

IN THE SUPREME COURT OF NEVADA

NEVADA YELLOW CAB)
CORPORATION, NEVADA)
CHECKER CAB CORPORATION, and)
NEVADA STAR CAB)
CORPORATION')
Petitioners,)

vs.)

THE EIGHTH JUDICIAL DISTRICT)
COURT of the State of Nevada, in and)
For the County of Clark, and THE)
HONORABLE RONALD J. ISRAEL)
District Judge,)
Respondents,)

and)

CHRISTOPHER THOMAS, and)
CHRISTOPHER CRAIG,)
Real Parties in Interest.)

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Sup. Ct. No. 74166
Case No.: A-12-661726-C

Dept. No.: XXVIII

PETITIONERS' REPLY

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1 **A. Former Nevada Deputy Labor Commissioner’s Sworn Testimony Clearly**
2 **Establishes a Defense For Petitioners That Must Be Constitutionally**
3 **Permitted To be Presented At Trial On February 5, 2018**

4 Senior Litigation Counsel, Tamer B. Botros, Esq., travelled to Pittsburgh,
5
6 PA to take the deposition of former Nevada Deputy Labor Commissioner, Keith
7 Sakelhide which was conducted on November 15, 2017. Based on Commissioner
8 Sakelhide’s testimony, it clearly without a doubt establishes a legitimate,
9
10 reasonable and viable defense for Petitioners which they must be constitutionally
11 permitted to be present to the jury on February 5, 2018 at trial. Commissioner
12 Sakelhide’s deposition was revealing and explained in detail the confusion,
13
14 uncertainty and conflict that the Office of Nevada Labor Commissioner found
15
16 itself in when it had to try and reconcile NRS 608.250 (2)(e) with the 2006 Nevada
17 Constitutional Minimum Wage Amendment (MWA) and at the same time provide
18
19 guidance to employers. His testimony will provide a defense for Petitioners which
20
21 the jury must be constitutionally permitted to hear; otherwise, a grave
22
23 constitutional injustice will occur that will likely have a detrimental consequence
24
25 on the entire great State of Nevada. Commissioner Sakelhide was a Nevada Deputy
26
27 Labor Commissioner from 2007-2013 and was working under Labor
28
Commissioner Michael Tanchek in carrying out his directives for that office.

1 Q: Did your office levy or institute any type of penalties at any time
2 when you were Deputy Labor Commissioner against my clients, Yellow Checker
3 Star?
4

5 A: **I don't believe so, no.** (See **PA0065**, lines 7-12)
6 This is quiet telling because under NRS 607.160 (2) the Office of Nevada Labor
7 Commissioner has the power to enforce any labor laws pertaining to minimum
8 wage in Nevada.
9

10 Q: Did you or anybody at your office, without receiving any type of
11 claim or Complaint on your own initiative under NRS 607.160, Subsection 2, take
12 any action against my client, Yellow Checker Star Transportation, to enforce any
13 labor law or regulation pertaining to minimum wage in Nevada during your tenure
14 as Deputy Labor Commissioner?
15

16 A: **No.**
17

18 Q: If you look in Subsection 7, it's an interesting Subsection of NRS
19 607.160. Did you, as Deputy Labor Commissioner from 2007 to 2013, or anybody
20 from your office, for that matter, present any facts to the Attorney General or
21 anybody in the Office of Attorney General regarding my client violating any labor
22 laws pertaining to minimum wage in the State of Nevada?
23
24
25

26 A: **No, we didn't.** (See **PA0070**, lines 2-18)
27
28

1 Commissioner Sakelhide testified that no notice was given by his office to
2 employers including YCS not to follow NRS 608.250 which is a very powerful
3 defense that Petitioners must be allowed to present to the jury on February 5, 2018.
4

5 Q: You mentioned something about notice and adequate notice. And I
6 just want to ask you, Commissioner Sakelhide, at any time as Deputy Labor
7 Commissioner for the Office of Nevada Labor Commissioner, did you advise
8 employers that they cannot, can no longer follow NRS 608.250, Subsection 2E, the
9 exemption to protect cab drivers, and they are no longer to follow that, and they
10 need to follow what the Constitutional amendment had prescribed, meaning the
11 2006 Nevada Constitutional Minimum Wage Amendment?
12
13

14
15 A: **No, I didn't. And for a simple - - well, several reasons. One is**
16 **that provision was still on the books. As an administrative agency, we lacked**
17 **authority to interpret a Constitutional amendment in a way that would**
18 **remove that existing provision from the statute. Again, what we would do is,**
19 **and, again, this is what I tasked, I did and tasked the investigators to do**
20 **whenever they had any contact with the employers is to let them know that**
21 **that was an issue that was being litigated. And, again, we weren't going to give**
22 **them - - you know, we were precluded from providing anyone with legal**
23 **advice one way or the other. Our Crystal ball, frankly, was a little foggy as to**
24
25
26
27
28

1 **what the Court would ultimately do.** (See **PA0076**, lines 9-25 and **PA0077**, lines
2 1-11)

3 Under NRS 607.160 the office of Labor Commissioner was tasked with enforcing
4 minimum wage laws in Nevada.
5

6 Q: I just want - - for the record, Commissioner Sakelhide, did you get a
7 chance to review what's been marked as Exhibit No. 2 in front of you, NRS
8 607.160?
9

10 A: **Yes. I quickly read through it.**
11

12 Q: Okay. Does it refresh your recollection of what the Office of Nevada
13 Labor Commissioner is tasked to do?
14

15 A: **It confirmed what my understanding was.**

16 Q: Of course. I just want to make sure we're on the same page.
17

18 A: **Of course.**

19 Q: So it confirmed your understanding of what the office was set up to
20 do?
21

22 A: **Exactly.**

23 Q: And what its responsibilities and duties and obligations under the law
24 is?
25

26 A: **Exactly.**
27
28

1 Q: So having established a foundation in that, when it says the Labor
2 Commissioner, Subsection (a), 1(a), shall enforce all labor laws of the State of
3 Nevada, to you at the time as Deputy Labor Commissioner, what did that mean?
4

5 A: **Oh. Basically, any law that fell within the jurisdiction of the**
6 **Labor Commissioner, we would enforce.**
7

8 Q: Would that mean minimum wage issues?

9 A: **Yes. That was the primary responsibility of the office of Labor**
10 **Commissioner or the vast majority of the matters that came before us dealt**
11 **with minimum wage laws.**
12

13 Q: Subsection 2 of NRS 607.160 says if the Labor Commissioner has
14 reason to believe that a person is violating or has violated a labor law or regulation,
15 the Labor Commissioner may take any appropriate action against the person to
16 enforce the labor law or regulation, whether or not a claim or complaint has been
17 made to the Labor Commissioner concerning the violation? Do you see that?
18
19

20 A: **Yes.**
21

22 Q: Based on your reading of Subsection 2, of NRS 607.160, what does
23 that mean?
24

25 A: **Well, basically, two things. One is - - well, simply in addition to**
26 **responding to a wage claim if you believe there was a violation by either an**
27
28

1 **employer or group of employers, we had authority to, basically, investigate**
2 **those matters even absent a wage claim.**

3 Q: Meaning there doesn't necessarily need to be a wage claim made; you
4 on your own initiative, through your own investigatory enforcement powers, had
5 the power under Nevada law at the time as Deputy Labor Commissioner to
6 lawfully institute investigations of any entity or person you suspect of violating
7 any labor laws in Nevada; correct?

8
9
10 A: **That's true.**

11
12 Q: In particular, that would mean that you would have the power to
13 investigate any person or entity that you believe is violating minimum wage laws
14 in the State of Nevada?

15
16 A: **That's correct.** (See **PA0067**, lines 7-25, **PA0068**, lines 1-25,
17 **PA0069**, lines 1-18)

18
19 As the state agency tasked with enforcing Nevada labor laws which included
20 allegations of violations of Nevada minimum wage laws, which was the "primary
21 responsibility," the Office of Nevada Labor Commissioner had the power to
22 investigate Petitioners and levy fines and make any appropriate determinations as
23 to their conduct upon investigation. In this case, that simply did not occur because
24 the Office of Nevada Labor Commissioner found absolutely no basis to even
25 commence an investigation against Petitioners. Petitioners submit that this
26
27
28

1 powerful evidence must be constitutionally permitted to be presented to the jury as
2 a defense to the allegations that have been made by Real Parties In Interest. Failure
3 to present this powerful defense, would be a grave constitutional injustice not only
4 on Petitioners, but on everyone that would be subject to a civil suit under NRS
5 608.250 exemptions in the State of Nevada.
6

7
8 Furthermore, at the time in question pertaining to this litigation prior to
9 Thomas 1 (2014), the Office of Nevada Labor Commissioner was enforcing the
10 exemption pertaining to the taxicab and limousine drivers under NRS 608.250
11 (2)(e).
12

13 Q: Would you agree with me that what I'm about to read, I'm going to
14 read the list for the record, those individuals who would be working in those
15 particular jobs would be, under Nevada law, exempt from minimum wage?
16

17 A: **That's correct.**
18

19 Q: And is that what you understood and you were interpreting Nevada
20 law as Deputy Labor Commissioner during your tenure in Nevada?
21

22 A: **That is how we applied this provision.**
23

24 Q: So, and when you say "applied," that means enforced; correct?
25

26 A: **Yes.**
27

28 Q: First starts out with casual babysitters; do you see that?
29

A: **Yes.**

1 Q: That would mean that under Nevada law, casual babysitters would be
2 exempt from minimum wage laws and enforcement by your agency; correct?

3 A: **That's correct.**

4
5 Q: Subsection B where it has domestic service employees who reside in
6 the household where they work; do you see that?

7
8 A: **Yes.**

9 Q: That means those individuals would be exempt from minimum wage
10 laws that your agency would be enforcing; correct?

11
12 A: **That's correct.**

13 Q: Subsection C, outside salespersons who earnings are based on
14 commissions; do you see that?

15
16 A: **Yes.**

17 Q: That would mean that those individuals would be exempt from
18 minimum wage laws being enforced by your agency; correct?

19
20 A: **That's correct.**

21 Q: Subsection D, employees engaged in agricultural pursuit for an
22 employer who did not use more than 500 days of agricultural labor any calendar
23 quarter of the preceding calendar year. Do you see that?
24

25
26 A: **Yes.**
27
28

1 Q: That would mean that those individuals under Nevada law would be
2 exempt from minimum wage laws enforced by your agency; correct?

3 A: **That's correct.**

4 Q: Subsection E, taxicab and limousine driver; do you see that?

5 A: **Yes.**

6 Q: That would mean that those individuals such as taxicab drivers and
7 limousine drivers would be exempt from minimum wage - -
8

9 A: **That's correct.**

10 Q: - - being enforced by your agency?

11 A: **Yes.**

12 Q: Subsection F, Subsection F, persons with severe disabilities, whose
13 disabilities have diminished their productive capacity in a specific job and who are
14 specified in certificates issued by the rehabilitation division of Department of
15 Employment Training and Rehabilitation; do you see that?
16
17
18
19

20 A: **Yes.**

21 Q: That would mean that those persons would be exempt from minimum
22 wage under Nevada law being enforced by your agency; is that correct?
23

24 A: **That is correct.**

25 Q: Commissioner Sakelhide, I know I mentioned exempt, but when I say
26 "exempt," what does that mean to you?
27
28

1 A: **Well, that would mean that if there was a wage claim that was**
2 **filed by somebody that fell into one of those categories, that the minimum**
3 **wage provisions, we would not apply the minimum wage provisions to those**
4 **wage claims.**

6 Q: Would that also mean that employers who employ these individuals
7 such as casual babysitters, domestic service employees, outside salespersons,
8 agricultural workers, taxicab and limousine drivers, and entities who employ
9 persons with severe disabilities, they would be compliant with Nevada law if they
10 do not pay minimum wage under Nevada law?
11

13 A: **Yeah, with regard to Nevada law, that would be true.** (See
14 **PA0081**, lines 5-25, **PA0082**, lines 1-25, **PA0083**, lines 1-25 and **PA0084**, lines 1-
15 13)
16
17 Petitioners must be allowed to present a defense at trial. The fact that the Office of
18 Labor Commissioner was recognizing NRS 608.250 (2)(e) as valid law that it was
19 enforcing, supports Petitioners' defense of reasonable and legitimate reliance on
20 the Office of Labor Commissioner's guidance.
21

23 Commissioner Sakelhide also testified that the Office of Labor
24 Commissioner relied on the Lucas v. Bell Trans, 2009 WL 2424557 (D. Nev.
25 2009) decision by Judge Jones and it was reasonable for employers at the time to
26 rely on that decision as well.
27
28

1 Q: And when there is not a Nevada or a State Supreme Court decision on
2 a particular issue, and the Federal District Court is presented with an issue of first
3 impression in the state because of jurisdictional issues and because it hadn't yet
4 made its way through the State Courts all the way to the State Supreme Court,
5 when you have a - - you're familiar with an Article 3 judge?
6

7
8 A: **Uh-huh, yes.**

9 Q: Is that yes? Okay. I just wanted to be clear. They are appointed for
10 life?
11

12 A: **Right.**

13 Q: When you have a lawful order from a United States Federal District
14 Court judge that rules on an issue that hasn't been decided at the time by the
15 Nevada Supreme Court, where he in his order states, the Nevada Attorney
16 General's opinion does not necessarily carry weight with this Court, what did that
17 mean to you when you read that?
18

19
20 A: **Well, quite simply, an AGO was an advisory opinion.**

21
22 Q: What does that mean by AGO is an advisory opinion?
23

24 A: **An Attorney General's opinion is an advisory opinion. It's not
25 one that binds a Court to follow.**

26 Q: When you read that at the time, Commissioner Sakelhide, did you
27 follow that opinion?
28

1 A: **The - - which opinion, the AGO opinion or the opinion of - -**

2 Q: The opinion of Judge Jones, basically that he said - - you mentioned
3 you read side by side the Nevada Attorney General opinion of 2005 by then
4 Attorney General Brian Sandoval and then you read the order from Judge Jones,
5 United States Federal District Court judge of Nevada in Lucas v. Bell Trans of
6 2009, after you read them, the first AG opinion in 2005 and then the 2009 order,
7 whichever order - -
8
9

10 A: **Of Course.**

11 Q: It is irrelevant to me for this line of questioning, but when you read
12 them side by side, after you had read them, and as somebody at the time who
13 would have been practicing for over 20 years in your position, in your capacity in
14 terms of all the extensive legal interpretations you've done starting from first in
15 your career on Capitol Hill, did you, when you read that, did you follow that
16 opinion of Judge Jones, that he is ruling that the Nevada Attorney General's
17 opinion does not necessarily carry weight with this Court? Did you follow that?
18
19
20
21

22 A: **I understand your question. What I did was have a discussion**
23 **with Commissioner Tanchek and strongly encouraged him to run both of**
24 **these by our AG to get directive as to what we should do, whether we should**
25 **continue the practice or make a decision on way or the other as to whether**
26 **this was a final directive that we should - - that we would then take a position**
27
28

1 **that 250 clearly survive the Constitutional amendment and, after having that**
2 **discussion with him, it was later, we were later or I was later directed to**
3 **continue the practice.**

4
5 Q: The practice of?

6 A: **Of taking the wage claims, holding those in abeyance until they're**
7
8 **- - until one of two things happened, either any period of appeal of this**
9 **decision was exhausted or there was a final decision that was rendered by the**
10 **Nevada Supreme Court on the matter. I didn't know what the next step was**
11 **going to be, whether it would be appealed, whether the Federal District Court**
12 **would ask for the input of the Nevada Supreme Court, which could happen.**
13
14 **So I wasn't really - - we weren't really sure what the next step would be.**

15
16 Q: Okay.

17 A: **So, again, we simply continued the process.**

18 Q: Understood, Commissioner. But you did not, in any way, advise
19 employers to follow, after reading the Lucas v. Bell decision, after reading where it
20 says the Nevada Attorney General's opinion does not necessarily carry weight with
21 this Court, on Page 10 of 18, Line 23, you didn't advise employers to follow the
22 2005 Nevada Attorney General's opinion?
23
24

25
26 A: **No. We continued in the same vein. We didn't advise them to ignore**
27 **the provisions or we didn't tell them that Judge Jones' decision resulted in 250**
28

1 clearly surviving the Constitutional amendment. We simply told people we
2 were continuing the same process and that there was still - - there was still
3 question as to what was going to happen with regard to whether 250 survived
4 Constitutional muster. (See PA0103, lines 7-25, PA0104, lines 1-25, PA0105,
5 lines 1-25, PA0106, lines 1-25, PA0107, line 1)
6

7
8 There was no written notice provided by the Office Of Labor Commissioner of the
9 uncertainty, confusion and conflict that involved NRS 608.250(2)(e) and the
10 MWA, which is a crucial point to present to the jury at trial on February 5, 2018
11 and hence Petitioners must be allowed to present a defense to the jury otherwise
12 risk a U.S. Constitutional violation. Litigants are constitutionally entitled as a
13 matter of due process to present a defense to allegations in civil suits at trial in
14 front of a jury.
15
16

17
18 Q: What about notice to employers; did you provide any formal notices
19 to employers about the conflict that your agency was determining existed with the
20 Nevada minimum wage law?
21

22 A: **Did I, no.**

23 Q: No, no, no. Did anybody in your office?
24

25 A: **To be honest, I don't know. I don't recall any. There may have**
26 **been.**

27 Q: Who would have been - -
28

1 A: **That, obviously, would have been Commissioner Tanchek.**

2 Q: Okay. So he would have been the person that if I wanted to get an
3 answer whether or not him or his office, either at your direction or somebody else,
4 that he tasked, for example, saying, hey, I am the Commissioner, Michael
5 Tanchek, just using an example, I am hereby directing you to advise all employers,
6 here is the notice to give to them, that they now no longer follow NRS 608.250?
7

8 A: **There's a formal process that, advisory opinion of the Labor
9 Commissioner to be issued. I don't believe there was any formal advisory
10 opinion issued by Commissioner Tanchek on this matter.**
11

12 Q: One way or the other?
13

14 A: **One way or the other.**
15

16 Q: Okay. So I understand one way or the other. Was there any type, as
17 far as you know, and if you don't, that's understandable and you just let me know
18 who in your view would know, whether a notice went out to employers from the
19 office of Nevada Labor Commissioner indicating to them, advising them,
20 informing them, oh, by the way, there is a conflict - -
21

22 A: **No. The only person - -**
23

24 Q: - - of the law of Nevada minimum wage, this issue is in flux, we are
25 waiting for a court of competent jurisdiction to decide this matter?
26
27
28

1 **A: I don't believe it was. The only person that would be able to do**
2 **that, given what Commissioner Tanchek, Commissioner Towler's**
3 **management style was would be the Labor Commissioner.** (See **PA0107**, lines
4
5 **14-25, PA0108**, lines 1-25, **PA0109**, lines 1-5)

6 Q: Understood, Commissioner Sakelhide. Would you agree with me
7
8 that, since you were tasked with this directive, that any notice that would be sent
9
10 out to employers, one way or the other, about whether to continue following NRS
11 608.250 or not or, oh, by the way, the current State of Nevada minimum wage law
12 is in conflict and in flux, and if you have any questions, you know, please call so
13
14 and so, that if such notice were to be sent out, you would have been involved, not
15
16 necessarily in just sending it out, but in at least some type of a discussion because
17
18 of your position at the time as Deputy Labor Commissioner?

19 **A: Well, again, from a certain point forward that I was involved in**
20 **608 matters, I would say the answer would be yes. There was a period of time**
21 **before that I was limited to really 338 matters. I might not be. Or there was**
22 **also a period of time that was post the issue, post the Constitutional**
23 **amendment and my tenure that things may have gone out.**

24
25 Q: Sure.

26 A: **So, again - -**
27
28

1 Q: No, no. I'm talking about, specifically, here's the time - - and I
2 appreciate that.

3 A: **I just want to be specific as to the timeframe.**

4 Q: And you are, and I'm going to be even more specific.

5 A: **Go ahead.**

6 Q: Thank you, Commissioner. I'm talking about in 2009 after you had
7 presented Commissioner Michael Tanchek as well as the Deputy Attorney General
8 Diana Hegeduis, I mess up her name all the time, her, after - - would you agree
9 with me that that period of time, now that you have been tasked with collecting
10 information and disseminating it to the Labor Commissioner Michael Tanchek as
11 well as the Deputy Attorney General, Dianna Hegeduis?
12
13
14
15

16 A: **Hegeduis.**

17 Q: Hegeduis. I'm going to get it right one time. That you would have
18 been, at the very least, if such notices were to be sent out to employers about the
19 conflict of the Nevada minimum wage law, the influx and how the Office of Labor
20 Commissioners are waiting on a court of competent jurisdiction to fully and finally
21 resolve this issue, that you would have been the one who would have been
22 involved and, at the very least, discussions on what would be contained in such a
23 notice?
24
25
26
27
28

1 I understand that I may be subject to sanctions in the event that the accompanying
2 Reply is not in conformity with the requirements of the Nevada Rules of Appellate
3 Procedure.
4

5 DATED this 22nd day of November, 2017.

6 YELLOW CHECKER STAR
7 TRANSPORTATION CO. LEGAL DEPT.

8 /s/ Tamer Botros

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CERTIFICATE OF SERVICE

The undersigned certifies that on November 22nd, 2017, service of the foregoing, **PETITIONERS' REPLY** and **PETITIONERS' REPLY APPENDIX** was made by depositing same in the U.S. mail, first class postage, prepaid, addressed as follows:

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