

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEWS+MEDIA CAPITAL GROUP
LLC, a Delaware limited liability
company; and LAS VEGAS
REVIEW-JOURNAL, INC., a
Delaware corporation,

Appellants/Cross-
Respondents

v.

LAS VEGAS SUN, INC., a Nevada
corporation,

Respondent/Cross-
Appellant.

Supreme Court No. 80511

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APPELLANTS/CROSS-RESPONDENTS' APPENDIX
VOL. 4

Appeal from the Eighth Judicial District Court of the State of
Nevada in and for the County of Clark
The Honorable Timothy Williams
District Court Case No: A-18-772591-B

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2020, the foregoing **Appellants’/Cross Respondents’ Appendix – Volume 4** was served electronically with the Clerk of the Supreme Court of Nevada by using the court’s electronic filing system, which will send notice of electronic filing to the following:

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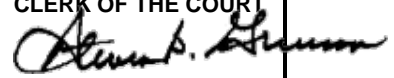
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OCTOBER 22, 2019

LV SUN V. NEWS+MEDIA
GROUP

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CASE NO. A-18-772591-B

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

LAS VEGAS SUN INC,

Plaintiff,

vs.

NEWS+MEDIA CAPITAL GROUP,

Defendant.

REPORTER'S TRANSCRIPT
OF
MOTION

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED TUESDAY, OCTOBER 22, 2019

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1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 22, 2019

2 1:36 P.M.

3 P R O C E E D I N G S

4 * * * * *

01:36:03

5
6 THE COURT: Okay. All right. Good afternoon
7 everyone.

8 IN UNISON: Good afternoon, your Honor.

01:36:29

9 THE COURT: And let's go ahead and place our
10 appearances on the record.

11 MR. REID: Your Honor, for the plaintiffs,
12 Leif Reid.

13 MS. SCOTT: Nicole Scott.

14 MS. MARTINI: Kristen Martini.

01:36:38

15 MR. PISANELLI: James Pisanelli.

16 MR. SMITH: Jordan Smith.

17 MR. JONES: Good afternoon, your Honor.

01:36:48

18 Randall Jones on behalf of the defendants. Also with
19 me is Rick Stone from Jenner & Block who has been
20 admitted pro hac vice, and also Mr. Gayan who is out
21 running down some water in case I run out of speed
22 during the argument.

23 And also with us is general counsel, Mr. Ben
24 Lipman.

01:37:04

25 THE COURT: All right. Once again, good

01:37:06 1 afternoon. And we're -- how should we proceed
2 efficiently? Where should we go to first?

3 MR. REID: We didn't discuss this. But my
4 recommendation would be to proceed with the arbitration
01:37:18 5 motions. They'll probably take the most time.

6 MR. JONES: And I'm fine with that, your
7 Honor. I was kind of assuming that's what we would do.
8 So that's fine with me.

9 THE COURT: And that's fine with me. And so
01:37:33 10 let's go ahead and deal with the arbitration motions.
11 Who filed first?

12 MR. REID: I did.

13 THE COURT: Okay. You go first.

14 MR. JONES: I notice he was hesitant about
01:37:46 15 that, your Honor.

16 THE COURT: Yes.

17 MR. REID: Well, it's -- there is a lot of
18 filings, right? It's hard to keep track of, but...

19 THE COURT: It is.

01:37:52 20 MR. REID: We truly appreciate your time this
21 afternoon, your Honor, having a little bit of extended
22 time to argue all the different motions that are here.

23 I think we're in front of you this afternoon
24 in a very unique situation. We're asking you to
01:38:13 25 confirm and correct an arbitration award. There's

01:38:19 1 nothing truly special about that. That's the business
2 of this department. I'm sure that happens all the
3 time.

4 What's different in my mind is what's at stake
01:38:32 5 for Las Vegas, and the impact these decisions have on
6 our community. Will Las Vegas be a city that continues
7 to have two competing newspapers, which is something
8 special and unique about Las Vegas, or will our town be
9 limited to the editorial voice of one activist arch
01:38:52 10 conservative owner?

11 Newspapers need money to run their newsrooms.
12 And the purpose of a newsroom is so that an editorial
13 voice is heard. It shouldn't be lost on anybody that,
14 for example, judges are elected and that newspapers
01:39:17 15 around election time weigh in on matters like that.

16 That's just one aspect of the public interest
17 that Congress deems so important that it allowed
18 newspapers to join forces, noneditorial functions,
19 under the Newspaper Preservation Act. The public's
01:39:46 20 interest is to preserve multiple independent editorial
21 voices for the community. It's pretty clear that the
22 Review Journal wants to be the only voice.

23 But the Sun made an agreement with the Review
24 Journal 30 years ago that would allow it to coexist and
01:40:08 25 at the same time compete with the Review Journal

01:40:13 1 editorially and reportorially in the Las Vegas market.

2 So our arbitration revealed that the Review
3 Journal has essentially shredded that agreement, for
4 all practical purposes, in its accounting and other
01:40:33 5 business practices, including charging all editorial
6 costs and independent promotional activities improperly
7 against the joint operation.

8 The arbitration also showed clearly that the
9 Review Journal's done everything it could to obstruct
01:40:52 10 the Sun's audit rights to look into those abuses.

11 In their -- the reply, the last filing --
12 THE COURT: And, you know, and I think it's
13 important to truly point this out. Because I know this
14 is often overlooked. But what we have here is a court
01:41:11 15 of law, right? And this is why it's important, because
16 I have true faith in the process and due process and
17 the process ultimately working.

18 And I do understand what my charges are as it
19 relates to an issue pertaining to whether or not an
01:41:26 20 arbitration award should be vacated. I understand what
21 the burdens are amongst the respective parties. Under
22 Nevada law, clear and convincing evidence. I get that.

23 I do understand what's at issue here, in this
24 specific case, is whether or not potentially the
01:41:41 25 arbitrator exceeded their powers. I understand what

01:41:44 1 the standard is there too, just as important, and
2 that's statutorily. That's under Chapter 38.

3 And then the other issues that I have to
4 grapple with specifically deal with potential common
01:41:56 5 law issues as it relates to the determination by this
6 arbitrator as to, number one, whether it was arbitrary
7 and capricious; and, number two, whether the
8 determination of the arbitrator was a manifest
9 disregard of the law.

01:42:09 10 And so the reason why I bring that out, I
11 think it's kind of important. We can always get off
12 track on policy issues, politics. But I've been on the
13 bench now for close to 14 years. And in that period of
14 time, what I've always tried to do is keep close to the
01:42:24 15 law because I feel the law is my best friend as a trial
16 judge. And, ultimately, that's all I look for.

17 And so when I was reviewing the points and
18 authorities, a couple things that just kind of jumped
19 out at me. And I think there's a more recent Nevada
01:42:39 20 Supreme Court case. And that's Washoe County School
21 District versus Kara White. And it's a 2017 published
22 decision by our Nevada Supreme Court that just so
23 happens to deal specifically with the issues that are
24 at hand. And our Supreme Court dealt with the issue,
01:42:57 25 for example, what is the burden of proof in vacating an

01:43:01 1 arbitration award; right? It discussed it in some
2 detail.

3 Secondly, they talked about and discussed --
4 and I always look to our decisions by our Supreme Court
01:43:09 5 as a safe haven for me as a trial judge because I want
6 to make sure that, regardless of whether I agree or
7 disagree, ultimately, I'm going to follow the mandate
8 of our Supreme Court. And the reason why that's
9 important, you have to have faith in the process. And
01:43:22 10 really and truly, that's what it's all about.

11 And no matter what -- and this is a civil
12 case -- you're going to have winners and losers at the
13 end of the day; right? And we have the appropriate
14 procedural mechanisms in place. And that would be an
01:43:36 15 appeal to the Court of Appeals and/or Supreme Court,
16 you know.

17 And so I guess the best way I can say it is I
18 really would like a clinical approach as we deal
19 specifically with the issues at hand.

01:43:48 20 And, number one, for example -- and I think
21 this case is really telling because it goes into
22 detail. And it says, Look, judges -- you know, and I
23 think from a policy perspective, the courts have taken
24 a determination that we have two businesses that may
01:44:03 25 enter into an agreement to submit a case to

01:44:07 1 arbitration. The arbitration process should be given
2 some deference, right? I get that. I really and truly
3 do.

4 And so, for example, we're talking about
01:44:19 5 potential vacation of an arbitration award or
6 confirmation of an arbitration award, and this is a
7 clear quote from the Supreme Court in the Washoe County
8 School District case. It says:

9 "The party seeking to attack the validity
01:44:34 10 of an arbitration award has the burden of
11 proving, by clear and convincing evidence, the
12 statutory or common-law ground relied upon for
13 challenging the order."

14 And that's like the starting point, right?

01:44:45 15 And here's the thing: When you think about
16 it, and what I truly enjoy about the law is, I guess,
17 once you've been doing it for a long -- a fairly long
18 period of time -- and I've been a licensed lawyer since
19 1983, which is a long time -- you start seeing, and I
01:45:01 20 look at the law in many respects almost like
21 mathematics because it's all intertwined.

22 As a trial judge, all I'm trying to do is
23 determine what basket the specific issue would go into
24 factually. Once I make that determination, then I
01:45:14 25 apply the law. It's really -- it's really that --

01:45:18 1 that, I guess, clinical from that perspective. And
2 that's kind of how I look at it.

3 And so I understand the positions of the
4 respective parties. But, for example, when there's an
01:45:32 5 allegation that the arbitrator exceeded -- and I
6 understand that's probably from the defense more so
7 than the plaintiff -- exceeded their powers or the
8 appropriate term of art would be, yeah, exceeding their
9 powers, tell me why. And do you understand where I'm
01:45:52 10 going? Or...

11 MR. REID: I do completely.

12 THE COURT: The decision is arbitrary and
13 capricious. Tell me why.

14 MR. REID: So I appreciate that, you directing
01:46:02 15 us in that way.

16 As you said, for the defendants to prevail,
17 they have to meet the clear and convincing evidence
18 burden that you describe. Focusing on their motion --

19 THE COURT: Right.

01:46:23 20 MR. REID: -- their motion to vacate doesn't
21 cite to any evidence. They make a plain language
22 contractual interpretation argument, and they ask you
23 to ignore what happened in our arbitration.

24 Just a few general points about the
01:46:45 25 proceeding. Our arbitrator was selected by both

01:46:51 1 parties. He was a licensed CPA and attorney. We
2 selected him from a panel of highly qualified
3 arbitrators. The papers describe him as someone that
4 was easily duped, and that's not corroborated by the
01:47:11 5 record at all.

6 We had an eight -- a seven-day evidentiary
7 hearing. There were 12 live witnesses. There was a
8 mountain of evidence, thousands of pages of exhibits
9 that were presented.

01:47:26 10 And our arbitrator used his accounting
11 expertise, sat essentially as a special master and made
12 determinations which the accounting findings are solid
13 and can't -- I think there's no way that the defendants
14 can meet that burden to overturn what they want
01:47:57 15 overturned because of the deference that you describe.

16 The evidence that was presented that under the
17 standard of review that applies was overwhelming at the
18 arbitration. A lot of the issues weren't close calls.
19 The Sun, for example, has a right to audit. The Review
01:48:22 20 Journal refused to participate in the audit. It's in
21 black and white in Appendix D.

22 The arbitrator found that we were entitled to
23 conduct an audit and ordered the RJ to submit to the
24 audit.

01:48:39 25 The 2005 JOA says that when the RJ has an

01:48:45 1 advertisement that doesn't feature the Sun, it should
2 be paid "at its own expense." Wasn't a close call by
3 the arbitrator.

4 Also in that hearing, the RJ chose not to
01:49:05 5 present any witnesses that had any personal knowledge
6 about the amendment of the JOAs. For an understanding
7 of the contract, the RJ put up its CFO, somebody who
8 had been involved with the Review Journal for eight
9 months, somebody who wasn't even a CPA.

01:49:28 10 They also presented as their expert witness
11 someone who had billed a dozen hours in the case and
12 needed a highlighted binder.

13 In contrast, the Sun presented witnesses who
14 had negotiated the changes to the JOA. We presented
01:49:50 15 correspondence and documents showing when specific
16 provisions were negotiated and what the language and
17 the changes meant, what disputes had arisen between the
18 parties prior to the 2005 that motivated the parties to
19 want to be make changes and what those changes were.

01:50:07 20 In the end, we proved our case. We showed
21 that the RJ hasn't imposed any accounting controls to
22 ensure compliance with the JOA.

23 So focusing on specific issues in the award,
24 we're going -- we ask you to give deference where no
01:50:31 25 error occurred. Specifically that relates to

01:50:32 1 confirming the arbitrator's decision with respect to
2 editorial costs and promotional costs.

3 And then we ask you to vacate and modify the
4 award in certain circumstances where the arbitrator
01:50:51 5 failed to apply the correct legal standard. For
6 example, didn't make findings on the elements of
7 claims. Or in one circumstance as I'll describe in a
8 minute with respect to the house ads where he didn't
9 consistently apply his findings and his reading of
01:51:14 10 Section 5.1.4 of the JOA.

11 There's one important correction I want to
12 make real quick, your Honor.

13 THE COURT: And -- but I think it's important
14 from a review perspective, when we're asking for a
01:51:29 15 specific relief, it's important to know specifically
16 what would be the grounds upon review where I'm to make
17 a determination? Did he seek -- did he, for whatever
18 reason, fail to -- or did he exceed his powers? Or was
19 it an arbitrary and capricious decision? For example,
01:51:53 20 was it a manifest disregard of the law? I really need
21 to know that.

22 MR. REID: I'll describe that for you.

23 THE COURT: Yes.

24 MR. REID: For example, on the house ads
01:52:01 25 issue. Another element when you look at that statute

01:52:06 1 you're referring to in NRS 38, it -- the language --

2 THE COURT: Is that 241?

3 MR. REID: Yeah. I have it right here. I
4 apologize.

01:52:16 5 THE COURT: Okay.

6 MR. REID: Well, in -- yeah, 241. So the
7 language is, when interpreting the agreement, if you --
8 if the terms were disregarded. I think that's the
9 language I'm referring to. And --

01:52:38 10 THE COURT: And so I just want to make sure
11 we're clear, though. We're looking at NRS 38.241(d).
12 It's alleged that the arbitrator exceeded his or her
13 powers. Is that the provision?

14 MR. REID: Yeah. Let me -- can I -- let me
01:52:54 15 pull the statute for you, your Honor. I don't want to
16 misstate it.

17 THE COURT: I have it right here in front of
18 me.

19 MR. REID: So I think I may be reciting the
01:53:03 20 common law. One of the grounds is where the contract
21 was -- where the arbitrator manifestly disregarded the
22 law and one of the elements of that is when --

23 THE COURT: That's a common law.

24 MR. REID: Yeah. That's common law.

01:53:22 25 THE COURT: Okay.

01:53:23 1 MR. REID: Let me -- let me explain, if I
2 could. I'm going to jump forward to promo costs, that
3 discussion. I think in response to your question,
4 maybe that's the best way to describe the relief we're
01:53:37 5 asking for.

6 So, your Honor, the arbitrator made two
7 findings with respect to promotional agreements. We
8 have a couple boards here. Let me. Let's do this.

9 So just promotional expenses. There were two
01:54:10 10 findings that the arbitrator made. There were two
11 issues that we were talking about.

12 The first issue the arbitrator found for the
13 Sun. And that had to do with trade agreements. If I
14 could take 15 or 20 seconds just so it's clear what a
01:54:28 15 trade agreement is. You have a board up there showing
16 a billboard at the NASCAR stadium. Okay?

17 The Review Journal has a practice where the RJ
18 trades or provides advertising. And this -- we'll use
19 this as the example. The NASCAR people entered --
01:54:55 20 received from the Review Journal \$750,000 worth of
21 advertising in the newspapers. In exchange for that
22 advertising, they got a billboard at the NASCAR stadium
23 that advertises the Review Journal and
24 ReviewJournal.com. They also got a bunch of VIP
01:55:23 25 tickets. They got to meet NASCAR drivers and a bunch

01:55:27 1 of things like that, a box, and a tent. That is a
2 trade agreement.

3 The Review Journal entered into hundreds of
4 agreements like this. A hundred thousand dollars here
01:55:44 5 to get a box at Thomas & Mack. And floor seats to
6 Rebel games in exchange for advertisement in the Review
7 Journal that UNLV got to place.

8 They had -- they advertise Pacquiao tickets.

9 MR. JONES: Your Honor, I hate to interrupt
01:56:08 10 argument, but may we approach for a moment? There's an
11 issue here that I'd like to address, in private, with
12 the court calendar.

13 THE COURT: Okay. If there is no objection,
14 both of you can approach.

01:56:17 15 MR. JONES: Yeah. No. I'd like Mr. Reid to
16 make sure he's here to hear what this is.

17 (A discussion was held off the record.)

18 THE COURT: Counsel, thank you.

19 MR. REID: Okay.

02:02:11 20 THE COURT: Thank you for the guidance.

21 MR. REID: Yeah.

22 THE COURT: I appreciate that.

23 MR. REID: So understanding the mechanics of
24 what we're talking about, these promotional agreements
02:02:21 25 where the Review Journal was giving away advertising

02:02:27 1 space in the newspapers in exchange for benefits that
2 accrued to the Review Journal alone or its website.

3 When you walk through Section 5.1.4, it's easy
4 to see why the arbitrator's decision should be
02:02:45 5 confirmed. First sentence there says that, "The JOA
6 is -- the JOA requires the RJ to promote the
7 newspapers."

8 "Newspapers" is a term of art, plural.
9 Capital N. "Newspapers" throughout the agreement means
02:03:01 10 the Review Journal and the Sun, both.

11 Second sentence: "The plain language requires
12 the RJ to include the Sun in a mention of equal
13 prominence."

14 Using the billboard as an example -- and
02:03:15 15 there's hundreds of examples that the arbitrator
16 reviewed -- the Sun is not there.

17 And even the Review Journal's consultants and
18 expert witnesses at trial recognized that reading the
19 plain language of 5.1.4, the third sentence, that when
02:03:41 20 the RJ doesn't mention the Sun in equal prominence, it
21 has to pay for that promotional activity at their own
22 expense.

23 So our arbitrator correctly made that finding
24 that the RJ had to reimburse the Sun for promotional
02:04:07 25 activities that were not -- that were not at the Review

02:04:16 1 Journal's own expense.

2 Now, when we talk about the other aspect of
3 what the arbitrator did, and we'll look at the other --

4 You can put that up.

02:04:39 5 I want to show you this quickly. So you saw
6 the billboard.

7 Let's just put this down here. That's good.

8 THE COURT: And bottom lining it, I think is
9 it your position that the arbitrator -- there was
02:04:57 10 substantial evidence in the record to support the
11 findings of the arbitrator as it relates to promotional
12 activities?

13 MR. REID: Absolutely. And to explain the
14 other aspect of promotional activities that the
02:05:08 15 arbitrator found against us on, this is an example.
16 The Sun -- pardon me -- the Review Journal ran as small
17 fillers, also as half-page, full-page ads,
18 advertisements like this where you see all the sections
19 of the newspaper laid out. The Sun is not there.

02:05:31 20 They're just talking about the Review Journal. They're
21 asking people to subscribe to the Review Journal.

22 The arbitrator incorrectly -- his decision
23 with respect to house ads conflicted with the plain
24 language. It manifestly disregarded the plain language
02:05:52 25 of Section 5.1.4. Second sentence uses the term "any,"

02:05:57 1 your Honor. And it uses the term "shall."

2 Any promotion of the Review Journal as an
3 advertising medium or to advance circulation, ads like
4 this that say "subscribe," no -- there's no dispute
02:06:12 5 that house ads are promotional activities. The Review
6 Journal just said they're just filler in the newspaper.
7 But the arbitrator didn't apply the language of this
8 provision which says "any promotion." "Any promotion"
9 would include house ads.

02:06:36 10 THE COURT: Tell me, why does that matter?
11 And the reason why I say that, and I keep coming back
12 to the law because, I mean, this is straight out of the
13 Washoe County case. It says:

14 "The judicial inquiry under the manifest
02:06:51 15 disregard of the law is extremely limited."
16 And "the issue is not whether the arbitrator
17 correctly interpreted the law, but whether or
18 not the arbitrator, knowing the law and
19 recognizing the law, required a particular
02:07:04 20 result, simply disregarded it."

21 MR. REID: Well, we think that this finding
22 falls under that standard because of this language.

23 The arbitrator understood what the language of
24 the provision was. He made a finding with respect to
02:07:23 25 the trade agreements that they were promotional

02:07:32 1 activities. He read the sentence and said, Well, a
2 billboard -- the NASCAR billboard that says Review
3 Journal and ReviewJournal.com doesn't comply with
4 5.1.4. And, therefore, because the Review Journal
02:07:48 5 didn't pay for it at its own expense, the Review
6 Journal had to pay.

7 THE COURT: Okay.

8 MR. REID: So the same issue with respect to
9 house ads. It's a promotion, any and all. "Any" means
02:08:05 10 "all." "Shall" means "must."

11 Any promotional activity like what you see
12 there that doesn't feature the Sun, must be paid for by
13 the Review Journal.

14 Now, this isn't a problem that there's a long
02:08:31 15 history of. Up until Mr. Adelson purchased the
16 newspaper, the RJ complied with this provision.

17 These are examples that the arbitrator saw.
18 He knew that the RJ, under the prior ownership, used to
19 feature the RJ and the Sun together in compliance with
02:08:54 20 Section 5.1.4.

21 That changed when Mr. Adelson purchased the
22 newspaper and he began promoting in the Review Journal
23 only the Review Journal to the exclusion of the Sun and
24 in violation of this provision. That's why we are
02:09:19 25 asking the Court to take a look at that aspect of the

02:09:24 1 arbitrator's award to reconcile it, because clearly the
2 arbitrator knew what the requirements of 5.1.4 were,
3 but he disregarded it as it applied to the Review
4 Journal's house ad promotional activities.

02:09:50 5 A couple other areas you've asked about and
6 you've made clear to us the high bar that exists to
7 overturn an arbitration decision. That bar is
8 different when we can demonstrate that the arbitrator
9 manifestly disregarded the law. We can do that. We
02:10:20 10 presented a number of issues where the arbitrator did
11 that by failing to make required findings.

12 This goes back years, but the Court's aware,
13 for example, that we filed a claim to -- with the
14 Court -- as part of our initial complaint we filed here
02:10:45 15 to require the Review Journal to submit to an audit.

16 Plain language of Appendix D requires that the
17 Review Journal submit to an audit every year so that
18 the calculation of the annual profits payment can be
19 reviewed. The Court's aware that the Review Journal
02:11:05 20 refused to participate in the audit.

21 As part of the motion to compel arbitration
22 that was filed, your Honor compelled that claim to
23 arbitration.

24 Your Honor's aware that the arbitrator, as
02:11:24 25 part of his award, compelled the RJ to submit to an

02:11:30 1 audit.

2 His finding, however, didn't address the Sun's
3 damages. There was no finding there. So that's a
4 manifest disregard of the law. That was something that
02:11:45 5 this Court compelled the arbitrator to take up. He
6 ordered the arbitration, but there was a breach of the
7 JOA on the part of the RJ for failing to participate in
8 an audit, and no damages were awarded.

9 We're requesting that the Court vacate the
02:12:10 10 award as it relates to this issue and order damages
11 because Appendix D envisions a streamlined process. It
12 envisions these audits to be performed. It requires
13 participation. The Review Journal refused to
14 participate. Required us to come to court in order to
02:12:43 15 exercise a right that is black and white in the JOA.

16 And if the Court doesn't correct the
17 arbitrator's disregard of this finding failing to award
18 us damages on this issue, it -- it's truly -- it is an
19 outcome that is manifestly unjust. The Sun can't or
02:13:17 20 shouldn't be forced to litigate for years and to expend
21 millions of dollars in order to exercise simple rights
22 like its ability to audit the calculation.

23 And if the Court doesn't afford us damages
24 with respect to the audit in some ways, the remedy that
02:13:48 25 we receive in having an audit ordered is empty because

02:13:52 1 it hasn't made us whole.

2 The same is true with respect to the
3 attorney's fees issue, that we have asked the Court to
4 vacate the arbitrator's award. Again that is an issue
02:14:06 5 where the arbitrator manifestly disregarded the law.

6 The arbitrator knew that both sides
7 interpreted the agreement.

8 I'll take that. Thank you. This is kind of a
9 fun visual. You know, we've been --

02:14:32 10 Yeah. We've litigated the issue of attorney's
11 fees for years, your Honor. This is the second
12 arbitration that has occurred since 2015. And
13 Mr. Jones' firm is the first set of lawyers that the RJ
14 has employed that have argued that the parties didn't
02:15:05 15 intend that attorney's fees be awarded. Clearly that
16 was not the parties' intent.

17 And one thing should be really clear on that
18 issue. The RJ argued for attorney's fees to be awarded
19 up until the moment that it lost, up until the moment
02:15:28 20 that the Sun became the prevailing party in the
21 arbitration. And we have a trail. This board shows
22 just some examples over the course of years. There are
23 multiple, too many to fit on that board, where both
24 parties have acknowledged that this agreement provides
02:15:51 25 the arbitrator with an obligation to enter an award of

02:15:58 1 fees to the prevailing party.

2 We ask you to vacate that -- the award because
3 it touches to the same issue that I addressed before
4 with respect to the audit rights.

02:16:19 5 If the Sun -- well, first, the intent of this
6 provision was clearly that the prevailing party receive
7 an award of its fees and costs. The Sun negotiated for
8 this right so that its remedies wouldn't be hollow.

9 The Court's aware that we -- the Sun -- with
02:16:47 10 respect to editorial costs, for example, the arbitrator
11 awarded \$1.8 million in damages for the editorial costs
12 that were improperly accounted for under the JOA. The
13 cost to litigate that equals essentially and now it's
14 less than the fees incurred to pursue that.

02:17:11 15 The parties didn't envision a result where the
16 prevailing party would be -- wouldn't be made whole by
17 the outcome of the arbitration.

18 The arbitrator --

19 THE COURT: Tell me this. Is it really more
02:17:33 20 of a mechanical issue? Because at the end of the day,
21 could it be argued that if the joint operating
22 agreement doesn't provide for attorney's fees and the
23 arbitrator awards fees and costs that he exceeded his
24 powers?

02:17:49 25 MR. REID: No. Appendix D -- that's not our

02:17:53 1 argument at all.

2 THE COURT: No, no. But I'm just -- you're
3 asking for fees. And I think when we talked about
4 under the NRS Chapter 38.241(d), arbitrator exceeding
02:18:08 5 his or her powers, typically, you're talking about a
6 scenario where the arbitrator makes a determination or
7 makes a finding or goes beyond -- that specifically
8 goes beyond the thrust, scope, and focus of the
9 contract between the parties; right? That's when they
02:18:28 10 exceeded their party -- exceeded their powers.

11 So in order to award fees and costs in this
12 case, wouldn't that -- wouldn't that specific provision
13 have to be set forth in the operating agreement
14 relating to the prevailing party?

02:18:42 15 MR. REID: Well, it's laid out in Appendix D
16 as a -- in describing what -- you know, Appendix D does
17 a lot of things. It describes the calculation. It
18 describes the dispute resolution mechanism. And so
19 it's at the end of Appendix D when that's set forth
02:19:01 20 where it says -- it describes that the arbitrator is
21 empowered to award fees and costs.

22 Now, I know the Court --

23 THE COURT: Now, I want to make sure that I
24 find it. There's a lot here. And let me see if I can
02:19:25 25 find it for you.

02:19:26 1 MR. REID: Yeah, I have the agreement here
2 too, your Honor.

3 THE COURT: Let me see here.

4 MR. REID: It says -- it's on the very last
02:19:35 5 page, I believe. Second to the last page.

6 It uses the language "shall."

7 "The arbitrator shall also make an award of
8 the fees and costs of the arbitration."

9 THE COURT: Okay.

02:19:57 10 MR. REID: And so -- and I really appreciate
11 in the, you know, hours that we've been before you in
12 this case and others, the way you frame the questions.
13 So on this exceeding powers...

14 THE COURT: Right.

02:20:13 15 MR. REID: Okay.

16 THE COURT: There's a reason why I do that.

17 MR. REID: Yeah. No. I -- I mean, it's --
18 it's -- it's extremely thoughtful.

19 But -- so looking at this question and what
02:20:27 20 the arbitrator did in light of this language, the
21 arbitrator exceeded his authority in failing to --
22 he --

23 THE COURT: I understand what you're --

24 MR. REID: He was aware of the language and he
02:20:43 25 failed to follow it.

02:20:45 1 THE COURT: Right.

2 MR. REID: So it's -- when you pose these
3 intellectual questions, you're exceeding your authority
4 through an omission.

02:20:53 5 THE COURT: I understand.

6 MR. REID: That's the description.

7 So I know I've taken a bit of time. I've
8 bounced around in response to your questions.

9 I do want to touch on the editorial, because
02:21:08 10 I'm confident that Mr. Jones will have comments about
11 the editorial costs. And I want to explain to you why,
12 under the extremely deferential standards that you've
13 described to us, why simply the Court is required to
14 confirm the arbitrator's award with respect to
02:21:32 15 editorial costs.

16 So could we get those boards, the 4.2 boards?
17 I think they are up here already. Just to quickly go
18 through those.

19 And that side down.

02:21:51 20 Section 4.2 the arbitrator found that the
21 plain language of 4.2 which requires each newspaper
22 to -- it says "each bear their own respective editorial
23 costs," that the Review Journal had breached that
24 provision, that it wasn't bearing its own respective
02:22:15 25 editorial costs when it deducted them from what the Sun

02:22:20 1 received each year. So plain language reading of this
2 provision.

3 Our arbitrator received days of evidence on
4 this issue. The arbitrator knew that Section 4.2 was
02:22:35 5 one of the initial agreed changes between the parties
6 to the agreement.

7 That there had been disputes before with prior
8 ownership because the structure of the 1989 agreement,
9 you can see the language that was changed there,
02:22:52 10 Section 4.2 was a provision that established what set
11 of editorial costs were permissible agency expenses.
12 Agency expenses are those expenses that could be
13 included in the profits calculation.

14 If the parties had separate expenses that
02:23:17 15 didn't meet the definition of agency expenses, they --
16 they weren't permitted to be -- they were excluded from
17 the calculation and the parties had to bear them
18 separately.

19 Section 4.2 changed. And there's a flaw
02:23:41 20 that -- that's in the Review Journal's pleadings that's
21 important to discuss with respect to this and with
22 respect to the broader issue of calculating the JOA
23 EBITDA. And it's that first, under the 1989 agreement,
24 the RJ wasn't paying the Sun's editorial costs. There
02:24:05 25 was an agency -- and as you see in the plain language

02:24:07 1 of this agreement here, both newspapers' editorial
2 costs were budgeted and then together deducted as
3 allowed agency expenses under the JOA calculation.
4 They were joint expenses, both newspapers' editorial
02:24:24 5 costs. They were treated reciprocally under the 1989
6 agreement. That was a point of dispute because the RJ
7 had an incentive, as this contract will set up, to
8 understate what its editorial expenses were, because
9 for every dollar that it spent, 65 cents would go to --
02:24:48 10 yeah, another 65 cents would go to the Sun for its
11 editorial expenses.

12 That was a point of a lot of contention
13 throughout the years. So in 2005, the parties set out
14 to take editorial expenses out of the JOA calculation.
02:25:05 15 They agreed to this language.

16 Now, instead -- under 4.2 as it was amended,
17 instead of both newspapers' editorial costs being
18 allowed expenses that were part of the profits
19 calculation, they're now treated the same but in a
02:25:32 20 different way. They're both excluded from the JOA
21 calculation. An easy way to understand that is
22 thinking about the newspaper, and you -- that maybe
23 arrived on your front step this morning, the Review
24 Journal and the Sun both expended editorial costs to
02:25:52 25 produce the paper. They do that every day.

02:25:57 1 The Sun's editorial costs don't reduce the
2 RJ's profits. And pursuant to Section 4.2, it's clear
3 that the RJ's editorial costs shouldn't reduce the
4 Sun's profits either. They're treated reciprocally.
02:26:15 5 Each bear their own respective editorial costs.

6 We have that other board, your Honor, that has
7 paragraph 2 from Appendix D. I want to talk about this
8 for just a second, because in Mr. Jones's reply, there
9 was a concession.

02:26:47 10 We've litigated these issues for years through
11 more than one arbitration hearing. The RJ's witnesses,
12 when we talk about this provision, would say
13 essentially that there was nothing to see there. Just
14 go -- let's talk about the retention sentence. There
02:27:08 15 was never an acknowledgement about what the impact of
16 this provision was.

17 So I was interested when the RJ's reply
18 conceded that the second sentence of paragraph --
19 second paragraph of the first sentence of paragraph D
02:27:31 20 in Appendix D requires editorial costs to be removed
21 from the JOA calculation. They have a caveat, they
22 say, but just for pre-2005.

23 I hope that that concession is something the
24 Court -- I know -- you always ask very thoughtful
02:27:58 25 questions. That concession made for the first time in

02:28:00 1 their reply prompts a lot of questions.

2 And the questions are: So this reference to
3 Appendix A -- this is the reference here. They concede
4 that when you perform the JOA EBITDA calculation, you
02:28:21 5 have to remove A1, these costs that would have been
6 otherwise deducted. A1 is a reference to the 1989
7 agreement. These are editorial costs. Okay? It's
8 saying they need to be taken out.

9 So the question that that concession should
02:28:39 10 provoke is, why did the parties do that? Why did the
11 parties want to have editorial costs taken out? And
12 then why would they have only wanted them out for prior
13 to April 1, 2005, earnings? What was special about
14 that year? Why wouldn't the agreement require them to
02:29:07 15 be excluded every year?

16 Understanding this section of the agreement
17 changed how the JOA calculation was made, your Honor.
18 The first paragraph of Appendix D says instead of there
19 being a calculation every year that's just simply
02:29:32 20 agency revenue minus agency expense equals profits,
21 under the 2005 JOA, there's a comparison calculation
22 that's made.

23 Paragraph 1 sets that up saying there's a --
24 that JOA profits under the 2005 agreement are made by
02:29:53 25 comparing the percentage change between year over year.

02:29:59 1 That's what the first paragraph says.

2 The second paragraph sets out a base year.

3 And it sets out a base year so you know what the
4 initial comparison is.

02:30:10 5 This first sentence there says when you do
6 that base year calculation, you're taking the editorial
7 costs out. So if you have no -- and as the RJ conceded
8 in their last filing, if you have no editorial costs in
9 the base year, and as they argue, you add them back in,
02:30:38 10 what result would that have to the comparison? Doesn't
11 that skew the comparison?

12 Why would the parties have wanted a skewed
13 comparison? A comparison where, in the first year,
14 editorial costs are removed, and then in later years
02:30:57 15 the costs are way up because they're included.

16 Why did -- why would the parties have wanted
17 that? What is the purpose of removing costs and then
18 later add them back in?

19 We submit to you, your Honor, that that
02:31:17 20 explanation that you get from the Review Journal makes
21 no sense. It makes no sense to take out costs in the
22 first year and then say that only applies to that year,
23 because it means that the comparison is -- isn't
24 consistent or harmonious.

02:31:36 25 This language supports the arbitrator's

02:31:40 1 finding with respect to Section 4.2. It was
2 appropriate and necessary in setting the base year to
3 remove editorial costs. Why? Because Section 4.2 said
4 editorial costs weren't going to be part of the
02:31:56 5 calculation going forward. And the only way that you
6 had a consistent comparison that you would under the
7 agreement going forward is if you went back into the
8 first year and said remove the editorial costs so that
9 going forward there would be no editorial costs that
02:32:16 10 are part of the comparison. That's the only way to
11 consistently and harmoniously apply all of the terms of
12 the agreement.

13 That's what our arbitrator did. And under any
14 standard of review or any way to frame a standard of
02:32:36 15 review that you may hear when I sit down, that finding
16 cannot and should not be overturned.

17 Finally, with respect to editorial costs, we
18 should discuss the retention sentence. That's -- the
19 RJ in their pleadings call it a formula at least 12
02:33:06 20 times.

21 That's not what the arbitrator found. In
22 weighing all of the evidence, the arbitrator
23 determined -- and you can look at the plain language of
24 that sentence and come to the exact same conclusion --
02:33:27 25 that that sentence that the RJ relies on is anything

02:33:34 1 but a formula.

2 First, it describes the calculation needing to
3 be in a manner consistent. What does that mean? "In a
4 manner consistent" doesn't mean "identical with."

02:33:49 5 Furthermore, the reference to the P&L doesn't
6 tell you anything more than that either. A P&L doesn't
7 tell you -- it's not a formula for calculating
8 anything. The P&L contains numbers, but it doesn't
9 tell you what's included or what is excluded.

02:34:19 10 The 2004 P&L, your Honor, that the Review
11 Journal wants you to rely on and use that sentence to
12 say the arbitrator manifestly disregarded the law,
13 abused his discretion, includes costs that went away.
14 It includes both parties. This was a misstatement in
02:34:49 15 the Review Journal's pleadings. It includes both
16 parties' promotional costs, it includes many other
17 costs that went away in the 1989 agreement. The Review
18 Journal isn't arguing that those costs that went away
19 should be included as part of the JOA EBITDA
02:35:09 20 calculation. They're saying that it only applies to
21 editorial costs.

22 I have some other comments.

23 The last thing I want to say is with respect
24 to all of these issues, there is a significant error
02:35:30 25 inherent in the Review Journal's arguments. And that

02:35:33 1 is when it describes the calculation. The RJ wants you
2 to believe that EBITDA is all about the RJ. That
3 EBITDA is the RJ's earnings. They call it the RJ's
4 EBITDA. They put this in bold underline in the last
02:35:57 5 pleading they filed which I thought was great, because
6 it points out a flaw that underlies all of their
7 interpretation of the contract.

8 Appendix D, that last sentence you see on the
9 board on the right, says, "EBITDA shall include the
02:36:15 10 earnings of the newspapers."

11 "The newspapers." Again, a defined term in
12 the agreement meaning both the Review Journal and the
13 Sun. It's not the RJ's EBITDA. It's not the RJ's
14 earnings alone. It's both -- earnings are for both --
02:36:36 15 from both of the newspapers that are jointly
16 distributed. The Sun isn't free-riding. We're asking
17 for what we're entitled to under the agreement.

18 Thank you, your Honor.

19 Well, quickly. I'll go really quick. So I
02:36:58 20 didn't address the aspect of our motion that asks you
21 to -- to vacate the -- the arbitrator's findings with
22 respect to our tortious breach claim. And very
23 briefly, the reason that that -- that that finding --
24 the findings with respect to that claim must be
02:37:20 25 overturned is because the arbitrator was presented with

02:37:24 1 what the elements of the law were. And the arbitrator
2 failed to make any of the findings on the elements of
3 that claim.

4 A necessary finding with respect to -- I'll
02:37:43 5 leave it.

6 The arbitrator made no findings with respect
7 to the elements of tortious breach. The arbitrator
8 didn't address whether a special relationship existed
9 between the parties. One clearly does.

02:38:03 10 It's inherent in the contractual structure of
11 the JOAs. It's inherent in everything we've described.
12 In the calculation, the printing functions, everything
13 that the superior position that exists under the
14 contracts. The arbitrator didn't address these claims
02:38:19 15 at all. He manifestly disregarded the law by instead
16 of addressing the legal elements of a tortious breach
17 claim, his analysis essentially focused on -- it was --
18 it was as if he was making a punitive damages
19 assessment, looking at the intent and whether it rose
02:38:37 20 to a level where he should enter punitive damages.
21 Instead of making the required findings, he manifestly
22 disregarded the law.

23 Thank you.

24 THE COURT: Thank you, sir.

02:38:56 25 MR. JONES: Your Honor, we have some slides.

02:38:58 1 We don't have a board, but we have some slides. I
2 wanted to know, is it possible -- I know you get that,
3 but is it possible I can bring the --

4 MR. REID: You can move this.

02:39:09 5 MR. JONES: Thank you.

6 Good afternoon again, your Honor.

7 I always try to do my best to listen to what
8 the judge says the Court thinks is important. And
9 first thing you talked to both sides about is in
02:40:02 10 reference to the Washoe County School District case.

11 And I'd like to make a couple of points about
12 that case because I hope to be talking to you this
13 afternoon about two things. One is the applicable law
14 and the contract itself. Not our interpretation of the
02:40:21 15 contract. Not the other side's interpretation of the
16 contract. And certainly not the arbitrator's
17 interpretation of the contract. So I'm going to try to
18 stick to those things.

19 And in referencing Washoe, you talked about
02:40:35 20 the burden. So each side, as you mentioned, we have
21 competing motions.

22 THE COURT: Yes.

23 MR. JONES: Oh, your Honor -- your Honor, do
24 you have it on your screen, at least, the slides?

02:40:49 25 THE COURT: We can turn it on.

02:40:52 1 MR. JONES: Would you mind doing that, your
2 Honor. Also I have --

3 Your Honor, I thought I might make that --

4 THE COURT: It's on.

02:41:10 5 MR. JONES: -- since I'm referring to them,
6 those would be exhibits for the Court.

7 So getting back to the point here. You
8 referenced the Washoe case. And I would also point out
9 one thing that I think is important for all of us here.

02:41:24 10 As you mentioned, it's very difficult to set
11 aside an arbitrator's award.

12 But I would make note of the fact that even
13 though this is Nevada, and as you well know, there's
14 not that much case law in the state to guide you or
02:41:43 15 litigants because we're a pretty small state. Until
16 the last 10 or 15 years, we had very little case law
17 directly on an issue.

18 I would point out, however, there are numerous
19 cases by the Supreme Court that tell you what your, if
02:41:59 20 you will, parameters are as to what you should be doing
21 in considering a motion like that. And you referenced
22 one of them, Washoe. And Washoe also says, in addition
23 to the burden of proof, it says the standard to review
24 a motion to vacate is de novo.

02:42:16 25 So you're starting from scratch here, your

02:42:18 1 Honor. You are the one that's going to look at this
2 contract and say, Okay, what does this mean? And, in
3 fact, it goes on to say in Washoe that the
4 interpretation of a contract is de novo. So it's
02:42:30 5 doubly applicable to this case.

6 And with respect to this whole point about the
7 burden of proof, clear and convincing evidence, and
8 I've certainly tried cases that had punitive damages
9 and I've had to talk to a jury about that standard.
02:42:44 10 What does that mean in essence? Well, in this case,
11 it's pretty straightforward. Clear and convincing.
12 We're talking about a Court's interpretation of
13 contract language.

14 And we believe -- and we believe it is
02:42:58 15 manifest in the language of the agreements themselves
16 what they -- or the agreement itself what it means.
17 It is clear and it -- the interpretation that
18 we are pointing out to the Court we think is,
19 obviously, convincing.

02:43:18 20 Now, one other thing Washoe said that I think
21 is important to point out, that -- this is a quote from
22 Washoe at page 304.

23 "The deference" -- excuse me.

24 "The deference accorded an arbitrator is
02:43:35 25 not limitless; he is not free to contradict the

02:43:39 1 express language of the contract."
2 That is a manifest disregard of the law. And
3 if an arbitrator does it, I would submit to the Court
4 it is also arbitrary and capricious for an arbitrator
02:43:54 5 to disregard the plain or express language of a
6 contract.
7 The Washoe court went on to say:
8 "If the contract is clear and unambiguous,
9 then it will be enforced as written."
02:44:04 10 Not as interpreted by a party who wants to
11 interpret it in their favor. As written.
12 Let's talk about some other cases that our
13 Supreme Court has given us to give you and all of us
14 guidance. The Coblentz case which we cited in our
02:44:19 15 briefs. It -- the Supreme Court held:
16 "Reversing the trial court's confirmation
17 of an arbitration award where the arbitrator's
18 disregard -- disregard of the express contract
19 provisions."
02:44:29 20 So we keep getting this recurring theme.
21 You -- as an arbitrator, if you ignore or disregard the
22 express language of a contract, you're going to be
23 overturned, straightforward. That simple. Wichinsky,
24 another Nevada case, 1993:
02:44:47 25 "If an award is...unsupported by the

02:44:49 1 agreement, it may not be enforced."
2 Krieger, 2005, a federal district court case,
3 Nevada.
4 "Under Nevada law, an arbitrator's -- an
02:44:58 5 arbitration award must be vacated where the
6 arbitrator refuses to apply established
7 principles of contract law or ignores the
8 express language of the agreement."
9 So what does the Sun say about that?
02:45:15 10 Put the next slide, if you would, up, Michael.
11 The Sun agrees. While an arbitrator enjoys
12 broad discretion in determining issues under an
13 arbitration agreement, that discretion is not without
14 limits.
02:45:26 15 That's what we just quoted from Washoe.
16 He is confined to interpreting and applying
17 the agreement and his award need not be enforced if it
18 is arbitrary, capricious, or unsupported by the
19 agreement.
02:45:38 20 That's their motion at page -- at page 10.
21 At page 10, Footnote 6. Footnote 6, they
22 quote:
23 "An arbitrator exceeds their power when
24 they address issues or make awards outside the
02:45:54 25 scope of the governing contract."

02:45:57 1 So that's -- I think everybody agrees in this
2 courtroom, hopefully, that's Black Letter Law in
3 Nevada. You got to follow the plain language of the
4 contract.

02:46:06 5 And you said there's two things you wanted to
6 hear about from counsel in this argument. One is how
7 was the arbitrator's decision arbitrary and capricious?
8 And, two, how is it a manifest disregard of the law?

9 Well, let's walk through --

02:46:21 10 THE COURT: Or, I guess, one of the other
11 issues is whether or not they exceed their powers
12 statutorily.

13 MR. JONES: I got that, your Honor. You
14 didn't mention that at the beginning, but I don't
02:46:30 15 disagree with that premise. I agree.

16 So now let's talk about the contract and let's
17 just walk through what it says, because it doesn't
18 matter what I think it says. It doesn't matter what
19 Mr. Reid thinks it says. In this hearing, it matters
02:46:47 20 what you think it says.

21 We believe the language is clear, unambiguous,
22 and only has one meaning that anybody that has -- in
23 fact, it begs the question, what happened to the
24 arbitrator? The arbitrator clearly went off the rails.
02:47:05 25 And so let's walk through it.

02:47:07 1 Go to the next slide, if you would, Michael.
2 So the 2005 JOA says how EBITDA is to be
3 calculated.
4 So, your Honor, that's what we're talking
02:47:16 5 about. And I know you've been involved in enough cases
6 to understand what EBITDA is. So that's basically,
7 okay, how do you calculate what your money is going to
8 be left over after you calculated all your expenses,
9 debt, interest, et cetera, et cetera.
02:47:35 10 Right? So no dispute there.
11 So, Michael, would you get the next line
12 there.
13 So here's a critical point, your Honor, which
14 the Sun does not talk about. There's only one place --
02:47:52 15 THE COURT: And what page is this on?
16 MR. JONES: This is -- this is part of
17 exhibit -- it's Exhibit H. Oh, I'm sorry. It's
18 Exhibit 1 to the motion, and it's part of Appendix D of
19 our motion, yes.
02:48:15 20 Let me know when you find it, your Honor. But
21 it's part of Exhibit 1. It's Appendix D to the 2005
22 JOA.
23 It's actually Exhibit A. I apologize.
24 MR. STONE: Page 18.
02:48:33 25 MR. JONES: I don't know if you found

02:48:34 1 Exhibit A.

2 THE COURT: I'm just looking at the page and
3 section.

4 MR. JONES: Okay. So that's part of
02:48:39 5 exhibit -- or Appendix D to Exhibit A. Page 18, your
6 Honor.

7 Page 19, your Honor. That's where you'll find
8 that language.

9 THE COURT: Okay.

02:49:20 10 MR. JONES: That's --

11 THE COURT: I think I found it. I'm with you.

12 MR. JONES: About, yeah, two-thirds of the
13 way, three-quarters of the way down the page.

14 THE COURT: Yes.

02:49:32 15 MR. JONES: All right. So, by the way, Judge,
16 this is where -- I mean, you're really getting down
17 to -- and I'm a firm believer, the old adage, if it's a
18 simple case, you don't have to do any explaining. We
19 don't have to do explaining. This is a road map that
02:49:50 20 is easy to follow. How the arbitrator got derailed,
21 I'll never know. But this is all straightforward
22 analysis based upon the law and the plain language of
23 the agreement. So if you look at that language, your
24 Honor -- and here's important to note: This is the
02:50:08 25 2005 JOA. This is not the '89 JOA.

02:50:10 1 And it's also important to note -- I don't
2 believe there's any dispute about this because it's,
3 again, contained in the plain language of the JOA. The
4 2005 JOA replaced the 1989 JOA. It basically said --
02:50:26 5 in fact, it said that's going away. We're going to now
6 operate under a completely new agreement. And we have
7 new issues here. We're going to go about business
8 differently and we're going to treat the money
9 differently. We're going to treat how we operate
02:50:43 10 differently. The Sun went from a newspaper that was
11 actually published separately and delivered in the
12 afternoon to becoming an insert in part of the RJ, a
13 fundamental difference in how the parties did business
14 together under a new JOA.

02:50:59 15 So I think it's important for you to note,
16 your Honor, this is critical in terms of tracking the
17 plain language and the intent of the parties. This is
18 exhibit -- or Appendix D, 2005 JOA. It's referenced in
19 Section 7 of the JOA, the 2005 JOA, under the heading
02:51:21 20 "Payment."

21 That's on page 5 of the agreement.

22 Now, I want to make sure and give you a chance
23 to look at that before I go on.

24 THE COURT: I've read it.

02:51:35 25 MR. JONES: Okay. So if you -- if you don't

02:51:37 1 mind just going back to page 5 just for a moment.

2 You'll see the Section 7.

3 Did you find it, your Honor?

4 THE COURT: Yes.

02:51:54 5 MR. JONES: It says "payment", right? What
6 does it refer you to, your Honor? Appendix D, correct?

7 THE COURT: That's what it says.

8 MR. JONES: Okay. So now we have the contract
9 the parties entered into saying with respect to
02:52:08 10 payment, refer to Appendix D. I don't think it could
11 be any more clear and unambiguous than that.

12 Why is that important, your Honor? If you
13 look at Appendix D, it's the only place in that entire
14 agreement, all right, or anything related to it that
02:52:26 15 references EBITDA.

16 That's where the parties were defining what
17 EBITDA was. That is the only place that the parties
18 were defining what EBITDA was. That's where anybody
19 who wants to know how you calculate EBITDA would want
02:52:43 20 to look. So plain as day. Easy to follow.

21 And what does it say?

22 "The parties intend that EBITDA be
23 calculated in a manner consistent with the
24 computation of retention."

02:53:03 25 In other words, that's a -- as we said in our

02:53:05 1 brief, "retention" is a word that newspapers sometimes
2 use that is synonymous with EBITDA.

3 And here they actually say that. We're going
4 to call retention EBITDA in this -- in this agreement
02:53:20 5 between us. "The parties intend." You can't get
6 more -- a more clear expression of a party's intent
7 than that language.

8 And they go on to say what the computation of
9 retention, "As that line item appears on the profit and
02:53:36 10 loss statement for Stephens Media Group for the period
11 ending December 31, 2004."

12 In other words, your Honor, plain as day.

13 We are now moving into a new era. We're going
14 to a new JOA. And we are intending that EBITDA be
02:53:55 15 calculated in a certain manner.

16 And here's what they did. In fact, my firm
17 has done this. Mr. Kemp and I have had some other
18 cases where we had a complicated computation with joint
19 venture counsel in another state, and we wanted to be
02:54:12 20 clear in our joint -- in our fee-sharing agreement what
21 was intended and how to calculate the fee in a fairly
22 complicated formula. So what we did, just like the
23 parties did here, we put it in writing in our fee
24 agreement and then we added an actual monetary
02:54:30 25 calculation, an example of what we were intending so

02:54:34 1 everybody would know from the get-go and not try to
2 second-guess what was meant by some words years later.
3 We put it in a formula.

4 So what did they do in this case?

02:54:46 5 Let's look at the next slide.

6 Your Honor, let's bring it -- well, first of
7 all, let's just talk about this for a moment.

8 This is the very document that is being
9 referenced in the slide we just showed you that came
02:55:02 10 from Appendix D about the Stephens Media 2004,
11 December 31, P&L. They gave an actual illustration of
12 how to calculate EBITDA. It cannot get any clearer
13 than that.

14 So they said on a going-forward basis -- and
02:55:22 15 this is going to have some significance when I talk
16 about that Section 4.2, as it relates to EBITDA how are
17 we going to calculate it? Here's how, so nobody would
18 have a misunderstanding. Clear as day, plain as day,
19 easy to follow.

02:55:39 20 Gave us an example right out of a profit and
21 loss statement: Going forward this is how we're going
22 to do it.

23 So what is included in this EBITDA calculation
24 under the contract?

02:55:51 25 Michael.

02:55:57 1 Promotional expense. I'm sorry. Editorial.
2 Couldn't read it from there.
3 Editorial expense. They put in there in
4 writing and in a graphic from the P&L that editorial
02:56:11 5 expense for the RJ was to be included in EBITDA.
6 It can't get any clearer than that.
7 What else did they include in that profit and
8 loss statement?
9 Promotional expense. I got it right the
02:56:24 10 second time. They put it right in there.
11 As in promotion, it's right in there, plain as
12 day.
13 It's -- if you'll excuse the expression --
14 manifest. It's express. It's unambiguous. And it
02:56:40 15 says here's the road map. This is what you include
16 when you talk about EBITDA.
17 And what does -- what do we have at the
18 bottom? Operating expenses.
19 So let's go to the next slide.
02:56:58 20 Section 5.1, "The Review Journal shall bear
21 all costs under the 2005 JOA except for the Sun's
22 editorial costs."
23 Why is that important, your Honor? And this
24 is -- again, this is a matter of fact. This isn't me
02:57:18 25 saying it. The only change if you look at that -- that

02:57:21 1 quote there from Section 5.1, "All costs, including
2 capital expenditures of operation." So what is
3 operations? Operations, operating expenses. Costs of
4 operation are synonymous with operating expenses which
02:57:37 5 goes back to that profit and loss statement we were
6 just talking about that actually has right at the
7 bottom operating expenses, and it tells you what we're
8 going to include in those. And it says all of the
9 expenditures of operation under the restated agreement,
02:57:51 10 the 2005 JOA, except -- except -- the operation of the
11 Sun's news and editorial department shall be borne by
12 the RJ. In other words, everything but the Sun's news
13 and editorial department costs will be borne by the RJ.
14 And why -- how is that different, Judge?
02:58:15 15 Well, before the 2005 JOA, the RJ picked up the Sun's
16 editorial costs.
17 So they explain what they were doing. They
18 gave a clear road map to anybody who was willing to
19 actually read it.
02:58:32 20 Again, why the arbitrator did what he did when
21 it's plain as day in the written documents, we don't
22 know. All we know is that he didn't follow the plain
23 language of the agreement.
24 So going back again to the slide we just
02:58:48 25 looked at, which is the profit and loss statement, it

02:58:52 1 says right in there as part of Appendix D, they gave
2 the example. They actually attached the --
3 specifically referred to the profit and loss statement
4 from December 31 of 2004 for Stephens Media. To give
02:59:08 5 the example of what was to be included in operating
6 expenses they included editorial costs and they include
7 promotional costs. Plain and simple. Manifest and
8 express.

9 With respect to the next --

02:59:44 10 Yeah. Your Honor, you probably -- Mr. Gayan
11 pointed out a point here. On this slide where we have
12 the 2004 profit and loss statement, we didn't blow it
13 up, but it probably would be helpful for you to see
14 this. But right below -- I don't know if you can see
02:59:59 15 it here. If I may. This line here. It's the one,
16 two, three, fourth line up from the bottom. It's
17 retention. And so, again, that's how they define the
18 EBITDA in the agreement in Section 7 referring to
19 Appendix D. And they literally define EBITDA as
03:00:25 20 synonymous with retention. So there it is.

21 THE COURT: Is this page 2 of the --

22 MR. JONES: I'm sorry?

23 THE COURT: Page 2 of the statements? Of the
24 profit and loss statements, I think?

03:00:40 25 MR. JONES: Yes, your Honor.

03:00:44 1 THE COURT: Page 2?

2 MR. JONES: Yeah. Yeah. I don't know if
3 you -- I think you've got it also as an exhibit, a page
4 in the -- in our brief as well. I think you have it
03:00:54 5 there.

6 But, yeah, this basically goes through all the
7 different line items that are to be included in the
8 operating expenses.

9 And as I've just pointed out, advertising and
03:01:05 10 promotion and editorials are separate, distinct line
11 items in the P&L that gets you your totality of your
12 operating expenses, and that ultimately you end up with
13 a retention calculation which is also defined as EBITDA
14 under the agreement.

03:01:27 15 So the Sun's position that the editorial
16 expenses are not a part -- promotional expenses are not
17 supposed to be a part of the EBITDA is manifestly
18 incorrect.

19 You can't get around it. If the parties did
03:01:45 20 not want to do this, they could have easily excluded
21 editorial and advertising and promotional expenses from
22 the profit and loss statement or done -- used a
23 different exhibit. They chose this.

24 And here's the point, Judge. If you look at
03:02:01 25 the next slide, they did this for nine years. Nine

03:02:11 1 years the Sun agreed with this interpretation. The Sun
2 didn't do anything about this for nine years. They
3 followed along.

4 And here's the point about that. We quoted
03:02:27 5 this at -- in -- it's exhibit -- new Exhibit E-H to our
6 reply, I believe. It's the testimony of Steve Gray,
7 who is the Sun's CFO. And he was responsible for
8 verifying the EBITDA calculations between the parties.
9 So he's the Sun's representative, the CFO of the Sun,
03:02:49 10 who's responsible for verifying this calculation of
11 EBITDA, the very issue we're talking about.

12 And Mr. Gray testified that he knew about that
13 the RJ was deducting editorial expenses since 2006. So
14 here they knew this was going on. And for nine years
03:03:11 15 they didn't say a word about it. All of a sudden they
16 decided that they don't want to do this anymore even
17 though the agreement they signed clearly and
18 unambiguously said that's how they're going to
19 calculate it.

03:03:28 20 Now, let's go to the next point that they
21 make.

22 Next slide, please. Oh, I'm sorry. I see.

23 All right. So we're going to go to 4.2. This
24 is a point that the Sun brings up and says, Look, this
03:04:08 25 shows that -- that the RJ is supposed to bear its own

03:04:16 1 editorial costs and so is the Sun.

2 Well, first of all, your Honor, it says what
3 it says. But that's in Section 4.2. And -- well, the
4 law, I believe, is clear in the state of Nevada and I
03:04:27 5 think universally. I think it's first-year contracts.
6 You don't read into a contract, what the arbitrator
7 clearly did, a term that doesn't exist. So somehow or
8 other, the arbitrator decided that Section 4.2 which
9 has nothing to do with EBITDA -- has nothing to do with
03:04:45 10 it -- somehow relates to EBITDA.

11 And so their position is somehow this language
12 in a section that has nothing to do with the
13 calculation of EBITDA somehow contradicts Section 7 in
14 Appendix D.

03:05:06 15 And, interestingly, if you look at -- it's
16 page 20, lines 11 through 12 of their opposition, they
17 make the point or make the argument that, well,
18 Section 4.2 was negotiated before Appendix D as somehow
19 supporting their position. But actually if that's true
03:05:24 20 and they negotiated Section 4.2 before they negotiated
21 Section 7 and the Appendix D, then that simply
22 reinforces the point that they -- if they agreed to
23 Section 7 in Appendix D after Section 4.2, then they
24 clearly knew that 4.2 didn't apply to EBITDA. It just
03:05:48 25 reinforces the plain language of the agreement based on

03:05:52 1 their own position in this case.

2 And, by the way, there's nothing in this
3 statement that contradicts the way you would calculate
4 EBITDA. The RJ did bear its costs as part of the
03:06:06 5 ongoing operations. It doesn't say anywhere in
6 there -- and I defy the Sun to point out to this Court
7 where it says, And, by the way, you're going to bear
8 your own costs, but you cannot deduct those from
9 EBITDA. Where does that language exist in that
03:06:21 10 statement? That's what the arbitrator put into the
11 agreement.

12 That is, on its face, your Honor, a manifest
13 disregard for the plain language of the agreement. It
14 violates Nevada law. It violates all of the four, five
03:06:39 15 cases that we've cited, including the Washoe County
16 School District case that you referred to.

17 It's just straightforward. It doesn't take a
18 complicated analysis to understand that. You cannot
19 plug in language that doesn't exist in the documents.
03:06:57 20 You can't do it. Period. No exceptions.

21 Now, looking at paragraph 5.1, going to 5.1,
22 yes. So, your Honor, again, 5.1:

23 "The Review Journal bears all costs under
24 the 2005 JOA except for the Sun's editorial
03:07:23 25 costs."

03:07:25 1 All costs, including capital expenditures of
2 operations. This is what we've talked about before.
3 This goes back to: What are operations? Operations
4 are operating expenses. That's all costs of the
03:07:39 5 operation.

6 "Under this restated agreement, except the
7 operation of the Sun's news and editorial
8 department, shall be borne by the RJ."

9 As I mentioned before, that's...

03:07:50 10 Oh, quote below. Oh. Somehow I got confused
11 here.

12 THE COURT: So does that rise to a conscious
13 disregard of the law, though? And the reason why I
14 bring that up, I understand all the arguments both
03:08:16 15 sides have made in this case, but as a trial judge,
16 sometimes I feel when it comes to these specific issues
17 my hands are somewhat tied.

18 The reason why -- I mean, I go back to the
19 Washoe County case and our Supreme Court said judicial
03:08:29 20 inquiry under the manifest disregard of the law
21 standard is extremely limited, right? That's the first
22 thing they said.

23 And then they say further, it says, thus, the
24 issue is not whether the arbitrator correctly
03:08:42 25 interpreted the law but whether the arbitrator, knowing

03:08:46 1 the law and recognizing -- recognizing that the law
2 required a particular result, simply disregarded the
3 law.

4 MR. JONES: Well --

03:08:56 5 THE COURT: Then it kind of goes on to the
6 next page. That's kind of where we talk sidebar. Kind
7 of reminds me of -- and maybe that's why it's clear and
8 convincing. But they use an example from another
9 place. It was the Clark County Education Association.
03:09:11 10 And this is on -- I think this would be probably 307A41
11 of the decision.

12 And it seems to me the -- the standard they
13 fall upon or rely upon is whether there's clear and
14 convincing evidence that the arbitrator willfully
03:09:31 15 ignored a specific provision under the contract.

16 And that becomes tough. And that -- you know,
17 that's why they say manifest disregard. I'm sitting
18 here saying what does that mean? And we have a clear
19 and convincing standard. It kind of reminds me of
03:09:47 20 punitive damages in a way. See where I'm going on
21 that?

22 MR. JONES: I do. And I'm happy to answer
23 your question. I think -- I think it absolutely
24 fundamentally is, yes, this was a manifest disregard of
03:09:55 25 the law because the law requires -- and we've cited

03:09:59 1 multiple cases, some of which you even referred to. I
2 go back to them for a moment.

3 But this is the Coblentz case --

4 THE COURT: They say "willfully ignored."

03:10:18 5 What does that mean, right?

6 MR. JONES: Well -- so there's a couple of
7 ways to look at this, your Honor. One is under
8 Coblentz. Reversing the trial court's confirmation of
9 an arbitration award where the arbitrator disregarded
03:10:41 10 the express contract provisions.

11 Your Honor, to answer your question, that's
12 just one. And I've got -- we've got lots more where
13 that came from. If an arbitrator sees a provision that
14 is clear -- and -- and I don't believe -- and, again,
03:10:55 15 you cited Washoe as controlling law.

16 THE COURT: Right.

17 MR. JONES: Washoe also says you review the
18 contract de novo. You also review the arbitrator's
19 award de novo. So I believe that if you -- if you
03:11:11 20 are -- put yourself -- place yourself in a position
21 where you try to get into the head of the arbitrator
22 and what he was thinking in this case, I think that is
23 actually an error. You have all the information
24 available to you separate and apart for having to try
03:11:29 25 to interpret or go back and get inside the brain of the

03:11:32 1 arbitrator as to what he was doing.

2 Because to me, that is a very slippery slope
3 for a Court to go down. And it's a totally unnecessary
4 road for the Court to go down when you have clear
03:11:44 5 direction from a number of Nevada Supreme Court cases
6 and federal district court cases in Nevada that tell
7 you you cannot -- an arbitrator cannot disregard the
8 plain language of an agreement.

9 Now, you can presume that that was an
03:12:00 10 intentional act or you can presume that they just made
11 a mistake. Either way you slice it, if you look at it
12 de novo, you end up in the same place. Was it a clear
13 misunderstanding of -- or misinterpretation of the
14 plain language of the agreement? You can't look at
03:12:18 15 these agreements -- at the terms of this agreement and
16 come to a different conclusion than what we're showing
17 you right here in open court.

18 How he did it is, I believe, irrelevant for
19 the ultimate determination. And I believe the Supreme
03:12:33 20 Court has been clear about that.

21 And, by the way, as you said, that's only one
22 of the standards we have to look at. You -- I don't
23 believe the standard is if it's not arbitrary and
24 capricious, a clear -- or a manifest disregard of the
03:12:48 25 law as well, that you don't win. That's not what it

03:12:52 1 says. It's an either-or proposition.

2 THE COURT: No, no. It's either-or. It's an
3 or. I mean, I agree with that.

4 MR. JONES: Okay. So --

03:12:59 5 THE COURT: You have your statutory remedy
6 potentially, exceeding the powers. We have arbitrary
7 and capricious. There is no question about it. And
8 the third standard, of course, would be I think the one
9 you're referring to, and that's manifest disregard of
03:13:15 10 the law standard. I mean, I get it. It's not
11 conjunctive. It's disjunctive.

12 MR. JONES: Right.

13 THE COURT: And that's --

14 MR. JONES: And with that said --

03:13:22 15 THE COURT: Mr. Jones, the reason I go here,
16 it seems to me when I'm reading -- when I read this
17 Washoe County case like, for example, there's a
18 statement here when they're reviewing this Clark County
19 Education Association case, and they say this:

03:13:35 20 "Instead, we conclude that Arbitrator
21 Cohn's citation to the statute shows that he
22 'clearly appreciated the significance' of the
23 statute, regardless of whether he correctly
24 applied it."

03:13:48 25 And so where does that put us as a trial judge

03:13:52 1 reviewing these arbitration decisions based upon one of
2 the common law standards or the statutory standard for
3 review? That's -- that's kind of where I'm going.
4 Because, like I discussed sidebar, it appears to a
03:14:09 5 certain extent my hands are somewhat tied unless it's
6 really clear and convincing; right? And that's the
7 standard in that.

8 MR. JONES: Well, and I would agree your hands
9 are tied. I would say that they're tied in the sense
03:14:21 10 that there's no alternative but to vacate this award
11 because I think it meets all the criteria that the
12 Supreme Court has set forth.

13 I think that it would be improper -- and,
14 obviously, I'm an advocate for my client. But I'm just
03:14:37 15 looking at this agreement and seeing what the plain
16 language is. And as the Washoe case says, the
17 arbitrator is not allowed to rewrite the contract. He
18 must follow the plain language of the agreement. And
19 the plain language, we're walking it through.

03:14:52 20 And I think I finally got the point that my
21 colleagues were trying to make with respect to this
22 Section 5.1, all costs, including capital expenditures
23 of operations, meaning operating expenses, under this
24 restated agreement shall be borne by the RJ so --
03:15:08 25 except the Sun's editorial.

03:15:10 1 So we go back to the profit and loss
2 statement. That just shows that all costs are being
3 borne by the RJ except the Sun's editorial costs.
4 Everything -- if you'll excuse the expression, your
03:15:24 5 Honor, all roads lead back to Rome. Everything comes
6 back when you're talking about EBITDA and how it was
7 intended by the parties. Remember, that first line we
8 looked at it in Appendix D, "the parties intend" -- it
9 could not be more clear, more straightforward -- "The
03:15:45 10 parties intend that the Stephens Media 2004,
11 December 31st, P&L be the way we define EBITDA."
12 So...
13 THE COURT: And so instead what the arbitrator
14 did, he relied upon Section 4.2?
03:16:09 15 MR. JONES: Exactly. That's part of the
16 problem. He relied on Section 4.2. And he also relied
17 on Section 5.1.4 which, again, I'll get to.
18 Let's go to that right now. And, in fact,
19 that's sort of distilling this all down into the
03:16:23 20 essence of what we're talking about, Judge. There is
21 one place in this agreement where the parties say this
22 is how we intend to calculate EBITDA. It's clear.
23 It's manifest. It's in writing. And the arbitrator
24 ignored it. He just ignored it.
03:16:40 25 Instead, he relies on other provisions of the

03:16:43 1 contract to contradict what the parties say in writing
2 plain as day, here's how we intend to interpret EBITDA.
3 So he goes to sections that have nothing to do with
4 that, Section 4.2, we just talked about editorial
03:16:58 5 costs, and he goes to Section 5.1.4.

6 And, by the way, I give Mr. Reid and
7 Ms. Martini great accolades for being able to -- and
8 I'm sure they didn't see it this way -- confuse the
9 arbitrator. But that's what happened, clearly.

03:17:15 10 Either he did it intentionally, which I
11 certainly would not attribute to him, or he just got so
12 confused and bought into this argument that somehow
13 these other provisions in the agreement control the
14 clear language -- well, let me put it a different way.

03:17:31 15 These other provisions of the agreement that are
16 directly contradicted by the provision that talks about
17 EBITDA somehow over control and take precedence over
18 the part of the contract that says this is how we're
19 going to calculate EBITDA. It doesn't even make sense.

03:17:48 20 It -- it hits all the buttons, Judge. Every criteria
21 the Supreme Court has said you can't do as an
22 arbitrator is done here.

23 He goes outside the plain language to cobble
24 together a result that he thought was right. And
03:18:06 25 that's just not all he did. I'm going to get to that

03:18:08 1 in a minute.

2 But here's promotional costs. Section -- it's
3 up on the screen, 5.1. This is the other thing that
4 Mr. Reid was talking about. This is why he says, Well,
03:18:18 5 promotional costs are covered or should not have been a
6 part of the expenses.

7 That doesn't -- I defy you, your Honor, if you
8 can read that provision that they're relying upon --
9 and what's interesting, we're all looking at the same
03:18:33 10 provisions. Somehow or other, they read them
11 differently than we do. If you can see anywhere in
12 there where it talks about this is a formula to
13 calculate EBITDA, I would like to see it, because I
14 don't believe it's in there.

03:19:06 15 And think about this, Judge. I assume you
16 didn't find any reference to EBITDA in there?

17 THE COURT: No, no. I was -- I was reading
18 it, but I was thinking about my charge and what I'm
19 going to ultimately do with this. But go ahead.

03:19:19 20 MR. JONES: All right. And so think about
21 what the arbitrator then does. The arbitrator then
22 flouting basic accounting principles under GAAP, he
23 rules that the RJ was required to add revenues from its
24 promotion to the RJ to its EBITDA calculation instead
03:19:37 25 of subtracting them as an expense and then have to

03:19:43 1 basically pay for those promotions so that what
2 effectively happens is the Sun gets a windfall. So you
3 got this expense that is clearly part of the definition
4 of EBITDA under Section 7 in Appendix D, and he says,
03:19:59 5 No, you don't get to do that. And so the Sun, as a
6 result of that, gets more money from the RJ that it's
7 not entitled to under the plain reading of the
8 contract.

9 That's a violation of GAAP. It's a windfall
03:20:17 10 to the Sun. And just think in terms of what this
11 arbitrator did, your Honor. Just a couple of other
12 points about him. He was required under the agreement
13 to provide a reasoned award. There is no reasoning
14 contained in his agreement about this because he
03:20:32 15 couldn't do it.

16 I don't know if that's why he didn't add any
17 actually explanation or reason for why he did what he
18 did. But he didn't provide that, which was required.

19 And, moreover, what he did is he took it upon
03:20:46 20 himself to issue rules for the Sun's audit of the RJ's
21 books even though those rules do not appear in the 2005
22 JOA and even though he acknowledged that it doesn't do
23 that.

24 That's how far off the rails this guy went.

03:21:01 25 He was making stuff up and saying, Well, it's

03:21:05 1 not really my job as I see it under the terms of the
2 JOA, but here's what I'm suggesting. Sun, go out and
3 do this other stuff and come back.

4 I mean, there -- again, Judge, there's a
03:21:20 5 limit -- as the Washoe County Supreme Court said,
6 there's a limit to what an arbitrator can do. This guy
7 is one of those guys like these other cases we've cited
8 where the Court found the arbitrator exceeded his
9 authority. He tried to basically rewrite the parties'
03:21:41 10 agreement. He can't do it. Plain and simple.

11 Our position, Judge, is not -- it doesn't
12 require any interpretation by anybody but this Court.
13 All you got to do is look at a contract and read it and
14 cross-reference every section we talked about, and you
03:21:59 15 can see for yourself that everything we're telling you
16 is right there in black and white. And it starts with
17 the language in Appendix D that says "the parties
18 intend." The parties intend.

19 How can you get around that? And then it
03:22:18 20 tells you what the parties intend to do.

21 Yeah. So -- so Mr. Gayan makes the point, I
22 guess, just kind of bring this full circle of what the
23 result of this is. Appendix D in the profit and loss
24 statement requires the RJ to deduct all three
03:22:44 25 categories of expenses: Editorial, promotional, and

03:22:46 1 operating.

2 What the arbitrator did is he used 4.2 and
3 5.1.4 to knock out editorial expenses from that
4 calculation, to knock out promotional expenses from
03:22:59 5 that calculation, so that now, this last line here
6 "retention," this line of retention goes up. And what
7 happens? The Sun profits, gets a windfall because
8 those calculations are not in the retention number as
9 clearly required by the agreement and the Sun gets
03:23:21 10 money it's not entitled to under the plain reading of
11 the agreement.

12 Now, I want to talk about one other slide
13 about the actual contents of the agreement. Provisions
14 that the Sun relies on only applies to earnings prior
03:23:42 15 to April 1, 2005. You may recall this slide, your
16 Honor, as Mr. Reid used this slide. And he -- he put
17 it -- well, he used the board. But he put up this same
18 language.

19 And so, by the way, guess where this came
03:23:58 20 from. Appendix D. This is EBITDA. That's why you
21 find this language, because it's in the only place in
22 the contract where EBITDA is referred to.

23 And it says:

24 "In calculating EBITDA, for any period that
03:24:13 25 includes earnings prior to April 1, 2005."

03:24:17 1 Prior to April 1, 2005.

2 Not a point that the Sun wants to focus on

3 because it guts their argument.

4 So it says let's get rid of the operative or

03:24:32 5 the critical language there and read it the way the Sun

6 wants to read it.

7 "In calculating EBITDA, such earnings shall

8 be reduced by any amounts that during such

9 period may have been otherwise been deducted"

03:24:42 10 -- double "been" there -- "from earnings under

11 section," blah, blah, blah.

12 So, yeah, you would deduct that -- that --

13 those amounts prior to -- from EBITDA -- prior to April

14 1, 2005.

03:25:01 15 What is any plain language, English language

16 meaning interpretation of that is? After that date,

17 you don't deduct those amounts.

18 I mean, how much more obvious and plain can

19 that be? It -- how the -- if that's not manifest

03:25:20 20 disregard of the plain language of the agreement, I

21 don't know what is.

22 It tells the arbitrator unequivocally you only

23 deduct those amounts for numbers prior to April 1,

24 2005, before the 2005 JOA came into effect.

03:25:41 25 So that argument the Sun made that the

03:25:46 1 arbitrator agreed with goes out the window as a matter
2 of plain contract interpretation under any state. I
3 don't care where you are. It's gone.

4 This is -- that's why I said at the very
03:26:03 5 beginning, your Honor, we have a heavy burden. This is
6 an arbitration decision. But sometimes -- sometimes
7 the Court has to fix it.

8 This is one of those times.

9 This is one of those times.

03:26:17 10 And I'll just refer to my last slide here.

11 The 2014 [sic] Stephens Media profit and loss
12 statement was incorporated in the 2005 JOA by
13 reference.

14 We cite the Pentax case as also in our brief
03:26:32 15 that Nevada case from 1995. You have to construe
16 profit and loss statement because it's specifically
17 referenced in the Section 7 and Appendix D of the JOA.
18 And it has -- you could not interpret that JOA properly
19 without it.

03:26:55 20 Second, Paseo Verde Gibson Apartments:

21 "The plain language of an agreement
22 references and expressly incorporates other
23 documents, reference to them is not an attempt
24 to introduce parol evidence to vary or
03:27:08 25 contradict the terms of a written agreement."

03:27:10 1 Now, that gets us back to where we started,
2 your Honor. What are the criteria? It's an -- in
3 short, the arbitrator's decision here concerning the
4 editorial costs and promotional costs were arbitrary
03:27:24 5 and capricious because they were not based on the plain
6 language of the agreement, that he essentially made up
7 his own interpretation that is contradicted by the
8 plain language of the agreement. And the arbitration
9 decision was also therefore contrary to the -- to the
03:27:48 10 plain language of the contract, which means it was a
11 manifest disregard of the law.

12 The contractor [sic] was not at liberty and
13 did not have the authority to ignore as a matter of law
14 the plain language in the contract.

03:28:00 15 And the Washoe case goes on to say that:

16 "An arbitrator's application of the law is
17 difficult to challenge, but that is only if he
18 correctly interprets the plain meaning of the
19 law."

03:28:12 20 In this case, we have a contract. The
21 arbitrator must be reversed if he incorrectly
22 interprets the plain language. That is what Washoe
23 says. And that's what happened here.

24 And, your Honor --

03:28:25 25 THE COURT: There are issues regarding

03:28:26 1 exceeding the powers from the defense perspective --

2 MR. JONES: Say that again.

3 THE COURT: There's no issues regarding, I

4 guess, the statutory limiting exceeding the powers from

03:28:35 5 the defense perspective?

6 MR. JONES: Well, your Honor, I guess I

7 would -- I would say that there is, because the

8 arbitrator is not at liberty under the statute to add

9 terms to an agreement that are not in the agreement.

03:28:50 10 You cannot -- the arbitrator doesn't have the license

11 to just go start making stuff up, which I'm quoting

12 again page 13 of our brief where he essentially did

13 just that. And he even acknowledged that in his -- in

14 his findings.

03:29:07 15 THE COURT: Well, wouldn't that go to

16 substantial evidence potentially?

17 And the reason why I bring that up, I want to

18 make sure I'm really clear, because I'm listening.

19 There is a lot here. And I want to make sure I

03:29:17 20 understand the issues. But exceeding the powers is one

21 thing.

22 For example, hypothetically -- and I haven't

23 looked at the operating agreement, but if the operating

24 agreement didn't provide for awarding punitive damages

03:29:32 25 pursuant to the operating agreement and he awarded

03:29:35 1 punitive damages, potentially he would have exceeded
2 the powers under the agreement.

3 Here he had the powers to award, it appears to
4 me, potential damages regarding editorial and
03:29:46 5 promotional activities, right? So he's not exceeding
6 his powers.

7 Your position is he was either arbitrary and
8 capricious, or there was a manifest disregard of the
9 law. Is that what you're saying?

03:29:58 10 MR. JONES: Well, I would -- with respect to
11 those issues, yes, I would say that.

12 I would also say that we've made the argument
13 that he's exceeding his authority because he also did
14 things beyond that. He went and, as I said,
03:30:09 15 essentially made up additional remedies that are not
16 provided for in the agreement that he even acknowledged
17 were -- I think he said were possibly beyond the scope
18 of his authority.

19 So, you know -- so it's a combination of
03:30:23 20 things, your Honor. I would put it this way: And I
21 mean no disrespect to the arbitrator, but the
22 arbitrator screwed up six ways to Sunday. There are
23 multiple errors here. And that's why, by the way, the
24 arbitrator made some decisions that -- that we frankly
03:30:37 25 like about the attorney's fees and things, but at least

03:30:40 1 parts of these things that he did.

2 But we believe that the decision as a whole,
3 you cannot segregate or separate the mistakes from
4 the -- the errors or the parts that are not errors or
03:30:58 5 arguably not errors as the Sun wants to do. The Sun
6 wants to have its cake and eat it too. In other words,
7 it's like, Well, look, you know, we want to throw out
8 the bath water, but not the baby.

9 Well, in this case, the problem is, you can't
03:31:15 10 try -- if you try this Court -- this is, I guess,
11 ultimately up to you. You, I think, are put in a very
12 untenable position of trying to parse out where this
13 arbitrator made the right decisions versus where he
14 made the wrong decisions.

03:31:31 15 And as it relates to the promotional, the
16 audit and the promotional expenses and the editorial
17 expenses, he manifestly disregarded the plain language
18 of the agreement. I know I'm sort of mixing legal
19 theories here with manifest disregard of the law and
03:31:51 20 misconstruing the plain language of the agreement, but
21 the point is the same.

22 He did multiple things incorrectly, and it's
23 manifest. You can't avoid seeing it. It's right there
24 in black and white.

03:32:08 25 And I said if you just start with the basic

03:32:10 1 premise of what's in -- the language that starts in
2 Appendix D, "the parties intend." The parties intend.
3 That's the place where the analysis should have started
4 and it should have sprung from there. Instead, he went
03:32:24 5 off on a detour following this rabbit that the Sun got
6 him chasing after, and he got lost in the woods and he
7 came up with a very bad decision.

8 And we believe that Nevada law is crystal
9 clear that that decision will not and cannot stand.
03:32:41 10 And that -- assuming you agree with us, your Honor, we
11 think the Court will be on very solid ground of any
12 appellate practice because the Supreme Court has told
13 us repeatedly that an arbitrator can't do what this
14 arbitrator did.

03:33:00 15 If you have any other questions, I'd be happy
16 to try to answer them.

17 THE COURT: I'm fine, sir. Thank you.

18 THE MARSHAL: Your Honor, is now a good time
19 for a break?

03:33:08 20 THE COURT: You want a break? How are you
21 doing, Peggy?

22 THE COURT REPORTER: A break would be great.

23 MR. JONES: I was talking pretty fast.

24 THE COURT: We'll take a break. Take 15.

03:33:17 25 THE MARSHAL: All rise.

03:33:17 1

-o0o-
(Recess)
-o0o-

2

3

4

THE COURT: It's 4:00 o'clock and we're not
going to get everything done today; right?

03:59:16 5

MR. REID: I'm always optimistic, but...

6

7

8

THE COURT: I'm not. What about we'll finish
this one up, of course. What about the 31st of next
week? What day is the 31st? Is that --

9

MR. REID: That's a Thursday, I think.

03:59:35 10

THE COURT: Thursday.

11

THE COURT CLERK: That's right.

12

13

THE COURT: They're telling me -- I checked.
We have the entire afternoon available.

14

MR. REID: Okay.

03:59:43 15

16

MR. JONES: Your Honor, I'm available on the
31st.

17

18

19

THE COURT: Okay. Because it's 4:00 o'clock.
We're not going to get done, not with what we have
pending; right?

03:59:56 20

21

22

MR. REID: Yeah. Can I ask what -- what would
we be hearing on the 31st? We're -- just the other
motions besides the arbitration motions?

23

THE COURT: Yes.

24

MR. REID: Okay.

04:00:05 25

THE COURT: Yeah.

04:00:06 1 MR. GAYAN: I could be very brief on those.
2 I'm addressing them. I don't know how much time these
3 two will take to wrap up the arbitration.

4 MR. JONES: Well, your Honor, I think maybe
04:00:16 5 what we'll do is we'll see where we get today. And if
6 we -- if we -- Mr. Reid and I go on too long, then we
7 can -- obviously if you've got time on the 31st, we can
8 deal with the rest of this stuff on the 31st, if that's
9 acceptable to the Court.

04:00:31 10 THE COURT: I mean, that's fine. We can see
11 where we're at today. We'll move on.

12 MR. REID: So, I guess, going back to the
13 argument on the arbitration award, your Honor.

14 THE COURT: Yes.

04:00:45 15 MR. REID: First place I want to start is
16 where you started us both by focusing on the standard
17 of review. There are some things that need to be
18 clarified based on the argument you just heard from
19 Mr. Jones.

04:01:03 20 And -- and I know you have the Washoe County
21 decision in front of you. I have it up on my screen.
22 It's one of those -- left it on my desk here on the
23 way. But it's important, and I hope it wasn't lost on
24 the Court that -- that the review that Mr. Jones was
04:01:28 25 inviting the Court to entertain is completely

04:01:32 1 inconsistent with the Washoe County case.

2 For starters, Mr. Jones described the review
3 as being de novo. That is a completely misaccurate
4 characterization of what the standard of review that
04:01:49 5 applies to what you're doing.

6 The Washoe County decision does say that the
7 Supreme Court reviews what the district court did
8 de novo. And that de novo review is to see if the
9 district court -- on appeal, if the district court
04:02:11 10 applied the deference that's required.

11 THE COURT: I understand the distinctions,
12 sir. I do.

13 MR. REID: Yeah. So just not to belabor that
14 point, but what Mr. Jones -- Mr. Jones's argument is --
04:02:27 15 is -- mirrors what you see in page -- on page 10 and 11
16 of the Washoe County decision where you have someone
17 who's arguing to overturn the arbitrator's
18 interpretation and the Nevada Supreme Court correctly
19 pointed out that the arbitrator -- and you can relate
04:02:58 20 it to here, you know. The decision says the arbitrator
21 knew what the statute was. The arbitrator cited to it.
22 The arbitrator knew what the agreement was. He
23 referenced it.

24 And the Court says we may not concern
04:03:17 25 ourselves with the correctness of the arbitrator's

04:03:20 1 interpretation. If the arbitrator was aware of what
2 the statute or, here, what the agreement was, it isn't
3 the Court's role to just -- or it isn't appropriate --
4 it isn't the standard of review that is appropriate, as
04:03:42 5 Mr. Jones is asking the Court to do, to ignore what the
6 Court's findings were and say this is the -- you know,
7 the interpretation manifestly disregarded the law.

8 Because here the arbitrator knew what the
9 statute was. The arbitrator listened to seven days of
04:04:03 10 testimony. The arbitrator has far more expertise than
11 anyone here in the room regarding the -- you know, what
12 is appropriate accounting procedures and how all of
13 these different provisions of the agreement relate to
14 each other.

04:04:26 15 The deferences that the arbitrator's required,
16 that the arbitrator has to receive is something very
17 different from what -- what Mr. Jones argued to you.
18 His argument was completely inconsistent with the
19 standard of review, which is not de novo. We have to
04:04:46 20 defer to the findings that were made.

21 There are issues where we can point to the
22 arbitrator. You asked -- you asked if there are
23 questions where the arbitrator exceeded his authority.
24 You gave an example, the punitive damages example.

04:05:13 25 THE COURT: Right.

04:05:13 1 MR. REID: Is there -- does the agreement say
2 you can't award punitive damages and did the arbitrator
3 do that? The example that -- that mirrors that in our
4 circumstances is attorney's fees.

04:05:27 5 The language in Appendix D says that the
6 arbitrator shall award fees and costs. The arbitrator
7 was aware of that provision and he exceeded his
8 authority when he declined to award the Sun its
9 attorney's fees.

04:05:49 10 That is a finding under Washoe County that it
11 would be appropriate for this Court to vacate.

12 THE COURT: Well, there's a reason why I felt
13 Washoe County compelling for a number of different
14 reasons.

04:06:08 15 MR. REID: Um-hum.

16 THE COURT: Number one, it's a recent case.
17 But, number two, it actually interpreted two issues.
18 And you don't see this raised. But it constructed the
19 statute, Chapter 38 in addition to discuss the common
04:06:23 20 law limit for setting aside an arbitration award, which
21 is a little bit different, right?

22 And this is for both of you.

23 And it appears to me that maybe this might be
24 my charge. Because -- this is Headnote 12 and 13 in
04:06:41 25 the Washoe County case.

04:06:42 1 And what's important to point out about Washoe
2 County, it's analogous to this case in certain respects
3 because factually one of the primary arguments was
4 essentially this: The employee took the position that
04:06:56 5 pursuant to Article 18.1 her termination had to be
6 progressive in nature. And the Supreme Court addressed
7 that argument.

8 But they also looked at another provision that
9 the arbitrator relied upon, and it wasn't progressive
04:07:19 10 in nature, but -- which ambiguously -- unambiguously
11 provided a disciplinary action must be determined by
12 the severity -- severity of the misconduct.

13 So they kind of took both of those together
14 and they say, Well, you know what, the district
04:07:36 15 court -- well, I should say the arbitrator's decision
16 was appropriate and there wasn't a misapplication of
17 the law or there wasn't a, quote -- it wasn't
18 "arbitrary and capricious and/or a manifest disregard
19 of the law."

04:07:55 20 And here's my point in many respects: And
21 this is one of the things they talked about in that
22 case, and it's a recent case, and it covers a lot of
23 the issues that are in front of me today. And this is
24 what the Supreme Court said:

04:08:08 25 "Therefore, an award should be enforced so

04:08:12 1 long as the arbitrator is arguably construing
2 or applying the contract and there is a
3 colorable justification for the outcome.
4 Nonetheless, the deference accorded an
04:08:30 5 arbitrator is not limitless. He is not free to
6 contradict the express language of the
7 contract."

8 And I get that. I just want to make sure I
9 understand that.

04:08:39 10 And so when I was listening to some of the
11 discussions here, it appeared to me, and you can
12 correct me if I'm wrong or not, because I always ask
13 questions so everyone knows what I'm thinking.

14 MR. REID: Um-hum.

04:08:49 15 THE COURT: It appeared to me that when it
16 comes to the colorable justification for the
17 arbitrator's ruling, he appeared to have read
18 Provisions 4.2, 5.1.4, and the profits and losses which
19 determined what the ultimate result should be.

04:09:11 20 MR. REID: Correct.

21 THE COURT: And that's what he relied on in
22 making his decision. And whether he necessarily was
23 right or not is a different issue. I understand the
24 arguments there.

04:09:21 25 But is there a colorable justification for his

04:09:26 1 outcome?

2 MR. REID: Absolutely there is. I --
3 absolutely. It's described in his award. It's
4 supported by seven days of hearing testimony.

04:09:42 5 And it's -- this is a classic case where
6 parties have competing interpretations of language in
7 the contract.

8 I can -- I can -- you know, we don't have all
9 day, right? We're -- it's 4:00 o'clock. I could spend
04:10:03 10 a long time refuting point by point what Mr. Jones
11 described about the contract.

12 The arbitrator heard all of -- heard every
13 argument that Mr. Jones made, and then some. He didn't
14 buy it. He didn't buy it because it -- because 4.2
04:10:28 15 says what it says:

16 Each party shall bear their own respective
17 editorial costs.

18 The arbitrator knew that Section 4.2 --
19 Mr. Jones said 4.2 has nothing to do with EBITDA. The
04:10:48 20 arbitrator knew that it had everything to do with
21 EBITDA.

22 Section 4.2 was a provision that established
23 what allowable expenses for the JOA calculation would
24 be.

04:11:06 25 Originally it said both parties' editorial

04:11:11 1 budgets, their allocations that were established
2 pursuant to Appendix A, that was -- those were expenses
3 that could be part of the profits calculation.

4 It was amended and it now says that neither
04:11:27 5 parties' expenses are part of the JOA EBITDA
6 calculation.

7 Each bear their own respective editorial
8 costs.

9 The arbitrator took -- and this is what any
04:11:43 10 accountant would do. When you calculate EBITDA, when
11 you try to understand what a contract requires, you
12 look at the entire contract.

13 We think clearly there's language in the --
14 and the arbitrator relied on that language in the
04:11:58 15 second paragraph of Appendix D that says editorial
16 costs have to come out.

17 There is -- there's certainly language that
18 supports, explains why the Sun was correct in its
19 interpretation. Appendix D describes the EBITDA
04:12:18 20 calculation. It describes some things that have to be
21 excluded, some things that have to be included.

22 But that doesn't mean you ignore every other
23 provision in the agreement. Both 4.2 and 5.1.4 have
24 everything to do with EBITDA because they say certain
04:12:37 25 expenses have to be outside of the calculation.

04:12:40 1 And that -- that's more than -- it's not just
2 a colorable interpretation of the contract. It's the
3 correct interpretation of the contract.

4 Mr. Jones spent a lot -- a long time talking
04:12:55 5 about this P&L. Okay? There are a lot of reasons why
6 the arbitrator didn't buy those arguments.

7 That -- that sentence that says it will be
8 calculated in -- pardon me -- in a manner consistent.
9 Sorry. It's late in the afternoon. In a manner
04:13:21 10 consistent.

11 When you look at the P&L, and it was -- it's
12 very odd. When -- in the slides you saw from
13 Mr. Jones, when they show retention, this is a formula,
14 they show you a word and a bunch of numbers. The
04:13:42 15 numbers don't explain anything.

16 Also, this P&L -- and they're not able to
17 explain that -- has numbers that talk about year to
18 date, talks about budget.

19 This P&L doesn't say what are -- what were the
04:14:03 20 parties permitted to include in the profits
21 calculation? Was it the budgeted number? Was it the
22 year-to-date number?

23 This P&L doesn't describe what the figures
24 were, how they were arrived at in here.

04:14:19 25 The promotion number or the promotion line

04:14:23 1 item that Mr. Jones pointed to and said promotions are
2 in there, that means that the arbitrator got it wrong
3 when he interpreted Section 5.1.4.

4 This P&L doesn't describe, but the arbitrator
04:14:37 5 knew because he heard evidence -- he knew how these
6 numbers were arrived at. The promotions line item in
7 this -- in this P&L includes the Sun's promotional
8 losses.

9 Now, is the RJ really arguing that the Sun,
04:14:55 10 because it's in the 2004 P&L, that the Sun's costs are
11 there, that that's how it should be going forward? And
12 because there are other costs that didn't carry forward
13 in the old agreement into the new agreement, rental
14 costs, equipment costs, other operating expenses that
04:15:19 15 are in this P&L that are disallowed under Appendix D,
16 that those carry forward? The arbitrator looked with
17 specificity at all of those issues, and he construed
18 the agreement in its totality.

19 He didn't say this one sentence means that I
04:15:38 20 have to ignore what 4.2 says. It doesn't mean that I
21 have to -- because the retention sentence makes a
22 reference to a P&L that includes costs that are clearly
23 disallowed now that I should include those costs. And
24 the RJ doesn't argue that those costs should be
04:15:57 25 included. They just say editorial costs should be

04:16:01 1 included because it's convenient to them to point at
2 that line and with -- with little more than Mr. Jones's
3 word, editorial is there.

4 But, you know, what was included there? What
04:16:16 5 was permitted under the 2004 version in effect in the
6 JOA? What figures from this P&L were permissible as
7 part of the JOA EBITDA calculation? That detail is not
8 there.

9 The arbitrator was aware of it. The
04:16:36 10 arbitrator made findings that were more -- as I said,
11 more than colorable; they were correct.

12 And certainly they withstand the standard of
13 proof or the standard of review that's applicable when
14 the parties come in and ask the Court to review that
04:16:58 15 provision.

16 The other thing the arbitrator knew about the
17 retention sentence is he knew that Mr. Greenspun
18 drafted it. He knew that and nobody refuted
19 Mr. Greenspun's testimony that the retention sentence
04:17:15 20 was a reference to prohibit the Review Journal from
21 including new costs, new categories of costs that
22 weren't included in the 2004 P&L. There was discussion
23 about the RJ buying a new printing press, and that
24 language, the retention sentence came in with other
04:17:42 25 sentences that are around it, that refer to equipment

04:17:45 1 costs not being permissible, not being included as part
2 of the P&L statement.

3 Nobody refuted Mr. Greenspun's testimony. The
4 arbitrator had that. He understood how these
04:18:01 5 provisions came into being. And it -- it's that --
6 it's -- it's for that reason that the Nevada Supreme
7 Court in cases like Washoe County say, you know, the
8 parties can't come in and just ignore what happened
9 below, give no deference to what the arbitrator found.

04:18:28 10 We have a different reading, and our reading was the
11 right reading. That's not what the Supreme Court
12 requires.

13 The retention argument that Mr. Jones makes
14 can't be reconciled with other provisions in the
04:18:47 15 agreement. 4.2 that you have in front of you. Other
16 provisions you cited to a minute ago. It can't be
17 reconciled with the first sentence in Appendix D, the
18 one that says editorial costs are removed for
19 calculation -- for when you're calculating EBITDA for
04:19:09 20 costs that precede 2005.

21 This P&L is from 2004.

22 So if you accept their interpretation of that,
23 and that limitation that editorial costs need to be
24 included and you -- you -- you take their
04:19:27 25 interpretation, which we reject, but you take it

04:19:30 1 through to its conclusion, and you take the retention
2 sentence and give -- give it meaning together with that
3 first sentence that says you exclude editorial costs,
4 it means that editorial in the 2004 statement are
04:19:50 5 excised. They're not considered.

6 And the arbitrator knew and understood well
7 from an accounting perspective the arrangement under
8 the agreement, the comparison calculation, why
9 editorial costs were excluded before 2005 and the
04:20:09 10 calculation didn't work if you didn't continue to
11 exclude them. It was the only way to give meaning to
12 that language in Appendix D and give meaning to Section
13 4.2 at the same time.

14 Now, the point is the same with Section 5.1.4.
04:20:42 15 Mr. Jones made some arguments. There -- you
16 throw out this idea about matching principle, some
17 accounting argument.

18 The arbitrator knows accounting.
19 The arbitrator knows and could apply Section
04:21:08 20 5.1.4. It's clear that when the Review Journal is
21 giving away advertising space in the newspaper, it's
22 receiving -- it's not featuring the Sun.

23 The arbitrator understood that the RJ was
24 giving joint resources of the newspaper's advertising
04:21:32 25 space for the RJ's use alone.

04:21:35 1 The arbitrator understood -- it's kind of
2 like, you know, you have a partnership and a partner is
3 using assets of the partnership for the benefit of just
4 himself to the exclusion of the other partners.

04:21:53 5 That's what the RJ was doing when it would
6 give away -- when it would trade advertising space in
7 exchange for billboards and tickets and other
8 advertisements that featured the Review Journal's
9 website or the Review Journal and not the Sun. It has
04:22:19 10 nothing to do with the GAAP matching principle. It has
11 everything to do with the fact that the Review Journal
12 wasn't complying with Section 5.1.4. It's not paying
13 for things at its own expense if it's using -- it's
14 using JOA assets for its own exclusive use.

04:22:43 15 The arbitrator's decision with respect to the
16 promotional expenses should be confirmed.

17 We ask you to apply a standard of review
18 that's consistent. The arbitrator was able to see
19 through the arguments that -- that you heard.

04:23:16 20 The arbitrator saw that while the retention
21 sentence is there, there's other language that shows
22 that there's more to it than that, that you have to
23 give effect to all of the language in a contract.

24 He saw that those provisions have to do with a
04:23:46 25 proper calculation that gives -- that doesn't force the

04:23:49 1 Sun to subsidize operations of the Review Journal.
2 If the Review Journal has a billboard that
3 just says "Review Journal," it isn't appropriate that
4 the Sun's profits payment be reduced in part to pay for
04:24:07 5 the cost of that billboard or to pay for the cost of
6 promoting the Review Journal's website.
7 Now, I don't know what weight you give to
8 arguments that there's some mention -- there's a slide
9 about nine years. The arbitrator reviewed the facts,
04:24:48 10 and he found that the claims hadn't been waived. There
11 was no abuse of discretion with respect to that.
12 The arbitrator knew that the -- and found that
13 the Review Journal had systematically engaged in
14 efforts to conceal what its editorial costs were.
04:25:20 15 This P&L that you see here starting in 2005
16 and for that -- the period in time that Mr. Jones
17 talked about, the format changed so that you couldn't
18 tell that editorial costs were included. The
19 arbitrator knew that.
04:25:39 20 The arbitrator found that there was no waiver.
21 The arbitrator found that when Mr. Adelson purchased
22 the Review Journal, he knew that we had an arbitration
23 pending with the prior owner. He knew that the
24 interpretation of this contract was in dispute, that
04:26:02 25 there's been a case that went up to the Nevada Supreme

04:26:05 1 Court about the arbitration, that an arbitration was
2 compelled and that arbitration was pending when
3 Mr. Adelson purchased the paper.

4 The arbitrator found that there was no waiver
04:26:24 5 of the Sun's right to pursue its claims in this matter.

6 So with respect to the arguments that you hear
7 and, you know, you hear on surreply, I guess, the
8 literal reading of the retention sentence is all the
9 Review Journal has. That's the argument they forward
04:27:11 10 to you. They ask you, in essence, to ignore all other
11 language in the contract.

12 The arbitrator had more than ample basis in
13 all the evidence he reviewed to make the finding that
14 he did.

04:27:35 15 Just looking at my notes to see if there is
16 any other points.

17 Obviously, as the Court pointed out, the focus
18 is on what the correct standard of review is. That
19 standard requires affirmance or I should say
04:28:06 20 confirmation of the arbitrator's findings with respect
21 to editorial costs and the promotional costs finding
22 relating to the trade agreements.

23 Application of that standard review requires
24 vacating the arbitrator's decision with respect to
04:28:32 25 attorney's fees. Attorney's fees are -- shall be

04:28:38 1 awarded pursuant to the terms of Appendix D to the
2 prevailing party.

3 The arbitrator -- the arbitrator abused -- he
4 went beyond his discretion when he refused to award
04:29:00 5 those.

6 The arbitrator manifestly disregarded the law
7 when he didn't award damages to the Sun upon his
8 finding that the Review Journal was required to consent
9 or to submit to an audit.

04:29:23 10 And we ask the Court to vacate those findings
11 based on the Washoe County case.

12 Thank you.

13 MR. JONES: I know it's getting late, so I
14 will -- I will make sure that I'm not going to run past
04:29:46 15 5:00 o'clock. I don't think I will.

16 If I may, I'm going to move this over here
17 again.

18 Can you see that, Leif? I'm not sure --

19 MR. REID: It's up on my screen here.

04:30:24 20 MR. JONES: Your Honor, I guess I'll start --
21 I think it's probably a real simple point about this
22 attorney's fees thing.

23 If you look at Exhibit A to the agreement in
24 our brief, which is the JOA, if you look at line 20,
04:30:37 25 and that's enough to do with what's on the screen right

04:30:41 1 now, but on -- on page 20 of the JOA, it says:

2 "The arbitrator shall make an award of the
3 fees and costs of arbitration which may include
4 a division of such fees and costs among the
04:30:56 5 parties in a manner determined by the
6 arbitrator to be reasonable in light of the
7 positions asserted and the determination made."

8 It's discretionary. He didn't decide to award
9 fees, and so there's no requirement in the agreement
04:31:11 10 that says the prevailing party gets fees. So that's
11 just -- you can't have it both ways. You want to have
12 a -- you want to rely on a contract, but then you want
13 to, again, add something, a prevailing party provision
14 into an agreement where there doesn't exist.

04:31:29 15 So let's go back and, I guess, start again
16 with this whole idea of contract interpretation in
17 Washoe County. So this is from Washoe case.

18 "Contract interpretation is a question of law.
19 And as long as no facts are in dispute, this Court
04:31:46 20 reviews contract issues de novo."

21 So "this Court," obviously it's the Supreme
22 Court. Goes on to say:

23 "We," the Supreme Court, "review a district
24 court's interpretation of a contract de novo."

04:31:58 25 So I agree with Mr. Reid that the Supreme

04:32:03 1 Court looks at your decision related to an arbitrator's
2 interpretation of the contract de novo. But I don't
3 know how this Court can make a determination of whether
4 or not the plain language of a contract was followed
04:32:21 5 without looking at the contract. In other words,
6 looking at it yourself.

7 And I want to point out, Mr. Reid also talked
8 about testimony of Mr. Greenspun and brought up some
9 other issues. There's not -- about supporting their
04:32:34 10 interpretation of the contract. Again, you can't have
11 it both ways. There's nothing in the arbitrator's
12 decision that says I found any of the language in the
13 contract, the JOA, to be ambiguous. So that's all
14 inadmissible parol evidence. Period. End of story, as
04:32:53 15 a matter of law.

16 The arbitrator does not say the contract's
17 ambiguous so, therefore, I'm going to list it as parol
18 evidence. He let in lots of parol evidence,
19 unfortunately, and clearly got swayed by it and
04:33:05 20 confused by it.

21 But using parol evidence to interpret the
22 plain language of an unambiguous contract is an error
23 as a matter of law. So that whole argument is -- just
24 goes out the window.

04:33:18 25 Now, I want to get back to something this

04:33:21 1 Court said in talking to -- in response to Mr. Reid's
2 argument. I believe you said, your Honor -- correct me
3 if I misstated this -- but the arbitrator -- I believe
4 you said the arbitrator appears to rely on Section 4.2
04:33:35 5 and Section 5.1.4 for his interpretation of the
6 contract.

7 THE COURT: Correct. I did say that.

8 MR. JONES: Okay. So I agree with you.

9 THE COURT: And the P&L.

04:33:44 10 MR. JONES: Well, he clearly didn't rely, at
11 least as far as we're concerned, on the P&L.

12 THE COURT: Okay.

13 MR. JONES: Because had he done that, he could
14 not have come to the conclusion that he came to.

04:33:55 15 So I just want to point out a couple of
16 things. One is on; paragraph -- or excuse me. Look at
17 Slide 4. Let's look at Slide 4. That's the one that
18 has the language from the Appendix D. So, again, this
19 is the only part of the contract, Appendix 4 -- excuse
04:34:27 20 me -- Appendix D, that talks about EBITDA. It's the
21 only one. And it is very clear.

22 In fact, I want to point out something
23 Mr. Reid said. He said the only thing basically -- I'm
24 paraphrasing, but words to the effect: The only thing
04:34:44 25 that the RJ has is a literal interpretation of

04:34:49 1 Appendix D.

2 Well, gee, Judge, I'll take that every day of
3 the week. I agree with him. In fact, that's something
4 I would say in open court that the Sun and the RJ agree
04:35:02 5 upon. The RJ is relying upon a literal interpretation
6 of Appendix D to the JOA.

7 And that's really where the interpretation
8 should stop. Because if you look then at -- let's look
9 at Slide 9, for example, that the RJ -- or excuse me,
04:35:23 10 the Sun wants to refer to a lot. That's the --

11 I hope I've got the same number as you do,
12 Mr. Gayan. 9 is, yeah, thank you, 4.2.

13 So 4.2, Judge, so look at it. So this is
14 where the arbitrator has said I'm going to inject 4.2
04:35:43 15 into my interpretation of this contract.

16 As we noted before, 4.2 has nothing to do with
17 Section 7 which has to do with payment. Payment is how
18 much money is the Sun going to get out of this deal,
19 this new deal we're doing.

04:35:59 20 4.2 has nothing to do with how much money the
21 Sun is going to make from this agreement. Nothing to
22 do with it. It cannot be more clear. Nothing to do
23 with it.

24 What it does say is the RJ and the Sun shall
04:36:16 25 each bear their own respective editorial costs. Now,

04:36:20 1 your Honor, somehow or other the Sun thinks that's
2 inconsistent with the plain language of the agreement
3 that's -- or the plain language of Appendix D.

4 The fact that the RJ is bearing its own
04:36:35 5 editorial costs is not inconsistent with the -- the
6 RJ's interpretation of the contract. In fact, it's
7 wholly consistent with the RJ's interpretation of the
8 contract. That's why the editorial costs, for example,
9 are contained in the profit and loss statement. So it
04:36:57 10 is bearing those costs.

11 And, in fact, it says that the -- or the Sun
12 will bear its editorial costs, which is also consistent
13 with paragraph 5.1 -- or Section 5.1 of the agreement.

14 But think about what this is also saying.
04:37:13 15 Remember, your Honor, the way this contract works now,
16 the new one, the 2005 JOA, is this is a profit-sharing
17 agreement. So there are certain things that were
18 agreed upon back in 2004 and 2005 that would be
19 included in the expenses -- the operating expenses of
04:37:33 20 the contract.

21 So if we go to the profit and loss statement,
22 and you think about what they want to do -- what the
23 Sun wants to do, which is what's Slide 7. So think
24 about this, Judge. Essentially if they're saying we
04:37:48 25 bear all the costs, all of our costs, we wouldn't just

04:37:53 1 take out the editorial and promotional line items. You
2 take them all out. We bear all the costs. And it
3 would be a -- their -- their share would be based on
4 the gross revenue, not the profits, not the retention.
04:38:08 5 It would be based on gross revenue. So the Sun would
6 be getting a massive windfall. If you read their
7 interpretation, then we have to bear all these costs
8 and this profit and loss statement would be blank.
9 That interpretation leads to a nonsensical
04:38:30 10 result which is also a matter of Nevada law that the
11 courts will not interpret a contract to lead to a
12 nonsensical result.
13 So, again, we have a situation where the
14 literal language, as Mr. Reid said, that we're relying
04:38:48 15 upon is somehow going to be trumped by parol evidence
16 from Mr. Greenspun of what the parties intended even
17 though the arbitrator did not find the contract to be
18 ambiguous in any sense of the word.
19 So -- and let's -- with respect to the Washoe
04:39:12 20 County case too, I would just point out in Washoe
21 County, the Court said that -- the Court concluded the
22 arbitrator decision did not contradict the express
23 language of the contract. So in interpreting the
24 contract in Washoe County, that's why they upheld the
04:39:31 25 decision, because the arbitrator didn't contradict that

04:39:34 1 language.

2 Here we have the opposite situation. The
3 arbitrator's decision is reading into -- and let's go
4 back to exhibit -- or Appendix D. So, your Honor,
04:39:51 5 think about what they're trying to do. This is
6 actually what you said. So let's read this the way
7 that the Sun wants to read it.

8 The parties intend that EBITDA to be
9 calculated in a manner consistent with the
04:40:04 10 computation of retention as that line item
11 appears on the profit and loss statement for
12 Stephens Media Group for the period ending
13 December 31, 2004, except for editorial -- RJ
14 editorial costs and RJ promotional costs.

04:40:23 15 That is -- that is what -- exactly what
16 they're saying. You've got to add that language that
17 doesn't exist in this provision in order to reach the
18 interpretation that the Sun reached -- or the
19 arbitrator reached. You have to inject language that
04:40:39 20 does not appear and is inconsistent with this language,
21 this clear language and the -- the actual example that
22 the parties embedded in the agreement, which is the
23 profit and loss statement. So you'd have to ignore
24 that language and inject new language that is not
04:41:01 25 related to Section 7 of the JOA or Appendix D.

04:41:05 1 That is exactly what the Nevada Supreme Court
2 has told us all you cannot do.

3 And we all know, your Honor, that one
4 circumstance where the Supreme Court has told the
04:41:19 5 district courts that it is appropriate and is required
6 for a district court to vacate an arbitrator's award is
7 where the arbitrator exceeded or misconstrued the plain
8 language of an agreement. So there's no debate about
9 that. The one circumstance where the Supreme Court has
04:41:40 10 said over and over and over again a district court must
11 vacate an arbitration award is where the arbitrator
12 misconstrued or misinterpreted the plain language of
13 the agreement.

14 And here's the -- here's what it comes down
04:41:59 15 to, Judge. You said it, so I'm just parroting what you
16 said. Either the contract says what it says without
17 trying to add anything to it or you have to add to this
18 sentence two things: Except for the RJ's editorial
19 costs and except for the RJ's promotional costs. So
04:42:23 20 it's either what it says without adding that language
21 or it's what it says by adding that language that the
22 arbitrator added apparently, according to the Sun,
23 based upon testimony of Mr. Greenspun about what the
24 parties intended even though the language is clear as
04:42:41 25 to what the parties intended.

04:42:43 1 It's really, really simple. The -- I don't
2 see how it can get any simpler than that. You don't
3 have to do any back flips. You don't have to do any
4 yoga moves. You don't have to do anything except look
04:42:56 5 at the agreements, look at the various sections and
6 say: Does this one have anything to do with that one?
7 And if it doesn't, then they lose. And the arbitrator
8 made a major mistake.

9 And essentially what we believe has happened
04:43:13 10 here is the arbitrator decided, for whatever reason,
11 that he was going to impose additional expenses on my
12 client that are clearly unintended by the plain
13 language of the agreement. And don't forget, your
14 Honor, this is important. Mr. Reid said, "We didn't
04:43:31 15 know about this. It was -- it was hidden from us."

16 Well, as I said in my opening remarks, and
17 it's contained in exhibit -- new exhibit -- I think
18 it's E through H, Mr. Gray, Steve Gray's testimony at
19 the arbitration, his sworn testimony under oath that he
04:43:53 20 knew at least by 2006 that the RJ was including its
21 editorial costs in the deduction of the EBITDA.

22 So they went on for years and years, almost a
23 decade of agreeing with the construction.

24 And clearly at some point they didn't like
04:44:12 25 what they were getting paid, and so they decided to say

04:44:15 1 we now, nine years into it, are going to say you're
2 doing it wrong. Nine years, your Honor, that they
3 agreed with this interpretation.

4 According to their CFO, there was at least six
04:44:31 5 years that they agreed with this interpretation, or
6 seven years, I should say, that they knew about this
7 and didn't do anything, didn't make a peep about it.

8 So, your Honor, when you add all this up, it
9 becomes, I think, pretty straightforward. The Supreme
04:44:52 10 Court has told us repeatedly if an arbitrator
11 disregards the plain language of a contract, it is
12 error and has to be vacated. Period. End of story.

13 The Court has hit the nail on the head that
14 the only way the Sun wins this is if the Court believes
04:45:11 15 the interpretation as found by the arbitrator is
16 correct to take two separate and distinct sections of
17 the agreement which, by the way, are literally not
18 inconsistent with Appendix D in our interpretation of
19 Appendix D and the contract language, and somehow
04:45:30 20 interprets those provisions differently than what they
21 say and says somehow they're related to EBITDA even
22 though there is nothing in those provisions that say
23 they are, and this provision is -- somehow has a secret
24 clause in it that includes a language that actually
04:45:48 25 doesn't exist.

04:45:50 1 And under those circumstance, your Honor, we
2 believe this Court has only one option. It's to vacate
3 the award.

4 MR. REID: Your Honor, could I draw your
04:46:17 5 attention to one document in the record?

6 THE COURT: You can.

7 MR. REID: 2PA39, which is a page --

8 THE COURT: Two.

9 MR. REID: -- of the arbitration award.

04:46:28 10 THE COURT: Okay. I have that, I think.

11 MR. REID: So it's the fifth page, if it's
12 helpful, of the arbitration award. It's where the
13 discussion and reasoning section starts.

14 THE COURT: And what page again, sir?

04:47:00 15 MR. REID: It's marked as 2PA39. It's the
16 fifth page of the arbitration award. In the middle of
17 the page it has -- it says "Discussion and Reasoning."

18 THE COURT: I have it right in front of me.

19 MR. REID: So I want to draw your attention to
04:47:22 20 some language there. It disproves most of what
21 Mr. Jones just argued to you.

22 The arbitrator, as you see in that first
23 sentence says, "At issue here are multiple readings of
24 the JOA."

04:47:39 25 In the next sentence, he describes the

04:47:43 1 arguments that Mr. Jones put forward about the reliance
2 on the retention sentence.

3 Two sentences later you see, on the other
4 hand, he describes the interpretation of the JOA, the
04:48:01 5 Review Journal -- pardon me -- that the Sun forwarded
6 describing how the various provisions of the JOA relate
7 to each other.

8 And then the sentence -- it's two-thirds of
9 the way down, it says, "The weight of the evidence."
04:48:23 10 Do you see that, your Honor?

11 THE COURT: I see it right here. I'm
12 following you.

13 MR. REID:

14 "The weight of the evidence leads to the
04:48:29 15 conclusion that the RJ has improperly deducted
16 the RJ editorial expenses reducing EBITDA of
17 the JOA resulting in an improperly low annual
18 profit payments to the Sun."

19 I think with respect to editorial expenses
04:48:46 20 this is the point I wanted to make: I think the
21 parties' arguments each forwarding different
22 interpretations of the agreement prove that with
23 respect to editorial costs, the arbitrator's award must
24 be confirmed.

04:49:06 25 This is precisely the situation that's

04:49:09 1 described in the Washoe County case. We have -- we're
2 not talking about plain language. Mr. Jones can argue
3 it's plain language. He can say it says it right here.
4 But in order to reach the conclusion that they want --
04:49:30 5 they wanted the arbitrator to reach and they want you
6 to reach, they have to disregard other provisions in
7 the contract.

8 The arbitrator wasn't willing to do that.

9 And under the standard of review that applies
04:49:45 10 here where the arbitrator said there are multiple
11 readings, each side is presenting its interpretation of
12 the agreement. And based on the weight of the
13 evidence, I find that the Sun's interpretation is
14 correct. Under the standard of review that you cited,
04:50:09 15 that is -- that is the colorable basis in the record
16 that requires confirmation of this finding.

17 And the same analysis happens pages later when
18 the arbitrator discussed promotional expenses. And the
19 applicable standard of review requires the Court to
04:50:41 20 defer to the evidence and findings because they're
21 well -- they're more than just colorable in the record,
22 they're well-supported. The arbitrator heard both
23 sides, and he agreed with the Sun with respect to those
24 issues.

04:51:00 25 I just wanted to point that out.

04:51:02 1 THE COURT: I understand. And I think it's
2 important to point out --

3 MR. JONES: Your Honor, if I may, he pointed
4 it out. I'd like to make a comment. I'd like -- you
04:51:10 5 stay with that provision. If you look at it --

6 THE COURT: Wait, wait. Let me go back to the
7 provision.

8 MR. JONES: Yes. Thank you, your Honor. Page
9 5.

04:51:23 10 So --

11 THE COURT: Page 5. I'm there.

12 MR. JONES: Yeah. So with what Mr. Reid was
13 reading, so a couple of issues I have with that: One
14 is that the very point about the weight of the evidence
04:51:34 15 leads. It doesn't say it's an ambiguous contract. So
16 here it is essentially an admission, an acknowledgement
17 that he is -- he's resorting to parol evidence
18 improperly to interpret the contract that is not
19 ambiguous.

04:51:51 20 Now, look up above that where it says:

21 "On the other hand, the specific provisions
22 of the JOA 4.2" -- and we've been talking about
23 here all day -- "a provision which was new to
24 the calculation of the 2005 JOA specifically
04:52:05 25 indicates that the RJ and the Sun would each

04:52:08 1 bear their own additional editorial costs,
2 meaning that the RJ would not, be keeping the
3 books for the JOA, be permitted to deduct
4 editorial expenses of the RJ in computing
04:52:19 5 EBITDA of the JOA and the subsequent annual
6 profits, if any, of the Sun."

7 That is simply a made-up provision. He gets
8 that from his own -- it's not what the contract says.
9 We went through 4.2. It has nothing to do with EBITDA.
04:52:35 10 It's not inconsistent, bearing your own costs. So
11 what? That's not -- doesn't say you don't deduct it
12 then from EBITDA. You bear the costs and then, under
13 Appendix D, you deduct it from EBITDA as the parties
14 "intended" in Appendix D.

04:52:54 15 Then the fact that he even says, "The weight
16 of the evidence leads to the conclusion," is
17 demonstrable proof that he -- he went outside the plain
18 language of the contract and used parol evidence
19 improperly to come to the wrong conclusion, the very
04:53:11 20 point we've been trying to make. So I absolutely
21 categorically disagree with the Sun's interpretation of
22 that language. I think it unequivocally supports our
23 argument.

24 MR. REID: Well, we could go back and forth
04:53:29 25 about this all day.

04:53:31 1 THE COURT: Right.

2 MR. REID: And we've gone back and forth about

3 it for years.

4 MR. JONES: Most of --

04:53:36 5 MR. REID: Well, yeah. That's true.

6 THE COURT REPORTER: I didn't hear that.

7 Sorry. I didn't hear what you said, so I didn't get

8 what you're talking about now.

9 MR. REID: The point is, we disagree. Section

04:53:49 10 4.2 says that the parties' editorial costs are

11 separate. And when the Review Journal reduces our

12 profit payment, they're not bearing their costs.

13 That's what the arbitrator found. He didn't write

14 anything new into the agreement. He just interpreted

04:54:09 15 the agreement in a manner that the RJ disagrees with.

16 And that is not a sufficient ground to overturn. That

17 is not a sufficient ground to vacate an arbitration

18 award. Deference should be given to the trier of fact,

19 the arbitrator that was duly appointed and selected and

04:54:34 20 qualified to make this determination.

21 And we appreciate all the many hours with you.

22 See you on Halloween.

23 THE COURT: You sure will.

24 MR. REID: Yeah.

04:54:52 25 THE COURT: This is what I'm going to do.

04:54:53 1 And I think it's important to point out, I'm
2 going to follow my charge as far as Washoe County.
3 There's an unpublished case that essentially -- and
4 it's 427 P.3d 1038. I normally don't rely upon
04:55:12 5 unpublished decisions, but it is an unpublished
6 decision from our Nevada Supreme Court. And all it
7 does is essentially this: It just follows Washoe
8 County. It just -- you know, that's what the case
9 does.

04:55:22 10 And I'm going to follow the mandate of Washoe
11 County. I've listened to the arguments here. I will,
12 of course, take a look at the issues as presented. I
13 will focus on whether or not the arbitrator exceeded
14 the powers as set forth in the joint operation
04:55:46 15 agreement. And then I will look at the specific common
16 law issues as far as the arbitration is concerned and
17 make a determination as to whether or not the decision
18 was arbitrary and capricious. I'll look and make a
19 determination as to whether there's substantial
04:56:04 20 evidence in the record to support the decision of the
21 arbitrator.

22 I've always felt substantial evidence is
23 somewhat of a misnomer. And the reason why I say that
24 is this: I tend to think of it as sufficient evidence
04:56:18 25 to create material issue of fact. And they decide to

04:56:23 1 go one way; right? That's essentially what that is.

2 And then last, but not least, I will take a
3 look at the second common law issue manifest disregard
4 of the law and make a determination within those
04:56:36 5 parameters.

6 I just want you to know that.

7 MR. REID: Thank you.

8 THE COURT: Everyone enjoy your day. And what
9 we're doing to do, 1:00 o'clock on the 31st? Is that
04:56:44 10 fine?

11 MR. JONES: That's fine, your Honor. Fine
12 with me.

13 THE COURT: I can't promise you, but I'm going
14 to try if I get -- I'm not in trial right now. I was
04:56:53 15 actually in trial. It settled. When did that case
16 settle, Peggy?

17 THE COURT REPORTER: I don't remember. No, it
18 wasn't Friday, but last week. Yeah.

19 THE COURT: We had -- it was taken care of.
04:57:02 20 But the bottom line is it settled. I have a little
21 more time to catch up. I'm crossing my fingers to try
22 to get something done before the 31st.

23 MR. JONES: Very well, your Honor.

24 THE MARSHAL: All rise.

04:57:37 25 MR. GAYAN: Your Honor, the parties have a

04:57:38 1 stipulation, just a housekeeping matter, an extension?

2 Can we submit that?

3 THE COURT: You can. Of course, you can.

4 MR. GAYAN: Thank you, your Honor.

04:57:45 5

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7 (Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
AND UNDER MY DIRECTION AND SUPERVISION AND THE
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
NEVADA.

/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

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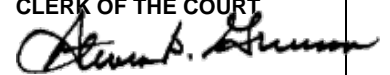
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17 LAS VEGAS SUN, INC., a Nevada
18 corporation,

19 Plaintiff,

20 vs.

21 NEWS+MEDIA CAPITAL GROUP LLC, a
22 Delaware limited liability company; LAS
23 VEGAS REVIEW-JOURNAL, INC., a
24 Delaware limited liability company; and
25 DOES, I-X, inclusive,

26 Defendants.

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CASE NO.: A-18-772591-B

DEPT.: XVI

FIRST AMENDED COMPLAINT

**(EXEMPT FROM COURT ANNEXED
ARBITRATION PROGRAM:
EQUITABLE RELIEF REQUESTED)**

COMES NOW Plaintiff Las Vegas Sun, Inc. (the “Sun”), and complains against Defendants as follows:

INTRODUCTION

1. This Complaint stems from Defendants’ unilateral, unbridled, and unabashed actions that have intentionally deprived the Sun of the fundamental benefits of its bargain under the parties’ joint operating agreement. Through their superior position over the Sun, Defendants have systematically (1) frustrated—and now completely eviscerated—the most essential method by which the Sun funds its newspaper editorial operations; (2) improperly diminished the vitality and visibility of the Sun’s brand and voice in the market; (3) impaired the Sun’s ability to compete for the public’s attention; and (4) denied the Sun access to its only contracted-for oversight mechanism that would reveal whether Defendants were abiding by the parties’ agreement, *i.e.*, an audit. Defendants’ multi-pronged attack to cripple and crush the Sun’s financial stability and brand has been advanced with a single goal: to gain monopolistic dominion over Las Vegas as the only news and political voice speaking to Southern Nevadans. Defendants desperately hope that at the end of this unlawful scheme the Sun will be bled into complete demise whereby Defendants would then find themselves free to prosecute whatever agenda its owners might contemplate without any counterbalancing news organization of a similar scale. Defendants’ actions are unlawful, conducted in bad faith, and constitute breaches of the parties’ agreement and Defendants’ implied duties of good faith and fair dealing.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under Article 6, section 6, of the Nevada Constitution.

3. Upon information and belief, a member or members of Defendant News+Media Capital Group LLC (“News+Media”) are Nevada citizens, and the center of Defendant Las Vegas Review-Journal, Inc.’s (the “Review-Journal”), direction, control, and coordination, is in the State of Nevada.

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1 4. This Court has personal jurisdiction over Defendants, and each of them, pursuant
2 to NRS 14.065 because the acts and omissions complained of herein were committed, in part,
3 within the State of Nevada, County of Clark, and, thus, Defendants, and each of them, had and
4 continue to have sufficient minimum contacts with this forum such that the exercise of personal
5 jurisdiction over them will not offend traditional notions of fair play and substantial justice.

6 5. Venue is proper in the Eighth Judicial District Court, Clark County, Nevada,
7 under NRS 13.010, because all of the actions alleged herein were undertaken in Clark County,
8 Nevada, and affect property located in Clark County, Nevada, and NRS 13.040.

9 **THE PARTIES**

10 6. The Sun is a Nevada corporation that is a member of Greenspun Media Group,
11 LLC, which publishes various newspapers and magazines, including the Las Vegas Sun in
12 Clark County, Nevada.

13 7. Defendant News+Media is a Delaware limited liability company doing business
14 in the State of Nevada, which owns a separate newspaper in Clark County, Nevada, the Las
15 Vegas Review Journal.

16 8. Defendant Review-Journal is a Delaware corporation doing business in the State
17 of Nevada, which, upon information and belief, is a wholly-owned subsidiary of News+Media
18 and operates and publishes the Las Vegas Review Journal.

19 9. Plaintiff alleges that Defendants named herein as Does I through X are
20 individuals, corporations, limited-liability companies, partnerships, associations, or other
21 persons or entities who are responsible in some manner or capacity for the acts alleged herein,
22 but whose names are unknown to Plaintiff at this time. Plaintiff will seek leave to amend this
23 Complaint to include the names of Does I through X when the identities of such defendants
24 become known to Plaintiff.

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GENERAL ALLEGATIONS

I. THE 1989 JOINT OPERATING AGREEMENT

10. The Sun and News+Media each own one of the two daily morning newspapers of general circulation in Las Vegas, Nevada. The Sun owns, operates, and publishes the Las Vegas Sun (also referred to herein as, the “Sun”). News+Media, through the Review-Journal, operates and publishes the Las Vegas Review-Journal (also referred to herein as, the “Review-Journal”).

11. The Sun has been a source of news for Nevadans since 1950. By the late 1980s, the Sun had been operating at a substantial loss and was in probable danger of financial failure.

12. It was the Sun and the Review-Journal’s prior owners, Donrey of Nevada, Inc.’s, firm belief that the continued publication of at least two newspapers of general circulation, editorially and reportorially separate and independent, was of paramount importance to the citizens of Las Vegas and its environs.

13. As a result, in June 1989, the Sun and Donrey of Nevada, Inc., entered into a joint operating agreement, the 1989 JOA. *See generally* Ex. 1. These parties entered into the 1989 JOA in accordance with the Newspaper Preservation Act of 1970, 15 U.S.C. §§ 1801-04 (the “Act”). *See id.* at 3.

14. The Act authorizes the formation of joint operating agreements among competing newspaper operations within the same market area: it exempts newspapers that choose to merge operations from the otherwise applicable antitrust laws. At the same time, the Act makes clear that merging newspapers must remain “editorially and reportorially independent.”

15. Under the 1989 JOA, the Sun and the then-owners of the Review-Journal agreed to start producing and distributing both newspapers in the form of a joint operation using a single platform (the Review-Journal’s plant and equipment). *See generally* Ex. 1. The parties agreed that the Review-Journal, among other things, would handle all print advertising and circulation functions for both print newspapers. *Id.*

1 16. Pursuant to the 1989 JOA, together the parties operated separate daily news
2 publications: the Sun and Review-Journal, to which the agreement referred as the
3 “Newspapers.” The 1989 JOA allowed the Newspapers to maintain their editorial
4 independence while, at the same time, realizing the savings of joint production, distribution,
5 advertising, and other non-editorial functions.

6 17. Because the Review-Journal was now publishing and producing the Sun,
7 including printing, selling, and distributing the Newspapers, the Review-Journal agreed not to
8 “change the format of the Sun to a size or format different from that of the Review-Journal”
9 without the Sun’s approval. *Id.* at 5.1 & 5.1.1.

10 18. To facilitate the management and administration of this joint operation, the 1989
11 JOA obligated Defendants’ predecessor to form a separate business corporation, the “Agency,”
12 which was to own or lease all assets related to the operation. *Id.* at Art. 2. The Agency was
13 supposed to assume the duties and obligations of the joint operation, including the payment of
14 the joint expenses and collection of the joint revenues. *Id.* at Art. 2 & Art. 6.

15 19. The 1989 JOA defined such joint expenses and joint revenues as “Agency
16 Expense” and “Agency Revenues,” respectively. *Id.* at App’x B & C.

17 20. One such Agency Expense involved the parties’ news and editorial costs. The
18 1989 version of Section 4.2 provided:

19 4.2 News and Editorial Allocations. The Review-Journal and the
20 Sun shall establish, in accordance with the provisions of Appendix
21 A attached hereto and made a part hereof by reference, the
22 amounts to be allocated to Agency Expense, as hereinafter defined,
23 for each for news and editorial expense.

24 *Id.* § 4.2.

25 21. Under this version of Section 4.2, both parties’ news and editorial allocations
26 were approved deductions from the parties’ joint earnings as an Agency Expense. *See id.*

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22. In the event that either the Sun's or the Review-Journal's editorial costs exceeded their respective allocated amounts, Section 5.2 of the 1989 JOA required that such additional expenses be borne by the newspaper that incurred them:

5.2 News and Editorial Autonomy. . . . All news and editorial expense of the Sun or the Review-Journal in excess of the amounts set forth in Appendix A shall be borne by the respective newspaper.

Ex. 1.

23. The 1989 JOA further provided that the Sun, as the publisher of the Sun, would receive compensation from the joint operation via two revenue streams:

A. compensation for the Sun's news and editorial expenses was calculated as 65 percent of the Review-Journal's budgeted news and editorial expenses, on the condition that such compensation was at least \$2.5 million annually (the "Sun's editorial allocation"); and

B. a profit-sharing arrangement allocating to the Sun 10 percent of the Agency Operating Profit, calculated as the excess of Agency Revenues over Agency Expense (the "10% profits payment").

Id. at App'x A & D.

24. An allocation structure similar to the one applied to the parties' editorial costs was also applied to the parties' promotional activities and expenses. *See id.* § 5.1. Under the 1989 JOA, the Review-Journal would establish a budget for promotional activities each fiscal year that was allocated between the Review-Journal and the Sun, with the Sun receiving 40 percent of the allocated budget. *Id.* § 5.1.4 & App'x A.3.

25. Also similar to the editorial cost provision of Section 4.2, Section 5.1.4 provided that any promotional expenses incurred by either party in excess of the promotional allocation was disallowed as an Agency Expense. *Id.* § 5.1.4 ("If either the Review-Journal or the Sun determines that it wishes to incur expenses in excess of those in the promotional budget, such expenses shall not be included in Agency Expense."); *see also id.* at App'x B.1.1 (defining

1 “Agency Expense” as “[t]he amounts allocated to Review-Journal and Sun . . . for promotional
2 expenses as set forth in Appendix A”).

3 26. Any dispute arising under the 1989 JOA that could not be informally resolved by
4 the parties was subject to litigation, as the 1989 JOA did not provide for any alternative dispute
5 resolution procedure.

6 **II. ONGOING DISPUTES CULMINATE INTO A SETTLEMENT**

7 27. By 2002, the parties under the 1989 JOA had persistent disputes related to the
8 Sun’s compensation.

9 28. The Sun believed that Donrey of Nevada, Inc., and the successor-owner of the
10 Review-Journal, DR Partners, had been hiding and reclassifying valid editorial costs to avoid
11 paying the Sun its full 65 percent editorial allocation.

12 29. As a result of this ongoing dispute, DR Partners and the Sun entered into a
13 settlement agreement whereby DR Partners agreed to pay the Sun for amounts that included
14 certain editorial, profit, and other adjustments due to the Sun. *See generally* Ex. 2 § 10.13.

15 **III. THE 2005 JOA**

16 30. In 2004, the Sun and DR Partners began renegotiating the 1989 JOA. The
17 renegotiation was desired by both parties in large part to eliminate the friction related to the
18 constant editorial cost dispute that was once addressed in the 2002 settlement.

19 31. DR Partners, through its General Partner Stephens Group, Inc., and the Sun
20 eventually executed an Amended and Restated Agreement, dated June 10, 2005 (the “2005
21 JOA”). *See generally* Ex. 2.

22 32. Like the 1989 JOA, the 2005 JOA was entered into pursuant to the Act. Ex. 2 §
23 1.1. DR Partners and the Sun explicitly acknowledged the public interest in remaining
24 editorially independent in the 2005 JOA as required by the Act. *See, e.g., id.* § 10.8 (“Because
25 of the public interest in maintaining editorially and reportorially independent and competitive
26 newspapers in Las Vegas” specific performance is available to enforce the 2005 JOA) & § 5.4
27
28

1 (“The Sun shall provide and pay for its own offices and editorial department and
2 management.”).

3 33. The 2005 JOA was to remain effective for an initial period ending on December
4 31st of the 50th year from July 1, 1990, *i.e.*, December 31, 2040. *Id.* § 1.2.

5 34. As a result of the new agreement, the parties combined the two newspapers into
6 a single media product that contained and separately branded the Review-Journal and the Sun.
7 *See generally id.* at Art. 5. In doing so, the parties removed the Agency concept from the 2005
8 JOA.

9 **A. Editorial Cost Obligations**

10 35. Unlike the previous version of Section 4.2 (which referenced an allocation for
11 news and editorial costs based on a set 65 percent formula, *see* Ex. 1 § 4.2 & App’x A), the
12 parties changed Section 4.2 to read as follows:

13 News and Editorial Allocations. The Review-Journal and the Sun
14 shall each bear their own respective editorial costs and shall
15 establish whatever budgets each deems appropriate.

16 Ex. 2 § 4.2.

17 36. The parties then modified the original language of Section 5.2 in line with the
18 new Section 4.2 to make all editorial costs an individual expense of the newspaper that incurred
19 them. *See id.* § 5.2. The old statement that “[a]ll news and editorial expense of the Sun or the
20 Review-Journal in excess of the amounts set forth in Appendix A shall be borne by the
21 respective newspaper” was deleted from Section 5.2 entirely. *Compare id. with* Ex. 1 § 5.2.

22 37. Every other reference to the parties’ previous method of sharing editorial costs,
23 and reference to those costs as a joint expense before the Agency Operating Profit was
24 calculated, was also deleted from the 2005 JOA. *Compare generally* Ex. 2 *with* Ex. 1. These
25 revisions caused the remainder of the 2005 JOA to conform with the new Section 4.2, *i.e.*, that
26 each party was to bear its own costs.

27 38. The Sun’s compensation scheme was also restructured to remove editorial costs
28 from its payment calculation.

1 39. The Sun and DR Partners replaced the Sun's two-part compensation scheme
2 with "Annual Profits Payments" to the Sun. Ex. 2 at App'x D.

3 40. The new compensation arrangement required the Review-Journal to pay the Sun
4 a \$12 million Annual Profits Payment, payable monthly, in the first fiscal year (starting on
5 April 1, 2005). *Id.*

6 41. The amount of subsequent Annual Profits Payments was set to fluctuate in direct
7 correlation with the amount of the joint EBITDA. *Id.*

8 42. Higher operating expenses under the new compensation arrangement would
9 therefore work to reduce the joint EBITDA and, consequently, lead to lower Annual Profits
10 Payments to the Sun.

11 43. To effectuate a direct mandate of Section 4.2, Appendix D of the 2005 JOA
12 explicitly removed both the Sun's and the Review-Journal's editorial costs as an expense
13 category chargeable against the joint EBITDA for the fiscal year ending March 31, 2005, *i.e.*,
14 the "base year." *See id.* at App'x D.

15 44. This was done to ensure that the calculation of the base year EBITDA was
16 consistent with calculations of future years' EBITDAs.

17 **B. Promotional Obligations**

18 45. The 2005 JOA further deviated from the 1989 JOA regarding the parties'
19 responsibilities to promote the Newspapers and their promotional allocations.

20 46. Under the 1989 JOA, the parties promoted their respective newspapers with their
21 promotional allocations, with the Sun receiving 40 percent of the Review-Journal's established
22 promotional budget, and each party to bear its own expenses incurred in excess of that
23 allocation. *See* Ex. 1 § 5.1 & 5.1.4. The promotional allocation was eliminated in the 2005
24 JOA, and the Review-Journal was charged with the responsibility of promoting both
25 Newspapers. *See* Ex. 2 § 5.1.4.

26 47. Now, the Review-Journal would be responsible for marketing and promoting the
27 Sun (using commercially reasonable efforts to maximize the circulation of the Newspapers),
28

1 including equal mention to the Sun in the Review-Journal's promotional activities to ensure the
2 Sun's brand remained as vibrant as the Review-Journal's once the Review-Journal assumed
3 responsibility for all marketing.

4 48. The 2005 JOA provides, in part, that the RJ is required to "sell all advertising
5 for, promote and circulate" both newspapers. *Id.* § 5.1.

6 49. The 2005 JOA specified how the parties were to charge promotional expenses
7 incurred for the Review-Journal's independent promotional activities:

8 5.1.4 Promotional Activities. Review-Journal shall use
9 commercially reasonable efforts to promote the Newspapers. Any
10 promotion of the Review-Journal as an advertising medium or to
11 advance circulation shall include mention of equal prominence for
12 the Sun. Either the Review-Journal or Sun may undertake
13 additional promotional activities for their respective newspaper at
14 their own expense. For all promotional activities for the
15 Newspapers paid for by the Review-Journal, the Review-Journal
16 shall be responsible for all promotional copy preparation and
17 placement, provided however, that the Sun shall have the right to
18 approve all promotional copy for the Sun that does not generically
19 and concurrently promote both Newspapers.

16 *Id.* § 5.1.4.

17 50. Thus, if the Review-Journal included the mention of equal prominence for the
18 Sun, the expense for that promotional activity was chargeable against the joint operation.

19 51. Virtually all promotion for a newspaper is either to promote it as an advertising
20 medium or to advance circulation.

21 52. However, if the Review-Journal undertook to promote its newspaper (or its non-
22 JOA entities) individually, the Review-Journal's expenses associated with those promotional
23 activities could not be charged against the joint operation. The same is true if the Sun
24 undertook to promote its own newspaper.

25 53. In light of this new joint operation platform and in line with Defendants' new
26 obligations, the parties included the following provision:

27 ///

1 5.3 Performance and Cooperation. Sun and Review Journal agree
2 to take all corporate action necessary to carry out and effectuate
3 the intent, purposes and provisions of this Restated Agreement,
4 and to cooperate with the other party in every reasonable way that
5 will promote successful and lawful operation under this Restated
6 Agreement for both parties.

7 *Id.*

8 **C. Front Page Formatting Specifications**

9 54. The Sun and DR Partners' agreement to combine the separate Newspapers into a
10 single-media product naturally resulted in the Review-Journal's continued obligation to produce
11 and publish the Sun.

12 55. With the new, single-media product, however, the 2005 JOA contained strict and
13 mutually-agreed upon formatting specifications for the Sun's pages, including "the number,
14 placement, and characteristics," and how the Sun was to appear on the front page of the
15 Review-Journal. Ex. 2 § 5.1, App'x A.2(d), App'x B. The Review-Journal promised to feature
16 the Sun's masthead according to the detailed specifications in Appendix A.2(d). *Id.* App'x A &
17 App'x B.

18 56. The front page of the combined publication was required to appear, in pertinent
19 part, as follows:

20 The Monday-Sunday editions of the Review Journal shall include a
21 noticeable mention of the Sun, on the front page of the Review-
22 Journal. The noticeable mention will appear in a box above the
23 Review-Journal's masthead (the "Sun Box") and shall be in the
24 form shown on Appendix B. The Sun Box shall not be smaller in
25 proportion than shown in Appendix B. The Sun Box shall also
26 include the Sun's masthead, and any emblem that is part of the
27 Sun's masthead. The Sun Box shall include a promotion of a story
28 in the Sun and refer readers to the Sun inside. The type face,
editorial artwork, font, and editorial promotional content appearing
in the Sun Box shall be determined by Sun, in its sole discretion.
Any color in the Sun Box shall be restricted to constituent colors
used by the Review-Journal on its front page. The Sun Box shall
be the left-hand box unless it would be obscured by a spaeda fold,
in which case the Sun Box shall be the right-hand box. In the event
of major breaking news or for exigent production circumstances,
the Sun Box may be moved below the Review-Journal's masthead.
The Sun, on average, will receive as much editorial color as the
local news section of the Review-Journal.

1 *Id.*, App'x A at A.2(d).

2 57. Appendix B provided sample illustrations of how the Sun was to appear on the
3 front page.

4 **D. Electronic Replica Editions**

5 58. The 2005 JOA also includes a requirement that the RJ include the Sun in any
6 electronic replica edition:

7 Review-Journal shall have the exclusive right and the obligation to distribute the
8 Sun through electronic replica technology (i.e. technology customarily used by
9 metropolitan daily newspapers which transmits an entire Sun page to the
10 subscriber or consumer in any form) to the same extent the Review-Journal
11 distributes its own pages by such means provided

12 *Id.* § 10.6.

13 **E. The Sun's Entitlement to an Audit, Arbitration, and Specific Performance**

14 59. The parties also incorporated audit and arbitration rights exercisable only by the
15 Sun in the 2005 JOA. *See* Ex. 2, App'x D at 19-20.

16 60. The Sun's audit right was a necessary provision now that Defendants were in
17 control of all aspects of non-editorial management: an audit was the Sun's sole mechanism by
18 which it could ensure that that Defendants were complying with the 2005 JOA.

19 61. Section 10.8 was included as an additional remedy, and expressly allowed for
20 specific performance of any default in performance of any material obligation under the 2005
21 JOA. *Id.*

22 62. Under the 1989 JOA, either party was allowed to inspect the books and records
23 of the other party within certain limitations, *see* Ex. 1 § 10.3, and there was no alternative
24 dispute resolution procedure provided for.

25 63. The parties changed these elements in the 2005 JOA and the parties included an
26 audit and arbitration provision in favor of the Sun.

27 64. The 2005 JOA's audit provision reads, in pertinent part:

28 Sun shall have the right, exercisable not more than once every
twelve months and only after providing written notification no less
than thirty days prior thereto, to appoint a[] certified public

1 accounting firm or law firm as Sun's representative to examine and
2 audit the books and records of the Review-Journal and the other
3 publications whose earnings are included in EBITDA for purposes
of verifying the determinations of the changes to the Annual Profit
Payments.

4 *Id.*

5 65. The Sun's right to arbitrate any disputes follows that provision, providing:

6 If as a result of such an audit, there is a dispute between the Sun
7 and the Review-Journal as to amounts owed to Sun and they are
8 not able to resolve the dispute within 30 days, they shall select a
9 certified public account to arbitrate the dispute. The arbitration
10 shall be conducted according to the commercial arbitration rules of
11 the American Arbitration Association, including such rules for the
12 selection of a single arbitrator if sun and the Review-Journal are
note able to agree upon an arbitrator. Sun and Review-Journal
shall request the arbitrator to render a decision with sixty (60) days
of his or her selection, and Sun and the Review-Journal each
hereby covenant to cooperate with the arbitrator to facilitate such
request.

13 *Id.* at 20.

14 66. Keeping in line with the purpose of the Act, the parties included an express
15 provision acknowledging the availability of specific performance. Pursuant to Section 10.8 of
16 the 2005 JOA, "[b]ecause of the public interest in maintaining editorially and reportorially
17 independent and competitive newspapers in Las Vegas and its environs, and because of the
18 inadequacy of damages in the event of a default in their performance of material obligations
19 hereunder, [the Sun] shall have the right to seek specific performance of the material provisions
20 of the [2005 JOA]."

21 **IV. THE SUN AND DR PARTNERS LITIGATE; DEFENDANTS TAKE OVER THE**
22 **REVIEW-JOURNAL**

23 67. In 2014, the Sun discovered that DR Partners and its then-successor-in-interest
24 Stephens Media LLC ("Stephens Media") had reduced the base year EBITDA with the Review-
25 Journal's individual news and editorial costs, contrary to the express language of Section 4.2
26 and Appendix D of the 2005 JOA.

27 ///

68. The Sun made this discovery once Mr. Brian Greenspun obtained sole ownership of the Sun.

69. Although the Sun immediately notified Stephens Media of the issue, Stephens Media continued to reduce all subsequent EBITDAs by the amounts of the Review-Journal's individual editorial costs.

70. In 2015, the Sun initiated a lawsuit against DR Partners and Stephens Media, styled as *Las Vegas Sun, Inc. v. DR Partners d/b/a Stephens Media Group*, Case No. A-15-715008-B (Nev. Dist. Ct., March 10, 2015). These proceedings were centered on the interpretation of Section 4.2 and Appendix D of the 2005 JOA, and DR Partners' and Stephens Media LLC's illegal editorial costs accounting practice.

71. Stephens Media sought to compel the action to arbitration pursuant to the arbitration provision of Appendix D of the 2005 JOA.

72. The issue went before the Nevada Supreme Court on appeal in August 2015. *See Las Vegas Sun, Inc. v. DR Partners d/b/a Stephens Media Group*, Appeal No. 68700.

73. The Nevada Supreme Court compelled the action to arbitration. *Las Vegas Sun, Inc. v. DR Partners d/b/a Stephens Media Group*, Appeal No. 68700, Order of Reversal and Remand (Nev. May 19, 2016).

74. In so ordering, the Nevada Supreme Court rejected a narrow reading of the arbitration provision, and broadly construed the provision: "Appendix D of the JOA refers to the payments that are owed to the Sun by the RJ under the JOA, including how those payments are to be calculated, how the Sun can audit the books and records used to calculate those payments, and how disputes regarding the calculation of those payments may be resolved." *Id.* at 3.

75. The Nevada Supreme Court reasoned that "[b]y disputing whether each newspaper should bear its own editorial costs, the Sun is essentially disputing the amounts owed to it under the JOA and therefore the dispute falls within the scope of the JOA's arbitration provision." *Id.* at 6.

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85. Defendants have known that that they should have changed and still should change their accounting practices as a result.

86. Defendants, however, (like their predecessors) refused to do so.

87. Defendants have violated the 2005 JOA in several respects.

V. DEFENDANTS HAVE FAILED TO BEAR THE REVIEW-JOURNAL'S EDITORIAL COST BURDEN

88. The previous controversy between the Sun and Defendants' predecessors concerning the meaning of and obligations imposed by the 2005 JOA and who must carry the Review-Journal's editorial cost burden is presently ongoing between the Sun and Defendants.

89. By the fiscal year ending March 31, 2017, Defendants—for the first time in the history of the joint operation—recorded a negative EBITDA in the amount of negative \$2.25 million.

90. This constitutes a negative 122.43% EBITDA change from the prior year.

91. Defendants had increased the Review-Journal's editorial costs from \$6.78 million in 2016 to \$8.88 million in 2017.

92. The Review-Journal's editorial costs in the amount of \$8.88 million in 2017 is close to the amount of editorial costs that the Review-Journal maintained in 2005, when the joint EBITDA equaled \$121.56 million.

93. Upon information and belief, when News+Media purchased the Review-Journal, its immediate successor-in-interest remained with the Review-Journal as its manager for a short period of time in 2015 and early 2016.

94. Upon information and belief, under this management, the joint operation was projected to expect a financially strong close for the fiscal year end 2016. Consequently, the Sun was projected to receive an increase of more than 18 percent of its Annual Profits Payments for 2017.

95. Thereafter, the then-manager's financial forecast for the joint operation continued to point toward even stronger growth for the year 2016-2017, projecting profits of the joint operation in the amount of \$20 million.

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1 96. The then-manager of the Review-Journal was removed from its position by the
2 time that fiscal year 2015-2016 closed. News+Media placed a new manager and publisher in
3 charge, who then communicated to the Sun that its Annual Profits Payments were expected to
4 significantly decrease as a result of poor performance of the joint operation, and that they did
5 not show any profits going forward.

6 97. As a result of Defendants' illegal accounting practices related to the Review-
7 Journal's editorial costs, Defendants owe the Sun in an amount in excess of \$1.43 million.

8 98. Defendants continue to illegally charge the Review-Journal's individual editorial
9 costs against the joint operation to this day, resulting in an improper reduction of the Sun's
10 Annual Profits Payments.

11 **VI. DEFENDANTS HAVE CHARGED THE REVIEW-JOURNAL'S INDIVIDUAL**
12 **PROMOTIONAL EXPENSES TO THE JOINT OPERATION**

13 99. Defendants have been marketing and promoting the Review-Journal (and the
14 Review-Journal's non-JOA digital entities, including reviewjournal.com) in various advertising
15 mediums without any mention of the Sun, or displaying the Sun's logo incomparably to the
16 Review-Journal's.

17 100. The 2005 JOA mandates that Defendants "shall use commercially reasonable
18 efforts to promote the Newspapers."

19 101. Contrary to this mandate, Defendants have confirmed that virtually none of the
20 Review-Journal's promotional activities comply with the demands of the contract.

21 102. 100 percent of the Review-Journal's television advertisements to promote
22 circulation and advertising of the Review-Journal omit mention of the Sun.

23 103. None of the Review-Journal's trade agreements with third-party customers
24 mention the Sun.

25 104. When the Sun challenged the Review-Journal to produce any examples of
26 promotional activities that mention the Sun in equal prominence, Defendants have conceded
27 that they cannot do so.

1 105. Defendants have not promoted the Sun.

2 106. Defendants have not used commercially reasonable efforts to promote the
3 Newspapers.

4 107. Defendants have not promoted the Sun in “[a]ny [of the Review-Journal’s]
5 promotion of the Review-Journal as an advertising medium or to promote the Newspapers.”

6 108. Furthermore, all promotional activity for the RJ — completely charged against
7 the JOA activities — includes promotion for the reviewjournal.com, the revenues of which do
8 not accrue to the benefit of the JOA.

9 109. While Defendants may undertake to promote its newspaper individually the
10 Review-Journal’s expenses associated with those promotional activities may not be charged
11 against the joint operation.

12 110. Defendants have admitted to the Sun that they have not included the Sun in their
13 promotional activities for the Review-Journal.

14 111. Yet, upon information and belief, Defendants have failed to properly account for
15 those expenses under the 2005 JOA and Section 5.1.4.

16 112. Defendants’ improper charges for the Review-Journal’s unilateral promotional
17 activities, like the Review-Journal’s editorial costs, reduces the joint EBITDA, and therefore the
18 Sun’s Annual Profits Payments.

19 113. Defendants’ failures to (1) promote the Sun under Section 5.1, (2) promote the
20 Sun with equal prominence under Section 5.1.4, and (3) to “use commercially reasonable
21 efforts to promote the Newspapers” and improper accounting practices related to the Review-
22 Journal’s unilateral promotional activities under Section 5.1.4, specifically contravenes
23 Defendants’ obligations under Section 5.1.3 of the 2005 JOA. That is, that Defendants would
24 “take all corporate action necessary to carry out and effectuate the intent, purposes and
25 provisions of this [2005 JOA], and to cooperate with the other party in every reasonable way
26 that will promote successful and lawful operation under this [2005 JOA] for both parties.”

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114. As a result of Defendants' failures related to the Review-Journal's promotional activities, the Sun has sustained damages.

115. Defendants' continue to not use commercially reasonable efforts to promote the Sun and continue to improperly charge the Review-Journal's unilateral promotional activities against the joint operation.

VII. DEFENDANTS CHANGED THE NEWSPAPERS' FRONT PAGE SPECIFICATIONS WITHOUT APPROVAL

116. In 2017, Defendants, through the Review-Journal, informed the Sun that, after 12 years of publishing the Newspapers in accordance with the specifications of Appendices A and B of the 2005 JOA, they were unilaterally changing the format of the front page of the combined publication.

117. Two days later, the Review-Journal published the Newspapers with a new front page design that has eliminated the Sun Box entirely and deviated from the Sun's specifications, including reducing the font size of the Sun's logo.

118. The Sun has suffered damage to its brand as a result of the Review-Journal's unauthorized design.

119. The Review-Journal has continued to publish the unapproved front page design over the Sun's objection.

VIII. DEFENDANTS OMITTED THE SUN FROM THE ELECTRONIC REPLICA EDITION

120. Section 10.6 of the 2005 JOA requires that the RJ include the Sun in all electronic replica editions it publishes.

121. On or about January 25, 2018, the RJ stopped including the Sun in the electronic replica edition of the newspapers.

122. On or about May 3, 2019, the RJ's publisher and editor, Keith Moyer, telephoned the COO for the Sun, Robert Cauthorn, and stated that he had looked into the

1 removal and stated that it was “kind of a unilateral decision by Craig Moon. He said, ‘Just take
2 it out.’”

3 **IX. DEFENDANTS HAVE STONEWALLED THE SUN’S AUDIT REQUESTS FOR**
4 **OVER A YEAR**

5 123. Amidst the Sun’s pending litigation with DR Partners and Stephens Media, on
6 May 12, 2016, the Sun (through its appointed law firm representative) provided Defendants
7 with its 30-day notice of intent to examine and audit the Review-Journal’s books and records
8 (and other publications whose earnings were included in EBITDA) to verify the Review-
9 Journal’s Annual Profit Payment calculation, and ensure that Defendants have not illegally
10 redirected revenues from or charged expenses to the joint operation for the Review-Journal’s
11 non-JOA digital operations, including reviewjournal.com.

12 124. The Sun’s audit request was made pursuant to and in accordance with Appendix
13 D of the 2005 JOA.

14 125. The Sun forwarded its initial list of documentation requested after the notice
15 period expired.

16 126. Defendants rejected the Sun’s request in late July 2016.

17 127. Prior to and after the November 2016 settlement with Stephens Media, the Sun
18 attempted to informally negotiate with Defendants to obtain documents from the Review-
19 Journal, party-to-party.

20 128. On September 5, 2017, the Sun renewed its formal audit request, expressly
21 appointing its chosen law firm auditor to examine and audit the books and records of the
22 Review-Journal and related publications pursuant to Appendix D of the 2005 JOA.

23 129. One month later, the Review-Journal rejected the request on the grounds that it
24 “far exceed[ed] the limited audit provisions” of the 2005 JOA, but also stated that the Review-
25 Journal intended to gather relevant, albeit very limited, information for production in due
26 course.

27 ///

137. Although Defendants have sought to prevent a reasonable review of the Review-Journal's books and records regarding the Review-Journal's digital operations, it cannot be disputed that the Review-Journal has inextricably intertwined its digital promotion, sales, accounting, management, and billing with the print publication. All of the expenses related to these items have been improperly charged against the joint operation. Furthermore, the

1 Review-Journal offers bundled print and digital products, yet Defendants have refused to allow
2 the relative revenue allocations to be audited.

3 138. Despite the parties' dispute as to the Review-Journal's digital operations, the
4 Sun agreed to commence the audit on the date that the Review-Journal proposed to open the
5 stipulated information for inspection.

6 139. However, on or about January 24, 2018, the Review-Journal then objected to the
7 Sun's chosen representative law firm.

8 140. As of this filing, Defendants have not produced any documents or opened for
9 inspection and examination the Review-Journal's books and records.

10 **X. THE SUN INITIATES ARBITRATION OF THESE DISPUTES AND**
11 **DEFENDANTS CHALLENGE AAA JURISDICTION**

12 141. On February 12, 2018, the Sun filed its Demand for Arbitration and Arbitration
13 Statement in AAA. *See Las Vegas Sun, Inc. v. News+Media Capital Group LLC, et al.*, AAA
14 Case No. 01-18-0000-7567.

15 142. AAA confirmed receipt of the Sun's arbitration demand, and scheduled
16 Defendants' answering statement deadline for February 28, 2018, along with the parties'
17 Checklists for Conflicts.

18 143. The parties conducted the administrative call with AAA on February 23, 2018.

19 144. During the call, the parties discussed and agreed that the matter would be
20 overseen by a single arbitrator pursuant to Appendix D of the 2005 JOA, with the parties'
21 agreement as to how the single-arbitrator selection process would proceed. The parties also
22 agreed to the timing of the case (and agreed that the arbitrator must render a decision within 60
23 days from appointment), and discovery issues.

24 145. During that call, Defendants sought an extension to file their answering
25 statement. They were granted an extension to March 21, 2018.

26 146. On March 12, 2018, AAA provided the parties with the arbitrator selection list.
27 The parties were required to submit their arbitrator selections no later than March 28, 2018.

1 156. Disputes have arisen between Plaintiff and Defendants regarding the
2 interpretation of the plain language of the 2005 JOA with respect to these disputes set forth
3 herein, and the parties' rights and obligations thereunder, including the arbitrability of the
4 disputes themselves pursuant to the arbitration provision set forth in Appendix D of the 2005
5 JOA.

6 157. Consequently, a dispute has arisen between the parties as to their rights and
7 obligations under the 2005 JOA.

8 158. Because the 2005 JOA is an executory contract, with the parties' obligations
9 continuing until 2040, Plaintiff seeks a judicial declaration that Plaintiff is entitled to an award
10 of damages for Defendants' past breaches of the 2005 JOA, in addition to a declaration (1)
11 interpreting the parties rights and duties as set forth in the 2005 JOA, and (2) directing
12 Defendants to comply with the 2005 JOA in a manner not inconsistent with the Court's order
13 on a going-forward basis and through the remainder of the term of the 2005 JOA so as to avoid
14 re-litigating the same issues.

15 159. No adequate remedy other than that prayed for exist by which the rights of the
16 parties may be ascertained.

17 160. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced
18 to obtain the services of counsel to prosecute this action and are entitled to an award of
19 attorneys' fees and costs incurred herein pursuant to NRS 18.010.

20 **SECOND CLAIM FOR RELIEF**
21 **(Breach of Contract—Arbitration Provision)**

22 161. Plaintiff realleges and incorporates by reference as though fully set forth herein
23 the allegations contained in the above paragraphs.

24 162. The 2005 JOA is a valid and existing contract.

25 163. The arbitration provision contained in Appendix D of the 2005 JOA provides
26 that in the event of a dispute between the Sun and the Review-Journal as to the amounts owed
27 to Sun, which are not resolved within 30 days, "arbitration shall be conducted" pursuant to the
28

1 AAA rules of arbitration, “including the rules for the selection of a single arbitrator if Sun and
2 Review-Journal are not able to agree upon an arbitrator.”

3 164. The Nevada Supreme Court has already interpreted the 2005 JOA’s arbitration
4 provision and held that any dispute relating to amounts owed to the Sun are arbitrable.

5 165. Despite substantially participating in the arbitration process initially, Defendants
6 have unnecessarily delayed the proceedings in bad faith and have now breached the 2005 JOA
7 by challenging AAA’s jurisdiction over these disputes, and demanding that the case be closed.

8 166. Plaintiff has performed under the 2005 JOA.

9 167. As a direct and proximate result of Defendants’ breaches, Plaintiff has suffered
10 damages in excess of \$15,000.

11 168. In addition, Defendants’ breaches continue.

12 169. The editorial costs provisions included in the 2005 JOA are definite and certain.

13 170. The remedy at law is inadequate, and Plaintiff has tendered performance under
14 the 2005 JOA.

15 171. Defendants’ refusal to arbitrate these disputes pursuant to the 2005 JOA is a
16 violation of a material obligation contained in the parties’ agreement. Because of the
17 undisputed public interest in maintaining editorially and reportorially independent and
18 competitive newspapers in Las Vegas and its environs, and because of the inadequacy of
19 damages in the event of a default of Defendants’ obligation to arbitrate these disputes, Plaintiff
20 has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of
21 the same.

22 172. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically
23 perform in accordance with the terms of the 2005 JOA now and for the remaining duration of
24 the term of the 2005 JOA.

25 173. As a result of Defendant’s wrongful and unlawful acts, Plaintiff has been forced
26 to obtain the services of counsel to prosecute this action and are entitled to an award of
27 attorneys’ fees and costs incurred herein pursuant to NRS 18.010.

THIRD CLAIM FOR RELIEF

(Breach of Contract—Editorial Costs: Section 4.2 and Related Provisions)

174. Plaintiff realleges and incorporates as though fully set forth herein the allegations contained in the above paragraphs.

175. The 2005 JOA is a valid and existing contract.

176. Section 4.2 and related provisions, as detailed herein, require that Defendants bear the Review-Journal's editorial costs, which requires Defendants to refrain from charging its costs against the joint operation, and improperly reducing the joint EBITDA calculation and, therefore, the Sun's Annual Profits Payments.

177. Defendants have beached the 2005 JOA, including Section 4.2, and related provisions, by improperly charging the Review-Journal's editorial costs against the joint operation, resulting in the Sun receiving improperly low, and now no, Annual Profits Payments. Defendants have failed to pay sums due and owing under the 2005 JOA and continues to fail to pay said sums despite Plaintiff's demands.

178. The Sun has performed under the 2005 JOA.

179. As a direct and proximate result of Defendants' breaches, Plaintiff has suffered damages in excess of \$15,000.

180. In addition, Defendants' breaches continue.

181. The editorial costs provisions included in the 2005 JOA are definite and certain.

182. The remedy at law is inadequate.

183. Defendants' refusal to bear the Review-Journal's editorial costs and cease from charging those costs against the joint EBITDA is a violation of a material obligation contained in the parties' 2005 JOA. Because of the undisputed public interested in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of a default of Defendants' obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

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1 184. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically
2 perform in accordance with the terms of the 2005 JOA now and for the remaining duration of
3 the term of the 2005 JOA.

4 185. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced
5 to obtain the services of counsel to prosecute this action and are entitled to an award of
6 attorneys' fees and costs incurred herein pursuant to NRS 18.010.

7 **FOURTH CLAIM FOR RELIEF**
8 **(Breach of Contract—the Review-Journal's Independent Promotional Activities and**
9 **Expenses: Section 5.1.4)**

10 186. Plaintiff realleges and incorporates by reference as though fully set forth herein
11 the allegations contained in the above paragraphs.

12 187. The 2005 JOA is a valid and existing contract.

13 188. Section 5.1.4 of the 2005 JOA requires that if Defendants undertake additional
14 promotional activities for their respective newspaper, they must do so at their own expense.

15 189. Defendants are prohibited from charging their individual promotional activity
16 expenses against the joint operation.

17 190. Defendants have failed to undertake individual promotional activities for the
18 Review-Journal at their own expense: they have failed to properly account for their individual
19 promotional expenses under the 2005 JOA, having charged those expenses against the joint
20 operation.

21 191. As a direct and proximate result of these Defendants' wrongful and unlawful
22 acts, Plaintiff has suffered damages in excess of \$15,000.

23 192. In addition, Defendants' breaches continue.

24 193. Section 5.1.4 in the 2005 JOA is definite and certain.

25 194. The remedy at law is inadequate.

26 195. Defendants' failure to pay its individual promotional expenses, and refrain from
27 charging those expenses against the joint operation, is a violation of a material obligation
28 contained in the parties' 2005 JOA. Because of the undisputed public interested in maintaining

1 editorially and reportorially independent and competitive newspapers in Las Vegas and its
2 environs, and because of the inadequacy of damages of a default of Defendants' obligation,
3 Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific
4 performance of the same.

5 196. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically
6 perform in accordance with the terms of the 2005 JOA now and for the remaining duration of
7 the term of the 2005 JOA.

8 197. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced
9 to obtain the services of counsel to prosecute this action and are entitled to an award of
10 attorneys' fees and costs incurred herein pursuant to NRS 18.010.

11 **FIFTH CLAIM FOR RELIEF**
12 **(Breach of Contract—The Front Page Format: Section 5.1,**
13 **and Appendices A and B)**

14 198. Plaintiff realleges and incorporates as though fully set forth herein the
15 allegations contained in the above paragraphs.

16 199. The 2005 JOA is a valid and existing contract.

17 200. Section 5.1, and Appendices A and B of the 2005 JOA set forth strict and
18 mutually-agreed upon formatting specifications for the Sun's pages, including how the Sun is to
19 appear on the front page of the Newspapers and including the "Sun Box."

20 201. In violation of Section 5.1 and Appendices A and B of the 2005 JOA,
21 Defendants changed the format and design of the front page of the Newspapers, such that the
22 new design fails to comply with the 2005 JOA.

23 202. As a direct and proximate result of these Defendants' wrongful and unlawful
24 acts, Plaintiff has suffered damages in excess of \$15,000.

25 203. In addition, Defendants' breaches continue.

26 204. Section 5.1 and Appendices A and B in the 2005 JOA are definite and certain.

27 205. The remedy at law is inadequate.

28 ///

206. Defendants' unlawful change to the formatting specifications of the front page of the Newspapers is a violation of a material obligation contained in the parties' 2005 JOA. Because of the undisputed public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages of a default of Defendants' obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

207. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically perform in accordance with the terms of the 2005 JOA now and for the remaining duration of the term of the 2005 JOA.

208. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced to obtain the services of counsel to prosecute this action and are entitled to an award of attorneys' fees and costs incurred herein pursuant to NRS 18.010.

SIXTH CLAIM FOR RELIEF
(Breach of Contract—Audit)

209. Plaintiff realleges and incorporates by reference as though fully set forth herein the allegations contained in the above paragraphs.

210. The 2005 JOA is a valid and existing contract.

211. Appendix D to the 2005 JOA grants the Sun the unilateral right "to appoint a[] certified public accounting firm or law firm as Sun's representative to examine and audit the books and records of the Review-Journal and the other publications whose earnings are included in EBITDA for purposes of verifying the determinations of the changes to the Annual Profit Payments."

212. Defendants have consistently delayed and refused to participate in the Sun's lawful audit request.

213. As a direct and proximate result of these Defendants' wrongful and unlawful acts, Plaintiff has suffered damages in excess of \$15,000.

214. In addition, Defendants' breach continues to date.

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1 225. Defendants have failed to promote the Sun; indeed Defendants concealed from
2 the Sun that the Sun is not included in any of the Defendants' trade agreements with third-party
3 customers.

4 226. Defendants have failed to use commercially reasonable efforts to promote the
5 Newspapers, including the Sun.

6 227. Defendants have failed to include a mention of equal prominence for the Sun in
7 Defendants' promotions "as an advertising medium or to advance circulation."

8 228. In addition, Defendants' breaches continue.

9 229. Sections 5.1 and 5.1.4 in the 2005 JOA are definite and certain.

10 230. The remedy at law is inadequate.

11 231. Defendants' failure to promote the Sun is a violation of a material obligation
12 contained in the parties' 2005 JOA. Because of the undisputed public interested in maintaining
13 editorially and reportorially independent and competitive newspapers in Las Vegas and its
14 environs, and because of the inadequacy of damages of a default of Defendants' obligation,
15 Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific
16 performance of the same.

17 232. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically
18 perform in accordance with the terms of the 2005 JOA now and for the remaining duration of
19 the term of the 2005 JOA.

20 233. As a result of Defendant's wrongful and unlawful acts, Plaintiff has been forced
21 to obtain the services of counsel to prosecute this action and are entitled to an award of
22 attorneys' fees and costs incurred herein pursuant to NRS 18.010.

23 **EIGHTH CLAIM FOR RELIEF**
24 **(Breach of Contract/Specific Performance—Electronic Replica Edition)**

25 234. Plaintiff realleges and incorporates as though fully set forth herein the
26 allegations contained in the above paragraphs.

27 235. The 2005 JOA is a valid and existing contract.

236. Section 10.6 requires Defendants to include the Sun in the electronic replica edition: “Review-Journal shall have the exclusive right *and the obligation to distribute the Sun through electronic replica technology . . .*” (Emphasis added.)

237. In violation of Section 10.6 of the 2005 JOA, Defendants omitted the Sun from its electronic replica technology from approximately January 25, 2018, through May 3, 2019.

238. The replica edition constitutes a meaningful percentage of the Review-Journal’s circulation and is mostly used in educational environments, thus Defendants deprived the Sun of an opportunity to reach new young readers to allow its voice to be introduced to future readers.

239. Defendants’ removal of the Sun from the electronic replica edition has reduced the Sun’s visibility.

240. As a direct and proximate result of these Defendants’ wrongful and unlawful acts, Plaintiff has suffered damages in excess of \$15,000.

241. Absent an order from the Court, Defendants could (as they have previously) remove the Sun from the electronic replica edition at any time.

242. Section 10.6 in the 2005 JOA is definite and certain.

243. The remedy at law is inadequate.

244. Defendants’ unlawful omission of the Sun in the electronic replica edition is a violation of a material obligation contained in the parties’ 2005 JOA. Because of the undisputed public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages of a default of Defendants’ obligation, Plaintiff has the right, under Section 10.8 of the 2005 JOA and the Act, to seek specific performance of the same.

245. Accordingly, Plaintiff is entitled to an Order directing Defendants to specifically perform in accordance with the terms of the 2005 JOA now and for the remaining duration of the term of the 2005 JOA.

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1 iii. directing Defendants to abide by Section 5.1.4, and use commercially
2 reasonable efforts to promote both Newspapers and cease charging the Review-Journal's
3 individual promotional expenses against the joint operation;

4 iv. directing Defendants to abide by Section 5.1, and Appendices A and B,
5 and revert to the original front page design that complied with the 2005 JOA;

6 v. directing Defendants to comply with the audit provision contained in
7 Appendix D to the 2005 JOA, and allowing the Sun to inspect the Review-Journal's digital
8 operations in their entirety.

9 vi. directing Defendants to comply with Section 5.1 and 5.1.4, and promote
10 the Sun, and to do so in equal prominence with the Review-Journal in any promotional activity
11 that seeks to "advance circulation" or promote the Review-Journal as an "advertising medium."

12 vii. directing Defendants to comply with Section 10.6 and distributing the
13 Sun as part of the electronic replica edition.

14 C. An award of compensatory damages for Defendants' breaches of the 2005 JOA
15 in an amount to be determined at trial.

16 D. An award of punitive damages.

17 E. An award to Plaintiff of its cost of suit, including reasonable attorney's fees.

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F. And, an order granting to Plaintiff such other and further relief to which it may be entitled and which this Court finds to be just and appropriate.

DATED this 15th day of November, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

BY: /s/ E. Leif Reid

E. LEIF REID, Bar No. 5750
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I certify that I am an employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP, and that on this date, I caused the foregoing **FIRST AMENDED COMPLAINT** to be served by electronically filing the foregoing with the Odyssey electronic filing system, which will send notice of electronic filing to the following:

Steve Morris, Esq., SBN 1543
Akke Levin, Esq., SBN 9102
MORRIS LAW GROUP
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J. Randall Jones, Esq., SBN 1927
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Richard Stone, Esq.
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633 West 5th Street, Suite 3600
Los Angeles, CA 90071

DATED this 15th day of November, 2019.

/s/ Autumn D. McDannald
Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT LIST

EXHIBIT NO.	DESCRIPTION	NO. OF PAGES
1	1989 [Joint Operating] Agreement	44
2	2005 Amended and Restated [Joint Operating] Agreement	25

EXHIBIT 1

EXHIBIT 1

AGREEMENT

This Agreement is dated as of June 12, 1989, between Donrey of Nevada, Inc., a Nevada corporation ("Donrey"), and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

Donrey owns and publishes in Las Vegas, Nevada, an all day newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"). Sun owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays and Saturdays and a Sunday newspaper, each known as the Las Vegas Sun (hereinafter referred to as the "Sun"). The Sun presently operates and for a number of years has operated at a substantial loss, and is in probable danger of financial failure. It is the firm belief of the parties that the continued publication of at least two newspapers of general circulation, editorially and reportorially separate and independent, is of paramount importance to the citizens of Las Vegas and its environs. The parties further believe that publication of the Sun can be carried on profitably, and its continued editorial existence and independence thereby assured, if its production, distribution and advertising functions and related non-news and non-editorial activities are conducted and performed by the Review-Journal, through a single staff of Review-Journal employees utilizing Review-Journal's plant and equipment under a joint

Pages 12-13 include Exhibits.

newspaper operating arrangement (hereinafter referred to as "Agreement"), under which the Review-Journal will act on its own behalf with respect to the Las Vegas Review-Journal and on behalf of the Sun with respect to the Las Vegas Sun.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

TERM

1.1 Effective Date. The term of this Agreement shall begin at 12:01 a.m. on the 10th day (or on such later day as the parties may agree) after the filing of written consent of the Attorney General of the United States to this Agreement under the Newspaper Preservation Act, which shall be known as "the Effective Date". The parties agree to pursue diligently the filing of the application for approval of this Agreement to the Department of Justice and to use their best efforts and take all action necessary to obtain such written consent as expeditiously as possible within the procedures set forth in applicable regulations of the Department of Justice. This Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary

corporate action has been taken to authorize this Agreement and that, subject to the conditions of the preceding paragraph, this Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Agreement.

If, within eighteen (18) months after the filing of the application with the Department of Justice, the application has neither been approved by the Attorney General without a hearing nor been the subject of an order for a hearing, or if, within eighteen (18) months after the Attorney General has issued an order for a hearing, the application has not been approved by the Attorney General, the parties shall discuss the feasibility of continuing to seek approval of the application and either party may, after notification to the other, withdraw from the application. The Review-Journal and Donrey intend to make a request, at the time of filing the application, under 28 CFR Section 48.5 for a protective order withholding from public disclosure their financial and other privileged and confidential commercial information to be filed with this application and restricting access to such materials to the applicants and the Department of Justice. If the request is not granted the Review-Journal and Donrey reserve the right to unilaterally withdraw the application. If the protective order is initially granted but, at a later date, access to or inspection of the protected information is to be afforded anyone other than the

applicants, the Department of Justice, or an administrative law judge, and their respective employees, without restrictions as to disclosure acceptable to the Review-Journal and Donrey, then the Review-Journal and Donrey shall have the unilateral right to withdraw the application and dismiss any further hearing or proceedings concerning the application.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of this Agreement and the preparation and filing of the application to the Department of Justice. From and after the filing of such application all costs and professional fees shall be borne equally by the parties with each party having reasonable approval of costs and fees to be incurred.

1.2 Duration. Subject to the termination provisions set forth in Article 9, this Agreement shall continue for an initial period ending at the close of business on the ~~31st day of~~ ~~December of the fiftieth~~ (50th) year following the Effective Date. The Agreement shall automatically renew for succeeding renewal periods of ten (10) years each unless either party shall notify the other in writing at least two (2) years prior to the end of the initial period that it elects to terminate the Agreement at the end of said fiftieth (50th) year, or unless either party shall notify the other in writing at least two (2) years prior to the end of the renewal period that it elects to terminate the Agreement as of the end of said renewal

period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2

AGENCY

Donrey of Nevada, Inc. now owns and operates the Review-Journal, together with other unrelated business operations in the State of Nevada. In order to facilitate management, administration, record keeping and tax administration under this Agreement, Donrey, as of the effective date of this Agreement, shall have established a separate Nevada business corporation which shall own or lease all assets related to the operation of the Las Vegas Review-Journal. Donrey shall cause such corporate entity to assume and agree to perform all duties and obligations of the Review-Journal under the terms of this Agreement.

ARTICLE 3

TRANSFER OF CONTRACTS AND SALE OF SUPPLIES, INVENTORY AND EQUIPMENT BY SUN TO REVIEW-JOURNAL

3.1 Transfer to and Assumption by Review-Journal of Certain Contracts. To enable Review-Journal to perform its functions hereunder on behalf of Sun, Sun shall (as of the Effective Date) transfer certain assets and assign certain contracts to Review-Journal subject to the procedures and conditions hereinafter specified in this Section 3.1.

3.1.1 Delivery of Contracts and Data to Review-Journal. Upon consent of the Attorney General as specified in Section 1.1, Sun shall furnish to the Review-Journal:

3.1.1.1 Circulation Contracts. All subscription, bulk sales, circulation, dealer and sub-dealer, and delivery agent lists and contracts related to the Sun in the possession or control of Sun, and all books and statements of account, records and other information relating to or concerning routes, daily draws by editions, distribution, delivery, sales returns, or prepaid subscriptions of the Sun in any territory, but not including the Sun's general books of account.

3.1.1.2 Contracts for Supplies. All contracts and other available information as may be reasonably necessary to form business judgments respecting such contracts, then held by Sun for the purchase of newsprint, film, ink and supplies for the Sun's mechanical departments, and all other similar contracts (other than those relating to the Sun's news and editorial departments) which would be helpful or beneficial to the Review-Journal in fulfilling its obligations hereunder.

3.1.1.3 Advertising Contracts. A list of all contracts then outstanding for publication of advertising in the Sun, which list shall indicate in each case the date of the contract, the name and address of the advertiser, the amount of space used up to that time, the amount unpaid and owing the Sun for advertising run to that time, the amount prepaid as of the Effective Date, the frequency of insertions, the rate, the expiration date, and any special conditions, records, requirements or publication orders with the date thereof, and any special instructions, agreements or commitments made by the Sun with

the advertiser with respect thereto, and all insertion orders for advertising subsequent to the Effective Date. Sun shall make available to the Review-Journal at the Review-Journal's request copies of any or all such contracts.

3.1.2 Analysis of Contracts and Assumption by Review-Journal. As soon as possible after such information and documents shall have been furnished to the Review-Journal, and in any event prior to the Effective Date, Review-Journal shall designate in writing to Sun those contracts that Sun shall assign to Review-Journal and which Review-Journal shall assume as of the Effective Date (excluding all portions which Sun had a duty to perform prior to the Effective Date); provided, that with respect to advertising contracts Review-Journal shall have no obligation to assume any advertising contract that is on a trade-out basis, and Review-Journal agrees that it will not refuse the assumption of any advertising contract solely on the basis of the contract rate. However, for advertising contracts containing rates which Review-Journal determines to be unreasonable, Review-Journal shall have the right to charge to Sun the difference between the contract rate and a rate determined by Review-Journal to be reasonable, effective ninety (90) days after the date of assumption and continuing for the balance of such contracts. Subject to the foregoing, Review-Journal shall use its best efforts to maximize its designation of such contracts

to be assigned to and assumed by Review-Journal. Review-Journal pre-assumption analysis of such contracts and information may include consultation with the contracting parties, and Sun agrees to assist Review-Journal in that process. Sun shall remit to Review-Journal (a) all dealers', vendors' and carriers' cash deposits (to the extent that the same shall not be due and owing to such depositors on the Effective Date) and (b) all sums in respect of prepaid subscriptions and prepaid advertising received by Sun but not earned prior to the Effective Date. As to any assigned and assumed advertising contracts, Review-Journal shall have the right to make adjustments, such as rebates or short ratings of any of same so long as this shall not alter indebtedness due Sun prior to the Effective Date without Sun's approval. All such contracts to be assumed by Review-Journal shall be assigned to Review-Journal by Sun as of the Effective Date, and such contracts shall be assumed by Review-Journal as of that date and thereafter shall be performed by Review-Journal, and Sun shall be relieved from any and all performance obligations under such contracts accruing after the Effective Date.

3.2 Newsprint. Review-Journal shall procure, as of the Effective Date and thereafter, a supply of newsprint adequate to produce the Newspapers as defined in Section 5.1 below;

provided, that Review-Journal shall have the purchase and assumption obligations specified in Section 3.3 as to Sun newsprint.

3.3 Sale of Supplies, Inventory and Equipment. As of the Effective Date, Review-Journal agrees to purchase Sun's inventory of newsprint and supplies common to or usable in the operations of both newspapers (i.e., newsracks, production film, rubber bands, plastic bags, etc.). Upon the consent of the Attorney General as specified in Section 1.1, Sun shall deliver to Review-Journal a schedule identifying all supplies, inventory (on hand or in transit) and equipment owned or leased by Sun and used or available to be used in the production and distribution of the Sun. On or before the Effective Date, Review-Journal shall designate in writing which of the scheduled items of supplies, inventory and equipment it wishes to purchase or sublease, as the case may be.

As to such of the equipment as is owned by Sun, which Review-Journal determines to purchase, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the purchase cost of such equipment or its then market value, whichever is lower.

As to such of the supplies and inventory which Review-Journal is obligated to purchase or designates for purchase by it, Sun shall be obligated to sell and deliver same and Review-Journal shall be obligated to buy at a purchase price equal to the cost of same to Sun, or its then market value, whichever is lower.

Any newspaper production equipment of the Sun which is not purchased by the Review-Journal may be sold by the Sun to a third party, provided that the sale of any such equipment to any party within the State of Nevada shall require Donrey's prior approval.

ARTICLE 4

NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff; Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall establish, in accordance with the provisions of Appendix A attached hereto and made a part hereof by reference, the amounts to be allocated to Agency Expense, as hereinafter defined, for each for news and editorial expenses.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun or the Sun portion of jointly published newspapers as provided in Section 4.4, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its

newspaper, or its portion of jointly published newspapers hereunder, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, typewriters, video terminals and news editing systems) as may be required as of the Effective Date to interface with Review-Journal production facilities. ~~Any changes or additions thereafter required in such equipment shall be covered by Appendix B hereto.~~ Newshole limitations and other matters for separate and jointly published newspapers are set forth in Appendix A hereto.

4.4 Furnishing Copy, Features and Services for Jointly Published Newspapers. Sun shall furnish editorial copy, features and comics to permit the Review-Journal to include them within jointly published newspapers, which shall be Sundays, Saturdays, holidays, other special editions and total market coverage editions. The Sun portion of jointly published newspapers shall be in accordance with Appendix A hereto. All components of jointly published newspapers shall bear the Review-Journal's headdress, typeface and style. The front page logo of all jointly published newspapers shall read "Las Vegas REVIEW-JOURNAL and SUN," and all folios shall similarly refer to both papers, except for editorial and other pages described in Appendix A as being for the use of only one newspaper, which

pages shall bear only the name of such newspaper. The Review-Journal shall provide all of the news content of jointly published newspapers, except for stories and features included on those pages described in Appendix A as being only for the use of the Sun. The Review-Journal reserves the right to print conspicuous notices in jointly published newspapers to the effect that the news content of the non-Sun portion of the newspaper, including locally produced supplements, is produced by Review-Journal personnel.

4.5 Showbiz Magazine. Showbiz Magazine, which is owned or controlled by Sun, is carried as an insert by the Sun and distributed to hotels in Las Vegas. As of the Effective Date, Showbiz Magazine shall be a department or division of the Sun and subject to the terms of this Agreement. If the Review-Journal determines that it no longer desires Showbiz Magazine to be governed by the terms of this Agreement and/or no longer desires to carry Showbiz Magazine as an insert in the jointly published Sunday newspaper, Review-Journal shall give sixty (60) days prior written notice to Sun, and Sun shall have the right to transfer Showbiz Magazine out of Sun, or continue publication and distribution of Showbiz Magazine, and in either case, outside the terms of this Agreement. In this event, Review-Journal agrees to perform, at the request of Sun, composition, production and printing services at reasonable costs and further agrees not to engage in the production of an entertainment magazine for distribution to Las Vegas hotels for a period of two (2) years.

ARTICLE 5

CONTINUING PUBLICATION AND
NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of this Agreement, and as of the Effective Date, Sun shall be a daily afternoon newspaper and Review-Journal shall be a daily morning newspaper and on Saturday, Sunday, holidays, and other special editions the newspapers shall be jointly published as provided in Section 4.4. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Agreement, Review-Journal agrees to produce the Sun daily as an afternoon newspaper as provided herein, to include the Sun copy and features in jointly published newspapers as specified in Article 4 above, and to sell all advertising for, promote and circulate such newspapers as provided herein. Review-Journal agrees that the afternoon Sun and the Sun portion of jointly published newspapers shall contain no editorial content other than that furnished by Sun. Also subject to the terms of this Agreement, Review-Journal further agrees to publish and produce for the term of this Agreement the Las Vegas Review-Journal daily as a morning newspaper and to produce jointly published newspapers as provided herein. The daily Sun and the Sun portion of jointly published newspapers, and the daily Review-Journal and the balance of the jointly published newspapers are hereinbefore and hereinafter referred to as the "Newspapers".

Review-Journal shall print the Newspapers on equipment owned or leased by the Review-Journal in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Agreement, except the operation of the Sun's news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal's said plant or plants or by independent contractors selected by the Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Agreement, including printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial content (subject to the newshole formula set forth in Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required (subject to Sun's obligations under Section 3.2), shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable which come into existence after the Effective Date, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Best Efforts. Review-Journal agrees that it will use its best efforts, using the same degree of diligence, to sell advertising space in the Sun and the Review-Journal and to promote and circulate the Sun and the Review-Journal.

5.1.4 Promotional Activities. Review-Journal shall establish for each fiscal year a budget for promotional activities which shall be allocated between the Review-Journal and the Sun in accordance with the provisions of Appendix A, attached hereto and made a part hereof by reference. Promotional activities may include radio and television, outdoor advertising, in-paper or house advertisements, and other advertising media. All expenses of such promotional activities shall be Agency Expense, up to the amount of the promotional budget allocation. If either the Review-Journal or the Sun determines that it wishes to incur expenses in excess of those in the promotional budget, such expenses shall not be included in Agency Expense. Direct circulation sales expenses, including such items as carrier premiums and expenses of order generation shall not be included in the promotional budget and shall be allocated by Review-Journal between the newspapers so as to maximize the maintenance and enhancement of the circulation of the newspapers to the

extent economically feasible. The newsroom of each newspaper shall determine the nature, extent and timing of its promotional activities and shall supply basic information therefor. Review-Journal promotion management shall be responsible for all final promotional copy preparation and placements.

5.1.5 Rates. Review-Journal shall not increase the single copy or subscription prices of the daily edition of the Sun to an amount higher than the comparable rates for the Review-Journal. Review-Journal shall not change the rates for advertising to be run solely in the Sun in relation to the rates charged for comparable advertising to be run solely in the Review-Journal, unless such change is justified by the then-relative circulation of the Sun and the Review-Journal and other factors considered relevant in the industry.

5.1.6 Meetings of JOA Participants. Periodically, not less than four times per year, Donrey senior management shall meet with Sun senior management to discuss operations under this Agreement and future plans and opportunities.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is in the opinion of Sun undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on

Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Sun Distribution. To the extent economically feasible, Review-Journal shall use its best efforts to substantially maintain the historical area and extent of distribution of the Sun.

5.2 News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers and in its portion of the jointly published newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Agreement. All news and editorial expense of the Sun or the Review-Journal in excess of the amounts set forth in Appendix A shall be borne by the respective newspaper.

5.3 Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Agreement for both parties.

5.4 Sun Office Space. The Sun shall have the option to provide its own offices for its news and editorial department and senior management, or to occupy office space, to be provided by the Review-Journal, adjacent to the Review-Journal's newspaper building.

ARTICLE 6

PAYMENT OF EXPENSES, DISTRIBUTION OF REVENUES, AND OTHER FINANCIAL PROVISIONS

6.1 Expenses and Revenues. Review-Journal shall pay and record all Agency Expense, as defined in Appendix B hereto, and collect and record all Agency Revenues as defined in Appendix C hereto, and shall pay to Sun, monthly, a sum for Sun news and editorial expense as provided in Appendix A hereto.

6.2 Accounting Records. Accounting records of Agency Revenues and Agency Expense shall be maintained by Review-Journal. Accounting records of news and editorial expense shall be separately maintained by the Review-Journal and the Sun for their respective newspapers. All such records shall be kept on a fiscal year basis in reasonable detail and in accordance with generally accepted accounting principles. Financial statements to be provided under Section 6.3 shall be prepared

in accordance with generally accepted accounting principles and the applicable provisions of this Agreement.

6.3 Financial Statements. Within ninety (90) days following the close of each fiscal year, Review-Journal shall furnish to Sun financial statements in respect of such year which summarize Agency Revenues and Agency Expense hereunder. Within thirty (30) days after the end of each month, except the last month of the fiscal year, Review-Journal shall furnish to Sun a monthly financial statement summarizing Agency Revenues and Agency Expense. All Agency financial statements furnished by Review-Journal shall be certified by a financial officer of Review-Journal.

6.4 Distributions. Payments of Sun's share of operating profit, pursuant to Appendix D, shall be made with each financial statement to be furnished to Sun under the provisions of Section 6.3 above.

ARTICLE 7

TRANSITIONAL MATTERS

7.1 Collection of Sun Receivables. After the Effective Date, Review-Journal shall use its best efforts (without any obligation to institute legal proceedings) to collect Sun advertising and circulation accounts receivable which are outstanding on the Effective Date and shall remit same to Sun on a monthly basis, less the Agency's reasonable collection costs specifically incurred in connection therewith. Such collections and collection costs recovered by Review-Journal shall not be Agency Revenues or Agency Expense. Any such

advertising accounts which have not been collected by Review-Journal within sixty (60) days after the Effective Date shall be returned to Sun. Collections from particular subscribers shall first be applied to circulation accounts receivable unless otherwise agreed by Sun. As to any Sun advertising or circulation contracts assumed by Review-Journal under Section 3.1 above, Review-Journal will remit to Sun the portion of the receipts thereunder reflecting advertising run or circulation delivered by Sun prior to the Effective Date but not payable until on or after that date, and such portion shall not be Agency Revenues.

7.2 Termination Obligations. Sun shall be solely responsible for all notices, severance allowances, accrued benefits, or other related payments or obligations which may become due or payable to any terminated employee or agent of Sun.

7.3 Sun Personnel. Review-Journal shall be under no obligation to employ any terminated Sun employee.

ARTICLE 8

NONLIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -- except as provided in Section 8.1.2 -- and Claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost or expense related thereto, shall be an Agency Expense, except to the extent any such Claim shall be covered by insurance. Review-Journal shall give written notice to Sun of any material Claims arising under this Section 8.1.1.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1. or elsewhere in this Agreement, neither party hereto shall be charged with or held responsible for any third party Claims (except to the extent certain Sun contracts shall be assumed by Review-Journal under Article 3), arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless

the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or the Review-Journal portion of the jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or the Review-Journal portion of the jointly published newspaper, or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by the Review-Journal, and any such liability, cost or expense on account of Claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or the Sun portion of any jointly published newspaper, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an Agency Expense by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purposes of this Article 8, each party shall separately maintain and pay for, as an item of

news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars (\$10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Agreement, occasioned by war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or workers, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, and if it is feasible to publish only one newspaper product, Review-Journal shall exercise its best efforts to produce a jointly published newspaper in which the Sun portion shall be determined by Review-Journal, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than two (2) pages.

ARTICLE 9

TERMINATION

9.1 Events of Termination. This Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 Voluntary Termination. Voluntary termination under the provisions of Section 1.1.

9.1.2 Bankruptcy or Default. If either party hereto makes an assignment of its assets for the benefit of creditors, is adjudged a bankrupt or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the entry of the decree related thereto before such adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Agreement upon thirty (30) days' written notice by the Sun and sufficient notice by the Review-Journal to enable the Sun to arrange for the separate

production of the Sun, but not to exceed six (6) months; provided, that in the event of default, the other party shall have the additional option to cure such default and, on demand, be reimbursed by the defaulting party for all costs and expenses related thereto.

9.1.3 Change of Controlling Interest. In view of the nature of the relationship established by this Agreement and the fact that the Sun is published under the direction and control of Herman M. Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Agreement or be associated with another party to which it objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction and control of Herman M. Greenspun, or Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. If, following an approved or permitted change of control of Sun, a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 Loss Operation. If there are any two (2) consecutive years in which the Agency does not have an operating Profit (Agency Expenses in excess of Agency Revenues), despite the Review-Journal's good faith efforts to produce an operating

profit, the Review-Journal may terminate this Agreement upon ninety (90) days written notice.

9.2 Mechanics of Termination. Upon termination of this Agreement, Review-Journal shall take appropriate action to transfer to Sun: (a) all then current circulation contracts, agreements or lists concerning bulk sales, subscriptions, dealers and sub-dealers, distributions, deliveries, sales returns and prepaid subscriptions of the Sun's daily newspaper, and of all jointly published newspapers, plus all pertinent portions of then current records and data pertaining thereto, and all sums received by Review-Journal in respect of prepaid subscriptions and cash deposits relating to daily Sun circulation, and a pro rata portion of all sums received by Review-Journal in respect of such subscriptions and deposits relating to the jointly published newspaper circulation, and (b) all then current advertising contracts and all pertinent portions of then current records and data relating to advertising to be published in the Sun and in all jointly published newspapers. Review-Journal shall further provide Sun with the originals and all copies of all contracts relating solely to circulation and advertising of the daily Sun, and copies of all other contracts referred to in the immediately preceding sentence.

ARTICLE 10

MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered

in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: Donrey, Inc.
P. O. Box 410
Las Vegas, NV 89125
Attention: Fred W. Smith

Sun: Las Vegas Sun, Inc.
P. O. Box 4279
Las Vegas, NV 89127
Attention: Brian L. Greenspun

or, in the case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Inspection of Books and Records. Either party shall have the right to authorize its independent certified public accountants or any of its corporate officers to inspect the books and records of the other party hereto at reasonable times and intervals in regard to the financial statements specified in Article 6, but only as to the three (3) years preceding the exercise of the right of inspection, commencing with the year immediately preceding the year in which the right is exercised. The expenses of any such inspection shall be borne by the party

causing such inspection to be made and shall not be included in Agency Expenses.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Agreement. This Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Agreement, including Appendices A through D hereto, and contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Agreement.

10.5 Community Cable TV. As of the Effective Date, Sun shall assign or cause to be assigned to Donrey the right to receive ten percent (10%) of all dividends or distributions of any kind paid or made by Community Cable TV ("CCTV"), a Nevada corporation which owns and operates a cable television system serving Las Vegas and surrounding communities and certain unincorporated areas of Clark County, Nevada, to any of its shareholders, including any payments in excess of current salaries or current percentages of income as management or

consultant fees paid by CCTV to any of its shareholders. With respect to payments to be made to Donrey hereunder, Sun shall cause CCTV to make such payments, or make such payments directly to Donrey. As soon as permitted under the terms of certain shareholder and financing agreements, CCTV shall issue to Donrey ten percent (10%) of the total issued and outstanding common stock of CCTV, which shall be issued as fully paid and nonassessable. In addition, at such time as Sun or its affiliates have purchased all of the issued and outstanding common stock of CCTV owned by third parties, Donrey shall have the right to purchase an additional thirty-five percent (35%) of the issued and outstanding common stock of CCTV on the same terms and conditions, including price, as those on which Sun or its affiliates acquired such stock, which shall be issued as fully paid and nonassessable. In the event of the sale by Sun or its affiliates of any interest in CCTV prior to Donrey's acquisition of stock, Donrey shall be entitled to receive ten percent (10%) of the net sale proceeds, and Donrey's right to receive its ten percent (10%) stock interest shall be ratably reduced. Donrey's rights with respect to CCTV as herein provided shall survive the expiration or termination of this Agreement, provided, in the event the Review-Journal and Donrey withdraw from the application to the Department of Justice, pursuant to Section 1.1 of this Agreement, or if the Review-Journal terminates this Agreement pursuant to Section 9.1.4. within the first three (3) years of the term of this Agreement, Donrey's rights with

respect to CCTV shall terminate, and in the event Donrey has received any payments, issuances, or transfers of or with respect to CCTV stock pursuant hereto prior to Donrey's withdrawal from the application to the Department of Justice or the Review-Journal's termination of this Agreement as herein provided, such payments, issuances or transfers of or with respect to CCTV stock shall be refunded or rescinded.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights.

In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Agreement, Review-Journal shall use its best efforts to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Agreement. Sun shall use its best efforts to maintain in effect said trademarks, tradenames, service marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, tradenames, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun and the jointly published newspapers as Sun reasonably may request in order to protect

said trademarks, tradenames, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, tradename, service marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, tradenames, service marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Agreement.

10.7 Tax Treatment of Payments to Sun. It is contemplated by the parties that the payments to Sun under Section 6.4 of this Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by Review-Journal as a business expense.

10.8 Specific Performance. Because of the public interest of maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Agreement, provided, that in the event of any action by Sun for specific performance against Review-Journal, if Sun does not obtain an order of specific performance, Review-Journal shall be entitled to recover in such action its attorneys' fees and costs.

10.9 Successors and Assignment. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

10.11 Headings. Headings have been inserted in this Agreement for the purpose of convenience only.' They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DONREY, INC.

By 

Fred W. Smith
President

LAS VEGAS SUN, INC.

By 

Brian L. Greenspun
President

APPENDIX A

A.1. Pursuant to Section 4.2 of this Agreement, for each fiscal year after the Effective Date Review-Journal shall establish an allocation for Review-Journal news and editorial expenses, and the allocation for, news and editorial expenses for the Sun shall be equal to sixty-five percent (65%) of the Review-Journal allocation, subject to a minimum of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) per fiscal year, which shall be increased each year by a percentage equal to the percentage increase in the CPI for the Las Vegas metro area. Such allocations shall be prorated for any period less than a full fiscal year. The aggregate allocations for news and editorial expenses shall constitute Agency Expense. On the first day of each month following the Effective Date, Review Journal shall pay to Sun an amount equal to one-twelfth (1/12th) of the Sun's annual allocation for news and editorial expenses as herein provided.

A.2. Pursuant to Sections 4.3 and 4.4 of this Agreement, the reading content of the newspapers shall be in accordance with the following formulas:

(a) For Monday through Friday editions, the number of pages of the Sun and the number of pages of the Review-Journal shall be determined by the ratio of the number of inches of advertising to be printed in each newspaper and the size of the newshole in each newspaper shall be determined by the same ratio, provided that in no event

shall the average newshole of the Sun in any month be less than eighty-five percent (85%) of the newshole of the Review-Journal in such month.

(b) For the jointly published Sunday edition, Sun shall be entitled to a separate section of three (3) open pages (one cover page, one editorial page and one op. ed. page), plus four hundred fifty (450) column inches, provided, that the Review-Journal may add additional pages to the Sun section comprised of news and advertising, as may be required by composition or printing requirements. The Review-Journal shall attempt to place the Sun section within the first four (4) sections of the Sunday edition. The Review Journal shall determine the number of pages for a comic section for jointly published Sunday editions which shall consist of strips and features selected equally by the Review-Journal and the Sun.

(c) For jointly published Saturday and holiday editions, the Sun shall be entitled to one editorial or op. ed. page and one comic page.

A.3. Pursuant to Section 5.1.4 of this Agreement, the Review-Journal shall establish for each fiscal year after the Effective Date a budget for promotional activities of the Review-Journal and the Sun and at least forty percent (40%) of each total budget shall be allocated to the Sun.

A.4. Edition times for Monday through Friday issues of the Review-Journal and the Sun and for jointly published Sunday,

Saturday and holiday editions shall be established by the Review-Journal in accordance with normal industry standards.

A.5. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a jointly published edition, but the content of any "extra" edition shall be determined solely by the Review-Journal.

APPENDIX B

B.1. Except as otherwise expressly provided for in this Agreement, the term "Agency Expense" shall mean and include all costs and expenses of the performance of the Review-Journal's obligations under this Agreement, including but not limited to:

~~B.1.1. The amounts allocated to Review-Journal and Sun for news and editorial expenses and for promotional expenses as set forth in Appendix A.~~

B.1.2. Costs and expenses incurred by Review-Journal, with respect to the newspapers, supplements and Showbiz Magazine, for composition, printing, and distributing; news content of Showbiz Magazine; solicitation and sale of advertising; circulation sales expenses; collection of circulation and advertising accounts receivable, including a reasonable allowance for doubtful receivables and write-offs of receivables deemed uncollectible.

B.1.3. Compensation of Review-Journal's non-news and non-editorial employees, including, without limitation, salaries, commissions, payroll taxes, the cost of group insurance, retirement benefits, workers' compensation coverage, and other benefits for such employees as may be customary in the newspaper industry from time to time.

B.1.4. Accrued vacation or severance pay for Review-Journal's non-news and non-editorial employees.

~~Agency~~ costs s/n/ include
income taxes
RJ liable ins.

B.1.5. Costs for supplies, postage, private couriers, freight, Sunday comics and supplements, film, photo paper and chemicals, ink, newsprint, plates, cuts and mats and contract trucking, and similar costs for all Review-Journal newspaper departments, other than news and editorial.

B.1.6. Expenses for travel, auto allowances, mileage reimbursement, employee relations, recruiting, and attendance at seminars and conventions for Review-Journal's non-news and non-editorial employees.

B.1.7. Sales and use taxes on equipment and personal property purchased for use by Review-Journal or otherwise applied to Agency operations under this Agreement to the extent that such taxes are not capitalized for purposes of depreciation or amortization.

B.1.8. Taxes, license or permit fees paid by Review-Journal with respect to or resulting from the conduct of business under this Agreement or with respect to property used by Review-Journal in the operations under this Agreement, except federal, state or local taxes, if any, measured by net income.

B.1.9. The cost of membership for Review-Journal and Sun and their non-news and non-editorial employees in the Better Business Bureau, Las Vegas Chamber of Commerce, and other business-oriented



memberships which shall be determined by Review-Journal to be in the best interests of the Agency.

B.1.10. The cost of Review-Journal and Sun membership in the Newspaper Advertising Bureau, American Newspaper Publishers Association, and other similar newspaper organizations.

B.1.11. The cost of public liability insurance, insurance against interruption or suspension of publication of the newspapers, carrier insurance, and libel, invasion of privacy and related insurance covering advertising printed in the newspapers. Insurance costs relating to the news or editorial activities of the Review-Journal or the Sun shall not be considered Agency Expense and such costs shall be borne separately by the parties; provided, that each party shall attempt to add the other as an additional named insured under such insurance, but Review-Journal may procure libel, invasion of privacy and related insurance to cover any otherwise inadequately insured exposure it may have as a republisher of Sun news, editorial or advertising copy, and the cost of such additional insurance shall be an Agency Expense.

B.1.12. The cost of fire and casualty insurance on buildings, equipment, and other property utilized by Review-Journal in the performance of the Agreement.



B.1.13. The cost of all utilities related to the Review-Journal's performance of the Agreement.

B.1.14. Costs and expenses incurred in connection with hazardous waste materials.

B.1.15. Costs and expenses incurred by Review-Journal in obtaining legal and other professional services which it deems necessary in performing its obligations under this Agreement, including but not limited to the costs and fees related to any defense against third party claims, charges, complaints and related matters asserted against the Review-Journal related to the Agreement or Review-Journal's performance of the Agreement; provided, that such costs and fees related to news and editorial liabilities as defined in Section 8.1.2 shall not be Agency Expense, except insofar as such liabilities are asserted against Review-Journal solely due to its republication of Sun news, editorial or feature material or advertising copy.

B.1.16. A monthly charge of Five Hundred Fifty Thousand Dollars (~~\$550,000~~) for the rental value of all Review-Journal real property, plant and equipment (including the value of Sun office space provided by Review-Journal under Section 5.4 of the Agreement), except that devoted to non-agency activities such as the Review-Journal's news and editorial operations. The rental charge would be adjusted each five (5)



years on the basis of the change in the CPI for the Las Vegas, Nevada, market.

B.1.17. A monthly charge equal to one and one-half percent ($1\frac{1}{2}\%$) of the cost of all equipment acquired, expansion or remodeling of buildings, or other capital expenditures, in connection with Agency activities, subsequent to the date of the Agreement. The monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada. The Review-Journal shall have sole discretion regarding the purchase of equipment or other necessary capital expenditures for the performance of the Agreement.

B.1.18. A monthly charge for general management services equal to three and one-half percent ($3\frac{1}{2}\%$) of Agency Revenues.

B.2. All costs and expenses in connection with the news content, composition, production, distribution and advertising sales in connection with Showbiz Magazine shall be included in Agency Expense for the period Showbiz Magazine is governed by the terms of this Agreement, pursuant to Section 4.5.

B.3. Changes or additions in the Sun's newsroom equipment which may be required after the Effective Date to interface with Review-Journal production facilities shall be purchased or paid for by Review-Journal and a monthly charge equal to one and one-half percent ($1\frac{1}{2}\%$) of the cost thereof shall be



included in Agency Expense. This monthly charge would be subject to adjustment at any time on the basis of increases in the prime interest rate at First Interstate Bank, Las Vegas, Nevada.



APPENDIX C
AGENCY REVENUES

C.1. Except as otherwise expressly provided in this Agreement, the term "Agency Revenues" shall mean and include:

C.1.1. All advertising and circulation revenues of the newspapers, subject to the provisions of Section 7.1 of this Agreement with respect to accounts receivable outstanding on the Effective Date.

C.1.2. All revenues from sales incidental to the publication of the newspaper's or involving either the facilities used to produce the newspapers or personnel whose compensation is included in Agency Expense, such as sales of commercial printing, waste paper, press plates, and other production materials.



APPENDIX D

Operating profit under the Agreement shall mean the excess of Agency Revenues over Agency Expense, and shall be distributed as follows:

For each fiscal year during the term of the Agreement the operating profit shall be distributed ninety percent (90%) to the Review-Journal and ten percent (10%) to the Sun, with payment to be made to the Sun pursuant to the provisions of Section 6.4 of the Agreement, provided, that for the first fiscal year the Sun shall be guaranteed a minimum operating profit distribution of Three Million Dollars (\$3,000,000).

APPENDIX D

operating profit under the Agreement shall mean the excess of Agency Revenues over Agency Expense, and shall be distributed as follows:

For each fiscal year during the term of the Agreement the operating profit shall be distributed ninety percent (90%) to the Review-Journal and ten percent (10%) to the Sun, with payment to be made to the Sun pursuant to the provisions of Section 6.4 of the Agreement.

24/5

EXHIBIT 2

EXHIBIT 2

AMENDED AND RESTATED AGREEMENT

This Amended and Restated Agreement ("Restated Agreement") dated as of June 10, 2005 between DR Partners, a Nevada General Partnership, the successor-in-interest to Donrey of Nevada, Inc. ("DR") and the Las Vegas Sun, Inc., a Nevada corporation ("Sun").

PRELIMINARY STATEMENT

WHEREAS, DR owns and publishes in Las Vegas, Nevada, a morning newspaper on weekdays, a morning newspaper on Saturdays and holidays, and a Sunday newspaper, each known as the Las Vegas Review-Journal (hereinafter referred to as the "Review-Journal"); and

WHEREAS, Sun owns in Las Vegas, Nevada, an afternoon newspaper on weekdays, known as the Las Vegas Sun (hereinafter referred to as the "Sun") and a combined Saturday and Sunday paper with the Review-Journal; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE I **REGULATORY FILING AND TERM**

1.1 **Regulatory Filing.** Within ten business days (or on such later day as the parties may agree) the Parties agree to file the Restated Agreement with the Attorney General of the United States under the Newspaper Preservation Act within the Department of Justice and to use their best efforts and take all action necessary to effect the intent of this Restated Agreement. In the event of any action by the United States Department of Justice after the filing of the Restated Agreement which, in the sole opinion of either party, hinders, impairs, seeks to halt or otherwise materially impacts this Restated Agreement, then either party may declare the Restated Agreement null and void, and the 1989 Agreement between the parties shall be reinstituted and remain in full force and effect. The Restated Agreement does not constitute any limitation on either party's obligation to engage in good faith labor negotiations if and as required by the National Labor Relations Act, and to implement any understandings it may reach in such negotiations.

Upon execution hereof, each party shall furnish to the other a written opinion of its counsel that all necessary corporate or partnership action has been taken to authorize this Restated Agreement and that, subject to the conditions of the preceding paragraph, this Restated Agreement shall constitute the valid and binding obligation of the respective party. The parties agree to cooperate in coordinating meetings with government officials, community leaders, employees and their representatives, advertisers and others to explain the Restated Agreement.

Each party shall pay its own costs and professional fees in connection with the formulation and drafting of the Restated Agreement and the preparation and filing of the Restated Agreement with the Department of Justice. From and after the filing of such Restated Agreement, all costs and professional fees in connection with seeking any required approval by the Department of Justice shall be controlled and approved by the Review-Journal and such cost and shall be borne solely by Review-Journal.

1.2 Term. The term of this Restated Agreement shall begin at 12:00 a.m. on June 10, 2005 ("the Effective Date"). The 1989 Agreement shall remain in full force and effect through September 30, 2005 (the "Transition Date"). Subject to the termination provisions set forth in Article 9, the Restated Agreement shall continue for an initial period ending at the close of business on the 31st day of December of the fiftieth (50th) year from July 1, 1990. The Restated Agreement shall then automatically renew for succeeding periods of ten (10) years unless either party shall notify the other in writing at least two (2) years prior to the end of the then current period that it elects to terminate the Restated Agreement at the end of said period. The phrase "term of this Agreement" as used hereafter shall mean the initial period and any renewal period or periods.

ARTICLE 2

AGENCY

Intentionally omitted

ARTICLE 3

Intentionally omitted

ARTICLE 4

NEWS AND EDITORIAL COPY, FEATURES AND SERVICES

4.1 Maintenance of News and Editorial Staff; Feature Materials. Review-Journal and Sun each shall maintain a staff of news and editorial employees, and shall license such feature materials (including, but not limited to, news and editorial services supplied by third parties), adequate to provide its respective newspaper with all of the news and editorial copy and related services deemed necessary by each of them as to its respective newspaper. Review-Journal shall use commercially reasonable efforts to cause third party suppliers of feature materials and professional associations to provide such feature materials and association memberships to Sun at rates equivalent to those currently charged to Sun.

4.2 News and Editorial Allocations. The Review-Journal and the Sun shall each bear their own respective editorial costs and shall establish whatever budgets each deems appropriate.

4.3 Furnishing News and Editorial Copy and Services. In furnishing features, news and editorial copy, and like materials to Review-Journal for publication in the Sun, and in providing layout for such material, Sun shall provide all such material in a form appropriate for the production of its newspaper, in conformity with the mechanical standards, deadlines and production requirements which prevail in the Review-Journal plant from time to time, including

deadlines, page sizes, column widths, and cut-offs established by Review-Journal, upon reasonable notice to Sun. Sun shall acquire and maintain at its expense such newsroom equipment (including, but not limited to, newspaper production systems, i.e., “front-end” systems) as may be required to interface with Review-Journal production facilities. In the event that the newspaper production system used by the Review-Journal is changed and (i) the Sun has utilized a production system that is current with systems commonly employed in the newspaper industry; (ii) the change by the Review-Journal results in any loss of a fully functional interface with the Sun newspaper production system, the Review-Journal shall be responsible to furnish such additional software, hardware and technical services to the Sun as may be necessary to establish such an interface. The Review-Journal shall give Sun ninety (90) days advance notice of anticipated changes to the Review-Journal’s production system, including technical specifications for the new or modified system. The Sun shall treat any software provided as confidential and conform to all applicable licensing requirements for such software. Newshole limitations and other matters are set forth in Appendix A hereto. The parties agree to begin the publication cycle changes for the Sun on the Transition Date (or on such latter day as the parties may agree). The Review-Journal reserves the right to print conspicuous notices to the effect that the news content of the non-Sun portion of the Newspapers, including locally produced supplements, is produced by Review-Journal personnel. The Sun reserves the right to print conspicuous notices to the effect that the news content of the non-Review-Journal portion of the Newspapers, including locally produced supplements, is produced by Sun personnel.

4.4 Intentionally omitted.

ARTICLE 5

CONTINUING PUBLICATION AND
NEWS AND EDITORIAL AUTONOMY

5.1 Production and Promotion of the Newspapers. Subject to the terms of the Restated Agreement, and as of the Transition Date, Sun shall be a daily morning newspaper as specified in Appendix A. The Review-Journal shall be a daily morning newspaper, as specified in Appendix A, including such sections and materials as are consistent with custom and practice in the United States metropolitan daily newspaper industry. So long as Sun furnishes news and editorial copy, features and services to Review-Journal in accordance with Article 4 of this Restated Agreement, Review-Journal agrees to produce the Sun daily as a morning newspaper as provided herein to include the Sun copy and to sell all advertising for, promote and circulate such newspapers as provided herein. The daily Sun and the daily Review-Journal are hereinbefore and hereinafter referred to as the “Newspapers”. Review-Journal shall print the Newspapers in the Review-Journal plant or plants located at such place or places as Review-Journal may determine, and all operations under this Restated Agreement, except the operation of the Sun’s news and editorial department, shall be carried on and performed by the Review-Journal with Review-Journal employees and equipment and in the Review-Journal’s said plant or plants or by independent contractors selected by the Review-Journal. All costs, including capital expenditures, of operations under this Restated Agreement, except the operation of the Sun’s news and editorial department, shall be borne by Review-Journal.

The Review-Journal shall control, supervise, manage and perform all operations involved in managing and operating under this Restated Agreement, including the need, if any, for Sunday supplements and comics, total or zoned market coverage, direct mail or other publication programs, zoned editions, and printing, selling and distributing the Newspapers, shall determine page sizes, number of columns per page, cut-offs, page makeup of non-news and non-editorial (subject to Appendix A), and all other mechanical and technical functions of the Newspapers, shall purchase newsprint, materials and supplies as required and shall determine the rates for, solicit and sell all advertising space in the Newspapers, shall determine circulation rates, collect the Newspapers' circulation and advertising accounts receivable, and shall make all determinations and decisions and do any and all acts and things related to the foregoing activities, provided:

5.1.1 Format. Review-Journal shall not change the format of the Sun to any size or format different from that of the Review-Journal without approval of Sun.

5.1.2 Sun Editions. The number of Sun editions shall not be changed without approval of Sun.

5.1.3 Circulation. Review-Journal shall use commercially reasonable efforts to maximize the circulation of the Newspapers.

5.1.4 Promotional Activities. Review-Journal shall use commercially reasonable efforts to promote the Newspapers. Any promotion of the Review-Journal as an advertising medium or to advance circulation shall include mention of equal prominence for the Sun. Either the Review-Journal or Sun may undertake additional promotional activities for their respective newspaper at their own expense. For all promotional activities for the Newspapers paid for by the Review-Journal, the Review-Journal shall be responsible for all promotional copy preparation and placement, provided however, that the Sun shall have the right to approve all promotional copy for the Sun that does not generically and concurrently promote both Newspapers.

5.1.5 Intentionally omitted.

5.1.6 Meetings of JOA Participants. DR senior management shall meet quarterly with Sun senior management to discuss performance under this Restated Agreement.

5.1.7 Advertising Acceptability. Sun may reject any advertising or types of advertising for the Sun which is, in the opinion of Sun, undesirable or inappropriate for publication therein, and shall notify Review-Journal in writing of any specific advertising or types of advertising that Sun deems undesirable for publication. Review-Journal shall accept all advertising for the Sun other than the advertising indicated on Sun's written notice, subject to all laws affecting the acceptability of advertising.

5.1.8 Intentionally omitted.

5.2. News and Editorial Autonomy. Preservation of the news and editorial independence and autonomy of both the Review-Journal and the Sun is of the essence of this Restated Agreement. Sun shall have exclusive and complete control, authority and direction over the news and editorial content, features and services to be furnished by Sun to Review-Journal to be included in its newspaper, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. Review-Journal shall have exclusive and complete control, authority and direction over the news and editorial content, features and services in its newspapers, including without limitation the right of selection of all its news and editorial employees, and the exclusive right to hire and discharge such employees. The Review-Journal and Sun each hereby agrees to preserve high standards of newspaper quality throughout the term of this Restated Agreement consistent with United States metropolitan daily newspapers.

5.3. Performance and Cooperation. Sun and Review-Journal agree to take all corporate action necessary to carry out and effectuate the intent, purposes and provisions of this Restated Agreement, and to cooperate with the other party in every reasonable way that will promote successful and lawful operation under this Restated Agreement for both parties.

5.4 Sun Office Space. The Sun shall provide and pay for its own offices for its news and editorial department and management.

ARTICLE 6
Intentionally omitted

ARTICLE 7
PAYMENT

During the term of this Restated Agreement, DR and the Sun shall receive the amounts set forth in Appendix D.

ARTICLE 8
NON-LIABILITY PROVISIONS

8.1 Defense of Claims and Indemnification. Any claim, demand, suit, action, obligation or other liability asserted against or sustained by Review-Journal and Sun, or either of them, in respect of any third party ("Claims") shall be dealt with as provided in this Article 8. For all purposes of this Article 8, the term "cost or expense" shall include reasonable attorneys' fees and costs, whether or not taken to trial or appeal or in any bankruptcy or other related proceeding.

8.1.1 Claims Related to the Joint Operation. Review-Journal shall defend and shall control the defense or settlement of any third party Claims related to the joint operations or to its performance or non-performance under this Restated Agreement (including but not limited to Claims arising from any advertising published in, or excluded from, any of the Newspapers -

except as provided in Section 8.1.2 - and claims in respect of feature, news and editorial content furnished by Sun hereunder arising as a result of any act or omission on the part of Review-Journal other than republication in the form furnished by Sun), devoting reasonable efforts to minimizing any resulting liability and related cost or expense. Any such liability, and the cost of expense related thereto, shall be borne by the Review-Journal, except to the extent any such Claim shall be covered by insurance.

8.1.2 Other Claims. Except as specifically provided in Section 8.1.1. or elsewhere in this Restated Agreement, neither party hereto shall be charged with or held responsible for any third party Claims, arising before or after the Effective Date by reason of any act or omission on the part of the other party, and the responsible party shall defend and indemnify and hold the other party harmless therefrom, including all related cost or expense. The responsible party shall defend, settle, pay or discharge any such Claim and shall indemnify and hold harmless the other party against any such Claim, and from any liability, cost or expense arising therefrom. By way of example under this Section 8.1.2 and without limitation, the entire cost or expense of defending, settling or paying and discharging Claims relating to any feature, news or editorial copy published in, or excluded from the daily Review-Journal or arising by reason of anything done or omitted by the news and editorial department of the Review-Journal in regard to its daily newspaper or arising by reason of any advertising rejected by the Review-Journal or accepted by the Review-Journal in situations where such advertising would be rejected pursuant to Sun guidelines, shall be borne by DR and any such liability, cost or expense on account of claims relating to any feature, news or editorial copy published in, or excluded by Sun from the daily Sun or, or arising by reason of anything done or omitted by the news and editorial department of the Sun, or arising by reason of any advertising rejected by the Review-Journal pursuant to Sun guidelines, or accepted in situations where such advertising would be rejected pursuant to Review-Journal guidelines, shall be borne by Sun, unless such Claims shall be an expense of the Review-Journal by reason of the operation of Section 8.1.1.

8.1.3 Insurance. For the purpose of this Article 8, each party shall separately maintain and pay for, as an item of news and editorial expense, insurance to the extent reasonably available protecting against losses from libel, invasion of privacy, copyright or trademark infringement and other matters related to the gathering or preparation of news and editorial matter for publication, in such amounts as the parties may agree upon from time to time, but in no event less than Ten Million Dollars (\$10,000,000), and the other party shall be named as an additional insured.

8.2 Force Majeure. Neither party shall be liable to the other for any failure or delay in performance under this Restated Agreement, occasioned by war, riot, government action, act of God or public enemy, acts of terrorism, damage to or destruction of facilities, strike, labor dispute, failure of suppliers or worker, inability to obtain adequate newsprint or supplies, or any other cause substantially beyond the control of the party required to perform, provided that in the event partial performance under this Restated Agreement is feasible, notwithstanding the occurrence of one or more of the foregoing, performance shall be allocated between the newspapers by the Review-Journal, in its sole judgment, notwithstanding the provisions of Appendix A hereto, provided, that the Sun portion shall not be less than six (6) pages.

ARTICLE 9 TERMINATION

9.1 Events of Termination. This Restated Agreement shall continue in full force and effect unless and until it may be terminated by the occurrence of one of the following events of termination:

9.1.1 Stated Duration. Expiration of the term set forth in Section 1.1

9.1.2 Bankruptcy or Default. If either party hereto makes an assignment of its assets for the benefit of creditors, an order of relief is entered by any bankruptcy court or has a receiver appointed for its business by a court of competent jurisdiction (provided, that such assignment, order of relief or adjudication shall continue unstayed on appeal or otherwise in effect for a period of ninety (90) days after the assignment, the entry of the order of relief or decree related thereto before such assignment or adjudication becomes an event of termination, and further provided that the appointment of the receiver must continue unvacated, not set aside, not stayed or otherwise in effect for a period of ninety (90) days after such appointment before such appointment becomes an event of termination), or if either party defaults in the performance of any of its material obligations hereunder and does not cure such default within sixty (60) days after receiving written notice thereof from the other party, then such other party may, at its election, and in addition to all other remedies available to it at law or in equity, terminate this Restated Agreement. In the event of the entry of an unstayed order of relief in an involuntary bankruptcy by DR, the Sun shall have the right, at its option, to purchase from DR, the equipment necessary to publish the Sun. The value of the equipment shall be set by the bankruptcy trustee. In the event of an unstayed order of relief in an involuntary bankruptcy, the Sun may lease, at fair market value, for a period not to exceed five (5) years the assets necessary to the publish the Sun.

9.1.3. Change of Controlling Interest. In view of the nature of the relationship established by this Restated Agreement and the fact that the Sun is published under the direction and control of the Estate of Herman Greenspun and Brian L. Greenspun, the Review-Journal shall not be required to carry out the terms of this Restated Agreement or be associated with another party to which it reasonably objects. Accordingly, ownership or control of the Sun shall not be transferred to any other entity or person without notice to and prior approval by the Review-Journal, provided that the Review-Journal will not object to any transfer of the ownership or control of Sun to any entity under the immediate direction of Brian L. Greenspun, or any other lineal descendant of Herman M. Greenspun. Notwithstanding the foregoing, controlling interest of the Sun may be transferred to any person that can provide the necessary editorial background and expertise to produce the Sun pursuant to the terms of this Restated Agreement. Following an approved or permitted change of control of Sun, if a subsequent change of control occurs, notice as hereinabove shall be given and the Review-Journal may exercise the rights provided herein.

9.1.4 Intentionally omitted.

9.2 Intentionally omitted.

9.3 Duties Upon Termination. Upon termination of this Restated Agreement, either by expiration of its term or otherwise, the Review-Journal shall provide Sun with a complete list (including all contact information) of current newspaper subscribers and advertisers.

ARTICLE 10
MISCELLANEOUS

10.1 Notices. Each notice or other communication given pursuant to this Agreement shall be given in writing, delivered in person or mailed by registered or certified mail, addressed to the respective parties as follows:

Review-Journal: DR Partners
P. O. Box 70
Las Vegas, NV 89125
Attention: Sherman Frederick

Sun: Brian L. Greenspun, Esq.
President & Editor
Las Vegas Sun
2275 Corporate Circle Drive
Suite 300
Henderson, Nevada 89074

Or, in case of either party hereto, at such other address or marked for the attention of such other person, as such party may set forth in a written notice to the other party.

10.2 Disclaimer of Labor Related Obligations. The parties specifically agree that neither party hereby assumes any obligations of the other party related to its employment practices or to any of its employees, whether or not arising under any collective bargaining agreements or arising prior to, on or subsequent to the Effective Date.

10.3 Intentionally omitted.

10.4 Limited Effect. Nothing herein contained shall constitute the parties hereto partners, joint venturers, successors, alter egos, joint employers, an unincorporated association, or as having any relationship other than as specifically provided by this Restated Agreement. This Restated Agreement is intended solely for the benefit of the parties hereto, and their permitted successors and assigns and not for the benefit of any other person or party. This Restated Agreement, including Appendices A through D hereto, and the contracts and agreements supplemental hereto, comprises the entire understanding and agreement of the parties hereto on the subject matter herein contained and any and all other representations or agreements, which heretofore may have been made on such subject matter, whether oral or in

writing, by any agent of either party shall be null, void and of no effect whatsoever. Time is of the essence of this Restated Agreement.

10.5 Intentionally omitted.

10.6 Sun Trademark, Tradenames, Service Marks and Copyrights. In its use of such Sun trademarks, tradenames, service marks and copyrights as may be required to perform its obligations under this Restated Agreement, including promotion of the Newspapers, Review-Journal shall use commercially reasonable effort to comply substantially with all relevant laws of the State of Nevada and of the United States pertaining to trademarks, tradenames, service marks and copyrights in force at any time during the term of this Restated Agreement. Review-Journal shall have the exclusive right and the obligation to distribute the Sun through electronic replica technology (i.e. technology customarily used by metropolitan daily newspapers which transmits an entire Sun page to the subscriber or consumer in any form) to the same extent the Review-Journal distributes its own pages by such means provided, however, that Sun shall have the right to republish, license, or otherwise use its editorial content in any form or media, other than as an entire Sun page or pages, upon the earliest of: (i) 7:00 a.m., (ii) the time the Review-Journal guarantees delivery to its subscribers, or (iii) the time the Review-Journal first uses its editorial content in any form or media other than in the printed newspaper or replica technology. Sun shall use commercial reasonable efforts to maintain in effect said trademarks, trade names, services marks and copyrights, and shall make applications for the registration and/or renewal thereof if and when required by law. Review-Journal acknowledges Sun's right, title and interest in and to said trademarks, trade names, service marks and copyrights and all renewals thereof, and agrees that it shall not at any time permit, take, or cause to be taken any action within its control in any way impairing or tending to impair any part of such right, title and interest. Review-Journal agrees to publish such notices in the Sun as Sun reasonably may request in order to protect said trademarks, trade names, service marks and copyrights, or any of them. Review-Journal shall not in any manner represent that it has any ownership interest in said trademarks, trade names, services marks or copyrights or in the registration thereof, and Review-Journal acknowledges that its use hereunder of said trademarks, trade names, services marks or copyrights shall not create in its favor any right, title or interest in or to same beyond those created by this Restated Agreement. The Review-Journal shall have the right to republish, license, or otherwise use its editorial content in any form or media.

10.7 Tax Treatment of Payments to Sun. Its is contemplated by the parties that the payments to Sun under Appendix D of this Restated Agreement will be, for federal income tax purposes, ordinary income to Sun and will be deductible by DR as a business expense.

10.8 Specific Performance. Because of the public interest in maintaining editorially and reportorially independent and competitive newspapers in Las Vegas and its environs, and because of the inadequacy of damages in the event of default in the performance of material obligations hereunder, each party shall have the right to seek specific performance of the material provisions of this Restated Agreement, provided, that in the event of any action by either party for specific performance, if that party does not obtain an order of specific

performance, the other party shall be entitled to recover in such action its attorneys' fees and costs.

10.9 Successors and Assignment. This Restated Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their permitted successors and assigns.

10.10 Governing Law; Modification. This Restated Agreement shall be construed and enforced in accordance with the laws of the State of Nevada. This Restated Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, modification or discharge shall be sought.

10.11 Headings. Headings have been inserted in this Restated Agreement for the purpose of convenience only. They shall not be used to interpret or construe the meaning of any Articles or Sections, nor shall they have the effect of limiting or enlarging the meaning thereof.

10.12 Ancillary Publications. Nothing in this Restated Agreement shall preclude either party from engaging in any lawful business outside of this Restated Agreement, except that neither Review-Journal, or any Affiliate of Review-Journal nor Sun, or any Affiliate of Sun, shall, outside of this Restated Agreement, publish a newspaper that is published three or more days per week and that is directed primarily to Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. As used in this Restated Agreement, "Affiliate" means any person, corporation, partnership, trust or other entity which controls, is controlled by, or is under common control with either party.

10.13 Release. As a material inducement to DR to enter into this Restated Agreement, and for other good and valuable consideration, Sun, for itself, and its assigns, hereby unconditionally releases and forever discharges DR and the Las Vegas Review-Journal and their partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys, divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit C to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lvvj.com, reviewjournal.com, lasvegasnewspapers.com.

As a material inducement to Sun to enter into this Restated Agreement, and for other good and valuable consideration, DR, for itself, its affiliates and assigns, hereby unconditionally releases and forever discharges Sun its partners, predecessors, successors, assigns, agents, stockholders, directors, officers, current or former employees, representatives, attorneys,

divisions, subsidiaries, affiliates, receivers, trustees, shareholders and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses, including, but not limited to, attorneys' fees and costs actually incurred of any nature whatsoever with respect to all those claims asserted or which could have been asserted which arise out of, or are related to, operation of the Las Vegas Review-Journal or Sun between June 17, 1989, and June 10, 2005, known or unknown, including, but not limited to, any claims connected with operations under the 1989 Joint Operating Agreement between the parties, during that time period, including those items set forth on Exhibit D to a release agreement between the parties dated June 20, 2002 and any claims related to the conduct or operation of lasvegassun.com or lasvegasnewspapers.com.

IN WITNESS WHEREOF, this Restated Agreement has been executed by the parties' respective corporate officers thereto duly authorized as of the day and year first above written.

DR PARTNERS.

By: Stephens Group, Inc.
General Partner

By: Warren A. Stephens
Warren Stephens
Chief Executive Officer

LAS VEGAS SUN, INC.

By: Brian L. Greenspun
Brian L. Greenspun
President

APPENDIX A

A.1. Intentionally omitted

A.2. Pursuant to Section 4.3. of this Restated Agreement, the number, placement, and characteristics of Sun pages shall be in accordance with the following specifications:

- (a) For Monday through Friday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and seven (7) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to the restrictions in (d) below. For Monday-Friday editions, the Review-Journal shall be composed of as many pages as Review-Journal management determines in its sole discretion.
- (b) For the Sunday edition, the Sun shall be composed of an open front page with the Las Vegas Sun flag and nine (9) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The remaining pages may include advertising, subject to restrictions in (d) below. The Review-Journal shall determine the number of pages for a comic section for the Sunday edition which shall consist of strips and features selected by the Review-Journal. The Sunday paper, including comics, shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion.
- (c) For Saturday and holiday editions, the Sun shall be composed of an open front page with the Las Vegas Sun flag and five (5) additional editorial pages (or the lineage equivalent thereof) of which three (3) shall be open pages as determined by the Sun. The Saturday and holiday editions shall be composed of as many Review-Journal pages as Review-Journal management determines in its sole discretion. The remaining pages may include advertising, subject to restrictions in (d) below.
- (d) The Sun shall not include any Review-Journal editorial content. Standard materials such as weather pages, comics, standardized television listings and the like shall not be considered Review-Journal editorial material and may be included in the Sun as additional pages unless the Sun objects in writing thereto. Other than open pages, the Sun may include advertising. No Sun page shall be more than 50% advertising, except for full page ads, and no advertising shall appear “above the fold” in the Sun, except for full page ads. Notwithstanding the foregoing, pages may contain, from time to time, more than 50% advertising due to production issues and advertising demands. Advertising will not be stacked in a pyramid format and shall be evened out in terms of height on the page. The Monday-Sunday editions of the Review-Journal shall include a noticeable mention of the

Sun, on the front page of the Review-Journal. The noticeable mention will appear in a box above the Review-Journal's masthead (the "Sun Box") and shall be in the form shown on Appendix B. The Sun Box shall not be smaller in proportion than shown in Appendix B. The Sun Box shall also include the Sun's masthead, and any emblem that is part of the Sun's masthead. The Sun Box shall include a promotion of a story in the Sun and refer readers to the Sun inside. The type face, editorial artwork, font, and editorial promotional content appearing in the Sun Box shall be determined by Sun, in its sole discretion. Any color in the Sun Box shall be restricted to constituent colors used by the Review-Journal on its front page. The Sun Box shall be the left-hand box unless it would be obscured by a spaeda fold, in which case the Sun Box shall be the right-hand box. In the event of major breaking news or for exigent production circumstances, the Sun Box may be moved below the Review-Journal's masthead. The Sun, on average, will receive as much editorial color as the local news section of the Review-Journal.

A.3. Edition times for Monday through Sunday issues of the Review-Journal shall be established by the Review-Journal in accordance with normal industry standards. Deadlines for the Sun shall be the same as those established for the last local news sections of the Review-Journal. The Sun will be placed as the third section of the Newspapers except on occasions when exigent production circumstances require that it be placed as the fourth section. The Sun will be printed in the same press run as the Review-Journal local news section. The Review-Journal shall be solely responsible for determining the need for replating the Newspapers, and shall treat the Sun and the Review-Journal equally with respect to replating of page one for major breaking national or international news events

A.4. If the Review-Journal determines that it is feasible to publish an "extra" edition, such edition shall be a Review-Journal edition and the content of any "extra" edition shall be determined solely by the Review-Journal.

A.5. In the event the Review-Journal determines that the Sun's continued placement in the Review-Journal has a material and substantial negative financial impact on the revenue and profit of the Newspapers it may deliver the Sun separately from the Review-Journal but at the same time, place, and manner as the Review-Journal. The Review-Journal shall provide written notice to the Sun within fifteen (15) days of beginning such separate delivery specifying in detail the factual basis for its determination.

In the event the Sun disagrees with the Review-Journal's determination, it shall within seven (7) days of receipt of notice from the Review-Journal, request that the matter be submitted to arbitration by an arbiter mutually agreed upon by the parties. If Sun requests arbitration, the Review-Journal shall not deliver the Sun separately until sixty (60) days after selection of the arbitrator. In the event the parties are not able to agree upon an arbiter within seven (7) days, an arbiter shall be selected by the Chairman of the Department of Journalism of Northwestern University, Evanston, Illinois, or a similar journalism school if Northwestern University has ceased operations of its School of Journalism. The parties shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each

hereby covenant to cooperate with the arbitrator to facilitate such request.

The arbitrator shall have experience in the senior management of metropolitan daily newspapers. In determining material and substantial negative financial impact, only the following factors shall be considered; advertiser abandonment of the Newspapers specifically due to the Sun's inclusion within the Review-Journal or subscriber cancellations of the Newspapers specifically due to the Sun's inclusion within the Review-Journal. The material and substantial negative financial impact shall be determined by reference to generally accepted standard newspaper industry sources. The decision of the arbitrator shall be final. The cost of the arbitration shall be borne by the non-prevailing party. The Review-Journal's rights under this section shall be cumulative and may not be exercised more often than once every eighteen (18) months.

In the event Sun determines, in its sole discretion, that the Sun's continued placement in the Review-Journal negatively impacts the Sun, the Review-Journal shall, upon fifteen (15) day written notice from Sun, thereafter deliver the Sun separately from the Review-Journal but at the same time, place and manner as the Review-Journal, provided that Sun shall pay any incremental expenditure reasonably incurred because of such separate delivery, which separate delivery shall be effected without any derogation in the publication, production, or delivery of the Review-Journal. Prior to giving its fifteen (15) day written notice, Sun may request and the Review-Journal shall provide a good faith estimate of such incremental expenditures and the parties shall meet and confer regarding the estimate. If the Sun is separately delivered, it will no longer receive noticeable mention in the Review-Journal.

APPENDIX B

[Sample to be attached]

Help pick the new Las Vegas city seal

DRAW YOUR OWN SEE LIVING



Batter Up
After finally breaking their 86-year-old Curse, the Red Sox start the season in a new role: defending champs

SEE SPORTS

LAS VEGAS SUN
DOE knew of Yucca e-mails in December

INSIDE | SECTION E

MONDAY

LAS VEGAS REVIEW-JOURNAL

50 CENTS

MONTH XX, 2005

Agency pursued damage control

Documents show how DOE coped with Yucca Mountain

By MICHAEL K. RAY

Special Associated Press

WASHINGTON — Although there were lapses for a big chunk of the Energy Department's efforts, a federal report in late 2004 found that the agency did a good job of managing the Yucca Mountain nuclear waste site, documents made public on Monday show.

Three dozen pages of mostly redacted memos and other internal documents show how federal officials tried to manage the site after discovering a cache of small nuclear devices in which scientists discovered a major design flaw.

The documents were turned over to the department's attorney on March 11 and were announced on March 12.

In the days between their discovery and the announcement, officials tried to keep the small nuclear devices from being moved, May 18, 1998, and March 24, 2000. They prepared an audit agreement and taking steps to be as close as possible to the Yucca Mountain site.

As part of a larger project, the Yucca Mountain site was to be a major part of the Yucca Mountain site, and the documents were to be a major part of the Yucca Mountain site.

ALL YUCCA MOUNTAIN INFO

PUBLIC VIEWING OF POPE

Mourners pay respects

Thousands pack St. Peter's Square to see John Paul II ahead of burial

By MICHAEL K. RAY

Special Associated Press

Vatican City

All the time, as the line stretched forward, it grew longer and longer, out of St. Peter's Square, stretching out of sight down the Via della Conciliazione. Police said close to midnight it was two miles long, and many people were

For pilgrims mourning Pope John Paul II, it was a deeply moving scene: the pope lying lifeless on a casket, surrounded by a crowd of people, some kneeling in prayer, others weeping. The pope's body was on his trip around the world.

There was no stopping for a moment, since a continuous stream of reflection. Many went as they walked past the pope's body, some kneeling in prayer, others weeping. The pope's body was on his trip around the world.

People who had never had an audience with the pope felt as if they had lost a close one. "Every time I saw him (on television), he gave me a message,"



A mourner weeps Monday as John Paul II's body is carried through St. Peter's Square.

Said John Paul II, 24, a student in Rome, after seeing the body. "Now, I just saw him."

"His face was suffering," said Sister Emma, a 70-year-old Italian nun who saw the pope's body. "I felt a sense of sadness, even though I know he's in heaven."

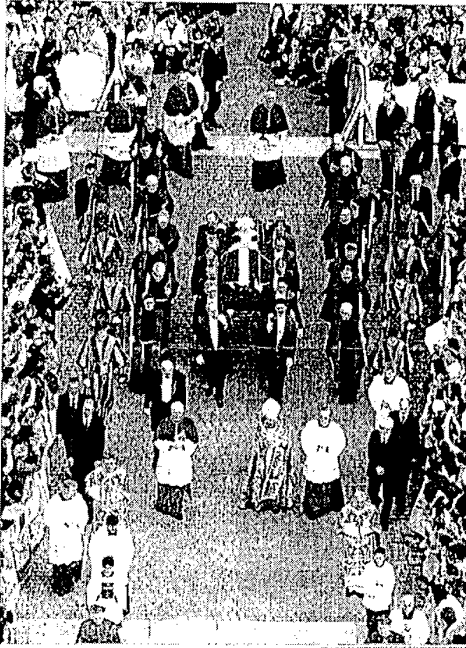
The crowd, mostly elderly and poor, gathered on the street leading to St. Peter's Square as it moved slowly toward the basilica. As soon as they entered the square, people fell silent. It became a procession of mourning, with people holding their hands tightly and whispering the words.

After taking a quick glimpse of the pope's remains as police whizzed by, many turned away. "Every time I saw him (on television), he gave me a message,"

ALL POPE INFO

AMERICAN CATHOLICS HOPE FOR AFRICAN CHANGES PAGE 10A

POPE'S FUNERAL DELAYS CHARLES' WEDDING PAGE 38A



The late Pope John Paul II is carried to St. Peter's Basilica at the Vatican Monday for a period of public viewing before he is buried in the grotto of the basilica after his funeral Friday.

Oil concerns increase as prices soar to record level

Limited supply, rising demand, continued weakness of U.S. dollar cited

By MICHAEL K. RAY
Special Associated Press

Late in the day, traders took profits and considered a price increase by the Organization of Petroleum Exporting Countries, sending light, sweet crude for May delivery down 26 cents to \$57.01 a barrel on the New York

Merchants Exchange. Prices had climbed as high as \$58.28, topping the previous intraday record of \$57.20 a barrel reached Friday, when futures settled at a record \$57.27.

ALL OIL INFO

Supreme Court rules IRAs protected from bankruptcy

By MICHAEL K. RAY
Special Associated Press



Witness says Michael Jackson molested him

By MICHAEL K. RAY

Special Associated Press

SANTA MARIA, Calif. — In a finding, another child witness, the son of Michael Jackson's

trying to show the jury that the singer has a pattern of abusing young boys.

The judge told jurors the evidence of past uncharged crimes was being offered to show a "propensity" by the de-

LAS VEGAS SUN
DOE knew of Yucca
e-mails in December
INSIDE | SECTION E



Batter Up
After finally breaking their 86-year-old
Curse, the Red Sox start the season in a
new role, defending champs
SEE SPORTS

Help pick the
new Las Vegas
city seal
**DRAW YOUR OWN
SEE LIVING**

MONDAY

LAS VEGAS REVIEW-JOURNAL

www.reviewjournal.com

50 CENTS

MONTH XX, 2005

Agency pursued damage control

Documents show
how DOE coped
with e-mails about
Yucca Mountain

BY STEVE HARRIS

WASHINGTON — Although they were looking for a big black eye, Energy Department officials believed much in the reports of possible falsified documents would not affect the agency's reputation.

Documents purporting to be records of meetings and other by federal officials, combined to suggest the effort also showed a number of e-mail messages in which scientists discussed using "false data" and fabricating graphs, according to computer databases for climate and water studies.

The e-mails were thought to be a sign of the agency's attempt to "cover up" the situation on Monday, Harris said, and were announced on March 14.

In the days between the discovery and the announcement, officials discussed the e-mail messages written between May 15, 1998, and March 20, 2000. They prepared an initial assessment and talking points to be discussed with Energy Secretary Carlos Rodriguez and used as talking points, Harris said.

According to a memo prepared by a DOE manager in late 1999, Rodriguez was to be told the information in the e-mails "does not impact the overall site security analysis, and we do not believe that the questionable data has any meaningful effect" on the site, Harris said, and was to be discussed with Energy Secretary Carlos Rodriguez and used as talking points, Harris said.

During the same period, of the e-mails, Harris said, "the documents show."

They also show the Energy Department was "concerned" in the e-mails, Harris said, and was to be discussed with Energy Secretary Carlos Rodriguez and used as talking points, Harris said.

BY STEVE HARRIS

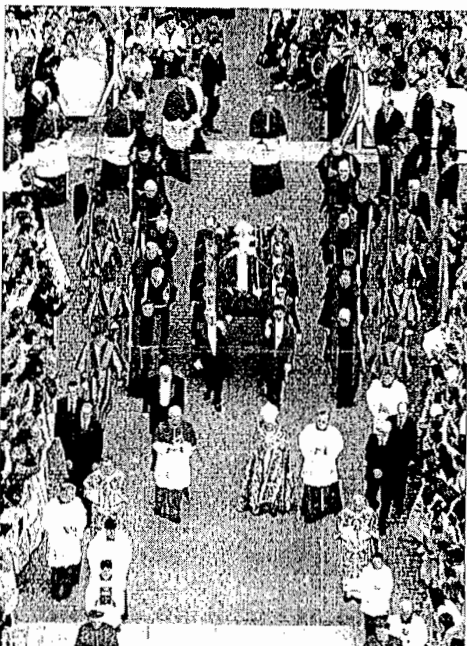
Supreme Court rules IRAs protected from bankruptcy

BY STEVE HARRIS

WASHINGTON — The Supreme Court ruled Monday that individual retirement accounts (IRAs) are protected from bankruptcy.

PUBLIC VIEWING OF POPE

Mourners pay respects



The late Pope John Paul II is carried to St. Peter's Basilica at the Vatican Monday for a period of public viewing before he is buried in the grotto of the Basilica after his funeral Friday.

Thousands pack St. Peter's Square
to see John Paul II ahead of burial

BY WILLIAM A. KOLA
AND MARTA FALCÓN

THE ASSOCIATED PRESS

VATICAN CITY — The mourners stood in line hour after hour, starting when the sun beat down off the Vatican's old stone, and into the life-size effigy of the pope. Pilgrims older than the late pope struggled to remain standing. Young children, even infants, were unusually well behaved.

All the time, as the line inched forward, it grew longer and longer, out of St. Peter's Square, stretching out of sight down the Via della Conciliazione. Police said close to midnight it was 10 miles long, and many people were sick.

For pilgrims mourning Pope John Paul II, it was a deeply moving scene. The pope lay lifeless on a crimson platform, wearing a pair of the simple brown leather shoes he so often wore on his trips around the world.

There was no stopping for a lingering view, a momentary moment of reflection. Many went as they walked past the line. Some collapsed against the wall outside after leaving St. Peter's Basilica, where the pope's remains went on public view Monday afternoon. He will be buried Friday.

People who had never had an audience with the pope felt as if they had lost a dear one. "Every time I see him (in pictures), he gave me something," he gave me a message," said Sister Emma, a 70-year-old Italian nun who was the pope's body. "I felt a sense of sadness, even though I know he's in heaven."

The crowd cheerfully chanted and clapped hands on the street leading to St. Peter's Square as it moved slowly toward the basilica. As soon as they entered the square, people fell silent. It became a procession of mourning, with people holding their hands tightly and whispering the rosary.

After taking a quick glimpse at the pope's remains as people whispered "Blessed be," many turned against the walls of the basilica and sobbed.

SEE POPE PAGE 10A



A mourner weeps Monday as John Paul II's body is carried through St. Peter's Square.

SEE POPE PAGE 10A

AMERICAN CATHOLICS NOT FOR MAJOR CHANGES PAGE 10A
POPE'S FUNERAL DELAYS CHARLES' WEDDING PAGE 10A

Oil concerns increase as prices soar to record level

Limited supply,
rising demand
continued weakness
of U.S. dollar fuel

BY STEVE HARRIS

THE ASSOCIATED PRESS

Oil prices nearly doubled in a matter of days, fueling concerns about a possible shortage of gasoline. The price of oil rose to a record level of \$38 a barrel Monday, as concerns about growing demand and potential supply shortages.

Oil prices rose to a record level of \$38 a barrel Monday, as concerns about growing demand and potential supply shortages. The price of oil rose to a record level of \$38 a barrel Monday, as concerns about growing demand and potential supply shortages.

Late in the day, traders took profits and considered a possible production increase by the Organization of Petroleum Exporting Countries, sending light sweet crude for May delivery down 25 cents to \$37.51 a barrel on the New York Mercantile Exchange.

Prices had climbed as high as \$38.25, topping the previous intraday record of \$37.70 a barrel reached Friday, when futures settled at a record \$37.27.

SEE OIL PAGE 4A

Witness says Michael Jackson molested him

BY STEVE HARRIS

THE ASSOCIATED PRESS

SANTA MONICA, Calif. — In a hearing, emotion choked voices, the son of Michael Jackson's former housekeeper testified Monday that the singer had molested him.

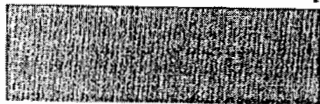
trying to show the jury that the singer had a pattern of abusing young boys. The judge told jurors the evidence of past molested victims was being offered to show a "propensity" to do the defendant in a similar act.

their weight "by a preponderance of the evidence." "Caucasian," he said, the judge said, and permitted to give them the instructions regarding the evidence. "The witness, a tall, slender, dark-haired young man, said



Headline teaser of Sun's choice, using Sun typeface

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APPENDIX C
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APPENDIX D

Sun shall receive an annual profits payment (the “Annual Profits Payment”), one-twelfth (1/12th) of which shall be paid monthly in advance on the first day of each month during the Term. For the fiscal year beginning April 1, 2005, the Annual Profits Payment shall be Twelve Million Dollars (\$12,000,000), provided, however, that payments to Sun shall continue in accordance with the 1989 Agreement until the Transition Date. Each fiscal year thereafter during the term of this Agreement the Annual Profits Payment shall be adjusted as set forth in this Appendix D. Within thirty (30) days following the beginning of each such fiscal year, Review-Journal shall calculate the percentage change (the “Percentage Change”) between the earnings, before interest, taxes, depreciation and amortization (“EBITDA”) for the fiscal year immediately preceding (the “LTM EBITDA”) and the EBITDA for the penultimate fiscal year (the “Prior Period EBITDA”). The Annual Profits Payment shall be increased, or decreased, as the case may be, by the Percentage Change between the LTM EBITDA and the Prior Period EBITDA.

In calculating the EBITDA (i) for any period that includes earnings prior to April 1, 2005, such earnings shall not be reduced by any amounts that during such period may have been otherwise been deducted from earnings under section A.1 of Appendix A or sections B.1.16, B.1.17, B.1.18, or B.3 of Appendix B of the 1989 Agreement and (ii) for any period whether before or after April 1, 2005, such earnings shall not be reduced by any amounts paid to Sun as a percentage of operating profit under Appendix D of the 1989 Agreement or under this Appendix D. Any expense of the Review-Journal attributable to a transaction with an Affiliate shall not exceed fair market value. EBITDA shall include the earnings of the Newspapers and the

earnings of the Review-Journal's Affiliates derived from publications generally circulated in Clark, Nye, or Lincoln Counties, Nevada or any parts thereof. For purposes of this paragraph, Press Equipment shall mean the press equipment currently owned by the Review-Journal and identified in Appendix D-1 and any additional equipment, whether owned by the Review-Journal or third parties, to the extent that it produces substantially the same product or result, and Other Equipment shall mean all equipment and facilities used for production or operation of the printed Newspapers or other print publications whose earnings are included in EBITDA other than Press Equipment. EBITDA, whether determined for any period before or after April 1, 2005, shall not include (a) any expense for rents, leases or similar expense for Other Equipment (i) if such expense, under generally accepted accounting principles, should be treated as a capitalized lease obligation, or (ii) if such expense is made for the use of any capital asset the use of which is intended to replace any item of Other Equipment that is owned by the Review-Journal as of the Effective Date or (b) any expense for rents, leases, or similar expenses for Press Equipment, including any portion of a printing services contract that is fairly attributable to the use of Press Equipment. All calculations shall be made in accordance with generally accepted newspaper industry accounting principles consistently applied. The Parties intend that EBITDA be calculated in a manner consistent with the computation of "Retention" as that line item appears on the profit and loss statement for Stephens Media Group for the period ended December 31, 2004. Sun shall have the right, exercisable not more than once every twelve months and only after providing written notification no less than thirty days prior thereto, to appoint an certified public accounting firm or law firm as Sun's representative to examine and audit the books and records of the Review-Journal and the other publications whose earnings are included in EBITDA for purposes of verifying the determinations of the changes to the Annual Profit

Payments. Such representative shall agree in writing to maintain the confidentiality of all such financial records inspected. The confidentiality agreement shall not restrict the representative from disclosing to the management of Sun information concerning the audit of the Review-Journal, but shall restrict the representative from disclosing any specific individual salary information or advertiser-specific information (e.g., names, prices, contract terms, discounts, total inches) for the other publications whose earnings are included in EBIDTA. With respect to such other publications, the representative may only disclose summary information (e.g., total advertising revenue or total salaries) that is not identifiable with individual advertisers or employees. If as a result of such an audit, there is a dispute between Sun and the Review-Journal as to amounts owed to Sun and they are not able to resolve the dispute within 30 days, they shall select a certified public accountant to arbitrate the dispute. The arbitration shall be conducted according to the commercial arbitration rules of the American Arbitration Association, including such rules for the selection of a single arbitrator if Sun and the Review-Journal are not able to agree upon an arbitrator. Sun and the Review-Journal shall request the arbitrator to render a decision within sixty (60) days of his or her selection, and Sun and the Review-Journal each hereby covenant to cooperate with the arbitrator to facilitate such request. The arbitrator shall agree to be bound by terms of confidentiality to the same extent as the Sun's representative. The arbitrator shall make an award to Sun in the amount of the arrearage, if any, found to exist, together with interest thereon from the date any arrearage was due until paid at the corporate prime rate as quoted by the Wall Street Journal on the first business day of each month. The arbitrator shall also make an award of the fees and cost of arbitration, which may include a division of such fees and costs among the parties in a manner determined by the arbitrator to be reasonable in light of the positions asserted and the determination made.

DR shall be entitled to all of the profits of the Newspapers after the payments set forth above to the Sun during the term of this Restated Agreement.

APPENDIX D-1

- 1 Goss Urbanite Press (Pama Lane)
- 1 Goss Community Press (Press Annex)
- 2 Goss Newsliner presses (Main pressroom)
- 1 Didde press (Mailroom)
- 2 Lines of Heidelberg Inserters and GMA/Alphaliners