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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. )  
 )

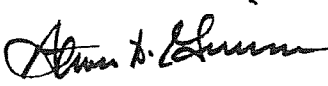
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Mar 27 2015 08:59 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Case No.: 66888

**APPENDIX**  
**VOLUME IX**

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**APPENDIX TO APPELLANT'S OPENING BRIEF**

TITLE	PAGE NO.
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CLERK OF THE COURT

1 **CERT**  
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11 Attorneys for Plaintiff

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

19 **CERTIFICATE OF MAILING**

20 I certify that on this 27<sup>th</sup> day of August, 2014, the foregoing REQUEST FOR HEARING  
21 was served on the following by depositing a true copy of the same for mailing, first class mail  
22 addressed as follows:

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28 ///

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5 S&C Claims Service  
6 9075 W. Diablo Drive, # 140  
7 Las Vegas, Nevada 89148

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

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An Employee of Dunkley Law



*Alvin J. Lerman*  
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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

Petitioner,

Dept. No.: II

vs.

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

20 Respondents.

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

22 TO: WILLIAM POREMBA, Petitioner; and

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

25 The above-captioned matter came before the Honorable Valorie J. Vega on  
26 September 29, 2014, on the Petitioner, WILLIAM POREMBA's Petition for Judicial Review  
27 relative to the Appeal Officer's Order Granting Summary Judgment against him related to a request  
28 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

**LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP**  
ATTORNEYS AT LAW

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<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Dispositive Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Petitioner	<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 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 ///

1 Order Denying Petition for Judicial Review

2 Petitioner: William Poremba

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

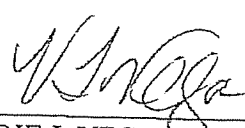

4 Dept. No.: II

5 THE COURT FINDS, that 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 5<sup>th</sup> day of October, 2014.

14  
15  
16   
17 VALORIE J. VEGA  
DISTRICT COURT JUDGE 

18 Submitted by:

19 LEWIS BRISBOIS BISGAARD & SMITH LLP

20  
21 By: 

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