

REVISED

9:14 am, Jan 12, 2023



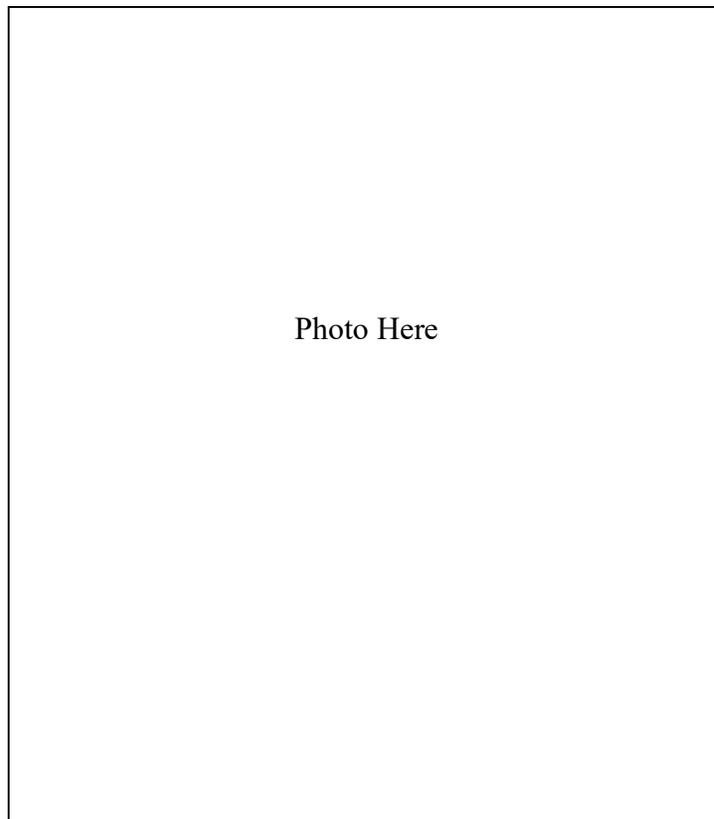
EIGHTH JUDICIAL DISTRICT
DEPARTMENT N

Replace the highlighted spaces on this page with the vacancy you seek to fill
VII, C or N

Candidates may only choose one department and may not withdraw to apply for another department within this selection period

By

(Robert O. Kurth, Jr.)



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| Personal Information |
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| 1. | Full Name | Robert Otto Kurth, Jr. |
| 2. | Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used. | No. |
| 3. | How long have you been a continuous resident of Nevada? | 52 years |
| 4. | City and county of residence | Las Vegas, Clark County |
| 5. | Age | 55 |

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

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| Current or Last Employer | Kurth Law Office |
| Phone | 702-438-5810 |
| Physical Address & Website | 3420 North Buffalo Drive, Las Vegas, NV 89129 robertkurth.com |
| Date(s) of Employment | June 1996 thru Current |
| Supervisor's Name and Title | Robert O. Kurth, Jr., President |
| Your Title | President |
| Describe Your Key Duties | Legal representation of clients. Management and operation of law office. Supervision of staff. |
| Reason for Leaving | Still employed and working. |

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| Previous Employer | Northwest Career College |
| Phone | 702-254-7577 |
| Address & Website | 7398 Smoke Ranch Road, Las Vegas, NV 89128 northwestcareercollege.edu |
| Date(s) of Employment | May 2017 thru Current |
| Supervisor's Name and Title | Lisa Myers, Program Chair |
| Your Title | Adjunct Professor |
| Describe Your Key Duties | Preparation and teaching of students in an Associate's Degree program concerning Criminal Justice and previously concerning |

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| | various areas of the law in a Paralegal Studies program; Grading; Corresponding and Communicating with Students. |
| Reason for Leaving | Still employed and working. |

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

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

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.
 Eldorado High School, 1139 Linn Lane, Las Vegas, NV 89110
 Attended from August/September of 1981 thru May of 1985; High School Diploma; National Honor Society, Sun Leadership Forum; Lettered in Varsity Football, Wrestling and Band.

Brigham Young University
D155 ASB, Provo, UT 84602
Attended from August of 1985 thru May of 1986 on a Dean's Scholarship.

UNLV
4505 South Maryland Pkwy., Las Vegas, NV 89154.
Attended from August of 1986 thru May of 1989.
Received B.S. Degree in Business Administration.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.
Played Varsity Football at Eldorado High School.
Was named the MVP on Defense in the Sunrise Division.
Wrestled for Eldorado High School, who was nationally ranked, and placed 3rd in zone / regionals and 4th in State.
Was in the Varsity Band and marching band at Eldorado High School.
Was a member of the National Honor Society.
Was selected to be in the Sun Youth Forum.
Attended BYU on a Dean's Scholarship.
Was married with one child and worked full-time doing construction work, while attending UNLV.
9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.
University of Denver Sturm College of Law, 2255 E. Evans Ave., Denver, CO 80208;
Attended August of 1989 thru December of 1991; Awarded Juris Doctor degree in December of 1991. I am unsure of my class rank.
10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.
Between September of 1989 and December of 1991, at various times, I was employed part-time in the computer lab for the law school, was a racker-jobber for Frito Lay Corp., where I would go to grocery stores late at night and restock the shelves, and I also worked as a law clerk for Marc Levy & Associates in Englewood, Colorado. I also completed an unpaid externship as a Law Clerk for the Appellate Division of the District Attorney's Office of Clark County, Nevada, during the summer of 1990.
11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.
I was married and had two children prior to attending law school and my third child was born a couple months after I graduated from law school.
During some of my time while attending law school, I was the Student Editor of the *Family Law Quarterly*.

Law Practice

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

1992

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

I was admitted to practice law in the State of Utah in 1994.

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

No

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

I estimate that 90% of my work involves litigation matters; though, I am able to resolve most cases without having to go to trial. I only deal with the appellate courts if one of my cases is appealed and most of my cases are rarely appealed.

16. Estimate percentage of time spent on:

| Legal Discipline | Percentage of Practice |
|---------------------------|------------------------|
| Domestic/family | 50% |
| Juvenile matters | 8% |
| Trial court civil | 15% |
| Appellate civil | 1% |
| Trial court criminal | 25% |
| Appellate criminal | 0 |
| Administrative litigation | 1% |
| Other: Please describe | |

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

Most civil litigation matters were set for a jury trial unless they were in the arbitration program.

All family law matters were set for a non-jury trial.

Most of my criminal cases were set for a bench trial but I have had some that were not resolved in the Justice Court that were set for a jury trial in the District Court until I resolved them.

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

I tried one civil litigation case to a conclusion in a jury trial in 2015. I have tried numerous non-jury cases in the Family Court. Though, I am usually able to resolve most of my cases in the Civil, Criminal and Family Courts so as to avoid the additional costs for the client to go to trial.

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

The Nevada Supreme Court and the Nevada Court of Appeals; All Municipal, Justice, District and Family Courts located in Clark County, NV; Justice and District Courts in Nye County, NV; Family/District Court in Ely, White Pine County, NV; Municipal/Justice Court in Elko County, NV; Courts in Iron County and Washington County, UT.

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

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| Case 1 |
| Case name and date: Nevada Insurance Guaranty Association vs. MGM/MIRAGE and STEEL ENGINEERS, INC. 2005 - 2009 |
| Court and presiding judge and all counsel: Honorable Elizabeth Gonzalez, District Court Dept. XI; James H. Randall, Esq., Michael K. Wall, Esq., HUTCHISON & STEFFEN, LLC; S. Denise McCurry, Esq. |
| Importance of the case to you and the case's impact on you: The matter was important to my client and to all of the self-insured employers throughout the State of Nevada and dealt with a simple and complicated question(s) and issue(s) that needed to be resolved as a matter of first impression. |
| Your role in the case: I was the lead counsel in the case and won the Appeal before the Nevada Supreme Court, which had a major effect on all self-insured employers in the State of Nevada. |

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| Case 2 |
| Case name and date: Makani Payo vs. Clark County School District |
| Court and presiding judge and all counsel: Honorable Joe Hardy, District Court Dept. XV; Daniel O'Brien, Esq. for the Clark County School District |
| Importance of the case to you and the case's impact on you: I was unable to negotiate and resolve the case and had to take it to a 5-day jury trial. The case was one of first impression to initially hold the Clark County School District liable for not having the proper training, safety equipment, etc. for playing a game in PE class, and I had to deal with complicated issues of discretionary immunity, the Coverdell Act, the Public Duty Doctrine, political subdivision issues, assumption of risk, inherent risk, intervening and superseding negligence of third parties, etc. |

Your role in the case: I represented the Plaintiff, who was injured in a P.E. class while in the 6th grade when he was required to participate and play field / floor hockey. I obtained a Jury Verdict in favor of the Plaintiff after an approximate 5-day jury trial, which was later overturned by the Nevada Supreme Court.

Case 3

Case name and date: Brion Botelho vs. Elysia Botelho; 2022.

Court and presiding judge and all counsel: Honorable Dawn R. Throne, District Court, Dept. U; Lynn N. Hughes, Esq., Rhonda L. Mushkin, Esq.

Importance of the case to you and the case's impact on you: Initially, the mother lost custody in the divorce / child custody matter. Later, the child was hidden from the mother, who was distraught when she was unable to locate her child. Eventually, the child was located and custody was modified. I worked with the mother and watched her growth as a person and a parent and was able to help her locate her child.

Your role in the case: I represented the mother of the minor child and assisted her with finding and locating the minor child and obtaining a change of custody to her. She was also later able to relocate with the minor child.

Case 4

Case name and date: Ruben Quiterio-Mendoza vs. Veronica Jeronimo Martinez and Rodrigo Garcia Corona. 2019.

Court and presiding judge and all counsel: Honorable Mathew Harter, District Court, Dept. N; Rebecca Gallardo, Esq.

Importance of the case to you and the case's impact on you: The matter involved the custody of a child, who was less than 10 years old, and who had not spent overnight or extensive visitation with her father. The Parties were referred to be evaluated by a specialist, and the child was taken away from the mother for approximately thirty days to force a unification / reunification with her and the father.

Your role in the case: I represented the mother of the minor child, who was accused of parental alienation and frustration of the relationship between the father and the child. I was able to assist the mother in keeping primary physical custody of the minor child.

Case 5

Case name and date:
Reese vs. Mallow; 2022

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| <p>Court and presiding judge and all counsel: Honorable Charles J. Hoskin, District Court, Dept. E. The Defendant was In Proper Person. Honorable Linda Marquis, District Court, Dept. B. Marina F. Dalia-Hunt, Esq. The Respondent was In Proper Person.</p> |
| <p>Importance of the case to you and the case's impact on you: The case was important because it concerned a dissolution and termination of a Domestic Partnership, community property, separate property, alimony / spousal support, etc., and was further complicated because the custody of the minor child had to be determined in a separate guardianship matter.</p> |
| <p>Your role in the case: I represented the Plaintiff, who was requesting a dissolution and termination of a Domestic Partnership and a guardianship over the Defendant's minor daughter.</p> |

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

Yes

I have served as an Arbitrator for the Eighth Judicial District Court since in or around 2001 thru the current time period. I have mediation training and have served as a mediator. I previously served as a Small Claims Court Referee and as an Alternate Child Support Hearing Master. I enjoyed all of these experiences.

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

I have done much pro bono work for various clients throughout the years as there are many person(s), who need guidance and direction and cannot afford to pay for such. Some pro bono work I have done includes representing women from Living Grace Homes, who may have a warrant that needs to be quashed, etc. I have also done much legal work at a reduced fee and have also worked with clients with payment plans. I also currently sit as a Board Member of the Las Vegas Zoological Society.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation. I have been a member of the State Bar of Nevada, The Utah State Bar Association, and the Clark County Bar Association, where I was one of the initial members of the *Trial By Peers Committee*, a juvenile court diversion program for the Clark County Bar Association. I am also a former member of the Nevada American Inn of Court.

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

I am in compliance with the continuing legal education requirements for my law license for both the State of Nevada and the State of Utah. The following are the continuing legal education courses, etc. that I have taken during the past five years:

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| 12/01/2022 | Advanced Family Law 2022 |
| 11/03/2022 | Bench Bar |
| 10/01/2022 | Three Theories of the High Conflict Case |
| 10/01/2022 | Influence, Persuade and Lead: Seducing The Jury and Surviving the Gauntlet Known as Trial |
| 09/30/2022 | Beyond Competence: Mindfulness, Ethics and Well-Being for Attorneys |
| 09/30/2022 | All Bets are Off: Gambling, Addiction and Attorneys |
| 09/30/2022 | Cell Phone Forensics: The Digital Smoking Gun |
| 09/30/2022 | Ethical Issues in a Transactional Practice |
| 05/20/2022 | EDCR 5 Update: New Rules Approved |
| 01/21/2022 | Current Issues in Wildlife & Hunting Law 2022 |
| 02/05/2021 | Overview of Record Sealing in Clark & Washoe Counties |
| 01/14/2021 | Substance Abuse with Justice Michael Cherry |

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| 09/21/2020 | Annual Probate & Estate Administration Conference in Nevada (86381) |
| 07/20/2020 | Drug & Alcohol Abuse: The 800-Pound Gorilla in the Room |
| 06/19/2020 | Nevada Family Law Case Law Update |
| 05/29/2020 | The Six Steps to Creating an Ethical & Efficient Family Law Firm |
| 05/08/2020 | Family Court 2020: The New Child Support Regulations |
| 04/21/2020 | Tips & Techniques to Succeed with Virtual Mediation |
| 03/20/2020 | Chronic Stress & the Practice of Law |
| 03/12/2020 | 31st Annual Family Law Conference |
| 12/05/2019 | Advanced Family Law |
| 10/18/2019 | Arbitrator Training - Las Vegas |
| 08/25/2019 | Warning Signs of Potential Employment Lawsuits |
| 08/18/2019 | Ten Tips to Avoid Ethical Violations & Malpractice Claims |
| 08/15/2019 | Burnt, Smashed, or Broken: Property Damage & Homeowners Insurance |

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| 08/15/2019 | Cell Phone Forensics for Legal Professionals |
| 12/20/2018 | Identifying & Handling Attorney Stressors: The Path to Health & Well |
| 12/06/2018 | Advanced Family Law - Part 1 |
| 12/06/2018 | Advanced Family Law - Part 2 |
| 12/06/2018 | Advanced Family Law - Part 3 |
| 12/06/2018 | Advanced Family Law - Part 4 |
| 12/06/2018 | Advanced Family Law - Part 5 |
| 04/18/2018 | Part III - How to Maximize Your Results in Mediation |
| 03/02/2017 | 2017 Family Law Conference |
| 02/08/2017 | Top Ethics Issues From the Office of Bar Counsel |
| 01/26/2017 | Bench/Bar Meeting |
| 01/07/2016 | Basic Mediation Training UNLV-William S. Boyd School of Law 30 hrs. |

25. Do you have Professional Liability Insurance or do you work for a governmental agency?
I do not currently have Professional Liability Insurance.

Business & Occupational Experience

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

Yes. While practicing law, I have also been an adjunct professor at the Northwest Career College since in or around May of 2017 where I have taught in the Paralegal Studies and the Criminal Justice Associate's Degree program(s).

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

- a. the nature of the business
- b. the nature of your duties
- c. the extent of your involvement in the administration or management of the business
- d. the terms of your service
- e. the percentage of your ownership

I have been the president and practicing attorney for Robert O. Kurth, Jr. and Associates, Professional Corporation dba Kurth Law Office since in or around June of 1996. I own 100% of the Kurth Law Office, where I practice in various areas of the law.

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

I serve as the Trustee of the Steel Engineers Workers' Comp Trust and have so served since on or about December of 2015. The address is 3420 North Buffalo Drive, Las Vegas, NV 89129. I do not own or hold any ownership interest in such. I assisted in the winding down and dissolution of Steel Engineers, Inc. and oversee the handling of an ongoing worker's compensation claim.

Civic Professional & Community Involvement

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

No

Have you been a candidate for such an office?

Yes

I have previously been a candidate for Family Court, District Court, Municipal Court and Justice Court.

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

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

I was the former President of the Sagebrush Youth Soccer League; a National "D" Licensed Youth Soccer Coach, and coached in Sagebrush, Nevada South, the Silver State Girls Soccer

League, and Henderson United Youth Soccer. I am a Board member of the Las Vegas Zoological Society.

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

I am an adjunct professor at the Northwest Career College and have taught various courses in the Paralegal Studies and the Criminal Justice Associate's Degree program(s) since in or around May of 2017.

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

Adjunct Professor in Legal Studies and Criminal Justice for the Northwest Career College.

Member of The National Trial Lawyers: Top 100 lawyers in Nevada.

MYVEGAS magazine 2016 - Top 100 Lawyers in Las Vegas.

Former President of the Sagebrush Youth Soccer League; National "D" Licensed Youth Soccer Coach, and coached in Sagebrush, Nevada South, the Silver State Girls Soccer League, and Henderson United Youth Soccer.

Former Youth Football Coach, and coached in Pop Warner, Nevada Youth Football League, and the Clark County Middle School Football program.

Former Webelos Leader / Assistant Scoutmaster / Venturing Crew Assoc. Advisor / Merit Badge Counselor with the Boy Scouts of America.

Board member of the Las Vegas Zoological Society.

Actively involved in Church and its leadership programs.

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

Member of The National Trial Lawyers: Top 100 lawyers in Nevada.

MYVEGAS magazine 2016 - Top 100 Lawyers in Las Vegas.

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

No

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

None.

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

Yes

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

Yes

37. List avocational interests and hobbies.

I enjoy sports, hiking, camping, hunting, fishing, horseback riding, cooking, and other outdoor related activities.

Conduct

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

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

Yes

In 30 years of practicing law and 26 of them as a solo practitioner, I did not have an ethics complaint from a client. Notwithstanding, I was publicly reprimanded once for being negligent in my record keeping procedures concerning my trust account. I did not account for a check that I wrote to pay criminal restitution for a defendant that did not clear until several months later. The check cleared and no-one was injured. It was a public reprimand as they no longer issue private letters of reprimand. I wish I had nothing but am otherwise proud of my record as I have been in private practice for 30 years facing the scrutiny of every litigant of whom I have represented throughout the years.

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.
No.

Other

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

I believe that I submitted an application for a judicial appointment for a District Court Judge position in the Eighth Judicial District Court more than ten years ago but I do not recall when.

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

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

I am applying for Dept. N of the Family Division in the Eighth Judicial District Court because I care about our community and the place my family calls home. I have always been involved in the community. This is where I grew up, attended school, and have raised my family. I was raised in Las Vegas, have been married for 36 years, have four children, four grandchildren and three dogs. I grew up in a blue-collar family and worked construction for Steel Engineers, Inc. full-time as a rebar fabricator, while being married, having child(ren) and attending UNLV fulltime. I was a Law Clerk for the Clark County District Attorney's Office in the summer of 1990. I have practiced in the following areas of the law: family law, guardianship, probate, estate planning, wills / trusts, criminal, juvenile, landlord tenant, evictions, real estate, civil litigation, collections, protective orders, construction, workers' compensation, personal injury / auto accidents, traffic, licensing, tax law, business law, bankruptcy, immigration, etc.

I have been practicing law in the State of Nevada for 30 years since 1992, where I have represented men, women, mothers, fathers, grandparents, and other persons from different backgrounds, income levels, races, and ethnicities in the Family Court and various other areas of the law. I have judicial experience as an ARBITRATOR for the Eighth Judicial District Court from 2001- current (21 years), as a former ALTERNATE CHILD SUPPORT HEARING MASTER, and as a former SMALL CLAIMS COURT REFEREE.

I want to take my 30 years of experience being in and out of the courtroom and representing people in these delicate and emotional issues to provide a better forum for the resolution of their disputes. I will be a Judge, who will be COURTEOUS, who will LISTEN to the concerns of those before me, RESPECT their rights, PROTECT our families, and ENFORCE the Constitution and the laws of the State of Nevada. I will not legislate from the bench and will be FAIR in applying justice to all those who come before me, while acting in the best interest of our children. *I will wade through the muck and the mire and use my discretion to act in the best interest of those who come before me, their children and our families as I have the Experience, Integrity, Demeanor, Fairness and Common Sense necessary to be our Family Court Judge.*

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

Re: Question #47 of the Public Information Application for Robert O. Kurth, Jr.

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

I believe that the following sets me apart from my peers and qualifies me to be appointed to Dept. N of the Family Division in the Eighth Judicial District Court. First, I care about our community and the place my family calls home. This is where I grew up, attended school, and have raised my family. I was raised in Las Vegas, have been married for 36 years, have four children, four grandchildren and three dogs.

I grew up in a blue-collar family and worked construction for Steel Engineers, Inc. full-time as a rebar fabricator, while being married, having child(ren) and attending UNLV fulltime to obtain my B.S. in Business Administration. I attended and completed law school, while being married with children.

I have been practicing law for 30 years and have had and managed my own law practice since 1996 for 26 years. During that time, I have had a general practice of law, where I have practiced in the following areas of the law: family law, guardianship, probate, estate planning, wills / trusts, criminal, juvenile, landlord tenant, evictions, real estate, civil litigation, collections, protective orders, construction, workers' compensation, personal injury / auto accidents, traffic, licensing, tax law, business law, bankruptcy, immigration, etc. I have also been in the trenches and represented men, women, mothers, fathers, grandparents, and other persons from different backgrounds, income levels, races, and ethnicities in the Family Court, the District Court, the Justice Court, the Municipal Court, unemployment hearings, workers compensation hearings, the Nevada Supreme Court, the Nevada Court of Appeals, the Utah Supreme Court and the Utah Court of Appeals, etc. This has given me a wide range of experience and exposure to various areas of the law and how they interact with each other.

I have judicial experience as an ARBITRATOR for the Eighth Judicial District Court,

where I have served since in or around 2001- current (21 years) and have decided numerous cases concerning claims valued at \$50,000.00 or below. I have also served as an ALTERNATE CHILD SUPPORT HEARING MASTER in Child Support Court and as a former SMALL CLAIMS COURT REFEREE. I have also been trained as a Mediator and have participated in and mediated cases. Additionally, I have taught for the Northwest Career College as an Adjunct Professor in the Paralegal Studies and the Criminal Justice Associate's Degree Program(s) since May of 2017.

I believe that my 30 years of experience being in and out of the courtroom and representing people in these serious, delicate and emotional issues will allow me to wade through the muck and the mire and use my discretion to act in the best interest of those who come before me, their children and our families as I have the Experience, Integrity, Demeanor, Fairness and Common Sense necessary to be our Family Court Judge.

I believe that my experience allows me to provide a better forum for the resolution of the disputes that will be handled in the Family Court. I will be a Judge, who will be COURTEOUS, who will LISTEN to the concerns of those before me, RESPECT their rights, PROTECT our families, and ENFORCE the Constitution and the laws of the State of Nevada. I believe a judge should not be making the law. That is for the Legislature. A judge enforces the law and sometimes one has to enforce a law in which they do not agree. I recognize that everyone has some sort of bias as to how they were raised, etc. and that it is important to recognize what bias(es) exist so that they do not impair one's ability to properly apply the facts to the law and make the appropriate and correct decision that is in the best interest of the child(ren), etc. Further, I believe that Government should be limited and understand that there are three branches of government for a reason. I believe in a strict interpretation of the U.S. Constitution and believe that the focus in Family Court should be on the best interest of the children. I will not legislate from the bench and will be FAIR in applying justice to all those who come before me, while acting in the best interest of our children.

Throughout my 30 years of practicing law, I have counseled, advised and represented numerous persons and have learned to think outside the box to come up with creative solutions to solve their problems. I believe that my greatest strengths are being courteous, listening, discerning the truth, being ethical, fair, impartial, and having a good judicial temperament as I understand where the individual and their attorney is/are coming from with regard to the testimony and evidence presented when considering their situation and the particular facts and circumstances concerning such. I will also manage and run Dept. N as Judge Harter did with efficiency, effectiveness and fairness. I believe that all of these things and my life experience(s), along with my demeanor, judicial experience and philosophy, makes me the most qualified to do the best job for our community.

THANK YOU for your consideration.

Best regards,

Robert O. Kurth, Jr.

ROBERT O. KURTH, JR.

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2
3 **In the Supreme Court of the State of Nevada**
4

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6 **MGM MIRAGE, a Delaware Corporation; and**
7 **STEEL ENGINEERS, INC., a Nevada Corporation,**

8 **Appellants,**

Supreme Court No. 49445

9 vs.

10 **NEVADA INSURANCE GUARANTY**
11 **ASSOCIATION, a Non-Profit Unincorporated**
12 **Nevada Entity,**

13 **Respondent.**

FILED

DEC 26 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY _____
DEPUTY CLERK

14
15 **ON APPEAL FROM**
16 **THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA**

17 **APPELLANT'S, STEEL ENGINEERS, INC.,**
18 **OPENING BRIEF**
19

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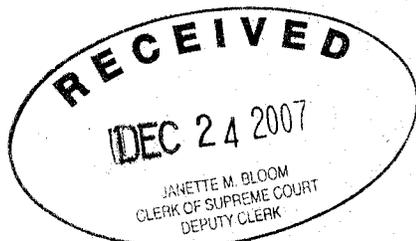


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ISSUES PRESENTED

1. Whether the Nevada Insurance Guarantee Act obligates the Nevada Insurance Guarantee Association (“NIGA”) to cover claims filed by self-insured employers pursuant to their excess workers’ compensation insurance policies when their excess workers’ compensation carrier(s) are insolvent, and would otherwise have been obligated to pay the self-insured employers’ claim(s).
2. Whether self-insured employers are considered “insurers” under the Nevada Insurance Guarantee Act, and subsequently not subject to coverage in accordance therewith.
3. Whether claims filed by self-insured employers are “covered claims” under the Nevada Insurance Guarantee Act.
4. Whether excess workers’ compensation insurance, as issued to self-insured employers, meets the definition of “direct insurance” as the term is used in the Nevada Insurance Guaranty Act?

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is a case of first impression in the State of Nevada, which has an impact on all self-insured employers throughout the State of Nevada. The Nevada Insurance Guaranty Association (“NIGA”) initiated the underlying action against the MGM Mirage (“MGM”) and Steel Engineers, Inc. (“SEI”) claiming they were neutral and simply seeking a determination by the Court as to the interpretation of the pertinent statutes concerning whether a self-insured employer can have a valid claim against the Nevada Insurance Guaranty Association when their excess workers’

1 compensation insurance carrier becomes insolvent; leaving the self-insured employer with the sole
2 liability and obligation to pay the covered claims for which the insolvent, excess workers'
3 compensation insurance carrier would have otherwise paid. (JA 142 ll. 16-25, 143).
4

5 **B. COURSE OF PROCEEDINGS**

6 On October 21, 2005, NIGA filed its Complaint against SEI and the MGM seeking
7 declaratory relief by the Court (which first had to go through the Eighth Judicial District Court)
8 clarifying the Nevada Insurance Guaranty Association Act, as codified in NRS Title 687A, as to
9 whether SEI, the MGM, and other self-insured employers are entitled to payments from the NIGA
10 fund for claims filed with NIGA based on the insolvency of their excess workers' compensation
11 insurer. (JA 001). On October 5, 2006, NIGA filed its Motion for Summary Judgment. (JA 016).
12 On November 13, 2006, SEI filed its Opposition to NIGA's Motion for Summary Judgment and a
13 Counter-Motion for Summary Judgment. (JA 076). On November 16, 2006, the MGM filed an
14 Opposition to Plaintiff's Motion for Summary Judgment and Joinder to SEI's Opposition and
15 Counter Motion. (JA 096). Replies were filed by the Parties and on February 13, 2007, the
16 Honorable Judge Elizabeth Gonzalez of the Eighth Judicial District Court heard oral arguments on
17 the Motions for Summary Judgment. (JA 116). At that time, the Honorable Judge Elizabeth
18 Gonzalez of the Eighth Judicial District Court granted NIGA's Motion while denying SEI's Motion;
19 and made the following ruling:
20

21 "Although I am uncomfortable with the result, since all of these claims arise
22 from Work Comp claims, I must read the Work Comp definition of "insured,"
23 NRS 616A.270, and the NIGA statutes consistently together as a result.
24 Therefore, all of the defendants are insurers under 616A.270, which would
25 preclude them from receiving benefits from NIGA for Workers Compensation
26 claims." (JA 169 ll. 6-19).

27 The Appellant SEI filed their Notice of Appeal on or about May 14, 2007.
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C. STATEMENT OF FACTS

The facts of this case are generally UNDISPUTED as all Parties agreed prior that the underlying issues and interpretation of the pertinent Nevada law can be determined by the Court as a matter of law. (JA 141 ll. 1-8). The Appellant, Steel Engineers, Inc. ("SEI"), is a Nevada corporation that principally operates within the State of Nevada. For the purposes of workers' compensation, SEI is a self-insured employer pursuant to NRS 616B.300. However, in order for SEI to qualify as a self-insured employer, Nevada law requires that it carry excess insurance coverage for all workers' compensation claims, which would cover a catastrophic loss. NRS 616B.300(5). (JA 018 ll. 20-28). Accordingly, between September of 1998, and September of 1999, SEI purchased its Excess Workers' Compensation Insurance Policy no. NXC0112374-04 (the "Excess Insurance Policy") from Reliance National Indemnity Company ("RELIANCE"), a Pennsylvania entity formerly licensed to do business in the State of Nevada. (JA 019 ll. 1-7). Unfortunately, RELIANCE experienced significant financial difficulties, and on October 3, 2001, the Commonwealth Court of Pennsylvania declared the company insolvent and ordered its liquidation. As a result, certain monies owed under SEI's Excess Insurance Policy with RELIANCE are unpaid. Consequently, SEI was forced to cover hundreds of thousands of dollars in worker's compensation claims, laying out monies far exceeding its expected liability as a self-insured employer.

The Respondent, Nevada Insurance Guaranty Association ("NIGA"), is a non-profit, unincorporated entity created by the Nevada Legislature. As dictated by statute, NIGA is obligated to pay certain obligations of insolvent insurance companies, like RELIANCE. (JA 019 ll. 17-18). This additional layer of surety protects individuals and companies from suffering financial hardship when, through no fault of their own, their insurance carrier becomes insolvent and incapable of paying monies owed under its insurance policies. Under the NIGA Act, the State of Nevada will step in and cover certain claims arising out of and within the coverage of "direct insurance" policies issued by an insurer that has become "insolvent." See NRS 687A.033, 687A.020.

NIGA admits that RELIANCE, when in operation, was licensed to sell insurance in the State of Nevada and sold policies to the Appellants SEI and MGM. (JA 019 ll. 2-7). Further,

1 NIGA admits that RELIANCE, upon declaring bankruptcy, became an “insolvent insurer” as defined
2 under NRS 687A.035. (JA 019 ll. 11-13). Accordingly, NIGA is obligated to pay any “covered
3 claims” arising under the “direct insurance” policies that RELIANCE issued to Nevada residents and
4 businesses.

5
6 In the present case, however, NIGA contends that SEI’s Excess Insurance Policy does
7 not qualify as “direct insurance” and fails to meet the definition of a “covered claim” as defined
8 under NRS 687A.020 and 687A.033. Based on this reasoning, NIGA is refusing to cover the
9 obligations that the insolvent insurer RELIANCE owes SEI, RELIANCE’s insured.

10 ARGUMENT/ANALYSIS

11 **SUMMARY**

12 At the center of this case stands a single question of statutory interpretation;
13 specifically, whether under the Nevada Insurance Guaranty Act (the “NIGA Act”), the excess
14 insurance policies of self-insured employers and self-insured employers themselves are afforded the
15 protection of the Nevada Insurance Guaranty Association (“NIGA”) through the NIGA Act.
16 Through a close reading of the NIGA Act and a thorough analysis of the purposes behind its
17 statutory framework, answering this question will help shape the scope and substance of Nevada’s
18 insurance laws. If NIGA is obligated to guaranty such policies, as argued by the Appellants, then the
19 financial burden imposed by the insolvency of an excess insurer is equitably distributed throughout
20 the entire insurance industry. If, however, NIGA is not obligated to guaranty such policies, as
21 argued by the Respondent, then that financial burden is thrust solely upon the shoulders of the
22 insolvent insurer’s customers, exposing Nevada’s employers to overly burdensome financial risks.
23 Despite the fact that this second scenario holds NO rational policy purpose, NIGA has seized upon
24 an overly narrow and somewhat awkward interpretation of the NIGA Act that yields this very result.
25 Nevertheless, a plain, common sense reading of the NIGA Act demonstrates that NIGA is obligated
26 to cover the claims against such policies; not just due to the obvious policy considerations, but also
27 because Nevada law expressly requires it to cover such claims.
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Either way, it comes down to the interpretation of pertinent statutes. When interpreting the meaning of a statute, the Court usually considers three relevant factors: (1) the plain meaning of the statute's language, (2) the legislative intent with which the statute was drafted, and (3) the reason and public policy interests underlying the statute. See e.g., Salas v. Allstate Rent-A-Car, Inc., 116 Nev. 1165, 1168, 14 P.3d 511, 513-14 (2000). "When the statutory language is plain, the sole function of the courts -- at least where the disposition required by the text is not absurd -- is to enforce it according to its terms." Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 126 S. Ct. 2455, 2459 (2006). If, however, the statutory language is vague or ambiguous, the Court should then consider the legislative intent with which the statute was drafted. Sheriff v. Marcum, 105 Nev. 824, 826, 783 P.2d 1389, 1390 (1989). In determining legislative intent, the Court may consider the reason and public policy considerations that underlie the entire statutory framework. See e.g., State, Dep't of Mtr. Vehicles v. Lovett, 110 Nev. 473, 477, 874 P.2d 1247, 1249-50 (1994); SIIS v. Bokelman, 113 Nev. 1116, 1123, 946 P.2d 179, 184 (1997). (JA 022).

As demonstrated by the following arguments, all three of the abovementioned factors indicate that NIGA is obligated to cover the claims arising under SEI's Insurance Policy. SEI's insurance claims qualify for the surety protections of NIGA because exempting these claims would (A) violate the plain language of the NIGA Act, (B) violate the legislative intent underlying the NIGA Act, and (C) violate basic tenets of public policy. Further, this Court reviews the Eighth Judicial District Court's conclusions of law under a *de novo* standard of review. Phillip A.C. v. Central Council, 122 Nev. Adv. Rep. 109, 149 P.3d 51, 57 (2006).

I. The Plain Meaning of the Nevada Insurance Guaranty Act Requires NIGA to Cover the Subject Claims.

The monies RELIANCE owed under SEI's Excess Worker's Compensation Insurance Policy with RELIANCE (the "Excess Insurance Policy") fall squarely within the plain meaning of the "covered claims" that NIGA is obligated to guarantee. Pursuant to the plain meaning of the statute's text, NIGA is obligated to cover the unpaid claims that SEI has against its insolvent insurer,

1 RELIANCE. It is undisputed that RELIANCE would be considered a "Member insurer" in
2 accordance with the NIGA Act as RELIANCE, like all excess insurance carriers, are required to pay
3 into the NIGA as they are "licensed to transact insurance in this State". NRS 687A.037(2).
4 Therefore, claims against RELIANCE by its insured would be covered claims as that was the
5 intended purpose of creating the Nevada Insurance Guaranty Association, which is more particularly
6 described in the following statutes.
7

8 **NRS 687A.020 Applicability, provides:**

9 Except as otherwise provided in subsection 5 of NRS 695E.200, this chapter
10 applies to all direct insurance, except:

- 11 1. Life, annuity, health or disability insurance;
- 12 2. Mortgage guaranty, financial guaranty or other forms of insurance offering
13 protection against investment risks;
- 14 3. Fidelity or surety bonds or any other bonding obligations;
- 15 4. Credit insurance as defined in NRS 690A.015;
- 16 5. Insurance of warranties or service contracts;
- 17 6. Title insurance;
- 18 7. Ocean marine insurance;
- 19 8. Any transaction or combination of transactions between a person,
20 including affiliates of the person, and an insurer, including affiliates of the
21 insurer, which involves the transfer of investment or credit risk
22 unaccompanied by the transfer of insurance risk; or
23 9. Any insurance provided by or guaranteed by a governmental entity.

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26 (Added to NRS by 1971, 1943; A 1973, 312; 1977, 434; 1987, 1333; 1993,
27 1396; 1995, 1773, 2057; 1997, 579; 1999, 1833)
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NRS 687A.031 "Association" defined. "Association" means the Nevada Insurance Guaranty Association created pursuant to NRS 687A.040. (Added to NRS by 1985, 1072)

NRS 687A.033 "Covered claim" defined.

1. "Covered claim" means an unpaid claim or judgment, including a claim for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer which becomes an insolvent insurer, if one of the following conditions exists:

(a) The claimant or insured, if a natural person, is a resident of this State at the time of the insured event.

(b) The claimant or insured, if other than a natural person, maintains its principal place of business in this State at the time of the insured event.

(c) The property from which the first party property damage claim arises is permanently located in this State.

(d) The claim is not a covered claim pursuant to the laws of any other state and the premium tax imposed on the insurance policy is payable in this State pursuant to NRS 680B.027.

2. The term does not include:

(a) An amount that is directly or indirectly due a reinsurer, insurer, insurance pool or underwriting association, as recovered by subrogation, indemnity or contribution, or otherwise.

(b) That part of a loss which would not be payable because of a provision for a deductible or a self-insured retention specified in the policy.

1 (c) Except as otherwise provided in this paragraph, any claim filed with the
2 Association:

3 (1) More than 18 months after the date of the order of liquidation; or

4 (2) After the final date set by the court for the filing of claims against the
5 liquidator or receiver of the insolvent insurer, whichever is earlier. The
6 provisions of this paragraph do not apply to a claim for workers'
7 compensation that is reopened pursuant to the provisions of NRS
8 616C.390 or 616C.392.
9

10 * * *

11 (Added to NRS by 1985, 1072; A 1987, 1065; 1989, 565; 1993, 1396; 1999,
12 2521; 2001, 2215; 2003, 3307; 2005, 1497)
13

14
15 **NRS 687A.037 "Member insurer" defined.** "Member insurer" means any
16 person, except a fraternal or nonprofit service corporation which:

- 17 1. Writes any kind of insurance to which this chapter applies, including the
18 exchange of reciprocal or interinsurance agreements of indemnity.
19
20 2. Is licensed to transact insurance in this state.

21 (Added to NRS by 1985, 1073)
22

23 **NRS 687A.040 Nevada Insurance Guaranty Association created.** There is
24 hereby created a nonprofit unincorporated legal entity to be known as the
25 Nevada Insurance Guaranty Association. All member insurers must be
26 members of the Association as a condition of their authority to transact
27 insurance in this state. The Association shall perform its functions under a
28

1 plan of operation established and approved pursuant to NRS 687A.070 and
2 shall exercise its powers through a Board of Directors established under NRS
3 687A.050. (Added to NRS by 1971, 1944; A 1985, 1074)
4

5 Based purely upon the stipulated facts of this case, SEI's insurance claims satisfy the standards set
6 forth in the above statute: the Appellant SEI, a Nevada corporation, to be self-insured in accordance
7 with Nevada law, properly held and paid premiums on an insurance policy from a licensed excess
8 workers' compensation insurer, who was required to pay into the NIGA; the insurer became
9 insolvent; and the insurer failed to meet its obligations under the insured's insurance policy. NRS
10 687A.033(1). (JA 173). As such, a plain reading of the statute's text indicates that NIGA is obligated
11 to cover the unpaid claims arising under SEI's Excess Insurance Policy with RELIANCE.
12

13 **II. SEI is NOT an "insurer."**

14 NIGA has seized upon a very narrow reading of the NIGA Act; focusing on a specific
15 exception cited in subsection (2) of NRS 687A.033. That exception reads as follows: The term
16 ["covered claim"] does not include: (a) An amount that is directly or indirectly due a reinsurer,
17 insurer, insurance pool or underwriting association, as recovered by subrogation, indemnity or
18 contribution, or otherwise. Although NIGA admits that SEI is neither an "insurance pool" nor an
19 "underwriting association," NIGA contends that SEI's role as a self-insured employer makes it an
20 "insurer" within the meaning of the above statute; and thus prevents SEI from utilizing the sureties
21 of the NIGA Act. This is NIGA's contention, despite the fact that SEI has never directly profited
22 from or otherwise engaged in the insurance business, and is not licensed to even write or sell
23 insurance. The undisputed fact is that SEI does not now, nor has it ever, engaged in the business of
24 insurance, reinsurance, or any other related field of surety finance.

25 Even though the Legislature neglected to provide a specific definition of "insurer"
26 within the NIGA statutes, the term is plain on its face. An insurer, without any other modifications,
27 is someone who engages in the business of selling or otherwise profiting from the sale of insurance.

28 See e.g. NRS 679A.100; NRS 679B.540; NRS 686B.1759; NRS 692C.070; NRS 695A.014; NRS

1 695H.040; NRS 696B.120; Cal Ins Code 688.5; ARS 20-104; Utah Code Ann 31A-1-301(87); Idaho
2 Code § 41-103. (JA 125-126). SEI simply does not fit within this definition; as such, it is eligible for
3 NIGA's protections.
4

5 In stating that a self-insured employer is considered an "insurer" and not eligible for
6 benefits under the NIGA Act, NIGA relies on NRS 616A.270 of the Workers' Compensation Act,
7 which includes self-insured employers in its definition of "insurer." The district court agreed with
8 NIGA's interpretation and held that because a self-insured employer is listed as an insurer under
9 NRS 616A.270, a statute concerning workers' compensation, it is not entitled to benefits under the
10 NIGA Act. (JA 169 ll. 11-14; 175). **NRS 616A.270** defines an "insurer" as:

- 11 1. A self-insured employer;
- 12 2. An association of self-insured public employers;
- 13 3. An association of self-insured private employers; and
- 14 4. A private carrier.

15 This is the ONLY Nevada statute that includes self-insured employers within the definition of an
16 "insurer." (JA 086 ll. 1-6). Moreover, this outlying definition sits within a section of the NRS that
17 deals principally with self-insured employers for purposes of workers' compensation; explaining its
18 unique inclusion of such entities within its definition of "insurers" as it was formulated when Nevada
19 broadened the workers' compensation statutes to allow qualified entities to be self-insured. Further,
20 NRS 616A.025, narrows the use and applicability of the definitions in NRS 616A.030 thru NRS
21 616A.360 to only be construed in NRS 616A to NRS 616D, as these pertinent statutes are set forth
22 within Title 53, Labor and Industrial Relations.

23 **NRS 616A.025 Definitions.** As used in chapters 616A to 616D, inclusive, of
24 NRS, unless the context otherwise requires, the words and terms defined in
25 NRS 616A.030 to 616A.360, inclusive, have the meanings ascribed to them in
26 those sections. [2:168:1947; 1943 NCL § 2680.2] + [3:168:1947; 1943 NCL
27 § 2680.3]—(NRS A 1977, 188; 1981, 710, 1016; 1987, 2047, 2322; 1991,
28 2398; 1993, 692; 1995, 1638, 1977, 2008; 1997, 576, 578, 2766; 1999, 1759,
2445, 3140, 3376; 2001, 2256, 2447; 2003, 2303, 2331)

1 Additionally, note that the term "insurer," as used here, makes no specific mention of
2 insurance companies, underwriters, or entities traditionally categorized as "insurers." Instead, it uses
3 the term "private carriers" to represent the entirety of the insurance industry. (JA 086 ll. 7-11). See
4 NRS 616A.290, which defines a "private carrier" as follows:
5

6 **NRS 616A.290 "Private carrier" defined.** "Private carrier" means any
7 insurer or the legal representative of an insurer authorized to provide
8 industrial insurance pursuant to chapters 616A to 617, inclusive, of NRS. **The**
9 **term does not include a self-insured employer** or an association of self-
10 insured public or private employers. (emphasis added). (Added to NRS by
11 1995, 2000; A 1999, 1760)
12

13 SEI contends that the definition of "private carrier" is really the definition of "insurer" as referred to
14 in the NIGA Act, and that definition specifically excludes a self-insured employer. Moreover, NRS
15 616A.305 provides an accurate definition of a self-insured employer for the purposes of NRS 616A.
16

17 **NRS 616A.305 "Self-insured employer" defined.** "Self-insured employer"
18 means any employer who possesses a certification from the Commissioner of
19 Insurance that he has the capability to assume the responsibility for the
20 payment of compensation pursuant to chapters 616A to 617, inclusive, of
21 NRS. (Added to NRS by 1979, 1035; A 1995, 2009)—(Substituted in
22 revision for NRS 616.112)
23

24 Further, in its filings on this case, NIGA goes through a myriad of awkward and
25 needlessly complicated polemics to stretch the definition of "insurer" so that it might include a self-
26 insured employer. However, NIGA's argument ignores the obvious fact that the word "insurer" is
27 plain on its face and does not require any in-depth deciphering. Simply stated, SEI cannot be an
28 "insurer" because it does not engage in any insurance-related business activities. Moreover, a clear

1 reading of the NIGA Act (specifically NRS 687A.030) expressly states that the "words and terms
2 defined in [said NIGA Act, which is located in Title 57, Insurance] . . . , inclusive, have the meanings
3 ascribed to them in those sections". Therefore, the definition of "insurer" must be interpreted strictly
4 within the NIGA Act as set forth therein.
5

6 **NRS 687A.030 Definitions, provides:**

7
8 As used in this chapter, unless the context otherwise requires, the words and
9 terms defined in NRS 687A.031 to 687A.039, inclusive, **have the meanings**
10 **ascribed to them in those sections.** (emphasis added). (Added to NRS by
11 1971, 1943; A 1977, 434; 1985, 537, 1073)

12 "When the statutory language is plain, the sole function of the courts -- at least where
13 the disposition required by the text is not absurd -- is to enforce it according to its terms." See
14 Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy, 126 S. Ct. 2455, 2459 (2006); see also Bacher v.
15 Office of the State Eng'r of Nev., 122 Nev. Adv. Rep. 95; 146 P.3d 793 (2006). Here, the word
16 "insurer" is widely understood to mean one who engages in the business of issuing insurance
17 policies or otherwise profiting from the issuance of such policies. In fact, to expand the term so
18 broadly as to include companies like SEI, is absurd.
19

20 Defining SEI as an "insurer" violates basic common sense. It is undisputed
21 that SEI does not now, nor has it ever, engaged in the business of selling insurance. SEI engages in
22 the business of reinforcing steel, structural steel and providing concrete accessories and industrial
23 supplies and services to businesses and individuals in the Las Vegas Valley. NIGA even admits that
24 SEI is not "in the business of insurance in the same sense as Allstate or Nationwide." (JA 108 ll. 26-
25 27). Last, NIGA admits "the majority of courts addressing this issue have concluded that self-
26 insured employers are not insurers under statutes similar to NRS 679A.100." See Zinke-Smith v.
27 Florida Insurance Guaranty Association, 304 So.2d 507 (Florida 1974). (JA 109 ll. 22-25; 148 ll. 1-
28

1 7). In light of these undisputed facts, it should be obvious that SEI does not meet the definitional
2 criteria of an "insurer."
3

4 Moreover, the Nevada Administrative Code supports SEI's claim that a self-insured
5 employer is not an "insurer" where it provides a specific definition of "insurer", and states:
6

7 **NAC 680A.012 "Insurer" defined.** (NRS 679B.130) "Insurer" means an
8 insurer licensed to transact the business of insurance in this State.

9 (Added to NAC by Comm'r of Insurance, eff. 5-23-96)

10 To be such an "insurer", NRS 680A.060 provides that the Commissioner of Insurance must issue a
11 certificate of authority deeming said entity is an "insurer":
12

13 **680A.060 Certificate of authority required; penalty.**

14 A person shall not act as an insurer and an insurer shall not transact
15 insurance in this State by mail or otherwise, except as authorized by
16 a certificate of authority issued by the Commissioner and then in full
17 force, and except as to such transactions as are expressly otherwise
18 provided in this Code.

19 This definition of "insurer" in the Nevada Administrative Code is important as it specifically refers
20 to **NRS 679B.130**, which authorizes ONLY the Commissioner of Insurance to adopt reasonable
21 regulations:

22 (a) For the administration of any provision of this Code, NRS 287.04335 or
23 chapters 616A to 617, inclusive, of NRS; or

24 (b) As required to ensure compliance by the Commissioner with any federal
25 law or regulation relating to insurance.

26 2. A person who willfully violates any regulation of the Commissioner is
27 subject to such suspension or revocation of a certificate of authority or license,
28

1 or administrative fine in lieu of such suspension or revocation, as may be
2 applicable under this Code or chapter 616A, 616B, 616C, 616D or 617 of
3 NRS for violation of the provision to which the regulation relates. No penalty
4 applies to any act done or omitted in good faith in conformity with any such
5 regulation, notwithstanding that the regulation may, after the act or omission,
6 be amended, rescinded or determined by a judicial or other authority to be
7 invalid for any reason. (Added to NRS by 1971, 1563; A 1977, 97; 1995,
8 2048; 2001, 2938; 2003, 3276)
9

10
11 Additionally, to become a self-insured employer for purposes of workers'
12 compensation, SEI is REQUIRED BY NEVADA LAW to carry excess insurance coverage pursuant
13 to NRS 616B.300 (5), which provides as follows:
14

15 **NRS 616B.300 Qualification as self-insured employer: Establishment of**
16 **financial ability to pay; deposit or security; evidence of excess insurance;**
17 **Account for Self-Insured Employers.**
18

19 * * *

20
21 5. The Commissioner shall require the self-insured employer to submit
22 evidence of excess insurance to provide protection against a catastrophic loss.
23 The excess insurance must be written by an insurer authorized to do business
24 in this State. The Commissioner shall consider the excess insurance coverage
25 as a basis for a reduction in the deposit required of an employer.

26
27 6. The Account for Self-Insured Employers is hereby created in the State
28 Agency Fund for Bonds. All money received by the Commissioner pursuant

1 to this section must be deposited with the State Treasurer to the credit of the
2 Account for Self-Insured Employers. All claims against this Account must be
3 paid as other claims against the State are paid.
4

5 (Added to NRS by 1979, 1035; A 1981, 269, 1465; 1985, 582, 933; 1989,
6 1078; 1991, 1799; 1993, 2403; 2007, 3334)

7 In fact, the Commissioner of Insurance for the State of Nevada will not permit an employer to self-
8 insure unless it can show evidence that it has an excess insurance policy issued by an insurer
9 licensed to do business in Nevada. NRS 616B.300(5). (JA 018 ll. 20-28; 030 ll. 15-18). As a result,
10 the practical effect of being "self-insured" is tantamount to carrying a very large insurance
11 deductible. Similar to a deductible, a self-insured retention is merely the amount of money that an
12 insured pays on a given claim before its excess insurance policy kicks in. Once the cost of a given
13 claim extends beyond the self-insured retention, the company's excess insurance policy takes over
14 and covers the remainder of the claim.
15

16 It is important to note that SEI is not seeking compensation under NIGA for claims
17 that fall within its "self-insured retention." SEI merely seeks the monies it was owed under its
18 excess worker's compensation insurance policy with RELIANCE that SEI was required to have to
19 be self-insured. Like all valid insurance policyholders, SEI paid regular monthly premiums to its
20 insurance carrier, RELIANCE, with the expectation that RELIANCE would cover any claims that
21 fell within the parameters of the insurance policy. However, when such claims came due,
22 RELIANCE became insolvent; defaulting on its obligations to SEI. As a result, SEI is saddled with
23 hundreds of thousands of dollars in unforeseen liabilities. SEI paid for a benefit that, through no
24 fault of its own, it is now deprived of receiving. The situation that SEI faces is precisely the sort of
25 situation and catastrophic loss that NIGA was created to safeguard against. NIGA was created to
26 ensure that persons who purchase insurance benefits are protected from claims when their insurance
27
28

1 above. That is to say, a member insurer must, in addition to being an insurer as defined by the first
2 prong of the definition, also be "licensed to transact insurance in this state."
3

4 More importantly, using the definition cited above, it follows that an "insurer" would
5 be any person that "writes any kind of insurance to which this chapter applies, including the
6 exchange of reciprocal or interinsurance agreements of indemnity." A self-insured employer such as
7 SEI does not meet this definition, since it does not issue insurance policies or otherwise write any
8 kind of insurance. Defining SEI as an "insurer" under the NIGA Act not only violates the plain
9 meaning of the word "insurer," but also leads to results that violate basic common sense. SEI is not
10 an "insurer" and nothing within SEI's operations even remotely compares to the business structure of
11 an insurance company. Consequently, it is clear that SEI does not fall within the definition of
12 "insurer" and therefore is eligible for the protections granted under the NIGA Act. Accordingly, the
13 Nevada Supreme Court should find that NIGA is obligated to cover the unpaid claims of a self-
14 insured employer such as SEI.

15 **III. The Legislative Intent Underlying the Nevada Insurance Guaranty**
16 **Act Requires NIGA to Cover the Subject Claims.**
17

18 NIGA's reading of the Nevada Insurance Guaranty Act runs against the legislative
19 intent with which it was drafted. There is no indication in the NIGA Act, its legislative history, or
20 any supporting documentation that the Legislature intended self-insured employers to fall within the
21 definition of "insurers." On the contrary, the language of the NIGA Act and its surrounding
22 legislative history show that the Legislature viewed self-insured employers as distinct from
23 "insurers" and intended them to receive NIGA'S protections. (JA)
24

25 NIGA was created to ensure that persons who purchase insurance benefits are
26 protected from claims when their insurance company becomes insolvent and is granted some sort of
27 insolvency protection against these claims. Cimini v. Nevada Ins Guar Ass'n, 112 Nev. 442, 915
28 P.2d 279 (1996). (JA 23 ll. 3-10). Nevada's worker's compensation laws clearly favor the public

1 policy of providing economic security for employees who are injured on the job. See Department of
2 Indus. Relations v. Circus Circus Enters., 101 Nev. 405, 411 (Nev. 1985). Additionally, “The
3 modern trend is to construe the industrial insurance acts broadly and liberally, to protect the interest
4 of the injured worker and his dependents. A reasonable, liberal and practical construction is
5 preferable to a narrow one, since these acts are enacted for the purpose of giving compensation, not
6 for the denial thereof.” Id at 411.

8 NIGA’s narrow interpretation of the statutes at issue eliminates the core benefit of
9 becoming a self-insured employer - the cost savings associated with administering the employer’s
10 own worker’s compensation claims and avoiding paying tens of thousands of dollars for insurance
11 premiums for a fully externally administered worker’s compensation insurance plan. One can
12 picture a self-insured employer, saddled with excess worker’s compensation claims which would
13 have been covered by an excess insurance policy, were it not for an insolvent insurer—but are
14 refused by NIGA based on the above narrow interpretation. What could happen when this company
15 becomes insolvent because of these uncovered claims is the company would be required to lay off all
16 of the employees, including the injured employees, who subsequently will not be covered by the one
17 ‘policy of last resort’ intended to protect that injured employee - NIGA. If the goal of NIGA is to
18 ensure that the interests of the injured worker and his dependants are protected, NIGA’s
19 interpretation fails to accomplish this underlying public purpose. For the foregoing reasons, the
20 Plaintiffs interpretation of the NIGA Act runs against the legislative purpose for which it was
21 drafted. Accordingly, this Court should find that NIGA is obligated to cover the unpaid sums owed
22 under SEI's Insurance Policy with RELIANCE.
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Las Vegas, NV 89129

1 **IV. Based on Fundamental Tenets of Public Policy, NIGA Should be**
2 **Obligated to Cover the Subject Claims.**
3

4 NIGA'S overly narrow reading of the NIGA Act needlessly thrusts additional
5 liability and risks upon the shoulders of self-insured employers and flies in the face of basic notions
6 of public policy. NIGA has, somewhat callously, dismissed the Defendant's policy arguments, and
7 incorrectly asserted that such arguments are irrelevant to the issues of this case. NIGA's cursory
8 dismissal of these points contravenes fundamental canons of statutory construction and undermines
9 the role of the Court in determining issues of public concern. It is essential that this Court, in
10 determining the meaning of the NIGA Act, take into consideration the statute's underlying policy
11 and purpose. In construing a law of doubtful meaning or application, the policy which induced its
12 enactment, or which was designed to be promoted thereby, is a proper subject for consideration.

13 Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 737 (U.S. 1975). Indeed, the proper course
14 in all cases is to adopt that sense of the words which promotes in the fullest manner the policy of the
15 legislature. Ash Sheep Co. v. U.S., 252 U.S. 159, 170 (1920); see also, State, Dep't of Mtr. Vehicles
16 v. Lovett, 110 Nev. 473, 477, 874 P.2d 1247, 1249-50 (1994); SIIS v. Bokelman, 113 Nev. 1116,
17 1123, 946 P.2d 179, 184 (1997).
18

19 Here, NIGA admits that it is an unfair burden on insureds when carriers become
20 insolvent, and that this phenomenon complicates any planning for contingencies, which is why
21 NIGA was created. (JA 113 ll. 23-28). To truly understand any legislative act, the Court must
22 examine the policies and principles of equity that gave rise to that Act. If a certain construction of
23 the Act would contravene public policy and cause unjust results, the Court should certainly take that
24 into consideration when making its decision. In the present case, any construction of the NIGA Act
25 that would preclude SEI from receiving protection in accordance with the NIGA Act would violate
26
27
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1 public policy and cause unjust results' results contrary to the policy considerations that gave rise to
2 the initial enactment of the NIGA Act.

3 A stable and prosperous economy relies upon some degree of predictability.

4 Although businesses take on sizeable risks as they invest in the community, they consistently seek
5 out ways of limiting that risk and ensuring future stability. For this very reason, most companies
6 carry large insurance policies guaranteeing against any number of business risks, including the threat
7 of workers' compensation claims. In such instances, companies essentially pay out money today to
8 guard against the unforeseen liabilities of tomorrow. This arrangement limits the risks of operating
9 any given business; meanwhile allowing managers and executives to focus their attentions upon
10 more effectively managing their operations, finances, and future growth.

11
12 Insurance guaranty funds like NIGA provide an added layer of stability and certainty
13 within the marketplace. Without the guarantees of organizations like NIGA, businesses and other
14 self-insured entities run the risk that their insurance provider will become insolvent and incapable of
15 covering any future claims arising under its policies. Under such circumstances, a company might
16 lay out hundreds of thousands of dollars in monthly insurance premiums, but when a claim actually
17 arises, the insurance company, now insolvent, may prove unable to cover those unforeseen
18 liabilities. Serving the same arena of public policy concerns as the FDIC, insurance guaranty funds,
19 like NIGA, make certain that individuals and companies can purchase insurance with the certain
20 foreknowledge that their claims are guaranteed.

21
22 The abovementioned scenario matches, almost perfectly, the situation of SEI. SEI
23 purchased an Excess Insurance Policy from RELIANCE and diligently paid its monthly premiums.
24 However, when a major claim arose under the policy, RELIANCE proved insolvent and incapable of
25 covering those losses. As a result, SEI was forced to cover hundreds of thousands of dollars in
26 excess workers' compensation claims that it had never anticipated, planned for, or otherwise
27
28

1 factored in its financial forecasts. That is why Nevada requires self-insured employers to carry
2 excess insurance coverage, and that is why SEI obtained excess insurance coverage. SEI knows it is
3 responsible for the self-insured retention amount until the excess coverage is in effect. Nevertheless,
4 the excess coverage was purchased and is in existence to protect the company, SEI, from claims that
5 exceed its self-insured retention.
6

7 The fact that SEI is labeled as a "self-insured" employer is merely a distraction from
8 the core policy considerations of this case. As a self-insured employer, SEI was never supposed to
9 take on the monumental responsibility of accepting complete and total liability for all workers'
10 compensation claims against it. On the contrary, SEI made sure to carry excess insurance coverage,
11 as required by Nevada law. Self-insured employers represent some of this State's most valuable
12 employers, both public and private, including MGM/Mirage, Caesar's Entertainment, Boyd Gaming,
13 Sands Corporation, Carson City, the City of Las Vegas, the City of Sparks, the City of Reno, the
14 City of Henderson, the City of North Las Vegas, the Clark County School District, the Nevada
15 System of Higher Education, Clark County Government, Las Vegas Paving, Anderson Dairy, Coca-
16 Cola, Costco, Home Depot, Healthsouth, Las Vegas Metro Police Department, and dozens others.
17

18 If this Court were to accept NIGA's interpretation of the Act, then all of the
19 abovementioned employers must operate at their own peril. Hundreds of thousands of workers
20 throughout Nevada must toil without the guarantees of NIGA. This absurd interpretation of the Act
21 essentially guts the protections of NIGA and leaves Nevada's economy exposed to catastrophic
22 risks. On the contrary, the protections of NIGA promote economic stability and prosperity.
23 Extending the protections of NIGA to self-insured employers is entirely consistent with the public
24 policy considerations that formed the basis of NIGA's creation. In light of the foregoing, this Court
25 should DECLARE that SEI and all self-insured employers are eligible for the protections of the
26 Nevada Insurance Guaranty Association.
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CONCLUSION

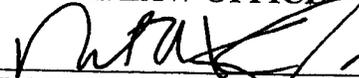
The Appellant SEI also Joins in the Brief filed by the Appellant, MGM.

WHEREFORE, in light of the aforementioned argument and analysis set forth herein, the Appellant, Steel Engineers, Inc., respectfully requests that this Court REVERSE the Eighth Judicial District Court's decision in this matter and ENTER JUDGMENT in favor of the Appellants as set forth herein; specifically, holding that self-insured employers are covered under the NIGA Act. Additionally, the Appellant SEI requests such other and further relief this Court deems appropriate.

DATED this 21st day of December, 2007.

Respectfully Submitted by:

KURTH LAW OFFICE



ROBERT O. KURTH, JR.

Nevada Bar No. 4659

Attorney for Appellant, Steel Engineers, Inc.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that I have read the Appellant's Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation. I FURTHER CERTIFY that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in the Brief regarding matters in the record to be supported by a reference to the page of the appendix where the matter relied on is

1 to be found. I understand that I may be subject to sanctions in the event that the accompanying Brief
2 is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.
3

4 DATED this 21st day of December, 2007.

5 Respectfully Submitted by:

6 **KURTH LAW OFFICE**

7 
8 **ROBERT O. KURTH, JR.**

9 Nevada Bar No. 4659

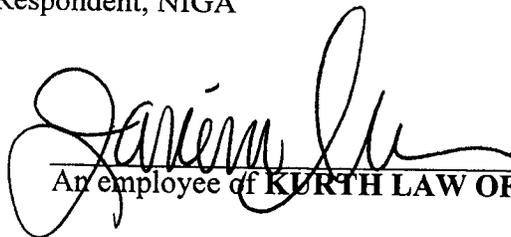
10 Attorney for Appellant, Steel Engineers, Inc.

11 **CERTIFICATE OF SERVICE**

12 **I HEREBY CERTIFY** that on the 21st day of December, 2007, I placed a full, true
13 and correct copy of the foregoing **APPELLANT'S OPENING BRIEF and the JOINT**
14 **APPENDIX** in a sealed, first-class postage-prepaid envelope, in the U.S. Mail, and addressed to the
15 following:

16 S. Denise McCurry, Esq.
17 3260 Industrial Rd.
18 Las Vegas, NV 89109
19 Attorney for Appellant, MGM Mirage

20 James H. Randall
21 Michael K. Wall
22 HUTCHISON & STEFFEN, LLC
23 Peccole Professional Park
24 10080 West Alta Drive, Suite 200
25 Las Vegas, NV 89145
26 Attorneys for Respondent, NIGA

27 
28 An employee of **KURTH LAW OFFICE.**

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ADDENDUM

NRS 616A.025 Definitions. As used in chapters 616A to 616D, inclusive, of NRS, unless the context otherwise requires, the words and terms defined in NRS 616A.030 to 616A.360, inclusive, have the meanings ascribed to them in those sections.

[2:168:1947; 1943 NCL § 2680.2] + [3:168:1947; 1943 NCL § 2680.3]—(NRS A 1977, 188; 1981, 710, 1016; 1987, 2047, 2322; 1991, 2398; 1993, 692; 1995, 1638, 1977, 2008; 1997, 576, 578, 2766; 1999, 1759, 2445, 3140, 3376; 2001, 2256, 2447; 2003, 2303, 2331).

NRS 616A.270 “Insurer” defined. “Insurer” includes:

1. A self-insured employer;
2. An association of self-insured public employers;
3. An association of self-insured private employers; and
4. A private carrier.

(Added to NRS by 1981, 1449; A 1993, 694; 1995, 2009; 1999, 1760)

NRS 616A.290 “Private carrier” defined. “Private carrier” means any insurer or the legal representative of an insurer authorized to provide industrial insurance pursuant to chapters 616A to 617, inclusive, of NRS. The term does not include a self-insured employer or an association of self-insured public or private employers.

(Added to NRS by 1995, 2000; A 1999, 1760)

NRS 616A.305 “Self-insured employer” defined. “Self-insured employer” means any employer who possesses a certification from the Commissioner of Insurance that he has the capability to assume the responsibility for the payment of compensation pursuant to chapters 616A to 617, inclusive, of NRS.

(Added to NRS by 1979, 1035; A 1995, 2009)—(Substituted in revision for NRS 616.112)

1 **NRS 616B.300 Qualification as self-insured employer: Establishment of financial ability to**
2 **pay; deposit or security; evidence of excess insurance; Account for Self-Insured Employers.**

3 1. An employer may qualify and remain qualified as a self-insured employer by establishing to
4 the satisfaction of the Commissioner that the employer has sufficient administrative and financial
5 resources to make certain the prompt payment of all compensation under chapters 616A to 616D,
6 inclusive, or chapter 617 of NRS. For the purposes of this subsection, an employer has sufficient
7 financial resources if:

8 (a) At the time of initial qualification and until the employer has operated successfully as a
9 qualified self-insured employer for 3 years, as determined by the Commissioner, the employer has a
10 tangible net worth of not less than \$2,500,000, as evidenced by a statement of tangible net worth
11 provided to the Division of Insurance of the Department of Business and Industry by an independent
12 certified public accountant; or

13 (b) After 3 years of successful operation as a qualified self-insured employer, as determined by
14 the Commissioner, the employer has net cash flows from operating activities plus net cash flows
15 from financing activities of five times the average of claims paid for each of the last 3 years or
16 \$7,500,000, whichever is less.

17 2. A self-insured employer must, in addition to establishing financial ability to pay, deposit with
18 the Commissioner a bond executed by the employer as principal, and by a corporation qualified
19 under the laws of this State as surety, payable to the State of Nevada, and conditioned upon the
20 payment of compensation for injuries and occupational diseases to employees. The bond must be in
21 an amount reasonably sufficient to ensure payment of compensation, but in no event may it be less
22 than 105 percent of the employer's expected annual incurred cost of claims, or less than \$100,000. In
23 arriving at an amount for the expected annual cost of claims, due consideration must be given to the
24 past and prospective experience of the employer with losses and expenses within this State, to the
25 hazard of catastrophic loss, to other contingencies, and to trends within the State. In arriving at the
26 amount of the deposit required, the Commissioner may consider the nature of the employer's
27 business, the financial ability of the employer to pay compensation and his probable continuity of
28 operation.

3. In lieu of a bond, the employer may deposit with the Commissioner a like amount of lawful
money of the United States or any other form of security authorized by NRS 100.065. If security is
provided in the form of a savings certificate, certificate of deposit or investment certificate, the

1 certificate must state that the amount is unavailable for withdrawal except upon order of the
2 Commissioner.

3 4. The required deposit may be increased or decreased by the Commissioner in accordance with
4 chapter 681B of NRS and his regulations for loss reserves in casualty insurance. If the
5 Commissioner requires an employer to increase his deposit, the Commissioner may specify the form
6 of the additional security. The employer shall comply with such a requirement within 60 days after
7 receiving notice from the Commissioner.

8 5. The Commissioner shall require the self-insured employer to submit evidence of excess
9 insurance to provide protection against a catastrophic loss. The excess insurance must be written by
10 an insurer authorized to do business in this State. The Commissioner shall consider the excess
11 insurance coverage as a basis for a reduction in the deposit required of an employer.

12 6. The Account for Self-Insured Employers is hereby created in the State Agency Fund for
13 Bonds. All money received by the Commissioner pursuant to this section must be deposited with the
14 State Treasurer to the credit of the Account for Self-Insured Employers. All claims against this
15 Account must be paid as other claims against the State are paid.

16 (Added to NRS by 1979, 1035; A 1981, 269, 1465; 1985, 582, 933; 1989, 1078; 1991, 1799;
17 1993, 2403; 2007, 3334)

18 **NRS 687A.020 Applicability.** Except as otherwise provided in subsection 5 of NRS 695E.200, this
19 chapter applies to all direct insurance, except:

- 20 1. Life, annuity, health or disability insurance;
- 21 2. Mortgage guaranty, financial guaranty or other forms of insurance offering protection against
22 investment risks;
- 23 3. Fidelity or surety bonds or any other bonding obligations;
- 24 4. Credit insurance as defined in NRS 690A.015;
- 25 5. Insurance of warranties or service contracts;
- 26 6. Title insurance;
- 27 7. Ocean marine insurance;
- 28 8. Any transaction or combination of transactions between a person, including affiliates of the
person, and an insurer, including affiliates of the insurer, which involves the transfer of investment
or credit risk unaccompanied by the transfer of insurance risk; or

1 9. Any insurance provided by or guaranteed by a governmental entity.

2 (Added to NRS by 1971, 1943; A 1973, 312; 1977, 434; 1987, 1333; 1993, 1396; 1995,
3 1773, 2057; 1997, 579; 1999, 1833)

4
5 **NRS 687A.030 Definitions.** As used in this chapter, unless the context otherwise requires, the
6 words and terms defined in NRS 687A.031 to 687A.039, inclusive, have the meanings ascribed to
7 them in those sections. (Added to NRS by 1971, 1943; A 1977, 434; 1985, 537, 1073).

8
9
10 **NRS 687A.031 "Association" defined.** "Association" means the Nevada Insurance Guaranty
11 Association created pursuant to NRS 687A.040. (Added to NRS by 1985, 1072)

12
13 **NRS 687A.033 "Covered claim" defined.**

14 1. "Covered claim" means an unpaid claim or judgment, including a claim for unearned
15 premiums, which arises out of and is within the coverage of an insurance policy to which this
16 chapter applies issued by an insurer which becomes an insolvent insurer, if one of the following
17 conditions exists:

18 (a) The claimant or insured, if a natural person, is a resident of this State at the time of the
19 insured event.

20 (b) The claimant or insured, if other than a natural person, maintains its principal place of
21 business in this State at the time of the insured event.

22 (c) The property from which the first party property damage claim arises is permanently located
23 in this State.

24 (d) The claim is not a covered claim pursuant to the laws of any other state and the premium tax
25 imposed on the insurance policy is payable in this State pursuant to NRS 680B.027.

26 2. The term does not include:

27 (a) An amount that is directly or indirectly due a reinsurer, insurer, insurance pool or
28 underwriting association, as recovered by subrogation, indemnity or contribution, or otherwise.

1 (b) That part of a loss which would not be payable because of a provision for a deductible or a
2 self-insured retention specified in the policy.

3 (c) Except as otherwise provided in this paragraph, any claim filed with the Association:

4 (1) More than 18 months after the date of the order of liquidation; or

5 (2) After the final date set by the court for the filing of claims against the liquidator or
6 receiver of the insolvent insurer, whichever is earlier. The provisions of this paragraph do not apply
7 to a claim for workers' compensation that is reopened pursuant to the provisions of NRS 616C.390
8 or 616C.392.

9 (d) A claim filed with the Association for a loss that is incurred but is not reported to the
10 Association before the expiration of the period specified in subparagraph (1) or (2) of paragraph (c).

11 (e) An obligation to make a supplementary payment for adjustment or attorney's fees and
12 expenses, court costs or interest and bond premiums incurred by the insolvent insurer before the
13 appointment of a liquidator, unless the expenses would also be a valid claim against the insured.

14 (f) A first party or third party claim brought by or against an insured, if the aggregate net worth
15 of the insured and any affiliate of the insured, as determined on a consolidated basis, is more than
16 \$25,000,000 on December 31 of the year immediately preceding the date the insurer becomes an
17 insolvent insurer. The provisions of this paragraph do not apply to a claim for workers'
18 compensation. As used in this paragraph, "affiliate" means a person who directly or indirectly owns
19 or controls, is owned or controlled by, or is under common ownership or control with, another
20 person. For the purpose of this definition, the terms "owns," "is owned" and "ownership" mean
21 ownership of an equity interest, or the equivalent thereof, of 10 percent or more.

22 (Added to NRS by 1985, 1072; A 1987, 1065; 1989, 565; 1993, 1396; 1999, 2521; 2001, 2215;
23 2003, 3307; 2005, 1497)

24 **NRS 687A.035 "Insolvent insurer" defined.** "Insolvent insurer" means an insurer which has been
25 issued a certificate of authority by the Commissioner to transact insurance in this state, either at the
26 time the policy was issued or when the insured event occurred:

27 1. Against which a final order of liquidation with a finding of insolvency has been entered by a
28 court of competent jurisdiction in the insurer's state of domicile or in Nevada; or

1 2. Which is involved in judicial proceeding in its state of domicile or in Nevada related to the
2 determination of its solvency, rehabilitation or liquidation, if the court conducting those proceedings
3 has issued an order prohibiting the insurer from paying claims for more than 30 days.

4 (Added to NRS by 1985, 1072)

5 **NRS 687A.037 “Member insurer” defined.** “Member insurer” means any person, except a
6 fraternal or nonprofit service corporation which:

7 1. Writes any kind of insurance to which this chapter applies, including the exchange of
8 reciprocal or interinsurance agreements of indemnity.

9 2. Is licensed to transact insurance in this state.

10 (Added to NRS by 1985, 1073)

11
12 **NRS 687A.040 Nevada Insurance Guaranty Association created.** There is hereby created a
13 nonprofit unincorporated legal entity to be known as the Nevada Insurance Guaranty Association.
14 All member insurers must be members of the Association as a condition of their authority to transact
15 insurance in this state. The Association shall perform its functions under a plan of operation
16 established and approved pursuant to NRS 687A.070 and shall exercise its powers through a Board
17 of Directors established under NRS 687A.050. (Added to NRS by 1971, 1944; A 1985, 1074)