amount.

LXVII.

That Plaintiff had to retain the services of an attorney to prosecute this action and is entitled to prejudgment interest, reasonable attorney's fees and costs of suit incurred herein.

LXVIII.

That upon information and belief, the Defendants, and each of them, have acted with or committed acts constituting: a conscious disregard of the rights of Plaintiff CONAN OBENCHAIN and have acted with oppression; fraud; and/or, malice, express or implied. Plaintiff CONAN OBENCHAIN is entitled to exemplary damages as contemplated by NRS 42.005. Upon information and belief, each Defendant is liable for exemplary damages by knowledge and actions that satisfy NRS 42.007.

LXIX.

Plaintiff hereby demands a trial by jury.

THIRD CAUSE OF ACTION

VIOLATION OF PLAINTIFF'S RIGHT TO DUE PROCESS

(42 USC 1983)

LXX.

Plaintiff incorporates Paragraphs I through LXIX of the Complaint as though said paragraphs were fully set forth at this point herein.

LXXI.

That defendants individually and in concert acted "under color of state law" to enter into various agreements to fund, locate and construct "bus stops" at various location in Clark County,

Docket 67919 Document 2015-26559

including the bus stop located at Spring Mountain road, approximately 400 feet west of El Camino Road where plaintiff was struck and severely injured by a motor vehicle on February 5, 2012 (hereinafter referred to as the subject bus stop).

LXXII.

That the defendants, individually and by concerted action, taken under "color of state law" constructed and placed bus stops, such as the subject bus stop, created an "obvious and known danger" that persons waiting at bus stops for a bus operated in the public bus system would be injured and/or suffer death when motor vehicles drove into these bus stops.

LXXIII.

That plaintiff is a member of that group of persons that utilize the public bus system in Clark County for which the defendants funded, located and constructed "bus stops" such as the subject bus stop while "acting under color of state law."

LXXIV.

That the defendants individually and by concerted action purposely and with a conscious disregard to the "obvious and known danger" to persons occupying bus stops, such as the subject bus stop, located and placed such bus stop throughout Clark County.

LXXV.

That prior to February 5, 2012, the defendants knew that the placement of the bus stops, such as the subject bus stop, was an "obvious and known danger" to persons waiting for buses due to the number of motor vehicles that had driven into these bus stops causing injury and death to persons as the plaintiff.

LXXVI.

That defendants individually and in concert purposely and with conscious disregard of the "obvious and known danger" created to persons occupying bus stops, such as the subject bus stop, failed to close or remove or remediate these bus stops, including the subject bus stop, thereby proximately causing the plaintiff to occupy the subject bus stop on February 5, 2012 when a motor vehicle left the roadway, striking the bus stop and the plaintiff who suffered severe bodily injury.

LXXVII.

That the defendants' conduct in the funding, construction and placement of bus stops, such as the subject bus stop, and failing to close, remove or remediate the dangerous condition of these bus stops after a number of vehicle drove into these bus stops causing severe bodily injury and death to persons waiting for a bus, shocks the consciousness.

LXXVIII.

That the aforementioned policies, acts and omissions of defendants constitute a denial of plaintiff's right to procedural and substantive due process guaranteed by the Fourteenth (14th) Amendment to the United States Constitution, and 42 USC 1983 including, but not limited to:

1. Freedom from injury due to a danger created by a state policy, custom, procedure or practice as described above.
2. Freedom from injury due to the intentional acts, deliberate indifference and conscious disregard of an individual's life, safety, and well being by individuals acting under "color of state law."

LXXIX.

That as a direct and proximate result of the aforementioned violation of the Fourteenth

Amendment to the United States Constitution and the provisions of 42 USC 1983 by defendants, plaintiff suffered severe bodily and emotional injury and disability.

LXXX.

That as a direct and proximate result of the aforementioned violation of the Fourteenth Amendment of the United States Constitution and the provisions of 42 USC 1983 by the defendants, plaintiff has suffered damages consisting of the past and future cost of medical care to treat the injuries caused by the defendants all of his damage in a sum in excess of $10,000.00.

LXXXI.

That as a direct and proximate result of the aforementioned violation of the Fourteenth Amendment of the United States Constitution and the provisions of 42 USC 1983 by the defendants, plaintiff suffered severe pain, emotional distress and physical disability, all of his damages in a sum in excess of $10,000.00.

LXXXII.

That when the defendants violated the Fourteenth Amendment of the United States Constitution and the provisions of 42 USC 1983 on February 5, 2012, they intentionally with deliberate indifference and a conscious disregard of the life, safety and well being of plaintiff and was aware of the probable dangerous consequences of its conduct and wilfully and deliberately failed to avoid these consequences justifying an award of punitive damages in a sum in excess of $10,000.00.

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///

FOURTH CAUSE OF ACTION

VIOLATION OF PLAINTIFF'S RIGHT TO EQUAL PROTECTION

(42 USC 1983)

LXXXIII.

Plaintiff incorporates Paragraphs I through LXXXII of the Complaint as though said paragraphs were fully set forth at this point herein.

LXXXIV.

That plaintiff was a member of a distinct class of individuals that utilize bus stops such as the subject bus stop, while waiting to board buses operated by the public transportation system in Clark County.

LXXXV.

That defendants deliberately and intentionally discriminated against the class of individuals denying them equal protection of the law in violation of the United States Constitution and the provisions of 42 USC 1983 including, but not limited to:

1. Constructing and locating bus stops, such as the subject bus stop, that created an obvious and known danger of injury or death.
2. Failing to close, remove or remediate the dangerous bus stop prior to February 5, 2012, while constructing and locating safe bus stops in newer areas of Clark County.
3. Freedom from injury due to a danger created by the "state" policy, custom, procedure or practice as described above.
4. Freedom from injury due to the intentional acts, deliberate indifference and

conscious disregard of an individual's life, safety and well being by individuals acting under "color of state law."

LXXXVI.

That the classification of the plaintiff by defendants was unreasonable and arbitrary and has no reasonable or rational relationship to a legitimate state interest.

LXXXVII.

That as a direct and proximate result of the unlawful and disparate treatment of this classification of persons, the defendants violated plaintiff's right to equal protection of the law guaranteed by the United States Constitution and 42 USC 1983.

LXXXVIII.

That as a direct and proximate result of the aforementioned violation of the Equal Protection Claim of the United States Constitution and the provisions of 42 USC 1983 by the defendants, plaintiff suffered complete severe, bodily injury, severe emotional distress and disability.

LXXXIX.

That as a direct and proximate result of the aforementioned violation of the Fourteenth Amendment of the United States Constitution and the provisions of 42 USC 1983 by the defendants, plaintiff has suffered damages consisting of the past and future cust of medical care to treat the injuries caused by the defendants all of his damage in a sum in excess of $10,000.00.

XC.

That as a direct and proximate result of the aforementioned violation of the Fourteenth Amendment of the United States Constitution and the provisions of 42 USC 1983 by the

defendants, plaintiff suffered severe pain, emotional distress and physical disability, all of his damage in a sum in excess of $10,000.00.

XCI.

That when the defendants violated the Fourteenth Amendment of the United States Constitution and the provisions of 42 USC 1983 on February 5, 2012, they intentionally, with deliberate indifference and a conscious disregard of the life, safety and well being of plaintiff and were aware of the probable dangerous consequences of its conduct and wilfully and deliberately failed to avoid these consequences justifying an award of punitive damages in a sum in excess of $10,000.00.

FIFTH CAUSE OF ACTION

NEGLIGENCE OF THE DEFENDANT DRIVER

XCII.

Plaintiff incorporates Paragraphs I through XCI of the Complaint as though said paragraphs were fully set forth at this point herein.

XCIII.

The aforementioned acts of the defendant driver, as described herein, constitute negligence, and as a direct and proximate result thereof, Plaintiff has suffered damages.

WHEREFORE, Plaintiff, expressly reserving the right to amend this Complaint at the time of trial to include all items of damages not yet ascertained, demands judgment against Defendants, and each of them, as follows:

1. For general damages sustained by Plaintiff in a sum in excess of $10,000.00;

2. For special damages sustained by Plaintiff in a sum in excess of $10,000.00;

3. For punitive damages;

4. For attorney's fees and costs of suit incurred herein;

5. For interest at the statutory rate;

6. For such other and further relief as the Court deems just and proper in the premises.

DATED this 5th day of February, 2014.

STOVALL & ASSOCIATES

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JARED B. ANDERSON, ESQ.
Nevada Bar No. 9747
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Attorneys for Plaintiff

Exhibit 'D'

Exhibit 'D'

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Attorneys for Defendant,
REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

PATRICK OBENCHAIN as Guardian ad Litem for CONAN OBENCHAIN, a minor, Plaintiff, vs. LYNN NOEL LARDEO; OUTDOOR PROMOTIONS, INC.; OUTDOOR PROMOTIONS, LLC; BUSTOP SHELTERS OF NEVADA, INC.; CBS OUTDOOR, INC.; METRO DISPLAY ADVERTISING, INC.; REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA; CLARK COUNTY; ROES I-X, and DOE CORPORATIONS I-X, inclusive, Defendants.	Case No. A-14-695695-C Dept. No. XVII **ORDER GRANTING DEFENDANT REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5) AND ALL JOINDERS THERETO** Date of Hearing: 10/15/14 Time of Hearing: 10:00a.m.

ORDER GRANTING DEFENDANT REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA'S MOTION TO DISMISS PURSUANT TO NRCP 12(B)(5) AND ALL JOINDERS THERETO

THIS MATTER, having come before the Honorable Nancy Allf on October 15, 2014, and

Liza M. Velazco, Esq., of the law firm Bremer, Whyte, Brown & O'Meara, LLP. being present and appearing on behalf of Defendant REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA ("RTC"), and having filed a Motion to Dismiss pursuant to NRCP 12(b)(5) ("Motion to Dismiss") on August 6, 2014; Matthew J. Christian, Esq., Deputy District Attorney – Civil Division, being present and appearing on behalf of Defendant CLARK COUNTY, and having filed a Joinder to RTC'S Motion to Dismiss on August 13, 2014; Michael E. Talbot, Esq., of the law firm Lewis Brisbois Bisgaard & Smith, LLP., being present and appearing on behalf of Defendants CBS OUTDOOR, INC. and BUSTOP SHELTERS OF NEVADA, INC., and having filed a Partial Joinder to RTC'S Motion to Dismiss; Jeffrey L. Galliher, Esq. of the law firm Dennett Winspear, LLP., being present and appearing on behalf of Defendant NOEL LYNN LARDEO; Kevin P. King, Esq., being present and appearing on behalf of Defendant OUTDOOR PROMOTIONS, LLC.; and, Jared B. Anderson, Esq. of the law firm Stovall and Associates, on behalf of Plaintiff PATRICK OBENCHAIN as Guardian ad Litem for CONAN OBENCHAIN, a minor, having filed an Opposition to RTC'S Motion to Dismiss and All Joinders Thereto on August 25, 2014, and a Supplemental Opposition on September 9, 2014; and, the Court having reviewed the papers and pleadings on file herein, the Oppositions, Reply Memoranda, having heard oral arguments of counsel, and good cause appearing, the Court finds as follows:

FINDINGS OF FACT

The Court must accept the facts stated in Plaintiff's Complaint as true on a motion to dismiss. The Plaintiff's Complaint alleges that, on February 5, 2012, Plaintiff was a waiting for a bus at a bus shelter on Spring Mountain Road near El Camino when a vehicle operated by Defendant Lynn Noel Lardeo on Spring Mountain Road veered off the street onto the sidewalk and into the bus shelter causing serious injury to Plaintiff. The Complaint alleges that Defendant Lardeo was intoxicated at the time of the accident.

Plaintiff asserts a negligence cause of action against Defendant Lardeo alleging negligent operation of her vehicle. Plaintiff also asserts a negligence cause of action against all the other Defendants allegedly arising from the ownership, placement, maintenance and operation of the bus shelter. Finally, Plaintiff asserts a strict products liability cause of action against all the

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Defendants, except Lardeo, alleging that the bus shelter was defectively designed, engineered and fabricated.

CONCLUSIONS OF LAW

Defendant CLARK COUNTY is not a proper party because it does not operate the bus transportation system. NRS Chapter 277A.

Defendant RTC and Defendant CLARK COUNTY are entitled to discretionary act immunity pursuant to NRS 41.032 as it pertains to the placement of the subject bus shelter. Martinez v. Maruszczak, 123 Nev. 433, 168 P.3d 720 (2007).

Plaintiff's negligence cause of action against Defendants RTC, CLARK COUNTY, CBS OUTDOOR, INC., and BUSTOP SHELTERS OF NEVADA, INC. is dismissed. Plaintiff has not established any duty on the moving Defendants that would entitle him to relief on the negligence cause of action. City of Reno v. Van Ermen, 79 Nev. 369, 385 P.2d 345 (1963).

Plaintiff's strict products liability cause of action against Defendants RTC and CLARK COUNTY for defective design and/or construction of the bus shelter is dismissed.

Plaintiff may potentially have the ability to state a cause of action for defective design and/or construction of the bus shelter against all Defendants, other than LARDEO, CLARK COUNTY and the RTC, under the products liability cause of action of his Complaint, but an attorney's affidavit and a report from an expert are required pursuant to NRS 11.258.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA'S ("RTC") Motion to Dismiss is GRANTED and that Plaintiff's Complaint, in its entirely, is HEREBY DISMISSED WITH PREJUDICE as against Defendant RTC.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant CLARK COUNTY'S Joinder to RTC'S Motion to Dismiss is GRANTED and that Plaintiff's Complaint, in its entirety, is HEREBY DISMISSED WITH PREJUDICE as against CLARK COUNTY.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff's negligence cause of action is DISMISSSED WITH PREJUDICE as against Defendants CBS OUTDOOR, INC. and BUSTOP SHELTERS OF NEVADA, INC.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, with respect to Plaintiff's remaining cause of action for products liability against all Defendants (other than Lardeo, the RTC and Clark County) based on defective design, engineering and construction of the bus shelter, Plaintiff shall have thirty (30) days to amend that portion of his Complaint and to file and serve the requisite attorney's affidavit and expert report set forth under NRS 11.258. If Plaintiff fails to timely comply with this portion of the Order, Plaintiff's products liability cause of action will be dismissed, with prejudice.

IT IS SO ORDERED.

Dated this 1 day of December, 2014.

Nancy L Allf
DISTRICT COURT JUDGE

Respectfully Submitted by:

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Approved as to form and content by:

Dated: _____
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_____
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Attorney for Plaintiff PATRICK OBENCHAIN as Guardian ad Litem for CONAN OBENCHAIN, a minor

Dated: 11-11-14
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Attorney for Defendants CBS OUTDOOR, INC. and BUSTOP SHELTERS OF NEVADA, INC.

Dated: _____
CLARK COUNTY – CIVIL DIVISION

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Matthew J. Christian, Esq.
Deputy District Attorney
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Attorney for Defendant CLARK COUNTY

Dated: _____
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Attorney for Defendant NOEL LYNN LARDEO

Approved as to form and content by:

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Dated: Dated: 11-12-14
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CLERK OF THE COURT

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Attorneys for Defendant Clark County

DISTRICT COURT

CLARK COUNTY, NEVADA

ZEIXANG WANG, an individual; GERBER HERNAN AYALA RIVERA, individually and as administrator of the estate of GERBER HERNAN AYALA TOMASINO, JR., deceased Plaintiffs, vs. OUTDOOR PROMOTIONS, INC., a Colorado corporation; OUTDOOR PROMOTIONS, LLC, a Delaware limited liability company; LAMAR ADVERTISING SOUTHWEST, INC., a domestic corporation; OUTDOOR PROMOTIONS WEST, LLC, a domestic corporation; TRANSIT AMERICA LAS VEGAS, LLC, a domestic corporation; LAMAR MEDIA CORP., a domestic corporation; REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA, a political subdivision of the State of Nevada; CLARK COUNTY, a political subdivision of the State of Nevada; DOE NON-DESIGN PROFESSIONAL DEFENDANTS I through X; and ROE CORPORATIONS NON-DESIGN PROFESSIONAL DEFENDANTS XI through XX, inclusive; Defendants.	Case No: A-14-706627-C Dept No: XXVI Consolidated with: Date of Hearing: March 12, 2015 Time of Hearing: 9:30 A.M. **OMNIBUS REPLY IN SUPPORT DISMISSAL OF ALL CONSOLIDATED ACTIONS AGAINST CLARK COUNTY AND JOINDER TO REGIONAL TRANSPORTATION'S OMNIBUS REPLY**
ZAKIYA CORNER, individually; and CHADWICK COOLEY, individually and as Special Administrator of the Estate of HYONCHA COOLEY aka HYON CHA COOLEY aka HYON C. COOLEY fka HYON CHA Kim, deceased, Plaintiffs, vs.	Case No: A-14-706681-C

GARY LEE HOSEY, individually; RAKEYA REYNOLDS, individually; REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA, a political subdivision of the State of Nevada; CLARK COUNTY, a political subdivision of the State of Nevada; CITY OF LAS VEGAS, a political subdivision of the State of Nevada; OUTDOOR PROMOTIONS, INC., a foreign corporation; BUSSTOP SHELTERS OF NEVADA, INC., a Nevada corporation, dba VIACOM outdoor and/or CBS Outdoor; DOES I through X, inclusive; ROE CORPORATIONS XI through XX, inclusive; and ROE ENTITIES XXI through XXX, inclusive,

Defendants.

NICHELLE GARNER, Individually and as Special Administrator for the Estate of JOHNNI GARNER

Plaintiff,

vs.

GARY LEE HOSEY, an individual; RAKETA REYNOLDS, an individual; LAMAR MEDIA CORP., a Delaware Corporation; THE LAMAR COMPANY LLC, a Louisiana Limited Liability Company; LAMAR ADVERTISING SOUTHWEST, INC., a Nevada Domestic Corporation; TRANSIT AMERICA LAS VEGAS, LLC, a foreign limited liability company; OUTDOOR PROMOTIONS WEST, LLC, a Delaware Limited Liability Company; BUS SHELTERS OF NEVADA, INC., a Nevada Corporation; BUS SHELTERS OF NEVADA, INC. dba VIAVOM OUTDOOR; CBS OUTDOOR, INC., a foreign corporation; OUTDOOR PROMOTIONS, INC., a Colorado Corporation; OUTDOOR PROMOTIONS, LLC, a Delaware Limited Liability Company; REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA, a political subdivision of the State of Nevada; CLARK COUNTY, a political subdivision of the State of Nevada; DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive,

Defendants.

MORENA GUADALUPE TOMASINO DE HERNANDEZ, individually; and ASHLEY GANIER, as Special Administrator of the ESTATE OF GERBER HERNAN AYALA DIAZ, deceased,

Case No: A-14-706707-C

Case No: A-14-706906-C

Plaintiffs,

vs.

GARY LEE HOSEY, individually; RAKETA REYNOLDS, individually; REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA, a political subdivision of the State of Nevada; CLARK COUNTY, a political subdivision of the State of Nevada; OUTDOOR PROMOTIONS, INC., a foreign corporation; BUSTOP SHELTERS OF NEVADA, INC., a Nevada corporation, dba VIA COM OUTDOOR and/or CBS OUTDOOR; DOES I through X, inclusive; ROE CORPORATIONS XI through XX, inclusive; and ROE ENTITIES XXI through XXX, inclusive,

Defendants.

OMNIBUS REPLY IN SUPPORT DISMISSAL OF ALL CONSOLIDATED ACTIONS AGAINST CLARK COUNTY AND JOINDER TO REGIONAL TRANSPORTATION'S OMNIBUS REPLY

Date of Hearing: March 12, 2015
Time of Hearing: 9:30 A.M.

COMES NOW, Defendant CLARK COUNTY, through its attorney, STEVEN B. WOLFSON, District Attorney, by MATTHEW J. CHRISTIAN, Deputy District Attorney, and hereby files its Omnibus Reply in Support of Dismissal of All Consolidated Actions Against Clark County and Joinder to Regional Transportation's Omnibus Reply.

This matter consolidates four actions arising from the same tragic crash into a bus stop. The four sets of plaintiffs have separate counsel. Each case was in a slightly different stage at the time of consolidation. Both Clark County and the Regional Transportation Commission (RTC) have filed motions to dismiss, joinders, and replies. Although the plaintiffs have asserted somewhat different theories in opposing the motions to dismiss, and thus the County's and the RTC's papers are based on arguments that vary to a certain extent, at this stage, the County believes that all arguments are before the court. The County expects that certain plaintiffs who have not raised certain issues will be entitled to the benefit of any argument raised by another plaintiff. Similarly, the County expects that any

arguments raised against any particular plaintiff will be applied to all plaintiffs. Thus, in the interest of judicial economy, the County will not file additional points and authorities. Rather, the County hereby incorporates by reference all arguments raised in any pleading. Those arguments apply to all four sets of plaintiffs, and to ensure clarity of the record, the County has moved for dismissal, with prejudice, of all claims against it raised by any plaintiff herein.

DATED this 6th day of March, 2015.

STEVEN B. WOLFSON
DISTRICT ATTORNEY

By: /s/Matthew J. Christian
MATTHEW J. CHRISTIAN
Deputy District Attorney
State Bar No. 8024
500 South Grand Central Pkwy. 5th Floor
Las Vegas, Nevada 89155-2215
Attorney for Defendant Clark County

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Office of the Clark County District Attorney and that on this 6th day of March, 2015, I served a true and correct copy of the foregoing **OMNIBUS REPLY IN SUPPORT OF DISMISSAL OF ALL CONSOLIDATED ACTIONS AGAINST CLARK COUNTY AND JOINDER TO REGIONAL TRANSPORTATION COMMISSION'S OMNIBUS REPLY** (United States District Court Pacer System or the Eighth Judicial District Court Wiznet), by e-mailing the same to the following recipients. Service of the foregoing document by e-mail is in place of service via the United States Postal Service.

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/s/Patricia C. Villa
An Employee of the Clark County District Attorney's Office – Civil Division

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CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

ZEXIANG WANG,

Plaintiff,

vs.

OUTDOOR PROMOTIONS INC, et al.,

Defendants.

And all consolidated cases

Case No: A-14-706627-C
Dept. No.: XXXI

DECISION AND ORDER DENYING MOTIONS TO DISMISS AND JOINDERS THERETO WITHOUT PREJUDICE

This matter came on for hearing on March 12, 2015, on Clark County's Motion to Dismiss, Regional Transportation Commission of Southern Nevada's ("RTC") Motions to Dismiss, and Clark County and RTC's Joinders to the other's Motions. Present at the hearing were Christian Matthew, Esq., counsel for Defendant Clark County, Liza Velazco, Esq., counsel for Defendant RTC, David Gluth, Esq., counsel for Defendant Outdoor Promotions, Michael Talbot, Esq.,[1] counsel for Lamar Advertising Southwest Inc., Lamar Company LLC, Lamar Media Group, and Bustop Shelters of Nevada, Michael Haight, Esq., counsel for

[1] Because the instant case is a consolidated action, and stems from four different Complaints filed by different Plaintiffs, counsel for certain Defendants indicated at the time of the hearing that they were appearing only on certain of the consolidated cases. However, pursuant to EDCR 2.50, because all of the cases have been consolidated under Case no. A706627, *Zexiang Wang v. Outdoor Promotions*, the Court treats the appearance of each of the counsel at the hearing as an appearance in the instant case. However, any arguments regarding the effectiveness of service made in one case or another case before consolidation, or whether a particular party was named, are not presently before the Court. The Court is not making any finding with respect to whether an appearance in the consolidated case constitutes an appearance in all cases or any other matter not currently before the Court.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

Plaintiffs Nichelle Garner, David Thomas, Esq., and Mark Jackson, Esq., counsel for Plaintiffs Zexiang Wang and Gerber Hernan Ayala Rivera, Bradley Mainor, Esq., counsel for Plaintiff Morena Guadalupe Tomasino De Hernandez, and David Moore, Esq., counsel for Chadwick Cooley, and Zakiya Corner. The Court deferred ruling on this matter to further consider the full record of this case. After a full review of all the papers, pleadings, documents on file, oral arguments of counsel, and all applicable statutes and case law, the Court finds as follows:

Procedural History

The instant case is the result of an alleged automobile accident that occurred on September 13, 2013, at the intersection of Spring Mountain Rd. and Decatur Blvd, in Clark County, Nevada. Plaintiffs all allege that Defendant Gary Lee Hosey was driving a vehicle which left the roadway, striking several people who were waiting at or in the vicinity of a bus shelter located on the south side of Spring Mountain Rd., east of the intersection with Decatur Boulevard. Plaintiffs are comprised of some of the individuals who assert they were struck by Defendant Hosey's vehicle, as well as the heirs and estates thereof.

Because of the number of people involved in the incident, multiple complaints were filed by several different Plaintiffs as the Plaintiffs were not all represented by the same counsel. Plaintiffs Zexiang Wang, Gerber Hernan, and Ayala Rivera filed a complaint in Department XXVI under Case no. A706627, naming Defendants Outdoor Promotions, Inc., Outdoor Promotions, LLC, Lamar Advertising Southwest, Inc., The Lamar Company, LLC, Outdoor Promotions

West, LLC, Transit America Las Vegas, LLC, Lamar Media Corp, RTC, and Clark County, as well as Does and Roes.

Plaintiffs Zakiya Corner and Chadwick Cooley filed a complaint, also in Department XXVI, under Case no. A706681, naming Defendants Gary Lee Hosey, Raketa Reynolds, RTC, Clark County, Outdoor Promotions, Inc., and Bustop Shelters of Nevada, Inc., as well as Does and Roes.

Plaintiff Nichelle Garner filed her complaint in Department XXI, under Case no. A706707, naming Defendants Gary Lee Hosey, Raketa Reynolds, Lamar Media Corp., The Lamar Company, LLC, Lamar Advertising Southwest, Inc., Transit America Las Vegas, LLC, Outdoor Promotions West, LLC, Bus Shelters of Nevada, Inc., Bus Shelters of Nevada, Inc., dba Viacom Outdoor, CBS Outdoor, Inc., Outdoor Promotions, Inc., Outdoor Promotions, LLC, RTC, and Clark County, as well as Does and Roes.

Plaintiffs Morena Guadalupe Tomasino De Hernandez and Ashley Ganier filed their complaint in Department XV under Case no. A706906, naming Defendants Gary Lee Hosey, Raketa Reynolds, RTC, Clark County, Outdoor Promotions, Inc., Bustop Shelters of Nevada, Inc., as well as Does and Roes.

On November 18, 2014, a hearing was held in Department XXVI in both Case nos. A706627 and A706707, on Plaintiff Nichelle Garner's Motion to Consolidate Case no. A706707 with Case no. A706627. As the Department XXVI case was the lower-numbered case, the matter was properly before Department XXVI, which granted the Motion, and consolidated the cases under

case no. A706627. On November 24, 2014, the consolidated case was randomly reassigned to this Court, based on an attorney conflict.

On December 11, 2014, the Court heard another Motion to Consolidate, this time seeking to consolidate Case nos. A706681 and A706906 with Case no. A706627 (which, as was indicated above, had already been consolidated with Case no. A 706707). As there was no opposition to the Motion, the Court ordered the consolidation of all of the cases, which thereafter proceeded under case no. A706627. While the consolidation of the cases was being resolved, RTC and Clark County had both filed Motions to Dismiss in response to the several complaints, as well as Joinders to each other's Motions. Accordingly, after consolidating the cases, the Court also set a date for hearing on all of the pending Motions to Dismiss in all of the cases, which had been deferred as the consolidation was pending. As indicated above, that hearing was held on March 12, 2015.

The Motions to Dismiss and Joinders thereto, in response to each of the complaints, make essentially three arguments in support of dismissal. The first argument is made by only Clark County, who asserts that they are not a proper party to the case; and therefore, should be dismissed. The second is that RTC and Clark County, as governmental entities, are immune from suit based on sovereign immunity for their discretionary acts pursuant to NEV. REV. STAT. § 41.032(2). The third argument is that Plaintiffs fail to comply with NEV. REV. STAT. § 11.256 and 11.258, which requires an expert affidavit in actions involving nonresidential construction. Because the first and second arguments apply

equally to each of the Complaints, the Court shall address those arguments with respect to all of the Complaints together. Additionally, the Court furthermore finds it appropriate to do so as Defendant Clark County indicated in their reply that they expect that any arguments raised by either Clark County or RTC against any particular Plaintiff will apply equally against all Plaintiffs and in favor of each Defendant; and Clark County also concedes that any argument raised by any one Plaintiff should apply equally in favor of each Plaintiff; and all parties agreed at the time of the hearing that given the procedural posture of this case, the Court should allow all parties the benefit of the arguments of all other parties. However, because the third argument requires individual analysis with respect each of the Complaints, given they were filed separately by different counsel, the Court addresses each of the Complaints separately with respect to Defendants' arguments based on NEV. REV. STAT. § 11.256 and 11.258.

Decision

I. CLARK COUNTY'S STATUS AS A PARTY PURSUANT TO NEV. REV. STAT. § 277A

Clark County first argues that it is not a proper party pursuant to NEV. REV. STAT. § 277A, which provides for the creation of the Regional Transportation Commission in a county whose population is 700,000 or more. Clark County therefore moves to dismiss pursuant to NEV. R. CIV. P. 12(b)(5) for failure to state a claim upon which relief can be granted.

A Motion to Dismiss based on NEV. R. CIV. P. 12(b)(5) is appropriately granted when "it appears beyond a doubt that [Plaintiff] could prove no set of facts, which,

if true, would entitle it to relief." *Buzz Stew v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008). "[A]t the pleadings stage, [the Court] credit[s] the allegations of the complaint...as true." *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75.

Here, although Clark County asserts in their Motion that the Complaint is based solely on operational decisions, which are in fact the responsibility of RTC and not the County, the Court does not find a sufficient basis at this stage to dismiss Clark County based on this argument. Although the Court can take judicial notice of NEV. REV. STAT. § 277A, which does provide that the RTC is responsible for some of the actions alleged to be the basis of liability on the part of Clark County, the Court finds that utilizing the NEV. R. CIV. P. 12(b)(5) standard, each of the Complaints in the respective cases alleges basis of liability on the part of Clark County, separate and apart from those asserted to be solely the responsibility of RTC. Specifically, Plaintiffs allege liability based on the ownership of the real property where the bus shelter was located. Furthermore, although the statute provides the RTC with the authority to construct and maintain bus shelters, the statute explicitly leaves open the possibility that the RTC may delegate that responsibility to another entity. *See, e.g.,* NEV. REV. STAT. § 277A.330(2). Taking all of the allegations in the Complaint as true, as the Court is required to do, it must DENY Clark County's Motion to Dismiss without prejudice on this basis.

II. DISCRETIONARY IMMUNITY PURSUANT TO NEV. REV. STAT. § 41.032

Defendants Clark County and RTC both assert that Plaintiffs fail to state a claim pursuant to NEV. R. CIV. P. 12(b)(5) because both entities are entitled to immunity pursuant to NEV. REV. STAT. § 41.032(2), which provides:

> NRS 41.032 Acts or omissions of officers, employees and immune contractors.
>
> Except as provided in NRS 278.0233 no action may be brought under NRS 41.031 or against an immune contractor or an officer or employee of the State or any of its agencies or political subdivisions which is:
>
> 1. Based upon an act or omission of an officer, employee or immune contractor, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if the statute or regulation has not been declared invalid by a court of competent jurisdiction; or
>
> 2. Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the State or any of its agencies or political subdivisions or of any officer, employee or immune contractor of any of these, whether or not the discretion involved is abused.

In *Martinez v. Maruszczak*, 123 Nev. 433, 168 P.3d 720 (2007), the Supreme Court of Nevada adopted the two-part test set forth by the United States Supreme Court to determine whether an act is discretionary in nature. The first inquiry is whether the acts alleged to be negligent are discretionary, meaning they involve "an element of judgment or choice." The second inquiry is "whether [the] judgment is of the kind that the discretionary-function exception was designed to shield." *Martinez*, 123 Nev. at 445, 168 P. 3d at 728. In *Martinez*, the Court held that the decision to create and operate a public hospital would be the kind of decision shielded by discretionary immunity, but that "garden-variety" medical malpractice committed in a public policy would not

satisfy the second prong because the decisions regarding diagnosis and treatment would not include policy considerations.

The Court finds that, at this stage, where the pleadings must be accepted as true, that each Complaint states a claim upon which relief can be granted, and that Plaintiffs claims overcome Clark County and RTC's assertions of discretionary-function immunity. Plaintiffs do not allege that Clark County and RTC are liable under a negligence theory simply for the discretionary decision of constructing the bus shelter where an accident occurred. Rather, based on their respective pleadings, the allegations in each Complaint assert liability for the negligent implementation of that policy decision. For example, in support of their allegations, Plaintiffs cite the fact that Defendants had conducted a study regarding safety concerns based on the placement of bus stops, and therefore, were on notice of safety problems; yet failed to take action to implement safety measures that could have prevented the subject incident. Based on the allegations set forth in the various Complaints at issue here, the Court concludes that Clark County and RTC fail to show that there is no set of facts which could be proven where the two entities would not be entitled to discretionary-function immunity. Accordingly, the Motion to Dismiss is DENIED, with respect to this argument, without prejudice.

III. **AFFIDAVIT REQUIREMENTS PURUSANT TO NEV. REV. STAT. § 11.258**

NEV. REV. STAT. § 11.258 provides:

> 1. Except as otherwise provided in subsection 2, in an action involving nonresidential construction, **the attorney for the complainant shall file an affidavit with the court concurrently**

with the service of the first pleading in the action stating that the attorney:

(a) Has reviewed the facts of the case;

(b) Has consulted with an expert;

(c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and

(d) Has concluded on the basis of the review and the consultation with the expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to subsection 1 at a later time if the attorney could not consult with an expert and prepare the affidavit before filing the action without causing the action to be impaired or barred by the statute of limitations or repose, or other limitations prescribed by law. If the attorney must submit the affidavit late, the attorney shall file an affidavit concurrently with the service of the first pleading in the action stating the reason for failing to comply with subsection 1 and the attorney shall consult with an expert and file the affidavit required pursuant to subsection 1 not later than 45 days after filing the action. (emphasis added)

The RTC and Clark County allege that each of the Plaintiffs' Complaints are deficient in that they allege that each Plaintiff did not comply with this statutory provision. In order to determine whether each Plaintiff complied with the statute, the Court must base its decision on the plain, unambiguous language of the statute. *See, e.g., State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 995 P.2d 482 (2000); *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007). The Court addresses each Complaint and the arguments regarding its compliance with the statute as follows:

A. Zexiang Wang v. Outdoor Promotions, et al., A706627

Plaintiff Wang filed her Complaint on September 8, 2014. An affidavit pursuant to NEV. REV. STAT. § 11.258 was filed on October 21, 2014. The

Complaint was served on both Clark County and RTC on November 5, 2014, and the affidavits of service with respect to both Defendants indicate that the Summons, Complaint and Affidavits were all served contemporaneously on both parties. Defendants concede that the substance of the affidavit complies with the statute, but they argue that the affidavit is deficient because the affidavit was not filed at the same time as the Complaint

Based on the plain language of the statute, the Court does not agree with Defendants' contentions. As the language the Court has highlighted in the relevant section above indicates, NEV. REV. STAT. § 11.258 provides that "the attorney for the complainant shall file an affidavit with the court concurrently with the service of the first pleading in the action." Unlike NEV. REV. STAT. § 41A.071, which explicitly states that an expert affidavit in a medical malpractice action be filed with the complaint, the statute at issue here sets forth that the affidavit can be filed "concurrently with the service of the first pleading." Because the affidavit in the present case was on file at the time that each of the Defendants were served with the Complaint and the affidavit, the Court finds that Plaintiffs Wang and Rivera have complied with the statute. The Motion to Dismiss is therefore DENIED without prejudice with respect to Plaintiffs Zexiang Wang and Gerber Hernan Ayala Rivera, and the contention that they did not comply with the affidavit requirement as asserted by Defendants.

B. Zakiya Corner v. Gary Hosey, et. al., originally Case no. A706681

Plaintiffs Corner and Cooley's Complaint was filed on September 9, 2014, and the required affidavit was attached to the Complaint as a combined single

filing. Defendants assert, however, that the statutory requirements were not met, however, because Plaintiff's expert, Carl Berkowitz, failed to attach the documents upon which he relied to his report, which is required by NEV. REV. STAT. § 11.258(3)(c).

The Court does not find that this deficiency requires dismissal of the complaint for two independent reasons. First, the documents that Defendants claim should have been attached are all public records, many of which were prepared by Defendants themselves. Berkowitz listed all of the documents in his report, which are voluminous. Because the documents were public records, and because they were prepared by Defendants themselves, the Court does not find that the failure to attach the documents which were clearly identified mandates dismissal of the Complaint. Accordingly, the Motion to Dismiss is DENIED without prejudice on that basis.

Furthermore, even if the technical requirement is to be strictly enforced, the Court does not find that Defendants have shown that the requirements of NEV. REV. STAT. § 11.258 even apply to this case. Based on the fact the Motion was one for dismissal pursuant to NRCP 12(b)(5), the Court needs to take the allegations as true. Based on the pleadings presented in this Motion, Defendants have not established that this action is one to which the statute would apply based on who was sued.

NEV. REV. STAT. § 11.2565 defines an action involving nonresidential construction as an "action that: (a) Is commenced against a design professional; and (b) Involves the design, construction, manufacture, repair or landscaping of

a nonresidential building or structure..." Here, although Plaintiffs complied with the requirements of the statute, the evidence and facts presented to the Court at this early juncture, and based on who was sued, do not establish conclusively that this action is against a design professional as provided for in the statute. Furthermore, because the Complaint is asserted to be based on negligent placement and maintenance of the bus shelters, rather than negligent construction of the structures, that prong of the test at this early stage has not been shown to have been met. As Defendants have not demonstrated that these Plaintiffs were required to attach the affidavit based on their specific Complaint, Defendants' Motion to Dismiss is DENIED without prejudice with respect to Plaintiffs Zakiya Corner and Chadwick Cooley.

C. Nichelle Garner v. Gary Hosey, et al., originally case no. A706707

Plaintiff Garner filed her Complaint September 9, 2014, and the required affidavits were filed September 26, 2014. Service was made on Clark County and RTC on October 15, 2014. Defendants assert the same deficiency here, as they do with Plaintiff Wang, that the affidavit was not timely filed along with the Complaint. The Affidavits of Service indicate that the Summons and Complaint were served on both parties along with the required affidavits; and therefore, the Court finds that, for the same reasons as set forth above with respect to Plaintiff Wang, the Motion to Dismiss must be DENIED without prejudice with respect to Plaintiff Nichelle Garner and this argument.

D. Morena Guadalupe De Hernandez v. Gary Hosey, et al., originally Case no. A706906

Plaintiffs De Hernandez and Ganier filed their Complaint on September 12, 2014, and attached an affidavit pursuant to NEV. REV. STAT. § 11.258(2), which allows the attorney to file an affidavit to state a basis for not attaching the required affidavit, and then subsequently submitting an affidavit, which would otherwise be untimely, within 45 days. Plaintiff filed an affidavit 45 days later, on October 27, 2014. Defendants take issue with the affidavit, however, because the affidavit does not name Plaintiff De Hernandez, but rather states that it supports a Complaint on behalf of Plaintiffs Corner and Cooley. The Court finds that although the affidavit does not name the Plaintiff whose Complaint it was filed in support of, that the affidavit still complies because the Plaintiffs who were named were involved in the exact same incident and Defendants were on notice that the supplemental affidavit was forthcoming relating to De Hernandez, and therefore, the affidavit would apply equally to all. Had Plaintiff attempted to use an affidavit from an analogous case, the analysis would not be the same, but because it was based on the exact same incident, the Court finds that the expert could have issued an identical report changing only the names of the Plaintiffs; and therefore, the Plaintiff has complied with the statute.

Furthermore, for the reasons set forth above with respect to Plaintiffs Corner and Cooley, the Court does not find that Defendants have met their burden to show that the affidavit requirement needed to be met in this case. For these reasons, the Motion to Dismiss is DENIED without prejudice with respect to

Plaintiffs Morena Guadalupe Tomasino De Hernandez and Ashley Ganier and this argument.

ORDER

Based on the foregoing, it is hereby ORDERED, ADJUDGED, and DECREED that Defendant Clark County and Regional Transportation Commission's Motions to Dismiss, and Joinders thereto, are DENIED without prejudice, with respect to each of the Plaintiffs and their Complaints that were consolidated under Case no. A706627.

DATED this 30th day of March, 2015.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

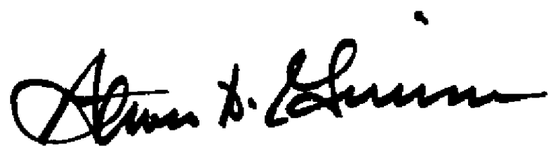
I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties, via Electronic Service, to every Attorney/Party who has signed up for Electronic Service, as required, pursuant to EDCR 8.05 and EDCR 8.12:

Tracy L Cordoba

TRACY CORDOBA
JUDICIAL EXECUTIVE ASSISTANT

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

ZEXIANG WANG, et al.,	.	CASE NO. A-706627
	.	DEPT. NO. XXXI
Plaintiffs,	.	
vs.	.	CONSOLIDATED WITH:
	.	CASE NO. A-706681
OUTDOOR PROMOTIONS, INC.,	.	CASE NO. A-706707
et al.,	.	CASE NO. A-706906
Defendants.	.	
. . . . .	.	**TRANSCRIPT OF**
And related cases/matters.		**PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

THURSDAY, MARCH 12, 2015

APPEARANCES:

FOR THE PLAINTIFFS: DAVID L. THOMAS, ESQ.
MARK JACKSON, ESQ.
DAVID MOORE, ESQ.
BRADLEY S. MAINOR, ESQ.
MICHAEL D. HAIGHT, ESQ.

FOR THE DEFENDANTS: LIZA VELAZCO, ESQ.
MATTHEW J. CHRISTIAN
DAVID T. GLUTH, ESQ.
MICHAEL E. TALBOT, ESQ.

COURT RECORDER:	TRANSCRIPTION BY:
RACHELLE HAMILTON District Court	VERBATIM DIGITAL REPORTING, LLC Englewood, CO 80110 (303) 798-0890

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, THURSDAY, MARCH 12, 2015, 10:10 A.M.

THE COURT: Then we will call pages 1 through 5, Wang versus Outdoor Promotions and all other related cases.

(Pause in the proceedings)

THE COURT: Okay. So pages 1 through 5, I'm going to just -- let's see the best way to do this. I'm going to ask you just on each case to identify yourself. We've pretty much got the same over here and different on your table.

MR. THOMAS: We'll just start here. David Thomas on behalf of Mr. Wang, Mr. Rivera, individually, and as administrator of the estate of Mr. Tomasino, Jr.

MR. JACKSON: Mark Jackson on behalf of the plaintiffs in the same case.

MR. MOORE: David Moore on behalf of plaintiffs Corner and Cooley.

MR. MAINOR: Brad Mainor on behalf of plaintiff, Hernandez and the Estate of Diaz.

THE COURT: Okay.

MR. HAIGHT: Donald Haight --

THE COURT: Oh, I'm sorry.

MR. HAIGHT: Donald Haight, Bar No. 1483, on behalf of the Garner plaintiffs in Case No. 706707.

THE COURT: Okay.

MS. VELAZCO: Good morning, Your Honor. Liza Velazco on behalf of the RTC.

MR. CHRISTIAN: Good morning, Your Honor. Matthew Christian on behalf of Clark County.

MR. TALBOT: Michael Talbot on behalf of Lamar Advertising Southwest, Inc. in the Wang case, and on behalf of Lamar Advertising Southwest, Inc. and Bustop Shelters of Nevada in the Corner Case, and the Morena Guadalupe De Hernandez case, not making any appearance in the Garner case.

MR. GLUTH: David Gluth on behalf of Outdoor Promotions, LLC in all cases.

THE COURT: Okay. So, we have lots of motions to dismiss and joinders and lots of oppositions thereto.

Okay. So it seems to me, really I need Clark County's arguments first, because it's kind of -- RTC wants to go first? I don't -- it doesn't -- the only reason why I was saying is because Clark County, you have the additional argument with regards to your role overall in these -- which was somewhat different than the combined arguments.

MR. CHRISTIAN: Well, that's true. And the County has an additional defense in that it's not a proper party under 277A, because bus stops and --

THE COURT: Or RTC.

MR. CHRISTIAN: -- the bus system in general are the RTC's. The County --

THE COURT: Before you start, I'm sorry, can I just see if I can --

MR. CHRISTIAN: Sure. Absolutely.

THE COURT: -- get a clarification in the other case, just so that I don't have parties --

(Case passed at 10:14 a.m. until 10:15 a.m.)

THE COURT: Thank you, Clark County. If -- I don't car which order it is. It just seemed to me that made a little bit more sense that I could address the Clark County arguments before I had the --

MR. CHRISTIAN: Sure, I -- I think that makes sense. And I've been involved in these matters for several years. I used to represent both the County and the RTC in the first matter that Mr. Thomas is familiar with. So I'm -- I'm familiar with all the arguments.

But again, the County does have one additional argument that it's not the proper party. And so in these matters, the RTC has taken more of a lead than the County. But nevertheless, I'm happy to get the ball rolling.

THE COURT: Okay. I was -- it seemed to be practical that the -- Clark County's isolated argument get addressed first. I rule on that, and then we go back to the combined arguments, because I think it's somewhat unique so that I don't get -- the two all aren't getting embroiled in all the other aspects; does anyone --

MR. THOMAS: Okay.

THE COURT: -- disagree with --

MR. THOMAS: We're fine with that. No, we're fine with that, Your Honor.

THE COURT: Is that -- okay.

MR. CHRISTIAN: Well, that's the most simple argument that we have.

THE COURT: That's why I'm trying to address it first, to carve it out.

MR. CHRISTIAN: We -- we really are not a proper party. The two entities are separate entities. The County does not operate the bus transportation system. It has no duty to do anything with regard to the bus system.

I mean, with that said, we've joined in all of the RTC's arguments. I think they would be applicable if the County were a proper party. But whether we are a proper party is almost a jurisdictional issue and I think it's appropriate for the Court to hear that first.

THE COURT: That's what I --

MR. CHRISTIAN: And in the other matters that are similar in nature to this one, the other Departments have been pretty consistent in recognizing that the County is a separate entity, and under 277A, that is a separate defense to the County.

THE COURT: Okay. Let me just hear on that one narrow and then we're going to get to the more substantive, because I'll -- you could probably guess; my inclination --

the reason why I'm carving this out, is my inclination is the County's argument is correct from a jurisdictional basis.

MR. THOMAS: That's fine.

THE COURT: I have more substantive concerns and questions on everything else. But --

MR. THOMAS: And, Your Honor, I didn't fully understand that argument. Are they saying that because they are in -- they have passed this over to the RTC, is what it is, they've washed their hands of it?

MR. CHRISTIAN: No, we're --

MR. THOMAS: Okay.

MR. CHRISTIAN: -- we're a separate party. We've always been a separate party. Many years past, the two parties had the same lawyer, which was me. But the way the liability pool works, they've gone their separate ways in terms of the liability pool, and so they're separate counsel. That's --

MR. THOMAS: I --

MR. CHRISTIAN: -- that's all.

THE COURT: Right. I thought his -- his question was a little bit different. It wasn't whether it's separate counsel --

MR. THOMAS: It is.

THE COURT: -- is legal arguments asserted by the County appeared to state that any issues, subject to all the

other arguments raised by the RTC, is that Clark County is a separate entity that does not have the direct oversight and responsibility of the underlying bus stops, that that has been, for lack of a better term, delegated to the RTC.

MR. CHRISTIAN: Yes. Pursuant to the statute.

MR. THOMAS: And, Your Honor, our position on that is that they still own the land on which the bus stop is located. And assuming that they don't have immunity, they have the same responsibilities as to any landowner that contracts out for a different -- for lack of a better term.

We've alleged -- and this is a 12(b)(5) motion --

THE COURT: Right.

MR. THOMAS: -- that they knew -- that they knew these accidents were happening. That the accidents were foreseeable. And under Nevada law, Your Honor, they had a duty to do something to protect these people sitting up there, at the bus shelters.

You can't -- basically, you can't delegate your responsibilities as a landowner to some other defendant, whether you're the government or not, Your Honor, and that would be our response -- our response to that argument.

THE COURT: Okay.

MR. HAIGHT: Your Honor, Mr. Haight on behalf of Garner. The RTC didn't come into existence until July 1st '09. Prior to that, Clark County, through the Regional

Transportation Commission, operated the public transit system. Our office made a public record request to the RTC for information on the bus stop, and was advised by the RTC, we have no information. That bus stop was built during the reign of Clark County.

It's our position that we are alleging acts and negligence that was committed by Clark County prior to July 1st '09. We fully agree that Clark County and the RTC are separate entities.

We're suing Clark County for what they did prior to July 1st, '09, and we're suing the RTC for what they did after July 1st, '09. We think that because the Complaint alleges that Clark County committed negligent acts in the positioning of this bus stop which the RTC says was done by Clark County is sufficient to defeat a Motion for Summary Judgment.

THE COURT: Okay. Any other arguments from plaintiffs' table?

MR. THOMAS: No, thank you, Your Honor. No, thank you.

MR. CHRISTIAN: The gist of this action is that a crash occurred after 2009, and that something should have been done to prevent that crash or to protect the plaintiffs.

The pleadings are varying, meaning, there's lots of different allegations. But the gist of the action is that

the government should have done something on that day, or before that day, somewhat before that day, to move the bus stop, place it somewhere differently, make it stronger, make it more protective. Those are the types of things that the RTC has been delegated the responsibility for.

So, I mean, I appreciate the arguments. We've joined in the RTC's arguments. I believe the County is immune. I believe the Public Duty Doctrine applies regardless of which government entity we're talking about. But I think it's important to note that the gist of this action is regarding this bus stop on the date that it happened.

THE COURT: Okay. Thank you. I think the Court does need to deal with these in their entirety and not carve out Clark County.

So, I just needed to know if there was kind of a little bit clarity, but in light of the arguments, so now I think you're deferring to RTC first, and then you want to come back up to joinders, or?

MR. CHRISTIAN: Well, I think it's fair; sure.

MS. VELAZCO: That's fine. Your Honor, I know you've been briefed with a lot of motions in opposition, so I'll just kind of try to bring out the gist of what the RTC's arguments are. They're fairly similar anyways in addressing the plaintiffs' various --

THE COURT: Um-hum.

MS. VELAZCO: -- Complaints and oppositions.

This all boils down to a legal issue. And the RTC and we agree that the County are immune under the Discretionary Act exception for its decisions, even if some of the plaintiffs use the word "operation" that doesn't necessarily mean that what the RTC's decision -- that that's what the RTC's decisions were.

Based on the case law that we provided, operational decisions pertain to day-to-day administrative obedient tasks where there are prescribed courses of action and there's no room for judgment. RTC's decisions and what all the plaintiffs are critical of pertain to discretionary decisions, making judgment calls in furtherance of public policy.

And even taking discretionary (indecipherable) aside, there's also another prong of that statute. It's 41.0321, which is the exercise of due care exception. And all plaintiffs are critical that the RTC and the County failed to exercise due care. So within that exception alone, immunity applies.

The County also raised the argument about there being -- there not being a legal duty on behalf of whichever governmental entity we're talking about. There is the Public Duty Doctrine that we raised in -- in our motions. And there

simply is no legal duty on -- on the government's -- on the RTC's and the Clark County's position.

And those are the main points that I just wanted to address, and I'd be happy to respond to any questions that Your Honor may have, or after they've had a chance to -- to oppose.

THE COURT: Okay. First off, you've got joinders, and I'm going to ask -- you know, I don't really have joinders, they're -- because -- right? You all don't --

MR. CHRISTIAN: Well, I don't know (indecipherable).

MR. TALBOT: That's right. No -- no joinder, Your Honor.

MR. GLUTH: We haven't joined.

THE COURT: Okay.

MR. CHRISTIAN: I would reiterate those points, Your Honor. The discretionary immunity and the Public Duty Doctrine, I think, are very closely related. They really get to the heart of the pleadings. The pleadings allege a generalized breach of -- a generalized duty of care, no matter how -- which words, which plaintiffs use, they're varying.

But the heart of the matter is that they're alleging there was a generalized duty to protect against drunk drivers leaving the roadway and running into the

sidewalk and into bus stops. The Public Duty Doctrine is there to assure that the government isn't responsible for those sorts of generalized duties or breaches thereof that are alleged in this case.

We don't know that there is a drunk driver that's coming on a particular date at a particular time into a particular bus stop. There's no special relationship with this particular -- or with these particular plaintiffs. They were victims of a very tragic but very random act.

In order for there to be a duty, especially one against the government, there needs to have been some more specific relationship formed between the plaintiff and the government, and that's what the Public Duty Doctrine is all about.

And the discretionary act immunity, I think when the -- when we read the cases, the concepts that are explored there are basically the same, because under the -- under the discretionary immunity doctrine, the heart of that is second guessing -- judicial second guessing of what the government was doing in terms of trying to protect the public.

So if there's any balancing that has to be done in terms of social, economic or political considerations, then there's immunity for that, and that's, again, the heart of what they're -- what they're alleging here, that there is a generalized failure on the part of the RTC or the County to

have done something about a drunk driver. So under either one of those theories which I think, again, are related, you know, these claims are not actionable.

Now, if I maybe just can briefly address premises liability, because that's sort of a new theory that Mr. Thomas has raised.

And again, you know, we give plaintiffs credit for doing everything they can for their clients to come up with new theories.

The premises liability theory is new. But it sort of fails for the same reasons, Your Honor, because -- and -- oh, I'm sorry, are they coming back?

THE COURT: Is that for one of you all?

MR. CHRISTIAN: Sorry.

THE COURT: We don't interrupt the middle of a court proceeding.

(Pause in the proceedings)

THE COURT: Sorry.

MR. CHRISTIAN: Oh, that's no problem, Your Honor.

So, premises liability, again, a new theory. But the government, unlike private entities, has immunity from premises liability, as well.

There has to be an actual known hazard, not a generalized hazard. It has to be a hazard that the government knows to exist, that's very specific.

So it's -- it's like the -- is it Chastain or the other case, it's sand in the sandbox at the school district. The school district knows that on occasion there's glass that gets into the sandbox, but it doesn't know on the date in question where the particular plaintiff got injured that there was glass in the sandbox. And so that's the exact same thing that's happening here.

Of course the RTC and the County and everybody knows that on occasion drunk drivers leave the roadway and plow into sidewalks, or run red lights, or run into bus stops or run into buildings. We all know that. But we don't know that on this day, this particular bus stop, this particular time, there's going to be an event like this. And so immunity --

THE COURT: But how do I deal with that?

MR. CHRISTIAN: -- applies in that regard.

THE COURT: Okay. I've got two questions. One; are you no longer arguing your affidavit argument, or are you just kind of going with the two other ones first?

MR. CHRISTIAN: Well, again, the affidavit argument, I think, is out there. It depends on which plaintiff you're talking about.

THE COURT: Different plaintiffs, different rules, yeah.

MR. CHRISTIAN: It's all over the place. From my

perspective, I think there is some real problems with the way the affidavits have been handled. And again, that's a jurisdictional issue, too, because if they haven't been done right, the Complaints are void ab initio.

But my focus has really been on the merits. One way or the other, no matter what the affidavits say, and no matter what -- when they were filed or whether they comply with the statute or whether they're really getting a design defects, it still is going to be that the immunity applies and that the Public Duty Doctrine applies.

MS. VELAZCO: I'm sorry, Your Honor. I have the same position as the County.

THE COURT: Okay.

MR. HAIGHT: Your Honor, if I may address the affidavit requirement?

THE COURT: Can we -- can we get there in just a second? I've got to get all of one side, then we'll let you argue yours; okay?

MR. HAIGHT: I just think that --

THE COURT: I -- cool it one second --

MR. HAIGHT: -- if I argue the affidavit --

THE COURT: -- until I --

MR. HAIGHT: -- we can lay that matter to rest.

THE COURT: Okay. Let's -- I've got to -- you all have a lot of different arguments, and I appreciate a lot of

breadth and depth of experience, but I need to kind of keep it from a management standpoint.

Okay. The other question the Court has is, this is a 12(b)(5) --

MR. CHRISTIAN: Yes.

THE COURT: -- versus a summary judgment, and the Court is not inclined sua sponte to turn it into a summary judgment because I don't have all the affidavits in anyway.

Isn't a lot of the arguments are fact specific? And under -- I'll take the most recent SFR decision, but you can go through any decision you want to. And I've got to deem all the facts of the pleadings as true, and a lot of the nuances that are being phrased are more appropriate for pleadings down the road than necessarily a 12(b)(5) standard?

MR. CHRISTIAN: I think no matter what Complaint the Court is looking at, the gist of the matter is that the plaintiffs are alleging a duty to protect against a drunk driver, by doing any one of many various things that are pled, but the duty is a duty to protect against drunk drivers.

And whether or not that is actionable under the Public Duty Doctrine or under the immunity statutes is always going to be a matter of law. It's always going to be a matter of law. There are no other facts that can be explored that are going to overcome those legal arguments, because at

the end of the day, this was a public bus stop. It was a public sidewalk and it was a drunk driver who slammed into it.

THE COURT: Okay. Thank you. Anything else from RTC? If not, I'm going to go to plaintiffs, because you'll have the last opportunity to response.

MS. VELAZCO: Well, Your Honor, I just wanted to kind of tack on that -- and just raise the Van Ermen case, too, that, you know, as a municipality, they weren't -- there was a similar issue in that there was a speeding driver that ultimately caused an injury, but it had to do with the traffic control.

And the municipality was -- was sued, but was not held liable on a legal issue. They were immune. And so I would pretty much just jumping on the same argument, that it's all legal issues.

THE COURT: Okay. I appreciate it. Thank you. Okay. So whichever order you all have decided among yourselves, and whoever is speaking first; you're each going to get your chance, so.

MR. HAIGHT: I would like to address the affidavit issue first, Your Honor.

THE COURT: Sure. And just -- as much as I know each counsel and your respective cases, just so we have a clean record, depending on different people may have

different needs down the road, at least from -- can you just kind of say on behalf of which plaintiff? Thanks.

MR. HAIGHT: Donald Haight, on behalf of the Garner plaintiffs.

THE COURT: Sure. Go ahead, counsel.

MR. HAIGHT: Essentially, Chapter 11 of the NRS makes special provisions similar to malpractice cases for design professionals. A design professional is defined as a person who holds a certain license.

Now, what everyone else in this case has overlooked is, NRS has a definition chapter, Chapter Zero. And Chapter 0.039 defines person. And it defines person as a natural person, or a business entity.

But it then goes on to say, the term does not include a government agency, a government, or a political subdivision of the state. So, by definition, Clark County and RTC cannot be a person. Since they're not a person, they are not a design professional as defined by 11.2565.

Essentially, the RTC and Clark County have gone through this unique argument that because in Otak, LLC the Supreme Court didn't quibble about whether an LLC was a person, then you, Your Honor, should not quibble over whether a governmental agency is a person.

Well, what the Otak court did, is they correctly defined or applied the definition of a person; that a person

is a business entity, which includes an LLC. So Otak fit under the definition of a person.

However, there is absolutely no basis based on NRS 0.039 to find that Clark County or the RTC qualify as persons who are design professionals.

And I think that argument, in and of itself, throws out all of this nonsense about design professionals and we don't have to get into the varying arguments between -- of each of the four individual cases as to whether or not we've complied with it. We never had a duty to comply with it.

Clark County and RTC are not design professionals because they are not a person. They're specifically prohibited from being persons.

THE COURT: Thank you. Okay. Please, next, on whichever other argument?

MR. THOMAS: Your Honor, David Thomas on behalf of the Wang plaintiffs. Your Honor, we would -- we would join in that argument to begin with. But I'm going to kind of skip to what seems to be the primary argument which is the immunity argument.

I'll follow up a little bit with 11.258, because we specifically did not plead what they had prevailed on before. We stayed away from that just so we wouldn't have to deal with this, and still provided affidavits in compliance with the rules to make sure we wouldn't have to deal with that

argument and we're still here.

But, Your Honor, in terms of immunity, I'm assuming that that is the primary issue here, because they haven't discussed the fact that we didn't plead everything appropriately. They haven't discussed the fact in terms of accepting what we pled is true, that they had actual knowledge of the dangers that were at these bus shelters, actual knowledge of the danger that was at this particular bus shelter, a fact that they have to accept as true.

We have pled that. We have pled negligence. We have pled a duty to protect under Nevada case law, that every single landowner has, that every single land occupier has. Clark County is a landowner, RTC is a land occupier, the other defendants are occupiers. They all have interest in these shelters.

And, Your Honor, but I -- I think what's very, very important in terms of immunity is that this is a 12(b)(5) motion. And they have simply come in here and told you, you have to accept what we say is true, that this is a policy argument, without presenting one affidavit, without telling us who made the policy, when it was made. I don't even know what the policy is. They just come in here and told you it's policy; that's it.

Your Honor, we'd like to find out what the policy is. We have been involved in other cases. We've been

involved in other cases -- and let me just back -- usually the way these contracts work is that they have no economic risk. They give it all to the other defendants.

Now, I don't know if that's the case in this case, but they give everything to these private people over here, and they sit back and take a portion of the advertising. So when they say that there's an economic consideration here, I'd like to find that out. I'd like to know, what is the economic consideration.

We have cited cases that basically say -- Ninth Circuit cases, that you have to present some evidence. Every case we cited was not a motion to dismiss. Every case we cited discussed the fact that they have the burden to show that there was policy.

Next, Your Honor, in addition to the fact that they have not met that burden, I'd like to reference Martinez, which has defined both of the statutes that's been referenced today.

And under Martinez, "The purpose of Nevada's waiver of sovereign immunity is to compensate victims of government negligence in circumstances like those in which victims of private negligence would be compensated." That is a direct quote.

The position they have taken in this and every other case is the opposite of that. It is basically, they

are narrowing the victims of public negligence. They are taking away the victims of their negligence, making it smaller, saying, you cannot sue us. And, Your Honor, that is the opposite of what Martinez says.

I also want to point out a couple of other problems. The RTC references or implies, at least, that the only case law in Martinez dealt with medical malpractice. That's not true, Your Honor.

And in one of the footnotes, Your Honor, Mahan is cited, relied upon by the Nevada Supreme Court, Mahan Services, that was the state supplying a defective hoist to a plaintiff; no immunity there.

Another case was Barner vs. Leeds, that was the state supplying a public defender for a bank robber; no immunity there. Then there was Peterson vs. State where the State failed to protect the plaintiff from a psychiatric patient driving a car, just like we're alleging here; no immunity there.

And, Your Honor, one of the malpractice cases specifically says that the failure to warn is a day-to-day decision. And that's what we're arguing here, Your Honor. And again, this is Martinez. This isn't me saying it, this is what the State Supreme Court has stated.

Next, Your Honor, we would, again, like to find out what the policy is. And I just want to give you just a

hypothetical. In addition to the fact that, what if they have no economic risk? What if it is all with the private people that they've hired?

I'll give you another one. What if the policy is, we don't like poor people. And we don't care if a few of them get wiped out at the bus shelters. There's no evidences of that, but there's as much evidence as to that, as that there's evidence that there was an economic consideration here, or a public -- excuse me -- a safety consideration here, or a political consideration here. We have no evidence as to what the public policy was.

Finally, Your Honor, I do want to discuss just very, very quickly, the Public Duty Doctrine. Your Honor, the statute specifically says that applies to firemen and policemen. It says that.

If we look at the plain meaning of it, it is not applied to RTC or County. It's for firemen and policemen. And, Your Honor, there's one case that we found that I believe they cited, which was Coty, that actually defined when it even applies to firemen and policemen.

And I'm just going to read a quote for me -- again, this is a direct quote where the Public Duty Doctrine did not apply to a policeman. It shouldn't apply under any circumstances. But here the Supreme Court said, "In Eaton (phonetic) the trooper failed to take any precautionary

measures after being at the scene of a known hazardous condition for over an hour. Thus, the trooper may have affirmatively caused the harm as contemplated by the Public Duty Statute." That's what we've alleged. They had a known hazard and they failed to do anything. As such, they caused this. And in a 12(b)(5) motion, Your Honor, I don't see that the Public Duty Doctrine applies either.

Finally, Your Honor, I do want to address the affidavits and the reports, just very, very quickly. Your Honor, we specifically alleged our Complaint in a way that we don't believe they designed it, we don't believe they built it, any of these defendants. We said, they owned and operated it. That being the case, as Mr. Haight pointed out, since these only -- NRS 11.258 only applies to design professionals for design professional negligence, we specifically haven't alleged that against them. We don't think any of them did any of those things in 11.258.

We even alleged in our Doe and Roe Corporation -- and this is something else that the RTC's motion kind of misled the Court on. They said that we alleged Doe and Roe Manufacturers. We alleged Doe and Roe non-design professional manufactures. So, 11.258 cannot be applied in any way, shape or form.

So why did they leave out those two words "non-design professional"? Because they can't win if it does not

involve a design professional. Even with that, Your Honor, we filed the Complaint. Otak and the statute says, you have to serve the affidavit -- excuse me -- you have to file the affidavits, file the reports before or -- I'm sorry, concurrently with service of the Complaint.

This isn't a medical malpractice where it has to be filed with. We filed the Complaint. We filed the affidavits and the -- and the reports, and then we served the affidavits and reports to every defendant, along with the Complaint. We completely, completely complied with that statute.

Finally, Your Honor, the purpose of NRS 11.258 -- because the County raised this. The County basically said that the purpose of 11.258 is to let the defendants know what they did wrong, and that's simply not true, Your Honor.

And I'm going to read a quote to you from -- from Otak which says what the purpose is. "The purpose of 11.258 is to ensure that such actions" -- professional negligence against design professionals -- "that such actions be brought in good faith based upon competent expert testimony."

Your Honor, we provided two experts, two reports. We told them that there are thousands of documents that we can't give to you now because of this other case where there's a confidentiality agreement. Outdoor Promotions can't give them to us, because they're subject to the same confidentiality agreement and we have to come down here and

ask for a court order, which I think is going to be simple.

But at the time we were filing this, we couldn't provide them, Outdoor Promotions couldn't provide them, and we couldn't get them from Outdoor Promotions, because there was no litigation.

So we did what we could do. And I'd ask you to look at 11.2584, which says, we don't have to give conclusions. We don't have to give the basis for the conclusions or the documents relied upon if they're not available to us. And we -- and as long as I put in an affidavit, which I did.

So first of all, Your Honor, the statute doesn't apply, at least to our Complaint. Next, Your Honor, we complied with the statute. And to the extent that we didn't comply with the conclusion and everything else, the statute says we didn't have to, because the documents were not available to us. Thank you very much.

THE COURT: Thank you.

MR. MOORE: David Moore on behalf of Corner and Cooley. I just join all the plaintiffs' arguments. I think it's been well briefed on this issue. And if I could ask permission to step out, I have -- I'm kind of doubled booked. I appreciate that.

THE COURT: Okay. Thank you.

MR. MAINOR: Brad Mainor for Hernandez. I just

have -- I also join the arguments that have been made. I just have a few things to add or highlight.

Nevada is a little bit different than a lot of these cases that have been cited around the country. Nevada has a special two-prong test, and I think that's very important, because this isn't just discretion alone. And I would -- I would submit, on behalf of Hernandez, that even if there was discretion, that's not the standard, was there discretion. The standard is, was there discretion alone?

And it's very clear that there are statutes that mandate these tasks. So there is not discretion alone. Discretion is very broad. It can be -- they could make that argument in every single case; do we have discretion? Well, yeah, we have discretion, because we made the decision.

Well, that could be made in every case. But this case, there was -- even if -- even if there is discretion, there wasn't discretion alone, because there's specific statutes. NRS 277A, NRS 278, which mandates that they create these -- these structures.

And so I would just -- I would just say that the two-prong test fails here for them. And, you know, if you -- in the Martinez case, and I quote, "The legislative purpose in mind, our task becomes easier. In a close case, we must favor a waiver of immunity and accommodate the legislative scheme. Only when we conclude that discretion alone is

involved may we find immunity from suit."

That is not the case here. There was more than just discretion alone. But let's -- let's assume arguendo that it was discretionary alone, which -- which we believe it is not -- how in the world to we get past the cases that we cited; Crucil, Pardini, Herrigan, and State v. Webster (phonetic) which was -- were totally ignored in the opposition. They address Rose, but these cases were ignored in the opposition because they -- they can't get around the proposition that when the Supreme Court holds that even if the state and its agencies make an initial discretionary decision about a highway, parking lot, freeway or other design, it undertakes a duty of care to maintain it and take measures to make it reasonably safe for the people around it.

In all of these cases that are cited, these exact same arguments can be made. In the Crucil (phonetic) case, a stop sign fell down and someone was injured when they ran into it. Well, same kind of argument could be made. Well, this was discretionary, we should be immune. And the state -- and the Supreme Court of Nevada said, no, wait a second. Once you undertake a decision like this, then you must -- you have a duty to maintain it and make sure it's safe for people.

In the Pardini (phonetic) case, there was a raised street; okay? And a car went off the raised street. And the

argument was, he should have put a barrier up if you're going to have a raised street. They could have made the same argument in that case; well, that's an economic decision. That's going to -- we made the decision not to put a barrier up because that's going to cost the state money.

Same kind of argument could have been made. They didn't put a barrier up in that case. And the Supreme Court of Nevada said, no, wait a second. You're not getting out of this one, because you need -- once you -- once you create that highway you need to make sure that it's safe, and you need to maintain it as such.

Same thing in Harrigan (phonetic). Wind blew over a person that was on a raised parking lot. The government entity created this parking lot. Someone was injured on it. And the Supreme Court says, you can't get out of this by immunity just -- just by saying this was a discretionary decision. You've got to make sure that there's safety devices in place.

And in State v. Webster, the government refused to install a cattle guard, same -- same kind of facts in all these cases where someone was injured. They could have argued, well, this was a -- this was a policy decision. This was an economic decision.

In this bus stop case, there are things that could have been -- barriers that could have been put in place, just

like a cattle guard or a barrier on a parking lot, that could have made this safer, and they knew by their own admission that this was a safety concern.

And with that, on the affidavit, I reserve the right to argue where there's specific arguments against my client on the affidavit requirement. We join the -- the argument that it's not required, however, if it is, we feel like we've -- we've complied with that -- that requirement.

THE COURT: Okay. Thank you.

MR. HAIGHT: Again, for the record, Mr. Haight on behalf of the Garner plaintiffs.

First of all, addressing -- addressing the Chapter 277A argument that somehow that relieves Clark County of all responsibility for actions that occurred prior to July 1st, 2009, there has been no affidavit, there's been nothing that says that the RTC has assumed all liabilities of Clark County arising prior to July 1st 2009. And, in fact, the RTC specifically declined to join Clark County in that argument, that they were solely responsible for this mess.

Second of all, again, with design professional, I've stated my argument that it doesn't apply at all. But we have complied with the requirements. And again, the problem with the RTC and Clark County is that they haven't read the statute in -- in its -- in full.

There are two different affidavit methods of

complying with the statute. One is if the documents are available, the other is if the documents are not available. We set forth in our affidavit why the documents were not available, that the RTC had failed to respond to our Freedom of -- or not Freedom of Information, excuse me -- our public record request for the 2008 report. Because they had not complied with the request for records, we did not have the records to provide to our expert.

So we did the abbreviated affidavit that stated all the reasons why we couldn't have the records. And our expert did the abbreviated affidavit which, according to the statute, he's not required to list all the documents that he examined, because he didn't have any to examine. And he's not required to list all his -- his curricula vitae. All he has to do is state that there's a reasonable basis for suit.

Again, we have complied with 11.25. And if Clark County and the RTC would take the time to read the statute and then look at the affidavits that have been provided by the -- the plaintiffs, they wouldn't be making these fallacious arguments that we have not complied with the statute that was totally unnecessary.

As far as discretionary immunity goes, the RTC has made an almost incomprehensible argument that somehow they are protected by 41.032(1), which provides that an officer, employee or immune contractor exercising due care in

execution of a statute or regulation is immune.

Well, first of all, RTC and Clark County are not officers, employees or immune contractors. Second of all, we allege that they did not exercise due care. That fact must be taken as true. Therefore, that fact alone in our Complaint is enough to defeat the motion for summary -- or not summary judgment -- the motion to dismiss on section (1) of 41.032.

We then turn to Martin v. Maruszczak (sic). Clark County and the RTC seem to take the position that this decision somehow changed the law in the State of Nevada. That is not the case. What the Supreme Court did in Martinez was they said, you know, there's been some confusion as to what constitutes a discretionary function, and in order to clear up that confusion we're going to adopt a new case.

They didn't overrule any prior decision dealing with discretionary immunity. All those prior decisions are still applicable. And Garner would submit that if you apply the new test as expounded in Martinez to each of these prior cases, those cases would -- would find that there was no immunity. It's, again, just simply a new test.

As indicated by Mr. Mainor, it's a two-prong test. Both Mr. Mainor and I have argued that Clark County and RTC has not met the first prong of the test, because they were required by the Nevada Revised Statutes to provide safe bus

stops. They did not do that.

So as far as we're concerned, at that point, that's as far as you need to go to find that discretionary immunity does not apply to them.

Mr. Christian misstated; we're not saying that they had to -- had a duty to protect our clients from drunk drivers. We're saying they had a duty to provide safe bus stops. And therefore, this allegation that they have some reason under Chastain and Nardozzi (phonetic) to say that they didn't have any knowledge of this, is somewhat amusing.

I didn't ever think I'd have a chance to say this, Your Honor, but I'm very familiar with the Chastain and the Nardozzi cases. I argued both of those before the Nevada Supreme Court. And these are not the type of situations that we're dealing with here.

We have a report done in 2008 by the RTC that says, we've got 1000 dangerous bus stops. Now, they're saying, we aren't on notice that there's something wrong with our bus stops? You know, I find that disingenuous.

The second element of the Martinez test, if we get to that point -- and I don't believe we have to -- is whether the choice is of a kind that the discretionary function test was designed to shield the government from liability.

Now, what the arguments that have made -- been made by RTC and Clark County is, is that they haven't done

anything about these bus stops, because it would be economic, they'd have to spend a lot of money, they'd have to condemn property.

Well, both of those reasons have been rejected by the Ninth Circuit as grounds for imposing the discretionary function test. In O'Toole (phonetic) they specifically rejected economic concerns, budgetary inadequacies, allocating funds between different projects --

THE COURT: Counsel, I hate to -- because I'm trying to give everyone their fair time -- I did say -- remember, a total of 45 minutes you all agreed on. And some people are taking more than their share, and I've got, as you know, one other matter. And if you all had wanted more time, please, in the future, set it up as a special setting. So, I'll let you give another minute or two. I'm going to limit you to like --

MR. HAIGHT: Okay.

THE COURT: -- a few moment response, and then I'm going to -- I have to defer this anyway, honestly, because each of your unique arguments I have to flesh out with regards to writing a ruling that is fair to each of these. So, just to tell you, you're not getting it from the bench today anyway. Thank you, counsel.

MR. HAIGHT: O'Toole says economic is not a discretionary function. The Wiznet case says that health and

safety is not the type of decision that is prone to the discretionary function test. Those two cases alone throw out discretionary immunity in this case.

Their legal duty case, as Mr. Thomas indicated, is based on a statute that applies to policemen and firemen. They also rely on the Reno v. Van Ermen case. That case involved a passenger in a vehicle. And the driver of the car was traveling 70 or 80 miles an hour and he ran into a barricade. And the Supreme Court in that case found that that was an intervening cause.

I would point the Court instead to the Drummond v. Mid-West Growers case in which a person with a car that knew he had a faulty battery stalled and he was now in the middle of the road. A plaintiff came to his aid to try to push him out of the road. A drunk driver came along, and tried to -- and ran over the plaintiff. The Supreme Court said that both the battery -- the driver of the vehicle with the faulty battery and the drunk driver were responsible jointly.

Finally, there's one item that hasn't been addressed and that's their strict liability claim. They claim that strict liability is not something that can be raised against a government agency. Again, the problem is, is that they haven't bothered reading the statute. NRS 41.031 says, "The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its

liability determined in accordance with the same rules of laws as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038." It then goes on to waive sovereign immunity for political subdivisions of the state in the same language.

I would challenge both RTC and Clark County to come up with anywhere in Chapter 41, where it says, strict liability isn't covered.

THE COURT: Thank you. Okay. Here's what I'm going to do. Real brief response, because you all had a full chance. I mean, I've got excellent briefing here. And I appreciate you all (indecipherable) some aspects of it.

MR. CHRISTIAN: My only brief comment, Your Honor, would be is the gist of every one of these four Complaints is what we've just heard from Mr. Haight. There needs to have been a duty on the part of the government to have made bus stops generally in Las Vegas safe enough to have prevented this accident. That's what the duty is that they need to establish as a matter of law. That the government had a duty to make all the bus stops in Las Vegas safe enough to prevent this accident. And I would submit under the Public Duty Doctrine, the law of immunity, the law of premises liability as against the government, that that duty fails under any one of those three theories.

And in terms of the design professionals affidavit,

that fits into place here, because what they're alleging is that the design was -- was insufficient for that purpose. That somebody in the government should have designed these bus stops differently.

So the statute applies, as well, but my main focus is on the legal obligation of the plaintiffs to assert an actionable duty, and they can't.

THE COURT: RTC, any last -- final?

MS. VELAZCO: Yes, Your Honor, very briefly. I join in everything that the County said, but I'd also like to add that, you know, the bus shelter in and of itself is not inherently dangerous. It's not what caused any of the injury. We are forgetting the fact that there was this drunk driver that decided to be intoxicated at that moment and crash into the shelter. We're forgetting that intervening and actual and proximate cause.

Also, plaintiffs talk about having actual knowledge of a known hazard at this shelter, but the actual knowledge then they're referring to is have other incidents at other shelters, not necessarily this particular shelter. And how is that different than the hazard of drunk drivers running, you know, running through a red light or running through crosswalks and injuring people that way? And I would just submit to Your Honor our arguments in the briefs.

THE COURT: Thank you so very much. I appreciate

the excellent brief and appreciate the excellent arguments giving you all, gosh, almost an hour to argue it. The Court as it's noted a moment ago does have to defer because as you can probably appreciate, each of these Complaints are different. This is a motion to dismiss. It has -- it's on the Complaints, and each of your respective Complaints.

So I'm going to not promise this Friday, because it's not going to happen by tomorrow. I'm probably putting this two weeks out; okay? Is there something that I should be cognizant of from a date deadline, meaning, do you all have a settlement conference? Do you have something set up that it makes a difference if it's on next week's Friday chamber calendar --

MR. THOMAS: I don't think it's anything --

THE COURT: -- versus another week?

MR. THOMAS: I don't think there's anything that makes a difference. We've all agreed -- we haven't had a 16.1 only because --

THE COURT: That's okay.

MR. THOMAS: -- that's the only thing.

THE COURT: And that --

MR. THOMAS: But we've all agreed to push it out.

THE COURT: And that's fine. And let's put it this way; if Commissioner Bulla has a question, send her my way, because if it's waiting for a decision from me send her my

way; okay?

MS. VELAZCO: Thank you, Your Honor.

MR. JACKSON: Thank you, Your Honor.

THE COURT: I appreciate it. Thanks very much.

MR. THOMAS: Thank you, Your Honor.

THE COURT: Thank you so much again for the excellent argument.

(Proceeding concluded at 10:14 a.m.)

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

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