

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
Jun 11 2018 01:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

**MOTION TO EXPEDITE ANY ORAL ARGUMENT HEARING
AND DECISION**

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Attorneys for Respondents, Jack Chernikoff and Elaine Chernikoff

Respondents, Jack Chernikoff and Elaine Chernikoff (collectively, “the Chernikoffs”), by and through their counsel of record, Marquis Aurbach Coffing, Richard Harris Law Firm, and Charles Allen Law Firm, hereby move this Court to expedite any oral argument hearing and the decision in this appeal to the extent that this Court’s docket allows.

The jury verdict in favor of the Chernikoffs and against Appellants, First Transit, Inc. and Jay Farrales (collectively “First Transit”), was rendered on February 29, 2016, with the judgment entered on March 8, 2016.¹ First Transit promptly appealed the judgment, which was docketed in this Court on April 15, 2016. Since this appeal was docketed, the parties engaged in settlement discussions through the NRAP 16 settlement conference program and completed the post-trial proceedings. The briefing is now nearly complete with First Transit’s reply brief currently due on June 8, 2018. Once the briefing is complete, the Chernikoffs move this Court to expedite any oral argument hearing and the decision in this appeal to the extent that this Court’s docket allows.

NRAP 2 specifically allows this Court to “expedite its decision.” This Court has previously expedited appeals based upon accruing fines and penalties. *See, e.g., Board of County Commissioners of Clark County*, 110 Nev. 567, 568–569, 875 P.2d 1045, 1045–1046 (1994). This basis for expediting the appeal would

¹ The March 8, 2016 judgment upon the jury verdict is attached as **Exhibit 1**.

actually favor First Transit since the amended judgment totals \$16,135,787.67 and has already accrued one year of post-judgment interest.² By analogy to NRS 16.025(1) (preferential trial setting due to age),³ the Chernikoffs ask this Court to expedite this appeal. The Chernikoffs are both over 70 years of age, a condition of NRS 16.025(1), and would like to see the end of this litigation sooner rather than later. The Chernikoffs certainly understand the enormous burden of this Court's heavy caseload and, therefore, ask that their request to expedite be granted only to the extent that this Court's docket allows.

Dated this 8th day of June, 2018.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
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Las Vegas, Nevada 89145
Attorneys for Respondents,
Jack Chernikoff and Elaine Chernikoff

² The June 6, 2017 amended judgment upon the jury verdict is attached as **Exhibit 2**.

³ **NRS 16.025(1)**: "Upon the motion of a party to an action who is 70 years of age or older, the court may give preference in setting a date for the trial of the action, unless the court finds that the party does not have a substantial interest in the case as a whole."

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO EXPEDITE ANY ORAL ARGUMENT HEARING AND DECISION** was filed electronically with the Nevada Supreme Court on the 8th day of June, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

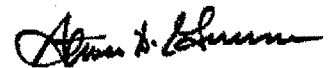
Joel D. Henriod, Esq.
Daniel F. Polsenberg, Esq.
LeAnn Sanders, Esq.
Benjamin P. Cloward, Esq.

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

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950 E. Paces Ferry Road
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/s/ Leah Dell
Leah Dell, an employee of
Marquis Aurbach Coffing

Exhibit 1



CLERK OF THE COURT

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17 *Attorney for Plaintiffs*

18 DISTRICT COURT

19 CLARK COUNTY, NEVADA

20 JACK CHERNIKOFF and ELAINE
21 CHERNIKOFF,

22 Plaintiffs,

23 vs.

24 FIRST TRANSIT, INC. JAY
25 FARRALES; DOES 1-10, and ROES 1-10
26 inclusive,

27 Defendants.

CASE NO. A-13-682726-C
DEPT. NO. XXIII

JUDGMENT UPON THE JURY
VERDICT

28 This action came on for trial before the court and the jury, the Honorable Stefany A. Miley,
District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its
verdict.¹

¹ Exhibit 1: Jury Verdict

<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input type="checkbox"/> Non-Jury Judgment Reached	<input checked="" type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 IT IS ORDERED AND ADJUDGED that Plaintiffs, JACK CHERNIKOFF and ELAINE
2 CHERNIKOFF, have and recover of Defendant, FIRST TRANSIT, INC., the following sum:

3 Pain and suffering, by Harvey Chernikoff: \$7,500,000.00

4 Greif, sorrow, loss of companionship, society,
5 Comfort, and loss of relationship suffered
6 by Plaintiffs, JACK CHERNIKOFF and
7 ELAINE CHERNIKOFF: + \$7,500,000.00

8 **Total Damages** \$15,000,000.00

9 IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff's past damages shall bear Pre-
10 Judgment interest in accordance with Lee v. Ball, 116 P.3d 64, (2005) at the rate of 3.25% per annum
11 plus 2%² from the date of service of the Summons and Complaint³ on June 7, 2013, through the date
12 of the verdict on February 29, 2016, as follows:

13 **PRE-JUDGMENT INTEREST ON PAST DAMAGES: 15,000,000.00**

14 06/07/13 through 02/29/16 = **\$2,149,631.70**
15 [(997 days) at (prime rate (3.25%) plus 2 percent = 5.25%)]
16 [Interest is approximately \$2,156.10 per day]

17 NOW, THEREFORE, Judgment Upon the Verdict in favor of the Plaintiffs are as follows:

18 JACK CHERNIKOFF and ELAINE CHERNIKOFF is hereby given Seventeen Million One
19 Hundred Forty-Nine Thousand, Six Hundred Thirty-One Dollars and 70/100 (\$17,149,631.70), which
20 shall bear interest at the current rate of 5.25% per day, until satisfied.

21 DATED THIS 8 day of March, 2016.

22 
23 DISTRICT COURT JUDGE

24 JUDGE STEFANY A. MILEY

25 Respectfully submitted:

26 CLOWARD HICKS & BRASIER, PLLC

27 BENJAMIN P. CLOWARD, ESQ.

28 ² Exhibit 2: Prime Rate as of January 1, 2013

³ Exhibit 3: Affidavit of Service upon the Defendant

EXHIBIT “1”

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**JACK CHERNIKOFF and ELAINE
CHERNIKOFF,**

Plaintiffs,

vs.

**FIRST TRANSIT, INC. JAY
FARRALES; DOES 1-10, and ROES 1-10
inclusive,**

Defendants.

**CASE NO. A-13-682726-C
DEPT. NO. XXIII**

VERDICT FORM

**FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT**

FEB 29 2016

5:21 PM

**JY. Katherine Streuber
KATHERINE STREUBER, DEPUTY**

VERDICT FORM

1
2 1. Do you find from a preponderance of the evidence that Defendant Jay Farrales
3 was negligent and that such negligence was a proximate cause of the death of Harvey
4 Chernikoff?

5 ANSWER: Yes ☒ No ☐

6
7 2. Do you find from a preponderance of the evidence that Defendant First Transit,
8 Inc. was negligent and that such negligence was a proximate cause of the death of Harvey
9 Chernikoff?

10 ANSWER: Yes ☒ No ☐

11 If you have answered "No" to questions #1 and #2 above, stop here, answer no further
12 questions, and have the foreperson sign and date this form.

13 3. Do you find from a preponderance of the evidence that Plaintiff Jack Chernikoff
14 was negligent and that such negligence was a proximate cause of the death of Harvey
15 Chernikoff?

16 ANSWER: Yes ☐ No ☒

17
18 4. Do you find from a preponderance of the evidence that Plaintiff Elaine
19 Chernikoff was negligent and that such negligence was a proximate cause of the death of
20 Harvey Chernikoff?

21 ANSWER: Yes ☐ No ☒

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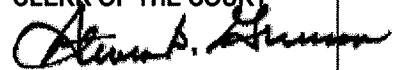
Jay Farralles	<u>0</u> %
First Transit, Inc.	<u>100</u> %
Jack Chernikoff	<u>0</u> %
Elaine Chernikoff	<u>0</u> %
Totaling	100%

Pain and suffering by HARVEY CHERNIKOFF	\$ <u>7.5 million</u>
Grief, sorrow, loss of companionship, Society, comfort, and loss of relationship suffered by Plaintiffs JACK CHERNIKOFF and ELAINE CHERNIKOFF:	\$ <u>7.5 million</u>
TOTAL	\$ <u>15,000,000</u>

Dated this 29 day of FEBRUARY, 2016.

Fred A. Gamm
FOREPERSON

Exhibit 2



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*Attorneys for Plaintiffs,
Jack Chernikoff and Elaine Chernikoff*

DISTRICT COURT

CLARK COUNTY, NEVADA

**JACK CHERNIKOFF; and ELAINE
CHERNIKOFF,**

Case No.: A682726
Dept. No.: XXIII

Plaintiffs,

vs.

**FIRST TRANSIT, INC.; JAY FARRALES;
DOES 1-10; and ROES 1-10, inclusive,**

Defendants.

AMENDED JUDGMENT UPON THE JURY VERDICT

This action came on for trial before the Court and the jury, the Honorable Stefany A. Miley, District Court Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict.¹

¹ Exhibit 1: Jury Verdict.

1 IT IS ORDERED AND ADJUDGED that Plaintiffs, JACK CHERNIKOFF and ELAINE
2 CHERNIKOFF, have and recover of Defendant FIRST TRANSIT, INC. the following sums:

3 Pain and suffering by Harvey Chernikoff: \$7,500,000.00
4 Grief, sorrow, loss of companionship, society,
5 Comfort, and loss of relationship suffered by
6 Plaintiffs, JACK CHERNIKOFF and ELAINE
CHERNIKOFF: + \$7,500,000.00
7 **Total Damages** **\$15,000,000.00**

8
9 IT IS FURTHER ORDERED AND ADJUDGED that Harvey Chernikoff's past damages
10 shall bear Pre-Judgment interest in accordance with Lee v. Ball, 121 Nev. 391, 116 P.3d 64
11 (2005) and NRS 17.130 at the rate of 3.50% per annum plus 2% from the date of service of the
12 Summons and Complaint on June 7, 2013, through the entry of the Judgment on March 8, 2016:

13 **PRE-JUDGMENT INTEREST ON PAST DAMAGES: \$7,500,000.00**

14 06/07/13 through 03/08/16 = \$1,135,787.67

15 [(1,006 days) at (prime rate (3.50%) plus 2 percent = 5.50%)]

16 [Pre-Judgment Interest is approximately \$1,130.14 per day]

17 **PLAINTIFFS' TOTAL JUDGMENT**

18 Plaintiffs' total judgment is as follows:

19 **Total Damages:** **\$15,000,000.00**

20 **Prejudgment Interest:** **\$1,135,787.67**

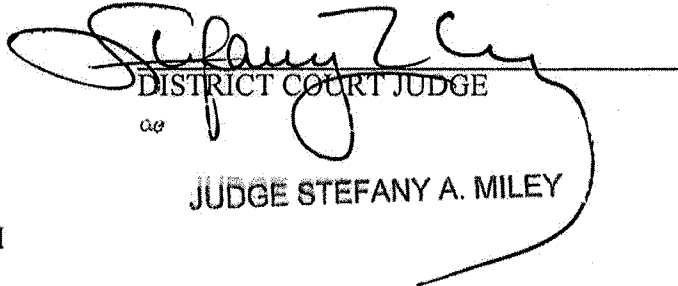
21 **TOTAL JUDGMENT** **\$16,135,787.67**

22
23 NOW, THEREFORE, Judgment Upon the Verdict in favor of the Plaintiffs are as
24 follows:

25 JACK CHERNIKOFF and ELAINE CHERNIKOFF are hereby awarded Sixteen Million,
26 One Hundred Third-Six Thousand, Nine Hundred Seventeen Dollars and 81/100
27 (\$16,135,787.67) against Defendant FIRST TRANSIT, INC., which shall bear post-judgment
28


1 interest at the adjustable legal rate from the date of the entry of judgment (March 8, 2016) until
2 fully satisfied.²

3
4 Dated this 6th day of June, 2017.

5
6 
7 DISTRICT COURT JUDGE
8
9 JUDGE STEFANY A. MILEY

8 Respectfully submitted by:

9 RICHARD HARRIS LAW FIRM

10
11 By  9466
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24 *Attorneys for Plaintiffs,*
25 *Jack Chernikoff and Elaine Chernikoff*

26
27 ² The legal interest rate according to NRS 17.130 was 5.50% at the time of the entry of the judgment on
28 March 8, 2016 and has adjusted to 5.75% as of January 1, 2017.

1 Approved³ as to form and content:

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By 

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12 *Attorneys for Defendants,*

13 *First Transit, Inc. and Jay Farrales*

14
15 [CASE NO. A682726—AMENDED JUDGMENT UPON THE JURY VERDICT]
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17
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26
27 ³ Defendants believe that this order expresses the Court's reasoning and conclusions. However,
28 defendants do not necessarily agree with, or acquiesce to, the reasoning, findings of fact, or conclusions
of law articulated in the order.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **AMENDED JUDGMENT UPON THE JURY**
3 **VERDICT** was submitted electronically for filing and/or service with the Eighth Judicial
4 District Court on the 6th day of May, 2017. Electronic service of the foregoing document shall
5 be made in accordance with the E-Service List as follows:¹

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22 /s/ Leah Dell
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24 Marquis Aurbach Coffing
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26

27 ¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
28 consents to electronic service in accordance with NRCP 5(b)(2)(D).