

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 IN RE: NEWPORT CORPORATION  
3 SHAREHOLDER LITIGATION.

**SUPREME COURT NO. 80636**

**District Court No. A733154**

4 HUBERT C. PINCON; and LOCALS 302  
5 AND 612 OF THE INTERNATIONAL  
6 UNION OF OPERATING ENGINEERS-  
EMPLOYERS CONSTRUCTION  
INDUSTRY RETIREMENT TRUST,

7 Appellants,

8 vs.

9 ROBERT J. PHILLIPPY; KENNETH F.  
10 POTASHNER; CHRISTOPHER COX;  
11 SIDDHARTHA C. KADIA; OLEG  
KHAYKIN; and PETER J. SIMONE,

12 Respondents.

Electronically Filed  
Aug 18 2020 02:10 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**UNOPPOSED MOTION OF APPELLANTS  
FOR EXTENSION OF TIME TO FILE  
OPENING BRIEF**

13 Appellants, through their undersigned counsel, hereby move this Court for an extension of  
14 time under NRAP 31(a)(3) of forty-five (45) days, to Friday, October 23, 2020, within which to file  
15 Appellants' Opening Brief. This motion is made in good faith and without the purpose of delay. The  
16 parties have met and conferred, and Respondents do not oppose this motion.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 During the pendency of this appeal, in a time of office closures and related logistical  
19 impediments, Appellants have drafted and filed 74 pages of briefing regarding Respondents' 2,000+  
20 page submissions requesting over \$4.5 million in fees and costs. Counsel for Appellants have  
21 devoted, and continue to devote, time and attention to this and other matters at the same time, while  
22 often working remotely. In order to allow for sufficient time to complete the opening brief in this  
23 appeal in light of those issues, Appellants therefore respectfully request a forty-five (45) day  
24 extension, to October 23, 2020, to file Appellants' Opening Brief.

25 Appellants telephonically requested one prior extension of time to file the Opening Brief,  
26 which was granted. That request moved the due date for the Opening Brief from August 24, 2020, to  
27 September 8, 2020. No other extensions of time for appellate briefing have been requested during  
28 this appeal. While there is opportunity for the Parties to stipulate to a 30-day extension, Appellants

1 believe that 30 days will not allow enough time to complete, file and serve their Opening Brief in  
2 light of the issues described above. As such, Appellants are requesting an extension of forty-five  
3 (45) days in which to file their Opening Brief. The forty-five (45) day extension would make  
4 Appellants' Opening Brief due on October 23, 2020. The parties have met and conferred, and  
5 Respondents do not oppose this motion.

6 In addition, on a related note, counsel for Appellants wish to apprise the Court that on August  
7 4, 2020, the District Court below issued an oral ruling on Defendants' Motion for Costs, Interest and  
8 Attorneys' Fees, and on Plaintiffs' Motion to Retax and Settle Costs. The parties are awaiting a  
9 signed order from the District Court regarding that ruling, at which point a second appeal will be  
10 promptly filed. The District Court may not ultimately issue a written order by the September 8, 2020  
11 deadline for Appellants' Opening Brief.

12 Counsel for Appellants believe that, in the interests of judicial economy, the costs/fees appeal  
13 and the present appeal, which obviously are closely related and present overlapping issues, should be  
14 consolidated upon the filing of the second Notice of Appeal. Counsel for Appellants anticipate that,  
15 if consolidated, the briefing on the consolidated appeals may be streamlined into a consolidated  
16 Opening Brief, with appropriate type-volume limitation modifications, and that the consolidated  
17 Opening Brief would be filed within the timeframe of the 45-day extension requested herein, i.e. by  
18 October 23, 2020, if permitted by the Court. In sum, while this requested extension is warranted on  
19 its own merit, Appellants also believe that this extension will result in a more timely resolution of  
20 this appeal than will bifurcated briefing commencing on September 8, 2020.

21 DATED: August 17, 2020

THE O'MARA LAW FIRM, P.C.

22  
23 /s/ David C. O'Mara  
DAVID C. O'MARA, ESQ.

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26 Telephone: 775.323.1321  
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Email: david@omaralaw.net

27 Attorneys for Appellants  
28

**DECLARATON OF COUNSEL**

I, David C. O'Mara, Esq., declare under penalty of perjury that the following is true and correct:

1. I am an attorney, licensed in Nevada, and am acting as local counsel in the above referenced matter for Appellants.

2. During the pendency of this appeal, in a time of office closures and related logistical impediments, Appellants have drafted and filed 74 pages of briefing regarding Respondents' 2,000+ page submissions requesting over \$4.5 million in fees and costs. Counsel for Appellants have devoted, and continue to devote, time and attention to this and other matters at the same time, while often working remotely.

3. Undersigned counsel attended a hearing in the 8<sup>th</sup> Judicial District Court on August 4, 2020.

4. At this hearing the District Court made decisions regarding Defendants' Motion for Costs, Interest, and Attorneys' Fees as well as Plaintiffs' Motion to Retax and Settle Costs, both motions in the underlying case resulting in this appeal. The written order has yet to be issued and is currently pending.

5. Appellants plan to appeal the decisions made at this hearing but are precluded from initiating this process until the Order is signed and filed.

6. Upon filing any additional appeals stemming from the decisions made at the August 4, 2020 hearing, Counsel will move to consolidate this appeal with any others that may arise.

7. Appellants' Opening Brief was originally due on August 24, 2020.

8. Appellants requested an extension of time on August 3, 2020 which was granted on August 3, 2020 and moved the original due date from August 24, 2020 to September 8, 2020.

9. Appellants can be prepared to file one consolidated opening brief by October 23, 2020, including the substantive issues raised in this appeal and fee and cost-related issues which are expected to be raised shortly.

10. Counsel expects that this interim 45-day extension will provide for a more-prompt resolution of what will ultimately be a consolidated appeal, as opposed to Appellants filing bifurcated briefs starting September 8, 2020.

11. On August 17, 2020, counsel for Appellants provided a draft of the instant motion to counsel for Respondents and asked whether Respondents would oppose the requested extension. On August 17, 2020, counsel for Respondents responded that they do not oppose this motion.

DATED: August 17, 2020

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara  
DAVID C. O'MARA, ESQ.

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Accordingly, I also certify that the foregoing is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Bryan Snyder  
BRYAN SNYDER