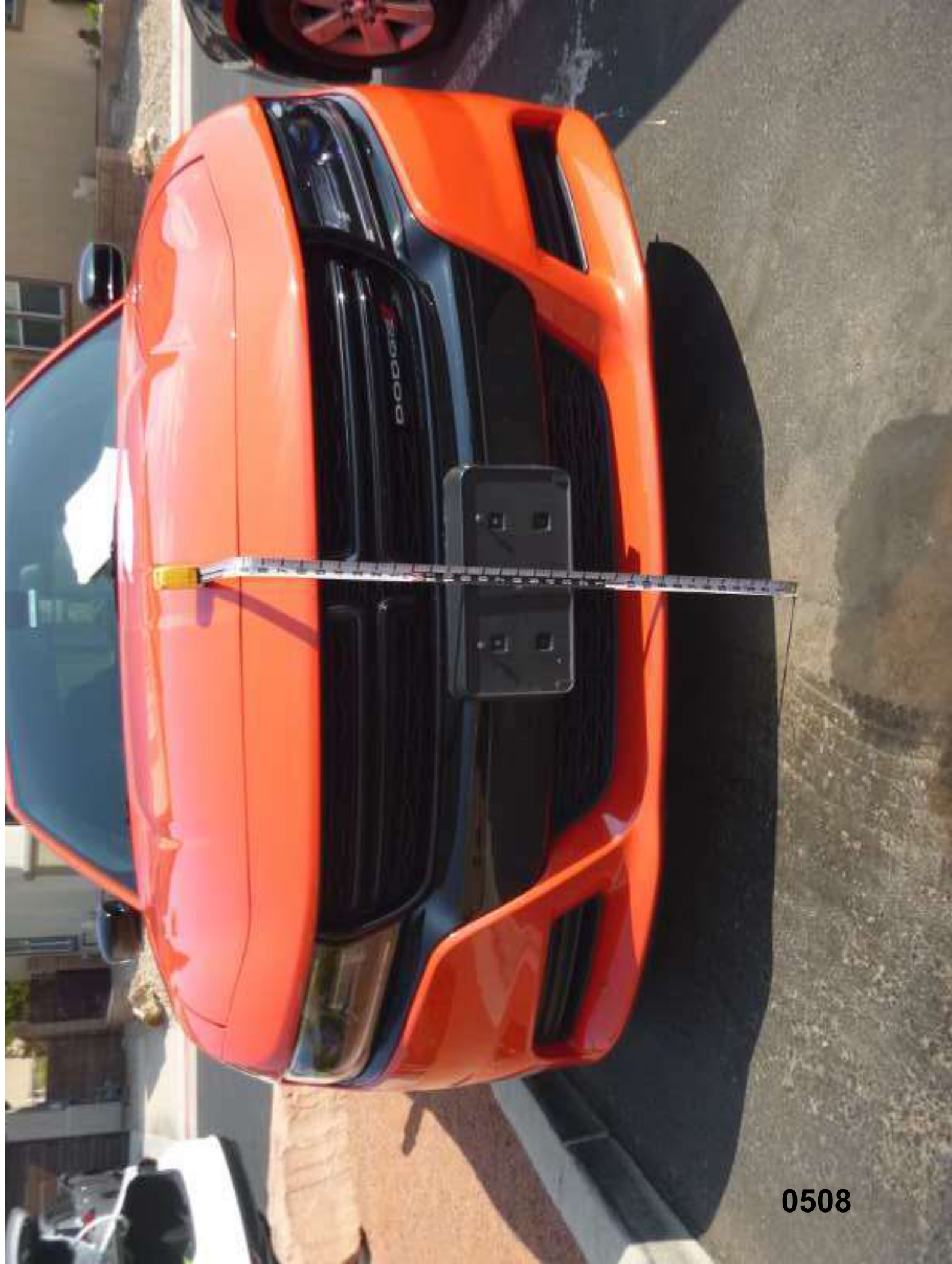


0505



0506





0508



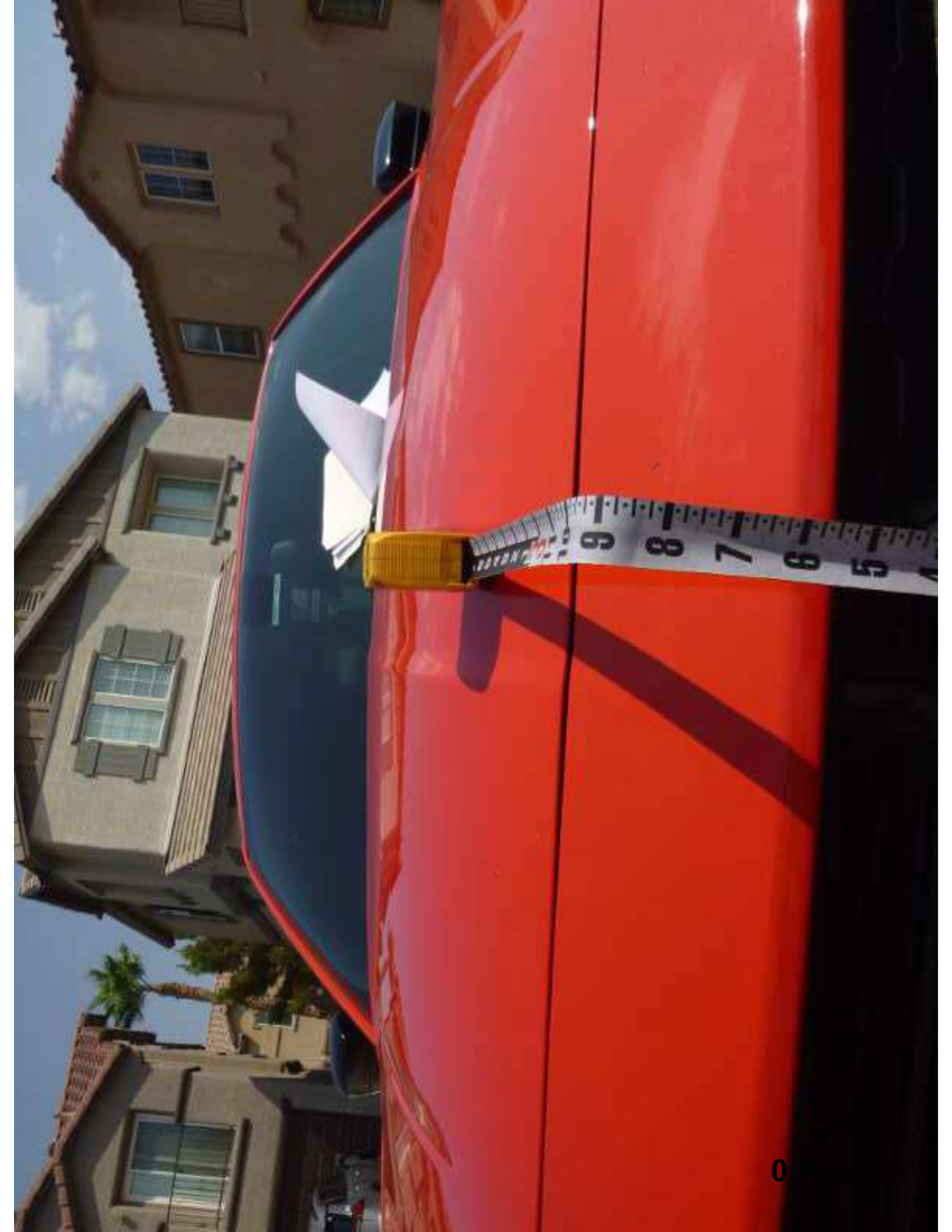
0509

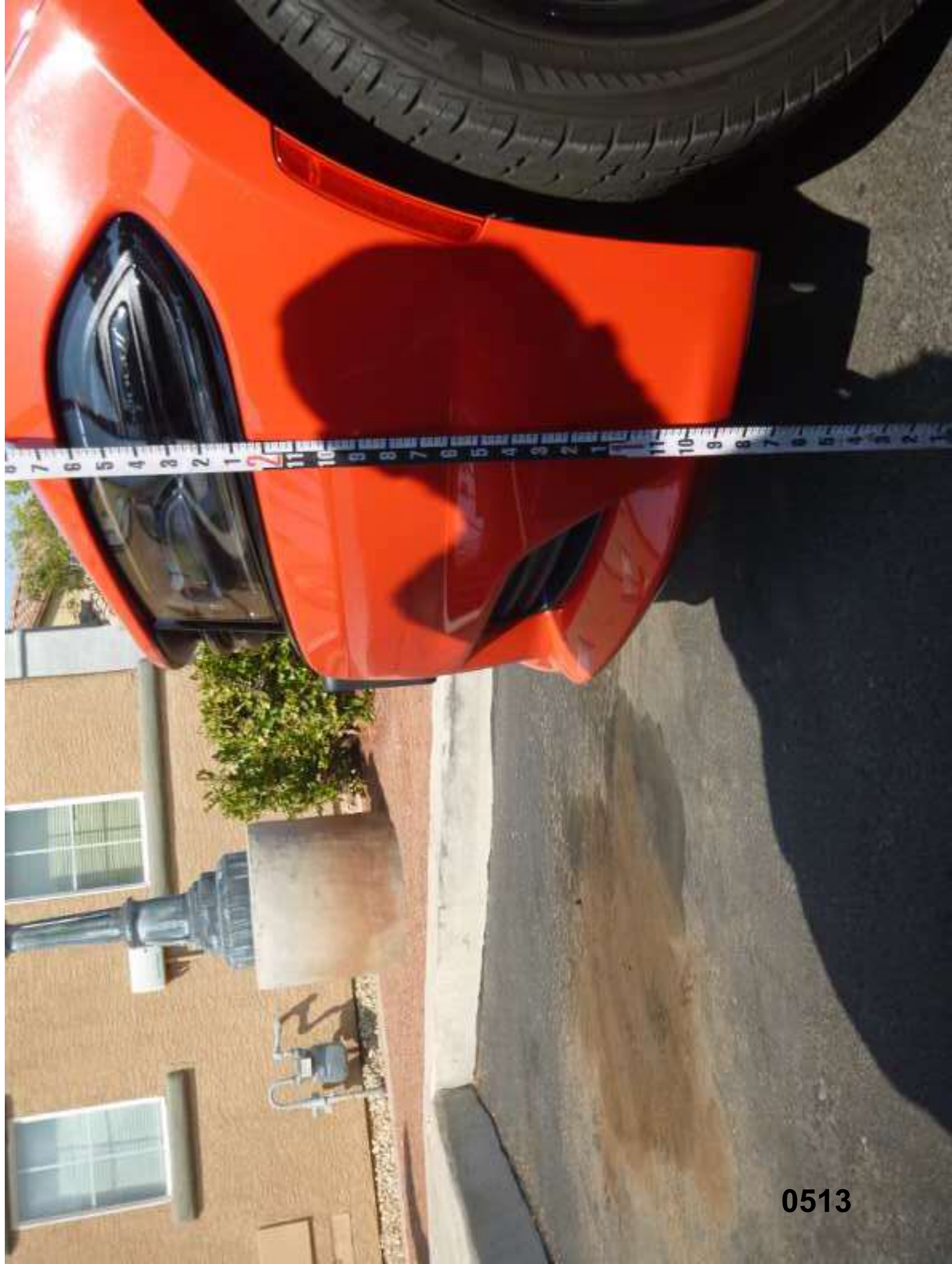


0510



0511

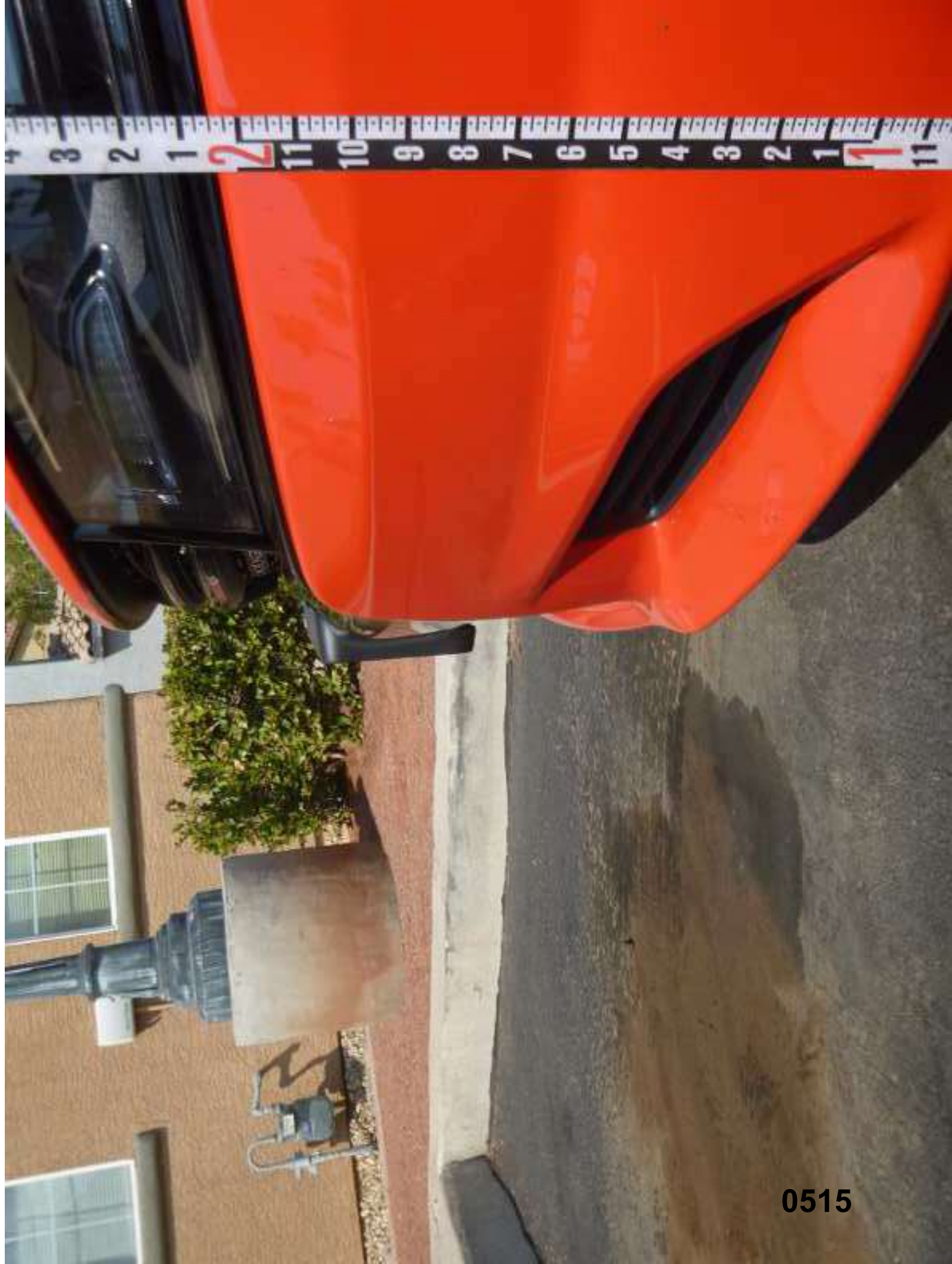




0513



0514



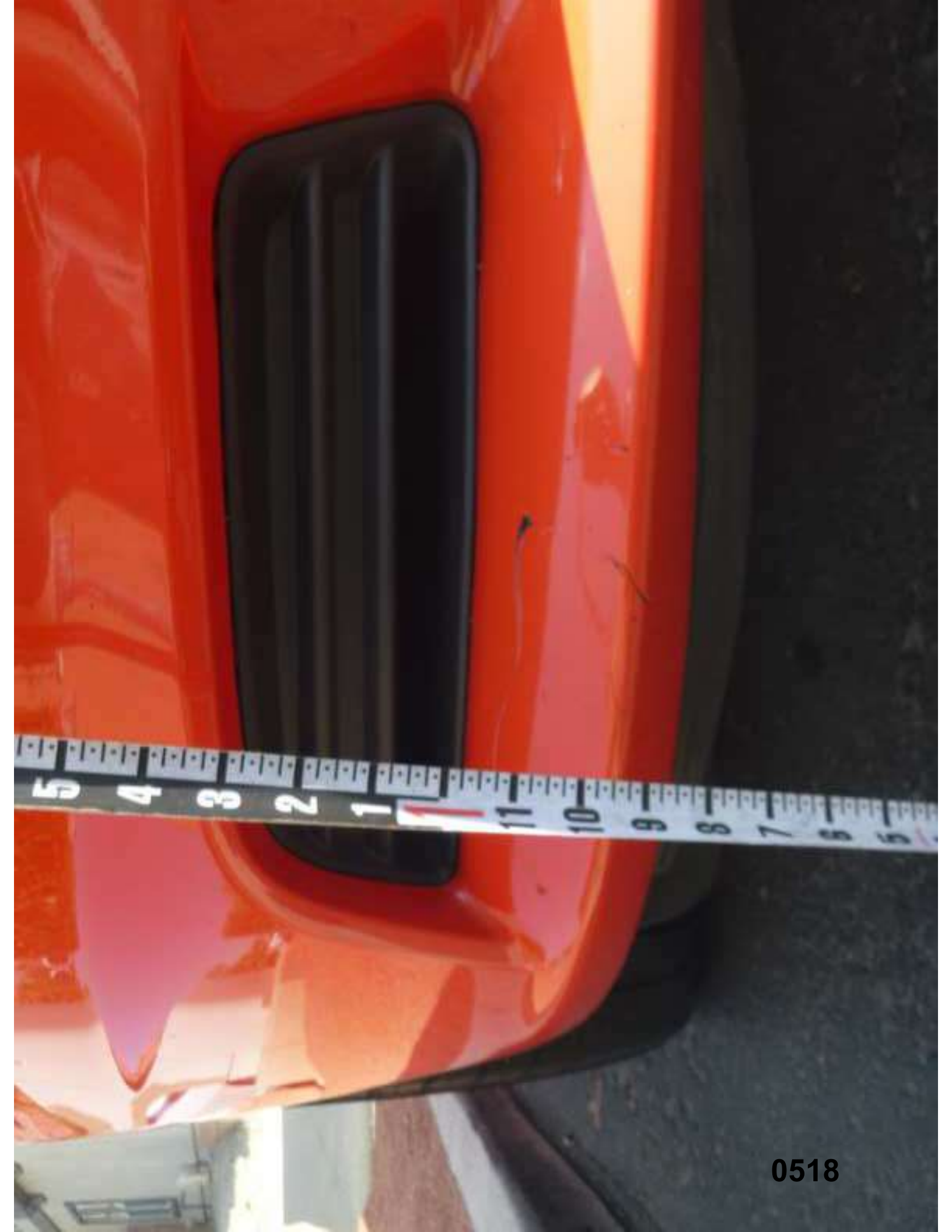
0515



0516



0517



0518



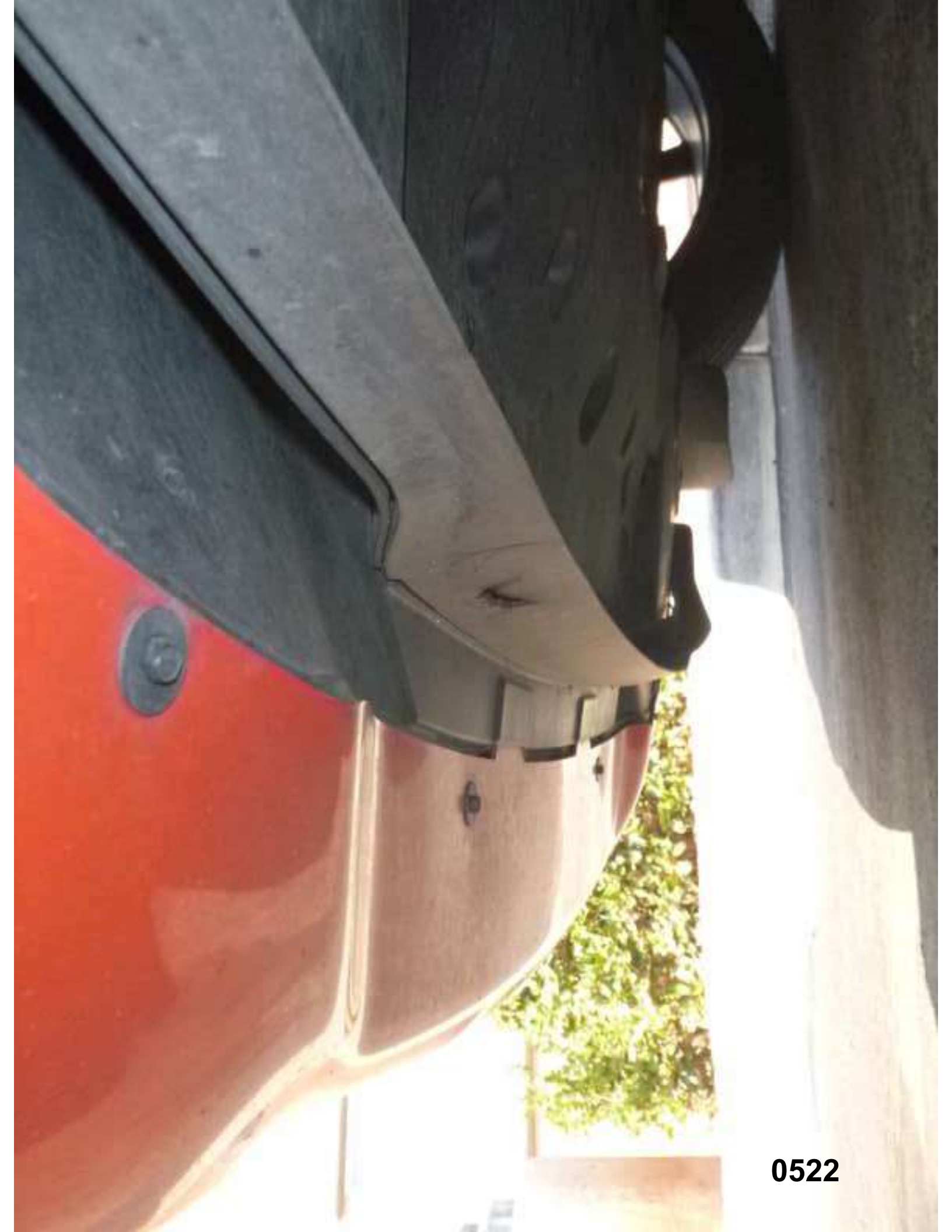
0519



0520



0521



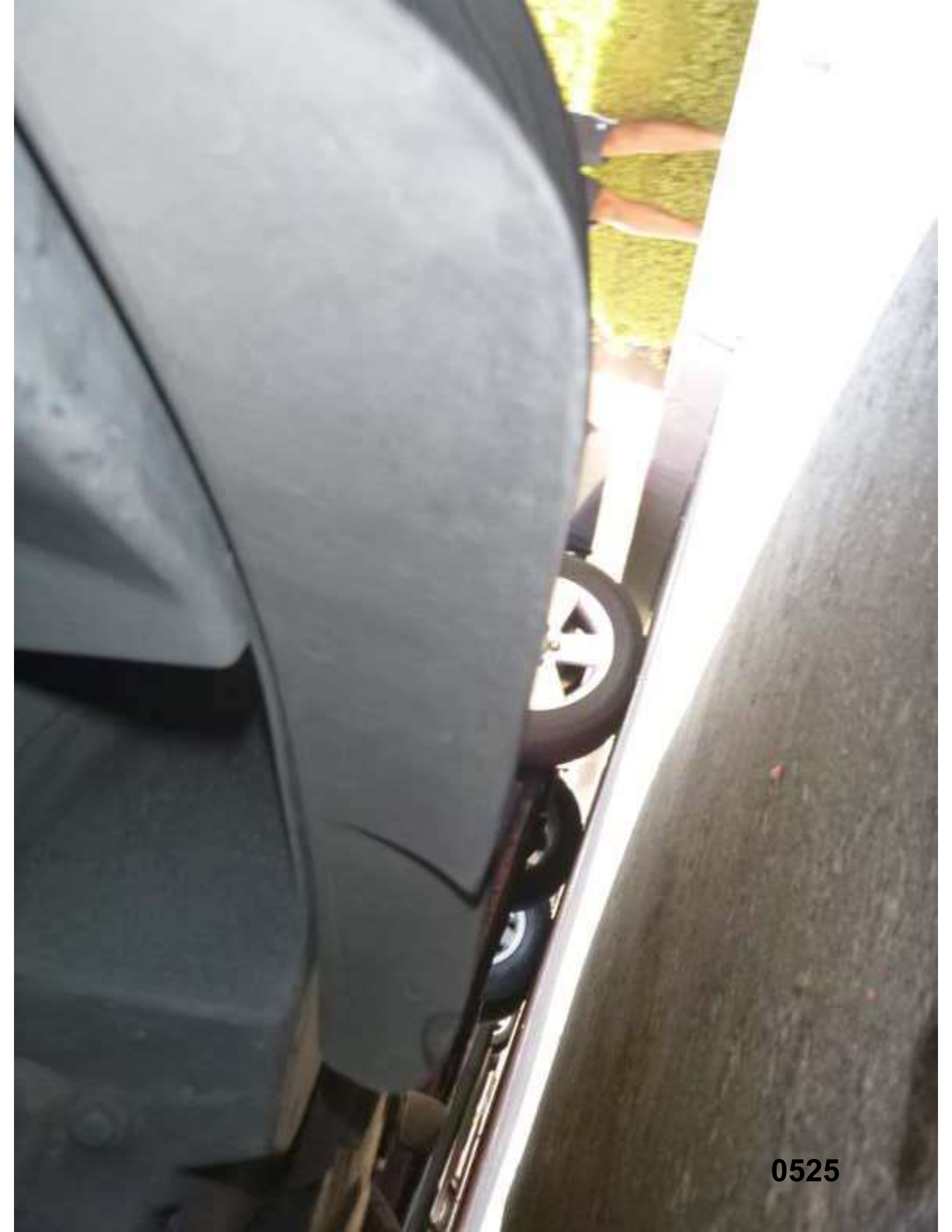
0522



0523



0524



0525

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

EXHIBIT C



July 28, 2020

Geico

Fax: 866-568-2132

Re: Your insured : Berenice Domenzain-Rodriguez & Edward J Rodriguez Moya
Date of Loss : 7/25/2020
Claim Number: 0279986740101014
My Client(s) : Judith Salter, Joshua Kaner & Sydney Kaner

Dear claims handler:

This is to advise you that my firm represents the above-named client(s) in a claim for personal injuries against your insured as a result of an incident on 7/25/2020.

Please provide me with a **certified copy of all insurance policies**, including any umbrella policy(ies), of your insured and retain this letter as an indication of my representation. Kindly forward copies of any recorded oral and or written statements taken from our client with regards to the facts of this loss. Please also preserve any and all information related to this claim.

Please confirm in writing your address and other information to correspond with the adjuster. Should you need further information or assistance with this claim, please feel free to contact me.

Finally, please instruct your insured to preserve all evidence in your insured's possession, custody, or control related to this incident. This includes any photographs, and/or video/audio of the incident, parties, and/or the involved vehicles, statements of the parties, etc. Failure to preserve that evidence may result in sanctions against your insured. *See, Stubli v. Big D International Trucks, Inc.*, 810 P.2d 785, 107 Nev. 309 (1991).

Sincerely,

Daniel Price

Daniel R. Price
PRICE BECKSTROM, PLLC

Office: 702-941-0503 Fax: 702-507-2335 Email: info@pricebeckstromlaw.com
7312 West Cheyenne Avenue Ste. 5, Las Vegas, Nevada 89129

0527



July 29, 2020

Whitney Atterberry
Geico
Fax: 866-568-2132

Re: Your insured : Berenice Domenzain-Rodriguez & Edward J Rodriguez Moya
 Date of Loss : 7/25/2020
 Claim Number: 0279986740101014
 My Client(s) : Judith Salte, Joshua Kanerr & Sydney Kaner

Dear Whitney Atterberry:

Attached please find written authorization to receive the medical reports, records and bills of my above-referenced client related to this claim. Pursuant to NRS 690B, as amended by SB 435, I request that you provide to my office all pertinent facts or provisions of your insured's policy relating to any coverage at issue, including policy limits. This information must be provided within ten (10) days of the date of this request.

Sincerely,

Daniel Price

Daniel R. Price
PRICE BECKSTROM, PLLC

Office: 702-941-0503 Fax: 702-507-2335 Email: info@pricebeckstromlaw.com
7312 West Cheyenne Avenue Ste. 5, Las Vegas, Nevada 89129

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT D

EXHIBIT D

Attn: Region IV Claims, PO Box 509119
San Diego, CA 92150-9914

9/4/2020

Price Beckstom Attorneys At Law

7312 W CHEYENNE AVE STE 5
Las Vegas, NV 89129-7425

Company Name:	GEICO Advantage Insurance Company
Claim Number:	027998674 0101 014
Loss Date:	Saturday, July 25, 2020
Policyholder:	Berenice Domenzain-rodriguez
Driver:	Edward Rodriguez moya

Dear Price Beckstom Attorneys At Law,

We acknowledge your request for the disclosure of our insured's bodily injury liability limits regarding your clients, Judith Salter, Joshua Kaner and Sydney Kaner.

Please accept this letter as confirmation of the available coverage in lieu of a Declarations Page and/or policy. The limits for this policy for the date of loss, 07/25/2020, is \$25,000/\$50,000.

Please note that we are respectfully denying your client's injury claim as having no causal relationship to this loss. We will not be collecting any medical records for this file.

If you have any questions or wish to discuss this matter further, please call me at the number listed below.

Sincerely,

Whitney Atterberry
520-546-5254
Claims Department

0530

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT E

EXHIBIT E

and at such time the funds will be distributed as ordered by the court. Following acceptance of this offer my clients will execute a release of all claims in favor of your insureds. A copy of my firm's W-9 is attached.

Sincerely,

Daniel Price

Daniel R. Price, Esq.
PRICE BECKSTROM, PLLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT F

EXHIBIT F

Attn: Region IV Claims, PO Box 509119
San Diego, CA 92150-9914

11/12/2020

Price Beckstom PLLC

7312 W CHEYENNE AVE STE 5
Las Vegas, NV 89129-7425

Company Name:	GEICO Advantage Insurance Company
Claim Number:	027998674 0101 014
Loss Date:	Saturday, July 25, 2020
Policyholder:	Berenice Domenzain-rodriguez
Driver:	Edward Rodriguez moya
Clients:	Judith Salter, Joshua Kaner and Sydney Kaner

Dear Price Beckstom PLLC,

Please be advised that there were a total of three (3) injured parties that were involved in the above referenced loss.

We have Bodily Injury Coverage on our policy with limits of \$25,000.00 per person/ \$50,000.00 per occurrence. At this time, we are extending an offer of the global limit of \$50,000.00 to settle the three (3) bodily injury claims presented in this loss.

Please take this matter under consideration to come up with a distribution of our remaining policy limits (with no one person receiving more than the \$25,000.00 single policy limit and all parties limited to \$50,000.00 combined.) Please notify me when you have come to a conclusion regarding the disbursement of the remaining limits.

Please note that all parties must agree to settlement before we can issue payments. We will coordinate with all parties to assist in the agreement and anticipated resolution to include the utilization of a mediator if necessary.

Please note given the nature of the case we will request court approval for any minors involved.

0535

Sincerely,

Whitney Atterberry
520-546-5254
Claims Department

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT G

EXHIBIT G



December 1, 2020

Whitney Atterberry
GEICO
PO Box 509119
San Diego, CA 92150
Via Document Upload

Re: Your insured : Berenice Domenzain-Rodriguez &
 Edward J Rodriguez Moya
 Date of Loss : 7/25/2020
 Claim Number: 0279986740101014
 My Clients : Judith Salter, Joshua Kaner and Sydney Kaner

Dear Ms. Atterberry:

My clients were surprised that you did not accept their settlement offer dated October 22, 2020. We did receive your counteroffer dated November 12, 2020, which my clients reject.

Sincerely,

Daniel Price

Daniel R. Price, Esq.
PRICE BECKSTROM, PLLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT H

EXHIBIT H

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto**COURT MINUTES****March 15, 2021**

A-20-827003-C Judith Salter, Plaintiff(s)
 vs.
 Edward Rodriguez Moya, Defendant(s)

March 15, 2021 3:00 AM Minute Order

HEARD BY: Bluth, Jacqueline M. **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Keith Reed

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Having considered Defendants Motion to Enforce Settlement Agreement, Plaintiffs Opposition, and Defendants Reply, the motion is hereby DENIED. Plaintiffs Judith Salter, Joshua Kamer, and minor Sydney Kamer allege that they were involved in a motor-vehicle collision involving the defendants which occurred on or about July 25, 2020. Plaintiffs allege they were rear-ended by Defendants and sustained injuries as a result. On October 22, 2020, Plaintiffs sent a Time-Limited Settlement Offer to Defendants. The offer required acceptance by performance and included the following language:

My clients make this one-time offer to settle all of my clients claims arising from this loss against your insured in exchange for the formal limits of your insureds policy limits of \$50,000 as a global tender. This offer expires on November 23, 2020 at 1:00 p.m., Pacific Time. This offer can only be accepted by the following performance, accomplished prior to the expiration of this offer:

1) Receipt of \$50,000 (the global policy limits of this policy) in my office, payable to Price Beckstrom, PLLC, Judith Salter, Joshua Kaner, and Sydney Kaner.

(Plaintiffs 10/22/20 Settlement Offer) (emphasis added). GEICO responded to Plaintiffs settlement offer with a letter dated November 12, 2020, stating:

We have Bodily Injury Coverage on our policy with limits of \$25,000.00 per person/\$50,000.00 per

PRINT DATE: 03/17/2021

Page 1 of 2

Minutes Date: March 15, 2021

0540

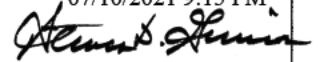
occurrence. At this time, we are extending an offer of the global limit of \$50,000.00 to settle the three (3) bodily injury claims presented in this loss.

Please take this matter under consideration to come up with a distribution of our remaining policy limits (with no one person receiving more than the \$25,000.00 single policy limit and all parties limited to \$50,000.00 combined.) Please notify me when you have come to a conclusion regarding the disbursement of the remaining limits.

GEICO's 11/12/20 Letter. Defendants now argue that the November 12, 2020 letter sent to Plaintiffs constituted valid acceptance of the settlement offer and request that this Court enforce the agreement.

Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer. *Eagle Materials, Inc. v. Stiren*, 127 Nev. 1131, 373 P.3d 911 (2011); (citing Restatement (Second) of Contracts 50 (1981)). Where an offer invites an offeree to accept by rendering a performance ... [a] contract is created when the offeree tenders or begins the invited performance. *Id.* (citing Restatement (Second) of Contracts 45 (1981)). Where the offer requires acceptance by performance and does not invite a return promise . . . a contract can be created only by the offeree's performance. Restatement (Second) of Contracts 50 (1981). A mere promise to perform, without actual performance, does not constitute valid acceptance in such a situation. *Id.* Plaintiff's October 22, 2020 Settlement Offer clearly states that the offer can only be accepted by performance accomplished prior to the expiration of the offer. It is undisputed that Defendants did not provide payment in the manner specified prior to the deadline. Accordingly, the essential element of acceptance is not present to form an enforceable contract and Defendants' motion is DENIED. Plaintiffs' counsel shall promptly submit a proposed order.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Attorneys Daniel R. Price & Darrell D. Dennis. kar 3/16/21


CLERK OF THE COURT

ORDR

DARRELL D. DENNIS

Nevada Bar No. 006618

MICHAEL R. SMITH

Nevada Bar No. 12641

LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Telephone: 702.893.3383

Facsimile: 702.893.3789

E-Mail: Darrell.Dennis@lewisbrisbois.com

E-Mail: Michael.R.Smith@lewisbrisbois.com

Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JUDITH SALTER, individually; JOSHUA
KANER, individually; and JOSHUA KANER
as guardian and natural parent of SYDNEY
KANER, a minor;

Plaintiffs,

vs.

EDWARD RODRIGUEZ MOYA, an
individual; BERENICE DOMENZIAN-
RODRIGUEZ, an individual; DOE OWNERS
I-V; DOE DRIVERS I-V; and ROE
COMPANIES I-V;

Defendants.

Case No. A-20-827003-C

Dept. No.: VI

ORDER

Defendants EDWARD RODRIQUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion for Reconsideration of Court's March 15, 2021, Minute Order Denying Defendants' Motion to Enforce Settlement Agreement, having come on for Hearing before Honorable Jacqueline Bluth of Department Six of the Eighth Judicial District Court for the State of Nevada on May 25, 2021, with Daniel R. Price, Esq. and Christopher Beckstrom, Esq. of the law firm Price Beckstrom, PLLC appearing on behalf of plaintiffs and Michael R. Smith, Esq., of the law firm Lewis Brisbois Bisgaard & Smith, LLP, appearing on behalf of Defendants, the Court having entertained argument from counsel and for good cause appearing therefore:

THE COURT FINDS that The Court's March 15, 2021, Minute Order, entered by the Court on April 22, 2021 denying Defendants' Motion to Enforce Settlement is clearly erroneous, as The

1 Court failed to properly consider, among other things, the potential for future or additional exposure
2 to liability for Defendants, Defendants' automobile liability insurance carrier, and plaintiff's counsel
3 and the necessary assurances for protection of the interests of the minor plaintiff;

4 THE COURT ALSO FINDS that the Plaintiffs' Settlement Offer dated October 22, 2020,
5 was a valid offer insofar as it articulated sufficient material terms to allow for full and final
6 settlement;

7 THE COURT ALSO FINDS that it would not have been impossible for Defendants to tender
8 a single settlement draft to plaintiffs in response to the Plaintiffs' Settlement Offer dated October
9 22, 2020, albeit subject to the potential for future or additional exposure to liability for Defendants,
10 Defendants automobile liability insurance carrier, and plaintiffs' counsel and the necessary
11 assurances for the protection of the interests of the minor plaintiff as discussed above;

12 THE COURT ALSO FINDS that the Defendants' Letter dated November 12, 2020, was a
13 valid Acceptance of plaintiff's Offer insofar as the Defendants' Letter dated November 12, 2020,
14 expressed an acceptance of plaintiffs' material terms as articulated in the Plaintiff's Settlement Offer
15 dated October 22, 2020;

16 THE COURT ALSO FINDS that the Defendants' Letter dated November 12, 2020, was a
17 valid acceptance of plaintiffs' offer and sought guidance from plaintiffs' counsel as to manner of
18 acceptance, i.e., how the settlement drafts should be written and delivered;

19 THE COURT ALSO FINDS that the valid Offer and Acceptance were present sufficient to
20 form an Agreement;

21 THE COURT ALSO FINDS that the Defendants' Letter dated November 12, 2020,
22 requested guidance on the distribution of settlement funds and issuance of settlement drafts such
23 that without response and guidance from the plaintiffs' counsel, it was impossible for Defendants
24 to perform under the Agreement;

25 THE COURT ALSO FINDS that the Defendants were unable to move forward with
26 Performance of the Agreement;

27 ///

28 ///

1 THE COURT ALSO FINDS that the Agreement shall be enforced.

2 THEREFORE,

3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants EDWARD
4 RODRIGUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion for Reconsideration of
5 Court's March 15, 2021, Minute Order Denying Defendants' Motion to Enforce Settlement
6 Agreement is GRANTED;

7 IT IS ALSO HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants
8 EDWARD RODRIGUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion to Enforce
9 Settlement Agreement is GRANTED;

10 IT IS ALSO HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' case
11 will be DISMISSED WITH PREJUDICE.

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants EDWARD RODRIQUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion for Reconsideration of Court's March 15, 2021, Minute Order Denying Defendants' Motion to Enforce Settlement Agreement is GRANTED; and

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants EDWARD RODRIQUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion to Enforce Settlement Agreement is GRANTED; and

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' case shall be DISMISSED WITH PREJUDICE.

~~DATED this _____ day of June, 2021.~~

Dated this 10th day of July, 2021



EIGHTH JUDICIAL
DISTRICT COURT JUDGE

Respectfully submitted by:

LEWIS BRISBOIS BISGAARD & SMITH, LLP

CCA 079 7E7D D88D
Jacqueline M. Bluth
District Court Judge

MT
kj

/s/ Michael R. Smith

Michael R. Smith
Nevada Bar No. 12641
6385 So. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendants

Approved as to form and content:

/s/ Daniel R. Price

Daniel R. Price
Nevada Bar No. 13564
1404 South Jones Blvd.
Las Vegas, NV 89146
Attorneys for Plaintiffs

Schroeder, Brenda

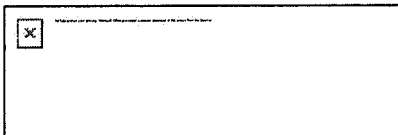
From: Daniel Price <daniel@pbnv.law>
Sent: Thursday, June 17, 2021 4:11 PM
To: Smith, Michael R. (LV)
Cc: Schroeder, Brenda; Stephanie Amundsen; Christopher Beckstrom
Subject: Re: [EXT] Re: Salter v. Moya - Order

Michael,

Thank you for the additional revisions. If you will correct the title of the document in the caption to reflect that it is an order, not a motion, you may then affix my electronic signature for submission to the department.

Sincerely,

Daniel Price
Price Beckstrom, PLLC
1404 S Jones Blvd, Las Vegas, NV 89146
Call: 702-941-0503 | Text: 702-941-0503 | Fax: 702-832-4026
www.pbnv.law



1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Judith Salter, Plaintiff(s)

CASE NO: A-20-827003-C

7 vs.

DEPT. NO. Department 6

8 Edward Rodriguez Moya,
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: 7/12/2021

15 Darrell Dennis

darrell.dennis@lewisbrisbois.com

16 Carrie Dunham

carrie.dunham@lewisbrisbois.com

17 Abigail Prince

abigail.prince@lewisbrisbois.com

18 Michael Smith

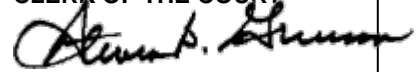
michael.r.smith@lewisbrisbois.com

19 Price Beckstrom, PLLC Eservice

info@pbnv.law

20 Brenda Schroeder

brenda.schroeder@lewisbrisbois.com



DARRELL D. DENNIS
Nevada Bar No. 006618
MICHAEL R. SMITH
Nevada Bar No. 12641
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702.893.3383
Facsimile: 702.893.3789
E-Mail: Darrell.Dennis@lewisbrisbois.com
E-Mail: Michael.R.Smith@lewisbrisbois.com
Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JUDITH SALTER, individually; JOSHUA
KANER, individually; and JOSHUA KANER
as guardian and natural parent of SYDNEY
KANER, a minor;

Plaintiffs,

vs.

EDWARD RODRIGUEZ MOYA, an
individual; BERENICE DOMENZIAN-
RODRIGUEZ, an individual; DOE OWNERS
I-V; DOE DRIVERS I-V; and ROE
COMPANIES I-V;

Defendants.

Case No. A-20-827003-C

Dept. No.: VI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order on Defendants EDWARD RODRIGUEZ and
BERENICE DOMENZIAN-RODRIGUEZ' Motion for Reconsideration of Court's March 15,
2021, Minute Order Denying Defendants' Motion to Enforce Settlement Agreement was entered
with the Court in the above-entitled case on the 10th day of July, 2021, a copy of which is

///

///

1 attached hereto.

2
3 DATED this 12th day of July, 2021.

4
5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By: */s/ Michael R. Smith*

7 DARRELL D. DENNIS

8 Nevada Bar No. 006618

9 MICHAEL R. SMITH

10 Nevada Bar No. 12641

11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 *Attorneys for Defendants*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS BISGAARD & SMITH LLP and that on this 12th day of July, 2021, I did cause a true copy of the foregoing **NOTICE OF ENTRY OR ORDER**, to be served via the Court's electronic filing and service system to all parties on the current service list.

Daniel R. Price
Christopher Beckstrom
PRICE BECKSTROM, PLLC
1404 South Jones Blvd.
Las Vegas, NV 89146
Attorneys for Plaintiff

By */s/ Brenda Schroeder*
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

Heather S. Smith
CLERK OF THE COURT

ORDR

DARRELL D. DENNIS

Nevada Bar No. 006618

MICHAEL R. SMITH

Nevada Bar No. 12641

LEWIS BRISBOIS BISGAARD & SMITH LLP

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Telephone: 702.893.3383

Facsimile: 702.893.3789

E-Mail: Darrell.Dennis@lewisbrisbois.com

E-Mail: Michael.R.Smith@lewisbrisbois.com

Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JUDITH SALTER, individually; JOSHUA
KANER, individually; and JOSHUA KANER
as guardian and natural parent of SYDNEY
KANER, a minor;

Plaintiffs,

vs.

EDWARD RODRIGUEZ MOYA, an
individual; BERENICE DOMENZIAN-
RODRIGUEZ, an individual; DOE OWNERS
I-V; DOE DRIVERS I-V; and ROE
COMPANIES I-V;

Defendants.

Case No. A-20-827003-C

Dept. No.: VI

ORDER

Defendants EDWARD RODRIQUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion for Reconsideration of Court's March 15, 2021, Minute Order Denying Defendants' Motion to Enforce Settlement Agreement, having come on for Hearing before Honorable Jacqueline Bluth of Department Six of the Eighth Judicial District Court for the State of Nevada on May 25, 2021, with Daniel R. Price, Esq. and Christopher Beckstrom, Esq. of the law firm Price Beckstrom, PLLC appearing on behalf of plaintiffs and Michael R. Smith, Esq., of the law firm Lewis Brisbois Bisgaard & Smith, LLP, appearing on behalf of Defendants, the Court having entertained argument from counsel and for good cause appearing therefore:

THE COURT FINDS that The Court's March 15, 2021, Minute Order, entered by the Court on April 22, 2021 denying Defendants' Motion to Enforce Settlement is clearly erroneous, as The

1 Court failed to properly consider, among other things, the potential for future or additional exposure
2 to liability for Defendants, Defendants' automobile liability insurance carrier, and plaintiff's counsel
3 and the necessary assurances for protection of the interests of the minor plaintiff;

4 THE COURT ALSO FINDS that the Plaintiffs' Settlement Offer dated October 22, 2020,
5 was a valid offer insofar as it articulated sufficient material terms to allow for full and final
6 settlement;

7 THE COURT ALSO FINDS that it would not have been impossible for Defendants to tender
8 a single settlement draft to plaintiffs in response to the Plaintiffs' Settlement Offer dated October
9 22, 2020, albeit subject to the potential for future or additional exposure to liability for Defendants,
10 Defendants automobile liability insurance carrier, and plaintiffs' counsel and the necessary
11 assurances for the protection of the interests of the minor plaintiff as discussed above;

12 THE COURT ALSO FINDS that the Defendants' Letter dated November 12, 2020, was a
13 valid Acceptance of plaintiff's Offer insofar as the Defendants' Letter dated November 12, 2020,
14 expressed an acceptance of plaintiffs' material terms as articulated in the Plaintiff's Settlement Offer
15 dated October 22, 2020;

16 THE COURT ALSO FINDS that the Defendants' Letter dated November 12, 2020, was a
17 valid acceptance of plaintiffs' offer and sought guidance from plaintiffs' counsel as to manner of
18 acceptance, i.e., how the settlement drafts should be written and delivered;

19 THE COURT ALSO FINDS that the valid Offer and Acceptance were present sufficient to
20 form an Agreement;

21 THE COURT ALSO FINDS that the Defendants' Letter dated November 12, 2020,
22 requested guidance on the distribution of settlement funds and issuance of settlement drafts such
23 that without response and guidance from the plaintiffs' counsel, it was impossible for Defendants
24 to perform under the Agreement;

25 THE COURT ALSO FINDS that the Defendants were unable to move forward with
26 Performance of the Agreement;

27 ///

28 ///

1 THE COURT ALSO FINDS that the Agreement shall be enforced.
2 THEREFORE,
3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants EDWARD
4 RODRIGUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion for Reconsideration of
5 Court's March 15, 2021, Minute Order Denying Defendants' Motion to Enforce Settlement
6 Agreement is GRANTED;
7 IT IS ALSO HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants
8 EDWARD RODRIGUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion to Enforce
9 Settlement Agreement is GRANTED;
10 IT IS ALSO HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' case
11 will be DISMISSED WITH PREJUDICE.
12 ///
13 ///
14 ///
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants EDWARD RODRIQUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion for Reconsideration of Court's March 15, 2021, Minute Order Denying Defendants' Motion to Enforce Settlement Agreement is GRANTED; and

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants EDWARD RODRIQUEZ and BERENICE DOMENZIAN-RODRIGUEZ's Motion to Enforce Settlement Agreement is GRANTED; and

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' case shall be DISMISSED WITH PREJUDICE.

~~DATED this _____ day of June, 2021.~~

Dated this 10th day of July, 2021


EIGHTH JUDICIAL
DISTRICT COURT JUDGE

Respectfully submitted by:

LEWIS BRISBOIS BISGAARD & SMITH, LLP

CCA 079 7E7D D88D
Jacqueline M. Bluth
District Court Judge

MT
kj

/s/ Michael R. Smith
Michael R. Smith
Nevada Bar No. 12641
6385 So. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendants

Approved as to form and content:

/s/ Daniel R. Price
Daniel R. Price
Nevada Bar No. 13564
1404 South Jones Blvd.
Las Vegas, NV 89146
Attorneys for Plaintiffs

Schroeder, Brenda

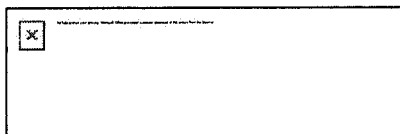
From: Daniel Price <daniel@pbnv.law>
Sent: Thursday, June 17, 2021 4:11 PM
To: Smith, Michael R. (LV)
Cc: Schroeder, Brenda; Stephanie Amundsen; Christopher Beckstrom
Subject: Re: [EXT] Re: Salter v. Moya - Order

Michael,

Thank you for the additional revisions. If you will correct the title of the document in the caption to reflect that it is an order, not a motion, you may then affix my electronic signature for submission to the department.

Sincerely,

Daniel Price
Price Beckstrom, PLLC
1404 S Jones Blvd, Las Vegas, NV 89146
Call: 702-941-0503 | Text: 702-941-0503 | Fax: 702-832-4026
www.pbnv.law



1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Judith Salter, Plaintiff(s)

CASE NO: A-20-827003-C

7 vs.

DEPT. NO. Department 6

8 Edward Rodriguez Moya,
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: 7/12/2021

15 Darrell Dennis

darrell.dennis@lewisbrisbois.com

16 Carrie Dunham

carrie.dunham@lewisbrisbois.com

17 Abigail Prince

abigail.prince@lewisbrisbois.com

18 Michael Smith

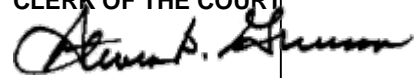
michael.r.smith@lewisbrisbois.com

19 Price Beckstrom, PLLC Eservice

info@pbnv.law

20 Brenda Schroeder

brenda.schroeder@lewisbrisbois.com



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JUDITH SALTER,)	
)	
Plaintiff(s),)	
)	Case No. A-20-827003-C
vs.)	
)	Department VI
EDWARD RODRIGUEZ MOYA,)	
)	
Defendant(s).)	

BEFORE THE HONORABLE JACQUELINE M. BLUTH,
DISTRICT COURT JUDGE

TUESDAY, MAY 25, 2021

TRANSCRIPT OF PROCEEDINGS RE:
MOTION FOR RECONSIDERATION OF COURT'S MARCH 15, 2021,
MINUTE ORDER DENYING DEFENDANTS' MOTION TO ENFORCE
SETTLEMENT AGREEMENT
(Via Audio Via BlueJeans)

APPEARANCES:

For the Plaintiff(s):	CRISTOPHER BECKSTROM, ESQ.
	DANIEL R. PRICE, ESQ.

For the Defendant(s):	MICHAEL R. SMITH, ESQ.
-----------------------	------------------------

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

1 **LAS VEGAS, NEVADA, MONDAY, MARCH 25, 2021**

2 [Proceeding commenced at 10:02 a.m.]

3
4 THE COURT: 827003, Judith Salter versus Moya. If I
5 could have the appearances for the record, please.

6 MR. BECKSTROM: Cristopher Beckstrom for the
7 plaintiff -- plaintiffs, I should say.

8 THE COURT: Thank you.

9 MR. PRICE: And Daniel --

10 MR. SMITH: Good morning. Michael Smith on behalf of
11 the defendants.

12 THE COURT: And then did I hear Mr. Price as well?

13 MR. PRICE: That's right, Your Honor.

14 THE COURT: Okay. All right. Let me pull up my notes. I
15 have a few questions for the parties.

16 So let's start, if we can, with -- let's start with you first,
17 Mr. Smith. So in the motion work, it says:

18 So by stating that Defendant's insurer was required to
19 perform an illegal act, the district court is ignoring state law and
20 stating illegal contracts are valid.

21 So when I looked at the two statutes, right, and I think
22 Plaintiff discusses this, we have NRS 485.185, which is the
23 requirement on motor vehicle owners to carry liability insurance
24 with certain minimums. And then I looked at 41.200, which
25 discusses minor comp claims and it's clear, you know, the rationale

1 behind the statute is to protect minors from unfair fees or their
2 parents or guardians taking advantage of the situation.

3 So I'm not seeing anything in here that would make it
4 illegal for GEICO to enter into this type of contract. So can you go
5 into a little bit more depth and explain to me why it is that you
6 believe it would be an illegal act.

7 MR. SMITH: Certainly. First let me -- I'd like to thank the
8 Court and the attorneys at Price Beckstrom for allowing this hearing
9 to go forward and to giving us a week continuance. I apologize that
10 I was out last week.

11 THE COURT: That's okay.

12 MR. SMITH: But thank you, everyone, for
13 accommodating.

14 THE COURT: Sure.

15 MR. SMITH: To address the Court's concern, I'm not
16 saying that it -- that the contract is legal. The contract is 100
17 percent legal and that's why we're trying to enforce the agreement.
18 What we're trying to say is that by providing one check without an
19 allocation between the three, it puts my carrier in a position to
20 where one individual may receive more than \$25,000, which is a
21 violation of that statute.

22 And also the purpose of the minor's compromise statute
23 is twofold. And I discuss that in my opposition -- or, excuse me, in
24 my reply. The minor's compromise statute not only protects
25 minors, but it affords the insurer or the alleged tortfeasor with

1 some sort of measure of finality, meaning that in the -- let's say the
2 hypothetical that Price Beckstrom, in this case, there was an issue
3 with getting the money to the actual minor. What would happen is
4 all of a sudden now the defendants and their insurer are in a
5 position where 15, 20 years down the line, they're all of a sudden
6 subject to another potential lawsuit based on the same occurrence
7 that they thought they had resolved.

8 And so while I'm not saying that there's possible penalties
9 for the defendants presented by the minor's compromised statute;
10 what I'm saying is there's no finality of judgment. And that's
11 something that you can understand and appreciate that insurance
12 carriers and defendants want, and that's something that the minor's
13 compromise statute allows to happen and accelerates that
14 potential, you know, statute of limitations issue for minors.

15 So I'm not saying that the contract is illegal. The contract
16 is 100 percent valid. What I'm saying is that in order for the carrier
17 in this case to satisfy the requirements of the agreement, they need
18 to know that -- how the money's being distributed such that they're
19 not inadvertently violating the statute that says only one -- in this
20 case, only one person could get \$25,000. And they're also stating
21 that, yes, they know that the minor has been protected, has been --
22 the compromise has been addressed by the Court and the carrier
23 themselves are protected from future liability or claims.

24 The original motion was hoping to address the fact that
25 the carrier in this case attempted to satisfy their obligations under

1 the contract, but Plaintiff's counsel never really provided that
2 instruction. And for the carrier, knowing that they're in compliance
3 with the law and that they have that reassurance that's provided by
4 the minor's compromise statute is what prevented the carrier from
5 tendering a single check for the entire policy limits. And that's the
6 type of clarification that I'm here to request before the Court.

7 We don't believe that the contract was illegal; we just
8 want to make sure the compliance was in conformity with those
9 statutes.

10 THE COURT: But so what do you say -- well, to two of
11 their arguments, the first one is, well, then can the contract, though,
12 actually be valid and legal if the contract specifically calls for,
13 basically, two things: Specific performance of the delivery of one
14 check by that time period?

15 MR. SMITH: Well, as long as there's an allocation, an
16 allocation is in compliance with the statute, then yes. I mean, I
17 agree that the -- what Plaintiff's counsel's asking for in their initial
18 ask is something that carriers do all the time.

19 However, in fulfilling their obligations under that, they
20 allocate, you know, a certain amount to this individual, to that
21 individual. And they hold back a position for the minor.

22 This is a peculiar situation. I would not have -- I have
23 issues with the ask. I don't think the ask was in itself illegal or
24 anything like that. I just think that, you know, had the plaintiff's
25 counsel provided a response to the carrier of the \$50,000 check

1 would have been issued. It's just in this case it wasn't, because the
2 carrier had questions on their end that needed to be resolved and
3 those questions are why we're here today.

4 THE COURT: And then, lastly, they said -- Plaintiff states
5 that to comply with NRS 41.200, there was a specific clause in there
6 stating, additionally, all funds attributable to minor Sydney Kaner
7 will be held in trust until an order is issued from the appropriate
8 court compromising the minor's claim, and at such time the funds
9 will be distributed as ordered by the Court.

10 And Plaintiff also brings up the point, look, like, if we mess
11 this up or, you know, it's not given to the minor as appropriate or,
12 you know, as it should be, then that's on us, not on you. What's
13 your response to that?

14 MR. SMITH: Well, again, that may be on them, but it also
15 could be an issue that isn't presented to the Court for resolution for
16 another 15, 20 years.

17 THE COURT: Uh-huh.

18 MR. SMITH: And while I certainly wish Mr. Price and
19 Mr. Beckstrom all the success in the world, there's no guarantee
20 that in 15 years when the minor, who was aggrieved by the inability
21 to put something in the trust or to have the minor's compromise
22 claim in the event that they are forced to bring a claim, who's on
23 the hook? It would be the carrier, right? And that's one of the
24 things that the minor's compromise scheme is meant to avoid.

25 And also, had -- again, I'm not accusing Mr. Price or

1 Mr. Beckstrom of any shenanigans, but let's just say that there was
2 a delay or an issue in preparing the minor's compromise or getting
3 that issue before the Court, the carrier and the defendants would
4 have no real mechanism to move forward and force that
5 compromise.

6 And I'll hold out to the Court that minor's compromise are
7 something that I do quite often as a, you know, added benefit to
8 minor claimants. And sometimes they can get a little squirrely,
9 because there's a lot of issues and things like that. So while I'm not
10 accusing or attempting to infer that Mr. Price or Mr. Beckstrom
11 would do anything untoward, however, the fact that it's a future
12 promise of which the carrier and the defendants can't really
13 enforce, it kind of puts them in a position to where maybe they're
14 in -- they have to pay twice. Right? And that's what they're trying
15 to avoid.

16 THE COURT: Okay. Let me -- and so who is arguing
17 today, Mr. Price or Mr. Beckstrom?

18 MR. BECKSTROM: That would be me, Your Honor,
19 Mr. Beckstrom.

20 THE COURT: All right. So Mr. Beckstrom, I'm going to
21 allow you the opportunity to respond to any of the comments
22 Mr. Smith made. But first, I'd like to ask you a few questions on my
23 end. Okay?

24 So defense states in their motion:

25 By failing to address Defendant's insurer's legitimate legal

1 concerns in complying with Plaintiff's demand, the district court
2 did not provide a method by which Defendant's insurer could
3 perform under the contract and still maintain compliance with
4 Nevada law.

5 In the Court's March 15th, 2021, minute order, this
6 Honorable Court stated the failure of the underlying contract
7 was a failure of performance. In so stating without more, the
8 Honorable Court did not present guidance on how to resolve
9 this dilemma moving forward. The scenario of several
10 claimants presenting demands to a single automobile liability
11 insurance policy will surely happen again.

12 So how was Defendant supposed to comply with your
13 request? I mean, to me, so I look -- I'm looking back at this, right?
14 So you send over the offer, they e-mail: We accept, how would you
15 like the checks?

16 I guess why did it have to become so complex? Why
17 didn't you just e-mail them back and say, Great, sounds good, send
18 three checks. This is how it is. What was the breakdown?

19 MR. BECKSTROM: Sure, Your Honor.

20 I do want to disagree a little bit with some of the premise
21 for this question, because they did not e-mail back: We accept.
22 They e-mailed back: We are asserting a new offer -- or we are
23 asserting an offer for the global policy limit.

24 And, essentially, here, when they're looking at this statute
25 under Chapter 485.185, this is really their whole basis for this

1 argument. All this statute does, interestingly, is it does not actually
2 impose any requirements on insurers. If you read the statute, it
3 applies to every owner of a motor vehicle.

4 This statute places the responsibility on motorists to make
5 sure that their insurance -- or that their financial responsibility,
6 essentially, complies with the statute. Now, insurers often will take
7 it upon themselves to make sure they're providing state minimum
8 limits. But there's nothing in the statute that stops, you know, a
9 motorist from buying two separate policies, you know, a \$10,000
10 individual limit and then another \$50,000 individual limit. That,
11 technically, would comply with the statute.

12 Chapter 45 also allows motorists to not even have
13 insurance, but to buy a bond to show that they are financially viable
14 and collectible in the event that something happens, right? A car
15 crash.

16 So this statute doesn't actually stop them from doing
17 anything as opposed -- you know, with regard to what we
18 requested. The statute does say, yes, there's a \$25,000 individual
19 minimum policy limit, and then there's a 50 -- for bodily injury, of
20 course, and also for bodily injury, a \$50,000 per incident limit. We
21 often call that a global policy limit. And, in this case, we were not
22 requesting the individual policy limit, but we were requesting the
23 global limit for all three plaintiffs.

24 And as far as specific reasons why, you know, we didn't
25 provide a specific breakdown, essentially, you know, perhaps that,

1 you know, could have been something to be done. But here, this
2 was a very clearly, you know, the medical bills alone for all of these
3 three claimants exceeded the global policy limit.

4 It's then incumbent upon GEICO to protect its insured, if
5 they had just sent this check the way it was requested, you know,
6 we wouldn't be here right now, this would not be an issue. If the
7 plaintiffs wanted to sue GEICO or their -- you know, their insured,
8 the defendants in this case, they would be precluded from doing so.
9 But there's really no -- there's no dispute that that just didn't
10 happen.

11 So whatever the reasons might have be -- might have
12 been, unfortunately, this is not material to our decision, because as
13 this Court's order states on the previous Motion to Enforce, we
14 required acceptance by performance, and that acceptance by
15 performance never took place. There's no dispute as to that.

16 And, Your Honor, you've read our briefing, you know our
17 position that there is nothing that prevented GEICO from doing this,
18 from issuing a global limit check for three claimants who were all
19 members of the same family, had actually agreed to distribute the
20 funds in a certain way with their attorneys. And I'm not at liberty to
21 divulge that due to attorney/client privilege, the specific amounts.
22 But this agreement was in place. We crafted this very carefully
23 when we sent this offer to make sure that it was in compliance with
24 all of these statutes.

25 And so even if Defendant's position is true, that this is

1 somehow impossible or illegal, which, you know, we maintain it is
2 not, there's no change in the end result here. The -- there is no
3 enforceable contract.

4 THE COURT: So, Mr. Beckstrom, I'm sorry, when you
5 started this, did you say that you consider their letter to be a
6 counter offer?

7 MR. BECKSTROM: Yes, Your Honor. I mean, by its plain
8 language -- I'm referring to the November 12th letter.

9 THE COURT: Yeah. So, actually, let me go back to yours
10 first. Sorry. So on October 22nd, you state:

11 My clients make this one-time offer to settle all of my
12 clients' claims arising from this loss against your insured in
13 exchange for the formal limits of your insurance policy limit
14 of \$50,000 as a global tender. This offer expires on
15 November 23rd.

16 And it talks about the, you know, following performance,
17 acceptance, expiration, blah, blah, blah.

18 MR. BECKSTROM: Yes.

19 THE COURT: So receipt of one \$50,000 -- the global policy
20 limits of this policy in my office, payable to Price Beckstrom.

21 Right?

22 But then -- so when I read their letter dated
23 November 12th, they're stating:

24 We have bodily injury coverage on our policy with limits
25 of 25 per person, 50,000 per occurrence. At this time, we are

1 extending an offer of the global limits of 50,000 to settle the
2 three bodily injuries.

3 But wasn't -- you were asking for the 50,000 for the three.
4 And I guess their wording is -- they shouldn't have used the word,
5 We are extending an offer. I think it should have probably said, We
6 are accepting your offer. But both of you are discussing the same
7 thing, right? 50,000.

8 MR. BECKSTROM: Correct. That is correct.

9 THE COURT: So then I guess what I'm -- so why do you --
10 do you -- are you considering that a counter offer because they
11 used the word: We are extending an offer?

12 MR. BECKSTROM: Well, there's that. And there's also the
13 fact that, you know, our offer was very specific, very unambiguous
14 about how to accept it, and they were proposing something else.
15 Those are revised terms. You know, the case law and the
16 restatements, they all say, you know, there's this mirror image rule,
17 you know, if you're revising the terms of these offers in any way,
18 then it is legally a counter offer.

19 THE COURT: Well, when you say -- I think that they talk
20 about material terms, though, right? So if they're saying -- you say,
21 Hey, we want 50,000 for all three, they're saying, We'll give
22 you 50,000 for all three, let us know how to cut the checks; is that
23 material?

24 MR. BECKSTROM: Well, we're not -- so, Your Honor,
25 we're kind of getting the cart ahead of the horse when we're talking

1 about materiality. In order for materiality to even be a legal
2 concern, there has to be offer and acceptance. Right? Once the --
3 there's case law, I believe this was briefed in the original motion
4 that Defendants brought, a separate case. There was -- it was
5 another car crash case and the plaintiff's attorney agreed to accept
6 the policy limits for settlement. I apologize, I don't have the name
7 of the case off the top of my head, I could pull it up here.

8 What, essentially, happened is then after he gave the
9 release to his client, client looked at it and said, No, they're not
10 admitting fault, we have to release other parties. But then we -- I
11 can't agree to this release. The insurance company didn't want to
12 alter the release. And so then it came to the Court and the Court
13 decided these other terms here are immaterial. They're peripheral
14 terms, they're not material terms. The material terms of the
15 agreement were, you know, that you would accept settlement in
16 this amount in exchange for, you know, a covenant not to sue and
17 releasing them of any further liability.

18 So that analysis can be pertinent, but only after there's
19 offer and acceptance. If there's no offer and acceptance, materiality
20 is not a consideration for determining whether a contract does
21 exist.

22 THE COURT: But your argument is that their e-mail --
23 that -- your argument is, is the only way they could have accepted
24 was one \$50,000 check to you by -- what was it, December 23rd?
25 Or, no, November 23rd. That -- you're saying that that's the only

1 way they could have accepted, correct?

2 MR. BECKSTROM: We made that very clear in our –

3 THE COURT: Demand letter.

4 MR. BECKSTROM: -- October 22nd settlement offer, that
5 this is the only way to accept this offer, it was by performance prior
6 to the expiration of the offer. So yes, Your Honor.

7 THE COURT: Okay. So, Mr. Smith, what is your response
8 to -- I guess my questions of Mr. Beckstrom in regards to, well, you
9 sent the e-mail asking for 50,000, they send the e-mail back saying,
10 We'll give you 50,000, just tell us how to cut the checks. Then
11 Mr. Beckstrom's response was, Well -- because I said, Well, wasn't
12 that an acceptance? Mr. Beckstrom's position is no, because it
13 could only be accepted in one way, by the one check by
14 November 23rd. So then I followed up with the materiality of the
15 terms question.

16 So what is your position in regards to that?

17 MR. SMITH: Thank you, Your Honor.

18 I think the material terms were addressed and the material
19 terms, again, under *May v Anderson*, that was the case
20 Mr. Beckstrom was looking for. The material terms were agreed
21 upon. They weren't written down, but the material terms are,
22 essentially, \$50,000 in exchange for all three claimants to release
23 their claims. Very, very simple terms.

24 Now, Mr. Beckstrom said something very interesting a
25 few minutes ago when he used the phrase, Protect their insureds.

1 And you had asked a question regarding how this will come up in
2 the future. What Plaintiffs -- or what the scenario is -- presented
3 itself, whether deliberate or unintentional, is a demand was made
4 that requires certain questions on the behalf of the insurer to
5 answer, to resolve prior to resolution. And whether or not those
6 questions were intentional or not, those questions still need to be
7 addressed prior to cutting the check. So what -- or checks.

8 So what Plaintiffs have done is, again, intentionally or not,
9 is introduce certain questions, concerns, and hurdles for
10 satisfaction, and now they're saying, well, because we deliberately
11 failed to -- or negligently or inadvertently did not respond to your
12 request on how to perform, the only way for you to perform is by
13 giving us a check and leaving these questions unanswered and
14 potential additional exposure to the client -- or to the insureds and
15 the defendants down the road.

16 Basically, you're getting the situation where satisfaction of
17 demands is going to become more and more complicated and
18 more and more difficult for the insurance companies and
19 defendants to do in order to -- I actually -- as the minute order says,
20 satisfy the demand.

21 What we have in the instant cases, you do have -- a
22 demand was made and questions were presented on how to satisfy
23 that demand. Now, the material terms were addressed by the
24 insurer, and the insurer made a good-faith effort to satisfy those
25 questions, get those answers and issues resolved, and still provide

1 the material terms, which was a total of \$50,000 to the claimants in
2 release of their claims.

3 You mention the November 12 letter. I agree, the use of
4 the word extending, instead of accepting, was unfortunate. But I
5 don't think that defeats the material terms of the agreement such
6 that acceptance of the offer, the material terms, and enforcement of
7 the settlement agreement proper. I believe it is proper under *May v*
8 *Anderson*, I think it's proper under the fact that material terms are --
9 were addressed. And the only thing that the carrier had were
10 questions on its side to make sure that the satisfaction and the
11 resolution of this case was in compliance with the policy and the
12 statutes regarding policies and single payers, which is what the
13 demand Plaintiff's counsel made, they made a demand on the
14 policy. And they wanted to make sure that there was some sort of
15 protection by the minors compromised, not only for the minor
16 claimant, but also -- and agreed, selfishly, by the carrier and the
17 defendants. The defendants and the carrier, they want to know that
18 the -- all claims are completely satisfied, which is one of the
19 questions they had. And those were not --

20 THE COURT: Can you I ask you just -- Mr. Smith, can I ask
21 you just a practical question? Because on this side of the
22 courtroom, you know, I don't generally see how these are done.

23 When a minor is involved, do -- and you have a family
24 involved, do the checks normally come separate? Do the checks
25 over to Plaintiff normally come in separate amounts or do they

1 normally go over to the Plaintiff and then Plaintiff cuts it? How
2 does that work?

3 MR. SMITH: Well, that's interesting, because it happens
4 very -- a lot of different ways. Generally, if the claimant -- minor
5 claimant is unrepresented, I or my firm will petition the Court, we'll
6 present all the facts to the Court and the medical records, and say
7 this is an agreement that the insurance company and the parents of
8 the minor have come to agreement, and this is what we'd like the
9 Court to address. We do that as a courtesy, because in our
10 instance, where I would do it, there's no attorneys' fees involved, so
11 there's more recovery for the minor.

12 And the Court says, okay, we're going to take -- we're
13 going to accept that. We're going to make sure that these medical
14 providers are paid, the liens are satisfied, and the remainder will go
15 into a blocked trust account for the benefit of the minor. And the
16 financial institution has to be approved, that's part of the petition
17 for minors compromised. And depending on the amount, the
18 depository institution will report to the Court the balance of the
19 trust amount.

20 In instances where Plaintiff's counsel generally would
21 prepare the minors' compromise, they do also articulate the facts of
22 the underlying event, they talk about the treatment and the cost of
23 treatment, and everybody presents the bills. They present the --
24 whatever fee that the plaintiff's counsel would get for their services
25 would be, and they would ask -- and would identify the depository

1 institution, and they would request the Court to accept that
2 agreement and enter an order saying that this has been agreed to
3 by all the parties and the minors' ability to make a claim against the
4 alleged tortfeasor once they reach the age of maturity is exhausted.

5 And then in the event that, either way, whether it's
6 prepared by Defendant's counsel or the insurance counsel or the
7 plaintiff's -- the plaintiff's counsel, once the minor reaches the age
8 of 18, they have to petition the Court to release those funds.

9 Sometimes it can be very, very simple. I'll be honest with
10 you, there was one time I was in front of a judge who's no longer
11 practicing -- or sitting on the bench, and I heard him call a 17th
12 Amended Petition for Minors Compromise claim. I think that's a
13 little extreme.

14 But, generally, like I said, all the facts and the medical
15 records and the depository institution and who's getting paid what
16 are presented to the Court. The Court approves it, enters an order,
17 and that, basically, extinguishes the minor's right to bring a claim
18 once they become 18, but also provides that the money is sitting in
19 a appropriate financial institution for their benefit once they reach
20 the age of maturity.

21 THE COURT: Mr. Beckstrom --

22 MR. BECKSTROM: And, Your Honor, if I could provide a
23 little perspective from the other side of the aisle here?

24 THE COURT: Yeah.

25 MR. BECKSTROM: This is Mr. Beckstrom.

1 THE COURT: I was going to ask you what your experience
2 is in that regard.

3 MR. BECKSTROM: What typically happens when a minor
4 is represented, whether -- and this is true whether we're in litigation
5 and a lawsuit or whether it's just a prelitigation settlement, what
6 will happen is we'll agree on the settlement, the insurance company
7 will then -- and like Mr. Smith said, it doesn't always happen the
8 same way every time. But the typical routine thing that we see
9 most often is that the insurance company will then send us the
10 check and a copy of the release. The minor cannot -- the minor's
11 parent, rather, cannot sign the release until the Court approves the
12 settlement.

13 However, we hold those funds in trust until the minor's
14 compromise is approved by the Court, which they routinely do --
15 are approved, provided the attorney fees and costs don't exceed the
16 minor's recovery, we're getting appropriate reductions from any
17 lienholders or medical providers, and, you know, it's an overall fair
18 settlement, which will, basically, never get denied if it's for policy
19 limits, and we can show sufficient, you know, evidence that the
20 defendant is judgment proof for, you know, not collectible.

21 And at that point, once the Court does approve the
22 minor's compromise, we typically always need to have those funds
23 in trust, because then we have I believe it's 30 or 60 days, it's a
24 fairly quick turnaround to -- and this has especially been difficult
25 during the pandemic, but getting an appointment with the bank,

1 going there with the parent of the minor, making that deposit. And
2 then the bank has to send us proof of the blocked trust account with
3 the amount in it that we can provide for the Court to satisfy that
4 obligation to place the net proceeds into a blocked trust account at
5 an appropriate financial institution.

6 THE COURT: Understood. Okay. Thank you.

7 So, first of all, I want to say that I appreciate everyone's
8 briefing initially, and then on the Motion for Reconsideration. I
9 think the briefs were exceptional on the -- it was very thorough on
10 both sides. And I've actually struggled with this decision, because
11 on one side, I do see the plaintiff's point of it, saying, Listen, it was
12 very simple, we asked for \$50,000, we asked for a specific
13 performance, the only way that that could be done was by having a
14 check to us in that amount by November 23rd.

15 But then I have looked at the defense side of it, and I see,
16 you know, the initial letter from Plaintiff saying specific
17 performance, \$50,000, all three people. And then I look at the -- I
18 can't remember if it was a letter or an e-mail on behalf of Mr. Smith
19 saying, okay, \$50,000, how do you want the checks written so we
20 can comply?

21 So I am granting Defendant's Motion for Reconsideration.
22 I do find my previous ruling to be erroneous. There were different
23 factors that I took into consideration at the second look in regards
24 to the potential liability down the road, which I do agree with
25 Plaintiff, it could also be on them too. But I think that it can also be

1 on the back of the carrier, as well. As well as the assurances that
2 the money is going to the minor in the appropriate way.

3 I think a valid offer was made. I think a valid acceptance
4 was made. When it was stated that they would accept the \$50,000
5 offer and that the checks -- they just wanted guidance in regards to
6 how the checks would -- they -- how Plaintiff would like the checks
7 written and delivered. So I think that it made it somewhat
8 impossible for Defendants to go forward with that acceptance when
9 Plaintiff did not get back to them in telling them how the checks
10 were to be delivered.

11 So for those reasons, I am enforcing the settlement.

12 I would ask, Mr. Smith, that you create a detailed order
13 with my findings today. You run it by Plaintiff's counsel,
14 Mr. Beckstrom, and then you get it to my office.

15 Does anybody have -- or my chambers -- does anybody
16 have any questions about that?

17 MR. SMITH: This is Michael Smith.

18 Yes, Your Honor. I would -- I'm going to track the order
19 off the minutes of the hearing. So I would just like to, you know,
20 have a couple of days for those to be posted, because I want them
21 to track as best as possible. So thank you for that.

22 THE COURT: Okay. So just so you know, I mean, that's
23 fine, but the minutes are probably not going to be as detailed as I
24 would want the findings. So if you need a transcript or you need a
25 CD, we can do that as well.

1 MR. SMITH: I think that's what we'll do.

2 THE COURT: Okay. So we'll get -- we'll just do a CD, if we
3 can, De'Awna, of today.

4 MR. BECKSTROM: And, Your Honor, I am -- I would like
5 one point of clarification for this order. Would -- are you finding
6 impossibility such that, essentially, it was impossible for GEICO to
7 accept this offer?

8 THE COURT: Impossible in that -- no. No, I'm not finding
9 that it was -- I think it was impossible for them -- when you didn't
10 respond, I think it was impossible for them to have guidance once
11 they asked that question. However, let's say that it was a different
12 insurance carrier and they just gave you the \$50,000 -- they just sent
13 over the \$50,000 check. So I don't think it's impossible.

14 I think once that they sent you the e-mail just asking for
15 clarification and how they wanted the three checks written, that is
16 what I was talking about in specific to that. Does that make sense?

17 MR. BECKSTROM: That clarifies the issue. Thank you,
18 Your Honor.

19 THE COURT: Okay. So we're preparing a CD for each of
20 you.

21 Will that be ready today, De'Awna, the CDs?

22 THE COURT RECORDER: Yes.

23 THE COURT: So those will be ready for pick-up by today.
24 However, if you want a transcript, then you have to pay for it. So I
25 would just pick up the CDs, because the last four minutes of my --

1 you know, are the only thing that you really need for the order.

2 MR. SMITH: All right. Thank you, Your Honor.

3 THE COURT: All right. Sounds good.

4 Anything else? All right.

5 [Proceeding concluded at 10:38 a.m.]

6 ///

7
8
9
10
11
12
13
14
15
16
17 ATTEST: I do hereby certify that I have truly and correctly
18 transcribed the audio/video proceedings in the above-entitled case
19 to the best of my ability. Please note: Technical glitches in the
20 BlueJeans audio/video which resulted in audio distortion and/or
audio cutting out completely were experienced and are reflected in
the transcript.


Shawna Ortega, CET*562