

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 UNITED STATES OF AMERICA,

Case No. 2:15-cv-01743-MMD-NJK

5 Plaintiff,

ORDER

6 v.

7 400 ACRES OF LAND, more or less,
8 situate in Lincoln County, State of Nevada;
9 and JESSIE J. COX, et al.,

Defendants.

10 The Court granted the Government's motion to appoint a land commission in its
11 order resolving the parties' motions in limine. (ECF No. 497 at 8.) The Court then held a
12 status conference at which the Court discussed the appointment of three land
13 commissioners to serve on the land commission. (ECF No. 501.) The Court now advises
14 the parties of the identity and qualifications of each prospective commissioner: (1) The
15 Honorable Philip M. Pro; (2) The Honorable Peggy A. Leen; and (3) The Honorable Justice
16 Michael L. Douglas.¹ Fed. R. Civ. P. 71.1(h)(2)(C).

17 The Court has confirmed that these individuals do not have any conflicts with the
18 parties or the dates identified in the scheduling order (ECF No. 506). Accordingly, the
19 Court determines that an alternate is not necessary.

20 It is therefore ordered that the parties' objections related to the prospective land
21 commissioners are due within seven days.

22 DATED THIS 17th day of September 2019.

23
24 

25 MIRANDA M. DU
26 CHIEF UNITED STATES DISTRICT JUDGE

27 _____
28 ¹A copy of their curriculum vitae is attached to this order. Judge Pro's professional
time is billed at \$525 per hour. Judge Leen and Justice Douglas's professional time is
billed at \$500 per hour.



Hon. Philip M. Pro (Ret.)

Case Manager

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Biography

Hon. Philip M. Pro (Ret.) joined JAMS following a distinguished federal judicial career spanning nearly 35 years, during which he earned a reputation for active case management, fairness, preparation, decisiveness, and a deep understanding of the law. As a United States District Judge for more than 27 years, he presided over a full range of cases involving intellectual property, commercial disputes, antitrust, securities, employment, class actions, multi-district litigation, and many others. Prior to his service on the Bench, Judge Pro had a distinguished career as a former Assistant U.S. Attorney for Nevada, Deputy Attorney General for the State of Nevada Gaming Division and a civil litigator.

As the only full-time United States Magistrate Judge in Las Vegas, Nevada, from 1980 to 1987, Judge Pro also presided over a wide range of pre-trial matters and settlement conferences in virtually all civil cases filed in federal court, including the MGM Grand Hotel Fire Litigation, MDL 453.

Judge Pro has traveled to over 20 countries to promote the rule of law through educational programs teaching independent judicial administration and case management. His experience and global perspective prove vital in resolving many different types of cases.

ADR Experience and Qualifications

Judge Pro presided over and resolved by settlement, judgment, or trial, thousands of cases involving a wide range of issues, including:

- Antitrust
- Banking
- Bankruptcy
- Business/commercial

- Class actions and collective actions
- Corporate governance
- Employment and labor disputes
- Intellectual property: Copyright, patent, trademark, unfair competition
- International discovery
- Medical malpractice
- Multi-district litigation: Antitrust, employment, mass tort, securities
- Personal injury
- Products liability
- Securities

Representative Matters

Antitrust

- Held that Natural Gas Act preempts state-law claims challenging alleged industry price fixing practices that directly affect wholesale natural gas market. *In re Western States Wholesale Natural Gas Antitrust Litigation*, MDL 1566
- Multi-district litigation (MDL) case alleging antitrust conspiracy to artificially inflate energy prices and seeking remand to state court. *In re California Retail Natural Gas and Electricity Antitrust Litigation*, MDL 1406
- Adjudicated gasoline retailers antitrust action against competitor alleging predatory pricing of gasoline in violation of Sherman Act and Clayton Act. *Rebel Oil v. Atlantic Richfield Co.*, 957 F.Supp. 1184 (1997)

Business/Commercial

- Dispute related to authorization for banks to charge customers of other banks for usage of their automated teller machines (ATM). *Valley Bank v. Plus Systems*, 749 F.Supp. 223
- Breach of contract action against real estate companies arising from dispute regarding 2,000 acre development
- Federal savings association action against former bank employees alleging breach of fiduciary duty and violation of Nevada Uniform Trade Secrets Act
- Countless actions related to breach of contract and breach of fiduciary duty
- Numerous deficiency judgment actions on guarantees securing loans for real estate development
- Numerous insurance coverage and bad faith claims
- Settled action over liability of members of joint venture developing a large condominium complex following summary judgment
- Adjudicated claims for interference with contractual relations arising in connection with real estate development auction

Employment/Labor

- Disputes alleging age and gender discrimination, and hostile work environment
- Disputes arising from retaliation claims
- MDL action related to allegations that nationwide retailer systematically failed to pay overtime hours and altered employees time records. *In re Wal-Mart Wage and Hour Employment Practices Litigation*, MDL 1735
- Sex discrimination case brought against owner/publisher of newspaper
- Numerous sexual harassment and discrimination cases
- Former employees' class actions alleging systematic wage and hour violations under federal and state law
- Lawsuits alleging disability discrimination under Americans with Disabilities Act (ADA)
- Lawsuits brought by employees alleging failure to make reasonable accommodation for disabilities under the Fair Employment and Housing Act (FEHA) and Employee Retirement Income Security Act (ERISA)

- Multiple collective actions and class actions brought under Fair Labor Standards Act
- Numerous actions brought under Labor Management Relations Act
- Numerous actions alleging breach of the duty of fair representation
- Actions involving employee group health coverage claims under ERISA

Governmental and Environmental Litigation

- Suit by property developer and City of Las Vegas against railroad seeking remediation costs for railroad's contamination of property. *City Parkway v. Union Pacific Railroad*, 911 F.Supp.2d 1022 (2012)
- Construing claims by former employees working at classified United States Air Force facility against EPA alleging violations of Resource Conservation and Recovery Act. *Kaza v. Browner*, 932 F.Supp. 254 (1996)
- Citizen suit brought under Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). *Frost v. Perry*, 919 F.Supp. 1459 (1995)
- Lawsuit related to project to widen section of federal interstate highway. *Sierra Club v. U.S. Dept. of Transportation*, 245 F.Supp.2d 1109
- Action by organizations in Mexico and the United States regarding project to modify the "All American Canal" to prevent seepage of water to the Mexicali Valley. *Consejo de Desarrollo Economico de Mexicali v. U.S.*, 438 F.Supp.2d 1207 (2006)
- Construing claims related to water diversion, transportation, and storage rights and authority of Nevada State Engineer with respect thereto. *U.S. v. Alpine Land & Reservoir Co.*, 919 F.Supp. 1470 (1996)
- Holding absolute FCC ban on proposed gaming advertisements violated broadcasters' rights to commercial free speech. *Valley Broadcasting v. U.S.*, 820 F.Supp. 519 (1993)
- Construing claims by various county and city defendants in eminent domain proceeding relating to easement for construction of the Kern River Natural Gas Pipeline

Intellectual Property

- **Copyright**
 - Adjudicated various cases on diverse copyright areas
 - Disputes arising from website design
- **Patent**
 - Court trial declaratory judgment finding that patents related to machine vision and automatic identification bar code technology were invalid, unenforceable, and not infringed. *Symbol Technologies v. Lemelson*, 301 F. Supp. 2d 1147 (2004)
 - Lawsuit by owner of card game patents alleging infringement by competitor
 - Patent infringement suit by owner by assignment of six patents for "Electronic Surface Mount Packages". *Halo Electronics v. Bel Fuse* (2013)
 - Infringement suit by owner of patent for electronic gaming network and patent for lottery-type wagering game against competitor. *Fortunet v. Melange Computer Services*, 412 F.Supp.2d 1071 (2005)
 - Class action by investor partners against patent owner alleging breach of fiduciary duty and of partnership agreement as result of alleged failure to enforce royalty agreement
 - Claim construction and summary judgment on patent infringement action involving patents for systems and methods of data analysis and data visualization
 - Claim regarding patents covering various navigation processes and devices related to construction
 - Multiple actions regarding allegations of patent infringement, trademark infringement, and unfair competition
- **Trade Secrets**
 - Claims of developer of Kentucky Fried Chicken skinless fried chicken product against restaurant franchisor for misappropriation of trade secrets
- **Trademark**
 - Action brought by owner of registered trademark consisting of name of musician Bob Marley for infringement, unfair competition, and unauthorized use of right to publicity under Nevada law
 - Disputes involving website names and access
 - Actions over competitors' uses of similar trade names

- Various trade dress cases between competitors concerning product design and packaging
- Trademark infringement action between owners of competing adult entertainment websites

Securities

- Dispute related to alleged hostile takeover and defensive measures, and to compel annual meeting. *Hilton Hotels v. ITT Corp.*, 978 F.Supp. 1342 (1997)
- Class action alleging securities fraud, insider trading, and pendent state claims for common-law fraud and negligent misrepresentation
- Actions alleging securities fraud through issuing false or misleading statements about reserves, revenues, and income. *In re Stratosphere Corp. Securities Litigation*, 66 F.Supp.2d 1182 (1999)
- Action alleging golf club owners conspired to fraudulently induce investors to purchase country club at inflated price
- Securities fraud class action alleging price-fixing
- MDL action for securities fraud brought by investors who purchased stock

Torts/Personal Injury

- Claims for negligent infliction of emotional distress, and conscious disregard for safety of invitees and guests at 1991 Tailhook Convention. *Paula Coughlin v. Tailhook Assoc. & Hilton Hotels*, 879 F.Supp. 1047 (1995)
- Court trial adjudicating claims of former workers at Nevada nuclear test site alleging negligence in protecting workers engaged in atmospheric and underground nuclear testing
- Action alleging conspiracy to defame Jennifer Flowers in books and television interviews. *Flowers v. Carville, et al.*, 292 F.Supp 2d 1225 (2003)

Honors, Memberships, and Professional Activities

- Appointed, Nevada Gaming Commission, 2015-2019
- Recognized in *Nevada Law Journal* 511 (2012) *Saluting Judge Pro's Quarter Century of Nevada District Service*
- Board Member, Saltman Center for Conflict Resolution at the Boyd School of Law, 2006-present
- Participated in "Rule of Law" programs with foreign judiciaries in over 20 countries including Hungary, Georgia, Bosnia, Netherlands, Spain, South Africa, Malawi, Jordan, Pakistan, Norway, Indonesia, Armenia, Azerbaijan, Ukraine, Latvia, and Columbia, since 1999
- Chair, State Bar of Nevada Law Related Education Consortium, 2010-2014
- Board, Federal Judicial Center, 2007-2011
- Chair, Ninth Circuit Wellness Committee, 2005-2010
- Co-moderator, U.S. Department of Justice Colloquium for Iraqi Jurists in Washington, D.C., 2003
- Member of the Ninth Circuit Jury Instructions Committee, 1987-2002
- Vice President, Federal Judges Association, 1997-2001, and Board Member, 1992-2001
- Co-chair, Founding Advisory Board, William S. Boyd School of Law, University of Nevada at Las Vegas, 1997-1999
 - Member, Boyd Law School Advisory Board
- Chair, United States Judicial Conference Committee on the Administration of the Magistrate Judges System, 1993-1998
- Founding Member, Howard McKibben Nevada American Inn of Court
 - President, 1988-1990
- Publications:
 - Co-author, "Measured Progress, the Evolution and Administration of the Federal Magistrate Judges System", *The American University Law Review*, 1995
 - Author, "Misunderstanding Judging," *Nevada Law Journal*, 2007

Background and Education

- Judge, United States District Court, District of Nevada, 1987-2014

- Senior United States District Judge, 2012-2014
- Chief Judge, District of Nevada, 2002-2007
- Magistrate Judge, United States District Court, District of Nevada, 1980-1987
- Assistant United States Attorney, Reno, 1980
- Deputy Attorney General, Gaming Division, State of Nevada, 1979-1980
- Partner, Semenza, Murphy and Pro, 1977-1979
- Assistant United States Attorney, Las Vegas, Nevada, 1975-1977
- Deputy Public Defender, Clark County, Nevada, 1973-1975
- Law Clerk for the Honorable William P. Compton, Eighth Judicial District Court in Las Vegas, Nevada, 1972-1973
- LL.M., Duke University School of Law, 2014
- J.D., Golden Gate University School of Law, 1972

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Hon. Peggy A. Leen (Ret.)

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Biography

Hon. Peggy A. Leen (Ret.) joins JAMS after serving more than 18 years as a United States magistrate judge in the District of Nevada, where magistrate judges are utilized to the full extent of their jurisdictional authority. Magistrate judges in the District of Nevada conduct 100% of the district's alternative dispute resolution, and as a result, Judge Leen has conducted more than 900 settlement conferences and early neutral evaluations over the last 18 years, settling hundreds of cases. Before appointment to the bench, she was a trial lawyer for more than 20 years, during which time she litigated both civil and criminal cases. As a civil trial lawyer, she litigated primarily multi-party, complex litigation, including construction, product liability, mass disaster, toxic tort/PCB, nuclear radiation, employment, insurance/insurance bad faith, eminent domain, malpractice and commercial/business matters.

Judge Leen has developed a reputation as an effective settlement judge who is always fully prepared, with a firm grasp of the facts, legal issues and applicable law involved in each case. She is known for innovative approaches to complicated cases and ability to tactfully but firmly handle emotionally charged and difficult cases. She is evaluative, candid and direct about the strengths and weaknesses of parties' cases, while still willing to listen and make sure that parties feel they have been heard and understood. As a settlement judge and mediator, she is thorough, organized, empathetic and focused on realistic resolutions. She excels in assisting counsel to manage the expectations of their clients about realistic outcomes, both in litigation and settlement.

ADR Experience and Qualifications

Served as a federal magistrate judge. Presided over trial, evidentiary hearings, a wide variety of civil cases. She was automatically referred all case management, discovery and non-dispositive motions in all civil cases to which she was assigned.

Conducted in excess of 900 settlement conferences and early neutral evaluations involving a wide range of civil disputes, including those in the following areas:

- Antitrust
- Business/Commercial
- Class Actions
- Civil Rights: excessive force, wrongful death, First and Fourth Amendments, conditions of confinement
- False Claims Act
- FLSA Collective Actions
- Employment and Labor
- Intellectual Property: copyright, trademark, patent, unfair competition
- Insurance/Insurance Bad Faith
- Malpractice: architectural, engineering, medical, legal
- Multi-District Litigation
- Personal Injury
- Products Liability

Representative Settled Matters

Business/Commercial

- Nine-figure global settlement of multi-party litigation filed in multiple federal districts and related bankruptcy involving the development of Lake Las Vegas
- Global settlement of multi-party litigation brought by investors and lenders alleging breach of contract, negligent and fraudulent representation and other claims arising out of plan to convert golf course to residential development
- Suit brought by corporate officer and general counsel of a technology consulting firm for breach of contract, negligent and false representation, fraud, retaliation and other claims against firm alleging failure to pay agreed compensation and benefits and provide equity interest in company
- Multiple cases involving breach of commercial lease agreements
- Several Miller Act and payment and performance bond cases

Civil Rights

- First Amendment and due process suit brought by plaintiff circulating petition for automatic voter registration challenging public library's time, place and manner restrictions on circulating petitions
- Lawsuit against City of Las Vegas alleging First Amendment and due process violations arising out of city ordinance and enforcement practices regulating and restricting street entertainers' activities at the downtown Fremont Street Experience in Las Vegas
- Wrongful death/excessive force claims brought by mother and fiancé against police department arising out of shooting death during execution of a search warrant
- Multiple cases against police departments and individual officers for alleged excessive force, false arrest/imprisonment, abuse of power, due process and search and seizure violations
- Multiple cases filed by parents of children with autism and other disabilities against school district and individual employees for alleged failure to provide a free and adequate public education
- Multiple lawsuits against school district and individual employees filed by parents of autistic children alleging physical and emotional abuse of their children
- Lawsuit against county, individual defendants employed by department of family and juvenile services and owner/operators of group home for violation of the Fourteenth Amendment/duty to protect arising out of the sexual assault of a 10-year-old boy in foster care at a group home by an older foster child with whom he was housed

- Numerous cases brought by pretrial detainees and convicted persons and representatives of their estates against department of corrections and municipalities operating local jails and detention centers alleging deliberate indifference/failure to provide adequate medical care for serious medical issues

Employment

- Dozens of cases brought under Title VII and related state statutes alleging race, sex, religious and national origin discrimination and retaliation
- Dozens of cases brought for sexual harassment
- Dozens of age discrimination cases
- Dozens of cases brought under the ADA
- Multiple lawsuits filed by the EEOC on behalf of charging parties and similarly situated employees seeking injunctive relief and monetary damages for alleged violations of Title VII brought against gaming industry employers, cab company, automobile dealership and other employers
- Multiple collective and class action lawsuits brought under the FLSA and related state and federal wage and hour laws for alleged violations by gaming industry employers, timeshare companies, limousine service, security guard company, retail chain and other employers
- Several collective bargaining agreement scope-of-work disputes between different unions
- Multiple lawsuits brought by union trust funds to compel required trust fund contributions

Health Care

- Suit brought by Department of Justice against pain management specialist claiming systematic overbilling of Medicare and Medicaid
- Resolved multiple cases management and discovery disputes in case brought by relator and Department of Justice under the False Claims Act against a large national health care provider alleging pervasive and systematic false/unlawful certification of nursing home patients for end-of-life hospice care

Insurance

- Multiple lawsuits involving coverage disputes over the duty to defend and/or indemnify underlying third-party litigation in construct defect, personal injury, defamation and other tort cases
- Multiple lawsuits involving coverage disputes in first-party litigation
- Multiple lawsuits involving disputes among insurance carriers litigating each company's equitable share contribution to settlements or judgments
- Dozens of cases alleging breach of contract and/or bad faith for failure to settle first party personal injury, defamation, homeowners' claims and UM/UIM claims

Intellectual Property

- Copyright infringement action brought by architectural firm alleging owner of project unlawfully converted and appropriated architectural plans for use on another commercial project
- Patent infringement action against gaming equipment manufacturer involving sales of card-shuffling devices used in live casino table games
- Several patent infringement cases involving software applications/methods of playing casino games

Personal Injury/Products Liability/Tort

- Suit brought by patron of strip club who alleged he was beaten and rendered a quadriplegic by club

bouncer

- Product liability action brought by U.S. Air Force airman against aviation company/government contractor for severe and disfiguring burn injuries sustained while performing airplane maintenance on base
- Action filed by U.S. Marine against commercial trucking company, truck driver and driver of the vehicle in which she was a passenger for life-threatening, permanent injuries and loss of Marine career suffered in multi-vehicle accident
- Negligence and malpractice claims brought by parents for failure to detect fetal distress during hospital admission allegedly resulting in death of the unborn child
- Negligence and malpractice claim brought by parents of an infant who died of an IV overdose of prescription medication administered at hospital
- Negligence and malpractice action brought against law firm former by former client alleging failure to timely assert potentially case dispositive claims and defenses
- Suit by mother of severely autistic 13-year-old against school district for negligence and negligent supervision arising out of child's assault by teaching aid convicted of lewdness with a minor
- Suit by parents of 17-year-old student against school district for negligent hiring and supervision arising out of a sexual relationship between school coach and student
- Multiple premises liability cases brought against hotel/casinos, apartment complexes and commercial business establishments for failure to provide adequate security resulting in personal injury and/or loss of property
- Multiple slip and fall cases brought by patrons of grocery store and retail chains

Honors, Memberships, and Professional Activities

- Member/Fellow, International Society of Barristers, 1994–present
- Member/Fellow, International Academy of Trial Lawyers, 1998–present
- Member/Fellow, American Academy of Trial Lawyers, 1999–present
- President, Howard D. McKibben Nevada American Inn of Court, 2002–2004
- Member, Magistrate Executive Board, Ninth Circuit Court of Appeals, 2012–2015
- Judicial Participant, Duke Law/EDRM and Bolch Judicial Institute effort to develop technology-assisted review (TAR) guidelines for judges and lawyers (requested to review and comment on draft proposed guidelines)
- Judicial Participant, Duke Law Center for Judicial Studies Program, Implementing the 2015 Amendments to the Federal Rules of Civil Procedure, San Francisco, 2017
- Panel Member, Roundtable on Intellectual Property and Trade Shows; USPTO Office on Trade Show Infringement; Alexandria, VA; 2017

Background and Education

- Magistrate Judge, United States District Court, District of Nevada, 2001–2019
- Chief Deputy District Attorney, Nevada District Attorneys' Office, Clark County, 1996–2000.
- Associate, Shareholder and Managing Shareholder; Thorndal, Backus, Maupin & Armstrong; 1981–1995
- Deputy Public Defender, Nevada Public Defender's Office, Clark County, 1979–1981
- Law Clerk and Student Intern, Nevada Public Defender's Office, Clark County, 1976–1979
- J.D., University of San Diego School of Law, 1979
- B.A., University of Nevada, Las Vegas, 1976

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JUSTICE MICHAEL L. DOUGLAS

Justice Michael L. Douglas was appointed to the Nevada Supreme Court in March 2004 by Gov. K. Guinn, and thereafter retained; and twice re-elected. Justice Douglas is the first African American Justice in Nevada's history.

Justice Douglas, a native of Los Angeles, came to Las Vegas in 1982 from Philadelphia, PA., where he had been working as a private attorney. His Nevada career began as an attorney with Nevada Legal Services in 1982. Two years later he was hired by the Clark County District Attorney's Office and served in the Civil Division until 1996. In January 1996, he was appointed to the Eighth Judicial District Court bench by Gov. R. Miller and was twice elected, serving until his appointment to the Supreme Court. On the District Court, he served as Chief Judge and Business Court Judge, and also served on District Court Committees and Supreme Court Commissions. On the Supreme Court, Justice Douglas chaired the Nevada Supreme Court Bench-Bar Committee, the Nevada Supreme Court Access to Justice Commission, and the Nevada Supreme Court Specialty Court Funding Committee. Justice Douglas also served as Chief Justice of the Nevada Supreme Court in 2011 and 2018. In January 2019 Douglas retired. Thereafter, he served for two months as Acting Chief Judge of the Nevada Court of Appeals and serves as a Senior Justice by appointment.

A graduate of the University of California Hastings College of the Law in 1974 and California State College, Long Beach, in 1971, Justice Douglas has been a member of the Judicial Council of the State of Nevada and Vice President of the Nevada District Judges Association. He is a past president of the Nevada American Inns of Court. He has also been active with the State Bar of Nevada, Nevada Law Foundation, National Bar Association, Consumer Credit Counseling Service, and groups fighting domestic violence.

Justice Douglas, is married and has a daughter and three grandchildren, has been a longtime supporter of youth in both California and Nevada. He is also a mentor for young lawyers and UNLV Boyd Law School students.