

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISRAEL BAIGUEN, an individual,

Appellant,

v.

HARRAH'S LAS VEGAS, LLC, a
Nevada Domestic Limited-Liability
Company, dba HARRAH'S CASINO
HOTEL, LAS VEGAS; HARRAH'S
LAS VEGAS INC. dba HARRAH'S
CASINO HOTEL, LAS VEGAS;
CAESARS ENTERTAINMENT
CORPORATION, a Nevada Foreign
Corporation, dba HARRAH'S
CASINO HOTEL, LAS VEGAS;
DOES I through X, inclusive; and,
and ROE CORPORATIONS I
through X, inclusive,

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 70204

Appeal from Clark County District Court

Case No. A-14-708544 -C

ANSWER TO PETITION FOR REVIEW

Appellant Israel Baiguen, pursuant to NRAP 40b(e), and at the direction of the Court pursuant to its Order filed April 20, 2017, hereby files his Answer to the Petition for Review filed by Respondent Harrah's Las Vegas, LLC on March 16, 2017.

This case was submitted to the Court of Appeals pursuant to NRAP 17(b)(2). In the Routing Statement of his Opening Brief Appellant stated that “[w]hereas this appeal is taken from a District Court Order Granting Summary Judgment, this matter is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)”. [Opening Brief, page 1.] In the Answering Statement within its Responding Brief, Harrah’s stated “Respondents agree with the Routing Statement contained in the Opening Brief.” [Answering Brief, page 1.]

The matter was fully briefed by both parties and submitted to the Court of Appeals. On February 28, 2017 the Court of Appeals issued its Order reversing and remanding the matter. [Order of Reversal and Remand, page 5.] That order reversed the District Court’s granting of summary judgment in favor of Harrah’s.

Only after suffering an adverse result from the Court of Appeals, did Harrah belatedly claim in its petition for review that this case “is ‘one of first impression of general statewide significance’ or ‘statewide public importance’” and should therefore be decided by the Supreme Court and not the Court of Appeals. [Petition for Review, page 2]. Harrah’s agreement at the briefing stage that the case should be routed to the Court of Appeals should now operate to waive the newly stated belief that this case “is ‘one of first impression of general statewide significance’ or ‘statewide public importance’”.

If granted, the extraordinary relief being requested by Harrah's would negate the intended benefits to litigants and the Nevada judicial system by the creation of the Court of Appeals. At this point, the appeal SHOULD be finally resolved and the matter remanded for further proceedings in the district court. However, if the court grants Harrah's petition for review - which really amounts to a second bite at the appellate apple - the authority and efficacy of the Court of Appeals will be thoroughly undermined.

NRAP 17 clearly delineates the categories of cases which should be routed to each respective court. All of the information needed for Harrah's to make a determination regarding which court should hear this case was available before the briefs were written. Nevertheless, Harrah's agreed that the issues in this case could and should be resolved by the Court of Appeals.

Harrah's concurrent complaint that "the Court of Appeals decision conflicts with prior holdings that worker's compensation applies when, as here, there is a nexus between workplace conditions and an injury" is without merit. First, a review of the table of authorities in Harrah's Answering Brief reveals that the case cited in support of the Petition for Review, *Rio Suite Hotel & Casino v. Gorsky*, was NOT cited in the Answering Brief. Now, Harrah's seeks to impermissibly rely upon authority which Harrah's 1) never raised at the district court level; and 2) did not include in its Responding Brief.

Despite the Court of Appeals' well-reasoned analysis of the issue of whether Appellant's injuries arose from his employment, and its subsequent determination that they did not, Harrah's simply declares that "they did." PFR page 5. One party's disagreement with the decision (which of course is the result in every case) does not equate to a "conflict with prior holdings". Indeed, nowhere in the Petition for Review does Harrah's either 1) identify exactly which prior cases are inapposite to the Court of Appeals' order; or 2) explain how the order in this case does violence to any prior holdings by Nevada courts. Instead, Harrah's cites to an extra-jurisdictional Arizona case, *Dugan v. American Express*, which has been the authority relied upon primarily by Harrah's throughout this litigation. Even then, Harrah's merely re-argues the points already considered and eschewed by the Court of Appeals.

The Petition for Review does not address the issues which it claims warrant review: That the case is "one of first impression of general statewide significance" or "statewide public importance" and/or that the Court of Appeals decision conflicts with prior holdings in this jurisdiction.

Rather, the petition merely reargues the same points and contentions raised in the Answering Brief. It is clear that the issue of employer liability for injuries incurred in the workplace is well settled in Nevada. The briefing in this case and the Court of Appeals' opinion make myriad references to the underlying Nevada

authority in this area of law. The Opening Brief cited six Nevada cases and Harrah's Answering Brief added another four unique Nevada cases. Multiple sections of Nevada Industrial Insurance Act were cited. The well-reasoned Order of Reversal and Remand issued by the Court of Appeals is supported throughout by applicable precedent. Nowhere in the petition for review does Harrah's even argue, let alone support an argument, that this is a case of first impression.

Further, while Harrah's claims that "NRAP 40(B)(a)(2) (sic) is applicable because the Court of Appeals' decision conflicts with prior holdings" it never articulates which prior holdings are at issue and how the Order of Remand does them violence. Instead, Harrah's, *for the first time in this litigation*, cites to a 1997 case (Rio v. Gorsky) and attempts to make factual arguments in a too-late effort to argue that Mr. Baiguen's injuries are "employment related." Harrah's then immediately reverts to the Arizona authority-based arguments it has made all along. Quite simply, Harrah's has failed to reasonably identify how the Order of Remand and Reversal is in conflict with existing Nevada law and therefore ripe for review.

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CONCLUSION

Based upon the legal authority and reasons set forth above and the pleadings and papers on file herein, Appellant Israel Baiguen requests that this Honorable Court DENY Respondent's Petition for Review.

Dated this 4th day of May, 2017.

Law Offices of Steven M. Burris, LLC

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Answer complies with the formatting requirements of NRAP 32(a)(4)-(6), the typeface requirements of NRAP 32(a)(5) and NRAP 32(a)(7)(c) and the type style requirements of NRAP 32(a)(6) because this Answer has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, font size 14, and does not exceed 15 pages.

2. I further certify that this Answer complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages.

3. Finally, I hereby certify that I have read this Answer, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Answer complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Answer regarding matters in the records to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relief on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of May, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Steven M. Burris LLC and that on the 4rd day of May, 2017, pursuant to N.E.F.C.R 8, I electronically filed and served a true and correct copy of the above and foregoing ANSWER TO PETITION FOR REVIEW as follows:

[X] by the Court's CM/ECF system which will send notification to the following; and

[X] by US mail at Las Vegas, Nevada, postage prepaid thereon, addressed to the following:

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