IN THE SUPREME COURT

OF THE STATE OF NEVADA

Electronically Filed
Aug 30 2016 11:08 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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.	Supreme Court Case No. 70204 District Court Case No. A-14-708544 -C

APPELLANT'S OPENING BRIEF

The Law Offices of Steven M. Burris, LLC
Steven M. Burris (Nevada Bar No. 603)
Jeffrey L. Galliher (Nevada Bar No. 8078)
Adrian A. Karimi (Nevada Bar No. 13514)
2810 W. Charleston Blvd. Suite F-58
Las Vegas, NV 89102
(702) 258-6238

ATTORNEYS FOR APPELLANT

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certify that the following are persons and entities as described in NRAP 26.1 (a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Appellant is Israel Baiguen. Appellant has been represented exclusively by the undersigned counsel of record in this matter.

Dated this 29th day of August, 2016.

Law Offices of Steven M. Burris, LLC

By:_____

Steven M. Burris, Esq.
Nevada Bar No. 603
Jeffrey L. Galliher, Esq.
Nevada Bar No. 8078
Adrian A. Karimi, Esq.
Nevada Bar No. 13514
2810 W. Charleston Boulevard, # F-58
Las Vegas, Nevada 89102

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Nevada Supreme Court

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

Appellant properly appeals from the District Court's Order Granting Defendant's Motion for Summary Judgment entered on March 18, 2016. (Vol. 2, APP 0211-0215). NRAP 3A(b)(1). This appeal is timely as Plaintiff-Appellant filed the Notice of Appeal with the District Court on April 14, 2016. (Vol. 2, APP 0216-0238). NRAP 4(a)(1).

ROUTING STATEMENT

Whereas 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)(2).

ISSUE PRESENTED

Whether the Nevada Industrial Insurance Act provides immunity of liability to employers when an employee is injured due to the employers' conduct while on its premises, but such injury did not arise out of the employee's course and scope of employment; and whether an employee merely being on the employers' premises when such injury occurs meets the threshold of the "increased risk" analysis as held by this Court in *Rio All Suite Hotel and Casino v. Phillips*, 126 Nev. 346 (2010).

///

///

STANDARD OF REVIEW

Because the District Court granted a summary judgment ruling for the Defendant-Appellee, the appellate court reviews the case de novo. *Wood v. Safeway*, 121 Nev. 724 (2005).

STATEMENT OF THE FACTS

Plaintiff-Appellant Israel Baiguen was employed by Defendant-Appellee Harrah's Las Vegas, as a houseperson at Harrah's. (Vol. 1, APP 0003). On October 19, 2012, Mr. Baiguen arrived at the parking garage of Harrah's between 4:00 and 4:15 p.m. (Vol. 2, APP 0166 at 26:1-5). He was scheduled to begin his work shift work at 4:30 p.m. that day. (Vol. 2, APP 0151 at 29). Multiple co-workers observed that Mr. Baiguen was mute, drooling, appeared disoriented, and was exhibiting facial droop. (Vol. 2, APP 0151 at 29:14-16; *see also* Vol. 2, APP 0166 at 26; Vol. 2, APP 0181 at 21). Those co-workers of Mr. Baiguen who saw him on that day believed he was not well and sensed something was wrong. (Vol. 2, APP 0166 at 26). Mr. Baiguen's supervisor, Mercedes Raez, testified that one side of Mr. Baiguen's face was drooping. (Vol. 2, APP 00181-00182 at 21:6-23:16). Mr. Baiguen's co-workers notified the Department manager, Karla Young, that Mr. Baiguen was "not good." (Vol. 2, APP 00151-00152 at 29-31). Ms. Young came out of her office to see Mr. Baiguen and attempted to speak to him, but did not receive any response from Mr. Baiguen. (Vol. 2, APP 00151 at 29:14-

16). Ms. Young told Mr. Baiguen's co-workers to take him home since he appeared unwell. (Vol. 2, APP 00152 at 30:1-4). Witness testimony indicates Mr. Baiguen did not clock in that day and documents produced by Harrah's during the course of the litigation indicate that Mr. Baiguen did not clock in for work at any time on October 19, 2012. (Vol. 2, APP 00151 at 29:14-16; Vol. 2, APP 166-168). Harrah's supervising employee, Ms. Young, testified that no "call-in slip" for missed work was ever generated for Mr. Baiguen's absence that day. (Vol. 2, APP 00153 at 35:10-13). Despite the fact that Mr. Baiguen was displaying classic signs of stroke none of his co-workers, including his supervisor Mercedes Raez and his department manager Karla Young, no one ever summoned emergency medical assistance or notified the hotel security department. (Vol. 2, APP 00152). Defendants-Appellees Harrah's written policies and procedures dictate that the security department - which includes trained emergency medical technicians - be contacted in the event of a serious illness or injury of a guest or employee. (Vol. 2, APP 00152 at 30:5-10).

Nevertheless, despite the clear policy to the contrary, Mr. Baiguen was merely taken home by two maids from the off-going shift and left at his apartment where he was discovered by his significant other two (2) days later suffering from an obvious stroke. (Vol. 1, APP 00053-00056 at 54-57; Vol. 2, APP 00152 at 30:1-4). Mr. Baiguen was then rushed to a hospital; however the significant delay

in treatment meant that the irreversible long term effects of the stroke had taken hold. (Vol. 1, APP 00104, 00123). Israel continues to suffer from those long term effects to this day. (Vol. 1, App 104).

Plaintiff-Appellant's medical expert, Dr. David Shprecher, opined that if Mr. Baiguen was timely seen by a medical provider and administered t-PA treatment, he would have a had a 30% chance of a full recovery with little or no long term lasting effects of stroke. (Vol. 1, APP 00104, 00123). Mr. Baiguen filed the underlying lawsuit based upon Defendants-Appellees' negligence in failing to summon emergency medical assistance in the face of an obvious stroke and instead directing employees to simply take him home and leave him there alone. (Vol. 1, APP 0001-0008).

On Defendants-Appellees' motion for summary judgment, Judge Douglas Herndon of Department 29 in the Eighth Judicial District Court granted summary judgment in the favor of Defendant-Appellee Harrah's and judgment was entered on March 18, 2016. (Vol. 2, APP 00230-00234). Judge Herndon held that Israel Baiguen's injury occurred within the course and scope of his employment, and therefore his exclusive remedy lies within the Nevada Industrial Insurance Act. (Vol. 2, APP 00227-00229). On April 14, 2016, Plaintiff-Appellant timely filed a notice of appeal. (Vol. 2, APP 00235-00257).

SUMMARY OF THE ARGUMENT

NRS 616A.020 provides that employees who are injured in the course of employment shall have the exclusive remedy of worker's compensation, as set forth in NRS chapters 616A to 616D (the Nevada Industrial Insurance Act [NIIA]). "Whether an injury occurs within the course of the employment refers merely to the time and place of employment, i.e., whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties." *Wood v. Safeway, Inc.*, 121 Nev. 724, 733 (2005).

The Nevada Supreme Court has consistently held that before an injury may be considered to fall under the auspices of the NIIA, such injury must "arise out of the employment and occur within the course of that employment." *See Wood*, 121 Nev., at 733; *see also McAffee v. Garrett Freightlines, Inc.*, 95 Nev. 483, 485 (1979) ("Where. . . the employee suffers injury by accident sustained arising out of and in the course of employment, the Act provides the employee's exclusive remedy and relieves the complying employer from common law liability"). When determining whether an injury "arose out of employment," the Court found that a compensable injury under the NIIA would result only from "increased risks" resulting from the scope of employment, and not "personal risks" that happen to occur while on the job. *Rio All Suites Hotel and Casino v. Phillips*, 126 Nev. 346, 351 (2010) ("Generally, injuries caused by employment-related risks are deemed to

arise out of employment and are compensable. . . Personal risks are those that are "so clearly personal that, even if they take effect while the employee is on the job, they could not possibly be attributed to the employment. For example, a fall caused by the [employee's] personal condition, such as a bad knee, epilepsy, or multiple sclerosis, is a personal risk.").

Israel Baiguen alleges the injuries sustained on October 19, 2012 did not arise out of his employment, nor within the course of his employment with Defendant Harrah's. Mr. Baiguen argues that his stroke and any subsequent injuries related to his stroke, are "personal risks" not reasonably attributable to his employment with Harrah's. Mr. Baiguen further asserts that Defendants Harrah's owed him a duty under Nevada law and under its own internal policies to render aid during his time of peril.

However, due to Defendants' choice to take Mr. Baiguen home rather than seek aid for him, Mr. Baiguen suffered serious long term damages that could have been prevented had he been provided with an appropriate response, beginning with the summoning of medical aid, at the time of the onset of his stroke. These specific damages are recoverable under Nevada's 'loss of chance doctrine.' Nevada's 'loss of chance doctrine' provides that "the injury to be redressed by the law is not defined as the [injury] itself, but, rather, as the decreased chance of survival caused by the [negligence]." *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 7

(1991). In this case, Defendants' failure to render aid to Mr. Baiguen during the crucial early moments of his stroke constitutes negligence that did not "arise out" of nor "occur within the scope of" Mr. Baiguen's employment with Harrah's Las Vegas, and therefore the damages recoverable under the 'loss of chance doctrine' are not related to Mr. Baiguen's employment with Harrah's Las Vegas.

Because Mr. Baiguen's claim and related injuries do not fall within the purview of the NIIA this Court should reverse the District Court's grant of summary judgment for Defendants-Appellees, Harrah's Las Vegas, Inc. and remand the case for further proceedings.

ARGUMENT

I. THE COURT SHOULD REVERSE AND REMAND THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT BECAUSE A GENUINE ISSUE OF MATERIAL FACT EXISTS REGARDING WHETHER APPELLANT'S INJURY AROSE OUT OF THE WORKPLACE

NRS 616A.020 provides that employees who are injured in the course of employment shall have the exclusive remedy of worker's compensation, as set forth in NRS chapters 616A to 616D (the Nevada Industrial Insurance Act [NIIA]). "Whether an injury occurs within the course of the employment refers merely to the time and place of employment, i.e., whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties." *Wood v. Safeway, Inc.*, 121 Nev. 724, 733 (2005).

This Court has consistently held that in order for a workplace injury to implicate the NIIA, such injury must "arise out of the employment and occur within the course of that employment." *See Wood*, 121 Nev., at 733; *see also McAffee v. Garrett Freightlines, Inc.*, 95 Nev. 483, 485 (1979) ("Where. . . the employee suffers injury by accident sustained arising out of and in the course of employment, the Act provides the employee's exclusive remedy and relieves the complying employer from common law liability"). The determination of whether an injury "arose out of employment," is made by application of the "increased risk test." *Rio All Suite Hotel and Casino v. Phillips*, 126 Nev. 346, 351 (2010). In order for an injury to be compensable under the NIIA the injury must result from "increased risks" related to the scope of employment, and not "personal risks" which simply happen to occur while at the workplace. 126 Nev. 346, 351 (2010) ("Generally, injuries caused by employment-related risks are deemed to arise out of employment and are compensable. . . Personal risks are those that are "so clearly personal that, even if they take effect while the employee is on the job, they could not possibly be attributed to the employment. For example, a fall caused by the [employee's] personal condition, such as a bad knee, epilepsy, or multiple sclerosis, is a personal risk.").

The injury for which Mr. Baiguen seeks compensation in this case is the loss of chance from recovery of the underlying stroke resulting from the Defendants'

negligence in responding to the obvious signs of stroke exhibited by Israel Baiguen on the afternoon of October 19, 2012. Nevada's 'loss of chance doctrine' provides that "the injury to be redressed by the law is not defined as the [injury] itself, but, rather, as the decreased chance of survival caused by the [negligence]." *Perez v. Las Vegas Med. Ctr.*, 107 Nev. 1, 7 (1991).

Mr. Baiguen's stroke, and Harrah's subsequent failure to render aid are injuries that did not arise out of and in the course his employment, but rather resulted from a *personal risk* not covered by the NIIA under the *Wood* and *Phillips* analysis. Summary judgment should not have been entered as there remain genuine issues of material fact including, but not limited to: the time of the onset of the stroke; whether the risk encountered by Mr. Baiguen was inherent to his employment or one which could equally befall a non-employee (the "Increased-Risk Test"); and, whether the actions of Mr. Baiguen after arriving on the property constituted "reasonably performing his duties."

A. The District Court's erred in ruling that no genuine issues of material fact exist with respect to whether Plaintiff-Appellant's injury arose out of and in the course his employment.

The injury suffered by Israel Baiguen's on October 19, 2012 does not fall under the purview of the NIIA because it was an injury that did not *arise out of and within the course of his employment* with Defendants-Appellees Harrah's Las Vegas. The plain language of NRS 616A.020 states that the exclusive remedy

provisions of the NIIA only limit the recovery "for an employee on account of an injury by accident sustained *arising out of and in the course of employment*..." *See* NRS 616A.020 (emphasis added). The use of the word "and" is a conjunctive connector which demonstrates the statute's intent that such injury must be twofold: (1) directly related to the employee's employment, (2) while the employee is working.[1] The statutory language of NRS 616A.020 is plain and unambiguous, and therefore its language will be given its ordinary meaning. *See McGrath v. State Dept. of Public Safety,* 123 Nev. 120, 123 (2007) ("In interpreting the plain language of a statute, we presume that the Legislature intended to use words in the usual and natural meaning").

This Court has previously determined what constitutes injury "within the course of employment" and when an injury "arises out of employment." In *Wood*, this Court found that "whether an injury occurs *within the course of the employment* refers merely to the *time and place of employment, i.e., whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties*." *Wood,* 121 Nev., at 733 (emphasis added). In this case, there are genuine issues of material fact as to these elements. While it is undisputed that the injury occurred upon Harrah's property, there are disputed

[1] *See* William N. Eskridge, Jr., Philip P. Frickey, & Elizabeth Garrett, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY, at 827. (3d. ed. 2001)

material issues of fact with respect to the other two elements; "during working hours" and "while the employee is reasonably performing his or her duties."

Witness testimony indicates Mr. Baiguen did not clock in that day and documents produced by Harrah's during the course of the litigation indicate that Mr. Baiguen did not clock in for work at any time on October 19, 2012. (Vol. 2, APP 00151 at 29:14-16; Vol. 2, APP 166-168). No "call in slip" was ever generated for that date which pursuant to company policy should have been had Mr. Baiguen reported for work and then left early. (Vol. 2, APP 00135, 152-153).

No testimony or other evidence indicates that Mr. Baiguen "started doing the[se] preliminary activities" to commence his workday as was found by the District Court and upon which the District Court relied in granting summary judgment. In fact, all of the evidence adduced to date shows that Mr. Baiguen was completely mute and "disoriented" during the entire time he was on Harrah's property on October 19, 2012. (Vol. 2, APP 167 at 31:24). Mr. Santaren further testified that Mr. Baiguen kept "on walking around the basement where the clock-in area is" and confirmed that such behavior was unusual for Mr. Baiguen. (*Id*. at 31:13-21) and that some of his co-workers and supervisors tried to talk to him but that he would just "look at them and smile." (*Id*. at 32:5-7).

Mr. Santaren states he did not see Mr. Baiguen clock in at any time on October 19, 2012. *Id.* at 38. Defendant Harrahs did not produce time clock

records demonstrating that Mr. Baiguen did clock in on October 19, 2012. Lastly, Mr. Santaren testified that he witnessed the department supervisor, Karla Young, approach Mr. Baiguen before he had completed a single work related task and tell him "you can't work." (Vol. 2, APP 169 at 41).

Karla Young's deposition testimony also supports the conclusion that Mr. Baiguen did not clock in and therefore did not "work" on October 19, 2012. Ms. Young testified to coming out of her office and attempting to speak to Mr. Baiguen, but that Mr. Baiguen did not respond. (Vol. 2, at 29:21-25). Ms. Young further testified that Mr. Santaren asked if he could take Mr. Baiguen home due to him appearing "sick," to which Ms. Young responded "of course." *Id*. at 30:1-4.

None of the deposition testimony in this case nor any of Mr. Baiguen's employment records show that he was clocked in or otherwise acting within the "course of his employment" at any time on on October 19, 2012. In fact, by all accounts Mr. Baiguen was physically incapable of even speaking, let alone doing "the activities to commence his workday" as was determined by the District Court. Eyewitness accounts from Mr. Santaren and Ms. Young corroborate that Mr. Baiguen appeared to be "sick" and did respond to any attempts to communicate with him. Mr. Santaren testified that he never saw Mr. Baiguen clock in, or retrieve any items to begin work. Ms. Young further stated that she allowed Mr. Baiguen's co-workers to take him home that day, and that Mr. Baiguen did not

work that day. Therefore, Mr. Baiguen's stroke, and more importantly Defendants' negligence in failing to render aid, is not an injury which occurred "within the course of" his employment.

Secondly, the second part of the two factor test is determining whether Mr. Baiguen's injury was "within the course of employment." *See Wood*, 121 Nev., at 733. In *Wood*, the Court held that the term "within the course of the employment" refers "merely to the time and place of employment, i.e., whether the injury occurs at work, during working hours, and while the employee is reasonably performing his or her duties." *See id*. Therefore, for Mr. Baiguen's injury to fall under NIIA, all of the following three criteria must be met to qualify as "within the course of employment:" (1) the injury occurs at work; (2) during working hours; (3) and while the employee is reasonably performing his or her duties.

Here, Mr. Baiguen was on his employer's premises, but he was not working or performing any employee functions. Consequently, even though Mr. Baiguen's stroke and Defendants' failure to render aid happened at the premises of his employment, it did not happen at his job or "work" per se. Moreover, Mr. Baiguen never clocked in, and was sent home before his schedule shift on that day. Hence the injury never occurred "during working hours." Lastly, Mr. Baiguen was not performing any of his duties as a houseperson for Harrah's on October 19, 2012. He arrived to Defendants' premises to attempt to clock in for his schedule work

shift that day, but suffered a stroke prior to his shift and was sent home. None of the evidence provided demonstrates that any of Mr. Baiguen's actions were done to "reasonably perform his [employment] duties."

As shown by the evidence and facts, none of the three criteria under *Wood* demonstrate that Mr. Baiguen's injury occurred "within the course of employment." His injury: (1) did not occur at work, but rather just at his employer's premises; (2) did not occur during working hours because he never clocked in and was sent home; and (3) he was not performing any of his job duties. Since the criteria listed have not been met, it is clear that Mr. Baiguen's injury did not occur "within the course of employment" as held under *Wood*.

B. The District Court erred in ruling that no genuine issues of material fact exist with respect to whether Plaintiff-Appellant's injuries arose out of his employment.

In determining whether Mr. Baiguen's injury "arose out of" his employment, the District Court should have applied the analysis set forth in *Phillips.* Any reasonable application of that analysis would reveal that Mr. Baiguen's injury resulting from Defendants' failure to render aid during his stroke is not "related to some risk involved within the scope of employment." *Phillips*, 126 Nev., at 350-351. In applying the increased-risk test from *Phillips* to the underlying facts, there is no evidence (or alternatively, a genuine issue of material fact) that Mr. Baiguen was exposed "to a common risk more frequently than the general public." *Id*.

Defendants have not demonstrated that simply being an employee (who was not working or clocked in) experiencing a stroke while on the employer's premises subjects such person to an increased risk more-so than a member of the general public. In fact, as will be discussed in detail below, Nevada law has established that the duty of Defendants Harrah's to render aid to its guests are identical to its employees. *See Lee v. GNLV Corp.*, 117 Nev. 291, 295 (2001) ("where a special relationship exists between the parties, such as with an innkeeper-guest, teacher-student or employer-employee, an affirmative duty to aid others in peril is imposed by law").

Additionally, in *Phillips*, this Court addressed when an injury "arises out of" employment: "an injury *arises out of employment* if there is 'a causal connection between the injury and the employee's work,' in which 'the *origin of the injury is related to some risk involved within the scope of employment*.'" *Phillips*, 126 Nev., at 350-351 (citing *Rio Suite Hotel & Casino v. Gorsky*, 113 Nev. 600, 604 (1997) (emphasis added). Here, there is no "causal connection" between Mr. Baiguen's work as a houseperson and the risk that Harrah's employees would ignore the obvious signs of a stroke and fail to seek medical help for him That risk could befall any person on the premises at any time.

It is clear that Mr. Baiguen's stroke was a "personal risk" which occurred while on his employer's premises, prior to him beginning his work. Under

Phillips, personal risks are those that are "so clearly personal that, even if they take effect while the employee is on the job, they could not possibly be attributed to the employment. For example, a fall caused by the [employee's] personal condition, such as a bad knee, epilepsy, or multiple sclerosis, is a personal risk." *See Phillips*, 126 Nev., at 351. Mr. Baiguen's stroke, combined with Defendants' failure to render aid to him, is a personal risk that is clearly not "attributed to the employment." *See id.*

Thus, summary judgment was improper as Defendants failed to provide there is any undisputed evidence demonstrating Mr. Baiguen's stroke and Defendants' subsequent failure to render aid is an injury that falls under the NIIA. As explained above, Mr. Baiguen's injury did not "arise out of and within the course of his employment" as held under *Phillips* and *Wood*. When looking at the underlying summary judgment motion in a light most favorable to Plaintiff-Appellant, there is, at a minimum, a genuine issue of material fact regarding whether Mr. Baiguen's injury arose out of and occurred within the course of his employment. This is a factual issue that should be determined by a trier of fact, not at the summary judgment stage by the lower court. Based on the foregoing reasons, summary judgment should be reversed and remanded as there are genuine issues of material fact regarding whether Mr. Baiguen's injuries arose out of and within the course of his employment.

C. The District Court's erred in failing to apply the "increased-risk test".

At the hearing on the motion for summary judgment the District Court stated its reasoning as follows:

"So I think clearly it arises out of the employment because it's alleged that it was occurring at his employment – at his place of employment. And it was because of the interaction with Harrah's employees supposedly not doing what they should have done that these injuries were exacerbated or worsened or allowed to continue on." (Vol. 2, APP 223, at lines 1-5).

Plaintiff's counsel suggested additional briefing on the *Phillip's* analysis which the court declined. (Vol. 2, APP 226, at lines 4-12).

The analysis urged by Plaintiff-Appellant was one to distinguish between "personal risk" and "increased risk" when determining whether an injury *arose out of* employment:

> Generally, injuries caused by employment-related risks *are deemed to arise out of employment* and are compensable. . . Personal risks are those that are "so clearly personal that, even if they take effect while the employee is on the job, they could not possibly be attributed to the employment. For example, a fall caused by the [employee's] personal condition, such as a bad knee, epilepsy, or multiple sclerosis, is a personal risk. As such, an employee's injury resulting from a personal risk is not compensable.

Phillips, 126 Nev., at 351. In *Phillips*, the Court expressly adopted the "increased-risk test" to determine whether an injury arose out of employment. *See Id.* at 352-353 (The increased-risk test "examines whether the employment exposed the claimant to a risk greater than that to which the general public was exposed"). The *Phillips* Court held that an employee may recover under the NIIA for an injury if

such injury was a result of being exposed "to a common risk more frequently than the general public." *Id*. at 353 (quoting *Nascote Industries v. Industrial Com'n*, 820 N.E.2d 531, 535 (2004)). Therefore, an injury suffered as a result of a risk common to both employees and non-employees is not compensable under a worker's compensation claim and as a result not subject to an exclusive remedy disposition.

Here, there has been no evidence that Defendants' failure to render aid, was a risk Mr. Baiguen was more frequently exposed to than the general public. In fact, because Mr. Baiguen's employer, Harrah's, is also an "innkeeper" the exact same duty to render aid imposed upon Harrah's by the "employer-employee" relationship to Mr. Baiguen is imposed upon Harrah's by the "innkeeper-guest" relationship between Harrah's and its customers. In this unique case a customer suffering a stroke in the casino would be subject to the same risk Mr. Baiguen was: that Harrah's employees would breach their duty to render aid. There is a genuine issue of material fact whether Defendants' failure to render aid to Mr. Baiguen during his stroke would have been any different had Mr. Baiguen being a guest on Defendants' premises.

The District Court's failure to apply the "increased-risk" test as set forth in Phillips is reversible error.

CONCLUSION

Both the plain language meaning of NRS 616A.020 and precedential court rulings in *Wood*, *Phillips*, and *McAffee* demonstrate that Plaintiff-Appellate Israel Baiguen's claim for injury under the 'loss of chance doctrine' did not arise out of and within the course of his employment. Further, Nevada law imposes upon Defendants Harrah's Las Vegas an affirmative duty to render aid to a party in peril, particularly when an employer-employee relationship exists between the parties. The evidence in this case indicates that, at minimum, a genuine issue of material fact exists whether Mr. Baiguen's injury arose out of his employment and occurred within the course and scope of his employment.

///

///

///

///

///

///

///

///

///

For the foregoing reasons, the District Court's entry of summary judgment should be reversed and the case should be remanded for further proceedings.

Dated this 29th Day of August, 2016.

Law Offices of Steven M. Burris, LLC

By:_____

Steven M. Burris, Esq.
Nevada Bar No. 603
Jeffrey L. Galliher, Esq.
Nevada Bar No. 8078
Adrian A. Karimi, Esq.
Nevada Bar No. 13514
2810 W. Charleston Boulevard, # F-58
Las Vegas, Nevada 89102

Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, font size 14.

2. I further certify that this brief 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 20 pages.

3. Finally, I hereby certify that I have read this opening brief, 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 brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief 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. 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 29th Day of August, 2016.

Law Offices of Steven M. Burris, LLC

By:_____

Steven M. Burris, Esq.
Nevada Bar No. 603
Jeffrey L. Galliher, Esq.
Nevada Bar No. 8078
Adrian A. Karimi, Esq.
Nevada Bar No. 13514
2810 W. Charleston Boulevard, # F-58
Las Vegas, Nevada 89102

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Steven M. Burris LLC and that on the 29th day of August 2016, pursuant to N.E.F.C.R 8, I electronically filed and served a true and correct copy of the above and foregoing APPELLANT'S OPENDING BRIEF (as resubmitted) 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:

Scott M. Mahoney, Esq
FISHER & PHILLIPS, LLP
3800 Howard Hughes Pkwy, Suite 950
Las Vegas, NV 89169

Attorney for Respondents

An Employee of the law offices of Steven M. Burris, LLC