

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SUNRISE VILLAS IX HOMEOWNERS  
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX**  
**VOLUME 16**

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1 CASE NO. A-17-753606-C

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DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9 SIMONE RUSSO, )

10 Plaintiff, )

11 vs. )

12 COX COMMUNICATIONS LAS VEGAS, )

13 INC., )

14 Defendant. )

15 REPORTER'S TRANSCRIPT

16 OF

17 HEARING

18 (TELEPHONIC CONFERENCE)

19

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22 DATED FRIDAY, NOVEMBER 8, 2019

23

24

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

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RUSSO V. COX COMMUNICATIONS

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1 LAS VEGAS, NEVADA; FRIDAY, NOVEMBER 8, 2019

2 9:35 A.M.

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

4 \* \* \* \* \*

5  
6 THE COURT: Good morning to everyone.

7 IN UNISON: Good morning.

8 THE COURT: All. Right. And let's go ahead  
9 and place our appearances for the record.

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

11 MR. FINK: Leonard Fink, Sunrise Villas IX  
12 HOA.

13 MR. LEMKUL: Will Lemkul, your Honor, for Cox  
14 and IES.

15 THE COURT: All right.

16 MR. MELORO: Joseph Meloro for Kevin  
17 Bushbaker.

18 THE COURT: And we have Mr. Meloro in the  
19 courtroom. And so this is a follow up on yesterday  
20 regarding some of the material terms of the settlement.  
21 Have we come to some sort of agreement?

22 MR. FINK: Your Honor, Leonard Fink for  
23 Sunrise Villas IX. We are really, really close. I  
24 mean, Dave and I exchanged -- Mr. Sampson and I  
25 exchanged language that I'm fine with. I've sent it

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1 off to my carrier who is having their coverage counsel  
2 look at it. Unfortunately, even though I told them we  
3 had a 9:30 status conference, I still don't have an  
4 answer on it. But I think that we're pretty much  
5 there, but I can't say for sure at this exact minute  
6 because I don't know what they're all going to say.  
7 But I think -- I think we're probably fine.

8 THE COURT: Mr. Sampson, sir.

9 MS. SAMPSON: Well, I don't know. I mean, I  
10 hope -- I hope -- I hope we're fine. This is the thing  
11 that I can't just -- I can't get out of my head is  
12 yesterday I read into the record a release that I had  
13 proposed in the alternative that essentially said, you  
14 know, it names all the parties and then says we agree  
15 to release each other pursuant to the terms set forth  
16 on the record on October 16 and October 18 of 2019.

17 And so, I guess, the only thing I don't want  
18 any further delay. I don't want to get a call, you  
19 know, in an hour from Mr. Fink going, oh golly gosh,  
20 you know what, some carrier has got some issue, and now  
21 we have no way to flush it out.

22 So perhaps the Court could say, you know, if  
23 Mr. Fink and his client agree to what Mr. Sampson  
24 proposed this morning, and no one else has any  
25 objection on this Sunrise employee Duslak Sesman thing

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1 then we'll go ahead and sign what Mr. Sampson proposed  
2 this morning. And that's going to be done.

3 And if for some reason Mr. Fink's client  
4 doesn't agree, then we'll do the other proposal  
5 Mr. Sampson set up which is we all just all release  
6 each other pursuant to the terms that were placed on  
7 the record on the 16th, and 18th which are incorporated  
8 by this reference, and we'll just do it that way.

9 I still for the life of me don't understand  
10 why we can't just do that. Because the only reason  
11 anybody would want to object to that is if they plan on  
12 just wanting to delay things for some reason, or they  
13 want to get some right that wasn't placed on the  
14 record. Neither one of which would be an appropriate  
15 reason to not sign that release.

16 So that would be my preference so one way or  
17 another we've got one of two releases that will be  
18 signed, and my client is going to get his money here  
19 pretty quick.

20 THE COURT: Okay. You want -- you want to  
21 respond to that, Mr. Fink?

22 MR. FINK: Judge, I have no idea even what to  
23 say. I mean, we've all been down this road before. I  
24 can't agree to anything like that until I get the  
25 approval from the people that are paying the money that

1 have the actual stake in this.

2           You know, and there's a lot of moving parts.

3 This is not a normal -- this isn't a normal

4 by-the-numbers settlement because of the carve out.

5 We're working through it. Again, I was -- I've been

6 worked on this since early this morning. I was

7 really -- thought I would get a definitive answer by

8 now. I don't have it.

9           You know, it may very well be that the answer

10 is, you know what, let's go with Mr. Sampson's proposal

11 with -- we just use the record. And then we use the

12 record and supplement it, I think, for the -- to make

13 sure we've got the liens taken care of. Which I think

14 we're the only other real major issue. But, you know,

15 I can't --

16           And, Judge, you've been through this before.

17 You've been through this as a settlement conference

18 judge. You've seen it through the parties. I just --

19 it's -- I can appreciate Mr. Sampson's position, but it

20 just can't work that way.

21           THE COURT: This is -- and --

22           MS. SAMPSON: Why can't --

23           THE COURT: This is one -- I think this is

24 important to really point out. And from time to time

25 from a judicial perspective, I have to make sure that

1 the issue in front of me is clearly ripe for  
2 adjudication.

3           And what I mean by that is this: There  
4 appears to be a significant probability that based upon  
5 the action of the parties, and more specifically  
6 Mr. Fink, that we have an agreement in principle as to  
7 the language that will be in the agreement. Because  
8 whatever changes were made as it related to the two  
9 putative/independent contractor, whatever status they  
10 have, apparently there is some sort of agreement as the  
11 type of language that would be appropriate. And so all  
12 we have to do at this point is this: Either it's  
13 approved or it's not approved.

14           If it's approved, then we're done. There's no  
15 need for law and motion. There's no need for any  
16 decisions from me. I would anticipate the checks would  
17 be exchanged shortly.

18           In contrast, and this is important to point  
19 out, if they're not done, then I have to make some  
20 important decisions.

21           As a trial judge, I don't give advisory  
22 decisions.

23           But, Mr. Sampson, you are correct. I will  
24 have to make some decisions. But here's the problem  
25 with making decisions. Decisions don't always end up

1 being efficient in the long term. Because what  
2 potentially could trigger that would be more delay,  
3 potential posttrial motions, maybe a Rule 54  
4 certification, writ to the Court of Appeals and/or  
5 Nevada Supreme Court. And that doesn't really help  
6 anyone at this point.

7           And so I don't mind saying this. I wanted to  
8 delay a little bit or kick the can down the road so  
9 that doesn't occur. Because I feel it's prudent to let  
10 you guys work it out. That's probably the best way I  
11 can say it. Because as a trial judge sometimes I have  
12 to help everyone along. And sometimes inaction helps  
13 facilitate the process. Especially under the facts of  
14 this case. Because understand this: I'm not dealing  
15 with motions in limine. I'm not dealing with pretrial  
16 dispositive motions. I'm not dealing with any of those  
17 things where time is necessarily of the essence in that  
18 we're going to trial.

19           I do realize there's a significant time  
20 component. I want to make sure Mr. Sampson understands  
21 this, I've been in your situation before many times.  
22 And I understand clients and their demands. And they  
23 don't see things the way lawyers see them. I get that.  
24 But if we can get this matter done sometime this  
25 morning, I think everyone is in a better position. I



1 just do.

2 And so I'm not going to make any decisions  
3 other than I'm going to monitor this matter. And what  
4 I mean by that is this: Let me know what happens  
5 either way. And we can do it one of two ways.

6 I would want a joint letter. Judge, we're  
7 done. Everything is agreed. Or, Judge, we're not  
8 done. And there's a problem.

9 And then I have to decide what to do. Does  
10 everybody understand that?

11 MS. SAMPSON: I understand that. I would add  
12 that it does not necessarily have to be a joint letter  
13 because apparently there is issues working together.  
14 That's why we're here.

15 THE COURT: Well --

16 MS. SAMPSON: And keep in mind I understand  
17 Mr. Fink says there's a lot of moving parts, and that's  
18 why I waited until right now at the end of three weeks  
19 later before I -- before I'm where I'm at. I went the  
20 whole first week very patiently waiting to see what  
21 could find out, and I heard zero from anybody except  
22 Mr. Meloro. Period. From nobody at all except him.

23 THE COURT: And I understand this --

24 MS. SAMPSON: And then I wait the second  
25 week --

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1 THE COURT: But, Mr. Sampson --

2 MS. SAMPSON: Then --

3 THE COURT: -- number one, I understand your  
4 frustration. I get that. I truly do.

5 But understand this. I don't know if it would  
6 be necessarily appropriate to say that you and Mr. Fink  
7 aren't working together because apparently both you and  
8 Mr. Fink have agreed in principle on the specific  
9 language. All's he's doing right now is he's seeking  
10 approval from the insurance carrier I would anticipate  
11 and they're having counsel look it over.

12 And --

13 MS. SAMPSON: Right.

14 THE COURT: It doesn't happen --

15 MS. SAMPSON: But --

16 THE COURT: -- necessarily all the time in  
17 tort cases. But when it comes to release language --

18 MR. SAMPSON: Three weeks?

19 THE COURT: No, no, no, no. I mean, let's be  
20 fair. It's my understanding that the stipulation or  
21 proposed stipulation was agreed to just yesterday. And  
22 then Mr. Fink met with -- apparently sent  
23 correspondence back east early this morning to seek  
24 some sort of approval.

25 And so, I mean, there's a lot of moving parts.

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1 And it is what it is. But the ultimate agreement in  
2 principle occurred yesterday. That's my understanding.

3 And so --

4 MR. SAMPSON: And that's -- the problem I  
5 have, Judge, is they always -- no, not "they", Mr. Fink  
6 at this point. I get discussion, and we start working  
7 stuff out. Well, we have a hearing tomorrow, and  
8 that's what happened on Wednesday when we had the  
9 hearing set for yesterday. It's what happened this  
10 morning when we had a hearing set for this morning.

11 So my concern is if we leave it -- I don't  
12 understand why there would be an issue with, Look, if  
13 you reach an agreement -- obviously, if we reach an  
14 agreement, halleluiah, we get the thing done. But I  
15 don't think there would be a problem with the judge  
16 saying in the event -- with your Honor, in the event  
17 you can't reach a settlement agreement -- we're three  
18 weeks out now. You can't reach an agreement, so here's  
19 what we're going to do.

20 THE COURT: I mean, tell you --

21 MR. SAMPSON: It would be from --

22 THE COURT: I can tell you what I'm going to  
23 do. My court reporter is here. If for some reason  
24 there can't be -- there's not -- you can't reach an  
25 agreement, I'll pull the points and authorities, and

1 I'll look at the transcript from that hearing. Then  
2 I'll make a determination based upon the record.

3 And the reason why I would do that, I would  
4 think all the Nevada case law would specifically  
5 require me to look at the record and specifically the  
6 terms and conditions that were placed on the record.

7 And understand this, I think the case law is  
8 pretty clear on that. And, hypothetically, Mr. Sampson  
9 you might be right. But if I'm going to go that route,  
10 I feel compelled. I would at the very least, and I've  
11 done this in every case that involves motions to  
12 enforce settlement agreements that were placed on  
13 the -- the material terms were placed on the record,  
14 I've done that in every case. I wanted to see exactly  
15 just to make sure, not go off of rote memory. Case in  
16 point, you are kind of fortunate you're in a court  
17 reporting department where we have a court reporter  
18 that's here today.

19 And it might take her a little while to get  
20 the exact transcript together, but I can do that. In  
21 contrast, I remember I was doing a settlement  
22 conference for another judge -- no, in one of my own  
23 cases and another judge actually did the settlement  
24 conference. They were a JAVS department and not a  
25 court reporting department. And it took me about close

1 to a month or more to get a copy of the transcript.  
2 And that's just because the way that -- those -- the  
3 recording departments are set up.

4           They don't do the transcripts. They send them  
5 out. And so I have an in-house certified court  
6 reporter that also does realtime court reporting and  
7 that can give you realtime during trial. So that's not  
8 a real big issue for us.

9           But I just want to make sure everybody  
10 understands that no matter what I do, I do have to read  
11 the transcript.

12           MR. SAMPSON: Although, your Honor, and I  
13 appreciate that. However, if the release is as I  
14 proposed it, it's going to say we release each other  
15 pursuant to the terms that were set forth in the  
16 record. So that point it doesn't matter what the  
17 transcript says. Whatever it says, is what we've  
18 agreed to in the release. No more, no less.

19           So I appreciate if we're going to put in  
20 details and go beyond just saying we release each other  
21 as agreed to in the transcript, then I want to go  
22 through it. But I think we can say that is a very  
23 practical way of handling it and saying you guys are  
24 releasing each other as agreed on the record. And can  
25 we just please --

1 THE COURT: You know what, Mr. Sampson.

2 MS. SAMPSON: -- do the agreement that was  
3 made on the record.

4 THE COURT: All I can say is this, and I  
5 understand and I respect your proposal. But I've never  
6 seen a settlement agreement executed and signed by the  
7 parties in that regard. And there's a reason for it.  
8 There might be what would be considered material terms  
9 that would be the basis for enforcement of the  
10 settlement, but there's also a lot of collateral terms  
11 to the settlement agreement that typically goes into  
12 settlements; right?

13 And so what you're asking me to do is, under  
14 those circumstances, would be to somehow not consider  
15 what lawyers would normally put in settlement  
16 agreements. And so all I'm doing is this, and I think  
17 this is the best way to say it, if this matter doesn't  
18 settle, I'll make some tough decisions. I feel  
19 compelled I have to review the transcript.

20 MS. SAMPSON: Okay.

21 THE COURT: I don't think any trial judge  
22 would make a determination that there's a settlement  
23 without reading the transcript and making sure I  
24 clearly understand what the material terms are.

25 And I think that's just important. Because I

1 think -- I mean, my recollection, and I wish I had  
2 100 percent recollection of every fact and statement of  
3 lawyers in cases, but I don't. I do remember some of  
4 the key terms. But do I have absolute recollection?  
5 No, I don't. And I don't think any judge would have  
6 absolute recollection of everything placed upon the  
7 record vis-à-vis a settlement three-plus weeks later.  
8 It just doesn't happen that way.

9 Mr. Meloro.

10 MR. MELORO: Your Honor, Joseph Meloro for  
11 Mr. Bushbaker. I would think that the material terms  
12 were put on the record, but it's still -- I am going to  
13 be comfortable with the formal settlement agreement  
14 that do include the terms that generally are included  
15 that lawyers add as is like you said. And that just  
16 going off the record could be vague and ambiguous.  
17 There was all sorts of other language during the  
18 hearing, and I just don't see that that is the best  
19 solution to this. All we are is waiting for Mr. Fink  
20 to get some response from his insured, and we'll know  
21 where we're going to go from there.

22 But I just think that making an agreement to  
23 of -- you know, go off the record. And which I haven't  
24 reviewed the record either, your Honor. That, you  
25 know, I think that your decision to maybe just postpone

1 this until we find out what Mr. Fink's insured has to  
2 say would probably be the best solution at this point.

3 THE COURT: Anyone else want to --

4 MS. SAMPSON: The only other -- the only --

5 MR. FINK: Your Honor.

6 MR. SAMPSON: -- thing I would request is  
7 that -- is that you mentioned a joint letter. Can I  
8 just have -- just let me send a letter. If we don't  
9 reach a settlement agreement, I'll advise the Court.  
10 We do -- we don't have an agreement. I don't think I  
11 should have to shuffle back and forth with the other  
12 attorneys to get a joint letter out to your Honor just  
13 to tell you we didn't reach an agreement. Could I  
14 please at least do that?

15 THE COURT: There is a method to my madness.  
16 And although in a general sense under the facts of this  
17 case, I don't think that would be a big issue. But  
18 understand this. And I think this is important to  
19 point out. From a custom and practice perspective, I  
20 don't read letters at all that come from lawyers unless  
21 they're joint letters by all the parties and their  
22 lawyers.

23 And the reason why for it is this: I have to  
24 be concerned about ex parte communications; right? And  
25 if we have an agreement that, Look, Judge, we're going



1 to send a joint letter, I mean, that's fine. Now, if  
2 someone said, Look, Judge, we'll waive that, and all  
3 you have to do is cc us on the letter, that's another  
4 thing.

5 But once again, I have no control over what's  
6 coming to me; right? And so there's a reason why I do  
7 everything. And once again, I think I said this  
8 yesterday in open court. When it comes to letters from  
9 lawyers, I don't read them. They take them and left  
10 side file them. Because I am concerned of ex parte  
11 communications.

12 You know, if it's a joint letter from  
13 everybody, and my law clerk will check that, say, yes,  
14 Judge, this is from the plaintiff. This is from the  
15 defendants signed off, and we have third-party  
16 defendants maybe that have signed off. Okay.

17 And typically all those letters say is, Judge,  
18 we have a full settlement and resolution of the case;  
19 right? But that's my concern.

20 And I just want you to understand,  
21 Mr. Sampson, there's a reason why I proceed in a  
22 certain way, you know. It's just not arbitrary.  
23 That's probably the best way I can say it.

24 MR. FINK: Your Honor, Leonard Fink for  
25 Sunrise. In this particular case, and I would be -- I

1 would be fine from my client that if we, whatever our  
2 resolution is, that if the letter from Mr. Sampson to  
3 the Court cc'ing all counsel, I have no qualms that  
4 he's not going to -- I'm sure he's not going to  
5 misrepresent anything.

6 THE COURT: Right.

7 MR. FINK: And I can -- I understand, you  
8 know, that getting everybody to sign things could be a  
9 little bit more onerous than this would need to be  
10 under these circumstances. So for Sunrise, I'll be  
11 fine doing that.

12 MR. LEMKUL: I'm fine with that too, your  
13 Honor. This is Will Lemkul.

14 THE COURT: Okay. Mr. Lemkul is fine with it.  
15 Mr. Meloro, you okay with it?

16 MR. MELORO: I have no objection. I don't  
17 think there will be any misrepresentations.

18 THE COURT: I understand.

19 MR. MELORO: Either we settle or we don't,  
20 your Honor.

21 THE COURT: And you are 100 percent correct,  
22 sir. All the letter is going to say essentially, we  
23 got a deal, Judge, or we don't.

24 You got that, Mr --

25 MR. FINK: Your Honor, that's fine.

1 THE COURT: Is that fine, Mr. Sampson?

2 MS. SAMPSON: That is fine.

3 (Reporter clarification)

4 THE COURT: I don't know. I'm not sure.

5 MR. SAMPSON: I think it's the party that  
6 doesn't -- that doesn't reach the agreement. We've  
7 got -- we've got -- what we've got -- we've got three  
8 parties, three defendants and a plaintiff who all said  
9 this is fine. We've got one hold out.

10 MR. MELORO: For the record, your Honor, I  
11 mean the settlement agreement --

12 (Unreportable cross-talk)

13 THE COURT: One -- okay. And, Mr. Sampson,  
14 Mr. Meloro wants to add something.

15 MR. MELORO: I am in agreement to the last  
16 proposal that was given. And the dispute between  
17 Sunrise and the plaintiff, that doesn't regard myself.

18 THE COURT: Right.

19 MR. FINK: Your Honor, Leonard Fink. Just  
20 because we're on the record, I feel the need that I've  
21 got to defend myself here. And I have been doing  
22 everything I can to get this case settled and done.  
23 Including like I said yesterday, I jumped on and did  
24 the proposed agreement within, I think we put on the  
25 record Friday afternoon and by Monday morning everybody

1 had it. I was waiting as was Mr. Sampson for input.  
2 It happens that way. But I don't appreciate and I  
3 don't want the record to show in any way that I've  
4 delayed or done anything other than trying to get this  
5 case to the finish line.

6 So it's an important issue. And, you know, I  
7 mean, I suppose we can broach the subject of who's  
8 going to pay for the transcript if we need to do that.  
9 Or as of right now, there is no -- we don't know that  
10 we need to do that.

11 THE COURT: Okay. All right.

12 MS. SAMPSON: Well, I'd like it resolved  
13 before we -- I mean, I don't want to have to have  
14 another conference and another conference to talk about  
15 okay who's going to pay for the transcript next.

16 MR. FINK: Well --

17 MS. SAMPSON: I mean --

18 (Unreportable cross-talk)

19 THE COURT: Stop. Wait, wait, wait. You have  
20 to be one at a time. Go ahead.

21 MR. SAMPSON: Sure. And as I was saying, you  
22 know, I find it hard to believe that qualified  
23 upstanding member of the bar doing everything they can  
24 to work this out couldn't call me back for two straight  
25 weeks at all to even tell me nothing if anything is

1 going on.

2           So, I mean, there's been a delay here. Other  
3 than Mr. Meloro, I heard nothing from anybody for the  
4 first nine days of this. And then I spoke for a day or  
5 two with Mr. Fink on it. Got some -- got some word  
6 from Cox, we worked it out.

7           Spoke with Mr. Meloro. We worked it out.  
8 Spoke with Mr. Clark, we worked it out. And then I  
9 went a whole other week with radio silence from  
10 Mr. Fink. So with what's going on, again, and I  
11 proposed another possible solution that just says  
12 whatever the transcript says is what we agreed to.

13           So in light of that, I don't see why my client  
14 should be penalized.

15           THE COURT: Well, nobody --

16           MS. SAMPSON: If it's not being worked out.  
17 If anybody has done everything they can, believe me  
18 it's me. In fact, I've held back on a few things. I  
19 probably should have gotten a motion to compel in the  
20 middle of that first week. But I was giving everyone  
21 the benefit of the doubt. But oh, no, they're not  
22 going to -- certainly they won't delay. I mentioned  
23 when we reached it on the record, we're not going to  
24 drag this out two weeks. Oh, no, we won't. Don't  
25 worry about it.

1           So I gave everyone the benefit of the doubt.  
2 And I've been extremely patient. And now, apparently,  
3 if Sunrise can't agree to the final iteration that  
4 everyone else is on board with, somehow my client is  
5 going to pay the price for that. I don't think that's  
6 fair at all.

7           THE COURT: Well, I can tell you this. And  
8 this is one decision I will make. Your recommendation,  
9 and that's what it would be, that I enter an order that  
10 would say, Look, case settled based upon the terms and  
11 conditions as set forth in this record, and leaving it  
12 at that, I think potentially that's problematic.  
13 Because I don't think the case law on any level would  
14 stand for the proposition that it would be appropriate  
15 for the trial judge to do that.

16           What the -- what I would have to do is this:  
17 I'd have to make -- review the transcript and make a  
18 determination as to whether or not there was an  
19 agreement as to the material terms and conditions of  
20 the settlement. And that's how it's done in every  
21 case.

22           And one thing I won't do, and I feel very  
23 strongly about this, I've been on the bench now for  
24 almost 14 years, and that's the way I do things. It  
25 just is. And any lawyer that's been in front of me

1 during that time period knows that I tend to go by the  
2 book. I cross my I's and I dot my -- I cross my T's  
3 and I dot my I's, and that's how I do it. And then I  
4 can live with the results as to what the Nevada Supreme  
5 Court or Court of Appeals does under those  
6 circumstances.

7 But it's -- it would -- I think it would be  
8 even -- I mean, I feel potentially this way: If I  
9 entered an order like that, the material terms, without  
10 articulating what the material terms of the settlement  
11 would be, that order wouldn't stand.

12 In contrast, I could review it and make a  
13 judgment that these are the material terms of the  
14 settlement. And say we have an enforceable settlement  
15 here, then that could stand. And I think that's what  
16 the case law mandates.

17 So I'm not going to be an outlier, and I never  
18 have been. And I'm just going to do what I think is  
19 right under the facts and circumstances of any case.

20 And last, but not least, I think this is  
21 important to point out too, right now all we're doing  
22 is waiting for communications from the carrier. And so  
23 all these discussions about this and that, it's not  
24 really accomplishing anything, right?

25 MR. MELORO: Your Honor, Joseph Meloro for

1 Mr. Bushbaker.

2 MS. SAMPSON: Oh, no, I disagree.

3 MR. MELORO: I'm sorry. I'm --

4 (Unreportable cross-talk)

5 THE COURT: Wait, wait, wait.

6 (Reporter clarification)

7 THE COURT: Wait, wait. Now, Mr. Meloro, I'll  
8 let you go. Just one comment.

9 MR. MELORO: Thank you. I also would like to  
10 say I feel my client's being penalized. My client is  
11 just an individual in this matter. I'm not going to  
12 get into the, you know, our defenses. We believe we're  
13 not even a true party to this case. But my client is  
14 having to pay for all these hearings. And he is being  
15 penalized as well.

16 So I would like for the sake of finality to  
17 come to some sort of decision because, you know, we got  
18 to realize, these aren't all corporations in this  
19 matter.

20 THE COURT: I understand. And here's my  
21 point. We're having all these discussions. We already  
22 have a record as to what happened. We don't need to  
23 argue it over and over and over again. We don't.

24 Because, ultimately, whoever has the last  
25 word, or whoever argues the longest, that's not going



1 to -- that's not going to control my ultimate decision.  
2 I'm going to do what a trial judge should do. I'm  
3 going to look at the record. I'm going to review the  
4 transcript. And then I will take a close look at the  
5 case law that guides me as to making a determination as  
6 it relates to whether or not the material terms of the  
7 settlement were placed on the record. And that's it.  
8 Very clinical. Nothing more, nothing less.

9           Anyone else want to comment? And then we'll  
10 go.

11           MR. FINK: Last thing from me, Judge. And I  
12 appreciate everything you said, but I'm -- again,  
13 because we're on the record, I'm getting very tired of  
14 having to defend myself and to my actions when I'm  
15 being told constantly that it's been inaction, which  
16 hasn't been true. Other than when I, like I said  
17 yesterday, I got sick for four days and wasn't doing  
18 anything. So not just for Mr. Sampson, but for  
19 anybody.

20           So, you know, it's a mischaracterization of  
21 the efforts that have gone in to get this done.  
22 It's -- again, I'm getting tired of repeating myself.  
23 Hopefully, I don't have to do that again.

24           THE COURT: All right. So, I guess --

25           MR. FINK: I will --

1 THE COURT: Go ahead. I don't want to cut  
2 anybody off.

3 MR. FINK: No, no. I'm sorry. I will as soon  
4 as we're off the phone, I will, again, follow up with  
5 my people. I've been -- as I've been doing all  
6 morning, and I'll continue to do that throughout the  
7 day.

8 THE COURT: Okay. Mr. Lemkul, anything you  
9 want to add, sir?

10 MR. LEMKUL: No, your Honor. Other than to  
11 say I do have my client's settlement draft. I have a  
12 check. So once we get past the impasse, I can have  
13 that over to Mr. Sampson's office within minutes.

14 The other thing, I don't know if it helps  
15 anybody but just to maybe to calm Mr. Sampson down a  
16 little bit. I have had numerous conversation with  
17 Lenny about these issues. I can tell you at least from  
18 my standpoint that he's responded to me about a bunch  
19 of issues over the course of this entire time with the  
20 exception of when he was sick.

21 So there have been efforts. And I know it's  
22 hard looking outside in, but there's been a lot of  
23 effort have gone into it. In fact, I personally got on  
24 the phone with a manager at my insurance company to  
25 make sure I would have this check for David

1 commensurate with the time period we gave the Court.  
2 So I know it's frustrating. The whole thing is tough.  
3 I think by Monday at 5:00 this will be done.

4 THE COURT: Mr. Meloro.

5 MR. MELORO: I would like to add to give  
6 Mr. Fink credit, he did have a release prepared that  
7 Sunday after the Friday when we concluded the matter.  
8 So that I think that was a gallant effort itself that  
9 shouldn't be forgotten.

10 THE COURT: And, Mr. Sampson, you get the last  
11 word, sir.

12 MS. SAMPSON: Thank you, Judge. I'm not  
13 casting aspersions. I don't know what's going on, on  
14 the other side. I've been talking about the facts  
15 every time I brought this up.

16 The fact is I was given a document either  
17 Sunday night or Monday morning after we resolved this  
18 that Mr. Fink said here's a thing I've written, but I  
19 don't have any authority from my client as to whether  
20 this will work or not.

21 I made my changes. I wrote back immediately.  
22 Mr. Meloro got in response with me immediately. And I  
23 heard zero from anyone else for a solid week.

24 And it wasn't until the following Monday that  
25 I heard anything. Now I'm only talking about the facts

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1 of what went on. And someone takes that as an attack,  
2 well, that's the reality of what happened. I don't  
3 know what went on.

4 For all I know, Mr. Fink was every single hour  
5 of every day that week on the phone with his client.  
6 In which case, I guess, his client would have some  
7 explaining to do. But all I know is I got zero  
8 response until the following Monday when I said since  
9 no one is responding, except Mr. Meloro, and we've got  
10 it worked out, let's go with this.

11 And then within 10 or 15 minutes, I hear from  
12 Sunrise, from Mr. Fink and from Mr. Turtzo on behalf of  
13 Cox. Work it out with Cox over the course -- over the  
14 course of I think the next 24 or 48 hours. I think  
15 Mr. Fink a time or two over the next couple of days.  
16 Then I hear nothing at all until we are literally on  
17 the eve of yesterday's hearing. Then I finally hear  
18 again, and we talk.

19 Now, it sounds like there's zealous things  
20 going on. But that's what's happened.

21 And, you know, Mr. Fink has done everything  
22 possible. Maybe he has. All I indicated was this is a  
23 reality of what I've seen, and I question whether  
24 that's the case based on what I've seen here. Because  
25 I'd like to think if someone -- if an attorney was

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1 truly doing everything they could, I would have heard  
2 something by perhaps Wednesday of week one and not over  
3 a week later. So that's where we're at on this.

4 I appreciate that Mr. Fink take whatever  
5 efforts he can this morning to just get the final word  
6 on this thing that is apparently, you know, all the  
7 other defendants agree to, my client agrees to, and it  
8 sounds like Mr. Fink even agrees to.

9 So see if we can get the client on board,  
10 Sunrise on board. If so, great. If not, can I please  
11 know, perhaps, I don't know, by noon today or by 2:00  
12 o'clock today so that I can send a letter to the Court  
13 sometime later today. Or if I hear later in the day, I  
14 guess, on Tuesday because Monday is a holiday, that  
15 says: "We got a deal. We're finalizing it. Or we  
16 don't, Judge. Please proceed with rectifying this for  
17 us."

18 THE COURT: All right. Anything else?

19 MS. SAMPSON: No, Judge. Thank you.

20 MR. FINK: No, not from Sunrise, Judge.

21 THE COURT: Okay. Good luck, Mr. Fink. Get  
22 it done.

23 MR. FINK: Thank you.

24 MS. SAMPSON: All right.

25 THE COURT: Everyone, enjoy your day.

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1 MR. FINK: Thank you.

2 MR. MELORO: Thank you. Thank you, Judge.

3 MR. LEMKUL: Thank you.

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8 (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  
TELEPHONIC 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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<b>N</b> <b>next</b> [3] 21/15 29/14 29/15 <b>night</b> [1] 28/17 <b>nine</b> [1] 22/4 <b>no</b> [29] 1/1 5/21 5/24 6/22 8/14 8/15 11/19 11/19 11/19 11/19 12/5 13/22 14/10 14/18 14/18 16/5 18/5 19/3 19/16 21/9 22/21 22/24 25/2 27/3 27/3 27/10 29/9 30/19 30/20 <b>nobody</b> [2] 10/22 22/15 <b>noon</b> [1] 30/11 <b>normal</b> [2] 7/3 7/3 <b>normally</b> [1] 15/15 <b>not</b> [38] <b>NOTES</b> [1] 32/8 <b>nothing</b> [5] 21/25 22/3 26/8 26/8 29/16 <b>NOVEMBER</b> [2] 1/22 4/1 <b>now</b> [13] 5/20 7/8 10/18 11/9 12/18 18/1 21/9 23/2 23/23 24/21 25/7 28/25 29/19 <b>number</b> [1] 11/3 <b>numbers</b> [1] 7/4 <b>numerous</b> [1] 27/16 <b>NV</b> [4] 1/25 2/6 2/18 3/20	32/14 <b>oh</b> [4] 5/19 22/21 22/24 25/2 <b>okay</b> [10] 6/20 15/20 18/16 19/14 19/15 20/13 21/11 21/15 27/8 30/21 <b>on</b> [48] <b>once</b> [3] 18/5 18/7 27/12 <b>one</b> [16] 5/24 6/14 6/16 6/17 7/23 10/5 11/3 13/22 20/9 20/13 21/20 23/8 23/22 25/8 29/9 30/2 <b>onerous</b> [1] 19/9 <b>only</b> [6] 5/17 6/10 7/14 17/4 17/4 28/25 <b>open</b> [1] 18/8 <b>or</b> [25] 6/12 6/16 8/13 9/4 9/8 10/7 11/20 14/1 19/19 19/23 21/4 21/9 22/4 23/18 24/5 25/25 26/6 28/17 28/20 29/11 29/14 29/15 30/11 30/13 30/15 <b>order</b> [3] 23/9 24/9 24/11 <b>other</b> [19] 5/15 6/4 6/6 7/14 10/3 14/14 14/20 14/24 16/17 17/4 17/11 21/4 22/2 22/9 26/16 27/10 27/14 28/14 30/7 <b>our</b> [3] 4/9 19/1 25/12 <b>out</b> [23] 5/11 5/21 7/4 7/24 8/19 9/10 10/21 12/7 12/18 14/5 17/1 17/12 17/19 20/9 21/24 22/6 22/7 22/8 22/16 22/24 24/21 29/10 29/13 <b>outlier</b> [1] 24/17 <b>outside</b> [1] 27/22 <b>over</b> [11] 11/11 18/5 25/23 25/23 25/23 27/13 27/19 29/13 29/13 29/15 30/2 <b>own</b> [1] 13/22	<b>P</b> <b>PARK</b> [1] 3/6 <b>PARKWAY</b> [1] 2/16 <b>parte</b> [2] 17/24 18/10 <b>particular</b> [1] 18/25 <b>parties</b> [6] 5/14 7/18 8/5 15/7 17/21 20/8 <b>parts</b> [3] 7/2 10/17 11/25 <b>party</b> [3] 18/15 20/5 25/13 <b>past</b> [1] 27/12 <b>patient</b> [1] 23/2 <b>patiently</b> [1] 10/20 <b>pay</b> [4] 21/8 21/15 23/5 25/14 <b>paying</b> [1] 6/25 <b>PEGGY</b> [3] 1/25 32/4 32/17 <b>penalized</b> [3] 22/14 25/10 25/15 <b>people</b> [2] 6/25 27/5 <b>percent</b> [2] 16/2 19/21 <b>perhaps</b> [3] 5/22 30/2 30/11 <b>period</b> [3] 10/22 24/1 28/1 <b>personally</b> [1] 27/23 <b>perspective</b> [2] 7/25 17/19 <b>phone</b> [3] 27/4 27/24 29/5 <b>PITEGOFF</b> [1] 2/14 <b>place</b> [2] 4/9 32/7 <b>placed</b> [7] 6/6 6/13 13/6 13/12 13/13 16/6 26/7 <b>plaintiff</b> [5] 1/10 2/2 18/14 20/8 20/17 <b>plan</b> [1] 6/11 <b>please</b> [4] 14/25 17/14 30/10 30/16 <b>plus</b> [1] 16/7 <b>point</b> [11] 7/24 8/12 8/18 9/6 12/6 13/16 14/16 17/2 17/19 24/21 25/21 <b>points</b> [1] 12/25 <b>position</b> [2] 7/19 9/25 <b>possible</b> [2] 22/11	29/22 <b>postpone</b> [1] 16/25 <b>posttrial</b> [1] 9/3 <b>potential</b> [1] 9/3 <b>potentially</b> [3] 9/2 23/12 24/8 <b>practical</b> [1] 14/23 <b>practice</b> [1] 17/19 <b>preference</b> [1] 6/16 <b>prepared</b> [1] 28/6 <b>pretrial</b> [1] 9/15 <b>pretty</b> [3] 5/4 6/19 13/8 <b>price</b> [1] 23/5 <b>principle</b> [3] 8/6 11/8 12/2 <b>probability</b> [1] 8/4 <b>probably</b> [5] 5/7 9/10 17/2 18/23 22/19 <b>problem</b> [4] 8/24 10/8 12/4 12/15 <b>problematic</b> [1] 23/12 <b>proceed</b> [2] 18/21 30/16 <b>Proceedings</b> [3] 31/8 32/6 32/12 <b>process</b> [1] 9/13 <b>proposal</b> [4] 6/4 7/10 15/5 20/16 <b>proposed</b> [7] 5/13 5/24 6/1 11/21 14/14 20/24 22/11 <b>proposition</b> [1] 23/14 <b>prudent</b> [1] 9/9 <b>pull</b> [1] 12/25 <b>pursuant</b> [3] 5/15 6/6 14/15 <b>put</b> [4] 14/19 15/15 16/12 20/24 <b>putative</b> [1] 8/9 <b>putative/independ</b> <b>ent</b> [1] 8/9	20/6 <b>reached</b> [1] 22/23 <b>read</b> [4] 5/12 14/10 17/20 18/9 <b>reading</b> [1] 15/23 <b>real</b> [2] 7/14 14/8 <b>reality</b> [2] 29/2 29/23 <b>realize</b> [2] 9/19 25/18 <b>really</b> [6] 4/23 4/23 7/7 7/24 9/5 24/24 <b>realtime</b> [2] 14/6 14/7 <b>reason</b> [10] 6/3 6/10 6/12 6/15 12/23 13/3 15/7 17/23 18/6 18/21 <b>recollection</b> [4] 16/1 16/2 16/4 16/6 <b>recommendation</b> <b>[1]</b> 23/8 <b>record</b> [30] 4/9 5/12 5/16 6/7 6/14 7/11 7/12 13/2 13/5 13/6 13/13 14/16 14/24 15/3 16/7 16/12 16/16 16/23 16/24 20/10 20/20 20/25 21/3 22/23 23/11 25/22 26/3 26/7 26/13 32/11 <b>recording</b> [1] 14/3 <b>rectifying</b> [1] 30/16 <b>reference</b> [1] 6/8 <b>regard</b> [2] 15/7 20/17 <b>regarding</b> [1] 4/20 <b>related</b> [1] 8/8 <b>relates</b> [1] 26/6 <b>release</b> [10] 5/12 5/15 6/5 6/15 11/17 14/13 14/14 14/18 14/20 28/6 <b>releases</b> [1] 6/17 <b>releasing</b> [1] 14/24 <b>remember</b> [2] 13/21 16/3 <b>repeating</b> [1] 26/22 <b>REPORTED</b> [1] 1/25 <b>reporter</b> [6] 12/23 13/17 14/6 20/3 25/6 32/4
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<b>R</b>	20/13 21/1 26/18 27/15 28/10 <b>Sampson's [3]</b> 7/10 7/19 27/13 <b>say [19]</b> 5/5 5/6 5/22 6/23 9/11 11/6 14/14 14/22 15/4 15/17 17/2 18/13 18/17 18/23 19/22 23/10 24/14 25/10 27/11 <b>saying [5]</b> 9/7 12/16 14/20 14/23 21/21 <b>says [7]</b> 5/14 10/17 14/17 14/17 22/11 22/12 30/15 <b>second [1]</b> 10/24 <b>see [7]</b> 9/23 9/23 10/20 13/14 16/18 22/13 30/9 <b>seek [1]</b> 11/23 <b>seeking [1]</b> 11/9 <b>seen [4]</b> 7/18 15/6 29/23 29/24 <b>send [4]</b> 14/4 17/8 18/1 30/12 <b>sense [1]</b> 17/16 <b>sent [2]</b> 4/25 11/22 <b>Sesman [1]</b> 5/25 <b>set [7]</b> 5/15 6/5 12/9 12/10 14/3 14/15 23/11 <b>settle [2]</b> 15/18 19/19 <b>settled [2]</b> 20/22 23/10 <b>settlement [23]</b> 4/20 7/4 7/17 12/17 13/12 13/21 13/23 15/6 15/10 15/11 15/15 15/22 16/7 16/13 17/9 18/18 20/11 23/20 24/10 24/14 24/14 26/7 27/11 <b>settlements [1]</b> 15/12 <b>SEVENTH [1]</b> 3/18 <b>SGRO [1]</b> 3/16 <b>SGROANDROGER.</b> <b>COM [1]</b> 3/23 <b>SHORTHAND [1]</b> 32/4 <b>shortly [1]</b> 8/17 <b>should [4]</b> 17/11 22/14 22/19 26/2 <b>shouldn't [1]</b> 28/9	<b>show [1]</b> 21/3 <b>shuffle [1]</b> 17/11 <b>sick [2]</b> 26/17 27/20 <b>side [2]</b> 18/10 28/14 <b>sign [3]</b> 6/1 6/15 19/8 <b>signed [4]</b> 6/18 15/6 18/15 18/16 <b>significant [2]</b> 8/4 9/19 <b>silence [1]</b> 22/9 <b>SIMONE [1]</b> 1/9 <b>since [2]</b> 7/6 29/8 <b>single [1]</b> 29/4 <b>sir [4]</b> 5/8 19/22 27/9 28/11 <b>situation [1]</b> 9/21 <b>so [40]</b> <b>solid [1]</b> 28/23 <b>solution [3]</b> 16/19 17/2 22/11 <b>some [19]</b> 4/20 4/21 5/20 5/20 6/3 6/12 6/13 8/10 8/19 8/24 11/24 12/23 15/18 16/3 16/20 22/5 22/5 25/17 29/6 <b>somehow [2]</b> 15/14 23/4 <b>someone [3]</b> 18/2 29/1 29/25 <b>something [2]</b> 20/14 30/2 <b>sometime [2]</b> 9/24 30/13 <b>sometimes [2]</b> 9/11 9/12 <b>soon [1]</b> 27/3 <b>sorry [2]</b> 25/3 27/3 <b>sort [4]</b> 4/21 8/10 11/24 25/17 <b>sorts [1]</b> 16/17 <b>sounds [2]</b> 29/19 30/8 <b>SOUTH [1]</b> 3/18 <b>specific [1]</b> 11/8 <b>specifically [3]</b> 8/5 13/4 13/5 <b>spoke [3]</b> 22/4 22/7 22/8 <b>SPRINGEL [1]</b> 3/4 <b>SPRINGELFINK.CO</b> <b>M [1]</b> 3/11 <b>stake [1]</b> 7/1 <b>stand [3]</b> 23/14	24/11 24/15 <b>standpoint [1]</b> 27/18 <b>start [1]</b> 12/6 <b>STATE [2]</b> 32/2 32/14 <b>statement [1]</b> 16/2 <b>status [2]</b> 5/3 8/9 <b>STENOTYPE [2]</b> 32/5 32/8 <b>still [3]</b> 5/3 6/9 16/12 <b>stipulation [2]</b> 11/20 11/21 <b>Stop [1]</b> 21/19 <b>straight [1]</b> 21/24 <b>STREET [1]</b> 3/18 <b>strongly [1]</b> 23/23 <b>stuff [1]</b> 12/7 <b>subject [1]</b> 21/7 <b>SUBSCRIBED [1]</b> 32/13 <b>SUITE [3]</b> 2/17 3/7 3/19 <b>SULLIVAN [1]</b> 2/14 <b>Sunday [2]</b> 28/7 28/17 <b>SUNRISE [11]</b> 3/3 4/11 4/23 5/25 18/25 19/10 20/17 23/3 29/12 30/10 30/20 <b>SUPERVISION [1]</b> 32/9 <b>supplement [1]</b> 7/12 <b>suppose [1]</b> 21/7 <b>Supreme [2]</b> 9/5 24/4 <b>sure [11]</b> 5/5 7/13 7/25 9/20 13/15 14/9 15/23 19/4 20/4 21/21 27/25	27/17 <b>tend [1]</b> 24/1 <b>term [1]</b> 9/1 <b>terms [18]</b> 4/20 5/15 6/6 13/6 13/13 14/15 15/8 15/10 15/24 16/4 16/11 16/14 23/10 23/19 24/9 24/10 24/13 26/6 <b>than [6]</b> 10/3 19/9 21/4 22/3 26/16 27/10 <b>Thank [8]</b> 25/9 28/12 30/19 30/23 31/1 31/2 31/2 31/3 <b>that [137]</b> <b>that's [31]</b> 6/2 9/10 10/14 10/17 12/2 12/4 12/8 13/18 14/2 14/7 15/25 18/1 18/3 18/19 18/23 19/25 23/5 23/9 23/12 23/20 23/24 23/25 24/3 24/15 25/25 26/1 26/7 29/2 29/20 29/24 30/3 <b>their [3]</b> 5/1 9/22 17/21 <b>them [6]</b> 5/2 9/23 14/4 18/9 18/9 18/10 <b>then [21]</b> 5/14 6/1 6/4 7/11 8/14 8/19 10/9 10/24 11/2 11/22 13/1 14/21 22/4 22/8 24/3 24/15 26/4 26/9 29/11 29/16 29/17 <b>there [15]</b> 5/5 8/3 8/10 10/13 12/12 12/15 12/24 15/8 16/17 16/21 17/15 19/17 21/9 23/18 27/21 <b>there's [16]</b> 7/2 8/14 8/15 9/19 10/8 10/17 11/25 12/24 15/7 15/10 15/22 18/6 18/21 22/2 27/22 29/19 <b>THEREAFTER [1]</b> 32/8 <b>these [7]</b> 19/10 24/13 24/23 25/14 25/18 25/21 27/17 <b>they [14]</b> 6/11
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				<b>X</b> <b>XVI [1]</b> 1/3 <b>Y</b> <b>years [1]</b> 23/24 <b>yes [1]</b> 18/13 <b>yesterday [8]</b> 4/19 5/12 11/21 12/2 12/9 18/8 20/23 26/17 <b>yesterday's [1]</b> 29/17 <b>you [60]</b> <b>you're [2]</b> 13/16 15/13 <b>you've [3]</b> 7/16 7/17 7/18 <b>your [22]</b> 4/13 4/22 9/21 11/3 12/16 14/12 15/5 16/10 16/24 16/25 17/5 17/12 18/24 19/12 19/20 19/25	

<b>Y</b> <b>your... [6]</b> 20/10 20/19 23/8 24/25 27/10 30/25 <b>Z</b> <b>zealous [1]</b> 29/19 <b>zero [3]</b> 10/21 28/23 29/7				
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1 CASE NO. A-17-753606-C

2 DOCKET U

3 DEPT. XVI

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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. )

14 ----- )

15 REPORTER'S TRANSCRIPT  
16 OF  
17 HEARING

18 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19 DISTRICT COURT JUDGE

20 DATED THURSDAY, NOVEMBER 7, 2019

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

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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

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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

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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.

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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

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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,

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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

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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  
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)

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HEREBY CERTIFY THAT I TOOK DOWN IN STENOTYPE ALL OF THE  
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE  
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID  
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FEBRUARY 11, 2021

RUSSO V. COX COMMUNICATIONS

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1 CASE NO. A-17-753606-C

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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SIMONE RUSSO,

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Plaintiff,

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vs.

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COX COMMUNICATIONS LAS VEGAS, INC,

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)

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Defendant.

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REPORTER'S TRANSCRIPT  
OF  
HEARING

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(TELEPHONIC HEARING)

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BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

20

DISTRICT COURT JUDGE

21

22

DATED THURSDAY, FEBRUARY 11, 2019

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RUSSO V. COX COMMUNICATIONS

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RUSSO V. COX COMMUNICATIONS

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RUSSO V. COX COMMUNICATIONS

6

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 11, 2021

2 9:47 A.M.

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

4 \* \* \* \* \*

09:47:29 5  
6 THE COURT: Next up page 7. And that happens  
7 to be Simone Russo versus Cox Communications et al.  
8 let's go ahead and place our appearances on the record.

9 MR. REEVES: William Reeves on behalf of the  
09:47:42 10 intervener QBE.

11 MR. BARTON: Christian Barton on behalf of Cox  
12 Communications Las Vegas Incorporated doing business as  
13 Cox Communications and IES Residential Incorporated.

14 MS. FUNAI: Good morning, your Honor. Julie  
09:48:00 15 Funai on behalf of Scarcelli.

16 MS. SPLAINE: Good morning, your Honor.  
17 Shannon Splaine on behalf of Sunrise Villas HOA.

18 MR. FINK: Good morning, your Honor. Leonard  
19 Fink --

03:07:53 20 (Multiple speaker cross-talk)

21 MS. BOLICK: Good morning. Nicole Bolick.

22 THE COURT: Okay. I think --

23 MS. BOLICK: Good morning. Nicole Bolick on  
24 behalf of Kevin Bushbaker.

09:48:24 25 THE COURT: Thank you, ma'am.

09:48:26 1 MR. SAMPSON: Judge, David Sampson for  
2 Dr. Simone Russo.

3 THE COURT: And I think we have Mr. Fink  
4 making his appearance but he was talked over.

09:48:36 5 Mr. Fink, you can go ahead and set forth your  
6 appearance again for the record.

7 MR. FINK: Thank you, your Honor. Leonard  
8 Fink co-counsel for Sunrise.

9 MS. SPLAINE: And, your Honor, this is Shannon  
09:48:44 10 Splaine. We are requesting that this hearing be  
11 reported.

12 (Reporter clarification)

13 THE COURT: All right. We're having some  
14 background. I'm hearing somebody talking in the  
09:49:00 15 background.

16 (A discussion was held off the record.)

17 THE COURT: All right. And we can go ahead.  
18 It's my understanding this is intervenor QBE Insurance  
19 Corporation's motion to intervene to enforce  
09:49:41 20 settlement; is that correct?

21 MR. REEVES: William Reeves, your Honor. Yes.

22 THE COURT: Okay. Sir, you have the floor.

23 MR. REEVES: Thank you, your Honor. Your  
24 Honor, there are currently before this Court three  
09:49:53 25 separate motions that are all intertwined, so, I guess,

09:49:56 1 I just wanted to start off by highlighting that fact.

2 We, QBE insurer for Sunrise HOA, filed a  
3 motion which is set for hearing today.

4 There is a separate motion filed by the HOA  
09:50:11 5 which is calendared for either the 23rd or 25th. And  
6 then there's a third motion filed by plaintiff that is  
7 on one of those days as well.

8 So I just want to make this Court aware that  
9 the issues are all intertwined, the motions are all  
09:50:29 10 interrelated. And in a sense, in order to avoid  
11 redundancy, we, QBE, have referred to exhibits of other  
12 people in connection with the other filings. And so  
13 let me start there.

14 THE COURT: And, sir, yeah. And for the  
09:50:43 15 record I do have recollection of this case, first and  
16 foremost.

17 Secondly, and I think this is important to  
18 point out because you are correct, if I take a look,  
19 there's a -- and we'll deal with this a little later,  
09:50:58 20 but there's a motion to set aside and/or amend judgment  
21 in this matter set for the February 23rd, 2021. I see  
22 that. There's a joinder to that. And there is also  
23 plaintiff's motion to enforce settlement.

24 And I realize what's going on as far as these  
09:51:17 25 other ancillary issues are concerned. But what I

09:51:21 1 anticipate doing after we're done with this matter,  
2 probably putting both of those on the same date. I  
3 kind of look at today's issues as one that's a fairly  
4 straightforward issue. And that's whether or not the  
09:51:35 5 insurance company can intervene in this matter.

6 And with that in mind, sir, you have the  
7 floor.

8 MR. REEVES: Fair enough. Thank you, your  
9 Honor.

09:51:42 10 So QBE is the insurer for Sunrise HOA. And  
11 QBE appointed the Springle Fink firm to represent  
12 Sunrise HOA in the case. QBE ultimately funded a  
13 settlement on behalf of the HOA. And the settlement  
14 is, obviously, front and center row to the three  
09:52:06 15 motions that are pending before this Court.

16 So there is now a federal action that from  
17 QBE's perspective runs counter to the settlement that  
18 was reached in this case. And so the substantive  
19 relief that is being sought bears upon settlement that,  
09:52:26 20 you know, that was placed on the record that was  
21 documented that this Court had an extensive hearing on.  
22 And that's been set forth in all the pleadings.

23 But procedurally, QBE comes to this Court as  
24 an interested party relative to that settlement. And  
09:52:43 25 so the motion that was filed was one to intervene to

09:52:49 1 enforce the settlement. Taking the intervention issue  
2 first, QBE's interest is relatively patent,  
3 straightforward.

4 It funded a settlement which it believed cut  
09:53:01 5 off certain claims, which per plaintiff is in dispute  
6 apparently. And the nature of that dispute is candidly  
7 very confusing. And I don't quite understand how we  
8 got here, so to speak, relative to the efforts that  
9 this Court put into the settlement. And so, but that's  
09:53:24 10 the substantive issue. And let me put that to the  
11 side.

12 Procedurally, QBE, third-party beneficiary,  
13 direct interest and all this, has sought to intervene  
14 based upon two basis, if you will, mandatory and  
09:53:41 15 permissive intervention. And that's NRCP 24. And  
16 we've made our showing relative to that in the  
17 paperwork.

18 The response that we received from plaintiff  
19 who's the only one opposing this relief is that QBE is  
09:53:59 20 seeking to set aside the judgment and that a carrier  
21 can't come in that never participated in the case and  
22 try to deal with the judgment. And this Court is aware  
23 of the concept of bad facts make bad law.

24 And we have a case where a carrier came in,  
09:54:16 25 what appears to be, almost ten years after and says,

09:54:19 1 Oh, we want to set aside that judgment. And, you know,  
2 the Court there said, no, that's too late. You can't  
3 come in after the fact and do that.

4 QBE is very differently situated. First of  
09:54:31 5 all, we seek to enforce the settlement, and the follow  
6 up from that is what it is.

7 So first of all we don't seek -- you know, we  
8 join in the request to set aside the judgment, but  
9 that's the HOA's motion. QBE is different.

09:54:43 10 But more importantly, QBE is not a -- it's not  
11 an outsider relative to this. QBE was effectively in  
12 the case. It was defending. It provided a defense to  
13 its insured, and it funded the settlement.

14 So it's not as if QBE is an insurer that, in a  
09:55:02 15 sense, was an outsider sitting on the sidelines.  
16 Rather it was directly involved in this case. And  
17 attorney Fink can validate that. I don't think it's in  
18 dispute.

19 And so the basis for intervention is one for  
09:55:16 20 which it, again, QBE has a direct interest in this.  
21 QBE was a participant in all this. We do have a  
22 tripartite relationship. And so QBE is a client of  
23 attorney Fink relative to all this.

24 And so respectfully the efforts by plaintiff  
09:55:35 25 to put QBE to the side are based upon decisional law



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09:55:43 1 that is readily distinguishable. Just doesn't bear  
2 relative to the circumstances we have in this case.

3 And so relative to this Court's comments, do  
4 you wish for me to now address the substance of the  
09:55:56 5 motion relative to enforce the settlement? Or is that  
6 something you wish to table for the moment? Does the  
7 Court have any questions for me?

8 THE COURT: Well, here's the -- I kind of look  
9 at this in two ways. Number one, I have to deal  
09:56:13 10 specifically with the motion for intervention pursuant  
11 to Rule 24. That's what I would like to discuss.

12 But just as important too, I realize for  
13 example on 2/25/21 plaintiff has a motion to enforce  
14 settlement. Then I think one of the defendants has a  
09:56:30 15 motion to set aside or amend judgment. There's a  
16 joinder. Those are heard on the 23rd. And so from a  
17 judicial efficiency perspective two things.

18 Number one, I want to hear those two motions  
19 at the same time.

09:56:47 20 Secondly, when it comes to intervention I see  
21 that as a much different issue than enforcement of the  
22 settlement.

23 And so I want to make sure that we have a  
24 thoroughly -- we have a thorough record from an  
09:57:03 25 enforcement perspective. But for today I'm really

09:57:06 1 focusing on Rule 24 and whether or not the insurance  
2 company can intervene? Would it be intervention as a  
3 matter of right? Would it be permissive? And those  
4 types of things. So that's what I'm looking for.

09:57:22 5 MR. REEVES: Fair enough. And so we addressed  
6 it in our papers, you know, and made our prima facie  
7 showing relative to it. I believe it's compelling  
8 relative to the set of circumstances.

9 Plaintiff in opposing it relies on a body of  
09:57:37 10 law that talks about that a carrier may not intervene  
11 to set aside a judgment. That is not the relief being  
12 sought here.

13 We're differently postured. So respectfully  
14 unless this Court has any questions, we'll submit  
09:57:51 15 relative to the showing that we've made under both  
16 prongs of NRCP 24.

17 THE COURT: Do you think when you look at  
18 24(a), would this be intervention as a matter of right?  
19 Or permissive intervention?

09:58:10 20 MR. REEVES: Respectfully we would submit to  
21 you both. We could make a showing as to both.

22 It's a matter of right given the direct  
23 interests that QBE has relative to the settlement. And  
24 those interests may be somewhat nuanced or different  
09:58:27 25 than the HOA's interest.

09:58:28 1 This is a set circumstances where defaulted  
2 parties for which a judgment was entered, for which a  
3 release was obtained as to their estate.

4 HOA employees are now alleging otherwise, and  
09:58:46 5 counsel for plaintiff had at one point in time did the  
6 same. And that was, again, it's somewhat of an  
7 evolving picture that we have here. But at the point  
8 in time that we filed the motion, and bear in mind the  
9 HOA joined in our motion. So that we have, you know,  
09:59:03 10 not only QBE seeking to enforce but the HOA is as well.

11 But at that point in time we had plaintiff  
12 taking a position relative to the settlement that was  
13 adverse to QBE. Adverse to the HOA as well because  
14 those defaulted parties have also sued the HOA as the  
09:59:25 15 former employer.

16 So in a sense both QBE and the HOA have been  
17 adversely impacted by the conduct of plaintiff relative  
18 to the settlement. And come to this Court in -- you  
19 know, have an overlapping interest relative to the  
09:59:45 20 enforcement of settlement, but separate interests  
21 relative to how they're impacted. Carrier is impacted  
22 one way. The HOA is impacted in another.

23 So relative to the showing that's needed for  
24 mandatory intervention, we -- respectfully, we think  
10:00:01 25 we've met that. But at a minimum, if we move to

10:00:04 1 permissive where this Court has in a sense broad  
2 discretion, we would respectfully submit that it's  
3 relatively simple and straightforward why QBE wishes to  
4 intervene, why it wishes to be heard.

10:00:16 5 It was a quasi party to the case by virtue of  
6 funding the defense, the tripartite relationship  
7 funding the settlement. And so we're simply asking for  
8 a seat at the table. Again, the HOA -- the interests  
9 of the HOA do overlap. So I don't wish to suggest that  
10:00:35 10 QBE has divergent interests from the HOA. But there  
11 are some interests of the insurer that are separate and  
12 distinct from the HOA.

13 And so QBE out of an abundance of caution  
14 comes to this Court to make sure that this Court has a  
10:00:50 15 full and complete picture of, in a sense, how the  
16 settlement has -- has impacted and what has flowed from  
17 that.

18 Because we have a parallel action going. We  
19 have efforts to enforce a judgment against both QBE and  
10:01:07 20 the HOA. And as this Court is aware, that judgment is  
21 for \$25 million. So we have a substantial issue at  
22 hand relative to whether -- you know, what is the  
23 settlement that was reached? What were the terms?

24 And, again, I'm not going to breach the  
10:01:22 25 substance here relative to this Court's comments but

10:01:25 1 respectfully we, QBE, has made a prima facie showing  
2 relative to both prongs of A and B.

3 THE COURT: And I will have some questions,

4 but I'm going to go ahead and let this matter be

10:01:40 5 developed on the record. We had some joinders it's my

6 recollection. And, I guess, we can start first with

7 defendant Sunrise Villas IV Homeowners Association.

8 MR. FINK: Yes, your Honor. Leonard Fink,

9 co-counsel for Sunrise. Just real briefly. The reason

10:01:58 10 that we came in to join this is mostly because it

11 was -- because the federal action where the gentlemen

12 that Mr. Sampson has the default against are alleging

13 that they are employees so they can sue the HOA. So

14 that's why obviously we have a big interest in this.

10:02:16 15 But I do want to point out that I think whether you're

16 looking at permissive or mandatory joinder, QBE is at

17 the very least was a foreseeable donee third-party

18 beneficiary of the settlement agreement in the

19 contract, and certainly was an intended beneficiary. I

10:02:37 20 think they're even named in the -- in the settlement

21 agreement.

22 But even if they're not, we all know from

23 doing these cases, and certainly clear in this case

24 that it was insurers that were funding the settlement.

10:02:48 25 For anybody to say, well, I'm not suggesting

10:02:51 1 Mr. Sampson is saying otherwise. But for anybody to  
2 say otherwise really kind of ignores what we do on a  
3 day-to-day basis.

4 So QBE is far from a stranger to the  
10:03:00 5 settlement. And because they're far from a stranger to  
6 the settlement, they're also far from a stranger to the  
7 impact of the default judgment against Mr. Duslak and  
8 Mr. Sesman.

9 THE COURT: Okay. Thank you, sir.

10:03:18 10 I think we had one more joinder; is that  
11 correct?

12 MR. REEVES: This is Bill Reeves, your Honor.  
13 I don't believe so. The other counsel are on the line  
14 by virtue of kind of more the substance of the motion.  
10:03:33 15 But the only parties that are before this Court  
16 relative to that substance are QBE, the HOA, and  
17 plaintiff.

18 THE COURT: Okay. I just wanted to make sure.  
19 And thank you.

10:03:46 20 And we'll go ahead, and we'll go to the  
21 plaintiff. Mr. Sampson, sir.

22 MR. SAMPSON: Yes, your Honor. Thank you.

23 First of all I'd like to address Mr. Reeves'  
24 comment regarding bad facts make bad law, and one bad  
10:04:02 25 case is how we're here. We are not here because of one

10:04:04 1 case.

2           This is -- it has been the position of the  
3 Nevada Supreme Court, your Honor, for over 80 years at  
4 this point in time that in all cases intervention must  
10:04:17 5 take place prior to the judgment being entered.

6 There's not a single case in Nevada jurisprudence  
7 history where a judge has allowed a party to intervene  
8 after judgment and been upheld. In fact, in every  
9 circumstance they're always been reversed.

10:04:34 10           And most recently it was the Nalder matter.  
11 But it's not just Nalder versus Eighth Judicial  
12 District Court that says intervention -- could be no  
13 intervention after judgment including default  
14 judgments. But you have Ryan Landis. Ryan vs Landis,  
10:04:49 15 which was 1938. You have Lopez versus Merit Insurance  
16 Company, which was 1993. And it's the one that says  
17 that it's the strongest.

18           I don't know how much -- how much more broad  
19 the Court could make their position, how much more  
10:05:03 20 clear they could make their position then to say "in  
21 all cases intervention must be made before trial."

22           And they've expanded it in the other cases,  
23 national or what not, where they talked about that also  
24 includes default judgments.

10:05:20 25           There's just -- there's absolutely no grounds

10:05:24 1 to request an intervention following the judgment.

2 It's absolutely not permitted under NRS 12.130.

3 And then when we turn to Rule 24, where it

4 says intervention as a matter of right and also

10:05:42 5 permissive, both of those subsections start out with

6 the words "upon" or "on timely motion".

7 And, your Honor, if a motion to intervene can

8 be filed 13, 14 months after judgment's entered and 7,

9 8 months after the case is closed, this case was closed

10:06:02 10 in May of 2020, if that is deemed a timely motion, then

11 I can't envision a circumstance that wouldn't

12 qualify -- that would be an untimely motion.

13 I mean, you just can't wait until -- and I

14 understand Mr. Fink's point where he says they've been

10:06:19 15 a friend to this. They've been involved in this all

16 along, and they had -- they wanted to bring an

17 intervention. They had the opportunity to do that

18 since I think it's -- well since March -- no, November,

19 December of 2017 when we first amended the complaint to

10:06:37 20 add these gentlemen as defendants.

21 It's three years later, more than three years

22 later they finally -- they finally file this motion.

23 So I don't see how they get over the on-timely-motion

24 prong whatsoever. Additionally, the Nalder, I mean,

10:06:52 25 it's very clear under the statute. 12.130 that you



10:06:57 1 cannot not intervene post judgment. That is  
2 specifically set forth in a number of cases.

3 So then they want to try to make an end run  
4 around that with NRCP 24. But the Nalder decision says  
10:07:12 5 that NRCP 24 must be read in harmony with  
6 NRS 12.130(1)(a) which is the requirement an  
7 intervention be had before trial, and certainly before  
8 judgment is entered.

9 So I don't see how you can possibly read  
10:07:29 10 NRCP 24 in harmony with the statute that says it has to  
11 be done before trial and find that someone can  
12 intervene after judgment.

13 And so there's just -- there's -- when the --  
14 when the Nevada Supreme Court speaks in cases like  
10:07:45 15 Lopez and says "In all cases intervention must be made  
16 before judgment," and when the Nevada Supreme Court  
17 speaks in cases like Nalder, they say "Nothing permits  
18 an insurance carrier to intervene after judgment".  
19 Nothing. Not NRCP 24. Not NRS 12.130. Nothing  
10:08:04 20 permits an intervention post judgment.

21 And then we turn to the provisions of Rule 24.  
22 Intervention as a matter of right. First you've got to  
23 make a timely motion, which they certainly have not  
24 done.

10:08:22 25 Under (a)(1), you have to have an

1 unconditional right to intervene by state or federal  
2 statute which they cannot identify. What is the  
3 statute that gives you a right to intervene other than  
4 NRS 12.130 that says you have to do so before trial,  
5 and it's been interpreted before judgment including  
6 default judgment. They certainly have no rights under  
7 (a)(1).

8 (a)(2) is they claim an interest in the  
9 property and transactions be -- this has already gone  
10 to judgment, so it's already resolved. And then the  
11 final clause of 24(a)(2) is unless existing parties  
12 adequately represent that interest. We have Sunrise,  
13 their insured in the suit. And, in fact, Mr. Reeves  
14 just referred to a moment ago said QBE is essentially a  
15 client of Mr. Fink.

16 And so how they can possibly claim, even if  
17 they were somehow permitted to make an end run around  
18 12.130 and what the case law says about that, you have  
19 Mr. Fink adequately representing their interests in the  
20 matter.

21 And so -- and it's already -- again, the  
22 action's already been disposed of. It's already gone to  
23 judgment. The case closed last May.

24 24(b) permissive, again, it's got to be on a  
25 timely motion, which a year post judgment and 7, 8

10:09:38 1 months after the case is closed is certainly not  
2 timely. But then subsection (b)(1)(a), again, has --  
3 if you're given a conditional right to intervene by  
4 statute -- state or federal statute, which, once again,  
10:09:50 5 they can't identify any state or federal statute that  
6 permits them to intervene other than 12.130(1)(a) that  
7 says -- or 12.130, which (1)(a) of that subsection says  
8 it has to be before trial which has been interpreted to  
9 be before judgment.

10:10:06 10 And then finally under 24(b) -- or I'm sorry.  
11 24(b)(1)(B) you have a claim or a defense you share  
12 with the main action and a common question of law or  
13 fact. The main action is a negligence premises  
14 liability case. There are no laws or facts in that  
10:10:26 15 action that QBE shares with the parties in this case.

16 It doesn't apply and can't be applied. And  
17 regardless would have to be brought timely in any  
18 event. I mean, this is -- if you -- if you grant this  
19 motion, then we're essentially opening up the door and  
10:10:44 20 saying, you know, 80 years of case law where every  
21 judge that has ever granted intervention post judgment  
22 has been reversed can now be cast aside, because all  
23 you have to do is go, Well, I get a pass around all  
24 that authority under Rule 24.

10:10:59 25 And you certainly shouldn't be doing that. I

10:11:01 1 would rec -- I would, with all due respect, submit,  
2 Judge. When the Nalder Supreme Court says NRCP 20 --  
3 or I'm sorry. NRCP 24 is not a hall pass to get you  
4 around NRS 12.130.

10:11:14 5 It says NRS -- NRCP 24 must be read in harmony  
6 with NRS 12.130(1)(a), which, again, is the specific  
7 statute that says you have to do it before trial,  
8 which, again, has been interpreted for many years now  
9 as before judgment.

10:11:30 10 So none of these factors line up. It's very  
11 clear. In fact, I think the Nalder decision talked  
12 about the "well-settled principle that intervention may  
13 not follow a final judgment." I mean, I don't know --  
14 again, I don't know how much clearer the Court can be  
10:11:49 15 when they say intervention. Not just intervention  
16 under the rule, but they also talk about  
17 intervention -- I'm sorry, under the statute, but also  
18 NRCP 24. And the Court held clearly unequivocally we  
19 have a well-settled principle, intervention may not  
10:12:02 20 follow final judgment.

21 So the only question is was judgment entered.  
22 Yes, it was. Then you cannot intervene thereafter.

23 So unless the Court has questions for me,  
24 again, I don't see how we follow the instructions from  
10:12:13 25 the Supreme Court to read these rules and statutes in

10:12:16 1 harmony and then nothing allows intervention post  
2 judgment to in any way permit this relief they're  
3 requesting.

4 MR. REEVES: May I respond, your Honor?

10:12:28 5 THE COURT: Yes.

6 And thank you, Mr. Sampson.

7 Yes, sir, you can respond.

8 MR. REEVES: I --

9 THE COURT: I was actually -- I have the  
10:12:34 10 Nalder case right in front of me. And the language in  
11 that specific case is fairly strong as far as  
12 intervention post judgment. What do I do about that?

13 MR. REEVES: We don't have a judgment, your  
14 Honor. That's the key point here. And Nalder,  
10:12:47 15 frankly, supports the relief QBE seeks. We're seeking  
16 to enforce the settlement. There was no trial. There  
17 was no judgment as it pertains to the HOA and the  
18 plaintiff.

19 And so in Nalder, you'll find, permitted for  
10:13:03 20 the insured to intervene to deal with the settlement.  
21 And that's what we're seeking to do here. And so  
22 that's -- that's the disconnect. There is certainly  
23 a --

24 THE COURT: But don't we have -- don't we have  
10:13:14 25 default judgments as to the -- as to -- and I realize

10:13:17 1 there is an issue of fact as to whether or not they're  
2 employees and/or independent contractors potentially.  
3 I get that.

4 But at the end of the day, isn't there a  
10:13:27 5 judgment vis-à-vis the two individuals in this matter?

6 MR. REEVES: There is as to two individuals,  
7 yes, your Honor, but not as to the HOA. And bear in  
8 mind we're seeking to enforce the settlement that was  
9 reached between plaintiff and the HOA.

10:13:43 10 The fallout of it may implicate that judgment.  
11 But as a functional predicate, we're seeking to enforce  
12 the settlement. And so Nalder, if you -- I have it in  
13 front of you. You'll see they permitted for the  
14 insurer to intervene to deal with the settlement.

10:13:57 15 Not -- you know, there was two different cases. There  
16 was one with judgment. One with a settlement. And  
17 that's what we have here.

18 And so counsel's focus on the judgment is  
19 misapplied because we're dealing -- there's no judgment  
10:14:11 20 against the HOA. There was no trial in this case, as  
21 this Court is aware. There's a settlement. It's  
22 documented on the record. The Court has a transcript  
23 of November 7. November 8 where this issue was vetted  
24 and noted. And QBE seeks to intervene to deal with  
10:14:29 25 that.

10:14:30 1 Relative to the timeliness, I'm not quite  
2 understanding that. Settlement was reached. QBE  
3 understood the settlement would be complied with.

4 In December of this past year, QBE became  
10:14:43 5 first aware that the settlement was not being complied  
6 with. And QBE filed a motion with this Court within  
7 six days, if not shorter, relative to that. So I'm not  
8 understanding the timeliness aspect because we  
9 didn't -- there was not known to be a problem until  
10:15:00 10 December of this past year. And QBE moved promptly  
11 with it.

12 Relative to NRCP 24(a) and (b), again, QBE has  
13 a direct interest in all this. And, again, circling  
14 back now to plaintiff's comments, this Court is not  
10:15:19 15 constrained relative to the aspect of a judgment. The  
16 judgment is as to different parties. That is not what  
17 QBE is focused on. It is focused on the settlement.

18 And none of the case law that counsel relies  
19 upon, save and except Nalder, deal with that. Nalder  
10:15:39 20 then deals with that and says the carrier can intervene  
21 to deal with the settlement. And that's precisely what  
22 we're trying to achieve here.

23 So, respectfully, this is a -- this Court  
24 needs to -- or the case law needs to take into  
10:15:54 25 consideration what we're dealing with here.

10:15:55 1 This is not a simple two party case where  
2 there was a judgment and carrier coming in ten years  
3 later. That was my comment relative to bad facts, bad  
4 law. That's Nalder relative to that dynamic.

10:16:10 5 Relative to a settlement, certainly there is  
6 no problem of an insurer seeking to intervene to  
7 enforce. And QBE's interests are -- relative to trying  
8 to achieve are, respectfully, patent and obvious. You  
9 know that it's dealing with very aggressive litigation,  
10:16:26 10 parallel litigation where, in a sense, claims are being  
11 asserted which were to be disposed of by virtue of the  
12 settlement.

13 So unless this Court has questions, we will  
14 submit it.

10:16:37 15 THE COURT: I do have a question. And as far  
16 as Nalder is concerned where does it say that an  
17 insurance company can intervene to enforce settlement?

18 MR. REEVES: The case -- and I don't have it  
19 in front of me, but the case dealt with two different  
10:16:51 20 cases that were underlying cases that were pending.

21 And the Court there said that the insurance company  
22 could intervene to deal with the settlement.

23 THE COURT: Okay. I'm just trying to --  
24 because I have it in front of me. I'm looking for  
10:17:02 25 that.



10:17:04 1 MR. REEVES: If I could pull it in front of  
2 me. But again, Nalder involved both an underlying case  
3 where there was a default judgment, and then a second  
4 case where there was a settlement that was reached.

10:17:16 5 And the Court there held that the carrier could  
6 intervene in that second case.

7 THE COURT: Well, I think what happened in the  
8 second case, and I'm just -- I just skimmed it. It  
9 appeared that the parties tried to stipulate and to a  
10 settlement -- I'm sorry, to a judgment that wasn't  
11 Court approved. And for the purposes of the 2018  
12 action that wasn't proper, and they could intervene  
13 there. But as far as the 2007 action they couldn't  
14 intervene because there was a settlement -- I mean,  
10:17:49 15 sorry, there was a judgment entered in the 2007 case.

16 MR. REEVES: Agreed, your Honor. And so what  
17 I'm pointing out is that in that earlier case, it was  
18 simply a judgment. There was no settlement reached in  
19 that case. So there's no ability to intervene per the  
10:18:03 20 law. But in the subsequent case where there was a  
21 settlement, the carrier was able to intervene. And  
22 that's what we're dealing with here is a settlement. I  
23 understand there is also a judgment. But our focus is  
24 on the settlement and the terms of that settlement.  
10:18:16 25 And that's the basis for the intervention.

10:18:18 1 And so, respectfully, you know, the concept  
2 that we sat on our hands, didn't act timely that's just  
3 not accurate relative to circumstances we have, and  
4 then relative to the case law. Again, there was a  
10:18:33 5 judgment entered as to certain parties. And that, you  
6 know, that record is clear. But there was a settlement  
7 reached with the HOA. There was no judgment against  
8 the HOA. There was no trial against the HOA.

9 And QBE has a direct interest in enforcing the  
10:18:48 10 settlement that was reached, candidly, on its behalf  
11 with the plaintiff. And that's what it seeks to do.  
12 It wants a seat at the table relative to this case  
13 given what is occurring in the parallel federal action.

14 THE COURT: Here's my next question. Does  
10:19:06 15 intervention impact the judgment as to the two  
16 "individuals" who had the default judgment entered  
17 against them?

18 MR. REEVES: When you say "does intervention  
19 impact", in what way is this Court -- I guess, I'm not  
10:19:22 20 understanding.

21 THE COURT: Well, I'm trying to figure out. I  
22 mean, you're intervening, does that have some sort of  
23 an impact on the default judgments that have been  
24 entered in this case?

10:19:34 25 MR. REEVES: It may very well at the end of

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10:19:35 1 the day if this Court concludes that the default  
2 judgment is -- has issues. And we've pointed out  
3 there's no record. We don't know what the basis was  
4 for that default judgment.

10:19:47 5 We have a settlement. The default judgment  
6 appears to violate the terms of that settlement. So in  
7 a sense that that -- and there's, I don't want to say  
8 irony, but this Court will note that Duslak and Sesman,  
9 who are represented by counsel, are not before this  
10:20:03 10 Court. Have, in a sense, chosen not to be before this  
11 Court. Yet, in the abstract, it would be in their best  
12 interests if they were. So we can only surmise how  
13 that came to be.

14 But to answer your Court's -- this Court's  
10:20:19 15 question, yeah, it could impact that judgment if this  
16 Court so precludes, but only to the benefit. Not to  
17 their detriment.

18 MR. FINK: Your Honor, Leonard Fink. Can I  
19 just make a comment on that question for the HOA?

10:20:33 20 THE COURT: Yes, you can.

21 MR. FINK: As the Court is aware --

22 THE COURT: Then I'm going to give  
23 Mr. Sampson -- I don't want to cut you off. I'm going  
24 to give Mr. Sampson a chance too. But go ahead.

10:20:41 25 MR. REEVES: Sure. The HOA has filed its own

10:20:43 1 motion to set aside the defaults --

2 THE COURT: Right.

3 MR. FINK: -- or the alternative. So I think  
4 whether or not QBE is allowed to intervene, that's  
10:20:52 5 going forward.

6 THE COURT: Right.

7 MR. FINK: But I think QBE intervening is  
8 going to have no effect on whether or not the default  
9 is set aside.

10:21:01 10 Because we're going forward with that anyway.  
11 Now, there may be -- there may be things on the back  
12 end once -- if the Court decides to do that, that  
13 impacts as Mr. Reeves talked about.

14 But regardless of what you do with QBE, that  
10:21:13 15 motion is going forward. And I don't think that  
16 there's any -- there is not an argument that the HOA  
17 isn't allowed to bring that argument. Not whether or  
18 not -- whether or not, you know, the Court will simply  
19 will grant that is a different story. So I think that  
10:21:25 20 whether or not the Court puts QBE -- let's QBE  
21 intervene, that's moving forward regardless. So I just  
22 want to put that on the record.

23 THE COURT: And the follow-up to that. Would  
24 QBE be permitted to set aside the default judgment as  
10:21:39 25 to the two individuals?

10:21:42 1 MR. REEVES: Your Honor, Bill Reeves.

2 MR. FINK: Go ahead.

3 MR. REEVES: No, go ahead.

4 MR. FINK: I was going to say -- Leonard Fink

10:21:48 5 for the HOA. I think the answer to that is, as I said

6 when I originally -- during my original comments are

7 that QBE is part and parcel of the settlement. Either

8 they were direct, direct parties to it. Or they are

9 intended donee third-party beneficiaries or foreseeable

10:22:04 10 donee third-party beneficiaries. So they would stand

11 in that respect somewhat in the same shoes as the HOA.

12 Obviously, they have a little different interest in

13 there. But for the most part they're aligned.

14 And, again, this is really because of the

10:22:17 15 federal action against the HOA that Mr. Sesman and

16 Duslak have filed.

17 MR. REEVES: Your Honor, if I could amplify on

18 that.

19 THE COURT: Yes.

10:22:28 20 MR. REEVES: In the -- this is Bill Reeves.

21 In the federal action we have raised the issue of

22 reconciliation of the settlement agreement. And that

23 the judgment -- this Court is aware the judgment

24 doesn't include factual findings relative to anything.

10:22:44 25 And so context would need to be provided relative to

10:22:48 1 the judgment, in a sense, its applicability relative to  
2 the claims asserted there.

3 So we certainly, in connection with the  
4 federal action, wish to present to that court context.

10:23:02 5 And so circle back now to this Court. We seek  
6 clarification from this Court relative to the  
7 settlement so that we can provide context to the  
8 federal court.

9 And, again, QBE has a direct interest in that  
10 settlement agreement and would submit that it gets a  
11 seat at the table relative to that. Its interests  
12 certainly overlap with the HOA, but they are subtly  
13 different. And so to protect -- and, frankly, this is  
14 why NRCP 24 exists. It exists to permit for parties to  
10:23:35 15 protect their interests. And we have a substantial --  
16 QBE has a substantial interest in that settlement by  
17 virtue of a \$25 million judgment in efforts to pursue  
18 it in that federal action. We'll submit.

19 THE COURT: Okay. Mr. Sampson, I don't want  
10:23:50 20 to overlook you, sir.

21 MR. SAMPSON: Thank you, Judge. I very much  
22 appreciate that.

23 The comment was made by Mr. Reeves that there  
24 is no judgment.

10:24:00 25 Well, let me just jump to the Court's question

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10:24:02 1 about does the intervention impact the judgment or  
2 could it impact the judgment against Duslak and Sesman.  
3 I can't believe they even hedged on that question  
4 because, your Honor, QBE has already filed a joinder to  
10:24:19 5 Sunrise's motion to amend and set that judgment aside.  
6 They've already asked with that judgment.

7 And so when Mr. Reeves comes in and tries to  
8 say we're not asking to do anything vis-à-vis the  
9 judgment, or vis-à-vis Duslak and Sesman, we're just  
10:24:36 10 looking to do the settlement between Sunrise and  
11 Dr. Russo, and so as a result, because there's been no  
12 judgment as to Sunrise, we should be allowed to  
13 intervene, that's all we're doing here is looking at  
14 stuff between Sunrise and Dr. Russo, that is a  
10:24:51 15 remarkably disingenuous, Judge, for an insurance  
16 company that's already joined Sunrise's motion to amend  
17 this judgment.

18 And, yeah, we'll get into when we have a  
19 hearing, the fact the motion to amend is supposed to be  
10:25:05 20 filed 28 days after the judgment is entered and not a  
21 year and 30 some days afterwards. We'll argue that at  
22 the time.

23 But, no, there is -- make no mistake about it.  
24 They're intervening because they want to set this  
10:25:16 25 judgment aside. They're looking to take steps

10:25:19 1 vis-à-vis this judgment.

2 In fact, their motion to enforce asks that the  
3 judgment be impacted to make reflection and make it  
4 conditional somehow, which I don't even know how  
10:25:30 5 judgments can be conditional, but regardless. Even in  
6 their motion, they're seeking to affect and impact this  
7 judgment, if nothing by virtue of their joinder. And  
8 they're simply not allowed to that.

9 And in the Nalder decision, there were two  
10:25:47 10 cases. One case went to judgment. The other did not.  
11 And so the Court said you can intervene in the case  
12 that did not go to judgment, but you can't intervene in  
13 the one that did go to judgment. And that is the key.

14 And, you know, Mr. Reeves says, Well, Nalder  
10:26:01 15 allows intervention to dispute the settlement. Well,  
16 NRS 12.130 allows intervention for a whole variety of  
17 reasons. So does Rule 24. But you got to do it before  
18 the deadline. Before the -- before the judgment is  
19 entered.

10:26:20 20 Nalder was a vehicular negligence case. And  
21 so I could stand -- if I file a vehicular negligence  
22 case a year after the statute, like they filed a year  
23 after judgment was entered, if I filed a vehicular  
24 negligence case a year after the statute of limitations  
10:26:35 25 runs, I can't very well stand in front of your Honor,



10:26:38 1 as Mr. Reeves is today, and try to say, but, Judge,  
2 look at Nalder. Nalder says you can pursue a vehicular  
3 negligence case in Nevada. And you can. But you got  
4 to file it and you got to take those steps before your  
10:26:51 5 statute of limitations runs. You don't get to do it  
6 regardless.

7 And, yes, you're allowed to intervene under  
8 certain circumstances. Had they filed this motion  
9 prejudgment, they might have been able to do that. But  
10:27:03 10 they didn't. They filed it a year after judgment has  
11 already been entered.

12 And the case law is -- again, going all the  
13 way back to 1938 -- is so remarkably strong when it  
14 says in all cases. And that's the big one. "In all  
10:27:15 15 cases intervention must be made before trial." That's  
16 from the Ryan vs. Landis case. And all cases means all  
17 cases. I don't know how much more broad the Court  
18 could have been.

19 In Lopez vs Merit, the Court said: "This  
10:27:28 20 Court has not distinguished between judgments entered  
21 following subsequent entry" -- I think -- "This Court  
22 has not distinguished between judgments entered  
23 following trial and judgments entered by default." And  
24 reiterated in Lopez: "In all cases intervention must  
10:27:45 25 be sought before judgment is entered including a

10:27:48 1 default judgment."

2 In McLaney vs Fortune Operating Company it  
3 says: "In that case the lower court allowed appellants  
4 to intervene after judgment." And the Court said:

10:27:59 5 "This motion to intervene came too late and should have  
6 been denied." And the court was reversed.

7 In every -- I mean, we note several cases, and  
8 there is even more out there. Aetna -- Aetna Life vs  
9 Rowan is another one where they just time and time  
10:28:14 10 again, if the Court says you can intervene post  
11 judgment, the appellate court or the Supreme Court has  
12 every single time said, No, you can't. And they've  
13 been reversed over and over again.

14 I don't know if the Court has any additional  
10:28:32 15 questions for me. But, you know, it's very clear in  
16 this case. The only real question is, did you file  
17 your motion before or after the judgment was entered.  
18 And if the answer is we moved to intervene after  
19 judgment was entered, then the -- then they're not  
10:28:47 20 allowed to intervene.

21 There was a comment at one point about, Well,  
22 there's been some statements made by Mr. Sampson in the  
23 federal cause, and we didn't have any reason to  
24 intervene before that because he never made those  
10:28:59 25 statements. And so now he made those statements, and

10:29:01 1 so now we should have a right to intervene. We acted  
2 timely. But they failed to advise your Honor, I've  
3 withdrawn those statements. We withdrew them eight  
4 days after they were filed. And so those statements  
10:29:13 5 were actually withdrawn on now December 30th, I  
6 believe, of 2020. This motion to intervene wasn't  
7 filed until January 4th.

8 And I think it's a bit improper for them to  
9 come in and say let us intervene. And let's set the  
10:29:29 10 judgment aside because of all these things in this  
11 pleading that they're holding up in front of your Honor  
12 without even bothering to tell your Honor that we filed  
13 an amendment to that counterclaim that withdrew every  
14 one of those records.

10:29:42 15 And if we get into the motion to compel and  
16 Sunrise's motion, I'll be happy to discuss exactly why  
17 those comments were made. They exactly are  
18 appropriate, but out of an abundance of caution we  
19 withdrew -- we withdrew them, withdrew those  
10:29:57 20 references.

21 But to the extent Mr. Reeves has told your  
22 Honor today there was no cause to intervene until these  
23 comments were made in this pleading, well, that pleading  
24 has been withdrawn, so there's been no reason to  
10:30:08 25 intervene even now. But regardless, and, again, I went

10:30:10 1 through each one of the factors in Rule 24 where  
2 they're not allowed to do it. And I didn't hear  
3 Mr. Reeves or Mr. Fink point to any of those factors  
4 that would permit intervention, and particularly -- at  
10:30:24 5 all.

6 But then especially now that we have a ruling  
7 from the Court, or, again, going back to 1930 and as  
8 recently as last summer in the Nalder decision, that  
9 is, as your Honor described, very strong. You are not  
10 allowed to intervene post judgment. And if the judge  
11 permits it, that judge gets reversed. And just the --  
12 that's the law at this point.

13 So unless the Court has questions for me, I  
14 just don't see any way around it. Particularly when  
10:30:49 15 there's -- when they've joined Sunrise's motion to set  
16 this judgment aside. I think that's a big part of why  
17 you can't intervene post judgment. Because once the  
18 judgment is entered, it's entered, and it stays.  
19 Especially a year down the road.

10:31:05 20 MR. REEVES: May I respond, your Honor?

21 THE COURT: Yes, you can.

22 Mr. Sampson, thank you.

23 We'll hear your response.

24 MR. REEVES: Your Honor, NRCP 24(a)(2) says  
10:31:15 25 intervention as a matter of right when a party claims

10:31:17 1 an interest relating to the property or transaction  
2 that is the subject of the action. The settlement is  
3 the subject of the action. We wish to -- where QBE is  
4 directly impacted by it, wishes to intervene to enforce  
10:31:30 5 it.

6 24(b)(1)(B) says intervention is permitted  
7 permissibly where a party "has a claim or defense that  
8 shares the main action in common question of law or  
9 fact".

10:31:44 10 Again, there is a settlement which is the  
11 basis upon which a federal court action is pending.  
12 QBE has a direct interest in enforcing the settlement.

13 Again, QBE's interest, candidly, can't be  
14 disputed. And the only issue I believe we're dealing  
10:32:03 15 with is whether a default judgment entered against  
16 different parties procedurally bars a carrier from  
17 intervening on behalf of a party it defended and a  
18 party that settled.

19 And, respectfully, the cases that counsel  
10:32:17 20 relies upon do not deal with a settlement.

21 They deal with a two party case where there is  
22 a judgment. There is no judgment entered against the  
23 HOA. We are seeking to enforce the settlement.

24 And counsel's drum beating about reversible  
10:32:33 25 error, respectfully, NRCP 24 permits for intervention,

10:32:36 1 both mandatory and permissively, and the statute does  
2 not prohibit it under any scenario. And that's borne  
3 out by Nalder.

4 We're dealing with a settlement. There may be  
10:32:47 5 fallout from that settlement. Understood.

6 And I, you know, I -- counsel's suggestion  
7 that we're not -- QBE is not coming to this Court with  
8 candor is misguided. We wish to enforce the  
9 settlement.

10:32:58 10 If enforcement of that settlement impacts the  
11 judgment, so be it. But we wish to enforce the  
12 settlement. That is why we are here. That is what is  
13 at issue relative to that federal court action. QBE is  
14 entitled to be at the table.

10:33:12 15 Again, we'll deal with substance down the road  
16 relative to this Court's comments. Procedurally QBE is  
17 entitled to intervene in this case. We will submit  
18 unless this Court has questions.

19 THE COURT: All right. And there was some  
10:33:24 20 discussion here regarding the relationship, and it  
21 would be my -- I look at the relationship from a  
22 different -- I'm trying to good figure out the  
23 potential third-party beneficiary aspect of it.

24 Clearly, we have a relationship between an  
10:33:41 25 insurer and its insured. We have indemnity

10:33:44 1 obligations. We also have duty to defend obligations.  
2 In this situation here I'm looking at it where the HOA,  
3 it's my recollection, will be moving to set aside  
4 and/or amend the judgment.

10:34:00 5 Is that correct, Mr. Fink?

6 MR. FINK: That's correct, your Honor.

7 THE COURT: Okay. Under those circumstances,  
8 why would the insurance company be permitted to  
9 intervene when, in fact, its insured is doing the exact  
10:34:13 10 same thing?

11 MR. REEVES: Because the carrier's interests  
12 are subtly different. Again, the interest here is a  
13 settlement. That settlement reflected a release of HOA  
14 employees. QBE has a direct interest in that because  
10:34:29 15 whether they are employees or not could bear upon  
16 coverage.

17 And certainly in the federal action what we  
18 see is that these gentlemen now claim they're  
19 employees. And, again, at a point in time when the  
10:34:41 20 settlement was put on the record it was represented  
21 otherwise. But now they're claiming employee status.

22 By virtue of that they are suing both QBE and  
23 the HOA. I understand the issues overlap, but they are  
24 different. QBE's obligations to Duslak and Sesman are  
10:35:01 25 different than HOA's obligations to Duslak and Sesman

10:35:05 1 to the extent that they can establish those.

2           The settlement put before this Court dealt  
3 with that issue. And so by virtue of that, QBE has a  
4 direct interest in the settlement that is subtly  
10:35:18 5 different than the HOA.

6           And, again, if we're talking about employer  
7 employees versus insurer and insured, we're dealing  
8 with different relationships. And so QBE, by virtue of  
9 having a different perspective and a different  
10:35:34 10 obligation or duties that may flow, is entailed to be  
11 before this Court to enforce the settlement. The  
12 settlement dealt with this issue. QBE simply wishes to  
13 enforce the settlement.

14           Again, I don't mean to suggest that the HOA  
10:35:48 15 will not do, you know, an adequate or great job  
16 relative to enforcement of the settlement. But QBE's  
17 interests are subtly different. And it is by virtue of  
18 that, it has a right and this Court has the discretion  
19 to permit it to intervene.

10:36:04 20           There is no judgment entered against the HOA.  
21 The judgment procedural aspect does not come into play.

22           Unless this Court has questions, we'll submit.

23           THE COURT: But at the end of the day, and, I  
24 mean, I get that. But doesn't the motion to set aside  
10:36:21 25 and/or amend the judgment, I mean, that's what we have



10:36:24 1 here. And that's filed by the HOA. And enforcement of  
2 the settlement, does that have an indirect impact  
3 potentially on the way I rule as it pertains to the  
4 judgment entered in this case?

10:36:40 5 MR. REEVES: Yes, your Honor.

6 (Multiple speaker cross-talk)

7 THE COURT: And that's my point. Because in  
8 the Nalder case at the end of the day didn't it deal  
9 with attacking a judgment?

10:36:48 10 MR. REEVES: Relative to the one aspect of it,  
11 but it wasn't a judgment that was flavored by  
12 settlement. And that's -- I guess, that's maybe  
13 getting lost in the translation here. This is not  
14 simply a judgment that sits in isolation. It's an --  
10:37:03 15 it's a judgment that is limited by settlement.

16 The settlement is the driver. The judgment is  
17 what it is. And, again, there's no record. So on some  
18 level if there were a record we may not be here.  
19 Because we would understand the basis for that  
10:37:18 20 judgment.

21 But in the absence of a record, because there  
22 is none, there is no reporter's transcript. There is  
23 no documents as part of the court file. And attorney  
24 Sampson has indicated he hasn't provided anything and  
10:37:32 25 may not exist. So because of that, this Court, you

10:37:37 1 know, needs to -- a settlement was reached that was for  
2 the benefit of QBE. QBE's interests are different than  
3 the HOA. In order for this Court to understand the  
4 complete picture of what is going on, QBE --  
10:37:51 5 respectfully, QBE should be entitled to advise this  
6 Court relative to its interests since it has a direct  
7 interest in the settlement.

8 I guess I'm not sure how to say it any  
9 different. I understand that the HOA -- that they  
10:38:05 10 overlap and the HOA may have success, or hopefully does  
11 have success relative to all that. But in order for  
12 this Court to understand how we got here, it needs to  
13 respectfully understand what the carrier's perspective  
14 is. Because the carrier was a driver relative to all  
10:38:20 15 this. And this Court will see that relative to the  
16 settlement.

17 The carrier was involved relative to the  
18 settlement discussions as this Court would expect. So  
19 the carrier's perspective is directly at issue because  
10:38:33 20 we got a federal court action where coverage is being  
21 sought.

22 So, I guess, I understand the Court is saying  
23 the HOA may have it covered, and I tend to agree with  
24 this Court. But because the interests are distinct and  
10:38:46 25 separate, NRCP 24 permits for QBE to intervene in this

10:38:50 1 context. And, respectfully, the case law supports  
2 that. And I'm not hearing anything to the contrary.

3 The judgment is as to another party. It  
4 doesn't -- again, we're dealing with a settlement.

10:39:01 5 We'll submit, your Honor.

6 THE COURT: But I have one last final  
7 question. At the end of the day if the insurance  
8 company, QBE, is successful in its enforcement of the  
9 settlement, what impact does that have on the judgment?

10:39:22 10 MR. REEVES: It bears on the -- well, when you  
11 say "what impact will it have on the judgment" are you  
12 asking what impact will it have on coverage for the  
13 judgment or the judgment?

14 THE COURT: Well, the judgment in a general  
10:39:34 15 sense. Because a judgment can be attacked directly or  
16 indirectly. I'm trying to figure out what impact would  
17 that have on this --

18 MR. REEVES: This Court --

19 THE COURT: -- judgment.

10:39:45 20 MR. REEVES: Fair enough. This Court may  
21 conclude that the judgment for which it entered, for  
22 which no record exists, may not, in light of the  
23 settlement, be properly entered.

24 This Court -- again, the relief sought  
10:39:59 25 relative to the judgment by the HOA, for which QBE

10:40:02 1 joins, is to set it set aside because there is no  
2 record, or modify it because of in light of the  
3 settlement.

4           So when you say "QBE impacting the judgment,"  
10:40:13 5 in an indirect manner, certainly. But in a direct  
6 manner, we're seeking to enforce the settlement. And  
7 what flows from enforcement of the settlement may --  
8 certainly will impact the federal action which is  
9 pending, a parallel action, and it may impact this  
10:40:29 10 Court's decision making. But it's an indirect manner  
11 because the settlement is the focus.

12           And to your Court's point, settlement -- or  
13 judgments can be attacked directly or indirectly.

14           QBE certainly will use this Court's guidance  
10:40:43 15 relative to an indirect attack on that judgment in the  
16 federal action. But this Court can -- is also -- has a  
17 vehicle to directly address the judgment if it so  
18 desires. And QBE simply wants this Court to factor in  
19 its thinking since, in a sense, it participated in  
10:41:04 20 negotiation of that settlement. And that's borne out  
21 in the documents before this Court.

22           It's not as if it was a stranger to all this  
23 and comes to this Court after the fact and says, Hey,  
24 what about this? What about this? Rather QBE was  
10:41:17 25 directly involved in the settlement. QBE has different

10:41:20 1 interests than the HOA. QBE simply wishes for this  
2 Court to factor in those considerations. Nothing more  
3 than that.

4 THE COURT: And my last question would be  
10:41:28 5 this: If Nalder doesn't permit a direct attack, why  
6 would -- why would the Supreme Court permit an indirect  
7 attack on the judgment being entered into when the  
8 intervention is done post entry of those default  
9 judgments?

10:41:47 10 MR. REEVES: Well, let me make sure I  
11 understand. Nalder doesn't bear upon the HOA directly  
12 attacking the judgment.

13 THE COURT: No, no. I'm talking about the  
14 intervention by QBE.

10:41:57 15 MR. REEVES: Okay. Relative to Nalder, what  
16 this Court saw was that a settlement was attempted that  
17 took -- took into consideration that judgment. I mean,  
18 frankly, Nalder, on its face, permits for the indirect  
19 attack this Court is raising. So, again, we're seeking  
10:42:13 20 to enforce the judgment.

21 THE COURT: I have one last question for you.  
22 What -- and I don't mind. I mean, I've looked at  
23 Nalder. But what part of Nalder would support that  
24 position of the case?

10:42:26 25 MR. REEVES: Again, the fact that --

10:42:28 1 THE COURT: I have no problem going back and  
2 looking at it.

3 MR. REEVES: And, you know, maybe at this  
4 point it would make sense to do a supplemental brief on  
10:42:34 5 that to the extent that's the hang up.

6 But, again, Nalder dealt with the circumstance  
7 where the carrier was able to intervene to deal with  
8 the settlement. And the settlement was related to the  
9 judgment. And so it was all intertwined. In some  
10:42:48 10 level same as we have here.

11 If you take Nalder and you collapse the two  
12 cases, in a sense, which is what we have here because  
13 we have a judgment as to one and a settlement as to  
14 another, then the Court permitted for intervention to  
10:43:02 15 deal with the settlement recognizing it might impact  
16 the judgment.

17 So that's respectfully what we're dealing with  
18 here. But, again, relative to this Court's comments,  
19 we'd be happy to submit a supplemental brief on this  
10:43:13 20 issue if it would be helpful.

21 THE COURT: Yeah. And the reason why I'm just  
22 really focusing on that because, for example, I have  
23 Alder in front of me -- I'm sorry, Nalder in front of  
24 me. And it says:

10:43:25 25 "We reject UAIC's argument that

10:43:30 1 intervention was permissible because the 2008  
2 final judgment expired and was thus void -- and  
3 is thus void. Nothing permits UAC to intervene  
4 after final judgment to challenge the validity  
10:43:46 5 of the judgment itself."

6 And it says see Ryan, so on and so on. I  
7 should say Ryan, 58 Nevada 260, 755 F.2d at 736. And  
8 then -- then in the footnote it says:

9 "If UAIC wanted to challenge the validity  
10 of a judgment, it could have timely intervened  
11 before the judgment to become a proper party to  
12 the litigation to challenge it under NRCP 60."

13 You know, and that's why I'm asking that  
14 question. Because it's --

10:44:24 15 MR. REEVES: If I may, your Honor.

16 THE COURT: Yeah, go ahead.

17 MR. REEVES: Let me -- maybe I'm -- maybe I'm  
18 better understanding. We're not -- look, certainty the  
19 HOA is directly attacking the judgment. Okay. So set  
10:44:37 20 that aside.

21 THE COURT: They have a right to.

22 MR. REEVES: Fair enough.

23 THE COURT: I'm not ever -- yeah.

24 MR. REEVES: Fair enough.

10:44:41 25 What QBE is trying to do is to provide context

10:44:44 1 to that judgment. And so maybe I'm not being  
2 articulate relative to this. I have a federal court  
3 case where there is a position taken that the judgment  
4 is predicated on liability that Duslak and Sesman face  
10:45:00 5 as former HOA employees.

6 Okay. The judgment doesn't address that issue  
7 one way or the other, relative to on its face. So when  
8 I say indirect, what I'm, you know, I suppose  
9 inarticulately, saying to you is I simply want to  
10:45:17 10 provide context. Because if this Court, per the  
11 settlement, entered judgment against these gentlemen in  
12 their capacity as independent contractors, I'm not  
13 seeking to do anything relative to the judgment. I'm  
14 just providing context.

10:45:31 15 Because if they're independent contractors  
16 that bears on the coverage obligation, i.e., there is  
17 none.

18 So the -- what I'm trying to do, I'm not  
19 trying to attack the judgment per se. I'm trying to  
10:45:42 20 provide context to it. I'm trying to provide --  
21 because there is no record. And I know I'm beating a  
22 drum at this point, but if there was a -- if this Court  
23 were to look at the judgment, it's no more than a page  
24 between, you know, take out the caption and the  
10:45:59 25 signature line. And it doesn't address the fact that



10:46:01 1 plaintiff had agreed to not proceed against Duslak and  
2 Sesman as HOA employees. If it was complied with, then  
3 the federal court needs to know about that. And that's  
4 the context. And that's why we're here. To ensure the  
10:46:15 5 judgment that was entered was complied with.

6 I have my suspicions and my suspicions are a  
7 product of what plaintiff has alleged or did allege,  
8 and then confronted with Rule 11, backed out of. And  
9 then what I'm now dealing with with Duslak and Sesman  
10:46:32 10 where, in a sense, they're not before this Court.

11 And those suspicions give raise to the fact  
12 that the judgment this Court entered may not have  
13 complied with the settlement. But that's separate and  
14 apart from the fact that the settlement remains  
10:46:46 15 binding. And the context of it flavors the judgment.  
16 And so maybe I'm not attacking the judgment per se.  
17 I'm just providing context for it because it bears upon  
18 coverage in the federal action.

19 So, again, I don't wish to be nuanced on this.  
10:47:00 20 I hope I'm being relatively patent and clear. But,  
21 again, we're trying to enforce the settlement, and  
22 there is no provision to that.

23 And the impact on the judgment is as it is.  
24 But in the federal action, I simply wish to provide  
10:47:14 25 context because the settlement flavors the judgment.

10:47:17 1 They are intertwined on some level.

2 We'll submit it, your Honor.

3 THE COURT: But here's my point. And that  
4 might be true. But at the end of the day, providing

10:47:25 5 context wouldn't be the basis to intervene pursuant to  
6 Rule 24.

7 MR. REEVES: Yes, it would, your Honor. I  
8 guess, I disagree.

9 THE COURT: But providing context to the trial  
10 court, I mean, I understand -- trust me. I understand  
11 what the issues are going to be down the road. I  
12 remember this case vividly. I do. In fact, it's my  
13 recollection we even started trial in this case. And  
14 we were actually conducting the jury selection to some  
10:47:52 15 extent. I don't know if we swore the first witness or  
16 not. I don't remember that.

17 But I remember this case very well. In fact,  
18 I remember the discussions we had in open court  
19 regarding specific issues in this case that are set  
10:48:03 20 forth in the record here. I remember it. I just do.

21 And so, but at the end of the day, and this is  
22 what always controls my thought process is the decision  
23 making. If I'm going to grant a motion to intervene, I  
24 want to make sure it's -- whatever decision I make is  
10:48:20 25 on solid footing.

10:48:22 1 And that's, ultimately, what it comes to.  
2 Because intervention as a matter of right, we have that  
3 under 24(a). And we have permissive intervention under  
4 24(b). And I look at that, and I come back to Nalder.

10:48:38 5 And the thing about Nalder that I find  
6 extremely compelling and, I guess, it shouldn't really  
7 make a difference whether it's a 2020 case or a 1920  
8 case. Maybe the 1920 case is more powerful to a  
9 certain extent in that it hasn't been reversed. But we  
10:48:55 10 have -- and it's good law for a hundred years.

11 But my point is this, we have a recent  
12 pronouncement from our Nevada Supreme Court  
13 specifically dealing with inventions post judgment.

14 And so, and it appears to me potentially  
10:49:09 15 you're asking me to carve out an exception in some  
16 manner. But I keep coming back. And our Nevada  
17 Supreme Court appears to be fairly forceful in their  
18 decision and so on. And when I look at it.

19 And so that's what I come down to. I really  
10:49:24 20 and truly do. Because as a trial judge this is all you  
21 want to do is you want to get it right. And after  
22 that, I can live with the appeals. I can. Doesn't  
23 matter. But I just want to get it right at first  
24 blush.

10:49:38 25 MR. REEVES: Understood, your Honor. And I

10:49:40 1 appreciate that mindset. It's, you know, we, as  
2 practitioners, candidly wish the same. And so you  
3 obviously have differing opinions. But that -- the  
4 hang up is that I'm dealing with a judgment as to one  
10:49:54 5 party and a settlement as to another.

6 And the case law in Nalder deals with a  
7 circumstance where the only thing -- the only  
8 procedural aspect was a judgment entered. There is not  
9 a settlement. And this Court, I believe, would agree  
10:50:09 10 that there's no judgment entered against the HOA.

11 THE COURT: I get that. I do. I do.

12 MR. REEVES: So, I guess, I'm confused because  
13 if we were dealing with simply -- take away the HOA.  
14 And suppose that QBE was coming to this Court relative  
10:50:26 15 to Duslak and Sesman. I'd have a real problem. I'd  
16 have a real problem relative to the fact that the only  
17 party in the case was a judgment. And that's what  
18 Nalder stands for.

19 But this is different. I'm coming to this  
10:50:39 20 Court to enforce a settlement. And I'm doing so  
21 because I got a parallel federal action going that is  
22 seeking to, in a sense, contravene that settlement.

23 And so in order for me to adequately represent  
24 the insurance company relative to that parallel action,  
10:50:53 25 I'm coming to this Court in order to develop a record

10:50:57 1 because a record doesn't exist relative to that  
2 judgment.

3 And so, respectfully, you know, when we talk  
4 about NRCP 24(a) and (b), we talk about claims or  
10:51:08 5 interest relating to the property or transaction. I  
6 mean, isn't it -- isn't it patently clear that we meet  
7 the burden under 24(a) and (b)?

8 You know, respectfully in terms of both  
9 mandatory and permissive, isn't the only issue that  
10:51:23 10 really is inhibiting the relief QBE seeks is the fact  
11 that there's a judgment entered against one party. But  
12 isn't the fact that there's a settlement reached as to  
13 another where there is no judgment, doesn't that  
14 resonant relative to the fact that there's an ability  
10:51:38 15 to come in and be heard relative to that system.

16 And I fail to see how there's any fallout from  
17 that. There's no prejudice. We're simply getting a  
18 seat at the table. To prohibit or prevent QBE from  
19 coming to have a seat at the table relative to what's  
10:51:54 20 going on in the federal action, candidly, that's  
21 prejudice. And that's -- that would be a circumstance  
22 where I could see someone taking a look at it.

23 But what prejudice flows from permitting QBE  
24 to simply sit and provide this Court with context?

10:52:07 25 Again, this Court could choose to reject that context,

10:52:10 1 but what harm flows from that? I'm not seeing it.

2 And, again, we're dealing with a circumstance  
3 that is readily distinguishable because of a  
4 settlement, and not simply a judgment.

10:52:22 5 I guess, I'm not understanding the  
6 reservations or the concerns that are being expressed.  
7 Permit for us to be heard. This Court could reject it.  
8 Conclude otherwise. Conclude it doesn't bear. Simply  
9 permit for us to make a record. That's what I believe  
10:52:36 10 what the Supreme Court would want relative to this type  
11 of situation. Have a full and developed record. And  
12 then, you know, make a decision based upon it. Rather  
13 than cutting off the ability of a party to make that  
14 record. That is prejudice, and that -- that would --  
10:52:51 15 that would be concerning to QBE.

16 We'll submit, your Honor.

17 THE COURT: Okay. This is what I'm going to  
18 do. And this is an observation of mine. Because  
19 intervention in this matter by the insurance company,  
10:53:05 20 it appears to me, is somewhat nuanced.

21 And it would be -- if this was simply  
22 enforcing a settlement, potentially I could see where  
23 under those circumstances maybe intervention pursuant  
24 to 24(b) might be appropriate. But the case is more  
10:53:32 25 nuanced than that. Because we're looking for more than

10:53:35 1 just, at least me it appears to me, then just the  
2 enforcement of a settlement agreement.

3 Because at the end of the day I would  
4 anticipate there's going to be some sort of declaration  
10:53:52 5 requested on some level. And I don't know what level  
6 that will be, because we have a lot going on here, to  
7 determine the status of the two "independent  
8 contractors/employees," I guess, with the pending  
9 coverage action in federal court. And I get that.

10:54:17 10 So what I'm going to do is this. And I don't  
11 mind telling you that. I'm going to go back and take a  
12 close look at Nalder. I haven't read it in the detail  
13 I want to read it. And I just want to spend some time  
14 reading the case.

10:54:31 15 And if I -- I'll tell you this. If I feel I  
16 need additional briefing -- and I think everybody knows  
17 this from a historical perspective, if I feel I need  
18 additional briefing, I'll tell you that.

19 I won't do any independent research, I'm going  
10:54:44 20 to tell you that too, other than what's limited to  
21 what's in the briefing in front of me. If I feel there  
22 are issues, I'll ask for a supplemental briefing. I  
23 don't know yet. So that's what I'm going to do.

24 But I just want to make sure I don't overlook  
10:54:58 25 anyone else. Mr. Fink, Mr. Sampson, or anyone, any

10:55:01 1 other issues you want to address for the record before  
2 we adjourn?

3 MS. SAMPSON: I do, Judge. I appreciate it.  
4 This is Mr. Sampson.

10:55:11 5 And I appreciate the Court looking into it. I  
6 would also ask the Court to look into the language  
7 specifically in Nalder that says Rule 24 is to be read  
8 in harmony with NRS 12.130 which requires you have to  
9 do it before judgment is entered, period.

10:55:28 10 Additionally --

11 THE COURT: And I've looked at that,  
12 Mr. Sampson. I have. I have looked at the statute. I  
13 get it.

14 MR. SAMPSON: Thank you, Judge.

10:55:35 15 Additionally, you know, when Mr. Reeves says,  
16 I just -- I don't want to attack the judgment. I just  
17 want to provide context to it, perhaps then there could  
18 be some explanation as to why he has already, even  
19 before being allowed to intervene, filed a joinder to  
10:55:52 20 Sunrise's motion to set the judgment aside and to amend  
21 it.

22 I just don't understand why a party can stand  
23 before your Honor and say, We're not attacking the  
24 judgment. We're just looking to provide context, when  
10:56:04 25 they've literally attacked the judgment by joining a



10:56:07 1 motion to amend it and set it aside. And so I think  
2 for sure we ought to strike, and the Court should even  
3 right now rule that to the extent they're seeking to  
4 intervene to join Sunrise's motion to attack this  
10:56:18 5 judgment, that should for sure be denied.

6 And, and, and, you know, it's -- I just don't  
7 understand how we're in this situation where they can  
8 have already openly attacked the judgment, and yet, yet  
9 ask to intervene because they're not going to attack  
10:56:34 10 the judgment, and just want to provide context. I  
11 just -- I don't understand that.

12 So I -- I guess, if the Court wants to look at  
13 Nalder again, and say let me see if they can intervene  
14 for the limited purpose of looking at this judgment,  
10:56:45 15 but no, I'm -- I'm going to deny a motion to intervene  
16 for all purposes, and we should, right now, agree that  
17 any joinders they file, any additional document -- they  
18 filed I think a -- they filed a joinder to the motion  
19 to intervene, they filed a joinder to the opposition to  
10:57:04 20 my motion regarding the settlement, and they've also  
21 filed a joinder to Sunrise's reply to my opposition to  
22 the motion to set the judgment set aside.

23 And so I think all of those documents need to  
24 be stricken. First of all, they shouldn't have been  
10:57:19 25 filed in the first place because QBE shouldn't be

10:57:23 1 filing joinders and other things when they've not yet  
2 been permitted to intervene as a party in this case.  
3 But to the extent they've already attacked this  
4 judgment, I think the motion needs to be denied here  
10:57:31 5 and now.

6 MR. REEVES: May I respond, your Honor?

7 THE COURT: Yes, you may.

8 And, Mr. Sampson, I'm taking that into  
9 consideration.

10:57:43 10 MR. SAMPSON: Thank you, Judge. Thank you.

11 MR. REEVES: Your Honor, we're -- QBE is  
12 moving on multiple fronts. Again, it's dealing with a  
13 \$25 million judgment in a federal action. Certainly,  
14 we joined with the HOA relative to setting aside the  
10:57:58 15 judgment.

16 But we recognize the limitations that exist  
17 there, and so we've come to this Court for multiple  
18 reasons.

19 And one of the reasons is to provide the  
10:58:07 20 context, the record. And, again, I -- I don't wish to  
21 say it again, but, the judgment, there is no record.  
22 There is no record for that judgment.

23 And so if we're simply dealing with a one-page  
24 judgment without context, then, you know, and in light  
10:58:25 25 of the settlement and in light of the agreement

10:58:27 1 relative to releasing claims, you know, we need that  
2 context. It is imperative to develop it. And so  
3 that's why we're here.

4 And so, again, we've come to this Court on  
10:58:39 5 multiple -- for multiple basis, multiple reasons. And  
6 I'm trying to articulate to this Court one basis  
7 relative to responding to this Court's concern about  
8 the judgment.

9 And, again, relative to the record before this  
10:58:53 10 Court, context needs to be provided for that judgment  
11 because there is none. And claims are being asserted  
12 that have been released; hence, the desire of QBE to  
13 enforce the settlement.

14 Hence QBE's desire -- I mean, this record is  
10:59:08 15 helpful relative to what's being recorded here. And  
16 QBE simply wishes to make a record so that this Court  
17 is aware of all circumstances, all issues that bear  
18 upon the conduct of this case. Because QBE  
19 participated in it. It has a direct interest in it.

10:59:25 20 So we'll submit, your Honor. We appreciate  
21 the time this Court has afforded for this matter.

22 THE COURT: Thank you, sir.

23 Mr. Fink, I don't want to overlook you.

24 Anything you want to add lastly?

10:59:35 25 MR. FINK: No, your Honor. I have nothing

10:59:38 1 further to add. Thank you very much.

2 THE COURT: Okay. You're welcome, sir.

3 What I'm going to try to do is I want

4 something -- I'm going to try to get -- you're coming

10:59:45 5 back on the 23rd. Today is the 11th. I'm going to try

6 to get something done before you come back on the other

7 matter.

8 MS. SAMPSON: Your Honor.

9 THE COURT: Everyone, enjoy your --

10:59:55 10 Yes, sir.

11 MS. SAMPSON: Hold on. Judge, sorry. This is

12 David Sampson.

13 As to the -- you said when you're here on the

14 23rd, I've advised -- so Mr. Fink, when these hearings

11:00:05 15 were first set indicated he was unavailable for today's

16 hearing because there was some issue. And I advised

17 I'm out of town with my daughter at her college the

18 week of the 22nd.

19 And we had proposed moving all of these

11:00:19 20 hearings. And I think Mr. Fink, and he can correct me

21 if I'm wrong here, but he had proposed some dates in

22 early March -- or in early March. And my only request

23 was pretty much exactly what your Honor said at the

24 very beginning of this hearing. Was, Well, let's have

11:00:34 25 the motion to intervene first. And then the other

11:00:38 1 hearings take place on a separate day. Because I want  
2 that issue resolved first before we get into the other  
3 matters, which is exactly what your Honor said when you  
4 started this morning.

11:00:47 5 Mr. Reeves opposed that and said, No, we're  
6 going to do them all on one day. Or we're going to  
7 leave them as is. And so as a result, unfortunately  
8 for Mr. Fink, we were unable to reach an agreement to  
9 move today's hearing. Which I wanted to do as long as  
11:01:01 10 we kept the intervention on first as the Court wanted  
11 to do as well.

12 So right now we've got hearings set the 23rd  
13 and 25th. I very much like the idea of doing them on  
14 the same day. But could we please not do then when I'm  
11:01:15 15 with my daughter out of town at her college?

16 I would also ask the Court to remember when we  
17 started, I believe, the first trial Mr. Fink was taking  
18 his daughter to college. I want to say Arkansas or  
19 Alabama, but I could be wrong about that.

11:01:28 20 THE COURT: I think --

21 MR. SAMPSON: She went to college.

22 THE COURT: I think it was Purdue University.

23 MR. SAMPSON: See, your Honor is better than  
24 me. You got a better recollection.

11:01:35 25 But we agreed to schedule things around so

11:01:38 1 that he could be available with his daughter's school.  
2 Mr. Reeves didn't want to provide that courtesy to me  
3 unless we put everything on one day, which I didn't  
4 want to do. So can we, please, I'll just petition the  
11:01:50 5 Court since we're moving things around anyway, we move  
6 it to a date that's convenient for everyone, please.

7 MR. REEVES: May I respond, your Honor?

8 THE COURT: Yes.

9 MR. REEVES: I wanted all things to go forward  
11:02:02 10 today. I -- relative to this Court's comment of  
11 consolidation, I felt this was the first day which  
12 consolidation made sense. So I simply wanted today to  
13 go forward in the event this Court wanted to address  
14 all issues.

11:02:15 15 Rest assure that I'm not such an ogre that I'm  
16 trying to impact counsel's time with his daughter.  
17 That's preposterous. So I would suggest permit for the  
18 parties to meet and confer and come up with a date that  
19 makes sense. And simply leave it at that.

11:02:33 20 MS. SPLAINE: Your Honor, this is Shannon  
21 Splaine.

22 MS. SAMPSON: That's not --

23 MS. SPLAINE: Your Honor, this is Shannon  
24 Splaine.

11:02:37 25 THE COURT: Wait.

11:02:37 1 Go ahead, Ms. Splaine.

2 MS. SPLAINE: Thank you. I represent the HOA  
3 in the federal Court matter where I just recently  
4 appeared. I have no problem trying to consolidate  
11:02:48 5 these two upcoming hearings and get them on a date that  
6 works for everyone.

7 My only concern is how far out it goes.  
8 Simply because in the federal court action I had  
9 requested time to get up to speed and to extend  
11:03:01 10 deadlines because it is being moved along very quickly,  
11 and was told "no". And so I just want to make sure  
12 that when we are meeting and conferring that this next  
13 hearing is as early in March as humanly possible after  
14 Mr. Sampson gets back from his trip with his daughter  
11:03:18 15 because of those concerns.

16 So I don't want this to be something that gets  
17 pushed far out into the future.

18 THE COURT: All right.

19 MR. SAMPSON: Your Honor, this is Dave  
11:03:28 20 Sampson. I have no problem not pushing it very far. I  
21 just -- I've had zero success dealing, coordinating  
22 with Mr. Reeves. And I'm not going to get into what's  
23 gone on, other than to advise he's been less than  
24 cooperative in working anything out. Whether it's  
11:03:47 25 federal case or this case. So I'd like to just here

11:03:50 1 and now, the Court's got a date. And so --

2 THE COURT: You know what I'm going --

3 (Multiple speaker cross-talk)

4 MS. SAMPSON: -- it's not even funny.

5 THE COURT: -- to do. This is what I'm going  
6 to do. I'm going to make it really easy for everyone.

7 And fact, Mr. Fink, was it Purdue University?

8 MR. FINK: It was. And in case, my son reads  
9 the transcript that's something --

11:04:10 10 THE COURT: I thought it was your son too.

11 MR. SAMPSON: I'm sorry.

12 MR. FINK: That's all right, Dave.

13 THE COURT: Well, I do remember. And like I  
14 indicated at that time, and I accommodated Mr. Fink.

11:04:23 15 And I'm going to accommodate Mr. Sampson. I mean, when  
16 it comes to issues regarding taking your children to  
17 college and holidays and stuff like that, I've always  
18 been very accommodating.

19 This is what I want to do, though. I'm not  
11:04:39 20 going to give a chance to meet and confer because you  
21 might not ever meet and confer. You know.

22 What about the 23rd? What day of week -- the  
23 25th, what day of the week is that, CJ? The 25th, is  
24 that a Thursday?

11:04:51 25 THE COURT CLERK: That starts Monday



11:04:53 1 February 22nd through Friday the 26th.

2 MR. REEVES: The answer is "yes", your Honor,  
3 it's a Thursday.

4 THE COURT: What is the 25th? That's Tuesday?

11:05:03 5 THE COURT CLERK: That is a Thursday, Judge.

6 THE COURT: Okay. That's what I thought. How  
7 about this?

8 MR. SAMPSON: And I'm out -- I'm out that  
9 week.

11:05:11 10 THE COURT: Yeah. Well, I understand that.

11 What about the following Thursday, CJ? What  
12 day is that?

13 THE COURT CLERK: Judge, we're full that  
14 morning and afternoon. If I might suggest the Tuesday  
11:05:24 15 and Wednesday before we could do afternoons. Those are  
16 open.

17 THE COURT: Okay. All right. How about that?  
18 Tuesday or Wednesday.

19 And which two dates are those, CJ?

11:05:37 20 THE COURT: We have Tuesday March 2nd in the  
21 afternoon or Wednesday March 3rd in the afternoon.

22 MR. FINK: Your Honor, Leonard Fink co-counsel  
23 for Sunrise. I could do Tuesday afternoon. And I just  
24 want to be clear too, and I know we kind of joked about  
11:05:54 25 the -- but, obviously, I would give every counsel any

11:05:57 1 courtesy that I can. I think the Court knows that.

2 And Mr. Sampson knows that too.

3 And I think some of us, unfortunately, got a  
4 little lost in the weeds with all the different motions  
11:06:06 5 going back and forth. But I can do Tuesday afternoon.

6 MR. REEVES: Lenny, can you do the 3rd  
7 assuming I -- again, maybe I don't get a vote. This is  
8 Bill Reeves. Maybe I don't get a vote. The third  
9 would work better for my calendar for whatever it's  
11:06:22 10 worth.

11 MR. FINK: I could -- the Supreme Court  
12 settlement conference following the mediator. Although  
13 that's not the day of the conference. So I could  
14 probably ask that federal department judge to move my  
11:06:34 15 time. So I could probably do something with that.

16 MR. SAMPSON: The 3rd actually works better  
17 for me too. This is David Sampson.

18 MS. SPLAINE: And, your Honor, this is Shannon  
19 Splaine. The 3rd in the afternoon is fine by me as  
11:06:45 20 well.

21 MR. BARTON: And, your Honor, Christian  
22 Barton. That 3rd works as well for IES and Cox.

23 THE COURT: All right. Is the 3rd the  
24 consensus? I just want to make sure.

11:07:03 25 MS. FUNAI: Yes.

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11:07:03 1 MS. SAMPSON: I do have a 10:00 o'clock  
2 deposition. So, perhaps, if we could start at 1:30 or  
3 2:00.

4 THE COURT: We'll do 1:30, Mr. Sampson. We  
11:07:10 5 won't start without you.

6 MR. SAMPSON: Thank you.

7 MR. FINK: We could.

8 MR. SAMPSON: By the way, for the record,  
9 yeah, I will verify Mr. Fink, I believe, is doing  
11:07:20 10 everything he could to be cooperative initially when we  
11 were moving around. No question about that.

12 THE COURT: All right. Okay. And I'm going  
13 to get everybody off the call because they have other  
14 business to take care of.

11:07:32 15 So the defendants' motion to set aside and/or  
16 amend judgment and also plaintiff's motion to enforce  
17 settlement and any joinders thereto are being moved to  
18 the afternoon at 1:30 on March 3rd, 2021.

19 MR. SAMPSON: Just so we're clear then, the  
11:07:52 20 joinder by QBE to amend and set aside the judgment is  
21 going to be --

22 THE COURT: I'm going to address all those for  
23 you. Don't worry. I'm going to address them. I'm  
24 going to address everything.

11:08:06 25 MR. SAMPSON: Already, if you can remember

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11:08:07 1 this, you can remember that.

2 THE COURT: Okay.

3 MR. SAMPSON: Thank you, Judge.

4 THE COURT: Everyone, enjoy your day.

11:08:15 5 IN UNISON: Thank you. You as well, your

6 Honor.

7

8 (Proceedings were concluded.)

9

12:49:31 10 \* \* \* \* \*

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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

<b>IN UNISON: [1]</b> 71/5 <b>MR. BARTON: [2]</b> 6/11 69/21 <b>MR. FINK: [16]</b> 6/18 7/7 16/8 30/18 30/21 31/3 31/7 32/2 32/4 42/6 62/25 67/8 67/12 68/22 69/11 70/7 <b>MR. REEVES: [46]</b> 6/9 7/21 7/23 9/8 13/5 13/20 17/12 24/4 24/8 24/13 25/6 27/18 28/1 28/16 29/18 29/25 30/25 32/1 32/3 32/17 32/20 39/20 39/24 42/11 44/5 44/10 46/10 46/18 46/20 48/10 48/15 48/25 49/3 50/15 50/17 50/22 50/24 53/7 54/25 55/12 61/6 61/11 65/7 65/9 68/2 69/6 <b>MR. SAMPSON:</b> <b>[16]</b> 7/1 17/22 33/21 59/14 61/10 64/21 64/23 66/19 67/11 68/8 69/16 70/6 70/8 70/19 70/25 71/3 <b>MS. BOLICK: [2]</b> 6/21 6/23 <b>MS. FUNAI: [2]</b> 6/14 69/25 <b>MS. SAMPSON:</b> <b>[6]</b> 59/3 63/8 63/11 65/22 67/4 70/1 <b>MS. SPLAINE: [6]</b> 6/16 7/9 65/20 65/23 66/2 69/18 <b>THE COURT</b> <b>CLERK: [3]</b> 67/25 68/5 68/13 <b>THE COURT: [73]</b> <b>\$</b> <b>\$25 [3]</b> 15/21 33/17 61/13 <b>\$25 million [3]</b> 15/21 33/17 61/13 <b>0</b> <b>0706 [1]</b> 3/19	<b>0798 [1]</b> 3/20 <b>1</b> <b>10655 [1]</b> 3/16 <b>1099 [1]</b> 2/7 <b>10:00 [1]</b> 70/1 <b>11 [3]</b> 1/22 6/1 52/8 <b>11th [1]</b> 63/5 <b>12.130 [12]</b> 19/2 19/25 20/6 20/19 21/4 21/18 22/6 22/7 23/4 23/6 35/16 59/8 <b>120 [1]</b> 3/6 <b>13 [1]</b> 19/8 <b>14 [1]</b> 19/8 <b>1500 [1]</b> 3/8 <b>170 [1]</b> 2/17 <b>1920 [2]</b> 54/7 54/8 <b>1930 [1]</b> 39/7 <b>1938 [2]</b> 18/15 36/13 <b>1993 [1]</b> 18/16 <b>1997 [1]</b> 5/9 <b>1:30 [3]</b> 70/2 70/4 70/18 <b>2</b> <b>2/25/21 [1]</b> 12/13 <b>20 [1]</b> 23/2 <b>200 [1]</b> 2/5 <b>2007 [2]</b> 28/13 28/15 <b>2008 [1]</b> 50/1 <b>2017 [1]</b> 19/19 <b>2018 [1]</b> 28/11 <b>2019 [1]</b> 1/22 <b>2020 [3]</b> 19/10 38/6 54/7 <b>2021 [3]</b> 6/1 8/21 70/18 <b>21 [1]</b> 12/13 <b>2203 [1]</b> 5/10 <b>22nd [2]</b> 63/18 68/1 <b>2300 [1]</b> 5/6 <b>23rd [7]</b> 8/5 8/21 12/16 63/5 63/14 64/12 67/22 <b>24 [34]</b> 10/15 12/11 13/1 13/16 13/18 19/3 20/4 20/5 20/10 20/19 20/21 21/11 21/24 22/10 22/11 22/24 23/3 23/5 23/18 26/12 33/14 35/17 39/1 39/24 40/6	40/25 45/25 53/6 54/3 54/4 56/4 56/7 57/24 59/7 <b>257-1997 [1]</b> 5/9 <b>257-2203 [1]</b> 5/10 <b>25th [5]</b> 8/5 64/13 67/23 67/23 68/4 <b>260 [1]</b> 50/7 <b>26th [1]</b> 68/1 <b>275 [1]</b> 3/17 <b>28 [1]</b> 34/20 <b>2:00 [1]</b> 70/3 <b>2nd [1]</b> 68/20 <b>3</b> <b>30 [1]</b> 34/21 <b>300 [2]</b> 4/7 5/7 <b>30th [1]</b> 38/5 <b>3770 [1]</b> 2/16 <b>382-1500 [1]</b> 3/8 <b>384-9800 [1]</b> 4/9 <b>3rd [7]</b> 68/21 69/6 69/16 69/19 69/22 69/23 70/18 <b>4</b> <b>405-8100 [1]</b> 2/19 <b>4120 [1]</b> 4/10 <b>4199 [1]</b> 2/8 <b>4th [1]</b> 38/7 <b>5</b> <b>541 [2]</b> 1/25 72/17 <b>58 [1]</b> 50/7 <b>6</b> <b>60 [1]</b> 50/12 <b>600 [1]</b> 4/17 <b>605-1099 [1]</b> 2/7 <b>665-4120 [1]</b> 4/10 <b>699-7822 [1]</b> 4/20 <b>699-9455 [1]</b> 4/21 <b>7</b> <b>702 [12]</b> 2/7 2/8 2/19 3/8 3/19 3/20 4/9 4/10 4/20 4/21 5/9 5/10 <b>720 [1]</b> 4/6 <b>736 [1]</b> 50/7 <b>755 [1]</b> 50/7 <b>7822 [1]</b> 4/20 <b>8</b> <b>80 [2]</b> 18/3 22/20 <b>804-0706 [1]</b> 3/19 <b>804-0798 [1]</b> 3/20 <b>8100 [1]</b> 2/19 <b>888-209-4199 [1]</b>	2/8 <b>89101 [1]</b> 4/8 <b>89102 [1]</b> 5/8 <b>89106 [2]</b> 2/6 4/19 <b>89144 [2]</b> 3/7 3/18 <b>89169 [1]</b> 2/18 <b>9</b> <b>9455 [1]</b> 4/21 <b>9800 [1]</b> 4/9 <b>9900 [1]</b> 3/5 <b>9:47 [1]</b> 6/2 <b>:</b> <b>:SS [1]</b> 72/2 <b>A</b> <b>A.M [1]</b> 6/2 <b>ability [4]</b> 28/19 56/14 57/13 72/11 <b>able [3]</b> 28/21 36/9 49/7 <b>about [27]</b> 13/10 18/23 21/18 23/12 23/16 24/12 31/13 34/1 34/23 37/21 40/24 43/6 47/24 47/24 48/13 52/3 54/5 56/4 56/4 62/7 64/19 67/22 68/7 68/11 68/17 68/24 70/11 <b>absence [1]</b> 44/21 <b>absolutely [2]</b> 18/25 19/2 <b>abstract [1]</b> 30/11 <b>abundance [2]</b> 15/13 38/18 <b>accommodate [1]</b> 67/15 <b>accommodated [1]</b> 67/14 <b>accommodating</b> <b>[1]</b> 67/18 <b>accurate [2]</b> 29/3 72/11 <b>achieve [2]</b> 26/22 27/8 <b>act [1]</b> 29/2 <b>acted [1]</b> 38/1 <b>action [31]</b> 9/16 15/18 16/11 22/12 22/13 22/15 28/12 28/13 29/13 32/15 32/21 33/4 33/18 40/2 40/3 40/8 40/11 41/13 42/17 45/20 47/8 47/9 47/16 52/18 52/24	55/21 55/24 56/20 58/9 61/13 66/8 <b>action's [1]</b> 21/22 <b>actually [4]</b> 24/9 38/5 53/14 69/16 <b>add [3]</b> 19/20 62/24 63/1 <b>additional [4]</b> 37/14 58/16 58/18 60/17 <b>Additionally [3]</b> 19/24 59/10 59/15 <b>address [10]</b> 12/4 17/23 47/17 51/6 51/25 59/1 65/13 70/22 70/23 70/24 <b>addressed [1]</b> 13/5 <b>adequate [1]</b> 43/15 <b>adequately [3]</b> 21/12 21/19 55/23 <b>adjourn [1]</b> 59/2 <b>adverse [2]</b> 14/13 14/13 <b>adversely [1]</b> 14/17 <b>advise [3]</b> 38/2 45/5 66/23 <b>advised [2]</b> 63/14 63/16 <b>Aetna [2]</b> 37/8 37/8 <b>affect [1]</b> 35/6 <b>afforded [1]</b> 62/21 <b>after [23]</b> 9/1 10/25 11/3 18/8 18/13 19/8 19/9 20/12 20/18 22/1 34/20 35/22 35/23 35/24 36/10 37/4 37/17 37/18 38/4 47/23 50/4 54/21 66/13 <b>afternoon [7]</b> 68/14 68/21 68/21 68/23 69/5 69/19 70/18 <b>afternoons [1]</b> 68/15 <b>afterwards [1]</b> 34/21 <b>again [49]</b> 7/6 11/20 14/6 15/8 15/24 21/21 21/24 22/2 22/4 23/6 23/8 23/14 23/24 26/12 26/13 28/2 29/4 32/14 33/9 36/12
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<b>A</b>	16/12	51/13 62/24 66/24	70/11	48/12 50/19 52/16
<b>again... [29]</b> 37/10	<b>allowed [11]</b> 18/7	<b>anyway [2]</b> 31/10	<b>articulate [2]</b> 51/2	59/23
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16/18 16/21 32/22	53/22 67/17	<b>appreciate [5]</b>	16/7	<b>bad [7]</b> 10/23
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<b>ahead [10]</b> 6/8 7/5	34/19 42/4 43/25	<b>appropriate [2]</b>	<b>at [62]</b> 9/3 12/9	<b>bars [1]</b> 40/16
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(2) again... - because

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(4) concludes - do

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Peggy Isom, CCR 541, RMR

(9) Mr.... - out

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Peggy Isom, CCR 541, RMR

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