

3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JAMES A. MOBERLY and
LINDA U. MOBERLY, husband
and wife,

Plaintiffs,

vs.

Case No. CV13-00370

JAMES MATHIS, DIANE MATHIS,
and STACIE MATHIS,

Dept. No. 1 (for OSC only)

Defendants.

ORDER

On April 22, 2014, the Court entered an *Order Scheduling Settlement Conference*
(hereinafter "*Order*") before the Honorable Janet Berry.¹ The *Order* instructed:

The Defendant must bring a representative who has final settlement authority to commit the organization to pay, in the representative's own discretion, a settlement amount up to the Plaintiff's prayer, or up to the Plaintiff's last demand, whichever is lower. . . . Any insurance company that is a party or is contractually required to defend or to pay damages, if any, assessed within its policy limits in this case must have a fully authorized settlement representative present. Such representative must have final settlement authority to commit the company to pay, in the representative's own discretion, an amount within the policy limits or up to the Plaintiff's last demand, whichever is lower. The purpose of this requirement is to have in attendance a representative who has both the authority to exercise his or her own discretion, and the realistic freedom to exercise such discretion

¹ Trial is scheduled to commence June 2, 2014, in Department Eight before the Honorable Lidia Stiglich.

1 without negative consequences, in order to settle the case during the settlement
2 conference without consulting someone else who is not present. . . .

3 Counsel appearing for the settlement conference without their client
4 representatives or insurance company representatives, authorized as described
5 above, will cause the settlement conference to be canceled or rescheduled. The
6 non-complying party, attorney or both, may be assessed the costs and expenses
7 incurred by the other parties and the Court as a result of such cancellation, as
8 well as any additional sanctions deemed appropriate by the Court, including but
9 not limited to contempt proceedings. Counsel are responsible for timely advising
10 any involved non-party insurance company of the requirements of this order.

11 See Exhibit 1.

12 On April 30, 2014, the parties participated in a settlement conference with the Honorable
13 Janet Berry. Extensive negotiations occurred throughout the day, spanning from 9:30 a.m. until
14 approximately 7:30 p.m. The Court was told by the representative of American Family Insurance
15 Company that he had full settlement authority to the limits of the policy at the outset of the
16 conference. Ultimately, Plaintiffs made a final demand to which Defendants indicated a probable
17 desire to accept; however, Defendants requested until 5 p.m. on May 1, 2014, to confirm the terms
18 and conditions of the agreement. It is important to note that American Family Insurance Company
19 initially made an offer to settle the case, but increased their offer as the settlement conference
20 progressed. Ultimately, the insurance representative told the Court that upon further discussion with
21 the company, authority for the Plaintiffs' final demand was likely. It was clear to the Court that the
22 representative sent to the settlement conference did not have the discretionary authority to make a
23 final decision or offer at the settlement conference. Defendants subsequently advised the Court that
24 they were unable to secure authority for the proposed settlement and requested Plaintiffs allow the
25 offer to remain open until 5 p.m. on May 5, 2014.

26 The Court met with counsel on May 1, 2014, to address the status of the settlement. Upon
27 learning that the American Family Insurance Company representative could not confirm or reject the
28 proposed settlement agreement, the Court issued an *Order to Show Cause*. The Court ordered all
Defendants and insurance representatives who had actual authority to policy limits to appear before
the Court in their human forms and show cause why they should not be held in contempt for failure
to comply with the Court's April 22, 2014, *Order*. Specifically, the Court was concerned that the
Defendants had not participated in the settlement conference in good faith, and that the insurance

1 representative in attendance was not authorized to consummate a settlement up to the Plaintiff's last
2 demand and/or to policy limits as required by the *Order*.

3 On May 5, 2014, the Court met in-person with Plaintiffs' counsel, Peter Chase
4 Neumann, Esq.; Defendants' counsel David Zaniel, Esq.; and via telephone with American Family
5 Insurance Company's counsel, Tom McGrath, Esq. During this meeting, Mr. McGrath advised the
6 Court that the company's representative at the settlement conference did not have the authority to
7 offer any sum above the initial offer that was made at the outset of the settlement conference. The
8 Court was advised that the progressive offers made by the insurance representative were a "mistake"
9 and beyond his authority.

10 The Court conducted the contempt hearing on May 9, 2014, at 10 a.m. The parties present
11 included Plaintiffs and their attorneys, Mr. Neumann and Richard Fleischer, Esq., as well as
12 Mr. McGrath and Mr. Zaniel, representing American Family Insurance Company. The Court heard
13 sworn testimony from Mr. Zaniel.² The Court heard argument from Mr. McGrath and Mr.
14 Neumann. During the contempt hearing, Mr. McGrath advised the Court that American Family
15 Insurance Company had raised its settlement offer back to the sum previously offered at the
16 conclusion of the settlement conference.

17 At the contempt hearing, Mr. Neumann provided a document titled "Declaration to the
18 Court" outlining the time he spent in preparation for the settlement conference. Upon conclusion of
19 the hearing, Mr. Neumann filed a document titled *Declarations in Support of Order to Show Cause*.
20 See Exhibits 1 and 2.

21 ///

22 ///

23 ///

24 ///

25 ///

26
27 ² The Court offered to continue the *Order to Show Cause* hearing to afford American Family Insurance Company to
28 subpoena witnesses to testify at the contempt hearing. American Family Insurance Company waived its right to call
additional witnesses to the stand to give sworn testimony, as it believed the testimony of Mr. Zaniel was sufficient
evidence of the company's position.

1 NRS Chapter 22 creates the statutory basis for the Court's power to hold persons in
2 contempt.³ NRS 22.010 defines acts or omission constituting contempt, which includes
3 "[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at
4 chambers." NRS 22.010(3). "Upon the answer and evidence taken, the court or judge or jury, as the
5 case may be, shall determine whether the person proceeded against is guilty of the contempt
6 charged." NRS 22.100(1). "The court may require the person [held in contempt] to pay to the party
7 seeking to enforce the writ, order, rule or process the reasonable expenses, including, without
8 limitation, attorney's fees, incurred by the party as a result of the contempt." NRS 22.100(3).

9 The Court has the authority to issue both civil and criminal contempt orders, and some
10 proceedings may be both civil and criminal in nature. *Warner v. Second Judicial Dist. Court*, 111
11 Nev. 1379, 1383, 906 P.2d 707, 709 (1995). Criminal contempt proceedings are "those directed to
12 preservation of the dignity and authority of the Court." *Id.* at 1382, 906 P.2d at 709. Such contempt
13 is intended to punish the contemtor for disobeying a court order. *Id.* at 1383, 906 P.2d at 709. On
14 the other hand, civil contempt proceedings are "prosecuted to enforce the rights of private parties
15 and to compel obedience to orders or decrees for the benefit of opposing parties." *Id.* at 1832-83,
16 906 P.2d at 709. A civil contempt order is designed to coerce the contemtor into complying with a
17 court order. *Id.*

18 During the contempt hearing, the Court made a record of its observations related to American
19 Family Insurance Company's failure to abide by the Court's April 22, 2014, *Order*. Specifically, the
20 Court found American Family Insurance Company's representative did not attend the settlement
21 conference in good faith with full authority to policy limits. After ten hours of settlement
22 discussions, it became clear to the Court that the insurance representative was not authorized to settle
23 the case within the parameters of the Court's *Order*.

24
25
26 ³ The Court also has the "inherent power to enforce their decrees through civil contempt proceedings, and this power
27 cannot be abridged by statute." The Nevada Supreme Court has approved of contempt orders that appear to fall outside
28 NRS Chapter 22, including a requirement that the contemtor post a \$10,000 bond if it violated the court's contempt
order. See *In re Determination of Relative Rights of Claimants of Waters of Humboldt River Stream System*, 118 Nev.
901, 909-10, 59 P.3d 1226, 1231 (2002) ("Such an order is within the district court's inherent power and is not
necessarily restricted or controlled by NRS 22.100"). The Nevada Supreme Court has also upheld a contempt order
fining parties over \$100,000 for violating terms of a settlement agreement. *Pengilly v. Rancho Santa Fe Homeowners*
Ass'n, 116 Nev. 646, 647-50, 5 P.3d 569, 570-71 (2000).

1 The Court has considered the testimony and arguments from the parties. Accordingly, and
2 good cause appearing, the Court exercises its power under NRS Chapter 22 and its inherent power to
3 enforce its decrees through contempt proceedings and finds American Family Insurance Company in
4 both civil and criminal contempt of Court.

5 The Court's April 22, 2014, *Order* clearly and unambiguously required American Family
6 Insurance Company to send a representative who was authorized to consummate a settlement up to
7 the Plaintiffs' last demand and/or to policy limits. American Family Insurance Company's
8 admission following the settlement conference that its representative was not authorized to offer any
9 sum greater than what was offered at the beginning of the settlement conference, combined with the
10 fact that American Family Insurance Company retracted its last increased offer as a "mistake," and
11 then re-offered the same figure after the Court ordered American Family Insurance Company to
12 appear at the contempt hearing, establishes beyond a reasonable doubt that American Family
13 Insurance Company did not send a representative to the April 30, 2014, ten-hour settlement
14 conference in good faith and with full settlement authority. *See Cunningham v. Eighth Judicial Dist.*
15 *Court*, 102 Nev. 551, 559-60, 729 P.2d 1323, 1333-34 (1986).


16 The Court finds a sanction of \$50,000.00 is appropriate in order to pay the parties for their
17 attorneys' costs, fees, and significant lost time from trial preparation. The parties' two-week trial
18 begins June 2, 2014. Significant pre-trial preparation and discovery was held in abeyance by
19 counsel, in the good faith belief that a meaningful settlement conference was to occur on
20 April 30, 2014.

21 American Family Insurance Company is hereby ORDERED to pay costs and expenses
22 incurred by Plaintiffs and their attorneys to prepare for the settlement conference, attend the
23 conference, attend multiple hearings and conferences associated with these contempt proceedings,
24 and participate in the contempt hearing. The Court finds the sum of Fifty Thousand Dollars
25 (\$50,000.00) is a reasonable sanction as punishment of American Family Insurance Company for its
26 failure and/or refusal to abide by the Court's *Order* of April 22, 2014.

1 American Family Insurance Company shall have fifteen (15) days from the date of this *Order*
2 to tender the funds to Peter C. Neumann, Esq. Failure to comply with this *Order* shall result in
3 further contempt proceedings and/or sanctions as the Court deems appropriate.

4 IT IS SO ORDERED.

5 Dated: this 13th day of May 2014.

6 
7 DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

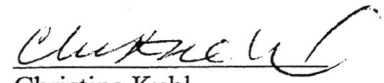
INDEX OF EXHIBITS

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	NUMBER OF PAGES INCLUDING COVER
1	<i>Order Scheduling Settlement Conference</i> , filed April 22, 2014	6
2	"Declaration of Peter Chase Neumann"	4
3	<i>Declarations in Support of Order to Show Cause</i> , Filed May 13, 2014	11

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 13th day of May 2014, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

PETER NEUMANN, ESQ.
RICHARD FLEISCHER, ESQ.
DAVID ZANIEL, ESQ.
MONICA CAFFARATTI, ESQ.


Christine Kuhl

FILED
Electronically
2014-05-13 01:26:14 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4429526

EXHIBIT 1

3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JAMES A. MOBERLY and
LINDA U. MOBERLY, husband
and wife,

Plaintiffs,

vs.

Case No. CV13-00370

JAMES MATHIS, DIANE MATHIS,
and STACIE MATHIS,

Dept. No. 8

Defendants.

ORDER SCHEDULING SETTLEMENT CONFERENCE

The Court has ordered the parties to a settlement conference on **April 30, 2014, at 9:30 a.m.**
in Department One before the Honorable Janet Berry.

Clients or client representatives with complete authority to negotiate and consummate a
settlement must attend in their human form(s), unless excused by order of the Court. The Defendant
must bring a representative who has final settlement authority to commit the organization to pay, in
the representative's own discretion, a settlement amount up to the Plaintiff's prayer, or up to the
Plaintiff's last demand, whichever is lower. The Plaintiff, and or his or her representative must have
final authority, in the representative's own discretion, to authorize dismissal of the case with
prejudice, or to accept a settlement amount down to the Defendant's last offer. If board approval is

1 required to authorize settlement, the attendance of at least one sitting member of the board
2 (preferably the chairperson) is absolutely required. Any insurance company that is a party or is
3 contractually required to defend or to pay damages, if any, assessed within its policy limits in this
4 case must have a fully authorized settlement representative present. Such representative must have
5 final settlement authority to commit the company to pay, in the representative's own discretion, an
6 amount within the policy limits or up to the Plaintiff's last demand, whichever is lower. The
7 purpose of this requirement is to have in attendance a representative who has both the authority to
8 exercise his or her own discretion, and the realistic freedom to exercise such discretion without
9 negative consequences, in order to settle the case during the settlement conference without
10 consulting someone else who is not present. In the event counsel for any party is aware of any
11 circumstance which might cause doubt on a client's compliance with this paragraph s/he shall
12 immediately discuss the circumstance with opposing counsel to resolve it well before the settlement
13 conference, and, if such discussion does not resolve it, request a telephone conference with the Court
14 and counsel.

18 Counsel appearing for the settlement conference without their client representatives or
19 insurance company representatives, authorized as described above, will cause the settlement
20 conference to be canceled or rescheduled. The non-complying party, attorney or both, may be
21 assessed the costs and expenses incurred by other parties and the Court as a result of such
22 cancellation, as well as any additional sanctions deemed appropriate by the Court, including but not
23 limited to contempt proceedings. Counsel are responsible for timely advising any involved
24 non-party insurance company of the requirements of this order.

26 ///

28 ///

1 The parties, through their counsel, shall give a brief (5-10 minute) presentation outlining the
2 factual and legal highlights of their case at the settlement conference. Then separate, confidential
3 caucuses will be held with each party and/or the party's representative(s).
4

5 PREPARATION FOR SETTLEMENT CONFERENCE

6 In preparation for the settlement conference, the attorney(s) for each party shall submit a
7 confidential settlement conference statement for the court's *in camera* review.
8

9 Please provide your confidential settlement conference statement to Department One no later
10 than noon on **Friday, April 25, 2014**. Please do not deliver your settlement conference statement to
11 opposing counsel or file with the Clerk of Court.

12 You may deliver your settlement conference statement to chambers via one of the following
13 methods:

- 14 (1) A PDF file attached to an e-mail to: Christine.Kuhl@washoecourts.us;
15 (2) FAX to: 775-328-3170; or
16 (3) hand-delivered in an envelope.
17

18 The purpose of the settlement conference statement is to assist the court in preparing for and
19 conducting the settlement conference. In order to facilitate a meaningful conference, your utmost
20 candor in responding to the listed questions is required. The confidentiality of each statement will
21 be strictly maintained by the settlement judge. Following the conference, the settlement conference
22 statements will be destroyed.
23

24 The settlement conference statement shall contain the following:

- 25 1. A brief statement of the nature of the action.
26 2. A concise summary of the evidence that supports your theory of the case, including
27 information which documents your damages claims. You may attach to your statement those
28

1 documents or exhibits which are especially relevant to key factual or legal issues, including selected
2 pages from deposition transcripts or responses to other discovery requests.

3 3. An analysis of the key issues involved in the litigation.

4 4. A discussion of the strongest points in your case, both legal and factual, and a frank
5 discussion of the weakest points as well. The court expects you to present a candid evaluation of the
6 merits of your case.

7 5. A further discussion of the strongest and weakest points in your opponents' case, but
8 only if they are more than simply the converse of the weakest and strongest points in your case.

9 6. An estimate of the cost (including attorney's fees and costs) of taking this case
10 through trial.

11 7. A history of settlement discussions, if any, which details the demands and offers
12 which have been made, and the reasons they have been rejected.

13 8. The settlement proposal that you believe would be fair.

14 9. The settlement proposal that you would honestly be willing to make in order to
15 conclude this matter and stop the expense of litigation.

16 IT IS SO ORDERED.

17 Dated: This 22nd day of April 2014.

18
19
20
21
22
23
24
25
26
27
28

DISTRICT JUDGE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

PETER NEUMANN, ESQ.
DAVID ZANIEL, ESQ.
MONICA CAFFARATTI, ESQ.

-5-

FILED
Electronically
2014-05-13 01:26:14 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4429526

EXHIBIT 2

DECLARATION OF PETER CHASE NEUMANN

1. I am Peter Chase Neumann, Lawyer with office at 136 Ridge St., Reno, NV 89501
2. As lead counsel for James and Linda Moberly in the case of Moberly v. Mathis, CV13-00370 I was responsible for preparing for and participating in the mandatory Settlement Conference of this civil action, Ordered by Judge Stiglich and presided over by Judge Janet Berry on Wednesday, April 30, 2014 in Dept. One of the 2nd Judicial Dist. Ct of Washoe County, Nevada.
3. Trial of this matter is set for June 2nd, 2014 in Dept. 8 (Judge Stiglich' Department), and I have been working an average of 60-65 hours per week for the last three months, in preparation for the trial.
4. In order to prepare for the mandatory Settlement Conference ordered by Judge Stiglich and conducted by Judge Berry, I was required to temporarily abandon my duties of preparing for the trial, almost immediately upon receiving the Order of Judge Stiglich on Tuesday afternoon, April 15, 2014, ordering counsel for the parties to meet with the Judicial Assistant in Department One within five (5) days to schedule the mandatory Settlement Conference.
5. In order to comply with that Order, I immediately contacted my co-counsel Richard Fleischer and our clients, Mr. And Mrs. Moberly to confer with them about Judge Stiglich' Order and to insure that they understood its meaning and importance.
6. Next, I placed a conference call to opposing counsel Mr. Zaniel, attorney for defendants Mathis, in which Mr. Fleischer and I arranged with Mr. Zaniel to meet at the desk of Judicial Assistant Christine Kuhl in Department One to set the date for the Settlement Conference. We agreed to meet the following Monday April 21st at 9:30 to set the Conference date.
7. On April 21, 2014 I prepared an Application For Setting form for the signatures of the counsels for the parties relative to the Mandatory Settlement Conference, and met with my co-counsel Mr. Fleischer and we walked to the Courthouse to meet defense counsel at the desk of Judicial Assistant Kuhl. We agreed to a settlement conference beginning at 9:30 a.m. on Wednesday April 30th.
8. On the morning of April 22, 2014 I received another Order, "Order Scheduling Settlement Conference," which was four pages in length, from Judge Janet Berry, in her capacity as the Settlement Conference Judge, which I carefully read several times, and then called my-counsel and my clients and read it to them on the telephone, and discussed its meaning and importance, and arranged for my clients to meet with us before the April 30 conference.

9. During the fourteen (14) days following receipt by E-Flex of Judge Stiglich's April 15, 2014 Order and the event of the Settlement Conference of April 30, 2014 I continued to work an *average* of 60-65 hours per week exclusively on the *Moberly v. Mathis* case, but instead of trial preparation, my work was primarily directed towards the Mandatory Settlement Conference set for Dept. One on April 30.
10. Accordingly I believe and therefore aver that in preparation for the April 30th Settlement Conference I spent a *minimum* of twenty-five (25) hours of my professional time in preparing for the Mandatory Settlement Conference, including preparation of plaintiffs' complex, detailed Confidential Settlement Statement, the compilation of the numerous exhibits attached to that Statement, multiple conferences with my clients and co-counsel, a pre-Settlement Conference with my client's neurosurgeon (Dr. J. Walker, MD) at his office, a review of my client's medical records, a review of the depositions of James and Linda Moberly, James Diane and Stacie Mathis, Michael Potts, Patrick Fritchel, Patrick Peregrin, Michael Liddiard, and Sally Evarts taken in this case and excerpting some of them for the Confidential Settlement Statement, a review of the reports of my expert witnesses (Dr. Polksy, Ph.D., Mr. Teichner, and Dr. Melese, D.V.M. and telephonic conferences with two of them, a review of dozens of pleadings filed in this case, constituting several hundreds of pages. (I am not including the hours spent by my two staff employees assisting me.)
11. On April 30, 2014 I met with my clients James and Linda Moberly one last time before the Settlement Conference, and with my co-counsel Richard Fleischer, following which we walked to the Washoe County Courthouse and appeared before Judge Janet Berry at 9:30 for an all-day Settlement Conference with opposing counsel, his client Mr. Mathis, and his clients insurance representative ""Jake") from the Las Vegas Claims Office of American Family Insurance Company.
12. The Settlement Conference was conducted by Judge Berry from 9:30 a.m. until approximately 7:30 p.m. on April 30, 2014 with a one hour and :15 minute recess during which my clients, my co-counsel and I ate lunch at a nearby restaurant during which we discussed the settlement conference exclusively – a working lunch. Altogether I believe and aver that I spent ten (10) hours of my professional time at or directly related to the settlement conference on April 30, 2014.
13. On May 1, 2014 I spoke briefly to opposing defense counsel who told me that although he had stated the day previously that he needed an additional 24 hours to confirm the authority to settle this case for \$850,000 – now, he needed an additional four days, until Monday 5th to confirm it. Following this new revelation, I spent another 1 hour (minimum) with opposing counsel and Judge Berry at her chambers in Dept. One at the Courthouse discussing the meaning of this revelation.
14. Shortly after the May 1, 2014 meeting with Judge Berry, I received by E-Flex a written

Order from Judge Berry titled "Order To Show Cause" reflecting that the Judge had granted defense counsel the additional four days he had requested, to secure authority for the proposed settlement, and granting defendants the extension requested by them, until Monday May 5, 2014 at 5 pm.

15. The May 1, 2014 Order To Show Cause also ordered that if the parties fail to confirm the terms and conditions of the proposed agreement by May 5, 2014 at 5 pm, the Court Ordered all Defendants and all insurance representatives who have actual authority to policy limits to appear in human form at 10 am on May 9, 2014 in Dept. One to Show Cause why they should not be held in contempt for failure to comply the Court's Settlement Conference Scheduling Order of April 22, 2014.
16. On Monday May 5, 2014 I met with defense counsel at the chambers of Judge Berry where defense counsel stated that American Family Insurance Counsel was now taking the position that it would not pay more than \$600,000 to settle the case. Counsel had previously stated during the Settlement Conference of April 30th, in the presence of my co-counsel and me, the judge, and others including the American Family Insurance Representative "Jake," that American Family had authorized \$750,000 to settle the case, which was \$100,000 less than the plaintiff's ultimate demand (diminished from \$1,000,000 during the Settlement Conference negotiations that day).
17. Judge Berry then called the Claims Manager of American Family Insurance Company in Las Vegas, NV, a Mr. Thomas, and conversed with him for nearly one hour, first with defense counsel and I in the chambers listening on the judge's speaker phone, and then while defense counsel and I waited in her Judicial Assistant's office next door. I spent more than 1 hour on May 5th at Judge Berry's chambers on May 5, 2014 conversing with the Judge and defense counsel, and waiting while the judge conversed with Mr. Thomas, presumably about the failed Settlement Conference.
18. Accordingly I believe and therefore aver that altogether, I have expended *at least* the following number of hours of my professional time, which is valued at \$550 per hour, in connection with the failed settlement conference:

- Pre-Conference Preparation Time: 25 hours
- April 30, 2014 Settlement Conference: 10 hours
- May 1, 2014 Conf w/ counsel & judge: 1 hour
- May 5, 2014 Conf w/ counsel & judge: 1 hour

Total: 37 hours

Dated this 7th day of May, 2014.


Peter Chase Neumann, SBN 636

FILED
Electronically
2014-05-13 01:26:14 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4429526

EXHIBIT 3

1 Code: 1520
2 Peter Chase Neumann SBN 636
3 136 Ridge St., Reno, NV 89501
4 (775)786-3750
5 -----

6 Richard D. Fleischer, SBN 665
7 227 Clay St, Reno, NV 89501
8 Co-Counsel for Plaintiffs

FILED

2014 MAY 13 AM 11:07

JOEY GRONHA HASTINGS
CLERK OF THE COURT
BY T. Arriola
DEPUTY

9 **SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 JAMES A. MOBERLY and
12 LINDA U. MOBERLY, husband and wife,

13 Plaintiffs,

CASE NO. CV13 - 00370

DEPT NO. 8

14 vs.

15 JAMES MATHIS and STACIE MATHIS,

16 Defendants.

17 DECLARATIONS IN SUPPORT OF ORDER TO SHOW CAUSE

18 NOW COME Peter Chase Neumann and Richard D. Fleischer, counsel for plaintiffs James and
19 Linda Moberly, and submit their Declarations in Support Of Order To Show Cause reflecting
20 their estimated hours of professional time spent in re: Mandatory Settlement Conference Ordered
21 and the subsequent May 1, 2014 Order to Show Cause and the May 9, 2014 Hearing thereon.
22 (Exhibit 1, attached)

23 Affirmation of No Social Security Number In This Document

24 The undersigned attorney affirms that no person's social security number appears herein.

25 Dated: May 12, 2014

26 *Peter Chase Neumann*

/S/ RICHARD D. FLEISCHER

27 Peter C. Neumann, SBN 636

Richard D. Fleischer, SBN 665

Attorneys for Plaintiffs

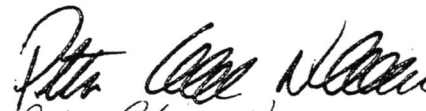
28 *Peter Chase Neumann*

1 **CERTIFICATE OF SERVICE ON OPPOSING COUNSEL**

2 I certify that I am an employee of Peter Chase Neumann, Lawyer, and that on this date, I
3 electronically filed the foregoing with the Clerk of Court by using the Washoe District Court
4 ECF system which will send a notice of electronic filing, which pursuant to N.E.F.R. 9(b) shall
5 constitute valid service, to the following:

6 David M. Zaniel, Esq.
7 Ranalli and Zaniel, LLC
8 50 West Liberty, Ste 1050
9 Reno, NV 89501
10 Attorneys for Defendants

11 Dated: May 12, 2014


Peter Chase Neumann

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Peter C. Neumann, SBN 636

Index

Exhibit No.	Name	Pages
1	Declarations of Fleischer and Neumann	6

Exhibit 1

Exhibit 1

Exhibit 1

DECLARATION OF RICHARD D. FLEISCHER, ESQ.

1. I am Richard D. Fleischer, lawyer with an office at 227 Clay Street, Reno, Nevada 89501.
2. As a co-counsel for James and Linda Moberly in the case of Moberly vs. Mathis, CV13-00370, I was responsible for preparing for and participating in the mandatory Settlement Conference of this civil action, Ordered by Judge Stiglich and presided over by Judge Janet Berry on Wednesday, April 30, 2014, in Dept. One of the 2nd Judicial District Court of Washoe, County, Nevada.
3. The trial in this matter is set for June 2, 2014, in Dept. 8 (Judge Stiglich Department), and I have been working in conjunction with Peter Neuman, co-counsel on this matter for the last 3 months in preparation for the trial.
4. In order to prepare for the mandatory Settlement Conference ordered by Judge Stiglich and conducted by Judge Berry, I was required to temporarily abandoned my duties of preparing for the trial, almost immediately upon receiving the Order of Judge Stiglich on Tuesday afternoon, April 15, 2014, ordering counsel for the parties to meet with the Judicial Assistant in Dept. 1 within five (5) days to schedule the mandatory Settlement Conference.
5. I was contacted by my co-counsel Peter Neumann, and discussed the settlement conference with Mr. & Mrs. Moberly to ensure that they understood its meaning and importance.
6. Mr. Neumann placed a conference call to opposing counsel, Mr. Zaniel, attorney for defendants Mathis, in which myself and Mr. Neumann arranged with Mr. Zaniel to meet at the desk of Judicial Assistance Christin Kuhl in Dept. 1 to set the date for the Settlement Conference.
7. On April 22, 2014, Mr. Neumann prepared an Application for Setting form for the signatures of the counsels for the parties relative to the Mandatory Settlement Conference, and met with myself and we walked to the Courthouse to meet defense counsel at the desk of Judicial Assistant Kuhl. We agreed to a Settlement Conference beginning at 9:30 am on Wednesday, April 30, 2014.
8. On the morning of April 22, 2014, I received another Order, "Order Scheduling Settlement Conference," which was 4 pages in length, from Judge Janet Berry, in her capacity as the Settlement Conference Judge, which I carefully read several times, and then I received a call from co-counsel, Mr. Neumann concerning this matter.
9. During the 14 days following the receipt of Judge Stiglich's April 15, 2014 Order and the event of the settlement conference of April 30, 2014, I continued to work with co-counsel exclusively on the Moberly v. Mathis case, but instead of trial preparation, my work was primarily directed towards the Mandatory Settlement Conference set for Dept. One on April 30, 2014.

10. Accordingly, I believe and therefore aver that in preparation for the April 30th Settlement Conference, I spent a minimum of twenty (20) hours of my professional time in preparing for the Mandatory Settlement Conference. I read all the current pending motions and other various pleadings and portions of depositions taken in this case to prepare for said Mandatory Settlement Conference.
12. On April 30, 2014, I met with Co-counsel, Peter Neumann and my clients, James and Linda Moberly one last time before the Settlement Conference, following which we walked to the Washoe County Courthouse and appeared before Judge Janet Berry at 9:30 am for an all-day Settlement Conference with opposing counsel, his client Mr. Mathis, and his clients insurance representative "Jake" from Las Vegas Claims Office of American Family Insurance Company.
13. The settlement conference was conducted by Judge Berry from 9:30am until approximately 7:30 pm on April 30, 2014 with a one hour and :15 minute recess during which my clients, my co-counsel and I ate lunch at a nearby restaurant during which we discussed the settlement conference exclusively- a working lunch. Altogether I believe and aver that I spent ten hours of my professional time at or directly related to the settlement conference on April 30, 2014.
14. The May 1, 2014, Order to Show Cause also ordered that If the parties fail to confirm the terms and conditions of the proposed agreement by May 5, 2014 at 5pm, the court Ordered all Defendants and all insurance representatives who have actual authority to policy limits to appear in human form at 10 am on May 9, 2014 in Dept. 1 to Show Cause why they should not be held in contempt for failure to comply the Court's Settlement conference Scheduling Order of April 22, 2014.
15. Accordingly I believe and therefore aver that I have expended at least the following number of hours of my professional time, which is valued at \$550.00 per hour, in connection with the failed settlement conference:

Pre-Conference Preparation Time :	10	hours
April 30, 2014 Settlement Conference:	10	hours
May 9, 2014 Conf. W/. Counsel & Judge	<u>4.50</u>	<u>hours</u>
	24.5	hours

DATED this 12th day of May, 2014.


Richard D. Fleischer, SBN #665

DECLARATION OF PETER CHASE NEUMANN

1. I am Peter Chase Neumann, Lawyer with office at 136 Ridge St., Reno, NV 89501
2. As lead counsel for James and Linda Moberly in the case of Moberly v. Mathis, CV13-00370 I was responsible for preparing for and participating in the mandatory Settlement Conference of this civil action, Ordered by Judge Stiglich and presided over by Judge Janet Berry on Wednesday, April 30, 2014 in Dept. One of the 2nd Judicial Dist. Ct of Washoe County, Nevada.
3. Trial of this matter is set for June 2nd, 2014 in Dept. 8 (Judge Stiglich' Department), and I have been working an average of 60-65 hours per week for the last three months, in preparation for the trial.
4. In order to prepare for the mandatory Settlement Conference ordered by Judge Stiglich and conducted by Judge Berry, I was required to temporarily abandon my duties of preparing for the trial, almost immediately upon receiving the Order of Judge Stiglich on Tuesday afternoon, April 15, 2014, ordering counsel for the parties to meet with the Judicial Assistant in Department One within five (5) days to schedule the mandatory Settlement Conference.
5. In order to comply with that Order, I immediately contacted my co-counsel Richard Fleischer and our clients, Mr. And Mrs. Moberly to confer with them about Judge Stiglich' Order and to insure that they understood its meaning and importance.
6. Next, I placed a conference call to opposing counsel Mr. Zaniel, attorney for defendants Mathis, in which Mr. Fleischer and I arranged with Mr. Zaniel to meet at the desk of Judicial Assistant Christine Kuhl in Department One to set the date for the Settlement Conference. We agreed to meet the following Monday April 21st at 9:30 to set the Conference date.
7. On April 21, 2014 I prepared an Application For Setting form for the signatures of the counsels for the parties relative to the Mandatory Settlement Conference, and met with my co-counsel Mr. Fleischer and we walked to the Courthouse to meet defense counsel at the desk of Judicial Assistant Kuhl. We agreed to a settlement conference beginning at 9:30 a.m. on Wednesday April 30th.
8. On the morning of April 22, 2014 I received another Order, "Order Scheduling Settlement Conference," which was four pages in length, from Judge Janet Berry, in her capacity as the Settlement Conference Judge, which I carefully read several times, and then called my-counsel and my clients and read it to them on the telephone, and discussed its meaning and importance, and arranged for my clients to meet with us before the April 30 conference.

9. During the fourteen (14) days following receipt by E-Flex of Judge Stiglich's April 15, 2014 Order and the event of the Settlement Conference of April 30, 2014 I continued to work an *average* of 60-65 hours per week exclusively on the *Moberly v. Mathis* case, but instead of trial preparation, my work was primarily directed towards the Mandatory Settlement Conference set for Dept. One on April 30.
10. Accordingly I believe and therefore aver that in preparation for the April 30th Settlement Conference I spent a *minimum* of twenty-five (25) hours of my professional time in preparing for the Mandatory Settlement Conference, including preparation of plaintiffs' complex, detailed Confidential Settlement Statement, the compilation of the numerous exhibits attached to that Statement, multiple conferences with my clients and co-counsel, a pre-Settlement Conference with my client's neurosurgeon (Dr. J. Walker, MD) at his office, a review of my client's medical records, a review of the depositions of James and Linda Moberly, James Diane and Stacie Mathis, Michael Potts, Patrick Fritchel, Patrick Peregrin, Michael Liddiard, and Sally Evarts taken in this case and excerpting some of them for the Confidential Settlement Statement, a review of the reports of my expert witnesses (Dr. Polksy, Ph.D., Mr. Teichner, and Dr. Melese, D.V.M. and telephonic conferences with two of them, a review of dozens of pleadings filed in this case, constituting several hundreds of pages. (I am not including the hours spent by my two staff employees assisting me.)
11. On April 30, 2014 I met with my clients James and Linda Moberly one last time before the Settlement Conference, and with my co-counsel Richard Fleischer, following which we walked to the Washoe County Courthouse and appeared before Judge Janet Berry at 9:30 for an all-day Settlement Conference with opposing counsel, his client Mr. Mathis, and his clients insurance representative ""Jake") from the Las Vegas Claims Office of American Family Insurance Company.
12. The Settlement Conference was conducted by Judge Berry from 9:30 a.m. until approximately 7:30 p.m on April 30, 2014 with a one hour and :15 minute recess during which my clients, my co-counsel and I ate lunch at a nearby restaurant during which we discussed the settlement conference exclusively – a working lunch. Altogether I believe and aver that I spent ten (10) hours of my professional time at or directly related to the settlement conference on April 30, 2014.
13. On May 1, 2014 I spoke briefly to opposing defense counsel who told me that although he had stated the day previously that he needed an additional 24 hours to confirm the authority to settle this case for \$850,000 – now, he needed an additional four days, until Monday 5th to confirm it. Following this new revelation, I spent another 1 hour (minimum) with opposing counsel and Judge Berry at her chambers in Dept. One at the Courthouse discussing the meaning of this revelation.
14. Shortly after the May 1, 2014 meeting with Judge Berry, I received by E-Flex a written

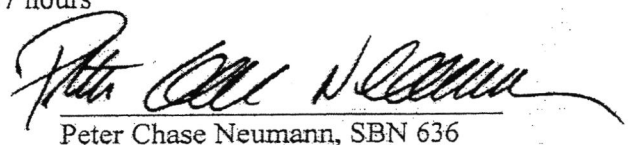
Order from Judge Berry titled "Order To Show Cause" reflecting that the Judge had granted defense counsel the additional four days he had requested, to secure authority for the proposed settlement, and granting defendants the extension requested by them, until Monday May 5, 2014 at 5 pm.

15. The May 1, 2014 Order To Show Cause also ordered that if the parties fail to confirm the terms and conditions of the proposed agreement by May 5, 2014 at 5 pm, the Court Ordered all Defendants and all insurance representatives who have actual authority to policy limits to appear in human form at 10 am on May 9, 2014 in Dept. One to Show Cause why they should not be held in contempt for failure to comply the Court's Settlement Conference Scheduling Order of April 22, 2014.
16. On Monday May 5, 2014 I met with defense counsel at the chambers of Judge Berry where defense counsel stated that American Family Insurance Counsel was now taking the position that it would not pay more than \$600,000 to settle the case. Counsel had previously stated during the Settlement Conference of April 30th, in the presence of my co-counsel and me, the judge, and others including the American Family Insurance Representative "Jake," that American Family had authorized \$750,000 to settle the case, which was \$100,000 less than the plaintiff's ultimate demand (diminished from \$1,000,000 during the Settlement Conference negotiations that day).
17. Judge Berry then called the Claims Manager of American Family Insurance Company in Las Vegas, NV, a Mr. Thomas, and conversed with him for nearly one hour, first with defense counsel and I in the chambers listening on the judge's speaker phone, and then while defense counsel and I waited in her Judicial Assistant's office next door. I spent more than 1 hour on May 5th at Judge Berry's chambers on May 5, 2014 conversing with the Judge and defense counsel, and waiting while the judge conversed with Mr. Thomas, presumably about the failed Settlement Conference.
18. Accordingly I believe and therefore aver that altogether, I have expended *at least* the following number of hours of my professional time, which is valued at \$550 per hour, in connection with the failed settlement conference:

- Pre-Conference Preparation Time: 25 hours
- April 30, 2014 Settlement Conference: 10 hours
- May 1, 2014 Conf w/ counsel & judge: 1 hour
- May 5, 2014 Conf w/ counsel & judge: 1 hour

Total: 37 hours

Dated this 7th day of May, 2014.



Peter Chase Neumann, SBN 636

Addendum to Declaration of Peter Chase Neumann

19. In addition to the foregoing 37 hours spent preparing for, and participating in, the April 30, 2014 settlement conference in Department One, I expended four and one-half additional hours, preparing for and participating in, the Court Hearing on the Order To Show Cause Why a Contempt Order Should Not Issue, which Hearing was conducted by the Hon. Janet Berry, District Judge, in open court last Friday May 9, 2014.

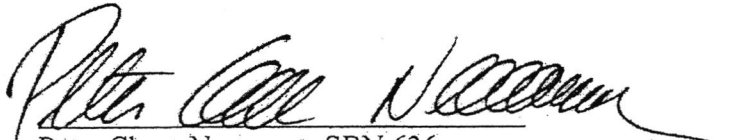
20. Accordingly I believe and therefore aver that altogether, I have expended *at least* the following number of hours of my professional time, which is valued at \$550 per hour, in connection with the failed settlement conference:

- Pre-Conference Preparation Time: 25 hours
- April 30, 2014 Settlement Conference: 10 hours
- May 1, 2014 Conf w/ counsel & judge: 1 hour
- May 5, 2014 Conf w/ counsel & judge: 1 hour
- May 9, 2014 Court Hearing on O.S.C.: 4.5 hours

Total: 41.5 hours

21. At the rate of \$550 per hour, the value of my professional time on the matter of the Mandatory Settlement Conference ordered by Judge Stiglich in the case of Moberly v. Mathis is \$22,825.

Dated this 12th day of May, 2014.


Peter Chase Neumann, SBN 636