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IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM POREMBA )  
)  
Petitioner, )  
)  
vs. )  
)  
SOUTHERN NEVADA PAVING; )  
S&C CLAIMS SERVICE and )  
DEPARTMENT OF ADMINISTRATION, )  
APPEALS OFFICER, )  
)  
Respondent. )  
)

Electronically Filed  
Mar 27 2015 08:58 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Case No.: 66888

APPENDIX  
  
VOLUME VI

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**APPENDIX TO APPELLANT'S OPENING BRIEF**

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FEB 25 2014

NEVADA DEPARTMENT OF ADMINISTRATION

BEFORE THE APPEALS OFFICER

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 <sup>February</sup> ~~March~~, 2013. 2014 <sup>MD</sup>

  
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

CERTIFICATE OF MAILING

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  
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Matthew Dunkley, Esq.  
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9075 W. Diablo Drive, #140  
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William Poremba  
168 Red Arches Court  
Henderson, NV 89012

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

DATED this 25<sup>th</sup> day of March, 2013 2014

  
\_\_\_\_\_  
An employee of the State of Nevada

13 11:50  
FILE

ORIGINAL

BEFORE THE APPEALS OFFICER

\_\_\_\_\_) )  
 In the Matter of the Contested) )  
 Industrial Insurance Claim of:) )  
 ) Claim No.: 739255  
 ) )  
 William Poremba ) )  
 ) )  
 Claimant. ) Appeal No.: 1306201-SL  
 ) )  
 ) )  
 \_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS

BEFORE THE

HONORABLE SHIRLEY D. LINDSEY

APPEALS OFFICER

JANUARY 29, 2014

1:00 P.M.

2200 SOUTH RANCHO DRIVE # 220

LAS VEGAS, NV 89102

Ordered by: State of Nevada  
 Department of Administration  
 2200 South Rancho Drive, Suite 220  
 Las Vegas, Nevada 89102

DOC003

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On behalf of the Claimant:

MARK LOSEE  
DUNKLEY LAW  
2450 ST ROSE PARKWAY STE 210  
HENDERSON, NV 89074

On behalf of the Employer and Administrator:

ALYSSA M. FISCHER, ESQ.  
LEWIS BRISCOIS BISGAARD & SMITH LLP  
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LAS VEGAS, NV 89102

Interpreter: N/A

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I N D E X

WITNESS	DIRECT	CROSS	RE-DIRECT	RE-CROSS
William Poremba	Pg 22	Pg 37	--	--

E X H I B I T S

EXHIBITS	IDENTIFIED	IN EVIDENCE
Claimant's 1	page 12	page 13
Claimant's 2	page 17	page 18
Insurer's A	page 4	page 5

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P R O C E E D I N G S

APPEALS OFFICER LINDSEY: We're on the record in Appeal number 1306201. This is in the Contested Industrial Insurance Claim of William Poremba? The Claimant is present and is represented in these proceedings by his attorney, Matthew Dunkley?

MR. LOSEE: Mark Losee. I'm Matthew Dunkley's associate.

APPEALS OFFICER LINDSEY: Thank you. And Mr. Losee, is it like the road, L-O-S-E-E?

MR. LOSEE: Correct.

APPEALS OFFICER LINDSEY: Alyssa Fischer is here on behalf of the Insurer, Builders Insurance Company. This is the Claimant's appeal from a hear -- from a November 8, 2012 determination by the Administrator to deny re-opening. I have received the Insurer's Index of Exhibits. Have you received those, Mr. Losee?

MR. LOSEE: Yes.

APPEALS OFFICER LINDSEY: There are -- its 126 pages filed April 15th -- March 15th --

MS. FISCHER: March 15th, Your Honor, I believe. You're welcome to see my copy if you --

APPEALS OFFICER LINDSEY: It looks like



1 March 15th. The signature line says April 15th and I  
2 guess that's why -- usually they're closer than that  
3 but it does look like March 15th. Have you received  
4 that, Mr. --

5 MR. LOSEE: I have that in front of me.  
6 Yes.

7 APPEALS OFFICER LINDSEY: And I'm sorry.  
8 Did you have any objections?

9 MR. LOSEE: No.

10 APPEALS OFFICER LINDSEY: I got carried  
11 away in the -- in the land of date stamps. That'll be  
12 marked as Insurer's Exhibit A and admitted into  
13 evidence. And -- I have a Supplement to that that was  
14 filed on January 28th, consisting of an additional 11  
15 pages. Have you received that?

16 MR. LOSEE: I have not seen that.

17 APPEALS OFFICER LINDSEY: It is a  
18 Hearing Officer decision entered in a different  
19 worker's compensation claim by a different Appeals  
20 Officer and I am thinking that this is no evidence. I  
21 think you're entitled to have a copy of it.

22 MS. FISCHER: Yes. Certainly. We sent  
23 him a copy on the 28th.

24 APPEALS OFFICER LINDSEY: I mean it's  
25 not this claim so it's not stare decisis, for what

1 purpose is this appeals officer -- well, let's get you  
2 a copy of it --

3 MR. LOSEE: All right.

4 APPEALS OFFICER LINDSEY: Here you go,  
5 sir. I'm sorry, why is this being offered?

6 MS. FISCHER: Your Honor, its being  
7 offered because it is a ruling that just came out on  
8 the 27th -- so I apologize for the timing, but I  
9 literally just received it -- of a -- another Appeals  
10 Officer on a very -- similar factual scenario with  
11 regards to an offset third party proceeds received by  
12 the Claimant. He spent them on personal loans and  
13 other things and they're exhausted and now wants to re-  
14 open and says I get that use for the offset. There are  
15 findings in the conclusions of law and citations to  
16 numerous cases that are on point and that is identical  
17 to the facts -- some of the facts in this case with  
18 regard to the request for re-opening that there was a  
19 third party settlement and the Insurer's argument is  
20 that the offset has not been met.

21 So we would ask that -- I'm not saying -- I  
22 recognize that it's a different Claimant in this case,  
23 Your Honor, but it is a similar issue -- identical  
24 issue that went before another Appeals Officer and for  
25 that reason we would ask that you admit it and give it

1 whatever weight you deem appropriate.

2 APPEALS OFFICER LINDSEY: Okay. It's  
3 not evidence. I'm not going to admit it. You know --  
4 in a former life I was the attorney that did the  
5 Chandler case that's cited in here and I'm not saying I  
6 won't look to it to review its points of authorities.  
7 It's not a public document as far as I know.

8 MS. FISCHER: It's not?

9 APPEALS OFFICER LINDSEY: Well, there's  
10 an issue -- at least in my mind and maybe no one else  
11 has this -- as to whether the files of the Department  
12 of Administration are public records. Clearly if  
13 someone files a Petition for Judicial Review and a  
14 record on appeal is created and transmitted to District  
15 Court then that becomes a matter of public record -- I  
16 don't know that that happened in this case. I am not --  
17 - you know -- I'm not convinced that our records here  
18 are public records but I may review this decision --  
19 it's clearly not binding on me.

20 MS. FISCHER: No. I wasn't saying that  
21 it was, Your Honor, but if you're not -- so you're  
22 refusing to admit it into evidence even?

23 APPEALS OFFICER LINDSEY: That's  
24 correct.

25 MS. FISCHER: Okay.

1 APPEALS OFFICER LINDSEY: And I'm not  
2 even sure it's the type of document that I can take  
3 judicial notice of because it's not a public document,  
4 it's not -- you know -- *Larsons* or some other treaty --

5 MS. FISCHER: I've never -- in your  
6 rationale, Your Honor, because I've done this in other  
7 cases and never had an Appeals Officer have a problem  
8 with it so I just want to understand in case we need to  
9 go up on Appeal on it -- that the reason you're  
10 refusing to admit it into evidence is because --

11 APPEALS OFFICER LINDSEY: Well it's not  
12 stare decisis, it's not binding on the parties to this  
13 litigation. It's not binding on the Court. It may be  
14 subject to privilege, running in favor to the claimant.  
15 I don't know. I know it references some of his doctors  
16 in here. I don't know that it has other -- you know --  
17 other -- any medical information in here that to the  
18 extent it is protected by that claimant's privilege,  
19 then it would be improper to have it admitted into this  
20 case.

21 MS. FISCHER: Okay. But, Your Honor, if  
22 I was to -- there's nothing that would preclude me in  
23 my closing argument to read from it or argue the case  
24 law that's contained in it.

25 APPEALS OFFICER LINDSEY: No.

1 MS. FISCHER: Okay.

2 APPEALS OFFICER LINDSEY: And it'll --  
3 I'll give it the same weight as if you were making  
4 those arguments without reference to that piece of  
5 paper.

6 MS. FISCHER: Yeah. And I won't  
7 reference it because I know that you're not going to  
8 consider it evidence.

9 APPEALS OFFICER LINDSEY: Right. Is  
10 there anything else? By -- from the -- that's been  
11 offered by the Insurer?

12 MS. FISCHER: No.

13 APPEALS OFFICER LINDSEY: Okay. I have  
14 the Claimant's Appeal Memo and attached to it I have --  
15 oh I have unnumbered pieces of paper.

16 MR. LOSEE: The larger of the documents  
17 are tax returns so I don't think it's necessary to have  
18 to read through every single page. It's just supposed  
19 to bolster or support other evidence that's already  
20 been submitted. For example, Mr. Poremba's affidavit  
21 that was attached to the Opposition for -- to the  
22 Motion for Summary Judgment in which Mr. Poremba talked  
23 about his finances.

24 APPEALS OFFICER LINDSEY: Okay. Do you  
25 want -- do you want this affidavit to be admitted into

1 evidence in this case?

2 MR. LOSEE: Yes I do.

3 APPEALS OFFICER LINDSEY: Okay.

4 MR. LOSEE: I did bring extra copies.

5 APPEALS OFFICER LINDSEY: Now, attached  
6 to the Opposition for Summary Judgment are some  
7 Exhibits. 1, 2 and 3. Are you wanting to have each of  
8 those Exhibits admitted into evidence in this matter or  
9 -- I mean they're in the record because the Motion will  
10 be in there as well as your Opposition but they haven't  
11 been marked into evidence and I don't know to what  
12 extent they're duplicative. The --

13 MR. LOSEE: Yes. Mainly today we'll be  
14 relying on the two doctor's letters.

15 APPEALS OFFICER LINDSEY: They are found  
16 in Claimant's 1 and 2 that are attached to the  
17 Claimant's Appeal Memo?

18 MR. LOSEE: Correct.

19 APPEALS OFFICER LINDSEY: Okay.

20 MR. LOSEE: And this Affidavit that I've  
21 just given extra copies of to them is from his  
22 testimony.

23 APPEALS OFFICER LINDSEY: Okay.

24 Attached to the Claimant's Opposition to Insurer's  
25 Motion for Summary Judgment is a two page letter --

1 unsigned letter dated September 25, 2009 that appears  
2 to be a -- some sort of record of the distribution of  
3 funds received in a Third Party Settlement. Is that in  
4 the record someplace?

5 MS. FISCHER: Yes. Page 59 of my  
6 Evidence Packet, Your Honor.

7 APPEALS OFFICER LINDSEY: Okay. Because  
8 we would need that in there.

9 MS. FISCHER: Certainly.

10 APPEALS OFFICER LINDSEY: Claimant's 2  
11 pages -- excuse me -- the second Exhibit attached to  
12 that Opposition is a copy of pain -- excuse me -- a  
13 copy of medical bills, incurred -- I don't know, in  
14 2009 and 2010 it looks like to me. Are those relevant  
15 to this?

16 MR. LOSEE: They can support Mr.  
17 Poremba's Affidavit.

18 APPEALS OFFICER LINDSEY: Are they  
19 concluded in the documents that you submitted and  
20 attached to your Appeal Memo?

21 MR. LOSEE: No they're not.

22 APPEALS OFFICER LINDSEY: And what about  
23 the Patient History Detail regarding -- again it looks  
24 like this is regarding medical treatment provided in  
25 2009 and most likely from Dr. Nagy. Are those in the -

1 - I mean what I'm trying to figure out is do I need to  
2 admit these documents individually --

3 MS. FISCHER: Nothings been produced,  
4 Your Honor, by way of evidence on behalf of the  
5 Claimant and this isn't in my evidence packet so you  
6 don't have --

7 APPEALS OFFICER LINDSEY: Okay.

8 MS. FISCHER: -- and it's not itemized  
9 or numbered.

10 APPEALS OFFICER LINDSEY: Okay. I'm  
11 going to detach your Opposition from the Exhibits that  
12 are attained -- attached to it and I'm going to  
13 consider marking the first group of Exhibits, which are  
14 marked Exhibit 1, 2, 3, 4 and 5 as Claimant's Exhibit  
15 1. Do you have any -- you have those.

16 MS. FISCHER: I had them. I didn't know  
17 he was -- but certainly I've seen them so that's fine.

18 APPEALS OFFICER LINDSEY: Okay.

19 MS. FISCHER: I do -- with regard to you  
20 going to address the one that we got yesterday though,  
21 I do have an objection to that.

22 APPEALS OFFICER LINDSEY: Okay. We  
23 haven't gotten there yet.

24 MS. FISCHER: Perfect.

25 APPEALS OFFICER LINDSEY: Okay. So that



1 will be marked -- those five documents -- they're  
2 marked Exhibits 1-5, I'm going to mark those as  
3 Claimant's Exhibit 1 and enter them into evidence.

4 Then yesterday an additional three Exhibits  
5 were filed. Ms. Fischer, have you received those?

6 MS. FISCHER: I received them yesterday,  
7 Your Honor.

8 APPEALS OFFICER LINDSEY: Do you have an  
9 objection to their admission?

10 MS. FISCHER: I do, Your Honor.  
11 Several, actually. First and foremost being  
12 timeliness. NAC 616C.297 says that, "The moving  
13 parties evidence is due 14 days before the hearing."  
14 The majority of what's in front of you, Your Honor, are  
15 tax returns from the years 2008 to 2011 and certainly  
16 all of those would have been in the Claimant's  
17 possession long before yesterday and certainly long  
18 before two weeks before the date of the hearing. So do  
19 you want me to go through all of them or do you just  
20 want me to go through -- stop at timeliness?

21 APPEALS OFFICER LINDSEY: No. I've got  
22 that. I got that. Mr. Losee, do you want to explain  
23 why the Exhibit 1 is a 2010 letter from Dr. Akima (ph)  
24 and Exhibit 3 are tax returns that appear to have been  
25 in existence 14 days ago. Why they weren't filed until

1 yesterday?

2 MR. LOSEE: Any new documents that I  
3 received I sent them as soon as I received them so --  
4 the new doctor's letter by Dr. Lipshutz and the tax  
5 returns just came into my possession on Monday. Once I  
6 saw those I drafted the memo and sent it out as soon as  
7 I possibly could.

8 APPEALS OFFICER LINDSEY: And what about  
9 Dr. Sedar Akima's report from October 22?

10 MR. LOSEE: The Insurer's been aware of  
11 this letter since 2010, I believe.

12 APPEALS OFFICER LINDSEY: Is it in the  
13 Insurer's Evidence Packet?

14 MS. FISCHER: It may well be, Your  
15 Honor, and I was just looking -- it's in what you've  
16 already marked as Claimant's Exhibit 1 for sure. I  
17 don't know if it's in mine but it's definitely --

18 APPEALS OFFICER LINDSEY: Okay.

19 MS. FISCHER: -- it's Exhibit 4 to the  
20 previous one.

21 MR. LOSEE: It's also a letter that is -  
22 - was --

23 MS. FISCHER: So that one I would agree.

24 MR. LOSEE: -- in reference to in  
25 Insurer's Memo.

1 APPEALS OFFICER LINDSEY: Okay. So  
2 we're down to this.

3 MR. LOSEE: Now, I would also just like  
4 to -- you know -- I understand why there would be an  
5 issue with the evidence only getting to Ms. Fischer  
6 yesterday but that's the same argument we had here  
7 beginning with the evidence that she tried to introduce  
8 -- that was just submitted yesterday.

9 APPEALS OFFICER LINDSEY: But it wasn't  
10 admitted.

11 MR. LOSEE: No. But -- you're correct  
12 but that she tried to.

13 MS. FISCHER: Your Honor, may I respond?

14 APPEALS OFFICER LINDSEY: No. I don't -  
15 - I don't see the point in it.

16 MS. FISCHER: Okay.

17 APPEALS OFFICER LINDSEY: Where we are  
18 here is Ms. Fischer would you like to continue this  
19 matter so that you have an opportunity to review the  
20 Claimant's evidence?

21 MS. FISCHER: No, Your Honor, because  
22 this was originally set for March of last year. It's  
23 been continued numerous times at the Claimant's request  
24 and so -- candidly -- I don't want to continue it  
25 because I would like to get it completed.

1 APPEALS OFFICER LINDSEY: Okay. Then  
2 I'm going to overrule your objection. Did you want to  
3 make some more?

4 MS. FISCHER: Yes I did.

5 APPEALS OFFICER LINDSEY: Okay.

6 MS. FISCHER: I'm sorry, Your Honor.  
7 With regard to -- with regard to the tax returns, Your  
8 Honor -- I'm not sure how -- the burden before the  
9 Claimant is to prove that he has expended and completed  
10 his off set. So he got third party proceeds and he has  
11 to prove that he spent those on medical records  
12 subsequent to his receipt of that. I've reviewed these  
13 tax returns and there's -- to my knowledge and from  
14 what I've reviewed -- there's nothing relevant in here.  
15 There's nothing in here that -- in these tax returns --  
16 that proves that he spent the third party proceeds and  
17 spent them on doctor's care that would've otherwise  
18 been under this worker's comp claim in these -- in  
19 these reportings. So, I'm not sure that they're even  
20 relevant to this procedure, Your Honor.

21 APPEALS OFFICER LINDSEY: Mr. Losee, do  
22 you want to respond to that? How are these relevant to  
23 showing what monies he paid for treatment for his  
24 industrial condition?

25 MR. LOSEE: As I stated earlier, it

1 bolsters for support other evidence that's already been  
2 submitted. Namely Mr. Poremba's Affidavit. In there  
3 he discusses his finances --

4 APPEALS OFFICER LINDSEY: I'm not even -  
5 - I mean as I recall from doing taxes if you -- they're  
6 in -- is it schedule 2? Schedule --

7 MS. FISCHER: I don't know, Your Honor -  
8 -

9 APPEALS OFFICER LINDSEY: Where is  
10 anything in here about his medical?

11 MR. LOSEE: There's nothing specific  
12 about his medical in there.

13 APPEALS OFFICER LINDSEY: Okay. Then  
14 why would we want to take this into consideration?  
15 Worker's compensation is not a -- you know you don't  
16 have to prove eligibility for it. His general economic  
17 background is -- has no relevance.

18 MR. LOSEE: Any -- any money that Mr.  
19 Poremba expends -- or spends on the cost of daily  
20 living is for him now a debt. And the tax returns go  
21 to show that by showing what he is earning himself  
22 during those years. But as I said it supports other  
23 evidence that I'd like to submit it so I'm not relying  
24 on it solely.

25 APPEALS OFFICER LINDSEY: Okay. I'm

1 going to overrule the objection as to relevance.  
2 Although, I don't see any but it's just going to make -  
3 - the only thing I see is it's going to make the -- the  
4 record on appeal -- if this does go to District Court -  
5 - three quarters of an inch thicker than it would  
6 otherwise be.

7 MS. FISCHER: Okay. So, you're  
8 admitting it -- allowing it into evidence?

9 APPEALS OFFICER LINDSEY: I'm allowing  
10 it into evidence.

11 MS. FISCHER: Okay. So, I assume you're  
12 marking it then?

13 APPEALS OFFICER LINDSEY: I will be  
14 marking it into evidence -- I didn't know if you had  
15 other objections.

16 MS. FISCHER: Timeliness and relevance I  
17 think, Your Honor, covers most of it.

18 APPEALS OFFICER LINDSEY: Okay. That  
19 will be marked as Claimant's Exhibit 2 and entered into  
20 evidence. Now, you gave me a copy of this affidavit  
21 but since that's already in what I have marked as  
22 Claimant's Exhibit 1, I don't need to mark that at this  
23 time.

24 MR. LOSEE: I understand.

25 APPEALS OFFICER LINDSEY: Okay. Any

1 other documents for the Court's consideration?

2 MR. LOSEE: No.

3 APPEALS OFFICER LINDSEY: Okay. Are we  
4 going to have testimony today?

5 MR. LOSEE: Yes, Your Honor.

6 APPEALS OFFICER LINDSEY: Okay. Do you  
7 wish to make an opening statement, Mr. Losee?

8 MR. LOSEE: My opening statement would  
9 just be to outline what I've already stated in  
10 Claimant's Appeal Memorandum. Claimant now has the  
11 required medical evidence to re-open his claim. Not  
12 just one doctor's letter but now two. The second one  
13 clearly meeting all of the elements that are required  
14 of a doctor's letter and explaining the first doctor's  
15 letter. Second, the Claimant has exhausted the third  
16 party settlement funds and the way that I read the case  
17 that Insurer cites to, Mr. Poremba only needs to show  
18 that he has exhausted it.

19 APPEALS OFFICER LINDSEY: The Chandler  
20 case?

21 MR. LOSEE: This is *Employee's Insurance*  
22 *Company of Nevada vs. Chandler*, correct.

23 APPEALS OFFICER LINDSEY: Okay.

24 MR. LOSEE: The Supreme Court -- they're  
25 only defining what compensation means. They provided

1 one example of how that can be met but not all  
2 examples. And nor did they say how or when exhaustion  
3 must occur.

4 APPEALS OFFICER LINDSEY: Okay. Ms.  
5 Fischer?

6 MS. FISCHER: Yes, Your Honor. It is  
7 the Insurer's position that the re-opening was properly  
8 denied. In this case it is undisputed that the  
9 gentlemen had a third party claim and received  
10 settlement proceeds of \$19,667.61. That is contained  
11 in Insurer's A at page 59. So, what is before you,  
12 Your Honor, before we even get to the issue of whether  
13 or not he's sustained his burden for re-opening under  
14 390 of NRS 616C, as you know, is whether or not he's --  
15 evidence that he has satisfied the offset. And, Your  
16 Honor, I can almost make a Motion for Summary Judgment  
17 -- everything that --

18 APPEALS OFFICER LINDSEY: You did,  
19 didn't you? You made a motion to dismiss?

20 MS. FISCHER: Yes, Your Honor, but may I  
21 make a -- I mean -- I guess what I'm trying to say is  
22 even if we look at his affidavit and take it as truth,  
23 he says in there that he's expended \$14,000. That  
24 would not -- and I don't even believe that that \$14,000  
25 has been spent on money that I think would be



1 appropriately allocated under Chandler. But even if I  
2 -- even if took every cent and assumed that it was --  
3 even though I don't believe that to be the case, he's  
4 only spent \$14,000. He has an offset of close to  
5 \$20,000. So, in the best case scenario, although the -  
6 - if we go further into evidence I will prove that the  
7 personal loans and the money spent to support himself  
8 and his family is not appropriately offset. It's  
9 offset for medical expenses. But even accepting his  
10 affidavit and assuming he would testify consistent to  
11 that, Your Honor, it says he's spent \$14,000 for  
12 insurance payments.

13 APPEALS OFFICER LINDSEY: Okay. Mr.  
14 Losee, do you wish to call your first witness?

15 MR. LOSEE: Yes. I'd like to call  
16 William Poremba on the record.

17 APPEALS OFFICER LINDSEY: Mr. Poremba,  
18 if you'll come around here and have a seat. These  
19 proceedings are recorded by use of microphone so once  
20 you're seated comfortably please move that microphone  
21 so that the head of the microphone is close to your  
22 mouth. You're probably going to be looking at your  
23 attorney and/or Ms. Fischer more than you're looking at  
24 me. Please raise your right hand. Do you solemnly  
25 swear and affirm that the testimony that you're about

1 to give in this matter shall be the truth, the whole  
2 truth, and nothing but the truth?

3 MR. POREMBA: I do.

4 APPEALS OFFICER LINDSEY: Thank you.  
5 You can put your hand down. Please state your full  
6 name.

7 MR. POREMBA: William Poremba.

8 APPEALS OFFICER LINDSEY: And please  
9 confirm -- or please spell your last name.

10 MR. POREMBA: P-O-R-E-M-B-A.

11 APPEALS OFFICER LINDSEY: And your  
12 current mailing address?

13 MR. POREMBA: 168 Red Arches Court.  
14 Henderson Nevada. 89012.

15 APPEALS OFFICER LINDSEY: Thank you.  
16 Your witness, Mr. Losee.

17 DIRECT EXAMINATION BY MR. LOSEE

18 Q. Thank you. Mr. Poremba, can you please give  
19 me -- can you please tell me when your industrial  
20 accident occurred?

21 A. It happened in July 2005.

22 Q. And did you seek treatment right after?

23 A. Yes.

24 Q. And did you file a Worker's Compensation  
25 Claim?

1 A. Yes.

2 Q. And was that claim accepted?

3 A. Yes.

4 Q. And can you tell me the background of how your  
5 injury occurred?

6 A. I was looking for an intersection that I was  
7 told to look for at a construction site where there  
8 were no street signs.

9 APPEALS OFFICER LINDSEY: Were you on  
10 foot or driving?

11 A. I was driving a semi --

12 APPEALS OFFICER LINDSEY: Thank you.

13 A. And I spotted the pile because I spotted the  
14 operator pushing up the pile. And decided to figure  
15 out how I'm going to get inside there. I saw where I  
16 needed to go and it was going to be a tight fit and  
17 there was going to be a lot of maneuvering so I had  
18 took off my seat belt. It wasn't my truck at the -- my  
19 normal truck at the time. I was on site. I wasn't on  
20 a public thoroughfare. It was a construction site.

21 I took off the seatbelt and as soon as I was  
22 feeding it back into the apparatus, I looked up in my  
23 window and there was a shovel right in the driver's  
24 window. And I didn't even have time to blink before I  
25 was blown out of my seat and onto my head where the

1 passenger seat would be while the truck was still  
2 moving. I reached up and I pulled my emergency air  
3 brakes and got the vehicle to stop before it ran  
4 anybody over. Landed on my head, my right shoulder and  
5 when I was blown out of my seat I banged my left knee  
6 across the steering column and when I landed -- when I  
7 pulled the emergency brakes when I landed back down, I  
8 landed on top of wet kit with my right hip. And the  
9 wet kit is a steel box with all the maneuvering -- with  
10 all the levers to maneuver and to dump the load that I  
11 was carrying.

12 Q. Okay. And what -- what injury did you sustain  
13 as a result of the accident?

14 A. At the beginning I ended up with bulges -- I  
15 believe -- from C1 all the way down to L5. So that  
16 would be the whole length of my spine. A torn meniscus  
17 in my left knee. And that's it for now. At that  
18 point, yeah.

19 Q. Okay. Now it sounds like that there was  
20 another party that was at fault in this accident. Is  
21 that correct?

22 A. Yes.

23 Q. And did you file a lawsuit against this other  
24 party?

25 A. Yes.

1 Q. When did that lawsuit come to conclusion?

2 A. It was August 2009. I just had cervical  
3 surgery so it was August 2009 -- somewhere around  
4 there.

5 Q. And that's based on your memory?

6 A. Yes.

7 Q. Now, do you remember your Claim being closed  
8 in January 2006?

9 MS. FISCHER: I'm sorry, Your Honor,  
10 objection to (inaudible) and ambiguous. Which claim --  
11 the third party claim? The worker's compensation  
12 claim?

13 Q. Do you -- Mr. Poremba, you filed a worker's  
14 compensation claim right after the accident, correct?

15 A. Yes.

16 Q. And was your worker's compensation claim  
17 closed in January 2006?

18 A. I believe so. I don't remember.

19 Q. Now between the time that your worker's  
20 compensation claim closed and you received a settlement  
21 from the lawsuit, were you receiving medical treatment?

22 A. Yes.

23 Q. And how did you pay for that medical  
24 treatment?

25 A. Out of my pocket.

1 APPEALS OFFICER LINDSEY: Let me hear  
2 that again. I -- I'm sorry. I -- I know the answer  
3 was out of my pocket but what period of time are you  
4 talking about?

5 MR. LOSEE: Between the time that his  
6 claim was closed -- his worker's compensation claim was  
7 closed in January 2006 to when his -- he received a  
8 settlement in his personal injury lawsuit.

9 APPEALS OFFICER LINDSEY: And he doesn't  
10 remember when his claim was closed?

11 Q. Do you remember when your claim -- when your  
12 worker's compensation claim was closed?

13 A. I don't remember when but I know -- I knew it  
14 was.

15 Q. And was there a period of time between your  
16 worker's compen -- when your worker's compensation  
17 claim closed and when you received settlement for your  
18 personal injury lawsuit?

19 A. Say that again, please?

20 Q. When your worker's compensation closed, was  
21 there a time afterwards that you -- that you received  
22 treatment -- medical treatment?

23 A. Yes.

24 Q. And how did you pay for that?

25 A. Out of pocket.

1 Q. And did you pay for medical care before your  
2 personal injury was settled?

3 A. Yes.

4 Q. (Inaudible). Did you -- after your worker's  
5 compensation claim was closed -- try to return to work?

6 MS. FISCHER: Objection, Your Honor.  
7 Relevance?

8 APPEALS OFFICER LINDSEY: Sir, what's  
9 the relevance of the question?

10 MR. LOSEE: If we're needing to show  
11 that Mr. Poremba has exhausted his funds I need to go  
12 into some of his financials.

13 APPEALS OFFICER LINDSEY: Well -- I mean  
14 right now and I don't -- what we need to see is  
15 evidence of him paying healthcare providers for  
16 something that was arguably related to his industrial  
17 injury. I'm looking at what has been marked as  
18 Claimant's Exhibit 1 and it's -- the pages aren't  
19 numbered but it's the printout that comes after the  
20 page marked Exhibit 2. And on there I see a lot of  
21 numbers. The only numbers that I see indicating credit  
22 card co-pay is a \$20 payment on April 17, 2009. One on  
23 April 23, 2009. One on April 29, 2009. And these are  
24 before the third party payout, right?

25 MS. FISCHER: Yes, Your Honor.

1 MR. LOSEE: Your Honor, if I could have  
2 some clarity it'll help me in my direct -- questions.  
3 Are you saying that Mr. Poremba's settlement monies  
4 needs to be exhausted solely on medical care after he  
5 received the settlement funds?

6 APPEALS OFFICER LINDSEY: I don't think  
7 that question has been answered but it would need to be  
8 after -- I see on the -- Exhibit 1 -- of Claimant's  
9 Exhibit 1 -- there is an amount saying "Amount withheld  
10 pending insurance payment and liens reduction." A  
11 \$14,963.90. And I guess I -- the question arises were  
12 those payments made up to September 25, 2009? I mean I  
13 always look at worker's compensation liens as they're  
14 basically are two liens. There's a lien for past  
15 services and there's a lien for future services. And  
16 here the lien for past services as of September 25,  
17 2009 -- and I'm not saying this is the best evidence  
18 but so far it's the only evidence I've noticed in the  
19 file -- as to what his bills were up to September 25,  
20 2009 was this \$14,963. Now then, if he's claiming that  
21 he has other bills that he incurred prior to September  
22 25, 2009 then the question arises whether or not they  
23 were included in this lien amount. And I don't know the  
24 answer to that question.

25 MR. LOSEE: Okay.



1 MS. FISCHER: And, Your Honor, may I  
2 just raise one other concern? That the treatment that  
3 he had from the time the worker's comp claim closed  
4 until the time of the settlement, would that not all  
5 have been known to his attorneys and discussed in the  
6 settlement? Because that information was known to --  
7 right?

8 APPEALS OFFICER LINDSEY: I have no  
9 idea. I don't know -- I really don't know. Who would  
10 those -- these bills from? From Las Vegas Pain  
11 Institute in the disbursements section they have money  
12 paid to Integrated Health Services, a Dr. LaTourette  
13 (ph), to Radiology. Is that -- does not include -- no  
14 money was paid to the Las Vegas Pain Institute from the  
15 third party recovery?

16 MR. LOSEE: That I can't specifically  
17 answer because I wasn't in on the case at that point.

18 APPEALS OFFICER LINDSEY: Okay. So I  
19 don't know that it's important. I don't know that its  
20 substantial but I just wanted to --

21 MR. LOSEE: I understand.

22 APPEALS OFFICER LINDSEY: -- try to  
23 paint the picture. Okay. You had asked him if he had  
24 returned to work and there'd been an objection based on  
25 relevance and I'm going to sustain the objection.

1 Q. Mr. Poremba, from the time that you had your  
2 accident in 2005 until now, have you been receiving  
3 continuing treatment?

4 A. Yes.

5 Q. Have you -- would you consider yourself having  
6 gotten better or having worsened?

7 A. Worsened. Never gotten better.

8 Q. And at the times that -- let me move on.  
9 Since receiving the settlement how -- what would you  
10 approximate the total bills of your medical care has  
11 been?

12 APPEALS OFFICER LINDSEY: That he's paid  
13 or that anyone in the world has paid?

14 Q. That you've paid out of pocket.

15 A. Well it was more than I received that's for  
16 sure. I could -- I didn't know it was going to be --  
17 you know -- a total summary of everything but I have  
18 every receipt for the past 10 years if we want to keep  
19 this up.

20 Q. Can you please tell me what your financial  
21 situation has been since you received --

22 A. Dire.

23 Q. -- settlement from your personal injury?

24 A. I've been on Medicaid for the past two years.  
25 Let's see --

1 APPEALS OFFICER LINDSEY: Is there a  
2 question pending?

3 MS. FISCHER: Yeah and I'm not sure -- I  
4 guess I would object as to his financial situation and  
5 the relevance of proving the offset, I'm not sure where  
6 that's going.

7 Q. Mr. Poremba, the money that you received from  
8 your personal injury, how was that spent?

9 A. It was to pay for my meds on a monthly basis  
10 and to live. Pay for food, my house.

11 Q. Do you still have any funds from your personal  
12 injury to pay for these costs?

13 A. No.

14 Q. How are you paying for these costs now?

15 A. I'm not.

16 Q. How are you taking care of the expenses of  
17 daily living?

18 A. My wife helps and so does my daughter. And  
19 the State pays for the rest.

20 Q. Did you ever fully recover from the initial  
21 accident?

22 A. No.

23 Q. You stated earlier that you felt that you have  
24 worsening symptoms. Can you explain how things have  
25 worsened? How your medical condition since the time of

1 the accident in 2005, how you've worsened?

2 MS. FISCHER: I'm going -- I guess I'm  
3 going to object -- since the time of the accident -- I  
4 mean we can read the medical records with regard to --  
5 until -- I don't know -- I just think that the question  
6 is vague and ambiguous and possibly not relevant.

7 Q. Mr. Poremba, are you still in pain?

8 MS. FISCHER: Oh, Your Honor, I mean  
9 Counsel --

10 APPEALS OFFICER LINDSEY: I'm going to  
11 affirm the objection and he's gone on and I'm going on  
12 with him.

13 MS. FISCHER: Perfect.

14 Q. Mr. Poremba, are you still in pain?

15 A. Yes.

16 Q. Are these in the same areas?

17 A. Yes.

18 Q. Are these the same -- do you still have pain  
19 with the same injuries that you had in 2005 from the  
20 accident?

21 A. Yes.

22 Q. Have you recently gone to see a physician  
23 concerning these injuries?

24 A. Yes.

25 Q. Can you please tell me who that was?

1           A. Dr. Kye (ph) and Dr. Lipshutz.

2           Q. And can you tell me what was explained to you  
3 by those doctors?

4           A. Dr. Lipshutz wants to do procedures on me to  
5 where -- I guess it was explained to me like where they  
6 want to burn off the nerve endings so the pain isn't  
7 constantly there. It's one procedure. And Dr. Kye --  
8 I get my scripts (sic) from him on a monthly basis --  
9 my pain meds and then he's always -- he's sending me to  
10 an orthopedic surgeon.

11          Q. Okay. Have these doctors that you've  
12 discussed personally treated you?

13          A. Yes.

14          Q. And are they aware of your accident in 2005?

15          A. Yes.

16          Q. Are they aware of your medical treatment from  
17 the time of 2005 until now?

18          A. Yes.

19          Q. Have they told you that your condition has  
20 changed since --

21          A. Yes.

22          Q. -- your Claim was closed in 2006?

23          A. Yes. Dr. Kye not so much because he's new  
24 only because the doctor that I had been seeing for the  
25 past couple of years decided to quit which would make

1 like either the 3rd or 4th doctor that I've seen in the  
2 past eight years that either quit on me or had to leave  
3 his practice for some reason.

4 Q. Had they explained to you the types of  
5 treatment you need to be able to recover from --

6 A. Yes.

7 Q. -- these injuries?

8 A. Yes. Then -- yes.

9 Q. Can you tell me what they described the  
10 treatment that you need is?

11 A. Well the one way it was put to me was -- I  
12 needed additional surgery on my neck -- on my cervical  
13 spine. And then it was explained to me -- like how  
14 Peyton Manning had his surgery. It was the same area  
15 of the back but here's a guy whose got a ton of dough  
16 and he -- he's had -- I don't know -- four or five  
17 surgeries so he could get back to work where I have had  
18 one. And I was told by the neurosurgeon, Dr. Nagy,  
19 that if I had the one surgery eventually within a five  
20 year period, they'd (inaudible) below the fusion or  
21 above it is going to tear or blow out to a rupture and  
22 that eventually I'm going to need additional surgery.  
23 And then I asked him since there are other parts of the  
24 spine screwed up is this going to be an ongoing thing  
25 and he said yes, probably for the rest of your life.

1 Q. Had your doctors allowed you to go back to  
2 work?

3 A. No.

4 Q. And your doctors been willing to help you try  
5 to re-open your worker's compensation claim?

6 A. Well -- yes.

7 Q. And do they believe that your work injury is  
8 the primary cause for the need to reopen?

9 A. Yes.

10 MR. LOSEE: That's all the questions I  
11 have for now.

12 APPEALS OFFICER LINDSEY: I have a  
13 question. Do we have -- do we have scope of claim  
14 here?

15 MS. FISCHER: Is the scope of the claim  
16 in front of you?

17 APPEALS OFFICER LINDSEY: Someplace I  
18 have -- my notes indicate that we have a cervical and  
19 lumbar and knee sprain strain -- strain sprain -- but  
20 then he's talking about surgery and on someplace else I  
21 thought I read something about like a meniscal tear.

22 MS. FISCHER: Is your question, Your  
23 Honor, what was the accepted scope of the industrial  
24 claim --

25 APPEALS OFFICER LINDSEY: Yeah. Yes.

1 MS. FISCHER: -- when it was  
2 (inaudible)?  
3 APPEALS OFFICER LINDSEY: Yes.  
4 MS. FISCHER: Page 20 of Insurer's  
5 Exhibit shows that the Claim was accepted for a  
6 cervical strain, lumbar strain, left knee strain.  
7 APPEALS OFFICER LINDSEY: Okay. Was  
8 there a PPD?  
9 MS. FISCHER: I believe there -- I don't  
10 know the answer to that, Your Honor. Let me see if I -  
11 - can review -- I don't know the answer to that, Your  
12 Honor.  
13 APPEALS OFFICER LINDSEY: Okay.  
14 MR. LOSEE: My review of all the notes  
15 and records and timeline, I'm not aware of --  
16 APPEALS OFFICER LINDSEY: Okay. And do  
17 you have anything -- is there anything -- I have a  
18 closure of April 26th, that's what I got for date of  
19 closure -- I don't --  
20 MS. FISCHER: 73 days after January 27,  
21 2006.  
22 APPEALS OFFICER LINDSEY: Yeah. Okay.  
23 MS. FISCHER: April 26th, Your Honor?  
24 APPEALS OFFICER LINDSEY: Yes. That's  
25 what I have is April -- okay. Thank you. Go ahead.



1           CROSS-EXAMINATION BY MS. FISCHER

2           Q. Thank you, Your Honor. Good Afternoon, sir.  
3 I represent the Insurance Company. I have a bunch of  
4 questions for you. You mentioned a Dr. Cai. Can you  
5 spell that person's name?

6           A. C-A-I. Yeah. He was just introduced to South  
7 West Medical last month.

8           Q. Do you know his first name by any chance?  
9 It's a man, right?

10          A. Z-E-I. So it's Zei. Zei Cai.

11          Q. Okay. So Zei is his first name and Cai is his  
12 last name.

13          A. Yes.

14          Q. Okay. I've never heard of this doctor. I  
15 don't -- I'm not aware of us having any medical records  
16 from him in --

17          A. Like I said I was just introduced to him last  
18 month myself.

19          Q. What is he treating? I'm sorry, I think you  
20 said he gives you medication. Is that correct?

21          A. Yes. My pain medications.

22          Q. And I believe you also said -- is it your  
23 testimony he's with South West Medical Associates?

24          A. Yes.

25          Q. Okay. Our records indicate, sir, that on

1 January 27, 2006 a Notice of Intention to close your  
2 worker's compensation was mailed to you. Do you recall  
3 receiving that letter, sir?

4 A. I'm sure -- yes -- yeah I recall.

5 Q. Okay. And then if you don't appeal by law 73  
6 days later the claim actually closed. Do you recall  
7 whether or not you appealed the claim closure letter?  
8 Or let me state it differently because I'm not trying  
9 to test your memory. I have no evidence that you  
10 appealed the claim closure letter sir, do you --

11 A. I don't remember if I did or not.

12 Q. Okay. Operating under that assumption that  
13 you didn't sir, just because we have no documents in  
14 evidence to show us that you did, your claim would have  
15 closed 73 days later, or on or about April 26, 2006.  
16 That's when the worker's compensation claim would have  
17 closed. My understanding from your testimony is you  
18 continued to seek medical treatment after that date,  
19 correct?

20 A. Yes.

21 Q. Okay. And at that point in time you were  
22 pursuing litigation. You were suing the party who was  
23 responsible for your injuries, correct?

24 A. Yes.

25 Q. Okay. You had hired attorneys to assist you

1 in that matter, correct?

2 A. Yes.

3 Q. Okay. (Inaudible) those attorneys were  
4 successful in recovering money from the responsible  
5 party, correct?

6 A. If that's what you want to call it, yes.

7 Q. Okay.

8 A. Yeah they were successful but -- you know --  
9 not to -- for the extent of the injury till what I  
10 received -- yeah totally different ball of wax.

11 Q. Okay. And I'm looking at what we've marked as  
12 Claimant's Exhibit 1 and it's a September 25, 2009  
13 letter addressed to you from your attorneys that talks  
14 about "that your settlement with the at fault driver  
15 has been finalized and the settlement check of \$63,500  
16 has been received, deposited and cleared." Is that  
17 your understanding of what the settlement amount was,  
18 sir?

19 A. That's not what I received.

20 Q. Okay. I understand that but is that your  
21 understanding of what your attorneys were able to  
22 secure from the other party?

23 A. I don't know. I don't know what the final  
24 number was. I don't remember what the final number was  
25 so --

1 APPEALS OFFICER LINDSEY: Do you have  
2 any reason to dispute the \$63,500 amount?

3 A. I thought it was more than that. I don't  
4 remember if it was 63 or 65 -- I don't remember. I  
5 just (inaudible) surgery too so I don't --

6 APPEALS OFFICER LINDSEY: When?

7 A. When I -- when I was going through this  
8 settlement thing.

9 APPEALS OFFICER LINDSEY: What kind of  
10 surgery?

11 A. The cervical fusion --

12 APPEALS OFFICER LINDSEY: And who did  
13 that?

14 A. -- I have a hard time trying to remember right  
15 around there. I just remember being there.

16 APPEALS OFFICER LINDSEY: Who did the  
17 cervical fusion?

18 A. Dr. Nagy.

19 APPEALS OFFICER LINDSEY: Do we have  
20 that operative report in here?

21 MS. FISCHER: (Inaudible) under the  
22 worker's comp claim so I don't know the answer to that,  
23 Your Honor. I don't even know when it was done.

24 APPEALS OFFICER LINDSEY: Did you have  
25 knee surgery done also?

1 A. Yes. It was done in '06.

2 APPEALS OFFICER LINDSEY: Was that to  
3 your left knee?

4 A. Left knee.

5 APPEALS OFFICER LINDSEY: And who did  
6 that?

7 A. Dr. LaTourette (ph).

8 APPEALS OFFICER LINDSEY: And do you  
9 know what that was?

10 A. Torn meniscus.

11 APPEALS OFFICER LINDSEY: Okay.

12 Q. And Dr. LaTourette appears to have been paid  
13 an excess of \$15,000 when your settlement came through.  
14 Is it your understanding that you were paying him for  
15 the knee surgery?

16 A. Yes.

17 Q. Your Honor, may I approach?

18 APPEALS OFFICER LINDSEY: You may.

19 Q. Sir, I don't know if this is going to help you  
20 or not but I'm going to show you what's marked as  
21 Insurer's A pages 59 and 60. This is a two page letter  
22 that I was referring to dated September 25, 2009  
23 addressed to you. I'm just going -- I'll hand it to  
24 you --

25 A. Yeah. It makes sense.

1 Q. And do you see on page 60 --

2 A. Yeah. That's me.

3 Q. Okay. So would that refresh your recollection  
4 as to what your attorneys told you they were able to  
5 recover in your lawsuit --

6 A. Yeah. I just don't -- didn't remember the  
7 figure (inaudible).

8 Q. Okay. And Your Honor, may I approach  
9 (inaudible)? I'm just going to let him hold a copy of  
10 that letter so that if I ask him a question -- I'm  
11 actually going to show him page 1 of Claimant's Exhibit  
12 1 but it's the same letter that way he'll have a copy -  
13 -

14 APPEALS OFFICER LINDSEY: That's fine.

15 Q. Sir, this letter represents that the money  
16 that was given to you as a result of the settlement is  
17 \$19,667.61. Do you see that?

18 A. Yes.

19 Q. Okay. Is that an accurate accounting of the  
20 money that you received as a result of the third party  
21 settlement? And by the third party settlement I mean  
22 your lawsuit against the guy who hit you.

23 A. Yes.

24 Q. Okay. And then as we look down the accounting  
25 it says, "amount withheld pending insurance payments

1 and lien reductions" and it's \$14,963.90. What's your  
2 understanding of what that almost \$15,000 was going to  
3 pay?

4 A. I guess it's -- it seemed like it's gone all  
5 to one guy -- from what I can see here.

6 Q. I'm talking about the figure that says,  
7 "amount withheld pending insurance payments and lien  
8 reductions." Did you have an understanding as to what  
9 that money was being spent on?

10 A. I had no idea.

11 Q. Okay. Before the settlement went through  
12 though you had attorneys and you were continuing to get  
13 treatment. Your attorneys were aware that you were  
14 continuing to get treatment. Is that correct, sir?

15 A. Yes.

16 Q. And when you expended money on this treatment  
17 would you provide the bills to your attorneys?

18 A. Sometimes. Yeah.

19 Q. Okay.

20 A. Yeah. I would collect them over the year and  
21 then send them on -- you know -- as I -- as the year  
22 progressed I would collect them all at one time and  
23 then send them all at one time so --

24 Q. But you understood that your attorneys were  
25 suing someone else to try and get as much money back as

1 possible, right?

2 A. Exactly.

3 Q. Okay. So if you had bills that you expended  
4 from this accident you were giving those to your  
5 attorneys so that they knew that you --

6 A. Oh yeah. Yes. Yes.

7 Q. Okay. I think you know where I'm going but  
8 I'm just going to finish my --

9 A. Yeah. I'm not feeling good -- I was wondering  
10 if I could just get some air outside. It's so hot in  
11 here.

12 APPEALS OFFICER LINDSEY: Yes. You can  
13 have a short break. In fact I have a 2:00 pm case.  
14 Let me see how they're doing and we may let them go in  
15 front of you so --

16 MR. POREMBA: Yeah. That's fine.

17 APPEALS OFFICER LINDSEY: -- let him  
18 take a break. They may have settled on the other hand  
19 -- you know. We're back on record. You understand sir  
20 that you're still under oath?

21 MR. POREMBA: Yes.

22 APPEALS OFFICER LINDSEY: Thank you.

23 Q. Sir, prior to the break I was asking you  
24 questions and showing you a letter from your attorneys  
25 regarding your third party recovery. Do you recall



1 that?

2 A. Yes.

3 Q. Okay. Your Honor, may I approach?

4 APPEALS OFFICER LINDSEY: You may.

5 Q. I'd like to show the Claimant his affidavit  
6 which was signed on April 11, 2013. Have you seen this  
7 document before, sir?

8 A. Yes.

9 Q. Do you see your signature on the second page?

10 A. Yes.

11 Q. Have you reviewed this document before?

12 A. Yes.

13 Q. Is it truthful and accurate to the best of  
14 your knowledge?

15 A. Yes.

16 Q. Okay. It occurred to me on the break that I  
17 was using numbers that your attorneys had represented  
18 and this document might be a better representation of  
19 your beliefs because it's your affidavit and it's  
20 signed by you in 2013.

21 A. Yes.

22 Q. Okay. If we look at paragraph one it talked  
23 about the money that you recovered from the third  
24 party, Pratt Development that was the responsible party  
25 in your injury, correct?

1 A. Yes.

2 Q. Okay. And it says, "I received a total net of  
3 \$34,631.51." Is that correct?

4 A. Yes.

5 Q. Okay. So that's the amount of money that you  
6 got as a result of your third party claim?

7 A. Right.

8 Q. Okay. And then it says, "Since receiving the  
9 settlement" -- so meaning since September -- sometime  
10 in September 2009 -- "I have spent approximately  
11 \$14,000 for medical insurance payments, prescriptions  
12 and co-pays and medical expenses for injuries related  
13 to my accident of July 22, 2005."

14 A. Right.

15 Q. Do you -- do we have in evidence or have you  
16 provided your attorney evidence of that \$14,000?

17 A. Yes.

18 Q. Okay.

19 A. Should.

20 Q. Okay. Can you tell me what you think you  
21 spent it on so I can see -- I'm not aware of us having,  
22 that's what I'm worried about.

23 A. I had a box of all my receipts and all my  
24 payments that I had made to Doctors that are listed in  
25 there and I submitted them. There's a whole stack of

1 papers somewhere.

2 Q. We have -- it appears that we have some bills  
3 from the Las Vegas Pain Institute. Did you treat  
4 there?

5 A. That was one of the places. Yes.

6 Q. And we have something from Las Vegas  
7 Neurosurgery and Spine Care. Did you treat there?

8 A. That was another place. Yes.

9 Q. Who was the doctor you treated with there?  
10 Was that --

11 A. Neuro Spine would be Dr. Nagy.

12 APPEALS OFFICER LINDSEY: Who would you  
13 -- what's the name of the doctor at the Pain Institute?  
14 Is that Lipshutz?

15 A. Lipshutz used to be with Las Vegas Pain then  
16 he ventured out on his own and started (inaudible)  
17 Health Institute.

18 Q. Did you know sir, the name of the doctor who  
19 you treated with at Las Vegas Pain Institute in 2009?

20 A. I -- it depended on who was there that day so  
21 it was -- it could of either been Dr. Meducca, Dr.  
22 Petka or Dr. Lipshutz. I normally would see Dr.  
23 Lipshutz but when he left there it was either Dr.  
24 Meducca or Dr. Petka.

25 Q. Okay. Do you think you have bills evidencing

1 -- strike that. And those are the only bills sir that  
2 we have.

3 A. Copies were made of all the stuff.

4 Q. Okay. So this affidavit swears sir, that  
5 you've spent \$14,000. You spent exactly \$14,000?

6 A. Approximately.

7 Q. Okay. Paragraph six says, "I currently have  
8 approximately over \$20,000 in unpaid medical bills."  
9 Have those been submitted? I'm not aware that they're  
10 part of this case.

11 A. I'm -- yeah. Everything is -- that's what I  
12 don't understand -- everything has been given to Ed  
13 Dunkley's office.

14 Q. Okay. And you talked about -- I'm aware you  
15 had a mortgage in 2009, you talked about what that was  
16 and the rise of utilities in the summer time. That's  
17 enumerated in your -- and discussed in your affidavit,  
18 correct, at paragraph 7?

19 A. Right.

20 Q. And then you also acknowledged -- and I  
21 certainly understand this -- that the money -- in the  
22 end of paragraph seven beginning of page two of your  
23 affidavit it says, "Also the money was spent on  
24 expenses required in supporting two children. One in  
25 college and the other in middle school."

1 A. Correct.

2 Q. Okay. So, you're saying I got this money from  
3 the recovery and I used it on medical bills and I used  
4 it to support my family. Is that a fair statement?

5 A. Yes.

6 Q. Pay your bills, pay your mortgage, put food on  
7 the table, the whole nine yards.

8 A. Yes.

9 Q. Okay. And again in paragraph eight you list a  
10 whole bunch of doctors who it says you treated with  
11 since 2009 and I see Nagy, Easton, Lipshutz, Minta,  
12 Meducca, Gonni and Gupta and again you're seeing Roger  
13 (inaudible). And you believe that you submitted bills  
14 evidencing all of your payments to these doctors?

15 A. Yes.

16 Q. And I understood from your testimony earlier  
17 sir, that you understood Dr. Nagy to be telling you  
18 that you might need future surgery down the line, is  
19 that correct?

20 A. Yes.

21 Q. Is it your understanding that someone is  
22 telling you that that time has come and the time is  
23 now?

24 A. I don't know that yet I got to -- I can't see  
25 Dr. Nagy because of the insurance differences and I was

1 supposed to be seeing an orthopedic now. It's in the  
2 works.

3 Q. Okay. To your knowledge, as you sit here  
4 today, you have no doctor who's saying that you are  
5 required to -- that you're needing surgery at this  
6 moment. Is that a fair statement?

7 A. Yes. Either on my neck or my lower back.  
8 Either or. I don't know what's going on with my left  
9 knee. It's never been the same since the surgery.

10 Q. My understanding of your prior testimony sir,  
11 was that Dr. Nagy was talking about your cervical  
12 spine. Is that true?

13 A. (Inaudible).

14 Q. Okay. Did you have some type of surgery on  
15 your lower back?

16 A. No. But he did mention that I do need surgery  
17 on my lower back as well.

18 Q. Okay. Presently needed or maybe in the  
19 future?

20 A. No. Presently. And that was back when I was  
21 having the cervical done. 2008 or 2009 or whatever --  
22 whatever it was.

23 Q. Okay. You're seeking to re-open your claim,  
24 am I correct?

25 A. Yes.

1 Q. And what -- if you were successful -- what  
2 body parts is it that you're seeking to have treatment  
3 on?

4 A. My entire spine from my cervical and my lumbar  
5 -- it was explained to me at like an accordion with all  
6 the shock absorbers -- stuff like that. Where it's all  
7 coming into the middle and now that the (inaudible) is  
8 being all screwed up because of the accident as well.  
9 When I had my initial cat scan done from right after  
10 the accident, it showed every one of my discs just  
11 bulging out. Ready to pop at a moment's notice it  
12 seemed like. Over the years some of them went in, some  
13 of them retreated, some of them didn't. The ones that  
14 didn't tore. So right -- as of right now I think -- I  
15 know of three torn discs right now. One in my cervical  
16 and two in my lumbar and in the past six months  
17 something else has given out in there as well. So I  
18 know of three right now. It can be even more than  
19 that.

20 Q. Okay. So if I'm hearing incorrectly, my  
21 question was what body part do you think you need more  
22 treatment on?

23 A. The whole back.

24 Q. Okay. And previously -- and again I just want  
25 to close up this, I don't want to repeat myself but I

1 want to make sure I understand -- your testimony  
2 earlier was that you paid out of pocket more than you  
3 received in third party settlement, correct? Meaning  
4 you've expended more than the thirty five -- your  
5 affidavit says you received \$34,651.51.

6 A. I -- say that again.

7 Q. You're saying -- your testimony earlier and I  
8 took a note and correct me if it's wrong -- it said  
9 that you've paid out of pocket more than you received  
10 in the settlement. Meaning you'd spent more than  
11 \$34,631.51.

12 A. What I meant by that was -- is I -- I --  
13 exceeded my -- my bills more than what I received is  
14 what I think I meant by that.

15 Q. Okay. And when you say your bills do you mean  
16 --

17 A. Medical bills.

18 Q. Okay.

19 A. But let's just put it this way, since the  
20 accident I've seen a doctor on a monthly basis from  
21 July 2005 to just two weeks ago. Every month.

22 Q. Okay. I have nothing further.

23 APPEALS OFFICER LINDSEY: Mr. Losee.

24 MR. LOSEE: I don't have any re-direct,  
25 Your Honor.



1 APPEALS OFFICER LINDSEY: Thank you.  
2 You can return to your seat. Closing? Mr. Losee.

3 MR. LOSEE: I would -- my closing would  
4 be what I've already argued in my memorandum. So I  
5 would rely on that and this is -- only thing that I  
6 would add to that. The definition of compensation in  
7 NRS 616A.090 means money, which is payable to an  
8 employee and includes benefits for funerals, accident  
9 benefits and money for rehabilitative services. And  
10 you'll note that medical benefits is not listed in the  
11 definition. But the Chandler case tells us that it is  
12 included. So that means the definition of compensation  
13 that we have in NRS 616A.090 is not all inclusive. So  
14 our argument is that the offset can be exhausted by  
15 showing that the claimant incurred any item which meets  
16 the definition of compensation.

17 And I would argue that paying your mortgage,  
18 putting food on the table meets that definition.  
19 Particularly when Mr. Poremba needs a home to live in  
20 to be able to cover. Particularly needs food and  
21 healthy diet to be able to recover and do the things  
22 the doctors have instructed him to do.

23 APPEALS OFFICER LINDSEY: Ms. Fischer.

24 MS. FISCHER: Yes, Your Honor. It's the  
25 Insurer's position that re-opening is not appropriate

1 at this time. We've heard credible testimony from the  
2 Claimant supporting his affidavit which was presented  
3 to this Court and that affidavit generated in April  
4 2013 verifies that as a result of his third party  
5 settlement he received \$34,631.51. And granted this is  
6 in excess of what his attorneys represented in the  
7 letter contained at page 59 of Insurer's A but it's  
8 also subsequent to that. So I have to believe that  
9 maybe they were able to reduce some of his liens so he  
10 could get more money. Regardless, the gentleman has  
11 sworn under oath that this information is correct and  
12 that's how much money he got. So if that is how much  
13 money he would need to prove the offset before he could  
14 re-open his worker's compensation claim.

15 I'll get to in a moment what we believe he needs  
16 to spend that money on but regardless there's no  
17 evidence in front of you Your Honor, that he has spent  
18 an excess of \$34,651.51 on medical treatment that would  
19 otherwise be required of the Insurer to pay under the  
20 worker's compensation case. And that is the standard  
21 that we (inaudible) he gets the settlement money, he  
22 has to expend it on money that would otherwise have  
23 been spent on his worker's compensation case before he  
24 can ask for re-opening. While I recognize that he  
25 needs things like food and support his family, I

1 totally get that, however we don't believe those are  
2 appropriate offsets and we believe that the Court and  
3 the Law has supported that. That it has to be money  
4 spent that would have otherwise been the responsibility  
5 of the insurance company under the worker's  
6 compensation claim. In that case his mortgage  
7 payments, his utility bills, his spending money to  
8 support his children, while all certainly reasonable  
9 and necessary expenses, Your Honor, I'm not minimizing  
10 them, however, the position of the Insurer is that  
11 they're not entitled to the offset. Looking at the  
12 Chandler case, which Your Honor knows quite intimately  
13 I can tell, it says "The Insurer is entitled to  
14 withhold payment of medical benefit for a work related  
15 injury until an employee has exhausted any third party  
16 settlement proceeds."

17 Sounds like, Your Honor, is well familiar with  
18 that case. It is our opinion that -- in Chandler they  
19 take the lien back. In this case I'm not even sure --  
20 there's no evidence that my client has even been paid  
21 back the lien. But in Chandler the lien was paid back  
22 and so now I'm going to get to my other arguments about  
23 the Claimant's argument is that he can exhaust those  
24 settlement proceeds. It is my position, Your Honor,  
25 that that is not supported by case law in the 9th

1 Circuit. In *Toben v. The Department of Labor and*  
2 *Industries* a citation 145 was constant at 607, 613, 187  
3 Pacific 3rd 780, a 2008 case. The Washington Court of  
4 Appeals held that there was a remaining balance of the  
5 settlement to be paid to the employee and the employee  
6 or beneficiary is not entitled to receive additional  
7 worker's compensation benefits until the additional  
8 benefit equals the remaining balance of the recovery to  
9 the employee or beneficiary.

10 Again, the Court's (inaudible) that the claimant  
11 cannot be paid compensation and damages by the employer  
12 and yet retain a portion of the damages which would  
13 include those same elements. Again, Your Honor, a  
14 Hawaiian Supreme Court in *Associated Steel Workers*  
15 *Limited v Mullin*, a 2005 case, its 2005 Hawaii Lexus  
16 Number 46. It's Supreme Court case from Hawaii  
17 indicated that the claimant's must first exhaust all  
18 necessary future worker's compensation payments from  
19 the remainder prior to requesting future compensatory  
20 payments from the insurer for compensable injuries  
21 arising out of the same accident. Again, he has to pay  
22 -- use the money that he gets from the settlement on  
23 monetary -- medical treatments that would otherwise be  
24 the responsibility of the insurer if the claim were to  
25 re-open. There's additional case law, Your Honor, in

1 Arizona in Polito v Industrial Commission of Arizona,  
2 171 AZ 46 828 Pacific 2nd 182. A 1992 case that says  
3 the worker's compensation carriers only responsible for  
4 paying the deficiency between the amount actually  
5 collected by the claimant from a third party settlement  
6 and any medical benefits which are due under the  
7 Industrial Insurance Statutes. There's similar law in  
8 the State of California in Dodds v Stellar and again  
9 it's our contention, Your Honor, that in Chandler the  
10 Court did not allow the claimant to use that money and  
11 spend it on anything he wants. The Court said that  
12 there can't be a double recovery. And if he was  
13 allowed to be paid for his injury by a third party and  
14 then was also to be allowed to be paid by the insurance  
15 company while those proceeds are still available then  
16 that's a double recovery. So the entire point of  
17 preventing the double recovery means that he gets paid  
18 for his injury by the third party and he doesn't get  
19 paid by the worker's compensation again to re-open his  
20 claim unless he can show he's expended all those  
21 benefits.

22 And again it's our testimony and it's our  
23 argument, Your Honor that paying things like food and  
24 housing and mortgage and utility bills do not go for --  
25 it must be spent on medical treatment that would

1 otherwise be the responsibility of the worker's  
2 compensation. To simply say that the money is gone,  
3 that would be the case in every -- I mean I believe  
4 everybody sincerely gets the money. I'm not saying  
5 that they take it out in the back and burn it. I think  
6 they sincerely spend it and I don't have a problem with  
7 how the gentleman spent it. However, it would be a --  
8 if you're allowed to use it on things like your  
9 mortgage payments and stuff then that money is -- then  
10 you're going to get a double recovery because you're  
11 spending the money on things that are not related and  
12 associated to your worker's compensation case and then  
13 you're coming back and asking the insurance company to  
14 give you that money all over again.

15       So, it's our position, Your Honor, with regard to  
16 jurisdiction of whether he can even re-open because he  
17 hasn't met his offset that he has not satisfied the  
18 third party offset of the insurance company. Even if  
19 Your Honor were to get beyond that to reach the merits  
20 of re-opening, we don't believe there's medical  
21 evidence in front of you that would support re-opening  
22 of the case. There is no change of circumstance. He  
23 has pain complaints. I would stipulate to that. But  
24 pain in and of itself, Your Honor, is subjective and we  
25 would argue cannot be solely in and of itself a change

1 of circumstance that would satisfy the claimant's  
2 burden under NRS616C.390 and secondly no doctor has  
3 indicated that he needs a specific treatment and the  
4 need for said treatment is the industrial injury of  
5 2005.

6 So, even if you were to reach the merits, Your  
7 Honor, we don't believe that re-opening is appropriate  
8 however, the insurer's primary argument is that we  
9 can't reach the merits because the claimant hasn't  
10 satisfied the offset. So, for all those reasons we  
11 would ask that you would affirm -- I beg your pardon,  
12 we bypassed the Hearing Officer -- that you would  
13 affirm the determination of the Insurer of November  
14 2012. One other thing I would point out, Your Honor,  
15 procedurally -- and I apologize -- but before I  
16 conclude -- procedurally we were down this road in  
17 2011. At that point in time the Claimant had not  
18 exhausted all of his funds. We did a Motion for  
19 Summary Judgment before a different Appeals Officer.  
20 The Motion for Summary Judgment was granted. That's  
21 contained in Insurer's A at pages 115-116. The Motion  
22 for Summary Judgment's at 108-114.

23 So, a prior Appeals Officer has evaluated this  
24 issue and at that point in time felt that the Claimant  
25 hadn't expended all of his proceeds. So, it would be

1 appropriate, Your Honor, to look from that point  
2 forward to see if there's any change or any difference.  
3 And I would note that the -- there are no additional  
4 medical bills that have been provided to the Court  
5 after the date that the Motion for Summary Judgment was  
6 granted in 2011. The only bills that you have in  
7 evidence, Your Honor, are ones from 2009 and 2010.  
8 Those were available and attempted to be used the last  
9 time he tried to re-open. And so you would have to --  
10 we believe it would be appropriate to look from the  
11 time that that Motion for Summary Judgment was granted  
12 forward to see what's changed. And candidly, Your  
13 Honor, we would assert that nothing has changed. That  
14 he still -- the evidence before you today still doesn't  
15 support and show that he has spent all of the money  
16 that he has received from his proceeds.

17 So, for all of those reasons, Your Honor, we would  
18 ask that you would affirm the denial of reopening at  
19 this time. Thank you.

20 APPEALS OFFICER LINDSEY: Thank you.

21 Mr. Losee.

22 MR. LOSEE: Your Honor, we rest on what  
23 we've already submitted.

24 APPEALS OFFICER LINDSEY: Thank you.

25 This matter will be submitted. You'll have a decision



1 within 30 days. Thank you.  
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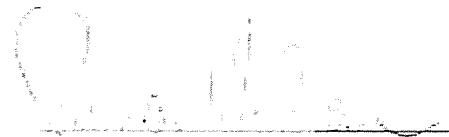
C E R T I F I C A T E

TITLE: The Contested Industrial Insurance Claim of:  
William Poremba

DATE: January 29, 2014

LOCATION: Las Vegas, Nevada 89102

The below signature certifies that the proceedings and evidence are contained fully and accurately in the digital audio as reported at the proceedings in the above-referenced matter before the Department of Administration, Appeals Office.

  
Sharon M. Brown  
Court Reporting Services

April 16, 2014

Date