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**REPLY**

**DAVID H. BENAVIDEZ, ESQUIRE**

Nevada Bar No. 004919

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Attorney for Petitioner

Electronically Filed  
Feb 05 2020 10:09 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ASSOCIATED RISK MANAGEMENT, INC., )

Appellant, )

vs. )

) Case No.: A-19-792902-J

) Dept No.: X (10)

MANUEL IBANEZ, THE DEPARTMENT OF )

) Supreme Court No. 80480

ADMINISTRATION, HEARINGS DIVISION, )

APPEALS OFFICE, an agency of the State )

of Nevada )

Respondents. )

**REPLY TO THE OPPOSITION TO MOTION FOR STAY  
PENDING SUPREME COURT REVIEW**

COMES NOW, the Petitioner Associated Risk Management, Inc. by  
and through its counsel David H. Benavidez, and replies to the  
opposition for stay.

Permanent total disability is premature in this claim.

The opposition asserts the Appellant will only have to pay  
installment payments if this Court denies the stay. The  
installment payments defeat the purpose of the stay.

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1 The claimant continues to date to receive medical care. The  
2 claim remains open. No authorized treating physician has thus far  
3 found the claimant medically stable.

4  
5 As noted in the motion, per a prior Appeal Officer decision,  
6 the claimant is not legally eligible to work in the United States  
7 and is therefore not entitled to bi-weekly temporary total  
8 disability compensation benefits.

9  
10 The claimant sought a one time unauthorized visit with Dr.  
11 Cestkowski who opined the claimant is physically permanently and  
12 totally disabled. Dr. Cestkowski was not made aware of the  
13 claimant's illegal status. Dr. Cestkowski did not check or assess  
14 the labor market for possible employment opportunities based on  
15 the claimant's temporary work restrictions. Dr. Cestkowski, a  
16 rating physician, failed to note the claimant was not medically  
17 stable, had not been rated for permanent impairment or assessed by  
18 a vocational counselor for job opportunities and had not attended  
19 a functional capacity evaluation to assess the claimant's true  
20 physical capabilities.

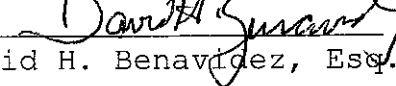
21  
22 In fact, counsel does not and cannot rebut Nevada Indus.  
23  
24 Comm'n v. Hildebrand, 100 Nev.47, 675 P.2d 401 (1984), where the  
25 treating physician found her at maximum medical improvement,  
26 medically stable and Hildebrand had been rated for permanent  
27  
28

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1 impairment receiving a 5% award unlike the present claim where the  
2 claimant continues to treat, is not stable and continues with  
3 light duty restrictions. Hildebrand was offered vocational  
4 services where a vocational counselor assessed the job market,  
5 unlike this claim. Hildebrand was 62 years old and already  
6 retired from the workforce unlike this claim where the claimant is  
7 49 years old. Hildebrand was not granted permanent total  
8 disability benefits.  
9  
10

11 The Appellant is more than likely to prevail. The stay is  
12 warranted only for compensation benefits as the claimant is not  
13 medically stable and continues to treat.  
14

15 DATED this 5<sup>th</sup> day of February, 2020.

16 By:   
17 David H. Benavidez, Esq.  
18 Nevada Bar No. 004919  
19 850 S Boulder Hwy #375  
20 Henderson, NV 89015  
21 Counsel for Appellant  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury, that I am an employee of The Law Office of David H. Benavidez and on the 5<sup>th</sup> day of February, 2020, I deposited the foregoing **REPLY TO THE OPPOSITION TO MOTION FOR STAY PENDING SUPREME COURT REVIEW** in the United States Mail, with first class postage fully prepaid thereon, sent by electronic delivery, or had hand-delivered, copies of the attached document addressed as follows:

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Rose Mary Keys, Paralegal

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