

COMMISSION ON JUDICIAL SELECTION APPLICATION

NEVADA SUPREME COURT
SEAT F

By

Patricia Lee



Personal Information

1.	Full Name	
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	Yes, I was formerly known as Patricia Thompson. I officially changed my name to Patricia Lee in 2006 upon marriage to my husband, Ronnie Lee.
3.	How long have you been a continuous resident of Nevada?	I have been a continuous resident of Nevada since 2002
4.	City and County of residence	Las Vegas, Clark County
5.	Age	47

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Partner, Hutchison & Steffen, PLLC
Phone	(702) 385-2500
Physical Address & Website	10080 West Alta Drive, Suite 200, Las Vegas, Nevada 89145 www.hutchlegal.com
Date(s) of Employment	August 12, 2002 - present
Supervisor's Name and Title	As a partner, I have no real supervisor, but work collaboratively with my partners in running the firm and the practice.
Your Title	Partner
Describe Your Key Duties	Engage in all manner of litigation, primarily complex commercial litigation. I also practice in the areas of trademark (transactional and litigation), family law, appellate, collections law and the representation of pro bono clients through the Legal Aid Center of Southern Nevada, which cases include representation of abused and neglected children through Legal Aid's Children's Attorney Project, domestic violence matters, consumer rights cases and Section 1983 cases. As a partner, I am also responsible for running the firm's summer internship program, am the head of the firm's pro bono program and liaise with political candidates for firm visits and presentations. I am also responsible for managing and training a team of associates as they assist on various legal cases and participate in community engagement.

Reason for Leaving	I am still currently employed by the firm.

Previous Employer	
Phone	
Address & Website	
Date(s) of Employment	
Supervisor's Name and Title	
Your Title	
Describe Your Key Duties	
Reason for Leaving	

Previous Employer	
Phone	
Address & Website	
Date(s) of Employment	
Supervisor's Name and Title	
Your Title	
Describe Your Key Duties	
Reason for Leaving	

Previous Employer	
Phone	
Address & Website	
Date(s) of Employment	
Supervisor's Name and Title	
Your Title	
Describe Your Key Duties	
Reason for Leaving	

<p>Educational Background</p>

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

- Lompoc High School: 1989-1993: High School Diploma; reason for leaving: Graduation.
- University of Southern California: 1993-1997; Bachelors of Arts, Dual Degree in Psychology and Communications; reason for leaving: Graduation.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

High School activities:

- Student Class President
- Cheerleading Captain (3 years)
- Treasurer of Science Enrichment Club
- President of the Black Studies Club
- Homecoming Queen
- Student/graduate of Upward Bound

College activities:

- Student Senator
- President of the Black Student’s Union
- Tutor – Upward Bound
- Order of Troy Award Recipient for Academic Excellence
- Thurgood Marshall Leadership Award for Civic Engagement

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

George Washington University Law School; Juris Doctorate achieved in May of 2002; upon speaking with the Office of Registrar at GWU, I am informed that GWU does not now, nor has it ever subscribed to a class ranking system.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

Employer	Full Time/Part Time	Nature of Employment	Dates of Employment
Steven Polin, Esq.	PT	Law Clerk	Winter 2000 – Summer 2000
Department of Justice, Aviation and Admiralty Division	FT	Summer Intern	Summer 2000

United States Postal Service, legal division	FT	Summer Intern	Summer 2001
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11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

Director of the Small Business Clinic
 Community Services Director for the Student Bar Association
 Black Law Students Association – Member

Law Practice

12. State the year you were admitted to the Nevada Bar.

2002

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

N/A

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

98% of my work over the past 5 years has involved litigation matters, with approximately 5% of those matters involving appeals (including writs of mandamus and prohibition).

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	3%
Juvenile matters	2%
Trial court civil	80%
Appellate civil	3%
Trial court criminal	0%

Appellate criminal	0%
Administrative litigation	2%
Other: Please describe	Transactional/Trademark: 10%

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

- 80% Bench Trials
- 20% Jury Trials

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have had 1 jury trial in the past 5 years and approximately 3 non-jury trials (including arbitration).

19. List courts and counties in any state where you have practiced in the past five years.

Eighth District Judicial Court, Clark County, Nevada

Federal District Court, District of Nevada

Superior Court State of California, County of Riverside, Eastern Region of Indio (pro hac vice)

United States District Court, Eastern District of Pennsylvania (pro hac vice)

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Preliminary Statement: While I am immensely proud of the millions of dollars I have been able to procure for my clients over the years, as well as the many cases I have defended as a complex commercial litigator, it is my pro bono cases that have most meaningfully impacted my philosophy on, and purpose in, the law. For a list of some of my more salient commercial litigation cases, please refer to my firm’s website at www.huthlegal.com. I feel that my extensive experience engaging in complex commercial litigation matters has honed my professional skills and deepened my understanding of Nevada jurisprudence. Only two of the following cases represent my vast commercial litigation experience (although, I am more than happy to elaborate on any of my commercial cases upon request). Three of the cases I have included as being of greatest significance are those in which I represented my clients pro bono.

Case 1
Case name and date: <i>Dachtler v Anderson, et. al.</i> ; Date complaint was filed: 05/18/2010
Court and presiding judge and all counsel: Eighth District Judicial Court; Presiding Judge: Honorable Judge Jessie Elizabeth Walsh; Counsel involved other than myself on behalf of Plaintiff, Eleanor Dachtler: Kurt R. Bond and Alan Mulliner on behalf of Defendant, Albert Anderson; Ann-Martha Andrews and Kristina N. Holmstrom on behalf of defendant Prudential Insurance Company of America.
<p>Importance of the case to you and the case's impact on you: This was a pro bono case that fundamentally transformed my outlook and purpose as a practicing attorney. Eleanor raised her son, Nicholas, in Las Vegas after she and her husband divorced. Nicholas visited his father in California during breaks but maintained his primary residence with his mother in Las Vegas. Eleanor and Nicholas shared a special bond and relied on each other throughout his formative years. She raised Nicholas to be self-sufficient with a strong sense of duty to his family and country. Consequently, at the tender age of 19, Nicholas enlisted in the military and was tragically killed by a road-side bomb while stationed in Afghanistan. Eleanor was understandably devastated and at times, inconsolable. Her despair, however, quickly devolved into indignation and rage when she learned that Nicholas's body was shipped to California for final burial. Upon research, Eleanor learned that the body was shipped to Nicholas's father due to what was then known as the "Eldest Senior Policy" which essentially dictated that, when a soldier died in combat, was unmarried and had divorced parents, the body would be automatically shipped to the older of the two parents. I was fortunate to have Eleanor's case assigned to me as a pro bono attorney through the Legal Aid Center of Southern Nevada. I undertook representation of Eleanor to ensure that her son could be buried in Nevada, as well as undertaking a campaign to change the law for similarly situated parents. Eleanor devoted her life to effectuating change in the name of her deceased son and with fierce dedication and efforts, including a letter writing campaign and meeting with prominent political figures such as then Congresswoman Shelley Berkley and then Senator John Ensign, we worked hand-in-hand to draw attention to the arbitrary and capricious nature of this antiquated and biased law. It was not so much the lawsuit that impacted my life so profoundly, but the advocacy and passion exhibited by my client. It lit a fire under me and reminded me of why I went to law school in the first place. Sadly, Eleanor was diagnosed with lung cancer and, as I delivered the news to her in hospice care that the law was changed to now require all service men and women to "check the box" designating where they want their bodies to be shipped in the unfortunate event of a casualty, Eleanor welled up with tears, squeezed my hand and said "We did it! Now, when I see Nicholas in heaven, I will tell him that his death was not vain." In that moment, I was fundamentally transformed and quietly pledged to spend the rest of my legal career to both improving the law and helping pro bono clients achieve access to justice. Eleanor quietly passed shortly after our meeting, and there is not a day that goes by that I do not call upon her memory for inspiration and gratitude.</p>
Your role in the case: Lead counsel for Plaintiff, Eleanor Dachtler

Case 2
Case name and date: <i>Michell Lynn Hanson v. Brent Joseph Hanson</i> : Date matter was resolved, May 6, 2019.
Court and presiding judge and all counsel: Eighth District Judicial Court, Family Division, Honorable Judge Sandra Pomrenze. The plaintiff appeared in proper person.
Importance of the case to you and the case’s impact on you: Mr. Hanson is one of my all-time favorite clients. I was fortunate enough to meet Mr. Hanson during an “Ask A Lawyer” community service event hosted by the Legal Aid Center of Southern Nevada. Mr. Hanson is a single father of 3 teenage girls, whose wife fell victim to the clutches of heroin and methamphetamine addiction. The wife would periodically pop-up in the girls’ lives, wreak havoc and invariably wind up committed or in jail. Mr. Hanson, a doting and loving father, was doing his best to raise his daughters alone, protecting them from the traumatizing interactions with their mother and was living off a fixed income due to a disability. I was moved by his devotion to his daughters, who, by all accounts were growing up to be responsible and independent young ladies with a love for life and their father. Through my involvement in this matter, I was able to facilitate the divorce of Mr. Hanson from his wife, allow him to have sole physical and legal custody of the girls and obtain an extended order of protection so that his ex-wife could not simply show up and re-traumatize the girls. I continue to stay in touch with Mr. Hanson and his girls. Most recently, I was able to assist Mr. Hanson in getting clinical help for his ex-wife to facilitate rehabilitation. She appears to be doing well, and Mr. Hanson has started to allow her to have supervised visitations with the girls. The girls have reported that the visits with their mother have helped them heal and forgive.
Your role in the case: Lead counsel for Plaintiff, Brent Hanson.

Case 3
Case name and date: <i>O.P.H. of Las Vegas, Inc. v. Oregon Mutual Ins.</i> , Nevada Supreme Court opinion published September 14, 2017; <i>O.P.H. of Las Vegas, Inc. v. Dave Sandin et. al.</i> ; Nevada Supreme Court order of affirmance entered January 22, 2020.; petition for judicial review denied April 21, 2020
Court and presiding judge and all counsel: Eight District Judicial Court; Honorable Judge Gloria Sturman; Michael N. Feder and Gabriel A. Blumberg of Dickinson Wright, PLLC on behalf of O.P.H. of Las Vegas, Inc.; Robert Freeman and Priscilla O’Briant with Lewis Brisbois Bisgaard & Smith, LLP on behalf of Oregon Mutual Insurance Company. I represented the Sandin defendants along with my partner, Michael Wall of Hutchison & Steffen.
Importance of the case to you and the case’s impact on you: The day after O.P.H. of Las Vegas’s insurance lapsed for failure to pay its premium, the Old Pancake House burned down. O.P.H. sued its (former) insurance company and its brokers David Sandin and Sandin

& Co. O.P.H claimed that the Sandin Defendants had a to inform it that its insurance was in jeopardy of lapsing for non-payment. We were able to successfully move to dismiss all O.P.H’s claims on a motion for summary judgment. We then successfully defended that result on appeal to the Nevada Supreme Court. This case is significant to me because my efforts resulted in a published opinion clarifying Nevada law. *See O.P.H. of Las Vegas, Inc. v. Oregon Mut. Ins. Co.*, 133 Nev., 430, 401 P.2d 218 (2017). Following the issuance of that decision, we were able to obtain an order from the lower court granting our clients’ fees and costs, which decision was affirmed by the Nevada Supreme Court on January 22, 2020.

Your role in the case: Lead counsel on behalf of David Sandin and Sandin & Co. (Defendants). Co-author of briefs on both appeals.

Case 4

Case name and date: *In re Johnson and Kliezel*, case assigned in 2005

Court and presiding judge and all counsel: Eight District Judicial Court, Family Division; Honorable Judge Gerald Hardcastle

Importance of the case to you and the case’s impact on you: The Johnson sisters had two different fathers and their mother, respective fathers and they themselves, all had AIDS. Ms. Kleitzel was a single mother trying to raise the girls, along with several other children, on a single income. It was all she could do to manage her own illness and keep food on the table. As a result of her unintentional neglect, the Johnson girls both developed pneumonia and were hospitalized and in critical condition. The younger of the two Johnson girls also suffered from spina bifida which only exacerbated the symptoms she experienced from the AIDS virus. Luckily, they were both able to persevere through their illnesses, however, their hospitalization caught the attention of DFS and the girls were removed from the care of Ms. Kleitzel for her medical neglect. Ms. Kleitzel and the girls were devastated by the separation. The Court was compassionate and implemented a rigorous reunification plan which would allow Ms. Kleitzel to regain full custody of the Johnson girls upon completing a program which included the teaching of coping skills to help manage the illness. Over the course of the next several months, Ms. Kleitzel followed the reunification plan with unwavering dedication. I was able to assist by picking the girls up once a week to attend supervised visitations with their mother. This gave me the opportunity to get to know the Johnson girls on a deep and personal level, and they were absolutely an inspirational delight. At the conclusion of the matter, we were able to put into place the resources necessary to ensure that Ms. Kleitzel could manage her illness while also sticking to the required medical protocols necessary to ensure the future health of the Johnson girls. Ms. Kleitzel is a good mom who was simply overwhelmed with the daily care of herself and her children. The Johnson girls are all grown up now and living productive lives in New York. This case reaffirmed my faith in the system and in humanity. This was also one of my first pro bono cases and is significant to me because the experience exposed me to how important pro bono work is and how the legal system can provide meaningful ways to improve lives.

Your role in the case: Lead counsel for the Johnson girls

Case 5
Case name and date: <i>Trainor v. DelaRosa, Jr., et.al.</i> ; Remittitur affirming district court judgment issued on February 9, 2018.
Court and presiding judge and all counsel: Honorable Judge Joana Kishner; myself and my partner, Joseph Ganley represented the Plaintiff, Maribeth Trainor; Defendants Moreno P. DelaRosa and Patient Care Home Health Services, Inc. were represented by Kirk T. Kenney and Gary Modafferi.
Importance of the case to you and the case’s impact on you: Maribeth Trainor invested in Patient Care Home Health Service, Inc. on behalf of her sister. After making \$83,000.00 of payments towards the investment in the company, Ms. Trainor learned that Mr. DelaRosa was mismanaging the company’s assets, misrepresenting the extent of the company’s debts and ultimately cut-off Ms. Trainor’s access to the company’s books and records. Mr. DelaRosa further refused to sign the assignment documents which would have transferred ownership in the company from Ms. Trainor to her sister. After a 5-day jury trial, my partner, Joseph Ganley and I were able to get a full verdict on each of our claims and successfully defeat all of Defendants’ counterclaims. The defendants appealed and I assisted my partner, Michael Wall, with the drafting of the answering brief. This case is significant to me as I was permitted to act as the first chair on this jury trial, taking the lead on jury selection, motion practice, witness examinations and closing arguments. I was also able to assist in the appellate briefing which resulted in affirmance of the verdicts entered below.
Your role in the case: Lead counsel for Defendants

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

22. Describe any pro bono or public interest work as an attorney.

- Legal Aid Center of Southern Nevada: Board member
- Represented approximately 100 clients in pro bono matters
- Volunteer judge at multiple “We the People” competitions
- Volunteer judge at multiple “Rebel Trojan Mock Trial” competitions
- Attended school visits with Justice Michael Douglas (ret.) to discuss the role of attorneys and the judiciary in the law to elementary school students.

- Justice Douglas PreLaw Fellowship Board member
- Jury Services Commission – member
- Pro Bono Advisory Council – member
- Self-Help Center’s Steering Committee - member

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

Las Vegas Chapter of the National Bar Association – Treasurer, 2010

Las Vegas Chapter of the National Bar Association Foundation – President, 2011

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

I am a routine guest lecturer with the National Business Institute and am able to satisfy most, if not all of my CLE credits through teaching. I am in compliance with my continuing legal education requirements. The following is a list of CLE courses I have taught and attended over the past 5 years:

2017

- “How to get Your Clients Paid – Debt Collection 101” - Lecturer
- “LLC Operating Agreements Gone Wrong” – Lecturer
- “Substance Abuse Disorders” – Attendee

2018

- “Ethics for the Business Contract Attorney” – Lecturer
- “Fiduciary Duties and Decision Making” – Lecturer
- “Negotiating Indemnification Provisions and Agreements” – Lecturer
- “LLC’s in Asset Protection” – Lecturer
- “A Paralegal’s Guide to Ethics” – Lecturer
- “A Paralegal’s Guide to Researching” - Lecturer

2019

- “Business Law Start to Finish” – Lecturer
- “Drafting and Reviewing Business Contracts” – Lecturer
- “Indemnification Provisions in Business Contracts” – Lecturer
- “Litigation for Paralegals” – Lecturer
- “Substance Abuse and Addiction in the Legal Profession” – Attendee

2020

- “Legal Research and Writing Tips and Tricks” – Lecturer
- “Using LLCs to Protect Assets” – Lecturer

- "The Brain Disease of Addiction" – Attendee

2021

- "8 Dimensions of Wellness" – Attendee
- "Business Law – A to Z" – Lecturer
- "NFT and Intellectual Property Intersection" – Attendee
- "Top FDCPA Violations 2021" – Lecturer

2022

- "§1983 Eighth and Fourteenth Amendment Claims" – Attendee
- "Collection Law from Start to Finish" – Lecturer
- "LLCs in Asset Protection" - Lecturer

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

- I am covered under my firm's malpractice insurance policy

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Omitting the various jobs that I held in high school, college and law school, I was previously employed by the California Science Center, a state-run museum located in Los Angeles, California. I worked part time in the accounting and procurement department throughout my college years (1993-1997) and, upon graduation, was hired full time to continue in those duties. Since first being employed by the law firm of Hutchison & Steffen, PLLC in 2002, I have not been employed by any other firm, agency or company.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

a. the nature of the business

- I was named a partner with the law firm of Hutchison & Steffen, PLLC in or around 2009. Hutchison & Steffen, PLLC is a law firm engaged in a wide range of practice areas.
- I have served as the Secretary of Artistic Business Services, Inc., a business development company managed primarily by my husband.
- I am a manager in Livelee Concepts, LLC, which is an Arizona franchise engaging in the provision of home health care services to residents in and around the Phoenix area.

b. the nature of your duties

- As a partner of the law firm of Hutchison & Steffen, my duties include managing associates, running the summer intern program, and serving as the pro bono liaison for the firm. I also consult with my partners on a variety of business decisions for the firm including insurance coverage, employee health care plans, hiring, firing, firm initiatives, mentoring, associate training, and collection practices.
- As Secretary for Artistic Business Services, I prepare the minutes of the annual meetings and ensure regulatory compliance with corporate renewal requirements each year.
- As a manager of Livelee Concepts, I advise on high-level strategic business development initiatives, legal compliance and help to facilitate franchisor/franchisee relations.

c. the extent of your involvement in the administration or management of the business

- As a partner with my firm, I am substantially engaged in the management and administration of the firm. *See* description of duties above.
- As the Secretary for Artistic Business Services, I am only marginally involved in the administration or management of the business. *See* description of duties above.
- Other than those duties set forth above, I do not otherwise engage in the administration or management of Livelee Concepts.

d. the terms of your service

- I have been employed with the law firm of Hutchison & Steffen since August of 2002 and have been a partner since 2009.
- I have been the secretary and director for Artistic Business Services, off and on, since approximately 2015.
- I have been a manager of Livelee Concepts, LLC since 2021.

e. the percentage of your ownership

- I am a non-equity partner with the law firm of Hutchison & Steffen and therefore hold no ownership interest therein.
- I am a 15.3% owner of Artistic Business Services.
- I am a 13% owner of Livelee Concepts

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

None.

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

Yes

Have you been a candidate for such an office?

No

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

- In 2010 I was appointed as the head of the Crime Commission by then Governor Jim Gibbons. I continued that position through the first part of Governor Sandoval's administration until such time as the Commission expired in 2012.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

- Las Vegas Chapter of the National Bar Association – Treasurer, 2010
- Las Vegas Chapter of the National Bar Association Foundation – President, 2011
- Girl Scouts of Southern Nevada – President Elect – 2015-2017
- Girl Scouts of Southern Nevada – President – 2017-2019
- Girl Scouts of Southern Nevada – Board Member 2015-Present
- Legal Aid Center of Southern Nevada – Board Member 2014-Present
- Justice Douglas PreLaw Fellowship Board member – 2020-Present
- Jury Services Commission – Member 2018-2020
- Pro Bono Advisory Council – member 2013-2014
- Self-Help Center's Steering Committee – member 2011-2013
- Lili Claire Foundation – Board Member - 2010-2015
- Women's Chamber of Commerce – Board Member – 2013-Present
- Women's Chamber of Commerce, Government Affairs Committee – 2014 – present
- Women's Chamber of Commerce Foundation – 2016-present

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

See list of Continuing Legal Education Courses listed in response to question 24.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

- *See response to question number 30 above.*

33. List honors, prizes, awards, or other forms of recognition.

- Pro Bono Attorney of the Year – Legal Aid Center of Southern Nevada
- National Pro Bono Publico Award – American Bar Association (first recipient from the State of Nevada)
- Humanitarian of the Year Award – Women’s Chamber of Commerce
- Women to Watch – Las Vegas Review Journal
- Live Your Passion Award – Lili Claire Foundation
- Community Service Award- Asian American Group (“AAG”)
- Young Professionals Award – Women’s Chamber of Commerce
- Nevada Business Magazine – Legal Elite
- Mountain West Super Lawyers
- Nevada Magazine – Pro Bono Heroes

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

- Ken-not speaker for new admittees to the Nevada State Bar - 2013
- Key-note speaker for new admittees to the Nevada State Bar - 2022

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

I am an avid reader and enjoy taking hikes with my family. I also love to cook and am the proud host to anyone who needs a home during the holidays. As a soccer mom, I am deeply entrenched in the culture of youth sports and dedicate a large amount of time to supporting my children and their teams in personal and athletic development. Otherwise, my passions and hobbies center around my role as a mother, wife, advocate, and community ambassador.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?
Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.
No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.
No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.
No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.
No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.
No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?
No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

- Other than cases in which Hutchison & Steffen represented a party during the time I worked there, I am not presently aware of any disqualifying conflicts that might prevent me from hearing any case that may come before me. Prior to engaging in the analysis of any matter, however, I would vigilantly assess each case within the scope of the Nevada Code of Judicial Conduct, Rule 2.11 and recuse myself if my impartiality might reasonably be questioned.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

N/A

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

Response to Inquiry No. 26;

I am a foreign born, mixed-race, woman who as a child experienced homelessness, abuse, and poverty. Through grit and a commitment to personal excellence I overcame those obstacles to become a partner in a premier Nevada law firm, a dedicated and effective board member of organizations who address the needs of the underserved, and a co-creator of a stable and supportive family home.

I was born in Jeon Ju, Korea, the product of an African American military father and a native Korean mother. Because my father was African American, my birth was deeply objectionable in Korea where it was condemned as “miscegenation.” I was off to a rocky start. We left Korea when I was four years old, and our family made our way to Vandenberg Air Force Base. After my father retired from the service, we settled in the nearby valley of Lompoc, California. My father, by all accounts, was a devoted and loving family man, but suffered from the burdensome echoes of his tumultuous past and military service, and he ultimately succumbed to severe and chronic alcoholism.

My parents divorced when I was seven years old, and my father left us, presumably to spare us from the unavoidable consequences of his pervasive addiction. We were left to fend for ourselves. My mother, who barely had a grasp of the English language, my two younger brothers and I were left to navigate the landscape of survival. My mother’s linguistic limitations forced me to take on a leadership role in the family early on. I have vivid memories of filling out public assistance applications as early as age eight. We subsisted on food stamps and other governmental assistance for as long as I can remember. It was a daily hustle to make sure that we had food on the table, clothes on our backs and a roof over our heads.

Notwithstanding our best efforts, we were frequently evicted from many apartments and moved on average two or three times each year. At one point, we found ourselves homeless. After some months, we were fortunate enough to secure housing at an abused women’s shelter, where we lived for the better part of a year. Notwithstanding the grim nature of our circumstances, I was grateful that we had each other and a roof over our heads. My mother eventually found a mate. Unfortunately, he was abusive towards me, and I left home at the age of fifteen. I “couch surfed” for the next year and finished high school living in the home of one of my classmates. Ironically, the circumstances which plagued my childhood fortified my character and instilled in me a dogged work ethic which would carry me forward for the rest of my life.

Being a foreign-born, Black-Asian female, intermittently homeless, fending off my abuser, and hustling day to day, ignited a fierce determination within me to do better. While my formative years were tumultuous and plagued with poverty, those hardships motivated me to forge a better life for myself. I vowed at a young age that my future family, whatever that may look like, would have stability. It would not include awakening to cockroaches crawling across our beds and eviction notices on the door. My early difficulties also instilled a determination in me to help others, a determination that lives in me today.

That determination motivated me to immerse myself while in high school in my scholastic endeavors and extra-curricular activities, and with hard work and focused dedication, I became Senior Class President, President of the Black Studies Club, Varsity Cheerleading Captain and Treasurer for the Science Enrichment Club. With the invaluable help of the Upward Bound Program's fee waiver grants, I was able to apply and receive admission offers to the five universities to which I had applied. I chose to attend the University of Southern California ("USC"). While attending USC, I became the President of the Black Students' Union, a Student Senator, and received awards including the Order of Troy Award for Academic Excellence and the Thurgood Marshall Award for Civic Engagement.

I explored every opportunity to advocate for the rights of the oppressed and unrepresented and continued that tradition throughout my studies at George Washington University Law School. For example, as the Director of my law school's Small Business Clinic, I proudly advised multiple small businesses operating in economically depressed communities throughout the District of Columbia and surrounding areas.

That same grit, determination and commitment to excellence is exemplified in my legal career. I joined Hutchison & Steffen as the first female and first person of color to work as an attorney at the firm. I hit the ground running and accelerated quickly through the ranks. In my seventh year of practice, I was named the firm's first female partner. I work well with all the members and employees of our firm and view our disparate backgrounds and perspectives as a core strength.

In over 20 years of practice, I have been fortunate to work on a wide range of cases and with a variety of clients. From complex commercial litigation matters representing some of the largest companies inside and outside of the country, to family law cases representing parties to divorce, abused and neglected children and victims of domestic violence, my experience has been both wide and deep. I have also had my fair share of

appellate experience both in the form of writs and appeals of cases through conclusion. As a senior partner I manage and engage in all manner of trials, arbitrations, mediations, administrative hearings, evidentiary hearings related to preliminary injunctions, receivership appointments, show cause hearings and more.

I have worked hard to serve my community and others during my legal career. I have represented over one hundred pro bono clients, earned Pro Bono Attorney of Year Award from the Legal Aid Center of Southern Nevada, and was the first Nevada recipient of the National ABA Pro Bono Publico Award for pro bono service. I have served on the Board of the Legal Aid Center of Southern Nevada for the past 8 years, the Girl Scouts of Southern Nevada for the past seven years (two of which I served as President), and the Women's Chamber of Commerce for the past nine years. I served on the Boards of the Las Vegas Chapter of the National Bar Association and its Foundation, serving as its Treasurer and its President, respectively, the Justice Douglas Pre-Law Fellowship, and the Lili Claire Foundation. I also served on the Jury Services Commission, Civil Self-Help Center's Steering Committee and as Chair of the Nevada Crime Commission throughout its existence.

I am very proud to be a partner in my firm. I am interested in the firm's cases and comfortable in its collegial environment, which includes people of very different backgrounds and perspectives. My husband and I live in Clark County with our two children who attend school and are involved in lots of activities here. I understand that the Supreme Court seat to which I am applying will be chambered in Carson City. Before submitting this application, I engaged in serious soul-searching as well as conversations with my family and law partners. I am ready for this challenge.

I understand that were the members of this Commission to select me as a candidate for Governor Sisolak's consideration, and if he were to appoint me, it would result in profound changes to my life. I would embrace those changes if given the opportunity to serve on the Nevada Supreme Court. Its work has great significance to both the development of the law and the impact of that law on all Nevadans. I would relish working with the other members of the Court in a collegial manner to consider and decide the cases before it while ensuring equal justice under the law. My experience (both in life and professionally) would provide an additional positive perspective to the important work undertaken by the Court. I recognize mine is a different profile than most applicants for appellate courts. But I am confident that I will work hard, be fair and devote myself wholeheartedly to this new challenge.



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13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 PETER GARDNER and CHRISTIAN
16 GARDNER, individually and on behalf of
17 minor child, LELAND GARDNER, as
18 assignees of Third-Party Plaintiff Henderson
19 Water Park, LLC dba Cowabunga Bay Water
20 Park,

21 Plaintiffs,

22 v.

23 BLISS SEQUOIA INSURANCE & RISK
24 ADVISORS, Inc., AND HUGGINS
25 INSURANCE SERVICES, Inc.,

26 Third-Party Defendants.

27 AND ALL RELATED CLAIMS

28 **CASE NO. A-15-722259-C**

DEPT. NO: XXX

**THIRD-PARTY DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
DUE TO LACK OF HWP'S DAMAGES
AND LIABILITY**

HEARING REQUESTED

Third-Party Defendants Bliss Sequoia Insurance & Risk Advisors, Inc. and Huggins Insurance Services (the "Brokers"), through their undersigned counsel of record, bring the instant Motion for Summary Judgment Due to Lack of Damages and Liability seeking summary judgment of claims against the Brokers that were assigned to the Gardner Plaintiffs by Third-Party Plaintiff Henderson Water Park, LLC ("HWP").

1 This Motion is filed pursuant to NRC 56 and is based on the memorandum of points
2 and authorities contained herein, the exhibits attached hereto, the pleadings on file with this
3 Court, and any oral argument this Court chooses to entertain.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 **1. Introduction**

6 Damages are the fundamental bedrock upon which any civil claim must be built. *See*
7 *Frias Holding Co. v. Greenberg Traurig, LLP*, 2:11-CV-00160-GMN, 2011 WL 4500936, at
8 *4 (D. Nev. Sept. 26, 2011) (“**If no damages exist, no claims can exist.**”). Emphasis added.
9 When a plaintiff cannot establish that it has incurred damages as a result of the claims
10 alleged, a court must dispose of those claims. *See id*; *see also Boulder City v. Miles*, 85 Nev.
11 46, 49 (1969) (“[N]o one has a claim against another without having incurred damages.”).
12 Here, HWP does not and cannot show that it has or ever will suffer cognizable damages due to
13 the Brokers’ allegedly negligent conduct. Thus, summary judgment must be granted.

14 The crux of HWP’s claims, which were assigned to the Gardner Plaintiffs in their
15 settlement agreement with HWP, is the allegation that the Brokers negligently represented to
16 HWP that \$5 million was a sufficient amount of liability insurance coverage. HWP and the
17 Gardner Plaintiffs stipulated to a \$49 million damages figure in their settlement agreement¹
18 but agreed not to record or execute on such stipulated damages figure against HWP through a
19 covenant not to execute. HWP did not itself pay a cent in damages to the Gardner Plaintiffs.
20 Indeed, the Gardner Plaintiffs settled and dismissed their claims against HWP in exchange for
21 the \$5 million insurance policy limits. ***HWP therefore has no real damages against the***
22 ***Brokers.*** Instead, the Gardner Plaintiffs assert that somehow the illusory \$49 million stipulated
23 damages figure in the Settlement Agreement is a real measure of damages even though the
24 Gardner Plaintiffs can never go after or recover another dime from HWP under any scenario.

25 Although some courts have allowed a settlement agreement coupled with a covenant
26 not execute to be enforced against insurance agents, these courts explicitly hold that such

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¹ The Brokers were not a party to the Agreement.

1 agreements are valid *only if* the assignor defendant (here, HWP) remains susceptible to
2 liability. *See e.g., Kobbeman v. Oleson*, 574 N.W.2d 633, 637 (S.D. 1998) (holding that “[a]
3 settlement which includes a covenant not to execute (as opposed to a release) in exchange for
4 an assignment of a cause of action against the tortfeasor's agent, who allegedly failed to obtain
5 requested insurance” did not run afoul of public policy). If the assignor defendant’s liability is
6 extinguished, such an agreement is invalid as a matter of public policy because an agreement
7 which unilaterally exposes only the broker to liability “invites future mischief and collusion”
8 by the settling parties. *See id.* at 640. Like these courts, Nevada courts recognize the technical
9 distinction between a release -- which extinguishes the cause of action -- and covenant not to
10 execute -- which does not. *See Van Cleave v. Gamboni Const. Co.*, 99 Nev. 544, 547 (1983).

11 In the Settlement Agreement, the Gardner Plaintiffs agreed to not record, or execute on
12 the judgment against HWP and further agreed to fully absolve HWP of any negative liability
13 stemming from HWP’s claims against the Brokers. Thus, regardless of what the parties to the
14 Settlement Agreement call their “arrangement,” the effect of the Settlement Agreement is that
15 HWP is fully absolved of any and all liability to the Gardner Plaintiffs and HWP will never be
16 required to pay damages to the Gardner Plaintiffs in excess of the \$5 million insurance policy
17 limit payment already tendered by HWP’s insurance carrier. Thus, because the Settlement
18 Agreement acts as a complete release of the Gardner Plaintiffs’ claims against HWP, HWP has
19 not and will not have to pay any damages to the Gardner Plaintiffs and summary judgment in
20 favor of the Brokers is necessary.

21 Alternatively, even if the Settlement Agreement was not a complete release of the
22 Gardner Plaintiffs’ claims, summary judgement in favor of the Brokers is still necessary as the
23 Settlement Agreement, operates as a *de facto* release of HWP’s liability in everything but
24 name. Because there is a covenant not to execute or record the illusory stipulated judgment,
25 and also because the statute of limitations now bars the Gardner Plaintiffs from resurrecting
26 their negligence claim against HWP after the claims have been dismissed, summary judgment
27 is appropriate. *See Arnold v. Kip*, 123 Nev. 410, 416 (2007), *as amended* (Nov. 21, 2007)

28

1 (explaining that dismissal without prejudice will nonetheless bar a party from pursuing their
2 claim if the statute of limitations expires.).

3 Accordingly, HWP can no longer face any liability or otherwise be required to pay
4 any additional damages to the Gardner Plaintiffs because the statute of limitations has run on
5 the Gardner Plaintiffs' negligence claim against HWP. Thus, the claims against the Brokers
6 that HWP assigned to the Gardner Plaintiffs fail as a matter of law, and the Brokers
7 respectfully request the entry of summary judgment in their favor and against the Gardner
8 Plaintiffs.

9 **2. Background**

10 **A. The Cowabunga Bay incident and subsequent litigation against HWP et al.**

11 On May 27, 2015, minor child Leland Gardner suffered a nonfatal drowning at
12 Cowabunga Bay's wave pool (the "Cowabunga Bay Incident"). *See* July 28, 2015 Compl. at ¶¶
13 19-20. Two months later, as a result of the Cowabunga Bay Incident, the Gardner Plaintiffs
14 filed suit against HWP alleging a single cause of action for negligence. *See* July 28, 2015
15 Compl. at ¶¶ 24-30. on file. In the coming years, the Gardner Plaintiffs amended their
16 complaint on multiple occasions but never brought additional causes of action against HWP.
17 *See e.g.*, July 30, 2018 Third Amended Compl.

18 **B. HWP's third-party claims against the Brokers**

19 Over three years after the Gardner Plaintiffs first filed suit against HWP, HWP filed a
20 Third-Party Complaint against the Brokers. *See* November 13, 2018 Third-Party Compl. on
21 file. The crux of HWP's claims was that the Brokers negligently stated to HWP that \$5 million
22 in liability insurance coverage for Cowabunga Bay was sufficient. *See id.* at ¶16.
23 Subsequently, the Court bifurcated HWP's Third-Party complaint from the underlying action
24 because, *inter alia*, "unless there is a verdict in favor of the [Gardner] Plaintiffs in the principal
25 action, which exceeds the \$5 Million insurance policy purchased, there are no claims against
26 Bliss Sequoia that would remain." *See* March 4, 2020 Order Granting Mot. for Recons. on file.

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1 C. Settlement of the underlying claims and assignment of HWP's third-party
2 claims against the Brokers to the Gardner Plaintiffs

3 On or around September 11, 2019, all parties to the underlying action reached
4 settlements with the Gardner Plaintiffs. *See e.g.*, Settlement Agreement between Gardner
5 Plaintiffs and HWP attached as Exhibit 1 (Under Seal). Shortly thereafter, the Gardner
6 Plaintiffs and HWP entered into an Addendum to the Settlement Agreement (the
7 “Addendum”). *See* October 18, 2019 Addendum attached as Exhibit 2 (Under Seal). As part of
8 the Settlement Agreement, HWP stipulated to entry of a judgment in the amount of \$49 million
9 in exchange for the Gardner Plaintiffs’ agreement to not execute and/or record the judgment
10 (excluding the “Policy limits of Five Million Dollars”) *See id.* at §1.1; *see also*, Covenant not
11 to Execute attached as Exhibit 3 (Under Seal); November 20, 2019 Amended Third-Party
12 Compl.at ¶18 on file. The Settlement Agreement further provided that “[u]pon the approval of
13 this good faith settlement, [the Gardner] Plaintiffs shall dismiss their claims against HWP
14 without prejudice subject to the terms of this Agreement.” *See* Settlement Agreement at §3.3.

15 In addition to the \$5 million insurance policy limit payment tendered by HWP’s carrier,
16 the terms of the Settlement Agreement required HWP to assign to the Gardner Plaintiffs “all
17 contractual, tort-based and equitable causes of action it has asserted against the Brokers in the
18 Case, and any other as-yet unasserted causes of action arising out of the Brokers' professional
19 opinion that an aggregate commercial general liability insurance coverage structure to HWP
20 with primary limits for bodily injury liability in the amount of One Million Dollars
21 (\$1,000,000) and excess follow-form coverage in the amount of Four Million Dollars
22 (\$4,000,000) was adequate.” *See id.* at §2.1. The Settlement Agreement further provides that
23 “[t]o the extent that the amount of the stipulated judgment referenced herein is not upheld in
24 the action against the Brokers, such an outcome will not affect the enforceability of this
25 Agreement.” *Id.* at §2.2. Furthermore, the Gardner Plaintiffs agreed to “advance the funds
26 necessary to continue the action brought by HWP against the Brokers” and absolve HWP from
27 all liability stemming from “any adverse outcome arising from their prosecution of the claims
28 against the Brokers, including but not limited to an award of attorneys’ fees or costs.” *Id.* at
§2.3. As part of the Settlement Agreement and assignment, “HWP and its members, managers,

1 agents, affiliates and attorney(s) agree[d] to provide reasonable cooperation in the pursuit of
2 the litigation against the Brokers including but not limited to being available for consultation,
3 document production and responding to discovery requests as needed.” *Id.* at §2.4.

4 Although the Brokers initially filed an Opposition to the approval of this arrangement
5 as a good-faith settlement, the parties ultimately agreed that the Brokers would withdraw their
6 Opposition, but that such withdrawal “will not impact any arguments the Brokers may make in
7 connection with the claims asserted against them.” *See* November 11, 2019 Stipulation and
8 Order on file. Thus, the prior ruling deeming this settlement a good-faith settlement must have
9 no bearing on the Court’s analysis here.

10 **3. Discussion**

11 **A. Applicable legal standard for an NRCP 56 motion for summary judgment**

12 “Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,
13 answers to interrogatories, admissions, and affidavits, if any, that are properly before the court
14 demonstrate that no genuine issue of material fact exists, and the moving party is entitled to
15 judgment as a matter of law.” *Wood v. Safeway, Inc.*, 121 Nev. 724, 730 (Nev. 2005). “The
16 substantive law controls which factual disputes are material and will preclude summary
17 judgment; other factual disputes are irrelevant.” *Id.* “A factual dispute is genuine when the
18 evidence is such that a rational trier of fact could return a verdict for the nonmoving party.” *Id.*

19 “While the pleadings and other proof must be construed in a light most favorable to the
20 nonmoving party, that party bears the burden to do more than simply show that there is some
21 metaphysical doubt as to the operative facts in order to avoid summary judgment being entered
22 in the moving party’s favor.” *Id.* “The nonmoving party ‘must, by affidavit or otherwise, set
23 forth specific facts demonstrating the existence of a genuine issue for trial or have summary
24 judgment entered against him.’” *Id.* “The nonmoving party is not entitled to build a case on the
25 gossamer threads of whimsy, speculation, and conjecture.” *Id.*

1 **B. Under Nevada law, summary judgment is mandatory because HWP**
2 **suffered no cognizable damages attributable to the Brokers' alleged**
3 **conduct**

4 Under Nevada law, a claim cannot accrue or be properly maintained if damages have
5 not been sustained. *See Semenza v. Nevada Med. Liab. Ins. Co.*, 104 Nev. 666, 668 (1988)
6 (citing *Boulder City v. Miles*, 85 Nev. 46, 49, 449 P.2d 1003, 1005 (1969) (“[N]o one has a
7 claim against another without having incurred damages”). This basic principle was reaffirmed
8 in *Plise*, where the court upheld the district court’s issuance of sanctions against the plaintiff
9 for the maintenance of a frivolous claim “because the record shows that [plaintiff’s] claim was
10 indeed meritless, as damages, a necessary element of the claim, could never be realized.” *See*
11 *Plise v. Schwartz*, 469 P.3d 194 (Nev. App. 2020).² Moreover, to have a cognizable claim
12 “the alleged harm cannot be hypothetical, speculative, or describe other possible future
13 injuries.” *Frias Holding Co. v. Greenberg Traurig, LLP*, 2:11-CV-00160-GMN, 2011 WL
14 4500936, at *4 (D. Nev. Sept. 26, 2011) (citing *Schmier v. U.S.Ct. of Appeals for Ninth Cir.*,
15 279 F.3d 817, 821 (9th Cir.2002)).³

16 Although some jurisdictions have allowed an assignment of claims coupled with a
17 stipulated damages amount and covenant not to execute to serve as the basis for a valid
18 assignment of claims in limited circumstances, Nevada has never addressed this issue. Nevada
19 law, however, indicates that Nevada Courts would likely reject such a scheme as the claims
20 arising therefrom would not be based on any actual harm or damages. *See id.* Simply put, “[i]f
21 no damages exist, no claims can exist.” *See id.* The Court itself recognized this maxim in
22 granting the Brokers’ motion to bifurcate. *See* March 4, 2020 Order Granting Mot. for Recons.
23 on file (“[U]nless there is a verdict in favor of the [Gardner] Plaintiffs in the principal action,

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25 ² Although this is an unpublished opinion, it illustrates that damages must exist or be potentially realized to
26 maintain a meritorious claim in Nevada.

27 ³ The need for actual damages was further recognized in *Padilla*, where an insured defendant assigned its
28 indemnity claims against a third-party as part of a settlement agreement through which the insurer paid its \$2
million policy limit. *Padilla Const. Co. v. Burley*, 132 Nev. 1014 (Nev. App. 2016). The Court explained that
under the principle of subrogation, had the insurer paid the full claim amount, the insurer would be “the only real
party in interest and must sue in its own name.” *See id.* The Court noted that because the record showed that the
insured defendants had actually paid a portion of the claim, however, the insured defendants, and by extension
their assignees, may bring the claim against the third-party in their own name. *See id.*

1 which exceeds the \$5 Million insurance policy purchased, there are no claims against Bliss
2 Sequoia that would remain.”).

3 Here, it is undisputed that there was no verdict against HWP in excess of its \$5 million
4 insurance policy, and it is undisputed that the amount paid on behalf of HWP by its carrier
5 under the terms of the Settlement Agreement did not exceed the policy limits. *See* Settlement
6 Agreement at §1.1; *see also*, Scott Huish Dep. Tr. at 239:18–240:22 attached as Exhibit 4
7 (explaining that no payments were made by HWP beyond the \$5 million liability insurance
8 policy limits). As this Court intrinsically recognized, the lack of such excess payment
9 obligations eliminates HWP’s ability to demonstrate any real damages and necessarily
10 precludes the existence of a cognizable claim against the Brokers. *See* March 4, 2020 Order
11 Granting Mot. for Recons. on file.

12 C. **Summary judgment remains necessary because HWP can never suffer**
13 **cognizable damages attributable to the Brokers’ alleged conduct**

14 Although the Gardner Plaintiffs and HWP attempt to disguise the true nature of their
15 agreement by dubbing their arrangement as a covenant not to execute with a dismissal *without*
16 prejudice, the practical effect of the Settlement Agreement belies these labels because HWP
17 can never be held liable to the Gardner Plaintiffs for any damages beyond the \$5 million
18 insurance policy limits already paid by HWP’s carrier. Thus, the Settlement Agreements acts
19 as a complete release and shields HWP from any damages. As a result, there is no scenario in
20 which HWP can suffer any damages, precluding the existence of a valid claim against the
21 Brokers. *See Semenza*, 104 Nev. at 668 (“[N]o one has a claim against another without having
22 incurred damages”). However, even if the Settlement Agreement does not act as a complete
23 release of the Gardner Plaintiffs’ claims against HWP, HWP still cannot suffer damages as the
24 statute of limitations for the claims against HWP have run.

25 Under Nevada law, the statute of limitations for an “action to recover damages for
26 injuries to a person or for the death of a person caused by the wrongful act or neglect of
27 another” is two years. *See* NRS 11.190(4)(e). It is undisputed that Leland Gardner suffered his
28 injuries on May 27, 2015, or nearly 7 years ago. This means that a dismissal, even without
prejudice, bars any further litigation of the action. *See Arnold v. Kip*, 123 Nev. 410, 416

1 (2007), *as amended* (Nov. 21, 2007) (explaining that dismissal without prejudice will
2 nonetheless bar a party from pursuing their claim if the statute of limitations expires.).

3 It is clear that the Gardner Plaintiffs may never resuscitate their claims against HWP.
4 When this dismissal is coupled with -- a) the covenant not to execute on the judgment
5 (Settlement Agreement §1.1), b) the agreement that non-adherence to the stipulated judgment
6 amount in relation to the claims against the Brokers does not alter the enforceability of the
7 Settlement Agreement (Settlement Agreement §2.2), and c) the agreement that HWP cannot
8 face any adverse liability as a result of the Gardner Plaintiffs' pursuit of HWP's claims
9 (Settlement Agreement §2.3), the net effect is that an impregnable wall is raised which shields
10 HWP from paying any damages of any kind to the Gardner Plaintiffs beyond the \$5 million
11 insurance policy limit payment already tendered by the carrier.

12 When faced with this exact scenario, the *Kobbeman* court, which lies in a jurisdiction
13 that allows for an assignment of claims against an insurance agent coupled with a covenant not
14 to execute, the court granted summary judgment in favor of the insurance agent. *See*
15 *Kobbeman v. Oleson*, 574 N.W.2d 633, 637 (S.D. 1998). In *Kobbeman*, a plaintiff and an
16 insured defendant entered into a settlement agreement through which the plaintiff agreed not to
17 execute a judgment against the insured defendant and in turn the insured defendant agreed to
18 assign his third-party claims against his insurance broker for the broker's alleged failure to
19 "obtain an umbrella policy." *See id.* at 635. After the plaintiff brought suit against the
20 insurance broker, the insurance broker moved for summary judgment because the statute of
21 limitations for plaintiff's claims had run, meaning that the insured defendant could not be held
22 liable for any damages owed to the plaintiff even though the settlement agreement did not
23 include a full release, but a covenant not to execute. *See id.* The district court granted
24 summary judgment, which was upheld on appeal. *See id.*

25 In its holding, the South Dakota Supreme Court noted the split in authority between
26 jurisdictions which deem a covenant not to execute coupled with the assignment of claims
27 invalid and jurisdictions which "distinguish between a release and a covenant not to execute"
28 and reasoned that "[t]he most pragmatic approach looks to the language of the covenant to find

1 whether a tortfeasor remains legally obligated on a judgment.” *See id.* at 636. The settlement
2 agreement at issue in *Kobbeman* stated, in relevant part, that “[plaintiffs] agree and covenant
3 not to execute against the [defendants].” *See id.* “[Plaintiffs] represent that their intent is to
4 prosecute the assigned causes of action against [the broker] or any other agency or agent.” *See*
5 *id.* The Court reasoned that this agreement amounted to a covenant not to execute and that
6 defendant’s “tort liability continued because he might still be legally obligated to pay despite
7 the covenant not to execute.” *See id.* The Court further explained that “[the insured
8 defendant’s] ostensible remedy if [plaintiff] breaks his covenant and attempts to enforce a
9 judgment against him would be to sue for breach of contract.” *See id.*

10 After finding the assignment and agreement valid, the court turned to consider whether
11 the expiration of the statute of limitations on the underlying tort claim between the plaintiff and
12 insured defendant barred the claims by the plaintiff seeking a judgment for damages beyond
13 the insurance limit. *See id.* at 639. The court answered this query in the affirmative stating that
14 with the expiration of the statute of limitations, “the basis for both the assignment and covenant
15 dissolved: [the insured defendant] could no longer suffer an excess judgment and thus he (and
16 his assignee) no longer had grounds to sue for failure to obtain an umbrella policy.” *Id.* at 640.
17 The Court further rejected an argument by the plaintiff that the agreement acted as a waiver of
18 the statute of limitations on the underlying tort claims because “[v]alidating [the] waiver would
19 make [the insured defendant’s] need to sue the agents a mere pretext. *See id.* Thus, “[t]he
20 waiver portion of the assignment...is void as against public policy because it prolonged an
21 otherwise closed controversy, solely to extend exposure to others by artificially perpetuating a
22 need for insurance coverage.” *Id.* Based on this finding, the court held that “as [the insured
23 defendant] is no longer exposed to liability because the statute of limitations expired, we affirm
24 the grant of summary judgment.” *Id.* “The assignment became ineffective when the cause of
25 action it transferred ceased to exist.” *Id.* at 641.

26 In addition to *Kobbeman*, courts in other jurisdictions which allow an assignment of
27 claims coupled with a covenant not to execute against an insurance agent, allow such an
28 arrangement only when the assignor remains potentially liable to the plaintiff. *See Stateline*