

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court No.
District Court Case No. A-19-800435-C**

Gravady Nevada, LLC, a Nevada Limited Liability Company and Circustrix, LLC, a Utah Limited Liability Company, Electronically Filed
April 11, 2022 1:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Petitioners,

**EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK;
AND THE HONORABLE JUDGE NADIA KRALL. in her capacity as**

**District Judge
Respondent,**

**JESUS MEJIA, an individual
Real Parties in Interest.**

**PETITIONERS, GRAVADY NEVADA, LLC AND CIRCUSTRIX, LLC'S
PETITION FOR WRIT OF MANDAMUS**

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PETITION FOR WRIT OF MANDAMUS

Petitioners were previously represented by Kyle J. Hoyt, Esq. of WOOD, SMITH, HENNING & BERMAN, LLP. Petitioners are currently represented by Phillip V. Tiberi, Esq. and Nicholas F. Adams, Esq. of WOOD, SMITH, HENNING & BERMAN, LLP, by and through their counsel, hereby respectfully petition this Court for a Writ of Mandamus pursuant to Nevada Rule of Appellate Procedure 21 and based on this Court's original jurisdiction as set forth in Article 6 section 4 of the Nevada Constitution and NRS 34.160 and 34.320.

Petitioners respectfully request that this Court issue a Writ of Mandamus directing Respondent, the Honorable Nadia Krall: (1) to vacate her order denying Petitioners' Motion for Summary Judgment based upon the lack of genuine issue of fact as to whether the Release constituted a valid assumption of risk; and (2) to issue an order setting forth the parameters and/or language that a waiver must contain that equate to actual knowledge, such that assumption of risk can be a legitimate defense. Petitioners ask this Court to direct the district court to enter an order entering summary judgment in favor of Petitioners.

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Alternatively, Petitioners request this Court direct the district court to enter an order allowing for the proper application of the Release in this case under the *Renaud* case.

DATED: April 11, 2022

WOOD, SMITH, HENNING &
BERMAN LLP

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RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

On information and belief, no parent corporation or publicly held company owns 10% or greater of Petitioners.

DATED: April 11, 2022

WOOD, SMITH, HENNING &
BERMAN LLP

By: /s/ Phillip V. Tiberi

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AFFIDAVIT OF NICHOLAS F. ADAMS, ESQ. IN SUPPORT OF
GRAVADY NEVADA, LLC AND CIRCUSTRIX, LLC'S PETITION FOR
WRIT OF MANDAMUS

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

I, NICHOLAS F. ADAMS, ESQ., swear under penalty of perjury that the following statements are true and correct.

1. I am licensed to practice law in this court and I am a partner with the law firm of WOOD, SMITH, HENNING & BERMAN, LLP, attorneys for Petitioners, and provide this affidavit in support of their PETITION FOR WRIT OF MANDAMUS.

2. I certify that I have read this Petition, and to the best of my knowledge, information and belief, this Petition complies with the form requirements of Rule 21(d), and that it is not frivolous or interposed for any improper purpose such as to harass, cause unnecessary delay or to needlessly increase the cost of litigation.

3. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure; including the requirement of Rule 28(e) that every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand that I may be

subject to sanctions in the event that the accompanying brief is not in conformity with requirements of the Nevada Rules of Appellate Procedure.

4. All documents contained in Petitioners' Appendix, filed herewith, are true and correct copies of the pleadings and documents they are represented to be in the Petitioners' Appendix and as cited herein.

5. This Petition also complies with the requirements of NRAP 21(d) and 32(c)(2).

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Executed on April 8 2022.



NICHOLAS F. ADAMS, ESQ.

SUBSCRIBED and SWORN to before me
this 8th day of April, 2022.



NOTARY PUBLIC



ROUTING STATEMENT

The Nevada Supreme Court should retain this writ proceeding because it is a matter raising as a principal issue a question of statewide importance and an issue upon which there is an inconsistency in published decisions of the Supreme Court. NRAP 17(a)(12). Litigants need guidance on the limits of summary judgment under *Renaud*, specifically whether a plaintiff did not appreciate the risk is always a dispute of fact requiring a jury to reach a determination.

This Petition concerns issues which are of the utmost importance to both the general population, as well as business operating in this District, including these Petitioners. More and more frequently, these alternative style amusement parks are opening, and this has raised an ongoing question of whether reading and signing a release, such as the one in this case, constitutes actual knowledge such that assumption of risk is a viable defense. The instant matter is one of four cases currently being handled by the law firm representing Petitioners. Respondent's error in refusing to apply the *Renaud* decision appropriately, and failure to grant summary judgment due to the decision that assumption of risk, despite affirmative consent to same, is a question of fact left to the jury will have wide-ranging, negative impacts on not just the trial of this matter, but future litigation.

This matter does not fall within any of the categories presumptively assigned to the Court of Appeals pursuant to Nevada Rule of Appellate Procedure 17(b).

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I. INTRODUCTION AND RELIEF SOUGHT

The district court erroneously denied Petitioners' motion for summary judgment despite no dispute that there was an executed contract with Gravady Nevada, LLC ("Gravady") releasing it from liability for negligence. The district court denied summary judgment because "it's unclear whether or not [Plaintiff] had actual knowledge of the risk" and also because of this Court's holding in *Renaud v. 200 Convention Center Ltd.* 102 Nev. 500 (1986). (1P. App. 131:22-132:2.) The district court's decision forces Petitioners to proceed to trial despite Plaintiff's agreement not to sue and, more broadly, casts doubt as to the requirements of a waiver of liability for recreational activities. If Nevada law, and specifically this Court's holding in *Renaud*, permits a plaintiff alleging personal injury to avoid their agreement to waive future suits by claiming the jury must resolve if they appreciated the specific injury they allege, many businesses' liability waivers may be called into question. The lack of ability to enforce these waivers could harm the state's economy. Moreover, if a jury must always resolve a plaintiff's credibility in claiming they did not appreciate the specific risk of injury – in this case, an injury from jumping on a trampoline – then judicial economy will suffer. District courts and litigants need guidance on the limits of summary judgment under *Renaud*, specifically whether a plaintiff appreciated the risk will always be a dispute of fact requiring a jury to reach a determination.

II. STATEMENT OF ISSUES

1. Whether the district court failed to apply Nevada law by denying the Petitioner's motion for summary judgment, where there was no factual dispute that Plaintiff had executed a waiver that contained a release of liability and covenant not to sue for negligence.

2. Whether the district court failed to apply Nevada law when the court accepted that whether a plaintiff assumed the risk is question of fact under *Renaud*.

III. STATEMENT OF FACTS

A. The Incident

On August 1, 2018, Plaintiff, a 44-year-old man, visited Petitioner's trampoline park. (1P. App. 7, ¶ 20, 1P. App. 8 ¶ 27; 1P. App. 62, 1P. App. 69.) Prior to entering the subject trampoline park, Plaintiff signed Petitioner's Participant Agreement, Indemnification, General Release and Assumption ("Release"). (1P. App. 44-45, 48-49.) After signing the Release, Plaintiff thereafter "was jumping on a trampoline when he suddenly felt a sharp pain in his foot and leg." (*Id.*; 1P. App. 71.)

B. The Release

On the first page of the Release, at the top of the page, Plaintiff initialed next to the following paragraph or waiver:

**BY SIGNING THIS AGREEMENT I AM GIVING UP MY
RIGHTS AND THE RIGHTS OF MY SPOUSE AND/OR
CHILD(REN) TO SUE GRAVADY FOR ANY INJURY,**

INCLUDING PARALYSIS OR DEATH, CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR FAULT OF GRAVADY, INCLUDING ANY OF ITS AGENTS, EMPLOYEES AND EQUIPMENT.

(1P. App. 44)

Thereafter, the first full paragraph of the Release provides in relevant part:

In consideration of being allowed to participate in the services and activities, including, but not limited to, trampoline park access . . . trampoline courts . . . and any other amusement activities (collectively "ACTIVITIES"), provided by GRAVADY NEVADA, LLC and its agents, owners, officers, directors, principals, volunteers, participants, clients, customers, invitees, employees, independent contractors, insurers, facility operators, land and/or premises owners, and any and all other persons and entities acting in any capacity on its behalf (collectively "GRAVADY"), I, on behalf of myself . . . hereby agree to forever release, indemnify and discharge GRAVADY on behalf of myself . . . [and] hereby acknowledges, agrees and represents that immediately upon entering or participating I will, inspect and carefully consider GRAVADY'S premises and facilities. . . . The undersigned, for myself . . . hereby represent that (i) I/we are in good health and in proper physical condition to participate in the activities in which GRAVADY provides. . . . The undersigned, for myself . . . agree to be familiar with and to abide by the rules established for the ACTIVITIES, which include without limitation the rules posted in the facility and/or the website. The undersigned, for myself . . . accepts sole responsibility for my own conduct and actions . . . while participating in the activities, and the condition and adequacy of the equipment.

(*Id.*)

The "release of liability" provision of the Release, provides in relevant part:

(1) **RELEASE OF LIABILITY:** Despite all known and unknown risks including but not limited to serious bodily injury, permanent disability, paralysis and loss of life, I, on behalf of myself . . . expressly and voluntarily remise, release, acquit, satisfy and forever discharge and agree not to sue GRAVADY . . . and agree to hold said parties harmless of and from any and all manner of actions or omission(s), causes of action, suits, sums of money, controversies, damages, judgments, executions, claims and demands whatsoever, in law or equity, including, but not limited to, any and all claims which allege negligent acts and/or omissions committed by GRAVADY . . . whether the action arises out of any damage, loss, personal injury, or death to me . . . while participating in

or as a result of participating in any of the ACTIVITIES in or about the premises. This Release of Liability, is effective and valid regardless of whether the damage, loss or death is a result of any act or omission on the part of GRAVADY. . . .

(Id.)

The "indemnification" provision of the Release, provides in relevant part:

(2) **INDEMNIFICATION:** I understand that the known and unknown risks may be caused in whole or in part by my . . . own actions or inactions, the actions or inactions of others participating in activities, or the acts, inaction or negligence of GRAVADY . . . and in consideration of being allowed . . . to participate in the ACTIVITIES, I hereby assume all risk of damage, loss, personal injury, or death to myself . . . as a result of the participation in ACTIVITIES in or about the facility, including any such loss due to any negligence of GRAVADY . . . and agree to indemnify and hold harmless GRAVADY . . . from and against any and all losses, liabilities, claims, obligations, costs, damages and/or expenses whatsoever paid, incurred and/or suffered by GRAVADY . . . as a result of any claims asserted by myself . . . against GRAVADY. . . .

(Id.)

The "terms of agreement" provision of the Release, provides in relevant part:

(5) **TERMS OF AGREEMENT:** I understand that this agreement extends forever into the future and will have full force and legal effect each and every time I . . . visit GRAVADY, whether at the current location or any other location or facility.

(1P. App. 45.)

The final paragraph of the Release, which provides in relevant part:

By signing this document, I understand that I may be found by a court of law to have forever waived my . . . right to maintain any action against GRAVADY on the basis of any claim from which I have released GRAVADY and any released party herein and that I have assumed all risk of damages, loss, personal injury, or death to myself. . . . I have had a reasonable and sufficient opportunity to read and understand this entire document. . . . I knowingly and voluntarily agree to be bound by all terms and conditions set forth herein.

(*Id.*)

IV. ARGUMENT

A. A WRIT PETITION IS NECESSARY AND APPROPRIATE.

A writ of mandamus is an extraordinary remedy that may be issued to compel an act that the law requires. *Cote v. Eighth Judicial District Court*, 175 P.3d 906, 907-08, 124 Nev. Adv. Rep. 3, 4 (Nev. 2008). A writ of mandamus may also issue to control or correct a manifest abuse of discretion. *Id.*

This Court may consider writ petitions challenging the admission or exclusion of evidence when ““an important issue of law needs clarification and public policy is served by this court’s invocation of its original jurisdiction,”” *Sonia F. v. Dist. Ct.*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (*quoting Mineral County v. State, Dep’t of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001), or when the issue is “one of first impression and of fundamental public importance,” *County of Clark v. Upchurch*, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998), or whether resolution of the writ petition will mitigate or resolve related or future litigation. *Id.*

A Petition for Writ should be considered when there is an extraordinary circumstance that lacks a “plain, speedy and adequate remedy in the ordinary course of law” or where there is an “important legal issue that requires clarification in order to promote judicial economy and administration.” *Piroozi v. Eighth Judicial Dist. Court*, 363 P.3d 1168, 1170 (2015); *citing Cheung v. Eighth Judicial Dist. Court*,

121 Nev. 867, 869, 124 P.3d 550, 552 (2005).

The strong public interest in and public policy behind clarifying whether signing a legal waiver constitutes actual knowledge insofar as to satisfy the requirement for an assumption of risk defense, weighs heavily in favor of clarifying the analysis of the *Renaud* decision. Further, a writ of mandamus is necessary and appropriate since there is conflict between *Renaud* and other Nevada decisions that allow an express agreement to assume risk of personal injury to bar future claims. District courts and litigants need guidance on the limits of summary judgment under *Renaud*, specifically whether a plaintiff did not appreciate the risk will always be a dispute of fact requiring a jury to reach a determination.

B. SUMMARY JUDGMENT STANDARD.

Summary judgment is appropriate when, after a review of the record viewed in the light most favorable to the non-moving party, no genuine issues of material fact remain, and the moving party is entitled to judgment as a matter of law. *Fire Insurance Exchange v. Cornell*, 120 Nev. 303, 305, 90 P.3d 978, 979 (2004). An issue of material fact is "genuine" if the evidence is such that a reasonable jury, applying the applicable quantum of proof, could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1968). The party opposing a motion for summary judgment must do more than simply show that there is some doubt as to the material facts. *See Wood v. Safeway*, 121 Nev. 724, 731-32, 121 P.3d

1026, 1031 (2005). As will be demonstrated below, when applying the applicable substantive law to the facts, Petitioners are entitled to judgment as a matter of law.

C. PLAINTIFF'S CLAIMS MUST BE DISMISSED BECAUSE HE EXPRESSLY WAIVED LIABILITY FOR INJURY.

Plaintiff executed a Release which expressly and voluntarily waived any claim of personal injury against Petitioners. This waiver, by its own clear terms, bars his claims for negligence. The Release waives any potential right to hold Petitioners responsible, even in the event of its own negligence. Nevada's courts, like the courts of other jurisdictions, routinely enforce waivers of liability in similar claims of personal injury alleged to be the result of a defendant's negligent actions, as a recognition of the contract which affirmatively waives those claims. As a result of Plaintiff's voluntary decision to enter into and execute an unambiguous and enforceable agreement, he has waived all ability to assert a cause of action against Petitioners, and his claims cannot survive summary judgment.

1. Nevada Law Allows an Express Agreement to Assume Risk of Personal Injury to Bar Future Claims, Even as the Result of a Defendant's Negligence

Nevada courts construe contracts that are clear on their face from the written language and enforce such contracts as written. *Canfora v. Coast Hotels*

and Casinos, Inc., 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The interpretation of a contract when facts are not in dispute is a question of law. *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003). A Nevada court has no authority to alter the terms of an unambiguous contract. *Renshaw v. Renshaw*, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980). Contractual exculpatory provisions which seek to relieve a person for negligence are "generally regarded as a valid exercise of the freedom of contract" under Nevada law. *See Miller v. A & R Joint Venture*, 636 P.2d 277, 278 (Nev. 1981). When the exculpatory language is unambiguous, the contract must be strictly construed. *Agricultural Aviation Eng Co. v. Board of Clark County Comm 'rs*, 106 Nev. 396, 399-400 (1990). There is no opposing public policy in Nevada that prevents voluntary transactions in which one party agrees to assume a risk which the law may otherwise place on the other party. *Id.*

Express assumptions of risk serves as an enforceable bar to liability in Nevada. *Mizushima v. Sunset Ranch*, 103 Nev. 259, 737 P.2d 1158 (1987) *overruled on other grounds by Turner v. Mandalay Sports Entertainment LLC*, 124 Nev. 213, 221, 180 P.3d 1172, 1177 (2008.) "Parties may agree to assume risk by contract, and, in Nevada, the issue of assumption of the risk is a question for the court, not a jury." *Burnett v. Tufguy Productions, Inc.*, 2010 WL 4282116, 4 (D. Nev. 2010) (citing *Turner*, 124 Nev. 213 at 220-21, 180 P.3d at 1177). Express

assumption of risk stems from a contractual undertaking that expressly relieves a putative defendant from any duty of care to the injured party; such a party has consented to bear the consequences of a voluntary exposure to a known risk. *Mizushima*, 103 Nev. 259 at 264, 737 P.2d 1158 at 1161 (1987) *overruled in part* by *Turner Mandalay Sports Entm 't, LLC*, 124 Nev. 213, 180 P.3d 1172 (2008).

To cover express assumption of the risk, a document must have an exculpatory clause that indicates that the plaintiff agrees to assume the risk of injury caused by the other party's negligence and clearly states that party is being released for negligent acts. *Mizushima*, 103 Nev. at 264, 737 P.2d at 1161; *See also Van Tuyn v. Zurich American Ins. Co.*, 447 So.2d 318, 320 (Fla. App. 4 Dist. 1984).

Here, Plaintiff executed a waiver with a valid exculpatory clause. The Release states, in plain express terms, that by signing and making use of the equipment, Plaintiff would be unable to sue for negligence. (1P. App. 44.) The Release is also for known and unknown risk of bodily injuries, specifically from use of the trampolines and foam pits, and explains that no action or suit can be brought. (*Id.*) In essence, the Release makes clear that the Plaintiff was expressly assuming the risk of injury, and would not be able to bring a lawsuit for negligence. (*Id.*) (emphasis added.)

Plaintiff argued against summary judgment based on the *Renaud* decision arguing that assumption of the risk is a question of fact for the jury. (1P. App.

94-96.) However, Plaintiff fails to take account for the fact that by signing the Release, he accepted risk of injury, and release of Gravady's potential negligence. In sum, there is no reason for a trial court to assert a dispute of fact for whether Plaintiff appreciated the risk.

The Release in this case is a stark contrast to the *Mizushima* case, wherein the Court held the exculpatory clause to be invalid insofar as it was not an express assumption of risk because patrons "were not consenting to assume the risk of injury caused by Sunset's own negligence." *Mizushima*, 103 Nev. at 264, 737 P.2d at 1161. In this case, the question is whether the waiver expressly and cleared set forth the risk of the specific injury Plaintiff claims to have suffered. The Release specifically states that the signor is releasing liability from any and all bodily injury that may arise from jumping on the trampoline. (1P. App. 44.). It is undisputed that the clear language of the Release appreciated and contemplated liability for the exact type of injury Plaintiff is claiming therefore, it is incomprehensible how this could be seen as anything other than an express assumption of risk.

In sum, there is no dispute of fact that Plaintiff executed the Release. He had agreed as indicated in answers to written discovery. (1P. App. 48-49.) In the Release, Plaintiff agreed that he would not assert claims against Gravady for any personal injury as a result of his use of the park facilities, even if those injuries

were a result of Gravady's own negligence, a valid contractual agreement in Nevada. While Gravady disputes that it was negligent, and disputes the nature and extent of Plaintiff's claimed injuries, the Release bars Plaintiff from asserting negligence claims against Petitioners. Therefore, Petitioners are entitled to summary judgment.

2. Nevada Courts Routinely Uphold and Enforce Liability

Waivers

Recently, four trial court judges in Nevada have held waivers of liability enforceable and granted summary judgment in favor of defendants. In *Moffitt v. 24 Hour Fitness USA, Inc.*, the plaintiff signed a membership agreement that stated that using the facilities, *specifically the steam room*, involved the risk of injury, including death, to them or their guest, whether they or someone else causes it. *Moffitt v. 24 Hour Fitness USA, Inc.*, No. 2:12-CV-00469-PMP, 2013 WL 1080441, at *1 (D. Nev. Mar. 14, 2013). After the Plaintiff later brought a claim against 24 Hour Fitness for bodily injury resulting from a fall in the steam room, the court held the "membership agreement contains an express, unambiguous exculpatory clause which identifies the potential risk of injury and states that by entering into the membership agreement, [plaintiffs] consented to assume the risk of injury caused by 24 Hour Fitness's negligence, whether an injury was related to exercise or not." *Id.* at 4.

24 Hour Fitness was also granted summary judgment on the basis of its **liability waiver** in *Bartman v. 24 Hour Fitness*, No. 11A644998, 2013 WL 1852918 (Nev. Dist. Ct. Mar. 11, 2013) since the "Plaintiffs have not identified any ambiguity in the contractual language... nor have they presented any evidence raising a genuine issue of fact regarding the parties' intent." *Id.*

In *Waldschmidt v. Edge Fitness, LLC*, Case No. 14-A-710986, 2016 WL 6560295 (Sept. 23, 2016, Nev. Dist. Ct.) the Court granted defendants' Motion for Summary Judgment, finding the plaintiff's membership agreement contained a valid, "unambiguous, and enforceable, assumption of risk provision that relieved Defendant of liability for injuries arising out of the use of its facilities by members." *Id.* at *2. The court agreed that, as recognized in many other decisions in Nevada and the United States, exculpatory agreements for activities that are not necessary, such as use of fitness clubs, are not void against public policy. *Id.* at 1. (additional citations omitted). The court further analyzed that "the parties entered into an valid written membership agreement" which made plain that each party intended to release defendant for risk of injury, even if it was the result of defendant's own negligence. *Id.* at *2. Therefore, the plaintiff's express waiver barred his claims, and summary judgment was appropriate.

In *Ansara v. Las Vegas Boat Harbor, Inc.*, Case No. 14-A-697943, 2016 WL 1722189 (March 17, 2016, Nev. Dist. Ct.), the estate of a man who drowned

at Lake Mead sued the boat rental company. The man had signed a waiver that stated that "that he was responsible for the safe and proper operation of the boat craft, for the safety and welfare of other boaters and persons, and agreed that (the company) would not be held liable for damages, inconvenience, or time lost caused by accident, breakdown or malfunction of the rental craft; and that he would indemnify and hold (them) harmless from and against any and all claims for loss of or damage to property or injury to persons (including death) resulting through the use, operation or possession of said rental craft." *Id.* at *3. Not only did the court hold the agreement enforceable and grant the boat rental company summary judgement, it also required the estate to indemnify the company for its attorney's fees. *Id.* at *10.

D. THE *RENAUD* DECISION DOES NOT CONFLICT WITH PETITIONER'S CITED AUTHORITY, INCLUDING *MIZUSHIMA*.

Plaintiff also relied on this Court's decision in *Renaud v. 200 Convention Center*, 102 Nev. 500 (1986). The *Renaud* Court did not expand upon its statement that an express contractual exculpatory clause is not sufficient evidence to singularly dismiss a Plaintiff. *Renaud* contains a discussion of approximately a single page pertaining to all legal analysis. *Id.* at 501-02. The discussion merely states that for a waiver to be valid, the Court requires: (1) voluntary exposure to the danger; and (2) actual knowledge of the risk assumed. *Id.* at 501. This Court concluded that

judgment as a matter of law was inappropriate because there was a dispute as to whether Ms. Renaud knowingly and voluntarily assumed the risk associated with use of a sky-diving simulator. Because there was a question of fact as to whether Ms. Renaud's had actual knowledge of the risks by nature of the language of the waiver, the Court found that the case had to be reserved for the fact-finder. *Id.*

The key difference between the *Renaud* case and the instant case is that Plaintiff was admittedly aware of the risk of injury. Again, his argument that he understood the risk of injury, just not his particular injury, is not sufficient to overcome summary judgment. If Plaintiff's argument is accepted, virtually no waiver of liability would exist. This would allow an exception which would swallow the rule. Courts could not address any liability waiver at the summary judgment stage so long as a Plaintiff claims that they did not anticipate the injury they allege. Such a result would be contrary to Nevada's clear law that "[p]arties may agree to assume risk by contract, and, in Nevada, the issue of assumption of risk is a question for the court, not a jury." *Burnett v. Tufguy Productions, Inc.*, 2010 WL 4282116, *4 (D. Nev. 2010) (citing *Turner*, 121 Nev. 213, 220-21, 180 P.3d at 1177). The specific statement of the law in *Renaud* fails to address the substance of the waiver and the facts of this particular case: Plaintiff knew he was signing a waiver, which clearly indicated the intention of the parties, Plaintiff was aware of the risks of injury, and he proceeded. The Court should adhere to *Mizushima* and *Turner*, and give credence

to the waiver in this action, along with the applicable facts that show Plaintiff assumed the risks involved, and expressly waived his right to sue for negligence.

V. CONCLUSION

Petitioners are entitled to judgment as a matter of law. Plaintiff signed a Release which contained a valid exculpatory clause, in which Plaintiff unequivocally agreed Petitioners could not be responsible for his personal injuries, even if the result of its own negligence. Therefore, Petitioners respectfully request that this Court reverse the district court's decision denying its Motion for Summary Judgment. Alternatively, Petitioners request further guidance on the limits of summary judgment under *Renaud*, specifically whether a plaintiff appreciated the risk will always be a dispute of fact requiring a jury to reach a determination.

DATED: April 11, 2022

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CERTIFICATE OF COMPLIANCE

1. Pursuant to NRAP 21(e), I hereby certify that his petition complies with NRAP 32(a)(9) and the formatting requirements of NRAP 32(a), including the fact that this petition has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman type style.

2. I further certify that this petition complies with the word-count limitation of NRAP 21(d), because, using the computation guidelines in NRAP 32(a)(7)(C), it contains 5692 words.

DATED: April 11, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 2022, a true and correct copy of this completed **PETITION FOR WRIT OF MANDAMUS** upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

I hereby certify that on this 11th day of April, 2022, I caused a true and correct copy of **PETITION FOR WRIT OF MANDAMUS** to be placed in the United States Mail, with first class postage prepaid, addressed as follows:

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