

1 MATTHEW S. DUNKLEY, ESQ.
2 Nevada Bar No. 6627
3 MARK G. LOSEE, ESQ.
4 Nevada Bar No. 12996
5 DUNKLEY LAW
6 2450 St. Rose Parkway, Suite 210
7 Henderson, Nevada 89074
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9 Fax (702) 570-5940
10 Attorneys for Appellant

Electronically Filed
Dec 08 2014 02:48 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

WILLIAM POREMBA)	
)	Supreme Court No. 66888
Petitioner,)	District Court Case No. A-698184
vs.)	
)	
SOUTHERN NEVADA PAVING;)	
S&C CLAIMS SERVICE and)	
DEPARTMENT OF ADMINISTRATION,)	
APPEALS OFFICER,)	
)	
Respondent.)	

DOCKETING STATEMENT

1. **Judicial District** Eighth **Department** II
County Clark **Judge** Honorable Judge Valorie J. Vega
District Court Case No. A-14-698184-J

2. **Attorney filing this docketing statement:**
Attorney Mark G. Losee, Esq. **Telephone** (702) 413-6565
Firm Dunkley Law
Address 2450 St. Rose Parkway, Suite 210, Henderson, Nevada 89074
Client(s) William Poremba

1 **3. Attorney(s) representing respondent(s):**

2 Attorney Daniel L. Schwartz, Esq. Telephone (702) 893-3383

3 Firm Lewis Brisbois Bissgaard & Smith, LLP

4 Address 2300 W. Sahara Avenue, Suite 300, Las Vegas, Nevada 89102

5 Client(s) S&C Claims Services, Inc., and Southern Nevada Paving

6 **4. Nature of disposition below (check all that apply):**

- 8 Judgment after bench trial
- 9 Judgment after jury verdict
- 10 Summary Judgment
- 11 Default judgment
- 12 Grant/Denial of NRCP 60 (b) relief
- 13 Grant/Denial of injunction
- 14 Grant/Denial of declaratory relief
- 15 Review of agency determination
- Dismissal:
- Lack of jurisdiction
- Failure to state a claim
- Failure to prosecute
- Other (specify): _____
- Divorce Decree:
- Original Modification
- Other disposition (specify): Denial of Petition
for Judicial Review

16 **5. Does this appeal raise issues concerning any of the following?** N/A

- 17 Child Custody
- 18 Venue
- 19 Termination of parental rights

20 **6. Pending and prior proceedings in this court.** List the case name and docket number of all
21 appeals or original proceedings presently or previously pending before this court which are related to
22 this appeal:

N/A

23 **7. Pending and prior proceedings in other courts.** List the case name, number and court of all
24 pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy,
25 consolidated or bifurcated proceedings) and their dates of disposition:

26 William Poremba vs Pratte Development Co Inc, Case No. 07A544177, Eighth Judicial
27 District Court, Order of Dismissal With Prejudice 09/23/2009, (Third-Party Negligence-Auto).

1 **8. Nature of the action.** Briefly describe the nature of the action and the result below:

2 Petition for Judicial Review of Agency (Nevada Department of Business and Industry)
3 decision denying Petitioner reopening rights of his workers compensation claim and awarding
4 Respondent summary judgment.

6 **9. Issues on appeal:** State specifically all issues in this appeal (attach separate sheets as necessary):

7 The nature of the action includes statutory interpretation of Nevada workers compensation
8 laws to answer the main following issue:

9 1. As a matter of law can a failure to exhaust third party settlement funds be used to preclude
10 reopening a workers compensation claim when the worker has met the statutory requirements to
11 reopen his claim pursuant to NRS 613C.390, or does it merely allow withholding or offsets?

12 And if so, as a matter of law must a claimant exhaust third party settlement funds solely on
13 medical costs before he can reopen his workers compensation claim, or may the funds be
14 exhausted on other needs?

16 Other procedural issues to decide are:

17 2. Does a decision by an appeals officer to grant an already dismissed motion for summary judgment
18 without being re-raised fail to meet the notice requirements of NRS 233B.121 making the
19 decision procedurally improper?

21 3. Does a final order by an appeals officer granting summary judgment without any written
22 findings of fact or conclusions of law make the order procedurally deficient?

23 **10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any
24 proceedings presently pending before this court which raises the same or similar issues raised in this
25 appeal, list the case name and docket numbers and identify the same or similar issue raised.

26 Unknown

1 **11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any
2 state agency, or any officer or employee thereof is not a party to this appeal, have you notified the
3 clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

4 N/A

5 Yes

6 No

7 If not, explain:

8 **12. Other issues.** Does this appeal involve any of the following issues?

9 Reversal of well-settled Nevada precedent (identify the case(s))

10 An issue arising under the United State and/or Nevada Constitutions

11 A substantial issue of first impression

12 An issue of public policy

13 An issue where en banc consideration is necessary to maintain uniformity of this
14 court's decisions

15 A ballot question

16 If so, explain: Interpretation of case law, *Employers Ins. Co. of Nevada v. Chandler*, 23 P.3d
17 255 (Nev. 2001), and its relationship to NRS 613C.390.

18
19 **13. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

20 Was it a bench or jury trial? _____

21
22
23 **14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have justice
24 recuse him/herself from participation in this appeal? If so, which Justice?

25 No

1 **TIMELINESS OF NOTICE OF APPEAL**

2 **15. Date of entry of written judgment or order appealed from** October 22, 2014

3 If no written judgment or order was filed in the district court, explain the basis for
4 seeking appellate review.

5 **16. Date written notice of entry of judgment or order was served** October 23, 2014

6 Was service by:

7 Delivery

8 Mail/electronic/fax

9 **17. If the time for filing the notice of appeal was tolled by a post-judgment motion**
10 **(NRCP 50(b), 52(b), or 59)**

11 (a) Specify the type of motion, the date and method of service of the motion, and the
12 date of filing.

13 NRCP 50(b) Date of filing _____

14 NRCP 52(b) Date of filing _____

15 NRCP 59 Date of filing _____

16 **NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or**
17 **reconsideration may toll the time for filing a notice of appeal. See AA**
Primo Builders v. Washington, 126 Nev. _____, 245 P.3d 1190 (2010).

18 (b) Date of entry of written order resolving tolling motion _____

19 (c) Date written notice of entry of order resolving tolling motion was served _____

20 Was service by:

21 Delivery

22 Mail

23 **18. Date notice of appeal filed** November 10, 2014

24 If more than one party has appealed from the judgment or order, list the date each
25 notice of appeal was filed and identify by name the party filing the notice of appeal:

26 **19. Specify statute or rule governing the time and limit for filing the notice of appeal,**
e.g., NRAP 4(a) or other

27 NRAP 4(a)

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SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|--|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 616C.370</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal of a District Court's final order in relation to a Petition for Judicial Review that was filed by Appellant Poremba which in turn was preceded by a final agency decision denying Appellant Poremba from reopening his workers compensation claim.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

WILLIAM POREMBA
SOUTHERN NEVADA PAVING
S&C CLAIMS SERVICE
NEVADA DEPARTMENT OF ADMINISTRATION APPEALS

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Petitioner, William Poremba, seeks reversal of agency decision based on failure to apply NRS 613C.390; Respondent, S&C Claims Services, Inc., and Southern Nevada Paving, seeks affirmation of summary judgment based on interpretation of *Employers Ins. Co. of Nevada v. Chandler*, 23 P.3d 255 (Nev. 2001); supra.

1 **23. Did the judgment or order appealed from adjudicate ALL the claims alleged below**
2 **and the rights and liabilities of ALL the parties to the action or consolidated actions**
3 **below?**

- 4 Yes
5 No

6 **24. If you answered “No” to questions 23, complete the following:**

7 (a) Specify the claims remaining pending below:

8 (b) Specify the parties remaining below:

9 (c) Did the district court certify the judgment or order appealed from as a final judgment
10 pursuant to NRCP 54(b)?

- 11 Yes
12 No

13 (d) Did the district court make an express determination, pursuant to NRCP 54(b), that
14 there is not just reason for delay and an express direction for the entry of judgment?

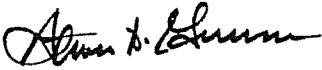
- 15 Yes
16 No

17 **25. If you answered “No” to any part of questions 24, explain the basis for seeking**
18 **appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

19
20 **26. Attach file-stamped copies of the following documents:**

- 21 • The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- 22 • Any tolling motion(s) and order(s) resolving tolling motion(s)
- 23 • Orders of NRCP 41(a) dismissals formally resolving each claim,
24 counterclaims, cross-claims and/or third-party claims asserted in the action or
25 consolidated action below, even if not at issue on appeal
- 26 • Any other order challenged on appeal
- 27 • Notices of entry for each attached order

EXHIBIT 1



CLERK OF THE COURT

1 PTJR
2 MATTHEW S. DUNKLEY, ESQ.
Nevada Bar No. 6627
3 MARK G. LOSEE, ESQ.
Nevada Bar No. 12996
4 DUNKLEY LAW
2450 St. Rose Parkway, Suite 210
5 Henderson, Nevada 89074
6 Tel. (702) 413-6565
Fax (702) 570-5940
7
8 Attorneys for Petitioner

10
11 **EIGHTH JUDICIAL, DISTRICT COURT**
CLARK COUNTY, NEVADA

12
13 WILLIAM POREMBA)
14) CASE NO. : A-14-698184
Petitioner,) DEPT NO. : II
15 vs.)
16)
SOUTHERN NEVADA PAVING;)
17 S&C CLAIMS SERVICE and)
DEPARTMENT OF ADMINISTRATION,)
18 APPEALS OFFICER,)
19 Respondent.)
_____)

20 **AMENDED PETITION FOR JUDICIAL REVIEW**

21 COMES NOW the Petitioner, WILLIAM POREMBA, by and through his attorneys,
22 DUNKLEY LAW, petitions this Court for judicially review of the decision of the Appeals Officer
23 in 1306201-SL, filed on, a February 25, 2014, a copy of which is attached hereto as Exhibit 1 and
24 made pursuant to the provisions of NRS 233B.130.
25

26 Petitioner claims substantial rights have been prejudiced because administrative findings,
27 inferences, conclusions or decisions are:
28

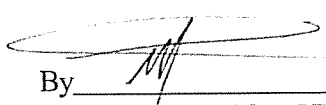
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- a. In violation of constitutional or statutory provisions;
- b. In excess of the statutory authority of the agency;
- c. Made upon unlawful procedure;
- d. Affected by error of law;
- e. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and
- f. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, Petitioner prays this Court allow briefs to be filed, oral arguments to be heard and following a review of the record, this Court enter an Order reversing the decision of the Appeals Office.

DATED this 27 day of March, 2014.

DUNKLEY LAW



By _____
MATTHEW S. DUNKLEY, ESQ.
Nevada Bar No. 6627
MARK G. LOSEE, ESQ.
Nevada Bar No. 12996
2450 St. Rose Parkway, Suite 210
Henderson, Nevada 89074
Attorneys for Petitioner

1 CERTIFICATE OF SERVICE

2 I certify that on this 21st day of March, 2014, the foregoing AMENDED PETITION FOR

3 JUDICIAL REVIEW was served on the following by:

- 4 hand delivery
5 Facsimile
6 Facsimile and U.S. Mail first class postage prepaid
7 U.S. Mail first class postage prepaid

8 addressed as follows:

9 Shirley D. Lindsey, Esq.
10 Appeals Officer
11 Department of Administration
12 Hearings Division
13 2200 South Rancho Drive, Suite 220
14 Las Vegas, Nevada 89102

15 Alyssa M. Fischer, Esq.
16 **LEWIS BRISBOIS BISGAAARD & SMITH LLP**
17 2300 West Sahara, Suite 300, Box 28
18 Las Vegas, NV 89102-4375

19 Julie Wood
20 S&C Claims Service
21 9075 W. Diablo Drive, # 140
22 Las Vegas, Nevada 89148

23 Southern Nevada Paving
24 3101 E. Craig Road
25 N. Las Vegas, Nevada 89030

26 William Poremba
27 168 Red Arches Court
28 Henderson, Nevada 89012

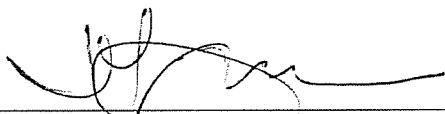

An Employee of Dunkley Law

EXHIBIT 1

FEB 25 2014

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

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In the Matter of the Contested Industrial
Insurance Claim

Claim No.: 739255

Appeal No.: 1306201-SL

of

Employer:
SOUTHERN NEVADA PAVING
3101 E. CRAIG ROAD
N. LAS VEGAS, NV 89030

WILLIAM POREMBA
168 RED ARCHES COURT
HENDERSON, NV 89014,

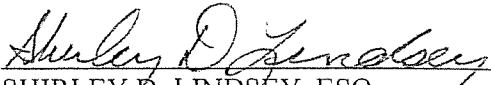
Claimant.

ORDER GRANTING INSURER'S MOTION FOR SUMMARY JUDGMENT


After careful review and consideration of the Insurer's Motion for Summary
Judgment and good cause appearing,

IT IS HEREBY ORDERED that the Insurer's Motion for Summary Judgment is
GRANTED, ~~and the appeal hearing scheduled for April 23, 2013 at 10:30 AM is VACATED.~~

DATED this 25 day of ~~March, 2013~~ ^{February} 2014 ^{MLD}


SHIRLEY D. LINDSEY, ESQ.
Appeals Officer

Submitted by:
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
ALYSSA M. FISCHER, ESQ.
Nevada Bar No. 5709
400 S. Fourth Street, Ste. 500
Las Vegas, Nevada 89101
Phone: (702) 893-3383
Fax: (702) 366-9689
Attorneys for Insurer

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP

31833417
4823-6545-3065.1

FEB 26 2014

CERTIFICATE OF MAILING

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The undersigned, an employee of the State of Nevada, Department of Administration, Appeals Division, does hereby certify that on the date shown below, a true and correct copy of the foregoing **ORDER GRANTING INSURER'S MOTION FOR SUMMARY JUDGMENT** was duly mailed, postage prepaid **OR** placed in the appropriate addressee runner file maintained by the Division, 2200 South Rancho Drive, Suite 220, Las Vegas, Nevada, to the following:

Alyssa M. Fischer, Esq.
Lewis, Brisbois, Bisgaard & Smith LLP
400 S. Fourth Street, Ste. 500
Las Vegas, NV 89101

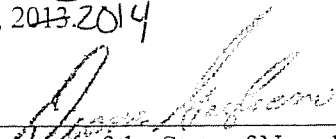
Matthew Dunkley, Esq.
1522 W. Warm Springs Road
Henderson, NV 89014

Julie Wood
S&C Claims Service
9075 W. Diablo Drive, #140
Las Vegas, NV 89148

William Poremba
168 Red Arches Court
Henderson, NV 89012

Southern Nevada Paving
3101 E. Craig Road
N. Las Vegas, NV 89030

DATED this 25th day of March, ^{KAW} ~~2013~~ 2014



An employee of the State of Nevada

2/25/14

EXHIBIT 2

CLERK OF THE COURT

1 **ORDD**
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 005125
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
5 2300 W. Sahara Ave., Ste. 300, Box 28
6 Las Vegas, Nevada 89102
7 Telephone: 702/893-3383
8 Facsimile: 702/366-9689
9 Email: daniel.schwartz@lewisbrisbois.com
10 *Attorneys for Respondents*
11 *S&C CLAIMS SERVICES, INC. and*
12 *SOUTHERN NEVADA PAVING*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 WILLIAM POREMBA,

Case No.: A-14-698184-J

16 Petitioner,

Dept. No.: II

17 vs.

18 SOUTHERN NEVADA PAVING; S&C CLAIMS
19 SERVICES, INC.; AND NEVADA
20 DEPARTMENT OF ADMINISTRATION,
21 APPEALS OFFICER

22 Respondents.

23 **ORDER DENYING PETITIONER'S PETITION FOR JUDICIAL REVIEW**

24 TO: WILLIAM POREMBA, Petitioner; and

25 TO: MATTHEW DUNKLEY, ESQ. and MARK LOSEE, ESQ. Petitioner's Attorneys of
26 Record.

27 The above-captioned matter came before the Honorable Valorie J. Vega on
28 September 29, 2014, on the Petitioner, WILLIAM POREMBA's Petition for Judicial Review
relative to the Appeal Officer's Order Granting Summary Judgment against him related to a request
for reopening, in a contested workers' compensation claim. The Court, having reviewed the record
and considered the arguments of the parties, finds that the Petitioner's Petition for Judicial Review is
DENIED.

When this Court reviews an Administrative decision, it is to give deference to the

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Preliminary Judgment	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Disputed Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Defendant	<input type="checkbox"/> Judgment of Arbitration

1 agency's determination of facts. Roberts v. State Indus. Ins. System, 114 Nev. 364, 367, 956 P.2d
2 790, 792 (1998). The reviewing Court is not to substitute its view of the case so long as the Appeals
3 Officer's decision does not contain an error of law or is clearly erroneous in view of the reliable,
4 probative and substantial evidence, and therefore, based upon the whole record was not arbitrary,
5 capricious or characterized by an abuse of discretion. NRS 233B.135(3).
6

7 Here, the claimant appealed from the denial of reopening of his workers'
8 compensation claim. Claimant failed to submit any medical evidence in support of his request for
9 reopening. Further, claimant failed to prove that he exhausted his third-party proceeds on medical
10 treatment before asking the Insurer to pay additional benefits under the workers' compensation
11 claim. The Insurer denied claimant's request for reopening and the claimant appealed. The parties
12 bypassed the Hearing Officer. The Insurer filed a Motion for Summary Judgment, which the
13 Appeals Officer initially denied and a hearing commenced.
14

15 At the Appeals Officer hearing, the Claimant testified that he spent the third-party
16 settlement sum of \$34,631.51 on paying his mortgage, supporting his family, and on food. The
17 Claimant admitted that he did not spend the \$34,631.51 on medical care that would be the
18 responsibility of the workers' compensation Insurer if the claim was reopened.

19 The Insurer argued (1) that the Claimant has not proven that he has exhausted his
20 offset because he has not proven that he spent his third-party proceeds on medical care incurred after
21 the date of settlement; and (2) even if we could reach the issue of reopening, the Claimant has
22 insufficient medical evidence to prove the need for more treatment on an industrial basis.
23

24 Appeals Officer Shirley Lindsey issued an Order Granting the Insurer's Motion for
25 Summary Judgment, in lieu of a Decision and Order with Findings of Fact and Conclusions of Law.

26 ///

27 ///

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1 Order Denying Petition for Judicial Review

Petitioner: William Poremba

2 Case No.: A-14-698184-J

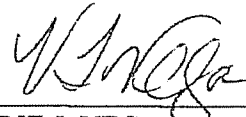

3 Dept. No.: II

4 THE COURT FINDS, that the there was no violation of law, excess of authority,
5 unlawful procedure, error of law, nor clear error upon review of the record. The Appeal's Officer's
6 granting of Insurer's Motion for Summary Judgment was based upon substantial evidence and,
7 therefore, was not arbitrary, capricious, or an abuse of discretion. Therefore, COURT ORDERED,
8
9 Petition for Judicial Review is DENIED.

10 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
11 Petitioner WILLIAM POREMBA's Petition for Judicial Review is DENIED.

12 IT IS SO ORDERED.

13 DATED this 5th day of October, 2014.

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16 VALORIE J. VEGA
17 DISTRICT COURT JUDGE 

18 Submitted by:

19 LEWIS BRISBOIS BISGAARD & SMITH LLP

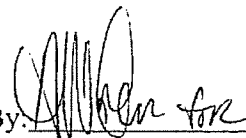
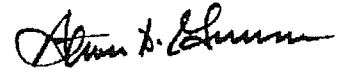
20
21 By: 
22 DANIEL L. SCHWARTZ, ESQ.
23 Nevada Bar No. 5125
24 2300 W. Sahara Ave., Ste. 300, Box 28
25 Las Vegas, Nevada 89102
26 Attorneys for the Respondents
27 S&C CLAIMS and SOUTHERN NEVADA PAVING
28

EXHIBIT 3



CLERK OF THE COURT

1 **NEOJ**
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 005125
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
5 2300 W. Sahara Ave. Ste. 300
6 Las Vegas, Nevada 89102
7 Telephone: 702/893-3383
8 Facsimile: 702/366-9689
9 *Attorney for Respondents*
10 *S&C CLAIMS SERVICES, INC.,*
11 *and SOUTHERN NEVADA PAVING*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 WILLIAM POREMBA,

Case No.: A-14-698184-J

10 Petitioner,

Dept. No.: II

11 vs.

12 SOUTHERN NEVADA PAVING; S&C
13 CLAIMS SERVICES, INC.; AND NEVADA
14 DEPARTMENT OF ADMINISTRATION,
15 APPEALS OFFICER

16 Respondents.

17 **NOTICE OF ENTRY OF ORDER**

18 YOU, AND EACH OF YOU, please take notice that a **ORDER OF DENYING**
19 **PETITINOER'S FOR JUDICIAL REVIEW** was entered in the above-captioned matter on the
20 8th day of October, 2014, a copy of which is attached hereto and made a part hereof.

21 DATED this 22 day of October, 2014.

22 Respectfully submitted,

23 LEWIS BRISBOIS BISGAARD & SMITH LLP

24 By: 

DANIEL L. SCHWARTZ, ESQ.

Nevada Bar No. 005125

2300 W. Sahara Ave. Ste. 300

Las Vegas, Nevada 89102

Attorney for Respondents

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CERTIFICATE OF MAILING

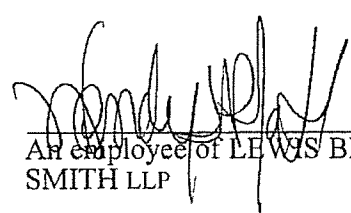
Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 23 day of October, 2014, service of the attached **NOTICE OF ENTRY OF ORDER** was made this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada, addressed follows:

Matthew Dunkley, Esq.
Dunkley Law
2450 St. Rose Pkwy., Ste. 210
Henderson, NV 89074

Southern Nevada Paving
3101 E. Craig Road
N. Las Vegas, NV 89030

S&C Claims Services
9075 W. Diablo Drive, Ste. 140
Las Vegas, NV 89148

Department of Administration
2200 S. Rancho Drive, Ste. 220
Las Vegas, NV 89102



An employee of LEWIS BRISBOIS BISGAARD &
SMITH LLP

CLERK OF THE COURT

1 **ORDD**
2 DANIEL L. SCHWARTZ, ESQ.
3 Nevada Bar No. 005125
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
5 2300 W. Sahara Ave., Ste. 300, Box 28
6 Las Vegas, Nevada 89102
7 Telephone: 702/893-3383
8 Facsimile: 702/366-9689
9 Email: daniel.schwartz@lewisbrisbois.com
10 *Attorneys for Respondents*
11 *S&C CLAIMS SERVICES, INC. and*
12 *SOUTHERN NEVADA PAVING*

DISTRICT COURT
CLARK COUNTY, NEVADA

10 WILLIAM POREMBA,

11 Petitioner,

12 vs.

13 SOUTHERN NEVADA PAVING; S&C CLAIMS
14 SERVICES, INC.; AND NEVADA
15 DEPARTMENT OF ADMINISTRATION,
16 APPEALS OFFICER

16 Respondents.

Case No.: A-14-698184-J

Dept. No.: II

17 **ORDER DENYING PETITIONER'S PETITION FOR JUDICIAL REVIEW**

18 TO: WILLIAM POREMBA, Petitioner; and

19 TO: MATTHEW DUNKLEY, ESQ. and MARK LOSEE, ESQ. Petitioner's Attorneys of
20 Record.

21 The above-captioned matter came before the Honorable Valorie J. Vega on
22 September 29, 2014, on the Petitioner, WILLIAM POREMBA's Petition for Judicial Review
23 relative to the Appeal Officer's Order Granting Summary Judgment against him related to a request
24 for reopening, in a contested workers' compensation claim. The Court, having reviewed the record
25 and considered the arguments of the parties, finds that the Petitioner's Petition for Judicial Review is
26 DENIED.
27

28 When this Court reviews an Administrative decision, it is to give deference to the

LEWIS
BRISBOIS
& SMITH LLP
ATTORNEYS AT LAW

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<input type="checkbox"/> Voluntary Disposal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Disposal	<input type="checkbox"/> Compulsory Judgment
<input type="checkbox"/> Stipulated Disposal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Subject to Review by District	<input type="checkbox"/> Judgment of Arbitration

1 agency's determination of facts. Roberts v. State Indus. Ins. System, 114 Nev. 364, 367, 956 P.2d
2 790, 792 (1998). The reviewing Court is not to substitute its view of the case so long as the Appeals
3 Officer's decision does not contain an error of law or is clearly erroneous in view of the reliable,
4 probative and substantial evidence, and therefore, based upon the whole record was not arbitrary,
5 capricious or characterized by an abuse of discretion. NRS 233B.135(3).

6
7 Here, the claimant appealed from the denial of reopening of his workers'
8 compensation claim. Claimant failed to submit any medical evidence in support of his request for
9 reopening. Further, claimant failed to prove that he exhausted his third-party proceeds on medical
10 treatment before asking the Insurer to pay additional benefits under the workers' compensation
11 claim. The Insurer denied claimant's request for reopening and the claimant appealed. The parties
12 bypassed the Hearing Officer. The Insurer filed a Motion for Summary Judgment, which the
13 Appeals Officer initially denied and a hearing commenced.

14
15 At the Appeals Officer hearing, the Claimant testified that he spent the third-party
16 settlement sum of \$34,631.51 on paying his mortgage, supporting his family, and on food. The
17 Claimant admitted that he did not spend the \$34,631.51 on medical care that would be the
18 responsibility of the workers' compensation Insurer if the claim was reopened.

19
20 The Insurer argued (1) that the Claimant has not proven that he has exhausted his
21 offset because he has not proven that he spent his third-party proceeds on medical care incurred after
22 the date of settlement; and (2) even if we could reach the issue of reopening, the Claimant has
23 insufficient medical evidence to prove the need for more treatment on an industrial basis.

24
25 Appcals Officer Shirley Lindsey issued an Order Granting the Insurer's Motion for
26 Summary Judgment, in lieu of a Decision and Order with Findings of Fact and Conclusions of Law.

26 ///

27 ///

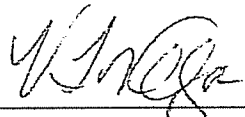

1 Order Denying Petition for Judicial Review
2 Petitioner: William Poremba
3 Case No.: A-14-698184-J
4 Dept. No.: II

5 THE COURT FINDS, that the there was no violation of law, excess of authority,
6 unlawful procedure, error of law, nor clear error upon review of the record. The Appeal's Officer's
7 granting of Insurer's Motion for Summary Judgment was based upon substantial evidence and,
8 therefore, was not arbitrary, capricious, or an abuse of discretion. Therefore, COURT ORDERED,
9 Petition for Judicial Review is DENIED.

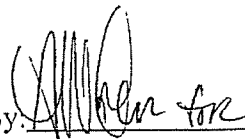
10 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
11 Petitioner WILLIAM POREMBA's Petition for Judicial Review is DENIED.

12 IT IS SO ORDERED.

13 DATED this 5th day of October, 2014.

14
15
16 
17 VALORIE J. VEGA 
18 DISTRICT COURT JUDGE

19 Submitted by:
20 LEWIS BRISBOIS BISGAARD & SMITH LLP

21 By: 
22 DANIEL L. SCHWARTZ, ESQ.
23 Nevada Bar No. 5125
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