

# **EXHIBIT A**

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AMERICAN ARBITRATION ASSOCIATION

RENEE ZINSKY,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	
ARIAS AGENCIES, ET AL.,	)	Case No.
	)	01-22-0004-0849
Respondent,	)	
	)	
vs.	)	
	)	
AMERICAN INCOME LIFE	)	
INSURANCE COMPANY,	)	
	)	
Respondent.	)	

BEFORE: ARBITRATOR CAROLE KATZ  
          ARBITRATOR MELVIN VATZ  
          ARBITRATOR STEPHEN JORDAN

March 4, 2024  
9:42 a.m.

CONFIDENTIAL TRANSCRIPT OF PROCEEDINGS

Reported By:

Maria M. Siatkowski  
Certified Diplomate Reporter  
Certified Realtime Reporter  
Certified Realtime Captioner  
Job No.: 8845

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1 APPEARANCES:

2 For the Claimant:

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4 phone):

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BY: JANICE SAVINIS, ESQUIRE

5 BY: MICHAEL GALLUCCI, ESQUIRE

BY: AMY WILLIAMSON, ESQUIRE

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14 For the Respondent American Income Life  
Insurance Company:

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King and Spalding LLP

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BY: JAMES A. UNGER, ESQUIRE

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20 ALSO PRESENT:

Corey Herrick

21 Simon Arias

Rebecca Regniere - (via phone)

22

23

24

25

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

2 ARBITRATOR KATZ: Would you  
3 please, on the phone, state your names again,  
4 slower, so the court reporter can get it down?

5 ATTORNEY KANE: John Kane,  
6 K-A-N-E.

7 ATTORNEY SAVINIS: Janice  
8 Savinis, S-A-V-I-N-I-S.

9 ATTORNEY GALLUCCI: Mike  
10 Gallucci, G-A-L-L-U-C-C-I.

11 ATTORNEY WILLIAMSON: Amy  
12 Williamson, W-I-L-L-I-A-M-S-O-N.

13 ARBITRATOR KATZ: Okay. And  
14 Respondents counsel, would you please enter  
15 your appearances and you can go in whatever  
16 order you choose.

17 ATTORNEY HAMMER: For  
18 Respondent, American Income Life Insurance  
19 Company, Jeffrey Hammer, and Anne Dana and  
20 James Unger. And as a representative for  
21 American Income Life Insurance Company,  
22 Corey Herrick is present as well.

23 ARBITRATOR KATZ: And how do  
24 you spell your --

25 ATTORNEY HERRICK: It's

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1 H-E-R-R-I-C-K.

2 ARBITRATOR KATZ: And Corey is  
3 C-O-R-E-Y?

4 ATTORNEY HERRICK: Correct.

5 ARBITRATOR KATZ: Okay.

6 ATTORNEY NOVAK: For Arias  
7 Agencies, Jean Novak, Erica Laughlin, and  
8 corporate representative, Simon Arias.

9 ARBITRATOR KATZ: Claimants  
10 counsel, is Claimant present with you?

11 ATTORNEY KANE: No.

12 ARBITRATOR KATZ: Okay. We,  
13 you know, received the E-mail communication  
14 last night. Actually, I saw it this morning,  
15 and we have some questions about it. If, you  
16 know, on behalf of Claimant you choose not to  
17 move forward at all, that is, I suppose, your  
18 client's decision.

19 But the E-mail is, basically, among  
20 other things, says that there's a protective  
21 order in the Federal Court that are -- by  
22 signing the subpoena, the Russin subpoena, we  
23 would be putting Claimant in a position of  
24 violating.

25 The protective order is publicly

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1 filed and we're just confused on why Claimant's  
2 position is that that would -- that the  
3 protective order is implicated in the subpoena  
4 that the panel signed.

5 ATTORNEY KANE: Well, if there  
6 was a document that was marked Confidential  
7 that did not allow either party to discuss it,  
8 and then we were compelled to discuss something  
9 we're not permitted to discuss, we would go on  
10 to Federal Court and seek relief.

11 But because this occurred between  
12 Friday and Monday, Claimant felt that she had  
13 no choice but to dismiss her claim yesterday,  
14 March 3, 2024, in its entirety against any  
15 pending claims, against any pending  
16 Respondents, before being put in such a  
17 position.

18 ARBITRATOR KATZ: When were  
19 you planning on calling Russin? He was the  
20 first witness.

21 And again, my understanding, and we  
22 don't have a hard copy here of the protective  
23 order, we can all pull it up on our screens  
24 because that's a -- that protects certain  
25 discovery materials marked as Confidential.

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1           Again, we're not -- we're just not  
2           -- we're confused about why it -- understanding  
3           there's two separate issues.

4           One, whether the protective order is  
5           implicated and then, two, if the settlement  
6           agreement is confidential, that's a contractual  
7           issue.

8           So I'd like to stick with one at a  
9           time and the -- and to understand what your  
10          claim is as to the protective order.

11           ATTORNEY KANE: Well, I don't  
12          have the protective order in front of me, but I  
13          would say to the Court there's two things -- I  
14          would say there's three things. It would be  
15          the ongoing settlement negotiations pursuant to  
16          a federal mandated mediation. Any  
17          conversations and any documents created  
18          pursuant to that would also be protected for  
19          the third issue.

20           So there are three issues involved.  
21          One would be the protective order. One would  
22          be the protection from federal, I think it's  
23          408. And that the last one would be if there  
24          is a settlement agreement, that would be an  
25          entirely separate issue, which I don't think

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1 the parties could take a position on at this  
2 moment.

3 ARBITRATOR KATZ: So the Panel  
4 signed a subpoena. The import of which was to  
5 have a witness bring one document with him and  
6 that was a settlement agreement. And I'm --  
7 the Panel has not ruled that the content of any  
8 settlement negotiations is in play. So I want  
9 to make that clear. The sole issue is a  
10 settlement agreement.

11 ATTORNEY KANE: Yeah. We  
12 don't speak for Mike Russin and so we don't  
13 know what he would say. We have probably a  
14 different position on the matter than that he  
15 would but none of this could be fleshed out in  
16 Federal Court which is where we would have  
17 fleshed it out.

18 ARBITRATOR KATZ: We're not  
19 asking you to speak for Mike Russin. We as the  
20 Panel control the evidence admitted here and  
21 control our rulings and the only action the  
22 Panel has taken was to sign a subpoena to have  
23 Russin bring with him a settlement agreement.  
24 That -- so the Panel has not any -- made any  
25 ruling that negotiations that led to that



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1 settlement agreement are admissible. So I want  
2 to be clear on that.

3 (Arbitrator Katz conferred with  
4 Arbitrator Vatz.)

5 ARBITRATOR KATZ: Nor have we  
6 ordered the Claimant to produce this one  
7 document.

8 So, I mean, I, you know, again, the  
9 Panel is just confused on the turn of events in  
10 the last, you know -- less than 24 hours after  
11 all the work that everyone's put into this for  
12 Claimant to dismiss her case based on us  
13 signing a subpoena -- a subpoena for one  
14 document.

15 So we're just trying to understand.  
16 Does Respondent want to be heard or --

17 ATTORNEY HAMMER: There's been  
18 no change in our position. There's a subpoena  
19 that's been issued, you know, that we think is  
20 valid and enforceable. We're here for the  
21 hearing. The clients are present. We're ready  
22 to proceed.

23 If the Panel wants to hear about  
24 what the request is our position vis-a-vis the  
25 E-mail that was sent last night, we can address

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1 that now, if that's what you're asking.

2 ARBITRATOR KATZ: Can you hear  
3 on the phone? I just want to make sure you can  
4 hear.

5 ATTORNEY KANE: Yes.

6 ARBITRATOR KATZ: Okay.

7 ATTORNEY HAMMER: So, I mean,  
8 our position vis-a-vis the E-mail that was sent  
9 last night is that Claimant cannot unilaterally  
10 withdraw claims without prejudice if that is  
11 what they're attempting to do and that we  
12 should proceed with the hearing then.

13 ARBITRATOR KATZ: Okay. So to  
14 Claimant's counsel, the Panel wants to be clear  
15 before you make any unalterable decisions that  
16 the only directive so far has been that your  
17 witness bring with him and produce the  
18 settlement agreement.

19 If Claimant wishes to seek relief  
20 from -- and again, we looked at the protective  
21 order and see that as a -- you know, protecting  
22 discovery documents marked as Confidential.  
23 The Panel does not see the protective order as  
24 relevant here.

25 But if Claimant has concerns that

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1 she would be violating a court order, the Panel  
2 is open to working with Claimant if she wants  
3 to reorder her witnesses and get the attention  
4 of -- to try to get Judge Horan's attention,  
5 that's one option.

6 If -- and again, the Panel is not  
7 open -- has not been asked to entertain any  
8 evidence about the negotiations leading up to  
9 the settlement agreement, so we -- and I'm sure  
10 there are other solutions other than Claimant  
11 dismissing her claim and we're open to  
12 discussing those.

13 If, however, Claimant chooses to  
14 dismiss her claim, then it would be with  
15 prejudice. And so we -- we urge Claimant's  
16 counsel to consider the option -- on behalf of  
17 your client, to consider the options. Panel is  
18 open to discussing them. And I urge you to  
19 confer with each other before you make a  
20 decision to dismiss the case with prejudice.

21 ATTORNEY KANE: So just in  
22 response to Mr. Hammer's comment about a valid  
23 subpoena, we would object that it was a valid  
24 subpoena being issued, but, you know, less than  
25 24 hours from the first witness in the hearing.

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1 We don't think of any -- that could be  
2 categorized as a reasonable time period for a  
3 subpoena. They had four months to do so.

4 ARBITRATOR KATZ: That is --  
5 yeah, that was a question that we had. When --  
6 this is I guess a question to Respondent's  
7 counsel. When did you receive notice that  
8 Mr. Russin was going to be called?

9 ATTORNEY HAMMER: We received  
10 notice that he was voluntarily appearing. The  
11 recent dates are a blur, but I believe it was  
12 the day before we asked the Panel to issue the  
13 subpoena.

14 So that was the -- that was the  
15 first time we were on notice that he was not  
16 appearing pursuant to a subpoena.

17 ARBITRATOR KATZ: Putting  
18 aside your position, Claimant's counsel, on the  
19 validity or lack thereof of the subpoena,  
20 again, we urge you to confer about your next  
21 steps and they're willing to take a break here  
22 to allow you to do that.

23 Anything you want to say? Hold on  
24 one minute.

25 (Arbitrators confer.)

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1 ARBITRATOR KATZ: I mean,  
2 well, I'll -- we'll hear counsel on this. I  
3 mean, there's either the claimant is dismissing  
4 it with prejudice, that's one thing. If  
5 Claimant is just not participating, then  
6 there's a rule on that and we would go forward  
7 with the evidence.

8 So we need Claimant's counsel on the  
9 record on behalf of your client to advise us  
10 what -- what your choice is.

11 Do you want to take some time to  
12 discuss among yourselves?

13 ATTORNEY KANE: Sure, we will.

14 ARBITRATOR KATZ: Okay. So  
15 you can just mute us. We don't have you on  
16 video anyways and we'll stand by. If you're  
17 going to need more than, say, you know, ten  
18 minutes, would you just come on and let us know  
19 that?

20 ATTORNEY KANE: The phone cut  
21 out so I'm not sure what you said. You need  
22 more --

23 ARBITRATOR KATZ: If you need  
24 more than ten minutes -- I was just saying if  
25 you need more than ten minutes to confer, just

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1 as a courtesy, would you please unmute yourself  
2 and let us know just so we know what's going  
3 on?

4 ATTORNEY KANE: Will do.

5 ARBITRATOR KATZ: Okay.

6 ATTORNEY KANE: All right.

7 Hold on.

8 (Short recess taken.)

9 ATTORNEY KANE: Okay.

10 Claimant is back. Is everybody ready?

11 ARBITRATOR KATZ: Hold on one  
12 minute.

13 ATTORNEY KANE: You know what?

14 I think I need to get Amy Williamson again.

15 Hold on one second.

16 ATTORNEY WILLIAMSON: Hello?

17 ATTORNEY KANE: Hey, Amy.

18 We're waiting for the other side. I have you  
19 logged on to the Zoom call.

20 ATTORNEY WILLIAMSON: Okay.

21 ATTORNEY KANE: We're waiting  
22 for the other side.

23 ATTORNEY WILLIAMSON: Yeah,  
24 okay.

25 ARBITRATOR KATZ: So we're

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1 resuming after Claimant's counsel has conferred  
2 amongst themselves.

3 What do you have to say?

4 ATTORNEY KANE: Claimant's  
5 position is that there are no claims pending,  
6 that they were withdrawn yesterday on March  
7 3rd. And, you know, Claimant is sticking with  
8 that position.

9 We don't agree that there's any  
10 settlement agreement with Mike Russin. We  
11 believe he's an antagonistic witness to us, and  
12 anything in writing reflects the settlement  
13 negotiations as opposed to any final settlement  
14 agreement.

15 And if you look at the Federal Court  
16 docket, after Mr. Russin's counsel called it a  
17 binding settlement agreement, we had to go and  
18 confer again with Dave White before  
19 confidential mediations and more confidential  
20 negotiations and mediations and an amended  
21 motion had to be filed to reflect that.

22 And so the Claimant's in a position  
23 that Respondents have had four months to ask  
24 for that document since that was filed in  
25 October and has known about it the entire time.

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1 They waited till the last possible second to  
2 request the subpoena so that we can seek no  
3 relief in Federal Court. And so we had no  
4 choice but to withdraw our claims yesterday.

5 Claimant believes we can prove that  
6 Ms. Zinsky's signatures were forged on multiple  
7 documents, but it was deemed too late in  
8 January by the arbitrators to bring such a  
9 claim, and yet Respondents are permitted to  
10 conduct discovery on the first day of trial  
11 with a hostile witness, which will allow him to  
12 say anything and everything he wants to say  
13 because he's not protected by the Federal Court  
14 action. So Claimant does not -- does not  
15 believe that she has a choice.

16 Mr. Russin was testifying today as a  
17 first witness because his wife is giving birth  
18 tomorrow and we worked it out with his counsel  
19 that he would testify today without a subpoena.  
20 And yet, you know, we're stuck in this  
21 position.

22 So it's our position to withdraw the  
23 claims and we understand it's with prejudice  
24 but that's where we stand.

25 ARBITRATOR KATZ: Does counsel



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1 want to be heard on anything that you just  
2 heard?

3 ATTORNEY HAMMER: We do  
4 believe that any dismissal should be with  
5 prejudice. Unless they're not showing up, then  
6 that should be -- it should not be a withdrawal  
7 without prejudice, it certainly should be with  
8 prejudice.

9 ARBITRATOR KATZ: Counsel?

10 ATTORNEY NOVAK: We do believe  
11 that the order should indicate that --

12 ARBITRATOR KATZ: Speak up  
13 just to make sure they can hear you.

14 ATTORNEY NOVAK: We do believe  
15 that the order should indicate that its  
16 adjudication on the merits, they bore the  
17 burden, they failed to appear. They presented  
18 nothing. Therefore, in addition to withdrawing  
19 with prejudice, the order should indicate that  
20 they failed to appear, and that this was a  
21 finding on the merits.

22 ARBITRATOR VATZ: Can I ask a  
23 question, Ms. Novak?

24 ATTORNEY NOVAK: Yes.

25 ARBITRATOR VATZ: How can we

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1 have both? If we enter an order that says that  
2 the claims have been dismissed at the request  
3 of the Claimant with prejudice, doesn't that  
4 mean there was no hearing?

5 So are you objecting to a dismissal  
6 in saying you want to proceed with the hearing  
7 on the merits? I just don't -- can you do  
8 both?

9 ATTORNEY NOVAK: Well, we  
10 showed up for the hearing.

11 ARBITRATOR VATZ: I  
12 understand.

13 ATTORNEY NOVAK: We were ready  
14 to go but it is their burden and, therefore,  
15 they would have been the first party to present  
16 evidence. They failed to appear. We're  
17 certainly not going to present evidence based  
18 on what they might have done.

19 ATTORNEY HAMMER: Yeah, you  
20 can understand our situation. We're here.  
21 What we need is the final -- whatever wraps  
22 this up needs to preclude Claimant the ability  
23 of turning around and filing these claims  
24 again.

25 You know, we're thinking through

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1 what the appropriate procedural outcome for  
2 that is. I do, you know, hearing what  
3 Ms. Novak is saying, I mean, whether that's a  
4 final award, finding that they have not met  
5 their burden, that might be the more  
6 appropriate vehicle.

7 But we want to make sure that the  
8 ultimate -- whatever is issued by the Panel  
9 provides that -- that fact and, you know, an  
10 award saying that Claimant is -- we're here,  
11 the hearing's commenced, Claimant put in no  
12 evidence. Therefore, they have not met their  
13 burden might be the appropriate way to do that.

14 ARBITRATOR KATZ: Well, I  
15 think the Panel -- and we're going to ask  
16 everybody to remain where they are. The  
17 Panel's going to confer for a few minutes. In  
18 the meantime, the parties are directed there's  
19 a -- to Rule 32 --

20 ATTORNEY KANE: I'm sorry, the  
21 phone cut out there.

22 ARBITRATOR KATZ: The parties  
23 are directed to Rule 32. But in the meantime,  
24 the Panel's going to confer for a couple  
25 minutes and we'll be back.

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1 ARBITRATOR JORDAN: This is  
2 Steve --

3 ATTORNEY KANE: May I make one  
4 quick response?

5 ARBITRATOR KATZ: Wait. Hold  
6 on.

7 ARBITRATOR JORDAN: Ms. Zinsky  
8 is on the line; is that correct?

9 ATTORNEY KANE: She is not.

10 ARBITRATOR JORDAN: Oh, I  
11 thought she called in.

12 ARBITRATOR KATZ: No, that was  
13 Amy Williamson.

14 ARBITRATOR JORDAN: That was  
15 Amy, sorry.

16 ATTORNEY KANE: May I make one  
17 brief response?

18 ARBITRATOR KATZ: Yes.

19 ATTORNEY KANE: Thank you.

20 Claimant absolutely opposes any  
21 ruling on the merit. There's been no hearing.  
22 Our claims were dismissed yesterday and they  
23 were dismissed yesterday for a reason. They  
24 were withdrawn yesterday, so there is no ruling  
25 on the merit because there was no hearing and

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1 there was no evidence taken. So --

2 ARBITRATOR KATZ: And just to  
3 be -- just to be clear -- just to be clear, you  
4 are representing on behalf of Ms. Zinsky that  
5 you are withdrawing or -- and dismissing all  
6 the claims that were present in this action  
7 with prejudice?

8 ATTORNEY KANE: After more  
9 than two hours on the phone with our client  
10 yesterday and all counsel, it was agreed that  
11 we would withdraw all pending claims against  
12 all pending Respondents in arbitration. It was  
13 understood that it would likely be with  
14 prejudice and the Claimant understood based on  
15 the circumstances and was actually the one that  
16 suggested it. So we have no hesitation  
17 suggesting that Ms. Zinsky is aware of  
18 everything that we're discussing now.

19 ARBITRATOR KATZ: Okay. So  
20 we're going to put you on mute and we'll be  
21 back.

22 ATTORNEY NOVAK: If you want  
23 to go out that door --

24 ARBITRATOR KATZ: Okay.

25 ATTORNEY NOVAK: -- I'll meet

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1 you in the front.

2 (Short recess taken.)

3 ARBITRATOR KATZ: Okay. We're  
4 back on the record.

5 Claimant's counsel, are you there?

6 ATTORNEY KANE: Yes.

7 ARBITRATOR KATZ: Okay. Well,  
8 the Panel would like to -- we'll say the  
9 following:

10 Number one, this one document that  
11 was -- that the witness was directed to bring  
12 with him in the subpoena is potentially  
13 relevant to his credibility as a witness that  
14 Claimant is choosing to call. If there is no  
15 final settlement agreement, then there is  
16 nothing for the witness to bring.

17 However, the Panel before we -- one  
18 final time confirm that Claimant -- the  
19 Claimant's course of action, the Panel wants to  
20 be clear that as I think we've said we would be  
21 willing to take a pause if Claimant wants to  
22 reach out to Judge Horan. We also would be  
23 willing to take this witness out of order if  
24 he's tied up with the birth of a child. We  
25 would be willing to hold it -- to go forward

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1 with the evidence and hold the hearing open for  
2 this one witness by Zoom afterwards.

3 And we want Claimant's counsel to be  
4 clear that there are other options. Those  
5 happen to be the ones we've thought of. There  
6 may be others that you or other -- that you  
7 would offer and we'd be open to hearing them.

8 With that, then we ask Claimant's  
9 counsel do you want -- are you sure you want to  
10 dismiss this case with prejudice or do you want  
11 to reconsider that?

12 ATTORNEY KANE: So long as  
13 it's not an adjudication on the merits we want  
14 it dismissed. We believe it was withdrawn  
15 yesterday, precluding an adjudication on the  
16 merit.

17 ARBITRATOR KATZ: So  
18 Claimant's counsel, on the record, you are  
19 dismissing and withdrawing this case, including  
20 all claims brought, whether they've been  
21 disposed of prior to the hearing or would have  
22 been the subject of the hearing, you are  
23 dismissing with -- and withdrawing all of those  
24 with prejudice?

25 ATTORNEY KANE: We're

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1 withdrawing all claims that are pending or were  
2 pending in this case in arbitration.

3 ARBITRATOR KATZ: Are you --  
4 (Reporter interrupted for  
5 clarification.)

6 ARBITRATOR KATZ: What was  
7 that?

8 ATTORNEY KANE: With  
9 prejudice. I was acknowledging that it was  
10 with prejudice.

11 ARBITRATOR KATZ: Okay.  
12 Anything else? Anything else?

13 ATTORNEY HAMMER: Well, does  
14 the Panel -- our preference would be for an  
15 award -- an award finding that we're here for  
16 the hearing and Claimant failed to meet the  
17 burden -- it's her burden to prove her claims.

18 ARBITRATOR KATZ: The -- go  
19 ahead.

20 ATTORNEY HAMMER: That's --  
21 and that the unilateral withdrawal for  
22 dismissal with prejudice, the Claimant's not  
23 permitted to do that. That we're here for the  
24 hearing. And if --

25 ARBITRATOR KATZ: What is your



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1 authority for that? If we were in Federal  
2 Court --

3 ATTORNEY HAMMER: If we were  
4 in Federal Court, you actually do need to file  
5 a motion for relief or to dismiss, you do, and  
6 it's true that under the arbitration rules  
7 there's the absence of a rule addressing this  
8 very unique situation we're in.

9 ARBITRATOR KATZ: Right.

10 ATTORNEY HAMMER: But there is  
11 a rule that addresses a scenario where a  
12 witness doesn't show up for the hearing. And  
13 so --

14 ARBITRATOR KATZ: That's real  
15 clear --

16 ATTORNEY HAMMER: That's where  
17 we are. That's where we are.

18 We don't think that there's -- given  
19 the silence of the arbitration rules on what it  
20 is that Claimant is attempting to do here, we  
21 feel that Rule 32 should govern and there  
22 should be an award on the merits for failing to  
23 meet the burden.

24 ARBITRATOR VATZ: So using the  
25 Federal Court rules as a parallel, as a guide.

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1                   ATTORNEY HAMMER: As an  
2 analog.

3                   ARBITRATOR VATZ: As an  
4 analog, okay. If a Plaintiff in Federal Court  
5 comes in eve of trial or morning of trial and  
6 says, "We move the Court to enter an order  
7 dismissing all claims with prejudice, Defendant  
8 objects, says we want an award or judgment."

9                   The Court can under federal rules  
10 say, "Claims are dismissed with prejudice upon  
11 motion of the Plaintiff."

12                   Correct?

13                   ATTORNEY HAMMER: Yes.

14                   ARBITRATOR VATZ: Okay. So  
15 using that as an analog, we can do the same  
16 thing. There's -- it doesn't appear to us to  
17 be anything in the rules that would prevent us  
18 from doing that.

19                   ATTORNEY HAMMER: Speaking for  
20 AIL, that's an option. I don't see anything in  
21 the rules that prevents anything in the request  
22 to dismiss with prejudice. Of course, Arias'  
23 counsel's may have a different view about it.

24                   ARBITRATOR VATZ: And maybe  
25 this is just my curiosity. Why is there a

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1 difference between an award on the merits which  
2 is not binding in any other proceeding and a  
3 dismissal with prejudice?

4 ATTORNEY HAMMER: We simply  
5 want, as you might imagine, to avoid being back  
6 here litigating these claims, or anywhere.

7 And so we want what has the most  
8 preclusive effect and we think there might --  
9 you know, this is an atypical situation but an  
10 award finding in favor of Respondents we think  
11 may have benefit in ensuring that the same  
12 Respondents are not facing these same claims by  
13 the same Claimant in some other form.

14 ARBITRATOR KATZ: I guess  
15 that's my confusion, too, is why if we would do  
16 a written order laying out this is one scenario  
17 that -- that the Claimant on the morning or  
18 night before, whichever the case may be, the  
19 hearing, after, you know, all parties had  
20 traveled and gathered and prepared for a  
21 hearing to -- chose to dismiss her claims with  
22 prejudice, why wouldn't that have a preclusive  
23 with a capital P effect?

24 ATTORNEY HAMMER: Well, let me  
25 be very clear on the record. I think that

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1 would have a preclusive effect and our position  
2 is that, you know, in any further proceeding  
3 that would be preclusive.

4 And as you might imagine, we got  
5 this -- we have not fully researched this. And  
6 so we're, you know -- we've had time to sit and  
7 think about all of the scenarios of how this  
8 plays out. That's our preference.

9 We think either way, our view is  
10 that whether it's a dismissal with prejudice or  
11 it's an award on the merits of the hearing,  
12 that it should be preclusive and we just -- you  
13 know, that that's our view of what might be --  
14 might have a more full-proof effect.

15 ARBITRATOR KATZ: I guess  
16 another question because I don't remember ever  
17 having dealt with this. If it were a Federal  
18 Court and the Plaintiff came in on the, you  
19 know, morning or eve before trial and said, "I  
20 want to dismiss my case with prejudice," you  
21 know, what would be the reason or reasons a  
22 court would -- would not grant that? I mean --

23 ARBITRATOR VATZ: That's a  
24 good question.

25 ARBITRATOR KATZ: I mean,

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1 again, I've never dealt -- I don't remember  
2 ever dealing with a situation like this. But  
3 why -- you know, I understand, you know,  
4 counsel's withdrawing, then there are all kinds  
5 of reasons a court wouldn't grant that but if  
6 counsel with full consent of their client is  
7 dismissing all claims with prejudice, why would  
8 a court not grant that?

9 I mean, and the alternative if  
10 you're talking about Rule 32 is then we go  
11 forward with evidence. We don't just say --

12 ATTORNEY HAMMER: Well,  
13 Rule 32 contemplates what the -- contemplates  
14 the evidence that the arbitrators may require.

15 ARBITRATOR KATZ: "The  
16 arbitrators shall require the party who is  
17 present to submit such evidence as the  
18 arbitrator may require for the making of an  
19 award."

20 It's clear as -- clear as mud.

21 ATTORNEY HAMMER: You know,  
22 and our view is it's -- these are Claimant's  
23 claims. She bears the burden. She puts on no  
24 evidence. We have no obligation to put on  
25 any -- any evidence ourselves. She has not met

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1 her burden so there should be no evidence  
2 that's required to be put in.

3 ARBITRATOR VATZ: Well, let me  
4 just muddy the waters. If we did it that way,  
5 because I don't think -- I don't think you can  
6 do both. I don't think you do a stipulation or  
7 a dismissal with prejudice on the motion of the  
8 Claimant and then an award. Okay?

9 To me, that there's a little bit of  
10 an inherent contradiction. Again, I've never  
11 researched this either or come across this  
12 situation.

13 But let's just assume that we went  
14 forward with a hearing and we entered an award.  
15 Doesn't that give the Claimant some option to  
16 then appeal the award based on, you know,  
17 whatever the limited grounds for appeal of an  
18 arbitration award are? I'm not saying it would  
19 be successful or not, but still that leaves  
20 that open.

21 It seems to me that a dismissal with  
22 prejudice ends it forever. You tell me if I'm  
23 wrong.

24 ATTORNEY HAMMER: One thing I  
25 think would be fair to ask the Claimant's

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1 counsel -- I mean, obviously, the intent here  
2 is to have a preclusive effect.

3 ARBITRATOR VATZ: Right.

4 ATTORNEY HAMMER: You know, I  
5 think it's fair to ask Claimant's counsel if  
6 they acknowledge the preclusive effect of a  
7 dismissal with prejudice and that would go a  
8 long way toward figuring out.

9 ARBITRATOR VATZ: I would have  
10 preferred to have asked those questions also of  
11 Claimant but we don't seem to have that  
12 opportunity here.

13 ARBITRATOR KATZ: Well, okay.  
14 I think that's a fair, you know, obviously,  
15 the -- well, I won't say anything's obvious.

16 In choosing on behalf -- in  
17 representing on behalf of your client -- this  
18 is directed to Claimant's counsel -- that with  
19 her consent all of her claims in this  
20 arbitration are being dismissed and withdrawn  
21 with prejudice, does counsel understand and  
22 does Claimant -- can you represent that  
23 Claimant understands that that will have a  
24 preclusive effect on all of those claims that  
25 were brought in this matter?

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1                   ATTORNEY KANE: Claimant  
2 understands that "with prejudice" means that  
3 all pending claims cannot be brought again in  
4 arbitration forever. So giving us authority  
5 based on our conversations what --

6                   ARBITRATOR KATZ: Wait, your  
7 voice cut out. Hello?

8                   ATTORNEY KANE: That she gave  
9 us authority --

10                   Can you hear me?

11                   ARBITRATOR KATZ: Now we can,  
12 yes.

13                   ATTORNEY KANE: I said that  
14 based on our more than two-hour conversation  
15 with our client yesterday, she understands that  
16 by withdrawing her claims in this matter with  
17 prejudice, she cannot thereafter bring the same  
18 claims in arbitration against these same  
19 parties. She understands that and has given us  
20 authority to withdraw all pending claims  
21 against all pending Respondents in arbitration.

22                   ARBITRATOR KATZ: Well, does  
23 she understand that by withdrawing with  
24 prejudice, she cannot -- there will be a  
25 preclusive effect not only on pending claims



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1 but all claims that were brought in this matter  
2 and it will be preclusive as to not just future  
3 arbitrations but any future proceeding?

4 ATTORNEY KANE: I don't know  
5 that I agree that future proceedings is  
6 necessarily applicable. I certainly agree  
7 that, you know, she's precluded from  
8 resurrecting any of these claims in  
9 arbitration, any claims she had or ones that  
10 were dismissed in arbitration.

11 But preclusive of ever doing  
12 anything anywhere is I think overly broad.

13 ARBITRATOR KATZ: That's what  
14 preclusive means, is that these claims are  
15 done, dead, permanently in any form. So if  
16 we're going to enter the order, that's the  
17 import. That's the impact and, again, if you  
18 need to consult with your client, we will allow  
19 you to do that.

20 ATTORNEY HAMMER: Can I add  
21 something?

22 ATTORNEY KANE: Can you give  
23 us one minute, please?

24 ARBITRATOR KATZ: Wait.  
25 Counsel for AIL wants to say something before

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1 you do.

2 ATTORNEY HAMMER: I mean, the  
3 way the doctrines of --

4 ARBITRATOR KATZ: Are you  
5 there? Are you still on the phone?

6 ATTORNEY KANE: Yeah. We're  
7 here.

8 ARBITRATOR KATZ: Okay. Go  
9 ahead.

10 ATTORNEY HAMMER: I mean, to  
11 have a preclusive effect is not only on these  
12 specific causes of action but it's the claims  
13 that arise out of these.

14 ARBITRATOR KATZ: I --

15 ATTORNEY HAMMER: You know, it  
16 is -- I'm not making up law here. So whatever  
17 the law is --

18 ARBITRATOR KATZ: Whatever the  
19 law is.

20 ATTORNEY HAMMER: -- not  
21 necessarily limited to the specific causes of  
22 action.

23 ARBITRATOR KATZ: Right. It  
24 is preclusive however that's defined in the  
25 controlling law as to any and all fora I think

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1 is the proper word.

2 So, okay. You go ahead and confer  
3 and I'll mute and you can let us know when  
4 you're back.

5 ATTORNEY KANE: Thanks.

6 (Short recess taken.)

7 ATTORNEY KANE: Can we have  
8 more than ten minutes? I wanted to ask so  
9 you're not all sitting here waiting.

10 ARBITRATOR KATZ: Yeah, just  
11 before you do that, Rebecca from the AAA just  
12 joined and I just want to update her  
13 procedurally on what's going on and I didn't  
14 want to do that without you.

15 ATTORNEY KANE: Okay.

16 ARBITRATOR KATZ: Rebecca, are  
17 you there?

18 ATTORNEY REGNIERE: I am.

19 Thank you very much.

20 ARBITRATOR KATZ: Okay. So  
21 you saw the E-mail communications. Claimant's  
22 counsel -- Claimant is not with them -- joined  
23 by Zoom and we have made a record of everything  
24 that's been discussed this morning.

25 Claimant's counsel has stated

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1 repeatedly on the record that they wish,  
2 despite the Panel presenting other options to  
3 deal with this subpoena and their concerns, the  
4 Claimant has stated that she wishes --  
5 Claimant's counsel has stated the Claimant  
6 wishes to withdraw and dismiss all her claims  
7 with prejudice.

8 The Panel at Respondent's counsel's  
9 request asked Claimant's counsel whether they  
10 understood the preclusive effect that this  
11 would have and they are consulting among  
12 themselves. So we're putting it on mute until  
13 they're back.

14 ATTORNEY REGNIERE: Okay. All  
15 right. Thank you for the update. I appreciate  
16 that.

17 ATTORNEY KANE: Can we resume  
18 at 11:00 to give everybody a break?

19 ARBITRATOR KATZ: Yes.

20 ATTORNEY KANE: Okay.

21 (Short recess taken.)

22 ARBITRATOR KATZ: Okay. We're  
23 back on the record.

24 Claimant's counsel, I'll give you  
25 the mic.

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1                   ATTORNEY KANE: Part of that  
2 -- the phone cut out there so I didn't catch  
3 the end of that but I assume you're asking us  
4 to speak?

5                   ARBITRATOR KATZ: Yes.

6                   ATTORNEY KANE: Okay. After  
7 conferring, Claimant's counsel and Claimant  
8 stand by her decision to withdraw all of her  
9 claims with prejudice and understands the  
10 preclusive effect of withdrawing those pending  
11 and dismissed claims in arbitration.

12                   ARBITRATOR KATZ: Okay. We're  
13 going to put this on pause one more time  
14 because the case manager at the AAA has asked  
15 us to keep her apprised, so I don't think we'll  
16 be much longer.

17                   Anybody want to say anything else on  
18 the record?

19                   ATTORNEY HAMMER: Yes. You  
20 know, counsel for Claimant just spoke and I  
21 believe at the end there said "understands the  
22 preclusive effect in arbitration." If there's  
23 not an --

24                   ARBITRATOR KATZ: Oh, I didn't  
25 catch the last two words.

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1                   ATTORNEY HAMMER: And so I  
2 would ask that there's an acknowledgment of  
3 preclusive effect in all fora.

4                   ARBITRATOR KATZ: Do you  
5 understand --

6                   ATTORNEY KANE: I understand  
7 what Mr. Hammer said.

8                   ARBITRATOR KATZ: He was  
9 picking up on the end of what you said after  
10 you said that -- that Claimant understands the  
11 preclusive effect, AIL's counsel heard you to  
12 say and I believe he's correct I just didn't --  
13 it didn't register with me, "in arbitration."

14                   And is that your -- is that -- did  
15 you say that as opposed to the preclusive  
16 effect generally?

17                   ATTORNEY KANE: I did make  
18 that distinction, correct.

19                   ARBITRATOR KATZ: And what is  
20 the distinction then that you're making? I  
21 mean, what --

22                   ATTORNEY KANE: The  
23 distinction is just whether it's an  
24 adjudication on the merits or withdrawal of all  
25 claims. So we understand that withdrawing

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1 these claims means that they are forever barred  
2 and can't be brought again by Claimant in  
3 arbitration. We certainly understand the --  
4 the issue with going to court because we were  
5 in court and that's arbitration, so we get it.

6 ARBITRATOR KATZ: What do you  
7 get? I mean, we are not here -- the Panel is  
8 not here to issue a legal opinion on what is  
9 the preclusive effect of a dismissal with  
10 prejudice.

11 What we are asking is do you and  
12 does your client understand that by dismissing  
13 the arbitration with prejudice, it would have  
14 the same preclusive effect as any dismissal  
15 with prejudice whether in arbitration or in  
16 Federal Court or in state court or any other --  
17 whatever form it was pending in, it has the  
18 same preclusive effect as a dismissal with  
19 prejudice generally. There's no distinction --

20 ATTORNEY KANE: Understood.

21 ARBITRATOR KATZ: You  
22 understand. Okay.

23 Anything else that you think that  
24 needs to be clarified? I'm looking at  
25 Respondent's counsel.

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1                   ATTORNEY HAMMER: Can you give  
2 us just one moment?

3                   ARBITRATOR VATZ: Sure.

4                   ARBITRATOR KATZ: Mm-hmm.

5                   (Short recess taken.)

6                   ATTORNEY HAMMER: With --

7                   ARBITRATOR KATZ: Wait, wait,  
8 I have it muted. Okay, go ahead.

9                   ATTORNEY HAMMER: With  
10 Claimant's counsel's acknowledgment, that's  
11 sufficient for Respondents. We do want to  
12 request leave to seek fees and costs from the  
13 Panel and would request, you know, a date by  
14 which we can make that submission.

15                   ARBITRATOR KATZ: Claimant's  
16 counsel, are you still there?

17                   ATTORNEY KANE: We are here.  
18 We're obviously opposed to paying the costs and  
19 such.

20                   ARBITRATOR KATZ: And what's  
21 your basis?

22                   ATTORNEY HAMMER: Well, we  
23 would make -- we're just now dealing with this  
24 now and we want to assess the basis for seeking  
25 fees and costs and, obviously, that would be



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1 part of our submission is making that case to  
2 the Panel, why we believe given how things  
3 played out here we are entitled to fees and  
4 costs.

5 ARBITRATOR KATZ: And if the  
6 case is dismissed with prejudice, it's over. I  
7 mean, I'm not sure -- now I'm rethinking the  
8 procedural --

9 (Arbitrators confer.)

10 ARBITRATOR VATZ: Wouldn't  
11 that have to be, Mr. Hammer, in the arbitration  
12 agreement for you to seek that? Again, I don't  
13 think any of us have ever dealt with this  
14 situation. But just spit balling, do you have  
15 any basis for saying it should be in -- it's in  
16 the arbitration agreement or it's in the rules?

17 ATTORNEY HAMMER: The  
18 arbitration agreement does provide that the  
19 Panel may grant any relief that's otherwise  
20 available in court.

21 ARBITRATOR VATZ: It's  
22 typical.

23 ATTORNEY HAMMER: Yeah, which  
24 is typical and, you know, we're all familiar  
25 with the law surrounding what entitles a party

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1 to attorney's fees. They're also -- and this  
2 is what would be part of any submission that we  
3 need time to look into is the particular  
4 circumstances here. And there -- we believe  
5 there is law that addresses this type of  
6 situation but we need to have an opportunity to  
7 look into that.

8 ARBITRATOR KATZ: Anything  
9 else anyone wants to say on the record before  
10 we pause for what we believe will be the last  
11 time? Okay, everyone.

12 ATTORNEY KANE: I guess the  
13 question --

14 ARBITRATOR KATZ: Go ahead.

15 ATTORNEY KANE: I guess the  
16 question that Claimant -- the question the  
17 Claimant would have would be whether the Panel  
18 was going to entertain the motion for fees and  
19 costs. And if that's the case, we may have to  
20 call our client and ask if she wants to proceed  
21 in light of that.

22 ARBITRATOR KATZ: Well, the  
23 Panel's going to confer and in the meantime,  
24 you can confer with your client.

25 ATTORNEY KANE: Very good.

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1 (Short recess taken.)

2 ARBITRATOR KATZ: Okay. We're  
3 back on the record.

4 Claimant's counsel, are you there?

5 ATTORNEY KANE: Yes.

6 ARBITRATOR KATZ: Okay. The  
7 Panel has reviewed the arbitration provision or  
8 contract which is the foundational document for  
9 what brings us -- for why we're in this forum.  
10 And that document provides quote, "The  
11 arbitrator shall have the power to award any  
12 relief that would otherwise be available in  
13 court, comma, including attorney's fees if  
14 permitted by statute, injunctive or other  
15 equitable relief." End quote.

16 The Panel finds that this is not a  
17 general fee shifting to prevailing party  
18 provision and that the -- that they're not  
19 aware of a statute, injunctive or other  
20 equitable relief that would give Respondents a  
21 right to fee shifting in this situation.

22 And accordingly are inclined to deny  
23 the request to seek fees and costs and to issue  
24 an order memorializing what are the results of  
25 this proceeding this morning and the order

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1 would dismiss the case with prejudice.

2 We also note that there's language  
3 in the arbitration provision that says that the  
4 award shall be final and binding on the parties  
5 and their beneficiaries, successors and  
6 ensigns, et cetera.

7 And the Panel may include that  
8 language in the dismissal with prejudice and  
9 that will bring this matter to a final and  
10 preclusive conclusion.

11 That's our inclination. If anybody  
12 wants to say anything before we close the  
13 record, we will allow that.

14 Anything Claimant's counsel wants to  
15 say?

16 ATTORNEY KANE: Nothing from  
17 Claimant.

18 ARBITRATOR KATZ: Anything --  
19 any Respondent's counsel? I'll start with  
20 Arias' counsel.

21 ATTORNEY NOVAK: Nothing.

22 ARBITRATOR KATZ: AIL counsel?

23 ATTORNEY HAMMER: Nothing from  
24 AIL.

25 ARBITRATOR KATZ: Okay. This

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1 hearing is -- or proceeding is now at a close  
2 and an order will be issued today.

3 Thank you.

4 ATTORNEY KANE: Thank you.

5 ATTORNEY NOVAK: Yes, I need a  
6 copy for sure. Electronic only.

7 (At 11:26 a.m., the arbitration was  
8 concluded.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me on the hearing of the within cause, and that this is a correct transcript of the same.

---

Maria M. Siatkowski  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Certified Realtime Captioner

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