

HIGHLIGHTS

Statute of Repose for Construction Defect Claims Begins on the Date of Recording

The Nevada Supreme Court clarified that, for purposes of determining the commencement date of the construction defect statute of repose, a notice of completion is "issued" on the date it is recorded, rather than the date it is signed and notarized.

Defense Verdict after Plaintiff Admits to Consuming Beer

Plaintiff's motorcycle collided with Defendant's vehicle at a four-way stop. Plaintiff admitted he consumed two beers prior to the accident and left the scene before investigating officers arrived. Plaintiff asked the jury to award more than \$1 million in damages, but the jury returned a verdict for the Defendant.

Verdict for \$18 Million against Las Vegas Neonatologist

Defendant neonatologist allegedly failed to diagnose a newborn's genetic blood disorder and failed to recognize that the infant had a serious form of anemia. Plaintiff claimed that the untreated anemia caused anemic shock and a permanent catastrophic brain injury, rendering the newborn severely disabled. After a nine day trial, the jury awarded Plaintiff a total of \$18 million, including damages for pain and suffering.

NEVADA SUPREME COURT DECISIONS

CONSTRUCTION DEFECT

Statute of Repose for Construction Defect Claims Calculated from the Date of Recording

Robert M. Dykema and Ronald Turner purchased homes developed by Del Webb Communities, Inc., in the Anthem Heights subdivision of Henderson, Nevada. A notice of completion for Mr. Dykema's residence was signed and notarized on November 30, 2004, and recorded on December 8, 2004. The notice of completion for Mr. Turner's residence was signed and notarized on December 14, 2004, and recorded on December 23, 2004. Mr. Dykema and Mr. Turner served a notice of construction defect on Del Webb on December 2, 2014 and December 22, 2014, respectively. Both parties, among others, filed a complaint against Del Webb in District Court on February 27, 2015.

Del Webb moved to dismiss the claims, arguing that they were untimely pursuant to the statute of repose for construction defect claims, as set forth in Chapter 11 of the Nevada Revised Statutes. Del Webb argued that the statute of repose began to run on the date the notice of completion for each residence was signed and notarized. Mr. Dykema and Mr. Turner maintained that the statute of

repose should be calculated from the date the notices of completion were actually recorded.

The district court granted Del Webb's motion to dismiss the claims asserted by Mr. Dykema and Mr. Turner. The trial court held that because the homeowners served the notices of construction defect more than ten years after the notices of completion were signed and notarized, their claims were time-barred by the ten-year statute of repose set forth in NRS 11.203. Plaintiffs appealed.

The period in which a plaintiff must bring an action for construction defect depends on the nature of the alleged deficiency; for example, ten years for a known deficiency. The Nevada Supreme Court held that Mr. Dykema and Mr. Turner properly applied the ten-year statute of repose for known deficiencies under NRS 11.203(1) when they alleged that Del Webb knew or should have known of the defect in question.

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The Nevada Supreme Court additionally held that a notice of completion for purposes of determining the commencement date for the statute of repose was “issued” on the date it was recorded, rather than the date it was signed and notarized. Plaintiffs’ notices of defect were therefore timely served within the ten year statute of repose, and the Supreme Court reversed the district court’s dismissal. *Dykema v. Del Webb Communities, Inc.*, 132 Nev. Adv. Op. 82 (December 2016).

INSURANCE

Spouse Who Murdered His Partner Not Entitled to PERS Benefits

In 2009, Kristine Jo Freshman, an employee of Clark County School District and a member of the Public Employees’ Retirement Act (PERS) for 24 years, was murdered by her husband, Walter Freshman. Mr. Freshman pleaded guilty and was adjudicated of second degree murder.

Before her death, Mrs. Freshman designated her daughter, Shae Gitter, as her survivor beneficiary. In 2011, Ms. Gitter applied to PERS for her survivor benefits, but that application was denied. In denying the request, PERS reasoned that Ms. Gitter was not included in any category of people eligible to receive the PERS benefits. The PERS Act allowed a survivor beneficiary to collect benefits only if the member was unmarried on the date of the member’s death. If the PERS member was married, the payments went to the member’s spouse and any minor children.

The PERS Act did include a slayer statute, which prohibited a person from collecting benefits if he was convicted of the murder or voluntary

manslaughter of the PERS member. Likewise, Nevada’s slayer statute mandated “that a killer cannot profit from his or her wrong.” Under the statute, the individual convicted of murder was to be treated as if he predeceased the decedent, and he therefore forfeited any benefit to which he was previously entitled.

After her claim was denied by PERS, Ms. Gitter filed suit to collect her survivor benefits. The district court granted partial summary judgment in favor of Ms. Gitter and declared that Nevada’s slayer statutes applied to the PERS Act. Following the district court’s decision, the parties stipulated that Ms. Gitter was owed \$203,321.76. Ms. Gitter then filed a motion seeking litigation costs and attorney’s fees, as well as pre and post-judgment interest.

The district court determined that PERS was required to pay limited interest on the principal amount. The district court also addressed the cost of expert witnesses, including a financial consultant. The court limited the claimed costs to \$1,500.00 per expert witness, pursuant to NRS 18.005(5). Ms. Gitter argued that PERS continually took unreasonable positions throughout the course of litigation that were not supported by Nevada law. The district court agreed and ordered PERS to pay \$96,272.50 in attorney’s fees. PERS appealed the district court’s order regarding interest, fees and costs.

On appeal, the Nevada Supreme Court confirmed that Ms. Gitter was entitled to survivor benefits and held that the district court did not abuse its discretion in limiting expert costs to \$1,500.00. In addressing the other issues, however, the Court reversed the district court’s award of interest and remanded with instructions that PERS was liable for paying full, rather than only limited, interest. The Court further held that the district court abused its discretion in awarding attorney’s fees because the order did not include sufficient reasoning and findings to support the conclusion. *Public Employees’ Retirement System of Nevada v. Gitter*, 133 Nev. Adv. Op. 18 (Apr. 27, 2017).

NEVADA JURY VERDICTS

PERSONAL INJURY

Defense Verdict for Motorist Who Struck a Disabled Nevada Resident

Plaintiff, a 58 year old disabled female, was walking in an unmarked crosswalk when Defendant driver, the operator of a 2002 Toyota Tacoma pickup truck, executed a right turn and struck Plaintiff. Plaintiff landed on the hood of Defendant’s pickup truck and sustained bruising to the inside of both thighs. She also alleged pain in both of

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her knees and her left ankle, as well as bruising and swelling of the left wrist.

Plaintiff sought more than \$23,000.00 in damages, including \$13,273.00 in medical expenses. After a one day short trial, the jury returned a verdict for Defendant. *Beasley v. Piedrasanta*, October 14, 2016.

Plaintiff Recovers against Negligent Ambulance Driver

Plaintiff, the female passenger in a Medicwest ambulance, claimed that the driver negligently rear-ended another vehicle while in the course and scope of his occupational duties. Plaintiff sustained unspecified injuries as a result of the collision. Defendants, the driver and ambulance service, admitted negligence but argued that Plaintiff's injuries were not causally related to the accident.

After a nine day trial, the jury awarded Plaintiff \$300,000.00 in future medical expenses, \$250,000.00 for past pain and suffering, and \$100,000.00 for future pain and suffering, for a total award of \$650,000.00. *Stanley v. Medicwest Ambulance, Inc.*, November 4, 2016.

Defense Verdict after Plaintiff Collided with Pizza Delivery Driver

Defendant, a 35 year old male in the course and scope of his employment delivering pizza, collided with Plaintiff while executing a left turn at a four-way stop. Plaintiff, a 55 year old male and time share salesman, was operating a motorcycle. As a result of the collision, Plaintiff allegedly sustained a compound fracture of the left tibial plateau and fibula head, which required surgical repair.

Defendant denied liability and alleged that Plaintiff failed to stop

before entering the intersection. Plaintiff admitted he consumed two beers prior to the accident and left the scene before responding police officers arrived. There were no independent witnesses to the accident.

Plaintiff sought compensatory damages including unspecified medical expenses. Defendant made a \$5,000.00 pretrial offer of settlement. At the end of a three day trial, during closing arguments, Plaintiff asked the jury to award more than \$1 million in damages. The jury subsequently returned a verdict for Defendant. *Snyman v. Rolling Dough, Inc.*, December 14, 2016.

Jury Finds for Defendant after Plaintiff Admits to Drug Use

Plaintiffs, two 19 year old teenagers, were traveling to a local Quick Care for treatment of a heroin overdose by the Plaintiff passenger. Plaintiffs alleged that as they quickly turned into the urgent care parking lot, Defendant, a 23 year old female, exited a restaurant drive-through lane and caused a collision.

At trial, Plaintiffs relied on the testimony of an accident reconstructionist, who testified that Defendant caused the collision with Plaintiffs' vehicle. Defendant denied liability arguing that after she left the restaurant's drive-through lane, she crossed over the entrance to the shopping center. As she was crossing the entrance, Plaintiff driver turned rapidly into the shopping center and struck Defendant's vehicle.

Plaintiffs sustained unspecified injuries. Plaintiff driver sought \$19,000.00 in medical damages, and the passenger sought \$16,000.00 for

past medical treatment. Plaintiffs made a pretrial demand of \$20,000.00 and the Defendant offered \$3,000.00.

During closing arguments, Plaintiffs argued that the police department, who was not named as a party, had destroyed evidence related to the collision. Defendant argued that Plaintiff driver, who had also injected heroin, was speeding at the time of the collision and was therefore at fault. After only two hours of deliberation, the jury found for the Defendant. *Butler and Urban v. Carlson*, January 20, 2017.

MEDICAL MALPRACTICE

Jury Awards \$18 Million to Disabled Infant

Plaintiff's infant daughter was born prematurely and was in the neonatal intensive care unit for eleven weeks. During that time she required eleven red blood cell transfusions. Plaintiff alleged that Defendant neonatologist fell below the standard of care when he failed to diagnose and treat her daughter's genetic blood disorder. Plaintiff further alleged that Defendant failed to recognize that the infant had a serious form of anemia and failed to obtain a hematology consultation. It was further alleged that Defendant included incorrect and misleading information in the discharge summary and did not include relevant test results which demonstrated that the infant was not producing red blood cells, her blood count was falling, and she was still anemic at the time of discharge.

As a result of Defendant's alleged negligence, the infant's anemia went undiagnosed and untreated, which reportedly resulted in anemic shock and a permanent catastrophic brain injury. Plaintiff alleged that her

daughter was unable to crawl or walk, had limited verbal communication, was blind, and would require 24-hour care for the remainder of her life.

Defendant denied falling below the standard of care arguing that the transfusions were required because of the infant's premature birth, several bouts of clinical sepsis, and her need for surgical procedures. Defendant maintained that, at the time he provided care and treatment, there was no need to be concerned that the infant might have a serious form of anemia.

Plaintiff sought \$1,700,000.00 in past medical expenses and \$9,100,000.00 for future medical care and treatment. After a nine day trial and seven hours of deliberation, the jury awarded Plaintiff a total of \$18 million, including \$14,400,000.00 for past and future medical expenses and \$3,600,000.00 for pain and suffering. The pain and suffering award will likely be reduced post-trial, based on Nevada law limiting pain and suffering awards in medical malpractice actions to \$350,000.00. *Hurst v. Piroozji, M.D.*, December 2, 2016.

Verdict for Defendant after Death Resulting from Diabetic Ketoacidosis

Plaintiff, the mother of a 38 year old male, brought suit for her son's alleged wrongful death. Plaintiff claimed that Defendant internist fell below the standard of care when he discharged Decedent from the hospital without insulin and transferred him to an improper facility, resulting in his death from diabetic ketoacidosis.

At trial, Plaintiff relied on the testimony of an emergency medicine specialist and family practitioner, who

opined that Defendant fell below the standard of care. Plaintiff also called a pathologist and an endocrinologist, who were both of the opinion that Decedent died from lack of insulin.

Defendant denied falling below the standard of care and argued that Decedent had multiple comorbidities, was treated properly, and was transferred to another facility with the required medication. Defendant relied on the expert testimony of an internist, specializing in geriatrics, who testified that the care and treatment provided to Decedent was within the standard of care. Defendant also called an endocrinologist and a pathologist, who opined that diabetic ketoacidosis did not cause Decedent's death.

Plaintiff made a pretrial demand of \$240,000.00, but Defendant refused to make an offer. After an 11 day trial, the jury deliberated for one hour and found unanimously for the Defendant. *Cornell v. Tam, M.D.*, January 31, 2017.

PREMISES LIABILITY

Defense Verdict for Nightclub after Plaintiff Fell Down Stairs

Plaintiff, a 33 year old female, allegedly fell on the stairs at Blue Martini nightclub. Plaintiff claimed that inadequate lighting and stair tread depth contributed to her fall and that the handrails violated the applicable building code.

As a result of her fall, Plaintiff fractured her arm. She also sustained a torn meniscus of the knee, which required surgical intervention, and a lumbar injury, which would allegedly require future surgical treatment. Plaintiff also claimed that she would

require pain management injections for the rest of her life.

At trial, Plaintiff called an expert in lighting who opined that the lighting in and around the stairs was inadequate. Plaintiff also relied on an architect and construction code compliance expert, who testified that the stair tread depth and short handrails violated the building code and contributed to Plaintiff's fall. Defendant denied liability and maintained that any alleged building code violations were not causally related to Plaintiff's fall and the stairwell met or exceeded the building code requirements. Defendant further argued that Plaintiff was inattentive at the time of the fall.

Plaintiff sought \$119,237.00 in past medical expenses; \$1,208,747.00 in future medical costs; \$35,000.00 in lost wages; and \$497,437.00 in lost household services. Plaintiff made a \$799,000.00 pretrial settlement demand and Defendant served a \$375,000.00 offer of judgment. After a seven day trial, the jury unanimously found for the Defendant. *Jimenez v. Blue Martini*, October 17, 2016.

Jury Finds for Plaintiff in Raised Concrete Fall

Plaintiff, a male Nevada resident, alleged that as he was walking through the common area of his apartment complex, he tripped and fell over a portion of raised concrete. As a result of the fall, Plaintiff allegedly sustained cervical, thoracic, and lumbar soft tissue injuries, as well as injury to his shoulders.

Plaintiff claimed that Defendants negligently maintained the property and knew, or should have known, of the dangerous condition. At trial, Plaintiff relied on the testimony

of a civil engineer to address issues of liability, and a neurosurgeon to discuss his alleged damages. Defendants presented the videotape deposition of an orthopedist.

After an eight day trial and more than two days of deliberation, the jury awarded Plaintiff \$80,000.00 in compensatory damages. The jury also found Plaintiff to be 30 percent at fault, which reduced Plaintiff's award to \$56,000.00. *Sirigos v. NGVP, L.L.C.*, January 19, 2017.

Jury Finds for Music Producer in Slip and Fall Case

Plaintiff, a 46 year old male who worked as a music producer, alleged that as he entered the bathroom in his condominium he slipped and fell on water. The water allegedly came from a leaking ice machine in the unit above, which caused water to drip into Plaintiff's condominium. Defendant, the owner of the upstairs unit, argued that he was not aware of the leak as he only owned the condominium for rental purposes and had not been in the upstairs unit in several months.

Plaintiff asked the jury to award both medical expenses and property damages. Plaintiff made a pretrial demand of \$45,000.00 and Defendant served a \$15,000.00 offer of judgment. After a one day trial, the jury awarded Plaintiff \$11,721.00 in compensatory damages. *Morris v. Aston Hotels & Resorts L.L.C. & Victor*, January 27, 2017.

DEFAMATION

Jury Awards the "Biggest Loser" Over \$4.7 Million

Plaintiff, a political consultant,

was working with judicial candidates in Clark County on their political campaigns. Plaintiff used Defendant, a contract printer, for printing services. On January 21, 2014, after Plaintiff stopped using Defendant's printing services, Defendant allegedly mailed most, if not all, of the judicial candidates in Clark County an anonymous postcard about Plaintiff captioned, "The Biggest Loser." This postcard allegedly contained false and defamatory statements regarding Plaintiff's abilities as a political consultant. Plaintiff filed a defamation action alleging that many of the recipients were either clients or potential clients and, as a result of Defendant's actions, Plaintiff's business was adversely affected. Defendant denied liability, claiming that it printed the postcard at the request of another customer.

Plaintiff sought compensatory and punitive damages on behalf of himself and his companies. After a 14 day trial, the jury awarded Plaintiff \$3,200,000.00 in compensatory damages and \$1,500,000.00 in punitive damages. *Organized Karma, L.L.C. v. Gillespie*, November 18, 2016

COMMENTS

Eighth Judicial District Court for Clark County, Nevada, Gains Three New Judges

At an investiture ceremony at the Clark County Government Center Commission Chambers on June 2, 2017, three new judges swore to uphold the law and took the bench with the Eighth Judicial District Court. Judge Tierra Jones is a native Nevadan with experience as a District Attorney in Clark and Nye counties and as a public defender in Clark County. A graduate of the University of Nevada, Las Vegas, William S. Boyd School of

Law, Judge Jones will preside over a civil/criminal docket in District Court Department 10. Judge Jones is filling the vacancy left by the retirement of Judge Jessie Walsh.

Judge Mark Bailus will preside over a civil docket in District Court Department 18. Judge Bailus is a graduate of Pepperdine University School of Law, and has served as an attorney with the Clark County Special Public Defender's Office as well as on the Ombudsperson Panel to represent the deceased family and public at the Police Fatality Public Fact-Finding Review hearing. His private practice experience includes serving as Vice President and General Counsel for Nevada Beverage Company and as a partner with Cherry Bailus & Kelesis. He most recently focused on complex civil and criminal litigation and appeals at Bailus Cook & Kelesis. Judge Bailus is filling the vacancy left by the retirement of Judge David Barker.

Judge David Jones is a Las Vegas native who attended Arizona State University and returned to Las Vegas to teach Government, World and US History at Rancho High School. He also developed a Criminal Justice curriculum and class for the Clark County School District. He later attended University of the Pacific, McGeorge School of Law, where he graduated with honors. Judge Jones has practiced law entirely in the State of Nevada, including as a long-term partner at Rawlings, Olson, Cannon, et al., partner at Lewis Brisbois, and managing attorney for the plaintiff-based firm of David Allen & Associates. He also served as a short-trial judge, a court-ordered mediator and arbitrator, and as a family court judge through the Truancy Diversion Program. Judge Jones will preside over a civil docket in District Court Department 29, and is filling the vacancy left by the passing of Judge Susan W. Scann.

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