

IN THE SUPREME COURT OF NEVADA

Case Nos. 58504, 59208 and 59423

JENNY RISH,

Appellant,

vs.

WILLIAM JAY SIMAO, individually; and
CHERYL ANN SIMAO, individually and as
husband and wife,

Respondents.

Electronically Filed
May 16 2012 02:44 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MOTION FOR EXTENSION TO FILE OPENING BRIEF AND APPENDIX

Pursuant to NRAP 31(b)(3), appellant requests 30 days, up to and including June 15, 2012, in which to file its opening brief and appendix. The brief is due to be filed on May 16, 2012. This is Appellant's third motion for extension. (The deadline was previously extended by stipulation of the parties.)

The transcripts still are not complete

Undersigned counsel is loath to request another extension where the brief is substantially complete; but, extreme and unforeseeable circumstances necessitate more time. In particular, the transcripts of several bench conferences that took place during trial still are not finished. While the court reporter filed a notice in this Court that all requested transcripts of the proceedings had been delivered—and, in fact, all *days* of trial were transcribed—only some of the transcripts included the bench conferences.

Complete trial transcripts are essential

The absence of these bench conferences from the transcripts, moreover, is material. This is an appeal from a judgment entered after the district court struck defendant's answer based upon defense counsel's purported failure to abide by pre-trial orders. When Judge Walsh struck defendant's answer, she expressly referred to warnings she claimed to have given during bench conferences. (*See* 3/31/11 Tr. 112.) Thus, the transcripts of bench conferences might be as significant in this case as they were in *Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. ___, 252 P. 3d 649, 656 (2011).

The court reporter estimates delivery by June 8th

Undersigned counsel requested that the missing bench conferences be transcribed immediately upon learning that they were missing, at the beginning of April. Since that time, counsel's office has been in continuous contact with the court reporter to encourage completion of the transcripts. (Exhibit 1.) Because the court reporter in District Court Department 10 is occupied in a trial, the court reported outsourced completion of the transcripts to Verbatim Digital Reporting. An employee at Verbatim Digital Reporting informed undersigned counsel that she expects to complete and deliver the transcripts by June 8.

Assuming the transcripts will be delivered by June 8, appellant moves for this extension of 30 days, until June 15, to complete and file the opening brief and appendix. This will provide appellant approximately one week to integrate the

completed transcripts into the appendix and to properly address any relevant contents in the opening brief.

DATED this 16th day of May 2012.

LEWIS AND ROCA LLP

/s/ Joel D. Henriod

By: _____

DANIEL F. POLSENBERG
Nevada Bar No. 2376
JOEL D. HENRIOD
Nevada Bar No. 8492
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
(702) 474-2616
DPolsenberg@LRLaw.com
JHenriod@LRLaw.com

STEPHEN H. ROGERS (SBN 5755)
ROGERS MASTRANGELO CARVALHO
& MITCHELL
300 South Fourth Street, Suite 170
Las Vegas, Nevada 89101
(702) 383-3400
SRogers@RMCMLaw.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 16th day of May, 2012, Electronic service of the foregoing MOTION FOR EXTENSION TO FILE OPENING BRIEF AND APPENDIX shall be made in accordance with the Master Service List as follows:

ROBERT T. EGLET
DAVID T. WALL
ROBERT ADAMS
EGLET WALL
400 South Fourth Street
Las Vegas, NV 89101

s/ Mary Kay Carlton
An Employee of Lewis and Roca LLP

EXHIBIT 1

EXHIBIT 1

May 8, 2012

Via U.S. Mail and Facsimile - 671-4384

Victoria Boyd
Court Reporter
Department 10
The Honorable Jessie Walsh
200 Lewis Avenue
Las Vegas, NV 89155

Re: *Simao v. Rish - Bench Conferences Transcripts*
Case No. 07A539455

Dear Ms. Boyd:

Allow me to follow up again on our requests for completion of the trial transcripts in this matter. In particular, we still have not received the transcripts of the bench conferences that were omitted from the transcripts of the proceedings on March 14, 2011, March 15, March 16, March 17, March 18, March 22, and March 23. Once more, we understand that transcripts of the bench conferences may include notations that certain dialogue is "indiscernible," as is the case in the trial transcripts that already include the bench conferences.

We would appreciate anything that can be done to hasten the completion of these missing transcript portions, as the delay is hindering the pending appeal in the Nevada Supreme Court.

We truly appreciate your efforts. Thank you.

Sincerely,



Joel D. Henriod

JDH/m

cc: Robert M. Adams and David T. Wall - Via Facsimile - 450-5451



FACSIMILE TRANSMITTAL

**3993 Howard Hughes Parkway, 6th Floor
Las Vegas, Nevada 89169
Telephone (702) 949-8200
Facsimile (702) 949-8398**

May 8, 2012

To: Receiving Party/Firm	Telephone Number	Facsimile Number
Victoria Boyd, Court Reporter Department 10		702-671-4384
Robert M. Adams David T. Wall Eglet Wall		702-450-5451

From: Joel D. Henriod Direct Telephone: (702) 474-2681

Total Pages Including this page: 2 Direct Facsimile: (702) 216-6190

Comments: Simao v. Rish - Transcripts on Appeal

Document(s) Being Transmitted: Letter to Victoria Boyd

NOTE: THIS IS A CONFIDENTIAL AND PRIVILEGED COMMUNICATION. This transmission is intended only for the use of the individual or entity to which it is addressed, and contains confidential information that is privileged and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service.

Carlton, Mary Kay

From: RightFax E-mail Gateway
Posted At: Tuesday, May 08, 2012 11:02 AM
Conversation: Your fax has been successfully sent to Fax User at 17026714384.
Posted To: Deleted Items

Subject: Your fax has been successfully sent to Fax User at 17026714384.

Your fax has been successfully sent to Fax User at 17026714384.

From: Fax Sender
Client: 60850
Matter: 00002

Time: 5/8/2012 10:49:03 AM
Sent to 17026714384 with remote ID ""
Result: (0/339;4/3) No loop current detected or loop current dropped Page record: NONE SENT Elapsed time: 00:26 on channel 3

Time: 5/8/2012 10:54:53 AM
Sent to 17026714384 with remote ID ""
Result: (0/339;4/3) No loop current detected or loop current dropped Page record: NONE SENT Elapsed time: 00:26 on channel 9

Time: 5/8/2012 11:00:46 AM
Sent to 17026714384 with remote ID "6714384"
Result: (0/339;0/0) Successful Send
Page record: 1 - 2
Elapsed time: 00:40 on channel 8

Carlton, Mary Kay

From: RightFax E-mail Gateway
Posted At: Tuesday, May 08, 2012 11:16 AM
Conversation: Your fax has been successfully sent to Fax User at 17024505451.
Posted To: Inbox

Subject: Your fax has been successfully sent to Fax User at 17024505451.

Your fax has been successfully sent to Fax User at 17024505451.

From: Fax Sender
Client: 60850
Matter: 00002

Time: 5/8/2012 11:15:29 AM
Sent to 17024505451 with remote ID "702 450 5451"
Result: (0/339;0/0) Successful Send
Page record: 1 - 2
Elapsed time: 00:36 on channel 3