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Elizabeth A. Brown  
Clerk of Supreme Court

A-19-805351-C

VS.

## Respondents.

Real Party in Interest.

*With Supporting Points and Authorities*

*Attorneys for Petitioners NationsBuilders Insurance Services, Inc. and  
Construction & Transport Services, Inc.*

**PETITION FOR WRIT OF MANDAMUS,  
OR ALTERNATIVELY, PROHIBITION**

Petitioners NationsBuilders Insurance Services, Inc. (“NBIS”) and NBIS Construction & Transport Insurance Services, Inc. (“CTIS”) seek a writ of mandamus, or prohibition, directing the district court to stay the bad faith action initiated by Real Party in Interest Diane Sanchez, pending the appeal of the order refusing to set aside the default judgment in the underlying personal injury lawsuit which gives rise to Sanchez’s claims.

Federal courts, including the District Court of Nevada, have routinely held that bad faith claims are not ripe for adjudication until the appellate process is complete. *See Branch Banking*, No. 2:10-CV-1970 JCM (RJJ), 2011 U.S. Dist. LEXIS 40948, at \*10 (D. Nev. Apr. 13, 2011). This policy ensures that insurance entities are not forced to indemnify their insureds for a particular liability until the insured has a real and concrete injury. *Id.*; see also *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 662 (9th Cir. 2002).

Though Petitioners believe this alone is a sufficient basis to grant their writ, the matter is further complicated by the fact that Sanchez has already abused discovery produced in the bad faith action to improperly influence the outcome of the underlying personal injury lawsuit and pending appeal. Her efforts are a direct and flagrant violation of the parties’ Amended Stipulated Protective Order in the bad faith action, and have placed NBIS and CTIS at a marketed disadvantage as

they are not named defendants in the personal injury lawsuit and cannot intervene at this stage in litigation. In the absence of a stay, Sanchez will continue to submit documents produced in the bad faith action to the district court in the personal injury lawsuit, in a complete reversal of the normal course and resolution of these cases. This is inequitable and simply cannot be allowed.

Despite the existing case law and the procedural quagmire created by Sanchez's conduct, the district court refused to stay the bad faith action pending adjudication of the default judgment, finding that the prejudice to Sanchez would be too great. The district court reached this conclusion without any declaration or affidavit from Sanchez evidencing any prejudice and with full knowledge that Sanchez sat on the default for three years, only taking action after the district court in the personal injury action moved to statistically close the case. This is improper, and this Court should issue a writ of mandamus compelling the district court to stay litigation pending the appeal. Alternatively, Petitioners seek a writ of prohibition to prevent the district court from lifting the temporary stay of litigation.

Dated this 11<sup>th</sup> day of February, 2022.

LIPSON NEILSON P.C.

*/s/ Megan H. Thongkham*

By:

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**NRAP 21(A)(5) VERIFICATION**

STATE OF NEVADA                    )  
  )  
COUNTY OF CLARK                )

Under penalty of perjury, I declare that I am counsel for the Petitioners NationsBuilders Insurance Services, Inc. and NBIS Construction & Transport Services, Inc. in the foregoing petition and know the contents thereof; that the pleading is true of my own knowledge, except as to those matters stated on information and belief; and that as to such matters I believe them to be true. I, rather than petitioner, make this verification because the relevant facts are procedural and thus within my knowledge as petitioner's attorney. This verification is made pursuant to NRS 15.010.

Dated this 11<sup>th</sup> day of February, 2022.

LIPSON NEILSON P.C.

*/s/ Megan H. Thongkham*

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## **NRAP 26.1 DISCLOSURE**

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

Petitioner NationsBuilders Insurance Services, Inc. is a privately held Delaware corporation. No publicly traded company owns more than 10% of its stock. Petitioner NBIS Construction & Transport Services, Inc. is a privately held Delaware corporation. No publicly traded company owns more than 10% of its stock.

NationsBuilders Insurance Services, Inc. and NBIS Construction & Transport Services, Inc. are represented by Lipson Neilson P.C.

Dated this 11<sup>th</sup> day of February, 2022.

LIPSON NEILSON P.C.

*/s/ Megan H. Thongkham*

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### **JURISDICTIONAL STATEMENT**

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

### **ROUTING STATEMENT**

The Nevada Supreme Court should retain this because it raises as a principle issue both a question of first impression involving common law and a question of statewide public importance: whether an insurer or its related entities precluded from staying a third party's bad-faith action pending the appeal of the underlying default judgment against the insured. NRAP 17(a) (11), (12).

### **ISSUES PRESENTED**

Whether the bad faith action filed against Petitioners should be stayed when (1) the underlying default judgment that gives rise to the purported bad faith is on appeal, and (2) when Sanchez has already improperly used the discovery produced in the bad faith action to try and influence the outcome of the personal injury lawsuit and appeal?

## **STATEMENT OF FACTS**

### **A. The Accident**

Respondent Diane Sanchez alleges that on April 28, 2015, Blas Bon negligently collided with the back of Sanchez's sedan while Sanchez slowed down for traffic on northbound Interstate 15. **I: Ex. 5 at NBIS 000257.** Sanchez's sedan was then struck by a second vehicle driven by Joseph Acosta. At the time of the collision, Bon was driving a pick-up truck insured under a personal automobile liability insurance policy issued by Windhaven National Insurance Company *formerly known as* ATX Premier Insurance. *Id.* The truck was owned by non-party Hipolito Cruz, and Sanchez alleges that Bon drove Cruz's pick-up truck with express permission from Cruz. *Id.*

### **B. The Personal Injury Lawsuit**

On August 7, 2015, Sanchez filed a complaint for personal injuries in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-15-722815-C. I, **I: Ex. 1.** Sanchez named Bon and Acosta as defendants. When Sanchez sued Bon, she knew that he was homeless, and splitting his time between a neighborhood community center and Cruz's residence. **II: Ex. 6 at NBIS 000271.** Cruz's address appears three times within the accident report, including in Bon's voluntary statement as to "[his] current location." **Id. at NBIS 000307-000320.** Rather than use the information he provided in the accident report to locate Bon and serve him,

Sanchez mailed the summons and complaint to the community center. **Id. at NBIS 000267.** When the summons and complaint were returned undelivered, Sanchez filed an Amended Affidavit of Compliance, asserting that service was complete by mailing a copy of the summons and complaint to the Nevada Department of Motor Vehicles. **Id.** On April 1, 2014, the court entered a default against Bon. **I: Ex. 2.**

For three years, Sanchez let the default sit. On February 7, 2019, the district court entered an order statistically closing the case. Nevertheless, on March 29, 2019, Sanchez filed an application for entry of default judgment against Bon. **I: Ex. 3.** On July 19, 2019, the district court granted the application and issued judgment against Bon for \$15,209,896.28. **II: Ex. 4.** On January 17, 2020, Bon moved to set aside the default judgment. **II: Ex. 6.** The district court denied the motion to set aside in February 2020. The order denying the motion to set aside was entered on September 21, 2020. **II: Ex. 7.**

**C. The Appeal of the Order Denying the Motion to Set Aside the Default Judgment, and Other Orders**

On October 20, 2020, Bon filed a Notice of Appeal, appealing from (1) all judgments and orders in the case, (2) the order denying Bon's motion to set aside the default judgment, and (3) all judgments, rulings and interlocutory orders made appealable by the foregoing. **II, Ex. 8.** The appeal remains pending, Case No. 81983.

**i. Amended Notice of Appeal**

On October 8, 2021, Bon filed an Amended Notice of Appeal, which added to the appeal the “Order Denying Defendant Blas Bon’s Motion for Rehearing and to Alter or Amend the Judgment and Denying Rule 60(b) Relief.” **IV: Ex. 14**

**ii. Second Amended Notice of Appeal**

On October 27, 2021, Bon filed a Second Amended Notice of Appeal, which added to the appeal the “Amended Order Granting Plaintiff’s Motion Pursuant to NRS 21.320 for Judicial Assignment of Claims and/or Causes of Action Defendant Blas Bon Has Against ATX Premier Insurance Company, any Other Applicable Liability Insurer, any Third-Party Adjuster or any Other Insurance Entity.” **IV: Ex. 16.**

**D. The Bad-Faith Action against Petitioners**

Notwithstanding the pending appeal, Sanchez sued Petitioners NationsBuilders Insurance Services, Inc. (“NBIS”) and NBIS Construction & Transport Services, Inc. (“CTIS”), along with DMA Claims Management, Inc. (“DMA”), and ATX/Windhaven, based on the judicial assignment of Bon’s rights to a claim for bad faith. **II: Ex. 5.**

### **1. NBIS and CTIS File Their First Motion to Stay Proceedings**

On July 22, 2021, NBIS and CTIS filed a Motion to Dismiss the Second Amended Complaint, or in the alternative, a Motion to Stay Proceedings. **III: Ex. 10.** The motion requested that the district court stay litigation pending adjudication of the appeal in the personal injury action. On August 23, 2021, the district court denied the motion to stay, stating that it was not ripe because the Nevada Supreme Court had recently issued an Order to Show Cause addressing a potential jurisdictional defect in the appeal. The district court indicated that NBIS and CTIS could renew the motion “after the dust settles as to whether or not there is an appeal.” **III: Ex. 11.**

### **2. The Supreme Court Reinstates Briefing on the Appeal, NBIS and CTIS File a Renewed Motion to Stay Proceedings**

On October 1, 2021, this Court issued an order reinstating briefing on the appeal. **III: Ex. 13.** Specifically, the Court confirmed that Bon had provided a copy of the district court’s written order denying the motion to alter or amend the judgment, and directed the appeal to proceed accordingly. Based on this order, Petitioners filed a Renewed Motion to Stay Proceedings with the district court. **IV: Ex. 15.** Sanchez opposed the Renewed Motion; NBIS and CTIS replied to Sanchez’s arguments in opposition. **V: Ex. 17.** The hearing on the Renewed Motion was set for December 9, 2021.

While the Renewed Motion was pending, however, this Court issued a Second Order to Show Cause. **V: Ex. 18.** The second OSC dealt exclusively with the question of whether the Court has jurisdiction to consider an appeal from a judicial assignment pursuant to NRS 21.230. The second OSC had no impact on the principal appeal from the order denying Bon's motion to set aside the default judgment. Despite this fact, the district court denied Petitioners' Renewed Motion, "without prejudice to renewal following the Supreme Court's determination on such Order to Show Cause." **V: Ex. 20.**

### **3. NBIS and CTIS File a Motion for Reconsideration of the Order Denying the Renewed Motion for Stay, on an Order Shortening Time**

On January 7, 2022, NBIS and CTIS filed a Motion for Reconsideration of the Order Denying their Renewed Motion, on an Order Shortening Time, requesting that the district court reconsider its position on a stay of litigation as the second OSC only addressed the Amended Order Granting Plaintiff's Motion Pursuant to NRS 21.320, and had zero impact on the appeal from the order refusing to set aside the default judgment. **V: Ex.21.** NBIS and CTIS further argued that they faced substantial risk of injustice should the bad faith action be forced to move forward while the appeal is pending. **Id.**

In her opposition to the Motion for Reconsideration, Sanchez conceded that the second OSC had no impact on the principal appeal moving forward, but argued,



among other things, that Sanchez would suffer financially while the appeal was pending. **V: Ex.23**

**4. The District Court Grants in Part, Denies in Part the Motion for Reconsideration, and Stays the Bad Faith Action for 15 Days.**

On January 27, 2022, the district court granted in part and denied in part NBIS and CTIS' Motion for Reconsideration, specifically ordering that the bad faith action be temporarily stayed from Thursday January 27, 2022 to Monday, February 14, 2022 in order to allow NBIS/CTIS to seek further stay relief from the Nevada Supreme Court. **V: Ex.24**. During the hearing, the district court noted its concern that Sanchez would indeed be prejudiced if forced to wait for the appeal to resolve, despite having allowed the default to languish on the personal injury docket for three years before taking any action. **V: Ex.22 at NBIS 001078: L19-20**.

**SUMMARY OF THE ARGUMENT**

The district court has indicated its intent to lift the temporary stay of proceedings on February 14, 2022. *Id.* NBIS and CTIS have no right to appeal from the temporary order, and unless these proceedings are arrested, the district court will abuse its discretion and allow the bad faith action to proceed, despite the fact that Sanchez's bad faith claims are not ripe until the appellate process is complete. *Branch Banking & Tr. Co. v. Nev. Title Co.*, No. 2:10-CV-1970 JCM (RJJ), 2011 U.S. Dist. LEXIS 40948, at \*10 (D. Nev. Apr. 13, 2011).

By lifting the stay, the district court will expose NBIS and CTIS to substantial inequity and prejudice, and irreparable harm. Sanchez has already used discovery produced by NBIS and CTIS in the bad faith action to try and improperly influence the outcome of the underlying personal injury lawsuit and appeal, in direct violation of the parties' Amended Stipulated Protective Order. **V: Ex.22 at NBIS 001078-NBIS 1079.**

Sanchez would not be entitled to see NBIS and CTIS' documents or files "but for" the ongoing bad faith litigation. Her conduct has created a procedural and jurisdictional quagmire, and resulted in duplication of efforts between the personal injury action, the appeal, and the bad faith litigation, in violation of principles of comity and judicial economy. Moreover, NBIS and CTIS are not named defendants in the underlying personal injury action. Thus, Sanchez has severely prejudiced NBIS and CTIS by raising allegations and claims against them in the personal injury action post-judgment, and therefore, in a context that prohibits them from moving to intervene.

Moreover, by refusing to grant a stay of litigation, Petitioner are forced to defend against claims that will be moot if the default judgment is set aside. Even worse, if the bad faith action goes to trial before the appeal is resolved, and NBIS and CTIS are forced to pay even a portion of the multi-million dollar default judgment, there is very little chance those funds would ever be recovered by NBIS

and CTIS if the default judgment is subsequently set aside. This Court should grant the petition to keep the district court from lifting the stay accordingly.

## **LEGAL ARGUMENT**

### **A. A Writ of Mandamus is the Appropriate Relief**

A writ petition is the appropriate procedural vehicle for challenging a district court's order denying a motion to stay, because no appeal may be taken from an order granting or denying a stay of proceedings.<sup>1</sup> *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 640, 289 P.3d 201, 204 (2012); *cf. G.C. Wallace, Inc. v. Eighth Judicial Dist. Court*, 127 Nev. 701, 704, 262 P.3d 1135, 1137 (2011) (writ relief available where appeal was "not an adequate and speedy legal remedy"); *Brunzell Const. Co. v. Harrah's Club*, 81 Nev. 414, 419-420, 404 P.2d 902, 905 (1965); Nev. Rev. Stat. §§ 34.170.

"A writ of mandamus is available to compel the performance of an act which the law . . . [requires] as a duty resulting from an office, trust or station, or to control a manifest abuse or an arbitrary or capricious exercise of discretion." *PetSmart, Inc. v. Eighth Judicial Dist. Court*, 499 P.3d 1182 (Nev. 2021), citing *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008). "The decision to entertain a petition for a writ of mandamus is within [this Court's] sole discretion," *id.*, citing *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849,

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<sup>1</sup> Except in an arbitration context.

851 (1991), and the petitioner bears “the burden of demonstrating that extraordinary relief is warranted.” *Otak Nev., LLC v. Eighth Judicial Dist. Court of Nev.*, 129 Nev. 799, 804, 312 P.3d 491, 495 (2013).

Indeed, writ relief is imperative here because the object of the petition—to halt the bad-faith litigation pending a final resolution of the action on which the bad-faith complaint rests—would be defeated by having to await a final judgment and appeal in the bad-faith litigation, having already forfeited the benefits of a stay.

This Court has consistently considered such writ petitions “where an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition.” *Cote H.*, 124 Nev. at 39, citing *State of Nevada v. Dist. Ct. (Ducharm)*, 118 Nev. 609, 614, 55 P.3d 430, 423 (2002); *see also Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 796, 358 P.3d 234, 237 (2015); *Humboldt Gen. Hosp. v. Sixth Judicial Dist. Court of Nev.*, 132 Nev. 544, 547, 376 P.3d 167, 170 (2016) (internal citations omitted).

**B. The Writ Petition Raises an Important Question of Law that Needs Clarification: Whether a Third Party Assignee May Proceed with Bad Faith Claims when the Underlying Appellate Process is Ongoing and Incomplete.**

The writ petition raises an important legal issue for this Court’s consideration, one that has been analyzed in federal court, but appears to be an issue of first impression in Nevada: can a third party, who is judicially assigned an insured’s potential rights against an insurer, proceed with a bad faith action when the

underlying default judgment that gives rise to the purported bad faith, and the assignment itself, are on appeal? As courts across the country agree, the answer to this question is a resounding no.

Bad faith claims, like claims for professional negligence, are not ripe until the appellate process is complete. *Branch Banking*, No. 2:10-CV-1970 JCM (RJJ), 2011 U.S. Dist. LEXIS 40948, at \*10 (D. Nev. Apr. 13, 2011) (“Plaintiff asserts a claim for bad faith ... However, this claim is not ripe until the appeal process is complete.”), citing *Barnes v. Allstate Ins. Co.*, No. 8:10-cv-2434-T-30MAP, 2010 U.S. Dist. LEXIS 138340, at \*6-7 (M.D. Fla. Dec. 28, 2010) and *Premcor USA, Inc. v. Am. Home Assurance Co.*, 400 F.3d 523, 529 (7th Cir. 2005); see also *Semenza v. Nevada Medical Liability Ins. Co.*, 765 P.2d 184, 186, 104 Nev. 666, 668 (Nev., 1988) (“[A]pparent damage may vanish with successful prosecution of an appeal...” (internal citations omitted)).

The rationale behind this principle is simple: a litigant must have an injury that is “real and concrete rather than speculative and hypothetical” before she seeks judicial resolution of her claims. *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 662 (9th Cir. 2002), citing *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000). Adjudication is premature if a claim “rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Id.* (internal citations omitted); see also *W. Side Salvage v. Rsui Indem. Co.*,

No. 13-cv-0363-MJR-PMF, 2014 U.S. Dist. LEXIS 203089, at \*7 (S.D. Ill. Mar. 31, 2014) (internal quotations omitted), interpreting *Branch Banking*, 2011 U.S. Dist. LEXIS 40948 (“since the appellate court could return a favorable outcome for the insured, the matter rest[s] upon contingent events that may not occur.”)

In bad faith litigation, the essence of the suit “is that the insurer breached its duty to its insured by failing to properly or promptly defend the claim ... – all of which results in the insured being exposed to an excess judgment.” *Romano v. Am. Cas. Co.*, 834 F.2d 968, 969 (11th Cir. 1987). If the judgment is reversed on appeal, however, “the insured is no longer exposed to any loss in excess of the limits of his liability insurance policy, [and] he no longer has any claim he might previously have had against his insurance company for bad faith...” *Id.* In other words, “[i]f the appeal is successful, [the claim] ... will be moot.” *W. Side Salvage*, 2014 U.S. Dist. LEXIS 203089, at \*7, citing *Torrez v. State Farm Mut. Auto. Ins. Co.*, 705 F.2d 1192, 1202 (10th Cir. 1982) (bad faith claim did not accrue until after underlying litigation ended). Therefore, to avoid a premature judgment in the bad faith action, and to conserve judicial time and resources, courts should refrain from acting during the pendency of the appeal. *Premcor USA*, 400 F.3d at 530. (“As the underlying state action remains pending on appeal in the Illinois Courts, Premcor is correct - the district court acted precipitously.”)

**C. NBIS and CTIS are Entitled to a Stay of Litigation During the Pendency of the Appeal.**

Here, there is no question that NBIS and CTIS are entitled to a stay of litigation on the merits. This is not a typical bad faith action by an insured who pursues a claim after being subjected to an excess judgment after an unsuccessful appeal. Sanchez is not the insured, but the plaintiff in the underlying personal injury lawsuit. She knew Bon was transient when she served him, and yet she only served him at a community shelter and the DMV - never at his only known residential address. **II: Ex.6 at NBIS 000268**, She then sat on her default for three years, only seeking to reopen the case after she had (perhaps to her later regret) dismissed all of her claims against all parties with prejudice—and when the district court consequently moved to statistically close the case in 2019. **II: Ex.6 at NBIS 000269**, **V: Ex. 14 at NBIS 000690; III: Ex.10 at NBIS 000555; II: Ex. 8; IV: Ex. 14.**

Sanchez never attempted to locate or execute against Bon himself, and never obtained an assignment from Bon himself in exchange for a release or satisfaction of the judgment. **I: Ex. 2; II: Ex. 6 at NBIS 000271** Instead, Sanchez procured a judicial assignment of Bon's potential claims, if any, against his insurers. In the meantime, the judgment itself has been challenged as void for, among other reasons, Sanchez's failure to exhaust reasonable means for personal service on Bon. **V: Ex. 18.**

At its core, Sanchez’s claim is simply unripe. The appeal from the order denying Bon’s motion to set aside the default judgment is ongoing. Sanchez’s right to pursue a bad faith action against NBIS and CTIS is entirely contingent on the appeal sustaining the default judgment. If the Court reverses the order and the default judgment is set aside, the personal injury lawsuit will proceed on its merits and the bad faith case evaporates. The complications presented by these potential outcomes are the exact reason why the ripeness doctrine aims “to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Scott*, 306 F.3d at 662, citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 148, 87 S. Ct. 1507, 1515 (1967). When the issues at the core of the lawsuit “remain woefully unfit for adjudication,” the case should not move forward. *Id.* at 663.

**D. A Stay Pending Appeal in the Underlying Personal Injury Action Conserves Judicial Resources, and Fosters the Principles of Economy and Finality.**

This Court has the inherent authority to stay cases in the district court pending an appeal in another case. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Stays are valuable tools that “promote efficiency and conserve judicial resources by reducing duplicative and piecemeal litigation and avoiding potentially inconsistent outcomes.” *Rose, LLC v. Treasure Island, LLC*, 135 Nev. 145, 159, 445 P.3d 860, 871 (Ct. App. 2019); *Yu v. Yu*, 133 Nev. 737, 738, 405 P.3d 639,



640 (2017) (Nevada’s interest in promoting judicial economy is furthered by avoiding the specter of piecemeal litigation); *Lee v. GNLV Corp.*, 116 Nev. 424, 427, 996 P.2d 416, 418 (2000) (insuring finality of decisions by a court promotes “judicial economy by avoiding the specter of piecemeal review” (internal quotation marks and citations omitted)). Stays become increasingly important when there is an appeal that “is likely to have a substantial or controlling effect on the claims and issues” presented to the district court. *Miccosukee Tribe of Indians v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1198 (11th Cir. 2009).

Considerations of judicial economy and administration are at the heart of NBIS and CTIS’ petition. Forcing NBIS and CTIS to participate in discovery is highly prejudicial, not only because it is inapposite to the strong public policy considerations that weigh in favor of conserving judicial time and resources when a claim is not ripe, but also because it turns the normal order of events on its head. Sanchez now has access to information produced by NBIS/CTIS in the bad faith action that she would not be entitled to see in the personal injury action, and she is attempting to use that information to impermissibly influence the district court’s decisions in the personal injury lawsuit, and the outcome of the pending appeal. **V: Ex. 22 at NBIS 001072.**

Her conduct has placed NBIS and CTIS at a marked disadvantage. They are not named defendants in the personal injury lawsuit, and cannot intervene or

otherwise defend themselves against Sanchez's post-judgment filings. *See Nalder v. Eighth Judicial Dist. Court*, 136 Nev. 200, 203, 462 P.3d 677, 682 (2020). Additionally, in the absence of a stay, NBIS and CTIS cannot stop Sanchez from abusing the discovery they have produced in the bad faith action. None of NBIS and CTIS' documents should be part of the record before the district court in the personal injury lawsuit, or this Court on appeal. Yet, the parties have already expended considerable time and resources arguing over Sanchez's entirely improper efforts to amend the facts that give rise to the order denying Bon's motion for Rule 60(b)(3) relief, with documents and information Sanchez obtained from NBIS and CTIS (and other defendants) in the bad faith action.

Sanchez argues she will be prejudiced by the length of time it will take to adjudicate the appeal, but there is no evidence in the record to substantiate this claim. In fact, to the contrary, the record reveals that Sanchez sat idly on the default for three years – from April 2016 to March 2019, only taking action after the district court statutorily closed the case. Even if waiting on the appeal causes some amount of prejudice to Sanchez, the district court abused its discretion in wholly neglecting to consider the substantial and immediate prejudice caused to NBIS and CTIS by denying their request to stay litigation. If this Court affirms the district court order denying the motion to set aside and upholds the judicial assignment, Sanchez will have an opportunity to pursue any of Bon's remaining bad faith claim against NBIS

and CTIS. On the other hand, if NBIS and CTIS are forced to pay a premature bad-faith judgment based on a default judgment that is reversed on appeal, the chance that NBIS and CTIS will successfully collect those funds from Sanchez is slim to none.

### **CONCLUSION**

For these reasons, this Court should issue a writ of mandamus, or prohibition, instructing the district court to stay the bad faith action pending the resolution of the appeal of the order denying Bon's motion to set aside the default judgment.

Dated this 11<sup>th</sup> day of February, 2022.

LIPSON NEILSON P.C.

*/s/ Megan H. Thongkham*

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## **CERTIFICATE OF COMPLIANCE**

1. I certify that this brief complies with the formatting, type- face, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word with a proportionally spaced typeface in 14-point, double-spaced Times New Roman font.

2. I certify that this brief complies with the type-volume limitations of NRAP 29(e) because it contains 3,727 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 11<sup>th</sup> day of February, 2022.

LIPSON NEILSON P.C.

*/s/ Megan H. Thongkham*

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## **CERTIFICATE OF SERVICE**

I certify that on February 11, 2022, I submitted the foregoing “Petition For Writ of Mandamus” for filing *via* the Court’s eFlex electronic filing system.

Electronic notification will be sent to the following:

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*/s/ Brenda Correa*

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An employee of Lipson Neilson P.C.