

**IN THE SUPREME COURT OF THE
OF THE STATE OF NEVADA**

NATIONSBUILDERS INSURANCE)
SERVICES, INC., a foreign corporation;)
NBIS CONSTRUCTION & TRANSPORT)
INSURANCE SERVICES, INC., a foreign)
corporation;)

Petitioners,)

vs.)

THE EIGHTH JUDICIAL DISTRICT)
COURT of the State of Nevada, in and for the)
County of Clark; and THE HONORABLE)
MARK R. DENTON, District Judge;)

Respondents.)

DIANE SANCHEZ;)

Real Party in Interest.)

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Elizabeth A. Brown
Clerk of Supreme Court
District Court Case No.
A-19-805351-C

PETITIONER'S APPENDIX
(VOLUME V OF V)

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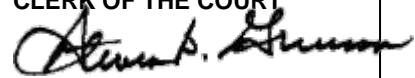
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EXHIBIT 17



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8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 DIANE SANCHEZ,
12
13 Plaintiff,

14 vs.

15 ATX PREMIER INSURANCE COMPANY
16 now known as WINDHAVEN NATIONAL
17 INSURANCE COMPANY, a foreign
18 corporation; NATIONSBUILDERS
19 INSURANCE SERVICES, INC., a foreign
20 corporation; NBIS CONSTRUCTION &
21 TRANSPORT INSURANCE SERVICES,
22 INC., a foreign corporation; DMA
23 CLAIMS MANAGEMENT, INC., a
24 foreign corporation; BLAS BON, an
25 individual; DOES I-X; and ROE
26 CORPORATIONS I-X, inclusive,

27 Defendants.

Case No. A-19-805351-C
Dept. No. XIII

**PLAINTIFF DIANE SANCHEZ'S
OPPOSITION TO DEFENDANTS
NATIONSBUILDERS INSURANCE
SERVICES, INC. AND NBIS
CONSTRUCTION & TRANSPORT
INSURANCE SERVICES, INC.'S
RENEWED MOTION TO STAY
PROCEEDINGS**

Hearing Date: December 2, 2021
Hearing Time: 9:00 a.m.

25 Plaintiff DIANE SANCHEZ, by and through her counsel of record, Dennis M.
26 Prince and Kevin T. Strong of PRINCE LAW GROUP, hereby submits her *Opposition to*
27 *Defendants NationsBuilders Insurance Services, Inc. and NBIS Construction &*
28 *Transport Insurance Services, Inc.'s Renewed Motion to Stay Proceedings.*



1 This Opposition is based on the pleadings and papers on file in this action, the
2 Memorandum of Points and Authorities set forth herein, the exhibits attached hereto,
3 and any argument this Court wishes to entertain at the hearing of this matter.

4 DATED this 4th day of November, 2021.

5 **PRINCE LAW GROUP**

6
7
8
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MEMORANUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

From the moment Plaintiff Diane Sanchez's ("Sanchez") insurance bad faith and judgment enforcement action was remanded to this Court, she has been faced with multiple motions to stay these proceedings. As a result, Sanchez's efforts to conduct meaningful discovery have been thwarted at every turn. Currently, this action is stayed as to Windhaven National Insurance Company ("Windhaven") formerly known as Defendant ATX Premier Insurance Company ("ATX"). The stay enjoyed by Windhaven is predicated on the Texas State Court's entry of its Order Appointing Liquidator, Permanent Injunction, and Notice of Automatic Stay ("Liquidation Order") against Windhaven. This Court very carefully tailored its ruling to limit the stay imposed by the Liquidation Order to Windhaven only, not any of the other Defendants in this action. Afterall, Defendant DMA Claims Management, Inc. ("DMA") previously moved to seek stay relief pursuant to the Liquidation Order, which this Court denied on March 25, 2021. Defendants NationsBuilders Insurance Services, Inc. ("NBIS") and NBIS Construction & Transport Insurance Services, Inc. ("CTIS") similarly tried and failed to seek a stay of this action pursuant to the Liquidation Order.

As expected, NBIS and CTIS request, for a second time, to stay this action and prevent Sanchez from enforcing her valid default judgment entered against ATX's insured, Blas Bon ("Bon"), in Case No. A-15-722815-C ("the personal injury action"). NBIS and CTIS's request for a stay is nothing more than a last-ditch attempt to avoid litigating their bad faith conduct arising from the handling of Sanchez's bodily injury claim on behalf of Bon. The primary basis for NBIS and CTIS's stay request remains the appeal of the order denying the motion to set aside the default judgment entered against Bon in the personal injury action. There is no dispute that NBIS and CTIS initiated the appeal in the personal injury action because they are now at risk of being financially responsible for satisfying the default judgment. Of course, the financial peril NBIS and CTIS now face is borne out of their individual and collective failures to satisfy the duty of good faith and fair dealing they owed to Bon as part of their oversight,

1 investigation, and/or handling of Sanchez's bodily injury claim. The default judgment
2 was entered against Bon because ATX, NBIS, CTIS, and DMA failed to ensure Sanchez's
3 bodily injury claim was fairly investigated and evaluated. The default judgment was
4 also entered against Bon because ATX, NBIS, CTIS, and DMA made no attempt to
5 provide Bon with a defense against Sanchez's personal injury action, despite receiving
6 multiple opportunities to tender a defense. Imposing a stay of this action pending the
7 outcome of NBIS and CTIS's appeal in the personal injury action will unfairly reward
8 them when they are certainly not entitled to that benefit.

9 As a practical matter, NBIS and CTIS also improperly seek to use this separate
10 judgment enforcement action to stay Sanchez's enforcement of the default judgment by
11 circumventing NRCP 62. Under NRCP 62, a party is required to post a supersedeas
12 bond in the judgment amount to secure a stay of **any** proceedings to enforce a judgment.
13 Not surprisingly, NBIS and CTIS have failed to post a supersedeas bond in the personal
14 injury action because they wish to receive the benefit of a stay without providing this
15 required financial security to Sanchez. Sanchez's judgment enforcement action is also
16 the only means available for her to enforce the default judgment action. This further
17 underscores the unfairness of NBIS and CTIS's attempt to receive the benefit of a stay
18 against judgment enforcement to the financial detriment of Sanchez.

19 NBIS and CTIS also conveniently overlook the finality of the default judgment is
20 not impacted by their appeal. The timeframe to appeal the default judgment expired
21 well in advance of the pending appeal. As a result, NBIS and CTIS have only effectuated
22 an appeal of the order denying the motion to set aside the default judgment and the
23 order denying the motion to alter or amend the order denying NRCP 60(b) relief. These
24 prevailing factual circumstances further demonstrate the deficiencies of NBIS and
25 CTIS's stay request.

26 Finally, NBIS and CTIS's assertion this action cannot be litigated without
27 Windhaven's participation is not meritorious because it is factually inaccurate. None of
28 the Defendants in this action have ever provided even a shred of documentation to this
Court establishing that Windhaven, as part of its purchase of ATX, also assumed all
liabilities arising from insurance policies underwritten by ATX, pre-sale. Of course, no

1 such documentation exists. In fact, Windhaven's counsel, who previously represented
2 NBIS and ATX in a factually similar action, confirmed NBIS retained the indemnity
3 obligations for all ATX liability insurance policies issued before the sale to Windhaven.
4 To somehow suggest that NBIS, as the former parent company of ATX, cannot
5 adequately defend itself against Sanchez's claims without the presence of Windhaven is
6 laughable. The same is true for CTIS as it retained responsibility for overseeing the
7 claims adjustment and administrative services performed by DMA for insurance policies
8 "issued by affiliated companies of [CTIS]." See Claims Administration Agreement
9 between CTIS and DMA, at p. 1, attached as **Exhibit 1**. Therefore, NBIS and CTIS fail
10 to provide this Court with any legitimate basis to impose a stay of this action based on
11 the Liquidation Order.

12 II.

13 LEGAL ARGUMENT

14 A trial court has the discretion to stay an action pending resolution of separate
15 proceedings that may impact a case. *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d
16 857, 863 (9th Cir. 1979). "Where it is proposed that a pending proceeding be stayed, the
17 competing interests which will be affected by the granting or refusal of a stay must be
18 weighed." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962).

19 [T]he power to stay proceedings is incidental to the power
20 inherent in every court to control the disposition of the
21 causes on its docket with economy of time and effort for
22 itself, for counsel, and for litigants. How this can best be
23 done calls for the exercise of judgment which must weigh
24 competing interests and maintain an even balance

25 *Maheu v. Eighth Judicial Dist. Court*, 89 Nev. 214, 216 (1973) (quoting *Landis v. North*
26 *American Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163, 166 (1936)).

27 Among those competing interests are the possible damage
28 which may result from the granting of a stay, the hardship
or inequity which a party may suffer in being required to
go forward, and the orderly course of justice measured in
terms of the simplifying or complicating of issues, proof,
and questions of law which could be expected to result from
a stay.

Lockyear v. Mirant Corp., 398 F.3d 1098, 1099 (9th Cir. 2005).

1 “A stay should not be granted unless it appears likely the other proceedings will
2 be concluded within a reasonable time.” *Dependable Highway Express, Inc. v.*
3 *Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Leyva*, 593 F.2d at
4 864). Stays should not be indefinite in nature. *Id.* Yet, this is precisely the type of stay
5 that NBIS and CTIS request this Court to impose because there is no set timeframe for
6 when the Nevada Supreme Court will decide their appeal. This underscores the
7 significant damage Sanchez will suffer if she is not allowed to proceed with her valid
8 judgment enforcement action against NBIS, CTIS, and DMA. Sanchez initiated this
9 action in 2019 and, through no fault of her own, was misled regarding those entities
10 financially responsible for her alleged damages in this action. Now, those same entities
11 that caused the entry of a financially ruinous judgment by completely abandoning ATX’s
12 insured, Bon, somehow expect this Court to summarily grant a stay. Any alleged
13 hardship NBIS and CTIS will suffer if this judgment enforcement action proceeds while
14 their desperate appeal in the personal injury action is decided is self-inflicted. Under
15 these circumstances, NBIS and CTIS are not deserving of the benefit of a stay,
16 particularly in light of the reasons forming the basis of their stay request.

16 NBIS and CTIS’s request to stay this action are predicated on two flawed theories:
17 (1) Sanchez’s breach of contract and insurance bad faith claims are not ripe because an
18 appeal in the personal injury action is pending; and (2) Windhaven’s participation in
19 this action is necessary. Sanchez’s claims for breach of contract and insurance bad faith
20 form the legal basis to enforce her default judgment, which is valid and final, irrespective
21 of the appeal. Secondarily, Windhaven is not involved in this action because financial
22 responsibility and control over claims arising from ATX insurance policies that were
23 underwritten before the sale remained with NBIS and CTIS, respectively. For the
24 reasons set forth below, NBIS and CTIS are not entitled to a stay.

25 **A. NBIS and CTIS Seek to Use this Action to Unfairly Halt Sanchez’s Efforts**
26 **to Enforce Her Default Judgment Without Posting the Necessary**
27 **Security Pursuant to NRCP 62**

28 NBIS and CTIS’s request to stay this action is procedurally improper and solely
designed to avoid bearing the financial brunt directly resulting from their own bad faith

1 conduct. NBIS and CTIS undertook no steps to ensure ATX and/or DMA provided Bon
2 with a defense against Sanchez's personal injury action. In fact, NBIS and CTIS made
3 no efforts to participate in the personal injury action on behalf of Bon. It was only after
4 a substantial default judgment was entered and Bon's claims for relief were judicially
5 assigned to Sanchez that NBIS and CTIS acted. Naturally, NBIS and CTIS have made
6 multiple attempts in the personal injury action to set aside the default judgment only
7 because their financial interests are now exposed. Otherwise, NBIS and CTIS would
8 have taken all steps necessary to ensure a substantial default judgment was not entered
9 against Bon in the first place. Therefore, NBIS and CTIS are only using Bon's status as
10 a party to the personal injury action to serve their own interests.

11 The timing and extent of NBIS and CTIS's involvement in the personal injury
12 action underscores the ulterior motive behind their request for a stay here, not the
13 personal injury action. On August 7, 2015, Sanchez filed her complaint for personal
14 injuries against Bon. *See* Second Amended Complaint ("SAC"), at p. 11, ¶ 46. There is
15 no dispute Sanchez used diligent efforts to serve Bon with the summons and personal
16 injury complaint. The district court presiding over the personal injury action concluded,
17 on **three separate occasions**, that Sanchez properly served Bon with the summons
18 and personal injury complaint as a matter of Nevada law:

19 As to Bon, Sanchez filed her Affidavit of Due Diligence on
20 October 22, 2015 wherein the process server described his
21 failed efforts to personally serve Bon with the Summons
22 and Complaint at his last known address on September 22,
23 2015. On March 29, 2016, Sanchez filed her Amended
24 Affidavit of Compliance wherein she confirmed that Bon
25 was served with the Summons and Complaint through the
26 Nevada Department of Motor Vehicles, pursuant to NRS
27 14.070, on November 2, 2015. On November 9, 2015,
28 Sanchez also sent, via certified mail, copies of the
Summons, Complaint, traffic accident report, and
November 2, 2015 DMV letter confirming proof of service
to Bon's last known address: 3900 Cambridge Street, Suite
106, Las Vegas, Nevada 89119. This package went
unclaimed and was returned to Sanchez on November 12,
2015. On April 1, 2016, the district court entered Default
against Bon for his failure to file an answer to Sanchez's
Complaint or to otherwise appear in the action within
twenty (20) days of service.

See July 19, 2019 Default Judgment, at 2:3-13, attached as **Exhibit 2**.

1 **THE COURT FURTHER FINDS** that Plaintiff properly
2 served her Complaint on Defendant Blas Bon through the
3 Nevada Department of Motor Vehicles pursuant to NRS
4 14.070. **Plaintiff exercised due diligence** to locate and
5 personally serve Bon before effectuating service through
6 the DMV. . . . The efforts made to locate Bon **were**
7 **reasonably diligent and justified service of**
8 **Sanchez's Complaint through the DMV.**

9 *See* September 19, 2020 Order Denying Bon's Motion to Set Aside Default Judgment,
10 attached as **Exhibit 3** (emphasis added).

11 **THE COURT FURTHER FINDS** that, **based upon the**
12 **totality of the circumstances, Sanchez exercised**
13 **reasonable and appropriate diligent efforts to locate**
14 **Bon for personal service of the summons and**
15 **complaint before substitute service was made**
16 **through the DMV by conducting standard process**
17 **server efforts, to wit:** (1) attempted service at 3900
18 Cambridge Street, Suite 106, Las Vegas, Nevada 89119,
19 which was listed in the police report; and (2) records
20 searches with the Clark County Assessor's Office, Clark
21 County Voter Registration, local phone records, the DMV,
22 and Premium Finder after learning Bon's whereabouts
23 were unknown to someone at the Cambridge Street
24 address.

25 *See* September, 2021 Order Denying Defendant Blas Bon's Motion for Rehearing and to
26 Alter or Amend the Judgment and Order Denying Rule 60(b) Relief, at 3:4-12, attached
27 as **Exhibit 4**.

28 NBIS and CTIS's affiliated liability insurer, ATX, along with CTIS and ATX's
contracted third-party claims administrator, DMA, also received ample notice of
Sanchez's personal injury action. On January 20, 2016, Sanchez mailed a letter to ATX
and DMA advising Bon was served with the summons and personal injury complaint via
the Nevada Department of Motor Vehicles. *See* SAC, at p. 11, ¶ 50. Sanchez enclosed
copies of the summons and personal injury complaint with this letter. *Id.* DMA and
ATX failed to respond to the letter and took no action to tender a defense on behalf of
Bon in the personal injury action. *Id.* at p. 11, ¶ 51. On February 16, 2016, Sanchez
sent yet another letter to ATX and DMA advising Bon still had not yet filed an answer
to the personal injury complaint. *Id.* at p. 12, ¶ 52. Sanchez further advised if Bon did
not file an answer to the personal injury complaint, she would request the district court
to enter a default against Bon, the insured. *Id.* Once again, DMA and ATX failed to
respond to this letter or otherwise make an appearance on behalf of Bon to defend him

1 against Sanchez's personal injury complaint. *Id.* at p. 12, ¶¶ 53-54. The district court
2 did not even enter a default against Bon until April 1, 2016, which means ATX and/or
3 NBIS and/or CTIS and/or DMA had over a month and a half from the February 16, 2016
4 letter to provide a defense for Bon and still failed to take that necessary action. *Id.* at
5 p. 12, ¶ 55. Sanchez even notified ATX and DMA that a default was entered against
6 Bon and provided them with a copy of the same. *Id.* at p. 12, ¶¶ 56-57. Once again, no
7 action was undertaken by ATX, DMA, NBIS, or CTIS at that time to request the district
8 court to set aside the default or to defend Bon in any way. *Id.* ATX and/or NBIS, and/or
9 CTIS, and/or DMA breached their respective contractual duties to defend and breached
10 their respective duties to make reasonable settlement decisions in bad faith. *Id.* at p.
11 15, ¶ 75, pp. 16-17, ¶ 87. As a result, the Nevada state court entered a default judgment
12 against Bon in the amount of \$15,212,655.73, inclusive of attorney's fees and costs. *See*
Exhibit 2, at p. 4.

13 Once the default judgment was entered, NBIS and CTIS conveniently chose to
14 involve themselves in the personal injury litigation. NBIS and CTIS continue to use
15 Bon to further their own self-interests and act for the benefit of ATX by pursuing various
16 legal avenues to avoid the default judgment entered against Bon in the personal injury
17 action. The NBIS/CTIS entities first hired attorney William Volk to file a motion to set
18 aside the default judgment, which the district court denied on September 19, 2020. *See*
19 **Exhibit 3**, at 4:1-4. Following the denial of that motion, NBIS and/or CTIS hired
20 appellate counsel to file a motion for rehearing and to alter or amend the judgment and
21 order denying Rule 60(b) relief, which the Court also denied. *See* **Exhibit 4**, at p. 1.
22 NBIS and/or CTIS also simultaneously filed a notice of appeal on behalf of "Bon." *See*
23 October 20, 2020 Notice of Appeal, attached as **Exhibit 5**. It is certainly predictable
24 that the only actions taken by NBIS and CTIS on Bon's behalf occurred when their
25 financial interests became implicated. Yet, NBIS and CTIS now wish to secure the
26 benefit of staying Sanchez's judgment collection efforts in this action rather than the
27 personal injury action. This dilatory tactic undermines the purpose of NRCP 62 and
28 necessitates the denial of their stay request.

...

1 **1. NBIS and CTIS cannot avoid the legal requirements of NRCP 62**

2 NBIS and CTIS's individual and collective bad faith conduct directly caused entry
3 of a financially ruinous judgment against ATX's insured, Bon. Yet, they somehow
4 arrogantly believe they can halt Sanchez's collection efforts without incurring any
5 financial cost. This completely undermines the intent and scope of NRCP 62.

6 NRCP 62, titled "Stay of Proceedings to Enforce a Judgment," articulates the
7 circumstances in which a party's execution or enforcement of a judgment may be stayed.
8 Rule 62 states, in relevant part:

9 **(d) Stay Pending an Appeal.**

10 **(1) By Supersedeas Bond.** If an appeal is taken, the
11 appellant may obtain a stay by supersedeas bond,
12 except in an action described by Rule 62(a)(2). The
bond may be given upon or after the filing of a notice of
13 appeal or after obtaining the order allowing the appeal.
The stay is effective when the supersedeas bond
is filed (emphasis added).

14 "The purpose of a supersedeas bond is to stay the **enforcement** of a judgment."
15 *Sherman Gardens Co. v. Longley*, 87 Nev. 558, 563 (1971). "[A] supersedeas bond posted
16 under NRCP 62 should usually be set in an amount that will permit full satisfaction of
the judgment" *Nelson v. Heer*, 121 Nev. 832, 834 (2005) (quoting *McCulloch v.*
17 *Jenkins*, 99 Nev. 122, 123 (1983)). "The purpose of security for a stay pending appeal is
18 to protect the judgment creditor's ability to collect the judgment if it is affirmed by
19 preserving the status quo and preventing prejudice to the creditor arising from the stay."
20 *Id.*

21 Sanchez's breach of contract and insurance bad faith claims give rise to a
22 judgment enforcement action because she seeks to collect the full amount of the
23 judgment entered against Bon from Defendants, including NBIS and CTIS. As a result,
24 this action falls under the direct purview of NRCP 62 and necessitates NBIS and CTIS
25 to seek a stay in the personal injury action by posting the requisite supersedeas bond
26 for the full amount of the \$15,212,655.73 default judgment. It is no coincidence that
27 NBIS and CTIS, to date, have not posted a supersedeas bond and have, instead, chose
28 to directly move for a stay of Sanchez's judgment enforcement action. NBIS and CTIS

1 want the benefit of a stay without satisfying the legal requirements for that stay. This
2 illustrates NBIS and CTIS's dismissive attitude towards the validity and finality of the
3 default judgment without any basis. NBIS and CTIS's tactics are intended to deprive
4 Sanchez of the protection needed for her to collect upon the judgment by circumventing
5 the legal requirement to stay judgment enforcement efforts under Nevada law. NBIS
6 and CTIS's request for a stay of this action directly contravenes NRCP 62 and is legally
7 improper.

8 **2. The default judgment remains fully enforceable even though an appeal
9 is pending**

10 “[A] cause of action for bad faith arises when the insured is *legally obligated* to
11 pay a judgment that is in excess of his policy limits.” *Belanger v. GEICO Gen. Ins. Co.*,
12 623 Fed. App'x 684, 688 (5th Cir. Aug. 21, 2015) (*quoting Kelly v. Williams*, 411 So.2d
13 902, 904 (Fla. Dist. Ct. App. 1982)). In *Belanger*, Stephen, GEICO's insured, caused an
14 automobile accident that injured Belanger. *Id.* at 685. A substantial judgment was
15 entered against Stephen in the underlying personal injury action and the judgment was
16 appealed by GEICO, suspensively, but appealed by Stephen, devolutively. *Id.* After the
17 judgment was affirmed on November 13, 2012 and the Louisiana Supreme Court denied
18 certiorari on April 1, 2013, Stephen assigned her rights against GEICO to Belanger. *Id.*
19 at 685-86. After Belanger filed his bad faith action against GEICO, GEICO moved to
20 dismiss arguing that Belanger's claim was time-barred by the applicable statute of
21 limitations. The district court granted GEICO's motion and an appeal followed. The
22 Fifth Circuit affirmed the dismissal because of the distinction between a devolutive
23 appeal and a suspensive appeal:

24 [A] suspensive appeal is one which suspends the effect or
25 the execution of an appealable order or judgment;
26 **requires the appellant to furnish security, typically**
27 **in the amount of the judgment;** and must be filed within
28 30 days of either a ruling on a motion for new trial or JNOV
(or expiration of the delay for applying for that relief, in the
absence of such a motion). A devolutive appeal, on the
other hand is one **which does not suspend the effect or**
the execution of an appealable order or judgment;
does not require the appellant to post security; and must
be filed within 60 days of one of the terminal events.

Id. at 688-89 (emphasis added).

1 The Fifth Circuit reasoned that “because the excess judgment was appealed only
2 devolutively, not suspensively,” Stephen’s bad faith claim against GEICO that she
3 assigned to Belanger accrued when the excess judgment was entered. *Id.* at 689. As a
4 result, Belanger’s delay in filing his bad faith action until after the judgment was
5 affirmed barred his claim under the applicable statute of limitations. *Id.*

6 The construct of NRCP 62 contemplates the distinctions between devolutive
7 appeals and suspensive appeals set forth in *Belanger* because the suspension of
8 collection efforts to enforce a judgment is predicated on the posting of a supersedeas
9 bond. *Sherman Gardens Co.*, 87 Nev. at 563. Therefore, the default judgment entered
10 against Bon remains fully enforceable and allows Sanchez to proceed with this judgment
11 enforcement action. Rest assured, if there was any question about the timeliness of
12 Sanchez’s bad faith claim, NBIS and CTIS would be arguing the opposite position,
13 namely that the default judgment remains enforceable, irrespective of the appeal.
14 Therein lies the absurdity of NBIS and CTIS’s legal position that this matter must
15 somehow be stayed while its devolutive appeal is pending. *Belanger* is illustrative for
16 this precise reason as it further demonstrates the illogicality of NBIS and CTIS’s
17 position that the default judgment is not final or fully enforceable.

18 **B. Sanchez’s Claims Alleged in this Action are Not Unripe Solely Because**
19 **NBIS and CTIS Appealed the Underlying Default Judgment**

20 “It is fundamental that the mere pendency of an appeal does not, in itself, disturb
21 the finality of a judgment.” *Wedbush, Noble, Cooke, Inc. v. S.E.C.*, 714 F.2d 923, 924
22 (9th Cir. 1983). NBIS and CTIS assert Sanchez’s claims for breach of contract and
23 insurance bad faith are not ripe merely because an appeal in the personal injury action
24 is pending. NBIS and CTIS’s position is erroneous because they ignore that the
25 substance of the pending appeal does not affect the finality of the default judgment.

26 “The basic test for ripeness requires the court to evaluate both the fitness of the
27 issues for judicial decision and the hardship to the parties of withholding court
28 consideration.” *Bergeson v. Dilworth*, 749 F. Supp. 1555, 1560 (D. Kan. 1990); *see also*,
Branch Banking & Trust Co. v. Nev. Title Co., Case No. 2:11-CV-1970 JCM (RJJ), 2011
U.S. Dist. LEXIS 40948, at *7 (D. Nev. Apr. 13, 2011). NBIS and CTIS cite to *Branch*

1 *Banking* and a litany of other cases to argue Sanchez's claims alleged in this action are
2 not ripe because the default judgment may be set aside or eliminated by the appeal.
3 Conspicuously absent from NBIS and CTIS's analysis is the hardship that Sanchez will
4 suffer if this matter is stayed. Instead, NBIS and CTIS selfishly focus on the supposed
5 financial hardship they will suffer if forced to litigate Sanchez's judgment enforcement
6 action. Given the complete abandonment of Bon by ATX, NBIS, and CTIS, their request
7 that this Court show sympathy because they might have to incur substantial costs to
8 litigate this action is preposterous.

9 Conversely, Sanchez, who has attempted to enforce her judgment against those
10 financially responsible and culpable entities for over two years, will suffer significant
11 hardship if this matter is stayed. If a stay is imposed, Sanchez will, in all likelihood,
12 have to withstand two successive appeals, one in this action and one in the underlying
13 personal injury action, that are separated by several years. The size of such a time delay
14 will further prejudice Sanchez because it will enhance "the attendant risks of lost
15 witnesses and failed memories that are always associated with delayed proceedings."
16 *Bergeson*, 749 F. Supp. at 1560. Under these circumstances, the notion that interests of
17 judicial efficiency warrant a stay is not tenable. There is no legitimate reason why
18 Sanchez should have to bear the burden of delaying the adjudication of her claims
19 merely because a remote possibility exists that the default judgment will be set aside.
20 *Id.*

21 NBIS and CTIS also disregard a critical factual distinction between this action
22 and *Branch Banking*. In *Branch Banking*, Commonwealth, the insurer that Branch
23 Banking sued for insurance bad faith, was continuing to advocate for Branch Banking
24 in the appeal of the underlying case, which centered on whether its trust deed had
25 priority over another bank's trust deed. 2011 U.S. Dist. LEXIS 40948, at *3-5. As such,
26 a unity of interest remained between Commonwealth, the title insurer, and Branch
27 Banking, its insured. *Id.* at *7 (No hardship exists because Commonwealth "has
28 undertaken the defense of Branch Banking" . . . and "it will continue to defend [Branch
Banking] in the underlying state action and . . . appeal"). By contrast. NBIS and CTIS
are not defending or preserving Sanchez's interests in the underlying personal injury

1 action by appealing the order setting aside the default judgment. NBIS and CTIS are
2 not even defending or preserving Bon's interests through their appeal because their
3 motive to set aside the default judgment is to protect their financial interests, not his.
4 These facts directly repudiate the persuasive value of the *Branch Banking* decision to
5 the stay inquiry before this Court because no benefit will accrue to Sanchez or Bon if the
6 default judgment is altered or set aside in any manner. Sanchez's damages resulting
7 from ATX, NBIS, CTIS, and DMA's individual and collective bad faith conduct will
8 remain. Despite NBIS and CTIS's argument, the ripeness inquiry is not solely limited
9 the possibility that the default judgment will be set aside. Based on all of the relevant
10 considerations under the ripeness inquiry, NBIS and CTIS fail to meet their burden to
11 request this Court impose an indefinite stay of this action.

12 **C. The Finality of the Underlying Default Judgment is Not Impacted in any**
13 **Way by the Pending Appeal**

14 The substance and nature of the appeal made by NBIS and CTIS undermines any
15 suggestion that the default judgment is not final. The default judgment was entered
16 against Bon on July 19, 2019. *See Exhibit 1*, at p. 1. On January 17, 2020, nearly six
17 months or 180 days after the default judgment was entered, NBIS and CTIS used Bon
18 to file a motion to set aside the default judgment pursuant to NRCP 60(b). *See personal*
19 *injury action docket*, attached as **Exhibit 6**. NBIS and CTIS took this action solely to
20 avoid financial responsibility for the resulting default judgment, not to protect or
21 otherwise serve the interests of Bon. NRCP 60(c) addresses the interplay between filing
22 a Rule 60(b) motion and the finality of the judgment entered:

23 ***(c) Timing and Effect of that Motion***

24 . . .

25 ***(2) Effect on Finality.*** The motion **does not affect the**
26 **judgment's finality or suspend its operation.**
27 (emphasis added).

28 The district court's denial of the subject motion to set aside the default judgment
occurred well after the August 19, 2019 deadline to appeal the default judgment. *See*
Nev. R. App. P. 4(a)(1). This is precisely why an order denying a motion seeking relief
pursuant to NRCP 60(b) is independently appealable and one of the only substantive

1 orders on appeal before the Nevada Supreme Court now. *See Holiday Inn Downtown v.*
2 *Barnett*, 103 Nev. 60, 63 (1987); *see also, Miller v. Freeman*, No. 75291, 2018 Nev.
3 Unpub. LEXIS 332, at *1 (Apr. 16, 2018) (“unpublished decision”) (“[A]n order denying
4 a motion seeking NRCP 60(b) relief is independently appealable). Therefore, the finality
5 of the default judgment was not impacted when the district court denied NBIS and
6 CTIS’s NRCP 60(b) Motion to Set Aside the Default Judgment and is not now impacted
7 by their appeal of that order.

8 Even NBIS and CTIS’s subsequent filing of a motion to alter or amend the
9 judgment pursuant to NRCP 59(e) on October 19, 2020 has not impacted the finality of
10 the default judgment. *See Exhibit 6*. A party must file his notice of appeal after entry
11 of a written judgment or order no later than 30 days after the date such judgment or
12 order is entered. Nev. R. App. P. 4(a)(1). NRCP 59(e) allows a party to file a motion to
13 alter or amend a judgment no later than 28 days after service of written notice of entry
14 of judgment. Motions filed with the district court pursuant to NRCP 59 toll the time
15 period for a party to file their notice of appeal of a judgment or order. *See Nev. R. App.*
16 *P. 4(a)(4); see also, Winston Prods. Co. v. Deboer*, 122 Nev. 517, 519-20 (2006). However,
17 NBIS and CTIS failed to timely toll the 30-day time period to appeal the default
18 judgment because their NRCP 59(e) motion was never filed until over a year after the
19 30-day time period to appeal the default judgment expired. As a result, NBIS and CTIS’s
20 NRCP 59(e) motion was solely limited to the district court’s denial of the motion to set
21 aside the default judgment, **not** the actual default judgment. Therefore, the pending
22 appeal addresses **only**: (1) the order denying the motion to set aside the default
23 judgment; and (2) the order denying the motion to alter or amend the order denying Rule
24 60(b) relief, **not the default judgment**. The default judgment entered against Bon
25 remains final. Accordingly, Sanchez can proceed with her claims for breach of contract,
26 breach of the implied covenant of good faith and fair dealing, and violation of Nevada’s
27 Unfair Claims Practices Act.
28

...

...

...

1 **D. Windhaven's Participation in this Litigation is Not Necessary for the**
2 **Parties to Fairly and Fully Litigate this Action**

3 In a further act of desperation, NBIS and CTIS request a stay because
4 Windhaven's participation is somehow necessary. This argument is predicated on the
5 falsehood that NBIS and CTIS are not in possession of the relevant documents related
6 to Windhaven's acquisition of ATX. Windhaven's interests are in no way implicated by
7 this action, which is why NBIS and CTIS fail to specify the manner in which Windhaven
8 plays any role in the litigation of Sanchez's claims or their defenses. On the other hand,
9 Sanchez possesses very specific facts that directly refute the notion that Windhaven
10 bears any financial responsibility or liability for Sanchez's alleged damages.

11 ***1. NBIS and CTIS's reserved power over claims and indemnity***
12 ***obligations arising from insurance policies underwritten by ATX***
13 ***negate Windhaven's participation in this action***

14 At the time of Sanchez's claim, a contractual relationship existed between ATX
15 and DMA whereby DMA provided services as a third-party claims adjuster for any
16 claims made under policies issued by ATX. See SAC, at p. 6, ¶ 27. DMA was
17 contractually obligated to carry out the duties ATX owed to Bon under the express terms
18 of the policy. *Id.* A contractual relationship also existed between DMA and CTIS
19 whereby DMA was required, on behalf of CTIS, to perform a variety of "claims adjusting
20 services" for "claims and losses arising out of policies issued by affiliated companies of
21 [CTIS]." *Id.* at pp. 6-7, ¶¶ 26-29; see also, **Exhibit 1**, at pp. 1, 3-7. One of those affiliated
22 companies was ATX because NBIS and/or CTIS retained control over ATX policies,
23 which included indemnity, administrative, and handling obligations. See SAC, at pp. 8-
24 9, ¶¶ 31-35.

25 As early as February 22, 2013, NBIS was the parent company of ATX. See SAC,
26 at p. 5, ¶ 21; see also, Official Order of the Texas Commissioner of Insurance, filed as an
27 exhibit in *Hayes v. ATX Premier Ins. Co.*, Case No. 2:18-cv-01938-GMN-NJK, at bates
28 no. NBIS0065, ¶ 5, attached as **Exhibit 7**. On April 1, 2015, ATX, CTIS, AutoTex MGA,
Inc. ("AutoTex"), and Safe Auto Insurance Company ("Safe Auto") entered into their
Amended and Restated Claims Handling Agreement. See SAC, at p. 5, ¶¶ 22-24; see
also, Amended and Restated Claims Handling Agreement excerpt, filed as an exhibit in

1 *Hayes v. ATX Premier Ins. Co.*, Case No. 2:18-cv-01938-GMN-NJK, attached as **Exhibit**
2 **8**. The Amended and Restated Claims Handling Agreement outlines specific
3 “definitional guidelines” regarding the treatment of ongoing business obligations before
4 the stock sale to Safe Auto that are relevant to this action:

5 (A) **Pre-close Policy**. **Pre-close Policy** means any policy
6 which was issued on or before the closing date of the sale
7 of **Auto Tex**, or which may be validly reinstated after such
8 closing date by the policyholder during a reinstatement
9 period. It also means any new policy written or renewed
on or after the closing date which: (1) resides in the state of
Arizona; (2) is produced by the LA Franchise Agency or its
affiliates in any state; or (3) has been certified under the
financial responsibility laws and regulations of any state.

10 See SAC, at p. 5, ¶ 23; *see also*, **Exhibit 8**.

11 The Amended and Restated Claims Handling Agreement confirms that policies
12 issued by ATX before the March 2, 2015 stock sale of AutoTex to Safe Auto remain with
13 CTIS:

14 **WHEREAS**, CTIS wishes to assume the rights and
15 obligations hereunder to administer **Pre-close Policies** as
the **Pre-close Policy Claims Administrator**;

16 **WHEREAS**, CTIS is in the business of providing claim
17 services on behalf of insurance companies and is willing to
18 provide such services on behalf of **Company** on all **Pre-**
close Policies in accordance with the terms and
conditions set forth herein; and as set forth in any agreed
to Addenda attached to and made part of this Agreement;

19 See SAC, at pp. 5-6, ¶ 24; *see also*, **Exhibit 8**.

20 The Amended and Restated Claims Handling Agreement defines ATX as
21 “Company” under the contract. See SAC, at p. 5, ¶ 24; *see also*, **Exhibit 8**. As such, the
22 express terms of the agreement confirm NBIS and CTIS retain distinct management
23 and control over insurance policies issued by ATX before March 2, 2015. *Id.* The ATX
24 policy covering Bon went into effect on December 16, 2014. See SAC, at p. 4, ¶ 18; *see*
25 *also*, ATX policy term and coverage, attached as **Exhibit 9**. By definition, the ATX
26 liability insurance policy giving rise to Sanchez’s claims in this action is a “Pre-close
27 Policy” that has always remained under the control of NBIS and CTIS. See **Exhibit 8**.

1 NBIS eventually sold ATX to Windhaven. The Texas Insurance Commissioner's
2 Order approving the acquisition references only that "Windhaven will acquire control of
3 ATX through the purchase of 100% of the issued and outstanding common capital stock
4 of ATX for \$7,500,000 cash." See March 3, 2016 Official Order of the Texas
5 Commissioner of Insurance approving acquisition of ATX, at p. 1, ¶ 2, attached as
6 **Exhibit 10**. This Order does not articulate that Windhaven also undertakes financial
7 responsibility and control over any of ATX's liabilities, including pre-sale liability
8 insurance policies issued. See generally, **Exhibit 9**. Structuring the transaction in this
9 manner makes sense given that ATX/NBIS already collected the premium payments for
10 the insurance policies issued before the sale to Windhaven. The terms and structure of
11 ATX's sale to Windhaven explain why no documentation has ever been disclosed
12 showing Windhaven ever assumed financial responsibility or control over any ATX
13 liability insurance policies as part of its acquisition of ATX. No such evidence actually
14 exists given the representations made by attorney John Podesta ("Podesta"), who
15 previously represented ATX and NBIS in a similar action filed years **after** Windhaven
acquired ATX.¹

16 ***2. Podesta's representation of ATX and NBIS proves Windhaven never***
17 ***maintained financial responsibility or control over pre-sale ATX***
insurance policies

18 Podesta previously represented ATX and NBIS in a Nevada federal district court
19 action styled as *Hayes v. ATX Premier Ins. Co.*, Case No. 2:18-cv-01938-GMN-NJK
20 ("Hayes"). As Sanchez has articulated to this Court on several occasions, the *Hayes*
21 matter involved claims arising from an ATX insurance policy issued in 2014. See Third
22 Amended Complaint filed in *Hayes*, at pp. 1-2, ¶ 1, attached as **Exhibit 11**. The timeline
23 for the various claims submitted by the decedent's wife and minor child in the *Hayes*
24 matter spanned from 2014 through 2016. *Id.* at pp. 5-10. The insurance policy at issue
25 in *Hayes* was underwritten by ATX and in full force and effect on November 15, 2014,
26 the date of the relevant motor vehicle collision. *Id.* at pp. 1-2, ¶ 1. Here, Bon's ATX

27 ¹ Podesta represents Windhaven in this action.
28

1 policy was in full force and effect from December 16, 2014 through June 16, 2015. *See*
2 **Exhibit 9**. The similarities between the relevant coverage timeframe at issue here
3 when compared to *Hayes* are critical because they substantiate NBIS's financial
4 responsibility for Sanchez's damages and CTIS's responsibility for the culpable conduct
5 giving rise to Sanchez's damages.

6 Podesta's representations he affirmatively made on behalf of ATX and NBIS in
7 dispositive motion practice filed in *Hayes* also establish NBIS's financial responsibility
8 for the ATX insurance policy that covered Bon:

9 In the context of this case, NBIS **retained financial**
10 **responsibility for claims relating to policies that**
11 **were issued prior to the sale of ATX in 2015** [sic].

12 *See* ATX and NBIS's Opposition to Plaintiff's Motion for Summary Judgment filed in
13 *Hayes*, pleading portion only, at 7:18-19, attached as **Exhibit 12** (emphasis added).

14 Podesta confirmed NBIS's role as indemnitor and also detailed CTIS's role
15 regarding claims arising from ATX policies issued in 2014 in a summary judgment
16 motion he filed in *Hayes* on November 7, 2019:

17 NBIS is a holding company that, as part of the sale of ATX,
18 **agreed to indemnify ATX for losses associated with**
19 **pre-sale policies, akin to a reinsurer to insurance**
20 **companies.**

21 . . .

22 While NBIS-affiliated companies engage in **claim**
23 **oversight activities** – notably NBIS Construction and
24 Transport Services ("CTIS") – it is a completely separate
25 company from NBIS.

26 *See* NBIS's Motion for Summary Judgment or in the Alternative Motion for Partial
27 Summary Judgment filed in *Hayes*, pleading portion only, at 3:18-20, 4:17-19, attached
28 as **Exhibit 13** (emphasis added).

The prior representations made by Podesta are completely consistent with NBIS
and CTIS's past and present attempts to avoid the default judgment in the personal
injury action. On April 29, 2020, Sanchez's counsel drafted a letter to "Bon's" counsel,
William Volk ("Volk") requesting he clarify the name of the insurer or entity that hired
him to represent "Bon's" interests in the personal injury action:

. . .

1 As I am sure you are aware, ATX was the relevant
2 underwriting entity that issued the insurance policy at
3 issue to Mr. Bon. It is not entirely clear, however, whether
4 Windhaven acquired ATX's claims against its insureds (*i.e.*
5 liabilities) that were pre-existing at the time of its
6 acquisition. **This inquiry is directly relevant to
7 whether the stay as to Windhaven is even applicable
8 in both the state court action and Ms. Sanchez's
9 federal enforcement action.**

10 In light of the foregoing, we respectfully request you
11 identify who hired you [to] notify the state court of the
12 Liquidation Order on behalf of Mr. Bon.

13 See April 29 2020 letter to Volk, attached as **Exhibit 14**.

14 In response, Volk identified NBIS, not Windhaven, as the entity that hired him
15 in the personal injury action:

16 Kevin:

17 Gotcha. It is my understanding that **NBIS**
18 **(NationsBuilders Insurance Services, Inc.)** retained
19 Kolesar & Leatham and then my new office Holley Driggs
20 to represent Mr. Bon. I have no information on the
21 relationship between NBIS and Windhaven or ATX. That's
22 as much as I know. I hope this answers your question.

23 See April 29 2020 Volk e-mail, attached as **Exhibit 15** (emphasis added),

24 Less than two hours later, Podesta was forced to clarify Volk's e-mail regarding
25 the entity that hired him:

26 And we see the reason that defense lawyers are kept in the
27 dark about how things really work. Sorry, Bill. Mr. Volk's
28 **retention was by NBIS Construction and Transport**
Insurance Services, Inc., for the benefit of ATX
Premier Insurance Co., who then utilized DMA Claims
as the claims administrator.

See April 29 2020 Podesta e-mail, attached as **Exhibit 16** (emphasis added).

Five minutes after Podesta's e-mail, Volk clarified the entity that hired him to
represent Bon

Kevin:

I want to clarify that it was **NBIS Construction and**
Transport Insurance Services, Inc. that retained my
office. They are obviously **part of the NBIS family of**
companies. I should have been more precise about that
point.

1 See April 29 2020 e-mail from attorney William Volk ("Volk"), attached as **Exhibit 17**
2 (emphasis added).

3 Notably, the e-mails from Volk and Podesta were sent **after** the March 5, 2020
4 Liquidation Order was entered against Windhaven. These e-mails confirm Windhaven
5 was not involved whatsoever in the retention of attorneys to set aside the default
6 judgment, and further refute the notion that this matter should somehow be stayed now
7 for the benefit of NBIS and CTIS. NBIS remains the indemnitor for all losses arising
8 from pre-sale ATX policies. The prevailing circumstances in 2019 have not changed,
9 which solidifies that Windhaven's purchase of ATX in 2016 did not include the
10 assumption of financial responsibility or control over any pre-sale insurance policies
11 issued by ATX. This is precisely what happened when NBIS sold AutoTex to Safe Auto.
12 See **Exhibit 8**. As a result, Windhaven never assumed any contractual or indemnity
13 obligations arising from the way Sanchez's bodily injury claim was investigated,
14 evaluated, or adjusted by ATX, DMA, NBIS, or CTIS. In fact, CTIS issued a settlement
15 check **for the benefit of ATX** in the *Hayes* matter dated October 26, 2016, over six
16 months after Windhaven purchased ATX:

17

18

19

20

21

22

NBIS CONSTRUCTION & TRANSPORT INSURANCE
SERVICES INC.
FBC ATX PREMIER INSURANCE COMPANY
PO BOX 28004
GLENDALE, CA 91222-0004
(323) 342-1650

FROST BANK ADDISON
15301 N. DALLAS PKWY #100
ADDISON, TX 76001
30-9/1140

VOID AFTER 90 DAYS
THIS ACCOUNT IS
PROTECTED BY POSITIVE PAY

3514

DATE
10/26/2016

AMOUNT

PAY

TO THE
ORDER
OF

COPY

MEMO

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

0035 1 1 1 1 4000 931 6088 765 1 7

23 See October 26, 2016 check issued by CTIS, filed as an exhibit in *Hayes*, attached as
24 **Exhibit 18**.

25 This settlement check was tendered in relation to a claim arising from the ATX
26 policy issued in 2014 to the owner of the car in *Hayes*, the same year that ATX issued
27 the subject policy in Bon. See **Exhibit 11**, at p. 2, ¶¶ 2-3. CTIS issued this settlement
28 check for the benefit of ATX, which again reflects the precise language Podesta used in
his April 29, 2020 e-mail. See **Exhibit 16**. NBIS and CTIS's attempt to somehow

1 suggest they cannot defend against Sanchez's claims without implicating Windhaven's
2 interests defies logic and commonsense. If this were true, NBIS and CTIS would have
3 provided this Court with information to directly refute the facts Sanchez has repeatedly
4 provided to them and this Court.

5 In "our system of representative litigation, . . . each party is **deemed bound by**
6 **the acts of his lawyer-agent.**" *Nev. Power v. Fluor III*, 108 Nev. 638, 647 n.9 (1992)
7 (emphasis added). In turn, a party "cannot avoid the consequences of the acts or
8 omissions of this freely selected agent." *Id.* NBIS and CTIS are bound by the
9 representations made by Podesta, NBIS's counsel in the *Hayes* case. Their attempt to
10 use the Liquidation Order to stay this action is futile and warrants this Court's denial
11 of their request for a stay.

12 III.

13 CONCLUSION

14 Based on the foregoing facts, law, and analysis, Plaintiff Diane Sanchez
15 respectfully requests this Court to **DENY** Defendants NationsBuilders Insurance
16 Services, Inc. and NBIS Construction & Transport Insurance Services, Inc.'s Renewed
17 Motion to Stay Proceedings.

18 DATED this 4th day of November, 2021.

19 **PRINCE LAW GROUP**

20
21 /s/ Kevin T. Strong
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24 KEVIN T. STRONG
25 Nevada Bar No. 12107
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Attorneys for Plaintiff
Diane Sanchez



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of **PRINCE LAW**
3 **GROUP**, and that on the 4th day of November, 2021, I caused the foregoing document
4 entitled **PLAINTIFF DIANE SANCHEZ'S OPPOSITION TO DEFENDANTS**
5 **NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS**
6 **CONSTRUCTION & TRANSPORT INSURANCE SERVICES, INC.'S RENEWED**
7 **MOTION TO STAY PROCEEDINGS** to be served upon those persons designated by
8 the parties in the E-Service Master List for the above-referenced matter in the Eighth
9 Judicial District Court E-Filing System in accordance with the mandatory electronic
10 service requirements of Administrative Order 14-2 and the Nevada Electronic Filing
11 and Conversion Rules.

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12 Wing Yan Wong
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NBIS Construction & Transport Insurance Services, Inc.

26 /s/ Kevin T. Strong
27 An Employee of PRINCE LAW GROUP



EXHIBIT 1

CLAIMS ADMINISTRATION AGREEMENT

by and between

NBIS Construction and Transport Insurance Services, Inc.
(hereinafter the "Company")

and

DMA Claims Management, Inc.
(hereinafter the "Claims Administrator")

Effective Date: April 1, 2015

WHEREAS, the Company desires to employ Claims Administrator to perform claims adjustment and administrative services for certain claims and losses arising out of policies issued by affiliated companies of the Company;

WHEREAS, the parties desire to enter into a Claims Administration Agreement (hereinafter, the "Agreement") that will outline their primary duties and obligations with respect to this engagement;

NOW THEREFORE, in consideration of mutual promises and agreements, the parties agree as follows:

I. DEFINITIONS

A. The term "Allocated Loss Adjustment Expense" as used herein shall mean all claims adjustment costs and expenses incurred in connection with the investigation, adjustment and settlement or defense of a claim for benefits. Allocated Loss Adjustment Expenses are limited to reasonable, customary and necessary expenses. Such expenses shall include, but shall not be limited to, the following:

- 1) attorneys fees and disbursements; and
- 2) fees to court reporters; and
- 3) all court costs, court fees and court expenses; and
- 4) costs of automobile and property appraisals and re-inspections; and

- 5) costs of any required investigations by claims adjusters in the field; and
- 6) costs of interpreters; and
- 7) fees for database searches; and
- 8) fees for service of process; and
- 9) costs of surveillance and detective services; and
- 10) costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, diagrams; and
- 11) costs for employing experts for their advice, opinions or testimony concerning claims under investigation or in litigation or for which a declaratory judgment is sought; and
- 12) costs for independent medical examination and/or evaluation for rehabilitation and/or to determine the extent of the Company' liability; and
- 13) costs of legal transcripts of testimony taken at coroner's inquests, criminal or civil proceedings; and
- 14) costs for copies of any public records and/or medical records; and
- 15) costs of depositions and court - reported and/or recorded statements; and
- 16) costs and expenses of subrogation when referred to outside attorneys or other vendors; and
- 17) costs of engineers, handwriting experts and/or any other type of expert used in the preparation of litigation and/or used on a one-time basis to resolve disputes; and
- 18) charges for medical cost containment services, i.e., utilization review, pre-admission authorization, hospital bill audit, provider bill audit and medical case management incurred only with the prior approval of the Company.
- 19) any other similar cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a claim or loss or to the protection or perfection of the subrogation rights of the Company.

B. The term "Qualified Claim" shall mean a claim assigned by Company to Claims Administrator.

- C. The term "Feature" shall mean any separate coverage exposure within a claim. For example, one claim might have a Collision feature and one or more Bodily Injury or Property Damage features.
- D. The term "Claims Adjusting Services" as used herein shall mean the furnishing by the Claims Administrator to the Company of the following services in compliance with the terms of the applicable insurance policy, the laws and regulations of the applicable state(s), and industry-wide standards:
- 1) Review all Company's claims and loss reports; and
 - 2) Receive from Company coverage information for the applicable policy for the claim or loss reported. If authorized by Company, where coverage is in question, draft reservation of rights letters to be reviewed by the Company prior to sending to the insured. When Claims Administrator is advised by Company that no coverage exists, draft declination letters, which are to be reviewed by the Company as required, prior to sending to the insured. When appropriate, advise interested parties of the extent of coverage; and
 - 3) If instructed by the Company, establish records for incidents or occurrences reported by the insured that are not claims but may become claims at a later date; and
 - 4) Establish and adequately reserve each Qualified Claim and Feature, and code such claim in accordance with Company's statistical data requirements. Claims Administrator shall adopt and agree upon guidelines for reserving Features that comply with Company's guidelines and are consistent with industry standards; and
 - 5) Conduct a prompt and detailed investigation of each Qualified Claim. Company and Claims Administrator shall adopt and agree upon guidelines for referring claims investigation to field investigators and adjusters that comply with Company's guidelines and are consistent with industry standards; and
 - 6) Adjust Qualified Claims for Property and/or Physical Damage by obtaining itemized estimates and/or appraisals of damage; and
 - 7) Assure that there is sufficient evidence and documentation gathered and in the Company's claims system on a Qualified Claim, to allow the adjuster to properly evaluate the merits of the claim; and
 - 8) Provide, in accordance with the Company's procedures and authority, an initial report and periodic reports on the status of each Qualified Claim in excess of the reporting level or otherwise reportable; and

- 9) Perform all necessary administrative work in connection with Qualified Claims; and
- 10) Respond immediately to any inquiry, complaint or request received from an insurance department or any other regulatory agency in compliance with written instructions, if any, provided by the Company. Respond promptly to any inquiry, complaint or request received from a client, claimant, agent, broker, or other interested party in connection with the Claims Adjusting Services; and
- 11) Process each Qualified Claim utilizing industry-wide standard forms where applicable; and
- 12) Attend, where appropriate and approved by the Company, mediation, arbitration, court-related or other dispute resolution hearings and/or conferences; and
- 13) Maintain files for all Qualified Claims in the Company's claims system, that may include, where necessary, a) defense of claims; b) other litigation (such as subrogation, contribution or indemnity); c) other proceedings; d) claims handling activities; and e) expense control and disbursements; and
- 14) Pursue all reasonable possibilities of subrogation, contribution or indemnity on behalf of the Company; and
- 15) Adjust, settle or otherwise resolve claims in accordance with authority levels granted; and
- 16) Pay or recommend payment where appropriate, all Qualified Claims and Allocated Loss Adjustment Expenses, on a timely basis and in accordance with authority granted by the Company; and
- 17) Pursue recovery of third party liability deductibles; and
- 18) Maintain closed claim files in accordance with state regulations and/or Company requirements.

E. The term "Claims Files" shall mean all information and documentation in written, electronic, photographic, or audio form gathered as part of the Claims Adjusting Services.

II. SERVICES

- A. In consideration of service fees paid by the Company as set forth in the Compensation Schedule attached hereto and made part of this Agreement, Claims Administrator agrees to provide Claims Adjusting Services with respect to all Qualified Claims, including those in excess of the Claims Administrator's authority level.
- B. Claims exceeding the authority level are to be immediately reported by email to the Company. Claims Administrator shall seek the Company's prior written approval on all Qualified Claim settlements in excess of the authority level. With respect to those Qualified Claims in excess of the authority level, Claims Administrator shall calculate and recommend reserves, and then, upon approval by the Company, post such reserves. However, ultimate determination of settlement and reserve amounts shall be retained by the Company.
- C. Claims Administrator warrants and represents that: 1) it shall perform all Claims Adjusting Services that are necessary and appropriate directly or through licensed independent claims adjusters; and 2) it and/or its employees hold all adjuster licenses as required by law to perform the designated services; and 3) it and its employees and persons under contract to Claims Administrator will at all times observe the requirements of laws and regulations of each state in the territory in which it operates, specifically including but not limited to the privacy laws, fair claims practices acts, and fair trade practices acts.
- D. If a Summons and Complaint is filed on a Qualified Claim, the Claims Administrator shall transfer that claim and all its Features back to the Company and shall no longer be responsible for the further handling of that claim.

III. TERM AND TERMINATION

- A. This Agreement shall be effective April 1, 2015, and shall be in effect until cancelled by either party with ninety (90) days' notice.
- B. In the event any license necessary to conduct the Claims Administrator's business expires or terminates, for any reason, the Claims Administrator shall immediately notify the Company and this Agreement shall automatically terminate as of the date of such license's expiration or termination unless, within one week from the date the Company receives notice of the license expiration or termination from the Claims Administrator, the Company agrees, in writing, to modify the provisions of this paragraph so as to allow the Agreement to continue.
- C. This Agreement may be terminated immediately upon written notice to either party if there has been an event of fraud, abandonment, insolvency, or gross or willful misconduct on the part of the other party.

- D. Notwithstanding the foregoing, if the Claims Administrator shall commit any material breach of the terms of this Agreement, or fail to comply with any material instruction or direction by the Company, the Company may, in its sole discretion, immediately upon notice, suspend or terminate any or all authority of the Claims Administrator. Upon receipt of such notice, the Claims Administrator shall thereupon cease to exercise such power or powers in accordance with such notice.
- E. Notwithstanding the foregoing, if the Company shall commit any material breach of the terms of this Agreement, or fail to fulfill its obligations under the Agreement, Claims Administrator may immediately upon notice, suspend and/or terminate all claims handling under this Agreement.
- F. If the Agreement is terminated as per the provisions above, the Claims Administrator shall transfer all open Features to the Company at termination. The Company shall pay Claims Administrator all service fees earned up to the date of termination according to the Compensation Schedule attached hereto. Any time and expenses incurred by the Claims Administrator in the return of such files will be billed to the Company, with supporting documentation for such billing, and the Company shall pay such billing to the Claims Administrator within thirty (30) days from billing date.

IV. DUTIES AND OBLIGATIONS OF CLAIMS ADMINISTRATOR

- A. Claims Administrator shall maintain all industry standard claim information necessary in the jurisdictions in which Claims Administrator performs Claims Adjusting Services.
- B. Claims Administrator shall comply with reasonable requests of the Company to achieve compliance with applicable state insurance statutes and regulations regarding the creation and maintenance of a Special Investigative Unit for the business of this Agreement.
- C. Claims Administrator shall cooperate with requests of the Company to achieve compliance with the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) relative to Company's obligation to assure that illicit transactions involving target countries and Specifically Designated Nationals are not processed. To the extent that the Claims Administrator incurs out-of-pocket costs for such compliance that solely benefits the Company, the Company will reimburse prior approved expenses.
- D. Claims Administrator shall comply with the Company's Privacy Policy under the Gramm-Leach-Bliley Act of 1999, as set forth below:

NBIS does not disclose any nonpublic personal information about individual policyholders or claimants to any affiliate or any non-affiliate third party other than those permitted by law and only for the purpose of transacting the business of the policyholder's insurance coverage or claim.

Claims Administrator shall fulfill any obligation of the Company to provide claimants with a copy of the Privacy Policy of the Company as may be required by law.

- E. Claims Administrator shall at all times be an independent contractor and shall not for any purpose be deemed to be or hold itself out to be an employee of or affiliated with the Company.
- F. In any state that levies a tax on the services provided by Claims Administrator to Company, Claims Administrator shall prepare an accounting of the tax owed as required by law and submit an invoice for this tax to Company. Once Company has paid the invoice, Claims Administrator shall forward the tax to the appropriate state agency.

V. DUTIES AND OBLIGATIONS OF COMPANY

- A. Company will provide all information relevant to particular claims to Claims Administrator in order for Claims Administrator to fulfill its duties and obligations as set out in this Agreement, including applicable policy and coverage information and coverage confirmation status.
- B. Company has ultimate authority and responsibility for authorizing claims payment and settlement of claims under this Agreement.
- C. Company will provide to Claims Administrator access to Company's claims system and policy and coverage information as required by Claims Administrator to perform its authorized duties under this Agreement.
- D. Company shall be responsible for the payment of all Allocated Loss Adjustment Expenses relating to the Qualified Claims and the Claim Adjusting Services provided by Claims Administrator.

VI. INSURANCE AND INDEMNIFICATION

- A. As a condition precedent and an ongoing obligation throughout the term of this Agreement, Claims Administrator shall, no less than annually, provide the Company with evidence of a policy of insurance providing Errors and Omissions insurance coverage for services performed pursuant to this Agreement, from an

insurance carrier acceptable to the Company, with a Limit of Liability no less than \$1,000,000 per claim and \$1,000,000 in the aggregate. Claims Administrator shall immediately notify the Company in the event of any cancellation, non-renewal, or reduction of coverage on any such policy.

- B. Claims Administrator agrees to defend the Company from any and all claims, suits or demands asserted by anyone against the Company, as a result of any errors or omissions of Claims Administrator, its officers, directors, employees or successors. If the Company becomes legally obligated to pay damages due to the errors or omissions of Claims Administrator, Claims Administrator agrees to indemnify the Company and to reimburse the Company for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Company, including but not limited to attorneys fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Company as a result thereof. Claims Administrator agrees to cooperate with the Company in the investigation and defense of any such claims.
- C. The Company agrees to defend the Claims Administrator from any and all claims, suits or demands asserted by anyone against the Claims Administrator, as a result of any errors or omissions of Company, its officers, directors, employees or successors. If the Claims Administrator becomes legally obligated to pay damages due to the errors or omissions of Company, Company agrees to indemnify the Claims Administrator and to reimburse the Claims Administrator for any costs, damages and expenses, of any nature whatsoever incurred or sustained by the Claims Administrator, including but not limited to attorneys fees and other expenses, in connection with investigating and defending any actions, claims or suits against the Claims Administrator as a result thereof. Company agrees to cooperate with the Claims Administrator in the investigation and defense of any such claims.
- D. Claims Administrator does not agree to defend or indemnify any claims, suits or demands where the alleged errors or omissions concern parties other than Claims Administrator or its officers, directors, employees, successors, representatives or agents, such as matters of underwriting or policy administration.

VII. MISCELLANEOUS PROVISIONS

- A. This Agreement shall be interpreted in accordance with the laws of the state of Georgia. Any cause of action brought arising out of the rights or obligations of this Agreement shall be brought in Atlanta, Georgia.
- B. Any forbearance or failure by the Company or Claims Administrator to enforce any right, provision, or power established under this Agreement or by operation of law shall not operate as a modification or waiver of such right, provision or

power, and the Company or Claims Administrator may, at any time, pursue all rights or remedies available to it to enforce all terms and conditions of this Agreement.

- C. This Agreement represents the full and complete understanding of the parties as to the subject matter herein, superseding all previous agreements, whether written or verbal. This Agreement may be modified or altered only by written amendment to this Agreement signed by duly authorized representatives of the parties.
- D. Claims Administrator understands and agrees that it shall retain liability for any loss or damage arising out of any work performed by any subcontractor retained by Claims Administrator to perform its duties under this Agreement.
- E. Claims Administrator understands and agrees that it shall retain liability for any loss or damage directly or indirectly caused by or arising out of Claims Administrator's access or use of Company's claims and policy systems.
- F. To be validly given, all notices, requests, consents, and other communications arising out of this Agreement must be in writing and mailed, postage paid, to the address of the party provided for in this Agreement. As an ongoing obligation throughout the term of this Agreement, each party shall notify the other of any change of address.
- G. This Agreement shall not become effective until signed by a duly authorized representative of both the Company and Claims Administrator.
- H. Headings on titles to the several sections herein are for identification purposes only and shall not be construed as forming a part hereof.
- I. In the event that any section, sub-section, or provision of this Agreement is declared by statute or by a court of competent jurisdiction to be illegal or void, such section, sub-section, or provision shall be deemed severed from the Agreement, and all other sections, sub-sections, terms, conditions and provisions shall remain in full force and effect.
- J. During the course of this Agreement, the parties will have access to proprietary, confidential information of each other. The parties will protect such information and treat it as strictly confidential, and shall not provide it to any third party or utilize it in any fashion outside of the scope of this Agreement, except as expressly authorized in writing by the parties or as required by law. The Claims Administrator agrees to adhere to all reasonable confidentiality policies as adopted from time to time by the Company regarding the protection of the Company's information.

For purposes of this Agreement, "proprietary information" means any non-public information regarding or relating to the business operations, technology, insureds,

customers, employees, business methods and other non-public information about Company and/or Claims Administrator. Such non-public business and technical information collectively constitutes trade secrets. For purposes of this Agreement, "confidential information" shall include, without limitation, information concerning insureds or prospective insureds, claimants, and employees and agents of Company and employees, methods, claims administrative procedures, metrics and other work practices of Claims Administrator.

K. The Company, its authorized agents, officers and employees, and Claims Administrator mutually agree that until one (1) year after termination of this Agreement, they will not solicit, recruit or hire the other party's officers, employees, contractors or agents.

L. Any notice under this Agreement shall be sent, postage prepaid, to the addresses provided below:

If to the Company: NBIS Construction & Transport Insurance Service, Inc.
800 Overlook, 2859 Paces Ferry Road
Atlanta, GA 30339
(770) 257-1130
E-mail: akirkner@nbis.com
Attention: Arthur P. Kirkner, Vice President - Claims

If to the Claims Administrator: DMA Claims Management, Inc.
P.O. Box 26004
Glendale, CA 91222-6004
(323) 342-6800
(323) 342-6850
Attn: Thomas J. Reitze, President

M. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be addressed first by mediation between the parties. The costs of mediation shall be borne by both parties. If not resolved by mediation, the matter shall be addressed and settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All parties to this Agreement and their authorized agents, officers and employees agree that during the dispute resolution process and afterwards, they will not at any time disparage, defame or hold up to public embarrassment or ridicule the other parties involved.

**NBIS Construction and Transport
Insurance Services, Inc.**

By: [Signature]
Its: Vice President of Insurance
Date: 5/15/2015

DMA CLAIMS MANAGEMENT, INC.

By: Thomas Seitz
Its: PRESIDENT
Date: 5/9/15

ADDENDUM TO CLAIMS ADMINISTRATION AGREEMENT

This Addendum incorporates by reference that certain Claims Administration Agreement effective April 1, 2015 (hereinafter referred to as the "Agreement"), by and between the Company as identified in the Agreement, and the Claims Administrator as identified in the Agreement.

Claims Administrator will receive the following compensation from Company for its services:

1. For Property Damage, Collision or Comprehensive features that are open and being handled by Claims Administrator as of April 1, 2015, \$75 per feature. Payable when the feature closes.
2. For Bodily Injury features that are open as of April 1, 2015, and are assigned to Claims Administrator by Company to handle to conclusion, \$375 per feature. \$187.50 is earned on assignment, and \$187.50 is earned when the feature is closed.
3. For new features opened after April 1, 2015, \$500 per Bodily Injury feature and \$250 per Property Damage, Collision or Comprehensive feature, with a cap of \$800 per accident regardless of the number of features arising out of the accident. Regarding Bodily Injury features, \$250 is earned on assignment, and \$250 is earned when the feature is closed.
4. \$75 for incident-only claims where no investigation is warranted.
5. For First Notices of Loss, \$12.50 per First Notice of Loss taken.
6. For administrative services including but not limited to bank and check stock setup, positive pay setup, FileHandler claims system setup, creation of Quality Control reports and testing, and setup of other required reports, \$200 per hour.
7. For one administrative employee of Claims Administrator who is assigned to this program, Claims Administrator will receive the employee's actual salary plus 20%.

8. For administration and maintenance of the FileHandler claims system, \$1,000 per month.
9. Twenty-five percent (25%) of Net Subrogation Recoveries, earned when the recoveries are received. Net Subrogation recoveries are the gross amounts recovered through subrogation efforts by the claims Administrator on behalf of the Company, less any outside costs involved in the recovery process such as attorney fees.
10. \$105 per vehicle appraisal, \$115 per vehicle appraisal for a total loss, and actual cost outside of the DMA appraisal network, all earned upon completion.
11. \$35 per desk review of an auto damage estimate, earned upon completion.
12. \$45 per damaged auto assigned to Claims Administrator's shop network, earned upon assignment.

All ALAE is passed through to the Company for payment and is not included in this fee per feature. Any feature that goes into litigation is to be returned by Claims Administrator to Company.

At the end of each month Claims Administrator will prepare an invoice itemizing the services rendered as described in 1 through 12 above, and will send the invoice to the Company by email. The Company will pay the invoice within 20 days of receipt.

NBIS Construction and Transport
Insurance Services, Inc.

By: [Signature]

Its: [Signature]

Date: 5/15/15

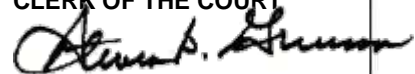
DMA CLAIMS MANAGEMENT, INC.

By: Thomas Spitz

Its: PRESIDENT

Date: 5/9/15

EXHIBIT 2



JUDG
DENNIS M. PRINCE
Nevada Bar No. 5092
KEVIN T. STRONG
Nevada Bar No. 12107
PRINCE LAW GROUP
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.534.7600
Fax: 702.534.7601
Attorneys for Plaintiff
Diane Sanchez

DISTRICT COURT
CLARK COUNTY, NEVADA

DIANE SANCHEZ,
Plaintiff,

Case No. A-15-722815-C
Dept. No. XXV

DEFAULT JUDGMENT

vs.

BLAS BON, individually; JOSEPH
ACOSTA, individually; WILFREDO
ACOSTA, individually; DOES I-X and ROE
CORPORATIONS I-X, inclusive,
Defendants.

Plaintiff Diane Sanchez's ("Sanchez") Application for Default Judgment was brought for hearing in Department XXV of the Eighth Judicial District Court, before The Honorable Kathleen E. Delaney, on the 11th day of June, 2019, with Dennis M. Prince and Kevin T. Strong of PRINCE LAW GROUP, appearing on behalf of Plaintiff Diane Sanchez and no one appearing on behalf of Defendant Blas Bon. The Court having reviewed the application on file herein, the documents attached thereto, and being duly advised in the premises:

This matter arises from a motor vehicle collision involving four (4) cars that occurred on April 28, 2015. On August 7, 2015, Sanchez filed her Complaint for personal injuries against Defendants Blas Bon ("Bon") and Joseph Acosta. On October 13, 2016, Sanchez filed her Amended Complaint wherein she named Wilfredo Acosta as an additional defendant. On October 16, 2018, Sanchez and the Acosta Defendants filed their Stipulation and Order for Dismissal with Prejudice following their confidential settlement of Sanchez's claims.

1



Prince Law Group
8816 Spanish Ridge
Las Vegas, NV 89148

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input checked="" type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

mk

NBIS 000929

JUL 12 2019

As to Bon, Sanchez filed her Affidavit of Due Diligence on October 22, 2015 wherein the process server described his failed efforts to personally serve Bon with the Summons and Complaint at his last known address on September 22, 2015. On March 29, 2016, Sanchez filed her Amended Affidavit of Compliance wherein she confirmed that Bon was served with the Summons and Complaint through the Nevada Department of Motor Vehicles, pursuant to NRS 14.070, on November 2, 2015. On November 9, 2015, Sanchez also sent, via certified mail, copies of the Summons, Complaint, traffic accident report, and November 2, 2015 DMV letter confirming proof of service, to Bon's last known address: 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119. This package went unclaimed and was returned to Sanchez on November 12, 2015. On April 1, 2016, the district court entered Default against Bon for his failure to file an answer to Sanchez's Complaint or to otherwise appear in the action within twenty (20) days of service. On March 29, 2019, Sanchez filed her Application for Entry of Default Judgment pursuant to NRCP 55(b)(2). The district court's entry of default constitutes an admission by Bon of all material facts alleged in Sanchez's Complaint. *Estate of LoMastro v. Am. Family Ins. Group*, 124 Nev. 1060, 1068 (2008). As a result, entry of default against Bon resolves the issues of liability and causation for all claims for relief in Sanchez's Complaint. *Id.* The only outstanding issue is the extent of Sanchez's damages.

Based on the foregoing, this Court finds and enters judgment against Bon as follows:

1. On April 28, 2015, Sanchez traveled northbound on Interstate 15 in a 1995 BMW 325i in the #5 travel lane. Bon drove a 1997 Dodge Ram 2500 pickup truck, wherein he hauled two wheelbarrows in the truck bed, directly behind Sanchez. Bon negligently collided with the left side of Sanchez's rear bumper.

2. As a result of Bon's negligence, Sanchez sustained severe and life-altering injuries to her cervical spine and lumbar spine that required substantial medical treatment, including anterior artificial disc replacement surgery at L4-5 of her lumbar spine, as established by her medical records.

3. As a result of Bon's negligence, it is reasonably foreseeable that Sanchez will suffer ongoing pain, suffering, and loss of enjoyment of life. It is also reasonably foreseeable that Sanchez will

undergo future medical treatment to address her cervical and lumbar spine injuries and ongoing residual chronic pain complaints suffered as a result of Bon's negligence. Sanchez's need for future medical treatment and the associated costs for her future medical treatment are established by her medical records and opinions of her retained medical expert, David J. Oliveri, M.D. Dr. Oliveri offers these opinions to a reasonable degree of medical probability.

4. As a result of Bon's negligence, Sanchez suffered past economic damages and it is reasonably foreseeable that Sanchez will suffer future economic damages that consist of: (1) future medical expenses, (2) past and future loss of wages and employee benefits, (3) loss of past and future housekeeping and household management services, and (4) reduction in the value of life damages. The extent of Sanchez's past and future economic damages is established by the opinions of her retained economist, Stan V. Smith, Ph.D. Dr. Smith offers his opinions to a reasonable degree of economic probability. Sanchez's permanent functional capacity disability that will preclude her from working in the future is established by the opinions of Dr. Oliveri. Dr. Oliveri offers this opinion to a reasonable degree of medical probability.

Based upon the papers, pleadings, and evidence on file herein, judgment is hereby entered in favor of Plaintiff Diane Sanchez and against Defendant Blas Bon, jointly and severally, as follows:

1. Past medical special damages:	\$465,285.01
2. Future medical special damages:	\$827,038.00
3. Past and future economic wage loss and employee benefits:	\$840,260.00
4. Past and future economic loss of household services:	\$446,334.00
5. Past pain and suffering:	\$2,000,000.00
6. Future pain and suffering:	\$3,000,000.00
7. Future reduction in the value of life:	\$2,685,877.00
8. Pre-judgment interest as allowed by Nevada law on past damages:	\$599,417.62
Total Damages:	\$10,864,211.63

Attorneys' fees based on a contingency fee agreement of forty percent (40%) of the total judgment award in the amount of \$4,345,684.65 ($\$10,864,211.63 * .40$) pursuant to *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. Adv. Rep. 67, 429 P.3d 664, 670-71 (Nev. Ct. App. 2018).

A total judgment in the amount of \$15,209,896.28, plus costs in the amount of \$2,759.45, is hereby entered in favor of Plaintiff Diane Sanchez and against Defendant Blas Bon. Plaintiff Diane Sanchez shall also be entitled to interest as allowed by Nevada law from the date of entry hereof until the judgment is fully satisfied.

DATED this 19th day of July, 2019.


DISTRICT COURT JUDGE

Respectfully Submitted By:

PRINCE LAW GROUP


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KEVIN T. STRONG
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Las Vegas, Nevada 89148
Tel: 702.534.7600
Fax: 702.534.7601
Attorneys for Plaintiff
Diane Sanchez

EXHIBIT 3

1 **ORDR**
2 DENNIS M. PRINCE
3 Nevada Bar No. 5092
4 KEVIN T. STRONG
5 Nevada Bar No. 12107
6 **PRINCE LAW GROUP**
7 10801 West Charleston Boulevard
8 Suite 560
9 Las Vegas, Nevada 89135
10 Tel: (702) 534-7600
11 Fax: (702) 534-7601
12 Email: eservice@thedplg.com
13 Attorneys for Plaintiff
14 *Diane Sanchez*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 DIANE SANCHEZ,
12 Plaintiff,

CASE NO. A-15-722815-C
DEPT. NO. XXV

13 vs.

14 BLAS BON, individually; JOSEPH
15 ACOSTA, individually; WILFREDO
16 ACOSTA, individually; DOES I-X and
17 ROE CORPORATIONS I-X, inclusive,
18 Defendants.

**ORDER DENYING
DEFENDANT BLAS BON'S
MOTION TO SET ASIDE
DEFAULT JUDGMENT**

18 Defendant BLAS BON's Motion to Set Aside Default Judgment was brought for
19 hearing in Department XXV of the Eighth Judicial District Court, before the Honorable
20 Kathleen Delaney, on the 25th day of February, 2020, with Dennis M. Prince and Kevin
21 T. Strong of PRINCE LAW GROUP, appearing on behalf of Plaintiff DIANE SANCHEZ;
22 and William P. Volk of HOLLEY DRIGGS, appearing on behalf of Defendant BLAS
23 BON.¹ The Court having reviewed the pleadings and papers on file herein, having heard
24 oral argument, and being duly advised in the premises:

25 . . .

26 . . .

27
28 ¹ At the time of the hearing, Mr. Volk was a partner at Kolesar & Leatham. Since that time, Kolesar & Leatham ceased operations and Mr. Volk is now a partner/shareholder with Holley Driggs.

1 **THE COURT HEREBY FINDS** that NRCP 60(b) outlines the specific legal
2 grounds for a district court to grant a party relief from a final judgment. The legal
3 grounds outlined in NRCP 60(b) include mistake, inadvertence, surprise, or excusable
4 neglect and any other reason that justifies relief.

5 **THE COURT FURTHER FINDS** that a district court has broad discretion to
6 determine whether a default judgment should be set aside. *Britz v. Consolidated*
7 *Casinos Corp.*, 87 Nev. 441, 445 (1971).

8 **THE COURT FURTHER FINDS** that the district court has “wide discretion in
9 determining what neglect is excusable and what neglect is inexcusable” under NRCP
10 60(b). *Durango Fire Prot., Inc. v. Troncoso*, 120 Nev. 658, 662 (2004).

11 **THE COURT FURTHER FINDS** that Plaintiff properly served her Complaint
12 on Defendant Blas Bon through the Nevada Department of Motor Vehicles pursuant to
13 NRS 14.070. Plaintiff exercised due diligence to locate and personally serve Bon before
14 effectuating service through the DMV. Specifically, Plaintiff attempted to serve Bon at
15 3900 Cambridge Street, Suite 106, Las Vegas, Nevada 89119, the address that was listed
16 on the traffic accident report. Plaintiff’s process server attempted to locate Bon through
17 records searches with the Clark County Assessor’s Office and Clark County Voter
18 Registration. Plaintiff’s process server also searched local phone records and performed
19 a registered vehicle search with the Nevada Department of Motor Vehicles and Premium
20 Finder. The efforts made to locate and serve Bon were reasonably diligent and justified
21 service of Sanchez’s Complaint through the DMV.

22 Sanchez also fully complied with the requirements to effectuate service through
23 the DMV set forth in NRS 14.070. Sanchez received a letter dated November 2, 2015
24 from the DMV acknowledging service of the Summons and Complaint on Bon. On
25 November 9, 2015, Sanchez mailed, via certified mail, return receipt requested, a copy
26 of the Summons, Complaint, traffic accident, report, and the November 2, 2015 DMV
27 letter to Bon’s best last known address: 3900 Cambridge Street, Suite 106, Las Vegas,
28 Nevada 89119.

 This Court also determined Bon was properly served when it considered Sanchez’s
Application for Default Judgment filed on March 29, 2019. Bon has also not supplied

1 this Court with an affidavit declaring that he never received any notice of Sanchez's
2 Complaint or otherwise has no knowledge of the suit against him. Under these
3 circumstances, Bon cannot now claim that he was surprised or that there is excusable
4 neglect to justify relief from the July 19, 2019 default judgment entered against him
5 pursuant to NRCP 60(b)(1).

6 **THE COURT FURTHER FINDS** that there is ample evidence that Bon's
7 insurer, ATX, the entity tasked to defend Bon, received notice of Sanchez's Complaint.
8 On January 20, 2016, Sanchez sent a letter, via U.S. mail, to DeLawrence Templeton
9 ("Templeton") of DMA Claims Services, advising him that Bon was served with the
10 Summons and Sanchez's Complaint via the DMV.² Sanchez provided Templeton with a
11 copy of her Complaint, November 2, 2015 DMV letter, and November 19, 2015 Affidavit
12 of Complaine and requested ATX to file an answer to her Complaint. Sanchez
13 specifically warned Templeton that she would request the Court to enter a default against
14 Bon if an answer was not filed. On February 16, 2016, Sanchez again sent a letter to
15 Templeton advising that Bon still did not file his Answer to her Complaint. Sanchez
16 clarified that if Bon did not file his Answer to her Complaint by February 23, 2016, she
17 would request entry of a default against Bon. ATX never filed an answer to Sanchez's
18 Complaint on Bon's behalf despite receiving a full and fair opportunity to do so. There
19 is no evidence to suggest that ATX never received any notice of Sanchez's lawsuit.

20 **THE COURT FURTHER FINDS** that there is no factual or legal basis to set
21 aside the July 19, 2019 Default Judgment due to surprise, excusable neglect, or for any
22 other reason under NRCP 60(b). The evidence presented establishes inexcusable neglect
23 on the part of both Bon and ATX given ATX's failure to satisfy its responsibility to defend
24 Bon against the allegations set forth in Sanchez's Complaint.
25
26
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...

² DMA represented the interests of ATX in relation to the motor vehicle collision giving rise to Sanchez's Complaint for personal injuries against Bon.

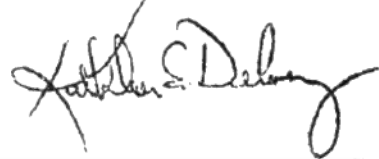
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Blas Bon's Motion to Set Aside Default Judgment is **DENIED** in its entirety.

IT IS SO ORDERED.

Dated this 19th day of September, 2020

DATED this ____ day of September, 2020.



DISTRICT COURT JUDGE

DD9 015 23D5 10E3

DATED this 9th day of September, 2020.

DATED this 19th day of September, 2020.

Kathleen E. Delaney
District Court Judge

Respectfully Submitted By:

Approved as to Form and Content:

PRINCE LAW GROUP

HOLLEY DRIGGS



Refused to sign

DENNIS M. PRINCE
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Diane Sanchez

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400 South 4th Street
Suite 300
Las Vegas, Nevada 89101
Tel: (702) 791-0308
Fax: (702) 791-1912
Attorney for Defendant
Blas Bon

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Diane Sanchez, Plaintiff(s)

CASE NO: A-15-722815-C

7 vs.

DEPT. NO. Department 25

8 Blas Bon, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/19/2020

15 William Volk

wvolk@klnevada.com

16 Joanne Hybarger

jhybarger@klnevada.com

17 Lennie Fraga

lfraga@klnevada.com

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NBIS 000938

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EXHIBIT 4

Heather S. Smith
CLERK OF THE COURT

ORDER

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JHenriod@LewisRoca.com
ASmith@LewisRoca.com

Attorneys for Defendant Blas Bon

DISTRICT COURT
CLARK COUNTY, NEVADA

DIANE SANCHEZ,

Plaintiff,

vs.

BLAS BON, individually; JOSEPH
ACOSTA, individually; WILFREDO
ACOSTA, individually; DOES I-X and
ROE CORPORATIONS I-X, inclusive,

Defendants.

Case No. A-15-722815-C

Dept. No. 25

**ORDER DENYING DEFENDANT BLAS
BON'S MOTION FOR REHEARING AND
TO ALTER OR AMEND THE JUDGMENT
AND ORDER DENYING RULE 60(b)
RELIEF**

Defendant BLAS BON's Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief was brought for a hearing in Department XXV of the Eighth Judicial District Court, before The Honorable Kathleen E. Delaney, on the 24th day of November, 2020, with Dennis M. Prince and Kevin T. Strong of PRINCE LAW GROUP, appearing on behalf of Plaintiff DIANE SANCHEZ; and Daniel F. Polsenberg and Abraham G. Smith of LEWIS ROCA ROTHGERBER CHRISTIE LLP and William P. Volk of

1 HOLLEY DRIGGS, appearing on behalf of Defendant BLAS BON. The Court
2 having reviewed the pleadings and papers on file herein, having heard oral
3 argument, and being duly advised in the premises:

4 **THE COURT HEREBY FINDS** that, in light of Defendant Blas Bon's
5 ("Bon") appeal of the July 19, 2019 Default Judgment entered against him and
6 the September 19, 2019 Order Denying Bon's Motion to Set Aside Default
7 Judgment, this Court's jurisdiction is outlined in *Huneycutt v. Huneycutt*, 94
8 Nev. 79, 80-81 (1978) and *Foster v. Dingwall*, 126 Nev. 49, 52 (2010).

9 **THE COURT FURTHER FINDS** that Nevada allows service of process
10 on "resident motorists who have left the State or cannot be found within the
11 State" to be effectuated through the Nevada Department of Motor Vehicles
12 ("DMV"). Nev. Rev. Stat. 14.070(2), (6); *Browning v. Dixon*, 114 Nev. 213, 216
13 (1998).

14 **THE COURT FURTHER FINDS** that a plaintiff must exercise
15 reasonable diligence to search for the resident motorist defendant to effectuate
16 personal service before service of process may be effectuated through the DMV.
17 *Browning*, 114 Nev. at 216. The diligence required "is that which is reasonable
18 under the circumstances and not all possible diligence which may be conceived."
19 *Abreu v. Gilmer*, 115 Nev. 308, 312 (1999) (quoting *Parker v. Ross*, 217 P.2d
20 373, 379 (Utah 1950)).

21 **THE COURT FURTHER FINDS** that, in accordance with Nevada law,
22 this analysis must focus on the reasonableness of the due diligence efforts that
23 were taken by Sanchez, not whether other efforts could or should have been
24 taken. This Court previously evaluated the diligence used by Plaintiff Diane
25 Sanchez ("Sanchez") to locate Bon before the default judgment was entered
26 against Bon on July 19, 2019 and while considering Bon's Motion to Set Aside
27 Default Judgment, which this Court denied on September 19, 2020. On these

1 two (2) prior occasions, this Court concluded Sanchez satisfied the requisite due
2 diligence to locate Bon's whereabouts before effectuating service of process
3 through the DMV pursuant to NRS 14.070(6).

4 **THE COURT FURTHER FINDS** that, based upon the totality of the
5 circumstances, Sanchez exercised reasonable and appropriate diligent efforts to
6 locate Bon for personal service of the summons and complaint before substitue
7 service was made through the DMV by conducting standard process server
8 efforts, *to wit*: (1) attempted service at 3900 Cambridge Street, Suite 106, Las
9 Vegas, Nevada 89119, which was listed in the police report; and (2) records
10 searches with the Clark County Assessor's Office, Clark County Voter
11 Registration, local phone records, the DMV, and Premium Finder after learning
12 Bon's whereabouts were unknown to someone at the Cambridge Street address.

13 **THE COURT FURTHER FINDS** that Bon provided other information
14 in his Voluntary Statement attached to the police report, including a phone
15 number, the address at "4000 Abrams 89 Las Vegas, Nevada," and his
16 employer, "SouthWest Trees." Although the Abrams address and employer
17 information could have been used and would have been reasonable, the
18 existence of those other methods to effectuate personal service does not negate
19 the diligent efforts Sanchez undertook to locate Bon before effectuating service
20 of the summons and complaint through the DMV.

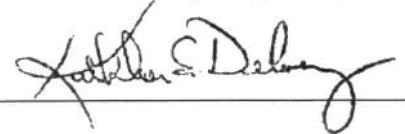
21 **THE COURT FURTHER FINDS** that although Bon was never served
22 with the amended complaint because a default was already entered against
23 him, there was no change in circumstances requiring Sanchez to serve the
24 amended complaint on Bon because because the nature of the original
25 allegations against Bon did not change in the amended complaint. Instead, the
26 amended complaint included additional allegations against defendant Joseph
27 Acosta, who answered the complaint and ultimately reached a settlement and

1 dismissal of all claims with prejudice before the entry of a default judgment
2 against Bon.

3 **THE COURT FURTHER FINDS** that NRCP 54(c) is not
4 unconstitutional and therefore, no relief from the default judgment is granted
5 on that basis.

6 **IT IS SO ORDERED.**

Dated this 16th day of September, 2021

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10 Respectfully submitted by:

11 LEWIS ROCA ROTHGERBER CHRISTIE LLP

ABA D62 BEDC 9A27
Kathleen E. Delaney
District Court Judge

12
13 By: /s/ Abraham G. Smith

14 DANIEL F. POLSENBERG (SBN 2376)
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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Diane Sanchez, Plaintiff(s)

CASE NO: A-15-722815-C

7 vs.

DEPT. NO. Department 25

8 Blas Bon, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/16/2021

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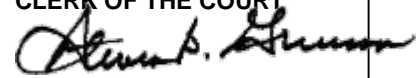
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EXHIBIT 5



Electronically Filed
Oct 23 2020 10:28 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Attorneys for Defendant BLAS BON

DISTRICT COURT

CLARK COUNTY, NEVADA

DIANE SANCHEZ,

Plaintiff,

vs.

BLAS BON, individually; JOSEPH ACOSTA,
individually; DOES I - X, and ROE
CORPORATIONS I - X, inclusive,

Defendants.

JOSEPH ACOSTA, individually; and
WILFREDO ACOSTA, individually,

Cross-Claimants,

vs.

BLAS BON, individually,

Cross-Defendant.

Case No. A-15-722815-C

Dept. No. 25

NOTICE OF APPEAL

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Please take notice that defaulted defendant Blas Bon hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
 2. “Order Denying Defendant Blas Bon’s Motion to Set Aside Default Judgment,” filed September 19, 2020, notice of entry of which was served electronically on September 21, 2020 (**Exhibit “A”**); and
 3. All judgments, rulings and interlocutory orders made appealable by the foregoing.
- Dated this 20th day of October, 2020.

HOLLEY DRIGGS

By: /s/ William P. Volk
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2020 service of the above and foregoing “Notice of Appeal” was made upon each of the parties via electronic service through the Eighth Judicial District Court’s Odyssey E-file and Serve system.

/s/ Suri Guzman
An Employee of HOLLEY DRIGGS

EXHIBIT 6

REGISTER OF ACTIONS

CASE NO. A-15-722815-C

Diane Sanchez, Plaintiff(s) vs. Blas Bon, Defendant(s)

www.pearsoned.com

Case Type: Negligence - Auto

Date Filed: 08/07/2015

Location: **Department 25**

Cross-Reference Case Number: **A722815**

Supreme Court No.: 81983

PARTY INFORMATION

Lead Attorneys

Defendant **Bon, Blas**

William P Volk
Retained
702-791-0308(W)

Plaintiff **Sanchez, Diane**

Dennis M Prince
Retained
702-534-7600(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

10/16/2018	Order of Dismissal With Prejudice (Judicial Officer: Delaney, Kathleen E.) Debtors: Diane Sanchez (Plaintiff) Creditors: Blas Bon (Defendant), Joseph Acosta (Defendant), Wilfredo Acosta (Defendant) Judgment: 10/16/2018, Docketed: 10/16/2018 Debtors: Blas Bon (Cross Defendant) Creditors: Joseph Acosta (Cross Claimant), Wilfredo Acosta (Cross Claimant) Judgment: 10/16/2018, Docketed: 10/16/2018
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07/19/2019	Default Judgment Plus Legal Interest (Judicial Officer: Delaney, Kathleen E.) Debtors: Blas Bon (Defendant) Creditors: Diane Sanchez (Plaintiff) Judgment: 07/19/2019, Docketed: 07/19/2019 Total Judgment: 15,212,655.73
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OTHER EVENTS AND HEARINGS

08/07/2015	Complaint	Doc ID# 1	
	<i>[1] Complaint and Initial Fee Disclosure</i>		
09/18/2015	Demand for Jury Trial	Doc ID# 2	
	<i>[2] Demand for Jury Trial</i>		
10/12/2015	Affidavit of Service	Doc ID# 3	
	<i>[3] Affidavit of Service</i>		
10/20/2015	Affidavit of Due Diligence	Doc ID# 4	
	<i>[4] Affidavit of Due Diligence</i>		
11/19/2015	Affidavit of Compliance	Doc ID# 5	
	<i>[5] Affidavit of Compliance</i>		
12/01/2015	Answer and Crossclaim	Doc ID# 6	
	<i>[6] Defendant Joseph Acosta's Answer To Plaintiff's Complaint And Cross-Claim Against Blas Bon</i>		
12/01/2015	Initial Appearance Fee Disclosure	Doc ID# 7	
	<i>[7] Initial Appearance Fee Disclosure</i>		
12/01/2015	Demand for Jury Trial	Doc ID# 8	
	<i>[8] Demand for Jury Trial</i>		
01/15/2016	Commissioners Decision on Request for Exemption - Granted	Doc ID# 9	
	<i>[9] Commissioner's Decision on Request for Exemption</i>		
02/17/2016	Joint Case Conference Report	Doc ID# 10	
	<i>[10] Joint Case Conference Report</i>		
03/08/2016	Scheduling Order	Doc ID# 11	
	<i>[11] Scheduling Order</i>		

NBIS 000952

03/09/2016 **Order Setting Civil Jury Trial Doc ID# 12**
[12] Order Setting Civil Jury Trial and Pretrial/Calendar Call

03/29/2016 **Amended Affidavit Doc ID# 13**
[13] Amended Affidavit of Compliance

04/01/2016 **Default Doc ID# 14**
[14] Default on Defendant Blas Bon

06/22/2016 **Notice of Entry of Default Doc ID# 15**
[15] Notice of Entry of Default

08/29/2016 **Motion Doc ID# 16**
[16] Plaintiff's Motion for Leave to File Amended Complaint

09/07/2016 **Notice of Entry of Stipulation and Order Doc ID# 17**
[17] Notice of Entry of Order of Stipulation and Order to Extend Discovery & Continue Trial (First Request)

09/07/2016 **Stipulation and Order Doc ID# 18**
[18] Stipulation and Order to Extend Discovery & Continue Trial (First Request)

09/09/2016 **Amended Order Setting Jury Trial Doc ID# 19**
[19] Amended Order Setting Civil Jury Trial and Pretrial/Calendar Call

10/04/2016 **Motion for Leave (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**
Plaintiff's Motion for Leave to File Amended Complaint

Parties Present

Minutes

Result: Granted

10/04/2016 **Order Doc ID# 20**
[20] Order

10/05/2016 **Notice of Entry of Order Doc ID# 21**
[21] Notice of Entry of Order

10/13/2016 **Amended Complaint Doc ID# 22**
[22] Amended Complaint

11/09/2016 **Acceptance of Service Doc ID# 23**
[23] Acceptance of Service of Summons and Complaint

11/09/2016 **Answer to Amended Complaint Doc ID# 24**
[24] Defendants Joseph Acosta and Wilfredo Acosta's Answer to Plaintiff's Amended Complaint and Cross-Claim Against Blas Bon

11/09/2016 **Initial Appearance Fee Disclosure Doc ID# 25**
[25] Defendant Wilfredo Acosta's Initial Appearance Fee Disclosure

11/09/2016 **Demand for Jury Trial Doc ID# 26**
[26] Defendants/Cross-Claimants Joseph Acosta and Wilfredo Acosta's Demand for Jury Trial

02/23/2017 **Application for Issuance of Commission to Take Deposition Doc ID# 27**
[27] Application to Issue Commission to serve Subpoena Outside the State of Nevada - Donna Mae Evans

02/27/2017 **Commission to Take Deposition Outside the State of Nevada Doc ID# 28**
[28] Commission to Serve Subpoena Duces Tecum Outside the State of Nevada - Donna Mae Evans

03/07/2017 **Motion Doc ID# 29**
[29] Defendant/Cross-Claimant Joseph Acosta's Motion to Enlarge Time to Perfect Service of Cross Claim Against Cross-Defendant Blas Bon

03/11/2017 **Notice of Change of Address Doc ID# 30**
[30] Notice of Change of Address

04/11/2017 **Motion (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**
Defendant/Cross-Claimant Joseph Acosta's Motion to Enlarge Time to Perfect Service of Cross Claim Against Cross-Defendant Blas Bon

Parties Present

Minutes

Result: Motion Granted

04/21/2017 **Stipulation and Order Doc ID# 31**
[31] Stipulation and Order to Extend Discovery and Move the Trial Date (Second Request)

04/21/2017 **Notice of Entry Doc ID# 32**
[32] Notice of Entry of Order

04/24/2017 **Amended Order Setting Jury Trial Doc ID# 33**
[33] Second Amended Order Setting Civil Jury Trial and Pretrial/Calendar Call

05/16/2017 **CANCELED Pretrial/Calendar Call (10:30 AM) (Judicial Officer Delaney, Kathleen E.)**
Vacated - per Stipulation and Order

05/22/2017 **CANCELED Jury Trial (10:30 AM) (Judicial Officer Delaney, Kathleen E.)**
Vacated - per Stipulation and Order

07/25/2017 **CANCELED Pretrial/Calendar Call (10:30 AM) (Judicial Officer Delaney, Kathleen E.)**
Vacated - per Stipulation and Order

07/31/2017 **CANCELED Jury Trial (10:30 AM) (Judicial Officer Delaney, Kathleen E.)**
Vacated - per Stipulation and Order

09/08/2017 **Pre-Trial Disclosure Doc ID# 34**
[34] Plaintiff's Pre-Trial Disclosure Statement

09/13/2017 **Pre-Trial Disclosure Doc ID# 35**
[35] Defendant/Cross-Claimant's Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3)

09/25/2017 **Motion Doc ID# 36**
[36] Joint Motion to Continue Trial and Extend Discovery on an Order Shortening Time

09/26/2017 **Motion to Continue Trial (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**
Joint Motion to Continue Trial and Extend Discovery on an Order Shortening Time

Parties Present

Minutes

Result: Motion Granted

10/03/2017 **CANCELED Pretrial/Calendar Call (10:30 AM) (Judicial Officer Delaney, Kathleen E.)**
Vacated - per Judge

10/09/2017 **CANCELED Jury Trial (10:30 AM) (Judicial Officer Delaney, Kathleen E.)**
Vacated - per Judge

10/24/2017 **Amended Order Setting Jury Trial Doc ID# 37**
[37] Third Amended Order Setting Civil Jury Trial and Pretrial/Calendar Call

02/22/2018 **Motion Doc ID# 38**
[38] Motion for Juror Questionnaire

NBIS 000953

03/09/2018 **Motion in Limine** Doc ID# 39
[39] Plaintiff's Motions in Limine

03/09/2018 **Motion in Limine** Doc ID# 40
[40] Defendant/Cross-Claimant Joseph Acosta's Motion in Limine

03/12/2018 **Opposition to Motion** Doc ID# 41
[41] Defendant/Cross-Claimant Joseph Acosta's Opposition to Motion for Juror Questionnaire

03/15/2018 **Reply in Support** Doc ID# 42
[42] Reply in Support of Motion for Jury Questionnaire

03/21/2018 **Opposition to Motion in Limine** Doc ID# 43
[43] Plaintiff's Opposition to Defendant's Motion in Limine

03/26/2018 **Opposition to Motion in Limine** Doc ID# 44
[44] Defendant/Cross-Claimant Joseph Acosta's Opposition to Plaintiff's Omnibus Motion in Limine

03/27/2018 **Motion** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
Plaintiff's Motion for Juror Questionnaire
Parties Present
Minutes
Result: Motion Denied

04/03/2018 **Reply in Support** Doc ID# 45
[45] Defendant/Cross-Claimant Joseph Acosta's Reply in Support of Motions in Limine

04/03/2018 **Reply in Support** Doc ID# 46
[46] Plaintiff's Reply in Support of Plaintiff's Motions in Limine

04/10/2018 **Motion in Limine** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
04/10/2018, 04/24/2018, 04/25/2018
Plaintiff's Motions in Limine
Result: Off Calendar

04/10/2018 **Motion in Limine** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
04/10/2018, 04/24/2018, 04/25/2018
Defendant/Cross Claimant Joseph Acosta's Motion in Limine
Result: Off Calendar

04/10/2018 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
Minutes
Result: Matter Heard

04/11/2018 **Pre-Trial Disclosure** Doc ID# 47
[47] Defendant/Cross-Claimant Joseph Acosta's First Supplemental Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3)

04/11/2018 **Stipulation and Order** Doc ID# 48
[48] Stipulation and Order to Continue Hearing Date on All Motions in Limine

04/12/2018 **Notice of Entry of Order** Doc ID# 49
[49] Notice of Entry of Order

04/12/2018 **Order** Doc ID# 50
[50] Order

04/12/2018 **Notice of Entry of Order** Doc ID# 51
[51] NOTICE OF ENTRY OF ORDER

04/19/2018 **Pre-Trial Disclosure** Doc ID# 52
[52] Plaintiff's Supplemental Pre-Trial Disclosure Statement

04/24/2018 **All Pending Motions** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)
Parties Present
Minutes
Result: Matter Heard

04/25/2018 **All Pending Motions** (1:30 PM) (Judicial Officer Delaney, Kathleen E.)
Parties Present
Minutes
Result: Matter Heard

05/11/2018 **Joint Pre-Trial Memorandum** Doc ID# 53
[53] Joint Pre-Trial Memorandum

05/15/2018 **Calendar Call** (10:30 AM) (Judicial Officer Delaney, Kathleen E.)
Parties Present
Minutes
Result: Trial Date Set

05/21/2018 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer Delaney, Kathleen E.)
Vacated - per Judge

06/28/2018 **Pre-Trial Disclosure** Doc ID# 54
[54] Defendant/Cross-Claimant's Second Supplemental Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3)

06/29/2018 **Pre-Trial Disclosure** Doc ID# 55
[55] Plaintiff's Second Supplemental Pre-Trial Disclosure Statement

07/03/2018 **Order** Doc ID# 56
[56] Order

07/03/2018 **Notice of Entry of Order** Doc ID# 57
[57] Notice of Entry of Order

07/05/2018 **Order** Doc ID# 58
[58] Order on Defendant/Cross-Claimant Joseph Acosta's MIL

07/10/2018 **Notice of Entry of Order** Doc ID# 59
[59] Notice of Entry of Order

07/11/2018 **Proposed Voir Dire Questions** Doc ID# 60
[60] Defendant/Cross-Claimant Joseph Acosta's Proposed Voir Dire Questions

07/12/2018 **Objection** Doc ID# 61
[61] Plaintiff's Objections to Defendant Joseph Acosta's Pre-Trial Disclosure Statement Pursuant to NRCP 16.1 (a)(3)

07/24/2018 **Pretrial/Calendar Call** (10:30 AM) (Judicial Officer Delaney, Kathleen E.)
Parties Present

NBIS 000954

Minutes

Result: Matter Heard

07/30/2018 **CANCELED Jury Trial** (10:30 AM) (Judicial Officer Delaney, Kathleen E.)*Vacated - per Judge*09/25/2018 **Status Check** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**09/25/2018, 11/27/2018, 01/29/2019***Status Check: Settlement / Default Judgments*Parties PresentMinutes

Result: Matter Continued

10/16/2018 **Stipulation and Order for Dismissal With Prejudice** Doc ID# 62*[62] Stipulation and Order for Dismissal with Prejudice*10/18/2018 **Notice of Entry of Order** Doc ID# 63*[63] Notice of Entry of Stipulation and Order for Dismissal with Prejudice*11/14/2018 **Notice of Association of Counsel** Doc ID# 64*[64] Notice of Association of Counsel*02/07/2019 **Order to Statistically Close Case** Doc ID# 65*[65] Civil Order to Statistically Close Case*03/29/2019 **Application** Doc ID# 66*[66] Plaintiff Diane Sanchez's Application For Entry Of Default Judgment*03/29/2019 **Clerk's Notice of Hearing** Doc ID# 67*[67] Notice of Hearing*06/11/2019 **Motion for Default Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)*Plaintiff Diane Sanchez's Application for Entry of Default Judgment*Parties PresentMinutes*04/30/2019 Reset by Court to 05/14/2019**05/14/2019 Reset by Court to 06/11/2019*

Result: Motion Granted

06/13/2019 **Notice of Change** Doc ID# 68*[68] Notice of Change of Lead Counsel and Change of Contact Information for Dennis M. Prince, Esq.*06/20/2019 **Notice** Doc ID# 69*[69] Notice of Disassociation of Counsel*07/08/2019 **Notice of Attorney Lien** Doc ID# 70*[70] Notice of Attorney Lien*07/09/2019 **Supplemental** Doc ID# 71*[71] Plaintiff's Supplement to Application for Entry of Default Judgment*07/19/2019 **Default Judgment** Doc ID# 72*[72] Default Judgment*07/19/2019 **Notice of Entry of Judgment by Default** Doc ID# 73*[73] Notice of Entry of Default Judgment*07/19/2019 **Motion** Doc ID# 74*[74] Plaintiff's Motion for Judicial Assignment*07/22/2019 **Clerk's Notice of Hearing** Doc ID# 75*[75] Notice of Hearing*08/19/2019 **Memorandum of Costs and Disbursements** Doc ID# 76*[76] Plaintiff's Memorandum of Costs and Disbursements*08/20/2019 **Motion** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)*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 or any Other Applicable Liability Insurer*Parties PresentMinutes

Result: Motion Granted

08/20/2019 **Order** Doc ID# 77*[77] 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 or Any Other Applicable Liability Insurer*08/22/2019 **Notice of Entry of Order** Doc ID# 78*[78] Notice of Entry of 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 or Any Other Applicable Liability Insurer*01/03/2020 **Notice of Change of Address** Doc ID# 79*[79] Notice of Change of Address*01/17/2020 **Motion to Set Aside Default Judgment** Doc ID# 80*[80] Motion to Set Aside Default Judgment*01/17/2020 **Initial Appearance Fee Disclosure** Doc ID# 81*[81] Initial Appearance Fee Disclosure*01/21/2020 **Clerk's Notice of Hearing** Doc ID# 82*[82] Notice of Hearing*02/05/2020 **Stipulation and Order** Doc ID# 83*[83] Stipulation and Order to Continue Deadline for Plaintiff to File Her Opposition to Defendant Blas Bon's Motion to Set Aside Default Judgment (First Request)*02/06/2020 **Notice of Entry of Order** Doc ID# 84*[84] Notice of Entry of Stipulation and Order to Continue Deadline for Plaintiff to File Her Opposition to Defendant Blas Bon's Motion to Set Aside Default Judgment*02/07/2020 **Opposition to Motion** Doc ID# 85*[85] Plaintiff Diane Sanchez's Opposition to Defendant Blas Bon's Motion to Set Aside Default Judgment*02/09/2020 **Supplement to Opposition** Doc ID# 86*[86] Plaintiff Diane Sanchez's Supplement to Opposition to Defendant Blas Bon's Motion to Set Aside Default Judgment*02/18/2020 **Reply in Support** Doc ID# 87*[87] Reply in Support of Motion to Set Aside Default Judgment*02/25/2020 **Motion to Set Aside Default Judgment** (9:00 AM) (Judicial Officer Delaney, Kathleen E.)

NBIS 000955

Defendant Motion to Set Aside Default JudgmentParties PresentMinutes

Result: Motion Denied

03/17/2020 **Notice of Change of Address Doc ID# 88**

[88] Notice of Change of Contact Information and Firm Affiliation

03/30/2020 **Notice Doc ID# 89**

[89] Notice of Permanent Injunction and Automatic Stay Re: Liquidation of Windhaven National Insurance Company f/k/a ATX Premier Insurance Company

07/31/2020 **Motion Doc ID# 90**

[90] Plaintiff's Motion for Judicial Assignment of Claims and/or Causes of Action Defendant Blas Bon has Against any Third-Party Claims Administrator, Third-Party Adjuster, or any Other Insurance Entity Pursuant to NRS 21.320

08/03/2020 **Clerk's Notice of Hearing Doc ID# 91**

[91] Notice of Hearing

08/13/2020 **Opposition to Motion Doc ID# 92**

[92] Opposition Of Blas Bon To Plaintiff Diane Sanchez s Motion For Judicial Assignment Of Claims And/Or Causes Of Action Defendant Blas Bon Has Against Any Third-Party Claims Administrator, Third-Party Adjuster, Or Any Other Insurance Entity Pursuant To NRS 21.320

09/01/2020 **Reply in Support Doc ID# 93**

[93] Plaintiff Diane Sanchez's Reply in Support of Motion for Judicial Assignment of Claims and/or Causes of Action Defendant Blas Bon Has Against Any Third-Party Claims Administrator, Third-Party Adjuster, or Any Other Insurance Entity Pursuant to NRS 21.320

09/08/2020 **Motion (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**

Plaintiff's Motion for Judicial Assignment of Claims and/or Causes of Action Defendant Blas Bon has Against any Third-Party Claims Administrator, Third-Party Adjuster, or any Other Insurance Entity Pursuant to NRS 21.320

Parties PresentMinutes

Result: Motion Granted

09/19/2020 **Order Denying Motion Doc ID# 94**

[94] Order Denying Defendant Blas Bon's Motion to Set Aside Default Judgment

09/21/2020 **Notice of Entry of Order Doc ID# 95**

[95] Notice of Entry of Order Denying Blas Bon's Motion to Set Aside Default Judgment

10/19/2020 **Notice of Association of Counsel Doc ID# 96**

[96] Notice of Association of Counsel

10/19/2020 **Motion to Rehear Doc ID# 97**

[97] Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief

10/20/2020 **Clerk's Notice of Hearing Doc ID# 98**

[98] Notice of Hearing

10/20/2020 **Notice of Appeal Doc ID# 99**

[99] Notice of Appeal

10/20/2020 **Case Appeal Statement Doc ID# 100**

[100] Case Appeal Statement

11/02/2020 **Opposition to Motion Doc ID# 101**

[101] Plaintiff Diane Sanchez's Opposition to Defendant Blas Bon's Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief

11/17/2020 **Reply in Support Doc ID# 102**

[102] Reply Brief on "Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief"

11/24/2020 **Motion to Rehear (9:00 AM) (Judicial Officer Delaney, Kathleen E.)**

Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief

Parties PresentMinutes

Result: Motion Denied

08/27/2021 **Objection Doc ID# 103**

[103] Objection to Plaintiff's Proposed "Order Denying Defendant Blas Bon's Motion for Rehearing and to Alter or Amend the Judgment Order Denying Rule 60(b) Relief"

09/14/2021 **Response Doc ID# 104**

[104] Plaintiff Diane Sanchez's Response to Objection to Plaintiff's Proposed "Order Denying Defendant Blas Bon's Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief"

09/16/2021 **Amended Order Doc ID# 105**

[105] 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 Claims Administrator, and any Third-Party Adjuster, or any Other Insurance Entity

09/16/2021 **Order Doc ID# 106**

[106] Order Denying Defendant's Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief

09/20/2021 **Notice of Entry of Order Doc ID# 107**

[107] Notice of Entry of "Order Denying Defendant Blas Bon's Motion for Rehearing and to Alter or Amend the Judgment and Order Denying Rule 60(b) Relief"

09/21/2021 **Notice of Entry of Order Doc ID# 108**

[108] Notice of Entry of 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 Claims Administrator, Any Third-Party Adjuster, or any Other Insurance Entity

09/28/2021 **Amended Notice of Appeal Doc ID# 109**

[109] Amended Notice of Appeal

09/28/2021 **Amended Case Appeal Statement Doc ID# 110**

[110] Amended Case Appeal Statement

10/21/2021 **Amended Notice of Appeal Doc ID# 111**

[111] Second Amended Notice of Appeal

10/21/2021 **Amended Case Appeal Statement Doc ID# 112**

[112] Amended Case Appeal Statement

11/01/2021 **Request Doc ID# 113**

[113] Request for Transcripts

NBIS 000956

FINANCIAL INFORMATION

Cross Claimant Acosta, Joseph			
	Total Financial Assessment		223.00
	Total Payments and Credits		223.00
	Balance Due as of 11/04/2021		0.00
12/01/2015	Transaction Assessment		223.00
12/01/2015	Efile Payment	Receipt # 2015-124439-CCCLK	Acosta, Joseph (223.00)
Cross Claimant Acosta, Wilfredo			
	Total Financial Assessment		223.00
	Total Payments and Credits		223.00
	Balance Due as of 11/04/2021		0.00
11/10/2016	Transaction Assessment		223.00
11/10/2016	Efile Payment	Receipt # 2016-109785-CCCLK	Acosta, Wilfredo (223.00)
Cross Defendant Bon, Blas			
	Total Financial Assessment		271.50
	Total Payments and Credits		271.50
	Balance Due as of 11/04/2021		0.00
01/17/2020	Transaction Assessment		223.00
01/17/2020	Efile Payment	Receipt # 2020-03428-CCCLK	Bon, Blas (223.00)
10/19/2020	Transaction Assessment		3.50
10/19/2020	Efile Payment	Receipt # 2020-59052-CCCLK	Bon, Blas (3.50)
10/20/2020	Transaction Assessment		24.00
10/20/2020	Efile Payment	Receipt # 2020-59164-CCCLK	Bon, Blas (24.00)
11/17/2020	Transaction Assessment		3.50
11/17/2020	Efile Payment	Receipt # 2020-65285-CCCLK	Bon, Blas (3.50)
08/27/2021	Transaction Assessment		3.50
08/27/2021	Efile Payment	Receipt # 2021-53791-CCCLK	Bon, Blas (3.50)
09/20/2021	Transaction Assessment		3.50
09/20/2021	Efile Payment	Receipt # 2021-58448-CCCLK	Bon, Blas (3.50)
09/28/2021	Transaction Assessment		3.50
09/28/2021	Efile Payment	Receipt # 2021-60279-CCCLK	Bon, Blas (3.50)
10/21/2021	Transaction Assessment		3.50
10/21/2021	Efile Payment	Receipt # 2021-65363-CCCLK	Bon, Blas (3.50)
11/01/2021	Transaction Assessment		3.50
11/01/2021	Efile Payment	Receipt # 2021-67461-CCCLK	Bon, Blas (3.50)
Plaintiff Sanchez, Diane			
	Total Financial Assessment		275.00
	Total Payments and Credits		275.00
	Balance Due as of 11/04/2021		0.00
08/07/2015	Transaction Assessment		270.00
08/07/2015	Efile Payment	Receipt # 2015-83393-CCCLK	Sanchez, Diane (270.00)
04/16/2021	Transaction Assessment		5.00
04/16/2021	Payment (Window)	Receipt # 2021-23513-CCCLK	Sanchez, Diane (5.00)

NBIS 000957

EXHIBIT 7

No. **2309**

Exhibit D

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: FEB 22 2013

Subject Considered:

ATX Premier Insurance Company
Dallas, Texas
Sircon No. 08-75779

**ADMISSION TO DO BUSINESS IN TEXAS
CONSENT ORDER**

General remarks and official action taken:

On December 31, 2012, the commissioner of insurance issued Commissioner's Order No. 2162, which approved the application of ATX Premier Insurance Company for admission to do the business of insurance in Texas pursuant to Tex. Ins. Code Chapter 982 and redomestication to Texas pursuant to Tex. Ins. Code Chapter 983.

Staff for the Texas Department of Insurance (the department) and the duly authorized representative of ATX Premier Insurance Company, have consented to the entry of this Consent Order as evidenced by the signature hereto and request the commissioner of insurance to informally dispose of this matter pursuant to the provisions of TEX. INS. CODE § 36.104, TEX. GOV'T CODE § 2001.056, and 28 TEX. ADMIN. CODE § 1.47.

As contemplated in Order No. 2162, ATX Premier Insurance Company and the department agree to the following stipulations as a requirement for ATX Premier Insurance Company doing the business of insurance in Texas:

1. ATX Premier Insurance Company will submit, prior to executing, any and all reinsurance agreements for review and approval by the department.
2. ATX Premier Insurance Company will not exceed a 2:1 ratio of net written premium to capital and surplus.
3. ATX Premier Insurance Company must at all times reserve at least the mid-point range of its actuary's estimate. ATX Premier Insurance Company will engage a CPA that will include as part of the required annual audit, an independent actuary to review ATX Premier Insurance Company's actuarial practices and related work. ATX Premier Insurance Company will notify the Department of the actuary providing services and related reserving work.
4. ATX Premier Insurance Company will deposit \$5 million with the comptroller for the protection of policyholders or creditors wherever they are located in the United States. This deposit is to be made pursuant to Texas Insurance Code Chapter 406.

Exhibit D

NBIS 000959
NBIS0064

2309

Exhibit D

COMMISSIONER'S ORDER
ATX PREMIER INSURANCE COMPANY
Page 2 of 7

5. The parent company of ATX Premier Insurance Company, Nations Builders Insurance Services, Inc. shall establish a trust account for the benefit of ATX Premier Insurance Company with a minimum floor of no less than \$250,000 in a form of security acceptable to the commissioner, for the purpose of collateralizing any receivable due to ATX Premier Insurance Company from AutoTex or any other managing general agency, agency, or agent regarding commissions owed back under an MGA agreement per a sliding scale commission or other arrangement.
6. The receivable described in item 5 above shall be calculated quarterly beginning with June 30, 2013, and any required additional funds to be placed in the trust account shall be made by Nations Builders Insurance Services, Inc. no later than forty five days following the end of each calendar quarter.
7. These limitations may be adjusted in the future by order of the commissioner.

The commissioner of insurance orders that if at any time it is shown that ATX Premier Insurance Company did not comply with the aforementioned stipulations as agreed, then the commissioner of insurance may revoke the Certificate of Authority of ATX Premier Insurance Company.

ELEANOR KITZMAN
COMMISSIONER OF INSURANCE

BY:

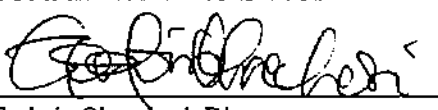

Godwin Ohaechesi, Director
Company Licensing & Registration Office
Licensing Services Section
Financial Regulation Division
Commissioner's Order No. 12-0052

Exhibit D

NBIS 000960
NBIS0065

2309

Exhibit D

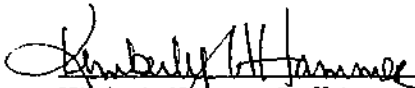
COMMISSIONER'S ORDER
ATX PREMIER INSURANCE COMPANY
Page 3 of 7

Recommended by:



Loretta Calderon, Insurance Specialist
Company Licensing & Registration Office
Licensing Services Section
Financial Regulation Division

Reviewed by:



Kimberly Hammer, Staff Attorney
Office of Financial Counsel
Legal Section
General Counsel Division

Exhibit D

NBIS 000961
NBIS00066

Exhibit D

2309

COMMISSIONER'S ORDER
 ATX PREMIER INSURANCE COMPANY
 Page 7 of 7

STATE OF Georgia
 COUNTY OF Cobb

§
§
§

BEFORE ME, the undersigned notary public, personally appeared

William C. Tepe

1. "My name is William C. Tepe. I am of sound mind, am capable of making this statement, and am personally acquainted with the facts stated herein.
2. "I am the President of Nations Builders Insurance Services, Inc., which is the parent company of ATX Premier Insurance Company. As an officer of Nations Builders Insurance Services, Inc., I am authorized to make this statement, and I agree to and execute this Consent Order on behalf of Nations Builders Insurance Services, Inc..
4. "Nations Builders Insurance Services, Inc. agrees with and consents to the issuance and service of the foregoing Consent Order to be entered by the Texas Commissioner of Insurance."

William C. Tepe
 Signature

William C. Tepe
 Printed Name

President
 Title

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by
William C. Tepe, President of Nations Builders Insurance Services, Inc., on this 20
 day of February, 2013.

Ruth A. Bankston
 Signature of Notary Public

Ruth A. Bankston
 Printed Name of Notary Public
 Notary Public in and for the State of
 My Commission Expires:

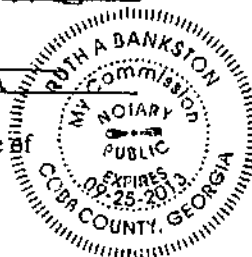


Exhibit D

NBIS 000962
NBIS0070

EXHIBIT 8

AMENDED AND RESTATED CLAIMS HANDLING AGREEMENT

This Amended and Restated Claims Handling Agreement ("Agreement") entered into and effective March 22, 2013, and amended April 1, 2015 12:01 am, is made and entered into by and between ATX Premier Insurance Company ("Company"); NBIS Construction & Transport Insurance Services, Inc. ("CTIS"; or, "Pre-close Policy Claims Administrator"); AutoTex MGA, Inc. ("AutoTex"; or, "Former Administrator"); and Safe Auto Insurance Company ("SafeAuto"; or, "Post-close Policy Claims Administrator"), collectively "Administrator", SafeAuto; AutoTex; CTIS; and, Company are each hereinafter referred to as a "Party" and collectively as the "Parties".

WHEREAS, Company has the authority to issue insurance policy(ies) to insureds and is responsible for claims settlement on those policies;

WHEREAS, NationsBuilders Insurance Services, Inc. ("NBIS"), the current parent company of AutoTex and Company, has, contemporaneously with the execution of this Agreement, closed a certain Stock Purchase Agreement (executed on March 2, 2015, "SPA") with Safe Auto Insurance Group, Inc. (the acquirer of AutoTex and parent company of SafeAuto) whereby Safe Auto Insurance Group, Inc. has acquired one hundred percent (100%) of the stock of AutoTex;

WHEREAS, pursuant to the terms and conditions of the aforementioned stock purchase agreement, Safe Auto Insurance Group, Inc. and NBIS have agreed to certain definitional guidelines regarding the ongoing treatment of business which was produced by AutoTex prior to the closing of the transaction and business which will be produced by AutoTex after the closing of such transaction, and which are applicable to the administration of this Agreement going forward and to which the Parties agree to incorporate herein:

- (A) **Pre-close Policy.** **Pre-close Policy** means any policy which was issued on or before the closing date of the sale of AutoTex, or which may be validly reinstated after such closing date by the policyholder during a reinstatement period. It also means any new policy written or renewed on or after the closing date which: (1) resides in the state of Arizona; (2) is produced by the LA Franchise Agency or its affiliates in any state; or (3) has been certified under the financial responsibility laws and regulations of any state.
- (B) **Post-close Policy.** **Post-close Policy** means any new or renewal policy term written after the closing date and not included in the definition of **Pre-close Policy**.

WHEREAS, CTIS wishes to assume the rights and obligations hereunder to administer **Pre-close Policies** as the **Pre-close Policy Claims Administrator**;

WHEREAS, CTIS is in the business of providing claims services on behalf of insurance companies and is willing to provide such services on behalf of Company on all **Pre-close Policies** in accordance with the terms and conditions set forth herein, and as set forth in any agreed to Addenda attached to and made a part of this Agreement;

WHEREAS, the Parties acknowledge that the role of CTIS as the **Pre-close Policy Claims Administrator** will terminate and cease to exist, subject to those provisions of this Agreement which may otherwise remain in effect, upon the expiration of the last claim from any **Pre-close Policy**.

WHEREAS, SafeAuto is a property and casualty insurer licensed to conduct business in States of Arkansas, Arizona, Nevada and Texas and, wishes to assume the rights and obligations hereunder to administer **Post-close Policies** as the **Post-close Policy Claims Administrator**;

WHEREAS, Company has reviewed and accepted the qualifications of SafeAuto and CTIS, and wishes to authorize them to provide the to provide the services set forth herein;

EXHIBIT 9

ANV00003087 (A) HIPOLITO F CRUZ

Full Term: \$1,045.00 Written: \$914.00 Changed: \$0.00 Annual: \$2

Term Dates: 12/16/2014 - 6/16/2015 | Transaction Dates: 3/23/2015 12:55:10 PM - 6/16/2015

Online to Presently In Force

More Links

My Navigator

ANV00003087

- Policy Info
- Orkents (3)
 - HIPOLITO F CRUZ
 - BARBARAINA CRUZ
 - MARK J CRUZ
- Vehicles (3)
 - 1999-CHEVROLET-SUBURBAN 2
 - 1997-DODGE-RAM 2500 XCAB 5
 - 1995-Ford-F-150 REGULAR CAB
- Coverages
- 3rd Party Reports
- Loss History (1)
- Billing Info
- Additional Policy Info
- Policy Summary

Close

** Policy is in inquiry mode. No changes will be saved. **

Coverages

Vehicle Level Coverages

Bodily Injury	15/30
Property Damage	10,000
Medical Payments	N/A
UMBI/UMBI	N/A

Reset all combos to "N/A"

Vehicle Basic Information

	Num	Year	Make	Model	Body Type	Vin	Principal Driver	Camp Only
Select 1		1999	CHEVROLET	SUBURBAN 1500	SUV	3GNEC16R6XG249893	BARBARAINA CRUZ	No
Select 2		1997	DODGE	RAM 2500 XCAB 5.9L	Pickup	3B7KC23Z5VM536338	HIPOLITO F CRUZ	No
Select 3		1995	Ford	F-150 REGULAR CAB	Pickup	2FTEF15Y9SCA60315		No

Vehicle Level Coverages for 1997 DODGE RAM 2500 XCAB 5.9L [Use Previous Vehicle](#)

Comprehensive	N/A
Collision	N/A

Reset all combos to "N/A"

EXHIBIT 10

No. **4335**

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: MAR 03 2016

Subject Considered:

Acquisition of
ATX Premier Insurance Company
Dallas, Texas
by
Windhaven National Holding Company
a Florida corporation
HCS No. 990473

Consent Order

General remarks and official action taken:

The commissioner of insurance considers the application of Windhaven National Holding Company, (Windhaven), for approval of its acquisition of control of ATX Premier Insurance Company, (ATX).

As shown by their signatures, the authorized representatives for Windhaven National Holding Company agree and consent to the entry of this order and request that the commissioner informally dispose of this matter pursuant to the provisions of Tex. Ins. Code §36.104, Tex. Gov't Code §2001.056, and 28 Tex. Admin. Code §1.47.

Jurisdiction

The commissioner has jurisdiction over the application under Tex. Ins. Code § 823.157 and 28 Tex. Admin. Code § 7.205.

Findings of Fact

Based upon the information submitted to and reviewed by Texas Department of Insurance staff, the commissioner makes the following findings of fact:

1. ATX is a domestic property and casualty insurance company.
2. Windhaven will acquire control of ATX through the purchase of 100% of the issued and outstanding common capital stock of ATX for \$7,500,000 cash.

NBIS 000968

3. No evidence was presented that any of the events or conditions listed in Tex. Ins. Code § 823.157(b) would occur or exist after the acquisition of control.
4. In signing the order, Windhaven agrees that it will not cause ATX to pay any dividends or other distributions to shareholders or accept dividends from ATX for five years from the date of the acquisition of ATX without prior written approval of the commissioner.
5. In signing this order, Windhaven agrees and represents to the commissioner that ATX will not exceed a 3:1 ratio of net written premiums to capital and surplus.

Conclusions of Law

Based on the findings of fact, the commissioner makes the following conclusions of law:

1. The proposed acquisition of control by Windhaven National Holding Company to acquire 100% of the issued and outstanding common capital stock of ATX Premier Insurance Company constitutes a change of control under the provisions of Tex. Ins. Code §§ 823.151 and 823.154.
2. There is no evidence that any of the events or conditions listed in Tex. Ins. Code § 823.157(b) would occur or exist after the acquisition of control.
3. Upon review of the representations and information provided, no evidence was presented on which the commissioner could predicate a denial of the acquisition of control under Tex. Ins. Code § 823.157.
4. Windhaven knowingly and voluntarily waives all procedural rights, including but not limited to notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review of this administrative action as provided for in Tex. Ins. Code §§ 36.201 – 36.205 and Tex. Gov't Code §§ 2001.051, 2001.052, 2001.145, and 2001.146.

The commissioner approves the acquisition of control of ATX Premier Insurance Company by Windhaven National Holding Company.

The acquisition of control of ATX must be completed not later than the 90th day from the date of this order as required by Tex. Ins. Code § 823.160(a).

If the acquisition of control of ATX Premier Insurance Company is not completed on or before the 90th day after the date of this order and Windhaven National Holding Company has not obtained an extension of time in writing to complete the acquisition of control by the commissioner as required by Tex. Ins. Code § 823.160(a), this order expires, Windhaven

Commissioner's Order
ATX Premier Insurance Company
HCS No. 990473
Page 3 of 5 Pages

National Holding Company will be required to submit a new application to the commissioner for review and approval.

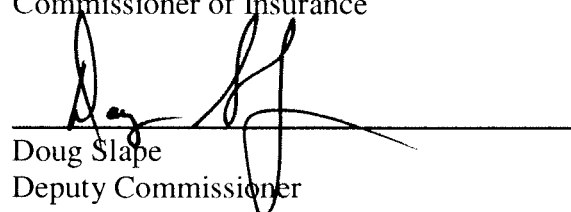
This order amends the limitations on ATX Premier Insurance Company set out in the February 22, 2013, Commissioner Order Number 2309.

The commissioner orders Windhaven not to cause ATX to pay any dividends or other distributions to shareholders and or accept dividends from ATX for five years from the date of the acquisition of ATX without prior written approval of the commissioner.

The commissioner orders ATX not to exceed a 3:1 ratio of net written premiums to capital and surplus.

David C. Mattax
Commissioner of Insurance

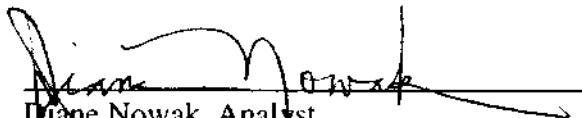
By:



Doug Slape
Deputy Commissioner
Financial Regulation Division
Commissioner's Order No. 3632

Commissioner's Order
ATX Premier Insurance Company
HCS No. 990473
Page 4 of 5 Pages

Recommended by:



Diane Nowak, Analyst
Financial Analysis Section
Financial Regulation Division

Reviewed by:



Teresa Saldana, Chief Analyst
Financial Analysis Section
Financial Regulation Division

Reviewed by:



Margaret Jonon, Attorney
Office of Financial Counsel
Legal Division

Commissioner's Order
 ATX Premier Insurance Company
 HCS No. 990473
 Page 5 of 5 Pages

Agreed as to form and content this 1st day of March 2016:

Windhaven National Holding Company

Signature

Printed Name

Title

Jimmy E. Whited
PRESIDENT

AFFIDAVIT

BEFORE ME, the undersigned notary public, personally appeared

Jimmy E. Whited and stated the following after being sworn:

1. "My name is Jimmy Whited. I am of sound mind, capable of making this statement, and I am personally acquainted with the facts stated in this order and affidavit.
2. I am the President of Windhaven National Holding Company and I am authorized to make this statement. I agree to the terms and execute this Consent Order on behalf of Windhaven National Holding Company.
3. Windhaven National Holding Company agrees with and consents to the issuance and service of the foregoing consent order to be entered by the commissioner.

Signature

SWORN TO AND SUBSCRIBED before me, the understated authority by the President of Windhaven National Holding Company on this 1st day of March 2016.

Signature of Notary Public

Notary Public in and for the State of
Florida

My Commission Expires: 4-24-16

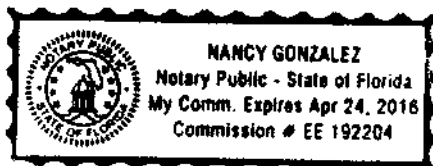


EXHIBIT 11

1 Lawrence E. Mittin, Esq.
2 Nevada Bar No. 005428
3 CRAIG P. KENNY & ASSOCIATES
4 501 S. 8th Street
5 Las Vegas, NV 89101
6 (702) 380-2800
7 Fax: 702-380-2833
8 lmittin@cpklaw.com
9 *Attorneys for Plaintiff Kelley Hayes*

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KELLEY HAYES, as Natural parent of Minor I.R.,

CASE NO. 2:18-cv-01938-GMN-NJK

Plaintiff,

v.

ATX PREMIER INSURANCE COMPANY;
NATIONSBUILDERS INSURANCE
SERVICES, INC.; DMA CLAIMS
MANAGEMENT, INC.; DOES I through X,
inclusive; and ROE CORPORATIONS I
through X, inclusive

Defendants.

PLAINTIFF'S THIRD AMENDED COMPLAINT

COMES NOW Plaintiff Kelley Hayes, as Natural parent of Minor I.R., and hereby files her Third Amended Complaint against Defendants, and each of them, as follows:

GENERAL ALLEGATIONS

Plaintiff KELLEY HAYES, by and through her attorneys CRAIG P. KENNY & ASSOCIATES, hereby alleges as follows:

1. Plaintiff KELLEY HAYES, as Natural parent of Minor I.R., Kelley, hereby sues Defendants ATX PREMIER INSURANCE COMPANY; NATIONSBUILDERS INSURANCE SERVICES, INC.; DMA CLAIMS MANAGEMENT, INC., DOES I through X, and ROE CORPORATIONS I through X, for breach of contract and bad faith pursuant to the assignment given by Cesar Gutierrez as to ATX PREMIER INSURANCE COMPANY, and/or its subsidiaries, assigns, network companies, and agent companies. Minor I.R. is 11 years old and she currently resides with Plaintiff in Arizona. Minor I.R.'s father was Mario Regalado. On 11/15/14, when

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1 Minor I.R. was only 7 years old, her father Mario Regalado was killed when the bike he was riding
2 was struck by Cesar Gutierrez. Gutierrez was a permissive driver of a 1992 Acura Integra owned by
3 Tracy Miller. At the time of the accident, Minor, Regalado, Gutierrez and Miller, were all residents
4 of Las Vegas, Nevada. Miller had insurance of \$15,000 per person, \$30,000 per accident, and
5 \$10,000 for property damage for the Acura with ATX. This ATX policy applied to permissive
6 drivers such as Gutierrez.

7 2. At all times mentioned herein, Defendant ATX PREMIER INSURANCE COMPANY
8 ("ATX") was and is a company authorized to conduct business in Clark County, Nevada. As of
9 11/15/14, Defendant ATX was the insurance company for ATX policy number ANV000000230
10 which covered Tracy Miller's 1992 Acura Integra. The ATX policy provided coverage of 15/30/10
11 and the policy covered permissive drivers such as Cesar Gutierrez. As the insurer of the policy for
12 Miller's Integra, Defendant ATX had duties under the Nevada Unfair Trade Practices Act
13 ("NUPTA") and contractual obligations as to permissive driver Gutierrez for this 11/15/14 claim
14 wherein Mario Regalado was killed; these obligations included the duty to defend, the duty to
15 provide coverage, the covenant of good faith and fair dealing, and communication/disclosure duties
16 as required by *Allstate v. Miller*. Gutierrez assigned damages to Plaintiff for ATX's violations of
17 ATX insurance contract ANV000000230 and NUPTA.

18 3. At all times mentioned herein, Defendant NATIONSBUILDERS INSURANCE
19 SERVICES, INC. ("NATIONSBUILDERS") was and is an insurance company authorized to
20 conduct business in Clark County, Nevada. As of 11/15/14, Defendant NATIONSBUILDERS was
21 the parent company of Defendant ATX. As the parent company of ATX, NATIONSBUILDERS has
22 liability for contractual damages, extra-contractual damages, and violations of NUPTA as to the
23 ATX policy for Miller's Integra. Since the inception of the 11/15/14 wrongful death claim, Art
24 Kirkner, VP of Claims for NATIONSBUILDERS and ATX, was personally handling Plaintiff's
25 claim for NATIONSBUILDERS and ATX, and Kirkner was working with Third Party Administrator
26 DMA as to the claim. On June 17, 2016, Art Kirkner represented himself as VP of claims for ATX
27 when he signed as a true and correct copy the Miller ATX policy declaration page. VP Kirkner has
28 continued to work up until the present time on behalf of Defendant NATIONSBUILDERS as to the

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1 handling of Plaintiff's claim under the subject Miller ATX policy. The subject Miller ATX policy is
2 a Pre-Close policy for which Defendant NATIONSBUILDERS' liability as to the 11/15/14 wrongful
3 death claim continues to the present time. Given its status as the parent company of ATX and VP of
4 Claims Art Kirkner's handling of Plaintiff's claim therein, NATIONSBUILDERS is subject to the
5 assignment that Gutierrez gave to Plaintiff. As the parent company of ATX, NATIONSBUILDERS
6 is an insurer of the Miller ATX policy and as such, it was governed by NUPTA and it had
7 contractual obligations as Gutierrez for this 11/15/14 claim; these obligations included the duty to
8 defend; the duty to provide coverage; the covenant of good faith and fair dealing; and
9 communication/disclosure duties as required by *Allstate v. Miller*.

10 4. At all times mentioned herein, Defendant DMA CLAIMS MANAGEMENT, INC.
11 ("DMA") was and is a company duly authorized to conduct business in Clark County, Nevada.
12 DMA owns, operates and does business in Clark County as DMA Claims Services. DMA Claims
13 Services is the entity which is the subject of the assignment of contractual rights from Cesar
14 Gutierrez to Plaintiff. DMA is and was a claims administrator for ATX and ATX's parent company
15 NATIONSBUILDERS as to the subject Miller policy. As the claims administrator, DMA has an
16 indemnity and hold harmless agreement with ATX and its parent company NATIONSBUILDERS.
17 Given that DMA was adjudicating the 11/15/14 wrongful death claim for ATX and
18 NATIONSBUILDERS and DMA has an indemnity agreement wherein it has warranted its works as
19 to ATX and NATIONSBUILDERS, Plaintiff asserts that DMA was a joint venturer with ATX and
20 NATIONSBUILDERS as to the ATX Miller Policy/Plaintiff's claim. As a joint venturer, DMA has
21 liability for breach of contract and bad faith as to ATX insured Cesar Gutierrez for the subject claim.

22 5. The true names and capacities, whether individual, corporate, associate, or otherwise of
23 Defendants DOES I through X, inclusive, and ROE CORPORATIONS I through X, inclusive, are
24 unknown to Plaintiff who therefore sues those Defendants by such fictitious names, but are believed
25 to be agents, servants, employers, or employees of the other Defendants named in this complaint.
26 Plaintiff is informed and believes, and upon such alleges, that each of the Defendants designated as a
27 DOE and/or ROE performed many of the same insurance functions as Defendants ATX,
28 NATIONSBUILDERS, and DMA in investigating Plaintiff's claim, as more fully set forth and

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1 described in *Wohlers v. Bartgis*, thereby causing injury and damages directly and proximately to the
2 Plaintiff as alleged in this Complaint; that such DOE and ROE Defendants were the agents, servants,
3 or employees, of each other or other Defendants named in this Complaint, and in doing the things
4 alleged in this Complaint, each were acting within the course and scope of said agency, servitude,
5 authority, and employment, with knowledge, permission, and consent of the other Defendants.

6 6. Defendants ATX, NATIONSBUILDERS, and DMA, were the agents, ostensible agents,
7 servants, employees, partners, co-owners and/or joint venturers of each other, and were acting within
8 the color, purpose and scope of their employment, agency, ownership and/or joint ventures and by
9 reason of such relationship, the Defendants, and each of them are vicariously and jointly and
10 severally responsible and liable for the acts and/or omission of their Co-Defendants.

11 7. On 11/15/14 at 2:07 p.m., in Henderson, Nevada, Cesar Gutierrez was a permissive driver
12 of the 1992 Acura Integra owned by Tracy Miller and insured by the ATX policy ANV000000230.
13 Gutierrez was driving at 65 mph in a 35 mph zone and weaving through traffic on southbound
14 Eastern Ave., south of Evansville Avenue. Gutierrez made an unsafe pass on the right at a very high
15 rate of speed, striking bicyclist Mario Regalado from behind, killing Regalado.

16 8. Plaintiff submits that it is undisputed that on 11/15/14, Cesar Gutierrez killed Minor I.R.'s
17 father Mario Regalado while driving the 1992 Acura Integra owned by Tracy Miller and which was
18 insured by the ATX policy.

19 9. Tracy Miller has testified in a deposition that prior to the accident, she knew that Cesar
20 Gutierrez was using her ATX insured vehicle, as she had heard about him driving her vehicle. In
21 this same deposition, counsel for Gutierrez (who was also counsel for Miller) represented that
22 Gutierrez had implied permission to use the vehicle.

23 10. From 11/15/14 until 9/12/17, Defendants ATX, NATIONSBUILDERS, and DMA never
24 made any contact at all with Cesar Gutierrez regarding the 11/15/14 death claim. In failing to ever
25 make any contact with Gutierrez, the Defendants never informed Gutierrez of his rights as an insured
26 under the ATX policy, rights which included providing a defense and coverage for this 11/15/14
27 loss. Defendants never conducted any investigation as to Gutierrez having any auto insurance of his
28 own which might apply to this loss as well as Gutierrez having any assets which might apply to any

1 claims for this loss. Further, Defendants never communicated with Gutierrez as to the three
2 conditional settlements demands made by Plaintiff as required by *Allstate v. Miller*; as to Gutierrez's
3 right to personally make a financial contribution to resolve the death claim pursuant to *Miller*; the
4 consequences if the conditional settlement demands were not accepted; Gutierrez's contractual right
5 to an attorney paid for by ATX if a lawsuit was filed against him; and the insurance coverage
6 available under the policy for any lawsuit. Plaintiff submits that Defendants could have easily
7 located Gutierrez and communicated with him regarding this claim, such communication to include
8 informing Gutierrez of his contractual rights as an insured under the contract. Plaintiff alleges that
9 Defendants deliberately chose to act as if Gutierrez did not even exist as an insured.

10 11. As of November 20, 2014, Melissa Moses, wife of Mario Regalado, made a claim
11 against the subject ATX policy. The Moses' claim was being handled by Defendant DMA whose
12 adjusters were reporting directly to Art Kirkner, VP of Claims for Defendants ATX and
13 NATIONSBUILDERS. On 12/22/14, DMA took a recorded statement of Tracey Miller. In the
14 recording, Miller stated that the address on the policy was her address and that the home was her
15 mother-in-law's; that the driver of the insured vehicle was her brother-in-law Cesar Gutierrez; that
16 Gutierrez on occasion would borrow the insured vehicle; and that Gutierrez was in jail.

17 12. As of 12/22/14, Defendants ATX, NATIONSBUILDERS, and DMA had actual
18 knowledge that the Follow Fields address was the home of Gutierrez's parents and that Gutierrez
19 was in jail in Las Vegas. Gutierrez went from jail to High Desert State Prison. Defendants knew
20 how to get into contact with Gutierrez with regard to this claim and they just deliberately choose not
21 to contact Gutierrez until 9/12/17.

22 13. On 1/7/15, Melissa Moses' attorney made a demand for the injury limits for Moses.
23 ATX, NATIONSBUILDERS, and DMA were all involved in the decision to tender the \$15,000
24 single injury limit to the attorney for Moses. None of the companies had ever been presented with
25 any documentation showing that an Estate had been opened for Mario Regalado and that Moses was
26 the administratrix for the Estate. None of the companies had asked if Mario Regalado had any
27 children when he died. Clearly, all companies were panicked by the attorney's threat to file a lawsuit
28 and they just sent the attorney a release even though they did not have any information about the

1 Estate nor any information about any children of Mario Regalado. When the release was sent, ATX,
2 NATIONSBUILDERS, and DMA had never made any inquiry into any available insurance for
3 Gutierrez; any additional insurance for Miller; nor whether Gutierrez and/or Miller wanted to make
4 a financial contribution to the settlement. This \$15,000 release was never signed by Moses.

5 14. On 3/16/15, Moses's attorney made a demand for the property damage limits of \$10,000
6 for the bicycle. On 4/3/15, DMA adjuster Rebecca Perez noted that she was "Preparing
7 recommendation to settle PD at limits of \$10,000 without seeking retention of salvage."

8 15. From 4/3/15 until 7/20/15, DMA adjuster Perez was in contact with Moses' attorney
9 asking for documentation about the bike, as ATX was not willing to pay the \$10,000 limit for the
10 bicycle. On 7/20/15, ATX and NATIONSBUILDERS VP of Claims Art Kirkner emailed Perez with
11 a "High" level of importance about the bike claim. VP Kirkner wanted Perez to "explain why this
12 bike has a \$10K value." Kirkner wanted to know how many miles were on this bike when it was
13 actually purchased; how long did Regalado have the bike; and he was "curious" about miles on the
14 bike.

15 16. When ATX and NATIONSBUILDERS VP Art Kirkner sent the email, he had reviewed
16 the police report and was aware that Gutierrez was in jail for killing Regalado. Nonetheless, VP
17 Kirkner did not want to pay the limits on the property damage. VP Kirkner's actions show that ATX
18 and NATIONSBUILDERS were determined to save on paying the policy limits of \$10,000 for the
19 property damage. VP Kirkner was more concerned with overpaying on the property damage claim
20 than in resolving the actual death claim and protecting ATX policy insureds, Gutierrez and Miller.
21 VP Kirkner never once questioned any of the adjusters about Gutierrez, as Kirkner knew from a
22 review of the log notes that Gutierrez had never been contacted at all. VP Kirkner's focus on this
23 death claim was on trying to save money on the bike, not the death claim itself nor protection of
24 ATX's insureds, Gutierrez and Miller. As of 7/20/15, ATX and NATIONSBUILDERS still had no
25 documentation showing that an Estate had been opened; they had never inquired if Regalado had any
26 children when he died; they had never inquired into any available insurance for Gutierrez; they had
27 never inquired into any additional insurance for Miller; and they had never inquired into whether
28 Gutierrez or Miller wanted to personally make a financial contribution to the settlement.

1 17. Defendants ATX and NATIONSBUILDERS, and DMA's investigation about the bike
2 continued on for another month until 8/19/15, when Perez emailed VP Kirkner for authority to pay
3 the property limits. Again, VP Kirkner showed his reluctance to pay the \$10,000. In an 8/20/15
4 email, VP Kirkner wanted to know if the bike was worth over \$10,000 and the depreciation value of
5 the bike. VP Kirkner was consumed with saving money on the bike claim, and yet on the death
6 claim itself and the protection of ATX's insureds Gutierrez and Miller, Kirkner expressed no
7 concern at all. Gutierrez did not ever merit any mention in any of Kirkner's log notes during the
8 claims process. A team of DMA adjusters spent the next six weeks working with VP Kirkner on the
9 property damage claim. Given these actions as to the bike and omissions as to the insured Gutierrez,
10 saving money on the bike was all that mattered to VP Kirkner of ATX and NATIONSBUILDERS.

11 18. In October 2015, even though DMA finally had permission to tender to Moses the
12 property damage limits of \$10,000, the DMA adjuster offered Moses only \$8,500 for the property
13 damage claim. Even though the DMA adjuster had authority to pay the \$10,000 property damage
14 limits, someone at ATX, NATIONSBUILDERS, and DMA had decided that it was very important
15 that the companies win the negotiations and only pay \$8,500 for the bike. These Defendants had
16 spent months on the bike claim all to save \$1,500 on the bike, as Moses signed the property damage
17 release for \$8,500. Meanwhile, the bodily injury portion of this death claim remained open, with no
18 investigation having been conducted by Defendants as to an Estate for Mario Regalado and if Mario
19 Regalado had any children as heirs. Further, Defendants ATX, NATIONSBUILDERS, and DMA,
20 had still never contacted Gutierrez; never inquired into any available insurance for Gutierrez; never
21 inquired into any additional insurance for Miller; and they had never inquired into whether Gutierrez
22 or Miller wanted to personally make a financial contribution to the settlement.

23 19. On 3/30/16, Plaintiff's counsel Julie Mersch sent a representation letter for Minor I.R.'s
24 claim to adjuster Hermanese Ravasio of Defendant DMA. The letter asked "please confirm all
25 coverage available for this accident under your insured's policy, and provide my office with a copy
26 of the declarations page of the policy(ies) for all vehicles owned by Ms. Miller at the time of the
27 accident."
28

1 20. On 5/17/16, Plaintiff's counsel Mersch sent to DMA adjuster Ravasio a 30-Day Policy
2 Limits Demand with Conditions and this demand was courtesy copied via email to VP Kirkner at his
3 NATIONSBUILDERS email address. The letter first addressed that DMA had not sent the actual
4 certified declaration page. The letter then demanded the policy limits for Plaintiff by 6/20/16 with
5 the following conditions: (1) Autotex to provide a Certified Copy of the Declaration page for the
6 Miller vehicle; and (2) Autotex to provide an "Affidavit Setting Forth Assets" of insured Miller.

7 21. On 6/2/16, a log note was entered by DMA adjuster Ravasio which stated as follows:

8 We need a certified copy of the policy limits to be sent to claimant attorney. She is
9 looking for a reason to sue.

10 22. Given the log note, DMA adjuster Ravasio believed that Mersch was not genuinely
11 seeking documents for I.R.—a minor child whose father was killed when she was 7—but instead
12 Mersch had a more nefarious intent as to ATX and DMA. Ravasio knew from the log notes that
13 ATX and NATIONSBUILDERS were able to win the negotiations with Moses and save \$1,500 on
14 the property damage. As such, Ravasio was suspicious of Mersch's intentions, even though Mersch
15 was simply asking for relevant documents for I.R. Ravasio's suspicions about Mersch were well
16 documented in the notes, such that they colored not only her handling of the claim, but also affected
17 the handling by subsequent adjusters at DMA and ATX and NATIONSBUILDERS VP Kirkner.
18 These adjusters and VP Kirkner all abdicated any of their responsibilities and duties to insureds
19 Gutierrez—a phantom in the entire claims process—and Miller. The concern of all of these adjusters
20 and VP Kirkner was to not allow Mersch to "set up" ATX and DMA. So these adjusters and VP
21 Kirkner decided that they would not comply with Mersch's requests for a certified copy of the
22 declaration page, an Asset Affidavit from Miller, nor the two later requests for an Affidavit from
23 ATX itself showing its attempts to secure an Asset Affidavit from Miller. Instead, DMA and VP
24 Kirkner were going to handle the claim as they saw fit, irrespective of the harm they were all causing
25 to the insureds Gutierrez and Miller.

26 23. On 6/2/16, DMA sent a letter to Miller informing her that more than her limits were
27 being sought. However, this DMA letter did not include a copy of the 5/17/16 demand letter. The
28 DMA letter then stated "In order for us to immediately resolve this claim it will be necessary that
you complete and return the attached documents. Have them notarized and returned to the law firm

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1 representing Mr. Regalado's daughter." The letter then gave the address for attorney Mersch.
2 Plaintiff submits that the evidence will show that DMA never sent **with this letter an Affidavit for**
3 **Miller to complete which had Miller's name listed as well as the date of loss of 11/15/14.**
4 Further, neither DMA, ATX nor NATIONSBUILDERS ever attempted to call Miller during the
5 entire time this conditional policy limit demand was pending from 5/17/16-6/20/16. The letter
6 shows that DMA on behalf of ATX and NATIONSBUILDERS, was placing sole responsibility on
7 Miller to complete, notarize, and send the Affidavit to Mersch. DMA never mentioned anything in
8 the letter about a deadline for Miller to return the Affidavit to Mersch.

9 24. On 6/17/16, DMA sent a letter to Mersch which stated that "a second copy of our
10 policyholder's insurance page was sent via certified mail on June 3, 2016." Given this statement,
11 adjuster Ravasio believed that sending a copy of the insurance page via certified mail made a
12 document certified. The letter then stated "we've included another copy of the declarations page for
13 your review. On that same date, the insurance and assets affidavit was sent to our policyholder via
14 certified mail." The letter also states that enclosed was a release. In sending the release, Ravasio
15 believed that DMA had satisfied the conditions of the 5/17/16 letter by allegedly sending a copy of
16 the dec page via certified letter and by informing Mersch that DMA had sent Miller an asset
17 affidavit.

18 25. As of 6/20/16, DMA on behalf of ATX and NATIONSBUILDERS, had failed to comply
19 with both of the conditions set forth in the 5/17/16 demand letter. DMA never sent Mersch a
20 Certified Copy of the declarations page. Further, DMA never sent Mersch an "Affidavit Setting
21 Forth Assets" of its insured Tracy Miller. DMA never asked for an extension of time to the 5/17/16
22 demand.

23 26. On 9/14/16, Mersch sent via fax another 14 day conditional demand letter to DMA
24 adjuster Ravasio. The conditional demand letter requested an Assets Affidavit of Miller or in the
25 alternative, an Affidavit by DMA's principal ATX setting forth all efforts to obtain Miller's
26 Affidavit and a certified copy of the Declaration Page.
27
28

1 27. Even though there is a faxed confirmation for the 9/14/16 demand letter, the letter itself
2 and any reference to said letter never made it into the DMA claims file. Instead, on 9/27/16, Ravasio
3 noted for the file "no response from claimant's attorney. Another certified letter sent."

4 28. DMA adjuster Ravasio sent a 9/27/16 letter to Mersch which only referenced the May
5 2016 demand. On 10/3/16, Mersch responded to the DMA 9/27/16 letter via fax and mail. Mersch's
6 10/3/16 letter was a conditional demand letter which was essentially the same as the 9/14/16
7 conditional demand letter. The conditional demand letter requested an Assets Affidavit of Miller or
8 in the alternative, an Affidavit by DMA's principal ATX setting forth all efforts to obtain Miller's
9 Affidavit and a certified copy of the Declaration Page.

10 29. DMA adjuster Ravasio noted in the claims file the 10/3/16 conditional demand letter.
11 Ravasio sent on 10/12/16, a note to DMA adjuster Church stating "Please send affidavit of insurance
12 letter in the attachments to the insured again. This time we need it sent certified." Then, Ravasio
13 emailed Rebecca Perez and stated "Need to send to Art asap."

14 30. On 10/12/16, DMA adjuster Church logged that she had sent via certified mail the
15 affidavit of insurance letter to Miller. Plaintiff alleges that there is no proof this letter was ever sent
16 to Miller. Further, Plaintiff submits that DMA never sent at any time to Miller an Affidavit which
17 had Miller's name listed as well as the date of loss of 11/15/14. While this demand was pending,
18 DMA never made any attempt to call Miller regarding an affidavit let alone sending her a copy of the
19 conditional demand letter which was set to expire on 10/20/16.

20 31. On 10/17/16, Ravasio emailed DMA adjuster Rebecca Perez and stated as follows:

21 This is the one we have to overnight on Thursday to comply with deadline for answer.
22 Any word from Art on altering release or sending a letter from him about the affidavit?

23 32. On 10/26/16, six days after the deadline date on the demand, Ravasio sent an urgent
24 email to Rebecca Perez and John DePompeo which stated:

25 To date we have not received a reply from Art deadline on this was 10/20....recommend
26 we send the check and release together to this attorney...to find a way to find some type of
fault so we need to stay ahead.

27 33. On 10/26/17, Defendant DMA then sent a \$7,500 check issued on the account of
28 Defendant NBIS Construction & Transport Insurance Services, Inc. FBO ATX Premier Insurance
Company via FedEx to Mersch which was received by Mersch on October 27, 2016. There was no

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1 cover letter with the check. NBIS Construction & Transport Insurance Services, Inc. is a company
2 affiliated with Defendant NATIONSBUILDERS.

3 34. On 11/4/16, Mersch filed a lawsuit on Plaintiff's behalf against Cesar Gutierrez and
4 Tracy Miller. On 11/8/16, Mersch returned the \$7,500 check to DMA and provided DMA with a
5 file-stamped copy of the Complaint.

6 35. On 11/18/16, Mersch sent a letter via fax, email and mail informing Ravasio that the
7 DMA check had been returned to her. Ravasio was also provided with proof of service of the
8 Complaint on Miller on 11/13/16.

9 36. On 11/29/16, Gutierrez was served in prison with a copy of the Complaint. On 12/4/16,
10 Gutierrez sent to the Court an Answer to the Complaint and a Motion for Appointment of Counsel
11 for the lawsuit. In the Motion, Gutierrez was seeking the appointment of an attorney to defend him,
12 as he noted that he was financially unable to retain an attorney and had no training to represent
13 himself and defend this action. Since Defendants ATX, NATIONSBUILDERS, and DMA never had
14 contacted Gutierrez, he was not aware of his contractual right to an attorney under the ATX policy.
15 As such, Gutierrez was trying to have the Court appoint an attorney to defend him for Plaintiff's
16 lawsuit. On 12/15/16, the Court denied Gutierrez's Application.

17 37. On 12/14/16, Mersch sent DMA a copy of Gutierrez's Answer and Motion for
18 Appointment of Counsel and these documents were stamped "received" by DMA on 12/19/18.

19 38. On 12/27/16, DMA adjuster Arnice Daniels entered a log note to Answer the complaint.
20 However, neither DMA, ATX, nor NATIONSBUILDERS, ever referred the file out to counsel to
21 provide a defense pursuant to the terms of the insurance contract. As such, an Answer was not filed
22 for Gutierrez and Miller and thus, on 4/19/17, both Gutierrez and Miller were Defaulted.

23 39. On 9/13/17, Plaintiff made a proposal to Defendant DMA to mediate her claims against
24 Gutierrez and Miller. The proposal was open until 10/9/17. As of 9/13/17, both Gutierrez and
25 Miller were in Default with the next phase of litigation to be a Default Judgment.

26 40. On 9/18/17, defense counsel retained by Defendant DMA filed a Motion to Enforce
27 Settlement. The Motion sought to have a Court find that Plaintiff had entered into a settlement with
28 ATX for the remaining bodily injury limits of \$7,500.

1 41. Even though a DMA lawyer was now involved for Gutierrez and Miller, DMA adjuster
2 Rita Westfall decided she was going to personally respond to the mediation proposal. In a 10/9/17
3 letter, Westfall wrote as to Mersch's request for Tracy Miller's Asset Affidavit as follows:

4 Apparently, Ms. Miller failed to complete, sign and mail either affidavit, which is
5 consistent with her failure to notify Auto Tex of the accident itself and her failure to
6 forward any suit papers to Auto Tex or DMA and tender the defense of the suit to
7 AutoTex....We suggest that since Ms. Miller has failed to voluntarily provide to us or Ms.
8 Mersch any information regarding her other assets (or lack thereof), then it becomes
9 incumbent upon the plaintiff's counsel to develop such assets information as will satisfy a
10 court being asked to approve the minor plaintiff's settlement.

11 As to the handling of the claim, Westfall stated as follows:

12 Auto Tex believes that a reviewing court will see any bad faith suit as a rather transparent
13 but meritless attempt to "set up" an insurer for a bad faith claim because it was presumed
14 that the remaining limits of the policy purchased by the named insured are insufficient to
15 fully compensate the minor plaintiff for the death of her father.

16 42. DMA adjuster Westfall's 10/9/17 letter ignored the fact that the September and October
17 demands gave ATX the opportunity to submit its own Affidavit regarding its efforts to secure an
18 Affidavit from Miller.

19 43. Westfall's opinion that a "set up" of ATX and DMA had occurred, was an opinion
20 repeated throughout the claims file by DMA adjusters. As of 10/9/17, DMA had convinced itself
21 that Miller and Mersch were to blame for DMA's failure to ever secure an Asset Affidavit for Miller
22 and that DMA was the victim of a lawyer set up to create more insurance.

23 44. Given Westfall's 10/9/17 letter, it is alleged that ATX, NATIONSBUILDERS, and
24 DMA never informed Gutierrez about the mediation proposal and the consequences if DMA failed
25 to have a Court enforce the settlement of \$7,500. On 12/11/17, the Court denied the Motion to
26 Enforce, but the Defaults of Gutierrez and Miller were set aside.

27 45. On 3/19/18, Gutierrez, while represented by counsel who had been retained by DMA,
28 signed an Assignment to Plaintiff of his rights to breach of contract and bad faith as to ATX, its
29 subsidiaries, assigns, network companies, agent companies, which includes ATX's parent company
30 NATIONSBUILDERS, and as to DMA.

31 46. On 6/12/18, Plaintiff filed a Motion for Summary Judgment as to Gutierrez's liability to
32 Plaintiff for a \$2.5 million dollar judgment. On 8/7/18, the Court granted Plaintiff's Motion for
33 Summary Judgment and an Order was entered on 8/24/18.

47. Given Gutierrez's Assignment to Plaintiff of his rights for breach of contract and bad faith as to ATX and its subsidiaries, assigns, network companies, and agent companies which includes ATX's parent company Defendant NATIONSBUILDERS and Defendant DMA, and the granting of a Summary Judgment against Gutierrez for \$2.5 million, Plaintiff hereby sues (1) Defendants ATX and NATIONSBUILDERS for breach of contract, bad faith, and violation of NUPTA; and (2) Defendant DMA for breach of contract and bad faith.

FIRST CLAIM FOR RELIEF
(Breach of Contract ATX and NATIONSBUILDERS)

48. Plaintiff repeats and re-alleges each and every allegation set forth in Paragraphs 1 through 47.

49. On 11/15/14, Cesar Gutierrez was an insured under the ATX policy for Miller's vehicle. Defendant ATX owed contractual duties to its insured Cesar Gutierrez. Defendant NATIONSBUILDERS as the parent company of ATX owed contractual duties to its insured Cesar Gutierrez. From the inception of the claim, Art Kirkner who was VP of Claims for both Defendants ATX and NATIONSBUILDERS, personally handled the claim. Defendants ATX and NATIONSBUILDERS breached the contract of insurance with Gutierrez and both Defendants are liable for all damages, including consequential damages, from such a breach.

50. Defendants ATX and NATIONSBUILDERS breached the contract of insurance by failing to ever contact Gutierrez about this death claim until September, 2017. During this period, ATX and NATIONSBUILDERS never made any attempt to inform Gutierrez that he was a covered insured and that ATX had a duty to defend him and to provide coverage. ATX and NATIONSBUILDERS never informed Gutierrez of his contractual rights; demands made against the policy of insurance; his right to make a financial contribution to resolve the claim pursuant to *Miller*; excess exposure he was facing if the claim was not settled within the limits; and communications between ATX, NATIONSBUILDERS, and Plaintiff pursuant to *Miller*. ATX and NATIONSBUILDERS abdicated their responsibilities as Gutierrez's insurer by shifting onto Tracy Miller the burden to provide a timely Asset Affidavit to Plaintiff. ATX and NATIONSBUILDERS never took any actions to comply with Plaintiff's conditional demands and protect Gutierrez from exposure. ATX and NATIONSBUILDERS never sent the certified declaration page; never sent

1 Plaintiff an Asset Affidavit from Miller; and ATX and/or NATIONSBUILDERS never sent Plaintiff
2 its own Affidavit showing its attempts to secure an Asset Affidavit from Miller.

3 51. Defendants ATX and NATIONSBUILDERS were aware in November 2016 that
4 Gutierrez was sued by Plaintiff; ATX and NATIONSBUILDERS were then aware in December
5 2016 that Gutierrez had filed his own Answer and a Motion asking for the appointment of counsel.
6 Yet ATX and NATIONSBUILDERS did nothing, allowing a Default to be entered against Gutierrez.
7 In failing to inform Gutierrez of his contractual right to counsel as an insured and allowing him to be
8 Defaulted, Defendants ATX and NATIONSBUILDERS breached the contract as to their insured
9 Gutierrez.

10 52. After counsel was provided to Gutierrez after 9/12/17, ATX and NATIONSBUILDERS
11 continued to be in breach of contract, as they never informed Gutierrez of the proposal for mediation.
12 In rejecting mediation without ever informing Gutierrez about the proposal and the consequences,
13 Defendants ATX and NATIONSBUILDERS continued their breach of contract and violation of the
14 dictates of *Miller*.

15 53. Defendants ATX and NATIONSBUILDERS' multiple breaches of contract resulted in
16 Gutierrez being exposed to damages beyond the \$7,500 in available insurance. ATX and
17 NATIONSBUILDERS failed to protect their insured Gutierrez from an excess exposure when it was
18 reasonably feasible to do so. As a result of the breaches of contract by ATX and
19 NATIONSBUILDERS, a summary judgment of \$2.5 million dollars has been granted against
20 Gutierrez. Gutierrez has assigned to Plaintiff his rights against ATX and NATIONSBUILDERS as
21 ATX's parent company for the these breach of contract damages, which include the \$2.5 million
22 dollar summary judgment.

23 54. As a result of this breach of contract by Defendants ATX and NATIONSBUILDERS and
24 Gutierrez's assignment of rights against ATX and NATIONSBUILDERS, Plaintiff seeks from
25 Defendants ATX and NATIONSBUILDERS general damages in excess of \$15,000 and special
26 damages in excess of \$15,000.

27 55. Due to the conduct of these Defendants, it has become necessary for Plaintiff to retain
28 counsel and Plaintiff is entitled to reasonable attorney's fees and costs incurred therefore.

SECOND CLAIM FOR RELIEF
(Bad Faith ATX and NATIONSBUILDERS)

56. Plaintiff repeats and re-alleges each and every allegation set forth in Paragraphs 1 through 55.

57. Defendants ATX and NATIONSBUILDERS breached the implied duty of good faith and fair dealing that exists in their insurance contract with Gutierrez for this death claim. Art Kirkner, VP of Claims for both ATX and NATIONSBUILDERS, was personally handling this 11/15/14 wrongful death claim from its inception. As alleged in Paragraphs 49-53 above, ATX and NATIONSBUILDERS engaged in multiple acts and omissions which constitute bad faith under Nevada law.

58. Defendants ATX and NATIONSBUILDERS acted in bad faith when they invited a lawsuit against Gutierrez on this claim. ATX and NATIONSBUILDERS then failed to inform Gutierrez of his contractual rights. ATX and NATIONSBUILDERS sat back and watched Gutierrez appeal to the Court for a lawyer to defend him in this lawsuit. ATX and NATIONSBUILDERS did not send the file out to counsel to provide a defense; did not assign a lawyer to Gutierrez; and did not contact Gutierrez in prison and inform him of his contractual rights to counsel and to coverage. Instead, ATX and NATIONSBUILDERS allowed a Default to be entered against Gutierrez in April 2017. After counsel was provided to Gutierrez, ATX and NATIONSBUILDERS continued to act in bad faith, as it never informed Gutierrez of the proposal for mediation. ATX and NATIONSBUILDERS' multiple acts of bad faith resulted in Gutierrez being exposed to damages beyond the \$7,500 in insurance. ATX and NATIONSBUILDERS failed to protect their insured Gutierrez from an excess exposure when it was reasonably feasible to do so.

59. Defendants ATX and NATIONSBUILDERS' conduct, as described herein, was intended by Defendants to cause injury to the Gutierrez, or was carried on by ATX with such conscious disregard for the rights of Gutierrez, as to subject Gutierrez to cruel and unjust hardship, such as to constitute malice, oppression, or fraud under NRS § Section 42.005, thereby entitling Gutierrez and his assignees such as Plaintiff to punitive damages in an amount in excess of \$15,000 against Defendants ATX and NATIONSBUILDERS.

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1 60. As a result of Defendants ATX and NATIONSBUILDERS' bad faith, a summary
2 judgment of \$2.5 million dollars has been granted against Gutierrez. Gutierrez has assigned his
3 rights to Plaintiff for the acts of bad faith and resultant damages which include the \$2.5 million
4 dollar judgment. Based on the assignment of bad faith rights from Gutierrez, Plaintiff seeks from
5 Defendants ATX and NATIONSBUILDERS, general damages in excess of \$15,000 and special
6 damages in excess of \$15,000.

7 61. Due to the conduct of these Defendants, it has become necessary for Plaintiff to retain
8 counsel and Plaintiff is entitled to reasonable attorney's fees and costs incurred therefore.

9 **THIRD CLAIM FOR RELIEF**

10 (Violations of the Nevada Unfair Trade Practices Act by ATX and NATIONSBUILDERS)

11 62. Plaintiff repeats and re-alleges each and every allegation set forth in Paragraphs 1
12 through 61.

13 63. From the inception of this 11/15/14 wrongful death claim, Art Kirkner, VP of Claims for
14 both Defendant ATX and NATIONSBUILDERS, personally handled this claim. Defendant ATX
15 and its parent company Defendant NATIONSBUILDERS engaged in unfair trade practices in
16 violation of NUTPA by failing, *inter alia*, to ever treat as an Gutierrez insured who had a contractual
17 rights to coverage, to a defense if a lawsuit was filed against him, and to whom ATX and
18 NATIONSBUILDERS owed duties and obligations under the law, including *Miller*, such that ATX
19 and NATIONSBUILDERS violated NRS § 686A.310(1)(a),(b),(c),(e), and (n).

20 64. Defendants ATX and NATIONSBUILDERS owed a duty to Gutierrez under NUPTA, to
21 fully, fairly, reasonably, and promptly inform him of his rights as an insured, including his right to an
22 attorney for any lawsuit under the duty to defend and his rights as to coverage for this loss. ATX and
23 NATIONSBUILDERS breached their duties under NUPTA with wanton and reckless disregard for
24 Gutierrez's contractual rights, and in doing so acted in bad faith and in violation of NUPTA.

25 65. Defendants ATX and NATIONSBUILDERS' conduct in violating NUPTA was intended
26 by these Defendants to cause injury to Gutierrez, or was carried on by ATX and
27 NATIONSBUILDERS with such conscious disregard for the rights of Gutierrez, as to subject
28 Gutierrez to cruel and unjust hardship, such as to constitute malice, oppression, or fraud under NRS

1 § Section 42.005, thereby entitling Gutierrez and assignees such as Plaintiff to punitive damages in
2 an amount in excess of \$15,000 against ATX and NATIONSBUILDERS.

3 66. As a result of the violations of NUPTA by Defendants ATX and NATIONSBUILDERS,
4 a summary judgment of \$2.5 million dollars has been granted against Gutierrez. Gutierrez has
5 assigned to Plaintiff his rights for the violations of NUPTA and resultant damages which include the
6 \$2.5. million dollar judgment. Based on these NUPTA violations and the Gutierrez assignment,
7 Plaintiff seeks from Defendants ATX and NATIONSBUILDERS, compensatory damages in excess
8 of \$15,000 and punitive damages in excess of \$15,000.

9 67. Due to the conduct of these Defendants, it has become necessary for Plaintiff to retain
10 counsel and Plaintiff is entitled to reasonable attorney's fees and costs incurred therefore.

11 **FOURTH CLAIM FOR RELIEF**
12 **(Breach of Contract DMA)**

13 68. Plaintiff repeats and re-alleges each and every allegation set forth in Paragraphs 1
14 through 67.

15 69. Defendants ATX and NATIONSBUILDERS retained Defendant DMA to act as the
16 claims handler for the 11/15/14 death claim involving Minor I.R.'s father Mario Regalado. Given its
17 role as claims administrator for ATX and NATIONSBUILDERS who warrantied its work for ATX
18 and NATIONSBUILDERS via an indemnity and hold harmless agreement, Plaintiff alleges that
19 DMA was a joint venturer with ATX and NATIONSBUILDERS as to this claim. As a joint
20 venturer, DMA owed contractual rights and duties to Gutierrez once it began administering the
21 claim. Defendant DMA's adjusters worked for years on this claim with Art Kirkner, VP of Claims
22 for ATX and NATIONSBUILDERS.

23 70. As a joint venturer, Defendant DMA breached the contract of insurance by failing to ever
24 contact Gutierrez about the claim until 9/12/17. Before 9/12/17, DMA never made any attempt to
25 contact Gutierrez and inform him that he was a covered under the ATX policy and that ATX and
26 NATIONSBUILDERS had a duty to defend him and to provide coverage. DMA's actions show that
27 because Gutierrez was incarcerated, DMA did not consider Gutierrez an insured to whom DMA
28 owed duties to under the ATX contract. DMA never informed Gutierrez of his contractual rights;
demands made against the policy; his right to make a financial contribution to resolve the claim

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1 pursuant to *Miller*; excess exposure he was facing if the claim was not settled within the limits; and
2 communications between DMA and Plaintiff as required by *Miller*. DMA abdicated its
3 responsibilities as Gutierrez's insurer by shifting onto Tracy Miller the burden to provide a timely
4 Asset Affidavit to Plaintiff. DMA never took any actions to comply with Plaintiff's conditional
5 demands and protect Gutierrez from exposure. DMA never sent the certified declaration page; DMA
6 never sent Plaintiff an Asset Affidavit from Miller; and DMA never sent Plaintiff an Affidavit from
7 ATX showing ATX's attempts to secure an Asset Affidavit from Miller.

8 71. Defendant DMA was aware in November 2016 that Gutierrez was sued by Plaintiff;
9 DMA was then aware in December 2016 that Gutierrez had filed his own Answer and a Motion
10 asking for the appointment of counsel. Yet DMA did nothing, allowing a Default to be entered
11 against Gutierrez. As a joint venturer, in failing to inform Gutierrez of his contractual right to
12 counsel as an insured and allowing him to be Defaulted, Defendants DMA breached the contract as to
13 insured Gutierrez.

14 72. After counsel was provided to Gutierrez in September 2017, Defendant DMA as a joint
15 venturer continued to be in breach of contract, as it never informed Gutierrez of the proposal for
16 mediation. In rejecting mediation without ever informing Gutierrez about the proposal and the
17 consequences, DMA continued its breach of contract and violation of the dictates of *Miller*.

18 73. As a joint venturer, Defendant DMA's multiple breaches of contract resulted in
19 Gutierrez being exposed to damages beyond the \$7,500 of available insurance. DMA failed to
20 protect its insured Gutierrez from an excess exposure when it was reasonably feasible to do so. As a
21 result of the breaches of contract by DMA, a summary judgment of \$2.5 million dollars has been
22 granted against Gutierrez. Gutierrez has assigned to Plaintiff his rights against DMA for the these
23 breach of contract damages, which include the \$2.5 million dollar summary judgment.

24 74. As a result of this breach of contract by Defendant DMA and Gutierrez's assignment of
25 rights against DMA, Plaintiff seeks from DMA general damages in excess of \$15,000 and special
26 damages in excess of \$15,000.

27 75. Due to DMA's conduct, it has become necessary for Plaintiff to retain counsel and
28 Plaintiff is entitled to reasonable attorney's fees and costs incurred therefore.

FIFTH CLAIM FOR RELIEF
(Bad Faith DMA)

76. Plaintiff repeats and re-alleges each and every allegation set forth in Paragraphs 1 through 75.

77. Defendants ATX and its parent company Defendant NATIONSBUILDERS retained Defendant DMA to act as the claims handler for the 11/15/14 death claim involving Minor I.R.'s father Mario Regalado. DMA was a joint venturer with Defendants ATX and NATIONSBUILDERS as to this claim. As a joint venturer, DMA owed contractual rights and duties to Gutierrez as to the administration of this claim. DMA breached the implied duty of good faith and fair dealing as to its contractual duties owed to Gutierrez for this death claim. As alleged in Paragraphs 69-73 above, DMA engaged in multiple acts and omissions which constitute bad faith under Nevada law. Given its actions and omissions, DMA acted in bad faith and this resulted in Gutierrez being exposed to damages beyond the \$7,500 in available insurance.

78. Defendant DMA's conduct was intended by Defendant to cause injury to Gutierrez, or was carried on by this Defendant with such conscious disregard for the rights of Gutierrez, as to subject Gutierrez to cruel and unjust hardship, such as to constitute malice, oppression, or fraud under NRS § Section 42.005, thereby entitling Gutierrez and his assignees such as Plaintiff to punitive damages in an amount in excess of \$15,000 against DMA.

79. As a result of Defendant DMA's bad faith, a summary judgment of \$2.5 million dollars has been granted against Gutierrez. Gutierrez has assigned his rights to Plaintiff for the acts of bad faith and resultant damages which include the \$2.5 million dollar judgment. Based on the assignment of bad faith rights from Gutierrez, Plaintiff seeks from DMA general damages in excess of \$15,000 and special damages in excess of \$15,000.

80. Due to DMA's conduct, it has become necessary for Plaintiff to retain counsel and Plaintiff is entitled to reasonable attorney's fees and costs incurred therefore.

WHEREFORE, Plaintiff prays for a judgment against Defendants ATX, NATIONSBUILDERS, and DMA, as follows:

1. For general damages in a sum in excess of \$15,000.00;

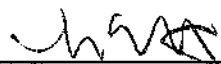
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2. For special damages in an sum in excess of \$15,000;
3. For punitive damages in a sum in excess of \$15,000;
4. For reasonable attorneys fees, costs, and prejudgment interest; and,
5. For such other and further relief as the Court may deem appropriate.

DATED this 30 day of May, 2019.

CRAIG P. KENNY & ASSOCIATES

By:


LAWRENCE E. MITTIN, ESQ.

Nevada Bar #5428
501 S. 8th Street
Las Vegas, NV 89101
Attorney for Plaintiff

NBIS 000993

EXHIBIT 12

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16 Attorneys for Third Party Defendants
17 NATIONSBUILDERS INSURANCE SERVICES, INC.

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20 KELLY HAYES, as Natural Parent of Minor
21 I.R.,

22 Plaintiffs,

23 vs.

24 ATX PREMIER INSURANCE COMPANY;
25 NATIONSBUILDERS INSURANCE
26 SERVICES, INC. DMA CLAIMS
27 MANAGEMENT, INC.; DOES I through X,
28 inclusive; and ROE CORPORATIONS,

Defendants.

CASE NO. 2:18-cv-01938-GMN-NJK

**DEFENDANTS ATX PREMIER
INSURANCE COMPANY AND
NATIONSBUILDERS INSURANCE
SERVICES, INC.'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

NBIS 000995

2:18-cv-01938-GMN-NJK

I. Plaintiff's Framed Issue for Summary Judgment is Procedurally Improper

Defendants ATX Premier Insurance Company ("ATX") and Nationsbuilders Insurance Services Inc. ("NBIS") submit this opposition to Kelly Hayes' ("Hayes") Motion for Summary Judgment in conjunction with their affirmative motions for Summary Judgment. Plaintiff's motion fails to demonstrate any grounds for Summary Judgment or any claim to which she is entitled to Partial Summary Judgment (FRCP 56(a)) and for that reason the motion should be denied.

The Notice of Motion states that Hayes "files this motion for summary judgment and as a matter of law that defendants failed to inform insured Cesar Gutierrez of the offers to settle within policy limits." This is not a legal issue, and it is not an application of law to fact. It does not establish a cause of action or eliminate any affirmative defense. It is simply a fact, which might be a part of a bad faith cause of action if the balance of the elements are proven, namely: (1) that there was a duty to provide notice in light of the fact that the offers to settle did not involve Gutierrez, (2) that the failure to give notice prevented Gutierrez from taking action to protect himself, or (3) that the failure led to an excess verdict. Plaintiff simply ignores the rest of the cause of action.

Partial summary judgment is inappropriate where the issue "is merely a matter of proof in the general step toward damages. It is not an end within itself." *Sparks v. England* (W.D.Mo. 1941) 1 F.R.D. 688, 688. There, the court found that a plaintiff was not entitled to have a claim of ownership of a burial plot summarily adjudicated, where the issue was merely an element of a trespass claim. Also, under the "Rules of Civil Procedure either party may move for a summary judgment in his favor as to "all or any part thereof." However, such a judgment should be granted only when the judgment is to the whole of any one of the several claims joined in the action. (*Triangle Ink & Color Co. v. Sherwin-Williams Co.*, 64 F.R.D. 536, 537 (N.D.Ill. 1974))

Here, adjudicating whether notice to Gutierrez was given is procedurally improper and the motion should be denied.

II. Relevant Factual Background

As set forth in Defendant ATX Premier Insurance Company ("ATX") and Nationsbuilders Insurance Services, Inc. ("NBIS") (collectively, "Defendants"), this case is postured as "bad faith" but

1 is in reality a failed “set up” to try and collect more than the contractually-agreed policy limit of the
2 ATX policy.

3 Following the accident and notice to DMA, NBIS and ATX’ third party claim administrator,
4 the wrongful death claim by Melissa Moses, Regalado’s widow, and the claim for property damage to
5 his bicycle were resolved, and releases taken. Traci Miller, the Named Insured on the ATX policy
6 was advised that there could be exposure in excess of the policy limits and that a lawyer would be
7 hired for her if a suit was filed. (See Declaration of John H. Podesta in Support of Opposition to
8 Plaintiff’s MSJ; Ex. 1).

9 Defendants do not dispute the delivery or the content of the three conditional settlement
10 demands. Defendants dispute, however, that there was any legal obligation to send these to Gutierrez,
11 since (1) the settlement demands never contained any condition that required input or consent from
12 Gutierrez – only Traci Miller; and (2) the letters never demanded money in excess of the policy limits
13 of the ATX policy. Therefore, not only is this motion procedurally improper and seeks inappropriate
14 relief, but should be denied on its merits because there was no obligation to notify Gutierrez. (Ex. 2).

15 Furthermore, there are no damages to Gutierrez; when the case proceeded to litigation and a
16 defense was being provided by ATX, Mr. Mitten proposed a settlement directly with Gutierrez that
17 included an assignment of all his rights under the ATX policy to plaintiffs, and an agreement that a
18 future judgment could be entered against him in the amount of \$2,500,000. In exchange for those two
19 promises, Kelly Hayes would agree never to seek to recover against Gutierrez for the agreed judgment
20 to be entered sometime in the future. Gutierrez signed the documents. (Exhibit 3.) Months after
21 Gutierrez was fully protected, Plaintiff moved to enter a judgment. The motion was obviously not
22 opposed since Gutierrez’ rights to coverage and a defense belonged to Mr. Mitten’s client by virtue of
23 the assignment, and therefore he had no right or incentive to oppose the motion. (Exhibit 4)

24 **III. Allstate v Miller Confirms This Motion Should be Denied**

25 Plaintiff has placed great emphasis on *Allstate Ins. Co. v. Miller* (2009) 125 Nev. 300 [212
26 P.3d 318] and its impact on Defendants’ liability in this case. (Ex. 5). *Miller* is important to Nevada
27 jurisprudence relating to insurer bad faith; there are two important holdings. First, conditions placed
28

1 on settlement demands, in order to be bad faith to reject it, must arise out of contractual obligations in
2 the policy. Demands unrelated to the contract obligations are not 'bad faith' to reject. *Id.* at 317-320.
3 Second, it holds that a failure to notify an insured of a settlement demand "may" be bad faith if the
4 failure "caused" the settlement not to be consummated *and* damages to the insured result therefrom.
5 *Id.* at 313-315.

6 **1. Background of Miller.**

7 As with this case, *Miller* involved an auto accident, and there was a low limits \$25,000 policy
8 covering the insured; the loss exceeded the policy limit. Allstate offered the policy limits in settlement
9 immediately. Allstate notified the insured of the potential excess exposure, just as AutoTex did here.
10 The plaintiff switched attorneys, however, and the original one placed a lien on the file. Allstate
11 offered to issue a policy-limits check with both the current and the original attorney's names on it.
12 That offer was rejected, and current counsel suggested that Allstate interplead the policy limits to let
13 the court determine the original counsel's proper fee. Allstate originally refused, and then agreed to
14 file the interpleader after the settlement demand had expired. While this settlement offer was pending,
15 however, Allstate did not advise the insured of the settlement demand that included the interpleader,
16 and there was evidence that the insured might have contributed to the settlement or paid for the
17 interpleader to effect the settlement.

18 Significantly, after the settlement fell through, the plaintiff's action against the insured then
19 proceeded to trial and judgment in the amount of \$703,619.88. Prior to trial, the plaintiff offered to
20 stipulate to a judgment if Allstate agreed, and in exchange he would cap the insured's liability;
21 however, the stipulation was for an amount in excess of the Allstate policy limits. After trial, Miller,
22 the insured, filed the action against Allstate, who requested special interrogatories regarding three
23 different theories of bad faith presented by plaintiff: (1) Allstate's failure to file an interpleader
24 complaint; (2) its failure to inform Miller of Hopkins' interpleader offer; and (3) its refusal to agree to
25 Hopkins' excessive stipulated judgment thereby forcing the case to trial against the insured. The judge
26 refused the special interrogatories and the jury rendered a general verdict against Allstate. Allstate
27 appealed.
28

1 The Supreme Court rejected the first and third theories of bad faith, since nothing in the policy
2 required Allstate to take care of liens, and the policy limit was the extent of Allstate's contractual
3 obligation. *Id.* at 317-20. Since Allstate had no contractual duty to perform either, there was no "bad
4 faith" for not doing so, and the failure was therefore not an unreasonable denial. The Court felt that
5 the "duty to notify" of the interpleader was a viable theory of bad faith, but a new trial was required
6 because court couldn't determine which of the three theories of bad faith that the jury found credible.
7 *Id.* at 318-23.

8 **2. Notifying Gutierrez was an idle act because he was not in a position to participate,**
9 **the failure to notify did not result in damages to the Insured, and no condition was**
10 **directed at Gutierrez.**

11 With regard to the second theory, the failure to inform, the Nevada Supreme Court stated:
12 "Allstate breached its duty to inform when it failed to inform Miller of the offer. *Miller could have*
13 *chosen at that time to hire independent counsel to review the offer and pursue any available options,*
14 *such as initiating an interpleader complaint at his expense or contributing additional funds to Allstate's*
15 *\$25,000 settlement offer in return for a release from Hopkins. The failure to inform must be in the*
16 *context of the insured arguably being able to do something, and to be liable there must be proof that*
17 *the failure to inform (not other actions) caused any damage, i.e. the trial and judgment. *Id.* at 305.*

18 This factual background shows why *Miller* doesn't apply here. First, there was no condition
19 on settlement that was directed at Gutierrez, unlike the interpleader in *Miller*. The conditions were
20 relative to Miller's assets, not Gutierrez. There was nothing that Gutierrez could have done to comply
21 with the conditions of settlement. Therefore, notifying him would be an idle act, at least in terms of
22 his ability to conclude the settlement. Further, as confirmed by Plaintiff's counsel at Gutierrez'
23 deposition, Gutierrez was in jail. He had no assets. The underlying case did not proceed to trial and
24 judgment, unlike in *Miller*, because Gutierrez might have been able to effect a settlement had notice
25 been given. Therefore, there is no evidence that failing to notify caused the judgment or any damage
26 to Gutierrez whatsoever. In fact, a cynic might observe that the failure to notify Gutierrez allowed
27 him to enter a deal where he could settle for no money and obtain complete exoneration from Hayes.
28

1 **3. Pursuant to *Miller*, failing to obtain an affidavit of efforts to obtain assets from Miller,**
2 **is not based on any contractual duty of ATX and therefore cannot be the basis for**
3 **bad faith.**

4 Aside from whether Gutierrez should have been notified in a general sense, Defendants further
5 maintain that there was no reasonable settlement demand that was rejected. In order to be liable the
6 insurer must have *unreasonably* rejected the terms of a *reasonable* settlement demand. A reasonable
7 settlement term, in turn, must be one that is contract based, or that is implied in the duty of good faith.
8 *Id.* at 317-20. It is not enough, as plaintiff implies, that compliance with the condition does not take
9 a great deal of effort. For example, the *Miller* Court stated that Allstate was not under a contractual
10 obligation to resolve all lien claims, and thus the claim that it failed to interplead the limits had no
11 merit and was not a rejection of a reasonable condition. *Id.* at 318. Similarly, there was no contractual
12 basis that Allstate agree to a stipulated judgment in excess of the policy limits and thus the refusal to
13 do so was not bad faith. Either of these were of minimal effort, but Allstate's refusal could not be the
14 basis of a bad faith claim. However, because the court refused the request for special interrogatories,
15 the record didn't disclose the theory on which the verdict rested. Two of the three theories relied on
16 failures by Allstate to comply with demands that were not based on the contract, which would not
17 support a theory of bad faith rejection of a reasonable settlement demand.

18 As the record in this case is clear, ATX agreed to pay the policy limits and to provide a certified
19 declarations page to establish that. It attempted to have Traci Miller fill out an asset affidavit by
20 sending it to her at the last known address. All contract-related conditions on settlement—those that
21 relate to defense or indemnity of the insured and attempting communications with the insured—were
22 complied with by ATX.

23 The two conditions in Mersch's demands that were not complied with are: (1) a demand that
24 DMA's principal declare what its efforts were to locate Traci Miller's assets without providing any
25 guidelines or a draft of what information is required; and (2) a revised release to be drafted by DMA
26 to Julie Mersch's satisfaction. Mersch never provided acceptable language, but a revised release was
27 never rejected if other conditions could be met. However, the insurer signing a declaration regarding
28

1 ATX or DMA's efforts to obtain the insured's assets information has no basis in the insurance contract
2 and therefore, pursuant to *Miller*, could not subject ATX or NBIS to liability for bad faith.
3 *Id.* at 317-20.

4 IV. Response to Specific Portions of Motion

5 The following passages are highlighted specifically to demonstrate the red herrings in
6 plaintiff's case and motion.

7 **MSJ at 13-16.** Plaintiff argues that Summary Judgment was *granted* in plaintiff's favor in the
8 amount of \$2.5million. Given Cesar Gutierrez' exposure to a potential future judgment, he argues,
9 Gutierrez entered into an assignment of his bad faith rights. As stated above, this characterization of
10 the facts is out of sequence, and therefore misleading. Gutierrez was "exposed" to an excess judgment
11 the moment that he got into Traci Miller's car and drove dangerously. In fact, ATX was defending
12 Gutierrez in the *Regalado* lawsuit, when he agreed to a settlement by Plaintiff counsel here. The
13 settlement included an agreement that a \$2.5million judgment could be entered in the future. The
14 judgment was entered *after the settlement* was finalized and Gutierrez was completely protected. This
15 action is to collect the amount of the voluntary settlement.

16 **MSJ at 3:17-4:3.** NBIS is not an insurance company, and reference to its ownership of other
17 companies is utterly irrelevant. NBIS objects to this section of the brief on the grounds of relevance,
18 and lack of foundation. In the context of this case, NBIS retained financial responsibility for claims
19 relating to policies that were issued prior to the sale of ATX in 2015. However, NBIS is not a party
20 to the contract, and it does not adjust claims – the only relevant features to liability for breach of
21 contract or bad faith. ATX is the insurer and has never claimed otherwise.

22 **MSJ at 4:4-4:18.** Plaintiff absurdly throws mud on the corporate counsel of NBIS
23 Construction and Transport Insurance Services, Inc. ("CTIS"). The testimony was merely that counsel
24 had drafted a letter, but that Rita Westfall of DMA reviewed and approved the letter and sent it over
25 her signature. The remainder is mere distraction. Mr. Mitten, the architect of the assignment and
26 covenant not to execute, claims that he was misled by that letter into suing the wrong entity, AutoTex
27 MGA. This feigned "deception" is itself incredible. Before this action was commenced, Mr. Mitten
28

1 had the entire ATX policy; the assignment by Gutierrez that he sues upon and which he drafted recites
2 that Gutierrez was an insured under the policy issued by ATX Premier Insurance Company. Exhibit
3 11 to Plaintiff's motion includes a copy of the check issued by CTIS that clearly states it is for the
4 benefit of ATX Premier Insurance Company. Therefore, the Court should see through this mud-
5 slinging and not allow the record before it to be tainted. There is no deception by the Defendants.

6 MSJ at 5:13-5:15. Plaintiff asserts that NBIS is "handling" the claim and that Art Kirkner
7 was "handling" the claim. This is a transparent attempt to misstate the evidence to support their
8 otherwise unsupportable claim that NBIS is a proper party in this case. It is completely beside the
9 point of what the motion seeks. In fact, NBIS is akin to a reinsurer that has no direct involvement in
10 this case. It is not a party to the insurance contract, and it has no direct responsibility for handling
11 claims.

12 V. Conclusion

13 First, this is an improper Motion for Partial Summary Judgment, seeking judgment relative to
14 a "fact" that is part of a cause of action.

15 Second, Plaintiff's entire theory of liability based on *Miller* is misplaced. The condition
16 requiring an affidavit setting for the insured's assets was not "reasonable" and therefore there is no
17 bad faith in failing to provide one. The provision of an affidavit from a "principal" concerning assets
18 of the insured has nothing to do with the promise of defense or indemnity from the insurer. Moreover,
19 Plaintiff has not and cannot show that there was any damage to Gutierrez from a failure to provide
20 notice of settlement demands.

21 Finally, plaintiff's motion is replete with mischaracterizations concerning corporate status of
22 NBIS that are attempts to paint the defense in a negative light and have *absolutely nothing* to do with
23 even their request for a "judgment" concerning whether Gutierrez was notified or not, such surplusage
24 should be disregarded.


25 ///

26 ///

27 ///

1 Date: November 6, 2019

2 WILSON ELSE MOSKOWITZ
3 EDELMAN & DICKER, LLP

4 By: 
5 John Podesta (NV Bar No. 7487)
6 Christopher Phipps (NV Bar No. 3788)
7 Attorneys for Defendants
8 ATX Premier Insurance Company and
9 NationsBuilders Insurance Services
10
11
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13
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NBIS 001003

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on November 6, 2019, I served a true and correct copy of the foregoing:
as follows:

**DEFENDANTS ATX PREMIER INSURANCE COMPANY NATIONSBUILDERS
INSURANCE SERVICES, INC'S OBJECTIONS TO EVIDENCE OFFERED IN
SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

- ☐: by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in San Francisco, California;
- ☒: via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐: via hand-delivery to the addressees listed below
- ☐: via facsimile;
- ☐: by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

By:


Marilee Barlow

NBIS 001004

2:18-cv-01938-GMN-NJK

SERVICE LIST

Lawrence Mittin
Craig P. Kenny & Associates
501 S. 8th Street
Las Vegas NV 89101
T: 702-380-2800
F: 702-380-2833
E: lmittin@cpklaw.com
Attorney for Plaintiff
Kelly Hayes

NBIS 001005

EXHIBIT 13

1 John H. Podesta (NV Bar No. 7487)
Christopher Phipps (NV Bar No. 3788)
2 WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
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6

Address for Personal Service Only
7 WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
8 300 South 4th Street, Ste. 1100
Las Vegas, NV 89101
9

Attorneys for Defendants
10 ATX PREMIER INSURANCE COMPANY
NATIONSBUILDERS INSURANCE SERVICES,
11 INC.

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**
14

15 KELLY HAYES, as Natural Parent of Minor
I.R.,

16 Plaintiffs,

17 vs.

18 ATX PREMIER INSURANCE COMPANY;
NATIONSBUILDERS INSURANCE
19 SERVICES, INC. DMA CLAIMS
MANAGEMENT, INC.; DOES I through X,
20 inclusive; and ROE CORPORATIONS,

21 Defendants.

CASE NO. 2:18-cv-01938-GMN-NJK

**DEFENDANT NATIONSBUILDERS
INSURANCE SERVICES, INC.'s MOTION
FOR SUMMARY JUDGMENT OR
IN THE ALTERNATIVE MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Action Filed: 05/06/19
Trial Date: None Set

22 **TO PLAINTIFF AND THEIR ATTORNEY OF RECORD:**
23

24 **PLEASE TAKE NOTICE** that Defendant NATIONSBUILDERS INSURANCE SERVICES,
INC. ("NBIS") will and hereby does move this court for an order granting Summary Judgment or, in
25 the Alternative Partial Summary Judgment in its favor of the following issues:
26
27
28


1 1. That NBIS is not a party to the insurance contract between Defendant ATX Premier
2 Insurance Company and Traci Miller, and therefore is not liable for breach of contract with respect to
3 Plaintiff.

4 2. That NBIS is not a party to the insurance contract between Defendant ATX Premier
5 Insurance Company and Traci Miller, and took no part in the claims administration of the Regalado
6 matter, therefore is not liable for insurance bad faith.

7 3. That NBIS is not a party to the insurance contract between Defendant ATX Premier
8 Insurance Company and Traci Miller, and is not a claims administrator or agent of ATX Premier, and
9 therefore is not liable for breach of NRS 686A.310.

10
11 Dated: November 7, 2019

WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP

12
13
14 By: 
15 JOHN H. PODESTA (NV Bar No. 7487)
16 CHRISTOPHER PHIPPS (NV Bar No. 3788)
17 525 Market Street, 7th Floor
18 San Francisco, California 94105-2725
19 (415) 625-9251
20 *Attorneys for Defendants*
21 *ATX PREMIER INSURANCE COMPANY*
22 *NATIONSBUILDERS INSURANCE*
23 *SERVICES, INC.*
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction/Summary of Argument

This action is ostensibly one to recover an insurance “bad faith” judgment brought by Kelly against the insurer for the party that allegedly caused the death of Mario Regalado, the father of Isabella Regalado. This motion is brought in conjunction with defendants’ separate motions for summary judgment, which detail the claim, the claim handling, and the settlement between Hayes and Gutierrez. For purposes of this motion, however, Defendant NationsBuilders Insurance Services, Inc. (“NBIS”) merely draws the Court’s attention to the facts underlying the sole legal issue to be decided in this motion, as summarized herein. Simply, NBIS is NOT an insurance company; it is NOT a party to the insurance contract; and it is NOT a claims administrator or claims agent for ATX Premier Insurance Company (“ATX”), the company that issued the policy in question. It therefore is not a proper party to this lawsuit.

On May 3, 2019, Plaintiff filed her Third Amended Complaint against defendants, including NBIS, based on the apparent belief that NBIS was a party to the policy issued by ATX Premier Insurance Company (“ATX”). TAC ¶ 4. ATX, at the time it issued the policy, was an insurance company incorporated under the laws of Texas but licensed to do business in Nevada. In fact, NBIS was the stockholder of ATX the time of the underlying loss. However, NBIS is not and has never been an insurance company. Rather, NBIS is a holding company that, as part of the sale of ATX, agreed to indemnify ATX for losses associated with the pre-sale policies, akin to a re-insurer to insurance companies.

As set forth in response to Request for Admission, Plaintiff is fully aware of the separate nature of these two entities, and that NBIS is not a party to the contract. Specifically, she has admitted: 1) NBIS is not a party to the ATX insurance policy at issue; 2) NBIS did not issue the ATX policy; 3) NBIS is not an admitted insurance company in Nevada; 4) NBIS is not a Surplus Lines Insurance Company in Nevada; and 5) NBIS is a separate company from ATX. Plaintiff’s claims herein are, charitably, based on the notion that counsel’s difficulty in determining the corporate relationship justifies holding NBIS in the litigation. However, the claims are not based on Nevada law.

///

II. Undisputed Material Facts and Reference to Evidence

ATX is an insurance company that issued policy number ANV00000230 to Traci Miller, in effect on November 14, 2014, covering the 1992 Acura and containing an “each person” policy limit of \$15,000 policy limit. (see copy of ATX policy, Attached to the declaration of John H Podesta, herein after labeled “Ex.” (Ex. 1) NBIS is not a party to that insurance contract and the policy was not issued by NBIS. (Exs. 1, 8).

On May 3, 2019, Plaintiff filed her Third Amended Complaint, in which she alleges that “[a]s the *parent* company of ATX, [NBIS] is an insurer of the Miller ATX policy and as such, it was governed by NUPTA and it had contractual obligations to Gutierrez for this 11/15/14 claim; these obligations included the duty to defend; the duty to provide coverage; the covenant of good faith and fair dealing; and communication/disclosure duties as required by *Allstate v. Miller*.” TAC ¶ 3.

Plaintiff’s amended responses to NBIS’ Requests for Admission confirm that: 1) NBIS is not a party to the ATX insurance policy at issue; 2) NBIS did not issue the ATX policy; 3) NBIS is not an admitted insurance company in Nevada; 4) NBIS is not a Surplus Lines Insurance Company in Nevada; and 5) NBIS is a separate company from ATX. (Ex. 2) NBIS has no claims adjusters and conducts no oversight of claims handling operations. (Declaration of John Parker ¶¶ 5, 7). NBIS is holding company that did not participate in issuing the policy or handling the claims. While NBIS-affiliated companies engage in claim oversight activities—notably NBIS Construction and Transport Insurance Services (“CTIS”)—it is a completely separate company from NBIS.

Following Plaintiff’s admissions, counsel for NBIS twice requested that NBIS be dismissed from the lawsuit, as there was no longer any basis for maintaining claims for breach of contract and bad faith where NBIS was not even a party to the contract at issue. (Exs. 3, 4). Both times Plaintiff refused to dismiss NBIS, raising incoherent arguments unsupported by the facts or the law. (Exs. 2, 5).

In light of the foregoing undisputed facts, NBIS was forced to bring the instant motion.

III. Standard of Law

Summary judgment is appropriate when the moving party demonstrates no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). Under summary judgment practice, the

1 moving party always bears the initial responsibility of informing the district court of the basis of its
 2 motion, and identifying those portions of “the pleadings, depositions, answers to interrogatories, and
 3 admissions on file together with affidavits, if any,” which it believes demonstrate the absence of a
 4 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “[W]here the
 5 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment
 6 motion may properly be made in reliance solely on the pleadings, depositions, answers to
 7 interrogatories, and admissions on file.” *Id.* at 324 (internal quotations omitted).

8 If the moving party meets its initial responsibility, the burden then shifts to the opposing party to
 9 establish that a genuine issue as to any material fact actually does exist. *Matsushita Elec. Indus. Co. v.*
 10 *Zenith Radio Corp.*, 475 U.S. 574, 585–87 (1986); *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S.
 11 253, 288–89 (1968). In attempting to establish the existence of this factual dispute, the opposing party
 12 may not rely upon the denials of its pleadings, but is required to tender evidence of specific facts in the
 13 form of affidavits, and/or admissible discovery material, in support of its contention that the dispute
 14 exists. Fed. R. Civ. P. 56(c). The opposing party must demonstrate that the fact in contention is material,
 15 i.e., a fact that might affect the outcome of the suit under the governing law, *Anderson v. Liberty Lobby,*
 16 *Inc.*, 477 U.S. 242, 248 (1986), and that the dispute is genuine, i.e., the evidence is such that a
 17 reasonable jury could return a verdict for the nonmoving party. *Id.* at 251–52.

18 IV. Legal Argument

19 a. NBIS Could Not Breach Insurance Contract to Which It Is Not A Party.

20 “Nevada law requires the plaintiff in a breach of contract action to show (1) the existence of a
 21 valid contract [between the parties]; (2) a breach by the defendant; and (3) damage as a result of the
 22 breach.” *Saini v. Int’l Game Tech.*, 434 F.Supp.2d 913, 919-20 (D. Nev. 2006). It follows that a party
 23 against whom breach is alleged must actually be a party to the contract, such that a duty between
 24 promisor and promisee is established. In other words, one cannot breach a contract to which they were
 25 not a party. *See* Restatement (Second) of Contracts § 9 (1981).

26 Plaintiff admits that NBIS is not a party to the ATX Policy, that NBIS did not issue the ATX
 27 Policy, and that NBIS is a separate company from ATX. (Ex. 2). A matter admitted to in response to a
 28 written request is conclusively established unless the court, on motion, permits the admission to be

1 withdrawn or amended. Fed. R. Civ. P. 36(b). Plaintiff's breach of contract claim thus fails as a matter
2 of law.

3 **b. NBIS Cannot Have Acted in Bad Faith Absent Insurer/Insured Relationship.**

4 Plaintiff's Second Claim for Relief as to NBIS similarly fails as a matter of law. A breach or
5 failure to perform constitutes "bad faith" only where the relationship between the parties is that of
6 insurer and insured. *See Pemberton v. Farmers Ins. Exchange*, 109 Nev. 789, 793 (1993); *Allstate Ins.*
7 *Co. v. Miller*, 125 Nev. 300 (2009); *Drennan v. Maryland Cas. Co.*, 366 F.Supp.2d 1002, 1005-06 (D.
8 Nev. 2005). As already mentioned, Plaintiff has admitted to the fact that NBIS is neither a party to the
9 insurance contract nor an insurance company, a fact thus conclusively established. (Ex. 2)

10 Therefore, it is impossible for NBIS to have acted in bad faith with respect to Plaintiff's
11 supposed bad-faith insurance claim. For this reason NBIS is entitled to judgment as a matter of law.

12 **c. NBIS Cannot be Liable Under NRS 686A.310 as It Is Not an Insurer and Did Not**
13 **Participate in Claims Handling**

14 NRS 686A.310, the Nevada Unfair Claims statute proscribes certain activities of "insurers". *See*
15 *Sonoma Springs Ltd. P'ship v. Fidelity and Deposit Co. of Maryland*, 2019 WL 3848790 at *7 (D.
16 Nevada August 14, 2019) (holding that the statute applies more narrowly than the common law tort and
17 is "limited in proscribing specific actions taken by an insurer.") (quotations omitted); *see also Zurich*
18 *American Ins. Co. v. Coeur Rochester, Inc.*, 720 F.Supp.2d 1223, 1236 (D. Nevada June 24, 2010)
19 ("Unlike a cause of action for bad faith, the provisions of Nev.Rev.Stat. § 686A.310 address *the manner*
20 *in which an insurer handles an insured's claim* whether or not the claim is denied.") (emphasis added).
21 NBIS is not an insurer (as admitted by plaintiff) and it did not issue the policy at issue, Therefore is not
22 subject to the duties of an insurer in this context or subject to the penalty provisions in NRS
23 686A.310(2).

24 Additionally, and notwithstanding plaintiff's claims of a "parent" relationship, or involvement,
25 neither NBIS nor any employee of NBIS participated in this claim in any respect. The only two
26 identified persons, Art Kirkner and John Parker, who were not employees of the third party claims
27 handler, DMA Claims, are employees of NBIS Construction and Transport Insurance Services, Inc., a
28 completely separate corporation. NationsBuilders Insurance Services, has neither an obligation to adjust

1 the claim, the ability to engage in any of the prescribed acts, nor any direct involvement in this claim.
2 (Decl. of John Parker ¶¶ 5-7).

3 **V. CONCLUSION**

4 Both Plaintiff's First and Second Claims for Relief against NBIS failure as a matter of law for
5 the simple reason that NBIS is not the insurer to Plaintiff under the insurance policy at issue. NBIS is
6 entitled to judgment on such basis. Therefore, NBIS' motion should be granted.

7 Date: November 7, 2019

WILSON ELSEER MOSKOWITZ,
EDELMAN & DICKER, LLP

8
9
10 By: 

JOHN H. PODESTA (NV Bar No. 7487)
CHRISTOPHER PHIPPS (NV Bar No. 3788)
525 Market Street, 7th Floor
San Francisco, California 94105-2725
(415) 625-9251
Attorneys for Defendants
ATX PREMIER INSURANCE COMPANY
NATIONSBUILDERS INSURANCE SERVICES,
INC.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on November 7, 2019, I served a true and correct copy of the foregoing:
as follows:

DEFENDANT NATIONSBUILDERS INSURANCE SERVICES, INC.'s MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE MOTION FOR PARTIAL SUMMARY JUDGMENT

- ☐: by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in San Francisco, California;
- ☒: via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐: via hand-delivery to the addressees listed below
- ☐: via facsimile;
- ☐: by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

By: 

Marilee Barlow

SERVICE LIST

Lawrence Mittin
Craig P. Kenny & Associates
501 S. 8th Street
Las Vegas NV 89101
T: 702-380-2800
F: 702-380-2833
E: lmittin@cpklaw.com
Attorney for Plaintiff
Kelly Hayes

EXHIBIT 14



April 9, 2020

Via E-mail

(wvolk@nevadafirm.com)

William P. Volk
HOLLEY DRIGGS
400 South 4th Street
Suite 300
Las Vegas, Nevada 89101

Re: *Sanchez v. Bon et al.*
Case No. A-15-722815
Case No. 2:19-cv-02196-RFB-VCF

Dear Mr. Volk,

On March 30, 2020, your office filed the Notice of Permanent Injunction and Automatic Stay Re: Liquidation of Windhaven National Insurance Company f/k/a ATX Premier Insurance Company ("Windhaven"). Upon careful review of the Order Appointing Liquidation, Permanent Injunction, and Notice of Automatic Stay issued by the Texas District Court ("Liquidation Order"), we do not believe the Liquidation Order applies to ATX Premier Insurance Company ("ATX").

As I am sure you are aware, ATX was the relevant underwriting entity that issued the insurance policy at issue to Mr. Bon. It is not entirely clear, however, whether Windhaven acquired ATX's claims against its insureds (*i.e.* liabilities) that were pre-existing at the time of its acquisition. This inquiry is directly relevant to whether the stay as to Windhaven is even applicable in both the state court action and Ms. Sanchez's federal enforcement action.

10801 W. Charleston Boulevard, Suite 560, Las Vegas, Nevada 89135
T: 702.534.7600 | F: 702.534.7601
www.thedplg.com

NBIS 001017

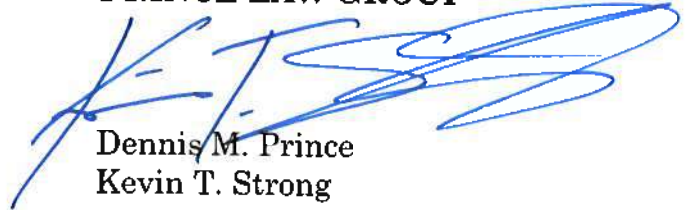
William P. Volk
April 9, 2020
Page 2 of 2

In light of the foregoing, we respectfully request you identify who hired you to notify the state court of the Liquidation Order on behalf of Mr. Bon.

Thank you for your time and attention to this matter.

Sincerely,

PRINCE LAW GROUP



Dennis M. Prince
Kevin T. Strong

NBIS 001018

EXHIBIT 15

Kevin Strong

From: William P. Volk <wvolk@nevadafirm.com>
Sent: Wednesday, April 29, 2020 3:13 PM
To: Kevin Strong
Cc: Dennis Prince; Angela Lee; Amy Ebinger; John H. Podesta, Esq. (john.podesta@wilsonelser.com); Suri Guzman
Subject: RE: Sanchez v. Bon

Kevin:

Gotcha. It is my understanding that NBIS (NationsBuilders Insurance Services, Inc.) retained Kolesar & Leatham and then my new office Holley Driggs to represent Mr. Bon. I have no information on the relationship between NBIS and Windhaven or ATX. That's as much as I know. I hope this answers your question.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912
400 S. 4th Street, Suite 300, Las Vegas NV 89101

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From: Kevin Strong <kstrong@thedplg.com>
Sent: Wednesday, April 29, 2020 3:02 PM
To: William P. Volk <wvolk@nevadafirm.com>
Cc: Dennis Prince <dprince@thedplg.com>; Angela Lee <alee@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>; John H. Podesta, Esq. (john.podesta@wilsonelser.com) <john.podesta@wilsonelser.com>; Suri Guzman <sguzman@nevadafirm.com>
Subject: RE: Sanchez v. Bon

Mr. Volk,

I apologize if my question was not clear, but it is very simple. Did Windhaven hire you to represent Mr. Bon in the state court action? Given that you notified the state court of the stay "on behalf" of Mr. Bon, I think it is safe to assume Windhaven hired you.

Sincerely,

EXHIBIT 16

Kevin Strong

From: Podesta, John <John.Podesta@wilsonelser.com>
Sent: Wednesday, April 29, 2020 5:03 PM
To: William P. Volk; Kevin Strong
Cc: Dennis Prince
Subject: RE: Sanchez v. Bon

And we see the reason that defense lawyers are kept in the dark about how things really work. Sorry, Bill. Mr. Volk's retention was by NBIS Construction and Transport Insurance Services, Inc., for the benefit of ATX Premier Insurance Co. who then utilized DMA Claims as the claims administrator.

ATX Premier was sold in 2015, and you have the filings on that because you asked about them. The buyer changed the name (only) to Windhaven National Insurance Company, who was then put into liquidation this year. My understanding is that claims against Windhaven National or its insureds must go through the liquidator. If there are any exceptions to this rule, I'm not aware of them but I'm not foreclosing a dialogue since I'm not an expert in this area.

John Podesta
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
525 Market Street - 17th Floor
San Francisco, CA 94105-2725
415.625.9258 (Direct)
415.433.0990 (Main)
415.434.1370 (Fax)
john.podesta@wilsonelser.com

From: William P. Volk [mailto:wvolk@nevadafirm.com]
Sent: Wednesday, April 29, 2020 3:13 PM
To: Kevin Strong <kstrong@thedplg.com>
Cc: Dennis Prince <dprince@thedplg.com>; Angela Lee <alee@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>; Podesta, John <John.Podesta@wilsonelser.com>; Suri Guzman <sguzman@nevadafirm.com>
Subject: RE: Sanchez v. Bon

[EXTERNAL EMAIL]

Kevin:

Gotcha. It is my understanding that NBIS (NationsBuilders Insurance Services, Inc.) retained Kolesar & Leatham and then my new office Holley Driggs to represent Mr. Bon. I have no information on the relationship between NBIS and Windhaven or ATX. That's as much as I know. I hope this answers your question.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

EXHIBIT 17

Kevin Strong

From: William P. Volk <wvolk@nevadafirm.com>
Sent: Wednesday, April 29, 2020 5:08 PM
To: Kevin Strong
Cc: Dennis Prince; Angela Lee; Amy Ebinger; John H. Podesta, Esq. (john.podesta@wilsonelser.com); Suri Guzman
Subject: RE: Sanchez v. Bon

Kevin:

I want to clarify that it was **NBIS Construction and Transport Insurance Services, Inc.** that retained my office. They are obviously a part of the NBIS family of companies. I should have been more precise about that point.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

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400 S. 4th Street, Suite 300, Las Vegas NV 89101

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From: William P. Volk
Sent: Wednesday, April 29, 2020 3:13 PM
To: Kevin Strong <kstrong@thedplg.com>
Cc: Dennis Prince <dprince@thedplg.com>; Angela Lee <alee@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>; John H. Podesta, Esq. (john.podesta@wilsonelser.com) <john.podesta@wilsonelser.com>; Suri Guzman <sguzman@nevadafirm.com>
Subject: RE: Sanchez v. Bon

Kevin:

Gotcha. It is my understanding that NBIS (NationsBuilders Insurance Services, Inc.) retained Kolesar & Leatham and then my new office Holley Driggs to represent Mr. Bon. I have no information on the relationship between NBIS and Windhaven or ATX. That's as much as I know. I hope this answers your question.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

EXHIBIT 18

NBIS CONSTRUCTION & TRANSPORT INSURANCE SERVICES INC.

FBO ATX PREMIER INSURANCE COMPANY
PO BOX 26004
GLENDALE, CA 91222-6004
(323) 342-1650

FROST BANK ADDISON
15301 N. DALLAS PKWY #100
ADDISON, TX 76001
30-9/1140

VOID AFTER 90 DAYS
THIS ACCOUNT IS
PROTECTED BY POSITIVE PAY

3514

DATE
10/26/2016

AMOUNT

PAY

TO THE
ORDER
OF

COPY

MEMO

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈003514⑈ ⑆114000093⑆ 608876517⑈

NBIS CONSTRUCTION & TRANSPORT INSURANCE SERVICES INC.

3514

Claim #: DMA-0137991

Date of Loss: 11/15/2014

Received Date: 11/20/2014

NBIS CONSTRUCTION & TRANSPORT INSURANCE SERVICES INC.

3514

Claim #: DMA-0137991

Date of Loss: 11/15/2014

Received Date: 11/20/2014

RECEIVED
OCT 27 2016
BY:

MANDATORY FRAUD STATEMENT:

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURANCE COMPANY OR ITS INSURED FILES AS STATEMENT OF CLAIM CONTAINING FALSE, INCOMPLETE OR MISLEADING INFORMATION IS GUILTY OF FELONY IN THE THIRD DEGREE.

WL65111PK1

NORTH LAKE BUSINESS FORMS 116-746-9162

PRINTED IN U.S.

NBIS 001026

EXHIBIT 18

EXHIBIT 18

IN THE SUPREME COURT OF THE STATE OF NEVADA

BLAS BON,
Appellant,
vs.
DIANE SANCHEZ,
Respondent.

No. 81983

FILED

NOV 19 2021

ORDER TO SHOW CAUSE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a second amended notice of appeal from a postjudgment order assigning to respondent any claims or causes of action appellant has against third parties in satisfaction of the judgment on appeal. Preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) reveals a potential jurisdictional defect. Specifically, it appears that the judgment or order designated in the notice of appeal may not be substantively appealable. *See* NRAP 3A(b). This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 678 P.2d 1152 (1984). It is not clear that any statute or court rule permits an appeal from a judicial assignment pursuant to NRS 21.230, and it is not clear that the order alters the substantive rights or obligations of the parties arising from the judgment. *See Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (holding that, to be appealable under NRAP 3A(b)(2), a special order made after final judgment "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered").

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. Failure to demonstrate that this court has

jurisdiction may result in this court's dismissal of this appeal as to the order granting the assignments. The briefing schedule in this appeal shall be suspended pending further order of this court. Respondent may file any reply within 14 days from the date that appellant's response is served.

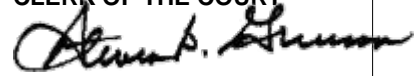
It is so ORDERED.

1 Sardes, C.J.

cc: Lewis Roca Rothgerber Christie LLP/Las Vegas
Holley Driggs/Las Vegas
Prince Law Group

EXHIBIT 19

EXHIBIT 19



LIPSON NEILSON P.C.
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MEGAN H. THONGKHAM, ESQ
Nevada Bar No. 12404
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*Attorneys for Defendants,
NationsBuilders Insurance Services, Inc.,
NBIS Construction & Transport Insurance Services, Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DIANE SANCHEZ,

Plaintiff,

vs.

ATX PREMIER INSURANCE COMPANY
now known as WINDHAVEN NATIONAL
INSURANCE COMPANY, a foreign
corporation; NATIONSBUILDERS
INSURANCE SERVICES, INC., a foreign
corporation; NBIS CONSTRUCTION &
TRANSPORT INSURANCE SERVICES,
INC., a foreign corporation; DMA CLAIMS
MANAGEMENT, INC., a foreign
corporation; BLAS BON, an individual;
DOES I-X; and ROE CORPORATIONS I-X,
inclusive,

Defendants.

Case No: A-19-805351-C
Dept. No.: XIII

**DEFENDANTS NATIONSBUILDERS
INSURANCE SERVICES, INC. AND
NBIS CONSTRUCTION &
TRANSPORT SERVICES, INC.'S
REPLY IN SUPPORT OF THEIR
RENEWED MOTION TO STAY
PROCEEDINGS**

**Hearing Date: December 2, 2021
Hearing Time: 9:00 am**

Defendants Nationsbuilders Insurance Services, Inc. ("NBIS") and NBIS Construction & Transport Services, Inc. ("CTIS") (collectively "Defendants"), by and through their counsel of record, Lipson Neilson P.C., hereby submit this Reply in Support of their Renewed Motion to Stay Proceedings ("Reply"). This Reply is made and based upon the pleadings and papers on file herein, the Points and Authorities below, and any oral argument the Court may entertain at hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's opposition begins by mischaracterizing the procedural history of this action. The Renewed Motion to Stay is not in any way a "last ditch effort to avoid litigating ...bad faith conduct arising from the handling of Sanchez's bodily injury claim..." See Opposition, p. 3:20-22. Quite the opposite, the Renewed Motion seeks to protect the judicial resources of this Court, as well as the time and expense incurred by the parties while the order denying Defendant Blas Bon's motion to set aside the default judgment in the underlying personal injury action is on appeal. Moreover, the Renewed Motion cannot in good faith be called "last ditch" or futile when this Court specifically invited Defendants to file a renewed motion "after the dust settle[d] as to whether or not there [would be] an appeal." See Renewed Motion, Ex. 1.

Plaintiff's argument that the appeal has no material impact on the bad faith claim against NBIS and CTIS is equally misguided. *Id.* ("NBIS and CTIS also conveniently overlook the finality of the default judgment is not impacted by their appeal.") Bon filed an appeal of the order denying his motion to set aside the default judgment and the order denying his motion to alter or amend the order denying Rule 60(b) relief. Regardless of Plaintiff's personal opinions on the merits of the appeal, the Nevada Supreme Court may well determine that the default judgment should have been set aside in its entirety, and the personal injury action may ultimately proceed on the merits. If that happens, all the time, the effort, and the money that the parties put into this bad faith action will be completely moot. Thus, the benefits of a stay – benefits that Plaintiff seeks so desperately to attribute only to the Defendants – are, in reality, benefits shared by all the parties and by the Court.

NRCP 62 does not change this analysis. No one disputes the plain language of the rule. However, a request to stay discovery in a bad faith action is separate and distinct from a motion to stop *enforcement* of the default judgment in the underlying personal injury lawsuit. Plaintiff believes and thereon alleges that NBIS and CTIS are

ultimately liable for her damages, but the fact remains that NBIS and CTIS were not parties in the underlying personal injury lawsuit, and the default judgment was not entered against them. The default judgment was entered against Bon. Whether Bon could or should move to stay enforcement of the judgment are not issues properly before this Court and have no bearing on the Renewed Motion to Stay, which serves a completely different procedural function in a completely separate lawsuit.

Similarly, Plaintiff's restated beliefs on whether NBIS and CTIS are individually or collectively responsible for Plaintiff's damages (or the meaning and implication of phrases used by Defendants' prior counsel in a separate, unrelated federal lawsuit) are irrelevant to this Court's determination of whether a stay is appropriate pending final adjudication of the appeal. Neither NBIS nor CTIS are insurers, and neither Defendant retained insurance obligations for ATX's pre-sale insurance policies, including the policy at issue. But even if, *arguendo*, Plaintiff was right and Defendants retained so-called "financial responsibility" for the ATX/Windhaven policy at issue, principles of equity and fairness still weigh heavily in favor of the requested stay. For all these reasons, discussion in depth below, Defendants respectfully request that the Court grant their Renewed Motion to Stay Proceedings.

II. LEGAL ARGUMENT

A. The Mere Fact That the Appeal May Take Some Time to Resolve is Not Sufficient Grounds to Deny the Motion to Stay.

Plaintiff argues that the stay requested by Defendants is inappropriately "indefinite" on the sole basis that there is no timeframe when the Nevada Supreme Court will decide their appeal. See Opposition, p. 4:18-23. But this generalized concern could apply equally to any appeal and does not give rise to "prejudice" sufficient to overcome the compelling reasons why Defendants requested the stay.

Notwithstanding this fact, Plaintiff cites *to Dependable Highway Express, Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) to support her argument that a stay should not be granted unless it appears likely the other proceedings will be

1 concluded within a reasonable time. *Id. Dependable* is inapposite to this case as it
2 involved significantly more complex issues at law and legitimately “indefinite” variables.
3 *Id.* The case was a diversity action appealing from a district court order staying a
4 domestic contract dispute pending resolution of appeal of arbitration proceedings in
5 England, which had not even begun two years later. *Id.* Moreover, the Court found “a
6 strong likelihood that the English proceedings will leave one of the parties “effectively out
7 of court” and that “the stay order provides no indication that the district court clearly
8 [anticipated] and intend[ed] that proceedings [would] resume after the stay has expired.”
9 *Id.* at 1064.

10 In contrast, the appealable issue before the Nevada Supreme Court in this case is
11 straightforward and singular, *to wit*, whether the trial court erred in denying Defendant’s
12 Motion to Set-Aside the default judgment. The case appeal statement identifies no other
13 issues. It lacks the complex and time consuming issues present in *Dependable* which
14 gave rise to concerns that proceedings would not conclude in a reasonable time.

15 **B. *Belanger v. GEICO Gen. Ins. Co.* Is Based on a Specific Louisiana Statute**
16 **and Is Not Readily Applicable to this Matter.**

17 It is unnecessary for Defendants to address each facet of Plaintiff’s lengthy
18 analysis of *Belanger v. GEICO Gen. Ins. Co.*, 623 Fed App’x 683, 688 (5th Cir. August
19 21, 2016), and its distinctions between devolutive and suspensive appeals, prescriptive
20 tolling, and the applicable timeliness of appeal. Suffice to say, upon a thorough reading
21 of the case, Plaintiff’s specific arguments predicated upon the holdings in *Belanger* are
22 wholly based on a Louisiana-specific law, La. Rev. Stat. § 22:1973, and the Louisiana
23 doctrine of *contra non valentem*, for which there exists no counterparts in Nevada.

24 **C. The Supreme Court’s Decision on the Order Denying the Motion to Set**
25 **Aside the Default Judgment will Materially Alter Defendants’ Liability.**

26 Plaintiff incorrectly argues that the finality of the underlying default judgment is not
27 impacted by the pending appeal “in **any** way” because Bon’s NRCP 60(b)(6) Motion to
28 Set Aside Default filed January 17, 2020, and subsequent Motion for Rehearing pursuant

1 to NRCP 59(e)”¹ filed October 20 [sic], 2020² allegedly are independently appealable
2 and have no effect whatsoever on the default judgment or the parties’ ability to move
3 forward with discovery in the bad faith action. See generally *id.*

4 This is a gross oversimplification of the procedural status of the case, and the
5 potential impact of the appeal. The district court awarded Sanchez a multi-million dollar
6 default judgment against Bon, and granted Sanchez’s motion for judicial assignment of
7 Bon’s claims against Windhaven “or any other applicable insurer” pursuant to NRS
8 21.320. SAC ¶¶ 64-65. It was only a few months after Sanchez filed pursuant to that
9 assignment that Bon filed a motion to alter or amend the default judgment in the personal
10 injury lawsuit. The district court denied the motion and Bon timely appealed accordingly.
11 The core argument unpinning the appeal is that “a void judgment may be vacated at any
12 time.” *Rawson v. Ninth Judicial Dist. Court*, 133 Nev., Adv. Op. 44, 396 P.3d 842, 848 &
13 n.4 (2017); see also *W. Side Salvage v. RSUI Indemn. Co.*, 2014 U.S. Dist. LEXIS
14 203089, at *7, citing *Torrez v. State Farm Mut. Auto. Ins. Co.*, 705 F.2d 1192, 1202 (10th
15 Cir. 1982) (bad faith claim did not accrue until after underlying litigation ended).
16 Defendants’ analysis that the bad faith claim is not ripe until the appellate process is
17 complete is unchanged by any arguments about defect in the appeal, the argument is
18 that the appeal needs to be resolved first because if the judgment is reversed on appeal,
19 “the insured is no longer exposed to any loss in excess of the limits of his liability
20 insurance policy, [and] he no longer has any claim he might previously have had against
21 his insurance company for bad faith” *Id.* In other words, “[i]f the appeal is successful, [the
22 claim] ... will be moot.”

23 **D. Windhaven’s Participation is Crucial and Necessary to Litigation.**

24 Defendants incorporate by reference their Motion filed July 22, 2021. In
25 summary, Plaintiff seeks to hold NBIS and CTIS liable for “a contract of insurance

26
27 ¹ Bon’s *Motion for Rehearing and to Alter or Amend Judgment* argues the judgment is void for lack of
28 due process based upon NRCP 60(b)(4), and 59(e); see also NRCP 52(b), 54(c), 55(c). See generally
Lytle v. Rosemere Estates Prop. Owners, 129 Nev. 923, 926, 314 P.3d 946, 948 (2013) (“a motion to alter
or amend is permitted as to any appealable order, not just final judgments”).

² Filed October 19, 2020

1 between ATX and Cruz, the vehicle owner. ..." Plaintiff does not allege the existence of
2 a contract between Cruz and NBIS, or Cruz and CTIS, because there are none. As the
3 Second Amended Complaint makes clear, ATX/Windhaven – not NBIS or CTIS - issued
4 the insurance policy that covered the pick-up truck Bon was driving on the day of the
5 Accident (and Bon as a permissive driver of that truck). SAC ¶ 69. The contract is
6 between Bon and ATX/Windhaven.

7 Plaintiff contends Defendants are not entitled to a stay because "Windhaven is not
8 involved in this action" and because "financial responsibility and control over claims
9 arising from ATX insurance policies that were underwritten before the sale remained with
10 NBIS and CTIS..."³ As has been previously briefed, however, NBIS was the former
11 parent company for ATX/Windhaven and CTIS acted as a claims administrator on the
12 policy. They are not insurers and retained no insurance obligations on the policy.

13 Plaintiff attaches as Exhibit 1 to her Opposition a claims administration agreement
14 between CTIS and DMA and claims the agreement is dispositive of a contractual
15 obligation in Bon. But this is not a global, exclusive agreement. There is no proof this
16 agreement is applicable to Bon because it is not. DMA was the third-party administrator
17 contracted by ATX, now Windhaven, to adjust *certain claims*, not all claims. It is
18 demonstrable not "laughable" as Plaintiff contends in her opposition that NBIS and CTIS
19 assert their defenses against Plaintiff's claims implicate ATX/Windhaven's and DMA's
20 defenses and otherwise bear on their *potential* liability for Plaintiff's damages.⁴ In
21 actuality, these are indelible legal issues central to this litigation.

22 Similarly, Plaintiff cites to another case, *Hayes*, as proof that counsel in that case,
23 Mr. Podesta, made judicial admissions applicable to this case. This issue was fully
24 briefed in *Defendants' Objections And Motion To Quash Plaintiff's Subpoena Duces*
25 *Tecum To Custodian Of Records For Craig P. Kenny & Associates And Motion For*
26

27 ³ Opposition @ 6: 20-23.

28 ⁴ Nothing in this Reply shall be construed to be a waiver by the moving Defendants that there is
no contract between Bon and either NBIS or CTIS.

1 *Protective Order* (filed 9/23/21) and *Reply in Support* (filed 10/15/21), both of which are
2 incorporated fully herein by reference and set for hearing on December 2, 2021.

3 It continues to be inappropriate for Plaintiff to request that this Court exercise its
4 discretion to consider statements by NBIS' prior counsel as binding judicial admissions,
5 particularly given the unclear definition of the phrase "financial responsibility" or the
6 intended impact of the statement. See generally *Reyburn Lawn & Landscape Designers,*
7 *Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 343, 255 P.2d 268, 276 (2011). That being said,
8 to both comply with the Texas injunction regarding Windhaven and to protect against the
9 unfair and inequitable adjudication of Sanchez's claims, the stay must necessarily extend
10 to the remaining defendants whose liability has been inextricably intertwined with
11 ATX/Windhaven by virtue of the allegations in the Second Amended Complaint.

12 **E. Grounds for Stay Pursuant to *Branch Banking***

13 Defendants cite, *inter alia*, to *Branch Banking & Tr. Co. v. Nev. Title Co.*, No.
14 2:10-CV-1970 JCM (RJJ), 2011 U.S. Dist. LEXIS 40948, at *10 (D. Nev. Apr. 13,
15 2011) and its progeny in making the argument in favor of granting a stay in this matter.
16 *Id.* Plaintiff argues that *Branch Banking* held there was no hardship because the unity
17 of interest remained between Commonwealth, the title insurer, and Branch Banking,
18 it's insured. While it is true that *Branch Banking* involved a dispute over a bank trust
19 deed and related FDIC rights after bank failure, this analysis was only *part* of the
20 holding, which also addresses ripeness for appeal in bad faith matters. *Id.*, citing
21 *Barnes v. Allstate Ins. Co.*, No. 8:10-cv-2434-T-30MAP, 2010 U.S. Dist. LEXIS
22 138340, 2010 WL 5439754, at *3 (M.D. Fla. Dec. 28, 2010) (holding the "appellate
23 process must be complete before the cause of action for bad faith insurance practice
24 is ripe."); see also *Premcor USA, Inc. v. Am. Home Assurance Co.*, 400 F.3d 523, 530
25 (2005) (holding "that the question of whether a duty to indemnify the insured for a
26 particular liability is only ripe for consideration" after resolution of "the underlying state
27 court action...[and] pending appeal."). *Branch Banking* applies to this case
28 accordingly.

F. NRCP 62 Does Not Apply to This Matter.

NRCP 62 does not yet govern this bad faith action because there are no judgments to be enforced (or stayed). Even if the rule is implicated in the personal injury action, it is still irrelevant to a consideration of Defendants' Motion to Stay and improperly raised before this Court in response to the Renewed Motion to Stay. NBIS and CTIS were not parties in the underlying litigation and the default judgment was not entered against them. It is therefore not their appeal; it is Bon's appeal. Whether Bon could or should move to stay enforcement of the judgment are not issues properly before this Court and have no bearing on the Renewed Motion to Stay. The sole purpose of the Motion to Stay is to conserve the parties' time and resources while the appeal is pending. There is no intent or actual circumvention of NRCP 62.

III. CONCLUSION

The majority of the arguments raised in Plaintiff's opposition are more appropriately before the Nevada Supreme Court or are inapplicable to Nevada. NBIS and CTIS respectfully request that this Court grant their Renewed Motion and stay proceedings based upon (1) the pending final adjudication of Blas Bon's appeal, Supreme Court Case No. 81983; and (2) the order granting Windhaven's motion to stay, in the interest of judicial economy and to avoid unnecessary costs of litigation by all parties.

DATED this 24th day of November, 2021.

LIPSON NEILSON P.C.

/s/ Megan H. Thongkham

By:

Joseph P. Garin, Esq. (NV Bar No. 6653)
Megan H. Thongkham, Esq. (NV Bar No. 12404)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

*Attorneys for Defendants,
NationsBuilders Insurance Services, Inc.,
NBIS Construction & Transport Insurance Services,
Inc.*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 24th day of November, 2021, I electronically served the foregoing **DEFENDANTS NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS CONSTRUCTION & TRANSPORT SERVICES, INC.'S REPLY IN SUPPORT OF THEIR RENEWED MOTION TO STAY PROCEEDINGS** to the following parties utilizing the Court's E-File/ServeNV System:

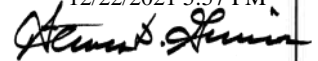
Dennis M. Prince, Esq. Kevin T. Strong, Esq. PRINCE LAW GROUP 10801 West Charleston Blvd., Suite 560 Las Vegas, NV 89135 eservice@thedplg.com <i>Attorneys for Plaintiff, Diane Sanchez</i>	John H. Podesta, Esq. Chris Richardson, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP 525 Market Street, 17th Floor San Francisco, CA 94105-2725 John.Podesta@wilsonelser.com Chris.Richardson@wilsonelser.com <i>Attorneys for Defendants Windhaven National Insurance Company, Windhaven National Insurance Company fka ATX Premier Insurance</i>
Robert E. Schumacher, Esq. Wing Yan Wong, Esq. GORDON REES SCULLY MANSUKHANI, LLP 300 South 4 th Street, Suite 1550 Las Vegas, Nevada 89101 rschumacher@grsm.com wwong@grsm.com <i>Attorneys for Defendant, DMA CLAIMS MANAGEMENT, INC., erroneously sued as DMA CLAIMS INC.</i>	

/s/ Michele Stones

An Employee of LIPSON NEILSON P.C.

EXHIBIT 20

EXHIBIT 20



CLERK OF THE COURT

ORDR DISTRICT COURT
CLARK COUNTY, NEVADA

DIANE SANCHEZ,)
)
Plaintiff(s),)
) CASE NO. A-19-805351-C
vs.) DEPT. NO. XIII
)
ATX PREMIER INSURANCE COMPANY, et)
al.,)
)
Defendant(s).)

ORDER

HAVING further reviewed and considered the parties' filings and argument of counsel pertaining to "Defendants Nationbuilders Insurance Services, Inc. and NBIS Construction & Transport Services, Inc.'s Renewed Motion to Stay Proceedings," heard and taken under advisement on December 9, 2021, and being now fully advised in the premises, and noting that the Nevada Supreme Court, in Case No. 81983, has once again issued a jurisdictional Order to Show Cause on November 19, 2021 which is now pending, the Court DENIES the subject Motion without prejudice to renewal following the Supreme Court's determination on such Order to Show Cause.

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MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

NBIS 001038

1 COUNSEL FOR PLAINTIFF IS DIRECTED TO PROVIDE PROMPT
2 WRITTEN NOTICE OF ENTRY HEREOF.

3 Dated this 22nd day of December, 2021

4 
5

6 4DB 737 325C 02D6
7 Mark R. Denton
8 District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Diane Sanchez, Plaintiff(s)

CASE NO: A-19-805351-C

7 vs.

DEPT. NO. Department 13

8 ATX Premier Insurance
9 Company, 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: 12/22/2021

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16 Brenda Correa

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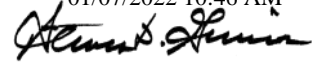
If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 12/23/2021

Christopher Richardson	Wilson Elser Moskowitz Edelman & Dicker LLP Attn: Christopher J. Richardson 6689 Las Vegas Blvd. South, Suite 200 Las Vegas, NV, 89119
------------------------	---

Dennis Prince	Prince Law Group Attn: Dennis Prince, Esq 10801 West Charleston Boulevard, Suite 560 Las Vegas, NV, 89135
---------------	--

EXHIBIT 21

EXHIBIT 21


CLERK OF THE COURT

MRCN
LIPSON NEILSON P.C.
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*Attorneys for Defendants,
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NBIS Construction & Transport Insurance Services, Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DIANE SANCHEZ,

Plaintiff,

vs.

ATX PREMIER INSURANCE COMPANY
now known as WINDHAVEN NATIONAL
INSURANCE COMPANY, a foreign
corporation; NATIONSBUILDERS
INSURANCE SERVICES, INC., a foreign
corporation; NBIS CONSTRUCTION &
TRANSPORT INSURANCE SERVICES,
INC., a foreign corporation; DMA CLAIMS
MANAGEMENT, INC., a foreign
corporation; BLAS BON, an individual;
DOES I-X; and ROE CORPORATIONS I-X,
inclusive,

Defendants.

Case No: A-19-805351-C
Dept. No.: XIII

**MOTION FOR RECONSIDERATION
OF ORDER DENYING
NATIONSBUILDERS INSURANCE
SERVICES, INC. AND NBIS
CONSTRUCTION & TRANSPORT
INSURANCE SERVICES RENEWED
MOTION TO STAY PROCEEDINGS
PURSUANT TO NRCP 60(B)(6), OR
ALTERNATIVELY, EDCR 2.24(B) ON
AN ORDER SHORTENING TIME**

HEARING REQUESTED

Defendants Nationsbuilders Insurance Services, Inc. ("NBIS") and NBIS
Construction & Transport Services, Inc. ("CTIS") (collectively "Defendants"), by and
through their counsel of record, Lipson Neilson P.C., hereby submit their Motion for
Reconsideration of the Order Denying Defendants' Renewed Motion to Stay
Proceedings, on an Order Shortening Time ("Motion"). This Motion is brought pursuant
to NRCP 60(b)(6), EDCR 2.24 and EDCR 2.26, and is made and based upon the

1 accompanying Memorandum of Points and Authorities, any exhibits attached hereto, the
2 pleadings and papers on file with the Court, and any oral argument that may be
3 presented at the time of the hearing on this matter.

4 DATED this 5th day of January, 2022.

5 LIPSON NEILSON P.C.

6 */s/ Megan H. Thongkham*

7 By:

8 Joseph P. Garin, Esq. (NV Bar No. 6653)
9 Megan H. Thongkham, Esq. (NV Bar No. 12404)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

10 *Attorneys for Defendants,*
11 *NationsBuilders Insurance Services, Inc.,*
12 *NBIS Construction & Transport Insurance Services, Inc.*

ORDER SHORTENING TIME

The Court, having examined Defendants' Motion for an Order Shortening Time, being fully advised in the premises, and for good cause appearing, finds that Defendants' Motion should be heard on order shortened time. This Court therefore ORDERS that the hearing on Defendants' Motion shall be shortened to January 24, 2022 at 9:00 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard in Department XIII of the above-entitled court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada.

DATED this ____ day of January, 2022. Dated this 7th day of January, 2022



DISTRICT COURT JUDGE
D7A 643 0B63 2D0D
Mark R. Denton
District Court Judge

ABG

DECLARATION OF MEGAN H. THONGKHAM, ESQ.

I, Megan H. Thongkham, Esq., an attorney licensed to practice in the State of Nevada and a partner at the law firm of Lipson Neilson P.C., declare as follows:

1. I am one of the counsel of record for Defendants NationsBuilders Insurance Services, Inc. ("NBIS") and NBIS Construction & Transport Insurance Services, Inc. ("CTIS") (collectively "Defendants") in the above-captioned matter.

2. I make this declaration upon personal knowledge, and if called as a witness, I could and would competently testify to the facts contained in this declaration.

3. The purpose of this declaration is to inform the Court of the need for an order shortening time to hear Defendants' Motion for Reconsideration of the Order Denying Defendants' Renewed Motion to Stay ("Motion for Reconsideration").

4. There is good cause to justify shortening of time because a substantial amount of discovery will take place in this action before the Court hears argument and renders a decision on the Motion for Reconsideration, if the motion is heard in normal course. In fact, Plaintiff has already noticed the deposition of CTIS' Rule 30(b)(6) corporate designee for February 16, 2022.

5. Shortening time protects all parties involved in this litigation by providing this Court's decision on the Motion for Reconsideration in advance of scheduled depositions and before the parties have spent hours drafting or responding to written discovery.

6. Accordingly, Defendants request that this matter be heard on an order shortening time.

7. This Motion is made in good faith, is reasonably necessary, and is not brought for the purpose of undue delay, bad faith, or other dilatory motive.

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

DATED this 5th of January, 2022.

/s/ Megan H. Thongkham
MEGAN H. THONGKHAM, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTUAL BACKGROUND

On December 9, 2021, the Court heard argument on Defendants' Renewed Motion to Stay Proceedings ("Renewed Motion"). The Renewed Motion sought a stay of this bad faith action pending final adjudication of the appeal of the order denying Blas Bon's motion to set aside the default judgment in the underlying personal injury lawsuit.¹ The appeal of the order refusing to set aside the default judgment has been pending since October 2020. For the avoidance of doubt, the order refusing to set aside the default judgment is the controlling issue, and the only order relevant to this Court's consideration of Defendants' Renewed Motion.

There is a second order arising from the same personal injury lawsuit that is also on appeal. The second order is a post-judgment order assigning to Plaintiff under NRS 21.320 all of Bon's claims of any kind against his insurers and any third-party administrators in satisfaction of Plaintiff's underlying judgment against Bon. On November 19, 2021, the Nevada Supreme Court issued an Order to Show Cause ("OSC") regarding the second order on appeal. See Order to Show Cause, attached hereto as **Exhibit 1**.

The OSC has no bearing on the principal appeal from the order denying Rule 60(b) and Rule 59(e) relief or on Defendants' Renewed Motion. In fact, as the Supreme Court itself noted, the OSC addresses solely the "second amended notice from [the] postjudgment order assigning to respondent any claims or causes of action appellant has against third parties in satisfaction of the judgment," and the only threatened action is that "[f]ailure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal *as to the order granting the assignments.*" Ex. 1 (emphasis added); see *also* Bon's Response filed December 20, 2021, attached hereto as **Exhibit**

¹ Supreme Court Case No. 81983.

1 2. In other words, even if the second appeal is dismissed for lack of jurisdiction, the
2 appeal of the first order denying Bon's motion to set aside the default judgment is still
3 moving forward.

4 Notwithstanding this distinction, on December 22, 2021, the Court issued an
5 order denying Defendants' Renewed Motion without prejudice to renewal following the
6 Supreme Court's determination on the OSC. The OSC and its presumed effect on the
7 appeal was the only stated reason for denial. Because the OSC, attached as Exhibit 1,
8 has zero impact on the appeal of the order denying Bon's motion to set aside the default
9 judgment, Defendants respectfully request that the Court reconsider its order denying
10 the Renewed Motion pursuant to NRCP 60(b)(6), or alternatively, EDCR 2.24.

11 **II. LEGAL ARGUMENT**

12 **A. The Court Should Reconsider the Order Denying Defendants'**
13 **Renewed Motion Pursuant to NRCP 60(b)(6).**

14 The Court has inherent authority to "amend, correct, resettle, modify, or vacate"
15 an order previously entered where sufficient cause is shown. *Masonry & Tile*
16 *Contractors v. Jolley, Urga & Wirth Ass'n*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).
17 Reconsideration of an order on a motion may be brought under NRCP 60(b) for
18 mistake, or "any other reason that justifies relief." See Nev. Civ. P. 60(b)(6). A motion
19 made under any subpart of Rule 60(b) must be raised within a reasonable time. Nev. R.
20 Civ. P. 60(c)(1).

21 Rule 60(b)(6) is a somewhat recent addition to the Nevada Rules of Civil
22 Procedure. See *In re Creating a Comm. to Update & Revise the Nev. Rules of Civil*
23 *Procedure*, ADKT 0522, 2018 Nev. LEXIS 127 (Order Amending the Rules of Civil
24 Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and
25 Conversion Rules, December 31, 2018). Like its federal counterpart, Rule 60(b)(6) is a
26 "catch-all," meant to cover circumstances "which are not addressed by the first five
27 numbered clauses of the rule and only as a means to achieve substantial justice."
28

1 *Tanner v. Yukins*, 776 F.3d 434, 443 (6th Cir. 2015); see also *Klapprott v. United*
2 *States*, 335 U.S. 601, 613-615, 69 S.Ct. 384, 93 L.ed 266 (1949).

3 Rule 60(b)(6) vests broad discretion in courts, but “is available only in
4 extraordinary circumstances.” *Buck v. Davis*, 137 S. Ct. 759, 777-78 (2017), citing
5 *Gonzalez v. Crosby*, 545 U.S. 524, 125 S.Ct. 2641 (2005). “In determining whether
6 extraordinary circumstances are present, a court may consider a wide range of factors,”
7 including but not limited to “the risk of injustice to the parties and the risk of undermining
8 the public’s confidence in the judicial process.” *Id.*

9 Here, extraordinary circumstances exist which justify this Court’s reconsideration
10 of the order denying Defendants’ Renewed Motion. Defendants face substantial risk of
11 injustice should this bad faith action be forced to move forward while the appeal of the
12 underlying default judgment is still pending. The OSC that forms the basis of the court’s
13 denial has no material effect on the challenge mounted against the default judgment.
14 The OSC relates exclusively and specifically to a second order, a post-judgment order,
15 regarding the judicial assignment of Blas Bon’s claims against his insurance carriers
16 and third-party administrators to Plaintiff Diane Sanchez. The OSC has no bearing on
17 the principal appeal from the order denying Rule 60(b) and Rule 59(e) relief or on
18 Defendants’ Renewed Motion.

19 In fact, as the Supreme Court itself noted, the OSC addresses solely the “second
20 amended notice from [the] postjudgment order assigning to respondent any claims or
21 causes of action appellant has against third parties in satisfaction of the judgment,” and
22 the only threatened action is that “[f]ailure to demonstrate that this court has jurisdiction
23 may result in this court’s dismissal of this appeal as to the order granting the
24 assignments.” Exs. 1 and 2. The Supreme Court will hear the underlying appeal with
25 respect to the default judgment regardless. For these reasons, Defendants respectfully
26 request that the Court reconsider its ruling accordingly.

27 ///

28 ///

B. As An Alternative to Relief Pursuant to NRCP 60(b)(6), the Court May Reconsider its Ruling Pursuant to EDCR 2.24(b).

Should the Court be disinclined to consider Defendants' request under NRCP 60(b)(6), Defendants request that reconsideration be made pursuant to EDCR 2.24(b), which states in pertinent part as follows:

(b) A party seeking reconsideration of a ruling of the court, other than any order that may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 14 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the period for filing a notice of appeal from a final order or judgment.

If a motion for rehearing is granted under EDCR 2.24(b), the court may make a final disposition without hearing oral argument, "or may reset the matter for reargument or resubmission or make any other such orders as are deemed appropriate under the circumstances of the particular case." EDCR 2.24(c).

III. CONCLUSION

Based on the foregoing arguments, NBIS and CTIS respectfully request that this Court reconsider the order denying Defendants' Renewed Motion to Stay Proceedings.

DATED this 5th day of January, 2022.

LIPSON NEILSON P.C.

/s/ Megan H. Thongkham

By:

Joseph P. Garin, Esq. (NV Bar No. 6653)
Megan H. Thongkham, Esq. (NV Bar No. 12404)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

*Attorneys for Defendants,
NationsBuilders Insurance Services, Inc.,
NBIS Construction & Transport Insurance Services, Inc.*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 5th day of January, 2022, I electronically served the foregoing **DEFENDANTS NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS CONSTRUCTION & TRANSPORT SERVICES, INC.'S MOTION FOR RECONSIDERATION PURSUANT TO NRCP 60(B)(6) OR ALTERNATIVELY EDCR 2.24(B) ON AN ORDER SHORTENING TIME** to the following parties utilizing the Court's E-File/ServeNV System:

Dennis M. Prince, Esq. Kevin T. Strong, Esq. PRINCE LAW GROUP 10801 West Charleston Blvd., Suite 560 Las Vegas, NV 89135 eservice@thedplg.com <i>Attorneys for Plaintiff,</i> <i>Diane Sanchez</i>	ROBERT E. SCHUMACHER, ESQ. Nevada Bar No. 7504 JOHN F. SCHNERINGER, ESQ. Nevada Bar No. 14268 300 South 4th Street, Suite 1550 Las Vegas, Nevada 89101 rschumacher@grsm.com jschneringer@grsm.com <i>Attorneys for Defendant,</i> <i>DMA CLAIMS MANAGEMENT, INC.,</i> <i>erroneously sued as DMA CLAIMS INC.</i>
---	---

/s/ Michele Stones

An Employee of LIPSON NEILSON P.C.

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

BLAS BON,
Appellant,
vs.
DIANE SANCHEZ,
Respondent.

No. 81983

FILED

NOV 19 2021

ORDER TO SHOW CAUSE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a second amended notice of appeal from a postjudgment order assigning to respondent any claims or causes of action appellant has against third parties in satisfaction of the judgment on appeal. Preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) reveals a potential jurisdictional defect. Specifically, it appears that the judgment or order designated in the notice of appeal may not be substantively appealable. *See* NRAP 3A(b). This court has jurisdiction to consider an appeal only when the appeal is authorized by statute or court rule. *Taylor Constr. Co. v. Hilton Hotels*, 100 Nev. 207, 678 P.2d 1152 (1984). It is not clear that any statute or court rule permits an appeal from a judicial assignment pursuant to NRS 21.230, and it is not clear that the order alters the substantive rights or obligations of the parties arising from the judgment. *See Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002) (holding that, to be appealable under NRAP 3A(b)(2), a special order made after final judgment "must be an order affecting the rights of some party to the action, growing out of the judgment previously entered").

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed for lack of jurisdiction. Failure to demonstrate that this court has

jurisdiction may result in this court's dismissal of this appeal as to the order granting the assignments. The briefing schedule in this appeal shall be suspended pending further order of this court. Respondent may file any reply within 14 days from the date that appellant's response is served.

It is so ORDERED.

1 Sardes, C.J.

cc: Lewis Roca Rothgerber Christie LLP/Las Vegas
Holley Driggs/Las Vegas
Prince Law Group

EXHIBIT 2

In the Supreme Court of Nevada

BLAS BON,

Appellant,

vs.
DIANE SANCHEZ,

Respondent.

Electronically Filed
Dec 20 2021 09:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONSE TO ORDER TO SHOW CAUSE

This case involves appeals from two principal orders:

First, appellant Blas Bon appeals the order refusing to set aside as void the default judgment against him, as well as the order denying NRCP 59(e) and other relief. This Court's jurisdiction over that appeal is not in dispute.

Second, Bon has appealed from a post-judgment order assigning under NRS 21.320 to respondent Diane Sanchez all of Bon's claims of any kind against his insurers and any third-party administrators in satisfaction of Sanchez's underlying judgment against Bon (from which Bon has also appealed). This Court has questioned its jurisdiction over this second appeal. But the assignment is substantively appealable under NRAP 3A(b)(8), because it is a special order made after final judgment

and under NRS 31.460 as a final order in supplementary judgment-enforcement proceedings.

**A. The Assignment Is an Appealable
Special Order after Judgment**

A post-judgment order constitutes an appealable special order if it affects “the rights of some party to the action, growing out of the judgment previously entered.” *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002). In *Gumm*, the plaintiff had obtained a settlement from one defendant and a jury award from another. *Id.* at 914, 59 P.3d at 1221. Thereafter, the district court entered a post-judgment order, which, among other things, required that a portion of the judgment proceeds be paid to certain medical lienholders. *Id.* at 914-15, 59 P.3d at 1222. On appeal, this Court accepted jurisdiction, explaining that the post-judgment order was an appealable special order because it “affected [plaintiff’s] right to the money he was awarded on judgment through settlement or jury verdict” and “deprived [plaintiff] of part of his judgment and distributed that money to others who claimed a right to it.” *Id.* at 919, 59 P.3d at 1225.

Here, the post-judgment assignment order does not merely “affect” some of Bon’s rights growing out of the judgment; it strips him of those

rights (and all related rights) *entirely* and grants them to Sanchez, who might seek *more* than the \$15-million judgment she obtained in the district court. That is because, as Sanchez has construed the assignment, Bon’s assigned claims include potential punitive damages and other relief that Sanchez did not and could not have obtained in the underlying action here but now seeks to recover (as Bon’s assignee) in *Sanchez v. ATX Premier Insurance Company et al.*, Eighth Judicial District Court Case No. A-19-805351-C (the “ATX Action”).¹ Bon disagrees with the propriety of stripping those rights from him in post-judgment collection proceedings, particularly as Sanchez—notwithstanding the assignment—continues to pursue Bon himself in the ATX Action. As a result, the order is an appealable special order. *Gumm*, 118 Nev. at 919, 59 P.3d at 1225.

¹ In the ATX Action, Sanchez has also sued Bon to recover on the default judgment, despite the district court’s assignment order here that must necessarily “be applied toward satisfaction of the judgment.” See NRS 21.320.

**B. The Assignment Order is a Final Order in
Supplementary Judgment Enforcement Proceedings**

In addition, final judgments and orders in supplementary judgment-enforcement proceedings, including final orders under NRS 21.320, are appealable under NRS 31.460. *Nev. Direct Ins. Co. v. Fields*, No. 66561, 132 Nev. 1012, 2016 WL 797048, *3 (Feb. 26, 2016) (unpublished) (accepting direct appellate jurisdiction and reversing post-default-judgment assignment of insurance rights under NRS 21.320); *accord Murray v. A Cab Taxi Serv. LLC*, No. 81641, 475 P.3d 60 (Table), 2020 WL 6585946 (Nov. 9, 2020) (distinguishing between non-appealable, non-final disposition in *Murray* and appealable final order under NRS 21.320 in *Nev. Direct Ins.*); *see also Gumm*, 118 Nev. at 914, 59 P.3d at 1222 (distinguishing earlier appeal from a non-final procedural decision “electing to treat a motion to interplead funds as a motion to adjudicate lien claimants”).

Here, there is no question that the district court’s assignment order was both substantive and final under NRS 21.320 and NRS 31.460; indeed, Sanchez is now pursuing the ATX Action on that very ground. As a result, the order is appealable, and there is no reason to delay or

avoid that review. *See also* 15B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3916 (2d ed. Apr. 2021 update) (“[O]nce the original trial proceedings have been completed, final judgment appeal should be available upon conclusion of most post-judgment proceedings.”)

C. Alternatively, this Court Should Consider the Jurisdictional Issue in the Merits Briefing

There is no question that the principal appeal from the order denying Rule 60(b) and Rule 59(e) relief from the default judgment is properly before this Court. Indeed, this Court’s latest order to show cause addresses solely the “second amended notice of appeal from [the] postjudgment order assigning to respondent any claims or causes of action appellant has against third parties in satisfaction of the judgment,” and the only action threatened is that “[f]ailure to demonstrate that this court has jurisdiction may result in this court’s dismissal of this appeal *as to the order granting the assignments.*” (Nov. 19, 2021 Order to Show Cause, Doc. No. 21-33475 (emphasis added).) Consequently, at a minimum this Court will hear the underlying appeal with respect to the default judgment.

So as an alternative to deciding jurisdiction over the judicial assignment now, if doubts over this Court's jurisdiction remain, this Court should order the parties to address the jurisdictional issue as part of the merits briefing.²

Dated this 20th day of December, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellant

² This Court has taken this approach in other cases presenting difficult jurisdictional questions. (*See, e.g.,* Ex. A, "Order Regarding Jurisdiction and Denying Motion for Stay," Doc. No. 21-04268 in *Vargas v. J Morales, Inc.*, Docket No. 88218.)

CERTIFICATE OF SERVICE

I certify that on December 20, 2021, I submitted the foregoing “Response to Order to Show Cause” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

Dennis M. Prince
Kevin T. Strong
PRINCE LAW GROUP
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Respondent

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAX VARGAS, INDIVIDUALLY,
Appellant,
vs.
J MORALES INC.,
Respondent.

No. 82218

FILED

FEB 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

**ORDER REGARDING JURISDICTION AND
DENYING MOTION FOR STAY**

This is an appeal from a district court order granting a motion to set aside a default judgment under NRCP 60(b). Respondent has filed a motion to dismiss this appeal for lack of jurisdiction. Having considered the motion, opposition, and reply, this court concludes further briefing regarding jurisdiction is warranted. Accordingly, briefing of this appeal is reinstated.

Appellant shall have 90 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). In addition to the merits of this appeal, the parties' briefs shall contain a detailed discussion regarding this court's jurisdiction to consider this appeal. The jurisdiction discussion should specifically address NRAP 3A(b)(8), *Lindblom v. Prime Hospitality Corporation*, 120 Nev. 372, 374 n.1, 90 P.3d 1283, 1284 n.1 (2004), *Estate of Adams v. Fallini*, 132 Nev. 814, 386 P.3d 621 (2016), and *TRP International, Inc. v. Proimtu MMI LLC*, 133 Nev. 84, 391 P.3d 763 (2017), as well as 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2871 (3d ed. 2016), and the authorities cited therein.

Appellant has also filed a motion for stay pending appeal.¹ Appellant did not move for a stay in the district court and this court is not convinced that moving for a stay in the district court in the first instance is impracticable. See NRAP 8(a). The motion is thus denied without prejudice so that appellant may first seek relief in the district court.

It is so ORDERED.

Cadish, J.
Cadish

Pickering, J.
Pickering

Herndon, J.
Herndon

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Department 32
Hon. David M. Jones, District Judge
Peralta Law Group
Lewis Roca Rothgerber Christie LLP/Las Vegas
Eighth District Court Clerk

¹Although the motion was titled as an emergency motion and requested relief by February 1, 2021, this court determined that emergency treatment was not warranted.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Diane Sanchez, Plaintiff(s)

CASE NO: A-19-805351-C

7 vs.

DEPT. NO. Department 13

8 ATX Premier Insurance
9 Company, 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 Motion to Reconsider was served via the court's electronic eFile
system to all recipients registered for e-Service on the above entitled case as listed below:

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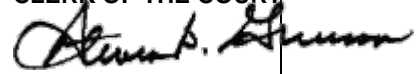
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EXHIBIT 22

EXHIBIT 22



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

DIANE SANCHEZ,

Plaintiff,

vs.

ATX PREMIER INSURANCE
COMPANY,

Defendant.

CASE NO. A-19-805351-C

DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON,
DISTRICT COURT JUDGE

THURSDAY, JANUARY 27, 2022

TRANSCRIPT OF HEARING

**MOTION FOR RECONSIDERATION OF ORDER DENYING
NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS
CONSTRUCTION & TRANSPORT INSURANCE SERVICES RENEWED
MOTION TO STAY PROCEEDINGS PURSUANT TO NRCP 60(B)(6), OR
ALTERNATIVELY, EDCR 2.24(B) ON AN ORDER SHORTENING TIME
PLAINTIFF DIANE SANCHEZ'S MOTION FOR COURT ORDER
DIRECTING DEFENDANTS NATIONSBUILDERS INSURANCE
SERVICES, INC. & NBIS CONSTRUCTION & TRANSPORT INSURANCE
SERVICES, INC. TO REDESIGNATE DOCUMENTS UNILATERALLY
DEEMED CONFIDENTIAL ON ORDER SHORTENING TIME**

SEE APPEARANCES ON PAGE 2

RECORDED BY: JENNIFER P. GEROLD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

NBIS 001068

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APPEARANCES:

For the Plaintiff:

DENNIS M. PRINCE, ESQ.
KEVIN T. STRONG, ESQ.
Appearing Via Video

For the Defendant
DMA Claims Management:

JOHN F. SCHNERINGER, ESQ.
Appearing Via Video

NBIS Defendants:

MEGAN H. THONGKHAM, ESQ.
Appearing Via Video

1 Las Vegas, Nevada, Thursday, January 27, 2022

2
3 [Case called at 10:17 a.m.]

4 THE COURT: Diane Sanchez versus ATX Premier
5 Insurance Company.

6 MR. PRINCE: Good morning, Your Honor. Dennis Prince
7 and Kevin Strong for Plaintiff.

8 MS. THONGKHAM: Good morning, Your Honor. Megan
9 Thongkham on behalf of Defendants Nationsbuilders Insurance
10 Services and NBIS Construction and Transport Insurance Services.

11 MR. SCHNERINGER: Good morning, Your Honor. John
12 Schneringer on behalf of DMA Claims.

13 THE COURT: Good morning.

14 All right. I've got a couple motions on. One's a Motion
15 for Reconsideration and Order Denying Nationsbuilders Insurance
16 Services, Inc. and NBIS Construction and Transport Insurance
17 Services Renewed Motion to Stay Proceedings Pursuant to NRCP
18 60(b)(6), or Alternatively EDCR 2.24(b).

19 And then I've got Plaintiff Diane Sanchez's Motion for
20 Court Order Directing Defendants Nationsbuilders Insurance
21 Services, Inc. & NBIS Construction & Transport Insurance Services,
22 Inc. To De-Designate Documents Unilaterally Deemed Confidential.
23 Okay.

24 Any consensus on the order in which I should hear these?

25 MS. THONGKHAM: Your Honor, the Motion for

1 Reconsideration should be heard first.

2 THE COURT: I'm hearing no objection to that. Go ahead.

3 MS. THONGKHAM: Thank you, Your Honor. This is -- I'm
4 going to refer to them as NBIS and CTIS, if you don't mind; they're
5 defendants.

6 We came before the Court on December 9th on
7 Defendant's Renewed Motion to Stay Proceedings and the big issue
8 that came up at that hearing was that in order to show cause, the
9 Supreme Court had issued, November 19th, in the appeal, pending
10 in the underlying personal injury action and whether that Order to
11 Show Cause would somehow affect the efficacy of the appeal or
12 result in the dismissal of the appeal.

13 And so based on that, Your Honor denied the renewed
14 motion without prejudice and essentially told Defendants, come
15 back when the dust settles, and we can revisit the Motion to Stay.
16 We're here today, hopefully to address your concerns, Your Honor,
17 and ask you to reconsider the order denying the Renewed Motion
18 because the order to show cause on which the Court based the
19 denial has zero impact on whether the appeal will move forward.

20 There are multiple orders on appeal in the underlying
21 action. The order that's most central, that's absolutely crucial to
22 this action is the order that refused to set aside the default
23 judgment. That order is moving forward no matter what. The OSC
24 that was issued in November, deals specifically with a potential
25 jurisdictional defect in the appeal from the judicial assignment; it

1 has nothing to do with the appeal from the order refusing to set
2 aside the default.

3 As long as that order is pending, it is absolutely
4 antithetical to principles of equity and fairness in opposition to
5 existing case law to allow the bad faith action to move forward
6 when the judgment that allegedly gives rise to the bad faith could
7 be set aside.

8 The prejudice to my clients, in particular, is extremely
9 widespread. It's not just the cost of discovery in this matter and the
10 time, although that has been immense, it's also the risk that a
11 judgment could be entered in this case when the underlying
12 judgment is not settled.

13 And unfortunately, Your Honor, we're seeing that the
14 Plaintiff is already using the discovery produced in this action to
15 attempt to influence the outcome of the underlying appeal, in
16 violation of the protective order, first of all, but also, this outcome is
17 precisely the opposite of the normal order resolution. In the
18 underlying action, the Plaintiff would never have access to the claim
19 file. They'd never be able to submit the insurance documents to the
20 District Court Judge, to attempt to influence how the appeal comes
21 out on the Order to Set Aside the Default Judgment.

22 So by entering a stay in this case, you not only save all of
23 the parties' time and money, you conserve judicial resources and
24 you protect the Defendants against the absolute abuse of their
25 documents in submission in the underlying action.

1 THE COURT: All right. Mr. Prince.

2 MR. PRINCE: Yes, Your Honor. Thank you.

3 This motion has been brought before you numerous times
4 and you've denied it each and every time.

5 I want to address two aspects of the request. One is -- just
6 let's talk about the order to show cause. I mean, the Court has
7 determined that there is a potential jurisdictional defect as it relates
8 to the judicial assignment order; that is true. But however, that
9 doesn't impact what you're doing here in this case, in this
10 enforcement proceeding.

11 The appeal will go forward as Ms. -- as Counsel indicates
12 on the issue of the valid -- the order denying the Motion to Set
13 Aside the Default Judgment; however, what we have is a valid final
14 judgment issued in Judge Delaney's Court that -- we also have a
15 valid judicial assignment of all of Mr. Bon's rights, the claimed
16 insured, which gives rise to Ms. Sanchez's ability to file this direct
17 action against NBIS, CTIS, and DMA, which is the other co-
18 defendant in this case, to enforce the default judgment.

19 Contrary to Counsel's arguments, this proceeding is not
20 antithetical to concepts of equity or other notions of justice. This
21 insurer and/or representative of an insurer, NBICTIS, Number 1,
22 they knew that Mr. Bon was an insurer, they knew there was a
23 lawsuit. They had notice of the lawsuit; those facts are undisputed.
24 They knew that Mr. Bon was served through the Department of
25 Motor Vehicles as appropriate substitute of services, as allowed

1 under Nevada law. With that in mind, they never provided a legal
2 defense to challenge the efficacy of the service. When they had
3 notice of the action and opportunity to defend, they chose to ignore
4 it.

5 Next, they actually spoke to Mr. Bon, explained the
6 lawsuit to him and even though they knew he was served through
7 the Department of Motor Vehicles, there was an attempt for a
8 substitute of service, they explained the lawsuit to him and then
9 again elected --

10 THE COURT: All right. I under --

11 MR. PRINCE: -- not to --

12 THE COURT: I understand all your --

13 MR. PRINCE: -- provide a legal defense --

14 THE COURT: -- contentions. What I'm focusing on here --

15 MR. PRINCE: And I guess the point is with that -- because
16 they're making an equitable argument and because they had an
17 opportunity to defend, elected not to defend prior to the entry of a
18 default judgment that they shouldn't be heard now when the
19 absence of appropriate security. They never moved for a stay in
20 Judge Delaney and sought Rule 62 relief by posting a bond.

21 Similarly, they shouldn't be able to circumvent that here
22 in your action and halt all enforcement proceedings. Ms. Sanchez's
23 only known asset right now is this insurance policy and the rights
24 flowing from that insurance policy and the briefs, the duties by
25 NBIS and CTIS. They -- she shouldn't be at risk now of -- with no

1 bond and no security or anything else and prevented from moving
2 forward against those two entities who made the decision not to
3 defend in the first place.

4 And I think -- I raise those arguments because I think it's
5 important to your analysis in terms of the equity. It's not as if you
6 had a carrier who said we didn't have notice of the accident, we
7 didn't have an opportunity to defend and we want to challenge
8 those issues. That's not what you have here. And so that's why I
9 highlight those facts because they come in here after already
10 breaching their obligations.

11 They don't have the right to equity, they don't have clean
12 hands, they don't have the sense of hey, there's a potential injustice
13 happening in the underlying tort case that we now need to get relief
14 from because no one knew the lawsuit was filed or there was an
15 effort of service or even a default or a default judgment. They knew
16 about all of those facts and so we have a valid and final de --
17 judgment that we're seeking to enforce here.

18 If the Court is inclined -- so we never really addressed the
19 merits of the -- and the substance of the stay arguments. We talked
20 kind of loosely about the appellate-related issues but quite frankly
21 those are irrelevant. They have the ability to get a stay, they have
22 elected not to post a bond. If they want to have a meaningful
23 opportunity to litigate the underlying appeal, go ahead. And if they
24 want a stay, then post a bond like any other Defendant would under
25 Rule 62. They've chosen not to do that.

1 But we're asking you here, Your Honor, because the
2 equities of the position, their refusal to post security and get a stay
3 in front of Judge Delaney, under Rule 62, that if you grant a stay
4 and post a security requirement so that the Plaintiff, Diane Sanchez
5 is not prejudiced by a two-year stay of this action against this entity.
6 We don't know what's going to happen in two years. Their
7 solvency, ability to recover, if they'd sell assets, what impact that's
8 going to have on Ms. Sanchez's rights to pursue this matter. And
9 that would be manifestly unfair to her in seeking the payment of
10 redress for her 15-plus million-dollar default judgment.

11 And so for those reasons, Your Honor, we don't believe
12 that under Rule 60(b)(6) that there's been any sufficient cause. They
13 need to present to you substantially different evidence; they have
14 not. It's the same arguments they've made over and over. They
15 haven't satisfied the Rule 60(b)(6) requirements.

16 Moreover, they can't satisfy the local rule because they
17 haven't demonstrated any good cause or stopping this enforcement
18 proceeding while they pursue an appeal that they could have
19 challenged a service early on. They could have avoided the default
20 judgment by simply appearing in the action; that -- they themselves
21 could have done that.

22 So this is not the entity that deserves a stay. There is no
23 equitable basis or legal basis for an entity who knows about a
24 lawsuit and elects not to defend. That was a voluntary choice they
25 made, and they shouldn't now benefit from their own decision-

1 making which results in a catastrophic default judgment entered
2 against their insured.

3 So for those reasons, Your Honor, we're requesting you
4 deny.

5 THE COURT: How do you respond to Counsel's statement
6 that the pending Order to Show Cause has nothing to do with the
7 judgment?

8 Did you hear me, Mr. Prince?

9 MR. PRINCE: I'm sorry?

10 THE COURT: How do you respond to what --

11 MR. PRINCE: I'm sorry --

12 THE COURT: How do you respond to what Counsel said
13 about the pending Order to Show Cause and the Supreme Court
14 having nothing to do with the judgment that's the subject of this?

15 MR. PRINCE: Oh I think I -- I'm sorry, Your Honor, I
16 thought -- I apologize. I thought I addressed that at the beginning. I
17 agreed with her that the Order to Show Cause related to the order
18 relating to judicial assignment and not the underlying judgment
19 itself.

20 THE COURT: Okay.

21 MR. PRINCE: I agreed with that.

22 THE COURT: What is your understanding relative to the
23 timeframe -- what do Supreme Court records show relative to when
24 it's going to be expected that a determination will be made in the
25 Supreme Court on the appeal?

1 MR. PRINCE: We -- oh, we have no indication. We
2 haven't even started the briefing on appeal. And from my
3 experience in dealing with intricate appellate matters over the
4 course of my career, you're looking at a probably almost 24
5 months -- by the time we brief it, decision, potential argument,
6 we're looking at probably close to two years from now.

7 THE COURT: Okay. All right. Thank you.
8 Counsel?

9 MS. THONGKHAM: Yes, Your Honor. A couple thoughts I
10 had. First of all, Mr. Prince referred to my clients as insurers; they
11 are not insurers. We've represented that many times in briefing but
12 just to make sure that record is clear.

13 And, you know, I think it's important to point out, we're
14 not asking this Court to, you know, overturn the judgment. We're
15 asking for a discretionary stay, pending the outcome of the appeal.
16 And there's lots --

17 THE COURT: Pending the outcome --

18 MS. THONGKHAM: -- of use --

19 THE COURT: -- of the appeal that will take maybe up to
20 two years or whatever; is that what I -- or a year?

21 MS. THONGKHAM: If that's what it takes, Your Honor.
22 But here's the other part, Your Honor, there's a lot of use of the
23 word they; they should have done this, they should have done that.
24 NBIS and CTIS are not Defendants in the underlying matter. The
25 judgment was not entered against them. There's no dispute that

1 Mr. Bon, you know, has very limited financial resources.

2 And to the extent that there's a discussion about a bond,
3 that shouldn't be here in the bad faith action, that should be in front
4 of Judge Delaney. We are not named Defendants in the underlying
5 case. And the way that this -- the two cases have run almost
6 simultaneously instead of finishing the personal injury action first
7 and the appeal and then proceeding to bad faith, my clients don't
8 even have a real opportunity to move to intervene.

9 We're post-judgment now. We're faced with fighting
10 violations of our protective order, the submission of documents to
11 the underlying court, in violation of our protective order. And we
12 can't even intervene because it's post-judgment. So the quagmire
13 of issues that are presented by the procedural status of these two
14 cases really can't be understated.

15 Mr. Prince made some representations about the impact
16 on his client. We've never seen any sort of financial affidavit from
17 Ms. Sanchez. We've never seen any information that would
18 indicate that she can't wait another two years in the interest of, you
19 know, ensuring that the Defendants are protected against the entry
20 of yet another judgment that could be subject to reversal.

21 THE COURT: All right. I don't know off the top of my
22 head whether or not an order granting or denying a stay would be
23 an appealable order. It certainly, I guess, could be the subject of a
24 writ petition, one way or the other. But here's what I'm going to do,
25 I will grant a temporary stay for a period of 15 days. Okay?

1 And let's see here, I'll have the matter come before me
2 again on February 14th at 9:00 a.m. In other words, I'll grant the
3 stay effective until February 14th, at 9:00 a.m., close of business.
4 That's a temporary stay that will give you an opportunity, Counsel,
5 to determine what you want to do relative to that ruling.

6 I'm not going to grant a full stay or a permanent stay, just
7 a temporary stay to that point. And in the meantime, you can
8 determine whether or not to seek relief from the Supreme Court,
9 either by way of appeal or writ. Okay?

10 And I'm also going to continue the hearing on the other
11 motion that's before the Court today, which is the De-Designation
12 of Documents to the same time; February 14th at 9:00 a.m. In other
13 words, the Stay --

14 MR. PRINCE: Your Honor, I guess --

15 THE COURT: The Stay is effective until the end of the day
16 of February 14th. I'm continuing for further proceedings on the
17 Motion for Reconsideration and the -- let's put it this way. I'm
18 denying the Motion for Reconsideration to the extent that it seeks a
19 stay pending the appeal, but I am granting it in part, to the extent
20 that it seeks a temporary stay so that further relief can be sought by
21 the moving party in the Supreme Court. Okay?

22 MR. PRINCE: Very good.

23 MS. THONGKHAM: Thank you.

24 MR. PRINCE: Thank you, Judge.

25 THE COURT: So what I need then is -- and I'll hear -- I'm

1 deferring -- I'm passing the motion regarding the de-designation to
2 the 14th as well. Okay?

3 MR. PRINCE: With respect to --

4 THE COURT: Actually, I don't need --

5 MR. PRINCE: -- them --

6 THE COURT: I don't need to -- I don't need to pass any
7 part of the Motion for Reconsideration to the 14th because I've
8 ruled on that motion; temporary stay. Okay?

9 But I'll -- on the 14th of February, I'll then take a look at
10 what the record is reflecting regarding whether or not the Supreme
11 Court issued a stay or not. Okay?

12 MR. PRINCE: At the request of the moving party, correct?
13 I mean, you're not putting that on the Plaintiff --

14 THE COURT: Oh, yes --

15 MR. PRINCE: -- to do that.

16 THE COURT: Oh, yes. I'm sorry. Yes, it's -- if the moving
17 party wants to seek further stay beyond the temporary stay that I've
18 issued, the moving party can proceed accordingly in the Supreme
19 Court, either by of appeal, if it's an appealable order, or by --

20 MR. PRINCE: Okay.

21 THE COURT: -- way of writ. But the point is, get that
22 order to me ASAP, Mr. Prince; the order on the ruling --

23 MR. PRINCE: Yeah, we'll do it --

24 THE COURT: -- I've just made.

25 MR. PRINCE: Yeah, we'll get that to you today.

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THE COURT: Okay.

MR. PRINCE: Yep, no problem.

THE COURT: So then Counsel --

MR. PRINCE: Yep.

THE COURT: -- can have that --

MR. PRINCE: Thank you.

THE COURT: -- in hand and be able to seek relief. Okay?

MS. THONGKHAM: Thank you, Your Honor.

THE COURT: Thank you.

MR. PRINCE: Thank you.

[Hearing concluded at 10:34 a.m.]

* * * * *

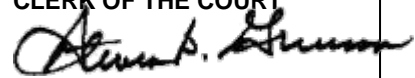
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Brittany Mangelson
Independent Transcriber

EXHIBIT 23

EXHIBIT 23



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15 **EIGHTH JUDICIAL DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 DIANE SANCHEZ,
18
19 Plaintiff,

Case No. A-19-805351-C
Dept. No. XIII

20 vs.

21 ATX PREMIER INSURANCE COMPANY
22 now known as WINDHAVEN NATIONAL
23 INSURANCE COMPANY, a foreign
24 corporation; NATIONSBUILDERS
25 INSURANCE SERVICES, INC., a foreign
26 corporation; NBIS CONSTRUCTION &
27 TRANSPORT INSURANCE SERVICES,
28 INC., a foreign corporation; DMA
CLAIMS MANAGEMENT, INC., a
foreign corporation; BLAS BON, an
individual; DOES I-X; and ROE
CORPORATIONS I-X, inclusive,

Defendants.

**PLAINTIFF DIANE SANCHEZ'S
OPPOSITION TO MOTION FOR
RECONSIDERATION OF ORDER
DENYING NATIONSBUILDERS
INSURANCE SERVICES, INC. AND
NBIS CONSTRUCTION &
TRANSPORT INSURANCE
SERVICES, INC.'S RENEWED
MOTION TO STAY PROCEEDINGS
PURSUANT TO NRCP 60(B)(6), OR
ALTERNATIVELY, EDCR 2.24(B)
ON AN ORDER SHORTENING TIME**

Hearing Date: January 27, 2022
Hearing Time: 9:00 a.m.

Plaintiff DIANE SANCHEZ, by and through her counsel of record, Dennis M. Prince and Kevin T. Strong of PRINCE LAW GROUP, hereby submits her *Opposition to Motion for Reconsideration of Order Denying NationsBuilders Insurance Services, Inc. and NBIS Construction & Transport Insurance Services, Inc.'s Renewed Motion to Stay*



1 *Proceedings Pursuant to NRCP 60(b)(6) or, alternatively, EDCR 2.24(b) on an Order*
2 *Shortening Time.*

3 This Opposition is based on the pleadings and papers on file in this action, the
4 Memorandum of Points and Authorities set forth herein, and any argument this Court
5 wishes to entertain at the hearing of this matter.

6 DATED this 21st day of January, 2022.

7 **PRINCE LAW GROUP**

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendants NationsBuilders Insurance Services, Inc. (“NBIS”) and NBIS Construction & Transport Insurance Services, Inc. (“CTIS”) once again improperly seek to delay Plaintiff Diane Sanchez’s (“Sanchez”) efforts to enforce her legally valid default judgment by obtaining the benefit of a stay without posting the requisite security to stay enforcement pursuant to NRCP 62. For several years, NBIS and CTIS took no steps to ensure Defendant Blas Bon (“Bon”), who was covered under an automobile liability insurance policy underwritten by ATX Premier Insurance Company, a former subsidiary of NBIS, received a defense against Sanchez’s personal injury complaint. NBIS and/or CTIS’s inaction was shocking, particularly because they knew Sanchez filed her personal injury lawsuit and served Bon with the lawsuit through the Nevada Department of Motor Vehicles (“DMV”). Cindy Blanco, an employee of NBIS and/or CTIS, even spoke to Bon about the personal injury lawsuit and pledged to keep his whereabouts hidden to help him avoid service of the summons and complaint even though he was already served through the DMV.¹ By all accounts, NBIS and/or CTIS assumed the responsibility and control of satisfying ATX’s contractual duty to defend. Yet, NBIS and CTIS refused to provide Bon with a defense or otherwise challenge the sufficiency of Sanchez’s efforts to personally serve Bon with the summons and personal injury complaint at that time. Now, several years later, NBIS and CTIS question the efficacy of Sanchez’s diligence to personally serve Bon before she served him through the DMV as part of their concerted effort to escape liability for a default judgment that was entered because of their conduct. Under these circumstances, NBIS and CTIS are in no

¹ On December 8, 2021, Sanchez submitted, as part of her Supplement to Opposition to NBIS and CTIS’s Renewed Motion to Stay, claims file notes detailing Blanco’s acknowledgement of the lawsuit, telephone call with Bon, and failure to assign defense counsel to defend Bon against Sanchez’s personal injury lawsuit. As NBIS and CTIS erroneously designated the claims file notes as “Confidential,” Sanchez submitted them to this Court, *in camera*. This Court also received the claims file notes as part of Sanchez’s Motion requesting NBIS and CTIS de-designate these documents as “Confidential.”

1 position to credibly express concerns about being forced to litigate Sanchez's judgment
2 enforcement action while their appeal in the underlying personal injury action is
3 pending.

4 NBIS and CTIS's Motion for Reconsideration is based solely on their contention
5 that the Nevada Supreme Court's second Order to Show Cause ("OSC") is irrelevant
6 because their appeal, through Bon, of the order denying the motion to set aside the
7 default judgment is ongoing. NBIS and CTIS's counsel made these same arguments to
8 this Court during the December 9, 2021 hearing on NBIS and CTIS's Renewed Motion
9 to Stay, which undermines the legitimacy of their request for reconsideration. NBIS
10 and CTIS fail to comprehend the intent of this Court's December 22, 2021 Order is to
11 reach the merits of the parties' respective arguments for and against entry of a stay once
12 the OSC issue before the Nevada Supreme Court is resolved. Now, by design, NBIS and
13 CTIS seek to deprive Sanchez from obtaining this Court's consideration of the legal
14 arguments and bases she has made against entry of a stay. The impropriety of NBIS
15 and CTIS's reconsideration request justifies this Court's denial of the same.

16 II.

17 LEGAL ARGUMENT

18 NRCP 60 allows this Court to relieve a party from an order for various reasons,
19 including "any other reason that justifies relief." *See* Nev. R. Civ. P. 60(b)(6). However,
20 there must be "**sufficient cause shown**" for the Court to reconsider "an order
21 previously made and entered on motion in the progress of the cause or proceeding." *Trail*
22 *v. Faretto*, 91 Nev. 401, 403 (1975) (emphasis added). "A district court may reconsider a
23 previously decided issue if substantially different evidence is subsequently introduced
24 or the decision is clearly erroneous." *Masonry & Tile Contrs. v. Jolley, Urga & With*
25 *Ass'n*, 113 Nev. 737, 741 (1997). "Only in very rare instances in which new issues of fact
26 or law are raised supporting a ruling contrary to the ruling already reached should a
27 motion for rehearing be granted." *Moore v. Las Vegas*, 92 Nev. 402, 405 (1976).

28 The only legal avenue NBIS and CTIS rely upon to move for reconsideration is
NRCP 60(b)(6), which is identical in language to Federal Rule of Civil Procedure
60(b)(6). "Rule 60(b)(6) is a "catch-all" provision used "**sparingly** as an equitable

1 remedy to prevent manifest injustice.” *Richard v. Univ. Med. Ctr. of S. Nev.*, No. 2:09-
2 cv-02444-LDG-PAL, 2011 U.S. Dist. LEXIS 2972, at *6 (D. Nev. Jan. 10, 2011) (*quoting*
3 *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993))
4 (emphasis added).² “Even stricter standards are routinely applied to motions under
5 subsection 6 of Rule 60(b)(6) than to motions made under other provisions of the rule.”
6 *Stokes v. Williams*, 475 F.3d 732, 735 (6th Cir. 2007). “Courts . . . must apply subsection
7 (b)(6) only as a means to achieve substantial justice when something more than one of
8 the grounds contained in Rule 60(b)’s first five clauses is present.” *Id.* (internal
9 quotations omitted). “The something more . . . must include **unusual and extreme**
10 situations where principles of equity *mandate* relief. *Id.* (emphasis added). Thus, “Rule
11 60(b)(6) carries a high burden.” *United States v. Fausnaught*, No. 3:03-CR-32, 2018 U.S.
12 Dist. LEXIS 67111, at *4 (M.D. Pa. April 20, 2018); *see also*, *Zagorski v. Mays*, No. 3:99-
13 cv-01193, 2018 U.S. Dist. LEXIS 155532, at *3 (M.D. Tenn. Sep. 12, 2018) (A movant
seeking relief under Rule 60(b)(6) faces an “exceedingly high burden”).

14 **A. NBIS and CTIS Fail to Carry Their High Burden to Prove They Will**
15 **Suffer Injustice if Their Motion for Reconsideration is Denied**

16 NBIS and CTIS contend extraordinary circumstances are present to justify
17 reconsideration of the order denying their stay request. They contend they face
18 “substantial risk of injustice should this bad faith action be forced to move forward while
19 the appeal of the underlying default judgment is still pending.” *See Opps.*, at 8:9-10.
20 Conspicuously absent from these wholly conclusory arguments is any detailed factual
21 explanation about what substantial risk of injustice they will face. Sanchez can only
22 decipher that NBIS and CTIS equate a substantial risk of injustice with merely
23 incurring attorney’s fees and costs to defend themselves against Sanchez’s claims in this
24 action. Currently, the only outstanding discovery as it relates to NBIS and CTIS are
25 interrogatories and requests for production Sanchez served on January 13, 2022. CTIS’s
26 employee, Arthur Kirkner, is no longer available for his February 16, 2022 deposition

27 ² Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive
28 authority, because the Nevada Rules of Civil Procedure are based in large part upon
their federal counterparts.” *Exec. Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53 (2002).

1 due to his involvement in a bench trial involving CTIS in the United States District
2 Court, Middle District of Florida scheduled to begin on February 7, 2022. *See* Jan. 18,
3 2022 correspondence, attached as **Exhibit 1**.³ Nevertheless, incurring litigation costs
4 is a far cry from injustice, particularly when NBIS and CTIS refused to hire and pay an
5 attorney to defend ATX's insured, Bon, against Sanchez's personal injury complaint.

6 NBIS and CTIS's claimed financial hardship also rings hollow when they are
7 clearly funding the appeal of an order denying a motion to set aside a default judgment
8 entered as a direct result of their misconduct. This Court is well-aware of the fact that
9 NBIS and/or CTIS have paid for multiple attorneys to muster legal challenges to the
10 default judgment entered against Bon because they now bear financial responsibility for
11 it:

12 Kevin:

13 Gotcha. It is my understanding that NBIS
14 (NationsBuilders Insurance Services, Inc.) retained
15 Kolesar & Leatham and then my new office Holley Driggs
16 to represent Mr. Bon. I have no information on the
17 relationship between NBIS and Windhaven or ATX. That's
18 as much as I know. I hope that answers your question.

19 . . .

20 Mr. Volk's **retention was by NBIS Construction and**
21 **Transport Insurance Services, Inc., for the benefit of**
22 **ATX Premier Insurance Co.**, who then utilized DMA
23 Claims as the claims administrator.

24 . . .

25 Kevin:

26 I want to clarify that it was **NBIS Construction and**
27 **Transport Insurance Services, Inc.** that retained my
28 office. They are obviously part of the **NBIS family of**
companies. I should have been more precise about that
point.

³ The immediacy of Arthur Kirkner's deposition was one of the primary reasons NBIS and CTIS requested this Court to hear this motion on an order shortening time. *See* Declaration of Megan H. Thongkham, at ¶ 4. It is implausible that NBIS and CTIS were unaware of this trial start date and the potential conflict that might arise when they requested this matter be heard on an order shortening time.

1 See April 29, 2020 e-mails from attorneys William Volk and John Podesta, collectively
2 attached as **Exhibit 2** (emphasis added).

3 NBIS and CTIS have also hired Lewis Roca Rothgerber Christie LLP to prosecute
4 their appeal seeking to set aside the default judgment. See Second Amended Notice of
5 Appeal, attached as **Exhibit 3**. NBIS and CTIS are clearly using Bon to fund an appeal
6 of a default judgment they bear financial and legal responsibility for because their
7 misconduct caused entry of that judgment. The irony of claiming financial hardship in
8 the litigation of this action while simultaneously paying multiple attorneys to prosecute
9 an appeal cannot be overstated. These facts also underscore NBIS and CTIS's devious
10 motivation to avoid posting the requisite security needed to halt Sanchez's judgment
11 enforcement action pursuant to NRCP 62. NBIS and CTIS retained control and
12 responsibility to provide ATX insureds, like Bon, with a defense against personal injury
13 complaints. Their failure to provide Bon with a defense was a clear breach of the
14 contractual duty to defend. See *Century Sur. Co. v. Andrew*, 134 Nev. 819, 822 (2018).
15 Allowing NBIS and CTIS to secure the benefit of a stay without posting a bond will
16 unfairly reward insurers or insurance entities, like NBIS and CTIS, that have breached
17 the duty to defend by allowing them to circumvent the financial requirement to stay
18 judgment enforcement for their own financial benefit. In turn, Sanchez, or other
19 similarly situated judgment creditors, will be left without the requisite financial security
20 to safeguard their judgment enforcement and/or collection efforts. The inequity of such
21 an outcome further justifies NBIS and CTIS's obligation to post a supersedeas bond if
22 they successfully convince this Court to stay this action.

23 As it relates to this case, the potential exists that NBIS and CTIS may be sold or
24 otherwise suffer financially during the two years or more their appeal is pending. The
25 likelihood of this outcome is magnified by NBIS's sale of ATX to Windhaven National
26 Insurance Company and Windhaven's subsequent liquidation proceedings. If NBIS and
27 CTIS suffer financial calamity, this will undoubtedly impair Sanchez's ability to later
28 recover the full amount of the \$15,212,655.73 default judgment and other damages
incurred. Sanchez simply should not have to bear this financial risk while NBIS and
CTIS can enjoy the benefits of a stay without bearing the requisite financial cost for that

1 stay. The posting of a supersedeas bond will ameliorate any harm Sanchez suffers if
2 NBIS and CTIS sustain financial harm during the pendency of their appeal.

3 The facts detailed above call into question the legitimacy of NBIS and CTIS's
4 claim that principles of equity justify reconsideration pursuant to NRCP 60(b)(6). By
5 failing to clarify what genuine injustice they will face, NBIS and CTIS do not even
6 remotely come close to satisfying the high burden for this Court to grant reconsideration.

7 **B. The Alleged Irrelevance of the Pending OSC Issued by the Nevada**
8 **Supreme Court Does Not Invalidate this Court's Clear Intention to**
9 **Determine, on the Merits, Whether this Proceeding Should be Stayed**

10 This Court states in its November 22, 2021 Order Denying NBIS and CTIS's
11 Renewed Motion to Stay that its denial is "without prejudice [subject] to renewal
12 following the Supreme Court's determination on such Order to Show Cause." This
13 Court's ruling demonstrates a clear intent to consider the parties' substantive
14 arguments on their merits as part of its decision to grant or deny a stay of this action.
15 This Court has merely decided to wait until after the Nevada Supreme Court's OSC is
16 resolved to render a decision regarding a stay on the merits.

17 On January 20, 2022, NBIS and CTIS filed a supplement to their Motion for
18 Reconsideration in which they attached Sanchez's Reply to "Bon's" Response to the
19 Nevada Supreme Court's pending OSC. Sanchez's Reply challenges the Nevada
20 Supreme Court's jurisdiction over "Bon's" appeal of the order assigning his claims for
21 relief against any liability insurer or other relevant third-party entity. NBIS and CTIS
22 seemingly believe Sanchez's Reply constitutes a concession that the OSC is irrelevant
23 and that a stay should be imposed. This argument is short-sighted and misses the mark.
24 Sanchez's arguments against a stay have always been predicated on the premise that
25 the appeal of the order denying the motion to set aside the default judgment provides no
26 legitimate basis to stay this action. Sanchez's Reply addressing the second OSC does
27 not change this fact, nor does it undermine this Court's desire to decide the stay issue,
28 on the merits.

NBIS and CTIS completely ignore that this Court has essentially held its ruling
on the stay issue in abeyance due to a procedural technicality that exists in the Nevada

1 Supreme Court. Denying this motion for reconsideration will not foreclose NBIS and
2 CTIS from, once again, renewing their motion to stay once the Nevada Supreme Court
3 resolves the OSC issue. Even if this Court ultimately determines the OSC has no
4 bearing on the stay request, NBIS and CTIS are still not entitled to a stay until this
5 Court has meaningfully evaluated the parties' respective legal positions regarding the
6 propriety of a stay. NBIS and CTIS's failure to satisfy the high burden under NRCP
7 60(b)(6), coupled with the plain language of this Court's Order, justify this Court's denial
8 of their Motion for Reconsideration in its entirety.

9 **C. Reconsideration Pursuant to EDCR 2.24(b) Fails for the Same Reasons**

10 NBIS and CTIS refer to EDCR 2.24(b) as an alternative legal basis to grant
11 reconsideration without any supporting analysis. The plain language of the rule excludes
12 motions for reconsideration "that may be addressed by motion pursuant to NRCP 50(b),
13 52(b), 59 or **60** . . ." (emphasis added). NBIS and CTIS provide no explanation for this
14 Court to entertain reconsideration pursuant to EDCR 2.24(b). Similarly, they provide
15 no reason why they are entitled to reconsideration pursuant to EDCR 2.24(b). To the
16 extent NBIS and CTIS rely upon the same failed arguments and analysis pursuant to
17 NRCP 60(b)(6), they similarly do not justify reconsideration under EDCR 2.24(b). In the
18 event NBIS and CTIS articulate alternative grounds to seek reconsideration pursuant
19 to EDCR 2.24(b) in their Reply, Sanchez expressly reserves the right to address those
20 arguments at the January 27, 2022 hearing on their Motion.

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III.

CONCLUSION

Based on the foregoing facts, law, and analysis, Plaintiff Diane Sanchez respectfully requests this Court to **DENY** Defendants NationsBuilders Insurance Services, Inc. and NBIS Construction & Transport Insurance Services, Inc.'s *Motion for Reconsideration of Order Denying NationsBuilders Insurance Services, Inc. and NBIS Construction & Transport Insurance Services, Inc.'s Renewed Motion to Stay Proceedings pursuant to NRCP 60(b)(6) or, alternatively, EDCR 2.24(b) on an Order Shortening Time.*

DATED this 21st day of January, 2022.

PRINCE LAW GROUP

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Diane Sanchez

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of **PRINCE LAW**
3 **GROUP**, and that on the 21st day of January, 2022, I caused the foregoing document
4 entitled **PLAINTIFF DIANE SANCHEZ'S OPPOSITION TO MOTION FOR**
5 **RECONSIDERATION OF ORDER DENYING NATIONSBUILDERS**
6 **INSURANCE SERVICES, INC. AND NBIS CONSTRUCTION & TRANSPORT**
7 **INSURANCE SERVICES, INC.'S RENEWED MOTION TO SYAY**
8 **PROCEEDINGS PURSUANT TO NRCP 60(B)(6), OR ALTERNATIVELY, EDCR**
9 **2.24(B) ON AN ORDER SHORTENING TIME** to be served upon those persons
10 designated by the parties in the E-Service Master List for the above-referenced matter
11 in the Eighth Judicial District Court E-Filing System in accordance with the mandatory
12 electronic service requirements of Administrative Order 14-2 and the Nevada Electronic
Filing and Conversion Rules.

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NationsBuilders Insurance Services, Inc. and
NBIS Construction & Transport Insurance Services, Inc.

22
23 /s/ Kevin T. Strong

24 An Employee of PRINCE LAW GROUP
25
26
27
28

EXHIBIT 1

BARRY J. LIPSON
(1955-2003)

LAW OFFICES
Lipson | Neilson
Attorneys and Counselors at Law

From the desk of:

MEGAN H. THONGKHAM
MThongkham@lipsonneilson.com

OFFICE LOCATIONS

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LAS VEGAS, NEVADA 89144

TELEPHONE (702) 382-1500
TELEFAX (702) 382-1512
www.lipsonneilson.com

January 18, 2022

VIA ELECTRONIC SERVICE ONLY

Dennis M. Prince, Esq.
Kevin T. Strong, Esq.
Andrew R. Brown, Esq.
Prince Law Group
10801 W. Charleston Blvd., Suite 560
Las Vegas, NV 89135

Re: *Diane Sanchez v. DMA Claims Management, Inc. et al.*
Case No. A-19-805351-C
Request to Move Deposition of Arthur Kirkner

Dear Mssr. Prince, Strong, and Brown,

Please allow this correspondence to serve as NBIS/CTIS' request to move the videotaped deposition of Arthur Kirkner in the above-referenced matter from February 16, 2022 to a date that is mutually convenient for the parties in late February or early March 2022.

Mr. Kirkner is a witness in a case entitled *NBIS Construction & Transport Insurance Services, Inc. v. Liebherr-America, Inc.*, Case No. 8:19-cv-02777-AAS, venued in the United States District Court, for the Middle District of Florida ("Florida Action"). A five-day bench trial in the Florida Action is scheduled to begin on February 7, 2022. At this juncture and after discussion with the court, the Parties are reasonably certain the trial will proceed as scheduled and will run through at least Friday, February 11, 2022. The trial in the Florida Action significantly impacts our ability to prepare Mr. Kirkner for his deposition in this matter. Additionally, due to existing obligations and scheduling conflicts, we are unable to move Mr. Kirkner's deposition to a date early than February 16, 2022.

NBIS 001095

Dennis Prince, Esq.
Kevin Strong, Esq.
Andrew Brown, Esq.
January 18, 2022
Page 2

Thank you in advance for your consideration of this request. Please contact my office with proposed deposition dates in late February/early March 2022, and we will work to reschedule Mr. Kirkner's deposition as expeditiously as possible. Alternatively, if Plaintiff will not agree to move the deposition, please advise my office as soon as possible so we may move for the appropriate relief.

Very truly yours,

LIPSON NEILSON P.C.

/s/ Megan H. Thongkham

MEGAN H. THONGKHAM, ESQ.

MHT/dm/NB8546-001

cc: Robert E. Schumacher, Esq.
John F. Schneringer, Esq.

EXHIBIT 2

Kevin Strong

From: William P. Volk <wvolk@nevadafirm.com>
Sent: Wednesday, April 29, 2020 3:13 PM
To: Kevin Strong
Cc: Dennis Prince; Angela Lee; Amy Ebinger; John H. Podesta, Esq. (john.podesta@wilsonelser.com); Suri Guzman
Subject: RE: Sanchez v. Bon

Kevin:

Gotcha. It is my understanding that NBIS (NationsBuilders Insurance Services, Inc.) retained Kolesar & Leatham and then my new office Holley Driggs to represent Mr. Bon. I have no information on the relationship between NBIS and Windhaven or ATX. That's as much as I know. I hope this answers your question.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912
400 S. 4th Street, Suite 300, Las Vegas NV 89101

Tel: 775.851.8700 | Fax: 775.851.7681
800 S. Meadows Parkway, Suite 800, Reno NV 89521

www.nevadafirm.com

This email message (including any attachments): (a) may include privileged, confidential, proprietary and/or other protected information, (b) is sent based upon a reasonable expectation of privacy, and (c) is not intended for transmission to, or receipt by, unauthorized persons. If you are not the intended recipient, please notify the sender immediately by telephone (702.791.0308) or by replying to this message and then delete the message and all copies or portions from your system. Thank you.

From: Kevin Strong <kstrong@thedplg.com>
Sent: Wednesday, April 29, 2020 3:02 PM
To: William P. Volk <wvolk@nevadafirm.com>
Cc: Dennis Prince <dprince@thedplg.com>; Angela Lee <alee@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>; John H. Podesta, Esq. (john.podesta@wilsonelser.com) <john.podesta@wilsonelser.com>; Suri Guzman <sguzman@nevadafirm.com>
Subject: RE: Sanchez v. Bon

Mr. Volk,

I apologize if my question was not clear, but it is very simple. Did Windhaven hire you to represent Mr. Bon in the state court action? Given that you notified the state court of the stay "on behalf" of Mr. Bon, I think it is safe to assume Windhaven hired you.

Sincerely,

Kevin Strong

From: Podesta, John <John.Podesta@wilsonelser.com>
Sent: Wednesday, April 29, 2020 5:03 PM
To: William P. Volk; Kevin Strong
Cc: Dennis Prince
Subject: RE: Sanchez v. Bon

And we see the reason that defense lawyers are kept in the dark about how things really work. Sorry, Bill. Mr. Volk's retention was by NBIS Construction and Transport Insurance Services, Inc., for the benefit of ATX Premier Insurance Co. who then utilized DMA Claims as the claims administrator.

ATX Premier was sold in 2015, and you have the filings on that because you asked about them. The buyer changed the name (only) to Windhaven National Insurance Company, who was then put into liquidation this year. My understanding is that claims against Windhaven National or its insureds must go through the liquidator. If there are any exceptions to this rule, I'm not aware of them but I'm not foreclosing a dialogue since I'm not an expert in this area.

John Podesta
Attorney at Law
Wilson Elser Moskowitz Edelman & Dicker LLP
525 Market Street - 17th Floor
San Francisco, CA 94105-2725
415.625.9258 (Direct)
415.433.0990 (Main)
415.434.1370 (Fax)
john.podesta@wilsonelser.com

From: William P. Volk [mailto:wvolk@nevadafirm.com]
Sent: Wednesday, April 29, 2020 3:13 PM
To: Kevin Strong <kstrong@thedplg.com>
Cc: Dennis Prince <dprince@thedplg.com>; Angela Lee <alee@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>; Podesta, John <John.Podesta@wilsonelser.com>; Suri Guzman <sguzman@nevadafirm.com>
Subject: RE: Sanchez v. Bon

[EXTERNAL EMAIL]

Kevin:

Gotcha. It is my understanding that NBIS (NationsBuilders Insurance Services, Inc.) retained Kolesar & Leatham and then my new office Holley Driggs to represent Mr. Bon. I have no information on the relationship between NBIS and Windhaven or ATX. That's as much as I know. I hope this answers your question.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

Kevin Strong

From: William P. Volk <wvolk@nevadafirm.com>
Sent: Wednesday, April 29, 2020 5:08 PM
To: Kevin Strong
Cc: Dennis Prince; Angela Lee; Amy Ebinger; John H. Podesta, Esq. (john.podesta@wilsonelser.com); Suri Guzman
Subject: RE: Sanchez v. Bon

Kevin:

I want to clarify that it was **NBIS Construction and Transport Insurance Services, Inc.** that retained my office. They are obviously a part of the NBIS family of companies. I should have been more precise about that point.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

Tel: 702.791.0308 | Fax: 702.791.1912
400 S. 4th Street, Suite 300, Las Vegas NV 89101

Tel: 775.851.8700 | Fax: 775.851.7681
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From: William P. Volk
Sent: Wednesday, April 29, 2020 3:13 PM
To: Kevin Strong <kstrong@thedplg.com>
Cc: Dennis Prince <dprince@thedplg.com>; Angela Lee <alee@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>; John H. Podesta, Esq. (john.podesta@wilsonelser.com) <john.podesta@wilsonelser.com>; Suri Guzman <sguzman@nevadafirm.com>
Subject: RE: Sanchez v. Bon

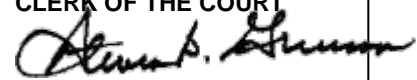
Kevin:

Gotcha. It is my understanding that NBIS (NationsBuilders Insurance Services, Inc.) retained Kolesar & Leatham and then my new office Holley Driggs to represent Mr. Bon. I have no information on the relationship between NBIS and Windhaven or ATX. That's as much as I know. I hope this answers your question.

William P. Volk
Shareholder
Las Vegas Office

HOLLEY DRIGGS

EXHIBIT 3



Electronically Filed
Oct 27 2021 03:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 **ANOA**
2 WILLIAM P. VOLK, (SBN 6167)
3 HOLLEY DRIGGS
4 400 S. Fourth Street
5 Suite 300
6 Las Vegas, Nevada 89101
7 (702) 791-0308
8 WVolk@NevadaFirm.com

9 DANIEL F. POLSENBERG (SBN 2376)
10 JOEL D. HENRIOD (SBN 8492)
11 ABRAHAM G. SMITH (SBN 13,250)
12 LEWIS ROCA ROTHGERBER CHRISTIE LLP
13 3993 Howard Hughes Parkway, Suite 600
14 Las Vegas, Nevada 89169-5996
15 (702) 949-8200
16 DPolsenberg@LewisRoca.com
17 JHenriod@LewisRoca.com
18 ASmith@LewisRoca.com

19 *Attorneys for Defendant Blas Bon*

20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 DIANE SANCHEZ,
23
24 Plaintiff,

25 *vs.*

26 BLAS BON, individually; JOSEPH
27 ACOSTA, individually; WILFREDO
28 ACOSTA, individually; DOES I-X and
ROE CORPORATIONS I-X, inclusive,
Defendants.

Case No. A-15-722815-C

Dept. No. 25

**SECOND AMENDED
NOTICE OF APPEAL**

SECOND AMENDED NOTICE OF APPEAL

Please take notice that defendant Blas Bon hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Order Denying Defendant Blas Bon's Motion to Set Aside Default Judgment, filed September 19, 2020, notice of entry of which was served electronically on September 21, 2020 (Exhibit A);

3. “Order Denying Defendant Blas Bon’s Motion for Rehearing and to Alter or Amend the Judgment and Denying Rule 60(b) Relief,” filed on September 16, 2021, notice of entry of which was served electronically on September 20, 2021 (Exhibit B);

4. “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 Claims Administrator, Any Third-Party Adjuster, or Any Other Insurance Entity,” filed September 16, 2021, notice of entry of which was served electronically on September 21, 2021 (Exhibit C); and

5. All judgments, rulings and interlocutory orders made appealable by the foregoing.

Dated this 21st day of October, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13250)
3993 Howard Hughes Parkway,
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WILLIAM P. VOLK, (SBN 6167)
HOLLEY DRIGGS
400 S. Fourth Street, Suite 300
Las Vegas, Nevada 89101
(702) 791-0308

Attorneys for Defendant Blas Bon

1 CERTIFICATE OF SERVICE

2 I certify that on October 21, 2021, I served the foregoing “*Second*
3 *Amended Notice of Appeal*” through the Court’s electronic filing system upon
4 all parties on the master e-file and serve list.

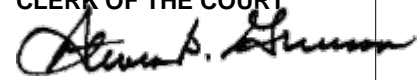
5 Dennis M. Prince
6 Kevin T. Strong
7 PRINCE LAW GROUP
8 10801 West Charleston Boulevard
9 Suite 560
10 Las Vegas, Nevada 89135
11 E-mail: eservice@thedplg.com

12 *Attorneys for Plaintiff Diane Sanchez*

13 /s/ Emily D. Kapolnai
14 An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT 24

EXHIBIT 24



LIPSON NEILSON P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
MEGAN H. THONGKHAM, ESQ
Nevada Bar No. 12404
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
jgarin@lipsonneilson.com
mthongkham@lipsonneilson.com

*Attorneys for Defendants,
NationsBuilders Insurance Services, Inc.,
NBIS Construction & Transport Insurance Services, Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

DIANE SANCHEZ,

Plaintiff,

vs.

ATX PREMIER INSURANCE COMPANY
now known as WINDHAVEN NATIONAL
INSURANCE COMPANY, a foreign
corporation; NATIONSBUILDERS
INSURANCE SERVICES, INC., a foreign
corporation; NBIS CONSTRUCTION &
TRANSPORT INSURANCE SERVICES,
INC., a foreign corporation; DMA CLAIMS
MANAGEMENT, INC., a foreign
corporation; BLAS BON, an individual;
DOES I-X; and ROE CORPORATIONS I-X,
inclusive,

Defendants.

Case No: A-19-805351-C
Dept. No.: XIII

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART, MOTION FOR
RECONSIDERATION OF
DEFENDANTS NATIONSBUILDERS
INSURANCE SERVICES, INC. AND
NBIS CONSTRUCTION &
TRANSPORT SERVICES, INC.'S
RENEWED MOTION TO STAY
PROCEEDINGS PURSUANT TO
NRCP 60(B)(6), OR
ALTERNATIVELY, EDCR 2.24(B) ON
AN ORDER SHORTENING TIME**

TO: ALL PARTIES; and

TO: THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on the 1st day of February, 2022, an **ORDER
GRANTING IN PART AND DENYING IN PART, MOTION FOR RECONSIDERATION
OF DEFENDANTS NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS**

1 **CONSTRUCTION & TRANSPORT SERVICES, INC.’S RENEWED MOTION TO STAY**
2 **PROCEEDINGS PURSUANT TO NRCP 60(B)(6), OR ALTERNATIVELY, EDCR**
3 **2.24(B) ON AN ORDER SHORTENING TIME**, was entered in the above-captioned
4 matter.

5 A copy of said Order is attached hereto and made part hereof.

6 Dated this 1st day of February, 2022.

7 LIPSON NEILSON P.C.

8 */s/ Megan H. Thongkham*

9 By:

10 Joseph P. Garin, Esq. (NV Bar No. 6653)
11 Megan H. Thongkham, Esq. (NV Bar No. 12404)
12 9900 Covington Cross Drive, Suite 120
13 Las Vegas, Nevada 89144

14 *Attorneys for Defendants,*
15 *NationsBuilders Insurance Services, Inc.,*
16 *NBIS Construction & Transport Insurance Services, Inc.*

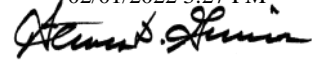
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 1st day of February, 2022, I electronically served the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART, MOTION FOR RECONSIDERATION OF DEFENDANTS NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS CONSTRUCTION & TRANSPORT SERVICES, INC.'S RENEWED MOTION TO STAY PROCEEDINGS PURSUANT TO NRCP 60(B)(6), OR ALTERNATIVELY, EDCR 2.24(B) ON AN ORDER SHORTENING TIME** to the following parties utilizing the Court's E-File/ServeNV System:

Dennis M. Prince, Esq. Kevin T. Strong, Esq. PRINCE LAW GROUP 10801 West Charleston Blvd., Suite 560 Las Vegas, NV 89135 eservice@thedplg.com <i>Attorneys for Plaintiff,</i> <i>Diane Sanchez</i>	John H. Podesta, Esq. Chris Richardson, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP 525 Market Street, 17th Floor San Francisco, CA 94105-2725 John.Podesta@wilsonelser.com Chris.Richardson@wilsonelser.com <i>Attorneys for Defendants</i> <i>Windhaven National Insurance Company,</i> <i>Windhaven National Insurance Company</i> <i>fka ATX Premier Insurance</i>
Robert E. Schumacher, Esq. Wing Yan Wong, Esq. GORDON REES SCULLY MANSUKHANI, LLP 300 South 4 th Street, Suite 1550 Las Vegas, Nevada 89101 rschumacher@grsm.com wwong@grsm.com <i>Attorneys for Defendant,</i> <i>DMA CLAIMS MANAGEMENT, INC.,</i> <i>erroneously sued as DMA CLAIMS INC.</i>	

/s/ Debra Marquez

An Employee of LIPSON NEILSON P.C.


CLERK OF THE COURT

ORDR

LIPSON NEILSON P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
MEGAN H. THONGKHAM, ESQ
Nevada Bar No. 12404
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 382-1500
Fax: (702) 382-1512
jgarin@lipsonneilson.com
mthongkham@lipsonneilson.com

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

DISTRICT COURT

CLARK COUNTY, NEVADA

DIANE SANCHEZ,

Plaintiff,

vs.

ATX PREMIER INSURANCE COMPANY
now known as WINDHAVEN NATIONAL
INSURANCE COMPANY, a foreign
corporation; NATIONSBUILDERS
INSURANCE SERVICES, INC., a foreign
corporation; NBIS CONSTRUCTION &
TRANSPORT INSURANCE SERVICES,
INC., a foreign corporation; DMA CLAIMS
MANAGEMENT, INC., a foreign
corporation; BLAS BON, an individual;
DOES I-X; and ROE CORPORATIONS I-X,
inclusive,

Defendants.

Case No: A-19-805351-C

Dept. No.: XIII

**ORDER GRANTING IN PART AND
DENYING IN PART, MOTION FOR
RECONSIDERATION OF
DEFENDANTS NATIONSBUILDERS
INSURANCE SERVICES, INC. AND
NBIS CONSTRUCTION &
TRANSPORT SERVICES, INC.'S
RENEWED MOTION TO STAY
PROCEEDINGS PURSUANT TO
NRCP 60(B)(6), OR ALTERNATIVELY,
EDCR 2.24(B) ON AN ORDER
SHORTENING TIME**

On January 27, 2022, Defendants Nationsbuilders Insurance Services, Inc.
("NBIS") and NBIS Construction & Transport Services, Inc.'s (CTIS") Motion for
Reconsideration of the Order Denying NBIS and CTIS' Motion to Stay Proceedings
Pursuant to NRCP 60(b)(6), or alternatively, EDCR 2.24(b), on an Order Shortening

Time, was brought for hearing before the Honorable Judge Mark R. Denton. Dennis Prince of PRINCE LAW GROUP, appearing on behalf of Plaintiff Diane Sanchez; Megan H. Thongkham of LIPSON NEILSON P.C., appearing on behalf of NBIS and CTIS; and John Schneringer of GORDON REES SCULLY MANSUKHANI, LLP, appearing on behalf of Defendant DMA Claims Management, Inc. The Court, having reviewed the pleadings and papers on file herein, having heard oral argument, and for good cause appearing therefor:

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that NBIS and CTIS' Motion for Reconsideration of the Order Denying NBIS and CTIS' Renewed Motion to Stay Proceedings Pursuant to NRCP 60(b)(6), or alternatively, EDCR 2.24(b), on an Order Shortening Time is **GRANTED IN PART**, and **DENIED IN PART**, as follows:

1. The action shall be temporarily stayed from Thursday, January 27, 2022, through Monday, February 14, 2022.

///

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///

///

Dated this 1st day of February, 2022



F88 0F4 64EE 48A4
Mark R. Denton
District Court Judge

ABG

DIANE SANCHEZ v. ATX PREMIER INSURANCE COMPANY
Case No: A-19-805351-C

2. The Court's entry of a temporary stay allows Defendants NBIS and CTIS to seek any further stay relief from the Nevada Supreme Court.

IT IS SO ORDERED.

Dated this 28th day of January, 2022.

Respectfully Submitted by:

/s/ Megan H. Thongkham

JOSEPH P. GARIN
Nevada Bar No. 6653
MEGAN H. THONGKHAM
Nevada Bar No. 12404
9900 Covington Cross Drive
Suite 120
Las Vegas, Nevada 89144
Attorneys for NBIS and CTIS

Dated this 28th day of January, 2022.

Approved as to Form and Content:

/s/ Refused to sign

DENNIS M. PRINCE
Nevada Bar No. 5092
KEVIN T. STRONG
Nevada Bar No. 12107
10801 West Charleston Boulevard
Suite 560
Las Vegas, Nevada 89135
Attorneys for Plaintiff Diane Sanchez

Dated this 28th day of January, 2022.

Approved as to Form and Content:

/s/ John F. Schneringer

ROBERT E. SCHUMACHER
Nevada Bar No. 7504
JOHN F. SCHNERINGER
Nevada Bar No. 14268
300 South 4th Street
Suite 1550
Las Vegas, Nevada 89101
Attorneys for DMA Claims Management, Inc.

From: John Schneringer <jschneringer@grsm.com>
Sent: Friday, January 28, 2022 8:21 AM
To: Megan Thongkham
Cc: Debra Marquez
Subject: RE: Sanchez v. NBIS, et al. - Proposed Order Granting, in part and Denying, in part, NBIS and CTIS's Motion for Reconsideration

Follow Up Flag: Follow up
Flag Status: Completed

Confirmed, thanks Megan.

JOHN F. SCHNERINGER | Associate

GORDON REES SCULLY MANSUKHANI
YOUR 50 STATE PARTNER®

300 South Fourth Street, Suite 1550
Las Vegas, NV 89101
D: 702-577-9302 | jschneringer@grsm.com

www.grsm.com
[vCard](#)

From: Megan Thongkham <MThongkham@lipsonneilson.com>
Sent: Thursday, January 27, 2022 10:52 PM
To: John Schneringer <jschneringer@grsm.com>
Cc: Debra Marquez <DMarquez@lipsonneilson.com>; Megan Thongkham <MThongkham@lipsonneilson.com>
Subject: FW: Sanchez v. NBIS, et al. - Proposed Order Granting, in part and Denying, in part, NBIS and CTIS's Motion for Reconsideration

Hi John,

Please confirm that we may submit with your electronic signature.

Thanks,

Please note my new email address: mthongkham@lipsonneilson.com



Megan H. Thongkham, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)

NBIS 001111

E-Mail: mhummel@lipsonneilson.com

Website: www.lipsonneilson.com [lipsonneilson.com]

OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

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From: Kevin Strong <kstrong@thedplg.com>

Sent: Thursday, January 27, 2022 5:04 PM

To: Megan Thongkham <MThongkham@lipsonneilson.com>; John Schneringer <jschneringer@grsm.com>

Cc: Dennis Prince <dprince@thedplg.com>; Andrew Brown <abrown@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>

Subject: RE: Sanchez v. NBIS, et al. - Proposed Order Granting, in part and Denying, in part, NBIS and CTIS's Motion for Reconsideration

Dear Megan:

Thank you for your prompt response. We will submit our proposed order and advise that a competing order will be submitted. Thanks.

Sincerely,

Kevin



Kevin T. Strong | Attorney

PRINCE LAW GROUP

10801 West Charleston Boulevard, Suite 560

Las Vegas, Nevada 89135

P: 702.534.7600 | F: 702.534-7601

kstrong@thedplg.com | www.thedplg.com

From: Megan Thongkham <MThongkham@lipsonneilson.com>

Sent: Thursday, January 27, 2022 5:00 PM

To: Kevin Strong <kstrong@thedplg.com>; John Schneringer <jschneringer@grsm.com>

Cc: Dennis Prince <dprince@thedplg.com>; Andrew Brown <abrown@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>

Subject: RE: Sanchez v. NBIS, et al. - Proposed Order Granting, in part and Denying, in part, NBIS and CTIS's Motion for Reconsideration

Hi Kevin,

I agree with John that Judge Denton stayed the entire case through February 14.

NBIS 001112

Thanks,

Please note my new email address: mthongkham@lipsonneilson.com



Megan H. Thongkham, Esq.
Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144-7052
(702) 382-1500
(702) 382-1512 (fax)
E-Mail: mthongkham@lipsonneilson.com
Website: www.lipsonneilson.com

OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

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From: Kevin Strong <kstrong@thedplg.com>

Sent: Thursday, January 27, 2022 4:57 PM

To: John Schneringer <jschneringer@grsm.com>; Megan Thongkham <MThongkham@lipsonneilson.com>

Cc: Dennis Prince <dprince@thedplg.com>; Andrew Brown <abrown@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>

Subject: RE: Sanchez v. NBIS, et al. - Proposed Order Granting, in part and Denying, in part, NBIS and CTIS's Motion for Reconsideration

John,

We equally disagree with your interpretation of Jude Denton's ruling. We will await Megan's input and submit competing orders.

Sincerely,

Kevin

NBIS 001113



Kevin T. Strong | Attorney

PRINCE LAW GROUP

10801 West Charleston Boulevard, Suite 560

Las Vegas, Nevada 89135

P: 702.534.7600 | F: 702.534-7601

kstrong@thedplg.com | www.thedplg.com

From: John Schneringer <jschneringer@grsm.com>

Sent: Thursday, January 27, 2022 4:47 PM

To: Kevin Strong <kstrong@thedplg.com>; Megan Thongkham <MThongkham@lipsonneilson.com>

Cc: Dennis Prince <dprince@thedplg.com>; Andrew Brown <abrown@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>

Subject: RE: Sanchez v. NBIS, et al. - Proposed Order Granting, in part and Denying, in part, NBIS and CTIS's Motion for Reconsideration

Hello Kevin,

As we discussed previously, I disagree with your characterization of Judge Denton's ruling. Please find attached proposed redlines which I believe more accurately reflect Judge Denton's ruling.

JOHN F. SCHNERINGER | Associate

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From: Kevin Strong <kstrong@thedplg.com>

Sent: Thursday, January 27, 2022 4:04 PM

To: Megan Thongkham <MThongkham@lipsonneilson.com>; John Schneringer <jschneringer@grsm.com>

Cc: Dennis Prince <dprince@thedplg.com>; Andrew Brown <abrown@thedplg.com>; Amy Ebinger <aebinger@thedplg.com>

Subject: Sanchez v. NBIS, et al. - Proposed Order Granting, in part and Denying, in part, NBIS and CTIS's Motion for Reconsideration

Counsel,

Attached, please find our proposed order regarding NBIS and CTIS's Motion for Reconsideration for your review. Please provide any proposed revisions. If you have no proposed revisions, please confirm that we may affix your e-signature. Thanks.

Sincerely,

NBIS 001114

Kevin



Kevin T. Strong | Attorney

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NBIS 001115

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Diane Sanchez, Plaintiff(s)

CASE NO: A-19-805351-C

7 vs.

DEPT. NO. Department 13

8 ATX Premier Insurance
9 Company, 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: 2/1/2022

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27
28
NBIS 001116

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