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*Attorneys for Plaintiff Michael Tricarichi*

DISTRICT COURT  
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,	)	CASE NO. A-16-735910-B
	)	APPEAL NO. 87835
Plaintiff,	)	
	)	<b>PLAINTIFF'S CASE APPEAL</b>
v.	)	<b>STATEMENT</b>
	)	
PRICEWATERHOUSECOOPERS LLP,	)	
	)	
Defendant.	)	
	)	
_____	)	

**1. NAME OF APPELLANT FILING THIS CASE APPEAL STATEMENT**

Plaintiff Michael A. Tricarichi

**2. JUDGE ISSUING THE DECISION JUDGMENT, OR ORDER APPEALED FROM**

The Honorable District Court Judge Joanna Kishner  
Eighth Judicial District  
Department XXXI

3. **NAME OF EACH APPELLANT AND THE NAME AND ADDRESS OF COUNSEL  
FOR EACH APPELLANT**

a. **Appellant:**

Michael Tricarichi

b. **Appellant's Counsel:**

Ariel C. Johnson (NV Bar No. 13357)  
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4. **NAME OF RESPONDENT AND ADDRESS OF APPELLATE COUNSEL FOR  
RESPONDENT**

**Respondent:**

PricewaterhouseCoopers, LLP ("PwC")

**Respondent's Counsel:**

Patrick Byrne, Esq. (NV Bar No. 7636)  
Bradley T. Austin, Esq. (NV Bar No. 13064)  
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Katharine A. Roin, Esq. (Admitted *Pro Hac Vice*)  
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5. **WHETHER COUNSEL LISTED ABOVE IS NOT LICENSED TO PRACTICE  
LAW IN NEVADA**

The following counsel listed above is admitted to practice law in Nevada:

Appellant's Counsel:

Ariel C. Johnson (NV Bar No. 13357)  
(HUTCHISON & STEFFEN, PLLC)

Respondent's Counsel:

Patrick Byrne, Esq. (NV Bar No. 7636)  
Bradley T. Austin, Esq. (NV Bar No. 13064)  
(SNELL & WILMER L.L.P.)

The following counsel listed above are not admitted to practice law in Nevada but have  
been admitted pro hac vice.

Appellant's Counsel<sup>1</sup>:

Scott F. Hessel (Admitted *Pro Hac Vice*)  
(SPERLING & SLATER, LLC)

Respondent's Counsel<sup>2</sup>:

Mark L. Levine, Esq. (Admitted *Pro Hac Vice*)

<sup>1</sup> Pursuant to NRAP 3(f)(3)(E), the Order Admitting to Practice Appellant's non-Nevada-licensed counsel (Scott Hessel) is attached hereto as Exhibit 1.

<sup>2</sup> Pursuant to NRAP 3(f)(3)(E), the Orders Granting Motions to Associate all six (6) of Respondent's non-Nevada-licensed counsel are attached hereto as Exhibit 2 (admitting Chris Landgraff, Mark Levine, and David Taylor), Exhibit 3 (admitting Katharine Roin), Exhibit 4 (admitting Alexandra Genord), and Exhibit 5 (admitting Sundee "Rob" Addy).

Christopher D. Landgraff, Esq. (Admitted *Pro Hac Vice*)  
Katharine A. Roin, Esq. (Admitted *Pro Hac Vice*)  
Alexandra R. Genord, Esq. (Admitted *Pro Hac Vice*)  
Sundeep K. (Rob) Addy, Esq. (Admitted *Pro Hac Vice*)  
Daniel C. Taylor, Esq. (Admitted *Pro Hac Vice*)  
(BARTLIT BECK LLP)

6. **WHETHER APPELLANT IS REPRESENTED BY APPOINTED OR RETAINED COUNSEL IN THE DISTRICT COURT**

Michael Tricarichi was represented by retained counsel in the District Court.

7. **WHETHER APPELLANT IS REPRESENTED BY APPOINTED OR RETAINED COUNSEL ON APPEAL**

Michael Tricarichi is represented by retained counsel on appeal.

8. **WHETHER APPELLANT IS GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS, AND THE DATE OF ENTRY OF THE DISTRICT COURT ORDER GRANTING SUCH LEAVE**

Michael Tricarichi has not moved for leave to proceed in forma pauperis.

9. **DATE THE PROCEEDINGS COMMENCED IN DISTRICT COURT**

April 29, 2016.

10. **BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND RESULT**

This is an appeal from a district court post-judgment order denying a motion for reconsideration under NRCP 60(b) based on newly discovered evidence.

Plaintiff Michael Tricarichi sued PwC for accounting malpractice relating to the 2003 stock sale of his company, Westside Cellular (“Westside”). Before the sale, Westside had received a large settlement payment to resolve antitrust litigation, and as part of the settlement, Plaintiff agreed to exit his company from the cellular-phone business. Plaintiff thus considered options, including a stock sale through an intermediary (or “Midco”) transaction, which was proposed to him as a tax-efficient solution that would avoid double taxation of the settlement payment. Because Plaintiff is not sophisticated in tax-related matters, he engaged PwC to evaluate the proposed Midco transaction, and he relied on PwC’s tax expertise in deciding whether to proceed.

1 But despite investigating the financial condition of the purchasing entity, PwC did not  
2 advise Plaintiff that the purchasing entity lacked sufficient funds to cover its warranty of  
3 Westside's 2003 tax liability. And despite the proposed transaction's substantial similarity to the  
4 intermediary transactions listed in an IRS notice as abusive tax shelters, PwC did not tell Plaintiff  
5 about that substantial similarity or otherwise warn him that the proposed transaction would be  
6 deemed abusive. To the contrary, PwC advised Plaintiff that the proposed transaction *was not*  
7 substantially similar to the transactions listed in the IRS notice and that, even if the IRS was to  
8 disallow the purchasing entity's attempt to offset Westside's large taxable gain, Plaintiff would  
9 not be exposed to transferee liability. In short, rather than advising Plaintiff not to proceed with  
10 the transaction, PwC advised there was no reason not to proceed.  
11

12 After relying on PwC's advice and closing the transaction, Plaintiff had no way of  
13 knowing that the advice he received was negligent. PwC concealed its negligence from Plaintiff,  
14 and the IRS did not begin auditing Westside's 2003 income tax return until 2008. That audit was  
15 not completed until February 2009 and the IRS did not finalize its transferee report until August  
16 2009. After Plaintiff objected to that report, the IRS and Plaintiff tried to resolve their  
17 disagreement until early 2012. And throughout the entire process of the audit and the subsequent  
18 negotiations, PwC kept its malpractice concealed from Plaintiff, even as he continued to rely on  
19 PwC's advice. It was not until June 2012, after the negotiations between the IRS and Plaintiff  
20 ended, that the IRS sent a notice of transferee liability to Plaintiff—who then entered into a series  
21 of tolling agreements with PwC, retroactive to January 2011, under which PwC agreed to waive  
22 any defense based on the expiration of the statute of limitations during the tolling period.  
23  
24

25 Plaintiff commenced this action on April 29, 2016. The District Court granted summary  
26 judgment to PwC on October 24, 2018, based on the statute of limitations. On March 26, 2019,  
27 the Court granted Plaintiff leave to file an amended complaint, which he filed on April 1, 2019,  
28 asserting that PwC committed accounting malpractice by failing to advise him about the risks of

1 his transaction despite being required to do so by IRS notice issued in 2008 and accounting duties.  
2 The matter ultimately proceeded to trial on Plaintiff's amended complaint, and the District Court  
3 entered Findings of Fact and Conclusions of Law and Judgment in favor of PwC. Plaintiff's timely  
4 appeal from the District Court's judgment is pending (SCT Docket No. 86317).

5 On March 15, 2023, PwC filed a motion seeking its attorneys' fees and costs based on two  
6 \$50,000 offers of judgment. Plaintiff argued that PwC met none of the required factors under  
7 *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983). The District Court entered an order denying  
8 PwC's motion with respect to the 2019 offer of judgment, granting the motion with respect to the  
9 2021 offer of judgment, and entering an award to PwC of more than \$2 million. Plaintiff's timely  
10 appeal from that special order after final judgment is pending (SCT Docket No. 87375).

12 On August 21, 2023, Plaintiff filed a motion pursuant to NRCP 60(b). Plaintiff based his  
13 Rule 60(b) motion on newly discovered evidence that PwC should have produced in 2017 and  
14 2018.

15 In particular, the District Court had denied PwC's motion for summary judgment on  
16 Plaintiff's 2003-based claims expressly because Plaintiff was entitled to NRCP 56(f) discovery  
17 regarding "PwC's review, promotion or advocacy of, or other advice regarding transactions  
18 similar to Mr. Tricarichi's transaction with Fortrend, and the reasons why PwC did not make  
19 Mr. Tricarichi aware of those transactions." (Dkt. 100, 5/31/2017 MSJ Order, at 1.) In responding  
20 to that discovery, PwC failed to produce two documents that fell squarely within the scope of the  
21 District Court's order and Plaintiff's subsequent document requests.

23 First, PwC failed to produce a 2003 internal email thread that unequivocally demonstrated  
24 what PwC knew about Midco transactions before Plaintiff even retained PwC. The email thread  
25 pertained to the Marshall Midco transaction—a Midco transaction that was substantially similar  
26 to the Westside transaction—and the key email was written by Michael Weber, the co-head of  
27 PwC's Portland office that advised on the Marshall transaction. As the email makes clear, Weber  
28

1 and his Portland colleague were not experts with respect to Midco transactions, but they had been  
2 advising the Marshalls based on the premise that PwC did Midco transactions “all the time” and  
3 that the basic transaction was not risky to transferee taxpayers. (Dkt. 451, at Ex. 2,  
4 p. 004.) As the Marshall transaction approached closing, Weber’s Portland colleague belatedly  
5 sought feedback from PwC’s subject-matter experts in its National Office. Eleven minutes after  
6 Weber’s colleague sent the draft 57-page stock-purchase agreement to the National Office, the  
7 National Risk Management lead partner responded, balking at the Midco transaction itself and  
8 making clear that PwC should not advise on such transactions. When Weber received that advice,  
9 his unfiltered response showed the disconnect between what PwC knew about the basic Midco  
10 transaction and what PwC was advising in the field:  
11

12       Wow! I didn’t know the basic transaction was risky. I thought we were told this  
13       was done all the time and there was not risk to our client. We may have already  
14       given our client the wrong advice. We need to talk with the attorneys at Schwabe  
15       the first of next week and explain that if this blows up at the IRS as it probably will  
16       we have a client that doesn’t want to give their money back. I can’t guarantee the  
17       client he won’t get sued for aiding and abetting a transaction the sole purpose of  
18       which was to evade income tax. If Schwabe can’t give that guarantee we need to  
19       back of right now.

20 (*Id.*) But rather than conveying its knowledge to its clients or its clients’ lawyers, PwC concealed  
21 its knowledge and took steps to prevent the Wow! email from ever being discovered—including  
22 by improperly deleting copies from its servers and by breaching its obligations to produce the  
23 document in response to subpoenas from the IRS and document requests in the Marshall litigation  
24 and, most pertinently, in this case.

25       Second, PwC failed to produce its Risk Management Policy that directed PwC employees  
26 against admitting mistakes: “Don’t ... admit liability, shortcomings, or defects in our services” if  
27 there are “circumstances we discover that might call into question the quality of PwC’s services  
28 whether or not the client has knowledge.” (Dkt. 451, at Ex. 3, p. 026). Not only did the Risk  
Management Policy fall squarely within Plaintiff’s 56(f) document requests, but PwC represented

1 after the parties' meet-and-confers that it had produced documents related to "any internal policies  
2 or guidelines regarding on-going communications with a client." (Dkt. 451, at Ex. 2, p. 004.)

3 Because of PwC's improper (but successful) efforts to conceal highly incriminating  
4 evidence, which was not available to Plaintiff or the District Court until after the entry of  
5 judgment, relief under NRCP 60(b) was necessary. But on November 28, 2023, the Court entered  
6 an order denying Plaintiff's motion under NRCP 60(b) on the ground that the evidence would not  
7 have changed the Court's decisions. Plaintiff appeals from that order.

8  
9 **11. PREVIOUS APPEAL OR WRIT PROCEEDING**

10 *PricewaterhouseCoopers LLP v. The Eighth Judicial District Court, et al.*,  
11 135 Nev. 87, 440 P.3d 645 (2019)  
(Docket No. 73175)  
Opinion published on May 2, 2019

12 *PricewaterhouseCoopers LLP v. The Eighth Judicial District Court, et al.*,  
13 (Docket No. 82371)  
Order Granting Petition for Writ of Mandamus  
14 Order issued on September 30, 2021

15 *PricewaterhouseCoopers LLP v. The Eighth Judicial District Court, et al.*,  
16 (Docket No. 86317)  
Appeal from Final Judgment, currently pending before the Nevada Supreme Court

17 *PricewaterhouseCoopers LLP v. The Eighth Judicial District Court, et al.*,  
18 (Docket No. 87375)  
Appeal from special order after final judgment awarding attorneys' fees and costs,  
19 currently pending before the Nevada Supreme Court

20 **12. CHILD CUSTODY OR VISITATION**

21 This appeal does not concern child custody or visitation.

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**13. POSSIBILITY OF SETTLEMENT**

Possible.

Dated: January 9, 2024.

HUTCHISON & STEFFEN, PLLC

By: /s/ Ariel C. Johnson  
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*Attorneys for Plaintiff Michael A. Tricarichi*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, PLLC and that on this 9<sup>th</sup> day of January, 2024, I caused the above and foregoing documents entitled **PLAINTIFF’S CASE APPEAL STATEMENT** to be served through the Court's mandatory electronic service system, per EDCR 8.02, upon the following:

**ALL PARTIES ON THE E-SERVICE LIST**

/s/ Kaylee Conradi  
An employee of Hutchison & Steffen, LLC