

**RULE 44 CERTIFICATE**

I, GABRIEL MAALOUF, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.
2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.



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Signature

Executed on November 12, 2019

**APPENDIX TO PETITION FOR REHEARING**

Defendant Efrain Loza's Arbitration Brief (November 7, 2012) .....	1a
Recorded Statement of Gabriel Maalouf.....	6a

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11  
12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA  
14 GABRIEL A. MAALOUF, Individually; MARIAR CORPORATION, a Nevada Corporation d/b/a/ FAIRWAY RENT A CAR SYSTEM Plaintiffs, vs. EFRAIN LOZA; DOES I through X, inclusive; and CORPORATIONS I through V, inclusive Defendants.

15 CASE NO.: A622092  
16 DEPT. NO.: III  
17 Date: November 7, 2012  
18 Time: 10:00 a.m.

19 **DEFENDANT EFRAIN LOZA'S ARBITRATION BRIEF**

20 COMES NOW, Defendant Efrain Loza ("Loza") by and through his attorney of record, Krystal A. Kemp, Esq., of the law firm of PYATT SILVESTRI and hereby submits his arbitration brief.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I.**

23 **FACTS**

24 **A. UNDERLYING ACCIDENT**

25 On August 3, 2008, a motor vehicle accident ("MVA") occurred at approximately 6:00 p.m. between Gabriel A. Maalouf ("Maalouf") and Loza. See, Plaintiff's Exhibit "1," Traffic 26 Accident Report. Maalouf was heading northbound on Maryland Parkway, and Loza was 27 heading southbound on Maryland Parkway. Loza turned in front of Maalouf in an attempt to go 28

1 east on Reno. Maalouf was driving a two-door 1993 Mazda MX6. Loza was driving a four-door  
2 1987 Toyota Corolla.

3 Maalouf's car was apparently a rental car registered to Fairway Rent A Car System. It is  
4 believed that Maalouf rented the car out under his business - Mariar Corporation d/b/a/ Fairway  
5 Rent A Car.

6 The Mariar Corporation ("Mariar") car was partially repaired at the Auto Repair/Rent-a-  
7 car/Auto Sales shop - Fairway Rent A Car. *See, Exhibit "A," Recorded Statement of Gabriel*  
8 *Maalouf, p. 8.* No invoices for these repairs have been provided. Plaintiff's arbitration brief  
9 includes a copy of a property damage estimate from Collision Specialists of Las Vegas that is  
10 dated October 4, 2009 - over one year after the subject MVA on August 6, 2008. *See, Plaintiff's*  
11 *Exhibit "2."* There is no way to tell what damage if any is related to the subject MVA, especially  
12 in light of Maalouf's admission that the car was partially repaired at Fairway Rent A Car.  
13 Furthermore, there is no contemporaneous documentation showing what damage the Mariar car  
14 sustained as a result of the subject MVA. There is simply no reliable evidence of the value of  
15 any property damage to the Mariar car.

16 Maalouf reported no injuries at the scene of the MVA. *See, Plaintiff's Exhibit "I," p. 5.*  
17 Loza had automobile insurance through American Sterling Insurance Company ("American  
18 Sterling") for the time period of the subject incident.

19 **B. PROCEDURAL FACTS**

20 Maalouf filed his Complaint on August 2, 2010. Loza filed an Answer to the Complaint  
21 on May 10, 2011. American Sterling was ordered into liquidation, and a Notice of  
22 Conservatorship and Restraining Order was filed on October 19, 2011. Thereafter, Pyatt  
23 Silvestri was retained to protect the interests of Loza subject to the provisions of the Nevada  
24 Insurance Guaranty Association Act ("NIGA" Act), NRS Chapter 687A.

25 **C. MEDICAL TREATMENT**

26 In his September 8, 2009 statement, Maalouf alleged that he was "bruised up" as a result  
27 of the MVA. *See, Exhibit "A," pp. 3-4.* His knees and legs were bruised up. *Id.* He did not  
28 seek medical assistance for his bruising. *Id.* at 4-5.

1 The MVA occurred on August 3, 2008, but Plaintiff did not seek medical treatment for  
2 his allegedly related low back pain for nearly two years! Plaintiff obtained an MRI of his low  
3 back on July 9, 2010 due to back pain extending into the right lower extremity. See, Plaintiff's  
4 Exhibit "4." The MRI findings demonstrate degenerative changes for the most part. This is not  
5 unusual given Maalouf's age at the time - 72 years old.

6 After the MRI, Maalouf was seen by Dr. Seibel on August 30, 2010 for low back pain and  
7 right lower extremity pain. *See*, Plaintiff's Exhibit "4." While Dr. Seibel's report mentions that  
8 Maalouf self-reported he was involved in the August 3, 2008 MVA (over two-years prior), the  
9 report does not tie the low back pain to the subject MVA. Rather, Dr. Seibel's report merely  
10 states that Maalouf "is a 72-year old gentleman with approximately 2-year history of low back  
11 pain, periodic radiation to the right lower extremity."

12 Maalouf has presented no medical records that even suggest that his low back pain is  
13 caused by the subject MVA. The more likely explanation is that Maalouf is suffering from low  
14 back pain related to his advanced age.

II.

## LEGAL ARGUMENT

17 A. PLAINTIFFS ARE NOT ENTITLED TO RECOVER FROM DEFENDANT

18 Once American Sterling became insolvent the provisions of the NIGA Act - NRS Chapter  
19 687 A - were triggered. As such, the parties' rights and obligations to recover are subject to the  
20 NIGA Act. One such provision requires the Plaintiffs to exhaust their uninsured motorist  
21 coverage before they can recover any amount from Loza. Pertinent provisions of NRS  
22 §687A.100 provide:

**NRS 687A.100 Exhaustion of remedies of insured.**

1. Any person having a claim against his or her insurer, including, but not limited to, a claim for damages caused by an uninsured motorist, under any provision in the person's insurance policy, which is also a covered claim shall first exhaust his or her right under the policy. Any amount payable on a covered claim under this chapter must be reduced by the amount of the applicable limit under the claimant's insurance policy, regardless of whether the claimant recovers the full amount payable under that policy or exhausts only a lesser amount.

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1 Pursuant to NRS §687A.100, Plaintiffs are not entitled to recover any monies from Loza  
2 until they have exhausted their uninsured motorist coverage. Plaintiffs have a claim pending  
3 with their insurance carrier, Praetorian Ins. Co. *See*, Plaintiffs' Arbitration Brief, p.2. As such,  
4 Plaintiffs are not even entitled to any monies from Loza at this time.

5 Upon information and belief, Praetorian is aware of the subject arbitration and has chosen  
6 not to intervene or otherwise be present at the arbitration. As such, Loza should not be penalized  
7 for Praetorian's failure to participate in this matter.

8 **B. DEFENDANT IS CONTRACTUALLY ENTITLED TO A DEFENSE**

9 As noted by Plaintiffs, the Court previously denied Plaintiffs' Counter-Motion to Dismiss  
10 Appearance of Counsel based on Plaintiffs' argument that Loza did not retain prior defense  
11 counsel and the defense was a masquerade. Undersigned counsel was not involved in this case at  
12 that time. No Order appears to have been filed for that motion. *See*, attached Exhibit "B,"  
13 Register of Actions, including Minute Order for May 18, 2011. Rather, the Court's Minutes  
14 indicate that the Court accepted prior defense counsel's argument that he had a duty to represent  
15 the insured under the terms of the insurance contract. *Id*. There is no mention in the Minutes  
16 that the motion was denied without prejudice. *Id*.

17 As such, it would be wholly inappropriate to limit Loza's right to a defense at this time.  
18 In fact, it is unclear whether Plaintiffs have ever formally produced any documentation in support  
19 of their claim or answered any discovery propounded on behalf of Loza. Therefore, if any  
20 limitations should be placed on any party, than the Plaintiffs should be limited on what evidence  
21 they can present.

22 The idea that Loza would like a default to be entered against him is preposterous and  
23 simply without any support. Plaintiffs are not entitled to a default judgment in this matter.

24 **III.**

25 **CONCLUSION**

26 The purpose of this arbitration is to determine the damages suffered by Plaintiffs as a  
27 result of the subject MVA. Maalouf has provided no documentation to tie his alleged bodily  
28 injury to the subject MVA. Mariar Corporation has provided no documentation to support its

1 claim for lost profits, and has failed to provide any credible evidence of the value of the property  
2 damage to the Mariar car. Loza respectfully requests that the arbitrator award Plaintiffs no  
3 damages.

4 DATED this 6th day of November, 2012.

5 PYATT SILVESTRI  
6  
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10

*Krystal C. Kemp*  
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15 Efrain Loza

**CERTIFICATE OF SERVICE**

16 I hereby certify that service of the foregoing **DEFENDANT EFRAIN LOZA'S**  
17 **ARBITRATION BRIEF** was made this 6th day of November, 2012, via facsimile and electronic  
18 mail, addressed to the following:  
19

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*Krystal C. Kemp*  
An Employee of Pyatt Silvestri

## RECORDED STATEMENT OF GABRIEL MAALOUF

BW: And Gabriel I've got the recorder turned on now, so if you're ready, I will go ahead and start.

GM: I'm ready.

BW: Alright. This is Brian Wilmeth with Claims Professionals having a recorded conversation today with Gabriel Maalouf. It's in regards to claim number ASKC38707 for an incident report to have happened August 3, 2008. Today's date is Tuesday, September 8, 2009 and the current time is 9:24 a.m. central standard time. Gabriel, can I have you give me your full name and spell your last name for me please?

GM: My name is Gabriel, middle initial A, last name is Maalouf, M-a-a-l-o-u-f as in Frank.

BW: And Gabriel, you understand I'm recording this today?

GM: Yes I do.

BW: And I have your permission to do so?

GM: Yes.

BW: And you'll answer everything truthful and to the best of your knowledge?

GM: Absolutely.

BW: Okay I'm sorry, I have to have a yes or no answer.

GM: Yes.

BW: So you'll answer everything ...

GM: Yes.

BW: ... and to the best of your knowledge?

GM: Yes.

BW: All right. And Gabriel, what's your home address?

GM: My home address is 3516 East Edison, E-d-i-s-o-n Avenue, Las Vegas, Nevada, zip code is 89121.

BW: And your home phone number?

GM: The cell phone is 702 area code, 523-2634. I have a land phone at home.

BW: And your work number?

GM: 702 area code, 369-7216.

BW: Your date of birth?

GM: 7-29-38.

BW: And your driver's license, is that Nevada?

GM: Nevada driver's license.

BW: Okay and the license number?

GM: 0201093645.

BW: And the expiration date?

GM: July 29, 2013.

BW: Okay Gabriel I appreciate that. Now the incident we're talking about that you said happened on August 3, 2008, is that correct?

GM: That's correct.

BW: Okay and approximately what time did this happen?

GM: It was in the afternoon. It says on the report in the afternoon. I'm looking at the report. I have to see the report here. Anyway, it was in the afternoon right after I got off work on 21 East Sunset.

BW: Okay and so once again Gabriel, approximately what time would that have been?

GM: I'm looking at the report time would be 1759 on a Sunday. In the daytime.

BW: And what vehicle were you driving?

GM: A 1993 Mazda XS.

BW: Okay was it a 1992 Mazda?

GM: '93.

BW: Okay, what color was that vehicle?

GM: Black in color.

BW: And where was the damage from the accident on the vehicle?

GM: The whole front.

BW: Did you have any passengers with you at the time?

GM: No there was not.

BW: And were you wearing your seat belt?

GM: Yes I was.

BW: And were you injured in the accident?

GM: Yes.

BW: I'm sorry?

GM: Yes.

BW: Okay what injuries did you sustain in the accident Gabe?

GM: I was bruised up. I got bruised up.

BW: Okay, where were the bruises at?

GM: Knees and I think, knees and (inaudible) my legs.

BW: Okay and I apologize Gabriel, if you had your seat belt on, how did your knees and ankles and legs get bruised up?

GM: I don't know, just the impact. I guess the impact sometimes makes you hit the bottom of the dash.

BW: Okay so did the seat belt not hold you back or?

GM: It held me back, but you can't, it will not hold my legs back. It's always, you know it's the second accident my knees, my legs got hurt. It will not hold your knees, that's for damn sure.

BW: Sorry sir?

GM: It will not hold your knees.

BW: Okay did EMS arrive at the scene? Emergency Medical Services?

GM: No, no.

BW: Did you go to the emergency room that day?

GM: No.

BW: Did you go to the doctor for the bruising?

GM: No.

BW: And did the bruising go away?

GM: Yes.

BW: And what was the other vehicle that was involved Gabriel?

GM: It was a truck.

BW: Do you know the year, make and model on that vehicle?

GM: Well I mean it's in the report.

BW: I understand that Gabriel, like I said, we're taking your recorded ...

GM: Well I, I, you know I wasn't interested in the year and the police came in. It was a small pickup truck.

BW: Do you remember what color?

GM: No. I don't remember the color.

BW: And where was the damage on the pickup?

GM: I guess, he pulled in front of me, I must have hit the right side, passenger side.

BW: Did they have any passengers in their vehicle that you're aware of?

GM: No, he had no vehicle, no passengers in his vehicle.

BW: And to your knowledge, was the other driver injured in any way from the accident?

GM: No, he was not injured 'cuz he was sitting on the sidewalk waiting ...

BW: Where, where did this happen?

GM: I was northbound on South Maryland Parkway and he was southbound on, heading southbound on Maryland Parkway and he pulled in front of me going east on Reno and this is when I hit him. I remember the police man said if you were on the motorcycle you would have been dead. The way he pulled in front of me. He got arrested for DUI on the scene.

BW: Okay Gabriel, once the impact occurred, kind of walk me forward through what you did from there.

GM: Nothing, I just waited for the motorcycle policeman to come in, took the report, he arrested the suspect for DUI and said to me you're lucky that you're still alive. If you are on a motorcycle, you would have been dead.

BW: Yes sir, I ...

GM: DUI ...

BW: ... you already did say that already. Like I said what (inaudible) waiting in your vehicle, who was it that called the police?

GM: I did.

BW: And what jurisdiction was it that showed up?

GM: Clark County.

BW: So that was the Clark County Sheriff's Department or Las Vegas Metro PD?

GM: They don't have a Sheriff's Department anymore. They merged. It's Metro, Las Vegas Metro.

BW: So it was Las Vegas Metro that showed up?

GM: Yeah they showed up. Absolutely. But the accident happened in Las Vegas in Clark County.

BW: I understand that. I was asking who it was that showed up at the scene. So that was the Las Vegas Metro?

GM: Las Vegas Metropolitan Police showed up.

BW: Okay and you've already mentioned the DUI ticket and arrest on the other driver, do you know if any other tickets were issued?

GM: Not to the best of my knowledge. I have to refer to the report.

BW: Did you receive any tickets Gabe?

GM: I did not.

BW: No, where this happened, is that at a main intersection or?

GM: No it's not. It's a T intersection.

BW: Okay that intersection where this happened at, are there any kind of stop signs, stop lights?

GM: No.

BW: Okay and Gabriel you said you had a copy of the Las Vegas Metro PD report?

GM: Yes I do.

BW: Okay and would you be willing to fax me a copy of that?

GM: Absolutely.

BW: Okay and where this happened there on Maryland Parkway, do you remember how fast you were going at the time?

GM: Normal speed limit.

BW: And what's the normal speed limit?

GM: I think it was 35.

BW: Were there any witnesses that saw what happened Gabriel that you have their contact information?

GM: No.

BW: Okay and Gabriel was there anything you'd like to add at this point in regards to what happened?

GM: No.

BW: And Gabriel since this happened over a year ago, was your vehicle repaired or was it towed from the scene or what happened there?

GM: (Inaudible - phone cutting out).

BW: I'm sorry Gabriel, it's kind of cutting in and out there. One more time?

GM: It was (inaudible).

BW: I'm sorry?

GM: It was semi-repaired. Repaired partially.

BW: Okay and who is, was that through your insurance company or?

GM: We did it our self. We have an in-house, we are basically an auto repair shop. A rent a car company and an auto sales.

BW: Okay did you guys make any photos of the damages or anything prior to making these repairs?

GM: Yes. Yes we did. I've got them here by me.

BW: Did you get any estimates or anything from any outside sources?

GM: I was told we did get an estimate, I can't find the estimate, but I have to go back to this place that we probably got it from. I don't know. It was, this (inaudible). I got a lot of pictures that will really tell you what the damages are. I got one, two, three, four, five pictures.

BW: Okay and has the vehicle been in operation since this happened?

GM: Yes. It's in operation as we speak. Right now.

BW: So it's rented out to somebody?

GM: I'm sorry?

BW: So it's rented out to somebody?

GM: Yes. Since then, since the accident it was rented, yes.

BW: Okay and I apologize, I was talking about right now. You said it was currently being rented?

GM: No, it just got checked in about a week ago.

BW: Okay so what's the location the vehicle's currently at?

GM: At 3347 South Highland Drive, Suite 310, Las Vegas, Nevada, zip code is 89109.

BW: And Gabriel are you the contact person if I send an appraiser to look at the vehicle?

GM: Yes.

BW: What was that contact number at work? 702-369-7216?

GM: Or the cell phone, 702-523-2634.

BW: Okay well Gabriel we'll go ahead and close up the statement for right now then. Can I have you give me your full name and spell your last name one more time for me please?

GM: My full name is Gabriel A. Maalouf. My last name is spelled M as in mother, a-a-l-o-u-f as in Frank.

BW: And Gabe you understood I was recording this today?

GM: Yes I do.

BW: And I had your permission to do so?

GM: Yes you did.

BW: And you answered everything truthful and to the best of your knowledge?

GM: Yes I did.

BW: All right, I do appreciate that. This is Brian Wilmeth, the time is now 9:42 p.m. central standard time. This concludes our recorded conversation. I'm going to turn the recorder off.