

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

A CAB, LLC; AND A CAB SERIES, LLC,

Appellant,

vs.

MICHAEL MURRAY; AND
MICHAEL RENO, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Respondents.

Electronically Filed
Supreme Court No. 77050
Oct 23 2020 02:47 p.m.
Elizabeth A. Brown
District Court No. A-13-659926-C
Clerk of Supreme Court

**APPENDIX TO
RESPONDENTS' ANSWERING BRIEF
VOLUME VI OF VI**

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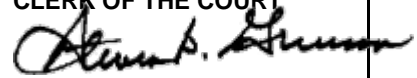
Doc. No.	Description	Vol.	Bates Nos.
1	Plaintiffs' Supplemental Brief Re: Motion to Compel Production of Documents (first heard on 3/18/15) filed November 16, 2015	I	RA00001– RA00191
2	Transcript of Hearing November 18, 2015	I	RA00192– RA00223
3	Order on Discovery Commissioner's Report and Recommendation filed March 3, 2016	II	RA00224– RA00229
4	Transcript of Hearing April 8, 2016	II	RA00230– RA00265
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8	Plaintiffs' Motion to Impose Sanctions Against Defendants for Violating Order of March 9, 2017 and Compelling Compliance with that Order filed July 12, 2017	III	RA00443– RA00496
9	Plaintiffs' Motion for Partial Summary Judgement with Declaration of Plaintiffs' Counsel and Exhibits (through Exhibit "C") filed November 2, 2017	III	RA00497– RA00637
10	Plaintiffs' Motion for Partial Summary Judgement with Declaration of Plaintiffs' Counsel and Exhibits (portion Exhibit "D" only) filed November 2, 2017	IV	RA00638– RA00871
11	Plaintiffs' Motion for Partial Summary Judgement with Declaration of Plaintiffs' Counsel and Exhibits (portion Exhibit "D" through "J" only) filed November 2, 2017	V	RA00872– RA01068
12	Defendants' Objections to Discovery Commissioner's Report & Recommendations filed November 13, 2017	V	RA01069– RA01088

13	Plaintiffs' Response to Defendants' Objections to Discovery Commissioner's Report & Recommendations filed November 22, 2017	V	RA01089– RA01104
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TRAN

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

MICHAEL MURRAY, et al,)	CASE NO. A-12-669926
)	
Plaintiffs,)	DEPT. NO. I
)	
vs.)	
)	
A CAB TAXI SERVICE, LLC, et al,)	
)	
Defendants.)	

BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE
WEDNESDAY, SEPTEMBER 26, 2018

TRANSCRIPT RE:
DEFENDANT'S EX-PARTE MOTION TO QUASH WRIT OF EXECUTION
AND, IN THE ALTERNATIVE, MOTION FOR PARTIAL STAY
OF EXECUTION ON ORDER SHORTENING TIME

APPEARANCES:

For the Plaintiffs:	LEON GREENBERG, ESQ. DANA SNIEGOCKI, ESQ.
For the Defendants:	ESTHER C. RODRIGUEZ, ESQ. MICHAEL K. WALL, ESQ. JAY A. SHAFER, ESQ.
For Non-party Wells Fargo Bank:	KELLY H. DOVE, ESQ.
ALSO PRESENT:	CREIGHTON J. NADY

RECORDED BY: Lisa Lizotte, Court Recorder

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 26, 2018, 11:11 A.M.

2 * * * * *

3 THE CLERK: Page 10, Michael Murray versus A Cab Taxi Service. Case
4 Number A669926.

5 (Briefly off the record while the Court handles another matter)

6 THE COURT: Good morning.

7 MR. SHAFER: Good morning.

8 THE COURT: My, we have a full house today. Have counsel already
9 entered their appearances?

10 MR. GREENBERG: Leon Greenberg and Dana Sniegocki for plaintiffs,
11 Your Honor.

12 MS. SNIEGOCKI: Good morning.

13 MS. DOVE: And, Your Honor, Kelly Dove on behalf of Wells Fargo Bank.
14 We're not a party.

15 THE COURT: Good morning.

16 MS. DOVE: Good morning.

17 MR. SHAFER: Good morning. Jay Shafer for defendants.

18 MS. RODRIGUEZ: Esther Rodriguez, good morning, for the defendants.

19 MR. WALL: And Michael Wall for the defendants. Good morning, Your
20 Honor.

21 THE COURT: Good morning. There are two matters that are at issue or
22 partly at issue, only one of which is calendared and that's the defendants' motion to
23 quash the writ of execution or for a partial stay of execution. In response the plaintiff
24 has filed not only a response to that motion but a countermotion for appropriate

1 judgment enforcement relief in which any number of tools are suggested. This has
2 all happened very quickly. The defense motion is on an order shortening time. The
3 countermotion for appropriate judgment enforcement relief is even quicker. I don't
4 know exactly when that was filed. My chambers copy is not a file-stamped copy.
5 But at any rate, perhaps recognizing that, the timing here, the plaintiff has suggested
6 that we may need to have a different date for hearing on the countermotion, which
7 I agree with, and suggests -- well, much of what was said in the motion itself is just
8 taking what was said in opposition to the defense motion and taking it from a shield
9 to a sword.

10 It seems to me -- I mean, I recognize the gravity of the situation for the
11 defendant's business. I think that we must deal with the motion to quash the writ of
12 execution, and to the extent possible it seems to me that we should put the plaintiffs'
13 countermotion off, allow an opportunity to respond and then have a hearing on that.

14 Does anybody think differently?

15 MR. SHAFER: No.

16 MR. GREENBERG: Your Honor, my concern with the pending motion to
17 quash is the record before the Court being inadequate. This is discussed in my
18 brief, Your Honor. So I don't disagree with the Court's concern about the gravity of
19 the situation and the need to, of course, fairly resolve defendant's request for relief,
20 but I do believe that standing here today there clearly is an inadequate record
21 before the Court to grant the relief they're requesting. And this is discussed in my
22 response, Your Honor.

23 THE COURT: Okay.

24 MR. SHAFER: I have no qualms in continuing the countermotion. I think

1 that's appropriate. This is obviously somewhat of a confusing issue that needs to be
2 addressed according to due process. And I think that's the crux of our motion and
3 I'm happy to --

4 THE COURT: All right.

5 MR. SHAFER: -- answer your questions or go ahead if the Court is ready.

6 THE COURT: Yeah, go ahead. This is not one where I'm prepared to say,
7 well, this is the way I'm leaning and I'll just tell you what I'm thinking because this --
8 I don't -- well, at any rate, go ahead.

9 MR. SHAFER: Yeah. No, I appreciate that. And I'm glad that the Court
10 recognizes the gravity of the situation. This writ, which was executed upon separate
11 series LLCs has withheld the capital, the lifeblood of these companies. If the writ is
12 not quashed and the funds are not returned, payroll will not be met. The company
13 will fold. Because of its nature as a taxicab licensee, it cannot borrow against its
14 license. It cannot declare bankruptcy. It cannot take the appropriate remedies that
15 might otherwise be appropriate in this circumstance to try to protect against these
16 issues. If the writ --

17 THE COURT: Now you've raised something that I'm not familiar with. They
18 cannot declare bankruptcy, either?

19 MR. SHAFER: That's my understanding is that if it declared bankruptcy,
20 it forfeits its license.

21 THE COURT: Ahh. I see. Okay.

22 MR. SHAFER: So while it technically can --

23 THE COURT: Uh-huh.

24 MR. SHAFER: -- it would cease to be as an operating entity.

1 THE COURT: You know, I do not know that much about bankruptcy. I
2 always referred those questions to my brother. But it strikes me, knowing how all
3 powerful the bankruptcy judges tend to be, it strikes me as odd that they would allow
4 that in the estate before them, you know. But, whatever, that's perhaps a question
5 for a different day.

6 MR. SHAFER: Yeah. And I think that's an interesting question. Obviously
7 it's a statutory issue because it's a privilege license. But the matter is that if -- even
8 if the license were not forfeited, employees would go elsewhere, the company would
9 fold. But it's really a simple issue. Nevada has enacted a statutory regimen for the
10 issuance of Series Limited Liability Corporations. The only distinction that's set out
11 in the statute, it's NRS 86.296 and some of the corresponding records, the only
12 difference between a series LLC and a normal LLC is the lack of requirement to
13 register that LLC with the Nevada Secretary of State and pay the additional filing
14 fee. That is the only difference. The statute clearly provides that it can have one
15 or multiple members, that they can have one or no voting rights or differential voting
16 rights. They are separate LLCs. The only restriction is that it has to have the same
17 registered agent and if it conducts business it needs to register as a dba with the
18 appropriate licensing authority if it's conducting business with the public. But it is a
19 separate statute and the statute is very clear that --

20 THE COURT: Did you -- I think one of you submitted a copy of the statute
21 with it. Was that yours?

22 MR. SHAFER: Yeah. And I -- I think that was the defense -- or plaintiff's
23 counsel that submitted the statute.

24 MR. GREENBERG: Yes, I did, Your Honor. At Exhibit B, I believe, you

1 have -- or Exhibit C you have a copy of the Nevada statute for comparison and
2 Exhibit D is a copy of the Texas statute, and the difference is important to discuss.
3 But let me not interrupt.

4 MR. SHAFER: But the issue here is that the debts, liabilities of one series
5 are enforceable against that series only, just like any other LLC. They are separate
6 and distinct entities. While it is possible to pierce the corporate veil to go from one
7 entity to the other or from a member to an entity, there's due process that has to
8 be involved in that. It's not enough to say that because they share a name that
9 they are involved or that they are connected. If I have a judgment against myself,
10 Jay Shafer, they can't go to my brother, Tim Shafer, and try to collect against him
11 because we're related and share the same name. We are distinct individuals.

12 Now, there is a process for piercing the corporate veil. There is a
13 process for amending. There is a process for dealing with all these issues. We are
14 not at that step. What they have done is collared somebody, a random third party,
15 and are shaking them down for their money and saying prove to me that you don't
16 have to pay me the money. That is not the way our due process works and it's not
17 the way the statute works. NRS 86.296 says that they are a separate company
18 and it has -- the series LLC has the same rights as any other.

19 Plaintiff tends to argue that this is kind of an umbrella subsidiary
20 relationship and that because A Cab owns the series that they are entitled to get
21 the assets of the subsidiary company. First, that's incorrect. They can't execute
22 on the stock because this an LLC, which has membership interest. Second, A Cab
23 does not own the sub series LLCs. It does not have an ownership interest. It is
24 not a member in those series LLCs. It is complete and distinct from those two.

1 The remedy that might be --

2 THE COURT: Well, then let me go ahead and throw one hand grenade
3 that Mr. Greenberg lobbed, and that is then what is the standing of any of the
4 named defendants to raise objection on behalf of an entirely separate corporate
5 entity?

6 MR. SHAFER: We are here to try to protect the business relationships of
7 the series LLC and because this was the quickest way we knew how to do that,
8 because justice delayed in this situation is justice denied.

9 THE COURT: Who would be the -- for example, I guess the members,
10 who would be the managing member, for example, of any of the series LLCs?

11 MR. SHAFER: Well, I think that's been clearly developed in the record and
12 that's one of the issues of concern here. During the deposition of Mr. Creighton J.
13 Nady --

14 THE COURT: Uh-huh.

15 MR. SHAFER: -- last July, it was clearly disclosed to the Court the
16 corporate organization of this business entity and that he was the member of the
17 series LLCs. So that is -- he is the member of the different series LLCs. But a
18 co-membership interest or having the same member doesn't conflate the two LLCs.
19 You can be a member of multiple LLCs without piercing the corporate veil as long
20 as you maintain the corporate books and records and do all of the things that you're
21 supposed to do, which they have done in this instance.

22 THE COURT: Is the -- am I correct -- I don't recall, frankly, if this was
23 argued by Mr. Greenberg, but the way the series LLCs appear to be set up is it
24 takes portions or aspects of the LLC that is in this case of our defendant LLC and

1 divides the business of that LLC off into separate entities, separate series.

2 MR. SHAFER: That is incorrect in that it takes the business of the LLC and
3 divides them up, because it assumes that an enterprise or an LLC can only be one
4 business, it has to do the entire thing. It is correct, as I understand it, that the
5 series LLCs are engaged in different businesses. One business owns the cabs.
6 One business --

7 THE COURT: And these are the cabs that are used by the defendant
8 corporation or defendant LLC here?

9 MR. SHAFER: Yeah. So there is a different -- and those are all -- the
10 accounting is there. They are leased or otherwise there is a financial arrangement,
11 and I can defer to counsel about how those are set up, but there is an appropriate
12 accounting to where the financial records of those entities are set up. For example,
13 I, as an attorney, can subcontract to do contract work or do something for somebody
14 else. I don't have to take on the entire representation if I contract with another
15 firm. It doesn't make me the attorney of record if I, you know, draft a brief under
16 somebody else's license. It doesn't separate these out. We have the same
17 separation here. We have different parts, different entities that are set up to allocate
18 this. The reason for the series LLC is not provide for a limitation of liability. It's not
19 taking advantage of the plaintiff to engage with these -- you know, what the statute
20 provides, any more than it would be for them to set up 150 separate LLCs or to
21 set up a trust or to engage in the other statutory established remedies for corporate
22 organizations that are established by statute.

23 THE COURT: Was this reorganization, I believe it was in this case -- I don't
24 know, maybe reorganization is the wrong word, but the series LLCs were formed

1 and registered, is that the right word, with the Secretary of State sometime in 2012,
2 is that correct?

3 MR. SHAFER: It is my understanding that this set of series LLCs were
4 established in February of 2012; sometime early in 2012.

5 THE COURT: And was that before this lawsuit was started?

6 MR. SHAFER: I believe that's correct, Your Honor.

7 THE COURT: Okay. All right.

8 MR. SHAFER: And obviously that goes to another issue which is pending
9 before the Court regarding the amendment to the judgment's name, A Cab versus
10 A Cab Series LLC. But that's really not what we're here for.

11 THE COURT: Right.

12 MR. SHAFER: We are not here to contest the writ of execution as it goes
13 to A Cab. That is a separate issue and a bond and the issue before the Court. We
14 are asking really for the Court to quash the writ of execution as it relates to third
15 parties. It is long-established case law going back to the 1900s that when you seek
16 to obtain assets of a third party which are claimed belong to the judgment debtor,
17 that you have to initiate a separate legal action to bring those third parties into the
18 jurisdiction of the Court. I mean, we can go back to -- I think it was Hagerman v.
19 Tong Lee in 1877, Persing v. Reno Board of Trade, 30 Nev. 342, and as recently as
20 Greene v Eighth Judicial. That has been a very clear black letter law that you must
21 file a separate action against a third party in possession of property of the judgment
22 debtor.

23 So if they're claiming this money belongs to A Cab or should be A Cab's
24 or whatever their claim is, they have to initiate a separate legal action. It's not enough

1 to send a writ of execution and bamboozle the garnishee or somehow mislead them
2 in a way that causes them to hold the funds and then somehow convince the Court
3 to bypass the exemption process and other things to get them to transmit them to
4 plaintiff's trust account where they can be held. One, that isn't what the law says,
5 and two, that causes significant harm, as we've addressed with the Court.

6 There really is no basis to conflate it. I know there was some argument
7 about Tax ID's or other governmental identifications. That doesn't separate them.
8 If I have an LLC that I elect to be taxed as an individual representative, I don't have
9 a separate Tax ID for my LLC, but that doesn't mean that they aren't separate
10 entities from myself personally, as long as I provide the appropriate accounting.
11 As we know, the Federal Government does not always recognize series LLCs. That
12 doesn't change the fact that the Nevada statute --

13 THE COURT: So does that mean that there are separate tax returns for
14 each of the series LLCs?

15 MR. SHAFER: I don't know that, the answer to that, Your Honor.

16 THE COURT: I see Mr. Nady shaking his head.

17 MR. SHAFER: I'm being advised that there probably are not. And of course
18 that is one of the advantages to the series LLC, in addition to not having to file and
19 pay the couple hundred dollars per series LLC with the Nevada Secretary of State,
20 but then you also can account for or only file one separate tax filing with the IRS.
21 But there is separate accounting for each of the entities.

22 THE COURT: So the -- under the framework of these series LLCs, each
23 one has the potential to receive an income and pay out costs of doing business,
24 etcetera, etcetera?

1 MR. SHAFER: That is correct. For example, I believe that the cab rental --
2 you know, this particular cab leases or rents itself out for a certain daily rate and
3 pays for the maintenance or the costs of maintaining that cab to the maintenance
4 company or the maintenance series. That way there is an appropriate flow of
5 accounting and liabilities to the corporation. This has been very carefully entered
6 into with consultation with multiple legal counsel to try to abide by the state of the
7 law and abide by what you are supposed to do to manage this. This has been
8 a long held provision to try to establish the appropriate corporate form.

9 Really, it is very simple. They are not defendant A Cab or A Cab
10 Series and therefore the writ of garnishment should not apply to them. If there's any
11 hurry to this, that's not defendant's fault. Defendant raised the issue of the separate
12 corporate organization as long as more than -- excuse me, more than a year ago
13 in the deposition.

14 THE COURT: Oh. Uh-huh.

15 MR. SHAFER: So plaintiff's counsel has been aware of this issue for as
16 long as they can remember. In fact, the fact that it is a series LLC is public record.
17 It could be obtained by obtaining the corporate filings with the Nevada Secretary
18 of State.

19 THE COURT: Uh-huh.

20 MR. SHAFER: So this should not come as a surprise to plaintiff's counsel
21 and it's not something they couldn't have dealt with earlier. So plaintiff -- in fact,
22 the only case law they cite in their brief, the only citation to anything other than the
23 Texas statute, which is completely inapplicable, is a citation to Gardner v. Eighth
24 Judicial, which says that if you know you can bring an alter ego cause of action.

1 You have that ability to bring it. They had the ability to bring it more than a year ago
2 and chose not to.

3 THE COURT: When you say bring it, you mean bring a motion to amend
4 to include the series LLCs?

5 MR. SHAFER: I wouldn't guess or tell Mr. Greenberg what option he would
6 take, but certainly it would be one of those options that could have been dealt with.

7 THE COURT: Okay.

8 MR. SHAFER: We are now in a situation where they have contacted the
9 bank, have given them information, have sent a writ for third parties. They want to
10 kind of jump to the end of alter ego and just have the Court hold the funds because
11 they lucked into it. You can't mug somebody and then say, well, prove to me it's
12 not your money and it's my money.

13 THE COURT: Well, they don't want the Court to hold the funds. As I
14 understand it, they want it to go to Mr. Greenberg's trust account.

15 MR. SHAFER: That's correct.

16 THE COURT: Okay.

17 MR. SHAFER: Because, well, a bird in the hand, right? So we have a
18 situation here where that causes an irreparable harm to my client, an irreparable
19 harm to the business, the very people that they claim to represent are going to be
20 harmed by this, the drivers themselves.

21 THE COURT: That brings up a good point. Is the analysis that a court is
22 to perform here on a motion to quash the writ of execution the same or similar to
23 what the court would do on an injunctive relief motion?

24 MR. SHAFER: I don't believe so. I think it's --

1 THE COURT: I mean, you mentioned irreparable harm.

2 MR. SHAFER: Yeah.

3 THE COURT: That's why I'm --

4 MR. SHAFER: No, I don't think so. I think it's very clear it's a third party.
5 Absent an order of the Court subjecting the third party to liability, absent an order
6 of the Court or a separate action bringing or piercing the corporate veil or even
7 pursuing with a prejudgment writ of attachment through a separate action, absent
8 that they have no more claim on A Cab Series LLC, the maintenance LLC than they
9 do on my own personal bank account. They have -- it is black and white. Black --
10 the statute is very clear as to a separation of the LLCs.

11 THE COURT: Will you point that out to me? You started --

12 MR. SHAFER: Sure.

13 THE COURT: I think I interrupted. You were talking about NRS 86.296?

14 MR. SHAFER: Yeah. Absolutely, Your Honor. Subsection -- excuse me,
15 86.296, subsection 3, which says that "the debts, liabilities, obligations and
16 expenses incurred, contracted fo or otherwise existing with respect to a particular
17 series are enforceable against the assets of that series only and not against the
18 assets of the company generally or any other series." They are separate and
19 firewalled.

20 THE COURT: Uh-huh.

21 MR. SHAFER: And I believe that there was -- I just want to check NRS --
22 and this is a companion statute, NRS 86.311, which I can provide a copy to the
23 Court, says -- and they changed this --

24 THE COURT: 86.311. Go ahead.

1 MR. SHAFER: Subsection 2. "Real and personal property may be
2 purchased, owned and conveyed by a series separately in the name of the series
3 as an asset of the series only." So bank accounts, cabs, other assets are assets
4 of the series only. They are not --

5 THE COURT: If the records comport with that. Is that the way that goes?

6 MR. SHAFER: No different than any other LLC.

7 THE COURT: Yeah.

8 MR. SHAFER: If I have LLC A and LLC B and I smoosh all the records
9 together and just keep one check register and don't account for it, then that would
10 be --

11 THE COURT: Oh. Then you have effectively co-mingled or some such
12 thing?

13 MR. SHAFER: You co-mingled it and you set yourself up.

14 THE COURT: Okay. What kind of records, then? To what extent do those
15 have to be maintained in order to maintain that protection of no liability?

16 MR. SHAFER: Well, the statute says that you have to --

17 THE COURT: Separate and distinct records.

18 MR. SHAFER: Yeah. So you have to provide -- you have to have a ledger
19 for the income and expenses for each series LLC.

20 THE COURT: And your client does maintain that?

21 MR. SHAFER: That's correct. And we submitted an affidavit or a
22 declaration by their account manager to that effect. That's a sworn statement
23 attached to our application to quash. Certainly if plaintiffs' counsel have reason to
24 believe -- that could be subject to some other motion, but in the present case it's

1 not enough to just send this writ out and hope they get something and then to hold
2 the money.

3 THE COURT: So is the cash flow -- I assume that A Cab LLC takes in all
4 the money, the income, and then turns around and pays it out to each of these
5 series LLC?

6 MR. SHAFER: No. I don't think that's entirely correct --

7 THE COURT: Oh.

8 MR. SHAFER: -- because each LLC has its own lease and its own issue,
9 you know, as far as the income. And then there is a leasing company that handles
10 -- or an employee company that handles the payroll, as I understand it.

11 THE COURT: How do they -- how do they get their money, then? Say --
12 take the maintenance LLC.

13 MR. SHAFER: Well, let me give you an example and perhaps this -- I could
14 give you the actual sums and the accounts that are at issue here. Maybe that will
15 help the Court --

16 THE COURT: Okay.

17 MR. SHAFER: -- understand the scope of what's going on. There is an
18 account held by -- I apologize, I want to get to the actual motion -- owned by
19 A Cab Series LLC, Maintenance Company, \$38,572.53 that is held to pay for the
20 maintenance expenses and the other items which are incurred to pay for other
21 things, which is a completely separate --

22 THE COURT: And how did the \$38,000 get into those accounts?

23 MR. SHAFER: The \$38,000 I'm presuming was paid in by the other cab
24 companies to pay for the tire rotations and other --

1 MR. NADY: It was paid in based on miles per day.

2 MR. SHAFER: So --

3 THE COURT: So the --

4 MR. NADY: It's a percent -- it's a --

5 THE COURT: Does that mean you get a check cut from A Cab to the
6 series, the maintenance series LLC?

7 MR. NADY: I would be glad to help you with this.

8 MR. SHAFER: Well, I don't know if it's a check, but there is a transfer of --

9 MR. NADY: No, it's a transfer within the bank itself. We have 135 separate
10 -- excuse me for not rising -- we have -- I think it's 135 separate bank accounts.

11 THE COURT: Okay.

12 MR. NADY: And as the money comes in, it's separated by cab. That
13 becomes the revenue. Based on number of miles, a certain amount of that revenue
14 is divided to the maintenance company. Another certain percentage, five dollars a
15 day is paid to the -- another cell, which is -- or series. The word series and cell by
16 law can be interchanged. But another cell gets so much for owning that medallion.
17 There's 111 vehicles right now that are owned by 111 separate series or cells.
18 Those for income and expenses and then we have a payroll company, which we
19 call Employee Leasing Company, which then takes the money from the cabber.
20 That much goes into that cab company. The expenses are paid out.

21 THE COURT: When you say that cab company, meaning an individual cab
22 with it's own medallion?

23 MR. NADY: Each cab -- each cab company as a -- each taxi is a separate
24 company.

1 THE COURT: Company.

2 MR. NADY: A separate corporation or entity.

3 THE COURT: Okay.

4 MR. NADY: Each one. It's been this way since we started. We have --
5 we produce quarterly statements for each cab company every quarter and then
6 we file a consolidated return with the State. The Taxicab Authority requires this.
7 And we file a Schedule C for the IRS. But these expenses, it's extremely difficult
8 accounting.

9 THE COURT: I'll say.

10 MR. NADY: But we have -- we have a smart meter which does almost all
11 of it. The meter takes in how much the driver makes.

12 THE COURT: Wow.

13 MR. NADY: The meter takes in how much -- how many miles it is. And it's
14 almost done automatically. We've set it up so -- pretty well through a guy that he
15 deposed, Jim Morgan's company, where the money then goes out. We actually
16 transfer every day or maybe two or three times a week every bit of money out of that
17 into the appropriate expense accounts. And the rest --

18 THE COURT: So it's not only -- I mean, so you're saying the income from
19 hauling people around goes to that one Series Cab LLC --

20 MR. NADY: That goes back -- it's deposited into the administrative account
21 for one day. By day's end --

22 THE COURT: What's the administrative account?

23 MR. NADY: That's --

24 THE COURT: Is that an A Cab account?

1 MR. NADY: That's generally the administration of the company, Employee's
2 Management Company.

3 THE COURT: That's a separate cell, then?

4 MR. NADY: It's a separate cell. Yes, sir.

5 THE COURT: Okay. So all the money goes to the administrative LLC for
6 one day?

7 MR. NADY: It does until it's transferred because the bank -- it's just for
8 logistics. We don't co-mingle the funds. We put it together until they can be
9 distributed into each one. And from those we deduct so much for each mile. It's
10 actually 24 cents per mile. We figure it's the cost of operating the vehicle. We take
11 the gas for that particular vehicle and put it in there.

12 THE COURT: Wow. And do you put it in the administrative account --

13 MR. NADY: No.

14 THE COURT: -- or do you put it directly into the maintenance and --

15 MR. NADY: No, they go back into each one of those other cells. The
16 administrative company and then the management company gets paid so much.
17 And at the end of the day all of those -- most all of those accounts, we write checks
18 out of the administrative company and the maintenance company also has its own
19 checking account. All of them have their own checking accounts, but we don't issue
20 checks in most of them. We only have four or five checking accounts --

21 THE COURT: Uh-huh.

22 MR. NADY: -- but that's because we just transfer the money within the
23 bank. But we do that every day. And we get audited by the guy who wrote or
24 helped write the series LLC law. Steve Oshins is his name and we probably should

1 have had him here, but you can ask him. He reviews my records and books every
2 year --

3 THE COURT: Uh-huh.

4 MR. NADY: -- and has never found -- he's given us some possible changes,
5 but he's never found any shortcoming that would not be applicable here in court.

6 THE COURT: Uh-huh.

7 MR. NADY: We go to great lengths to keep these records and accounts
8 separate. And we provide income statements quarterly and then we consolidate
9 those. When we first do an income statement it's pages and pages for each one
10 of them.

11 THE COURT: Because it's a separate income statement for each series
12 LLC.

13 MR. NADY: Because it's a separate income statement for each -- well, for
14 each series. And remember, we've got one for each medallion --

15 THE COURT: Each cab. Yeah.

16 MR. NADY: -- plus one for every car.

17 THE COURT: Yeah.

18 MR. NADY: And we've got one for the management company. And we've
19 got Employee Leasing Company, which actually pays the drivers.

20 THE COURT: What's your --

21 MR. NADY: I shouldn't say this, but if anybody is liable, it would be the
22 Employee Leasing Company for not doing it, but.

23 THE COURT: Okay.

24 MR. NADY: They took \$44,000 out of that account, too --

1 THE COURT: Ahh.

2 MR. NADY: -- but they weren't sued.

3 MR. SHAFER: As you can tell, this is a very --

4 THE COURT: So that must cost you an arm and a leg for the accounting.

5 MR. NADY: No. Actually -- remember, I have a degree in accounting.

6 I practiced accounting before this.

7 THE COURT: Ahh.

8 MR. NADY: I was a controller of a casino for years. I worked for the
9 Gaming Control Board for years. I was a Gaming Control Board agent. Accounting
10 is my background.

11 THE COURT: Uh-huh.

12 MR. NADY: And we were the first cab company to do this. Others have
13 since started doing this. The purpose initially was to limit liability in the case of an
14 accident --

15 THE COURT: Yeah.

16 MR. NADY: -- to that particular cell or cab.

17 THE COURT: Yeah.

18 MR. NADY: If we got into a wreck, we wouldn't lose all our cabs, we would
19 lose one.

20 THE COURT: Yeah.

21 MR. NADY: And we provide insurance for each cab, so there's a certain
22 daily insurance amount. Yes, it seems like a lot, but you can program your
23 computer now to do almost all of it --

24 THE COURT: All of that.

1 MR. NADY: -- every day when it comes in, and it downloads from the meter
2 to our computer. Pretty cool.

3 THE COURT: That's amazing.

4 MR. NADY: And which Mr. Greenberg used earlier in his case to say how
5 long they were working. But that doesn't always tell when they went it, it's just when
6 the meter went on, which is a part of our case a long time ago. But I'm pretty proud
7 of it.

8 THE COURT: So the -- all the income from each of the medallions goes
9 first to the administrative company for a day and then it's transferred just by
10 computer --

11 MR. NADY: Every day the money is completely disbursed.

12 THE COURT: To -- and so it would go to -- well, how does A Cab make
13 any money, then?

14 MR. NADY: Well, it's completely disbursed in that normally we have zero --
15 ZBAs, zero balance accounts in every account, but because we have outstanding
16 checks such as payroll, those outstanding checks were collected by Mr. Greenberg.
17 We have outstanding checks in the maintenance company that go to the State.
18 We pay -- taxicab companies pay two dollars every time they go to the airport.

19 THE COURT: So which of these cells pays that?

20 MR. NADY: The administrative company pays those.

21 THE COURT: Okay.

22 MR. NADY: And we have a management company which does the hiring
23 and training.

24 THE COURT: How do you get your profit out of that?

1 MR. NADY: Well, at the end of the day it all goes out of that account into
2 my personal account and then the next day it goes back in. I don't have any money
3 in my account.

4 THE COURT: You mean the individual cells pay into your personal --

5 MR. NADY: Yes, sir. At the end of the --

6 THE COURT: Wow.

7 MR. NADY: Remember, the money goes into the administrative and then
8 we take out the expenses.

9 Do you want me to shut up?

10 MR. SHAFER: No, that's fine. I think the Court is getting the idea.

11 THE COURT: Yeah.

12 MR. NADY: It's extremely calculated and we've had five years of perfecting
13 it. And the computer industry has made it so instead of having three people do it,
14 I have a half of a person doing it, half of a full-time employee who's been with me
15 forever.

16 MR. SHAFER: So this is --

17 THE COURT: You know, we need to change the law. I mean, make it
18 easier somehow because --

19 MR. NADY: The law says specifically separate accounts and records --

20 THE COURT: Yeah.

21 MR. NADY: -- so that's what we've strived to do. And Steve Oshins, the
22 other attorney that helped me create this, says it's the best he's ever seen.

23 MR. SHAFER: So there is -- obviously you can see there's a detailed
24 nature of how this is all set up.

1 THE COURT: Yeah.

2 MR. SHAFER: They keep appropriate accounting records. When we look
3 at it -- obviously the money is not transmitted. For example, one of the big concerns
4 is that money that is held by -- for payroll taxes or for the franchise fee to the State
5 is being held in the account, which if it's not paid could subject my client to sanctions
6 or fines by the State for not submitting the funds appropriately.

7 THE COURT: Is that in the administrative account, then?

8 MR. SHAFER: Yes.

9 MR. NADY: No, that is -- yes, that's correct.

10 MR. SHAFER: Yeah. Well, some if it is in the administrative account,
11 some of it's in the Employee Leasing Company, some of the payroll and some of
12 the other items.

13 THE COURT: Employee Leasing, does that -- does that include all the
14 taxi drivers?

15 MR. NADY: Yes.

16 MR. SHAFER: Well, I believe so. But there's --

17 THE COURT: So the Employee Leasing Company gets some cash flow
18 from individual meters with the medallions and that's peeled off because that's what
19 it costs to pay the drivers.

20 MR. SHAFER: Right.

21 THE COURT: And then it goes -- does the -- sorry. Does the Employee
22 Leasing Company cut the check to the drivers?

23 MR. SHAFER: I don't know the answer to that specifically.

24 MR. NADY: Yes.

1 MR. SHAFER: They do.

2 THE COURT: Huh. Wow.

3 MR. SHAFER: So it is a process that's involved and that's why Mr. Nady
4 was very clear in his deposition that there was an entity that was set up to do it
5 that way. You know, there is -- this has been tested in litigation. You know, the
6 concern we have is, as you heard, there's 100 plus accounts. With this garnishment
7 in place, any time money gets put into one of these accounts it's subject to
8 garnishment, which would require that individual series LLC to come in and file its
9 own interpleader action, and all of a sudden we've got hundreds of actions.

10 THE COURT: Yeah.

11 MR. SHAFER: So not only for the sake of expedience but also practicality,
12 we're here today. But it's really -- that way is kind of, respectfully, a backwards
13 approach to how to do it because they're only entitled to execute upon the judgment
14 debtor --

15 THE COURT: Uh-huh.

16 MR. SHAFER: -- which is A Cab LLC and A Cab Taxi Service LLC. If they
17 believe that that judgment should be amended to somebody else, there's a process
18 for doing that.

19 THE COURT: Uh-huh.

20 MR. SHAFER: But the process is not just telling the garnishee, telling the
21 people who were served the writ of execution that, well, you could name anybody
22 else that has a similar name, has A Cab in their name.

23 THE COURT: Well, that -- is that what was done here?

24 MR. SHAFER: That is.

1 THE COURT: Because I don't believe the actual writ of execution did that,
2 did it?

3 MR. SHAFER: No. The writ said A Cab LLC and A Cab Taxi Service LLC.

4 THE COURT: Maybe I could ask -- does anybody object if I ask the bank?
5 Are you a bank manager, ma'am?

6 MS. DOVE: No. No, Your Honor. I'm counsel for Wells Fargo.

7 THE COURT: Oh, okay.

8 MS. DOVE: So we are just here to --

9 THE COURT: Yeah.

10 MS. DOVE: You know, obviously we don't really have a dog in this fight,
11 so to speak, about who gets the money, but --

12 THE COURT: Do you know any of the operative facts as far as how this
13 garnishment happened and how this money was taken from these various series
14 LLCs?

15 MS. DOVE: I know Wells Fargo was served with a write of garnishment
16 and had quite a few accounts with the A Cab name --

17 THE COURT: Uh-huh.

18 MS. DOVE: -- titled A Cab Series, LLC (comma) and then different
19 descriptors. My understanding, and again, not sort of testifying or giving evidence --

20 THE COURT: Yeah. No.

21 MS. DOVE: -- but my understanding is that of the many accounts that exist
22 under the A Cab moniker they all share the same Tax ID number --

23 THE COURT: Uh-huh.

24 MS. DOVE: -- which is what Wells Fargo predominantly used to unify those.

1 And at the time of the writ, six accounts had money in them.

2 THE COURT: Uh-huh.

3 MS. DOVE: And that's what was attached at the time of the writ. They
4 were A Cab Series LLC, Administration Company, Employee Leasing, Maintenance,
5 Ccards, Medallion and Taxi Leasing, with far and away the most money being in the
6 A Cab Series LLC, Administration Company account. And they went by the Tax ID
7 number.

8 THE COURT: Uh-huh.

9 MS. DOVE: Wells Fargo is here to represent we'll of course comply with
10 any order the Court issues with respect to the writ. It will provide further information
11 as the Court might wish to know on as expedited a basis as possible. And just also
12 seeks a release of any liability, whether we have to file a motion for interpleader or
13 simply comply with the Court's order. We're just here to do what the Court finds at
14 the end of the day.

15 THE COURT: Okay. Thank you.

16 MS. DOVE: Thank you.

17 THE COURT: Appreciate it.

18 Go ahead, Mr. Shafer.

19 MR. SHAFER: Yeah. So I think she's confirmed those are the correct
20 ones. There were, you know, A Cab Series LLC, Maintenance Company; A Cab
21 Series LLC, Administration Company; A Cab Series LLC, Taxi Leasing Company;
22 A Cab Series LLC, Employee Leasing Company II; A Cab Series LLC, Medallion
23 Company and A Cab Series LLC, Ccards. Those are on page 7 of our motion.
24 The writ was served on September 17th. We submitted a copy of that as an exhibit,

1 I believe, to our motion. If not, I have a copy for the Court.

2 THE COURT: Uh-huh. The writ is attached, I believe, writ of execution.

3 MR. SHAFER: Yeah. And you can see it is directed to A Cab LLC or A Cab
4 Taxi Service, which are distinct from the entities, from the account holders, which is
5 A Cab Series LLC.

6 THE COURT: Is there an A Cab Taxi Service, LLC?

7 MR. SHAFER: There is not such an entity.

8 THE COURT: Okay.

9 MR. SHAFER: So that is -- and that is, I believe, pending another motion
10 with the Court which has been briefed, which we are not here today. But that is
11 essentially where the issue is, is that they have a partial name match and that's
12 not enough to execute a writ of garnishment on a third party, especially given the
13 extensive nature of the books and records that they have engaged in to keep them
14 separate and distinct legally under the law.

15 THE COURT: Did those series LLCs also comply with the -- this is in
16 86.296 sub 3, sub (b): "The articles of organization or operating agreement provides
17 that the debts, liabilities, obligations and expenses incurred, contracted for or
18 otherwise existing with respect to a particular series are enforceable against the
19 assets of that series only"?

20 MR. SHAFER: Yes.

21 THE COURT: It does do that?

22 MR. SHAFER: Yes.

23 THE COURT: And did you give me an example of such a -- is it articles of
24 organization or what kind of document is that contained in?

1 MR. SHAFER: I don't believe that we provided a copy of the articles or
2 the operating agreement to that.

3 THE COURT: Okay.

4 MR. SHAFER: I know it had been provided -- well, I don't know if it had
5 been provided in another action.

6 THE COURT: Okay.

7 MR. SHAFER: But essentially if plaintiffs are correct, which I don't believe
8 they are, there can be no asset protection, no separate corporate liability for any
9 corporate entity if it's tied in with somebody else. That's clearly not what the intent
10 of the statute was to set up -- establish LLCs. We can argue that maybe series
11 LLCs are not a good thing, they're not a preferable thing, but that's not what the
12 Legislature in their wisdom has enacted. They have enacted a provision that allows
13 for --

14 (Mr. Shafer confers with Ms. Rodriguez)

15 MR. SHAFER: So we've provided -- I think that the operating agreement
16 for the A Cab has been provided in opposition to the motion to amend, but not the
17 series.

18 THE COURT: I'm sorry, say that again, will you?

19 MR. SHAFER: The operating agreement for the series LLCs --

20 THE COURT: Oh.

21 MR. SHAFER: -- have not been provided, but the operating agreement for
22 A Cab LLC has been provided to the Court as an exhibit to the opposition to the
23 motion, plaintiff's motion to amend --

24 THE COURT: Okay.

1 MR. SHAFER: -- which was filed on September 10th. It's Exhibit 1 to that
2 motion.

3 THE COURT: Okay.

4 MR. GREENBERG: Your Honor, the document being referred to is actually
5 in plaintiff's response. The Certificate of Articles of Operation, Organization is at
6 Exhibit E of my response on this motion, Your Honor.

7 THE COURT: Is that -- is that Exhibit B?

8 MR. GREENBERG: Exhibit E, Your Honor. E as in Edward.

9 THE COURT: Oh, E. Okay. All right.

10 MR. GREENBERG: The particular article is Article 2 of that document that
11 discusses the issue.

12 THE COURT: Okay.

13 MR. SHAFER: I mean, it is clear. We have the statute to go by. And
14 absent any evidence on their -- their filing of the writ doesn't require a third party
15 to have a burden of proof because of established case law that they have to be
16 brought in as a party or otherwise subjected to legal process. They haven't been,
17 so there's no basis to do it. It is simply enough for us to say this is a separate entity.
18 This is a different company and the Court should order that the funds that belong to
19 that company be released. If the plaintiff disagrees with that or has other concerns
20 about that, then they can bring the appropriate legal method to do so. But it's not
21 enough to circumvent that, to jump to the end and violate my client -- the due
22 process rights of A Cab Series LLC and punish them for doing what they're
23 supposed to do --

24 THE COURT: Uh-huh.

1 MR. SHAFER: -- and providing for this accounting that they're supposed to
2 do and keeping the corporate books and records. The statute is clear a series LLC
3 is no different as far as separation of liabilities than an ordinary LLC. And it's not
4 enough to just say, well, maybe sometime there's some basis that we could maybe
5 assert and let's hold the funds until then. No. The appropriate remedy is for this
6 Court to order those funds that are being held by Wells Fargo to be released back to
7 the account holders. A failure to do so is both against the intent of the statute and
8 will cause an irreparable harm, a substantial harm to my client and their employees.

9 Unless the Court has any further questions, I'll let Mr. Greenberg
10 argue.

11 THE COURT: Not at this time, no.

12 Mr. Greenberg.

13 MR. GREENBERG: Your Honor, there are two fundamental questions
14 presented by the application. Besides the standing issue, I don't believe there's
15 any application properly before the Court, as Your Honor was mentioning, because
16 these supposedly independent entities who actually have the interest in the property
17 aren't even here. And defendants have talked about expediency to the process.
18 Well, Your Honor, they can't have it both ways. They can't say we have no interest
19 in this property, it's not ours, and then at the same time come to the Court and say
20 we have a sufficient interest, so that the Court should act in terms of disposition of
21 the property.

22 So that's a starting point, Your Honor. I don't see that there's any
23 subject matter jurisdiction over the request, if defendants are actually making a valid
24 request. By establishing the validity of the request, they're actually establishing that

1 there's no jurisdiction as this application is configured for the Court to give them
2 the relief they want. But I'm skipping over that --

3 THE COURT: You're saying that in order to do that they would have to
4 come in with separate -- not necessarily separate representation, but separate --
5 as separate entities for each one -- well, at lease of the six that had funds taken?

6 MR. GREENBERG: Well, they say they're separate entities.

7 THE COURT: Yeah. Yeah.

8 MR. GREENBERG: They claim to have separate legal standing. I mean,
9 the statute that they refer to does give a series, a subordinate LLC of a master LLC
10 the right to appear in court and to prosecute and defend actions. And if they're
11 claiming that these are really independent entities, they need to appear. It's their
12 property. They need to come claim it. Defendants can't -- as I said, they can't
13 have it both ways. Our position is it's not their property, at least in respect to this
14 judgment, Your Honor.

15 THE COURT: I'll ask you to address that when I come back to you, Mr.
16 Shafer.

17 MR. GREENBERG: But to address the issue of the enforcement of the
18 judgment, setting aside this question of standing or even jurisdiction over the
19 application, there are two questions that are presented. The first is whether
20 Nevada's statute actually operates to place assets that are in a subordinate LLC
21 from reach by a judgment against its master LLC. There is in fact nothing in the
22 language of the statute that commands that or even allows it, Your Honor.

23 THE COURT: Why else would they do that?

24 MR. GREENBERG: Well, the traditional view or the real reason why you

1 would have a series LLC set up is in real estate investment or real estate
2 operations. Each property is a separate series, a separate sub LLC of the real
3 estate company. You've got four houses, four LLCs. And it makes sense there,
4 Your Honor, because you have individual assets which are generating individual
5 revenue, individual expenses, individual obligations, individual mortgages against
6 each particular parcel of real estate. And what the statute --

7 THE COURT: What would be the difference between that situation of
8 real estate and -- I mean, what if this were a real estate series LLC and it was 111
9 or 102 instead of cabs, 102 properties?

10 MR. GREENBERG: Well, to answer your question, Your Honor, you can't
11 do that, okay, because you need a certificate of public convenience and necessity
12 to license, to operate a taxi business. It's a restricted license, as defendants were
13 explaining. You need to meet the requirements by statute, which are quite rigorous --

14 THE COURT: Yeah.

15 MR. GREENBERG: -- to be approved and you as the licensee are the one
16 who are handed those medallions in the first place by the Taxi Commission. And
17 Mr. Nady at his deposition was deposed about whether each of these 100 or 230
18 individual cells that he claims operate the taxi cabs could operate as independent
19 businesses. He conceded they couldn't. And they couldn't for that reason, Your
20 Honor, because they don't actually have access to the medallions directly. They
21 don't own them. They have to go through the licensee, which is the master LLC
22 here, A Cab, the judgment debtor. And in addition, it's not like the real estate
23 situation because you don't have an independent property, you know, with its own
24 liabilities, its own property taxes, its own independent source of revenue from rents,

1 etcetera, etcetera. This is an integrated business, Your Honor. They have to have
2 drivers, they have to have maintenance. I mean, it works together and in particular
3 it only can operate derivative of that license holder's power, Your Honor.

4 THE COURT: Uh-huh.

5 MR. GREENBERG: And the license holder here is A Cab, LLC, which is
6 the judgment debtor, the master of the series. And in addition, Your Honor, these
7 series LLCs, the subordinate LLCs that are issued under the law, they owe their
8 existence to the master LLC. If the master LLC disappears or is dissolved, there
9 is no provision in the law for the continuance of the existence of the series LLCs.
10 They may exist as separate legal entities, but there is no registration with the
11 department of State. In this case they don't have a separate tax registration. They
12 could have but they don't because they are operating, as I was explaining, as part
13 of an integrated business.

14 And to take a look at the language of the statute which was being
15 discussed by Your Honor with counsel and that counsel has recited, counsel has
16 skipped over the issue, which is that in 3(b), okay, as Your Honor was asking about
17 the operating agreement, okay, there are two issues raised here by the limitation on
18 liability as the statute is written. First of all, it doesn't even shield the series, the sub
19 series from a judgment against the master. And it doesn't actually say that. It says
20 the articles of organization, etcetera, can provide that the assets -- with respect to a
21 particular series only, the judgment or liabilities of that series -- of that series, of that
22 sub of the master are enforceable only against that series, that sub, okay. So that
23 sub can be structured so that if I get a judgment against the sub, the sub series of
24 the master, I can only go after that sub series' assets. I can't go after its sister sub

1 series and I can't up the chain against the master because that clearly bars it. It
2 doesn't say anything about a judgment against the master. It's completely silent
3 on that issue, okay.

4 Now, in this case we have in the record here an admission that the
5 interest held by all of these LLCs, assuming they are really independent entities,
6 is the same person. They're all held by Mr. Nady. Mr. Nady is the holder. So they
7 say, well, there's no stock certificates issued. Well, that's true in the LLC structure
8 we don't have stock certificates as in a normal corporation, but the interests are the
9 same. And the reason why I point this out -- I have in Exhibit D a copy of the Texas
10 statute concerning LLCs. And in Texas, if you look at Section A-2 of the first page
11 there that I gave you, it expressly extends the shield of assets that we were just
12 discussing in possession of the sub to judgments, the liabilities of the company
13 generally. This language is not present in Nevada's statute. So this assumption
14 that these assets are beyond reach of a judgment against the company generally
15 when the membership identical, the ownership interest is identical, is not supported
16 by the statutory language.

17 So that is the first problem here and this is an issue of law that I think
18 Your Honor needs to consider, particularly in light of what we were discussing
19 regarding the fact that this is an integrated business operation, as defendants have
20 testified about. Your Honor heard some testimony from Mr. Nady. I do object to
21 that to the extent that he may have testified as to details different than in his
22 deposition. In his deposition he did confirm much of what he was saying today.
23 I'm not sure if was necessarily identical.

24 And this goes to what I was initially addressing to the Court when we

1 started that I think we need more of a record here before the Court can resolve this
2 issue because essentially, and this gets to the second point I was trying to raise, all
3 you have before the Court are defendants' assertions that these are independent
4 entities, an assertion which is contradicted by defendants coming in here
5 simultaneously and speaking on behalf of them rather than having them file their
6 own appearances. As I said, that can't be reconciled. But there are no books or
7 records. Your Honor was asking about the operating agreement, and this is the
8 other crucial portion of subsection 3 that Your Honor was looking at. And if you
9 look at Exhibit E of the response, which is the only document we have -- excuse
10 me, that's Exhibit B. Oh, no, that's not B, that's E. I'm sorry. E as in Edward,
11 Your Honor.

12 THE COURT: Okay.

13 MR. GREENBERG: If you look at E, Article 2, this is all we have in the
14 record here regarding the potential invocation of that subpart 3 of the Nevada
15 statute. It simply says that A Cab LLC is a Series Limited Liability Company that
16 may -- that may establish sub series, which in turn may benefit from the protections
17 afforded in the statute.

18 THE COURT: Where are you -- where are you reading?

19 MR. GREENBERG: This is on the second page of Exhibit E. The first page
20 of Exhibit E is the certificate accompanying articles of organization.

21 THE COURT: Oh. Oh, okay. Yeah.

22 MR. GREENBERG: The second page we have the actual articles of
23 organization and Article 2 contains the series LLC authorization for A Cab LLC.

24 THE COURT: Uh-huh.

1 MR. GREENBERG: And you can read the language yourself Your Honor,
2 but it is permissive language.

3 THE COURT: So it would -- you would in turn have to look at the operating
4 agreement?

5 MR. GREENBERG: Absolutely, Your Honor. This doesn't say as a matter
6 of fundamental organization in that document that every series LLC in fact enjoys
7 the limitations of liability in respect to its assets. It doesn't say that. It simply says
8 the master LLC here is authorized to establish them in that order. And pursuant to
9 86.296 3(b), as Your Honor was asking defense counsel, in order for them to benefit
10 from that limitation on liability, assuming it even extends in this situation, when we
11 were previously discussing that there is nothing in the statute extending that shield
12 to judgments against the master LLC.

13 But let's assume that the purpose of the statute does in fact provide
14 that shield. They still need to come in here and establish two things. One is that
15 the operating agreement in fact confers that immunity upon them. And we don't
16 have any of these operating agreements. There's nothing in the record, Your
17 Honor. The second thing they have to establish is in 3(a), that in fact there are
18 separate and distinct records maintained for these businesses. And again, all we
19 have are defendants' assertions. We have nothing in the record. What we do know
20 about that issue, whether there are separate and distinct records, is that they all
21 share the same EIN number. We have testimony from Mr. Nady in his deposition
22 that there is a common unemployment insurance account filed with the State of
23 Nevada for A Cab LLC. We know that that license to operate the taxi business as
24 the carrier is authorized to A Cab LLC, the master. It's not issued to any of these

1 102 medallion holders that A Cab LLC has designated the medallions to. I mean,
2 the certificate, the license to operate is possessed by the master.

3 So we don't have any record. And there's in fact no public record
4 regarding the existence of any of these sub series LLCs. There's no tax ID, there's
5 no filing with the Secretary of State, there are no business licenses, there's no dba
6 filings. There's nothing, Your Honor, except their assertion that they are in fact
7 separate entities. Now, I'm sure the attorney from Wells Fargo can confirm this,
8 but if I'm an incorporated business -- I am an incorporated business, actually Your
9 Honor -- I can go to a bank and I can establish an account for my administration
10 department, I can establish an account for my employee department, I can establish
11 an account for my maintenance department. Those are all part of my corporation.
12 I mean, here they title them Maintenance Company. There's no reason this Court
13 should view that as being any different than being the maintenance department of
14 the same entity, which is the judgment debtor here, A Cab LLC.

15 We just don't have a record here establishing any reason to conclude
16 that the assertions made by the defendants, assuming the Court even would
17 entertain them given the fact that these supposed independent entities aren't here,
18 are in fact true, Your Honor. I mean, there's good reason to doubt it.

19 And this gets to the other issue which I was asking the Court to take
20 note of, is that the record as presented by the defendants themselves shows that
21 there are good, equitable reasons to not grant the relief because they admit that
22 some of these monies that they're seeking to release are actually being held for the
23 benefit of the master LLC. A Cab LLC as the CPCN holder, they're the ones who
24 are responsible for remitting those taxes to the State for the operation of the taxicab

1 business. They're the carrier. They're the ones who would have to pay the
2 unemployment insurance tax, for example. The State is going to go after them if
3 those taxes aren't paid. If they're holding money in accounts at Wells Fargo, you
4 know, as a separate entity --

5 THE COURT: Are you saying that they don't pay those fees -- each
6 individual series company doesn't pay those fees to the State?

7 MR. GREENBERG: It's not their responsibility to pay them. Those are
8 liabilities of A Cab LLC, Your Honor. They're the liabilities of the master. The
9 master is the one who holds the certificate to operate the taxicab company. The
10 master, according to Mr. Nady's deposition, is the one who has the unemployment
11 insurance account with the State of Nevada. And again Your Honor, I am getting
12 into assertions of fact here, which I'm making to the Court in a very hasty fashion
13 because we don't actually have the time to get the evidentiary records before the
14 Court, but I am very certain of what I am telling the Court. But this goes to my point
15 that the Court needs to have more of a record here because there is very good
16 reason to believe it's otherwise than what the defendants are representing to the
17 Court.

18 Even assuming these were independent entities and they were the
19 ones who have title to the money in these accounts, they very likely are holding that
20 money or a substantial portion of that money, by their own admission, by their own
21 limited record before this Court, as nothing but bailees for A Cab LLC, the judgment
22 debtor here. If they're holding money to pay to Nevada to satisfy the tax liabilities of
23 the master, which is what they say they are doing here, then that's attachable, Your
24 Honor. That's not shielded from our execution. The State of Nevada may give the

1 master LLC a lot of grief when it doesn't get those monies, but that's not the concern
2 of this Court. I mean, if they're holding -- again, if they're holding those monies for
3 that purpose then they're attachable, Your Honor. And it's a lot more complicated,
4 okay, than defendants are representing to this Court. They're basically just coming
5 to the Court and saying, look, this money doesn't belong to the judgment debtor,
6 it belongs to these other people. We're telling you that and therefore release the
7 funds. And, Your Honor, the funds don't have to be put in my trust account. They
8 can be deposited with the court if that was a more reasonable way to proceed.

9 There was a comment initially made about how the taxi company could
10 not go to the bankruptcy court. I don't believe that's correct, Your Honor. The
11 bankruptcy court clearly has the power as federal supremacy to take control of the
12 company and also to prevent the Taxi Commission from doing anything in respect
13 to the licensee, okay. Whether that in fact will result in the company going out of
14 business is another story, but it's not a question that the bankruptcy court action
15 is not available to them. It's probably not desirable to them because this whole
16 argument that they're trying to make, this whole shielding of their assets that they're
17 trying to engage in here clearly will not be recognized by the bankruptcy court
18 because in bankruptcy court you have a very evolved jurisdiction of entity business
19 operations or ongoing business operations which will not allow them to make these
20 sort of arguments to the bankruptcy court. They are aware of that. That's why they
21 don't want to go before the bankruptcy court.

22 THE COURT: What I understood Mr. Shafer to be saying, and maybe I
23 didn't get this correctly, but if they did go file in bankruptcy court then the State
24 would move in and take away their license, I guess, so they would be effectively

1 out of business.

2 MR. GREENBERG: Well, Your Honor, there's a stay in bankruptcy court,
3 okay. Just like, you know, you can't foreclose on the property once the homeowner
4 files for bankruptcy, you've got to get the stay lifted. I mean, conceivably they could
5 if they went to the bankruptcy court, but it's not like they can act without going before
6 the bankruptcy court. The bankruptcy court clearly has superior jurisdiction. What
7 would happen is all hypothetical in that situation. I just want the Court to understand
8 this claim that this is not an avenue that's available to them as a matter of law
9 clearly is in error.

10 But there's one other issue that is not discussed in my briefs that I
11 think is extremely important. I didn't have time to raise this, but I want the Court to
12 understand this. Under the Taxi Commission's regulations, and I can actually give
13 Your Honor the exact cite if you want.

14 THE COURT: Uh-huh.

15 MR. GREENBERG: It's NAC 706.149, okay. The Taxi Commission
16 requires that operators who are issued these licenses, because it's for the public
17 interest, must meet certain financial particulars, okay. One of them is that there
18 must be at least a 20 percent equity interest in the business. The business can't be
19 insolvent. It has to have a certain measure of financial health. And they have to file
20 financial reports with the Taxi Commission every year. I believe it's in May, is my
21 understanding. There's a uniform system that they use for this. Those reports are
22 not public record. I cannot access -- well, if Your Honor issued a subpoena, which
23 you might want to -- I can't access them otherwise, though.

24 My point, Your Honor, is that A Cab LLC, the holder of this license, is

1 reporting to the Taxi Commission all of these medallions, all of these vehicles that
2 are possessed by the series LLC, by supposedly independent, subordinate LLCs
3 as its assets, they should be estopped from taking the position that is before this
4 Court that they're not its assets, okay. And this again goes to the point that we
5 need more of a record developed here.

6 And what's really going on, I think Your Honor understands, is that
7 in light of the Court's judgment defendants have appealed. They have every right
8 to appeal and have their appeal heard, but they don't have the right to stop the
9 judicial process here in this court. They're not posting a bond. Clearly they have
10 the resources, they could post a bond, but if they posted a bond and the appeal is
11 unsuccessful, they're going to have to pay the plaintiffs. What's going on here is
12 they're trying to keep the business running so they have their options open. If the
13 appeal is unsuccessful, they could just close down the business and in the interim
14 make whatever profits they can from the business, which is significant. The
15 financials we have do show the business generally has been earning a significant
16 income over the past five years, certainly more than the judgment that is at issue.

17 THE COURT: Let me ask you to clarify. You made reference to NAC
18 706.149. Equity capital: Minimum requirement; proof; failure to comply. This is
19 regulation of motor carriers generally. What part am I looking at?

20 MR. GREENBERG: Well, they are a motor carrier. They are required --
21 they're one of the motor carriers that are regulated under the State statute and
22 under the Taxi Commission. They have to show that they're financially solvent to --

23 THE COURT: "Shall maintain an investment of not less than 20 percent
24 equity capital in his or her operations and include proof that the fully regulated

1 carrier meets this requirement in his or her annual report filed with the Authority.”

2 That’s the part you’re talking about?

3 MR. GREENBERG: Well, right, Your Honor. I mean, this is a requirement
4 that they have to meet. I mean, the NRS sections that relate to that are NRS
5 706.167, which specifies an annual report must be filed by May 15th. That’s the
6 statutory reference.

7 I think Your Honor understands my concern here, okay. I’m trying to
8 do the right thing. I understand the Court is trying to do the right thing. And just
9 to return to my initial statement because I know I’m repeating myself -- unless the
10 Court has other questions, I don’t really want to take up more of the Court’s time.

11 THE COURT: No.

12 MR. GREENBERG: You’ve been extremely patient with us. It’s just that --

13 THE COURT: I can only do that because I have a crack staff, you see.

14 MR. GREENBERG: Well, I thank them, then, as well as Your Honor.

15 THE COURT: Who will stay at their posts to the bitter end.

16 MR. GREENBERG: We need more of a record here, Your Honor.

17 THE COURT: Okay.

18 MR. GREENBERG: These funds, they don’t have to be turned over to me.
19 They should be put in escrow somewhere and held. If the defendants want to go
20 seek bankruptcy relief in response to that, the funds are going to wind up going to
21 a trustee and they’re not going to -- you know, they’re going to be taken out of my
22 jurisdiction or the jurisdiction of the Court.

23 THE COURT: If I agreed with you, why not just ask the banker or the bank
24 to maintain the funds --

1 MR. GREENBERG: That's fine with me, Your Honor.

2 THE COURT: -- pending further order of the Court?

3 MR. GREENBERG: Yeah, I would ask that --

4 THE COURT: Would that be a problem for your bank?

5 MS. DOVE: No, Your Honor. Wells Fargo is happy to comply with whatever
6 Your Honor orders.

7 THE COURT: All right.

8 MS. DOVE: We just want to make sure we're not -- we're between a rock
9 and a hard place as things stand now.

10 THE COURT: Understood.

11 MS. DOVE: If we release the funds we can be liable to one side. If we
12 keep them we can be liable to the other. So we are simply happy to follow this
13 Court's order regarding whatever Your Honor wishes us to do.

14 THE COURT: All right. Thank you.

15 MR. GREENBERG: And perhaps Your Honor could give us some
16 suggested schedule for further hearings, some production of the actual materials
17 that they claim support their position regarding release of this writ. Maybe Your
18 Honor wants to give them leave to have these supposed entities intervene -- apply
19 to intervene and appear, as they claim they should. Let's see these operating
20 agreements that supposedly provide the foundation for this limitation of assets.
21 I'd like to have an inspection of the actual records and documents that they claim
22 show that they've complied with the statute regarding the maintenance of these
23 corporations. I asked the Court to order a judgment debtor examination. That was
24 part of the cross-motion. That would be part of this process. Your Honor may want

1 to consider all this rather than make any decision right now, besides just to maintain
2 the status quo, but there's an avenue we need to go forward with here in some
3 fashion. So I'm asking Your Honor just to perhaps think about that and possibly
4 address those issues.

5 THE COURT: All right. Mr. Shafer, what -- it's your motion, what do you
6 say in response to what's raised? Well, let me put it this way. The things that do
7 concern me from what Mr. Greenberg just said, one is still the standing. I find it
8 difficult to see how far the statute goes in allowing entities to band together and
9 protect from liability, but only if certain things are done. And then the parties that
10 I have before me are not those parties. If they're really separate, then how is there
11 standing? Second is -- that concerns me is the point that he made about only the
12 master company LLC holds the license. So, I mean, that has a lot of ramifications
13 for how or whether there's compliance with the intent of the statute, I think.

14 MR. SHAFER: Let me -- I'm sorry, go ahead.

15 THE COURT: And then finally the lack of record, which I also am troubled
16 by. I'm being asked to jump onto a boat that I don't know much about and there
17 isn't much of a record here to support these various points that have been raised.

18 MR. SHAFER: Well, if it's okay, I'll take the last point --

19 THE COURT: Yeah.

20 MR. SHAFER: -- because I think it's the easiest to deal with. The fact
21 of the matter is that Mr. Greenberg has put the cart before the horse. It is clear,
22 unequivocal black letter law that if you want the assets of a third party you have to
23 sue them. You have to bring them into a legal proceeding. He has said, well, we
24 happened upon these assets. I found this wallet on the table, I get to take it unless

1 the person comes in and proves that it's mine. That's not where we're at. They
2 have to sue the individual series LLC. They have to subject them to --

3 THE COURT: I thought the issue was whether or not we really have third
4 parties or do we really only have one party, at least as far as the LLCs are
5 concerned?

6 MR. SHAFER: Yeah. Well, I mean, the clear -- this is what I'm coming to,
7 is that he has turned the evidentiary standard on its head and tried to say that,
8 well, we have a duty to prove that we exist or we have a duty to prove that we are
9 not subject to this liability, rather than him try to prove that it is a piercing of the
10 corporate veil. So let's say that there was a legal action and it brought these people
11 in, he would have to show a prima facie case as to why these entities -- why there
12 should be a piercing of the corporate veil. We've established that we have these
13 entities, that the accounts are there, that they're separate accounting. We have
14 a declaration and sworn testimony these are separate series LLCs. We have
15 established as a prima facie case that they are separate and distinct.

16 The burden then shifts to Mr. Greenberg to prove that they are not.
17 And that's skipping over the service issue and that they are subject to jurisdiction
18 here. It's very simple. They haven't been sued, they haven't been brought in, and
19 therefore the burden is not to -- he's flipped it on its head and asking us to prove
20 the negative, to prove that we didn't commit a crime, to prove that we weren't
21 at certain place at a certain time. That is -- the presumption of innocence, a
22 presumption of lack of liability has not flipped here because he has a judgment
23 against one party. He still has the burden to prove that. He has the obligation.

24 He also has the corporate structure law. It is not a master/subordinate

1 relation between the master and the series LLC. There's provisions in the statute
2 that talk about how removal of a member of the master doesn't mean removal from
3 the series. There is a provision that sets these up. They are separate and distinct
4 entities that do not have a master/subordinate relationship. They are separate
5 LLCs just like -- and so to that effect, the Court really just needs to consider them
6 as separate LLCs and apply the appropriate standard when you're dealing with
7 two complete and distinct series or normal LLCs.

8 What we have here was when the garnishment was written he
9 executed a garnishment to everything that shared that EIN. An EIN is not
10 determinative. There's nothing in the statute that says that you have to have a
11 separate EIN or a separate Tax ID to be a separate LLC. In fact, that's one of the
12 benefits when you look at the advantages, it allows you to have a centralized
13 recording of the income.

14 The Taxicab Authority is aware of the corporate organization of A Cab
15 and the series LLCs which provide services to it. They are not concerned about the
16 financial organizations. A Cab is compliant with its statutory reporting requirements.
17 They've cleared this with the Taxicab Authority. His assertions that maybe they
18 haven't, that there's this statute and since they haven't proved they met the statute,
19 they haven't met the statute. It is the complete opposite of how the rule of law
20 issues. You don't get to say, well, there's a requirement and they haven't proved
21 they met it and therefore we're entitled to pierce the corporate veil. No. The
22 presumption is that there isn't any action that's been taken against A Cab, so the
23 presumption should be that they are compliant with any statutory and regulatory
24 authority that the Nevada Taxicab Authority has seen to fit to impose by either rule,

1 statute or law.

2 If he wants to bring an action, he has to sue them separately. He has
3 to bring an action to bring it. Now, the problem is is because these are businesses
4 that are intertwined -- I'm trying to explain it in the best way I can that makes it
5 simple. If I hire a janitor to clean my office, that doesn't mean that they're involved
6 somehow in the practice of law or that it's inappropriate for me to pay them as an
7 independent contractor because they provide services to me as a law firm, any more
8 than it's different for me to pay a copy company to provide copies for trial litigation
9 because that's involved in the practice of law.

10 His restriction of a series LLC to real estate properties is completely
11 wrong and it's completely inappropriate. The legislative history to NRS 86.296,
12 that contemplated that it would be used in various enterprises, such as restaurants,
13 real estate, anything where you have individual segments for which LLCs would
14 be useful to have but for which imposing the regulatory requirements would be a
15 substantial burden. Obviously having 150 LLCs that you have to update an officer
16 and director to imposes a substantial burden to do so. The Legislature has enacted
17 the requirements. We've met a prima facie case as to why these sub series LLCs
18 are not here. It would be against due process for the Court to order withholding of
19 the funds at this point. They have remedies and methods that they can enact to
20 protect their interest, but they can't just do whatever they want and use the ends
21 to justify the means.

22 THE COURT: When you say due process, you mean the due process as
23 it protects these individual persons?

24 MR. SHAFER: Correct.

1 THE COURT: Okay.

2 MR. SHAFER: Yeah, these individual LLCs. They have to name them or
3 they have to take some action to say that they are not and to absolve them of their
4 -- you know, to pierce the corporate veil and say they are an alter ego. I mean,
5 that's what the case they cited in their brief stands for, is that if you have a cause
6 of action against members of an LLC or another corporate entity, you can bring that,
7 you're entitled to bring that, but you have to bring it and you have to put that party
8 on notice of the claims and give them an opportunity to defend. In fact, that's one
9 of the clear issues in the statute. The statute says that a series LLC has an ability
10 to sue and to be sued, to defend, to take action to own property, to sell it, to dispose
11 of it. If it is a subsidiary, if it is an appendage --

12 THE COURT: Is that in that same statute or is that in a different one?

13 MR. GREENBERG: Yes, Your Honor.

14 MR. SHAFER: It is NRS 86.296 subparagraph 2, (a) through (f).

15 THE COURT: Yes. Okay. Okay.

16 MR. SHAFER: And the individual series in other cases have been sued.
17 This court is probably replete with all sorts of series LLCs that are a party, that are
18 plaintiffs and defendants in many courses of action. They are their own entity. They
19 have the ability to act on their behalf. If they are mere appendages to the master,
20 then that would defeat the separate nature because they wouldn't have the ability
21 to sell or dispose of property because they would be subject to any restrictions that
22 the master LLC or the one -- A Cab --

23 THE COURT: Well, let me ask you a question about that. If to operate a
24 taxi you have to have a medallion, you have to have -- you have to be licensed by

1 the Taxicab Authority, then to be separate would you not have to have each one of
2 those separate entities, the series LLCs go get their license? Does the license go
3 to them or does the license that's in place, is it for A Cab?

4 MR. SHAFER: No. I believe that it is the company. In fact, the license
5 I believe is held by a company by the name of Admiral Taxi, but it isn't operated as
6 that because there was another Admiral entity. They are entitled to have this broken
7 up. The only distinction here is that it lends to confusion because we call it a series
8 LLC. If you had separate LLCs we wouldn't even be having this argument because
9 it's axiomatic that an LLC is separate and has its own separate assets and own
10 separate liabilities.

11 THE COURT: Uh-huh.

12 MR. SHAFER: But because they are a series, it somehow confuses the
13 issues and we have some magical hand waving to conflate the issues. No. A series
14 LLC is an LLC and entitled to the same protections and rights as any other LLC,
15 subject to the restrictions of the statute under NRS 86.296. There's no support for
16 their proposition that it is somehow subordinate or subject to the liabilities of this
17 master LLC as a matter of law without any need to -- you know, to serve the entity
18 individually or separately. So as far as the -- I'm not a taxi attorney and I'm not
19 completely familiar with the administrative code on this issue, but I presume that if
20 there were an issue it would have been raised by the Taxicab Authority because the
21 corporate organization has been disclosed to the Taxicab Authority, how everything
22 is reported. They are required to report --

23 MR. NADY: We reported. We were agendized and we were changed of
24 type of entity from an LLC to a series LLC in 2012.

1 MR. SHAFER: So they've cleared this with the appropriate authority. So
2 as far as any administrative barrier or concerns, I think we can say with relative
3 confidence that that is not an issue and has been adjudicated by the appropriate
4 authority on that issue.

5 The sole issue for the Court is whether or not plaintiff can bypass the
6 requirement to sue you personally individually and claim assets and hold assets
7 of an unrelated -- excuse me, of a third party without due process. And they are
8 entitled to try to bring whatever action they can, but right now they have failed to do
9 that. The reason -- and I think that's -- as I'm going through my notes, that is about
10 as simple as I can make it. If plaintiffs have their way there is no protection for
11 series LLCs. It will completely destroy the purpose of the statute because it means
12 that anybody who has a claim against the master can just kind of run amok and grab
13 whatever they can grab. And it's not even against series LLCs, against any LLC.
14 They just happen to grab something that doesn't belong to them and they can hold
15 it until they prove -- the other side prove that it's not.

16 Really, the appropriate remedy here is to order Wells Fargo to release
17 the funds, and if the plaintiffs have any objections or have a belief that the series
18 LLCs are subject to liability for A Cab, then they bring the appropriate motion to
19 amend as they've done already.

20 THE COURT: Okay. Looking at 86.296, sub 3(b), which says that the
21 article -- they get to be treated as a separate entity if the articles of organization
22 or the operating agreement provides that the debts, liabilities, obligations and
23 expenses incurred, contracted for or otherwise existing with respect to a particular
24 series are enforceable against the assets of that series only and not against the

1 assets of the company generally or any other series. You submitted a number of
2 documents. Is that provision in either the articles of organization or an operating
3 agreement?

4 MR. SHAFER: Yes.

5 THE COURT: Okay. Where is that?

6 MR. SHAFER: Well, we have the provision from A Cab LLC, which in
7 Article 2 of the -- which is attached as Exhibit E to their motion, it says that this is
8 a Series Limited Liability Corporation that may establish and may have a separate
9 business purpose or investment objective or limitation of liabilities of such in
10 accordance with --

11 THE COURT: I'm sorry, before you get too far into it, tell me again where
12 you're at.

13 MR. SHAFER: I'm sorry. Exhibit E.

14 MR. GREENBERG: Exhibit E of the response, Your Honor.

15 MR. SHAFER: Exhibit E to their opposition.

16 THE COURT: Oh, okay. Okay. That's a certificate to a company, the
17 restated articles --

18 MR. SHAFER: If you go to the second page of that exhibit --

19 THE COURT: Okay.

20 MR. SHAFER: -- there is the Amended and Restated Articles of
21 Organization for A Cab LLC.

22 THE COURT: Okay.

23 MR. SHAFER: Article 2 to that says that this is a Series Limited Liability
24 Company.

1 THE COURT: Uh-huh.

2 MR. SHAFER: And says that it will establish a series. If we skip down to
3 the end, will have a separate business purpose or investment objective and a
4 limitation on liabilities of such series in accordance with the provisions of 86.161
5 of the Nevada Revised Statutes. This was --

6 THE COURT: It says to the extent provided in the operating agreement
7 of the company.

8 MR. SHAFER: Right. We don't have the individual series LLCs' operating
9 agreements present before the Court, but we do have sworn testimony as to what
10 they contain.

11 THE COURT: All right.

12 MR. SHAFER: And if the Court is -- I can get Steve Oshins to come and
13 testify about what they contain or we could get it within the next few minutes, but
14 I think that we've established sufficiently that they do contain that. If they don't and
15 the plaintiffs wish to test that argument, they can bring whatever action they want.
16 But I think we've established the prima facie case as to what they contain.

17 THE COURT: Okay. Anything else?

18 MR. SHAFER: And if you -- we could -- if that's the Court's concern, you
19 could order a release of the funds pending submission of the articles containing
20 language to that effect. Normally I would say additional briefing, but additional
21 briefing will kill this company.

22 THE COURT: All right. Anything else?

23 MR. SHAFER: I think that's -- I think we've established that the case law
24 is on our side and that despite the argument against it there's no record proving that

1 there is a separate -- or a basis to pierce the corporate veil or otherwise go against
2 the statute.

3 THE COURT: All right. This is for me, at least, a difficult analysis to make,
4 particularly at this point in the game. We've been involved in heated litigation for
5 five years, more than five years, really, because there's been various stays during
6 the litigation process. We get all the way down to the very end, a judgment is
7 rendered, rightly or wrongly, a judgment is rendered. The victorious plaintiff goes to
8 obtain what they have maintained is due and I would have to point out again this is
9 monies that were due that were found in -- you talk about constitutional rights, due
10 process, there's also the constitutional right because the people of Nevada said that
11 it is to receive pay in accordance with that provision of the Nevada Constitution.

12 We get all the way down to the very end, the plaintiff goes to execute
13 and is told at that point and we're told that, oh, you've got the wrong guy. That's not
14 -- this one that you took the money from, that's not me, that's some other guy. Well,
15 sometimes that's hard to pin down. When you have natural people it's pretty easy
16 to distinguish one from another. The law of Nevada says that they don't have to be
17 natural people, it can be a corporate citizen or it can be an LLC or, as we now learn,
18 it can be a series LLC.

19 In dealing with this question of are these series LLCs truly separate
20 individuals as apparently intended by the law of the State of Nevada, I have to view
21 it within the context of where we are in this lawsuit. What that means to me is that
22 if you're going to avoid the natural course of a lawsuit that ends in a judgment and
23 execution, then it's incumbent upon you to show that you're not the guy. In criminal
24 law we have the other dude did it as the defense. In business law, corporate law,

1 LLC law in the State of Nevada we now have the other series LLC did it or nobody
2 did it, it was only the -- I think at some point you used the term the umbrella
3 organization, although not that you agreed with it, but you know, A Cab LLC. And
4 I don't have the other people here. Today earlier in court you saw that somebody
5 came in and got an exemption from execution by showing that those funds weren't
6 theirs, they belong to somebody else. It's a much easier proposition with people
7 than it is with a corporate person or LLC person.

8 So I believe that it's incumbent upon me viewing this question and
9 issue arising in the context of this litigation to say to the separate series LLCs you
10 need to show me that you're not -- because you look just like the other guy. And so
11 in fact that's the only way you get standing. It is -- in trying to discern whether this is
12 really a separate individual -- and when I say this is, what I really mean, I guess for
13 our purposes it boils down to the six series LLCs that had money in their accounts
14 which was attempted to be levied upon. You only get to be treated that way under
15 Nevada law if you're doing certain things; for example, the things that we've been
16 through. We don't need to rehash all of that stuff, but particularly NRS 86.296.

17 And I don't have a record before me that shows that whichever of the
18 six series LLCs has the money has complied with everything that's in that statute,
19 most particularly somewhere where it says that it's only -- that liabilities are only
20 enforceable against the assets of that series only. Well, or in other words, that the
21 liabilities of A Cab LLC are not my liabilities. You have to -- you have to -- you go
22 through the extra step of saying I really am a person as that is recognized under
23 Nevada law. And I think that you have to do that. Otherwise, if you don't do that
24 then what you wind up with is a way for someone, be they a natural person or

1 corporate or LLC to literally make themselves judgment-proof by going through the
2 motions of some of the requirements of Nevada law as regards series LLCs but
3 not all of them.

4 So I think it's incumbent upon me to require that in this instance these
5 separate LLCs, series LLCs need to be able to say, hey, you can't take my money
6 because I really am a separate person. And so at the very least I think it would take
7 more of a record than we have here. I don't know what to do about the perhaps
8 devastating toll that this may have upon the company, the company at the top, the
9 LLC, but we have been through the entire litigation process provided under the laws
10 of the State of Nevada. As I said, rightly or wrongly this plaintiff has obtained a
11 judgment. Now they're trying to execute to get the money that is required under
12 the Constitution of the State of Nevada. When I put that up against the claim that --
13 and it's not even a person, it's lawyers for the defendant saying, oh, but this guy is
14 not me, so, you know, you're going to have to do more than that. That's all I can
15 tell you.

16 MR. SHAFER: If I -- I don't mean to argue. We did submit a declaration of
17 Mr. Steven Beck --

18 THE COURT: Okay.

19 MR. SHAFER: -- who is an employee of A Cab Series, LLC, Employee
20 Leasing II.

21 THE COURT: Where is this now?

22 MR. SHAFER: That is Exhibit B to our motion to quash.

23 THE COURT: B, you said, that's in Boy?

24 MR. SHAFER: Yes. It is the last three pages of our -- of the motion.

1 THE COURT: Oh, of Steve Beck?

2 MR. SHAFER: Correct.

3 THE COURT: Okay.

4 MR. SHAFER: And Mr. Beck, after being sworn testified that he keeps the
5 books and records for these companies and that -- he says that in paragraph 2. In
6 paragraph 7 he says that the garnished accounts are not those of A Cab LLC and
7 has sworn testimony attesting to that fact. He testifies that -- as to who owns the
8 funds that are being taken. I appreciate the Court's concerns with balancing the
9 rights of a plaintiff to collect on a debt which the Court has determined they are
10 owed and I am not here to argue that judgment, the validity of it, the enforceability
11 of it at all, except as opposed to these independent agencies.

12 If the Court is inclined because of the sheer nature of this, we would
13 be willing to submit to the Court with a sworn attesting affidavit the operating
14 agreement's articles of incorporation for these six entities and we could do so by
15 the close of business today, by four o'clock.

16 THE COURT: That would take care -- perhaps would take care of one of
17 my concerns. Another, though, concerns the licensing. If A Cab LLC is the only
18 entity licensed, as opposed to some of these individual series LLCs, then how is
19 that that they're the only ones licensed to make the money and yet somebody else,
20 a separate person is doing the business and making the money?

21 Yes?

22 MR. WALL: May I address that just shortly, Your Honor?

23 THE COURT: Yes.

24 MR. WALL: I don't know if --

1 MR. SHAFER: No, I think that would be --

2 THE COURT: Sure. Yeah.

3 MR. WALL: We set up corporations all the time every day in our business.
4 The licensing for a parent for whatever it is that the business is doing is always held
5 by a parent corporation. Subsidiary corporations then do business under those
6 licenses. They may have to have doing business licenses for whatever it is they're
7 doing, but each one of these LLCs has whatever licenses they need. It's a red
8 herring to say because there's one license that A Cab has to operate a company
9 that it's all one company.

10 THE COURT: Uh-huh.

11 MR. WALL: It is set up with separate companies just like any other
12 corporate organization would be set up for the purpose of limiting liability. This was
13 explained throughout this time and they only sued A Cab LLC. They can't get a
14 judgment against someone else. With all due respect, Your Honor --

15 THE COURT: Uh-huh.

16 MR. WALL: -- you're shifting the burden again. It's their burden to prove --

17 THE COURT: I love it when lawyers say with all due respect.

18 MR. WALL: -- that somebody -- they have to prove that somebody isn't the
19 person -- is the person they have a judgment against before they can take it. They
20 can't go to -- they can't get a judgment against Farmers and then go collect against
21 one of Farmers' subsidiaries. They have to sue and make sure that there is -- that
22 they've got the right entity.

23 THE COURT: Assuming that you have a subsidiary legally recognized in
24 the State of Nevada.

1 MR. WALL: The law presumes that until they prove otherwise.

2 THE COURT: Where does it say that, that the law presumes that?

3 MR. WALL: If I'm a corporation you can't just come and take my bank
4 account and say prove to me that you're an actual corporation. You have to prove
5 first that you have a basis for taking the money and that I'm not a corporation. It's
6 always the burden of the party who is taking the money to pierce the veil, not the
7 other way around. We get to defend when they try to pierce the veil, not the other
8 way around.

9 THE COURT: Well, I'd be happy to receive further briefing on that. I don't
10 -- you know, that doesn't change my conclusion that at this juncture it is not only fair
11 but incumbent upon the defendant or defendants -- or defendant -- it's not even that,
12 it's the series LLC that holds the money that they say has been wrongfully held up
13 for execution.

14 MR. WALL: Then they should have sued the series LLCs.

15 MR. SHAFER: That is the -- the appropriate remedy is to sue the series
16 LLCs and bring them into the jurisdiction of the Court. That's set out in the Greene
17 case versus the Eighth Judicial District.

18 THE COURT: But if they are not a separate person, then what? In other
19 words, if they haven't complied with Nevada law such that they are -- such that a
20 separate person recognizable by the law has even been created, is it no burden to
21 show that? I don't agree with that.

22 MR. WALL: You sue them and you prove that they're not a person when
23 they claim that they're a person. That's the requirement of the law.

24 THE COURT: I disagree.

1 MR. WALL: I have to sue the corporation. I don't get to just go take the
2 corporation's money and then say prove I stole it from you.

3 THE COURT: Well, at the beginning of the lawsuit that may be so, but
4 when you have series LLCs created by the defendant it becomes important to make
5 sure that the law has been complied with in order to shield those assets from the
6 liabilities of the parent. I don't think that is too much of a stretch to ask them to
7 show that you are in fact a person recognized by Nevada law.

8 MR. WALL: They have to show that when they're sued, Your Honor, not
9 before.

10 MR. SHAFER: They are, I believe --

11 THE COURT: Well, you may be right. In that case all I can say is then you
12 don't appear to represent those persons. You represent the defendant.

13 MR. SHAFER: And there is a process for claiming exemption. The sheriff
14 has not served the entities as required, has not served them with a notice of
15 execution. And this gets into some of the other argument. There is a process for
16 claiming exemption. That exemption requires that the notice of writ be served upon
17 the party being executed upon. No writ has been served --

18 THE COURT: Okay.

19 MR. SHAFER: -- upon the series LLCs.

20 THE COURT: All right.

21 MR. SHAFER: There's no basis to do that. I suppose -- in fact, I don't
22 believe even that they served the -- I guess it's another issue that they didn't serve --
23 the sheriff didn't serve the LLC with a notice of writ timely, either, or A Cab LLC.

24 THE COURT: Required by the law?

1 MR. SHAFER: Required by the law.

2 THE COURT: Okay.

3 MR. SHAFER: But that's I think an evidentiary issue that we may need to
4 get into when the things were mailed and that's not why we're here.

5 THE COURT: Well, it was raised.

6 MR. SHAFER: We raised that because we wanted to make every
7 argument we could --

8 THE COURT: Yeah.

9 MR. SHAFER: -- so there wasn't an unfair surprise at the time when we
10 came in here today, especially given that it was on an order shortening time.

11 THE COURT: Well, that's the kind of issue that if I -- it seems to me it's fair
12 to turn to the plaintiff and say did you comply with the statute, procedural statutes
13 regarding execution?

14 MR. GREENBERG: Your Honor, I can personally attest that when the writ
15 was sent out, because I personally delivered it to the constable, a notice form was
16 given to them because they wouldn't take it without the notice form and without
17 instructions as to where to serve it with the proper envelope and so forth.

18 THE COURT: Was that a notice form to the defendant LLC or to the
19 series?

20 MR. GREENBERG: Your Honor, we don't even know anything about the
21 existence of these series LLCs because they're not public record. There's no way
22 we could know about it. The writ was directed to the assets of --

23 THE COURT: I thought each one of them was created and made a public
24 record of. Is that not true?

1 MR. GREENBERG: It is not, Your Honor. That's part of the problem here.
2 They are not registered with the Secretary of State. They can go out tomorrow and
3 mint 100 more series LLCs. They don't have business licenses for any of these
4 series LLCs. They're not registered as business names with the County, Your
5 Honor. There's no way to know --

6 THE COURT: Does not the administrative LLC have some sort of business
7 license?

8 MR. GREENBERG: None that we've been able to find. None that's been
9 introduced in the record in these proceedings.

10 THE COURT: Do you know?

11 MR. GREENBERG: This is part of the problem that we're facing here,
12 Your Honor. What I wanted to just point out to the Court is that for Your Honor to
13 proceed in the fashion you are proceeding, you should also look at what is in the
14 record. What is in the record is two things. You have an EIN number, a Tax ID
15 number that ties these all together to A Cab LLC. And in addition, Your Honor,
16 when this case was commenced in 2012, A Cab LLC, the master LLC here against
17 whom the judgment is entered, was issuing W-2s as the employer, as the liable
18 party to the plaintiffs. I mean, a copy is at Exhibit A of my response.

19 THE COURT: Uh-huh.

20 MR. GREENBERG: So as Your Honor was saying, we need to sue --
21 this discussion you have to sue the right people, well, we did sue the right people.
22 I mean, Mr. Nady at his deposition confirmed that at the time that 2012 W-2 was
23 issued it was in fact being issued by the master LLC here. So the liability in this
24 case, as Your Honor understands, extends back quite a number of years before

1 2012 and after 2012. The point is once this litigation is ongoing, I mean they can't
2 then somehow shift their assets to these -- its subordinate LLCs after it's already
3 been named. You know, again, Your Honor, we don't have a clear -- I'm not
4 asserting we have a clear determinative record here, Your Honor. That's not what
5 I'm here to argue. What I'm here to argue is we don't have a sufficient record,
6 clearly, to grant the defendants the relief they were asking. And I think Your Honor
7 appreciates why we don't, okay.

8 And I just would like to emphasize two other things, which is that the
9 analogy to Farmers Insurance that Mr. Wall was giving the Court is not completely
10 correct because if you have a judgment against Farmers as the parent and there's
11 a Farmers subsidiary that Farmers parent wholly owns, they're the only interested
12 party of the subsidiary, yes, you can attach the subsidiary. You don't have to go
13 and sue the subsidiary because it's an asset of the judgment debtor which is the
14 parent. I think Your Honor understands that.

15 THE COURT: So is that -- but in this case the owner, the parent owner
16 would be Mr. Nady himself.

17 MR. GREENBERG: But Mr. Nady's interests are identical in the parent LLC
18 here, the master LLC.

19 THE COURT: Okay.

20 MR. GREENBERG: He should not be -- I mean, there's no difference of
21 membership. There's no difference of ownership between A Cab, the master --

22 THE COURT: Uh-huh.

23 MR. GREENBERG: -- and its, you know, 200 or 300 subordinate series
24 LLCs. It's no different, Your Honor. It's all owned by Mr. Nady. There's no basis

1 for him to hide or for A Cab LLC as the master that he's operating through to be able
2 to place the assets that are nominally titled to the slaves, so to speak, of the master
3 beyond reach of the liability of the master. I was explaining this in the language
4 of the statute itself. It does not mention any ability of the series to shield their
5 assets from liabilities of the master. It says that the liabilities of the slaves, the
6 subordinates, can be limited to their assets and not to their sisters, but it doesn't say
7 anything about if you get a judgment against the basis for their existence because
8 they can't exist without the master. There has to be a master for them to exist.

9 THE COURT: Yeah.

10 MR. GREENBERG: But, Your Honor, even if the Court was to find in
11 favor of defendants' request here and say that these assets are possessed, were
12 nominally titled to these six or whatever it is subordinate LLCs, there's still a
13 question as to whether some measure of those assets really is being held for the
14 benefit of A Cab LLC, the master. They've introduced evidence that it is, as we
15 were discussing, in respect to these monies they were supposedly holding for tax
16 payments. So there shouldn't be any rush here to release funds for any reason.
17 I mean, you need more of a record. I think Your Honor understands my position
18 on that. So Your Honor should proceed in that fashion as you think is best.

19 THE COURT: Well, what I'm trying to do is to see whether or not these
20 series defend-- not defendants, these series LLCs' existence can be appropriately
21 documented enough so the Court can at least know whether we do have an
22 execution that cannot go forward. As I said, I'm acutely aware that it's possible that
23 the life of the company hangs in the balance. It doesn't seem to me that you do too
24 much good by killing the goose that lays the golden egg. But that's a different thing

1 than someone who has participated in a lawsuit and has waited themselves to say
2 we're the wrong guy until this moment in time. I think it is -- as I said, then it's at
3 least incumbent on these parties to establish that they are really separate entities
4 cognizable under Nevada law.

5 All right, hang on a minute.

6 (Court confers with the clerk)

7 THE COURT: All right, here's what we're going to do. I'm going to meet
8 again with you on Friday, two days hence. A Cab and/or the Series LLCs who claim
9 to be officially cognizable will have until then to either supply or bring with you some
10 sufficient evidence to do so, to see that in all particulars it's appropriate for me to
11 hold off on this execution. I will be gone from the jurisdiction beginning the next day,
12 Saturday, so this is -- will be the last time. That will be for two weeks. This will be
13 the last time that we can get this resolved and I want to get it resolved appropriately
14 under Nevada law. I won't give you a time right now. I have to check a couple of
15 things. But we'll contact your offices. Is it okay if we contact one party for each
16 side? Which should we contact?

17 MS. RODRIGUEZ: May I seek the Court's indulgence for a moment --

18 THE COURT: Yes.

19 MS. RODRIGUEZ: -- because I know that I will be scheduled to be out of
20 town and Mr. Nady as well will be in Kiev, out of the country. So I just want to make
21 sure with Mr. Shafer and Mr. Wall. I can supply what the Court is asking to counsel,
22 but I want to make sure somebody else will be here.

23 THE COURT: Uh-huh.

24 MS. RODRIGUEZ: Will you be here Friday?

1 MR. SHAFER: I can be here Friday.

2 MR. NADY: I have payroll Friday. That's -- I have to issue paychecks those
3 days and I will not be able to since they've taken that money out of that payroll
4 account.

5 THE COURT: But it won't be you who's issuing the checks, will it?

6 MR. NADY: They took the money from the payroll account.

7 THE COURT: Which is the property of whom?

8 MR. NADY: Which is the property of the payroll account. It's a separate
9 corporation that wasn't even sued.

10 THE COURT: Okay. So that's yet another entity?

11 MR. SHAFER: Yes, Your Honor.

12 MR. NADY: They're called Employee Leasing Account.

13 MR. SHAFER: And this has been the structure --

14 THE COURT: That's not a series LLC?

15 MR. SHAFER: It is.

16 MR. NADY: Yes, sir, it is.

17 THE COURT: Oh, okay.

18 MR. NADY: A Cab Series LLC, Employee Leasing.

19 MR. SHAFER: It's been the structure since 2012. Is it -- it's not possible to
20 -- would it be possible to hold this tomorrow? If it's not, I understand.

21 THE COURT: No.

22 MR. SHAFER: Okay.

23 THE COURT: No, I really can't tomorrow.

24 MS. RODRIGUEZ: Your Honor, if I may, just for clarification because there

1 are over 120 series LLCs within the series LLC that have some reference to A Cab.
2 And since all the money was pulled through a common employer EIN number,
3 basically A Cab is on hold as to what accounts are going to be garnished because
4 if everything is under the EIN number, it just happened that those six accounts were
5 -- had money and so they were garnished.

6 THE COURT: Uh-huh.

7 MS. RODRIGUEZ: But they are living day-by-day in fear that maybe one
8 of the other 120, if there's a dollar in the account that it's going to be garnished by
9 the bank --

10 THE COURT: Uh-huh.

11 MS. RODRIGUEZ: -- because we're just using -- or the bank I believe was
12 instructed by Mr. Greenberg to just use an EIN number --

13 THE COURT: Uh-huh.

14 MS. RODRIGUEZ: -- which is common to the 120 plus. So what -- I think
15 for what the Court is requesting --

16 THE COURT: I guess I would have to leave it to the defendants to
17 determine which ones they want to show to the Court are --

18 MS. RODRIGUEZ: Well, that's what I wanted to ask the Court, is for now
19 do you want the operating agreements and the documentation for the six that have
20 already been garnished so that we can show those were improperly garnished?

21 THE COURT: If I were you that's what I would do. That's the thing -- that's
22 what we're really staring at right now in the face.

23 MR. NADY: Those operating agreements are already written. They're on
24 my desk.

1 MS. RODRIGUEZ: Hold on, Jay.

2 MR. NADY: I'm sorry.

3 THE COURT: So it makes sense to me that if I were you I would try to at
4 least get these six released and maybe you have to worry about the rest on another
5 day. I don't know. You have to make that decision.

6 MS. RODRIGUEZ: Well, that's what we were trying to prevent, 120
7 interpleader actions or complaints in intervention --

8 THE COURT: Yeah.

9 MS. RODRIGUEZ: -- on behalf of 120 different separate entities. But if
10 they're all subject to being garnished, then that's going to be the Court's preference.
11 But maybe with this, this will satisfy the Court, just if you see this --

12 THE COURT: I don't have a preference per se. I'm responding to the
13 various issues and arguments and matters put to me to try and sort out and apply
14 the law legally and justly.

15 MS. DOVE: Your Honor, could I just request service of anything that's filed
16 from the parties --

17 THE COURT: Yes.

18 MS. DOVE: -- a courtesy copy, and the time of Friday's so we can --

19 THE COURT: Any problem with that, folks? Anybody files anything, serve
20 it on the bank as well.

21 All right. We will contact, then -- whose office for the defense are we
22 going to contact?

23 MR. SHAFER: You can contact my office.

24 THE COURT: We will contact you shortly and let you know what time, and

1 also you, Mr. Greenberg.

2 MR. GREENBERG: Yes, Your Honor. Just note my objection for the
3 record. The presentation of the operating agreements that's being discussed does
4 not establish by themselves compliance with the statute that Your Honor has been
5 talking about. There still has to be an established business operation that's actually
6 operating independently in respect to how the books and records and the operations
7 of the business are managed. And I don't see that I'm going to be given an
8 opportunity in any kind of evidentiary hearing in this time frame to be able to
9 examine any of that. But we will take this up in the fashion that the Court will review
10 on Friday.

11 THE COURT: Yeah. Okay.

12 MR. GREENBERG: I'm just noting that for the record, Your Honor.

13 THE COURT: All right. I'll see you on Friday. I'll let you know shortly what
14 time.

15 MR. GREENBERG: Thank you, Your Honor.

16 THE COURT: Thank you.

17 (PROCEEDINGS CONCLUDED AT 1:14 P.M.)

18 * * * * *

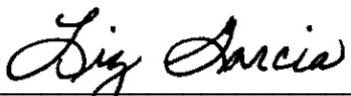
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my ability.

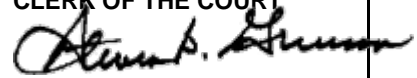
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Liz Garcia, Transcriber
LGM Transcription Service



1 **TRAN**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CIVIL/CRIMINAL DIVISION**
5 **CLARK COUNTY, NEVADA**

6 MICHAEL MURRAY, et al,) CASE NO. A-12-669926
7 Plaintiffs,) DEPT. NO. I
8 vs.)
9 A CAB TAXI SERVICE, LLC, et al,)
10 Defendants.)

11 BEFORE THE HONORABLE KENNETH CORY, DISTRICT COURT JUDGE

12 FRIDAY, SEPTEMBER 28, 2018

13 ***TRANSCRIPT RE:***

14 DEFENDANT'S EX-PARTE MOTION TO QUASH WRIT OF EXECUTION
15 AND, IN THE ALTERNATIVE, MOTION FOR PARTIAL STAY
16 OF EXECUTION ON ORDER SHORTENING TIME

17 PLAINTIFFS' RESPONSE TO DEFENDANT'S EX-PARTE MOTION TO QUASH
18 WRIT OF EXECUTION ON OST AND COUNTERMOTION FOR
19 APPROPRIATE JUDGMENT ENFORCEMENT RELIEF

20 **APPEARANCES:**

21 For the Plaintiffs: LEON GREENBERG, ESQ.
22 DANA SNIEGOCKI, ESQ.

23 For the Defendants: ESTHER C. RODRIGUEZ, ESQ.
24 MICHAEL K. WALL, ESQ.
JAY A. SHAFER, ESQ.

For Non-party Wells Fargo Bank: KELLY H. DOVE, ESQ.

RECORDED BY: Lisa Lizotte, Court Recorder

RA 01173

1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 28, 2018, 10:40 A.M.

2 * * * * *

3 THE COURT: I received this morning the defendant's copies of defense
4 exhibits in support of this motion to quash the writ of execution consisting of
5 Exhibit A, which then consists of -- I don't know how many, but a whole series of --
6 well, A is the affidavit of Mr. Beck. B is the series -- no, sorry.

7 MR. SHAFER: I believe it's E, Your Honor.

8 THE COURT: C starts with the selected portions of NRS 86. And then
9 D has certificate to a company. I should probably use the ones that you formally
10 submitted. You wish this to be made an exhibit today?

11 MR. SHAFER: Yes, Your Honor.

12 THE COURT: All right. And defendant -- I mean, plaintiff has received
13 this?

14 MR. GREENBERG: We were given a copy here in court this morning.

15 THE COURT: Uh-huh. All right. Any objection to enter these into the
16 record?

17 MR. GREENBERG: Well, Your Honor, I don't see that we can object to
18 their introduction in the record, but in terms of them being considered by the Court
19 as representing what they purport to represent, we do have a serious problem --

20 THE COURT: Sure.

21 MR. GREENBERG: -- from an evidentiary point of view, Your Honor.

22 THE COURT: Yeah. Okay. So this will be admitted as Defense Exhibits --
23 altogether it's A through J, I believe. Is that correct?

24 MR. SHAFER: Yes, Your Honor.

1 THE COURT: And the -- how many of these exhibits are operating
2 agreements?

3 MR. SHAFER: Your Honor, Exhibit E.

4 THE COURT: E. Okay.

5 MR. SHAFER: E is one set of the operating agreements for one of the
6 series.

7 THE COURT: For one of the series.

8 MR. SHAFER: Yes.

9 THE COURT: For which series?

10 MR. SHAFER: It is for -- so I get the name right, A Cab Series LLC, Valley
11 Taxi Company.

12 THE COURT: Okay.

13 MR. SHAFER: And I will represent to the Court that this series is potentially
14 identical to all of the other series agreements, series operating agreements for each
15 taxicab.

16 THE COURT: All right. Okay, so those will be admitted as Defense A
17 through J.

18 I would say that my law clerk and I worked late into the night last night
19 trying to really get on top of this issue, including reviewing not only the Nevada
20 statute, form of the statute, but statutes enacted in -- similar statutes enacted in
21 other states and some reading materials -- where is that -- one of which is Limited
22 Liability Companies Law, Practice and Forms by Nicholas Karambelas, which has
23 a section which describes series LLCs. Some of the challenges that have come
24 about in those states that have adopted them and some of the various forms of

1 a series LLC creation in statutory creation. Some of the things -- rules that have
2 been adopted in certain states which seem to have avoided all of this that we've
3 encountered, and that is that each series LLC must be registered with the same
4 entity as the lead LLC, the lead series LLC. We don't have that, apparently, in
5 Nevada. If we do, I'd be happy to be disabused of that notion.

6 Also, I've taken a look at what this author at least says about how
7 various entities, governmental entities deal with a situation like this where they are
8 not separately publicly identified so that the public can know who they're really
9 dealing with as opposed to who they thought they were dealing with perhaps. In this
10 case A Cab LLC or ultimately as of last year A Cab Series LLC. And it appears that
11 to some extent -- and these are just generalities, these do not necessarily apply --
12 well, we're not even there in this case. Bankruptcy court tends to brush aside the
13 series LLCs and tend to go to the creator of the entire series. There's also some
14 treatment of what happens in non-series states. In other words, recognition of a
15 series LLC doing business in a non-series state, which we don't have in this case.
16 And there's also a treatment of what happens or what some of the issues are when
17 one gets into the treatment of series LLCs under the Uniform Commercial Code,
18 Article 9. There are any number of other topics that creep up but they're only
19 tangentially implicated in the present matter before the Court.

20 I'm going to hear from all of you. By the way, I understand you need
21 to leave, Mr. Wall, at 11:15. I'll try to make as much headway as we can before
22 that happens.

23 Here is the question that I wind up having, even having seen the
24 exhibits submitted by the defendant, and most particularly the operating agreements

1 or at least some of them that have been employed here. There is one, for example,
2 which says: Operating Agreement between A Cab Series dash Employee Leasing
3 Company II and A Cab Series LLC, Valley Taxi Company. Question for the
4 defense. Is there another operating agreement which first establishes A Cab Series
5 LLC dash Employee Leasing Company II or establishes A Cab Series LLC, Valley
6 Taxi Company? Or is this the document purported to be the creation of both of
7 those series LLCs?

8 MR. SHAFER: I think -- if I can respond. This is the only operating -- the
9 only agreement we have. There is not a separate operating agreement that is solely
10 as to Employee Leasing or solely as to Valley.

11 THE COURT: Uh-huh.

12 MR. SHAFER: But it is not -- under the statute it is not required --

13 THE COURT: Okay.

14 MR. SHAFER: -- to have such an operating agreement. And we refer to
15 this in the selected statutes, but in the state of Nevada an operating agreement is
16 an elective or a permissive matter to establish a limited liability corporation and not
17 mandatory.

18 THE COURT: Uh-huh.

19 MR. SHAFER: The mandated part is the articles of incorporation that are
20 filed with the Nevada Secretary of State and one you have that, that operating
21 agreement -- and you have an operating agreement for the filed entity, that permits
22 the members to then create series LLCs on their own. Now, if they wish to have
23 liability protection there has to be an operating agreement that provides that they
24 are subject -- excuse me -- that they are separate. And I believe that each of these

1 is an agreement signed by the members of the respective entities that provides
2 that each of these entities is its own entity, has its own liabilities and not subject to
3 attachment or liability of the other series or general corporation.

4 THE COURT: And so that's the purpose of this operating agreement here?

5 MR. SHAFER: That is one of the purposes.

6 THE COURT: Okay.

7 MR. SHAFER: It's also to establish the relationship between the various
8 series so that the relationships and the product or what they were going to do is
9 defined, which is one of the portions of keeping appropriate records so that there
10 is a written record of what the relationship is between the series LLCs. I think
11 that's incumbent on what the -- to maintain adequate records. If you don't have a
12 document of what they're going to do for each other -- having this establishes that
13 and provides that record of what they're going to do. So --

14 THE COURT: So that theoretically you could have a series LLC that has
15 a number of members, two of which, let's say, decide to form another series LLC
16 and then do business with yet a third series LLC?

17 MR. SHAFER: That's correct.

18 THE COURT: So if that happens and there is a dispute between these two
19 series LLCs and the dispute is not resolved and it eventuates in a lawsuit, would
20 the lawsuit of A Cab Series -- let's assume the Valley Taxi Company decided to sue
21 A Cab Series, Employee Leasing Company II, how would -- I mean, what effect
22 would that have? In other words, if they had a disagreement and sued each other,
23 even though they knew about each other --

24 MR. SHAFER: Uh-huh.

1 THE COURT: -- that we were doing business with a series LLC that is not
2 registered anywhere and does not do business under its own name. Well, I guess
3 I wouldn't go that far. It does business but in the form of doing agreements such
4 as the one that's done here and other things. I believe, and correct me if I'm wrong,
5 the Employee Leasing Company II was the one that had the responsibility for W-2s.

6 MR. SHAFER: Well, let's take this example that there was a dispute
7 between the Employee Leasing series and Valley Taxi series. Perhaps there was
8 some dispute about a payment that wasn't made. Here it's somewhat of a moot
9 issue because the member, the sole member of the company is the same in both
10 instances.

11 THE COURT: Right.

12 MR. SHAFER: Let's say that that was not -- there was some disunity of
13 interest or some shared interest, one was a multi-member or whatever, or maybe
14 they were completely disparate. I've established series LLCs that has -- Series 1
15 has one member and Series 2 has another entire member. Let's say there was
16 some dispute regarding that. They would -- each would have the ability to sue or
17 to be sued and there is no restriction that I'm aware of that would prevent one
18 company from suing the other. The only difference would be they would have to
19 serve the registered series with the Nevada Secretary of State. So if Valley Taxi
20 were to sue Employee Leasing, they would serve A Cab Series LLC at the address
21 indicated with the Nevada Secretary of State.

22 THE COURT: And I assume that's because A Cab Series LLC is the real --
23 the closest thing we have to a real --

24 MR. SHAFER: They -- it is a registered --

1 THE COURT: -- existing entity?

2 MR. SHAFER: Yeah, it is a registered entity, and so they are the correct
3 one to be served for that purpose.

4 THE COURT: So they would serve them, serve A Cab Series LLC?

5 MR. SHAFER: They would serve the registered agent for A Cab Series LLC.

6 THE COURT: Okay, the registered agent.

7 MR. SHAFER: There is a fine distinction, but -- and many times the
8 registered agent is the corporation itself.

9 THE COURT: And how would they know who the registered agent was?

10 MR. SHAFER: They would know that because that's listed with the Nevada
11 Secretary of State.

12 THE COURT: Okay.

13 MR. SHAFER: So --

14 THE COURT: And that's if these two companies -- I should probably
15 identify this document. There's no numbers on it, but it's one of the documents
16 contained in Exhibit E.

17 MR. SHAFER: Yeah.

18 THE COURT: And it is an operating agreement between Leasing Company
19 and Valley Taxi Company. If a third party had a dispute with A Cab Series LLC,
20 Valley Taxi Company, which could be anything -- I assume that Valley Taxi
21 Company operates taxis?

22 MR. SHAFER: Yes. It operates -- it owns one of the taxicabs.

23 THE COURT: Okay.

24 MR. SHAFER: Yes.

1 THE COURT: So if -- well, let's say the cab gets in a wreck and people are
2 harmed and they believe -- they take issue not only with the driver but the company
3 who owns the cab. And I suppose in Nevada we have theories of P.I. lawsuits that
4 include the owners of the vehicle. How would that person know who to sue?

5 MR. SHAFER: Well, it's pretty simple. In that instance they would -- if they
6 knew the name of the taxi company they would sue A Cab Series or Valley Taxi
7 Company. If they didn't, it's no different than any other accident where they don't
8 know the exact name. They would sue A Cab Series LLC or --

9 THE COURT: How would they know who to serve in Valley Taxi Company?

10 MR. SHAFER: Well, this goes back to one of the --

11 THE COURT: Does that go back to -- there's no registered agent for Valley
12 Taxi Company; right?

13 MR. SHAFER: No, there is a registered agent for Valley Taxi Company
14 and that's the same registered agent for A Cab Series LLC.

15 THE COURT: How would they know that that is the registered agent for
16 Valley Taxi Company? In other words, I assume that this is not a public document
17 somewhere --

18 MR. SHAFER: No, it is not.

19 THE COURT: -- Secretary of State for anyone to find out who to serve.
20 So they would serve in that case A Cab Series LLC, the registered agent?

21 MR. SHAFER: Correct.

22 THE COURT: And if they proceeded through the litigation and let's say
23 they did persevere and obtained a judgment against Valley Taxi Company, how
24 would they -- how would they execute on the judgment?

1 MR. SHAFER: Well, there is a very good way to do that and that's -- as in
2 the example of the personal injury accident, Nevada provides for several theories
3 of liability, including alter ego. Let me give you an example. If there was a car
4 accident and Valley Taxi Company owned the cab that was involved in the auto
5 accident, the plaintiff who was injured may bring suit against the taxi driver for
6 negligent operation of the vehicle. He may also bring a cause of action for negligent
7 maintenance or some other cause of action. The maintenance is done by a
8 completely separate entity. There is a way to do that. When you bring the lawsuit,
9 you bring it upon the information you have at the time and prudent practice is to
10 name Does and Roes so that if it indeed turns out that the person -- the name you
11 sued was not the correct person, you can move to amend.

12 Or as plaintiff has done in this instance, they have moved -- they
13 sued A Cab LLC and following the judgment have moved to amend to name A Cab
14 Series, LLC. I'm not commenting on the merits of that motion, but illustrating that it
15 is a method or a remedy that can be brought in the event that the improperly named
16 party, or if you allege that the improperly party was named. Plaintiff in their brief that
17 they submitted yesterday cited several cases regarding amendment and bringing
18 claims against a differently named party. In all of those instances they said that you
19 need to bring an action or bring some sort of proceeding to amend and to add that
20 cause of action as an alter ego.

21 THE COURT: Uh-huh.

22 MR. SHAFER: It's really -- I can appreciate the Court's concern in protecting
23 the public --

24 THE COURT: Uh-huh.

1 MR. SHAFER: -- because you do want to have accountability --

2 THE COURT: Uh-huh.

3 MR. SHAFER: -- for companies to be responsible. But there's really no
4 difference between that -- we do not require people to -- you know, to give their
5 name, necessarily. Well, I guess there is a statute that says that, but if you are --
6 let me give you an example. My wife was driving down the street yesterday and
7 some teenagers threw a rock at her car and damaged her car. She stopped and
8 asked their names and they gave their first names and that's it and then ran off.
9 If we were to bring a suit against that person, we would name Alexander and Kevin
10 Doe, bring the lawsuit against them and engage in our due diligence to name that
11 person. Upon finding out their identity, it would be incumbent upon us to move to
12 amend to correct the name of the parties as part of our due diligence, but we would
13 be able to bring that lawsuit even though we didn't know the correct name of the
14 parties. Or if it turned out that Kevin Smith was really not his name but in fact was
15 Joe Biden or some other name, we would be able to move to amend to name the
16 correct party. We do not mandate that we have our names tattooed on our
17 foreheads or otherwise provided. There is a method that balances that.

18 In the statute there's not a provision that requires registration with the
19 Nevada Secretary of State. I know other states have enacted to do that, but our
20 Legislature in its wisdom or folly has ruled that these are the requirements, that if
21 you operate in this manner that you can -- you do not have to register. In fact,
22 there's not a way for the series LLCs to register. It would be impossible for A Cab
23 Series LLC, Valley Taxi to go to the Nevada Secretary of State and try to file a
24 registered agent certificate. It is impossible for them to do that. There is no method

1 to do that. Even if they wanted to do that or tried to that, it is an impossibility to do
2 that. The method you have to do that is to have, as they set out in the statute, is to
3 create articles and then have an operating agreement that provides for how lawsuits
4 and how these things are to be managed. And this is what we've submitted in
5 Exhibit E and also -- excuse me, Exhibit F -- no, Exhibit E, and then Exhibit D is the
6 articles of incorporation that set out the basis for the registered LLC.

7 THE COURT: I'm sorry, that was Exhibit --

8 MR. SHAFER: Exhibit D.

9 THE COURT: D. Okay.

10 MR. SHAFER: And we referred to this yesterday.

11 THE COURT: Certificate to accompany restated articles or amended and
12 restated articles.

13 MR. SHAFER: Yes. And pages 2 and 3 are the amended and restated
14 articles of organization --

15 THE COURT: Uh-huh.

16 MR. SHAFER: -- that were filed in -- were created in February of 2012.

17 THE COURT: Uh-huh.

18 MR. SHAFER: And these set out the separate nature of the series LLCs
19 in accordance with the statute that was in place at that time.

20 THE COURT: Uh-huh.

21 MR. SHAFER: It's since been revised slightly, but that is why it was created
22 there. And this comes --

23 THE COURT: So are you saying that by -- I mean, how would a party
24 under the circumstances that I was describing where you have one of these series

1 LLCs that gets in a legal dispute and somebody wants to sue them, how would they
2 know?

3 MR. SHAFER: They would know the same way we get any information.
4 They would -- well, let me back up here. One of the reasons that the -- the benefit
5 of the way these are drafted now, A Cab Series LLC indicates its tie to the registered
6 entity by its name format, because if you notice all of the entities are A Cab Series
7 LLC comma Valley Taxi Company; A Cab, Employee Leasing Company, so that it
8 would put the various parties on notice that A Cab Series LLC is a part or related to
9 those entities.

10 THE COURT: Well, how would they know that, though? If somebody gets
11 in a wreck with the cab that we were talking about, how would they know that the
12 owner is known as A Cab Series LLC, Valley Taxi Company?

13 MR. SHAFER: Well, in the event of an accident the insurance for the
14 individual entity and the registration docs for the car show that the owner of the
15 vehicle is A Cab Series LLC, Valley Taxi Company. So --

16 THE COURT: But how would somebody know that? In other words, to
17 get even to the registration? I assume what you're saying is they have to do the
18 discovery to find out.

19 MR. SHAFER: Well, that would be part of it, but if we go back to the
20 automobile accident, it is incumbent on a registered driver in the state of Nevada to
21 provide insurance information and provide registration information in the event of
22 an accident.

23 THE COURT: Uh-huh.

24 MR. SHAFER: So if A Cab is in an automobile accident with another party,

1 they have to provide that information. That information then would identify them
2 as A Cab Series LLC, with an address that's indicated, just as if you or I were in
3 an auto accident we would have to provide that registration information and would
4 provide our address information for us to be sued or contacted in the event of a
5 claim for damages. It's no different for the series here in the event of an automobile
6 accident. It's listed on the insurance, it's listed on the registration documents so
7 that person, that cab driver -- the person that was involved in that accident or the
8 passenger would know who it is.

9 When we get to the series of hypotheticals, what if somebody driving
10 down the street wanted to sue Valley Taxi for offensive advertising or something.
11 Maybe there was an ad that they thought was a little too racy or something and they
12 felt offended and wanted to bring a lawsuit. How would they do that? Well, how
13 would they do that in any other instance if they say who it was? If I'm driving down
14 the street and they don't like -- they think my license plate is offensive and want to
15 sue me for that, how do they find out who I am? I mean --

16 THE COURT: Well, driving down the street, I assume they have the tag
17 number, like off the tag.

18 MR. SHAFER: Yeah. And they would have the tag number here, which
19 they would go to the DMV, find out who the registered operator of that vehicle was.
20 There is a method that's set out in the statute for service and that's that all of these
21 series LLCs have the registered agent that's indicated by the registered -- the
22 registered agent for the filed LLC is who has to be served.

23 THE COURT: Okay.

24 MR. SHAFER: Now, how do you find out that? I appreciate the Court's

1 concern, but I don't know that it has to be a full-proof method that no matter with
2 no effort on the part of the complaining party the name of the entity has to be
3 discovered. It's whether or not that entity is hiding or not representing who it is
4 or is engaging in some sort of skullduggery to obscure their identity. And in this
5 case they have registered the vehicle, they operate under Valley Taxi, they have
6 insurance in that name, so that any foreseeable action -- I guess the question is
7 how do you -- you know, we can get into lots of scenarios --

8 THE COURT: Yeah.

9 MR. SHAFER: -- in which it might be difficult for the plaintiff or putative
10 plaintiff to find out the exact identity of the entity, and that's I suppose a balancing
11 test. It's not set out in the statute that there has to be a way. The Legislature
12 has made an exception for the registration requirement for series LLCs. If the
13 Legislature chooses to change that or amend that in some way, as they have in
14 other states, there are certainly reasons why they would and reasons why they
15 would not want to do that.

16 Going back to the issue, one of the primary benefits of a series LLC
17 is that you do not have to do multiple filings with the Nevada Secretary of State.
18 That it makes it simpler. They've done that to invite businesses to the state of
19 Nevada and to compete with Delaware and other states that have such a similar
20 series LLC. I mean, to a certain extent we could argue against the creation of a
21 corporate entity or a limited liability corporation in the first place, but they have been
22 created and we have to deal with the statutes as they are written.

23 THE COURT: Uh-huh.

24 MR. SHAFER: So I appreciate the Court's concern, but I think the answer

1 to that is in most instances the remedy -- well, you don't need to reach the remedy
2 because they will know the identity of the entity in most scenarios, and if they don't
3 they can move to amend or they can move to seek alter ego. We do not require in
4 the state of Nevada that the identity of owners of a corporation or a limited liability
5 company be known. They are not required to be registered with the Nevada
6 Secretary of State. So if we want to pierce the corporate veil or bring an alter ego
7 theory, how would we go about that? Well, you Does and Roes and you seek to
8 amend and you seek discovery in that process. So there is a method that does not
9 leave a plaintiff without a remedy or without an ability to pursue a claim.

10 THE COURT: Let's return to this operating agreement that I was looking
11 at between the Employee Leasing Company II and Valley Taxi Company.

12 MR. SHAFER: Correct.

13 THE COURT: What part of this -- I'm concerned that this purports to be
14 an operating agreement that creates, apparently, both A Cab Series LLCs that are
15 named there, and yet what it really is is simply a lease because the very -- the
16 language, once it gets through with -- I mean, it starts off saying, "This employee
17 leasing agreement is made and entered into by and between A Cab Series LLC,
18 Employee Leasing Company II and A Cab Series LLC, Valley Taxi Company,
19 lessee, effective as of the commencement of business 2/25/16, the effective date."
20 So it's a lease. It says it's an operating agreement, but there is -- I don't see
21 anything in this operating agreement -- in other words, if somebody even did
22 diligence and came up with this document, how does this document create the
23 entities that it purports to have created and as lessor and lessee?

24 MR. SHAFER: And I appreciate the Court pointing to that. This is a lease.

1 It is an agreement that defines the relationship between these two entities. If we
2 turn to the second page of this agreement, particularly paragraphs 9 and 10,
3 paragraph 9 provides that the Employee Leasing Company II and Valley Taxi
4 Company have the list of items A through F, which are the same powers and
5 responsibilities that are set out in the organizing statute, NRS 86.296. So this
6 paragraph here establishes the series LLCs, plural. It is a reciprocal and mutual
7 establishment by the different -- the members of the different series LLCs.

8 THE COURT: Uh-huh.

9 MR. SHAFER: So this paragraph here establishes those entities and
10 reiterates the powers and abilities they have. Paragraph 10 limits the liability and
11 copies this language from the statute as to the limitation of liability as to the series
12 itself being responsible for its own debts and not responsible for others. So these
13 two paragraphs are the establishing and the limiting factors required in the statute
14 to establish a series LLC. While it's a bit of a sandwich in that it combines multiple
15 ingredients and multiple aspects and while some attorneys may like to have
16 separate documents, one establishing and then the other, I don't see anything in the
17 statute or anything in law that would preclude a combined agreement to this effect.

18 THE COURT: Uh-huh. What --

19 MR. SHAFER: It is a mutual pledge.

20 THE COURT: You mentioned just now that separate and distinct records
21 are maintained. They -- it says they're held directly or indirectly, including through
22 a nominee or otherwise, and accounted for separately from the other assets of the
23 company and any other series. What assets is -- would either of these entities own
24 since -- isn't one of the hallmarks of one of these series limited liability companies

1 is that they can control assets but not own them?

2 MR. SHAFER: It is possible to control and to own. The statute provides
3 and in fact this operating agreement says that they can own property -- they can
4 own, hold, improve or otherwise deal with real or personal property. Valley Taxi
5 Company owns a vehicle. That's the asset that it has that is used in the furtherance
6 of providing taxi service.

7 THE COURT: Which is -- Valley Taxi, which is a series --

8 MR. SHAFER: It is a series of A Cab Series, LLC.

9 THE COURT: Uh-huh.

10 MR. SHAFER: So it is the entity that owns the vehicle. So that's the asset
11 that it has. Employee Leasing, the assets that it has, I suppose, are the provision of
12 labor that is used by the -- provides the drivers of the vehicles then used to generate
13 revenue.

14 THE COURT: Does the limited liability -- or, sorry, the series LLC statute
15 in Nevada either allow explicitly or preclude a series LLC from owning property
16 assets?

17 MR. SHAFER: It explicitly provides for that, Your Honor.

18 THE COURT: Okay.

19 MR. SHAFER: In fact, if we look at --

20 THE COURT: Ahh. 86.311. Acquisition, ownership and disposition of
21 property by company and series.

22 MR. SHAFER: That is -- yes. Also, 86.296 2, sub (e) and (f).

23 THE COURT: Oh, where did that go? Where is our series LLC statute?

24 MR. SHAFER: That would be Exhibit B to our motion.

1 THE COURT: You put the statute in there?

2 MR. SHAFER: I did, Your Honor, just so we didn't have to pull the heavy

3 books.

4 THE COURT: Oh. D, did you say, like Dog?

5 MR. SHAFER: No. E. Edward and Frank, under paragraph 2.

6 THE COURT: All right.

7 MR. SHAFER: Leading into that --

8 THE COURT: Where's the statute? I'm looking for the statute. Is that in E?

9 MR. SHAFER: No. Sorry. Exhibit B. Or, excuse me, Exhibit C as in Charlie.

10 THE COURT: C. Okay. All right.

11 MR. SHAFER: On page 1 of Exhibit C, looking at paragraph 2, it says, "A

12 series may." And then directing to subparagraph (e) and (f), (e) says a series may

13 "purchase, take, receive, lease or otherwise acquire, own, hold, improve, use and

14 otherwise deal in and with real or personal property or an interest in it, wherever

15 situated, and the power to sell, convey, mortgage, pledge, lease, exchange, transfer

16 and otherwise dispose of all or any part of its property and assets."

17 THE COURT: Okay.

18 MR. SHAFER: So a series LLC has the ability to hold and to transfer

19 property.

20 THE COURT: All right. Let me jump to another statute, then. You may not

21 have this with you.

22 MR. SHAFER: Well, I think -- yeah. Counsel was just pointed to 86.311.

23 THE COURT: Oh, yes. Uh-huh.

24 MR. SHAFER: Which says essentially the same thing. Subparagraph 2

1 says, "Real and personal property may be purchased, owned and conveyed by
2 a series separately in the name of a series, as an asset of the series only."

3 THE COURT: Uh-huh.

4 MR. SHAFER: So a series LLC has the ability to do that, subject to the
5 authorization of its members and managers. Here there is only one member and
6 they have authorized this.

7 THE COURT: What I keep coming back to is this problem with interpreting
8 these statutes in this fashion, and that is that in this case we are dealing with a
9 constitutional mandate, the minimum wage act, only it's not just an act it's part of our
10 Constitution. And what I hear you saying is that if we interpret our limited -- I'm
11 sorry, our series LLC enabling legislation in the way that you're proposing, there is
12 really no way for employees to know who their real employer is. How many of the
13 drivers know that their employer is a series LLC, Employee Leasing Company?

14 MR. SHAFER: That I do not know the answer to, Your Honor, but I think
15 I can anticipate that there's -- there is a remedy for that situation.

16 THE COURT: And then similarly under NRS 86 -- now I don't recall exactly
17 which statute it is, but it says that -- where's the statute that says that you have to be
18 able to go to your employer and request your pay information and they have to give
19 it to them in ten days, within ten days? Where's that statute?

20 MR. GREENBERG: That would be in Chapter 608, Your Honor.

21 THE COURT: Oh, 608. That's right. That's right.

22 MR. GREENBERG: Or maybe 613. It's part of the labor code, Your Honor,
23 not the LLC.

24 THE COURT: So how would this Employee Leasing Company -- first of all,

1 how would an employee know to go there? How would they know to know who
2 their real employer is and how -- who would they make demand on in the Employee
3 Leasing Company to get the information guaranteed by NRS 608.115?

4 MR. SHAFER: Well, in that instance when the employee gets paid they
5 receive tax information. They receive tax statements, whether they're an
6 independent contractor or an actual employee, they receive tax documents that
7 identify who their employer is and the appropriate withholding. So in that instance --

8 THE COURT: So each of the payment stubs, the pay stubs identify the
9 employer as this series LLC, Employee Leasing Group?

10 MR. SHAFER: I do not know the answer to that, Your Honor, if they do or
11 they don't. But I suppose that's an issue as to whether or not -- it may be that they
12 identify only the dba. That would be when we have -- that would be a different
13 argument altogether as to whether or not the appropriate demand would be made
14 upon their employer, given that the employer identifies themselves as a particular
15 name.

16 THE COURT: Well, let's assume that -- who would it be? I don't even
17 know who it would be. You could say the IRS, but they play by different rules. If
18 the IRS came around and said we don't think you're withholding enough, how would
19 they know who to talk to if all they have is whatever the employee has?

20 MR. SHAFER: Well, they would make a demand on whoever was remitting
21 the taxes; that information.

22 THE COURT: How would they know who that is?

23 MR. SHAFER: Well, they would be getting a statement. They don't just get
24 a blank check or, you know, cash that's received. There is some tracking as to the

1 EIN number as to how that has to be prepared. Again, with the -- I think there is
2 a remedy to do that. If for some reason there was a mistake in the name of the
3 company that was identified, there's a remedy for that, amending or adding the
4 correct name, just as if you were in an auto accident and somebody identified
5 themselves by the incorrect name. For example, if my wife identified herself by her
6 maiden name as opposed to her married name, that would not disrupt necessarily
7 the lawsuit.

8 THE COURT: Well, in this instance I'm talking about how does the IRS go
9 to find out -- verify that the correct amount -- or if they look at the paystub and they
10 see what it reflects in terms of withholding and the amount of pay, how would they
11 go to the employer, which is this Leasing Company, and say you're not withholding
12 enough or you're withholding too much or whatever? How would they do that?

13 MR. SHAFER: Well, in reality they go to their HR department or to whoever
14 has been appointed to address that and, you know, try to deal with that issue.

15 THE COURT: How do they know that? Who's the HR department? I mean,
16 have they got a sign on the door, we are the HR department for the Employee
17 Leasing Group? Or, I'm sorry, Employee Leasing Company, being the Series LLC
18 dash Employee Leasing Company?

19 MR. SHAFER: Well, in some ways --

20 THE COURT: Is there a sign on the door?

21 MR. SHAFER: I don't know, is there a sign?

22 MS. RODRIGUEZ: Your Honor, may I?

23 THE COURT: Yeah.

24 MS. RODRIGUEZ: I don't want to add additional argument, but since Mr.

1 Nady is out of the country, I'm a little more familiar with the premises.

2 THE COURT: Okay.

3 MS. RODRIGUEZ: I won't make argument, but maybe I can answer some
4 of the questions if the Court is okay with that, because yes, there is a sign on the
5 door. It doesn't say Employee Leasing Company on the door, but there is a Human
6 Resources Department, there is a Payroll Department, that if an employee has
7 any problems with tax withholding or payroll questions, anything like that, they
8 are dealing with those people and those people are actually working for the
9 Administration Company, like Mr. Beck who supplied the declaration saying I'm the
10 bookkeeper, I'm the accountant, I work for the Admin. Company. And so if there
11 was a question --

12 THE COURT: So they're not employees of any of these entities?

13 MS. RODRIGUEZ: They -- the drivers?

14 THE COURT: No. No. You said these --

15 MS. RODRIGUEZ: The admin people?

16 THE COURT: Yeah, admin people.

17 MS. RODRIGUEZ: Right. They --

18 THE COURT: They're not employees --

19 MS. RODRIGUEZ: No, they're different. They're administration. The
20 Employee Leasing Company -- excuse me. A Cab Series LLC, Administration
21 Company is going to encompass such people as the payroll people, the HR people,
22 the accountant, the more professional people. It's a separate company entirely
23 than the taxicab drivers that are through Employee Leasing Company, as well as
24 Employee Leasing Company Roman numeral II.

1 THE COURT: So if the IRS through whatever means decided that there
2 was insufficient money being withheld and they wanted to deal directly with the
3 employer, if the -- even if the paystub identifies the true employer, which is this
4 Series LLC, Employee Leasing Company, then they would have to know to go to a
5 different company's administrative people or bookkeeping people to have somebody
6 to talk to about this.

7 MS. RODRIGUEZ: Well, like all the cab companies in town and especially
8 because A Cab is not that big, everybody is housed basically in the same
9 administration building, so it's not like they have to go to Henderson for one office
10 and Las Vegas for another. They're all in the same premises. There are just
11 different businesses according to purpose, really. I think the names speak for
12 themselves. The Admin. is very straightforward, those are the people that are going
13 to do the administration. So if something comes in from the IRS or from the Labor
14 Commissioner or from Nevada Equal Rights, anything like that, that's going to get
15 directed to the right answering department, whether it's going to be the payroll
16 people or the HR people that are dealing, you know, with the insurance health
17 benefits, that type of thing.

18 And I wouldn't necessarily rely on the W-2s or the paycheck stubs
19 or some of those things that they necessarily have A Cab Series LLC, Employee
20 Leasing Company, Roman numeral II, because again, like most companies, A Cab
21 outsources a lot of that to use through Intuit and check printing, people like Clark
22 Check Printing. And they -- I think that's where we originally got the name A Cab
23 Taxi Service, which is nonexistent altogether, because as Mr. Nady testified in his
24 deposition, the check printing company put that on the checks. So I can represent

1 that every entity, every series has the word A Cab in it, but whether anybody has
2 ever gotten it right from -- Are you familiar with Intuit? That's what I'm --

3 THE COURT: Only just barely, so not very much.

4 MS. RODRIGUEZ: Okay. The Intuit payroll processing and the Clark
5 Check Printing Services, the Costco check printing services. A lot of times they
6 really shortcut things and put A Cab Taxi or A Cab Service. And so it's hard to rely
7 upon those particular prints as being the appropriate name.

8 MR. SHAFER: But I think this is --

9 THE COURT: The operating agreement we've been looking at, which is
10 between the Employee Leasing Company II and Valley Taxi Company, says in it,
11 "The purpose of the lessor is to interview, select" -- I'm at number one -- "is to
12 interview, select or reject applicants, orientate those selected applicants to the
13 customs and requirements of A Cab Taxi Company." So the operating agreement
14 itself refers to an A Cab Taxi Company. So I would suggest that it may -- the
15 confusion may not have originated with whoever did that check stub or whatever
16 it was because the operating agreement itself refers to such a company. The
17 agreement is not between them and anybody, but it does refer to it. It also says,
18 "Taxicab drivers as needed for each taxi company within this series of cells named
19 under the series limited liability company, A Cab LLC." It does not say A Cab Series
20 LLC. A Cab Series LLC did not exist, am I correct, until 2017?

21 MR. SHAFER: No. A Cab Series LLC was created in 2012.

22 THE COURT: And is that because the --

23 MR. SHAFER: I think the reason it was created, after approval of the
24 Taxicab Authority in 2011 --

1 THE COURT: But it was still called A Cab LLC, it was not called A Cab
2 Series LLC.

3 MR. SHAFER: The name had not been updated with the Nevada Secretary
4 of State. Even though the articles was A Cab Series LLC, it had not been updated
5 with the Nevada Secretary of State.

6 THE COURT: So this agreement would be correct that it was being done
7 for cells ostensibly within A Cab LLC, even though there was no series liability
8 company -- there was no series LLC created by A Cab, whatever you want to call it
9 at the top, until 2017?

10 MR. SHAFER: Well, let me back up here.

11 THE COURT: And therefore why would not -- if somebody even had this
12 document, the operating agreement, why would they not think that the real cab
13 company, so to speak, was either A Cab Taxi Company, which is nonexistent,
14 apparently, or/and A Cab LLC, which is specifically referenced? And so my whole
15 point is unless you get all of this done right from the beginning, including
16 denominating A Cab as an A Cab Series LLC, you haven't complied with Nevada
17 statutes for purposes of creation of a whole series of LLCs.

18 In the example that we had before you said that for several of these
19 things they would simply go to the Secretary of State and they would find out who
20 A Cab Series LLC, who their registered agent was and they'd serve them, but there
21 was no such entity until -- well, let me rephrase that. They wouldn't have found
22 A Cab Series LLC, they would have found A Cab LLC, which I assume they would,
23 quite correctly, I think, or understandably assume was organized under Nevada's
24 laws pertaining to LLCs. They might have even taken comfort from -- that they had

1 the right person from Nevada statute NRS 86.141, which deals with LLCs which
2 says, "Except as otherwise provided in subsection 2, a limited liability company may
3 be organized under this chapter for any lawful purpose. A person shall not organize
4 a limited liability company for any illegal purpose or with the fraudulent intent to
5 conceal any business activity or lack thereof from another person or a governmental
6 agency." And number 2 says: "A limited liability company may not be organized
7 for the purpose of insurance unless approved to do so by the Commissioner of
8 Insurance."

9 So would you say that these putative defendants, any number of
10 series LLCs, are not bound by Nevada's -- by that particular statute that is not
11 included in the series LLC statutes but is included in the LLC statutes? Or would
12 you say that statute is not applicable to the defendant in this case, to A Cab LLC?

13 MR. SHAFER: I think I would argue that it is not relevant to this issue at
14 hand, and let me explain that. Nowhere has it been argued that the creation of
15 the series LLCs or the LLCs were for an illegal purpose. They aren't created to
16 distribute drugs or --

17 THE COURT: Did you say legal or --

18 MR. SHAFER: Illegal.

19 THE COURT: For an illegal purpose. Yeah.

20 MR. SHAFER: Right. They aren't created to, you know, do some -- to
21 create -- distribute drugs or illegal property or some other improper or illegal basis.

22 THE COURT: Would it be an illegal purpose to form them in order to avoid
23 liability for the minimum wage requirements in our Constitution? Would that not be
24 an illegal purpose?

1 MR. SHAFER: Well, there is nowhere on the record that these entities
2 were formed for the purpose of avoiding taxes or employment liability or minimum
3 wage liability. If that was the express purpose --

4 THE COURT: You're right.

5 MR. SHAFER: -- then that might be problematic --

6 THE COURT: Yeah.

7 MR. SHAFER: -- but they aren't here. The express -- and they aren't
8 created to hide assets, either. The authorizing statute permits and does not require
9 separate registration of the series LLC. So by their very nature if it permits a
10 company not to be registered, in fact you can't, then as a -- if it is impossible to
11 register, it is impossible to see how such creation of a series LLC would be created
12 for the purpose of avoiding or hiding recognition. If you're doing what the statute
13 says and you can't do any more --

14 THE COURT: And yet what you're telling me is because of A Cab LLC's
15 use of the series LLC mechanism, albeit not really legally until 2017 because it still
16 did not identify itself as a series LLC until that date, so no person who had any
17 quarrel with one of these series LLC companies could know that they better get it
18 right because that's a separate legal entity than A Cab LLC. Would that not qualify
19 -- I mean, would I -- don't I have to interpret this statute as being applicable to
20 A Cab LLC's purported creation of separate series LLCs in an illegal manner as far
21 as I can tell because it didn't identify itself as a series LLC, so nobody going to the
22 available public records would be put on notice that they better do some of the
23 things that we talked about earlier in terms of discovery?

24 MR. SHAFER: Let me --

1 THE COURT: Then how can I not hold that NRS 86.141 applies and that --
2 I don't want to hold that there was fraudulent intent to conceal any business activity,
3 but you have taken a series LLC statute that was designed -- it may be questioned,
4 I think, whether or not the Nevada Legislature ever intended for that statute to be
5 used for a company, an LLC, even a series LLC to take all of its business operation
6 and slice it up -- in my analysis it's kind of sliced up horizontally, meaning -- well,
7 you could do it vertically -- anyway, sliced up so as to actually be separate cells that
8 do not bear any liability for the activities of other cells but are never identified to the
9 public, never identified in any way that the public could know, even if they need to
10 dig deeper.

11 MR. SHAFER: I think that that is the actual intent of the statute, Your
12 Honor, is to allow a company to divide its assets up into separate series and to
13 create a limitation on liability.

14 Going back to whether or not the series LLC was created, I think it is
15 inaccurate to say that the series LLC was not created until 2017. The entity was
16 created in February of 2012 when the amended and restated articles was filed with
17 the Nevada Secretary of State. Anybody who looked at A Cab Series LLC -- and
18 the amended articles is a public record and could be obtained from the Nevada
19 Secretary of State --

20 THE COURT: There was no A Cab identified as A Cab Series LLC
21 because it was still -- it specifically said it shall be known as A Cab LLC.

22 MR. SHAFER: There is no requirement in the statute for a series LLC to be
23 identified as a series.

24 THE COURT: Well, then if there is not, all of the protection of assets by

1 creation of series LLCs that took place in this case could take place with no notice to
2 anyone who had sued the entity that was then the real entity. A Cab LLC was not a
3 series, was not -- gave no notice to the public. In other words, if I don't require that
4 notice be given under our series LLC, even if it's just by virtue of calling yourself a
5 series LLC in stead of an LLC, then I don't know how to avoid thinking that you run
6 afoul of the LLC statutes. I mean, at that point it was still an LLC at the point that it
7 filed its 2012 amendment.

8 MR. SHAFER: Yes. Up until 2012, A Cab initially -- the entity was known
9 as Admiral Cab or Admiral Taxi. In 2001 it changed its name to A Cab LLC. In
10 2012 it changed to be a series LLC through the amended restatement, which was
11 a public record.

12 THE COURT: And what was the name of the entity in that public record?

13 MR. SHAFER: The name was A Cab Series LLC, as we look --

14 THE COURT: No.

15 MR. SHAFER: The recorded name, the name which appeared under the
16 Nevada Secretary of State was A Cab. The question is does that destroy or make
17 it not a series? That there was a mistake or an error in recording, does that destroy
18 the series LLC? I see no basis to find so. That might be a basis for an argument as
19 to whether or not the appropriate entity was served, but in this instance and counsel
20 has advised me that in all the answers and in all the responses for discovery, in
21 every instance A Cab Series LLC denied that it was the employer, and so put it out
22 there for many, many years that they were not the employer. As we saw in the
23 deposition transcript of Mr. Nady, he says that the Employee Leasing Company
24 was actually the employer. But that's an argument for another day as to who the

1 appropriate entity should have been and there's a method for --

2 THE COURT: He said that in 2017, correct?

3 MR. SHAFER: Correct.

4 THE COURT: Okay.

5 MR. SHAFER: And there's an argument for why they might have been
6 excused for bringing it later on. I would think that the denial of the -- that they were
7 the employer would have spurred -- at least in my instance I would have sent a
8 request for admission or a request for interrogatory as to who the employer of these
9 drivers were. If you're denying that they were the driver (sic), who is the employer?
10 I'm not familiar with what happened in that case to know if they did or didn't do that
11 or what the responses were, but there is a remedy for doing that.

12 THE COURT: And they would have sent that -- they would have sent that
13 to A Cab?

14 MR. SHAFER: And they would have asserted jurisdiction over A Cab
15 through the service of process. If I get sued and I had nothing to do with an
16 automobile accident, I was in another state at the time, by virtue of my service I am
17 before the court and have an obligation to respond to the other party. Now, I can
18 move to quash, I can move to dismiss, I can move to take whatever remedies, but
19 by virtue --

20 THE COURT: Is that by long arm or --

21 MR. SHAFER: Well, I mean, ultimately it's by nature of the service. It is
22 presumptive that I have an obligation to respond. Obviously I can bring for lack of
23 jurisdiction a motion to dismiss or any number of remedies based on a failure to
24 bring the proper party before the court, but until that point I don't have the luxury

1 of not responding. I'm just ignoring the orders of the court because, hey, you've
2 got the wrong guy. No. I have an obligation, at least presumptively of being served,
3 of responding. That is the situation here. That does not -- the fact that I can be
4 brought or that I am the wrong person doesn't change the nature of the LLCs or the
5 separate nature of the property that's at issue. There is nothing -- and this is going
6 back to it really is an issue, I think, of due process and going through things the
7 right way.

8 THE COURT: Uh-huh.

9 MR. SHAFER: If you -- you have an obligation to do your due diligence.
10 If through your due diligence and reasonable effort you cannot discover the
11 appropriate party, you bring against the party you know -- you think that it is and you
12 engaged in that process. There is not a constitutional requirement for us to wear
13 name tags of who and where we can be legally served. I don't have to carry around
14 a registered agent card for myself. The Legislature has not enacted that rule. They
15 have for LLCs, that there has to be a registered agent. And for series LLCs there
16 is a registration requirement for the entity. But those are issues as to reasonability,
17 not foundational requirements for a separate nature.

18 The question the statute poses is, one, are there separate records?
19 Are there records that are kept that establish a separate nature? And I would
20 submit that the operating agreement between these various entities carves out
21 a separate nature for Taxi Company, the Employee Leasing Company, for the
22 maintenance company. And are finances kept separate? And we have sworn
23 testimony that they are. So presumptively we've met the two requirements under
24 the statute. I may not disagree with the Court, to its opinion as to whether or not

1 it would be a good idea or good public policy to require series LLCs to register, or
2 it would be a good idea to impose other requirements. But the Legislature hasn't
3 done that. The fact that other jurisdictions have indicates that the Legislature has
4 no desire to do that or has elected not to do that.

5 And again, the remedy is one that they've already elected, and that's
6 to move to amend the judgment. Now, here the crux of this issue is they served a
7 writ of execution on A Cab LLC, not on A Cab Series LLC, Maintenance Company.
8 There might be a different reason for carving A Cab Series, the employment
9 company, but that's not before the Court. They have an obligation to put the
10 individual series, the presumptive separate parties on notice.

11 They cited to a lot of case law in their brief about whether or not an
12 EIN number provides a basis to pierce the corporate veil, whether or not you can
13 have separate companies, but the thing they omit is that in every one of those
14 cases there was a separate action, there was a motion to amend, there was some
15 procedure that said that you have to go to the other person, you have to go to the
16 other party and bring them into the lawsuit by -- (unintelligible) -- by personal service
17 or by subjecting them to the jurisdiction of the Court. Until they are given that
18 opportunity to respond, you know, you can't jump to the end. You say, well, I think
19 they do, so let's take their money and then they can prove it later. But I think going
20 back to the separate -- as much as we would like to, the requirements are the ones
21 set out in the statute and I don't believe that there's a separate requirement to
22 register. Obviously they have endeavored to do so.

23 Going back to the operating agreement, you mentioned and I just want
24 to touch on this briefly, that A Cab LLC was mentioned in the operating agreement

1 between the separate series and A Cab Taxi Company. Again, A Cab Series LLC
2 or A Cab Taxi Company wasn't a party to that and any mistake shouldn't be
3 construed against it.

4 THE COURT: Wasn't a party to?

5 MR. SHAFER: To that operating -- to that contract or operating agreement.

6 THE COURT: This operating agreement? Neither of those entities was a
7 party to to this?

8 MR. SHAFER: No.

9 THE COURT: Who was, then?

10 MR. SHAFER: A Cab Series LLC, Valley Taxi Company and A Cab Series
11 LLC, Employee Leasing Company were parties to this agreement.

12 THE COURT: Okay.

13 MR. SHAFER: A Cab Series LLC or A Cab LLC are not. So if there's a
14 mistake in reference to the name, going back to contract construction does that
15 error or that mistake destroy this agreement or is it just simply -- you know, can we
16 reasonably interpret it to mean who it is?

17 THE COURT: Well, here's the problem I'm having with virtually all of these
18 explanations and the argument that you're making. It seems to me that if I agree
19 with that and simply say to these particular plaintiffs, sorry, Bud, you just -- you
20 sued the wrong entity, you didn't go and find that there was an Employee Leasing
21 Company and you didn't find that there was a Valley Taxi Company and you didn't
22 discover all of these various series LLCs, and therefore too bad, so sad, give me
23 the money back. And Mr. Nady and A Cab LLC, who have been parties to this
24 litigation, obviously, from the get-go, walk out with money that has been executed

1 upon. I can't get away from the notion that it is those employees, the employee
2 class who will thereby be deprived of due process of law.

3 MR. SHAFER: And I can appreciate the Court's concern.

4 THE COURT: And even, I would say, a heightened or, you know, we could
5 say strict scrutiny, we'll borrow a term from a different legal analysis, giving -- I think
6 the Court is duty bound to vouchsafe that parties really do have due process and
7 that that due process means you can't organize all these things behind closed
8 doors, not let anyone know, not even call the master LLC a series LLC until five
9 years after the litigation was commenced. I just -- I don't know how to countenance
10 that and not be forced to find that it works as a fraud upon the rights of these
11 employees.

12 MR. SHAFER: And I can appreciate the Court's concern regarding that.
13 I have two points in response to that. First, if I am sued, my co-counsel and I are
14 driving down the road, she's driving, she gets in an auto accident, she runs away
15 and the police cite me for driving, and I deny that I was the one that caused the
16 accident and I do that through the entirety of the litigation, it is not a fraud for me
17 to continue to maintain my innocence, nor is it a fraud to say -- to point to her, that
18 it's another party. There is a separateness there.

19 THE COURT: If there is a legal separation --

20 MR. SHAFER: Correct.

21 THE COURT: -- correct?

22 MR. SHAFER: Correct. If I say that my name is, you know, John Smith
23 and it's not John Smith, or they sued me as John Smith and I deny that that's the
24 thing through the litigation, I told them that, it is not a fraud to continue to say that,

1 you know, accounts that are held by Jane Smith are not subject to attachment.

2 There is a method for doing that.

3 They were advised early on that this was not the appropriate entity.

4 They could have taken steps and in fact they did so the moment the judgment was
5 entered, they moved to amend. And that's not what we're here for. I'm not arguing
6 whether or not they have a successful motion to amend or not. The Court doesn't
7 need to get there and in fact shouldn't get there at this point. The sole thing we
8 have to look at is are these separate entities as a prima facie case. Do they meet
9 the facial requirements for separation as a statute? Do they have a separate -- do
10 they hold themselves out as a separate entity? Have they met the requirements of
11 the statute? And I submit they have.

12 Is there a basis to move to amend? I don't know. Is there a basis to
13 name them personally? I don't know. The Court doesn't know. The Court can't
14 and should not reach that at this point. There is a method and a procedure for
15 doing that. If it turns out that they were hiding money and doing things, other things,
16 by all means pierce the corporate veil. It's no different than any other piercing of the
17 corporate veil requirement. There is a method for doing that, and that is as we saw
18 in the -- and I'll just name the cases that they cited, in Hennessey's Tavern, the one
19 out of California, it says that it is necessary that a new defendant be named in the
20 amended complaint and summons and that they be served upon in order for the
21 court to acquire jurisdiction. They were asserting alter ego, that they were the same
22 entity, and yet the court still required that jurisdiction be established over the other
23 entities.

24 In the Greene case that they cited last time we were here, there is a

1 basis to require personal jurisdiction. Greene v. Eighth Judicial District Court,
2 115 Nev. 391, Hagerman v. Tong Lee going back to 1877, all require that when you
3 seek alter ego or seek an independent party, you have to establish jurisdiction over
4 them. Maybe they have to file a separate lawsuit, maybe they can move to amend
5 the judgment in this case. I'm not arguing which is the appropriate remedy, nor am
6 I conceding any particular points, but there are remedies that are available. But
7 you cannot send a writ to Party A and because you get something of Party B, hold
8 it until such time as you can prove up a basis to argue that, to get that money,
9 because there is just no basis to do that. And that's -- it is that limited and discrete
10 issue, whether or not they can skip and jump to the end or whether they have to
11 jump through the appropriate procedural and due process requirements.

12 I appreciate the Court's concerns regarding collectability of judgment,
13 particularly as to the minimum wage claims for employees. There is a method to do
14 that. But I don't think that the Court -- as much as we would like to change the law
15 or as much as we might think that the law might be better if it were construed a
16 particular way, we have to abide by the law as it is written. We have to respect the
17 fact that the Legislature has permitted series LLCs to be created in this manner and
18 to have these certain requirements. And based on the promise that if you comply
19 with the requirements that are issued in the statute, that you have a separate liability,
20 that you have an ability to compartmentalize and to hold these out separately.

21 The fact that a claim is made on a wage claim does not distinguish
22 it or make it different than any other claim that is brought against a series LLC,
23 whether it be personal injury or breach of contract or defamation or whatever the
24 basis might be.

1 THE COURT: Let me ask you a question, then. Would a writ of execution
2 served upon the assets of the Employee Leasing Group have been effective in this
3 case at this juncture?

4 MR. SHAFER: Well, that's a hypothetical because they didn't. I think the
5 appropriate remedy would have been to seek a prejudgment writ of attachment and
6 to engage in that method to seek claims against Employee Leasing. And that might
7 be the only one for which --

8 THE COURT: So what's the answer to my question, though? Would it
9 have been effective to serve the bank with a writ of execution in the name of the
10 Employee Leasing Company?

11 MR. SHAFER: Well, by effective do you mean would it have been an
12 appropriate writ or would they ultimately end up getting the money?

13 THE COURT: Both.

14 MR. SHAFER: Well, the second one I think is easy to establish. No, it
15 would not necessarily because there's a basis for claims of exemption and there's
16 a process that's set out in the statute for claiming exemption and contesting the
17 objections or the exemption -- objecting to the exemptions and a hearing and all
18 that.

19 THE COURT: What would the exemption be?

20 MR. SHAFER: I don't know, Your Honor, what the exemptions might be.
21 I think certainly there would be exemptions for the funds that are held for the IRS
22 or for Social Security that are held. But that's a hypothetical and I'm going beyond
23 my brief as to what I actually have knowledge of. But I think, again, that might be
24 a case in which you would see that. A prejudgment writ of attachment, I cannot say

1 that it would be effective because I don't know the basis on which they would argue
2 that. It might be possible for it to be effective. If they appropriately had a basis to
3 pierce the corporate veil, and I know that's the subject of another motion which has
4 been briefed by my co-counsel on the motion to amend which is pending before the
5 Court, but that -- if there were to be an exception that would be the sole exception.

6 There would not be a basis to seek a writ of garnishment or a writ of
7 execution against the companies that own the medallions, nor would there be a
8 basis to do so on the Maintenance Company. The Maintenance Company doesn't
9 employ the drivers, doesn't provide paychecks to the drivers. It holds money for the
10 maintenance of the vehicles and the money that is held is to be used to buy tires
11 and change oil and to buy gas and all the other expenses that are incurred in the
12 operation and maintenance of the actual vehicles themselves, subject to the
13 operating agreement between the parties.

14 THE COURT: And am I correct that they don't get the money to do that
15 from the Employee Leasing Group, they must get that from someone else, that
16 money?

17 MR. SHAFER: I don't know if the money comes directly from the Employee
18 Leasing Company or if the Admin. Company delivers as sort of bailee from the
19 Employee Leasing Company to the Maintenance Company.

20 THE COURT: Okay.

21 MR. SHAFER: But I think that that's the -- it might be possible for them
22 to argue that the Employee Leasing -- and obviously that's subject to some later
23 argument and that goes beyond what I'm prepared to argue to the Court today.
24 But that would be -- if there is any exception, that would be the only one. And I'm

1 not conceding that it is, but that would be the only one because the others have a
2 clear and separate -- they have a different operation. They don't employ drivers.

3 THE COURT: Uh-huh.

4 MR. SHAFER: They aren't the appropriate party in any circumstance in
5 this as to who the appropriate entity might be. Now, if you argue that they should
6 have been or that they pulled money out of one account, then that's a different thing
7 altogether. That's no different than piercing the corporate veil and subject to -- well,
8 if they want to pursue that, they can do post-judgment discovery like any other
9 judgment creditor.

10 THE COURT: You heard Mr. Nady describe to some extent just a brief
11 thing of how the money transfers from one series LLC to another.

12 MR. SHAFER: Uh-huh.

13 THE COURT: And that a part I didn't quite understand was that it goes
14 from -- I think he said the Administrative Series LLC to him for one day and then
15 it's transferred back. Does that have anything to do with creating -- with legitimizing
16 the series LLC application in this instance?

17 MR. SHAFER: I don't know that it has --

18 THE COURT: Or what is the purpose of that? Do you know?

19 MR. SHAFER: Well, I believe the purpose of that is to take your profits --

20 THE COURT: Okay.

21 MR. SHAFER: -- just like any other LLC distributes profits.

22 THE COURT: So whatever amount he sends back is not the full amount
23 that was sent, presumably?

24 MR. SHAFER: I don't know that that's correct.

1 THE COURT: Okay.

2 MR. SHAFER: In some instances -- I don't know that there is any reason
3 to say that it is or is not. I think in most instances it is essentially the same amount.
4 Sometimes it may be less, sometimes it may be more. I believe that it is intended to
5 be -- they do that for accounting purposes to take profits and then to make capital
6 contributions to keep the operation going, so that the business is adequately funded.
7 If there was a shortfall on one particular week and inordinate expenses, then in
8 some instances the capital contribution that occurs may be greater than the
9 distribution that was taken the week before or the day before or whatever it happens
10 to be. And that's subject to the accounting and that would be, you know, if there
11 were such an action of post-judgment discovery, that would be -- well, subject to
12 whatever objections might be brought, but that would be -- but those are all
13 accounted for as to -- and those are reflected in the tax filings that go to the IRS.

14 THE COURT: Let me just ask our bank representative -- I'm sorry, would
15 you give us your name again, please?

16 MS. DOVE: Sure. It's Kelly Dove.

17 THE COURT: Last name?

18 MS. DOVE: Dove. D-o-v-e.

19 THE COURT: Dove.

20 MS. DOVE: Yes.

21 THE COURT: Do you know whether or not there is such a transfer from
22 one of these series LLC accounts directly to Mr. Nady, presumably some significant
23 sum, I would think, and then a transfer back from his personal account to one or
24 more of these series LLC accounts?

1 MS. DOVE: I don't have those transactions with me today or specific
2 knowledge of them. I am aware that there are daily trans-- my understanding is that
3 there are daily transfers between these accounts. And I could be incorrect, but that
4 the money goes into one and then there's transfers to other accounts on a daily
5 basis.

6 THE COURT: You heard his explanation of the meter --

7 MS. DOVE: Yes, I did.

8 THE COURT: -- that the meter is -- kind of is programmed, apparently, to
9 do this kind of divvying out of how much or what percentage goes to each of these
10 entities?

11 MS. DOVE: Yes. I mean, all I know at this point is that the transfers
12 between accounts are directed by the customer, is my understanding, and it's not
13 something that's just set up with the bank.

14 THE COURT: Do you know if that customer is Mr. Nady?

15 MS. DOVE: I don't know the person who -- the individual who gives the
16 instruction. I could find that out if Your Honor needs any more information --

17 THE COURT: No, I think that's --

18 MS. DOVE: -- to make your decision. That's part of why we're here, so
19 we can accommodate any requests for additional information. But I don't have the
20 details of nitty-gritty, so to speak.

21 THE COURT: All right. Thank you very much.

22 MS. DOVE: Thanks.

23 THE COURT: All right. Have you got anything to say, Mr. Greenberg, in
24 the two minutes remaining here?

1 MR. GREENBERG: Your Honor, there's quite a bit I could say. Your Honor
2 has talked about a great number of issues. You've obviously looked at the situation
3 very carefully and I appreciate that. What I hear from Your Honor is you reaching a
4 conclusion, as I understand it, that there is some not legitimate or not regular sort of
5 relationship here where fraud was used, Your Honor, a fraudulent sort of situation,
6 and based on that it's my understanding you're not going to grant the motion. I'm
7 not quite sure where you would go further at that point, Your Honor.

8 THE COURT: Well, let me clarify one thing. I have not said that this was
9 fraudulent activity. I have said that if I don't interpret this statute, and again, that's
10 86.141, as having some to do with the imperative placed upon A Cab LLC, which is
11 what it was known as, which is what it was, apparently, until 2017, some imperative
12 to give notice to, I don't know, the public or somehow to give notice that -- in this
13 instance that A Cab LLC was not the employer of these people. Otherwise, it would
14 appear to be concealing a business activity and it's only a short step from there
15 to arguing that it must have been done with fraudulent intent. Presumably the
16 fraudulent intent would simply be with the intent of avoiding legal process, execution
17 on a judgment, and avoiding any liability for the actions orchestrated and set out
18 and undertaken by Mr. Nady and A Cab LLC.

19 So I don't say that it was fraudulent, done with fraudulent intent, but
20 I do -- it does appear to me that if we do not at least apply this statute to what was,
21 as far as anybody including -- you know, anybody in the state knew until last year was
22 A Cab LLC. And I don't think that the Legislature intended to allow a series LLC to
23 be set up in the fashion that this was, again with the fact that there was no notice to
24 anybody, even in the name of the entity, until last year. I don't think the Legislature

1 intended to allow them to do that to escape liability under a constitutionally mandated
2 requirement to pay the minimum wage.

3 MR. GREENBERG: Your Honor, I would agree that that is absolutely
4 correct. What I was just going to state to bring us back to the narrow issue before
5 the Court concerning these particular assets that were attached, as I advised the
6 Court in my brief filed yesterday, the tying fact for all of these assets is their
7 identification under this EIN number.

8 THE COURT: Uh-huh.

9 MR. GREENBERG: And Your Honor has talked a lot about this question
10 of public notice and how the employees would know who the employer was, and
11 as I tried to explain to the Court in the submission I gave the Court yesterday, it is
12 not possible for anyone but the judgment debtor here, A Cab LLC, to have funds
13 identified with that Employee ID number, that EIN number that in turn are being
14 used to pay employees or operate a business because none of these LLCs, none of
15 these series LLCs have an EIN number. They couldn't possibly issue a W-2. For
16 example, the operating agreement you were referring to, Your Honor, it talks about
17 A Cab Employee Leasing Company having the purpose of hiring as W-2 employees.
18 They can't do that, Your Honor, because they don't have an EIN number. They use
19 the judgment debtor, the master's EIN number. The W-2s that I've introduced in
20 the court have the judgment debtor, A Cab LLC's name on them, along with that
21 EIN number.

22 So my point -- and again, Your Honor, what I'm just trying to clarify
23 with the Court is how far the Court wishes to go in dealing with the issues before the
24 Court at this point. I want to be respectful of the Court's due diligence here. You've

1 deliberated a lot on this and I appreciate that. I've limited my request to the Court,
2 as we were here on Wednesday, to simply maintain the status quo of keeping these
3 funds preserved and not granting the motion. And to the extent the Court is going
4 to make a determination as to, you know, these claims that these funds are not
5 properly subject to the judgment, let us develop a full record and let the Court reach
6 a further determination in the future. I don't know if the Court wants to go beyond
7 that today. That was my request on Wednesday and that's --

8 THE COURT: Are you speaking of a fuller determination as to the defense
9 motion to strike the -- was it strike or quash or what was it?

10 MR. SHAFER: Quash.

11 THE COURT: Quash.

12 MR. GREENBERG: I mean, in terms of the motion to quash, I think it
13 needs to be denied. In terms of the further implication of that denial, that's up to
14 the Court. The Court may not be making a determination at this time in terms of the
15 merits of the ownership of these funds, whether these funds are or are not in fact
16 subject to the judgment. I mean, the Court can make a more limited finding and
17 simply say, for the reasons Your Honor was discussing of what's before the Court,
18 there's certainly ample reason to keep these funds in escrow. It could be with the
19 bank, they could be placed in my IOLTA account pending a fuller determination,
20 a full record if the defendants insist that these are not in fact properly subject to
21 the judgment.

22 As I pointed out on Wednesday, Your Honor, we don't even have the
23 alleged possessors of these funds before the Court. These six series LLCs have
24 not intervened and appeared. We discussed this on Wednesday. In fact, the

1 documents before the Court, Your Honor, don't even establish that these series
2 LLCs exist. I mean, the operating agreement you were provided with, Your Honor,
3 if you look on page 2 where there's signatures, there is no signature or indication
4 of execution by the master, A Cab LLC. It is A Cab LLC, the registered agent, that
5 has the authority to create these series LLCs. They're not a party to this. They
6 didn't sign it. Assuming this document even is legitimate. I have serious questions
7 as to the legitimacy of the document in the first place, Your Honor. And in addition,
8 there's nothing in this -- this is not even an operating agreement because an
9 operating agreement would command the operations, the internal operations,
10 essentially like the corporate bylaws of the individual series, Employee Leasing
11 Company II, for example. This doesn't do that.

12 THE COURT: Who does -- normally who are the parties to an operating
13 agreement?

14 MR. GREENBERG: Well, the Nevada statute actually states that an LLC,
15 a series LLC, does not have to have an operating agreement and this has been
16 upheld in the case law. The question, though, in this case is, as we were discussing
17 on Wednesday, for this limitation of liability protection of assets to exist for a series
18 or a series of the master there must be a provision for that protection in a written
19 operating agreement or in the articles of incorporation for the master. And we
20 discussed this on Wednesday. And all the master says, Article 2 of the public
21 document which I think we were looking at earlier, it just simply says that A Cab LLC
22 may establish these series LLCs with these limitations on liability. It does not state
23 that if they are so established they have that limitation on liability.

24 And when you look at the operating agreement themselves, Your

1 Honor, all it does at the end of the operating agreement is parrot the language of
2 the statute. And I think Your Honor sort of understood this, it doesn't actually state
3 in those -- again, I don't see these are really operating agreements, these are
4 presumably contracts between two supposedly independent entities. It just parrots
5 the language of the statute. It doesn't actually identify any particular series LLC
6 that's placing its assets in this protective mode or any particular assets. And it says
7 nothing about those assets, whatever assets referring to, being insulated from the
8 liabilities of the company generally. It says the reverse. It says that the liabilities
9 of this series, of a series, a sub is not subject to being satisfied from the company
10 generally. It doesn't say anything about the reverse, Your Honor.

11 We had this discussion on Wednesday when I was pointing out to the
12 Court that the statute itself did not specifically authorize that sort of subsidiary or
13 lower level shield from the general's, you know, the creating entity's liabilities. But
14 assuming it was possible, there's nothing here actually confirming that this was ever
15 done.

16 So, Your Honor, there simply is nothing before this Court either
17 establishing the existence of these series LLCs, establishing that they complied
18 with the statutory requirements to enjoy this protection of their assets, assuming
19 that's even available. I do not see that the statute even authorizes that. But even
20 assuming the statute did authorize them to be immune from a judgment against
21 the general, against the master, it's not in anything before the Court. And the
22 requirements are also under the statute that they have to maintain regular books
23 and records. There are no business licenses for any of these operating entities.
24 They need to have a business license.

1 So, I mean, Your Honor's concerns are well placed. What I'm trying
2 to get to here is there was discussion about how the State of Nevada allows this.
3 Well, okay, let's just assume their interpretation of what the State allows under the
4 statute was correct. I disagree. But assuming it was, they need to comply with the
5 law. The law should be strictly construed here in terms of what they need to comply
6 with to enjoy these protections under the statute. So they need to comply. I mean,
7 there was a discussion about the defendants -- their complying with the statute
8 as written. They haven't complied with the statute as written, at least not on this
9 record, Your Honor. So --

10 THE COURT: What would it take to do that, to comply with the statute as
11 written? What is this missing here?

12 MR. GREENBERG: Well, they need to have an operating agreement for
13 each of these series LLCs if they're going to enjoy this asset immunity, and the
14 operating agreement --

15 THE COURT: And that operating agreement would be between whom?

16 MR. GREENBERG: It would be created to govern the internal operations
17 of each individual LLC. That's what the operating agreement is. They don't have
18 to have --

19 THE COURT: Well, who's -- if it's an agreement, you've got at least two
20 people who are agreeing to something.

21 MR. GREENBERG: Well, an operating --

22 THE COURT: So who are the parties to one that if it complied with the
23 statute?

24 MR. GREENBERG: If you look -- we were looking at the statute, Your

1 Honor, which is -- I think you had it in front of you. It's at Exhibit C of my response
2 that was filed on Monday, although it was also attached by defendants. In Article 1
3 it says -- this section 1 of the statute, "The articles of organization or operating
4 agreement" -- I'm sorry, I'm giving Your Honor the incorrect reference here. The
5 reference is at 86.286. I was just referring you to 296.

6 THE COURT: Okay.

7 MR. GREENBERG: I'm reading it off of my computer here. At 86.286
8 there's a section that says Operating Agreement. "A limited liability company may
9 but is not required to adopt an operating agreement." So it is the company that
10 adopts the operating agreement for its operations. "An operating agreement may be
11 adopted only by the unanimous vote or unanimous written consent of the members,
12 which may be in any tangible or electronic format or by the sole member." So it
13 needs to be -- an operating agreement, if it's going to exist -- it doesn't have to
14 have one, but if it's going to exist it has to exist in some written form. It could be in
15 electronic form, it could be in paper.

16 THE COURT: If it doesn't have an operating agreement to create this
17 separate entity, what else could they do to create it?

18 MR. GREENBERG: Well, that's a good question, Your Honor. It's not
19 clear from the statute what would constitute the creation of the entity. I would
20 submit they would have to have some sort of memorialization in writing to create
21 the entity. I don't believe that's addressed in the statute. But the reason why the
22 operating agreement is critical in the circumstances we're dealing with here, and
23 this was again discussed on Wednesday and this is in the language of 296, which
24 we've gone over a number of times, which is to enjoy the limitations of liability of

1 the assets, the asset protection, it must be provided in the operating agreement or
2 in the certificate of organization filed with the Secretary of State. There is nothing
3 in the record here meeting that requirement.

4 THE COURT: So you're saying this language in paragraph 9 of this
5 operating agreement does not do so?

6 MR. GREENBERG: Well, it says it has separate powers, rights or duties
7 in respect to specified property or obligations to the company. What property or
8 obligations of the company? It doesn't tell us. I mean, and then it goes on in
9 paragraph 10, it says, "Debts, liabilities, obligations and expenses incurred with
10 respect to a series." It doesn't say this series, it just says a series. Again, it is
11 simply reciting the language, okay. But even if it said this series, meaning -- well,
12 you've got two different series identified here, too. Again, this is actually a contract
13 allegedly between these two series groups. "Are only enforceable against the
14 assets of that series and not against the company generally," the master. It doesn't
15 say anything about the series liability for judgment against the master, which is our
16 situation here, okay.

17 And again, it recites the statute about separate and distinct records
18 must be held and so forth and so on. We don't have any proof that they're separate
19 and distinct records. In fact, we have proof that they didn't have proper records
20 because they didn't have proper licenses to be conducting businesses. All of these
21 entities should have business licenses. They're not even before this Court because
22 they haven't appeared.

23 My point, Your Honor, is just because you spent a lot of time on this
24 and there's a lot more I could discuss about the issues you raised. There's, you

1 know, quite a few other things. But to bring us to the immediate issue that brought
2 us here is the status of these funds. And if the Court has agreed to take the limited
3 approach that I was requesting of the Court, which is simply to deny this motion but
4 not necessarily make any final determination as to the status of the interest in this
5 property, then I understand and I think that is clearly the correct decision to be
6 made. You know, Your Honor had talked about its concern with there being
7 irregularities. And as I tried to stress to the Court, it's not about making a final
8 determination, it's about what's before the Court, the indicia that there's reason to
9 believe that these funds are properly attached under the circumstances, whether
10 as counsel for the defendant was saying it would be through the form of some sort
11 of writ of attachment, through a constructive trust, through some sort of equitable
12 order.

13 The Court has certified this class for equitable relief, as the Court is
14 aware. I mean, we have an alter ego claim pending against Mr. Nady that's stayed
15 for the moment, okay. And so presumably these assets could be reached on that
16 claim, even if -- a judgment on that claim even if not to be reached on a judgment
17 on the existing claim. I'd also like to point out --

18 THE COURT: But that would only be if you do alter ego and pierce the --
19 whatever veils we have here at play and reach through to Mr. Nady. Is that correct?

20 MR. GREENBERG: Well, if we could. But what I wanted to point out to
21 the Court is Mr. Nady has apparently perjured himself in his deposition because
22 when he was asked at his deposition who are the members and owners of each of
23 those cells, who is it? It's me.

24 THE COURT: Yeah.

1 MR. GREENBERG: He says it's me. If you look at the operating agreement,
2 it's in fact the Laurie Nady Family Trust.

3 THE COURT: Yeah. Yeah.

4 MR. GREENBERG: So as I pointed out in my response --

5 THE COURT: I forgot that point. That raised concerns for me as well.

6 MR. GREENBERG: Well, it concerns me, Your Honor, okay, and I think
7 it has to have -- the Court have some serious questions about the veracity of all of
8 Mr. Nady's representations, which quite candidly the most extensive element of the
9 record we have here is his deposition testimony which I've given to the Court. And
10 as I pointed out to the Court in the response that you got yesterday afternoon, and
11 the Court I think understand this in terms of this question of there being some sort of
12 -- skullduggery was the term that was used by the defendants here, at his deposition
13 Mr. Nady testified that there have been three different Employee Leasing entities
14 used by the A Cab Taxi business since February of 2012 when they were authorized
15 to issue series until the date of his deposition which was a little over five years later
16 in June of 2017. When he was asked at his deposition why this was done, he
17 refused to answer. He invoked the attorney-client privilege, saying it's based upon
18 legal advice.

19 Now, this is not a criminal proceeding, Your Honor, this is a civil
20 proceeding. I believe given his conduct at his deposition, his testimony, there is
21 ample reason in this record to believe that there is something, there is skullduggery
22 going on here to, you know, use the terminology that was used by the defendants,
23 at least enough at this point to maintain the status quo, which is all I'm asking for
24 in respect to these assets.

1 The Court needs to make a clear, proper decision here on a full record
2 as it deems appropriate. As I said, you spent a lot of time on this. I'm taking up
3 too much of your time I feel, Your Honor, myself. I want to assist the Court. So I'm
4 asking the Court to just clarify what it's doing today, where it wants us to go. I know
5 Your Honor told us you're going to be away from the jurisdiction for two weeks. I
6 mean, you could reconvene us when you return. You could direct us to, you know,
7 engage in some further development of the record or presentation of information for
8 the Court's consideration on this issue.

9 I would suggest that if we are going to have continued proceedings
10 relating to the nature and ownership of these assets and whether they are in fact
11 subject to the judgment, that two things be done. One is that every single series
12 LLC that they claim has an interest in these assets or that they claim they've
13 operated under appear in this action and file an appearance if they claim they're
14 entities, they provide discovery on those. We can hold a deposition in Your Honor's
15 absence. I mean, it will be difficult on such short notice, but I can find time in the
16 next couple weeks to do that, if necessary. And that the Court also issues an order
17 enjoining A Cab LLC from issuing any new series LLCs because as we have Mr.
18 Nady's testimony in his deposition, apparently they just keep issuing the series LLCs
19 to evade the liability that's presented in this case. I mean, he was actually asked at
20 his deposition about the liabilities posed by this case and, again, he invoked counsel
21 and did not really dispute that this was the motivation behind the conduct of the
22 business and what was going on with the series LLCs.

23 Your Honor doesn't have to get into any of that at this point. These
24 are just suggestions, thoughts that I would share with the Court. Is there anything

1 I can do to assist the Court in terms of any issues in its mind or anything else?

2 THE COURT: I don't think so.

3 MR. GREENBERG: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. DOVE: Your Honor, may I make one brief request?

6 THE COURT: Yes.

7 MS. DOVE: Just on behalf of Wells Fargo Bank, we just request that Your
8 Honor give us clear direction whether we should continue to attach the funds,
9 release the funds to either party in a release as we would get in an interpleader
10 scenario. We would be happy to file a motion for interpleader if Your Honor found
11 that necessary. However, these proceedings effectively are doing the same thing.

12 THE COURT: Uh-huh.

13 MS. DOVE: So if you would like us to file such a motion, we'd be happy to
14 if that would assist the Court.

15 THE COURT: I don't feel --

16 MS. DOVE: Otherwise we just would prefer to follow the Court's direction
17 and understand that by following whatever this Court orders that we would have a
18 coverable release of liability under that scenario.

19 THE COURT: I don't see the need to do that at this point. Does any party
20 feel the necessity of the bank filing it as an interpleader?

21 MR. SHAFER: No.

22 THE COURT: Assuming -- you know, that assumes, of course, that the
23 Court were to take action on the pending motion.

24 MS. DOVE: That's correct, Your Honor. It's just that as has been made

1 very clear, by continuing to attach the funds A Cab has represented that it will suffer,
2 you know, certain harms by the sort of status quo of the attachment.

3 THE COURT: Understood.

4 MS. DOVE: So I just was raising that for that particular reason.

5 THE COURT: Understood. I made a comment the other day about trying
6 to avoid killing the goose that lays the golden egg. That was partly in response
7 to the understandable desperation to get the funds to continue operation of the
8 company. It appears to me that it is unavoidable that I find, given these two --
9 given the issues that we've already discussed at great length, that I should deny the
10 motion for quashing the writ of execution. I recognize that this means most likely,
11 I assume, that the defendants will seek redress from the supreme court as an aid
12 to making those funds in the most -- keeping them where this Court could respond
13 promptly to whatever directive the supreme court gives. I would order that the funds
14 be transferred to the Clerk of this court pending further action by this Court.

15 It is true that we are not -- I was thinking that I would simply announce
16 my decision on the plaintiff's motion to amend, but it strikes me that so much is
17 going on here that it may -- because it was submitted on a chambers calendar for
18 yesterday or today -- yesterday, I am not in a hurry, I do not want to rush the
19 consideration of that motion. And so I'm not going to rule on that motion at this time.
20 I think that -- am I correct that the defendants will attempt some sort of redress with
21 the supreme court?

22 MR. SHAFER: I believe that is one of the options we're pursuing. There's
23 also the exemption process that still remains yet to be done pursuant to the writ of
24 execution statute. I'd like to make one request.

1 THE COURT: Yeah.

2 MR. SHAFER: I guess it's a two part request. The first is if the Court is
3 denying it, we would request maybe that you would grant it -- or deny it in part and
4 grant it in part as to the funds in the Employee Leasing Company. And if the Court
5 is not inclined to do that, that the Court would preclude further execution of the
6 funds against the company. Essentially we maintain the status quo until such time
7 as two weeks when we can -- for example, the person who drafted the agreement
8 with Holland & Hart has since deceased. And Mr. Oshins, we wanted him here
9 today, was detained unavoidably and couldn't come to testify about the records.
10 So I think there's still some arguments to be made here, so we would at least
11 request if the Court doesn't grant it in part and release only the Employee Leasing
12 funds, that the Court preclude further execution on the funds that might be
13 deposited into Wells Fargo accounts.

14 THE COURT: You mean further execution on yet other funds that would
15 be in the account?

16 MR. SHAFER: Correct. We maintain the status quo.

17 THE COURT: Mr. Greenberg, what's your take on such an order?

18 MR. GREENBERG: Your Honor, what I would submit to the Court is that
19 these funds were restrained because they were held in accounts under this EIN
20 number, which is the same EIN number we had when we started this lawsuit that's
21 on the W-2s issued to the employee class. To the extent that there are funds being
22 held under that EIN number for the purposes of paying the liabilities of that EIN
23 number, whether to the IRS or anyone else or just being held as an asset under that
24 designation, we believe they should properly be subject to execution. It is sufficient

1 to identify them as funds of the judgment debtor of A Cab LLC. So I -- we never
2 served a writ on just A Cab Series Leasing Company in the generic form, Your
3 Honor, I mean, and we're not going to do that. We don't even know that that
4 company exists. But we did serve an execution based upon the designation of
5 these funds being associated under that EIN. And I don't see that there's any basis
6 to restrain us from doing that. A Cab, if it wishes to stop the process of execution
7 here, can post a bond. It has an appeal currently pending. It automatically will
8 stay our action.

9 THE COURT: Uh-huh.

10 MR. GREENBERG: Presumably they could post a bond and get this
11 \$230,000 released. We would consent to have the bond posted in the amount of
12 \$960,000, which is somewhat less than the full amount of the judgment your order
13 entered because your order restrained us from collection at this time of more than
14 that \$960,000 amount --

15 THE COURT: Uh-huh.

16 MR. GREENBERG: -- because there is a question as to a certain credit
17 that Your Honor provided for A Cab to still receive of about \$60,000 or so. If they'll
18 post a bond for the \$960,000, they will restrain all action on the judgment at this
19 time. So they have options, Your Honor. They just don't want to post a bond
20 because they're afraid of what's going to happen on the appeal, Your Honor.

21 MR. SHAFER: Your Honor, we can't post a bond. Because these funds
22 are held, we cannot post a bond at this time. We would be inclined to pursue that
23 option, but we can't because they're holding the funds. We deny that the EIN --
24 he's correct --

1 THE COURT: In other words, your client, Mr. Nady and A Cab LLC are
2 not able to post a bond, they don't have the money?

3 MR. SHAFER: They don't have the collateral to secure that. The other --
4 and I'll just briefly make this because I know we've run very long in this instance.
5 He is correct, there was not a writ served with the EIN number. The EIN number
6 that they're saying belongs to one company, he's incorrect on who it belongs to.
7 That issue has not been briefed before the Court. We anticipate it will be at some
8 future point. That's why we're asking until the Court returns in two weeks and we've
9 submitted additional briefing, which we anticipate will be forthcoming very shortly,
10 that they don't dig the knife any deeper, that they don't take these unrelated
11 companies, who we argue are unrelated, and hurt them further. What's going to
12 happen is they're not going to put the money in Wells Fargo. They're going to
13 have to have other work-arounds which are going to disrupt the operations of the
14 company and kill the golden goose, as it were.

15 So if the Court is not inclined to release in part, I think that it is only
16 fair to just put a stay on the proceedings on this particular writ. I'm not asking you
17 to restrain their ability to file other motions or other proceedings, but just as to this
18 account so there's some security that Wells Fargo -- that my company or A Cab
19 can continue to operate. If there are transfers --

20 THE COURT: You're suggesting that I put a stay on what?

21 MR. SHAFER: On further execution on the writ that was served on Wells
22 Fargo beyond -- and we're not asking for a stay on A Cab or A Cab Taxi -- as to
23 these other separately named series LLCs, that money is not withheld from those
24 accounts in the future or at any bank, really, as to the separately held LLCs. They

1 can go against A Cab and the named parties to their heart's content and they can
2 file whatever motions they would like to do. But until such time as there's been
3 further briefing, let's put a stay on the --

4 THE COURT: Do you represent any of these series LLC entities?

5 MR. SHAFER: I had not presently been retained at that point. I anticipate
6 we will do so when we file a request for exemptions.

7 THE COURT: Do you represent any of those entities?

8 MS. RODRIGUEZ: I think Mr. Wall -- I'm not trying to make a joke, Your
9 Honor, but yesterday he was anticipating contacting the entirety of Hutchison &
10 Steffen to make an appearance on perhaps 120 plus series individual entities if the
11 Court was going to require representation for each one of the entities. I'm a sole
12 practitioner. I don't have 120 lawyers, fortunately or unfortunately in my firm.

13 THE COURT: Yeah.

14 MS. RODRIGUEZ: But, no, in answer to the Court, I don't currently
15 represent the series.

16 THE COURT: These problems and these challenges come back to the
17 attempted use of Nevada's new -- relatively new series LLC statute. And, you know,
18 essentially for all the reasons that we've discussed and even more, this Court
19 concludes that they have not correctly in such a way as to assure due process to --
20 you know, you could say the public, but certainly to the plaintiffs, class members
21 who are employed by somebody in all of that. And so I don't -- you know, I've
22 wrestled with that myself as far -- I've taken it as far as I can without holding this
23 whole process up even further, which would simply keep the money out of anyone's
24 hands for even longer.

1 So that's why I've gone and ahead and ruled as I have and now the
2 defendant is free to seek redress on the central issue of whether or not these
3 separate entities have been created in such a way that it does not deny the rights
4 of the plaintiff class members. Or whether in order to assure that that has not
5 happened, the Court must construe the Nevada Series LLC statute in such a way
6 as to not have that happen. For example, falling back on the LLC statute like the
7 one that I read, 86.141. It's difficult to believe that the Nevada Legislature intended
8 to create something, the series LLC organizational statutes, and to on purpose
9 avoid the very important imperative in 86.141 that you can't use all these things as
10 a way to conceal the business activity in a way that winds up working a denial of
11 due process in the form of the execution, getting the monies that the plaintiff has
12 established were not paid to these individuals.

13 So anyway, I am only going to rule on that motion. I am denying it.
14 And if you wish to argue further on the -- I'm going to regret saying this, I know, but
15 I'm trying not to just rush through this as best as possible -- on plaintiff's motion,
16 rather than simply handling it on the calendar, if you wish we can do oral argument
17 on it, or handle it on the calendar. Does anybody wish oral argument on the
18 plaintiff's motion?

19 MR. GREENBERG: Your Honor, all I would like to say about that is I
20 believe the discussion we had today and defendant's counsel relating to A Cab LLC
21 and A Cab Series LLC establishes what I had represented to the Court, which is
22 that it is the same entity. There is no motion to amend to bring in a different entity.
23 A Cab LLC --

24 THE COURT: Actually I was just asking if you wanted to do further oral

1 argument. I wasn't asking for your argument.

2 MR. GREENBERG: I understand, Your Honor. I have not -- I mean, I think
3 this is all discussed in the papers. I mean, if the Court wants oral argument, if it
4 would help the Court, I want to help the Court, but.

5 THE COURT: Does the defense wish further oral argument on that motion?

6 MR. SHAFER: Yes, we would, on the motion for --

7 THE COURT: To amend the judgment.

8 MR. SHAFER: Yes. We would like further argument on that point.

9 THE COURT: All right. Is it a matter that can wait for two weeks?

10 MR. SHAFER: Well, I think at this point we have to wait because of the
11 Court's schedule.

12 THE COURT: Well, I'm not --

13 MR. SHAFER: And, you know, to be honest --

14 THE COURT: I'm here to serve. If I needed to be here in a week, I'd find
15 a way to do it.

16 MR. SHAFER: I appreciate that. We also would like to get -- we need to
17 go back to Holland & Hart and have them pull their client records because these are
18 not the total corporate records that have ever existed. And -- yes, so we would like
19 further argument on that point.

20 And I did have one question for clarification.

21 THE COURT: Yes.

22 MR. SHAFER: In the basis for its decision, is the Court ruling that the
23 February 2012 filing for the A Cab Series LLC was ineffective to notify the public of
24 the series election?

1 THE COURT: I don't think I would hold that. I think the way that it's set up
2 it appears to -- it appears to contemplate that if you're doing business with a series
3 LLC then you need to do this further scrutiny, as you've described it. The question
4 then becomes, well, does that mean if you sue an LLC and you go through litigation
5 for five years or more and then during the litigation the LLC changes what it is, that
6 is, a legally functioning series LLC by virtue of changing its name, then -- well, you
7 see where I'm going.

8 MR. SHAFER: Okay. All right, thank you.

9 THE COURT: All right. So is it sufficient if we set this for two weeks hence?

10 MR. SHAFER: Yes.

11 THE COURT: All right.

12 MR. GREENBERG: What day is that, Your Honor?

13 THE COURT: I haven't set it yet.

14 MR. GREENBERG: Oh, okay.

15 THE COURT: I'm just looking to see.

16 THE CLERK: Do you want a separate day?

17 THE COURT: Yeah, we'd have to have a separate day.

18 THE CLERK: We could do the 18th or the 19th, Thursday or Friday.

19 MS. RODRIGUEZ: Could we possibly do it maybe the following week,
20 because I anticipate -- well, I know I'll be in Prescott, Arizona on depositions the
21 17th, 18th and 19th.

22 THE COURT: Saturday?

23 MS. RODRIGUEZ: That's Wednesday, Thursday, Friday, I believe, Your
24 Honor.

1 THE COURT: Oh. Okay. So --

2 MS. RODRIGUEZ: Hopefully not Saturday. But I don't know if there's an
3 availability any time that following week, the 22nd through the 26th.

4 MR. GREENBERG: The 26th is Nevada Day. Yeah, that is Nevada Day.

5 MS. RODRIGUEZ: Or I can do it before then, the 15th or 16th.

6 THE CLERK: We're dark.

7 MS. RODRIGUEZ: Oh.

8 (The Court confers with the clerk)

9 THE COURT: Okay. Let's do Monday, October 22nd.

10 MR. GREENBERG: If that's what the Court believes is best, of course.

11 We're here to help the Court. I understand that.

12 THE COURT: Does that work?

13 MR. GREENBERG: It works, Your Honor. We will be here on the 22nd.

14 In terms of Your Honor's decision today, do you want an order submitted? And if
15 so --

16 THE COURT: I think we better because otherwise they won't have anything
17 to appeal.

18 MR. GREENBERG: I just want to be sure that I don't do anything beyond
19 what the Court -- I mean, we could have a very summary order that simply denies
20 the motion. If Your Honor wants findings in accordance with what I understood Your
21 Honor's view was of the record before it, I can try to draft some findings that aren't
22 extremely extensive. I don't know that we need extensive --

23 THE COURT: It would be extremely difficult to draft such findings. My
24 understanding is that you don't necessarily have to do that if it's a denial of a motion.

1 MR. GREENBERG: I would agree, Your Honor. I don't see -- I just want to
2 help the Court in terms of what the Court would like presented. I'm not asking the
3 Court to sign off on an order with lots of detailed findings.

4 THE COURT: Which means that you would need a transcript to take this
5 up. You know, this is the second time that this will have gone to the supreme court
6 and the supreme court did not like what I did last time, so I'm sensitive to that. I'm
7 sensible of it. And I want to do everything that the Court can to aid your process
8 so that the right decision can be made on what I think is a precedent-setting case.
9 I assume that you all agree with that?

10 MR. SHAFER: I agree this is likely -- this could very well be a published
11 opinion if the supreme court addresses it.

12 MR. DOVE: And just -- I'm sorry. I was just going to request that any
13 written order just include the direction to Wells Fargo --

14 THE COURT: Pay the money to the Clerk of the Court.

15 MS. DOVE: -- regarding depositing the funds, etcetera, so that we have
16 that in writing --

17 THE COURT: Yeah.

18 MS. DOVE: -- and not dependent on a transcript, if possible.

19 THE COURT: Okay.

20 MR. GREENBERG: Given the issue Your Honor has just raised, I realize
21 that perhaps some sort of more than summary order might helpful --

22 THE COURT: All right.

23 MR. GREENBERG: -- to the process here, Your Honor. So I will consider
24 all that. I will try to cooperate with the defendants, of course, and get something to

1 the Court that hopefully is not overly burdensome for anybody's review, but not
2 necessarily completely summary, either.

3 THE COURT: All right. Oh, we have the defendant's motion for
4 reconsideration presently set on the 18th of October. Do you want to move that
5 to the 22nd as well?

6 MR. GREENBERG: That was your chambers calendar, I believe, Your
7 Honor.

8 MS. RODRIGUEZ: Yes, if we could, please.

9 THE COURT: Oh, is that chambers calendar? Okay.

10 THE CLERK: The motion to amend is also -- they're both chambers.

11 THE COURT: Yeah. But we're changing the motion to amend to an oral
12 hearing date.

13 THE CLERK: Do you want that one changed too?

14 THE COURT: What's your pleasure? Do you want to leave that as a
15 chambers calendar for the 18th?

16 MS. RODRIGUEZ: No, Your Honor. That's our motion. We would like oral
17 argument on it as well. I don't know what time. Did you give us a time?

18 THE CLERK: I didn't. I was going to go ten o'clock. Do you want it at ten?

19 THE COURT: Yeah, ten o'clock. Yeah. So that will be ten o'clock on
20 October 22nd. That will be both motions --

21 MS. RODRIGUEZ: Thank you.

22 THE COURT: -- on that day.

23 MR. GREENBERG: Thank you, Your Honor. A minute order, I take it, will
24 issue so that the record is clear as to the disposition as of today. I understand we

1 need to submit a formal order to the Court, correct?

2 THE COURT: Yes. The minute order will issue, but if we need -- I think
3 we need an order, something for the supreme court to deal with.

4 MR. GREENBERG: I will work on getting that to the Court promptly, Your
5 Honor.

6 THE COURT: All right. Thank you.

7 MR. GREENBERG: Thank you, Your Honor.

8 THE COURT: Anything else that we need to address at this point?

9 MR. SHAFER: Just one clarification. You're ordering the money that is
10 currently held by Wells Fargo to be submitted to the Clerk?

11 THE COURT: The Clerk of the Court.

12 MR. SHAFER: But future garnishments will go through the normal process
13 that whatever --

14 THE COURT: Yes. I'm really -- you know, I'm entering no order in relation
15 to future garnishments.

16 MR. SHAFER: Okay.

17 THE COURT: So I assume it would fall to the plaintiff to take some action
18 again, would it not?

19 MR. SHAFER: Sometimes.

20 THE COURT: Execution?

21 MR. SHAFER: Yeah. And then there's the ordinary -- you know, there's --
22 you're not ruling on the exemptions and all the other procedural things that happen,
23 it was just our motion to quash?

24 THE COURT: Yeah, that's correct.

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MR. SHAFER: Okay.

THE COURT: That's all I really had before me. I necessarily had to look at all these things in order to know whether to grant the motion to quash. But it really is -- it's only intended to be to deny the motion to quash the execution.

MR. SHAFER: Thank you, Your Honor.

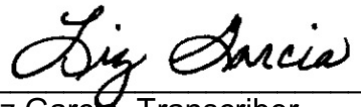
MR. GREENBERG: Thank you, Your Honor.

THE COURT: Okay. Thank you all.

(PROCEEDINGS CONCLUDED AT 12:45 P.M.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

March 01, 2019

A-12-669926-C Michael Murray, Plaintiff(s)
vs.
A Cab Taxi Service LLC, Defendant(s)

March 01, 2019 3:38 PM Minute Order

HEARD BY: Cory, Kenneth **COURTROOM:** Chambers

COURT CLERK: Elizabeth Vargas

PARTIES PRESENT: Minute Order- No parties present.

JOURNAL ENTRIES

- The Court notes that a Notice of Firm Name Change was filed on February 27, 2019, which changes the name of one of the firms representing the Defendants from Premier Legal Group to Cory Reade Dows and Shafer. The Court has confirmed that his brother Timothy Cory has formed a law firm which places him in partnership with Jay Shafer, one of the attorneys for the Defendants.

Pursuant to Rule 2.11(a)(2) of the Revised Nevada Code of Judicial Conduct, when a judge knows that the judge's brother is acting as a lawyer in the proceeding he should disqualify himself from presiding over the matter. Accordingly, the Court RECUSES itself from further hearings in this matter.

The Court further notes that the three orders bearing today's date were previously heard and decided, and that the Court today simply approved the final draft of those orders.

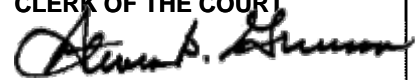
CLERK'S NOTE: A copy of this minute order was emailed to: Leon Greenberg, Esq. (leongreenberg@overtimelaw.com) Esther Rodriguez, Esq. (info@rodriguezlaw.com), Mark Bourassa, Esq. (mbourassa@blgwins.com) and Steven Parsons, Esq. (steve@sjplawyer.com). //ev 3/1/19

PRINT DATE: 03/01/2019

Page 1 of 1

Minutes Date: March 01, 2019

RA 01240



1 **OST**
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Attorneys for Plaintiffs.

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 MICHAEL MURRAY, and MICHAEL
10 RENO, Individually and on behalf of
11 others similarly situated,

12 Plaintiffs,

13 vs.

14 A CAB TAXI SERVICE LLC, A CAB,
15 LLC, and CREIGHTON J. NADY,

16 Defendants.

Case No.: A-12-669926-C

Dept.: I

**PLAINTIFFS' MOTION ON
ORDER SHORTENING TIME
FOR RECONSIDERATION OF
ORDER OF RECUSAL**

17 Plaintiffs, through their attorneys, class counsel, Leon Greenberg and Dana
18 Sniegocki of Leon Greenberg Professional Corporation, hereby move this Court on an
19 OST for reconsideration and reversal the Court's Minute Order of Recusal issued on
20 March 1, 2019.

21 Plaintiffs' motion is made and based upon the annexed declaration of class
22 counsel, the memorandum of points and authorities submitted with this motion, the
23 attached exhibits, and the other papers and pleadings in this action.

24 Dated: March 4, 2019

25 **LEON GREENBERG PROFESSIONAL CORP.**

26 /s/ Leon Greenberg
27 Leon Greenberg, Esq.
28 Nevada Bar No. 8094
2965 S. Jones Boulevard - Ste. E-3
Las Vegas, NV 89146
Tel (702) 383-6085
Attorney for the Class


1
2
3 **ORDER SHORTENING TIME**

4 It is hereby ordered, that the foregoing **MOTION FOR**
5 **RECONSIDERATION OF ORDER OF RECUSAL** shall be heard on the
6 28 day of March, 2019, at the hour of 9:00 am^{Chambers} or as soon as the
7 matter may be heard by the Court in Dept. I.

8 Any response to the motion shall be served and filed by _____ with
9 any reply to be served and filed by _____

10 Plaintiffs' counsel shall serve on all counsel a copy of this Order via the Court's
11 electronic filing system and by email within one judicial day of their receipt of the
12 same.

13 Dated this 20 day of March, 2019.

14 
15 Hon. Kenneth Cory
16

17 **DECLARATION OF CLASS COUNSEL AND INCORPORATED**
18 **MEMORANDUM OF POINTS AND AUTHORITIES**
19 **IN SUPPORT OF MOTION ON AN OST**

20 **Recusal is not required as the only party who could reasonably question**
21 **the Court's impartiality opposes recusal and the *de minimis* relationship of**
22 **Timothy Cory's law practice to one of the counsel in this case does not**
23 **require recusal under the Nevada Code of Judicial Conduct.**

24 Leon Greenberg, an attorney duly licensed to practice law in the State of
25 Nevada, and plaintiffs' class counsel in this case, hereby affirms, under penalty of
26 perjury, that:

27 1. As discussed, *infra*, I do not believe the stated basis for Judge Cory's
28 recusal order, issued *sua sponte* on March 1, 2018, that the creation of a new law
partnership between his brother Timothy Cory and Jay Shafer results in a situation
where pursuant to NCJC 2.11(a)(2) "he should disqualify himself from presiding over"

1 this case. Such rule and circumstances, for the reasons discussed *infra*, neither require
2 such disqualification nor render it advisable or appropriate, and such recusal order
3 should be reconsidered and reversed.

4 **Class counsel opposes recusal, waives any right to seek recusal, and**
5 **believes such recusal will cause substantial harm to the class**
6 **members, the very parties such recusal is intended to protect.**

7 2. This class action case has a far too long and convoluted history. It is now
8 six months after the Court rendered judgment and over six years since it was
9 commenced. The Court is dealing with numerous post-judgment issues, defendants
10 having refused to post a *supersedes* bond even though they are appealing the Court's
11 judgment, a judgment rendered by the Court, not a jury. My hundreds of class action
12 clients, who hold a judgment in excess of \$1,000,000 with interest for unpaid
13 minimum wages, have yet to receive anything.

14 3. It is in the interests of my clients to continue to have Judge Cory preside
15 over this case, and to waive any question that could be raised as to his impartiality,
16 irrespective of the existence of the new relationship of Timothy Cory to one of the
17 defendants' firms in this case (Ex. "A" minute order of recusal). The vast personal
18 knowledge that Judge Cory possesses of this case, and its history, is absolutely
19 essential to its speedy, and just, disposition. Any transfer of this case to another jurist
20 is certain to be accompanied by further delay and inefficiencies.

21 4. It is beyond question that Judge Cory has not, and will not, act in a
22 manner that is biased against the plaintiff class members, or for that matter any party,
23 and has and will remain impartial. It is the defendants, not the plaintiffs, who are
24 currently appealing the judgment he rendered granting certain relief to the class
25 members and the other rulings he has made in this case. And it is, of course, the
26 plaintiffs, my clients the class members, who would have the arguable basis to
27 "reasonably question the impartiality" of Judge Cory based upon his relationship with
28 Timothy Cory. On behalf of my clients I unequivocally and without reservation waive
any such questioning of Judge Cory's impartiality and request he continue his service

1 in this case. Finding a recusal necessary under NCJC 2.11 when it is opposed by the
2 only party who could conceivably be subject to a lack of impartiality by the presiding
3 jurist is unfair and inimical to the efficient functioning of the Court. In this case it is
4 also causing a recusal presumptively welcomed (based upon their appeal filings and
5 obvious disagreement with Judge Cory's rulings) by the party who is the only arguable
6 recipient of the feared future potential lack of impartiality triggered by Timothy Cory's
7 new relationship with one of this proceeding's counsel. In this case it is the very party
8 NCJC 2.11 is intended to protect, my clients, who will be disadvantaged by its
9 unwaivable application.

10 **The relevant provisions of the Nevada Code of Judicial**
11 **Conduct do *not* require recusal under these circumstances**
12 **as there is no "substantially affected" interest of**
13 **Timothy Cory that will result from these proceedings.**

14 5. I am unaware of any legal principle that prohibits a waiver of a Nevada
15 State Court jurist's recusal by the potentially prejudiced party.¹ But even if the Court
16 were unsure whether it could resolve the recusal issue based upon such a waiver, the
17 circumstances presented do not create a need for such a recusal.

18 6. The recusal decision was triggered by Timothy Cory's entering into a law

19 ¹ The Nevada Supreme Court has implicitly held such a waiver is permissible.
20 *See, Turner v. State*, 962 P.2d 1223, 1224-26 (Nev. Sup. Ct. 1998) (Mandatory recusal
21 of judge who was former prosecutor in case against defendant was initially waived by
22 defendant, but withdrawal of waiver by defendant prior to trial mandated recusal and
23 reversal of conviction). *City of Las Vegas Downtown Redevelopment v. Hecht*, 940
24 P.2d 134 (Nev. Sup. Ct. 1997), a civil case, is also instructive. Assertions that a jurist
25 is biased against a specific counsel, a situation logically indistinguishable from this
26 case where the potential impropriety would be a bias *in favor of* a specific counsel,
27 should result in disqualification only in "extreme situations" and the jurist's opinion
28 on their ability to be fair and impartial "should be given substantial weight." *id.*, 940
P.2d 137-138. Waiver of the right to secure recusal may also occur where the attorney
allegedly subject to such bias does not consistently seek recusal. *Id.*, 940 P.2d 139.
Nevada's allowance for such a waiver is also evidenced by the similarity between
NCJC 2.11 and its very similar federal analog, 28 U.S.C. 455, and Nevada's omission
of 28 U.S.C. 455(e) that expressly prohibits such a waiver by federal court jurists.

1 partnership with Jay Shafer, one of defendants' three counsel (defendants have *three*
2 different law firms representing them). Mr. Shafer first appeared in this case in
3 September 2018 and post judgment. Timothy Cory has not appeared as counsel in this
4 case. The comments to Nevada Code of Judicial Conduct Rule 2.11 state that recusal
5 is *not* required under this situation, as comment [4] states:

6 **The fact that a lawyer in a proceeding is affiliated with a law firm**
7 **with which a relative of the judge is affiliated does not itself**
8 **disqualify the judge.** If, however, the judge's impartiality might
9 reasonably be questioned under paragraph (A) [the overall need for
10 recusal if impartiality might reasonably be questioned], **or the relative is**
11 **known by the judge to have an interest in the law firm that could be**
12 **substantially affected by the proceeding under paragraph (A)(2)(c),**
13 **the judge's disqualification is required.** (Emphasis provided).

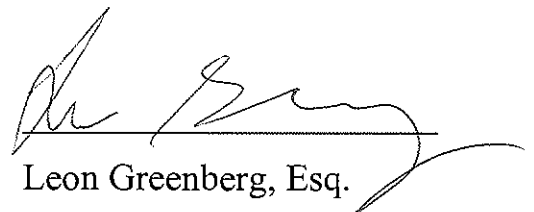
14 7. Judge Cory's overall impartiality is not subject to question. The only
15 recusal issue raised is the new affiliation of Timothy Cory with one of defendants'
16 numerous counsel in this case. But as the above comment makes clear, such an
17 affiliation by itself does *not* result in a disqualification of Judge Cory. Only if
18 Timothy Cory possesses "an interest in the law firm" of Jay Shafer "that could be
19 substantially affected" by these proceedings does a recusal issue arise (and then only if
20 the Court believes such a recusal cannot be waived). A *de minimis* interest of Timothy
21 Cory does not trigger disqualification.

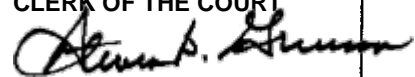
22 8. The law practice partnership of Jay Shafer and Timothy Cory will ***not*** be
23 "substantially affected," or even marginally affected, by these proceedings. Or by any
24 decisions that Judge Cory would make in these proceedings that favor, or disfavor, any
25 party. Jay Shafer and Timothy Cory may share, through their law partnership, some
26 measure of joint economic interest (though even that is unknown). Yet Jay Shafer is
27 not retained on a contingency fee basis in this case. He is being paid hourly for his
28 work or on some sort of project basis. Whatever he is paid, and that may in some very
attenuated and unknown fashion also implicate Timothy Cory's financial interest, **is**
not going to be impacted by Judge Cory's rulings or the outcome of this case.
Whether defendants receive favorable or unfavorable rulings from Judge Cory is

1 irrelevant to the fees Jay Shafer is paid. This is not a contingency litigation situation,
2 where a successful litigation result for Jay Shafer's client, based upon a favorable
3 ruling by Judge Cory, could conceivably inure to the financial benefit of his law
4 practice partner, Timothy Cory.

5 9. This Motion is brought in good faith and in accordance with the unusual
6 circumstances presented. It is brought on an expedited basis and in a fashion that will
7 ensure its presentation to Judge Cory, as only Judge Cory can reconsider his decision
8 (Ex. "A" minute order) that was issued *sua sponte* without an opportunity for plaintiffs
9 to address the circumstance triggering such action. While I do not believe I can
10 challenge that such minute order's issuance is within Judge Cory's power and
11 prerogative, I believe such order is unwise, unwarranted, not in the interests of my
12 clients or the efficient administration of justice, and not required by the circumstances.
13 With all due respect, for the reasons discussed *supra*, I urge Judge Cory to reconsider
14 such Order and continue to serve as the district judge on this case.

15
16 Affirmed this 4th day of March, 2019.

17
18
19 
Leon Greenberg, Esq.



ORD

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL MURRAY, et al.,
Plaintiffs,

Vs.

A CAB TAXI SERVICE, LLC, et al.,
Defendants.

CASE NO. A-12-669926-C
DEPT NO. I

**ORDER TO DENY
RECONSIDERATION**

The Court has reviewed Plaintiff's motion to reconsider recusal and the affidavit of Mr. Greenberg. The Court has rather painfully reconsidered the order previously entered on this subject.

Up to this point, this Court has been of a point of view similar to that expressed by Mr. Greenberg in his motion and affidavit. For that reason the Court did not recuse when it was not available to serve due to a fairly unexpected hiatal hernia operation and recuperation in March, 2018 or even when the Court's spouse died suddenly at the end of April, 2018. As ever, the parties were at that time filing critical time-sensitive motions which needed rapid resolution by someone familiar with the tortured history of this case.

Without waxing eloquent about the challenges to modern families who prize duty, love and loyalty to each other and a brotherhood which has thus far survived marriages,

1
2 deaths, and even a law practice together, it sufficeth to say that this public servant is
3 convinced that the duty to sit is not intended to displace or conflict with the very human
4 relationships a society relies upon to produce and encourage impartial judges free from
5 conflict of interest in judging important legal issues. While the Judicial Canons are useful to
6 sensitize a person to those conditions which should create in a judge a conflict with
7 impartiality, where a judge already feels such cross purposes, due to the level of love and
8 loyalty he feels to his own brother, further recourse to canons of ethics to inform and
9 sensitize are quite unnecessary. There is for such a judge but one right recourse: recusal.

10
11 Therefore, it is hereby ORDERED the motion to reconsider is DENIED.

12
13 DATED this 20th day of March, 2019.

14
15 
16 KENNETH C. CORY
DISTRICT COURT JUDGE

17
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on or about the date of filing, a copy of the foregoing Order was
20 electronically served, pursuant to NEFCR Rule 9, to all registered parties in the Eighth
21 Judicial District Court Electronic Filing Program.

22
23 
24 JOAN LAWSON
JUDICIAL EXECUTIVE ASSISTANT

CERTIFICATE OF SERVICE

I certify that on October 23, 2020 I served a copy of the foregoing RESPONDENTS' APPENDIX upon all counsel of record by EFLEX system which served all parties electronically.

Dated this 23rd day of October, 2020

/s/ *LEON GREENBERG*

Leon Greenberg