

**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, an individual;)) Real Party in) Interest.) _____)	Electronically Filed February 28, 2022 09:53 p.m. Elizabeth A. Brown Clerk of Supreme Court Supreme Court No. 84227 District Court Case No. A-19-805351-C
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**REPLY ON MOTION TO EXTEND DISTRICT COURT’S
STAY PENDING WRIT PETITION**

and

**RULE 27(e) EMERGENCY MOTION FOR
INTERIM EXTENSION OF STAY
(Action Required by February 14, 2022)**

INTRODUCTION

This petition is based on a simple principle: a bad faith claim is not ripe until the appellate process is complete because any alleged damage suffered by the insured in the underlying lawsuit will vanish with successful prosecution of an appeal. *Branch Banking & Tr. Co. v. Nev. Title Co.*, No. 2:10-CV-1970 JCM (RJJ), 2011 U.S. Dist. LEXIS 40948 (D. Nev. Apr. 13, 2011). The rationale behind this principle extends far beyond bad faith litigation and speaks to “[t]he prudential considerations of ripeness” that the Ninth Circuit Court of Appeals considered in *Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 662 (9th Cir. 2002). Petitioners are not asking this Court for a “favor,” but rather for an appropriate stay of proceedings until Real Party in Interest Diane Sanchez has asserted a real and concrete injury.

Sanchez identifies no compelling reason for the Court to deviate from this principle and to lift the temporary stay while Petitioners’ writ is pending. In fact, if anything, her response demonstrates just how conflated the personal injury lawsuit and the bad faith action have become as a result of Sanchez’s conduct. Sanchez sees no distinction between the issues, the cases, or the parties. *See e.g. Motion*: Ex. 1-Hr’g Tr. 01/27/22, 11:9-12:14. As demonstrated by Sanchez’s violation of a protective order to supposedly bolster her defense of Bon’s appeal, a stay is necessary. Without one, she will not only needlessly increase the costs of litigation,

she will also set a dangerous precedent that opens the door for plaintiffs to pursue claims against defendants in bad faith or professional liability actions before this Court has even affirmed that it is appropriate for the claims to be asserted in the first place. See *Semenza v. Nev. Med. Liab. Ins. Co.*, 104 Nev. 666, 668, 765 P.2d 184, 186 (1988) (legal malpractice action cannot move forward during appeal).

LEGAL ARGUMENT

1. The Object of the Writ Petition Will be Defeated without an Extension of the District Court Stay.

Sanchez argues that Petitioners are seeking duplicative relief and an “indefinite stay” by asking this Court to extend the district court stay pending adjudication of the petition. *Opp.* 3. Sanchez even says that the stay motion and the writ petition “seek[] the exact same stay relief.” *Opp.* 4. This is incorrect. The requests are different: this motion seeks only a stay pending the resolution of the *petition*, while the petition itself seeks a stay pending the resolution of the underlying *appeal* based on the prematurity of the bad-faith action.

An extension of the stay is the only way to preserve appellate review of the issue in the writ petition itself and to prevent an irreversible and highly prejudicial abuse of documents disclosed by the defendants in the bad faith action. *Motion: Ex. 1*, 5:8-25. Sanchez rationalizes this abuse on the assumption that she is entitled to use whatever she wants to “further the prosecution of her judgment enforcement/bad faith action.” There are two fundamental problems with this argument.

First, Sanchez, through her counsel, agreed to and executed a Stipulated Amended Protective Order (“Protective Order”) in the bad faith action wherein she agreed that, absent a court order, documents marked as “CONFIDENTIAL” by any party “shall be used solely for the prosecution or defense of this action.” (emphasis added). There is no exception in the Protective Order that allows for filing the confidential documents to a different judge, in another case. *Id.*

Second, by arguing that she has a “right” to use documents produced in the bad faith action (confidential or otherwise) to influence the outcome of the appeal of the order refusing to set aside the default judgment, Sanchez again conflates the personal injury lawsuit and the bad faith action. The two cases are separate, and Sanchez’s conduct has led to a complete reversal of the normal course and resolution of these claims. The personal injury action was filed against Blas Bon, not Petitioners. *Id.* 12:2-8. The default judgment was entered against Blas Bon, not Petitioners. Though Sanchez desires for Petitioners to be liable for the judgment, there has been no judicial determination that Petitioners acted in bad faith or breached a contractual duty to defend Bon; indeed, there cannot be until Bon exhausts his appellate rights. Bon, whose rights to a bad-faith action were judicially stripped from him and assigned to Sanchez, contends that the judgment against him

is void and the judicial assignment invalid. Sustaining Bon’s appeal would prevent Sanchez’s claim from ever arising.¹

2. The Petition Presents a Substantial Case on an Important Issue of First Impression

Sanchez’s objection to a stay is inextricable from her position on the merits—that she has a ripe bad-faith claim, properly assigned to her without Bon’s permission, notwithstanding Bon’s own appeal challenging the underlying judgment as void—a position rejected by other courts, including within the Nevada federal courts. *Branch Banking*, 2011 U.S. Dist. LEXIS 40948; *see also Premcor USA, Inc. v. Am. Home Assurance Co.*, 400 F.3d 523, 529 (7th Cir. 2005).

Sanchez asks this Court to ignore the prematurity of her claim, citing to cases such as *Century Surety Co v. Andrew*, 134 Nev. 819, 822 n. 4, as proof apparent that Petitioners are liable for her damages and that the bad faith claim is ripe. But *Century* did not involve an appeal of the underlying default judgment or a dispute with the insured himself. Indeed, unlike Bon—who had his rights taken away by judicial assignment, who is appealing the entry of default judgment against him, and who is named as a defendant in the bad faith action—the insured in *Century* settled with the plaintiff, forwent an appeal, and assigned his bad faith rights to the plaintiff in

¹ Sanchez insinuates that Bon’s own challenge to the validity of the judgment is an improper post-judgment “intervention” by NBIS and CTIS as “the real parties-in-interest in the personal injury action” apparently forgetting that Bon himself has an interest in vacating the default judgment. *Opp.* 6-7.

exchange for a covenant not to sue. No one, not even the insurer, attacked the validity of the underlying judgment. The findings made by the court in the bad faith action regarding Century's duty to defend were therefore made in a different context and in the absence of an underlying appeal by the insured.

3. Petitioners Bear the Greatest Prejudice Without Extension of the Stay

Sanchez fails to identify how she will be prejudiced if this Court extends the district court stay. She insinuates that she will be deprived of "all financial security," but fails to acknowledge that she sat on the default judgment for nearly three years, only taking action once the court statistically closed the case following the entry of a stipulation dismissing all parties. It defies logic that, after nearly forgetting she had a default on the docket for that length of time, Sanchez would be irreparably harmed by a brief stay of litigation pending the writ. The harm to Petitioners is far more immediate and concrete, particularly given the abuse of their confidential documents which has already taken place to date.

Dated this 28th Day of February, 2022.

LIPSON NEILSON P.C.

/s/ Megan H. Thongkham

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CERTIFICATE OF SERVICE

I certify that on February 28, 2022, I submitted the foregoing “Reply On Motion To Extend District Court’s Stay Pending Writ Petition and Rule 27(E) Emergency Motion For Interim Extension Of Stay” for filing *via* the Court’s eFlex electronic filing system.

Electronic notification will be sent to the following:

<p>Dennis M. Prince, Esq. Kevin T. Strong, Esq. PRINCE LAW GROUP 10801 West Charleston Blvd., Suite 560 Las Vegas, NV 89135</p> <p><i>Attorneys for Plaintiff, Diane Sanchez</i></p>	<p>ROBERT E. SCHUMACHER, ESQ. JOHN F. SCHNERINGER, ESQ. 300 South 4th Street, Suite 1550 Las Vegas, Nevada 89101</p> <p><i>Attorneys for Defendant, DMA CLAIMS MANAGEMENT, INC., erroneously sued as DMA CLAIMS INC.</i></p>
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/s/ Kristina Marzec

An employee of Lipson Neilson P.C.