

IN THE SUPREME COURT OF THE STATE OF NEVADA

MOISES A. LEYVA; and, DARREN J.
LACH, ESQ.

Appellants,

vs.

QBE INSURANCE COMPANY; and,
ERIC BLANK INJURY ATTORNEYS,

Respondents.

Supreme Court Case No. 84627
Electronically Filed
Jun 29 2022 11:25 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

(District Court A-18-786537-C)

MOTION TO DISMISS APPEAL

JAMES R. CHRISTENSEN, ESQ.

Nevada Bar No. 003861

601 S. 6th Street

Las Vegas, NV 89101

(702) 272-0406

(702) 272-0415 fax

jim@jchristensenlaw.com

Attorney for Eric Blank Injury Attorneys

NRAP 26.1 DISCLOSURE

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

No such corporations involved.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.

Nevada Bar No. 003861

601 S. 6th Street

Las Vegas, NV 89101

Attorney of Record for Eric Blank Injury
Attorneys

I. Introduction

Appellant Moises Leyva is purportedly appealing a decision of the district court which “reduced the amount of attorney’s fees awarded to Plaintiff’s counsel, Lach Injury Law”. (Case Appeal Statement (C.A.S.) at 3:3-12.) As such, Lach Injury Law (LIL), the attorney for Appellant Leyva, is the one who is aggrieved by the challenged decision, Moises Leyva is not.

Only an aggrieved party may appeal. NRAP 3A. Moises Leyva is not aggrieved by the challenged action of the district court, only LIL is aggrieved. Thus, this appeal by Mr. Leyva is subject to dismissal.

II. Relevant Facts and Procedure

On February 19, 2018, attorney Darren Lach joined Eric Blank Injury Attorneys (EBIA). (Ex. 1, 1.06.22 Findings of Fact & Conclusions of Law (FFCL) at FF#5.)

In December of 2016, Moises Leyva was injured in a motor vehicle collision and was referred to Eric Blank at EBIA in June of 2018. (Ex. 1 at FF #1, 2 & 6.)

From June of 2018 to June of 2021, EBIA represented Moises Leyva. (Ex. 1 at FF#6-31.)

On Friday June 25, 2021, at 8:29 a.m., without prior notice Darren Lach resigned effective immediately from EBIA via email. (Ex. 1 at FF#27.)

On June 25, 2021, at 12:24 p.m. EBIA received a transfer letter from LIL for the *Leyva* case. (Ex. 1 at FF#31.)

On Monday June 28, 2021, EBIA asserted an attorney charging lien on the *Leyva* case. (Ex. 1 at FF#33 & CL #2-8.)

On Tuesday June 29, LIL appeared at a mediation on behalf of Moses Leyva. The mediation was scheduled, briefed, and paid for by EBIA. (Ex. 1 at FF#24-26.) The *Leyva* case settled at mediation for \$915,000.00. (Ex. 1 at FF#34.)

On July 28, 2021, LIL filed a motion requesting the district court adjudicate the EBIA attorney lien. LIL argued that EBIA should receive nothing - not even the cost of the mediation. (Ex. 2.)

On January 6, 2022, following briefing and an evidentiary hearing, the district court issued findings of fact and conclusions of law which adjudicated the attorney lien. The district court determined the overall fee due from Moises Leyva to his lawyers based on a contingency, then granted each lawyer a portion of the contingency fee. (Ex. 1.)

EBIA moved for reconsideration and sought an increase in the share of the fee due EBIA and a like decrease in the fees due LIL. On March 22, 2022, the district court reconsidered its decision and reduced the amount of attorney fees due LIL with a corresponding increase in fees due EBIA. (Ex. 3.) *The total amount of fees owed by Moises Leyva to his attorneys did not change. (Compare, Ex. 1 & Ex. 3.)*

On April 22, 2022, Moises Leyva purportedly filed a notice of appeal challenging the district court decision which reduced the attorney fees due LIL and increased the fees due EBIA. (CAS at #10.)

On April 29, 2022, EBIA filed a motion to dismiss this appeal.

On May 3, 2022, the motion to dismiss appeal was denied without prejudice with a “right to renew the motion, if necessary, upon completion of settlement proceedings.”

On June 9, 2022, this case was determined to be unsuitable for the settlement program.

On June 14, 2022, this matter was removed from the settlement program and a briefing schedule was reinstated.

The parties before the district court were Plaintiff Moises Leyva, Defendant Sabreana Ann Robinson, and Intervenor QBE Insurance Company. (Ex. 1, Ex. 3, Notice of Appeal & CAS.) It appears that prior

and current attorneys for Plaintiff below have been misidentified as Appellant and Respondent on appeal. An attorney is not a party. *Albany v. Arcata Assocs.*, 106 Nev. 688, 690, 799 P.2d 566, 567 (1990).

III. Argument

NRAP 3A(a) states that a party must be “aggrieved by an appealable judgment or order” to have standing to “appeal from that judgment or order”. See, *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

The burden to establish appellate jurisdiction falls on the party seeking appellate review. *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 527, 25 P.3d 898, 899 (2001).

Appellant Moises Leyva cannot carry the burden to establish appellate jurisdiction because Mr. Leyva was not aggrieved by the decision to reduce the attorney fees to be paid to LIL. Mr. Leyva pays the same total fee under the challenged order. (*Compare*, Ex. 1 & Ex. 3.) Mr. Leyva plainly states in the case appeal statement that the appeal was filed because the attorney fee due his attorney LIL was reduced. Thus, Moises Leyva did not suffer an adverse economic impact and is thereby not an aggrieved party. Instead, LIL, the attorney whose fee was reduced is the aggrieved party, and LIL does not have a right of direct appeal. *Albert D.*

Massi, LTD., v. Bellmyre, 111 Nev. 1520, 908 P.2d 705 (1995)(the right of appeal under NRAP 3A is limited to an aggrieved party and an attorney for a party in a lien dispute who was not named or served does not qualify under NRAP 3A).

Mr. Leyva is not an aggrieved party as required by NRAP 3A(a) and his appeal is subject to dismissal.

IV. Conclusion

Moises Leyva is not an aggrieved party as required by NRAP 3A(a). The current and former Plaintiff attorneys were not named or served in the underlying case and are therefore not parties. Accordingly, EBIA respectfully moves for dismissal of this appeal.

Dated this 29th day of June 2022.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
Attorney for EBIA

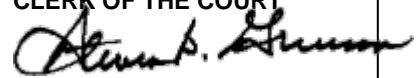
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of June 2022, I served a copy of the foregoing MOTION TO DISMISS APPEAL electronically to all registered parties.

/s/ Dawn Christensen

an employee of JAMES R. CHRISTENSEN

EXHIBIT 1



JOSH COLE AICKLEN
Nevada Bar No. 07254
Josh.Aicklen@lewisbrisbois.com
JOHN BOYDEN
Nevada Bar No. 3917
LEWIS BRISBOIS BISGAARD & SMITH LLP
5555 Kietzke Lane, Suite 200
Reno, Nevada 89511
TEL: 775.399.6383
FAX: 775.827.9256

Attorneys for Intervenor QBE INSURANCE
COMPANY

DISTRICT COURT
CLARK COUNTY, NEVADA

MOISES A. LEYVA, individually,
Plaintiff,

v.

SABREANA ANN ROBINSON, individually,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,
Defendants.

CASE NO. A-18-786537-C
Dept. No.: 24

NOTICE OF ENTRY OF ORDER

QBE INSURANCE COMPANY,
Intervenor,

v.

MOISES A. LEYVA, individually,
Intervenee.

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the Findings Of Fact, Conclusions Of Law, And Order was
entered by the above-entitled Court on the 6th day of January, 2022, a true and correct copy of which

1 is attached hereto as "Exhibit A."

2 DATED this 19th day of January, 2022.

3 Respectfully submitted,

4 LEWIS BRISBOIS BISGAARD & SMITH LLP

5
6 By /s/ John Boyden
7 JOSH COLE AICKLEN
8 Nevada Bar No. 7254
9 JOHN BOYDEN
10 Nevada Bar No. 3917
11 LEWIS BRISBOIS BISGAARD & SMITH LLP
12 5555 Kietzke Lane, Suite 200
13 Reno, Nevada 89511
14 T: 775.399.6383
15 Attorneys for Intervenor QBE INSURANCE
16 COMPANY
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of LEWIS BRISBOIS BISGAARD
3 & SMITH LLP, and that on this 19th day of January, 2022, I did cause a true and correct copy of
4 **NOTICE OF ENTRY OF ORDER** to be served via email to all parties currently shown on the
5 Court's E-Service List.

6 Eric R. Blank, Esq.
7 Darren J. Lach, Esq.
8 ERIC BLANK INJURY ATTORNEYS
9 7860 W. Sahara Ave.
10 Suite 110
11 Las Vegas, NV 89117
12 Phone: 702-222-2115
13 service@ericblanklaw.com

14 By /s/ Roshell Gist
15 An Employee of
16 LEWIS BRISBOIS BISGAARD & SMITH LLP
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

1 **FFCL**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6
7 Moises A. Leyva,
8 Plaintiff(s),

Case No.: A-18-786537-C
Dept. No.: XXIV

9 v.

10 Sabreana Ann Robinson and Does I-X and Roe
11 Entities I-X,
12 Defendant(s).

13
14 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

15
16 The motion to adjudicate Eric Blank Injury Attorneys attorney's lien came before the
17 Court for an evidentiary hearing on October 13, 2021. Eric Blank and Eric Blank Injury
18 Attorneys (EBIA) appeared in person and by and through their attorney of record, James R.
19 Christensen, and Darren Lach and LIL LLC d/b/a Lach Injury Law (LIL) appeared in person
20 and by and through their attorney of record, David M. Fassett.

21 The Court took testimony and admitted exhibits at the evidentiary hearing. Further the
22 Court considered the arguments and evidence submitted by briefing including the Motion to
23 Adjudicate Eric Blank Injury Attorneys' Notice of Attorney Lien, Response to Motion to
24 Adjudicate Attorney Lien of Eric Blank Injury Attorneys and Supplement, and Reply in
25 Support of Motion to Adjudicate Eric Blank Injury Attorneys' Notice of Attorney Lien, the
26 exhibits attached to the foregoing, and the declarations of Darren Lach, Eric Blank and James
27 Christensen.

28 The Court having considered the evidence, arguments of counsel and being fully

1 advised of the matters herein, the Court finds and concludes as follows:

2 **Findings of Fact**

- 3 1. On December 16, 2016, Moises Leyva was injured in a car crash with one other vehicle.
4 The driver of the other vehicle, Sabreana Ann Robinson (Robinson), was at fault.
5 Robinson was insured by Progressive. Robinson's Progressive policy of insurance
6 provided for \$15,000.00 in liability coverage.
- 7 2. On December 16, 2016, Leyva was driving a Silver State Transportation Services, LLC
8 vehicle when he was injured by Robinson. On the date of the crash, Silver State
9 Transportation Services had a policy of insurance issued by QBE North America (QBE)
10 which provided \$1,000,000.00 (\$1M) in uninsured/underinsured coverage (UIM).
- 11 3. In March of 2017, Leyva retained The Firm to pursue a claim for damages arising from
12 the collision of December 16, 2016. The Firm later withdrew and asserted an attorney
13 lien for \$6,112.50.
- 14 4. In October of 2017, Leyva retained Heshmati & Associates. There is no evidence of
15 work performed by Heshmati & Associates. Heshmati & Associates did not assert a
16 lien.
- 17 5. On February 19, 2018, Darren Lach (Lach) joined EBIA in the position of managing
18 attorney.
- 19 6. On June 8, 2018, Leyva was referred to Eric Blank. Based on the referral to Eric Blank,
20 Leyva hired EBIA to pursue a claim for damages arising from the collision of December
21 16, 2016.
- 22 7. When Leyva hired EBIA, Leyva entered into a contingency fee agreement with EBIA.
23 Per the agreement, the relevant agreed upon contingency fee was 1/3 (33-1/3%) of all
24 recoveries obtained before the filing of a complaint and 40% of all recoveries obtained
25 after the filing of a complaint. (Hearing Exhibit [H.E.] 20, EBIA [Leyva] 121-128.)
- 26 8. Attorney Darren J. Lach had primary responsibility for the Leyva file during the entire
27 time EBIA represented Leyva.
- 28 9. After Leyva retained EBIA, EBIA began to build the Leyva case file. For example,

- 1 EBIA obtained vehicle photographs, requested the police report, and sent requests for
2 medical records and bills to medical providers. Over the life of the file, EBIA sent over
3 seventy (70) requests for records and bills. There are approximately 2,200 pages of
4 medical records and bills in the EBIA case file for Leyva.
- 5 10. After retention, EBIA began a practice of communication with its client Leyva. During
6 the three years of representation, the EBIA Needles Case Management system
7 (Needles) has 96 entries regarding communication and meetings with Leyva and over
8 50 text messages exchanged with Leyva on the EBIA office text program.
- 9 11. On September 17, 2018, EBIA sent a certified letter of representation to QBE. In the
10 letter EBIA claimed a lien of “40% of all recoveries after the filing of a Complaint”.
11 The EBIA letter was signed by Lach. (H.E. 8, EBIA [Leyva] 125-126.)
- 12 12. On September 18, 2018, QBE sent a letter to EBIA acknowledging receipt of the EBIA
13 letter of representation. The QBE letter was sent to the attention of Lach. QBE
14 provided a declaration sheet disclosing \$1M in UIM coverage. The QBE letter did not
15 contain a reservation of rights. (H.E. 8, EBIA [Leyva] 127.)
- 16 13. Other documents were attached to the demand letter. The demand letter required a
17 response within 10 days of the date of the letter. The demand letter was signed by Lach.
18 (H.E. 18, EBIA [Leyva] 394-742.)
- 19 14. On November 27, 2018, EBIA sent a request for UIM benefits to QBE on behalf of
20 Leyva. The request for benefits listed medical expenses of \$296,192.18. Over 300
21 pages of medical records and other documents were attached to the request for benefits.
22 EBIA requested the full UIM policy limit (\$1M) be paid by QBE to Leyva as benefits
23 due under the policy. The request for benefits was signed by Lach. (H.E. 18, EBIA
24 [Leyva] 742-1091.)
- 25 15. On December 14, 2018, Ryan L. Dennett, Esq., counsel for Progressive, sent a letter to
26 EBIA to the attention of Lach in response to the EBIA demand letter of November 15.
27 In the letter, Progressive agreed to pay the liability policy limit of \$15,000.00 to Leyva
28 and EBIA. (H.E. 9, EBIA [Leyva] 150-52.) As of the date of the evidentiary hearing

- 1 on October 13, 2021, the settlement of \$15,000.00 had not yet been paid by Progressive.
- 2 16. On December 14, 2018, Leyva signed a covenant not to execute upon Robinson in
- 3 exchange for the Progressive agreement to pay the liability limit of \$15,000.00. (H.E.
- 4 30, EBIA [Leyva] 3781-83.)
- 5 17. At the evidentiary hearing held October 13, 2021, Lach testified that settlement of the
- 6 Leyva's third party claim against Robinson for the \$15,000.00 in coverage provided by
- 7 the Progressive policy in exchange for a covenant not to execute was accomplished by
- 8 The Firm. Based on the foregoing findings, the Court finds that the testimony of Lach
- 9 regarding the timing of the Robinson/Progressive settlement was not accurate, and that
- 10 the settlement was accomplished by EBIA.
- 11 18. On December 19, 2018, QBE sent a letter to EBIA to the attention of Lach. In the
- 12 letter, QBE noted a telephone conversation with Lach regarding the EBIA request for
- 13 benefits of November 27 and mentioned "an investigation into a coverage
- 14 determination." (H.E. 8, EBIA [Leyva] 124.)
- 15 19. On December 21, 2018, EBIA filed a complaint against Robinson for Leyva. The
- 16 complaint was served, and the affidavit of service was filed on January 4, 2019.
- 17 20. In April of 2019, EBIA entered a default of Robinson and then filed a notice of default.
- 18 21. On March 27, 2020, the first party insurer, QBE insurance, intervened in the Leyva
- 19 case.
- 20 22. On June 29, 2020, EBIA filed an answer to the QBE complaint in intervention and
- 21 petitioned the court for exemption from the arbitration system. The case was exempted
- 22 from arbitration three days later.
- 23 23. EBIA worked for Leyva for three years. EBIA represented Leyva for the December
- 24 2016 crash and a 2018 crash. Leyva's 2016 collision claim presented challenges due
- 25 to a complicated medical course with multiple injuries, ongoing treatments and
- 26 surgeries, an intervening crash in 2018, an unflattering personal history, and a
- 27 recalcitrant insurance company. During the case:
- 28
 - EBIA prepared five (5) NRCP 16.1 disclosures (the last was prepared but not served) totaling over 1500 pages.

- EBIA received and reviewed two defense productions and reviewed and addressed releases provided by the defense.
- EBIA responded to 17 requests for production of documents.
- EBIA responded to 31 interrogatories.
- EBIA answered 30 requests for admission.
- EBIA prepared written discovery to be served on the defense.
- EBIA negotiated the parameters of a defense medical exam and prepared the client to attend the exam.
- EBIA scheduled, briefed, and paid for the mediation with ARM (Justice Nancy Saitta, ret.).
- EBIA prepared and served an offer of judgment for \$999,995.00.
- Needles contains 650 entries, each documenting an act by EBIA to benefit the case.
- EBIA confirmed medical bill balances on at least 11 occasions.

24. Prior to March 25, 2021, EBIA and QBE agreed to mediate the Leyva case. On March 25, 2021, EBIA paid the Leyva mediation fee. (H.E. 29, EBIA (Leyva) 3760.)

25. Following March 25, 2021, EBIA scheduled the Leyva mediation to be held on Tuesday, June 29, 2021.

26. On June 17, EBIA submitted a mediation brief on behalf of Leyva. EBIA sought the full amount of the available UIM benefit available to Leyva of \$1M. Lach signed the Leyva mediation brief for EBIA. (H.E. 29, EBIA [Leyva] 3737-3759.)

27. On Friday, June 25, 2021, at 8:29 a.m., without prior notice, Lach quit EBIA by email, effective immediately. (H.E. 4.)

28. On Friday, June 25, at about 9:00 a.m., EBIA employee Ganniny Osorio (Osorio) quit without notice by email. Osorio claimed she had no prior notice of Lach's departure. (H.E. 6.)

29. At 9:20 a.m. on June 25, Osorio sent an email to an EBIA client on behalf of Lach/LIL with an LIL fee agreement attached.

30. Following the surprise resignations of Lach and Osorio, EBIA and Eric Blank reviewed EBIA client files and prepared to cover Lach's calendar. While Lach had primary responsibility for the Leyva file while Lach worked at EBIA, Eric Blank asserts he was was ready, willing, and able to represent Leyva at the upcoming mediation.

- 1 31. On June 25 at 12:24 p.m., Osorio emailed an LIL transfer letter for Leyva to EBIA.
2 The LIL letter precluded EBIA from contacting Leyva.
- 3 32. At the evidentiary hearing held October 13, 2021, Lach testified that Lach informed
4 select EBIA clients of Lach's intention to depart from EBIA to start his own firm before
5 June 25, 2021 and solicited select EBIA clients to transfer to Lach's new law firm,
6 without informing Eric Blank or EBIA. Lach testified that he was assisted by Osorio
7 and that Osorio acted as a translator for Spanish speaking EBIA clients, including
8 Leyva.
- 9 33. On June 28, 2021, EBIA served a notice of attorney lien in the Leyva matter. (H.E.
10 22.) The attorney lien was served by certified mail upon Leyva, Lach, Progressive,
11 QBE, and counsel for the two insurance companies. (H.E. 22.)
- 12 34. On the afternoon of Tuesday, June 29, 2021, Leyva's case against QBE for UIM
13 benefits settled at mediation for \$915,000.00.
- 14 35. At the evidentiary hearing held October 13, 2021, Lach claimed that he undertook
15 significant legal research and preparation for the Leyva mediation between Friday, June
16 25, and the start of mediation on the afternoon of Tuesday, June 29. However, Lach
17 acknowledged that he could have done the claimed preparation work when Lach
18 worked for EBIA. When questioned at the evidentiary hearing, Lach did not provide
19 details about the claimed legal work, and Lach did not provide documentation of the
20 claimed legal work.
- 21 36. At the evidentiary hearing held October 13, 2021, Lach testified concerning a
22 preliminary proposed disbursal prepared by Lach. (H.E. 33.) Per the Lach disbursal,
23 Lach proposed to charge Leyva a contingency fee of 36% or \$330,661.11, with Lach
24 receiving a fee of \$260,948.61. Lach testified that Lach had made reduction requests
25 to medical providers some of which had not been responded to yet or were in the
26 process of negotiation. Thus, the amounts on the disbursal were not final on the date
27 of the hearing.
- 28 37. Lach testified that he believes he may have spent approximately 50-60 hours of attorney

1 time while working for EBIA on this case, and he believes that approximately 100 to
2 150 hours of 16 staff time may have been expended during EBIA's representation of
3 Plaintiff during this case. The Court does not find that those estimates are reasonable
4 despite Mr. Lach being in the best position to know. Mr. Lach has reason to
5 underestimate the amount of time spent while working on this matter for EBIA. In
6 addition, the estimates are unreasonable given the complexity of the case and the
7 amount of work done prior to Lach's departure from EBIA.

8 38. Blank testified that he believes there would be more attorney hours and more staff hours
9 expended on this matter, however, Blank provided no compilation of hours.

10 39. As of Friday June 25, EBIA had represented Leyva for three years. During the three
11 years of representation, EBIA filed and pursued a lawsuit, agreed to terms on the third-
12 party claim, advanced case costs, paid staff and Lach, and maintained an office to put
13 the Leyva case in position for success at mediation or trial. The EBIA investment of
14 time and money on behalf of Leyva was done with the risk that the case would take
15 many years to resolve and that the case could suffer from low to no recovery.

16 **Conclusions of Law**

17 1. In Nevada, an attorney charging lien is a "creature of statute". Argentina Consolidated
18 Mining, v. Jolley, Urga, Wirth, Woodbury & Standish, 125 Nev. 527, 532, 216 P.3d
19 779, 782 (2009), superseded by statute on other grounds as stated in, Fredianelli v.
20 Fine Carman Price, 133 Nev. 586, 402 P.3d 1254, 1255-56 (2017). A charging lien
21 provides "a unique method of protecting attorneys." Leventhal v. Black & Lobello,
22 129 Nev. 472, 475, 305 P.3d 907, 909 (2013), superseded by statute on other grounds
23 as stated in, Fredianelli, 133 Nev. 586, 402 P.3d 1254 (2017).

24 **A. The EBIA attorney charging lien was perfected and is enforceable.**

25 2. The Court concludes that EBIA may use an attorney charging lien to obtain payment
26 for the work performed on the Leyva matter per NRS 18.015. NRS 18.015(1)(a) states,
27 in pertinent part:

28 1. An attorney at law shall have a lien:

1 (a) Upon any claim, demand or cause of action, including any claim for
2 unliquidated damages, which has been placed in the attorney's hands by a client
3 for suit or collection, or upon which a suit or other action has been instituted.
4

- 5 3. The Court concludes that the EBIA charging lien complies with NRS 18.015(1)(a).
6 Leyva placed his claim for damages in the hands of EBIA, EBIA instituted an action,
7 EBIA preformed substantial work, and EBIA pursued the Leyva claim for three years.
- 8 4. The Court concludes that EBIA perfected the charging lien pursuant to NRS 18.015(3),
9 by serving notice of the EBIA attorney lien via certified mail upon Lach/LIL, Leyva,
10 QBE, Progressive and counsel for the insurance carriers.
- 11 5. The Court concludes that the EBIA charging lien is enforceable in form. The EBIA
12 lien stated an amount of fees sought which was reached by applying the applicable
13 EBIA contingency fee to the then perceived value of the case. Golightly & Vannah,
14 PLLC v TJ Allen LLC, 132 Nev. 416, 420-21, 373 P.3d 103, 106 (2016) (an attorney
15 working on a contingency fee does not need to include a specific dollar amount in the
16 notice of lien); Gonzales v. Campbell & Williams, 2021 WL 4988154, 497 P.3d 624
17 (Nev. 2021) (unpublished) (the Court relied upon Golightly in finding that a notice of
18 lien that sought a ““reasonable fee...under quantum meruit” to be determined by the
19 court” was enforceable).
- 20 6. The Court concludes that the EBIA charging lien may be enforced because the lien was
21 perfected by service before settlement monies were received. Neither Progressive nor
22 QBE had tendered settlement funds as of the date of the evidentiary hearing and the
23 notice of lien was served well prior to the hearing. NRS 18.015(4)(a); Golightly &
24 Vannah, 132 Nev. at 420, 373 P.3d at 105 (a charging lien must be perfected “before
25 the attorney receives the funds”).
- 26 7. The Court concludes that the Court has incidental personal jurisdiction over Lach, LIL
27 and EBIA, because EBIA asserted a charging lien on the case and Leyva moved for
28 adjudication of the EBIA lien. Argentina, 125 Nev. at 531-34, 216 P.3d at 782-83.

1 8. The Court concludes that this Court has subject matter jurisdiction over adjudication of
2 the EBIA charging lien and resolution of the fee dispute because the dispute is between
3 current and former counsel of record. Argentina, 124 Nev. at 532-33, 216 P.3d at 783.

4 **B. The Court must determine the reasonableness of attorney fees sought by EBIA**
5 **and Lach/LIL under the Brunzell factors.**

6 9. NRS 18.015(2) states that an attorney can recover the contract rate; or, if no contract
7 rate, then a “reasonable fee for the services which the attorney rendered for the client”.
8 Under either scenario, the attorney fee must be reasonable. McDonald Carano Wilson
9 v. Bourassa Law Grp., 131 Nev. 904, 908, 362 P.3d 89, 91 (2015) (“Finally the district
10 court must ensure that McDonald Carano’s and Bourassa’s fee agreements are not
11 unreasonable”).

12 10. When a lawyer is discharged by a client, the lawyer is no longer compensated under
13 the discharged/breached/repudiated contract but is paid based on quantum meruit.
14 Golightly v. Gassner, 125 Nev. 1039, 281 P.3d 1176 (2009) (discharged contingency
15 attorney paid by quantum meruit rather than by contingency); citing, Gordon v. Stewart,
16 74 Nev. 115, 324 P.2d 234 (1958) (attorney paid in quantum meruit after client breach
17 of agreement); and citing, Cooke v. Gove, 61 Nev. 55, 114 P.2d 87 (1941) (fees
18 awarded in quantum meruit when there was no agreement); Gonzales, 2021 WL
19 4988154, 497 P.3d 624 (upheld the finding that an attorney without a fee agreement
20 was due a percentage of a case’s recovery as the measure of a reasonable fee in quantum
21 meruit in a lien adjudication); Edgeworth Family Trust v. Simon, 2020 WL 7828800,
22 477 P.3d 1129 (Nev. 2020) (unpublished) (discharged attorney entitled to quantum
23 meruit as the measure of reasonable attorney fees due under a charging lien); Fracesse
24 v. Brent, 494 P.2d 9 (Cal. 1972).

25 11. Quantum meruit means, as much as is deserved. Black’s Law Dictionary 1119 (5th ed.
26 1979). Quantum meruit is effectively synonymous with the reasonable fee language of
27 NRS 18.015. However, under any word choice, the Court must find an attorney fee to
28 be reasonable under the Brunzell factors. O’Connell v. Wynn Las Vegas, LLC, 134

1 Nev. 550, 429 P.3d 664 (C.A. 2018)¹; Logan v. Abe, 131 Nev. 260, 266, 350 P.3d 1139,
2 1143 (2015); Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969).

3 **C. The Court has wide discretion to calculate the amount of the reasonable fee due,**
4 **including use of a contingency. Detailed billing statements are not required.**

5 12. The district court has wide discretion in the determination of a reasonable fee due an
6 attorney. Logan, 131 Nev. at 266, 350 P.3d at 1143. The district court may employ
7 any method of fee determination which is rational. Ibid. For example, while the
8 contingency contract between a discharged attorney and client is not controlling, the
9 contract may still be considered by the court. See, Crockett & Myers v. Napier,
10 Fitzgerald & Kirby, LLP, 583 F.3d 1232, 1238 (9th Cir., 2009) (applying Nevada law
11 to analyze an attorney fee claim); citing, Gordon, 74 Nev. 115, 324 P.3d 234.

12 13. Detailed billing statements are not a requirement to find a reasonable fee amount. Katz
13 v. Incline Village General Improvement Dist., 2019 WL 6247743, 452 P.3d 411 (2019)
14 (unpublished) (while reliance on a redacted memorandum of work made evaluation of
15 the reasonable fee due difficult, the fee award was based on sufficient evidence);
16 O'Connell, 134 Nev. 550, 429 P.3d 664 (billing records are not required to support an
17 award of fees); Golightly, 125 Nev. 1039, 281 P.3d 1176 (Court's decision to reject
18 Golightly's lien adjudication request affirmed when Golightly claimed that quantum
19 meruit did not apply and when "Golightly refused to provide itemized billing
20 statements, an invoice of costs, an affidavit to show the hours worked or services
21 performed, **or any other evidence** as to the reasonable value of his services to support
22 his claim" (emphasis added)); Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837,
23 864, 124 P.2d 530, 548-49 (2005) (the Court may use any rational method to determine
24 a fee, including use of a "contingency fee"); Herbst v. Humana, 109 Nev. 586, 591, 781

26 ¹ Lach/LIL argued that O'Connell, 134 Nev. 550, 429 P.3d 664, can be distinguished on its facts
27 because the case did not address a lien adjudication. The Court declines to accept the argument. There is no
28 indication in Nevada law that there is a separate method for determination of the reasonableness of an attorney
fee that applies when a lien is adjudicated per NRS 18.015, and Lach/LIL does not provide such authority.

O'Connell addressed the reasonableness of an attorney fee under Brunzell and Nevada law, which is
the same issue presented to the Court herein.

P.2d 762, 765 (1989) (a detailed affidavit regarding work performed was sufficient to determine a reasonable fee without a detailed billing statement); Cooke v. Gove, 61 Nev. 55, 114 P.2d 87 (1941) (reasonableness of a fee award affirmed based upon testimony of attorney).

14. The Court concludes that the only baseline requirement for a finding of attorney fees in Nevada, including under an attorney lien, is that an attorney fee be reasonable under the Brunzell factors. O'Connell, 134 Nev. 550, 429 P.3d 664; Logan, 131 Nev. at 266, 350 P.3d at 1143; Brunzell, 85 Nev. 345, 455 P.2d 31.

D. Use of a contingency fee to determine the reasonable fee due EBIA under the charging lien is appropriate in this case.

15. A discharged attorney may recover a contingency fee as the measure of a reasonable fee due in quantum meruit under the appropriate circumstances. See, O'Connell, 134 Nev. at 557-563, 429 P.3d at 670-674.

16. A contingency fee is due the discharged attorney when the attorney has done the bulk of the work necessary to resolve the case and the attorney is discharged on the proverbial courthouse steps.

17. In this case, EBIA worked the Leyva file for three years and performed substantial work. In contrast, the file transferred to Lach/LIL on Friday mid-day and the case settled at mediation the following Tuesday. Per the disbursement sheet, Lach/LIL seeks a fee of more than \$260,000.00 for the few days Lach/LIL had the file.

18. The Court concludes that the reasonable fee due EBIA may be calculated as a percentage of the recovery using the contingency fee because EBIA did the overwhelming amount of the work on the case; and, because allowing Lach/LIL to charge a \$260,000 fee is unreasonable.

19. The Court concludes that EBIA is due a contingency fee as the measure of its reasonable fees due under the attorney lien, with an offset for the attorney lien of the Firm, and a reasonable fee amount to Lach/LIL for Lach's performance in negotiation.

///

1 **E. The Brunzell factors**

2 20. The Brunzell factors are:

- 3 1. the qualities of the advocate, including their training, education,
4 experience, professional standing, and skill;
- 5 2. the character of the work to be done, including its difficulty, intricacy,
6 importance, the time and skill required, the responsibility imposed, and
7 the prominence and character of the parties where they affect the
8 importance of the litigation;
- 9 3. the work actually performed by the lawyer, including the skill, time, and
10 attention given to the work; and,
- 11 4. the result, including whether the attorney was successful and the benefits
12 derived.

13 Brunzell, 85 Nev. 345, 455 P.2d 31.

14 21. The Court concludes that the Brunzell factors support a finding that the measure of the
15 reasonable fee due EBIA is based on the contingency fee, less an offset for the work of
16 Lach/LIL from Lach's work as a negotiator in the mediation and for payment of The
17 Firm's lien.

18 1. Qualities of the advocate

19 22. Brunzell expands on the "qualities of the advocate" factor and mentions such items as
20 training, skill, and education of the advocate. The qualifications of Eric Blank, the
21 founder of EBIA, were described in his declaration and testimony. In sum, Eric Blank
22 has been a successful litigator in Nevada for over two decades. He is a highly qualified
23 advocate. This Court also notes that Lach was admitted to the Nevada Bar in 2006, and
24 he has been actively practicing ever since. He has tried dozens of jury trials and
25 attended thousands of arbitrations and depositions. The Court concludes that both
26 Blank and Lach are qualified counsel under this factor and that the qualifications
27 support the finding of reasonableness of a contingency fee for EBIA.

28 2. The character of the work to be done

29 23. The character of the work to be done in the case was moderately difficult. The medical
30 treatment of Leyva was lengthy and complex. Prosecution of the case had to address
31 standard tort issues, a complicated damages case, and the nuances of first party

insurance law. However, Lach's performance as a negotiator in the mediation cannot be understated.

24. The Court concludes that the character of the work to be done in the case support the finding of reasonableness of a contingency fee for EBIA.

3. The work actually performed

25. The Court concludes that the work performed by EBIA was good. Important points of focus to successful resolution of the Leyva claim included a well-supported damages case and placing the first party carrier in a position where there was a risk of extra contractual damages – without which, there is less incentive for a first party carrier to pay at or near a large policy limit.

26. EBIA kept the medical file updated and compiled over 1,000 pages of medical records and bills. Early on, EBIA made a policy limit demand, and forced an intervention by QBE insurance. As the case matured EBIA served an offer of judgment just below the policy limit which created the potential for extra contractual damages against QBE. The Court concludes that EBIA did most of the work that was needed to provide Leyva with a successful result and that this factor supports the finding of reasonableness of a contingency fee for EBIA.

4. The results

27. The Court concludes that obtaining 91.5% of a \$1M UIM policy on a case where there was the potential to attack the relationship of medical care to the subject crash is a good result. However, the Court also finds that the lawyering that takes place in the mediation is extremely important to the overall outcome of the mediation. The Court concludes that this factor supports the finding of reasonableness of a contingency fee. Although Lach/LIL performed the mediation and obtained the result, both law firms benefit from finding that a contingency fee arrangement is appropriate here.

5. Other factors

28. The Brunzell factors are not exclusive. Determination of the fee due to a discharged contingency fee attorney presents unique issues. The reasonableness of a contingency

1 fee is not just based upon hours worked multiplied by an hourly rate. O'Connell, 134
2 Nev. at 559-60, 429 P.3d at 671-72. Many other factors are involved, including the risk
3 of taking a case on contingency, the length of time a contingency case may take before
4 receiving payment, if any payment is received, and fronting costs and paying salaries
5 and other costs attendant to pursuing a legal claim, plus the public policy of allowing
6 contingency fees to encourage attorneys to represent those who cannot afford an hourly
7 rate. Ibid, and cases cited therein; Crockett & Myers, 664 F.3d 282; and, ABA Formal
8 Opinion 94-389, "Contingent Fees".

9 29. The Court concludes that the unique contingency factors support the reasonableness of
10 finding EBIA is due a contingency. EBIA pursued the Leyva case for three years during
11 which time EBIA advanced costs, paid overhead and other expenses to pursue the case,
12 the recovery of which are all placed at risk under the contingency arrangement. Further,
13 EBIA was the third law firm to represent what presented as a difficult case. EBIA
14 accepted considerable risk in taking Leyva as a client. Finally, the risk posed to EBIA
15 was not present when the file transferred to Lach/LIL on the eve of mediation.

16 30. The Court concludes that the Brunzell factors support a finding that EBIA is due the
17 contracted for contingency as the measure of the reasonable fee it is due under the
18 attorney lien and NRS 18.015.

19 Accordingly, the Court concludes that EBIA is due the following as the measure of the
20 reasonable attorney fees under the charging lien:

21 The December 14, 2018, settlement of \$15,000.00 occurred prior to the filing of a
22 complaint, accordingly the fee is 1/3, or \$5,000.00.

23 The May 29, 2021, settlement of \$915,000.00 occurred after a complaint was filed,
24 accordingly the fee is 40%, or \$366,000.00.

25 The total fee due EBIA is \$371,000.00, minus offsets for fees found due to the Firm
26 and/or Lach/LIL.

27 **F. The fee due Lach/LIL**

28 31. The Court concludes that it must review the fee sought by Lach/LIL for reasonableness
as well as the EBIA fee. McDonald Carano Wilson, 131 Nev. at 908, 362 P.3d at 91

1 (“Finally the district court must ensure that McDonald Carano’s and Bourassa’s fee
2 agreements are not unreasonable”).

3 32. Based on the information provided regarding the background and experience of
4 Lach/LIL as a skilled litigator and negotiator and the additional preparation taken place
5 for the mediation, the Court concludes that the amount rate of \$122,000 is reasonable
6 for Lach/LIL’s efforts in the negotiation.

7 33. The the amount of work necessary to be done by LIL after being retained by Leyva
8 prior to mediation was also skillful, thought intensive, and difficult. This work included
9 extensive and long meetings with Leyva to go over the history of treatments and what
10 his doctors told him regarding what they believed was the cause of the treatments he
11 received after the subsequent car collision on October 23, 2018. EBIA did not retain
12 any doctor and/or expert in this case.

13 34. The knowledge, expertise, trial verdict results, and litigation experience of LIL was
14 also extremely important in the result given to Leyva. Lach’s years of experience in
15 litigating most definitely assisted Leyva in receiving the \$915,000.00 amount on the
16 day of mediation.

17 35. Accordingly, reasonable fees in the amount of \$122,000, are granted to Lach/LIL to be
18 offset against the fee award to EBIA.

19 **G. The fee due the Firm**

20 36. The Firm served a lien in the amount of \$6,112.50 for fees and costs. While the Firm
21 did not appear at the evidentiary hearing, no other interested party contested the amount
22 of the lien. Upon review, the Court concludes that the amount sought by the Firm is
23 not unreasonable for the case. Accordingly, the Court concludes that The Firm is due
24 its claimed lien amount in the sum of \$6,112.50, to be offset against the fee award to
25 EBIA.

26 **H. Costs due EBIA**

27 37. EBIA presented documented costs of \$3,863.12. The costs do not appear to be in
28 dispute. Accordingly, the Court concludes that EBIA is due its advanced costs in the

1 amount of \$3,863.12.

2 To the extent any finding of fact or conclusion of law is found to be mischaracterized
3 herein, the finding or conclusion should be considered as correctly termed.

4

5

Dated this 6th day of January, 2022

6



7

B19 79E 8678 EBF7
Erika Ballou
District Court Judge

8

9

10

11

12

13

14

15

CERTIFICATE OF SERVICE

16

17

I hereby certify that on the date e-filed, a copy of the foregoing was electronically served,
pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court
Electronic Filing Program.

18

19

If indicated below, a copy of the foregoing was also

20

☐ Mailed by the U.S. Postal Service, postage prepaid, to the proper parties listed below at their
last known address(es):

21

22

23

24

Chapri Wright

25

Chapri Wright
Judicial Executive Assistant

26

27

28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Moises Leyva, Plaintiff(s)

CASE NO: A-18-786537-C

7 vs.

DEPT. NO. Department 24

8 Sabreana Robinson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 1/6/2022

15 James Christensen

jim@jchristensenlaw.com

16 Jacqueline Martinez

Jacqueline@thefirm-lv.com

17 Eric Blank

service@ericblanklaw.com

18 Jennifer Lanahan

jennifer.lanahan@lewisbrisbois.com

19 Josh Aicklen

josh.aicklen@lewisbrisbois.com

20 Darren Lach

service@lachinjurylaw.com

21 David Fassett

david@davidfassetlaw.com

22 Brianna Fletcher

brianna@davidfassetlaw.com

23 Mark Brown

mark.j.brown@lewisbrisbois.com

24 Roshell Gist

Roshell.Gist@lewisbrisbois.com

25
26
27
28

1 If indicated below, a copy of the above mentioned filings were also served by mail
2 via United States Postal Service, postage prepaid, to the parties listed below at their last
3 known addresses on 1/7/2022

4 Jesselyn De Luna

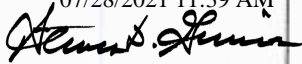
Wolfe & Wyman LLP

Attn: Jesselyn Marie Verdera De Luna

6757 Spencer Street

Las Vegas, NV, 89119

EXHIBIT 2


CLERK OF THE COURT

1 **MTN**
2 **DARREN J. LACH, ESQ.**
3 Nevada Bar No. 09606
4 **LACH INJURY LAW**
5 8870 S. Maryland Pkwy, Suite 135
6 Las Vegas, NV 89123
7 Telephone: (702) 505-4758
8 Facsimile: (702) 505-4768
9 E-mail: service@lachinjurylaw.com
10 *Attorney for Plaintiff*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **MOISES A. LEYVA**, an individual,
14
15 **Plaintiffs,**

16 **vs.**

17 **SABREANA ANN ROBINSON**, an
18 individual; DOES I through X, inclusive; and;
19 **ROE CORPORATIONS I through X,**
20 inclusive;

21 **Defendants.**

22 **QBE INSURANCE COMPANY,**
23 **Intervenor.**

CASE NO.: A-18-786537-C
DEPT NO.: 24

MOTION TO ADJUDICATE ERIC
BLANK INJURY ATTORNEYS'
NOTICE OF ATTORNEY LIEN ON
ORDER SHORTENING TIME

HEARING REQUESTED

24 Plaintiff **MOISES A. LEYVA**, by and through his attorney of record, **DARREN J. LACH**,
25 **ESQ. of LACH INJURY LAW**, and hereby files his Motion to Adjudicate Eric Blank Injury
26 Attorneys' Notice of Attorney Lien on an Order Shortening Time.

27 This Motion is made and based on the pleadings and papers filed herein, the attached
28 Memorandum of Points and Authorities, and any oral argument that the Court may wish to entertain
at the time and date set for hearing of this Motion, if any.

**AFFIDAVIT OF DARREN J. LACH, ESQ. FOR MOTION AND
ORDER SHORTENING TIME**

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

DARREN J. LACH, ESQ., being first duly sworn, under oath deposes and says:

1. I am an attorney duly licensed to practice law in the State of Nevada and an attorney with the law firm of LACH INJURY LAW.
2. I am personally familiar with the facts and circumstances surrounding this matter and am competent to testify hereto.
3. Prior counsel for Plaintiff, Eric Blank Injury Attorneys (hereinafter "EBIA"), has served a Notice of Attorney Lien with regards to the above-referenced case for the total amount of attorneys' fees of \$405,998.00 and for costs in the total amount of \$4,784.40. See a true, correct and authentic copy of Eric Blank Injury Attorneys' Notice of Attorney Lien dated June 28, 2021, attached hereto as Exhibit "1."
4. Plaintiff MOISES A. LEYVA (hereinafter "Plaintiff") terminated the retainer Plaintiff had with EBIA on June 25, 2021, in regards to the above-referenced case. See a true, correct and authentic copy of Plaintiff's Notice of Drop Letter to EBIA dated June 25, 2021, attached hereto as Exhibit "2."
5. On June 30, 2021, Plaintiff's counsel received a letter from James R. Christensen, P.C. (hereinafter "JRCPC") that he has been retained by EBIA to handle all matters relating to this case and any other client previously employed by EBIA and now retained by LACH INJURY LAW.
6. On July 1, 2021, LACH INJURY LAW retained the services of DAVID W. FASSETT, J.D., PLLC. (hereinafter "FASSETT") to handle communications between LACH INJURY LAW and James R. Christensen, P.C. regarding this case and all other previous clients' retained by LACH INJURY LAW.

- 1 7. Also on July 1, 2021, LACH INJURY LAW emailed EBIA, JRCPC and FASSETT the
2 Substitution of Counsel executed by Plaintiff and Plaintiff's counsel for EBIA's signature.
3 See a true, correct and authentic copy of the email sent to EBIA regarding Substitution of
4 Attorney for Plaintiff Leyva, attached hereto as Exhibit "3."
- 5 8. Since it was unknown by Plaintiff's counsel when EBIA would execute the Substitution of
6 Attorney, Plaintiff's counsel filed a Notice of Association of Counsel on July 2, 2021. See
7 Doc ID #25.
- 8 9. Due to not receiving any correspondence and/or communication regarding Plaintiff's request
9 to EBIA to execute the Substitution of Attorney previously sent on July 1, 2021, FASSETT
10 sent another correspondence to JRCPC on July 9, 2021, regarding the failure to EBIA to
11 execute the 1) Leyva Substitution of Attorney; 2) If the Substitution of Attorney was not
12 returned to Plaintiff's counsel by July 13, 2021, a Motion would be filed against EBIA and
13 attorney fees sought; and 3) "Attorney Blank's law firm is sending "lien" claims to client's
14 of Attorney Lach. These lien statements do not conform with Nevada law. Please provide a
15 detailed breakdown of each cost allegedly expended on each case. Further, please provide a
16 hourly breakdown on each case regarding either attorney or staff work done on the file. This
17 is required to be done in detail again as required by Nevada law." See a true, correct and
18 authentic copy of letter from FASSETT to JRCPC dated July 9, 2021, attached hereto as
19 Exhibit "4."
- 20 10. EBIA did not execute the Substitution of Attorney by July 13, 2021, but instead had JRCPC
21 send the signed Substitution of Attorney on July 14, 2021, to FASSETT. See a true, correct
22 and authentic copy of the Letter from JRCPC dated July 14, 2021, attached hereto as Exhibit
23 "5."
- 24 11. On July 14, 2021, Plaintiff's counsel efiled and eserved the Substitution of Attorney. See Doc
25 ID #26.
26
27
28

1 12. Since EBIA has sent a Notice of Attorney Lien that violates Nevada law to Intervenor's
2 counsel and Plaintiff; EBIA has failed to remedy the improper Notice of Attorney Lien has
3 previously requested by Plaintiff's counsel to EBIA; and EBIA's unsubstantiated Notice of
4 Attorney Lien for attorneys' fees of \$405,998.00 and costs of \$4,784.40, Plaintiff is unable to
5 resolve his case with other medical and non-medical lien holders at this time.

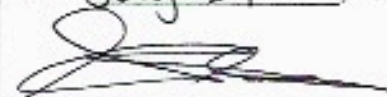
6 13. Non-medical lien holders have interest that is accruing daily to the detriment of Plaintiff and
7 EBIA's unsubstantiated Notice of Attorney Lien is precluding resolution of this case and
8 harming Plaintiff daily.

9 14. Should this Motion be heard in the ordinary course, a determination on this issue would
10 further damage Plaintiff financially. Therefore, the undersigned respectfully requests that this
11 matter be heard on an Order Shortening Time before the Court.

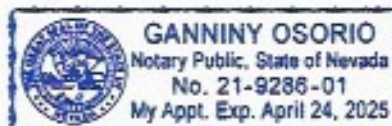
12 FURTHER AFFIANT SAYETH NAUGHT

13
14
15 
16 DARREN J. LACH, ESQ.

17 SUBSCRIBED AND SWORN to before
18 me on July 27th, 2021.

19 

20 NOTARY PUBLIC in and for
21 Clark County, Nevada



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

IT IS HEREBY ORDERED that the time for hearing of the above-entitled matter be heard on Order Shortening Time, and the same will be heard on the 3rd day of August, 2021, at the hour of 9:00 am

Dated this 28th day of July, 2021

Ennio Balbo

SUBMITTED BY:

By: /s/ Darren J. Lach
DARREN J. LACH, ESQ.
 Nevada Bar No. 09606
LACH INJURY LAW
 8870 S. Maryland Pkwy, Suite 135
 Las Vegas, Nevada 89123
Attorneys for Plaintiff

I.

STATEMENT OF FACTS

This action arises out of a car collision that occurred on or about December 31, 2016. On that day, Plaintiff was driving a 2016 2500 Laramie RAM Truck while in the course and scope of his employment and was traveling southbound on I-15 south of the I-15/Tropicana southbound off ramp in Las Vegas, Clark County, Nevada. Defendant Robinson driving directly behind Plaintiff's vehicle failed to slow down and rear-ended Plaintiff's vehicle. Plaintiff had a trailer on the back of

1 his truck and Defendant's vehicle struck the rear of Plaintiff's trailer. Plaintiff's work vehicle had
2 insurance and an UM/UIM policy through QBE Insurance Company. QBE Insurance Company
3 chose to Intervene in the case and dispute the value of the benefits owed under the UM/UIM
4 insurance policy contract. As a direct result of the said negligence and carelessness of the
5 Defendant, Plaintiff suffered medical bills and pain and suffering.
6

7 **II.**

8 **FACTS RELEVANT TO MOTION**

9 On June 25, 2021, Plaintiff served a Notice of Drop Letter to EBIA. *See* Exhibit "2." In
10 response to EBIA receiving Notice of Drop Letter, EBIA served Plaintiff, Plaintiff's new counsel,
11 and Intervenor's counsel with a Notice of Attorney Lien dated June 28, 2021, with an
12 unsubstantiated claim for attorney's fees of \$405,998.00 and an unsubstantiated claim for costs of
13 \$4,784.40. *See* Exhibit "1." EBIA was then sent an executed Substitution of Attorney by Plaintiff
14 to be executed and returned to Plaintiff's counsel on July 1, 2021. EBIA delayed and did not
15 execute the Substitution of Attorney until threatened with a Motion for Attorney's Fees to be file
16 by FASSETT until July 14, 2021. *See* Exhibit "5." This caused Plaintiff to incur additional and
17 unnecessary interest fees on non-medical liens for an additional thirteen (13) days to the detriment
18 of EBIA's former client, Plaintiff.
19

20
21 On July 9, 2021, FASSETT sent a letter to JRCPC regarding EBIA's failure to execute the
22 Substitution of Attorney and return to Plaintiff's counsel. *See* Exhibit "4." This letter to EBIA also
23 advised that "Attorney Blank's law firm is sending "lien" claims to client's of Attorney Lach.
24 These lien statements do not conform with Nevada law. Please provide a detailed breakdown of
25 each cost allegedly expended on each case. Further, please provide a hourly breakdown on each
26 case regarding either attorney or staff work done on the file. This is required to be done in detail
27
28

again as required by Nevada law.” *Id.* EBIA nor JRCPC has attempted to rectify, change and/or amend their unsubstantiated request for attorney’s fees and/or costs, to date. Since EBIA’s Notice of Attorney Lien violated established Nevada law and is prohibiting EBIA’s former client from resolving this case, Plaintiff now requests for this Court to invalidate EBIA’s June 28, 2021, Notice of Attorney Lien and allow Plaintiff to resolve his case without further detriment and financial costs being incurred daily.

III.

LEGAL ARGUMENT

A, EBIA’S NOTICE OF ATTORNEY LIEN IS UNSUBSTANTIATED AND IN VIOLATION OF ESTABLISHED NEVADA LAW; THEREFORE, PLAINTIFF REQUESTS EBIA’S NOTICE OF ATTORNEY LIEN TO BE INVALIDATED AND FOUND VOID WITH PREJUDICE.

This court and other courts have long recognized that it is within the inherent power of the court to govern the conduct of the members of the bar appearing before it. *See Ryan’s Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 279 P.3d 166 169 (2012), *citing State Bar of Nevada v. Claiborne*, 104 Nev. 115, 126, 756 P.2d 464, 471 (1988); *see, e.g., State ex rel. NSBA v. Krepela*, 259 Neb. 395, 610 N.W.2d 1, 3 (2000); *Beyers v. Richmond*, 594 Pa. 654, 937 A.2d 1082, 1091 (2007); *Swafford v. Harris*, 967 S.W.2d 319, 321 (Tenn.1998). NRS 18.015 states “[o]n motion filed by an attorney having a lien under this section, the attorney’s client or any party who has been served with notice of the lien, the court shall, after 5 days’ notice to all interested parties, adjudicate the rights of the attorney, client or other parties...” *See* NRS 18.015(6). Plaintiff and Plaintiff’s current counsel having been served with EBIA’s June 28, 2021, Notice of Attorney Lien hereby request this Court to adjudicate EBIA’s lien and invalidate, void the same with prejudice.

1 “In determining the amount of fees to award, the [district] court is not limited to one
2 specific approach; its analysis may begin with any method rationally designed to calculate a
3 reasonable amount, so long as the requested amount is reviewed in light of the *Brunzell* factors.”
4 *See Logan v. Abe*, 131 Nev. 260, 266, 350 P. 3d 1139, 1143 (2015) (internal quotation marks and
5 citation omitted). The *Brunzell* factors are:

6
7 (1) *the qualities of the advocate*: his ability, his training, education, experience,
8 professional standing and skill; (2) *the character of the work to be done*: its
9 difficulty, its intricacy, its importance, time and skill required, the responsibility
10 imposed and the prominence and character of the parties where they affect the
11 importance of the litigation; (3) *the work actually performed by the lawyer*: the
12 skill, time and attention given to the work [and]; (4) *the result*: whether the attorney
13 was successful and what benefits were derived

14 *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33-34 (1969). Therefore, a
15 quantum meruit analysis is appropriate in conjunction with the application of the *Brunzell* factors.
16 *See, e.g., Cooke v. Gove*, 61, Nev. 55, 61, 114 P.2d 87, 89 (1941) (awarding compensation for
17 legal services based on quantum meruit principles). Here, EBIA has failed to provide to Plaintiff
18 and/or any other counsel an itemized attorney time, staff time and/or any time spent on Plaintiff’s
19 case in order to fulfill its requirement of asserting reasonable attorney’s fees for work actually
20 completed by the lawyer on Plaintiff’s case. Since EBIA has failed to satisfy the *Brunzell* factors
21 of work actually performed by the lawyer, EBIA is not entitled to any attorney’s fees in this case
22 and the Notice of Attorney Lien sent on June 28, 2021, should be invalidated and void with
23 prejudice, so Plaintiff can finalize and resolve all medical and non-medical liens in his case.

24 ///

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

CONCLUSION

Based on the foregoing law and analysis, Plaintiff respectfully requests that the Court GRANT Plaintiff's Motion to Adjudicate Eric Blank Injury Attorneys' Notice of Attorney Lien on an Order Shortening Time and find the Attorney Lien to be invalidated and void with prejudice to allow Plaintiff to finalize and resolve all medical and non-medical liens in the case.

DATED this 27th day of July, 2021.

By: Darren J. Lach.
DARREN J. LACH, ESQ.
Nevada Bar No. 09606
LACH INJURY LAW
8870 S. Maryland Pkwy, Suite 135
Las Vegas, NV 89123
Attorney for Plaintiff

1
2 **CERTIFICATE OF SERVICE**

3 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I certify that on this date, I filed and
4 served the foregoing **MOTION TO ADJUDICATE ERIC BLANK INJURY ATTORNEYS'**
5 **NOTICE OF ATTORNEY LIEN ON ORDER SHORTENING TIME**, on the following
6 parties, by the selected means:
7

8
9 Mark J. Brown, Esq.
10 LEWIS BRISBOIS BISGAARD & SMITH
11 LLP
12 6385 S. Rainbow Blvd., #600
13 Las Vegas, NV 89118
Attorneys for Intervenor

☐ ODYSSEY NV E-FILE & E-SERVE
☐ FACSIMILE
☒ U.S. MAIL (Via Hand Delivery)

14 Eric R. Blank, Esq.
15 ERIC BLANK INJURY ATTORNEYS
16 7860 W. Sahara Ave, Ste 110
17 Las Vegas, Nevada 89117

☐ ODYSSEY NV E-FILE & E-SERVE
☐ FACSIMILE
☒ U.S. MAIL (Via Hand Delivery)

18
19 DATED this 27th day of July, 2021.

20 /s/ Ganniny Osorio
21 An Employee of Lach Injury Law
22
23
24
25
26
27
28

Exhibit 1



7860 W. Sahara Ave., Ste. 110, Las Vegas, NV 89117
Tel: (702) 222-2115 Fax: (702) 227-0615
<http://www.ericblanklaw.com>
contact@ericblanklaw.com

Eric R. Blank, Esq.

Brian P. Nestor, Esq.

Amanda L. Laub, Esq.

NOTICE OF ATTORNEY LIEN

June 28, 2021

VIA FACSIMILE: 702-505-4768
And CERTIFIED US MAIL: 70181830000080905163

Moises Leyva
c/o Lach Injury Law
8870 S. Maryland Parkway, Suite 135
Las Vegas, NV 89123

RE: Motor Vehicle Accident on 12/31/2016

Dear Mr. Leyva,

Please be advised that Eric Blank Injury Attorneys was previously retained in the above-referenced matter. Pursuant to NRS 18.015, this letter serves as notice that Eric Blank Injury Attorneys is asserting a lien against the above-referenced matter in the amounts of:

Attorney's Fees: \$405,998.00

Costs: \$4,784.40

Our office understands the complex nature of litigation. Therefore, in the interest of furthering a speedy and amicable resolution to this case, our office will release our file relating to this case once we have received payment for our costs in the amount of \$4,784.40.

Please note that the payment of \$4,784.40 does NOT resolve your obligation to pay our Attorney's Fees Lien in the amount of \$405,998.00.

Please present this letter to your attorney so that Eric Blank Injury Attorneys may be included as a payee on any settlement drafts in the above-referenced matter.

Sincerely,

Eric R. Blank

Eric R. Blank, Esq.

ERB:mf

Exhibit 2



8870 S. Maryland Pkwy
Suite 135
Las Vegas, NV 89123

Darren J. Lach, Esq.

P: (702) 505-4758

F: (702) 505-4768

www.lachinjurylaw.com

June 25, 2021

Via Email: service@ericblanklaw.com

Eric R. Blank, Esq.

ERIC BLANK INJURY ATTORNEYS

7860 W. Sahara Ave., Suite 110

Las Vegas, NV 89117

Re: Moises A. Leyva v. Sabreana A. Robinson/QBE Insurance Company:
Clark County Case No.: A-18-786537
Our Client: Moises A. Leyva

Dear Mr. Blank,

Please be advised that your former client, Moises A. Leyva has retained my firm to take over the handling of the above-referenced matter. **Please stop all work on the case immediately.** Our client has also requested that you do not contact him about this matter. Please instead direct any questions you may have about this case to my office.

Please immediately provide my office with any original evidence and with copies of all documents and photographs in your file related to this case. If you intend to assert a lien for attorney's fees and/or costs, please inform me as to the amount you claim and provide us with a detailed basis for the lien as required by Nevada law and the Nevada Revised Statutes. Your office will be paid any amount to which you are entitled at the conclusion of this case.

Sincerely,

/s/ Darren J. Lach

DARREN J. LACH, ESQ.

I have retained LACH INJURY LAW to take over the handling of my above-referenced personal injury case. Please immediately turn over the entire contents of my file with your office to LACH INJURY LAW. Please do not contact me directly about this matter.

Moises Leyva

46EDFC4770CA4D7...
MOISES A. LEYVA

Exhibit 3

Subject: Substitution of Attorney for Moises Leyva Case
Date: Thursday, July 1, 2021 at 7:41:52 PM Pacific Daylight Time
From: Darren Lach
To: service@ericblanklaw.com
CC: James R. Christensen, david@davidfassetlaw.com, brianna@davidfassetlaw.com
Attachments: image001.jpg, Leyva.Substitution.of.Atty.pdf

Please find attached the executed Substitution of Attorney for client, Moises Leyva. Please execute the same and return the executed documents to our office via email at service@lachinjurylaw.com.

Should you have any questions or concerns regarding the above, please feel free to contact our office. Thank you.

Darren J. Lach, Esq.

Injury Lawyer



8870 S. Maryland Pkwy, Suite 135

Las Vegas, NV 89123

P: (702) 505-4758

F: (702) 505-4768

E: darren@lachinjurylaw.com

www.lachinjurylaw.com

***** CONFIDENTIAL INFORMATION *****

THIS EMAIL TRANSMISSION IS INTENDED FOR THE EXCLUSIVE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED, AND MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION THAT IS PROTECTED BY THE ELECTRONIC COMMUNICATIONS AND PRIVACY ACT (18 USC § [2510-2521](#)), THE ELECTRONIC COMMUNICATIONS PRIVACY ACT, 18 USC § 2701 ET.SEQ., AND NRS §§ 179.425-170.450 AND 205.320, AND MAY ALSO BE PROTECTED UNDER THE ATTORNEY CLIENT, WORK PRODUCT OR OTHER PRIVILEGE. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS COMMUNICATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE ([702.505.4758](tel:702.505.4758)), FAX ([702.505-4768](tel:702.505.4768)), OR E-MAIL, AND DELETE THE ORIGINAL MESSAGE.

1 **SUBT**

2 **DARREN J. LACH, ESQ.**

3 Nevada Bar No. 009606

4 **LACH INJURY LAW**

5 8870 S. Maryland Pkwy, Suite 135

6 Las Vegas, NV 89123

7 Telephone: (702) 505-4758

8 Facsimile: (702) 505-4768

9 E-mail: service@lachinjurylaw.com

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 MOISES A. LEYVA an individual,

14 Plaintiff,

15 vs.

16 SABREANA ANN ROBINSON, an
17 individual; DOES 1 through X, inclusive; and
18 ROE CORPORATIONS I through X,
19 inclusive,

20 Defendants.

21 QBE INSURANCE COMPANY,

22 Intervenor.

CASE NO.: A-18-786537-C

DEPT NO.: 29

SUBSTITUTION OF COUNSEL

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

SUBSTITUTION OF COUNSEL

Plaintiff MOISES A. LEYVA, hereby substitutes DARREN J. LACH, ESQ. of LACH
INJURY LAW, 8870 S. Maryland Pkwy., Suite 135, Las Vegas, NV 89123, (702) 505-4758 as
attorney of record in place and stead of ERIC R. BLANK, ESQ. of Eric Blank Injury Attorneys,
7860 W. Sahara Ave, Suite 110, Las Vegas, NV 89117, (702) 222-2115.

DATED: 6/29/21

Moises A. Leyva
MOISES A. LEYVA

I hereby agree and consent to the above and foregoing substitution with respect to the
above-entitled action.

DATED: _____

ERIC R. BLANK, ESQ.

///

///

///

///

///

///

///

///

///

///


///

///

///

1 I am duly admitted to practice in the State of Nevada and having been retained by MOISES
2 A. LEYVA, accept the above substitution. No delay of discovery, trial or any hearing will result
3 from this substitution.

4
5 DATED: 6/29/21


DARREN J. LACH, ESQ.

6
7 Submitted by:

8 **LACH INJURY LAW**

9
10 
11 **DARREN J. LACH, ESQ.**

12 Nevada Bar No. 009606

13 8870 S. Maryland Pkwy, Suite 135

14 Las Vegas, NV 89123

15 Telephone: (702) 505-4758

16 Facsimile: (702) 505-4768

17 E-mail: service@lachinjurylaw.com

18 *Attorneys for Plaintiff*
19
20
21
22
23
24
25
26
27
28

Exhibit 4

DAVID W. FASSETT, J.D., PLLC.

531 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

Attorney at Law

TELEPHONE (702) 384-2495
FACSIMILE (702) 834-7133

TRIAL ATTORNEY
CIVIL LITIGATION

July 9, 2021

Via Facsimile & Email Only:

702-272-0415/ jim@jchristensenlaw.com

James R. Christensen, Esq.
601 South 6th Street
Las Vegas, Nevada 89101

Re: My Client: Darren J. Lach, Esq.

Dear Attorney Christensen:

Please accept this correspondence in reply to your letter of July 2, 2021, our two phone conversations and other emails.

Dealing first with the two concerns you raised yesterday; Client Joshua Garber is a personal friend of Attorney Lach and Attorney Lach attempted to resolve a disputed collection case for him. Attorney Lach has informed Mr. Garber that there is nothing more that Attorney Lach can do on his collection case and he will either need to seek additional counsel or handle himself. EBIA is free to send a drop letter to Mr. Garber at the following address: 3913 Moonshine Falls Ave., North Las Vegas, NV 89085

Second, you inquired whether Attorney Lach had taken any files or “downloaded” information from the computer system regarding clients who had decided to have Attorney Lach represent them. The answer to this inquires remains “No”.

As we have informed you on at least two separate occasions Attorney Lach had a detailed discussion with the Nevada State Bar before his departure from the Blank Law Firm. Attorney Lach believes he followed the State Bar perimeters and adhered to all rules and applicable law.

Attorney Lach does not wish to be a party to a “joint letter” regarding other clients he may have represented while working at the Blank Law Firm. It is my understanding the above responds to the concerns you have expressed regarding this matter.

As discussed yesterday, my client also has concerns which require **immediate** attention;

1. Please have your client sign the Substitution of Attorney regarding the Leyva case forthwith. If not done a motion will be filed with the Court on Tuesday, July 13, 2021. We will seek attorney fees for having to file such a ridiculous motion.
2. There is a serious issue developing regarding the holding of Attorney Lach’s compensation. Further, deductions from that compensation are lawfully inappropriate. It is anticipated the compensation will be paid forthwith or we demand a reason why it is not being paid.

3. Attorney Blank's law firm is sending "lien" claims to client's of Attorney Lach. These lien statements do not conform with Nevada law. Please provide a detailed breakdown of each cost allegedly expended on each case. Further, please provide a hourly breakdown on each case regarding either attorney or staff work done on the file. This is required to be done in detail again as required by Nevada law.

In conclusion, our position remains that a client should never be inconvenienced due to a potential attorney dispute. As you have been informed on two occasions my client is willing to resolve this matter and we continually wait for what your client wishes in order to resolve this matter.

Sincerely,

/s/ David W. Fassett

DAVID W. FASSETT, ESQ.

DWF:blw

Exhibit 5

James R. Christensen Esq.
601 S. 6th Street
Las Vegas, NV 89101
Ph: (702)272-0406 Fax: (702)272-0415
E-mail: jim@jchristensenlaw.com

Via Email/USPS/Facsimile

July 14, 2021

David W. Fassett
David W. Fassett, J.D., PLLC.
530 S. 7th Street
Las Vegas, NV 89101
david@davidfassettlaw.com
(702) 834-7133

Re: My client: Eric Blank Injury Attorneys
Your client: Darren J. Lach, Esq.

Dear Mr. Fassett:

The signed substitution of counsel in the *Leyva* case is attached. The substitution of counsel is provided to avoid undue prejudice to the client. EBIA does not waive any claims, positions, or rights by virtue of the substitution, including but not limited to, claims for breach of fiduciary duty and interference with existing contractual rights, the position that Lach forfeited fees, and the right to seek the full EBIA contingency fee via adjudication.

I ask again for a status on the *Leyva* matter. Please respond.

Sincerely,

JAMES R. CHRISTENSEN, P.C.

/s/ James R. Christensen

James R. Christensen Esq.

cc: client

1 **SUBT**

2 **DARREN J. LACH, ESQ.**

3 Nevada Bar No. 009606

4 **LACH INJURY LAW**

5 8870 S. Maryland Pkwy, Suite 135

6 Las Vegas, NV 89123

7 Telephone: (702) 505-4758

8 Facsimile: (702) 505-4768

9 E-mail: service@lachinjurylaw.com

10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 MOISES A. LEYVA an individual,

14 Plaintiff,

15 vs.

16 SABREANA ANN ROBINSON, an
17 individual; DOES 1 through X, inclusive; and
18 ROE CORPORATIONS I through X,
19 inclusive,

20 Defendants.

21 QBE INSURANCE COMPANY,

22 Intervenor.

CASE NO.: A-18-786537-C

DEPT NO.: 29

SUBSTITUTION OF COUNSEL

23 ///

24 ///

25 ///

26 ///

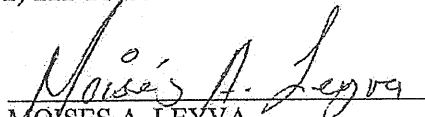
27 ///

28 ///

SUBSTITUTION OF COUNSEL

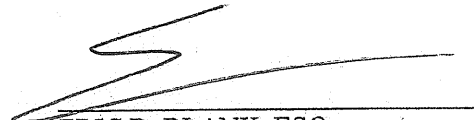
Plaintiff MOISES A. LEYVA, hereby substitutes DARREN J. LACH, ESQ. of LACH
INJURY LAW, 8870 S. Maryland Pkwy., Suite 135, Las Vegas, NV 89123, (702) 505-4758 as
attorney of record in place and stead of ERIC R. BLANK, ESQ. of Eric Blank Injury Attorneys,
7860 W. Sahara Ave, Suite 110, Las Vegas, NV 89117, (702) 222-2115.

DATED: 6/29/21


MOISES A. LEYVA

I hereby agree and consent to the above and foregoing substitution with respect to the
above-entitled action.

DATED: 7/12/2021


ERIC R. BLANK, ESQ.

///

///

///

///

///

///

///

///

///

///

///

///

///

1 I am duly admitted to practice in the State of Nevada and having been retained by MOISES
2 A. LEYVA, accept the above substitution. No delay of discovery, trial or any hearing will result
3 from this substitution.

4
5 DATED: 6/29/21


6
7
8
9
10
11 DARREN J. LACH, ESQ.

Submitted by:

LACH INJURY LAW


11 DARREN J. LACH, ESQ.
12 Nevada Bar No. 009606
13 8870 S. Maryland Pkwy, Suite 135
14 Las Vegas, NV 89123
15 Telephone: (702) 505-4758
16 Facsimile: (702) 505-4768
17 E-mail: service@lachinjurylaw.com
18 *Attorneys for Plaintiff*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Moises Leyva, Plaintiff(s)

CASE NO: A-18-786537-C

7 vs.

DEPT. NO. Department 24

8 Sabreana Robinson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/28/2021

15 Susan Kingsbury

susan.kingsbury@lewisbrisbois.com

16 Eric Blank

service@ericblanklaw.com

17 Jennifer Lanahan

jennifer.lanahan@lewisbrisbois.com

18 Josh Aicklen

josh.aicklen@lewisbrisbois.com

19 Mark Brown

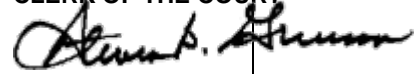
mark.j.brown@lewisbrisbois.com

20 Darren Lach

service@lachinjurylaw.com

21
22
23
24
25
26
27
28

EXHIBIT 3



NEOJ
James R. Christensen Esq.
Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for EBIA

Eighth Judicial District Court

District of Nevada

MOISES A. LEYVA, individually,

Plaintiffs,

vs.

SABREANA ANN ROBINSON; and
DOES 1 through 10 and ROE entities
1 through 10,

Defendants.

Case No.: A-18-786537-C
Dept. No.: 24

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR
RECONSIDERATION**

Date of Hearing: N/A
Time of Hearing: N/A

1 PLEASE TAKE NOTICE an order granting EBIA's motion for
2 reconsideration was entered on the docket on the 22nd day of March 2022.

3 A true and correct copy of the file-stamped order is attached hereto.

4 DATED this 23rd day of March 2022.

6 /s/ James R. Christensen

7 James R. Christensen Esq.
8 Nevada Bar No. 3861
9 James R. Christensen PC
601 S. Sixth Street
Las Vegas NV 89101
10 (702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
11 Attorney for EBIA

12 **CERTIFICATE OF SERVICE**

13 I CERTIFY SERVICE of the foregoing NOTICE OF ENTRY OF
14 ORDER was made by electronic service (via Odyssey) this 23rd day of
15 March, 2022, to all parties currently shown on the Court's E-Service List.

17 /s/ Dawn Christensen

18 an employee of
JAMES R. CHRISTENSEN, ESQ.
19 -

James R. Christensen Esq.
Nevada Bar No. 3861
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101
(702) 272-0406
(702) 272-0415 fax
jim@jchristensenlaw.com
Attorney for EBIA

Eighth Judicial District Court

District of Nevada

MOISES A. LEYVA, individually,

Plaintiffs,

vs.

SABREANA ANN ROBINSON; and
DOES 1 through 10 and ROE entities
1 through 10,

Defendants.

Case No.: A-18-786537-C

Dept. No.: 24

**ORDER GRANTING MOTION FOR
RECONSIDERATION**

Date of Hearing: 2.24.22

Time of Hearing: chambers

Eric Blank Injury Attorneys (EBIA) filed a motion for reconsideration on January 10, 2022. The motion came before the Court on February 24, 2022, on the chambers calendar without oral argument. The Court, having reviewed the papers and pleadings on file, and for good cause in the premises, finds as follows:

1 IT IS HEREBY ORDERED the motion for reconsideration is
2 GRANTED due to evidence of the initial settlement offer by QBE Insurance
3 that was previously unavailable at the Evidentiary Hearing held on October
4 13, 2021.

5
6 FURTHER FINDS EDCR 2.24(a) states, “[N]o motions once heard
7 and disposed of may be renewed in the same cause, nor may the same
8 matters therein embraced be reheard, unless by leave of the court granted
9 upon motion therefor, after notice of such motion to the adverse parties.” A
10 district court may reconsider a previously decided issue if substantially
11 different evidence is subsequently introduced or the decision is clearly
12 erroneous. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga*
13 *& Wirth, Ltd.*, 113 Nev. 737, 941 P.2d 486 (1997). Only in very rare
14 instances in which new issues of fact or law are raised supporting a ruling
15 contrary to the ruling already reached should a motion for rehearing be
16 granted. *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246
17 (1976). Points or contentions not raised in the original hearing cannot be
18 maintained or considered on rehearing. *Achrem v. Expressway Plaza Ltd.*,
19 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).
20
21
22
23
24
25

1 In requesting reconsideration, EBIA proffers substantially different
2 evidence from that which was previously presented to the Court. EBIA
3 presented evidence that the QBE insurance adjuster Ms. Kimberly Kotson,
4 confirmed that QBE had not made an offer prior to mediation, but made an
5 initial offer at mediation of \$750,000.00. The new evidence demonstrates
6 that Mr. Lach did not contribute more than a marginal increase to QBE's
7 initial offer of \$750,000.00, therefore, the Court finds that it is not
8 appropriate for Mr. Lach to receive a contingency fee.
9

10
11 The district court has wide discretion in the determination of a
12 reasonable fee due an attorney so long as it is rational. See, *Logan v. Abe*,
13 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). Mr. Lach is entitled to an
14 award of attorney's fees based upon the locally customary fees that
15 attorney charge for similar work. *Gonzales v. Campbell & Williams*, 2021
16 WL 4988154,497 P.3d 624 *4 (Nev. 2021)(unpublished). Mr. Lach testified
17 at the Evidentiary Hearing that \$750.00 an hour was an appropriate rate.
18 The Court finds that Mr. Lach may have reasonably worked on this matter
19
20
21
22
23
24
25

24 hours on the days of June 26, 27, 28, and 29, entitling him to a
reasonable attorney fee of \$17,760.00 under quantum meruit principles.

DATED this _____ day of _____ 2022.

Dated this 22nd day of March, 2022



DISTRICT COURT JUDGE

9AA 183 AB58 65AF

Erika Ballou

District Court Judge

Submitted by:

/s/ James R. Christensen

James R. Christensen Esq.

Nevada Bar No. 3861

James R. Christensen PC

601 S. Sixth Street

Las Vegas NV 89101

(702) 272-0406

(702) 272-0415 fax

jim@jchristensenlaw.com

Attorney for EBIA

Approved as to form ~~and content~~:

/s/ David W. Fassett

DAVID W. FASSETT, ESQ.

Nevada Bar No. 06968

LAW OFFICE OF DAVID W. FASSETT

3333 E. Serene Ave., #120

Henderson, NV 89074

Telephone: (702) 384-2495

Facsimile: (702) 834-7133

E-mail: david@davidfassettlaw.com

Attorney for LIL, LLC

Re: Leyva proposed order

David Fassett <david@davidfassettlaw.com>

Tue 3/22/2022 1:33 PM

To: James R. Christensen <jim@jchristensenlaw.com>

Mr. Christensen,

You have my authorization to sign the order on by behalf as TO FORM ONLY, not as to content.

Thank you.

On Mon, Mar 21, 2022 at 9:44 AM James R. Christensen <jim@jchristensenlaw.com> wrote:

Mr. Fassett,

A proposed order is attached. If acceptable to form and content, please reply to this email with approval to use your electronic signature.

If you have proposed edits, please provide the edits.

Please respond by this Wednesday, my office will submit the order to the Court this Thursday.

James R. Christensen
Law Office of James R. Christensen PC
601 S. 6th St.
Las Vegas NV 89101
(702) 272-0406

--

David W. Fassett, Esq.
3333 E. Serene Ave., Suite 120
Henderson, Nevada 89074
T: 702-384-2495
F: 702-834-7133

NOTICE: The above information is for the sole use of the intended recipient and contains information belonging to David W. Fassett, J.D., PLLC., which is confidential and may be legally privileged. If you are not the intended recipient, or believe that you have received this communication in error, you are hereby notified that any printing, copying, distribution, use or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please immediately (1) notify the sender by reply e-mail; (2) call our office at (702) 384-2495 to inform the sender of the error; and (3) destroy all copies of the original message, including ones on your computer system and all drives.

In accordance with Internal Revenue Service Circular 230, we advise you that if this e-mail contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Moises Leyva, Plaintiff(s)

CASE NO: A-18-786537-C

7 vs.

DEPT. NO. Department 24

8 Sabreana Robinson, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/22/2022

15 Maceo Butler

Maceo.Butler@lewisbrisbois.com

16 James Christensen

jim@jchristensenlaw.com

17 Jacqueline Martinez

Jacqueline@thefirm-lv.com

18 Eric Blank

service@ericblanklaw.com

19 Adrina Harris

Adrina.Harris@lewisbrisbois.com

20 Jesselyn De Luna

jesselyn.deluna@lewisbrisbois.com

21 Josh Aicklen

josh.aicklen@lewisbrisbois.com

22 Pamela Klausky

Pamela.Klausky@lewisbrisbois.com

23 Darren Lach

service@lachinjurylaw.com

24 David Fassett

david@davidfassettlaw.com

25 Brianna Fletcher

brianna@davidfassettlaw.com

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

John Boyden	John.Boyden@lewisbrisbois.com
Louise Ligouri	Louise.Ligouri@lewisbrisbois.com
Sherie Morrill	Sherie.Morrill@lewisbrisbois.com
Tracy Girdwood	Tracy.Girdwood@lewisbrisobis.com
Maureen Dwelley	Maureen.Dwelley@lewisbrisobis.com