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### Summary of Yellow Cab of Reno, Inc. v. Second Jud. Dist. Ct. of Nev., 127 Nev. Adv. Op. No. 52

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*Nevada Law Journal*

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*Yellow Cab of Reno, Inc. v. Second Jud. Dist. Ct. of Nev.*,  
127 Nev. Adv. Op. No. 52 (Aug. 4, 2011)<sup>1</sup>  
MISCELLANEOUS – Rehearing of Petition for Writ of Mandamus

**Summary**

A rehearing of a petition for a writ of mandamus challenging a district court order denying a motion for summary judgment in a personal injury action.

**Disposition/Outcome**

Adhering to its “general policy of not considering writ petitions challenging the denial of summary judgment,” the Supreme Court of Nevada denied the petition.<sup>2</sup> However, the Court used the petition for rehearing to address an important issue of law, finding that under NRS 0.050, to determine whether NRS 706.473 applies to a dispute, courts must use the population figure provided in the last preceding national decennial census.

**Factual and Procedural History**

On June 14, 2007, a taxicab owned by petitioner Yellow Cab of Reno, Inc. (“Yellow Cab”), and driven by Timothy Willis (“Willis”), allegedly struck real party in interest Kelly Encoe (“Encoe”) in Reno, Nevada.

In his district court complaint, Encoe argued Yellow Cab was liable for Encoe’s injuries under respondeat superior because Willis was Yellow Cab’s employee and Willis’s cab struck Encoe in the course and scope of Willis’s employment. Yellow Cab moved for summary judgment, arguing NRS 706.473 authorized it to lease the taxicab to Willis as an independent contractor, thereby precluding Yellow Cab from respondeat superior liability. More specifically, Yellow Cab argued that, because its lease with Willis “complied with the regulations authorized by NRS 706.475, the relationship must be construed, as a matter of law, as that of an independent contractor as mandated by NRS 706.473.”<sup>3</sup> Encoe opposed Yellow Cab’s motion, arguing the degree of control Yellow Cab exercised over Willis would demonstrate Willis was, in fact, Yellow Cab’s employee.

The district court denied Yellow Cab’s motion, determining the question of Willis’s status as an employee or independent contractor was a question of fact for the jury to resolve.<sup>4</sup> Subsequently, Yellow Cab petitioned the Supreme Court of Nevada for a writ of mandamus challenging the district court’s denial of summary judgment, arguing that, in rejecting Yellow Cab’s NRS 706.473 argument, the district court failed to follow directly applicable statutory and administrative authority. In its answer to Yellow Cab’s petition, Encoe argued NRS 706.473 did

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<sup>1</sup> By Brian L. Blaylock

<sup>2</sup> *Yellow Cab of Reno, Inc. v. Second Jud. Dist. Ct. of Nev.*, 127 Nev. Adv. Op. No. 52, at 3 (Aug. 4, 2011).

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.*

not apply “because, by its plain language, that statute only applies in counties with populations of less than 400,000 people.”<sup>5</sup> Certified population statistics by the Nevada State Demographer confirmed the population of Washoe County (in which Reno is located) exceeded that amount as of the date of the accident. The Court therefore denied Yellow Cab’s petition on November 10, 2010.

Yellow Cab then filed a petition for rehearing, arguing the Court overlooked NRS 0.050, which directs that population totals from the 2000 United States census be applied in this case, rather than any population table produced by Nevada’s government. Encoe’s answer asserted NRS 0.050 was immaterial because the district court properly denied summary judgment on various alternative arguments. The Court granted Yellow Cab’s rehearing petition, withdrawing the original disposition of Yellow Cab’s writ petition and reinstating the proceedings. The Court then “issue[d] this opinion to explain [its] reasoning for granting the rehearing and to fully set forth the important issues and applicable law presented by this case.”<sup>6</sup>

## **Discussion**

The Court first explained the legal misapprehension (its reliance on the State Demographer’s population statistics and failure to consider NRS 0.050) that warranted its rehearing of Yellow Cab’s petition.

Next, the Court reviewed the propriety of writ relief. Concluding “this case d[id] not necessitate a departure from [the Court’s] general policy of declining to exercise [its] discretion to consider petitions challenging the denial of a summary judgment motion,” the Court denied Yellow Cab’s petition for writ relief.<sup>7</sup>

Notwithstanding its denial of Yellow Cab’s petition, in the interest of judicial economy, the Court then discussed NRS 706.473’s proper applicability to Washoe County. The Court explained that under NRS 0.050, to determine whether NRS 706.473 applies to a dispute, courts must use the population figure provided in the last preceding national decennial census. In the 2000 national census, Washoe County had a population of 339,386. The Court therefore concluded NRS 706.473 applied to Washoe County at the time of the alleged incident and rejected Encoe’s assertion that NRS 706.473 did not apply to his dispute with Yellow Cab.

Finally, the Court criticized the district court’s failure to address “whether a statutorily recognized independent contractor relationship, established through compliance with NRS 706.473 and the regulations promulgated through compliance with NRS 706.475, would allow Yellow Cab to avoid liability under a respondeat superior analysis.”<sup>8</sup> Accordingly, the Court’s denial of Yellow Cab’s petition was “without prejudice to the district court re-evaluating the

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<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 7.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 14.

propriety of summary judgment regarding Yellow Cab's NRS 706.473-based independent contractor argument in light of the analysis set forth in this opinion.”<sup>9</sup>

### **Conclusion**

Under NRS 0.050, to determine whether NRS 706.473 applies to a dispute, courts must use the population figure provided in the last preceding national decennial census. Accordingly, NRS 706.473 applied to Washoe County at the time of the alleged incident and Encoe's assertion that NRS 706.473 was inapplicable to his dispute with Yellow Cab is rejected. Although the Court denied Yellow Cab's petition for writ relief, the district court may re-evaluate the propriety of summary judgment regarding Yellow Cab's NRS 706.473 argument in light of the Court's analysis in this opinion.

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<sup>9</sup> *Id.* at 15.