McDONALD · CARANO · WILSON LLP
2300 WEST SAHARA AVENUE · SUITE 1200 · LAS VEGAS, NEVADA
PHONE (702)873-4100 · FAX (702) 873-9966

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF DISH NETWORK DERIVIATIVE LITIGATION.	SUPREME COURT No. 69012
JACKSONVILLE POLICE AND FIRE PENSION FUND, Appellant, vs. GEORGE R. BROKAW; CHARLES M. LILLIS; TOM A. ORTOLF; CHARLES W. ERGEN; CANTEY M. ERGEN; JAMES DEFRANCO; DAVID K. MOSKOWITZ; CARL E. VOGEL; THOMAS A. CULLEN; KYLE J. KISER; AND R. STANTON DODGE, Respondents.	SUPREME COURT No. 69729 **MOTION TO CONSOLIDATE APPEALS AND MOTION TO SET LENGTH OF CONSOLIDATED BRIEF**

Electronically Filed
Feb 18 2016 08:45 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant Jacksonville Police and Fire Pension Fund ("Appellant"), by and through its attorneys of record, Bernstein Litowitz Berger & Grossmann LLP; Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson; and McDonald Carano Wilson LLP, hereby moves this Court to consolidate the appeals in Supreme Court Docket Nos. 69012 and 69729, to be governed by the briefing schedule already established in Docket No. 69012 and to set the length of the consolidated brief. This Motion is brought pursuant to NRAP 3(b)(2) and NRAP 27.

I. PROCEDURAL HISTORY

A. Supreme Court Docket No. 69012

Supreme Court Docket No. 69012 is an appeal from an order of the Honorable Elizabeth Gonzalez, Department XI, Eighth Judicial District Court, Clark County (the "District Court"), deferring to the judgment of the Special Litigation Committee ("SLC") of DISH Network Corporation ("DISH") and dismissing Appellant's derivative claims against DISH's controlling stockholder Charles W. Ergen ("Ergen") along with certain other officers and directors of DISH. Specifically, Appellant, a shareholder of Nominal Defendant DISH, raised five derivative claims on behalf of

DISH: (1) a claim against Ergen for breach of the fiduciary duty of loyalty in connection with DISH's failed bid for assets of the bankrupt spectrum company LightSquared; (2) a claim against Ergen for breach of the fiduciary duty of loyalty in connection with Ergen's purchases of LightSquared debt; (3) a claim against members of DISH's board of directors for breach of the fiduciary duty of loyalty; (4) a claim against certain DISH executive officers for breach of the fiduciary duty of loyalty; and (5) a claim against Ergen for unjust enrichment. Appellant alleged that, as a result of Ergen and the other Defendants' misconduct, Ergen obtained approximately $800 million in personal profits on purchases of LightSquared debt that rightfully belong to DISH, and DISH lost the opportunity to purchase LightSquared assets worth billions of dollars at a favorable price due to Ergen's interference with DISH's bid to protect his personal LightSquared investment.

The night before the District Court was set to hear argument on Appellant's Motion for Expedited Discovery in Connection With Its Motion for Preliminary Injunction, the board formed the SLC, which opposed Appellant's claims and ultimately issued a report recommending that the board not pursue Appellant's claims. The SLC filed a motion to defer to its determination that Appellant's claims should be dismissed. Before and following discovery into the SLC's independence and the thoroughness of its investigation, Appellant presented evidence showing the existence of disputed material facts and precluding resolution as a matter of law, because the evidence could reasonably show that the SLC members lack independence, and did not investigate the claims with sufficient good faith to merit judicial deference and termination of Appellant's claims.

In an oral ruling on July 16, 2015, followed by the entry of the SLC's proposed findings of fact and conclusions of law on September 18, 2015, the District Court granted the SLC's motion requesting that the District Court defer to the SLC and its recommendation to dismiss Appellant's action, and denied Respondents' pending motions to dismiss as moot.

McDONALD · CARANO · WILSON LLP
2300 WEST SAHARA AVENUE · SUITE 1200 · LAS VEGAS, NEVADA
PHONE (702)873-4100 · FAX (702) 873-9966

On October 12, 2015, Appellant timely filed its notice of appeal of the District Court's order deferring to the SLC and dismissing the Action. The parties were referred to the settlement program, which did not result in a settlement. On December 9, 2015, this Court entered an order removing Docket No. 69012 from the settlement program and reinstating briefing. Accordingly, Appellant's opening appeal brief in Docket No. 69012 is due March 8, 2016, with Respondents' brief in response due April 7, 2016, and Appellant's reply due May 9, 2016.

B. Supreme Court Docket No. 69729

Supreme Court Docket No. 69729 is an appeal from an order of the District Court granting in part and denying in part Appellant's Motion to Retax. On October 19, 2015, the SLC filed a Memorandum of Costs, claiming taxable costs under NRS 18.005. Appellant filed a Motion to Retax, arguing that neither NRS 18.005 nor Nevada Supreme Court precedent established in *Bergmann v. Boyce*, 109 Nev. 670 (1993), and *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348 (1998), allow for taxation of certain claimed expenses, including over $150,000 in electronic discovery costs. After briefing, the District Court on January 5, 2016 granted in part and denied in part Appellant's Motion to Retax, including denying the Motion to Retax the SLC's significant electronic discovery costs that Appellant argued are not taxable under the statute.

Appellant timely filed its notice of appeal of the District Court's order granting in part and denying in part Appellant's Motion to Retax on February 2, 2016. On February 10, 2016, the Court notified the parties that it has been determined that the appeal of Docket No. 69729 will not be assigned to the settlement program.

II. LEGAL ANALYSIS

Pursuant to NRAP 3(b)(2), the Court may consolidate separate appeals. Here, the two appeals involve the same parties and the same District Court action. Docket No. 69012 is the substantive appeal from the judgment and order of dismissal entered by the District Court, and Docket No. 69729 is an appeal from the District Court's

McDONALD · CARANO · WILSON LLP
2300 WEST SAHARA AVENUE · SUITE 1200 · LAS VEGAS, NEVADA
PHONE (702)873-4100 · FAX (702) 873-9966

order concerning the SLC's Memorandum of Costs and Appellant's Motion to Retax entered by the District Court after the District Court's dismissal of the Action. In other words, the two appeals are interrelated, and should therefore be briefed and decided together. Unless the appeals are consolidated, the parties will file multiple briefs in the two appeals, thereby consuming significantly more resources of the parties and the Court. Consolidation, including combined briefing, will avoid duplication. Consolidation is therefore warranted in the interests of judicial efficiency and economy.[1]

Additionally, Appellant requests that this Court determine now the length of the consolidated brief. While NRAP 7(a)(i) and (ii) would allow Appellant 30 pages or 14,000 words in each docket, Appellant is requesting that it be permitted to file a consolidated brief of 45 pages or 21,000 words. Appellant believes that this will be sufficient to address all issues presented in both Docket Nos. 69012 and 69729.

III. CONCLUSION

As discussed above, Appellant requests that the Court consolidate Docket No. 69012 with Docket No. 69729, with briefing to proceed on the schedule already governing Docket No. 69012.

[1] In the event that this Court does not formally consolidate the two appeals, Plaintiff respectfully requests that the Court place both appeals on the same briefing schedule.

McDONALD • CARANO • WILSON LLP
2300 WEST SAHARA AVENUE • SUITE 1200 • LAS VEGAS, NEVADA
PHONE (702)873-4100 • FAX (702) 873-9966

Appellant also requests that it be permitted to file a consolidated brief of 45 pages or 21,000 words.

RESPECTFULLY SUBMITTED this 17th day of February, 2016.

McDONALD CARANO WILSON

By: /s/ *Jeff Silvestri*

Jeff Silvestri (NSBN 5997)
Amanda C. Yen (NSBN 9726)
Debbie Leonard (NSBN 8620)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Telephone: 702.873.4100
Facsimile: 702.873.9966
jsilvestri@mcdonaldcarano.com
ayen@mcdonaldcarano.com
dleonard@mcdonaldcarano.com

Mark Lebovitch (*admitted pro hac vice)*
Jeroen Van Kwawegen (*admitted pro hac vice)*
Adam D. Hollander (*admitted pro hac vice)*
Bernstein Litowitz Berger & Grossmann LLP
1241 Avenue of the Americas, 44th Floor
New York, NY 10020
Telephone: 212.554.1400
markL@blbglaw.com
jeroen@blbglaw.com
adam.hollander@blbglaw.com
Attorneys for Jacksonville Police and Fire Pension Fund

McDONALD • CARANO • WILSON LLP
2300 WEST SAHARA AVENUE• SUITE 1200 • LAS VEGAS, NEVADA
PHONE (702)873-4100 • FAX (702) 873-9966

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 17th day of February, 2016, a true and correct copy of the foregoing **MOTION TO CONSOLIDATE APPEALS** was electronically filed with the Clerk of the Court via the Clark County District Court Electronic Filing Program which will provide copies to all counsel of record registered to receive such electronic notification.

/s/ *CaraMia Gerard*
An employee of McDonald Carano Wilson LLP

McDONALD • CARANO • WILSON LLP
2300 WEST SAHARA AVENUE• SUITE 1200 • LAS VEGAS, NEVADA
PHONE (702)873-4100 • FAX (702) 873-9966