

In The Supreme Court 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, an individual;
Real Party in Interest.

Supreme Court Case No. 84227
District Court Case No. A-19-805351-C
Electronically Filed
Feb 22 2022 05:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**REAL PARTY IN INTEREST DIANE SANCHEZ'S RESPONSE TO MOTION
TO EXTEND DISTRICT COURT'S STAY PENDING WRIT PETITION**

I. INTRODUCTION

Real Party in Interest Diane Sanchez ("Sanchez") initiated her underlying judgment enforcement/insurance bad faith action against Petitioners NationsBuilders Insurance Services, Inc. ("NBIS") and NBIS Construction & Transport Insurance Services, Inc. ("CTIS") because ATX Premier Insurance Company ("ATX"), an automobile liability insurer that NBIS and/or CTIS managed and controlled, breached its contractual duty to defend its insured, Blas Bon ("Bon"), against Sanchez's personal injury lawsuit (District Court Case No. A-15-722815-C). NBIS and/or CTIS assumed the responsibility to satisfy ATX's contractual duty to defend Bon. As a result of NBIS

and/or CTIS's failure to ensure Bon received a defense against Sanchez's personal injury lawsuit, the district court entered a financially ruinous default judgment against Bon for \$15,212,655.73. It was not until after Sanchez obtained Bon's rights and initiated the underlying action that NBIS and CTIS conveniently decided to assert untimely legal challenges to the default judgment under the guise of protecting Bon's interests. NBIS and CTIS are only using Bon because the default judgment places their financial interests directly at stake.

Since January 2020, NBIS and CTIS have used Bon to try setting aside the default judgment entered against him without success. NBIS and CTIS had a fair opportunity to prevent entry of a financially ruinous judgement against Bon if they simply ensured ATX, Bon's auto liability insurer they owned and controlled, satisfied the contractual duty to defend him. NBIS and CTIS's futile motions to set aside the default judgment have culminated in the filing of an appeal of orders denying their various motions. *See* Second Amended Notice of Appeal, NVSC Case No. 81983. Rather than post the requisite bond in the personal injury action to stay judgment enforcement, NBIS and CTIS move to stay this judgment enforcement/insurance bad faith action solely to avoid posting any form of financial security whatsoever, thereby circumventing NRC 62(d).

NBIS and CTIS's numerous attempts to stay this litigation illustrate a sense of urgency that should have influenced their efforts to ensure Bon received a legal defense against Sanchez's personal injury lawsuit. In light of NBIS and CTIS's failure to

provide Bon with a defense, they have no legitimate basis to receive any favors from this Court to alleviate harm that they directly caused. A final default judgment was entered against Bon and remains valid, irrespective of the pendency of “Bon’s” appeal in the personal injury action that NBIS and CTIS are funding. Under these circumstances, NBIS and CTIS are not entitled to an indefinite extension of the stay.

II. STATEMENT OF FACTS

On November 13, 2019, Sanchez commenced her judgment enforcement/insurance bad faith action. Since that time, NBIS and CTIS have twice tried to set aside the default judgment entered against Bon in the personal injury action. Both of those efforts failed. As a result, the default judgment entered against Bon is valid and final because the orders NBIS and CTIS have appealed from arise from motions they filed pursuant to NRCP 60(b). *See* Second Amended Notice of Appeal, NVSC Case No. 81983. Motions filed pursuant to NRCP 60(b) do “not affect the judgment’s finality or suspend its operation.” *See* Nev. R. Civ. P. 60(c). The finality of the default judgment is not compromised by NBIS and CTIS’s appeal in the companion personal injury action, which renders Sanchez’s insurance bad faith claim ripe.

On two separate occasions, the district court denied NBIS and CTIS’s motions to stay Sanchez’s judgment enforcement/insurance bad faith action pending the outcome of the appeal in the personal injury action. The district court eventually ordered a temporary stay through February 14, 2022 to allow NBIS and CTIS to seek further stay relief from this Court. *See* NBIS/CTIS Mot, Exhibit 2, at p. 3, ¶ 2. NBIS

and CTIS waited until the stay period nearly elapsed before seeking such relief from this Court.

III. LEGAL ARGUMENT

NBIS and CTIS filed their Petition for Writ of Mandamus, or alternatively, Prohibition, requesting this Court direct the district court to stay Sanchez's judgment enforcement/insurance bad faith action pending the outcome of their appeal in the personal injury lawsuit. NBIS and CTIS simultaneously filed a motion for this Court to extend the stay they seek in their writ petition, indefinitely, until this Court rules on the writ petition. In essence, NBIS and CTIS want the benefit of the same stay relief **now**, before this Court has even substantively evaluated their writ petition. Similar to their failure to post a supersedeas bond to properly stay Sanchez's judgment enforcement efforts pursuant to NRCP 62(d), NBIS and CTIS are circumventing the writ procedure outlined by NRAP 21. For the reasons set forth below, the factors outlined in *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251 (2004) do not justify entry of a premature stay before this Court considers the writ petition seeking the **exact same stay relief**.

A. As the Entities that Breached the Contractual Duty to Defend Bon, any Harm NBIS and CTIS Suffer if a Stay is Not Imposed is Self-Inflicted

We take this opportunity to clarify that where there is potential coverage based on comparing the allegations of the complaint with the terms of the policy, **an insurer does have a duty to defend**.

Century Sur. Co. v. Andrew, 134 Nev. 819, 822 n.4 (2018) (emphasis added).

A liability insurer that refused to defend its insured has materially breached the insurance contract and may be subjected to “unbounded liability” that “vastly exceeds the policy limits.” *Nautilus Ins. Co. v. Access Med., LLC*, 482 P.3d 683, 689 (2021). NBIS and CTIS were well aware of the personal injury lawsuit before the district court entered a default and default judgment against Bon. On January 20, 2016, Sanchez advised ATX, and the third-party claims administrator NBIS and CTIS retained to handle her bodily injury claim, DMA Claims Management, Inc. (“DMA”), via letter, that Bon was served with the summons and personal injury complaint through the Nevada Department of Motor Vehicles (“DMV”). *See* Sanchez’s Second Amended Complaint, at p. 11, ¶ 50, attached as **Exhibit 1**. Sanchez enclosed a copy of the summons and personal injury complaint with the letter. *Id.* On February 16, 2016, Sanchez sent yet another letter to ATX and DMA advising Bon still had not yet filed an answer to her complaint. *Id.* at p. 12, ¶ 52. In both letters, Sanchez advised of her intent to request the district court enter a default against Bon if no answer was filed on his behalf. *Id.* at pp. 11–12, ¶¶ 50–52. NBIS and CTIS recently produced claims file notes confirming on February 18, 2016, their employee, Cindy Blanco (“Blanco”), was aware of Sanchez’s personal injury lawsuit and that entry of a default against Bon was possible.¹ On February 19, 2016, NBIS/CTIS employee Blanco spoke directly to Bon

¹ NBIS and CTIS erroneously assert these claims file notes contain confidential information. Sanchez moved the district court to de-designate them as confidential, but this matter was stayed before the district court ruled on the motion.

and explained Sanchez's personal injury lawsuit to him. This conversation occurred before the district court entered the April 1, 2016 default against Bon. Even after being informed of the lawsuit, service through the DMV, and explaining the lawsuit to Bon directly, NBIS and CTIS still provided no defense. By failing to undertake any action to defend Bon, NBIS and CTIS proverbially stuck their heads in the sand.

The crux of NBIS and CTIS's appeal in the personal injury action is that Sanchez failed to exercise reasonable diligence to personally serve Bon with the summons and complaint before she served him through the DMV. However, NBIS and CTIS easily could have hired an attorney to challenge the reasonableness of Sanchez's diligence to personally serve Bon by filing an NRCP 12(b)(4) motion before the default and default judgment were entered. After all, they knew about Sanchez's personal injury lawsuit and informed Bon of the same well before the district court entered a default and default judgment against him. Now that Sanchez seeks to recover against NBIS and CTIS for their refusal to provide Bon with a defense in 2016, they ask this Court to show mercy by staying this action so that they can now do what they should have done over six years ago. NBIS and CTIS are in no position to argue they will suffer irreparable harm if Sanchez is allowed to proceed with her judgment enforcement/insurance bad faith action, which arose as a direct result of their misconduct and breach of their legal duties.

As made clear in this Response, NBIS and CTIS are the real parties-in-interest in the personal injury action because they are financially responsible for the default judgment. As a result, they are using Bon's party status to intervene and challenge the

validity of the default judgment, despite the prohibition against intervention after entry of a final judgment. *Nalder v. Eighth Judicial Dist. Court*, 462 P.3d 677, 682 (2020). Now, NBIS and CTIS seek to enjoy a stay of Sanchez’s proceedings to enforce her valid default judgment, pending the outcome of their appeal, without posting the requisite supersedeas bond to stay enforcement. *See Nev. R. Civ. P. 62(d)(1)*. Allowing insurers or insuring entities, like NBIS and CTIS, to obtain a stay in a separate judgment enforcement action while they challenge the validity of the controlling default judgment will unfairly reward them for failing to satisfy their contractual duty to defend in the first place. This Court’s expansive view of an insurer’s contractual duty to defend does not justify such an inequitable result. *See Nautilus*, 482 P.3d at 688 (The potential for excess liability “creates a significant disincentive” for the insurer to deny a defense).

B. Denying this Motion for Stay Will Not Defeat the Object of the Writ Petition

Ironically, NBIS and CTIS contend a stay should be entered to help them avoid participation in costly discovery when they have paid and hired two different law firms to set aside the default judgment caused by their breach of the contractual duty to defend. *See Second Amended Notice of Appeal*, NVSC Case No. 81983. The first stay factor is insignificant here because the object of both the writ and the motion are predicated upon the outcome of NBIS and CTIS’s attempt, on appeal, to set aside the default judgment in the personal injury action. These facts further demonstrate the procedurally improper manner in which NBIS and CTIS are seeking a stay. NBIS and CTIS can avoid discovery in Sanchez’s judgment enforcement/insurance bad faith

action by simply posting a supersedeas bond in the personal injury litigation as they are admittedly funding that appeal. *See Sherman Gardens Co v. Longley*, 87 Nev. 558, 563 (1971) (“The purpose of a supersedeas bond is to stay the **enforcement** of a judgment” (emphasis added)); *see also*, Nev. R. Civ. P. 62(d)(1). This negates NBIS and CTIS’s entire purpose to stay this action namely, to avoid conducting discovery while their appeal is pending.

NBIS and CTIS also mischaracterize Sanchez’s submission of relevant claims file notes in the personal injury action. NBIS and CTIS have incessantly argued in the personal injury matter that the default judgment should be set aside because Sanchez failed to exercise reasonable diligence to personally serve Bon before she served him through the DMV. To further support these arguments, NBIS and CTIS repeatedly claimed Bon had no knowledge of Sanchez’s personal injury lawsuit. However, the documents NBIS and CTIS produced conclusively prove their employee, Blanco, explained Sanchez’s personal injury lawsuit to Bon **before** the default and default judgment were entered against him. The documents also establish Blanco knew the potential for entry of a default against Bon existed, but, nevertheless, obtained Bon’s personal address and pledged to hide his whereabouts. Blanco made this pledge even though she was aware Sanchez served Bon through the DMV based on the threat of the default entry. Given that NBIS and CTIS made factual misrepresentations to the district court in the personal injury action to manipulate the appellate record for their own financial benefit, Sanchez appropriately submitted the claims file notes to the district

court, *in camera*. Thus, it is imperative this Court review those documents as part of its consideration of the appeal in the personal injury action.

Sanchez did not violate the Amended Stipulated Protective Order when she submitted the claims file notes because this furthers the prosecution of her judgment enforcement/insurance bad faith action, which is based on the default judgment. NBIS and CTIS's characterization of Sanchez's actions as "abusing discovery" illustrates their arrogance and desire to obtain favorable relief at all costs, not on the merits.

C. A Stay Will Irreparably Harm Sanchez, Not NBIS and CTIS

Sanchez is the only party who will suffer irreparable harm if this Court indefinitely stays this action. If a stay is entered, NBIS and CTIS will have successfully avoided the financial cost required to stay judgment enforcement. In turn, Sanchez will be deprived of all financial security needed to safeguard her judgment enforcement efforts, which may not resume for up to two years while NBIS and CTIS's appeal is pending. NBIS and CTIS have no credibility to make any timeliness arguments when they could have avoided entry of a default judgment against Bon by providing him with a defense **over six years ago**. Instead, they now assert arguments they should have made in defense of Bon against Sanchez's personal injury lawsuit.

D. The Underlying Writ Petition has No Substantial Merit

Sanchez's insurance bad faith claim is ripe because the finality of the default judgment entered against Bon is not impacted by NBIS and CTIS's appellate challenge of the orders denying their motions to set aside the default judgment. *See Nev. R. Civ.*

P. 60(c). The litany of cases NBIS and CTIS cite are not analogous because they involved: (1) an appeal of the actual judgment; and (2) no hardship to the insured pursuing the bad faith claim because a unity of interest between the insurer and insured remained. *See Branch Banking & Tr. Co. v. Nev. Title Co.*, No. 2:10-CV-1970 JCM (RJJ), 2011 U.S. Dist. LEXIS 40948, at *9-10 (D. Nev. Apr. 13, 2011); *Smenza v. Nevada Medical Liability Ins. Co.*, 104 Nev. 666, 668 (1988). NBIS and CTIS's writ petition does not present a legitimate legal question because they can easily stay Sanchez's judgment enforcement/insurance bad faith action by simply posting the requisite supersedeas bond in the personal injury action.

IV. CONCLUSION

NBIS and CTIS improperly ask this Court to prematurely grant an indefinite stay before substantively ruling on the merits of their writ petition seeking the exact same relief. Sanchez respectfully requests this Court to **DENY** NBIS and CTIS's Motion.

DATED this 22nd day of February, 2022.

Respectfully Submitted,

/s/ Kevin T. Strong

DENNIS M. PRINCE
Nevada Bar No. 5092
KEVIN T. STRONG
Nevada Bar No. 12107
PRINCE LAW GROUP
10801 W. Charleston Boulevard
Suite 560
Las Vegas, Nevada 89135
Attorneys for Respondent
Diane Sanchez

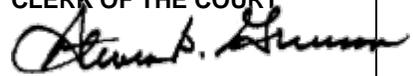
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Supreme Court of Nevada on the 22nd day of February, 2022. Electronic service of the foregoing document entitled **REAL PARTY IN INTEREST DIANE SANCHEZ'S RESPONSE TO MOTION TO EXTEND DISTRICT COURT'S STAY PENDING WRIT PETITION** shall be made in accordance with the Master Service List and the Court's eFlex electronic filing system to the following:

Joseph P. Garin
Megan H. Thongkham
LIPSON NEILSON P.C.
9900 Covington Cross Drive
Suite 120
Las Vegas, Nevada 89144
Attorneys for Petitioners
*NationsBuilders Insurance Services, Inc. and
NBIS Construction & Transport Insurance
Services, Inc.*

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

EXHIBIT 1



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

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

11 DIANE SANCHEZ,
12
13 Plaintiff,

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

14 vs.

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

**PLAINTIFF DIANE SANCHEZ'S
SECOND AMENDED COMPLAINT**

22
23 Defendants.

24
25 Plaintiff DIANE SANCHEZ, by and through her attorneys of record, PRINCE
26 LAW GROUP, for her Complaint against Defendants ATX PREMIER INSURANCE
27 COMPANY now known as WINDHAVEN NATIONAL INSURANCE COMPANY;
28 NATIONSBUILDERS INSURANCE SERVICES, INC.; NBIS CONSTRUCTION &



1 TRANSPORT INSURANCE SERVICES, INC.; DMA CLAIMS MANAGEMENT, INC.;
2 and BLAS BON, hereby alleges and complains as follows:

3 I.

4 **PARTIES AND JURISDICTION**

5 1. At all times material hereto, Plaintiff DIANE SANCHEZ (“Sanchez”) was
6 and is a resident of the State of Nevada, Clark County.

7 2. Based upon information and belief, Defendant ATX PREMIER
8 INSURANCE COMPANY now known as WINDHAVEN NATIONAL INSURANCE
9 COMPANY (“ATX”) was a foreign corporation organized and existing under the laws of
10 the State of Florida and was authorized to do business in the State of Nevada at the
11 time of the incident alleged herein. Based upon information and belief, WINDHAVEN
12 NATIONAL INSURANCE COMPANY (“Windhaven”) is a foreign corporation organized
13 and existing under the laws of the State of Texas, with its principal place of business in
14 the State of Florida, and is authorized to do business and is doing business in the State
15 of Nevada. In approximately April of 2016, Windhaven purchased the assets of ATX,
16 but did not assume all obligations, liabilities, or duties owed by ATX for any insurance
policies issued by ATX before the 2016 sale.

17 3. Based upon information and belief, Defendant NATIONSBUILDERS
18 INSURANCE SERVICES, INC. (“NBIS”) is a foreign corporation organized and existing
19 under the laws of the State of Delaware, with its principal place of business in the State
20 of Georgia, and is authorized to do business and is doing business in the State of Nevada.

21 4. Based upon information and belief, Defendant NBIS CONSTRUCTION &
22 TRANSPORT INSURANCE SERVICES, INC. (“CTIS”) is a foreign corporation
23 organized and existing under the laws of the State of Delaware, with its principal place
24 of business in the State of Georgia, and is authorized to do business and is doing business
in the State of Nevada. CTIS is an affiliated company of NBIS.

25 5. Based upon information and belief, Defendant DMA CLAIMS
26 MANAGEMENT, INC. (“DMA”) is a foreign corporation organized and existing under
27 the laws of the State of California and is authorized to do business and is doing business
28 in the State of Nevada.

1 6. Based upon information and belief, Defendant Blas Bon (“Bon”) was and is
2 a resident of the State of Nevada, Clark County, at all times material hereto.

3 7. The true names and capacities, whether individual, corporate, associate,
4 partnership, or otherwise, of Defendants DOES I through X, inclusive, are unknown to
5 Sanchez, who therefore sues said Defendants by such fictitious names. Sanchez is
6 informed and believes, and therefore alleges that each of the Defendants designated
7 herein as DOES I through X are responsible in some manner for the events and
8 happenings referred to herein, and in some manner, caused the injuries and damages to
9 Sanchez as alleged herein. Sanchez will ask leave of this Court to amend her Complaint
10 to assert the true names and capacities of said Defendants DOES I through X, inclusive,
11 when the same have been ascertained by Sanchez, together with the appropriate
12 charging allegations, and to join such Defendants in this action.

13 8. The true names and capacities, whether individual, corporate, associate,
14 partnership, or otherwise, of Defendants ROE CORPORTATIONS I through X,
15 inclusive, are unknown to Sanchez, who therefore sues said Defendants by such
16 fictitious names. Sanchez is informed and believes, and therefore alleges that each of
17 the Defendants designated herein as ROE CORPORATIONS I through X are responsible
18 in some manner for the events and happenings referred to herein, and in some manner,
19 caused the injuries and damages to Sanchez as alleged herein. Sanchez will ask leave
20 of this Court to amend her Complaint to assert the true names and capacities of said
21 Defendants ROE CORPORATIONS I through X, inclusive, when the same have been
22 ascertained by Sanchez, together with the appropriate charging allegations, and to join
23 such Defendants in this action.

24 9. All acts complained of herein occurred in the State of Nevada.

25 10. The motor vehicle collision described herein occurred in the State of
26 Nevada, Clark County.

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II.

FACTUAL ALLEGATIONS

A. The Underlying Motor Vehicle Collision

11. On December 16, 2014, ATX issued a personal automobile liability insurance policy to non-party Hipolito Cruz (“Cruz”), Policy No. ANV00003087. The policy provided liability insurance coverage limits of \$15,000.00 per person and \$30,000.00 per occurrence (“the ATX Insurance Policy”).

12. Pursuant to the terms and conditions of the ATX Insurance Policy, ATX agreed to provide liability insurance coverage to its insured, including coverage for those liability claims arising from a third party’s permissive use of the insured vehicle.

13. On April 28, 2015, Sanchez traveled northbound on Interstate 15 in a 1995 BMW 325i sedan.

14. Bon drove Cruz’s 1997 Dodge Ram 2500 pickup truck directly behind Sanchez on northbound Interstate 15.

15. Bon, while driving Cruz’s 1997 Dodge Ram 2500 pickup truck, negligently collided with the back of Sanchez’s 1995 BMW 325i sedan while she slowed down for traffic.

16. At the time of the April 28, 2015 motor vehicle collision, Bon drove Cruz’s 1997 Dodge Ram 2500 pickup truck with the express permission of Cruz. As a permissive driver of Cruz’s pickup truck, Bon was covered under the relevant ATX Insurance Policy.

17. Following the collision with Bon, Sanchez’s BMW 325i sedan was struck from behind by another vehicle. Sanchez subsequently resolved her claim against the driver of this other vehicle.

B. The Applicable ATX Insurance Policy

18. The term dates of the ATX Insurance Policy issued to Cruz and covering Bon at the time of the April 28, 2015 motor vehicle collision spanned from December 16, 2014 through June 16, 2015.

19. At the time of the April 28, 2015 motor vehicle collision, the ATX Insurance Policy issued to Cruz was in full force and effect. As a permissive driver, Bon was

1 insured under the ATX Insurance Policy when the April 28, 2015 collision occurred. As
2 a result, ATX owed Bon a contractual duty to defend; a duty of good faith and fair dealing
3 to defend, indemnify, or settle Sanchez’s claims prior to and during the pendency of the
4 action; a duty to timely intervene; a duty to diligently investigate the facts and
5 circumstances surrounding the collision; and a duty to settle Sanchez’s claim within
6 policy limits when it had a reasonable opportunity to do so, or to otherwise take action
7 to protect the interests of Bon, its insured.

8 20. ATX was the licensed insurer and underwriter of the applicable automobile
9 liability insurance policy that covered Bon at the time of the April 28, 2015 motor vehicle
10 collision.

11 21. As early as February 22, 2013, NBIS served as the parent company of ATX.

12 22. On April 1, 2015, ATX, CTIS, AutoTex MGA, Inc. (“AutoTex”), and Safe
13 Auto Insurance Company (“Safe Auto”) entered into their Amended and Restated Claims
14 Handling Agreement. See Amended and Restated Claims Handling Agreement,
15 attached as **Exhibit “1.”**

16 23. The Amended and Restated Claims Handling Agreement, in addition to
17 confirming Safe Auto’s acquisition of one hundred percent (100%) of the stock of
18 AutoTex, outlined specific definitional guidelines regarding the treatment of ongoing
19 business obligations before the stock sale to Safe Auto that are relevant to this action:

20 (A) **Pre-close Policy.** **Pre-close Policy** means any policy
21 which was issued on or before the closing date of the sale
22 of **AutoTex**, or which may be validly reinstated after such
23 closing date by the policyholder during a reinstatement
24 period. It also means any new policy written or renewed
25 on or after the closing date which: (1) resides in the state of
26 Arizona; (2) is produced by the LA Franchise Agency or its
27 affiliates in any state; or (3) has been certified under the
28 financial responsibility laws and regulations of any state.

See **Exhibit “1.”**

24 24. The Amended and Restated Claims Handling Agreement affirmed that
25 policies issued by ATX (referred to as “Company” in the agreement) before the March 2,
26 2015 stock sale of AutoTex to Safe Auto remained with CTIS:
27
28

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

4 **WHEREAS, CTIS** is in the business of providing claims
5 services on behalf of Insurance companies and is willing to
6 provide such services on behalf of **Company** on all **Pre-**
7 **close Policies** in accordance with the terms and
8 conditions set forth herein, and as set forth in any agreed
9 to Addenda attached to and made part of this Agreement.

10 *See Exhibit “1.”*

11 25. The express terms of the Amended and Restated Claims Handling
12 Agreement confirmed that NBIS and CTIS retained control over policies issued by ATX
13 before March 2, 2015. The ATX policy that covered Bon at the time of the April 28, 2015
14 motor vehicle collision went into effect on December 16, 2014. By definition, the ATX
15 Insurance Policy that gives rise to Sanchez’s claims was a “Pre-close Policy” that
16 remained under the control and financial responsibility of NBIS and CTIS.

17 26. On April 1, 2015, CTIS (the “Company”) and DMA (the “Claims
18 Administrator”) memorialized and executed their “Claims Administration Agreement”
19 whereby DMA agreed to “perform claims adjustment and administrative services for
20 certain claims and losses arising out of policies issued by affiliated companies of the
21 Company.” *See* Claims Administration Agreement, at Bates no. PLTF001627, attached
22 as **Exhibit “2.”**

23 27. ATX was an affiliated company of CTIS that issued policies for which DMA
24 expressly agreed to “perform claims adjustment and administrative services for certain
25 claims and losses arising out of” the policies. *Id.* Therefore, ATX was a third-party
26 beneficiary of the “Claims Administration Agreement.” Alternatively, ATX and DMA
27 entered into a contract wherein DMA agreed to serve as a third-party claims
28 administrator and adjuster for bodily injury claims arising from liability insurance
policies issued by ATX.

 28. The “Claims Administration Agreement” specifically defined various
“Claims Adjusting Services for DMA to perform for the benefit of CTIS.

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- 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
- ...
- 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
- ...
- 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

1 Company. Respond promptly to any inquiry,
2 complaint or request received from a client,
3 claimant, agent, broker, or other interested party in
4 connection with the Claims Adjusting Services; and

5 . . .

6 15) Adjust, settle or otherwise resolve claims in
7 accordance with authority levels granted; and

8 16) Pay or recommend payment where appropriate, all
9 Qualified Claims and Allocated Loss Adjustment
10 Expenses, on a timely basis and in accordance with
11 Authority granted by the Company.

12 See **Exhibit “2,”** at Bates nos. PLTF001629-PLTF001630.

13 29. The express terms of the Claims Management Agreement detail the
14 extensive control CTIS retained over DMA’s administration of claims arising from
15 insurance policies issued by ATX.

16 30. In approximately April of 2016, Windhaven purchased ATX from NBIS.
17 Windhaven did not purchase or assume control over any ATX liability insurance policies
18 issued before the sale, including the subject ATX Insurance Policy.

19 31. In a matter before the Nevada federal district court entitled *Hayes v. ATX*
20 *Premier Insurance Company et al.*, Case No. 2:18-cv-01938-GMN-NJK, counsel for ATX
21 and NBIS stated in briefing filed with the district court that NBIS retained financial
22 responsibility for claims relating to insurance policies that were issued prior to the sale
23 of ATX to Windhaven.

24 32. In the *Hayes* matter, counsel for ATX and NBIS also stated in briefing filed
25 with the district court, that CTIS is an affiliated company of NBIS and engaged in claims
26 services.

27 33. NBIS and CTIS assumed all contractual obligations arising from ATX
28 insurance policies issued before the sale of ATX to Windhaven in 2016, including the
29 ATX Insurance Policy that covered Bon at the time of the April 28, 2015 motor vehicle
30 collision.

31 34. NBIS and/or CTIS assumed the indemnity obligations of ATX and is
32 financially responsible for damages arising from Sanchez’s claim against the ATX

1 Insurance Policy that covered Bon at the time of the April 28, 2015 motor vehicle
2 collision.

3 35. As an NBIS affiliate, CTIS performed claims management, claims
4 handling, and claims administration oversight duties for the benefit of ATX pursuant to
5 the “Claims Management Agreement” by and between CTIS and DMA wherein DMA
6 agreed to serve as a third-party claims administrator and adjuster for bodily injury
7 claims arising from automobile liability insurance policies issued by ATX, including the
8 subject ATX Insurance Policy.

9 36. ATX and/or NBIS and/or CTIS together with DMA jointly managed,
10 investigated, evaluated, adjusted, and performed other claims handling tasks regarding
11 Sanchez’s bodily injury claim against the ATX Insurance Policy that covered Bon at the
12 time of the April 28, 2015 motor vehicle collision.

13 37. As a third-party claims administrator and adjuster, DMA’s remuneration
14 from ATX and/or NBIS and/or CTIS was based upon the volume of third-party bodily
15 injury claims for which DMA performed an investigation, evaluation, or any other claims
16 adjusting or handling duties and responsibilities that DMA was contracted to perform
17 for the benefit of ATX and/or NBIS and/or CTIS.

18 38. As a third-party claims administrator and adjuster, DMA’s remuneration
19 from ATX and/or NBIS and/or CTIS was based on the percentage of claim savings ATX
20 and/or NBIS and/or CTIS received as a direct result of the investigation, evaluation, or
21 any other claims adjusting or handling duties and responsibilities that DMA was
22 contracted to perform for the benefit of ATX and/or NBIS and/or CTIS.

23 39. As a third-party claims administrator and adjuster, DMA shared a common
24 pecuniary interest with ATX and/or NBIS and/or CTIS to reduce costs arising from
25 claims and to pay reasonable amounts on claims necessary to optimize the financial
26 interests of ATX and/or NBIS and/or CTIS.

27 **C. Sanchez’s Bodily Injury Claim Against Bon**

28 40. On May 21, 2015, Sanchez, through her counsel, faxed and mailed a letter
notifying ATX of her bodily injury claim. Sanchez enclosed her medical records, bills,
and other supporting documentation with the letter. ATX and/or CTIS and/or DMA

1 assigned claim number DMA0147074 to Sanchez's bodily injury claim. This claim
2 number signified that DMA was to serve as the third-party administrator and adjuster
3 of Sanchez's bodily injury claim on behalf of ATX and under the express supervision and
4 control of CTIS pursuant to their "Claims Administration Agreement."

5 41. On June 16, 2015, Sanchez, through her counsel, faxed and mailed a letter
6 to DMA wherein she offered to settle her bodily injury claim for all applicable policy
7 limits under the ATX policy that covered Bon. At that time, Sanchez's past medical
8 expenses totaled \$7,818.00 and she was recommended to undergo a cervical fusion
9 surgery. Sanchez included a copy of the traffic accident report and her medical records
10 and bills, including the record outlining her future surgical recommendation, with the
11 June 16, 2015 offer letter. Sanchez's policy limits offer remained open until June 30,
12 2015. Sanchez clearly articulated her intent to file a lawsuit against Bon if she did not
13 receive a response to her offer by June 30, 2015.

14 42. ATX and/or NBIS and/or CTIS and/or DMA failed to timely respond to
15 Sanchez's June 16, 2015 offer letter.

16 43. On July 10, 2015, DMA sent a letter to Sanchez's counsel acknowledging
17 that DMA represented the interests of ATX for the April 28, 2015 motor vehicle collision.
18 DMA requested additional time to complete its investigation of Sanchez's bodily injury
19 claim because of its supposed need to gather information necessary to determine
20 liability. The information DMA allegedly required to reach this determination was a
21 statement from the vehicle drivers involved in the crash and photos of the vehicles
22 involved in the crash. DMA made this request even though Sanchez provided a copy of
23 the traffic accident report and her medical records and bills to DMA as part of her June
24 16, 2015 demand.

25 44. On July 17, 2015, one week after its initial letter, DMA sent another letter
26 to Sanchez's counsel. DMA stated that after completing a thorough investigation of the
27 facts and circumstances surrounding the April 28, 2015 motor vehicle collision,
28 Sanchez's bodily injury claim was denied because its insured, Bon, was not the
proximate cause of the crash and therefore, was not legally liable for Sanchez's damages.
DMA never confirmed that it actually obtained the information referenced in its July

1 10, 2015 letter as part of its investigation and ultimate denial of Sanchez’s bodily injury
2 claim.

3 45. Sanchez never received any further oral or written communications from
4 ATX and/or NBIS and/or CTIS and/or DMA.

5 **D. Sanchez’s Personal Injury Lawsuit Against Bon**

6 46. On August 7, 2015, Sanchez filed her complaint for personal injuries in the
7 Eighth Judicial District Court, Clark County (“Nevada state district court”), Case No.
8 A-15-722815-C. The allegations contained within her personal injury complaint are
9 incorporated by reference as though fully set forth herein. In her personal injury
10 complaint, Sanchez set forth several allegations that included: (1) Bon negligently drove
11 his vehicle, which caused the motor vehicle collision and Sanchez’s resulting injuries;
12 and (2) Bon drove the truck owned by Cruz at the time of the motor vehicle collision.

13 47. The factual allegations set forth in Sanchez’s personal injury complaint
14 triggered ATX’s duty to defend Bon, its insured, pursuant to Nevada law.

15 48. Sanchez properly served Bon with her summons and personal injury
16 complaint in accordance with Nevada law.

17 49. On December 11, 2015, Sanchez, through her counsel, sent a letter advising
18 DMA and ATX of her withdrawal of the policy limits demand sent on June 16, 2015.

19 50. On January 20, 2016, Sanchez, through her counsel, mailed a letter to ATX
20 and DMA advising that Bon was served with the summons and Sanchez’s personal
21 injury complaint via the Nevada Department of Motor Vehicles (“DMV”). Copies of the
22 personal injury complaint, the affidavit of compliance, and a letter dated November 2,
23 2015 from the DMV confirming service of the summons and personal injury complaint
24 were included in the January 20, 2016 letter to ATX and DMA. Sanchez’s counsel
25 specifically requested DMA and/or ATX to file an answer to the personal injury
26 complaint as soon as possible or else Sanchez would request the Nevada state court to
27 enter a default against Bon.

28 51. ATX and/or NBIS and/or CTIS and/or DMA failed to respond to the
January 20, 2016 letter.

1 52. On February 16, 2016, Sanchez, through her counsel, mailed another letter
2 to ATX and DMA advising that Bon still had not yet filed an answer to Sanchez's
3 personal injury complaint. Sanchez's counsel clarified that if Bon did not file his answer
4 by February 23, 2016, a request for the Nevada state court to enter a default against
5 Bon would be made by Sanchez.

6 53. From February 17, 2016 through March 31, 2016, ATX and/or NBIS and/or
7 CTIS and/or DMA: (1) never responded to Sanchez's February 16, 2016 letter and (2)
8 never filed an answer to Sanchez's personal injury complaint on behalf of Bon.

9 54. Bon never filed an answer to Sanchez's personal injury complaint in Case
10 No. A-15-722815-C.

11 55. On April 1, 2016, the Nevada state court entered a default against Bon in
12 the personal injury action, Case No. A-15-722815-C.

13 56. On June 22, 2016, Sanchez filed her notice of entry of default against Bon
14 in the personal injury action, Case No. A-15-722815-C, and mailed a copy of it to ATX
15 and DMA, via certified mail.

16 57. ATX and/or NBIS and/or CTIS and/or DMA took no further action in
17 response to the entry of default against the Bon.

18 58. Even after Sanchez notified ATX and DMA of the entry of default against
19 Bon, ATX and/or NBIS and/or CTIS and/or DMA failed and refused to investigate,
20 provide Bon, ATX's insured, with a defense, or indemnify Bon against the substantial
21 losses Sanchez incurred as a result of the April 28, 2015 motor vehicle collision. ATX
22 and/or NBIS and/or CTIS and/or DMA failed to retain counsel to represent the interests
23 of Bon or undertake any other steps to defend him against Sanchez's allegations set
24 forth in her personal injury complaint.

25 59. On March 29, 2019, Sanchez filed an application for entry of a default
26 judgment pursuant to NRCP 55(b)(2) in the personal injury action, Case No. A-15-
27 722815-C. Sanchez sought a judicial determination from the Nevada state district court
28 of the damages she suffered as a result of Bon's negligence.

1 60. The Nevada state district court’s April 1, 2016 entry of default constituted
2 an admission by Bon of all material facts alleged in Sanchez’s personal injury complaint
3 as a matter of Nevada law.

4 61. Bon was notified of the hearing for Sanchez’s application for entry of a
5 default judgment.

6 62. On July 19, 2019, the Nevada state district court entered a default
7 judgment against Bon in the amount of \$15,212,655.73, inclusive of attorney’s fees and
8 costs, in the personal injury action, Case No. A-15-722815-C.

9 63. On July 19, 2019, Sanchez filed a motion for judicial assignment of Bon’s
10 claims or causes of action against ATX or any other applicable liability insurer or entity
11 pursuant to NRS 21.320 in the personal injury action, Case No. A-15-722815-C.

12 64. On August 20, 2019, the Nevada state district court entered an order
13 granting Sanchez’s motion for judicial assignment of Bon’s claims or causes of action
14 against ATX, or any other insurance company or entity.

15 65. On September 8, 2020, the Nevada state district court granted Sanchez’s
16 motion to clarify its August 20, 2019 Order and confirmed that its judicial assignment
17 of Bon’s claims or causes of action included those claims or causes of action against any
18 third-party claims administration, third-party claims adjuster, or other applicable
19 insurer, administrator, or entity.

20 66. Sanchez, as the judicial assignee of Bon’s claims or causes of action, has
21 the legal right and ability to assert all claims against ATX and/or NBIS and/or CTIS
22 and/or DMA to satisfy the entire default judgment amount based upon their respective
23 breaches of the duties owed to Bon.

24 67. ATX and/or NBIS and/or CTIS failed to compensate Sanchez for all the
25 damages she incurred in excess of Bon’s automobile liability insurance policy limits for
26 third-party claims under the ATX Insurance Policy that was issued in December of 2014
27 and covered Bon at the time of the April 28, 2015 motor vehicle collision. ATX and/or
28 NBIS and/or CTIS had a duty to indemnify Bon, as its insured, for the loss suffered by
Sanchez under Nevada law and failed to satisfy this duty.

...

1 **FIRST CLAIM FOR RELIEF**

2 ***(Breach of Contract against Defendants ATX, NBIS, CTIS, and DMA)***

3 68. Sanchez hereby incorporates, by reference, each and every allegation set
4 forth in Paragraphs 1 through 67 of this Complaint as though fully set forth herein.

5 69. A contract of insurance existed between ATX and Cruz on the date of the
6 April 28, 2015 motor vehicle collision described herein. As a permissive driver, Bon was
7 the insured under the express terms and conditions of the ATX Insurance Policy. ATX
8 owed contractual duties to Bon as the insurer.

9 70. At the time of the April 28, 2015 motor vehicle collision, all premiums were
10 paid under Cruz's ATX Insurance Policy. All proofs of loss were submitted under said
11 policy and Cruz and/or Bon performed all conditions required to be performed by the
12 policy.

13 71. NBIS assumed all of ATX's indemnity obligations for claims arising from
14 ATX insurance policies issued before the sale of ATX to Windhaven in April of 2016. The
15 ATX Insurance Policy that covered Bon at the time of the April 28, 2015 motor vehicle
16 collision was issued on December 16, 2014. NBIS is financially responsible for all
17 damages arising from Sanchez's claims in this Complaint.

18 72. CTIS performed claims management, claims handling, and claims
19 administration oversight duties for the benefit of ATX pursuant to the "Claims
20 Management Agreement" by and between CTIS and DMA wherein DMA agreed to serve
21 as a third-party claims administrator and adjuster for bodily injury claims arising from
22 automobile liability insurance policies issued by ATX, including the subject ATX
23 Insurance Policy.

24 73. ATX and/or NBIS and/or CTIS together with DMA jointly managed,
25 investigated, evaluated, adjusted, and performed other claims handling tasks regarding
26 Sanchez's bodily injury claim against the ATX Insurance Policy that covered Bon at the
27 time of the April 28, 2015 motor vehicle collision.

28 74. ATX and/or NBIS and/or CTIS and/or DMA each possessed a joint financial
interest to act for the benefit of each other by satisfying the duty to investigate, evaluate,

1 adjust, and perform other claims handling and/or administrative tasks as joint
2 venturers.

3 75. ATX and/or NBIS and/or CTIS and/or DMA breached their respective
4 contractual duties to defend, indemnify, investigate, or settle Sanchez's claim when each
5 of them had notice of Sanchez's bodily injury claim and her subsequent personal injury
6 action, and failed to take any actions necessary to protect Bon's interests. Specifically,
7 ATX and/or NBIS and/or CTIS and/or DMA failed to conduct any type of substantive
8 investigation or evaluation of Sanchez's bodily injury claim necessary to settle or resolve
9 her bodily injury claim before she filed her personal injury lawsuit.

10 76. After Sanchez filed her personal injury lawsuit in Nevada state court and
11 provided ample notice to ATX and DMA of the same, ATX and/or NBIS and/or CTIS
12 and/or DMA failed to tender a defense on behalf of Bon against the allegations set forth
13 in the personal injury complaint, failed to retain an attorney to represent the interests
14 of Bon, failed to timely intervene in the personal injury action, and failed to settle
15 Sanchez's personal injury claim within policy limits when it had a reasonable
16 opportunity to do so, or to otherwise take any and all necessary actions to protect the
17 interests of its insured, Bon.

18 77. As a result of the actions and/or inactions of ATX and/or NBIS and/or CTIS
19 and/or DMA, each of them are legally bound by the default judgment entered in the
20 Nevada state court action, Case No. A-15-722815-C, in the amount of \$15,212,655.73,
21 inclusive of attorney's fees and costs and are obligated to satisfy the same.

22 78. As a result of ATX and/or NBIS and/or CTIS and/or DMA's breaches of their
23 respective contractual duties, Sanchez, as assignee of Bon, has suffered damages in an
24 amount in excess of \$15,000.00, the exact amount of which will be proven at trial.

25 79. Sanchez has been compelled to retain counsel to prosecute this action and
26 is therefore entitled to recover attorneys' fees and costs.

27 ...
28 ...



1 **SECOND CLAIM FOR RELIEF**

2 ***(Breach of the Implied Covenant of Good Faith and Fair Dealing Against ATX,***
3 ***NBIS, CTIS, and DMA)***

4 80. Sanchez hereby incorporates, by reference, each and every allegation set
5 forth in Paragraphs 1 through 79 of this Complaint as though fully set forth herein.

6 81. There was an implied covenant in the ATX Insurance Policy that covered
7 Bon whereby ATX and/or NBIS and/or CTIS was obligated to act in good faith and deal
8 fairly with Bon. ATX and/or NBIS and/or CTIS owed this duty of good faith and fair
9 dealing to Bon implied in the ATX Insurance Policy that covered Bon at the time of the
10 April 28, 2015 motor vehicle collision.

11 82. As joint venturers tasked to perform claims management, claims
12 handling, and claims administration duties and tasks for the benefit of ATX and/or NBIS
13 and/or CTIS, DMA and/or each of them were obligated to act in good faith and deal fairly
14 with Bon in relation to Sanchez's bodily injury claim arising from the ATX Insurance
15 Policy that covered Bon at the time of the April 28, 2015 motor vehicle collision.

16 83. ATX and/or NBIS and/or CTIS and/or DMA had a special relationship with
17 Bon as the insured at the time of the April 28, 2015 motor vehicle collision and Sanchez's
18 bodily injury claim arising from that collision. This special relationship between ATX
19 and/or NBIS and/or CTIS and/or DMA and Bon was akin to a fiduciary relationship.

20 84. The nature of the fiduciary-like relationship required ATX and/or NBIS
21 and/or CTIS and/or DMA to adequately protect Bon's interests.

22 85. At all material times hereto, ATX and/or NBIS and/or CTIS and/or DMA
23 each had a duty to give equal consideration to Bon's interests.

24 86. As the assignee of Bon's claims for relief and/or causes of action against
25 ATX and/or NBIS and/or CTIS and/or DMA, Sanchez possesses all legal authority to
26 pursue all of Bon's claims for relief and/or causes of action for breach of the implied
27 covenant of good faith and fair dealing against each of them.

28 87. ATX and/or NBIS and/or CTIS and/or DMA knowingly and deliberately
breached their respective implied covenants of good faith and fair dealing by failing to
defend, indemnify, investigate, or settle Sanchez's bodily injury claim when each of them

1 had notice of Sanchez's bodily injury claim and her subsequent personal injury action,
2 and failed to take any actions necessary to protect Bon's interests. Specifically, ATX
3 and/or NBIS and/or CTIS and/or DMA failed to conduct any type of substantive
4 investigation or evaluation of Sanchez's bodily injury claim necessary to settle or resolve
5 her bodily injury claim before she filed her personal injury lawsuit.

6 88. After Sanchez filed her personal injury lawsuit in the Nevada state
7 district court and provided ample notice to ATX and DMA of the same, ATX and/or NBIS
8 and/or CTIS and/or DMA knowingly and deliberately failed to tender a defense on behalf
9 of Bon against the allegations set forth in the personal injury complaint, failed to retain
10 an attorney to represent the interests of Bon, failed to timely intervene in the personal
11 injury action, and failed to settle Sanchez's personal injury claim within policy limits
12 when it had a reasonable opportunity to do so, or to otherwise take any and all necessary
13 actions to protect the interests of its insured, Bon.

14 89. As a proximate result of ATX and/or NBIS and/or CTIS and/or DMA's
15 respective breaches of the implied covenant and good faith and fair dealing and bad faith
16 refusal to defend, indemnify, investigate, evaluate, or settle Sanchez's bodily injury
17 claim, Sanchez, as assignee of Bon, has suffered damages in an amount in excess of
18 \$15,000.00, the exact amount of which will be proven at trial.

19 90. ATX and/or NBIS and/or CTIS and/or DMA intentionally and willfully,
20 with malice, oppression, and fraud, failed to conduct a fair, objective, and reasonable
21 investigation and evaluation of Sanchez's bodily injury claim to satisfy the duties they
22 owed to Bon.

23 91. ATX and/or NBIS and/or CTIS and/or DMA intentionally and willfully,
24 with malice, oppression, and fraud, refused to give equal consideration to Bon's interests
25 by taking affirmative actions to gather facts necessary to conduct a fair, objective, and
26 reasonable investigation and evaluation of Sanchez's bodily injury claim.

27 92. ATX and/or NBIS and/or CTIS and/or DMA intentionally and willfully,
28 with malice, oppression, and fraud, failed to settle Sanchez's bodily injury claim within
Bon's ATX Insurance Policy's limits without any factual basis.

1 willfully and deliberately ignoring Sanchez's June 16, 2015 offer to tender Bon's
2 minimum automobile liability insurance policy limit of \$15,000.00 available under the
3 ATX Insurance Policy covering Bon. ATX and/or NBIS and/or CTIS and/or DMA knew
4 that liability was not in dispute when Sanchez made her June 16, 2015 offer because
5 she provided a copy of the traffic accident report and ATX and/or NBIS and/or CTIS
6 and/or DMA failed to take any additional steps to investigate the cause of the April 28,
7 2015 motor vehicle collision.

8 101. ATX and/or NBIS and/or CTIS and/or DMA failed to inform Bon of
9 Sanchez's June 16, 2015 settlement offer for policy limits and failed to communicate to
10 Bon about the contractual duty to defend him against the allegations set forth in
11 Sanchez's personal injury complaint.

12 102. ATX and/or NBIS and/or CTIS and/or DMA deliberately and willfully
13 rejected Sanchez's bodily injury claim for Bon's minimum automobile liability insurance
14 policy limit of \$15,000.00 in direct contravention of Bon's interests prior to the
15 commencement of Sanchez's personal injury lawsuit.

16 103. ATX and/or NBIS and/or CTIS and/or DMA failed to diligently investigate
17 the facts and circumstances surrounding the April 28, 2015 motor vehicle collision
18 involving the insured, Bon, and Sanchez, to aid in its investigation and evaluation of
19 Sanchez's bodily injury claim necessary to complete a thorough and adequate
20 investigation of Sanchez's bodily injury claim within 30 days.

21 104. By failing and refusing to defend, indemnify, and/or settle Sanchez's claim,
22 ATX and/or NBIS and/or CTIS and/or DMA violated the express provisions of NRS
23 686A.310 and regulations adopted by Nevada Administrative Code § 686A *et seq.*

24 105. As a proximate result of ATX and/or NBIS and/or CTIS and/or DMA's
25 respective violations of the Nevada Unfair Claims Practices Act set forth in NRS
26 686A.310, plus all other applicable regulations adopted by Nevada Administrative Code
27 § 686A *et seq.*, Sanchez, as assignee of Bon, has suffered damages in an amount in excess
28 of \$15,000.00, the exact amount of which will be proven at trial.

...

...

1 **FOURTH CLAIM FOR RELIEF**

2 ***(Action on the Default Judgment Against Defendant Blas Bon)***

3 106. Sanchez hereby incorporates, by reference, each and every allegation set
4 forth in Paragraphs 1 through 105 of this Complaint as though fully set forth herein.

5 107. On July 19, 2019, the Nevada state district court entered a default
6 judgment against Bon in the amount of \$15,212,655.73, inclusive of attorney's fees and
7 costs, in Case No. A-15-722815-C.

8 108. The July 19, 2019 Default Judgment was entered against Bon for his
9 failure to file an answer to Sanchez's personal injury complaint, filed on August 7, 2015,
10 or to otherwise appear in the personal injury action within 20 days of service of the
11 summons and personal injury complaint.

12 109. As a direct result of the Nevada state district court's entry of a default
13 judgment against Bon, all issues of liability, causation, and damages arising from
14 Sanchez's personal injury claims are fully resolved.

15 110. The full amount of the \$15,212,655.73 default judgment entered against
16 Bon remains unsatisfied.

17 111. As the judgment debtor, Bon is legally responsible for satisfying the full
18 amount of the default judgment entered against him on July 19, 2019 by the Nevada
19 state court in the amount of \$15,212,655.73.

20 112. Sanchez, as the judgment creditor, hereby reserves the right to utilize all
21 remedies under Nevada law to collect on the July 19, 2019 default judgment by way of
22 her action on the default judgment, including the Court's issuance of a writ of
23 attachment upon the personal property of Bon pursuant to NRS 31.010 *et seq.*; the
24 Court's issuance of a writ of garnishment upon the money, credits, effects, debts, choses
25 in action, and other personal property of Bon pursuant to NRS 31.240 *et seq.*; replevin;
26 or any other means of collection available to her under Nevada law.

27 113. Sanchez has been compelled to retain the services of an attorney to
28 prosecute this action and is therefore entitled to reasonable attorney's fees and costs
incurred herein.

...

1 114. Sanchez timely pursues this claim for action on the default judgment
2 against Bon in accordance with NRS 11.190(1)(a).

3 **III.**

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff Diane Sanchez prays for judgment against Defendants, and
6 each of them, as follows:

7 1. Satisfaction of the July 19, 2019 default judgment in the amount of
8 \$15,212,655.73, plus post-judgment interest;

9 2. General Damages for a sum in excess of Fifteen Thousand Dollars and
10 00/100 Cents (\$15,000.00);

11 3. Special damages for a sum in excess of Fifteen Thousand Dollars and
12 00/100 Cents (\$15,000.00);

13 4. Punitive damages for a sum in excess of Fifteen Thousand Dollars and
14 00/100 Cents (\$15,000.00);

15 5. For attorneys' fees, costs of suit, and pre-judgment and post-judgment
16 interest incurred herein; and

17 6. Such other and further relief as this Court deems just and proper.

18 DATED this 1st day of June, 2021.

19 Respectfully Submitted,

20 **PRINCE LAW GROUP**

21 /s/ Kevin T. Strong
22 DENNIS M. PRINCE
23 Nevada Bar No. 5092
24 KEVIN T. STRONG
25 Nevada Bar No. 12107
26 10801 West Charleston Boulevard
27 Suite 560
28 Las Vegas, Nevada 89135
Tel: (702) 534-7600
Fax: (702) 534-7601
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 1st day of June, 2021, I caused the foregoing document entitled
4 **PLAINTIFF DIANE SANCHEZ'S SECOND AMENDED COMPLAINT** to be served
5 upon those persons designated by the parties in the E-Service Master List for the above-
6 referenced matter in the Eighth Judicial District Court E-Filing System in accordance
7 with the mandatory electronic service requirements of Administrative Order 14-2 and
8 the Nevada Electronic Filing and Conversion Rules.
9

10 Robert E. Schumacher
11 Wing Yan Wong
12 **GORDON REES SCULLY MANSUKHANI, LLP**
13 300 South 4th Street, Suite 1550
14 Las Vegas, Nevada 89101
15 Tel: (702) 577-9300
16 Fax: (702) 255-2858
17 Attorneys for Defendant
18 *DMA Claims Management, Inc.*

19 John H. Podesta
20 Christopher Phipps
21 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP**
22 300 South 4th Street, Suite 1100
23 Las Vegas, Nevada 89101
24 Tel: (702) 727-1400
25 Fax: (702) 727-1401
26 Attorneys for Defendant
27 *ATX Premier Insurance now known as*
28 *Windhaven National Insurance Company*

23 /s/ Amy Ebinger
24 An Employee of Prince Law Group



EXHIBIT “1”

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 “2”

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: 5/15/2015

DMA CLAIMS MANAGEMENT, INC.

By: Thomas Spitz

Its: PRESIDENT

Date: 5/9/15