

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST TRANSIT, INC.; and JAY
FARRALES,

Appellants,

vs.

JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Respondent.

Case No.: 70164

Electronically Filed
Feb 22 2018 09:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable Stefany Miley
Presiding

**MOTION FOR ORDER REQUIRING TRANSMISSION OF PHYSICAL
TRIAL EXHIBIT FROM DISTRICT COURT**

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Attorneys for Respondents, Jack Chernikoff and Elaine Chernikoff

MAC:14620-001 3328006_1

Respondents, Jack Chernikoff and Elaine Chernikoff (the “Chernikoffs”), by and through their attorneys of record, Marquis Aurbach Coffing; Richard Harris Law Firm; and Charles Allen Law Firm, hereby move this Court for an order requiring the transmission of a physical trial exhibit from the District Court.

A video disk containing footage of the incident underlying this case was admitted as Trial Exhibit A2¹ during trial in the District Court on February 19, 2016, and was referenced throughout the trial proceedings by both the Chernikoffs and Appellants, First Transit, Inc. and Jay Farrales (“Defendants”). The Chernikoffs believe that this Court would benefit from a review of Trial Exhibit A2 in deciding the instant appeal and, as such, now ask this Court to issue an order requiring transmission of the original physical exhibit from the District Court according to NRAP 30(d) and NRAP 10(b)(2).

Defendants transmitted a copy of Trial Exhibit A2 with a motion to this Court for inclusion of the disk in their appendix. However, this Court denied the motion in its December 12, 2017 order, indicating that a motion to transmit the original Trial Exhibit A2 would be necessary. Both the Chernikoffs and Defendants have referenced and relied upon the video recording on Trial Exhibit A2 in their respective briefs filed in this Court.

¹ A copy of the District Court Clerk’s Exhibit List is attached as **Exhibit 1**.

Therefore, the Chernikoffs now respectfully request that this Court issue an order requiring the transmission of the original disk designated as Trial Exhibit A2 from the District Court pursuant to NRAP 30(d) and NRAP 10(b)(2).

Dated this 21st day of February, 2018.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols

Micah S. Echols, Esq.
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*Attorneys for Respondents,
Jack Chernikoff and Elaine Chernikoff*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION FOR ORDER REQUIRING TRANSMISSION OF PHYSICAL TRIAL EXHIBIT FROM DISTRICT COURT** was filed electronically with the Nevada Supreme Court on the 21st day of February, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Joel D. Henriod, Esq.
Daniel F. Polsenberg, Esq.
LeAnn Sanders, Esq.
Benjamin P. Cloward, Esq.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Charles H. Allen, Esq.
Charles Allen Law Firm
950 E. Paces Ferry Road
NE Suite 1625
Atlanta, Georgia 30326

/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

Exhibit 1

JOINT EXHIBITS

CASE NO. A682726

	Date Offered	Objection	Date Admitted
A1 - Operator Incident Report	FEB 25 2016	NO	FEB 25 2016
A2 - Disk Containing Video Footage of Harvey Chernikoff	FEB 13 2016	NO	FEB 13 2016
A2-1 - Poster Board	FEB 25 2016	NO	FEB 25 2016
A2-2 - " "	"		"
A2-3 - " "	"		"
A2-4 - " "	"		"
A2-5 - " "	"		"
A2-6 - " "	"		"
A2-7 - " "	"		"
A2-8 - " "	"		"
A3 - Records from C.C. Coroner's Office	FEB 19 2016	NO	FEB 19 2016
A4 - Report of Investigation from C.C. Coroner/Medical Examiner			
A5 - Records from C.C. Fire Dept.	FEB 24 2016	NO	FEB 24 2016
A6 - RTC Paratransit Guide	FEB 22 2016	NO	FEB 22 2016
A7 - First Transit LV Operator Training Matrix	FEB 26 2016	NO	FEB 26 2016
A8 - " " Minimum Training Requirements	FEB 26 2016	NO	FEB 26 2016
A9 - " " Collective Bargaining Agreement	FEB 26 2016	NO	FEB 26 2016
A10 - Jay Farrales' Personnel File	FEB 26 2016	NO	FEB 26 2016

JOINT EXHIBITS

CASE NO. A682726

	Date Offered	Objection	Date Admitted
A11- Jay Farrales' Medical Examination Reports for Commercial Driver Fitness Determination	FEB 2 6 2016	NO	FEB 2 6 2016
A12- " " Application for Employment with Laidlaw	FEB 2 6 2016	NO	FEB 2 6 2016
A13- Supplement to Jay Farrales' Personnel File	FEB 2 6 2016	NO	FEB 2 6 2016
A14- Documentation regarding Jay Farrales Safety Classes + Tests	FEB 2 6 2016	NO	FEB 2 6 2016
A15- Driver Manifest for Bus 1790 on July 29, 2011	FEB 2 5 2016	NO	FEB 2 5 2016
A16- Contract between RTC of Southern Nevada & Laidlaw Transit Services Inc dated 3/8/07	FEB 2 6 2016	NO	FEB 2 6 2016
A17- Harvey Chernikoff's Records from the RTC of Southern Nevada			
A18- Photograph of Signage on Bus	FEB 2 2 2016	NO	FEB 2 2 2016
A19- Thirty Eight (38) Bus Inspection Photographs taken by Expert (00001-00003)			
A19 - Photo (00004)	FEB 2 5 2016	NO	FEB 2 5 2016
A19 - Photos (00005-00025)			
A19 - Photo (00026)	FEB 2 5 2016	NO	FEB 2 5 2016

JOINT EXHIBITS

CASE NO. A 682726

	Date Offered	Objection	Date Admitted
A19 - Cont. Photos - (00027 - 00038)			
A20 - Death Certificate			

Attachment
to

JOINT EXHIBITS

ORIGINAL

JOINT EXHIBITS

Exhibit #	# of PAGES	DESCRIPTION	OFFERED	OBJ	Admit
A1	1	Operator Incident Report [A1 - 00001]	FEB 2 5 2016	NO	FEB 2 5 2016
A2	1	Disc containing video footage of Harvey Chernikoff on a First Transit vehicle on July 29, 2011	2-19-16	NO	2-19-16
A3	21	Records from the Clark County Coroner's Office [A3 - 00001 - 00021]	2-19-16	NO	2/19/16
A4	9	Report of Investigation from the Clark County Coroner/Medical Examiner [A4 - 00001 - 00009]			
A5	3	Records from the Clark County Fire Department [A5 - 00001 - 00003]	FEB 2 4 2016	NO	FEB 2 4 2016
A6	12	RTC Paratransit Guide [A6 - 00001 - 00012]	FEB 2 2 2016	NO	FEB 2 2 2016
A7	3	First Transit, Inc.'s Las Vegas Operator Training Matrix [A7 - 00001 - 00003]			
A8	1	First Transit, Inc.'s Minimum Training Requirements [A8 - 00001]			
A9	50	First Transit, Inc.'s Collective Bargaining Agreement [A9 - 00001 - 00050]			
A10	133	Jay Farrales' Personnel File [A10 - 00001 - 00133]			
A11	8	Jay Farrales' Medical Examination Reports for Commercial Driver Fitness Determination, dated June 2, 2006, May 24, 2008, and May 21, 2010 [A11 - 00001 - 00008]			
A12	16	Jay Farrales' Application for Employment with Laidlaw Transit Services [A12 - 00001 - 00016]			
A13	34	Supplement to Jay Farrales' Personnel File [A13 - 00001 - 00034]			
A14	110	Documentation regarding Jay Farrales' Safety Classes and Tests [A14 - 00001 - 00110]			
A15	5	Driver Manifest for Bus 1790 on July 29, 2011 [A15 - 00001 - 00005]	FEB 2 5 2016	NO	FEB 2 5 2016
A16	110	Contract between Regional Transportation Commission of Southern Nevada and Laidlaw Transit Services, Inc., dated March 8, 2007 [A16 - 00001 - 00110]	FEB 2 6 2016	NO	FEB 2 6 2016
A17	7	Harvey Chernikoff's records from the Regional Transportation Commission of Southern Nevada [A17 - 00001 - 00007]			
A18	1	Photograph of signage on Bus 1790 [A18 - 00001]	FEB 2 2 2016	NO	FEB 2 2 2016
A19	38	A19-00004 + 00026 Thirty Eight (38) Bus Inspection photographs taken by Defendant's expert Matt Daecher [A19 - 00001 - 00038]	FEB 2 5 2016	NO	FEB 2 5 2016
A20	1	Death Certificate [20 - 00001]			

PLAINTIFF'S EXHIBITS

CASE NO. A 682726

	Date Offered	Objection	Date Admitted
1- First Transit Inc's, Minimum Hiring Standards			
2- 2010 First Transit Employee Handbook	FEB 19 2016 1	NO	FEB 19 2016 1
3- LVMPD Incident Report (3-00001 - 3-00008)			
- 3-00009 - Voluntary Statement	FEB 25 2016	NO	FEB 25 2016
4- Net Claim Summary Form			
5- CAD Incident Report + Disc w/ 911 Calls			
6- RTC of Southern Nevada Documents			
7- 14 Color Photographs of Harvey's Life	FEB 19 2016 1	NO 1	FEB 19 2016 1
8- Harvey Chernikoff Eulogy			
9- Jay Ferrales Personnel File			
- 9-00001 - 9-00050			
- 9-00051	FEB 25 2016	NO	FEB 25 2016
- 9-00052 - 00133			
10- Ferrales Employee File			
11- Ferrales Safety			
12- Photograph of Signage on Bus			
13- Photos of Decedent (4 photos)	FEB 23 2016	NO	FEB 23 2016

ONE PAGE

ATTACHMENTS TO

PLAINTIFFS' EXHIBITS

ORIGINAL

PLAINTIFFS' EXHIBITS

Exhibit #	# of PAGES	DESCRIPTION	Offered	OBJ	Admit
1	1	First Transit, Inc.'s Minimum Hiring Standards [0001 - 00001]			
2	80	2010 First Transit Employee Handbook [0002- 00001 - 00080]	2-19-16	n	2-19-16
3	4	LVMPD Incident Report [0003 - 00001 - 00004] 00009 4/25/16			
4	2	Net Claim Summary Form [0004 - 00001 - 00002]			
5	1	The CAD Incident Report 1107290001082 and the disc with the 911 calls [0005 - 00001]			
6	971	Regional Transportation Commission of Southern Nevada Documents [0006 - 00001 - 00971]			
7	14	14 Color Photographs of Harvey's Life [0007 - 00001 - 00014]	2-19-16	n	2-19-16
8	1	Harvey Chernikoff Eulogy [0008 - 00001]			
9	133	Jay Ferrales Personnel File 00051 1/25/16			
10	1	Ferrales Employee File (A10-00008)			
11	110	Ferrales Safety			
12	1	Photograph of Signage on Bus			
13	4	Photos of Decedent	FEB 23 2016	NO	FEB 23 2016

**PLAINTIFFS' EXHIBITS
(ATTACHMENTS)**

PLAINTIFFS' EXHIBITS				
Exhibit #	# of PAGES	DESCRIPTION	OBJECTION	ADMITTED (YES/NO)
1	1	First Transit, Inc.'s Minimum Hiring Standards [0001 - 00001]	Def.'s Object	
2	80	2010 First Transit Employee Handbook [0002- 00001 - 00080]	Def.'s Object	
3	4	LVMPD Incident Report [0003 - 00001 - 00004]	Def.'s Object	
4	2	Net Claim Summary Form [0004 - 00001 - 00002]	Def.'s Object	
5	1	The CAD Incident Report 1107290001082 and the disc with the 911 calls [0005- 00001]	Def.'s Object	
6	971	Regional Transportation Commission of Southern Nevada Documents [0006 - 00001 - 00971]	Def.'s Object	
7	14	14 Color Photographs of Harvey's Life [0007 - 00001 - 00014]	Def.'s Object	
8	1	Harvey Chernikoff Eulogy [0008 - 00001]	Def.'s Object	
9	133	Jay Ferrales Personnel File	Def.'s Object	
10	1	Ferrales Employee File 00008 (A10-00008)	Def.'s Object	
11	110	Ferrales Safety 00017 (A14-00017-A14-00018)	Def.'s Object	
12	1	Photograph of signage on Bus 1790 [A18 - 00001]	Def.'s Object	
13	24	Photos 0013-00024 -0001-00024	Def.'s Object	

DEFENDANT'S EXHIBITS

CASE NO. A682726

	Date Offered	Objection	Date Admitted
A- Disc Containing Video Footage of Harvey Chernikoff 7/27/11			
B- Laidlaw Transit Services' Employee Handbook			
C- Harvey Chernikoff's Records from Transition Services			
D- Harvey Chernikoff's Records from State of Nevada Desert Regional Center			
E- " " Records from San Gabriel/Pomona Regional Center			
F- Harvey Chernikoff's Records from Gautham Reddy M.D.			
- 00001 - 00010			
- 00011 - 00014	FEB 24 2016	NO	FEB 24 2016
- 00015 - 00020	FEB 24 2016	NO	FEB 24 2016
- 00021 - 00024			
- 00025 - 00027	FEB 24 2016	NO	FEB 24 2016
- 00028 - 00043			
- 00044 - 00045	FEB 24 2016	NO	FEB 24 2016
- 00046 - 00080			
- 00081	FEB 24 2016		FEB 24 2016

* F are admitted as individual pages reflected above.

① of 2
Defendant's
Exhibits

DEFENDANT'S EXHIBITS

CASE NO. A1682726

	Date Offered	Objection	Date Admitted
F- Cont. 00082-00177			
G- Title 49 Part 37 of the Code of Federal Regulations			
H- Medical Records of Elaine Chernikoff from Gautham Reddy			
I- Medical Records of Jack Chernikoff from Gautham Reddy			
J- Jack Chernikoff's Medical Records from Ricardo Fortillas			
K- First Transit Video Recording Records + Retention Policy			

(2) of 2
Def't Exhibits

DEFENDANTS' EXHIBITS

ORIGINAL

DEFENDANTS' EXHIBITS

Exhibit #	# of PAGES	DESCRIPTION	OFFERED	objected	Admitted
Exhibit "A"	1	Disc containing video footage of Harvey Chernikoff on a First Transit vehicle on July 27, 2011			
Exhibit "B"	23	Laidlaw Transit Services' Employee Handbook [B - 00001-00023]			
Exhibit "C"	12	Harvey Chernikoff's Records from Transition Services [C - 00001-00012]			
Exhibit "D"	66	Harvey Chernikoff's records from the State of Nevada Desert Regional Center [D - 00001-00066]			
Exhibit "E"	448	Harvey Chernikoff's records from the San Gabriel/Pomona Regional Center [E - 00001-00448]			
Exhibit "F"	177	Harvey Chernikoff's records from Gautham Reddy, M.D. [F - 00001-00177] FIS-F20 00177 Only 00001	FEB 24 2016	No	FEB 24 2016
Exhibit "G"	90	Title 49 Part 37 of the Code of Federal Regulations [G - 00001-00090]			
Exhibit "H"	226	Medical Records of Elaine Chernikoff from Gautham Reddy, M.D. [H - 00001-00226]			
Exhibit "I"	528	Medical Records of Jack Chernikoff from Gautham Reddy, M.D. [I - 00001-00528]			
Exhibit "J"	11	Jack Chernikoff's Medical Records from Ricardo Fontillas, M.D. [J - 00001-00011]			
Exhibit "K"	1	First Transit Video Recording Records & Retention Policy [K - 00001]			

** Attachment to Deft Exhibits **

COURT'S EXHIBITS

CASE NO. A682726

	Date Offered	Objection	Date Admitted
1. Plaintiff's Power Point presentation	2/19/16		2/19/16
2. Juror note #8 (not asked)	2/19/16		2/19/16
3. Juror note #4 (asked and answered)	2/19/16		2/19/16
4. Juror note #8 (asked and answered)	2/19/16		2/19/16
5. Juror note #8 (asked and answered)	2/19/16		2/19/16
6. Deft's Power Point presentation	2/19/16		2/19/16
7. Juror Question #4 (Not asked)	FEB 23 2016	NO	FEB 23 2016
8. Juror Question #4 (Not asked)	"		"
9. Juror Question #4 (Not asked)			
10. Juror Question #8 (Not asked)			
11. Juror Question #8 (Asked + Answered)			
12. Juror Question #4 (Asked + Answered)	FEB 24 2016	NO	FEB 24 2016
13. Juror Question #10 (Asked + Answered)	FEB 24 2016	NO	FEB 24 2016
14. Juror Question #8 (Asked + Answered)	FEB 26 2016	NO	FEB 26 2016
15. Juror Question #8 (Asked + Answered)	"		"
16. Juror Question #4 (Asked + Answered)			
17. Juror Question #3 (Asked + Answered)			
18. Juror Question #4 (Asked + Answered)			
19. Juror Question #10 (Asked + Answered)			
20. Pltff's Proposed Instruction-Not Given			
21. Pltff's Closing Argument Power Point		NO	
22. Deft's Closing Argument Power Point		NO	