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U N R E D A C T E D

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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ANA PATRICIA CHAVEZ, CECILIA )  
SANTOS, JOSE FRANCISCO )  
CALDERON, ERLINDA FRANCO, AND )  
DANIEL ALVARADO, )  
Plaintiffs, )  
VS. )  
NICOLAS CARRANZA, )  
Defendant. )

NO. 03-2932-MI /P

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TRIAL PROCEEDINGS  
BEFORE THE HONORABLE JON PHIPPS MCCALLA, JUDGE  
NOVEMBER 17, 2005  
VOLUME XII

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A P P E A R A N C E S

Appearing on behalf of the Plaintiffs:

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315 DEADERICK STREET, SUITE 2700  
NASHVILLE, TENNESSEE 37238-3001  
By: DAVID R. ESQUIVEL, ESQ.

CAROLYN PATTY BLUM, ESQ.  
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MATTHEW J. EISENBRANDT, ESQ.  
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870 MARKET STREET, SUITE 684  
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Appearing on behalf of the Defendant:

FARGARSON & BROOKE  
65 UNION AVENUE  
9TH FLOOR  
MEMPHIS, TENNESSEE 38103  
By: ROBERT M. FARGARSON, ESQ.  
BRUCE BROOKE, ESQ.

1 THURSDAY MORNING & AFTERNOON

2 NOVEMBER 17, 2005

3 The jury trial in this case resumed on this,  
4 Thursday, November 17, 2005, at 8:45 o'clock a.m., when  
5 and where evidence was introduced and proceedings were had  
6 as follows:

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10 (Jury began deliberations at 8:45 a.m.)

11 (At 12:10 p.m, the following proceedings were  
12 had via telephone:)

13 THE COURT: This is Judge McCalla, and we have  
14 a note from the jury and the jury note reads as follows:  
15 Judge McCalla, it is dated today at 11:27. The jurors  
16 respectfully request a copy of Ana Chavez's testimony for  
17 the plaintiff and for the defense and signed, of course,  
18 by Ms. Richardson. I have dictated a response, just a  
19 supplement response number two.

20 Request for copy of transcript of testimony of  
21 Ana Patricia Chavez. You have requested a copy of  
22 testimony of Ana Patricia Chavez given during the trial.  
23 At the beginning of the case, the court discussed with you  
24 the fact that a written transcript of proceedings cannot  
25 be made available during your deliberations. I may need

1 to work this thing out. That a written transcript of the  
2 proceedings cannot be made available for you during your  
3 deliberations. That rule will also apply to requests of a  
4 particular witness. To provide a written transcript is  
5 not only difficult and time consuming, but would also as I  
6 indicated in preliminary instructions would tend to  
7 overemphasize the words recorded in the transcript and  
8 deemphasize those other facts that jurors must consider in  
9 determining the weight, faith, credit and value to which  
10 you think the testimony is entitled.

11 MR. FARGARSON: I'm sorry, Judge McCalla, your  
12 voice sounded muffled, I couldn't quite --

13 THE COURT: I will read it again. That's okay.  
14 I will read it again. You have requested a copy of  
15 testimony -- of the testimony of Ana Patricia Chavez given  
16 during the trial. At the beginning of the case, the court  
17 discussed with you the fact that a written transcript of  
18 the proceedings cannot be made available for you during  
19 your deliberations. That rule would also apply to  
20 requests for specific testimony of a particular witness.  
21 To provide a written transcript is not only difficult and  
22 time-consuming, but would also, as I indicated in the  
23 preliminary instructions, tend to overemphasize words  
24 recorded in the transcript and deemphasize those other  
25 factors that jurors must consider in determining the

1 weight, faith, credit and value to which you think the  
2 testimony is entitled. You must rely on the collective  
3 recollection of all of you in determining the weight,  
4 faith, credit and value that you attribute to every  
5 witness' testimony, including the testimony of Ana  
6 Patricia Chavez.

7 MR. FARGARSON: Okay.

8 THE COURT: And that's just -- Mr. Fargarson is  
9 indicating that that is -- I think this is just what we  
10 said before. What about plaintiffs' counsel?

11 MR. ESQUIVEL: Your Honor, that's fine with  
12 plaintiffs' counsel.

13 THE COURT: All right. We will make those  
14 changes, and we will file in the record, of course, the  
15 note from the panel. All right.

16 MR. FARGARSON: Is that it?

17 THE COURT: That's all. Joe, you want to get  
18 that started and get that going? When is the service for  
19 Adrian Rogers, Reverend Rogers?

20 MR. FARGARSON: Your Honor, I'm a pall bearer,  
21 and I have to be out there a little bit earlier. I'm  
22 supposed to be there at 4:45.

23 THE COURT: Sure, sure.

24 MR. FARGARSON: But I mean -- I understand  
25 they're busing people to the funeral and everything else,

1 so I have got to -- you know, I'm going to have to leave  
2 here to get out there by 4:00 o'clock.

3 THE COURT: Sure, absolutely. I just wasn't  
4 sure that Mr. Esquivel knew that you would need to be  
5 away. I was bringing that up so he would be aware, and I  
6 understand Mr. Brooke will be able to respond if we have  
7 another question.

8 MR. FARGARSON: He's asking about you. Well,  
9 he's a deacon, too, Judge, and he has got to be there not  
10 that quick, but within -- he'll have to be out there by  
11 5:30.

12 THE COURT: Well, the jury surely will not --  
13 we will let the jury go home. If they have a question  
14 after that point in time, we will just bring them back,  
15 and Joe will get the message to you that we have a  
16 question.

17 MR. FARGARSON: Okay.

18 THE COURT: Now, if we have a verdict, what do  
19 we need to do? We will just wait and do that tomorrow.  
20 If you are both gone, we will obviously wait and do that  
21 tomorrow, so that will be the way we will handle that.

22 MR. FARGARSON: Okay.

23 THE COURT: Mr. Esquivel, it sounds like we're  
24 going to be here tomorrow no matter what. The Federal Bar  
25 seminar starts tomorrow at 9:00 o'clock at Cook Convention

1 Center, which is every bit of a 10-minute walk if I'm  
2 walking slowly, you know, into the room over there. It is  
3 just at Cook, it is right across the street, and so I will  
4 be there for a good part of the day, but I will have my  
5 phone with me, and the staff will be all around, and we  
6 shouldn't have an issue in that regard.

7 MR. FARGARSON: Okay. Did Joe tell you, Judge,  
8 that there is a confidential private burial in the  
9 morning, and I'm supposed to be at that?

10 THE COURT: He told me there was one, and I  
11 didn't know you would be there, but I understand. Do you  
12 know what time that is?

13 MR. FARGARSON: It is --

14 THE COURT: I don't need to know if it is  
15 secret.

16 MR. FARGARSON: It is at 10:30 tomorrow.

17 THE COURT: Sure, sure.

18 MR. FARGARSON: It is at 10:30 tomorrow.

19 THE COURT: Okay.

20 MR. FARGARSON: But I think Bruce can -- Bruce  
21 can cover that in the morning. I mean, in other words, if  
22 things go on longer than that, Bruce can be there.

23 THE COURT: Okay. We will keep all of you  
24 advised, and anybody who would like to, since you're in  
25 town, if there are people here from the plaintiffs' side

2 gainfully engaged, do you have any objection to us  
3 allowing them to attend that so actually I can keep an eye  
4 on them? I'm kidding, but --

5 MR. FARGARSON: No.

6 THE COURT: So they will be close at hand, but  
7 they may have work to do. Mr. Esquivel, what do you want  
8 to do?

9 MR. ESQUIVEL: I would be happy to accept that  
10 invitation, Judge. If we're here tomorrow morning, then I  
11 may plan to attend that.

12 THE COURT: You're all welcome. I know you're  
13 out-of-towners, and if it is a good use of your time, we  
14 would be glad to accommodate you. I will simply ask them  
15 to please make an accommodation for you.

16 MR. ESQUIVEL: Thank you, Your Honor, I will  
17 plan to be there at 9:00 o'clock and may bring two  
18 associates with me who may also be interested.

19 THE COURT: Absolutely.

20 MR. FARGARSON: And where is that, Judge?

21 THE COURT: It is at the Cook Convention Center  
22 on the mezzanine level. And if you have anybody from your  
23 office who would like to be there -- I'm just inviting you  
24 because it is -- you're tied up with the case, and I feel  
25 like that the right thing to do is to -- you know, make

1 that available if you would like to come over.

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MR. FARGARSON: Okay.

THE COURT: I know you can't be there, but if Mr. Brooke would like to be there, we're glad to have him. Thanks so much.

MR. FARGARSON: Thank you so much.

THE COURT: Thank you.

(The jury was sent supplemental jury instruction number 2.)

(The jury was excused at 5:00 p.m.)