Alverson Taylor & Sanders
Nevada's Law Firm

NEVADA
# Legal Update

Winter 2020

## HIGHLIGHTS

### Statute of Limitations for Personal Injury Applies to Claims for Wrongful Termination

The Nevada Supreme Court recognized the analogous connection between wrongful termination and personal injury claims. Accordingly, the two-year statute of limitations period provided in NRS 11.190(4)(e) for personal injury claims was the appropriate period for Plaintiff's wrongful termination claim. Based on the two-year statute of limitations, the district court correctly granted Defendant's motion to dismiss.

### Plaintiffs Awarded over $32 Million in Punitive Damages for Wrongful Death Claim

Decedent was admitted to Defendant Hospital for treatment related to her sickle cell disease. While under Defendant's care, Decedent suffered five cardiac arrests and kidney failure, resulting in her death. The jury found that Defendant fell below the standard of care and engaged in conduct with fraud, oppression, or malice toward Decedent. Plaintiffs were awarded $10,536,500.00 in compensatory damages and $32,420,000.00 in punitive damages.

### Defense Verdict in Wrongful Death Claim Following Surgery

Decedent underwent a laparoscopy radical left nephrectomy performed by Defendant urologist. Decedent subsequently was diagnosed with pneumonia and sepsis, and her health declined despite additional surgery and surgical wound debridement. She passed away 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

### DEFAMATION

### Digital Media Qualifies for News Shield Protections Despite Lack of Printing

Sam Toll ran an online blog, "The Storey Teller," in which he discussed public events, opinions, and current news in Virginia City, Storey County, Nevada. Mr. Toll wrote several articles that were critical of County Commissioner Lance Gilman. Specifically, he alleged that Mr. Gilman did not live in Storey County as he claimed. Mr. Gilman filed a defamation action against Mr. Toll alleging defamation per se.

NRS 41.660, also known as the anti-SLAPP statute, provides that in an action brought against a person 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. To defeat this motion, the plaintiff must demonstrate with prima facie evidence a probability of prevailing on the claim. If a party can demonstrate that information needed to meet or oppose plaintiff's burden is in the possession of another party, the court may allow limited discovery.

Mr. Toll filed a special motion to dismiss under the anti-SLAPP statute with a sworn declaration that his statements were made in good faith and in furtherance of his right to free speech on a matter of public concern. Mr. Gilman opposed the motion, arguing that he could demonstrate a probability that he would succeed on his defamation claim. The district court held that Mr. Gilman met his burden as to the falsity of the allegations and their damaging nature, but failed to show that Mr. Toll acted with actual malice. The court granted Mr. Gilman's motion for limited discovery so he could determine the source of Mr. Toll's information and discern if Mr. Toll knew the statements were false or acted with a high degree of awareness that they were false, which would establish actual malice. Mr. Toll refused to reveal his sources, invoking the news shield statute under NRS 49.275, which protected a reporter of any newspaper from being required to disclose his or her sources. The court granted Mr. Gilman's motion to compel, holding that the news shield statute did not apply to bloggers. While Mr. Toll could be considered a reporter under the statute, the court found that the blog was not a newspaper under the plain language of the statute because it was not physically printed. Mr. Toll filed a petition for a writ of prohibition or mandamus to challenge both the motion to compel and the order allowing limited discovery.

The Nevada Supreme Court heard the petition because it was an issue of first impression in need of clarification. The Supreme Court agreed with the district court's classification of Mr. Toll as a reporter but disagreed with its finding that a newspaper had to be physically printed. The news shield statute was last amended in 1975 when the notion of digital media would not likely have been a consideration. The court must "resolve any doubt as to legislative intent in favor of what is reasonable, as against what is unreasonable." *Desert Valley Water Co. v. State*, 104 Nev. 718,

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720, 766 P.2d 886, 886 (1988). The district court looked to the literal dictionary definition of the word "newspaper," which stated that a newspaper was "printed." The Supreme Court found that, while the word "print" traditionally referred to paper-and-ink copying, modernly, it could also be defined as to display on a surface such as a computer screen for viewing. The Nevada Supreme Court therefore held that it would be unreasonable to disqualify a blog from the news shield statute simply because it was not an ink-printed publication, but declined to conclude whether Mr. Toll's blog should be classified as a newspaper in this case. It also determined that the district court did not abuse its discretion by ordering limited discovery. The case was remanded back to the district court for further action consistent with this decision. *Toll v. The Honorable James E. Wilson, December 5, 2019*

## CONSTRUCTION MALPRACTICE

### Plain Language of the Construction Malpractice Statute Did Not Void Improperly Filed Complaint

Marcus Reif sustained serious injuries when his car traveled through the wall of a parking garage and fell five stories due to a structural failure. Mr. Reif brought an action for negligence, negligence per se, and negligent performance of an undertaking against Aries Consultants, the company that inspected the wall.

Pursuant to NRS §11.258, actions involving nonresidential construction malpractice require the attorney to file an affidavit and an expert report "concurrently with the service of the first pleading." The Nevada Supreme Court previously held in *Otak Nevada, LLC v. Eighth Judicial District Court*, 127 Nev. 593, 599 (2011) that a pleading filed under NRS 11.258 without the affidavit and expert report was void *ab initio*. The parties conceded that Aries Consulting was a design professional and NRS 11.258 applied to the action.

Plaintiff initially filed the complaint without the affidavit or expert report. The next day, Plaintiff filed an amended complaint, which was identical to the original except for the addition of the affidavit and expert report. Plaintiff served the amended complaint without having served the initial complaint. Relying on *Otak*, the district court dismissed Plaintiff's complaint for failure to file the initial complaint with the required affidavit and expert report. Plaintiff appealed.

The Supreme Court of Nevada looked to the plain language of the statute. When a statute was clear and unambiguous, the court must "give effect to the plain and ordinary meaning of the words." *Cromer v. Wilson*, 126 Nev. 106, 109, 225 P.3d 788,790 (2010). The court held that its previous decision in Otak conflicted with the plain language of the statute and clarified the correct interpretation. The statute stated that a complaint must be dismissed only when it was *served* without the necessary documents, not where it was merely *filed* without the documents. Because the original filing was never served, and the amended complaint included the correct documents, the district court should not have dismissed the action. The court reversed the district court's decision and remanded the action for further proceedings. *Reif by & through Reif v. Aries Consultants, Inc.*, 135 Nev. Adv. Op. 51, 449 P.3d 1253 (2019).

## WRONGFUL TERMINATION

### Damages Resulting from Wrongful Termination are Analogous to Personal Injury for Determining Appropriate Statute of Limitations

Antonette Patush filed a workers' compensation claim for an injury suffered while working at Las Vegas Bistro. Her employment was terminated in July 2014, allegedly in retaliation for her workers' compensation claim. She subsequently filed a wrongful termination claim in March 2018, and Las Vegas Bistro filed a motion to dismiss, arguing that the two-year statute of limitations under NRS 11.190(4)(e) had expired. The district court granted the motion to dismiss and awarded attorney's fees to Las Vegas Bistro under NRS 18.010(2)(b), which allowed a prevailing party to recover attorney fees when the claim brought by the opposing party was brought without reasonable grounds. Plaintiff appealed both decisions.

NRS 11.190(4)(e) provides a two-year statute of limitations for actions to recover damages for injuries to a person caused by the wrongful act or neglect of another. Las Vegas Bistro argued that a wrongful termination claim was analogous to a personal injury claim because the plaintiff was seeking damages for a violation of her personal rights caused by the wrongful act of another. Ms. Patush argued that wrongful termination should fall into the catch-all provision set forth in NRS 11.220, which provides a four-year limitations period for an action for which a limitations period was not otherwise provided. The Supreme Court of Nevada recognized the analogous connection between wrongful termination and personal injury claims. The Nevada Supreme Court previously held in *Perry v. Terrible Herbst, Inc.* that the catch-all provision of NRS 11.220 did not apply when the court found an analogous cause of action with an express limitations period. Accordingly, the two-year statute of limitations period provided in NRS 11.190(4)(e) was the appropriate period for a wrongful termination claim. The district court did not err in granting Las Vegas Bistro's motion to dismiss and the Supreme Court affirmed that order.

The Nevada Supreme Court further held that the district court erred in awarding attorney fees to Las Vegas Bistro under NRS 18.010(2)(b). The limitations period for a wrongful termination claim was an issue of first impression and Ms. Patush's claim rested on the novel and arguable contention that the complaint was timely in light of the limitations period in NRS 11.220. Therefore, the claim was not without reasonable grounds and the district court abused its discretion in awarding attorney fees. The Supreme Court reversed this part of the district court's order. *Patush v. Las Vegas Bistro, LLC*, 135 Nev. Adv. Op. 46, 449 P.3d 467 (2019).

# NEVADA JURY VERDICTS

## PERSONAL INJURY

### Defendant Not Negligent for Failing to Replace Screws Securing Bed Liner to His Pickup Truck

Plaintiff, a casino bathroom attendant,

and Defendant, a carpenter, were traveling eastbound on Lake Mead Boulevard in Las Vegas when the bed liner of Defendant's truck detached from Defendant's vehicle and struck the rear of Plaintiff's vehicle causing him injury.

Plaintiff brought a negligence action against Defendant, asserting that Defendant was negligent for failing to properly secure the bed liner by replacing the screws. Defendant denied liability, arguing that the screws did not need replacing, instead it was the record winds present at the time of the incident that blew the bed liner off his truck. Plaintiff alleged cervical, thoracic, and lumbar soft tissue injuries and sought in excess of $10,000.00 in compensatory damages and $4,828.96 in medical expenses.

Plaintiff was awarded $11,828.96 at arbitration. Defendant appealed the arbitration award and the case proceeded to a one-day short trial decided by four jurors. Defendant made a pre-trial offer of judgment of $4,500.00. At trial, Defendant successfully relied on the expert testimony of a biomechanical engineer and accident reconstructionist. After less than one hour of deliberation, the jury returned a unanimous verdict for the Defendant. *Gonzalez-Becerra v. Vega*, January 11, 2019.

## Handyman Awarded $640,605.63 in Damages for Rear-End Collision

Plaintiff, a Nevada handyman, was towing a trailer with his pickup truck on Interstate 15 in Las Vegas when Defendant, a Nevada resident, allegedly failed to decrease her speed for stopped traffic and rear-ended Plaintiff's trailer. As a result of the collision, Plaintiff allegedly sustained injuries to his back, shoulder, and hip. The impact also caused an object to fly from the dashboard, hitting Plaintiff in the face and knocking out his front tooth. Plaintiff further alleged that the impact caused his knee to impact the dashboard, necessitating several surgeries followed by physical therapy. His knee subsequently "gave out" while he was walking, causing him to sustain a facial laceration which required thirty-three sutures. Plaintiff alleged he had ongoing pain, tinnitus, sleep disturbance and residual scarring that would require future treatment.

Plaintiff sought $156,805.68 in past medical expenses, $276,812.00 in future medical expenses, and $5,344.46 in property damage to his vehicle, trailer, and tools. During the six-day trial, Plaintiff called his treating physician to testify regarding his injuries. Defendant relied on an expert physicist and biomechanical engineer. The engineer was permitted to testify to the severity of the impact and the speed of the vehicles, but not medical causation. The jury unanimously awarded Plaintiff $640,605.63 in compensatory damages representing $140,605.63 in past medical expenses, $150,000.00 in future medical expenses, $150,000.00 in past pain and suffering, $200,000.00 in future pain and suffering, and $5,208.77 in property damage. *Comstock v. Mullen*, January 22, 2019.

## Defendant's Arbitration Appeal Backfires as Plaintiff Awarded More at Short Trial

Defendant rear-ended Plaintiff's vehicle after Plaintiff stopped for traffic. Defendant admitted negligence but argued that Plaintiff's alleged injuries were not caused by the subject incident. Defendant claimed that he came to a stop, but his foot slipped off the brake pedal causing his vehicle to move forward and bump Plaintiff's vehicle. Arguably, the impact was insufficient to cause the alleged injuries.

Plaintiff alleged cervical, thoracic, and lumbar soft tissue injuries, which required chiropractic treatment. Plaintiff sought $7,361.00 in medical expenses and was awarded $10,000.00 at arbitration. Defendant appealed the arbitration award and the matter was subsequently tried as a one-day short trial. The four jurors unanimously awarded Plaintiff $15,000.00, including $5,888.80 in medical expenses and $9,111.20 for pain and suffering. *Luna v. Safrance*, February 1, 2019.

## Court Grants Additur to Plaintiff injured in "Trikke" Accident After Jury Awarded Only Forty-Nine Percent of Medical Expenses

Plaintiff attended an interview for potential employment with Defendant Trikke Las Vegas, a tour company that guided paying customers around downtown Las Vegas in three-wheeled motorized vehicles known as "trikkes." During the tours, the tour guide communicated with participants via a one-way radio system located in the participants' helmets. Plaintiff alleged that, as part of the job interview, she was invited to accompany Defendant Welch, an employee of Trikee Las Vegas, on a tour of downtown Las Vegas.

Plaintiff signed Defendant Trikke Las Vegas's standard release/liability waiver and joined the tour. The tour route included a path with a sharp, ninety degree turn. Plaintiff claimed that the tour guide did not give her adequate warning of the sharp turn and, as a result, she lost control of her trikke while turning and fell. Plaintiff sustained a fractured ulna and a fractured radius in her right forearm which required open reduction with implantation of internal fixation devices. Plaintiff claimed that she would need future surgery to remove the internal fixation devices due to discomfort and loss of range of motion. She also suffered a fractured front tooth.

Plaintiff brought suit against Defendant Welch for negligence and Defendant Trikke Las Vegas for negligent hiring, training, and supervision. Defendants claimed that Plaintiff assumed the risk and waived liability when she signed the waiver. Plaintiff argued that, because the tour was part of the job interview, she did not knowingly, voluntarily, and/or intentionally give her consent when she signed the waiver, did not voluntarily assume the risks associated with riding a trikke, and did not have actual knowledge of the risks. Defendants denied that the tour was part of the job interview. Plaintiff relied on the testimony of a mechanical engineer who testified that Defendant Welch did not adequately train Plaintiff to use the trikke or warn her of the trikke's propensity to jackknife. Plaintiff received a directed verdict in her favor on the issue of liability. A trial was held to determine damages.

During the four-day trial, Plaintiff's expert, a hand surgeon, testified to the extent of Plaintiff's injuries. Plaintiff sought compensatory damages in excess of $10,000.00 and $74,381.38 in medical expenses. Before trial, Plaintiff made an offer of judgment of $84,999.00 and Defendant made an offer of $25,000. After two hours of deliberation, the jury awarded Plaintiff $74,381.38 in medical expenses, but found that she was forty-nine percent negligent and Defendant was fifty-one percent negligent.

Therefore, Plaintiff was to take only $37,934.50. Plaintiff filed for additure or in the alternative a new trial. The court granted the motion and Defendants were given a choice to pay $100,000.00 in additure for Plaintiff's past and future pain and suffering or to proceed to a new trial. The parties subsequently settled the matter. *Phillips v. Trikke Las Vegas and Welch*, March 14, 2019.

## MEDICAL MALPRACTICE

### Unanimous Defense Verdict for Doctors Accused of Overmedicating Patient

Decedent was admitted to the emergency department of non-party Valley Hospital Medical Center with severe pain and swelling following an outpatient scrotal surgery to remove a lump. Decedent had a history of chronic spinal pain, chronic bronchitis, asthma, hypertension, pulmonary tuberculosis, chronic hepatitis, and anxiety. His medications for these conditions included oral Dilaudid (hydromorphone), four milligrams every four hours as needed for pain, diazepam ten milligrams twice daily, sertraline and citalopram for anxiety and depression, simvastatain for high cholesterol, albuterol, singulair, and ferrous sulfater. After Decedent was admitted, Defendants ordered one milligram of hydromorphone and ten milligrams of diazepam to be administered intravenously every two hours as needed for pain. Decedent was administered six doses of hydromorphone at regular intervals over a period of fourteen hours. Less than one hour after the sixth dose, Decedent was found unresponsive. He was successfully resuscitated, but subsequently went into cardiac arrest and died a few hours later. The cause of death was determined to be "multiple drug intoxication," with chronic obstructive pulmonary disease being a significant contributing factor.

Decedent's spouse filed a claim for wrongful death, alleging that Defendants fell below the standard of care when they improperly administered medication to Decedent. The trial lasted five days during which time Plaintiff's expert testified that intravenous hydromorphone was five times stronger than the oral version and the dose prescribed at the hospital was too high, especially given Decedent's medical history of asthma and obstructive pulmonary disease. The expert also testified that an order for Decedent's baseline arterial blood gases would have revealed that Decedent was a chronic carbon dioxide retainer and failure to order this test fell below the standard of care. Defense experts testified that the dosage was appropriate under the circumstances and Defendant doctors did not fall below the standard of care. The jury deliberated for less than one hour before finding unanimously for Defendants. *Smith v. Kaae Bialczak and Brandt*, January 11, 2019.

### Plaintiffs Awarded Punitive Damages in Wrongful Death Claim After Nursing Staff Fell Below the Standard of Care

Decedent, a 29 year old female certified nursing assistant and nursing student, had suffered from sickle cell disease since her youth. This disease resulted in multiple hospitalizations for pain management due to "sickle cell crisis," a condition where the sickled cells block small blood vessels carrying blood to the bones, causing pain that could last from several hours to several days. Decedent presented to Defendant hospital with acute chronic anemia and a sickle cell crisis and died four days later.

Decedent's spouse and 2-year-old daughter brought a wrongful death suit against the hospital, an internist, and the hospitalist group. Plaintiffs settled with the internist and hospitalist group before trial for an undisclosed amount.

Plaintiffs alleged that hospital nursing staff fell below the standard of care when they administered the NSAID Toradol in excess of both the physician's order and the manufacturer's "black box" warning. Additionally, Plaintiffs alleged that Defendant failed to notice that Decedent had stopped excreting urine, failed to timely report critical laboratory values and failed to carry out the physician's orders, including a blood transfusion. Plaintiffs also alleged that Defendant breached its fiduciary duty to Decedent by failing to make good faith decisions regarding Decedent's medical care and treatment, allowing policies and procedures to be disregarded, failing to properly staff its facility, and by placing its economic needs above the needs of its patients. As a result, Decedent suffered from five cardiac arrests and kidney failure that lead to her death.

The trial lasted ten days, during which time Plaintiffs called a hematologist and a nephrologist as experts to testify to the standard of care. Defendant denied falling below the standard of care in their care and treatment of Decedent and relied on the expert testimonies of a critical care medicine specialist and a nursing standards expert. Plaintiffs also called an economist to testify to Plaintiffs' damages as a result of Decedent's death. Plaintiffs alleged in excess of $10,000.00 in compensatory damages, in excess of $10,000.00 in punitive damages, $1,700,000.00 in lost earnings, and $10,000.00 in funeral expenses.

The jury deliberated for five hours before awarding Plaintiffs $16,210,000.00 in compensatory damages representing $5,000,000.00 for loss of consortium, $1,700,000.00 in lost earnings, $10,000.00 in funeral expenses, $7,000,000.00 in pain and suffering, and $2,500,000.00 for Decedent's pain and suffering. Defendant was found sixty-five percent at fault and the two non-party doctors were found twenty-five percent and ten percent at fault. Therefore, Plaintiff recovered $10,536,500.00 from Defendant. At the punitive damages phase, the jury deliberated for less than one hour before deciding that Defendant had engaged in conduct with fraud, oppression, or malice toward Decedent and awarded Plaintiffs $32,420,000.00 in punitive damages. *Murray and Estate of Whitley-Murray v. Centennial Hills Hospital Medical Center*, January 23, 2019.

### Defendant Doctors Not Liable for the Death of a Patient after Post-Surgical Complications

Decedent, a 67-year-old female, was admitted to non-party Summerlin Hospital for a laparoscopy radical left nephrectomy performed by Defendant urologist. Immediately after the procedure, the surgical site appeared inflamed, and during the 24 to 48 hours thereafter, Decedent experienced low blood pressure and swelling in her extremities. Infection became a concern and a CT scan revealed several pockets of hematoma, pneumomediastinum, left pleural

effusion, and subcutaneous emphysema from the left rib cage to the groin. Infectious disease specialists diagnosed Decedent with pneumonia and sepsis. Decedent was later taken back into surgery for a perforated viscous, after which she remained intubated. Her health continued to decline due to septic shock, and she required multiple surgical wound debridement and repair of another missed bowel injury. Decedent developed gangrene of her fingers and remained septic, and died after twenty-two days in the hospital. The cause of death was a colonic injury resulting in negative gram sepsis.

Decedent's spouse and children filed a wrongful death action against Defendants alleging that they fell below the standard of care both during the surgery and in the management of the post-operative complications. During the ten-day trial, Plaintiffs relied on the testimony of a urologist and a colorectal surgeon regarding the standard of care. Defendants denied falling below the standard of care and relied on the testimony of an expert urologist, radiologist, and an oncologist and hematologist to support that contention. Both parties also called economists to testify to the value of the economic loss caused by Decedent's death. Plaintiffs alleged $1,200,000.00 in medical expenses, $15,592.00 in funeral expenses, and $245,372.00 in lost household services. After one-plus hours of deliberation, the jury found unanimously for Defendants. *Manzullo v. McBeath and Weiss*, February 4, 2019.

## PREMISES LIABILITY

### Recovering Alcoholic Could Not Blame Hotel Casino for Falling Off the Wagon

Plaintiff, a recovering alcoholic, claimed he ordered a Diet Pepsi at Defendant's hotel and casino. Defendant's server allegedly brought Plaintiff a drink that not only contained regular, rather than Diet Pepsi, but also contained alcohol. Plaintiff alleged that the drink caused him to begin vomiting, for which he had to seek emergency treatment. He also alleged that he began struggling with his sobriety after the incident.

As a result of the incident, Plaintiff sought compensatory damages, including $2,780.00 in medical expenses. Plaintiff was awarded $22,780.00 at arbitration, and Defendant appealed the award. The matter proceeded to a one-day short trial decided by four jurors. After one hour of deliberation, the jury found unanimously for Defendant. *Brandon v. NPL Palace dba Palace Station Hotel and Casino*, January 11, 2019.

### Plaintiff Found Ninety Percent at Fault for His Own Injures, Takes Nothing

Plaintiff was visiting his aunt at her condominium complex, which was maintained by Defendant homeowner's association. A sidewalk within the complex was allegedly blocked by a vehicle that was parked too close to the curb, requiring Plaintiff to walk through a landscaped area covered with grass and rocks. Plaintiff allegedly tripped over the root of a bush that had been cut down but only partially removed. As a result of the fall, Plaintiff allegedly sustained injuries to his elbow and hands, which required surgery; cervical, thoracic and lumbar soft tissue injuries; a shoulder injury; and a closed head injury.

Plaintiff claimed that Defendant negligently maintained the premises. Defendant denied liability and argued that Plaintiff was walking in an area not intended for pedestrian use. Plaintiff's treating physician, a hand surgeon, testified to Plaintiff's injuries. The jury awarded Plaintiff $121,000.00 for his medical expenses; however, the jury also determined that Plaintiff was ninety percent at fault for the incident. Thus, Plaintiff took nothing. Plaintiff subsequently appealed the decision, but withdrew the appeal before it was heard. Defendant was awarded $92,615.74 in attorney fees and post-judgment interest. *Fitzgerald v. Isla at South Shores Homeowner's Association*, February 28, 2019.

## BREACH OF CONTRACT

### Mistrial Granted in Claim against Auto Insurance Carrier

Plaintiff was involved in a hit and run accident in February of 2010, a collision with an insured driver who ran a red light in September of 2010, and a highway collision with an uninsured driver in July of 2012. Plaintiff sustained unspecified injuries. Plaintiff settled the claim arising from the September, 2010, accident for the opposing driver's $15,000.00 policy limits and subsequently filed a claim with his own insurance carrier, USAA, for his $500,000.00 underinsured/uninsured motorist policy limits for each collision. Defendant paid Plaintiff $46,276.00 pursuant to his underinsured/uninsured motorist coverage, and $15,217.33 under his medical payments coverage.

Plaintiff sued USAA alleging breach of contract and breach of the covenant of good faith and fair dealing, claiming Defendant did not reasonably investigate and evaluate Plaintiff's claims and failed to pay the entirety of Plaintiff's medical expenses under his underinsured/uninsured motorist coverage. Plaintiff alleged $43,837.80 in past medical expenses, an unspecified amount for future medical expenses, and an unspecified amount for lost wages.

Before the sixth day of trial, Plaintiff produced documents that had been in his possession for over six months but had not been previously disclosed to Defendant. Defendant filed a motion for a mistrial because the documents contradicted opinions rendered by Plaintiff's expert witnesses and the witnesses could not be recalled for further cross-examination. The judge determined that these documents constituted extreme prejudice to the Defendant, granted the motion for mistrial and the jury was excused. The parties settled before the matter could be retried. *Bass v. USAA*, January 29, 2019.

Nevada Legal Update is published quarterly by
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NEVADA Legal Update

# COMMENTS

Chief Justice Mark Gibbons of the Nevada Supreme Court announced on November 4, 2019 that he will not be seeking re-election in 2020. Chief Justice Gibbons has served on the Supreme Court since 2002, making him the longest serving justice of the seven current members of the Court.

Chief Justice Gibbons graduated from the University of California, Irvine and Loyola School of Law. He served as a judge in the Eighth Judicial District Court for Clark County, Nevada, for six years, including time as Chief Judge, before his election to the Supreme Court.

In other news, District Court Judge Trevor Atkin swore his judicial oath on November 8, 2019 and took his place on the bench in the Eighth Judicial District, Department 8.

Judge Atkin graduated with a Bachelor's Degree from Arizona State, and received his law degree from McGeorge School of Law at the University of the Pacific. He is admitted to practice in all Nevada state and federal courts, including the Ninth Circuit Court of Appeals. Prior to his judicial appointment by Nevada Governor Steve Sisolak on August 7, 2019, Judge Atkin was the managing partner at Atkin Winner & Sherrod. During his 32 years of experience in the fields of personal injury litigation, commercial litigation, and insurance litigation, Judge Atkin took over 30 civil jury trials to verdict as lead counsel and served as counsel in seven reported Nevada Supreme Court cases.

Judge Atkin is also known for his service to the Las Vegas community through his pro bono work with Legal Aid Center of Southern Nevada, as a mentor in the State Bar Mentorship Program for young lawyers, and as an adjunct instructor within the University of Nevada system. After swearing his oath, Judge Atkin expressed his hope that he will someday be remembered as a judge who "knew the law and treated every attorney and party equally, fairly and with respect."

Before Judge Atkin, the Honorable Doug Smith served in Department 8 until retiring earlier this year. Judge Smith had served for approximately 20 years on the bench.