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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

DARIA HARPER, an individual; and DANIEL
WININGER, an individual,

Plaintiffs,

vs.

COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY, an Arizona
corporation; COPPERPOINT GENERAL
INSURANCE COMPANY, an Arizona
corporation; LAW OFFICES OF MARSHALL
SILBERBERG, P.C., a California corporation;
KENNETH MARSHALL SILBERBERG aka
MARSHALL SILBERBERG aka K.
MARSHALL SILBERBERG, an individual;
THOMAS S. ALCH aka THOMAS STEVEN
ALCH, an individual; SHOOP, A
PROFESSIONAL LAW CORPORATION, a
California corporation; DOES 1-50, inclusive,

Defendants.

Case No.: A-20-814541-C

Dept. No.: 30

NOTICE OF APPEAL

NOTICE IS HEREBY given that plaintiffs Daria Harper and Daniel Winger, by and through
their attorneys of record, the law firms BLUMBERG LAW CORPORATION and MAIER GUTIERREZ &

1 ASSOCIATES, appeal to the Supreme Court of Nevada from the Order entered by the Eighth Judicial
2 District Court on October 26, 2020, granting the motion to dismiss filed by defendants CopperPoint
3 Mutual Insurance Holding Company and CopperPoint General Insurance Company and denying the
4 motion for partial summary judgment filed by plaintiffs Daria Harper and Daniel Wininger, a copy of
5 which is attached hereto as **Exhibit 1**.

6 DATED this 24th day of November, 2020.

7 Respectfully submitted,

8 **BLUMBERG LAW CORPORATION**

9 /s/ John P. Blumberg

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF APPEAL** was
3 electronically filed on the 24th day of November, 2020, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List, as follows:

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18 James Kjar, Esq.
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23 *Attorneys for Defendants Kenneth Marshall Silberberg and*
24 *Law Offices of Marshall Silberberg*

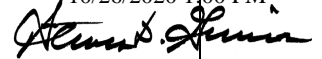
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Attorneys for defendants Shoop A Professional Law Corporation
and Thomas S. Alch

24 /s/ Natalie Vazquez

25 An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

DARIA HARPER, an individual; and)
DANIEL WININGER, an individual,)
)
Plaintiffs,)
)
vs.)
)
COPPERPOINT MUTUAL INSURANCE)
HOLDING COMPANY, an Arizona Corp.;)
COPPERPOINTI GENERAL INSURANCE)
COMPANY, an Arizona Corp; LAW OFFICES)
OF MARSHALL SILVERBERG, P.C., a)
California Corp.; KENNETH MARSHALL)
SILVERBERG aka MARSHALL SILVERBERG)
Aka K. MARSHALL SILVERBERG, an)
Individual; THOMAS S. ALCH aka THOMAS)
STEVEN ALCH, an individual; SHOOP, A)
PROFESSIONAL LAW CORPORATION, a)
California Corporation, DOES 1-50, inclusive,)
)
Defendants.)
_____)

CASE NO.: A-20-814541-C
DEPT NO.: XXX

ORDER

The above-referenced matter is scheduled for a hearing on 10/28/20 with regard to Defendant Copperpoint's Motion to Dismiss or Motion for Summary Judgment; Defendant Shoop's Motion to Dismiss; Defendant Alch's Motion to Dismiss or for Summary Judgment; Defendant Marshall Silverberg's Joinder to Alch's Motion to Dismiss or for Summary Judgment; and Plaintiff's Motion for Partial Summary Judgment. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this Order issues.

COPPERPOINT'S MOTION TO DISMISS.

FACTUAL INFORMATION.

1 Plaintiff, Daria Harper, is an Arizona resident, who was employed by an Arizona
2 employer that carried workers' compensation insurance with Defendant, Copperpoint
3 General Insurance Company (Copperpoint). Plaintiff was initially injured in Arizona
4 during her employment with Islander RV Resort, and she filed for and obtained
5 workers' compensation benefits in Arizona. Plaintiff required medical treatment in Las
6 Vegas, and was injured as a result of medical negligence. Plaintiff then filed a medical
7 malpractice/professional negligence suit in Clark County, Nevada. The industrial claim
8 was administered in accordance with the provisions of the Arizona Workers'
9 Compensation Act, and Defendant Copperpoint paid benefits of approximately
10 \$3,171,095. With regard to Plaintiff's professional negligence claim in Nevada, Plaintiff
11 received \$6,250,000.00 in settlement funds. Plaintiff claims her recovery was limited
12 by NRS 42.021 which would diminish her recovery by the admission of evidence that
13 medical bills and lost earnings were paid by workers' compensation. But that same
14 statute would preclude a lien by the workers' compensation carrier if such payments
15 were admitted at trial. Defendant, Copperpoint, has ceased paying Plaintiff benefits,
16 claiming that it now has a credit for \$3,171,095, and it is not required to pay further
17 benefits until it has recouped its lien. Plaintiff filed an action in Clark County, Nevada,
18 seeking declaratory and injunctive relief. Plaintiff seeks a declaratory judgment that
19 Copperpoint is required to continue paying workers' compensation benefits.

20 **SUMMARY OF LEGAL ARGUMENTS.**

21 Copperpoint argues that Plaintiffs' claims for declaratory and injunctive relief
22 must be dismissed pursuant to NRCP 12(b)(1), 12(b)(2), and 12(b)(5). Copperpoint
23 argues that Pursuant to NRCP 12(b)(1), the Court lacks subject matter jurisdiction.
24 Where a statute provides an administrative remedy, declaratory relief is inappropriate.
25 See *Baldonado v. Wynn Las Vegas, LLC.*, 124 Nev. 951, 964 (2008). In matters of
26 workers' compensation, NRS §616A.020 provides that the "rights and remedies
27 provided in chapters 616A to 616D, inclusive, of NRS" to a claimant who suffers a
28 workplace injury "shall be exclusive." Under Arizona law, ARS §23-1022 provides that
the workers' compensation system is an injured worker's exclusive remedy against both
the employer and the employer's workers' compensation carrier. As a result, NRS
§616A.020 bars an injured worker from filing any action in District Court regarding his

1 or her workers' compensation claim prior to the conclusion of the Department of
2 Administration's administrative appeals process.

3 Copperpoint argues that under Nevada law, this court is without subject-matter
4 jurisdiction to provide declaratory or injunctive relief in the instant case. First,
5 Plaintiffs did not adhere to the administrative appeals process, which pursuant to *Reno*
6 *Sparks Convention Visitors Auth. v. Jackson*, 112 Nev. 62, 67 (1996), strips the
7 Department of Administration and any subsequent judicial court of jurisdiction.
8 Second, pursuant to NRS §233B.135, in reviewing a workers' compensation
9 administrative decision, the District court is limited to either 1) affirming the order or
10 2) setting the order aside in whole or part. NRS § 233B.135 does not allow the District
11 Court to grant any form of declaratory or injunctive relief in a workers' compensation
12 matter.

13 Copperpoint argues that the case must be dismissed for lack of personal
14 jurisdiction pursuant to NRCP 12(b)(2). Copperpoint cites to *Arbella Mut. Ins. Co. v.*
15 *Eighth Judicial Dist. Court*, in which the Nevada Supreme Court stated that:

16 To obtain jurisdiction over a non-resident defendant, a plaintiff must show: (1)
17 that the requirements of the state's long-arm statute have been satisfied, and (2)
18 that due process is not offended by the exercise of jurisdiction. First, Nevada's
19 long-arm statute, NRS 14.065, reaches the limits of due process set by the
20 United States Constitution. Second, the Due Process Clause of the Fourteenth
21 Amendment requires a nonresident defendant to have "minimum contacts" with
22 the forum state sufficient to ensure that exercising personal jurisdiction over
23 him would not offend "traditional notions of fair play and substantial justice."
24 The defendant must have sufficient contacts with the forum such that he or she
25 could reasonably anticipate being hauled into court there.

26 See *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 513 (2006). In
27 *Sinatra v. Nat'l Enquirer, Inc.*, the Ninth Circuit Court of Appeals stated that:

28 When a defendant challenges the sufficiency of personal jurisdiction, the
plaintiff bears the burden of establishing personal jurisdiction over the
defendant.

See *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1194 (9th Cir. 1988).

Copperpoint argues that here, Plaintiffs have not established that Nevada courts
have personal jurisdiction over the Copperpoint Defendants. The Copperpoint
Defendants are Arizona Corporations, and in this case, an Arizona Corporation
provided workers' compensation coverage and benefits under Arizona law to Harper's
Arizona employer. Plaintiff, Harper, a resident of Arizona, received benefits from

1 Defendant, Copperpoint, under Arizona workers' compensation law. Copperpoint
2 Mutual Insurance Holding Company did not provide workers' compensation insurance
3 to Harper's employer nor administer benefits under Harper's claim, and otherwise has
4 no connection to Harper. Based on these facts, Copperpoint argues that Plaintiffs have
5 not established that this Court has personal jurisdiction over Copperpoint Mutual or
6 Copperpoint General.

7 Copperpoint next argues that pursuant to NRCP 12(b)(5), the Plaintiff's claims
8 must be dismissed, because even viewing the facts in the light most favorable to the
9 Plaintiffs, the requirements for declaratory relief remain unmet. Citing to NRS
10 616A.020, Copperpoint argues that the rights and remedies contained in NRS 616A
11 through 616D are the exclusive means of securing compensation for an industrial
12 injury. Similarly, ARS 23-1022 provides that the Arizona workers' compensation
13 system is the exclusive remedy for an Arizona worker, such as Harper, who sustains an
14 industrial injury.

15 Copperpoint argues that Plaintiff's second cause of action for "injunctive relief,"
16 is a remedy, not a cause of action.

17 Copperpoint argues that Copperpoint Mutual Insurance Holding Company must
18 be dismissed as it did not administer Harper's Workers' Compensation Claim, and
19 owed no duty to Harper. There are no possible set of facts under which Plaintiff may
20 obtain any relief against Copperpoint Mutual. Alternatively, Copperpoint argues that if
21 the Court is not willing to dismiss the Plaintiff's Complaint, Copperpoint is entitled to
22 Summary Judgment pursuant to NRCP 56 because there are no genuine issues of
23 material fact remaining regarding Copperpoint's statutory lien on Plaintiff's medical
24 malpractice settlement, and Copperpoint is entitled to judgment as a matter of law.

25 Copperpoint argues that NRS § 616C.215, which conclusively governs matters of
26 workers' compensation subrogation matters, contains no lien limitation simply because
27 the aggravating injury arose from medical malpractice. Indeed, in *Tri-County Equip. &*
28 *Leasing, LLC v. Klinke*, the Nevada Supreme Court determined that NRS §
616C.215(10) "creates an exception to the collateral source rule." See *Tri-County Equip.*
& Leasing, LLC v. Klinke, 128 Nev. 352, 356 (2012). In *Klinke*, the Nevada Supreme
Court stated that:

The collateral source doctrine does not change this result. As noted, this court
has adopted a per se rule barring the admission of a collateral source of payment

1 for an injury into evidence for any purpose. Nevada recognizes a limited
2 exception to the collateral source rule for workers' compensation payments. In
3 *Cramer v. Peavy*, this court expressly held that NRS 616C.215(10) creates an
4 exception to the collateral source rule. Pursuant to NRS 616C.215(10), "[i]n any
5 trial of an action by the injured employee . . . against a person other than the
6 employer or a person in the same employ, the jury must receive proof of the
7 amount of all payments made or to be made by the insurer or the Administrator
8 [of the Division of Industrial Relations]." The court must then instruct the jury
9 to follow the court's damages instructions without reducing any award by the
10 amount of workers' compensation paid, thus leaving unaltered the general
11 substantive law on calculating damages. The jury-instruction language
12 specifically suggested by the statute reads:

13 Payment of workmen's compensation benefits by the insurer, or in the
14 case of claims involving the Uninsured Employers' Claim Account or a
15 subsequent injury account the Administrator, is based upon the fact that
16 a compensable industrial accident occurred, and does not depend upon
17 blame or fault. If the plaintiff does not obtain a judgment in his or her
18 favor in this case, the plaintiff is not required to repay his or her
19 employer, the insurer or the Administrator any amount paid to the
20 plaintiff or paid on behalf of the plaintiff by the plaintiff's employer, the
21 insurer or the Administrator. If you decide that the plaintiff is entitled to
22 judgment against the defendant, you shall find damages for the plaintiff
23 in accordance with the court's instructions on damages and return your
24 verdict in the plaintiff's favor in the amount so found without deducting
25 the amount of any compensation benefits paid to or for the plaintiff. The
26 law provides a means by which any compensation benefits will be repaid
27 from your award.

28 We have previously recognized that this statute benefits both the plaintiff and
the defendant by preventing jury speculation as to workers' compensation
benefits received. 616C.215(10)'s application to "any trial" gives the statute
universal applicability to trials involving a plaintiff receiving workers'
compensation payments, at least when the plaintiff is required to first use any
recovery to reimburse the insurer for amounts paid.

See *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355–56 (2012)

(quotations omitted and emphasis added by Copperpoint).

In Opposition, the Plaintiffs argue that Defendant Copperpoint's Motion should
be denied because 1) Nevada's workers compensation statutes do not apply to Plaintiff;
2) personal jurisdiction exists because the Copperpoint Defendants do business in
Nevada; and 3) NRS 42.021 takes precedence over Arizona law regarding the
prohibition of a lien on the proceeds from medical malpractice case.

Plaintiffs argue that NRS 616A.020, 616C.315 and 616C.345 only apply to
injured workers who seek workers' compensation pursuant to Nevada law and
employers, and declaratory and injunctive relief causes of action are not covered by the

1 NIIA. Plaintiffs cite to *Conway v. Circus Circus*, 116 Nev. 870, 8 P.3d 837 (2000),
2 wherein the Nevada Supreme Court held that “the exclusive remedy portion of the NIIA
3 does not bar injunctive relief.” *Id.* at 876. Plaintiffs further argue that Arizona
4 Workers’ Compensation statutes do not apply. They claim that the only part of the case
5 subject to the exclusivity provision, the determination whether Plaintiff was entitled to
6 benefits and the amount of those benefits, has been completed. Plaintiffs cite to *State*
7 *Comp. Fund of Ariz. v. Fink* (Fink), 224 Ariz. 611, 233 P.3d 1190 (App. 2010), *State*
8 *Compensation Fund v. Ireland* (Ireland) 174 Ariz. 490, 851 P.2d 115 (App. 1992), and
9 *Stout v. State Compensation Fund* (Stout), 197 Ariz. 238, 243, 3 P.3d 1158, 1163 (App.
10 2000.), as support for the contention that the Courts have jurisdiction and authority
11 over lien issues arising from workers’ compensation actions. Plaintiffs further argue
12 that (1) CopperPoint General Insurance Company is licensed and does business in
13 Nevada, as do other CopperPoint entities; (2) CopperPoint Mutual Insurance Holding
14 Company holds itself out to the public as doing business in Nevada; (3) CopperPoint
15 Mutual Insurance Holding Company has created ambiguity regarding which
16 CopperPoint entity has terminated Plaintiff’s benefits; (4) the cause of action arises out
17 of purposeful contact with Nevada that includes (a) a lien claim for money paid to the
18 Nevada health care providers that treated plaintiff, (b) a claim of the right to have
19 participated in (and by inference, prevent) any settlement of the Nevada medical
20 malpractice action, and (c) claiming a right to reimbursement of and a credit on the
21 proceeds of a settlement of a Nevada medical malpractice lawsuit paid by Nevada
22 health care providers; and (5) CopperPoint Mutual Insurance Holding Company does
23 business as and is also known as CopperPoint Mutual Insurance Company, which is the
24 same entity as CopperPoint Insurance Company, which is licensed and does business in
25 Nevada.

26 In opposing the request for Summary Judgment, Plaintiffs “conceded that
27 CopperPoint Defendants’ lien claim would be valid, but for NRS 42.021 which prohibits
28 the lien.” Plaintiffs suggest that the court must first determine if Nevada Law takes
precedence over Arizona law, and if so, summary judgment must be denied. Plaintiffs
suggest that NRS 42.021 applies to and is part of the Nevada workers’ compensation
scheme, but is specifically limited to medical malpractice third-party actions by an
employee who has collected workers’ compensation benefits. Plaintiffs argue that

1 “Unlike NRS 616C.215(10), NRS 42.021 precludes an employer or workers’
2 compensation carrier which has provided the injured employee benefits from
3 recovering any portion of those benefits by lien, subrogation or otherwise.”

4 Plaintiffs cite to the case of *Tri-County Equip. & Leasing, LLC*, 128 Nev. 352,
5 286 P.3d 593, which cites to NRS 616C.215(10), but Plaintiffs argue that the Court’s
6 analysis there only applies “when the plaintiff is required to first use any recovery to
7 reimburse the insurer for amounts paid.” See Opposition at pgs. 21-22, citing NRS
8 616C.215(10). Plaintiff argues that pursuant to NRS 42.021, a plaintiff pursuing a
9 medical malpractice action is not required to use any recovery to reimburse the insurer
10 that provided him or her with workers’ compensation benefits.

11 **LEGAL ANALYSIS.**

12 Based upon the foregoing, this Court finds and concludes that when an
13 industrial injury claim is brought in Arizona, by an Arizona resident, and is handled
14 and processed according to Arizona laws and statutes, the Arizona law applies to the
15 industrial injury claim. When some of the treatment is rendered in Nevada, as part of
16 that industrial injury claim, Arizona law still applies, to some extent, but if the
17 treatment were, for example, not paid for, it would be the Nevada law, which would
18 control and would provide a mechanism for the Nevada medical care provider to obtain
19 relief and payment. In the present case, the injured worker, Plaintiff, was required to
20 obtain some medical care in Nevada, as part of her Arizona industrial injury claim.
21 That treatment was apparently rendered in a negligent manner, resulting in a medical
22 malpractice claim in Nevada. The Plaintiff resolved that medical malpractice claim by
23 way of a settlement in the amount of \$6,250,000.00. Copperpoint claims that it has no
24 obligation to pay additional benefits in the industrial injury claim, until Plaintiff
25 reimburses it the \$3,171,095.00 which Copperpoint has paid in benefits. Copperpoint’s
26 claim is correctly based on Arizona law, as that is the law that applies to the industrial
27 injury claim. Plaintiff contends that Copperpoint is not entitled to a lien, because NRS
28 42.021 prevents a lien by any collateral source against the Plaintiff.¹

¹ This Court notes that it has previously held NRS 42.021 to be unconstitutional, as a violation of the Takings Clause of the United States Constitution. The constitutionality of the statute was not challenged by either of the parties in this case, and consequently, this Court has no right or ability to adjudicate the constitutionality, and consequently, the Court will proceed as if the parties have stipulated to the constitutionality of that statute.

1 NRS 42.021 reads in pertinent part as follows:

2 NRS 42.021 Actions based on professional negligence of providers of health care:
3 Introduction of certain evidence relating to collateral benefits; restrictions on source of collateral
4 benefits; payment of future damages by periodic payments.

5 1. In an action for injury or death against a provider of health care based upon
6 professional negligence, if the defendant so elects, the defendant may introduce evidence
7 of any amount payable as a benefit to the plaintiff as a result of the injury or death
8 pursuant to the United States Social Security Act, any state or federal income disability
9 or worker's compensation act, any health, sickness or income-disability insurance,
10 accident insurance that provides health benefits or income-disability coverage, and any
11 contract or agreement of any group, organization, partnership or corporation to provide,
12 pay for or reimburse the cost of medical, hospital, dental or other health care services. If
13 the defendant elects to introduce such evidence, the plaintiff may introduce evidence of
14 any amount that the plaintiff has paid or contributed to secure the plaintiff's right to any
15 insurance benefits concerning which the defendant has introduced evidence.

16 2. A source of collateral benefits introduced pursuant to subsection 1 may not:

17 (a) Recover any amount against the plaintiff; or

18 (b) Be subrogated to the rights of the plaintiff against a defendant.

19 Although the Plaintiff argues that NRS 42.021 applies to settlements as well as to
20 cases that are taken to Trial, this Court concludes the opposite. The statute specifically
21 provides that "if the defendant so elects, the defendant may introduce evidence . . ."
22 and if the Defendant does so, "the plaintiff may introduce evidence of any amount that
23 the plaintiff has paid or contributed to secure the plaintiff's right to any insurance
24 benefits. . ." And finally, a collateral source "*introduced pursuant to subsection 1* may
25 not recover any amount against the plaintiff." (*Id.*, emphasis added).

26 The purpose of this statute was to preclude double-dipping in medical
27 malpractice cases. The Defendants would have the "option" to determine whether they
28 wanted to introduce evidence of the amounts payable by insurance carriers or other
collateral sources. Although the settlement documents in this case attempt to include
language to suggest that this was considered as part of the settlement, the statute
makes no reference to a "settlement." The "introduction of evidence," only applies to
Trial, and not to a settlement negotiation. Consequently, while NRS 42.021 would
arguably have applied if this case were taken to Trial, there is no suggestion in the
statute, nor in any Nevada case law, that it applies to a settlement, and consequently,
NRS 42.021 cannot preclude Copperpoint's lien or offset, pursuant to Arizona workers'
compensation law.

Based upon the foregoing analysis and this Court's interpretation of NRS 42.021,
the remainder of the arguments are essentially rendered moot. This Court notes that in
addressing a Motion to Dismiss, the Court must view all factual allegations in the light

1 most favorable to the non-moving party, and the Complaint should be dismissed only if
2 it appears beyond a doubt that the Plaintiff could prove no set of facts, which, if true,
3 would entitle Plaintiffs to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev.
4 224, 181 P.3d 670 (2008). Even viewing the evidence in the light most favorable to the
5 Plaintiffs, this Court finds that there are no set of facts, which if true, would entitle the
6 Plaintiffs to relief, as it relates to the interpretation of NRS 42.021.

7 Consequently, based upon the foregoing, and other good cause appearing,

8 **IT IS HEREBY ORDERED** that Defendant Copperpoint's Motion to Dismiss
9 is hereby **GRANTED**.

10 **ALCH'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT.**

11 **FACTUAL INFORMATION**

12 Plaintiff's Complaint alleges 6 causes of action, and a claim for punitive
13 damages. Only 3 claims address the Defendant, Thomas Alch: the 3rd cause of action
14 for legal malpractice, the 4th cause of action for fraud, and the 5th cause of action for
15 breach of fiduciary duty.

16 Defendant, Alch, argues that Plaintiffs' claims for punitive damages for fraud
17 and breach of the fiduciary duty are inappropriate because the alleged breach of
18 fiduciary duty is duplicative of the claim for legal malpractice, and Plaintiffs have failed
19 to alleged fraud against Defendant with sufficient specificity. Finally, Alch argues that
20 Plaintiffs cannot sustain the burden for punitive damages by clear and convincing
21 evidence.

22 It appears that Alch began working on the case while at the office of Bruce G.
23 Fagel & Associates. In September of 2017, he became an employee of Defendant,
24 Shoop. Alch argues that he did not attend the mediation before Retired Judge Stuart
25 Bell. Silberberg informed him of the settlement amount, the up-front cash portion was
26 received and distributed by Mr. Silberberg, and Mr. Alch was allegedly not involved in
27 any of those processes.

28 **SUMMARY OF LEGAL ARGUMENTS**

Defendant Alch argues that the Complaint is not specific enough relating to the
allegations of fraud. The case law requires that "the circumstances that must be

1 detailed include averments to the time, the place, the identity of the parties involved,
2 and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636
3 P.2d 874, (1981). Further, Alch argues that to set forth a claim for fraud, a plaintiff
4 must allege the following elements: (1) A false representation made by the defendant;
5 (2) defendant's knowledge or belief that its representation was false or that defendant
6 has an insufficient basis of information for making the representation; (3) defendant
7 intended to induce plaintiff to act or refrain from acting upon the misrepresentation;
8 and (4) damage to the plaintiff as a result of relying on the misrepresentation.
9 *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998). Plaintiff
10 only alleges that “If said defendants did know [that Silberberg was charging an
11 excessive fee], and accepted a portion of those fees for themselves, then they are
12 similarly liable to plaintiffs for fraud.” Alch argues that he was not involved in the
13 distribution of the settlement, nor was he involved in any discussions or
14 communications with Harper or Mr. Wininger regarding fees and costs.

15 Alch argues that “a cause of action for legal malpractice encompasses breaches
16 of contractual as well as fiduciary duties because both ‘concern the representation of a
17 client and involve the fundamental aspects of an attorney-client relationship.’” *Stalk v.*
18 *Mushkin*, 199 P.3d 838, 843 (2009). Consequently, Alch argues that any claim for
19 breach of a fiduciary relationship is subsumed in the claim for legal malpractice.

20 Finally, Alch argues that Plaintiffs’ claim for punitive damages should be
21 dismissed because the Plaintiffs cannot establish facts sufficient to support by clear and
22 convincing evidence that the Defendants are guilty of fraud, oppression, or malice.

23 The Court notes that the Silberberg Defendants filed a Joinder.

24 Plaintiffs argue that breach of a fiduciary duty is different from negligence, and a
25 claim for breach of fiduciary duty is not duplicative of a claim for legal malpractice.
26 Plaintiffs argue that the damages recoverable for legal malpractice do not include
27 damages for emotional suffering or emotional distress, but such damages would
28 arguably be recoverable for a breach of fiduciary duty.

With regard to the fraud claim, Plaintiffs argue that there are sufficient facts
alleged against Silberberg, and that the 4th cause of action for fraud is not alleged
against the Defendant, Alch.

1 **LEGAL ANALYSIS**

2 Based upon the foregoing, this Court finds and concludes that the allegations
3 alleged against Silberberg relating to fraud are sufficient to put the defendant on notice
4 of the claims against him, and satisfy the elevated standard of pleading required by the
5 rules. Because the Plaintiffs have confirmed that the 4th cause of action for fraud is not
6 alleged against Defendant Alch, the Court hereby confirms that the 4th cause of action
7 for fraud does not apply to the Defendant, Alch. As it relates to the claim for breach of
8 fiduciary duty, although the *Stalk v. Mushkin* case seems to indicate that the claim is
9 subsumed in a claim for legal malpractice, the Court can see how there could be a
10 distinction, as the elements are different, and the potential damages could be different.
11 Consequently, the Court finds and concludes that they are separate and distinct causes
12 of action, and may both be maintained. With regard to the claim for punitive damages,
13 although this Court sits as a gatekeeper, the ultimate determination as to whether the
14 evidence supports fraud, oppression, or malice against the Defendants will be up to the
15 trier of fact. Because this Court cannot dismiss a claim unless it appears beyond a
16 doubt that the Plaintiff could prove no set of facts, which, if true, would entitle
17 Plaintiffs to relief, the Court cannot dismiss the claims as requested by the Defendants
18 herein. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).
19 Similarly, with regard to the request for summary judgment, NRCP 56 indicates that
20 summary judgment is only appropriate if no genuine issues of material fact remain.
The Court's above-referenced analysis confirms that genuine issues of material fact
remain.

21 Consequently, based upon the foregoing, and good cause appearing,

22 **IT IS HEREBY ORDERED** that Alch's Motion to Dismiss or for Summary
23 Judgment, and the Silberberg Defendants' Joinder, are hereby **DENIED**.

24 **SHOOP'S MOTION TO DISMISS.**

25 **FACTUAL INFORMATION**

26 Defendant Shoop, a Professional Law Corporation, claims to be a complete
27 stranger both to Nevada and to the underlying representation which is the basis of this
28 lawsuit. Shoop claims to have no contacts at all with Nevada that would confer general
jurisdiction. Further, Shoop alleges that neither he individually nor as Shoop APLC

1 had any involvement in the underlying case, nor shared in any of the fees generated
2 from it.

3 4 **SUMMARY OF LEGAL ARGUMENTS**

5 Shoop correctly argues that there are two types of personal jurisdiction – general
6 jurisdiction and specific jurisdiction. General jurisdiction exists over a defendant who
7 has “substantial” or “continuous and systematic” contacts with the forum state. Shoop
8 contends that his home and base of operations are not in Nevada. Further, Shoop lacks
9 any substantial, continuous, or systematic contacts with Nevada. Shoop does not
10 conduct business in Nevada, and is not licensed in Nevada. Shoop APLC’s principal,
11 David Shoop, is not licensed in Nevada, and neither Shoop entity has ever earned
12 income in Nevada. With regard to “specific” jurisdiction, the relationship must arise
13 out of contacts that the “defendant himself” creates with the forum state, and Shoop
14 argues that he has none.

15 In evaluating specific personal jurisdiction, courts consider two factors: (1)
16 whether the defendant purposefully availed itself of the privilege of acting in the forum
17 state or purposefully directed its conduct towards the forum state; and (2) whether the
18 cause of action arose from the defendant’s purposeful contact or activities in
19 connection with the forum state, such that it is reasonable to exercise personal
20 jurisdiction. *Tricarichi v. Coöperative Rabobank, U.A.*, 440 P.3d 645, 650 (Nev. 2019).
21 In analyzing whether specific personal jurisdiction exists in a tort action, courts apply
22 the “effects test” derived from *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, which
23 considers whether the defendant (1) committed an intentional act, (2) expressly aimed
24 at the forum state, (3) causing harm that the defendant knows is likely to be suffered in
25 the forum state. *Tricarichi v. Cooperative Rabobank, supra*, 440 P.3d at 650. Shoop
26 argues that none of these factors justifies the Court exercising personal jurisdiction
27 over him or his business.

28 The Plaintiffs simply request additional time to do discovery to be able to obtain
the information necessary to establish personal jurisdiction over the Shoop Defendants.
The Plaintiffs do cite to the Settlement Agreement, which indicates Shoop APLC as one
of the attorneys for Plaintiffs, which is at least some evidence that Shoop had some
involvement in the case.

1 **LEGAL ANALYSIS**

2 Based upon the foregoing, there is at least some evidence that Shoop had some
3 involvement in the underlying case. That may not be enough to justify the Court's
4 exercise of personal jurisdiction over Shoop individually and Shoop APLC. The Nevada
5 Supreme Court has indicated in the past, however, that it may be an abuse of the
6 Court's discretion to dismiss a case, in light of a request for NRCP 56(d) relief, at the
7 beginning of the case, and without allowing the Plaintiff the opportunity to conduct at
8 least some discovery.

9 Based upon the foregoing, and good cause appearing,

10 **IT IS HEREBY ORDERED** that the hearing on this motion is **CONTINUED**
11 for approximately 120 days **to February 24, 2021, at 9:00 a.m.** If the Plaintiff has
12 additional information to support its opposition, such information should be set forth
13 in a **supplemental Opposition, filed on or before February 10, 2021**, allowing
14 the Defendant until **February 17, 2021, to file any necessary response.**

15 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

16 **FACTUAL INFORMATION**

17 Plaintiffs have alleged two causes of action against Copperpoint, and this Motion
18 seeks partial summary judgment as to those causes of action, ie., the first cause of
19 action for declaratory relief on the question of whether Defendant, Copperpoint has a
20 lien, or is otherwise entitled to a future credit, on the settlement proceeds and the
21 second cause of action for appropriate injunctive relief if Plaintiff prevails on the first
22 cause of action.

23 **SUMMARY OF LEGAL ARGUMENTS**

24 The Court appreciates the Plaintiffs' citation to voluminous California law, which
25 may arguably support the Plaintiffs' position, but the Court has already stated its
26 position above, with regard to NRS 42.021.

27 **LEGAL ANALYSIS**

28 Although the Plaintiff argues that NRS 42.021 applies to settlements as well as to
cases that are taken to Trial, this Court concludes the opposite. The statute specifically

1 provides that “if the defendant so elects, the defendant may introduce evidence . . .”
2 and if the Defendant does so, “the plaintiff may introduce evidence of any amount that
3 the plaintiff has paid or contributed to secure the plaintiff’s right to any insurance
4 benefits. . .” And finally, a collateral source “*introduced pursuant to subsection 1* may
5 not recover any amount against the plaintiff.” (*Id.*, emphasis added).

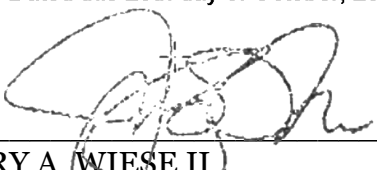
6 The purpose of this statute was to preclude double-dipping in medical
7 malpractice cases. The Defendants would have the “option” to determine whether they
8 wanted to introduce evidence of the amounts payable by insurance carriers or other
9 collateral sources. Although the settlement documents in this case, attempt to include
10 language to suggest that this was considered as part of the settlement, the statute
11 makes no reference to a “settlement.” The “introduction of evidence,” only applies to
12 Trial, and not to a settlement negotiation. Consequently, while NRS 42.021 would
13 arguably have applied if this case were taken to Trial, there is no suggestion in the
14 statute, nor in any Nevada case law, that it applies to a settlement, and consequently,
15 NRS 42.021 cannot preclude Copperpoint’s lien or offset, pursuant to Arizona workers’
16 compensation law. Although the settlement agreement indicates that the Defendant
17 would have sought to introduce such evidence at Trial, that never transpired in this
18 case, and consequently, NRS 42.021 cannot apply. If the Nevada Legislature desired to
19 have NRS 42.021 apply to “settlements” as well as “trials,” they could have included
20 language so indicating.

21 Based upon the foregoing analysis and this Court’s interpretation of NRS 42.021,
22 this Court has no choice but to deny the Plaintiffs’ requested relief.

23 Consequently, based upon the foregoing, and other good cause appearing,
24 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion for Partial Summary
25 Judgment is hereby **DENIED**.

26 Dated this 25TH day of October, 2020.

Dated this 26th day of October, 2020

27 
28 JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 25B5 2CE7
Jerry A. Wiese
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

8 Copperpoint Mutual Insurance
9 Holding Company, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/26/2020

15 Kellie Piet

kpiet@mcbridehall.com

16 Heather Hall

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18 MGA Docketing

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23 Cynthia Crizaldo

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25 Terry Rodriguez

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2	Tiffane Safar	tsafar@mcbridehall.com
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4	John Blumberg	advocates@blumberglaw.com
5	Dalton Hooks, Jr.	dalton@hmc.law
6	Dalton Hooks, Jr.	dalton@hmc.law
7	Alan Schiffman	alan@schiffmanlaw.com
8	Terry Rodriguez	trodriguez@hmc.law
9	Kenneth Silberberg	ms@silberberglaw.com
10	Kenneth Silberberg	ms@silberberglaw.com
11	Thomas Alch	thomas.alch@shooplaw.com
12	James Kjar	kjar@kmslegal.com
13	Jon Schwalbach	jschwalbach@kmslegal.com
14	James Kjar	kjar@kmslegal.com
15	Jon Schwalbach	jschwalbach@kmslegal.com
16	Jessica O'Neill	joneill@kmslegal.com
17	Robert McKenna, III	rmckenna@kmslegal.com
18	Penny Williams	pwilliams@mcbridehall.com
19	Melissa Grass	mgrass@copperpoint.com
20	Kelly Lasorsa	klasorsa@blumberglaw.com
21	William Brenske	bak@baklawlv.com
22	Shawnee Allen	sallen@kmslegal.com
23		
24		
25		
26		
27		
28		

1 If indicated below, a copy of the above mentioned filings were also served by mail
2 via United States Postal Service, postage prepaid, to the parties listed below at their last
3 known addresses on 10/27/2020

4 David Clark 600 E. Charleston Blvd.
Las Vegas, NV, 89104

5 Jason Maier Maier Gutierrez & Associates
6 Attn: Jason Maier, Esq
7 8816 Spanish Ridge Avenue
Las Vegas, NV, 89148
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CASE SUMMARY**CASE NO. A-20-814541-C****Daria Harper, Plaintiff(s)****vs.****Copperpoint Mutual Insurance Holding Company,
Defendant(s)**§
§
§
§
§Location: **Department 30**
Judicial Officer: **Wiese, Jerry A.**
Filed on: **05/04/2020**
Cross-Reference Case Number: **A814541****CASE INFORMATION**Case Type: **Other Tort**Case Status: **05/04/2020 Open****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-20-814541-C
Court Department 30
Date Assigned 05/04/2020
Judicial Officer Wiese, Jerry A.**PARTY INFORMATION**

Plaintiff	Harper, Daria	<i>Lead Attorneys</i> Maier, Jason R., ESQ <i>Retained</i> 702-629-7900(W)
	Wininger, Daniel	Maier, Jason R., ESQ <i>Retained</i> 702-629-7900(W)
Defendant	Alch, Thomas S.	Clark, David A. <i>Retained</i> 7023822200(W)
	Copperpoint General Insurance Company Removed: 10/26/2020 Dismissed	Hooks, Dalton L. <i>Retained</i> 702-384-7000(W)
	Copperpoint Mutual Insurance Holding Company	Hooks, Dalton L. <i>Retained</i> 702-384-7000(W)
	Law Offices of Marshall Silberberg, P.C.	McBride, Robert C. <i>Retained</i> 702-792-5855(W)
	Shoop, a Professional Law Corporation	Clark, David A. <i>Retained</i> 7023822200(W)
	Silberberg, Kenneth Marshall	McBride, Robert C. <i>Retained</i> 702-792-5855(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**




05/04/2020

Complaint With Jury Demand
Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel

CASE SUMMARY

CASE NO. A-20-814541-C

Complaint Demand for Jury Trial

05/04/2020	 Initial Appearance Fee Disclosure Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Initial Appearance Fee Disclosure</i>
05/04/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
05/04/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
05/04/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
05/04/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
05/04/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
05/04/2020	 Summons Electronically Issued - Service Pending <i>Summons</i>
05/06/2020	 Errata Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Errata to complaint</i>
05/14/2020	 Summons Filed by: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Summons</i>
05/14/2020	 Summons <i>Summons</i>
05/14/2020	 Acceptance of Service Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel Party Served: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Acceptance of Service</i>
05/20/2020	 Application Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction</i>
05/20/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
05/22/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Initial Appearance Fee Disclosure (NRS Chapter)</i>

CASE SUMMARY

CASE NO. A-20-814541-C

05/22/2020	 Acceptance of Service Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Acceptance of Service</i>
05/26/2020	 Summons Filed by: Plaintiff Harper, Daria <i>Summons</i>
05/27/2020	 Joinder To Motion Filed By: Defendant Law Offices of Marshall Silberberg, P.C. <i>Defendant Kenneth Marshall Silberberg's Joinder to Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction</i>
06/01/2020	 Summons Filed by: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Summons</i>
06/01/2020	 Answer to Complaint Filed by: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Defendants' Copperpoint Mutual Insurance Holding Company & Copperpoint General Insurance Company's Answer to Plaintiff's Complaint</i>
06/02/2020	 Notice Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Notice of Joinder</i>
06/03/2020	 Opposition Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Copperpoint Mutual Insurance HOLDing Company and Copperpoint General Insurance Company's Opposition to Plaintiffs' Application for Temprary Restraining Order and Motion for Preliminary Injunction</i>
06/05/2020	 Errata Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Errata to Defendants' Opposition</i>
06/08/2020	 Opposition Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Opposition to Defendant Marshall Silberberg's Joinder to Plaintiffs' Application for temporary restraining order and motion for preliminary injunction</i>
06/24/2020	 Reply in Support Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Plaintiffs' Reply in Support of Application for Temporary Restraining Order and Motion for Preliminary Injunction</i>
06/29/2020	 Order to Show Cause Filed by: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Motion to Associate Counsel on Ex Parte Order Shortening Time</i>
07/06/2020	

CASE SUMMARY

CASE NO. A-20-814541-C

	 Order Admitting to Practice
07/07/2020	 Notice of Entry of Order Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Notice of Entry of Order Admitting to Practice</i>
07/08/2020	 Initial Appearance Fee Disclosure Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
07/10/2020	 Notice of Early Case Conference Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Notice of Early Case Conference</i>
07/14/2020	 Request for Exemption From Arbitration Filed by: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Request for Exemption from Arbitration</i>
07/16/2020	 Recorders Transcript of Hearing <i>Transcript of Proceedings Re: All Pending Motions July 8, 2020</i>
07/20/2020	 Motion to Dismiss Filed By: Defendant Shoop, a Professional Law Corporation <i>Defendant Shoop, A Professional Law Corporation's, Motion to Dismiss for Lack of Personal Jurisdiction [NRCP 12(B)(2)]</i>
07/20/2020	 Motion To Dismiss - Alternative Motion For Summary Judgment Filed By: Defendant Alch, Thomas S. <i>Defendant Thomas S. Alch's Motion To Dismiss Or, Alternatively, Motion For Summary Judgment</i>
07/20/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Alch, Thomas S. <i>Initial Appearance Fee Disclosure</i>
07/21/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/22/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/22/2020	 Filing Fee Remittance Filed By: Defendant Shoop, a Professional Law Corporation <i>Filing Fee Remittance</i>
07/24/2020	 Answer to Complaint Filed by: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall <i>Defendants, Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Answer To Plaintiffs Complaint</i>
07/24/2020	 Joinder To Motion Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall

CASE SUMMARY

CASE NO. A-20-814541-C

Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Joinder To Defendant Thomas S. Alch s Motion To Dismiss Or, Alternatively, Motion For Summary Judgment Motion To Dismiss

07/24/2020



Demand for Jury Trial

Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall
Demand for Jury Trial

07/24/2020



Initial Appearance Fee Disclosure

Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall
Initial Appearance Fee Disclosure

07/24/2020



Disclosure Statement

Party: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall
Defendant Law Offices Of Marshall Silberberg, P.C. S 7.1 Disclosure Statement

07/27/2020



Errata

Filed By: Defendant Silberberg, Kenneth Marshall
Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Errata To Joinder To Defendant Thomas S. Alch s Motion To Dismiss Or, Alternatively, Motion For Summary Judgment Motion To Dismiss

07/29/2020



Joint Case Conference Report

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel
Joint Case Conference Report

07/29/2020



Joinder To Motion

Filed By: Defendant Silberberg, Kenneth Marshall
Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg's Amended Joinder To Defendant Thomas S. Alch's Motion To Dismiss Or, Alternatively, Motion For Summary Judgment Motion To Dismiss

07/30/2020



Commissioners Decision on Request for Exemption - Granted

Commissioner's Findings on Request for Exemption - Automatically Exempt (Declaratory Relief Claimed)

07/31/2020



Order

MANDATORY RULE 16 CONFERENCE ORDER

08/03/2020



Opposition to Motion to Dismiss

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel
Plaintiffs' Opposition to Defendant Thomas S Alch's Motion to Dismiss or, Alternatively, Motion for Summary Judgment and Plaintiffs' Opposition to Defendants Law Offices of Marshall Silberberg PC and Kenneth Marshall Silberberg's Joinder

08/04/2020



Motion to Associate Counsel

Filed By: Defendant Law Offices of Marshall Silberberg, P.C.
Defendants Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion to Associate James Jorgen Kjar as Counsel on Order Shortening Time

08/04/2020



Motion to Associate Counsel

Filed By: Defendant Law Offices of Marshall Silberberg, P.C.
Defendants Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's

CASE SUMMARY

CASE NO. A-20-814541-C

Motion to Associate Jon Roy Schwalbach, III as Counsel on Order Shortening Time

08/05/2020



Clerk's Notice of Hearing
Notice of Hearing

08/05/2020



Opposition
Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel
Plaintiffs' Opposition to Defendant Shoop, A Professional Law Corporation's Motion to Dismiss for Lack of Personal Jurisdiction [NRCP 12(b)(2)]

08/06/2020



Clerk's Notice of Nonconforming Document
Clerk's Notice of Nonconforming Document

08/06/2020



Clerk's Notice of Nonconforming Document
Clerk's Notice of Nonconforming Document

08/06/2020



Motion to Associate Counsel
Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall
Defendants Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion to Associate Jon Roy Schwalbach, III as Counsel

08/06/2020



Motion to Associate Counsel
Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Motion To Associate James Jorgen Kjar As Counsel

08/13/2020



Notice
Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel
Notice of Mandatory Rule 16 Conference

08/18/2020



Notice of Supplemental Early Case Conference
Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel
Notice of Telephonic Supplemental Case Conference

08/19/2020



Reply in Support
Filed By: Defendant Alch, Thomas S.
Defendant Thomas S Alch's Reply in Support of Motion to Dismiss, or Alternatively, Motion for Summary Judgment

08/19/2020



Reply in Support
Filed By: Defendant Shoop, a Professional Law Corporation
Reply Brief of Defendant Shoop, a Professional Law Corporation, in Support of Motion to Dismiss for Lack of Personal Jurisdiction [NRCP 12(b)(2)]

08/21/2020



Supplemental Joint Case Conference Report
Party: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel
Supplemental Joint Case Conference Report

08/26/2020



Motion for Partial Summary Judgment
Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel
Plaintiffs' Motion for Partial Summary Judgment

08/26/2020



Clerk's Notice of Hearing
Notice of Hearing

CASE SUMMARY

CASE NO. A-20-814541-C

08/27/2020	 Objection <i>Defendants, Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Objection To Plaintiffs Subpoena Duces Tecum And Notice Of Taking Records Deposition Of William Collins</i>
08/27/2020	 Objection <i>Defendants, Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Objection To Plaintiffs Notice Of Taking Deposition Of Kenneth Marshall Silberberg</i>
08/27/2020	 Objection <i>Defendants, Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Objection To Plaintiffs Subpoena Duces Tecum And Notice Of Taking Deposition Of William Collins</i>
09/04/2020	 Scheduling and Trial Order <i>Scheduling Order and Order Setting Civil Jury Trial</i>
09/04/2020	 Order Admitting to Practice Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall <i>Order Admitting to Practice (Jon Roy Schwalbach III)</i>
09/04/2020	 Order Admitting to Practice Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall <i>Order Admitting to Practice (James Jorgen Kjar)</i>
09/04/2020	 Motion to Dismiss Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Defendants' Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or alternatively, Motion for Summary Judgment [Hearing Requested]</i>
09/08/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/09/2020	 Opposition to Motion Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company <i>Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's opposition to Plaintiffs' motion for Partial Summary Judgment</i>
09/09/2020	 Motion for Protective Order <i>Defendants, Law Offices Of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg s Motion for Protective Order on an Order Shortening Time</i>
09/14/2020	 Notice of Entry of Order Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall <i>Notice Of Entry Of Order Admitting To Practice (Jon Roy Schwalbach III)</i>
09/14/2020	 Notice of Entry of Order Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall

CASE SUMMARY

CASE NO. A-20-814541-C

Notice of Entry of Order Admitting to Practice (James Jorgen Kjar)

09/15/2020



Opposition to Motion For Protective Order

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel

Plaintiff's Opposition to Defendants, Law Office of Marshall Silberberg, P.C. and Marshall Silberberg's Motion for Protective Order on an Order Shortening Time

09/16/2020



Reply in Support

Filed By: Defendant Law Offices of Marshall Silberberg, P.C.; Defendant Silberberg, Kenneth Marshall

Defendants, Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg's Reply In Support Of Motion For Protective Order On An Order Shortening Time

09/18/2020



Opposition

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel

Plaintiffs' Opposition to Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Summary Judgment

09/22/2020



Reply in Support

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel

Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary Judgment

09/25/2020



Errata

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel

Errata to Plaintiffs' Opposition to Defendant Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or, Alternatively, Motion for Summary Judgment

09/25/2020



Order Denying

Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company

Order Denying Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction

10/01/2020



Discovery Commissioners Report and Recommendations

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel

Discovery Commissioner s Report and Recommendations -Originals

10/02/2020



Objection

Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel

PLAINTIFFS OBJECTION TO DEFENDANTS, LAW OFFICES OF MARSHALL SILBERBERG, P.C. AND KENNETH MARSHALL SILBERBERG S INITIAL NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS; FIRST SUPPLEMENT TO NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS; SECOND SUPPLEMENT TO NRCP 16.1 DISCLOSURES OF WITNESSES AND DOCUMENTS; AND SUPPLEMENTS THERETO

10/07/2020



Reply in Support

Filed By: Defendant Copperpoint Mutual Insurance Holding Company; Defendant Copperpoint General Insurance Company

Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Reply n Support of their Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Partial Summary Judgment

10/19/2020









Order

ORDER

CASE SUMMARY

CASE NO. A-20-814541-C

10/19/2020	 Notice of Entry Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Notice of Entry of Discovery Commissioner's Report and Recommendations</i>
10/26/2020	 Order <i>Order</i>
11/09/2020	 Answer Filed By: Defendant Alch, Thomas S. <i>Defendant Thomas S. Alch's Answer and Affirmative Defenses</i>
11/24/2020	 Notice of Appeal Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Notice of Appeal</i>
11/24/2020	 Motion Filed By: Plaintiff Harper, Daria; Plaintiff Wininger, Daniel <i>Motion to Certify Order Entered on 10/26/20 as Final Pursuant to NRCP 54(B)</i>
	<u>DISPOSITIONS</u>
10/26/2020	Order of Dismissal (Judicial Officer: Wiese, Jerry A.) Debtors: Copperpoint Mutual Insurance Holding Company (Defendant), Copperpoint General Insurance Company (Defendant) Creditors: Daria Harper (Plaintiff), Daniel Wininger (Plaintiff) Judgment: 10/26/2020, Docketed: 10/28/2020
	<u>HEARINGS</u>
06/30/2020	 Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.) Minute Order - No Hearing Held; Journal Entry Details: <i>The above-referenced matter is scheduled for a chambers calendar on July 2, 2020, with regard to Plaintiff's Motion to Associate John Blumberg, Esq., as Counsel. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this minute order issues. Counsel has submitted a Verified Application for Association of Counsel, a Certificate of Good Standing from California, and a State Bar of Nevada Statement. There appears to be no good reason not to admit Mr. Blumberg to associate as counsel pursuant to Nevada Supreme Court Rule 42. Consequently, and good cause appearing, IT IS HEREBY ORDERED that Plaintiff's Motion to Associate Counsel is hereby GRANTED. The Court requests that Counsel for Plaintiff prepare an Order consistent with the foregoing, and submit it to the Court for signature within 10 days. Because this matter has been decided on the papers, the matter will be taken "off calendar." CLERK'S NOTE: A copy of the above minute order was distributed to all parties 06-30-20./lk;</i>
07/02/2020	CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated</i> <i>Motion to Associate Counsel on Ex Parte Order Shortening Time</i>
07/02/2020	CANCELED Motion to Associate Counsel (3:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Vacated - Duplicate Entry</i> <i>Motion to Associate Counsel on Ex Parte Order Shortening Time</i>
07/08/2020	Motion for Preliminary Injunction (9:00 AM) (Judicial Officer: Wiese, Jerry A.) <i>Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction</i> Denied Without Prejudice;

CASE SUMMARY

CASE NO. A-20-814541-C

07/08/2020	<p>Joinder (9:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Defendant Kenneth Marshall Silberberg's Joinder to Plaintiffs' Application for Temporary Restraining Order and Motion for Preliminary Injunction</i></p> <p>Denied Without Prejudice;</p>
07/08/2020	<p> All Pending Motions (9:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION DEFENDANT KENNETH MARSHALL SILBERBERG'S JOINDER TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION</i> John Blumberg, Esq. present for Plaintiffs. All parties present via Blue Jeans video conferencing. Upon Mr. Blumberg's inquiry, Court clarified the Court was viewing this as a hearing on preliminary injunction. Counsel agreed to their understanding of the same. Argument by Mr. Blumberg that the lawsuit was filed and settled under Nevada law and it was improper for opposing counsel to file workers' compensation liens in Arizona because workers' compensation liens were not subject to Nevada law. Argument by Ms. Randolph that the Arizona pleadings have already commenced and the actions were subject to a separate Arizona workers' compensation claim relating to an Arizona insurance provider. Ms. Randolph advised it was her position that this Court did not have jurisdiction over Arizona claims and benefits. Rebuttal argument by Mr. Blumberg. Court advised an issue in looking at the factors of the preliminary injunction was that the matter was briefed by counsel as a summary judgment motion and went beyond what was necessary for a preliminary injunction. Court advised the Court was not convinced that NRS 42.021 would trump Arizona workers' compensation statutes. Court advised there were too many issues for the Court to decide as a matter of law to grant a preliminary injunction. Additionally Court advised monetary loss was not enough to site irreparable harm. COURT ORDERED, motion DENIED. Mr. Blumberg indicated the matter was ripe for summary judgment motions and requested the Court schedule a hearing date. Court advised opposing counsel would have to agree that there are not issues of fact. Ms. Randolph advised there may be issues of material fact. Court advised counsel to file whatever motions they need to file and they will be set by the Court accordingly. Court DIRECTED Ms. Randolph to prepare the Order.;</p>
08/24/2020	<p> Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)</p> <p>Minute Order - No Hearing Held;</p> <p>Journal Entry Details:</p> <p><i>The above-referenced matter is scheduled for a hearing on 8/26/20 with regard to Defendant Shoop's Motion to Dismiss for Lack of Personal Jurisdiction, and Defendant Alch's Motion to Dismiss or Alternatively, Motion for Summary Judgment. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non essential," and may be decided after a hearing, decided on the papers, or continued. This matter is hereby CONTINUED to Tuesday, September 29, 2020. Because this matter has been continued, the hearing scheduled for 8/26/20 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear. CLERK'S NOTE: A copy of the above minute order was distributed to all parties 08-24-20./lk;</i></p>
09/03/2020	<p>Mandatory Rule 16 Conference (12:30 PM) (Judicial Officer: Wiese, Jerry A.)</p> <p>Trial Date Set;</p>
09/03/2020	<p>Motion to Associate Counsel (12:30 PM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Motion To Associate James Jorgen Kjar As Counsel On Order Shortening Time</i></p> <p>Granted;</p>
09/03/2020	<p>Motion to Associate Counsel (12:30 PM) (Judicial Officer: Wiese, Jerry A.)</p> <p><i>Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Motion To Associate Jon Roy Schwalbach, III As Counsel On Order Shortening Time</i></p> <p>Granted;</p>
09/03/2020	<p> All Pending Motions (12:30 PM) (Judicial Officer: Wiese, Jerry A.)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p>

CASE SUMMARY**CASE No. A-20-814541-C**

RULE 16 MANDATORY CONFERENCE...DEFENDANTS LAW OFFICES OF MARSHALL SILBERBERG, P.C. AND KENNETH MARSHALL SILBERBERG'S MOTION TO ASSOCIATE JAMES JORGEN KJAR AS COUNSEL ON ORDER SHORTENING TIME DEFENDANTS LAW OFFICES OF MARSHALL SILBERBERG, P.C. AND KENNETH MARSHALL SILBERBERG'S MOTION TO ASSOCIATE JON ROY SCHWALBACH, III AS COUNSEL ON ORDER SHORTENING TIME Present via Teleconference: Jason Maier, Esq. and John Blumberg, Esq. for Plaintiff(s); Robert McBride, Esq. Sami Randolph, Esq. for Defendant(s). There was no appearance on behalf of Defendants Shoop, PLC and Thomas Alch. The Court brought to the attention of Counsel two motions to associate counsel filed on behalf of Defendants, Kenneth Marshall Silberberg and Law Offices of Marshall Silberberg, PC, currently scheduled to be heard in chambers on 9/9/20. The Court noted there has been no opposition filed to said motions and pursuant to EDCR 2.23, the hearings on said motions were ADVANCED to today's date and thereafter, the Court ORDERED Defendants Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion to Associate Jon Roy Schwalbach, III as Counsel on Order Shortening Time and Defendants Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion to Associate James Jorgen Kjar as Counsel on Order Shortening Time GRANTED. Counsel was instructed to submit proposed orders to chambers for processing. Upon the Court's inquiry, Counsel gave a brief description of the pending case. The Court reviewed the discovery deadlines set forth in the Joint Case Conference Report and all Counsel were in agreement that the dates were adequate, in light of directives associated with the current COVID-19 conditions. The Court thereafter ordered the dates set forth in the JCCR would be adopted and the trial of this matter set, accordingly. Counsel advised they may agree to engage in a private mediation in the future and did not wish to schedule a Judicial Settlement Conference with the Court at this time. Court advised Counsel that discovery disputes which arise during the course of litigation must be brought before the Discovery Commissioner. Counsel was further advised to contact the department chambers directly to address matters involving scheduling issues. Following discussion between Counsel regarding pending dispositive motions currently scheduled on the Court's docket on September 29, 2020, at 10:30 AM and September 30, 2020, at 9:00 AM, the Court ORDERED the hearings consolidated. Accordingly, Plaintiffs' Motion for Partial Summary Judgment, currently scheduled on September 30, 2020, at 9:00 AM shall be RESCHEDULED to SEPTEMBER 29, 2020 at 10:30AM. Additionally, any subsequently filed Counter-Motion shall be set on that same date. A Status Check: Settlement/Trial Setting is set for APRIL 7, 2021 at 9:00 AM. Final Day to Amend Pleadings/Add Parties: 4/20/2021 Initial Expert Disclosure Deadline: 4/20/2021 Rebuttal Expert Disclosure Deadline: 5/20/2021 Final Day to Complete Discovery: 7/19/2021 Deadline for filing Dispositive Motion: 8/18/2021 The JURY Trial is set on the JANUARY 3, 2022, 5-week stack. A Scheduling Order and Order Setting Civil Jury Trial to follow.;

09/17/2020

**Motion (9:30 AM)** (Judicial Officer: Truman, Erin)

Defendants, Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion for Protective Order on an Order Shortening Time

Granted in Part; Defendants, Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion for Protective Order on an OST

Journal Entry Details:

ATTORNEY PRESENT: John Blumberg, present as co-counsel for Plaintiff. Commissioner stated there is no Motion for Sanctions for the Commissioner to consider. Based on the timing of the deposition, Mr. McBride stated counsel are working on available dates for all counsel. Mr. Collins will be produced for deposition on 10-12-2020, and Mr. Silberberg will be deposed late October or early November. **COMMISSIONER RECOMMENDED, Motion for Protective Order is GRANTED;** the 9-22-20 and 9-24-20 unilaterally set depositions are **PROTECTED**. Commissioner advised counsel to work together to find available deposition dates. Commissioner stated production of documents are from the legal malpractice case. Argument by Mr. McBride; documents are protected, and counsel requested an in camera review with a privilege log, or moving this Hearing to another date for a final Hearing. Mr. Blumberg opposed moving the Motion. Argument by Mr. Blumberg. Commissioner stated the former client is entitled to the entire file, and it must be produced for the malpractice case; anything up until the representation ended must be produced. Argument by Mr. McBride. Colloquy. **COMMISSIONER RECOMMENDED,** through the end of Plaintiff's representation, everything is discoverable; communications are discoverable as Directed on the record. **COMMISSIONER RECOMMENDED,** once there is an indication of a dispute between the client and the attorney is initiated with the client, those communications are **PROTECTED**. Argument by Mr. Blumberg. During the time the Law Firm was working with Plaintiff on behalf of Plaintiff, representation is continued if the Law Firm is providing legal services. Commissioner stated those documents are discoverable. **COMMISSIONER RECOMMENDED,** motion is **GRANTED IN PART** and **DENIED IN PART** as stated. Mr. Blumberg to prepare the

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-814541-C

Report and Recommendations, and counsel to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.;

09/23/2020



Minute Order (3:00 AM) (Judicial Officer: Wiese, Jerry A.)

Minute Order - No Hearing Held;

Journal Entry Details:

At the request of the Court, for judicial economy, efficiency for review, and purposes of time management; COURT ORDERED, all Motions set for September 29, 2020 CONTINUED to October 14, 2020 at 9:00 a.m. 10/14/20 9:00 AM DEFENDANTS' MOTIONS TO DISMISS/MOTIONS FOR SUMMARY JUDGMENT CLERK'S NOTE: A copy of the above minute order was distributed to all parties 09-23-20./lk;

09/29/2020

CANCELED Joinder (10:30 AM) (Judicial Officer: Wiese, Jerry A.)

Vacated

Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg s Joinder To Defendant Thomas S. Alch s Motion To Dismiss Or, Alternatively, Motion For Summary Judgment Motion To Dismiss

10/22/2020

CANCELED Status Check: Compliance (3:00 AM) (Judicial Officer: Truman, Erin)

Vacated

Status Check: Compliance / 9-17-2020 DCRR

10/28/2020

CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Vacated - Previously Decided

Defendant Thomas S. Alch s Motion To Dismiss Or, Alternatively, Motion For Summary Judgment

10/28/2020

CANCELED Joinder (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Vacated - Previously Decided

Defendants Law Offices Of Marshall Silberberg, P.C. And Kenneth Marshall Silberberg's Amended Joinder To Defendant Thomas S. Alch's Motion To Dismiss Or, Alternatively, Motion For Summary Judgment Motion To Dismiss

10/28/2020

CANCELED Motion for Partial Summary Judgment (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Vacated - Previously Decided

Plaintiffs' Motion for Partial Summary Judgment

10/28/2020

CANCELED Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Vacated - Previously Decided

Defendants' Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or alternatively, Motion for Summary Judgment

02/24/2021

Motion to Dismiss (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

Defendant Shoop, A Professional Law Corporation's, Motion to Dismiss for Lack of Personal Jurisdiction [NRC 12(B)(2)]

04/07/2021

Status Check: Settlement/Trial Setting (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

12/06/2021

Pre Trial Conference (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

12/27/2021

Calendar Call (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

01/03/2022

Jury Trial (10:30 AM) (Judicial Officer: Wiese, Jerry A.)

DATE

FINANCIAL INFORMATION

Defendant Copperpoint General Insurance Company

Total Charges

253.00

Total Payments and Credits

253.00

CASE SUMMARY**CASE NO. A-20-814541-C**

Balance Due as of 11/25/2020	0.00
Defendant Alch, Thomas S.	
Total Charges	646.00
Total Payments and Credits	646.00
Balance Due as of 11/25/2020	0.00
Defendant Law Offices of Marshall Silberberg, P.C.	
Total Charges	253.00
Total Payments and Credits	253.00
Balance Due as of 11/25/2020	0.00
Defendant Shoop, a Professional Law Corporation	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 11/25/2020	0.00
Plaintiff Harper, Daria	
Total Charges	524.00
Total Payments and Credits	524.00
Balance Due as of 11/25/2020	0.00
Plaintiff Wininger, Daniel	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 11/25/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-814541-C
Department 30

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

Plaintiff(s) (name/address/phone): DARIA HARPER, an individual; and DANIEL WININGER, an individual.	Defendant(s) (name/address/phone): COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY, an Arizona corporation; COPPERPOINT GENERAL INSURANCE COMPANY, an Arizona corporation; et al.
Attorney (name/address/phone): John P. Blumberg, Esq., Blumberg Law Corporation, 444 W. Ocean Blvd., Suite 1500, Long Beach, CA 90802; (562) 437-0403	Attorney (name/address/phone):
Jason R. Maier, Esq., Maier Gutierrez & Associates, 8816 Spanish Ridge Avenue, Las Vegas, NV 89148; (702) 629-7900	

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

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <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 Estate Value <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	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <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	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <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		Other Civil Filing Other Civil Filing <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.

May 4, 2020
Date

/s/ Jason R. Maier
Signature of initiating party or representative

See other side for family-related case filings.

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

DARIA HARPER, an individual; and)
DANIEL WININGER, an individual,)
)
Plaintiffs,)
)
vs.)
)
COPPERPOINT MUTUAL INSURANCE)
HOLDING COMPANY, an Arizona Corp.;)
COPPERPOINTI GENERAL INSURANCE)
COMPANY, an Arizona Corp; LAW OFFICES)
OF MARSHALL SILVERBERG, P.C., a)
California Corp.; KENNETH MARSHALL)
SILVERBERG aka MARSHALL SILVERBERG)
Aka K. MARSHALL SILVERBERG, an)
Individual; THOMAS S. ALCH aka THOMAS)
STEVEN ALCH, an individual; SHOOP, A)
PROFESSIONAL LAW CORPORATION, a)
California Corporation, DOES 1-50, inclusive,)
)
Defendants.)
)

CASE NO.: A-20-814541-C
DEPT NO.: XXX

ORDER

The above-referenced matter is scheduled for a hearing on 10/28/20 with regard to Defendant Copperpoint's Motion to Dismiss or Motion for Summary Judgment; Defendant Shoop's Motion to Dismiss; Defendant Alch's Motion to Dismiss or for Summary Judgment; Defendant Marshall Silverberg's Joinder to Alch's Motion to Dismiss or for Summary Judgment; and Plaintiff's Motion for Partial Summary Judgment. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this Order issues.

COPPERPOINT'S MOTION TO DISMISS.

FACTUAL INFORMATION.

1 Plaintiff, Daria Harper, is an Arizona resident, who was employed by an Arizona
2 employer that carried workers' compensation insurance with Defendant, Copperpoint
3 General Insurance Company (Copperpoint). Plaintiff was initially injured in Arizona
4 during her employment with Islander RV Resort, and she filed for and obtained
5 workers' compensation benefits in Arizona. Plaintiff required medical treatment in Las
6 Vegas, and was injured as a result of medical negligence. Plaintiff then filed a medical
7 malpractice/professional negligence suit in Clark County, Nevada. The industrial claim
8 was administered in accordance with the provisions of the Arizona Workers'
9 Compensation Act, and Defendant Copperpoint paid benefits of approximately
10 \$3,171,095. With regard to Plaintiff's professional negligence claim in Nevada, Plaintiff
11 received \$6,250,000.00 in settlement funds. Plaintiff claims her recovery was limited
12 by NRS 42.021 which would diminish her recovery by the admission of evidence that
13 medical bills and lost earnings were paid by workers' compensation. But that same
14 statute would preclude a lien by the workers' compensation carrier if such payments
15 were admitted at trial. Defendant, Copperpoint, has ceased paying Plaintiff benefits,
16 claiming that it now has a credit for \$3,171,095, and it is not required to pay further
17 benefits until it has recouped its lien. Plaintiff filed an action in Clark County, Nevada,
18 seeking declaratory and injunctive relief. Plaintiff seeks a declaratory judgment that
19 Copperpoint is required to continue paying workers' compensation benefits.

20 **SUMMARY OF LEGAL ARGUMENTS.**

21 Copperpoint argues that Plaintiffs' claims for declaratory and injunctive relief
22 must be dismissed pursuant to NRCP 12(b)(1), 12(b)(2), and 12(b)(5). Copperpoint
23 argues that Pursuant to NRCP 12(b)(1), the Court lacks subject matter jurisdiction.
24 Where a statute provides an administrative remedy, declaratory relief is inappropriate.
25 See *Baldonado v. Wynn Las Vegas, LLC.*, 124 Nev. 951, 964 (2008). In matters of
26 workers' compensation, NRS §616A.020 provides that the "rights and remedies
27 provided in chapters 616A to 616D, inclusive, of NRS" to a claimant who suffers a
28 workplace injury "shall be exclusive." Under Arizona law, ARS §23-1022 provides that
the workers' compensation system is an injured worker's exclusive remedy against both
the employer and the employer's workers' compensation carrier. As a result, NRS
§616A.020 bars an injured worker from filing any action in District Court regarding his

1 or her workers' compensation claim prior to the conclusion of the Department of
2 Administration's administrative appeals process.

3 Copperpoint argues that under Nevada law, this court is without subject-matter
4 jurisdiction to provide declaratory or injunctive relief in the instant case. First,
5 Plaintiffs did not adhere to the administrative appeals process, which pursuant to *Reno*
6 *Sparks Convention Visitors Auth. v. Jackson*, 112 Nev. 62, 67 (1996), strips the
7 Department of Administration and any subsequent judicial court of jurisdiction.
8 Second, pursuant to NRS §233B.135, in reviewing a workers' compensation
9 administrative decision, the District court is limited to either 1) affirming the order or
10 2) setting the order aside in whole or part. NRS § 233B.135 does not allow the District
11 Court to grant any form of declaratory or injunctive relief in a workers' compensation
12 matter.

13 Copperpoint argues that the case must be dismissed for lack of personal
14 jurisdiction pursuant to NRCP 12(b)(2). Copperpoint cites to *Arbella Mut. Ins. Co. v.*
15 *Eighth Judicial Dist. Court*, in which the Nevada Supreme Court stated that:

16 To obtain jurisdiction over a non-resident defendant, a plaintiff must show: (1)
17 that the requirements of the state's long-arm statute have been satisfied, and (2)
18 that due process is not offended by the exercise of jurisdiction. First, Nevada's
19 long-arm statute, NRS 14.065, reaches the limits of due process set by the
20 United States Constitution. Second, the Due Process Clause of the Fourteenth
21 Amendment requires a nonresident defendant to have "minimum contacts" with
22 the forum state sufficient to ensure that exercising personal jurisdiction over
23 him would not offend "traditional notions of fair play and substantial justice."
24 The defendant must have sufficient contacts with the forum such that he or she
25 could reasonably anticipate being hauled into court there.

26 See *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 513 (2006). In
27 *Sinatra v. Nat'l Enquirer, Inc.*, the Ninth Circuit Court of Appeals stated that:

28 When a defendant challenges the sufficiency of personal jurisdiction, the
plaintiff bears the burden of establishing personal jurisdiction over the
defendant.

See *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1194 (9th Cir. 1988).

Copperpoint argues that here, Plaintiffs have not established that Nevada courts
have personal jurisdiction over the Copperpoint Defendants. The Copperpoint
Defendants are Arizona Corporations, and in this case, an Arizona Corporation
provided workers' compensation coverage and benefits under Arizona law to Harper's
Arizona employer. Plaintiff, Harper, a resident of Arizona, received benefits from

1 Defendant, Copperpoint, under Arizona workers' compensation law. Copperpoint
2 Mutual Insurance Holding Company did not provide workers' compensation insurance
3 to Harper's employer nor administer benefits under Harper's claim, and otherwise has
4 no connection to Harper. Based on these facts, Copperpoint argues that Plaintiffs have
5 not established that this Court has personal jurisdiction over Copperpoint Mutual or
6 Copperpoint General.

7 Copperpoint next argues that pursuant to NRCP 12(b)(5), the Plaintiff's claims
8 must be dismissed, because even viewing the facts in the light most favorable to the
9 Plaintiffs, the requirements for declaratory relief remain unmet. Citing to NRS
10 616A.020, Copperpoint argues that the rights and remedies contained in NRS 616A
11 through 616D are the exclusive means of securing compensation for an industrial
12 injury. Similarly, ARS 23-1022 provides that the Arizona workers' compensation
13 system is the exclusive remedy for an Arizona worker, such as Harper, who sustains an
14 industrial injury.

15 Copperpoint argues that Plaintiff's second cause of action for "injunctive relief,"
16 is a remedy, not a cause of action.

17 Copperpoint argues that Copperpoint Mutual Insurance Holding Company must
18 be dismissed as it did not administer Harper's Workers' Compensation Claim, and
19 owed no duty to Harper. There are no possible set of facts under which Plaintiff may
20 obtain any relief against Copperpoint Mutual. Alternatively, Copperpoint argues that if
21 the Court is not willing to dismiss the Plaintiff's Complaint, Copperpoint is entitled to
22 Summary Judgment pursuant to NRCP 56 because there are no genuine issues of
23 material fact remaining regarding Copperpoint's statutory lien on Plaintiff's medical
24 malpractice settlement, and Copperpoint is entitled to judgment as a matter of law.

25 Copperpoint argues that NRS § 616C.215, which conclusively governs matters of
26 workers' compensation subrogation matters, contains no lien limitation simply because
27 the aggravating injury arose from medical malpractice. Indeed, in *Tri-County Equip. &*
28 *Leasing, LLC v. Klinke*, the Nevada Supreme Court determined that NRS §
616C.215(10) "creates an exception to the collateral source rule." See *Tri-County Equip.*
& Leasing, LLC v. Klinke, 128 Nev. 352, 356 (2012). In *Klinke*, the Nevada Supreme
Court stated that:

The collateral source doctrine does not change this result. As noted, this court
has adopted a per se rule barring the admission of a collateral source of payment

1 for an injury into evidence for any purpose. Nevada recognizes a limited
2 exception to the collateral source rule for workers' compensation payments. In
3 *Cramer v. Peavy*, this court expressly held that NRS 616C.215(10) creates an
4 exception to the collateral source rule. Pursuant to NRS 616C.215(10), "[i]n any
5 trial of an action by the injured employee . . . against a person other than the
6 employer or a person in the same employ, the jury must receive proof of the
7 amount of all payments made or to be made by the insurer or the Administrator
8 [of the Division of Industrial Relations]." The court must then instruct the jury
9 to follow the court's damages instructions without reducing any award by the
10 amount of workers' compensation paid, thus leaving unaltered the general
11 substantive law on calculating damages. The jury-instruction language
12 specifically suggested by the statute reads:

13 Payment of workmen's compensation benefits by the insurer, or in the
14 case of claims involving the Uninsured Employers' Claim Account or a
15 subsequent injury account the Administrator, is based upon the fact that
16 a compensable industrial accident occurred, and does not depend upon
17 blame or fault. If the plaintiff does not obtain a judgment in his or her
18 favor in this case, the plaintiff is not required to repay his or her
19 employer, the insurer or the Administrator any amount paid to the
20 plaintiff or paid on behalf of the plaintiff by the plaintiff's employer, the
21 insurer or the Administrator. If you decide that the plaintiff is entitled to
22 judgment against the defendant, you shall find damages for the plaintiff
23 in accordance with the court's instructions on damages and return your
24 verdict in the plaintiff's favor in the amount so found without deducting
25 the amount of any compensation benefits paid to or for the plaintiff. The
26 law provides a means by which any compensation benefits will be repaid
27 from your award.

28 We have previously recognized that this statute benefits both the plaintiff and
the defendant by preventing jury speculation as to workers' compensation
benefits received. 616C.215(10)'s application to "any trial" gives the statute
universal applicability to trials involving a plaintiff receiving workers'
compensation payments, at least when the plaintiff is required to first use any
recovery to reimburse the insurer for amounts paid.

See *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355–56 (2012)

(quotations omitted and emphasis added by Copperpoint).

In Opposition, the Plaintiffs argue that Defendant Copperpoint's Motion should
be denied because 1) Nevada's workers compensation statutes do not apply to Plaintiff;
2) personal jurisdiction exists because the Copperpoint Defendants do business in
Nevada; and 3) NRS 42.021 takes precedence over Arizona law regarding the
prohibition of a lien on the proceeds from medical malpractice case.

Plaintiffs argue that NRS 616A.020, 616C.315 and 616C.345 only apply to
injured workers who seek workers' compensation pursuant to Nevada law and
employers, and declaratory and injunctive relief causes of action are not covered by the

1 NIIA. Plaintiffs cite to *Conway v. Circus Circus*, 116 Nev. 870, 8 P.3d 837 (2000),
2 wherein the Nevada Supreme Court held that “the exclusive remedy portion of the NIIA
3 does not bar injunctive relief.” *Id.* at 876. Plaintiffs further argue that Arizona
4 Workers’ Compensation statutes do not apply. They claim that the only part of the case
5 subject to the exclusivity provision, the determination whether Plaintiff was entitled to
6 benefits and the amount of those benefits, has been completed. Plaintiffs cite to *State*
7 *Comp. Fund of Ariz. v. Fink* (Fink), 224 Ariz. 611, 233 P.3d 1190 (App. 2010), *State*
8 *Compensation Fund v. Ireland* (Ireland) 174 Ariz. 490, 851 P.2d 115 (App. 1992), and
9 *Stout v. State Compensation Fund* (Stout), 197 Ariz. 238, 243, 3 P.3d 1158, 1163 (App.
10 2000.), as support for the contention that the Courts have jurisdiction and authority
11 over lien issues arising from workers’ compensation actions. Plaintiffs further argue
12 that (1) CopperPoint General Insurance Company is licensed and does business in
13 Nevada, as do other CopperPoint entities; (2) CopperPoint Mutual Insurance Holding
14 Company holds itself out to the public as doing business in Nevada; (3) CopperPoint
15 Mutual Insurance Holding Company has created ambiguity regarding which
16 CopperPoint entity has terminated Plaintiff’s benefits; (4) the cause of action arises out
17 of purposeful contact with Nevada that includes (a) a lien claim for money paid to the
18 Nevada health care providers that treated plaintiff, (b) a claim of the right to have
19 participated in (and by inference, prevent) any settlement of the Nevada medical
20 malpractice action, and (c) claiming a right to reimbursement of and a credit on the
21 proceeds of a settlement of a Nevada medical malpractice lawsuit paid by Nevada
22 health care providers; and (5) CopperPoint Mutual Insurance Holding Company does
23 business as and is also known as CopperPoint Mutual Insurance Company, which is the
24 same entity as CopperPoint Insurance Company, which is licensed and does business in
25 Nevada.

26 In opposing the request for Summary Judgment, Plaintiffs “conceded that
27 CopperPoint Defendants’ lien claim would be valid, but for NRS 42.021 which prohibits
28 the lien.” Plaintiffs suggest that the court must first determine if Nevada Law takes
precedence over Arizona law, and if so, summary judgment must be denied. Plaintiffs
suggest that NRS 42.021 applies to and is part of the Nevada workers’ compensation
scheme, but is specifically limited to medical malpractice third-party actions by an
employee who has collected workers’ compensation benefits. Plaintiffs argue that

1 “Unlike NRS 616C.215(10), NRS 42.021 precludes an employer or workers’
2 compensation carrier which has provided the injured employee benefits from
3 recovering any portion of those benefits by lien, subrogation or otherwise.”

4 Plaintiffs cite to the case of *Tri-County Equip. & Leasing, LLC*, 128 Nev. 352,
5 286 P.3d 593, which cites to NRS 616C.215(10), but Plaintiffs argue that the Court’s
6 analysis there only applies “when the plaintiff is required to first use any recovery to
7 reimburse the insurer for amounts paid.” See Opposition at pgs. 21-22, citing NRS
8 616C.215(10). Plaintiff argues that pursuant to NRS 42.021, a plaintiff pursuing a
9 medical malpractice action is not required to use any recovery to reimburse the insurer
10 that provided him or her with workers’ compensation benefits.

11 **LEGAL ANALYSIS.**

12 Based upon the foregoing, this Court finds and concludes that when an
13 industrial injury claim is brought in Arizona, by an Arizona resident, and is handled
14 and processed according to Arizona laws and statutes, the Arizona law applies to the
15 industrial injury claim. When some of the treatment is rendered in Nevada, as part of
16 that industrial injury claim, Arizona law still applies, to some extent, but if the
17 treatment were, for example, not paid for, it would be the Nevada law, which would
18 control and would provide a mechanism for the Nevada medical care provider to obtain
19 relief and payment. In the present case, the injured worker, Plaintiff, was required to
20 obtain some medical care in Nevada, as part of her Arizona industrial injury claim.
21 That treatment was apparently rendered in a negligent manner, resulting in a medical
22 malpractice claim in Nevada. The Plaintiff resolved that medical malpractice claim by
23 way of a settlement in the amount of \$6,250,000.00. Copperpoint claims that it has no
24 obligation to pay additional benefits in the industrial injury claim, until Plaintiff
25 reimburses it the \$3,171,095.00 which Copperpoint has paid in benefits. Copperpoint’s
26 claim is correctly based on Arizona law, as that is the law that applies to the industrial
27 injury claim. Plaintiff contends that Copperpoint is not entitled to a lien, because NRS
28 42.021 prevents a lien by any collateral source against the Plaintiff.¹

¹ This Court notes that it has previously held NRS 42.021 to be unconstitutional, as a violation of the Takings Clause of the United States Constitution. The constitutionality of the statute was not challenged by either of the parties in this case, and consequently, this Court has no right or ability to adjudicate the constitutionality, and consequently, the Court will proceed as if the parties have stipulated to the constitutionality of that statute.

1 NRS 42.021 reads in pertinent part as follows:

2 NRS 42.021 Actions based on professional negligence of providers of health care:
3 Introduction of certain evidence relating to collateral benefits; restrictions on source of collateral
4 benefits; payment of future damages by periodic payments.

5 1. In an action for injury or death against a provider of health care based upon
6 professional negligence, if the defendant so elects, the defendant may introduce evidence
7 of any amount payable as a benefit to the plaintiff as a result of the injury or death
8 pursuant to the United States Social Security Act, any state or federal income disability
9 or worker's compensation act, any health, sickness or income-disability insurance,
10 accident insurance that provides health benefits or income-disability coverage, and any
11 contract or agreement of any group, organization, partnership or corporation to provide,
12 pay for or reimburse the cost of medical, hospital, dental or other health care services. If
13 the defendant elects to introduce such evidence, the plaintiff may introduce evidence of
14 any amount that the plaintiff has paid or contributed to secure the plaintiff's right to any
15 insurance benefits concerning which the defendant has introduced evidence.

16 2. A source of collateral benefits introduced pursuant to subsection 1 may not:

17 (a) Recover any amount against the plaintiff; or

18 (b) Be subrogated to the rights of the plaintiff against a defendant.

19 Although the Plaintiff argues that NRS 42.021 applies to settlements as well as to
20 cases that are taken to Trial, this Court concludes the opposite. The statute specifically
21 provides that "if the defendant so elects, the defendant may introduce evidence . . ."
22 and if the Defendant does so, "the plaintiff may introduce evidence of any amount that
23 the plaintiff has paid or contributed to secure the plaintiff's right to any insurance
24 benefits. . ." And finally, a collateral source "*introduced pursuant to subsection 1* may
25 not recover any amount against the plaintiff." (*Id.*, emphasis added).

26 The purpose of this statute was to preclude double-dipping in medical
27 malpractice cases. The Defendants would have the "option" to determine whether they
28 wanted to introduce evidence of the amounts payable by insurance carriers or other
collateral sources. Although the settlement documents in this case attempt to include
language to suggest that this was considered as part of the settlement, the statute
makes no reference to a "settlement." The "introduction of evidence," only applies to
Trial, and not to a settlement negotiation. Consequently, while NRS 42.021 would
arguably have applied if this case were taken to Trial, there is no suggestion in the
statute, nor in any Nevada case law, that it applies to a settlement, and consequently,
NRS 42.021 cannot preclude Copperpoint's lien or offset, pursuant to Arizona workers'
compensation law.

Based upon the foregoing analysis and this Court's interpretation of NRS 42.021,
the remainder of the arguments are essentially rendered moot. This Court notes that in
addressing a Motion to Dismiss, the Court must view all factual allegations in the light

1 most favorable to the non-moving party, and the Complaint should be dismissed only if
2 it appears beyond a doubt that the Plaintiff could prove no set of facts, which, if true,
3 would entitle Plaintiffs to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev.
4 224, 181 P.3d 670 (2008). Even viewing the evidence in the light most favorable to the
5 Plaintiffs, this Court finds that there are no set of facts, which if true, would entitle the
6 Plaintiffs to relief, as it relates to the interpretation of NRS 42.021.

7 Consequently, based upon the foregoing, and other good cause appearing,

8 **IT IS HEREBY ORDERED** that Defendant Copperpoint's Motion to Dismiss
9 is hereby **GRANTED**.

10 **ALCH'S MOTION TO DISMISS OR FOR SUMMARY JUDGMENT.**

11 **FACTUAL INFORMATION**

12 Plaintiff's Complaint alleges 6 causes of action, and a claim for punitive
13 damages. Only 3 claims address the Defendant, Thomas Alch: the 3rd cause of action
14 for legal malpractice, the 4th cause of action for fraud, and the 5th cause of action for
15 breach of fiduciary duty.

16 Defendant, Alch, argues that Plaintiffs' claims for punitive damages for fraud
17 and breach of the fiduciary duty are inappropriate because the alleged breach of
18 fiduciary duty is duplicative of the claim for legal malpractice, and Plaintiffs have failed
19 to alleged fraud against Defendant with sufficient specificity. Finally, Alch argues that
20 Plaintiffs cannot sustain the burden for punitive damages by clear and convincing
21 evidence.

22 It appears that Alch began working on the case while at the office of Bruce G.
23 Fagel & Associates. In September of 2017, he became an employee of Defendant,
24 Shoop. Alch argues that he did not attend the mediation before Retired Judge Stuart
25 Bell. Silberberg informed him of the settlement amount, the up-front cash portion was
26 received and distributed by Mr. Silberberg, and Mr. Alch was allegedly not involved in
27 any of those processes.

28 **SUMMARY OF LEGAL ARGUMENTS**

Defendant Alch argues that the Complaint is not specific enough relating to the
allegations of fraud. The case law requires that "the circumstances that must be

1 detailed include averments to the time, the place, the identity of the parties involved,
2 and the nature of the fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636
3 P.2d 874, (1981). Further, Alch argues that to set forth a claim for fraud, a plaintiff
4 must allege the following elements: (1) A false representation made by the defendant;
5 (2) defendant's knowledge or belief that its representation was false or that defendant
6 has an insufficient basis of information for making the representation; (3) defendant
7 intended to induce plaintiff to act or refrain from acting upon the misrepresentation;
8 and (4) damage to the plaintiff as a result of relying on the misrepresentation.
9 *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998). Plaintiff
10 only alleges that “If said defendants did know [that Silberberg was charging an
11 excessive fee], and accepted a portion of those fees for themselves, then they are
12 similarly liable to plaintiffs for fraud.” Alch argues that he was not involved in the
13 distribution of the settlement, nor was he involved in any discussions or
14 communications with Harper or Mr. Wininger regarding fees and costs.

15 Alch argues that “a cause of action for legal malpractice encompasses breaches
16 of contractual as well as fiduciary duties because both ‘concern the representation of a
17 client and involve the fundamental aspects of an attorney-client relationship.’” *Stalk v.*
18 *Mushkin*, 199 P.3d 838, 843 (2009). Consequently, Alch argues that any claim for
19 breach of a fiduciary relationship is subsumed in the claim for legal malpractice.

20 Finally, Alch argues that Plaintiffs’ claim for punitive damages should be
21 dismissed because the Plaintiffs cannot establish facts sufficient to support by clear and
22 convincing evidence that the Defendants are guilty of fraud, oppression, or malice.

23 The Court notes that the Silberberg Defendants filed a Joinder.

24 Plaintiffs argue that breach of a fiduciary duty is different from negligence, and a
25 claim for breach of fiduciary duty is not duplicative of a claim for legal malpractice.
26 Plaintiffs argue that the damages recoverable for legal malpractice do not include
27 damages for emotional suffering or emotional distress, but such damages would
28 arguably be recoverable for a breach of fiduciary duty.

With regard to the fraud claim, Plaintiffs argue that there are sufficient facts
alleged against Silberberg, and that the 4th cause of action for fraud is not alleged
against the Defendant, Alch.

LEGAL ANALYSIS

Based upon the foregoing, this Court finds and concludes that the allegations alleged against Silberberg relating to fraud are sufficient to put the defendant on notice of the claims against him, and satisfy the elevated standard of pleading required by the rules. Because the Plaintiffs have confirmed that the 4th cause of action for fraud is not alleged against Defendant Alch, the Court hereby confirms that the 4th cause of action for fraud does not apply to the Defendant, Alch. As it relates to the claim for breach of fiduciary duty, although the *Stalk v. Mushkin* case seems to indicate that the claim is subsumed in a claim for legal malpractice, the Court can see how there could be a distinction, as the elements are different, and the potential damages could be different. Consequently, the Court finds and concludes that they are separate and distinct causes of action, and may both be maintained. With regard to the claim for punitive damages, although this Court sits as a gatekeeper, the ultimate determination as to whether the evidence supports fraud, oppression, or malice against the Defendants will be up to the trier of fact. Because this Court cannot dismiss a claim unless it appears beyond a doubt that the Plaintiff could prove no set of facts, which, if true, would entitle Plaintiffs to relief, the Court cannot dismiss the claims as requested by the Defendants herein. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008). Similarly, with regard to the request for summary judgment, NRCP 56 indicates that summary judgment is only appropriate if no genuine issues of material fact remain. The Court's above-referenced analysis confirms that genuine issues of material fact remain.

Consequently, based upon the foregoing, and good cause appearing,

IT IS HEREBY ORDERED that Alch's Motion to Dismiss or for Summary Judgment, and the Silberberg Defendants' Joinder, are hereby **DENIED**.

SHOOP'S MOTION TO DISMISS.

FACTUAL INFORMATION

Defendant Shoop, a Professional Law Corporation, claims to be a complete stranger both to Nevada and to the underlying representation which is the basis of this lawsuit. Shoop claims to have no contacts at all with Nevada that would confer general jurisdiction. Further, Shoop alleges that neither he individually nor as Shoop APLC

1 had any involvement in the underlying case, nor shared in any of the fees generated
2 from it.

3 4 **SUMMARY OF LEGAL ARGUMENTS**

5 Shoop correctly argues that there are two types of personal jurisdiction – general
6 jurisdiction and specific jurisdiction. General jurisdiction exists over a defendant who
7 has “substantial” or “continuous and systematic” contacts with the forum state. Shoop
8 contends that his home and base of operations are not in Nevada. Further, Shoop lacks
9 any substantial, continuous, or systematic contacts with Nevada. Shoop does not
10 conduct business in Nevada, and is not licensed in Nevada. Shoop APLC’s principal,
11 David Shoop, is not licensed in Nevada, and neither Shoop entity has ever earned
12 income in Nevada. With regard to “specific” jurisdiction, the relationship must arise
13 out of contacts that the “defendant himself” creates with the forum state, and Shoop
14 argues that he has none.

15 In evaluating specific personal jurisdiction, courts consider two factors: (1)
16 whether the defendant purposefully availed itself of the privilege of acting in the forum
17 state or purposefully directed its conduct towards the forum state; and (2) whether the
18 cause of action arose from the defendant’s purposeful contact or activities in
19 connection with the forum state, such that it is reasonable to exercise personal
20 jurisdiction. *Tricarichi v. Coöperative Rabobank, U.A.*, 440 P.3d 645, 650 (Nev. 2019).
21 In analyzing whether specific personal jurisdiction exists in a tort action, courts apply
22 the “effects test” derived from *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, which
23 considers whether the defendant (1) committed an intentional act, (2) expressly aimed
24 at the forum state, (3) causing harm that the defendant knows is likely to be suffered in
25 the forum state. *Tricarichi v. Cooperative Rabobank, supra*, 440 P.3d at 650. Shoop
26 argues that none of these factors justifies the Court exercising personal jurisdiction
27 over him or his business.

28 The Plaintiffs simply request additional time to do discovery to be able to obtain
the information necessary to establish personal jurisdiction over the Shoop Defendants.
The Plaintiffs do cite to the Settlement Agreement, which indicates Shoop APLC as one
of the attorneys for Plaintiffs, which is at least some evidence that Shoop had some
involvement in the case.

1 **LEGAL ANALYSIS**

2 Based upon the foregoing, there is at least some evidence that Shoop had some
3 involvement in the underlying case. That may not be enough to justify the Court's
4 exercise of personal jurisdiction over Shoop individually and Shoop APLC. The Nevada
5 Supreme Court has indicated in the past, however, that it may be an abuse of the
6 Court's discretion to dismiss a case, in light of a request for NRCP 56(d) relief, at the
7 beginning of the case, and without allowing the Plaintiff the opportunity to conduct at
8 least some discovery.

9 Based upon the foregoing, and good cause appearing,

10 **IT IS HEREBY ORDERED** that the hearing on this motion is **CONTINUED**
11 for approximately 120 days **to February 24, 2021, at 9:00 a.m.** If the Plaintiff has
12 additional information to support its opposition, such information should be set forth
13 in a **supplemental Opposition, filed on or before February 10, 2021**, allowing
14 the Defendant until **February 17, 2021, to file any necessary response.**

15 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

16 **FACTUAL INFORMATION**

17 Plaintiffs have alleged two causes of action against Copperpoint, and this Motion
18 seeks partial summary judgment as to those causes of action, ie., the first cause of
19 action for declaratory relief on the question of whether Defendant, Copperpoint has a
20 lien, or is otherwise entitled to a future credit, on the settlement proceeds and the
21 second cause of action for appropriate injunctive relief if Plaintiff prevails on the first
22 cause of action.

23 **SUMMARY OF LEGAL ARGUMENTS**

24 The Court appreciates the Plaintiffs' citation to voluminous California law, which
25 may arguably support the Plaintiffs' position, but the Court has already stated its
26 position above, with regard to NRS 42.021.

27 **LEGAL ANALYSIS**

28 Although the Plaintiff argues that NRS 42.021 applies to settlements as well as to
cases that are taken to Trial, this Court concludes the opposite. The statute specifically

1 provides that “if the defendant so elects, the defendant may introduce evidence . . .”
2 and if the Defendant does so, “the plaintiff may introduce evidence of any amount that
3 the plaintiff has paid or contributed to secure the plaintiff’s right to any insurance
4 benefits. . .” And finally, a collateral source “*introduced pursuant to subsection 1* may
5 not recover any amount against the plaintiff.” (*Id.*, emphasis added).

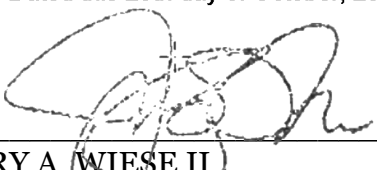
6 The purpose of this statute was to preclude double-dipping in medical
7 malpractice cases. The Defendants would have the “option” to determine whether they
8 wanted to introduce evidence of the amounts payable by insurance carriers or other
9 collateral sources. Although the settlement documents in this case, attempt to include
10 language to suggest that this was considered as part of the settlement, the statute
11 makes no reference to a “settlement.” The “introduction of evidence,” only applies to
12 Trial, and not to a settlement negotiation. Consequently, while NRS 42.021 would
13 arguably have applied if this case were taken to Trial, there is no suggestion in the
14 statute, nor in any Nevada case law, that it applies to a settlement, and consequently,
15 NRS 42.021 cannot preclude Copperpoint’s lien or offset, pursuant to Arizona workers’
16 compensation law. Although the settlement agreement indicates that the Defendant
17 would have sought to introduce such evidence at Trial, that never transpired in this
18 case, and consequently, NRS 42.021 cannot apply. If the Nevada Legislature desired to
19 have NRS 42.021 apply to “settlements” as well as “trials,” they could have included
20 language so indicating.

21 Based upon the foregoing analysis and this Court’s interpretation of NRS 42.021,
22 this Court has no choice but to deny the Plaintiffs’ requested relief.

23 Consequently, based upon the foregoing, and other good cause appearing,
24 **IT IS HEREBY ORDERED** that Plaintiffs’ Motion for Partial Summary
25 Judgment is hereby **DENIED**.

26 Dated this 25TH day of October, 2020.

Dated this 26th day of October, 2020

27 
28 JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 25B5 2CE7
Jerry A. Wiese
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

8 Copperpoint Mutual Insurance
9 Holding Company, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/26/2020

15 Kellie Piet

kpiet@mcbridehall.com

16 Heather Hall

hshall@mcbridehall.com

17 David Clark

dclark@lipsonneilson.com

18 MGA Docketing

docket@mgalaw.com

19 Kimberly Glad

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20 Susana Nutt

snutt@lipsonneilson.com

21 Debra Marquez

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22 Robert McBride

rcmcbride@mcbridehall.com

23 Cynthia Crizaldo

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24 Michelle Newquist

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25 Terry Rodriguez

trodriguez@hmc.law

26
27
28

1	Candace Cullina	ccullina@mcbridehall.com
2	Tiffane Safar	tsafar@mcbridehall.com
3	sami Randolph	srandolph@hmc.law
4	John Blumberg	advocates@blumberglaw.com
5	Dalton Hooks, Jr.	dalton@hmc.law
6	Dalton Hooks, Jr.	dalton@hmc.law
7	Alan Schiffman	alan@schiffmanlaw.com
8	Terry Rodriguez	trodriguez@hmc.law
9	Kenneth Silberberg	ms@silberberglaw.com
10	Kenneth Silberberg	ms@silberberglaw.com
11	Thomas Alch	thomas.alch@shooplaw.com
12	James Kjar	kjar@kmslegal.com
13	Jon Schwalbach	jschwalbach@kmslegal.com
14	James Kjar	kjar@kmslegal.com
15	Jon Schwalbach	jschwalbach@kmslegal.com
16	Jessica O'Neill	joneill@kmslegal.com
17	Robert McKenna, III	rmckenna@kmslegal.com
18	Penny Williams	pwilliams@mcbridehall.com
19	Melissa Grass	mgrass@copperpoint.com
20	Kelly Lasorsa	klasorsa@blumberglaw.com
21	William Brenske	bak@baklawlv.com
22	Shawnee Allen	sallen@kmslegal.com
23		
24		
25		
26		
27		
28		

1 If indicated below, a copy of the above mentioned filings were also served by mail
2 via United States Postal Service, postage prepaid, to the parties listed below at their last
3 known addresses on 10/27/2020

4 David Clark 600 E. Charleston Blvd.
Las Vegas, NV, 89104

5 Jason Maier Maier Gutierrez & Associates
6 Attn: Jason Maier, Esq
7 8816 Spanish Ridge Avenue
Las Vegas, NV, 89148
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

June 30, 2020

A-20-814541-C Daria Harper, Plaintiff(s)
vs.
Copperpoint Mutual Insurance Holding Company, Defendant(s)

June 30, 2020

3:00 AM

Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a chambers calendar on July 2, 2020, with regard to Plaintiff's Motion to Associate John Blumberg, Esq., as Counsel. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non-essential," and may be decided after a hearing, decided on the papers, or continued. This Court has determined that it would be appropriate to decide this matter on the papers, and consequently, this minute order issues.

Counsel has submitted a Verified Application for Association of Counsel, a Certificate of Good Standing from California, and a State Bar of Nevada Statement. There appears to be no good reason not to admit Mr. Blumberg to associate as counsel pursuant to Nevada Supreme Court Rule 42. Consequently, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff s Motion to Associate Counsel is hereby GRANTED.

The Court requests that Counsel for Plaintiff prepare an Order consistent with the foregoing, and submit it to the Court for signature within 10 days.

Because this matter has been decided on the papers, the matter will be taken "off calendar."

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 06-30-20./lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

July 08, 2020

A-20-814541-C	Daria Harper, Plaintiff(s)
	vs.
	Copperpoint Mutual Insurance Holding Company, Defendant(s)

July 08, 2020

9:00 AM

All Pending Motions

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER: Vanessa Medina

REPORTER:

PARTIES

PRESENT:	Maier, Jason R., ESQ	Attorney
	Randolph, Sami N.	Attorney

JOURNAL ENTRIES

- PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION DEFENDANT KENNETH MARSHALL SILBERBERG'S JOINDER TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

John Blumberg, Esq. present for Plaintiffs. All parties present via Blue Jeans video conferencing.

Upon Mr. Blumberg's inquiry, Court clarified the Court was viewing this as a hearing on preliminary injunction. Counsel agreed to their understanding of the same. Argument by Mr. Blumberg that the lawsuit was filed and settled under Nevada law and it was improper for opposing counsel to file workers' compensation liens in Arizona because workers' compensation liens were not subject to Nevada law. Argument by Ms. Randolph that the Arizona pleadings have already commenced and the actions were subject to a separate Arizona workers' compensation claim relating to an Arizona insurance provider. Ms. Randolph advised it was her position that this Court did not have jurisdiction over Arizona claims and benefits. Rebuttal argument by Mr. Blumberg. Court advised an issue in looking at the factors of the preliminary injunction was that the matter was briefed by counsel as a summary judgment motion and went beyond what was necessary for a preliminary

injunction. Court advised the Court was not convinced that NRS 42.021 would trump Arizona workers' compensation statutes. Court advised there were too many issues for the Court to decide as a matter of law to grant a preliminary injunction. Additionally Court advised monetary loss was not enough to site irreparable harm. COURT ORDERED, motion DENIED. Mr. Blumberg indicated the matter was ripe for summary judgment motions and requested the Court schedule a hearing date. Court advised opposing counsel would have to agree that there are not issues of fact. Ms. Randolph advised there may be issues of material fact. Court advised counsel to file whatever motions they need to file and they will be set by the Court accordingly. Court DIRECTED Ms. Randolph to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

August 24, 2020

A-20-814541-C	Daria Harper, Plaintiff(s) vs. Copperpoint Mutual Insurance Holding Company, Defendant(s)
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August 24, 2020

3:00 AM

Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: Chambers

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The above-referenced matter is scheduled for a hearing on 8/26/20 with regard to Defendant Shoop's Motion to Dismiss for Lack of Personal Jurisdiction, and Defendant Alch's Motion to Dismiss or Alternatively, Motion for Summary Judgment. Pursuant to A.O. 20-01 and subsequent administrative orders, this matter is deemed "non essential," and may be decided after a hearing, decided on the papers, or continued. This matter is hereby CONTINUED to Tuesday, September 29, 2020.

Because this matter has been continued, the hearing scheduled for 8/26/20 will be taken off calendar, and consequently, there is no need for any parties or attorneys to appear.

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 08-24-20./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

September 03, 2020

A-20-814541-C Daria Harper, Plaintiff(s)
vs.
Copperpoint Mutual Insurance Holding Company, Defendant(s)

September 03, 2020 12:30 AM All Pending Motions

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- RULE 16 MANDATORY CONFERENCE...DEFENDANTS LAW OFFICES OF MARSHALL SILBERBERG, P.C. AND KENNETH MARSHALL SILBERBERG'S MOTION TO ASSOCIATE JAMES JORGEN KJAR AS COUNSEL ON ORDER SHORTENING TIME DEFENDANTS LAW OFFICES OF MARSHALL SILBERBERG, P.C. AND KENNETH MARSHALL SILBERBERG'S MOTION TO ASSOCIATE JON ROY SCHWALBACH, III AS COUNSEL ON ORDER SHORTENING TIME

Present via Teleconference: Jason Maier, Esq. and John Blumberg, Esq. for Plaintiff(s); Robert McBride, Esq. Sami Randolph, Esq. for Defendant(s). There was no appearance on behalf of Defendants Shoop, PLC and Thomas Alch.

The Court brought to the attention of Counsel two motions to associate counsel filed on behalf of Defendants, Kenneth Marshall Silberberg and Law Offices of Marshall Silberberg, PC, currently scheduled to be heard in chambers on 9/9/20. The Court noted there has been no opposition filed to said motions and pursuant to EDCR 2.23, the hearings on said motions were ADVANCED to today's date and thereafter, the Court ORDERED Defendants Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion to Associate Jon Roy Schwalbach, III as Counsel on Order Shortening Time and Defendants Law Offices of Marshall Silberberg, P.C. and Kenneth Marshall Silberberg's Motion to Associate James Jorgen Kjar as Counsel on Order Shortening Time GRANTED.

Counsel was instructed to submit proposed orders to chambers for processing.

Upon the Court's inquiry, Counsel gave a brief description of the pending case. The Court reviewed the discovery deadlines set forth in the Joint Case Conference Report and all Counsel were in agreement that the dates were adequate, in light of directives associated with the current COVID-19 conditions. The Court thereafter ordered the dates set forth in the JCCR would be adopted and the trial of this matter set, accordingly.

Counsel advised they may agree to engage in a private mediation in the future and did not wish to schedule a Judicial Settlement Conference with the Court at this time.

Court advised Counsel that discovery disputes which arise during the course of litigation must be brought before the Discovery Commissioner. Counsel was further advised to contact the department chambers directly to address matters involving scheduling issues.

Following discussion between Counsel regarding pending dispositive motions currently scheduled on the Court's docket on September 29, 2020, at 10:30 AM and September 30, 2020, at 9:00 AM, the Court ORDERED the hearings consolidated. Accordingly, Plaintiffs' Motion for Partial Summary Judgment, currently scheduled on September 30, 2020, at 9:00 AM shall be RESCHEDULED to SEPTEMBER 29, 2020 at 10:30AM. Additionally, any subsequently filed Counter-Motion shall be set on that same date.

A Status Check: Settlement/Trial Setting is set for APRIL 7, 2021 at 9:00 AM.

Final Day to Amend Pleadings/Add Parties: 4/20/2021

Initial Expert Disclosure Deadline: 4/20/2021

Rebuttal Expert Disclosure Deadline: 5/20/2021

Final Day to Complete Discovery: 7/19/2021

Deadline for filing Dispositive Motion: 8/18/2021

The JURY Trial is set on the JANUARY 3, 2022, 5-week stack.

A Scheduling Order and Order Setting Civil Jury Trial to follow.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

September 17, 2020

A-20-814541-C Daria Harper, Plaintiff(s)
vs.
Copperpoint Mutual Insurance Holding Company, Defendant(s)

**September 17, 2020 9:30 AM Motion Defendants, Law
Offices of Marshall
Silberberg, P.C. and
Kenneth Marshall
Silberberg s Motion
for Protective Order
on an OST**

HEARD BY: Truman, Erin

COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: Clark, David A. Attorney
Maier, Jason R., ESQ Attorney
McBride, Robert C. Attorney

JOURNAL ENTRIES

- ATTORNEY PRESENT: John Blumberg, present as co-counsel for Plaintiff.

Commissioner stated there is no Motion for Sanctions for the Commissioner to consider. Based on the timing of the deposition, Mr. McBride stated counsel are working on available dates for all counsel. Mr. Collins will be produced for deposition on 10-12-2020, and Mr. Silberberg will be deposed late October or early November. COMMISSIONER RECOMMENDED, Motion for Protective Order is GRANTED; the 9-22-20 and 9-24-20 unilaterally set depositions are PROTECTED. Commissioner advised counsel to work together to find available deposition dates.

Commissioner stated production of documents are from the legal malpractice case. Argument by Mr. McBride; documents are protected, and counsel requested an in camera review with a privilege log, or moving this Hearing to another date for a final Hearing. Mr. Blumberg opposed moving the Motion. Argument by Mr. Blumberg. Commissioner stated the former client is entitled to the entire file, and it must be produced for the malpractice case; anything up until the representation ended must be produced. Argument by Mr. McBride. Colloquy. COMMISSIONER RECOMMENDED, through the end of Plaintiff's representation, everything is discoverable; communications are discoverable as Directed on the record. COMMISSIONER RECOMMENDED, once there is an indication of a dispute between the client and the attorney is initiated with the client, those communications are PROTECTED. Argument by Mr. Blumberg.

During the time the Law Firm was working with Plaintiff on behalf of Plaintiff, representation is continued if the Law Firm is providing legal services. Commissioner stated those documents are discoverable. COMMISSIONER RECOMMENDED, motion is GRANTED IN PART and DENIED IN PART as stated. Mr. Blumberg to prepare the Report and Recommendations, and counsel to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Tort

COURT MINUTES

September 23, 2020

A-20-814541-C Daria Harper, Plaintiff(s)
vs.
Copperpoint Mutual Insurance Holding Company, Defendant(s)

September 23, 2020 3:00 AM Minute Order

HEARD BY: Wiese, Jerry A.

COURTROOM: No Location

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the request of the Court, for judicial economy, efficiency for review, and purposes of time management; COURT ORDERED, all Motions set for September 29, 2020 CONTINUED to October 14, 2020 at 9:00 a.m.

10/14/20 9:00 AM DEFENDANTS' MOTIONS TO DISMISS/MOTIONS FOR SUMMARY JUDGMENT

CLERK'S NOTE: A copy of the above minute order was distributed to all parties 09-23-20./ /lk



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JOHN P. BLUMBERG, ESQ.
444 W. OCEAN BLVD., STE 1500
LONG BEACH, CA 90802

DATE: November 25, 2020
CASE: A-20-814541-C

RE CASE: DARIA HARPER; DANIEL WININGER vs. COPPERPOINT MUTUAL INSURANCE HOLDINGS COMPANY; COPPERPOINT GENERAL INSURANCE COMPANY; LAW OFFICES OF MARSHALL SILBERBERG, P.C.; KENNETH MARSHALL SILBERG AKA MARSHALL SILBERBERG AKA K. MARSHALL SILBERBERG; THOMAS S. ALCH AKA THOMAS STEVEN ALCH; SHOOP, A PROFESSIONAL LAW CORPORATION

NOTICE OF APPEAL FILED: November 24, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the court.*
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

DARIA HARPER; DANIEL WININGER,

Plaintiff(s),

vs.

COPPERPOINT MUTUAL INSURANCE HOLDINGS COMPANY; COPPERPOINT GENERAL INSURANCE COMPANY; LAW OFFICES OF MARSHALL SILBERBERG, P.C.; KENNETH MARSHALL SILBERBERG AKA MARSHALL SILBERBERG AKA K. MARSHALL SILBERBERG; THOMAS S. ALCH AKA THOMAS STEVEN ALCH; SHOOP, A PROFESSIONAL LAW CORPORATION,

Defendant(s),

Case No: A-20-814541-C

Dept No: XXX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 25 day of November 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk