

EXHIBIT F

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JOIN

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Division of Industrial Relations
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DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES,

Petitioner,
v.
DIVISION OF INDUSTRIAL RELATIONS,
and the DEPARTMENT OF
ADMINISTRATION, APPEALS Division,
a State Agency,

Respondents

Case No.: A644791
Department: IV

**RESPONDENT DIVISION OF INDUSTRIAL RELATIONS' NOTICE OF JOINDER
IN TPA/RESPONDENT'S "REPLY" TO PETITIONER'S OPENING BRIEF**

TO: Petitioner, SUSAN REEVES, in proper person;

TO: Respondent, CANNON COCHRAN MANAGEMENT SERVICES, INC.,
by and through its counsel of record, Dalton L. Hooks, Esq.,

FROM: Respondent, Division of Industrial Relations, by and through its
Division Counsel, Jennifer J. Leonescu, Esq.

The Division of Industrial Relations (the "Division") does hereby give notice of its intent to
join in the arguments set forth in Cannon Cochran Management Services, Inc.'s ("CCMSI")
"Reply" to Petitioner's Opening Brief.

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I. FACTS

In addition to the facts presented in CCMSI's brief, the Division will address some issues peculiar to this agency. The Division is Respondent State of Nevada, Department of Business and Industry, Division of Industrial Relations ("DIR"), is a state regulatory agency. DIR's Workers' Compensation Section ("WCS") is charged with ensuring the timely and accurate delivery of workers' compensation benefits and employer compliance with mandatory coverage provisions. NRS 616A.400.

DIR is responsible for investigating complaints by injured workers alleging he or she is entitled to a benefit penalty under NRS 616D.120. Once the Division issues a determination to award or not to award a benefit penalty, the aggrieved party may appeal to the Appeals Officer. NRS 616D.140. Appeals Officers have limited jurisdiction: they hear contested claim appeals pursuant to NRS 616C.345 and benefit penalty appeals pursuant to NRS 616D.140. The Division is not responsible for awarding workers' compensation benefits. The Division does not manage claims. Claims are managed and benefits are paid by individual insurers or the insurers' third-party administrators ("TPA") like CCMSI.

On February 28, 2010, Petitioner submitted a letter to the Division requesting the Division "to help me get the actual oral communications, the written record, of what was said, by whom and to whom at meetings with my Doctors..." ROA 181. The letter stated the request was made pursuant to NRS 616D.330. It did not request a benefit penalty. *Id.*

After completing its investigation, the Division responded in a letter dated April 26, 2010. It found no violation of NRS 616D.330. ROA 237-238. The Division did not include any language informing the Petitioner of her right to appeal because the correspondence was not a "determination" of the Division for which appeal rights are afforded but was a response to a request for assistance. *Id.*

1 Thereafter, the Petitioner submitted a complaint to the Division dated June 1, 2010 in
2 which she alleged either the employer, Bally's, and/or CCMSI failed to make temporary total
3 disability ("TTD") payments since August 26, 1998 in violation of NRS 616D.120(1)(c), (g) and
4 (h). ROA 241-242. Attached to the letter was an Appeals Officer's Decision and Order dated
5 December 1, 2003 which reversed claims closure. ROA 253-257. During the course of its
6 investigation into the complaint, the Division found subsequent procedural issues which were not
7 disclosed by the Petitioner in her complaint; (1) that the Appeals Officer affirmed the Hearing
8 Officer's dismissal of Petitioner's appeal of a determination denying TTD benefits which was
9 affirmed by the District Court and has been submitted to the Supreme Court [ROA 169-172]; and
10 affirmed by the District Court and has been submitted to the Supreme Court [ROA 169-172]; and
11 (2) that claim closure was affirmed by the Appeals Officer, the District Court and is on appeal to
12 the Supreme Court. ROA 174-180. Therefore, the Division determined there were no violations
13 to warrant imposition of an administrative fine and/or benefit penalty. *Id.* Petitioner filed a
14 Request for Hearing on the Division's Determination (Appeal No. 78016-SL). In her request she
15 reiterated her demand for back TTD benefits. *Id.*

17 The Petitioner then sent another letter dated September 11, 2010 requesting the Division
18 reconsider its letter dated February 28, 2010 regarding communications with the physicians. ROA
19 231-233. The Division responded in a letter dated October 1, 2010, restating that CCMSI provided
20 the information regarding oral communications, that there was a July 22, 2010 Division
21 determination addressing her other various complaints and that it was currently on appeal. ROA
22 234-235. The Division did not include appeal rights as it was informational and appeal rights were
23 already provided in its previous July 22, 2010 determination. Nevertheless, the Petitioner
24 submitted a Request for Hearing (Appeal No. 80334-SL).

25 After a hearing at which the Petitioner was represented and discussions were held for nearly
26 two hours regarding what the Petitioner was actually appealing, the parties were asked by the
27 28

1 Appeals Officer to submit any appropriate motions. the Division moved for Summary Judgment.
2 ROA 151-157. Summary judgment was granted on June 15, 2011 in an Order in which specific
3 findings of fact and conclusions of law are made. ROA 98-100. It is from this Order Petitioner
4 petitioned for judicial review.

5 II. ARGUMENT

6 The Division joins in CCMSI's statement of the standard of review on appeal and makes
7 the following brief argument.

8
9 A. The actions complained of in Appeal No. 78016-SL do not give rise to a benefit
10 penalty.

11 The Decision and Order at issue in this appeal did not order the payment of any TTD
12 benefits. Pursuant to NRS 616D.120, the Division is unable to "modify or negate in any manner a
13 determination or any portion of a determination made by a hearing officer, appeals officer or court
14 of competent jurisdiction..." In addition, the Nevada Supreme Court has held that "administrative
15 agencies cannot enlarge their own jurisdiction." *See, Reno v. Civil Serv. Comm'n of Reno*, 117
16 Nev. 855 (2002), *citing, Southern Nev. Mem. Hosp. v. State*, 101 Nev. 387, 394, 394, 705 P.2d
17 139, 144 (1985). The scope of an agency's authority is limited to the matters the legislative body
18 has expressly or implicitly delegated to the agency. *Clark Co. v. State, Equal Rights Comm'n.*, 107
19 Nev. 489, 492, 813 P.2d 1006, 1007 (1991).

20
21 The insurer's determinations to close the claim (since 2006) and not to pay TTD benefits
22 has been affirmed by the Hearing Officer, Appeals Officer, the District Court, and has been
23 submitted to the Supreme Court for decision; it is telling that information regarding these
24 subsequent court proceedings was omitted by the Petitioner in her complaint to the Division but
25 was found by investigators upon examination of the claims file. What the Petitioner is requesting
26 is that the Division order CCMSI, in contravention of all of these subsequent decisions, order the
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1 payment of TTD benefits. This is outside the scope of the Division's jurisdiction as has been
2 explained previously to the Petitioner. Under these circumstances, there was substantial evidence
3 to find there was no unreasonable delay in compliance with a Hearing or Appeals Officer's
4 Decision upon which to impose an administrative fine and/or benefit penalty. The Appeals
5 Officer's Decision and Order must be affirmed.

6 B. There was no actionable conduct raised in Appeal No. 80334.

7
8 Pursuant to NRS 616D.120(1) and (3), an administrative fine and benefit penalty may be
9 imposed only in the event an insurer, TPA, etc., has been found to have engaged in prohibited
10 conduct as described in NRS 616D.120(1), subsections (a) through (h) and (i). Petitioner requested
11 assistance in obtaining communications from her insurer. The Division on both April 26th and
12 October 1, 2010, advised the Petitioner that all communications were provided. The letter was
13 purely informational and not a determination and did not include any appeal rights. The remainder
14 of her complaints was already on appeal in Appeal No. 78016-SL.

15
16 The Appeals Officer did not commit error in granting summary judgment on these issues.
17 The Division will not respond to the other arguments asserted by Petitioner, including a
18 collaboration between counsel for the Division and CCMSI as the arguments are nonsensical and
19 baseless in law or fact.¹

20 **III. CONCLUSION**

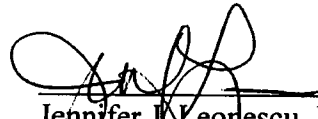
21
22 Petitioner continues to operate under a fundamental misapprehension about the role of the
23 Division in a benefit penalty appeal versus in the contested claims process. The Division's
24 jurisdiction is limited under the Nevada Industrial Insurance Act. The Division cannot compel the
25 payment of workers compensation benefits to any claimant. The Division cannot reverse, modify,

26
27 ¹ The Court is, however, alerted to the fact that Petitioner even while representing herself in proper person must still
28 comport with the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure, in particular
N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a

1 add to or take away from a Hearing Officer's, Appeals Officer's or Court's Decision on any claims
2 matter. Those matters are strictly within the jurisdiction of the Department of Administration,
3 Hearings Division.

4 Given the procedural history of this lengthy claim, there was substantial evidence to
5 support the Appeals Officer's Decision and Order affirming the Division's determination not to
6 impose a benefit penalty and/or administrative fine against CCMSI. The Petition must be denied.
7

8 Dated this 7 day of February, 2012 and respectfully submitted by:

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10 

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28 reference to the page of the transcript or appendix where the matter relief on is to be found. Petitioner's brief fails to
comport with this requirement.

TABLE OF AUTHORITIES

CASES

<i>Clark Co. v. State, Equal Rights Comm'n.</i> , 107 Nev. 489, 492, 813 P.2d 1006, 1007 (1991).....	5
<i>Reno v. Civil Serv. Comm'n of Reno</i> , 117 Nev. 855 (2002)	5
<i>Southern Nev. Mem. Hosp. v. State</i> , 101 Nev. 387, 394, 394, 705 P.2d 139, 144 (1985)	5

STATUTES

NRS 616A.400	2
NRS 616D.120	2,4,5
NRS 616D.140	2
NRS 616D.330	2

RULES

Nevada Rule of Appellate Procedure 28(e)	5,6
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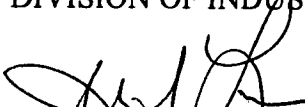
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ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Respondent Division of Industrial Relations Responding Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relief on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 7 day of February, 2012.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served:

**Respondent Division of Industrial Relations'
Joinder in Reply to Petitioner's Opening Brief**

Person(s) Served:

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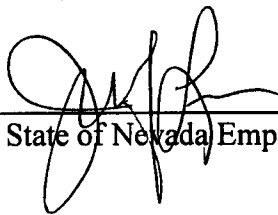
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9016.145
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Susan Reeves,

Appellant,

v.

Division of Industrial Relations; and Nevada
Department of Administration,

Defendant/Respondent.

Case No. 62468

Eighth Judicial Dis. Ct. Case No. A644791
(Dept. 4).

**STIPULATION TO EXTEND TIME TO
FILE APPELLANT'S OPENING BRIEF
(First Request)**

Pursuant to NRAP 26(b)(2) and NRAP 31(b)(2), the parties to this appeal, through their respective counsel of record, hereby stipulate that the time for filing Appellant's Opening Brief shall be extended thirty (30) days, from April 22, 2014, to and including May 22, 2014. No previous extensions of time for filing this brief have been sought or granted.

Dated: April 9, 2014.

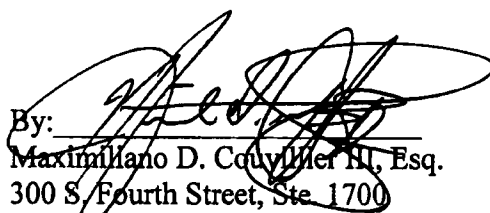
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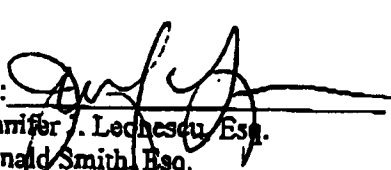
STIPULATION TO EXTEND TIME TO
FILE APPELLANT'S OPENING BRIEF
(First Request)

Pursuant to NRAP 26(b)(2) and NRAP 31(b)(2), the parties to this appeal, through their respective counsel of record, hereby stipulate that the time for filing Appellant's Opening Brief shall be extended thirty (30) days, from April 22, 2014, to and including May 22, 2014. No previous extensions of time for filing this brief have been sought or granted.

Dated: April 9, 2014.

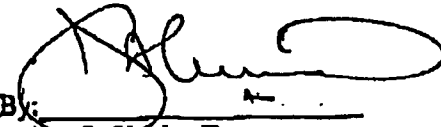
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CERTIFICATE OF SERVICE

I certify that on April 9, 2014, I deposited in the U.S. Mail, correct postage pre-paid, a true and correct copy of the foregoing **STIPULATION TO EXTEND TIME TO FILE APPELLANT'S OPENING BRIEF** addressed to the following at their last known address:

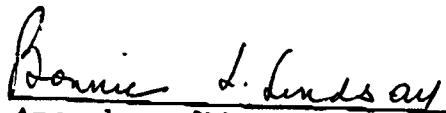
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Jun 19 2014 09:19 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN REEVES,

Appellant,

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DIVISION OF INDUSTRIAL
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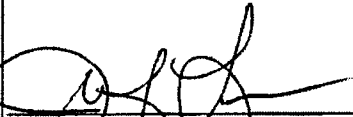
Supreme Court Case No. : 62468
District Court Case No.: A644791

STIPULATION TO EXTEND TIME TO FILE RESPONDENTS' ANSWERING BRIEF
(First Request)

Pursuant to NRAP 26(b)(2) and NRAP 31 (b)(2), the parties to this appeal, through their respective counsel of record, hereby stipulate that the time for filing Respondents' Answering Briefs shall be extended thirty (30) days, from June 20, 2014, to and including July 21, 2014. No previous extensions of time for filing this brief have been sought or granted. It is noted that Cannon Cochran Mgmt. Services, Inc. ("CCMSI") while not listed in the Supreme Court caption participated in the underlying District Court action and whose counsel was served by Appellant in her Notice of Appeal filed on January 18, 2013. CCMSI has participated in this case when counsel signed the Stipulation to Extend Time to File Appellant's Opening Brief in this case filed on April 10, 2014.

1 Dated this 18 day of June, 2014.

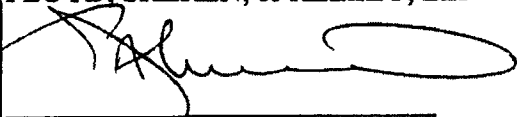
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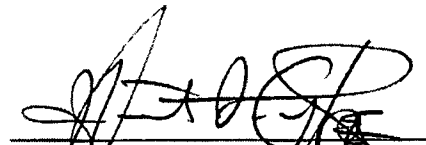
13 FLOYD, SKEREN, & KELLEY, LLP

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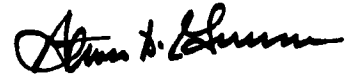
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EXHIBIT E



CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

SUSAN REEVES,

Petitioner,

vs.

**DIVISION OF INDUSTRIAL RELATIONS,
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ADMINISTRATION, APPEALS DIVISION,
a State Agency,**

Respondents.

**CASE NO.: A-11-644791-J
DEPT. NO.: IV**

**Hearing Date: N/A
Hearing Time: N/A**

TPA/RESPONDENT'S REPLY TO PETITIONER'S OPENING BRIEF

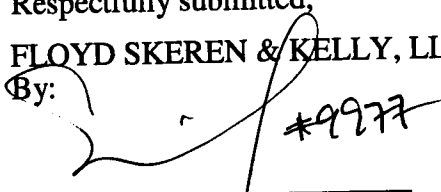
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CCMSI and FLAMINGO HILTON

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Petitioner In Proper Person

1 COMES NOW the TPA/Respondent, CANNON COCHRAN MANAGEMENT SERVICES,
2 INC. ("CCMSI" or "TPA/Respondent"), by and through its attorney, DALTON L. HOOKS, JR.,
3 ESQ., and hereby submits its Reply to Petitioner's Opening Brief concerning the above referenced
4 matter. This pleading is filed pursuant to NRS 233B.135. This Reply is based on the papers and
5 pleadings on file herein, the attached Points and Authorities and any oral argument at the time of the
6 hearing on the Petition.
7

8 Dated this 27th day of January 2012.

9 Respectfully submitted,
10 FLOYD SKEREN & KELLY, LLP.

11 By:  #9977

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TABLE OF CONTENTS

TABLE OF CONTENTS..... 3

TABLE OF AUTHORITIES..... 4

PRESENTATION OF ARGUMENT

 I. Issue Presented 5

 II. Statement of Facts 5-7

 III. Standard of Review 7-9

 IV. Legal Argument..... 9-13

 V. Conclusion..... 13

CERTIFICATE OF COMPLIANCE..... 14

AFFIRMATION PURSUANT TO NRS 239B.030..... 15

TABLE OF AUTHORITIES

Cases

<i>McCracken v. Fancy</i> , 98 Nev. 30, 639 P.2d 255 (1982).....	8
<i>Nevada Indus. Comm'n v. Reese</i> , 93 Nev. 115, 560 P.2d 1352 (1977).....	8
<i>Nevada Indus. Comm'n v. Williams</i> , 91 Nev. 686, 541 P.2d 905 (1975).....	8
<i>Wood v. Safeway, Inc.</i>	10
<i>Pegasus v. Reno Newspapers, Inc.</i>	10

Statutes

NRS 233B.135.....	7, 8
NRS 616A.010	9
NRS 616D.120.....	10, 11

I.

ISSUES PRESENTED

The issues argued herein deal with whether the Appeals Officer acted outside of her discretion by affirming the Division of Industrial Relations' ("DIR") determinations of 07/22/10 and 10/01/10. Specifically, the issue on appeal is whether the Appeals Officer committed clear error and an abuse of discretion, pursuant to NRS 233B.135, by ruling in favor of the DIR pursuant to a Motion for Summary Judgment regarding DIR's determination that there was no violation of NRS 616D.120.

The additional issues cited by the Petitioner/Claimant in her Opening Brief concerning the jurisdiction of the Appeals Officer regarding DIR determinations, the appropriateness of the consolidation of Appeals 78016-SL and 80334-SL, and the alleged collaboration between DIR and the TPA/Respondent will also be addressed briefly, although these issues were not on appeal. As will be discussed in more detail below, the Petitioner/Claimant fails, in any serious way, to develop a cogent argument pertaining to any of the issues in this case.

II.

STATEMENT OF RELEVANT FACTS

On or about 09/25/88, the Petitioner/Claimant, a restroom clerk for BALLY'S, suffered an occupational injury or disease during the course and scope of her employment. *See* Record on Appeal ("ROA") at pg. 333. According to the C-4, the Petitioner/Claimant was involved in a motor vehicle accident while in BALLY'S parking lot. *See id.* BALLY'S subsequently completed a C-3 which similarly described the incident. *See id* at pg. 334. A C-1 was also completed. *See id* at pg. 335. The Petitioner/Claimant apparently suffered head and neck pain as a result of this incident. *See id* at pp. 334-335. The claim was eventually accepted after lengthy litigation. *See id* at pp. 383-384. This case has progressed through many appeals, most of which are irrelevant to the current issue on

1 appeal. The current Petition for Judicial Review is regarding two of the Petitioner/Claimant's
2 consolidated appeals, the facts of which will now be outlined separately. *See id* at pp. 159-160.

3 **Appeal No. 78016-SL**

4 On or about 06/01/10, the Petitioner/Claimant filed a complaint with DIR. It the complaint,
5 the Petitioner/Claimant alleged that (1) she was not timely paid TTD benefits, (2) she was not given
6 proper medical care, and (3) she requested that she be awarded a benefit penalty. *See id* at pp. 396-
7 397. After carefully reviewing the Petitioner/Claimant's file and completing a thorough
8 investigation into the matter, DIR determined that there was no violations of NRS 616D.120, and
9 thus, the Petitioner/Claimant was not entitled to a benefit penalty. *See id* at pg. 401. The
10 Petitioner/Claimant subsequently filed an appeal of that determination on 08/10/10. *See id* at pp.
11 403-410.
12

13 **Appeal No. 80334-SL**

14 On or about 09/11/10, the Petitioner/Claimant filed another complaint with DIR, in which
15 she alleged that her claim was not properly closed. *See id* at pp. 191-192. On 09/20/10, in response
16 to the Petitioner/Claimant's allegations of possible violations, the TPA wrote a correspondence to
17 DIR and supplied a brief chronology regarding the closing of the Petitioner/Claimant's claim. *See id*
18 at pp. 195 and 204. After carefully reviewing the Claimant's file, DIR responded to the
19 Petitioner/Claimant in a correspondence dated 10/01/10. *See id* at pg. 205. In said correspondence,
20 DIR noted that the issue regarding claim closure had previously been before the Hearing Officer and
21 the Appeals Officer and was, at that time, pending before the Nevada District Court¹. *See id*. As
22 such, DIR informed the Petitioner/Claimant that it did not have the authority to modify or negate a
23
24

25
26 ¹ Indeed, the claim closure had affirmed by Hearing Officer Steven Evans in a Decision and Order dated 07/25/07. *See id* at pp. 372-
27 373. The Hearing Officer's Decision and Order was then affirmed by Appeals Officer Gregory Krohn in a Decision and Order dated
28 12/18/09. *See id* at pp. 374-379. The Petitioner/Claimant filed an appeal with the District Court regarding the 12/18/09 Decision and
Order. Over thirteen (13) months later, and after DIR's investigation of the Petitioner/Claimant's complaint, the District Court denied
the Petition for Judicial Review finding that the Appeals Officer's decision was supported by substantial evidence and was not
arbitrary and capricious in an Order dated 02/08/11. *See id* at pg. 135.

1 determination by a Hearing Officer, Appeals Officer, or court of competent jurisdiction. *See id.*
2 Although the 10/01/10 DIR letter contained no appeal rights as it was purely informational, the
3 Petitioner/Claimant nevertheless filed an appeal of that determination on 10/19/10. *See id* at pg. 207.

4 The parties subsequently agreed to consolidate the matters. *See id* at pp. 159-160. The
5 hearing concerning the consolidated matters was held before Appeals Officer Shirley Lindsey, on
6 04/13/11. *See id* at pg. 3. Testimonial evidence was not obtained at the hearing as the majority of the
7 two hour hearing was spent discussing and identifying what were the specific issues of the appeal.
8 Following the hearing, the Appeals Officer the parties were asked to file any appropriate motions
9 prior to the next hearing. *See id.* at pg. 66. Accordingly, DIR filed, and the TPA/Respondent joined,
10 a Motion to Dismiss, or in the Alternative for Summary Judgment. *See id* at pp. 147-158. The
11 Claimant opposed said Motion. *See id.* at pp. 112-116. Then, in an Order dated 06/15/11, the
12 Appeals Officer granted the Motion for Summary Judgment and affirmed DIR's determination
13 letters dated 07/22/10 and 10/01/10. *See id.* at pp. 98-100. The Appeals Officer found when
14 "[v]iewing the evidence in a light most favorable to [Petitioner/Claimant], there is no factual basis to
15 support a finding that the administrator delayed in paying the [Petitioner/Claimant] TTD in this
16 claim." *See id.* The Petitioner/Claimant subsequently filed a Petition for Judicial Review. The TPA
17 now submits this Reply Brief.

21 III.

22 STANDARD OF REVIEW

23 The Nevada Administrative Procedure Act, as contained in NRS 233B, outlines the standard
24 for review to be used when conducting a judicial review of a final decision of an agency. NRS
25 233B.135 states, in relevant part, the following:

26 1. Judicial review of a final decision of an agency must be:

27 (a) Conducted by the court without a jury; and
28

1 (b) Confined to the record.

2 In cases concerning alleged irregularities in procedure before an agency that are
3 not shown in the record, the court may receive evidence concerning the
4 irregularities.

5 2. The final decision of the agency shall be deemed reasonable and lawful until
6 reversed or set aside in whole or in part by the court. The burden of proof is on
7 the party attacking or resisting the decision to show that the final decision is
8 invalid pursuant to subsection 3.

9 3. The court shall not substitute its judgment for that of the agency as to the
10 weight of evidence on a question of fact. The court may remand or affirm the final
11 decision or set it aside in whole or in part if substantial rights of the petitioner
12 have been prejudiced because the final decision of the agency is:

13 (a) In violation of constitutional or statutory provisions;

14 (b) In excess of the statutory authority of the agency;

15 (c) Made upon unlawful procedure;

16 (d) Affected by other error of law;

17 (e) Clearly erroneous in view of the reliable, probative and substantial
18 evidence on the whole record; or

19 (f) Arbitrary or capricious or characterized by abuse of discretion.

20 NRS 233B.135.

21 In reviewing of a petition for relief from an administrative decision, the District Court may
22 not disturb the decision of an Appeals Officer unless the decision was clearly erroneous or
23 constituted an abuse of discretion. *See Nevada Indus. Comm'n v. Reese*, 93 Nev. 115, 560 P.2d 1352
24 (1977). With specific regard to factual determinations, the decision of the Appeals Officer, as the
25 initial trier of fact, are conclusive so long as they are supported by evidence which a reasonable mind
26 would consider to be sufficient to support the Appeal Officer's conclusion. *See Nevada Indus.*
27 *Comm'n v. Williams*, 91 Nev. 686, 541 P.2d 905 (1975). The court may not substitute its own
28 judgment as to the weight of evidence, but rather is limited to determining whether the Appeals

...

1 Officer's determination was arbitrary or capricious. *See McCracken v. Fancy*, 98 Nev. 30, 639 P.2d
2 255 (1982).

3 Further, despite the Claimant's assertions to the contrary, NRS 616A.010 provides that the
4 workers compensation statute must not be interpreted "broadly or liberally in favor of an injured or
5 disabled employee." *See* NRS 616A.010(4) (2009). Indeed, NRS 616A.010(2) provides in relevant
6 part that:
7

8 A claim for compensation filed pursuant to the provisions of chapters 616A to
9 616D, inclusive, or chapter 617 of NRS must be decided on its merits and not
10 according to the principles of common law that requires statutes governing
11 workers' compensation to be liberally construed because they are remedial in
12 nature

11 ...

12 [f]or the accomplishment of these purposes, the provisions of chapters 616A to
13 617, inclusive, of NRS must **not** be interpreted or construed broadly or liberally in
14 favor of an employee who is injured ...

15 *See* NRS 616A.010(2) (2009).

16 V.

17 LEGAL ARGUMENT

18 A. Introduction

19 The findings and decision of the Appeals Officer in this matter were not arbitrary or
20 capricious and were not in abuse of the Appeals Officer's discretion. As explained more fully
21 below, the Appeals Officer made a determination which was consistent with the controlling statutory
22 law, as well as the overwhelming evidence presented. Further, despite the Petitioner/Claimant's
23 assertion regarding the jurisdiction of the department of administration, the Appeals Officer was well
24 within her jurisdiction under NRS 616 and 617 to review the merits of the Petitioner/Claimant's
25 complaints to DIR because the Petitioner/Claimant had appealed DIR determination to the Appeals
26 Officer. Moreover, the consolidation of the Petitioner/Claimant's appeals had no negative affect on
27 the outcome of her appeal, and as such, her objection to the consolidation is rendered moot. Because
28

1 the Appeals Officer's determination is consistent with Nevada law, the Petitioner's Petition for
2 Judicial Review must be denied.

3 **B. The Appeals Officer's Granting of the Motion for Summary Judgment Was Not in**
4 **Error or An Abuse of Discretion**

5 The Appeals Officer did not act outside of her discretion by affirming DIR's determinations
6 of 07/22/10 and 10/01/10. Summary judgment is appropriate where there is no genuine issue of
7 material fact which could potentially resolve the matter in the non-moving party's favor. *See Wood*
8 *v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). In accordance with *Wood*,
9 summary judgment is not precluded on the basis that there is the "slightest doubt as to the operative
10 facts." *See id.* Rather, the non-moving party "must, by affidavit or otherwise, set forth specific facts
11 demonstrating the existence of a genuine factual issue." *See id.* The non-moving party is not
12 permitted to rely upon general allegations and conclusions, nor to rely "on the gossamer threads of
13 whimsy, speculation and conjecture." *See id.*, citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev.
14 706, 713, 57 P.3d 82, 87 (2002). In this case, the Appeals Officer appropriately granted DIR's
15 Motion for Summary Judgment because there was no genuine issue of material fact presented. In
16 other words, there was "no factual basis to support a finding that the administrator delayed in paying
17 the Petitioner/Claimant TTD." *See* ROA at pp. 98-99. As such, there was no violation of NRS
18 616D.120 and, therefore, no benefit penalty was warranted.

19
20
21 1. **There Was No Violation of NRS 616D.120 Because The Administrator Had Not**
22 **Delayed In Paying the Petitioner/Claimant TTD Benefits, and Therefore, No**
23 **Benefit Penalty Was Warranted**

24 Under the facts of this case, the Petitioner/Claimant's complaint regarding unpaid TTD
25 benefits under Appeal No. 78016-SL did not justify a benefit penalty. Under NRS 616D.120, a
26 benefit penalty is awarded to a claimant in cases where an insurer, third party administrator, etc. has
27 engaged in conduct as described in NRS 616D.120(1)(a-e)(h-i). However, despite the
28 Petitioner/Claimant's assertions to the contrary, this type of conduct did not occur in this case. Thus,

1 a benefit penalty was not warranted.

2 Here, in her complaint to DIR, the Petitioner/Claimant alleged that CCMSI, the third party
3 administrator for Bally's at the time of the Petitioner/Claimant's injury, violated NRS 616D.120 by
4 failing to pay her TTD benefits in accordance with the Appeals Officer's 12/01/03 Decision and
5 Order. *See id.* at pp. 185-189. However, the Appeals Officer's 12/01/03 Decision and Order simply
6 reversed claim closure. *See ROA* at pp. 363-366. Importantly, said Decision and Order did not
7 order TTD benefits.
8

9 However, after the 12/01/03 Decision and Order, the Petitioner/Claimant's attorney requested
10 TTD benefits in a correspondence dated 01/21/04. *See id.* at pp. 381-382. In response to her
11 request, pursuant to NRS 616C.475, the Respondent/TPA requested the Petitioner/Claimant provide
12 a certification of disability from her physician for the time period in which she had requested TTD
13 benefits. *See id.* at pg. 394. Because the Petitioner/Claimant never provided said certificates, the
14 TPA did not pay the requested TTD benefits. The TPA's determination not to pay TTD benefits was
15 thereafter appealed by the Petitioner/Claimant, and affirmed by the Hearing Officer, the Appeals
16 Officer, the District Court, and is now pending before the Nevada Supreme Court. *See id.* at pp.
17 367-371.
18

19 Despite this procedural status, upon receipt of the Petitioner/Claimant's complaint, DIR
20 undertook the investigation of the Petitioner/Claimant's complaint. As part of its investigation, DIR
21 sent a letter to CCMSI requesting its response to the alleged NRS 616D.120 violation. *See id.* at pp.
22 429-430. CCMSI provided the requested response on 06/29/10. *See id.* at pg. 432. After DIR
23 completed its investigation, it issued a letter to the Petitioner/Claimant outlining its findings of fact,
24 and concluding that there had been no violation of NRS 616D.120. *See id.* at pp. 433-436.
25 Specifically, DIR indicated, as stated above, that the issue of TTD benefits had been affirmed by the
26
27
28

1 Hearing and Appeals Officer, and at that time, was before the District Court.² Thus, DIR informed
2 the Petitioner/Claimant that no benefit penalty was warranted.

3 In regards to this issue, the Petitioner/Claimant's claims regarding collaboration or collusion
4 between the Respondent/TPA and DIR are completely without merit. To assert that DIR's request
5 for a response to the alleged violation from the Respondent/TPA illustrates collaboration is absurd.
6 As part of its investigation into complaints, DIR obtains statements from the complainant and the
7 accused party, as well as reviewing the evidence, in order to come to a determination. This is a
8 proper investigation procedure. Based on the facts of this case and DIR's investigation, it is clear
9 that there was no misconduct supporting the imposition of a benefit penalty. Hence, the Appeals
10 Officer appropriately granted DIR's Motion for Summary Judgment because there was "no factual
11 basis to support a finding that the administrator delayed in paying the Petitioner/Claimant TTD."
12
13 *See id.* at pp. 98-99.

14
15 2. The Petitioner/Claimant's Appeal of DIR's 10/01/10 Letter Was Improper
16 Because Said Letter Contained No Appeal Rights and Was Purely Informative

17 DIR's 10/01/10 letter to the Petitioner/Claimant was for information purposes only, and did
18 not carry with it any appeal rights. Therefore, summary judgment regarding this appeal was
19 appropriate.

20 On 02/28/10, the Petitioner/Claimant wrote a letter to DIR requesting assistance in gathering
21 certain communications from her insurer. *See id.* at pg. 236. In correspondences dated 04/26/10 and
22 10/01/10, DIR explained that it had investigated the Petitioner/Claimant's 02/28/10 request and had
23 determined that CCMSI had provided Petitioner/Claimant with all the requested information. *See id.*
24 at pp. 234-235; 237-238. The 10/01/10, like the 04/26/10, correspondence merely restated the
25 various complaints the Petitioner/Claimant had made regarding the handling of her claim and
26 explained that these issues had previously been dealt with in Appeal 78016-SL. *See id.* Because this
27

28

² The District Court later dismissed the Petitioner/Claimant's appeal

1 letter was purely informative, there was no appeal rights afforded thereto. Thus, the
2 Petitioner/Claimant's complaint and appeal regarding this 10/01/10 letter was improper and was
3 appropriately dismissed pursuant to the Motion for Summary Judgment.

4
5 V.

6 **CONCLUSION**

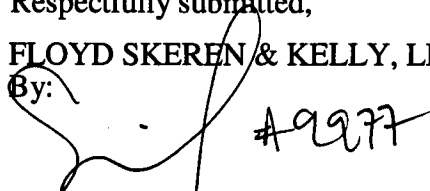
7 The Petitioner has failed to demonstrate, in any substantive way, that the Appeals Officer's
8 determination was clearly erroneous or an abuse of discretion. DIR's investigation into the
9 Petitioner/Claimant's complaint was appropriately completed, and its conclusion that no violations
10 had occurred was proper. Further, DIR's 10/01/10 letter to the Petitioner/Claimant was for
11 information purposes only, and did not carry with it any appeal rights. Therefore, summary
12 judgment regarding the Petitioner/Claimant's appeals was appropriate. Hence, the Appeals Officer's
13 Order Granting the Motion for Summary Judgment is in no way either capricious or inequitable, and
14 in fact, represented an appropriate exercise of her statutory duty.

15
16 Wherefore, CCMSI, respectfully requests that the District Court provide the following relief:

- 17 1. That the District Court DENY the Petitioner's Petition for Judicial Review and
18 AFFIRM the Appeals Officer's Order Granting Summary Judgment dated 06/15/11.

19 Dated this 27th day of January, 2012.

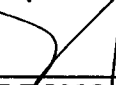
20
21 Respectfully submitted,
22 FLOYD SKEREN & KELLY, LLP.

23 By:  #9977

24 DALTON L. HOOKS, JR., ESQ.
25 Nevada Bar # 008121
26 4570 S. Eastern Ave. #28
27 Las Vegas, NV 89119
28 Attorneys for TPA/Respondent
CCMSI

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in conformity with the requirements of

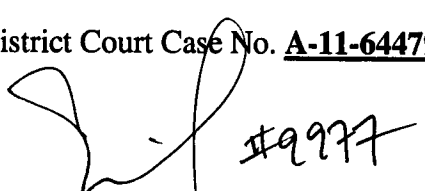
 #9977

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorneys for TPA/Respondent
CCMSI

1/27/12
DATE

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed in or submitted for District Court Case No. A-11-644791-J does not contain the social security number of any person.

 #9977

DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorneys for TPA/Respondent
CCMSI

1/27/12

DATE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am employee of the law firm of FLOYD, SKEREN, &
3 KELLY, LLP, and on this 30th day of January, 2012, I am serving the foregoing
4 **TPA/RESPONDENT'S REPLY TO PETITIONER'S OPENING BRIEF; TABLE OF**
5 **CONTENTS; TABLE OF AUTHORITIES; AFFIRMATION PURSUANT TO NRS 239B.030**
6 on the following parties:

7 Susan Reeves
8 Petitioner in Pro-Se
9 4724 E Washington Ave
Las Vegas NV 89110

10 Jennifer Leonescu, Esq.
11 Division of Industrial Relations
12 1301 N. Green Valley Parkway, #200
Henderson, NV 89074

13 Appeals Officer Shirley Lindsey, Esq.
14 Department Of Administration
15 2200 S. Rancho Dr. #220
Las Vegas, NV 89102
Appeal Nos: 78016-SL; 80334-SL

16 **Courtesy Copy:**

17 Ms. Rosemarie McMorris
18 CCMSI
19 PO Box 35350
Las Vegas, NV 89133-5350

20 BY:

21 xx Placing a true copy thereof in a sealed envelope placed for collection and mailing in the
22 United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business
practices.

23 _____ Personal delivery by runner or messenger service.

24 _____ Facsimile.

25 _____ Federal Express or other overnight delivery.

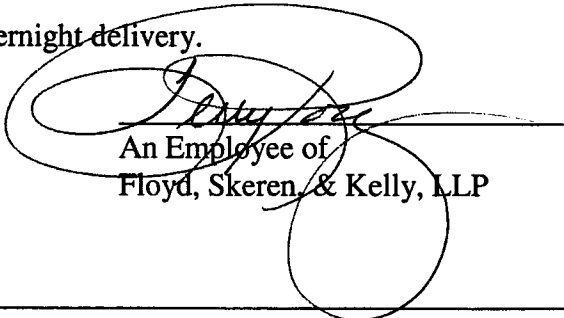
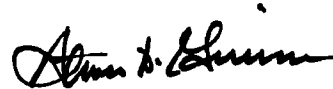
26 
27 An Employee of
28 Floyd, Skeren, & Kelly, LLP

EXHIBIT D



CLERK OF THE COURT

1 **RSPN**
2 DALTON L. HOOKS, JR., ESQ., Bar No. 8121
3 FLOYD, SKEREN & KELLY, LLP.
4 4570 South Eastern Avenue, Suite 28
5 Las Vegas, Nevada 89119
6 Telephone No. (702) 369-8820
7 Facsimile No. (702) 369-3903
8 Attorneys for TPA/Respondent
9 CANNON COCHRAN MANAGEMENT SERVICES
10

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **SUSAN REEVES,**

14 **Petitioner,**

15 **vs.**

CASE NO.: A-11-644791-J
DEPT. NO.: IV

Hearing Date: N/A
Hearing Time: N/A

16 **DIVISION OF INDUSTRIAL RELATIONS,**
17 **And THE DEPARTMENT OF**
18 **ADMINISTRATION, APPEALS DIVISION,**
19 **a State Agency,**

20 **Respondents.**

21 **TPA/RESPONDENT'S RESPONSE TO PETITION FOR JUDICIAL REVIEW**

22 **AND STATEMENT OF INTENT TO PARTICIPATE**

23 COMES NOW Insurer/Respondent, CANNON COCHRAN MANAGEMENT SERVICES,
24 INC./CCMSI ("TPA/RESPONDENT"), by and through its attorney, DALTON L. HOOKS, JR.,
25 ESQ., and submits its Response to Petition for Judicial Review and Statement of Intent to
26 Participate. This statement is filed pursuant to NRS 233B.130.
27
28

...

...

...

1 Petitioner, Susan Reeves, improperly failed to name CCMSI, as an essential party to her
2 Petition for Judicial Review. Despite this error, CCMSI, the TPA/Respondent, does intend to
3 participate in this appeal.

4 TPA/Respondent CCMSI avers that there is substantial, credible, reliable and probative
5 evidence in the record before the Appeals Officer and this Court to support the findings and decision
6 of the Appeals Office and the findings and decision were not arbitrary or capricious or characterized
7 by abuse of or unwarranted exercise of discretion by the Appeals Officer.
8

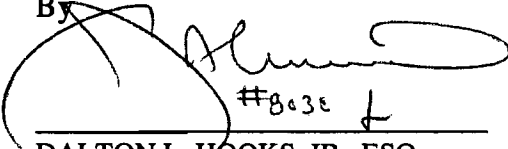
9 WHEREFORE, the TPA/Respondent CCMSI prays that this Court affirm the decision of the
10 Appeals Officer and enter an order in accordance therewith.

11
12 Dated this 14th day of October, 2011.

13 Respectfully submitted,

14 FLOYD SKEREN & KELLY, LLP.

15 By

16 
17 #8038

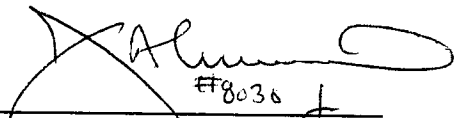
18 DALTON L. HOOKS, JR., ESQ.

19 Attorney for TPA/Respondent

20 CANNON COCHRAN MANAGEMENT SERVICES,
21 INC./CCMSI
22
23
24
25
26
27
28

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding pleading filed in or submitted for District Court Case No.: **A-11-644791-J** does not contain the social security number of any person.


DALTON L. HOOKS, JR., ESQ.
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, NV 89119
Attorney for TPA/Respondent
CANNON COCHRAN MANAGEMENT
SERVICES, INC./CCMSI

10 - 14 - 11
DATE

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am employee of the law firm of FLOYD, SKEREN, &
3 KELLY, LLP, and on this 14th day of October, 2011, I am serving the foregoing

4 **TPA/ESPONDENT'S RESPONSE TO PETITION FOR JUDICIAL REVIEW AND**
5 **STATEMENT OF INTENT TO PARTICIPAE; AFFIRMATION PURSUANT TO NRS**

6 **239B.030** on the following parties:

7 Susan Reeves
8 Petitioner in Pro-Se
9 4724 E Washington Ave
Las Vegas NV 89110

10 Jennifer Leonescu, Esq.
11 Division Counsel
12 Division of Industrial Relations
1301 N. Green Valley Parkway, #200
12 Henderson, NV 89074

13 Appeals Officer Shirley Lindsey, Esq.
14 Department Of Administration
15 2200 S. Rancho Dr. #220
16 Las Vegas, NV 89102
Appeal Nos: 78016-SL; 80334-SL

17 **Courtesy Copies:**

18 Ms. Rosemarie McMorris
19 CCMSI
PO Box 35350
Las Vegas, NV 89133-5350

20 BY:

21 xx Placing a true copy thereof in a sealed envelope placed for collection and mailing in the
22 United States Mail, at Las Vegas, Nevada, postage prepaid, following ordinary business
23 practices.

24 Personal delivery by runner or messenger service.

25 Facsimile.

26 Federal Express or other overnight delivery.

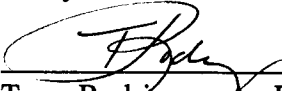
27 
28 Terry Rodriguez, An Employee of
Floyd, Skeren, & Kelly, LLP

EXHIBIT C

1 DALTON L. HOOKS, JR., ESQ., Bar No. 8121
2 FLOYD, SKEREN & KELLY, LLP.
3 4570 South Eastern Avenue, Suite 28
4 Las Vegas, Nevada 89119
5 Telephone No. (702) 369-8820
6 Facsimile No. (702) 369-3903
7 Attorneys for Third-Party Administrator
8 CCMSI

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RECEIVED
AND
FILED

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE

In the Administrative Action of:

SUSAN REEVES

APPEAL NO.: 80334-SL
CLAIM NO.: 88S01H243724

Employer:

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

NOTICE OF APPEARANCE

TO: SUSAN REEVES, Claimant;

TO: TERESA HORVATH, ESQ., NAIW, her attorney of record;

TO: JOHN F. WILES, ESQ., General Counsel for Division of Industrial Relations;

TO: BALLY'S, the Claimant's employer of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE of the appearance of
DALTON L. HOOKS, JR., ESQ., of the law firm of FLOYD, SKEREN & KELLY, LLP., as counsel
for CCMSI ("TPA"), in the above-entitled matter.

Dated this 9th day of November, 2010.

FLOYD, SKEREN & KELLY, LLP.
By:

DALTON L. HOOKS, JR., ESQ.
Attorney for Third-Party Administrator
CCMSI

Doc 023
314

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF APPEARANCE** was duly served on the following as indicated:

☐ Via Facsimile ☒ Mail ☐ Personal Delivery	Susan Reeves 4724 E Washington Ave Las Vegas, NV 89110
☒ Via Facsimile ☐ Mail ☐ Personal Delivery	Teresa Horvath, Esq. NAIW 2200 S. Rancho Dr #230 Las Vegas, NV 89102
☐ Via Facsimile ☒ Mail ☐ Personal Delivery	John Wiles, Esq. Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
☐ Via Facsimile ☒ Mail ☐ Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
☒ Via Facsimile ☐ Mail ☐ Personal Delivery	Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 9th day of November, 2010


An employee of
FLOYD, SKEREN & KELLY, LLP

315

EXHIBIT B

ORIGINAL

DALTON L. HOOKS, JR., ESQ., Bar No. 8121
FLOYD, SKEREN & KELLY, LLP.
4570 South Eastern Avenue, Suite 28
Las Vegas, Nevada 89119
Telephone No. (702) 369-8820
Facsimile No. (702) 369-3903
Attorneys for Third-Party Administrator
CCMSI

RECEIVED
AND
FILED
AUG 30 11:11:39

STATE OF NEVADA

DEPARTMENT OF ADMINISTRATION

APPEALS OFFICE

In the Matter of the Contested
Insurance Claim

APPEAL NO.: 78016-SL
CLAIM NO.: 88S01H243724

of

Employer:

SUSAN REEVES
4724 E WASHINGTON AVE
LAS VEGAS NV 89110

BALLY'S
DENNIS LINDENBACH
3645 LAS VEGAS BLVD S
LAS VEGAS NV 89109

NOTICE OF APPEARANCE

TO: SUSAN REEVES, Claimant in Proper Person;

TO: JOHN F. WILES, ESQ., General Counsel for Division of Industrial Relations;

TO: BALLY'S, the Claimant's employer of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE of the appearance of
DALTON L. HOOKS, JR., ESQ., of the law firm of FLOYD, SKEREN & KELLY, LLP., as
counsel for CCMSI ("TPA"), in the above-entitled matter.

Dated this 26th day of August, 2010.

FLOYD, SKEREN & KELLY, LLP.

By:

DALTON L. HOOKS, JR., ESQ.
Attorney for Third-Party Administrator
CCMSI

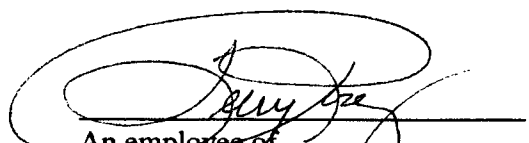
Doc 38
1052

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the date shown below, a true and correct copy of the foregoing **NOTICE OF APPEARANCE** was duly served on the following as indicated:

☐ Via Facsimile ☒ Mail ☐ Personal Delivery	Susan Reeves 4724 E Washington Ave Las Vegas, NV 89110
☒ Via Facsimile ☐ Mail ☐ Personal Delivery	John Wiles Business & Industry 1301 N Green Valley Pkwy #200 Henderson NV 89014
☐ Via Facsimile ☒ Mail ☐ Personal Delivery	Bally's Dennis Lindenbach 3645 Las Vegas Blvd S Las Vegas NV 89109
☒ Via Facsimile ☐ Mail ☐ Personal Delivery	Ms. Rosemarie McMorris CCMSI PO Box 35350 Las Vegas, NV 89133-5350

Dated this 26th day of August, 2010


An employee of
FLOYD, SKEREN & KELLY, LLP

1053

EXHIBIT A

✓

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

1 **NEOJ**
2 Donald C. Smith, Esq.
3 Nevada Bar No.: 000413
4 Jennifer J. Leonescu
5 Nevada Bar No.: 006036
6 State of Nevada
7 Department of Business and Industry
8 Division of Industrial Relations
9 1301 N. Green Valley Parkway, Suite 200
10 Henderson, Nevada 89074-6497
11 Phone: (702) 486-9070
12 Fax: (702) 990-0361
13 donaldcsmith@business.nv.gov
14 Attorney for Respondent

**DISTRICT COURT
CLARK COUNTY, NEVADA**

12 SUSAN REEVES,)
13)
14)
15)
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Petitioner,
vs.
DIVISION OF INDUSTRIAL RELATIONS,
And THE DEPARTMENT OF
ADMINISTRATION, APPEALS DIVISION
a State Agency,
Respondents.

Case No.: A-11-644791-J
Dept No.: IV

NOTICE OF ENTRY OF ORDER

TO ALL PARTIES:

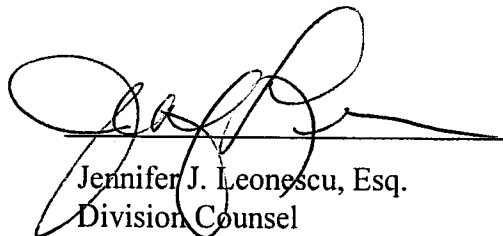
PLEASE TAKE NOTICE that an Order Denying Petition for Judicial Review was electronically filed in the above-entitled matter on December 24, 2012, a copy of which is

///
///
///

RECEIVED
JAN 02 2013
LAS VEGAS
FLOYD, SKEREN & KELLY, LLP

attached hereto.

Dated this 28 day of December, 2012 and respectfully submitted by:


Jennifer J. Leonescu, Esq.
Division Counsel

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served:

Respondent Division of Industrial Relations' Notice
Of Entry of Order Granting Motion to Dismiss – A644791

Person(s) Served:

Susan Reeves
4724 E. Washington Ave.
Las Vegas, NV 89110

U.S. Mail

☒ **via State Mail room** (regular or certified) circle one
☐ **deposited directly with U.S. Mail Service**
☐ **Overnight Mail**
☐ **Interdepartmental Mail**
☐ **Messenger Service**
☐ **Facsimile fax number:**

Person(s) Served:

Dalton Hooks, Esq.
Floyd, Skeren & Kelly, LLP
4570 South Eastern Ave., Ste. 28
Las Vegas, NV 89119

U.S. Mail

☒ **via State Mail room** (regular or certified) circle one
☐ **deposited directly with U.S. Mail Service**
☐ **Overnight Mail**
☐ **Interdepartmental Mail**
☐ **Messenger Service**
☐ **Facsimile fax number:**

Person(s) Served:

The Hon. Shirley Lindsey, Esq.
Office of the Appeals Officer
2200 S. Rancho Dr., #220
Las Vegas, NV 89102

U.S. Mail

☒ via State Mail room (regular or certified) circle one
☐ deposited directly with U.S. Mail Service
☐ Overnight Mail
☒ Interdepartmental Mail
☐ Messenger Service
☐ Facsimile fax number: _____

Person(s) Served:

CCMSI
Attn: Rosemarie McMorris
P.O. Box 35350
Las Vegas, NV 89133-5350

U.S. Mail

☒ via State Mail room (regular or certified) circle one
☐ deposited directly with U.S. Mail Service
☐ Overnight Mail
☐ Interdepartmental Mail
☐ Messenger Service
☐ Facsimile fax number: _____

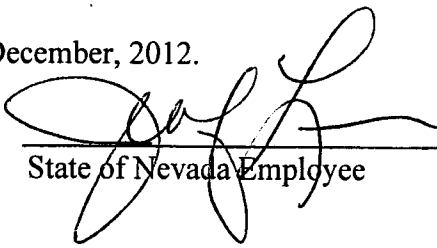
Bally's

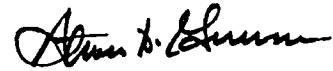
Attn: Dennis Lindenbach
3645 Las Vegas Blvd S.
Las Vegas, NV 89109

U.S. Mail

☒ via State Mail room (regular or certified) circle one
☐ deposited directly with U.S. Mail Service
☐ Overnight Mail
☐ Interdepartmental Mail
☐ Messenger Service
☐ Facsimile fax number: _____

DATED this 28 day of December, 2012.


State of Nevada Employee



CLERK OF THE COURT

1 ORDD

2 John F. Wiles, Esq.

3 Nevada Bar No.: 003844

4 State of Nevada

5 Department of Business and Industry

6 Division of Industrial Relations

7 1301 N. Green Valley Parkway, Suite 200

8 Henderson, Nevada 89074-6497

9 (702) 486-9070

10 jwiles@business.nv.gov

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 SUSAN REEVES,

14 Petitioner,

15 vs.

Case No.: A-11-644791-J

16 DIVISION OF INDUSTRIAL RELATIONS,

17 And THE DEPARTMENT OF

18 ADMINISTRATION, APPEALS DIVISION,

19 a State Agency,

Dept. No.: IV

20 Respondents.

21 ORDER DENYING PETITION FOR JUDICIAL REVIEW

22 THIS MATTER coming on for hearing on Petitioner's Petition for Judicial Review
23 on the 13th day of December, 2014, Petitioner, Susan Reeves, appearing in proper person,
24 Dalton Hooks, Esq., appearing on behalf of Respondent Cannon Cochran Management
25 Services, Inc., ("CCMSI"), and Jennifer J. Leonescu, Esq., Division Counsel, on behalf of
26 Respondent, the Division of Industrial Relations (the "Division"), the Court having
27 considered the papers and pleadings on file, the oral arguments of counsel and for good
28 cause therefore, the Court finds as follows:

STATE OF NEVADA
Division of Industrial Relations - Division Counsel's Office
1301 North Green Valley Parkway, Suite 200
Henderson, Nevada 89074
(702) 486-9070

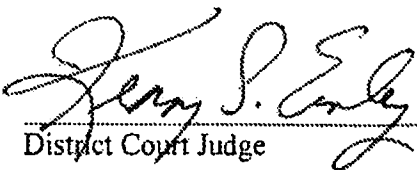
1 That this Court's review of the Petition for Judicial Review is governed by NRS
2 233B.135.

3 That the Appeals Officer's Order Granting Summary Judgment is not affected by
4 error of law or arbitrary or capricious or characterized by abuse of discretion or in any other
5 way reversible under NRS 233B.135; therefore,

6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Petitioner's
7 Petition for Judicial Review is **DENIED**.

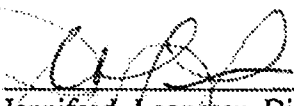
8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Appeals
9 Officer's June 15, 2011 Order Granting Summary Judgment is **AFFIRMED**.

10 **IT IS SO ORDERED** this 19 day of December, 2012

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15 District Court Judge
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Submitted by:

DIVISION OF INDUSTRIAL RELATIONS


Jennifer J. Leonescu, Division Counsel
Nevada Bar No. 6036
1301 N. Green Valley Pkwy., Ste. 200
Henderson, NV 89074
(702) 486-9070

1 **MOT**

2 DALTON L. HOOKS, JR., ESQ. NV Bar No. 8121

3 FLOYD, SKEREN & KELLY, LLP

4 4570 South Eastern Avenue, Suite 28

5 Las Vegas, Nevada 89119

6 Telephone: (702) 369-8820

7 terry.rodriguez@fsklaw.com

8 Attorney for TPA/Movant

Electronically Filed
Jun 24 2014 02:48 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

9
10 IN THE SUPREME COURT OF THE STATE OF NEVADA

11 SUSAN REEVES,
12 Appellant,

13 vs.

14 DIVISION OF INDUSTRIAL
15 RELATIONS; AND NEVADA
16 DEPARTMENT OF
17 ADMINISTRATION

18 Respondents.

Supreme Court Case No.: 62468

District Court Case No.:
A-11-644791-J

MOVANT CCMSI'S MOTION FOR
A PROCEDURAL ORDER TO
AMEND CAPTION TO ADD
MOVANT AS ESSENTIAL
RESPONDENT

19 COMES NOW, the Third Party Administrator, CANNON COCHRAN
20 MANAGEMENT SERVICES, INC. [CCMSI] ("TPA/Movant"), by and through its
21 attorney, DALTON L. HOOKS, JR., ESQ., of Floyd, Skeren & Kelly, LLP, and
22 hereby files this motion pursuant to NRAP 27 to amend the caption and providing
23 good cause for the same. TPA/Movant hereby, respectfully requests that it be allowed
24 to be added to the caption as an essential respondent in order to file an Answering
25 Brief in response to Appellant's Opening Brief.

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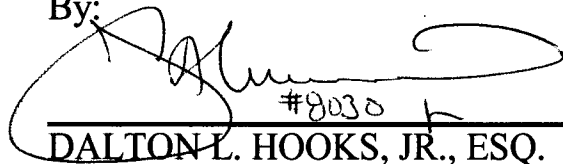
1 This Motion is made and based upon the attached Points and Authorities, and
2 such argument as the Court may entertain at hearing.

3
4 Dated this 24 day of June, 2014.

5 Respectfully submitted,

6 FLOYD, SKEREN, & KELLY, LLP.

7 By:

8 

9 DALTON L. HOOKS, JR., ESQ.

10 4570 South Eastern Avenue, Suite 28

11 Las Vegas, Nevada 89119

12 Attorney for TPA/Movant

13 CCMSI
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1 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

2 This appeal to the Supreme Court of Nevada concerns the District Court's
3 Order dated 12/19/12 denying the Appellant/Claimant's Petition for Judicial Review
4 (PJR) of both of the Appellant/Claimant's consolidated administrative appeals. The
5 Appellant/Claimant filed an appeal of the PJR. *See* exhibit attached as Exhibit A.
6 Following is a brief summary of the underlying administrative appeals.
7

8 **Administrative Appeal No. 78016-SL**

9 On or about 06/01/10, the Appellant/Claimant filed an administrative complaint
10 for benefit penalties with Respondent, Division of Industrial Relations
11 ("Respondent/DIR"). In the complaint, the Petitioner/ Claimant alleged that (1) she
12 was not timely paid temporary total disability (TTD) benefits, (2) she was not given
13 proper medical care, and (3) she requested that she be awarded a benefit penalty.
14 After carefully reviewing the Petitioner/Claimant's file and completing a thorough
15 investigation into the matter, the Respondent/DIR determined that there were no
16 violations of NRS 616D.120, and thus, the Petitioner/Claimant was not entitled to a
17 benefit penalty. The Petitioner/ Claimant subsequently filed an appeal of that
18 determination on 08/10/10. The TPA/Movant filed a Notice of Appearance on
19 08/30/10. *See* attached Exhibit B.
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1 **Administrative Appeal No. 80334-SL**

2 On or about 09/11/10, the Appellant/Claimant filed another complaint with
3 Respondent/DIR, in which she alleged that her claim was not properly closed. On
4 09/20/10, in response to the Appellant/Claimant's allegations of possible violations,
5 the TPA wrote to Respondent/DIR and supplied a brief chronology regarding the
6 closing of the Appellant/Claimant's claim. After carefully reviewing the Claimant's
7 file, Respondent/DIR responded to the Appellant/Claimant in correspondence dated
8 10/01/10.
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11 In said correspondence, Respondent/DIR noted that the issue regarding claim
12 closure had previously been before the Hearing Officer and the Appeals Officer and
13 was, at that time, pending before the Nevada District Court¹. As such,
14 Respondent/DIR informed the Appellant/Claimant that it did not have the authority to
15 modify or negate a determination by a Hearing Officer, Appeals Officer, or court of
16 competent jurisdiction. Although the 10/01/10 Respondent/DIR letter contained no
17 appeal rights as it was purely informational, the Appellant/Claimant nevertheless filed
18 an appeal of that determination on 10/19/10. On 11/12/10, the TPA/Movant filed its
19 Notice of Appearance. See attached Exhibit C.
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25 ¹ Indeed, the claim closure had been affirmed by Hearing Officer Steven Evans in a
26 Decision and Order dated 07/25/07. The Hearing Officer's Decision and Order was
27 then affirmed by Appeals Officer Gregory Krohn in a Decision and Order dated
28 12/18/09. The Petitioner/Claimant filed an appeal with the District Court regarding
the 12/18/09 Decision and Order. Over thirteen (13) months later, and after
Respondent/DIR's investigation of the Appellant/Claimant's administrative
complaint, the District Court denied the Petition for Judicial Review finding that the
Appeals Officer's decision was supported by substantial evidence and was not
arbitrary and capricious in an Order dated 02/08/11.

1 The parties subsequently agreed to consolidate the administrative matters. The
2 hearing concerning the consolidated matters was held before Appeals Officer Shirley
3 Lindsey, on 04/13/11. Accordingly, Respondent/DIR filed, and the TPA/Movant
4 joined, an administrative Motion to Dismiss, or in the Alternative for Summary
5 Judgment. The Appellant/Claimant opposed said Motion. Then, in an Order dated
6 06/15/11, the Appeals Officer granted the Motion for Summary Judgment and
7 affirmed Respondent/DIR's determination letters dated 07/22/10 and 10/01/10.
8

9
10 The Appellant/Claimant subsequently filed a Petition for Judicial Review on
11 07/12/11. On 10/14/11, the TPA/Movant filed its Response to Petition for Judicial
12 Review and Statement of Intent to Participate. *See* exhibit attached as Exhibit D. The
13 TPA/Movant filed its Reply to Appellant/Claimant's Opening Brief, on 01/30/12,
14 following which the Respondent/DIR subsequently joined and filed its Notice of
15 Joinder in TPA/Movant's "Reply" to Appellant/Claimant's Opening Brief. *See*
16 attached Exhibit E. The District Court denied the Appellant/Claimant's request for
17 petition for judicial review. *See* attached exhibit as Exhibit A. Subsequently, the
18 Appellant/Claimant filed her appeal to the Supreme of Court of Nevada.
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22 **LEGAL ANALYSIS**

23
24 The applicable Rule of Appellate Procedure, governing the subject of the
25 instant motion is NRAP 27(b). NRAP 27(b) provides in pertinent part:
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1 **RULE 27. MOTIONS**

2 **(b) Disposition of a Motion for a Procedural Order.** The court may act on a
3 motion for a procedural order—including a motion under Rule 26(b)—at any time
4 without awaiting a response. Under Rule 27(c), the clerk may act on motions for
5 specified types of procedural orders. A party adversely affected by the court's, or the
6 clerk's, action may file a motion to reconsider, vacate or modify that action. Timely
7 opposition filed after the motion is granted in whole or in part does not constitute a
8 request to reconsider, vacate, or modify the disposition; a motion requesting that relief
9 must be filed.

10 *See* NRAP 27(b).

11 The Appellant/Claimant, Susan Reeves, improperly failed to name CCMSI, as
12 an essential party to her appeal to the Supreme Court of Nevada as well as in the
13 Petition for Judicial Review filed with the District Court below. Despite this error, the
14 TPA/Movant, CCMSI, requests to participate in this current appeal before the
15 Supreme Court. As detailed above, the TPA/Movant has continuously participated as
16 an essential party to this litigation before the Appeals Officer and the District Court.

17 *See* attached Exhibits B and C.

18 Further and more importantly, at the District Court, the TPA/Movant filed its
19 notice of participation and answering brief to Appellant/Claimant's Opening Brief and
20 the Respondent/DIR filed its notice of joinder to the TPA/Movant's answering brief.

21 *See* attached Exhibits D-F. Also, the TPA/Movant has signed Stipulations before the
22 Supreme Court regarding the current briefing schedules. *See* exhibit attached as
23 Exhibit G.

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1 If the Supreme Court were to reverse the District Court and the Appeals Officer
2 in this matter, the real party in interest, the TPA/Movant, not Respondent/DIR, would
3 be required to pay wage replacement benefits, TTD, and related benefit penalties to
4 the Appellant/Claimant. Therefore, the TPA/Movant is an essential party to this
5 appeal. The TPA/Movant, CCMSI, avers that there is substantial, credible, reliable
6 and probative evidence in the record before the Appeals Officer and this Court to
7 support the findings and decision of the Appeals Office and the findings and decision
8 were not arbitrary or capricious or characterized by abuse of or unwarranted exercise
9 of discretion by the Appeals Officer.
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13 In light of the TPA/Movant, CCMSI, prior actions in the case, adding the
14 TPA/Movant as an essential party to the caption of this appeal will in no way bias the
15 Appellant/Claimant's case on appeal. Conversely, refusal to allow the TPA/Movant
16 to file an answer to the Appellant/Claimant's Opening Brief will prejudice the
17 TPA/Movant's rights as the TPA/Movant has participated and succeeded on the merits
18 of this litigation at both the administrative appeals level and the District Court. As
19 such, the TPA/Movant would be irreparably harmed if not allowed to participate at
20 this appellate level.
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24 Accordingly, pursuant to NRAP 27, there is good cause, to grant the instant
25 procedural motion and allow the TPA/Movant to be added to the caption and allowed
26 to file its Answering Brief to Appellant/ Claimant's Opening Brief.
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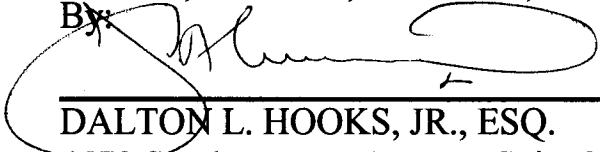
1 CONCLUSION

2 Based on the foregoing, TPA/Movant, CCMSI, respectfully requests that the
3 Supreme Court grant leave to allow to add TPA/Movant as an essential party to this
4 appeal and as an additional respondent in said appeal.
5

6 Dated this 24th day of June, 2014.

7 Respectfully submitted,

8 FLOYD, SKEREN, & KELLY, LLP.

9 By: 

10

DALTON L. HOOKS, JR., ESQ.

11 4570 South Eastern Avenue, Suite 28

12 Las Vegas, Nevada 89119

13 Attorney for TPA/Movant

14 CCMSI
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CERTIFICATE OF SERVICE

Pursuant to NRC 5(b), I certify that I am employee of the law firm of FLOYD, SKEREN, & KELLY, LLP, and on this 24th day of June, 2014, I am serving the foregoing **MOVANT CCMCI'S MOTION FOR A PROCEDURAL ORDER TO AMEND CAPTION TO ADD MOVANT AS ESSENTIAL RESPONDENT** on the following parties:

Maximiliano D. Couvillier, Esq.
Lionel Sawyer & Collins
300 S Fourth St., Ste. 1700
Las Vegas NV 89101
Attorney for Appellant,
SUSAN REEVES

Jennifer Leonescu, Esq.
Division of Industrial Relations
1301 N. Green Valley Parkway, #200
Henderson, NV 89074
Attorney for Respondent
NV DEPARTMENT OF BUSINESS & INDUSTRY

Appeals Officer Shirley Lindsey, Esq.
Department Of Administration
2200 S. Rancho Dr. #220
Las Vegas, NV 89102
Appeal Nos: 78016-SL; 80334-SL

Courtesy Copy:
CCMSI
PO Box 35350
Las Vegas, NV 89133-5350

1 BY:

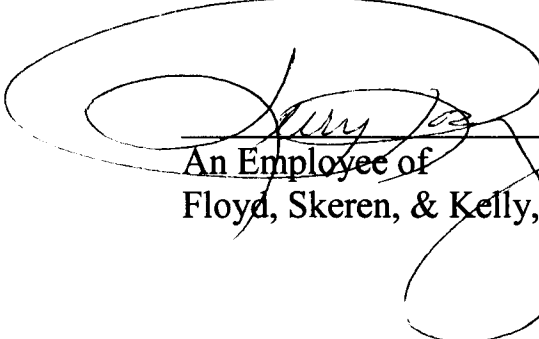
2 xx Placing a true copy thereof in a sealed envelope placed for collection and
3 mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid,
4 following ordinary business practices.

5 _____ Personal delivery by runner or messenger service.

6 _____ Facsimile.

7 _____ Federal Express or other overnight delivery.

8
9 Dated this 24th day of June, 2014.

10
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12 
13 An Employee of
14 Floyd, Skeren, & Kelly, LLP
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