IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TRICARICHI, Appellant, v. PRICEWATERHOUSECOOPERS, LLP, Respondent.	Supreme Court No: 86317 87375 87835

Electronically Filed
Apr 08 2024 10:46 PM
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the District Court of Clark County, Nevada
District Court Case No. A-16-735910-B

APPELLANT'S OPENING BRIEF

HUTCHISON & STEFFEN, PLLC
Ariel C. Johnson (13357)
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

SPERLING & SLATER, LLC
Scott F. Hessell (*Pro Hac Vice*)
55 West Monroe Street, 32nd Floor
Chicago, IL 60603

RANDY J. HART, LLC
Randy J. Hart (9055)
3601 South Green Road, Suite 200
Beachwood, OH 44122

Attorneys for Appellant Michael A. Tricarichi

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. Appellant Michael A. Tricarichi is an individual. Appellant was represented in the district court by the following counsel:

HUTCHISON & STEFFEN, PLLC
Ariel C. Johnson (13357)
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

SPERLING & SLATER, LLC
Scott F. Hessell (Pro Hac Vice)
55 West Monroe Street, 32nd Floor
Chicago, IL 60603

RANDY J. HART, LLC
Randy J. Hart (9055)
3601 South Green Road, Suite 200
Beachwood, OH 44122

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Dated: April 8, 2024

HUTCHISON & STEFFEN, PLLC

By: */s/ Ariel C. Johnson*
Ariel C. Johnson
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

SPERLING & SLATER, LLC
Scott F. Hessell (Pro Hac Vice)
55 West Monroe Street, 32nd Floor
Chicago, IL 60603

RANDY J. HART, LLC
Randy J. Hart (9055)
3601 South Green Road, Suite 200
Beachwood, OH 44122

Attorneys for Appellant Michael A. Tricarichi

TABLE OF CONTENTS

TABLE OF AUTHORITIES v

JURISDICTIONAL STATEMENT 1

ROUTING STATEMENT 2

STATEMENT OF THE ISSUES 2

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

I. The Westside Transaction 3

II. Tricarichi's Tax Liability 7

III. The District Court Proceedings 8

A. Tricarichi's 2003-Based Claims 8

B. Tricarichi's 2008-Based Claims 9

C. PwC's Motion for Attorneys' Fees and Costs 11

D. Tricarichi's NRCP 60(b) Motion 12

SUMMARY OF THE ARGUMENT 15

ARGUMENT 18

I. The District Court erred in ruling that Tricarichi's claims are time-barred. 18

A. The District Court failed to determine when Tricarichi's claim accrued. 20

B. The District Court erred by ruling as a matter of law that Tricarichi knew or should have known about his claims against PwC in early 2008. 26

II. The District Court erred by disregarding newly discovered evidence that PwC concealed its malpractice. 32

A. PwC failed to produce the Wow! Email and Risk Management Policy..33

B. PwC's conduct violated its discovery obligations in multiple Midco-related proceedings. 35

C. The newly discovered evidence warranted relief under NRCP 60(b). 37

III. The District Court abused its discretion in entering the Fee Award...40

A. The District Court misapplied the first three *Beattie* factors and unfairly penalized Tricarichi for not dropping claims that it ruled were legitimate.....................................40

1. The District Court improperly evaluated whether Tricarichi acted in good faith.....................................41

2. The District Court improperly evaluated whether PwC acted in good faith. 43

B. The fees sought by PwC are unreasonable...45

CONCLUSION 49

CERTIFICATE OF COMPLIANCE..ix

CERTIFICATE OF SERVICE xi

TABLE OF AUTHORITIES

Cases

Asian American Entertainment Corp., Ltd. v. Las Vegas Sands, Inc., 324 F. App'x 567 (9th Cir. 2009) 20

Beattie v. Thomas, 99 Nev. 579 (1983) .... *passim*

Boulder City v. Miles, 85 Nev. 46 (1969) 22, 23, 24, 25

Branch Banking & Trust Company v. Gerrard, 432 P.3d 736 (Nev. 2018) 26

Brunzell v. Golden Gate National Bank, 85 Nev. 345 (1969) 46, 48

CDT, Inc. v. Addison, Roberts & Ludwig, CPA, 7 P.3d 979, (Ariz. App. 2000) 23

Certified Fire Protection, Inc. v. Precision Construction, Inc., 128 Nev. 371 (2012) 43, 44

Clark v. Deloitte & Touche LLP, 34 P.3d 209 (Utah 2001) 23

Coulter v Grant Thornton, LLP, 388 P.3d 834 (Ariz. App. 2017) 24

Dredge Corp. v. Wells Cargo, Inc., 80 Nev. 99 (1964) 21, 23

Estate of Marshall v. Commissioner of Internal Revenue, 2016 WL 3460226 (Tax Ct. June 20, 2016) 29

Frazier v. Drake, 131 Nev. 632 (Ct. App. 2015) 18, 45, 48

George L. Brown Insurance v. Star Insurance Co.,
126 Nev. 316 (2010) 18

In re Amerco Derivative Litigation,
127 Nev. 196, 228 (2011) 30

International Engine Parts, Inc. v. Feddersen & Co.,
9 Cal.4th App.606 (Cal. 1995)..23

Jaramillo v. Ramos,
136 Nev. 134 (2020) 17, 18, 19, 33, 38, 43

Kipnis v. HVB, AG,
202 So.3d 859 (Fla. 2016)..23

Lowe Enterprises Residential Partners, L.P. v.
Eighth Judicial District Court ex rel. County of Clark,
118 Nev. 92 (2002) 39

Mahon v. Howard & Howard Attorneys PLLC,
Nos. 81152 & 81468, 2021 WL 5629851 (Nov. 30, 2021)
(Unpublished Disposition) 32

Murphey v. Grass,
267 P.3d 376 (Wash. App. 2011)...24

Petersen v. Bruen, 106 Nev. 271 (1990)..21, 22

PricewaterhouseCoopers LLP v.
Eighth Judicial District Court in and for County of Clark,
2021 WL 4492128 (Nev. 2021) (Unpublished Disposition) 10, 13, 39, 42

Semenza v. Nevada Medical Liability Insurance Co.,
104 Nev. 666 (1988) 26, 27

Siragusa v. Brown, 114 Nev. 1384 (1998) 23, 32

Tricarichi v. Commissioner of Internal Revenue,
2015 WL 5973214 (Tax Ct., Oct. 14, 2015)..*passim*

Tricarichi v. Commissioner of Internal Revenue,
752 F.App'x 455 (9th Cir. 2018) 27

Tricarichi v. Commissioner of Internal Revenue,
140 S. Ct. 38 27

U.S. Bank, N.A. v. Thunder Properties, Inc.,
503 P.3d 299 (Nev. 2022) 21

Wilcox v. Williams,
5 Nev. 206 (1869) 19, 20

Yamaha Motor Company, U.S.A.
114 Nev. 233 (1998) 40, 41, 44, 45

<u>Constitution, Statutes, and Rules</u>

Nevada Revised Statute 11.010 ....15, 21, 22, 23

Nevada Revised Statute 11.207 22

Nevada Revised Statute 11.220 22

Nevada Revised Statute 11.2075 ....*passim*

Nevada Revised Statute 268.020 24

Nevada Rule of Appellate Procedure 3A...1

Nevada Rule of Appellate Procedure 17..2

Nevada Rule of Civil Procedure 56 ....8, 12, 14, 33

Nevada Rule of Civil Procedure 60 ....*passim*

Nevada Rule of Civil Procedure 68 ....11, 40, 44

Other Authorities

Restatement (Second) of Conflict of Laws § 142..20

Restatement (Second) of Conflict of Laws § 143..20

Symeon Symeonides, *Choice of Law in the American Courts in 2020: Thirty-Fourth Annual Survey*, 69 Am. J. Comp. L. 177, 234 (2021) 20

JURISDICTIONAL STATEMENT

This case involves three consolidated appeals: Docket Nos. 86317, 87375, and 87835.

The Court has jurisdiction over Docket No. 86317 under NRAP 3A(b)(1). In that appeal from the District Court's entry of final judgment, Tricarichi filed his notice of appeal on March 24, 2023. (AA1275–77.) That date is within 30 days of February 22, 2023, which was the date that notice of entry of the District Court's final judgment was served. (AA1023–25.)

The Court has jurisdiction over Docket No. 87375 under NRAP 3A(b)(8). In that appeal from the District Court's special order after final judgment awarding attorneys' fees and costs, Tricarichi filed his notice of appeal on September 26, 2023. (AA1635.) That date is within 30 days of August 31, 2023, which was the date that notice of entry of the District Court's order awarding attorneys' fees and costs was served. (AA1474–76.)

The Court has jurisdiction over Docket No. 87835 under NRAP 3A(b)(8). In that appeal from the District Court's special order after final judgment denying Tricarichi's Rule 60(b) motion relating to newly discovered evidence, Tricarichi filed his notice of appeal on December 22, 2023. (AA1781–83.) That date is within 30 days of November 28, 2023, which was the date that notice of entry of the District Court's order awarding attorneys' fees and costs was served. (AA1760–62.)

ROUTING STATEMENT

Under NRAP 17(a)(9), this case is presumptively retained by the Supreme Court because it originated in business court.

STATEMENT OF THE ISSUES

1. Statutes of limitation apply only after there is a cognizable injury and the cause of action accrues. PwC advised Tricarichi to proceed with a tax-shelter transaction, concluding that he should not be subject to liability from the IRS. Did the District Court err by concluding that Tricarichi's malpractice claims against PwC accrued under NRS 11.2075 before the IRS even assessed liability?

2. PwC improperly withheld highly incriminating evidence that it knew Midco transactions entailed dangerous risks to Tricarichi. Did the District Court err by concluding that the improperly withheld evidence did not affect whether PwC was entitled to summary judgment on Tricarichi's 2003-based claims?

3. Did the District Court err in awarding PwC $2.4 million in attorneys' fees and costs, including by making contradictory findings that Tricarichi both acted in good faith and bad faith in pursuing his claims and rejecting identical $50,000 offers of judgment?

STATEMENT OF THE CASE

Plaintiff filed his complaint seeking to hold PwC responsible for providing negligent accounting services regarding a 2003 stock-sale transaction commonly referred to as a "Midco transaction." The district court granted PwC's renewed motion for summary judgment, ruling that all claims arising from services PwC provided to Tricarichi in 2003 were time-barred.

The matter later proceeded to trial on Plaintiff's amended complaint, which alleged claims against PwC for services provided in 2008 after the IRS began investigating the transaction. The District Court, in its February 9, 2023, Findings of Fact and Conclusions of Law and Judgment, ruled in favor of PwC at trial solely on the 2008-based claims.

On August 25, 2023, the District Court entered an order denying PwC's motion for attorneys' fees and costs with respect to PwC's 2019 offer of judgment, granting the motion with respect to PwC's 2021 offer of judgment, and entering an award to PwC of more than $2 million.

On November 28, 2023, the District Court denied Plaintiff's motion under NRCP 60(b) based on newly discovered evidence that PwC should have produced six years earlier.

STATEMENT OF FACTS

I. The Westside Transaction

Appellant Michael Tricarichi was the founder, president, and sole shareholder of Westside Cellular, a company he started from scratch that purchased network access from major cellular-service providers and resold that access to cellphone customers. (AA3, 10, 1028.) In 2003, Westside received $65 million to settle antitrust litigation with certain major cellular-service providers, and in exchange for that payment, Tricarichi agreed that Westside would exit cellphone service. (AA3, 10, 1028.)

Seeking to handle the settlement proceeds and Westside's exit from the business in a tax-efficient way, Tricarichi considered his options, including leaving the funds within Westside. (AA3.) One option proposed to Tricarichi was a Midco stock-sale transaction—a type of transaction that was promoted in the late 1990s and early 2000s as a way for shareholders of closely held C corporations to address potentially large taxable gains. (AA3, 9, 1029.) Unknown to Tricarichi but well known to PwC, the IRS listed Midco transactions as "reportable transactions" in early 2001, meaning the IRS considered them, and "substantially similar" transactions, as improper tax-avoidance mechanisms. (AA1824–26 (PwC alert regarding "IRS warning on 'intermediary transactions' (Notice 2001-16)"); AA1828–29 ("Risk Management Alert" stating that PwC has "an ethical obligation to discuss the implications of [Notice 2001-16] with each client who entered into transactions similar to those in the notices whether we are tax advisers or preparers")).

The purported benefit of a Midco transaction was that it allowed the shareholder to avoid double taxation that comes with liquidating closely held C corporations at the corporate and individual levels on the same proceeds. A Midco transaction generally involved two steps: the buyer would (1) cause an affiliated company (often a shell company and referred to as the "Midco" in the transaction) to purchase the shares of and merge into the targeted C corporation; and (2) the Midco would later offset the potentially large taxable gain to eliminate the corporate-level tax (AA9). *See also Tricarichi v. Commissioner of Internal Revenue*, 2015 WL 5973214, at *1 (Tax Ct., Oct. 14, 2015) (explaining purported benefit of Midco transaction).

In this case, the Midco transaction was promoted to Tricarichi by two potential buyers, Fortrend International, LLC and Midcoast Credit Corporation. (AA11–12.) Each promoter-buyer offered essentially the same transaction: An intermediary company would borrow money to purchase the stock of Westside, and after the intermediary merged into Westside, the promoter-buyer would employ Westside in its distressed-debt-collection business. (*Id.*) In particular, each promoter-buyer proposed that it would use Westside's remaining cash to help fund the promoter-buyer's business, would offset Westside's tax liabilities with legitimate business losses, and (to the extent any tax liability remained) would fully satisfy Westside's tax liabilities. (*Id.*)

Because he lacked any tax training or expertise, Tricarichi retained PwC in April 2003 to evaluate and provide advice regarding the proposed transaction. (AA12–13, 1030.) PwC's tax professionals included Rich Stovsky in PwC's Ohio office and Timothy Lohnes and Don Rocen from PwC's National Office, who evaluated the transaction, participated in calls with the parties and their representatives, reviewed documents, and conducted research. (AA13–14, 1031–33.) They had a sophisticated understanding of the transaction and thus knew, among other things, that Fortrend intended to offset Westside's contingent tax liability with deductions associated with high-basis, low-value assets, and that Fortrend did not have the financial ability to satisfy Westside's tax obligations if the tax offset were disallowed. (AA13–14, 1656–67.) PwC's Stovsky documented potential concerns about the proposed transaction in an internal memorandum, but he did not share that memorandum with Tricarichi. (AA1656–67; AA1797 at Tr. 597:8–10.)

PwC ultimately advised Tricarichi that the Fortrend transaction *was not* substantially similar to the IRS-listed Midco transactions; that he would not be exposed to personal (or "transferee") liability as the stock seller; and that there was no reason *not* to proceed. (AA23, 1658, 1677.) PwC went so far as to advise that the merits of Fortrend's plan to write off Westside's tax liability "was not Mr. Tricarichi's concern" because the IRS "would not cause a recharacterization of Mr. Tricarichi's stock sale." (AA677, at Tr. 627:10–628:2; AA680, at Tr. 701:14–16.) Relying on PwC's advice, Tricarichi agreed to Fortrend's proposal: on September 9, 2003, Tricarichi sold all of Westside's stock to the Midco affiliated with Fortrend for $35.2

million, (AA21). *See also Tricarichi*, 2015 WL 5973214, at *10 (transaction closed on September 9, 2003).

II. Tricarichi's Tax Liability

After the transaction closed, Tricarichi paid taxes for 2003, including more than $5 million relating to the long-term capital gain incurred when he sold the Westside stock to Fortrend. *Tricarichi*, 2015 WL 5973214, at *12. The IRS initiated an audit of Westside's 2003 tax return and, at the conclusion of the Westside audit, disallowed more than $43 million in post-stock-sale tax deductions. *Id*. In February 2009, the IRS mailed a notice of deficiency to Westside, and Westside did not contest that deficiency by petitioning the Tax Court. *Tricarichi*, 2015 WL 5973214, at *11. Because Fortrend distributed Westside's cash, the IRS proceeded with a transferee-liability examination into whether it could hold Tricarichi personally responsible for Westside's corporate tax obligations. *Id*. at *12.

The IRS did not assess Tricarichi with any liability for the Westside transaction until June 2012. *Tricarichi*, 2015 WL 5973214, at *12 ("Upon completion of that examination, the IRS sent petitioner a Letter 902–T, Notice of Liability. This notice of liability was timely mailed to petitioner on June 25, 2012."). Until the IRS assessment, the Midco transaction appeared to work as PwC advised, netting Tricarichi $6 million more in tax savings than if he had forgone a sale of Westside and simply liquidated the company. After the IRS assessment, Tricarichi timely petitioned the United States Tax Court for review of the IRS's proposed findings that he was personally liable for Westside's taxes, and he obtained a tolling agreement with PwC that (with extensions) remained effective through (and beyond) the litigation in Tax Court. (AA782–793.) Three years later, in October 2015, the Tax Court ruled that Tricarichi was liable as a transferee for Westside's full tax liability. *Tricarichi*, 2015 WL 5973214, at *27.

III. The District Court Proceedings

A. Tricarichi's 2003-Based Claims

On April 29, 2016, Tricarichi filed his Complaint, seeking to hold PwC liable for more than $20 million in damages caused by PwC's negligent tax advice. (AA 29–31.) PwC moved to dismiss Tricarichi's claims based on the statute of limitations, and the District Court (Judge Hardy) denied PwC's motion. (AA47–50.)

On March 6, 2017, PwC moved for summary judgment, again on statute-of-limitations grounds, and on May 31, 2017, the District Court denied PwC's motion and ordered that Tricarichi was entitled to NRCP 56(f) discovery. (AA80–83.)

On June 14, 2018, after completion of 56(f) discovery, PwC renewed its motion for summary judgment based on the statute-of-limitations, and on October 24, 2018, the District Court, now Judge Gonzalez, granted PwC's motion without prejudice to Tricarichi alleging "claims arising out of a subsequent retention of PwC in 2008." (AA891.)

B. Tricarichi's 2008-Based Claims

Tricarichi sought leave to file an amended complaint arising solely out of PwC's 2008 failure in and after 2008 to disclose material information about the transaction, and on March 26, 2019, the District Court granted Tricarichi's motion over PwC's objection. (AA895–97.)

On April 1, 2019, Tricarichi filed his amended complaint. (AA898–944). Tricarichi alleged that PwC failed to disclose that it: (i) provided advice exactly opposite to the advice it gave to a similarly situated client just before advising Mr. Tricarichi; (ii) had a conflict of interest relevant to its advice to him and to its assessment of Notice 2008-111; and (iii) knew that the IRS deemed Midco transactions (like the one PwC told Tricarichi to enter) were inappropriate tax shelters. (909–10, 937.)

PwC moved to dismiss Tricarichi's 2008-based claims, and on July 30, 2019, the District Court denied PwC's motion, finding that Tricarichi stated a claim as a matter of law. (AA948–50.)

Two months later, on September 25, 2019, PwC served on Tricarichi its first offer of judgment, offering just $50,000 even though Tricarichi's damages were more than $20 million. (AA1072–77.)

More than a year later, PwC moved for summary judgment and, based on a rider to the parties' 2003 engagement agreement, asked the District Court to strike

Tricarichi's jury demand and limit damages. (AA991–92.) The District Court (Judge Gonzalez) denied PwC's motion, finding genuine issues of material fact precluding summary judgment and that Tricarichi had not signed the rider containing the purported jury trial waiver and damages limitation. (*Id.*)

PwC petitioned this Court for a writ of mandamus, arguing that the jury-trial waiver was part of the engagement agreement as a matter of law. *Pricewaterhouse-Coopers LLP v. Eighth Judicial District Court in and for County of Clark*, 2021 WL 4492128 (Nev. 2021). On September 30, 2021, this Court granted the petition and issued a writ of mandamus, which remanded the jury-waiver issue to the District Court for further proceedings. *Id.*

A week later, on October 6, 2021, PwC served on Tricarichi its second offer of judgment, again offering just $50,000 despite Tricarichi's damages still exceeding $20 million. (AA1079–083.)

On April 14, 2022, based on this Court's writ of mandamus and after an evidentiary hearing, the District Court ruled that Tricarichi was bound by the jury-trial waiver in the rider to the engagement agreement. (AA996–999.)

PwC then moved for partial summary judgment based on the limitation-of-damages provision in the same rider. (AA1016.) While the provision contained an exclusion for grossly negligent, willful, or fraudulent conduct, PwC argued that the exclusion did not apply and that Tricarichi's damages were thus limited to $48,552, which was the amount Tricarichi paid PwC for its services in 2003. (*Id.*)

On June 16, 2022, the District Court denied PwC's motion, finding that there were "disputed questions of fact to be resolved at trial concerning whether PwC's conduct rises to gross negligence." (AA1017–18.) As the District Court explained, it "[could not] grant partial summary judgment that Plaintiff's claim cannot exceed $48,552," and Tricarichi would thus be "permitted to present evidence and make arguments about the full asserted damages" of $20 million. (*Id.*)

After a bench trial, on February 9, 2023, the District Court entered Findings of Fact and Conclusions of Law in favor of PwC. (AA1027–67.)

C. PwC's Motion for Attorneys' Fees and Costs

On March 15, 2023, PwC filed a motion for attorneys' fees and costs based on NRCP 68 and PwC's offers of judgment in 2019 and 2021. (AA1481.)

On August 25, 2023, the District Court denied PwC's motion with respect to the 2019 offer of judgment. (AA1478–1522.) In applying the factors under *Beattie v. Thomas*, 99 Nev. 579 (1983), the District Court relied primarily on the first and third factors—concluding that an award of fees and costs was not appropriate because (factor 1) Tricarichi brought his claims in good faith and (factor 2) it "was not grossly unreasonable or in bad faith" for Tricarichi to reject PwC's $50,000 offer of judgment. (AA1482–84.)

In the same order, the District Court granted PwC's motion with respect to the 2021 offer of judgment—concluding that Tricarichi did not bring his claims in good faith, that PwC made its offer in good faith, and that Tricarichi's "rejection of the 2021 Offer was grossly unreasonable." (AA1484–85.)

The District Court did not explain the fundamental discrepancies in its order, including how Tricarichi could have brought his claims in good faith when considering the 2019 offer of judgment but not when considering the 2021 offer of judgment. Nor did the District Court attempt to reconcile its earlier orders rejecting PwC's dispositive motions—including the order (entered *after* Tricarichi rejected PwC's 2021 offer) concluding that Tricarichi would "be permitted to present evidence and make arguments about the full asserted damages" of $20 million because there were "disputed questions of fact to be resolved at trial concerning whether PwC's conduct rises to gross negligence." (AA1017–18.)

D. Tricarichi's NRCP 60(b) Motion

On August 21, 2023, Plaintiff filed a motion for reconsideration under NRCP 60(b) based on newly discovered evidence that PwC should have produced in 2017 and 2018. In particular, the District Court had denied PwC's first motion for summary judgment on Plaintiff's 2003-based claims expressly because Plaintiff was entitled to NRCP 56(f) discovery regarding "PwC's review, promotion or advocacy of, or other advice regarding transactions similar to Mr. Tricarichi's transaction with

Fortrend, and the reasons why PwC did not make Mr. Tricarichi aware of those transactions." (AA81.) In responding to that discovery, PwC failed to produce two "smoking gun" documents that fell squarely within the scope of the District Court's order and Plaintiff's subsequent document requests.

First, PwC failed to produce a 2003 internal email thread that unequivocally demonstrated what PwC knew about Midco transactions before Plaintiff even retained PwC. (AA1380–81.) The email thread pertained to the Marshall Midco transaction—another 2003 Midco transaction that was substantially like the Westside transaction and gave rise to the malpractice litigation in *Marshall v. PricewaterhouseCoopers LLP*, Case No. 17 CV 11907 (Multnomah County Cir. Ct.). The key email in the thread was written by Michael Weber, who was the co-head of PwC's Portland office that advised on the Marshall transaction. As the email makes clear, Weber and his Portland colleague were not experts with respect to Midco transactions, but they had been advising the Marshalls based on the premise that PwC did Midco transactions "all the time" and that the basic transaction was not risky to transferee taxpayers. (AA1380.) As the Marshall transaction approached closing, Weber's Portland colleague belatedly sought feedback from PwC's subject-matter experts in its National Office. (*Id.*) Eleven minutes after Weber's colleague sent the draft 57-page stock-purchase agreement to the National Office, the National

Risk Management lead partner responded, balking at the Midco transaction itself and making clear that PwC should not advise on such transactions. (*Id.*)

When Weber received that advice, his unfiltered response showed the disconnect between what PwC's National Office experts knew about Midco transactions and what PwC was advising in the field. (*Id.*) But rather than conveying that expertise to its clients or its clients' lawyers, PwC concealed it and took steps to prevent the Wow! Email from ever being discovered by improperly deleting copies from its servers and by breaching its obligations to produce the document in response to subpoenas from the IRS and document requests in the *Marshall* litigation and in this case. (AA1455–56.)

Second, PwC failed to produce its Risk Management Policy that directed PwC employees against admitting mistakes: "Don't … admit liability, shortcomings, or defects in our services" if there are "circumstances we discover that might call into question the quality of PwC's services whether or not the client has knowledge." (AA1403.) Not only did the Risk Management Policy fall squarely with Plaintiff's 56(f) document requests, but PwC represented after the parties' meet-and-confers that it produced documents related to "any internal policies or guidelines regarding on-going communications with a client." (AA1553.)

Based on this highly relevant evidence, which was not available to Plaintiff or the District Court until after the entry of final judgment, Tricarichi sought relief under NRCP 60(b). But on November 28, 2023, the Court entered an order denying Plaintiff's motion under NRCP 60(b) on the ground that the evidence would not have changed the Court's decisions.

SUMMARY OF THE ARGUMENT

1. At summary judgment, the District Court misapplied the statute of limitation in two key respects.

First, the District Court erred by applying the statute of limitation without determining when Tricarichi was injured by PwC's malpractice and, thus, when his claims against PwC accrued. Statutes of limitation apply "after the cause of action shall have accrued," NRS 11.010, and the applicable statute in this case limits the time for filing an action "to recover damages for malpractice." NRS 11.2075. At summary judgment, when Tricarichi gets the benefit of all reasonable inferences, the evidence showed that he was not injured until (at the earliest) June 2012 when the IRS sent him a notice of liability. And because Tricarichi and PwC then entered a series of agreements that tolled the limitations period from January 19, 2011, through May 1, 2016, Tricarichi's 2003-based claims filed in April 2016 were timely.

Second, the District Court erred by ruling that Tricarichi was on notice of his claims by early 2008 merely because he learned the IRS was considering transferee liability. At summary judgment, however, whether Tricarichi was on notice raised (at least) a question of fact. Specifically, PwC had also considered transferee liability but advised Tricarichi that he would not be liable and that he should proceed with the transaction. Given that advice, it was reasonable for Tricarichi to believe in 2008 that the IRS was going through the same analysis as PwC and, in the end, would reach the same conclusion. It did not reasonably suggest to Tricarichi that PwC had committed malpractice.

2. In addressing Tricarichi's NRCP 60(b) motion, the District Court erred by ruling that the newly discovered evidence would not have changed the analysis at summary judgment. That evidence, which PwC improperly concealed from the IRS and its clients, showed that PwC (a) knew Midco transactions were unacceptably risky for its clients and (b) knew telling its clients to proceed with a Midco transaction was the wrong advice. But the District Court refused to reconsider its conclusion that Tricarichi was on notice of PwC's malpractice by early 2008. That conclusion was wrong for the reasons addressed above, and the refusal to reconsider—despite newly discovered evidence confirming that PwC misled Tricarichi *and* concealed what it knew—was an abuse of discretion.

The District Court likewise erred in refusing to reconsider other rulings in light of the newly discovered evidence. That evidence undermines the District Court's analysis of the *Beattie* factors when granting PwC's motion for attorneys' fees and costs, including with respect to PwC's "good faith" in making offers of judgment while concealing material evidence. The evidence also goes to the heart of whether Tricarichi knowingly waived his right to jury when signing PwC's engagement letter even though PwC concealed from him what it knew about Midco transactions.

3. The District Court erred in awarding PwC's motion for attorneys' fees and costs. PwC's motion was based on $50,000 offers of judgment that PwC made in 2019 and 2021. In awarding PwC its attorneys' fees and costs based on the 2021 offer, the District Court misapplied the *Beattie* factors in three ways.

First, the District Court misapplied the factors relating to Tricarichi's good faith in bringing his claims and refusing the offer of judgment. Not only is the District Court's analysis irreconcilable with the District Court's findings relating to those same factors for the 2019 offer of judgment, but it is directly contradicted by the District Court's summary judgment ruling *six months after* Tricarichi rejected the 2021 offer—a ruling that, as a matter of law, meant that a rational trier of fact could return a verdict in Tricarichi's favor for his full damages. *Jaramillo v. Ramos*, 136 Nev. 134, 135 (2020). It thus was not grossly unreasonable for Tricarichi to reject PwC's $50,000 offer.

Second, the District Court misapplied the factor relating to PwC's good faith in making the offer. The District Court never addressed the magnitude of PwC's potential liability to Tricarichi. Nor did the District Court address that PwC had made a $50,000 offer of judgment despite purportedly incurring more than *$10 million* in attorneys' fees and costs—an amount that, by comparison, rebuts any assertion of good faith. PwC made its nominal offer to create the chance later, if successful at trial, to stick its former client with massive attorneys' fees and costs. That is not a good-faith offer of judgment.

Third, the District Court misapplied the factor relating the reasonableness of the attorneys' fees. Most of the $10 million sought by PwC were incurred through a flat-fee billing arrangement with the law firm Bartlit Beck, and given the flat-fee billing arrangement, Bartlit Beck "d[id] not maintain precise hourly records of its work" or "prepare hourly descriptions for work performed." (AA1211, ¶ 8.) While PwC ultimately reduced the amount it sought for Bartlit Beck's services (from $9.17 million to $1.86 million), the reductions were untethered to any billing records that would allow Tricarichi or the Court to evaluate the reasonableness of the fees. There was not a sufficient basis for an award. *Frazier v. Drake*, 131 Nev. 632, 652 (Ct. App. 2015).

ARGUMENT

I. The District Court erred in ruling that Tricarichi's claims are time-barred.

This court reviews a district court's grant of summary judgment "de novo," without deference to the findings of the lower court. *Jaramillo*, 136 Nev. at 136; *George L. Brown Insurance v. Star Insurance Co.*, 126 Nev. 316, 322 (2010). Summary judgment is appropriate only when the evidence reveals "no genuine issue of material fact" and that "the movant is entitled to judgment as a matter of law." *Jaramillo*, 136 Nev. at 135. The evidence, along with all reasonable inferences drawn from the evidence, "must be viewed in a light most favorable to the nonmoving party." *Id*. at 136.

In this case, Nevada's statute of limitations for accounting malpractice claims provides that "[a]n action against an accountant or accounting firm to recover damages for malpractice must be commenced within" the earlier of the following:

> (a) "Two years after the date on which the alleged act, error or omission is discovered or should have been discovered through the use of reasonable diligence";
>
> (b) "Four years after completion of performance of the service for which the action is brought"; or
>
> (c) "Four years after the date of the initial issuance of the report prepared by the accountant or accounting firm regarding the financial statements or other information."

NRS 11.2075. In addition, the statute provides that the time limitation "is tolled for any period during which the accountant or accounting firm conceals the act, error or omission upon which the action is founded and which is known or through the use of reasonable diligence should have been known to the accountant or the firm." *Id*.

In its October 2018 order granting summary judgment,[1] the District Court ruled that Tricarichi's 2003-based claims were "time-barred under NRS

[1] This Court long ago established the *lex fori* rule for the statute of limitations—*i.e.*, the forum's statute of limitation controls. *Wilcox v. Williams*, 5 Nev. 206, 211

§ 11.2075(1)(a)'s two-year statute of limitations because Plaintiff discovered or, as a matter of law, should have discovered the alleged act, error or omission no later than when he received the [Information Document Request] from the IRS" in February 2008. (AA890.)

The District Court misapplied Nevada law in two critical respects: (a) failing to determine when Tricarichi suffered cognizable injury from PwC's conduct, *i.e.*, when his malpractice claim against PwC accrued; and (b) concluding as a matter of law that Tricarichi should have discovered PwC's malpractice in 2008 when the IRS requested documents but had made no determination about Tricarichi's liability.

A. The District Court failed to determine when Tricarichi's claim accrued.

For over a century, Chapter 11 of the Nevada Revised Statutes (or its predecessors) has provided that a civil action must be commenced within the applicable

---

(1869); *see also Asian American Entertainment Corp., Ltd. v. Las Vegas Sands, Inc.*, 324 F. App'x 567, 568 (9th Cir. 2009) (quoting *Wilcox* and explaining that Nevada follows "the rule of *lex fori*"); Symeon Symeonides, *Choice of Law in the American Courts in 2020: Thirty-Fourth Annual Survey*, 69 Am. J. Comp. L. 177, 234 (2021) (observing that *lex fori* approach "continues to be followed in 28 states"). The same result would apply under either approach of the Restatement (Second) of Conflict of Laws. Under Sections 142 and 143 of the Restatement as issued in 1971, the forum's statute of limitation controls unless the otherwise applicable law of another state would "bar[] the right and not merely the remedy." RESTATEMENT § 143. That exception is not met. Likewise, the exceptions are not met under the 1988 revision to the Restatement, which calls for the forum's statute of limitation unless maintaining the claim "would serve no substantial interest of the forum" *and* the claim 'would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence." RESTATEMENT § 142, 1988 Revision.

limitations periods "**after the cause of action shall have accrued**." NRS 11.010 (1911 CPA § 4) (emphasis added); *see also Dredge Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, 102 (1964) (same). "The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought." *Petersen v. Bruen*, 106 Nev. 271, 274 (1990).[2] That basic principle is also included in the accounting-malpractice statute of limitations, which specifies the time for filing "[a]n action against an accountant or accounting firm **to recover damages** for malpractice." NRS 11.2075 (emphasis added).

Thus, the first step in applying the statute of limitations is to determine when the alleged injury occurred and the cause of action accrued. In this case, however, the District Court never addressed the issue—even though Tricarichi was not injured by PwC's malpractice until, at the earliest, 2012 when the IRS made a determination that was inconsistent with PwC's advice to Tricarichi and arguably not until the Tax Court ruled in the IRS's favor in 2015. Instead, the District Court skipped straight to the two-year discovery rule in NRS § 11.2075(1)(a)—ruling that Tricarichi "should have discovered the act, error or omission no later than when he received the IDR

[2] *See also U.S. Bank, N.A. v. Thunder Properties, Inc.*, 503 P.3d 299, 308 (Nev. 2022) (Pickering, J., concurring in part and dissenting in part) (citing NRS 11.010 and explaining that, "[f]or a statute of limitations to matter, the cause of action must first accrue.").

from the IRS" in February 2008, without regard to whether Tricarichi had a ripe injury. (AA890.)

That was error—because at summary judgment, when factual disputes preclude the entry of judgment, the District Court was not permitted to assume that discovery of PwC's potential malpractice resulted in simultaneous injury and an immediately accrued claim. To be sure, as this Court has explained, "in most cases damages caused by the wrongful act of another occur contemporaneously with the wrongful act." *Boulder City v. Miles*, 85 Nev. 46, 49 (1969). So it normally makes no difference whether a statute-of-limitations analysis is focused on when the cause of action accrues,[3] when the resulting injury occurs,[4] or when (as NRS 11.2075 provides in this case) "the alleged act, error or omission is discovered" or the "performance of the service" occurs. If the wrongful act and the resulting injury are simultaneous, those formulations are different ways of arriving at the same point.

But if, as here, the wrongful act and resulting injury are *not* contemporaneous, there is no accrued claim until the injury occurs. *Petersen*, 106 Nev. at 274; NRS 11.010. As the Court explained long ago, "no one has a claim against another without having incurred damages." *Boulder City*, 85 Nev. at 49. And the statute of limitations

[3] *See* NRS 11.220 (basing limitations period on when "the cause of action shall have accrued").

[4] *See* NRS 11.207 (basing limitations period on when "the plaintiff sustains damage").

doesn't run until the cause of action accrues. *Dredge*, 80 Nev. at 102 ("The statute of limitations has application to the time within which civil actions may be commenced 'after the cause of action shall have accrued.'") (quoting NRS 11.010); *Boulder City*, 85 Nev. at 49 (measuring timeliness from when claim accrued even though provision was based on when act occurred). That is why, as explained above, NRS 11.0275 applies only to actions "to recover damages." The provision cannot apply to a cause of action before there is damage to recover. To interpret the provision otherwise would be contrary to its express language and would turn the first section into a statute of repose that cuts off all claims against accountants regardless of whether injury was incurred. *See Siragusa v. Brown*, 114 Nev. 1384, 1392 (1998) (rejecting interpretation that "would transmute the statute of one of limitation into one of abolition," because "[s]uch a result is not consonant with the legislative purpose of the statute").[5]

---

[5] Other state appellate courts have adopted similar analysis with respect to accrual of tax-related malpractice claims and concluded that accrual occurs no earlier than the IRS's assessment of liability. *See*, *e.g.*, *International Engine Parts, Inc. v. Feddersen & Co.*, 9 Cal.4th 606, 608 (Cal. 1995) ("actual injury, caused on by an accountant's negligent filing of tax returns" occurs when "the IRS actually assesses the tax deficiency"); *Clark v. Deloitte & Touche LLP*, 34 P.3d 209, 216–17 (Utah 2001) (statute of limitations begins to run when Tax Court renders decision assessing deficiency); *Kipnis v. HVB, AG*, 202 So.3d 859, 866 (Fla. 2016) (holding, in tax shelter case, taxpayer plaintiff's claims accrued "at the time their action in the tax court became final, following expiration of the ninety-day period for appealing the tax court's judgment"); *CDT, Inc. v. Addison, Roberts & Ludwig, CPA*, 7 P.3d 979, 986–87 (Ariz. App. 2000) (reversing summary judgment dismissal of malpractice

The Court's analysis in *Boulder City* is instructive because the applicable statute, like the statute here, framed the prescribed limitations period based on when the wrongful "act" occurred. 85 Nev. at 49. Those plaintiffs first had to present the claim to Boulder City within a six-month window "from the time the acts from which the claims originated shall happen." *Id.* (citing NRS 268.020). Because the plaintiffs were not injured for more than a year after the wrongful acts, they did not present their claims within six months of them. *Id.* at 47–48.

This Court rejected Boulder City's argument that the plaintiffs did not timely present their claim. *Id.* at 49. The Court reasoned that "no one has a claim against another without having incurred damages," and the "cause of action accrues only when the forces wrongfully put in motion produce an injury." *Id.* As the Court explained, "otherwise … a purported cause of action might be barred before liability arose." *Id.*

The same analysis governs here. PwC committed malpractice in 2003 when it advised Tricarichi that he should proceed with the Westside transaction. (AA23,

---

claims, rejecting accrual until formal assessment of delinquent taxes); *Coulter v. Grant Thornton, LLP*, 388 P.3d 834, 838–39 (Ariz. App. 2017) (reversing dismissal of malpractice claim because determining accrual date was fact-based inquiry; rejecting bright line rule for accrual based on IRS notice of deficiency); *Murphey v. Grass*, 267 P.3d 376, 379–82 (Wash. App. 2011) (reversing summary judgment, holding no injury triggering limitations period in negligent tax advice case until formal tax assessment).

1658–60, 1677.) While PwC's malpractice put "forces wrongly … in motion," *Boulder City*, 85 Nev. at 49, it did not immediately injure Tricarichi. PwC acknowledged that the Midco transaction entailed "some risk" but advised that Tricarichi ultimately "should have no successor/transferee liability for any corporate level tax" because any tax liability was Fortrend's problem, not his. (AA1658, 1677.) PwC further advised that the transaction's potential downside was "still better than not doing [the] deal." (AA1658.) As PwC analyzed it, the potential "taxpayer penalty" would be "minimal" and Tricarichi should "still do the transaction 10 times out of 10." (AA1677.)

Given PwC's advice, there was no injury in 2003 when Tricarichi entered the transaction. Nor was there injury in 2008 when the IRS audited Westside's tax return. PwC had acknowledged "some risk" but advised that any liability would ultimately not be his concern. And as part of the Midco transaction, Fortrend contractually agreed to take responsibility for any resulting tax liability of Westside. *Tricarichi*, 2015 WL 5973214, *7. So the IRS audit of Westside was merely the realization of risk that PwC (and the transaction documents) purportedly had accounted for.

Indeed, at the time of the audit in 2008, the IRS had not even determined that Westside was liable for additional taxes, much less made any determination as to Tricarichi. If the IRS had concluded that Westside's deductions were legitimate and that Westside owed no additional taxes, Tricarichi would never have been injured and would never have had a malpractice claim against PwC. Likewise, after the IRS finished its audit and determined that Westside was liable for additional taxes, there still was no determination about whether Tricarichi was liable as a transferee. Nor would there have been any liability if Westside had paid the additional taxes after the IRS completed the audit. Or if Fortrend had lived up to its contractual obligation to pay Westside's taxes. Or if the IRS had finally determined, as PwC advised it would, that Tricarichi had no personal liability. Any of those events would have cut off the forces PwC put in motion, and Tricarichi would never have been injured and would never have had a cognizable malpractice claim against PwC.

PwC's malpractice in this case closely resembles the type of legal malpractice that is covered by the litigation-malpractice tolling rule—a rule the Court's case law "engrafts" onto the legal-malpractice statute of limitation. *Branch Banking & Trust Company v. Gerrard*, 432 P.3d 736, 738 (Nev. 2018). The premise underlying the rule is that there is no accrued claim without a cognizable injury, and given the nature of litigation malpractice, the rule automatically tolls the accrual of any claim until the underlying litigation ends. *See Semenza v. Nevada Medical Liability Insurance Co.*, 104 Nev. 666, 668 (1988) (explaining that accrual is tolled because "[a]pparent damage may vanish with successful prosecution of an appeal and ultimate vindication of an attorney's conduct by an appellate court.")

That common law tolling rule provides a useful analogy because, as in a case involving litigation malpractice, Tricarichi did not suffer immediate injury from PwC's malpractice. He had no cognizable injury until (at the earliest) the IRS made its determination on transferee liability.[6]

The IRS did not make that determination until June 25, 2012, when it mailed to Tricarichi a notice of liability. *Tricarichi*, 2015 WL 5973214, at *12. Later that year, Tricarichi and PwC entered a series of agreements to toll all applicable limitations periods from January 19, 2011 through May 1, 2016. (AA782–93, 889–90.) Accordingly, Tricarichi's 2003-based claims filed on April 29, 2016, were timely. Tricarichi respectfully submits that the District Court's contrary determination, made without considering when Tricarichi's claim accrued, should be reversed.

[6] Tricarichi timely petitioned the Tax Court for review, and he subsequently timely appealed to the Ninth Circuit and filed a cert petition in the Supreme Court of the United States. *See Tricarichi v. Commissioner of Internal Revenue*, 752 F.App'x 455 (9th Cir. 2018) (affirming Tax Court's judgment); *Tricarichi v. Commissioner of Internal Revenue*, 140 S. Ct. 38 (denying certiorari). A favorable decision from any of those courts would have erased Tricarichi's liability and any potential claim against PwC, and thus Tricarichi's cognizable injury may best be viewed as occurring when the tax litigation finally ended. *Cf. Semenza*, 104 Nev. at 668 (explaining why there is no accrued claim under analogous circumstances covered by litigation-malpractice tolling rule). In this case, because Tricarichi timely filed his claim even when measured from the IRS notice of liability, this Court need not address the effect of the tax litigation on the date of accrual.

B. The District Court erred by ruling as matter of law that Tricarichi knew or should have known about claims against PwC in early 2008.

Even setting aside the District Court's failure to consider when Tricarichi suffered injury, a reasonable trier of fact could conclude that the limitations period did not accrue until the IRS issued its notice of liability in June 2012. Under NRS 11.2075(b), the time limitation provided for bringing an action to recover damages "is tolled for any period during which the accountant or accounting firm conceals the act, error or omission upon which the action is founded and which is known or through the use of reasonable diligence should have been known to the accountant or the firm."

In this case, even without addressing the newly discovered Wow! Email, it is clear that PwC knew or should have known about its malpractice and concealed it from Tricarichi. That conclusion is unavoidable given the Tax Court's decision that Tricarichi "should have known" that Fortrend was using the Midco transaction as a "tax-avoidance scheme." *Tricarichi*, 2015 WL 5973214, at *18. If Tricarichi "should have known"—even though he relied on the advice of PwC that he would not be subject to transferee liability and that any potential downside would be "minimal" and "still better than not doing [the] deal," which was worth doing "10 times of 10" (AA1677)—then surely PwC knew or should have known.

Other evidence supports this straightforward conclusion. PwC was no stranger to Midco transactions, including Midco transactions sponsored by Fortrend. With respect to one of those transactions—involving a nearly identical 2003 Midco transaction sponsored by Fortrend and entered by PwC's long-time clients in Oregon—PwC tried to shield itself from liability by asserting that it strongly advised against the transaction and refused to even consult on it. *Estate of Marshall v. Commissioner of Internal Revenue*, 2016 WL 3460226, *4–5 (Tax Ct. June 20, 2016). And as explained below, PwC was deliberately withholding the most damning evidence of its own knowledge—an internal email chain that conveyed exactly what PwC knew: the "basic transaction was risky" and "probably" would "blow[] up at the IRS" and lead to liability for "aiding and abetting a transaction the sole purpose of which was to evade income tax." (AA1380.)

PwC concealed all this knowledge from Tricarichi before he even decided to hire the firm. Under its engagement letter with Tricarichi, PwC affirmatively agreed to "discuss with [Tricarichi] any tax positions of which we are aware that we believe may subject [Tricarichi] to penalties." (AA90.) Yet PwC advised Tricarichi to proceed with the transaction, and while it conveyed that there was "some risk," it did not advise Tricarichi about the dangerous risk addressed in the Wow! Email or allow Tricarichi to see the internal memorandum prepared by PwC's Rich Stovsky addressing the risks in more detail. (AA1797, at Tr. 597:8–10.) Instead, PwC minimized the risk and advised Tricarichi to proceed. (AA1677.) By doing so, when it knew that Tricarichi would be subject to penalties, PwC concealed its malpractice and triggered the tolling provision in NRS 11.2075. *See also In re Amerco Derivative Litigation*, 127 Nev. 196 (2011) ("When a fiduciary 'fails to fulfill his obligations' and keeps that failure hidden, the statute of limitations will not begin to run until the failure of the fiduciary is 'discovered, or should have been discovered, by the injured party.'").

In granting summary judgment, the District Court did not address any of this.[7] Instead, the District Court concluded that, irrespective of what PwC knew and concealed, Tricarichi should have discovered PwC's malpractice by early 2008 when the IRS audited Westside's tax return and sent document requests to Tricarichi. (AA890.) According to the District Court, because the IRS referred to potential

[7] In its order entering judgment on Tricarichi's 2008-based claims, the District Court concluded that PwC's purported advice against the Oregon Midco transaction was not inconsistent with the advice to Tricarichi that he should proceed, because there were purportedly differences in the structure of the two Midco transactions. (AA1036–37.) But the Tax Court rejected that the Westside transaction structure precluded transferee liability. *Tricarichi*, 2015 WL 5973214, at *16–17. For tax purposes, the structural differences were immaterial to the negligence of PwC's advice. In addition, as addressed below, PwC knew the "basic transaction" itself was "risky" and "probably" would "blow[] up at the IRS" and could lead to liability for "aiding and abetting a transaction the sole purpose of which was to evade income tax." (AA1380.) And PwC concealed its knowledge from Tricarichi for 20 years—from 2003 when Tricarichi first approached PwC until 2023 when the facts finally came to light in the *Marshall* trial.

transferee liability in the event it imposed additional tax liability on Westside, Tricarichi was on notice of PwC's malpractice. (*Id*.)

Respectfully, that conclusion highlights the District Court's failure to properly consider the evidence at summary judgment. The IRS document requests to Tricarichi cannot be considered in a vacuum. To give Tricarichi the benefit of all reasonable inferences as required at summary judgment, the IRS's actions must be considered in context of what PwC advised Tricarichi. Given PwC's advice, there was nothing suspicious about the IRS auditing Westside's tax return or referring to the issue of transferee liability in its document requests to Tricarichi—because PwC itself had contemplated the issues ahead of time and assured Tricarichi that any additional tax liability of Westside would was not his problem. From Tricarichi's perspective, the IRS was doing the expected due diligence on a complicated transaction and would eventually arrive at the same conclusion as PwC.

The IRS did not make a final determination about transferee liability until June 25, 2012, when it mailed its notice of liability to Tricarichi. *Tricarichi*, 2015 WL 5973214, at *12. It was then that Tricarichi had reason to think that PwC might have committed malpractice, and soon after the parties entered the first in a series of tolling agreements that applied from January 19, 2011, and did not end until May 1, 2016. (AA782–793.)

At minimum, this timing presented issues of fact requiring a trial because "when the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of his cause of action is a question of fact for the trier of fact." *Siragusa*, 114 Nev. at 1391 (internal quotations marks and brackets omitted). As this Court has explained, "[o]nly where uncontroverted evidence proves that the plaintiff discovered or should have discovered the facts giving rise to the claim should such a determination be made as a matter of law." *Id*. at 1401; *see also Mahon v. Howard & Howard Attorneys PLLC*, Nos. 81152 & 81468, 2021 WL 5629851, at *3 (Nov. 30, 2021) (Unpublished Disposition) (ruling that tolling questions in legal-malpractice case, including with respect to attorney's concealment of malpractice, were "questions of fact" to be determined on remand).

II. The District Court erred by disregarding newly discovered evidence that PwC concealed its malpractice.

Neither Tricarichi nor the District Court knew at summary judgment—or when the District Court struck Tricarichi's jury demand or even at the bench trial—that PwC failed to produce highly incriminating evidence showing what PwC's national office really knew about Midco transactions. That evidence, which Tricarichi timely presented to the District Court in a motion under NRCP 60(b), provides further support for concluding that PwC knew about and concealed its malpractice.

The District Court's denial of relief under NRCP 60 is reviewed for abuse of discretion, *Cook v. Cook*, 112 Nev. 179, 181–82 (1996), and the District Court's application of the relevant standards at summary judgment is reviewed de novo, *Jaramillo*, 136 Nev. at 136.

A. PwC failed to produce the Wow! Email and Risk Management Policy.

In 2017, the District Court ruled that Tricarichi was entitled to NRCP 56(f) discovery regarding "PwC's review, promotion or advocacy of, or other advice regarding transactions similar to Mr. Tricarichi's transaction with Fortrend, and the reasons why PwC did not make Mr. Tricarichi aware of those transactions." ([Dkt. 100, at 1.) In the subsequent 56(f) discovery, PwC should have produced the Wow! Email and PwC's Risk Management Policy, both of which fall squarely within the scope of the District Court's order and Tricarichi's discovery requests.

The Wow! Email was written by Michael Weber, who was the co-head of PwC's Portland office that advised on the *Marshall* transaction in late 2002 and early 2003. As the email makes clear, Weber and his Portland colleague were not experts on Midco transactions but had been advising the Marshalls based on the premise that PwC did Midco transactions "all the time" and that the basic transaction was not risky to PwC's clients. (AA1380.)

As the *Marshall* transaction approached closing in March 2003, Weber's colleague belatedly sought feedback from PwC's national office. (AA1380.) Eleven minutes after the national office received the draft 57-page stock-purchase agreement, PwC's national risk management partner responded by balking at the Midco transaction itself and making clear that PwC should not even advise on such transactions. (*Id.*) Weber's reply is the Wow! Email, which shows both that he got the message and that he and his colleague had been giving the wrong advice:

> **Wow! I didn't know the basic transaction was risky. I thought we were told this was done all the time and there was not risk to our client. We may have already given our client the wrong advice.** We need to talk with the attorney [for the Marshalls] the first of next week and explain that **if this blows up at the IRS as it probably will** we have a client that doesn't want to give their money back. I can't guarantee the client he won't get sued for aiding and abetting **a transaction the sole purpose of which was to evade income tax**. …

(*Id.*) After receiving that reply from Weber, the risk management partner forwarded the entire chain to PwC's Office of General Counsel. (*Id.*)

PwC did its best to prevent the Wow! Email from being produced. The only copy that survived spoliation was the copy forwarded to PwC's Office of General Counsel, and there is a not a single subsequent communication pertaining to the issues addressed in the Wow! Email chain (or, at least, not a single communication that was ever produced). (AA1455–56 (finding that "PwC employees deleted their emails related to the work for the Marshalls").) PwC apparently tried to be discreet about what was put in writing because, as we now know from the Risk Management Policy that PwC also improperly withheld during discovery, PwC had a policy that flatly prohibited "admit[ting] liability, shortcomings, or defects in [its] services." (AA1403.)

B. PwC's conduct violated its discovery obligations in multiple Midco-related proceedings.

PwC's failure to produce the Wow! Email violated its obligations in multiple proceedings and deprived everyone involved in those proceedings—the IRS, the courts, and PwC's clients—of highly material evidence.

First, the Wow! Email should have been produced to the IRS because the IRS twice issued a summons to PwC that squarely encompassed the Wow! Email.

- In 2007, the IRS sent a summons to PwC for, among other things, "[a]ll documents that discuss, describe, effectuate or otherwise relate to" the *Marshall* transaction. (AA1691.)
- In 2008, the IRS sent a summons relating to its audit of Westside, directing PwC to produce "[a]ll documents and communications by, among, or pertaining to the Relevant Parties, that plan, debate, analyze, discuss, describe, effectuate or otherwise relate to [defined] transactions and/or activities." (AA1707 (Request 1).) The "Relevant Parties" included Fortrend—a name that appears in the subject line of the Wow! Email—and the defined "transactions and/or activities" include the Westside transaction and "all similar transactions," meaning "each and every transaction that has some, though not all, features in common with the described transaction." (AA1705–06, Definitions 3 & 9.)

Not only was PwC required to produce the Wow! Email in response to each summons, but for each the IRS explicitly directed that, to the extent PwC did not produce a responsive document on account of spoliation or privilege, PwC was obligated to identify the document not produced. (AA1689, 1703.) But PwC neither produced the Wow! Email nor complied with the directive to identify unproduced documents.

Second, the Wow! Email should have been produced in the *Marshall* litigation because, in 2018, the Marshalls served document requests on PwC encompassing the Wow! Email. But PwC did not produce the Wow! Email. Instead, while represented by the same Skadden attorneys that previously represented PwC in this case, PwC improperly withheld the email as "privileged" and hid the document on its privilege log under an inaccurate description. (AA1437, 1455–56.)

The email chain was not produced until February 2023—six months before trial in that case—in response to a motion to compel. The Oregon court found that "these key emails … were in fact being improperly withheld" and the Marshalls "didn't have those [emails] at critical procedural points in this litigation." (AA1457.) The court ruled that "the failure to produce [the Wow! Email and related email chain] was in fact a violation of [the court's] order to compel from April of 2019." (AA1457–58.) Because of these discovery violations, the court sanctioned PwC by instructing the jury about PwC's discovery misconduct. (AA1455–58.) With the benefit of the Wow! Email and Risk Management Policy at trial, the jury ultimately entered a verdict against PwC for more than $60 million. (AA1376–78.)

Third, the Wow! Email should have been produced to Tricarichi—both while the IRS investigating the transaction and during this litigation. Indeed, back ***in 2009***, PwC purported to send to Tricarichi all documents responsive to the IRS summons (AA1709), but that production did not include the Wow! Email. Nor did PwC's document production in this litigation include the Wow! Email, even though the Wow! Email's author, Michael Weber, and one recipient of the Wow! Email, Gary Cesnik, were designated custodians and the word "Fortrend" (which appears in the Wow! Email's subject line) was an agreed search term. (AA1556.)

Similarly, the Risk Management policy should have been produced to Tricarichi during discovery in this litigation. In August 2017, PwC expressly represented that it produced "documents related to any internal policies or guidelines regarding on-going communications with a client after PwC's services had been rendered concerning the client's engagement." (AA1553.) Because the Risk Management Policy is related to such internal policies and guidelines at PwC, its production was required.[8]

C. The newly discovered evidence warranted relief under NRCP 60(b).

Because of PwC's misconduct, neither the Wow! Email nor the Risk Management Policy were available before the District Court entered final judgment on February 9, 2023. The documents were not produced until January and February 2023—when they were produced in the *Marshall* litigation subject to a protective order that prevented disclosure to Tricarichi and use in any other litigation until they

[8] These were not PwC's only failures to produce material evidence. Just twelve days before trial, PwC belatedly produced four responsive documents, leading the District Court to grant Tricarichi's motion for discovery sanctions. (AA1801–07.)

were admitted into evidence at the *Marshall* trial that began on July 31, 2023, and ended August 14, 2023. Tricarichi filed his motion under Nevada Rule of Civil Procedure 60(b) a week later, on August 21, 2023.

Under NRCP 60(b), the "court may relieve a party … from a final judgment, order, or proceeding for … (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)" or for "(3) fraud … misrepresentation, or misconduct by an opposing party." Both of those grounds are met here. Because PwC committed misconduct in concealing the documents from everyone, that evidence could not have been discovered with reasonable diligence. Relief was thus warranted under NRCP 60(b).

The District Court denied NRCP 60(b) relief on the ground that the Wow! Email and Risk Management Policy "would not have changed [its] timeliness analysis" at summary judgment. (AA1768–69.) According to the District Court, "[n]either [document] addresses the timing of when Plaintiff was on notice and when he needed to file his claim for purposes of the statute of limitations," and thus the District Court stood by its conclusion that Tricarichi was on notice when he receive document requests from the IRS as part of the Westside audit. (*Id.*)

But that analysis ignores that, at summary judgment, Tricarichi was entitled to all reasonable inferences that can be drawn from the evidence. *Jaramillo*, 136 Nev. at 136. The Wow! Email explicitly confirms that PwC was giving its clients the "wrong advice" about Midco transactions. As explained above, in the context of what PwC had advised, the IRS audit of Westside and the documents requests to Tricarichi did not suggest to Tricarichi that PwC committed malpractice. To the contrary, PwC advised Tricarichi that it considered transferee liability and concluded that it would not apply. Tricarichi therefore reasonably believed the IRS would do the same, and his belief raises a disputed question of fact that could not be resolved at summary judgment. At minimum, PwC's concealment of the Wow! Email from 2003 until 2023 triggered the tolling provision in NRS 11.2075.

PwC's concealment of the Wow! Email is also highly relevant to the issue of attorneys' fees, as discussed below, and to the District Court's determination on the jury waiver and damage limitation clause. Such clauses are enforceable "when they are entered into knowingly, voluntarily and intentionally," *Lowe Enterprises Residential Partners, L.P. v. Eighth Judicial District Court ex rel. County of Clark*, 118 Nev. 92, 100 (2002), and PwC's failure to tell Tricarichi up front what it knew about Midco transactions goes to the heart of that inquiry. At minimum, the Wow! Email should have been part of the "fact-intensive" inquiry that is required in applying the *Lowe* factors. *PricewaterhouseCoopers*, 2021 WL 4492128, at *2.

Relief under NRCP 60(b) was thus warranted, and the District Court abused its discretion by failing to properly consider the evidence under the standards applicable at summary judgment.

III. The District Court abused its discretion in entering the Fee Award.

After the District Court entered final judgment against Tricarichi, PwC filed a NRCP 68 motion for attorneys' fees and costs based on PwC's identical offers of judgment in 2019 and 2021. The District Court awarded attorneys' fees and costs based only on the 2021 offer of judgment. (AA1482–84 (denying motion with respect to 2019 offer).) That Fee Award should be reversed for all the reasons addressed above—*i.e.*, summary judgment should not have been entered on Tricarichi's 2003-based claims and relief under NRCP 60(b) should have been granted.

In addition, the Fee Award itself should be reversed because the District Court misapplied the *Beattie* factors and awarded unreasonable fees and costs.

A. The District Court misapplied the first three *Beattie* factors and unfairly penalized Tricarichi for not dropping claims that it ruled were legitimate.

"[W]hile the purpose of NRCP 68 is to encourage settlement, it is not to force plaintiffs unfairly to forgo legitimate claims." *Beattie*, 99 Nev. at 588; *see also Yamaha Motor Company, U.S.A.*, 114 Nev. 233, 252 (1998) (reversing fee award and emphasizing that fee shifting under NRCP 68 is not supposed to "have the effect of unfairly forcing litigants to forgo legitimate claims").

With that purpose in view, *Beattie* emphasized that, "[i]n exercising its discretion regarding the allowance of fees and costs under NRCP 68, the trial court must carefully evaluate" the relevant factors. 99 Nev. at 588–89. Those factors are:

(1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount." *Id.* at 588–89. Careful consideration of those factors requires appropriately weighing all issues pertaining to them. *See, e.g.*, *Yamaha*, 114 Nev. at 252 (reversing fee award and remanding for re-evaluation because "the trial court may not have weighed appropriately the liability issues in this analysis").

In this case, the District Court addressed the first three *Beattie* factors with respect to both offers of judgment. But while the District Court formally discussed the factors, its order contradicts itself and cannot be reconciled with the District Court's earlier rulings that Tricarichi had a legitimate basis to proceed with claims against PwC.

1. The District Court improperly evaluated whether Tricarichi acted in good faith.

The first and third *Beattie* factors relate to the plaintiff's good faith in bringing a claim and rejecting an offer of judgment. In this case, the District Court applied those factors first to the 2019 offer of judgment, concluding that Tricarichi brought his claims and rejected the offer of judgment in good faith. (AA1482–83.) But when applying the same factors to the 2021 offer of judgment, the District Court flipped its analysis, concluding that Tricarichi (a) *did not* bring his claims in good faith and (b) was "grossly unreasonable" in rejecting the $50,000 offer of judgment. (AA1484–85.) Tricarichi respectfully submits that the District Court abused its discretion on both points.

First, the conclusion that Tricarichi did not bring his claims in good faith is inexplicable given the District Court's own ruling to the contrary. The District Court reached exactly the opposite conclusion two pages earlier in its analysis when finding that Tricarichi's good faith in bringing his claims weighed against an award on the 2019 offer. There is no plausible basis for reaching diametrically opposed conclusions on the same issue—particularly when, as discussed below, the District Court itself denied PwC's motion for summary judgment on the claims that were tried. Tricarichi brought his claims in good faith.

Second, it was not grossly unreasonable for Tricarichi to reject PwC's $50,000 offer of judgment in 2021. As an initial matter, the District Court itself concluded that it was not grossly unreasonable for Tricarichi to reject PwC's first $50,000 offer in 2019. (AA1483.) And between PwC's two offers, the only material change in the case's posture was that this Court remanded the case for the District Court to decide whether Tricarichi waived his right to a jury trial. *PricewaterhouseCoopers*, 2021 WL 4492128. Nothing about the possible absence of a jury trial made Tricarichi's rejection of the $50,000 offer in 2021 grossly unreasonable.

That conclusion is confirmed by the District Court's own denial of summary judgment sixth months *after* Tricarichi rejected the 2021 offer. As the District Court explained, it "[could not] grant partial summary judgment that Plaintiff's claim cannot exceed $48,552" under a limitation-of-damages provision because there were "disputed questions of fact to be resolved at trial concerning whether PwC's conduct rises to gross negligence." (AA1017–18.) And as a matter of law, the conclusion that there was a genuine factual dispute means "the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Jaramillo*, 136 Nev. at 135. In other words, under the standards applicable at summary judgment, the District Court itself concluded that Tricarichi had a good-faith basis for continuing to pursue his full damages of more than $20 million. It was not grossly unreasonable that, six months earlier, he rejected PwC's offer of $50,000.

Tricarichi respectfully submits that the District Court abused its discretion with respect to the first and third *Beattie* factors.

2. The District Court improperly evaluated whether PwC acted in good faith.

The second *Beattie* factor relates to the defendant's good faith in making an offer of judgment. This Court has explained that "there is no bright-line rule" regarding the reasonableness of an offer of judgment, and "the district court is vested with discretion to consider the adequacy of the offer." *Certified Fire Protection, Inc.*

v. Precision Construction, Inc., 128 Nev. 371, 383 (2012). In this case, the District Court concluded that PwC made its offers in good faith. (AA1482, 1484.)

Respectfully, the District Court abused its discretion in several respects. For PwC, a verdict in favor of Tricarichi would potentially have meant liability for Tricarichi's full damages of more than $20 million. Yet nowhere in its analysis did the District Court address the magnitude of Tricarichi's damages when considering whether a $50,000 offer from PwC was made in good faith.

The District Court's omission is even more glaring given the magnitude of the fees and costs PwC was seeking. Despite having offered only $50,000 to settle, PwC reported that it subsequently incurred more than $10 million in attorneys' fees and costs. (AA1488, 1498.) That number is staggering, and it puts PwC's low-ball offers in stark contrast. PwC was prepared to break the bank to fight Tricarichi's claim, and its nominal offers were intended to give PwC the chance, if ultimately successful at trial, to foist its massive fees and costs on its former client. That is not a good-faith basis for making an offer of judgment. *See Beattie*, 99 Nev. at 588 (explaining that purpose of NRCP 68 is "not to force plaintiffs unfairly to forgo legitimate claims"); *Yamaha*, 114 Nev. at 252 (same).

On top of all this, in denying relief under NRCP 60(b), the District Court never addressed Tricarichi's argument that PwC made its low-ball offers while knowing that it was improperly withholding highly incriminating evidence showing what

PwC really knew about Midco transactions. The Wow! Email is compelling evidence that PwC was grossly negligent in advising Tricarichi to proceed with the transaction. PwC knew that Midco transactions were unacceptably dangerous yet advised Tricarichi that he would not be subject to liability, that the transaction's potential downside was "still better than not doing [the] deal," and that he should "do the transaction 10 times out of 10." (AA1658, 1677.) PwC was not acting in good faith in making $50,000 offers of judgment while withholding evidence that strongly supports Tricarichi's claim for full damages.

Tricarichi respectfully submits that the District Court abused its discretion with respect the second *Beattie* factor.

B. The fees sought by PwC are unreasonable.

Because the first three *Beattie* factors weigh in Tricarichi's favor, it is unnecessary to weigh the reasonableness of the fees and costs that PwC sought. *See Yamaha*, 114 Nev. at 252 n.16 (explaining that "no one factor under *Beattie* is determinative"); *Frazier*, 131 Nev. at 643 (reversing fee award when reasonableness of fees was only factor supporting award).

But to the extent the Court considers the issue, the unreasonableness of PwC's motion further supports vacating the Fee Award. PwC sought more than $10 million in attorneys' fees and costs, and of that total, PwC sought $9,171,309 for services from Bartlit Beck LLP based on invoices that provide no way to evaluate the reasonableness of the fees. (AA1498.)

To the contrary, Bartlit Beck charged a flat monthly fee to PwC and, by its own admission, "d[id] not maintain precise hourly records of its work" or "prepare hourly descriptions for work performed." (AA1211, ¶ 8.) Given the lack of recorded detail, Bartlit Beck's invoices say almost nothing at all. Indeed, several of the invoices describe Bartlit Beck's legal services by saying only "Legal Services." (*See*, *e.g.*, AA1218.) Such descriptions are plainly insufficient because they provide no basis for evaluating "the work actually performed by the lawyer," including "the skill, time and attention given to the work." *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349 (1969).

Because there is no basis under Nevada law for its unsupported fee request, PwC proposed reducing the attorneys' fees requested for Bartlit Beck to $1,857,338.68. (AA1488.) In support of that modified request, Bartlit Beck produced documents purporting to provide general collective descriptions of work performed in any given month. (AA1495–96.) For example, as the District Court explained, Bartlit Beck's documents for December 2021 showed that it collectively worked on "preparing status reports, reviewing the mandamus petition, preparing for and attending hearings, drafting brief, and preparing for argument at an upcoming hearing." (AA1496.)

But those collective descriptions were not linked to any particular attorney or hours worked. Likewise, when Bartlit Beck reported the total hours each attorney "billed" each month, they were collective in nature and were not linked to any particular work performed. PwC's reduced request for Bartlit Beck's fees was therefore just as untethered as its initial request.

Nevertheless, without citing any basis under Nevada law, the District Court accepted PwC's reduced request, making only relatively small reductions on the ground that PwC might not have needed three Bartlit Beck attorneys for all tasks at trial. Ultimately, the District Court awarded $1,695,735.59 based on the attorneys' fees of Bartlit Beck, in addition to $407,018.80 for the attorneys' fees of PwC's local counsel and costs of $322,955.91. (AA1522.) Tricarichi respectfully submits that the award of attorneys' fees based on Bartlit Beck's work was an abuse of discretion.

To be clear, Tricarichi takes no issue with Bartlit Beck's flat-fee billing arrangement with PwC, or even with PwC's decision that it was willing to pay more than $9 million to Bartlit Beck. Those decisions are entirely between Bartlit Beck and PwC. But it is unreasonable and unfair for PwC to foist its arrangement onto Tricarichi with no way to meaningfully evaluate the work underlying those fees, particularly since Barlit Beck itself sent the 2021 offer of judgment for the very purpose of later seeking attorneys' fees. To the extent PwC wanted to recoup attorneys' fees, it should have made a good-faith offer of judgment and then supported its fee request with adequate billing records.

PwC's failure to require adequate billing records meant there was nothing to evaluate. Indeed, while the District Court slightly reduced PwC's modified fee request, the reductions were not tied to any billing records showing what the Bartlit Beck attorneys had done. (AA1497.) To the contrary, the reductions were pure guesswork, not based on any concrete analysis required under *Brunzell* of "the work actually performed by the lawyer." 85 Nev. at 349. That is not a sufficient basis for a reasonable award. *See Frazier*, 131 Nev. at 651 (rejecting "guesstimates" as basis for fees and reversing for abuse of discretion).

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

CONCLUSION

Tricarichi respectfully asks the Court to reverse the District Court's judgment in favor of PwC and the District Court's order denying relief under NRCP 60(b). To the extent the Court does not reverse, Tricarichi respectfully asks the Court to reverse the Fee Award.

Dated: April 8, 2024

HUTCHISON & STEFFEN, PLLC

By: */s/ Ariel C. Johnson*
Ariel C. Johnson
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

SPERLING & SLATER, LLC
Scott F. Hessell (Pro Hac Vice)
55 West Monroe Street, 32nd Floor
Chicago, IL 60603

RANDY J. HART, LLC
Randy J. Hart (9055)
3601 South Green Road, Suite 200
Beachwood, OH 44122

Attorneys for Appellant Michael A. Tricarichi

CERTIFICATE OF COMPLIANCE

I certify that this APPELLANT'S OPENING BRIEF complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word, Times New Roman 14-point type. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, it is proportionally spaced, has a typeface of 14-point, and contains 11,601 words, excluding the cover, tables, and certificates.

I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. This brief complies with all applicable NRAPs, and in particular NRAP 28(c)(1), which requires every assertion in this brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions if the accompanying brief is not in

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

conformity with the requirements of the Nevada Rules of Appellate Procedures.

Dated: April 8, 2024

HUTCHISON & STEFFEN, PLLC

By: */s/ Ariel C. Johnson*
Ariel C. Johnson
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

SPERLING & SLATER, LLC
Scott F. Hessell (Pro Hac Vice)
55 West Monroe Street, 32nd Floor
Chicago, IL 60603

RANDY J. HART, LLC
Randy J. Hart (9055)
3601 South Green Road, Suite 200
Beachwood, OH 44122

Attorneys for Appellant Michael A. Tricarichi

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this completed APPELLANT'S OPENING BRIEF was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

Dated: April 8, 2024.

By: */s/ Kaylee Conradi*
An Employee of Hutchison & Steffen