

## IN THE SUPREME COURT OF THE STATE OF NEVADA

ASSOCIATED RISK MANAGEMENT,  
INC.

Appellant,

vs.

MANUEL IBANEZ

Respondent.

Electronically Filed  
Dec 07 2020 11:25 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
District Court No.: A-19-792902-J

INTERESTED/NON-PARTY MOTION FOR PUBLICATION

COMES NOW, Interested/non-party, NEVADA JUSTICE ASSOCIATION, pursuant to Nevada Rules of Appellate Procedure (hereinafter "NRAP") 36(f), by and through its attorneys, CORY A. SANTOS, SR., ESQ. of SANTOS LAW, PLLC. and HERB J. SANTOS, JR., ESQ. of LAW FIRM OF HERB SANTOS, JR., and respectfully moves this honorable Court for an Order directing that this Court's Order of Affirmance dated November 23, 2020 be published in the Nevada Reports.

This Motion is based on NRAP 36, the following Points and Authorities, and all documents filed herein to date.

Respectfully submitted this 7<sup>th</sup> day of December, 2020.

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I.

Points and Authorities

Interested/non-party, Nevada Justice Association (hereinafter “NJA”), files this Motion in support of Respondent IBANEZ’s Motion for Publication of Order of Affirmance filed on December 7, 2020, for various reasons. This Honorable Court’s holding in this matter should be published as it satisfies a significant question of first impression in Nevada worker’s compensation law, it significantly clarifies a rule of law previously announced by the Nevada Supreme Court and, it involves an issue of great public importance that has broad application in Nevada workers’ compensation case law which extends beyond the parties hereto.

NRAP 36 states in pertinent part:

(f) Motion to Reissue an Order as an Opinion. A motion to reissue an unpublished disposition or order as an opinion to be published in the Nevada Reports may be made under the provisions of this subsection by any interested person. With respect to the form of such motions, the provisions of Rule 27(d) apply; in all other respects, such motions must comply with the following:

(1) Time to File. Such a motion shall be filed within 14 days after the filing of the order. Parties may not stipulate to extend this time period, and any motion to extend this time period must be filed before the expiration of the 14-day deadline.

...

(3) Contents. Such a motion must be based on one or more of the criteria for publication set forth in Rule 36(c)(1)(A)-(C). The motion must state concisely and specifically on which criteria it is based and set forth argument in support of such contention. If filed by or on behalf of a nonparty, the motion must also identify the movant and his or her interest in obtaining publication.

NRAP 36(2)(f), as cited above, allows “any interested person” to motion this Honorable Court for an order to publish a decision. Pursuant to NRAP 36(2)(f)(3), the NJA is an “interested person” in this matter as it is a non-profit educational organization. As a non-profit educational organization consisting of independent lawyers who represent consumers and share the common goal of improving the civil justice system, the NJA is a non-profit educational organization whose charter

1 strives towards three primary goals: 1) to continually provide its membership with  
2 up-to-date knowledge and information through continuing legal education programs  
3 and Nevada specific publications; 2) to monitor the legislative session in order to  
4 ensure that Nevadans' access to the courts is not diminished, and; 3) to educate the  
5 public regarding their individual rights and responsibilities as citizens.

6 Additionally, the NJA has a keen interest in the development of Nevada law  
7 in the areas in which its members practice. One of these important areas is workers'  
8 compensation law. The NJA has an interest in this case because its outcome and  
9 decision will have a profound effect on the practice of law in the workers'  
10 compensation area. Publication of this decision will especially impact the workers'  
11 compensation benefits that are due to the clients represented by NJA members and  
12 those clients' families.

13 The NJA requests that this Court grant this Motion, along with Respondent  
14 IBANEZ's Motion for Publication (Hereinafter "Res. Mot. Pub.") which it supports  
15 and joins for various reasons. The publication of this Decision would satisfy a  
16 significant question of first impression in Nevada Worker's Compensation law and  
17 also clarify a rule of law previously announced by the Nevada Supreme Court. As  
18 argued in Respondent IBANEZ's Motion, the insurer herein misconstrued this  
19 Honorable Court's prior holding in *Tarango v. State Industrial System*, 117 Nev.  
20 444, 25 P.2d. 175 (2001) to deny Permanent Total Disability (Hereinafter "PTD")  
21 benefits to Respondent IBANEZ. Res. Mot. Pub., p.2. While the *Tarango* decision  
22 did not address PTD benefits, this insurer, as others have, utilized the holding in  
23 *Tarango* to withhold benefits from an injured worker. Thus, this Court's holding in  
24 this matter clearly articulates and settles future needless appeals as it both settles a  
25 question of first impression (whether an injured worker can receive PTD benefits  
26 even though he/she is undocumented) and clarifies the *Tarango* holding. The  
27 decision of this Court here is clear, comprehensive and easily applicable for future  
28 precedent in the much needed published case law of Nevada workers'

1 compensation. As such, the granting of this Motion should not require revisions to  
2 the text of the unpublished disposition which would result in discussion of  
3 additional issues not included in the original decision. NRAP 36(f)(4).

4 Moreover, publication would serve significant public policy and have broad  
5 application to Nevada workers' compensation law. This Court's November 23,  
6 2020 Order of Affirmance satisfies a current need for an opinion which clarifies a  
7 commonly argued issue. The issues raised here should be published because by  
8 doing so, this Honorable Court preserves judicial resources, gives guidance to lower  
9 courts, and serves the public policy behind workers' compensation.

10 The issue which was raised here will be litigated in another case if this well  
11 reasoned Opinion is not published. By granting this Motion, this Court will provide  
12 guidance which will prevent unnecessary future appeals regarding the same denial  
13 of benefits at issue raised here. As this Honorable Court has consistently held, the  
14 Nevada workers' compensation statutes were enacted for the purpose of giving  
15 compensation, not for the denial thereof. *State Indus. Ins. Sys. v. Weaver*, 103 Nev.  
16 196, 199-200, 734 P.2d 740 (1987). Moreover, this Honorable Court has also held  
17 "It is unquestionably the purpose of worker's compensation laws "to provide  
18 economic assistance to persons who suffer disability or death as a result of their  
19 employment." *Breen v. Caesars Palace*, 102 Nev. 79, 83, 715 P.2d 1070,  
20 1072-73(1986) (quoting *State Indus. Ins. Sys. v. Jesch*, 101 Nev. 690, 694, 709 P.2d  
21 172, 175 (1985)). This Honorable Court recently held that the Nevada Industrial  
22 Insurance Act is a trade off whereby the injured worker loses the right to sue the  
23 employer in tort and in return, the injured worker receives the protections of the  
24 Nevada Industrial Insurance Act. See, *Baiguen v. Harrah's*, 134 Nev. Adv. Op. 71  
25 (2018).

26 In addition, in this case, Respondent had to defend his right to workers'  
27 compensation benefits by litigation through the administrative courts to this  
28 Honorable Court over many years. If this Court publishes this opinion, it will

1 prevent future injured workers from having to travel through the appeals process  
2 and thus also, preserve valuable state resources. This has the additional benefit of  
3 serving public policy by ensuring that Nevada injured workers receive their  
4 compensation quickly. *See*, NRS 616A.010(1) which states:

5 1. The provisions of chapters 616A to 617, inclusive, of NRS must be  
6 interpreted and construed **to ensure the quick and efficient payment of**  
7 **compensation to employees who are injured or disabled** at a reasonable  
8 cost to the employers who are subject to the provisions of those chapters;

(Emphasis added).

9 Publication of this decision would protect the State of Nevada's resources as  
10 a published precedent, would solidify Nevada law and guide Nevada industrial  
11 insurance companies and third party administrators. This supports Nevada public  
12 policy as it is highly probable that fewer injured workers would need to apply for  
13 state assistance due to having his/her benefits being incorrectly terminated. Thus,  
14 publication of this Honorable Court's Opinion in this matter would best serve the  
15 public policy behind workers' compensation and add valuable and much needed  
16 precedential case law to this Honorable Court's workers' compensation library.

## 17 II.

### 18 Conclusion

19 Based on the above reasons, the NJA contends that this decision is an  
20 important legal opinion which warrants publication as set forth in NRAP 36. This  
21 Court's opinion addresses a common issue which is litigated and provides clear  
22 guidance to lower courts. Finally, this Honorable Court's decision addresses  
23 several important public policy issues which are best served by publication. Thus,  
24 the NJA respectfully requests this Court to grant this Motion.

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1 Respectfully submitted this 7<sup>th</sup> day of December, 2020.

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**CERTIFICATE OF MAILING**

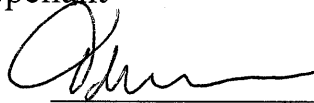
The undersigned hereby certifies that pursuant to Nevada Rules of Civil Procedure 5(b), on the 7<sup>th</sup> day of December, 2020 a true and correct copy of the above and foregoing INTERESTED/NON-PARTY MOTION FOR PUBLICATION in the above entitled matter was:

R deposited in the United States mail, postage prepaid, addressed to:

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