

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

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

REAL PARTY IN INTEREST DIANE SANCHEZ'S APPENDIX TO ANSWER TO WRIT PETITION VOLUME IV PAGES 751-797

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EXHIBIT 4

Negligence - Auto

COURT MINUTES

July 24, 2018

A-15-722815-C Diane Sanchez, Plaintiff(s)
vs.
Blas Bon, Defendant(s)

July 24, 2018 10:30 AM Pretrial/Calendar Call

HEARD BY: Delaney, Kathleen E. COURTROOM: RJC Courtroom 03F

COURT CLERK: Boyle, Shelley

RECORDER:

REPORTER: Howard, Sharon

PARTIES PRESENT:

Michael A. Kristof Attorney for Plaintiff

Renee M. Finch Attorney for Cross Claimant, Defendant

JOURNAL ENTRIES

Ms. Finch noted there is a Default Judgment pending against Deft. Blas Bon with respect to Pltf. that has not been resolved yet. Adding, the active cases, Deft's. Acosta, have entered into a confidential settlement agreement; it is being drafted, it has not been not executed yet. Mr. Kristof concurred; the matter is resolved as to Deft's. Acosta, Deft. Blas Bon defaulted some time ago. COURT NOTED, the Default Judgements have not been completed, and ORDERED a Status Check SET. Mr. Kristof noted a Prove Up Hearing will be required, the amounts are over \$50,000.00

09/25/18 9:00 A.M. STATUS CHECK: SETTLEMENT DOCUMENTS / DEFAULT JUDGEMENTS

EXHIBIT 5

A-15-722815-C Diane Sanchez, Plaintiff(s)
vs.
Blas Bon, Defendant(s)

September 25, 2018 09:00 AM Status Check: Settlement / Default Judgments

HEARD BY: Delaney, Kathleen E. COURTROOM: RJC Courtroom 03F

COURT CLERK: Boyle, Shelley

RECORDER:

REPORTER: Howard, Sharon

PARTIES PRESENT:

Renee M. Finch

Attorney for Cross Claimant, Defendant

JOURNAL ENTRIES

Mr. Finch indicated Mr. Kristol had a calendaring issue and would not be appearing. COURT SO NOTED. Mr. Finch stated he has all the releases for his clients, he is waiting upon the checks. As to the Default, he understands Mr. Prince will be associating in. Colloquy regarding scheduling, COURT ORDERED, matter CONTINUED.

CONTINUED TO: 11/27/18 9:00 A.M.

EXHIBIT 6

Negligence - Auto

COURT MINUTES

November 27, 2018

A-15-722815-C Diane Sanchez, Plaintiff(s)
vs.
Blas Bon, Defendant(s)

November 27, 2018 09:00 AM Status Check: Settlement / Default Judgments

HEARD BY: Delaney, Kathleen E. COURTROOM: RJC Courtroom 03F

COURT CLERK: Boyle, Shelley

RECORDER:

REPORTER: Howard, Sharon

PARTIES PRESENT:

Kevin T. Strong Attorney for Plaintiff

JOURNAL ENTRIES

COURT NOTED, there had been no updates indicating Deft. would appear; there is a Stipulation and Order to Dismiss the Compliant between Pltf. and the other Deft's. Mr. Strong stated he would prepare the Application for Default Judgment; Eglet Prince have associated in. COURT ORDERED, matter CONTINUED. The Court's expectation is that the Application will be filed, the Prove-Up Hearing set and completed by the next scheduled Court date.

CONTINUED TO: 1/29/18 9:00 A.M.

EXHIBIT 7

Negligence - Auto

COURT MINUTES

January 29, 2019

A-15-722815-C Diane Sanchez, Plaintiff(s)
vs.
Blas Bon, Defendant(s)

January 29, 2019 09:00 AM Status Check: Settlement / Default Judgments

HEARD BY: Delaney, Kathleen E. COURTROOM: RJC Courtroom 15B

COURT CLERK: Boyle, Shelley

RECORDER:

REPORTER: Howard, Sharon

PARTIES PRESENT:

James A. Trummell Attorney for Plaintiff

JOURNAL ENTRIES

Mr. Trummell stated the parties are still updating and receiving the paid medical records for completion of the settlement and requested the matter be continued. Clarifying, they want to make sure the numbers are as accurate as possible. Colloquy regarding scheduling and the Court's expectations the matter will be complete prior to the next setting. COURT ORDERED, matter CONTINUED; the future Court date can be VACATED with receipt of the appropriate documents in sufficient time.

CONTINUED TO: 04/02/19 9:00 A.M.

EXHIBIT 8

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Defendant.

DEPT. NO. 25

TUESDAY, NOVEMBER 24, 2020

(Appearing via teleconference)

DENNIS M. PRINCE, ESQ.

ABRAHAM G. SMITH, ESQ.
DANIEL POLSENBERG, ESQ.
WILLIAM P. VOLK, ESQ.

REPORTED BY: DANA J. TAVAGLIONE, RPR, CCR No. 841

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 24, 2020

2 * * * * *

3

4 THE COURT: All right. So we have
5 Sanchez vs. Blas Bon. Let's do that, and that's the
6 end of our calendar. And it proves, once again, it
7 doesn't matter how many things are on, it's just
8 what they are. I'm trying to reach Attorney
9 Dennis Prince for his court appearance.

10 (Judge gathers counsel for teleconference.)

11 THE COURT: So let me just do a quick -- I
12 could tell I have Mr. Prince still and I have
13 Mr. Polsenberg. Let me just doublecheck. Do I
14 still have Mr. Smith?

15 MR. SMITH: You do, Your Honor.

16 THE COURT: And do I still have Mr. Volk?

17 MR. VOLK: Yes. Yes, Your Honor.

18 THE COURT: Okay. So everybody's on the
19 conference call. Thank you so much. I do want to
20 let you all know that I have my full staff here in
21 the courtroom, and I have my court reporter. And so
22 I want to make sure that, if we need to write this,
23 that my court reporter knows.

24 And so I want to ask right upfront, is
25 there someone who would like to have this matter

1 reported this morning?

2 MR. POLSENBERG: Yes, please.

3 MR. PRINCE: Yes, for the plaintiff,
4 Your Honor.

5 THE COURT: well, that sounds like
6 everybody wanted that to be the case. So what will
7 happen is she'll invoice folks, and you can get your
8 copy. It's Dana Tavaglione, who is my reporter here
9 today, and if you have any questions how to reach,
10 you can get through the chambers; otherwise, again,
11 she will invoice you.

12 She was writing -- although, I told her to
13 skip that part there about the Supreme Court so I
14 didn't get in trouble for making any comments -- and
15 in all candor, she wasn't writing that part, but
16 she's writing now, and we're going to get started
17 with this matter. Thank you.

18 This is on the calendar for the Motion for
19 Rehearing and to Alter or Amend Judgment and Order
20 Denying Rule 60(b) Relief. And it's been very, very
21 thoroughly briefed, which I would expect no less
22 from counsel. And but I do always want to give an
23 opportunity with these arguments, so that we have
24 the best possible record, to let you help us
25 understand what you would like to highlight, what

1 you would like to want to make sure that we don't
2 misconstrue or misapprehend of your argument.

3 And, ultimately, you know, we have
4 discretion here. How we should exercise that
5 discretion is really what's the call to make today,
6 and I'm ready for some scintillating argument.

7 So shall we start with you, Mr. Smith. I
8 understand you're making the argument today.

9 MR. SMITH: Yes, Your Honor. Thank you.

10 THE COURT: Go ahead.

11 MR. SMITH: And you're a little muffled.
12 So I'm just going to ask everybody, because it's
13 just the nature of the beast, to speak slowly. It
14 may seem painfully slowly, but just speak slowly and
15 enunciate so we make sure we don't miss anything.

16 Okay?

17 MR. SMITH: Is this any better, Your Honor?

18 THE COURT: It is better. Thank you.

19 MR. SMITH: All right. And if you have any
20 specific questions, I'd be happy to answer them
21 either upfront or at the appropriate point during
22 the argument.

23 THE COURT: Why don't you go ahead and get
24 started, and I'll let you know if I've got anything
25 to follow-up on.

1 MR. SMITH: Very good. Thank you,
2 Your Honor.

3 So my wife often sends me to the store to
4 get groceries -- especially sprouts, we like sprouts
5 and Trader Joe's -- and when I go, I usually try to
6 get a list, but sometimes I go without a list, and
7 then I try really hard to figure out what it is we
8 need, and sometimes I'll go through a lot of effort
9 to, you know, figure out what we're going to be
10 making and whether I need to buy the big box of
11 arugula or whether we already have arugula at home.

12 And sometimes I get home and I check my
13 phone and realize that I have a text from my wife
14 with a list of things that I should have gotten from
15 the store that I did not get. And as Your Honor may
16 understand, I don't get a lot of credit for the
17 effort that I went through to, kind of on my own,
18 fashion a list of things that we need when I ignored
19 the text that would have told me exactly what we
20 needed.

21 So bringing things back to this case,
22 there's been a lot of emphasis in plaintiff's
23 opposition about the efforts that they went to. But
24 I think what they went through is a lot of
25 performative efforts, and that's not a substitute

1 for reasonable efforts, the reasonable efforts
 2 called for by the case law, especially the "Browning"
 3 case. And I think it's what the Supreme Court is
 4 getting at when it talks about reasonable efforts.
 5 It's the kind of things you would do if you were
 6 trying to find Mr. Bon, to actually find him,
 7 outside of this artificial context of setting him up
 8 for a default in litigation.

9 And, here, I think if you have the design,
 10 a method of service that would not go to give the
 11 defendant actual notice but would set him up for a
 12 default, it would look exactly like this. We have
 13 an indigent defendant, who admittedly did not have a
 14 permanent place of residence; but he gave, in his
 15 Voluntary Statement, two very easy methods of
 16 accessing or of getting in contact with him.

17 First, he listed -- actually, he listed as
 18 his current location, on the Voluntary Statement,
 19 the 4000 Abrams address; and then he listed that
 20 again later on that same page. He lists a phone
 21 number, and then he listed as an employer,
 22 Southwest Trees, with his occupation being "Trees,"
 23 and he provided all that so that the policeman, of
 24 course, who likely got a copy of this report, so
 25 that they would have a means of locating him.

1 Instead, we got checking voter registration
2 records; we got checking the DMV records; things
3 that may have been, you know, may have indeed taken
4 a lot of effort and that, for ordinary people who
5 have a permanent place of residence, might be a good
6 way of locating them, it was not a good way of
7 locating Mr. Bon, and it was not designed to locate
8 Mr. Bon.

9 Let me back-up for a minute. At this
10 point, on the jurisdictional question, just to make
11 sure we have all of our T's crossed and all of our
12 I's dotted. We're here now on the "Huneycutt"
13 procedure. We did file our motion before we filed a
14 Notice of Appeal, but now that we filed the
15 Notice of Appeal, the Court has jurisdiction. It's
16 a limited jurisdiction to certify intent to grant
17 release. So that would be what we're asking for
18 today.

19 THE COURT: Understood. Thank you for
20 that. Thank you for the clarification on the
21 procedural status. I appreciate that.

22 MR. SMITH: Right. And obviously I
23 apologize because, you know, the procedure changed
24 after the filing of our motion, which I think all
25 parties recognized in the opposition and reply.

1 So getting back to the main point, there's
2 been no reasonable attempt to serve the original
3 Complaint and no attempt whatsoever to file the
4 Amended Complaint. I'll turn to the Amended
5 Complaint in a few minutes.

6 But let me just focus on the original
7 Complaint for now. There's no actual service.
8 There's no question that Bon, Mr. Bon, did not even
9 have a chance of learning about the original
10 Complaint from plaintiffs. The DMV method that they
11 use came back unopened, unsent, and they didn't move
12 for publication.

13 I recognize that, in some circumstances,
14 publication may not actually reach the defendant if
15 they don't read the newspaper or the publication
16 where it's published, but that at least gives the
17 defendant a chance, a chance to learn about the
18 allegations in the Complaint. But plaintiff didn't
19 even move for that relief. So there was no actual
20 service on Bon from the plaintiffs.

21 The question now is were they
22 constitutionally at the point where they were
23 allowed to just give up? And the point that the
24 Supreme Court makes in cases interpreting both the
25 service rule, Rule 4, or former Rule 4, and the DMV

1 service statute, NRS 14.070, is that those rules and
2 that statute is unconstitutional unless it includes
3 a prerequisite to use every reasonable method to
4 find the defendant.

5 And I think that the 2019 amendment to
6 Rule 4, which now are broken up into five sub rules,
7 4.1, 4.2, 4.3 and 4.4 --

8 THE COURT: That was very quick, Mr. Smith,
9 for my reporter. So please be careful when you're
10 doing citations.

11 MR. SMITH: I'm sorry.

12 THE COURT: It's okay.

13 MR. SMITH: Hopefully, the decimal points
14 don't mess things up too much. The one I'm
15 interested though is in --

16 MR. POLSENBERG: Say it again so the court
17 reporter can get it down.

18 MR. SMITH: All right. Thank you, Dan.

19 So in 2019, the Supreme Court amended the
20 Nevada Rules of Civil Procedure. What used to be
21 Rule 4, just Rule 4, is now five separate rules.
22 We've got Rule 4, Rule 4.1, Rule 4.2, Rule 4.3, and
23 Rule 4.4. And those rules, especially Rule 4.4,
24 codify the due process requirements that already
25 adheres in the requirement to serve process on a

1 defendant before taking a default.

2 Rule 4.4(b)(2)(A)(II) says that you have to
3 go to a number of methods even before you can move
4 for publication, and those methods include using
5 defendant's known or last known contact information.
6 So not just an address; although, it includes the
7 defendant's address. You've also got to try phone
8 numbers, e-mail addresses, social media accounts
9 or -- and I think this is the key -- or any other
10 information used to communicate with the defendant.
11 I believe that's the requirement of due process.

12 That's not just something that the Nevada
13 Supreme Court is tacking on to make plaintiffs'
14 lives harder. So what are the other reasonable
15 methods that the Supreme Court requires as a matter
16 of due process to effectuate service? And we do
17 know that the Supreme Court has said "where other
18 reasonable methods exist for locating the whereabouts
19 of a defendant, the plaintiff should exercise those
20 methods." well, from the cases, we know about at
21 least three: The information that's contained in a
22 police report, information about the defendant's
23 employer, and if there is information that can be
24 gleaned from the defendant's acquaintances.

25 And it's clear in the one case, "Browning,"

1 the defendant, just like our defendant, gave an
2 address that he listed as his place of residence,
3 but by the time the lawsuit was filed, that's no
4 longer where he was living. Now, however, he also
5 gave his employer's address, and he was still
6 employed there. So the plaintiff could have found
7 him there. The plaintiff didn't do that.

8 They instead went through a bunch of other
9 efforts, and I believe they even did the -- that's
10 right. They used the DMV method, but they only
11 served the DMV Complaint on the address, the
12 residential address that was no longer accurate.
13 Although, I have to say even there, they weren't in
14 the position of the mail coming back undelivered.
15 There, at least, the Complaint was delivered even
16 though the defendant didn't live there anymore.

17 However, the Supreme Court said, "well, no.
18 That's not enough because you had this information
19 about the defendant's employer. You need to go
20 check that." Same thing here. Blas Bon obviously
21 wasn't at the community center where the DMV
22 Complaint was sent through the DMV. But he did list
23 his employer, and he listed the address of the
24 person from whom he borrowed the car, and none of
25 that was attempted by plaintiff here.

1 I think it's also important plaintiff tries
2 to -- well, I won't say "tries to" -- but the
3 plaintiff says there's some confusion about the
4 Abrams address. Although, it's listed several times
5 throughout the police report and in the voluntary
6 Statement as, again, his current location, just
7 4000 Abrams, Las Vegas. There is some confusion
8 where he starts to write "8-9," and so that
9 plaintiff says that looks like some kind of unit
10 number when, of course, there's no unit for a
11 standalone house. I think what he was probably
12 doing was probably just starting the Zip code and
13 didn't finish.

14 But, regardless, there are other places in
15 at that statement where he just lists 4000 Abrams,
16 and there's no confusion about the Southwest Trees
17 being his place of employment. And, of course, I
18 think I've already said this, but there was no
19 attempt to serve either and not just serve but to
20 inquire at either of these locations.

21 So we're not necessarily saying that
22 Mr. Bon lived at the place of his employment or even
23 that he lived with Mr. Cruz; although, he does give
24 that as his current location. But those are
25 reasonable methods for attempting to find the

1 defendant to be able to serve him. They could have
2 inquired at those locations to find out "Okay. So
3 where is Mr. Bon staying so we can be able to serve
4 him personally." They didn't do that.

5 And then this is the part that confuses me
6 because then they turn to the issue of insurance and
7 say, "well, we dropped off a copy of the Complaint
8 with the insurance company." But first of all, it's
9 not the insurance company's obligation to effectuate
10 service on a defendant. It's the plaintiff's
11 obligation, and it's also not the same thing as
12 inquiring about the whereabouts of Bon from the
13 insurer.

14 So there are cases that talk about, you
15 know, plaintiffs going through reasonable means,
16 including asking the insurer where to find the
17 plaintiff, but that's not what happened here. We
18 just got a copy of the Complaint. And, also, this
19 would have been significantly less likely to work
20 here because Mr. Bon was not the policyholder. So
21 obviously the insurance company would not have been
22 in regular contact with Mr. Bon, who's just a
23 permissive user.

24 In any event, Nevada is not one of the
25 states that the plaintiffs list in their opposition

1 as a state that allows service on an insurer in
2 substitute for service on the insured. In fact,
3 "Browning" was one of those situations where the
4 insurer got a copy of the Complaint, and the Supreme
5 Court said "No, that's defective." He needed to
6 check -- he needed to exhaust all of these
7 reasonable methods.

8 And I will point out that I think that the
9 statute, the DMV service statute, NRS 14.070(2) is
10 unconstitutional if it just allows a party to deem
11 service to be complete even when the mail is
12 returned undelivered, unopened.

13 As I said, I think in "Browning," the
14 Complaint at least made it to its destination even
15 though that turned out not to be the correct address
16 of the defendant. And the language of the statute
17 itself talks about the service of the copy, the
18 service -- sorry -- the notice of service and a copy
19 of the process is sent to the defendant. I think
20 that, at that point, if it comes back undelivered,
21 that hasn't fulfilled the requirements of due
22 process.

23 At that point, you would need to go through
24 what 4.4 now outlines, but certainly even before the
25 enactment of the 2019 rules, you would at least need

1 to go through the process of seeking to move for
2 publication, which was not done here. That was done
3 in some of the other cases, "Gassett," G-A-S-S-E-T-T,
4 "Price," P-R-I-C-E, and "Abreu," A-B-R-E-U. Sorry.
5 Thank you.

6 And just for a minute, I'll talk about the
7 Amended Complaint. The Amended Complaint, it is
8 important that there was no attempt to serve the
9 Amended Complaint. The allegations in the Complaint
10 are different, especially with regard to who caused
11 the crash. The original Complaint implicates all of
12 the defendants. The Amended Complaint says that
13 Joseph Acosta caused the crash.

14 And you don't need to reach this issue if
15 you agree with us that the service of the original
16 Complaint was improper, but even assuming that there
17 was proper service of the original Complaint and
18 that Bon, Mr. Bon, had actual knowledge of the
19 original Complaint, I think it would be fair, only
20 fair to Mr. Bon to know about a change that makes it
21 significantly more likely that he might be able to
22 prevail if the allegation is no longer that he is
23 the one causing the crash that put Mr. Acosta in.

24 Also, I think it's a little bit
25 disingenuous to refer to the present inability to

1 locate Mr. Bon as being somehow equivalent to
2 plaintiffs -- as discharging plaintiff's due process
3 obligations five years ago. So here we are --
4 obviously the accident was in April 2015 -- we're
5 now November 2020. But at the time plaintiffs filed
6 their Complaint, it was just August 2015, less than
7 four months after the accident. So the chance that
8 the information he would have given in that accident
9 report being accurate was much more likely to be the
10 case in mid-2015 than it is now, five years later,
11 but it's also irrelevant.

12 If they had done what due process demands
13 and at least attempted the reasonable means of
14 serving Bon, if they had gone through the channels
15 of seeking out the addresses that he listed himself
16 in this police report and they, at that point, still
17 were not able to find him, I think there might be a
18 closer question; then perhaps an alternative method,
19 method of service would have been appropriate.

20 Perhaps we could talk about moving for
21 publication. We're not saying that the plaintiffs
22 wouldn't have had a remedy if they couldn't find
23 Mr. Bon, but it's inappropriate to say posthoc that:
24 Oh, well, because we can't find him in 2020,
25 therefor, we're excused from our obligations to get

1 the defendant due process in 2015.

2 This actually kind of reminds me of the
3 meritorious defense requirement that while there's
4 no harm or foul because the defendant wouldn't have
5 been able to get the claims anyway, the U.S. Supreme
6 Court has rejected that. The Nevada Supreme Court
7 in "Price" expressly objected that. The due process
8 in here is regardless of the merits of the defense.

9 I also don't think it would be appropriate
10 for this Court to rely on any alleged failure to
11 defend or any alleged bad faith on the part of the
12 insurance company as a justification for depriving
13 Mr. Bon of due process. Plaintiff says that APX,
14 the insurance company, was in the best position to
15 locate Bon by contacting its insured, Cruz, to
16 locate Bon's whereabouts. No. That's the
17 plaintiff's obligation under Rule 4, under the
18 U.S. Constitution. It would be an abuse of
19 discretion for the Court to rely on any action or
20 failure of the insurance company to locate Mr. Bon.

21 I won't spend, unless Your Honor would like
22 me to, I won't spend a lot of time on the
23 argument -- although, I think the argument is well
24 presented in the papers -- that NRCP 54(C) is
25 unconstitutional as it applies to the exception that

1 a default judgment may be taken in excess of the
2 damages pleaded in the Complaint.

3 THE COURT: Yeah, I don't think you need to
4 spend any time on that.

5 MR. SMITH: Okay. Very good. Thank you,
6 Your Honor. I will rest on my papers with that.

7 THE COURT: All right. Let me come over
8 to --

9 MR. SMITH: Does Your Honor have any other
10 questions?

11 THE COURT: I don't have any questions at
12 this point. Again, the briefing was very thorough,
13 and I think you covered it very well. And, you
14 know, I don't have any confusion, I think, on the
15 underlying facts.

16 And, really, it's got to come down to, you
17 know, a final judgment call on, you know, was the
18 due diligence there or not, I think, in the end.
19 Because that ties then, of course, as you said, into
20 whether or not the substitute service was
21 appropriate.

22 And, you know, we've made the call kind of
23 a couple of times already, but we're really -- and I
24 always do, when I'm asked -- take a fresh look at
25 everything to see, you know, what it looks like

1 today. So let me hear from Mr. Prince, and we'll
2 come back and give Mr. Smith some final rebuttal
3 time as well.

4 MR. SMITH: Thank you, Your Honor.

5 MS. PRINCE: Your Honor, thank you.

6 THE COURT: And, Mr. Prince, can I tell
7 you -- I don't know if there's someone else with you
8 and that's why you're on speaker -- but you, unlike
9 Mr. Smith who started muffled, you are very distant
10 sounding. So I don't know what to do about that,
11 but you're going to have to get closer to the mic.

12 MS. PRINCE: Okay. Is this better for you
13 now?

14 THE COURT: Not at all.

15 MS. PRINCE: Okay. How about now?

16 THE COURT: Much better.

17 MS. PRINCE: Very good. I just picked up
18 the receiver so I could speak directly into it.

19 THE COURT: I know it's a hassle. But it's
20 just, I've got the phone right here by the microphone
21 in the courtroom, and my reporter is right below the
22 bench where the phone is, but it still was really
23 hard to hear you.

24 MS. PRINCE: Your Honor, thank you.

25 we've already, you've already been down and

1 evaluated this service of process issue on two
2 different occasions. First, before you entered such
3 a substantial default judgment, you examined the
4 service issue, satisfied yourself that there was, in
5 fact, appropriate substitute service.

6 I want to point out, while Mr. Smith talks
7 about service by publication and the requirements
8 for that, obviously this was served under 14.070,
9 which allows an injured party to substitutely serve
10 the DMV, who's caused a collision; and so the
11 publication-related issues are not relevant, nor are
12 they applicable. I don't feel I need to recitate
13 any further facts.

14 But I think what is telling because I think
15 you have those since we've argued this extensively
16 at the last motion to seek relief from the judgment,
17 importantly, since there's no affidavit of Mr. Bon,
18 he still is not participating in the case; you now
19 have multiple, significant sized law firms coming in
20 to Mr. Bon's rescue claiming his due process rights
21 were somehow evaded. And I want you to be clear,
22 Your Honor, as to who these parties are.

23 It's the insurance company who's being
24 called upon now to deal with a multimillion dollar
25 judgment seeking enforcement action. It's only

1 after that that anyone sought relief for Mr. Bon.
2 At the time, it's clear, that the time has expired
3 for them to intervene in their name. So they're
4 trying to use Mr. Bon as their vehicle to avoid
5 having to be accountable to Ms. Sanchez for the
6 substantial damages.

7 what is important, I need to identify this,
8 for the record, since this came up after the fact is
9 that Mr. Smith, the very gentleman who is arguing on
10 behalf of -- who's Mr. Bon's counsel here, Mr. Smith
11 and Mr. Polsenberg are ATX insurance company's --
12 they've been hired by the NBIS/CTIS entities. They
13 are the bad faith counsel, and they've recently
14 appeared on oral argument on November 5th, 2020, in
15 front of Judge Boulware in the federal court action
16 dealing with the enforcement of the judgment and all
17 the bad faith related claims where Judge Boulware
18 remanded this back to state court.

19 But I wanted to identify the fact that
20 Mr. Polsenberg and Mr. Smith, they are the insurer's
21 lawyer. They have made an appearance in the action
22 as the insurer's lawyers, and now they're here in
23 front of you today arguing on behalf of Mr. Bon, the
24 insured, the very person they were charged to
25 protect in the first place.

1 So I wanted to identify that. That's
2 something factually new. And I think it's important
3 for the Court to understand this, who is truly
4 behind this and whose rights were truly violated.
5 They don't care about Mr. Bon. They only want to
6 avoid seeking having to pay off that judgment.

7 I feel that our client exercised all
8 reasonable and appropriate diligence. It's within
9 this Court's discretion. You've already made those
10 determinations. There's no new factual or legal
11 arguments. They've already raised -- they've
12 already filed a Notice of Appeal. I don't feel
13 there should be any "Huneycutt" related relief or
14 you to intend to grant relief because there's
15 nothing new before you. These identical arguments
16 were made previously.

17 Importantly, two things I want to make sure
18 we're clear on: Mr. Smith refers to the 2019
19 amendment, but those weren't applicable at the time
20 of service. So that 2019 obviously has no bearing
21 on what you're deciding today, nor when you decided
22 the motion for relief from the default judgment
23 previously.

24 Secondly, it's important in terms of the
25 timing. They're talking about Mr. -- they're using

1 a revisionist history to argue that Mr. Bon was
2 indigent. I don't know -- and they rely on a
3 process server for the Defendant Acosta who said
4 that -- who noted when he tried to serve us, that he
5 was homeless and goes back and forth in different
6 places to pick up his correspondence.

7 But the timing of that is important because
8 that was the attempt to serve the Cross-Claim after
9 the Amended Complaint was filed, not at the time of
10 the original, service of the original Complaint
11 filed with this Court. So that factual information
12 learned after the attempted service here can't be
13 used to somehow argue that, therefore, there's a
14 lack of diligence because he went to some other
15 house and we know he was homeless or you needed to
16 work even harder to try to find somebody.

17 You don't have to exhaust every effort. It
18 just has to be reasonable efforts under the
19 circumstances, and I feel that you've already made
20 the determination that there were reasonable efforts
21 under the circumstances. It was reasonable to
22 pursue service under the Department of Motor
23 Vehicles, pursuant to NRS 14.070, which is the
24 substitute service for people causing motor vehicle
25 collisions in the State of Nevada.

1 And so for those reasons, they don't make
2 any challenge that the technical requirements of the
3 substitute service statute 14.070 were not satisfied.
4 The only question they're raising is was there
5 diligence exercised which, of course, there was.

6 The "Browning" case is important because it
7 was my case. The significance, the legal
8 significance of that case really had nothing to do
9 with the efforts. It was more to do, at the time,
10 people were serving through the substitute service
11 statute, 14.070, without exercising any due
12 diligence. And I argued on behalf of the defendant
13 in that case that 140.70, even though it's silent on
14 the issue, had a due diligence component to satisfy
15 constitutional requirements.

16 Here, it's clear that the process server
17 did exercise due diligence. They may not like the
18 diligence. It was fair; it was reasonable in
19 accordance with how they find people and how they
20 locate people. He is obviously difficult to locate.
21 No one has ever been able to locate him. He's still
22 missing to this day.

23 And Southwest -- I mean, some vague
24 reference to an employer when that's not specific in
25 the record of who he worked for and where he worked

1 for and where the address was or any other detailed
2 information, that doesn't change your analysis that
3 there were reasonable efforts made to try to locate
4 him before attempting to serve under 14.070.

5 So, Your Honor, other than this, Your Honor,
6 I have nothing further to add or else I'd be
7 repeating myself for the fifth time on this topic.
8 You've already addressed it multiple times.

9 THE COURT: I think you've covered
10 everything, and I do appreciate that. And, you
11 know, the outcome here today is not going to be
12 dictated by whether it's an insurance company or not
13 doing it. It really does come down, I think, to,
14 you know, do we have a basis here?

15 Obviously, if the strategy is to try to end
16 run around, you know, a too-late effort to intervene
17 and try to do it backdoor this way, that's not going
18 to be well taken by the Court.

19 But, really, just taking at face value,
20 coming back to Mr. Smith that, you know, the Court
21 has assessed this before; but you're raising very
22 specific, you know, arguments that certain efforts
23 should have been undertaken that would have met the
24 reasonability, reasonableness of the due diligence
25 effort. But I'm not sure we're focusing on, you

1 know, the efforts that were taken and why they
2 ultimately fall short.

3 I guess what I'm getting at is, is the tail
4 wagging the dog? Just because we didn't do "X," it
5 falls short versus, you know, we did what we did and
6 that's, you know, in itself not enough. I can't
7 have the fact that other things could have been
8 done, I don't think, completely drive the train that
9 what was done was not sufficient.

10 So I think the question I would have coming
11 back, and then you can wrap up however you see fit,
12 is isn't the analysis what was done, not what was
13 not done necessarily?

14 MR. SMITH: Thank you, Your Honor.

15 That's actually a great way of framing the
16 issue because I think it is important. I think
17 plaintiff has posited that the rule is we can set
18 forth the things that we have done, and if that
19 seems like a lot, that fulfills our due process
20 obligation, even if we've left on the table other
21 things that we did not do, that we could have done.

22 But, Your Honor, we're not asking for the
23 plaintiff to exhaust every conceivable method of
24 service. We're asking for the plaintiff only to
25 exhaust those reasonable methods, and the cases have

1 already been very specific. I congratulate
2 Mr. Prince for his -- for making great law in the
3 "Browning" case, and I think it is clear that, yes,
4 you do need to exhaust the reasonable methods of
5 service.

6 I don't know, in this situation, if he had
7 failed to check the voting registration records, I
8 don't know whether that would have been unreasonable.
9 That might have been something that he could have
10 skipped in this situation. I don't know.

11 But what I do know if he did need to
12 exhaust the methods of contacting Mr. Bon that were
13 expressly given to him in the police report, that's
14 clear from the cases. So I appreciate -- again,
15 this is like me going to the store and I work really
16 hard to figure out what the list is, but if I have a
17 list that's been texted to me, I don't get credit
18 for working really hard on things that ultimately
19 were ineffective.

20 So here I think it is dispositive, and I
21 believe it would be reversible error if this Court
22 found that it was enough that the plaintiff pursued
23 some avenues of service while ignoring the ones that
24 a reasonable person would have pursued if they
25 actually wanted to find Mr. Bon, which would have

1 included, yes, the employer.

2 The information in the accident report was
3 not unclear. It specifically listed employer as
4 "Southwest Trees," and it would have included
5 checking with the address that he provided as his
6 current location at the Abrams address. The fact
7 that they didn't do either, they didn't even try at
8 either of those addresses, instead they sent a
9 package of materials to an address that they knew
10 was a community center, that they knew wasn't going
11 to actually reach Mr. Bon, I don't think that
12 fulfills the requirements of due process.

13 Just so we're on the insurance issue,
14 obviously under "State Farm vs. Hanson," we have
15 ethical obligations. We effectively represent both
16 the insured and the insurer. And I appreciate that
17 Your Honor has stated that the failures of the
18 insurance company are irrelevant to plaintiff's
19 obligations and to provide due process to the
20 defendant.

21 And one last thing: I think that there was
22 perhaps a misunderstanding about our argument on the
23 import of publication. We recognize that plaintiffs
24 did not attempt service by publication in this case.
25 They instead purported to use the statutory method

1 under NRS 14.070. But the problem is when that
2 method results in no letter actually being sent, but
3 actually being returned undeliverable, there hasn't
4 actually been effective service in that case. You
5 would at least, in that circumstance, need to then
6 move for publication, which was not done here.

7 Final point on the 2019 amendments. Again,
8 as I said, the Nevada Supreme Court, they adopted
9 that from the Arizona Supreme Court Rules. We cited
10 some of the Arizona cases in our brief. Those
11 freely just import a specificity to the due process
12 requirement that already exists. It's not as if the
13 2019 amendments changed the nature of what due
14 process requires. They just make that expressed.

15 And, finally, if Mr. Prince wants to have
16 the Court resolve this case on the basis of what he
17 calls "very factual issues," then we would be
18 entitled to an evidentiary hearing on those factual
19 issues before this Court rules.

20 Thank you, Your Honor.

21 THE COURT: All right. Thank you,
22 Mr. Smith. Thank you, Mr. Prince.

23 I truly appreciate the quality and the
24 quantity of the work that was put into this argument
25 and the efforts made to cover everything. And I

1 think, you know, sometimes it can, I'm sure, get
2 frustrating when, you know, something has been
3 decided and then revisited and then it's coming back
4 again. But I think our goal always has to be to
5 have the best and most complete record.

6 And so when there may be something that had
7 not been addressed that needs to be addressed, to do
8 so is never a bad thing, in my opinion. And, again,
9 I do not fault who is being represented or who might
10 be underlying the ask.

11 Respectfully, I'm going to decline to grant
12 the ask, and I'm going to do my best to articulate
13 why. Really what focuses here for the Court is
14 there were a couple of things provided by Mr. Bon in
15 the police report that were not used to follow-up on
16 to see if he could be located, and is that enough
17 alone to say that the due diligence here was not
18 sufficient? And I just don't believe that it is.

19 The fact that there was a name of an
20 employer listed does not necessarily give a certain
21 amount of clarity, nor is it, you know, as to how or
22 where he would be found or located. And, frankly,
23 most employers I know are not about to give out that
24 information voluntarily, and maybe they might have
25 done it if there had been some effort to Subpoena or

1 otherwise, but that's not a clearcut avenue to
2 locate someone.

3 And while there was an address given, the
4 address associated, you know, with the case or with
5 the driver here -- I keep saying "driver," I'm
6 sorry -- the address associated with the vehicle
7 owner, Mr. Cruz, in the end, you know, not
8 necessarily something that would be obvious that
9 this is where we have to go with this when we have a
10 situation where what the plaintiffs did do was they
11 had, you know, attempts to serve what they believed
12 to be a last known address.

13 They had attempts to -- they got information
14 that the defendant was transient, as I understand
15 it. They conducted some database searches, and they
16 did ultimately try to get assistance from the
17 insurance provider which, you know, was not obligated
18 but which could have led somewhere; and as we know,
19 there's some case law that says that's not enough.
20 But there were efforts that were taken.

21 And I think, you know, we've assessed those
22 efforts in different ways, at different times, for
23 different reasons related to questioning whether
24 this should have been a default judgment and
25 ultimately whether or not it should have been the

1 default judgment at the amount that it's at.

2 But I really just don't see a sufficient
3 basis here for the Court to determine that due
4 diligence was lacking. There does appear to have
5 been, from the Court's perspective, appropriate due
6 diligence. And I appreciate that this is going to
7 be further argued, and I appreciate that there are
8 nuances here, and should the appellate court see it
9 differently, we'll stand corrected and respect that
10 decision.

11 But, you know, I'm being called upon here
12 to look at the totality of these circumstances, to
13 look at this case law and say that, you know,
14 definitively, after having reviewed this matter
15 twice -- and I'm not reluctant to reverse myself if
16 I think I've made an error -- but having looked at
17 this twice, to say that ultimately this judgment is
18 void, that substitute service was not appropriate
19 here, and that ultimately Mr. Bon was not given a
20 fair opportunity to see an Amended Complaint which,
21 in all candor, I'm not seeing the change in
22 circumstance sufficient to have required that
23 Amended Complaint service.

24 But ultimately focusing on the original
25 Complaint service, you know, sort of the underpinning

1 assumption that's being made, I think perhaps by the
2 insurance company or at least being hinted at to try
3 to connect with the Court, I think, is that somehow
4 this was done purposefully to be not connecting with
5 Mr. Bon so we could get into this position.

6 And I really don't honestly know to what
7 end because, in the end, it is not typically
8 difficult to get cases set aside if something like
9 that has occurred. And, frankly, generally, people
10 find out about or know about these litigations or
11 can suspect there would be these litigations and
12 come out of the woodwork somewhere, somehow. That
13 didn't happen here. I appreciate that.

14 But it's sort of a hindsight 2020, that
15 should they have done things differently here when
16 what they did do, by I think most measures that we
17 would have to look at this type of service, would be
18 that it was diligent. They didn't do nothing. They
19 didn't pretend to do something that they didn't do.

20 They did what seems to be standard process
21 server efforts. They got information that there was
22 a transient individual. They got information, and
23 they made attempts for service, and they ultimately
24 sought substitute service when they sought it, and I
25 think in appropriate fashion; and it is, you know,

1 an option that exists for a reason.

2 so, really, for me to make a decision that
3 I'm being asked to make today to set an evidentiary
4 hearing, which I don't believe is necessary; I
5 really don't believe these facts are in dispute. I
6 think the only necessity here is to make the legal
7 call as to whether or not there should be this
8 relief given because the judgment is void, I do not
9 find the judgment void.

10 I do find that there was appropriate
11 diligent efforts to serve and that substitute
12 service was appropriate based on the totality of the
13 circumstances here, notwithstanding the fact that
14 there could have been additional efforts. I don't
15 think the existence of those additional efforts
16 negates the efforts that were undertaken.

17 And I am not persuaded that there's a
18 constitutionality issue with regard to 54(C), and
19 I'm certainly not persuaded that in the end, when
20 you are required to allege simply a jurisdictional
21 threshold, that you are then forced to only deal
22 with that jurisdictional threshold upon default.

23 I think that we have mechanisms for
24 prove-up and we have mechanisms for circumstances to
25 show what the appropriate damages should be and that

1 that took place here and that that is not something
2 now that needs to be revisited, and I do not find
3 persuasive that argument.

4 It is a closer call on the due diligence
5 analysis in whether the Court properly exercised its
6 discretion. I believe I did. Again, I would
7 respectfully stand corrected. But I do not think
8 there's any traction for an argument that, again,
9 the pleading of jurisdictional minimums somehow now
10 binds you to those minimums for default.

11 And so for those reasons, and I hope I
12 articulated them well enough -- but in the end, I'm
13 going to direct Mr. Prince to prepare the order, and
14 obviously I want Mr. Smith to have an opportunity to
15 weigh in -- and I will not be, you know, giving
16 obviously the "Huneycutt" relief, which would be any
17 indication that I intend to grant the request.

18 So however that needs to be phrased to meet
19 the needs for the current procedural posture, I
20 trust that counsel can take care of that, but I just
21 need something obviously here that concludes this
22 matter. So I really appreciate your time and efforts.

23 Anything else, Mr. Prince?

24 MS. PRINCE: Nothing, Your Honor. Thank you
25 for your time.

1 THE COURT: Anything else -- thank you.
2 Anything else Mr. Smith?

3 MR. SMITH: Just one clarification.

4 Are you finding that the use of the Abrams
5 address and the employer information, that that
6 would have been unreasonable method or just that it
7 did not need to be done in these circumstances?

8 THE COURT: Yeah, I wouldn't have any
9 basis, I think, to find that doing it would be
10 unreasonable. I think certainly, you know, again,
11 hindsight being 2020, that could have been done.

12 What I'm saying is the fact that those
13 options, such as they were, the beauty will be in
14 the eye of the beholder to the next court to see if
15 what was actually available in the police report,
16 you know, should have driven the train or not.

17 But in the end, I'm not saying it would
18 have been unreasonable to do it. I'm saying that
19 what was done here was due diligence sufficient to
20 warrant the substitute service and does not require
21 me, at this time, to negate that and render this
22 judgment void.

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: Thank you so much. I hope
25 everyone has a healthy, safe, and as much as you can

1 safely do a fun Thanksgiving.

2 MS. PRINCE: Happy Thanksgiving to you,
3 Your Honor. Have a good day.

4 THE COURT: Have a good day. Bye-bye.

5

6 (The proceedings concluded at 11:19 a.m.)

7 -ooo-

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C E R T I F I C A T E

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Dana J. Tavaglione, RPR, CCR 841, do
hereby certify that I reported the foregoing
proceedings; that the same is true and correct as
reflected by my original machine shorthand notes
taken at said time and place before the
Hon. Kathleen E. Delaney, District Court Judge,
presiding.

Dated at Las Vegas, Nevada, this 9th day of
December 2020.

/S/Dana J. Tavaglione

Dana J. Tavaglione, RPR, CCR NO. 841
Certified Court Reporter
Las Vegas, Nevada