

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed
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APPELLANT'S APPENDIX
VOLUME 15

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	<u>Exhibit A</u> : Minute Order for March 31, 2021		12	2669-2671
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	<u>Exhibit F</u> : Order on Motion to Intervene to Enforce Settlement [April 22, 2021]		12	2699-2711
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	<u>Exhibit 2</u> : April 1, 2021 Email Correspondence from Russo's Counsel re proposed Order		13	2735-2736
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	<u>Exhibit 5</u> : April 1, 2021 Email Correspondence from Sunrise's Counsel re Order		13	2747-2749
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Kozmary Center for Pain Management

2851 El Camino Ave, Ste 101
Las Vegas, NV 89102
702.380.3210 fax 702.380.3212

Patient Name: Simone Russo
Date: 03/26/2015
Notes: ~~RIGHT LMBB~~ L2/3 L3/4 L4/5 L5/S1
Diagnosis: L4 RFA

Location: Kozmary Center for Pain Management

Start Time:

2:01 pm ✓

% Relief

100% ✓

Finish Time:

2:12 pm ✓

Fluoro Time:

19 ✓

Pump Trial Results ___%relief VAS___to___

724.2 ✓

NStim Trial Results

721.3 ✓

Pump Study Results

Comments:

Drug	Amount (ml)	Lot#	Expiration
<input type="checkbox"/> Marcaine 0.5%	<u>4</u>	<u>4509000</u>	<u>9/1/14</u>
<input type="checkbox"/> Betamethasone 6mg/mL	<u>1</u>	<u>410700</u>	<u>10/16</u>
<input type="checkbox"/> Lidocaine 2%	<u>10.5</u>	<u>38-234-DK</u>	<u>2/1/16</u>
<input type="checkbox"/> Omnipaque 300i/mL	<u>1</u>	LOT 12568608 OMNIPACQUE 300 mg/mL	<u>9/13/17</u>
<input type="checkbox"/> Other			

RCPM Procedure Record

Date: 03/26/15 Time: 12:54 Initials: RL Allergies Reviewed: ☐ Latex ☐ Betadine ☐ Contrast

Patient Identified: ☒ Verbal Procedure/site confirmed and patient verbalizes understanding ☒ Yes ☐ No N/A

Ride: ☒ Yes ☐ No Name: Barbara Phone: 702-792-4077

Blood Thinners: ☒ Yes ☐ No Last dose: _____

☐ NSAIDS ☐ Aspirin ☐ Persantine ☐ Plavix ☐ Effient ☐ Ticlid ☐ Warfarin ☐ Pradaxa ☐ Xarelto

NPO Since: 8:00am LMP: _____ Pregnancy test: _____ Hysterectomy: ☐ Yes ☐ No

Pain Scale: ☐ 0-1 ☒ 2-3 ☐ 4-5 ☐ 6-7 ☐ 8-9 ☐ 10

Heplock: ☐ Yes ☒ No

IV site: _____ Size: _____ Started by: _____ Solution: _____ Removed by: _____ Site: ☐ CDI ☐ Red/swollen

Antibiotic: ☐ Yes ☐ No Drug: ☐ Ancef 500mg ☐ IV ☐ IM Time: _____

B/P: _____ P: _____ R: _____ O2 Sat %: _____

Intra op: Time Start: 2:01 AM/PM AM Time Ended: 2:12 AM/PM PM

Procedure: (+) Lumbar RF Position: ☒ Prone ☐ Supine ☐ Sitting ☐ (R) Side ☐ (L) Side

Grounding Pad Site: (+) calf ☐ N/A Site Condition: ☒ CDI ☐ Red

O2 @ _____ Via: ☐ Nasal Cannula ☐ Mask Tolerance of Procedure: ☒ Well ☐ Fair ☐ Poor

Procedure Nurse: Sarah Lindstrom, RN Radiology Technician: Carlos Rios

Time: AM/PM	BP	Pulse	O2 Sat %	Time AM/PM	Medication	Site	Initials
<u>2:05</u>	<u>171/95</u>	<u>82</u>	<u>97</u>				
<u>2:07</u>	<u>171/94</u>	<u>81</u>	<u>95</u>				
Post op:							
<u>2:13</u>	<u>171/103</u>	<u>81</u>	<u>97</u>				

Discharge: ☒ Ambulatory ☐ Wheelchair ☐ Walker ☐ Cane ☐ Self ☒ With Responsible Adult Verbalizes Understanding: ☒ Yes ☐ No

Pain Level Upon Discharge: 0 Time Discharged: 2:15pm Copy of Discharge Instructions Given To: ☐ Patient ☐ Responsible Adult

Nurse's Notes: _____

% Improvement: 100

Simone F Russo
09/05/1942

Patient Identification

Kozmary Center
Steven V. Kozmary, M.D.

2851 El Camino Ave., Suite 101 • Las Vegas, Nevada 89102

12 SIMONE RUSSO

Patient Identification

RADIOFREQUENCY REPORT

Simone Russo

3/26/15

BURN 1	<input checked="" type="radio"/> Auto Temp <input type="radio"/> Auto Pulsed <input type="radio"/> Manual Pulsed	Temp: <u>80</u> °C Time: <u>90</u> Seconds
BURN 2	<input type="radio"/> Same as previous <input type="radio"/> Auto Temp <input type="radio"/> Auto Pulsed <input type="radio"/> Manual Pulsed	Temp: _____ °C Time: _____ Seconds
BURN 3	<input type="radio"/> Same as previous <input type="radio"/> Auto Temp <input type="radio"/> Auto Pulsed <input type="radio"/> Manual Pulsed	Temp: _____ °C Time: _____ Seconds

LEVEL <input checked="" type="radio"/> Left <input type="radio"/> Right	Sensory (50Hz)	Motor (2Hz)	Cannula Gauge x Length x Tip	Average Impedance (Ohms) Burn 1	Average Impedance (Ohms) Burn 2	Average Impedance (Ohms) Burn 3
L2	—	-2.0	20g	239		
L3	—	-2.0	20g	203		
L4	—	-2.0	20g	193		
L5	—	-2.0	20g	243		
S1	—	-2.0	20g	184		

- For bilateral, document on the back of this sheet

- Grounding Pad applied to: ☐ Left Thigh ☐ Left Calf ☐ Right Thigh ☒ Right CalfLot # / Expiration: _____ ☒ See stickerSite post-procedure: ☒ Clean / Intact ☐ Other: _____

- Notes:

Operator Signature: Dundrum / Initials DR

Recording Person Signature: _____ / Initials _____

- Same as operator ☒

Kozmary Center
 for Pain Management

 2851 El Camino Ave, Ste 101
 Las Vegas, NV 89102
 702.380.3210 fax 702.380.3212

 3M
 8149F
 LOT 2017-08LE
 2017-08

RUSSO
SIMONE
LT LMBB
PRUS03121245
KOZMARY

09/05/1942

KOZMARY CNTR FOR PAIN MGM
03/12/2015
12:45:44 PM

38 
54 

120 kVp
3.37 mA

1



OEC



RUSSO
SIMONE
LT LMBB
PRUS03121245
KOZMARY

09/05/1942

KOZMARY CNTR FOR PAIN MGM
03/12/2015
12:46:12 PM

41 
55 

119 kVp
3.51 mA

2



OEC



RUSSO
SIMONE
LT LMBB
PRUS03121245
KOZMARY

09/05/1942

KOZMARY CNTR FOR PAIN MGM
03/12/2015
12:47:14 PM

37 
56 



120 kVp
3.37 mA

3

OEC



RUSSO
SIMONE
PRUS03121245

KOZMARY CNTR FOR PAIN MGM
03/12/2015
12:47:28 PM

KOZMARY

09/05/1942

35 ☀
61 🌙



118 kVp
3.66 mA

4

OEC



RUSSO
SIMONE
RT LMBB
8282
KOZMARY

09/05/1942
M

KOZMARY CNTR FOR PAIN MGM

04/23/2015

1:25:01 PM

45 
59 



120 kVp
3.37 mA

1

OEC



RUSSO
SIMONE
RT LMBB
8282
KOZMARY

09/05/1942
M

KOZMARY CNTR FOR PAIN MGM
04/23/2015
1:25:24 PM

43-
60 

120 kVp
3.37 mA

2



OEC



RUSSO
SIMONE
RT LMBB
8282
KOZMARY

KOZMARY CNTR FOR PAIN MGM
04/23/2015
1:26:33 PM

09/05/1942
M

34-
63-

120 kVp
3.37 mA

3

OEC



RUSSO
SIMONE
RT LMBB
8282
KOZMARY

09/05/1942
M

KOZMARY CNTR FOR PAIN MGM
04/23/2015
1:26:39 PM

38-
62-

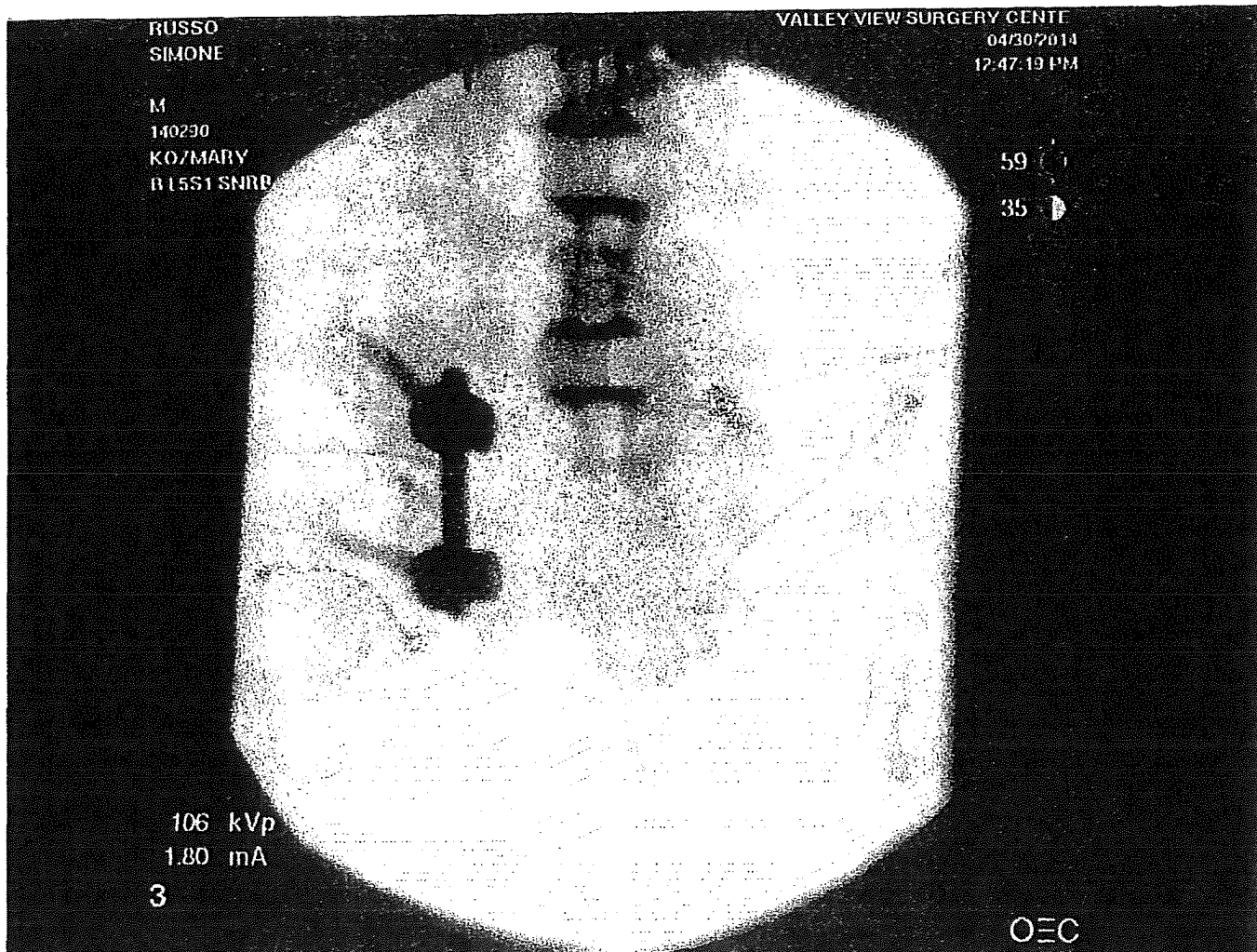
120 kVp
3.37 mA

4



OEC





NAME: RUSSO, SIMONE
ACT#: 140290
DOB: 09/05/42 AGE: 71
DR: KOZMARY, STEVEN M. D.
DOS: 04/30/14 SEX: M

TIMOTHY L. SAMS, PH.D.**PAIN PSYCHOLOGY**

Regus 7545 Irvine Ctr. Irvine, CA (855) 388-PACE	Regus 11801 Pierce St. Riverside, CA (855) 388-PACE	P.M.A. 3620 Atlantic Ave Long Beach, CA (855) 388-PACE	Parc Executive Suites 77564 Country Club Dr. Palm Desert, CA (388) 388-PACE	Regus 3960 Howard Hughes Las Vegas, NV (855) 388-PACE	Regus 2375 E. Camelback Phoenix, AZ (855) 388-PACE	Plaza Exec Suites 6909 W. Ray Rd Chandler, AZ (855) 388-PACE
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PSYCHOLOGICAL CLEARANCE FOR SPINAL CORD STIMULATOR

PATIENT: Simone Russo DATE: 05/23/14 LOC: LV REF DR: Kozmary TIME: 0900-0945 hrs

The patient is a 71 year old, married, White, male whom you referred for determination of psychological clearance for trial and implantation of neurostimulator (SCS). He is S/P multilevel spine surgery. He reported chronic pain in his low back and legs. He receives pain treatment by P.T. His immediate pain is 0/10 with daily variation from 0/10-9/10. He described his diagnosis as, "radiculopathy, stenosis" with a prognosis of, "same or worse." He described his treatment goal for SCS as, "less pain, less meds." He described his coping level as good with strategies including: distraction, still working in home. He reported behavioral avoidance through resting of 8/16 waking hours and stands 2/16 hours. Sleep problems include: EMA X 2-3. Additional medical problems include: HTN. He takes prescribed Flomax, sildenafil, amlodipine, HCTZ, Opana ER 10mg, Oxycodone 15mg SID.

The patient reported history of psychopathology. He reported history of mental health TX X 1, but not substance abuse treatment. He denied history of ETOH/substance abuse. Current alcohol consumption is none. He does not use THC.

The patient lives with his wife. He described his marriage of 25 years as good. He has two children. He visits family or friends daily and reported good social support. He is a nonsmoker and has one caffeinated beverage per day. He is 5'9" tall and weighs 200 lbs. He does not exercise. He does perform daily, self-directed physical therapy. His vocational/disability status is: SSA, He completed 24 years of education and received his M.D. He denied psychosocial stressors.

The patient has moderate pain behavior that is consistent with pain report. He ambulates with a walker. He was alert and fully oriented. There were no A/V hallucinations, delusions, paranoid ideation, loosening of association, or ideas of reference. Speech was spontaneous, goal directed, and normal in rate. Mood was euthymic with affect that was full and congruent with speech. He did not endorse suicidal ideation. There was no evidence of cognitive impairment. Intelligence is estimated in the superior range. Global insight and judgment were good. Formal Mental Status Testing was conducted and was within normal limits for his age.

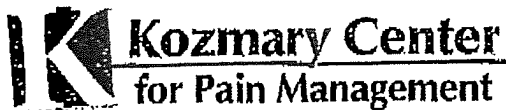
Review of medical records was consistent with patient self-report. The patient was administered a battery of psychological testing with results as follows. McGill Pain Questionnaire score of 14 reflects mild suffering beyond pain sensation. Visual Analog Pain scale score was 7-9. His Pain Drawing documents pain in his legs. Oswestry Disability Questionnaire score of 28 reflects severe disability. Beck Anxiety Inventory score of 16 reflects mild anxiety. Beck Depression Inventory score of 8 reflects minimal depression. Beck Hopelessness Scale score of 2 reflects minimal hopelessness.

In summary, the patient demonstrated a mild chronic pain syndrome with no depression, anxiety, or hopelessness. His Medical Insight is excellent. Medical and Premorbid Coping Style is excellent. Quality of Lifestyle is fair. Mental Status is excellent. Functional Motivation is excellent. His tendency to somaticize stress is minimal. He does have realistic goals for SCS. The factors supporting his candidacy for SCS outweigh those contravening. He was educated at length about the procedure and all questions were answered. He is considered to be an excellent candidate for neurostimulation.

CLEARANCE: The patient is cleared psychologically for SCS trial and implant.

Multiaxial Diagnosis: Axis I: Pain Disorder II: None III: Chronic Pain IV: none V: 85

Timothy L. Sams, Ph.D., Rehabilitation and Pain Psychologist/PY0682

**Steven V. Kozmary, M.D.**Board Certified: American Board of Anesthesiology,
Subspecialty Certification in Pain Management
American Academy of Pain Management**FAX**
702-380-3212**REFERRAL FORM****Patient Information**

Date: 02/03/16 DOB: 09/05/42
Patient Name: Simone Russo SS#: _____
Address: 3729 Green Crest Drive City: Las Vegas State: NV Zip: 89121
Cell: 702-277-8824 Home: 702-792-4077 Work Phone: _____
E-mail: _____

Insurance Information

Primary Insurance: Medicare Secondary Insurance: _____
Workers' Comp Ins: _____ MVA Ins: _____
Attorney Lien with: _____ Case Worker: _____ Phone: _____

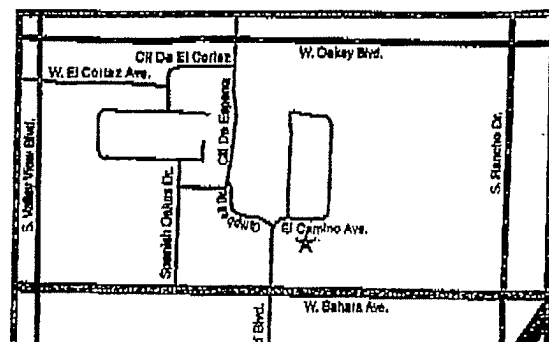
DiagnosisFor: SCS trial

- | | |
|---|---|
| <input type="checkbox"/> Consultation | <input type="checkbox"/> Transfer of Case |
| <input type="checkbox"/> Evaluation & Therapy | <input type="checkbox"/> 2nd Opinion |
| <input checked="" type="checkbox"/> Pain Management | <input type="checkbox"/> Diagnostic Testing |

Referring Physician Information

Physician Name: John S. Thalgett, M.D.
Contact Person: Jenny Office Phone: 702-898-8370 Fax #: 702-898-9642

2851 El Camino Ave.
Suite 101
Las Vegas, Nevada 89102
702-380-3210

**RUSSO-01743**

45 of 55

TRAFER

Simone F Russo, DOB : 9/5/1942

SONORAN MEDICAL IMAGING
7455 W. Washington Ave #120
Las Vegas Nevada 89128
702-804-6665



Referring physicians please contact radiologists at (775) 283-3025 for report inquiries

JOHN THALGOTT, M.D.
600 SOUTH RANCHO DR STE 107
LAS VEGAS, NV 89106

Patient: RUSSO, SIMONE
Patient ID #: 0000000G40249
Exam Date: 6/04/2014
Auth#:

DOB: 9/05/1942

Accession: 2014E46DBXLW
MR#

SONORAN IMAGING CENTER

PROCEDURE: CT LUMBAR SPINE WITHOUT CONTRAST

COMPARISON: CT LSPINE WO CON, 9/17/2013.

INDICATIONS: LBP

TECHNIQUE: CT images of the lumbar spine were obtained without contrast and with multiplanar reconstructions.

FINDINGS:

PARASPINAL TISSUES: No soft tissue mass or swelling.

BONES: Dictation is again noted to be status post L2-3 through L4-5 interspinous fusion with L2-3 and L3 for discectomy and disc graft placement. Patient has undergone interval left L4-L5 posterior fixation with left pedicle screws and an interconnecting rod. There has been interval development of destructive endplate changes at L5-S1 with interval widening of the disc space.

ALIGNMENT: No significant scoliosis or spondylolisthesis.

LUMBAR DISC LEVELS

- L1-L2:** No significant protrusion identified. There is mild disc bulging again seen with mild facet arthropathy and ligamentum flavum thickening. The thecal sac is narrowed to approximately 8 mm in AP dimension. No osseous foraminal stenosis.
- L2-L3:** Status post discectomy. There is extensive streak artifact from disc prosthesis hardware. Facet hypertrophy is again noted. A spur along the medial aspect of the right facet joint is again seen mildly narrowing the neural foramen. The left neural foramen is patent.
- L3-L4:** Streak artifact from this hardware is again demonstrated limiting evaluation. Facet arthropathy is again demonstrated bilaterally. There appears to be a least mild thecal sac narrowing not significantly changed with an AP urogram of approximately 9 mm. No osseous foraminal stenosis.
- L4-L5:** A diffusely bulging annulus is again demonstrated. There is narrowing of the thecal sac also again demonstrated with an AP dural diameter approximately 9 mm. Bilateral facet arthropathy is again demonstrated. Mild osseous foraminal narrowing is again noted bilaterally.
- L5-S1:** There has been interval development of destructive endplate changes with widening of the disc space. There is lucency surrounding the right S1 screw concerning for loosening versus infection. Thecal sac is not well evaluated due to streak artifact but appears at least mildly narrowed. Destructive changes involve the bilateral facets which is new.

OFFERING: CT, High Field Open MRI, 1.5 MRI, PET, Diagnostic X-ray, Nuclear Medicine, Ultrasound, Digital Mammography with Computer-Aided Diagnosis, Stereotactic Breast Biopsy, Bone Densitometry Scanning, Spine and Pain Management, Interventional Radiology.

This report is based solely on radiological examination – Correlation with clinical examination is essential.

www.GreatBasinImaging.com

Continued Report - Page 2 of 2

JOHN THALGOTT, M.D.
600 SOUTH RANCHO DR STE 107
LAS VEGAS, NV 89106

SONORAN IMAGING CENTER

Patient: **RUSO, SIMONE**
Patient ID #: 0000000G40249 **DOB:** 9/05/1942
Exam Date: 6/04/2014 **Accession:** 2014E46DBXLW
Auth#: **MR#**

CONCLUSION:

1. Interval development of destructive endplate changes and widening of the disc space at L5-S1 which is concerning for osteomyelitis discitis. New right pedicle screws are present at L5 and S1 with prominent lucency surrounding the S1 screw concerning for loosening which may be related to infection. Correlation with white count and CRP levels is recommended. MRI of the lumbar spine with gadolinium may be helpful for further evaluation.

2. Stable appearance otherwise of posterior interspinous fusion from L2-L5 and L2-3 and L3-4 disc grafts.

3. Redemonstration of multilevel spondylotic change with acquired spinal stenosis at several levels of mild degree as outlined.

Dictated and Electronically Authenticated by: Ryan Berecky, M.D. on 6/05/2014 at 8:02
Proofread by: Ryan Berecky, M.D. on 6/05/2014 at 8:02

OFFERING: CT, High Field Open MRI, 1.5 MRI, PET, Diagnostic X-ray, Nuclear Medicine, Ultrasound, Digital Mammography with Computer-Aided Diagnosis, Stereotactic Breast Biopsy, Bone Densitometry Scanning, Spine and Pain Management, Interventional Radiology.

This report is based solely on radiological examination – Correlation with clinical examination is essential.

www.GreatBasinImaging.com



Pueblo Medical Imaging
 8551 W. Lake Mead Blvd., Suite 150, Las Vegas, NV 89128
 2628 W. Charleston Blvd., Suite B, Las Vegas, NV 89102
 100 N Green Valley Pkwy, Suite 130, Henderson, NV 89074
 10561 Jeffrey's Street, Suite 111, Henderson, NV 89052
 7610 W Cheyenne, Suite 100 Las Vegas, NV 89129
 (702) 228-0031 • Fax (702) 228-7253 • www.pmiiv.com

Patient: RUSSO, SIMONE
 X-Ray #: 165671
 DOB: 09/05/1942
 Referring Doctor: JOHN THALGOTT MD

Exam Date: 09/21/2016
 Exam Time: 03:30 PM
 Accession #: 1369211

PROCEDURE: MRI C-SPINE WITHOUT CONTRAST

Date: Sep 21, 2016 04:00:00 PM

HISTORY: Neck pain burning sensation extending into right arm.

COMPARISON: MRI cervical spine dated 2/16/2012.

TECHNIQUE: Multiplanar multisequence MRI of the cervical spine was performed without intravenous contrast.

FINDINGS: Alignment of cervical spine is intact without significant subluxation. There is no bone marrow edema or acute compression fracture. The cervical spinal cord demonstrates normal signal intensity.

Axial images are partially degraded by patient motion artifact:

C2-C3: Posterior disc osteophyte complex resulting in mild central canal stenosis. There is no foraminal stenosis.

C3-C4: Posterior disc osteophyte complex resulting in moderate central canal stenosis. Neuroforamen are not able to be assessed on the axial images secondary to motion artifact.

C4-C5: Posterior disc osteophyte complex resulting in severe central canal stenosis. AP diameter of the thecal sac is approximately 6 mm. There is a probable severe bilateral foraminal stenosis, but again axial images are degraded by patient motion artifact.

C5-C6: Posterior disc osteophyte complex resulting in severe central canal stenosis. AP diameter of the thecal sac measures 5 mm. There is probable severe bilateral foraminal stenosis, but again assessment of the axial images is suboptimal secondary to motion artifact.

C6-C7: Posterior disc osteophyte complex resulting in moderate central canal stenosis. There is probable moderate bilateral foraminal stenosis, difficult to assess due to motion artifact.

C7-T1: No disc bulge or protrusion. No central canal stenosis or neural foraminal narrowing.

IMPRESSION:

1. Moderate to severe multilevel degenerative changes described above. Findings are similar to the previous study. Of note, axial images are significantly degraded by patient motion artifact.

Dictated By: Michael Sanders M.D. at 2016-09-21 16:34

Electronically Signed By: Michael Sanders M.D. at 2016-09-21 16:48

WORKSTATION: PMICH02

Electronically signed by Michael Sanders M.D. 09/21/2016 16:48:00

CENTER FOR DISEASES
AND SURGERY OF THE SPINE
600 S. Rancho Drive, Suite 107
Las Vegas, Nevada 89106
(702) 878-8370 • Fax (702) 878-9642

Patient: RUSSO, SIMONE Exam Date: 2/16/2012
X-Ray #: 165671 Exam Time: 15:14
DOB: 9/05/1942 Accession #: 309081
Referring Doctor: JOHN S. THALGOTT M.D.

Professionally Interpreted by Radiology Associates of Nevada

PROCEDURE:

MRI OF THE CERVICAL SPINE WITHOUT CONTRAST

HISTORY:

Pain, numbness, tingling.

TECHNIQUE:

The patient was imaged on a GE 1.5 Tesla magnet. The patient was imaged using sagittal T1, sagittal T2, and axial T2-weighted images.

IV CONTRAST: None.

FINDINGS:

There is no acute fracture identified. There is approximately 1-2 mm anterolisthesis of C4 on C5. There are varying degrees of disc desiccation throughout the cervical spine. No focal worrisome marrow lesion is seen.

At C2-C3, there is no focal disc herniation, central canal stenosis or neural foraminal narrowing.

At C3-C4, there is a minimal 1-2 mm posterior disc bulge. There is mild central canal stenosis with AP canal diameter of 8mm. There is bilateral uncovertebral spurring. There is severe right neural foraminal narrowing. There is mild to moderate left neural foraminal narrowing.

At C4-C5, there is 2 mm central disc protrusion. There is mild central canal stenosis. AP canal diameter is 7-8 mm. There is bilateral uncovertebral spurring. There is severe bilateral neural foraminal narrowing.

At C5-C6, there is 2-3 mm posterior disc bulge. There is effacement of the anterior CSF space. There is mild central canal stenosis with AP canal diameter of 7-8 mm. There is bilateral uncovertebral spurring contributing to severe bilateral neural foraminal narrowing.

At C6-C7, there is minimal 1-2 mm posterior disc bulge. There is mild central canal stenosis. AP canal diameter is 9 mm. There is bilateral uncovertebral spurring. There is moderate right neural foraminal narrowing. There is severe left neural foraminal narrowing.

At C7-T1, there is no focal disc herniation, central canal stenosis or neural foraminal narrowing.

IMPRESSION:

1. Multilevel cervical spondylosis, contributing to varying degrees of neural foraminal narrowing and mild degrees of central canal stenosis as delineated level by level above.



Radiology Associates Of Nevada
600 S. Rancho Dr., Suite 102
Las Vegas, Nevada 89106
(702) 938-1102 • Fax (702) 938-1106

Patient: RUSSO, SIMONE
X-Ray #: 165671
DOB: 09/05/1942
Referring Doctor: JOHN THALGOTT MD

Exam Date: 02/16/2012
Exam Time: 03:15 PM
Accession #: 309081

PROCEDURE: MRI C-SPINE WITHOUT CONTRAST

Dictated by: Joel Lin, DO on 2/16/2012 at 15:52
Transcribed by: AL on 2/16/2012 at 16:09
Electronically Signed on 2/16/2012 at 16:31

Thank you for referring this patient.



Pueblo Medical Imaging
 8551 W. Lake Mead Blvd., Suite 150, Las Vegas, NV 89128
 2628 W. Charleston Blvd., Suite B, Las Vegas, NV 89102
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 10561 Jeffrey's Street, Suite 111, Henderson, NV 89052
 7610 W Cheyenne, Suite 100 Las Vegas, NV 89129
 (702) 228-0031 • Fax (702) 228-7253 • www.pmiiv.com

Patient: RUSSO, SIMONE
 X-Ray #: 165671
 DOB: 09/05/1942
 Referring Doctor: JOHN THALGOTT MD

Exam Date: 09/21/2016
 Exam Time: 03:30 PM
 Accession #: 1369211

PROCEDURE: MRI C-SPINE WITHOUT CONTRAST

Date: Sep 21, 2016 04:00:00 PM

HISTORY: Neck pain burning sensation extending into right arm.

COMPARISON: MRI cervical spine dated 2/16/2012.

TECHNIQUE: Multiplanar multisequence MRI of the cervical spine was performed without intravenous contrast.

FINDINGS: Alignment of cervical spine is intact without significant subluxation. There is no bone marrow edema or acute compression fracture. The cervical spinal cord demonstrates normal signal intensity.

Axial images are partially degraded by patient motion artifact:

C2-C3: Posterior disc osteophyte complex resulting in mild central canal stenosis. There is no foraminal stenosis.

C3-C4: Posterior disc osteophyte complex resulting in moderate central canal stenosis. Neuroforamen are not able to be assessed on the axial images secondary to motion artifact.

C4-C5: Posterior disc osteophyte complex resulting in severe central canal stenosis. AP diameter of the thecal sac is approximately 6 mm. There is a probable severe bilateral foraminal stenosis, but again axial images are degraded by patient motion artifact.

C5-C6: Posterior disc osteophyte complex resulting in severe central canal stenosis. AP diameter of the thecal sac measures 5 mm. There is probable severe bilateral foraminal stenosis, but again assessment of the axial images is suboptimal secondary to motion artifact.

C6-C7: Posterior disc osteophyte complex resulting in moderate central canal stenosis. There is probable moderate bilateral foraminal stenosis, difficult to assess due to motion artifact.

C7-T1: No disc bulge or protrusion. No central canal stenosis or neural foraminal narrowing.

IMPRESSION:

1. Moderate to severe multilevel degenerative changes described above. Findings are similar to the previous study. Of note, axial images are significantly degraded by patient motion artifact.

Dictated By: Michael Sanders M.D. at 2016-09-21 16:34

Electronically Signed By: Michael Sanders M.D. at 2016-09-21 16:48

WORKSTATION: PMICH02

Electronically signed by Michael Sanders M.D. 09/21/2016 16:48:00



Scheduled
5/27/14 1:15
14 APR 28 9:35AM

Balance Questionnaire

- | | | |
|---|---|--|
| 1. Have you fallen in the past year? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do you lose your balance when standing? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Do you lose your balance when you initially get up? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Do you get dizzy, faint or have seizures? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Does it take you more than one try to get up out of a chair? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6. Does it take you more than one try to get up out of bed? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Do you trip over your own feet or objects on the floor? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 8. Do you use a walker, cane or need assistance to get around? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 9. Do you ever lose your balance? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 10. Do you feel unsteady or stagger when walking? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 11. Have you had a recent loss or decrease in your vision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 12. Have you had a recent loss or decrease in your hearing? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 13. Do you have numbness or loss of sensation/feeling in your legs? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 14. Have you ever had a stroke? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 15. Have you had an accident or injury that affected your balance? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 16. Do you have any health problems that affect your balance? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 17. Do you take any medications that affect your balance? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 18. Are you concerned about falling or losing your balance? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

If you have answered yes to one or more of the above questions, you may have a balance problem.
If you are concerned about falling, please speak with your physician.

Patient Name Printed: S. Russo DOB: 9/5/42

Patient Signature: C. Russo Date: 4/28/14

For Office Use Only

- ☒ I have reviewed the balance questionnaire.
- ☒ The patient is indicated for further workup including balance testing because of increased risk for falls.
- ☐ There is no evidence of increased risk of falls and no further testing is indicated at this time.

Steven Kozmary, M.D.

Date

4/28/14

Name: Simone RussoDate: 7/10/16
KOZMARY
 Pain Relief Center

Cognitive Assessment

Are you currently experiencing

- Sensation of not feeling right, being a little confused or unsteady
- Spells you would describe as feeling faint or as if you might pass out
- Events where you've experienced altered awareness
- Episodes of temporary confusion or brain fog
- Dizziness possibly accompanied by loss of awareness or confusion
- Difficulty finding the right words or expressing yourself

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

Have you been diagnosed with any of the following?

- Traumatic Brain Injury (TBI)
- Transient Ischemic Attack (TIA)
- Concussion or Post-Concussion Syndrome
- Dementia
- Stroke
- Brain Injury, Brain Surgery, or Brain Tumors

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

If yes, have you noticed?

- Do you ever lose track of time or experience zoning out
- Do you ever have difficulty recalling the details of conversations you just had or TV show you just watched

<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No



PUEBLO MEDICAL IMAGINGPO BOX 30077 DEPT 306
SALT LAKE CITY, UT 841300102**STATEMENT OF ACCOUNT**

8/27/2016 - 5/16/2017

SIMONE RUSSO
3729 GREENCREST DR
LAS VEGAS, NV 89121Patient Name: SIMONE RUSSO
Account: 165671

Visit Date	Description	Doctor	Charges	Insurance Payments	Patient Payments	Adjustments	Insurance Pending	Patient Owes
9/21/2016	MRI C-SPINE WITHOUT CONTRAST	SANDERS,	\$1,650.00	\$226.96	\$0.00	\$1,423.04	\$0.00	\$0.00
Total			\$1,650.00	\$226.96	\$0.00	\$1,423.04	\$0.00	\$0.00



Pueblo Medical Imaging

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 10561 Jeffrey's Street, Suite 111, Henderson, NV 89052
 5495 S. Rainbow Blvd Suite 101 Las Vegas, NV 89118
 (702) 228-0031 • Fax (702) 228-7253 • www.pmilv.com

Patient: RUSSO, SIMONE

X-Ray #: 165671

DOB: 09/05/1942

Referring Doctor: JOHN THALGOTT MD

Exam Date: 09/21/2016

Exam Time: 03:30 PM

Accession #: 1369211

PROCEDURE: MRI C-SPINE WITHOUT CONTRAST

Date: Sep 21, 2016 04:00:00 PM

HISTORY: Neck pain burning sensation extending into right arm.

COMPARISON: MRI cervical spine dated 2/16/2012.

TECHNIQUE: Multiplanar multisequence MRI of the cervical spine was performed without intravenous contrast.

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C5-C6: Posterior disc osteophyte complex resulting in severe central canal stenosis. AP diameter of the thecal sac measures 5 mm. There is probable severe bilateral foraminal stenosis, but again assessment of the axial images is suboptimal secondary to motion artifact.

C6-C7: Posterior disc osteophyte complex resulting in moderate central canal stenosis. There is probable moderate bilateral foraminal stenosis, difficult to assess due to motion artifact.

C7-T1: No disc bulge or protrusion. No central canal stenosis or neural foraminal narrowing.

IMPRESSION:

1. Moderate to severe multilevel degenerative changes described above. Findings are similar to the previous study. Of note, axial images are significantly degraded by patient motion artifact.

Dictated By: Michael Sanders M.D. at 2016-09-21 16:34

Electronically Signed By: Michael Sanders M.D. at 2016-09-21 16:48

WORKSTATION: PMICH02

Electronically signed by Michael Sanders M.D. 09/21/2016 16:48:00

RUSSO-01756

PATIENT INFORMATION RECORD

Patient Name : Russo, Simone
 Date of Birth : 09/05/1942
 Address : 3729 GREENCREST DR
 City, State, Zip : LAS VEGAS, NV 89121
 Home Phone Number : 702/792-4077
 Daytime Phone Number :
 Social Security Number: [REDACTED]
 Emergency Contact :
 Emergency Phone :
 Patient Employer :
 Employer Address :

Marketing Source :

PLEASE ENTER (OR CONFIRM) INSURANCE INFORMATION
 Primary Insurance:

Insurance: P MEDICARE
 ID#: [REDACTED] A

Group#:

Policy Holder: SIMONE RUSSO
 Date of Birth: 09/05/42
 Address: 3729 GREENCREST DR
 LAS VEGAS, NV 89121

Insured's Employer (and address):

Secondary Insurance:

Insurance: S AMA INSURANCE AGENCY
 ID#: 9500892319
 Group#: NONE
 Policy Holder: SIMONE RUSSO
 Date of Birth: 09/05/42
 Address: 3729 GREENCREST DR
 LAS VEGAS, NV 89121

Insured's Employer (and address):

What physicians do you want to receive a copy of today's report?

By signing this form you are acknowledging all information is correct.

RUSSO-01757

PATIENT INFORMATION RECORD

Patient Name : Russo, Simone
 Date of Birth : 09/05/1942
 Address : 3729 GREENCREST DR
 City, State, Zip : LAS VEGAS, NV 89121
 Home Phone Number : 702/792-4077
 Daytime Phone Number :
 Social Security Number: [REDACTED]
 Emergency Contact :
 Emergency Phone :
 Patient Employer :
 Employer Address :

Marketing Source :

PLEASE ENTER (OR CONFIRM) INSURANCE INFORMATION
 Primary Insurance:

Insurance: P MEDICARE
 ID#: [REDACTED] A

Group#:

Policy Holder: SIMONE RUSSO
 Date of Birth: 09/05/42
 Address: 3729 GREENCREST DR
 LAS VEGAS, NV 89121

Insured's Employer (and address):

Secondary Insurance:

Insurance: S AMA INSURANCE AGENCY
 ID#: 9500892319
 Group#: NONE
 Policy Holder: SIMONE RUSSO
 Date of Birth: 09/05/42
 Address: 3729 GREENCREST DR
 LAS VEGAS, NV 89121

Insured's Employer (and address):

What physicians do you want to receive a copy of today's report?

By signing this form you are acknowledging all information is correct.



RUSSO-01758

MRI SCREENING AND HISTORY

Welcome to Pueblo Medical Imaging. MRI is a technique for studying the body with radio waves and a powerful magnet. You will lie on a table which will move you to an area inside the open magnet. A device will be positioned near the area we are studying. As the study is performed, you will hear a tapping noise like a drum. **You must lie perfectly still for the entire exam.** During the study the technologist will talk to you over the intercom at the start of each scan. A typical study lasts 30 to 60 minutes.

Name **SIMONE RUSSO**

Weight **210**

Height

Do you have any of the following:

Heart Pacemaker?	No	
Aneurysm clips in the brain?	No	
Implanted drug infusion pump?	No	
Bio-or neurostimulators?		No
Cochlear implant or internal hearing aid?	No	
Artificial heart valve?	No	
Eye injury while working with metal at any time in the past?	No	
Metal fragments near the spine?	No	
Any other known metal in the body?	No	

Could you be pregnant or are you breast feeding? No

Do you have anemia or a blood disorder? No

Previous seizure disorder? No

Allergies? No

If yes, list.

If the answer to any of these questions is yes, the study may be hazardous. Please tell the technologist this now.

Do not enter the scan room with any of these items: hearing aids, glasses, removable dental work, jewelry, watch, wallet, money clip, pens, pencils, keys, coins, pocket knife, metal zippers, buttons, belt buckles, credit cards, bank cards, hairpins, barrettes, bra, girdle, sanitary belt or safety pins. Damage could result or the metal could interfere with the study.

Sometimes when we study the head or spine, we inject a special drug, Magnevist, into the blood stream to improve the accuracy of the test. It makes abnormal areas stand out on the pictures. Only one patient in twenty will experience any problems with this drug and usually they are mild. Severe reactions can occur but are rare.

Patient's Signature ~

RUSSO-01759

Please take a few minutes to complete this short questionnaire. Detailed, specific answers will help our doctors interpret your study with greater accuracy. The information that we request has not been provided by your doctor.

Have you ever had this test before? No
 If yes, where?
 When?
 Result?

What problem or reason brings you in today? **NECK PAIN AND BURNING DOWN RT ARM**
NON TRAUMA

If the doctor has given a preliminary diagnosis
 it would be helpful for us to know it.

What date did your problem begin?

Were you injured? No
 When?
 How?

Have you had surgery in this area? No
 Operation types?
 Dates of surgery?
 Surgeon?
 Hospital?
 Was the surgery a success?

Have you had any other surgeries? No
 If yes, Please list.

Do you have a chronic illness (such as
 diabetes, hypertension, or emphysema?) No
 If yes, please list.

Do you have or **have you ever had** cancer? No
 What type?
 What treatment have you had?
 Is the cancer cured?

Patient Signature ~

RUSSO-01760

JAN-02-2018(TUE) 11:58

Pueblo Medical Imaging

(FAX)702 228 7253

P.002/002

**Pueblo Medical Imaging**

8551 W. Lake Mead Blvd., Suite 150, Las Vegas, NV 89128
2628 W. Charleston Blvd., Suite B, Las Vegas, NV 89102
100 N Green Valley Pkwy, Suite 130, Henderson, NV 89074
5495 S. Rainbow Blvd Suite 101 Las Vegas, NV 89118
(702) 228-0031 • Fax (702) 228-7253 • www.pmiiv.com

Patient: RUSSO, SIMONE

X-Ray #: 165671

DOB: 09/05/1942

Referring Doctor: COLBY P. YOUNG, MD

Exam Date: 12/18/2017

Exam Time: 02:23 PM

Accession #: 1505938

PROCEDURE: CHEST AP & LAT

INDICATION: Shortness of breath.

COMPARISON: No pertinent priors are available.

TECHNIQUE: PA and lateral views of the chest were obtained.

FINDINGS:

Cardiac size is normal and there is no widening of the upper mediastinum. The right hemidiaphragm is mildly elevated and there is adjacent atelectasis. There are no pleural findings. There is ACDF hardware and some surgical clips near the thoracic inlet.

IMPRESSION:

Elevated right hemidiaphragm suggests paralysis. There is some adjacent atelectasis.

Dictated By: Eric Biesbroeck M.D. at 2017-12-18 16:51:05

Electronically Signed By: Eric Biesbroeck M.D. at 2017-12-18 16:51:55

Workstation: G4ZMMD2-PC

Electronically signed by Eric Biesbroeck M.D. 12/18/2017 16:51:55

RUSSO-01761

Patient History ReportClient: **DESERT RADIOLOGY**Run date: **05-10-2018 11:34:25 AM****Guarantor Information**

RUSSO, SIMONE F
4617 MADREPERLA ST
LAS VEGAS, NV 891214911

Home Phone: (702) 792-4077

Work Phone:

Fax:

Address Ind: Unknown

Guarantor ID: 1021682-DSRT

Patient: RUSSO, SIMONE F**Patient ID:** 1021682 **DOB:** 9/5/1942 **Sex:** M

Primary: MES00 - MEDICARE OF NEVADA

Secondary: AM295 - AMA INSURANCE AGENCY NON

<u>Provider</u>	<u>DOS</u>	<u>Creation Date</u>	<u>Primary Date Filed</u>	<u>Service</u>	<u>Amount</u>	<u>Balance</u>
HOVANESEAN, ARMEN (21)	03/08/12	03/15/12	03/15/12	71020 - CHEST X-RAY 2VW FRONTAL&LATL	41.00	0.00
				04/06/12 - Non-covered Diagnosis	41.00	
				Insurance Write-Off SubTotal:	41.00	
SHIH, JIMMY (59)	03/21/12	03/28/12	03/28/12	72100 - X-RAY EXAM L-S SPINE 2/3 VWS	43.00	0.00
				05/02/12 - Check (CHE)	43.00	
				Guarantor Payment SubTotal:	43.00	
SHIH, JIMMY (59)	03/30/12	04/06/12	04/06/12	71010 - CHEST X-RAY 1 VIEW FRONTAL	31.00	0.00
				05/22/12 - Check (CHE)	31.00	
				Guarantor Payment SubTotal:	31.00	
BHANDERI, SUDIPKUMAR K. (72)	03/06/14	03/13/14	03/13/14	72133 - CT LUMBAR SPINE W/O & W/DYE	1,309.02	0.00
				03/27/14 - Medicare Payment (MCP)	143.96	
				Insurance Payment SubTotal:	143.96	
				04/23/14 - Check (CHE)	36.73	
				Guarantor Payment SubTotal:	36.73	
				03/27/14 - Medicare Non Allowed	1,128.33	
				Insurance Write-Off SubTotal:	1,128.33	
BHANDERI, SUDIPKUMAR K. (72)	03/06/14	03/13/14	03/13/14	72130 - CT CHEST SPINE W/O & W/DYE	1,309.01	0.00
				03/27/14 - Medicare Payment (MCP)	225.91	
				Insurance Payment SubTotal:	225.91	
				04/23/14 - Check (CHE)	57.63	
				Guarantor Payment SubTotal:	57.63	
				03/27/14 - Medicare Non Allowed	1,025.47	
				Insurance Write-Off SubTotal:	1,025.47	
BHANDERI, SUDIPKUMAR K. (72)	03/06/14	03/13/14	03/13/14	Q9967 - LOCM 300-399MG/ML IODINE,1ML	526.75	0.00
				03/27/14 - Medicare Payment (MCP)	23.74	
				Insurance Payment SubTotal:	23.74	
				04/23/14 - Check (CHE)	6.06	
				Guarantor Payment SubTotal:	6.06	
				03/27/14 - Medicare Non Allowed	496.95	
				Insurance Write-Off SubTotal:	496.95	

RUSSO-01787

Patient History ReportClient: **DESERT RADIOLOGY**Run date: **05-10-2018 11:34:25 AM**

CARDUCCI, MICHAEL (8)	11/01/16	11/03/16	11/03/16	71020 - CHEST X-RAY 2VW FRONTAL&LATL	117.00	0.00
				11/16/16 - Non-covered Diagnosis	117.00	
				Insurance Write-Off SubTotal:	117.00	
NGUYEN, VAN (29)	11/15/17	11/22/17	11/24/17	72125 - CT NECK SPINE W/O DYE	817.00	0.00
				12/28/17 - Commercial Payment (COP)	34.39	
				12/08/17 - Medicare Payment (MCP)	134.79	
				Insurance Payment SubTotal:	169.18	
				12/08/17 - Sequestration Writeoff	2.75	
				12/08/17 - Medicare Non Allowed	645.07	
				Insurance Write-Off SubTotal:	647.82	
HORWICH, PERRY (1053498147)	11/15/17	11/24/17	11/24/17	72131 - CT LUMBAR SPINE W/O DYE	817.02	0.00
				12/28/17 - Commercial Payment (COP)	23.38	
				12/08/17 - Medicare Payment (MCP)	91.67	
				Insurance Payment SubTotal:	115.05	
				12/08/17 - Sequestration Writeoff	1.87	
				12/08/17 - Medicare Non Allowed	700.10	
				Insurance Write-Off SubTotal:	701.97	
NGUYEN, VAN (29)	11/15/17	11/22/17	11/24/17	G9557 - CT/CTA/MRI/A NO THYR <1.0CM	0.00	0.00
NGUYEN, VAN (29)	11/15/17	11/22/17	11/24/17	G9637 - DOC >1 DOSE REDUC TECH	0.00	0.00
HORWICH, PERRY (1053498147)	11/15/17	11/24/17	11/24/17	G9637 - DOC >1 DOSE REDUC TECH	0.00	0.00
STEINBERG, TODD A. (80)	01/17/18	01/26/18	01/26/18	93970 - EXTREMITY STUDY	132.07	0.00
				02/21/18 - Commercial Payment (COP)	7.05	
				02/09/18 - Medicare Payment (MCP)	27.66	
				Insurance Payment SubTotal:	34.71	
				02/09/18 - Sequestration Writeoff	0.56	
				02/09/18 - Medicare Non Allowed	96.80	
				Insurance Write-Off SubTotal:	97.36	

Total Chgs: \$5,142.87	Total Pmts: \$886.97	Total WOs: \$4,255.90	Total Adjs: \$0.00	Total Bal: \$0.00
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RUSSO-01788





702-759-8600
WWW.DESERTRAD.COM



Patient Name:	RUSSO, SIMONE	Requested Date:	April 18, 2019 09:30
Date of Birth:	September 5, 1942	Report Status:	Final
Referring Physician:	THORNTON MD, JOSEPH	Procedure Description:	MR PELVIS DEFECTOGRAM W/O CONTRAST
Patient ID:	000255079	Requested Procedure:	1
Gender:	Male	Modality:	MR
Home Phone:	(702)792-4077	Accession Number:	511899284
Organization:	CRK		

Findings

Reporting MD: GUPTA MD, ASHOK
Dictation Time:
Transcriptionist: Not available
Transcription Date:

MRI PELVIS WITHOUT CONTRAST-PELVIC FLOOR DYNAMIC.: 4/18/2019 9:30 AM PDT

CLINICAL HISTORY: Constipation. Outlet dysfunction

TECHNIQUE: Multiple pulse images were obtained in multiple planes of the pelvis small field-of-view, thin section and high field strength, 3 Tesla. Images were obtained using provocative maneuvers including at rest, squeeze, clench, Valsalva, defecation and voiding.

COMPARISONS: None.

FINDINGS:

Anterior compartment:

The bladder base is positioned approximately 3.7 cm above the pubococcygeus line at rest. The bladder base is positioned approximately 2.5 cm above the pubococcygeus line at strain/evacuation. No anterior compartment prolapse/cystocele. The urethra has a normal vertical orientation without evidence of urethral hypermobility on voiding images. There is some funneling of the urethra as it enters the prostate. Please correlate for any intervention. Patient was unable to empty the bladder during the examination limiting the examination.

Posterior compartment:

The anorectal junction is approximately 2.2 cm below the pubococcygeal line (normal less than 2.5 cm) rest. The anorectal junction is approximately 5.1 cm below the pubococcygeal line (normal less than 2.5 cm) at strain/evacuation. This descent of the anorectal junction greater than 2.5 cm is consistent with descending perineal syndrome.

The anorectal angle measures 129 degrees (normal 108 to 127 degrees) at rest. The anorectal angle does not decrease on squeeze maneuvers measuring 133 degrees. The anorectal angle does not significantly increase during defecation measuring 127 degrees. There is moderate retention of rectal contents on postvoid images. Small anterior rectocele is seen. There is no rectal intussusception (prolapse) on defecation maneuvers.

No enterocele, peritoneocele, or sigmoidocele

Muscles:



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Patient Name:	RUSSO, SIMONE	Requested Date:	April 18, 2019 09:30
Date of Birth:	September 5, 1942	Report Status:	Final
Referring Physician:	THORNTON MD, JOSEPH	Procedure Description:	MR PELVIS DEFECTOGRAM W/O CONTRAST

The levator plate angle (angle of the levator plate with the pubococcygeal line) measures 21 degrees (normal less than 10 degrees). No definite defects are seen within the puborectalis muscle. There is a normal V-shaped configuration of the levator ani muscles on coronal images.

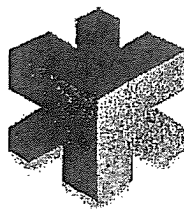
Subtly heterogeneous prostate is seen with some hypertrophy along the central zone, BPH. Seminal vesicles are grossly preserved. No free fluid in the pelvis. No lymph node enlargement. Small fat-containing inguinal hernias. The urinary bladder wall is subtly trabeculated.

IMPRESSION:

Posterior compartment prolapse identified with component of intussusception. Small anterior rectocele. Of note there is relatively little change in the anorectal angle with maneuvers. Incomplete emptying of the rectum is noted.

Limited emptying of the urinary bladder. Slight ectatic, following appearance of the prostatic urethra at the base the bladder. Please correlate with any previous instrumentation. There is evidence of BPH and trabecular bladder. Please correlate with PSA.

Electronically Signed By: GUPTA MD, ASHOK
Sign Date: 21-Apr-19 16:10



Doc-Request

www.docrequest.com

P. O. Box 530718, Henderson, NV 89053
Phone: 702-629-5189 Fax: 888-341-5040

Certificate of Medical Records Custodian

STATE OF NEVADA)

COUNTY OF CLARK)

NOW COMES Cecilia Roman

who after first duly sworn, deposes and says the following:

1. That the deponent is the **Copy Technician** in the Health Information Management Department and such capacity is the custodian of the Medical Records at

Desert Radiologists

2. That on Feb 12, 2018 the deponent received a release of information requesting medical records

pertaining to: Simone Russo

Date of Birth: 09/05/1942

3. That the deponent has examined the original or microfilmed original or scanned original of those medical records and has made a true and exact copy of them and that the reproduction of them attached hereto contains 9 pages of medical records and 0 of billing records and is true and complete.

☐ Films on CD ☐ Sheets of Films ☒ No Films ☐ No films requested

Films located at: Valley Hospital

Billing Records please contact facility at Chartswap at 855-879-7927

4. That the original of those medical records was made at or near the time of the acts, event, conditions, opinions, or diagnoses recited therein by or from information transmitted by a person with knowledge in the course of a regularly conducted activity of the deponent or the office or institution in which the deponent is engaged.
5. To the extent that the medical records being provided herewith contain medical records received from a different provider of health care, I am unable to make any representation as to the authenticity of such a records.

CERTIFICATION OF NO RECORDS:

A through search of our files, carried out under my direction using the specific information provided in your request ☐ revealed no documents, records, or other materials or images. It is to be understood that this does not mean that records do not exist under another spelling, name, or other classification.

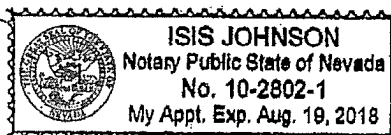
I declare under penalty of perjury that the foregoing is true and correct:

By: Cecilia Roman

Subscribed and Sworn to before me

This 12 day of February, 2018

Notary Signature ISIS JOHNSON



RUSSO-01791



702-759-8600
WWW.DESERTRAD.COM



MEDICAL IMAGING REPORT REPORT STATUS: FINAL

Name:	SIMONE RUSSO	DOB:	9/5/1942
Patient ID:	000255079	Gender:	Male
Exam Date:	11/16/2017 07:52 AM	Site:	EASTERN
Age:	75Y 4M	Acc #:	509484661
Exam Name:	CT LS SP WO CONTRAST 72131	Secondary Acc #:	509484661
Pt Status:			
Referrer:	BESS CHANG MD		
Ref1 Address:	8530 W SUNSET RD STE 350 LAS VEGAS, NV 89113		

CT LUMBAR SPINE:

CLINICAL HISTORY: ICD10: G6181-Chronic inflammatory demyelinating polyneuritis

COMPARISONS: CT exam of the lumbar spine dated March 6, 2014. CT exam of the lumbar spine dated January 19, 2014.

TECHNIQUE: Multidetector helical images were acquired. Axial, sagittal, and coronal reformatted series were generated. Dose reduction strategies were utilized.

CONTRAST: None.

FINDINGS:

The patient is status post anterior and posterior L2-S1 lumbosacral fusion. There is sclerosis involving the lumbar and sacral vertebral bodies at the fusion levels. There is vacuum phenomenon demonstrated at L4-L5, representing incomplete fusion at that level. Some vacuum phenomenon can be seen at L1-L2.

Patient is status post left L5 and S1 hemilaminectomy. There is some disruption and fluid demonstrated within the overlying paraspinous musculature on series 6 image 70.

There is posterior marginal ossified formation at L2-L3 that contributes to moderate central canal stenosis at that level. There is thickening of the ligamentum flavum and posterior marginal osteophyte formation present at L3-L4 contribute to severe central canal stenosis at that level. Assessment is limited by streak artifact. There is posterior marginal osteophyte formation and thickening of the ligamentum flavum contribute to severe central canal stenosis at L4-L5.

Osseous defect involving the posterior medial right iliac bone may reflect a site of bone graft harvest.

Continued...

Name: SIMONE RUSSO
Patient ID: 000255079

Date of Birth: 9/5/1942
Gender: Male
Location: EAS

The sacroiliac joint spaces are congruent. The visualized contents of the retroperitoneum and pelvis are unremarkable.

IMPRESSION:

Anterior and posterior L2-S1 lumbosacral fusion with left L5 and S1 hemilaminectomy.

Disruption of the paraspinous musculature and some ill-defined fluid along the operative approach to the L5 and S1 hemilaminectomies likely reflects postoperative change. No discrete seroma identified on this noncontrast examination. Infection is not excluded by imaging.

Multilevel central canal stenosis, perhaps worse at L3-L4 where marginal osteophyte formation contributes to severe central canal stenosis.

Report Electronically Signed by: PERRY HORWICH MD
Report Electronically Signed on: 11/17/2017 08:43 AM

Transcribed By:

Signed by: PERRY HORWICH MD
Finalized Date: 11/17/2017 08:43 AM

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702-759-8600
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f i+ t in

MEDICAL IMAGING REPORT REPORT STATUS: FINAL

Name:	SIMONE RUSSO	DOB:	9/5/1942
Patient ID:	000255079	Gender:	Male
Exam Date:	11/15/2017 04:46 PM	Site:	EASTERN
Age:	75Y 4M	Acc #:	509484654
Exam Name:	CT CERVICAL SP WO CONTRAST	Secondary Acc #:	509484654
	72125		

Pt Status:

Referrer: BESS CHANG MD

Ref1 Address: 8530 W SUNSET RD STE 350
LAS VEGAS, NV 89113

CLINICAL HISTORY: ICD10: G6181-Chronic inflammatory demyelinating polyneuritis

COMPARISON STUDIES: None currently available.

TECHNIQUE: Thin cut axial images were obtained through the cervical spine. Sagittal and coronal reformats were constructed from the source images. In accordance with CT protocols and the ALARA principle, radiation dose reduction techniques were utilized for this examination.

CONTRAST: None currently available.

FINDINGS: Patient is status post anterior cervical fusion from C4 through C6 with plate and screws. Partial corpectomy of C5 is seen within the intervertebral prosthesis. There is no acute fracture or malalignment. No significant prevertebral edema is identified. No paravertebral masses are present.

The nontransfixed disks demonstrate adequate height at all levels.

C2/3 : No significant canal or foraminal narrowing.

C3/4: Posterior protrusion is present resulting in mild canal narrowing. There is severe right and mild left foraminal narrowing present due to uncovertebral disease and facet disease.

C4/5: Posterior osteophyte complex is present resulting in mild to moderate canal narrowing. There is severe right and moderate to severe left foraminal narrowing due to uncovertebral disease and facet disease.

C5/6: Posterior osteophyte complex is present resulting in moderate to severe canal narrowing. Thecal sac diameter at midline is 6.5 mm. There is moderate to severe right and mild to moderate left foraminal narrowing present due to uncovertebral disease.

C6/7: Posterior disk osteophyte complex is present resulting in mild canal narrowing. There is

Continued...

Name: SIMONE RUSSO
Patient ID: 000255079

Date of Birth: 9/5/1942
Gender: Male
Location: EAS

moderate to severe left and moderate foraminal narrowing due to uncovertebral disease

C7/T1: No significant canal narrowing. There is moderate right and mild left foraminal narrowing present.

IMPRESSION:

1. Postop changes as above.
 2. Degenerative changes above notable for moderate to severe canal stenosis at the C5-6 level secondary to posterior ossified complex.
 3. Multilevel foraminal stenosis as above which is most severe on the right at C3-4 and C4-5.
- Clinical correlation recommended.

Report Electronically Signed by: VAN NGUYEN MD
Report Electronically Signed on: 11/16/2017 11:19 AM

Transcribed By:

Signed by: VAN NGUYEN MD
Finalized Date: 11/16/2017 11:19 AM

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MEDICAL IMAGING REPORT REPORT STATUS: FINAL

Name:	SIMONE RUSSO	DOB:	9/5/1942
Patient ID:	000255079	Gender:	Male
Exam Date:	11/1/2016 10:56 AM	Site:	EASTERN
Age:	75Y 4M	Acc #:	507811281
Exam Name:	XR CHEST PA LAT 2 VWS 71020	Secondary Acc #:	507811281
Pt Status:			
Referrer:	JOHN S THALGOTT MD		
Ref1 Address:	600 S RANCHO DR STE 107		
	LAS VEGAS, NV 89106		

XR CHEST 2 VIEWS

HISTORY: Preop

TECHNIQUE: Chest, two views (PA and lateral views).

COMPARISON: None.

FINDINGS: Bilateral nipple shadows appear to be present. The lungs appear clear. The heart size is normal. There is mild aortic calcification. There is no evidence of pneumothorax or pleural effusion. The osseous structures appear grossly unremarkable.

IMPRESSION:

No acute cardiopulmonary disease.

Report Electronically Signed by: MICHAEL CARDUCCI MD
Report Electronically Signed on: 11/1/2016 11:33 AM

Transcribed By:

Signed by: MICHAEL CARDUCCI MD
Finalized Date: 11/1/2016 11:33 AM

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Name:	SIMONE RUSSO	DOB:	9/5/1942
Patient ID:	500624777	Gender:	Male
Exam Date:	1/17/2018 05:41 PM	Site:	VALLEY HOSPITAL MEDICAL CENTER
Age:	75Y 4M	Acc #:	509857779
Exam Name:	US LE VENOUS DUPLEX BILATERAL 0	Secondary Acc #:	VAL01-US-18-000785
Pt Status:	Inpatient		
Referrer:	UNKNOWN PHYSICIAN		
Ref1 Address:	, NV		

ULTRASOUND BILATERAL LOWER EXTREMITY VENOUS DUPLEX

HISTORY: Pain and swelling. Progressive quadriparesis.

COMPARISON: None.

TECHNIQUE: Real-time ultrasound examination with permanent image recording was performed and reviewed on a PACS work station. Each vessel was evaluated for compressibility, Doppler flow, respiratory phasicity, and augmentation.

FINDINGS:

The bilateral common femoral, superficial femoral, popliteal, proximal greater saphenous, and proximal calf veins are compressible and patent. Normal respiratory phasicity and augmentation are present. There is no deep venous thrombosis. There is no superficial thrombophlebitis.

IMPRESSION:

No evidence for deep venous thrombosis

Report Electronically Signed by: TODD STEINBERG MD
Report Electronically Signed on: 1/17/2018 05:49 PM

Transcribed By:

Signed by: TODD STEINBERG MD
Finalized Date: 1/17/2018 05:49 PM

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Name:	SIMONE RUSSO	DOB:	9/5/1942
Patient ID:	500624777	Gender:	Male
Exam Date:	1/12/2018 12:01 PM	Site:	VALLEY HOSPITAL MEDICAL CENTER
Age:	75Y 4M	Acc #:	509836374
Exam Name:	XR SPINE CERVICAL 2 OR 3 VIEWS 0	Secondary Acc #:	VAL01-XR-18-002027
Pt Status:	Inpatient		
Referrer:	UNKNOWN PHYSICIAN		
Ref1 Address:	, NV		

OR FLUORO

HISTORY: Fluoroscopic guidance.

TECHNIQUE: Fluoroscopy with 3 spot images. Fluoroscopy time was 0.2 minutes.

FINDINGS: Fluoroscopy provided for procedure guidance. Please see procedure report.

Report Electronically Signed by: MICHAEL CARDUCCI MD
Report Electronically Signed on: 1/12/2018 12:05 PM

Transcribed By:

Signed by: MICHAEL CARDUCCI MD
Finalized Date: 1/12/2018 12:05 PM

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DR

DESERT RADIOLOGY

For office use only:
Patient PID: _____**CT History/ Injection Consent**Name: Simone RussoAge: 25

1. Have you had any previous CT scans performed (of the same part of the body)?

☐ Yes ☒ No

If yes, where were they performed and when? _____

2. Is there a chance you may be pregnant?

☐ Yes ☒ No

Last Menstrual Period _____

Are you Breastfeeding?

☐ Yes ☐ No

3. For what condition are we doing this CT scan?

Describe Prior Surgeries on L-Spine & Spine

4. Do you have a history of kidney disease, including tumor, nephrectomy, or transplant? (If patient is on dialysis proceed to exam)

☐ Yes ☒ No

5. Do you treat your diabetes with insulin or other medications?

☐ Yes ☒ No

6. Have you ever been diagnosed with cancer?

☐ Yes ☒ No

If yes, what type and location: _____

7. Please list any previous surgeries:

3 - Lumbar Spine Surg 1 - Cervical spine Surg

8. Do you have any allergies?

none

9. Do you have high blood pressure that requires medicine?

☒ Yes ☐ No

10. Do you currently or have you in the past been a smoker?

☒ Yes ☐ No

Your physician has referred you to us for a/an C-L spine CT examination. There are a number of X-ray examinations which require intravenous injection of a contrast material (a solution which contains iodine), such as CAT Scanning, Venography and IVPs.

After the injection, you will probably experience a warm flushing sensation in your head and face and then in the rest of your body. This sensation will rapidly go away. There are some risks in the examinations which you should know about. You may experience some nausea and vomiting. It usually goes away in a few minutes. Approximately 5% of people experience an allergic type reaction, with itching, possible hives, localized swelling of the eyes and lips, or difficulty in breathing. Other possibilities are infiltration/extravasation at the site of the injection. We are prepared to treat any of these conditions. There are complications that are very rare, which are more serious. We have facilities to treat these reactions, but despite vigorous emergency therapy, a fatality does occur in approximately 1 in every 50,000 procedures. It would be impractical and possibly misleading to describe all very rare complications in detail. Your physician is aware of the remote possibilities of a complication and feels that the diagnostic information obtained from this procedure outweighs the minimal risk of the procedure. If you desire further specific information, we would be happy to discuss any aspect of this examination with you.

☒ I understand that I will not take my Glucophage (metformin)/glucovance diabetic medicine until my physician has given me permission to resume the medication.

I have read the above information and consent to the above mentioned procedure. I understand the risks involved and I agree that all of my questions regarding this procedure have been answered to my satisfaction.

Patient/Guardian Signature: X L R RussoDate: 11/15/17

Physician: _____

TO BE COMPLETED BY TECH

IV started by: _____

Needle Type: ☐ 24GA ☐ 22GA ☐ 20GA

Site: _____

of Attempts: _____

D.O.D by: _____

revised 11/9/2016

1/25/2018

RUSSO-01799

DR
DESERT RADIOLOGY Ph: 702-759-8600 Fx: 702-598-3439 **MRIS ***

Your appointment is scheduled / See us at least 24 hours before
 Date/Time: _____
 Arrival Time/Address: _____

☐ **STAT**

Order Date: ***Add section on all**
***Add section on all**

Patient Name: **Simone Russo** DOB: **9/5/42**

Ph: _____ Coll / Alt Ph: _____

Primary Ins: **MCR / AMR** Policy #: _____

Authorization #: _____

History / Symptoms (required): _____

ICD-10 / Diagnosis: **Gle. 81 C10P**

Referring Physician: **Dr. Boss Chong**
 Ph: **702-851-1005** Fx: **702-851-1000** ☐ CALL REPORT

Office Contact: **Kaylinda R.** CC Physician: _____

☐ CD to Office ☐ CD w/ Patient ☐ DICOM CD to Office ☒ Other: **Films & report to office**

☐ X-ray (With-In bags ONLY, NO APPOINTMENTS)

☐ Fluoroscopy

☐ DEXA ☐ ADD Vertebral Height

☐ CTA ☐ CTA Chest (PE Pulmonary Embolism)

☒ **L & C spine**

☐ CT Urogram ☐ GTE (Enterography) ☐ CT Lung Cancer Screening ☐ CT Calcium Scoring

☐ MRI ☐ WO ☐ W & WO ☐ Arthrogram ☐ Per Rad

☐ MRI / MRY ☐ WO ☐ W & WO ☐ Per Rad

☐ Nuclear Medicine

☐ Mammo SCREENING ☐ 3D Mammo ☐ Mammo DIAGNOSTIC ☐ Mammo DIAGNOSTIC w/ US (if available)

☐ Breast Biopsy ☐ Stereotactic ☐ US Guided ☐ MRI

☐ Biopsy Other (specify): _____

☐ Ultrasound

Special Procedures Scheduling (P) 702-794-4384 (F) 702-733-1213

☐ Angiography

☐ CT Biopsy

PET/CT Scheduling (P) 702-794-4384 (F) 702-733-1213

☐ PET/CT Routine (Vague or Tumor) ☐ PET/CT Brain ☐ PET/CT Whole Body (All known, exclude Marrow)

DR Vain Clinic Scheduling (P) 702-794-2141 (F) 702-733-1213

☐ Vain Treatment CONSULTATION / EVALUATION

We warrant that the information contained herein is true and correct to the best of our knowledge and belief. We warrant that the information contained herein is true and correct to the best of our knowledge and belief. We warrant that the information contained herein is true and correct to the best of our knowledge and belief.

LOCATIONS
 For directions, visit DesertRad.com

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 3000
 Palmist Ln.
 Las Vegas, NV
 89116

☐ **EASTERN**
 3000
 Eastern Ave
 Las Vegas, NV
 89116

☐ **HELLIS**
 3000
 Hellis Ave
 Las Vegas, NV
 89116

☐ **WYNN**
 1500 S. Flamingo
 Las Vegas, NV
 89119

☐ **GROCK**
 721
 Grock Rd
 Las Vegas, NV
 89119

☐ **HORIZON**
 3000
 Horizon Blvd
 Las Vegas, NV
 89119

☐ **CENTRA**
 1650 S. Flamingo
 Las Vegas, NV
 89119

NEW LOCATIONS!!!

1/25/2018

RUSSO-01800





SimonMed
See Tomorrow Today

Phone:702-433-6944 Fax:702-433-6946 Address:3560 E. Flamingo Road, Suite 100 Las Vegas NV 89121-5088

FINAL

SimonMed-Las Vegas
DIAGNOSTIC IMAGING REPORT

Patient: **Russo, Simone** Sex: M DOB: Sep 05, 1942 Age: 76 Diag. Imaging # 3598769
Status: Outpatient Stat
Referring Physician: JOHN THALGOTT M.D.

Exam # 25286129 - Dec 13, 2018 - MRI 3T - CERVICAL SPINE W/O CONTRAST

INDICATION: M54.12 - Radiculopathy, cervical region. M48.02 - Spinal stenosis, cervical region.

COMPARISON: Outside cervical spine MRI from September 21, 2016. Outside cervical spine CT study (report only, no images available for review) from 11/15/2017.

TECHNIQUE: Multiplanar, multisequential MR images of the cervical spine were obtained without contrast.

FINDINGS:

Postoperative changes of anterior cervical fusion from C4 through C6 with a ventral plate and anterior fixation screws, new in comparison to the prior MRI study. Findings consistent with the previously reported partial corpectomy of C5 with intervertebral prosthesis. Apparent postoperative changes of unilateral right posterior fusion with suspected right hemilaminectomy defects, which appears to be from the C3 through C7 levels. Associated magnetic susceptibility artifact limits regional evaluation.

Reversal of the normal cervical lordosis from C4 through C7, new in comparison to the prior MRI study from 2016. Vertebral body heights at the nonoperative levels are maintained. Apparent grade 1 anterolisthesis of C4 on C5, similar in appearance to the prior MRI study from 2016. Multilevel disc dessication. Intervertebral disc heights at the nonoperative levels are preserved. No discrete aggressive bone marrow lesions.

Cerebellar tonsils are not low lying. Visualized pons and medulla are unremarkable. Cervicomedullary junction is unremarkable.

RUSSO-03565

Evaluation of the spinal cord signal is slightly limited by motion artifact. Subtle T2/STIR signal hyperintensity within the cord at C3-C4 likely relates to myelomalacia/edema. Apparent signal hyperintensity within the right hemicord at the C5 level also likely relates to myelomalacia/edema, likely with some associated atrophy of the right hemicord.

C2-C3: Circumferential disc osteophyte complex, right greater than left uncovertebral joint hypertrophy and minimal bilateral facet arthrosis. Moderate to severe right and moderate left neuroforaminal narrowing. Effacement of the ventral CSF space with mild to moderate spinal canal stenosis. Findings appear slightly progressed over the interval.

C3-C4: Circumferential disc osteophyte complex, asymmetric to the right. Right greater than left uncovertebral joint hypertrophy and bilateral facet arthrosis. Bilateral ligamentum flavum redundancy. Severe bilateral neuroforaminal narrowing. Severe spinal canal stenosis with flattening of the ventral and likely dorsal lateral aspects of the cord. Findings appear progressed over the interval.

C4-C5: Evidence of interval postoperative changes in comparison to the prior MRI study. Apparent posterior osteophytic ridging. Bilateral uncovertebral joint hypertrophy and apparent bilateral facet arthrosis. Severe bilateral neuroforaminal narrowing. Near complete effacement of the ventral CSF space with moderate to severe spinal canal stenosis. Apparent flattening of the ventral cord.

C5-C6: Evidence of interval postoperative changes in comparison to the prior MRI study. Posterior osteophytic ridging and bilateral uncovertebral joint hypertrophy. Right greater than left facet arthrosis. Moderate to severe right and severe left neuroforaminal narrowing. Apparent right ligamentum flavum redundancy, resulting in effacement of the right dorsolateral aspect of the thecal sac. Effacement of the ventral thecal sac with borderline spinal canal stenosis.

C6-C7: Evidence of interval postoperative changes in comparison to the prior MRI study. Posterior osteophytic ridging, bilateral uncovertebral joint hypertrophy and bilateral facet arthrosis. Moderate right and severe left neuroforaminal narrowing. No significant spinal canal stenosis.

C7-T1: No significant disc abnormality, spinal canal stenosis, or neural foraminal narrowing. Bilateral uncovertebral joint hypertrophy and bilateral facet arthrosis. Motion artifact limits evaluation for the degree of neuroforaminal narrowing with suspected moderate to severe bilateral neuroforaminal narrowing. No significant spinal canal stenosis. No significant interval change.

Prevertebral, paraspinal and posterior soft tissues are unremarkable.

Visualized thyroid gland is unremarkable. Visualized lung apices are grossly unremarkable. Visualized carotid and vertebral arteries are patent with expected flow-

void signal. Suspected polyp or mucosal retention cyst within the inferior right maxillary sinus.

IMPRESSION:

1. Postoperative changes of anterior cervical fusion from C4 through C6 and suspected unilateral right posterior fusion with suspected right hemilaminectomy defects from the C3 through C7 levels, new in comparison to the prior MRI study. Associated magnetic susceptibility artifact limits regional evaluation.
2. Multilevel degenerative changes, worst at C3-C4, where there is resultant severe bilateral neuroforaminal narrowing and severe spinal canal stenosis with flattening of the spinal cord. Please see above for additional details/findings at the individual levels.
3. Signal hyperintensity within the cord at C3-C4 and within the right hemicord at the C5 level likely relates to myelomalacia/edema, likely with some associated atrophy of the right hemicord at the C5 level.
4. Reversal of the normal cervical lordosis from C4 through C7, new in comparison to the prior MRI study from 2016.
5. Apparent grade 1 anterolisthesis of C4 on C5, similar in appearance.
6. Suspected polyp or mucosal retention cyst within the inferior right maxillary sinus.

The critical findings above have been communicated directly by myself via telephone to Dr. Thalgott on 12/13/2018 at 12:28 PM MST.

dd: Dec 13, 2018

Reported by: Hannah Russell D.O.

Electronically signed by: Hannah Russell D.O.

Thank you for your kind referral. If you require further assistance, please contact our Radiologist Hotline at 480-551-0264.

NOTICE: This information has been disclosed to you from records protected by Federal and State confidentiality rules (42CFR Part 2 and/or ARS 36-3661). The rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains, or as otherwise permitted by statute.



01/15/2019 TUE 14:41 FAX

001/021

401 N Buffalo Dr. Ste 120

Las Vegas, NV 89145

Phone: (702)818-5000 Ext 4000 Fax: (702)880-1511

**FYZICALTM**

Therapy & Balance Centers

FAX

To:	David Sampson	From:	Deah B.	
Fax:	888-209-4199	Pages:	14	+ Cover
Phone:	702-605-1099	Date:	1/15/2019	
Re:	Simone Russo	E-mail:		

Records for the requested patient to follow. Included is an invoice for medical records. If there are any questions, please call 702-818-5000.

Thank you,

Deah Boonsrisart
Custodian of Medical Records

This facsimile may contain confidential information which maybe legally privileged and which is intended only for the use of the addressee(s) named above. If you are not the intended recipient, you have received this facsimile in error. Please immediately notify us by phone and return the original. Thank you.

RUSSO-03544

01/15/2019 TUE 14:41 FAX

002/021



401 N. Buffalo Dr. Ste 120

Las Vegas, NV 89145

Phone: (702)818-5000 Ext 4000 Fax: (702)880-1511

MEDICAL RECORDS INVOICEDate: 1/15/2019To: David Sampson

Attn: _____

Fax: 888-209-4199Phone: 702-605-1099Re: Simone Russo

Claim/File # _____

DOB: 9/5/1942

To whom it may concern,

Per your request, records for Simone Russo are ready
to be mailed. Costs for medical records are \$.60 per page:

Total pages: 14 @ \$.60 per page = \$ 8.40

Postal charges: \$ _____

Total charge to you is: \$ 8.40

Please make check payable to: Las Fyzical, LLC

Records will be sent after payment is received.

Thank You,

Medical Records Administrator

A handwritten signature in black ink, appearing to be "Deah B.", is written over the printed name.

Deah B.

RUSSO-03545

01/15/2019 TUE 14:42 FAX

003/021

LAW OFFICE OF
DAVID SAMPSON

April 25, 2017

Fyzical Therapy and Balance Clinic
9005 S. Pecos Rd., Suite 2520
Henderson, NV 89074
Fax No: 702-818-5001

Re: Client Name: Simone Russo
DOB: 09/05/1942
SS No: [REDACTED]
Date of Incident: 08/27/2016

To whom it may concern:

We have been retained to represent the above-named patient in a claim for personal injuries sustained when involved in an incident occurring on 08/27/2016. Enclosed is a medical authorization, signed by our client. Please retain this letter of representation and the authorization to allow communication between our offices.

We request that you please forward to us the following upon the patient's discharge from treatment:

1. Copies of all **MEDICAL RECORDS** for services rendered from 08/27/2016 **TO THE DATE OF DISCHARGE** related to the above referenced incident.
2. An **ITEMIZED STATEMENT** for services rendered from 08/27/2016 **TO THE DATE OF DISCHARGE** related to the above referenced incident.
3. A notarized **AFFIDAVIT OF CUSTODIAN OF RECORDS**, attached hereto.

If you will please forward us a bill for the copying costs, we will gladly reimburse you at the maximum statutory rate of sixty cents per copy. Thank you in advance for your cooperation.

Very truly yours,
LAW OFFICE OF DAVID SAMPSON

David Sampson

David Sampson, Esq.
DS:an

Encl: Authorization
Affidavit of Custodian of Records

630 S. 3rd Street, Las Vegas NV 89101 Phone: 702-605-1099 Fax: 888-209-4199

RUSSO-03546

01/15/2019 TUE 14:42 FAX

004/021



AFFIDAVIT OF CUSTODIAN OF RECORDS

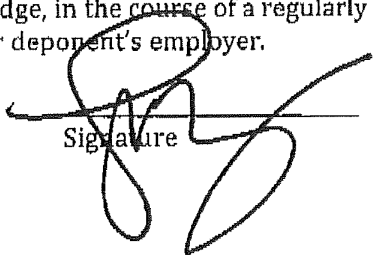
STATE OF Nevada)

) SS.

COUNTY OF Clark)NOW COMES Deah Boonchicart, who after being duly sworn deposes and

says:

1. That the deponent is the client care specialist of the office of Fyzical Therapy and Balance Clinic and in such capacity is a custodian of the records of the same.
2. That on the 15 day of January, 2019, the deponent received a Request and Authorization calling for the production of records pertaining to the 08/27/2016 incident involving Simone Russo.
3. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.
4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or deponent's employer.



Signature

Subscribed and sworn to before me,
this ____ day of _____, 20__.

NOTARY PUBLIC in and for said County and State

630 S. 3rd Street, Las Vegas NV 89101 Phone: 702-605-1099 Fax: 888-209-4199

RUSSO-03547

01/15/2019 TUE 14:42 FAX

005/021

Oct.20.2016 02:42 PM

7027924077

PAGE. 10

THE LAW OFFICE OF DAVID SAMPSON, L.L.C.
 1000 S. Valley View Blvd., Las Vegas, NV 89107 ph: 702-605-1099 fax: 888-209-4199

**AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH
 INFORMATION (PHI)*, WORKMAN'S COMPENSATION, EMPLOYMENT RECORDS,
 TAX RECORDS, POLICE RECORDS AND INCOME RECORDS**

I authorize and direct you, Physical Therapy and Balance Center to use, furnish and/or disclose a copy of the specific health, medical and personal information identified below to my attorneys, The Law Office of David Sampson, L.L.C., its associates and/or agents, at PO Box 750373, Las Vegas, Nevada 89136 for the purpose of investigating and proceeding on a claim on my behalf.

I specifically authorize the use and/or disclosure of the following protected health information ("PHI") and/or medical records, if such information and/or records exist, even though marked "confidential" or considered confidential or privileged, including but not limited to the following: all medical records; doctor's office charts; hospital records; consultation reports; lab records, test results, and reports; all drug and/or alcohol treatment records or records of treatment for communicable diseases, including HIV-related illnesses, if any; psychological testing, reports, and records; prescriptions; correspondence; and any hospitalization, history, physical examination diagnosis, condition, etiology, prognosis, memoranda, written or recorded statements, telephone messages, and charts of every kind and description relating to the medical and psychological care, and treatment provided; all X-ray films and reports, MRI scans, CT scans, and any and all diagnostic imaging films, tests, and their associated reports taken by you or contained in your files, any and all medical bills, invoices and statements reflecting provider charges and payment history including benefit payments and patient payments. I further authorize the use and disclosure of any and all police, highway patrol, sheriff or other investigation reports; employment records, income records; records pertaining to any claim made for workman's compensation; previous medical records; and any other records of any nature, which they may desire and allow them to make or obtain copies thereof. I acknowledge and consent that the disclosed PHI and/or medical records may contain: (1) HIV/AIDS related information and/or records, (2) mental health information and/or records, (3) genetic testing information and/or records, (4) drug/alcohol diagnosis, treatment or referral information.

I understand that this authorization may be revoked by me at any time in writing, but if I do, it will not have any effect on any actions taken prior to receiving the revocation. I understand that the above named healthcare provider may have already released information about me after I gave permission. I understand that revoking this authorization would not prohibit any release of information by the above-named healthcare provider in reliance on my original authorization.

I understand that I can revoke this authorization by writing a letter to the above-named healthcare provider or by completing and submitting a Revoke Authorization Form to the Privacy Services Department of the above named facility. The letter must state that I want to revoke my authorization to disclose my healthcare information. The letter must include the name or other specific identification of the person(s) that I no longer want to receive information. I (or my authorized representative) must sign and date the letter or form.

The information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer protected. Fees/charges will comply with all laws and regulations applicable to release of information. (i.e. 60 cents per page except for continuing care requests). A photocopy of this authorization will have the same force and effect as the original.

This authorizes my attorneys or their representatives to obtain access to my vehicle for the purposes of photographing and inspecting in any towing yard, police impound, wrecking yard or repair facility.

I understand that I may refuse to sign this Authorization. I understand that my refusal will not affect my ability to obtain treatment, payment, or eligibility for benefits. I understand that I have the right to receive a copy of this authorization. I may inspect or obtain a copy of the health information that I am being asked to use or disclose.

This authorization shall expire upon this expiration date or event: 06/01/19

DATED 10/20/16

X [Signature]
 Client Signature

Simone Russo
 Name Printed

SSN [Redacted]

DOB 09/05/1942

(A) *This authorization is made in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

RUSSO-03548

01/15/2019 TUE 14:43 FAX

006/021



Patient Case Ledger

Ledger Date: 1/15/2019

Name: Simone Russo
Case: Balance
Diagnosis: R26.0,M54.12,M79.605,M79.604
Clinic: Las FYZICAL LLC - Pecos
Therapist: Alex Darkhovsky, PT, DPT

Primary Insurance:

Las FYZICAL LLC - Pecos
 9005 S. Pecos Road #2520
 Henderson NV 89074
 (702) 818 5000

Service Date	CPT Code	Fee Name	Charge Amount	Primary Payments	Primary Write Offs	Primary Balance	Total Ins. Payments	Total Ins. Adjust.	Ins. Balance	Patient Payments	Patient Write Offs	Patient Balance
04/21/2017	G8978	MOBILITY CURRENT STATUS	\$0.01	\$0.00	\$0.01	\$0.00	\$0.00	\$0.01	\$0.00	\$0.00	\$0.00	\$0.00
04/21/2017	G8979	MOBILITY GOAL STATUS	\$0.01	\$0.00	\$0.01	\$0.00	\$0.00	\$0.01	\$0.00	\$0.00	\$0.00	\$0.00
04/21/2017	97163	Physical therapy evaluation: high complexity	\$155.00	\$65.65	\$72.60	\$0.00	\$82.40	\$72.60	\$0.00	\$0.00	\$0.00	\$0.00
04/21/2017	97112	NEUROMUSCULAR RE-ED	\$50.00	\$20.37	\$24.43	\$0.00	\$25.57	\$24.43	\$0.00	\$0.00	\$0.00	\$0.00
04/24/2017	97112	NEUROMUSCULAR RE-ED	\$150.00	\$68.26	\$64.33	\$0.00	\$85.67	\$64.33	\$0.00	\$0.00	\$0.00	\$0.00
05/01/2017	97112	NEUROMUSCULAR RE-ED	\$100.00	\$47.88	\$39.91	\$0.00	\$60.09	\$39.91	\$0.00	\$0.00	\$0.00	\$0.00
05/03/2017	97112	NEUROMUSCULAR RE-ED	\$100.00	\$47.88	\$39.91	\$0.00	\$60.09	\$39.91	\$0.00	\$0.00	\$0.00	\$0.00
05/03/2017	97140	MANUAL THERAPY TECHNIQUES	\$55.00	\$18.37	\$31.94	\$0.00	\$23.06	\$31.94	\$0.00	\$0.00	\$0.00	\$0.00
05/05/2017	97112	NEUROMUSCULAR RE-ED	\$100.00	\$47.88	\$39.91	\$0.00	\$60.09	\$39.91	\$0.00	\$0.00	\$0.00	\$0.00
05/05/2017	97140	MANUAL THERAPY TECHNIQUES	\$55.00	\$18.37	\$31.94	\$0.00	\$23.06	\$31.94	\$0.00	\$0.00	\$0.00	\$0.00
05/17/2017	97110	THERAPEUTIC EXERCISE	\$55.00	\$19.79	\$30.16	\$0.00	\$24.84	\$30.16	\$0.00	\$0.00	\$0.00	\$0.00
05/17/2017	97112	NEUROMUSCULAR RE-ED	\$100.00	\$47.88	\$39.91	\$0.00	\$60.09	\$39.91	\$0.00	\$0.00	\$0.00	\$0.00
05/19/2017	97112	NEUROMUSCULAR RE-ED	\$150.00	\$68.26	\$64.33	\$0.00	\$85.67	\$64.33	\$0.00	\$0.00	\$0.00	\$0.00
05/22/2017	97112	NEUROMUSCULAR RE-ED	\$150.00	\$68.26	\$64.33	\$0.00	\$85.67	\$64.33	\$0.00	\$0.00	\$0.00	\$0.00
05/27/2017	97112	NEUROMUSCULAR RE-ED	\$150.00	\$68.26	\$64.33	\$0.00	\$85.67	\$64.33	\$0.00	\$0.00	\$0.00	\$0.00

Simone Russo

Balance

Phone: (702) 818 5000

9005 S. Pecos Road #2520, Henderson NV 89074

Fax: 7028185001

1 of 2

RUSSO-03549

01/15/2019 TUE 14:43 FAX

007/021



Patient Case Ledger

Ledger Date: 1/15/2019

Outstanding Balance:	\$0.00	\$1370.02	\$607.11	\$608.05	\$0.00	\$761.97	\$608.05	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
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Simone Russo

Balance

Phone: (702) 818-5000

9805 S. Pecos Road #2520, Henderson NV 89074

Fax: 702-818-5001

2 of 2

RUSSO-03550

01/15/2019 TUE 14:44 FAX

008/021

Patient:	Simone Russo	Date:	4/21/2017
Referring MD:	John Thalgott, MD	Birthdate:	9/5/1942
Referral Phone:	(702) 878-8370	First Visit:	4/21/2017
Referral Fax Number:	(702) 878-9642	Injury Date:	-
Primary Insurance:	Medicare	Surgery Date:	-
Policy Number:	██████████ A	Certification Dates:	4/21/2017 to 5/21/2017
Service Type:	Physical Therapy		

Las FYZICAL LLC - Pecos
 9005 S. Pecos Road #2520
 Henderson, NV 89074

4/21/2017 - Initial Evaluation

Diagnosis			
R26.0 Ataxic gait:	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg 5	M79.6 Pain in right leg 04

Subjective**History of Present Illness (HPI)**

Patient presents with poor balance, LE weakness, low back pain, LUE weakness (C5,6 nerve roots affected--biceps, deltoid, wrist extensors) stemming from multiple lumbar and cervical fusions due to central stenosis in lumbar region, foraminal stenosis in cervical region. Neuropathy in plantar feet (S1/S2) and majority of BLE (sensation in heels intact).

Current Level of Function (Participation Restrictions)

Walking
 Travel (going through airport)
 Sitting tolerance 10 min (must always change position);
 Always relies on FWW

Aggravating Factors (Activity Limitations)

sitting, laying down, cannot lay prone (due to fusions)

Easing Factors

changing position

Co-Morbidities that may influence treatment/length

Lumbar spine surgery: 2012, 2014
 C-spine surgery (C5-6 affected) 2013, 2014, 2016
 B&B incontinence (neurogenic)
 Neuropathy resulting in paresthesias throughout BLE, sparing heels
 Lack of posterior tibialis and gastroc function (demonstrates active peroneals)

Objective**Activities Balance Confidence Scale (%)**

ABC Score (%)

	Findings
ABC Scale	34%

Functional Gait Assessment

Functional Gait Assessment

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Patient Name: Simone Russo - 4/21/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:44 FAX

009/021

	Findings
Gait Level Surface	1 = 9.5 sec
Change in Gait Speed	2
Gait with Horizontal Head Turns	1
Gait with Vertical Head Turns	1
Gait and Pivot Turn	2
Step Over Obstacle	2
Gait with Narrow Base of Support	0
Gait with Eyes Closed	2
Ambulating Backwards	1
Steps	2
TOTAL SCORE	14/30

Sit to Stand Testing

5x Sit to Stand (Seconds)

	Findings
Time (seconds)	13 BUE assistance

Other Comments

TUG: 16 sec without FWW

Clinical Presentation (Stable/Evolving/Unstable)

Stable

Assessment**Physical Therapy Assessment**

Patient presents with signs and symptoms consistent with referring diagnosis of ataxic gait, cervical radiculopathy and central lumbar stenosis (both of which required surgery). In addition, patient suffers from LE neuropathy from pelvis/public to plantar regions). Functional tests are consistent with increased fall risk (per TUG and FGA) and patient demonstrates general lack of confidence even with static balance without use of assistive device. Patient also presents with deep hip flexor restrictions resulting in forward stooped posture and low back pain when attempting to attain upright posture. Patient will benefit from skilled PT to address functional limitations and objective impairments.

Rehab Potential

Good

Clinical Decision Making

Review of Body Structures/Function: see subjective regarding neuropathy and lumbar/cervical fusions

Activity: see subjective

Participation Restrictions: travelling, going to gym

Clinical Presentation: Complex

Plan

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Patient Name: Simone Russo -

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:44 FAX

010/021

Frequency and Duration

3x/week for 8 weeks

Interventions

Static and Dynamic Balance Exercises, Therapeutic Exercises, Therapeutic Activities, Neuromuscular Re-education, Manual Therapy, Patient Education (Clinical condition and home exercise program), Soft Tissue and Joint Mobilization Techniques


PT, DPT #3517

Alex Darkhovsky, PT, DPT

4/21/2017 3:20 PM

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Patient Name: Simone Russo -

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

3 of 14

RUSSO-03553

01/15/2019 TUE 14:45 FAX

011/021

Las FYZICAL LLC - Pecos
9005 S. Pecos Road #2520
Henderson, NV 89074

Patient: Simone Russo Date: 4/21/2017
Referring MD: John Thalgott, MD Birthdate: 9/5/1942
Referral Phone: (702) 878-8370 First Visit: 4/21/2017
Referral Fax Number: (702) 878-9642 Injury Date:
Primary Insurance: Medicare Surgery Date:
Policy Number: Certification Dates: 4/21/2017 to 5/21/2017
Service Type: Physical Therapy

4/21/2017 - Daily Notes

Diagnosis			
R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg 5	M79.6 Pain in right leg 04

Objective

Flowsheet Objective

Interventions to improve trunk stability/control to improve balance reactions:

manual: hip flexor stretch (sidelying)

mat: tall kneel perturbations; bird dog; self hip flexor stretch by active hip extension in tall kneel

Alex Darkhovsky
PT, DPT #3317

Alex Darkhovsky, PT, DPT

4/21/2017 3:20 PM

The information contained in this facsimile message may be confidential information intended only for the use of the individual or entity named above. If the reader of this is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you receive this transmission in error, please notify the sender by phone for instruction regarding disposition of the matter.

Patient Name: Simone Russo - 4/21/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:45 FAX

012/021

Patient: Simone Russo **Date:** 4/24/2017
Referring MD: John Thalgott, MD **Birthdate:** 9/5/1942
Referral Phone: (702) 878-8370 **First Visit:** 4/21/2017
Referral Fax Number: (702) 878-9642 **Injury Date:**
Primary Insurance: Medicare **Surgery Date:**
Policy Number: [REDACTED] **Certification Dates:** 4/24/2017 to 5/24/2017
Service Type: Physical Therapy

LAS FYZICAL LLC - Pecos
 9005 S. Pecos Road #2520
 Henderson, NV 89074

4/24/2017 - Daily Notes

Diagnosis

R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg	M79.6 Pain in right leg
		5	04

Subjective

Flowsheet Subjective

The patient reports the hip flexor stretch has been of great benefit to his overall discomfort.

Objective

Flowsheet Objective

Interventions to improve trunk stability/control to improve balance reactions:

manual hip flexor stretch (sidelying)

mat: tall kneel perturbations; bird dog; self hip flexor stretch by active hip extension in tall kneel

Assessment

Flowsheet Assessment

The patient demonstrates concerning behavior with safety. The patient always appears in a rush to move between stations or drills. The patient has a decrease in awareness of his fall risk and engages in risk taking behaviors.

Plan

Flowsheet Plan

Continue to improve gait safety and decrease back pain with hip flexor stretching.

Robert Williams PT DPT #2861

Robert Williams, PT, DPT#2861

4/24/2017 9:40 AM

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Patient Name: Simone Russo - 4/24/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:45 FAX

013/021

Patient:	Simone Russo	Date:	5/1/2017
Referring MD:	John Thalgott, MD	Birthdate:	9/5/1942
Referral Phone:	(702) 878-8370	First Visit:	4/21/2017
Referral Fax Number:	(702) 878-9642	Injury Date:	-
Primary Insurance:	Medicare	Surgery Date:	-
Policy Number:	██████████A	Certification Dates:	5/1/2017 to 5/31/2017
Service Type:	Physical Therapy		

Las FYZICAL LLC - Pecos
9005 S. Pecos Road #2520
Henderson, NV 89074

5/1/2017 - Daily Notes

Diagnosis			
R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg S	M79.6 Pain in right leg 04

Subjective

Flowsheet Subjective

Pt states he had "excruciating and crippling pain," the other morning when he woke up which is why he had to cancel therapy that day. He reports he took 1/2 of a gabapentin last night and feels that that has helped decrease his discomfort prior to therapy today. The pt states he has been compliant with his stretches daily stating his hip flexor is still tight but he is trying to stretch it more. Pt is agreeable to tx at this time.

Objective

Flowsheet Objective

5/1/17

PT: 1/7 PU: 3

Pt x10 min late to tx

Interventions to improve trunk stability/control to improve balance reactions:

manual: hip flexor stretch (sidelying)

mat: tall kneel perturbations; bird dog; self hip flexor stretch by active hip extension in tall kneel

Assessment

Flowsheet Assessment

Pt continues to present rushed behavior during tx posing concerns with overall safety. HHAX2 was required while in // bars for stability and balance during amb. The pt demonstrated mm tightness and decreased ROM with hip flexor stretch in sidelying. Pt will continue to benefit from skilled PT interventions with the anticipation of maximizing functional outcomes and progressing toward achieving LTG outlined in the pt's Plan of Care.

Plan

Flowsheet Plan

Continue to improve gait safety and decrease back pain with hip flexor stretching.

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Patient Name: Simone Russo - 5/1/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:45 FAX

014/021

Dominique Kyker #0914 *Alex Darkhovsky*
PT, DPT #3317

Dominique Kyker, PTA #A-0914

Alex Darkhovsky, PT, DPT

5/1/2017 12:20 PM

5/1/2017 12:20 PM

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Patient Name: Simone Russo -

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

7 of 14

RUSSO-03557

01/15/2019 TUE 14:46 FAX

015/021

Patient: Simone Russo
Referring MD: John Thalgott, MD
Referral Phone: (702) 878-8370
Referral Fax Number: (702) 878-9642
Primary Insurance: Medicare
Policy Number: A

Date: 5/3/2017
Birthdate: 9/5/1942
First Visit: 4/21/2017
Injury Date:
Surgery Date:
Certification Dates: 5/3/2017 to 6/2/2017
Service Type: Physical Therapy

Las FYZICAL LLC - Pecos
 9005 S. Pecos Road #2520
 Henderson, NV 89074

5/3/2017 - Daily Notes

Diagnosis

R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg 5	M79.6 Pain in right leg 04
-------------------	--------------------------------------	------------------------------	-------------------------------

Subjective

Flowsheet Subjective

Patient with signs continued pain affecting functional ability. Pt is agreeable to tx at this time.

Objective

Flowsheet Objective

5/3/17

PT: 0/0 PU: 4

Interventions to improve trunk stability/control to improve balance reactions:

Floor: cook band resistance, fwd and back stepping, No AD training horizontal abduction for core activation.

manual: hip flexor stretch (sidelying) and hamstring mobility

Assessment

Flowsheet Assessment

Patient with continued decreased safety awareness with rushing behavior during tx posing concerns with overall safety. The pt demonstrated mm tightness and decreased ROM with hip flexor stretch in sidelying. Pt will continue to benefit from skilled PT interventions with the anticipation of maximizing functional outcomes and progressing toward achieving LTG outlined in the pt's Plan of Care.

Plan

Flowsheet Plan

Continue to improve gait safety and decrease back pain with hip flexor stretching.

Nicholas Branch, PT, DPT #3096

Alex Darkhovsky, PT, DPT #3317

Nicholas Branch, PT, DPT #3096

Alex Darkhovsky, PT, DPT

5/3/2017 2:40 PM

5/3/2017 2:40 PM

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Patient Name: Simone Russo - 5/3/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:46 FAX

016/021

Las FYZICAL LLC - Pecos
9005 S. Pecos Road #2520
Henderson, NV 89074

Patient: Simone Russo
Referring MD: John Thalgott, MD
Referral Phone: (702) 878-8370
Referral Fax Number: (702) 878-9642
Primary Insurance: Medicare
Policy Number: [REDACTED]

Date: 5/5/2017
Birthdate: 9/5/1942
First Visit: 4/21/2017
Injury Date:
Surgery Date:
Certification Dates: 5/5/2017 to 6/4/2017
Service Type: Physical Therapy

5/5/2017 - Daily Notes

Diagnosis

R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg 5...	M79.6 Pain in right leg 04
-------------------	--------------------------------------	---------------------------------	-------------------------------

Subjective

Flowsheet Subjective

Patient would like to integrate stretching first to assist in ability to tolerate sustained upright activities. Pt is agreeable to tx at this time.

Objective

Flowsheet Objective

5/5/17

PT: 0/0 PU: 5

Interventions to improve trunk stability/control to improve balance reactions:

Floor. cook band resistance, fwd and back stepping, No AD training horizontal abduction for core activation.

Green theraband assisted gait for abductor cueing

manual: hip flexor stretch (sidelying) and hamstring mobility

Assessment

Flowsheet Assessment

Patient with marked improvement in alignment and safety with theraband cueing to hip abductors to facilitate more normalized gait. Pt will continue to benefit from skilled PT interventions with the anticipation of maximizing functional outcomes and progressing toward achieving LTG outlined in the pt's Plan of Care.

Plan

Flowsheet Plan

Continue to improve gait safety and decrease back pain with hip flexor stretching.

Nicholas Branch, PT, DPT #3096

Alex Darkhovsky
PT, DPT #3317

Nicholas Branch, PT, DPT #3096

Alex Darkhovsky, PT, DPT

5/5/2017 2:40 PM

5/5/2017 2:40 PM

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Patient Name: Simone Russo - 5/5/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:46 FAX

017/021

Patient: Simone Russo
Referring MD: John Thalgott, MD
Referral Phone: (702) 878-8370
Referral Fax Number: (702) 878-9642
Primary Insurance: Medicare
Policy Number: [REDACTED] A
Date: 5/17/2017
Birthdate: 9/5/1942
First Visit: 4/21/2017
Injury Date:
Surgery Date:
Certification Dates: 5/17/2017 to 6/16/2017
Service Type: Physical Therapy

Las FYZICAL LLC - Pecos
 9005 S. Pecos Road #2520
 Henderson, NV 89074

5/17/2017 - Daily Notes

Diagnosis				
R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg	M79.6 Pain in right leg	
		5	04	

Subjective

Flowsheet Subjective

Patient reports high amount of back pain today. He also reports inability to ambulate without walker. He states he has difficulty lying on his back because he feels like it makes it harder to breath which limited lying fully supine during exercises.

Objective

Flowsheet Objective

5/17/17
 PT: 0/0 PU: 6

Pt completed both balance and strengthening exercises to improve neuromuscular control and sensory processing and integration. Ceiling mounted harness system was used during all treatments with the lines safely attached at the appropriate tension. See attached flow sheet.

Assessment

Flowsheet Assessment

Patient gait appeared to improve during session. He requires continuous contact on parallel bars but demonstrates a smoother gait. He has difficulty standing statically for longer than a few seconds. Pt will continue to benefit from skilled PT interventions with the anticipation of maximizing functional outcomes and progressing toward achieving LTG outlined in the pt's Plan of Care.

Plan

Flowsheet Plan

Continue to improve gait safety and decrease back pain with hip flexor stretching.

Robert Williams PT, DPT #2861
Alex Darkhovsky PT, DPT #3517

Robert Williams, PT, DPT#2861

Alex Darkhovsky, PT, DPT

5/17/2017 2:40 PM

5/17/2017 2:40 PM

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Patient Name: Simone Russo - 5/17/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:47 FAX

018/021

Patient:	Simone Russo	Date:	5/19/2017
Referring MD:	John Thalgot, MD	Birthdate:	9/5/1942
Referral Phone:	(702) 878-8370	First Visit:	4/21/2017
Referral Fax Number:	(702) 878-9642	Injury Date:	
Primary Insurance:	Medicare	Surgery Date:	
Policy Number:	██████████ A	Certification Dates:	5/19/2017 to 5/18/2017
		Service Type:	Physical Therapy

Las FYZICAL LLC - Pecos
9005 S. Pecos Road #2520
Henderson, NV 89074

5/19/2017 - Daily Notes

Diagnosis			
R25.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg 5	M79.6 Pain in right leg 04

Subjective**Flowsheet Subjective**

Pt reports that he has to wear his back brace all the time when he is moving which decreases his back pain. Pt states stretching helps to decrease his back pain but has difficulty doing them by himself at home. Pt states he is getting new shoe inserts. Current back pain level is 4/10. Pt agreed to therapy.

Objective**Flowsheet Objective**

5/19/17
PT: 1/2 PU: 7

NMR: Parallel bars for safety. Multiple surfaces x4 laps, Forward, sideways, backwards gait training x2 laps each. High knee forward and sideways. Mat: LE stretching.

Pt completed both balance and strengthening exercises to improve neuromuscular control and sensory processing and integration. Ceiling mounted harness system was used during all treatments with the lines safely attached at the appropriate tension. See attached flow sheet.

Assessment**Flowsheet Assessment**

Pt has a very unsteady forward posture gait and is jerky with movement. Pt required firm commands to maintain on activity also to take a sitting break after each bout that will allow back pain to return to 2/10. Stretching helped to increase patient's upright posture. Pt will continue to benefit from skilled PT interventions with the anticipation of maximizing functional outcomes and progressing toward achieving LTG outlined in the pt's Plan of Care.

Plan**Flowsheet Plan**

Continue to improve gait safety and decrease back pain with hip flexor stretching.

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Patient Name: Simone Russo - 5/19/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

01/15/2019 TUE 14:47 FAX

019/021

Alex Darkhovsky *Pomaikal Anduha PTA A-0866*
PT, DPT #3317

Alex Darkhovsky, PT, DPT

Pomaikal Anduha, PTA A-0866

5/19/2017 1:20 PM

5/19/2017 1:20 PM

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Patient Name: Simone Russo -

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

12 of 14

RUSSO-03562

01/15/2019 TUE 14:47 FAX

020/021

Las FYZICAL LLC - Pecos 9005 S. Pecos Road #2520 Henderson, NV 89074	Patient: Simone Russo Referring MD: John Thalgott, MD Referral Phone: (702) 878-8370 Referral Fax Number: (702) 878-9642 Primary Insurance: Medicare Policy Number: [REDACTED]	Date: 5/22/2017 Birthdate: 9/5/1942 First Visit: 4/21/2017 Injury Date: - Surgery Date: - Certification Dates: 5/22/2017 to 6/21/2017 Service Type: Physical Therapy
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5/22/2017 - Daily Notes**Diagnosis**

R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg 5	M79.6 Pain in right leg 04
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Subjective**Flowsheet Subjective**

Pt stated that he did his HEP stretches that helped to decrease his back pain and increase his upright posture. Still awaiting orthotist for foot inserts to be made. Current back pain level is 3/10. Pt agreed to therapy.

Objective**Flowsheet Objective**

5/22/17
PT: 2/5 PU: 8

NMR: Parallel bars for safety. Multiple surfaces x4 laps, Forward, sideways, backwards gait training x2 laps each. High knee forward and sideways. Mat: LE stretching.

Pt completed both balance and strengthening exercises to improve neuromuscular control and sensory processing and integration. Ceiling mounted harness system was used during all treatments with the lines safely attached at the appropriate tension. See attached flow sheet.

Assessment**Flowsheet Assessment**

Pt has a very unsteady forward posture gait and is jerky with movement. Pt required firm commands to maintain on activity also to take a sitting break after each bout that will allow back pain to return to 2/10. Stretching helped to increase patient's upright posture. Pt will continue to benefit from skilled PT interventions with the anticipation of maximizing functional outcomes and progressing toward achieving LTG outlined in the pt's Plan of Care.

Plan**Flowsheet Plan**

Continue to improve gait safety and decrease back pain with hip flexor stretching.

Alex Darkhovsky
PT, DPT #3317

Pomalkai Anduha PTA A-0866

Alex Darkhovsky, PT, DPT

Pomalkai Anduha, PTA A-0866

5/22/2017 2:40 PM

5/22/2017 2:40 PM

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Patient Name: Simone Russo - 5/22/2017

Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001

Las FYZICAL LLC - Pecos
9005 S. Pecos Road #2520
Henderson, NV 89074

Patient: Simone Russo
Referring MD: John Thalgott, MD
Referral Phone: (702) 878-8370
Referral Fax Number: (702) 878-9642
Primary Insurance: Medicare
Policy Number: [REDACTED]

Date: 5/27/2017
Birthdate: 9/5/1942
First Visit: 4/21/2017
Injury Date:
Surgery Date:
Certification Dates: 5/27/2017 to 6/26/2017
Service Type: Physical Therapy

5/27/2017 - Daily Notes

Diagnosis

R26.0 Ataxic gait	M54.12 Radiculopathy cervical region	M79.60 Pain in left leg 5	M79.6 Pain in right leg 04
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Subjective

Flowsheet Subjective

Pt reports the hamstring and piriformis stretches from his last appointment have been helping him greatly, pt agreeable to treatment.

Objective

Flowsheet Objective

5/22/17

PT: 3/10 PU: 9

NMR: Parallel bars for safety 4 way amb; Sit to stands.

Mat: Hamstring/Piriformis stretches; LTR; Marching w/ PPT; Ab bracing with add/abd.

Pt completed both balance and strengthening exercises to improve neuromuscular control and sensory processing and integration. Ceiling mounted harness system was used during all treatments with the lines safely attached at the appropriate tension. See attached flow sheet.

Assessment

Flowsheet Assessment

Pt has a very unsteady forward posture gait and is jerky with movement and well as difficulty controlling gait speed, indicating a fall risk. Pt tends to sway backwards when losing his balance and requires HHA to regain balance, especially with good posture. Pt required frequent breaks due to fatigue of BLE. Pt will continue to benefit from skilled PT interventions with the anticipation of maximizing functional outcomes and progressing toward achieving LTG outlined in the pt's Plan of Care.

Plan

Flowsheet Plan

Continue to improve gait safety and decrease back pain with hip flexor stretching.

Alex Darkhovsky
PT, DPT #3317

Andres Arambula
PTA A-0884

Alex Darkhovsky, PT, DPT

Andres Arambula, PTA #A-0884

5/27/2017 11:40 AM

5/27/2017 11:40 AM

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Patient Name: Simone Russo - 5/27/2017

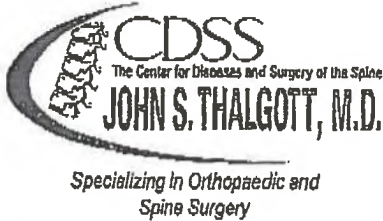
Date of Birth: 9/5/1942

Phone: (702) 818-5000

9005 S. Pecos Road #2520 Henderson, NV 89074

Fax: (702) 818-5001





January 15, 2019

David Sampson, Esq.
200 E Charleston Blvd
Las Vegas, NV 89104

RE: DR. SIMONE RUSSO

Dear Attorney Sampson,

Dr. Russo has undergone multiple cervical surgeries and is suffering from adjacent segment breakdown, on the posterior side, which he had undergone decompression, and now has adjacent segment breakdown anteriorly with stenosis at C4-5. He will need an anterior cervical fusion for this rather rapid adjacent segment breakdown in the very near future.

The cost of this, including anesthesia, surgeon's fee, assistant fees, hospitalization, rehabilitation is approximately \$250,000.00.

This is to a reasonable medical certainty.

Sincerely,

John S. Thalgott, MD

JST/kc: 9516
Dictated but not edited



Electronically Filed
6/23/2021 9:02 AM
Steven D. Grierson
CLERK OF THE COURT



1 **NOAS**
2 **SHANNON G. SPLAINE, ESQ.**
3 Nevada Bar No. 8241
4 **LINCOLN, GUSTAFSON & CERCOS, LLP**
5 **ATTORNEYS AT LAW**
6 3960 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Telephone: (702) 257-1997
Facsimile: (702) 257-2203
ssplaine@lgclawoffice.com

Attorneys for Defendant,
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

DISTRICT COURT
CLARK COUNTY, NEVADA

15 SIMONE RUSSO,
16 Plaintiff,

CASE NO.: A-17-753606-C
DEPT. No. 16

17 v.

NOTICE OF APPEAL

18 COX COMMUNICATIONS LAS VEGAS,
19 INC. D/B/A COX COMMUNICATIONS; IES
20 RESIDENTIAL, INC.; SUNRISE VILLAS IX
21 HOMEOWNERS ASSOCIATION; J&G
22 LAWN MAINTENANCE; KEVIN
23 BUSHBAKER; PW JAMES MANAGEMENT
& CONSULTING, LLC; J. CHRIS
SCARCELLI, DOE LANDSCAPER,
RICHARD DUSLAK, JUSTIN SESMAN, AND
DOES I-V, AND ROE CORPORATIONS I-V,
inclusive,

24 Defendants.

26 Notice is hereby given that Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION hereby
27 appeals to the Nevada Supreme Court from the Order on Defendant's Motion to Set Aside and/or
28 Amend Judgment, and Order on Plaintiff's Motion to Enforce Settlement, entered on May 26, 2021

1 (attached as Exhibit A), and from all other orders and judgments made final and appealable by the
2 foregoing.

3 DATED this 23rd day of June, 2021.

4 **LINCOLN, GUSTAFSON & CERCOS, LLP**

5 */s/ Shannon G. Splaine*

6 **SHANNON G. SPLAINE, ESQ.**

7 Nevada Bar No. 8241

8 3960 Howard Hughes Parkway, Suite 200

9 Las Vegas, Nevada 89169

Attorneys for Defendant, SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION

10 v:\p-t\qbe_sunrise\atty notes\drafts\pldgs\20210623_noas.docx

1 Simone Russo v. Cox Communications Las Vegas, Inc., et al.
2 Clark County Case No. A-17-753606-C

3 **CERTIFICATE OF SERVICE**

4 I HEREBY CERTIFY that on the 23rd day of June, 2021, I served a copy of the attached
5 **NOTICE OF APPEAL** via electronic service to all parties on the Odyssey E-Service Master List,
6 and via US Mail, postage prepaid to the following addresses:

7
8 Justin Sesman
9 4775 Topaz Street, Apt. 235
10 Las Vegas, NV 89121

11 Richard Duslak
12 4012 Abrams Avenue
13 Las Vegas, NV 89110

14 */s/ Ginger K. Bellamy*

15 _____
16 Ginger K. Bellamy, an employee
17 of the law offices of
18 Lincoln, Gustafson & Cercos, LLP

19 V:\P-T\QBE_Sunrise\POS\20210623_NOAS_gkb.doc
20
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Exhibit A

ELECTRONICALLY SERVED
5/26/2021 6:39 PM

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05/26/2021 6:39 PM

sgs
Heather L. Smith
CLERK OF THE COURT

1 **ORD**

2 DAVID F. SAMPSON, ESQ.

3 Nevada Bar No. 6811

4 LAW OFFICE OF DAVID SAMPSON, LLC.

5 630 S. 3rd Street

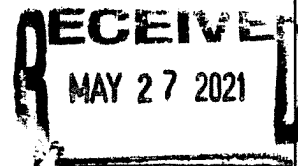
6 Las Vegas, NV 89101

7 Tel: 702-605-1099

8 Fax: 888-209-4199

9 Email: david@davidsampsonlaw.com

10 *Attorney for Plaintiff*



11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO,)

14 Plaintiff,)

15 vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

16 COX COMMUNICATIONS LAS VEGAS,)

17 INC., D/B/A COX COMMUNICATIONS,)

18 IES RESIDENTIAL, INC., SUNRISE)

19 VILLAS IX HOMEOWNERS)

20 ASSOCIATION, J & G LAWN)

21 MAINTENANCE, KEVIN BUSHBAKER,)

22 PWJAMES MANAGEMENT &)

23 CONSULTING, LLC., J. CHRIS)

24 SCARCELLI, DOE LANDSCAPER,)

25 RICHARD DUSLAK, JUSTIN SESMAN,)

26 AND DOES I-V, and ROE)

27 CORPORATIONS I-V, inclusive,)

28 Defendants.)

**ORDER ON DEFENDANT'S MOTION
TO SET ASIDE AND/OR AMEND
JUDGMENT, AND ORDER ON
PLAINTIFF'S MOTION TO ENFORCE
SETTLEMENT**

29 **ORDER ON DEFENDANT'S MOTION TO SET ASIDE AND/OR AMEND JUDGMENT**
30 **AND ORDER ON PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT**

31 Defendant SUNRISE's motion to set aside and/or amend judgment and Plaintiff's motion
32 to enforce settlement, having come on for hearing the 3rd day of March, 2021, the parties
33 appearing by and through their counsel of record, the Court having reviewed the papers
34 submitted, having heard oral argument, and good cause appearing, the Court rules as follows:

1 The Court notes that the pleadings and records in this matter confirm the following

2 **FINDINGS OF FACT:**

3 RUSSO filed the Complaint in this matter on April 6, 2017.

4 The Court GRANTED RUSSO's Motion to Amended the Complaint in this matter to add
5 claims against Defendants RICHARD DUSLAK ("DUSLAK") and JUSTIN SESMAN
6 ("SESMAN") on February 7, 2018.

7 RUSSO served the Amended Complaint on Defendant SESMAN on February 13, 2018.

8 RUSSO served the Amended Complaint on Defendant DUSLAK on February 14, 2018.

9 Neither DUSLAK nor SESMAN made any appearance in the instant litigation.

10 The Court Clerk entered a Default against Defendant DUSLAK on September 4, 2019.

11 The Court Clerk entered a Default against Defendant SESMAN on September 13, 2019.

12 Trial commenced in this matter on September 9, 2019, which trial resulted in a mistrial
13 due to the conduct of one of the venire members. Trial again commenced on October 10, 2019.
14 The October 10, 2019 trial concluded on October 18, 2019 when the active parties advised the
15 Court that a settlement had been reached in this action as to certain parties. The transcript from
16 October 18, 2019 confirms that the active parties in this matter advised the Court on that date
17 that a settlement had been reached as to the active parties in this matter.

18 The October 18, 2019 transcript further confirms the settling parties agreed that "there are
19 two other parties in this case who have been defaulted [DUSLAK and SESMAN]" and that "this
20 settlement does not affect them." See, October 18, 2019 transcript at P. 6 L. 16-21. The
21 October 18, 2019 transcript further confirms that the settling parties agreed the settlement only
22 involved the parties that had "actively litigated and PW JAMES". See October 18, 2019
23 transcript at P. 8 L. 2-3. The October 18, 2019 transcript also confirms the settling parties

1 agreed that “nothing in any of these releases or settlement . . . affects any rights Dr. Russo may
2 have against any person or entity related to the claims of the two individuals who have been
3 defaulted [DUSLAK and SESMAN]”. See, October 18, 2019 transcript at P. 11 L. 3-9.

4
5 Counsel for the settling parties then discussed reducing the settlement to writing,
6 whereupon counsel for the Plaintiff confirmed that in drafting any release or the like related to
7 the settlement:

8 the terms of whatever documents we sign or that my client has asked to sign
9 comport with what was discussed Wednesday, and what's being discussed today,
10 and no new terms, and those types of things. And, I guess, most of all that nothing
11 in any of these releases or any of the settlement affects any rights Dr. Russo may
12 have against any person or entity related to the claims of the two individuals who
13 have been defaulted, and any claims that they may have against anybody would
14 not be affected by this settlement. So as long as we're clear on all of that.

15 *Id* at P. 10 L. 24 – P. 11 L. 12.

16 The settling parties agreed that nothing in any of the settlement documents would affect
17 any rights Plaintiff may have against DUSLAK and/or SESMAN.

18 At a subsequent hearing on November 7, 2019 counsel for SUNRISE asked that
19 DUSLAK and SESMAN be included as releasees if it was determined they were employees of
20 Defendants. Counsel for RUSSO stated that there was no agreement to release DUSLAK and/or
21 SESMAN when the settlement was placed on the record on October 18, 2019. Counsel for
22 RUSSO stated, “this idea that if they're employees, then Sesman and Duslak are out. That was
23 not agreed to.” See, November 7, 2019 transcript at P. 23 L. 12-15. Counsel for RUSSO
24 continued by noting that on October 18, 2019 “we put on the record -- we're not waiving,
25 releasing, or otherwise affecting anything against Sesman or Duslak. I don't think anyone would
26 dispute that . . . it was a pretty significant point that day.” *Id* at P. 25 L. 6-16.

1 The Court then asked SUNRISE's counsel, "Mr. Fink, are we disputing that?" *Id* at P. 25
2 L. 21-22. Counsel for SUNRISE answered, "My best recollection is that when Mr. Sampson
3 said he was specifically retaining his rights to go against Mr. Sesman and Mr. Duslak, we all
4 agreed to that." *Id* at P. 26 L. 2-5.

6 The Court then gave the settling parties an opportunity to reduce the terms of the
7 settlement placed on the record on October 18, 2019 to writing. Counsel for RUSSO
8 commented that, in reducing the settlement to writing, "along the lines of Sesman and Duslak,
9 all rights against them, anybody who insures them, you know, all of those are preserved.
10 They're not affected. I would like to make sure that is crystal clear in whatever iteration we end
11 up with." *Id* at P. 40 L. 16-22.

13 In reducing the terms of the settlement placed on the record on October 18, 2019 to
14 writing, the agreement the settling parties signed stated that RUSSO was preserving all rights to
15 proceed against DUSLAK and SESMAN, and that neither DUSLAK and/or SESMAN were
16 being released even in the event they were subsequently deemed SUNRISE employees. The
17 agreement stated that "PLAINTIFF", "Dr. SIMONE RUSSO" was releasing SUNRISE
18 "EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN". *See*, Settlement
19 Agreement at P. 1 (emphasis in original). Each of the Defendants included in the agreement
20 were identified as including the Defendants' respective employees, with the clear exception of
21
22

23 ///

24 ///

25 ///

1 SUNRISE. On page one of the agreement the parties are identified. Defendant IES
2 RESIDENTIAL, INC., is identified as:

3 IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and
4 each of their respective past, present and future officers, directors, members,
5 managers, agents, representatives, shareholders, partners, associates, employees,
6 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,
7 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,
8 special purpose entities, legal and equitable owners and insurers;

9 *Id.*

10 Defendant COX is identified as:

11 COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX
12 COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and
13 each of their respective past, present and future officers, directors, members,
14 managers, agents, representatives, shareholders, partners, associates, employees,
15 attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees,
16 transferees, successors, assigns, heirs, divisions, contractors, joint ventures,
17 special purpose entities, legal and equitable owners and insurers;

18 *Id.*

19 Defendant SUNRISE however is identified as:

20 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter
21 "SUNRISE") and its affiliated companies, and each of their respective past,
22 present and future officers, directors, members, managers, agents, representatives,
23 shareholders, partners, associates, insurers (Community Association
24 Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc.,
25 DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to
26 SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN
27 OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM,
28 INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the
stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors,
beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs,
divisions, contractors, joint ventures, special purpose entities, legal and equitable
owners;

Id (emphasis in original).

The word "employees" is not used in the description of SURNISE as a Defendant.

Additionally, on page 4 of the release, the description of the released parties includes all of

1 Defendants' "employees ***EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN*** ...
2 .". *Id* at P. 4 (emphasis in original). When referencing the employees of any of the settling
3 Defendants it was made more than clear that the term "employees" who were being released did
4 not include DUSLAK or SESMAN as releasees.
5

6 The settlement agreement further stated, "PLAINTIFF [RUSSO] shall retain all rights to
7 pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN". *Id* at P. 4. The
8 settlement agreement further confirmed, "ANY LANGUAGE IN THIS RELEASE THAT IS
9 CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY
10 LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF'S
11 RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN . . . SHALL BE
12 DEEMED NULL AND VOID." *Id* (emphasis in original).
13

14 RUSSO filed an Application for Judgment by Default on October 31, 2019 which
15 Application noted that defaults had previously been entered against Defendants DUSLAK and
16 SESMAN, and which Application sought Judgment against DUSLAK and SESMAN in the
17 amount of \$25,000,000.00. The Application for Judgment by Default was served on all parties
18 in this matter on October 31, 2019.
19

20 On October 31, 2019 Joshua Raak, the Deputy Clerk of the Court, sent Notice of Hearing
21 to all active parties to this matter, including SUNRISE, which notified the said parties that
22 RUSSO's Application for Judgment by Default would be heard by the Court on December 17,
23 2019.
24

25 There is no record of any of the parties filing any opposition(s) to RUSSO's Application
26 for Judgment by Default. None of the Defendants in this matter appeared at the December 17,
27 2019 hearing on RUSSO's Application for Judgment by Default, nor did any of the Defendants,
28

1 or any other parties or non-parties, contest RUSSO's Application for Judgment by Default.
2 Following the hearing on RUSSO's Application for Judgment by Default, the Court entered
3 final Judgment in favor of RUSSO and against DUSLAK and SESMAN in the amount of
4 \$25,000,000.00 with interest accruing from the date of entry until paid in full. Notice of Entry
5 of the said final Judgment was served on all parties to this matter on December 17, 2019.
6

7 There is no record of any motion being filed under NRCP 59 to alter or amend the
8 Judgment within 28 days after service of written notice of entry of the said Judgment. Indeed,
9 there is no record of any such motion being filed at any time in 2019 or in 2020. There is no
10 record of any motion being filed under NRCP 60 for relief from the final Judgment in this
11 matter within six months after the date of the proceeding or after the date of service of the
12 written notice of entry of the duly entered December 17, 2019 Judgment. Indeed, there is no
13 record of any such motion being filed at any time in 2019 or in 2020.
14

15 With a final Judgment having been duly entered in this matter on December 17, 2019 and
16 notice of entry of the same being served on the same day, and no request to set aside the same
17 under NRCP 59, nor any request for relief under NRCP 60 being filed, the Court statistically
18 closed this case on May 14, 2020.
19

20 SUNRISE filed the instant motion to set aside and/or amend judgment on January 21,
21 2021. Non-Party QBE filed a joinder to the said motion then subsequently withdrew its joinder
22 to the same.
23

24 The Court makes the following **CONCLUSIONS OF LAW**:

25 Regarding SUNRISE's motion to set aside and/or amend the Judgment entered in this
26 matter, NRCP 59(e) states "a motion to alter or amend a judgment must be filed no later than 28
27 days after service of written notice of entry of judgment." SUNRISE's motion to set aside
28

1 and/or alter or amend the final Judgment in this matter was filed on January 21, 2021, which
2 was over a year after Notice of Entry of Judgment was served on the parties in this matter.
3 SUNRISE's motion to set aside or alter the Judgment was not filed within 28 days after Notice
4 of Entry of Judgment was served as required under NRCP 59(e) and is therefore denied.
5

6 Additionally, the Court finds that, in light of the procedural history of the case, there are
7 no grounds to amend or set aside the Judgment pursuant to NRCP 60(a). The Court finds that
8 there are no clerical mistakes, oversights or omissions in the duly entered Judgment. The Court
9 further finds that the final Judgment in his matter was entered exactly as sought in Plaintiff's
10 Application for Default judgment, which was provided to the active parties in this matter and
11 which none of the active parties contested. The Court therefore denies SUNRISE's request for
12 relief under NRCP 60(a).
13

14 The Court further finds that SUNRISE failed to establish grounds pursuant to NRCP 60(b)
15 (1)-(6) to amend or set aside the Default Judgment in this matter. The Court finds that relief is
16 not warranted under NRCP 60(b)(1) as SUNRISE has not presented the Court with evidence of
17 mistake, surprise, or excusable neglect that the Court in its discretion would find warranted any
18 such relief. The Court further finds that relief is not warranted under NRCP 60(b)(2) as
19 SUNRISE has not presented the Court with evidence of newly discovered evidence that, with
20 reasonable diligence, could not have been discovered in time to move for a new trial under
21 NRCP 59(b) that would cause the Court to exercise its discretion to grant such relief. The Court
22 also finds that relief is not warranted under NRCP 60(b)(3) as SUNRISE has not presented the
23 Court with evidence of fraud, misrepresentation, or misconduct by any opposing party that
24 would cause the Court to exercise its discretion to grant such relief.
25
26
27
28

///

1 Additionally, under NRCP 60(c)(1),

2 A motion under Rule 60(b) must be made within a reasonable time-and for
3 reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or
4 the date of service of written notice of entry of judgment or order, whichever date
5 is later. The time for filing the motion cannot be extended under Rule 6(b).

6 SUNRISE's motion to set aside and/or alter or amend the Judgment in this matter was
7 filed on January 21, 2021, which was over one year after Notice of Entry of Judgment was
8 served on the parties in this matter on December 17, 2019. SUNRISE did not file a request for
9 relief under NRCP 60(b) (1), (2), or (3) within 6 months after Notice of Entry of Judgment was
10 served as required under NRCP 60(c)(1). SUNRISE's requests for relief under NRCP 60(b) (1),
11 (2), and/or (3) are therefore also denied as untimely.

12 The Court also finds SUNRISE is not entitled to relief under NRCP 60(b)(4). The
13 provisions of NRCP 60(b)(4) concerning void judgments "is normally invoked in a case where
14 the court entering the challenged judgment did not have jurisdiction over the parties." *Misty*
15 *Management v. District Court*, 83 Nev. 180, 182, 426 P.2d 728, 729 (1967) (citing *LaPotin v.*
16 *LaPotin* 75 Nev. 264, 339, P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372, P.2d 679
17 (1962)). Judgments are typically deemed "void" in cases where the court entering the
18 challenged judgment was itself disqualified from acting, e.g., *Osman v. Cobb*, 77 Nev. 133, 360
19 P.2d 258 (1961), or did not have jurisdiction over the parties, e.g., *LaPotin v. LaPotin*, 75 Nev.
20 264, 339 P.2d 123 (1959); *Foster v. Lewis*, 78 Nev. 330, 372 P.2d 679 (1962), or did not have
21 jurisdiction over the subject matter of the litigation. *Misty Management v. District Court*, 83
22 Nev. 180, 426 P.2d 728 (1967).

23 DUSLAK and SESMAN were residents of Clark County Nevada when the underlying
24 incident occurred. DUSLAK and SESMAN were both served with this suit in Clark County
25 Nevada. The Court has jurisdiction over DUSLAK and SESMAN as well as the subject matter
26 27
28

1 of this negligence action. SUNRISE's motion does not assert that there were any jurisdictional
2 issues over the parties or the subject matter. SUNRISE did not present any evidence of any
3 jurisdictional issues. Relief is therefore not warranted under NRCP 60(b)(4).
4

5 NRCP 60(b)(5) allows a court to grant relief from a judgment if the judgment has been
6 satisfied, released, or discharged. As noted above, SUNRISE did not present evidence that the
7 duly entered Default Judgment against DUSLAK and SESMAN was satisfied, released, or
8 discharged. The record is replete with examples of RUSSO confirming, and SUNRISE and the
9 other active Defendants agreeing, that the settlement did not affect RUSSO's rights against
10 DUSLAK or SESMAN in any way, that the settlement did not include SUNRISE employees,
11 that the settlement did not include DUSLAK or SESMAN as employees of any of the
12 Defendants, and that the settlement agreement specifically and completely excluded DUSLAK
13 and SESMAN as releasees in all respects. The record further confirms that SUNRISE agreed
14 RUSSO "shall retain all rights to pursue any claims against RICHARD DUSLAK and/or
15 JUSTIN SESMAN". As the Judgment against DUSLAK and SESMAN was not satisfied,
16 released, or discharged, relief is not warranted under NRCP 60(b)(5).
17
18

19 NRCP 60(b)(6) permits relief from a judgment for "any other reason that justifies
20 relief". During the hearing on this matter counsel for RUSSO argued that a request for relief
21 under NRCP 60(b)(6) must present grounds "other" than those enumerated elsewhere in NRCP
22 60(b). In response counsel for SUNRISE stated, "Mr. Sampson says that, well, that's going to
23 mean something different than the grounds that might be discussed in (1), (2), (3), (4), or (b) (1)
24 (2) (3) (4), but I don't know if there's any law that says that." See Transcript of March 3, 2021
25 hearing at P. 68 L. 25 – P. 69 L. 4. The Court finds that the plain language of NRCP 60(b)(6)
26 which permits relief for "any other reason that justifies relief" requires that any relief sought
27
28

1 under NRCP 60(b)(6) be for grounds "other" than the grounds set forth elsewhere in NRCP
2 60(b)(1-5). SUNRISE has not presented any authority indicating a party may seek relief under
3 NRCP 60(b)(6) for reasons enumerated elsewhere in NRCP 60(b)(1-5). Indeed such a reading
4 would be contrary to the purposes of NRCP 60(b)(1-5) as well as NRCP 60(c)(1). As
5 SUNRISE has not provided the Court with "any other reason" that would justify relief from the
6 Judgment, SUNRISE's request for relief under NRCP 60(b)(6) motion is denied.

8 SUNRISE's motion requests relief under NRCP 60(d)(3). NRCP 60(d)(3) permits a
9 court to set aside a judgment "for fraud upon the court." As the Nevada Supreme Court held in
10 *NC-DSH Inc. v. Garner*, 218 P.3d 853, 858, 125 Nev. 647, 654 (2009):

12 The problem lies in defining what constitutes "fraud upon the court." Obviously, it
13 cannot mean any conduct of a party or lawyer of which the court disapproves;
14 among other evils, such a formulation "would render meaningless the [time]
15 limitation on motions under [Rule] 60(b)(3)." *Kupferman v. Consolidated*
16 *Research Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (Friendly, J.), cited with
17 approval in *Occhiuto*, 97 Nev. at 146 n. 2, 625 P.2d at 570 n. 2, and *Murphy*, 103
18 Nev. at 186, 734 P.2d at 739.

17 *Id.* at 858, 654.

18 The Court went on to state:

19 The most widely accepted definition, which we adopt, holds that the concept
20 embrace[s] only that species of fraud which does, or attempts to, subvert the
21 integrity of the court itself, or is a fraud perpetrated by officers of the court so that
22 the judicial machinery cannot perform in the usual manner its impartial task of
23 adjudging cases . . . and relief should be denied in the absence of such conduct.

23 *Id.*

24 For a judgment to be set aside for fraud on the court, "the moving party must show clear
25 and convincing evidence establishing fraud. *U.S. v. Estate of Stonehill*, 660 F.3d 415, 443 (9th
26 Cir. 2011) (as cited in *Hsu v. Ubs Fin. Servs.* 2014 U.S. Dist. LEXIS 29792 (2014)).

28 ///

1 The *Stonehill* Court went on to note:

2 Fraud on the court should, we believe, embrace only that species of fraud which
3 does, or attempts to, defile the court itself. . . . [Movant] must demonstrate, by
4 clear and convincing evidence, an effort . . . to prevent the judicial process from
5 functioning in the usual manner. They must show more than perjury or
6 nondisclosure of evidence, unless that perjury or nondisclosure was so
7 fundamental that it undermined the workings of the adversary process itself.

8 *Id* at 444-445.

9 SUNRISE's motion does not set forth any proof of wrongdoing by RUSSO, his counsel,
10 or the Court, and certainly does not provide clear and convincing evidence of any fraud that
11 would subvert the integrity of the Court itself. In its Reply filed February 25, 2021 SUNRISE
12 expressly withdrew any intimation or accusation of RUSSO's counsel committing any fraud or
13 misconduct in securing the Default Judgment in this matter. *See* Reply at P. 5 footnote 5. For
14 these reasons, any request for relief under NRCP 60(d)(2) is denied.

15 Based on the foregoing IT IS HEREBY ORDERED ADJUDGED AND DECREED that
16 Defendant Sunrise Villa IX Homeowners Association's Motion to Set Aside and/or Amend the
17 Judgment in this matter be, and hereby is, DENIED.

18 Regarding RUSSO's motion to enforce the settlement, under EDCR 7.50 an agreement
19 between parties is effective if the same is entered in the minutes and/or is in writing subscribed
20 by the party against whom the same shall be alleged or the party's attorney. The agreement that
21 was placed on the record on October 18, 2021, in which the active parties to this suit agreed: 1)
22 that RUSSO's rights against DUSLAK and/or SESMAN are not affected by the settlement; 2)
23 that the settlement did not include DUSLAK and/or SESMAN; and 3) that nothing in any
24 subsequent writing confirming the settlement agreement would affect any rights RUSSO may
25 have against DUSLAK and/or SESMAN, is enforceable. RUSSO's motion to enforce "requests
26
27
28

1 this Court enforce the settlement agreement confirmed on the record on October 18, 2019 and
2 hold that the settlement did not affect SIMONE's rights against DUSLAK and/or SESMAN."
3 See Motion at P. 8 L. 2-5. It is hereby ORDERED ADJUDGED AND DECREED that
4 RUSSO's motion to enforce settlement is GRANTED. It is further ORDERED ADJUDGED
5 AND DECREED that the settlement entered into in this matter between the active parties and
6 PW JAMES did not affect any of RUSSO's rights against DUSLAK and/or SESMAN to any
7 degree.
8

9
10 SUNRISE directs the Court to verbiage in the stipulation attached to the settlement
11 agreement in which RUSSO and SUNRISE stipulated that for purposes of this litigation, in
12 August 2016 DUSLAK and SESMAN were natural persons who were in the service of
13 SUNRISE as independent contractors whom SUNRISE compensated and whom SUNRISE had
14 the non-exclusive right to direct and control. See, SUNRISE's Consolidated Opposition to
15 Plaintiff's Motions to Enforce Settlement and Reply to QBE's Motion to Enforce at P. 2 L. 12-
16 27.
17

18 SUNRISE argues that the language "as independent contractors" found in the stipulation
19 attached to the Agreement impacts RUSSO's rights against DUSLAK and/or SESMAN and
20 releases DUSLAK and SESMAN if they are found to be employees of SUNRISE. SUNRISE's
21 position is without merit as the plain language on page 4 of the settlement agreement states
22 "PLAINTIFF [RUSSO] shall retain all rights to pursue any claims against RICHARD
23 DUSLAK and/or JUSTIN SESMAN".
24

25 The settlement agreement also states on page 4, "ANY LANGUAGE IN THIS
26 RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC
27 PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY
28

1 IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN
2 SESMAN . . . SHALL BE DEEMED NULL AND VOID." The stipulation attached to the
3 settlement Agreement is referenced multiple times in the settlement Agreement itself and is
4 incorporated into the Agreement. See, Bryan A. Garner, ed. (2001), *Black's Law*
5 *Dictionary* (2nd pocket ed.). St. Paul, MN: West Group. p.341. ISBN 0-314-25791-8.
6 Incorporation by reference is the act of including a second document within another document
7 by only mentioning the second document. When a document is mentioned in a main document,
8 the entire second document is made a part of the main document. *Id.* When a document is
9 referenced in a contract, the referenced document becomes a part of the contract for all
10 purposes. *Lincoln Welding Works, Inc. v. Ramirez*, 98 Nev. 342, 647 P.2d 381 (1982).

13 The Nevada Supreme Court has held that "where two instruments were executed
14 together as one transaction they constituted but one instrument or contract, although written on
15 different pieces of paper." *Haspray v. Pasarelli*, 79 Nev. 203, 207-208, 380 P.2d 919, (1963).

17 The *Haspray* Court went on to say:

18 They would have to be taken and construed together as if written on the same
19 paper and signed by both parties. The law in such case deals with the matter as it
20 really was – as one transaction – and therefore all the papers drawn up
21 simultaneously bearing the same subject are held to be but one contract, although
22 written on several papers.

22 *Id.*

23 As SUNRISE argues that the language in the stipulation identifying DUSLAK and
24 SESMAN "as independent contractors" impacts RUSSO's rights against DUSLAK and
25 SESMAN, and as the Agreement states that "ANY LANGUAGE THAT WOULD BE READ
26 TO IN ANY WAY IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK
27 and/or JUSTIN SESMAN . . . SHALL BE DEMED NULL AND VOID", IT IS HEREBY
28

1 ORDERED ADJUDGED AND DECREED that the language "as independent contractors" as
2 found in the stipulation is deemed null and void pursuant to the plain language found on page 4
3 of the settlement agreement.
4

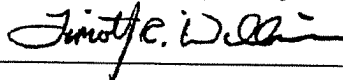
5 Paragraph 15 of the agreement, which is found on page 7 states:

6 If any provision of this Agreement is determined by a court of competent
7 jurisdiction to be illegal, invalid, or unenforceable, such provision will be deemed
8 to be severed and deleted from the Agreement as a whole, and neither such
9 provision nor its severance and deletion shall in any way affect the validity of the
10 remaining provisions of the Agreement.

11 As the language "as independent contractors" is deemed null and void, IT IS HEREBY
12 ORDERED ADJUDGED AND DECREED that the words "as independent contractors" are
13 severed and deleted from the Agreement as set forth in paragraph 15, and the remainder of the
14 Agreement and stipulation, with the words "as independent contractors" deleted shall remain in
15 full force and effect.

16 SO ORDERED.

17 Dated this 26th day of May, 2021

18 
19

ZJ

20 028 C04 6CB9 C18D
21 Timothy C. Williams
22 District Court Judge

23 Submitted by:
24 LAW OFFICE OF DAVID SAMPSON, LLC.

25 BY: /s/ David Sampson

26 DAVID SAMPSON, ESQ.
27 Nevada Bar No.6811
28 LAW OFFICE OF DAVID SAMPSON, LLC.
630 S. 3rd St.
Las Vegas NV 89101
Attorney for Plaintiff



Amanda Nalder <phoeny27@gmail.com>

Fwd: Russo

2 messages

David Sampson <davidsampsonlaw@gmail.com>

Fri, May 14, 2021 at 11:21 AM

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Amanda Nalder <amanda@davidsampsonlaw.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

On Tuesday I sent the proposed Order to all of you. On Wednesday I sent the proposed Order to you again after correcting two typographical errors. My Tuesday email asked you to please let me know if you have any proposed changes regarding the same.

Having heard nothing from any of you, I will be submitting the same to the Court.

Attached is yet another copy of the proposed Order.

Thank you,

----- Forwarded message -----

From: **David Sampson** <davidsampsonlaw@gmail.com>

Date: Tue, May 11, 2021 at 11:35 AM

Subject: Russo

To: Shannon Splaine <ssplaine@lgclawoffice.com>, Leonard Fink <lfink@springelfink.com>, Julie Funai <JFunai@lipsonneilson.com>, Jennifer Arledge <jarledge@sgroandroger.com>

Based on the May 3, 2021 Minute Order the Court and the comments from the Court at the hearing today, I have prepared the attached proposed Order on the matter. Please let me know if you have any proposed changes regarding the same.

Thank you,

--

David Sampson, Esq.

Certified Personal Injury Specialist (Nevada Justice Association, State Bar of Nevada)

Trial Lawyer of the Year (Nevada Reptile Trial Lawyers 2017)

The Law Office of David Sampson, LLC.

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This communication in no way constitutes an attorney/client agreement, and no such attorney/client relationship arises unless and until an attorney/client contract is signed by the attorney and client.

Thank you.

--

David Sampson, Esq.

Certified Personal Injury Specialist (Nevada Justice Association, State Bar of Nevada)

Trial Lawyer of the Year (Nevada Reptile Trial Lawyers 2017)

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Thank you.

2 attachments



656. Order on Motion to Set Aside.pdf
230K



656. Order on Motion to Set Aside.pdf
202K

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Simone Russo, Plaintiff(s)

CASE NO: A-17-753606-C

7 vs.

DEPT. NO. Department 16

8 Cox Communications Las Vegas,
9 Inc., Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 5/26/2021

15 Michael Merritt

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OCTOBER 16, 2019

RUSSO V. COX COMMUNICATIONS

1

1 CASE NO. A-17-753606-C

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9

SIMONE RUSSO,

)

10

Plaintiff,

)

)

11

vs.

)

)

12

COX COMMUNICATIONS LAS VEGAS,

)

)

13

Defendant.

)

)

14

15

REPORTER'S TRANSCRIPT

16

OF

17

HEARING

18

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED WEDNESDAY, OCTOBER 16, 2019

23

24

25

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

Peggy Isom, CCR 541, RMR

OCTOBER 16, 2019

RUSSO V. COX COMMUNICATIONS

2

1 APPEARANCES:

2 FOR THE PLAINTIFF RUSSO:

3

DAVID SAMPSON, LLC

4

BY: DAVID F. SAMPSON, ESQ.

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12 FOR THE DEFENDANT IES RESIDENTIAL:

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1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 16, 2019

2 1:43 P.M.

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

4 * * * * *

12:00:02 5
6 THE COURT: All right. Good afternoon to
7 everyone.

8 IN UNISON: Good afternoon, your Honor.

9 THE COURT: And let's go ahead and place our
01:43:42 10 appearances for the record.

11 MS. SAMPSON: David Sampson with Dr. Russo.

12 MR. FINK: Good afternoon, your Honor.
13 Leonard Fink and Raven Yim for Sunrise Villas IX.

14 MR. LEMKUL: Good afternoon, your Honor. Will
01:43:54 15 Lemkul on behalf of Cox Communications and IES.

16 MS. SUMMERS: Christopher Turtzo also for Cox
17 Communications and IES.

18 MR. MELORIO: Good afternoon, your Honor.
19 Joseph Meloro for Kevin Bushbaker.

01:44:07 20 MS. FUNAI: Good afternoon, your Honor. Julie
21 Funai on behalf of the defendant Scarcelli.

22 MR. CLARK: Good morning -- good afternoon,
23 your Honor. David Clark on behalf of the defendant
24 Chris Scarcelli.

01:44:17 25 THE COURT: What are we passing out?

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01:44:20 1 THE MARSHAL: The jury, did you get a new one.

2 THE COURT: The jury what?

3 THE MARSHAL: Oh, seating chart.

4 THE COURT: Anyway, Counsel, can we approach

01:44:32 5 for one second.

6 (A discussion was held off the record.)

7 THE COURT: Okay. Counsel, we had -- let the
8 record reflect that we had a sidebar discussion for

9 about four or five minutes regarding specific issues in

01:49:10 10 the case. And it is my understanding and recollection

11 that we've come to some sort of agreement; is that

12 correct, Counsel?

13 MR. FINK: Yes, your Honor.

14 THE COURT: All right. And, Mr. Fink, you

01:49:18 15 have the floor, sir.

16 MR. FINK: Actually I'm going to let

17 Mr. Lemkul.

18 THE COURT: Mr. Lemkul, you can have the

19 floor. Doesn't matter.

01:49:25 20 MR. FINK: Why don't you go.

21 MR. LEMKUL: Yes, that's fine. Actually I was

22 going to have Mr. Turtzo do it. That's fine, your

23 Honor well, there's been, obviously, a lot of moving

24 parts, your Honor. So let me start. And if I mess up,

01:49:36 25 I'm sure one of the other attorneys will jump in.

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01:49:40 1 On behalf of PW James, the homeowners
2 association, IES, and Cox we will pay \$355,000 to the
3 plaintiff in exchange for a release with prejudice of
4 all his claims. That is subject to the entry of an
01:49:58 5 order by the Court granting those defendants'
6 respective good faith settlement motions that we will
7 file most likely today.

8 THE COURT: Today.

9 MR. LEMKUL: Today for hearing on Friday
01:50:11 10 morning. We'll file that on an order shortening time.
11 We'll make sure everybody gets a copy of that, and that
12 will be done.

13 Also because there are active cross-claims,
14 and we do not have the defendant Scarcelli and
01:50:24 15 Bushbaker involved in the deal at the moment, my
16 understanding is the jury will be allowed to leave
17 today. We'll have Thursday off in order to allow the
18 parties to try to work out just a final settlement that
19 resolves all issues.

01:50:39 20 We would, obviously, continue to work with
21 Mr. Sampson and his office on that portion of the
22 transaction or the settlement. And we would come back
23 Friday morning.

24 I understand that the Court has a full day.
01:50:50 25 We can bring the jury in and have them there. We can

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01:50:53 1 go forward with the motion. See how the Court rules on
2 those various motions. And if we have a deal, we can,
3 obviously, let the jury go home on Friday for good. If
4 we do not, then we have the jury here and we can
01:51:06 5 resume.

6 THE COURT: I understand. Okay.

7 MR. LEMKUL: Am I missing anything?

8 MR. TURTZO: No.

9 THE COURT: Okay.

01:51:11 10 MR. LEMKUL: There is one other additional
11 issue, your Honor, is that if we do have active
12 cross-claims still pending irrespective of the
13 good-faith settlement determination, the defendants
14 that I mentioned would then file summary judgment
01:51:22 15 motions based on the Court's order on the good-faith
16 settlement to extinguish the cross-claims. I just
17 don't know how we'll get it all on, your Honor. The
18 good-faith settlement motion, your Honor, is one thing.
19 The summary judgment is a whole different animal, so I
01:51:35 20 don't even think we could get that on file today, which
21 is why I'm kind of separating the two things out.

22 THE COURT: Well, I understand. And everyone
23 remember this. The impact that good-faith settlements
24 have as it relates to equitable indemnity and
01:51:48 25 contribution claims.

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01:51:49 1 MR. LEMKUL: Correct, your Honor. Yes.

2 THE COURT: It's pretty clear under the

3 statute.

4 MR. LEMKUL: Absolutely right.

01:51:53 5 THE COURT: Okay.

6 MR. LEMKUL: So that's where I believe we are,

7 your Honor.

8 Did I missed anything?

9 Yeah.

01:52:03 10 Your Honor, I'm not aware of any contracts

11 that exist, so, you know, the entry of -- why don't we

12 come back on Friday to determine --

13 THE COURT: We'll go into more deal on that.

14 MR. LEMKUL: Correct.

01:52:13 15 THE COURT: But that's one of the discussions

16 under the statute and the case law, so we'll deal with

17 that.

18 MR. LEMKUL: Okay. Great.

19 THE COURT: Okay.

01:52:20 20 MR. CLARK: Good afternoon, your Honor. David

21 Clark for defendant Chris Scarcelli. As we said off

22 the record and I'll put it on the record now, we were

23 just made aware of this an hour ago. As I stand here,

24 I don't have authority from my client to join in any

01:52:38 25 global settlement at this time. I appreciate the

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01:52:40 1 Court's indulgence in giving us some time to consult
2 with our clients. But at this time I simply don't have
3 any authority to say yay or nay.

4 THE COURT: I understand that, Mr. Clark, and
01:52:50 5 you need authority to do that.

6 MR. CLARK: Right.

7 THE COURT: And I get it.

8 MR. MELORO: Joseph Meloro on behalf of
9 Mr. Bushbaker. We're in the same position, your Honor.
01:52:58 10 We need time to speak to the client and work this out.

11 THE COURT: I understand. We'll give you that
12 time too, sir.

13 MR. MELORO: Thank you.

14 THE COURT: Mr. Fink.

01:53:07 15 MR. FINK: Your Honor, I don't have anything
16 else to add. Mr. Lemkul laid out the core terms. I
17 know that we talked about payment issues. I don't know
18 if those need to be put on the record or not.

19 Dave, the payment terms.

01:53:20 20 MS. SAMPSON: I was going to address some of
21 those, yeah.

22 MR. FINK: So you want to do that?

23 MS. SAMPSON: Okay.

24 THE COURT: I don't want to overlook
01:53:27 25 Mr. Sampson. I don't think I have in the two or three

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01:53:29 1 weeks of the jury selection.

2 MS. SAMPSON: No.

3 THE COURT: But, sir, you have the floor.

4 MS. SAMPSON: Thank you, Judge.

01:53:33 5 Plaintiff is in agreement. There are just two
6 things -- well, it is two things I want to chat about.
7 We did ask that payment be made as quickly as possible.
8 The assertion, I believe, what I was told is the check
9 would be in our office within two weeks of any final
01:53:52 10 paperwork being signed.

11 I would just ask any paperwork be kept short
12 and sweet and stick to the terms that we discussed
13 today.

14 And, you know, I always joke and say, leave my
01:54:02 15 mother out of it, or something like that. But we'll
16 stick to the terms of what we discussed today and get
17 final paperwork authorized.

18 I'm curious -- well, and the other thing
19 Mr. Lemkul said that he may have misspoke, but he said
01:54:17 20 it certainly would resolve all issues as to the
21 settling defendants that were named. And if
22 Mr. Bushbaker and -- Mr. Bushbaker and Scarcelli join
23 in, it would settle all issues as to them. There are
24 other defendants that have been defaulted that we would
01:54:30 25 just, after this is all resolved, seek leave of the

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01:54:33 1 Court to proceed as appropriate against them.

2 The only other thing -- doggone it. It
3 slipped my mind. What do you know.

4 Oh, I was curious if there was any way to have
01:54:47 5 a good-faith determination made orally. I don't know
6 if that's -- if that would be appropriate. You've
7 heard the terms that the settling defendants are
8 willing to do.

9 We can advise the Court as to where the
01:54:59 10 non-settling defendants are. I think it would be a
11 pretty easy decision under the case law as to -- as to
12 whether there should be a good-faith determination. I
13 don't know. I've never seen one done orally before.
14 Can't think of why it couldn't be. But I would just
01:55:13 15 toss that out there. And leave it at that.

16 THE COURT: I understand.

17 MR. CLARK: Your Honor, David Clark for
18 Mr. Scarcelli. I would humbly ask that if we're going
19 to be carved out of this, we at least have a chance to
01:55:27 20 look at the motion.

21 THE COURT: Mr. Clark, I've never flown by the
22 seat of my pants that I can think of. Whether you
23 agree or disagree, I do understand the fundamentals of
24 due process.

01:55:40 25 And the reason why that's important, and it's

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01:55:43 1 really this simple. I don't mean -- you can sit down.

2 It is because I could potentially be right in
3 the substance but wrong procedurally, and that can
4 result in something happening that we don't necessarily
01:55:57 5 need to happen.

6 So what I'm going to do is this, and under the
7 rules, I can, of course, honor, if requested, an order
8 shortening time by one of the parties.

9 I think clearly under the facts of this case,
01:56:14 10 it would meet the requirements of an order shortening
11 time. So assuming you get whatever motion there is to
12 me today, I'm not going anywhere. I'll sign it today.
13 And counsel can serve it and file it today.

14 MR. LEMKUL: Got it.

01:56:29 15 THE COURT: It will be set for 9:00 o'clock
16 Monday morning. And that will take any potentially
17 appellate issues off the table in that regard. And
18 that's what I want.

19 And just as important too, and I do listen.

01:56:44 20 One of the things Mr. Sampson brought up as far as the
21 scope of the settlement, until the individual
22 defendants that weren't defaulted in this case they're
23 not included yet. But potentially they might be
24 included assuming you get the authority from your
01:57:00 25 clients.

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01:57:01 1 The next issue was any defaulted defendants in
2 this case that there's been a default entered
3 against -- against, they won't be part of the
4 settlement agreement; is that correct?

01:57:11 5 MR. LEMKUL: Correct, your Honor. That's
6 correct. I forget about that part. Mr. Sampson is
7 correct. They're not part of the settlement. And my
8 understanding is he's going -- Mr. Sampson is going to
9 have a prove-up hearing next week about that.

01:57:20 10 THE COURT: All right. I just want to make
11 sure I didn't overlook anything, so we got a pretty
12 clear record.

13 So what I'm -- I guess what -- here's the
14 thing.

01:57:30 15 MR. LEMKUL: Your Honor.

16 THE COURT: Go ahead.

17 MR. LEMKUL: I just want to make sure. There
18 was some confusion, your Honor, what -- we're going to
19 file the motion for the good-faith settlement
01:57:36 20 determination today, your Honor. And then the hearing
21 will be Friday at 9:00 a.m. this week.

22 THE COURT: Yes, sir.

23 MR. LEMKUL: Okay. Thank you.

24 THE COURT: It will be Friday at 9:00 o'clock
01:57:45 25 sharp. We'll do this then.

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01:57:46 1 MR. LEMKUL: We'll be here.

2 THE COURT: Okay. And last, but not least, I
3 guess, I have to deal with the jury. And what I will
4 do is we'll have them come in. And I will explain to
01:57:56 5 them in very simple terms that I just need time to
6 discuss issues with you regarding the case, and nothing
7 more; nothing less.

8 Consequently we'll take tomorrow off, and
9 we'll be here Friday at 9:30.

01:58:14 10 MR. LEMKUL: That's excellent, Judge.

11 THE COURT: How's that?

12 MR. CLARK: Excellent.

13 MS. SAMPSON: To the extent the Court is not
14 just willing to fall down on the sword and say it's all
01:58:21 15 your fault, that sounds like the next best shot.

16 THE COURT: All my fault? Well, I mean --

17 MS. SAMPSON: I mean, you cut us all a break,
18 but I get it.

19 THE COURT: No. But, I mean, it's -- well, we
01:58:33 20 are working together; right?

21 MS. SAMPSON: That is correct.

22 MR. LEMKUL: Yeah.

23 MS. SAMPSON: Very much.

24 MR. LEMKUL: I mean, the day off potentially
01:58:39 25 alleviates the Court's dealing with this any further,

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01:58:41 1 jury and, you know, the rest of us subject to
2 Mr. Sampson's prove-up hearings that could happen, you
3 know, I think he wants to do it next week. So...

4 THE COURT: Right. And my point is the one
01:58:51 5 other -- it's -- you know, what's fascinating about the
6 whole jury trial process, and I feel this is very
7 important, of course, we can't tell them the substance
8 of our discussions today. We can't do that, right?
9 There's a lot of things you can't tell the jury. But
01:59:06 10 you do try to be as transparent as you can be, right?

11 MR. LEMKUL: Um-hum.

12 THE COURT: You do. Because you owe that to
13 them. And that's why even during voir dire I just try
14 to explain to them what's going on. And maybe the best
01:59:20 15 way I can handle it is that there's a significant legal
16 issue that came up today that I have to decide
17 tomorrow. How does that sound?

18 MS. SAMPSON: That's fine. And I was being
19 somewhat facetious, but, yeah. That's fine.

01:59:31 20 THE COURT: Does that sound good?

21 MR. LEMKUL: That's absolutely --

22 MS. SAMPSON: That's fine.

23 THE COURT: Yeah.

24 MS. SAMPSON: Given Mr. Lemkul raised the
01:59:35 25 issue of the prove up, which I was -- I was going to

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01:59:37 1 address that. And they can tell me if they would not
2 be in agreement. But I think what we would do given
3 where we're at, we're already in trial. So if all of a
4 sudden, if the defendants all settle out, we would just
01:59:50 5 agree to dismiss the jury, have the matter resolved as
6 a bench trial. Exhibits have already been brought
7 down. We would stipulate to have them admitted. I put
8 my client on the stand. Probably his wife. I don't
9 even know if your Honor would require a doctor. And
02:00:04 10 then have a -- establish the evidence for your Honor to
11 come to a decision as to the amount of medical bills
12 and pain and suffering for the default judgment.

13 Can't imagine they'd have objection, but I
14 didn't want to catch anybody off guard.

02:00:19 15 MR. LEMKUL: No objection, Judge.

16 THE COURT: I get that. I understand why
17 nobody would have an objection. But, see, I'm always
18 looking at the next level. And here's my question on
19 that. And I think I know the answer. Of course, I
02:00:29 20 wouldn't be presumptuous just knowing the answer. But,
21 typically, when you have -- when you seek applications
22 for default judgment, there's a due process step in the
23 way; right?

24 MR. LEMKUL: Right.

02:00:41 25 THE COURT: And so all I'm saying is this: I

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02:00:44 1 would love to be able to circumvent the process.

2 But, Mr. Sampson, I don't know if I can do
3 that or not. If you want to look at that and explore
4 it for me, I always have an open mind. But my major
02:00:57 5 concern is this. I don't mind telling everybody this.
6 At the end of the day, I don't mind making the tough
7 calls. But I always look at it, okay, this decision I
8 make, how confident am I when it comes to all appellate
9 issues.

02:01:11 10 MR. LEMKUL: Right.

11 THE COURT: Right? That's kind of how I frame
12 things. And that's why I try not to let emotions get
13 involved at all. Because I'm sitting back saying to
14 myself, Okay, what will happen on appeal. And the only
02:01:21 15 reason I say that is this. Like, when I had a really
16 difficult construction defect issue as it related to
17 fees and costs with Mr. Fink's partner, right? And it
18 was a very unique issue.

19 And I think at the time I was probably the
02:01:36 20 first judge to step out there and say, wait a second
21 here. There is an issue of proximate cause as related
22 to it. I treated it like any other special damage. I
23 performed a calculation and so on and so forth. And it
24 was really an important issue at the time. Went up on
02:01:51 25 appeal. Was affirmed, right?

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02:01:53 1 MR. FINK: Yes, sir.

2 THE COURT: And actually, I don't mind telling
3 you this, Mr. Fink, I think that if there wasn't a
4 change in Chapter 40, they'd have issued a published
02:02:01 5 decision on that.

6 MR. FINK: I agree.

7 THE COURT: Yeah. But that's my point. You
8 know, you want to make sure you get it right.

9 MR. LEMKUL: Right.

02:02:06 10 THE COURT: That's what I try to do. And
11 whether you agree or disagree, I'm going to respect the
12 process. Because didn't somebody bring that up? You
13 got to respect it. You do. We were talking one day.
14 We saying you got to respect the process. That's -- at
02:02:22 15 the end of the day that's all we have.

16 So is there anything else?

17 MS. SAMPSON: No, Judge.

18 MR. LEMKUL: I don't think so.

19 THE COURT: All right. Okay. So we're going
02:02:32 20 to bring the panel in. And I will keep it as generic,
21 benign as possible. And that's all we can do.

22 MR. LEMKUL: Understood, Judge.

23 THE MARSHAL: As a reminder, we have to fill
24 the two jurors -- the two jurors that were released out
02:02:56 25 of the box when we get back.

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02:02:58 1 THE COURT: Do we need to do that now? I
2 don't think so.

3 MS. SAMPSON: I think we can just so that the
4 ones that are leaving don't have to come back Friday.

02:03:05 5 THE MARSHAL: True.

6 MS. SAMPSON: I think that's smart.

7 THE COURT: Did we release them already?

8 MS. SAMPSON: I thought it was --

9 THE MARSHAL: The two -- the two that we
02:03:09 10 talked about yesterday, I released them.

11 THE COURT: They've been released.

12 You know what, let's make it a little -- bring
13 them in. Put them in the box. And then after we do
14 that, then I'll explain it to them. I think that has a
02:03:20 15 little more protocol --

16 THE MARSHAL: Yes, your Honor.

17 THE COURT: -- for the proceeding.

18 THE MARSHAL: Yes, your Honor. I'll be right
19 back.

02:17:23 20 (The prospective jurors enter the
21 courtroom.)

22 THE COURT: All right. Do the parties
23 stipulate to the presence of the panel?

24 IN UNISON: Yes, your Honor.

02:18:37 25 THE COURT: Okay. Ladies and gentlemen of the

Peggy Isom, CCR 541, RMR

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02:18:40 1 panel, good afternoon.

2 IN UNISON: Good afternoon.

3 THE MARSHAL: Your Honor, I have two seats.

4 THE COURT: Yeah. You can proceed.

02:18:45 5 (The Marshal seated Prospective Jurors
6 173 and 175.)

7 THE COURT: All right. Ladies and gentlemen,
8 once again good afternoon.

9 IN UNISON: Good afternoon.

02:19:27 10 THE COURT: I just want to remind you of a
11 couple of points, and I think this is really important
12 to point out.

13 Just because you're not in open court and
14 you're here, doesn't mean or stand for the proposition
02:19:39 15 that the case isn't moving forward. Because what
16 happens many times during trial, I have to meet with
17 the lawyers, and we have to work on specific legal
18 issues. Does everybody understand that?

19 And I hate to say it, but it's just like
02:19:59 20 Mr. Rice indicated in his letter, and I think there's
21 one important point is very insightful because he
22 understood this when he was part of the military and
23 he -- it's funny I never thought about it this way, but
24 it's somewhat similar to jury service. He said, "I'm
02:20:17 25 used hurry up and waiting," Right? Remember that in

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02:20:20 1 his letter? And he said that, and that's true.

2 But that doesn't stand for the proposition
3 that the jury system is not at work. That's probably
4 the best way I can say that.

02:20:37 5 And as far as the current case is concerned,
6 as far as the ultimate outcome is concerned we're still
7 on track. I think that's the most important thing you
8 want to know; right? We're not going to go beyond the
9 31st, so we're still on track. We just have to make
02:20:51 10 some adjustments. And that's really and truly what it
11 comes down to.

12 Just as important too, there's one significant
13 legal issue I have to meet with and -- because I've
14 been meeting with the lawyers since 1:00 o'clock. From
02:21:07 15 a historical point I was on the bench this morning at
16 9:00 o'clock until about 12:30.

17 And the reason why I think that's important
18 because I have other cases I have to deal with. So
19 this is what we're going to do. Because there's a few
02:21:22 20 more items I have to work out with them that deal
21 specifically with this case. But I don't want to waste
22 your time sitting and waiting; right?

23 I just don't want to do that. And so I
24 anticipate we'll be together at least another hour or
02:21:41 25 two today, and then I need to spend time with them

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02:21:44 1 tomorrow. Do you understand that? And so, but once
2 again, I want you to understand this. It doesn't
3 impact your commitment to the October 31.

4 Right, Counsel?

02:21:57 5 MR. FINK: Yes, your Honor.

6 MR. LEMKUL: Correct.

7 THE COURT: We're still on track. Remember
8 that. We are.

9 So anyway, from an efficiency perspective,
02:22:09 10 that's probably the best way I can say it, because it
11 appears to me that once these final legal issues are
12 resolved, it should streamline things potentially.

13 So, anyway, what we're going to do is this,
14 we're going to recess right now, so you can go home.
02:22:29 15 And I see a couple of smiles. We're going to take
16 tomorrow off. And then we're going to meet at 9:30.
17 Does everybody understand that, and that's 9:30 Friday
18 morning.

19 All right. And so, and once again, remember
02:22:47 20 this, it has no impact on October 31. We're still on
21 track. Because remember at the very beginning of the
22 case we focused on how long would this take. And I
23 know some people had commitments and things that were
24 in the way. But everyone here said, Look, Judge,
02:23:04 25 that's all I can do.

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02:23:06 1 Right. So that's all you can do. I just want
2 to make sure you understand that there's no change in
3 the case itself as far as time commitment.

4 And so ladies and gentlemen, and I have to do
02:23:16 5 this:

6 You're admonished not to converse amongst
7 yourselves or with anyone else on any subject connected
8 with this trial or to read, watch, or listen to any
9 report of or commentary on the trial.

02:23:29 10 I get that. You really haven't heard the
11 facts; right? The only thing you can talk about is
12 this: The jury selection process. That's about all
13 you can talk about.

14 But anyway, those are the rules. And just as
02:23:40 15 important too, you can -- once the process is over,
16 please feel free to, if you want to, to get on
17 Facebook, if you want to Twitter and talk about the
18 preamble and those types of things you can do that:
19 Right? But that's after you're discharged. Does
02:23:59 20 everybody understand that? I just want to make sure.

21 So anyway with that in mind, I'm going to put
22 you into the temporary custody and control of the
23 Marshal. And we hope -- hopefully he does a really
24 great job, and he does, to make sure you're on track.
02:24:15 25 And then we'll see each other at 9:30 a.m. Friday

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RUSSO V. COX COMMUNICATIONS

25

02:24:19 1 morning.

2 THE MARSHAL: 9:30, October 19, your Honor.

3 THE COURT: Okay.

4 THE MARSHAL: Or 18. I'm sorry.

02:24:25 5 THE COURT: 18.

6 (The prospective jurors exit the courtroom.)

7 THE COURT: Okay. Do you think I softened it
8 a little bit?

9 MR. FINK: I think so. I think we're going to
02:25:36 10 have to sit here for a little bit, since you told them
11 we were --

12 (Unreportable cross-talk)

13 MR. CLARK: Can't leave right now.

14 MS. SAMPSON: Well, they --

02:25:43 15 THE COURT: But, anyway, I'm going to go ahead
16 and step down, but good luck in your endeavors.

17 IN UNISON: Thank you, your Honor.

18 MR. LEMKUL: Judge, thank you.

19 THE COURT: Hopefully, you can get done.

20

21 (Proceedings were concluded.)

22

23 * * * * *

24

25

OCTOBER 16, 2019

RUSSO V. COX COMMUNICATIONS

26

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.

PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR

IN UNISON: [5] 5/8 20/24 21/2 21/9 25/17 MR. CLARK: [6] 5/22 9/20 10/6 12/17 15/12 25/13 MR. FINK: [10] 5/12 6/13 6/16 6/20 10/15 10/22 19/1 19/6 23/5 25/9 MR. LEMKUL: [29]	2 200 [1] 2/5 2019 [2] 1/22 5/1 275 [1] 3/19 3 300 [1] 4/8 31 [2] 23/3 23/20 31st [1] 22/9 3770 [1] 2/17 382-1500 [1] 3/9 384-9800 [1] 4/10 4 40 [1] 19/4 405-8100 [1] 2/20 4120 [1] 4/11 4199 [1] 2/8 5 541 [2] 1/25 26/17 6 605-1099 [1] 2/7 665-4120 [1] 4/11 7 702 [8] 2/7 2/8 2/20 3/9 3/21 3/22 4/10 4/11 720 [1] 4/7 8 804-0706 [1] 3/21 804-0798 [1] 3/22 8100 [1] 2/20 888-209-4199 [1] 2/8 89101 [1] 4/9 89106 [1] 2/6 89144 [2] 3/8 3/20 89169 [1] 2/19 9 9800 [1] 4/10 9900 [1] 3/6 9:00 [1] 14/24 9:00 a.m [1] 14/21 9:00 o'clock [2] 13/15 22/16 9:30 [4] 15/9 23/16 23/17 25/2 9:30 a.m [1] 24/25 : : SS [1] 26/2 A a.m [2] 14/21	24/25 ABILITY [1] 26/11 able [1] 18/1 about [13] 6/9 10/17 11/6 14/6 14/9 16/5 20/10 21/23 22/16 24/11 24/12 24/13 24/17 absolutely [2] 9/4 16/21 ACCURATE [1] 26/11 active [2] 7/13 8/11 actually [3] 6/16 6/21 19/2 add [1] 10/16 additional [1] 8/10 address [2] 10/20 17/1 adjustments [1] 22/10 admitted [1] 17/7 admonished [1] 24/6 advise [1] 12/9 affirmed [1] 18/25 after [3] 11/25 20/13 24/19 afternoon [12] 5/6 5/8 5/12 5/14 5/18 5/20 5/22 9/20 21/1 21/2 21/8 21/9 again [3] 21/8 23/2 23/19 against [3] 12/1 14/3 14/3 ago [1] 9/23 agree [4] 12/23 17/5 19/6 19/11 agreement [4] 6/11 11/5 14/4 17/2 ahead [3] 5/9 14/16 25/15 all [27] alleviates [1] 15/25 allow [1] 7/17 allowed [1] 7/16 already [3] 17/3 17/6 20/7 also [2] 5/16 7/13 always [4] 11/14 17/17 18/4 18/7 am [2] 8/7 18/8 amongst [1] 24/6 amount [1] 17/11 animal [1] 8/19	another [1] 22/24 answer [2] 17/19 17/20 anticipate [1] 22/24 any [12] 9/10 9/24 10/3 11/9 11/11 12/4 13/16 14/1 15/25 18/22 24/7 24/8 anybody [1] 17/14 anyone [1] 24/7 anything [5] 8/7 9/8 10/15 14/11 19/16 anyway [6] 6/4 23/9 23/13 24/14 24/21 25/15 anywhere [1] 13/12 appeal [2] 18/14 18/25 appearances [4] 2/1 2/21 4/2 5/10 appears [1] 23/11 appellate [2] 13/17 18/8 applications [1] 17/21 appreciate [1] 9/25 approach [1] 6/4 appropriate [2] 12/1 12/6 are [12] 5/25 7/13 9/6 11/5 11/23 12/7 12/10 15/20 20/4 23/8 23/11 24/14 as [31] ask [3] 11/7 11/11 12/18 assertion [1] 11/8 association [1] 7/2 assuming [2] 13/11 13/24 at [26] 7/15 9/25 10/2 12/15 12/19 12/20 14/21 14/24 15/9 17/3 17/18 18/3 18/6 18/7 18/13 18/19 18/24 19/14 22/3 22/15 22/24 23/16 23/21 24/25 26/6 26/8 attorneys [1] 6/25 authority [4] 9/24 10/3 10/5 13/24 authorized [1]	11/17 aware [2] 9/10 9/23 B back [6] 7/22 9/12 18/13 19/25 20/4 20/19 based [1] 8/15 be [26] 7/12 7/16 10/18 11/7 11/9 11/11 12/6 12/10 12/12 12/14 12/19 13/2 13/15 13/23 14/3 14/21 14/24 15/1 15/9 16/10 16/10 17/2 17/20 18/1 20/18 22/24 because [13] 7/13 13/2 16/12 18/13 19/12 21/13 21/15 21/21 22/13 22/18 22/19 23/10 23/21 been [6] 6/23 11/24 14/2 17/6 20/11 22/14 before [3] 1/19 12/13 26/6 BEFORE-ENTITLED [1] 26/6 beginning [1] 23/21 behalf [5] 5/15 5/21 5/23 7/1 10/8 being [2] 11/10 16/18 believe [2] 9/6 11/8 bench [2] 17/6 22/15 benign [1] 19/21 best [5] 15/15 16/14 22/4 23/10 26/11 beyond [1] 22/8 bills [1] 17/11 bit [2] 25/8 25/10 BOULEVARD [1] 2/5 box [2] 19/25 20/13 break [1] 15/17 bring [4] 7/25 19/12 19/20 20/12 brought [2] 13/20 17/6 BUSHBAKER [6] 4/3 5/19 7/15 10/9 11/22 11/22
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1 CASE NO. A-17-753606-C

2 DOCKET U

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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* * * * *

9 SIMONE RUSSO,)

10 Plaintiff,)

11 vs.)

12 COX COMMUNICATIONS LAS VEGAS,)

13 Defendant.)

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REPORTER'S TRANSCRIPT
OF
MOTIONS

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17 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20 DATED FRIDAY, OCTOBER 18, 2019

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25 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

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1 LAS VEGAS, NEVADA; FRIDAY, OCTOBER 18, 2019

2 9:09 A.M.

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

4 * * * * *

5

6 THE COURT: All right. Good morning. Let's

7 go ahead and place our appearances for the record.

8 MS. SAMPSON: David Sampson for Dr. Russo.

9 MR. FINK: Good morning, your Honor. Leonard

09:09:55 10 Fink for Sunrise Villas IX HOA.

11 MR. TURTZO: Good morning, your Honor.

12 Christopher Turtzo for IES Residential and Cox

13 Communications Las Vegas.

14 MR. MELORIO: Good morning, your Honor.

09:10:04 15 Joseph Meloro for Kevin Bushbaker.

16 MS. FUNAI: Good morning, your Honor. Julie

17 Funai on behalf of the defendant Chris Scarcelli.

18 MR. CLARK: And good morning, your Honor.

19 David Clark on behalf of the defendant Chris Scarcelli.

09:10:16 20 THE COURT: All right. Once again good

21 morning. I see there's one matter on calendar this

22 morning. But did we come to some sort of resolution

23 that would make the issue moot; do we know?

24 MR. FINK: Your Honor, we have -- as of last

09:10:26 25 night about 4:30 4:45, we have a global settlement

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09:10:30 1 involving all the parties that are involved.

2 THE COURT: All right. That makes it moot,
3 right?

4 MR. FINK: Well, we still need to have the
09:10:35 5 Court determine the settlement is in good-faith --

6 THE COURT: I understand.

7 MR. FINK: -- because of the further actions
8 Mr. Sampson is going to take against the defaulted
9 parties.

09:10:42 10 THE COURT: I know you agree.

11 MS. SAMPSON: I do. And I think Mr. Fink said
12 it correctly, but I wanted to make sure it was on the
13 record that, yes, it's against all parties that
14 answered and are currently involved.

09:10:49 15 THE COURT: In this case.

16 MS. SAMPSON: Well, there are two other
17 parties in this case who have been defaulted that we're
18 still -- this settlement does not affect them, which is
19 the purpose of the good faith.

09:10:56 20 MR. FINK: And it will also include PW James.

21 MS. SAMPSON: Correct. That is correct.

22 MR. CLARK: I guess --

23 THE COURT: Mr. Clark, sir.

24 MR. CLARK: I guess for the record, your

09:11:06 25 Honor, we would join in the global settlement. I would

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09:11:09 1 make an oral motion as a joinder to the motion for
2 good-faith settlement.

3 THE COURT: Okay. Mr. Meloro.

4 MR. MELORIO: We join as well for the
09:11:17 5 good-faith settlement.

6 THE COURT: Okay. And I just want to make
7 sure the record is very clear in this regard. I've had
8 an opportunity to review the motion for good-faith
9 settlement. And notwithstanding the fact there's no
09:11:31 10 opposition, based upon the current status of Nevada
11 law, and NRS 17.245, all the case law specifically
12 interpreting the statute including Velsicol, MGM
13 factors, and the like, it clearly meets that.

14 I also included -- I also considered the
09:11:58 15 liability permutations. I think that's in Velsicol and
16 so on. And especially under the facts of this case,
17 there's no question this is good faith. I can say that
18 with no doubt.

19 So as far as the motion of good-faith
09:12:12 20 settlement and reflecting the global settlement of the
21 parties to this case that have actively litigated, I'm
22 granting that motion.

23 MR. FINK: That would also be including PW
24 James?

09:12:23 25 THE COURT: Yes, sir.

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09:12:24 1 MR. FINK: Thank you, your Honor.

2 MS. SAMPSON: Ones that are actively litigated
3 and PW James.

4 THE COURT: Yes.

09:12:30 5 MR. TURTZO: Maybe out of the abundance of
6 caution given how long --

7 THE COURT: Mr. Turtzo, go ahead.

8 MR. TURTZO: -- it's taken to get to this
9 point, I think we ought to make sure we have a clear
09:12:40 10 record of we put material terms of the partial
11 settlement on the record on Wednesday. Now we've got
12 some two additional parties joining in. I think unless
13 anybody disagrees, it would be good to just
14 re-kind-of-confirm exactly what the additional
09:12:57 15 settlement terms are.

16 MR. FINK: Agreed.

17 MR. TURTZO: Okay.

18 MS. SAMPSON: No objection.

19 MR. TURTZO: As far as I understand it, so the
09:13:04 20 settlement payment to the plaintiff is not -- has not
21 changed. That's still the amount that was put on the
22 record \$355 thousand. It's being funded by insurance
23 carriers on behalf of Cox and IES Residential and
24 Sunrise Villas IX.

09:13:21 25 And then additionally parties receiving a

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09:13:24 1 release from the plaintiff include IES Residential, Cox
2 Communications, the Sunrise HOA, PW James, and now
3 defendant Chris Scarcelli and defendant Kevin Bushbaker
4 will also be released as part of that settlement. The
09:13:42 5 plaintiff is releasing his claims against them.

6 In addition, all of the parties that I just
7 named are releasing any current or future cross-claims
8 for equitable indemnity, contribution, or otherwise.
9 All currently alleged or potential cross-claims amongst
09:14:03 10 those parties only are being released as part of the
11 global settlement.

12 MR. FINK: Including any current claims for
13 fees and costs by anyone that's currently involved in
14 the case.

09:14:14 15 MR. CLARK: That's the part I was going to
16 say.

17 THE COURT: Everyone agree.

18 MR. CLARK: Agreed.

19 MR. MELORIO: Yes, your Honor.

09:14:22 20 THE COURT: Great job, Mr. Turtzo.

21 MR. TURTZO: And as before, the settlement
22 will be reduced to a settlement agreement and release.
23 One thing that we didn't state on Wednesday is the
24 plaintiff will be responsible for satisfaction of any
09:14:32 25 liens as typical in settlement of any personal injury

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09:14:35 1 action.

2 THE COURT: I understand.

3 Is that correct, Mr. Sampson?

4 MS. SAMPSON: That's correct. And that's the
09:14:38 5 only other thing I would ask is again that the
6 agreement, any document that's generated: One, I'd
7 like to have that document generated as soon as
8 possible. I recommended perhaps next Tuesday since
9 everyone seemed to have their schedule booked out today
09:14:55 10 and Monday for trial, we ought to have plenty of time
11 to draft a release. But whatever documents they want
12 drafted, if I could have that the sooner the better. I
13 don't want to wait two, three weeks for it. Because
14 one of the -- one of the things I was able to utilize
09:15:10 15 to -- for and my client relied upon to agree to the
16 settlement was that he would get his money in
17 relatively short order. I think we talked about two
18 weeks from when he signs the documentation.

19 I certainly wouldn't hold it as a material
09:15:24 20 term if it took three weeks, but I don't want to wait
21 three weeks for the release and then three more weeks
22 for the check. That kind of thing. So I just want to
23 get it done in short order.

24 And then that the terms of whatever documents
09:15:35 25 we sign or that my client has asked to sign comport

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09:15:39 1 with what was discussed Wednesday, and what's being
2 discussed today, and no new terms, and those types of
3 things. And, I guess, most of all that nothing in any
4 of these releases or any of the settlement effects -- I
09:15:52 5 apologize.

6 THE MARSHAL: That's all right.

7 MS. SAMPSON: Affects any rights Dr. Russo may
8 have against any person or entity related to the claims
9 of the two individuals who have been defaulted, and any
09:16:04 10 claims that they may have against anybody would not be
11 affected by this settlement. So as long as we're clear
12 on all of that.

13 MR. FINK: I'm sorry. The last clause, that
14 they would have...

09:16:13 15 MS. SAMPSON: That they would have against --

16 MR. FINK: Not against --

17 MS. SAMPSON: Obviously, not for contribution
18 against a party.

19 THE COURT: And/or equitable indemnity.

09:16:19 20 MR. CLARK: Right.

21 MR. FINK: Right.

22 MR. TURTZO: Right.

23 MR. FINK: Between Mr. Turtzo and I, we'll
24 work out getting the settlement agreement done.

09:16:26 25 MR. TURTZO: Yes.

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09:16:26 1 THE COURT: And I think they understand,
2 Mr. Sampson, time is of the essence. In fact, it's
3 okay if you turn your phones on again.
4 Anyway, is there anything else I can help you
09:16:37 5 with?
6 MR. FINK: No, Judge. I know that we were
7 waiting, obviously, to have a jury come in, and so we
8 could dismiss the jury. My only question is we had one
9 juror who wasn't going to be here until I think 10:30
09:16:48 10 or 11:00 o'clock because of, I think, a dental --
11 MR. CLARK: Doctor's appointment.
12 THE COURT: Doctor's appointment.
13 MR. FINK: Doctor's appointment.
14 THE COURT: And we'll deal with him. You
09:16:53 15 don't have to wait for him.
16 MR. FINK: We don't have to wait for them.
17 THE COURT: No, no, no. You don't have to
18 wait for them.
19 And just as important too, if you want to
09:16:59 20 wait, you probably should because we're going to bring
21 the panel in. I'm going to explain to them the impact
22 of service, and it doesn't always result in a verdict;
23 right? For example, if they didn't come down here
24 today, this case would not be resolved, and served;
09:17:13 25 right?

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09:17:13 1 MR. FINK: Right.

2 THE COURT: I mean, really. That's just kind
3 of how it is. It is all part of the process. And I
4 want to explain to them because I don't want them to
09:17:21 5 walk away with a bad taste saying they wasted their
6 time coming down to the courthouse. They didn't. And
7 the days they've spent, what was it five days? Is it
8 five days? Four days?

9 MR. FINK: It's been a week.

09:17:32 10 THE COURT: Yeah. I mean, that's as important
11 as sitting through October 31 because ultimately it
12 resulted in a resolution. And I'll explain all that to
13 them.

14 MR. FINK: And in these circumstances I
09:17:44 15 usually like to be around to offer any answer to any
16 questions about the process we're doing. So that's
17 something I think that's important for us.

18 THE COURT: You can stay here. If they want
19 to talk, some of them will talk. I'm going to tell you
09:17:53 20 this, I anticipate they'll be very pleased.

21 MR. FINK: I think.

22 MS. SAMPSON: Ms. Erickson will be very
23 pleased.

24 THE COURT: Yes. They'll be very pleased.

09:18:00 25 But, yeah, that's what we'll do. And so we

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09:18:02 1 won't tell them anything.

2 And at 9:30, line them up, Mr. Marshal.

3 THE MARSHAL: Yes, your Honor.

4 THE COURT: We'll bring them in. And I'll
09:18:10 5 talk to them for a little bit and explain to them what
6 happened. And I'll explain how that's part of the
7 process. And let them know. And there's no question
8 about this, if they wouldn't have served, I mean,
9 people aren't willing to serve, we can't have trials.

09:18:26 10 We can't have resolution. And this is actually a
11 better resolution because there's no appeals. It's
12 final; right?

13 MS. SAMPSON: That's right.

14 THE COURT: So anyway...

09:18:35 15 MR. TURTZO: We will submit -- I guess, we're
16 still on the record; correct?

17 THE COURT: Yes.

18 MR. TURTZO: To be clear on the motion for
19 good-faith settlement, Mr. Scarcelli and Mr. Bushbaker
09:18:44 20 orally join in the motion; correct?

21 MR. CLARK: Correct.

22 MR. TURTZO: And so when we submit the order
23 to the Court what we will do is we will reflect the
24 relief -- if it's acceptable to the Court we will --
09:18:55 25 the order will not include the summary judgment request

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09:18:59 1 or dismissal of cross-claims. It will instead indicate
2 the parties have agreed to release all such claims, and
3 it will simply be a standard good-faith settlement
4 determination including Mr. Scarcelli and Mr. Bushbaker
09:19:13 5 as well if that's acceptable.

6 THE COURT: There's acceptable. Because, I
7 mean, those are the facts.

8 MR. TURTZO: And we will circulate that order
9 to everybody, obviously, to get input.

09:19:24 10 MR. CLARK: Yes.

11 MR. TURTZO: We will have it ready. And we'll
12 submit. But I just want to make sure in terms of the
13 good-faith settlement it will include those parties as
14 well, and we'll amend the proposed relief accordingly.

09:19:33 15 THE COURT: And, Mr. Turtzo, I appreciate the
16 details because details do matter as you know.

17 And last, but not least, as far as that's
18 concerned I'm going to be here all next week. So just
19 like the order shortening time, you're not --

09:19:46 20 MS. SAMPSON: I'd like to know. We'd like to
21 do a request to get our default prove-up set against
22 with the defaulted parties as quickly as we can. So
23 that's one thing I was thinking.

24 THE COURT: Here's the thing, you have to
09:19:57 25 understand this, I can't circumvent due process.

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09:20:00 1

MS. SAMPSON: No.

2

THE COURT: So you have to do the application

3

and prove up. And there is a reason for that. Because

4

at the end of the day what it does, it saves people a

09:20:06 5

lot of time. It does. Because one of -- I mean, I

6

don't mind differences of opinions in this regard where

7

I might decide an issue on the merits, and the Supreme

8

Court might disagree with the merits of whatever

9

decision I make.

09:20:23 10

However, I'm not going to get reversed based

11

upon due process issue and notice issue. It's not

12

going to happen. It just isn't. Because that's so

13

obvious. You can take care of that before it occurs.

14

Because you have to go through the steps, you

09:20:42 15

know. And that's part of the process. And I have a

16

lot of faith in the process. I really and truly do.

17

THE COURT CLERK: Your Honor.

18

THE COURT: All I'm saying is this, if you get

19

that to me Monday, I'll be here. You get it to me

09:20:55 20

Tuesday, I'll be here. I'm here all next week. And

21

just like I was here last night waiting for the order

22

shortening time to come through.

23

MR. TURTZO: Yes, I want to say on the record

24

we really appreciate that to the Court and all the --

09:21:07 25

THE COURT: Right.

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09:21:07 1 MR. TURTZO: -- all the members of the
2 department who assisted us with that. Very much
3 appreciated.

4 THE COURT: Still consider myself a lawyer at
09:21:16 5 heart, I mean.

6 So what we'll do, we'll break. And as soon as
7 they're ready, we will bring them in. And we will talk
8 to them for a little bit. And you can talk to them.
9 But I'll let them know specifically what happened. I
09:21:26 10 mean, I won't tell them the details and all that, but
11 I'll let them know there's a resolution, you know. And
12 I'll let them know how that happens. And I'll just be
13 candid with them and say that's some of the things the
14 lawyers were talking about yesterday.

09:21:38 15 And it's much better to be done on October 18
16 versus October 31.

17 MR. TURTZO: That's right.

18 THE COURT: That's right.

19 MR. FINK: Really.

09:21:45 20 MS. SAMPSON: For all of us.

21 MR. FINK: For all of us.

22 THE COURT: For everybody. All right.

23 IN UNISON: Thank you, Judge.

24 THE COURT: Once again, congratulations.

09:43:10 25 (brief pause in proceedings.)

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09:43:10 1

(The prospective jurors enter the
courtroom.)

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4

THE COURT: All right. Do the parties
stipulate to the presence of the jury?

09:45:17 5

IN UNISON: Yes, your Honor.

6

7

THE COURT: Okay. Ladies and gentlemen of the
panel, good morning. How you doing today?

8

9

IN UNISON: Good morning.

09:45:26 10

THE COURT: We got started a little closer on
time. I just want to thank all of you for coming down.
I do have some news for you. The case is settled. I
just want to let you know that. It has.

11

12

13

THE MARSHAL: It was like Christmas.

14

09:45:39 15

THE COURT: And here's the thing, and I think
it's important for you to truly understand how the
process works.

16

17

18

19

And there's no question a lot of things as you
can now see get done outside of your presence; right?
So there were a lot of legal issues that had to be
resolved. And they were resolved. And so the parties
got closer and closer.

09:45:55 20

21

22

23

24

09:46:10 25

And so we took yesterday off in order to give
them an opportunity to potentially finalize the
resolution of the case. So I can't tell you what's
going on, right, but -- and we kind of, we've talked

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09:46:12 1 about this, and, really and truly, it's about having
2 faith in the process, right?

3 Because understand this, and I want everyone
4 to know this, and this is of paramount importance for
09:46:25 5 me, the fact that this case resolved, resolved because
6 of your willingness to come down and serve.

7 You have to understand that. Because I think
8 some of the panel members talked about serving and the
9 case settled during trial, and that sometimes happens.
09:46:44 10 It doesn't happen all the time, but the only way a case
11 can ultimately resolve is when you have the potential
12 for finality, right?

13 And that's done by having a trial date. And
14 that's done by having the lawyers willing to come to
09:47:01 15 trial, the parties willing to have their cases
16 litigated. But more importantly, We the People willing
17 to serve. Right?

18 And so the fact that you didn't hear all the
19 evidence and arrive at a verdict, is not really what's
09:47:19 20 most important. The fact that you came down willing to
21 do that is what matters. And it really does matter.
22 Because I -- we've talked about this. And I really do
23 feel that when you look at the Preamble to the
24 Constitution of the United States of America, and if
09:47:37 25 the first concern raised by the founders of this nation

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09:47:43 1 was justice. Because they wanted a justice system
2 where a judge didn't decide the outcome. And I know
3 many times people -- you know, we forget that I don't
4 decide the case, right? And lawyers don't decide the
09:48:00 5 cases. The governor doesn't decide it. The presidents
6 don't decide it. Senators they don't decide it, you
7 know.

8 Just the average person that's truly the most
9 important cog in this whole democracy comes down and
09:48:19 10 decides it, right? And, I mean, really.

11 And just as important too, you can look at it
12 through this lens and think about this for a second.
13 Because from time to time, and we hope this never
14 happens, but we get -- if you get involved in civil
09:48:34 15 litigation of some sort that has to be heard and
16 decided, wouldn't you want We the People to decide
17 versus some political appointee, right? You know.
18 Think -- and so that's what really -- and that's the
19 great unknown. And you look at the -- in the
09:48:58 20 Constitution, and this is often overlooked, but, and no
21 one talks about the Seventh Amendment too much, right?
22 It's right there. You got a right to a jury trial in a
23 civil case.

24 You know. And from a historical perspective,
09:49:12 25 think about it from this, from this standpoint. If you

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09:49:15 1 go back to the middle ages, and they used to have some
2 concept called trial by ordeal. Anybody ever hear
3 about that? You know, where they tried to decide
4 whether the person is telling the truth or not. They
09:49:32 5 do -- and you see it in some movies but this is how
6 that concept works. There was many ways to determine
7 what the ordeal was, but one was this, they'd have a
8 vat of boiling oil, and have a rock or pebble in it.
9 And if you can reach down and pull it out without
09:49:47 10 screaming, you were telling the truth, you know. Think
11 about it, you know. And then because we've come a long
12 way. We have.

13 And there was a time in this country where
14 sometimes disputes were decided by dueling, right? You
09:50:03 15 remember that and reading about it.

16 And so, you know, whether we agree or disagree
17 politically on a lot of different issues, but I think
18 our justice system -- and I think you really appreciate
19 it if you serve, right? You come down, and you see it.
09:50:18 20 And it's a great system.

21 And I realize, I feel very strongly about this
22 too. Because I say -- I try to frame points for
23 different reasons. But no doubt it's been
24 inconvenient. I get that. It has. But when you think
09:50:32 25 about it, what's convenient about a democracy, right?

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09:50:35 1 And this is -- this is one of the most important
2 aspects of the democracy we just don't talk about.
3 And, for example, I'm on the Eighth Judicial
4 District Court Jury Commission. And right now we're
09:50:52 5 looking at ways we can make service easier. But it's
6 tough. It is. We're just trying to figure out -- we'd
7 love to make it -- if it was up to me, they would pay
8 more money for jury service, you know. I would. I
9 mean, I think if you're going to come down and serve,
09:51:07 10 at a minimum when you're here, they should pay you \$20,
11 \$25 an hour; something like that; right? But I'm not
12 in charge.

13 But and I get it. But the bottom line is
14 this, and I think the lawyers want to talk to you just
09:51:20 15 very briefly afterwards. Everyone that came down here,
16 I just want to thank you for your service, you know. I
17 do.

18 I would have, of course, loved to have had
19 this case resolved in a way where you participate in
09:51:35 20 deliberations, but, you know what, and here's what's
21 great about case resolution by the parties, there's no
22 appeals. It's final. They've agreed.

23 Because even after jury trial, you have to
24 understand, sometimes there is appeals; right? And
09:51:49 25 it's not -- it doesn't happen often, but sometimes

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09:51:52 1 cases have to be re-tried, you know.

2 And so, anyway, on behalf of the parties, you
3 know, to this litigation, counsel, my staff, hopefully
4 they've been -- they've helped, been helpful, I just
09:52:07 5 want to thank each and every one of you for coming down
6 and participating in our civil and criminal justice
7 system as a member of Clark County and the battle born
8 great state of Nevada. I just want to thank each and
9 every one of you.

09:52:28 10 So with that in mind, Mr. Marshal, it's my
11 understanding we have -- their checks are ready to go.

12 THE MARSHAL: Yes, sir. It's pay day.

13 THE COURT: It's pay day. And fortunately,
14 it's not 10:00 o'clock, right? You can be done. It's
09:52:40 15 Friday. And you're done. Don't have to bother about
16 next week. I did promise we'd get done by October 31.
17 You didn't think it would be this early, right? And so
18 and that's how it goes sometimes.

19 And, I guess, when you look back on it and you
09:52:56 20 reflect, and I know it's like -- remember the combat
21 war vet. He said I'm used to hurry up and wait. I
22 think that's so true when it comes to jury service. It
23 just is. But now you can kind of see. And I know
24 you're probably frustrated. But at the end of the day
09:53:12 25 maybe the wait was worth it because we've -- now you're

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09:53:15 1 going to be gone today. You don't have to worry about
2 being here to the 31st potentially. And its over. And
3 you don't have to worry about getting a summons in the
4 mail for quite a while. How about that? Because
09:53:27 5 you've served.

6 Once again, I just want to thank everyone.

7 Mr. Marshal.

8 THE MARSHAL: Yes, your Honor. All rise.

9 THE COURT: If you -- if the lawyers, they
09:53:35 10 might have questions for you. And, you know, they
11 probably just want to thank you for coming down and
12 serving.

13 So they're in you're control, sir.

14 THE MARSHAL: Thank you, your Honor.

09:53:44 15 Everybody if you could wait for me outside, I will
16 disburse your checks and I'll have some words for you.
17 And starting with you, sir.

18 THE COURT: And everyone, enjoy your weekend.

19 IN UNISON: Thank you.

12:08:03 20 (The prospective jury exits the
21 courtroom.)

22 THE COURT: All right, counsel. Okay. It's
23 been a pleasure.

24 IN UNISON: Thank you, your Honor.

09:54:55 25 THE COURT: Enjoy your weekend. Oh, trial

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09:54:59 1 exhibits, seven boxes; what do you want us to do with
2 them?

3 MR. TURTZO: We'll --

4 MR. FINK: Can we handle it, hang on until
09:55:08 5 Monday?

6 THE COURT: Yeah. That's fine. They can come
7 get them Monday.

8 MR. TURTZO: We'll send over -- Allison from
9 my office will coordinate.

09:55:13 10 THE COURT CLERK: Absolutely.

11 MR. TURTZO: And we'll have somebody come pick
12 them up along with everything else that we brought
13 over.

14 MS. SAMPSON: I think I have some in your ante
09:55:20 15 room. If I left my dolly, I'll bring them right now if
16 I can get let in.

17 THE COURT: Okay. We'll --

18 MS. SAMPSON: Otherwise, I'll come back.

19 THE COURT: Mr. Sampson, we'll do that for
09:55:29 20 you.

21 MS. SAMPSON: Thank you very much.

22 THE COURT: And, you know, I was thinking
23 about this case. And what I -- I feel very -- I feel
24 this is an very important issue. And this is one of
09:55:37 25 the things I try to do is get out of the way, you know.

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09:55:40 1 And I was talking to my law clerk, Chris, and I was
2 talking to CJ. And it could have been handled many
3 different ways. Some judges would have said, no, you
4 be ready to go to trial tomorrow and continue on and
09:55:53 5 on, but I actually have faith in the process. I do.
6 And I know when lawyers are talking, I get out of the
7 way. Good things, typically, happen. Not always, but
8 they do. Right?

9 MR. FINK: Appreciate that. I think that --
09:56:04 10 we were talking about I think most judges would have
11 had us continue on with the jury selection.

12 THE COURT: No, no, no.

13 MR. FINK: Most judges would have.

14 THE COURT: Yeah. I know everyone here.
09:56:11 15 You've appeared in front of me many times. And I just
16 I had confidence in you saying, Look, Judge, maybe...
17 I'm going to listen. And I'm going to do what I think
18 is best. If we lost a day, so be it. But I thought
19 there was an -- it was more likely true than not.

09:56:28 20 MR. FINK: That's the theme.

21 THE COURT: A greater probability, right? And
22 so I went with that. Because I feel it's very
23 important in this regard. I consider, we talk about
24 trials and trial days. I think trials are actually
09:56:41 25 the -- they're very, very important. But it's much

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09:56:46 1 better to have the case resolved by settlement. It
2 really and truly is. So I don't -- I'm not -- I used
3 to be concerned about my trial days. I'm not concerned
4 anymore. I'm more concerned about closing. You know,
09:56:56 5 because I think it's better to be a closer as a trial
6 judge versus having cases settled. It's like Glengarry
7 and Glen Ross. You ever see that movie? I love that
8 movie, you know. Coffee's for closers, right?

9 That's a great movie. It just is. The
09:57:12 10 staff -- I mean, the actors are just unbelievable in
11 that movie.

12 MR. TURTZO: First prize is a Cadillac.
13 Second prize is a set of steak knives. Third prize is
14 you're fired.

09:57:23 15 THE COURT: You're fired. I love that. And
16 Baldwin is amazing in that movie, right?

17 MR. TURTZO: Yes.

18 THE COURT: Jack Lemon. That's one of his
19 last movies. I mean, it's a great staff. Al Pacino --
09:57:33 20 I mean, a great cast of actors. Oh my God, it's a
21 great movie.

22 MR. TURTZO: Yes, it is.

23 THE COURT: Yes.

24 MR. TURTZO: Thank you, your Honor.

09:57:45 25 MR. FINK: Thank you, Judge.

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09:57:47 1

MS. FUNAI: Thank you, your Honor.

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(Proceedings were concluded.)

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Peggy Isom, CCR 541, RMR

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RUSSO V. COX COMMUNICATIONS 29

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.

PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR

IN UNISON: [5] 17/23 18/5 18/8 24/19 24/24 MR. CLARK: [9] 5/18 6/22 6/24 9/15 9/18 11/20 12/11 14/21 15/10 MR. FINK: [27] 5/9 5/24 6/4 6/7 6/20 7/23 8/1 8/16 9/12 11/13 11/16 11/21 11/23 12/6 12/13 12/16 13/1 13/9 13/14 13/21 17/19 17/21 25/4 26/9 26/13 26/20 27/25 MR. MELORIO: [3] 5/14 7/4 9/19 MR. TURTZO: [23] 5/11 8/5 8/8 8/17 8/19 9/21 11/22 11/25 14/15 14/18 14/22 15/8 15/11 16/23 17/1 17/17 25/3 25/8 25/11 27/12 27/17 27/22 27/24 MS. FUNAI: [2] 5/16 28/1 MS. SAMPSON: [18] 5/8 6/11 6/16 6/21 8/2 8/18 10/4 11/7 11/15 11/17 13/22 14/13 15/20 16/1 17/20 25/14 25/18 25/21 THE COURT CLERK: [2] 16/17 25/10 THE COURT: [56] THE MARSHAL: [6] 11/6 14/3 18/13 23/12 24/8 24/14 \$ \$20 [1] 22/10 \$25 [1] 22/11 \$355 [1] 8/22 0 0706 [1] 3/20 0798 [1] 3/21 1 10655 [1] 3/17	1099 [1] 2/7 10:00 [1] 23/14 10:30 [1] 12/9 11:00 [1] 12/10 120 [1] 3/7 1500 [1] 3/9 17.245 [1] 7/11 170 [1] 2/17 18 [3] 1/20 5/1 17/15 2 200 [1] 2/5 2019 [2] 1/20 5/1 275 [1] 3/18 3 300 [1] 4/7 31 [3] 13/11 17/16 23/16 31st [1] 24/2 3770 [1] 2/16 382-1500 [1] 3/9 384-9800 [1] 4/9 4 405-8100 [1] 2/19 4120 [1] 4/10 4199 [1] 2/8 4:30 [1] 5/25 4:45 [1] 5/25 5 541 [2] 1/25 29/17 6 605-1099 [1] 2/7 665-4120 [1] 4/10 7 702 [8] 2/7 2/8 2/19 3/9 3/20 3/21 4/9 4/10 720 [1] 4/6 8 804-0706 [1] 3/20 804-0798 [1] 3/21 8100 [1] 2/19 888-209-4199 [1] 2/8 89101 [1] 4/8 89106 [1] 2/6 89144 [2] 3/8 3/19 89169 [1] 2/18 9 9800 [1] 4/9 9900 [1] 3/6	9:09 [1] 5/2 9:30 [1] 14/2 : :SS [1] 29/2 A A.M [1] 5/2 ABILITY [1] 29/11 able [1] 10/14 about [29] 5/25 10/17 13/16 14/8 17/14 19/1 19/1 19/8 19/22 20/12 20/21 20/25 21/3 21/11 21/15 21/21 21/25 21/25 22/2 22/21 23/15 24/1 24/3 24/4 25/23 26/10 26/23 27/3 27/4 Absolutely [1] 25/10 abundance [1] 8/5 acceptable [3] 14/24 15/5 15/6 accordingly [1] 15/14 ACCURATE [1] 29/11 action [1] 10/1 actions [1] 6/7 actively [2] 7/21 8/2 actors [2] 27/10 27/20 actually [3] 14/10 26/5 26/24 addition [1] 9/6 additional [2] 8/12 8/14 additionally [1] 8/25 affect [1] 6/18 affected [1] 11/11 Affects [1] 11/7 after [1] 22/23 afterwards [1] 22/15 again [5] 5/20 10/5 12/3 17/24 24/6 against [9] 6/8 6/13 9/5 11/8 11/10 11/15 11/16 11/18 15/21 ages [1] 21/1 agree [4] 6/10 9/17 10/15 21/16 agreed [4] 8/16	9/18 15/2 22/22 agreement [3] 9/22 10/6 11/24 ahead [2] 5/7 8/7 AI [1] 27/19 all [30] alleged [1] 9/9 Allison [1] 25/8 along [1] 25/12 also [5] 6/20 7/14 7/14 7/23 9/4 always [2] 12/22 26/7 amazing [1] 27/16 amend [1] 15/14 Amendment [1] 20/21 America [1] 19/24 amongst [1] 9/9 amount [1] 8/21 answer [1] 13/15 answered [1] 6/14 ante [1] 25/14 anticipate [1] 13/20 any [12] 9/7 9/12 9/24 9/25 10/6 11/3 11/4 11/7 11/8 11/9 13/15 13/15 anybody [3] 8/13 11/10 21/2 anymore [1] 27/4 anyone [1] 9/13 anything [2] 12/4 14/1 anyway [3] 12/4 14/14 23/2 apologize [1] 11/5 appeals [3] 14/11 22/22 22/24 appearances [4] 2/1 2/20 3/23 5/7 appeared [1] 26/15 application [1] 16/2 appointee [1] 20/17 appointment [3] 12/11 12/12 12/13 appreciate [4] 15/15 16/24 21/18 26/9 appreciated [1] 17/3 are [12] 6/1 6/14 6/16 8/2 8/15 9/7 9/10 15/7 23/11	26/6 26/24 27/10 aren't [1] 14/9 around [1] 13/15 arrive [1] 19/19 as [32] ask [1] 10/5 asked [1] 10/25 aspects [1] 22/2 assisted [1] 17/2 at [12] 14/2 16/4 17/4 19/19 19/23 20/11 20/19 22/5 22/10 23/24 29/6 29/8 average [1] 20/8 away [1] 13/5 B back [3] 21/1 23/19 25/18 bad [1] 13/5 Baldwin [1] 27/16 based [2] 7/10 16/10 battle [1] 23/7 be [29] 7/23 8/13 9/4 9/22 9/24 11/10 12/9 12/24 13/15 13/20 13/22 13/24 14/18 15/3 15/18 16/19 16/20 17/12 17/15 18/19 20/15 23/1 23/14 23/17 24/1 26/4 26/18 27/3 27/5 because [26] 6/7 10/13 12/10 12/20 13/4 13/11 14/11 15/6 15/16 16/3 16/5 16/12 16/14 19/3 19/5 19/7 19/22 20/1 20/13 21/11 21/22 22/23 23/25 24/4 26/22 27/5 been [8] 6/17 11/9 13/9 21/23 23/4 23/4 24/23 26/2 before [4] 1/17 9/21 16/13 29/6 BEFORE-ENTITLED [1] 29/6 behalf [4] 5/17 5/19 8/23 23/2 being [4] 8/22 9/10 11/1 24/2 best [2] 26/18 29/11 better [5] 10/12
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Peggy Isom, CCR 541, RMR

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Peggy Isom, CCR 541, RMR

(7) want... - your

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

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1 CASE NO. A-17-753606-C

2 DOCKET U

3 DEPT. XVI

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DISTRICT COURT

7

CLARK COUNTY, NEVADA

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* * * * *

9 SIMONE RUSSO,

10 Plaintiff,

11 vs.

12 COX COMMUNICATIONS LAS VEGAS,

13 Defendant.

14

REPORTER'S TRANSCRIPT
OF
HEARING

15

17 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20 DATED THURSDAY, NOVEMBER 7, 2019

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22

23 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

24

25

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

2

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Pursuant to NRS 239.053, illegal to copy without payment.

NOVEMBER 7, 2019

RUSSO V. COX COMMUNICATIONS

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RUSSO V. COX COMMUNICATIONS

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1 LAS VEGAS, NEVADA; THURSDAY NOVEMBER 7, 2019

2 12:01 P.M.

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

4 * * * * *

5
6 MR. SAMPSON: This is David Sampson.

7 THE COURT: All right. Mr. Sampson, good
8 morning.

9 MR. SAMPSON: Good morning.

10 THE COURT: And...

11 MR. LEMKUL: Good morning, your Honor. Judge,
12 Will Lemkul here.

13 THE COURT: All right. Good morning. And I
14 see we have plaintiff's motion to compel settlement on
15 an order shortening time.

16 MR. SAMPSON: Yes, Judge, thank you. So we
17 were -- the Court is, I'm sure -- well remembers this
18 case. We were in front of your Honor three weeks ago
19 now on Wednesday initially. And we put the settlement
20 on the record and the terms of the settlement on the
21 record. We came back on Friday, found out that the two
22 other -- two other defendants who on Wednesday said
23 they hadn't gotten any confirmation from their client
24 yet because it had just kind of happened and that whole
25 thing. They wanted to check with their clients, call

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12:01:56 1 back on Friday, and confirmed their client did agree to
2 do the settlement. And so under those terms -- a
3 couple of the terms, one was that --

4 (Reporter clarification)

12:02:06 5 MR. SAMPSON: Two of the defendants who were
6 named in the case who have never filed answers, who
7 have been defaulted were not affected by the
8 settlement, with the money that was being paid.

9 THE COURT: And...

12:02:17 10 MR. SAMPSON: And my clients rights --

11 THE COURT: And Mr. Sampson, I don't want to
12 cut you off. But please identify the two defaulted
13 defendants again for the record.

14 MR. SAMPSON: Duslak and Sesman are the last
15 names.

16 THE COURT: Thank you, sir. You may continue.

17 MR. SAMPSON: So then Dr. Russo's rights
18 against those two defaulted individuals would not be
19 affected at all. Everyone agreed. And then the
12:02:41 20 comment was made that the provisions of the settlement
21 would be reduced to a writing and released. Then we
22 would sign off on. And the money would be paid to my
23 client within two weeks of the release being signed.

24 So I raised two issues when the release was
12:02:58 25 brought up. I said, number one, we agreed there is

12:03:01 1 going to be nothing in the release that's not agreed to
2 on the record today. There's not going to be any new
3 terms or new anything going on. And it's going to
4 comport with -- the release will comport with what
12:03:11 5 we've agreed to on the record today. Everyone agreed
6 that was the case. No problem. Not an issue.

7 The next thing I say is this idea that the
8 money will be paid within two weeks of release being
9 signed. I then said, well, I don't want the release to
12:03:27 10 take, you know, two weeks to get to me and then two
11 more weeks before you sign it. And so a month out and
12 we still don't have our money.

13 And the comments from the defense were, of
14 course, we'd never do that. Mr. Sampson, don't be
12:03:40 15 ridiculous. Why you got to always assume the worse,
16 that whole thing.

17 Yet here we sit three weeks later now. We're
18 three weeks and a day from Wednesday, and tomorrow is
19 two weeks from the Friday, and I don't have a release
12:03:53 20 that I can have my client sign to get the money. I did
21 get -- which we resolved it on Friday, I want to say
22 the 18th, on Monday, Mr. Fink sent an email over, and
23 he said here is the release that he had typed up. He
24 made no bones about it. Sunrise does not agree and has
12:04:11 25 not authorized this to be a release we can use in the

12:04:14 1 case.

2 And if we stand here today, we still don't
3 have anything from Sunrise that agrees we can use to
4 resolve the case.

12:04:21 5 I sent out some changes to what Mr. Fink
6 provided and asked for comment. I did get word from
7 Mr. Bushbaker's counsel, Mr. Meloro, to have some
8 rather insignificant changes we needed to make that
9 didn't affect any substance. I incorporated those
12:04:38 10 changes. And asked Cox, IES, Sunrise, anybody for
11 Mr. Scarcelli, anybody else have comments. I heard
12 nothing until the following Monday.

13 So on the following Monday I said, all right,
14 it's been a week that Mr. Fink provided this. And I
12:04:54 15 sent back my changes. I've heard nothing from anybody.
16 So I assume what I sent back was going to work and have
17 my client sign it. He expected his money in two weeks.

18 And then all of a sudden within like 15
19 minutes, I heard from Mr. Fink, oh, no, Sunrise hasn't
12:05:09 20 agreed yet. We told you we don't agree. We don't --
21 I'll pass it by to take a look at. Cox sent back word
22 very quickly from Mr. Turtzo, Oh, no, Cox hasn't
23 agreed. And I essentially wrote back and said, Well,
24 then get your clients to agree. I mean, what's he --
12:05:23 25 let me know what changes you have because it's -- I've

12:05:25 1 waited a week very patiently. I don't want this to
2 stall out. Because my client's losing patience. We
3 don't have anything for him to authorize.

4 We need to get this taken care of. I
12:05:36 5 ultimately did get comments from Cox, and we've
6 incorporated the changes they want. My understanding,
7 although Mr. Meloro would have to address this, my
8 understanding from the communications I received from
9 Mr. Meloro because he sent something a week ago Tuesday
12:05:52 10 saying, is this that Mr. Sampson sent out something we
11 can have my client sign and conclude. So I don't think
12 there is any additional issues.

13 I've not heard from Scarcelli's counsel other
14 than it was a side question about renters insurance,
12:06:05 15 and there isn't any. So I think, but I've not heard
16 conclusively, that Mr. Scarcelli is on board with what
17 I sent over.

18 But Sunrise now, between a week ago Tuesday
19 and Thursday, Mr. Fink and I were sending things back
12:06:23 20 and forth. What we're looking at is, again, we want to
21 preserve all rights against the defaulted defendants,
22 just like we said on the record. And the release that
23 was provided defines Sunrise as all employees,
24 independent contractors. It lays out other things that
12:06:40 25 could potentially include Duslak and Sesman.

12:06:44 1 So I included in there that we are not going
2 to include them specifically or anyone affiliated with
3 them. And I think, as I understand it, Sunrise no
4 longer agrees. So as of last Thursday, Halloween, was
12:06:57 5 my last conversation with Mr. Fink until yesterday.
6 And I've been calling every day since then trying to
7 work all this out. I got no response at all.

8 And so I did, when I didn't get it worked out
9 on Halloween, filed this motion. Let's get it in front
12:07:12 10 of the judge. It's been -- it's been silence since
11 then until yesterday. And even yesterday Mr. Fink on
12 the phone as we were talking sounded like maybe we
13 could work something out, but he sent over some
14 proposed language even this morning that, again, says
12:07:27 15 Seslak and Dusman [sic] are to be dismissed if it turns
16 out they're employees, for example, of Sunrise. Which
17 we -- so I sent something over yesterday. And I'll
18 just read it to the Court.

19 My email says: "It appears what I sent
12:07:44 20 earlier --" Well, I sent something over. I'm sorry.
21 I sent something over where I proposed since we haven't
22 got an agreement yet -- the problem was the first one I
23 sent over was red lined. So I said, it was so
24 ridiculously red lined that it looks like the actual
12:07:58 25 language I proposed didn't go through. But here is

12:08:01 1 what I propose our release should say.

2 Settlement release agreement. And it
3 identifies each party by name. Dr. Russo, Sunrise,
4 IES, Cox, PWJames, Kevin Bushbaker, Chris Scarcelli
12:08:16 5 hereby agree to settle the disputes between them and
6 release each other pursuant to the terms set forth on
7 the record on October 16 and October 18, 2019, in case
8 number, and I laid the case number out, pending in the
9 Eighth Judicial District, Clark County, Nevada, which
12:08:34 10 terms are incorporated herein by this reference.

11 And everybody signed it. And says it seems to
12 me to be the best way if, as we agreed, the release
13 isn't -- isn't any different than what was confirmed on
14 the record, all rights are going to be given in the
12:08:49 15 release nor taken away from the release than what was
16 confirmed on the record. This is really the only way
17 to do it.

18 And I have gotten a response I think from Cox
19 that they're not agreeable. I assume given I was given
12:09:02 20 the proposed changes from Mr. Fink perhaps they're not
21 agreeable either. But, you know, we really don't need
22 a release because, as your Honor pointed out a couple
23 times in voir dire, this case is pending a long time.
24 Happened back in October of 2016. And there is no
12:09:20 25 statute of limitations long run at this point in time.

12:09:22 1 So there really is no reason for a release. I
2 have no problem putting one -- or signing off on one as
3 long as it does two things:

4 One, doesn't delay my client getting his money
12:09:34 5 which now, it has;

6 And two, strictly comports with what was
7 placed on the record which the release I've now just
8 read into the record absolutely would do.

9 And if that are not agreeable, then I don't
12:09:46 10 know. I would ask the Court either enforce the
11 settlement and say, you know, since there was radio
12 silence regarding the release, I'm not going to require
13 one anymore. Or I will require one, but it's just
14 going to say what Mr. Sampson pointed out that you're
12:10:00 15 settling the case pursuant to the terms that were
16 placed on the record.

17 I've also given -- suggested a third option
18 that I'll now suggest to the Court that perhaps we just
19 print up the record, both days, and all the parties
12:10:13 20 sign it. And go, so agreed. And we're all released
21 pursuant to what this document says.

22 But what I don't want to do is keep spinning
23 my wheels with the parties with the defendants that's,
24 number one, going to delay my client getting his money.
12:10:27 25 And number two, potentially would add or takeaway from

12:10:31 1 the rights and claims that the parties agreed with not
2 be released or otherwise affected when we put this all
3 on the record.

4 So I'm just reaching out to the Court. I do
12:10:43 5 understand that the check from Sunrise is now in
6 Las Vegas. I understand the Cox one is either here or
7 should be here shortly. So I want to get my client his
8 money as we agreed to three weeks ago. I want to put
9 this thing to bed without waiving any rights other than
12:10:59 10 those that were specifically put on the record. So I
11 would ask for instruction or direction from the Court
12 on how we can best do that, please.

13 THE COURT: Okay. Thank you, sir.

14 MR. CLARK: If it please the Court, David
12:11:13 15 Clark for Chris Scarcelli. Mr. Sampson is right. We
16 did have a side issue on the additional insured
17 provision of the lease agreement.

18 Last week we got communications from
19 Mr. Sampson on that issue. And I can now say that my
12:11:29 20 client is going to go forward and just sign off on a
21 complete release and settlement.

22 THE COURT: Okay.

23 MR. CLARK: And if that's -- so I'm not really
24 involved in the other issues. I don't think my client
12:11:39 25 is going to pay me for this appearance now. But if it

12:11:42 1 please the Court, I have another appearance I need to
2 make. So if I'm not needed, and I don't know if
3 Mr. Sampson still needs me, but Mr. Scarcelli says
4 he'll just sign it when it's in final form.

12:11:56 5 THE COURT: I understand. And we don't need
6 you, sir, I don't think.

7 MR. CLARK: Okay. I'll take my leave now.
8 Thank you all.

9 MR. FINK: Your Honor, Leonard Fink for
12:12:03 10 Sunrise.

11 Mr. Sampson's recitation of what happened
12 since the Friday when we put the settlement on the
13 record is mostly correct. I want to throw in a few
14 things that I think are important here.

12:12:18 15 Number one is that I got everybody the
16 release, the proposed. And we said although we were
17 putting this on the record it was very clear that we
18 were going to be putting together an actual settlement
19 agreement.

12:12:32 20 I don't remember if that part was on the
21 record. I think it was. Mr. Lemkul might remember
22 that differently, but I do.

23 However, I did that Sunday night. And if
24 anybody knows me, the fact that I actually did it that
12:12:43 25 quickly shows that I was trying to be a person of my

12:12:46 1 word and get this done for Mr. Sampson. Especially
2 because I knew that his client -- that he was having
3 issues with that.

4 So I got that done. I sent it out either
12:12:55 5 Sunday night or early Monday morning. I did in the
6 email say my client had not yet agreed to the terms.
7 The reason is that I had a case with then Judge Bayliss
8 where a plaintiff went in to enforce the settlement
9 that was based upon terms that were negotiated between
12:13:09 10 counsel. And the reason the court enforced the
11 settlement, even though my client had not agreed to it,
12 was because counsel had agreed to it and he thought
13 that that was good enough.

14 So since that time, I made sure that unless my
12:13:21 15 client has absolutely signed off on it, every email
16 that goes out when we're talking about settlement
17 agreements, make sure it's clear. My client has not
18 yet agreed to these terms. I didn't think it would be
19 a problem, but I wanted to make sure everybody
12:13:33 20 understood that.

21 So I sent that out again either Sunday night
22 or early Monday morning waiting to hear back from
23 people as to what changes they were going to want, so
24 that we can get a final agreement, so then we can get
12:13:43 25 our respective clients to sign off on it.

12:13:46 1 And I don't recall, and I think Mr. Sampson is
2 probably correct. I think the next thing we probably
3 heard was maybe that next Friday. And then there was
4 some back and forth up until Thursday which was the
12:13:56 5 October 31, which is Halloween.

6 I got sick on Thursday, Friday. Then I had a
7 deposition on Monday which is why I never responded to
8 Mr. Sampson's phone calls. Again, I explained that to
9 him when I talked to him. So I wasn't shining him on
12:14:09 10 or anything like that. I just literally got sick and
11 wasn't do anything.

12 So we resumed trying to get this done. The
13 hold up, and Mr. Sampson I think said it but I'll say
14 it again, I think the real hold up right now is whether
12:14:24 15 or not the release that we negotiated was intended to
16 cover Mr. Sesman and Duslak, D-U-S-L-A-K, I think.
17 Actually, I've got it in front of me. Okay. Duslak,
18 D-U-S-L-A-K, and Sesman, S-E-S-M-A-N, if they were
19 considered employees of Sunrise.

12:14:43 20 There's never been one bit of evidence in this
21 case that they were employees. It was always that they
22 were independent contractors. But as I'm sure the
23 Court has dealt with thousands of settlements, when you
24 settle with an entity, you are settling with the
12:14:57 25 employees too.

12:14:58 1 There's nothing in Mr. Sampson's amended
2 complaint that even suggests or asserts that either one
3 of these gentlemen is an employee. There is nothing in
4 any one of his disclosures that asserts they're
12:15:09 5 employees.

6 So the idea here is that not only is Sunrise
7 getting itself out of the case, but it's also getting
8 out its employees, which also includes board members.
9 Although, we didn't specifically say that on the record
12:15:22 10 either, but also Cox, IES, they're also getting their
11 employees out.

12 In fact, the gentleman Curtis, I think
13 was always the name that came up. But, again, that
14 wasn't specifically on the record. So I think it's an
12:15:34 15 understood term. When you're getting an entity out
16 that includes their employees. If somebody is saying
17 that somebody acted within the course and scope of
18 their employment, unless you're saying they weren't
19 acting within the course and scope of employment,
12:15:45 20 which, again, wasn't an issue in the case because it
21 was never made an issue in the case.

22 So to the extent this is what we were trying
23 to do with the settlement agreement, and Mr. Sampson is
24 right, I did throw in independent contractors in the --
12:15:55 25 in one of the versions of the draft. But as of this

12:15:59 1 morning, I sent out something that I intended to send
2 out before the hearing and realized when I was talking
3 to Mr. Clark when I got here that I didn't press send
4 on my computer. So I think I sent it out maybe 9:15,
12:16:10 5 maybe 9:30 this morning.

6 So I think that the only hang up is whether or
7 not this settlement includes Mr. Duslak and Mr. Sesman
8 if they are found to be employees of Sunrise. And I
9 think that's it.

12:16:23 10 If they're not and they're independent
11 contractors, then the settlement agreement absolutely
12 does not cover them. Would allow Mr. Sampson to do
13 what he needs to do. And even try to go after my
14 client's insurance carriers to see if there is coverage
12:16:38 15 for them as independent contractors. We all agree
16 that -- that was one of the things that was important
17 to him. We aren't seeking to release that.

18 But to the extent they're employees, this
19 should cover it. And I think, I think that's really
12:16:48 20 where we are, Judge. And, of course, I'd certainly
21 leave it up to Mr. Bushbaker's counsel -- I think I
22 always stumble on your name -- sorry, Joe -- and
23 Mr. Lemkul for anything else.

24 THE COURT: Okay. Anything you want to add?

12:17:01 25 MR. MELORO: Joseph Meloro on behalf of Kevin

12:17:04 1 Bushbaker. Your Honor, Mr. Fink did prepare a release
2 agreement that Sunday evening. During that week I made
3 some minor requests for some changes. I've been trying
4 to cooperate through this whole matter.

12:17:19 5 You know, the issues that's going on between
6 Mr. Sampson and Mr. Fink really have nothing to do with
7 my client. I just want to make sure that we're not
8 releasing anyone who wasn't a party to this action that
9 we might have some claims against in the future.

12:17:36 10 But I don't see that in the agreement that was
11 presented, if that's the case at this point. But we're
12 trying to get this along just as much as everyone else,
13 your Honor.

14 THE COURT: I understand.

12:17:48 15 Mr. Lemkul.

16 MR. LEMKUL: Yeah, your Honor, how are you?

17 THE COURT: Good.

18 MR. LEMKUL: Good, good. So the position of
19 Cox and IES, your Honor, is basically we sent back
12:17:59 20 changes to Mr. Sampson that were incorporated into the
21 release that he sent out.

22 I don't have any issue with Monday's changes.
23 I do agree that part and parcel to the Cox and IES
24 release would come, officers, agents, the typical
12:18:18 25 language that we all see in these releases. And that's

12:18:20 1 what we sent out.

2 So I really have nothing else to offer other
3 than to answer questions should the Court have them for
4 me or my clients.

12:18:29 5 THE COURT: Okay. I have no questions, sir,
6 at this point.

7 Okay. Mr. Sampson, have you had a chance to
8 see the revised proposed settlement agreement that's
9 been sent by Mr. Fink in this matter at approximately
12:18:43 10 9:30 this morning?

11 MR. SAMPSON: I didn't see a proposed
12 settlement agreement. I saw, like, a list of here's
13 some items. And the one that I take issue with is the
14 one that seeks to stop my client from being able to
12:18:56 15 proceed against Sesman and Duslak.

16 And yes, I do know and I understand if you
17 release a party, you typically would be releasing their
18 employees, and board of directors, and those types of
19 things unless you clearly indicate otherwise when you
12:19:10 20 put the settlement agreement together.

21 So when we put this on the record, that's why
22 I made it a point to say, none of this settlement
23 involves Sesman or Duslak at all in any of their
24 capacities. And if there was an idea of, well, hold
12:19:25 25 on, Sunrise wants all its employees, and there might be

12:19:29 1 a claim that they're employees, so that should have
2 been brought up when we put the terms on the record.
3 It shouldn't have been dropped on me just like they
4 couldn't come up later and say, we want it
12:19:39 5 confidential. Or, and there is language about
6 indemnification and what not, which we'll agree to even
7 though it wasn't specifically put on the record. But
8 if you wanted those -- when I say -- make it a point to
9 mention, and I'm sure had I said, for example, you
12:19:50 10 know, here's so and so, it's the CEO of Cox, we're not
11 releasing any claims against that person, I'm sure
12 Mr. Lemkul would have piped up and said, oh, no, hold
13 on. We don't agree to that. We were stippling on the
14 record putting the terms together.

12:20:05 15 So I think it's improper for Sunrise to stand
16 there while we're putting the settlement on the record,
17 and I say Sesman and Duslak are not released in any
18 way, shape, or form. They remain parties. We still
19 have all rights to proceed against them, and that's all
12:20:19 20 fine and dandy while we're on the record, and then to
21 come back later in the release and say, except they're
22 not. Because if they're employees they're out.

23 I don't think they're employees either as I
24 sit here right now. But I've not had a chance to find
12:20:32 25 any of that stuff out. I have not -- I have no

12:20:34 1 confirmation as to any of that. So but the bottom line
2 is, you know, what I proposed now is, again, the
3 settlement that says here's all the people. We agree
4 to release each other pursuant to the terms reached on
12:20:48 5 the record on those two days we were there. And then
6 we all sign it.

7 I don't see why anyone would have a problem
8 having that serve as the release given that it does
9 exactly what we agreed to do. The only thing I can
12:21:00 10 envision as to why that would be a problem for someone
11 is: One, they want to continue to delay things, which
12 is an inappropriate reason and shouldn't be permitted;
13 or two, they're looking to change the deal that was
14 reached on the record.

12:21:14 15 Because what I proposed says specifically
16 releasing each other as agreed on the record. No more,
17 no less. I don't think anybody should require that my
18 client do any more or any less for any of that.

19 So given, again, EDCR allows a settlement to
12:21:31 20 be enforceable if it's placed on the record, so we've
21 done that. Mr. Fink kept talking about we're looking
22 at getting people out. Well, they are out. Anybody
23 pursuant to the terms that were set forth on the
24 record, they're out. The agreement is enforceable on
12:21:49 25 the record. Beside the fact that the statute of

12:21:50 1 limitations ran over a year ago at this point.

2 So it's not a question about that. I don't
3 know what else is going on. And my clients should not
4 be -- my client should not be required to waive any
12:22:02 5 right at all that he -- that he specifically --
6 especially when he specifically preserved them on the
7 record when we -- when we resolved this thing and put
8 the settlement on the record.

9 So, again, I appreciate your Honor asking if
12:22:14 10 I've had a chance to review what they sent me. Again,
11 I didn't get an actual release. I just got an email
12 from Mr. Fink that had some terms. And the term that I
13 had an issue with is this idea that if they're
14 employees, then Sesman and Duslak are out. That was
12:22:27 15 not agreed to.

16 But I think what you should perhaps ask is, to
17 the defendants, you know, what about what Mr. Sampson
18 sent you guys Wednesday and Tuesday? Say, we hereby
19 release each other as agreed on the record, and it's
12:22:40 20 incorporated by this reference. And we're done. Why
21 wouldn't that work?

22 And if they're going to balk and somehow say
23 that won't work, then, clearly, they must be either
24 looking to just drag this thing out or trying to get
12:22:52 25 something in the release that wasn't on the record,

12:22:54 1 which I don't think the Court should permit.

2 THE COURT: Do we have a copy of that portion
3 of the record? Have we ordered one or no?

4 MR. SAMPSON: I've not ordered one. I mean,
12:23:06 5 again, that's another proposal is I will order a copy
6 of Wednesday and Friday's transcripts and just have
7 everyone just sign the transcripts so agreed, so
8 released.

9 THE COURT: All right. Anything else?

12:23:22 10 MR. SAMPSON: But whatever is on -- yeah.
11 Whatever is on the transcript from Wednesday and Friday
12 would be incorporated by reference with exactly what I
13 proposed. And it just says release each other as per
14 what was put on the record. And then we all sign off
12:23:36 15 and get my client his money. And then we're done.

16 THE COURT: Well, I don't know if it's -- I
17 wish it was just that simple.

18 The reason why I asked that question regarding
19 a copy of the transcript, I wish I could say with
12:23:51 20 computer-like recollection I can remember every
21 utterance in court regarding the general terms of the
22 settlement and the like, but I can't.

23 And so all I'm saying is this: As to whether
24 anyone is correct as to specifically what was placed on
12:24:06 25 the record, I'd need a copy of the transcript to make

12:24:08 1 that determination. That's what I'm saying.

2 MR. SAMPSON: I don't know that anyone is
3 disputing what I'm talking about. In fact, I think
4 Mr. Fink indicated that my discussion with what was
12:24:19 5 placed on the record was accurate.

6 I mean, my position is -- I'm telling you, we
7 put on the record -- we're not waiving, releasing, or
8 otherwise affecting anything against Sesman or Duslak.
9 I don't think anyone would dispute that.

12:24:34 10 And if they don't dispute it, I mean, we can
11 keep a transcript -- we can get a transcript if we need
12 to, but I don't think it's disputed what I'm telling
13 you as to what we agreed to.

14 THE COURT: Is it --

12:24:44 15 MR. SAMPSON: It was a pretty significant
16 point that day.

17 THE COURT: Is it disputed? Anyone?

18 MR. SAMPSON: Not -- I'm not disputing. I'm
19 not disputing my version of what happened. I tell you
12:24:58 20 that. This is Dave Sampson.

21 THE COURT: Okay. Mr. Fink, are we disputing
22 that?

23 MR. FINK: Well, first I did send this out at
24 9:35 this morning which included, like, I think, six
12:25:10 25 bullet points, five bullet points of things that were

12:25:13 1 kind of core to the agreement.

2 My best recollection is that when Mr. Sampson
3 said he was specifically retaining his rights to go
4 against Mr. Sesman and Mr. Duslak, we all agreed to
12:25:27 5 that. There was no specific discussion as to whether
6 or not they were independent contractors or employees.
7 So I didn't -- I didn't jump and say, well, to the
8 extent they're employees. This wouldn't cover them.
9 So that part is right.

12:25:41 10 But then I didn't know that I had to do that
11 because when you're releasing Sunrise, you're releasing
12 their employees, their board members, all of that. So
13 I don't know that I was thinking that that's something
14 I needed to specifically do.

12:25:53 15 I completely understood that to the extent
16 that Sesman and Duslak were his independent
17 contractors, which we all think they are, that the HOA
18 hired to do the lawn maintenance that it --
19 shouldn't -- it didn't and shouldn't affect
12:26:07 20 Mr. Sampson's rights to go after them. That was the
21 point.

22 But certainly not if it turns out that they
23 were my client's employees, which, again -- and I
24 appreciate Mr. Sampson recognizing that in most cases
12:26:20 25 that's what's included, but that's exactly what I was

12:26:22 1 thinking was excluded here. If they're employees,
2 they're covered.

3 THE COURT: So the impact of the -- what would
4 be considered the material terms of the settlement is
12:26:34 5 an issue.

6 MR. FINK: If -- if the -- I think the only
7 issue, if I'm not mistaken, is whether or not the
8 settlement covers those two gentlemen if it turns out
9 they're employees. That's it.

12:26:46 10 If they're not employees, there's no question
11 the settlement doesn't cover them. And allows
12 Mr. Sampson whatever avenue or avenues he needs to try
13 to recover money from them, including going after
14 Sunrise's insurance carrier if for some reason that
12:27:01 15 that carrier should have defended or indemnified those
16 two gentlemen as independent contractors. And that's
17 language that my carrier agreed to that's in that
18 agreement. Which is fine. And that absolutely was not
19 part of a negotiation to get them out.

12:27:16 20 But the issue really is, is whether or not if
21 it turns out that these two were employees and getting
22 W-2s, which there's been no evidence and no allegation
23 that there they were, that it's our belief that the
24 settlement covers them under that one circumstance.

12:27:34 25 THE COURT: Okay. Mr. Sampson.

12:27:35 1 MR. SAMPSON: Your Honor.

2 THE COURT: Go ahead.

3 MR. SAMPSON: Sure. All I would ask, again,
4 is the Court to consider, well, you know, that should
12:27:42 5 have been brought up on the record. Because I made
6 clear -- and there is no dispute it sounds like. I
7 made it clear we want to preserve all rights against
8 Sesman and Duslak. They've been defaulted. We want to
9 move forward against them. And this release and this
12:27:56 10 money doesn't go to affecting any of my client's rights
11 against them, period.

12 And the response while we were on the record
13 from Mr. Fink and everybody else was that is correct.
14 And we are in agreement.

12:28:08 15 And if they were going to raise some kind of,
16 well, hold on. Is this, then okay. But if not, then
17 that was the time to do it, and they did not do it.
18 And they did it -- they had a chance on Wednesday and
19 again on Friday. So we can't even blame it on, like,
12:28:23 20 spur of the moment. I didn't have time to consider it.
21 It just got tossed out there. It was brought up
22 specifically, and they agreed. And they can't now turn
23 around and unagree, or try to undo it when we said --
24 again, all I want to do is enforce the terms that were
12:28:39 25 placed on the record. And I don't think my client

12:28:41 1 should be forced to agree to terms that weren't placed
2 on the record, which Mr. Fink is now asking to do. I
3 think -- I hope Mr. Fink is correct when he says
4 they're not employees.

12:28:51 5 I'm a little concerned if he is so convinced
6 they're not employees why this is a sticking point.
7 Because it shouldn't be. If he's convinced they're not
8 employees, I don't know how it would turn out, as he
9 used the phrase, if they somehow would magically become
12:29:06 10 employees other than perhaps if the carrier goes to
11 Sunrise, and says, you know, I don't know. Something
12 goes on and all of a sudden that all -- that they come
13 up W-2s that were not provided before and Mr. Fink's
14 not aware of, and then we've somehow been mislead.

12:29:20 15 But the terms of the agreement were reached on
16 the record, and we're just asking no more, no less than
17 what was placed on the record be enforced. And since
18 it's been three weeks now and they can't seem to come
19 up with an agreement, that Sunrise would be on board
12:29:37 20 with that comports with what was on the record, then I
21 think the Court either just find that that's waived at
22 this point, or that they sign what I proposed. Which
23 is we just release each other pursuant to what was
24 placed on the record.

12:29:51 25 THE COURT: Anything else? There is no way

12:29:52 1 this can be worked out.

2 MR. FINK: Never say no way. But your Honor,
3 again --

4 THE COURT: And the reason why I do that, I
12:30:01 5 think everybody understands this, it's always easier.

6 MR. FINK: Right. I mean, it's -- it's
7 problematic. I mean, look, there's nothing in the
8 complaint. So when Mr. Sampson says, Well, then we
9 should have said something. The problem here is that
12:30:12 10 if we are looking at the record, we're looking at the
11 entire record.

12 And the entire record is the amended complaint
13 which makes no allegation, even an allegation, that
14 either one of those two gentlemen were employees of
12:30:23 15 Sunrise, or were working within the course and scope of
16 being employees of Sunrise.

17 So if that's what he has alleged, then that's
18 why I have no problem releasing them as to how he's
19 alleged it. Had he alleged in his amended complaint
12:30:36 20 that they were employees of Sunrise, that would have
21 been a different discussion on the record.

22 Should that have been made more clear from
23 both sides? Probably, which we wouldn't be here. But
24 the fact is it's -- again, it's in the operative
12:30:51 25 complaint. There is no allegations that they are

12:30:53 1 employees, which is why I didn't feel the need that I
2 had to clarify that.

3 And again, nothing in any 16.1 disclosure, up
4 until and including trial, that alleged that either one
12:31:02 5 of them were employees. And I also think and I didn't
6 check this before the hearing, but even when we did the
7 motion for summary judgment, and even the renewed
8 motion for summary judgment -- or I think it was a
9 motion for reconsideration, I don't believe, and I'll
12:31:15 10 apologize if I'm wrong here, I don't believe that even
11 then Mr. Sampson -- Mr. Sampson said they were
12 employees.

13 And then there was a motion in limine related
14 to keeping the gardener's statements out of evidence.
12:31:29 15 And, again, he didn't say they were employees. He said
16 that we argued about whether or not agent in principal
17 whether or not that would --

18 So there has never been an allegation by
19 Mr. Sampson in this case that they're employees. And I
12:31:39 20 think that's true which is what I said all along. I
21 don't think they were. I thought they were independent
22 contractors, two guys on a mower.

23 However, I'm sure the Court can appreciate
24 that even though I'm really, really comfortable with
12:31:53 25 that, I'm also not that comfortable with just leaving

12:31:57 1 it to wind.

2 So, I mean, maybe the best thing to do is to
3 get a copy of the transcripts from those two hearings
4 and try to hash it out. I mean, the good thing is we
12:32:06 5 do have the money, so we're not waiting on that. So if
6 there is no delay here, no one is trying to delay
7 anything. We're just trying to get it right and trying
8 to save our own --

9 THE COURT: Well, here's the issue. I mean,
12:32:18 10 I've been listening patiently. And it appears to be no
11 dispute that hypothetically they're independent
12 contractors and potentially additional insureds under
13 the insurance policy, there would be coverage.

14 MR. FINK: Well, well, no, no. Not a coverage
12:32:33 15 issue, but would allow them to go after my insurance
16 carrier.

17 THE COURT: Right.

18 MR. FINK: Absolutely.

19 THE COURT: I understand. It's not a
12:32:38 20 stipulation.

21 MR. FINK: Right.

22 THE COURT: It's not a stipulation of
23 coverage.

24 MR. FINK: Right.

12:32:41 25 THE COURT: But there's not a -- I get the

12:32:43 1 significance.

2 MR. FINK: Right.

3 MR. MELORO: And your Honor.

4 THE COURT: Yes.

12:32:48 5 MR. MELORO: Joseph Meloro on behalf of
6 Mr. Bushbaker.

7 Mr. Fink did send an email earlier today. And
8 there were some bullet points. One of the bullet
9 points that I want to make clear was that Mr. Bushbaker
12:32:59 10 is not waiving any claims against any insurance
11 carriers.

12 Also I'd like the record to reflect that
13 Mr. Sampson in his motion did state that Mr. Bushbaker
14 is not doing anything to delay this settlement and that
12:33:14 15 we've been cooperative.

16 And so I just want to make that clear that
17 we're not doing anything. This is a dispute. I think
18 it's pretty narrow on whether these are independent
19 contractors or employees. Doesn't really regard my
12:33:29 20 client. But we're trying to help facilitate a
21 settlement here.

22 MR. FINK: We'd like nothing more than to give
23 Mr. Sampson the money.

24 MR. SAMPSON: Your Honor.

12:33:38 25 THE COURT: Yes. Yes, Mr. Sampson.

12:33:39 1 MR. SAMPSON: Well, so given that's the case,
2 I think then why don't we do this. Why doesn't the
3 Court order the money be paid to Dr. Russo, you know,
4 forthwith, or however you want to do it. Within, I
12:33:51 5 don't know, by middle of the next week or something.
6 If it's here in town, it could even be by the end of
7 this week. But order that the funds be paid. And that
8 we set maybe a status check or something. Or where we
9 can look at --

12:34:03 10 I don't know what Mr. Fink -- I've never known
11 him to say something that's not accurate, but I don't
12 know that my complaint doesn't make those allegations.
13 I know I typically have a paragraph in every complaint
14 I've done that involves respondeat superior potentially
12:34:18 15 that says the parties -- that the defendants were all
16 agents, principals, employees, employers, managers and
17 service with one another. Perhaps it's not in there.
18 I don't know. I don't know what was said. Sounds like
19 neither does Mr. Fink with much surety about what was
12:34:33 20 said in relation to motions that were filed.

21 But I think you say, Look, the Court is going
22 to enforce the terms that were reached on the record.
23 So go ahead and pay the money. We'll figure out a way
24 to draft it and get it written up. But we're going to
12:34:45 25 enforce it pursuant to what was placed on the record.

12:34:47 1 And the other issue I've got is if, you know,
2 Mr. Fink is saying, Well, we never had any allegation
3 that he thought they were employees. We never -- it
4 was never anything that would have ever even entered my
12:34:57 5 mind, well then why now? Because I didn't bring it up.

6 Why now when all of a sudden it's the sticking
7 point. Something has gone on, and it sure -- I mean,
8 again, I only see two reasons why we would do anything
9 other than sign something that says the terms reached
12:35:12 10 on the record are incorporated herein and we agree to
11 them. Unless they're trying to delay things or put
12 something in there that wasn't reached on the record.

13 And the Court shouldn't permit either one of
14 those to take place. So, you know, I haven't heard any
12:35:24 15 objection to what I proposed a day or two ago saying
16 let's just sign something saying that we agree to the
17 terms as proposed on the record, or as placed on the
18 record and incorporated by this reference and then pay
19 the money, then we're done.

12:35:38 20 So, again, I would just ask we either do that
21 or the Courts say, look, as Mr. Fink said and I'm sure
22 Mr. Lemkul probably agrees, they'd love nothing more
23 than to give Dr. Russo his money. So go ahead and give
24 it to him. And then we can sit down at some point if
12:35:52 25 we need to have an evidentiary hearing or some other

12:35:54 1 kind of status check where we go over complaints or the
2 transcript from when we put it on the record. Because
3 at some point we'll have a release in place that
4 Dr. Russo will sign that comports to what was placed on
12:36:05 5 the record. No more, no, less.

6 THE COURT: I don't think I can do that, as
7 far as ordering payments of monies without an execution
8 of some sort of closing documents, or release, or
9 something like that.

12:36:22 10 MR. SAMPSON: So then what about the one I
11 proposed that now no one has as of this point had an
12 objection to?

13 THE COURT: Well, here's --

14 MR. SAMPSON: That I've heard.

12:36:31 15 THE COURT: This is the -- I think it's always
16 better for parties to come to some sort of resolution.
17 Because I can anticipate -- and I don't mind saying
18 this, and then I want to go to lunch. I think we all
19 do. But and I don't know this, but I can anticipate
12:36:57 20 potentially without having it all tied up, there could
21 be litigation as to the impact of the release under one
22 remote scenario. Right?

23 And that's the concern I have. And, I mean,
24 it doesn't matter, I mean, from a personal level. But
12:37:16 25 from a judicial perspective, that's why I always want

12:37:20 1 you to try to come to some sort of accord before I make
2 decisions because realistically it could be litigation.
3 I mean, the chances are remote. I get that.

4 Because when you look at it from this
12:37:36 5 perspective if there was truly evidence -- I mean, this
6 makes perfect sense. If there was evidence that they
7 were employees, there would not have been a default
8 judgment entered against them. There would have been
9 motions to set aside, answers, and the like. And
12:37:50 10 that's pretty much the status of the case because I
11 can't -- I can't foresee either Mr. Lemkul or Mr. Fink
12 permitting an employee to be defaulted; right?

13 MR. SAMPSON: Could we perhaps enter a
14 stipulation on the record here and now that for
12:38:06 15 purposes of this litigation they're not employees?

16 THE COURT: Well, I think -- here's the thing,
17 and I don't -- I mean, as far as -- and, I mean, you
18 know, when you look at it, this is so layered. I'd
19 hate to go down this rabbit hole. But there could be
12:38:22 20 arguments made based upon the law of the case; or facts
21 of the case; or how the case has developed; as it has
22 an impact, what does the release cover? And so those
23 are issues. I think -- I don't mind saying this. I
24 think it's almost -- it rises to a level of a
12:38:47 25 significant presumption they're not employees because

12:38:50 1 there would have been an answer filed, you know. But I
2 just want everyone to come to some sort of accord on
3 this.

4 MR. SAMPSON: Well, the problem is it's been
12:38:59 5 three weeks, and we haven't. And I've spent two weeks,
6 Monday the 21st until the following week before I heard
7 anything and Thursday until yesterday where I go with
8 no communication from the -- from Sunrise. Or -- and
9 one of those weeks was including Cox, and then three
12:39:19 10 weeks with Scarcelli. I'm glad to hear he's on board.
11 But I don't want any further -- I mean, I don't want to
12 tell my client, well you don't get your money and you
13 don't get your verdict either. So...

14 THE COURT: I understand.

12:39:30 15 MR. SAMPSON: I mean, I need at this point for
16 the Court to please take action to tell these
17 defendants, do what -- enter into a release that
18 comports no more no less than what was placed on the
19 record and give the doctor his money.

12:39:44 20 MR. MELORO: Your Honor, I take exception to
21 being grouped as defendants by Mr. Sampson. There are
22 separate entities here. I communicated with
23 Mr. Sampson and the other parties in this action, not
24 only that first week after we made this agreement but
12:40:01 25 the following week I did a follow up saying have we

12:40:05 1 come to any agreements. So I just want it clear when
2 Mr. Sampson says "defendants", which defendants he's
3 speaking of, please. Thank you.

4 MR. FINK: Your Honor --

12:40:15 5 MR. SAMPSON: And I thought -- I don't know
6 what comes through on the phone, but I thought I said
7 some of the defendants, specifically Sunrise. I
8 went -- I got the release either Sunday night, Monday
9 morning. Didn't hear anything for a week. And then we
12:40:29 10 talked from Monday to Thursday. I didn't hear anything
11 for another week until yesterday. Cox I didn't hear
12 for the first week, but we did deal with them the
13 following week. We got it all worked out.

14 Scarcelli I hadn't heard from hardly at all,
10:27:58 15 but it sounds today like they're on board.

16 (Reporter clarification)

17 So that's where we are at. And again, I
18 just -- I don't want -- please don't make me go back
19 and tell Dr. Russo you don't get your money; you don't
12:40:49 20 get your trial either. There is some kind of limbo.

21 I'd like to think there is some way the Court
22 can take action under the settlement to say here's what
23 you need to do, and it includes -- and it should
24 include signing the release that comports and provides
12:41:05 25 no more no less than what was placed on the record, and

12:41:08 1 tender the funds pretty quickly. We've already been
2 three weeks into this.

3 THE COURT: Mr. Fink.

4 MR. FINK: Good, your Honor. Mr. Sampson made
12:41:16 5 an interesting suggestion that I'd like to think about
6 and that may work. That if we say for the purposes of
7 this litigation they weren't employees. That may take
8 care of all of this. I would just need to run that by
9 my people. But that may take care of all of our
12:41:31 10 concerns at that point, and then we can -- we can be
11 done.

12 THE COURT: How's that, Mr. Sampson?

13 MR. SAMPSON: It was my suggestion, so I still
14 totally agree with it.

12:41:40 15 THE COURT: Well, you know what --

16 MR. SAMPSON: I would ask -- I would ask
17 just -- Mr. Fink has made a couple of comments today,
18 and I think the Court also echoed them, along the lines
19 of Sesman and Duslak, all rights against them, anybody
12:41:53 20 who insures them, you know, all of those are preserved.
21 They're not affected. I would like to make sure that
22 is crystal clear in whatever iteration we end up with.
23 I put some language in there that Mr. Fink has asked to
24 modify. And I think he and I hopefully can work that
12:42:08 25 out, and say, you know, that sentiment that, I believe,

12:42:11 1 was expressed much more clearly today than in the
2 agreement be set out very, very clearly.

3 THE COURT: And I think he has no problem with
4 that because that was his idea, you know, so regarding
12:42:24 5 the fact that if they're independent contractors,
6 there's no waiver of the right to seek coverage for
7 this case. I mean, I get that based upon the insurance
8 policy. And no big deal there.

9 But, okay. How about this? Because I know
12:42:41 10 your client wants their money. And I've been in that
11 situation before.

12 How long do you think it would take you,
13 Mr. Fink, to run that passed your clients?

14 MR. FINK: Well, I can try to do that now.
12:42:55 15 They're on the east coast, Philly. So I can try to do
16 that now. But I would say for sure -- and they're,
17 obviously, they're hot on this issue. I would say if I
18 can't get that by them today for whatever reason,
19 tomorrow morning. You know, I get up early. I'm
12:43:09 20 usually up east coast time anyway. So I think I can
21 get an answer from them, again, either this afternoon
22 or before everybody generally wakes up in the morning.
23 But I think it's -- I think it's a workable solution
24 from where I'm sitting.

12:43:25 25 And yeah, Mr. Sampson and I, other than this

12:43:28 1 one thing, we're in complete agreement. I don't think
2 we have any issues on that.

3 THE COURT: So how about this then.

4 (Off-the-record scheduling discussion
01:24:06 5 between the court clerk and the Court.)

6 THE COURT: How about a status check,
7 telephonic status check at 9:30?

8 MR. FINK: That would be fine for Sunrise,
9 Judge.

12:43:52 10 THE COURT: Is that fine, Mr. Sampson?

11 MR. SAMPSON: That's fine.

12 THE COURT: Okay.

13 MR. SAMPSON: In the meantime, Mr. Fink can
14 just re-forward to me whatever the final version is
12:44:04 15 he's claiming. Or perhaps what we're talking the
16 stipulation he'd be okay with, the last one I provided.
17 And then I get a chance to look that over, and we can
18 talk it out tomorrow and find out where we're at, but
19 what if anything else we would do from there.

12:44:16 20 THE COURT: Well, I think this -- I think it's
21 actually much simpler than that in this regard.

22 Hypothetically, Mr. Fink hears back from the
23 east coast sometime today. He gives you a phone call
24 or email, says, Look, my client has no problems with
12:44:32 25 the stipulation. You guys move from -- with that, with

12:44:36 1 the stipulation and whatever release language you feel
2 would be appropriate. And everything is covered. I
3 make my phone call tomorrow at 9:30. Say, Look, Judge,
4 we've resolved this issue.

12:44:50 5 MR. SAMPSON: That would be nice too.

6 THE COURT: I mean, I can foresee that
7 happening. And the reason -- and what that does is
8 this, and remember this is important too, that gives
9 finality.

12:45:02 10 MR. SAMPSON: Yeah.

11 THE COURT: That's a big -- and I'm -- and,
12 Mr. Sampson, I understand your plight, and I respect
13 it. And I'm not just kicking the can down the road.
14 I'd rather give you finality now than maybe appeals,
12:45:17 15 those types of things. And we don't need that. We
16 need to just put this case to bed. Because 24 hours
17 could save you a year and a half, right?

18 MR. FINK: Mr. Sampson, did you get a copy of
19 the email I just sent over to you?

12:45:31 20 MR. SAMPSON: I don't know.

21 MR. FINK: Okay.

22 MR. SAMPSON: I'm not in a position to check
23 my emails right now.

24 MR. FINK: All right. Let me know if you
12:45:37 25 didn't get it. I just sent it over again, so I can

12:45:40 1 do --

2 MR. SAMPSON: All right. I'll take a look.

3 THE COURT: So what we'll do, we'll set a

4 9:00 o'clock conference call, and we'll use Court Call.

12:45:46 5 9:30, I'm sorry.

6 MR. FINK: 9:30.

7 THE COURT: 9:30. We'll use Court Call. And

8 we'll -- how do we do that?

9 THE COURT CLERK: Do you all have

12:45:56 10 instructions?

11 MR. LEMKUL: No.

12 MR. FINK: I'm sure my office does somewhere.

13 THE COURT CLERK: No worries.

14 MR. FINK: Those are all beyond my

12:46:03 15 capabilities.

16 THE COURT: And it's just a continuation of

17 today's hearing, Mr. Sampson and Mr. Lemkul. That's

18 all it is.

19 MR. LEMKUL: Sounds good, your Honor.

12:46:14 20 MR. SAMPSON: Sounds good.

21 THE COURT: All right. Everyone enjoy your

22 day.

23 MR. FINK: Thank you.

24 THE COURT: All right.

12:46:16 25 MR. SAMPSON: All right.

12:46:21 1

MR. MELORO: Have a good lunch, your Honor.

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(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.

PEGGY ISOM, RMR, CCR 541

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