

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
Apr 19 2021 08:24 a.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,

RESPONDENTS' MOTION TO ASSOCIATE COUNSEL

MAXIMILIEN FETAZ, ESQ., Nevada Bar No. 12737
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*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 Joshua S. Lipshutz, Esq. to practice in Nevada pursuant to Nevada Supreme Court Rule 42 (SCR 42).

Mr. Lipshutz, 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 California (attached hereto as Ex. B), Certificate of Good Standing from the District of Columbia (attached hereto as Ex.

C), Certificate of Good Standing from Massachusetts (attached hereto as Ex. D), and the State Bar of Nevada Statement (attached hereto as Ex. E).

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

DATED this 19th day of April, 2021.

/s/ Maximilien D. Fetaz

MAXIMILIEN D. FETAZ, ESQ.

Nevada Bar No. 12737

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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 April 19, 2021.

/s/ Wendy Cosby
an employee of Brownstein Hyatt Farber Schreck,
LLP

EXHIBIT A

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

Joshua Seth Lipshutz, Petitioner, respectfully represents:

First	Middle Name	Last
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1. Petitioner resides at 5510 Cornish Road
Street Address

Bethesda, Montgomery, Maryland
City County State

20814, ~~(202)~~ 955-8217 650-283-5934.
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 Avenue, NW
Street Address

City County State

_____, _____, _____
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 June 1 of 2006, petitioner has been, and presently is, a member of good standing of the bar of the highest court of the State of California 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:

DATE ADMITTED

See Exhibit A

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

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

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

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

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 B

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

(must be the same as the signature on the Nevada Counsel consent page)

who has offices at Brownstein Hyatt Farber Schreck, LLP
 —, Firm Name/Company

89106, (702) 464-7083
Zip Code Phone Number

NAME _____

See Exhibit C	See Exhibit C
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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, Joshua S. Lipshutz , 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.

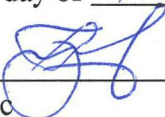
DATED this 27 day of February, 2021


Petitioner/Affiant (blue ink)

STATE OF Maryland)
COUNTY OF Montgomery) ss

Subscribed and sworn to before me

this 27 day of February, 20 21


Notary Public



AZIZ BEKISHOV
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires February 28, 2022

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. Fataz 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 26th day of March, 2021

[Signature]
Nevada Counsel of Record (blue ink)

STATE OF Nevada)
) ss
COUNTY OF Clark)

Subscribed and sworn to before me

this 26th day of March, 2021

Wendy Cosby
Notary Public



WENDY COSBY
A Notary Public of Nevada
My Commission Expires March 28, 2021
No. 08-8015-1

Joshua S. Lipshutz**Jurisdictions / Admissions to Practice**

Jurisdiction/Court	Admitted	Status
U.S. SUPREME COURT	November 2, 2009	Active/Good Standing
Federal Appellate Courts		
U.S. Court of Appeals, First Circuit (Bar No. 1175603)	June 24, 2016	Active/Good Standing
U.S. Court of Appeals, Second Circuit	September 21, 2016	Active/Good Standing
U.S. Court of Appeals, Third Circuit	September 9, 2016	Active/Good Standing
U.S. Court of Appeals, Fourth Circuit	October 30, 2013	Active/Good Standing
U.S. Court of Appeals, Fifth Circuit	October 2, 2014	Inactive
U.S. Court of Appeals, Sixth Circuit	September 25, 2014	Active/Good Standing
U.S. Court of Appeals, Ninth Circuit	October 6, 2010	Active/Good Standing
U.S. Court of Appeals, Tenth Circuit	July 12, 2013	Active/Good Standing
U.S. Court of Appeals, Eleventh Circuit	October 23, 2013	Active/Good Standing
Federal Courts		
U.S. District Court, Northern District of California	October 26, 2010	Active/Good Standing
U.S. District Court, Central District of California	February 24, 2010	Active/Good Standing
U.S. District Court, District of Massachusetts	May 18, 2010	Active/Good Standing
U.S. District and Bankruptcy Courts for DC	December 3, 2018	Active/Good Standing
U.S. District Court for Southern District of California	July 10, 2020	Active/Good Standing
U.S. District Court for District of Colorado	January 25, 2021	Active/Good Standing
State Courts		
CALIFORNIA SUPREME COURT, BAR NO. 242557	June 1, 2006	Active/Good Standing
MASSACHUSETTS SUPREME COURT, BAR NO. 675305	December 2, 2009	Active/Good Standing
DC COURT OF APPEALS, BAR NO. 1033391	July 8, 2016	Active/Good Standing

Exhibit B

Date of Application	Name	Cause	Title of Court, Administrative Body, or Arbitrator	Was Application Granted or Denied?
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. Lutz	A-16-733154-C	Eighth Judicial District	Granted
4/15/19	Katie M. Magallanes	A-16-733154-B	Eighth Judicial District	Granted

Exhibit C

<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. Wissbroeckker; 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



Supreme Court of California

JORGE E. NAVARRETE

Clerk and Executive Officer of the Supreme Court

CERTIFICATE OF THE CLERK OF THE SUPREME COURT

OF THE

STATE OF CALIFORNIA

JOSHUA SETH LIPSHUTZ

I, JORGE E. NAVARRETE, Clerk/Executive Officer of the Supreme Court of the State of California, do hereby certify that JOSHUA SETH LIPSHUTZ, #242557, was on the 1st day of June, 2006, duly admitted to practice as an attorney and counselor at law in all the courts of this state, and is now listed on the Roll of Attorneys as a member of the bar of this state in good standing.

*Witness my hand and the seal of the court
on the 1st day of April, 2021.*

JORGE E. NAVARRETE

Clerk/Executive Officer of the Supreme Court


By: 
Robert R. Toy, Senior Deputy Clerk

EXHIBIT C



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

Joshua Seth Lipshutz

was duly qualified and admitted on July 8, 2016 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 March
31, 2021.**

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Issued By:

[Signature]
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.

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

BE IT REMEMBERED, that at the Supreme Judicial Court holden at Boston within and for said County of Suffolk, on the **second** day of **December** A.D. **2009**, said Court being the highest Court of Record in said Commonwealth:

Joshua S. Lipshutz

being found duly qualified in that behalf, and having taken and subscribed the oaths required by law, was admitted to practice as an Attorney, and, by virtue thereof, as a Counsellor at Law, in any of the Courts of the said Commonwealth: that said Attorney is at present a member of the Bar, and is in good standing according to the records of this Court*.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this **sixth** day of **April**

in the year of our Lord **two thousand and twetny-one**.



MAURA S. DOYLE, Clerk

* Records of private discipline, if any, such as a private reprimand imposed by the Board of Bar Overseers or by any court, are not covered by this certification.
X3116

EXHIBIT E

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
18 appear under this rule. Absent special circumstances, repeated
19 appearances by any person or firm of attorneys pursuant to this rule
20 shall be cause for denial of the motion to associate such person.

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

26 (b) **Burden on applicant.** The applicant shall have the
27 burden to establish special circumstances and good cause
28 for an appearance in excess of the limitation set forth
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.

1. DATE OF APPLICATION: 3/29/2021

2. APPLYING ATTORNEY: Joshua Seth Lipshutz, Esq.


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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 April 13, 2021

9 
10 Suzy Moore
11 Member Services Admin.
12 Pro Hac Vice Processor
13 STATE BAR OF NEVADA
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