

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORBITZ WORLDWIDE, LLC;
ORBITZ LLC; ORBITZ INC.;
TRAVELSCAPE LLC;
TRAVELOCITY INC.; CHEAP
TICKETS INC.; EXPEDIA INC.;
EXPEDIA GLOBAL LLC;
HOTELS.COM LP; HOTWIRE INC.;
BOOKING HOLDINGS INC.;
PRICELINE.COM LLC; TRAVEL
WEB LLC; TRAVELNOW.COM
INC.; AGODA INTERNATIONAL
USA LLC; HOTEL TONIGHT INC.;
AND HOTEL TONIGHT LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE
HONORABLE MARK R. DENTON,
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA; MARK
FIERRO; AND SIG ROGICH,

Real Parties in Interest.

Supreme Court Case No.: 85111
Electronically Filed
Sep 29 2022 11:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION FOR PERMISSION TO
EXCEED WORD LIMIT OF REAL
PARTIES IN INTEREST'S ANSWER
TO PETITIONERS' WRIT OF
MANDAMUS**

Real Parties in Interest (“RPIs”), by and through their counsel, of the law firm of Clark Hill, PLLC, respectfully move, pursuant to NRAP 31(a)(7)(D), for permission to exceed the page/word/line and type-volume limitations provided by NRAP 21(d). This motion is made for good cause and is supported by the declaration of Mark S. Dzarnoski as required by NRAP 32(a)(7)(D)(ii). attached as Exhibit 1.

NRAP 21(d) sets forth that a petition for writ of mandamus shall not exceed 15 pages unless it contains no more than 7,000 words (or 650 lines of text in a monospaced typeface) or the court grants leave to file a longer petition. Further, the same page and type-volume limits apply to any answer, reply, or amicus brief allowed by the court. A motion to exceed the page or type-volume limit in this rule must comply with Rule 32(a)(7)(D).

As set forth by Petitioners in their Petition, this case “raises a case-dispositive legal question of first impression regarding the interpretation of the Nevada False Claims Act (“NFCA”).” [Petition at p. 1]. Petitioners further assert that the district court’s decision “has substantial implications for state litigation prerogatives.” [Petition at p. 5]. The Petition then, in 6,607 words, sets forth the substantive arguments of Petitioners as to why the district court erred in denying Petitioner’s Motion for Summary Judgment and/or Motion for Reconsideration thereof and seeks a ruling of first impression from this Court regarding applicability of the government action bar to Nevada False Claims Act qui tam actions.

In responding to the substantive arguments made by Petitioners, as fully but as concisely as reasonably possible, RPIs were able to satisfy the word/line limitations imposed by NRAP 21(d). That portion of the Answering Brief devoted to responding to Petitioners’ substantive arguments was 7,179 words utilizing 632 lines which satisfies the alternative maximum 650-line limitation of NRAP 21(d).

However, Petitioners wholly failed to address a gateway/procedural issue that exists which this Court should recognize and thereafter decline issuing any relief on the Petition. After the district court's denial of Petitioner's Summary Judgment Motion and prior to denying Petitioners' Motion for Reconsideration, RPIs filed a First Amended Complaint which wholly undercut the entire factual and legal basis for Petitioners' Motion for Summary Judgment. A substantial body of law exists in Nevada for the proposition that the filing of the First Amended Complaint rendered the original Complaint on file herein nugatory and the decision on the Motion for Summary Judgment moot. In short, Petitioners are now seeking an impermissible Advisory Opinion which the Court should decline to consider.

RPIs include in their Answer a Section III (i.e. "Issues Raised By The Petition Are Moot Or Premature") to raise and brief the gateway/procedural dispositive issue. Said Section III was trimmed and edited as much as counsel deemed possible; yet, it still includes 789 words and 77 lines. With the addition of Section III, the Answering Brief is now 7,968 words and 709 lines putting it 59 lines over the maximum lines permissible pursuant to NRAP 21(d).

Clark Hill PLLC utilized three (3) different attorneys to separately and jointly edit the various sections of the Answering Brief. In omitting all unnecessary introductory or duplicative content and/or any unnecessary adverbs, adjectives and other descriptive words or phrases, the three lawyers were able to delete more than

4,000 words from the original draft. Every paragraph in this Answer is believed to be directly responsive to an argument raised (or in some instances omitted) in the Petition and/or directly relevant to the gateway/procedural issue raised above.

Because Clark Hill PLLC was diligent in editing the Answer and, in good faith, attempting to satisfy the word/line limitations set forth in NRAP 21(d), and good cause appearing, RPIs request permission to exceed the page/word limit for this Answer from 7,000 words or 650 lines to 7,968 words with 709 lines.

Dated this 29th day of September 2022.

CLARK HILL PLLC

/s/ Mark S. Dzarnoski, Esq.
Dominic P. Gentile, Esq. (NSBN 1923)
Michael V. Cristalli, Esq. (NSBN 6266)
Mark S. Dzarnoski, Esq. (NSBN 3398)
A. William Maupin (NSBN 1150)
3800 Howard Hughes Pkwy, Suite 500
Las Vegas, Nevada 89169
Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that pursuant to NRAP 25(1(d) on the 29th day of September 2022, I did serve at Las Vegas, Nevada a true and correct copy of MOTION FOR PERMISSION TO EXCEED WORD LIMIT OF RESONDENTS' ANSWER TO PETITIONERS' WRIT OF MANDAMUS, on all parties to this action by Electronic Filing.

/s/ Tanya Bain
An employee of Clark Hill PLLC

EXHIBIT 1

EXHIBIT 1

DECLARATION OF COUNSEL

I, Mark S. Dzarnoski, do hereby declare:

1. I am an attorney, duly licensed and authorized to practice law in the State of Nevada. My office represents Real Parties in Interest with regard to this Petition. I personally worked with two additional lawyers employed by the firm in drafting and editing the Answer. As such, I have personal knowledge of and could testify competently to, the following.

2. Clark Hill, PLLC is requesting permission under NRAP 32(a)(7)(D) to file a reply that exceeds NRAP 21(d)'s 7,000 word or 650 line limitations for Answers to Petitions. We ask the Court to accept for filing an Answer containing 7,968 words with 709 lines.

3. In drafting and editing the Answering Brief, I personally worked with two (2) other Clark Hill PLLC attorneys. In addition to drafting different sections, we separately and jointly edited the various sections of the Answering Brief to attempt to satisfy the word/line limitations set forth in NRAP 21(d). In omitting all unnecessary introductory or duplicative content and/or any unnecessary adverbs, adjectives and other descriptive words or phrases, the three of us, with assistance of support staff also engaged in the effort, were able to delete more than 4,000 words from the original draft. Every paragraph in this Answer is believed by us to be directly responsive to an argument raised (or in some instances omitted) in the

Petition and/or directly relevant to the gateway/procedural issue raised in the instant Motion.

4. In our considered judgment, a complete Answer required Clark Hill to (a) respond to the substantive arguments on the merits set forth in the Petition; and (b) fully brief a gateway/procedural issue which militates against this Court exercising its discretion to consider this Petition on the merits.

5. That portion of the Answering Brief devoted to responding to Petitioners' substantive arguments was 7,179 words utilizing 632 lines which satisfies the alternative maximum 650 line limitation of NRAP 21(d).

6. After the district court's denial of Petitioner's Summary Judgment Motion and prior to denying Petitioners' Motion for Reconsideration, RPIs filed a First Amended Complaint which wholly undercut the entire factual and legal basis for Petitioners' Motion for Summary Judgment. A substantial body of law exists in Nevada for the proposition that the filing of the First Amended Complaint rendered the original Complaint on file herein nugatory and the decision on the Motion for Summary Judgment moot. In short, Petitioners are now seeking an impermissible Advisory Opinion which the Court should decline to consider.

7. RPIs include in their Answer a Section III (i.e. "Issues Raised By The Petition Are Moot Or Premature") to raise and brief the gateway/procedural dispositive issue. Said Section III was trimmed and edited as much as counsel

deemed possible; yet, it still includes 789 words and 77 lines. With the addition of Section III, the Answering Brief is now 7,968 words and 709 lines putting it 59 lines over the maximum lines permissible pursuant to NRAP 21(d).

8. Despite efforts to do so, counsel simply cannot edit the Answer in a way where the final product coherently (a) responds to the substantive merits of the Petition and (b) raises the gateway/procedural issue while at the same time satisfying the word/line limitations set forth in NRAP 21(d).

9. Thus, good cause exists for an extension of the page/word/line limit to allow for RPIs to thoroughly yet succinctly respond to all legal arguments contained in the Petition and advance the gateway/procedural issue for the Court's consideration.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 29th day of September 2022.

/s/ Mark S. Dzarnoski, Esq.
Mark S. Dzarnoski, Esq.