

**Case No. 80636**

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

In re: Newport Corporation Shareholder Litigation

Hubert C. Pincon; Locals 302 and 612 of the International Union of Operating  
Engineers-Employers Construction Industry Retirement Trust

Electronically Filed  
Mar 11 2021 02:15 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

*Appellants,*

v.

Robert J. Phillippy; Kenneth F. Potashner; Christopher Cox; Siddhartha C. Kadia;  
Oleg Khaykin; and Peter J. Simone

*Respondents,*

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**RESPONDENTS' MOTION TO ASSOCIATE COUNSEL**

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MAXIMILIEN FETAZ, ESQ., Nevada Bar No. 12737  
[mfetaz@bhfs.com](mailto:mfetaz@bhfs.com)

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

BRIAN M. LUTZ, ESQ. (*pro hac vice*)  
[blutz@gibsondunn.com](mailto:blutz@gibsondunn.com)  
GIBSON, DUNN & CRUTCHER LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105-0921  
Telephone: 415.393.8200  
Facsimile: 415.393.8306

COLIN B. DAVIS, ESQ. (*pro hac vice*)  
[cdavis@gibsondunn.com](mailto:cdavis@gibsondunn.com)

GIBSON, DUNN & CRUTCHER LLP  
3161 Michelson Drive  
Irvine, CA 92612-4412  
Telephone: 949.451.3800  
Facsimile: 949.451.4220

*Attorneys for Respondents Robert J. Phillippy, Kenneth  
F. Potashner, Christopher Cox, Siddhartha C. Kadia,  
Oleg Khaykin, and Peter J. Simone*

**RESPONDENTS' MOTION TO ASSOCIATE COUNSEL**

Respondents Robert J. Phillippy, Kenneth F. Potashner, Christopher Cox, Siddhartha C. Kadia, Oleg Khaykin, and Peter J. Simone (“Respondents”), by and through their undersigned counsel of record, hereby respectfully request an order permitting Andrew J. Wilhelm, Esq. to practice in Nevada pursuant to Nevada Supreme Court Rule 42 (SCR 42).

Mr. Wilhelm, having complied with the requirements set forth by SCR 42, hereby submits a “Verified Application for Association of Counsel” (attached hereto as Ex. A), Certificate of Good Standing from the District of Columbia Bar (attached hereto as Ex. B), Certificate of Good Standing from the State Bar of California, (attached hereto as Ex. C), and the State Bar of Nevada Statement (attached hereto as Ex. D).

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Accordingly, Respondents request that the Court admit Mr. Wilhelm to practice in the above-entitled Court for the purposes of the above-entitled matter pursuant to SCR 42.

DATED this 11<sup>th</sup> day of March, 2021.

*/s/ Maximilien D. Fetaz*

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MAXIMILIEN D. FETAZ, ESQ.

Nevada Bar No. 12737

BROWNSTEIN HYATT FARBER SCHRECK, LLP

100 North City Parkway, Suite 1600

Las Vegas, NV 89106-4614

Telephone: 702.382.2101

Facsimile: 702.382.8135

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GIBSON, DUNN & CRUTCHER LLP

3161 Michelson Drive

Irvine, CA 92612-4412

Telephone: 949.451.3800

Facsimile: 949.451.4220

*Attorneys for Defendants*

*Robert J. Phillippy, Kenneth F. Potashner, Christopher Cox, Siddhartha C. Kadia, Oleg Khaykin, and Peter J. Simone*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed and served the foregoing **RESPONDENTS' MOTION TO ASSOCIATE COUNSEL** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on March 11, 2021.

/s/ Mary Barnes  
an employee of Brownstein Hyatt Farber Schreck,  
LLP

# **Exhibit A**

**(Verified Application)**

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

v.

ROBERT J. PHILLIPPY; KENNETH F.  
POTASHNER; CHRISTOPHER COX;  
SIDDHARTHA C. KADIA; OLEG  
KHAYKIN; AND PETER J. SIMONE,

Respondents.

No. 80636

VERIFIED APPLICATION FOR  
ASSOCIATION OF COUNSEL UNDER  
NEVADA SUPREME COURT RULE 42

Andrew J. Wilhelm, Petitioner, respectfully represents:  
First Middle Name Last

1. Petitioner resides at 2122 11<sup>th</sup> St. NW, Unit 3  
Street Address

Washington, , District of Columbia  
City County State

20001, (202) 887-3556-419-583-6852.  
Zip Code Telephone

2. Petitioner is an attorney at law and a member of the law firm of

Gibson, Dunn & Crutcher LLP

with offices at 1050 Connecticut Ave. NW  
Street Address

Washington, , District of Columbia  
City County State

20036, (202) 887-3556, awilhelm@gibsondunn.com  
Zip Telephone Email

3. Petitioner has been retained personally or as a member of the above named law firm by

Robert J. Phillippy; Kenneth F. Potashner; Christopher Cox; Siddhartha C. Kadia; Oleg Khaykin; and Peter J. Simone to provide legal representation in connection with the above-entitled matter now pending before the above referenced court.

4. Since March of 2019, petitioner has been, and presently is, a member of good standing of the bar of the highest court of the State of District of Columbia where petitioner regularly practices law.

5. Petitioner was admitted to practice before the following United States District Courts, United States Circuit Courts of Appeal, the Supreme Court of the United States, and/or courts of other states on the dates indicated for each, and is presently a member in good standing of the bars of said Courts:

	<u>DATE ADMITTED</u>
<u>United States Court of Federal Claims</u>	<u>5/24/2015</u>
<u>United States Court of Appeals for the Federal Circuit</u>	<u>8/8/2017</u>
<u>Supreme Court of the United States</u>	<u>10/15/2019</u>
<u>The State of California</u>	<u>04/20/2015</u>

6. Is Petitioner currently suspended or disbarred in any court? You must answer yes or no. If yes, give particulars; e.g., court, jurisdiction, date: No

\_\_\_\_\_

\_\_\_\_\_

7. Is Petitioner currently subject to any disciplinary proceedings by any organization with authority at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No

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8. Has Petitioner ever received public discipline including, but not limited to, suspension or

disbarment, by any organization with authority to discipline attorneys at law? You must answer yes or no. If yes, give particulars, e.g. court, discipline authority, date, status: No

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9. Has Petitioner ever had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked? You must answer yes or no. If yes, give particulars, e.g. date, administrative body, date of suspension or reinstatement: No

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10. Has Petitioner, either by resignation, withdrawal, or otherwise, ever terminated or attempted to terminate Petitioner's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings? You must answer yes or no. If yes, give particulars: No

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11. Petitioner, or any member of petitioner's firm, has/have filed the following application(s) to appear as counsel under Nevada Supreme Court Rule 42 during the past three (3) years in the following matter(s), if none, indicate so: *(do not include Federal Pro Hacs)*

<u>Date of</u> <u>Application</u>	<u>Cause</u>	<u>Title of Court</u> <u>Administrative Body</u> <u>or Arbitrator</u>	<u>Was Application</u> <u>Granted or</u> <u>Denied?</u>
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See Exhibit A

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(If more space is needed, you may list previous applications on a separate attachment.)

12. Nevada Counsel of Record for Petition in this matter is:  
(must be the same as the signature on the Nevada Counsel consent page)



15. Petitioner has disclosed in writing to the client that the applicant is not admitted to practice in this jurisdiction and that the client has consented to such representation. Yes

I, Andrew J. Wilhelm , do hereby swear/affirm under penalty of perjury that the assertions

Print Petitioner Name

of this application and the following statements are true:

- 1) That I am the Petitioner in the above entitled matter.
- 2) That I have read Supreme Court Rule (SCR) 42 and meet all requirements contained

therein, including, without limitation, the requirements set forth in SCR 42(2), as follows:

- (A) I am not a member of the State Bar of Nevada;
  - (B) I am not a resident of the State of Nevada;
  - (C) I am not regularly employed as a lawyer in the State of Nevada;
  - (D) I am not engaged in substantial business, professional, or other activities in the State of Nevada;
  - (E) I am a member in good standing and eligible to practice before the bar of any jurisdiction of the United States; and
  - (F) I have associated a lawyer who is an active member in good standing of the State Bar of Nevada as counsel of record in this action or proceeding.
- 2) That I have read the foregoing application and know the contents thereof; that the same is true of my own knowledge except as to those matters therein stated on information and belief, and as to the matter I believe them to be true.

That I further certify that I am subject to the jurisdiction of the Courts and disciplinary boards of this state with respect to the law of this state governing the conduct of attorneys to the same extent as a member of the State Bar of Nevada; that I understand and shall comply with the standards of professional conduct required by members of the State Bar of Nevada; and that I am subject to the disciplinary jurisdiction to the State Bar of Nevada with respect to any of my actions occurring in the course of such appearance.

DATED this 23rd day of February, 2021

*Angie*

Petitioner/Affiant (blue ink)

STATE OF District of )  
 ) ss  
COUNTY OF Columbia )

Subscribed and sworn to before me

this 23<sup>rd</sup> day of February, 2021

*[Signature]*  
Notary Public

DORIS L. STANLEY  
Notary Public of District of Columbia  
My Commission Expires August 31, 2021



**DESIGNATION, CERTIFICATION AND CONSENT OF NEVADA COUNSEL**

SCR 42(14) Responsibilities of Nevada attorney of record.

(a) The Nevada attorney of record shall be responsible for and actively participate in the representation of a client in any proceeding that is subject to this rule.

(b) The Nevada attorney of record shall be present at all motions, pre-trials, or any matters in open court unless otherwise ordered by the court.

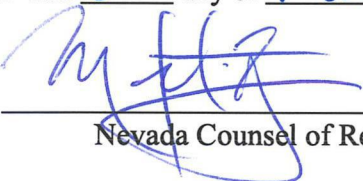
(c) The Nevada attorney of record shall be responsible to the court, arbitrator, mediator, or administrative agency or governmental body for the administration of any proceeding that is subject to this rule and for compliance with all state and local rules of practice. It is the responsibility of Nevada counsel to ensure that the proceeding is tried and managed in accordance with all applicable Nevada procedural and ethical rules.

I Maximilien D. Fetaz hereby agree to associate with Petitioner referenced hereinabove

Print Nevada Counsel Name

and further agree to perform all of the duties and responsibilities as required by Nevada Supreme Court Rule 42.

DATED this 23<sup>rd</sup> day of February, 2021

  
\_\_\_\_\_  
Nevada Counsel of Record (blue ink)

STATE OF Nevada )  
 ) ss  
COUNTY OF Clark )

Subscribed and sworn to before me

this 23<sup>rd</sup> day of February, 2021

  
\_\_\_\_\_  
Notary Public

YAJAIRA LOZANO  
A Notary Public of Nevada  
My Commission Expires May 25, 2022  
No: 18-2648-1

**Exhibit A**

<b>Date of Application</b>	<b>Name</b>	<b>Cause</b>	<b>Title of Court, Administrative Body, or Arbitrator</b>	<b>Was Application Granted or Denied?</b>
4/7/16	Colin B. Davis	A-16-733154-C	Eighth Judicial District	Granted
4/7/16	Meryl L. Young	A-16-733154-C	Eighth Judicial District	Granted
4/11/16	Brian M. Davis	A-16-733154-C	Eighth Judicial District	Granted
4/15/19	Katie M. Magallanes	A-16-733154-B	Eighth Judicial District	Granted

## Exhibit B

<i>Defendants-Respondents:</i> Robert J. Phillippy; Kenneth F. Potashner; Christopher Cox; Siddhartha C. Kadia; Oleg Khaykin; and Peter J. Simone	555 Mission Street, Suite 3000 San Francisco, CA 94105  100 North City Parkway, Suite 1600 Las Vegas, NV 89106
<i>Counsel for Defendants-Respondents:</i>  Joshua S. Lipshutz; Brian M Lutz; Colin B. Davis; Andrew J. Wilhelm GIBSON, DUNN & CRUTCHER LLP  Maximilien D. Fetaz BROWNSTEIN HYATT FARBER SCHRECK, LLP	555 Mission Street, Suite 3000 San Francisco, CA 94105  100 North City Parkway, Suite 1600 Las Vegas, NV 89106
<i>Plaintiffs-Appellants:</i> Hubert C. Pincon; and Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Trust	701 N Green Valley Pkwy #200 Henderson, NV 89074  655 West Broadway, Suite 1900 San Diego, CA 92101
<i>Counsel for Defendants-Respondents:</i> Eric D. Hone; Joel Z. Schwarz; Jamie L. Zimmerman H1 LAW GROUP  Randall J. Baron; David T. Wissbroeckcker; David A. Knotts ROBBINS GELLER RUDMAN & DOWD LLP	701 N Green Valley Pkwy #200 Henderson, NV 89074  655 West Broadway, Suite 1900 San Diego, CA 92101

# **Exhibit B**

**(Certificate of Good Standing - District of  
Columbia)**



On behalf of JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals,  
the District of Columbia Bar does hereby certify that


*Andrew J. Wilhelm*

was duly qualified and admitted on March 9, 2018 as an attorney and counselor entitled to  
practice before this Court; and is, on the date indicated below, a(n)  
ACTIVE member in good standing of this Bar.

**In Testimony Whereof,  
I have hereunto subscribed my  
name and affixed the seal of this  
Court at the City of  
Washington, D.C., on February  
4, 2021.**

*Julio A. Castillo*

**JULIO A. CASTILLO**  
Clerk of the Court

Issued By:   
District of Columbia Bar Membership

For questions or concerns, please contact the D.C. Bar Membership Office at 202-626-3475 or email  
[memberservices@dcbar.org](mailto:memberservices@dcbar.org).



# **Exhibit C**

**(Certificate of Good Standing - California)**



The State Bar  
*of California*

180 Howard Street, San Francisco, CA 94105

OFFICE OF ATTORNEY REGULATION &  
CONSUMER RESOURCES

AttorneyRegulation@calbar.ca.gov  
888-800-3400

## CERTIFICATE OF STANDING

February 10, 2021

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, ANDREW JOHN WILHELM, #302849 was admitted to the practice of law in this state by the Supreme Court of California on April 20, 2015; that from the date of admission to March 8, 2017, he was an ACTIVE licensee of the State Bar of California; that on March 8, 2017, he transferred at his request to the INACTIVE status; that from that date to August 7, 2017, he was an INACTIVE licensee of the State Bar of California; that on August 7, 2017, he transferred at his request to the ACTIVE status; that he has been since that date, and is at date hereof, an ACTIVE licensee of the State Bar of California; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Trustees or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

A handwritten signature in blue ink, which appears to read "Louise Turner".

Louise Turner  
Custodian of Records

# **Exhibit D**

**(State Bar of Nevada Statement)**

1 STAT

2  
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

4 Case No. 80636

5  
6 Hubert C. Pincon

7 vs.

8 Robert J. Phillippy  
9 \_\_\_\_\_/

10 STATE BAR OF NEVADA STATEMENT PURSUANT TO SUPREME COURT RULE  
11 42 (3) (b)

12 THE STATE BAR OF NEVADA, in response to the application of  
13 Petitioner, submits the following statement pursuant to SCR42(3):

14 SCR42(6)**Discretion.** The granting or denial of a motion to associate  
15 counsel pursuant to this rule by the court is discretionary. The  
16 court, arbitrator, mediator, or administrative or governmental  
17 hearing officer may revoke the authority of the person permitted to  
appear under this rule. Absent special circumstances, repeated  
appearances by any person or firm of attorneys pursuant to this rule  
shall be cause for denial of the motion to associate such person.

18 (a) **Limitation.** It shall be presumed, absent special  
19 circumstances, and only upon showing of good cause, that  
20 more than 5 appearances by any attorney granted under  
this rule in a 3-year period is excessive use of this  
rule.

21 (b) **Burden on applicant.** The applicant shall have the  
22 burden to establish special circumstances and good cause  
23 for an appearance in excess of the limitation set forth  
24 in subsection 6(a) of this rule. The applicant shall set  
forth the special circumstances and good cause in an  
affidavit attached to the original verified application.

25 1. DATE OF APPLICATION: 3/3/2021

26 2. APPLYING ATTORNEY: Andrew John Wilhelm, Esq.


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28 ///

1 3. FIRM NAME AND ADDRESS: Gibson, Dunn & Crutcher, LLP, 1050  
2 Connecticut Avenue, NW, Washington, DC 20036

3 4. NEVADA COUNSEL OF RECORD: Maximilien D. Fetaz, Esq., Brownstein  
4 Hyatt Farber Schreck, LLP, 100 City Parkway, Suite 1600, Las  
5 Vegas, NV 89106

6 5. There is no record of previous applications for appearance by  
7 petitioner within the past three (3) years.

8 DATED this March 9, 2021

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10   
11 Suzy Moore  
12 Member Services Admin.  
13 Pro Hac Vice Processor  
14 STATE BAR OF NEVADA  
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