



HIGHLIGHTS

Plaintiffs' Awarded Minimal Recovery Based on Perceived Issues with Causation

Three Plaintiffs were allegedly injured in a rear-end motor vehicle collision. The Defendant admitted fault, but maintained that Plaintiffs' injuries were not causally related to the subject incident. Plaintiffs each alleged medical expenses that approached or exceeded six figures. After a six-day trial, Plaintiffs were each awarded less than \$15,000 in damages.

Plaintiff Awarded Over \$5 Million in Medical Malpractice Action

Following an elective hernia repair procedure, Plaintiff suffered cardiac arrest, multiple infections, and loss of blood flow to her extremities. She required three subsequent surgical procedures and amputation of both legs below the knees. The jury found that the surgeon fell below the standard of care and awarded more than \$5 million in damages.

Defense Verdict in Wrongful Death Claim Following Surgery

Decedent underwent a laparoscopy radical left nephrectomy performed by Defendant urologist. Decedent subsequently experienced low blood pressure and swelling in her extremities, and was diagnosed with pneumonia and sepsis. Her health continued to decline and she passed after twenty-two days in the hospital. Defendant denied falling below the standard of care. The jury returned a verdict for Defendant.

NEVADA SUPREME COURT DECISIONS

CORPORATE LIABILITY

Nevada Supreme Court Clarifies Standard for Holding Corporate Officers Individually Liable for Acts Performed in Their Corporate Capacity

In 2012, a receivership action was filed in relation to Lewis & Clark LTC Risk Retention Group, Inc. The district court entered a liquidation order appointing the Commissioner of Insurance for the State of Nevada as receiver. The Commissioner filed a complaint against the directors individually, alleging claims of gross negligence and deepening insolvency.

Under the business judgment rule, directors and officers were presumed to act in good faith, on an informed basis, and with a view to the interests of the corporation. NRS 78.138(3). Therefore, it was presumed that a director or officer was not individually liable for an act or a failure to act within his capacity as a director or officer, except under certain circumstances described in NRS 78.138(7). For a director to be held personally liable the business judgment rule must be rebutted and the director's act or failure to act must constitute a breach of fiduciary duty involving intentional misconduct, fraud, or a knowing violation of the law. NRS 78.138(7).

The individual directors filed a motion to dismiss pursuant to NRCP 12(b)(5) for failure to state a claim, but the motion was denied. The directors also filed a motion pursuant to NRCP 12(c) for judgment on the pleadings, arguing that gross negligence could not support a claim for personal liability against the directors under NRS 78.138. The district court denied this motion, relying on *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006), which held that the business judgment rule did not protect gross negligence of uninformed directors and officers. Courts have interpreted this to require that the director or officer's act rise at least to

the level of gross negligence to support a breach of fiduciary duty claim, or involve intentional misconduct, fraud or knowing violation of the law to support a breach of the duty of loyalty. The directors filed a motion for reconsideration arguing that the district court relied too heavily on *Shoen* and ignored the statutory standard of NRS 78.138(7).

The Nevada Supreme Court noted that it did not ordinarily reconsider motions for summary judgment or motions for judgment on the pleadings; however, when an important issue of law required clarification, the Court reviewed the decision to resolve confusion that risked imposing inconsistent results for different litigants. The Court reviewed questions of statutory construction de novo, meaning the Court would not look beyond the plain language of the statute if the meaning was clear on its face.

The Supreme Court concluded that the district court's interpretation of *Shoen* conflicted with the plain meaning of the statute and disavowed that decision to the extent it implied a bifurcated approach to duty of care and duty of loyalty claims. For the sake of analysis, the Court assumed that the business judgment rule was rebutted and focused on the requirements for "knowing violation" or "intentional misconduct" under NRS 78.138(7). The Court looked to the Tenth Circuit Court of Appeals' interpretation

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of the Nevada statute, which focused primarily on the difference between factual knowledge and knowledge of the law. *In re ZAG Inc. S 'holder Derivative Action*, 826 F.3d 1222, 1232 (10th Cir. 2016). The ZAG court concluded that a statute protecting only those directors who had no knowledge of what their actions would be useless; instead, the statute should protect those who knew what they were doing but did not know it was wrong. The Nevada Supreme Court adopted this definition, concluding that “the claimant must establish that the director or officer had knowledge that the alleged conduct was wrongful in order to show a ‘knowing violation of law’ or ‘intentional misconduct’ pursuant to NRS 78.138(7)(b).”

Applying this definition, the Court concluded that the Commissioner did not sufficiently plead that the directors knew their conduct to be wrongful. The Commissioner’s allegations were limited to facts supporting the directors’ gross negligence and asserting that these actions rebutted the business judgment rule. Since knowledge of wrongdoing was an appreciably higher standard than gross negligence, the directors were entitled to judgment as a matter of law and the district court erred in denying the motion. *Chur v. Commissioner of Insurance for the State of Nevada*, February 27, 2020.

DEFAMATION

A Speculative Hypothetical May Still Have a Direct Relation to the Public Interest and May Qualify Under Nevada’s Anti-SLAPP Statute

Plaintiff Carl Lackey was a biologist for the Nevada Department of Wildlife (NDOW). Defendant Carolyn Stark was the creator and administrator of “NDOW Watch Keeping Them Transparent,” a public Facebook page that served as a forum for Stark and followers of the NDOW Watch page to discuss the actions of NDOW and its treatment of wildlife in Nevada. One comment thread addressed Lackey’s actions concerning the Northern Nevada bear population, criticizing his actions and expressing an opinion that Lackey should be fired or sent to jail. Lackey filed suit based on these comments, alleging defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and civil conspiracy. Stark filed a special motion

to dismiss pursuant to Nevada’s Anti-SLAPP (Strategic Lawsuit Against Public Participation) statutes.

Nevada’s Anti-SLAPP statute, codified in NRS 41.660, provided that in an action brought based on a good faith communication in furtherance of the right to free speech, and in connection with an issue of public concern, the defendant may file a special motion to dismiss. This was generally analyzed as a two-prong test. First, the moving party must establish by a preponderance of the evidence that the communications were made in good faith and in furtherance of her right to free speech on a matter of public concern. Second, the plaintiff must demonstrate with prima facie evidence a probability of prevailing on the claim. To satisfy the first prong, Stark had to show the communication related to the stated public interest and was truthful or made without knowledge of its falsehood. The district court denied the motion to dismiss, finding that Stark did not meet the first prong because not all of the comments were directly related to the stated public interest.

Four comments on the thread were specifically addressed in Lackey’s complaint, three of which the district court determined were related to the public interest. The fourth comment stated that Lackey and his family were directly benefiting from his actions regarding the bear population and that if they could “establish that he or his family benefits financially from selling bear parts or selling the location where he recently released a bear – he should go to jail.” The district court decided that this comment was not related to the stated public interest because it merely speculated about potential benefits to Lackey and his family and hypothesized that Lackey should go to jail if they could prove that he sold bear parts.

The Nevada Supreme Court disagreed with the findings of the district court, holding that the hypothetical nature of the comment did not reduce its direct relation to the public interest. The Supreme Court also determined that Stark’s affidavit stating that the statements were true and that she believed they were true, without evidence to the contrary, was sufficient to satisfy the second component of the first prong. The district court therefore erred in denying the Anti-SLAPP motion. The Supreme Court reversed the district court’s order and remanded the matter to the district court to address prong two of the

Anti-SLAPP analysis. *Stark v. Lackey*, February 27, 2020.

ISSUE PRECLUSION

Grounds for Decision Not Previously Examined by the Ninth Circuit Court of Appeals Were Not Barred by Issue Preclusion in State Court

In August 2011, Plaintiff caused two motor vehicle accidents while experiencing a mental health episode. She exited her own vehicle and attempted to enter the driver’s side of the second vehicle she impacted while the driver was still inside. A Las Vegas Metropolitan Police Department (Metro) officer responded to the scene and was informed that Plaintiff was attempting to steal the second vehicle. Plaintiff walked away from the officer, but when he ordered her to stop, she turned and lunged at him in an attempt to grab his weapon. The officer pushed Plaintiff away and attempted to arrest her while standing, but when she resisted arrest he took her to the ground and attempted to arrest her while she was face-down on the asphalt. Plaintiff continued to resist and the Metro officer called on a security guard from a nearby casino for assistance. Plaintiff was on the ground for approximately two minutes and forty seconds while the officer waited for backup to arrive. After her arrest, Plaintiff was taken to the hospital and diagnosed with second and third-degree burns from her prolonged contact with the hot asphalt.

Plaintiff asserted claims against the security guard and her employer, FCHI, for negligence and false imprisonment, against the Metro officer individually for negligence and excessive force in violation of the Fourth Amendment, against Metro for negligent hiring, training, and supervision and failure to train, direct or supervise under federal law. Defendants removed the matter to federal court and moved for summary judgment. The federal court concluded that the Metro officer was entitled to qualified immunity because 1) the force used by the officer was appropriate under the circumstances, and 2) there was no patent constitutional right such that the officer should have known he was restraining Plaintiff in a manner that was unconstitutional. The federal court granted summary judgment as to the federal claims and declined supplemental jurisdiction over the state law claims, dismissing



them without prejudice. This decision was affirmed by the Ninth Circuit Court of Appeals in an unpublished opinion; however, the Ninth Circuit only addressed the second prong regarding the existence of a clear constitutional right and declined to address the reasonableness of the officer's actions.

Prior to the Ninth Circuit decision, Plaintiff re-filed her negligence and false imprisonment claims in state court. The Metro Defendants moved for summary judgment, arguing that the negligence claim against the officer was precluded based on the federal court's finding that the officer acted reasonably and that the negligent hiring, training and supervision claim against Metro was barred by discretionary immunity. The state district court found that issue preclusion did not apply to the negligence claim against the officer because the federal court's decision addressed the issue of qualified immunity, not the officer's actions, and the issues were therefore not identical. The district court granted the motion as to the claims against Metro as the failure to adequately train its officers fell within its discretionary immunity.

The Metro officer filed a motion to reconsider and to stay pending the Ninth Circuit's decision. FCH1 and the security guard joined this motion to reconsider, arguing that the security guard acted in good faith when responding to the Metro officer's request for assistance. After the Ninth Circuit's decision was released, the district court granted summary judgment on all claims against the Metro officer, concluding that issue preclusion did apply because reasonableness under the Fourth Amendment was identical to the reasonableness issue under Nevada negligence law. The motion was also granted as to the claims against FCH1 and the security guard, but no reasoning was provided.

Plaintiff appealed the district court's summary judgment decision. The applicability of issue preclusion was a question of law and an issue of first impression. Issue preclusion prevented re-litigation of matters which the parties had a full and fair opportunity to litigate. Federal issue preclusion applied when the issue decided was identical to the one which was sought to be re-litigated, the first proceeding ended with a final judgment on the merits, and the party against whom the issue was asserted was a party or in privity with a party at the first proceeding. The Nevada

Supreme Court found that when a judgment in a lower court was based on two independent grounds, either of which could support the result alone, and a higher court affirmed the judgment on one ground but passed over the other ground, issue preclusion only attached to the issue actually decided by the higher court. Issue preclusion did not attach to the omitted ground because there was no final decision and there was no other avenue for appellate review. It would therefore be unfair to preclude this issue from further review.

The issue of whether the Metro officer's actions were unreasonable such that it constituted excessive force was not resolved by the Ninth Circuit's decision, which was based only on the issue of constitutional rights. This issue was therefore not precluded and the district court erred in granting summary judgment in favor of the officer. The Nevada Supreme Court reversed the summary judgment decision as to the negligence claim against the officer and the negligence and false imprisonment claims against FCH1 and its security guard, as non-governmental actors were not entitled to qualified immunity and no other grounds were given to support summary judgment. Summary judgment was affirmed as to Metro on the grounds of its discretionary immunity. *Paulos v. FCH1, LLC*, January 30, 2020.

NEVADA JURY VERDICTS

PERSONAL INJURY

Jury Questions Causation of Plaintiffs' Injuries Due to Large Gaps in Treatment

Plaintiff Tran, a nail technician, Plaintiff Huynh, a flooring installer, and Plaintiff Nguyen, a nail salon manager and technician, were passengers in a vehicle that was rear-ended by Defendant in a construction zone. Plaintiffs alleged that the impact pushed them into a concrete barrier, causing the barrier to rotate 90 degrees. Defendant admitted liability, but denied that the accident caused Plaintiffs' vehicle to hit the barrier. All three Plaintiffs alleged cervical, thoracic, and lumbar injuries with ongoing pain that affected their occupational performance and required ongoing pain management.

Plaintiff Huynh also alleged a closed head injury with residual brain damage. Plaintiffs called a neurosurgeon to testify that all of Plaintiffs' injuries and medical expenses were causally related to the subject incident.

Defendant argued that Plaintiff Tran's testimony contradicted her medical records and that there was a one year and three month gap in her medical treatment. Plaintiff Huynh showed no sign of brain injury post-accident, gave no reports of a brain injury until seventeen months post-accident, and had a one year and nine month gap in treatment. Plaintiff Nguyen also stopped treating for one year and only resumed treatment after he was injured in a subsequent accident. Defendant's expert testified that Plaintiffs' injuries should have resolved within the two or three months after the accident.

Plaintiff Tran alleged \$95,568.00 in medical expenses, Plaintiff Huynh alleged \$180,334.35, and Plaintiff Nguyen alleged \$97,996.90. Before trial, Plaintiff Tran demanded \$338,500.00, Plaintiff Huynh made a pre-trial demand of \$572,450.00, and Plaintiff Nguyen made a pre-trial demand of \$335,550.00. Defendant made a pre-trial offer of \$75,000.00 to Plaintiff Tran, \$165,000.00 to Plaintiff Huynh, and \$75,000.00 to Plaintiff Nguyen. During closing argument at trial, Plaintiffs' counsel asked the jury to award Plaintiff Tran \$508,117.21, Plaintiff Huynh \$948,475.35, and to award Plaintiff Nguyen \$491,654.61. Defendant argued that Plaintiffs' treatment was excessive. The jury deliberated for over one hour and unanimously awarded Plaintiff Tran \$13,268.73, Plaintiff Huynh \$11,390.64, and Plaintiff Nguyen \$12,168.73. *Tran, Huynh, & Nguyen v. Perez*, April 9, 2019.

MEDICAL MALPRACTICE

Doctors Did Not Fall Below the Standard of Care in Failing to Notice Decedent's Perforated Bowel

On May 6, Decedent underwent a laparoscopic procedure to remove an ovarian cyst. The procedure was performed by Defendant physician at Valley Hospital Medical Center. Decedent was scheduled to be discharged on May 7, but remained in the hospital due to low blood pressure and tachycardia and soon became septic. Emergency surgery was performed on May 8, but when the anesthesia was reversed, Decedent went



into cardiac arrest and suffered from brain oxygen deprivation. Her condition deteriorated and brain death was declared on May 23.

Decedent's surviving daughter brought a suit for wrongful death against Women's Cancer Center of Nevada and the gynecological oncologist who performed the procedure. The hospital settled confidentially before trial. Plaintiff claimed that Defendant doctor fell below the standard of care when she negligently perforated Decedent's bowel during the procedure and failed to re-evaluate Decedent after nurses discovered the drop in blood pressure. Plaintiff called an anesthesiologist as an expert witness. Defendants denied falling below the standard of care and argued that Decedent assumed the risks of the procedure. Defendants called an oncologist and an anesthesiologist to testify at trial. Plaintiff sought unspecified medical damages, unspecified lost earnings, and unspecified lost household services. After an eleven-day trial the jury deliberated for over one hour and found unanimously for Defendants. *Brown v. Women's Cancer Center of Nevada*, March 6, 2019.

Doctor Liable for Delayed Diagnosis and Surgery that Resulted in Amputation of Plaintiff's Legs

Plaintiff underwent an elective hernia repair and Nissen fundoplication for severe gastroesophageal reflux symptoms. During the surgery, Plaintiff's stomach was injured but the injury went unnoticed. After the surgery, Plaintiff suffered cardiac arrest, multiple infections, and loss of blood flow to her extremities, leading to bilateral amputations below the knees. Eleven days after the first surgery, Plaintiff underwent a second surgery and ultimately a third surgical procedure.

Plaintiff filed suit against the doctor who performed the surgery and a hospitalist who examined Plaintiff while she was hospitalized. Plaintiff alleged that Defendant doctor fell below the standard of care when he failed to recognize the stomach injury, failed to operate expeditiously when Plaintiff developed sepsis and delayed the operation until ten days after Plaintiff was diagnosed with sepsis and pancolitis. Plaintiff alleged that the Defendant hospitalist, fell below the standard of care when he failed to appropriately consider the most obvious source of Plaintiff's perioperative injury. Plaintiff called

a general surgeon, a critical care specialist, and a radiologist as expert witnesses to testify as to the standard of care.

Defendants denied falling below the standard of care and argued that Plaintiff's sepsis was caused by aspiration pneumonia or aspiration pneumonitis, and that her stomach abscess was caused by the nasogastric tube or air pressure from bag-mask ventilation. Defendants called a general surgeon, a gastroenterologist, a radiologist, an internist, a critical diseases specialist, and an infectious disease specialist as expert witnesses. The trial lasted 19 days.

Plaintiff sought medical expenses, lost wages, lost earning capacity, and loss of household services. Plaintiff's spouse asserted a claim for loss of consortium. After two days of deliberation, the jury found unanimously in favor of Defendant hospitalist and against Defendant doctor. Plaintiff was awarded \$5,771,494.61 in compensatory damages, representing \$1,906,694.61 in past medical expenses, \$2,300,000.00 in future medical expenses and lost household services, \$52,320.00 in past lost wages, \$12,480.00 future lost earning capacity, \$750,000.00 past pain and suffering, and \$750,000.00 in future pain and suffering. Plaintiff's spouse was awarded \$100,000.00 for past and future loss of consortium. *Center v. Laparoscopic Surgery of Nevada*, April 25, 2019.

PREMISES LIABILITY

Plaintiff Found Forty Percent Liable for his Own Injuries After He Slipped on A Puddle of Water

Plaintiff allegedly slipped and fell on a puddle of water, resulting in unspecified injuries. Plaintiff asserted that Defendant was negligent in its maintenance of its premises and that Defendant had notice of the dangerous condition. Defendant denied liability, arguing that its maintenance was proper. Defendant also maintained that Plaintiff's alleged injuries pre-existed the incident.

Plaintiff called an orthopedic physician to testify on his behalf at trial. Defendant's expert witness, also an orthopedic physician, testified that some of Plaintiff's medical treatment, including surgery and steroidal injections, was not causally related to the fall. Defendant filed a motion for judgment as a matter of law as to Plaintiff's alleged lost wages, which was granted. Plaintiff sought an unspecified amount in medical expenses. The

trial lasted eight days and the jury deliberated for more than five hours over a two day period before reaching a verdict. The jury awarded Plaintiff a total of \$185,625.86 in compensatory damages, including \$145,625.86 in medical expenses and \$40,000.00 for pain and suffering. Plaintiff was, however, determined to be 40 percent at fault and the judgment was reduced accordingly to \$111,375.52. *Morales-Lugo v. Bellagio*, March 8, 2019.

Plaintiff Alleges Over \$360,000.00 in Medical Damages after Walking into a Beverage Cart

Plaintiff alleged that she was leaving Defendant's casino floor when Defendant's server pushed a beverage cart into the walkway in front of Plaintiff, causing Plaintiff to trip and fall. Plaintiff alleged negligent hiring, training, and/or supervision. Defendant denied liability, asserting that the condition was open and obvious.

As a result of the incident, Plaintiff alleged injuries to her spine, left hip, hands, and knees. At trial, Plaintiff relied on the expert testimony of an orthopedic physician and a kinesiologist. Defendant called a cardiologist to testify as its expert witness. Plaintiff sought \$367,124.60 in medical expenses and \$470,769.00 in lost wages. After a five-day trial and one hour of deliberation, the jury found unanimously for Defendant. *Manley v. American Casino & Entertainment Properties and Aquarius Casino Resort*, April 12, 2019.

No Recovery for Plaintiffs after Hotel Room Robbery

Plaintiffs were guests at Defendant Casino when they allegedly heard a knock on their hotel room door at approximately 9:00 a.m. When Plaintiffs opened the door they were allegedly assaulted and robbed by two men. Plaintiffs filed suit against the casino alleging that Defendant did not provide adequate security.

Defendant denied liability and asserted that it had the largest number of security guards of any casino on the Las Vegas Strip and exceeded the minimum requirements for security. Defendant also argued that Plaintiffs had been gambling and partying all weekend and had a large amount of cash in their room. Additionally, Defendant alleged that one Plaintiff had the opportunity to leave the room to get help, but failed to do so and that the robbery was arguably staged.



Plaintiffs alleged injuries to their heads, spines, and extremities and sought compensatory damages. The matter was initially heard in arbitration with a finding for Defendant. Plaintiffs appealed the decision and the matter proceeded to a one-day short trial decided by four jurors. The jury found unanimously for Defendant. *Schwimer & Nicolson v. Cosmopolitan Resort & Casino*, June 14, 2019.

PRODUCT LIABILITY

Jury Finds Defendant Did Not Manufacture the Resistance Band Used by Plaintiff

Plaintiff, a 75 year old male, was using a flat resistance exercise band when it slipped from his grip and caused him to lose his balance. Plaintiff fell face-first into a hard-edged bathroom cabinet. As a result, he sustained injury to his right eye that resulted in blindness, fractured facial bones, fractured ribs, a closed head injury with a concussion, and bruises. Plaintiff also suffered from residual scarring, causing severe disfigurement.

Plaintiff argued that the product was defectively manufactured, that Defendant failed to warn consumers that the product was dangerous for the elderly, and that Defendant knew of the likelihood of injury to elderly consumers. Defendant asserted that it did not manufacture the product and, in the alternative, the product complied with all relevant safety regulations and was not defective in design or manufacture. Plaintiff alleged \$240,306.51 in medical expenses and lost household services, and sought punitive damages. Plaintiff's spouse also asserted a claim for loss of consortium. Following the ten-day trial and one hour of deliberation, the jury reached a unanimous verdict finding that Defendant was not the manufacturer of the product at issue. *Reid v. Hygienic Intangible Property Holding Company*, April 5, 2019.

BREACH OF CONTRACT

Defendant Validly Terminated Contract to Promote and Advertise Bingo Millions Game

Gaming Arts, LLC, and Fortunet, Inc. entered into a sales representative agreement whereby Fortunet agreed to promote and

distribute Gaming Art's Bingo Millions Game and sell sealed, barcoded paper related to the Bingo Millions Game. Gaming Arts claimed that Fortunet breached the sales contract and the covenant of good faith and fair dealing, and attempted to monopolize the market for bingo in violation of Nevada's unfair trade practices statute.

Fortunet denied Plaintiff's allegations and argued that it validly terminated the agreement pursuant to the terms of the contract. Gaming Arts claimed the contract was valid and binding and sought damages for lost profits, loss of business opportunities, and harm to its reputation in the game industry for keeping its contractual obligations with casinos. After a twelve-day trial, the jury deliberated for three hours and found unanimously for Fortunet. *Gaming Arts, LLC vs. Fortunet, Inc.*, March 1, 2019.

DISCRIMINATION

Cocktail Server Awarded \$500,000.00 After Finding Hidden Camera in the Employee Changing Room

Plaintiff was hired as a pool cocktail server at a resort spa and casino. Plaintiff alleged that on July 7, she and two other female employees were in the designated changing area for the casino's female employees. One of the women noticed what looked like a hidden camera in the ceiling. Plaintiff climbed on a chair and moved the camera into the ceiling so it was no longer pointed toward the women's changing area. Plaintiff informed her supervisor who indicated that he would handle the situation. Plaintiff also informed two managers of the camera. They advised Plaintiff that they were not aware of the camera or of any investigation into its existence. Plaintiff insisted that something be done about the situation. On July 11, Plaintiff was called into a meeting with the Human Resources director and the security

investigator. On July 13, she was called into her supervisor's office, told to transfer her open tabs to other female employees, and was suspended.

Plaintiff filed discrimination charges with the Nevada Employment Opportunity Commission and the U.S. EEOC on August 15 and received a "right to sue" letter resulting from agency reporting. Plaintiff filed suit against the casino, alleging that she was wrongfully suspended for reporting the hidden camera. At the time of the suspension, Plaintiff was not given a reason for the suspension or a date when she could return to work. Plaintiff also alleged negligent hiring, retention and supervision, and claimed that Defendant was guilty of discrimination, harassment, humiliation, embarrassment, retaliation, loss of employment, and loss of income and benefits. Plaintiff argued that Defendant's conduct was negligent, willful, malicious, and done with a conscious disregard for Plaintiff's rights.

Defendant denied liability, asserting that the area monitored by the camera was not the designated changing area as the female employees were instructed to change in the bathroom or locker room, and that the camera was installed to detect theft and other policy violations without any knowledge that the area was used by the female employees to change. Defendant also alleged that Plaintiff was terminated for moving the camera before reporting its existence to her supervisor.

Plaintiff alleged that she suffered emotional trauma and sought both compensatory and punitive damages. After a seven-day trial, the jury found unanimously for Defendant on Plaintiff's claims for invasion of privacy, negligent retention and intentional infliction of emotional distress. The jury also determined that Defendant did not act with malice or oppression. Plaintiff was awarded \$500,000.00 for her claim of negligent supervision. *Cooper v. M Resort Spa Casino*, April 16, 2019.

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Alverson Taylor & Sanders
6605 Grand Montecito Pkwy., Ste 200
Las Vegas, NV 89149
(702) 384-7000 • Fax (702) 385-7000
www.alversontaylor.com

Alverson Taylor & Sanders
6605 Grand Montecito Pkwy., Ste. 200
Las Vegas, NV 89149

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NEVADA Legal Update

COMMENTS

As of January 1, 2020, employers may not refuse to hire a prospective employee on the basis of a positive screening for marijuana under NRS 613.132. Recreational marijuana use has been legal in the State of Nevada since 2017. Nevada Assemblywoman Nina Neal originally opposed the legalization of recreational marijuana use, but later proposed this new law because she was concerned with the lack of policy for employers. She felt that those who legally use marijuana in their personal time should be protected from repercussions when seeking employment, especially because drug tests can detect marijuana for several weeks after use. Nevada is the first state to ban employers from denying

employment on the basis of marijuana use. New York City recently passed a similar bill banning employers from using marijuana screening as a condition of employment (though recreational use is still illegal in the State of New York), and the State of Maine has prohibited discrimination by employers against marijuana users.

The law provides specific exceptions for employers who are hiring firefighters, emergency medical technicians, and positions that require the employee to operate a motor vehicle and for which state or federal laws require the employee to submit to screenings. The broadest exception applies to positions where the employer determines that use of marijuana could “adversely affect the safety of others.” No guidance is provided

as to the kinds of positions that would qualify and the determination is left entirely within the employer’s discretion. The law does not override existing provisions in an employment contract or collective bargaining agreement. The law applies only to the hiring process. If a new employee is required to submit to a drug test within the first thirty days of employment, the employee may pay for a second test to rebut the first test and the employer must take the results of the second test into consideration.