

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

2  
3 **MOISES A. LEYVA; and DARREN J.**  
4 **LACH, ESQ.**

5                   Appellants,

6 vs.

7 **QBE INSURANCE COMPANY; and,**  
8 **ERIC BLANK INJURY ATTORNEYS,**

9                   Respondents.

Supreme Court Case No. 84627

Electronically Filed  
(District Court A-18-78173-2022 03:18 p.m.

Elizabeth A. Brown  
Clerk of Supreme Court

10                   **APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE**

11  
12                   HONE LAW

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17                   *Attorneys for Appellants*



1 Appellants Moises A. Leyva (“Leyva”) and Darren J. Lach, Esq. (“Lach”  
2 and, collectively, “Appellants”) by and through undersigned counsel, hereby  
3 respond to this Court’s July 19, 2022, Order to Show Cause (the “Order”). This  
4 response is based upon the following memorandum of points and authorities, the  
5 pleadings and papers on file herein, and any oral argument allowed by the Court.

## 6 MEMORANDUM OF POINTS AND AUTHORITIES

### 7 I. INTRODUCTION

8 After an evidentiary hearing on an attorneys’ fee lien, the district court issued  
9 a decision that was favorable to Appellants. The district court then erred when it  
10 granted a motion for reconsideration by Respondent Eric Blank Injury Attorneys  
11 (“Respondent”) based upon, *inter alia*, inadmissible evidence and arguments which  
12 could have been made at the initial evidentiary hearing. The district court added to  
13 the confusion because its initial decision was titled as an order but docketed as a  
14 judgment, leading Appellants to pursue a motion for reconsideration and  
15 simultaneously to appeal to protect their rights.

### 16 II. STATEMENT OF RELEVANT FACTS

17 Defendant Sabreana Ann Robinson (“Robinson”) was at fault in a vehicular  
18 collision that injured Leyva. Leyva agreed to accept her insurance policy’s minimal  
19 liability limit in exchange for not executing any judgment against her. **Exhibit 1**, at  
20 Finding of Fact (“FF”) ¶¶ 15-16. Leyva sued Robinson, but the real issue was  
21 Leyva’s claim for uninsured or underinsured motorist compensation on the policy  
22 held by the owner of the vehicle he had been driving. QBE Insurance Company  
23 (“QBE”) thus filed a complaint in intervention. At mediation on June 29, 2021,  
24 Lach secured a settlement for \$915,000.00 out of a policy limit of \$1,000,000.00.  
25 *Id.* at FF ¶ 34. Consequently, all the claims in the complaint and the complaint in  
26 intervention have been resolved.

27 Attorney’s fees are the remaining issue. Before June 25, 2021, Respondent  
28 represented Leyva, with Lach holding primary responsibility. *Id.* at FF ¶¶ 6, 8. On



1 June 25, 2021, Lach left Respondent's employment, and Leyva transferred his case  
2 to Lach's new legal practice. *Id.* at FF ¶¶ 27, 31. Respondent issued a notice of an  
3 attorney-fee lien, and Appellants filed a motion requesting the court to adjudicate  
4 that lien. The district court held an evidentiary hearing on the issue. *Id.* at FF ¶ 32.  
5 On January 6, 2022, the district court issued its written decision, which was  
6 favorable to Appellants.

7 Respondent then filed a motion for reconsideration. Respondent newly  
8 argued that a QBE adjuster said in an email communication that a QBE  
9 representative at the mediation had presented an initial offer \$750,000.00. **Exhibit**  
10 **2**, at 3. On March 22, 2022, without holding a supplemental evidentiary hearing and  
11 thus without giving Appellants the opportunity to cross-examine the QBE  
12 representative, the district court granted Respondent's motion for reconsideration  
13 based upon that hearsay. *Id.* at 2-4. The district court reduced Lach's portion of the  
14 attorney's fee by approximately 85.4 percent. *Id.* at 4. Notice of entry of that order  
15 was filed on March 23, 2022.

16 Appellants filed a motion for reconsideration on April 6, 2022. Appellants  
17 also filed a notice of appeal on April 22, 2022.

### 18 **III. LEGAL ARGUMENT**

#### 19 **A. All the issues have been resolved in the district court**

20 Although the Court is correct that the challenged order does not resolve the  
21 issues presented in the complaint or the complaint in intervention, the challenged  
22 order notes that those issues have been resolved. Robinson always was a nominal  
23 defendant. Even before the action commenced in the district court, Appellant  
24 Moises Leyva ("Leyva") accepted a small payment from her liability insurance  
25 carrier in exchange for not executing any judgment against her. Leyva sued her only  
26 to make a claim against QBE for uninsured or underinsured motorist coverage.  
27 Leyva and QBE then resolved their issues in mediation. The only remaining issue  
28 was adjudication of Respondent's attorneys' fee lien.



1           **B.     The district court’s docketing of the January 6, 2022, decision has**  
2           **created confusion**

3           The district court resolved the issue of the attorneys’ fee lien in a written  
4 decision on January 6, 2022. The district court *titled* the decision, “Findings of Fact,  
5 Conclusions of Law, and Order.” However, as shown on page 4 of the district  
6 court’s docket, the district court *docketed* the decision as “Findings of Fact,  
7 Conclusions of Law, and Judgment.” **Exhibit 3.** On March 22, 2022, the district  
8 court erroneously granted Respondent’s motion for reconsideration, and the notice  
9 of entry of order was issued on March 23, 2022. Appellants filed a motion for  
10 reconsideration on April 6, 2022. On June 2, 2022, the district court stayed any  
11 determination of the Appellants’ motion for reconsideration.

12           **C.     Appellants acted to protect their rights**

13           Appellants were faced with a dilemma as a result of the district court’s  
14 actions. If the January 6, 2022, decision is, as *titled*, not a final judgment, then the  
15 March 22, 2022, order granting Respondent’s motion for reconsideration is not an  
16 amendment to a final judgment. The time to appeal will not have started, and  
17 Appellants can litigate their April 6, 2022, motion for reconsideration without any  
18 effect on the timeliness of any possible future appeal.

19           On the other hand, if the January 6, 2022, decision is, as *docketed*, a final  
20 judgment, then the March 22, 2022, order granting the motion for reconsideration is  
21 an amendment of the judgment. That possibility exists because all the issues had  
22 been resolved even if the January 6, 2022, decision did not itself resolve the issues  
23 in the complaint or the complaint in intervention. The time to appeal then would  
24 have started with the issuance of the notice of entry of order on March 23, 2022.  
25 NRAP 4(a)(1). Appellants filed their motion for reconsideration on April 6, 2022.  
26 However, a motion for reconsideration is not one of the four motions that tolls the  
27 time to appeal until its disposal by written order. *See* NRAP 4(a)(4). *See also*  
28 *Chapman Industries v. United Ins. Co. of America*, 110 Nev. 454, 458, 874 P.2d



1 739, 741 (1994). If Appellants litigated their motion for reconsideration to its  
2 conclusion, and if that conclusion was unsuccessful, and if that motion for  
3 reconsideration would not be construed as a motion to alter or amend the judgment  
4 under NRCP 59, then the time to appeal would have expired long before decision  
5 on the motion for reconsideration.

6 Out of an abundance of caution, Appellants thus filed their notice of appeal  
7 on April 22, 2022. Given the way that the district court docketed its decision,  
8 Appellants did not want to learn that they used the incorrect procedure long after  
9 the time to use the correct procedure had expired.

10 **D. Appellants defer to the Court's determination**

11 As noted above, Appellants filed a motion for reconsideration, which the  
12 district court has stayed. If the Court determines that dismissal of the appeal is  
13 appropriate under the circumstances, then Appellants respectfully request that the  
14 Court direct the district court to proceed with consideration and a hearing on  
15 Appellant's pending motion for reconsideration, so that the district court may  
16 correct its own errors. However, if this Court determines that it has jurisdiction,  
17 then Appellants will proceed with the appeal, and this Court may correct the district  
18 court's errors.

19 **IV. CONCLUSION**

20 For the foregoing reasons, Appellants respectfully defer to this Court's  
21 determination whether it has jurisdiction to consider the appeal.

22 Dated this 17th day of August 2022.

23 HONE LAW



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28 *Attorneys for Appellants*



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 17th day of August 2022, I submitted the  
3 foregoing APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE for filing  
4 and service via the Court's eFlex electronic filing system.

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6 Karen M. Morrow, employee of HONE LAW  
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# **EXHIBIT 1**

1 **FFCL**

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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,

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

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26 <sup>1</sup> 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

          23. The character of the work to be done in the case was moderately difficult. The medical  
treatment of Leyva was lengthy and complex. Prosecution of the case had to address  
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



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B19 79E 8678 EBF7  
Erika Ballou  
District Court Judge

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**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

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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

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# **EXHIBIT 2**

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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

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Attorney for EBIA

Approved as to form ~~and content~~:

/s/ David W. Fassett

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Attorney for LIL, LLC

# **EXHIBIT 3**

# CASE SUMMARY

CASE NO. A-18-786537-C

10/22/2021	 Supplement <i>[36] Supplement to Evidence Presented by Eric Blank Injury Attorneys at the Evidentiary Hearing</i>
01/06/2022	 Findings of Fact, Conclusions of Law and Judgment <i>[37] EBIA v. LIL FFCL - Final</i>
01/14/2022	 Notice of Appearance Party: Intervenor QBE Insurance Company <i>[38] Notice of Appearance and Change of Service Address</i>
01/18/2022	 Recorders Transcript of Hearing <i>[39] Transcript of Proceedings Evidentiary Hearing 10.13.21</i>
01/19/2022	 Notice of Entry of Order Filed By: Intervenor QBE Insurance Company <i>[40] Notice of Entry of Order</i>
01/20/2022	 Motion to Reconsider <i>[41] Eric Blank Injury Attorneys' Motion to Reconsideration</i>
01/21/2022	 Clerk's Notice of Hearing <i>[42] Notice of Hearing</i>
02/04/2022	 Opposition to Motion Filed By: Plaintiff Leyva, Moises A. <i>[43] Lach Injury Law's Opposition to Eric Blank Injury Attorney's Motion for Reconsideration and Request for Sanctions</i>
02/17/2022	 Response Filed by: Intervenor QBE Insurance Company <i>[44] QBE's Response to Lach Injury Law's Opposition to Eric Plank Injury Attorneys' Motion for Reconsideration and Request for Sanctions</i>
02/17/2022	 Reply in Support <i>[45] Eric Blank Injury Attorneys' Reply to LLach Injury Law's Opposition to Motion for Reconsideration</i>
03/22/2022	 Order Granting Motion <i>[46] Order Granting Motion for Reconsideration</i>
03/23/2022	 Notice of Entry of Order <i>[47] Notice of Entry of Order Granting Motion for Reconsideration</i>
03/29/2022	 Notice of Rescheduling <i>[48] Notice of Rescheduling Hearing</i>
04/06/2022	 Motion Filed By: Plaintiff Leyva, Moises A. <i>[49] Plaintiff's Motion for Reconsideration</i>
04/07/2022	 Clerk's Notice of Hearing