



The NO SHOW category points will accumulate and are used to determine suspension of service. Riders are notified by mail when they cause a NO SHOW that qualifies for points being assessed. Suspension of service may result from points accumulated as follows:

No Show Point Value	Within Period of	Suspension Period
18	30 Days	15 Days
36	60 Days	30 Days
54	120 Days	90 Days
90	180 Days	6 Months

Right of Appeal

Anyone affected by this policy is entitled to request an appeal.

The RTC complies with the Americans with Disabilities Act of 1990, available for review at fta.dot.gov.

Contact the RTC comment team at (702) 228-4800, option 7 if you need further assistance. The comment team is available 7 a.m. to 6 p.m., seven (7) days a week.

Rider Rules

The RTC's goal is to provide a safe, comfortable commute for individuals traveling on RTC vehicles. To assure a pleasant commute for all, please observe the following rules:

- ▶ Seatbelts are required by passengers on vehicles.
- ▶ No eating is allowed on the vehicle, and drinks must be in spill-proof covered containers.
- ▶ Smoking is prohibited on the vehicle.
- ▶ Proper attire, including shirts and shoes or appropriate foot coverings, is required on the vehicle.
- ▶ Personal musical devices are allowed with head phones as long as the sound is not audible to others.
- ▶ Please do not distract the driver while the vehicle is in motion.
- ▶ Medication(s) and other personal belongings are the responsibility of the rider to plan for when riding paratransit.

Wheelchairs & Mobility Devices

All vehicles used for service in the RTC system are 100 percent ADA accessible.

Vehicle operators will assist customers in boarding and deboarding the Paratransit vehicle as needed.

All mobility devices such as wheelchairs, scooters and three-wheel carts must be secured in the vehicle and conform to the ADA definition of a "common wheelchair." A "common wheelchair" is such device that does not exceed 30 inches in width and 48 inches in length, measured two inches above the ground, and does not weigh more than 600 pounds when occupied. The RTC offers mobility device users a free and voluntary program designed to identify securement locations to assist drivers in quickly and safely securing the equipment on the bus. Please contact 676-1815 or TDD 676-1834 for more information and reference the S.A.F.E. program.



If your condition changes in a manner that requires you to use an assistive mobility device or change the type of mobility device used during your initial functional assessment, it must be reported to the RTC Certification Office at (702) 228-4800 or 676-1815 within 15 days. Due to this change in your condition, you may be required to undergo an additional functional assessment to determine what effect this change may have on your functional ability. Your current eligibility status may be altered as a result of your new functional assessment.

Service Animals

- ▶ Service animals are welcome and ride free-of-charge.
- ▶ A disruptive service animal will be treated according to the Illegal and Disruptive Behavior Policy. (pg. 19)
- ▶ Service animals must sit on the floor or on the passenger's lap. They may not occupy a passenger seat. All other animals must be in a secure cage in order to board the Paratransit vehicle.

Children

- ▶ Children under six years old must be accompanied by a responsible party.
- ▶ Children under six years old or who weigh less than 60 pounds must be secured in an approved child safety seat provided by the customer.
- ▶ Strollers must be collapsed to fit between the seat and the customer. Non-collapsible strollers are prohibited.
- ▶ For safety reasons, children capable of sitting on their own must sit in a seat and not on an adult's lap.

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Personal Care Attendants & Companions

A Personal Care Attendant (PCA) may ride free-of-charge when accompanying an individual certified by the RTC Certification Office as requiring a PCA. The need for a PCA will be determined during your evaluation appointment.

One companion may also accompany an eligible rider. A companion will be charged the same fare as the eligible rider. Let the Customer Service Representative know at the time the reservation is made if you will be traveling with a companion, a PCA or both.

Unattended Passenger Policy

Customers determined as unable to be left unattended (based on age, cognitive limitations or special request of the responsible party) may schedule rides and ride unattended; however, arrangements must be made to have a responsible party meet the Paratransit vehicle at each location.

The "unattended passenger" form must be completed and on file. Please contact the RTC Certification Office at 228-4800 or 676-1815 if this service is required.

The driver will only wait five minutes for the responsible party to meet the Paratransit vehicle. If no one arrives, the driver will notify the RTC and continue on his/her route. The RTC will attempt to reach the designated emergency contact person. If the customer is not met by the end of the route, he/she will be returned to the bus yard. The responsible party will be required to pick up the customer at the bus yard and must show proper identification. The customer will not be left unattended, and the police will be notified to assist in locating a responsible party.

Failure to have a responsible party meet the vehicle is a violation of RTC's Disruptive Behavior Policy, and customers are subjected to suspension and/or a fine may be assessed for expenses incurred by the RTC for violation of this policy.

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Carry-on Bag Policy

Customers are permitted to carry on only the number of bags that they are able to manage independently without the assistance of the driver. Due to space limitations and the time it takes to board the vehicle, the number of shopping bags is restricted to those that can be easily handled by the customer and carried aboard without delaying the vehicle. The carry-on items must fit within a certain space either on your lap or in front of your area. If a customer brings more than he/she is able to manage independently, it will be the customer's choice on whether to board with a manageable amount of items and find alternative transportation to carry the remaining packages, or decline the trip.

Shopping Cart Policy

Shopping carts or any type of equipment used to assist with transporting packages, groceries, clothing or other items are allowed on a limited basis. When space is limited, priority must be given to RTC ADA Paratransit wheelchair passengers. Carts can be no larger than 28.5" high by 12" deep by 15.5" wide. The customer must bring a securement device (for example a bungee cord) to secure his/her cart. It will cost an additional \$.50 cents for each ride with a cart. Rides with carts are on a standby basis and will be notified between 6 p.m. and 8 p.m. on the evening prior to service if space is available for the cart trip. The trip must be reserved and approved with the cart, or the driver will be unable to transport the customer with his/her shopping cart.

If your cart is declined due to space availability you may cancel the ride with no cancellation penalty.

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Illegal & Disruptive Behavior Policy

The RTC established an Illegal and Disruptive Behavior Policy to address the safety and well-being of customers, passengers, and staff of the RTC and its contractors. The policy defines categories of illegal and disruptive behavior and the consequences for such behavior. It's in effect in and around vehicles and facilities owned and/or operated by or on behalf of the RTC, including all RTC fixed route service, the Metropolitan Area Express (MAX) service, the Deuce service, ACE, ACEXpress, RTC ADA Paratransit Services, CAT STAR specialized service, Silver STAR senior transportation service, FDR, and other services.

The RTC recognizes that an individual's disability or medical condition may cause a passenger to unknowingly and/or unintentionally violate the Illegal and Disruptive Behavior Policy. For this reason, the RTC looks at each violation individually.



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Driver Services

Drivers will assist passengers who are unable to maneuver themselves from their door or designated pick-up location to the vehicle, provided it is safe for them to do so.

Drivers are Allowed to:

Maneuver your manual wheelchair if you need assistance from outside your door to the vehicle

Lend a steady arm if you need assistance

Provide directions or act as a sighted guide to/from vehicle if you are visually impaired. If you feel you need this type of assistance, please notify the driver.

Drivers are Not Allowed/Required to:

Operate or push your electric mobility device (for example, electric wheelchair or scooter)

Operate or push your equipment or shopping cart up or down stairs or steep inclines

Cross residential thresholds

Lift or carry riders

Carry packages or other items

Drivers are trained not to perform these activities. Please do not make these requests of your driver.

Please keep your information current and notify the RTC of any change of address, phone number, emergency contact information, etc.

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Door-to-Door

RTC ADA Paratransit Services provides "door-to-door" service. The driver will come to your door to let you know the bus has arrived. Please attempt to keep an eye out for the vehicle. However, there will be some locations and/or situations where the driver cannot leave the vehicle. When picking-up or dropping off on private property, there are often designated areas where a driver is permitted to stop. In order for us to serve you, it is necessary for you to wait for the vehicle at the marked stop.

Questions & Comments

We want to hear from you. Please contact Customer Service at (702) 228-4800 option 7 or (702) 676-1834 (TDD) to ask a question or leave us your comments, complaints, suggestions or recommendations. Or if you prefer, you can write to:

*RTC Paratransit Services,
600 S. Grand Central Pkwy., Ste. 350
Las Vegas, NV 89106*

*Attn: Customer Service or
e-mail us through our Web site at
rtcsnv.com.*

When making a comment, please try to provide as much detail as possible so we can properly address your concern. For example, if you're reporting a situation involving a Paratransit vehicle, the exact date is necessary.

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Important Numbers

RTC ADA Paratransit Customer Service

Scheduling

(702) 228-4800 option 2 or

TDD (702) 676-1834

7 Days a week 7 a.m. to 6 p.m.

Same Day Reservations

(702) 228-4800 option 3 or

TDD (702) 676-1834

Mon. – Fri. 7 a.m. to 8 p.m.

Inquiry/Same Day Cancellations

(702) 228-4800 option 3 or

TDD (702) 676-1834

7 Days a week 24 hours a day

Certification Office/Lost I.D. Cards

(702) 676-1815 or

TDD (702) 676-1834

Mon. – Fri. 8 a.m. – 4:30 p.m.

Comments

(702) 228-4800 option 7 or

TDD (702) 676-1834

7 Days a week 7 a.m. to 6 p.m.

RTC Administrative Offices

(702) 676-1500 or TDD (702) 676-1834

Mon. – Thurs. 7 a.m. to 6 p.m.

RTC Fixed Route Customer Service

(702) 228-7433 or

TDD 676-1834

7 Days a week 7 a.m. to 7 p.m.

Holidays 7 a.m. to 6 p.m.

Closed Christmas and Thanksgiving

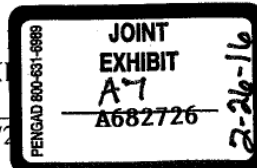
JOINT TRIAL EXHIBIT A7

FT - Classroom Training		
First Transit - Introduction, Company Policies & Procedures		0.50
TSI - Substance Abuse		1.00
NTI - Security Awareness		1.00
NTI - TARR		0.50
Safe Work Methods		0.50
IP and Risk Assessment		1.00
TSI - Bloodborne Pathogens/Hazardous Communication		0.50
Workplace Violence/Harassment		1.00
Workplace Safety/OSHA		0.00
Total		6.00
DAY TWO		
FT - Map Reading / Use / Scheduling		2.00
Manifest		2.00
Total		4.00
DAY THREE		
FT - Basics of Safety		1.00
TSI - First Transit Defensive Driving /Smith System		4.00
TSI - Emergency Procedures / Accident Procedures		1.00
TSI - Pre-Trip Inspection / FT - DVI Location Procedures		0.50
Total		6.50
DAY FOUR		
Conflict Prevention/Resolution		2.00
Sensitivity/ADA		3.00
RTC/ADA Paratransit Eligibility Process		1.00
TSI Customer Service / Passenger Relations		2.00
Total		8.00
DAY FIVE		
MDT/Radio Use		3.50
Total		3.50
TOTAL		28.00

Column C = The training required by current contract
 Column G = The training we are currently providing

LV OPERATOR TRAINING 0001

MARKED FOR
 PROPOSED EX
 # A7
 Case No. A682726



00A7-0001

UNIT	OSHA TOPIC'S
1	Accident Reporting & Investigation Plan
2	Back Safety Plan
3	Bloodborne Pathogens Exposure Control Plan
4	Compressed Gases Safety Plan
5	Confined Space Safety Plan
6	Corporate Safety Policy
7	Electrical Safety Plan
8	Emergency Action Plan
9	Fall Protection Safety Plan
10	Fire Prevention
11	Fork Lift Safety Plan
12	Intentionally Blank
13	Hazard Communication Safety Plan
14	Hazardous Waste Safety Plan
15	Hearing Conservation
16	Housekeeping
17	Intentionally Blank
18	Intentionally Blank
19	Machine Safety/ Equipment Usage Plan
20	Office Safety Plan
21	Personal Protection Equipment Plan
22	Respiratory Protection
23	Return to Work Program
24	Smoking Policy
25	Underground Storage Tanks Safety Plan
26	Universal Wastes Safety Plan
27	Used Oil Management Plan
28	Welding & Cutting Procedures
29	Workplace Security Safety Plan

LV OPERATOR TRAINING 00003

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JOINT TRIAL EXHIBIT A8

JOINT TRIAL EXHIBIT A9

LABOR AGREEMENT

BETWEEN

FIRST TRANSIT, INC.

And

THE INTERNATIONAL BROTHERHOOD

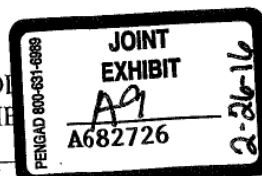
OF TEAMSTERS

LOCAL UNION NO. 631

Effective:

November 22, 2010 through November 22, 2015

MARKED FOR IDENTIFICATION
PROPOSED EXHIBIT
A9
Case No. A682726



CBA 00001

00A9-00001

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PREAMBLE

This agreement made and entered into, effective November 22, 2010, by and between First Transit, Inc. hereinafter referred to as the Company, and The International Brotherhood of Teamsters, Local 631, hereinafter referred to as the Union, representing full-time and part-time drivers, mechanics, utility/fuel, and tire-changer employees.

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ARTICLE 1 - INTENTS AND PURPOSES

SECTION 1 This Agreement is for the joint use and benefit of the signatory parties, and the provisions shall be construed as binding upon and effective in determining the relations between the parties and to set forth the basic Agreement covering basic rates of pay, fringe benefits, hours of work, and conditions of employment and an amicable way to adjust disputes that may arise out of the application or interpretation of this Agreement, to be observed by the parties.

It is the intent of the parties to set out efficient working conditions establish and maintain harmonious relations, secure optimum productivity, and to eliminate delays in the work undertaken by the Company.

It is mutually understood that the terms and conditions relating to employment of persons covered by this Agreement have been decided on by collective bargaining and that the provisions will be binding upon the Company and the Union.

SECTION 2 Anytime the masculine gender is used in this Agreement it shall also apply to the female gender. All provisions of this Agreement shall apply to male and female Employees alike.

SECTION 3 All provisions for paid time off, breaks, leaves or benefits provided in the Agreement shall apply to full-time employees only, and shall apply to part-time employees only if specifically stated in the relevant Article or Section.

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ARTICLE 2 - AFFIRMATIVE ACTION/NON-DISCRIMINATION/ADA

The Company and the Union mutually agree they shall not discriminate against any Employee or prospective Employee because of age, race, creed, color, national origin, sexual orientation, gender, handicap, veteran status, marital status, or disability and in strict compliance with all Federal laws and the laws of the State of Nevada. The Company and the Union agree to support the Company's Affirmative Action Program and will assist in every way possible in the achievement of those goals and objectives within their bargaining units.

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ARTICLE 3 - MANAGEMENT RIGHTS

SECTION 1 The Company has the right to manage and direct the working forces, including all responsibilities, powers and authorities shown below (by way of example and not by way of limitation):

- 1) The right to select and hire,
- 2) The right to promote, discipline, or terminate,
- 3) The right to direct and determine the size of the working force,
- 4) The right to manage and control or expand, reduce or eliminate jobs and operations in whole or in part,
- 5) The right to schedule work,
- 6) The right to require overtime work if business conditions warrant,
- 7) The right to determine the location of, and the right to removal of any portion of the facility,
- 8) The right to abandon any part of the operation,
- 9) The right to schedule hours and shifts, and determine workload,
- 10) The right to grant increases, promote, demote, layoff and recall,
- 11) The right to contract or arrange for work to be done by others or by other divisions of the Company,
- 12) The right to establish reasonable rules of facility,
- 13) The right to determine the qualifications, efficiency and ability of the employees.

SECTION 2 The Union agrees to instruct all its members covered by this Agreement to perform any and all work assigned to them in accordance with instructions from Company supervision regardless of the nature of the work or of the instructions, provided the work is within the recognized jurisdiction of the Union and can be safely accomplished. The Union will instruct its members they have no right to refuse to perform in accordance with any instructions from Company supervision and that in the event they question such instruction; their sole recourse is through the grievance and arbitration process set forth in Article 19.

SECTION 3 The relevant portions of the revenue contract between the Company and its customer shall be incorporated by reference into this Agreement. Nothing in this Section shall be construed as subjecting any of the terms of the Company's revenue contract to the Grievance and Arbitration provisions of this Agreement.

SECTION 4 None of the rights, duties, and prerogatives of the Company referred to in this Article shall be exercised in a manner which is in conflict with the specific provisions of this Agreement. It is understood, however, the Union shall retain the right to grieve any dispute arising under this Article.

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ARTICLE 4 - GENERAL SAVINGS CLAUSE

If any Article or Section of this Agreement should be held to be invalid by operation of law, or by tribunal of competent jurisdiction, the balance of this Agreement shall continue in full force and effect. The Article or Section held invalid shall be modified as required by law or tribunal of competent jurisdiction, or shall be re-negotiated for the purpose of an adequate replacement. If such negotiations shall not result in a satisfactory Agreement, the parties agree to be bound by the decision of a competent jurisdiction, or a tribunal mutually agreed to by the parties.

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ARTICLE 5 - SAFETY AND HEALTH

SECTION 1 It is the responsibility of the Company to provide a safe working environment free of recognized hazards and in compliance with the State, Federal, and Safety and Health standards.

SECTION 2 - On-The-Job Injuries

When an Employee covered by this Agreement is injured on the job during his regular straight-time shift to the extent of being unable to work for the remainder of his shift, he shall be paid the full straight-time shift at his regular rate. His ability to work or not work shall be determined by the Company's Workers Compensation carrier's physician.

SECTION 3 Attendance at scheduled Safety Meetings is mandatory, unless specifically excused by the Company. An employee who does not attend all scheduled Safety Meetings shall be charged with an attendance occurrence for each one missed without specific approval by the Company. Any safety meeting missed, must be made up by the employee prior to the date of the next scheduled safety meeting. For every four (4) consecutive safety meetings attended, the employee will have an attendance occurrence removed from his/her attendance record. After an employee reaches seven (7) attendance violations (See Attendance, Article 31) he/she will not be eligible for this benefit. All safety meeting attendees will be paid the greater of one (1) hour of pay or actual time of the meeting.

SECTION 4 No employee shall be required to Operate/Take out on Route, any piece of equipment that does not comply with Federal Motor Vehicle Safety Standards (FMVSS). Management will take timely action to repair any faulty A/C unit malfunction.

SECTION 5 In the event the Company requires the employee to take a physical examination or drug screen, the Company will pay the cost of the procedure, if mandated by the Company. No employee shall suffer loss of earnings from the Company as the result of time spent in such physical examination or drug screen.

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ARTICLE 6 - BREAKS AND LUNCHES

This paragraph applies to scheduled shifts of six (6) hours or more per day. A 30-minute or one hour uninterrupted unpaid lunch period will be provided during the shift. Maintenance employees will be required to clock out during the meal period. If the Company does not provide an employee with the meal period specified herein, the employee shall be entitled to be paid 30-minutes or one hour (whichever is applicable) at that employee's regular hourly rate of pay, provided that any claim for the denied meal period must be made in writing to the appropriate supervisor at the end of his or her shift in which the meal period was denied.

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ARTICLE 7 - NO STRIKES OR LOCKOUT

SECTION 1 During the term of this Agreement, neither the Union nor its agents or representatives, nor any employee, individually or collectively, shall call, sanction, support or participate in any strike, work stoppage, picketing, sit down, slowdown, or any refusal to enter the Company's premises, or any other interference with any of the Company's service or operations or services of any customer of the Company.

SECTION 2 The Company agrees there will be no lockout of the Union or of its Employees represented by the Union during the term of this Agreement.

SECTION 3 Any Employee who participates in any activity prohibited by Section 1 of this Article shall be subject to discharge or to such lesser discipline as the Company, at its discretion, shall determine; provided, however, that such employee shall have recourse to the grievance and arbitration procedure of this Agreement as to the sole question of whether he, in fact, participated in such prohibited activity.

SECTION 4 It shall not be a violation of this Agreement or cause for discharge or permanent replacement for any employee to refuse to cross a primary picket line in the performance of his duties which has been sanctioned by the Union (Joint Council 42). However, if refusal to cross such a picket line risks the Company being in violation of the revenue contract with the customer, the employee must cross the line for the first 24 hours. The Company and Union agree to meet within this time period to work out a means of performing the work without risks to the revenue contract.

SECTION 5 The failure or refusal on the part of any employee to comply with the provisions of Section 1 of this Article shall be cause for immediate discipline, including discharge. If any conduct prohibited by this Section occurs, the Union shall immediately do everything within its power to terminate such conduct.

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ARTICLE 8 - BULLETIN BOARDS/LOCK BOXES

SECTION 1 The Company agrees to furnish a locking bulletin board and lock box for the Union at all reporting points. Items displayed on this bulletin board will be of an official nature, will be in reference to official Union business and notices only for and approved by the Union.

SECTION 2 Any Employee found defacing, destroying, removing, or placing disparaging remarks on any bulletin board, or on any authorized bulletin, or document posted on either the Union or the Company bulletin boards will be subject to counseling or disciplinary action.

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ARTICLE 9 - PROBATIONARY PERIOD

SECTION 1 New Employees shall be on probation for ninety (90) calendar days. During this probationary period, such Employee shall be considered as being on trial subject to dismissal at any time at the sole discretion of the Company. Discipline and discharge during the probationary period shall not be subject to the Grievance and Arbitration Procedure. The Company has the right to extend the probationary period for up to an additional 30 calendar days. The Company will notify the Union of any such extension prior to expiration of the initial probationary period. Any extension beyond the additional 30 calendar days will be subject to agreement by the Parties.

SECTION 2 – Full-time and Part-Time Employees

The classifications of employees are:

- a. A regular full-time employee is defined as an employee regularly scheduled to work thirty-five (35) hours or more in a workweek. In the event an employee does not average thirty-five (35) hours of work per week over one-hundred eighty (180) working day period, he or she shall revert to part-time status.
- b. A regular part-time employee is defined as an employee regularly scheduled to work less than thirty-five (35) hours in a workweek. From time to time, regular part-time employees may be required to work more than thirty-five (35) hours in a workweek to meet service demands or unusual situations.

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ARTICLE 10 - HOLIDAYS

SECTION 1 As of the effective date of this Agreement, all full-time Employees who have completed their probationary period of employment will be eligible for the following paid holidays:

New Year's Day
4th of July
Thanksgiving Day
Christmas Day

Memorial Day
Labor Day
Martin Luther King Day

SECTION 2 To be eligible for holiday pay, Employees must work the shift on their last scheduled work day prior to the holiday, if scheduled to work and the first scheduled work day immediately following the holiday, unless excused by a supervisor.

SECTION 3 A full-time employee who qualifies for holiday pay will be paid at eight (8) or ten (10) hours depending if a five-day or four-day schedule at his regular hourly rate if forced off of work on the employee's scheduled workday, or eight (8) hours of pay if the holiday falls on the employee's scheduled day off. If a full-time employee is required to work on a holiday, he will receive his regular rate of pay for all hours worked plus the eight (8) or ten (10) hours of holiday pay. It is understood and agreed that the Company reserves the right to require employees to work on a designated holiday.

A part-time employee who qualifies for holiday pay will be kept whole if forced off of work on the employee's scheduled workday. If a part-time employee is required to work on a holiday, he or she will receive his or her regular pay for all hours worked plus holiday pay equivalent to his regular hours worked for that holiday. It is understood and agreed that the Company reserves the right to require employees to work on a designated holiday.

SECTION 4 Employees out on unpaid leave will not be eligible for holiday pay.

SECTION 5 - Holiday Bidding

Holidays falling on Mondays through Fridays will be posted for bid two weeks prior to each holiday. Holiday bids will be based on department seniority among those who sign the posted route sheets. If there are insufficient bidders the Company will assign routes on the basis of reverse seniority.

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ARTICLE 11 - VACATIONS

SECTION 1

Years 1	-	5 Days
Years 2 - 4	-	10 Days
Years 5 - 9	-	15 Days
Years 10+	-	20 Days

Vacation pay shall be calculated at the employee's straight-time regular hourly rate and will be based on the employee's regularly scheduled shift. Vacation pay will not be counted as hours worked for the purpose of computing overtime.

SECTION 2 After establishing initial eligibility for vacation (i.e. 12 months of continuous service), an employee whose employment is terminated for any reason will be paid for all earned but unused vacation on the basis of 1/12th of the current year's eligibility for each month the employee worked a majority of his or her scheduled workdays

SECTION 3 Subject to operating conditions, vacation periods shall be arrived at by mutual consent between the Employee and Company and the Employee shall be entitled to receive his vacation pay. No rollover of vacation days from one year to the next will be permitted. However, should a justifiable emergency arise, the Company may grant an employee the opportunity to carryover one (1) week of accrued, but unused vacation time to the following calendar year.

SECTION 4 Vacation periods for operators/mechanics/utility will be determined by the Company and posted for bid on or about December 1 for the following calendar year. Vacation bids will be based on department seniority. Vacation bids will be done by four (4) bid groups based on seniority. All accrued vacation must be bid or may be subject to forfeiture. Should any employee not bid their full accrued vacation time, they may request such time during the year and such request may be granted by the Company on a first come, first served basis as available. Should any employee bid a vacation schedule and exhaust all of his/her paid vacation time prior to the scheduled date(s), the Company will not be required to allow the employee unpaid vacation time for the vacation time bid. Vacations will be observed as bid unless emergency and/or staffing shortages at the time preclude granting the time off. Vacation trades may be allowed with prior approval of the Company.

SECTION 5 Should there be a conflict where more than one employee has elected the same vacation period, at the same time, and it is not in the best interest of the operation to let both (or multiple) employees off at the same time, the available vacation time shall be given to the employee with the most seniority.

ARTICLE 12 - PERSONAL TIME OFF

SECTION 1 Full-time employees will be eligible to earn paid Personal Time-Off (PTO) each year based on the following schedule:

<u>Years of Employment</u>	<u>Personal Time Off</u>
After one year	7 Days
After two years	8 Days

SECTION 2 PTO may be used for a full-day absence from scheduled work, not to exceed a total of 40 hours of pay per week (taken in four/eight or five/ten hour units, depending if the employee works a four- or five-day workweek). Employees may request a PTO with at least 72 hours advance notice to the Company. PTO taken with less than 72 hours advance notice will result in an attendance occurrence being recorded on the employee's attendance record. PTO that remains unused twelve (12) months after earning will be cashed out to the employee. In approving an absence from scheduled work under this Article, the Company will take into consideration verified emergencies.

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ARTICLE 13 - FUNERAL LEAVE

In the event an employee shall suffer the death of the employee's spouse or domestic partner (per the Company's published guidelines), parent, parent of spouse, sister, brother, children, stepchild who resides with the employee, grandchildren or grandparents, he shall be granted funeral leave with pay for four (4) workdays, on the basis of the employee's scheduled workday at the employee's straight-time hourly rate of pay, not to exceed eight (8) hours or ten (10) hour days per day, depending on whether the employee works a five-day or four-day workweek, including full-time and part-time employees. Should an employee elect not to take the funeral leave allowable, there will be no cash value for the unused leave. The employee will provide reasonable proof of death and family relationship if requested by the Company.

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ARTICLE 14 - COURT DUTY

SECTION 1 In the event a full time employee is required to serve on a duly constituted jury, he shall be paid at his appropriate rate for the hours necessarily absent from scheduled work each day for a maximum of fifteen (15) days during the life of this contract. Employees will immediately notify the Company of any jury notice. The employee may keep any jury duty fees paid by the court.

SECTION 2 Employees who are released from jury duty two hours or more prior to the end of their work day must contact their supervisor to determine whether or not they should report for work.

SECTION 3 Required time off for the appearance in court for reason of Company business will be compensated at the employee's regular rate of pay.

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ARTICLE 15 - FAMILY AND MEDICAL LEAVE

The Company and the Union will comply with the Family and Medical Leave Act as provided by applicable law. The Company and the Union agree that in the application of this Act the yearly period will be calculated using a floating 12 month period.

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ARTICLE 16 - LEAVE OF ABSENCE

SECTION 1 An employee must have at least 12 months of service to be eligible to request a leave of absence. Leaves of absence of up to thirty (30) days may be granted at the Company's discretion, upon receipt of a written request from the employee stating the reason for the requested leave.

SECTION 2 **Written Requests**

A request for leave of absence or for an extension must be made in writing by the employee and approved in writing by the Company.

SECTION 3 **Requests for Leave**

Requests for leave of absences shall be made as far in advance as possible. Seniority shall accumulate during a leave of absence, however, time spent on leave of absence shall be without pay and shall not be credited towards tenure of employment or towards working time for benefits.

SECTION 4 **Military Leave**

The parties hereto agree that the Employer shall comply with USERRA, as amended and the Reserve Forces Act of 1995, and amendments thereto.

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ARTICLE 17 - UNION RECOGNITION

SECTION 1 The Company recognizes the "Union" as the sole collective bargaining representative with respect to mandatory subjects for bargaining which are wages, hours and other working conditions for all employees in the work classifications set forth in the Wage Section of this Agreement.

Whenever used in this Agreement, the term "employees" shall mean all non-probationary regular, full-time and regular part-time persons employed, in the classifications set forth in the Wage Section of this Agreement, by the Company, but excluding all other administrative, clerical, reservations and dispatch employees, guards and supervisors as defined under the National Labor Relations Act.

For purposes of this Agreement, whenever the term he, his, him or any male appellation appears, it is understood to include the female as well.

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ARTICLE 18 - UNION REPRESENTATION

SECTION 1 Authorized representatives of the Union shall have access to areas where work is being performed as long as he shall first notify the General Manager or his designee, but visitations will be subject to reasonable safety/security rules. The purposes of these visitations will be to meet with bargaining unit employees and to settle and investigate grievances and/or possible grievances. It is not the intent of the Company to make visitation unreasonable.

SECTION 2 Shop stewards shall not be paid by the Company for union work and shall perform such work outside assigned duty time. However, if at the Company's request, the Steward is requested to attend a meeting during his normal shift that time shall be paid at the normal rate of pay.

SECTION 3 The Union shall notify the Company or its representative, in writing, of the appointment of a Job Steward. The Company shall notify the Union, in writing, of its intention to lay off a Job Steward at least two (2) full working days prior to such intended layoff. A Job Steward shall not be discharged for the performance of his agreed-upon duties when performed in accordance with this Article. ~~The Company will discuss any possible reassignment with the Union prior to transferring a Steward from the specific area where he is employed and assigned as a Steward.~~

SECTION 4 To promote harmony between the Union and the Company, the Steward, without interrupting the progress of the job, shall be limited to and shall not exceed the following duties and activities:

- (a) Work with the Company's designated representative in charge of the job in an attempt to resolve disputes prior to the application of the grievance procedure.
- (b) Investigate grievances and potential grievances.
- (c) Report to his Union representative infractions of the Agreement, which have not been resolved between himself and the Company's designated representative.
- (d) The Local Union representative or his designee will be allowed to meet with new employees during the employees' training period. This meeting will be solely for the purpose of introducing new and prospective employees to the Union.

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ARTICLE 19 - GRIEVANCE AND MEDIATION/ARBITRATION PROCEDURE

SECTION 1 The Company and the Union believe in order to foster good Labor/Management relations, potential grievance issues may be best addressed if they are informally discussed and resolved, if possible, as early as possible after the issue is known. Therefore, the Company and the Union encourage employees to discuss the matter with the employee's immediate supervisor or other Company manager as soon as possible after the issue comes to his/her attention. Such discussion may include the Union Steward. However, such informal discussions shall not extend the time limits for filing or processing a grievance in writing as set forth in STEP 1, and it is the aggrieved party's responsibility to comply with those time limits.

SECTION 2. For purposes of this Agreement, a grievance is defined as a dispute between the parties concerning the meaning, interpretation, application or alleged violation by the Company of the express terms of this Agreement. If a dispute arises over the application or interpretation of this Agreement, the Company and the Union agree that the procedure outlined below shall be the exclusive remedy for such dispute:

STEP 1 – Grievances must be submitted in writing to the Assistant General Manager (AGM), or designee, not later than 15 calendar days after the employee knew, or should have known, of the alleged violation giving rise to the grievance. The grievance shall be in such detail as to adequately identify the nature of the grievance, including date of the alleged violation, if appropriate, and the provision or provisions of the Agreement violated by the Company. The AGM, or designee, shall schedule a meeting with the employee and the Union Steward, if requested by the Union Steward or Union Business Agent, within 15 calendar days after receipt of the written grievance. The AGM, or designee, shall respond to the Grievance within 15 calendar days following the date of the meeting, or within 15 calendar days of receipt of the written Grievance if no meeting is requested.

Suspensions of three (3) or more workdays or terminations shall be commenced at STEP 2 within 15 calendar days of the date of the initial disciplinary decision.

STEP 2 – In the event the grievance is not resolved to the satisfaction of the filing party in STEP 1 above, that party may submit the grievance to the General Manager, or designee, within 15 calendar days following the date of the Company's answer in STEP 1. The General Manager, or designee, the employee, the Union Steward, and the Union Business Agent shall hold a meeting to discuss the grievance. The General Manager, or designee, shall respond in writing to the Union Business Agent within 15 calendar days following the date of the meeting.

STEP 3 – MEDIATION

In the event the Company and the Union do not resolve the Grievance in STEP 2, the Company and the Union may by mutual agreement, refer the matter to mediation, utilizing the services of the Federal Mediation and Conciliation Service (FMCS). It is understood that the mediation process is to be expedited and at any time during the mediation process either the Company or the Union may declare the process closed.

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STEP 4 – ARBITRATION

In the event the grievance is not resolved in STEP 2, or STEP 3 if invoked, the Union may refer the Grievance to arbitration by written notice to the General Manager and filing a request with FMCS within thirty (30) calendar days following the date of the General Manager's response in STEP 2, or the close of the mediation process in STEP 3 if invoked. The request with FMCS must request a list of a minimum of seven (7) names of impartial Arbitrators in the region nearest to the Company's premises. The General Manager, or designee, and the Union, shall, as soon as reasonably practical, following receipt of the list of Arbitrators from FMCS, alternately strike names from the list until only one (1) name remains. The remaining Arbitrator shall act as the impartial Arbitrator who shall hear and decide the issue.

SECTION 4 The Arbitrator shall have no authority to add to, delete from, amend, or in any way disregard any of the terms of this Agreement, or fashion a remedy in which back pay is awarded retroactively for more than fifteen (15) calendar days prior to the date on which the grievance was filed.

SECTION 5 The costs, fees and expenses of the arbitrator and hearing room will be equally shared between the Company and the Union; otherwise each party shall bear its own expenses.

SECTION 6 The Arbitrator's decision shall be in writing and served on the Company and Union. The decision of the Arbitrator shall be final and binding upon the Company and the Union.

SECTION 7 It is the intent of the parties that the time limits provided for shall be strictly adhered to. Exceptions to the foregoing time limits shall be made only upon mutual written agreement of the parties. Failure to comply with the time limits herein shall result in forfeiture of the failing party's position without setting precedent. If a time limit expires on a Saturday, Sunday, or holiday, the final day shall be the next business day.

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ARTICLE 20 - MAINTENANCE PROVISIONS

The following provisions pertain to Maintenance Department employees only and as such modify or amend other provisions in this Agreement. All other provisions of this Agreement apply to maintenance department employees.

Technicians currently employed who do not have at least one ASE Certification will be required as a condition of continued employment to obtain at least one ASE Certification within thirty (30) months of the effective date of this Agreement.

Tech level C - must obtain one or two certifications and one must be either A5, H4, T4, S4 (Brakes).
 Tech level B - must obtain three or four certifications and two must be either A5, H4, T4, S4 (Brakes), plus either H8, T8 (PM Inspection).
 Tech level A - must obtain five or more certifications and three must be either A5, H4, T4, S4 (Brakes), plus either H8, T8 (PM Inspection) and A7, H7, T7, S7 (Heating Ventilation and Air Conditioning).

ASE Technician Certification Levels							
Automotive		Medium/Heavy Truck		School Bus		Transit Bus	
A1	Engine Repair	T1	Gasoline engines	S1	Body systems and special equipment	H1	Compressed natural gas engines
A2	Automatic transmission/transaxles	T2	Diesel engines	S2	Diesel engines	H2	Diesel engines
A3	Manual drive train and axles	T3	Drive train	S3	Drive train	H3	Drive train
A4	Suspension and steering	T4	Brakes	S4	Brakes	H4	Brakes
A5	Brakes	T5	Suspension and steering	S5	Suspension and steering	H5	Suspension and steering
A6	Electrical and electronic systems	T6	Electrical and electronic systems	S6	Electrical and electronic systems	H6	Electrical and electronic systems
A7	HVAC	T7	HVAC	S7	HVAC	H7	HVAC
A8	Engine performance	T8	Preventive maintenance and inspection			H8	Preventive maintenance and inspection
A9	Light vehicle diesel engines						
ASE Master Automotive Certified = A1 thru A8		ASE Master Medium/Heavy Truck Certified = T2 thru T7		ASE Master School Bus Certified = S1 thru S6		ASE Master Transit Bus Certified = H2 thru H7	

If the company hires a Technician hereafter with no Automotive, Medium/Heavy Duty Truck, Transit Bus or School Bus ASE Certifications, that Technician must achieve at least one Automotive, Medium/Heavy Duty Truck, Transit Bus or School Bus ASE not later than six (6) months from the date of hire.

The Company will pay a premium of \$.15 per hour in addition to the regular hourly wage to Technicians for each ASE (Automotive Service Excellence) certification in Automotive, Medium/Heavy Duty Truck, School Bus and/or Transit Bus.

The Company will pay an additional premium of \$.25 per hour to technicians for each ASE Master Certification.

* Except for failure to maintain ASE certifications and/or being reduced in class, no technician's hourly wage rate shall be reduced as a result of the establishing the pay rates in this Agreement. Increases in hourly wage rates may occur annually (on the first pay period in January following the anniversary of the effective date of this Agreement) due to length of employment and as ASE certifications in Automotive, Medium/Heavy Duty Truck, School Bus and/or Transit Bus are obtained.

Failure to maintain ASE certifications in Automotive, Medium/Heavy Duty Truck, School Bus and/or Transit Bus according to the ASE requirements, will result in reduction in pay of \$.15 per hour per expired ASE, and may result in the Technician being reduced in class or disqualified to continue his or her employment if the Technician does not also meet minimum requirements.

The wages rates for all Maintenance personnel can be found on Appendix A.

SECTION 1 The Maintenance Department is divided into classifications as set forth in this Article, Bidding Procedures and recognizes the following seniority:

- a. Department Seniority: The length of continuous service commencing from the last date of hire or transfer into the Maintenance Department shall be termed departmental seniority. It shall be used for picking vacations, layoffs, and recall procedures.
- b. Classification Seniority. The length of service in a particular classification within the Maintenance Department but shall not exceed company, departmental, or technical classification seniority. The date an individual first moves into a classified position shall be termed the individual's classification seniority date. A one hundred-twenty (120) day trial period will be utilized for all existing maintenance employees changing classification. New employees hired will have a one hundred-twenty (120) day probationary period.

SECTION 2 – Workweek/ Overtime

A workweek starts 0001 hours on Sunday and runs to 2400 hours on the following Saturday. Overtime shall be paid for all hours worked in excess of forty (40) hours in one (1) workweek. Vacation or other paid time off does not count as time worked for overtime purposes. Under no circumstances will time-and-one-half (1 1/2) or premium time of any kind be paid more than once for the same hours, nor be cumulative.

- a. Overtime Rotation: All overtime work in the Maintenance Department shall be, as far as practicable, rotated among qualified and eligible employees according to seniority. Employees eligible for overtime shall not be passed for overtime until reasonable efforts to contact them have been made by the Company. Employees must be available to work during the times requested by the Company, or the employee shall be considered to have passed that opportunity to work overtime. Two hours or less is not subject to overtime rotation. Overtime subject to rotation shall pay a minimum of two (2) hours and one (1) minute at the overtime rate. A maintenance employee's consecutive hours shall not exceed twelve (12) hours except in emergencies.

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SECTION 3 – While Working As Relief Foreman

When an employee is assigned work in a foreman's capacity (mechanical or service worker), he/she shall receive an additional \$1.00 (one dollar) per hour.

SECTION 4 – Application Procedures

All maintenance vacancies covered by this Agreement will be posted on an appropriate bulletin board for five days. The Company will give preference to internal maintenance applicants before considering outside applicants for maintenance vacancies. Individual job changes ensuing from an application and offer shall be effective with seniority at the beginning of the next pay period, even though the employee involved may be required to perform work in a lower classification or on another shift until all job changes can be properly made. The Company will make a reasonable effort to make all job changes as quickly as possible.

SECTION 5 – Temporary Jobs

If an employee is off or will be off for at least thirty (30) days due to illness, accident, or leave, as provided elsewhere in this Agreement, his/her job may be posted as a temporary position. The individual awarded the temporary position will accrue seniority in that position only if the employee meets the job qualification requirements of that position or unless displaced, in which case no seniority loss shall occur in the previous classification. An employee may temporarily fill a position for another employee on extended leave.

SECTION 6 – Minimum Time In Position

Once bid and obtained, an employee must work in a specialized position for a minimum of one (1) year.

SECTION 7 - Evaluation and Training

The Company will supply applicable training to Maintenance employees. This training program is designed to give employees an opportunity to become qualified for increased job responsibilities and higher classifications. The Company will pay employees for such training at their present rate of pay. The Company may adjust the employee's schedule so that he may attend such training.

SECTION 8 – General Bid

General bids will occur and be governed by the provisions of Article 31, Bidding Procedure. If a vacancy in a job classification occurs between general bids, there will be a re-bid in that classification. General bids will be based on classification seniority. Before going on vacation, employees may leave with a Shop Steward conducting such bid a written authorization of their choice to bid on any job openings which may be posted during their absence.

SECTION 9 – Vacation Bid

Vacation bids will occur and be governed by the provisions of Article 12.

SECTION 10 – Miscellaneous – Maintenance Department

a. Tools/ Safety Allowance: The Company will provide on the first pay period following the employee's first annual anniversary and on the pay period following each subsequent annual anniversary a tool/ safety allowance to all technical employees. The total allowance can only be used for tools, safety shoes, or safety glasses and the maximum reimbursement total is three hundred eighty dollars (\$380) for actual work-related, documented expenditures. If the maintenance employee receives an ASE, the total allowance that can be claimed for reimbursement is four hundred dollars (\$400).

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b. Uniforms: The Company will provide eleven (11) sets of uniforms to each eligible Maintenance Department employees. Employees will be held responsible for documented shortages. Company supplied uniforms in addition to safety shoes and eye protection are required to be worn during scheduled working hours.

c. Cleanup Time: Cleanup time of twenty (20) minutes will be allowed and paid prior to the end of each shift. This shall consist of ten (10) minutes for area cleanup, and ten (10) minutes for personal cleanup.

d. Protective Clothing and Safety Equipment: Raincoats, rubber hats, and rubber boots of a serviceable nature shall be made available to employees in the Maintenance Department who are required to work outside in wet weather. The Company will make available suitable protective clothing for employees working in the wash rack area, for steam cleaning, in the battery building, and for other jobs when necessary. The Company will furnish all other safety equipment as required.

e. Maintenance Safety Program: The Company will continue the safety program in the Maintenance Department in which outstanding safety performance by Maintenance Department employees is recognized and required.

SECTION 11 – Temporary Pay

An individual who temporarily performs work in a higher paying classification will be paid at the higher classification's rate for the period of time of such temporary work.

SECTION 12 – Shift Bidding for Leadpersons'

In the event the Company deems it necessary to use Lead employees in the Maintenance Department, such employees may bid their respective shifts based on their Lead seniority. In the event two or more persons are appointed by the Company to a Lead position, mechanic classification seniority shall prevail for shift bidding purposes. Such bidding will occur at the time of the General Bid.

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ARTICLE 21 - UNIFORMS, WORKCLOTHES AND OTHER EQUIPMENT

SECTION 1 – OPERATORS

The Company will provide uniforms to Operators upon hire, consisting of five (5) long sleeve/ short sleeve shirts, three (3) pants/shorts and an all-season jacket. The employee will be required to keep his or her uniform clean and in good repair. The Company will replace uniform annually as needed.

SECTION 2 – Maintenance Employees

The Company will provide a weekly work clothes service for all employees in the Shop. The Company will provide: eleven (11) trousers, eleven (11) shirts, and two (2) all-season jackets, replaced as needed, with periodic cleaning provided.

SECTION 3 When an employee leaves the employment of the Company, the employee must return all uniform and work clothes items, and all other Company provided equipment and materials, and may be charged the reasonable value of items not returned.

SECTION 4 During a specified and announced Summer period, the Company will permit operators to wear uniform style shorts in lieu of pants. Such shorts must conform to the color scheme of operator uniforms and the bottom must be no more than 2 inches above the knee. During such period, either black socks and shoes or white socks and shoes may be worn while wearing such shorts. Employees must remain in full uniform, including any required safety gear, at all times when on Company time. Violations of this requirement may result in disciplinary action as necessary.

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ARTICLE 22 - DISCIPLINE, DISCHARGE AND INVESTIGATIONS

SECTION 1 It is understood and agreed by the Company and Union that the principle of progressive discipline will apply. The Company will discipline or discharge Employees for just cause. The Company may implement and enforce reasonable rules and regulations or may modify or eliminate such rules or regulations at any time so long as such rules or regulations are not in conflict with any specific provision of this Agreement. The Company will provide a copy of the rule to the Union, and will meet with the Union to discuss the rule, if requested. The Union does not waive its right to contest the application or reasonableness of any policy or rule issued by the Company through the grievance and arbitration procedures.

SECTION 2 The concept of progressive discipline shall include the following steps:

1. Written warning or warnings, as appropriate;
2. Suspensions without pay;
3. Final warning, and,
4. Discharge

It is understood that such steps will be applied on a case-by-case basis as determined by the Company based on the seriousness and severity of the violation. Further, violations of the most serious matters as set out in the Company's Employee Handbook, and violation of the Company's Drug & Alcohol policy, may be addressed by discharge on the first offense.

SECTION 3 Employees may request Union representation at any investigative meeting that they reasonably believe may result in disciplinary action, pursuant to the employer action taken against an employee.

SECTION 4 In all cases involving a written reprimand, suspension, or discharge, the Union Business Agent shall receive a copy of the written reprimand, letter of suspension or letter of discharge by facsimile or email. The Company will furnish all documentation used for discipline.

SECTION 5 Disciplinary letters other than those involving harassment or discrimination, shall not be considered for further discipline after twelve (12) months from the date issued, except that discipline for safety violations will remain active for 36 months from the date issued.

SECTION 6 All employees will receive a copy of the Company's Employee Handbook and any new changed rules as issued by the Company from time to time.

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ARTICLE 23 - WAGES

SECTION 1 Wages and other compensation for the classifications covered by the Agreement shall be paid in accordance with Appendix A.

SECTION 2 All employees covered by this Agreement shall be paid bi-weekly on a designated payday. If the designated payday falls on an observed holiday, payday shall be the workday proceeding such holiday.

SECTION 3 Employees who are laid off or discharged must be paid wages due to them upon layoff or discharge. If the Company fails to pay the wages or compensation of a discharged employee upon lay off or discharge, the Employee will be paid at the rate of eight (8) hours per day at his regular rate of pay until paid.

SECTION 4 The Employee will receive a paycheck or voluntary direct deposit stub on their designated payday. Paycheck stubs or pay detail sheets will include all information as required by state and federal law.

SECTION 5 In the case of minor discrepancies in an employee's pay up to fifty (\$50.00) dollars will be corrected by the following payday. The Company will correct and pay payroll discrepancies of more than fifty (\$50.00) dollars within forty-eight (48) hours after the Company is notified of the error. All discrepancies must be substantiated by the employee, which includes all details needed to calculate the claim prior to making a claim.

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ARTICLE 24 - WORK DAY, WORK WEEK

SECTION 1 The workweek shall begin at 12:01 A.M. Sunday, and end at 12:00 midnight the following Saturday.

SECTION 2 The workday shall begin at 12:01 A.M. and shall end at 12:00 midnight.

SECTION 3 Unless the employee has bid on a split days off schedule, the regular workweek for full-time employees will consist of any five (5) workdays during the period Sunday through Saturday, with two (2) consecutive days off, unless the full-time employee is on a four (4) day, ten (10) hour workday schedule.

SECTION 4 The regular workday for employees will consist of any eight (8) consecutive hours of work exclusive of one-half (1/2) hour unpaid meal period, unless employees are on a ten (10) hour workday schedule.

SECTION 5 Neither this Article nor any other provision of this Agreement shall be construed as a guarantee of hours of work per day or days of work per week.

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ARTICLE 25 - SENIORITY

SECTION 1 – SENIORITY DEFINED

Seniority shall mean the length of time an employee has been employed by the company, measured in calendar days from the first day of the employees most recent date of hire, for the purpose of selecting work, the determination of order in any layoff or other reduction in work force, bidding, runs, assignment or time off as provided for in this agreement. If application of the preceding sentences results in two (2) or more employees having the same seniority, the employee's seniority position will be determined by alphabetical order. Seniority shall be given prime consideration in the application of this agreement.

SECTION 2 - Layoff

- A. Determination of Lay off: The Company will determine the timing of a lay off and the number of employees to be laid off.
- B. Lay off: All layoffs will be made in an attempt to minimize the amount of full-time employees affected with the part-time employees being laid off first provided there are full-time employees willing to work and are qualified to perform the part-time work that remains available. When the reduction in the work force becomes necessary, as determined by the company, such lay off shall be in reverse order of seniority. In the event of a layoff, if a fulltime employee does not elect part-time, the Company will not contest his/her unemployment claim.
- C. Maintenance employees will be laid off first by classification seniority with downward bumping rights allowed for qualified employees, and then by company seniority.

SECTION 3 – Recall

Order of recall: Employees will be recalled from lay off status in the reverse order of which they were laid off.

- A. The employee with the most seniority will be the first one recalled from a lay off.

B. Notice of Recall: The Company will forward notice of recall by registered mail, return receipt requested, to the last known address of the employee as reflected on company records. The employee must, within five (5) days (excluding weekend days and holidays) of delivery or attempted delivery of the notice of recall, notify the company of his/her intent to return to work on the date specified for recall and, thereafter, returns to work on date specified.

SECTION 4 – Termination of Seniority

An employee's seniority shall be terminated and his/her rights under this agreement forfeited for the following reasons:

- a. Resignation by the employee or termination by the Company, unless reinstated pursuant to the grievance procedure.
- b. Failure to give notice of intent to return to work after recall within the time period specified in Section 3 of this Article, or failure to return to work on the date specified for recall, as set forth in the written notice of recall will be considered a voluntary resignation.

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- c. Except for layoff, time lapse of nine (9) months since the last day of actual work for the Company, regardless of reason.
- d. Failure to return to work upon expiration of an approved leave of absence.
- e. Layoff of a period of twelve (12) months or for a period equal to the employee's seniority, whichever is less.
- f. Absence of three (3) consecutive days without notifying the Company will be considered a voluntary resignation.
- g. Misuse of leave as a subterfuge, to accept employment elsewhere, or for a purpose other than stated upon request for leave.

SECTION 5 – Seniority Lists

The Company shall provide the Union current seniority list once every three (3) months. Such list shall be deemed accurate unless challenged by the Union or employee within ten (10) days of receipt.

SECTION 6 – Return of Personnel to the Bargaining Unit

A person who, after transfer or promotion out of the bargaining unit, for a period of six (6) months or less, remains in the continuous employment of the company shall be returned to the job classification previously held at the request of the employee and/or the company. If this return results in a lay off the least senior employee shall be laid off.

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ARTICLE 26 - HEALTH AND DENTAL INSURANCE

Section 1: Provisions: The Company shall provide group health, group dental and group vision insurance for all regular, full-time employees.

Section 2: Eligibility: Employees shall be eligible for the plans on the first day of the month following ninety (90) days of continuous, full-time employment.

Section 3: Contribution: Effective target date of January 1, 2011, but no later than February 1, 2011 after completion of an initial open enroll period, participating employees shall pay the following monthly amounts for the medical insurance coverage through payroll deductions:

	Employees Hired Before <u>3-1-02</u>	Employees Hired After <u>3-1-02</u>
Single Coverage	\$ 6.19	\$ 11.99
2-Party Coverage	\$ 67.15	\$ 67.15
Family coverage	\$ 85.48	\$ 85.48

Subsequent increases in medical insurance premiums will be paid by the Company contributing ninety percent (90%) of the increase and the employee ten percent (10%).

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ARTICLE 27- OTHER BENEFITS

SECTION 1 The Company agrees to participate in the Teamsters National 401(k) Plan for employees who have completed at least 12 months of service. The Company's contribution to the Plan for each eligible employee shall be limited to two and one-half percent (2.5%) of the wages of each job classification regardless of whether the employee contributes his/her own pay. This benefit will be effective the first of the month following ratification of the Labor Agreement. Employees may contribute an amount as provided by law, and may contribute before their 12-month anniversary.

SECTION 2 - GROUP LIFE AND AD&D INSURANCE:

Regular, full-time employees within the bargaining unit shall be eligible to participate in the Company's group life insurance and accidental death and dismemberment insurance plan. The premium for this benefit will be paid by the Company. The amount of insurance in effect will be \$20,000.

SECTION 3 - PERFORMANCE BASED INCENTIVE: In recognition of excellent performance the Company will provide full-time Operators additional incentive payments monthly, quarterly, and annually, on a rolling twelve-month basis, in accordance with the following schedule:

- a. Each full-time Operator who has all of the following: no preventable accidents; no validated complaints; perfect attendance; and, has been in 100% conformance with the uniform policy will receive a \$50.00 (fifty dollar) bonus each month.
- b. For each Quarter, each Operator who has made the bonus for each month of the quarter will receive an additional \$100.00 (one hundred dollars).
- c. For each year, each Operator who has made the bonus for each of the four quarters will receive an additional \$250.00 (two hundred fifty dollars).

In recognition of excellent performance the Company will provide full-time Maintenance Department employees additional incentive payments monthly, quarterly, and annually in accordance with the following schedule:

- d. Each full time employee who has all of the following: no preventable accidents, no validated complaints, perfect attendance, and has been in 100% conformance with the uniform policy will receive a \$50.00 (fifty dollar) bonus each month.
- e. For each Quarter, each employee who has made the bonus for each month of the quarter will receive an additional \$100.00 (one hundred dollars).
- f. For each year, each employee who has made the bonus for each of the four quarters will receive an additional \$250.00 (two hundred fifty dollars).

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**ARTICLE 28 - UNION DUES, INITIATION AND/ OR REINSTATEMENT FEES AND
DRIVE CHECKOFF**

SECTION 1 Upon receipt by the Company of an authorization card signed by an employee covered by this Agreement and upon notification from the Union, the Company shall, in accordance with the terms of such authorization and in acceptance with this Agreement, deduct from such employee's earnings, on a monthly basis, the amount owed to the Union by the employee for his monthly union dues, assessments, initiation and/or reinstatement fees for each month subsequent to the date of the receipt of the Union notification.

SECTION 2 If an employee does not have any earnings during the month, or the earnings are less than the amount owed and billed, deductions will be made during the next month in which the earnings are sufficient to cover the initiation fees, Union dues, reinstatement fees, and/or assessments owed and billed by the Union.

SECTION 3 The Company shall promptly mail to the Union a check for the amount of initiation fees, union dues, reinstatement fees and/or assessments the Company has withheld during the month involved in accordance with the above provisions. The check shall be accompanied by a list showing the names of employees and the amount deducted.

SECTION 4 If the Company erroneously withholds union dues, assessments, initiation and/or reinstatement fees, the Union will refund the Company upon proper verification.

SECTION 5 Nothing contained herein shall permit the deduction by the Company of any assessment levied against an individual employee or group of employees unless the levy applies equally to all employees who have provided a signed authorization card.

SECTION 6 The Union agrees to indemnify the Company and hold it harmless against any and all claims, suits or other forms of liability (including attorney fees and court costs) that may arise out of or by reason of action taken or not taken by the Company for the purpose of complying with any of the provisions of this Article in reliance on any list, notice or authorization provided by the Union hereunder.

SECTION 7 The initiation fees, union dues, reinstatement fees and/or assessments charged to employees covered by this Agreement shall be in accordance with the Union's Local Bylaws and the Union's International Constitution.

SECTION 8 The Company agrees to withhold on a once-a-month basis from employees who have signed a proper authorization card, a donation made out to D.R.I.V.E., which is to be submitted by the Company to DRIVE National Headquarters. The funds submitted are to be accompanied by a listing of the name and social security number of each employee on whose behalf a deduction is made. No such authorization shall be recognized if in violation of State and Federal law.

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ARTICLE 29 - COMMITTEES

SECTION 1 - Labor-Management Committee: The parties hereby agree to establish within six (6) months of the effective date of this Agreement a Committee to deal with issues that may arise with respect to the application or interpretation of this Agreement as affects the efficient operation of the Company's business, but not to replace the provisions of the grievance procedure. Meetings will be scheduled as the need may arise with proper advance notification provided to and by both parties. The intent of this Committee is to promote and sustain the harmonious relations between the parties. The Company and the Union will select their respective representatives, recognizing the Committee is to be limited to no more that three (3) persons for each party. Each party may have other pertinent and relevant resource persons in attendance at any given meeting. It is further understood and agreed that the Committee shall have no power or authority to alter, amend, change or modify any provisions of this Agreement.

SECTION 2 – Accident Review Committee: The parties agree to have an established Accident Review Committee (ARC) as outlined in the First Transit Employee Handbook to provide Operators and others charged with a preventable collision, a forum to appeal the Company's determination of collision preventability.

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ARTICLE 30 - DRUGS AND ALCOHOL TESTING

In acknowledgement of the nature of the Company's operations and the very special and overriding safety considerations, the Company has adopted formal provisions for fitness for duty drug and alcohol screening. Such provisions are adhered to and expressly made part of this Agreement.

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ARTICLE 31 - BIDDING PROCEDURE

SECTION 1 - Seniority for Bidding Purposes : There shall be a minimum of three (3) general bids per calendar year. There will be a minimum of three (3) months between each of the general bids. Operators shall be entitled to select runs and/or routes in accordance with their seniority. All regular runs will be posted on the bulletin board at least one (1) week before bidding commences. The operator's seniority list will be posted on the bulletin board thirty (30) days prior to the commencement of the bid. Any discrepancies will be addressed fifteen (15) days prior to the commencement of the bidding process.

SECTION 2 - Bidding Process: The bidding process will be administered by the Union as follows and should take place over an approximate one-week period. The two union representatives conducting the bid will be paid their regular straight-time hourly rate. At the end of group bidding if there are insufficient bidders the Company will re-bid the leftover packets it being understood and agreed that any remaining packets not thereby filled will be assigned on the basis of reverse seniority with the least amount of hours packet going to the least senior employee, and the most hours packet going to the most senior employee based on the reverse seniority order concept.

- a. Bid groups will be posted at the same time bid packets are posted.
- b. Each operator will bid according to his/her seniority and within his/her bid group. Each operator will make the appropriate number of selections based on seniority and placement within his/her individual bid group. For Example: If an operator is number 20 for bid group 4, he/she will make twenty (20) choices on his/her bid sheet.
- c. Each bid group shall bid for a twenty-four (24) hour period. Bid books may be picked up after 1300 two (2) days prior to scheduled bid date and not before. Individual bid books and bid selections are due back by noon the day of the groups' bidding. Late bids will be placed at the end of the next days' bid group. For Example: If an operator is in group two and is supposed to turn in his/her bid by noon Tuesday, but failed to do so, it will be counted at the end of group three on Wednesday.
- d. Bids will be accepted only on the form provided by the Company. The order of choices must be clearly indicated and signed by each individual operator. No bids will be taken over the phone. It will be the responsibility of the operator who is on vacation, leave of absence, extended illness or injury to make sure that his/her bid is made during the appropriate time. An operator may leave his/her signed bid choice with a Union representative. Late bids will be placed at the end of the next day's bid group.
- e. An operator who, by choice, bids a run that would put him/her into a violation of the ten (10) hours minimum rest rule will be withheld from the new assignment until such time as proper rest has been accomplished. At that time, the operator will pick up the new assignment. In such case the operator will be paid only for the actual time worked.

Section 3 - New Work: New work is defined as runs/routes that are added to the system after a general bid has occurred. Runs/routes will consist of thirty-two (32) hours or more. Future efforts will be made to produce 40-hour workweeks. All new work (runs) will be made into available packet runs and posted for ALL extra-board operators to bid, unless four (4) weeks or less remain on a general bid. Until such time that the work is successfully bid, it will be worked by the extra-board. If no extra-board operators are available, the work will be performed by regular full-time operators who sign up to work

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on their day off provided it does not result in those drivers working overtime. If "days off" operators are not available on a straight-time basis, the work shall be assigned to part-time operators and then the work will be assigned by rotation to regular full-time/extra-board operators who sign up to work on their day off. Provided the runs are available to the Company 48 hours prior to implementation, the union will be allowed to view all runs.

Section 4: Vacant/Open Work: Open work is defined as a packet run vacated for any period, through terminations, leave of absence, suspension, vacations, and other assignments such as training and special assignments. All open work shall be rotated or bid by regular full-time extra-board operators. In the event there are not enough extra-board operators available to fill these vacancies, the work will be filled by operators from the overtime sign-up sheet on a rotational basis.

The Company will post each Monday by 12:00 noon the open work, hold-downs and temporary work available for bid. Bidding will close on Thursday by 1200 and will be awarded on Friday by 1200. The run will commence on Sunday. Extra-board operators bidding this work shall operate it for the duration of the bid or until such time as the regular operator returns to work. If no Extra-board operator bids the work it shall be assigned to the operator with the least amount of seniority on the extra-board. Extra-board operators who bid on open work will not be forced onto other open work.

Section 5: Special Assignments: In order to be eligible to bid for a regular-packet run, an operator must drive for at least two-thirds (2/3) of the time of the bid. If an operator will be on special assignment during the bid and will not be available to drive for at least two-thirds (2/3) of the bid, the operator must bid a non-packet extra-board.

Section 6: Extra-Board: The purpose of the extra-board is to enable the Company to provide reliable, economical, efficient and uninterrupted service to the clients of the system. There are two classifications for extra-board. They are: Full-time Extra-Board Operators, and Part-time Extra-Board operators.

a. **Full-Time Extra-Board Operators:** These operators will be guaranteed a minimum of thirty-five (35) hours per week, provided they work all assignments given to them. (The 35-hour guarantee is a floor not a ceiling.) These operators will fill all known work that is vacant. This work includes runs vacated because of: sickness, vacation, leave of absence and the work of operators working in other capacities. In addition, these operators may be assigned a daily show-up slot.

b. **Part-Time Extra-Board Operators:** Normally these operators should work less than thirty (30) hours per week. These operators will work the show-up positions and left over pieces of work. Part-time operators will be given the option of going into full-time positions, as they become available, based on seniority. Part-time positions will not be used to diminish the number of full-time operators.

c. **Definitions of Extra-Board Terms:**

- 1) Open and Hold Down is defined as a long-term vacancy of five (5) days or more, or a normal workweek.
- 2) Partial Work is defined as a piece of work, segmented out from a full packet run.
- 3) Show-Up Work is defined as any work that develops after the daily schedules have been posted.

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- d. Scheduling Manpower: When scheduling known work for extra-board; (excluding work specifically designated for part-time), operators shall be used in the following order: Full-time extra-board operators, then Part-time operators. In the event there are not enough regular full-time and part-time extra-board operators available to fill the vacant work, the work will be filled by full-time operators who have signed to work their days off, on a rotational basis.
- e. Weekly Bidding: Vacant work shall be rotated to or bid by full time extra-board operators only. Open work, Long-term vacancies (hold downs) and Temporary work will be posted each Monday by 1200. Bidding will close on Thursday by 1200 and will be awarded by Friday by 1200. These bids will take effect on Sunday. Full-time Extra-board operators bidding this work shall operate it for the duration of the bid or until such time the regular operator returns to work. Work that is not bid shall be assigned to non-packet extra-board rotation for the week.
- f. New/Open Work: Bidding for this work will be done by operator seniority, always beginning at the top of the seniority roster.
- g. Operators Working Days Off: In the event there are not enough extra-board operators available to fill the vacant work, the work will be filled by full-time operators who have signed to work their days off, on a rotational basis.
- h. Daily Scheduling: Extra-board scheduled assignments will be based on PAY hours. On the first day of the week the work which pays the most hours for the day will be assigned according to seniority. On each successive day the work will be rotated with the most hours going to the operator with the least amount of hours. This will be done daily throughout the week. At the beginning of each new week (Sunday) this rotation will begin again. For scheduling and pay purposes regardless of the operator's day off, the week will begin at 0001 on Sunday and end at 2400 on Saturday. Any run commencing before 2400 on Saturday shall be paid in that week's work.
- i. Posting of Daily Scheduling: An extra-board operator rotational roster shall be posted daily by 1600, showing work assignments for the following day. The work for Saturday and Sunday will be posted by 1600 on Friday. If the assignment has been cancelled and no operator is required at all, the reporting operator will be placed on the show-up list at the scheduled report time and/or will be paid a minimum of two (2) hours. If two operators have been wrongly scheduled for the same piece of work and both operators are extra-board operators, the work will be given to the extra-board operator with the least amount of hours up to that point. The other operator will be placed on show-up in rotation at the scheduled report time and/or will be paid a minimum of two (2) hours. If neither operator is an extra-board operator, the work will be given to the more senior operator, and the less senior operator will be placed on the show-up list and/or will be paid a minimum of two (2) hours. If two operators have been wrongly scheduled and one operator is a regular operator working days off and the other is an extra-board operator, the extra-board operator gets the assignment. The other operator will be placed on show in rotation at the scheduled report time and/or will be paid a minimum of two (2) hours. If the inconvenienced operator is contacted prior to reporting on his/her regular day off and does not work, he/she will not lose his/her place on the rotation list for the following week.
- j. Maximum Length of Day: Operators will not be forced to work more than thirteen (13) hours per day, inclusive of the spread or split time. If an assignment is given to an operator which ends later than the thirteen (13) hours, all attempts will be made to relieve that operator from that assignment at the end of the thirteen (13) hours. If an operator is close to violating the thirteen (13) hour rule, the operator should notify radio, no later than twelve (12) hours, so that immediate arrangements

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may be made. Operators being relieved will be relieved as close to the thirteen (13) hours as possible. In emergency situations, when no other help is available, all of these procedures will be waived and will not affect the operator's guarantee the following day if applicable.

- k. Calculation of Ending Times: For scheduling purposes, extra-board operators, having pre-assigned runs, shall have an end time equal to the actual end time of the run. The Scheduler will attempt to use actual end times for all extra-board operators prior to the schedules being made (e.g., 1400) for the following day's assignments. In other words, at (1400) the dispatcher will use the known actual end times.
- l. Ten (10) Hour Rule/Scheduled Time Off Between Assignments: All extra-board operators will be off duty ten (10) hours before reporting back to work for their assignment the next day, except in emergency situations. Operators off on the ten (10) hour rule will be placed back on their run as close as practicable to the ten (10) hours as possible. All operators will be scheduled ten (10) hours off between assignments, except in emergency situations, or when out of personnel. The Company is responsible to make sure this happens. Extra-board operators, whose assignment for the next day conflicts with the ten (10) hour rule, may request to be relieved to avoid having to invoke the ten (10) hour rule. Operators will only be relieved if manpower is available. Operators being relieved will only be paid for the actual work performed. In emergency situations, when above procedures are waived, operators will not lose any pay because of this rule.
- m. Window Dispatching (Show-Up): Operators assigned to a partial run must contact dispatch at the completion of their run for possible further assignment. Work assignments on the extra-board will be made in the order in which the work goes out with all known open runs being assigned first. Upon completion of each assignment, the extra-board operator will report back to the dispatcher for his/her next assignment, if any. An operator assigned to work a complete regular run shall be paid the actual time worked.
- n. Emergency Work: Emergency work is defined as a sudden or unpredictable occurrence (such as a major catastrophe or natural disaster) requiring the transportation of a significant number of people. Dispatch will utilize any available operator(s) on the premises first. If additional operators are needed, dispatch will call operators who have signed for days off and/or operators who are regularly scheduled to work that day.
- o. Regular Operators Returning to Work: When regular operators return to work, extra-board operators who are working those operator sick runs, or other runs, shall be placed back on the extra-board.
- p. Add-ons prior to and at the end of a regularly scheduled shift shall be filled by the current Operator for a maximum period of one and a half (1.5) hours per day. Other overtime assignments will be filled first by volunteers indicating their desire to work overtime in the following order: Full-time Extra Board Operators, Full-time Operators working days off, and Part-time Operators. The Company will attempt to equalize overtime among those persons desiring overtime work.

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ARTICLE 32 - ATTENDANCE POLICY

Appropriate standards of attendance ensure that quality service is provided in all areas of our business. When an employee is absent it increases the workload on other employees. This may result in less efficient work results and overtime expenses. Absenteeism not only disrupts workflow, but could also have a negative impact on morale. While an employee may be capable of doing a job, the job is not acceptable if the employee has excessive absences.

First Transit has developed this Attendance Policy in order that both the employee and the company understand what is expected of each other regarding an employee's attendance at work. This policy establishes a principle in which an employee's occurrence of absenteeism is monitored as opposed to the number of days absent from work. There will be occasions when the duration of time an employee is permitted leave will be limited.

By monitoring occurrences, First Transit seeks to more effectively control employee absenteeism by identifying employees with habitual absenteeism problems which affect our ability to serve our customers.

Excessive absenteeism affects the high quality service to our customers and daily operations. When an employee's attendance becomes excessive it reflects negatively on our customers, passengers and your co-workers and it's those concepts that support our Attendance Policy.

Probationary Employees

New Hire and Probationary employees during their initial 90-day probationary period or company extension will only be permitted to incur a maximum of 2 occurrences. Should a probationary employee exceed this limit their employment will be evaluated for termination for failing to meet the expectations of the probationary period.

No Fault Policy

The attendance policy is a **NO FAULT** policy and any time you have an attendance occurrence it will be documented and charged to your attendance record.

Required Notifications

All employees are required to notify the dispatch office at **1-888-408-6889** no later than 2-hours prior to their shift **EACH DAY** if they are not going to be able to work their shift.

Failing to call off at least 2-hours prior to your shift shall result in the following disciplinary schedule. The disciplinary schedule for failing to call off at least 2-hours prior to your shift within a *12-month floating period* prior to an employee's last occurrence will be as follows:

1 ST OCCURRENCE	Written Warning
2 nd OCCURRENCE	Written Warning
3 rd OCCURRENCE	3-Day Suspension, Last and Final Warning
4 th OCCURRENCE	Discharge

NOTE: In addition to discipline being administered for failing to call out 2-hours in advance an Attendance Occurrence will also be charged to the record of the employee.

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No Call / No Show Occurrence

All employees are required to notify the dispatch office at 1-888-408-6889 no later than 2-hours prior to their shift **EACH DAY** if they are not going to be able to work their shift.

Failing to report the reason for your absence (including FMLA) before your shift start time or up to 60 minutes after your shift start time will be considered a No Call / No Show.

The disciplinary schedule for No Call / No Show occurrences within a *12-month floating period* prior to an employee's last occurrence will be as follows:

1 ST OCCURRENCE	3-Day Suspension, Last and Final Warning
2 ND OCCURRENCE	Discharge

NOTE: In addition to discipline being administered for incurring a No Call / No Show. An Attendance Occurrence will also be charged to the record of the employee.

Time Limits

An employee's attendance will be monitored based on the number of occurrences of absenteeism within a floating 12-month period measured from the employee's last chargeable occurrence.

Absence Definition

An absence for purposes of this policy is any time which is lost by an employee not reporting for assigned work when scheduled.

Tardy (Late Report)

Tardy for purposes of this policy is defined as a failure of an employee to report to the dispatch window for work more than 59 seconds after their scheduled report time based upon the Official Clock (Time Stamp) in the Dispatch Office.

Disciplinary Schedule for Occurrences

The disciplinary schedule within a *12-month floating period* prior to an employee's last attendance occurrence will be as follows:

1 ST OCCURRENCE	Courtesy Notification
2 ND OCCURRENCE	Courtesy Notification
3 RD OCCURRENCE	Courtesy Notification
4 TH OCCURRENCE	Courtesy Notification
5 TH OCCURRENCE	Courtesy Notification
6 TH OCCURRENCE	Courtesy Notification
7 TH OCCURRENCE	<i>First Written Warning</i>
8 TH OCCURRENCE	Courtesy Notification
9 TH OCCURRENCE	<i>Second Written Warning</i>
10 TH OCCURRENCE	<i>Third Written Warning</i>

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11th OCCURRENCE

Final Written Warning

12th OCCURRENCE

Discharge from Employment

Incorrectly Charged Occurrences

If an employee believes that occurrence is incorrect the employee will have 7 calendar days from the date of written notice to dispute to the Assistant General Manager or designee and provide a reason why they believe it is incorrect. After 7 calendar days the occurrence will not be corrected and will stand on the employee's record.

Consecutive Occurrences

First Transit recognizes there may be instances when consecutive days of absence will occur. If an employee is unable to report to work as scheduled for a number of consecutive days, and otherwise complies with all applicable notification requirements, one attendance occurrence will be charged for each 3 days of consecutive absence, as follows:

1 st day of absence	Attendance occurrence charged
2 nd day of absence	No occurrence charged
3 rd day of absence	No occurrence charged
4 th day of absence	Attendance occurrence charged
5 th day of absence	No occurrence charged
6 th day of absence	No occurrence charged
7 th day of absence	Attendance occurrence charged
8 th day of absence	No occurrence charged
9 th day of absence	No occurrence charged
10 th day of absence	Attendance occurrence charged

Occurrence Reduction Program

First Transit recognizes that during the progressive discipline process associated with the administration of the Attendance Policy, employees are likely to recognize the problems which may be causing their absenteeism.

As an incentive for employees to recognize and deal with the causes and consequences of their absenteeism, First Transit will provide a method by which employees may essentially reduce the "charged" absences by three (3) per a 12-month floating period. Should an employee attend four (4) consecutive Monthly Safety Meetings they will automatically receive a one (1) occurrence reduction. Once you receive this reduction, First Transit will not charge the most recent absence when calculating the number of absences for subsequent discipline. All absences will receive the appropriate discipline; however, if an employee attends every Monthly Safety Meeting, it is possible to increase the number of absences required before termination from 12 to 15.

Critical conditions regarding this reduction program are as follows:

- a) The employee must attend four (4) consecutive monthly safety meetings
- b) Employees may not "reduce" more than three (3) occurrences in a 12-month floating period.
- c) Each occurrence will receive the appropriate discipline. The reduction program will not excuse or remove the discipline which has previously administered; and will remove the newest occurrence on record.
- d) The opportunity to "reduce" a "charged" absence will not be afforded to employees once a seventh (7th) occurrence has occurred.

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NOTE: Consecutive meetings will not be broken for employees who are on pre-approved Vacation, or PTO time during the regularly scheduled monthly Safety Meeting.

Falsification of Records

Location management has the right to expect employees to provide a truthful and forthcoming reason why an employee will not be reporting to work as scheduled. Falsifying the reasons for your absences you can be subject to discipline up to and including termination in accordance with the Employee Handbook, Section 11.01.

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ARTICLE 33 - CLIENT CONTRACT TO PREVAIL

The relevant portions of the contract between the Company and its client under which an employee of the Company performs work shall be incorporated by reference into this Agreement, to the extent only that such provisions impose terms, conditions or requirements upon the Company and/or its employees that are not required under the terms of this Agreement. In a situation in which a provision of this Agreement is in conflict with any of the provisions of said contract or the directives of the customer, the relevant portions of said contract or the customer directives shall prevail for all purposes, notwithstanding the provisions of the grievance procedure. Nothing in this Article shall be construed as subjecting any of the terms of the Company's contract to the Grievance and Arbitration provisions of this Agreement, nor shall anything in this Article be construed as granting any rights or authority to the union to negotiate any of the terms of said contract, this being the sole and exclusive right of the Company. In addition, the Company and the union agree to ensure that the services to be provided under the Company's contract with its client shall be provided without interruption consistent with the other provisions of this Agreement.

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ARTICLE 34 - TERMS OF THE AGREEMENT

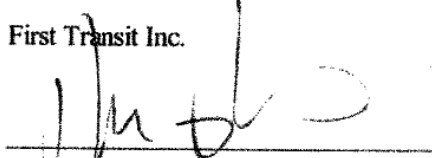
Section 1: This Agreement shall be in effect from the November 22, 2010, and shall remain in effect through the November 22, 2015, and shall continue in full force and effect from year to year thereafter unless either party hereto notifies the other party, in writing, on a date not less than sixty (60) nor more than seventy-five (75) days prior to the expiration date of the Agreement or the appropriate expiration date of any extension hereof, of its desire to amend or terminate this Agreement. If the aforementioned notice indicates desire to negotiate changes in any of the provisions of this Agreement, such notice also shall specify the changes desired. Changes in the Agreement shall be limited to those outlined in writing and all items on the Agreement not specifically set forth in the written notice shall be regarded as automatically renewed.

It is the intent of the parties that a successor Agreement to this one shall be completed prior to the expiration date and that all the terms of such successor Agreement be agreed upon without any interruption of the Company's business and without either the Company or the Union engaging in economic activity against the other. The Company and the Union therefore agree to commence negotiations on a successor Agreement sufficiently in advance of the expiration date to allow for settlement to be reached.

IN WITNESS WHEREOF, the parties have executed this Labor Agreement as dated below.

FOR THE COMPANY:

First Transit Inc.



Nick Promponas, Senior Vice President

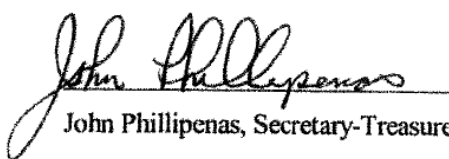


Allyn Keller, Project General Manager

11-23-10
Date

FOR THE UNION

TEAMSTERS LOCAL 631



John Phillipenas, Secretary-Treasurer



Todd Clapper, Recording Secretary

11/23/10
Date

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APPENDIX A

Hired Before	Drivers Annual Increase				
	Jan-11	Jan-12	Jan-13	Jan-14	Jan-15
11/11/2010 >	\$12.55	\$12.81	\$13.13	\$13.52	\$14.06
5/11/2010 >	\$13.37	\$13.64	\$13.98	\$14.40	\$14.98
11/11/2009 >	\$13.81	\$14.08	\$14.43	\$14.87	\$15.46
11/11/2008 >	\$14.12	\$14.40	\$14.76	\$15.21	\$15.81
11/11/2007 >	\$14.79	\$15.08	\$15.46	\$15.92	\$16.56
11/11/2006 >	\$15.11	\$15.41	\$15.80	\$16.27	\$16.92
11/11/2005 >	\$15.44	\$15.75	\$16.15	\$16.63	\$17.30
11/11/2004 >	\$16.56	\$16.90	\$17.32	\$17.84	\$18.55
Starting wage >	\$12.55	\$12.81	\$13.13	\$13.52	\$14.06

Classification	Maintenance Classifications - Annual Increase				
	Jan-11	Jan-12	Jan-13	Jan-14	Jan-15
Utility worker	\$13.44	\$13.71	\$14.05	\$14.48	\$15.06
Tire worker	\$13.67	\$13.94	\$14.29	\$14.72	\$15.30
Mechanic A	\$25.04	\$25.54	\$26.18	\$26.96	\$28.04
Mechanic B	\$21.11	\$21.53	\$22.07	\$22.73	\$23.64
Mechanic C	\$18.45	\$18.82	\$19.29	\$19.87	\$20.67

Payroll Note #1: There will be one (1) annual wage increase for each of the Driver date categories and Maintenance classifications outlined above that will take effect on the first pay period in January of each noted year shown above.

Payroll Note #2: The Company may assign an employee who, in its honest business judgment, is fully qualified to perform work as a Driver/Trainer and may similarly remove such employee from such assignment. The employee assigned to the Driver/Trainer position shall be paid a differential of \$1.00 per hour in addition to his/her regular rate of pay for all hours worked as a Driver/Trainer.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENTS' APPENDIX, VOLUME 1**, 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 an electronic copy of this document on disk 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

2010 Market Street
Camp Hill, PA 17011

DAECHER
CONSULTING GROUP

Ph: 717.975.9190
Fax: 717.975.3996

July 24, 2014

Ms. Taylor Trujillo
Alverson Taylor Mortensen & Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401

RE: Chernikoff v. First Transit, Inc. et al

Ms. Trujillo:

Subsequent to my initial report concerning this matter (dated June 25, 2014), I have performed additional tasks and reviewed additional materials. More specifically, I conducted an inspection of an exemplar bus, and reviewed the June 27, 2014 report authored by Mr. Ned Einstein. This will report will serve as a supplement to my initial conclusions.

Inspection of an exemplar bus recently operated by Mr. Jay Farrales (Farrales) indicated that Mr. Harvey Chernikoff (Harvey) would not have been visible in either interior, rearview mirror after he slumped over into the aisle (see photos 1 & 2 below). This finding is consistent with Mr. Farrales' testimony, as well as video evidence showing that Mr. Farrales had to significantly change his viewing angle when attempting to locate Harvey when he was in this position.

More importantly, Photo 1 shows that Harvey would not be visible at all in the windshield-mounted interior rear view mirror. In his report, Mr. Einstein references a magnitude of times that driver Farrales should have seen Harvey eating and/or slumped over in his mirror(s) while scanning those mirror during defensive driving practices. What Mr. Einstein fails to recognize is that defensive driving concepts apply to the driving function, not a passenger monitoring function. As he also notes in his report, when extensive passenger monitoring is required, personal care attendants or aids are utilized. Defensive driving education and practices focus on awareness of spaces around the vehicle being driven, as well as location of other vehicles in reference to that vehicle. Mirror scans addressed in accomplishing this task include checking side view mirrors and the windshield-mounted rearview mirror. Scanning/monitoring passenger compartment mirrors located significantly above the roadway plane are not included in defensive driving practices; in fact, doing such would be counterproductive to driving a vehicle safely and avoiding collisions and roadway conflicts.

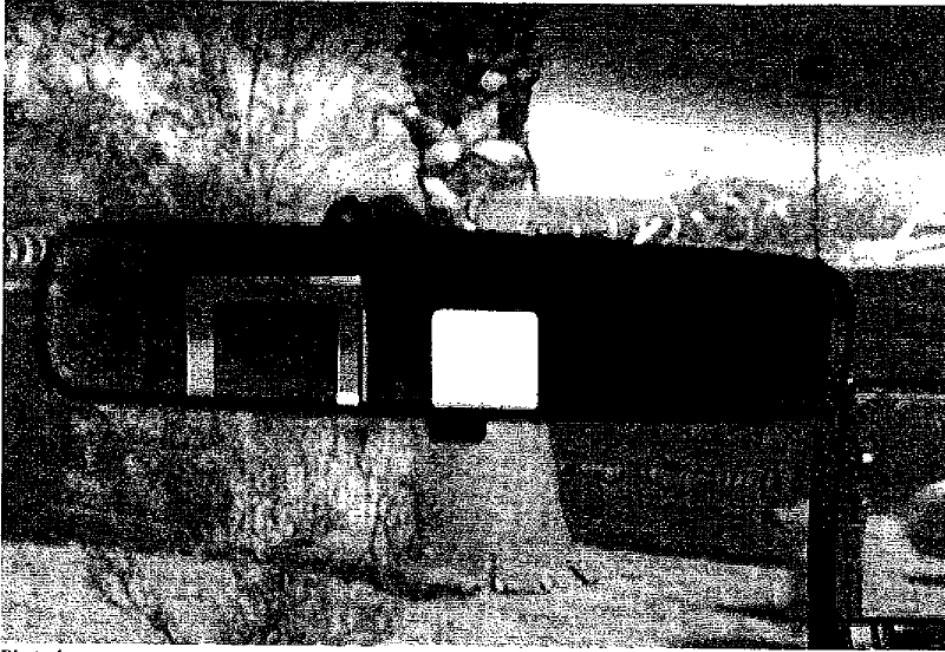


Photo 1

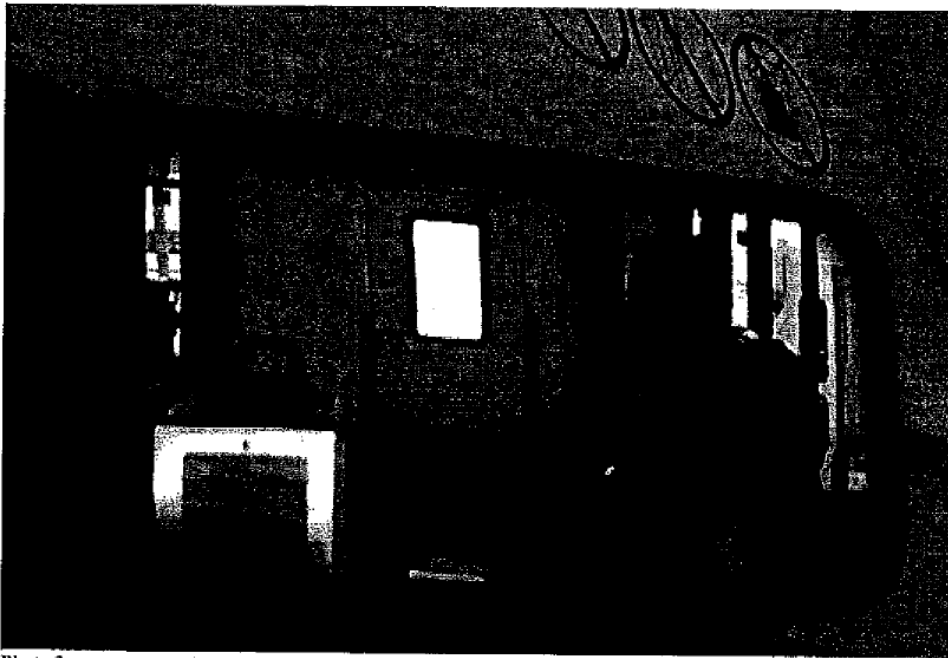


Photo 2

In reviewing Mr. Einstein's report, it is clear that many of his opinions and conclusions, which were repeated time and time again, are based upon assumptions, unsubstantiated claims, erroneous 'facts', misinterpreted or misconstrued testimony, or information contrary to testimony. Instances include, but certainly are not limited to:

- The assumption that Jay Farrales should have/could have seen Harvey eating;
- The assumption that Harvey ate on the bus before;
- The misconstrued testimony that Jay Farrales allowed select persons to eat on the bus;
- The assumption that Farrales could see Harvey slumped over in the mirror;
- The assumption that, somehow, Farrales was to know Harvey had choked (even if he did);
- That CPR and First Aid training is typically provided by transportation companies;
- That the Chernikoffs' never received the RTC Rider Guide;
- That Farrales failed to quickly notify dispatch after he determined Harvey to be unresponsive;
- The misinterpretation of ADA requirements and related First Transit policy regarding assisting passengers;
- Assumptions regarding the operation of first Transit's dispatch and communication systems; and
- Conclusion that Jay Farrales was not a defensive driver.

Additionally, it should be noted that Mr. Einstein offers conclusions or opinions that clearly lie outside his experience and expertise area.

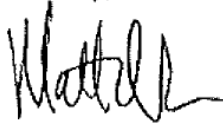
Ms. Taylor Trujillo
July 24, 2014
Page 4 of 4

Conclusions

Additional tasks performed in this matter have not altered or affected any of my previously stated opinions or conclusions. However, I do have one additional opinion to offer:

- If Jay Farrales had paid as much attention to passenger behavior, as is suggested he should per Mr. Einstein's report and conclusions, the risk of being involved in a collision would have risen substantially.

Yours truly,



Matthew Daecher
Transportation Safety Specialist
Accredited Accident Reconstructionist



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 Farraltes' 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

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② of 3 pages

Joint Exhibits

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]			

Page 1 of 1
Joint Exhibits
* Attachment *

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	NO	FEB 19 2016
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	NO	FEB 19 2016
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 4/5/16			
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 Secendent	FEB 2 3 2016	NO	FEB 2 3 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	FEB 2 4 2016	NO	FEB 2 4 2016
- 00011 - 00014	FEB 2 4 2016	NO	FEB 2 4 2016
- 00015 - 00020			
- 00021 - 00024	FEB 2 4 2016	NO	FEB 2 4 2016
- 00025 - 00027			
- 00028 - 00043	FEB 2 4 2016	NO	FEB 2 4 2016
- 00044 - 00045			
- 00046 - 00080	FEB 2 4 2016		FEB 2 4 2016
- 00081			

* F are admitted as individual pages reflected above.

① of 2
Defendant's
Exhibits

Attachment

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 Only 00007	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 Def't 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. Plt's Proposed Instruction-Not Given			
21. Plt's Closing Argument Power Point		NO	
22. Deft's Closing Argument Power Point		NO	

JOINT TRIAL EXHIBIT A1

Operator Incident Report

Operator Name: JAY FARRALES Date: 7-29-11 Time: 0801-0820
Passenger Name: HARVEY CHERNIKOFF Route: 5671 Vehicle Number: 1990

Passenger Related

Disruptive Behavior Incorrect Address or Information on Manifest Fare Issue (Short or No Pay)

Client on board too long Bag Policy Violation Other: _____

If passenger is listed as PSREQ, did you follow the passenger's Plan of Support?: _____

Radio / Window Dispatch Related

No Response Unprofessional Conduct Did not Help with Fuel or Break

No Show Communication No Route Assistance Other: _____

Vehicle Related

Seatbelts on Floor Unreported Damage Rubbish in Coach Other: _____

Accident / Injury Related

Vehicle Accident Passenger Accident Other: _____

Other Concern (please describe): PASSENGER WAS DESEBSED JUL 29 11 11:00

Additional Pertinent Information (State facts only / Refrain from personal comments or opinions):

I DROPPED OFF SOMEBODY AT (RIGEL) 3010 RIGEL AV AT
4801. ON MY WAY TO DROPOFF HARVEY CHERNIKOFF, HE WAS
TRYING TO MAKE A CONVERSATION WITH ME THEN SUDDENLY
HE STOPPED TALKING, I ASKED HIM IF HIS OKAY BUT
NO RESPONSE, I LOOKED AT THE MIRROR AND I SAW HIM
KIND LEAVING AWAY FROM HIS SIT JS TOOD UP AND CHECKS
IN HIM AND TRYING TO PROCESS WHY THING HTS, I KNEW THEN
HAT SOMETHING IS NOT RIGHT I FIXED HIM UP BACK
TO HIS SEAT AND THEN MOVE THE BUS TO THE CORNER
AND IMMEDIATELY CALLED THE DISPATCH SUPERVISOR
FOR HELP THEY CALLED 911 WHILE I WAS TRYING TO
MAKE HIM RESPOND UNTILL Operator Incident Report 00001

JOINT EXHIBIT
A1
A682726
2-25-16

IDENTIFICATION
BIT

00A1-00001

JOINT TRIAL EXHIBIT A3

ALVERSON, TAYLOR, MORTENSEN & SANDERS
 LAWYERS
 7401 WEST CHARLESTON BOULEVARD
 LAS VEGAS, NEVADA 89117-1401
 (702) 384-7000

1 **CERT**
 2 ALVERSON, TAYLOR,
 3 MORTENSEN & SANDERS
 4 LEANN SANDERS, ESQ.
 5 Nevada Bar No. 000390
 6 SHIRLEY BLAZICH, ESQ.
 7 Nevada Bar No. 008378
 8 7401 W. Charleston Boulevard
 9 Las Vegas, Nevada 89117
 10 (702) 384-7000
 11 Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

**

10	The Estate of HARVEY CHERNIKOFF, Deceased; by)	CASE NO. A-13-682726-C
11	JACK CHERNIKOFF as personal representative,)	DEPT. NO. XXIII
12	individually and as heir; ELAINE CHERNIKOFF)	
13	individually and as heir,)	
14	Plaintiffs,)	
15	vs.)	
16	FIRST TRANSIT, INC., LAIDLAW TRANSIT)	
17	SERVICES, INC. d/b/a FIRST TRANSIT; JAY)	
18	FARRALES; DOES 1-10, and ROES 1-10, inclusive,)	
	Defendants.)	

CERTIFICATE OF CUSTODIAN OF RECORDS

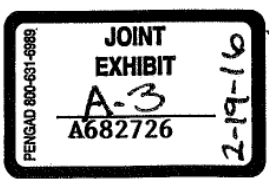
(To be Completed whether records are attached or IF there are NO records)

21 STATE OF NEVADA)
 22) ss.
 23 COUNTY OF CLARK)

NOW COMES the undersigned who, after being first duly sworn, deposes and says:

1. That the deponent is an employee of **Clark County Coroner Office**, and in such capacity, is the custodian of records for that office, entity, and/or institution.

LS#19969
 CLARK COUNTY CORONER 00001



IFICATION

00A3-00001

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7481 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7060

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2. That this deponent was served with an Authorization for the Release of Protected Health Information in connection with the above-entitled and numbered matter, calling for the production of information pertaining to HARVERY CHERNIKOFF, Date of Birth: [REDACTED] Social Security No. [REDACTED]

PLACE AN "X" BELOW IF PROVIDING RECORDS

X RECORDS ATTACHED on 8-13-2014

3. That this deponent has examined the original of those records/information/files and has made a true and exact copy of them, and that the production of same attached hereto is true and complete.

4. That the original of those records was made at or near the time of the acts, events, conditions, or circumstances recited therein by or from information transmitted by a person with knowledge in the course of a regularly conducted activity of the deponent or the office (or entity) in which the deponent is engaged.

OR, IN THE EVENT NO RECORDS WERE FOUND PLACE AN "X" BELOW:

 NO RECORDS FOUND

DATED this 2nd day of February, 2016

Signature: Nicole Garza
Print Name: Nicole Garza

SUBSCRIBED and SWORN to before me
this 2 day of February, 2016

Leslie Honeycutt
NOTARY PUBLIC
In and for said County and State



n:\leann.grp\cases\19969\records requests\cor\harvery\clark county coroner.doc

Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 456-3210



AUTOPSY REPORT

Case Number: 11-06667

July 30, 2011

**POSTMORTEM EXAMINATION ON THE BODY OF
Harvey Chernikoff**

Date of Birth: [REDACTED] Age: 51 CASE NO: 11-6667

EXAM DATE: 7/30/11
EXAM TIME: 0900 hours

Sex: M Ht: 63" Wt: 128 lbs. EXAM TIME: 0900

MD: Daniel Lingamfelter, D.O. DATE OF DEATH: 7/29/2011
TIME OF DEATH: 0830 hours

GROSS EXAMINATION:
GENERAL EXAMINATION

The body is that of a normally-developed, well-nourished, adult white male, who weighs 128 lbs, is 63 inches in length, and appears compatible with the reported age of 51 years. A Clark County Coroner identification tag is around the right great toe.

The body is received clad. See property inventory list. The clothing is released with the body.

EXTERNAL EXAMINATION

There is good preservation in the absence of embalming. Rigor mortis is fully developed in all extremities and the jaw. Unfixed dark pink-purple lividity extends over the posterior body surfaces, except in areas exposed to pressure. The deceased has dark blonde, wavy scalp hair averaging 1 inch in maximum length. The irides appear blue; the corneae are clear; and there are no petechiae of the bulbar or palpebral surfaces of the conjunctivae. The ears, nose, lips, and external auditory canals are unremarkable. The mouth has natural teeth

*Dissemination is restricted.
Secondary dissemination of this document is prohibited.*

CLARK COUNTY CORONER 00003

00A3-00003

Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89108
(702) 455-3210



AUTOPSY REPORT

Case Number: 11-06667

PAGE TWO

in good condition. The decedent is clean shaven. The external genitalia and perineum are unremarkable.

Approximately 50 grams of tan, partially masticated food is impacted within the oral cavity and upper airway. A strong peanut butter odor is noted. The food is removed and photographed for documentation.

Besides the evidence of injury to be described, the remainder of the external examination of the body is unremarkable.

EVIDENCE OF MEDICAL THERAPY

There is no evidence of medical therapy.

EVIDENCE OF INJURY

A 3/4 inch purple-gray contusion is on the left elbow.

A 2 3/4 inch pink-gray contusion is on the lower anteromedial right thigh.

TOXICOLOGY

FINDINGS: No drugs identified.

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Secondary dissemination of this document is prohibited.*

CLARK COUNTY CORONER 00004

00A3-00004

Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210



AUTOPSY REPORT

Case Number: 11-06667

PAGE THREE

FINAL DIAGNOSIS:

I. Choking:

- A. Large, impacted food bolus (50 grams) recovered from the oral cavity and upper airway.
- B. History that subject was discovered unresponsive on a bus while eating.

OPINION: It is my opinion that Harvey Chernikoff, a 51-year-old White male, died as a result of choking.

MANNER OF DEATH: ACCIDENT.



DANIEL LINGMEYER, D.O.

DL/kmo/amu

*Dissemination is restricted.
Secondary dissemination of this document is prohibited.*

CLARK COUNTY CORONER 00005

00A3-00005



NMS Labs
 3701 Welsh Road, PO Box 433A, Willow Grove, PA 18099-0437
 Phone: (215) 657-4880 Fax: (215) 637-3972
 e-mail: nms@nmslabs.com
 Robert A. Middleberg, PhD, DABFT, OABCC-TC, Laboratory Director

CONFIDENTIAL

Toxicology Report

Report issued 08/09/2011 11:01

To: 10284
 Clark County Coroner's Office
 Attn: Bill Gazza
 1704 Pinto Lane
 Las Vegas, NV 89108

Patient Name: **CHERINKOFF, HARVEY**
 Patient ID: 11-8867
 Chain: 11339385
 Age: 61 Y
 Gender: Male
 Workorder: 11203805

Page 1 of 4

Positive Findings:

Compound	Result	Units	Matrix Source
Sodium (Vitreous Fluid)	130	mmol/L	Vitreous Fluid
Potassium (Vitreous Fluid)	11	mmol/L	Vitreous Fluid
Chloride (Vitreous Fluid)	110	mmol/L	Vitreous Fluid
Urea Nitrogen (Vitreous Fluid)	18	mg/dL	Vitreous Fluid
Creatinine (Vitreous Fluid)	0.80	mg/dL	Vitreous Fluid

See Detailed Findings section for additional information

Testing Requested:

Analysis Code	Description
1818PL	Electrolytes and Glucose Panel (Vitreous), Fluid (Forensic)
6055B	Postmortem Toxicology - Basic Plus, Blood (Forensic) (CSA)

Specimens Received:

ID	Tube/Container	Volume/ Mass	Collection Date/Time	Matrix Source	Miscellaneous Information
001	Gray Top Tube	8.5 mL	07/30/2011 09:00	Heart Blood	
002	Gray Top Tube	8.5 mL	07/30/2011 09:00	Heart Blood	
003	Red Vial	2.75 mL	07/30/2011 09:00	Vitreous Fluid	
004	White Plastic Container	15 mL	07/30/2011 09:00	Urine	

All sample volumes/weights are approximations.
 Specimens received on 08/02/2011.

v.8

CLARK COUNTY CORONER 00006

00A3-00006



CONFIDENTIAL

Workorder 11203805
Chain 11338385
Patient ID 11-6987

Page 2 of 4

Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
Sodium (Vitreous Fluid)	130	mmol/L	80	003 - Vitreous Fluid	Chemistry Analyzer
Potassium (Vitreous Fluid)	11	mmol/L	1.0	003 - Vitreous Fluid	Chemistry Analyzer
Chloride (Vitreous Fluid)	110	mmol/L	70	003 - Vitreous Fluid	Chemistry Analyzer
Glucose (Vitreous Fluid)	None Detected	mg/dL	35	003 - Vitreous Fluid	Chemistry Analyzer
Urea Nitrogen (Vitreous Fluid)	18	mg/dL	3.0	003 - Vitreous Fluid	Chemistry Analyzer
Creatinine (Vitreous Fluid)	0.60	mg/dL	0.60	003 - Vitreous Fluid	Chemistry Analyzer

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. Chloride (Vitreous Fluid) - Vitreous Fluid
Normal: 105 - 135 mmol/L
2. Creatinine (Vitreous Fluid) - Vitreous Fluid:
Normal: 0.6 - 1.3 mg/dL
3. Glucose (Vitreous Fluid) - Vitreous Fluid:
Normal: <200 mg/dL
Postmortem vitreous glucose concentrations >200 mg/dL are associated with hyperglycemia.
Since postmortem vitreous glucose concentrations decline rapidly after death both in vivo and in vitro, care should be taken in the interpretation of results. Stability of vitreous glucose for up to 30 days has been noted by NMS Labs when specimens are maintained frozen (-20°C).
4. Potassium (Vitreous Fluid) - Vitreous Fluid:
Normal: <15 mmol/L
5. Sodium (Vitreous Fluid) - Vitreous Fluid:
Normal: 135 - 150 mmol/L
6. Urea Nitrogen (Vitreous Fluid) (YUN) - Vitreous Fluid:
Normal: 0 - 20 mg/dL

Sample Comments:

001 Physician/Pathologist Name: LINGAMFELTER

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded thirteen (13) months from the date of this report, and generated data will be discarded five (5) years from the date the analyses were performed. Chain of custody documentation has been maintained for the analyses performed by NMS Labs.

v.8

CLARK COUNTY CORONER 00007

00A3-00007

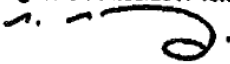


CONFIDENTIAL

Workorder 11203805
Chain 11399385
Patient ID 11-8887

Page 3 of 4

Workorder 11203805 was electronically signed on 08/08/2011 10:05 by:


Laura M. Lebay, Ph.D., DABFT, DABCC-TC
Forensic Toxicologist

Analysis Summary and Reporting Limits:

Acocd 1918FL - Electrolytes and Glucose Panel (Vitreal), Fluid (Forensic) - Vitreal Fluid

-Analysis by Chemistry Analyzer for:

Compound	Ref. Limit	Compound	Ref. Limit
Chloride (Vitreal Fluid)	70 mmol/L	Potassium (Vitreal Fluid)	1.0 mmol/L
Creatinine (Vitreal Fluid)	0.80 mg/dL	Sodium (Vitreal Fluid)	80 mmol/L
Glucose (Vitreal Fluid)	38 mg/dL	Urea Nitrogen (Vitreal Fluid)	3.0 mg/dL

Acocd 62167B - Buprenorphine and Metabolite - Free (Unconjugated) Confirmation, Blood (Forensic) - Heart Blood

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

Compound	Ref. Limit	Compound	Ref. Limit
Buprenorphine - Free	1.0 ng/mL	Norbuprenorphine - Free	1.0 ng/mL

Acocd 6066B - Postmortem Toxicology - Basic Plus, Blood (Forensic) (CSA) - Heart Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Compound	Ref. Limit	Compound	Ref. Limit
Amphetamines	20 ng/mL	Methadone	25 ng/mL
Serbitrates	0.040 mcg/mL	Opiates	20 ng/mL
Benzodiazepines	100 ng/mL	Phencyclidine	10 ng/mL
Cannabinoids	10 ng/mL	Propoxyphene	50 ng/mL
Cocaine / Metabolites	20 ng/mL		

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Compound	Ref. Limit	Compound	Ref. Limit
Salicylates	120 mcg/mL		

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Compound	Ref. Limit	Compound	Ref. Limit
Buprenorphine / Metabolite	0.50 ng/mL		

-Analysis by Headspace Gas Chromatography (GC) for:

Compound	Ref. Limit	Compound	Ref. Limit
Acetone	1.0 mg/dL	Isopropanol	1.0 mg/dL
Ethanol	10 mg/dL	Methanol	5.0 mg/dL

-Analysis by High Performance Liquid Chromatography (HPLC) for:

Compound	Ref. Limit	Compound	Ref. Limit
bupren	3.0 mcg/mL		

v.8

CLARK COUNTY CORONER 00008

00A3-00008



CONFIDENTIAL

Workorder 11203606
Chain 11338385
Patient ID 11-6887

Page 4 of 4

Analysis Summary and Reporting Limits:

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Ret. Limit</u>	<u>Compound</u>	<u>Ret. Limit</u>
Fentanyl	0.10 ng/mL	Norfentanyl	0.20 ng/mL

v.8

CLARK COUNTY CORONER 00009

00A3-00009

Cherinkoff, Harvey 11-6667

M-51 07/30/2011 CCOCME

RECORD OF EXAMINATION
CLARK COUNTY CORONER

EMP#

AS 341

EXAMINATION

Name: Cherinkoff, Harvey Under 18 no Case # 11-06667

Pathologist: Lingaus, Peter Forensic Tech: Felix Circ. Tech: Farpow

Date of Examination: 7-30-11 Time of Examination: 0900

EXAM TYPE: Autopsy: Medical Exam: X Head Post: No Forensic Interest:

Cause of Death is Pending: Toxicology Microscopic Further Studies Police Investigation

Other:

RADIOGRAPHY

Hospital X-rays Examination X-rays No X-rays Taken

EVIDENCE COLLECTED/IMPOUNDED

Evidence Impounded: Projectile Ligature Misc:

DNA SPECIMENS

DNA Blotter X None Taken, Cannot Yield Conventional Specimen

CERTIFICATION

Cause of Death: Choking

Due to:

Due to:

Other Significant Conditions:

How Injury Occurred: choked on food bolus

Date of Injury: 7-29-11 Time of Injury: 0920 Location of Injury: Citrus Ave - Trust Bus #172

Manner of Death: Accidental Date Unpending:

ME QA Review By: [Signature] External QA Review By:

DATE: 7/31/11 DATE:

CAUSE OF DEATH IS DUE TO COMMUNICABLE DISEASE: YES NO

TOXICOLOGY

Toxicology Specimen(s): No Specimens Submitted No Tox Requested Specimens on Forensic Hold

Specimens Submitted: Pb, vit, uric acid

Submit Date: 7-30-11 Toxicology Results Returned Date:

DISPOSITION

Released: Held Reason for Hold:

DC Typed 8-1-11 (0) Initials [Signature]

CLARK COUNTY CORONER 00010

00A3-00010

NAME Chernikoff, Henry DOB 10/8/57 CASE # 11-06667
 DATE OF DEATH 7-29-11 0830

DATE OF INSPECTION 7-30-11 0800

AGE 51 RACE W SEX M

HEIGHT 63" WEIGHT 125

DEVELOPMENT: NORMAL ABNORMAL

NOURISHMENT: NORMAL THIN OBSE CACHECTIC

LIVOR pink rigor rigor

SCALP HAIR bl wavy, 1"

MUSTACHE --- BEARD ---

EYES: OPEN CLOSED CLEAR CLOUDY

COLOR: blue

TEETH: NATURAL DENTURES NONE

good

ABNORMAL FINDINGS: _____

CLOTHING: 2 red shoes, 2 black socks,

jeans, pair black boxers, 1 black belt,

1 blue t-shirt

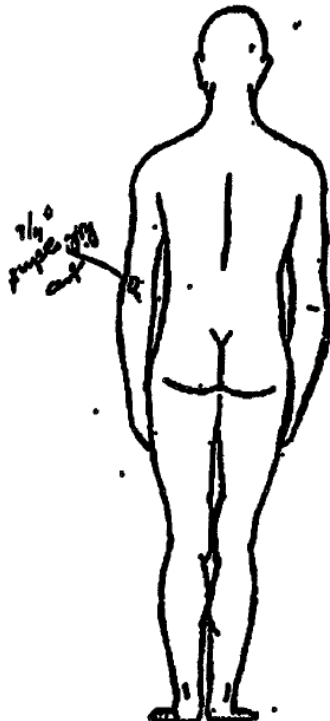
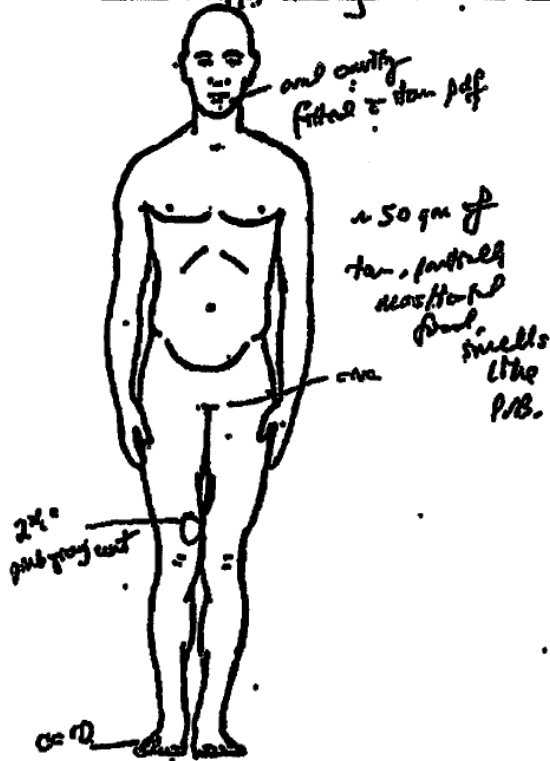
CAUSE OF DEATH: Choking

MANNER OF DEATH:

NATURAL ACCIDENT SUICIDE

Signature

358-17 JAN '87



CLARK COUNTY CORONER 00011

00A3-00011

POSTMORTEM TOXICOLOGY



3701 Welsh Rd. • P.O. Box 433A
 Willow Grove, Pennsylvania 19090
 (215) 657-4900 (800) 522-6671 FAX: (215) 657-2972
 www.nmslabs.com

CONTROL NO. 11339385

ACCOUNT NO. 10294

Esoteric Toxicology • Therapeutic Drug Monitoring • Endocrinology Testing • Metals Testing
 Forensic Toxicology • Criminalistics • Monitoring for Environmental/Occupational Exposure
 Cherinkoff, Harvey 11-6667

DEC M-51 07/30/2011 CCOCME
 EMP#

CLARK COUNTY CORONER'S OFFICE
 1704 PINTO LANE
 LAS VEGAS, NV 89106

INFORMATION OR AFFIX I.O. LABEL BELOW

AGE SEX

SPECIMEN TYPE(S):
 Blood Meconium Tissue Do not mix
 Cardiac Hair Do not consume
 Peripheral Vitreous Return Specimen (Addl. change)
 Plasma Bile Other Specify
 Serum Gastric
 Urine

SPECIMEN COLLECTION
 Date: 7/30/11
 Time: 0900
 MVA
 Homicide
 Suicide
 Suspected OD

CIRCUMSTANCES OF DEATH
 APP NAT vs. Aspiration

BASIC Postmortem Toxicology	EXPANDED Postmortem Toxicology	EXPERT Postmortem Toxicology
Our basic offering of Drugs of Abuse and Alcohol (confirmed & quantitated). <input type="checkbox"/> 8051B (blood) <input type="checkbox"/> 8051B plus 8050U (blood plus urine drug screen with 6-MAM) <input type="checkbox"/> 8051U (urine) <input type="checkbox"/> 8051SP (serum/plasma) <input type="checkbox"/> 8051TI (tissue) <input type="checkbox"/> 8051FL (fluid) 8055 CCCO BASIC PLUS <input checked="" type="checkbox"/> blood <input type="checkbox"/> tissue <input type="checkbox"/> urine <input type="checkbox"/> fluid <input type="checkbox"/> serum/plasma 7779 - NO TESTS REQUESTED	Our Basic package, plus: • Predefined selection of abused and therapeutic drugs of metabolites. • All positive findings confirmed & quantitated. <input type="checkbox"/> 8052B (blood) <input type="checkbox"/> 8052B plus 8050U (blood plus urine drug screen with 6-MAM) <input type="checkbox"/> 8052U (urine) <input type="checkbox"/> 8052SP (serum/plasma) <input type="checkbox"/> 8052TI (tissue) <input type="checkbox"/> 8052FL (fluid)	• Largest current library of the most relevant drugs, metabolites, poisons and toxins for comprehensive death investigation. • Case history evaluation and guidance by a leading NMS Labs toxicologist. • Case conference participation (exclusive to the Expert level). <input type="checkbox"/> 8092B (blood) <input type="checkbox"/> 8092U (urine) <input type="checkbox"/> 8092SP (serum/plasma) <input type="checkbox"/> 8092TI (tissue) <input type="checkbox"/> 8092FL (fluid) Please attach case history and include a list of all known/relevant medications.

CLIENT COPY

Keep This Copy For Your Records

IMPORTANT: Have your control no. available when inquiring about specimen status.

ADDITIONAL TESTING

<input checked="" type="checkbox"/> 1810FL Electrolytes & Glucose Panel (Vitreous)	<input type="checkbox"/> 2413B Infants Panel	<input type="checkbox"/> 4187B SIDS Screen
<input type="checkbox"/> 2164FL Glucose, (Vitreous)	<input type="checkbox"/> 8104B Fire Death Screen	<input type="checkbox"/> 7300SL DNA Analysis
<input type="checkbox"/> 0170FL Alcohol Panel, (Vitreous) Fluid	<input type="checkbox"/> 8103B Environmental Exposure	<input type="checkbox"/> 7307SL Hair DNA Profile
<input type="checkbox"/> 0171B Alcohol Screen	<input type="checkbox"/> 2693B Metals Poisoning, Blood	<input type="checkbox"/> 7201SL Drug Identification
<input type="checkbox"/> 1002B Carbon Monoxide	<input type="checkbox"/> 2693U Metals Poisoning, Urine	<input type="checkbox"/> 7306SL Y-STR Analysis

Other: CCCO Expert Test Code Add-on

More information on these tests including specimen collection information can be found on our website at www.nmslabs.com

DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF TRANSFER
7/30/11	JB 267	Coroner FedEx	TO LABS

NOTE: We do not provide Medicare, Medicaid or any other 3rd party billing services.

CLIENT COPY

PMT-1 (4/10)

CLARK COUNTY CORONER 00012

00A3-00012

**Clark County Coroner/Medical Examiner
Toxicology Submission Form**

Cherinkoff, Harvey 11-6667

M-51 07/30/2011 CCOCMB

EMPH _____

Decedent's Name: Cherinkoff, Harvey

Case# 11-6667

Collected Date: 7/30/11

Collected Time: 0800

Doctor of Record: Lingomfeller

Specimen(s) Submitted:


Peripheral Blood _____	Liver _____	Bile _____
Heart Blood <u>2</u>	Spleen _____	Urine <u>1</u>
Chest Blood _____	Brain _____	G.C. _____
Vitreous <u>1</u>	Kidney _____	Decomp Fluid _____

Other _____

TESTING REQUESTED

Standard Toxicology on:

Peripheral Blood _____	Liver _____	Bile _____
Heart Blood <u>1</u>	Spleen _____	Urine _____
Chest Blood _____	Brain _____	G.C. _____
Vitreous _____	Kidney _____	Decomp Fluid _____

CONTROL NUMBER **11339385**

KAS LABS - WILLOW GROVE 18030

Specific Testing _____

CO _____

ABOVE SPECIMEN(S) ON FORENSIC HOLD, NO TESTING REQUESTED _____

VITREOUS TESTING REQUESTED:

Vitreous Lytes ✓ FORENSIC HOLD, VITREOUS, NO TESTING REQUESTED _____
Vitreous Ketones _____
Vitreous Etoh _____

Corrier Initials for Receipt of Specimens _____ Date of Receipt: _____

Revised 11/26/07/JF

CLARK COUNTY CORONER 00013

00A3-00013

STATE OF NEVADA - DEPARTMENT OF HUMAN RESOURCES
DIVISION OF HEALTH - VITAL STATISTICS

CERTIFICATE OF DEATH

2011011750

1. DECEASED (NAME FIRST, LAST, MIDDLE OR INITIAL) MAYBY, Alan, CHERNIKOFF		2. DATE OF DEATH (Month, Day, Year) July 28, 2011		3. COUNTY OF DEATH Clark	
4. CITY, TOWN, OR LOCATION OF DEATH OR HOSPITAL OR OTHER INSTITUTION (Name, street, city, state, and zip) Las Vegas, Strife Avenue West of Valley View		5. HOURS OF DEATH (Month, Day, Year) CAT 8:18		6. SEX Male	
7. RACE White		8. AGE (Year, Month, Day) 1945		9. MARRIAGE STATUS MARRIED	
10. STATE OF BIRTH (If born in U.S.) District of Columbia		11. STATE OF BIRTH (If born in foreign country) United States		12. DATE OF BIRTH (Month, Day, Year) [REDACTED]	
13. SOCIAL SECURITY NUMBER [REDACTED]		14. USUAL OCCUPATION (Last kind of work done during part of working life, even if retired) Disabled		15. KIND OF BUSINESS OR INDUSTRY Disabled	
16. RESIDENCY STATE [REDACTED]		17. COUNTY [REDACTED]		18. CITY, TOWN, OR LOCATION [REDACTED]	
19. STREET ADDRESS [REDACTED]		20. CITY, TOWN, OR LOCATION [REDACTED]		21. STREET ADDRESS [REDACTED]	
22. FATHER'S NAME (First, Last, Middle) Vladimir CHERNIKOFF		23. MOTHER'S NAME (First, Last, Middle) Eileen M. COPLIN		24. MARITAL STATUS (If deceased, date of death) [REDACTED]	
25. SURVIVAL (Name, first, last, middle) Jack CHERNIKOFF		26. MARITAL STATUS (If deceased, date of death) [REDACTED]		27. DATE OF DEATH (Month, Day, Year) [REDACTED]	
28. JOURNAL, CREMATION, REMOVAL, OTHER (Specify) Burial		29. CEMETERY OR CREMATORIAL (Name) King David Memorial Cemetery		30. LOCATION (City or town, state) Las Vegas, Nevada 89120	
31. FUNERAL DIRECTOR (Name, first, last, middle) BART BURTON		32. FUNERAL DIRECTOR (Signature) [REDACTED]		33. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2807 E. Flamingo Ave., Las Vegas, NV 89119	
34. TRADE CALL, NAME AND ADDRESS [REDACTED]		35. SIGNATURE AUTHENTICATED [REDACTED]		36. SIGNATURE AUTHENTICATED [REDACTED]	
37. DATE SIGNED (Month, Day, Year) [REDACTED]		38. HOUR OF DEATH [REDACTED]		39. SIGNATURE AUTHENTICATED ALAN OLSON M.D.	
40. NAME OF ATTENDING PHYSICIAN (Full name) Alain OLSON M.D. 1704 Flamingo Las Vegas, NV 89106		41. DATE RECEIVED BY REGISTRAR August 01, 2011		42. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
43. IMMEDIATE CAUSE (Enter only one cause in line for (a), (b), and (c)) Choking		44. OTHER SIGNIFICANT CONTRIBUTING CAUSE (Specify) [REDACTED]		45. HAD ONE REFERRED TO CORONER (Specify Yes or No) NO	
46. (a) DUE TO OR AS A CONSEQUENCE OF [REDACTED]		47. (b) DUE TO OR AS A CONSEQUENCE OF [REDACTED]		48. (c) DUE TO OR AS A CONSEQUENCE OF [REDACTED]	
49. ACCIDENT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		50. PLACE OF INJURY (If work, home, farm, factory, office, public, etc. (Specify)) 0820		51. LOCATION (Street or R.F.D. No., City or Town, State) Strife Avenue west of Valley View Blvd, Las Vegas, Nevada	

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS STATE OF NEVADA." This copy was issued by the Southern Nevada Health District. Not State certified documents as authorized by the State Board of Health pursuant to NRS 440.176.

NOT VALID WITHOUT THE RAISED SEAL OF THE SOUTHERN NEVADA HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.
Registrar of Vital Statistics
By: [Signature]
Date: August 05, 2011

SOUTHERN NEVADA HEALTH DISTRICT • 625 Shallowford Lane, P.O. Box 17000 • Las Vegas, Nevada 89177 • 702.750.1010 • Fax: 702.750.1573

CLARK COUNTY CORONER 00014

00A3-00014

CORONER-MEDICAL EXAMINER
CLARK COUNTY, NEVADA
1704 Pinto Lane
Las Vegas, Nevada 89106






DECEASED FINGERPRINTS

Case No. 11-6667
Date _____






Name Cherin Koff, Harvey (E)
Address _____
DOB _____ S.S. No. _____
Race C Sex M Height 63 Weight 128
Hair BROWN Eyes BLUE Scars, Tattoos, Other _____

FPC
I.D. NO.
Signature of person taking prints <u>[Signature]</u>

Right

1. RIGHT THUMB	2. RIGHT INDEX	3. RIGHT MIDDLE	4. RIGHT RING	5. RIGHT LITTLE
				

Left

6. LEFT THUMB	7. LEFT INDEX	8. LEFT MIDDLE	9. LEFT RING	10. LEFT LITTLE
				

CLARK COUNTY CORONER 00015

00A3-00015

CLARK COUNTY CORONER-MEDICAL EXAMINER
1704 PINTO LANE, LAS VEGAS, NV 89106
702-455-3210

Initials ASM

AUTHORIZATION FOR RELEASE OF REMAINS

ARRIVAL DATE: 7/29/11 ARRIVAL TIME 1005 CASE # 11-06667

IN THE MATTER OF: CHERUKOFF, HARVEY DECEASED,

I, we, the legal next of kin, or authorized agent of the next of kin, do hereby authorize the Office of the Coroner-Medical Examiner, Clark County, Nevada, to release the remains of the aforementioned decedent to:

MORTUARY: PAW

The undersigned assumes any liability which might fall upon the Office of Coroner-Medical Examiner or the County of Clark, for the release of these remains as directed and a copy of a valid signature is hereto attached for next of kin if acting as an agent therefore. (VERBAL)

Date: 7/29/11 Signature: JACK C. CHERUKOFF / FATHER
Legal next of kin or agent of/ Relationship

Witness: ASM Pre-need attached _____

RECEIPT FOR REMAINS:

On this date, I received from the Office of the Coroner-Medical Examiner, Clark County, Nevada, the remains and any personal articles listed below of the above named decedent.

Mortuary Representative: Print name: VICTOR D. DONATI

Mortuary Representative: Signature: [Signature] Date: 7-30-11

Nude Clothing w/Body Clothing Description: RED SIDES, BLACK SOCKS,

Clothing retained for evidence: BLACK BELT, PLAID BOXERS,
(see file for agency)

Viscera bag: N/A PH DENIM SHORTS BLACK SHIRT

OTHER: _____

24 hr. Release: Date: _____ Time: _____ When done: _____

Notified Mortuary for P/U: Date: 7/30/11 Time: 1150 Spoke to: L/A James

2nd Notification for P/U: Date: _____ Time: _____ Spoke to: _____

Comments: _____

Hold for signed release until: Date: _____ Time: _____ Per: _____

Time of release: 1245 Released by (log entry) Initials: ASM

08/04/02

CLARK COUNTY CORONER 00016

00A3-00016



Coroner's Case #: 11-06667

DECEDENT IDENTIFICATION & ACCEPTANCE FORM

PALM MORTUARY accepts custody of the decedent identified as:

DECEDENT'S NAME: Harvey Chernickoff

Pick-up Location: at home

Does decedent have any (NON-PALM) identification? YES NO

Does identification agree with decedent's name? YES NO

Describe body tag or identification: _____

Briefly note condition of decedent, any related clothing, or other information to help confirm identification:

Date of Death: <u> / / </u>	Time of Death: _____	Doctor: _____
Social Security #: _____	Date of Birth: <u> / / </u>	Phone: _____
Next of Kin: _____	Relationship: _____	

Person Providing Identification of Decedent:

Signature: *Marcha Joye*

Print Name: _____

Title: _____

Date/Time: _____

Decedent Received by: *[Signature]* 7/20/11 1346
(Print Name) (Date/Time)

PALM I.D. TAG NUMBER ATTACHED TO DECEDENT 0004701

M-653 (Top Copy - Palm Mortuary) (Bottom Copy - Customer)

CLARK COUNTY CORONER 00017

00A3-00017

CLARK COUNTY CORONER'S
INVENTORY OF PERSONAL EFFECTS

#18 106531

Report No. 11-06667 JULY 29 2011
CHEKNIKOFF, HARVEY (DECD) Deceased
Location: BLAIRS & VALLEY VIEW
Case # 6 Date 6 Trial # 0
Property: 1-GRAN TIMEX WATCH
1-DINO SUNGLASSES
1-RED LUNCH COOLER
1- plaid boxer shorts



U.S. Postal Service
CERTIFIED MAIL RECEIPT
OFFICIAL USE
Package #
Certified Fee
Return Receipt for Collectors (if Requested)
Registered Delivery Fee (Domestic Mail Only)
Total Postage & Fees
\$
Signature: Jack E. Staines, Clerk of Court
Date: 7/29/11

The Above is a List of All Property Found upon the Body or in Possession of the Decedent in the Presence of the Witness Signatory Below
Coroner - Investigator: [Signature]
Witness: [Signature] [Signature]

Received from CLARK COUNTY CORONER the above described property as next of Kin
or Agent of Harvey Chepnikoff
Name (Please Print): Jack E. Staines, Clerk of Court
Name (Signature): [Signature]
Address: [Redacted]
State: [Redacted] Relationship: Agent
Released by: [Signature] Date: 7/29/11

OFFICE COPY

CLARK COUNTY CORONER 00018

00A3-00018

**Medical Authorization
In Accordance with 45 CFR Section 164.508(c) - HIPAA**

Upon presentation of this authorization, or a photostatic copy thereof, you are requested to provide the records outlined below to: **BERNSTEIN AND FOISSON, 330 S. Jones Boulevard, Las Vegas, Nevada 89107, (telephone) 702-256-8866.**

Patient Information

Name Harvey Gronkoff Social Security No. [REDACTED]
 Date of Birth [REDACTED] Account No. _____
 Date of Incident 7/18/21 Date of Treatment _____

Health Care Provider

(v) Clark County Coroner's Office

Dates of Service

Please provide a complete copy of my file for all dates of service

Records to be released (45 CFR 164.508(d)(1)(ii)).

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> All medical Records | <input checked="" type="checkbox"/> History & Physical | <input type="checkbox"/> Consultation Reports |
| <input checked="" type="checkbox"/> Emergency Room Record | <input checked="" type="checkbox"/> Operative Report | <input checked="" type="checkbox"/> Discharge Summary |
| <input checked="" type="checkbox"/> Lab/ Pathology Reports | <input checked="" type="checkbox"/> Radiology Reports/ Images | <input checked="" type="checkbox"/> Billing Records |

The purpose of this request is for review or use in a judicial proceeding or claim process involving the named patient (45 CFR §164.508(c) (1) (iv)).

I understand that I may revoke this authorization in writing at any time except to the extent that action has been taken in reliance upon this authorization (45 CFR §164.508(c) (1) (i)).


I understand that the release of PHI through this Authorization will not effect my treatment, payment, enrollment or eligibility for benefits. (45 CFR §164.508(c) (2)).

I understand that treatment or payment cannot be conditioned on my signing this authorization, except in certain circumstances such as for participation in research programs, or authorization of the release of testing results for pre-employment purposes (45 CFR §164.508(c) (2) (iii)).

I understand that my records are confidential and cannot be disclosed without my written authorization except when otherwise permitted by law such as in the course of legal proceedings. Information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and no longer protected. I understand that the specified information to be released may include, but is not limited to: history, diagnosis, and/or treatment of drug or alcohol abuse; mental illness, or communicable disease, including Human Immunodeficiency (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (45 CFR §164.508(c) (2) (ii)).

This authorization will expire Six (6) Years from the date of my signature unless I revoke the authorization, in writing, prior to that time.

Date: 10/5/11 Signature: [Signature]
 State of NV Printed: JACK S. CHERNIKOFF
 County of Clark _____
 Title of Patient or Legally Authorized Rep. _____

This instrument was acknowledged before me on _____
 By JACK S. CHERNIKOFF


CLARK COUNTY CORONER 00019

00A3-00019

BERNSTEIN & POISSON

Attorneys and Counselors at Law
320 S. Jones Boulevard
Las Vegas, Nevada 89107

11-6667

JACK G. BERNSTEIN, Esq. *
SCOTT L. POISSON, Esq. **
GLEN HOWARD, Esq.
CHRISTOPHER G. SUK, Esq. ***
MCKAY WHITNEY, Esq.
* Also Licensed in Florida
** Also Licensed in Arizona
*** Also Licensed in California

TELEPHONE: (702) 256-4866
FACSIMILE: (702) 256-6280

January 9, 2012

Via U.S. Mail

Clark County Coroner's Office
1704 Pinto Lane
Las Vegas, NV 89106

Re: Our Client: Jack Chernikoff, next of kin of deceased, Harvey Chernikoff
Deceased: Harvey A. Chernikoff
Date of Death: July 29, 2011
Date of Birth: [REDACTED]

Dear Sir or Madam,

Please find attached a notarized authorization and hippaa from deceased's next of kin, 4 separate checks and a copy of the death certificate. We ask that you please send us a copy of the deceased's autopsy report (\$30.00), toxicology report (\$15.00), coroner's investigative report (\$10.00) and any coroner medical examination reports (\$15.00) to our office: Bernstein & Poisson, 320 S. Jones, Las Vegas, NV 89107.

If you have any questions or concerns, please feel free to contact me at our office.

Sincerely,
BERNSTEIN & POISSON

[Signature]
Glen A. Howard, Esq.
Case Manager

BERNSTEIN & POISSON - 320 S. JONES BLVD - LAS VEGAS, NEVADA 89107 - FAX: (702) 256-6280 - TEL: (702) 256-4866

Mailed 1-13-12 CD

CLARK COUNTY CORONER 00020

00A3-00020

BERNSTEIN & POISSON

Attorneys and Counselors at Law
320 S. Jones Boulevard
Las Vegas, Nevada 89107

JACK G. BERNSTEIN, Esq. †
SCOTT L. POISSON, Esq. ††
GLEN HOWARD, Esq.
CHRISTOPHER D. BURK, Esq. †‡
MCKAY WHITNEY, Esq.
† Also Licensed in Florida
‡ Also Licensed in Arizona
‡ Also Licensed in California

TELEPHONE: (702) 256-4566
FACSIMILE: (702) 256-6280

I, Jack Chernikoff, the surviving parent of Harvey Chernikoff, deceased, authorize any and all police departments, fire departments, investigative authorities and government authorities to turn over a copy of all reports concerning the death of my son on July 29, 2011 in Las Vegas, Nevada. Please turn over these reports and records to Jack G. Bernstein, Esq. and/or Glen A. Howard, Esq. of Bernstein & Poisson, 320 S. Jones Blvd, Las Vegas, Nevada 89107.



Jack Chernikoff

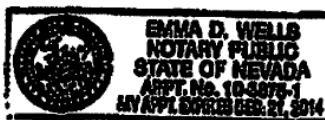
Dated this 10 day of 24 2011

State of Nevada
County of Clark

On the 24 day of ^{Oct.} ~~June~~ 2011, this instrument was sworn to and subscribed before me by Jack Chernikoff.



Notary Public



JOINT TRIAL EXHIBIT A5

Clark County Fire Department
575 E. Flamingo Road
Las Vegas NV 89119

CERTIFICATE OF CUSTODIAN OF RECORDS

State of Nevada }
 } SS.
County of Clark }

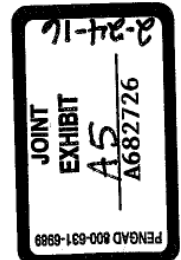
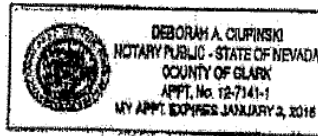
Under penalty of perjury, the undersigned deposes and says:

1. That the deponent is a Custodian of Records for the Clark County Fire Department.
2. That the deponent has examined the original of the attached records and has made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.
3. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or Clark County Fire Department.
4. It is also understood that this affidavit is limited to the information supplied to me, that the certification is contingent upon accurate information supplied by the requestor/subpoena, and such records may exist under another name, spelling, or other identifying data not provided to the affiant.

[Signature]
CUSTODIAN OF RECORDS

Subscribed and sworn to before me, a Notary Public on this 29th day of September, 2014.

[Signature]
Notary Public Clark County, Nevada
My appointment expires: 8/13/16



MARKED FOR PROPOSED EXHIBIT # A5 Case No. A682

CCFD 00001

Prehospital Care Report Summary

Clark County Fire Department

Date:07/29/2011 Call #:1186058 Booklet:70549841 Branch: Station 12 Time Zone:America/Los_Angeles

Call Information:

Disposition: Dead Prior To Arrival
 Unit #: R12 - R12, Ambulance - Land Trip Type: N/A
 Run Type to Scene: Emergency
 Incident Facility:
 Incident Location: S Valley View Blvd / Sirius Ave - Clark County, NV 89102 (Clark County)
 Incident Type: Street/Hwy
 Receiving Facility: N/A -
 Facility Address:
 Destination Type: N/A
 Dest. Reason: N/A
 Registration #: N/A

Patients Transported
 In My Unit: 0
 # Patients at Scene: N/A
 Call Received: 08:08:44
 Dispatched: 08:08:50
 En Route: 08:10:04
 On Scene: 08:15:14
 Patient Contact: 08:15:30
 Left Scene: N/A
 At Destination: N/A
 Transfer of Care: N/A
 In Service: 08:41:00

Loaded Mileage: N/A
 Crew Members: Mathew Segolan, EMT Intermediate(DOC); Raymond Nelson, EMT Intermediate; Ambulance Medic West, Advanced Trained Paramedic

Time On Scene: N/A Min
 Time to Destination: N/A Min
 Total Time of Run: 32 Min

Moved to Amb By: Transport Position: From Amb By:

Call Origin: N/A Lights/Siren: Scene-Not used / Destination-Not used

Patient Information:

Name: HARVEY CHERAIKOFF
 Address: [REDACTED]
 Phone:
 Email:
 SSN: -
 Driver License:

DOB:
 Gender: Male
 Age: 60 Years
 Weight: Broselow:

Other Contact Info

Name: Phone: Cell Phone:

Relationship:
 Current Meds: Comments:
 Env Allergies: Comments:
 Med Allergies: Comments:
 Patient Physician:
 Advanced Directives:
 PMH:
 Comment:

Payer Information:

Clinical:

Medical Need:

Onset Date/Time:
 Dispatch Reason (EMD): 32B-Unknown 32B-Unknown Problem (Man Down)

Chief Complaint:
 Provider Impression: Obvious Death
 Mechanism of Injury: Unknown
 Protocol 1: General Patient Care

Protocol 2:

Assessments:

Time	Employee	Type	Summary
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Vitals:

Time	Employee	Summary
------	----------	---------

Treatments/Medications:

Time	Employee	Summary
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Supply

Qty Supply

Narrative History Text:

R12 ARRIVE TO FIND APPROX 50-60YOM SITTING UPRIGHT IN BUS PULSELESS, APNEIC, UNRESPONSIVE W/FIXED PUPILS, PT SKIN WAS MOTTLED W/LIVIDITY, ASYSTOLIC ON MONITOR.

BUS DRIVER STS PT IS AROUND 40YO, HE PICKED HIM UP EARLIER THIS AM, PT WAS AMBULATORY W/OUT ASSISTANCE, SPEAKING / RESPONDING NORMALLY, BUT SOMEWHERE EN ROUTE TO DESTINATION PT BECAME UNRESPONSIVE AND HE WASN'T SURE IF HE WAS BREATHING SO HE CALLED HIS DISPATCHER WHO CALLED 911.

Auth Signature: No Privacy Sig: No Unable to Sign: No Refused to Sign: No

Recommended Service Level: BLS / Dispatch Service Level: ALS

JOINT TRIAL EXHIBIT A6

Paratransit Guide



Regional Transportation Commission
600 S. Grand Central Pkwy., Ste. 350
Las Vegas, NV 89146
(702) 228-7800
rtcsmv.com

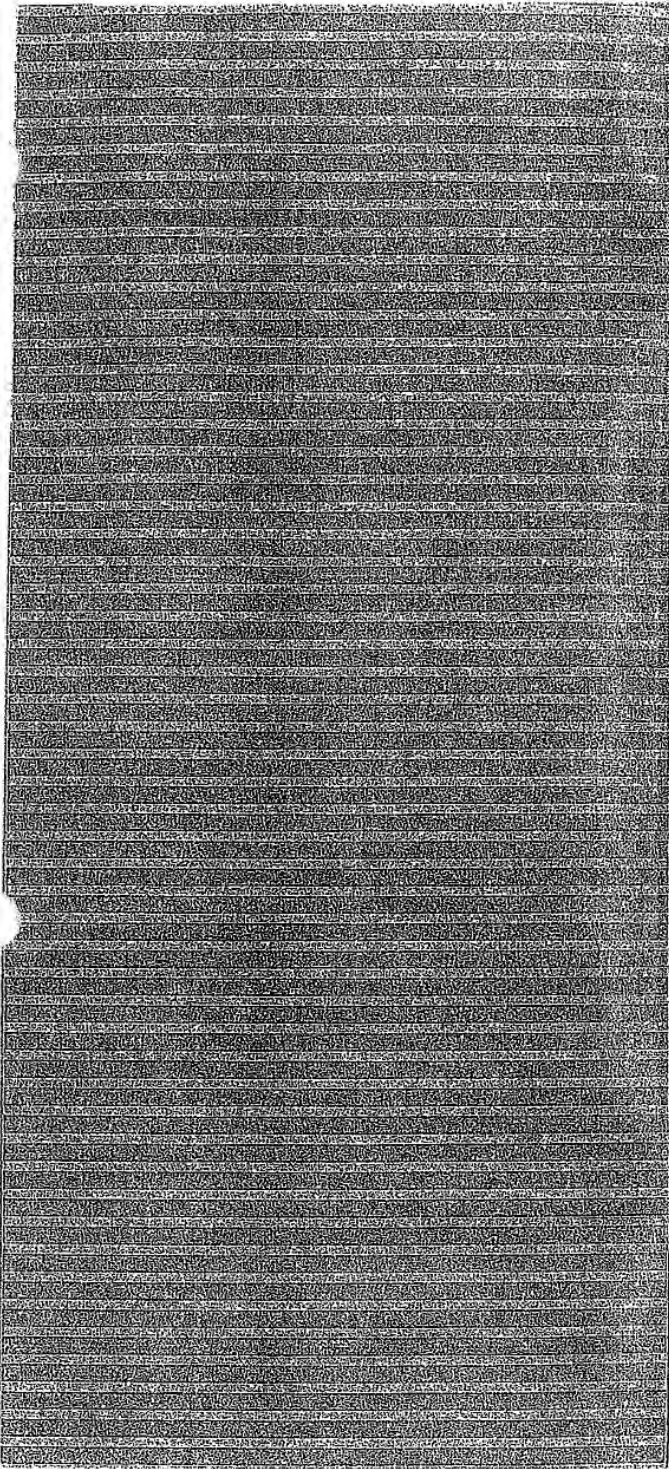


MARKED FOR
PROPOSED EX
A6
Case No. A682

PENGAD 800-631-6989
JOINT
EXHIBIT
A6
A682726
2-22-16

RTC GUIDE 0001

00A6-00001



Welcome to RTC ADA Paratransit Services

Americans with Disabilities Act of 1990 (ADA) Paratransit Services is a shared-ride, public transportation service for people with disabilities, as required by federal law, who are functionally unable to independently use the RTC fixed route services.

The RTC strives to provide safe and reliable service for all members of the community, and is committed to providing commuters with the most up-to-date information available.

You will find within this guide information you will need to use the RTC ADA Paratransit Services.

Please review this information carefully. If you have any questions, please feel free to call Customer Service at (702) 228-4800 or for the hearing impaired (702) 676-1834 (TDD).

RTC GUIDE 00002

00A6-00002

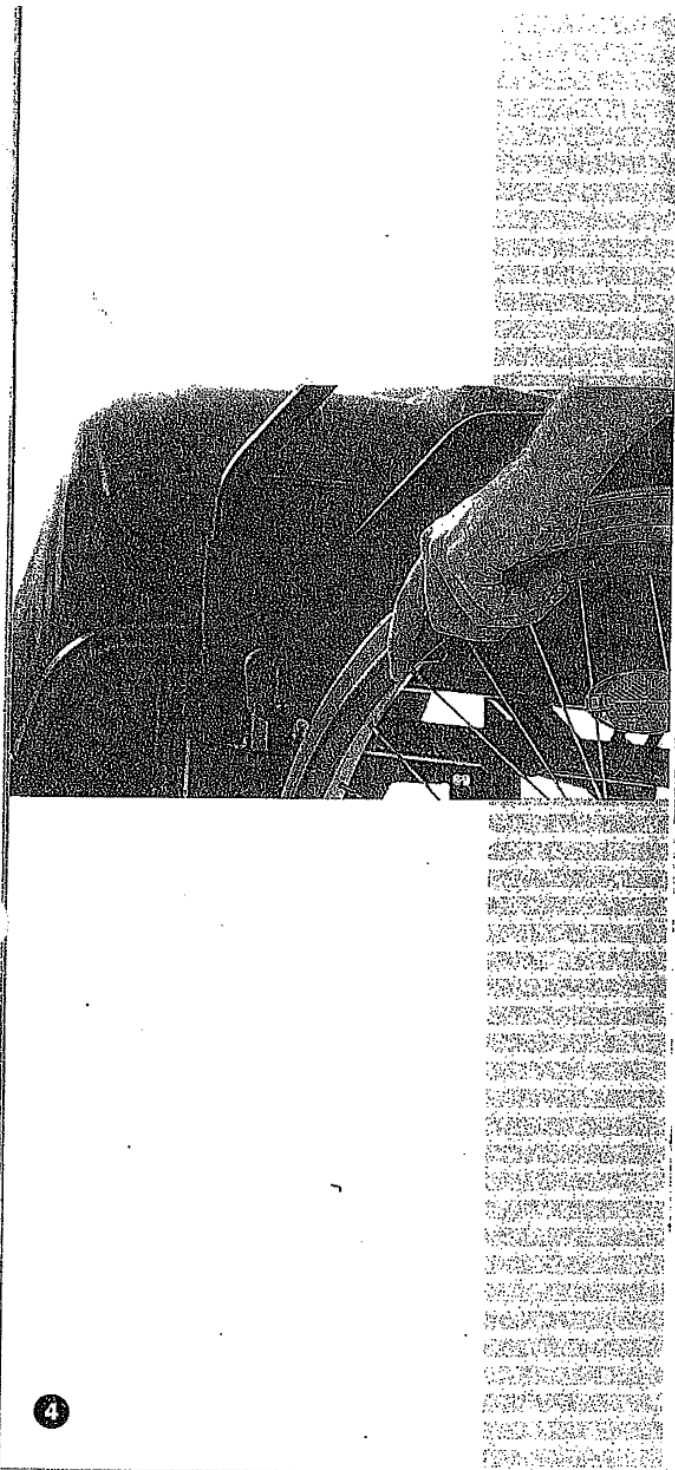


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Hours of Operation and Service Area

RTC ADA Paratransit Services operates 24 hours a day, 365 days per year.

The system operates within the urbanized area of Clark County as required under the ADA. Areas that are not serviced by RTC fixed route services may not have service through RTC ADA Paratransit Services.

A supplemental service zone exists outside of the service area required by the ADA. The supplemental service area is determined by the current RTC fixed route bus system. Special fares and reservation policies apply to travel within, into or out of this area. You were informed as to whether you live in the supplemental service area when your eligibility was determined.

Nellis Air Force Base permits drop off and pick up at designated areas only. Please ask the Customer Service Representative when you are scheduling your reservation where you may be dropped off at the base. Customers must have a valid military identification card in their possession.

Call Before You Move

The RTC's goal is to provide the best customer service possible. As a suggestion to help serve its riders, the RTC would like to remind customers to call RTC before changing residences to verify that public transportation is available where they are moving. This preventative step is similar in concept to the Public Utility agencies wanting people to call before they dig. The RTC understands that transportation and mobility are critical to our special services clients, and that it is just as important to others on our fixed route service. Don't leave yourself without a ride. One call is all it takes to RTC Customer Service at 228-4800.

Fares

RTC ADA Paratransit Services fare is broken down into various categories. The following outlines the rate schedule for a one-way trip.

RTC ADA Paratransit Fares Effective January 10, 2010

Amount	Type
\$2.75	Base cash (one-way)
\$3	Peak period (6 a.m. - 9 a.m. & 1 p.m. - 4 p.m.) Mon. - Fri.
\$6.00	Strip zone
\$4.00*	Supplemental fare zone
\$80	Unlimited RTC ADA Paratransit monthly pass (expires at end of calendar month)
\$150	Supplemental zone pass (expires at end of calendar month)
\$.50*	Shopping carts (one-way)
Free	Personal care attendant
\$5.50	Pre-paid punch card (10 fifty-cent and two (2) twenty-five denomination spots) No expiration date
\$16.50	Pre-paid punch card (30 fifty-cent and six (6) twenty-five denomination spots) No expiration date

NOTE: Passengers are responsible for paying their fare at the time of boarding. Failure to do so may result in the customer not being transported.

Companions are charged at the same fare amount as the ADA passenger.

Please have the exact fare ready. Drivers do not make change, or accept checks or credit cards.

* Plus fare

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Paperless Fare

Paper passes are no longer issued to clients when they purchase a monthly pass. The RTC will make a notation in the client's file that a monthly pass was purchased, and all drivers will be notified that the client is eligible to ride for that paid month. If omissions occur, please pay the fare and then immediately contact Customer Service at 228-4800. Please note that the fare will be updated to the client file the day after the purchase is processed. No payment will be required for each ride scheduled during this month. Please remember that it will take at least one day for the clients file to be updated after processing the purchase. Please allow 5-7 days for all mail and internet sales, and one day for purchases made at one of the transit terminals or administrative building.

A Paratransit monthly pass and pre-pay card can be purchased on the Internet at:

rtcshv.com

or by mailing a check or money order to:

RTC ADA Paratransit Services
600 S. Grand Central Pkwy., Ste. 350
Las Vegas, NV 89106

If you have any questions regarding fare sales, please call Customer Service at (702) 228-4800.

Sorry, we cannot accept out-of-state checks or third-party checks. Checks must be pre-printed with the rider's name, phone number and I.D. number.

Fares must be paid at the time of boarding a vehicle.

Reservations

Reservations can be made seven days a week between the hours of 7 a.m. and 6 p.m., by calling Customer Service at (702) 228-4800 or (702) 676-1834 (TDD) for hearing impaired. Reservations may be made from one day to three days in advance of the day of travel. Please note - there are special reservation policies for travel, including travel within the supplemental service zone and for non-ADA eligible customers.

Please Have the Following Available:

- ▶ Your name
- ▶ The day and date of your trip
- ▶ The exact street address, building or facility name, including the apartment, building, or suite numbers, for both pick-up and drop-off locations, and if you have it, a phone number for your destination and gate code

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- ▶ The type of mobility aide(s) you will be using*
- ▶ The number of people traveling - will you be taking a companion or Personal Care Attendant?
- ▶ The time you wish to be picked up, or in the case of a work, school or medical appointment, the time you need to be at your destination

* Passengers cannot travel using a mobility device unless it has been approved and your file is updated

Please note:

- ▶ Trips may originate from any location within the ADA Paratransit service area. Rides may be one-way, round trip or multiple rides.
- ▶ Once a ride has been scheduled, additional people cannot be added.
- ▶ No changes can be made to any trips on the day of your scheduled ride.

The RTC's Customer Service Representatives will do their best to accommodate the times you desire; however, alternate times may be offered. The RTC may negotiate the times of your trip by one hour. For example, if you would like to be picked up at 10 a.m. and that time is not available, we may offer you a trip as early as 9 a.m. or as late as 11 a.m.

The interval between pick-up times on the same day is recommended to be at least two hours. For example, if your scheduled pick-up time is 10 a.m., it is recommended that you do not schedule your next ride until 12 p.m. This will help to ensure you have arrived at your first destination with enough time to travel on your second or return ride.

Subscription Service

Subscription service is available for trips that are considered as being consistent and repetitive where continuation will extend over a period of at least 90 days. Once subscription service goes into effect, there is no need for additional reservation calls.

There are three categories of subscription requests, each with different criteria:

1. Weekly trips - will occur at least three (3) times over a seven day period
2. Weekday trips - will occur at least two (2) times, Monday through Friday
3. Weekend trips - will occur at least one (1) time on Saturday and/or Sunday

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RTC GUIDE 00005

00A6-00005

To be considered for subscription service, a person must demonstrate a pattern of no excessive cancellations or no-shows. Requests may be made by contacting a RTC Customer Service Representative.

The RTC offers subscription services as an optional component of service. Subscription services are allowed under the Americans with Disabilities Act (ADA) of 1990 but not mandated. Your request may be placed on a waiting list. When a space becomes available, the individual will be notified. Requests are maintained for four months, after which, you may re-apply.

Arrivals & Late Arrivals

Passengers should be ready to depart when the vehicle arrives. The drivers are instructed to wait no longer than five minutes after the scheduled time. If your vehicle has not arrived within the 25 minute late window, you may then elect to cancel/decline the ride with no cancellation points penalty. Please remember to call and cancel the late ride and/or any return rides you may have scheduled. Vehicles arriving within five minutes before or 25 minutes after the scheduled pick-up time are considered within the window for service. While the RTC strives to provide on-time service, many factors may result in a delayed pick-up. If your vehicle has not arrived within the window for service, please call the Inquiry Office, open 24 hours a day, seven days a week at (702) 228-4800 and press 3 at the voice prompt or (702) 676-1834 (TDD). Please refer to page 13 for the points policy.

Gated Communities

If a pick-up location is within a gated community, it is the customer's responsibility to arrange entry for the vehicle. When you schedule a trip, please confirm the gate code. Any changes should be reported to RTC ADA Paratransit Services at (702) 228-4800 or (702) 676-1834 (TDD). If a vehicle is unable to enter the pick-up area or the customer fails to meet the vehicle outside of the community, the customer's trip will be designated as a NO SHOW. Please note that some gated communities may have designated pick-up/drop-off location(s). Please check with customer service when you are scheduling a ride.

RTC Paratransit Same-Day-Service

A new pilot program offering same-day-service requests will become available to RTC Paratransit riders in January 2010. This pilot program will offer ADA certified riders an option for non-emergency, unplanned medical needs and is made possible through Federal "New Freedom" funds. Using the same-day-service request program, RTC Paratransit riders can schedule non-life threatening medical trips only. Trips can be for any medical reason, for example, pharmacy, therapy, etc. The same-day-service is provided to ADA certified riders within the ADA service area. There is no additional charge for a same-day-service ride; the fare is the same as ADA Paratransit service. Same-day-service ride hours are Monday through Friday, 8 a.m. to midnight. No weekends or holidays. To schedule a same-day-service request, call 228-4800 and select "Same-Day-Service Request" to schedule your ride. Reservations can be made Monday through Friday from 7 a.m. to 8 p.m.

Contacting Customer Service

RTC uses an automated phone system to assist in efficiently routing customers' calls. The service is available 24 hours a day, 7 days a week.

When you call **228-4800**, you will hear the following prompts.

Interactive Voice Response (IVR)
(702) 228-4800

- 1 Confirm or cancel a ride
 - 2 Schedule a ride
 - 3 Inquire on a current ride or schedule a same day medical trip
 - 4 Certification or eligibility
 - 5 Verify customer information
 - 6 General information
 - 7 System Comments
 - 0 Speak to a representative
- Repeat menu choices

Customers can confirm or cancel their rides for the next three days without having to speak to a customer service representative. Please contact Customer Service for your access code required to use the automated system.

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RTC GUIDE 00006

00A6-00006

Ride Check

Paratransit users now have the ability to check the status or cancel a previously scheduled Paratransit ride. Log onto the RTC's Web site, rtcsonv.com for step-by-step instructions. Or you can call our Paratransit Customer Service office at (702) 228-4800.

Shared Rides

RTC ADA Paratransit Services is a public transportation service. Whenever possible, the RTC will schedule rides with multiple passengers. This means you will be sharing rides with other persons with disabilities. Please be a courteous rider. Riders who require medication or oxygen at regular intervals should be advised that their travel time could be approximately 90 minutes depending on the distance traveled.

Destinations

A destination may not be changed after 6 p.m. the day before your trip is scheduled. Travel arrangements with more than one destination will be treated as separate trips and must be scheduled and cancelled separately.

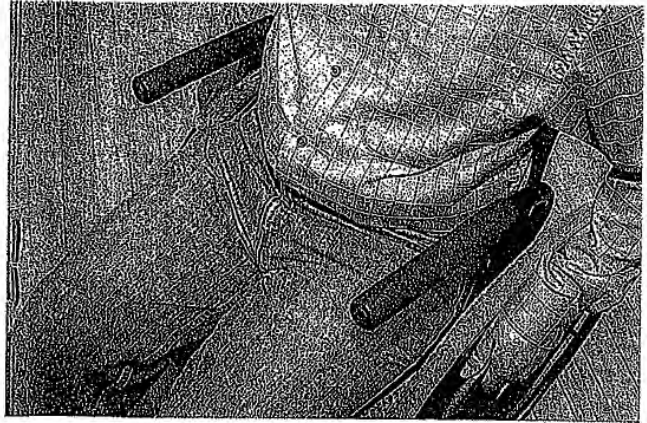
Vehicles

RTC ADA Paratransit Services may contract with other providers for transportation service. The Customer Service Representative is unable to tell you what type of vehicle will be used for your trip.

All vehicles used through this service are required to display a RTC sign on their vehicle. If you do not see the sign, ask the operator to show it to you.

Cancellations & No Shows

To cancel a scheduled trip, call Paratransit Reservations at (702) 228-4800 or (702) 676-1834 (TDD). Trips must be canceled no later than 6 p.m. the day prior to the scheduled pick-up to ensure no points are assessed. This call can be made 24 hours a day using the IVR phone system.



The following point system is used to determine penalties for recurring **NO SHOWS**.

RTC NO SHOW Categories

Limited Notice - any ride canceled between the hours of 6 p.m. and 7 p.m. the day prior to the scheduled pick-up. **ONE**

Early Notice - any ride canceled after 7 p.m. the day prior to the scheduled pick-up until four hours prior to the pick-up time. **TWO**

Late Notice - any ride canceled from within four hours to 30 minutes prior to the beginning of the pick-up window [five minutes before the pick-up time]. **THREE**

Notice at Door - any ride canceled by notice from the customer to the driver within the 30 minute pick-up window [five minutes before to 25 minutes after the pick-up time]. **FIVE**

No Notice - any ride canceled by telephone from 30 minutes prior to the beginning of the pick-up window [five minutes before the pick-up time]. **FIVE**

No Show - any ride for which an authorized paratransit service vehicle arrives at the designated pick-up location, waits the prescribed five minute period from the scheduled time, and the passenger is not present to board the vehicle. **FIVE**

In the event you are a NO SHOW for a ride, the return ride or any additional ride(s) scheduled for that day will not be automatically canceled. Please call (702) 228-4800 or (702) 676-1834 (TDD) and select option 1 to cancel any return/additional rides you had scheduled that will no longer be needed.

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13

RTC GUIDE 00007

00A6-00007

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

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AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **NOTICE OF ENTRY OF STIPULATION AND ORDER** filed in District Court Case No. A-13-682726-C

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

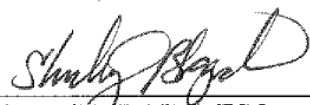
-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 3 day of April, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By



LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
Attorneys for Defendants

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LS#19969

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STIPULATION AND ORDER TO DISMISS
THE ESTATE OF HARVEY CHERNIKOFF WITH PREJUDICE


IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, by and through their counsel of record, that any and all claims made by the Estate of Harvey Chernikoff be dismissed from this matter with prejudice, the parties each to bear their own costs and jointly move this Honorable Court for an Order of dismissal of any and all claims of the Estate of Harvey Chernikoff with prejudice.

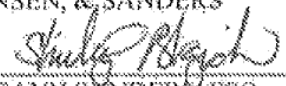
DATED this 11th day of March, 2014.

DATED this 12 day of March, 2014.

RICHARD HARRIS LAW FIRM

ALVERSON, TAYLOR,
MORTENSEN, & SANDERS

By: 

By: 

BENJAMIN CLOWARD, ESQ.
Nevada Bar No. 011087
801 S. 4th St.
Las Vegas, Nevada 89101
Attorney for Plaintiff

LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
(702) 384-7000
Attorneys for Defendants

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-0401
(702) 384-7000

ORDER


IT IS SO ORDERED.

DATED and DONE this 13 day of March, 2014.


DISTRICT COURT JUDGE
JUDGE STEFANY A. MILEY

Submitted by:

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
(702) 384-7000
Attorneys for Defendants

ALVERSON, TAYLOR, MORTENSEN & SANDERS

LAWYERS
540 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89101-1401
(702) 384-7000

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LS#10969

AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding STIPULATION AND ORDER TO DISMISS THE ESTATE OF HARVEY CHERNIKOFF WITH PREJUDICE filed in Eighth Judicial District Court Case No. A-13-682726-C

X Does not contain the social security number of any person.

-OR-

 Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 12 day of March 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By



LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 West Charleston Boulevard
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Attorneys for Defendants

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(702) 384-7000

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LS# 0969

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II.

FACTS RELATING TO THE DISCLOSURE OF CARL BERKOWITZ

The Court is well aware of the procedural history as to Plaintiffs' expert designation. Plaintiffs originally designated Mr. Ned Einstein as their transportation expert. Later, Plaintiffs moved to substitute a different expert, Dr. Carl Berkowitz, in place of Mr. Einstein. Defendants objected, arguing in part that they would be prejudiced because they had already expended a significant amount of time in analyzing Mr. Einstein's report. The Court granted the motion to substitute Dr. Berkowitz for Mr. Einstein, however it ruled further that Dr. Berkowitz would have to adopt Mr. Einstein's report.

On June 27, 2014, Defendants identified Dr. Michael Macquarie and Matthew Daecher as *initial* expert witnesses. Then on July 28, 2014, Defendants identified and produced *rebuttal* reports for Michael Macquarie and Matthew Daecher.

MICHAEL MACQUARIE, MD

On June 27, 2014 Defendants identified Dr. Michael Macquarie and Matthew Daecher as expert witnesses. Dr. Michael Macquarie's designation stated:

"Dr. Macquarie is by education training and experience and expert in the field of emergency medicine. He is prepared to offer causation opinions with regard to Harvey and Chernikoff's death and the incident in question. Dr. Macquarie is prepared to offer testimony consistent with but not limited to those opinions presented in his expert report attached hereto. In addition Dr. Macquarie is prepared to offer testimony in rebuttal to the opinions offered by Plaintiffs experts if any."

Importantly, Dr. Macquarie at that point had not reviewed any materials authored by Ned Einstein or Dr. Carl Berkowitz. Therefore any argument that Ned Einstein or Dr. Carl Berkowitz' opinions were foundation to his opinions is simply not correct.

1 Specifically, his report clearly listed the information that was foundation to his opinions, which
2 included the following:

- 3 • Complaint
- 4 • Video footage of the incident in question
- 5 • Clark county autopsy report
- 6 • Clark county coroner's report
- 7 • Toxicology report
- 8 • Harvey Chernikoff's medical records from Pamona Valley Hospital
- 9 • Harvey Chernikoff's medical record from the Desert Regional Center
- 10 • Harvey Chernikoff's medical record from Gautham Reddy, MD
- 11 • Harvey Chernikoff's medical records from William Gillespie, MD
- 12 • Harvey Chernikoff's medical records from Cedars Sinai Medical Center

13 These were the only documents that were listed as foundational to his opinions. As is clear,
14 nothing regarding Ned Einstein or Dr. Berkowitz were used for Dr. Macquarie to formulate his
15 opinions. His report contains approximately one page of opinions. See Exhibit 1 (Defendants' Initial
16 Disclosure Statement), attached hereto.

17 As this court is aware Plaintiffs first identified Ned Einstein as their expert, who was then, by
18 court order substituted and replaced by Dr. Carl Berkowitz.

19 On July 28, 2014, Defendants issued a rebuttal expert witness disclosure statement. See
20 Exhibit 2 (Defendants' Rebuttal Disclosure Statement), attached hereto. This rebuttal report was
21 issued after Dr. Macquarie had a chance to review Dr. Berkowitz' and Dr. Einstein's opinions. The
22 disclosure statement was listed plainly and unambiguously as a rebuttal expert disclosure, which
23 contained rebuttal opinions of Dr. Macquarie and Matt Daecher.

24 The information Dr. Macquarie now listed as having reviewed included the materials he had
25 reviewed previously but now included *only one additional* bullet point, which is as follows:

- 26 • Plaintiffs' designation of initial expert witnesses and exhibits thereto, including expert reports
27 by Kenneth Stein, M.D. and Ned Einstein.

1 Importantly at this point Dr. Macquarie had not yet read, reviewed or discussed Dr.
2 Berkowitz's opinions, report or his deposition.

3 It was not until nearly one year later on May 18, 2015 when Defendants did a supplemental
4 initial expert witness disclosure where they identified that Dr. Macquarie had now reviewed the
5 deposition testimony of Jack Chernikoff, Elaine Chernikoff, Jay Farrales, Scott McCartney, Carl
6 Berkowitz, PhD, Kenneth Stein, MD, Daniel Lingamfelter, DO, Jennifer Demers Jacobs. Additionally,
7 Dr. Macquarie had now reviewed Carl Berkowitz, PhD's expert report, and supplemental documents
8 from the file of Kenneth Stein, MD.
9

10 However very significantly and most important Dr. Macquarie **did not issue another report**
11 setting forth his opinions and how they had changed after now having reviewed the depositions and
12 opinions of Dr. Berkowitz. Rather Defendants stated "Dr. Macquarie's initial and rebuttal reports
13 curriculum vitae, fee schedule and list of prior testimony **have previously been produced.**" See
14 Exhibit 3 (Defendants' Supplemental Initial Expert Witness Disclosure).
15

16
17 **MATTHEW DAECHER**

18 The procedural history for Matt Daecher is similar to that of Dr. Macquarie as they were both
19 disclosed in the same disclosures. Specifically, on June 27, 2014, the Defendants designated Matthew
20 Daecher as their transportation safety and accident reconstructionist. The designation stated that:
21

22 Mr. Daecher is prepared to offer testimony consistent with, but not limited
23 to, those opinions presented in his expert report attached hereto. In
24 addition, Mr. Daecher is prepared to offer testimony in rebuttal to the
25 opinions offered by Plaintiffs expert(s), if any.

26 At the time of the designation, Mr. Daecher had not reviewed any materials authored by Ned
27 Einstein or Dr. Carl Berkowitz. Therefore any argument that Ned Einstein or Dr. Carl Berkowitz'
28 opinions were foundation to his opinions is simply not correct.

1 The list of documents which Mr. Daecher relied upon for his opinion pertaining to regulatory
2 requirements and compliance, company policies and driver actions demonstrates the fact that he is
3 offering expert opinions based on his opinions *and not Ned Einstein's initial report* because he had
4 not yet received that report at the time he formulated his initial opinions. These records include the
5 following:
6

- 7 • Complaint;
- 8 • Photographs of signs on the bus in question;
- 9 • Video footage of the incident from the on-board cameras;
- 10 • First Transit Employee Handbook;
- 11 • First Transit Minimum Required Training Hours;
- 12 • Las Vegas First Transit Operator Training Matrix;
- 13 • RTC Paratransit Guide;
- 14 • RTC Paratransit Interview Form for Harvey Chernikoff.
- 15 • Deposition transcript of Jack Chernikoff and related exhibits;
- 16 • Deposition transcript of Elaine Chernikoff and related exhibits;
- 17 • Deposition transcript of Jay Farrales and related exhibits; and
- 18 • Deposition transcript of Scott McCartney and related exhibits

19 Importantly these were the only documents that were listed as foundational to his initial expert
20 opinions.

21 Then on July 28, 2014, Defendants issued a rebuttal expert witness disclosure statement. See
22 Exhibit 2 (Defendants' Rebuttal Disclosure Statement), attached hereto. After having a chance to
23 review Dr. Berkowitz' and Dr. Einstein's opinions, Mr. Daecher then issued a rebuttal report,
24 containing rebuttal opinions.

25 Mr. Daecher's stated in his rebuttal report "subsequent to my initial report concerning this
26 matter (dated June 25, 2014), I have performed additional tasks and reviewed additional materials.
27 More specifically, I conducted an inspection of an exemplar bus, and reviewed the June 27, 2014
28 report authored by Mr. Ned Einstein. See Exhibit 2 (Defendants' Rebuttal Disclosure Statement),
attached hereto. Mr. Daecher offered one additional opinion that:

1 If Jay Farrales had paid as much attention to passenger behavior, as is
2 suggested he should per Mr. Einstein's report and conclusions, the risk
3 of being involved in a collision would have risen substantially.

4 It was not until nearly one year later on May 18, 2015 when Defendants did a supplemental
5 initial expert witness disclosure where they indicated that Matt Daecher would also be relying on the
6 Ned Einstein and Dr. Berkowitz documents to give his *initial opinions as well*. However very
7 significantly and most important at that time no additional report was issued setting forth how his
8 opinions had changed after now having reviewed the depositions and opinions of Dr. Berkowitz.
9 Rather Defendants stated "Mr. Daecher's initial and rebuttal reports curriculum vitae, fee schedule and
10 list of prior testimony have previously been produced." See Exhibit 3 (Defendants' Supplemental
11 Initial Expert Witness Disclosure).

12 ARGUMENT

13 Rebuttal expert witnesses consist of:

14 . . . [E]vidence that is intended solely to contradict or rebut evidence on the same subject
15 matter identified by another party under paragraph (2)(B), . . . This later disclosure deadline
16 does not apply to any party's witness whose purpose is to contradict a portion of another party's
17 case in chief that should have been expected and anticipated by the disclosing party, or to
18 present any opinions outside of the scope of another party's disclosure.
19

20 Nev R. Civ. P. 16.1(a)(2)(C)(ii). This rule is modeled after the federal equivalent, FRCP
21 26(a)(2)(D)(ii), but includes even more detail and restriction because the federal rule states only the
22 beginning of the Nevada rule: rebuttal expert opinions are "intended solely to contradict or rebut
23 evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), . . ."
24 Fed. R. Civ. P. 26(a)(2)(D)(ii). Federal cases interpreting the Federal Rules of Civil Procedure "are
25 strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon
26 their federal counterparts." *Exec. Mgmt. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53 (2002).
27
28

1 FRCP 26(a)(2)(D)(ii) permits the admission of rebuttal expert testimony that is “**intended**
2 **solely to contradict or rebut evidence on the same subject matter identified by an initial expert**
3 **witness.**” *R&O Constr. Co. v. Rox Pro Int’l Group, Ltd.*, 2011 WL 2923703, *2 (D. Nev. July 18,
4 2011) (emphasis added). Merely addressing the same general subject matter is not sufficient to show
5 an expert is a rebuttal expert rather than an initial expert; the expert must directly address the adverse
6 expert’s findings. See *Id.* at *3.

8 Rebuttal expert reports are proper if they contradict or rebut the subject matter of the initial
9 expert’s report, but they are not the proper place for presenting new arguments. *Nunez v. Harper*,
10 2014 WL 979933, *1 (D. Nev. Mar. 11, 2014) (citing *R&O Constr. Co.*, 2011 WL 2923703 at *2).
11 Rebuttal expert opinions should address **new, unforeseen issues upon which the opposing party’s**
12 **initial experts have opined.** *Id.* “**If the purpose of expert testimony is to contradict an expected**
13 **and anticipated portion of the other party’s case-in-chief, then the witness is not a rebuttal**
14 **witness or anything analogous to one.**” *Id.* (emphasis added). Presenting a new, alternative theory
15 of causation is not a rebuttal opinion; rather, it is an expected and anticipated portion of a party’s case-
16 in-chief. See *Amos v. Makita U.S.A., Inc.*, 2011 WL 43092, *2 (D. Nev. Jan. 6, 2011).

19 A party cannot abuse the rebuttal date and use it as “an extension of the deadline by which a
20 party must deliver the lion’s share of its expert information.” *Amos*, 2011 WL 43092 at *2 (citing
21 *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., Inc.*, 73 F.3d 546, 571 (5th Cir. 1996)).

23 Plaintiffs respectfully request that this Court strike defendant’s experts from mentioning,
24 referring to or commenting on Ned Einstein or Carl Berkowitz as **no evidence was presented by**
25 **Plaintiffs of either Ned Einstein or Carl Berkowitz** and Plaintiffs **will not** be presenting evidence of
26 either expert.

28 Because there were no opinions given in Plaintiffs’ case in chief by either Dr. Berkowitz or
Ned Einstein, there simply is nothing for either Dr. Macquarie or Mr. Daecher to rebut. Any evidence

1 elicited would be for an improper purpose because neither Dr. Macquarie nor Mr. Daecher relied on
2 anything that Dr. Berkowitz or Ned Einstein said when formulating their own opinions. Therefore,
3 any foundational argument made by Defendants is also misleading and flawed.
4

5 **CONCLUSION**

6 Michael Macquarie MD and Matthew Daecher are attempting to rebut the Plaintiffs' experts'
7 opinions, and as Ned Einstein or Carl Berkowitz have not testified and will not testify at trial, neither
8 Michael Macquarie MD and/or Matthew Daecher should be allowed to state anything regarding Ned
9 Einstein or Carl Berkowitz.
10

11
12 DATED this 24th day of February, 2016.

13
14 **CLOWARD HICKS & BRASIER, PLLC**
15 

16
17 **BENJAMIN P. CLOWARD, ESQ.**
18 Nevada Bar No. 11087
19 721 South 6th Street
20 Las Vegas, Nevada 89101
21 *Attorneys for Plaintiffs*
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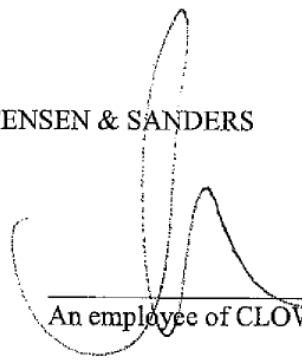
CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee of CLOWARD HICKS & BRASIER, PLLC and that on the 24 day of February, 2016, I caused the foregoing PLAINTIFFS' RENEWED OBJECTION TO EVIDENCE MENTIONING PLAINTIFF'S NON-TESTIFYING EXPERT, DR. CARL BERKOWITZ to be served as follows:

- Pursuant to N.E.F.C.R. 9 by serving it via electronic service
- by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or
- pursuant to EDCR 7.26, by sending it via facsimile; and/or
- by hand delivery

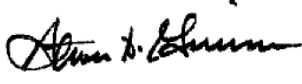
to the attorneys listed below:

LEANN SANDERS, ESQ.
ALVERSON, TAYLOR, MORTENSEN & SANDERS
7401 W. Charleston Blvd.
Las Vegas, Nevada 89117
Attorneys for Defendants



An employee of CLOWARD HICKS & BRASIER, PLLC

EXHIBIT “1”



CLERK OF THE COURT

1 IED
2 ALVERSON, TAYLOR,
3 MORTENSEN & SANDERS
4 LEANN SANDERS, ESQ.
5 Nevada Bar No. 000390
6 SHIRLEY BLAZICH, ESQ.
7 Nevada Bar No. 008378
8 7401 W. Charleston Boulevard
9 Las Vegas, Nevada 89117
10 (702) 384-7000
11 Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

%

10	JACK CHERNIKOFF and ELAINE CHERNIKOFF,)	CASE NO. A-13-682726-C
11	Plaintiffs,)	DEPT. NO. XXIII
12)	
13	vs.)	
14	FIRST TRANSIT, INC.; JAY FARRALES; DOES 1-)	
15	10, and ROES 1-10, inclusive,)	
16	Defendants.)	

**DEFENDANTS JAY FARRALES AND FIRST TRANSIT, INC.'S INITIAL
EXPERTWITNESS DISCLOSURE STATEMENT**

19 COMES NOW Defendants, JAY FARRALES and FIRST TRANSIT, INC. by and
20 through their attorneys of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS
21 and hereby submits his Initial Expert Disclosure Statement, pursuant to Nevada Rules of
22 Civil Procedure 16.1 and 26(b)(5):

- 23 1. Michael MacQuarrie, M.D.
- 24 P.O. Box 2484
- 25 Truckee, CA 96160

26 Dr. MacQuarrie is by education, training, and experience an expert in the field of
27 emergency medicine. He is prepared to offer causation opinions with regard to Harvey
28

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 Chernikoff's death and the incident in question. Dr. MacQuarrie is prepared to offer
2 testimony consistent with, but not limited to, those opinions presented in his expert report
3 attached hereto. In addition, Dr. MacQuarrie is prepared to offer testimony in rebuttal to
4 the opinions offered by Plaintiff's expert(s), if any.

5 Dr. MacQuarrie may add to, delete from, modify or change his expected testimony,
6 depending upon the nature of further information obtained between now and the time of
7 trial, as well as the deposition and trial testimony of other witnesses in this matter. Dr.
8 MacQuarrie's opinions will not be finalized until he has had an opportunity to review and
9 evaluate the opinions of all experts, which have not been fully ascertained at this time. In
10 that regard, Defendant reserves the right to supplement Dr. MacQuarrie's expert report
11 prior to the time of trial.

12 Dr. MacQuarrie's Expert Report, list of records reviewed, curriculum vitae, and fee
13 schedule are attached hereto as Exhibit A.

14 2. Matt Daecher
15 2010 Market Street
16 Camp Hill, Pennsylvania 17011
17 (717) 975-9190

18 Mr. Daecher is by education, training, and experience an expert in the fields of
19 transportation safety and accident reconstruction. Mr. Daecher is prepared to offer
20 testimony consistent with, but not limited to, those opinions presented in his expert report
21 attached hereto. In addition, Mr. Daecher is prepared to offer testimony in rebuttal to the
22 opinions offered by Plaintiff's expert(s), if any.

23 Mr. Daecher may add to, delete from, modify or change his expected testimony,
24 depending upon the nature of further information obtained between now and the time of
25 trial, as well as the deposition and trial testimony of other witnesses in this matter. Mr.
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Daecher's opinions will not be finalized until he has had an opportunity to review and evaluate the opinions of all experts, which have not been fully ascertained at this time. In that regard, Defendant reserves the right to supplement Mr. Daecher's expert report prior to the time of trial.

Along with his expert report, copies of Mr. Daecher's curriculum vitae, fee schedule, and a list of instances where he has offered deposition and/or trial testimony are attached hereto as Exhibit "B."

DATED this 21st day of June, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, NV 89117-1401
(702) 384-7000
Attorneys for Defendants

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LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, I hereby certify that on this 27th day of June, 2014, I did cause a true and correct copy of the above and foregoing **DEFENDANTS JAY**

FARRALES AND FIRST TRANSIT, INC.'S INITIAL EXPERT WITNESS

DISCLOSURE STATEMENT to be e-filed and e-served through the Eighth Judicial District Court EFP system pursuant to the Electronic Filing and Service Order entered on the Court's docket in the above-referenced matter.

Benjamin Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Charles H. Allen, Esq.
Attorneys for Plaintiffs
CHARLES ALLEN LAW FIRM
191 Peachtree Street N.W., Suite 3300
Atlanta, GA 30303

Attorneys for Plaintiffs

An employee of
ALVERSON, TAYLOR, MORTENSEN & SANDERS

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LS#19969

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AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANTS JAY FARRALES AND FIRST TRANSIT, INC.'S INITIAL EXPERTWITNESS DISCLOSURE STATEMENT** filed in District Court Case No. A-13-682726-C

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 27th day of June, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By



LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
Attorneys for Defendants

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LS#19969

EXHIBIT A

Michael MacQuarrie, M.D.,
F.A.C.E.P., F.A.E.E.M.
P.O. Box 2484
Truckee, California
96160

To Whom It May Concern:

I have been asked to provide expert standard of care and causation opinions with regard to the incident that occurred on July 29, 2011. All of the information contained in this report is based upon my review of the materials listed below, as well as my education, training and experience as a physician who is Board Certified by the American Board of Emergency Medicine.

Qualifications

I am currently an Emergency Physician at Tahoe Forest Hospital, a position which I have held since 1978. I am an Elected Fellow of the American College of Emergency Physicians. I have been a Certified Instructor of Advanced Cardiac Life Support, appointed by the affiliate faculty of the American Heart Association since 1976. I have also been certified in Advanced Trauma Life Support since 1982. I have previously served on the Emergency Medical Services Authority Committee on EMT II and Paramedic Training and as a consultant for the Commission on Emergency Medical Services for the State of California. As a consultant for the Commission on Emergency Medical Services, I participated in the development of regulations governing Paramedics and EMT II Scope of Practice for Title 22 of the California State Health and Safety Code, as well as statewide Paramedic and EMT II curriculum and testing standards for EMT I, II and Paramedics.

Information Reviewed

In preparation for rendering an expert opinion in this matter I have reviewed the following documents:

- Complaint;
- Video footage of the incident in question;
- Clark County Autopsy Report;
- Clark County Coroner's Report;
- Toxicology Report;
- Harvey Chernikoff's medical records from Pamona Valley Hospital;
- Harvey Chernikoff's records from the Desert Regional Center; and
- Harvey Chernikoff's medical records from Gautham Reddy, M.D.
- Harvey Chernikoff's medical records from William Gillispie, M.D.
- Harvey Chernikoff's medical records from Cedars Sinai Medical Center.

Expert Opinion

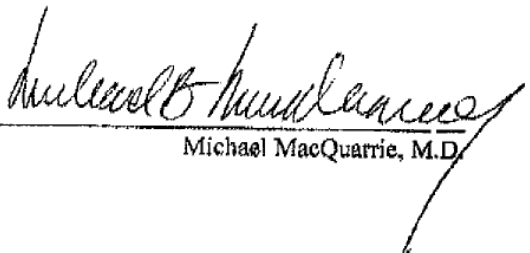
After review of the video footage, it is my opinion that Harvey Chernikoff exhibited no outward medical indications of choking. Further, in my opinion it would be very unusual for a person to choke without making a coughing noise or showing outward signs of distress. Based on the video footage, Harvey did exhibit some minor hand twitching and exhibited a slight lean. However, this activity is more consistent with subtle seizure activity, rather than choking behavior.

In my opinion, it is not clear that Harvey's death was caused solely by choking. The most likely alternative that could have caused Harvey's death without any outward signs of distress would be a heart attack. Based on his medical records, Harvey was in an age group that is susceptible to heart attacks and suffered from many conditions that make a patient at risk of a heart attack, such as hypertension, diabetes, and high cholesterol. Further, a minor obstruction in his throat, possibly caused by any food he may have consumed, could have deprived him of oxygen, leading to a heart attack. This would explain the minor hand twitching, which could have been the subtle seizure like activity Harvey exhibited prior to going unconscious. In the event that Harvey suffered a heart attack, neither CPR nor the Heimlich maneuver would have been effective in reviving Harvey.

As there was no medical indication that Harvey was choking or had choked, even an individual trained in first aid, would not have performed the Heimlich maneuver in this circumstance. Specifically, there was no evidence that would have directed any individual trained in first aid to check or clear Harvey's airway. Additionally, by the time Mr. Farrales was made aware that Harvey was nonresponsive, first aid would not have been sufficient to revive him. Even Emergency Medical Services did not look to Harvey's airway or attempt to revive Harvey when they arrived at the scene.

In summary, based on the foregoing, it is my opinion that, based on the materials reviewed, it would be impossible for any physician to state to a reasonable degree of medical probability that Mr. Chernikoff's death was caused by choking. Further, it is my opinion that an individual trained in first aid or even as a Level I Emergency Medical Technician would not have had the necessary training to save Harvey if his airway was in fact blocked, and even more so if he suffered a heart attack.

The foregoing opinions are made to a reasonable degree of medical probability. I reserve the right to supplement my opinion as new and/or additional information is provided to me. In addition, I reserve the right to modify my opinions should it become necessary.


Michael MacQuarrie, M.D.

CURRICULUM VITAE

Michael B. MacQuarrie, M.D., F.A.C.E.P., F.A.E.E.M.

Personal

Marital Status: Married. Three children
Current Address: P.O. Box 2484 Truckee, CA 96160
Hospital Address: Tahoe Forest Hospital 10121 Pine Ave. Truckee, CA.96161
Hospital / Office: (530) 582-3220 or (530) 587-6123 (phone, message, fax)
Email: macq@tfhd.com

Education

1962 -1966 Dartmouth College, Hanover, New Hampshire. Degree: B.A.
English Literature, Premedical Science

1966 -1970 Cornell University Medical College, New York, New York.
Degree: M.D.

Honors

- Robert Wood Johnson Scholar, Dartmouth College, 1962 - 1965
- Alfred P. Sloan National Scholar, Dartmouth College, 1965 - 1966
- Cornell Pathology Fellowship for study of Pulmonary Embolism - 1967
- Leopold Schepp Scholar, Cornell University Medical College, 1967 - 1970
- Payne Whitney Fellowship in Psychiatry and Neurology, St. Thomas' Hospital and Queens Square Hospital, London, England, 1968
- Commonwealth Fellowship, Cornell - Bahia Program, Infectious Disease and Tropical Medicine, Salvador, Bahia, Brazil, 1970
- Hospital Leadership Award, Hospital Council of Northern California, 1991
- Marin County Vision & Leadership Award for Development of Paramedic Services - September 2000
- Harvey Yorke Emergency Medical Service Award for Development and Implementation of Fire District Paramedic Systems - September 2003

Appointments - Postgraduate Training

1970 - 1972 Intern and Resident, Columbia University Medical Service,
Harlem Hospital Center, New York, New York. Internal Medicine.

1974 Fellow, Career Development Program, Center for Disease Control
and UCSF Hospitals. Internal Medicine Infectious Disease and
Public Health.

1974 - 1975 Senior Resident, University of California Hospitals: Moffitt Hospital
& Mission Emergency at San Francisco General Hospital, San
Francisco, California. Internal Medicine / Emergency Medicine.

Michael B. MacQuarrie, M.D., F.A.C.E.P.
Curriculum Vitae

Accreditation - Diplomate of the National Board of Medical Examiners, 1971.

Board Certification - American Board of Internal Medicine, 1975.
American Board of Emergency Medicine, 1982.
Re-certification 1992, 2002

Fellowship - Fellow of the American College of Emergency Physicians
(F.A.C.E.P.)
Fellow of the American Academy of Emergency Medicine
(F.A.A.E.M.)

Government Service

1972 - 1974 Lt. Commander, U.S. Public Health Service, Medical
Epidemiologist, Epidemic Intelligence Service, Center for Disease
Control, Atlanta, Georgia, assigned to California State Department
of Health. Disease surveillance investigation and control of
disease outbreaks in California. Quarantine Officer,
San Francisco Bay Area and Northern California.

Clinical Experience in Critical Care and Emergency Medicine

1970 - 72 Medical Resident - Columbia University - Harlem Hospital
Emergency Service and Trauma Center, New York, New York.
Volume 300 patients per day. Supervising Resident, Emergency
Dept.

1972 - 76 Emergency Physician Scenic General Hospital, Modesto;
Memorial North Hospital, Modesto;
Alameda Hospital, Alameda.

1974 - 75 Senior Resident, Mission Emergency Hospital and Trauma Center,
San Francisco General Hospital, San Francisco, California.

Sept / Oct Senior Resident San Francisco General Hospital
1974 Medical / Surgical Intensive Care Unit for critically ill and
injured patients.

Mar / Apr Cardiology Resident, University of California, San Francisco.
1975 Moffitt Hospital, San Francisco, California. Acute Cardiology
and Coronary Care Unit.

1975 - 81 Senior Physician, Marin Emergency Medical Group, Novato
Community Hospital, and Ross General Hospital, Marin County,
California.

Michael B. MacQuarrie, M.D., F.A.C.E.P.
Curriculum Vitae

- 1976 - present** **Certified Instructor Advanced Cardiac Life Support, appointed affiliate faculty of the American Heart Association.**
- 1982 -** **Certified Advanced Trauma Life Support**
- 1978 - present** **Emergency Physician, Tahoe Forest Hospital, Truckee, California.**

Teaching and Training in Emergency Medicine

- 1976 - 81** **Paramedic Instructor / Trainer, Novato Fire District and College of Marin**
- 1977 - 78** **Clinical Instructor, Stanford University Paramedic Training Program**
- 1978** **Instructor, Marin County Mobile Intensive Care Nurse Program.**
- 1981 - 94** **Instructor, Nevada / Placer County Mobile Intensive Care Nurse Program.**
- 1982** **Consultant / Instructor, Northern Sierra Consortium for Health Services. Video Productions: Rural Emergency Medical Management for Paramedics**
- 1978 - 89** **Primary Instructor and Medical Director Placer-Nevada EMT II Program, Tahoe Forest Hospital, under the auspices of the Sierra Sacramento Valley Emergency Medical Services Agency.**
- 1976 - 96** **Affiliate faculty, American Heart Association Medical Director Advanced Cardiac Life Support Training Program at Tahoe Forest Hospital sponsored by the Nevada Heart Association.**
- 1987 -91** **Medical Director, Alpine, Motherlode, Emergency Medical Services Agency, Regional Paramedic Program, Modesto, California.**
- 1988 - 91** **Medical Director for Training Sierra Sacramento Valley Emergency Medical Services Agency, Paramedic and EMT II Training Programs, Sacramento, California.**
- 1987 - 2002** **Northern California Medical Director and Affiliate Faculty, Basic Trauma Life Support, California Chapter, American College of Emergency Physicians.**
- 1991 - 93** **President, Academy of Emergency and Expedition Medicine and Academy Seminars. Continuing Education Programs and ACEP co-sponsored National Conferences for Emergency Physicians and Nurses.**

Michael B. MacQuarrie, M.D., F.A.C.E.P.
Curriculum Vitae

Administrative Activities in Emergency Medicine

- 1971 - 72 Consultant Physician, Prison Health Services, Rikers Island Adolescent Remand Shelter, New York, New York. Organization of Prison emergency medical services and general clinical medicine.
- 1973 - 75 Development of Emergency Services at hospitals in Merced, Tracy, Willits, and Patterson for Emergency Medical Systems of San Francisco.
- Aug - Nov 1973 Medical Advisor to Disaster Relief Team, Pakistan, India, Nepal, Bangladesh. Emergency Medical Aid (with USAID). Organization of emergency medical care stations in disaster areas.
- 1975 Consultant to Stanislaus County Paramedic Program.
- 1975 - 81 Director Emergency Services Novato Community Hospital. Development of Comprehensive Emergency Services for community. Development Marin County Paramedic Program. Marin County Paramedic Advisory Committee.
- 1975 - 78 Marin County Representative Medical Advisory Committee, Association of Bay Area Governments, (ABAG) Emergency Medical System for San Francisco Bay area communities
- 1975 - 77 Development of Transfer Agreements for Bay Area hospitals for burns, spinal cord injuries, trauma, coronary care and neonatal emergencies.
- 1978 Consultant to California Emergency Physicians. Development of Emergency Department physician staff at Marin General Hospital.
- 1978 - present Director Emergency Services, Tahoe Forest Hospital District. Development of physician staff and system of emergency care to include comprehensive delivery of advanced life support throughout the district.
- 1981 - present Nevada County Health Officer Designate for Paramedic Services.
- 1982 - 92 Emergency Medical Services Authority, State of California, Committee, on EMT II and Paramedic Training,

Michael B. MacQuarrie, M.D., F.A.C.E.P.
Curriculum Vitae

- 1982 - 89** **Consultant, Commission on Emergency Medical Services, State of California:**
1. Development of Regulations governing Paramedics and EMT II Scope of Practice for Title 22, California State Health and Safety Code.
2. Development of statewide Paramedic and EMT II curriculum.
3. Task Force on statewide testing standards for EMT I, II, and Paramedics.
- 1986-present** **Medical Director, Doctors Ski Patrol**
Alpine Meadows, Northstar, and Sugar Bowl Ski Resorts
- 1996 - present** **Medical Director, Emergency Department, Incline Village Community Hospital, Incline Village, Nevada.**
- 1990 - 91** **Consultant, Total Quality Management (TQM) and Continuous Process Improvement (CPI), Dimensions of Human Synergy, San Francisco, California (Emergency Department and Medical Office Management).**
- 1994 - 2001** **Board of Directors, Tahoe IPA**

Academic Appointments

- 1971 - 72** **Assistant in Medicine, College of Physicians and Surgeons of Columbia University, New York.**
- 1973 - 74** **Lecturer in Epidemiology, School of Public Health, University of California, Berkeley.**
- 1974 - 75** **Instructor in Medicine, University of California, School of Medicine, San Francisco.**
- 1978 - 79** **Attending Staff, Mission Emergency Hospital, San Francisco, California.**

Hospital Staff Member

- 1975 - 88** **Novato Community Hospital, Novato, California.**
- 1978 - present** **Tahoe Forest Hospital, Truckee, California.**
Chief of the Medical Staff, 1981-82, 1998-2000
Vice Chief of Medical Staff 1996, 1997, 2005
Chairman Emergency Medicine Committee 1990 / 1995, 2001-2003

**Michael B. MacQuarrie, M.D., F.A.C.E.P.
Curriculum Vitae**

1978 - present **Executive Committee of the Medical Staff,
Chairman, Emergency Department Committee,
Professional Audit Committee,
Development of Emergency Department audit procedures,
Critical Care Committee,
Quality Assurance Committee,
Long Range and Strategic Planning Committee.**

1990 - 2005 **Bio-Ethics Committee, Chairman, 2002**

1998 -- 2003 **Board of Directors, Tahoe Forest Hospital Foundation**

Membership

American College of Physicians (Internal Medicine) 1975-1995

American College of Emergency Physicians (Elected Fellow, 1983)

Community Services

1975 - 78 **Marin County Heart Association: Member Board of Directors;
Chairman, Pre-Hospital Care Committee.**

1976 - 78 **State of California Department of Health, Advisor, Medical
Programs for Department of Corrections.**

1975 - 78 **Marin County Emergency Medical Care Committee.**

1978 - 90 **Nevada County Emergency Medical Care Committee.**

Presentations Before Formal Professional Groups

**"Hepatitis B from a Human Bite", West Coast Epidemiology Conference,
Ashland, Oregon, November 9, 1973.**

**"Emergency Medical Care Organization During a Disaster in Pakistan", West
Coast Epidemiology Conference, Ashland, Oregon, November 10, 1973, and
Center for Disease Control, Atlanta, Georgia, December 18, 1973**

**"Varicella Outbreak on a Pediatric Oncology Ward", Epidemic Intelligence
Service Conference, Center for Disease Control, Atlanta, Georgia, April 17,
1974.**

Michael B. MacQuarrie, M.D., F.A.C.E.P.
Curriculum Vitae

"Salmonellosis In California", Marin County Medical Society, February, 1974.

"Paramedic Field Simulations", Stanford University Paramedic Program, Marin County, October - November, 1977.

"Emergency Management of Head Injuries and the Unconscious Patient", Video Productions, Northern Sierra Consortium for Health Services, Susanville, California, June, 1983.

"Cooperation - A Successful Strategy for the 80's, A Seminar for Board of Directors, Administrators, and Medical Staff Leadership", Association of California Hospital Districts, June 1984, Newport Beach, California.

"Hypothermia" Incline Winter Sports Injury Symposium, Incline Village, Nevada, November 1993.

Publications

1. The establishment of S.typhimurium infection in mice infected with s.mansoni. Rev Inst Med Trop Sao Paulo 13:328-332, 1971.
2. Hepatitis B transmitted by a human bite. JAMA 230:5, 723-24, November 4, 1974. (First documentation of transmission by this route)
3. Diagnosis and treatment of Amanita phalloides-type mushroom poisoning: use of thiocotic acid. Western J of Med 125:100-109, August 1976.
4. Emergency Encounter Forms: Their Use in the Emergency Department, January, 1976. (Private printing)
5. "Nosocomial Varicella" Western Journal of Medicine 130:196-199, March, 1979.
6. "Snowboarding Deaths in Deep Powder". The Physician and Sports Medicine 22:12, 48-67, December 1994.
7. "Pulmonary Airleaks in Outdoor Sports" - American Journal of Sports Medicine - Vol. 27, No. 4: 571-520, 1999

August 7, 2007

Michael B. MacQuarrie, MD, FACEP, FAAEM
P. O. Box 2484
Truckee, CA 96160
Phone / Fax: (530) 587-6123
Tax ID # 94-2479345

FEES FOR LEGAL WORK:

\$350 per hour to review records (minimum 3 hr.)

\$450 per hour for deposition and / or arbitration

Trial - arranged with attorney

Retainer - \$1000

EXHIBIT B

2010 Market Street
Camp Hill, PA 17011

DAECHER
CONSULTING GROUP

Ph: 717.975.9190
Fax: 717.975.3996

June 25, 2014

Ms. Taylor Trujillo
Alverson Taylor Mortensen & Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401

RE: Chernikoff v. First Transit, Inc. et al

Ms. Trujillo:

Pursuant to your request, I have reviewed materials to render opinions pertaining to regulatory requirements and compliance, company policies and driver actions related to the above referenced matter. The following documentation was reviewed in preparation of this report:

- Complaint;
- Video footage of the incident from the on-board cameras;
- Photographs of signs on the bus in question;
- First Transit Employee Handbook;
- First Transit Minimum Required Training Hours;
- Las Vegas First Transit Operator Training Matrix;
- RTC Paratransit Guide;
- RTC Paratransit Interview Form for Harvey Chernikoff.
- Deposition transcript of Jack Chernikoff and related exhibits;
- Deposition transcript of Elaine Chernikoff and related exhibits;
- Deposition transcript of Jay Farrales and related exhibits; and
- Deposition transcript of Scott McCartney and related exhibits.

Ms. Taylor Trujillo

June 25, 2014

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Background

On the morning of July 29, 2011, Harvey Chernikoff was among several approved passengers on a paratransit bus. Jay Farrales was the driver of the Paratransit vehicle, being operated for First Transit. First Transit was contracted to provide transportation services for the Regional Transportation Commission of Las Vegas (RTC).

While being transported to his worksite, Mr. Chernikoff suffered a medical event and passed away while on-board the paratransit bus.

Deposition Testimony

Jack Chernikoff testified that Harvey lived with a caretaker (Joseph) and that both they (him and Elaine) and Joseph stressed independence with Harvey. He stated that Harvey was talkative and followed verbal commands. He indicated that he was not familiar with the RTC Paratransit Guide and not aware of any rules that riders were to follow. He stated that Harvey did not need anyone to travel with him and that he would have protested such if it was a stipulation for using the Paratransit service. He testified that he had neither been on any RTC paratransit bus with Harvey and was unaware of Harvey's behaviors while riding.

Elaine Chernikoff also testified that Harvey was an independent person and that she felt there was no need for him to travel with a caretaker. She recalled seeing the RTC Paratransit Guide, but also indicated that she did not read it thoroughly and never provided it to Joseph, Harvey's caretaker. She does not indicate that she ever rode with Harvey on the bus and further indicated that Joseph only rode with Harvey on special occasion trips.

Jay Farrales testified that he had been a driver for First Transit and related previous entities for five years at the time of this incident. He indicates that he had only transported Harvey a few times and never saw Harvey eating on the bus. He testified that Harvey did ask him if he could drink water, which he would allow. He also states that in the past, when he has noticed passengers eating on the bus, that he had asked them to stop. He indicates that, after dropping off Ms. Kincaid, he did not specifically check on Harvey before resuming his trip. He believed Harvey may have been napping and states that he could not see Harvey in his mirror. He testified that he saw Harvey leaning over in the seat at a stoplight, and that he knew something was not right when he got up to check on him. He moved the bus off the roadway to a safe location and he contacted dispatch to alert them of the situation.

Ms. Taylor Trujillo

June 25, 2014

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Analysis & Comment

According to the testimony of the Chernikoffs and the Complaint in this case, it is clear that they believe that Harvey's death was caused by violations of standards and failures of actions on behalf of the driver Jay Farrales or his employer First Transit. More specifically, the following summarizes, at least in part, their beliefs:

1. Paratransit transportation includes drivers who should be able to diagnose medical emergencies and provide first aid;
2. Paratransit drivers and/or their companies are responsible for teaching riders rules of transport;
3. Harvey Chernikoff died from choking on food he was eating while on the bus;
4. Mr. Farrales knew, or should have known, that Harvey was eating on the bus; and
5. First Transit's policy to have drivers contact dispatch when an emergency occurs unnecessarily delayed medical attention.

Paratransit transportation is transportation provided to persons with disabilities who, because of their disabilities, cannot successfully utilize other available fixed-route, public transportation. Through the Americans with Disabilities Act, paratransit transportation was mandated for persons with disabilities in regulations promulgated by the Department of Justice and Department of Transportation. General regulations governing accessible transit operations can be found at CFR Title 49, Part 37.

Regulatory requirements specific to driver duties and responsibilities are found in Subpart G at §37.165 and 37.167. In summary, these require that drivers provide routine boarding assistance for passengers with disabilities as well as assist with identifying stops and transfer points. Regulations pertaining to driver training are found in §37.173, which reads in whole:

"Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities."

Notably, the regulations do not require that drivers be trained in first aid, CPR, or in recognizing or diagnosing medical events of any kind. While there are public

Ms. Taylor Trujillo

June 25, 2014

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paratransit entities that choose to provide training in first aid and/or CPR to drivers, there is no clear industry standard with regard to the application of this training. This is consistent with other modes of transportation, including school bus operations and charter/tour operations. Provision of this type of training is customarily stipulated in contracts for private operators, such as First Transit, when contracting entities determine it would be desirable given their operating profile. Drivers trained in these matters are generally found in more rural areas where access to highly trained and competent emergency response personnel is not as accessible as the same in more urban environments.

The RTC Paratransit Guide, provided to the Chernikoffs at the time of the eligibility assessment/certification process, details additional services of the driver; these outlined services are consistent with the requirements under the ADA regulations.

The RTC Paratransit Guide also outlines "Rider Rules", which include no eating, a rule consistent with signage provided on the First Transit vehicle operated by Mr. Farrales. The Chernikoffs indicate that Harvey both listened to and followed verbal commands and also was capable of learning the meaning of signage, but also admit that they never really read the RTC Guide, never provided it to Harvey's caretaker Joseph, and never rode on an RTC bus with Harvey. Instead, they assumed that the RTC, their contractors, or their drivers would be responsible for teaching riding rules to passengers. Considering that persons with cognitive disabilities undoubtedly learn concepts in different ways, it would seem much more reasonable for those who best understand each individual's learning capabilities to provide instruction in critical areas, rather than transportation providers who could not possibly understand an individual's cognitive function as well as relatives and caretakers.

It is not customary for drivers to provide instruction to riders as to rules while riding. In fact, this would be counterproductive, as rules would have to be provided to each new rider that boarded and would undoubtedly delay provision of timely transportation service.

Prior to Harvey slumping over there are no visible or audible signs of a medical emergency other than some slight arm tremor/movement. In fact, at 7:59:55, just 30 seconds prior to any obvious sign of a medical event, the bus stops to let off passenger Kincaid. At this time, Harvey closes his lunch bag and places it on the seat next to him, as driver Farrales gets out of his seat to exit the bus and assist passenger Kincaid alight the vehicle. Harvey actions at this time certainly do not indicate any obvious distress, and in fact, possibly imply that he was aware he was not supposed to be eating. At no time are any of the universal responses and reactions to choking observed.

Depending on physical characteristics of the inside mirror and how the mirror was positioned, Mr. Farrales very conceivably may not have been able to see



Ms. Taylor Trujillo

June 25, 2014

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Harvey after he was slumped over into the aisle, which is the position he was in from the time Mr. Farrales resumed the route after discharging passenger Kincaid until he determines there is an issue with Harvey while at the stoplight. In fact, the video confirms this to be the case. While at that stoplight, it is clear from the video that Farrales had to rise up in his seat or otherwise look in a not-seen-before fashion to fully recognize and realize Harvey's position, after which he immediately reaches back to assess if Harvey is okay.

Other observations from the video footage:

- The entire time Harvey was eating, his lunch bag was either on his lap, or on the seat to his left. Harvey consumed his entire sandwich in about 1.5 minutes.
- The length of time elapsed during which Harvey had not spoken to Farrales either prior to the stop for Kincaid, or after he re-boarded the bus was not abnormally unusual; there were many instances during this trip where longer times had elapsed without any type of conversation or comment from Harvey.

Mr. Farrales' actions after identifying that there was an issue with Harvey are consistent with practices within the transportation industry. Once he was unable to get Harvey to respond, he quickly moved the vehicle off the roadway to a safe location; this action is typical of instruction given to drivers so that any passengers and the driver are removed from continuing roadway traffic hazards. Moving the vehicle off the roadway also simplifies access to the vehicle for emergency responders and ensures their safety from roadway traffic hazards once they arrive.

Within the transportation industry, there are varying approaches for drivers to handle emergency notifications, with the options being direct notification by a driver, or notification through dispatch. It is more likely for companies to utilize dispatch notification in instances where dispatch is readily available at all times. Additionally, specific to transportation for persons with disabilities, dispatch personnel often times maintain more detailed information related to passengers that may be beneficial for emergency responders in their approach to patient evaluation and treatment.

On the RTC Paratransit Interview Form, the Chernikoffs indicate that Harvey would be able to travel without a Personal Care Attendant (PCA). This is consistent with their testimony. However, based upon the interview of Harvey and his needs, the RTC approved Harvey for travel with a PCA. This designation means that the transportation provider was required to transport a PCA at no additional charge for any trip that Harvey took on the transit service. PCAs are utilized for a variety of reasons, including medical attention.

Ms. Taylor Trujillo

June 25, 2014

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Conclusions

Based upon materials reviewed and my experience and knowledge of commercial passenger transportation operations, it is my opinion to a reasonable degree of professional certainty that:

- Paratransit regulations do not require first aid, CPR, or any medical training for vehicle operators. The main function of a driver is safe operation of the vehicle, routine boarding assistance, and disability-sensitive interaction with persons with disabilities.
- The Chernikoffs and Harvey's caretaker understood Harvey's learning and cognitive processes much better than anyone else and had the best opportunity to insure that he knew and understood rules for riders as well as signage onboard the vehicle. Despite this obvious fact, they failed to provide any known instruction to Harvey pertaining to rules of riding RTC buses, including eating on the bus.
- It is not customary for drivers, or transit agencies, to individually provide riding rule instruction to passengers unless a passenger is observed violating a rule.
- Given Harvey's seated position behind the driver and the manner in which he consumed his food, it is entirely possible that any view of Harvey eating was not visible in the driver's view of the inside mirror.
- Based upon video footage, Harvey's position while slumped over was not visible to the driver during normal mirror scans from his driving position.
- The Chernikoffs had the option to provide a Personal Care Attendant to ride the transit service with Harvey at no charge. Such as PCA could have provided all the functions they assumed the driver and/or transit company was providing for Harvey.
- The Chernikoffs made assumptions with regard to the transportation service that were not fact, and, had they made appropriate inquiries, would have known were positively wrong. Perceived failures of the driver or First Transit based on assumptions are erroneous.

Ms. Taylor Trujillo

June 25, 2014

Page 7 of 7

This report may be amended with the availability of additional information or facts related to this incident, including but not limited to a subject vehicle inspection that will occur in the next 30 days.

Yours truly,



Matthew Daecher
Transportation Safety Specialist
Accredited Accident Reconstructionist

Matthew A. Daecher

Transportation Safety Specialist

Accredited Accident Reconstructionist

Areas of Expertise:

Mr. Daecher regularly consults with commercial vehicle operations and commercial fleets on risk management practices, including Federal & State safety-based regulatory compliance. He has personally investigated over 100 vehicular accidents, most involving commercial vehicles. He has provided litigation support in hundreds of cases and his testimony has been accepted in both State and Federal Courts.

Mr. Daecher has significant experience in practices related to safe operations in commercial vehicle and commercial fleets.

Recent Consultation Includes:

- FMCSR, FMVSS, OSHA, and EPA compliance
 - Driver hiring & management
 - Driver training
 - Fleet maintenance
 - Accident and injury investigation
 - Workplace safety
 - Carrier assessment and selection
-

Education

Bachelors of Business Administration

Kent State University, 1992

Traffic Accident Reconstruction

Northwestern University, 1997

Core curriculum includes 320 hours of instruction in the following categories: Measurements at the Scene of Traffic Accidents; Traffic Accident Investigation; Vehicle Dynamics; Traffic Accident Reconstruction; Heavy Vehicle Crash Reconstruction (1999)

Accreditations

ACTAR-Accredited Accident Reconstructionist (#1113)
(Accreditation Commission for Traffic Accident Reconstructionists)

Professional Affiliations & Service

- **ACTAR; Director, Governing Board (2012-Present)**
 - **American Bus Association**
 - **American Society of Safety Engineers (ASSE)**
 - **Bus Industry Safety Council (BISC)**
 - **Commercial Vehicle Safety Alliance (CVSA)**
 - **National Association of Traffic Accident Reconstructionists and Investigators (NATARI); Member, Board of Directors (2008-2013)**
 - **National Association of Professional Accident Reconstruction Specialists (NAPARS)**
 - **National Safety Council (NSC)**
 - **United Motorcoach Association**
-

Employment History

1997 - Present

The Daecher Consulting Group, Inc.

President/Vice-President

Consultation with clients in all areas of commercial motor carrier and commercial fleet operations

- **Safety management practices**
- **Analysis of loss histories**
- **Design and implementation of loss prevention/control strategies**
- **Driver performance evaluation**
- **Regulatory compliance**
- **Design and implementation of corporate safety & risk management policies and procedures**
- **Workplace safety**
- **Fleet management**
- **Accident & injury investigation**
- **Development and presentation of training programs**

Investigation and/or reconstruction of collisions involving motor vehicles including performance of vehicle and scene inspections, vehicle testing, and vehicle electronic data interrogation

Participation in research projects pertaining to fleet safety

Manage and oversee staff and administration functions of company

1995 - 1997

Safety, Claims & Litigation Services, Inc.

**Loss Prevention Analyst /Consultant
& Accident Investigation/Reconstruction Assistant**

Safety & Loss Prevention Highlights

- Review and analyze loss/claims records to determine collision and injury trends and suggest solutions and/or training curriculum to reduce claims exposure
- Perform anonymous on-board evaluations to identify individual driver behaviors and route specific issues which create unnecessary loss exposures
- Conduct facility inspections to determine employee hazards and risks of injury
- Determine regulatory compliance levels of clients through audit mechanisms and worksite investigations and inspections
- Design, edit and publish loss prevention newsletters for customers
- Design and implementation of corporate safety & risk management policies and procedures

Accident Investigation / Reconstruction Assistance

- Collision scene and vehicle inspection and documentation
- Collection of vehicle, weather and other relevant data
- Obtain witness statements and accident reports
- Assist in all phases of accident data analysis and reconstruction

1993 - 1995

North Coast Energy, Inc.

Assistant Treasurer / HR Director

Assistant Treasurer

- Assist CFO in various functions, including: overseeing accounts payable and accounts receivables; cash flow analysis and daily cash management; short-term investment of excess capital; establish credit lines with vendors; review of stock dividend payments; preparation and submission of SEC filings

Human Resource Functions

- Perform payroll services; administer company 401K plan; maintain employee stock options; implement human resource plans; review and revise company policies; implement and oversee drug testing program; revise employee handbooks as necessary

Publications & Presentations

Mr. Daecher is regularly published in trade magazines and periodicals, including:

- American Bus Exchange
- Bus Ride Magazine
- Guardian (CVSA)
- The Road Explorer
- Transactions (ASSE Transportation Practice Specialty)

He also gives frequent presentations to carrier representatives and safety management personnel on topics of interest within his expertise. Some recent seminars/groups for whom he has presented:

- United Motorcoach Association Safety Management Seminar
- Atlas Van Lines (SALTA Insurance Group)
- Airport Ground Transportation Association
- Pennsylvania Public Transportation Association
- CVSA Safety Symposium

Research/Regulatory Projects

Mr. Daecher has participated in numerous US DOT-funded projects, including:

- Model Curriculum for Motorcoach Driver Training
- Bus Driver Fatigue and Stress Issues
- Motor Carrier Scheduling Practices and Their Influence on Driver Fatigue
- Security & Emergency Preparedness Plans for Passenger Carriers
- Operation Secure Transport
- Commercial Truck and Bus Safety Synthesis Programs

2010 Market Street
Camp Hill, PA 17011

DAECHER
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Fax: 717.975.3998

2013 Retainer Agreement

Thank you for your interest in The Daecher Consulting Group, Inc. Our rates for all new cases and litigation consultation are as follows:

Principal Expert - \$225.00/hour
Administrative Support - \$ 45.00/hour

Downloads of engine, restraint and other vehicle data control modules via electronic interrogation of the vehicle or module is subject to a \$400.00 fee per download in addition to personnel time.

Printing charges are 7¢/page for black and white print; color photographs and other necessary color prints will be billed at \$0¢/page. All other direct expenses associated with services provided will be billed in addition to these fees. Mutually agreed upon weekend and holiday time will be billed at \$400.00/hour.

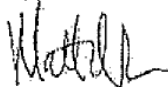
Our retainer for new cases is \$1,800.00. This retainer is non-refundable and will be applied to the first eight hours of chargeable time. After the retainer has been exhausted, we will bill for services and expenses every two weeks. Any invoices that remain unpaid for 30 days or longer will be assessed finance charges of 1 1/2% per month. These finance charges will continue to accrue until the invoice and all finance charges are paid. If any invoices remain unpaid for 100 days, all services will cease until the invoice and all finance charges are paid.

Our minimum fee for depositions is \$800.00; however, depending upon the location for the deposition, a specific minimum fee will be provided for payment in advance of the deposition.

Cancellations of depositions or trial testimony within 72 hours of scheduled time will incur the minimum fee as well as any direct travel costs incurred that cannot be cancelled or recovered.

We look forward to working with you.

Very truly yours,



Matthew Daecher
President

Federal ID No. 26-0034113



EXHIBIT “2”

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 ALVERSON, TAYLOR,
2 MORTENSEN & SANDERS
3 LEANN SANDERS, ESQ.
4 Nevada Bar No. 000390
5 SHIRLEY BLAZICH, ESQ.
6 Nevada Bar No. 008378
7 7401 W. Charleston Boulevard
8 Las Vegas, Nevada 89117
9 (702) 384-7000
10 Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

%

10 JACK CHERNIKOFF and ELAINE CHERNIKOFF,) CASE NO. A-13-682726-C
11 Plaintiffs,) DEPT. NO. XXIII
12 vs.)
13 FIRST TRANSIT, INC.; JAY FARRALES; DOES 1-)
14 10, and ROES 1-10, inclusive,)
15 Defendants.)

DEFENDANTS JAY FARRALES AND FIRST TRANSIT, INC.'S REBUTTAL
EXPERT WITNESS DISCLOSURE STATEMENT

18 COMES NOW Defendants, JAY FARRALES and FIRST TRANSIT, INC., by and
19 through their attorneys of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS
20 and hereby submit their Rebuttal Expert Disclosure Statement, pursuant to Nevada Rules of
21 Civil Procedure 16.1 and 26(b)(5):

- 23 1. Michael MacQuarrie, M.D.
24 P.O. Box 2484
25 Truckee, CA 96160

26 Dr. MacQuarrie is by education, training, and experience an expert in the field of
27 emergency medicine. He is prepared to offer causation opinions with regard to Harvey
28

1 Chernikoff's death and the incident in question. Dr. MacQuarrie is prepared to offer
2 testimony consistent with, but not limited to, those opinions presented in his expert report
3 attached hereto. In addition, Dr. MacQuarrie is prepared to offer testimony in rebuttal to
4 the opinions offered by Plaintiff's expert(s), if any.

5 Dr. MacQuarrie may add to, delete from, modify or change his expected testimony,
6 depending upon the nature of further information obtained between now and the time of
7 trial, as well as the deposition and trial testimony of other witnesses in this matter. Dr.
8 MacQuarrie's opinions will not be finalized until he has had an opportunity to review and
9 evaluate the opinions of all experts. In that regard, Defendants reserve the right to
10 supplement Dr. MacQuarrie's expert report prior to the time of trial.

11 Dr. MacQuarrie's curriculum vitae and fee schedule were previously attached to
12 Defendants First Transit, Inc., and Jay Farrales' Initial Expert Witness Disclosure
13 Statement. Dr. MacQuarrie's rebuttal expert report is attached hereto as **Exhibit A**.

14
15 2. Matthew Daecher
16 2010 Market Street
17 Camp Hill, Pennsylvania 17011
18 (717) 975-9190

19 Mr. Daecher is by education, training, and experience an expert in the fields of
20 transportation safety and accident reconstruction. Mr. Daecher is prepared to offer
21 testimony consistent with, but not limited to, those opinions presented in his expert report
22 attached hereto. In addition, Mr. Daecher is prepared to offer testimony in rebuttal to the
23 opinions offered by Plaintiff's expert(s), if any.

24 Mr. Daecher may add to, delete from, modify or change his expected testimony,
25 depending upon the nature of further information obtained between now and the time of
26 trial, as well as the deposition and trial testimony of other witnesses in this matter. Mr.
27
28

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Daecher's opinions will not be finalized until he has had an opportunity to review and evaluate the opinions of all experts. In that regard, Defendants reserve the right to supplement Mr. Daecher's expert report prior to the time of trial.

Mr. Daecher's curriculum vitae and fee schedule were previously attached to Defendants First Transit, Inc. and Jay Farrales' Initial Expert Witness Disclosure Statement. Mr. Daecher's rebuttal expert report is attached hereto as Exhibit B.

DATED this 28 day of July, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
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Attorneys for Defendants

LS#19969

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

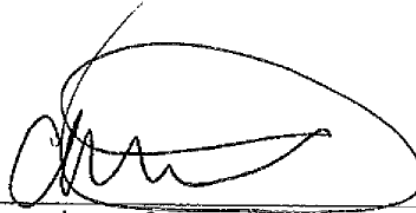
1 CERTIFICATE OF SERVICE

2 Pursuant to Administrative Order 14-2, I hereby certify that on this 28th day of July,
3 2014, I did cause a true and correct copy of the above and foregoing DEFENDANTS JAY
4 FARRALES AND FIRST TRANSIT, INC.'S REBUTTAL EXPERT WITNESS
5 DISCLOSURE STATEMENT to be e-served through the Eighth Judicial District Court EFP
6 system pursuant to the Electronic Filing and Service Order entered on the Court's docket in the
7 above-referenced matter.

8 Benjamin Cloward, Esq.
9 RICHARD HARRIS LAW FIRM
10 801 S. Fourth Street
11 Las Vegas, NV 89101

12 Charles H. Allen, Esq.
13 *Attorneys for Plaintiffs*
14 CHARLES ALLEN LAW FIRM
15 191 Peachtree Street N.W., Suite 3300
16 Atlanta, GA 30303

17 Attorneys for Plaintiffs

18 

19 An employee of
20 ALVERSON, TAYLOR, MORTENSEN & SANDERS

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LS#19969

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1 AFFIRMATION

2 Pursuant to N.R.S. 239B.030

3
4 The undersigned does hereby affirm that the preceding DEFENDANTS JAY
5 FARRALES AND FIRST TRANSIT, INC.'S REBUTTAL EXPERT WITNESS
6 DISCLOSURE STATEMENT filed in District Court Case No. A-13-682726-C

7
8 X Does not contain the social security number of any person.

9 -OR-

10
11 Contains the social security number of a person as required by:

12 A. A specific state or federal law, to wit:

13 [Insert specific law]

14 -or-

15 B. For the administration of a public program or for an application
16 for a federal or state grant.

17 DATED this 28 day of July, 2014.

18 ALVERSON, TAYLOR, MORTENSEN & SANDERS

19
20
21 By 

22 LEANN SANDERS, ESQ.
23 Nevada Bar No. 000390
24 SHIRLEY BLAZICH, ESQ.
25 Nevada Bar No. 008378
26 7401 W. Charleston Boulevard
27 Las Vegas, Nevada 89117
28 Attorneys for Defendants

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LS#19969

EXHIBIT A

Michael MacQuarrie, M.D.,
F.A.C.E.P., F.A.E.E.M.
P.O. Box 2484
Truckee, California
96160

To Whom It May Concern:

I have been asked to provide expert medical and causation opinions with regard to the incident that occurred on July 29, 2011. All of the information contained in this report is based upon my review of the materials listed below, as well as my education, training and experience as a physician who is Board Certified by the American Board of Emergency Medicine.

Information Reviewed

In preparation for rendering an expert opinion in this matter I have reviewed the following documents:

- Complaint;
- Video footage of the incident in question;
- Clark County Autopsy Report;
- Clark County Coroner's Report;
- Toxicology Report;
- Harvey Chernikoff's medical records from Pamona Valley Hospital;
- Harvey Chernikoff's records from the Desert Regional Center;
- Harvey Chernikoff's medical records from Gautham Reddy, M.D.;
- Harvey Chernikoff's medical records from William Gillispie, M.D.;
- Harvey Chernikoff's medical records from Cedars Sinai Medical Center;
- Plaintiffs' Designation of Initial Expert Witnesses and exhibits thereto, including expert reports by Kenneth Stein, M.D. and Ned Einstein.

Expert Opinion

Plaintiffs' emergency medicine expert, Dr. Stein, opined that Harvey Chernikoff died from asphyxiation from a peanut butter sandwich that blocked his airway. Additionally, Dr. Stein indicated that at "7:59:47 A.M. it was apparent that Mr. Chernikoff was in acute distress." It is still my opinion that it is not clear, especially to a reasonable degree of medical certainty, that Harvey's death was caused solely by choking. Harvey exhibited no outward medical indications of choking. It is just as likely, if not more so given Harvey's movement and outward expression, that he suffered a heart attack. In fact, even Plaintiff's transportation safety expert admitted within his report that Harvey did not exhibit, nor could he hear any signs of distress.

Dr. Stein also opined that, had Mr. Farrales (1) noticed Harvey's condition in a timely manner; (2) attempted the Heimlich maneuver and/or CPR in a timely manner; and/or (3) contacted 911 emergently, Harvey would have survived this incident and would not have died. As there were no outward visible, nor medical, indications that Harvey had choked, there was no evidence that would have directed any individual trained in first aid to check or clear Harvey's airway. Additionally, Dr. Stein does not provide an explanation for what a "timely manner" would have been. At the time that Mr. Farrales was made aware that Harvey was unresponsive, it is unlikely that there would have been anything he could have done to change the outcome. It is also impossible to opine to a degree of medical certainty that had all of the above actions been taken, Harvey would not have died. On the contrary, the opinions provided are speculation founded upon a number of "ifs" rather than the facts.

Additionally, it is my opinion to a reasonable degree of medical probability that an individual trained in first aid or even as a Level I Emergency Medical Technician would not have had the necessary training to save Harvey if his airway was in fact blocked, and even less so if he suffered a heart attack. As such, even had Mr. Farrales been trained in first aid and attempted to administer the Heimlich maneuver and/or CPR immediately after Harvey had become nonresponsive, first aid would not have been sufficient to revive him.

Interestingly, Plaintiff's transportation safety expert, Ned Einstein, made a number of medical opinions within his report. Mr. Einstein repeatedly acknowledged that he is not qualified to give medical opinions, but continued to provide them within his report regardless. Based on my review of his qualifications, I fully agree that Mr. Einstein is in no way qualified to provide any of the medical opinions he made throughout his report. Not only is Mr. Einstein not qualified to provide medical opinions, the opinions he provided are without any support in the medical field and are in fact ridiculous, and in some cases dangerous. For example, the assertion that any individual who is not medically trained should have "plunged" scissors into the lower portion of Mr. Chernikoff's neck just above the top of his breastplate "to create an airway passage" is not only absurd, but also reckless and totally unfounded. Not even a trained medical professional would have taken these measures in this circumstance, as it more likely than not would have caused more damage.

The medical opinions provided within Mr. Einstein's report are baseless and not supported by any facts within the record. As such, it is clear that Mr. Einstein is not trying to be objective, but merely wants to ridicule and mislead his audience. Mr. Einstein claims that his experience transporting physically and developmentally disabled adults qualifies him to opine as to an appropriate response to a passenger suffering a petit mal seizure and sleep apnea. He also seems to suggest that a paratransit driver should be able to effectively diagnose passengers by their symptoms and respond accordingly. There is no sign that

Harvey was suffering a petit mal seizure, nor was Mr. Einstein's description of a petit mal seizure correct.

Although he admitted that he was not qualified to comment on the "odds" of Harvey's resuscitation after certain periods of time, he provided page after page of commentary regarding the timing of events and its possible effects on Harvey's potential survival. Particularly, he maintains that the time it took for the paramedics to arrive could have been reduced to close to four and a half minutes. Although there is no support for this arbitrary calculation of time, there is no guarantee that Harvey could have been revived even if the timing had been reduced. Additionally, the assertion that a dispatcher should have instructed Mr. Farrales to drive to the nearest ambulance is absolutely ridiculous. There is no way for a transit dispatcher to know where the nearest ambulance was located, or even which ambulance would respond to the event.

Most importantly, Mr. Einstein refuted any and all opinions and arguments that he attempted to make within his own report. Even when scrutinizing the video footage with retrospectively, he acknowledged that there were no signs of distress visible. As such, how could any individual have been able to diagnose and treat Harvey, let alone one whose job is to drive and watch the road. Further, Mr. Einstein's opinions are all based on a number of incorrect presumptions, including the presumption that Mr. Farrales saw or could have seen Harvey eating. Experts, no matter the field, cannot base opinions on presumptions, particularly when the facts are contrary to the presumption made.

As he was accusing someone of causing a death, Mr. Einstein should have paid more attention to the facts and language he was using within his report, which was riddled with typos. This was a tragic event, so for Mr. Einstein to make light of it by references to 'Brer Rabbit' is insulting, demeaning, and unprofessional. Mr. Einstein's reliance on conjecture, inaccuracies, and supposition, in place of real expertise, shows his ignorance and disregard for the seriousness of this event and his accusations. Instead, he is trying to make light of a tragic, unforeseeable, and unpreventable death by providing irrelevant, baseless, unfounded, and incorrect opinions.

The foregoing opinions are made to a reasonable degree of medical probability. I reserve the right to supplement my opinion as new and/or additional information is provided to me. In addition, I reserve the right to modify my opinions should it become necessary.

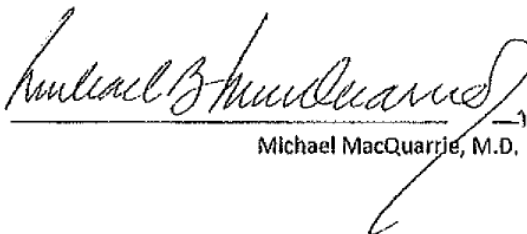

Michael MacQuarrie, M.D.

EXHIBIT B

2010 Market Street
Camp Hill, PA 17011

DAEGER
CONSULTING GROUP

Ph: 717.975.9190
Fax: 717.975.3996

July 24, 2014

Ms. Taylor Trujillo
Alverson Taylor Mortensen & Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401

RE: Chernikoff v. First Transit, Inc. et al

Ms. Trujillo:

Subsequent to my initial report concerning this matter (dated June 25, 2014), I have performed additional tasks and reviewed additional materials. More specifically, I conducted an inspection of an exemplar bus, and reviewed the June 27, 2014 report authored by Mr. Ned Einstein. This will report will serve as a supplement to my initial conclusions.

Inspection of an exemplar bus recently operated by Mr. Jay Farrales (Farrales) indicated that Mr. Harvey Chernikoff (Harvey) would not have been visible in either interior, rearview mirror after he slumped over into the aisle (see photos 1 & 2 below). This finding is consistent with Mr. Farrales' testimony, as well as video evidence showing that Mr. Farrales had to significantly change his viewing angle when attempting to locate Harvey when he was in this position.

More importantly, Photo 1 shows that Harvey would not be visible at all in the windshield-mounted interior rear view mirror. In his report, Mr. Einstein references a magnitude of times that driver Farrales should have seen Harvey eating and/or slumped over in his mirror(s) while scanning those mirror during defensive driving practices. What Mr. Einstein fails to recognize is that defensive driving concepts apply to the driving function, not a passenger monitoring function. As he also notes in his report, when extensive passenger monitoring is required, personal care attendants or aids are utilized. Defensive driving education and practices focus on awareness of spaces around the vehicle being driven, as well as location of other vehicles in reference to that vehicle. Mirror scans addressed in accomplishing this task include checking side view mirrors and the windshield-mounted rearview mirror. Scanning/monitoring passenger compartment mirrors located significantly above the roadway plane are not included in defensive driving practices; in fact, doing such would be counterproductive to driving a vehicle safely and avoiding collisions and roadway conflicts.

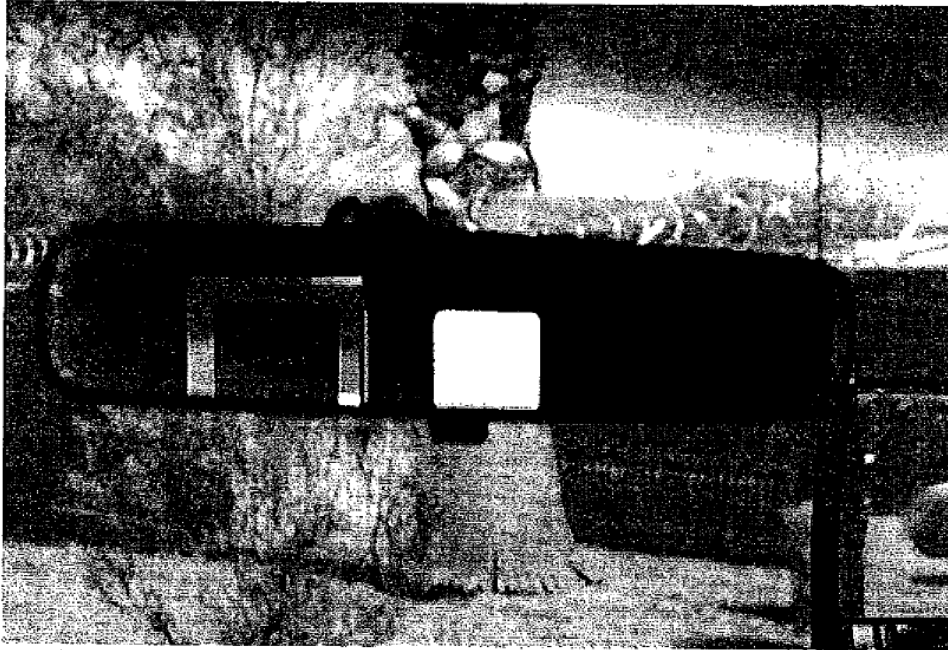


Photo 1

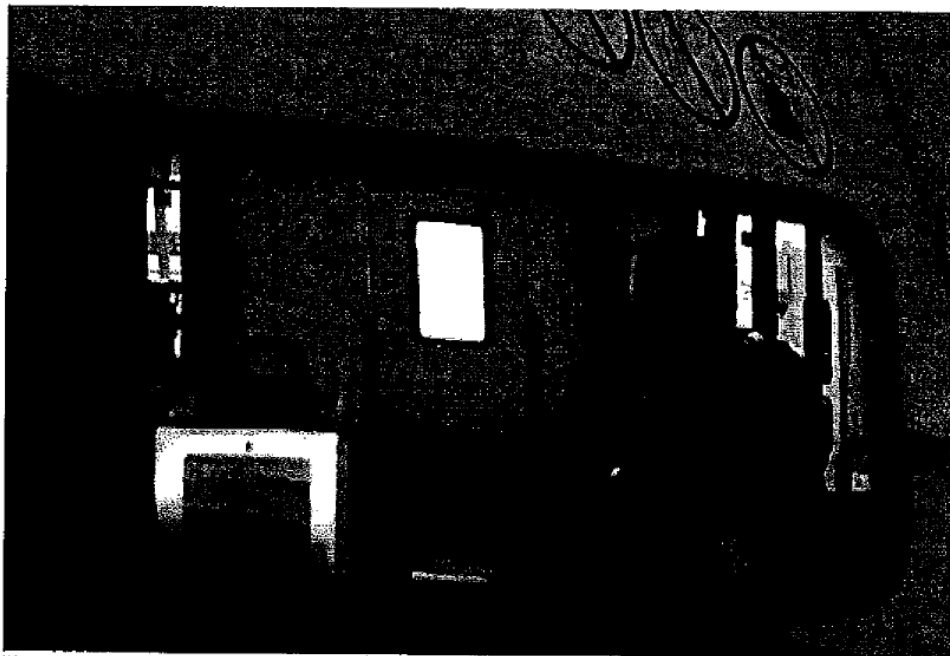


Photo 2

In reviewing Mr. Einstein's report, it is clear that many of his opinions and conclusions, which were repeated time and time again, are based upon assumptions, unsubstantiated claims, erroneous 'facts', misinterpreted or misconstrued testimony, or information contrary to testimony. Instances include, but certainly are not limited to:

- The assumption that Jay Farrales should have/could have seen Harvey eating;
- The assumption that Harvey ate on the bus before;
- The misconstrued testimony that Jay Farrales allowed select persons to eat on the bus;
- The assumption that Farrales could see Harvey slumped over in the mirror;
- The assumption that, somehow, Farrales was to know Harvey had choked (even if he did);
- That CPR and First Aid training is typically provided by transportation companies;
- That the Chernikoffs' never received the RTC Rider Guide;
- That Farrales failed to quickly notify dispatch after he determined Harvey to be unresponsive;
- The misinterpretation of ADA requirements and related First Transit policy regarding assisting passengers;
- Assumptions regarding the operation of first Transit's dispatch and communication systems; and
- Conclusion that Jay Farrales was not a defensive driver.

Additionally, it should be noted that Mr. Einstein offers conclusions or opinions that clearly lie outside his experience and expertise area.



Ms. Taylor Trujillo
July 24, 2014
Page 4 of 4

Conclusions

Additional tasks performed in this matter have not altered or affected any of my previously stated opinions or conclusions. However, I do have one additional opinion to offer:

- If Jay Farrales had paid as much attention to passenger behavior, as is suggested he should per Mr. Einstein's report and conclusions, the risk of being involved in a collision would have risen substantially.

Yours truly,



Matthew Daecher
Transportation Safety Specialist
Accredited Accident Reconstructionist



EXHIBIT “3”

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1 ALVERSON, TAYLOR,
MORTENSEN & SANDERS
2 LEANN SANDERS, ESQ.
Nevada Bar No. 000390
3 SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
4 7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
5 (702) 384-7000
6 Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

%

10 JACK CHERNIKOFF and ELAINE CHERNIKOFF,) CASE NO. A-13-682726-C
11 Plaintiffs,) DEPT. NO. XXIII
12 vs.)
13 FIRST TRANSIT, INC.; JAY FARRALES; DOES 1-)
14 10, and ROES 1-10, inclusive,)
15 Defendants.)

**DEFENDANTS JAY FARRALES AND FIRST TRANSIT, INC.'S REBUTTAL
EXPERT WITNESS DISCLOSURE STATEMENT**

18 COMES NOW Defendants, JAY FARRALES and FIRST TRANSIT, INC., by and
19 through their attorneys of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS
20 and hereby submit their Rebuttal Expert Disclosure Statement, pursuant to Nevada Rules of
21 Civil Procedure 16.1 and 26(b)(5):
22

23 1. Michael MacQuarrie, M.D.
24 P.O. Box 2484
Truckee, CA 96160

25 Dr. MacQuarrie is by education, training, and experience an expert in the field of
26 emergency medicine. He is prepared to offer causation opinions with regard to Harvey
27

28

1 Chernikoff's death and the incident in question. Dr. MacQuarrie is prepared to offer
2 testimony consistent with, but not limited to, those opinions presented in his expert report
3 attached hereto. In addition, Dr. MacQuarrie is prepared to offer testimony in rebuttal to
4 the opinions offered by Plaintiff's expert(s), if any.

5 Dr. MacQuarrie may add to, delete from, modify or change his expected testimony,
6 depending upon the nature of further information obtained between now and the time of
7 trial, as well as the deposition and trial testimony of other witnesses in this matter. Dr.
8 MacQuarrie's opinions will not be finalized until he has had an opportunity to review and
9 evaluate the opinions of all experts. In that regard, Defendants reserve the right to
10 supplement Dr. MacQuarrie's expert report prior to the time of trial.

11 Dr. MacQuarrie's curriculum vitae and fee schedule were previously attached to
12 Defendants First Transit, Inc., and Jay Farrales' Initial Expert Witness Disclosure
13 Statement. Dr. MacQuarrie's rebuttal expert report is attached hereto as Exhibit A.

14 2. Matthew Daecher
15 2010 Market Street
16 Camp Hill, Pennsylvania 17011
17 (717) 975-9190

18 Mr. Daecher is by education, training, and experience an expert in the fields of
19 transportation safety and accident reconstruction. Mr. Daecher is prepared to offer
20 testimony consistent with, but not limited to, those opinions presented in his expert report
21 attached hereto. In addition, Mr. Daecher is prepared to offer testimony in rebuttal to the
22 opinions offered by Plaintiff's expert(s), if any.

23 Mr. Daecher may add to, delete from, modify or change his expected testimony,
24 depending upon the nature of further information obtained between now and the time of
25 trial, as well as the deposition and trial testimony of other witnesses in this matter. Mr.
26
27
28


ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

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2 evaluate the opinions of all experts. In that regard, Defendants reserve the right to
3 supplement Mr. Daecher's expert report prior to the time of trial.

4 Mr. Daecher's curriculum vitae and fee schedule were previously attached to
5 Defendants First Transit, Inc. and Jay Farrales' Initial Expert Witness Disclosure
6 Statement. Mr. Daecher's rebuttal expert report is attached hereto as **Exhibit B**.

8
9 DATED this 28 day of July, 2014.

10 ALVERSON, TAYLOR, MORTENSEN & SANDERS

11
12 By 
13 LEANN SANDERS, ESQ.
14 Nevada Bar No. 000390
15 SHIRLEY BLAZICH, ESQ.
16 Nevada Bar No. 008378
17 7401 W. Charleston Boulevard
18 Las Vegas, NV 89117-1401
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20 Attorneys for Defendants
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CERTIFICATE OF SERVICE

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Benjamin Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Charles H. Allen, Esq.
Attorneys for Plaintiffs
CHARLES ALLEN LAW FIRM
191 Peachtree Street N.W., Suite 3300
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An employee of
ALVERSON, TAYLOR, MORTENSEN & SANDERS

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AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding DEFENDANTS JAY FARRALES AND FIRST TRANSIT, INC.'S REBUTTAL EXPERT WITNESS

DISCLOSURE STATEMENT filed in District Court Case No. A-13-682726-C

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

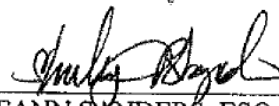
[Insert specific law]

-or-

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 28 day of July, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
Attorneys for Defendants

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LS#19969

EXHIBIT A

Michael MacQuarrie, M.D.,
F.A.C.E.P., F.A.E.E.M.
P.O. Box 2484
Truckee, California
96160

To Whom It May Concern:

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- Video footage of the incident in question;
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Expert Opinion

Plaintiffs' emergency medicine expert, Dr. Stein, opined that Harvey Chernikoff died from asphyxiation from a peanut butter sandwich that blocked his airway. Additionally, Dr. Stein indicated that at "7:59:47 A.M. it was apparent that Mr. Chernikoff was in acute distress." It is still my opinion that it is not clear, especially to a reasonable degree of medical certainty, that Harvey's death was caused solely by choking. Harvey exhibited no outward medical indications of choking. It is just as likely, if not more so given Harvey's movement and outward expression, that he suffered a heart attack. In fact, even Plaintiff's transportation safety expert admitted within his report that Harvey did not exhibit, nor could he hear any signs of distress.

Dr. Stein also opined that, had Mr. Farrales (1) noticed Harvey's condition in a timely manner; (2) attempted the Heimlich maneuver and/or CPR in a timely manner; and/or (3) contacted 911 emergently, Harvey would have survived this incident and would not have died. As there were no outward visible, nor medical, indications that Harvey had choked, there was no evidence that would have directed any individual trained in first aid to check or clear Harvey's airway. Additionally, Dr. Stein does not provide an explanation for what a "timely manner" would have been. At the time that Mr. Farrales was made aware that Harvey was unresponsive, it is unlikely that there would have been anything he could have done to change the outcome. It is also impossible to opine to a degree of medical certainty that had all of the above actions been taken, Harvey would not have died. On the contrary, the opinions provided are speculation founded upon a number of "ifs" rather than the facts.

Additionally, it is my opinion to a reasonable degree of medical probability that an individual trained in first aid or even as a Level I Emergency Medical Technician would not have had the necessary training to save Harvey if his airway was in fact blocked, and even less so if he suffered a heart attack. As such, even had Mr. Farrales been trained in first aid and attempted to administer the Heimlich maneuver and/or CPR immediately after Harvey had become nonresponsive, first aid would not have been sufficient to revive him.

Interestingly, Plaintiff's transportation safety expert, Ned Einstein, made a number of medical opinions within his report. Mr. Einstein repeatedly acknowledged that he is not qualified to give medical opinions, but continued to provide them within his report regardless. Based on my review of his qualifications, I fully agree that Mr. Einstein is in no way qualified to provide any of the medical opinions he made throughout his report. Not only is Mr. Einstein not qualified to provide medical opinions, the opinions he provided are without any support in the medical field and are in fact ridiculous, and in some cases dangerous. For example, the assertion that any individual who is not medically trained should have "plunged" scissors into the lower portion of Mr. Chernikoff's neck just above the top of his breastplate "to create an airway passage" is not only absurd, but also reckless and totally unfounded. Not even a trained medical professional would have taken these measures in this circumstance, as it more likely than not would have caused more damage.

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Harvey was suffering a petit mal seizure, nor was Mr. Einstein's description of a petit mal seizure correct.

Although he admitted that he was not qualified to comment on the "odds" of Harvey's resuscitation after certain periods of time, he provided page after page of commentary regarding the timing of events and its possible effects on Harvey's potential survival. Particularly, he maintains that the time it took for the paramedics to arrive could have been reduced to close to four and a half minutes. Although there is no support for this arbitrary calculation of time, there is no guarantee that Harvey could have been revived even if the timing had been reduced. Additionally, the assertion that a dispatcher should have instructed Mr. Farrales to drive to the nearest ambulance is absolutely ridiculous. There is no way for a transit dispatcher to know where the nearest ambulance was located, or even which ambulance would respond to the event.

Most importantly, Mr. Einstein refuted any and all opinions and arguments that he attempted to make within his own report. Even when scrutinizing the video footage with retrospectively, he acknowledged that there were no signs of distress visible. As such, how could any individual have been able to diagnose and treat Harvey, let alone one whose job is to drive and watch the road. Further, Mr. Einstein's opinions are all based on a number of incorrect presumptions, including the presumption that Mr. Farrales saw or could have seen Harvey eating. Experts, no matter the field, cannot base opinions on presumptions, particularly when the facts are contrary to the presumption made.

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The foregoing opinions are made to a reasonable degree of medical probability. I reserve the right to supplement my opinion as new and/or additional information is provided to me. In addition, I reserve the right to modify my opinions should it become necessary.

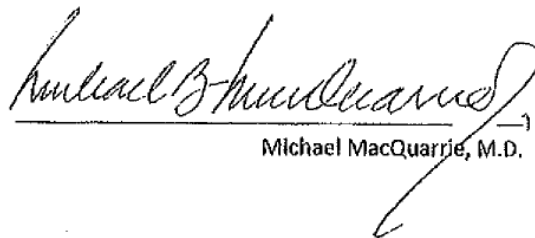

Michael MacQuarrie, M.D.

EXHIBIT B

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST TRANSIT, INC.; and JAY
FARRALES,

Appellants,

vs.

JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,

Respondents.

Case No.: 70164

Electronically Filed
Feb 22 2018 11:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

RESPONDENTS' APPENDIX
(Volume 1, Bates Nos. 1–250)

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Attorneys for Respondents, Jack Chernikoff and Elaine Chernikoff

INDEX TO RESPONDENTS' APPENDIX

DOCUMENT DESCRIPTION		LOCATION
Motion to Dismiss the Estate of Harvey Chernikoff (filed 02/20/14)		Volume 1, Bates Nos. 1–9
Exhibits to Motion to Dismiss the Estate of Harvey Chernikoff		
Exhibit No.	Document Description	
A	Complaint (filed 05/31/13)	Volume 1, Bates Nos. 2–24
B	Defendants First Transit, Inc., Laidlaw Transit Services, Inc., d/b/a First Transit and Jay Farrales' Answer to Plaintiffs' Complaint (filed 06/27/13)	Volume 1, Bates Nos. 25–35
C	Plaintiff Jack Chernikoff, as Personal Representative of the Estate of Harvey Chernikoff Responses to Defendants' First Set of Request for Production of Documents (dated 09/24/13)	Volume 1, Bates Nos. 36–50
D	October 2, 2013 Letter from LeAnn Sanders to Ben Cloward Regarding Discovery Responses	Volume 1, Bates Nos. 51–54
E	November 14, 2013 Response Letter from Ben Cloward to LeAnn Sanders	Volume 1, Bates Nos. 55–57
F	January 7, 2014 Letter from LeAnn Sanders to Ben Cloward Regarding Dismissal of Claims	Volume 1, Bates Nos. 58–60
G	January 16, 2014 Letter from Ben Cloward to LeAnn Sanders with Letters of Special Administration	Volume 1, Bates Nos. 61–65
Notice of Entry of Stipulation and Order Dismissing the Estate of Harvey Chernikoff with Order (filed 04/04/14)		Volume 1, Bates Nos. 66–72

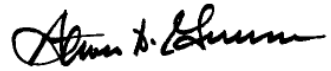
DOCUMENT DESCRIPTION		LOCATION
Plaintiffs' Renewed Objection to Evidence Mentioning Plaintiffs' Non-Testifying Experts, Dr. Carl Berkowitz or Ned Einstein (filed 02/24/16)		Volume 1, Bates Nos. 73–81
Exhibits to Plaintiffs' Renewed Objection to Evidence Mentioning Plaintiff's Non-Testifying Experts, Dr. Carl Berkowitz or Ned Einstein		
Exhibit No.	Document Description	
1	Defendants Jay Farrales and First Transit, Inc.'s Initial Expert Witness Disclosure Statement (filed 06/27/14)	Volume 1, Bates Nos. 82–111
2	Defendants Jay Farrales and First Transit, Inc.'s Rebuttal Expert Witness Disclosure Statement (served 07/28/14)	Volume 1, Bates Nos. 112–126
3	Defendants Jay Farrales and First Transit, Inc.'s Rebuttal Expert Witness Disclosure Statement (served 07/28/14)	Volume 1, Bates Nos. 127–141
Clerk's Exhibit List		Volume 1, Bates Nos. 142–152
Joint Trial Exhibits		
Exhibit No.	Document Description	
A1	Operator Incident Report	Volume 1, Bates Nos. 153–154
A3	Records from Clark County Coroner	Volume 1, Bates Nos. 155–176
A5	Records from Clark County Fire Department	Volume 1, Bates Nos. 177–180
A6	RTC Paratransit Guide	Volume 1, Bates Nos. 181–193

DOCUMENT DESCRIPTION		LOCATION
Joint Trial Exhibits (cont.)		
Exhibit No.	Document Description	
A7	First Transit Las Vegas Operator Training Requirements	Volume 1, Bates Nos. 194–197
A8	First Transit Las Vegas Operator Minimum Training Requirements	Volume 1, Bates Nos. 198–199
A9	First Transit Las Vegas Operator Collective Bargaining Agreement	Volume 1, Bates Nos. 200–250
A10	Jay Farrales’ Personnel File	Volume 2, Bates Nos. 251–383
A11	Jay Farrales’ Medical Examination Reports for Commercial Driver Fitness Determination	Volume 2, Bates Nos. 384–393
A12	Jay Farrales’ Application for Employment with Laidlaw	Volume 2, Bates Nos. 394–410
A13	Supplement to Jay Farrales’ Personnel File	Volume 2, Bates Nos. 411–445
A14	Documentation Regarding Jay Farrales’ Safety Classes and Tests	Volume 3, Bates Nos. 446–556
A15	Driver Manifest for Bus 1790 on July 29, 2011	Volume 3, Bates Nos. 557–562
A16	Contract Between RTC of Southern Nevada and Laidlaw Transit Services Inc. (dated 02/08/07)	Volume 3, Bates Nos. 563–683
A18	Photograph of Signage on Bus	Volume 3, Bates Nos. 684–686
A19	Bus Inspection Photos (00004) and (00026)	Volume 3, Bates Nos. 687–691

DOCUMENT DESCRIPTION		LOCATION
Plaintiffs' Trial Exhibits		
Exhibit No.	Document Description	
2	2010 First Transit Employee Handbook	Volume 4, Bates Nos. 692–773
3	Page 00009 Only of LVMPD's Incident Report: Voluntary Statement	Volume 4, Bates Nos. 774–776
7	14 Color Photographs of Harvey Chernikoff's Life	Volume 4, Bates Nos. 777–792
9	Page 00051 Only from Jay Farrales' Personnel File	Volume 4, Bates Nos. 793–795
13	Photos of Decedent	Volume 4, Bates Nos. 796–801
Defendants' Trial Exhibit		
Exhibit No.	Document Description	
F	Excerpted Pages from Harvey Chernikoff's Medical Records from Gautham Reddy M.D. (admitted 02/24/16) F00011–F0014; F00015–F00020; F00025–F00027; F00044–F00045; and F00081	Volume 4, Bates Nos. 802–834
Court's Trial Exhibit		
Exhibit No.	Document Description	
1	Plaintiffs' Power Point Presentation	Volume 5, Bates Nos. 835–949
2	Juror Question from Juror #8 (not asked)	Volume 5, Bates Nos. 950–951
3	Juror Question from Juror #4 (asked and answered)	Volume 5, Bates Nos. 952–953

DOCUMENT DESCRIPTION		LOCATION
Court's Trial Exhibit (cont.)		
Exhibit No.	Document Description	
4	Juror Question from Juror #8 (asked and answered)	Volume 5, Bates Nos. 954–955
5	Juror Question from Juror #8 (asked and answered)	Volume 5, Bates Nos. 956–957
6	Defendants' Power Point Presentation	Volume 5, Bates Nos. 958–966
7	Juror Question from Juror #4 (not asked)	Volume 5, Bates Nos. 967–968
8	Juror Question from Juror #4 (not asked)	Volume 5, Bates Nos. 969–970
9	Juror Question from Juror #4 (not asked)	Volume 5, Bates Nos. 971–972
10	Juror Question from Juror #8 (not asked)	Volume 5, Bates Nos. 973–974
11	Juror Question from Juror #8 (asked and answered)	Volume 5, Bates Nos. 975–976
12	Juror Question from Juror #4 (asked and answered)	Volume 5, Bates Nos. 977–978
13	Juror Question from Juror #10 (asked and answered)	Volume 5, Bates Nos. 979–980
14	Juror Question from Juror #8 (asked and answered)	Volume 5, Bates Nos. 981–982
15	Juror Question from Juror #8 (asked and answered)	Volume 5, Bates Nos. 983–984
16	Juror Question from Juror #4 (asked and answered)	Volume 5, Bates Nos. 985–986

DOCUMENT DESCRIPTION		LOCATION
Court's Trial Exhibit (cont.)		
Exhibit No.	Document Description	
17	Juror Question from Juror #3 (asked and answered)	Volume 5, Bates Nos. 987-988
18	Juror Question from Juror #4 (asked and answered)	Volume 5, Bates Nos. 989-990
19	Juror Question from Juror #10 (asked and answered)	Volume 5, Bates Nos. 991-992
20	Plaintiffs' Proposed Instruction-Not Given	Volume 5, Bates Nos. 993-994
21	Plaintiffs' Closing Argument Power Point	Volume 5, Bates Nos. 995-1027
22	Defendants' Closing Argument Power Point	Volume 5, Bates Nos. 1028-1053
Docket of Case No. A-13-682726-C		Volume 5, Bates Nos. 1054-1066



CLERK OF THE COURT

1 **MOT**
2 ALVERSON, TAYLOR,
3 MORTENSEN & SANDERS
4 LEANN SANDERS, ESQ.
5 Nevada Bar No. 000390
6 SHIRLEY BLAZICH, ESQ.
7 Nevada Bar No. 008378
8 7401 W. Charleston Boulevard
9 Las Vegas, Nevada 89117
10 (702) 384-7000
11 Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

%

12 The Estate of HARVEY CHERNIKOFF, Deceased;)
13 by JACK CHERNIKOFF as personal representative,)
14 individually and as heir; ELAINE CHERNIKOFF)
15 individually and as heir,)

16 Plaintiffs,)

17 vs.)

18 FIRST TRANSIT, INC., LAIDLAW TRANSIT)
19 SERVICES, INC. d/b/a FIRST TRANSIT; JAY)
20 FARRALES; DOES 1-10, and ROES 1-10, inclusive,)
21 Defendants.)

CASE NO. A-13-682726-C
DEPT. NO. XXIII

**MOTION TO DISMISS THE
ESTATE OF HARVEY
CHERNIKOFF**

Date of Hearing: _____

Time of Hearing: _____

MOTION TO DISMISS THE ESTATE OF HARVEY CHERNIKOFF

22 COME NOW, Defendants FIRST TRANSIT, INC. and JAY FARRALES, by and
23 through its attorneys of record, ALVERSON, TAYLOR, MORTENSEN & SANDERS, and
24 moves this Honorable Court to grant the following Motion to Dismiss the Estate of Harvey
25 Chernikoff.
26 ...
27 ...
28 ...

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000


1 This Motion is made and based upon the papers and pleadings on file herein, the Points
2 and Authorities submitted in support thereof, and any oral argument which may be heard at the
3 hearing set for this matter.

4 DATED this 19th day of February, 2014.

5 ALVERSON, TAYLOR, MORTENSEN & SANDERS

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7

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By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, NV 89117-1401
(702) 384-7000
Attorneys for Defendants

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NOTICE OF MOTION

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16 PLEASE TAKE NOTICE that the instant Motion to Dismiss will come on for hearing
17 before the above-entitled Court on the 01 day of April, 2014, at the
18 hour of 9:30 AM
hour of _____ a.m./p.m. in Department No. I, or as soon as counsel may be heard.

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DATED this _____ day of February, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, NV 89117-1401
(702) 384-7000
Attorneys for Defendants

MEMORANDUM OF POINTS & AUTHORITIES

I.

NATURE OF MOTION

At the time the Complaint was filed, Plaintiffs represented to the Court and to Defendants that Jack Chernikoff was the Representative of the Estate of Harvey Chernikoff. However, it has become apparent that Plaintiff failed to be properly appointed in this capacity until well after the Complaint was filed. The statute of limitations in this matter has now passed, barring any claim that the Estate may bring in relation to this incident. Further, Plaintiff's failure to follow the appropriate procedures has prejudiced Defendants and delayed discovery in this matter.

II.

STATEMENT OF FACTS

Plaintiff Jack Chernikoff, filed the Complaint, on behalf of Harvey Chernikoff's Estate, and individually, on May 31, 2013, against First Transit, Inc., Laidlaw Transit Services, Inc. d/b/a First Transit and Jay Farrales. *See* Exhibit A, Complaint. Defendants answered the Complaint on June 26, 2013. *See* Exhibit B, Answer. Plaintiffs made the Early Case Conference Disclosures on July 25, 2013, wherein they failed to provide any documentation substantiating that Jack Chernikoff had been properly designated Representative of the Estate of Harvey Chernikoff. As such, on August 21, 2013, counsel for Defendants propounded written discovery upon Jack Chernikoff, as Representative of the Estate of Harvey Chernikoff, requesting copies of any and all documentation indicating that Plaintiff Jack Chernikoff had been designated the Personal Representative and/or Special Administratrix of the Estate of Harvey Chernikoff. In response, Jack Chernikoff, as Representative of the Estate of Harvey Chernikoff, produced documentation related to Jack and Elaine Chernikoff's conservatorship over Harvey Chernikoff while he was living. *See* Exhibit C, Jack Chernikoff, as Representative of the Estate of Harvey

1 Chernikoff's Responses to Defendants' First Set of Requests for Production of Documents. The
2 responses were not verified by Jack Chernikoff, but were signed by Plaintiffs' counsel. Id. As
3 the documentation provided by Jack Chernikoff was not sufficient, on October 2, 2013, defense
4 counsel sent correspondence to opposing counsel requesting the documentation showing that
5 Jack Chernikoff has been appointed as administrator of Harvey Chernikoff's intestate estate. See
6 Exhibit D, Correspondence to Plaintiffs' counsel dated October 2, 2013. In response, counsel
7 received correspondence from opposing counsel on November 14, 2013, indicating that the
8 documentation had been submitted to the Court and they were awaiting its return. See Exhibit E,
9 Correspondence from Plaintiffs' counsel dated November 14, 2013.

11 Once it became clear that Plaintiffs had not followed the appropriate steps to get Jack
12 Chernikoff appointed as Administrator of the Estate prior to filing the Complaint, defendant's
13 counsel sent correspondence to Plaintiffs' counsel requesting that they voluntarily dismiss the
14 claims made by the Estate. See Exhibit F, Correspondence to Plaintiff's Counsel dated January 7,
15 2014. Defendants did not receive any response from Plaintiffs' counsel. However, on January
16 16, 2014, Plaintiffs' counsel forwarded the Letters of Administration and Order Appointing
17 Plaintiff Jack Chernikoff Special Administrator of the Estate of Harvey Chernikoff. See Exhibit
18 G. The Application and Order are dated December 30, 2013. Id. As such, it is clear that
19 Plaintiffs did not follow the appropriate steps to have Jack Chernikoff appointed as
20 Administrator of the Estate until well after suit was filed.

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III.

LEGAL ARGUMENT

I. PLAINTIFFS MADE A MISREPRESENTATION TO THE COURT

As indicated above, Jack Chernikoff was named as a Plaintiff in the Complaint, both individually and as the alleged Representative of the Estate of Harvey Chernikoff. However, as explained above, at the time the Complaint was filed, Jack Chernikoff had not even applied to be Representative of the Estate of Harvey Chernikoff. The fact that Jack Chernikoff represented that he was the Representative of the Estate of Harvey Chernikoff shows that Plaintiffs were aware of the need to have a representative appointed prior to filing the Complaint, but failed to do so. In addition to filing the Complaint, Jack Chernikoff responded to written discovery propounded to the Representative of the Estate.

As Jack Chernikoff had not been appointed Representative of the Estate of Harvey Chernikoff, he had no standing to file the Complaint or respond to written discovery on behalf of the Estate. Defendants were misled by Plaintiffs to believe that Jack Chernikoff had been properly and legally appointed as Representative of the Estate of Harvey Chernikoff by a court of competent jurisdiction.

II. THE STATUTE OF LIMITATIONS HAS RUN ON ANY CLAIMS MADE BY THE ESTATE

The instant litigation arises out of an incident that occurred on July 29, 2011. Pursuant to Nev. Rev. Stat. 11.190(4)(e), an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another must be brought within two years. As such, the statute of limitations on this cause of action expired on July 29, 2013. As indicated above, the Complaint in this matter was filed on May 30, 2013, prior to the expiration of the statute of limitations.

1 Pursuant to N.R.S. 41.100 and N.R.S. 41.085, the personal representative of the estate of
2 a decedent may maintain an action for damages against the wrongdoer in survival and wrongful
3 death actions. However, before suing, a personal representative must be appointed by order of a
4 court of competent jurisdiction. See N.R.S. 143.060; N.R.S. 143.340; Schwartz v.
5 Wasserburger, 117 Nev. 703 (Nev. 2001). Pursuant to Schwartz v. Wasserburger, a personal
6 representative inherits the benefits and burdens connected with the running of any applicable
7 statute of limitations, measured from when the cause of action first accrued in favor of the
8 decedent. 117 Nev. 703 (Nev. 2001). As such, the applicable statute of limitations has run
9 against any personal representative of the Estate who was appointed on or after July 29, 2013.

11 In this case, Plaintiffs had full knowledge of the potential claim and need to appoint a
12 representative of the Estate, prior to filing a wrongful death lawsuit. This is evidenced by the
13 very fact that they misrepresented Jack Chernikoff's capacity as such when the Complaint was
14 filed and thereafter. Yet, they failed to even attempt to get Jack Chernikoff appointed as the
15 representative of the Estate of Harvey Chernikoff until nearly six months after the Complaint
16 was filed. Even then, it appears that they took this necessary legal step only after being asked for
17 proof of Mr. Chernikoff's appointment by opposing counsel. Jack Chernikoff did not have the
18 right to bring suit on behalf of the Estate when the Complaint was filed as he had not yet been
19 appointed as Personal Representative of the Estate. In fact, this did not occur until December 30,
20 2013, long after the statute of limitations had expired. As such, the claims made on behalf of the
21 Estate should be dismissed.
22

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24 **III. DISCOVERY HAS BEEN UNDULY DELAYED BY PLAINTIFFS FAILURE TO FOLLOW THE APPROPRIATE PROCEDURES**

25 As explained above, counsel for Defendants had requested the appropriate documentation
26 showing that Jack Chernikoff had been appointed as administrator of Harvey Chernikoff's
27 intestate estate through written discovery in August of 2013. When Defendants did not receive
28

1 the documentation, counsel immediately followed up with opposing counsel to obtain the
2 documentation. At that juncture, defendants were still under the impression that Jack Chernikoff
3 had been appointed Representative of the Estate of Harvey Chernikoff, due to Plaintiffs'
4 representations in the pleadings. However, documentation was not received until January 16,
5 2014.

6 Within that four month period of time, Defendants were not able to request any of Harvey
7 Chernikoff's relevant medical records or conduct any discovery regarding his condition or life
8 prior to his death. Further, the discovery responses Defendants received from the Estate are
9 invalid, as they were allegedly prepared by an individual who had no standing to respond. As
10 such, Defendants were prejudiced by the appointment of Jack Chernikoff as personal
11 representative after the running of the statute of limitations. Further, there is no justification for
12 Plaintiffs' failure to follow proper procedural requirements, by having Jack Chernikoff appointed
13 as Personal Representative of the Estate before filing the instant lawsuit. It is too late for him to
14 do so now, as the statute of limitations has expired. The claims of the Estate of Harvey
15 Chernikoff must therefore be dismissed.
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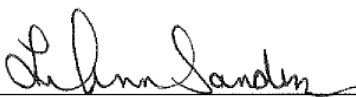
IV.

CONCLUSION

Based on the foregoing, Plaintiffs (1) intentionally misrepresented Jack Chernikoff's capacity to sue on behalf of the Estate of Harvey Chernikoff; (2) failed to follow the appropriate procedures to have Jack Chernikoff appointed as Representative of the Estate of Harvey Chernikoff until five months after the Complaint was filed; and (3) delayed discovery in this matter. As such, Defendants respectfully requests that this Court dismiss any and all claims of the Estate of Harvey Chernikoff.

DATED this 19th day of February, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
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LAWYERS
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(702) 384-7000

AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding MOTION TO DISMISS THE
ESTATE OF HARVEY CHERNIKOFF filed in District Court Case No.
A-13-682726-C

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for
a federal or state grant.

DATED this 19th day of February, 2014.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

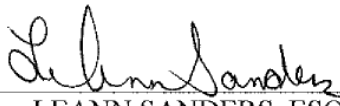
By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117
Attorneys for Defendants

EXHIBIT A

Answer due 6/27/13

Electronically Filed
05/31/2013 04:03:28 PM

Alanna D. Shuman
CLERK OF THE COURT

1 **COMP**
2 **BENJAMIN P. CLOWARD, ESQ.**
3 Nevada Bar No. 11087
4 Utah Bar No. 12336
5 **RICHARD HARRIS LAW FIRM**
6 801 South Fourth Street
7 Las Vegas, Nevada 89101
8 Telephone: (702) 385-1400
9 Facsimile: (702) 385-9408
10 *Attorney for Plaintiff*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 The Estate of HARVEY CHERNIKOFF,
12 Deceased; by JACK CHERNIKOFF as
13 personal representative, individually and as
14 heir; ELAINE CHERNIKOFF individually
15 and as heir,

CASE NO. A-13-682726-C
DEPT. NO. XXIII

COMPLAINT

16 Plaintiffs,

17 vs.

18 FIRST TRANSIT, INC. LAIDLAW
19 TRANSIT SERVICES, INC dba FIRST
20 TRANSIT; JAY FARRALES; DOES 1-10,
21 and ROES 1-10 inclusive,

22 Defendants.

23 COMES NOW Plaintiff JACK CHERNIKOFF, personal representative of the Estate of
24 HARVEY CHERNIKOFF, individually, and as heir, and ELAINE CHERNIKOFF
25 individually and as heir of the Estate of HARVEY CHERNIKOFF by and through their
26 attorneys, RICHARD A. HARRIS, ESQ, and BENJAMIN P. CLOWARD, ESQ., of
27 RICHARD HARRIS LAW FIRM, and for their causes of action against Defendants, and each
28 of them, allege as follows:

RICHARD HARRIS
LAW FIRM

*First Transit / 99/69
Chernikoff*

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PARTIES

1. That at all times relevant to these proceedings, HARVEY CHERNIKOFF, deceased (hereinafter "HARVEY") was a resident of Clark County, Nevada.

2. That at all times relevant to these proceedings, Plaintiff, JACK CHERNIKOFF the personal representative, individually and as heir of the Estate of HARVEY CHERNIKOFF, was and is a resident of Clark County, Nevada.

3. That at all times relevant to these proceedings, Plaintiff, ELAINE CHERNIKOFF individually and as heir of the Estate of HARVEY CHERNIKOFF, was and is a resident of Clark County, Nevada.

4. That at all times relevant to these proceedings and upon information and belief, Defendants, FIRST TRANSIT, INC., LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT, were corporations doing business in Las Vegas, Clark County, Nevada.

5. That at all times relevant to these proceedings, Defendant JAY FARRALES, was and is a resident of Clark County, Nevada.

6. That the true names and capacities whether individual, corporate, associate, partnership or otherwise of the Defendant herein designated as DOES 1-10, inclusive, are unknown to the Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff alleges that Defendant DOE 1 -5 were the actual operator/employee of Defendant and in the event said Defendants were acting within the course, scope and authority of such agency or employment, each said Defendant is liable or whose are statutorily or vicariously liable for the acts and omissions of those person(s) and or entities who caused or contributed to the injuries and death of HARVEY CHERNIKOFF as described below Plaintiffs further allege that

**RICHARD HARRIS
LAW FIRM**

WFO

WFO

WFO

WFO

WFO

RICARD HARRIS
LAW FIRM

1 Defendants DOES 6-10, are unknown at this time and may be individuals, corporations,
 2 associations, partnerships, subsidiaries, holding companies, owners, predecessor or successor
 3 entities, joint venturers, parent corporations or related business entities of Defendants,
 5 inclusive, who were acting on behalf of or in concert with, or at the direction of Defendants
 6 and may be responsible for the injurious activities and wrongfully death of the other
 7 Defendants. Plaintiffs allege that each named Defendant and Doe Defendant negligently,
 8 willfully, intentionally, recklessly, vicariously, or otherwise, caused, directed, allowed or set in
 9 motion the injurious events and wrongful death set forth herein. Each named and Doe
 10 Defendant is legally responsible for the events and happenings stated in this Complaint, and
 11 thus proximately caused injury, death and damages to Plaintiffs. Plaintiffs request leave of the
 12 Court to amend this Complaint to specify the Doe Defendants when their identities become
 13 known. Plaintiff will ask leave of this court to insert the true names and capacities of such
 14 Defendants when the same have been ascertained and will further ask leave to join said
 15 Defendants in these proceedings.

19 6. That Defendant, JAY FARRALES, was the operator of a certain First Transit
 20 Bus at all times relevant to this action, and at all times relevant hereto, was operating the same
 21 within the course and scope of his employment with Defendants, FIRST TRANSIT, INC.,
 22 LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT.

24 7. That at all times relevant to this action, ~~Defendants, FIRST TRANSIT, INC~~
 25 LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT, ~~employed Defendant JAY~~
 26 ~~FARRALES~~

28 8. All the facts and circumstances that give rise to the subject lawsuit occurred in
 Clark County, Nevada.

[Handwritten signature]
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9. Plaintiff has found it necessary to retain the services of an attorney to prosecute this action and is therefore entitled to reasonable attorney's fees and costs of suit incurred herein.

FACTS

10. ~~On or about July 29, 2011, HARVEY who had a mental disability was a passenger on Defendant FIRST TRANSIT, INC. LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT.~~

11. That while on the bus, Harvey started to eat his lunch and which time he began choking.

12. That Harvey died as a result of choking on the food he consumed.

13. Defendants and each of them knew that HARVEY had a mental disability.

14. Defendants and each of them failed to assist Harvey as he choked.

15. Defendants are a common carrier within the meaning of NRS 706.036.

16. Plaintiff has a disability as defined by NRS 706.361.

17. Defendants and each of them have a duty to its passengers and to HARVEY CHERNIKOFF to use the highest degree of care consistent with the mode of conveyance used and the practical operation of its business as a common carrier by para-transit bus/van.

18. Plaintiff was a passenger and was a person who, with the actual or implied consent of the carrier, was a passenger the vehicle at issue.

**FIRST CAUSE OF ACTION
NEGLIGENCE**

19. Plaintiff repeats, realleges, and incorporates by reference each and every allegation contained in the foregoing paragraphs above as if fully set forth herein.

RICHARD HARRIS
LAW FIRM

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20. Defendant, JAY FARRALES, and Defendants, were acting as common carriers and had a duty to use the highest degree of care to assist Plaintiff while a passenger on the vehicle at issue, according to the laws of the State of Nevada and as a reasonable and prudent common carrier would under similar circumstances.

21. Defendant, JAY FARRALES, and Defendants, breached the duty to use the highest degree of care and act reasonably in this matter when they neglected to take precautionary measures, including but not limited to, failing to contact emergency services and assisting Plaintiff while he choked. Defendant JAY FARRALES and Defendants were negligent and careless.

22. The sole and proximate cause of the subject incident was due to the negligent actions or inactions of the Defendants and Doc Defendant.

23. That HARVEY CHERNIKOFF' s estate is entitled to special damages for medical, funeral and burial expenses in an amount according to proof at trial.

24. From the time of his injuries until his death, HARVEY CHERNIKOFF suffered intense physical and mental pain, shock and agony all to his damage recoverable by his heirs, JACK CHERNIKOFF and ELAINE CHERNIKOFF in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

25. As a proximate result of HARVEY CHERNIKOFF death, Plaintiffs, JACK CHERNIKOFF and ELAINE CHERNIKOFF, have been deprived of his support and the value of the accumulations of his estate had he lived his normal life expectancy, all to Plaintiff JACK CHERNIKOFF and ELAINE CHERNIKOFF , special damage in an amount according to proof at trial.

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RICHARD HARRIS
LAW FIRM

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26. HARVEY CHERNIKOFF was a loving and devoted son, and by reason of the premises, Plaintiffs JACK CHERNIKOFF and ELAINE CHERNIKOFF have suffered extreme grief and sorrow and have been deprived of his companionship, society, comfort and consortium, all to their general damage in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

27. Punitive and exemplary damages are warranted in this action as a punishment for reckless and wanton acts that consciously disregarded the safety of HARVEY CHERNIKOFF, to serve as a deterrent to the Defendants and others for committing the same or similar acts that endanger the general safety of patrons and the public in an amount in excess of TEN THOUSAND DOLLARS (\$10,000.00).

SECOND CLAIM FOR RELIEF
RESPONDEAT SUPERIOR

28. Plaintiffs incorporate by this reference each and every paragraph previously made in this Complaint, as if here fully set forth.

29. Because Defendant JAY FARRALES was acting within the course and scope of his employment, service or agency, each and every other Defendant is vicariously liable for the injuries and damages sustained by Plaintiff, alleged herein.

30. That Defendant JAY FARRALES was acting in the course and scope of his employment with Defendant FIRST TRANSIT, INC. LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT and as such, Defendant FIRST TRANSIT, INC. LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT is responsible for the negligent acts of its employee under the doctrine of respondent superior.

RICHARD HARRIS
LAW FIRM

 RICHARD HARRIS
LAW FIRM

1 31. Whenever it is alleged in this Complaint that a Defendant did any act or thing, it
 2 is meant that such Defendant's officers, agents, servants, employees, or representatives did such
 3 act or thing and at the time such act or thing was done, it was done with full authorization or
 4 ratification or such defendant or was done in normal and routine course and scope of business or
 5 with the actual apparent and/or implied authority of such Defendant's officers, agents servants,
 6 employees, or representatives. Specifically Defendants are liable for the actions of its officers,
 7 agents, servants, employees and representatives.

8 32. Plaintiffs, allege that the Defendants, being a large corporation, can only act
 9 through their employees, servants agents, contracts, associates, security personnel, plain clothes
 10 employees, bartenders, porters and others paid directly or indirectly by the Defendants for the
 11 purpose of running the corporate enterprises, to make a profit, and to service their patrons and
 12 invitees.

13 33. Plaintiffs, allege that the above-described employees and agents of FIRST
 14 TRANSIT, INC. LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT and other
 15 Defendants were in various positions on the Defendants premises where they, if properly hired,
 16 trained, and supervised, and if properly acting within the scope of their employment, could have
 17 acted rather than omitting to act, in such a manner that they could have taken reasonable action
 18 to prevent the death of HARVEY CHERNIKOFF.

19 34. That Defendants breached their duty and negligently, disregarded the safety of
 20 HARVEY CHERNIKOFF, by failing, among other things, to have adequate first aid training, to
 21 prevent such an occurrence, by failing to have employees adequately trained or competent
 22 personnel on duty at the time of the incident to respond to the presence of a medical problem, or
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1 to enforce ruled already in place to prevent HARVEY or others from being allowed to eat food
2 on the bus.

3
4 35. As a direct and proximate result, Defendants are responsible for the wrongful
5 death of HARVEY CHERNIKOFF and the special and general damages as stated herein.
6

7 **THIRD CAUSE OF ACTION**
8 ***NEGLIGENT HIRING, RETENTION AND SUPERVISION***

9 36. Plaintiffs incorporate by this reference each and every allegation previously made
10 in this Complaint, as if here fully set forth.

11 37. Defendants were negligent in the selection, hiring, training, supervision and/or
12 retention of JAY FARRALES and Doe Defendants at all times relevant herein.

13 38. Defendants knew or reasonably should have known that management was
14 engaging in wrongful protocol, safety and/or supervision of their drivers in first aid response of
15 disabled parties and were unfit for their management position.
16

17 39. Defendants' management employees engaged in actions including, but not limited
18 to, lack of establishing a policy, and deficient in directing employees to respond to a medical
19 emergency of disabled parties causing a hazardous condition.
20

21 40. At all material times, Defendants knew or reasonably should have known that the
22 conduct, acts, or failures to act of management, and the conduct, acts, or failures to act of other
23 employees or agents of Defendant's (including Doe and Roe Defendants,) that managed and
24 supervised directly injured Plaintiff.
25

26 41. At all material times, Defendants knew or reasonably should have known that the
27 incidents and conduct of management and other employees described above, would and did
28 proximately result in the wrongful death of HARVEY CHERNIKOFF, including but not limited

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to, mental anguish and emotional distress.

42. At all material times, Defendants knew, or in the exercise of reasonable care should have known and could have reasonably foreseen, that unless Defendants intervened to protect HARVEY CHERNIKOFF, and or to adequately supervise, control, regulate, train, discipline, and/or otherwise penalize the conduct, acts, and failures to act, and/or terminate the employment of managers or employees who failed to act, such conduct would continue, thereby subjecting Plaintiffs to injury and severe emotional distress, and would have the effect of encouraging, ratifying, condemning, exacerbating, increasing, and worsening the conduct, acts, and failures to act described above.

43. At all times Defendants had the power, ability, authority and duty to intervene, supervise, train, prohibit, control, regulate, discipline and/or penalize the conduct and/or terminate the employment of Defendants and other agents or employees described above.

44. That of FIRST TRANSIT, INC. LAIDLAW TRANSIT SERVICES, INC dba FIRST TRANSIT and other Defendants and each of them, owed duties to HARVEY CHERNIKOFF to exercise reasonable care in hiring, training, retention, supervision and management of the personnel responsible for safety at the time and place of the events described above.

45. By their acts and omissions herein, Defendants breached these duties.

46. As a direct and proximate result, Defendants are responsible for the wrongful death of HARVEY CHERNIKOFF and the special and general damages as stated herein.

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FOURTH CLAIM FOR RELIEF
PUNITIVE DAMAGES

47. Plaintiffs incorporate by this reference each and every paragraph previously made in this Complaint, as if here fully set forth.

48. Defendants' actions were wrongful, willful, oppressive, malicious, and done with the intent to harm Plaintiff or in reckless disregard for Plaintiff. Plaintiff is therefore entitled to an award of punitive damages in amount sufficient to punish and deter the defendants and all others firm engaging in such conduct.

49. The acts complained of herein were willfully, unlawfully, violently and maliciously done by Defendants, and each of them, with a capricious and wanton disregard for the health and safety of Plaintiff, thereby entitling Plaintiff to exemplary or punitive damages in an amount in excess of \$10,000.00.

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RICHARD HARRIS
LAW FIRM


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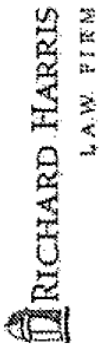
WHEREFORE, Plaintiffs respectfully pray that Judgment be entered against Defendants, and each of them, as follows:

1. General damages in an amount of to be proven at the time of trial;
2. Medical and incidental expenses incurred and to be incurred;
3. For punitive damages in an amount in excess of \$10,000.00;
4. Attorney's fees and cost of suit; and
5. For such other relief as is just and proper.

DATED this 31st day of May, 2013

~~RICHARD HARRIS LAW FIRM~~

By: 
 BENJAMIN P. CLOWARD, ESQ.
 Nevada Bar No. 11087
 801 South Fourth Street
 Las Vegas, Nevada 89101
 Attorney for Plaintiff



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RICHARD HARRIS
LAW FIRM

IAFD
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
Utah Bar No. 12336
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 385-1400
Facsimile: (702) 385-9408
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

The Estate of HARVEY CHERNIKOFF,
Deceased; by JACK CHERNIKOFF as
personal representative, individually and as
heir; ELAINE CHERNIKOFF individually
and as heir,

Plaintiffs,

vs.

FIRST TRANSIT, INC. LAIDLAW
TRANSIT SERVICES, INC dba FIRST
TRANSIT; JAY FARRALES; DOES 1-10,
and ROES 1-10 inclusive,

CASE NO. A-13-682726-C
DEPT. NO. XXIII

**INITIAL APPEARANCE FEE
DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are
submitted for parties appearing in the above entitled action as indicated below:

The Estate of HARVEY CHERNIKOFF	\$ 270.00
JACK CHERNIKOFF	\$ 30.00
ELAINE CHERNIKOFF	\$ 30.00

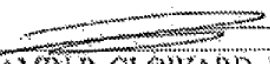
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TOTAL REMITTED: \$ 330.00

DATED this 31st day of May, 2013

RICHARD HARRIS LAW FIRM

By:  #9584
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Plaintiff

 RICHARD HARRIS
LAW FIRM

CIVIL COVER SHEET A-13-682726-C

Clark County, Nevada

XXIII

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): The Estate of HARVEY CHERNIKOFF

Defendant(s) (name/address/phone): FIRST TRANSIT INC.,

Attorney (name/address/phone): BENJAMIN R. CLOWARD, 801 S. 4th Street, Las Vegas, NV 89101 702-444-4444

Attorney (name/address/phone): Unknown

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

Civil Cases

Grid for Civil Cases with categories: Real Property, Torts, Probate, and Other Civil Filing Types. Includes checkboxes for various legal claims like Negligence, Product Liability, and Construction Defect.

III. Business Court Requested (Please check applicable category, for Clark or Washoe Counties only.)

- Checkboxes for business court categories: NRS Chaptres 78-88, Investments (NRS 104 Art. 8), Enhanced Case Mgmt/Business, etc.

May 31, 2013

Date

Signature of initiating party or representative

#7584

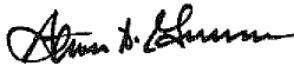
EXHIBIT **B**

dupl

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 ANSC
2 ALVERSON, TAYLOR,
3 MORTENSEN & SANDERS
4 LEANN SANDERS, ESQ.
5 Nevada Bar No. 000390
6 SHIRLEY BLAZICH, ESQ.
7 Nevada Bar No. 008378
8 7401 W. Charleston Boulevard
9 Las Vegas, Nevada 89117
10 (702) 384-7000
11 Attorneys for Defendants

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

11 The Estate of HARVEY CHERNIKOFF, Deceased;) CASE NO. A-13-682726-C
12 by JACK CHERNIKOFF as personal representative,) DEPT. NO. XXIII
13 individually and as heir; ELAINE CHERNIKOFF)
14 individually and as heir,)
15 Plaintiffs,)
16 vs.)
17 FIRST TRANSIT, INC., LAIDLAW TRANSIT)
18 SERVICES, INC. d/b/a FIRST TRANSIT; JAY)
19 FARRALES; DOES 1-10, and ROES 1-10, inclusive,)
20 Defendants.)

DEFENDANTS FIRST TRANSIT, INC., LAIDLAW TRANSIT SERVICES,
INC., d/b/a FIRST TRANSIT AND JAY FARRALES' ANSWER
TO PLAINTIFFS' COMPLAINT

21 COME NOW Defendants, FIRST TRANSIT, INC., LAIDLAW TRANSIT SERVICES,
22 INC., d/b/a FIRST TRANSIT and JAY FARRALES (hereinafter "Answering Defendants" or
23 "Defendants"), by and through their attorneys of record, ALVERSON, TAYLOR,
24 MORTENSEN & SANDERS, and hereby submit the following answer to Plaintiffs' Complaint
25 by admitting, denying, and alleging as follows:
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PARTIES

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2 1. Answering Paragraphs 1, 2, 3, 6 (the first Paragraph 6, on page 2) and 8 of Plaintiffs'
3 Complaint, Defendants state that they are without sufficient knowledge or information upon
4 which to base a belief as to the truth of the allegations contained therein, and upon said ground,
5 deny each and every allegation contained therein.

6 2. Answering Paragraphs 4, 5 and 6 (the second Paragraph 6, on page 3) of Plaintiffs'
7 Complaint, Defendants admit each and every allegation contained therein.

8
9 3. Answering Paragraph 7 of Plaintiffs' Complaint, Answering Defendants admit that
10 Defendant, FIRST TRANSIT, INC. employed Defendant, JAY FARRALES. Answering
11 Defendants deny the remaining allegations contained within Paragraph 7 of Plaintiffs'
12 Complaint.

13 4. Answering Paragraph 9 of Plaintiffs' Complaint, Answering Defendants deny each and
14 every allegation contained therein.

FACTS

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17 5. Answering Paragraph 10 of Plaintiffs' Complaint, Answering Defendants admit that on
18 or about July 29, 2011, HARVEY was a passenger on Defendant FIRST TRANSIT, INC. As
19 to the remaining allegations contained within Paragraph 10 of Plaintiffs' Complaint,
20 Defendants state that they are without sufficient knowledge or information upon which to base
21 a belief as to the truth of the allegations contained therein, and upon said ground, deny each
22 and every allegation contained therein.

23
24 6. Answering Paragraphs 11, 12, 13, 14, 16, 17 and 18 of Plaintiffs' Complaint, Defendants
25 state that they are without sufficient knowledge or information upon which to base a belief as
26 to the truth of the allegations contained therein, and upon said ground, deny each and every
27 allegation contained therein.

28

1 7. Answering Paragraph 15 of Plaintiffs' Complaint, Answering Defendants admit each and
2 every allegation contained therein.

3 **FIRST CAUSE OF ACTION**
4 **(Negligence)**

5 8. These Answering Defendants repeat and reallege their answers to the allegations
6 contained within Paragraphs 1 through 18 of Plaintiffs' Complaint, as if the same were more
7 fully set forth herein.

8 9. Answering Paragraphs 20, 24, 25 and 26 of Plaintiffs' Complaint, Defendants state that
9 they are without sufficient knowledge or information upon which to base a belief as to the truth
10 of the allegations contained therein, and upon said ground, deny each and every allegation
11 contained therein.

12 10. Answering Paragraphs 21, 22, 23, and 27 of Plaintiffs' Complaint, Defendants deny each
13 and every allegation contained therein.

14 **SECOND CLAIM FOR RELIEF**
15 **(Respondent Superior)**

16 11. These Answering Defendants repeat and reallege their answers to the allegations
17 contained within Paragraphs 1 through 27 of Plaintiffs' Complaint, as if the same were more
18 fully set forth herein.

19 12. Answering Paragraphs 29, 30, 31, 32 and 33 of Plaintiffs' Complaint, Defendants state
20 that they are without sufficient knowledge or information upon which to base a belief as to the
21 truth of the allegations contained therein, and upon said ground, deny each and every allegation
22 contained therein.

23 13. Answering Paragraphs 34 and 35 of Plaintiffs' Complaint, Defendants deny each and
24 every allegation contained therein.

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

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3 **THIRD CAUSE OF ACTION**

4 **(Negligent Hiring, Retention and Supervision)**

5 14. These Answering Defendants repeat and reallege their answers to the allegations
6 contained within Paragraphs 1 through 35 of Plaintiffs' Complaint, as if the same were more
7 fully set forth herein.

8 15. Answering Paragraphs 37, 38, 39, 40, 41, 42, 43, 45, 46 of Plaintiffs' Complaint,
9 Defendants deny each and every allegation contained therein.

10 16. Answering Paragraph 44 of Plaintiffs' Complaint, Defendants admit each and every
11 allegation contained therein.

12 **FOURTH CAUSE OF ACTION**

13 **(Punitive Damages)**

14 17. These Answering Defendants repeat and reallege their answers to the allegations
15 contained within Paragraphs 1 through 46 of Plaintiffs' Complaint, as if the same were more
16 fully set forth herein.

17 18. Answering Paragraphs 48 and 49 of Plaintiffs' Complaint, Defendants deny each and
18 every allegation contained therein.

19 **AFFIRMATIVE DEFENSES**

20 **FIRST AFFIRMATIVE DEFENSE**

21 Defendants allege that Plaintiffs' Complaint on file herein fails to state a claim upon
22 which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Defendants allege that the damages, if any, were caused in whole or in part, or were
25 contributed to by reason of the negligence of the Plaintiffs.
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THIRD AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious, and known to the Plaintiffs and said Plaintiffs voluntarily assumed said risks and dangers.

FOURTH AFFIRMATIVE DEFENSE

The incident alleged in the Complaint and the resulting damages, if any, to the Plaintiff were proximately caused or contributed to by Plaintiffs' own negligence, and such negligence was greater than the alleged negligence of Defendants.

FIFTH AFFIRMATIVE DEFENSE

Defendants allege that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom were caused by the acts or omissions of a third party over whom Defendants had no control.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are time-barred by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Defendants allege that recovery of unlimited punitive or exemplary damages is barred because N.R.S. Chapter 42, as amended, denies these Defendants equal protection of the law under Article Four, Section Twenty of the Nevada Constitution, and the Fourteenth Amendment to the United States Constitution.

EIGHTH AFFIRMATIVE DEFENSE

Defendants allege that any award of punitive or exemplary damages in this action is barred as excessive, as the product of bias or passion and/or by proceedings lacking sufficient guidelines and/or the basic elements of fundamental fairness, under the Due Process Clause of

1 the Fourteenth Amendment to the United States Constitution, and Article One, Section Eight, of
2 the Nevada Constitution.

3 **NINTH AFFIRMATIVE DEFENSE**

4 Plaintiffs failed to mitigate his damages, if any.

5 **TENTH AFFIRMATIVE DEFENSE**

6 Defendants hereby incorporate by reference those affirmative defenses enumerated in
7 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
8 investigation or discovery reveals the applicability of any such defenses, Defendants reserve the
9 right to seek leave of Court to amend their Answer to specifically assert the same. Such defenses
10 are herein incorporated by referenced for the specific purpose of not waiving the same.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 Pursuant to NRCP 11, as amended, all possible Affirmative Defenses may not have been
13 alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the
14 filing of Defendants' Answer and, therefore, Defendants reserve the right to amend their Answer
15 to allege additional affirmative defenses if subsequent investigation warrants.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 Plaintiffs' claims against these answering Defendants are reduced, in whole or in part, as
18 a result of the doctrine of comparative negligence.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 Defendants allege that recovery of unlimited punitive or exemplary damages is barred
21 because N.R.S. Chapter 42, as amended, denies these Defendants equal protection of the law
22 under Article Four, Section Twenty of the Nevada Constitution, and the Fourteenth Amendment
23 to the United States Constitution.

24 ///

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

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FOURTEENTH AFFIRMATIVE DEFENSE

Defendants allege that any award of punitive or exemplary damages in this action is barred as excessive, as the product of bias or passion and/or by proceedings lacking sufficient guidelines and/or the basic elements of fundamental fairness, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Article One, Section Eight, of the Nevada Constitution.

GENERAL DENIAL

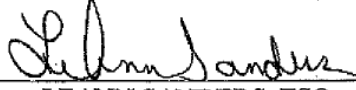
Answering Defendants deny each and every allegation contained in Plaintiffs' Complaint that is not specifically admitted to be true.

PRAYER FOR RELIEF

These Answering Defendants deny that Plaintiff is entitled to any of the requested relief as contained within Plaintiffs' Complaint.

DATED this 26th day of June, 2013.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
7401 W. Charleston Boulevard
Las Vegas, NV 89117-1401
(702) 384-7000
Attorneys for Defendants

LS#19969

CERTIFICATE OF SERVICE

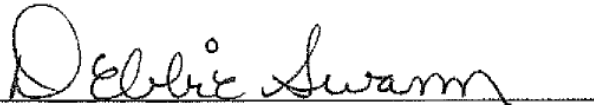
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Pursuant to NRCP 5(b), I hereby certify that I am an employee of ALVERSON, TAYLOR, MORTENSEN & SANDERS and that on the 26th day of June, 2013, I caused to be served a true and correct copy of the document described herein by U.S. mail, postage prepaid addressed to the following:

Document Served: DEFENDANTS FIRST TRANSIT, INC., LAIDLAW TRANSIT SERVICES, INC., d/b/a FIRST TRANSIT AND JAY FARRALES' ANSWER TO PLAINTIFFS' COMPLAINT

Person(s) served:

Benjamin Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiff



An employee of
ALVERSON, TAYLOR, MORTENSEN & SANDERS

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

ALVERSON, TAYLOR, MORTENSEN & SANDERS

LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 **AFFIRMATION**

2 Pursuant to N.R.S. 239B.030

3
4 The undersigned does hereby affirm that the preceding **DEFENDANTS FIRST**
5 **TRANSIT, INC., LAIDLAW TRANSIT SERVICES, INC., d/b/a FIRST TRANSIT AND**
6 **JAY FARRALES' ANSWER TO PLAINTIFFS' COMPLAINT** filed in District Court Case
No. A-13-682726-C

7 X Does not contain the social security number of any person.

8
9 **-OR-**

10 Contains the social security number of a person as required by:

11 A. A specific state or federal law, to wit:

12 **[Insert specific law]**

13 **-or-**

14 B. For the administration of a public program or for an application for
15 a federal or state grant.

16 DATED this 26th day of June, 2013.

17 ALVERSON, TAYLOR, MORTENSEN & SANDERS

18
19
20 By 

21 LEANN SANDERS, ESQ.
22 Nevada Bar No. 000390
23 SHIRLEY BLAZICH, ESQ.
24 Nevada Bar No. 008378
25 7401 W. Charleston Boulevard
26 Las Vegas, Nevada 89117
27 Attorneys for Defendants
28

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LS#19969

ATMS Copy Room Efile

From: ccservice@wiznet.com
Sent: Thursday, June 27, 2013 10:45 AM
To: ATMS Copy Room Efile
Subject: Courtesy Copy Notification of Filing Case(Estate of Harvey Chernikoff, Plaintiff(s)vs.First Transist Inc, Defendant(s)) Document Code:(ANSC) Filing Type:(EFO) Repository ID(4475801)

This is a courtesy copy for Case No. A-13-682726-C, Estate of Harvey Chernikoff, Plaintiff(s)vs.First Transist Inc, Defendant(s)

This message was automatically generated; do not reply to this email. Should you have any problems viewing or printing this document, please call (800)297-5377.

Submitted: 06/27/2013 09:09:47 AM

Case title: Estate of Harvey Chernikoff, Plaintiff(s)vs.First Transist Inc, Defendant(s)
Document title: Defendants First Transit, Inc., Laidlaw Transit Services, Inc. d/b/a First Transit and Jay Farrales' Answer to Plaintiffs' Complaint
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EXHIBIT C

EXHIBIT C



1 **RSPN**
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
4 **RICHARD HARRIS LAW FIRM**
5 801 South Fourth Street
6 Las Vegas, Nevada 89101
7 Phone: (702) 444-4444
8 Fax: (702) 444-4455
9 E-Mail: Benjamin@RichardHarrisLaw.com
10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 The Estate of HARVEY CHERNIKOFF,
14 Deceased; by JACK CHERNIKOFF as
15 personal representative, individually and as
16 heir; ELAINE CHERNIKOFF individually
17 and as heir,

18 **Plaintiffs,**

19 vs.

20 FIRST TRANSIT, INC. LAIDLAW
21 TRANSIT SERVICES, INC dba FIRST
22 TRANSIT; JAY FARRALES; DOES 1-10,
23 and ROES 1-10 inclusive,

24 **Defendants.**

CASE NO. A-13-682726-C
DEPT. NO. XXIII

25 **PLAINTIFF JACK CHERNIKOFF, AS PERSONAL REPRESENTATIVE OF THE**
26 **ESTATE OF HARVEY CHERNIKOFF RESPONDES TO DEFENDANT'S FIRST SET**
27 **OF REQUEST FOR PRODUCTION OF DOCUMENTS**

28 COMES NOW, the Plaintiff, JACK CHERNIKOFF as Personal
Representative of the Estate of Harvey Chernikoff pursuant to Nevada, by and through his
attorney of record, BENJAMIN P. CLOWARD, ESQ., of the RICHARD HARRIS LAW

1 FIRM, pursuant to Rule 33, Nevada Rules of Civil Procedure, and hereby responds to
2 Defendants First Request for Production of Documents as follows:

3
4 **DEFINITIONS**

5 A. "Nondiscoverable/Irrelevant." The request in question concerns a matter that is
6 not relevant to the subject matter and the matters that remain at issue in this litigation and is not
7 reasonably calculated to lead to the discovery of admissible evidence.

8 B. "Unduly burdensome." The request in question seeks discovery which is unduly
9 burdensome or expensive, taking into account the needs of the case, the amount in controversy,
10 limitations on the parties' resources, and the importance of the issues at stake in the litigation.

11 C. "Vague." The request in question contains a word or phrase which is not
12 adequately defined, or the overall request is confusing, and Plaintiff is unable to reasonably
13 ascertain what information or documents Defendant seeks in the request.

14 D. "Overly broad." The request seeks information beyond the scope of, or beyond
15 the time period relevant to, the subject matter of this litigation and, accordingly, seeks
16 information which is non-discoverable/irrelevant and is unduly burdensome.

17
18 **GENERAL OBJECTIONS**

19
20 1. Plaintiff objects to Defendant's requests to the extent that they seek documents
21 that are protected by any absolute or qualified privilege or exemption, including, but not limited
22 to, the attorney-client privilege, the attorney work-product exemption, and the consulting-expert
23 exemption. Specifically, Plaintiff objects to Defendant's requests on the following grounds.

24 a. Plaintiff objects to Defendant's requests to the extent they seek
25 documents that are protected from disclosure by the attorney-client privilege in accordance with
26 Rule 26 of the Nevada Rules of Civil Procedure and NRS 89.095.
27
28

1 b. Plaintiff objects to Defendant's requests to the extent they seek
2 documents that are protected from disclosure by the work-product exemption in accordance
3 with Rule 26(b)(1)(3) and (4) of the Nevada Rules of Civil Procedure and applicable case law.
4

5 c. Plaintiff objects to Defendant's requests to the extent they seek
6 documents that are protected from disclosure pursuant to the consultant/expert exemption in
7 accordance with Rule 26(b)(3) and (4) of the Nevada Rules of Civil Procedure and applicable
8 case law.

9 d. Plaintiff objects to Defendant's requests to the extent they seek trade
10 secrets, commercially sensitive information, or confidential proprietary data entitled to
11 protection under Rule 26(c)(7) of the Nevada Rules of Civil Procedure.
12

13 2. This response is made on the basis of information and writings available to and
14 located by Plaintiff upon reasonable investigation of its records. There may be other and
15 further information respecting the requests propounded by Defendant of which Plaintiff, despite
16 its reasonable investigation and inquiry, is presently unaware. Plaintiff reserves the right to
17 modify or enlarge any response with such pertinent additional information as it may
18 subsequently discover.
19

20 3. No incidental or implied admissions will be made by the responses to
21 Defendant's requests. The fact that Plaintiff may respond or object to any request or any part
22 thereof shall not be deemed an admission that Plaintiff accepts or admits the existence of any
23 fact set forth or assumed by such request, or that such response constitutes admissible evidence.
24 The fact that Plaintiff responds to a part of any request is not to be deemed a waiver by Plaintiff
25 of its objections, including privilege, to other parts to such request.
26

27 4. Plaintiff objects to any instruction to the extent that it would impose upon it
28

1 greater duties than are set forth under the Nevada Rules of Civil Procedure. Plaintiff will
2 supplement its responses to the requests as required by the Nevada Rules of Civil Procedure.

3
4 5. All responses will be made solely for the purpose of this action. Each response
5 will be subject to all objections as to competence, relevance, materiality, propriety and
6 admissibility, and to any and all other objections on any ground which would require the
7 exclusion from evidence of any statement herein if any such statements were made by a witness
8 present and testifying at trial, all of which objections and grounds are expressly reserved and
9 may be interposed at such hearings.
10

11 **RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**

12 **REQUEST NO. 1:**

13 Any and all medical records, for care provided to Harvey Chernikoff in the five
14 years prior to his demise (sic). In lieu of providing of those records and billings, an
15 authorization for obtaining medical records may be submitted. (Please see attached).
16

17 **RESPONSE:**

18 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
19 **Without waiving said objections, Plaintiff is not in possession of the requested**
20 **documentation. Please see the attached authorization executed by the Plaintiff in favor of**
21 **your firm.**

22
23 **REQUEST NO. 2:**

24 Please provide any and all employment records of the decedent, Harvey Chernikoff,
25 relative to each and every employer he had from 2005 to the time of his demise (sic). In lieu
26 of providing of the requested documents, assigned consent form authorizing the release of
27 employment records may be submitted. (Please see attached).
28

1 **RESPONSE:**

2 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
3 **Without waiving said objections, Plaintiff is not in possession of the requested**
4 **documentation.**

6 **REQUEST NO. 3:**

7 Please provide any and all tax records of the decedent, Harvey Chernikoff, from 2005 to
8 the present. In lieu of the requested documents, a signed consent form authorizing the release of
9 tax records may be submitted. (Please attached)

11 **RESPONSE:**

12 **Objection relevancy, in that it is overly broad and not relevant to the subject matter**
13 **in the pending action, and the information sought does not appear reasonably calculated to**
14 **lead to the discovery of relevant evidence. Subject to and without waiving the foregoing**
15 **objection(s), Plaintiff responds as follows: The decedent, Harvey Chernikoff did not file tax**
16 **returns.**

18 **REQUEST NO. 4:**

19 Copies of any and all documents or papers relating to previous lawsuits or claims made
20 by HARVEY CHERNIKOFF against any individual or entity for any type of injury or damage
21 since 2005.

23 **RESPONSE:**

24 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
25 **Without waiving said objections, Plaintiff is not in possession of the requested**
26 **documentation.**

28

1 **REQUEST NO. 5:**

2 Please provide copies of any applications that HARVEY CHERNIKOFF had submitted
3 for Social Security Disability benefits.

4 **RESPONSE:**

5 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
6 **Without waiving said objections, Plaintiff is not in possession of the requested**
7 **documentation.**

8 **REQUEST NO. 6:**

9 Please provide copies of responses received to any applications that HARVEY
10 CHERNIKOFF had submitted for Social Security Disability benefits.

11 **RESPONSE:**

12 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
13 **Without waiving said objections, Plaintiff is not in possession of the requested**
14 **documentation.**

15 **REQUEST NO. 7:**

16 Please provide copies of any correspondence between you or your attorneys and the
17 Centers for Medicare and Medicaid Services ("CMS").

18 **RESPONSE:**

19 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
20 **Without waiving said objections, Plaintiff is not in possession of the requested**
21 **documentation.**

22 **REQUEST NO. 8:**

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1 Please provide copies of any correspondence between you or your attorneys and any
2 other Medicare entities.

3 **RESPONSE:**

4 **Objection. This request is vague, ambiguous and overly broad as to time and**
5 **scope. Without waiving said objections, Plaintiff is not in possession of the requested**
6 **documentation.**

7 **REQUEST NO. 9:**

8 Please provide copies of any Medicare Liens or notices of Medicare liens against any
9 recovery that the Estate of HARVEY CHERNIKOFF may have in this matter.

10 **RESPONSE:**

11 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
12 **Without waiving said objections, Plaintiff is not in possession of the requested**
13 **documentation.**

14 **REQUEST NO. 10:**

15 Please provide any copies of correspondence between you or your attorney and
16 programs for medical assistance, including, but not limited to , Medicaid, and State Children's'
17 Health Insurance Program (SCHIP) and/or any State Children's Health Insurance Plan (CHIP)
18 payments, relative to the treatment at issue in this matter

19 **RESPONSE:**

20 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
21 **Without waiving said objections, Plaintiff is not in possession of the requested**
22 **documentation.**

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1 **REQUEST NO. 11:**

2 Please provide copies of any liens or notices received from the Department of Public
3 Welfare or any other agency or entity, whether private or public, regarding this matter.
4

5 **RESPONSE:**

6 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
7 **Without waiving said objections, Plaintiff is not in possession of the requested**
8 **documentation.**

9 **REQUEST NO. 12:**

10 Please provide copies of any materials provided to HARVEY CHERNIKOFF by First
11 Transit, Inc. including, pamphlets, handouts, guidelines, rules, schedules, etc., from the date he
12 started using First Transit services to the time of his demise.
13

14 **RESPONSE:**

15 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
16 **Without waiving said objections, Plaintiff is not in possession of the requested**
17 **documentation.**

18 **REQUEST NO. 13:**

19 Please provide copies of any correspondence between HARVEY CHERNIKOFF and
20 First Transit, Inc. from the date he started using First Transit serviced to the time of demise.
21

22 **RESPONSE:**

23 **Objection. This request is vague, ambiguous and overly broad as to time and scope.**
24 **Without waiving said objections, Plaintiff is not in possession of the requested**
25 **documentation.**
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REQUEST NO. 14:

Please provide copies of any and all documentation not previously provided which were relied upon and/or referenced in Jack Chernikoff as personal representative of the Estate of Harvey Chernikoff's Answers to Defendant's First Transit, Inc., and Jay Farrales First set of Interrogatories.

RESPONSE:

All documents in Plaintiff's possession responsive to this Request were produced in Plaintiff's Early Case Conference List of Witnesses and all supplements thereto. Plaintiff reserves the right to supplement this response, as discovery is continuing in this matter.

REQUEST NO. 15:

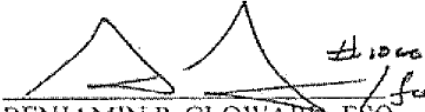
Please provide copies of any and all documentations indicating that Plaintiff JACK CHERNIKOFF has been designated the Personal Representative and/or Special Administratrix (sic) of the Estate of Harvey Chernikoff.

RESPONSE:

Please see attached.

DATED this 14 day of September, 2013.

RICHARD HARRIS LAW FIRM

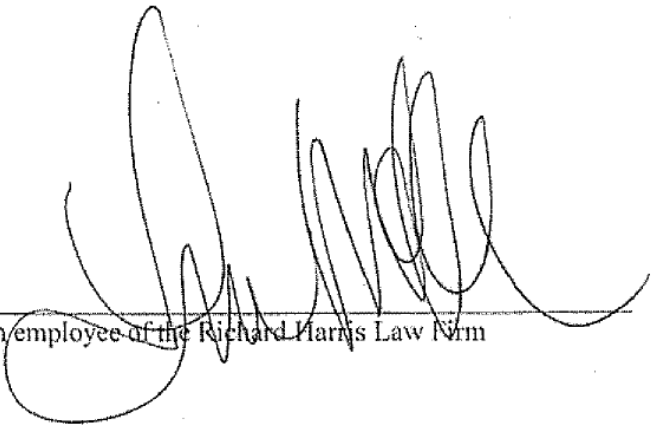

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM, and that on this 26 day of July, 2013, I served a copy of the foregoing PLAINTIFF JACK CHERNIKOFF, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HARVEY CHERNIKOFF RESPONSES TO DEFENDANT'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS as follows:

- U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or
- Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or
- Hand Delivery—By hand-delivery to the addresses listed below.

Leann Sanders, Esq.
Shirley Blazich, Esq.
ALVERSON, TAYLOR,
MORTENSEN & SANDERS
7401 W. Charleston Blvd.
Las Vegas, Nevada 89117
Fax (702) 385-7000
Attorneys for Defendants


An employee of the Richard Harris Law Firm

CONFIDENTIAL CLIENT INFORMATION

Inland Counties Regional Center, Inc.
See California Welfare & Institutions
Code, Section 4514.

CHERNIKOFF, Harvey
DOB:
UCI#: 7926091
SS#:

2/10/86 LIMITED CONSERVATORSHIP

RECOMMENDATIONS: The Regional Center's evaluations disclosed that Mr. Harvey Chernikoff has mild mental retardation and a psychological disorder, schizophrenic personality. The Regional Center recommends that a conservator be appointed to protect Mr. Chernikoff and encourage that the conservator be granted the powers:

- a. ability to set or determine residence.
- b. access to confidential records.
- c. consent to marriage.

KNOWLEDGE: Mr. Chernikoff was evaluated by Dr. Karol Fisher Ph.D. on 5/11/83. In addition, Mr. Chernikoff has been seen on a quarterly basis by the undersigned since 4/1/85 including 2/3/86.

FINDINGS: It was Dr. Fisher impression that Mr. Chernikoff has a schizophrenic personality. He was found to have an IQ of 65 on the Wechsler Adult Intelligence Scale. On the Vineland Social Maturity Scale he has a social age of 13 years. Mr. Chernikoff has a good broad vocabulary and can carry on a complex conversation with staff. His speech is easily understood by others. Mr. Chernikoff has all of his self help skills and even has an out-dated drivers license. He can tell time, make correct changes, use a calculator correctly and read.

Mr. Chernikoff is very immature emotionally and unable to handle stress of girl boy relationship. Currently he attends Community Skills Training Center regularly and has a production rate of 12% I.S.

Medically, Mr. Chernikoff is taking several different medications to control his agitation. He is borderline diabetic but has had no hospitalizations this past year. He is in good health.

This report is signed under penalty of perjury this 10th day of February 1985 at Covina, California.


Suzette Soviero
Counselor

SS:mw
IRC-W
2/10/86
2/11/86

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name): ELAINE CHERNIKOFF 2326 Tuna Canyon Road Topanga, CA 90290	Address: (213) 455-1140	TELEPHONE NO.:	FOR COURT USE ONLY ORIGINAL FILED APR 30 1986 COUNTY CLERK
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	IN PRO PER 400 Civic Center Plaza Pomona, CA 91766 EAST DISTRICT		
CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (NAME): HARVEY A. CHERNIKOFF		Conservatee	
ORDER-APPOINTING CONSERVATOR <input checked="" type="checkbox"/> Limited Conservatorship		CASE NUMBER: GAP 19845	

1. The petition for appointment of conservator came on for hearing as follows (check boxes c, d, e, and f to indicate personal presence):
- a. Judge (name): ROY L. NORMAN
 - b. Hearing date: March 21, 1986 Time: 9:00 AM Dept.: S Div.: Room:
 - c. Petitioner (name): ELAINE CHERNIKOFF
 - d. Attorney for petitioner (name):
 - e. Attorney for person cited (name, address, and telephone): Fred Heene, Esq.
COUENBERG & HEENE
666 N. Park Ave. Pomona, CA 91768
 - f. Person cited was present unable to attend able but unwilling to attend out of state.

2. THE COURT FINDS

- a. All notices required by law have been given.
- b. (Name):
 - is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.
 - is substantially unable to manage his or her financial resources or to resist fraud or undue influence.
 - has voluntarily requested appointment of a conservator and good cause has been shown for the appointment.
- c. Conservatee
 - is an adult.
 - will be an adult on the effective date of this order.
 - is a married minor.
 - is a minor whose marriage has been dissolved.
- d. There is no form of medical treatment for which the conservatee has the capacity to give an informed consent.
- e. Conservatee is an adherent of a religion defined in section 2355(b) of the Probate Code.
- f. Granting the conservator powers to be exercised independently under section 2590 of the Probate Code is to the advantage and benefit and in the best interest of the conservatorship estate.
- g. Conservatee is not capable of completing an affidavit of voter registration.
- g. Attorney (name): Fred Heene has been appointed by the court as legal counsel to represent the conservatee in these proceedings. The cost for representation is \$ 200.00
The conservatee has the ability to pay all none a portion of this sum (specify): \$ _____
- h. Conservatee need not attend the hearing.
- i. The appointed court investigator is (name, address, and telephone):
- j. (for limited conservatorship only) The limited conservatee is developmentally disabled as defined in section 1420 of the Probate Code.

(Continued on reverse)

Do NOT use this form for a temporary conservatorship.
Form Approved by the
Judicial Council of California
Revised Effective January 1, 1981
OC-340(81)

ORDER APPOINTING CONSERVATOR

7606825 (Rev. 7-81) 3-81

203A

HARVEY A. CHERNIKOFF	Conservatee	FILE NUMBER: EAP 19845
----------------------	-------------	---------------------------

ORDER APPOINTING/CONSERVATORS

Page 2

3. THE COURT ORDERS

a. (name): ELAINE & JACK CHERNIKOFF
 (address): 2326 Tuna Canyon Road (telephone): (213) 455-1140
 Topanga, CA 90290

Is appointed conservator limited conservator of the person of (name): HARVEY A. CHERNIKOFF
 and Letters shall issue upon qualification.

b. (name):
 (address): (telephone):

Is appointed conservator limited conservator of the estate of (name):
 and Letters shall issue upon qualification.

c. Conservatee need not attend the hearing.

d. Bond is not required.
 Bond is fixed at \$_____ to be furnished by an authorized surety company or as otherwise
 provided by law.

Deposits shall be made at (specify institution): _____ in the
 amount of \$_____ and receipts filed.

e. For legal services rendered, conservatee conservatee's estate parents of the minor minor's
 estate shall pay to (name): _____ the sum of \$_____
 forthwith as follows (specify terms, including any combination of payors):

f. Conservatee is disqualified from voting.

g. Conservatee lacks the capacity to give informed consent for medical treatment and the conservator of the
 person is granted the powers specified in section 2355 of the Probate Code. The treatment shall be
 performed by an accredited practitioner of the religion defined in section 2355(b) of the Probate Code.

h. The conservator of the estate is granted authorization under section 2590 of the Probate Code to exercise
 independently the powers specified in attachment 3h subject to the conditions provided.

i. Orders relating to the capacity of the conservatee under sections 1073 or 1001 of the Probate Code as
 specified in attachment 3i are granted.

j. Orders relating to the powers and duties of the conservator of the person under sections 2351-2358 of the
 Probate Code as specified in attachment 3j are granted.

k. Orders relating to the conditions imposed under section 2402 of the Probate Code upon the conservator
 of the estate as specified in attachment 3k are granted.

l. Other orders as specified in attachment 3l are granted.

m. The inheritance tax referee appointed is (name and address):

n. (for limited conservatorship only) Orders relating to the powers and duties of the limited conservator of the
 person under section 2351.5 of the Probate Code as specified in attachment 3n are granted.

o. (for limited conservatorship only) Orders relating to the powers and duties of the limited conservator of the
 estate under section 1830(b) of the Probate Code as specified in attachment 3o are granted.

p. (for limited conservatorship only) Orders limiting the civil and legal rights of the limited conservatee are granted
 as specified in attachment 3p are granted.

q. This order will be effective on the date signed date minor attains majority (date):

4. Number of boxes checked in item 3: FIVE

5. Number of pages attached: ONE

Dated:

of the Superior Court
 and follows to attachment

IN RE THE LIMITED
CONSERVATORSHIP OF: HARVEY A. CHERNIKOFF Case No. EAP - 19845

Attachment 3j, Form 203A

Pursuant to section 2358 of the Probate Code, Conservator shall have the power to approve objectives and programs (i.e., IPP) of the Conservatee.

Attachment 3n, Form 203A

Pursuant to section 2351.5 of the Probate Code, Conservator shall have the power to:

1. Fix the residence or specific domicile of the Conservatee;
2. To access the confidential records of the conservatee; and,
3. To grant or withhold consent for the Conservatee to marry.

Date: APR 30 2006

ROY A. BORGESANI
Judge of the Superior Court

D

EXHIBIT D

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

J. BRUCE ALVERSON
ERIC TAYLOR
DAVID J. MORTENSEN
LEANN SANDERS
KURT R. BONDS
NATHAN R. REINMILLER
JONATHAN B. OWENS
KARIE N. WILSON
SEETAL TEJARA
SHIRLEY BLAZICH
JENNIFER KISSEL-MORALES

SABRINA G. MANSANAS
CHELSEA R. HUETH
MARI K. SCHAAN
ELLEN S. HOWMAN
NICOLE D. MURRY
STEPHANIE ZINNA
IAN M. HOUSTON
COURTNEY CHRISTOPHER
TAYLOR A. TRUJILLO
MIRIAM SHOVAL
DAVID M. BRAY

LAWYERS

LAS VEGAS OFFICE

7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000 FAX (702) 385-7000

RENO OFFICE

200 S. VIRGINIA, 8TH FLOOR, RENO, NEVADA 89501
Telephone (775) 398-3025

www.alversonstaylor.com

REPLY TO: Las Vegas Office Reno Office

VATANA LAY
BRIGETTE E. FOLEY
ALIKA K. ANGERMAN
ANNA MIRJANIAN
SEAN FORBUSH
MATTHEW FRUITT

OF COUNSEL
JACK C. CHERRY

October 2, 2013

Via Facsimile -- 444-4455

Benjamin Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Re: First Transit, Inc. adv. Chernikoff, et al.
Our File No.: 19969

Dear Mr. Cloward:

Our office is currently in receipt of Plaintiffs Jack Chernikoff and Elaine Chernikoff's Individual Responses to Defendants' First Set of Interrogatories and First Set of Requests for Production. After review of Plaintiffs responses, it appears that they failed to adequately respond to a number of our interrogatories.

Specifically, Plaintiffs failed to provide responses to the following Interrogatories:

INTERROGATORY NO. 10:

According to the Complaint, you allege that "Defendants and each of them knew that HARVEY had a mental disability." Please describe, in detail, all facts upon which you intend to rely in proving that Defendants, "knew that HARVEY had a mental disability."

INTERROGATORY NO. 11:

According to the Complaint, you allege that Defendants "breached the duty to use the highest degree of care and act reasonably in this matter when they neglected to take precautionary measures, including but not limited to, failing to contact emergency services and assisting Plaintiff while he choked." Please describe, in detail, all facts upon which you intend to rely in proving this allegation.



ALVERSON, TAYLOR, MORTENSEN & SANDERS

Page Number: 2

Continuing Letter: October 2, 2013

INTERROGATORY NO. 12:

According to the Complaint, you allege that Defendants “consciously disregarded the safety of HARVEY CHERNIKOFF.” Please describe, in detail, all facts upon which you intend to rely in proving that Defendants, “consciously disregarded the safety of HARVEY CHERNIKOFF.”

INTERROGATORY NO. 13:

According to the Complaint, you allege that Defendants “breached their duty and negligently disregarded the safety of HARVEY CHERNIKOFF, by failing among other things, to have adequate first aid training, to prevent such an occurrence, by failing to have employees adequately trained or competent personnel on duty at the time of the incident to respond to the presence of a medical problem, or to enforce rules already in place to prevent HARVEY or others from being allowed to eat food on the bus.” Please describe, in detail, all facts upon which you intend to rely in proving this allegation.

INTERROGATORY NO. 14:

According to the Complaint, you allege that, “from the time of his injuries until his death, HARVEY CHERNIKOFF suffered intense physical and mental pain, shock and agony.” Please describe, in detail, all facts upon which you intend to rely in support of that claim.

In response to the foregoing Interrogatories, Plaintiffs responded as follows:

Objection, this may call for a legal opinion, for which Plaintiff is not qualified to render. Plaintiff further objects this interrogatory in that it calls for a legal conclusion and invades the attorney’s trial strategy.

We would like to point-out that the interrogatories your client objected to asked that they identify facts upon which they intends to rely in supporting various allegations set forth in the Complaint. Thwarting the discovery of relevant facts is in direct conflict with the purpose of discovery as outlined in the Nevada Rules of Civil Procedure. Pursuant to N.R.C.P. 26(b)(1):

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

Page Number: 3

Continuing Letter: October 2, 2013

The aforementioned Interrogatories do not ask your clients to offer a legal and/or expert conclusion by applying the facts of this case to the applicable law. Rather, these interrogatories merely request that your clients identify certain *facts* that they intend to rely on in support of the allegations made in the Complaint. In no way are they being asked to offer a legal conclusion, nor do the questions call for an expert opinion. As such, the Interrogatories are not beyond the scope of NRCP 16.1(a)(2)(B) and 26(b)(4).

Also, during our review of Jack Chernikoff's responses on behalf of the Estate of Harvey Chernikoff, we noticed that no signed HIPAA authorization was provided for Harvey Chernikoff, despite indication within the responses that they were enclosed. As such, please provide our office with completed HIPAA authorizations for Harvey Chernikoff, as soon as possible.

In addition, the documentation produced in response to Request No. 15, was not sufficient documentation to establish that Jack Chernikoff has been designated the personal representative of the Estate of Harvey Chernikoff. Specifically, Request No. 15 stated:

Please provide copies of any and all documentation indicating that Plaintiff JACK CHERNIKOFF has been designated the Personal Representative and/or Special Administratrix of the Estate of Harvey Chernikoff.

The documentation provided by your office was related to Jack and Elaine Chernikoff's conservatorship over Harvey while he was living. However, our office requested the documentation showing that Mr. Chernikoff has been appointed as administrator of Harvey's intestate estate. As such, please provide our office with the appropriate documentation.

We appreciate your attention to the foregoing issues and anticipated cooperation. If you have any questions or concerns regarding the foregoing, please feel free to contact our office.

Very truly yours,

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

/s/LeAnn Sanders

LeAnn Sanders

LS/chh

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EXHIBIT **E**

RICHARD HARRIS
LAW FIRM



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AMY V. MONDRAGON, J.D.*
BRIAN M. KEITH, J.D.**
AMY M. YONESAWA, J.D.*
ELAINE H. MARZOLA, J.D.*
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NOEL S. ANSCHUTZ
SAMANTHA M. HENZ
JONATHAN D. RUTHERFORD
Professional Disability Representatives

* admitted in Nevada
* admitted in California
* admitted in Utah
* admitted in Washington
o admitted in Texas
- admitted in Illinois
o Master of Laws in Dispute Resolution

November 14, 2013

Via Facsimile: (702) 385-7000

Leann Sanders, Esq.
ALVERSON, TAYLOR MORTENSEN & SANDERS
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117-1401

Re: *The Estate of Harvey Chernikoff v. First Transit*
Clark County District Court Case No. A-13-682726-C

Dear Ms. Sanders:

Thank you for your November 5, 2013, correspondence addressing various issues.

As to the issue surrounding the medical authorization for Harvey Chernikoff, the appropriate documents have been sent Jack Chernikoff for signature; we will supplement our discovery responses with the release as soon as it is received.

As to the issue regarding the documentation to support Jack Chernikoff as personal representative of the Estate of Harvey Chernikoff the Petition, Orders and Letter appointing Jack have been submitted to the Court and we await their return, upon receipt we will provide your office with copies.

Finally, as you know, Jack and Elaine's deposition is scheduled to take place on November 21, 2013, Jack is still ill with a heart condition and is unable to travel at this time. I have attached correspondence from Jack's physician Joseph Raffetto, MD affirming Jack is unable to fly until he is released from his care. Although the letter does state that "hopefully the beginning of November" Jack would be able to travel however, Jack has since returned to the Dr. Raffetto who put further restrictions on his travel. If necessary we will provide additional documentation confirming this fact. We request to reschedule the Chernikoff's deposition to a later date once Jack has returned to good health.

Thank you for your continued professionalism in working to accommodate the scheduling of Jack and Elaine's deposition.

Most sincerely,


BENJAMIN P. CLOWARD, ESQ.
RICHARD HARRIS LAW FIRM

LS
R&E 19969
BN
ON CAL

From: 4102507274 Page: 2/2 Date: 11/13/2013 8:50:39 AM

PENINSULA CARDIOLOGY ASSOCIATES, P.A.

DONALD M. WOOD, M.D.
JOSEPH L. RAFFETTO, M.D.
DENNIS J. CHODNICKI, M.D.
EMMANUEL N. NSAH, M.D.
LUCY B. VAN VOORHEES, M.D.
JENNIFER A. DORR, D.O.



JOHN G. GREEN, M.D.
JEFFREY M. WIELAND, M.D.
STEPHAN PAVLOS, M.D.
RENE L. DESMARAIS, M.D.
TOM A. J. SWIERKOSZ, M.D., Ph.D.

www.pencard.com

AMERICAN BOARD OF INTERNAL MEDICINE
AMERICAN BOARD OF CARDIOVASCULAR MEDICINE

October 18, 2013

RE: Jack Chernikoff
DOB: 1/28/1937

To Whom It May Concern:

Mr. Chernikoff has been a patient of mine since June 26, 2013. After first seeing patient he had a stent placed on 7/22/13 and then a permanent pacemaker placed on 10/7/13. During this time period he was in and out of the hospital. I did not feel the patient was stable to travel until after pacemaker placement and follow up visits. At this time, Mr. Chernikoff should be able to fly once released from our care, hopefully the beginning of November 2013.

Sincerely,

Joseph Raffetto, M.D.

SALISBURY
This fax was received by GFI FaxMaker fax server. For more information, visit: <http://www.gfi.com> **DEFIN**

EXHIBIT **F**

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

J. BRUCE ALVERSON
ERIC TAYLOR
DAVID J. MORTENSEN
LEANN SANDERS
KURT R. BONDS
NATHAN R. REINMILLER
JONATHAN B. OWENS
KARIE N. WILSON
SEETAL TEJURA
SHIRLEY BLAZICH
JENNIFER KISSEL-MORALES

SABRINA G. MANSANAS
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ISAIAH COSTAS
JOSHUA SCHLACHTER
MORGAN LEE

OF COUNSEL
JACK C. CHERRY

REPLY TO: Las Vegas Office Reno Office

January 7, 2014

Via Facsimile – 444-4455

Benjamin Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Re: First Transit, Inc. adv. Chernikoff, et al.
Our File No.: 19969

Dear Mr. Cloward:

The purpose of this correspondence is to request that you voluntarily dismiss the claims brought by the Estate of Harvey Chernikoff in the above referenced matter. Upon filing the Complaint on May 31, 2013, Plaintiffs brought a claim for the Estate of Harvey Chernikoff, representing to the Court that Jack Chernikoff was the personal representative of the Estate of Harvey Chernikoff. However, based on the information available to our office, it is clear that Plaintiff failed to be appointed as administrator by order of a court of competent jurisdiction. As such, Jack Chernikoff, as Special Administrator of the Estate, is not a proper party pursuant to Nevada Rule of Civil Procedure 17(a) and any claims made by the Estate should be dismissed.

On August 21, 2013, our office propounded written discovery upon the Estate of Harvey Chernikoff requesting copies of any and all documentation indicating that Plaintiff Jack Chernikoff has been designated the Personal Representative and/or Special Administratrix of the Estate of Harvey Chernikoff. In response, we were provided documentation regarding Jack and Elaine Chernikoff's limited conservatorship over Harvey Chernikoff during his lifetime, which was granted in California in 1986. This documentation is/was insufficient to establish that Jack Chernikoff has been designated the Personal Representative and/or Special Administratrix of the Estate.

As such, our office sent correspondence on October 2, 2013, requesting that you provide our office with the proper documentation so as to avoid further delay in discovery. In response to our October 2, 2013, correspondence, your office represented that the documentation to support Jack Chernikoff as personal representative of the Estate of Harvey Chernikoff had been submitted to the Court and would be provided to our office once they were returned.



ALVERSON, TAYLOR, MORTENSEN & SANDERS

Page Number : 2

Continuing Letter : January 7, 2013

As such, it became clear that Plaintiffs failed to properly appoint a representative of the Estate prior to filing the Complaint.

No cause of action is lost by reason of the death of any person, but may be maintained by or against the person's executor or administrator. Nev. Rev. Stat. Ann. § 41.100. However, before suing, the executor or administrator must be appointed by order of a court of competent jurisdiction. See N.R.S. 143.060; N.R.S. 143.210; Schwartz v. Wasserburger, 117 Nev. 703 (Nev. 2001). Pursuant to Schwartz v. Wasserburger, a personal representative inherits the benefits and burdens connected with the running of any applicable statute of limitations, measured from when the cause of action first accrued in favor of the decedent. 117 Nev. 703 (Nev. 2001). As such, the applicable statute of limitations has run against any personal representative of the Estate who may now be appointed.

In addition to the misrepresentations to both Defendant and the Court, Plaintiffs have impermissibly delayed discovery in this matter. Plaintiffs should have disclosed the proper documentation regarding representation of the Estate at the outset of this matter. Further, Defendant has been actively seeking the documentation since August of 2013, to no avail. Defendants have been unable to request any of Harvey Chernikoff's medical records, as there is no support for a HIPAA release that is signed by Jack Chernikoff. Further, Jack Chernikoff's responses and verification to written discovery directed towards the Estate is invalid.

Please inform our office if you are willing to voluntarily dismiss the claims of the Estate of Harvey Chernikoff. If you are not willing to do so, we will move forward to file a motion seeking dismissal of the Estate. We look forward to hearing from you on or before January 17, 2014. If you have any questions regarding the foregoing, please feel free to contact our office.

Very truly yours,

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

/s/LeAnn Sanders

LeAnn Sanders

LS/chh

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EXHIBIT G



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SAMANTHA M. HENZ
JONATHAN D. RUTHERFORD
Professional Disability Representatives

* admitted in Nevada
* admitted in California
* admitted in Utah
* admitted in Washington
Ω admitted in Texas
* admitted in Illinois
□ Master of Laws in Dispute Resolution

January 16, 2014

Via Facsimile: (702) 385-7000

Leann Sanders, Esq.
ALVERSON, TAYLOR MORTENSEN & SANDERS
7401 W. Charleston Boulevard
Las Vegas, Nevada 89117-1401

Re: *The Estate of Harvey Chernikoff v. First Transit
Clark County District Court Case No. A-13-682726-C*

Dear Ms. Sanders:

Please find attached the Court's Order of appointing Jack Chernikoff as Special Administrator for the estate of his son, Harvey Chernikoff. Also attached are Letters of Special Administration issued by Clerk of Court, Steven D. Grierson.

Thank you in advance for your time and attention to this matter. In the interim, should you have questions comments please contact our office at your convenience.

Most sincerely,

Tina McWhorter, paralegal to
BENJAMIN P. CLOWARD, ESQ.
RICHARD HARRIS LAW FIRM

DISTRICT COURT
CLARK COUNTY, NEVADA

Steven D. Grierson
CLERK OF THE COURT

In the Matter of the Estate of)
HARVEY CHERNIKOFF, Deceased.)
_____)

Case No: P-13-079562-E
Dept. No:

LETTERS OF ADMINISTRATION

Regular Special

On the 30th day of December, 2013, an Order of the Court was entered appointing JACK CHERNIKOFF as Special Administrator of the Estate of the Decedent, and who having duly qualified is hereby authorized to act and has the authority and shall perform the duties of such Administrator.

In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

STEVEN D. GRIERSON

CLERK OF COURT

By *Chris* JAN 13 2014
Deputy Clerk Date

OATH

I, JACK CHERNIKOFF, of 940 Eagle Mountain Drive, Henderson, Nevada 89123, solemnly affirm that I will faithfully perform the duties of Administrator according to law.

J. Chernikoff
JACK CHERNIKOFF

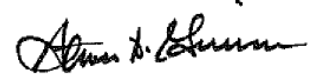
SUBSCRIBED and SWORN to before me
on this 30 day of December, 2013.

Tina McWhorter
NOTARY PUBLIC

TINA MCWHORTER
Notary Public State of Nevada
No. 05-100781-1
My appt. exp. Aug. 23, 2017

RICHARD HARRIS
LAW FIRM

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CLERK OF THE COURT

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ORDR
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
Utah Bar No. 12336
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101
Phone: (702) 444-4444
Fax: (702) 444-4455
E-Mail: Benjamin@RichardHarrisLaw.com
Attorneys for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Estate of HARVEY
CHERNIKOFF, Deceased.

CASE NO. P-13-079562-E

**ORDER FOR APPOINTMENT OF
SPECIAL ADMINISTRATOR AND
FOR ISSUANCE OF LETTERS OF
SPECIAL ADMINISTRATION**

RICHARD HARRIS
LAW FIRM

Upon the submission of a verified Petition for Special Letters of Administration representing HARVEY CHERNIKOFF who died on or about May 7, 20 July 29, 2011 2, in Las Vegas, Nevada; Decedent was, at the time of his death, a resident of the State of Nevada; Decedent's Estate has a cause of action against those responsible for injuries resulting in his death, and that the action needs to be maintained in the Eighth Judicial District Court of Nevada;

Petitioner JACK CHERNIKOFF has never been convicted of a felony; and that Petitioner is willing to act as Special Administratrix of the Estate to maintain the wrongful death action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner, JACK CHERNIKOFF, be and hereby is, appointed as Special Administrator of the Estate of HARVEY CHERNIKOFF, Deceased, and that Special Letters of Administration be issued in

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Petitioner upon his taking the oath of office, and that he may serve without the necessity of posting bond.

IT IS FURTHER ORDERED that all monies received by this estate will be placed in the attorney's trust account until further Order by the Court.

IT IS FURTHER ORDERED that the settlement of the Decedent's lawsuit is subject to this Court's approval.

DATED this 19th day of December 2013.

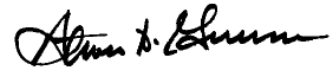

DISTRICT COURT JUDGE


Respectfully submitted by:
RICHARD HARRIS LAW FIRM

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Plaintiff

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
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(702) 384-7000

1 **NEO**
2 ALVERSON, TAYLOR,
3 MORTENSEN & SANDERS
4 LEANN SANDERS, ESQ.
5 Nevada Bar No. 000390
6 SHIRLEY BLAZICH, ESQ.
7 Nevada Bar No. 008378
8 7401 W. Charleston Boulevard
9 Las Vegas, Nevada 89117
10 (702) 384-7000
11 Attorneys for Defendants

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

%

10 The Estate of HARVEY CHERNIKOFF, Deceased;)
11 by JACK CHERNIKOFF as personal representative,)
12 individually and as heir; ELAINE CHERNIKOFF)
13 individually and as heir,)

13 Plaintiffs,

14 vs.

15 FIRST TRANSIT, INC., LAIDLAW TRANSIT)
16 SERVICES, INC. d/b/a FIRST TRANSIT; JAY)
17 FARRALES; DOES 1-10, and ROES 1-10, inclusive,)
18 Defendants.)

CASE NO. A-13-682726-C
DEPT. NO. XXIII

**NOTICE OF ENTRY OF
STIPULATION AND ORDER**

NOTICE OF ENTRY OF STIPULATION AND ORDER

21 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

22 **YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE** that on the 31st day of
23 March, 2014, the Court entered a Stipulation and Order To Dismiss The Estate of Harvey
24 Chernikoff With Prejudice in the above-entitled action.

25 ///

26 ///

27 ///


LS#19969

ALVERSON, TAYLOR, MORTENSEN & SANDERS
LAWYERS
7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

1 A copy of said Order is attached hereto.

2 DATED this 3 day of April, 2014.

3 ALVERSON, TAYLOR, MORTENSEN & SANDERS


4
5
6 By 
LEANN SANDERS, ESQ.
Nevada Bar No. 000390
7 SHIRLEY BLAZICH, ESQ.
Nevada Bar No. 008378
8 7401 W. Charleston Boulevard
9 Las Vegas, NV 89117-1401
10 (702) 384-7000
11 Attorneys for Defendants

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCPC 5(b), I hereby certify that I am an employee of ALVERSON,
14 TAYLOR, MORTENSEN & SANDERS and that on the 4 day of April, 2014, I caused to be
15 served a true and correct copy of the document described herein by U.S. mail, postage prepaid
16 addressed to the following:

17 **Document Served:** **NOTICE OF ENTRY OF STIPULATION AND**
18 **ORDER**

19 **Person(s) served:**
20 Benjamin Cloward, Esq.
21 RICHARD HARRIS LAW FIRM
22 801 S. Fourth Street
23 Las Vegas, NV 89101
Attorneys for Plaintiff

24 
25 An employee of
26 ALVERSON, TAYLOR, MORTENSEN & SANDERS