

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 \* \* \* \*

3 FIESTA PALMS, LLC, a Nevada Limited  
4 Liability Company d.b.a THE PALMS  
5 CASINO RESORT,

6 Appellant,

7 vs.

8 ENRIQUE RODRIGUEZ, an individual,

9 Respondent.


Electronically Filed  
Nov 22 2011 09:59 a.m.  
Tracie K. Lindeman

No. 5963 Clerk of Supreme Court

10 **NOTICE OF SUPPLEMENTAL EXHIBIT**  
11 **FOR EMERGENCY MOTION FILED ON NOVEMBER 21, 2011**

12 On November 21, 2011, appellant filed an emergency motion seeking relief from the  
13 district court's order requiring a \$5.5 million supersedeas bond. As indicated in the motion at  
14 page 5, footnote 2, at that time appellant did not yet have the transcript of the district court  
15 hearing on November 16, 2011. Appellant's counsel received the transcript today. Therefore,  
16 we are hereby supplementing the exhibits contained in the appendix submitted with the  
17 emergency motion. The hearing transcript is attached to this notice.

18 DATED: Nov. 22, 2011

19   
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**ATTACHED  
SUPPLEMENTAL EXHIBIT**

**ATTACHED  
SUPPLEMENTAL EXHIBIT**

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

ENRIQUE RODRIGUEZ, . CASE NO. A-531538  
 .  
Plaintiffs, . DEPT. NO. X  
 .  
vs. .  
 .  
FIESTA PALMS, LLC, . **TRANSCRIPT OF**  
 . **PROCEEDINGS**  
 .  
Defendant. .  
. . . . .

BEFORE THE HONORABLE JESSIE WALSH, DISTRICT COURT JUDGE

**PLAINTIFF'S RENEWED MOTION TO REQUIRE  
POSTING OF SUPERCEDES BOND**

TUESDAY, NOVEMBER 15, 2011

APPEARANCES:

FOR THE PLAINTIFF: STEVEN M. BAKER, ESQ.  
Benson, Bertoldo & Baker

FOR THE DEFENDANT: KEITH R. GILLETTE, ESQ.  
Archer Norris  
Via Telephone

COURT RECORDER:

VICTORIA BOYD  
District Court

TRANSCRIPTION BY:

VERBATIM DIGITAL REPORTING, LLC  
Englewood, CO 80110  
(303) 798-0890

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 15, 2011, 11:35 A.M.

2 (Court called to order)

3 THE COURT: So can we call up the Rodriguez v.  
4 Fiesta Palms matter?

5 THE CLERK: Case No. A-531538, Enrique Rodriguez v.  
6 Fiesta Palms, LLC.

7 MR. BAKER: Good morning, Your Honor. Steve Baker,  
8 4522, representing the plaintiff. And Keith is on the call  
9 [inaudible].

10 THE COURT: Oh, that's right. Give me a moment to  
11 make that phone call.

12 MR. BAKER: [Inaudible] Your Honor.

13 THE COURT: Is counsel going to be on the telephone  
14 not present?

15 MR. BAKER: I'm sorry?

16 THE COURT: Counsel for the defense will be on the  
17 phone and not present?

18 MR. BAKER: That's my understanding, Your Honor.

19 THE COURT: Okay.

20 MR. BAKER: Your Honor, I've been texting him, so I  
21 can text him that you're ready, as well.

22 THE COURT: Very well. I apologize for the delay.

23 MR. BAKER: No, it was interesting.

24 THE COURT: It is interesting.

25 (Pause in the proceedings)

1 (Court calls defense counsel)

2 THE COURT: Good morning, I'm looking for Mr.  
3 Gillette.

4 MR. GILLETTE: Good morning, Your Honor, on the  
5 phone.

6 THE COURT: Good morning. This is Jessie Walsh.  
7 Steve Baker is present in the courtroom. Mr. Baker, could you  
8 say something to see if Mr. Gillette can hear you?

9 MR. BAKER: Hey, Keith. Keith, can you hear me?

10 MR. GILLETTE: I know that you said something, Mr.  
11 Baker, I just can't hear it.

12 MR. BAKER: Your Honor, would you like me to make my  
13 opening closer to the phone?

14 THE COURT: Yes. Can you hear me, Mr. Gillette?

15 MR. GILLETTE: I can hear you fine, Your Honor.

16 THE COURT: All right.

17 MR. BAKER: Is this comfortable for the Court?

18 THE COURT: Sure.

19 MR. BAKER: Keith, is that better?

20 MR. GILLETTE: Thank you.

21 MR. BAKER: You're welcome.

22 THE COURT: Okay. This is Plaintiff's Renewed  
23 Motion to Require Posting of Supercedes Bond. Mr. Baker?

24 MR. BAKER: Your Honor, as you know, we brought a  
25 motion to originally post a supercedes bond, which occurred

1 after a mediation where the Palms' primary liability policy  
2 paid a million dollars of their primary on a nonrecourse basis  
3 pending remittitur.

4           The mediation agreement said that we will not  
5 execute pending remittitur. However, we brought the  
6 supercedes bond motion, because at the time of the mediation  
7 the Palms had forfeited on a \$380 million loan. Leonard Green  
8 & Associates came in and purchased their debt. Because the  
9 Palms had no collateral, they were unable to post a supercedes  
10 bond.

11           It was understood that Leonard Green, who is the  
12 principal, would foreclose on the collateral, or the Palms  
13 would be put into bankruptcy by taking and freezing their  
14 operating account and taking their assets at that particular  
15 time.

16           The million dollars was paid, as we said, on a  
17 nonrecourse basis, after which Leonard Green purchased the  
18 Palms' debt, making the Palms' a solvent agency at that time,  
19 which we brought the original motion for a supercedes bond in  
20 order to protect my client's interests on appeal. As the  
21 Court knew, he had a \$6,050,000 judgment entered against the  
22 Palms Hotel. The million dollars was paid. And we asked for  
23 collateral of the \$6 million, minus the \$1 million, in order  
24 to protect his interests on appeal.

25           We argued pursuant to McCullough [phonetic] and we

1 argued pursuant to Nelson [phonetic] how the Court should  
2 weigh the interests of the parties in determining whether a  
3 supercedes bond would be necessary. At that time, we pointed  
4 out to the Court, opposed to the arguments of Mr. Gillette,  
5 that we never contracted to waive supercedes. We only  
6 contracted to not seek collection pending remittitur.

7           The Court denied our motion at that time. We had  
8 expressed to the Court our real concerns for the financial  
9 condition of the Palms. We had expressed to the Court our  
10 real concerns about collection issues with respect to the  
11 Palms. But at that point in time there was, I don't really  
12 think, any indicia that the Palms was in immediate financial  
13 danger, or that the plaintiff's rights on appeal were in  
14 financial jeopardy because of any financial condition of the  
15 Palms.

16           After the hearing, but before an Order was entered  
17 on -- denying our Motion for Supercedes Bond, the Review  
18 Journal reported -- and it was reported across the financial  
19 boards, that the Gaming Board has recommended that 98 percent  
20 of the assets of the Palms be transferred from Fiesta Palms,  
21 LLC, which is the holding company for the Palms, to Leonard  
22 Green & Associates, meaning, only two percent of the assets of  
23 the Palms Hotel & Casino would be left in Fiesta Palms.

24           At this point in time, we realize that the Palms, in  
25 terms of us being able to collect against Fiesta Palms, LLC,

1 was in real financial jeopardy. That the ability of our  
2 client to have protection upon appeal was basically abrogated.  
3 That there was going to be only two percent of the value of  
4 the Palms left in Fiesta Palms, LLC.

5           So we renewed our motion prior to the order being  
6 filed denying the motion, and we set out a -- an analysis of  
7 the condition of Enrique Rodriguez, the plaintiff on appeal,  
8 subject to this very, very new and very, very important  
9 circumstance and occurrence, which is the Gaming Board  
10 recommending on the 17th, two days from now, that 98 percent  
11 of the interest of the hotel be transferred out of Fiesta  
12 Palms, LLC.

13           Now, in Nelson the Court held how this balancing is  
14 supposed to occur. And we understand at the time of the  
15 original hearing we couldn't put anything in front of you that  
16 says, imminent danger, imminent danger, danger Will Robinson  
17 kind of stuff.

18           But the test that was set forth in McCullough and  
19 Nelson was, one, the complexity of the collection process.  
20 Well, at this point time, if supercedes is not filed, we're  
21 going to have to bring Leonard Green in as the transferee in  
22 interest. They're going to argue that they're a transferee in  
23 interest, and whatever basis that that is, we're going to have  
24 to argue some sort of fraudulent conveyance.

25           And the collection process is much, much more



1 difficult than if there was a viable entity, which was the  
2 ongoing business of the Palms Hotel & Casino in Las Vegas.

3           The second is, the amount of time required to obtain  
4 a judgment after it's affirmed on appeal. And as we've  
5 discussed, at this point in time, if the assets are  
6 transferred out of Fiesta Palms, LLC, which only has two  
7 percent interest, there's no reason first not to disclose that  
8 entity [inaudible]. It's only a two percent holding company.

9           The second issue is, how will we ever figure out  
10 what the apportionate [sic] amount of what's left in that  
11 entity is as associated with what's transferred to Leonard  
12 Green & Associates or TPG Holding Corporation four  
13 years from now, or however long it's going to be before the  
14 Court makes the determination. The tracing will be almost  
15 impossible.

16           The third is the degree of confidence that the  
17 District Court has and the availability of funds to pay the  
18 judgment. Well, 98 percent of all of the interest in this  
19 company that originally couldn't afford to pay for a  
20 supercedes bond, is now being transferred with the approval of  
21 the Gaming Commission to a company that's not only outside  
22 this jurisdiction, but it's outside any of our collection  
23 efforts. There's a real, real panicky kind of sense that this  
24 judgment will become uncollectible.

25           Whether -- the fourth is whether the defendant's

1 ability to pay the judgment is so plain that the costs of a  
2 bond would be a waste of money. Again, it's going to be an  
3 empty company. Fiesta Palms, LLC will only hold two percent  
4 of the interest in a hotel which was losing money, and again,  
5 couldn't even pay for collateral on a supercedes bond after  
6 defaulting on almost \$400 million worth of debt.

7           And the fifth is, whether the defendant is in such a  
8 precarious financial situation that the requirement to post a  
9 bond would place other creditors of the defendant in an  
10 insecure position. Well, that's not the issue here. The  
11 issue here is that Leonard Green is the -- has purchased the  
12 debt of the Palms with respect to the creditors.

13           Where a judgment creditor, which is far different  
14 than a creditor even on the revolving credit line, which was  
15 the \$400 million, or any other subsidiary or ancillary debt  
16 which is incorporated into that lump sum amount that Leonard  
17 Green purchased.

18           Leonard Green, however, would not be an entity,  
19 because it was not an in rem action. It was an action with  
20 respect to negligence on the premises. We have no claim  
21 against the premises itself. So we'll be the judgment  
22 creditor that's left out in the breeze without any ability to  
23 collect.

24           Now, the ability to post a supercedes bond is an  
25 equitable consideration for the Court. And I believe I've

1 just shown you that on all five points of the test set forth  
2 in MuCullough and Nelson, Enrique Rodriguez is in extreme  
3 jeopardy of not being able to collect upon appeal and he'll be  
4 left out in the breeze with nothing and no ability.

5           To allow for supercedes bond at this point in time  
6 is not only fair with respect to the parties, but the Court  
7 should consider the fact that the amount that was paid, that  
8 million dollars, to stop our collection efforts, was paid from  
9 an insurance policy which paid the original one million  
10 dollars on a nonrecourse basis.

11           The Palm has come nothing out of their pocket. And  
12 it's a complete windfall for them to be able to waive the  
13 supercedes, because their primary insurance only paid that  
14 million dollars, because the primary insurance failed to  
15 notice the excess insurance, and there's a declaratory relief  
16 action on file as to whether or not Enrique Rodriguez has any  
17 excess insurance.

18           So when the court considers there's no excess  
19 insurance, and that the primary, we're only buying their  
20 piece, they were mitigating their damages by paying this one  
21 million dollars up-front so that we didn't collect against, or  
22 attempt to collect against the general account or the casino  
23 cage.

24           So when the Court looks at it, all five tests in  
25 Nelson and MuCullough say supercedes is very much required and

1 necessary in this case. If it's not granted, Enrique  
2 Rodriguez is left out in the cold. If it is granted, there's  
3 no prejudice to the casino, because the casino didn't pay  
4 anything with respect to stopping our collection efforts  
5 pending remittitur. They -- the primary insurance again, only  
6 paid in order to mitigate their damages with respect to  
7 failing to put the excess on notice of the potential of an  
8 excess judgment.

9           Otherwise, if the Court looks specifically to the  
10 agreement at mediation, nowhere in that agreement does it say  
11 it's in lieu of supercedes. And supercedes has two reasons  
12 for it. One is to stop the collection action, which was done.

13           But the second, and probably the most important  
14 reason once collection actions are stopped, is to protect the  
15 interest on the plaintiff of appeal, so that two-and-a-half  
16 years from now when your verdict is upheld by the Supreme  
17 Court, Enrique Rodriguez isn't standing looking at an empty  
18 company.

19           So our suggestion to the Court is, there's some  
20 credit should be given for the million dollars. That's just  
21 reasonable. A million dollars was paid. But that leaves  
22 Enrique Rodriguez \$5 million dollars short of having security  
23 on appeal.

24           And so our request to the Court would be to have a  
25 bond posted, at least in the amount of \$5 million dollars.

1 That doesn't even contemplate post-judgment interest on \$6  
2 million dollars of two years, and give him some protection in  
3 the event that this remaining measly two percent is  
4 transferred out of Fiesta Palms, LLC.

5 Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Baker. Mr. Gillette?

7 MR. GILLETTE: Your Honor, as a threshold matter, I  
8 note that the plaintiff's counsel, Mr. Baker, asserts a number  
9 of issue as evidence that have absolutely no supported basis  
10 for the purposes of this hearing. There's a great deal of  
11 discussion about the implications and the inference of a  
12 potential change in the ownership interest of the property  
13 that -- and the interests of the Palms.

14 But there's no evidence in front of the Court that  
15 substantially supports the positions that plaintiff is arguing  
16 here. I'm not saying that he's incorrect. What I'm saying  
17 is, I don't know that, and there's no evidentiary basis before  
18 this Court to determine whether those asserted facts are, in  
19 fact, true.

20 It goes to the issue that we have with this motion  
21 as a -- as a threshold issue, which is, it's procedurally  
22 defective. The plaintiff here is seeking this -- the Court to  
23 reconsider the same facts, under the same circumstances, and  
24 in light of the same law. And in light of that, Your Honor, I  
25 think that the plaintiff's request is inappropriate and

1 procedurally defective.

2           Now, with respect to the issues that Mr. Baker has  
3 raised and the various issues that support the granting of a  
4 bond in these circumstances, these are all situations that are  
5 arguably, and from what I can see, facts that plaintiff knew  
6 well at the time that he agreed to compromise the positions  
7 that everyone had at the mediation settlement on May 16th. He  
8 was keenly aware that there was a great deal of uncertainty  
9 surrounding the Palms. He mentions that in his moving papers  
10 back at the time of the filing of this original motion.

11           There's -- simply stated, Your Honor, the concept of  
12 all of these various factors giving rise to the necessity of a  
13 bond were known and disclosed to plaintiff, and were all part  
14 of his decisions in rendering -- or coming to the conclusion  
15 that I need to -- I need to come to some sort of agreement  
16 with the opposing side, and I will take the million dollars,  
17 notwithstanding the fact that it may have come from an  
18 insurance company. This is bargain for consideration.

19           And what the Palms and is -- is something that has  
20 been previously briefed with this Court, and previously  
21 decided by this Court, the purpose of the payment, Your Honor,  
22 was to allow the Palms to have peace, and to protect its  
23 assets from an attempt by Mr. Rodriguez to collect on his  
24 judgment.

25           That -- the purpose of buying peace has value to the

1 Palms. And to suggest that the Palms doesn't have a dog in  
2 the fight, so to speak, is really a -- I think a stretch,  
3 because the cost and expense of paying for a bond is going to  
4 come out of the Palms' pocket. And we don't know how much  
5 that is, but it's certainly a seven figure number on a \$5  
6 million dollar deficiency, as plaintiff suggests.

7           But, Your Honor, the fundamental point is that we  
8 have a mediation settlement, and that mediated settlement  
9 implicitly addresses the plaintiff's request for a bond now.  
10 And he's asserting no new facts, no new law, no new  
11 circumstance that gives rise to this Court to consider it,  
12 even if for a moment we set aside the fundamental procedural  
13 deficiencies that come with this renewed motion.

14           And finally, Your Honor, I would suggest that this  
15 motion is frivolous. There is nothing in plaintiff's moving  
16 papers, there is no evidence before this Court that  
17 substantiates the plaintiff's decision to refile this motion.

18           And just for what it's worth, that's the basis of  
19 our sanctions request on this. Now, the Court can do whatever  
20 it likes with this, but I just want to point that out.

21           THE COURT: Very well. I didn't know if you were  
22 finished, Mr. Gillette.

23           MR. GILLETTE: I apologize. Yeah, I think I've  
24 covered the points.

25           THE COURT: Very well. Mr. Baker?

1 MR. BAKER: Your Honor, with respect to there not  
2 being any new information, the mediation was in May. The  
3 article that we provided to you that the Gaming Board two days  
4 from now is going to suggest that the assets be transferred  
5 out of the Fiesta Palms, LLC, was published in November.  
6 Okay, so that's six months after the time.

7 At the time of the mediation, all that was known is  
8 that they didn't have the money to post supercedes and that  
9 they were looking at a potential bankruptcy with a potential  
10 motion to exclude excess insurance at that time.

11 Now we know that their financial position with  
12 respect to Leonard Green now owning basically the company is  
13 secure, except for visa vie our client, because he's a  
14 judgment creditor, not a creditor for any issue that Leonard  
15 Green purchased the debt.

16 The November article saying that they're going to  
17 purchase all of the -- or transfer all of the assets of the  
18 Palms is new information. With respect to it being  
19 jurisdictionally deficient we did a Motion to Renew. And  
20 Keith cites EDCR 13.7, but EDCR 13.7 -- it's actually DCR 13.7  
21 -- says that a Motion to Renew shall not be filed if the  
22 matter isn't completely resolved and adjudicated.

23 Well, no order was filed. And this Court is  
24 extremely aware of the fact that nothing that the Court says  
25 is res judicata or --



1 MR. GILLETTE: May I -- may I interrupt on that  
2 point briefly, Your Honor?

3 THE COURT: Well, I wish you wouldn't, because Mr.  
4 Baker was --

5 MR. GILLETTE: Okay.

6 THE COURT: -- gracious enough not to interrupt you.  
7 But I'll allow you an opportunity to respond later.

8 MR. BAKER: And if you look, their order was filed  
9 on the 9th. Our motion was filed on the 8th -- our motion was  
10 filed on the 8th. And then I called Keith and actually told  
11 him that we were filing this motion so that he wouldn't get  
12 caught by surprise, and at that point in time he filed the  
13 order and didn't notice the entry of the order until the 9th.

14 And the Court can judicial notice that  
15 electronically filed our motion was on the 8th, okay, which  
16 was before the order granting, well, their opposition to our  
17 motion for supercedes bond.

18 Now, when they're talking about the construction of  
19 the mediation agreement, and he said it himself, it's a  
20 contractual construction. We've quoted to you the McCall  
21 [sic] case. And the McCall [sic] case says that the Court  
22 will not arbitrarily force upon parties contractual  
23 obligations, terms of conditions which they have not  
24 voluntarily assumed.

25 And the Court also knows that you construe a

1 contract on its face, and that parole evidence will stop any  
2 other type of evidence from coming in to talk about what the  
3 intent of that particular contract was.

4 Well, in nowhere in the mediation agreement does it  
5 say that we waive security on appeal. The only protection  
6 that was afforded, was afford to the Palms with respect to the  
7 collection. And at this point in time, we know that the  
8 Gaming Board is approving the transfer of 98 percent of the  
9 assets.

10 So what does it do constructively? I mean, what's  
11 the effect of it? The effect of it is Enrique Rodriguez is  
12 left \$5 million dollars shy on the judgment that this Court  
13 entered because of his damages. And it's the Court's duty to  
14 do a balancing of the interest of the parties under Nelson and  
15 MuCullough cases.

16 And we've gone through the five-point test. I mean,  
17 it's completely clear that that's an upholdable decision,  
18 because you're looking at the comparative interests of the  
19 parties. Palms Hotel has come nothing out of pocket at this  
20 point in time. But Palms Hotel we know is being transferred,  
21 and that transfer in interest jeopardizes the plaintiff.

22 And it's this Court's -- I don't want to say  
23 obligation -- but it's very, very important that it also looks  
24 to the interests of the plaintiff to protect the plaintiff's  
25 interest on appeal. And right now, it's not. And we're not

1 asking for the full amount. We recognize that there should be  
2 an offset. But he should have protection for this judgment.

3           It was a good judgment. It was a clean trial. It  
4 was complete judicial fairness. And to have him robbed of  
5 that fairness because of a transfer in interest after the  
6 company that couldn't post a supercedes bond got a temporary  
7 pass is just unfair, Your Honor, and it's an equitable  
8 decision.

9           THE COURT: Mr. Gillette, was there something you  
10 wanted to respond to?

11           MR. GILLETTE: Yeah, Your Honor. And I apologize  
12 for interrupting.

13           MR. BAKER: It's okay, Keith.

14           MR. GILLETTE: I guess I've gotten a little excited  
15 over this.

16           THE COURT: I understand.

17           MR. GILLETTE: I find it a little disingenuous that  
18 plaintiff ignores my correspondence to him on perfecting forms  
19 of orders to be submitted to the Court, and then renews the  
20 motion and asserts the fact that we didn't file the order, or  
21 a Notice of Entry of Order on the underlying motion. I think  
22 that's a bit disingenuous, and I just feel inclined to point  
23 that out to the Court.

24           The second is that, while Mr. Baker focuses on what  
25 the Court has the power to do within the interest of Mr.

1 Rodriguez, Mr. Rodriguez has been capably represented  
2 throughout this litigation. And through the advice of his  
3 counsel, entered into a contract which is a stipulated  
4 settlement that surrounds not only Mr. Rodriguez's short term  
5 recovery on a million dollars, but it also addresses Mr.  
6 Rodriguez's rights, and his remedies that relate to an  
7 unsecured portion of whatever judgment this Court is awarded.

8           And Mr. Baker wants us now to play Monday morning  
9 quarterback, and ignore the implications of an agreement that  
10 was negotiated at arm's length, through Mr. Rodriguez's own  
11 capable attorneys, and several of whom were present in the  
12 mediation session, giving him advice, and now we've got a  
13 little bit of buyer's remorse going.

14           And I don't think that it's appropriate for Mr.  
15 Rodriguez to now seek to implicitly unwind the mediation  
16 settlement so that he can get the benefit of each and every  
17 twist and turn in this case. It's fundamentally unfair, Your  
18 Honor.

19           And with respect to the notion of rights and  
20 interests of parties, the Palms has throughout this  
21 litigation, used whatever assets, whatever -- whatever tools  
22 are at its disposal to address this -- this underlying  
23 lawsuit.

24           And I would suggest, Your Honor, for the purposes of  
25 the Court's consideration, whether the Palms themselves wrote

1 a check for a million dollars, or insurers of the Palms paid  
2 some money in settlement is completely immaterial to the  
3 consideration here.

4 Because what the plaintiff is ultimately asking the  
5 Court to do, is disregard whatever benefit the Palms received  
6 under this mediation settlement. Instead, force down their  
7 throats a million plus dollar policy for this bond, and the  
8 costs associated with it. It's fundamentally unfair, Your  
9 Honor. And I would ask that this motion be denied.

10 THE COURT: Mr. Baker?

11 MR. BAKER: And do think that I probably get the  
12 last word, Your Honor?

13 THE COURT: You do.

14 MR. BAKER: Your Honor, if the mediation agreement  
15 said that we waived supercedes, and that we waived any  
16 security that he had on [inaudible] regardless of the  
17 financial condition of the Palms, I understand that. But  
18 that's not what was bargained.

19 What was bargained is that we wouldn't collect. And  
20 there's two parts of posting a supercedes bond as we've talked  
21 about. One, is it inures to the benefit of the defendant,  
22 that we won't collect on them pending appeal. Well, they  
23 already have that benefit.

24 But the second benefit that wasn't mentioned isn't  
25 implied, and is nowhere in the contract, is that Enrique

1 Rodriguez is entitled to security pending the appeal. It's a  
2 two-part issue. They've already got the first part. They  
3 can't have everything if they didn't bargain for everything  
4 and it wasn't expressly set out that that's what they  
5 bargained for.

6           So we gave them what they wanted. We didn't  
7 collect. And that host of [inaudible] that comes up with  
8 collection. But in no way should that be construed by this  
9 Court outside the four corners of the contract to infer that  
10 it's okay with us if they transfer all the interests out of  
11 the holding corporation to Leonard Green, the credit holder,  
12 and leave Enrique flapping in the wind at the time of this  
13 appeal.

14           And fairness requires that he provided the security.  
15 They've already gotten more than they deserved in the fact  
16 that collection actions were stopped. They can't have the  
17 whole bag and say, okay, collection actions are stopped and we  
18 can screw him over when we transfer everything out of the  
19 holding company. That's what's not fair.

20           And, Your Honor, for that purpose we'd ask that the  
21 reasonable bond, affording them the offset of the million  
22 dollars already paid, even though it was paid by the carrier,  
23 be ordered by this Court.

24           MR. GILLETTE: Your Honor?

25           THE COURT: Yes?

1 MR. BAKER: Your Honor, I think I get the last word  
2 on the motion.

3 THE COURT: You do. You do, Mr. Baker.

4 MR. GILLETTE: He does, and I'm not trying to deny  
5 him that. I just want to make a point, and that is, if you  
6 look at the procedural developments that underlie the  
7 mediation, it underlies a stipulation --

8 MR. BAKER: Your Honor, he is getting the last word.

9 MR. GILLETTE: -- that involve plaintiff's  
10 [inaudible] on --

11 THE COURT: Mr. Gillette? Mr. Gillette, I apologize  
12 for interrupting you, but I think you're covering ground you  
13 already covered now.

14 MR. GILLETTE: No, the point is, is he is talking  
15 about implicit points that aren't raised within the -- within  
16 the mediated settlement. I would just point -- simply point  
17 out to the Court that at the time the mediation settlement was  
18 reached, plaintiff knew full well that the Palms was not in a  
19 position to post the bond. And that was the consideration  
20 that was part of the exchange.

21 THE COURT: Perhaps. But the mediation agreement,  
22 as I understand it, was really actually fairly concise in the  
23 way that it was drafted and the topics that it covered. And  
24 it did not address the issue at all of supercedes bond, as I  
25 recollect.

1 MR. BAKER: Correct, Your Honor.

2 THE COURT: I think that --

3 MR. GILLETTE: Well, Your Honor --

4 THE COURT: -- it's the Court's view that there has  
5 been a dramatic change in circumstances since May of last year  
6 when the court first heard this issue raised. And I think  
7 that the plaintiff counsel has made compelling arguments with  
8 respect to all five factors enumerated in both the Nelson  
9 case, and the MuCullough case.

10 I think that the only way to protect plaintiff's  
11 ability to collect the judgment would be to grant the relief  
12 requested by plaintiff counsel. The motion is granted.

13 Frankly, I think that the request is a reasonable  
14 one, because I think Mr. Baker actually would be entitled to  
15 request a much higher bond than the amount of the \$5 million,  
16 which he's seeking. So I think that's a reasonable request,  
17 Mr. Baker.

18 MR. BAKER: Well, I would -- what I was speaking  
19 about, Your Honor, just to make the record clear, is I believe  
20 on the initial amount they should get an offset for a million  
21 dollars, so it's \$5 million dollars consideration of the  
22 supercedes bond on appeal.

23 But whatever consideration the Court wants to make  
24 for a post-judgment interest, which is completely within the  
25 Court's discretion, I haven't calculated the post-judgment



1 interest. I think it's something like \$2,000 a day, is what's  
2 -- is that about right, Keith? It's -- we have it somewhere.

3 And I would request a higher amount than the \$5  
4 million dollars, but in understanding that an offset is  
5 provided for the million dollars.

6 THE COURT: Well, the total --

7 MR. GILLETTE: Your Honor?

8 THE COURT: -- the total amount of the verdict was  
9 \$6,051,589.38.

10 MR. BAKER: Correct. And that -- minus one million,  
11 leave the \$5,051,000, which doesn't contemplate providing him  
12 security with respect to his post-judgment interest.

13 THE COURT: That's true.

14 MR. BAKER: And so I would think something around  
15 six-and-a-half, or \$7 million would be a reasonable bond,  
16 given the \$1 million offset that they are entitled to.

17 THE COURT: Mr. Gillette?

18 MR. GILLETTE: Yes, Your Honor?

19 THE COURT: Did you want to respond to that?

20 MR. GILLETTE: Well, Your Honor, we don't have a  
21 judgment in place right now, so the notion of any additional  
22 amounts incurring interest at \$2,000 a day I think is -- is  
23 procedurally defective.

24 MR. BAKER: Well, in fact, Your Honor, we do --

25 MR. GILLETTE: And I think that that's a significant

1 point to consider. We have a motion that was granted to amend  
2 the judgment, but that -- and that motion was granted. We  
3 don't have an amended judgment on file that would -- that --  
4 that would be the basis of an award at this point in time, on  
5 that -- on that interest.

6 MR. BAKER: And, Your Honor, with -- some of what he  
7 says is accurate. We have not submitted an amended judgment  
8 because we were waiting for the Court's order with respect to  
9 the motion consideration -- for reconsideration on their  
10 motion to retax costs, which was then granted.

11 So, in fact, although a specific number hasn't been  
12 set out on the judgment, the Court is aware of what post-  
13 judgment interest is. The Court is aware of the \$5 million  
14 remaining on the judgment that is in place which, in fact, is  
15 still a valid judgment until an amended judgment is filed and  
16 a notice of appeal has been filed in the case, as well.

17 So, I'd ask the Court to use its equitable powers  
18 and just assert a reasonable number, which is within the realm  
19 of what the Supreme Court will recognize as reasonable and  
20 provide Enrique Rodriguez with complete security pending  
21 appeal.

22 And we wouldn't be able to tell you what the exact  
23 amount is anyway, because we don't know when the appeal is  
24 going to be heard.

25 THE COURT: Defendants are ordered to post a

1 supercedes bond in the amount of \$5,500,000.

2 MR. BAKER: Thank you, Your Honor. I'll prepare an  
3 order.

4 THE COURT: Thank you.

5 MR. GILLETTE: Your Honor, just -- may I have some  
6 clarification? This is new -- this is new ground for me. So  
7 when you instruct the Palms to issue a \$5,500,000 bond, what  
8 are the conditions associated with this order?

9 THE COURT: I'm not sure I understand the question,  
10 Mr. Gillette?

11 MR. GILLETTE: Who has the obligation of posting it,  
12 the Palms?

13 THE COURT: The defendant in this action.

14 MR. GILLETTE: When -- what is the time period for  
15 the posting of the bond, Your Honor?

16 MR. BAKER: Your Honor, to understand, the Board is  
17 recommending the transfer interest in two days.

18 MR. GILLETTE: I'm sorry, I didn't hear what you  
19 said, Mr. Baker.

20 MR. BAKER: I'm sorry, Keith. I said, the hearing,  
21 or the recommendation is going forward on the 17th.

22 MR. GILLETTE: You know, Your Honor, I am -- I am  
23 certainly doing whatever I will do to comply with your orders  
24 on this, but I'm not in a position to say that the Palms can  
25 do this in two days, or can't do this in any number of days,

1 or what have you. This is a -- you know, this is a new  
2 development for me. And I am one of a number of attorneys  
3 that are representing the Palms' interest in this case.

4 And so I will certainly follow whatever order or  
5 instruction that you provide me. At this point in time, I'm  
6 not sure -- that's why I was, frankly, just looking for a  
7 little guidance from the Court on what -- what the Court  
8 specifically wants and how they want it.

9 THE COURT: What do you think is an appropriate time  
10 frame, Mr. Gillette?

11 MR. GILLETTE: I can't speak to the -- this is not  
12 something that I've even spoken to my client about, Your  
13 Honor. I don't even know if they have the financial  
14 wherewithal to do this. I mean, these are issues -- to be  
15 very candid, Your Honor, these are issues that go far beyond  
16 what I know of the Palms, and what they're able to do.

17 And this goes to also, to the underlying issues that  
18 have been presented by Mr. Baker. I'm not saying anything  
19 that he said was either true or false. I just don't know.  
20 And so the whole issue of demanding that the Palm -- or excuse  
21 me, ordering that the Palms assert a bond in this amount is --  
22 I don't know what to do.

23 I mean, I will do -- I will certainly, you know, I  
24 will certainly communicate with my client exactly what I am  
25 ordered -- what you have ordered of my client. But I just

1 don't know what parameters or time frames that are appropriate  
2 or what -- what have you.

3 THE COURT: Two days isn't very much time, Mr.  
4 Baker.

5 MR. BAKER: I understand.

6 THE COURT: Within 10 days, Mr. Gillette.  
7 Please prepare an order, Mr. Baker.

8 MR. BAKER: Thank you, Your Honor.

9 MR. GILLETTE: From -- within 10 days of today's  
10 date?

11 THE COURT: Yes, sir.

12 MR. GILLETTE: Okay. So just --

13 THE COURT: Within 10 days of the date that the  
14 order is presented to the Court.

15 MR. BAKER: And, Keith, I'll let you know the day I  
16 present the Order to the Court.

17 THE COURT: The date that the order is signed by the  
18 Court.

19 MR. BAKER: Signed? Okay.

20 MR. GILLETTE: Can I look -- would you be kind  
21 enough to send me a draft of that?

22 MR. BAKER: Sure. And it's simply going to be, the  
23 motion is granted, and it's ordered that they post supercedes  
24 in the amount of 5.5.

25 MR. GILLETTE: Thank you.

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THE COURT: Okay. Thank you.

MR. GILLETTE: Bye bye.

MR. BAKER: Thank you, Your Honor.

THE COURT: You're welcome.

MR. BAKER: Have a good day, Your Honor.

(Proceeding concluded at 12:08 p.m.)

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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JULIE LORD, TRANSCRIBER

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date Appellant's **Notice of Supplemental Exhibit for Emergency Motion Filed on November 21, 2011** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

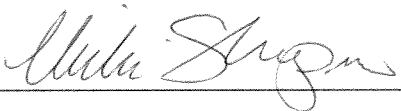
Steven Baker  
John Naylor  
Jeffery Bendavid  
Marsha Stephenson

I further certify that on this date I served copies of this **Notice** by facsimile and by U.S. mail to:

**Fax No. 925-930-6620**  
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DATED this 22 day of Nov., 2011.

  
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