IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, EX. REL. COMMISSIONER OF INSURANCE, BARBARA RICHARDSON, IN HER OFFICIAL CAPACITY AS RECEIVER FOR NEVADA HEALTH CO-OP,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE KATHLEEN E. DELANEY, DISTRICT JUDGE,

Respondents,
and

MILLIMAN, INC., A WASHINGTON CORPORATION; JONATHAN L. SHREVE, AN INDIVIDUAL; AND MARY VAN DER HEIJDE, AN INDIVIDUAL,

Real Parties in Interest.

Case No. 77682

District Court Case No. A-17-760558-C

SUPPLEMENTAL APPENDIX OF REAL PARTIES IN INTEREST
VOLUME I

Patrick G. Byrne (NV Bar No. 7636)
Andrew M. Jacobs (NV Bar No. 12787)
Alex L. Fugazzi (NV Bar No. 9022)
Kelly H. Dove (NV Bar No. 10569)
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway,
Suite 1100
Las Vegas, Nevada 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
pbyrne@swlaw.com, ajacobs@swlaw.com
afugazzi@swlaw.com, kdove@swlaw.com

Reid L. Ashinoff
(*Pro hac vice forthcoming*)
Justin N. Kattan
(*Admitted pro hac vice*)

DENTONS US LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: (212) 768-6700
reid.ashinoff@dentons.com
justin.kattan@dentons.com

Attorneys for Real Parties in Interest Milliman, Inc., Jonathan L. Shreve, and Mary van der Heijde

INDEX

Document Name	Date Filed	Vol.	Page
Hearing transcript regarding Plaintiff's Motion for Reconsideration on July 24, 2018		I	SA000001- SA000039

DATED this 20th day of March, 2019.

Respectfully submitted,
SNELL & WILMER, L.L.P.

/s/ Alex Fugazzi
Patrick G. Byrne (NV Bar No. 7636)
Andrew M. Jacobs (NV Bar No. 12787)
Alex L. Fugazzi (NV Bar No. 9022)
Kelly Dove (NV Bar No. 10569)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169

DENTONS US LLP
Reid L. Ashinoff (*pro hac vice* forthcoming)
Justin N. Kattan (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, NY 10020-1089

Attorneys for Real Parties in Interest Milliman, Inc., Jonathan L. Shreve, and Mary van der Heijde

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On March 20, 2019, I caused to be served a true and correct copy of the foregoing **SUPPLEMENTAL APPENDIX OF REAL PARTIES IN INTEREST – VOLUME I** upon the following by the method indicated:

☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

Judge Kathleen Delaney
Eighth Judicial District Court
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Judge Timothy C. Williams
Eighth Judicial District Court
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
(As the Judge to which this matter is currently assigned)

☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

Mark E. Ferrario, Esq.
Eric W. Swanis, Esq.
Donald L. Prunty, Esq.
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 N
Las Vegas, NV 89169
Attorneys for Petitioner

/s/ Ruby Lengsavath
An Employee of SNELL & WILMER L.L.P.

4841-3296-1165

TRAN
CASE NO. A-17-760558-B
DEPT. NO. 25

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

NEVADA COMMISSIONER OF INSURANCE, Plaintiff, vs. MILLIMAN INC., Defendant.	REPORTER'S TRANSCRIPT OF MOTION FOR RECONSIDERATION

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: TUESDAY, JULY 24, 2018

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

APPEARANCES:

For the Plaintiff: MARK FERRARIO, ESQ.
DONALD PRUNTY, ESQ.

For the Defendant: JUSTIN KATTAN, ESQ.
EVAN JAMES, ESQ.
ALEEM DHALLA, ESQ.

* * * * *

LAS VEGAS, NEVADA; TUESDAY, JULY 24, 2018

P R O C E E D I N G S

* * * * *

THE COURT: Nevada Commission of Insurance vs. Milliman.

Let's have appearances.

MR. FERRARIO: Mark Ferrario and Donald Prunty, your Honor, for Plaintiff.

MR. KATTAN: Good morning, your Honor. For Milliman, Justin Kattan, from Dentons US, LLP.

MR. DHALLA: Aleem Dhalla for Milliman.

MR. JAMES: Evan James for Nevada Health Solutions.

THE COURT: Thank you.

I appreciate this. Sorry for the confusion. This ended up being on our 9 o'clock calendar and our 11 o'clock calendar. It doesn't matter how we got there.

Mr. Ferrario contacted chambers indicating his availability was better suited for 11:00. We actually thought we'd get those calendar calls done to get started at 11:00. It went longer than I anticipated. Sadly, I still have a telephonic appearance from my 9 o'clock calendar. I attempted to give them a heads-up, and we'd be calling them later. So you have my undivided attention

at this time.

I also want to apologize for the confusion about the case and who was going to hear the case and where the case belongs. I think that it kind of caught us all by surprise the way the reshuffling of assignments was going to take place.

We were ultimately given the opportunity to look at our list of matters to be reassigned and hold back those where we had had significant motion practice, or motion for reconsideration pending or other circumstances that would really mean we shouldn't have the case move to another judge. Because of the timing of when the reconsideration had been filed and the circumstances of how it continued, it just got missed by everyone in terms of what it was and when it was, and so when the matter moved forward, we just missed it. We're sorry about that.

We're happy to be able to sort of address it now and at least bring that matter to a close before the case proceeds. There was quite a bit of back and forth between whether or not it would stay in this department once returned for this purpose or whether it remains transferred to Judge Williams and will only return for this purpose. I did not have much input on the final call on that. It was ultimately the court administration and the chief judge that made the final call. The case will

stay transferred to Judge Williams. It's only here for this determination today.

For purposes of motion for reconsideration, we have, obviously, received supplements that focus on the questions the court had with regard to New York law application. I know there was some issues as we were going along in terms of the additional information provided and when. But we have everything here. I have reviewed everything here today. I think I just want to see what argument you have you would like to make.

I'll start with Mr. Ferrario.

MR. FERRARIO: Thank you, your Honor. I thank the court and counsel for accommodating me on the start time.

You know, going through this again this morning, as we have I think on pretty much every one of the briefs, we had really done scorched earth on cases and arguments and everything.

THE COURT: Fantastic job. I really appreciate the time everybody took to do this research and provide information. There is obviously a difference of opinion in the supplements as to how New York law would be interpreted. Then there are some references to US Supreme Court cases, out-of-state cases, but, yes, I think we have it all here. So somewhere down the road, if it arises as

an opportunity to our appellate court, they ought to be able to settle issue.

MR. FERRARIO: I agree. I think that, I guess, what struck me as I was going through this again today was that we started this process with I think a very basic premise, and that is, what's the most efficient, effective way for a receiver to marshal assets, bring claims in a receivership context. We argued that in front of you. We went back and forth over what the scope of Judge Corey's order was. All of that stuff. You ultimately decided, and I think you said it was a close call, that, you know, in this context you would order arbitration.

Then we had additional decisions come down. And quite frankly, one from this court, with Judge Gonzales sitting in your position, that took a contrary position to the one you did in a similar setting and refused to kick the case out to arbitration in another forum. We brought these cases to your attention that now we appear to be somewhat of an outlier jurisdiction. Then we got into the topic of New York law and that has taken us down, yet, another path. I guess what struck me, when I was reading the cases, is when I see citations that say see this, or see that, or e.g., and that's what their brief is riddled with. They're taking A mish-mash of cases and picking different things to try to desperately hold on to an

arbitration forum that they do not contest they would not have if New York law applies. There is no contest to that. Okay.

Now, that takes me back to the contract. And when we look at the contract, I don't think it could be any clearer as to what law applies to the construction, the interpretation, and more importantly, the enforcement of the agreement. And it says New York law. And who chose that. Milliman chose that.

As we said in the prior hearing, as we've said in our brief, as I think we've done a great job of distinguishing all the cases they tried to cite to deflect the court's attention away from the very basic principle that under New York law where you have an insolvent insurance company and a receiver, or an insolvency proceeding, however you want to phrase it, you go to court. You let the court marshal the assets with the receiver.

Another thing that struck me as I was reading through the briefs again today -- and I think it's the Corchran case -- I believe it cites to the public policy reasons for that. There isn't overarching public policy concern to have these things done in public. To have the marshalling of assets where you have a defunct insured done in public. You do that with the assistance of the court. You don't do it in private in an arbitration

context.

Again, I was -- that struck me again and I wished I would have highlighted that more forcefully on our initial brief. But when all the arguments are sliced and diced and all the cases are put to rest, we come back to the very simple proposition of what law applies. New York law applies. They don't stand up in front of you, and they don't say it in their brief. They don't disavow New York law. This isn't a situation where --

THE COURT: You said a minute ago -- I'm not trying to interrupt you -- I don't know that they necessarily -- you say in the beginning they do not contest that arbitration would not be available if New York law applies. I don't think they said that in their argument.

MR. KATTAN: My grave concern hearing this is maybe we served half a brief on that. Because as your Honor points out, the second half, out of the 8 pages of our brief, 7 pages are devoted to the point what New York law really stands for is not what they say.

THE COURT: Don't argue it now, because you'll have the opportunity.

MR. KATTAN: I want to make sure we -- yes, you are correct, your Honor, we did contest.

MR. FERRARIO: They make arguments like, well,

it only apply to the New York Commission of Insurance. They cut the cases up and try to parse them to say what they don't say. What the cases don't stand for. I don't think counsel is going to stand up for you and say that in New York if you have an insolvent insurer that you don't have to arbitrate claims. I don't think they'll tell you that. Unless he's going to tell you Knickerbocker is not still good law and all it's progeny is not still good law. Or he's going to tell you that New York State courts have not found one instance -- we can't find one state court case from New York that's talking about New York State law where in a receivership context they ordered a case to go to arbitration. He'll correct me if I'm wrong on that.

He cites -- cherry picks the federal court cases and things like that with the "C" citations, but he's not going to stand up and tell you that. Their big argument is this. That New York law would only apply to the New York Commissioner of Insurance, or the superintendent of insurance, or whatever it is. We take that apart in our brief. I think it was pages 11 and 12 of our brief that the New York statutory scheme and the Nevada statutory scheme or strikingly similar. And this whole notion that they say, well, Nevada is different because we had an order from Judge Corey that they cherry picked from. They say, well, we could file suits in any forum. Yes. The

receiver has the option to do that. But what can't happen is the receiver can't be forced to go to arbitration. That's the important point.

THE COURT: As you said, we went off on this discussion about it because I wanted to flesh it out because I think there's a benefit, no matter what the outcome is today, to have this scorched earth look. But we asked about, okay, let's look at New York law to see if that gives us more guidance. But at the end of the day, as we start this process, it is a Nevada entity, Nevada insurance commissioner, Nevada circumstances.

MR. FERRARIO: With New York law applying.

THE COURT: New York law applying, which arguably wouldn't preclude arbitration. It's just that we're arguing that we really -- you're arguing that Nevada law makes us an outlier. I don't know.

MR. FERRARIO: I'm saying -- what we said when we brought the other decisions to your Honor is this case now became an outlier as your Honor decided it.

If you want to go back to this situation this is where this gets quirky. I don't think we should be down this path. Because when you're talking about receiver marshalling assets, you should invoke the most efficient, and, I think, public process that you can, which is what the Corchran case stands for. And by sending us now off

on the arbitration track, we now get into these strained arguments, and we're now looking at, okay, the contract they drafted. You say it's Nevada Commissioner of Insurance. You're right. You say we're here in Nevada courts. You're right.

I argued to you that if you look at Judge Corey's order and you look at the cases from the other states, then everything should be in Nevada courts. Your Honor disagreed and said we go to arbitration. That's where we now get into this contract. This contract indisputably says, New York law applies. Under New York law -- we've cited the cases. In a receivership context in New York you can't be forced to arbitrate. I don't think he's going to get up and say that.

Now, what he's going to say is, well, that doesn't apply to Nevada Commissioner of Insurance. So in New York, where their public policy kicks in, no arbitration.

So a New York insolvent insurer, okay, operates by a different set of rules than Nevada insurance insolvency. From a public policy, it makes no sense.

THE COURT: You're arguing, Mr. Ferrario, as if there's no such thing as arbitration in New York.

MR. FERRARIO: There is.

THE COURT: Okay.

MR. FERRARIO: There is arbitration in New York. I would agree with you. There is arbitration in New York, but not when you have an insolvency proceeding. They can't be forced. That's the distinction, your Honor. There's arbitration in Nevada. There's arbitration in New York. The issue is where you have an insolvent insurer and you have a receivership situation, can the receiver be forced to arbitrate. In New York, that doesn't happen. Under New York law, under Knickbocker and all the cases that have been decided since that. And they are the ones that chose New York law, not us.

Now the parties agreed to that. And I'll point out this isn't a case where there is an ambiguity in the contract on that issue. Unless they are going to argue, or the court's going to say there's an ambiguity as to the term enforcement. Then what did the parties intend. I don't see any declarations or affidavits from the folks saying that when they signed this they didn't intend for the New York pronouncement in Knickerbocker to apply here. There's nothing like that. We go all over the place, but you come back to the agreement. Your Honor asked some good questions. It's in Nevada. It's an insolvency proceeding. You're right. They choose New York law. And we talked about this in the briefing. That's without regard to conflict of laws. So we don't even get to that

analysis under New York law.

So what this court must do is look to New York law and say in a receivership context, if I'm applying New York, Knickbocker and its progeny, can I force a proceeding into arbitration. That's the question for this court to ask. That's the question for this court to answer. We believe when you look at the case law and policy consideration surrounding that, and you look at the New York case law that applies here, the answer is clear. You don't force the insolvent insurer, the receiver, if you will, to arbitration. That's the New York law. That's what they choose to apply and that's what should happen here. We should be allowed to proceed in court and not be forced into a private situation in arbitration.

THE COURT: Thank you, Mr. Ferrario.

Mr. Kattan.

MR. KATTAN: Thank you, your Honor. Appreciate once again for the opportunity to be heard.

I think this issue has certainly been briefed thoroughly. I don't want to take up any more of the court's time. As your Honor pointed out, our position is no court anywhere has applied Knickbocker's holding to say that any insurance commissioner, other then New York superintendent, acting pursuant to the New York insurance law, to liquidate a New York insurer in New York State

cannot arbitrate.

THE COURT: I don't think there's any doubt, Counsel, that case says that, right. The question becomes, you know -- if you look at this in layers.

The parties chose in their contract to apply New York law and now this issue may not have been contemplated. It may have been some argument, well, things were potentially contemplated, but really at the end of the day -- I'm going to assume for purposes of this argument it wasn't contemplated -- that we'd find ourselves in this insolvency place. And now we're looking at New York law and it's a New York case that says if you apply New York law to facts similar to this that you can't do arbitration in that circumstance.

You know, to couple that up we then, if you step back and look at policy consideration -- you argued in your supplement -- you argued initially, really maybe we're silent as to what the policy consideration could be here. But at the end of the day we have a situation where we are spending public monies, and it's not in the light of day. Something that Mr. Ferrario just said resinates in that regard.

When you look at those things taken together is the court's decision erroneous in that it really is a situation where we should consider allowing this to go

forward. I guess what I'm trying to get at is I'm not persuaded in your argument that we have to read Knickbocker so narrowly. I think I really need to hear the argument as to why we should not reconsider what we choose in light of the fact we have a contact provision that says New York law will apply.

MR. KATTAN: Sure.

Let me make three points in response to that. The first is that I think this is critical. You said we did make the point in our original motion, and we do make it in our supplement. And that is New York Court of Appeals, just like the United States Supreme Court, and just like your Honor held in the original March 8th order, that there is no, quote, public policy exception from the general rule of arbitrability mandated by the FAA. That's the New York Court of Appeal, Fletcher vs. Peabody and Company, 619 NE2nd 998 at 1006. It's a decision from 1993.

So the New York Court of Appeals is fully in accord with the law that your Honor cited, the Ninth Circuit law in Quackenbush, thew US Supreme Court that you can't just rely on public policy consideration to vitiate and otherwise valid arbitration clause. That's point number one.

So number two, then, you go and you look at what

Knickerbocker does. What Knickerbocker and Corchran vs. Argon do is they say not -- they talk about public policy consideration. I'm not going to deny that. But what they say is that based on the decision that the New York legislature made to not authorize arbitration, the court could not hold that the New York superintendent, when acting pursuant to the New York insurance law when liquidating a New York insurer, in those situations, the New York Court of Appeal couldn't give that authority to the New York State superintendent.

It's interesting, in her brief the liquidator argued -- I'm just going to quote -- "that under New York law where a state legislature has not specifically authorized arbitration given the public interest at state, arbitration is inappropriate." That's what they say at page 13. But you contrast that with the actual language of Knickbocker, which repeatedly refers to our legislature. And a quote from Knickerbocker is, "such withholding by our legislature, serves to apply point out that the arbitration forum was never intended by our legislature to supercede the Supreme Court in proceedings effecting insolvent insurance companies." Nothing in these cases, certainly not Knickerbocker, which did not lay out a blanket rule that said that even a New York superintendent could arbitrate.

The Knickerbocker court expressly limited its holding to situations involving the New York State Insurance superintendent liquidating New York insurance companies where the parties are residents of New York. It's express in the language of Knickbocker.

What you do is, you look and say, okay. What is this insurance commission here in Nevada authorized to do. And when you look at what the Nevada statute says, the Nevada law states that the district court has exclusive jurisdiction over delinquency proceedings. Quote, "any court with jurisdiction to make all necessary or proper orders to carry out the purposes of those actions," end quote.

Here the district court with Judge Corey entered such an order and expressly authorized his liquidator to arbitrate. The liquidator had never argued that that order was improper or inconsistent with the statute. No Nevada court ever held that the commissioner is not permitted to arbitrate. And so what you are left with is the liquidator then falling back on its old argument which this court rejected, which says, that's not really an authorization to arbitrate. That really gives us the choice. Your Honor correctly rejected that argument for various reasons in the original March 8th order.

So point number two is that when you look at

Knickerbocker it's not a matter of reading it narrowly, not narrowly. It's holding really just its own plain terms. It does not apply to this type of situation, particularly, you know, where you have the language of the order and the language of the Nevada statute that you have.

The third thing I would say -- and this is something that liquidator, counsel's argument glossed over -- is under Mastrobono (ph) the US Supreme Court decision is you cannot utilize the New York choice of law provision like the liquidator is advocating it be utilized here. They attempt to distinguish Mastrobono by saying, oh, it's holding is narrower. If I may, your Honor, I would like to just read for you an excerpt from Mastrobono. This will give you an idea of how broad it is and how broad that holding is. Our position is Mastrobono stands for the proposition that unless the parties expressly intended, and expressed that intent in the contract, to use the choice of law clause to vitiate an otherwise valid arbitration clause, you can't use the choice of law clause that way.

Look at what Mastrobono says. It says, petitioners rely on Southland Corp. vs. Keeting and Perry vs. Thomas in which we held that the FAA preempted two California statutes that reported to require judicial resolution of

certain disputes. In Southland we explained that the FAA not only declared a national policy favoring arbitration, but actually withdraw the power of the States to require a judicial forum for resolution of claims which the contracting parties agree to resolve by arbitration. Respondents answer the choice of law provision in their contract expresses agreement that punitive damages should not be awarded in the arbitration of any dispute arising under their contract.

The court then goes on to say, we think our decisions in Allied, Bruce, Southland, and Perry make clear that contracting parties agreed to include claims for punitive damages within the issues to be arbitrated, the FAA assures that their agreement will be enforced, according to its terms, even if a rule of state law would otherwise exclude such claims from arbitration. Thus, the case before us comes down to what the contract has to say about the arbitrability of petitioner's claims for punitive damages.

So let me stop there for a moment and set the stage. So admittedly the decision in Mastrobono dealt with the power of the arbitrators, but think about it. In our situation -- so the Supreme Court says you can't even use a choice of law clause unless it's expressly laid out in the contract. You can't even use a choice of law clause

to limit the powers of an arbitrator. That ruling should apply with even greater force set stripping the arbitrator's powers altogether. That -- this is a holding that frankly shows that using a choice of law clause to vitiate an arbitration provision is more difficult then what the court was talking about here in Mastrobono. Ultimately the court went and decided that the reference to the laws of the State of New York in the choice of law provision was to encompass substantive principles that New York courts would apply, but not to include special rules limiting the authority of the arbitrators.

Look at what the contract says in our case, your Honor. What the contract says in our case is that the matter will be governed by the substantive contract law of the State of New York. It's not even a blanket rule saying, all right, New York law applies. It specifically states that the substantive contract law of New York will apply. They are not arguing nor have they ever argued that the New York insurance law is somehow the substantive contract law of the State of New York. Clearly what the agreement intended -- Mr. Ferrario is right -- there is no ambiguity here.

Clearly what the agreement intended was that for underlying claims, the substantive contract law of New York applies. But it does not vitiate, there is nothing

in the contract that expresses an acknowledgment or intent that, okay, we understand that New York law applies and that means that if this case goes to liquidation or this matter goes to liquidation, we can't arbitrate because New York law says that. There is nothing in the contract that even remotely, even remotely espouses that intent or that acknowledgement. So there is nothing -- and that's what the Supreme Court in Mastrobono and other cases has said. You need to have that express recognition, that express knowledgement of the intent to have the choice of law provision vitiate the arbitration clause.

So that simply doesn't happen here. This court was correct in applying Nevada law, in applying federal law to its original March 8th decision. Again, our position, as your Honor correctly pointed out earlier, is that even if you did apply New York, it wouldn't change the outcome of your March 8th decision. But frankly, there is no basis to apply New York law. Your Honor's March 8th decision was correct in that regard in its original formulation.

So those are the three bases to answer your Honor's questions. I hope I did answer your Honor's questions. I don't know if you have any follow up.

THE COURT: No, I don't have follow-up questions. I appreciate the argument. I think I -- what always helps me with the oral argument is to make sure

there isn't anything I've misapprehended in terms of what has been argued, missed something, but I think what we've covered tracks to what I saw in your supplement, what I've seen in terms of argument. I don't have questions.

I did want to give Mr. Ferrario an opportunity to make any final argument he'd like. He relies heavily on Knickerbocker and feels very strongly and differently than you do as far as what New York law dictates.

I'm complete. Thank you.

MR. KATTAN: Thank you, your Honor.

MR. FERRARIO: Again, I would call your attention to pages 11 and 12 -- it goes on a bit in our brief -- where we talk about Corchran, what the law in New York is. You call it the contract law, the arbitration law, or law of New York, the one thing that I know is that in New York, at least today, a Plaintiff in the position of my client can't be forced to arbitrate. There are a number of reasons for that. I think, again, the Corchran case sets that out.

One of the many overarching reasons Counsel cited was the notion you don't handle public proceedings like this where you have a receiver put in by an insurance statute in private. There is real value to having it done in a public forum, which is why -- one of the reasons why in New York you don't push people off to arbitrate. We've

already distinguished the Mastrobono case. There was a conflict there. There is no conflict here. Somebody is not trying to import something into a situation where the arbitrator -- give the arbitrator jurisdiction over something they didn't have. That is not an issue here. The issue is in New York, if you apply New York law, can you force a receiver in the position of my client, to arbitrate. The answer to that is no. Counsel did nothing to dispel that. Knickbocker and its progeny make it very clear what this court should do. And it's consistent with Nevada law. It's consistent with the other cases we cited. We shouldn't be an outlier. We shouldn't have splintered proceedings. We shouldn't have a less efficient process then they do in other states.

With that, I'll rest. Thank you.

THE COURT: All right.

Just been one of those days where I feel quite certain that everybody that's left here today is not happy with the outcomes. It's unique to be in that position.

I really have spent quite a bit of time looking at this to see first and foremost to apply the standard that would apply for a motion for reconsideration, which is that we -- I won't misspeak it. I'll speak to it directly.

That if we're going to exercise the inherent

authority that we have, then we really need to be certain that, you know, I haven't misapplied the law or we -- there were facts that we failed to consider that were not available or for whatever reason were not argued. This really comes down squarely to looking at the law and whether we've properly applied the law.

One of the things that come up in the motion for consideration that intrigued me to want to look at was does New York law control this and would New York law require different a result. It's this court's finding, however, that the -- I am persuaded that the Mastrobono case does stand for the proposition and it is controlling over all the cases we would otherwise consider for this proposition anyway that when you have a choice of law provision you cannot, as stated, vitiate the enforceable arbitration provision.

I think ultimately when we look at that I believe that although we did go down this path, we did seek this additional briefing, that really at the end of the day the court made the correct call to begin with that this is to be decided the way the court originally decided and the court did not decide it in error.

I haven't seen anything either in the original motion for reconsideration or in the supplements that would point the court to the requirement to make an opposing ore

reversal decision, if you will.

I think if New York law were to apply, then I am persuaded that it would not preclude arbitration in the context of this case. I appreciate the Knickerbocker decision and its progeny. I appreciate the argument that is made under Corchran. At the end of the day, I think there can be a reading that in the totality of the circumstances that we have, the parties were not necessarily contemplating these circumstance, but ultimately these circumstances are what arose, that when you look at that, the arbitration clause still carries the day.

I am concerned about the idea that as Mr. Ferrario argued that we are not essentially having a public hearing when use of public money is being used in this insolvency action. I don't see anything that completely closes the door, New York law or otherwise, as to the ability to arbitrate a case such as this. Again, the totality of the circumstances of the agreement of the parties ands what we are dealing with here, the court did correctly decide this matter in its unique circumstances. I don't believe it's necessarily outlier. I think it is what it is in this context, and the court's ultimate determination is not to reconsider this matter for the reasons argued persuasive of Mr. Kattan. It's a very close call. I know that

doesn't satisfy Mr. Ferrario, Mr. Prunty or Commissioner of Insurance in any way. I can appreciate that.

I do think the court does not have -- has not been provided persuasive argument that would ultimately show it that it misapplied to law in this context. It's simply a legal determination. The court did get it correct the first time.

I respect if any of my colleagues see otherwise, I do think we need to have this decision in the final forum and do have to give the opportunity for it to be challenged. I know you have pending matters with claims that will be effected by this, so the sooner we get the order singed off on and figure out if there is a challenge as to that the better we be.

Mr. Kattan, you'll prepare the order, please, since you did prevail today. Give Mr. Ferrario an opportunity to review. I'd like it to be provided to the court as soon as possible.

MR. KATTAN: My pleasure, your Honor. The last time, back in January, you asked our office to provide some detail like we had had in our briefs in the order. Do you want the same sort of thing this time.

THE COURT: Not the similar details we had before. Reference to Nevada law in the reconsideration and the court's determination that the standard was not

met and ultimately the court is not finding that New York law is prevailing. Relying on the Mastrobono decision. But to the extent New York law would prevail, it's still not this court's determination to preclude the matter going to arbitration.

The details of the arguments made, I think we can limit that at this point. The record is clearly made for the briefings. We have today's hearing transcript. That's sufficient.

I'm more interested in expediency then I am details.

MR. KATTAN: Thank you, very much, your Honor.

MR. FERRARIO: Thank you, your Honor.

THE COURT: Thank you.

* * * * *

CERTIFICATE

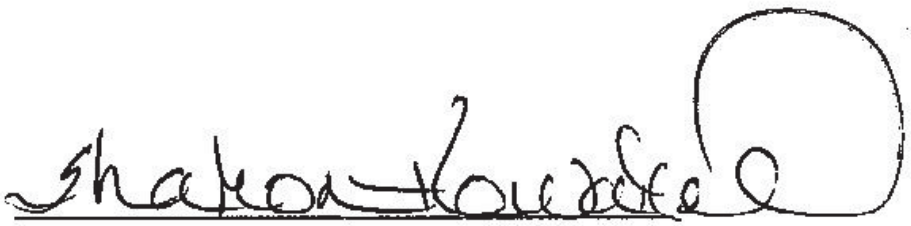
OF

CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth; that the testimony and all objections made at the time of the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing is a true record of the testimony and of all objections made at the time of the proceedings.



Sharon Howard
C.C.R. #745