

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

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

Petitioners,

vs.

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

Respondents.

DIANE SANCHEZ;

Real Party in  
Interest.

Supreme Court No. 84227

District Court Case No.  
A-19-805351-C

Electronically Filed  
Apr 28 2022 02:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITIONER’S RESPONSE IN OPPOSITION TO REAL PARTY IN  
INTEREST DIANE SANCHEZ’S MOTION TO DEDESIGNATE  
DOCUMENTS PETITIONERS DESIGNATED CONFIDENTIAL AND TO  
ALLOW SUBMISSION OF THOSE DOCUMENTS OR,  
ALTERNATIVELY, TO SUBMIT DOCUMENTS UNDER SEAL IN  
SUPPORT OF ANSWER TO PETITION FOR WRIT OF MANDAMUS, OR  
ALTERNATIVELY, PROHIBITION**

Petitioners NationsBuilders Insurance Services, Inc. (“NBIS”) and NBIS  
Construction & Transport Insurance Services, Inc. (“CTIS” and collectively with  
NBIS “Petitioners”), hereby submit their *Response in Opposition to Real Party in*

*Interest Diane Sanchez's ("Sanchez") Motion to De-Designate Documents  
Petitioners Designated Confidential and to Allow Submission of Those Documents  
or, Alternatively, to Submit Documents Under Seal in Support of Answer to  
Petition for Writ of Mandamus, or Alternatively, Prohibition ("Sanchez Motion").*

This opposition is made and based upon the pleadings and papers on file herein and the accompanying Memorandum of Points and Authorities below.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. Introduction**

Sanchez's Motion seeks to append the record with documents designated as confidential and produced by Petitioners under a stipulated protective order in the underlying bad faith action, which is currently stayed. Sanchez moves for de-designation of these documents in a blatant attempt to end run the stay of proceedings and with the intent to use the documents to influence the outcome of the personal injury action and pending appeal which gave rise to the bad faith claim.

Sanchez has, in fact, already attempted to submit documents produced by Petitioners to the Honorable Judge Delaney in the personal injury action, in direct violation of the parties' Amended Stipulated Protective Order in the bad faith action. *After* violating the Amended Stipulated Protective Order, Sanchez moved to de-designate Petitioners' documents before Judge Denton in the bad faith action. But Judge Denton has specifically deferred ruling on this issue, as discussed during

the January 27, 2022 hearing on Petitioners' renewed motion to stay proceedings. **Writ Appendix ("WA") VI: Ex. 22.** Thus, Sanchez has turned to this Court for relief, under the guise that Petitioners' confidential documents are somehow critical to the issue of whether the bad faith action filed against Petitioners should be stayed until there is final adjudication of the underlying default judgment.

As a threshold matter, non-party DMA (a party to the bad faith case) holds the confidentiality of the file in question, not Petitioners. This is precisely why Petitioners, in good faith participation with discovery, produced the same under the Amended Stipulated Protective Order. Furthermore, Petitioners only possessed and thus produced that partial copy of the DMA claim file sought here. Subsequently, DMA itself produced its entire claim file in the bad faith case with a privilege log, but Sanchez has not addressed her de-designation requests to DMA as of yet.

Instead, Sanchez incorrectly argues that Petitioners are interchangeable with DMA and other insuring entities, and are contractually liable to Bon or by extension, Sanchez. **WA III: Ex. 10, NBIS 000465-000468.** Petitioners are wholly separate entities from both DMA and ATX. They were not named parties in the underlying personal injury lawsuit and there is no judgment entered against them. In fact, Sanchez initiated the bad faith action against Petitioners (and now seeks the disclosure of confidential documents from Petitioners) knowing that the district

court order refusing to set aside the default judgment in the underlying personal injury lawsuit is still on appeal.

Indeed, there are two separate matters pending before this Court that arise from Sanchez's April 28, 2015 underlying motor vehicle accident. In Case 81983 (arising from the lower court personal injury litigation), Defendant Blas Bon ("Bon") *inter alia* appeals from the district court's default judgment against him, and, the subsequent denial of his motion to set that judgement aside.<sup>1</sup> *That* is the case where Sanchez intends to use the files produced by Petitioners in the bad faith action. In contrast, the writ petition filed by Petitioners under the instant case number is limited to challenging the district court's denial of Petitioners' motion to stay the bad faith action filed by Sanchez (under Sanchez's judicial assignment of Bon's rights related to the personal injury judgment appealed in Case 81893) until Case 81983 is resolved.<sup>2</sup>

Whether the appeal of the underlying default judgment (Case No. 81983) is relevant to a stay of the bad faith proceedings is at the heart of the parties' dispute, and a central point of contention in their briefing. **WA III: Ex. 5; WA IV: Ex. 15; WA V: Ex. 19, 21; WA VI: Ex. 22.** Sanchez's motion to de-designate confidential documents is a completely separate issue that has no bearing on the writ. The bad

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<sup>1</sup> The appeal is taken from all judgements and orders in the personal injury case.

<sup>2</sup> Noted that as of the time of filing, the bad faith case (A-19-805351-C) is currently temporarily stayed pursuant to this Court's Order entered February 14, 2022.

faith claims are not ripe for adjudication until the appellate process is complete. If this Court reverses the default judgment entered against Bon, Sanchez has no bad faith claim, and is not entitled to Petitioners' or DMA's documents at all, confidential or otherwise. Additionally, there is an unsettled question in Nevada of whether as a threshold issue a third-party assignee such as Sanchez can proceed in bad faith claims during the pendency of appeal. **Writ, 9-11.**

Sanchez has further muddied the waters and prejudiced Petitioners in her instant Motion to De-Designate Documents by relying extensively on her untimely filed and therefore rogue Answer to Petitioners' Writ. On March 28, 2022 at 6:03 p.m.--the day it was due--Sanchez filed a unilateral Motion for Extension of Time to Answer the writ petition. Then, even though the Court had not ruled on her extension request (and in fact still has not as of April 28, 2022), **Sanchez proceeded to file her untimely Answer.** This renders the Answer a rogue document to which Petitioners have not yet had the opportunity to Reply. *See Declaration of Megan H. Thongkham, Esq.* attached hereto as **Exhibit 1.** Sanchez's rogue Answering Brief pulls in voluminous district court records in her Appendix upon which she relies here. Petitioners contend these documents and arguments are not relevant. Petitioners are also unfairly prejudiced by being forced to fold in those conflated arguments *in their response to this Motion.*

While it is Petitioners' contention that Sanchez's Motion to De-Designate (1) largely argues irrelevant points (2) inappropriately draws in the arguments of the Bon appeal (3) relies extensively on the rogue Answering Brief to the Writ Petition, and (4) seeks to force Petitioners to de-designate documents to which they do not hold the actual rights, to the extent necessary to timely respond, Petitioners Reply in Opposition as follows.

## **II. STATEMENT OF FACTS**

Petitioners incorporate by reference and rely upon their Statement of Facts set forth in their *Writ* filed February 14, 2022. It is noted Sanchez incorrectly categorizes as facts, and Petitioners oppose, the following conclusory statements:

1. Sanchez's statements detailing that "Petitioners' reserved financial responsibility, management, and control over bodily injury claims arising from ATX insurance policies, including the policy that covered Bon" as set forth in her untimely Answer and referenced in her Motion. *See Sanchez Motion, p. 3.*
2. That the Sanchez claim was improperly rejected. *Id.*
3. That Bon was properly served with the Summons and Complaint. *Id.*
4. That Sanchez has a "valid" judicial assignment of Bon's claims for relief against Petitioners. *Id. 4.*

5. That the [district] court was “unable” to rule on Sanchez’s same Motion to De-Designate documents before this court stayed the proceedings.

In fact, Judge Denton clearly addressed Sanchez’s Motion to De-Designate in the context of the bad faith litigation when he ruled on Petitioners’ most recent Renewed Motion to Stay. **WA V: Ex. 24** for the February 1, 2022, District Court Order on Petitioners’ Renewed Motion to Stay. A review of the minutes shows the Court continued Sanchez’s Motion pending the resolution of Petitioner’s Writ Petition and Emergency Motion to Stay the bad faith proceedings. *See Minutes*, attached hereto as **Exhibit 2**.

### **III. ARGUMENT**

Sanchez argues based on the merits of the *nature* of the documents in question. To wit, whether the documents sought are proprietary and appropriately confidential. Petitioners argue they produced the documents under a Stipulated Protective Order, which Sanchez freely entered into. Petitioners are not the appropriate party to *de-designate* them in this case because DMA, **a party in the bad faith case**, created the claims file, is the custodian of records for that file, and subsequently produced the full file marked confidential before the stay issued. DMA has its own counsel. Petitioners are drawn into this because as it happens, they had in their possession a partial, unauthenticated portion of the DMA file and in good faith produced the same in discovery pursuant to a stipulated protective order before DMA subsequently

produced it presumably *en toto*. It was always Petitioners' intent ultimately to defer to DMA on the confidentiality of its records.

Once again, Sanchez has no one but herself to blame for her own poor timing. On January 5, 2022, DMA produced the entire claims file (the subject of the instant motion), partially redacted and largely marked confidential, along with the appropriate accompanying privilege log. On January 11, 2022, Sanchez filed her Motion to De-Designate **directed only to Petitioners**, NBIS and CTIS, relative to their unauthenticated, partial disclosure of DMA's claim file produced under the stipulated protective order. For unknown reasons, Sanchez filed no such motion addressed to DMA, the actual custodian of records, which had already produced the entire claims file in the same action. The bad faith case was not temporarily stayed by Judge Denton until the following week on January 28, 2022. Now, because Sanchez cannot pursue DMA directly to de-designate its documents pursuant to this Court's stay effective February 14, 2022, she is inappropriately re-filing her motion here and relying in large part upon her untimely filed Answering Brief to Petitioners' Writ to do it.

#### **IV. CONCLUSION**

Sanchez's Motion should be denied, or at minimum stricken in part, to the extent it relies upon her rogue, untimely filed Answering Brief.

In the alternative, Sanchez's Motion should be continued until this Honorable Court considers Petitioners' request to stay the bad faith proceedings in the Writ Petition.

Dated this 28th day of April, 2022.

LIPSON NEILSON P.C.

*/s/ Megan H. Thongkham*

By:

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JOSEPH P. GARIN, ESQ. Nev Bar No. 6653  
MEGAN H. THONGKHAM, ESQ. Nev Bar No. 12404  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
*Attorneys for Petitioners NationsBuilders  
Insurance Services, Inc. and NBIS Construction  
& Transport Services, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on April 28th 2022, I submitted the foregoing:

**PETITIONER’S RESPONSE IN OPPOSITION TO REAL PARTY IN INTEREST DIANE SANCHEZ’S MOTION TO DEDESIGNATE DOCUMENTS PETITIONERS DESIGNATED CONFIDENTIAL AND TO ALLOW SUBMISSION OF THOSE DOCUMENTS OR, ALTERNATIVELY, TO SUBMIT DOCUMENTS UNDER SEAL IN SUPPORT OF ANSWER TO PETITION FOR WRIT OF MANDAMUS, OR ALTERNATIVELY, PROHIBITION** for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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

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An employee of Lipson Neilson P.C.

# **EXHIBIT 1**

## **DECLARATION OF MEGAN H. THONGKHAM, ESQ.**

I, Megan H. Thongkham, Esq., do declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and a partner at the law firm of Lipson Neilson P.C. I am one of the attorneys retained to represent NationsBuilders Insurance Services, Inc. and NBIS Construction & Transport Insurance Services, Inc. (collectively hereinafter “Petitioners”) in Case No. 84227.

2. I make this declaration in support of Petitioners’ Opposition to Real party in Interest Diane Sanchez’s Motion to De-Designate Documents Petitioners Designated Confidential and to Allow Submission of Those Documents or, Alternatively, to Submit Documents under Seal in Support of Answer to Petition for Writ of Mandamus, or Alternatively Prohibition (“Motion to De-Designate”). I have personal knowledge of the facts and, if called upon as a witness, could competently testify thereto.

3. On April 11, 2022, I called the Clerk of the Supreme Court to request a telephonic extension on the deadline to oppose Sanchez’s Motion to De-Designate. The request was granted and an order issued on April 12, 2022 (Document No. 22-11481).

4. During the same call, I also requested a telephonic extension on Petitioners’ reply to Sanchez’s Answering Brief. I was informed that no extension could be granted because Petitioners’ reply brief was not due as this Court has not yet ruled on Sanchez’s Motion for an Extension of Time to File Answer to Petition for Writ of Mandamus, or Alternatively, Prohibition (Document No. 22-09623).

5. I was further informed that, if Petitioners attempted to file a reply brief, said filing would likely be rejected for the same reasons.

6. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 28<sup>th</sup> day of April, 2022.

*/s/ Megan H. Thongkham*

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Megan H. Thongkham, Esq.

# **EXHIBIT 2**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Insurance Carrier**

**COURT MINUTES**

**January 27, 2022**

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A-19-805351-C	Diane Sanchez, Plaintiff(s)
	vs.
	ATX Premier Insurance Company, Defendant(s)

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**January 27, 2022      9:00 AM      All Pending Motions**

**HEARD BY:** Denton, Mark R.      **COURTROOM:** RJC Courtroom 16D

**COURT CLERK:** Madalyn Kearney

**RECORDER:** Jennifer Gerold

**PARTIES**

<b>PRESENT:</b>	Prince, Dennis M	Attorney for Plaintiffs
	Strong, Kevin T.	Attorney for Plaintiffs
	Schneringer, John F.	Attorney for Defendant DMA
		Claims Management
	Thongkham, Megan H	Attorney for NBIS Defendants

**JOURNAL ENTRIES**

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

Counsel present via BlueJeans.

Following arguments by Ms. Thongkham and Mr. Prince, COURT ORDERED, Motion for Reconsideration of Order Denying Nationsbuilders Insurance Services, Inc. and NBIS Construction and Transport Insurance Services Renewed Motion to Stay Proceedings Pursuant to NRCP 60(b)(6), or Alternatively, EDCR 2.24(b) on an Order Shortening Time GRANTED IN PART to the extent it

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Minutes Date: January 27, 2022

seeks a temporary stay so further relief can be sought in the Supreme Court and DENIED to the extent it seeks a stay pending the appeal; temporary stay of 15 days effective until February 14, 2022. COURT FURTHER ORDERED, Motion to De- Designate CONTINUED. Court directed the order to be prepared as soon as possible.

2/14/22 9:00 AM PLAINTIFF DIANE SANCHEZ'S MOTION FOR COURT ORDERED DIRECTING DEFENDANTS NATIONSBUILDERS INSURANCE SERVICES, INC. AND NBIS CONSTRUCTION & TRANSPORT INSURANCE SERVICES, INC. TO DE-DESIGNATE DOCUMENTS UNILATERALLY DEEMED CONFIDENTIAL ON ORDER SHORTENING TIME