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ALICE WOODS; ALLEN WOODS; GEORGIA FROST; PAULETTE FROST; ROSE MARIE
USHER; ORLANDO USHER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

DORIS HEMSLEY, an individual; ALICE
WOODS, an individual; ALLEN WOODS, an
individual; GEORGIA FROST, an individual;
PAULETTE FROST, an individual; ROSE
MARIE USHER, an individual; ORLANDO
USHER, an individual,

Plaintiffs,

vs.

COLUMBUS DAVIS, JR, an individual;
JOSE ARTURO ARGUETA-CERNA, an
individual; GOLD & SILVER CHARTER
BUS COMPANY; GOLD & SILVER
TRAVEL, INC.; HEBARAGI AND LEMI
BUS, INC.; JEAN DEVELOPMENT
COMPANY dba GOLD STRIKE HOTEL
AND GAMBLING HALL; ELSINORE
DEVELOPMENT CO. dba NEVADA
LANDING HOTEL & CASINO; DINA
AUTOBUS, business form unknown;
MOTOR COACH INDUSTRIES
INTERNATIONAL, INC., a foreign
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. BCVBS08259
[Lead Case No.: BCV07252]

*Assigned for All Purposes to:
Honorable Christopher J. Warner
Department S2*

**MANDATORY SETTLEMENT
CONFERENCE BRIEF OF
PLAINTIFFS ALICE WOODS, ALLEN
WOODS, GEORGIA FROST,
PAULETTE FROST, ROSE MARIE
USHER AND ORLANDO USHER**

MSC Hearing: December 19, 2006
Time: 9:30 a.m.
Dept.: S2

Complaint Filed: March 9, 2004

Trial Date: April 2, 2007

HEBARAGI & LEMI BUS, INC., and JOSE
ARTURO ARGUETA-CERNA,
Cross-Complainants,

vs.

LAMAR ELLIOTT; P.V. HOLDING
CORPORATION; COLUMBUS DAVIS JR.;
GOLD & SILVER CHARTER BUS INC., a
California Corporation; JOSEPH ARTHUR
RODRIGUEZ; VICTORIA RODRIGUEZ;
NANCY KAY REBHOLTZ; MOTOR
COACH INDUSTRIES MEXICO, S.A. de
C.V., f/k/a DINA AUTOBUSES, S.A. de
C.V.; JEAN DEVELOPMENT COMPANY;
STATE OF CALIFORNIA, and ROES 1
through 100, inclusive,

Cross-Defendants.

AND ALL RELATED CROSS-ACTIONS.

NGO HU SO, NA LU,

Plaintiffs,

vs.

JOSE ARTURO ARGUETA-CERNA,
HEBARAGI/LEMI BUS, INC.,
COLUMBUS DAVIS JR., GOLD &
SILVER CHARTER BUS LINES, INC.
AND DOES 1 TO 10, INCLUSIVE,

Defendants.

(So v. Cerna, Case No. BCVBS08246)

TO THE HEREIN COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD
HEREIN:

Plaintiffs ALICE WOODS, ALLEN WOODS, GEORGIA FROST, PAULETTE FROST,
ROSE MARIE USHER AND ORLANDO USHER hereby submit their Mandatory Settlement
Conference Brief. With the exception of the specifically identified and attached Exhibits (Defendants'
independent medical examination and vocational rehabilitation evaluation reports), all other Exhibits
have already been submitted with the previously argued Oppositions to Motions for Summary

Judgment/Adjudication in co-Plaintiff DORIS HEMSLEY'S portion of the case, and in various other discovery Motions, Opposition and Reply Briefs therein, or have otherwise been exchanged between the parties during discovery. All Exhibits will be available at the Mandatory Settlement Conference, including but not limited to, documents and photographs, Traffic Collision Report, discovery statements, medical records, et al.

Settlements between Plaintiffs, ALICE WOODS, ALLEN WOODS, GEORGIA FROST, PAULETTE FROST, ROSE MARIE USHER AND ORLANDO USHER, and Defendants HEBARAGI & LEMI BUS, INC. and JOSE ARGUETA CERNA and MOTOR COACH INDUSTRIES, INC., MOTOR COACH INDUSTRIES INTERNATIONAL, INC., MCI SALES AND SERVICE, INC., and MOTOR COACH INDUSTRIES MEXICO, S.A. de C.V. f/k/a/ DINA AUTOBUSES S.A. de C.V. have been negotiated and are pending determination of good faith settlement by the Court.

I.

NAMES OF PARTIES AND RESPECTIVE COUNSEL HEREIN.

An entire listing of the parties involved in the herein case, as well as in all Consolidated Actions is attached hereto by way of Plaintiff's Proof of Service, and is incorporated herein by reference.

II.

STATEMENT OF FACTS.

Late in the afternoon on March 9, 2003, Plaintiffs ALICE WOODS, GEORGIA FROST, PAULETTE FROST, ROSE MARIE USHER AND ORLANDO USHER, together with friends and family members, were leaving Las Vegas, Nevada, on a charter bus [hereinafter "BUS"] owned by Defendant GOLD AND SILVER CHARTER BUS COMPANY after a weekend vacation to the properties of Defendant JEAN DEVELOPMENT COMPANY dba GOLD STRIKE HOTEL AND GAMBLING HALL and Defendant FOUR QUEENS HOTEL & CASINO/FOUR QUEENS, INC. to celebrate a birthday. (Plaintiff ALLEN WOODS was not

a passenger on the BUS and sues herein for Loss of Consortium only.) Said trip was sponsored by, and otherwise organized for the benefit of, Defendants GOLD & SILVER TRAVEL, INC. (charter bus company); COLUMBUS DAVIS, JR. (driver and owner of said charter bus company); JEAN DEVELOPMENT COMPANY dba GOLD STRIKE HOTEL AND GAMBLING HALL (casino) and FOUR QUEENS HOTEL & CASINO/FOUR QUEENS, INC (casino).

The accident ensued when Plaintiffs/passengers were traveling southbound on I-15 on said BUS driven by Defendant COLUMBUS DAVIS, JR [hereinafter "DAVIS"]. When the BUS was in the vicinity of the Halloran Springs Road exit, approximately 13 miles northeast of Baker, San Bernardino County, California, the BUS being driven by Defendant DAVIS impacted the rear of a second bus owned by Defendant HEBARAGI & LEMI BUS, INC. [hereinafter "HEBARAGI"], and driven by Defendant JOSE ARTURO ARGUETA CERNA [hereinafter "CERNA"]. The bus vehicle driven by Defendant CERNA had impacted another vehicle prior to the impact between the two bus vehicles. Plaintiff learned, by way of the Deposition of CERNA, that CERNA and thus, HEBARAGI, were negligent in the operation of the HEBARAGI bus, when it impacted with the vehicle directly in front of said HEBARAGI bus (which was a rental car owned by P.V. Holding Corporation (i.e., Budget), and driven by Lamar Elliott, neither of whom Plaintiff has named in the herein lawsuit.)

Notably, Defendant DAVIS, who was operating the (GOLD & SILVER) BUS, was negligent with regard to his driving duties, and operated said BUS in an unsafe manner for the roadway conditions while Plaintiff was a helpless, no-fault, even *captive* passenger of sorts. Specifically, Defendant DAVIS was observed to have driven with one hand, talked on his cell telephone with the other hand, listened to a "Walkman" or "Walkman"-type radio device, and watched a movie on a small screen television to the left of his steering wheel. In addition, the BUS contained an excessive amount of passengers, beyond the seating

capacity of the bus. The afore-described conduct demonstrated negligence, as well as a willful and conscious disregard for the rights and safety of others. As a result of the collision, certain seats aboard the BUS became dislodged from the floor and walls, thereby further endangering the passengers inside the BUS.

Defendants JEAN DEVELOPMENT COMPANY dba GOLD STRIKE HOTEL AND GAMBLING HALL [hereinafter "GOLD STRIKE"] and FOUR QUEENS HOTEL & CASINO/FOUR QUEENS, INC. [hereinafter "FOUR QUEENS"] enjoyed a mutually profitable agency relationship with Defendants GOLD & SILVER CHARTER BUS COMPANY [hereinafter "GOLD & SILVER"] and DAVIS, as they regularly caused to be transported from California, Casino patrons who were thereafter required to gamble at their facilities. Both Casino Defendants paid commissions to Defendants GOLD & SILVER and DAVIS based upon the number of patrons transported to the Casinos, which had amounted to over 50,000 passengers prior to this accident. Furthermore, discovery has disclosed an extensive, continuing, contractual business relationship existing between GOLD STRIKE and GOLD & SILVER/DAVIS, and between FOUR QUEENS and GOLD & SILVER/DAVIS, and even as amongst three of them – GOLD STRIKE, FOUR QUEENS and GOLD & SILVER/DAVIS. This contractual business relationship between the parties consisted of written agreements, all authored by the Casinos, imposing stringent restrictions and rules upon GOLD & SILVER/DAVIS.

In addition, GOLD STRIKE and FOUR QUEENS even have separate divisions within their corporate structures to promulgate and manage promotion and advertising, and the resulting business and activities of passengers transported to Nevada for the economic advantage of each Casino. In fact, and as an example, in a five year period from 1998 to 2002, GOLD STRIKE paid California bus companies, which included GOLD & SILVER/DAVIS, the total compensation of \$23,213,231.00. This translates to approximately 1,000,000 individuals that were recruited to visit, and that actually

patronized, the GOLD STRIKE casino during that same five year period as a result of the casino's Bus Program alone. Again, specifically with regard to the business arrangement between GOLD STRIKE and GOLD & SILVER/DAVIS, in the five and one-half year period from 1998 through June of 2003, GOLD STRIKE paid to GOLD & SILVER/DAVIS the total sum of \$838,351.00. That equates to approximately 50,000 people transported during said period. With respect to FOUR QUEENS, in the year 2003 alone, its Bus Program generated a profit of "\$977,000.00." Additionally, FOUR QUEENS even caused a GOLD & SILVER "icon" to appear on its slot machine monitors, so that players would immediately recognize the connection between the two businesses. [Deposition Transcript of Columbus Davis Jr., dated June 2, 2005, Volume II, p. 278:1-25, 279:1-6.]

Clearly, the "Bus Program" divisions in place at each Casino are multi-million dollar businesses. The specific occurrence which brought about the herein action; that is, a motor vehicle collision, was specifically recognized by the parties as a possible consequence of their contractual relationship. In fact, as to both GOLD STRIKE and FOUR QUEENS, their agreements with GOLD & SILVER/DAVIS specifically provided that they were to be additional insureds on the insurance policy necessarily carried by GOLD & SILVER/DAVIS. In each instance, this was found to actually be the case.

GOLD & SILVER/DAVIS and GOLD STRIKE, as well as GOLD & SILVER/DAVIS and FOUR QUEENS were in relative constant communication, by either phone, mail or fax, in order to plan and schedule these Casino trips, including the trip that culminated in the accident of March 9, 2003. Forms and documents evidencing same were created and provided by each Casino to GOLD & SILVER/DAVIS for notification and payments. Such payments were either tendered by cash, upon proper delivery of "qualified" passengers, i.e., proven gamblers, or by mail directed to the California bus entity.

The agreements and contacts between GOLD & SILVER/DAVIS and the two

respective Casinos, GOLD STRIKE and FOUR QUEENS, point to the inevitable conclusion that the business relationships with GOLD & SILVER/DAVIS was so extensive as to clearly constitute an agency relationship. In fact, the activities of GOLD & SILVER/DAVIS were stringently controlled by the casinos, as per the respective agreements and courses of dealing. It is also clear that these casinos have enjoyed substantial economic gain as a result of their agency relationship with GOLD & SILVER/DAVIS, among other charter bus companies, and evidently continue to do so, as both have ongoing, dedicated “Bus Programs.”

The several MCI Entities, who are named as Defendants herein due to the fact that they either manufactured, sold or distributed the subject BUS, have asserted that since the Federal Statutes do not require seat belts, they are relieved of any liability in the herein accident. They contend that the seats in front of each passenger act as a containment barrier for riders. However, the most severely injured Plaintiffs – ALICE WOODS, GEORGIA FROST and PAULETTE FROST – were seated in the front rows of the BUS, which was directly behind a steel and fiberglass barrier, not another cushioned seat. These Plaintiffs smashed into that barrier upon impact in the herein accident. Interesting, the “jump seat” or “tour guide seat” is equipped with a seat belt, so Defendant MCI Entities were aware of the hazards confronting passengers in the front of the BUS. Furthermore, Plaintiffs contend the BUS seats were not properly, securely or safely attached to the wall of the BUS, as the flimsy clamp devices became unfastened at impact, causing the seats to rotate inward and throwing passengers into the aisle and on top of one another. This failure caused severe lower limb injuries sustained by Plaintiffs herein.

As a result of these Defendants’ actions, including those of GOLD & SILVER; DAVIS; GOLD STRIKE, FOUR QUEENS, HEBARAGI & LEMI, CERNA and the MCI Entities, Plaintiffs sustained serious injuries and damages, and are certain in the future to

incur further losses, injuries and damages. Further, Plaintiffs were forced to employ physicians, surgeons and other medical personnel, thereby incurring substantial expenses therefore, as well as additional medical expenses for hospital bills and other incidental medical-related expenditures; and Plaintiff ALLEN WOODS has suffered Loss of Consortium.

III.

CASINO DEFENDANT LIABILITY

The relationship between GOLD & SILVER/DAVIS and each of the Casinos, that is, GOLD STRIKE and FOUR QUEENS, availed the Casinos of continuous travel services for inbound “qualified” gamblers whereby each Casino realized an economic benefit to the extent that each had a dedicated “Bus Program,” by and through which they were able to pay for the services of bus companies, including GOLD & SILVER/DAVIS to ferry passengers to their Casinos. Obviously, a Casino’s success is directly related to its ability to attract travelers. The services provided by the various bus companies, including GOLD & SILVER/DAVIS, were and are integral to the Casinos’ operation, to the point that they effectively became a separate arm of the Casino’s gambling business. In fact, the business conducted between each of these Casino Defendants and GOLD & SILVER by way of their respective “Bus Programs” is substantial.

The inherent conduct of the Casinos established the agency relationship between the Casinos and GOLD & SILVER. An agency is created when a principal gives authority to another to act on his or her behalf and the agent consents to do so. *Carrier v. McLlarky*, 693 A.2d 76 (1997). The granting of authority and consent to act need not be written, but may be implied from the parties’ conduct or other evidence of intent. *Clearing House Inc. v. Khoury*, 415 A.2d at 673 (1980). Whether a person performing work for another, and is

thus deemed an agent depends primarily on whether the one for whom the work is done has the legal right to control the activities of the alleged agent. *G.Karlin Michelson v. James S. Hamada*, 29 Cal.App.4th 1566 (1994). Further, agency may be implied from the circumstances and conduct of the parties. *Id.* An agency relationship may be informally created. No particular words are necessary, nor need there be consideration. All that is required is conduct by each party manifesting acceptance of a relationship, whereby one of them is to perform work for the other under the latter's direction. *Clinton Malloy v. William P. Fong*, 37 Cal.2d 356 (1951). The power of the principal to terminate the services of the agent gives him the means of controlling the agents' activities. The right to immediately discharge involves the right of control. It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent. The existence of the right of control and supervision establishes the existence of an agency relationship. *Id.*

Importantly, whether GOLD & SILVER/DAVIS are determined to be "independent contractors" is not dispositive of whether an agency relationship existed between it and the Casinos. California courts have stated that agency and independent contractorship are not necessarily exclusive legal categories, and that an agent may also be an independent contractor. [*City of Los Angeles v. Myers Bros. Parking System, Inc.* 54 Cal.App.3d 135, 138 (1975); *Mottola v. R. L. Kautz & Co.*, 199 Cal.App.3d, 108, 224 Cal.Rptr. 737 (1998).]

"When I first met Columbus Davis Jr., at Gold Strike Hotel, Columbus Davis Jr., explained to me that he could get me special rates, free rooms and meals, for myself, my family and my friends, at the Gold Strike Hotel and also at Four Queen, but only if I booked my tour bus tours through him and Gold & Silver Bus, because he had a "business arrangement" with Four Queens Hotel and Gold Strike Hotel." [Declaration of Doris Hemsely, dated July 6, 2005, ¶12.] Notably, Plaintiffs could only get the special "tour

promotional rate” through FOUR QUEENS, GOLD STRIKE and GOLD & SILVER/DAVIS by agreeing to the package, which created a reasonable inference of an ostensible agency relationship between the three parties. GOLD STRIKE also circulated fliers advertising a transportation charge of \$30.00 per person to travel to *either* the GOLD STRIKE or FOUR QUEENS casinos. “This price was so cheap, I took advantage of it, because I wanted to obtain cheap transportation to Las Vegas, Nevada.” [Declaration of Doris Hemsely, dated July 6, 2005, ¶2.]

Defendants extensive use of DAVIS (and ostensibly other bus company drivers as well), in the capacity of Casino Host, Foreman and/or Liaison for BUS passengers also supports Plaintiffs’ assertion that DAVIS should have been registered by the Casinos with the Nevada Gaming Commission. In fact, in his capacity, DAVIS was performing duties such as handing out Casino room keys; supervising passengers on behalf of the Casinos; and monitoring passengers’ correct usage of group tracking cards. In addition, these Casinos leveled a significant amount of control over DAVIS and the bus company for which he was responsible, GOLD & SILVER, as DAVIS/GOLD & SILVER were conducting the “business” of the Casino, i.e., transporting gamblers to their respective properties. By virtue of this fact alone, the Casinos were required to register DAVIS with the Nevada Gaming Commission.

It is Plaintiffs’ contention that if only the Casinos had done what they were supposed to do; that is, register DAVIS with the Nevada Gaming Commission, or even conducted their own simple background check, they would have discovered DAVIS’ psychiatric disability. Instead, they permitted him to transport over 50,000 people from Los Angeles – where these Casinos regularly solicit patrons – to the premises of the GOLD STRIKE and FOUR QUEENS. If he had, in fact, been registered, through that process, the Casinos would have learned DAVIS was on Psychiatric Disability through Social Security. In addition, there is no evidence that any background check or even a request for a valid Driver’s License was ever required of DAVIS by Defendant Casinos. As to

GOLD STRIKE, their ongoing willingness to do business with DAVIS and GOLD & SILVER *through 2005* show their utter disregard for the safety of the passengers its solicits from California. It is evident GOLD STRIKE has no interest whatsoever as to whether their bus drivers are psychiatrically disabled when transporting passengers to their Casino – they are only concerned that these people are “quality” gamblers. (*See*, in addition, Section B, below.)

A. FOUR QUEENS

FOUR QUEENS operated their “Bus Program” from a designated Bus Program Office, which allowed California tour bus operators, including GOLD & SILVER/DAVIS, to offer discounted rates, prizes, free rooms and meals to California tour bus passengers wishing to be transported to Las Vegas to gamble at FOUR QUEENS. In fact, FOUR QUEENS had designated a particular area that tour buses would enter and debark passengers at FOUR QUEENS; that is, “on Carson and Third.” [Deposition Transcript of Kotula, dated May 25, 2005, p.21: 6-12.] Furthermore, said Bus Program was actually “subsidized” by FOUR QUEENS, which allowed tour bus companies, including GOLD & SILVER/DAVIS to sell their tickets for lower than fair market value. Notably, in the year 2003 alone, FOUR QUEENS Bus Program generated a profit of \$977,000.00.

In addition, during the month of March, 2003 – the time during which the herein accident occurred – FOUR QUEENS marketed the Bus Program in California on its web site, as well as through the use of fliers and its agent, DAVIS. FOUR QUEENS also gave away free meals as part of a package tour, in order to offer cheap transportation for gamblers to travel to its casino, which increased overall foot traffic for their business. [Deposition Transcript of Tina Kotula, dated May 25, 2005, p.318: 2-6.]

With respect to the agency relationship that existed between FOUR QUEENS and GOLD & SILVER/DAVIS, Plaintiffs were, in fact, advised by DAVIS that he was responsible to supervise bus passengers, including Plaintiffs, on behalf of FOUR QUEENS, which responsibility was put upon him

by FOUR QUEENS. The Bus Program provided other very specific Rules that were required to be followed by the tour guides, drivers and bus companies:

- Passengers remaining in the casino after a bus has departed are the sole responsibility of the Tour Operator.” [FOUR QUEENS’ Bus Program Rules, p. 3:¶4.]
- The tour guide/driver must remain in the casino for the entire length of the stay, unless prior notification has been given.” [FOUR QUEENS’ Bus Program Rules, p. 3:¶6.]
- All passengers must use assigned data tracking cards when playing slot machines or playing table games. The tour guide/driver is responsible to monitor their passengers’ correct usage of group tracking cards.” [Bus Program Rules, p. 3:¶7.)

Said tracking cards were issued by FOUR QUEENS to the passengers as the entered the casino. *Notably, the tracking cards had the GOLD & SILVER logo on them.* FOUR QUEENS even caused a GOLD & SILVER icon to appear on FOUR QUEEN’S slot machine monitors, thereby further linking the two entities together in business, and in the minds of its passengers. [Deposition Transcript of Columbus Davis Jr., dated June 2, 2005, Volume II, p. 278:1-25, 279:1-6.]

The FOUR QUEENS’ Tour Bus contract also provided for a sharing of profits and losses, because in certain circumstances GOLD & SILVER/DAVIS would not be paid at all, while in other circumstances, the GOLD & SILVER/DAVIS and FOUR QUEENS would share in certain costs. Specifically, in the circumstances surrounding the instant action, GOLD & SILVER/DAVIS were not paid based upon a “first stop” at FOUR QUEENS, but were instead paid based upon the amounts the Plaintiff and the other passengers actually gambled. If the GOLD & SILVER/DAVIS’ passengers failed to gamble a certain amount at FOUR QUEENS, then GOLD & SILVER/DAVIS did not get paid. The FOUR QUEENS’ Agreement also provided that when BUS passengers were given “free meals” or “meal coupons,” DAVIS’ subsidy from FOUR QUEENS would be reduced by \$100.00, because

FOUR QUEENS required DAVIS to share in the costs of the “free meals.”

As mentioned above, FOUR QUEENS also required GOLD & SILVER/DAVIS to list FOUR QUEENS as an additional insured. Effectively, the casino itself was recognizing the possibility of sharing in the losses of California tour bus companies, including GOLD & SILVER/DAVIS, should a motor vehicle accident ensue, and calculated this an acceptable trade-off in order to fill their casino with California gamblers. Importantly, FOUR QUEENS never inquired into the fitness for duty of DAVIS who was, in fact, suffering from a psychological disability, nor did FOUR QUEENS ever inspect, or cause to be inspected, said BUS relative for road-worthiness or other safety issues.

B. GOLD STRIKE

Interestingly, many of the same facts identified with respect to FOUR QUEENS also apply to GOLD STRIKE. For example, GOLD STRIKE also maintained a “designated” tour bus area for the purpose of transporting passengers and their property to and from their casino, and “[a]ll bookings [had to] be made at the bus office only. . . .” [Gold Strike Bus Program Rules, ¶1.] Furthermore, GOLD & SILVER/DAVIS were able to sell its tour bus tickets for lower than their fair market value, because they were paid a subsidy commission, based upon the amounts the passengers gambled, and, in addition, DAVIS received free rooms and meals, as the driver. The evidence reveals that GOLD STRIKE “subsidized” GOLD & SILVER/DAVIS in the amount of approximately \$838,351.00. [Deposition Transcript of Marla Diloreanu, dated July 8, 2003, p. 10:14 through p.11:10.]

Like FOUR QUEENS, the GOLD STRIKE casino marketed its Bus Program in California on its web site, and also utilized fliers. Furthermore, as is the case with FOUR QUEENS, Plaintiff and the other passengers were advised that DAVIS was responsible to supervise them on behalf of GOLD STRIKE. In fact, the BUS driver, that is, DAVIS, could

not leave the property while his group was on the GOLD STRIKE property. [Deposition Transcript of Marla Diloreanu, dated May 26, 2005, p. 159:7-11.] GOLD STRIKE tightly controlled not only the commissions paid to the BUS, but also the behavior of the BUS driver (DAVIS), as well. For example, GOLD STRIKE required that the commission of GOLD & SILVER/DAVIS be reduced by \$5.00 per passenger per “free meal,” and also specifically restricted complimentary driver’s rooms for the driver’s use only, and stated that any abuse of this privilege may result in disciplinary action. [Gold Strike Bus Program Rules.]

In addition, BUS passengers, including Plaintiffs, were given ID badges to wear with the names “GOLD & SILVER BUS” and “GOLD STRIKE” emblazoned upon them, which further justified Plaintiffs’ reliance upon the agency relationship held out by these parties. Passengers were also instructed to insert a card with “GOLD STRIKE” and “GOLD & SILVER BUS” upon it into the slot machines while at the GOLD STRIKE. [Deposition Transcript of Georgia Therese Frost, dated April 5, 2005, p.205:19-23.]

Like FOUR QUEENS, no one at GOLD STRIKE ever inspected the BUS [Deposition of Kotula, dated May 25, 2005, p. 18:4-14], and it also permitted DAVIS, a psychologically-challenged individual with whom it nevertheless continued to enjoy an agency relationship, to transport its patrons to its GOLD STRIKE casino. [“Q: The trip that you did when you were the bus driver, at that time when you were the bus driver, you were under a psychiatric disability from the Social Security department; isn't that -- the Department of Social Security; is that correct? A: Correct. Q All right.” (Deposition of Columbus Davis Jr., dated June 2, 2005, Volume II, p. 220:21-25, p. 221:1-6.)]

Plaintiffs have learned, by way of a Deposition of Marla Diloreanu, taken on April 6, 2006, that GOLD STRIKE continued to do business with GOLD & SILVER through March 11, 2005. GOLD & SILVER was *still being run by DAVIS* (although he incorrectly states in his

Deposition that he was no longer driving bus.) Plaintiffs previously submitted the “Gold Strike Hotel Arrivals Report for 3/9/03 to 3/11/05” for the “Tour Group “Gold & Silver Charter Bus, Inc,” which evidences their ongoing business relationship, the number of passengers ferried, and the Commission Recipient’s Base Pay, among other information, including the fact that DAVIS drove a bus to GOLD STRIKE on November 23, 2003, and as late as February 11, 2004. In fact, the following testimony was elicited from Ms. Diloreanu that DAVIS, was in fact, paid as a driver *after* the herein accident:

Q BY MR. GILLEN: Now, I’m trying to find out – I wanted to clarify about the payments that were made the Mr. Davis. One was on Page 22 of this Exhibit 101. That was on November 23, 2003, the payment of \$1,080 to Mr. Davis. It lists him as being the driver; is that correct, ma’am? It says Number 1 classification.

A It was booked to be paid out to a driver; that’s correct.

Q And the driver is listed in this report as Mr. Davis, correct?

A Without actually looking at the document that this came from, I couldn’t tell you if he was the driver or not.

Q Well, if he is under Classification Number 1, that would indicate, from your own report, that he was the driver, correct?

MR. KENNEY: Object, argumentative, misstates prior testimony.

THE WITNESS: No.

Q BY MR. GILLEN: No? It says at the bottom here, ma’am, Method of Payment: “1 = Driver”; What’s the method of payment?

A The method of payment here says “Driver” that’s correct.

Q Right.

A Okay.

Q So by reading this document, it would indicate that Mr. Davis was the driver, correct?

A If there is not an error, yes, that is correct.

Q Thank you. The next page, Page 23 of 30 of Exhibit 101, we go on to December 6th of 2003; and it's a payment of \$840 to Mr. Davis, and, again, the pay method is Number 1. That would be listing Mr. Davis as the driver, correct?

A If the input is correct, yes.

* * *

Q Well, this would lead you to believe he was the driver, correct?

A Yes.

[Deposition of Diloreanu, dated April 6, 2006, p. 132, lines 15-25 through p. 134, lines 1-13.]

In addition, the "Gold Strike Hotel Arrivals Report for 3/9/03 to 3/11/05" for the "Tour Group "Gold & Silver Charter Bus, Inc" also reveals the fact that DAVIS drove passengers to GOLD STRIKE on December 26, 2003 and February 11, 2004, receiving commissions of \$816.00 on each date. Amazingly, it was further verified by Ms. Diloreanu that GOLD STRIKE makes no attempt to ensure that bus drivers, including DAVIS, have a valid commercial drivers' license:

Q So you at the casino made no efforts whatsoever to determine whether or not the drivers of these buses had valid commercial driving licenses; is that correct?

A That's correct.

[Deposition of Diloreanu, dated April 6, 2006, p. 163, lines 18-21.]

It is evident therein that as late as Even after this horrific accident and even after obtaining Traffic Collision Report which showed total incompetence on the part of DAVIS and his company,

GOLD & SILVER, the GOLD STRIKE Casino continued to do business with him. For example on page one of the "Gold Strike Hotel Arrivals Report for 3/9/03 to 3/11/05" for the "Tour Group "Gold & Silver Charter Bus, Inc," it is shown that DAVIS brought a group of 34 passengers to GOLD STRIKE on December 26, 2003, and received \$816.00 in payment therefore. Again, on February 11, 2004, DAVIS brought a group of 34 passengers to GOLD STRIKE, and received \$816.00 in payment therefore. In total, for the period March 9, 2003, the date of the herein accident, to March 11, 2005, thereafter, GOLD STRIKE accepted 637 "qualified" gambling passengers and compensated GOLD & SILVER the amount of \$15,288.00. Plaintiffs therefore assert that GOLD STRIKE ratified the conduct of DAVIS by its overt actions in continuing to do business with DAVIS and his company, GOLD & SILVER.

Earlier in the course of this litigation, GOLD STRIKE brought before the Court a Motion for Summary Judgment, based upon their contention that no agency relationship existed between it and GOLD & SILVER and thus, the negligence liability for damages in the herein accident should not be imputed to GOLD STRIKE. Plaintiffs contested the Motion, as did counsel for HEBARAGI & LEMI, the bus immediately in front of the GOLD & SILVER BUS at the time of the accident. Counsel for HEBARAGI & LEMI, Daniel Ferguson, crafted an excellent argument regarding agency, which is inserted hereinafter.

GOLD STRIKE set out specific policies and rules, and required GOLD & SILVER to abide by them. Following are some of the rules required by GOLD STRIKE, including:

1. All tour bus trips must be booked 24 hours in advance.
2. All tour bus passengers must wear badges with the bus company's name at all times while in the casino.
3. The badges must meet specifications outlined by GOLD STRIKE Casino.
4. Bus passengers cannot book their own hotel rooms; the rooms must be reserved and paid by the tour bus company.
5. Minors are not permitted as tour bus passengers.
6. All bus passengers must possess a valid government issued photo I.D.
7. Tour bus passengers cannot be of "poor quality" and must possess the ability and intention to gamble.

8. Tour busses have to check in/out with the casino.
9. Bus passengers are not permitted to disembark from the bus until a staff member from the casino has boarded the bus and counted the passengers.
10. Tour buses must park in a designated area assigned by the casino.
11. Once a bus arrives on the property, it cannot leave the premises while its passengers are on casino property.
12. The bus company must show evidence of insurance which names the casino as an additional insured.
13. The bus company must not permit any of its passengers to become intoxicated while on casino property.
14. The bus driver is not permitted to consume alcohol while its bus passengers are on casino property.
15. The bus company shall not transport passengers to other casinos after the passenger has been counted as part of the bus tour package.
16. The tour bus which arrives more than one hour late from its designated arrival time will not be accepted.
17. The tour bus company must display the name of the bus company and number on the bus.

In order for GOLD & SILVER to participate in the program, it had to sign a written agreement stating that they agreed to comply with the specific rules and policies set out by GOLD STRIKE. This Agreement has been produced in discovery. There was no negotiating permitted on behalf of GOLD & SILVER, and if GOLD & SILVER wished to participate in the program, it was required to execute the agreement "as is." When GOLD & SILVER executed the Agreement, it promised to abide by the Bus Program Rules and thus agreed to the level of control GOLD STRIKE could exercise over it. Failure to comply with the rules was grounds for suspension from the bus commission program, lasting six (6) months.

Furthermore, GOLD STRIKE authorized all California bus companies that participated in its Bus Program to use GOLD STRIKE'S name in their marketing and advertising to California patrons. Thus, GOLD & SILVER was the agent of GOLD STRIKE, for they had an Agreement with, and authorization from, GOLD STRIKE to participate in GOLD STRIKE'S Bus Program, which included advertising to California patrons in an

attempt to bus them to and from GOLD STRIKE for the sole purpose of gambling. The basic theory of the agency device is to enable a person, through the services of another, to broaden the scope of his activities and receive the product of another's efforts, paying such other for what he does, but retaining for himself any net benefit resulting from the work performed. *The Law of Agency & Partnership* §1 at 3, 2d.ed. (1990).

The element of "control" is also evidenced in the fact that GOLD & SILVER was required to carry insurance with limits of five million dollars (\$5,000,000.00), naming GOLD & SILVER as an additional insured. It is obvious that the reason for such coverage, was because the Casino not only planned to cover the risk of liability, but intended for the bus line to bring in gamblers from California and transport them back to California afterwards. If a bus company did not provide a certificate of insurance that covered GOLD STRIKE as an additional insured, it would not be able to participate in GOLD STRIKE'S Bus Program, which exemplifies another GOLD STRIKE tool of control exercised over the bus companies. Hence, through this mandatory insurance requirement, GOLD STRIKE controlled GOLD & SILVER'S actions, as a principal would over its agent.

GOLD STRIKE had other tools of control which they employed, in order to control the bus companies involved in its Bus Program. Another requirement under GOLD STRIKE'S Bus Program Rules was that GOLD & SILVER provide quality clientele. Quality clientele consisted of passengers who came to the Casino with the means and intention to gamble. If it is determined by GOLD STRIKE that a passenger from GOLD & SILVER was of poor quality, that particular passenger would not be counted in the total passenger count for the commission paid to GOLD & SILVER. Thus, as the agent of GOLD STRIKE, GOLD & SILVER was not only supposed to advertise and market to California patrons but was also required to screen them to determine if said patrons had the intention and financial means to gamble.

Further, GOLD & SILVER was not allowed to bring passengers that were minors, nor could the passengers become visibly intoxicated while at GOLD STRIKE. In addition, passengers had to possess a valid government I.D.; wear their I.D. badges at all times, and were not permitted to leave GOLD STRIKE'S property. These Bus Program Rules regarding passengers were to be enforced by the GOLD & SILVER bus driver or tour escort. This is yet another example of GOLD STRIKE'S level of control exerted over GOLD & SILVER.

GOLD & SILVER buses were required to park in a designated parking spot on GOLD STRIKE'S property. The bus could not leave the GOLD STRIKE property, except to refuel or for an emergency until the scheduled tour stop was over without the permission of GOLD STRIKE. Also, the bus driver was prohibited from consuming alcohol while on the GOLD STRIKE property. These are examples of additional GOLD STRIKE Bus Program rules that apply to bus companies and its personnel. Why would GOLD STRIKE expend such effort to control the actions of GOLD & SILVER, as well as other bus companies? The only logical reason is that GOLD STRIKE understood GOLD & SILVER was its agent and, as such, wanted to control GOLD & SILVER'S actions in its representation of GOLD STRIKE, through GOLD STRIKE'S Bus Program. It cannot legitimately be argued that GOLD STRIKE did not exercise significant control over GOLD & SILVER. In fact, the herein-described level of control and supervision exercised over GOLD & SILVER by GOLD STRIKE is significant and overwhelmingly testifies to the existence of an agency relationship.

If GOLD & SILVER violated any of the aforementioned Bus Program Rules, GOLD STRIKE had the right to temporarily suspend GOLD & SILVER for six (6) months, or even permanently suspend GOLD & SILVER. The type of suspension was predicated on which Rule was violated. The fact that GOLD STRIKE had the right to terminate GOLD &

SILVER evidences the required level of control to establish an agency relationship, even if it was not exercised. Thus, GOLD STRIKE used its right of suspension to force GOLD & SILVER to follow the Bus Program rules, which evidences the level of control a principal has over their agents.

GOLD STRIKE'S position is that even if an agency relationship existed, it terminated as soon as GOLD & SILVER was paid its commission and transported its passengers to FOUR QUEENS. Their reasoning, however, is flawed, due to the fact that general agency law holds that authority created in any manner terminates when either party, by any method, manifests to the other dissent to its continuance. *Strategis Asset Valuation & Management v. Pacific Mutual*, 805 F.Supp. 1544 (1992). At no time did GOLD STRIKE or GOLD & SILVER convey to the other any dissent in the continuance of their agency relationship. The agency relationship between GOLD STRIKE and GOLD & SILVER was not terminated simply by GOLD STRIKE paying GOLD & SILVER its commission, or GOLD & SILVER leaving the GOLD STRIKE property.

A principal may be precluded from denying an employment (agency relationship), if he or she, expressly or by conduct, has caused others to believe that such a relationship exists, and they have reasonably relied thereon in dealing with the supposed employee. [*California Civil Code* Sections 2298 and 2300; *Yanchor v. Kagan*, 22 Cal.App.3d 544, 549-550 (1971); 99 Cal.Rptr. 367, 370-371; *Saks v. Charity Mission Baptist Church*, 90 Cal.App.4th 1116, 1137-1138, 110 Cal.Rptr.2d 45, 62 (2001); *Asplund v. Selected Investments in Fin'l Equities, Inc.*, 86 Cal.App.4th 26, 45-49, 103 Cal.Rptr. 2d 34, 47-49 (2000).]

With respect to the strength of the business relationship between the Casinos and the bus companies, it is apparent that GOLD & SILVER supplied a significant number of gamblers to the Casino parties herein, and that in doing so, this business accounted for

the overwhelming majority of revenue for GOLD & SILVER. Specifically, referring to GOLD STRIKE, between 1998 and 2002, over \$797,000.00 was paid to GOLD & SILVER by GOLD STRIKE. In fact, GOLD STRIKE'S payments to GOLD & SILVER for participating in the Tour Bus Program accounted for ninety percent (90%) of GOLD & SILVER'S profit. GOLD & SILVER was one of the larger California tour buses which transported California gamblers to GOLD STRIKE. In fact, 86.81% of all tour bus trips to GOLD STRIKE came from California.

It was understood that the obligations between the GOLD STRIKE and GOLD & SILVER were as follows:

1. GOLD STRIKE would subsidize the GOLD & SILVER bus lines by paying its driver a commission for bringing in passengers from California to game at their casino. GOLD & SILVER received a flat fee, based on the number of passengers brought to the Casino. Said flat fee would fluctuate, depending on the number of hours the passengers spent gambling. The longer the passengers stayed and gambled at the Casino, the greater the bus driver's fee would be.
2. GOLD & SILVER would transport gamblers from California to GOLD STRIKE, where they would gamble for a specified number of hours. Once passengers finished gambling, the gamblers would then board the GOLD & SILVER bus and be transported back to California.

GOLD STRIKE asserts that the duties imposed by the two contracting parties somehow terminated when the gamblers left its Casino. However, that cannot be the case, since it was expected that the gamblers would be brought in from California, it should likewise be expected that they would be returned to California after their gambling trip was over. In fact, GOLD & SILVER advertised a round trip B, *not* a one-way trip B, in its advertisements. As previously mentioned, GOLD & SILVER was permitted to use GOLD STRIKE'S name in its advertisements.

As such, the business of the Casinos, including GOLD STRIKE, did not terminate

when the passengers left the Casino. A common carrier's duty commences when its passengers begin boarding and continues until their departure. *Squaw Valley Ski Resort Corp. v. Superior Court (Bowles)*, 2 Cal.App.4th 1499, 1510, 3 Cal.Rptr.2d 897, 901-902 (1992); *U.S. Air, Inc. v. United States Department of Navy*, 14 F.3d 1410, 1413-1414 (9th Cir. 1994); *McGettigan v. Bay Area Rapid Transit District*, 57 Cal.App.4th 1011, 1019-1020, 67 Cal.Rptr.2d 516, 521 (1997). *California Civil Code* §2355 states, in pertinent part: "An agency is terminated, as to every person having notice thereof, by any of the following: (a) The expiration of its term." In this case, the "term" of the agency did not expire until the bus passengers were safely returned to California.

In *Cardenas v. Ellston, et al.*, 259 Cal.App.2d 232, 66 Cal.Rptr. 128 (1968), a farm laborer was a bus passenger who sustained injury when the bus he was riding on collided with a truck. Mr. Cardenas was one of 34 Mexican farm workers who was involved in the Bracero Program (7 U.S.C. Section 1461, et seq.), and employed by Katoaka Brothers to pick and pack tomatoes. By reason of the Bracero Program, Katoaka Brothers was required to transport the field workers from their residence to the fields. Katoaka Brothers contracted with Ellston and Arizmendis and another partner for transportation purposes. The three partners hired Sam Diaz as their bus driver.

Mr. Diaz picked up and transported the plaintiff and other Mexican nationals, as required by the Bracero Program. In addition, Diaz exercised some supervision in the tomato fields, informing the laborers on the method in which the Katoaka Brothers wished their crops picked, the place where the work was to be done and how to box the produce. In their Answer, Ellston and Arizmendis admitted that Diaz was their employee. The evidence at the trial level established that:

1. Plaintiff Cardenas was an employee of Katoaka Brothers.
2. Defendants, Ellston & Arizmendis, employed Diaz.
3. If Diaz was an agent of Katoaka, it was as a special

agent only with relationship to the work in the fields, i.e., picking and packing tomatoes.

The jury found that Diaz was negligent in the operation of the bus and that his negligence was a proximate cause of the accident. The jury also found that Diaz, in operating the bus, was acting as an employee of Kataoka Brothers.

Prior to trial, the court permitted the defendants to amend their answer to set forth the affirmative defense of *Labor Code* §3601, which prescribes the only means of compensation for injuries to an employee caused by fellow employees. In essence, the trial court entered judgment in favor of Diaz, the bus driver, inasmuch as he was determined to be a fellow employee of the plaintiff and thus, the exclusive remedy was under *Labor Code* §3601, not a suit for negligence against Diaz.

Thereafter, the trial court granted judgment notwithstanding the verdict and ruled in favor of the plaintiff. Ellston, Arizmendis and the intervenor (workers' compensation carrier, Continental Casualty Company) moved for a new trial. The grounds for the new trial included insufficiency of evidence justifying the verdict that Diaz was an employee of Kataoka Brothers. As for the judgment NOV, the court stated at page 239:

At the same time, we are constrained to the conclusion that the order granting a judgment notwithstanding the verdict in favor of the plaintiffs and against Ellston and Arizmendis went entirely too far. The rule under section 629 of the *Code of Civil Procedure* concerning a judgment notwithstanding the verdict is that such a motion may be granted only if there is no substantial evidence to support the verdict on any possible theory of liability. (Citations omitted).

In reversing the judgment NOV, the court found that there was evidence upon which a jury could have reached a verdict favorable to Cardenas. The court stated, at page 241:

An employer-employee relationship certainly existed between Diaz and Ellston and Arizmendis, but if Ellston and Arizmendis were, in fact, agents of the Kataokas, then Diaz in the circumstances

developed in the record was also an agent of the Kataokas, for, under the facts as shown by the evidence, an employer-employee relationship exists between an employer and one working for the primary employee when the employer knows that his direct employee has hired another person as a worker on the project. (Emphasis added.)

The Appellate Court found that a jury could plausibly deduce from the evidence the following theories of liability:

1. That Ellston and Arizmendis were independent contractors with Kataokas; that Diaz was a general agent of Ellston and Arizmendis in connection with his work, or at least their agent in connection with the driving of the bus, and that, as he was negligent, judgment should go against him as well as against his employers, Ellston and Arizmendis;

2. That Ellston and Arizmendis were themselves employees of the Kataokas and by reason of this fact that their employee, Diaz, was a subemployee of the Kataokas, in which event the industrial accident sections of the *Labor Code* would afford the only recourse for damages to the plaintiffs and there could be no recovery against Diaz, Ellston or Arizmendis in the instant case. [Emphasis added.] *Cardenas v. Ellston, et al.*, 259 Cal.App.2d 232, 241(1968).

The facts at bar are similar to those in *Cardenas*, in that there is sufficient evidence to establish either a special agency relationship or a subemployee relationship between DAVIS and/or GOLD & SILVER and GOLD STRIKE. In order for GOLD & SILVER to participate in the Tour Bus Commission Program, their drivers and/or tour escorts were required by The GOLD STRIKE to comply with certain mandatory guidelines, which were specified in depth above.

Furthermore, GOLD STRIKE anticipated and insured against the risk of injury while passengers were en route. In fact, GOLD STRIKE *required* -- as part of its policies and procedures -- that the tour buses which participated in the Commission Program carry at least five (5) million dollars (\$5,000,000.00) in liability insurance, specifically naming GOLD STRIKE as a certificate holder and as an additional insured. This fact establishes that GOLD STRIKE: (1) knew that the tour buses would be transporting out-of-state

gamblers to and from their casino for purposes of gambling; and (2) expected or anticipated losses as a result of such transportation, because it required the tour bus companies to show proof of at least five million dollars in insurance naming GOLD STRIKE as an additional insured and certificate holder. In fact, failure of the GOLD & SILVER, or any other bus company, to name GOLD STRIKE as an additional insured would result in the *ultimate* penalty for said bus company: *It would be deemed ineligible to participate in the Casino's Tour Bus Commission Program.*

In considering reversal of the judgment notwithstanding the verdict, the court in *Cardenas v. Ellston*, 259 Cal.App.2d at 241, held, in essence, that an employer-employee relationship existed when the employer knew that his direct employee had hired another person to carry help him carry out his work for the employer. In *Cardenas*, the employer (Kataoka) hired Ellston & Arizmendis to transport field workers. Kataoka knew that Ellston & Arizmendis had hired Diaz to do the transportation. In fact, Diaz was instructing Kataoka's field workers how to pick and pack Kataoka's tomatoes.

In the case *sub judice*, DAVIS, on behalf of GOLD STRIKE, was responsible for instructing his passengers; for assigning hotel rooms; and for passing out their room keys, in addition to numerous other assignments given to him by the GOLD STRIKE. The *Cardenas* court stated that there were sufficient facts for a jury to find that Diaz was technically a subemployee of Katoaka.

A similar factual scenario exists with regard to the relationship between DAVIS/GOLD & SILVER and GOLD STRIKE. For instance, GOLD STRIKE contracted with GOLD & SILVER to transport gamblers from California to Las Vegas so that they could spend their money wagering at GOLD STRIKE. Although DAVIS was an employee of GOLD & SILVER, GOLD STRIKE placed significant requirements and rules on GOLD & SILVER, as well as its driver (herein, DAVIS) to create an agency relationship between the

Casino and DAVIS/GOLD & SILVER. Further, GOLD STRIKE required that the bus company carry insurance naming the casino as additional insured and certificate holder, because GOLD STRIKE was aware of the potential risk of injury to a bus passenger while en route to or from the Casino.

Although the obligation of GOLD STRIKE to pay bus driver DAVIS his commission fee ended upon payment of the fee, the agreement between the parties did not terminate until the passengers were returned to California. The fact that the bus had other stops to make after it left the Casino is a red herring. GOLD STRIKE was well aware that the only means the passengers had to return to California was by way of the GOLD & SILVER BUS. GOLD STRIKE'S obligation to return the passengers safely to California would apply whether the BUS stopped at a five-and-dime store, a Jack-in-the-Box or a gas station after it left the Casino grounds.

GOLD STRIKE asserts that, since at the time of the accident, GOLD STRIKE had no "control" over DAVIS or GOLD & SILVER, there was no active agency when the accident occurred. However, the agency relationship exists when the agent is *doing the business of the principal*. Here, the agent, GOLD & SILVER/DAVIS, was, in fact, doing the business of the principal, GOLD STRIKE, by returning its patrons, i.e., the BUS passengers, to the origin of their trip in California.

Simply stated, as in the case of *Cardenas v. Ellston, et al.*, the principal's business was to transport field laborers to work and then to return them to their residences. The agent's job was to transport the laborers to and from their place of employment. The same set of facts applies to the instant case. GOLD STRIKE (principal) employed GOLD & SILVER (agent) to bring out-of-state gamblers to their Casino, and once they were finished, to return them to the place their trip originated. GOLD & SILVER'S job was to transport those out-of-state gamblers from California to Nevada and then back to

California. The agency relationship intended to include the trip from California to Nevada and then back to California. In fact, the Casino expected this, because it mandated, as part of its policies and procedures, that bus companies carry liability insurance and name the Casino as an additional insured.

Furthermore, GOLD STRIKE, via its Bus Program Rules, anticipated that the passengers would be picked up *and* returned home. Said Rules specifically indicate that the tour bus would be picking up passengers and returning them home as part of the Tour Bus Program. Under Section II, "Integrity of Stops", Paragraph B, the rules describe "First Stop", "Second Stop", "Turnarounds," et al. Subparagraph 3 thereof specifically requires the tour bus company to pick up *and* return passengers to their homes: "Turnarounds - A turnaround means that we must be your only stop. You must bring your passengers directly to our property and return home directly from our property." The rules and policies to which both principal and agent have agreed succinctly require the tour bus company to return the passengers to their homes after they have completed their stop, whether a first stop, second stop, turnaround, etc.

If GOLD STRIKE had intended to terminate their involvement in the tour bus program after a certain event occurred, they could have just as easily included such wording in their Bus Program Rules. Since mention is made that the Program requires the bus company to return the gamblers to their home, it follows that such was the intent of the parties when they entered into the Agreement.

In summary, the *business* for which the agency was created was for the transportation of gamblers from California to Nevada, then back to California. The term of the agency did not expire until the passengers were returned to California. The accident occurred within the course and scope of that agency, i.e., while the passengers were being returned to California. The facts establish that an agency relationship existed between

GOLD STRIKE and GOLD & SILVER, and that DAVIS was doing the business of the principal, GOLD STRIKE, by transporting gamblers back to California when the incident occurred.

IV.

DAMAGES

A. Medical Specials

Following is a summary of the medical treatment Plaintiffs received as a result of the injuries they sustained in the herein subject accident:

[SECTION OMITTED]

V.

DEFENDANTS' AVAILABLE INSURANCE COVERAGE.

[SECTION OMITTED]

VI.

**STATUS OF SETTLEMENT DISCUSSIONS INCLUDING CALIFORNIA CODE OF
CIVIL PROCEDURE §998 OFFERS TO COMPROMISE IN BEHALF OF ALICE**

WOODS.

[SECTION OMITTED]

DATED: December 14, 2006

Respectfully submitted,
JAMES R. GILLEN

By /s/James R. Gillen
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