

**CAUSE NO. 1261**

**THE JOHN G. and MARIE  
STELLA KENEDY MEMORIAL  
FOUNDATION**

**V.**

**SYLVIA MENCHACA BALLÍ  
AGUILERA, ET AL.**

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**IN THE DISTRICT COURT OF  
  
KENEDY COUNTY, T E X A S  
  
105<sup>TH</sup> JUDICIAL DISTRICT**

**MOVANTS' TRIAL BRIEF  
IN SUPPORT OF MOTION TO CHANGE VENUE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, ROSA MARIA AGUILAR, ET AL. (hereinafter "Movants") and pursuant to Rules 257 – 259 of the Texas Rules of Civil Procedure file this their Trial Brief in Support of Motion to Change Venue, and in support thereof, would show unto the Court as follows:

**EVIDENCE OF LOCAL PREJUDICE**

Movants incorporate by reference herein for all purposes as if set forth at length the following evidence of local prejudice in the record proving that an impartial trial cannot be had in Kenedy County, as well as in the other two counties of the 105<sup>th</sup> Judicial District:

1. Exhibits "A" – "R" attached to Movants' Motion to Change Venue;
2. The deposition of Plaintiff's Chief Financial Officer, Paul Baen, which is attached as Exhibit "B" to Plaintiff's Supplemental Response to Motion to Change Venue (hereinafter referred to as Plaintiff's Exhibit "B");
3. The exhibits from the deposition of Paul Baen (Exhibit "S");
4. The depositions attached as Exhibit "C" to Plaintiff's Supplemental Response to Motion to Change Venue (hereinafter referred to as Plaintiff's Exhibit "C");
5. The Court Reporter's Certificates from the depositions of the five Kenedy County residents and from the depositions of Fred Ballí and Joe Ballí (Exhibit "T");

6. Offers of Oral Deposition Testimony containing page and line references to the credible evidence of local prejudice preventing Movants from receiving a fair and impartial trial in the 105<sup>th</sup> Judicial District (Exhibit “U”). All references to Exhibit “U” shall refer to both the Offer of Proof as well as the corresponding transcript with exhibits in Plaintiff’s Exhibit “C” unless otherwise indicated.

7. Plaintiff’s Responses to the two sets of Interrogatories and Requests for Production in Support of Motion to Change Venue Propounded by Fred Ballí (“V-1”) and Joe Ballí. (Exhibit “V-2”);

8. Plaintiff’s Amended Responses to Interrogatories and Requests for Production in Support of Motion to Change Venue Propounded in the Name of Fred Ballí. (Exhibit “W”);

9. Plaintiff’s Amended Responses to Interrogatories and Requests for Production in Support of Motion to Change Venue Propounded in the name of Joe Ballí. (Exhibit “X”);

10. Photos from Kenedy County. (Exhibit “Y”);

11. Photos from Nueces County. (Exhibit “Z”).

### **105<sup>TH</sup> JUDICIAL DISTRICT = VIOLATION OF DUE PROCESS**

12. Movants cannot get a fair trial in Kenedy County, Kleberg County, or Nueces County because of local prejudice. The inability of Movants and all the heirs of Jose Manuel Ballí Villarreal to obtain a fair and impartial trial in said counties is so severe that it would violate the due process clause of the Fourteenth Amendment to the U.S. Constitution as well as the due course of law provision in art. 1, §19 of the Texas Constitution if the trial of this cause were to occur in Kenedy County, Kleberg County, or Nueces County (hereinafter collectively referred to as the “105<sup>th</sup> Judicial District”).

13. Pursuant to Rules 257 - 259 of the Texas Rules of Civil Procedure, Movants therefore seek a change of venue to one of the three counties adjacent to Kenedy County, to wit:

Hidalgo County; Brooks County; or Willacy County (hereinafter collectively referred to as the “Adjacent Counties”).

14. Of the three Adjacent Counties, Hidalgo County is the logical choice for the following three reasons: (1) only the Hidalgo County Courthouse is wheelchair accessible and can accommodate attorney Christopher Jonas; (2) only Hidalgo County has a population large enough from which to select an impartial jury for a case of this magnitude; (3) only Hidalgo County is accessible by commercial airline, and most of the parties, attorneys, witnesses, as well as the Court will be forced to travel considerable distances for the trial.

#### **ARGUMENT AND AUTHORITIES**

15. There is no question that the Ballí family cannot get a fair and impartial jury trial in Kenedy County in this case. The only question is to which Rule 259 County will the venue of this case be changed.

16. Twenty depositions were conducted between Movants and the Kenedy Foundation with regard to the pending venue motion. Movants were forced to obtain an order of this Court before the Kenedy Foundation would provide sufficient answers to the two sets of interrogatories and requests for production served by Movants, which revealed that the Kenedy Foundation had distributed **more than one hundred million dollars (\$100,000,000.00)**<sup>1</sup> in the 105<sup>th</sup> Judicial District during the past twenty years. Contrary to Plaintiff’s Supplemental Response, the deposition testimony of the five Kenedy County residents is credible and conclusively establishes that Movants cannot get a fair and impartial jury trial in Kenedy County. Moreover, the deposition of Paul Baen as well as the other evidence referenced herein establishes that Movants cannot get a fair trial in any of the counties of the 105<sup>th</sup> Judicial District as a matter of law.

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<sup>1</sup> Plaintiff’s Exhibit “B”, page 28, lines 15-20 and page 30, line 10; *see also* Exhibits “S” “W” “X” and “U”.

17. Plaintiff's Supplemental Response misleads and implies that a judge conducting a Rule 258 venue hearing should consider only the credibility of the *affidavits* of the residents supporting the change of venue motion, rather than considering *all* the evidence presented at the venue hearing. A case cited by Plaintiff and attached as Exhibit "E" to Plaintiff's Supplemental Response confirms that in a Rule 258 hearing, "affidavits cannot be properly considered as evidence." *Governing Board v. Pannill*, 659 S.W.2d 670, 689 (Tex.Civ.App.—Beaumont 1983, writ ref'd n.r.e.). "They serve as pleadings to raise and frame the fact issues." *Id.*, *citing Galveston, H. & S.A. Ry. Co. v. Nicholson* 57 S.W. 693 (Tex.Civ.App. 1900, writ ref'd). Rule 258 provides in relevant part that "[r]easonable discovery in support of, or in opposition to, the application *shall* be permitted, and such discovery as is relevant, including deposition testimony on file may be attached to, or incorporated by reference in, the affidavit of a party, a witness, or an attorney who has knowledge of such discovery." Therefore, rather than an examination of the affidavits in a vacuum, a venue hearing conducted pursuant to Rules 257–259 requires the Court to consider all the evidence presented at the venue hearing.

18. Neither the affidavit to Plaintiff's Supplemental Response to Motion to Change Venue nor the corresponding deposition testimony of Paul Baen was credible. However, "[w]ell reasoned authorities hold that if the contestant to the motion to change venue merely avers 'it is not true', then the raised issues must be tried by the judge, pursuant to TEX.R.CIV.P. 258." *Governing Board v. Pannill*, 659 S.W.2d 670, 688 (Tex.Civ.App.—Beaumont 1983, writ ref'd n.r.e.) *citing City of Irving v. Luttrell*, 351 S.W.2d 941 (Tex.Civ.App.—Amarillo 1961, no writ). When exercising the discretion vested in him, the trial judge determines the facts proved, the credibility of the witnesses, and the weight to be given to testimony and evidence. *Jones v. Young*, 539 S.W.2d 901, 904 (Tex.Civ.App.—Texarkana 1976, writ ref'd n.r.e.). Moreover, a judge conducting a Rule 258 hearing has broad discretion to determine whether the change of

venue should be granted, and will not be reversed on appeal unless a clear abuse of discretion is shown. *Pannill*, 659 S.W.2d at 689; *see also Robertson v. Robertson*, 382 S.W.2d 945 (Tex.Civ.App.— Amarillo 1964, writ ref'd n.r.e.).

19. Rule 257 protects persons who are unable to obtain a fair and impartial jury trial because of local prejudice. Rule 257 is set forth in its entirety as follows:

A change of venue may be granted in civil causes upon motion of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, *for any following cause:*

- (a) That there exists in the county where the suit is pending *so great a prejudice against him that he cannot obtain a fair and impartial trial.*
- (b) That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial.
- (c) That *an impartial trial cannot be had in the county* where the action is pending.
- (d) *For other sufficient cause* to be determined *by the court.*

(Emphasis added). Although there is some evidence from which the Court could conclude that there is a combination of influential persons against Movants under Rule 257 (b), for purposes of brevity, and because the evidence of local prejudice is so overwhelming, Movants will only argue and prove in this Trial Brief that sufficient cause exists under Rule 257 (a), (c), and (d).

**The Evidence Satisfies Subsections (a), (c) and (d) of Rule 257  
as a Matter of Law**

20. In addition to the credible testimony from the five Kenedy County residents and other deposition testimony in the record, which will be discussed below, the following evidence establishes sufficient cause for changing the venue of this case from the 105<sup>th</sup> Judicial District:

### Kenedy County

- (a) Only 414 people live in Kenedy County.<sup>2</sup> Since all children and unregistered adults are excluded from serving as potential jurors, the actual jury pool in Kenedy County is far less than 414 persons.
- (b) The county seat of Kenedy County is the town of Sarita, which was named after Sarita Kenedy East, the person who established the foundation, which is the Plaintiff in this lawsuit.<sup>3</sup>
- (c) Most of the population of Kenedy County resides in Sarita.<sup>4</sup> There are 281 housing units and 138 households in Kenedy County according to the 2000 U.S. Census.<sup>5</sup> Until the 1990s, the Kenedy Foundation owned “approximately half of the houses in Sarita.”<sup>6</sup>
- (d) The Kenedy Foundation provided the financing for the homes sold<sup>7</sup> and the Foundation’s records indicate that it still owns the mortgage on five homes in Sarita.<sup>8</sup> The Kenedy Foundation currently owns or rents a combined total of 27 homes to residents in Sarita.<sup>9</sup>
- (e) The San Pedro Kenedy Ranch Company leases at least 7,185.68 acres from the Kenedy Foundation, and the lease signed by Mike East, includes six homes provided to employees of the San Pedro Kenedy Ranch Company.<sup>10</sup>

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<sup>2</sup> Exhibit “H”; Exhibit “S” tab 5.

<sup>3</sup> See Page 24 ¶ 4 of Plaintiff’s Original Petition in Declaratory Judgment on file with the court and said page is incorporated herein by reference as if set forth at length. See also Exhibit “H”.

<sup>4</sup> Plaintiff’s Exhibit “B” page 61, lines 4-20; see also Exhibit “U”.

<sup>5</sup> Exhibit “S” tab 5.

<sup>6</sup> Plaintiff’s Exhibit “B” page 89, lines 15-19; see also Exhibit “U”.

<sup>7</sup> Plaintiff’s Exhibit “B” page 89, lines 17-25 and page 90, lines 1-6. see also Exhibit “U”.

<sup>8</sup> Plaintiff’s Exhibit “B” page 89, lines 17-25 and page 90, lines 1-6; Exhibit “U”

<sup>9</sup> Exhibit “S”, Schedule of Structures (also marked “deposition exhibit Baen 3”).

<sup>10</sup> Exhibit “S”, Interim Grazing Lease (also marked “deposition exhibit Baen 4”) and Schedule of Structures (also marked “deposition exhibit Baen 3”).

- (f) None of the residents of Sarita pay either a water or sewage bill because Sarita Kenedy East's sister-in-law, Elena Suess Kenedy, made a large grant, which provides water and sewer services to the residents of Sarita free of charge.<sup>11</sup> Prior to the time of the grant, which occurred in 1982 or 1983, the residents of Sarita used septic tanks.<sup>12</sup>
- (g) The Kenedy Foundation has spent **\$886,805.97** for the construction of the Parish Hall of the (only) church in Sarita.<sup>13</sup>
- (h) At the deposition of Paul Baen on April 29, 2002, the Kenedy Foudation provided an updated report, which reflects that an additional **\$18,951.00** was recently distributed in Sarita by the Kenedy Foundation.<sup>14</sup> By adding this amount to the figures previously provided (\$18,951.00 + \$886,805.97) the Kenedy Foundation has spent at least **\$905,756.97** in the small town of Sarita.
- (i) A portrait of Mifflin Kenedy, the person after whom Kenedy County was named, and who was the grandfather of Sarita Kenedy East, hangs above the bench of the courtroom of the 105<sup>th</sup> district court in Sarita, Kenedy County, Texas.<sup>15</sup>

Kleberg and Nueces County

- (j) The relationship between Sarita Kenedy East's family and Arthur Spohn, after whom Spohn Hospital was named is well known by the residents of the 105<sup>th</sup> Judicial District.<sup>16</sup> Kenedy County is so small it does not have a hospital.<sup>17</sup> Kleberg County has one hospital, Christus Spohn Kleberg, and Nueces County,

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<sup>11</sup> Plaintiff's Exhibit "B" page 92, lines 2-23; *see also* Exhibit "U".

<sup>12</sup> Plaintiff's Exhibit "B" page 92, lines 2-23 and page 93, lines 1-3; *see also* Exhibit "U".

<sup>13</sup> Plaintiff's Exhibit "B" at page 83 lines 6-23.

<sup>14</sup> Exhibit "S", Grants from July 2001 to April 26, 2001 (also marked "deposition exhibit Baen 4" - this document is on the second to the last page of this exhibit).

<sup>15</sup> Exhibit "Y".

<sup>16</sup> Exhibit "Z" and Exhibit "U".

<sup>17</sup> Exhibit "U".

has the Christus Spohn Hospital System.<sup>18</sup> The largest single hospital in Corpus Christi is the Spohn Hospital on Shoreline Drive.<sup>19</sup> In 1982, the Kenedy Foundation granted \$10,269,300 for the addition of a new hospital wing, which was named the “Sarita Kenedy East Addition.”<sup>20</sup> The Sarita Kenedy East Addition contains large white letters on the outside of the building, which even the biased Paul Baen reluctantly admitted are “almost six feet tall.”<sup>21</sup>

- (k) During the past twenty years, the Kenedy Foundation has made staggering monetary distributions throughout the 105<sup>th</sup> Judicial District of at least:<sup>22</sup>
- (i) **\$100,831,204.57** in the 105<sup>th</sup> Judicial District;<sup>23</sup>
  - (ii) **\$98,179,223.18** in Nueces County;<sup>24</sup>
  - (iii) **\$1,665,174.42** in Kleberg County;<sup>25</sup>
  - (iv) **\$905,756.97** in Kenedy County<sup>26</sup>
  - (v) **\$87,584,349.96** to sectarian organizations, the majority of which were to the Catholic Diocese of Corpus Christi,<sup>27</sup> and the territory of the Diocese of Corpus Christi includes the three counties of the 105<sup>th</sup> Judicial District.
- (l) The “Sarita Kenedy East Addition” letters along with the vast sums of money distributed by Plaintiff to the Catholic Diocese of Corpus Christi and throughout the 105<sup>th</sup> Judicial District were identified by the residents of Kenedy, Kleberg and

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<sup>18</sup> Exhibit “U”.

<sup>19</sup> Plaintiff’s Exhibit “B” page 85, lines 10-25 and page 86, lines 1-2; see also Exhibits “Y” and “U”.

<sup>20</sup> Plaintiff’s Exhibit “B” page 57, lines 8-25 and page 58, lines 1-6; see also Exhibit “Z” and “U”.

<sup>21</sup> *Id.*

<sup>22</sup> These figures were derived from the data in Exhibit “S” and current through June 30, 2001. Plaintiff’s Exhibit “B” at page 35 lines 10-21. However the actual amount of grant money distributed in the 105<sup>th</sup> Judicial District exceeds \$100,831,204.57 because “there have been grants since June 30, 2001” including three recent grants totaling \$18,000 in Sarita. *Id.* at page 81, lines 8-25. See attachment to Exhibit “S” entitled Grants from July 2001 to April 26, 2001 (also marked “deposition exhibit Baen 4” - this document is on the second to the last page of the exhibit).

<sup>23</sup> Plaintiff’s Exhibit “B” at page 30 lines 10-15.

<sup>24</sup> Exhibit “X” at page 7

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* This grant was for the construction of Parish Hall of the Catholic church in Sarita. Plaintiff’s Exhibit “B” at page 83 lines 6-23; see ¶ 20(h) of this Trial Brief and accompanying footnotes.

<sup>27</sup> Exhibit “W” at page 8; Plaintiff’s Exhibit “B” at page 32, lines 4-19.

Nueces County as specific examples of local preventing Movants from getting a fair and impartial trial in the 105<sup>th</sup> Judicial District.<sup>28</sup>

The foregoing evidence conclusively establishes local prejudice under Rule 257 (a), (c) and (d), thus requiring that the venue of this case be changed from the 105<sup>th</sup> Judicial District to one of the Adjacent Counties.

The Testimony of the Kenedy County Residents is Credible

21. The deposition testimony of Evangelina Salazar, Johnny M. Salazar, Gloria Salazar, Joann Salazar, and Jennifer Salazar (hereinafter “Kenedy County residents”) was credible. All of the Kenedy County residents are blue-collar workers, three of whom live in homes owned by the Kenedy Foundation. Therefore, these decent people took a risk by testifying about Movants’ inability to get a fair trial in Kenedy County. As illustrated below, several expressed fear of retaliation and were extremely nervous during their deposition. Moreover, all of their depositions were conducted in an aggressive manner. An example from the deposition of Jennifer Salazar is set forth as follows:

Q: Based upon the affidavit and your testimony here today, are you fearful that the Foundation could retaliate against you?

A: Yes.

Q: Okay. And here on the record I want to tell you that if any such thing were to happen, I want you to contact me so that, you know, we can bring this up the Judge, Judge McDowell. But as we sit here today, have you been harassed or intimidated in any way for having signed the affidavit?

A: Just that I didn’t know stuff.

Q: Other than today in here.

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<sup>28</sup> Plaintiff’s Exhibit “C” and Exhibit “U”.

A: No.<sup>29</sup>

22. Although at times opposing counsel confused and/or attacked the Kenedy County residents on collateral matters such as whether Roy Turcotte was re-elected as County Attorney or how many people are in fact employed by the Foundation, their testimony was credible with regard to the inability of Movants to get a fair trial in Kenedy County because of local prejudice. Evidence of the inability of Movants to receive an impartial in Kenedy County from the deposition of Jennifer Salazar is set forth as follows:

Q: Okay. What was your address again, ma'am?

A: We have two addresses, because we just moved. And the one we live in now is 402 North Reichel. I mean – sorry. I'm nervous. 402 North Turcotte.<sup>30</sup>

Q: And you're what? Nineteen years old?

A: Yes.<sup>31</sup>

Q: What makes you think that the Turcottes or the Kenedy Foundation either could or would be able to apply immense pressure against the Ballí family on a great majority of the people in Kenedy County?

A: It would because – because there's not that very many people.

Q: And again, you don't know how many people the Kenedy Foundation employs in this county; do you?

A: No.

Q: How many houses in Sarita does the Kenedy Foundation own?

A: Quite a bit.<sup>32</sup>

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<sup>29</sup> Plaintiff's Exhibit C-1, page 42, lines 3-15; *see also* Exhibit "U".

<sup>30</sup> Plaintiff's Exhibit C-1, page 5, line 22, and page 6 lines 1-3; *see also* Exhibit "U".

<sup>31</sup> Plaintiff's Exhibit C-1, page 7, lines 21-22; *see also* Exhibit "U".

<sup>32</sup> Plaintiff's Exhibit C-1, page 21, lines 13-24; *see also* Exhibit "U".

Q: Sure. Do you have an opinion about whether the Kenedy Foundation has influence over the people in Sarita, Texas?

A: Yes.

Q: Okay, what is your opinion?

A: That everything that is here is about Kenedy.

Q: Okay. And could you give us an example of why the influence of the Kenedy Foundation is so strong here in Kenedy County?

A: Because everybody depends on the Kenedy family.

Q: And when you say “depends on” then what do you mean?

A: Like we depend on the Kenedy County for rent.<sup>33</sup> We depend on the Kenedy County for jobs here in Sarita and some other stuff.

Q: So when you say the Kenedy Foundation is influential, you’re talking about the power or the influence of the Foundation over the people?

A: Yes.<sup>34</sup>

Q: Okay, let’s move on. I wanted to ask you real quickly – and we’re almost done. You were asked several questions about the Kenedy – first about the Kenedy Foundation and the Kenedy family?

A: No, I don’t know what you mean.

Q: Okay. Do you distinguish or do you see a difference between the Kenedy family and the Kenedy Foundation?

A: No.

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<sup>33</sup> Jennifer Salazar also testified that her family pays their rent at the Kenedy Foundation office in Sarita. *See* Plaintiff’s Exhibit C-1, page 40, lines 20-23; *see also* Exhibit “U”.

<sup>34</sup> Plaintiff’s Exhibit C-1, page 27, lines 6-24; *see also* Exhibit “U”.

Q: When you say “no,” do you mean that you see them as one group, one control group?

A: Yes.<sup>35</sup>

Q: In paragraph 5 you were asked a few questions. What kind of town is Sarita? I mean what kind of town is it?

A: It’s a small, quiet town.

Q: Are you aware – I mean approximately how many people live here, to your knowledge?

A: About 400.<sup>36</sup>

Q: When you say “immense pressure,” why do you mean that? You said in your affidavit – and you answered some questions about it. Why do you feel that the Kennedy Memorial Foundation could apply immense pressure against the people who live here in Sarita?

A: Because a lot of people can lose their jobs for this.<sup>37</sup>

Q: Okay. Are you aware that one of the issues in this lawsuit is the actual ownership of a large portion of the land held – currently held by the Kennedy Memorial Foundation?

A: Yes.

Q: Do you have an opinion as to whether the possibility of losing the land could serve as a reason for the Foundation to apply pressure on the residents of Sarita to rule in their favor?

A: Yes.<sup>38</sup>

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<sup>35</sup> Plaintiff’s Exhibit C-1, page 30, lines 14-25 and page 31, lines 1-2; *see also* Exhibit “U”.

<sup>36</sup> Plaintiff’s Exhibit C-1, page 31, lines 9-11, 13, and 16-18; *see also* Exhibit “U”.

<sup>37</sup> Plaintiff’s Exhibit C-1, page 32, lines 3-7 and lines 12-13; *see also* Exhibit “U”.

Q: Do you believe the fact that a member of the Kenedy family left money to pay for the water bill and sewage bill of people who live in Sarita, do you think that would influence the people of Sarita?

A: Yes.<sup>39</sup>

Q: Are you saying that because Sarita East's sister-in-law did that, that the foundation that was created with Sarita East's money would somehow prejudice the people here in this county in favor of that foundation?

A: Yes.

Q: You think so? Have you talked that over with your neighbors?

A: No.

Q: Okay. Before Mr. Cardenas told you that, did you even know that?

A: Know what?

Q: Know that Sarita East's sister-in-law set things up so that the people in Sarita wouldn't have to pay for their water?

A: Yes.

Q: Okay. How did you learn that?

A: My parents.<sup>40</sup>

Q: Sure. What I'm trying to ask you is whether or not you have an opinion as to whether it's common knowledge that the people in Sarita know that a member of the Kenedy family is essentially paying their water bill?

A: Yes.<sup>41</sup>

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<sup>38</sup> Plaintiff's Exhibit C-1, page 32, lines 14-17, 19-23, and 25.

<sup>39</sup> Plaintiff's Exhibit C-1, page 34, lines 10-17; *see also* Exhibit "U".

<sup>40</sup> Plaintiff's Exhibit C-1, page 35, lines 1, and page 36, lines 1-16; *see also* Exhibit "U".

<sup>41</sup> Plaintiff's Exhibit C-1, page 40, lines 9-13; *see also* Exhibit "U".

23. Evangelina Salazar expressed a fear of retaliation not only for herself, but also for her father, with whom she lives in a home owned by the Kenedy Foundation.<sup>42</sup>

Q: Do you – do you have any fear of retaliation by the Foundation as a result of your testifying in this case?

A: Yes.

Q: Okay. You mentioned a few minutes ago you were worried about your father. Do you remember testifying to that?

A: Yes.

Q: What's your father's name?

A: Jose B. Salazar.<sup>43</sup>

24. Evangelina Salazar as well as all the Kenedy County residents were credible on the key issue, i.e. whether local prejudice would prevent Movants from receiving a fair and impartial trial in Kenedy County:

Q: Do you have an opinion as to whether the Turcotte family is powerful or influential in Kenedy County:

A: Yes.

Q: What is that opinion?

A: I don't think that, you know, the Ballís can get a fair trial here because the Turcottes have a lot of power here and a lot of people here in Kenedy County or somehow some way like they're leasing with the Foundation, so I don't think – I don't think the Ballís would have – that in my opinion the Ballís wouldn't have a fair trial.

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<sup>42</sup> Ms. Salazar's father, Jose B. Salazar is identified in the Schedule of Structures included in Exhibit "S" (also marked "deposition exhibit Baen 3") as the resident of building number 55 located at 110 S. Reichel, which is a home leased to her father's employer, the San Pedro Kenedy Ranch Company.

<sup>43</sup> Plaintiff's Exhibit C-7, page 61, lines 5-8 and lines 12-17; *see also* Exhibit "U".

Q: Do you have an opinion as to whether anybody could get a fair trial in a lawsuit against the Kenedy Foundation in Kenedy County?

A: No.

Q: And why do you feel that way?

A: Because it would be a lot of pressure on the people here because they work for the, you know, the Foundation, you know, with the Kenedys, you know. So I mean that would be a lot of pressure for the workers here.

Q: Okay.

A: They'd feel they probably have to, you know, vote, you know, especially the older people would feel, you know, they would be pressured.

Q: Okay. Do you have an opinion as to whether the Foundation, the Kenedy Memorial Foundation is very influential in Kenedy County?

A: Yes.

Q: What is that opinion?

A: That – well, they're together. I mean I don't think, like I said, you know, the Ballís could have a fair trial here for that reason.

Q: Or a chance of receiving a fair trial?

A: No.

Q: Okay. Let's go to paragraph 5, the second sentence says, "I am also aware that a majority of the people in Kenedy County either directly and/or indirectly depend on the Kenedy Foundation to earn a living." What did you mean by that?

A: Like the water and sewage, all of that is provided by us – for us.

Q: By whom?

A: By the – what’s her name” Stella, you know, I think it was Stella or Sarita left money for the people here in the county so we don’t have to pay water or sewage. Nobody pays water or sewage here in the county.<sup>44</sup>

Q: You were asked some questions about the San Pedro Kenedy Ranch.

A: Right.

Q: Do you remember testifying that the San Pedro Kenedy Ranch is leased by the Foundation to who? Who did you say it was leased to?

A: Mike East.

Q: So anybody who works for the San Pedro Kenedy Ranch would indirectly depend on the Kenedy Foundation?

A: Right.

Q: And also with regards to homes, anyone who would lease a home from the Kenedy Memorial Foundation, either directly or through a middleman like Mike East, do you have an opinion as to whether they would directly and/or indirectly depend on the Kenedy Foundation?

A: Yes.<sup>45</sup>

Q: Do you have an opinion as to whether the sphere of influence of the Foundation is to people that could potentially influence against the Ballís would include any parties like companies or people that lease property from them?

A: Yes

Q: Okay. So it’s your testimony that if it were shown that – is it your testimony that if the Foundation were to lease land, for example San Pedro Kenedy Ranch, that

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<sup>44</sup> Plaintiff’s Exhibit C-7, page 24 lines 4-25 and page 25, lines 1-23; *see also* Exhibit “U”.

<sup>45</sup> Plaintiff’s Exhibit C-7, page 26 lines 45-21; *see also* Exhibit “U”.

the sphere of influence of the Foundation would include the San Pedro Kenedy Ranch?

A: Yes.

Q: And in like fashion that would include any company or people that lease or conduct or are under the control or tied to the Foundation?

A: Yes.<sup>46</sup>

Q: Do you believe anybody could get a fair trial in Kenedy County against the Kenedy Memorial Foundation?

A: No.

Q: Okay. So you were asked the question: The Ballís could get a fair – something to the effect of the Ballís – if there were no Ballís living there and no Kenedys living there, you said that – as the question was phrased by Mr. Schiwetz, you felt that since there were no Ballís and no Kenedys living there they could get a fair trial?

A: Right.

Q: If that question were tweaked a little bit or phrased to present a situation where there's no Ballís, but there's a Kenedy Memorial Foundation as one of the – as the large land holder in that county, do you believe under that scenario that the Ballís could get a fair trial?

A: No.

Q: Okay. Do you think if the Foundation had a middleman and then set up a middleman to lease out their properties, do you think – do you have an opinion as to whether the fact that there's a middleman in the transaction changes the influence of the Foundation?

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<sup>46</sup> Plaintiff's Exhibit C-7, page 56 lines 4-19; *see also* Exhibit "U".

A: Yes.

Q: If it were shown to you that the San Pedro Kenedy Ranch were owned by another Kenedy entity, do you have – do you believe that other Kenedy entity, do you have – do you believe that other Kenedy entities, for example, the Kenedy trust, the trust set up by Elena Kenedy, whether that entity could exercise influence against the Ballís?

A: Yes.<sup>47</sup>

25. Like Jennifer and Evangelina Salazar, Joann Salazar lives in a home owned by the Kenedy Foundation and signed her affidavit because she was certain that Movants cannot get a fair trial in Kenedy County.

Q: And where do you live, Ms. Salazar?

A: Right now I live at 407 North Turcotte.<sup>48</sup>

Q: Okay. The Kenedy Memorial Foundation, do you think the people in this community would be so prejudiced in favor of the Kenedy Memorial Foundation that the Ballís couldn't get a fair trial?

A: Actually, yes, I do. It's all politics here.<sup>49</sup>

Q: Based just upon the fact that three people work for the Foundation, do you think that in itself would keep the Ballís from getting a fair trial?

A: Actually it's not so much that. It's just everybody – the people that go for jury around here, it's just it's very hard to get a fair trial. Everybody knows everybody. Everybody is related around here, so –

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<sup>47</sup> Plaintiff's Exhibit C-7, page 59 lines 17-25, page 60, lines 1-15 and lines 22-25, and page 61, lines 1-3; *see also* Exhibit "U".

<sup>48</sup> Plaintiff's Exhibit C-6, page 61, lines 9-10; *see also* Exhibit "U". In Exhibit "S" (also marked "deposition exhibit Baen 3") 407 North Turcotte is identified in as building number 31 and rented to Jose and Josephina Salazar.

<sup>49</sup> Plaintiff's Exhibit C-6, page 11, lines 2-7; *see also* Exhibit "U".

Q: Now, there –

A: Most of the people on the jury are related somehow.<sup>50</sup>

Q: Do you think that's a fair statement that the Turcottes are influential in the County?

A: Yes, they are.<sup>51</sup>

26. Although she was extremely nervous, the testimony of Gloria Salazar was also credible. Ms. Salazar's testimony regarding Movants' inability to receive a fair trial is set forth as follows:

Q: Are you nervous today?

A: Yes, I am.

Q: Okay. Could you please look at your affidavit. I'm going to refer back to paragraph 3. When you said – you said in paragraph 3, "I am familiar with the political situation in Kenedy County." By "political situation," what do you mean by that?

A: The – what I mean by that?

Q: Uh-huh.

A: The – Kenedys and the Turcottes and everybody just runs – I don't know – just runs everything. Just – just everything is all political here, just –

Q: So when you mean – or when you say they run everything –

A: You just don't have a chance here is the words. If you want to get like a fair trial or something, really -- everything is really connected. Everything is really – so it's really hard to have anything done here, because it's real controlling here. You know, I mean my opinion is you don't have a chance here.

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<sup>50</sup> Plaintiff's Exhibit C-6, page 12, lines 7-16; *see also* Exhibit "U".

<sup>51</sup> Plaintiff's Exhibit C-6, page 15, lines 9-11; *see also* Exhibit "U".

Q: Have you ever heard the term “good old boy politics”?

A: Yeah.

Q: Would you describe Kenedy County as good old boy politics?

A: Yeah.<sup>52</sup>

Q: Sarita. Do you know who the town of Sarita was named after?

A: Sarita.

Q: Are you aware that she’s also referred to as Sarita Kenedy East?

A: Uh-huh

Q: We’re talking about the same person?

A: Uh-huh.

Q: Are you aware that Sarita in her will created the Kenedy Memorial Foundation?

A: Yes.

Q: Did you know that?

A: Yes.

Q: Is that common knowledge here?

A: Yes.<sup>53</sup>

Q: Who doesn’t have a chance?

A: The Ballís just don’t have chance of having a fair trial here, because like the Turcottes and the Kenedy Foundation, they’re all like – like – I’m so nervous.

Q: Don’t be nervous.

A: They just don’t have – they don’t have a chance here or in other places also, like in Kleberg, Nueces, because they, because they all for some reason – like the hospitals, the – Maria Elena, she had donated some, you know, money, the

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<sup>52</sup> Plaintiff’s Exhibit C-3, page 15, lines 1-2 and page 16, lines 1-24; *see also* Exhibit “U”.

<sup>53</sup> Plaintiff’s Exhibit C-3, page 15, lines 6-20; *see also* Exhibit “U”.

Foundation, so – the – what do you call it? The hospitals, everything has – you can tell where the Kenedy Foundation or Saritas or the Turcottes or -- you know, it's just –it's just everywhere, and they all kind of like control everything.

Q: When you say it's everywhere, are you talking about the influence –

A: Yes.

Q: -- of the Kenedy family?

A: Yeah, the Kenedy family is just influenced everywhere. They have, like they say – they say they have like – they have pull. They have power there.<sup>54</sup>

Q: Do you pay a water bill?

A: No, we don't

Q: Or a sewage bill?

A: No, we don't.

Q: Do you know why you don't pay a water or sewage bill here in town?

A: Because Dona Elena, she donated –

Q: Elena who?

A: Dona Elena, I think.

Q: Did you say “Dona Elena”?

A: Or – I don't know what her name is. Sarita or – I can't think of her name. Okay. She – I know just by what I've read in some of the books or whatever and what I've heard. And they say that she had donated so much money to – to the people here in Sarita and – that they wouldn't pay no water and sewage as long—you know, as long as they were living here in this county.<sup>55</sup>

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<sup>54</sup> Plaintiff's Exhibit C-3, page 20, lines 5-25; *see also* Exhibit “U”.

<sup>55</sup> Plaintiff's Exhibit C-3, page 27, lines 15-25 and page 28, lines 1-6; *see also* Exhibit “U”.

27. Johnny Salazar is employed by Kenedy County as a maintenance worker and has lived all his life in Sarita. Although he at times was confused by many of the nuances of the questions of Mr. Schiwetz, he was nonetheless credible and illustrates the direct and indirect influence of the Kenedy Foundation upon the residents of Sarita:

Q: How long have you lived in this County?

A: Thirty-two.

Q: Thirty-two years. All your life?

A: Yes.

Q: Do you know most of the people in the county?

A: Yes.

Q: And you understand that the people that work on the ranches that are leased are working for whoever leases them, right?

A: Yes.

Q: Okay. So if I own a thousand acres, and I lease it to Mr. Cardenas, and you're working on the ranch, you're working for Mr. Cardenas, and not me. Do you understand that?

A: Yes.<sup>56</sup>

Q: Mr. Schiwetz asked you a good question about – and gave you an example about Mike East leasing the San Pedro Kenedy Ranch. Do you remember those questions?

A: Yes.

Q: Do you agree with me that someone who leases property doesn't own the property?

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<sup>56</sup> Plaintiff's Exhibit C-4, page 15, lines 12-25 and page 16, lines 1-3; *see also* Exhibit "U".

A: Yes.

Q: Okay. Now, is it your testimony that the Kenedy Foundation is leasing the San Pedro Kenedy Ranch to Mike East?

A: Yes.

Q: And Mike East is your father's boss?

A: Yes.

Q: Do you think it's possible that the Kenedy Memorial Foundation through Mr. East could exercise pressure upon your father or anybody to work under Mike East?

A: Yes.<sup>57</sup>

Q: And do other people work for Mike East with your father?

A: Yes.

Q: And do those other people live in Kenedy County?

A: Yes.

Q: And so your father and about how many other people work for Mike East?

A: I don't know exact count, but quite a few.

Q: Quite a few people work for Mike East?

A: Quite a few.

Q: And do all of those people live in Kenedy County?

A: Yes.<sup>58</sup>

Q: If someone pays your water bill, for example, do you think that would make you more likely or less likely to help them?

A: To help them.

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<sup>57</sup> Plaintiff's Exhibit C-4, page 17, lines 18-25 and page 18, lines 1-9; *see also* Exhibit "U".

<sup>58</sup> Plaintiff's Exhibit C-4, page 23, lines 16-25 and page 24, lines 1-2; *see also* Exhibit "U".

Q: So in a case like this where it's the Kenedy Memorial foundation versus the Ballí family, do you think the fact that a member of the Kenedy family pays the water bill and sewage bill of all the people here in the county could influence the jurors against the Ballí family?

A: Yes.<sup>59</sup>

28. Rule 257 requires the testimony of three credible residents of the county in which the suit is pending and the testimony of one party to the litigation. Movants exceeded their burden of proof with the credible testimony of the *five* Kenedy County residents referenced above. Movants also exceeded their burden of proof with the credible testimony of not one, but two parties to this lawsuit, Fred Ballí and Joe Ballí. The testimony of Fred Ballí is set forth as follows:

Q: Could you please state your name for the record?

A: Fred Ballí. Sir, excuse me. Could you speak up?

Q: Okay.

A: I usually wear hearing aids. I'm not wearing them today, because they're in need of repair, so I'm going to ask you to speak a little louder. I'll appreciate it.<sup>60</sup>

Q: Okay. "Sarita, the seat of Kenedy County, was named after Sarita Kenedy East, the person who created the Kenedy Foundation." Do you think the fact that a town is named after somebody who's been dead 40 years is going to have any influence on a lawsuit that takes place there many years later?

A: Yes, sir, I do believe that.

Q: What's the basis for believing that?

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<sup>59</sup> Plaintiff's Exhibit C-4, page 21, lines 6-9 and lines 11-17.; *see also* Exhibit "U".

<sup>60</sup> Plaintiff's Exhibit C-2, page 5, lines 6-11; *see also* Exhibit "U".

A: A foundation was formed when Sarita Kenedy East passed away, and that power she had was transferred over to the Foundation.<sup>61</sup>

Q: Just one or two real quick questions. You were asked a lot of questions about your perception of the Kenedy family and the Kenedy Memorial Foundation. Why do you see them as one and the same?

A: They're one and the same.

Q: Okay. Why do you see them as one and the same?

A: Because they intermarried. They're the – the family, it's like anything else. You get a family going, and they're going to stand for one another, and that's – I believe is going, and they're going to stand for one another, and that's – I believe is going to happen.

Q: Maybe – I probably didn't ask it properly. What I was asking you is: The Kenedy family and the Kenedy Foundation, and you said that they had intermarried, and I'm not talking about the Turcottes. I'm talking about the Kenedy family and the Kenedy Foundation. When you say you see them as one and the same, why do you say that?

A: Because they inherited everything the Kenedys had. They're the beneficiaries of that, the Foundation is. And who runs the foundation but the Catholic Diocese out of Corpus Christi.<sup>62</sup>

Q: What's the name of the county we're in?

A: What's the name of the county were I'm at right now? Kenedy County.

Q: What's the name of the town we're in?

A: Sarita.

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<sup>61</sup> Plaintiff's Exhibit C-2, page 15, line 25 and page 16, lines 1-10; *see also* Exhibit "U".

<sup>62</sup> Plaintiff's Exhibit C-2, page 28, lines 1-11, 14-25 and page 29, lines 1-10; *see also* Exhibit "U".

Q: What's the – where did you say the courthouse was located? Where did you say the courthouse was located? Here in Sarita, where is the courthouse?

A: Where is the courthouse? In Kenedy County.

Q: On what streets?

A: Huh?

Q: On the corner of what streets?

A: Turcotte and Kenedy?

Q: What is the name of the Foundation?

A: Kenedy Foundation.<sup>63</sup>

29. The deposition of Joe Ballí was also credible and relevant portions as to the ability of the Ballí family to get a fair trial in the 105<sup>th</sup> Judicial District are set forth as follows:

Q: You say, "I'm familiar with the political situation in Kenedy County." How did you become familiar with the political situation in this county?

A: In this county?

Q: Yes.

A: Most of it through research beginning back in 1957 with my sister in which she got me involved in doing research, not only for her, but she was keeping a promise that she had made to my father --<sup>64</sup>

Q: Mr. Ballí, how are you doing?

A: I'm fine.

Q: It's about 1:10. Do you need to stretch your legs?

A: No, I'm fine. I'm starting to get hungry now.

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<sup>63</sup> Plaintiff's Exhibit C-2, page 29, lines 21-25 and page 30, lines 1-10; *see also* Exhibit "U".

<sup>64</sup> Plaintiff's Exhibit C-5, page 7, line 25 and page 8, lines 1-8; *see also* Exhibit "U".

Q: Okay. I'll try to be quick. In you affidavit, I believe it's – I believe it's paragraph 3 that says you are familiar – or “I am familiar with the political situation in Kenedy County.” When you say “political situation,” what do you mean? What do you mean by that?”

A: Well, political situation in Kenedy County?

Q: Uh-huh.

A: What I meant by that is, of course, you have – just the name Kenedy alone is so well known within – within the – not only within the county, but within the State, and the – not only within the county, but within the State, and then you have a alliance with the King Ranch, which Mifflin Kenedy and Richard King had – had bound together, you know, to take care of each other's back, you know, so to speak. And then you have the Turcottes who hold public office in the county, and that in a way controls the entire county.

Q: Okay. When you say the “entire county,” are you talking about just Kenedy County, or are you talking about some other counties?

A: Well, that's not excluding surrounding – two surrounding counties.

Q: Which two surrounding counties are you talking about?

A: Kleberg and Nueces County.

Q: By “political situation,” are you referring to the power structure in Kenedy County, or are you referring to something else?

A: I'm referring to – to this – this power is at – that's one of the reasons why we can't get a fair and impartial trial here in this county. <sup>65</sup>

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<sup>65</sup> Plaintiff's Exhibit C-5, page 23, lines 1-25 and page 24 lines 1-2 and 8-12; *see also* Exhibit “U”.

Q: Okay. So she passed control of the land to the Foundation; is that your testimony?

A: Yes.

Q: And when you say “she,” who are you talking about?

A: Sarita Kenedy East.<sup>66</sup>

Q: Okay. And you testified a few minutes ago that Sarita Kenedy East passed control from herself to the Kenedy Foundation. Do you remember testifying to that?

A: Passed control to the Kenedy –yes, I do.

Q: Okay. So in effect she’s controlling this property – the Kenedy family is controlling this family from the grave?

A: Yes.<sup>67</sup>

Q: Is there anything else I wanted to ask you about?

A: Yes, I had one more. And at the Spohn Hospital in – in Corpus Christi, there -- an additional wing was added to that hospital, which in big letters – I’d say added to that hospital, which in big letters – I’d say they’re about three to four foot in height, and at night it’s lighted, and it’s got in big letters “Sarita East Kenedy” – or “Kenedy East” in the same hospital there at Spohn Memorial.<sup>68</sup>

Q: Okay, Let me read from paragraph 5. “A fair and impartial trial is simply not possible in either Kleberg County or Nueces County for other reasons. For example, a major hospital in Kleberg County and Nueces County is Spohn Hospital, which was endowed by and named after members of the Kenedy family.” Do you have an opinion as to whether the fact that members of the

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<sup>66</sup> Plaintiff’s Exhibit C-5, page 25, lines 2-13; *see also* Exhibit “U”.

<sup>67</sup> Plaintiff’s Exhibit C-5, page 26, lines 13-20; *see also* Exhibit “U”.

<sup>68</sup> Plaintiff’s Exhibit C-5, page 33, lines 2-9; *see also* Exhibit “U”.

Kenedy family had set up a hospital would make a difference or sway one way or the other the jurors in – Kleberg County or Nueces County?

A: I – yes I do. Because everyone within these counties solely depend on this hospital for medical attention, whether it's giving birth to expectant mothers, emergencies in accidents, or medical attention regardless of health and physical care. And so there – Spohn is dependent – or the people are dependent on these hospitals for their needs, you know.

Q: Okay. In paragraph 6 you say, “The beneficiary of the Kenedy Foundation is the Catholic Diocese of Corpus Christi, the headquarters of which are in Nueces County.” Do you feel the fact – do you have an opinion as to whether the beneficiary being, you know, the Catholic Diocese of Corpus Christi would matter?<sup>69</sup>

A: The Catholic Diocese of Corpus Christi, yes, I do. For the reason is that over – at least 60 percent of the population are Catholic, and they solely depend on the Catholic Church, whether it's finances or whether it's religious.

Q: The next sentence in paragraph 6 you say, “Many of the persons in Nueces County are Catholic, and since the Diocese is the beneficiary of the Kenedy Foundation an impartial trial cannot be held –“ or excuse me –“—cannot be had in Nueces County.” After testifying here today and listening to the other depositions, do you still hold that opinion?

A: My opinion on that is no, we would not get a fair and impartial trial in Nueces County.

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<sup>69</sup> Plaintiff's Exhibit C-5, page 34, lines 4-25; *see also* Exhibit “U”.

Q: Okay. You testified – and correct me if I’m wrong, but you’ve testified that the Ballís cannot get a fair trial in Kenedy County. Is that still your testimony?

A: Yes.

Q: Okay. You just testified that the Ballís cannot get a fair trial in Nueces County?

A: Yes.

Q: Okay. Do you believe the Ballís can get a fair trial in Kleberg County?

A: No.<sup>70</sup>

30. The above-referenced testimony from the five Kenedy County residents, as well as from Fred Ballí and Joe Ballí was credible, and conclusively establishes that Movants cannot get a fair and impartial jury trial in Kenedy County. This evidence combined with the other evidence of local prejudice identified for the Court in this Trial Brief requires a change of venue to one of the Adjacent Counties, and is so strong that it would be an abuse of discretion to change the venue from Kenedy County to another county within the 105<sup>th</sup> Judicial District.

31. In the event that the Court has any question with regard to the inability of Movants to get a fair and impartial trial in either Kleberg or Nueces County, the court is requested to examine the Offers of Proof in Exhibit “U” of the 5 Kleberg County residents<sup>71</sup> as well as from the 5 Nueces County residents.<sup>72</sup>

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<sup>70</sup> Plaintiff’s Exhibit C-5, page 35, lines 2-22 and page 36, lines 3-5; *see also* Exhibit “U”.

<sup>71</sup> The five Kleberg County residents are set forth as follows: Noelia Morales; Delia Silva; Patricia Flores; Amelia Valdez; and Frank Valdez. *See* Plaintiff’s Exhibit “C” and corresponding Offers of Proof for each such person in Exhibit “U”.

<sup>72</sup> The five Nueces County residents are set forth as follows: David A. Garcia; Sandra Garza Garcia; Emelia Anaya; Aurora P. Garcia; and Robert B. Garcia. *See* Plaintiff’s Exhibit “C” with the corresponding Offers of Proof for each such person in Exhibit “U”.

The Testimony of the Paul Baen is Not Credible

32. Plaintiff's representative, Paul Baen, is biased and not credible for the following reasons:

- (a) Baen is paid a salary of \$110,000.00 as well as retirement benefits.<sup>73</sup> Since graduating from college, he has only had two jobs, one for a brief period of two years and the other as an employee of the Kenedy Foundation since 1984.<sup>74</sup>
- (b) Despite testifying that up until the 1990s the Foundation owned half of the residential properties in Kenedy County and financed the sales of those homes to the residents of Sarita, this fact "could not possibly" influence a jury in Sarita to favor the Foundation in this lawsuit.<sup>75</sup>
- (c) Baen testified that neither the grant of over \$800,000 for the Parish Hall in Sarita, nor the recent grants over \$18,000 could possibly make the people of Sarita more receptive to an argument from the Foundation in this case.<sup>76</sup>
- (d) Baen, the \$110,000 dollar man further testified that \$80 to \$90 million dollars is not a significant enough amount of money by which a "reasonable person" could conclude that the Ballís could not get a fair trial in the 105<sup>th</sup> Judicial District.<sup>77</sup>

For the above reasons as well as other examples set forth in Mr. Baen's Offer of Proof in Exhibit "U", he is not a credible witness.

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<sup>73</sup> Plaintiff's Exhibit "B" page 92, lines 2-23; *see also* Exhibit "U".

<sup>74</sup> Plaintiff's Exhibit "B" page 6, lines 2-21; *see also* Exhibit "U".

<sup>75</sup> Plaintiff's Exhibit "B" page 90 lines 1-16; *see also* Exhibit "U".

<sup>76</sup> Plaintiff's Exhibit "B" page 83 lines 7-25 and page 84, lines 1-11; *see also* Exhibit "U".

<sup>77</sup> Plaintiff's Exhibit "B" page 71, lines 4-12; *see also* Exhibit "U".

## CONCLUSION

33. The above-referenced evidence of local prejudice satisfies subsections (a), (c) and (d) of Rule 257 requiring a change of venue from the 105<sup>th</sup> Judicial District to one of the Adjacent Counties as a matter of law. The evidence also establishes that the local prejudice in the 105<sup>th</sup> Judicial District is so severe that it would violate Movants' rights guaranteed by the due process clause of the Fourteenth Amendment to the U.S. Constitution as well as the due course of law provision in art. 1, §19 of the Texas Constitution if the trial of this cause were to occur in the 105<sup>th</sup> Judicial District.

34. Absent an agreement by the parties, Rule 259 of the Texas Rules of Civil Procedure requires that the venue of this case be moved to one of the Adjacent Counties. Hidalgo County is the logical choice for the following three reasons: (1) only the Hidalgo County Courthouse is wheelchair accessible and can accommodate attorney Christopher Jonas; (2) only Hidalgo County has a population large enough from which to select an impartial jury for a case of this magnitude; (3) only Hidalgo County is accessible by commercial airline, and most of the parties, attorneys, witnesses, as well as the Court will be forced to travel considerable distances for the trial. Therefore, the venue of this case must be changed from Kenedy to Hidalgo County.

WHEREFORE, ROSA MARIA AGUILAR, ET AL., Movants herein, pray that the Court find and enter an Order as follows:

1. that Movants and all the heirs of Jose Manuel Ballí Villarreal cannot obtain a fair and impartial trial in Kenedy County;
2. that there is a combination against Movants and all the heirs of Jose Manuel Ballí Villarreal instigated by influential persons, by reason of which they cannot expect a fair and impartial trial in Kenedy County;
3. that an impartial trial cannot be had by Movants and all the heirs of Jose Manuel Ballí Villarreal in Kenedy County;

4. that Movants and all the heirs of Jose Manuel Ballí Villarreal cannot obtain a fair and impartial trial in Kleberg County;
5. that there is a combination against Movants and all the heirs of Jose Manuel Ballí Villarreal instigated by influential persons, by reason of which they cannot expect a fair and impartial trial in Kleberg County;
6. that an impartial trial cannot be had by Movants and all the heirs of Jose Manuel Ballí Villarreal in Kleberg County;
7. that Movants and all the heirs of Jose Manuel Ballí Villarreal cannot obtain a fair and impartial trial in Nueces County;
8. that there is a combination against Movants and all the heirs of Jose Manuel Ballí Villarreal instigated by influential persons, by reason of which they cannot expect a fair and impartial trial in Nueces County;
9. that an impartial trial cannot be had by Movants and all the heirs of Jose Manuel Ballí Villarreal in Nueces County;
10. in addition to the foregoing, that this Motion is granted for other sufficient cause;
11. Movants further pray that upon the granting of this Motion upon one or more of the above grounds, that the Court change venue to Hidalgo County; and if not to Hidalgo County, then to Brooks County; and if not to Brooks County, then to Willacy County; and
12. for all such other and further relief at law or in equity to which Movants may be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record via certified mail return receipt requested, first class mail, facsimile and/or hand delivery on this the 13th day of May, 2002.

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