

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SEAN FITZGERALD,
vs.
MOBILE BILLBOARDS, LLC, a Nevada Limited Liability Company; VINCENT BARTELLO, an individual,

No. 72803

Electronically Filed  
Aug 16 2017 08:43 a.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING


This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District 8th Department 32  
County Clark Judge Rob Bare  
District Ct. Case No. A-16-737119-C

**2. Attorney filing this docketing statement:**

Attorney James P. Kemp, Esq. Telephone (702) 258-1183  
Firm Kemp & Kemp  
Address  
7435 W. Azure Drive  
Ste 110  
Las Vegas, NV 89130   
Client(s) Sean Fitzgerald

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney None (recently withdrew) Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_  
  
Client(s) \_\_\_\_\_

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_  
  
Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:                          |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                   | <input checked="" type="checkbox"/> Failure to state a claim            |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

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

None.

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

None.

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

The subject matter of this appeal concerns issues surrounding the common law tort of defamation per se and slander per se. Plaintiff sustained an industrial injury on April 20, 2014 and filed a claim for workers' compensation under NRS Chapter 616C.370. Plaintiff had surgery on May 13, 2014 to amputate a portion of his thumb as a result of the industrial accident. On May 21, 2014, Defendants orally and in writing communicated with their third-party workers' compensation administrator, AmTrust North America, that Plaintiff was attempting to obtain more and different prescription painkillers after his industrial injury, that multiple prescription painkillers, and prescriptions for additional painkillers, were found in Plaintiff's personal property which Defendants refused to return to Plaintiff after terminating his employment.

Plaintiff asserts that Defendants made defamatory statements resulting in the republication of those statements to unprivileged third-parties. Defendants claim they are entitled to an absolute litigation privilege because they believed Plaintiff would engage in +

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Did the court err in finding that the mere filing of a statutory workers' compensation claim automatically protects all communications on the basis of absolute litigation privilege when no threat of litigation had been communicated?
2. Did the court err in granting Defendants' Motion to Dismiss under NRS 12(b)(5) on the basis of absolute litigation privilege when the underlying facts which might give rise to the privilege are in dispute?
3. Can qualified immunity be raised under NRCP 12(b)(5) in light of clear precedent under *Pope v. Motel 6*, 121 Nev. 307, 319, 114 P.3d 277 (2005) and *Simpson v. Mars Inc.*, 113 Nev. 188, 191, 929 P.2d 966, 968 (1997) which requires the privilege to be pleaded and proved?

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

Appellant is unaware of any currently pending cases that raise the same or similar issues.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

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

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17 (14) which includes matters raising a question of statewide public importance. This is an issue of statewide public importance because, in part, it includes issues involving the Nevada Industrial Insurance Act. There is also an issue of first impression as to whether, for purposes of the absolute litigation privilege, does the mere of a statutory workers' compensation claim automatically protect all communications on the basis of absolute litigation privilege?

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 0 \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

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

N/A

## TIMELINESS OF NOTICE OF

**16. Date of entry of written judgment or order appealed from** March 27, 2017

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

**17. Date written notice of entry of judgment or order was served** April 3, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

(a) Specify the type of motion, the date and method of service of the motion, and

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE:** Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the

time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** April 6, 2017

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

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

NRAP 4 (a)

**SUBSTANTIVE APPEALABILITY**

**21. 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 type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

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

NRAP 3A(b)(1) provides for appeal from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. This appeal is from a final judgment entered by the court on a Motion to Dismiss under NRCP 12(b)(5).

Plaintiff's claims are Defamation per se and Slander per se.

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

(a) Parties:

Sean Fitzgerald (Plaintiff/Appellant)

Vincent Bartello (Defendant/Respondent)

Mobile Billboards (Defendant/Respondent)

(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:

**23. 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.**

Appellant appeals from final judgment issued on March 27, 2017.

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

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

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

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required

Sean Fitzgerald  
Name of appellant

James P. Kemp  
Name of counsel of record

Aug 15, 2017  
Date

/s/ James P. Kemp  
Signature of counsel of record

Clark County Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 15th day of August, 2017, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

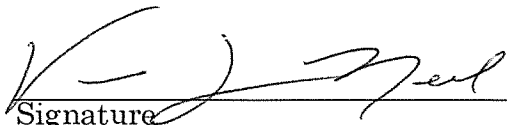
VINCENT BARTELLO  
1640 Liege Dr.  
Henderson, NV 89102

MOBILE BILLBOARDS LLC  
% VINCENT BARTELLO  
1640 Liege Dr.  
Henderson, NV 89102

This document was also sent via email to vincemobilebillboards@gmail.com and vincebartello@gmail.com



Dated this 15th day of August, 2017

  
Signature

## DISTRICT COURT CIVIL COVER SHEET

A- 16 - 737119 - C

County, Nevada

XXXI I

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
SEAN FITZGERALD	MOBILE BILLBOARDS, LLC
c/o Kemp & Kemp, Attorneys at Law	VINCENT BARTELLO
7435 W. Azure Drive, Suite 110	
Las Vegas, NV 89130	
Attorney (name/address/phone):	Attorney (name/address/phone):
James P. Kemp, Esq.	
7435 W. Azure Drive, Suite 110	
Las Vegas, NV 89130	
702-258-1183	

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input checked="" type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

05/20/16

Date

/s/ James P. Kemp

Signature of initiating party or representative

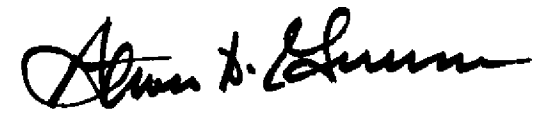
See other side for family-related case filings.

**KEMP & KEMP**  
ATTORNEYS AT LAW  
7435 W. Azure Drive, Suite 110  
LAS VEGAS, NEVADA 89130  
Tel. (702) 258-1183 • Fax (702) 258-6983

JAMES P. KEMP, ESQ.  
Nevada Bar No.: 6375  
VICTORIA L. NEAL, ESQ.  
Nevada Bar No.: 13382  
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702-258-1183 ph./702-258-6983 fax  
jp@kemp-attorneys.com  
vneal@kemp-attorneys.com

*Attorneys for Plaintiff*

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05/20/2016 06:15:06 PM



CLERK OF THE COURT

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SEAN FITZGERALD,

Plaintiff,

vs.

MOBILE BILLBOARDS, LLC, a Nevada  
Limited Liability Company; VINCENT  
BARTELLO, an individual; and DOES I through  
X; and ROE BUSINESS ENTITIES I through  
X, inclusive,

Defendants.

Case No.: A - 16 - 737119 - C

Dept No.: XXXI I

**COMPLAINT**

**JURY TRIAL DEMANDED**

**Arbitration Exemption: action seeking  
equitable or extraordinary relief.**

COMES NOW Plaintiff, SEAN FITZGERALD, by and through Counsel, KEMP &  
KEMP, ATTORNEYS AT LAW, and hereby complains and alleges the following:

**JURISDICTION**

1. SEAN FITZGERALD (herein "Plaintiff") is a resident of Clark County, Nevada. The amount in controversy in this case is in excess of \$10,000.00.
2. Defendant MOBILE BILLBOARDS, LLC (herein "Mobile") is a Nevada Limited Liability Company. It has continuous and ongoing business operations in the state of Nevada and Clark County. Plaintiff reserves the right to amend this Complaint to name any and all

appropriate parties in addition to this Defendant or instead of this Defendant should Plaintiff learn of additional or different facts from those set forth herein, or as a result of further discovery, analysis, and fact development in this case. Plaintiff thus brings these causes of action against MOBILE BILLBOARDS, LLC (herein Mobile”) as a successor or successor-in-interest, or as an integrated enterprise, or as a joint venturer, or otherwise jointly and severally responsible for Plaintiff’s damages.

3. Defendant VINCENT BARTELLO (herein “BARTELLO”) was at all relevant times mentioned herein, an owner, operating principal, employee, servant and/or agent authorized to act on behalf of Defendant MOBILE BILLBOARDS, LLC at its Clark County place of business. On information and belief this Defendant is, and was at all relevant times mentioned herein, a resident of Clark County, Nevada.

4. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOE INDIVIDUALS I through X and ROE BUSINESS ENTITIES I through X, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of them, are in some manner responsible and liable for the acts and damages alleged in this Complaint. Plaintiff will seek leave of this Court to amend this Complaint to allege the true names and capacities of the DOE INDIVIDUAL and ROE CORPORATION Defendants when the true names of the DOE INDIVIDUAL and ROE CORPORATION Defendants are ascertained.

5. The Court has jurisdiction over the parties named herein and the subject matter of this case.

6. This action has been timely filed.

...

...

**FACTS COMMON TO ALL CLAIMS**

7. Plaintiff repeats and realleges each and every pertinent allegation contained in and every other pertinent paragraph contained in this Complaint, as if set forth fully herein.
8. Plaintiff began his employment with Defendants in April 2014, as head fleet mechanic.
9. Plaintiff was hired and paid by Hillsboro until he sustained an industrial injury on April 30, 2015. Hillsboro is owned and operated by Defendant Vincent Bartello. After that date, Plaintiff was paid by Defendant Mobile because, upon information and belief, Defendant Hillsboro was not insured for workers' compensation as required by Nevada state law.
10. Plaintiff's April 30, 2014 serious on-the-job industrial injury was to his finger/hand.
11. Plaintiff filled out a C-4 form for workers' compensation the day of the industrial accident, April 30, 2014.
12. On May 13, 2014, Plaintiff had surgery as result of the industrial accident sustained on April 30, 2015.
13. On or about May 21, 2014, Defendants orally and in writing communicated with their third-party workers' compensation administrator, AmTrust North America, that Plaintiff was attempting to obtain more and different prescription painkillers after his industrial injury, that multiple prescription painkillers, and prescriptions for additional painkillers, were found in Plaintiff's personal property which Defendants had refused to return to Plaintiff after terminating his employment. Defendants' statements were false and the information communicated imputed to Plaintiff the commission of a crime including, but not limited to, the unlawful taking or obtaining of a controlled substance or prescription under NRS 453.391. Defendants' statements further imply that Plaintiff was a drug addict, a loathsome disease. Defendants' statements further falsely impute to the Plaintiff acts of dangerous and reckless conduct including, but not limited to, stating that Plaintiff was taking narcotic prescription

1 painkillers while operating dangerous and heavy equipment in the course of his employment.  
2 Such false and malicious accusations tend to harm the Plaintiff in his trade, occupation,  
3 profession, or business and is per se defamatory under Nevada law.

4 14. Plaintiff was not made aware of the defamation and slander by Defendants until  
5 approximately September 14, 2014, when Plaintiff was provided the letter from AmTrust  
6 North America wherein the claims adjuster restated what Defendants had told to her.  
7 AmTrust then republished the information to unprivileged third parties including, but not  
8 limited to, Plaintiff's workers' compensation doctor. Plaintiff received the AmTrust North  
9 America letter through the workers' compensation claims process. Defendants are liable for all  
10 foreseeable publications of the false and defamatory statements.

11  
12 15. Defendants acted with malice and ill will towards Plaintiff in disclosing information for which  
13 there was no reasonable grounds to believe was accurate and, thereby, recklessly and  
14 intentionally disclosed inaccurate and misleading information in an attempt to thwart  
15 Plaintiff's workers' compensation claim. It was reasonably foreseeable under the facts and  
16 circumstances that a person with ordinary intelligence and prudence could have anticipated  
17 that such conduct would result in injury to Plaintiff.

18  
19 **FIRST CAUSE OF ACTION:**

20 **DEFAMATION PER SE**  
21 **(Against All Defendants)**

22 16. All other Paragraphs of this Complaint are expressly incorporated here by reference as if fully  
23 reasserted, alleged, and set forth herein.

24 17. On one or more occasions Defendants told one or more third-persons, orally and/or in  
25 writing, that the Plaintiff was committing a crime including, but not limited to, the unlawful  
26 taking or obtaining of controlled substance or prescription under NRS 453.391.

1 18. On one or more occasions Defendants told one or more third-persons that Plaintiff was a  
2 drug addict, a loathsome disease.

3 19. On one or more occasions Defendants told one or more third-persons that Plaintiff was  
4 improperly taking prescription narcotic painkillers and then dangerously or recklessly  
5 operating dangerous and/or heavy equipment while under the influence. These statements  
6 tend to harm the Plaintiff in his trade, occupation, profession, or business.

7  
8 20. The statements of and concerning the Plaintiff were made as statements of fact and not of  
9 mere opinion.

10 21. The statements of and concerning the Plaintiff were false and defamatory.

11 22. The false and defamatory statements were published to third parties and were not privileged.

12 23. Defendants published the false and defamatory statements knowing they were false or with  
13 reckless disregard for the truth and/or with actual malice or malice in fact. Each publication  
14 and/or republication is a separate, distinct, and actionable tortious act.

15  
16 24. The false and defamatory statements made by Defendants were of a type that would tend to  
17 harm the Plaintiff in his trade, occupation, profession, business, or office.

18 25. The false and defamatory statements of and concerning Plaintiff imputed to Plaintiff the  
19 commission of one or more crimes including, but not limited to, the unlawful taking or  
20 obtaining of a controlled substance or prescription under NRS 453.391, and that Plaintiff was  
21 a drug addict, a loathsome disease.

22 26. Plaintiff's reputation and character were harmed causing him actual pecuniary and special  
23 damages including, but not limited to lost income.

24  
25 27. The false and defamatory statements of and concerning Plaintiff published by the Defendants  
26 constitute per se defamation.

27 28. Damages are presumed.

28

29. Plaintiff suffered emotional distress, mental anguish, and general damages.

30. Defendants conduct was accomplished with malice, fraud, or oppression such that punitive or exemplary damages should be awarded to deter similar future conduct by Defendants.

**SECOND CAUSE OF ACTION:**

**SLANDER PER SE  
(Against All Defendants)**

31. All other Paragraphs of this Complaint are expressly incorporated here by reference as if fully reasserted, alleged, and set forth herein.

32. Defendants made one or more false and defamatory written communications of and concerning the Plaintiff. The false and defamatory written statements of and concerning Plaintiff imputed to Plaintiff the commission of one or more crimes including, but not limited to, the unlawful taking or obtaining of a controlled substance or prescription under NRS 453.391, and that Plaintiff was a drug addict, a loathsome disease. Further, the Defendants stated to one or more third-persons that the Plaintiff had dangerously and recklessly taken narcotic painkillers and then worked on dangerous and/or heavy equipment creating a safety risk in his workplace. Each publication and/or republication is a separate, distinct, and actionable tortious act.

33. The false and defamatory communications were published to one or more third parties.

34. Defendants knew that the published communications were false, acted in reckless disregard as to the truth or falsity of the published communications and/or acted negligently with regard to each and every publication of defamatory matter.

35. The publication of each and every defamatory communication constituted slander per se in that it falsely imputed the commission of a crime to Plaintiff including, but not limited to, the unlawful taking or obtaining of controlled substance or prescription under NRS 453.391.

1 36. The publication of each and every defamatory communication constituted slander per se in  
2 that it would tend to injure the Plaintiff in his trade, occupation, business, profession, or  
3 office.

4 37. The communication was published with malice; the publication was unprivileged.

5 38. The defamatory communications have so damaged Plaintiff's reputation.

6  
7 **WHEREFORE**, Plaintiff expressly reserves the right to amend his Complaint at or before  
8 the time of trial of the action herein to include all items of damages not yet ascertained, and  
9 demands judgment against the Defendants, upon each of them, as follows:

10 A. All applicable monetary relief provided for under common law and Nevada state law  
11 including, but not limited to the following:

- 12 1. Money damages in excess of \$10,000.00;
- 13 2. Economic damages including, but not limited to, lost wages and benefits of  
14 employment, incidental and consequential damages;
- 15 3. General damages including emotional distress and general economic harm;
- 16 4. The full value of all chattels converted by Defendants;
- 17 5. Punitive and/or Exemplary Damages to deter the Defendants from future  
18 malicious, fraudulent, and oppressive conduct of a similar nature;
- 19 6. Pre-judgment and post-judgment interest on the amounts awarded at the  
20 prevailing legal rate;
- 21 7. Reasonable attorney fees, reasonable expert witness fees, and other costs of the  
22 action pursuant to statute, agreement, or court rule;
- 23 8. For extraordinary and equitable relief ordering that the Defendant be required to  
24 publish retractions to as much as possible restore to the Plaintiff his good name  
25 among those to whom the defamation was published;
- 26  
27  
28

1 B. A trial by jury on all issues that may be tried to a jury; and/or

2 C. For such other and further relief as the Court may deem just and proper.

3 DATED this 20th day of May, 2016.

4  
5 /s/ James P. Kemp

JAMES P. KEMP, ESQ.

Nevada Bar No.: 6375

VICTORIA L. NEAL, ESQ.

Nevada Bar No.: 13382

KEMP & KEMP

7435 W. Azure Drive, Ste 110

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702-258-1183 ph./702-258-6983 fax

*Attorneys for Plaintiff*

**KEMP & KEMP**  
ATTORNEYS AT LAW  
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*Attorneys for Plaintiff*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SEAN FITZGERALD,

Plaintiff,

vs.

MOBILE BILLBOARDS, LLC, a Nevada  
Limited Liability Company; VINCENT  
BARTELLO, an individual; and DOES I through  
X; and ROE BUSINESS ENTITIES I through  
X, inclusive,

Defendants.

Case No.:

Dept No.:

**INITIAL FEE DISCLOSURE**

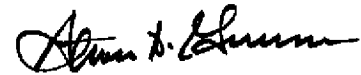
Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

SEAN FITZGERALD, Plaintiff	\$270.00
TOTAL REMITTED:	<u>\$270.00</u>

Plaintiff demands a jury trial.

DATED May 20, 2016

/s/James P. Kemp  
JAMES P. KEMP, ESQ.  
Nevada Bar No. 006375  
Attorney for Plaintiff



CLERK OF THE COURT

1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4 \*\*\*\*\*

5  
6  
7 SEAN FITZGERALD,

8  
9 Plaintiff,

CASE NO.: A-16-737119-C

DEPT. NO. 32

10 vs.

11 MOBILE BILLBOARDS, LLC, a  
12 Nevada Limited Liability Company;  
13 and VINCENT BARTELLO, an  
14 individual,

15 Defendants.  
16

17  
18  
19 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

20  
21 This matter involves allegations of defamation that took place during the  
22 pendency of a workers compensation claim. Plaintiff Sean Fitzgerald filed suit on  
23 May 20, 2016 against his former employers, Mobile Billboards, LLC and the  
24 company's owner, Vincent Bartello. Plaintiff alleges that after filing the workers  
25 compensation claim due to an injury that occurred on April 30, 2014, the  
26 Defendants made defamatory and slanderous comments about Plaintiff to the  
27 workers compensation claims examiner, who then republished those comments to  
28 Plaintiff's workers compensation doctor.

RECEIVED

MAR 29 2017

CLERK OF THE COURT

1 This matter came before the Court for Defendants' Motion to Dismiss on  
2 January 24, 2017. One of the bases for Defendants' motion was the doctrine of  
3 absolute litigation privilege. During oral argument, Plaintiff's attorney made new  
4 arguments that were not contained in the original motion practice regarding  
5 litigation privilege. The Court took the matter under advisement and ordered  
6 supplemental briefing on the issue. After carefully considering the original motion  
7 practice, the supplemental briefing, and oral argument, COURT ORDERED,  
8 Defendants' Motion to Dismiss is GRANTED.

9 In this case, the employer defendant made statements to the workers  
10 compensation claims examiner regarding the fact that the employer found  
11 prescription pain medication in Plaintiff's toolbox at work shortly after the incident  
12 which resulted in Plaintiff's injury. The employer expressed a concern to the  
13 claims examiner, who then expressed the concern to the workers compensation  
14 doctor. Plaintiff then brought suit, asserting that these various statements  
15 constitute defamation and slander. In their Motion to Dismiss, Defendants contend  
16 that these statements are protected by absolute litigation privilege, and this Court  
17 agrees.

18 Nevada has long recognized the existence of an absolute privilege for  
19 defamatory statements made during the course of judicial and quasi-judicial  
20 proceedings. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285  
21 (2014). This privilege, which acts as a complete bar to defamation claims based on  
22 privileged statements, recognizes that "[c]ertain communications, although  
23 defamatory, should not serve as a basis for liability in a defamation action and are  
24 entitled to an absolute privilege because 'the public interest in having people speak  
25 freely outweighs the risk that individuals will occasionally abuse the privilege by  
26 making false and malicious statements.'" *Id.* (quoting *Circus Circus Hotels, Inc. v.*  
27 *Witherspoon*, 99 Nev. 56, 61, 657 P.2d 101, 104 (1983)).  
28

1  
2  
3 In order for the absolute privilege to apply to defamatory statements made in  
4 the context of a judicial or quasi-judicial proceeding, "(1) a judicial proceeding  
5 must be contemplated in good faith and under serious consideration, and (2) the  
6 communication must be related to the litigation." *Jacobs v. Adelson*, 130 Nev.  
7 Adv. Op. 44, 325 P.3d at 1285. "Therefore, the privilege applies to  
8 communications made by either an attorney or a nonattorney that are related to  
9 ongoing litigation or future litigation contemplated in good faith." *Id.* "When the  
10 communications are made in this type of litigation setting and are in some way  
11 pertinent to the subject of the controversy, the absolute privilege protects them  
12 even when the motives behind them are malicious and they are made with  
13 knowledge of the communications' falsity." *Id.*

14 "The scope of the absolute privilege is quite broad." *Fink v. Oshins*, 118  
15 Nev. 428, 433, 49 P.3d 640, 643 (2002). The defamatory communication "need  
16 not be strictly relevant to any issue involved" in "the proposed or pending  
17 litigation," it only need be "in some way pertinent to the subject of controversy."  
18 *Id.* (quoting *Circus Circus Hotels, Inc.*, 99 Nev. at 61, 657 P.2d at 104). Further,  
19 the privilege applies not only to communications made during actual judicial  
20 proceedings, but also to "communications preliminary to a proposed judicial  
21 proceeding." *Id.*

22 "The scope of the privilege does, however, have limits." *Id.* When the  
23 defamatory communication is made before a judicial proceeding is initiated, it will  
24 be cloaked with immunity only if the communication is made "in contemplation of  
25 initiation" of the proceeding. *Id.* In other words, at the time the defamatory  
26 communication is made, the proceeding must be "contemplated in good faith and  
27 under serious consideration." *Id.* (quoting *Circus Circus Hotels, Inc.*, 99 Nev. at 61,  
28 657 P.2d at 104). Within these limits, courts should apply the absolute privilege

1 liberally, resolving any doubt in favor of its relevancy or pertinency. *Id.*

2 “Whether a statement is sufficiently relevant to the judicial proceedings to  
3 fall within the absolute privilege is a question of law for the court.” *Circus Circus*  
4 *Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

5 In this case, Plaintiff was injured on the job on April 30, 2014 and he filed  
6 the workers compensation claim on that same day. Therefore, as of April 30,  
7 2014, there was an open claim which was then subject to the Nevada statutory  
8 scheme for workers compensation, which is governed by NRS Chapter 616C.  
9 This statutory scheme allows for judicial review. *See* NRS 616C.370. As such, this  
10 Court finds that the opening of a workers compensation claim and the pursuit of  
11 that workers compensation claim opens the door for potential judicial proceedings.

12 The elements that must be met for absolute litigation to apply to alleged  
13 defamatory statements made are “(1) a judicial proceeding must be contemplated  
14 in good faith and under serious consideration, and (2) the communication must be  
15 related to the litigation.” *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d at  
16 1285. Because the Nevada Supreme Court has held that the privilege also to  
17 “communications preliminary to a proposed judicial proceeding,” this Court finds  
18 that these statements, which were made during the pendency of an open workers  
19 compensation claim and which were related to the treatment under that claim, meet  
20 the elements of absolute litigation privilege. *See Fink v. Oshins*, 118 Nev. 428,  
21 433, 49 P.3d 640, 644 (2002). Moreover, the Nevada Supreme Court has made it  
22 clear that “courts should apply the absolute privilege liberally, resolving any doubt  
23 in favor of its relevancy or pertinency.” *Fink*, 118 Nev. at 433, 49 P.3d at 644.

24 This Court does not agree with Plaintiff’s argument that a motion to dismiss  
25 cannot be granted on the basis of absolute litigation privilege, but that rather it  
26 must be plead and proven as an affirmative defense by Defendants at trial.  
27 Plaintiff cites to *Simpson v. Mars Inc.*, 113 Nev. 188, 189, 929 P.2d 966, 966  
28

1 (1997) and *Pope v. Motel 6*, 121 Nev. 307, 309, 114 P.3d 277, 279 (2005).

2 However, both of those cases dealt with issues pertaining to intracorporate  
3 communication privilege, and not absolute litigation privilege. Additionally,  
4 neither of those cases actually held that privilege cannot be the basis for dismissal.  
5 As such, the Court is not persuaded by this argument and finds that privilege can  
6 be a basis for dismissal, especially given that it is a matter of law to be determined  
7 by the district court. *See Circus Circus Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

8 These statements made by the employer and the claims examiner were in  
9 regards to the Plaintiff's his medical treatment under the workers compensation  
10 coverage. Plaintiff may litigate any issues pertaining to the workers compensation  
11 claim within the system under NRS Chapter 616C, and he may later seek further  
12 relief through a petition for judicial review. Therefore, although this Court finds  
13 that absolute litigation privilege applies to the alleged defamatory statements,  
14 Plaintiff is not left without recourse at this time.

15  
16 IT IS SO ORDERED.

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23 Dated this 27 day of March, 2017.

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26 Rob Bare  
27 Judge, District Court, Department 32  
28

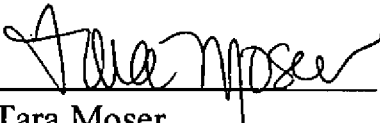
1 **CERTIFICATE OF SERVICE**

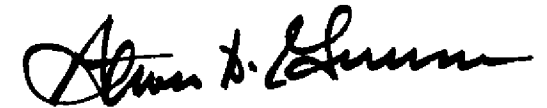
2  
3 I hereby certify that on the date filed, I or mailed or faxed a copy to:

4 JAMES P. KEMP, ESQ.  
5 VICTORIA L. NEAL, ESQ.  
6 Kemp & Kemp  
7 7435 W. Azure Drive, Ste 110  
8 Las Vegas, NV 89130  
9 (702) 258-1183  
10 jp@kemp-attorneys.com  
11 vneal@kemp-attorney.com  
12 *Attorneys for Plaintiff*

CARRIE HURTIK, ESQ.  
Hurtik Law & Associates  
7866 W. Sahara Ave.  
Las Vegas, NV 89117  
(702) 966-5200  
churtik@hurtiklaw.com  
*Attorney for Defendants*

13  
14  
15  
16 Dated this 27<sup>th</sup> day of March, 2017.

17  
18   
19 Tara Moser  
20 Judicial Executive Assistant, Dept. 32  
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CLERK OF THE COURT

1 **NEO**  
2 **CARRIE E. HURTIK, ESQ.**  
3 Nevada Bar No. 7028  
4 **JONATHON R. PATTERSON, ESQ.**  
5 Nevada Bar No. 9644  
6 **HURTIK LAW & ASSOCIATES**  
7 7866 West Sahara Avenue  
8 Las Vegas, Nevada 89117  
9 (702) 966-5200 Telephone  
10 (702) 966-5206 Facsimile  
11 churtik@hurtiklaw.com  
12 jpatterson@hurtiklaw.com  
13 Attorneys for Defendants,  
14 **VINCENT BARTELLO**  
15 **MOBILE BILLBOARDS, LLC**

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **SEAN FITZGERALD,**

12 Plaintiff,

13 vs.

14 **MOBILE BILLBOARDS, LLC, a Nevada**  
15 **Limited Liability Company; VINCENT**  
16 **BARTELLO, an individual; and DOES I**  
17 **through X; and ROE BUSINESS ENTITIES I**  
18 **through X, inclusive,**

18 Defendants.

Case No.: A-16-737119-C  
Dept. No.: XXXII

19 **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

20  
21 PLEASE TAKE NOTICE that an Order granting Defendant's Motion to Dismiss was entered  
22 in the above-entitled action on 29th day of March, 2017. A true and correct copy of said Order

23 ///

24 ///

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26 ///

27 ///

1 Granting Defendant's Motion to Dismiss is attached hereto as Exhibit "A".

2 DATED this 3<sup>rd</sup> day of April 2017.

3 **HURTIK LAW & ASSOCIATES**

4 

5 **CARRIE E. HURTIK, ESQ.**

6 Nevada Bar No. 7028  
7 7866 West Sahara Avenue  
8 Las Vegas, Nevada 89117  
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10 (702) 966-5206 Facsimile  
11 churtik@hurtiklaw.com  
12 Attorneys for Defendants,  
13 VINCENT BARTELLO  
14 MOBILE BILLBOARDS, LLC  
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CERTIFICATE OF SERVICE

STATE OF NEVADA )  
 ) ss.  
COUNTY OF CLARK )

I, NANCY RAMIREZ, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen (18) years and not a party to the within action. My business address is 7866 West Sahara Avenue, Las Vegas, Nevada 89117.

On April 3, 2017, I served the document described **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT'S MOTION TO DISMISS** on the party listed below at his/her/their last known addresses:

James P. Kemp, Esq.  
KEMP & KEMP  
7435 W. Azure Drive, Ste., 110  
Las Vegas, NV 89130

☒ **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☒ **VIA ELECTRONIC SERVICE:** by transmitting via Wiznet, pursuant to EDCR 8.05, to the electronic mail address as last given by that person on any document which he/she has filed in the action and served on the party making the service. The copy of the document served by electronic service bears a notation of the date and time of transmission. A confirmation of the transmission containing the electronic mail address(es) to which the document(s) was/were transmitted will be maintained with the document(s) served.

I declare under the penalty of perjury that the foregoing is true and correct.  
Executed at Las Vegas, Nevada on this 3 day of April 2017.

  
NANCY RAMIREZ, an employee of  
HURTIK LAW & ASSOCIATES

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# EXHIBIT A

*Adam D. L...*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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SEAN FITZGERALD,

Plaintiff,

vs.

MOBILE BILLBOARDS, LLC, a  
Nevada Limited Liability Company;  
and VINCENT BARTELLO, an  
individual,

Defendants.

CASE NO.: A-16-737119-C

DEPT. NO. 32

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

This matter involves allegations of defamation that took place during the pendency of a workers compensation claim. Plaintiff Sean Fitzgerald filed suit on May 20, 2016 against his former employers, Mobile Billboards, LLC and the company's owner, Vincent Bartello. Plaintiff alleges that after filing the workers compensation claim due to an injury that occurred on April 30, 2014, the Defendants made defamatory and slanderous comments about Plaintiff to the workers compensation claims examiner, who then republished those comments to Plaintiff's workers compensation doctor.

1           This matter came before the Court for Defendants' Motion to Dismiss on  
2 January 24, 2017. One of the bases for Defendants' motion was the doctrine of  
3 absolute litigation privilege. During oral argument, Plaintiff's attorney made new  
4 arguments that were not contained in the original motion practice regarding  
5 litigation privilege. The Court took the matter under advisement and ordered  
6 supplemental briefing on the issue. After carefully considering the original motion  
7 practice, the supplemental briefing, and oral argument, COURT ORDERED,  
8 Defendants' Motion to Dismiss is GRANTED.

9           In this case, the employer defendant made statements to the workers  
10 compensation claims examiner regarding the fact that the employer found  
11 prescription pain medication in Plaintiff's toolbox at work shortly after the incident  
12 which resulted in Plaintiff's injury. The employer expressed a concern to the  
13 claims examiner, who then expressed the concern to the workers compensation  
14 doctor. Plaintiff then brought suit, asserting that these various statements  
15 constitute defamation and slander. In their Motion to Dismiss, Defendants contend  
16 that these statements are protected by absolute litigation privilege, and this Court  
17 agrees.

18           Nevada has long recognized the existence of an absolute privilege for  
19 defamatory statements made during the course of judicial and quasi-judicial  
20 proceedings. *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1285  
21 (2014). This privilege, which acts as a complete bar to defamation claims based on  
22 privileged statements, recognizes that "[c]ertain communications, although  
23 defamatory, should not serve as a basis for liability in a defamation action and are  
24 entitled to an absolute privilege because 'the public interest in having people speak  
25 freely outweighs the risk that individuals will occasionally abuse the privilege by  
26 making false and malicious statements.'" *Id.* (quoting *Circus Circus Hotels, Inc. v.*  
27 *Witherspoon*, 99 Nev. 56, 61, 657 P.2d 101, 104 (1983)).  
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3 In order for the absolute privilege to apply to defamatory statements made in  
4 the context of a judicial or quasi-judicial proceeding, "(1) a judicial proceeding  
5 must be contemplated in good faith and under serious consideration, and (2) the  
6 communication must be related to the litigation." *Jacobs v. Adelson*, 130 Nev.  
7 Adv. Op. 44, 325 P.3d at 1285. "Therefore, the privilege applies to  
8 communications made by either an attorney or a nonattorney that are related to  
9 ongoing litigation or future litigation contemplated in good faith." *Id.* "When the  
10 communications are made in this type of litigation setting and are in some way  
11 pertinent to the subject of the controversy, the absolute privilege protects them  
12 even when the motives behind them are malicious and they are made with  
13 knowledge of the communications' falsity." *Id.*

14 "The scope of the absolute privilege is quite broad." *Fink v. Oshins*, 118  
15 Nev. 428, 433, 49 P.3d 640, 643 (2002). The defamatory communication "need  
16 not be strictly relevant to any issue involved" in "the proposed or pending  
17 litigation," it only need be "in some way pertinent to the subject of controversy."  
18 *Id.* (quoting *Circus Circus Hotels, Inc.*, 99 Nev. at 61, 657 P.2d at 104). Further,  
19 the privilege applies not only to communications made during actual judicial  
20 proceedings, but also to "communications preliminary to a proposed judicial  
21 proceeding." *Id.*

22 "The scope of the privilege does, however, have limits." *Id.* When the  
23 defamatory communication is made before a judicial proceeding is initiated, it will  
24 be cloaked with immunity only if the communication is made "in contemplation of  
25 initiation" of the proceeding. *Id.* In other words, at the time the defamatory  
26 communication is made, the proceeding must be "contemplated in good faith and  
27 under serious consideration." *Id.* (quoting *Circus Circus Hotels, Inc.*, 99 Nev. at 61,  
28 657 P.2d at 104). Within these limits, courts should apply the absolute privilege

1 liberally, resolving any doubt in favor of its relevancy or pertinency. *Id.*

2 “Whether a statement is sufficiently relevant to the judicial proceedings to  
3 fall within the absolute privilege is a question of law for the court.” *Circus Circus*  
4 *Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

5 In this case, Plaintiff was injured on the job on April 30, 2014 and he filed  
6 the workers compensation claim on that same day. Therefore, as of April 30,  
7 2014, there was an open claim which was then subject to the Nevada statutory  
8 scheme for workers compensation, which is governed by NRS Chapter 616C.  
9 This statutory scheme allows for judicial review. *See* NRS 616C.370. As such, this  
10 Court finds that the opening of a workers compensation claim and the pursuit of  
11 that workers compensation claim opens the door for potential judicial proceedings.

12 The elements that must be met for absolute litigation to apply to alleged  
13 defamatory statements made are “(1) a judicial proceeding must be contemplated  
14 in good faith and under serious consideration, and (2) the communication must be  
15 related to the litigation.” *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d at  
16 1285. Because the Nevada Supreme Court has held that the privilege also to  
17 “communications preliminary to a proposed judicial proceeding,” this Court finds  
18 that these statements, which were made during the pendency of an open workers  
19 compensation claim and which were related to the treatment under that claim, meet  
20 the elements of absolute litigation privilege. *See Fink v. Oshins*, 118 Nev. 428,  
21 433, 49 P.3d 640, 644 (2002). Moreover, the Nevada Supreme Court has made it  
22 clear that “courts should apply the absolute privilege liberally, resolving any doubt  
23 in favor of its relevancy or pertinency.” *Fink*, 118 Nev. at 433, 49 P.3d at 644.

24 This Court does not agree with Plaintiff’s argument that a motion to dismiss  
25 cannot be granted on the basis of absolute litigation privilege, but that rather it  
26 must be plead and proven as an affirmative defense by Defendants at trial.  
27 Plaintiff cites to *Simpson v. Mars Inc.*, 113 Nev. 188, 189, 929 P.2d 966, 966  
28

1 (1997) and *Pope v. Motel 6*, 121 Nev. 307, 309, 114 P.3d 277, 279 (2005).

2 However, both of those cases dealt with issues pertaining to intracorporate  
3 communication privilege, and not absolute litigation privilege. Additionally,  
4 neither of those cases actually held that privilege cannot be the basis for dismissal.  
5 As such, the Court is not persuaded by this argument and finds that privilege can  
6 be a basis for dismissal, especially given that it is a matter of law to be determined  
7 by the district court. *See Circus Circus Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105.

8 These statements made by the employer and the claims examiner were in  
9 regards to the Plaintiff's his medical treatment under the workers compensation  
10 coverage. Plaintiff may litigate any issues pertaining to the workers compensation  
11 claim within the system under NRS Chapter 616C, and he may later seek further  
12 relief through a petition for judicial review. Therefore, although this Court finds  
13 that absolute litigation privilege applies to the alleged defamatory statements,  
14 Plaintiff is not left without recourse at this time.

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16 IT IS SO ORDERED.

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23 Dated this 27 day of March, 2017.

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26 Rob Bare  
27 Judge, District Court, Department 32  
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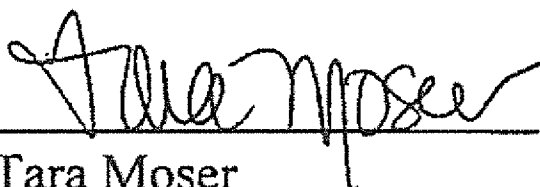
CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I or mailed or faxed a copy to:

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Dated this 27<sup>th</sup> day of March, 2017.



Tara Moser  
Judicial Executive Assistant, Dept. 32