No. 06-658

IN THE

Supreme Court of the United States

MCCARRAN INTERNATIONAL AIRPORT AND CLARK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA,

Petitioners,

v.

STEVE SISOLAK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Nevada

REPLY BRIEF OF PETITIONERS

DAVID J. J. ROGER
DISTRICT ATTORNEY
E. LEE THOMSON
DEPUTY DISTRICT ATTORNEY
500 South Grand Central Parkway
Fifth Floor
Las Vegas, Nevada 89109
(702) 455-4761

CARTER G. PHILLIPS*
JOSEPH R. GUERRA
PETER R. STEENLAND
PETER C. PFAFFENROTH
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Petitioners

* Counsel of Record
[Additional Counsel on Inside Cover]

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KIRK B. LENHARD
R. DOUGLAS KURDZIEL
SCOTT M. SCHOENWALD
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
Las Vegas, Nevada 89109
(702) 862-3300

LORI POTTER
DANIEL S. REIMER
THOMAS R. DEVINE
ARTHUR P. BERG
KAPLAN KIRSCH &
ROCKWELL LLP
1675 Broadway
Suite 2300
Denver, Colorado 80202
(303) 825-7000

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REPLY BRIEF OF PETITIONERS

In its unprecedented ruling, the Nevada Supreme Court held that federal law does not preempt a landowner's state-law right to exclude the public from up to 500 feet of "navigable airspace" that Congress placed in the public domain to ensure safe takeoffs and landings. Respondent's claim that the Court deemed this preemption issue "insubstantial" in *Jankovich* v. *Indiana Toll Road Commission*, 379 U.S. 487 (1965), is demonstrably false. In fact, the Nevada court's preemption ruling conflicts with the decisions of this and other courts. Nor does its takings judgment rest on state law: the judgment includes a $2 million fee award that inescapably rests on the court's finding of a "*per se*" taking under the Federal Constitution. Respondent's glib assurance that petitioners and the nation's aviation system can easily absorb the staggering potential liabilities that the decision creates is disingenous. The filing of an extraordinary *amicus* brief by nearly the entire industry confirms that this is the most important aviation case to reach this Court in over a generation.

1.a. Respondent concedes that the preemption issue petitioners raise is "a distinct question of federal law" that "is not jurisdictionally barred." Opp. at 19-20. His claim that this is "the precise same legal issue" dismissed in *Jankovich*, Opp. at 20-21, is flatly wrong and reflects a complete misunderstanding of petitioners' claim.

Jankovich involved an ordinance that imposed an 18-foot height limit on toll road property, thereby barring operation of a road built 30 feet above ground. 379 U.S. at 488. Because the state court found a taking under both federal and state law, the property owner argued that this Court lacked jurisdiction to review the decision. In response, the airport operators argued that the state court based its finding of a taking on much more than the ordinance's effect on the toll road property; it had deemed the ordinance "wholly void" and "invalid as an entirety." *Indiana Toll Road Comm'n* v. *Jankovich*, 193

N.E.2d 237, 241-42 (Ind. 1963). The airport operators argued that this ruling "signif[ied] the total nullification of airport zoning," and that such state-law nullification of airport zoning was preempted by "the policy of the Federal Airport Act," which deemed local airport zoning "essential to assur[ing] compatible land use" near airports. *Jankovich*, 379 U.S. at 492-93 (summarizing airport operators' argument).

The Solicitor General disavowed the operators' suggestion that federal law mandated airport zoning, and that a "State law forbidding airport height-limitation zoning would . . . violate the Supremacy Clause." Memorandum for the United States as *Amicus Curiae* at 2 n.1, in *Jankovich* v. *Indiana Toll Road Comm'n* ("U.S. *Jankovich* Mem."). Because federal law required a grantee to adopt zoning restrictions only "[i]nsofar as it is within its power," the Solicitor General stated that there was "no basis for a conclusion that federal law removes State law restrictions on the exercise of the zoning power or defeats any State law right to compensation." *Id.* This Court, in turn, deemed the preemption claim "insubstantial" because it did not read the Indiana Supreme Court's opinion to "portend the wholesale invalidation of all airport zoning laws." 379 U.S. at 492-93 & n.2.

Here, petitioners are not arguing that federal law mandates airport zoning or bars a state court from ever ruling that an airport zoning law effects a taking under a state constitution. Petitioners claim that, by granting the public the right to use the "navigable airspace," federal law necessarily preempts a state-law right to exclude the public from hundreds of feet of unused navigable airspace. This Court has never deemed this claim "'insubstantial.'" Opp. at 22. To the contrary, this preemption claim is based on this Court's decisions and federal statutes and regulations that were never mentioned in *Jankovich*. It is also fully consistent with the United States' submissions in *Jankovich* and later cases.

In *United States* v. *Causby*, this Court held that federal law abolished the common law doctrine of absolute ownership of

superadjacent airspace. 328 U.S. 256, 261 (1946). "The air is a public highway," and recognizing "private claims to the airspace would . . . transfer into private ownership that to which only the public has a just claim." *Id.*; see also *id.* at 264 (the Air Commerce Act placed navigable airspace "within the public domain"). At the same time, *Causby* also made clear that the public's right to use navigable airspace did not override a landowner's interest in use of underlying land. Because continuous invasions of superadjacent airspace at low altitudes "affect the use of the surface of the land," the Court held that overflights that "are so low and so frequent as to be a direct and immediate interference with the enjoyment and use of the land" effect a taking. *Id.* at 265-66.

Petitioners thus recognize that zoning laws that ensure the safety of low-altitude overflights can, like overflights themselves, so interfere with the right to use and enjoy land that it effects a taking of land. A claim that a height limit to protect navigable airspace is so "close to the ground," U.S. *Jankovich* Mem. at 2, that it prevents use of the land (as the 18-foot limit in *Jankovich* did) or destroys a pre-existing use of land (as the overflights did in *Causby*) is not preempted. "But it does not follow" that a landowner's right to use superadjacent airspace "is absolute and is not subject to reasonable regulation in the public interest." U.S. *Jankovich* Mem. at 9.

In this case, however, the Nevada Supreme Court did recognize an absolute property right to exclude the public from hundreds of feet of navigable airspace. Respondent tries to downplay the scope of this ruling, insisting that he was deprived of airspace "immediately above" his property. But the court expressly held that "Nevadans hold a property right in the useable airspace above their property *up to 500 feet*," and that respondent offered "'sufficient proof'" of a taking by showing "that airplanes fly lower than *500 feet* above his property." Pet. App. 15a, 23a (emphases added; footnote omitted). Respondent did not and could not claim that the ordinances' height restrictions destroyed an existing use of his

property (there was none) or deprived him of all commercial use of his property (the County authorized construction of a 600-room casino hotel, see *id.* 5a-6a). In fact, despite his misleading suggestion, Opp. at 27 n.13, respondent dismissed his claim that overflights so interfered with use of his land as to effect a taking. Pet. App. 9a. Instead, he based his damages on the "'best use'" of his property, which allegedly required hundreds of feet of navigable airspace. Opp. at 4.

State recognition of unqualified ownership of hundreds of feet of navigable airspace is preempted by federal law. This is so not because federal law encourages airport zoning, but because state recognition of an absolute right to exclude the public from such airspace is flatly inconsistent with the public's right under federal law to traverse this airspace. Absent a showing that use of navigable airspace—or zoning limits to protect it—effect a *Causby*-type taking of land, the federal right of transit must prevail over a state-law right to exclude. Indeed, since *Jankovich*, the United States has argued that, absent pre-existing use of airspace, ownership of land "never include[s] the right to exclude the public from the navigable airspace above [the] land." Opp. of United States at 13, *Breneman* v. *United States*, No. 03-2616 (1st Cir. filed Feb. 17, 2004) *available at* 2003 WL 23899334, at *13; see also *Air Pegasus of D.C., Inc.* v. *United States*, 424 F.3d 1206, 1214 (Fed. Cir. 2005) (noting the government's position that navigable airspace is "not available for private ownership").

This Court has never "flatly rejected," Opp. at 22 n.11, the claim that federal law preempts a state-law property right to exclude the public from hundreds of feet of navigable airspace. In *Griggs* v. *Allegheny County*, 369 U.S. 84 (1962), the Court found a taking where overflights rendered an existing home uninhabitable. *Griggs* thus rejected the extreme notion, not argued by petitioners here, that the public's right to use the navigable airspace overrides a landowner's right to continue a pre-existing use of underlying land. And, as noted,

Jankovich involved a zoning restriction that was so severe that it effected a *Causby*-type deprivation of the land itself.

The preemption claim in *Jankovich* was thus entirely different than the one raised here. The toll road owner did not claim an absolute right to exclude the public from hundreds of feet of navigable airspace. And the *Jankovich* petitioners relied on a federal "policy" of encouraging airport zoning, not a law explicitly granting the public a right of transit through navigable airspace. The fact that this statutory provision has not changed since *Jankovich* was decided, Opp. at 22, is thus utterly irrelevant, as this law was not discussed in the case.

Nor do the other provisions respondent cites cast any doubt on the preemption claim raised here. The statutory admonition that zoning laws be used "to the extent reasonable," 49 U.S.C. § 47107(a)(10), merely recognizes that some height limits can be so onerous that they effect a *Causby*-type taking of land.[1] In such cases, Congress expected local authorities to prevent hazards by purchasing land or easements, which is why it permits the use of federal funds for such purposes. See *id.* § 47107(c)(1)(A)(i). The other regulations respondent cites, Opp. at 23, likewise simply recognize the limits on use of very low height restrictions to prevent air hazards. Such a recognition does not remotely support the notion that the federal right to traverse the navigable airspace is somehow compatible with a state-law right to exclude the public from hundreds of feet of navigable airspace.

b. The Nevada court's preemption ruling plainly conflicts with decisions of this and other courts. In *Causby*, this Court stressed that superadjacent airspace is not a private domain but "a public highway" that Congress can place in "the public

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[1] Indeed, the FAA guidance respondent cites, Opp. at 24 n.12, makes precisely this point. *See* FAA, Advisory Circular 150/5190-4A, *A Model Zoning Ordinance to Limit Height of Objects Around Airports* § 5.d (Dec. 14, 1987) (height restrictions "should not be so low at any point as to constitute a taking of property without compensation[]").

domain." 328 U.S. at 264. Although the Court recognized that, to use land, a landowner must control some superadjacent air, the facts of *Causby* and *Griggs* make clear "the immediate reaches of the enveloping atmosphere" do not extend 500 feet or ensure the best possible use of the land.[2]

The decision in this case, moreover, squarely conflicts with those in *Air Pegasus* and *City of Austin* v. *Travis County Landfill Co.*, 73 S.W.3d 234 (Tex. 2002). Citing the same federal law petitioners cite, the Federal Circuit held that the plaintiff had no cognizable property interest because "it is well established under federal law that the navigable airspace is public property not subject to private ownership." *Air Pegasus*, 424 F.3d at 1217. The Federal Circuit thus held that federal law precludes recognition of a state-law property right in navigable airspace; the Nevada court held that it did not. And, because the preemption claim here and in *Air Pegasus* hinged on the scope of ownership rights in *navigable* airspace, it is irrelevant that the Federal Circuit did not consider Air Pegasus's "'right to use *non-navigable* airspace,'" Opp. at 25 (emphasis added).

Similarly, while the Nevada court recognized a right to exclude the public from navigable airspace, the Texas Supreme Court has held that a landowner "has no right to exclude overflights above its property, because airspace is part of the public domain." *City of Austin*, 73 S.W.3d at 241-42 (citing *Causby*). Respondent deems this conflict immaterial because the Texas court assumed that state and federal constitutional protections were the same. Opp. at 25. But this is irrelevant. Federal law does not preempt the *protections* a state constitution affords property rights, but rather state *recognition* of an absolute right to exclude the public from navigable airspace.

c. Although these clear conflicts alone justify review of the preemption issue, the significant harm that the Nevada court's

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[2] Causby's house and barn were 16 and 20 feet high. 328 U.S. at 258 n.3. Griggs' house was 36 feet high. *Griggs*, 369 U.S. at 86.

decision will inflict on McCarran and the national aviation system make review imperative. Respondent's claims to the contrary are at best wrong, and at worst disingenuous.

There is nothing "limited," Opp. at 26, about the Nevada court's extraordinary ruling. It held that landowners have the unqualified right to exclude the public from up to 500 feet of navigable airspace above their land and that ordinances allowing airplanes to fly less than 500 feet over private land cause a taking of this right. Pet. App. 15a, 23a. There are hundreds if not thousands of properties around McCarran subject to ordinances that have the same "central purpose," Opp. at 26-27, of enabling planes to fly less than 500 feet above ground, and thus that effect a compensable "permanent physical invasion" of private airspace under the Nevada court's logic. Pet. App. 30a. The owners of every one of these properties can seek compensation for such invasions, which is why petitioners conservatively estimate their exposure at $10 billion.

To attack this estimate, respondent misquotes an outdated 2005 financial report. The statement that "resolution of these matters will not have a material adverse effect on the future financial condition of the Airport" appears in a paragraph describing litigation matters other than this lawsuit, which is described in an earlier paragraph.[3] Moreover, the 2005 report was prepared when the Nevada court had recently *rejected* the claim that the same ordinances at issue here effected a *per se* taking. See *County of Clark* v. *Hsu*, No. 38853 (Nev. Sept. 30, 2004). Bond indentures issued since the decision in this case confirm petitioners' representations to this Court. They list a number of pending takings suits and acknowledge "the possible effect of the *Sisolak* decision" in each; they note that, as a result of the decision, "it is possible other litigation will be filed based on a similar legal theory," see Reply App.; and

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[3] Clark County Dep't of Aviation, *Comprehensive Annual Financial Report of the Year Ended June 2005*, at 51 n.9 (2005), *available at* http://cms.mccarran.com/dsweb/Get/Document-101847.

they do not conclude with the "reassur[ance]," Opp. at 27 n.14, that respondent misquotes from the earlier report. See Reply App.

Similarly, respondent speciously argues that this estimate is not supported by record citations. Opp. at 27. But petitioners had no opportunity or duty to submit such an estimate, because it was not relevant to the merits of respondent's takings claim; it is relevant to why this Court should review the decision. Moreover, precisely because there was no evidence on the subject, the Nevada court's "finding" that its decision will not harm the airport is utterly baseless. In fact, before the decision in this case, the state *repealed* the law permitting the property trading that the court thought would ameliorate the impact of its ruling.[4] Nor can petitioners' detailed showing of the significant operational impacts that that ruling will have on the nation's fifth busiest airport be shrugged off with the blithe observation that adverse takings decisions against two small municipal airports and an air force base did not lead to "calamitous results." *Id.* at 28. Indeed, any doubt about the impact of the decision in this case is laid to rest by the extraordinary *amicus* brief joined by every significant member of the otherwise fractious aviation industry. Like petitioners, these *amici* urge review because the decision in this case "[t]hreaten[s]" and "[i]mperils" the national aviation system. See Brief on Behalf of the Air Line Pilots Association, Int'l, *et al.* as *Amici Curiae* in Support of Petitioners at 7-8, 14-18.

2. Respondent does not even attempt to defend the Nevada court's deeply flawed holding that the ordinances effected a *per se* "*Loretto*-type" taking under federal law.[5] Instead, he

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[4] *Compare* Nev. Rev. Stat. § 244.281(1)(c) (2004) (permitting counties to exchange property) *with id.* § 244.281(1) (2006) (exchange provision repealed).

[5] Respondent's suggestion that the Nevada court's takings test is "'*per se*' in name" only, Opp. at 26, is false. The court found "a permanent physical invasion of his airspace" based simply on "evidence that planes

claims that the court's "clear intent" to shield this decision from review defeats this Court's jurisdiction. Opp. at 16. Regardless of its intent, however, the court's award of $2 million in attorney's fees under the federal Uniform Act, 42 U.S.C. § 4654(c), necessarily rests on its ruling that the ordinances effected a taking under the Federal Constitution. There is thus no independent and adequate state law basis for the takings judgment in this case.[6]

As the state court recognized, Nevada law forbids the award of attorney's fees unless authorized by statute, rule or contract. Pet. App. 33a. And the court admitted that there is no basis in Nevada law for a fee award in respondent's circumstances: there is no constitutional right to fees, and the state eminent domain statute likewise does not so provide. *Id.* Instead, the court turned to the federal Uniform Act.

As petitioners have shown, and respondent nowhere disputes, the Uniform Act only permits fees for takings or other claims founded on the *Federal* Constitution or other federal law. Pet. 30. And, contrary to respondent's contention, Opp. at 17, there is no ambiguity about whether the Nevada statute that subjects state entities to the Uniform Act permits fees for takings under state, rather than federal, law.

The court below has definitively ruled that Nev. Rev. Stat. § 342.105 simply "adopt[s], by reference, the federal [Uniform] Act and its regulations." *City of Reno* v. *Reno Gazette-Journal*, 63 P.3d 1147, 1150 (Nev. 2003) (per curiam). The court relied on the state statute's legislative history in concluding that its purpose was to incorporate into Nevada law applicable federal law in its totality. *Id.* at 1149. Indeed, in

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fly lower than 500 feet above his property." Pet. App. 23a. The court did not consider any of the factors that inform an ad hoc regulatory takings analysis; indeed, it held that respondent did not have to exhaust the variance procedure because he asserted a "per se taking." *Id.* at 21a.

[6] As noted above, respondent concedes that the preemption issue is legally distinct and not jursidictionally barred. *See* Opp. at 19-20.

Reno, the court held that, when a state agency is subject to the Uniform Act, state law that otherwise would govern is trumped by federal law. *Id.* at 1150.

It is thus indisputable that the fee award in this case rests entirely on the finding of a taking under the Federal Constitution. The state court only invoked the Nevada implementing statute to show that, because petitioners received federal funding, it was necessary for them to "'comply with [the Uniform Act's] *federal* requirements.'" Pet. App. 35a (quoting Nev. Rev. Stat. § 342.105(1)) (emphasis added). The court's entire discussion of the propriety of respondent's fee award dwelt upon the metes and bounds of the federal Uniform Act, not the Nevada statute. Thus, because the Uniform Act only permits attorney's fees in inverse condemnation actions arising under federal takings law, the court below necessarily based its ruling on the United States Constitution, and as such the decision is within this Court's jurisdiction.

The $2 million in fees awarded under federal law is hardly an "incidental" component of the ruling below. Opp. at 16. It amounts to nearly a third of the damage award itself. See Pet. App. 11a. Respondent's complaint that the issue of the Uniform Act's exclusive application to federal takings was never raised before the courts below, Opp. at 18, is both irrelevant and hypocritical. Petitioners do not seek *review* of this ruling, but rather cite it to show that the judgment rests on federal law. Respondent cannot seek $2 million in fees under the Uniform Act, then complain that his recovery "unfairly" subjects his victory to review in this Court.

CONCLUSION

For the foregoing reasons and those set forth in the petition, the Court should grant the petition.

Respectfully submitted,

DAVID J. J. ROGER
DISTRICT ATTORNEY
E. LEE THOMSON
DEPUTY DISTRICT ATTORNEY
500 South Grand Central Parkway
Fifth Floor
Las Vegas, Nevada 89109
(702) 455-4761

CARTER G. PHILLIPS*
JOSEPH R. GUERRA
PETER R. STEENLAND
PETER C. PFAFFENROTH
SIDLEY AUSTIN LLP
1501 K Street, N.W.
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(202) 736-8000

KIRK B. LENHARD
R. DOUGLAS KURDZIEL
SCOTT M. SCHOENWALD
JONES VARGAS
3773 Howard Hughes Parkway
Third Floor South
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(702) 862-3300

LORI POTTER
DANIEL S. REIMER
THOMAS R. DEVINE
ARTHUR P. BERG
KAPLAN KIRSCH &
ROCKWELL LLP
1675 Broadway,
Suite 2300
Denver, Colorado 80202
(303) 825-7000

Counsel for Petitioners

* Counsel of Record

January 23, 2007

APPENDIX

CLARK COUNTY DEPARTMENT OF AVIATION

CLARK COUNTY, NEVADA
AIRPORT SYSTEM SUBORDINATE
LIEN REVENUE BONDS
SERIES 2006A
(NON-AMT)

(Aug. 30, 2006)

* * * *

[45] LITIGATION AND OTHER LEGAL MATTERS AFFECTING THE AIRPORT

General Litigation. There is no controversy of any nature now pending against the County or, to the knowledge of its respective officers, threatened, seeking to restrain or enjoin the issuance, sale, execution or delivery of the Series 2006A Bonds or in any way contesting or affecting the validity of the Series 2006A Bonds or any proceedings of the County taken with respect to the issuance of, sale thereof, or the pledge or application of any monies or security provided for the payment of the Series 2006A Bonds or the use of the Bond proceeds.

Inverse Condemnation Litigation. The County is a party to actions concerning Airport System operations in which inverse condemnation damages and other damages are being sought against the County. Although the facts and circumstances of each case differ, the County believes the ultimate outcomes will all be affected by the recently decided Nevada Supreme Court case, *Steve Sisolak v. McCarran International Airport and Clark County*, Case No. A434337 described below. A discussion of the individual cases is below.

Steve Sisolak v. McCarran International Airport and Clark County, Case No. A434337 and Nevada Supreme Court Case

No. 41646. In *Sisolak*, the District Court found for plaintiff's inverse condemnation claim, holding that a per se taking had occurred as a result of the County's enactment of airport height zoning [46] ordinances. As of July 31, 2006, the estimated amount of the Court award (including interest and attorney's fees) was $20,252,000, including interest, costs and attorneys' fees. On appeal, the Nevada Supreme Court on July 13, 2006 affirmed the District Court's ruling that a per se taking had occurred as a result of the County's airport height zoning ordinance. The County is exploring a writ of certiorari to the U.S. Supreme Court based on federal law, including federal aviation law. The outcome of this request is difficult for the County to predict, but if the petition to the U.S. Supreme Court is denied, the damages awarded by the District Court would have to be paid.

Tien Fu Hsu and Lisa Su Family Trust; S.W. Stephen Huang, Peter B. Liao, Lucky Land Company Enterprise, Westgate, West Park, Inc., v. Clark County, Case No. A434071. The plaintiffs alleged inverse condemnation as a result of the Airport's expansion due to increased aircraft operations and the resultant noise, dust, vibration and fumes. The amount of damages claimed is unknown but in a previous case against the County, the plaintiffs were awarded $13 million for inverse condemnation of the same properties allegedly due to zoning height restrictions. While this prior award was overturned by the Nevada Supreme Court, in an unpublished decision, the *Sisolak* decision calls into question the rational of the prior unpublished decision in Hsu. The Nevada Supreme Court remanded the case to district court to give the plaintiffs the opportunity to apply for a zoning variance. Thereafter, plaintiffs did not apply for a variance because they sold the property. As a result, the district court dismissed the case. Plaintiffs have appealed. Despite the *Sisolak* decision, the County believes it has strong defenses in this case, but the ultimate outcome is difficult to predict.

Vacation Village, Inc., v. Clark County ex rel Clark County Department of Aviation (Formerly Case No. A328480), Bankruptcy Court Case No. BK-S-97-27654 RCJ, Chapter 11, ADV-S-982313 RCJ. The plaintiff, Vacation Village, filed an inverse condemnation action against the Department in December 1993 seeking approximately $17 million in compensation. The Bankruptcy Court issued findings of fact and conclusions of law that the low and frequent flight of aircraft over the plaintiff's property caused a direct, substantial and immediate interference with the enjoyment and use of the plaintiff's property, demonstrated by a significant and immediate decline in market price. The Bankruptcy Court's award to plaintiff (made June 17, 2005 and amended July 7, 2005), plus interest, costs and attorney's fees as of July 30, 2006, is approximately $10,541,000. The County believes the Bankruptcy Court did not have the factual or legal basis to support its decision and has appealed. While the County believes there is a strong basis for overturning the decision, the outcome of any appeal and the amount of damages ultimately awarded is difficult for the County to predict.

Hotels Nevada, LLC v. Clark County District of Nevada, Case No. A405698. This case involves the alleged "per se taking" of the plaintiff's airspace. On or about August 9, 2001, the parties argued crossmotions for summary judgment. The Court denied all motions and the landowners' subsequent Motion for Clarification. It is impossible to predict the outcome of this case at this juncture given the current stage of the present litigation and the possible effect of the *Sisolak* decision. The County believes there are significant viable defenses available.

*Mickle v. Clark County District of Nevad*a, Case No. A442655. Plaintiffs have alleged that the County and the Airport have dramatically increased airplane and helicopter operations causing increased noise, dust, fumes, smoke, and vibrations over and upon their property. Plaintiffs further allege that the County has condemned, purchased, removed

and/or demolished properties in the neighborhood of plaintiffs' residence, thereby blighting plaintiffs' neighborhood such that they can no longer use their property to its highest and best use. The County believes there is a strong potential to prevail on several affirmative defenses, including plaintiffs' knowledge of the Airport's future expansion.

McCarran Plaza Suites, Inc. v. McCarran International Airport and Clark County, a political subdivision of the State of Nevada, Case No. A444497. McCarran Plaza Suites, Inc. ("MPS") filed its Complaint for Damages by Inverse Condemnation against the Airport and the County on January 2, 2002. MPS recently emerged from a Chapter 11 bankruptcy proceeding, and the Bankruptcy Court has transferred control of MPS to its original owner. The trustee in the MPS bankruptcy sold the subject property at auction in 2000, and the County has since acquired it from the purchaser. MPS alleges that the County's imposition of [47] height restrictions on buildings on the subject property, and the impact of noise from airport operations, reduced the market value of the subject property at the time of its auction and constituted a "taking." Although MPS has not yet placed a dollar value on its damages, the County believes MPS will seek damages in the multi-million dollar range. The County has denied that a "taking" occurred and believes it has a number of meritorious defenses to MPS's claims. The County has contested the case vigorously, and will continue to do so. It is impossible to predict the outcome of this case at this juncture given the current stage of the litigation and the possible effect of the *Sisolak* decision.

Mohler Trust v. Clark County, District of Nevada, Case No. A463007. The complaint for inverse condemnation for the alleged per se taking of airspace above the plaintiff's property was filed on February 6, 2003. At this juncture, it is impossible for the County to predict the likelihood of a successful defense. The County believes there is a strong potential to prevail on several affirmative defenses given the current stage

of the litigation and the possible effect of the *Sisolak* decision. The likelihood of appeal by both parties is very high, regardless of the outcome.

Boueri v. McCarran International Airport and Clark County, Case No. A502726. The plaintiff filed an inverse condemnation complaint on April 19, 2005, alleging that the expansion and modification of runways and the imposition of zoning height restrictions over the plaintiff's property constitute a "per se taking." Discovery has not yet commenced and the amount claimed is uncertain, but believed to be in the lower range of the inverse condemnation cases that the County is defending. It is impossible to predict the outcome of this case at this juncture given the current stage of the litigation and the possible effect of the *Sisolak* decision.

STT Land, LLC and Doe Landowners I-XX v. McCarran International Airport and Clark County, Case No. A524064. The plaintiffs filed an inverse condemnation complaint on June 28, 2006 alleging the imposition of zoning height restrictions over the plaintiff's property constitute a "per se taking." Discovery has not commenced and the amount claimed is uncertain. It is impossible to predict the outcome of this case at this juncture given the current stage of the present litigation and the possible effect of the *Sisolak* decision.

MBP Land, LLC and Doe Landowners I-XX v. McCarran International Airport and Clark County, Case No. A524065. The plaintiffs filed an inverse condemnation complaint on June 28, 2006 alleging the imposition of zoning height restrictions over the plaintiff's property constitute a "per se taking." Discovery has not commenced and the amount claimed is uncertain. It is impossible to predict the outcome of this case at this juncture given the current stage of the present litigation and the possible effect of the *Sisolak* decision.

Other possible inverse condemnation/taking litigation. As a result of the Sisolak decision, it is possible that other litigation will be filed based on a similar legal theory by landown-

ers who are affected by the County's airport height zoning ordinance. It is impossible to predict at this time whether any such litigation will be filed or its ultimate outcome.

Other Litigation. *Vacation Village, Inc., et al. v. Clark County and Nevada Department of Transportation*, Case No. A441267. The plaintiff, Vacation Village, filed a Complaint on October 16, 2001 seeking, among other things, damages for a claimed taking of an alleged reversionary right to property which the Nevada Department of Transportation conveyed to the County. The Complaint was dismissed for failure to state a claim. However, plaintiff, Vacation Village, and an intervening plaintiff, VVLV, LLC, who had subsequently purchased the Vacation Village Hotel property, were allowed to file an Amended Complaint, provided they made no claim for reversionary rights. A settlement agreement has been reached with the successor in interest to the intervening plaintiff, VVLV, LLV. The new claim in the Third Amended Complaint filed by Vacation Village on April 22, 2004 includes eight causes of action based upon reversionary rights, a taking of reversionary rights and rights of first refusal, inverse condemnation, unjust enrichment, intentional interference with prospective economic advantage, taking of airspace, misrepresentation and concealment and civil conspiracy. The County does not know the amount of damages the plaintiff will claim, [48] but believes claimed damages will exceed $500,000. The County believes the case has no merit. There is a pending motion asking the Court to dismiss the remainder of the case.

The County is a party to numerous other actions and claims in connection with the ownership and operation of the Airport System, including personal injury claims, employment related claims and construction claims, but in the opinion of the District Attorney, the actions and claims described in this paragraph are not expected, in the aggregate, to have a material adverse effect on the financial condition of the Airport System.