

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

COPPERPOINT MUTUAL
INSURANCE HOLDING COMPANY,
an Arizona corporation;
COPPERPOINT GENERAL
INSURANCE COMPANY, an Arizona
corporation; LAW OFFICES OF
MARSHALL SILVERBERG, P.C., a
California corporation; KENNETH
MARSHALL SILVERBERG aka
MARSHALL SILVERBERG aka K.
MARSHALL SILVERBERG, an
individual,

Respondents.

Case No. 82158

Electronically Filed
Jun 21 2021 02:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from an order entered by the
Eighth Judicial District Court, Clark County, Nevada
The Honorable Jerry A. Wiese, III, District Court Judge
District Court Case No. A-20-814541-C

JOINT APPENDIX VOLUME I

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Copperpoint Mutual Insurance
Holding Co. and Copperpoint General
Insurance Company

DATE	DESCRIPTION	VOLUME	PAGES
05/04/2020	Complaint	I	0001-0022
06/01/2020	Defendants Copperpoint Mutual Insurance Holding Company & Copperpoint General Insurance Company's Answer to Plaintiffs' Complaint	I	0039-0051
09/04/2020	Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Summary Judgment	III	0593-0671
09/09/2020	Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Opposition to Plaintiffs' Motion for Partial Summary Judgment	III	0672-0741
10/07/2020	Defendants Copperpoint Mutual Insurance Holding Company and Copperpoint General Insurance Company's Reply in Support of Their Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Partial Summary Judgment	VI	1411-1491
05/06/2020	Errata to complaint	I	0023-0030
09/25/2020	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	V/VI	1107-1410
11/24/2020	Motion to Certify Order Entered on 10/26/20 as Final Pursuant to NRC 54(B)	VII	1530-1538
11/24/2020	Notice of Appeal	VII	1509-1529

02/08/2021	Notice of Entry of Order	VII	1571-1598
10/26/2020	Order	VII	1492-1508
07/06/2020	Order Admitting to Practice	I	0052-0055
02/06/2021	Order Granting Plaintiffs' Motion to Certify Order Entered on 10/26/20 as Final Pursuant to NRCPC 54(B)	VII	1546-1570
08/26/2020	Plaintiffs' Motion for Partial Summary Judgment	I/II/III	0056-0592
09/18/2020	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	IV/V	0742-1087
09/22/2020	Plaintiffs' Reply in Support of Plaintiffs' Motion for Partial Summary Judgment	V	1088-1106
01/29/2021	Stipulation and Order for Dismissal of Defendant, Shoop, a Professional Law Corporation, Without Prejudice	VII	1539-1545
5/14/2020	Summons with proof of service to defendant Copperpoint General Insurance Company	I	0035-0038
5/14/2020	Summons with proof of service to defendant Copperpoint Mutual Insurance Holding Company	I	0031-0034

CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I-VII** of the **JOINT APPENDIX** shall be made in accordance with the Master Service List as follows:

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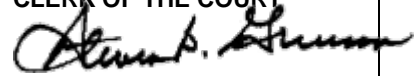
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*Attorneys for Defendants Kenneth Marshall Silverberg and
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DATED this 21st day of June, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES



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

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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.:
Dept. No.:

COMPLAINT

DEMAND FOR JURY TRIAL

Arbitration Exemptions:

- 1. Action for Declaratory Relief**
- 2. Action for Injunctive Relief**
- 3. Damages in Excess of \$50,000**

Plaintiffs hereby demand a trial by jury and complain and allege against defendants as follows:

GENERAL ALLEGATIONS

1
2 1. At all times mentioned, plaintiffs, DARIA HARPER and DANIEL WININGER, were
3 married and residents of the state of Arizona.

4 2. On or about August 11, 2014, plaintiff DARIA HARPER sustained a knee injury while
5 in the course and scope of her employment. Her employer was insured by defendant COPPERPOINT
6 GENERAL INSURANCE COMPANY, duly incorporated under the laws of Arizona as an Arizona
7 corporation, which is now also known and doing business as COPPERPOINT MUTUAL
8 INSURANCE HOLDING COMPANY, duly incorporated under the laws of Arizona as an Arizona
9 corporation, and is also known as COPPERPOINT MUTUAL INSURANCE COMPANY and/or
10 COPPERPOINT INSURANCE COMPANIES (collectively “COPPERPOINT”). Pursuant to the
11 Arizona Workers’ Compensation Act (Arizona Revised Statutes section 23-901, *et seq.*) defendant
12 COPPERPOINT was obligated to provide, among other things, necessary medical treatment and
13 income disability payments to plaintiff DARIA HARPER.

14 3. On or about June 9, 2015, plaintiff DARIA HARPER required medical treatment in
15 Las Vegas, Nevada that was related to her original August 11, 2014 injury. As a result of this medical
16 treatment, (a) plaintiff DARIA HARPER suffered serious injury resulting in quadriplegia, significant
17 pain, suffering, emotional distress and economic damages for the cost of future care, as well as lost
18 income and earning capacity and (b) plaintiff DANIEL WININGER suffered compensable damages
19 by virtue of his marital relationship with plaintiff DARIA HARPER.

20 4. At all times mentioned, defendant KENNETH MARSHALL SILBERBERG, also
21 known as MARSHALL SILBERBERG and K. MARSHALL SILBERBERG was, and is, licensed to
22 practice law in California, a resident of Los Angeles County, California and a principal and/or owner
23 of defendant LAW OFFICES OF MARSHALL SILBERBERG, P.C., located in Orange County,
24 California (hereafter, “defendant SILBERBERG” or “defendants SILBERBERG.”)

25 5. At all times mentioned herein, defendant THOMAS STEVEN ALCH, also known as
26 THOMAS S. ALCH (“ALCH”), was and is licensed to practice law in California and Nevada. From
27 May 2018 to the present, ALCH was an agent and/or employee of defendant SHOOP, A
28 PROFESSIONAL LAW CORPORATION (“SHOOP”). SHOOP was and is a corporation duly

1 incorporated under the laws of California and located in Los Angeles County, California and is liable
2 for the negligent acts and omissions of its agent and/or employee defendant ALCH.

3 6. The true names and capacities, whether individual, corporate, associate, partnership or
4 otherwise, of the defendants herein designated as DOES 1-50, inclusive, are unknown to plaintiffs,
5 who therefore sue said defendants by such fictitious names. Plaintiffs will seek leave of the Court to
6 insert the true names and capacities of such defendants when the same have been ascertained and will
7 further seek leave to join said defendants in these proceedings.

8 7. This court has jurisdiction because the complaint arises out of events, claims, actions
9 and omissions relating to a lawsuit prosecuted in the District Court of Clark County, Nevada,
10 specifically but without limitation: (a) defendant THOMAS STEVEN ALCH is licensed to practice
11 law in Nevada and was attorney of record for plaintiffs in Nevada; (b) defendant KENNETH
12 MARSHALL SILBERBERG was admitted to practice in District Court of Clark County, pro hac vice
13 and was counsel of record for plaintiffs in Nevada; (c) defendants COPPERPOINT GENERAL
14 INSURANCE COMPANY, and/or COPPERPOINT MUTUAL INSURANCE HOLDING
15 COMPANY, aka COPPERPOINT MUTUAL INSURANCE COMPANY, aka COPPERPOINT
16 INSURANCE COMPANIES, and DOES 1-10 conduct business in Nevada, paid medical bills of
17 plaintiff DARIA HARPER to Nevada health care providers, and claims entitlement to reimbursement
18 of those paid medical bills from money received by plaintiffs pursuant to the laws of and litigation in
19 Clark County, Nevada.

20 8. On or about March 10, 2016, defendant SILBERBERG (a) agreed to represent
21 plaintiffs in a medical malpractice lawsuit to be filed and prosecuted in Nevada and (b) entered into
22 an agreement with ALCH to jointly represent plaintiffs, DARIA HARPER and DANIEL
23 WININGER. On or about June 7, 2016, defendant ALCH filed a complaint in the District Court of
24 Nevada, Clark County, as Case Number A-16-738004-C (“the underlying medical malpractice
25 action”), alleging that plaintiffs sustained damages as a result of the medical negligence of the named
26 health care providers (“health care providers”). Thereafter, (a) defendant ALCH sponsored defendant
27 KENNETH MARSHALL SILBERBERG to be admitted, pro hac vice, to practice law in Nevada for
28 the purpose of jointly representing plaintiffs, (b) defendant KENNETH MARSHALL SILBERBERG

1 was admitted, pro hac vice, to practice law in Nevada; and (d) defendant KENNETH MARSHALL
2 SILBERBERG associated with defendant ALCH as attorney for plaintiffs in the underlying medical
3 malpractice action.

4 9. At all relevant times, defendants, ALCH and SILBERBERG, acted in concert with one
5 another, were agents for each other, and are vicariously liable for the negligent acts and omissions of
6 each other, whether acting jointly or severally.

7 10. When defendant COPPERPOINT became aware of the above-described underlying
8 medical malpractice action, it (a) asserted, in writing, its right to participate in any settlement thereof
9 and (b) claimed, in writing, its entitlement to a lien for repayment of financial benefits paid to or on
10 behalf of plaintiff DARIA HARPER pursuant to Arizona statute A.R.S. § 23-1023. At all times
11 mentioned herein, defendants ALCH and SILBERBERG, were aware of these assertions and claims
12 made by defendant COPPERPOINT and, as of March, 2018, they were aware that COPPERPOINT's
13 lien claim was \$2,768,656.65. Nevertheless, defendants, ALCH and SILBERBERG, advised
14 plaintiffs that COPPERPOINT had no legal right to claim a lien on the proceeds from any judgment
15 against or settlement with the health care providers and, therefore, could not claim a portion of any
16 such settlement or judgment and that COPPERPOINT would continue to be legally obligated to pay
17 for her care costs and disability.

18 11. In the underlying medical malpractice action, (a) the medical experts for both plaintiff
19 DARIA HARPER and the health care providers agreed that she would require 24-hour per day care
20 for the remainder of her life, (b) the economic expert retained by defendants, ALCH and
21 SILBERBERG, determined that the present value of the cost of DARIA HARPER's required future
22 care was \$14,291,374 and that she incurred past and future earnings losses of \$322,579, and (c) the
23 economic expert retained by the health care providers determined that the present value of the cost of
24 DARIA HARPER's future care would be \$12,057,480.

25 12. Based on the advice from defendants, ALCH and SILBERBERG, plaintiffs settled
26 with the health care providers for the total sum of \$6,250,000.00. Thereafter, in or about July 2018,
27 the lawsuit was dismissed and the settlement monies were paid by the settling health care providers,
28 from which defendants, ALCH and SILBERBERG, distributed to themselves attorney's fees of

1 \$1,130,737 and reimbursement of costs of \$125,070. On or about September 18, 2018, defendant
2 SILBERBERG told plaintiffs, for the first time, (a) that COPPERPOINT was still claiming a lien on
3 the settlement proceeds, (b) that COPPERPOINT might pursue its lien claim in a legal action, and (c)
4 that plaintiffs should be prepared to defend such legal action and pay COPPERPOINT the amount of
5 its lien if it was successful in prosecuting its lien claim.

6 13. On or about October 30, 2019, defendant COPPERPOINT served the “Notice of Claim
7 Status”, attached hereto as **Exhibit “1”** and made a part hereof by reference, on plaintiff DARIA
8 HARPER, that stated in part:

- 9 • Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party
10 recovery from a medical malpractice action (Case No. A-16-738004-C) brought in
11 the District Court of Clark County, Nevada, in an amount equal to compensation
12 and medical, surgical, and hospital benefits paid by CopperPoint.
- 13 • CopperPoint is entitled to accrued interest on the lien from the date settlement
14 proceeds were disbursed.
- 15 • CopperPoint is entitled to a future credit against Claimant's recovery equal to the
16 amount of money received by the Claimant in the malpractice action after
17 subtracting expenses and attorney fees.
- 18 • CopperPoint is not required to pay claimant compensation or medical, surgical, or
19 hospital benefits until the claimant's post-settlement accrued entitlement to
20 compensation and medical benefits exceeds the credit amount.
- 21 • To the extent the settlement in the malpractice action was less than the workers'
22 compensation benefits provided by CopperPoint, Claimant's failure to obtain
23 CopperPoint's prior approval before settling results in forfeiture of her workers'
24 compensation claim.

25 14. The lien amount claimed by defendant COPPERPOINT is \$3,171,095.

26 15. After defendant COPPERPOINT served the above-described Notice of Claim Status,
27 it terminated payments being made for the services of plaintiff DANIEL WININGER who was being
28 compensated to provide 24-hour per day care to plaintiff DARIA HARPER; and on April 2, 2020,

1 sent plaintiff DARIA HARPER the letter, attached as **Exhibit “2”** and made a part hereof by
2 reference, notifying her that it would terminate all benefits, in thirty days.

3 16. At all pertinent times, Nevada law, specifically, Nev. Rev. Stat. § 42.021, provided as
4 follows:

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

18 2. A source of collateral benefits introduced pursuant to subsection 1 may
19 not: (a) Recover any amount against the plaintiff; or (b) Be subrogated to
20 the rights of the plaintiff against a defendant.

21 17. At all pertinent times, Arizona law, specifically Ariz. Rev. Stat. Ann. § 23-1023D,
22 provided as follows:

23 If the employee proceeds against the other person, compensation and
24 medical, surgical and hospital benefits shall be paid as provided in this
25 chapter and the insurance carrier or other person liable to pay the claim shall
26 have a lien on the amount actually collectable from the other person to the
27 extent of such compensation and medical, surgical and hospital benefits
28 paid. This lien shall not be subject to a collection fee. The amount actually

1 collectable shall be the total recovery less the reasonable and necessary
2 expenses, including attorney fees, actually expended in securing the
3 recovery. In any action arising out of an aggravation of a previously
4 accepted industrial injury, the lien shall only apply to amounts expended for
5 compensation and treatment of the aggravation. The insurance carrier or
6 person shall contribute only the deficiency between the amount actually
7 collected and the compensation and medical, surgical and hospital benefits
8 provided or estimated by this chapter for the case. Compromise of any claim
9 by the employee or the employee's dependents at an amount less than the
10 compensation and medical, surgical and hospital benefits provided for shall
11 be made only with written approval of the insurance carrier or self-insured
12 employer liable to pay the claim.

13 18. At all pertinent times, Arizona law, specifically Ariz. Rev. Stat. Ann. § 12-565,
14 provided as follows:

15 A. In any medical malpractice action against a licensed health care provider,
16 the defendant may introduce evidence of any amount or other benefit which
17 is or will be payable as a benefit to the plaintiff as a result of the injury or
18 death pursuant to the United States social security act, any state or federal
19 workers' compensation act, any disability, health, sickness, life, income-
20 disability or accident insurance that provides health benefits or income-
21 disability coverage and any other contract or agreement of any group,
22 organization, partnership, or corporation to provide, pay for, or reimburse
23 the cost of income-disability or medical, hospital, dental or other health care
24 services to establish that any cost, expense, or loss claimed by the plaintiff
25 as a result of the injury or death is subject to reimbursement or
26 indemnification from such collateral sources. Where the defendant elects to
27 introduce such evidence, the plaintiff may introduce evidence of any
28 amount which the plaintiff has paid or contributed to secure his right to any

1 such benefits or that recovery from the defendant is subject to a lien or that
2 a provider of such collateral benefits has a statutory right of recovery against
3 the plaintiff as reimbursement for such benefits or that the provider of such
4 benefits has a right of subrogation to the rights of the plaintiff in the medical
5 malpractice action.

6 B. Evidence introduced pursuant to this section shall be admissible for the
7 purpose of considering the damages claimed by the plaintiff and shall be
8 accorded such weight as the trier of the facts chooses to give it.

9 C. Unless otherwise expressly permitted to do so by statute, no provider of
10 collateral benefits, as described in subsection A, shall recover any amount
11 against the plaintiff as reimbursement for such benefits nor shall such
12 provider be subrogated to the rights of the plaintiff.

13 19. Nev. Rev. Stat. Ann. § 42.021 is verbatim of California Civil Code section 3333.1,
14 which provides as follows:

15 (a) In the event the defendant so elects, in an action for personal injury
16 against a health care provider based upon professional negligence, he may
17 introduce evidence of any amount payable as a benefit to the plaintiff as a
18 result of the personal injury pursuant to the United States Social Security
19 Act, any state or federal income disability or worker's compensation act,
20 any health, sickness or income-disability insurance, accident insurance that
21 provides health benefits or income-disability coverage, and any contract or
22 agreement of any group, organization, partnership, or corporation to
23 provide, pay for, or reimburse the cost of medical, hospital, dental, or other
24 health care services. Where the defendant elects to introduce such evidence,
25 the plaintiff may introduce evidence of any amount which the plaintiff has
26 paid or contributed to secure his right to any insurance benefits concerning
27 which the defendant has introduced evidence.

28 (b) No source of collateral benefits introduced pursuant to subdivision (a)

1 shall recover any amount against the plaintiff nor shall it be subrogated to
2 the rights of the plaintiff against a defendant.

3 20. In *Barme v. Wood*, 37 Cal.3d 174, 207 Cal. Rptr. 816, 689 P.2d 446 (Cal. 1984), an
4 injured worker who had received worker’s compensation benefits sued the health care providers for
5 medical malpractice, claiming that they had caused him additional injury. The worker’s compensation
6 insurance company filed a complaint in intervention, seeking reimbursement of the compensation it
7 had paid to the plaintiff. The California Supreme Court held that the right of a worker’s compensation
8 insurance company to seek recovery of its statutory lien – even when there had not yet been a trial,
9 precluded recovery and dismissed the complaint in intervention.

10 21. In *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal. App. 3d 499, 258 Cal. Rptr. 376,
11 (Cal. Ct. App. 1989), the California Court of Appeal addressed the issue of whether a worker’s
12 compensation insurance company that had paid compensation to the plaintiff could claim credit for
13 future compensation based on money the plaintiff had received in a medical malpractice settlement.
14 The California Court of Appeal held that the lien preclusion provisions of Civil Code section 3333.1,
15 subdivision (b) applied, to settlements of medical malpractice lawsuits as well as to trials where
16 collateral source evidence was introduced.

17 22. In 2004, NRS 42.021 was enacted after being presented to Nevada voters by ballot
18 initiative. (Secretary of State, Statewide Ballot Questions 16 (2004),
19 <https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2004.pdf>.) (*McCrosky v.*
20 *Carson Tahoe Regional Medical Center*, 133 Nev. 930, 408 P.3d 149 (2017). The ballot question put
21 to Nevada voters stated, in part, that the initiative would “prohibit third parties who provided benefits
22 as a result of medical malpractice from recovering such benefits from a negligent provider of health
23 care” The Secretary of State’s explanation stated, in part: “If passed, the proposal would not
24 change the reduction of the injured person’s damages, but the third parties would no longer be
25 permitted to recover from the wrongdoer the expenses they have paid on behalf of a medical
26 malpractice victim.”

27 23. Although California Civil Code section 3333.1 and Nevada NRS 42.021 are identical,
28 and although the California Supreme Court and California Court of Appeal have found that insurance

1 companies providing benefits to a medical malpractice plaintiff have no lien against, or may take
2 credit for, money received by a medical malpractice plaintiff in a settlement before trial, no Nevada
3 appellate court has ever addressed the issue.

4 **FIRST CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 **(Alleged by Both Plaintiffs Against All Defendants)**

7 24. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the
8 complaint as though fully set forth herein, and incorporate the same herein by reference.

9 25. An actual controversy has arisen and now exists between plaintiffs and defendants
10 concerning the respective rights and duties of plaintiffs on the one hand and defendant
11 COPPERPOINT on the other hand. Defendant COPPERPOINT contends that it is entitled to a lien
12 and/or credit for money received by plaintiff DARIA HARPER pursuant to Ariz. Rev. Stat. Ann. §
13 23-1023D and that it is entitled to terminate the benefits that it has/had been making for plaintiff
14 DARIA HARPER's benefit. Plaintiffs contend – and plaintiffs are informed and believe and thereon
15 allege that all defendants other than COPPERPOINT contend – that defendant COPPERPOINT is not
16 entitled to any lien or credit because Nevada NRS 42.021 should be interpreted as precluding such
17 lien if a medical malpractice claim is settled and is and/or was not entitled to terminate the benefits
18 that it has/had been making for plaintiff DARIA HARPER's benefit and must forthwith pay those
19 benefits it has withheld with interest at the legal rate.

20 26. Plaintiffs desire a judicial determination of their rights and duties, and a declaration as
21 to whether defendant COPPERPOINT is entitled to any lien or credit and/or credit for money received
22 by plaintiffs from the above-described settlement and whether defendant COPPERPOINT remains
23 and has always remained obligated to making the above-described benefits and must forthwith pay
24 those benefits it has withheld with interest at the legal rate.

25 27. A judicial declaration is necessary and appropriate at this time under the circumstances
26 in order that plaintiffs may ascertain their rights and duties.

27 28. As a direct and proximate result of the aforementioned actions of defendants, and each
28 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees

1 and costs to bring this action.

2 **SECOND CAUSE OF ACTION**

3 **(Injunctive Relief)**

4 **(Alleged by Both Plaintiffs Against Defendants COPPERPOINT MUTUAL INSURANCE**
5 **HOLDING COMPANY, COPPERPOINT GENERAL INSURANCE COMPANY)**

6 29. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the
7 complaint as though fully set forth herein, and incorporate the same herein by reference.

8 30. Plaintiffs rely on the workers' compensation benefits paid by defendant
9 COPPERPOINT for the necessary and essential living and medical needs of plaintiff DARIA
10 HARPER. Based on its claim that it has no further obligation to pay worker's compensation benefits,
11 defendant COPPERPOINT will cease making any payments to or on behalf of plaintiffs on May 2,
12 2020.

13 31. The threatened conduct of defendant COPPERPOINT, unless and until enjoined and
14 restrained by order of this Court, will cause great and irreparable injury to plaintiffs. The \$14,291,374
15 life care plan itemized the medical and care needs of plaintiff DARIA HARPER. The net proceeds
16 that were not invested in annuities have been largely expended for goods and services that are
17 necessary for the survival of plaintiff DARIA HARPER. Because COPPERPOINT terminated
18 payments for the services of plaintiff DANIEL WININGER, plaintiffs' sole monthly income from
19 annuities is \$8,333, which is greatly exceeded by the monthly expenses for medical supplies
20 (including bladder supplies, bowel program, personal care and respiratory); medical equipment
21 (including vent, oxygenator condenser and oxygen canisters), appointments with four doctors,
22 therapists and nurses, and prescription medications. Additionally, because plaintiff DARIA HARPER
23 requires 24-hour per day care, plaintiff DANIEL WININGER must provide such services, but without
24 compensation therefor.

25 32. Plaintiffs have no adequate remedy at law for the above-described injuries in that they
26 do not have the financial means to provide for plaintiff DARIA HARPER's above-described needs.

27 33. As a proximate result of the wrongful conduct of defendant COPPERPOINT, plaintiff
28 DANIEL WININGER has been damaged in the sum of \$2,950 per month and will continue to be

1 damaged so long as the wrongful conduct of COPPERPOINT continues. As a proximate result of the
2 threatened conduct of defendant COPPERPOINT, if not restrained, plaintiff DARIA HARPER will
3 be damaged. The full amount of the damages respectively incurred by plaintiffs, DARIA HARPER
4 and DANIEL WININGER, will be proven at trial.

5 34. As a direct and proximate result of the actions of defendants, and each of them,
6 plaintiffs sustained damages in a sum in excess of \$15,000.

7 35. As a direct and proximate result of the aforementioned actions of defendants, and each
8 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees
9 and costs to bring this action.

10 **THIRD CAUSE OF ACTION**

11 **(Legal Malpractice)**

12 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**
13 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**
14 **SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS**
15 **STEVEN ALCH, SHOOP, A PROFESSIONAL LAW CORPORATION)**

16 36. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs of the
17 complaint as though fully set forth herein, and incorporate the same herein by reference.

18 37. Defendants were negligent in their advice to plaintiffs that defendant CopperPoint had
19 no lien on a settlement because (a) the issue had never been determined by a Nevada appellate court
20 and (b) Nevada attorneys representing plaintiffs in medical malpractice cases do not ignore workers'
21 compensation lien claims or advise their clients that such lien claims should be ignored. But for the
22 negligent legal advice, plaintiffs would not have settled their case for \$6,250,000 and, instead, would
23 have (a) required that defendants seek a judicial determination whether there would be a worker's
24 compensation lien, and (b) if such judicial determination held that there would be a worker's
25 compensation lien, reject the settlement and insisted that defendants, ALCH and SILBERBERG, try
26 the case to verdict or judgment. If the case had been tried, a collectible judgment in the amount no
27 less than \$15,313,953 would have been obtained, thus damaging plaintiffs in the sum of not less than
28 \$9,063,953.

1 38. As a legal and proximate result of the wrongful withholding by defendant,
2 SILBERBERG, of money to which plaintiffs were entitled, charging excessive attorney's fees,
3 reimbursing himself for costs to which he was not entitled, and failure to obtain refunds of money
4 deposited with the Clark County Superior Court, plaintiffs are entitled to further damages from
5 defendant SILBERBERG in amounts to be proven at trial. Defendants ALCH and SHOOP are jointly
6 and severally liable with defendant SILBERBERG for their failure to obtain refunds of money
7 deposited with the Clark County Superior Court which were charged as a cost to plaintiffs. If, after
8 the settlement money was deposited into the client trust account of defendant SILBERBERG,
9 defendants ALCH AND SHOOP were aware that defendant SILBERBERG was charging excessive
10 attorney's fees, or reimbursing himself for costs to which he was not entitled, then defendants ALCH
11 and SHOOP are jointly and severally liable to plaintiffs in amounts to be proven at trial.

12 39. If there is a judicial determination that defendant COPPERPOINT has a lien and is
13 entitled to credit for payments made to plaintiffs, then as a legal and proximate result of the negligence
14 of defendants SILBERBERG, ALCH and SHOOP, plaintiffs have sustained damages which include,
15 but are not limited to, lost future workers' compensation benefits, an amount necessary to satisfy the
16 lien of defendant COPPERPOINT in amounts to be proven at trial, and the damages that would have
17 been awarded if the lawsuit had been tried. Alternatively, if there is a judicial determination that
18 defendant COPPERPOINT has no lien and is not entitled to credit for plaintiffs' medical malpractice
19 settlement, plaintiffs will have sustained damages for the cost of retaining attorneys to represent her
20 in connection with (a) Arizona workers' compensation proceedings, (b) Nevada declaratory and
21 injunctive relief claims, and (c) incurring costs to achieve such declaration, the total amount of which
22 will be proven at trial.

23 40. As a direct and proximate result of the actions of defendants, and each of them,
24 plaintiffs sustained damages in a sum in excess of \$15,000.

25 41. As a direct and proximate result of the aforementioned actions of defendants, and each
26 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees
27 and costs to bring this action.

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Fraud)**

3 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**
4 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**
5 **SILBERBERG aka K. MARSHALL SILBERBERG)**

6 42. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 of the
7 complaint as though fully set forth herein, and incorporate the same herein by reference.

8 43. On or about December 26, 2015, defendants SILBERBERG entered into a “Contingent
9 Fee Agreement” with plaintiffs that provided, in pertinent part:

10 This Agreement is made this 26 day of December, 2015, by and between
11 Daria Harper and Daniel Winger (hereinafter designated as ‘Client’) and
12 the LAW OFFICES OF MARSHALL SILBERBERG (hereinafter
13 designated as ‘Attorney’). . . . If, and to the extent that, Client’s claims are
14 for medical malpractice subject to Section 6146 of the California Business
15 & Professions Code (MICRA), Client agrees to pay for the services herein
16 described and prosecution of such claims, the fee of 40% of the first
17 \$50,000.00 recovered; 33.33% of the next \$50,000.00; 25% of the next
18 \$500,000.00; and 15% of all sums recovered in excess of \$600,000.00.

19 44. At all times herein mentioned, Nev. Rev. Stat. Ann. § 7.095 provided in pertinent part:

20 An attorney shall not contract for or collect a fee contingent on the amount
21 of recovery for representing a person seeking damages in connection with
22 an action for injury or death against a provider of health care based upon
23 professional negligence in excess of: (a) Forty percent of the first \$50,000
24 recovered; (b) Thirty-three and one-third percent of the next \$50,000
25 recovered; (c) Twenty-five percent of the next \$500,000 recovered; and (d)
26 Fifteen percent of the amount of recovery that exceeds \$600,000.

27 45. At all times herein mentioned, California Business and Professions Code § 6146 (a)
28 provided in pertinent part:

1 An attorney shall not contract for or collect a contingency fee for
2 representing any person seeking damages in connection with an action for
3 injury or damage against a health care such person's alleged professional
4 negligence in excess of the following limits: (1) Forty percent of the first
5 fifty thousand dollars (\$50,000) recovered. (2) Thirty-three and one-third
6 percent of the next fifty thousand dollars (\$50,000) recovered. (3) Twenty-
7 five percent of the next five hundred thousand dollars (\$500,000) recovered.
8 (4) Fifteen percent of any amount on which the recovery exceeds six
9 hundred thousand dollars (\$600,000).

10 46. California Rules of Professional Conduct Rule 4-200 (A), in effect until October 31,
11 2018, provided that “A member shall not enter into an agreement for, charge, or collect an illegal or
12 unconscionable fee.”

13 47. Pursuant to Nevada law, (a) plaintiff DARIA HARPER had claims for economic
14 damages and for non-economic damages of \$350,000, the maximum recovery permitted for non-
15 economic damages in medical malpractice cases, and (b) plaintiff DANIEL WININGER had a claim
16 for loss of consortium, for which he would be entitled to a maximum recovery of \$350,000. In July
17 2018, after settlement agreements for a total of \$6,250,000 had been executed by the parties,
18 defendants SILBERBERG allocated \$1,050,000 as plaintiff DANIEL WININGER’s share of the
19 settlement monies and then charged plaintiffs \$297,498.00 for his attorney’s fees on plaintiff DANIEL
20 WININGER’s allocated amount.

21 48. Defendants SILBERBERG knew (a) that his “Contingent Fee Agreement” provided
22 that plaintiffs, collectively, and not severally, would be charged the statutory attorney’s fees (b) that
23 even if plaintiff DANIEL WININGER was obligated to pay his attorney’s fees based on a separate
24 calculation, the maximum allocation would not be \$1,050,000, but, rather, only \$350,000, and (c) that
25 plaintiffs were not legally sophisticated and relied on him to act honestly and according to his fiduciary
26 duty owed to them. Defendants SILBERBERG concealed from plaintiffs the above-referenced facts
27 for the purpose of misleading them into believing that the attorney fee allocation was in accordance
28 with the “Contingent Fee Agreement” and the law governing the limitations pertaining to attorney’s

1 fees. Moreover, defendants SILBERBERG affirmatively represented to plaintiffs that the allocation
2 to plaintiff DANIEL WININGER was proper, as were the attorney's fees charged separately and
3 based on said allocation. Defendants SILBERBERG concealed and misrepresented the above-
4 mentioned facts for the purpose of obtaining an illegal fee from plaintiffs to which he was not entitled,
5 and being their attorney, plaintiffs reasonably relied on defendants SILBERBERG's representations.
6 As a legal and proximate result of defendants SILBERBERG's fraud, plaintiffs were damaged in a
7 sum of approximately \$140,330.03 which is the difference between the attorney's fees to which
8 defendants SILBERBERG was entitled, and the amount he took.

9 49. Plaintiffs' damages, including emotional distress were a foreseeable consequence of
10 defendants SILBERBERG's fraud which was despicable and undertaken with a conscious disregard
11 of the rights of plaintiffs, thereby entitling plaintiffs to an award of punitive damages therefor.

12 50. If defendants ALCH and SHOOP were aware of the illegal fee charged by defendants
13 SILBERBERG, and accepted a portion of those fees for themselves, then defendants ALCH and
14 SHOOP are similarly liable to plaintiffs for fraud, and the legal and proximate cause of plaintiffs'
15 damages alleged in this cause of action.

16 51. As a direct and proximate result of the actions of defendants, and each of them,
17 plaintiffs sustained damages in a sum in excess of \$15,000.

18 52. As a direct and proximate result of the aforementioned actions of defendants, and each
19 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees
20 and costs to bring this action.

21 **FIFTH CAUSE OF ACTION**

22 **(Breach of Fiduciary Duty)**

23 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**
24 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**
25 **SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS**
26 **STEVEN ALCH, SHOOP, A PROFESSIONAL LAW CORPORATION)**

27 53. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-
28 52 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

1 54. California Rules of Professional Conduct 4-100(B)(4), in effect until October 31, 2018,
2 California Rules of Professional Conduct 1.15(7), in effect beginning November 1, 2018, and Nevada
3 Rules of Professional Conduct, Rule 1.15(d), all required that attorneys promptly distribute to their
4 client money belonging to their client. At all times herein mentioned, defendant SILBERBERG was
5 obligated, as a California attorney and attorney permitted to practice, pro hac vice in Nevada, to
6 comply with the California and Nevada Rules of Professional Conduct.

7 55. From approximately July 19, 2018 to approximately April 30, 2010, and in violation
8 of the California Rules of Professional Conduct 4-100(B)(4), in effect until October 31, 2018,
9 California Rules of Professional Conduct 1.15(7), in effect beginning November 1, 2018, and Nevada
10 Rules of Professional Conduct, Rule 1.15(d), defendants SILBERBERG kept, and did not distribute,
11 money belonging to plaintiffs from the settlement proceeds. Plaintiffs were damaged in a sum to be
12 proven at trial by the loss of interest on said sums.

13 56. California Rules of Professional Conduct, Rule 2-200 (A)(1), in effect until October
14 31, 2018, provided that, “A member shall not divide a fee for legal services with a lawyer who is not
15 a partner of, associate of, or shareholder with the member unless: The client has consented in writing
16 thereto after a full disclosure has been made in writing that a division of fees will be made and the
17 terms of such division.” At all times herein mentioned, defendants ALCH, SHOOP and
18 SILBERBERG were obligated, as California attorneys, to comply with the California Rules of
19 Professional Conduct.

20 57. At no time did plaintiffs enter into an attorney-client contract with defendants ALCH
21 or SHOOP, and at no time did plaintiffs consent in writing to any division of fees by which defendants
22 SILBERBERG would pay money to defendants ALCH and/or SHOOP. Plaintiffs believe that
23 defendant SILBERBERG shared the fees he deducted from plaintiffs’ share of the settlement money
24 with defendants ALCH and SHOOP.

25 58. Defendants SILBERBERG took money belonging to plaintiffs as a result of charging
26 and receiving attorney fees in excess of the amount allowed by law, and charging costs to plaintiffs
27 that should have been paid by defendants SILBERBERG.

28 59. At all times, defendants SILBERBERG owed a fiduciary duty of loyalty and fidelity

1 to plaintiffs, pursuant to which he was required, among other things, not to put his interests ahead of
2 those of plaintiffs, to promptly deliver to plaintiffs all money in his possession that belonged to
3 plaintiffs, not to charge plaintiffs for costs that he should personally bear, and not to subtract money
4 from plaintiffs' financial recovery for attorney fees to which he was not entitled, either pursuant to
5 contract or the statutory requirements of California Business and Professions Code section 6146 and
6 Nevada NRS 7.095.

7 60. Defendants SILBERBERG put his financial interests ahead of the interests of plaintiffs
8 and violated his fiduciary duties to plaintiffs as follows: (a) by failing, for approximately twenty
9 months, to deliver all money in his possession that belonged to plaintiffs, (b) charging plaintiffs for
10 costs for which he should have personally borne, including fees for membership in the Nevada State
11 Bar, and (c) charging illegal attorney's fees in excess of those agreed upon in his contract with
12 plaintiffs and those permitted by California Business and Professions Code section 6146 and Nevada
13 NRS 7.095. Additionally, in 2020, after defendants SILBERBERG entered into a contract to retain a
14 Nevada lawyer for the benefit of plaintiffs which required that he be personally responsible for
15 payment of attorney's fees and costs, he used money belonging to plaintiffs to pay said fees and costs.

16 61. As a result of the breach of fiduciary duties by defendants SILBERBERG, plaintiffs
17 have suffered pecuniary damages and emotional distress damages in sums to be proven at trial.

18 62. Plaintiffs' emotional distress was a foreseeable consequence of defendants
19 SILBERBERG's breach of fiduciary duties which was despicable and undertaken with a conscious
20 disregard of the rights of plaintiff, thereby entitling plaintiffs to an award of punitive damages therefor.

21 63. Plaintiffs are currently unaware whether defendants ALCH or SHOOP knew that
22 defendants SILBERBERG was charging plaintiffs illegal attorney's fees in excess of those agreed
23 upon in his contract with plaintiffs and those permitted by California Business and Professions Code
24 section 6146. If said defendants did know, then they are similarly liable to plaintiffs for fraud, and
25 the legal and proximate cause of plaintiffs' damages alleged in this cause of action.

26 64. As a direct and proximate result of the actions of defendants, and each of them,
27 plaintiffs sustained damages in a sum in excess of \$15,000.

28 65. As a direct and proximate result of the aforementioned actions of defendants, and each

1 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees
2 and costs to bring this action.

3 **SIXTH CAUSE OF ACTION**

4 **(Breach of Contract)**

5 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**
6 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**
7 **SILBERBERG aka K. MARSHALL SILBERBERG)**

8 66. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-
9 65 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

10 67. The "Contingency Fee Contract" between plaintiffs and defendants SILBERBERG
11 required that attorney fees be based on the net recovery after deduction of the cost of prosecution.
12 Said defendant calculated that his prosecution costs were \$125,070, leaving a net recovery of
13 \$6,124,930, entitling said defendant to the sum of \$990,406.16 as his attorney fees. The deduction by
14 defendants SILBERBERG of \$1,130,737.00 exceeded the contractual agreement, amounting to a
15 breach of contract. Plaintiffs have been damaged by the breach of contract in the amount of
16 \$140,330.84.

17 68. As a direct and proximate result of the actions of defendants, and each of them,
18 plaintiffs sustained damages in a sum in excess of \$15,000.

19 69. As a direct and proximate result of the aforementioned actions of defendants, and each
20 of them, plaintiffs have been required to engage the services of an attorney, incurring attorney's fees
21 and costs to bring this action.

22 **PUNITIVE DAMAGES**

23 70. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs 1-23 and 42-
24 65 of the complaint as though fully set forth herein, and incorporate the same herein by reference.

25 71. As a direct and proximate result of the aforementioned wrongful conduct of
26 defendants, and each of them, the actions of defendants were intended to cause injury to plaintiffs
27 and/or was despicable conduct carried on by defendants with a willful and conscious disregard of the
28 rights of plaintiffs and/or was an intentional misrepresentation, deceit or concealment of material facts

1 known to defendants with the intention, implied or in fact, to deprive plaintiffs of property, legal
2 rights, or fraud within NRS 42.005, entitling an award of punitive and/or exemplary damages in an
3 amount appropriate to punish and/or set an example of defendants.

4 **PRAYER FOR RELIEF**

5 Wherefore, plaintiffs pray for judgment against defendants, and each of them, as follows:

6 1. On the first cause of action for declaratory relief against all defendants:

7 a. For a declaration that defendant COPPERPOINT GENERAL INSURANCE
8 COMPANY aka COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY aka
9 COPPERPOINT MUTUAL INSURANCE COMPANY aka COPPERPOINT INSURANCE
10 COMPANIES is not entitled to any lien and/or credit for money received by plaintiffs as a result of
11 the settlements they entered into regarding District Court, Clark County, Nevada Case No. A-16-
12 738004-C and that defendants are obligated (a) to continue all benefits it previously provided and is
13 required to provide in the future for plaintiff DARIA HARPER, (b) to forthwith reinstate all benefits
14 it previously provided for plaintiff DARIA HARPER that were terminated and (c) to forthwith pay
15 for the services of plaintiff DANIEL WININGER that it previously paid but were terminated, with
16 interest thereon at the legal rate;

17 b. For reasonable attorney's fees and costs incurred in this action; and

18 c. For such other and further relief as the Court may deem just and proper.

19 2. On the second cause of action for injunctive relief against defendants COPPERPOINT
20 GENERAL INSURANCE COMPANY aka COPPERPOINT MUTUAL INSURANCE HOLDING
21 COMPANY aka COPPERPOINT MUTUAL INSURANCE COMPANY aka COPPERPOINT
22 INSURANCE COMPANIES:

23 a. For issuance of a temporary restraining order, preliminary injunction and
24 permanent injunction restraining and enjoining defendants COPPERPOINT GENERAL
25 INSURANCE COMPANY and COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY
26 and COPPERPOINT MUTUAL INSURANCE COMPANY and COPPERPOINT INSURANCE
27 COMPANIES (a) from terminating any of the benefits it is providing for plaintiff DARIA HARPER
28 and (b) to forthwith reinstate all benefits it previously provided for plaintiff DARIA HARPER that

1 were terminated, and forthwith pay for the services it previously paid for the services of plaintiff
2 DANIEL WININGER that were terminated, with interest thereon at the legal rate;

- 3 b. For damages in an amount in excess of \$15,000, to be proven at trial;
- 4 c. For reasonable attorney's fees and costs incurred in this action; and
- 5 d. For such other and further relief as the Court may deem just and proper.

6 3. On the third cause of action for legal malpractice against defendants LAW OFFICES
7 OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL
8 SILBERBERG, aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS STEVEN
9 ALCH, SHOOP, A PROFESSIONAL LAW CORPORATION:

- 10 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 11 b. For an award of reasonable attorney's fees and costs incurred in this action; and
- 12 c. For such other and further relief as the Court may deem just and proper.

13 4. On the fourth cause of action for fraud against defendants LAW OFFICES OF
14 MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL
15 SILBERBERG aka K. MARSHALL SILBERBERG:

- 16 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 17 b. For pecuniary damages and emotional distress damages in an amount in excess
18 of \$15,000, to be proven at trial;
- 19 c. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount
20 appropriate to punish and/or set an example of defendants;
- 21 d. For an award of reasonable attorney's fees and costs incurred in this action; and
- 22 e. For such other and further relief as the Court may deem just and proper.

23 5. On the fifth cause of action for breach of fiduciary duty against defendants LAW
24 OFFICES OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka
25 MARSHALL SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka
26 THOMAS STEVEN ALCH, SHOOP, A PROFESSIONAL LAW CORPORATION:

- 27 a. For damages in an amount in excess of \$15,000, to be proven at trial;
- 28 b. For pecuniary damages and emotional distress damages in an amount in excess

1 of \$15,000, to be proven at trial;

2 c. For punitive and/or exemplary damages pursuant to NRS 42.005 in an amount
3 appropriate to punish and/or set an example of defendants;

4 d. For an award of reasonable attorney's fees and costs incurred in this action; and

5 e. For such other and further relief as the Court may deem just and proper.

6 6. On the sixth cause of action for breach of contract against defendants LAW OFFICES
7 OF MARSHALL SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL
8 SILBERBERG aka K. MARSHALL SILBERBERG:

9 a. For damages in an amount in excess of \$15,000, to be proven at trial;

10 b. For an award of reasonable attorney's fees and costs incurred in this action; and

11 c. For such other and further relief as the Court may deem just and proper.

12 DATED this 4th day of May, 2020.

13 Respectfully submitted,

14 **MAIER GUTIERREZ & ASSOCIATES**

15
16 /s/ Jason R. Maier
17 JASON R. MAIER, ESQ.
18 Nevada Bar No. 8557
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

19 JOHN P. BLUMBERG, ESQ.
20 California Bar No. 70200
(to be admitted pro hac vice)
21 **BLUMBERG LAW CORPORATION**
444 West Ocean Blvd., Suite 1500
Long Beach, California 90802-4330

22 *Attorneys for Plaintiffs*

23

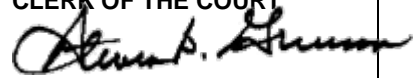
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1 **ERR**

2 JOHN P. BLUMBERG, ESQ.
3 California Bar No. 70200
4 *(to be admitted pro hac vice)*
5 **BLUMBERG LAW CORPORATION**
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13 **MAIER GUTIERREZ & ASSOCIATES**
14 8816 Spanish Ridge Avenue
15 Las Vegas, Nevada 89148
16 Telephone: 702.629.7900
17 Facsimile: 702.629.7925
18 E-mail: jrm@mgalaw.com

19 *Attorneys for Plaintiffs*

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 vs.

26 COPPERPOINT MUTUAL INSURANCE
27 HOLDING COMPANY, an Arizona
28 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

ERRATA TO COMPLAINT

Plaintiffs file this errata to the complaint that includes Exhibits "1" and "2" that were

1 inadvertently omitted.

2 DATED this 6th day of May, 2020.

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Respectfully submitted,

MAIER GUTIERREZ & ASSOCIATES

/s/ Jason R. Maier
JASON R. MAIER, ESQ.
Nevada Bar No. 8557
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

JOHN P. BLUMBERG, ESQ.
California Bar No. 70200
(to be admitted pro hac vice)
BLUMBERG LAW CORPORATION
444 West Ocean Blvd., Suite 1500
Long Beach, California 90802-4330

Attorneys for Plaintiffs

EXHIBIT 1

EXHIBIT 1

NOTICE OF CLAIM STATUS

<p style="text-align: center; margin: 0;">Carrier or Self-Insured Name and Address</p> <p>CopperPoint General Insurance Company / CLAIMS DEPT. P.O. Box 33069 Phoenix, AZ 85067-3069</p>
<p style="text-align: center; margin: 0;">Authorized Third Party Administrator (TPA) Name and Address</p>
<p style="text-align: center; margin: 0;">Claimant's Name and Address</p> <p>DARIA HARPER 3336 DATE PALM DR. LAKE HAVASU CITY, AZ 86404</p>

ICA Claim No.	20142520533
Soc. Sec. No.	###/###/####
SSN not required if correct ICA claim number is provided	
Carrier Claim No.	14G01532
Employer	ISLANDER RV RESORT LLC
Address	LAKE HAVASU CITY, AZ 86403
	LAKE HAVASU CITY, AZ 86403
Date of Injury	08/11/2014

- 1. Claim is accepted.
- 2. Claim is denied.
- 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- 4. Enclosed check for _____ for period of _____ through _____. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 ⅔ percent of the wage of _____ based on the following:
 - A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
 - B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- 5. Return to light duty effective _____. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective _____.
- 6. Temporary compensation and active medical treatment terminated on _____ because claimant was discharged.
- 7. Injury resulted in no permanent disability.
- 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- 9. Petition to Reopen accepted.
- 10. Petition to Reopen denied.
- 11. Other:

• Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party recovery from a medical malpractice action (case No. A-16-738004-C) brought in the District Court of Clark County, Nevada, in an amount equal to compensation

Mailed on: 10/30/2019 By: Jeff de Veuve

Copy to: Industrial Commission of Arizona (Authorized Representative) Tel. #: (602) 631-2966

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidlendo una audiencia debera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix Office: Industrial Commission of Arizona
800 W Washington Street
Phoenix, Arizona 85007-2922

PO Box 19070
Phoenix, AZ 85005-9070

Tucson Office: Industrial Commission of Arizona
2675 E Broadway
Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

Date: 10/30/19
Claimant Name: Daria Harper
Claim Number: 14G01532

11. Continued from page 1

- and medical, surgical, and hospital benefits paid by CopperPoint.
- CopperPoint is entitled to accrued interest on the lien from the date settlement proceeds were disbursed.
- CopperPoint is entitled to a future credit against Claimant's recovery equal to the amount of money received by the Claimant in the malpractice action after subtracting expenses and attorney fees.
- CopperPoint is not required to pay claimant compensation or medical, surgical, or hospital benefits until the claimant's post-settlement accrued entitlement to compensation and medical benefits exceeds the credit amount.
- To the extent the settlement in the malpractice action was less than the workers' compensation benefits provided by CopperPoint, Claimant's failure to obtain CopperPoint's prior approval before settling results in forfeiture of her workers' compensation claim.

CC: Marshall Silberberg
William Stephens Collins
LAW OFFICES OF MARSHALL
SILBERBERG
3333 Michelson Drive, Suite 710
Irvine, CA 92612

EXHIBIT 2

EXHIBIT 2

action by you to address CopperPoint's outstanding lien. Nevertheless, CopperPoint continued to pay full workers compensation payments to you even though it was not legally required. However, this benevolent conduct by CopperPoint cannot continue indefinitely.

Therefore, please be informed:


COPPERPOINT WILL TERMINATE PAYMENT OF YOUR WORKERS' COMPENSATION BENEFITS EFFECTIVE THIRTY DAYS FROM THE DATE OF THIS LETTER.

No further benefits will be paid until your post-settlement accrued entitlement to compensation and medical benefits exceeds CopperPoint's credit for its lien. It is anticipated this may result in no further benefits becoming payable in the future.¹

If you have any questions, please feel free to contact us.

Very truly yours,

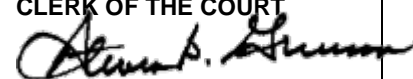
COPPERPOINT MUTUAL INSURANCE COMPANY

By 
Ginny Arnett Caro

cc: Adam Palmer, Esq.

¹ Moreover, to the extent the settlement in your malpractice action was less than the workers' compensation benefits provided by CopperPoint, your failure to obtain CopperPoint's prior approval before settling the malpractice claim results in a forfeiture of your workers' compensation claim.

Electronically Filed
5/14/2020 5:05 PM
Steven D. Grierson
CLERK OF THE COURT



1 **SUMM**
2 JOHN P. BLUMBERG, ESQ.
3 California Bar No. 70200
4 *(to be admitted pro hac vice)*
5 **BLUMBERG LAW CORPORATION**
6 444 West Ocean Blvd., Suite 1500
7 Long Beach, California 90802-4330
8 Telephone: 562.437.0403
9 Facsimile: 562.432.0707
10 E-mail: advocates@blumberglaw.com

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

11 JASON R. MAIER, ESQ.
12 Nevada Bar No. 8557
13 **MAIER GUTIERREZ & ASSOCIATES**
14 8816 Spanish Ridge Avenue
15 Las Vegas, Nevada 89148
16 Telephone: 702.629.7900
17 Facsimile: 702.629.7925
18 E-mail: jrm@mgalaw.com

19 *Attorneys for Plaintiffs*

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

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

Case No.:
Dept. No.:

24 Plaintiffs,

SUMMONS - CIVIL

25 vs.

26 COPPERPOINT MUTUAL INSURANCE
27 HOLDING COMPANY, an Arizona corporation;
28 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.

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ**

1 **THE INFORMATION BELOW.**

2 **COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY**

3 A civil complaint has been filed by the Plaintiff against you for the relief set forth in the
4 complaint.

5 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
6 you, exclusive of the day of service, you must do the following:

7 (a) File with the Clerk of the Court, whose address is shown below, a formal
8 written response to the Complaint in accordance with the rules of the Court,
9 with the appropriate filing fee.

10 (b) Serve a copy of your response upon the attorney whose name and address is
11 shown below.

12 2. Unless you respond, your default will be entered upon application of the Plaintiffs and
13 failure to so respond will result in a judgment of default against you for the relief demanded in the
14 complaint, which could result in the taking of money or property or other relief requested in the
15 complaint.

16 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
17 so that your response may be filed on time.

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PSER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

DARIA HARPER, ET AL.
Plaintiff

vs

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY, ET
AL.
Defendant

Case Number: A-20-814541-C

Dept:

PROOF OF SERVICE

TANNER TREWET, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on 5/11/2020 a copy of the:
SUMMONS; COMPLAINT; ERRATA TO COMPLAINT

I served the same on **5/11/2020** at **1:27 PM** to:

Defendant COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY, AN ARIZONA CORPORATION, BY SERVING DALTON L. HOOKS, JR., ESQ., ATTORNEY OF RECORD

by leaving the copies with or in the presence of "**JANE DOE,**" **white female, 60's, brown hair, brown eyes, 5'4", 140 lbs, RECEPTIONIST,** at **2820 W CHARLESTON BLVD, STE C-23, LAS VEGAS, NV 89102.**

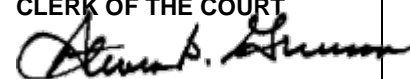
Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Tuesday, May 12, 2020



TANNER TREWET
Registered Work Card R-2019-07712

Electronically Filed
5/14/2020 5:05 PM
Steven D. Grierson
CLERK OF THE COURT



1 **SUMM**
2 JOHN P. BLUMBERG, ESQ.
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18 E-mail: jrm@mgalaw.com

19 *Attorneys for Plaintiffs*

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

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

Case No.:
Dept. No.:

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

Defendants.

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ**

1 **THE INFORMATION BELOW.**

2 **COPPERPOINT GENERAL INSURANCE COMPANY**

3 A civil complaint has been filed by the Plaintiff against you for the relief set forth in the
4 complaint.

5 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on
6 you, exclusive of the day of service, you must do the following:

7 (a) File with the Clerk of the Court, whose address is shown below, a formal
8 written response to the Complaint in accordance with the rules of the Court,
9 with the appropriate filing fee.

10 (b) Serve a copy of your response upon the attorney whose name and address is
11 shown below.

12 2. Unless you respond, your default will be entered upon application of the Plaintiffs and
13 failure to so respond will result in a judgment of default against you for the relief demanded in the
14 complaint, which could result in the taking of money or property or other relief requested in the
15 complaint.

16 3. If you intend to seek the advice of an attorney in this matter, you should do so promptly
17 so that your response may be filed on time.

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1 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board
2 members, commission members and legislators each have 45 days after service of this Summons
3 within which to file and Answer or other responsive pleading to the complaint.

4 STEVEN D. GRIERSON
CLERK OF THE COURT

5 
5/5/2020

6 Deputy Clerk Alisa-Mae Chapman Date
7 Regional Justice Court
8 200 Lewis Avenue
Las Vegas, Nevada 89155

9 Respectfully submitted,
10 **MAIER GUTIERREZ & ASSOCIATES**

11 /s/ Jason R. Maier
12 JASON R. MAIER, ESQ.
13 Nevada Bar No. 8557
14 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
15 Attorneys for Plaintiffs

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P SER
MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
LAS VEGAS, NV 89148
(702) 629-7900

DISTRICT COURT
CLARK COUNTY, NEVADA

DARIA HARPER, ET AL.
Plaintiff

vs

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY, ET
AL.
Defendant

Case Number: A-20-814541-C

Dept:

PROOF OF SERVICE

TANNER TREWET, deposes and says: that at all times herein I am a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #389, and not a party to nor interested in the proceeding in which this statement is made.

Legal Wings, Inc. received on 5/11/2020 a copy of the:
SUMMONS; COMPLAINT; ERRATA TO COMPLAINT

I served the same on **5/11/2020** at **1:27 PM** to:

**Defendant COPPERPOINT GENERAL INSURANCE COMPANY, AN ARIZONA CORPORATION,
BY SERVING DALTON L. HOOKS, JR., ESQ., ATTORNEY OF RECORD**

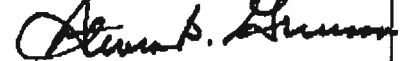
by leaving the copies with or in the presence of "**JANE DOE,**" white female, 60's, brown hair, brown eyes, 5'4", 140 lbs, RECEPTIONIST, at **2820 W CHARLESTON BLVD, STE C-23, LAS VEGAS, NV 89102.**

Pursuant to NRS 53.045, I declare under penalty of perjury under the law of the State of Nevada that the forgoing is true and correct.

Executed: Tuesday, May 12, 2020



TANNER TREWET
Registered Work Card R-2019-07712



1 ANS
2 DALTON L. HOOKS, JR., ESQ., Bar No. 8121
3 SAMI RANDOLPH, ESQ., Bar No. 7876
4 **HOOKS MENG & CLEMENT**
5 2820 West Charleston Boulevard, Suite C-23
6 Las Vegas, NV 89102
7 Telephone No.: (702) 766-4672
8 Facsimile No.: (702) 919-4672
9 dalton@hmc.law; srandolph@hmc.law
10 Attorneys for Defendants, COPPERPOINT MUTUAL INSURANCE
11 HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

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

16 Plaintiffs,

17 vs.

18 COPPERPOINT MUTUAL INSURANCE
19 HOLDING COMPANY, an Arizona corporation;
20 COPPERPOINT GENERAL INSURANCE
21 COMPANY, an Arizona corporation; LAW
22 OFFICES OF MARSHALL SILBERBERG, P.C.,
23 a California corporation; KENNETH
24 MARSHALL SILBERBERG aka MARSHALL
SILBERBERG, an individual; THOMAS S.
ALCH aka THOMAS STEVEN ALCH, an
individual; SHOOP, A PROFESSIONAL LAW
CORPORATION; a California corporation; DOES
1 through 50, inclusive,

Defendants.

**DEFENDANTS' COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY &
COPPERPOINT GENERAL INSURANCE COMPANY'S
ANSWER TO PLAINTIFFS' COMPLAINT**

COMES NOW Defendants, COPPERPOINT MUTUAL INSURANCE HOLDING
COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY, (collectively

1 "COPPERPOINT") by and through their counsel of record, the law firm of HOOKS MENG &
2 CLEMENT, and Answers Plaintiffs' Complaint as follows:

3 **GENERAL ALLEGATIONS**

4 1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendants COPPERPOINT
5 admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

6 2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendants COPPERPOINT
7 admit that Plaintiff DARIA HARPER sustained a knee injury while in the course of her
8 employment on or about August 11, 2014. Defendant COPPERPOINT GENERAL
9 INSURANCE COMPANY admits that it is incorporated under the laws of Arizona as an
10 Arizona corporation and was the workers' compensation insurer for the Plaintiff's employer.
11 Defendant COPPERPOINT GENERAL INSURANCE COMPANY admits that it provided
12 workers' compensation benefits to Plaintiff DARIA HARPER in accord with the Arizona
13 Workers' Compensation Act (Arizona Revised Statutes § 23-901, et seq.). Defendant
14 COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY admits that it is incorporated
15 under the laws of Arizona as a holding company. DEFENDANT COPPERPOINT MUTUAL
16 INSURANCE HOLDING COMPANY denies that it was the insurer for Plaintiff DARIA
17 HARPER'S employer and denies having provided benefits to Plaintiff. Defendants
18 COPPERPOINT are without sufficient knowledge or information necessary to form a belief as
19 to the truth or falsity of the remaining allegations contained in said Paragraph and therefore
20 denies the same.

21 3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendants COPPERPOINT
22 admit that on or about June 9, 2015 Plaintiff DARIA HAPER required medical treatment in Las
23 Vegas, that was related to her original August 11, 2014 injury. Defendants COPPERPOINT
24 admit Plaintiff DARIA HARPER sustained serious injury as a result of the medical treatment

1 obtained in Las Vegas, Nevada. Defendants COPPERPOINT are without sufficient knowledge
2 or information necessary to form a belief as to the truth or falsity of the remaining allegations
3 contained in said Paragraph and therefore denies the same.

4 4. Answering Paragraph 4 of Plaintiffs' Complaint, Defendants COPPERPOINT are
5 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
6 the allegations contained in said Paragraph and therefore denies the same.

7 5. Answering Paragraph 5 of Plaintiffs' Complaint, Defendants COPPERPOINT are
8 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
9 the allegations contained in said Paragraph and therefore denies the same.

10 6. Answering Paragraph 6 of Plaintiffs' Complaint, Defendants COPPERPOINT are
11 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
12 the allegations contained in said Paragraph and therefore denies the same.

13 7. Answering Paragraph 7 of Plaintiffs' Complaint, Defendant denies that a Nevada
14 court has jurisdiction. This action arises out of a workers' compensation claim filed in Arizona
15 wherein all benefits sought and paid have been in accord with Arizona law. Defendants
16 COPPERPOINT admit to having paid medical bills of Nevada providers and claim entitlement to
17 reimbursement of those medical bills. Defendants COPPERPOINT deny the remaining
18 allegations contained in said Paragraph.

19 8. Answering Paragraph 8 of Plaintiffs' Complaint, upon information and belief
20 Plaintiff DARIA HARPER filed a complaint in the District Court of Nevada, Clark County, as
21 Case No. A-16-738004-C ("the underlying medical malpractice action"), alleging that plaintiffs
22 sustained damages as a result of the medical negligence of the named health care providers
23 ("health care providers"). Defendants are without sufficient knowledge or information
24

1 necessary to form a belief as to the truth or falsity of the remaining allegations contained in said
2 Paragraph and therefore denies the same.

3 9. Answering Paragraph 9 of Plaintiffs' Complaint, Defendants COPPERPOINT are
4 without sufficient knowledge or information necessary to form a belief as to the truth or falsity of
5 the allegations contained in said Paragraph and therefore denies the same.

6 10. Answering Paragraph 10 of Plaintiffs' Complaint, Defendants COPPERPOINT
7 admit to having (a) asserted, in writing, its right to participate in any settlement thereof and (b)
8 claimed in writing, its entitlement to a lien for repayment of financial benefits to or on behalf of
9 Plaintiff DARIA HARPER pursuant to Arizona Revised Statute §23-1023. Defendants
10 COPPERPOINT are without sufficient knowledge or information necessary to form a belief as
11 to the truth or falsity of the remaining allegations contained in said Paragraph and therefore
12 denies the same.

13 11. Answering Paragraph 11 of Plaintiffs' Complaint, Defendants COPPERPOINT
14 are without sufficient knowledge or information necessary to form a belief as to the truth or
15 falsity of the allegations contained in said Paragraph and therefore denies the same.

16 12. Answering Paragraph 12 of Plaintiffs' Complaint, Defendants COPPERPOINT
17 are without sufficient knowledge or information necessary to form a belief as to the truth or
18 falsity of the allegations contained in said Paragraph and therefore denies the same.

19 13. Answering Paragraph 13 of Plaintiffs' Complaint, Defendants COPPERPOINT
20 admits to having served the Notice of Claim Status (Exhibit 1 of Plaintiffs' Complaint) on
21 Plaintiff DARIA HARPER on or about October 30, 2019.

22 14. Answering Paragraph 14 of Plaintiffs' Complaint, Defendants COPPERPOINT
23 admit that at a minimum its lien is \$3,171,095.

24 ...

1 15. Answering Paragraph 13 of Plaintiffs' Complaint, Defendants COPPERPOINT
2 admits to having terminated payments to Plaintiff DANIEL WININGER after providing written
3 notice in correspondence dated April 2, 2020. (See Exhibit 2 of Plaintiffs' Complaint) .

4 16. Answering Paragraph 16 of Plaintiffs' Complaint, said Paragraph calls for a legal
5 conclusion which Defendants can neither admit nor deny.

6 17. Answering Paragraph 17 of Plaintiffs' Complaint, said Paragraph calls for a legal
7 conclusion which Defendants can neither admit nor deny.

8 18. Answering Paragraph 18 of Plaintiffs' Complaint, said Paragraph calls for a legal
9 conclusion which Defendants can neither admit nor deny.

10 19. Answering Paragraph 19 of Plaintiffs' Complaint, said Paragraph calls for a legal
11 conclusion which Defendants can neither admit nor deny.

12 20. Answering Paragraph 20 of Plaintiffs' Complaint, said Paragraph calls for a legal
13 conclusion which Defendants can neither admit nor deny.

14 21. Answering Paragraph 21 of Plaintiffs' Complaint, said Paragraph calls for a legal
15 conclusion which Defendant can neither admit nor deny.

16 22. Answering Paragraph 22 of Plaintiffs' Complaint, said Paragraph calls for a legal
17 conclusion which Defendants can neither admit nor deny.

18 23. Answering Paragraph 23 of Plaintiffs' Complaint, said Paragraph calls for a legal
19 conclusion which Defendants can neither admit nor deny.

20 **FIRST CAUSE OF ACTION**

21 **(Declaratory Relief)**

22 **(Alleged by Both Plaintiffs Against All Defendants)**

23 24. Defendants COPPERPOINT repeats and realleges its answers to each and every
24 allegation contained above as if set forth at length herein.

1 32. Answering Paragraph 32 of Plaintiffs' Complaint, Defendants COPPERPOINT
2 deny the allegations contained in said Paragraph.

3 33. Answering Paragraph 33 of Plaintiffs' Complaint, Defendants COPPERPOINT
4 deny the allegations contained in said Paragraph.

5 34. Answering Paragraph 34 of Plaintiffs' Complaint, Defendants COPPERPOINT
6 deny the allegations contained in said Paragraph.

7 35. Answering Paragraph 34 of Plaintiffs' Complaint, Defendants COPPERPOINT
8 deny the allegations contained in said Paragraph.

9 **THIRD CAUSE OF ACTION**
10 **(Legal Malpractice)**

11 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL
12 SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL
13 SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS
14 STEVEN ALCH, SHOOP, A PROFESSIONAL LAW CORPORATION)**

15 36. Defendants COPPERPOINT repeats and realleges its answers to each and every
16 allegation contained above as if set forth at length herein.

17 37. Answering Paragraphs 37, 38, 39, 40, and 41 of Plaintiffs' Complaint, Defendants
18 COPPERPOINT are without sufficient knowledge or information necessary to form a belief as
19 to the truth or falsity of the allegations contained in said Paragraphs and therefore denies the
20 same.

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1 **FOURTH CAUSE OF ACTION**

2 (Fraud)

3 (Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL
4 SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL
5 SILBERBERG aka K. MARSHALL SILBERBERG)

6 42. Defendants COPPERPOINT repeats and realleges its answers to each and every
7 allegation contained above as if set forth at length herein.

8 43. Answering Paragraphs 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 of Plaintiffs'
9 Complaint, Defendants COPPERPOINT are without sufficient knowledge or information
10 necessary to form a belief as to the truth or falsity of the allegations contained in said Paragraphs
11 and therefore denies the same.

12 **FIFTH CAUSE OF ACTION**

13 (Breach of Fiduciary Duty)

14 (Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL
15 SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL
16 SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS
17 STEVEN ALCH, SHOOP, A PROFESSIONAL LAW CORPORATION)

18 53. Defendants COPPERPOINT repeats and realleges its answers to each and every
19 allegation contained above as if set forth at length herein.

20 54. Answering Paragraphs 54, 55, 56, 57 58, 59, 60, 61, 62, 63, 64, and 65 of
21 Plaintiffs' Complaint, Defendants COPPERPOINT are without sufficient knowledge or
22 information necessary to form a belief as to the truth or falsity of the allegations contained in
23 said Paragraphs and therefore denies the same.

24 ...

1 **SIXTH CAUSE OF ACTION**

2 **(Breach of Contract)**

3 **(Alleged by Both Plaintiffs Against Defendants LAW OFFICES OF MARSHALL**
4 **SILBERBERG, P.C., KENNETH MARSHALL SILBERBERG aka MARSHALL**
5 **SILBERBERG aka K. MARSHALL SILBERBERG, THOMAS S. ALCH aka THOMAS**
6 **STEVEN ALCH, SHOOP, A PROFESSIONAL LAW CORPORATION)**

7 66. Defendants COPPERPOINT repeats and realleges its answers to each and every
8 allegation contained above as if set forth at length herein.

9 67. Answering Paragraphs 67, 68, and 69 of Plaintiffs' Complaint, Defendants
10 COPPERPOINT are without sufficient knowledge or information necessary to form a belief as to
11 the truth or falsity of the allegations contained in said Paragraphs and therefore denies the same.

12 **PUNITIVE DAMAGES**

13 70. Defendants COPPERPOINT repeats and realleges its answers to each and every
14 allegation contained above as if set forth at length herein.

15 71. Answering Paragraph 71 of Plaintiffs' Complaint, Defendants COPPERPOINT
16 denies the allegations contained in said Paragraph.

17 **PLAINTIFFS' PRAYER FOR RELIEF**

18 Defendants COPPERPOINT deny that Plaintiff is entitled to the requested relief.

19 **GENERAL DENIAL**

20 Defendants COPPERPOINT deny each and every allegation contained in Plaintiffs'
21 Complaint that is not specifically admitted to be true.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY allege that Plaintiffs' Complaint on file herein fails to state a claim upon which relief can be granted against Defendants COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' action is barred due to lack of personal jurisdiction over Defendants COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY and/or improper venue.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' action is barred due to lack of subject matter jurisdiction over this action which stems from the administration and payment of benefits regarding a workers' compensation claim filed in Arizona. This action stems from a workers' compensation claim filed by an Arizona resident, regarding injuries sustained while working for an Arizona employer, and the Arizona employer was insured by an Arizona insurer.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' action is barred due to lack of jurisdiction. The Plaintiff filed her workers' compensation claim in Arizona. The Industrial Commission of Arizona has exclusive jurisdiction to determine all issues of fact and law relating to Plaintiffs' entitlement to Arizona workers' compensation benefits. The commission is exclusively vested with authority to adjudicate claims for compensation arising out of the provisions of Arizona Worker's Compensation Act. See Arizona Revised Statute §23-921 and §23-1022.

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FIFTH AFFIRMATIVE DEFENSE

The claims and contentions of Plaintiffs as contained in the Complaint are barred by virtue of the fact that, Defendants COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY have asserted its lien in conformance with Arizona law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for relief are barred on the grounds that Defendants COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY have valid justification for asserting the lien amount in dispute.

SEVENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as insufficient facts were available after reasonable inquiry upon the filing of Defendants' COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY Answer and Defendants therefore reserves the right to amend this Answer to allege additional affirmative defenses if subsequent investigation warrants.

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DEFENDANTS' PRAYER FOR RELIEF

WHEREFORE, Defendants COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY pray for judgment, order and decree of this Court as follows:

- 1. That Plaintiffs' Complaint be dismissed with prejudice and that Plaintiffs take nothing by way of their Complaint on file herein;
- 2. For reasonable attorney's fees and costs incurred in defending this action; and
- 3. For all other fees, costs, and disbursements as the Court deems just and equitable under the circumstances.
- 4. Such other and further relief as the Court may deem just and proper.

Dated this 1st day of June 2020.

Respectfully submitted,

HOOKS MENG & CLEMENT
By:

/s/ Sami Randolph
DALTON L. HOOKS, JR., ESQ.
SAMI RANDOLPH, ESQ.
Attorneys for Defendants,
COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY and COPPERPOINT
GENERAL INSURANCE COMPANY

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that on the 1st day of June, 2020, the forgoing
3 **DEFENDANTS' COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY &**
4 **COPPERPOINT GENERAL INSURANCE COMPANY'S ANSWER TO PLAINTIFFS'**
5 **COMPLAINT** was served on the following by Electronic Service to all parties on the Odyssey
6 Service List. I further certify that I mailed a true copy thereof in a sealed envelope placed for
7 collection and mailing in the United States Mail, at Las Vegas, Nevada, postage prepaid, as
8 follows:

9 JOHN P. BLUMBERG, ESQ.
BLUMBERG LAW CORPORATION
10 444 W OCEA BLVD., STE 1500
LONG BEACH CA 90802-4330
11 *Attorney for Plaintiffs*
DARIA HARPER and DANIEL WININGER

12 JASON R. MAIER, ESQ.
13 MAIER GUTIERREZ & ASSOCIATES
8816 SPANISH RIDGE AVENUE
14 LAS VEGAS NV 89148
Attorney for Plaintiffs
15 *DARIA HARPER and DANIEL WININGER*

16
17 Dated this 1st day of June, 2020

18 */s/ Terry Rodriguez*
19 An Employee of HOOKS MENG & CLEMENT
20
21
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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

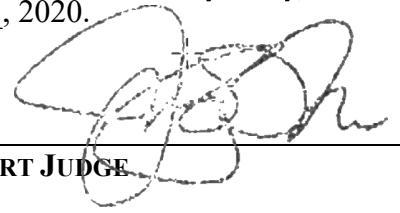
ORDER ADMITTING TO PRACTICE

John P. Blumberg, Esq. having filed his motion to associate counsel under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificate of Good

1 Standing from the State Bar of California, and State Bar of Nevada Statement; said application having
2 been noticed, no objections having been made, and the Court being fully apprised in the premises, and
3 good cause appearing, it is hereby,

4 ORDERED, that said application is hereby GRANTED, and John P. Blumberg, Esq. is hereby
5 admitted to practice in the above-entitled Court for the purposes of the above-entitled matter only.

6 DATED this ____ day of _____, ^{Dated this 6th day of July, 2020} 2020.



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DISTRICT COURT JUDGE

E99 3E8 26ED 05C6
Jerry A. Wiese

11 Respectfully submitted,

12 **MAIER GUTIERREZ & ASSOCIATES**

13 /s/ Jason R. Maier

14 JASON R. MAIER, ESQ.
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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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: 7/6/2020

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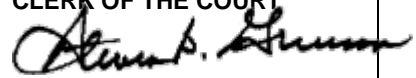
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11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

16 Plaintiffs,

17 vs.

18 COPPERPOINT MUTUAL INSURANCE
19 HOLDING COMPANY, an Arizona
20 corporation; COPPERPOINT GENERAL
21 INSURANCE COMPANY, an Arizona
22 corporation; LAW OFFICES OF MARSHALL
23 SILBERBERG, P.C., a California corporation;
24 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,

25 Defendants.

Case No.: A-20-814541-C

Dept. No.: 30

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

17 **[HEARING REQUESTED]**

26
27 Plaintiffs, Daria Harper and Daniel Wininger, by and through their attorneys, the law firms
28 BLUMBERG LAW CORPORATION and MAIER GUTIERREZ & ASSOCIATES, hereby file their motion for

1 partial summary judgment regarding their first cause of action for declaratory relief and second cause
2 of action for injunctive relief. This motion is made and based on the following memorandum of points
3 and authorities, the attached exhibits, and any oral argument entertained at the hearing on this motion.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 This case arises out of a medical malpractice action prosecuted in this Court by plaintiff Daria
7 Harper, an Arizona resident (and her husband Daniel Wininger) against various Nevada health care
8 providers that settled for \$6,250,000. Defendant CopperPoint General Insurance Company had
9 provided workers' compensation benefits to Daria Harper, including payment to the various Nevada
10 health care providers, because the injury-causing treatment was work-related. Approximately two
11 years after the settlement, Plaintiff Daria Harper was notified that "CopperPoint Mutual Insurance
12 Company" was claiming lien rights against the Nevada settlement she had received.¹ (Hereafter,
13 "defendant COPPERPOINT" refers to Plaintiff Daria Harper's workers' compensation insurance
14 provider that is claiming lien rights.) Defendant COPPERPOINT then ceased to provide benefits to
15 Plaintiffs contending that it has a lien, or is otherwise entitled to a future credit, on the settlement
16 proceeds. The other defendants in this action are the attorneys who represented Plaintiffs in the
17 underlying medical malpractice action.

18 Plaintiffs have alleged two causes of action against Defendant COPPERPOINT, and this
19 motion seeks partial summary judgment as to those causes of action, *i.e.*, the first cause of action for
20 declaratory relief on the question of whether defendant COPPERPOINT has a lien, or is otherwise
21 entitled to a future credit, on the settlement proceeds² and the second cause of action for appropriate

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23
24 ¹ Apparently, "CopperPoint" is actually now known as "CopperPoint Mutual Insurance
25 Holding Company" (**Exhibit 30**) although it does business in Nevada using the name, "CopperPoint
Insurance Company" and also refers to itself as "CopperPoint Mutual Insurance Company" and
"CopperPoint Insurance Companies." **Exhibit 31**; *see also* highlighted portions of **Exhibit 10**.

26 ² Declaratory relief is an appropriate cause of action because (1) a justiciable controversy exists
27 between persons with adverse interests, (2) the party seeking declaratory relief has a legally
28 protectable interest in the controversy, and (3) the issue is ripe for judicial determination. *Knittle v.*
Progressive Casualty Ins. Co., 112 Nev. 8, 10, 908 P.2d 724, 725 (1996).

1 injunctive relief should Plaintiffs prevail on their first cause of action. The third through six causes
2 of action are alleged only against the attorney defendants for conduct arising out of attorney-client
3 relationships, and are not addressed in this motion.

4 The initial issue of law presented is whether NRS 42.021 permits or prohibits a workers'
5 compensation lien or future credit on the settlement proceeds of a medical malpractice action.
6 Plaintiffs contend that NRS 42.021 prohibits such a lien or future credit. Defendant COPPERPOINT
7 contends it does not. If the Court concludes that NRS 42.021 does not apply to the settlement proceeds
8 of a medical malpractice action, then it need go no further because the laws of Arizona and Nevada
9 would be the same. But if the Court finds that NRS 42.021 prohibits a workers' compensation lien or
10 future credit on the settlement proceeds of a medical malpractice action, then a conflict of laws would
11 exist between Nevada and Arizona because Arizona has not enacted a statute similar to NRS 42.021.
12 In that instance, the Court would have to decide the second legal issue: which state law is applicable?³

13 Essentially, Plaintiffs contend the law of Nevada applies because the medical services forming
14 the basis of the allegations of the underlying medical malpractice case were provided in Nevada by
15 Nevada health care providers licensed by Nevada, and the settlement proceeds were paid by the
16 Nevada health care providers to settle an action prosecuted against them in Nevada. Defendant
17 COPPERPOINT contends that the law of Arizona applies because Plaintiff Daria Harper is an Arizona
18 resident who was initially injured in Arizona in the course and scope of her employment with an
19 Arizona employer and she then filed for and obtained benefits under the Arizona workers'
20 compensation scheme.

21 The third to sixth causes of action for legal malpractice are alleged against the defendants who
22 represented Plaintiff Daria Harper in her underlying medical malpractice claim. Their interest is that
23 the grant of this motion will significantly mitigate (though not eliminate) damages should they be
24 found to have negligently represented Plaintiff Daria Harper in the underlying action. Obviously,

25
26 ³ The order these two issues are to be decided is mandated by the Nevada Supreme Court. The
27 law of Nevada must be ascertained first because if it is the same as the law of Arizona, no conflict of
28 laws analysis is required. *Tri-County Equipment & Leasing v. Klinke*, 128 Nev. 352, 355, 286 P.3d
593, 595 (2012): "before undertaking a conflict-of-law analysis, a court should determine whether a
conflict of law actually exists."

1 material issues of fact exist as to the third to sixth causes of action. Accordingly, they are not
2 addressed by this motion. However, there are no material issues of fact regarding the first and second
3 causes of action for declaratory and injunctive relief. Accordingly, partial summary judgment thereon
4 should be granted.

5 **II. STATEMENT OF UNDISPUTED FACTS**

6 1. On or about August 11, 2014, Plaintiff Daria Harper, a resident of Arizona, sustained
7 a knee injury in Arizona while in the course and scope of her employment with Islander RV Resort,
8 LLC, a limited liability company domiciled in Arizona. **Defendant COPPERPOINT's Answer filed**
9 **June 1, 2020 at p. 2, lines 6-8; Exhibit 1, declaration of Daria Harper, ¶3; Exhibit 3; declaration**
10 **of John P. Blumberg, ¶5; Exhibit 14.**

11 2. At the time Plaintiff Daria Harper was injured, Defendant CopperPoint General
12 Insurance Company was the workers' compensation insurer for her employer and is now also known
13 and doing business as CopperPoint Mutual Insurance Holding Company, CopperPoint Mutual
14 Insurance Company and/or CopperPoint Insurance Company and/or CopperPoint Insurance
15 Companies (collectively "Defendant COPPERPOINT"). **Defendant COPPERPOINT's Answer**
16 **filed June 1, 2020 at p. 2, lines 8-17; Exhibit 1, declaration of Daria Harper, ¶3; Exhibit 10;**
17 **Exhibit 30; Exhibit 31.**

18 3. Pursuant to the Arizona Workers' Compensation Act (Arizona Revised Statutes
19 section 23-901, *et seq.*), Defendant COPPERPOINT was obligated to and did provide, among other
20 things, necessary medical treatment and income disability payments to Plaintiff Daria Harper.
21 **Defendant COPPERPOINT's Answer filed June 1, 2020 at p. 2, lines 11-13; Exhibit 1,**
22 **declaration of Daria Harper, ¶3.**

23 4. On or about June 9, 2015, Plaintiff Daria Harper required and received medical
24 treatment in Las Vegas, Nevada, that was related to her original August 11, 2014 injury and Defendant
25 COPPERPOINT paid the bills of these Nevada health care providers. **Defendant COPPERPOINT's**
26 **Answer filed June 1, 2020 at p. 2, lines 21-23 and p. 3, lines 15-17; Exhibit 1, declaration of Daria**
27 **Harper, ¶4.**

28 5. As a result of this medical treatment, (a) Plaintiff Daria Harper suffered serious injury

1 resulting in quadriplegia, significant pain, suffering, emotional distress and economic damages for the
2 cost of future care, as well as lost income and earning capacity and (b) Plaintiff Daniel Winger
3 suffered compensable damages by virtue of his marital relationship with Plaintiff Daria Harper.
4 **Defendant COPPERPOINT's Answer filed June 1, 2020 at p. 2, line 23 to p. 3, line 1; Exhibit 1,**
5 **declaration of Daria Harper, ¶4; Exhibit 2, declaration of Daniel Winger, ¶3.**

6 6. On or about June 7, 2016, Plaintiff Daria Harper and her husband, Plaintiff Daniel
7 Winger, filed a complaint in the District Court of Nevada, Clark County, as case number A-16-
8 738004-C (“the underlying medical malpractice action”), a true copy of which is attached as Exhibit
9 4, alleging that they sustained damages as a result of the medical negligence of the named health care
10 providers (“health care providers”). **Defendant COPPERPOINT's Answer filed June 1, 2020 at**
11 **p. 3, lines 19-23; Exhibit 1, declaration of Daria Harper, ¶5; Exhibit 2, declaration of Daniel**
12 **Winger, ¶4; Exhibit 4.**

13 7. The named defendants in the underlying medical malpractice were (1) Valley Hospital
14 Medical Center, Inc. dba Valley Hospital Medical Center, (2) Valley Health Systems, LLC dba Valley
15 Hospital Medical Center, (3) Jeffrey Davidson, M.D., (4) Cyndi Tran, D.O., (5) Paul Janda, D.O., (6)
16 Elizabeth Phung-Hart, D.O., (7) Andrea Agcaoili, D.O., and (8) Murad Jussa, D.O. All of the
17 individual defendants were licensed by Nevada to provide medical care. Valley Hospital Medical
18 Center, Inc. is a Nevada corporation and Valley Health Systems, LLC is a Delaware corporation. Both
19 have their primary place of business in Nevada and both are doing business as Valley Hospital Medical
20 Center, which is licensed by Nevada to operate a hospital. **Exhibit 1, declaration of Daria Harper,**
21 **¶5; Exhibit 3, declaration of John P. Blumberg, ¶s 6-12; Exhibits 4; Exhibits 15 to 21**
22 **(government documents); and Exhibits 22 to 28 (Answers in the underlying medical malpractice**
23 **action in which the defendants admit to be licensed as health care providers by Nevada).**

24 8. When Defendant COPPERPOINT became aware of the above-described underlying
25 medical malpractice action, it claimed, in writing, its entitlement to a lien for repayment of financial
26 benefits paid to or on behalf of Plaintiff Daria Harper pursuant to Arizona statute A.R.S. § 23-1023.
27 **Defendant COPPERPOINT's Answer filed June 1, 2020 at p. 4, lines 6-9.**

28 9. In the underlying medical malpractice action, (a) the medical experts for both Plaintiff

1 Daria Harper and the health care providers agreed that she would require 24-hour per day care for the
2 remainder of her life, (b) a life care plan was prepared that itemized Daria Harper’s future medical
3 needs and the cost therefor, and (c) the economic expert retained by Plaintiffs determined that the
4 present value of the cost of Daria Harper’s required future care was \$14,291,374, and that she incurred
5 past and future earnings losses of \$322,579. **Exhibit 1, declaration of Daria Harper, ¶7; Exhibit**
6 **5; Exhibit 6.**

7 10. In or about June, 2018, some of the health care providers and Plaintiffs agreed to a total
8 settlement of \$6,250,000, which the settling health care providers paid soon after settlement
9 agreements were entered into, a true but partially redacted copy of one being attached as Exhibit 7,
10 and Plaintiffs then caused all of the defendants in the medical malpractice action to be dismissed with
11 prejudice. **Exhibit 1, declaration of Daria Harper, ¶8; Exhibit 3; Exhibit 7.**

12 11. On or about July 2, 2018, Plaintiffs, through their attorney, notified Defendant
13 COPPERPOINT that the case had been settled but that, pursuant to NRS 42.021, Defendant
14 COPPERPOINT was not entitled to a lien. **Exhibit 1, declaration of Daria Harper, ¶9; Exhibit 3,**
15 **declaration of John P. Blumberg, ¶13; Exhibit 8; Exhibit 22 (CopperPoint’s Opposition to**
16 **Plaintiffs’ Application for Temporary Restraining Order and Preliminary Injunction filed in**
17 **this matter on June 3, 2020, at p. 5, lines 8 to 14 and exhibit C).**

18 12. Fifteen months later, on or about October 30, 2019, Defendant COPPERPOINT served
19 a “Notice of Claim Status” on Plaintiff Daria Harper, that stated in part:

- 20 • Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party
21 recovery from a medical malpractice action (case No. A-16-738004-C) brought in the
22 District Court of Clark County, Nevada, in an amount equal to compensation and
23 medical, surgical, and hospital benefits paid by CopperPoint.
- 24 • CopperPoint is entitled to accrued interest on the lien from the date settlement proceeds
25 were disbursed.
- 26 • CopperPoint is entitled to a future credit against Claimant's recovery equal to the
27 amount of money received by the Claimant in the malpractice action after subtracting
28 expenses and attorney fees.

- 1 • CopperPoint is not required to pay claimant compensation or medical, surgical, or
2 hospital benefits until the claimant's post-settlement accrued entitlement to
3 compensation and medical benefits exceeds the credit amount.
- 4 • To the extent the settlement in the malpractice action was less than the workers'
5 compensation benefits provided by CopperPoint, Claimant's failure to obtain
6 CopperPoint's prior approval before settling results in forfeiture of her workers'
7 compensation claim.

8 **Defendant COPPERPOINT's Answer filed June 1, 2020 at p. 4, lines 19-21; Exhibit 1,**
9 **declaration of Daria Harper, ¶9; Exhibit 9.**

10 13. After Defendant COPPERPOINT served the above-described Notice of Claim Status, it
11 terminated payments being made for the services of Plaintiff Daniel Winger who was being
12 compensated to provide 24-hour per day care to Plaintiff Daria Harper, and on April 2, 2020,
13 Defendant COPPERPOINT sent Plaintiff Daria Harper the letter notifying her that it would terminate
14 all benefits, in thirty days. **Defendant COPPERPOINT's Answer filed June 1, 2020 at p. 5, lines**
15 **1-3; Exhibit 1, declaration of Daria Harper, ¶10; declaration of Daniel Winger, ¶6; Exhibit**
16 **10.**

17 14. On May 1, 2020, defendant COPPERPOINT served its Notice of Claim Status that
18 stated, "Future compensation, medical, surgical, hospital, pharmacy, caretaker & other benefits
19 payable to applicant or behalf of applicant are terminated effective May 2, 2020 until CopperPoint's
20 current lien of \$3,171,095.00 is fully exhausted." **Defendant COPPERPOINT's Answer filed June**
21 **1, 2020 at p. 5, lines 6-9 and 22-23; Exhibit 1, declaration of Daria Harper, ¶11; Exhibit 11.**

22 **III. ARGUMENT**

23 **A. LEGAL STANDARD**

24 In Nevada, "[s]ummary judgment is appropriate under NRCP 56 when the pleadings,
25 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the
26 court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to
27 judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005)
28 (citation omitted); *see also* Nev. R. Civ. P. 56(c). "The substantive law controls which factual disputes

1 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Ibid.*

2 **B. NRS 42.021 APPLIES TO SETTLEMENTS**

3 **1. Introduction.**

4 As discussed below, under NRS 42.021, a workers’ compensation insurance carrier does not
5 have a lien on the judgment rendered in a medical malpractice action by an employee against third
6 parties if the amount payable as a benefit to the plaintiff as a result of the injury was introduced into
7 evidence at trial.⁴ Because, in the instant case, there was a settlement, and not a trial, an issue to be
8 determined is: If a medical malpractice case settles, does NRS 42.021 apply to the settlement
9 proceeds? No Nevada appellate court has decided the issue. But the Nevada statute is identical to
10 California Civil Code section 3333.1. And before NRS 42.021 was enacted, the California Supreme
11 Court and California Court of Appeal had both interpreted California Civil Code section 3333.1 as
12 precluding lien recovery of, or future credit for workers’ compensation benefits, if the medical
13 malpractice claim settled.⁵

14 **2. Had The Medical Malpractice Claim Been Tried, NRS 42.021 Would Have**
15 **Prohibited Defendant CopperPoint From Asserting a Lien or Credit.**

16 NRS 42.021, provides as follows:

17 “1. In an action for injury or death against a provider of health care based upon
18 professional negligence, if the defendant so elects, the defendant may introduce evidence of any
19 amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United
20 States Social Security Act, any state or federal income disability or worker's compensation act, any
21 health, sickness or income-disability insurance, accident insurance that provides health benefits or
22

23 ⁴ In cases other than medical malpractice, the workers’ compensation carrier has a lien in an
24 action by an employee against a third party. NRS 616C.215.

25 ⁵ Arizona’s statute that permits a lien on statutory workers’ compensation benefits in medical
26 malpractice cases i.e, Ariz. Rev. Stat. Ann. § 12-565C, differs from NRS 42.021 and California Civil
27 Code section 3333.1. Ariz. Rev. Stat. Ann. § 12-565C, provides that “Unless otherwise expressly
28 permitted to do so by statute, no provider of collateral benefits, as described in subsection A, shall
recover any amount against the plaintiff as reimbursement for such benefits nor shall such provider
be subrogated to the rights of the plaintiff.” Because Arizona’s workers’ compensation statute
(A.R.S. § 23 1023) expressly permits a lien, Defendant COPPERPOINT would have a lien on
Plaintiff’s settlement proceeds if Arizona law applies.

1 income-disability coverage, and any contract or agreement of any group, organization, partnership or
2 corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care
3 services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of
4 any amount that the plaintiff has paid or contributed to secure the plaintiff's right to any insurance
5 benefits concerning which the defendant has introduced evidence.

6 "2. A source of collateral benefits introduced pursuant to subsection 1 may not: (a)
7 Recover any amount against the plaintiff; or (b) Be subrogated to the rights of the plaintiff against a
8 defendant."

9 "[S]ection 2 protects plaintiffs by prohibiting collateral sources from recovering against
10 prevailing plaintiffs." *McCrosky, supra*, 133 Nev. 930, 937, 408 P.3d 149, 155 (2017). Accordingly,
11 had Plaintiff Daria Harper proceeded to trial in her underlying medical malpractice action,
12 COPPERPOINT would have been barred from recovering any amount from Plaintiff whether by lien,
13 subrogation, reimbursement or otherwise if evidence of the amount Defendant COPPERPOINT paid
14 to or on her behalf had been introduced into evidence at trial.

15 **3. A Settlement Agreement Stated That the Collateral Source Payments**
16 **Would be Introduced at Trial, Thereby Barring COPPERPOINT from**
17 **Any Lien or Credit.**

18 As mentioned, the underlying medical malpractice case settled. A redacted copy of one of the
19 settlement agreements is attached as **Exhibit 7**. Paragraph 10 of the settlement agreement
20 contemplated the introduction of the collateral source evidence at trial:

21 "Pursuant to NRS 42.021, and as allowed by the Court in the above described action,
22 Defendants introduced evidence of Plaintiffs' health insurance for payment of Plaintiffs'
23 past medical expenses. Defendants intended to argue that Plaintiffs were not entitled to an
24 award of past medical payments by reason of the payment by Plaintiffs' insurer. The
25 parties agree and acknowledge by reason of the admission of collateral source evidence,
26 there was a substantial likelihood the jury would not have awarded any damages for past
27
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1 medical expenses or related costs.”⁶

2 Although the settlement agreement was written in the past tense, rather than future tense, it
3 was clear that the settlement contemplated that if the case proceeded to trial, a defendant would
4 introduce evidence of Defendant COPPERPOINT’s collateral source payments. Of importance is the
5 fact that NRS 42.021 does not require that a case proceed to verdict or judgment; rather, the statute
6 requires only that the collateral source evidence be “introduced” to have the effect of barring a
7 collateral source lien. Therefore, it stands to reason that an agreement that a defendant intended to
8 introduce such evidence and argue the effect should be no different than actually introducing the
9 evidence at trial and settling immediately afterward. The logic is clear: if there existed a substantial
10 workers’ compensation lien (like that of defendant COPPERPOINT) that would be voided only by
11 the introduction of collateral source payments, and the parties wanted to settle and achieve the same
12 result, then rather than enter into a settlement, pay the agreed-upon settlement amount and dismiss the
13 case, the parties would have to enter into a two-phase settlement agreement that required them in
14 phase one to conduct a trial where evidence of the collateral source payments were introduced into
15 evidence, then, in phase two, inform the court of the settlement thereby ending the trial and pay the
16 agreed-upon settlement amount. That would be an absurdity. As the Nevada Supreme Court said in
17 *Sheriff, Clark County v. Burcham*, 124 Nev. 1247, 1253, 198 P.3d 326, 329 (2008), “statutory
18 construction should always avoid an absurd result.” The Supreme Court of Arizona had a similar,
19 albeit more colorful analysis:

20 “If proper construction of the statute requires such absurdities, then we would have to agree
21 with Mr. Bumble, in ‘Oliver Twist’, when he said: ‘If the law says that; the law is an ass.’
22 If a literal (interpretation) of the language leads to a result which produces an absurdity, it
23 is our duty to construe the act, if possible, so that it is a reasonable and workable law.” *City
24 of Phoenix v. Superior Court In and For Maricopa County*, 101 Ariz. 265, 267, 419 P.2d
25 49, 51 (1966)

26 ///

27

28 ⁶ The redactions are required because of the confidentiality required in ¶11 of the agreement.

1 **4. The Voter Initiative by Which NRS 42.021 was Enacted, Specifically**
2 **Explained that No Source of Collateral Benefits, Including Workers’**
3 **Compensation, Would Have a Lien on a Plaintiff’s Financial Recovery in**
4 **a Medical Malpractice Case.**

5 NRS 42.021 became law in 2004. It was enacted after being presented to Nevada voters by
6 ballot initiative. (Secretary of State, Statewide Ballot Questions 16 (2004),
7 <https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2004.pdf>.) *McCrosky*,
8 *supra*, 133 Nev. 930, 936, 408 P.3d 149, 155. In ascertaining how to interpret a law passed by a voter
9 initiative, the “primary objective is to discern the intent of [the voters] who enacted the provisions at
10 issue, and to fashion an interpretation consistent with that objective.” *Guinn v. Nevada State*
11 *Legislature*, 119 Nev. 460, 471, 76 P.3d 22, 29 (2003). “To determine the voter intent of a law that
12 was enacted by a ballot initiative, the court will look to the ballot initiative’s explanation and argument
13 sections. *Piroozi v. Eighth Jud. Dist. Co.*, 131 Nev. 1004, 1008, 1011, 363 P.3d 1168, 1171, 1173
14 (2015). “Examining the ballot materials to determine voter intent is appropriate because “[t]hose
15 materials are the only information to which all voters unquestionably had equal access. Patrick C.
16 McDonnell, *Nevada’s Medical Malpractice Damages Cap: One for All Heirs or One for Each*, 13
17 Nev. L.J. 983, 1009 (2013).” *Piroozi* at 1011, fn. 1, 363 P.3d at 1173, fn. 1. Indeed, the Nevada
18 Supreme Court previously looked to the argument in favor of the subject ballot initiative in *McCrosky*,
19 *supra*, 133 Nev. 930, 936, 408 P.3d 149, 155.

20 The ballot question put to Nevada voters stated, in part, that the initiative would “prohibit third
21 parties who provided benefits as a result of medical malpractice from recovering such benefits from
22 a negligent provider of health care” The Secretary of State’s explanation stated, in part: “If
23 passed, the proposal would not change the reduction of the injured person’s damages, but the third
24 parties would no longer be permitted to recover from the wrongdoer the expenses they have paid on
25 behalf of a medical malpractice victim.” Accordingly, the ballot material indicated that third parties
26 (such as defendant COPPERPOINT) that provided benefits as a result of medical malpractice (such
27 as to Plaintiff Daria Harper) would no longer be permitted to recover such benefits. There was no
28 mention that the proposal was limited to situations where collateral source evidence was introduced

1 at trial and, therefore, there was no consideration by the voters that it would not apply to settlements
2 of medical malpractice claims. Other rules of statutory interpretation yield the same result.

3 **5. Other Rules of Statutory Interpretation Support Interpreting NRS 42.021**
4 **by Looking at the Manner California Interprets Its Initiatives.**

5 “[T]he Nevada Supreme Court has yet to establish [other] rules specifically for ascertaining
6 the intent behind initiative-created state statutes.” *McDonnell supra*, 13 Nev. L.J. 983, 1007. To
7 create predictability, courts will fill gaps in the law. *Rivero v. Rivero*, 125 Nev. 410, 426, 216 P.3d
8 213, 225 (2009). To fill such gaps, “Nevada . . . courts have looked to the law of other jurisdictions,
9 particularly California.” *Crockett & Myers, Ltd. v. Napier, & Kirby, LLP*, 583 F.3d 1232, 1237 (9th
10 Cir. 2009) (“[w]here Nevada law is lacking, its courts have looked to the law of other jurisdictions,
11 particularly California” quoting *Mort v. United States*, 86 F.3d 890, 893 (9th Cir. 1996); see also,
12 *McDonnell, supra*, 13 Nev. L.J. 589, 1018-1019, citing *Commercial Standard Ins. Co. v. Tab Contr.,*
13 *Inc.*, 94 Nev. 536, 583 P.2d 449, 451 (1978). This principle applies to gaps created by cases or
14 statutory enactment. “When a . . . statute is taken from another state, we look to the construction
15 given that provision by the originating state when construing the Nevada equivalent decision.”
16 *Cheung v. Eighth Dist. Court ex rel. Cty of Clark*, 121 Nev. 867, 879-880, 124 P.3d 550, 559 (2005)
17 (adopting California law). Where “California’s and Nevada’s . . . statutes are similar in purpose and
18 language . . . we look to California law for guidance on this issue [of its scope].” *Shapiro v. Welt* 133
19 Nev. 35, 39, 389 P.3d 262, 268 (2017); see also *Massey v. Litton*, 99 Nev. 723, 726, 669 P.2d 248,
20 250 (1983) (“We look to decisions construing statutes worded similarly.”) More particularly, when a
21 state adopts a statute of another state, it is presumed that the judicial decisions of that state interpreting
22 the statute are also adopted. *Ex parte Skaug*, 63 Nev. 101, 107-108, 164 P.2d 743, 746 (1945)
23 (adopting California law.)

24 These principles of statutory interpretation apply to statutes enacted by the initiative process.
25 As discussed in the preceding point, (a) Nevada law on interpreting such statutes is sparse and has not
26 had to go further than a review of the materials provided to voters regarding the scope and extent of
27 an initiative, and (b) Nevada courts look to California where, as here, there are no Nevada decisions
28 on point. In California, it is established that the entity enacting a statute, whether the state legislature

1 or the voters through the initiative process, is deemed to be aware of existing laws and judicial
2 construction in effect when enacted. *People v. Perez*, 4 Cal.5th 1055, 1067-1068, 416 P.3d 42, 61
3 (2018); *People v. Gonzales*, 2 Cal.5th 858, 869, 216 Cal.Rptr.3d 285, 293, 392 P.3d 437, 445 (2017);
4 *Hill v. NCAA*, 7 Cal.4th 1, 23, 26 Cal.Rptr.2d 834, 847, 865 P.2d 633, 646 (1994); *In re Lance W.* 37
5 Cal.3d 873, 890, fn. 11, 210 Cal.Rptr. 631, 642, fn. 11, 694 P.2d 744, 755, fn. 11 (1985).

6 Accordingly, these question arise: when NRS 42.021 was adopted through the initiative
7 process in 2004, were the voters adopting California’s Civil Code section 3333.1? And if so, what
8 California judicial decisions were also adopted? The answers to both questions are “yes” as discussed
9 below.

10 **6. The Language of NRS 42.021 Was Taken from California law, And at the**
11 **Time of its Enactment, California Appellate Courts Had Held (And Still**
12 **Hold) That Workers’ Compensation Carriers Have No right to a Lien or**
13 **Credit From a Medical Malpractice Settlement.**

14 The language of section 2 of NRS 42.021 is nearly identical to subdivision (b) of California’s
15 Civil Code § 3333.1. (The difference being syntax, not substance.) Section 3333.1 was enacted in
16 1975. As discussed below, section 3333.1 was interpreted by the California Supreme Court in *Barme*
17 *v. Wood*, 37 Cal.3d 174, 207 Cal.Rptr. 816, 689 P.2d 446 (1984) and by the California Court of Appeal
18 in *Graham v. Workers’ Comp. Appeals Bd.*, 210 Cal.App.3d 499, 258 Cal.Rptr. 376 (1988) to preclude
19 the enforcement of a lien if the prosecution of the medical malpractice action resolves by settlement
20 before trial. And in *Graham*, the Court of Appeal held that the statute also precluded a workers’
21 compensation insurance carrier from claiming a credit against future benefit payment obligations. For
22 the Court’s convenience, copies of *Barme* and *Graham* are attached as **Exhibits 12 and 13.**

23 California Civil Code section 3333.1 states:

24 “(a) In the event the defendant so elects, in an action for personal injury against a
25 health care provider based upon professional negligence, he may introduce evidence of any
26 amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to the
27 United States Social Security Act, any state or federal income disability or worker's
28 compensation act, any health, sickness or income-disability insurance, accident insurance

1 that provides health benefits or income-disability coverage, and any contract or agreement
2 of any group, organization, partnership, or corporation to provide, pay for, or reimburse
3 the cost of medical, hospital, dental, or other health care services. Where the defendant
4 elects to introduce such evidence, the plaintiff may introduce evidence of any amount
5 which the plaintiff has paid or contributed to secure his right to any insurance benefits
6 concerning which the defendant has introduced evidence.

7 “(b) No source of collateral benefits introduced pursuant to subdivision (a) shall
8 recover any amount against the plaintiff nor shall it be subrogated to the rights of the
9 plaintiff against a defendant.”

10 In *Barme v. Wood*, 37 Cal.3d 174, 207 Cal.Rptr. 816, 689 P.2d 446 (1984), an injured worker
11 who had received worker’s compensation benefits sued the health care providers for medical
12 malpractice, claiming that they had caused him additional injury. The self-insured employer filed a
13 complaint in intervention, seeking reimbursement of the compensation it had paid to the plaintiff. The
14 trial court dismissed the complaint in intervention on the ground that California Civil Code section
15 3333.1 precluded such recovery. The California Supreme Court affirmed the dismissal, despite the
16 fact that there had been neither a settlement nor a trial. In other words, the California Supreme Court
17 held that, under no circumstances, could a collateral source payor of benefits recover money from the
18 proceeds of a medical malpractice lawsuit.

19 Five years later, the precise issue presented by the case at bar, *i.e.*, whether a workers’
20 compensation carrier could claim credit for a medical malpractice settlement, was decided in *Graham*
21 *v. Workers’ Comp. Appeals Bd.*, 210 Cal.App.3d 499, 258 Cal.Rptr. 376 (1989).

22 In *Graham*, a workers’ compensation insurance company that had paid compensation to the
23 plaintiff claimed credit for future compensation obligations based on money the plaintiff had received
24 in a medical malpractice settlement. The California Court of Appeal held (1) that Civil Code section
25 3333.1 must take precedence over contrary workers’ compensation statutes allowing reimbursement
26 and/or liens in third-party cases and (2) that subdivision (b) of section 3333.1 encompassed
27 settlements of medical malpractice lawsuits as well as trials. The *Graham* court noted that the purpose
28 of subdivision (b) was to assure that the medical malpractice plaintiff will suffer no “double

1 deduction” from his tort recovery as result of his receipt of collateral source benefits. *Id.* at 506, 258
2 Cal.Rptr. at 380. To construe the statute otherwise, the Court of Appeal explained, and allow an
3 employer “credit from an already reduced recovery, the injured employee, not the medical malpractice
4 defendant or the employer [or workers’ compensation carrier] would bear the cost of the medical
5 malpractice to the extent of the workers’ compensation benefits [so] the higher the workers’
6 compensation benefits to which the employee is entitled, the lower his overall recovery.” *Id.* at 506,
7 258 Cal.Rptr. at 380. Because the state’s public policy was to protect injured employees, the Court
8 of Appeal reasoned that “the sensible interpretation of Civil Code 3333.1 is that it includes the
9 employer’s credit remedies as well as its reimbursement remedies.” *Id.*

10 As mentioned, the language of section 2 of NRS 42.021 is nearly identical to subdivision (b)
11 of California’s Civil Code § 3333.1. (The difference being syntax, not substance.) Nevada has the
12 same clear public policy of protecting employees injured in the course of their employment. *Hansen*
13 *v. Harrah’s*, 100 Nev. 60, 63, 675 P.2d 394, 396 (1984); *SIIS v. Jesch*, 101 Nev. 690, 694, 709 P.2d
14 172, 175 (1985). Therefore, “it has been a long-standing policy for [the Nevada Supreme] Court to
15 liberally construe laws to protect injured workers and their families.” *Hansen, supra*, 100 Nev. at 63,
16 675 P.2d at 396. In addition, the *Graham* court noted that section 3333.1 was enacted after the statute
17 authorizing workers’ compensation reimbursement. *Graham, supra*, 210 Cal.App.3d at 505, 258
18 Cal.Rptr. at 380. Nevada statutes are similarly interpreted. “[W]hen statutes are in conflict, the one
19 more recent in time controls over the provisions of an earlier enactment.” *Piroozi v. Eighth Jud. Dist.*
20 *Ct.*, 131 Nev. 1004, 1009, fn.3, 363 P.3d 1168, 1172, fn.3 (2015) (applying the principle to the latter
21 statute enacted by the voters). NRS 42.021 was enacted by the voters in 2004, but NRS 616C.215
22 (formerly 616.560) was enacted years before. Accordingly, in an analogous manner, NRS 42.021
23 takes precedence over any contrary statute in its workers’ compensation statutory scheme.

24 The *Graham* court then decided whether subdivision (b) applied to cases that are settled rather
25 than tried. The employer in *Graham* correctly asserted that “under the clear and unambiguous
26 language of the statute, the employer’s right to credit is not affected unless there is a trial at which the
27 medical malpractice defendant introduces evidence of workers’ compensation benefits,” and in that
28 case, “the medical malpractice action was settled rather than tried.” *Graham, supra*, 210 Cal.App.3d

1 499, 507, 258 Cal.Rptr. 376, 381. Nevertheless, the appellate court concluded, subdivision (b) also
2 applied to settlements. The California Court of Appeal began by explaining that “courts resist blind
3 obedience’ to statutory language when its literal interpretation would defeat” its objective. *Id.* at 507,
4 258 Cal.Rptr. at 381. It then reasoned that Civil Code § 3333.1 cannot be interpreted in a way that
5 would discourage settlements. *Id.* at 508, 258 Cal.Rptr. at 382. “If we were to interpret the statute
6 to require a trial before the employer is precluded from seeking credit or reimbursement, plaintiffs
7 would be forced to try their cases unless medical malpractice defendants agreed to settle for sums
8 sufficient to cover employers’ costs.” *Id.* Nevada’s public policy is also to encourage pre-trial
9 settlement. *Trs. of the Plumbers and Pipefitters Union Local 525 Health and Welfare Trust Plan v.*
10 *Developers Sur. & Indem. Co.*, 120 Nev. 56, 62, 84 P.3d 59, 62 (2004). As *Graham* reasoned, its
11 construction of applying the statute to settlements was consistent with California’s public policy
12 protecting injured employees and that workers’ compensation statutes must “be construed liberally to
13 protect workers’ benefits.” *Graham, supra*, 210 Cal.App.3d at 506, 258 Cal.Rptr. at 380-81.
14 Nevada’s identical public policy likewise mandates “the workers’ compensation statutes to be
15 construed liberally to protect workers’ benefits.” *Hansen, supra*, 100 Nev. 60, 63, 675 P.2d 394, 396.

16 Accordingly, NRS 42.021 should be interpreted in the same manner as the California Supreme
17 Court and California Court of Appeal have interpreted California Civil Code § 3333.1, *i.e.*, (1) it bars
18 a workers’ compensation carrier from reimbursement or entitlement to a credit from the proceeds of
19 a medical malpractice lawsuit, and (2) applies regardless of whether the proceeds arise from a
20 settlement or a lawsuit. If this Court disagrees, it need not go further; under both the laws of Nevada
21 and Arizona defendant COPPERPOINT would have a lien, or is otherwise entitled to a future credit,
22 on the settlement proceeds. (See footnote 3, *supra*.) If the Court agrees with Plaintiffs that NRS
23 42.021 should be interpreted to preclude a lien or future credit on the settlement proceeds of a medical
24 malpractice action, then the Court would need to proceed with a conflict of laws analysis to determine
25 whether Arizona law or Nevada law applies to the circumstances presented by this matter, unless NRS
26 42.021 is either procedural or evidentiary in nature. Plaintiffs do not contend that NRS is a procedural
27 statute, but they do contend that it is evidentiary in nature.

28 ///

1 **C. BECAUSE NRS 42.021 IS EVIDENTIARY IN NATURE, NO CONFLICT OF**
2 **LAWS ANALYSIS IS REQUIRED**

3 In *Tri-County Equipment & Leasing, supra*, 128 Nev. 352, 286 P.3d 593, the issue was
4 whether evidence of California’s workers’ compensation payments was admissible in a personal
5 injury trial in Nevada. The Nevada Supreme Court concluded that the law of Nevada should be
6 applied for two reasons. First, the law of Nevada did not conflict with the law of California. Second,
7 “[e]ven if a conflict existed, Nevada law would apply because the statutory provision at issue, NRS
8 616C.215(10), is an evidentiary rule. *See Cramer v. Peavy*, 116 Nev. 575, 580, 3 P.3d 665, 669 (2000)
9 (explaining that NRS 616C.215(10) relates to what a jury can consider); *see also* Restatement
10 (Second) of Conflict of Laws § 138 (1971) (‘The local law of the forum determines the admissibility
11 of evidence.’).” *Tri-County Equipment Leasing, supra*, 128 Nev. 352, 355, fn. 3, 286 P.3d 593, 595,
12 fn.3.

13 Nevada has evidentiary rules pertaining to when collateral source evidence will be admissible.
14 In general, collateral source evidence is prohibited because it will prejudice the jury. *Bass-Davis v.*
15 *Davis*, 122 Nev. 442, 454, 134 P.3d 103, 110 (2006); NRS 48.035. One exception is NRS
16 616C.215(10), which states, in pertinent part: “In any trial of an action by the injured employee, or in
17 the case of his or her death by the dependents of the employee, against a person other than the
18 employer or a person in the same employ, the jury must receive proof of the amount of all payments
19 made or to be made by the insurer or the Administrator.”

20 Another evidentiary rule exception is NRS 42.021. In medical malpractice cases, it
21 specifically permits evidence of payments by collateral sources which would otherwise be per se
22 inadmissible. *McCrosky, supra*, 133 Nev. 930, 936, 408 P.3d 149, 154. Arizona also has a statute
23 that permits evidence of payments by collateral sources in medical malpractice cases, *i.e.*, Ariz. Rev.
24 Stat. (“ARS”) § 12-565C. Arizona’s statute differs from NRS 42.021 in that it exempts statutory liens
25 (such as workers’ compensation) if evidence of collateral source payments was introduced.
26 Nevertheless, both the Nevada and Arizona statutes pertain to evidentiary rules, and thus, the law of
27 Nevada, rather than Arizona law, applies. If the Court agrees, it need go no further. NRS 42.021
28 prevents and prohibits defendant COPPERPOINT from asserting a lien or credit on the settlement

1 proceeds generated by Plaintiffs’ underlying medical malpractice matter. Partial summary judgment
2 should be granted as to the first and second causes of action for declaratory relief and for appropriate
3 injunctive relief. But if the Court concludes that NRS 42.021 is not evidentiary in nature, then it will
4 need to undertake a conflict of laws analysis.

5 **D. NRS 42.021, NOT THE CONTRARY LAW OF ARIZONA, MUST BE APPLIED**
6 **WHERE NEVADA HEALTH CARE PROVIDERS NEGLIGENTLY**
7 **WORSENEDED WORK-RELATED INJURIES OF AN ARIZONA EMPLOYEE**
8 **WHO SUED THEM IN NEVADA FOR MEDICAL MALPRACTICE, THEN**
9 **SETTLED HER CASE**

10 As discussed above, NRS 42.021 and ARS § 12-565C both deal with the admissibility of
11 collateral source evidence in medical malpractice cases, but Arizona differs in that liens imposed by
12 statute are exempt from the preclusion on enforcement. If the effect of the evidentiary rule is deemed
13 to be substantive, Nevada law would still apply.

14 Nevada has adopted the Restatement (Second) of Conflict of Laws (“Restatement”) as the
15 relevant authority for Nevada’s choice-of-law jurisprudence in tort cases. *General Motors Corp. v.*
16 *Eighth Judicial Dist. Court of State of Nev. ex rel. County of Clark*, 122 Nev. 466, 473, 134 P.3d 111,
17 116 (2006). Furthermore, Nevada deems a subrogation claim that derives from a tort to be a tort claim
18 in a conflict of laws analysis. *Dictor v. Creative Management Services, LLC*, 126 Nev. 41, 46, 223
19 P.3d 332, 335 (2010). Subrogation claims include claims for reimbursement of workers’
20 compensation benefits. Indeed, *Dictor* quoted from *Federated Rural Elec. v. R.D. Moody &*
21 *Associates*, 468 F.3d 1322, 1326 (11th Cir. 2006): “A subrogation claim arising from a tort . . . is
22 properly characterized as a tort claim for choice of law purposes. . . . *Swain v. D & R Transp. Co.*,
23 735 F.Supp. 425, 427-28 (M.D.Ga. 1990).” In *Swain*, the claim was by a workers’ compensation
24 carrier seeking subrogation of the benefits it had paid. Accordingly, Nevada deems a subrogation
25 claim, including one by a workers’ compensation carrier, to be a tort claim in a conflicts of law
26 analysis. As explained in *General Motors Corp, supra*, 122 Nev. 466, 474, 134 P.3d 111, 117, section
27 145 of the Restatement governs Nevada’s choice-of-law analysis in tort cases unless the Restatement
28 contains a section that specifically addresses the particular tort involved.

1 These specific torts are listed in sections 146 to 155 of the Restatement.⁷ Section 146 governs
2 choice-of-law issues in personal injury claims. *Id.* A medical malpractice claim is a type of personal
3 injury. See *Wyeth v. Rowatt*, 126 Nev. 446, 462, 244 P.3d 765, 776 (2010) applying section 146 to a
4 case against the manufacturer of a drug that allegedly caused breast cancer, citing to *Massey, supra*,
5 99 Nev. 723, 725-26, 669 P.2d 248, 250-51, a medical malpractice action.⁸

6 Section 146 states that the rights and liabilities of the parties are governed by the ‘local law of
7 the state where the injury occurred’ unless ‘some other state has a more significant relationship to the
8 occurrence under the principles stated in section 6.’” *General Motors Corp., supra*, 122 Nev. 466,
9 474, 134 P.3d 111, 117. “Section 6 identifies the following principles: (1) A court, subject to
10 Constitutional restrictions, will follow a statutory directive of its own state on choice of law. (2) When
11 there is no such directive, [such as in this case] the factors relevant to the choice of the applicable rule
12 of law include (a) the needs of the interstate and international systems, (b) the relevant policies of the
13 forum, (c) the relevant policies of interested states and the relative interests of those states in the
14 determination of the particular issue, (d) the protections of justified expectations, (e) the basic policies
15 underlying the particular field of law, (f) certainty, predictability and uniformity of result, and (g) ease
16 in the determination and application of the law to be applied.” *Id.* at 474, 134 P.3d at 116-117. “These
17 principles are not intended to be exclusive and no one principle is weighed more heavily than another.”
18 *Id.*, 134 P.3d at 117.

19 Although no Nevada appellate court has applied section 6 principles to a medical malpractice
20

21 ⁷ Sections 146 to 155 respectively govern personal injury (146), injuries to tangible things
22 (147), fraud and misrepresentation (148), defamation (149), multistate defamation (150), injurious
23 falsehoods (151), right of privacy (152), multistate invasion of privacy (153), interference with marital
relationship (154) and malicious prosecution and abuse of process (155).

24 ⁸ If medical malpractice is not considered to be an action for “personal injury,” section 145 of
25 the Restatement would govern because no other section specifically addresses this particular tort. See
26 *General Motors Corp.*, 122 Nev. 466, 474, 134 P.3d 111, 117. Section 145, which also requires an
27 analysis using section 6 factors, states: “(1) The rights and liabilities of the parties with respect to an
28 issue in tort are determined by the local law of the state which, with respect to that issue, has the most
significant relationship to the occurrence and the parties under the principles stated in § 6. (2) Contacts
to be taken into account in applying the principles of § 6 to determine the law applicable to an issue
include: (a) the place where the injury occurred, (b) the place where the conduct causing the injury
occurred, (c) the domicile residence, nationality, place of incorporation and place of business of the
parties, and (d) the place where the relationship, if any, between the parties is entered.”

1 conflict-of-laws analysis, other courts have done so, identifying the following factors: (1) the state
2 where the patient chose to seek medical treatment, (2) the state where the patient has a reasonable
3 expectation that the health-care providers will be governed by the laws licensing and regulating them,
4 (3) the state where the physicians or other involved health providers practice or where the hospital is
5 located, (4) the state that licenses and regulates the physicians or other involved health-care providers
6 or hospitals, (5) the state where the health-care providers have a reasonable expectation that they will
7 be governed by the laws licensing and regulating the health-care providers, (6) the state where the
8 injury-causing conduct occurred, (7) the state where the injury occurred and (8) the state whose
9 citizens should be liable for the negligence attributable to them. *Grover v. Isom*, 137 Idaho 770, 53
10 P.3d 821 (2002); *Ginsberg ex rel. Ginsberg v. Quest Diagnostics, Inc.*, 441 N.J.Super. 198, 117 A.3d
11 200 (App.Div. 2015); *Drs. Groover, Christie & Merritt, P.C. v. Burke*, 917 A.2d 1110, (D.C. 2007).
12 Recognizing that factors are not given equal weight, these courts have pointed out that the state with
13 the most significant state interest is the state where the medical malpractice occurred because it is the
14 state that licenses and regulates the health-care providers that injured the patient/plaintiff.

15 *Grover, supra*, 137 Idaho 770, 53 P.3d 821, was a medical malpractice case against an oral
16 surgeon and a certified registered nurse anesthesiologist brought by their patient who had a stroke
17 while undergoing oral surgery. The patient lived in Idaho and had seen her dentist in Idaho who
18 recommended extraction of two teeth, and referred her to Dr. Isom whose office was in Ontario,
19 Oregon. Although their office was in Oregon, Dr. Isom and the nurse also lived in Idaho. The trial
20 court concluded that the law of Oregon rather than Idaho applied and, after judgment was rendered
21 against the patient/plaintiff, she appealed. In affirming, the Idaho Supreme Court discussed the
22 section 6 factors as follows:

23 “These policies support the application of Oregon law. The needs of the interstate and
24 international systems are not likely implicated in this case. In considering relevant policies
25 of other states it is clear that Oregon has an interest in making certain that oral surgeons
26 practicing in Oregon are subject to Oregon laws and the Oregon standard of care. The
27 defendants would justifiably expect to be governed by Oregon law, since they were
28 licensed in Oregon and in this case conducted their business in Oregon. ‘The basic policy

1 of negligence law is to allow a person to recover from injury proximately caused by
2 another's violation of a duty of reasonable care.' *DeMeyer*, 103 Idaho [327] at 330, 647
3 P.2d [783]at 786 [(1982)]. As a general rule, a victim should recover under the system in
4 place where the injury occurred. Predictability and ease in determining and applying law
5 are also better served by applying Oregon law, because it is a simple policy that the place
6 of the injury should generally govern the choice of law.

7 “The Grovers are correct that in *DeMeyer*, the Court of Appeals held that the place of the
8 injury does not always control the choice of law. However, that case and this case are distinguishable.
9 In *DeMeyer* the plaintiff and her sister were driving through Oregon at the time of an automobile
10 accident. *Id.* at 328, 647 P.2d at 784. The Court of Appeals ruled that under subpart (d) of Restatement
11 Section 6 none of the parties had any expectation that Oregon law would apply. *Id.* at 329, 647 P.2d
12 at 785. The Court of Appeals described the plaintiffs' presence in Oregon as ‘fortuitous,’ as the
13 plaintiffs were simply driving through Oregon while going between Washington and Idaho. *Id.* at 330,
14 647 P.2d at 786.

15 “This case is factually different. Grover’s presence in Oregon was not fortuitous – she
16 purposely went to Oregon to for the operation. Isom and Berg were practicing in Oregon and had
17 every expectation that Oregon law would govern their business in Oregon.

18 “The conduct causing the injury itself, as well as the injury itself, occurred in Oregon. Isom’s
19 place of business was located in Oregon. The only factor that justifies the application of Idaho law is
20 that the parties are Idaho residents. Every other factor supports the application of Oregon law. The
21 district court properly ruled that Oregon substantive law applied to this case.” *Grover, supra*, 137
22 Idaho at 773-774, 53 P.3d at 824-25.

23 *Ginsberg, supra*, 441 N.J.Super. 198, 117 A.3d 200 was a medical malpractice action
24 prosecuted on behalf of an infant suffering from Tay-Sachs disease against a gynecologist, Dr.
25 Rubinstein, and a hospital, Hackensack University Medical Center (HUMC) among other health care
26 providers, some of whom were from New York. The parents/plaintiffs were residents of New York.
27 The mother traveled to New Jersey to be treated there by Dr. Rubinstein. He referred plaintiffs to
28 HUMC in New Jersey where they underwent genetic counseling. The trial court ruled that the law of

1 New York applied to all defendants. After determining that an actual conflict of laws existed, the
2 appellate court concluded that the law of New Jersey, rather than New York, should apply to these
3 health-care providers. The court explained:

4 “With respect to Dr. Rubinstein, HUMC, and Duncan, it is especially significant that each
5 of them is a professional or hospital located in, licensed in, and regulated by the State of
6 New Jersey. Professionals and their patients have a reasonable expectation that the laws
7 of the state of licensure will govern the professional licensee’s activities in the state where
8 the services were provided. New Jersey has strong public policies in the regulation of
9 health care professionals where licensed in and who practice in this state, as well as the
10 regulation of hospitals that are licensed in this state. . . .

11 * * *

12 “Although the New Jersey health care professionals apparently believe it is more
13 advantageous to their litigation interests in this particular case to have the law of another
14 state govern their conduct, there are very strong public policies and real-world expectations
15 of professionals and patients that support applying to such professionals the law of the state
16 where they are licensed and in which they provided services to the plaintiff patient. [¶] In
17 this regard, we take judicial notice . . . that patients frequently travel across state lines to
18 be treated by a physician who is a surgeon or specialist because of that individual’s
19 expertise. Patients also may be drawn to a hospital in another state for the same reasons,
20 or may have an emergency condition while they are in the state temporarily. In such
21 circumstances, there should be a strong presumption that the laws of the state of licensure
22 and treatment govern the patient’s care in that state, subject to concerns of feasibility and
23 fairness. (Footnotes omitted.) *Id.* at 222-23, 117 A.2d at 234-35.

24 In *Drs. Groover, Christie, & Merritt, P.C.*, *supra*, 917 A.2d 1110, the patient/plaintiff was a
25 resident of the District of Columbia who traveled to Maryland for medical treatment by
26 physicians/defendants whose misdiagnosis caused her to have a stroke. The issue was whether to
27 apply the law of Maryland that imposed a cap on non-economic damages or that of the forum, *i.e.*,
28 District of Columbia, which did not. The trial court held that the law of the District of Columbia

1 applied. The Court of Appeals disagreed and held that Maryland law applied because the
2 Restatement’s jurisdictional elements were present, *i.e.* “a) the place where the injury occurred; b) the
3 place where the conduct causing the injury occurred; c) the domicile, residence, nationality, place of
4 incorporation and place of business of the parties; and d) the place where the relationship is centered.”
5 The Court of Appeals also counted as a factor the interest of Maryland in limiting financial liability
6 of health care providers by imposition of damage caps, which the District of Columbia did not have.

7 In the case at bar, all of the significant factors weigh in favor of applying the law of Nevada,
8 *i.e.*, (1) the state where the patient chose to seek medical treatment – **Nevada**, (2) the state where the
9 patient has a reasonable expectation that the health-care provers will be governed by the laws licensing
10 and regulating them – **Nevada**, (3) the state where the physicians or other involved health providers
11 practice or where the hospital is located – **Nevada**, (4) the state that licenses and regulates the
12 physicians or other involved health-care providers or hospitals – **Nevada**, (5) the state where the
13 health-care providers have a reasonable expectation that they will be governed by the laws licensing
14 and regulating the health-care providers – **Nevada**, (6) the state where the injury-causing conduct
15 occurred – **Nevada**, (7) the state where the injury occurred – **Nevada**, and (8) the state whose citizens
16 should be liable for the negligence attributable to them – **Nevada**. And, as the Court of Appeals found
17 in *Drs. Groover, Christie, & Merritt, P.C., supra*, the state with the most significant interest is the
18 state where the medical malpractice occurred because it is the state (a) that licenses and regulates the
19 health-care providers that injured the patient/plaintiff and (b) that imposed damage caps in medical
20 malpractice cases – again, **Nevada**.

21 Arizona has no damage caps in medical malpractice cases. The only connection to Arizona is
22 that Plaintiff, Daria Harper, was domiciled and employed there and that the workers’ compensation
23 benefits were paid pursuant to the Arizona workers’ compensation scheme. Such involvement, which
24 had nothing to do with the tort that was the basis of the medical malpractice lawsuit, is not a factor to
25 be considered. *Drs. Groover, Christie & Merritt, P.C. v. Burke, supra*, 917 A.2d 1110, 1117: “GCM’s
26 activities in the District had nothing to do with the tortious conduct at issue in this lawsuit. . . .”
27 Therefore, regardless of whether NRS 42.021 is deemed to be evidentiary or substantive, the law of
28 Nevada must take precedence over the law of Arizona.

1 **IV. CONCLUSION**

2 Plaintiffs have demonstrated that there are no material facts in controversy and they are entitled
3 to partial summary judgment on the first and second causes of action for declaratory and injunctive
4 relief. Accordingly, Plaintiffs request that the Court grant this motion and declare that NRS 42.021
5 applies to the underlying medical malpractice action and, accordingly, enjoins COPPERPOINT from
6 (1) seeking to enforce any claim to recover for collateral source benefits paid to Plaintiff Daria Harper,
7 (2) withholding workers' compensation benefits based on a claim of entitlement to a credit for the
8 amount of the \$6,250,000 medical malpractice settlement, and (3) failing to pay to or on behalf of
9 plaintiff Daria Harper any benefits withheld since May 2, 2020.

10 DATED this 26th day of August, 2020.

11 Respectfully submitted,

12 **BLUMBERG LAW CORPORATION**

13 /s/ John P. Blumberg

14 JOHN P. BLUMBERG, ESQ.
15 California Bar No. 70200
16 (admitted pro hac vice)
444 West Ocean Blvd., Suite 1500
Long Beach, California 90802-4330

17 JASON R. MAIER, ESQ.
18 Nevada Bar No. 8557
19 **MAIER GUTIERREZ & ASSOCIATES**
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2, **PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT** was electronically filed on the 26th day of August, 2020, and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List, as follows:

Dalton L. Hooks, Jr., Esq.
HOOKS MENG & CLEMENT
2820 West Charleston Blvd., Suite C-23
Las Vegas, Nevada 89102
*Attorneys for Defendants Copperpoint Mutual Insurance Holding Company
and Copperpoint General Insurance Company*

James Kjar, Esq.
Jon Schwalbach, Esq.
KJAR, MCKENNA & STOCKALPER LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
*Attorneys for Defendants Kenneth Marshall Silberberg and
Law Offices of Marshall Silberberg*

David A. Clark, Esq.
LIPSON NEILSON P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
*Attorneys for Defendants Shoop A Professional Law Corporation
and Thomas S. Alch*

/s/ Natalie Vazquez
An employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1

DECLARATION OF PLAINTIFF DARIA HARPER IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

I, DARIA HARPER, declare:

1. I am a plaintiff in this lawsuit. I am knowledgeable of the facts contained herein and am competent to testify thereto.

2. I am over the age of eighteen and I have personal knowledge of all matters set forth herein. If called to do so, I would competently and truthfully testify to all matters set forth herein, except for those matters stated to be based upon information and belief.

3. On or about August 11, 2014, I was employed by Islander RV Resort, LLC in Arizona, where I was a resident, and while in the course and scope of my employment in Arizona, I sustained a knee injury. My employer was insured by Defendant COPPERPOINT GENERAL INSURANCE COMPANY (“COPPERPOINT”) which provided workers’ compensation benefits to me.

4. On or about June 9, 2015, I required medical treatment in Las Vegas, Nevada that was related to my original August 11, 2014 injury. As a result of this medical treatment, I suffered serious injury resulting in quadriplegia.

5. On or about June 7, 2016, my husband, Daniel Wininger, and I filed a complaint in the District Court of Nevada, Clark County, as Case Number A-16-738004-C (“underlying medical malpractice action”) alleging that we sustained damages as a result of the medical negligence of the following named defendants: (1) Valley Hospital Medical Center, Inc. dba Valley Hospital Medical Center, (2) Valley Health Systems, LLC dba Valley Hospital Medical Center, (3) Jeffrey Davidson, M.D., (4) Cyndi Tran, D.O., (5) Paul Janda, D.O., (6) Elizabeth Phung-Hart, D.O., (7) Andrea Agcaoili, D.O., and (8) Murad Jussa, D.O. A true copy of the complaint is attached as **Exhibit 4**.

6. COPPERPOINT claimed a right to participate in any settlement thereof and that it was entitled to a lien for repayment of financial benefits paid to or on my behalf.

7. In the underlying medical malpractice action, (a) my medical experts determined that I would require 24-hour per day care for the remainder of my life, (b) my expert life care planner itemized all of the care I would require, and the cost therefor, and (c) my economic expert determined that the present value of the cost of my future required care was \$14,291,374, and that I incurred past

1 and future losses of \$322,579. A true copy of the Life Care Plan that itemized my care needs is
2 attached as **Exhibit 5** and a true copy of my economist's present value analysis is attached as **Exhibit**
3 **6**.

4 8. My husband and I settled the underlying medical malpractice action for the total sum
5 of \$6,250,000. A partially redacted copy of one of the three settlement agreements is attached as
6 **Exhibit 7**. Thereafter, in or about July 2018, the \$6,250,000 was paid and the defendants were
7 dismissed.

8 9. Based on a letter in my then-attorney's file, attached as **Exhibit 8**, it is my information
9 and belief (a) that he informed COPPERPOINT on or about July 2, 2018, that it was not entitled to
10 any lien and (b) that COPPERPOINT attached the letter as exhibit C of its opposition to my application
11 for a temporary restraining order and preliminary injunction filed with the Court on June 3, 2020, and
12 stated at page 5, lines 8 to 14 that after receiving the letter, COPPERPOINT "attempted to negotiate
13 a resolution to its lien issue. . . . Unable to reach a resolution . . . , CopperPoint mailed a Notice of
14 Claim Status" to my husband and me on October 30, 2019. I received the letter and a true copy is
15 attached as **Exhibit 9**.

16 10. On April 2, 2020, I was served with a letter from COPPERPOINT notifying me that it
17 would terminate all benefits in 30 days. A true copy of the letter is attached as **Exhibit 10**.

18 11. On May 1, 2020, I was served with a Notice of Claim Status by COPPERPOINT,
19 attached as **Exhibit 11**, which stated, "Future compensation, medical, surgical, hospital, pharmacy,
20 caretaker & other benefits payable to applicant or on behalf of applicant are terminated effective May
21 2, 2020 until CopperPoint's current lien of \$3,171,095.00 is fully exhausted." As it threatened to do,
22 COPPERPOINT terminated my benefits.

23 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
24 true and correct.

25 DATED this 25 day of August, 2020.

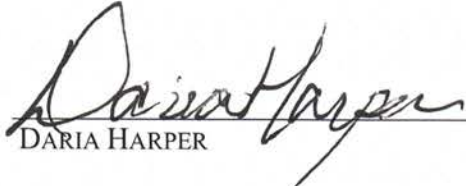
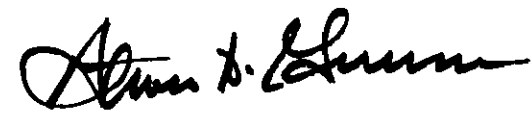
26 
27 DARIA HARPER
28

EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

1 Thomas S. Alch, Esquire
2 Nevada State Bar No. 6876
3 Law Offices of Thomas S. Alch
4 500 N. Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Telephone: (702) 740-4140

5 100 N. Crescent Drive, Suite 360
6 Beverly Hills, California 90210
Telephone: (310) 281-8700

7 Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER

8 **DISTRICT COURT**

9 **CLARK COUNTY NEVADA**

10
11 DARIA HARPER, DANIEL WININGER,

12 Plaintiffs,

13 vs.

14 VALLEY HOSPITAL MEDICAL
15 CENTER, INC., doing business as VALLEY
HOSPITAL MEDICAL CENTER;
16 VALLEY HEALTH SYSTEM, LLC, doing
business as VALLEY HOSPITAL
17 MEDICAL CENTER; JEFFREY
DAVIDSON, M.D.; CYNDI TRAN, D.O.;
18 PAUL JANDA, D.O.; ELIZABETH
PHUNG-HART, D.O.; ANDREA
19 AGCAOILI, D.O.; MURAD JUSSA, M.D.,
and, DOES 1 through 250, inclusive,

20 Defendants.

CASE NO. A- 16 - 738004 - C

DEPARTMENT NO. XVI I

ARBITRATION EXEMPTION CLAIMED:
MEDICAL MALPRACTICE - RULE 3(A)(9)

21
22 **COMPLAINT FOR MEDICAL MALPRACTICE**

23 **MEDICAL MALPRACTICE**

24 **LOSS OF CONSORTIUM**

25 Plaintiffs DARIA HARPER and DANIEL WININGER, through Counsel, allege in
26 their Complaint for Medical Malpractice and Loss of Consortium, as follows:

27 ///

1 1. The true names, identities or capacities, whether individual, associate,
2 corporate or otherwise of Defendants DOES 1 through 250, inclusive, are unknown to
3 Plaintiffs who, therefore, sue said Defendants by such fictitious names. When the true names,
4 identities or capacities of such fictitiously-designated Defendants are ascertained, Plaintiffs
5 will ask leave of Court to amend the Complaint to insert said true names, identities and
6 capacities, together with the proper charging allegations.

7 2. Plaintiffs are informed and believe and thereon allege that each of the
8 Defendants sued herein as a DOE is responsible in some manner for the events and
9 happenings herein referred to, thereby legally causing the injuries and damages to the
10 Plaintiffs as herein alleged.

11 3. All of the facts, acts, events and circumstances herein mentioned and described
12 occurred in Clark County, State of Nevada, and all Defendants are residents of Clark County,
13 State of Nevada, doing business in said county, State of Nevada.

14 4. At all times herein mentioned Plaintiffs and each of them, were and currently
15 are residents of Lake Havasu City, state of Arizona.

16 5. At all times herein mentioned, Defendants JEFFREY DAVIDSON, M.D.,
17 CYNDI TRAN, D.O., PAUL JANDA, D.O. ELIZABETH PHUNG-HART, D.O., ANDREA
18 AGCAOILI, D.O., MURAD JUSSA, M.D., and DOES 1 through 50, inclusive, were, and now
19 are, physicians and surgeons, holding themselves out as duly licensed to practice their
20 profession under and by virtue of the laws of the State of Nevada and were, and now are,
21 engaged in the practice of their profession in the State of Nevada.

22 6. At all times herein mentioned, Defendants DOES 51 through 100, inclusive,
23 were, and now are, registered nurses, licensed vocational nurses, practical nurses, physician
24 assistants, aids, technicians, attendants, students or other paramedical personnel, holding
25 themselves out as duly able to practice their profession under and by virtue of the laws of the
26 State of Nevada and were, and now are, engaged in the practice of their profession in the State
27 of Nevada and acting as agents, employees and servants of some or all of the other Defendants
28 within the course and scope of said agency or employment.

1 7. At all times herein mentioned, Defendants VALLEY HOSPITAL MEDICAL
2 CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER, and
3 VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL
4 CENTER and DOES 101 through 150, and 151-250, and each of them, were corporations,
5 partnerships, joint ventures, or other entities organized and existing under the laws of the State
6 of Nevada and Delaware, with their principal place of business situated in the State of Nevada.

7 8. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
8 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
9 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 200,
10 inclusive, were at all times herein mentioned duly organized Nevada corporations or hospitals
11 existing under and by virtue of the laws of the State of Nevada and other States; that said
12 Defendant corporations, hospitals and the remaining Defendants, and each of them, owned,
13 operated, managed and controlled a general hospital facility within Clark County, State of
14 Nevada, held out to the public at large and to the Plaintiffs herein, as properly equipped, fully
15 accredited, competently staffed by qualified and prudent personnel and operating in
16 compliance with the standard of due care maintained in other properly equipped, efficiently
17 operated and administered, accredited hospitals in said community commonly known as
18 VALLEY HOSPITAL MEDICAL CENTER.

19 9. At all times herein mentioned Defendants DOES 201 through 250 were doing
20 business as a district hospital, a hospital operated by a government entity open to the public, or
21 a medical facility operated by a government entity open to the public rendering medical,
22 surgical, hospital, diagnostic, nursing and other care to the general public for compensation.

23 10. All of the acts complained of herein by Plaintiffs against said Defendants were
24 done and performed by said Defendants by and through their duly authorized agents, servants
25 and employees, each of whom and all of whom were at all times mentioned herein acting
26 within the course, purpose, and scope of their said agency, service and employment, and
27 whose conduct was ratified by all Defendants, and each of them. Further, each Defendant
28 ratified and affirmed the conduct of each other Defendant. At all times set forth herein, each of

1 the Defendants were acting as the agents, servants, and employees of the other Defendants.

2 11. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
3 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
4 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 250,
5 and each of them, at all times herein mentioned were institutions or controlled institutions,
6 duly accredited by the Joint Commission on Hospital Accreditation, and assumed and held
7 themselves out to the public as in compliance with the minimum standards required by said
8 Joint Commission for such accreditation.

9 12. Plaintiffs are informed and believe and upon such information and belief allege
10 that at all times herein mentioned, Defendants and other Defendants named fictitiously, were
11 the agents, servants, employees, joint-venturers, and copartners of their said co-Defendants
12 and, as such, were acting within the course and scope of such agency, service, partnership,
13 venture, and employment at all times herein mentioned; that each and every Defendant, as
14 aforesaid, when acting as a principal, was negligent in the selection and hiring of each and
15 every other Defendant, as its agent, servant, employee, joint-venturer and partner. Further,
16 each and every Defendant ratified the conduct of the other Defendants.

17 13. Attached to this complaint are the following expert declarations supporting the
18 allegations of this complaint:

19 (1) David A. Neer, M.D., Neurology specialist;

20 (2) Michael Steven Ritter M.D., Emergency Medicine specialist;

21 **I.**

22 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR**
23 **MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF**
24 **THEM AS FOLLOWS:**

25 14. Plaintiff DARIA HARPER repeats and repleads each and every allegation
26 contained in all prior paragraphs and incorporates the same herein by reference as to
27 Defendants and each of them.

28 ///

1 15. At all times herein mentioned, the Plaintiff, DARIA HARPER, was in the
2 exclusive control of the Defendants, and each of them, and that at no time prior to the events,
3 conduct, activities, care and treatment herein complained of did the Defendants herein, or any
4 of them, obtain knowledgeable, informed consent for said care, treatment or conduct; that
5 prior to the initiation of or performance of said care, treatment, procedure or conduct no
6 opportunity was afforded the Plaintiff or any authorized agent of the Plaintiff to exercise
7 voluntary, knowledgeable and informed consent to said care, treatment, procedure or conduct.

8 16. On or about June 9, 2015 Plaintiff employed Defendants, and each of them, to
9 diagnose and treat her medical condition, and to do all things necessary for her care and
10 treatment, including, but not limited to surgery and hospitalization.

11 17. While Plaintiff DARIA HARPER was under the sole and exclusive care and
12 control of the Defendants, and each of them, Defendants, and each of them negligently,
13 carelessly and unskillfully examined, treated, cared for, diagnosed, operated upon, attended
14 and otherwise handled and controlled the Plaintiff herein, thereby proximately causing
15 injuries and damages to the. Said acts of negligence include, but are not limited to that
16 although the plaintiff was emergently transferred to Valley Hospital Medical Center on June 9,
17 2015, for an emergency neurosurgical consultation because of weakness and an inability to
18 move, as well as a CT scan that showed a mass compressing her spinal cord, the defendants
19 and each of them negligently delayed the diagnosis and treatment, and surgery was not
20 performed until June 11, 2015. The negligent failure to diagnose and treat Daria Harper's
21 condition caused her permanent paralysis.

22 18. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
23 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
24 doing business as VALLEY HOSPITAL MEDICAL CENTER, and DOES 101-250, neglected
25 to adequately select a competent medical staff and to periodically review the competency of its
26 medical staff and failed to adequately monitor its staff such that the Plaintiff was caused to,
27 and did suffer damages.

28 ///

1 25. As a direct and legal result of the defendants', and each of them, negligence,
2 carelessness, and unskillfulness, plaintiff, Daniel Wininger, has and will continue to be
3 deprived of the consortium of his wife, Daria Harper, all to his general and special damages,
4 including pain, suffering, mental, physical and emotional distress. (Please see Expert
5 Affidavits of Michael Ritter, MD, and David Neer, MD, attached hereto as Exhibit 1 and
6 incorporated fully herein.)

7 WHEREFORE, Plaintiffs pray for damages against the
8 Defendants, and each of them, as follows:

9 I. FOR THE CAUSE OF ACTION FOR MEDICAL MALPRACTICE FOR
10 PLAINTIFF DARIA HARPER:

- 11 1. General damages, according to proof and exceeding \$10,000.
- 12 2. Past and future medical expenses, according to proof;
- 13 3. For loss of future earnings and earning capacity,
14 according to proof;
- 15 4. Costs of suit incurred herein, and
- 16 5. For such other and further relief as to the Court appears just and proper.

17 II. FOR THE CAUSE OF ACTION FOR LOSS OF CONSORTIUM FOR
18 PLAINTIFF DANIEL WININGER

- 19 1. General damages, according to proof and exceeding \$10,000.
- 20 2. Past and future medical expenses, according to proof;
- 21 3. For loss of future earnings and earning capacity,
22 according to proof;
- 23 4. Costs of suit incurred herein, and
- 24 5. For such other and further relief as to the Court appears just and proper.

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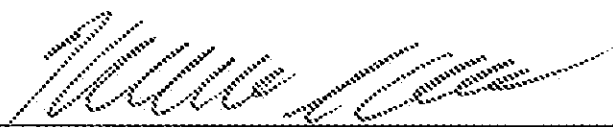
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DATED: June 7, 2016

LAW OFFICES OF THOMAS S. ALCH

By: 

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Attorney for Plaintiffs

EXHIBIT "A"

AFFIDAVIT OF DAVID NEER, M.D.

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

DAVID NEER, M.D., being duly sworn, deposes and says:

1. I received my medical degree from the University of Illinois College of Medicine in 1969. In 1973, I graduated from the University of Illinois Graduate School, Department of Pharmacology. I completed an internship in Internal Medicine at the University of Illinois Hospital and Veterans Administration Hospital in 1970. I completed a residency in Neurology at Rush-Presbyterian-St. Luke's Medical Center in 1973. I have been an Assistant Professor and Assistant Clinical Professor of Neurology at both Rush Medical College and UCLA Hospitals and Clinics. I was engaged in the private practice of Neurology for 37 years. I have held staff positions as Lakewood Regional Medical Center, UCLA-Harbor General Medical Center, UCLA Hospitals and Clinics, and Long Beach Memorial Medical Center, in California. At those facilities I also held various administrative positions, such as Chief of Staff, Consulting Staff, and member of the Governing Board.

2. During the time of the care at issue in this case my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As a neurologist I was involved on a daily basis with critically ill patients and patients with emergent neurological conditions, such as spinal epidural abscesses. As such, I am familiar with the standard of care applicable to hospitals, nursing staff, neurologists, hospitalists, and critical care physicians when faced with a patient with an emergent spinal cord condition. Further, I am familiar with the standard of care applicable to all physicians and healthcare providers in the setting of an emergent spinal cord condition, both in Nevada and nationally. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center with regard to the medical care that the hospitals, their nurses and staff, and the physicians, including, Dr. Cyndi Tran, Dr. Paul Janda, Dr. Andrea Agcaoili, Dr. Elizabeth Phung-Hart and Dr. Murrad Jussa, were required to provide to Daria Harper. Finally, it is

1 my understanding that the multiple residents who examined Ms. Harper were employees of Valley
2 Hospital, with the attending physicians and hospital both bearing responsibility for their actions and
3 inactions. Finally, as indicated above, the standard of practice in this context is a national standard, and
4 therefore applies to Las Vegas, Nevada as of June 2015.

5 3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center
6 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
7 patient at Havasu Regional Medical Center and Valley Hospital Medical Center on June 8, 2015 to July
8 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
9 lower extremities.

10 4. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
11 Thereafter, she was examined by an emergency room physician, who noted that she was unable to move,
12 was not responsive, and had been admitted for further neurology and possible neurosurgical evaluation.
13 The emergency room physician also noted the CT scan from Havasu Regional revealed displacement of
14 the thecal sac of Ms. Harper's spine. Given this information, the standard of care required stat neurology
15 and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine. A breach of the
16 standard of care occurred when no such orders were placed.

17 5. Thereafter, Ms. Harper was evaluated by Dr. Cyndi Tran and Dr. Paul Janda. Both
18 physicians noted that Ms. Harper was unable to move her extremities, with an impaired neurological
19 examination. Further, Dr. Tran and Dr. Janda noted that the CT scan of the spine revealed no acute
20 pathology, fracture, malalignment or soft tissue swelling, which was incorrect and demonstrates that
21 neither physician reviewed the imaging or the report. Based upon this information, the standard of care
22 required that Dr. Tran and Dr. Janda order a stat neurosurgical consultation and a stat MRI of the spine.
23 However, neither physician issued such orders, thereby breaching the standard of care. Further, as stated
24 above, as Dr. Tran was a resident, both Valley Hospital and Dr. Janda are responsible for her breach of the
25 standard of care.

26 6. At or about 12:15 PM, Ms. Harper was evaluated by Dr. Andrea Agcaoili. At or about that
27 time, Dr. Agcaoili issued an order for a stat CT scan of the thorax. Given Ms. Harper's condition,
28 including the emergent findings of the CT scan from Havasu Regional, her inability to move, low tone, and

1 lack of motor response, the standard of care required that Dr. Agcaoili review the chart and issue stat orders
2 for a neurosurgical consultation and an MRI of the spine. Dr. Agcaoili's failure to properly assess the
3 patient, review the chart, and ensure that Ms. Harper was receiving treatment, which would have prompted
4 the aforementioned orders, was a breach of the standard of care. As stated above, as Dr. Agcaoili was a
5 resident, both Valley Hospital and Dr. Murrad Jussa are responsible for her breach of the standard of care.

6 7. At or about 12:15 PM, Ms. Harper was also evaluated by Dr. Elizabeth Phung-Hart. Dr.
7 Phung-Hart issued orders for neurological assessments. However, the records do not reveal that Dr.
8 Phung-Hart examined the patient prior to issuing such orders, nor did she review the chart to ensure that
9 Ms. Harper was receiving proper care. Given Ms. Harper's condition, including the emergent findings of
10 the CT scan from Havasu Regional, her inability to move, low tone, and lack of motor response, the
11 standard of care required that Dr. Phung-Hart review the chart and issue stat orders for a neurosurgical
12 consultation and an MRI of the spine. The failure to do so was a breach of the standard of care. Assuming
13 that Dr. Phung-Hart is a resident, both her attending physician, whose identity is unknown at this time, and
14 Valley Hospital are responsible for her breach of the standard of care.

15 8. It was not until the following morning at 7:13 AM that Ms. Harper was next evaluated by
16 a physician. At that time, she was examined by Dr. Agcaoili and Dr. Murrad Jussa. Both physicians noted
17 that Ms. Harper was unable to move her arms and legs, with no motor response, and that overnight she had
18 developed a high fever, which is a sign of infection. Dr. Agcaoili and Dr. Jussa also noted, incorrectly, that
19 a CT scan of Ms. Harper's spine revealed no acute pathology, fracture, malalignment or soft tissue
20 swelling. Dr. Agcaoili's and Dr. Jussa's plan noted weakness in the upper and lower extremities secondary
21 to a "CVA vs spinal lesion vs acute inflammatory demyelination polyradiculoneuropathy (AIDP) vs opiate
22 overdose," with a follow up brain MRI of the spine. However, given those findings the standard of care
23 required that both Dr. Agcaoili and Dr. Jussa order a stat neurosurgical consultation and a stat MRI of the
24 spine. The failure to do so was a breach of the standard of care. Further, as stated above, as Dr. Agcaoili
25 was a resident, both Valley Hospital and Dr. Jussa are responsible for her breach of the standard of care

26 9. Finally, it was not until the evening of June 10, 2015, that Ms. Harper received an MRI of
27 her spine which identified a spinal epidural abscess and prompted notification of neurosurgeon Dr. Gregory
28 Douds. By that time, more than 48 hours had elapsed from the start of Ms. Harper's symptoms. It is my

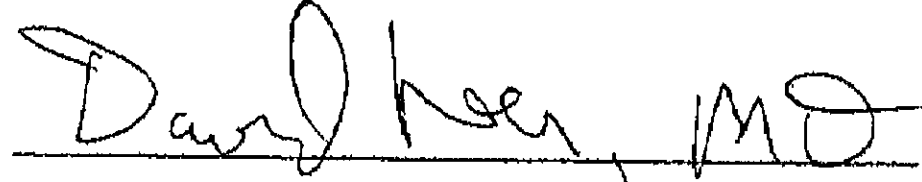
1 opinion, to a reasonable degree of medical probability, that by the time Ms. Harper's abscess was identified
 2 on MRI and Dr. Douds notified, Ms. Harper's spinal cord was irreparably damaged. It is also my opinion,
 3 to a reasonable degree of medical probability, had Ms. Harper received earlier medical treatment,
 4 compliant with the standard of care, she would not be paralyzed.

5 10. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
 6 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to
 7 Daria Harper, as well as her husband's loss of consortium.

8 FURTHER YOUR AFFIANT SAYETH NAUGHT

9 I declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true
 10 and correct.

11 Executed this 3 day of June, 2016, at Santa Monica, California.

12 

13
 14 DAVID NEER, MD

EXHIBIT “B”

1 **AFFIDAVIT OF MICHAEL STEVEN RITTER, MD, FAAEM, FACEP**

2 STATE OF CALIFORNIA)

3 COUNTY OF ORANGE)

4
5 MICHAEL STEVEN RITTER, MD, FAAEM, FACEP, being duly sworn, deposes and says:

6 1. I received my medical degree from the University of California, Irvine, in 1991. I
7 completed a residency in Emergency Medicine at the University of California, Irvine, Medical Center in
8 1994. Since 1996 I have been an Attending Physician in the emergency department at Mission Hospital
9 and Regional Medical Center & Children's Hospital at Mission, in Mission Viejo, California. From 1999
10 to 2012, I was the Associate Medical Director, Emergency Department, at Mission Hospital and Children's
11 Hospital at Mission. Additionally, since 1998, I have been an Assistant Clinical Professor, Department of
12 Emergency Medicine, at the University of California, Irvine Medical Center. I am currently the Medical
13 Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. I am Board
14 Certified in Emergency Medicine.

15 2. During the time of the care at issue in this case and currently my area of practice was and
16 is substantially similar to the practice being engaged at the time herein. Based upon my education, training
17 experience and review of the materials set forth below, I am familiar with the standard of care expected
18 of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to
19 this lawsuit. We are dealing with a national standard of care. As medical director of the emergency
20 department I am involved on a daily basis with administrative responsibilities at Mission Hospital, which
21 includes review of hospital and nursing protocols and thus, I am also familiar with the standard of care
22 applicable to hospitals, nursing staff and all other health care providers who provide emergency services
23 in the state of Nevada during the time relevant to this lawsuit. Specifically, I am familiar with the standard
24 of care as it applies to Valley Hospital Medical Center, their nurses and health care providers, including,
25 but not limited to, Dr. Jeffrey Davidson, with regard to the medical care that the hospitals and their nurses
26 and staff were required to provide to Daria Harper. As indicated, the standard of practice is a national
27 standard therefore applies to Las Vegas, Nevada as of June 2015.

28 3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center

1 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
2 patient at Havasu Regional Medical Center and Valley Hospital Medical Center from June 8, 2015 to July
3 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
4 lower extremities.

5 4. Ms. Harper presented to Havasu Regional Medical Center on June 8, 2015, with complaints
6 of bilateral lower and upper extremity weakness, with inability to move and low tone. A CT scan
7 performed at 1:44 AM on June 9, 2015, revealed anterior and rightward displacement of the thecal sac,
8 suspicious for either a hematoma or an abscess. Such a finding is an emergent condition. The standard
9 of care in this setting, required that Ms. Harper be transferred on a stat bases to another facility for higher
10 level care.

11 5. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
12 Thereafter, she was examined by Dr. Jeffrey Davidson, who noted that she was unable to move, was not
13 responsive, and had been admitted for further neurology and possible neurosurgical evaluation. Dr.
14 Davidson also noted the CT scan from Havasu Regional revealed displacement of the thecal sac of Ms.
15 Harper's spine. Given this information, the standard of care to a reasonable degree of medical certainty
16 required stat neurology and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine.
17 Dr. Davidson breached the standard of care by failing to issue such orders. Plaintiff, Daria Harper, did not
18 exercise any independent choice in the selection of her physicians and other healthcare professionals at the
19 time that she presented with her neurosurgical emergency. Physicians and staff were selected for her and,
20 as such, the physicians and staff were acting as agents for Valley Hospital Medical Center.

21 6. By that time Ms. Harper underwent surgery to decompress her spine, more than 48 hours
22 had elapsed from the start of Ms. Harper's symptoms. It is my opinion, to a reasonable degree of medical
23 probability, that by the time Ms. Harper's abscess was identified on MRI and Dr. Douds notified, Ms.
24 Harper's spinal cord was irreparably damaged. It is also my opinion, to a reasonable degree of medical
25 probability, had Ms. Harper received earlier medical treatment, compliant with the standard of care, she
26 would not be paralyzed.

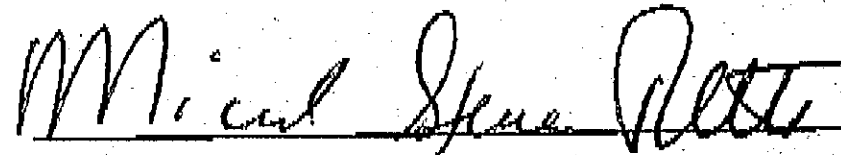
27 7. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
28 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to

1 Daria Harper, as well as her husband's loss of consortium.

2 FURTHER YOUR AFFIANT SAYETH NAUGHT

3 I declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true
4 and correct.

5 Executed this 3rd day of June, 2016, at Orange County, California.

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8 MICHAEL STEVEN RITTER, MD, FAAEM, FACEP

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EXHIBIT 5

EXHIBIT 5

Greg Vigna, M.D., JD, CLCP
 1303 Mable Avenue
 Modesto, CA 95355

LIFE CARE PLAN
DARIA HARPER-WININGER
PROJECTED EVALUATIONS

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Rehabilitation/ Long-term Needs Assessment	Beginning 47 1/2018 Ending 47 1/2018	1 x only – Already Accomplished	Life care planning.	Per Unit \$0 Per Year \$0	One time already accomplished as of 12/5/17 initial evaluation.	Greg Vigna, MD, JD, CLCP

A Life Care Plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs, with associated costs, for individuals who have experienced catastrophic injury or have chronic health care needs. (IALCP – International Academy of Life Care Planners, 2003. Definition established during the 2000 Life Care Planning Summit).

Through the development of a comprehensive Life Care Plan, a clear, concise, and sensible presentation of the complex requirements of the patient are identified as a means of documenting current and future medical needs for individuals who have experienced catastrophic injury or have chronic health care needs.

The goals of a comprehensive Life Care Plan are to: improve and maintain the clinical state of the patient; prevent secondary complications; provide the clinical and physical environment for optimal recovery; provide support for the family; and to provide a disability management program aimed at preventing unnecessary complications and minimizing the long-term care needs of the patient. The main avoidable complications requiring careful monitoring and appropriate preventative and treatment programs are: bladder and renal tract complications; constipation or diarrhea; under nutrition; respiratory infections; stress ulceration; deep vein thrombophlebitis; decubitus ulceration; complications of medications and disruption of family dynamics.

Greg Vigna, M.D., JD, CLCP
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 Modesto, CA 95355

LIFE CARE PLAN

DOB: June 9, 1970
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DARIA HARPER-WININGER

Date Prepared: February 9, 2018

Primary Disability: SCI - C4 ASIA C Quadriplegia

PROJECTED EVALUATIONS – CONTINUED*

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
<p>* The Veteran's Administration (VA) annual exam for persons with SCI developed its list of 33 preventative procedures from research published by the U.S. Preventive Services Task Force (USPSTF), the Clinical Practice Guidelines published by the Consortium for Spinal Cord Medicine (CSCM), and MEDLINE. These include the following: Medical History and Physical Exam including Sensory and Motor level reflex functions, Skeletal Changes, ADL function changes, Skin Integrity, Cardiovascular assessment, Pulmonary Function; Urinary testing such as: Creatinine clearance, Renal Sonogram, Renal Scan (CT), IVP, Cystoscopy with biopsy, and Urodynamics; General Medical Tests including Chest X-ray, Electrocardiogram for asymptomatic coronary heart disease, CBC and Chemical Profile (including lipids), Urinalysis and Culture/Sensitivity to include acid phosphates/prostatic specific antigen for patients over age 40, Rectosigmoidoscopy (over age 40), or colonoscopy when indicated, Abdominal sonogram; Functional and Other Evaluations to include: Psychosocial Assessment, Vocational Rehabilitation, Sexuality, Rehabilitation evaluation to include changes due to aging, Dietary and Nutritional Assessment.</p>						
Comprehensive Rehabilitation Re-evaluation at Craig Hospital**	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor status; evaluate SCI specific condition, therapy and equipment/ supply needs; provide comprehensive recommendations and/or treatment plans.	Per Unit \$12,000 - \$15,000 Per Year \$12,000 - \$15,000	Costs obtained from Craig Hospital	Greg Vigna, MD, JD, CLCP
<p>** The cost for a comprehensive rehabilitation reevaluation at Craig Hospital includes a review of records; nurse practitioner evaluations; urology with cystoscopy and urodynamic studies if performed; physical and occupational therapy evaluations for motor/sensory changes, posture, transfers, activities of daily living and functional tests, equipment evaluations, etc.; psychosocial evaluation and counseling; clinic service facility fees (e.g. neurosurgical, skin, respiratory, etc.); team conferences; and written reports documenting the results and recommendations. Cost does not include physician consultation fees, radiology, laboratory studies or travel or lodging during the reevaluations.</p> <p>According to data collected by the National Spinal Cord Injury Statistical Center (NSCISC) at the University of Alabama in Birmingham, individuals who are involved with a model systems program (established in the 1970's by the National Institute of Rehabilitation and Research) experience great functional ability at discharge. Mattson-Prince, J. (1997). A rational approach to long-term care: comparing the independent living model with agency- based care for persons with high spinal cord injuries. Spinal Cord, 35, 326-331.</p>						

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PROJECTED EVALUATIONS - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Spinal Cord Injury (SCI) Specialist	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Assess status during comprehensive rehabilitation reevaluations at Craig Hospital; provide recommendations.	Per Unit \$150 Per Year \$150	Costs obtained from Craig Hospital	Greg Vigna, MD, JD, CLCP
Nurse Practitioner Consultation	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Assess status during comprehensive rehabilitation reevaluations at Craig Hospital; provide recommendations.	Per Unit \$300 - \$400 Per Year \$300 - \$400	Costs obtained from Craig Hospital	Greg Vigna, MD, JD, CLCP
Nutritional Evaluation*	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor nutritional status and dietary intake to assist with maintaining ideal weight and bowel function; provide recommendations.	Per Unit \$272 Per Year \$272	Costs obtained from Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

* The importance of a nutritional diet in the prevention of cardiovascular disease, cancer and other chronic diseases has been well documented in the literature. A number of issues related to SCI including neurogenic bowel management, the functional implications of being overweight, abnormalities of glucose metabolism and cardiovascular disease risk reinforce the importance of this topic. A survey of long-term SCI survivors found that their food intake differed nutritionally from that of the general population as well as from optimal dietary standards. Nutritional assessment and counseling should be routinely incorporated into the clinical follow-up approach to the aging SCI population. Patients should be encouraged to maintain a heart-healthy diet with low saturated fat and cholesterol. Weight control should be promoted and incorporated into nutritional counseling. Exercise and a general increase in physical activity should be encouraged. *Source: Lammertse, Daniel P., MD, Maintaining Health Long-Term with SCI, Topics in SCI Injury Rehabilitation 2001;6(3):1-21, Thomas Land Publishers, Winter 2001.*

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LIFE CARE PLAN

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PROJECTED EVALUATIONS - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Physical Therapy Evaluation*	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Assess lower extremity status and functioning; monitor and update home exercise program.	Per Unit \$171 Per Year \$171	Costs obtained from Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
<p>* Many individuals with spinal cord injuries develop illnesses and functional problems before their nondisabled peers and often between the ages of 40 and 50 years. Along with the benefits of living into late life comes some of the consequences of age-associated declines in physical performance. The concerns of declines in function with advancing age are now shared by persons with SCI, but at an earlier age than anticipated when compared to a non-disabled population. Loss of function, pain, musculoskeletal problems, declining energy, and loss of strength are examples of new challenges people face whether they are aging with or without SCI. Older individuals who sustain an SCI begin to experience functional decline more rapidly following the SCI. <i>Source: Kemp, B. & Thompson, L. (2002). Aging and spinal cord injury: Medical, functional, and psychosocial changes. SCI Nursing 19 (2), 51-60.</i></p>						
Occupational Therapy Evaluation	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Assess upper extremity status, activities of daily living (ADLs) functioning, adaptive equipment and home care needs; monitor and update home exercise program.	Per Unit \$165 Per Year \$165	Costs obtained from Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
THERAPEUTIC MODALITIES

DOB: June 9, 1970
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 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Botox Injections 200 units	Beginning 47 1/2018 Ending 77 2047	4x/yr.	Treat spasticity and contractures in left biceps.	Per Unit \$6,284 Per Year \$25,136	\$505/professional fee \$379/e-stim guidance <u>\$5,400/medication fee</u> \$6,284/visit Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Physical Therapy	Beginning 47 1/2018 Ending 77 2047	12x/yr.	Improve and maintain lower extremity strength, function, range of motion and endurance; treat pain flare-ups.	Per Unit \$278 Per Year \$3,336	\$278/average visit Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Physical Therapy codes used for session: Involves 15 minute increments of each code or a combination of codes below: CPT 97110 Therapeutic exercise to develop strength and endurance, range of motion and flexibility: \$70/15 minutes; \$280/60 minutes CPT 97112 Neuromuscular reeducation: \$71/15 minutes; \$284/60 minutes CPT 97140 Manual therapy: \$68/15 minutes; \$272/60 minutes CPT 97530 Dynamic activities to improve functional performance: \$69/15 minutes; \$276/60 minutes						
Occupational Therapy	Beginning 47 1/2018 Ending 77 2047	12x/yr.	Improve and maintain upper extremity strength, function, range of motion and endurance; treat pain flare-ups.	Per Unit \$263 Per Year \$3,156	\$263/average visit Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Physical Therapy codes used for session: Involves 15 minute increments of each code or a combination of codes below: CPT 97110 Therapeutic exercise to develop strength and endurance, range of motion and flexibility: \$70/15 minutes; \$280/60 minutes CPT 97530 Dynamic activities to improve functional performance: \$69/15 minutes; \$276/60 minutes CPT 97535 Self-care/home management training: \$58/15 minutes; \$232/60 minutes						

Growth Trend to Be Determined by Economist.

Greg Vigna, M.D., JD, CLCP
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LIFE CARE PLAN

DARIA HARPER-WININGER

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THERAPEUTIC MODALITIES - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Respiratory Therapy	Beginning 47 1/2018 Ending 77 2047	1x/wk. (52 wks./yr.)	Improve and maintain cardiopulmonary system; treat breathing problems.	Per Unit \$157 Per Year \$8,164	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Lymphedema Management	Beginning 47 1/2018 Ending 77 2047	3x/wk. for 4 wks. per year (12x/year)	Manage bilateral lower extremity edema.	Per Unit \$272 Per Year \$3,264	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Neuromuscular Massage	Beginning 47 1/2018 Ending 77 2047	2x/mo.	Treat/relieve chronic neck and upper extremity pain.	Per Unit \$80 - \$120 Per Year \$1,920 - \$2,880		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

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THERAPEUTIC MODALITIES - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Psychological Counseling*	Beginning 47 1/2018 Ending 77 2047	3x/wk. for 12 wks. (36 sessions); then 1x/mo. to life expectancy	Aid in psychosocial adjustment and adaptation to disability; improve and maintain coping skills.	Per Unit \$198 Per Year	\$7,128/12 wks.; then \$2,376/year Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
<p>* No characteristic pattern of adjustment exists for those with a SCI. Many of those with SCI are able to respond constructively to the enormous stressor with which they are faced. Group and Individual psychological treatment, including a cognitive behavioral approach, may be conducive to positive adjustment. Significant depression occasionally occurs and may require pharmacologic intervention. Persons with SCI have an increased risk of death from suicide, particularly in the years immediately following injury. After 10 years, the rate of suicide approaches that of the general population. <i>Source: Saulino, M., M.D., Ph.D., Vaccaro, A., M.D. Rehabilitation of Persons with Spinal Cord Injuries. E-Medicine: Common Medical Problems; Functional Rehabilitation; Life in the Community, 12/8/03.</i></p>						
Sexual Therapy	Beginning 47 1/2018 Ending 57 2027	20x/total in next 10 yrs.	Provide sex counseling and support in dealing with effects of SCI.	Per Unit \$199 Per Year \$3,980	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Family Counseling and Education	Beginning 47 1/2018 Ending 77 2047	1x/wk. for 12 wks. in next yr.; then 12x/yr. to life expectancy; plus 12 visits for sons (in 5 yrs.)	Aid family in psychosocial adjustment and adaptation to disability; improve coping skills of the family.	Per Unit \$199 Per Year	\$2,388/next year; then \$2,388/year; plus \$2,388/12 visits for sons Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
<p>Educate family on issues dealing with spinal cord injury and disability management. <i>Source: Topics in Spinal Cord Injury Rehabilitation/Fall 1997, M.J. Mulcahey and Randal R. Betz.</i></p>						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICAL CARE

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Primary Care Physician	Beginning 47 1/2018 Ending 77 2047	2x/yr.	Monitor status; treat conditions related to spinal cord injury (SCI); medication management; make referrals to specialists as needed.	Per Unit \$154 - \$226 Per Year \$308 - \$452	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
* The Veteran's Administration (VA) annual exam for persons with SCI developed its list of 33 preventative procedures from research published by the U.S. Preventative Services Task Force (USPSTF), the Clinical Practice Guidelines published by the Consortium for Spinal Cord Medicine (CSCM), and MEDLINE. These include General Medical Evaluations.						
Physical Medicine and Rehabilitation (PMR) Specialist*	Beginning 47 1/2018 Ending 77 2047	4x/yr.	Monitor medical status; treat conditions related to SCI; supervise therapy needs.	Per Unit \$154 - \$226 Per Year \$616 - \$904	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
* The Veteran's Administration (VA) annual exam for persons with SCI developed its list of 33 preventative procedures from research published by the U.S. Preventative Services Task Force (USPSTF), the Clinical Practice Guidelines published by the Consortium for Spinal Cord Medicine (CSCM), and MEDLINE. These include the following: Medical History and Physical Exam including Sensory and Motor level reflex functions, Skeletal Changes, ADL function changes, skin Integrity, Cardiovascular assessment, Pulmonary Function; Functional and Other Evaluations to include: Rehabilitation evaluation to include changes due to aging.						
Neurologist	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor neurological status; treat problems related to SCI.	Per Unit \$154 - \$226 Per Year \$154 - \$226	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER

DOB: June 9, 1970
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MEDICAL CARE

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Neurosurgeon	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor neurosurgical status; treat problems related to SCI.	Per Unit \$730 Per Year \$730	Cost obtained for Dr. Falci from Craig Hospital	Greg Vigna, MD, JD, CLCP
Pulmonologist	Beginning 47 1/2018 Ending 77 2047	3x/yr.	Monitor pulmonology status; treat problems related to medical condition.	Per Unit \$154 - \$226 Per Year \$462 - \$678	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Pain Management Specialist	Beginning 47 1/2018 Ending 77 2047	4x/yr.	Monitor status; complete Botox injections; pain medication management.	Per Unit \$154 - \$226 Per Year \$616 - \$904	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Colorectal Surgeon	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor colorectal problems and fissures; treat problems related to medical condition.	Per Unit \$154 - \$226 Per Year \$154 - \$226	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICAL CARE

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Neuro-urologist	Beginning 47 1/2018 Ending 77 2047	4x/yr.	Monitor urological status and suprapubic catheter; treat problems related to SCI and neurogenic bladder.	Per Unit \$154 - \$226 Per Year \$616 - \$904	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Podiatrist*	Beginning 47 1/2018 Ending 77 2047	4x/yr.	Monitor foot health; trim toenails.	Per Unit \$150 - \$175 Per Year	\$200-\$280/initial visit; then \$150-\$175/visit \$650-\$805/1 st year; then \$600-\$700/year	Greg Vigna, MD, JD, CLCP

* Foot conditions considered to be trivial can become life threatening in some patients with SCI. Neurological events associated with an ingrown toenail, for example, can threaten life and become the causative factor in inducing a hypertensive crisis in patients who experience autonomic dysreflexia (AD). AD is a syndrome unique to patients with SCI at or above the level of T6 once spinal shock has worn off. There is dysfunction of the autonomic nervous system, which is caused by simultaneous sympathetic and parasympathetic activity. This neurological disorder produces an immediate increase in blood pressure in response to noxious stimuli below the level of the lesion, which can lead to a CVA and death during an attack. Onychocryptosis (ingrown toenail) is well documented as a triggering factor in almost all the literature. After the main triggers for AD, ingrown nails were the highest reported uncommon cause. A far greater percentage of the SCI population have ingrown nails as compared to the non SCI population. Other causes of referrals to podiatry for the SCI included overgrown nails, septic toes, localized infection and paronychia (inflammation involving the folds of tissue surrounding the nail). Treatment for AD is a multifactorial approach. Appropriate bowel and bladder programs, together with meticulous skin care are a high priority in management to prevent AD. Appropriate skin and wound care to prevent noxious stimuli should be sought by the patient, and SCI units do encourage the use of podiatrists (Freestone, 1996). SCI patients are encouraged to use a podiatrist and to seek meticulous skin care. Overgrown toenails, infection, hemorrhage as a result of treatment, an unusually high incidence of ingrown toenails and associated problems resulting from the use of local anesthetic, make this patient group one of special concern to the podiatrist. Sources: * Brad, R.I.P., Rocco, J.F. (1991): *Autonomic Dysreflexia. A survey of current treatment. AMJ Phys Med Rehab. 70 (5) pp. 234-41.* * Comar, A.E. (1984): *Autonomic Dysreflexia (Hyperreflexia). Paraplegia Society, 7, pp. 53-7.* * Freestone, C. (1996): *Information regarding Spinal Cord Injured people in the community. Community Liaison Department, London Spinal Injuries Unit. Royal National Orthopedic Hospital, Unpublished.* * Lindan, R. Joiner, E. Freehafer, A.A. Hazel, C. (1980): *Incidence and clinical features of autonomic dysreflexia in patients with SCI. Paraplegia. 18, pp. 285-92.* * McClain, W. A., Shields, C.P. Sixsmith, D.M. *Clinical Practice Guideline: Spinal Cord Medicine: Acute Management of Autonomic Dysreflexia: Adults with SCI Presenting to Health-Care Facilities. Consortium for Spinal Cord Medicine. 1997, Paralyzed Veterans of America. Some of the more common causes of Autonomic Dysreflexia (AD) include: Pressure Ulcers, Ingrown Toenail, Blisters, Constrictive clothing, shoes or appliances. Because of the loss of sensation, individuals with SCI can have significant pathology with minimal symptoms. These may include problems such as acute abdominal pathology, long bone fractures and ingrown toenails (Brad and Rocco, 1991).*

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LIFE CARE PLAN
DARIA HARPER-WININGER

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

MEDICATIONS*

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Cranberry Extract Gel	Beginning 47 1/2018 Ending 77 2047	1x/day	Prevent urinary tract infections.	Per Unit Per Year \$29 - \$62	\$9.27-\$19.99/120 tabs \$0.08-\$0.17/tab/day \$29-\$62/year	Greg Vigna, MD, JD, CLCP
Dulcolax Suppository	Beginning 47 1/2018 Ending 77 2047	1x/day	Bowel program.	Per Unit Per Year \$358 - \$416	\$27.39-\$31.99/28 tabs \$0.98-\$1.14/tab/day \$358-\$416/year	Greg Vigna, MD, JD, CLCP
Movantik 25 mg	Beginning 47 1/2018 Ending 77 2047	1x/day	Bowel program.	Per Unit \$402 - \$412.53 Per Year \$4,891 - \$5,019	\$402-\$412.53/30 days \$13.40-\$13.75/day \$4,891-\$5,019/year	Greg Vigna, MD, JD, CLCP
Zofran 4 mg	Beginning 47 1/2018 Ending 77 2047	1 tab q 4 hrs. prn (15 tabs/mo.)	Treat/prevent nausea.	Per Unit \$44.99 - \$62.99 Per Year \$540 - \$756	\$44.99-\$62.99/15 tabs \$540-\$756/year	Greg Vigna, MD, JD, CLCP
* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS - CONTINUED*

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Lactulose 10 cc	Beginning 47 1/2018 Ending 77 2047	10x/mo.	Treat constipation.	Per Unit \$51 - \$57 Per Year \$612 - \$684	\$51-\$57/month \$612-\$684/year	Greg Vigna, MD, JD, CLCP
Miralax 17 gm	Beginning 47 1/2018 Ending 77 2047	1-2x/day	Treat/prevent constipation.	Per Unit \$24.49 - \$27.99 Per Year \$299 - \$339	\$24.49-\$27.99/30 days \$0.82-\$0.93/day \$299-\$339/year	Greg Vigna, MD, JD, CLCP
Flovent Inhaler	Beginning 47 1/2018 Ending 77 2047	2 puffs 2x/day 1 inhaler/mo.	Treat respiratory problems.	Per Unit \$243 - \$275.99 Per Year \$2,957 - \$3,358	\$243-\$275.99/30 days \$8.10-\$9.20/day \$2,957-\$3,358/year	Greg Vigna, MD, JD, CLCP
Ventolin Inhaler	Beginning 47 1/2018 Ending 77 2047	3 puffs 2x/day 2 inhalers/mo.	Treat respiratory problems.	Per Unit Per Year \$1,580 - \$1,705	\$65-\$70/inhaler \$130-\$140/30 days \$4.33-\$4.67/day \$1,580-\$1,705/year	Greg Vigna, MD, JD, CLCP
* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS - CONTINUED*

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Albuterol 2.5 in 3 cc NS	Beginning 47 1/2018 Ending 77 2047	2-3x/day	Treat respiratory problems; use with nebulizer.	Per Unit \$45 - \$54 Per Year \$548 - \$657	\$45-\$54/60 ct. \$0.75-\$0.90/each \$1.50-\$2.70/day \$548-\$986/year	Greg Vigna, MD, JD, CLCP
Acetylcysteine (Mucomyst) 20% Vial	Beginning 47 1/2018 Ending 77 2047	2 ml 4x/day prn (1 box/2 mos. (25 vials/box)	Treat respiratory problems; use with nebulizer; relieve mucus congestion.	Per Unit \$18.00 - \$19.99 Per Year \$108 - \$120	\$18.00-\$19.99/box	Greg Vigna, MD, JD, CLCP Edgar Livingstone, M.D.
OxyContin 15 mg	Beginning 47 1/2018 Ending 77 2047	2x/day	Treat pain.	Per Unit \$160 - \$162 Per Year \$1,945 - \$1,971	\$160-\$162/30 days \$5.33-\$5.40/day \$1,945-\$1,971/year	Greg Vigna, MD, JD, CLCP
OxyContin 10 mg	Beginning 47 1/2018 Ending 77 2047	1 tab 4x/day	Treat pain.	Per Unit \$228 - \$230 Per Year \$2,774 - \$2,800	\$228-\$230/30 days \$7.60-\$7.67/day \$2,774-\$2,800/year	Greg Vigna, MD, JD, CLCP

* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS – CONTINUED*

DOB: June 9, 1970
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Neurontin 600 mg	Beginning 47 1/2018 Ending 77 2047	1.5 tabs 3x/day	Treat neuropathic pain.	Per Unit \$200 - \$240 Per Year \$2,435 - \$2,920	\$200-\$240/30 days \$6.67-\$8.00/day \$2,435-\$2,920/year	Greg Vigna, MD, JD, CLCP
Sumatriptan 6 mg/0.5 ml Auto Injector	Beginning 47 1/2018 Ending 77 2047	Daily 1 kit/mo. (2 pens/kit)	Prevent migraine headaches.	Per Unit \$174.67 - \$202 Per Year \$2,124 - \$2,456	\$174.67-\$202/30 days \$5.82-\$6.73/day \$2,124-\$2,456/year	Greg Vigna, MD, JD, CLCP
Voltaren Gel 1% 100 gm	Beginning 47 1/2018 Ending 77 2047	Daily 1 tube/mo.	Treat pain.	Per Unit \$47 - \$59 Per Year \$573-\$719	\$47-\$59/30 days \$1.57-\$1.97/day \$573-\$719/year	Greg Vigna, MD, JD, CLCP
Ativan 2 mg	Beginning 47 1/2018 Ending 77 2047	1 tab 4x/day	Treat anxiety.	Per Unit \$111 - \$115 Per Year \$1,351 - \$1,398	\$111-\$115/30 days \$3.70-\$3.83/day \$1,351-\$1,398/year	Greg Vigna, MD, JD, CLCP
* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS – CONTINUED*

DOB: June 9, 1970
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 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Elavil 25 mg	Beginning 47 1/2018 Ending 77 2047	1 tab 2x/day	Treat depression.	Per Unit \$40 - \$42 Per Year \$485 - \$511	\$40-\$42/30 days \$1.33-\$1.40/day \$485-\$511/year	Greg Vigna, MD, JD, CLCP
Baclofen 10 mg	Beginning 47 1/2018 Ending 77 2047	3x/day	Treat spasticity.	Per Unit \$62 - \$67 Per Year \$756 - \$814	\$62-\$67/30 days \$2.07-\$2.23/day \$756-\$814/year	Greg Vigna, MD, JD, CLCP
Lasix 20 mg	Beginning 47 1/2018 Ending 77 2047	2x/day	Treat fluid retention and edema.	Per Unit \$12 - \$14 Per Year \$146 - \$172	\$12-\$14/30 days \$0.40-\$0.47/day \$146-\$172/year	Greg Vigna, MD, JD, CLCP
Midodrine 5 mg	Beginning 47 1/2018 Ending 77 2047	1 tab q 4 hrs. prn (15 tabs/mo.)	Treat low blood pressure.	Per Unit \$38 - \$41 Per Year \$464 - \$500	\$38-\$41/30 days \$1.27-\$1.37/day \$464-\$500/year	Greg Vigna, MD, JD, CLCP
* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS – CONTINUED*

DOB: June 9, 1970
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 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Prenatal Multivitamin	Beginning 47 1/2018 Ending 77 2047	1x/day	Nutritional supplementation.	Per Unit Per Year \$88 - \$212	\$14.49-\$34.79/60 tabs \$0.24-\$0.58/tab/day \$88-\$212/year	Greg Vigna, MD, JD, CLCP
Fluconazole 150 mg	Beginning 47 1/2018 Ending 77 2047	1 tab for 3 days @ 3-4x/yr.	Treat yeast infections related to medications.	Per Unit Per Year \$150 - \$208	\$50.00-\$52.00/3 tabs	Greg Vigna, MD, JD, CLCP
Benadryl 8 oz	Beginning 47 1/2018 Ending 77 2047	3x/wk. 1 bottle/mo.	Treat itching related to medications.	Per Unit \$7.89 - \$11.49 Per Year \$95 - \$138		Greg Vigna, MD, JD, CLCP
Refresh Eyedrops	Beginning 47 1/2018 Ending 77 2047	Daily 1 bottle/2 wks.	Treat dry eyes.	Per Unit \$10.40 - \$16.91 Per Year \$270 - \$440		Greg Vigna, MD, JD, CLCP
* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS – CONTINUED*

DOB: June 9, 1970
 DOL: June 9, 2015
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
B6 Vitamin	Beginning 47 1/2018 Ending 77 2047	1x/day	Nutritional supplementation.	Per Unit Per Year \$15 - \$44	\$0.04-\$0.12/tab/day	Greg Vigna, MD, JD, CLCP
Iron 325 mg	Beginning 47 1/2018 Ending 77 2047	1x/day	Nutritional supplementation.	Per Unit Per Year \$11 - \$37	\$0.03-\$0.10/tab/day	Greg Vigna, MD, JD, CLCP
Magnesium Oxide 400 mg	Beginning 47 1/2018 Ending 77 2047	1x/day	Nutritional supplementation.	Per Unit Per Year \$55 - \$84	\$9.00-\$14.00/60 tabs \$0.15-\$0.23/tab/day \$55-\$84/year	Greg Vigna, MD, JD, CLCP
Vitamin D3 2000 iu	Beginning 47 1/2018 Ending 77 2047	1x/day	Nutritional supplementation.	Per Unit Per Year \$18 - \$47	\$0.05-\$0.13/tab/day	Greg Vigna, MD, JD, CLCP
* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS - CONTINUED*

DOB: June 9, 1970
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Vitamin C 500 mg	Beginning 47 1/2018 Ending 77 2047	1 tab/day	Nutritional supplementation.	Per Unit Per Year \$18 - \$47	\$0.05-\$0.13/tab/day	Greg Vigna, MD, JD, CLCP
Hemorrhoid Cream 1.8 oz	Beginning 47 1/2018 Ending 77 2047	1x/day 1 tube/mo.	Treat hemorrhoids.	Per Unit \$13.29 - \$14.99 Per Year \$159 - \$180		Greg Vigna, MD, JD, CLCP
Bactrim DS	Beginning 47 1/2018 Ending 77 2047	2x/day for 7 days every 2 yrs.	Treat urinary tract infections (UTIs).	Per Unit Per Year \$6 - \$7	\$12-\$14/14 tabs	Greg Vigna, MD, JD, CLCP
Levaquin 250 mg	Beginning 48 1/2019 Ending 77 2047	1x/day for 7 days every 2 yrs.	Treat UTIs.	Per Unit Per Year \$7 - \$18	\$14-\$35/7 tabs	Greg Vigna, MD, JD, CLCP
* Costs are based on current consumption. Ms. Harper will be on these or similar classes of medications throughout her lifetime.						

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LIFE CARE PLAN
DARIA HARPER-WININGER
MEDICATIONS - CONTINUED*

DOB: June 9, 1970
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Influenza Vaccine	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Prevent influenza.	Per Unit \$32 - \$45 Per Year \$32 - \$45		Greg Vigna, MD, JD, CLCP
Pneumococcal Vaccine	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Prevent pneumococcal disease.	Per Unit \$110 - \$120 Per Year \$22 - \$24		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
LABORATORY

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Complete Blood Count (CBC)	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor physiological status and effects of medications.	Per Unit \$64 Per Year \$64	\$43/lab fee \$21/draw fee \$64/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Comprehensive Metabolic Panel (CMP)	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor physiological status and effects of medications.	Per Unit \$96 Per Year \$96	\$75/lab fee \$21/draw fee \$96/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Urinalysis with Culture and Sensitivity	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Diagnose urinary tract infections (UTIs) and determine treatment.	Per Unit \$60 Per Year \$60	Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Drug Testing	Beginning 47 1/2018 Ending 77 2047	4x/yr.	Monitor pain medication compliance.	Per Unit \$149 Per Year \$596	\$128/lab fee \$21/draw fee \$149/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
DIAGNOSTIC STUDIES

DOB: June 9, 1970
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Cystoscopy*	Beginning 47 1/2018 Ending 77 2047	1x/yr.		Per Unit \$0 Per Year		Greg Vigna, MD, JD, CLCP
Urodynamic Studies*	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor urinary tract function and optimize bladder management.	Per Unit \$0 Per Year		Greg Vigna, MD, JD, CLCP
* The cost for cystoscopies and urodynamic studies are included in the cost for the Comprehensive Rehabilitation Reevaluations at Craig Hospital.						
Renal Scan	Beginning 47 1/2018 Ending 77 2047	1x/2 yrs.	Monitor kidney status.	Per Unit \$1,138 Per Year \$569	\$263/professional fee \$875/facility fee \$1,138/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Renal Ultrasound	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor kidney function.	Per Unit \$633 Per Year \$633	\$178/professional fee \$455/facility fee \$633/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

DOB: June 9, 1970
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DARIA HARPER-WININGER

Date Prepared: February 9, 2018

Primary Disability: SCI - C4 ASIA C Quadriplegia

DIAGNOSTIC STUDIES - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Cervical MRI	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor cervical spine status.	Per Unit \$2,203 Per Year \$2,203	\$363/professional fee \$1,840/facility fee \$2,203/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Chest X-ray	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor pulmonary status.	Per Unit \$167 Per Year \$167	\$49/professional fee \$118/facility fee \$167/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Echocardiogram	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Monitor cardiac function.	Per Unit \$1,355 Per Year \$271	\$320/professional fee \$1,035/facility fee \$1,355/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Pulmonary Function Test (PFT)	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor pulmonary function.	Per Unit \$439 Per Year \$439	\$90/professional fee \$349/facility fee \$439/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

DARIA HARPER-WININGER

DOB: June 9, 1970

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Primary Disability: SCI - C4 ASIA C Quadriplegia

DIAGNOSTIC STUDIES - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Sleep Study with Titration	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor for sleep apnea.	Per Unit \$3,451 Per Year \$3,451	\$564/professional fee \$2,887/facility fee \$3,451/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
Venous Doppler	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Monitor for deep vein thrombosis.	Per Unit \$810 Per Year \$810	\$149/professional fee \$661/facility fee \$810/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
WHEELCHAIR NEEDS

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Permobil F5 Corpus Power Wheelchair*	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Independent mobility.	Per Unit \$53,068 Per Year \$10,614	*Still researching cost	Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. – 1/6/17 Rx
* Ms. Harper-Wininger underwent a seating evaluation at NuMotion in Phoenix, AZ on January 12, 2018 in order to update her current wheelchair needs. According to NuMotion/United Seating Mobility Billing Records, the initial cost for her Permobil F5 Corpus Power Wheelchair was \$53,068; however, this cost will likely change with her current wheelchair needs. We will update the LCP as soon as additional information has been received.						
Tilite Aero Z Lightweight Manual Wheelchair	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Provide backup mobility assistance.	Per Unit \$10,117 Per Year \$2,023	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. - 1/6/17 Rx
The years following SCI may be associated with an acceleration of the aging process because of the increased demands made on still functioning body systems. <i>Source: Mentor, R., & Hudson, L. Effects of age at injury and the aging process. Spinal Cord Injury.</i>						
Replacement of power and manual wheelchairs - <i>Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).</i>						

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LIFE CARE PLAN
DARIA HARPER-WININGER

DOB: June 9, 1970
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 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

WHEELCHAIR MAINTENANCE AND ACCESSORY NEEDS

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Power Wheelchair Batteries	Beginning 48 1/2019 Ending 77 2047	1 pr./yr.; excluding year of WC replacement	Maintain power wheelchair.	Per Unit \$945 Per Year \$945	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP
Power Wheelchair Maintenance	Beginning 48 1/2019 Ending 77 2047	1x/yr.; excluding year of WC replacement	Maintain power wheelchair.	Per Unit Per Year \$250 - \$500		Greg Vigna, MD, JD, CLCP
Lightweight Manual Wheelchair Maintenance	Beginning 48 1/2019 Ending 77 2047	1x/yr.; excluding year of WC replacement	Maintain manual wheelchair.	Per Unit Per Year \$150		Greg Vigna, MD, JD, CLCP
Power and manual wheelchair maintenance costs - Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).						

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LIFE CARE PLAN

DOB: June 9, 1970
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DARIA HARPER-WININGER

Date Prepared: February 9, 2018

Primary Disability: SCI - C4 ASIA C Quadriplegia

WHEELCHAIR MAINTENANCE AND ACCESSORY NEEDS - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Rojo Quadro Select Wheelchair Cushion (2)	Beginning 47 1/2018 Ending 77 2047	1x/2-3 yrs., excluding year of WC replacement	Provide seating comfort; prevent pressure sores.	Per Unit \$458 Per Year \$305 - \$458	NuMotion/United Seating and Mobility Billing Records \$916/2 cushions	Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. – 1/6/17 Rx
Manual Wheelchair Varilite Icon Back Seating System	Beginning 47 1/2018 Ending 77 2047	1x/2-3 yrs., excluding year of WC replacement	Provide seating comfort; prevent pressure sores.	Per Unit \$525 Per Year \$175 - \$263	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. – 1/6/17 Rx
Replacement of wheelchair cushions - <i>Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).</i>						
Wheelchair Cushion Cover (2)	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Protect wheelchair cushion.	Per Unit \$60 - \$75 Per Year \$120 - \$150	NuMotion: \$120-\$150/2 covers	Greg Vigna, MD, JD, CLCP
Kristen Slide in Base Wheelchair Laptop Tray	Beginning 47 1/2018 Ending 77 2047	1x/5-10 yrs.	Desktop while in power wheelchair.	Per Unit \$823 Per Year \$82 - \$165	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER

DOB: June 9, 1970
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 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

WHEELCHAIR MAINTENANCE AND ACCESSORY NEEDS - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Writing Table with Cushion	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Provide cushion for signing paperwork.	Per Unit \$290 - \$294 Per Year \$58- \$59		Greg Vigna, MD, JD, CLCP
Overbed Table	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Work and eating station while in bed.	Per Unit \$62 - \$149 Per Year \$6 - \$15		Greg Vigna, MD, JD, CLCP
Folding Ramp/ Suitcase Ramp - 3 ft	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Wheelchair accessibility while visiting or traveling.	Per Unit \$93 - \$185 Per Year \$9 - \$19		Greg Vigna, MD, JD, CLCP
Folding Ramp/ Suitcase Ramp - 6 ft	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Wheelchair accessibility while visiting or traveling.	Per Unit \$185 - \$360 Per Year \$19 - \$6		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER

DOB: June 9, 1970
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

WHEELCHAIR MAINTENANCE AND ACCESSORY NEEDS - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Wheelchair Backpack	Beginning 47 1/2018 Ending 77 2047	1x/1-2 yrs.	Carry personal items.	Per Unit \$45 - \$97 Per Year \$23 - \$97		Greg Vigna, MD, JD, CLCP
Long Transfer Board	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Provide transfer safety and ease.	Per Unit \$189 - \$252 Per Year \$38 - \$50		Greg Vigna, MD, JD, CLCP
Short Transfer Board	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Provide transfer safety and ease.	Per Unit \$36 - \$99 Per Year \$7 - \$20		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
DURABLE MEDICAL EQUIPMENT

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
RAZ Shower Commode Chair with Custom Seat and Frame	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Provide personal hygiene safety and assistance.	Per Unit \$6,063 Per Year \$1,213	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. – 1/6/17 Rx
Portable Shower Chair System MultiChair 6000Tx Tilt	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Portable/travel shower chair when visiting or traveling.	Per Unit \$7,243 Per Year \$724	NuMotion/Nuprodx Billing Records	Greg Vigna, MD, JD, CLCP
MultiChair 6000Tx Cushion	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Provide seating comfort during bathing.	Per Unit \$209 Per Year \$42	NuProdux	Greg Vigna, MD, JD, CLCP
Adjustable Slide Bar/ Shower Head	Beginning 47 1/2018 Ending 77 2047	1x/5-7 yrs.	Provide personal hygiene safety and assistance.	Per Unit \$218 Per Year \$31 - \$44		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

DOB: June 9, 1970
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DARIA HARPER-WININGER

Date Prepared: February 9, 2018

Primary Disability: SCI - C4 ASIA C Quadriplegia

DURABLE MEDICAL EQUIPMENT - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Flex-A-Bed Hi-Low Fully Electric Hospital Bed with 2-Pair Side Rails, Wireless Remote and Gel Memory Foam Mattress*	Beginning 47 1/2018 Ending 77 2047	1x/7 yrs.	Provide sleeping comfort, positioning and transfer assistance.	Per Unit \$6,610 Per Year \$944	NuMotion/United Seating and Mobility Billing Records Includes: Side Rails x 2: \$700 Hospital Bed: \$3,295 Gel mattress: \$2,615	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D. and Heather Horii, PT, DPT at Craig Hospital – 8/21/15 Rx
Volkner Europa 1 Mattress*	Beginning 47 1/2018 Ending 77 2047	1x/4 yrs.	Provide sleeping comfort, positioning and transfer assistance.	Per Unit \$2,935 Per Year \$734	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D. and Heather Horii, PT, DPT at Craig Hospital – 8/21/15 Rx
* Replacement of Hospital Bed and Mattress - Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).						
Prevalon Turn and Position System	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Provide positioning assistance.	Per Unit \$213 - \$429 Per Year \$213 - \$429		Greg Vigna, MD, JD, CLCP Brian J. Beatty, D.O. – 5/16/16 Rx
Prevalon Turning System Microclimate Body Pads	Beginning 47 1/2018 Ending 77 2047	1x/day	Provide sleeping comfort.	Per Unit \$9.67 Per Year \$3,530		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

DURABLE MEDICAL EQUIPMENT - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Electric Bed Maintenance	Beginning 48 1/2019 Ending 77 2047	1x/yr., excluding year of purchase	Maintain hospital bed.	Per Unit Per Year \$661- \$793	Maintenance on equipment begins one year after each new item is purchased.	Greg Vigna, MD, JD, CLCP
Invacare Reliant 450 Power Lift	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Provide safe and easy transfers.	Per Unit \$3,024 Per Year \$302	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D. and Heather Horii, PT, DPT at Craig Hospital – 8/21/15
Joerns Hoyer Advance 340 Power Hoyer Lift	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Provide portable safe and easy transfers while visiting or traveling.	Per Unit \$3,464 Per Year \$346	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D. and Heather Horii, PT, DPT at Craig Hospital – 8/21/15
Wheelchair Lift Scale	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Monitor weight.	Per Unit \$743 - \$842 Per Year \$74 - \$84		Greg Vigna, MD, JD, CLCP E. Frank Livingstone, M.D.

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DURABLE MEDICAL EQUIPMENT - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Lift Slings (4)	Beginning 47 1/2018 Ending 77 2047	1x/4 yrs.	Provide safe and easy transfers for home and portable lift equipment.	Per Unit \$281 - \$315 Per Year \$562 - \$630	NuMotion/United Seating and Mobility Billing Records \$562-\$630/2 slings/lift \$2,248-\$2,520/4 slings	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D. and Heather Horii, PT, DPT at Craig Hospital – 8/21/15
Replacement of lifts slings - Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).						
Adjustable Height Work Table	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Use as a desk and during physical therapy.	Per Unit \$3,159 Per Year \$316	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP
Philips Respironics Non-Invasive Ventilator/ Continuous Positive Airway Pressure (CPAP) (2 machines)	Beginning 47 1/2018 Ending 77 2047	Monthly rental	Provide respiratory assistance; improve oxygenation; provide backup ventilator.	Per Unit \$1,367.86 Per Year \$16,414	Rental cost obtained from Homelink	Greg Vigna, MD, JD, CLCP
Philipps CoughAssist T70	Beginning 47 1/2018 Ending 77 2047	1x/7-10 yrs.	Assist with coughing mucus.	Per Unit \$7,300 Per Year \$730 - \$1,043		Greg Vigna, MD, JD, CLCP

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DURABLE MEDICAL EQUIPMENT - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
DeVilbiss Portable Suction Machine	Beginning 47 1/2018 Ending 77 2047	1x/2-3 yrs.	Remove excess secretions.	Per Unit \$280 - \$448 Per Year \$93 - \$224		Greg Vigna, MD, JD, CLCP
DeVilbiss Portable Suction Machine Maintenance (Rechargeable Battery)	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Maintain suction machine.	Per Unit \$43 Per Year \$43		Greg Vigna, MD, JD, CLCP
Oxygen Concentrator	Beginning 47 1/2018 Ending 77 2047	Monthly Rental	Oxygen supplementation.	Per Unit \$333.33 Per Year \$4,000	Rental cost obtained from Homelink	Greg Vigna, MD, JD, CLCP
Portable Oxygen Concentrator	Beginning 47 1/2018 Ending 77 2047	Monthly Rental	Oxygen supplementation when traveling or visiting.	Per Unit \$52.08 Per Year \$625	Rental cost obtained from Homelink	Greg Vigna, MD, JD, CLCP

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DURABLE MEDICAL EQUIPMENT – CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Portable Oxygen Regulator and Bag	Beginning 57 2027 Ending 77 2047	1x/10 yrs. (1-2x/total)	Use with oxygen concentrator.	Per Unit \$110 Per Year	\$110-\$220/total	Greg Vigna, MD, JD, CLCP
Life Care Solutions Nebulizer	Beginning 47 1/2018 Ending 77 2047	1x/3-5 yrs.	Treat respiratory problems.	Per Unit \$60 - \$104 Per Year \$12- \$35		Greg Vigna, MD, JD, CLCP
Replacement of Nebulizer – <i>Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).</i>						
Sprague Rappaport Stethoscope	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Monitor lung functioning.	Per Unit \$10 - \$16 Per Year \$2 - \$3		Greg Vigna, MD, JD, CLCP
Blood Pressure Monitor	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Monitor orthostatic hypertension.	Per Unit \$50 - \$90 Per Year \$10 - \$18		National Jewish 11/9/15 Rx

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DURABLE MEDICAL EQUIPMENT – CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Pulse Oximeter	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Monitor oxygenation.	Per Unit \$102 - \$210 Per Year \$20 - \$42		Greg Vigna, MD, JD, CLCP
Disposable Pulse Oximeter Probe	Beginning 47 1/2018 Ending 77 2047	1x/mon.	Use with pulse oximeter.	Per Unit \$44.79 - \$107 Per Year \$537 - \$1,284		Greg Vigna, MD, JD, CLCP
Portable Pulse Oximeter	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Monitor oxygenation when visiting or traveling.	Per Unit \$45 - \$200 Per Year \$9 - \$40		Greg Vigna, MD, JD, CLCP
Transcutaneous Electrical Nerve Stimulation (TENS) Unit	Beginning 47 1/2018 Ending 77 2047	1x/3-5 yrs.	Improve abdominal and core strength via electrical stimulation.	Per Unit \$400 - \$499 Per Year \$80 - \$166		Greg Vigna, MD, JD, CLCP Tom Balazy, M.D. – 9/10/15 Rx

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DURABLE MEDICAL EQUIPMENT – CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Inново iSoothe Wireless Rechargeable Electronic Pulse Massager (TENS) Electrotherapy Device	Beginning 47 1/2018 Ending 77 2047	1x/3-5 yrs.	Treat/control pain.	Per Unit \$32 Per Year \$6 - \$11		Greg Vigna, MD, JD, CLCP
Jaeco Multilink Mobile Arm Support / Mechanical Arm	Beginning 47 1/2018 Ending 77 2047	1 x only in next 10 yrs.	Assist with ADLs involving left upper extremity.	Per Unit \$4,125 Per Year	NuMotion/United Seating and Mobility Billing Records Cost Includes: - 20" Multi Link - w/ elevation assist - Jaeco/Rancho Mount - Forearm Supp w/ swivel - Mount relocater for keyed back posts - shipping	Greg Vigna, MD, JD, CLCP

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SUPPLIES

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Bladder Supplies*	Beginning 47 1/2018 Ending 77 2047	Annual	Bladder program care and management.	Per Unit Per Year \$2,192 - \$2,959	* Cost estimates were obtained from Homelink and various online vendors	Greg Vigna, MD, JD, CLCP

* Bladder supplies and frequencies listed below are based on Ms. Harper-Wininger's current needs and include:

- Bardex Foley Catheter (Suprapubic Catheter) for urinary drainage: 2x/month @ \$1.21-\$5.29/each = \$29-\$127/year
- Rusch Belly Bag - Urine Collection Bag for urine collection: 1 bag/month @ \$10.51-\$32.99/each = \$126-\$396/year
- Hollister Large Urinary Leg Bag for urine collection: 2 bags/year @ \$21.43/each = \$43/year
- Bard Latex Free Extension Tubing for urinary drainage: 1x/week @ \$3.26-\$4.09/each = \$170-\$213/year
- McKesson Disposable Urinary Drainage Bag Anti-Reflux Chamber 200 mL for nighttime urinary drainage: 1x/week at \$1.73-\$1.95/each = \$90-\$101/year
- UroCare Tube Clamp to prevent urine leakage from bag: 4 clamps/year @ \$25.29/each = \$101/year
- Carex Disposable Urinal to drain urine: 4/year @ \$15.88/each = \$64/year
- Bardia Foley Catheter Insertion Tray for suprapubic catheter replacement: 2x/mo. @ \$1.95-\$6.36/each = \$47-\$153/year
- McKesson Piston Syringe Irrigation Tray to flush catheter with sediment blockage: 2-3 trays/month @ \$2.86/each = \$69-\$103/year
- Statlock Catheter Stabilization Device Foley 2-Way securer leg bag/catheter tube: 1x/week @ \$9.81/each = \$510/year
- Bard Dispoz-A-Bag - Leg Bag with Flip-Flo Drainage Valve and Extension Tubing for urinary drainage: 1x/week at \$10.51/each = \$547/year
- Leg Bag Straps to secure urine bag: 1x/month @ \$8.21-\$25.30/each = \$99-\$304/year
- Kerlix Bandage Roll to clean area around catheter: 1 roll/week @ \$3.46/each = \$180/year
- McKesson Normal Saline 500 mL to flush suprapubic catheter: 2 bottles/month @ \$4.86/each = \$117/year

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LIFE CARE PLAN
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SUPPLIES - CONTINUED

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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Bowel Management Supplies*	Beginning 47 1/2018 Ending 77 2047	Annual	Bowel program care and management.	Per Unit Per Year \$3,280 - \$3,454	* Cost estimates were obtained from Homelink and various online vendors	Greg Vigna, MD, JD, CLCP

*Bowel management supplies and frequencies listed below are based on Ms. Harper-Wininger's current needs and include:

Barrier Protectant Cream to prevent/treat skin irritation: \$7.79-\$11.31 @ 1 tube/month = \$93-\$136/year
 Odor Antagonist Spray to remove smell from rooms during/after bowel program: 2 bottles/month \$9.83/bottle = \$236/year
 Antiseptic No-Rinse Cleaning Foam for perianal care: 2 bottles/month @ \$19.79/bottle = \$475/year
 McKesson Underpads 30 x 30 for perianal care and bowel program: 4 pads/day @ \$0.59/pad = \$861/year
 Disposable Baby Wipes: 1 container/3 days @ \$2.49-\$3.00/container = \$303-\$365/year
 Halyard Purple Nitrile Powder-Free Exam Gloves for perianal care, bowel program, cleaning catheter changing and flushing, etc.: 2 boxes/month @ \$23.53/box = \$565/year
 Halyard Grey Nitrile Powder-Free Exam Gloves for perianal care, bowel program, cleaning catheter changing and flushing, etc.: 2 boxes/month @ 25.13/box = \$603/year
 McKesson Lubricating Jelly 3 g packets: 2-3 packets/day @ \$0.19/packet = \$139-\$208/year
 Kimberly Clark Scottfold Disposable Towels for bowel program cleanup. 1 case/6 mos. 25 towels/case @ \$2.61/case = \$5/year

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SUPPLIES - CONTINUED

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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Personal Care Cleaning/Disinfectant/ Sanitizing Supplies*	Beginning 47 1/2018 Ending 77 2047	Annual	Clean, disinfect and sanitize skin, medical equipment and supplies, and other personal items in order to avoid infections and germs.	Per Unit Per Year \$976 - \$1,367	* Cost estimates were obtained from Homelink and various online vendors	Greg Vigna, MD, JD, CLCP
* Personal Care Cleaning/Disinfectant/Sanitizing supplies and frequencies listed below are based on Ms. Harper-Wininger's current needs and include: McKesson Premium Hand Sanitizer 18 oz - disinfectant, germicide and bactericide: 2 bottles/month @ \$3.95-\$8.85/each = \$95-\$212/year McKesson Antimicrobial Soap 18 oz - disinfectant, germicide and bactericide: 2 bottles/month @ \$3.86-\$6.91/each = \$93-\$166/year Clorox Disinfectant Wipes to clean/disinfect equipment and bathroom area: 2 containers/month @ \$3.50-\$3.66/container = \$84-\$88/year Hydrogen Peroxide Wipes - cleaning solution: 1 box/4 months @ \$2.95-\$5.03/each = \$9-\$15/year McKesson Hydrogen Peroxide 3% 16 oz to clean respiratory equipment and other medical equipment: 1 bottle/month @ \$0.95-\$2.14/each = \$11-\$26/year Alcohol Prep Pads to clean injection sites, catheter tubing connections, equipment, etc.: 1 box/200 pads/month @ \$5.71/box = \$69/year Sharps Container to dispose of medical waste products: 1x/year @ \$3.63-\$3.99/each = \$4/year Adhesive Remover Wipes to remove TENS unit electrodes: 2 boxes/month at \$4.64-\$11.95/box = \$111-\$287/year Miscellaneous Supplies to include extra bleach, laundry detergent, extra towels and linens, etc.: \$500/year						

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LIFE CARE PLAN
DARIA HARPER-WININGER
SUPPLIES - CONTINUED

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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Respiratory Supplies*	Beginning 47 1/2018 Ending 77 2047	Annual	Respiratory care and management.	Per Unit Per Year \$4,440 - \$5,269	* Cost estimates were obtained from Homelink and various online vendors	Greg Vigna, MD, JD, CLCP

*Respiratory supplies and frequencies listed below are based on Ms. Harper-Wininger's current needs and include:

Ventilator/CPAP

AirLife Sterile Water for Inhalation: 4 bottles/month @ \$0.11-0.23/each = \$5-\$11/year
 Fisher & Paykel Humidification Chamber: 1x/month @ \$14.50-\$20/month = \$174-\$240/year
 ResMed Airfit F20 Headgear: 1 mask/6 months @ \$118-\$149/each = \$236-\$298/year
 ResMed Airfit F20 Headgear Mask Cushion: 1 cushion/month @ \$31-\$59/each = \$372-\$708/year
 Fisher & Paykel Heated Wall Reusable Vent Circuit: 1 circuit/month @ \$139.44-\$155.67/each = \$1,673-\$1,868/year
 Adult-Pediatric Electrostatic Filter HME filter between vent and circuit: 1x/month @ \$129/each = \$1,548/year
 Trilogy Oxygen Input Quick Connect Inserts. Use with oxygen/vent to connect oxygen to the vent: 1 pkg./year. \$12.20-\$15.39/each = \$12-\$15/year

Nebulizer

Drive Reusable Nebulizer Kit to use with nebulizer: 2 kits/month @ \$4.45-\$6.99/each = \$107-\$168/year

Suction Machine

Hudson RCI AddiPak Unit Dose Vials – 5 ml Sterile 0.9% NaCL to use with suction bag to irrigate and clean nose: 100 vials/year @ \$0.17/vial = \$17/year
 MediChoice Suction Yankauer. 2 yankauers/6 months @ \$1.04-\$4.44/each = \$4-\$18/year
 Disposable Suction Canister, Tubing and Filter for secretion collection. 1/month @ \$17.99- \$25.19/each = \$216-\$302/year

CoughAssist

Hudson Bacterial Wall Filter to keep circuit clear of sputum: 24/year @ \$3.17/each = \$76/year

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LIFE CARE PLAN
DARIA HARPER-WININGER
SUPPLIES - CONTINUED

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Jobst Knee High Compression Stockings	Beginning 47 1/2018 Ending 77 2047	6 pr./yr.	Control lower extremity edema.	Per Unit \$27.99 - \$65.92 Per Year \$168 - \$396		Greg Vigna, MD, JD, CLCP
TENS Unit Electrodes (4)	Beginning 47 1/2018 Ending 77 2047	1x/2 wks.	Maintain TENS unit.	Per Unit \$4.95 - \$15.04 Per Year \$129 - \$391	4 electrodes/pack	Greg Vigna, MD, JD, CLCP Tom Balazy, M.D. – 9/10/15 Rx
TENS Unit Leads	Beginning 47 1/2018 Ending 77 2047	1-2x/yr.	Maintain TENS unit.	Per Unit \$19.95 - \$39.99 Per Year \$20 - \$80		Greg Vigna, MD, JD, CLCP
Inново iSoothe Wireless Rechargeable Electronic Pulse Massager (TENS) Electrotherapy Device – Pads (2)	Beginning 47 1/2018 Ending 77 2047	2 pads/yr.	Maintain Inново TENS unit.	Per Unit \$4.60 Per Year \$9		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
ADAPTIVE AIDS

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Adaptive Clothing Allowance	Beginning 47 1/2018 Ending 77 2047	Annual	Provide adaptive clothing to improve independent dressing and replace clothes due to wear and tear from the wheelchair.	Per Unit Per Year \$777	VA Special Benefit Allowances Rates: 2016 https://www.benefits.va.gov/COMPENSATION/special_Benefit_Allowances_2016.asp	Greg Vigna, MD, JD, CLCP
Independent Living Aids*	Beginning 47 1/2018 Ending 77 2047	Annual	Improve independence with activities of daily living (ADLs).	Per Unit Per Year \$300 - \$400		Greg Vigna, MD, JD, CLCP

* Independent living aids include adaptive writing aids and eating utensils, book holder, easy glide writer, slip-on typing/keyboard aid, sure hand strap, Velcro button aids, scoop plates and bowls, straws, medicine cups, Dycem pads/mats, spill proof cups, no skid divider plates with suction base, feeding aprons, universal weighted holder and cuffs, shampoo tray, electric toothbrush and replacement brushes, rocker knife, combination cutting board, electric can and jar openers, hair dryer stand, iPhone and iPad mounts, various kitchen aids, etc.

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LIFE CARE PLAN
DARIA HARPER-WININGER
ORTHOTICS/SPLINTS

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Bilateral Ultra Flex Elbow Wrist Hand Orthosis (2)	Beginning 47 1/2018 Ending 77 2047	1x/2-3 yrs.	Provide proper upper extremity positioning; improve independence.	Per Unit \$4,434 Per Year \$2,956 - \$4,434	UltraFlex systems \$8,868/pair	Greg Vigna, MD, JD, CLCP Craig Hospital – 5/17/16 Maggie McDone, MS, OTR/L
Left Elbow Dynasplint Replacement Pads	Beginning 47 1/2018 Ending 77 2047	2x/yr.	Maintain Dynasplint.	Per Unit \$120 Per Year \$240		Greg Vigna, MD, JD, CLCP
Podus Heel Boots (2)	Beginning 47 1/2018 Ending 77 2047	1x/yr.	Provide proper lower extremity positioning; prevent pressure sores.	Per Unit \$118 - \$201 Per Year \$118 - \$201		Greg Vigna, MD, JD, CLCP Brian J. Beatty, D.O. – 5/16/16 Rx for Roylan Heel Boots

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LIFE CARE PLAN
DARIA HARPER-WININGER
FUTURE HOSPITALIZATIONS

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Outpatient Hospitalization for Urinary Tract Infections (UTIs)	Beginning 47 1/2018 Ending 77 2047	1x/2 yrs.	Treat UTIs.	Per Unit \$2,421 Per Year \$1,211	\$834/professional fee \$1,587/facility fee \$2,421/visit Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP
<p>* Estimated facility fees are based on 2016 Medicare charges from the American Hospital Directory (ahd.com) and the average cost from the following hospitals:</p> <p>Havasu Regional Medical Center: \$1,507/facility fee Kingman Regional Medical Center: \$1,667/facility fee</p>						
Inpatient Hospitalization for UTIs	Beginning 47 1/2018 Ending 77 2047	1x/7 yrs. (14 days/hosp'n)	Treat UTIs.	Per Unit \$140,789 Per Year \$20,113	\$2,917/professional fee \$137.872/facility fee \$140,789/hosp'n	Greg Vigna, MD, JD, CLCP
<p>Professional fees obtained from Medical Fees 2017 75% adjusted to Arizona and based on the following cpt codes:</p> <p>CPT 99223 Initial hospital care per day: \$491/day CPT 99231 Subsequent hospital care per day. Pt is stable, recovering or improving (15 min/visit): \$110/day CPT 99232 Subsequent hospital care per day. Pt is responding inadequately to therapy or has developed a minor complication (25 min/visit): \$182/day CPT 99233 Subsequent hospital care per day. Pt is unstable or has developed a significant complication or a significant new problem. (35 min/visit): \$267/day (\$186/average professional fee of 99231, 99232, 99233) x 12 days: \$2,232 CPT 99238 Hospital discharge day management (30 min./visit): \$194/day</p> <p>* Estimated facility fees are based on 2016 Medicare charges from the American Hospital Directory (ahd.com) and the average of the daily rates (\$9,848/day) from the following hospitals:</p> <p>Havasu Regional Medical Center: \$31,953/2.6 days = \$12,290/day Kingman Regional Medical Center: \$26,218/3.54 days = \$7,406/day</p>						

Growth Trend to Be Determined by Economist.

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LIFE CARE PLAN

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FUTURE HOSPITALIZATIONS – CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Inpatient Hospitalization for Decubitus Ulcer with Flap	Beginning 47 1/2018 Ending 77 2047	1 x only (60 days/hosp'n)	Treat grade III/IV decubitus ulcer.	Per Unit \$768,613 Per Year	\$11,473/professional fee \$757,140/facility fee \$768,613/hosp'n	Greg Vigna, MD, JD, CLCP

Professional fees obtained from Medical Fees 2017 75% adjusted to Arizona and based on the following cpt codes:

CPT 99223 Initial hospital care per day: \$491/day
 CPT 99231 Subsequent hospital care per day. Pt is stable, recovering or improving (15 min/visit): \$110/day
 CPT 99232 Subsequent hospital care per day. Pt is responding inadequately to therapy or has developed a minor complication (25 min/visit): \$182/day
 CPT 99233 Subsequent hospital care per day. Pt is unstable or has developed a significant complication or a significant new problem. (35 min/visit): \$267/day
 (\$186/average professional fee of 99231, 99232, 99233) x 58 days: \$10,788
 CPT 99238 Hospital discharge day management (30 min./visit): \$194/day

* Estimated facility fees are based on 2016 Medicare charges from the American Hospital Directory (ahd.com) and the average of the daily rates (\$12,619/day) from the following hospitals:

Banner University Medical Center Phoenix: \$108,731/9.87 days = \$11,016/day
 Mayo Clinic Hospital Phoenix: \$93,574.00/6.58 days = \$14,221/day

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LIFE CARE PLAN

DARIA HARPER-WININGER

DOB: June 9, 1970

DOL: June 9, 2015

Date Prepared: February 9, 2018

Primary Disability: SCI - C4 ASIA C Quadriplegia

FUTURE HOSPITALIZATIONS - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Inpatient Hospitalization for Pneumonia with Respiratory Failure	Beginning 55 2025 Ending 77 2047	1x/within 10 yrs.; then 1x/in years 11-17; then 1x/3 yrs. (14 days/hosp'n)	Treat respiratory problems such as pneumonia and respiratory failure.	Per Unit \$125,361 Per Year	\$2,917/professional fee \$122,444/facility fee \$125,361/hosp'n \$125,361/in next 10 yrs.; then \$125,361/in years 11-17; then \$41,787/year to L.E.	Greg Vigna, MD, JD, CLCP

Professional fees obtained from Medical Fees 2017 75% adjusted to Arizona and based on the following cpt codes:

CPT 99223 Initial hospital care per day: \$491/day

CPT 99231 Subsequent hospital care per day. Pt is stable, recovering or improving (15 min/visit): \$110/day

CPT 99232 Subsequent hospital care per day. Pt is responding inadequately to therapy or has developed a minor complication (25 min/visit): \$182/day

CPT 99233 Subsequent hospital care per day. Pt is unstable or has developed a significant complication or a significant new problem. (35 min/visit): \$267/day

(\$186/average professional fee of 99231, 99232, 99233) x 12 days: \$2,232

CPT 99238 Hospital discharge day management (30 min./visit): \$194/day

* Estimated facility fees are based on 2016 Medicare charges from the American Hospital Directory (ahd.com) and the average of the daily rates (\$8,746/day) from the following hospitals:

Havasu Regional Medical Center: \$42,851.00/4.75 days = \$9,021/day

Kingman Regional Medical Center: \$63,523/7.5 days = \$8,470/day

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LIFE CARE PLAN
DARIA HARPER-WININGER
HOME CARE

DOB: June 9, 1970
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 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Attendant*	Beginning 47 1/2018 Ending 77 2047	24 hrs./day	Provide assistance with activities of daily living including personal care, bathing, laundry, bowel and bladder management, bed mobility, transfers, positioning, grocery shopping, cooking/meal preparation (and clean-up), feeding set-up, transportation (and wait-time) to medical appointments and community outings, running errands, etc.	Per Unit \$20 - \$31 Per Year \$175,200 - \$271,560		Greg Vigna, MD, JD, CLCP
Outcomes Following Traumatic Spinal Cord Injury: Clinical Practice Guidelines for Health Care Professionals. Consortium for Spinal Cord Medicine: Clinical Practice Guidelines, 1999. Table 6. Expected Functional Outcomes, Level C4.						
Attendant*	Beginning 47 1/2018 Ending 77 2047	2 hrs./day	Provide setup and assistance with transfers onto FES, standing frame and other equipment as needed.	Per Unit \$20 - \$31 Per Year \$14,600 - \$22,630		Greg Vigna, MD, JD, CLCP
Skilled Nursing - Registered Nurse (RN)*	Beginning 47 1/2018 Ending 77 2047	1x/day	Monitor medical status; bowel program; setup and administer medications; supervise attendant.	Per Unit \$100 - \$120 Per Year \$36,500 - \$43,800		Greg Vigna, MD, JD, CLCP
* Attendant and skilled nursing services will not be required during periods of hospitalization (see Future Hospitalizations, pages 44-46).						

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LIFE CARE PLAN
DARIA HARPER-WININGER
HOME CARE - CONTINUED

DOB: June 9, 1970
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Case Manager	Beginning 47 1/2018 Ending 77 2047	8 hrs./mo.	Assist with coordinating medical and rehabilitative care needs; improve access to community resources.	Per Unit \$80 - \$130 Per Year \$7,680 - \$12,480		Greg Vigna, MD, JD, CLCP
Housecleaning	Beginning 47 1/2018 Ending 77 2047	1x/wk. (52 wks./yr.)	Provide housecleaning assistance.	Per Unit \$120 - \$140 Per Year \$6,240 - \$7,280	Housecleaning services are based four-bedroom house. Open floor plan. Bathroom accessible to accommodate roll in shower chair.	Greg Vigna, MD, JD, CLCP
Interior/Exterior Home Maintenance	Beginning 47 1/2018 Ending 77 2047	2-4 hrs./mo.	Provide interior and exterior home maintenance assistance.	Per Unit \$73.51 Per Year \$1,764 - \$3,528		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

DARIA HARPER-WININGER

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COMMUNICATION/ENTERTAINMENT

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
iPad	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Provide portable accessible communication, learning and entertainment.	Per Unit \$780 - \$1,150 Per Year \$156 - \$230		Greg Vigna, MD, JD, CLCP
iPad Shatterproof Cover	Beginning 47 1/2018 Ending 77 2047	1x/2-3 yrs.	Protect iPad.	Per Unit \$50 - \$285 Per Year \$17 - \$143		Greg Vigna, MD, JD, CLCP
iPad Data Plan	Beginning 47 1/2018 Ending 77 2047	Monthly	Access portable communication, learning and entertainment.	Per Unit \$15 - \$30 Per Year \$180 - \$360		Greg Vigna, MD, JD, CLCP
Dragon Naturally Speaking Software Updates	Beginning 47 1/2018 Ending 77 2047	1x/2 yrs.	Update hands-free communication software.	Per Unit \$200 Per Year \$100		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

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Primary Disability: SCI - C4 ASIA C Quadriplegia

HEALTH AND STRENGTH MAINTENANCE

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Large Foam Therapeutic Wedge	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Use with physical therapy for exercise and stretching.	Per Unit \$61 - \$113 Per Year \$6 - \$11		Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. – 10/16/16 Rx
EasyStand Evolv Standing Frame	Beginning 47 1/2018 Ending 77 2047	1x/5 yrs.	Prevent contractures; improve lower extremity range of motion; stretch muscles in les and back; increase postural circulation responses.	Per Unit \$9,077 Per Year \$1,815	NuMotion/United Seating and Mobility Billing Records	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D.
Standing Frame Maintenance	Beginning 48 1/2019 Ending 77 2047	1x/yr., excluding year of purchase	Maintain standing frame.	Per Unit Per Year \$100 - \$800	Maintenance on equipment begins one year after each new item is purchased.	Greg Vigna, MD, JD, CLCP
Standing Frame Replacement and Maintenance Costs - Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).						
Hand Skate Roller Exerciser	Beginning 47 1/2018 Ending 77 2047	1x/3 yrs.	Improve range of motion in bilateral upper extremities.	Per Unit \$63 - \$138 Per Year \$21 - \$46		Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. – 10/26/16 Rx

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LIFE CARE PLAN

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Primary Disability: SCI - C4 ASIA C Quadriplegia

HEALTH AND STRENGTH MAINTENANCE - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Adjustable Platform Mat	Beginning 57 2027 Ending 77 2047	1x/10 yrs. (1-2 x only)	Provide safe area for stretching, ROM and therapy.	Per Unit \$3,793 - \$7,517 Per Year	\$3,739 - \$15,034/total	Greg Vigna, MD, JD, CLCP E. Franklin Livingstone, M.D. – 9/28/16 Rx
Mat Platform Replacement Mat	Beginning 52 2022 Ending 77 2047	1x/5 yrs.; excluding years of adjustable platform mat replacement	Replace mat platform.	Per Unit \$523 - \$749 Per Year \$105 - \$150		Greg Vigna, MD, JD, CLCP
Head Float	Beginning 47 1/2018 Ending 77 2047	1x/2-3 yrs.	Aid pool therapy and recreation.	Per Unit \$89 - \$113 Per Year \$30 - \$57		Greg Vigna, MD, JD, CLCP
Sectional Raft	Beginning 47 1/2018 Ending 77 2047	1x/3 yrs.	Aid pool therapy and recreation.	Per Unit \$261 Per Year \$87		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

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DARIA HARPER-WININGER

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Primary Disability: SCI - C4 ASIA C Quadriplegia

HEALTH AND STRENGTH MAINTENANCE - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Power Pool Lift	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Transfer assistance into swimming pool.	Per Unit \$7,639 - \$7,925 Per Year \$764 - \$793		Greg Vigna, MD, JD, CLCP
Power Pool Lift Slings (2)	Beginning 47 1/2018 Ending 77 2047	1x/2 yrs.	Transfer assistance into swimming pool.	Per Unit \$152 - \$498 Per Year \$152 - \$498	\$304-\$996/2 slings	Greg Vigna, MD, JD, CLCP
RT300-SLSA Functional Electrical Stimulation (FES) Bicycle	Beginning 47 1/2018 Ending 77 2047	1x/7-10 yrs.	Prevent disuse atrophy; maintain upper and lower extremity range of motion; improve lower extremity circulation; provide aerobic exercise.	Per Unit \$22,680 - \$28,380 Per Year \$2,268 - \$4,054	Initially received 8/28/15 from Restorative Therapies	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D., Heather Horri, DPT and Abby Schilz, MPT, at Craig Hospital – 8/14/15 Rx
* Estimated cost includes delivery, setup, training and electrodes.						
FES Electrodes	Beginning 48 1/2019 Ending 77 2047	1x/yr.; excluding year of FES replacement	Utilize FES bicycle.	Per Unit Per Year \$700	Initially received 8/28/15 from Restorative Therapies	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D., Heather Horri, DPT and Abby Schilz, MPT, at Craig Hospital – 8/14/15 Rx

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LIFE CARE PLAN

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Primary Disability: SCI - C4 ASIA C Quadriplegia

HEALTH AND STRENGTH MAINTENANCE - CONTINUED

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
FES Replacement Stimulation Cable (2)	Beginning 48 1/2019 Ending 77 2047	1x/2-4 yrs.	Maintain FES bicycle.	Per Unit \$390 Per Year \$195 - \$390	Initially received 8/28/15 from Restorative Therapies \$780/pr.	Greg Vigna, MD, JD, CLCP Thomas Balazy, M.D., Heather Horri, DPT and Abby Schilz, MPT, at Craig Hospital – 8/14/15 Rx
Bioness H200 Wireless (2)	Beginning 47 1/2018 Ending 77 2047	1x/3-5 yrs.	Therapeutic electrical nerve stimulation to improve strength, function, range of motion and endurance in bilateral hands/fingers and forearms.	Per Unit \$7,900 Per Year \$1,580 - \$2,633		Greg Vigna, MD, JD, CLCP
Bioness Electrodes (2)	Beginning 47 1/2018 Ending 77 2047	2 sets/2 wks. (52 sets/yr.)	Maintain bilateral Bioness units.	Per Unit \$35 Per Year \$1,820	6 pads/set	Greg Vigna, MD, JD, CLCP
Bioness Battery Replacement (2)	Beginning 47 1/2018 Ending 77 2047	2 batteries/2 yrs.	Maintain bilateral Bioness units.	Per Unit \$250 Per Year \$250	\$500/2 batteries	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER
RECREATIONAL*

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Action Trackchair	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.	Access property and uneven terrain; aid in camping and fishing activity.	Per Unit \$11,300 - \$14,125 Per Year \$1,130 - \$1,413		Greg Vigna, MD, JD, CLCP
TrackChair Rechargeable Batteries (2)	Beginning 57 2027 Ending 77 2047	1x/10 yrs.; excluding year of trackchair replacement (1-2 x only)	Maintain trackchair.	Per Unit \$100 Per Year	\$200/2 batteries \$200-\$400/total	Greg Vigna, MD, JD, CLCP

* Research has shown that improved fitness and increased physical activity can lead to improved health and function in persons with spinal cord injury (SCI). The research findings suggest that persons with SCI with higher activity levels may be less handicapped by their disability or more able to fulfill roles that might be considered "normal" for that individual. Thus, the relationship between physical activity and reduction of handicap provide evidence to support the development and encouragement of physical activity programs for persons with SCI. *Source: Manns, Patricia J., MSc, PT; Chad, Karen E., Ph.D. Determining the Relation Between Quality of Life, Handicap, Fitness and Physical Activity for Persons With Spinal Cord Injury. Archives of Physical Medicine and Rehabilitation, Volume 80, December 1999.*

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LIFE CARE PLAN
DARIA HARPER-WININGER
TRANSPORTATION

DOB: June 9, 1970
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 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Wheelchair Accessible 4-Wheel Drive Van	Beginning 47 1/2018 Ending 77 2047	1x/5-7 yrs.	Accessible transportation.	Per Unit \$85,431 Per Year \$12,204 - \$17,086	Mercedes-Benz of Littleton 3/29/16 Invoice: \$71,464/van; plus Performance Mobility 5/23/16 Invoice: \$13,967/Modifications	Greg Vigna, MD, JD, CLCP
NOTE: Trade-in value to be determined by economist. For information purposes, the average cost of a typical family car in the U. S. is \$34,222 (2017 dollars). This should be subtracted from the price of the van. Source: National Automobile Dealers Association. NADADATA 2016. Retrieved from https://www.nada.org/WorkArea/DownloadAsset.aspx?id=21474847506						
Wheelchair Accessible Van Equipment Maintenance	Beginning 48 1/2019 Ending 77 2047	2x/yr.; excluding year of van replacement	Maintain wheelchair accessible van.	Per Unit Per Year \$200 - \$400	Maintenance on equipment begins one year after each new item is purchased.	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

DARIA HARPER-WININGER

TRANSPORTATION – CONTINUED

DOB: June 9, 1970

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Date Prepared: February 9, 2018

Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Travel to Englewood, Colorado*	Beginning 47 1/2018 Ending 77 2047	1x/yr. (7 days/visit; plus 2 days of travel)	Reimburse travel to Craig Hospital in Englewood, CO for comprehensive rehabilitation re-evaluations.	Per Unit \$3,254 Per Year \$3,254		Greg Vigna, MD, JD, CLCP
<p>Cost estimate includes:</p> <p>\$1,055/mileage (1,936 miles/R.T. x \$0.545) \$238/lodging (2 nights in Sante Fe, NM (half way to Englewood) \$739/lodging (7 nights in Craig Hospital apartments) \$1,222/meals and incidentals (9 days for 2 people) \$3,254/trip</p> <p>Craig Hospital: \$105.50/night (2-bedroom) Irs.gov: \$0.545/mi. x 1,936 mi. R.T. = \$1,055 Gsa.gov: - \$64/day meals and incidentals in Sante Fe, NM (2 days x 2 people) = \$256 - \$69/day meals and incidentals in Englewood, CO (7 days x 2 people) = \$966 - \$119/lodging per night in Sante Fe, NM (2 nights) = \$238</p>						

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LIFE CARE PLAN
DARIA HARPER-WININGER
TRANSPORTATION - CONTINUED

DOB: June 9, 1970
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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Travel to Phoenix, Arizona	Beginning 47 1/2018 Ending 77 2047	3-4x/yr. (2 days/trip)	Reimburse travel to Phoenix, AZ to meet with NuMotion or various physician specialists at Barrows Institute.	Per Unit \$576 Per Year \$1,728 - \$2,304		Greg Vigna, MD, JD, CLCP
<p>\$216/mileage (396 mi./R.T.) \$124/lodging (1 night) <u>\$236/meals and incidentals (2 days for 2 people)</u> \$576/trip</p> <p>Irs.gov: \$0.545/mi. x 396 mi. R.T. = \$216 Gsa.gov: - \$59/day meals and incidentals x 2 days x 2 people = \$236 - \$124/lodging in Phoenix, AZ</p>						

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LIFE CARE PLAN
DARIA HARPER-WININGER
HOME MODIFICATIONS*

DOB: June 9, 1970
 DOL: June 9, 2015
 Date Prepared: February 9, 2018
 Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Home Modifications*	Beginning 47 1/2018 Ending 77 2047	2 x only	Provide improved safety and mobility within the home.	Per Unit \$81,080 Per Year	\$162,160/total	Greg Vigna, MD, JD, CLCP
<p>* Ms. Harper currently lives with her family in a four-bedroom home with accessible bathroom to accommodate a roll-in shower chair. She requires additional wheelchair accessible home modifications for maximum safety and mobility within the house. Home modifications will include appropriate exterior ramping; covered parking/garage; accessible kitchen, hallways, and bedrooms; sidewalk accessibility to the property; remote door opener; air conditioning, etc. Absent a contractor estimate regarding the cost for such home modifications, we are utilizing the Department of Veteran's Affairs (VA) Loan Guaranty Service as a standard. The Specially Adapted Housing (SAH) grant benefit amounts are set by law, but may be adjusted upward annually based on a cost-of-construction index. The maximum dollar amount allowable for the SAH grant in fiscal year 2018 is \$81,080. http://www.benefits.va.gov/homeloans/adaptedhousing.asp. Ms. Harper's home modification needs will easily exceed the maximum VA housing allowance, but more information is needed in order to refine the recommendation. If she changes residences in the future, similar renovations will be needed.</p>						
Guldmann Ceiling Lift System*	Beginning 47 1/2018 Ending 77 2047	1x/7 yrs.	Provide safe and easy transfers in bedroom and bathroom areas.	Per Unit \$6,000 - \$15,000 Per Year \$857 - \$2,143		Greg Vigna, MD, JD, CLCP
<p>**This equipment is not duplicative of the Power Patient Lift, as it is designed to move the patient from one area of the home to another via an overhead tracking system. The price is estimated as the actual cost will depend on the size of the home and the patient's needs.</p> <p>Ceiling Lift Replacement Cost Source: Marini, Irmo, Ph.D., CRC, CLCP, FVE and Harper, Dana, MS. <i>Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. Journal of Life Care Planning, Vo. 4, No. 4, (173-182).</i></p>						

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LIFE CARE PLAN

DARIA HARPER-WININGER

HOME MODIFICATIONS - CONTINUED

DOB: June 9, 1970

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Primary Disability: SCI - C4 ASIA C Quadriplegia

Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
Ceiling Lift Slings (2)	Beginning 47 1/2018 Ending 77 2047	1x/2-3 yrs.	Transfer safety and ease.	Per Unit \$325 Per Year \$217 - \$325	\$650/2 slings	Greg Vigna, MD, JD, CLCP
Ceiling Lift Batteries (2)	Beginning 47 1/2018 Ending 77 2047	1x/5-7 yrs.	Maintain ceiling lift.	Per Unit \$150 Per Year \$43 - \$60	\$300/2 batteries	Greg Vigna, MD, JD, CLCP
60 Hx Air-Cooled Generac Generator	Beginning 57 2027 Ending 77 2047	1x/10 yrs. (1-2 x only)	Whole-house backup generator; keep A/C running during power outages.	Per Unit \$2,890 Per Year	Purchased 10/2016 from McAtlin Electric Corp \$2,890-\$5,780/total	Greg Vigna, MD, JD, CLCP Brian J. Beatty, D.O. – 8/25/16 Rx
Generac Generator 10-year Warranty	Beginning 47 1/2018 Ending 77 2047	1x/10 yrs.; excluding year of generator replacement	Maintain generator.	Per Unit \$995 Per Year \$100	\$995/10 yrs.	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

DARIA HARPER-WININGER

HOME MODIFICATIONS - CONTINUED

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Item or Service	Age Year	Frequency/ Replacement	Purpose	Cost	Comment	Recommended By
200 Gallon Propane Tank	Beginning 47 1/2018 Ending 77 2047	1 tank/2 yrs.	Used to operate generator.	Per Unit \$430 - \$498 Per Year \$215 - \$249		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN
DARIA HARPER-WININGER

DOB: June 9, 1970
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COMPLICATIONS

Complication	Secondary To	Length of Risk	Surgery	Hospitalization	Possible Outcome from Complications
Skin Breakdown/ Pressure Sores	Physical stasis; impaired mobility	Lifetime	Probable	Probable	Increased medical care, medication and diagnostic study needs; nonhealing wounds; infections; surgical debridement; grafting; decreased functioning; sepsis.
Osteoporosis	Impaired mobility	Lifetime	Possible	Possible	Pain; fractures; decreased ROM; contractures; increased medical care, medication and diagnostic study needs; decreased functioning; nonhealing fractures; surgical intervention.
Respiratory Infections	SCI	Lifetime	Probable	Probable	Increased medical care, therapy, medication, laboratory and diagnostic study needs; tracheostomy; hospitalization.
Falls	Impaired mobility	Lifetime	Possible	Possible	Pain; fractures/musculoskeletal injuries; increased medical care, therapy, medication and diagnostic study needs; further brain injury; decreased functioning and mobility; surgical intervention.
Fractures/ Musculoskeletal Injuries	Falls	Lifetime	Possible	Possible	Pain; increased medical care, therapy, medication and diagnostic study needs; decreased functioning and mobility; nonhealing fractures; surgical intervention.
Upper Extremity Problems	Overuse	Lifetime	Possible	Possible	Increase pain; increased medical care, evaluations, therapy, medication and diagnostic study needs; decreased functioning, mobility and independence; surgical intervention.

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LIFE CARE PLAN
DARIA HARPER-WININGER
COMPLICATIONS - CONTINUED

DOB: June 9, 1970
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Complication	Secondary To	Length of Risk	Surgery	Hospitalization	Possible Outcome from Complications
Chronic Neck and Bilateral Upper Extremity Pain and Other Problems	SCI	Lifetime	Possible	Possible	Increase pain; increased medical care, evaluations, therapy, medication and diagnostic study needs; decreased functioning, mobility and independence; surgical intervention.
Bladder and Kidney Stones	Medical condition	Lifetime	Possible	Probable	Pain; increased medical care, therapy, medication, laboratory and diagnostic study needs; surgical intervention; hospitalization.
Chronic UTIs/Urosepsis	Neurogenic bladder	Lifetime	Probable	Probable	Increased medical care, medication, laboratory and diagnostic study needs; decreased functioning and independence; kidney damage; renal failure; hospitalization.
Deep Vein Thrombosis (DVT)	Impaired mobility	Lifetime	Possible	Possible	Increased medical care, laboratory and diagnostic study needs long-term anticoagulation therapy; emboli; impaired pulmonary function; stroke; hospitalization.
Depression	SCI and related functional limitations	Lifetime	Possible	Possible	Anger; sadness; withdrawal from family and friends; loss of coping skills; increased counseling and medication needs; decreased functioning; hospitalization.

EXHIBIT 6

EXHIBIT 6

FORMUZIS, HUNT & LANNING, INC.
SUMMARY OF THE ANALYSIS
ECONOMIC LOSSES SUSTAINED BY
DARIA HARPER

PRESENT VALUES

I. LOSS OF EARNING CAPACITY

A. PAST LOSS (06/09/2015 - 03/31/2018)

1. UNIMPAIRED EARNING CAPACITY

\$51,673

B. FUTURE LOSS (04/01/2018 - 08/31/2053)

1. UNIMPAIRED EARNING CAPACITY

\$270,906

C. TOTAL LOSS (PAST AND FUTURE)

\$322,579

II. FUTURE MEDICAL CARE COSTS (04/01/2018 - 06/30/2047)

\$14,282,286

III. TOTAL ECONOMIC LOSS (PAST AND FUTURE)

\$14,604,865

FORMUZIS, HUNT & LANNING, INC.
SUMMARY OF THE ANALYSIS
ECONOMIC LOSSES SUSTAINED BY
DARIA HARPER

PRESENT VALUE START DATE			04/01/2018
DATE OF BIRTH			06/09/1970
DATE OF INJURY			06/08/2015
AGE AT DATE OF INJURY	45.0	YEARS	
CURRENT AGE	47.8	YEARS	
EDUCATION LEVEL	HIGH SCHOOL GRADUATE		
RETIREMENT DATA	61.6 ¹	YEARS IN	12/31/2031
	62.4 ²	YEARS IN	10/31/2032
	67.0 ³	YEARS IN	05/31/2037
PROJECTED RETIREMENT AGE	63.7	YEARS IN	02/28/2034
REMAINING YEARS TO RETIREMENT	15.9	YEARS	
AGE AT NORMAL LIFE EXPECTANCY (FEMALE)	83.2 ⁴	YEARS IN	08/31/2053
YEARS TO NORMAL LIFE EXPECTANCY	35.4	YEARS	
AGE AT REDUCED LIFE EXPECTANCY	77.0 ⁵	YEARS IN	06/30/2047
YEARS TO REDUCED LIFE EXPECTANCY	29.2	YEARS	

FOOTNOTES:

- ¹ HUNT, PICKERSGILL AND RUTEMILLER, "RECENT TRENDS IN MEDIAN YEARS TO RETIREMENT AND WORKLIFE EXPECTANCY FOR THE CIVILIAN U.S. POPULATION," JOURNAL OF FORENSIC ECONOMICS, VOLUME XIV, NUMBER 3, FALL 2001.
- ² SKOOG AND CIECKA, "PROBABILITY MASS FUNCTIONS FOR YEARS TO FINAL SEPARATION FROM THE LABOR FORCE INDUCED BY THE MARKOV MODEL," JOURNAL OF FORENSIC ECONOMICS, VOLUME XVI, NUMBER 1, WINTER 2003.
- ³ MERCER HUMAN RESOURCE CONSULTING, INC., "2017 GUIDE TO SOCIAL SECURITY AND MEDICARE."
- ⁴ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL CENTER FOR HEALTH STATISTICS, "NATIONAL VITAL STATISTICS REPORTS," UNITED STATES LIFE TABLES, 2014.
- ⁵ PER THE REPORT OF DR. VIGNA.

DATE OF INJURY: 06/08/2015

EARNINGS HISTORY:

YEAR	EARNINGS	SOURCE	EMPLOYER
2006	\$24,812	W-2	ANIMAL HOSPITAL OF HAVASU
2007	\$26,268	W-2	ANIMAL HOSPITAL OF HAVASU
2008	\$30,163	W-2	ANIMAL HOSPITAL OF HAVASU
2009	\$24,771	W-2	ANIMAL HOSPITAL OF HAVASU
2010	\$14,545	W-2	ANIMAL HOSPITAL OF HAVASU
2011	\$0		
2012	\$0		
2013	\$18,000	CHECK	CARETAKER TO GRANDMOTHER
2014	\$25,000	CHECK	CARETAKER TO GRANDMOTHER
2015	\$10,354	W-2	ISLANDER RV RESORT
AVERAGE:	\$18,462	(9.42 YEARS)	

MS. HARPER'S UNIMPAIRED EARNING CAPACITY WAS CALCULATED USING \$18,400, AN AVERAGE OF HER AVAILABLE HISTORICAL EARNINGS.

1. PAST UNIMPAIRED EARNINGS

TIME PERIOD	ANNUAL EARNINGS	NUMBER OF MONTHS	TOTAL EARNINGS
06/09/2015 - 03/31/2018	\$18,400	33.7	\$51,673
		33.7	\$51,673

2. PRESENT VALUE OF THE FUTURE UNIMPAIRED EARNING CAPACITY

NET DISCOUNT RATE: 1.0% ¹
 NUMBER OF MONTHS: 191

TIME PERIOD	ANNUAL EARNINGS	MONTHLY EARNINGS
04/01/2018 - 02/28/2034	\$18,400	\$1,533

PRESENT VALUE: \$270,906

FOOTNOTE:

¹ THE NET DISCOUNT RATE IS THE ANTICIPATED SPREAD BETWEEN THE RATE OF RETURN ON INVESTMENTS AND THE RATE OF INCREASE IN COMPENSATION. THE RATE OF RETURN ON INVESTMENTS IS BASED UPON A MIX OF SHORT AND MEDIUM-TERM U.S. GOVERNMENT SECURITIES. RATES OF RETURN ARE REPORTED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. COMPENSATION GROWTH IS BASED ON THE HOURLY COMPENSATION SERIES PUBLISHED BY THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

ACCORDING TO THE REPORT OF DR. GREG VIGNA, DATED FEBRUARY 9, 2018, THE FOLLOWING CARE COSTS WILL BE REQUIRED IN THE FUTURE.

THE PRESENT VALUES OF THE FUTURE CARE COSTS ARE CALCULATED USING NET DISCOUNT RATES BETWEEN 0.0 AND 2.0 PERCENT.¹

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
1. COMPREHENSIVE REHABILITATION RE-EVALUATION AT CRAIG HOSPITAL	1.0%	04/01/2018 - 06/30/2047	\$13,500	\$342,745
2. SPINAL CORD INJURY SPECIALIST	1.0%	04/01/2018 - 06/30/2047	\$150	3,808
3. NURSE PRACTITIONER CONSULTATION	1.0%	04/01/2018 - 06/30/2047	\$350	8,886
4. NUTRITIONAL EVALUATION	1.0%	04/01/2018 - 06/30/2047	\$272	6,906
5. PHYSICAL THERAPY EVALUATION	1.0%	04/01/2018 - 06/30/2047	\$171	4,341
6. OCCUPATIONAL THERAPY EVALUATION	1.0%	04/01/2018 - 06/30/2047	\$165	4,189
7. BOTOX INJECTIONS	1.0%	04/01/2018 - 06/30/2047	\$25,136	638,166
8. PHYSICAL THERAPY	1.0%	04/01/2018 - 06/30/2047	\$3,336	84,696
9. OCCUPATIONAL THERAPY	1.0%	04/01/2018 - 06/30/2047	\$3,156	80,126
10. RESPIRATORY THERAPY	1.0%	04/01/2018 - 06/30/2047	\$8,164	207,272
11. LYMPHEDEMA MANAGEMENT	1.0%	04/01/2018 - 06/30/2047	\$3,264	82,868
12. NEUROMUSCULAR MASSAGE	1.0%	04/01/2018 - 06/30/2047	\$2,400	60,932
13. PSYCHOLOGICAL COUNSELING	1.0%	ONE TIME COST 04/01/2018	\$7,128	7,128
		07/01/2018 - 06/30/2047	\$2,376	59,730
14. SEXUAL THERAPY	1.0%	04/01/2018 - 03/31/2028	\$398	3,790
15. FAMILY COUNSELING AND EDUCATION		ONE TIME COST 04/01/2018	\$2,388	2,388
	1.0%	07/01/2018 - 06/30/2047	\$2,388	60,031
	1.0%	ONE TIME COST 04/01/2023	\$2,388	
16. PRIMARY CARE PHYSICIAN	1.0%	04/01/2018 - 06/30/2047	\$380	9,648

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
17. PHYSICAL MEDICINE AND REHABILITATION SPECIALIST	1.0%	04/01/2018 - 06/30/2047	\$760	\$19,295
18. NEUROLOGIST	1.0%	04/01/2018 - 06/30/2047	\$190	4,824
19. NEUROSURGEON	1.0%	04/01/2018 - 06/30/2047	\$730	18,534
20. PULMONOLOGIST	1.0%	04/01/2018 - 06/30/2047	\$570	14,471
21. PAIN MANAGEMENT SPECIALIST	1.0%	04/01/2018 - 06/30/2047	\$760	19,295
22. COLORECTAL SURGEON	1.0%	04/01/2018 - 06/30/2047	\$190	4,824
23. NEURO-UROLOGIST	1.0%	04/01/2018 - 06/30/2047	\$760	19,295
24. PODIATRIST	1.0%	04/01/2018 - 03/31/2019	\$728	725
	1.0%	04/01/2019 - 06/30/2047	\$650	15,856
25. CRANBERRY EXTRACT GEL	2.0%	04/01/2018 - 06/30/2047	\$46	1,022
26. DULCOLAX SUPPOSITORY	2.0%	04/01/2018 - 06/30/2047	\$387	8,599
27. MOVANTIK	1.0%	04/01/2018 - 06/30/2047	\$4,955	125,800
28. ZOFRAN	1.0%	04/01/2018 - 06/30/2047	\$648	16,452
29. LACTULOSE	1.0%	04/01/2018 - 06/30/2047	\$648	16,452
30. MIRALAX	2.0%	04/01/2018 - 06/30/2047	\$319	7,088
31. FLOVENT INHALER	1.0%	04/01/2018 - 06/30/2047	\$3,157	80,152
32. VENTOLIN INHALER	1.0%	04/01/2018 - 06/30/2047	\$1,643	41,713
33. ALBUTEROL	1.0%	04/01/2018 - 06/30/2047	\$767	19,473
34. ACETYLCYSTEINE	1.0%	04/01/2018 - 06/30/2047	\$114	2,894
35. OXYCONTIN 15MG	1.0%	04/01/2018 - 06/30/2047	\$1,958	49,711

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
36. OXYCONTIN 10MG	1.0%	04/01/2018 - 06/30/2047	\$2,787	\$70,758
37. NEURONTIN	1.0%	04/01/2018 - 06/30/2047	\$2,677	67,965
38. SUMATRIPTAN	1.0%	04/01/2018 - 06/30/2047	\$2,290	58,140
39. VOLTAREN GEL	1.0%	04/01/2018 - 06/30/2047	\$646	16,401
40. ATIVAN	1.0%	04/01/2018 - 06/30/2047	\$1,374	34,884
41. ELAVIL	1.0%	04/01/2018 - 06/30/2047	\$498	12,643
42. BACLOFEN	1.0%	04/01/2018 - 06/30/2047	\$785	19,930
43. LASIX	1.0%	04/01/2018 - 06/30/2047	\$159	4,037
44. MIDODRINE	1.0%	04/01/2018 - 06/30/2047	\$482	12,237
45. PRENATAL MULTIVITAMIN	2.0%	04/01/2018 - 06/30/2047	\$150	3,333
46. FLUCANAZOLE	1.0%	04/01/2018 - 06/30/2047	\$179	4,545
47. BENADRYL	2.0%	04/01/2018 - 06/30/2047	\$116	2,578
48. REFRESH EYEDROPS	2.0%	04/01/2018 - 06/30/2047	\$355	7,888
49. B6 VITAMIN	2.0%	04/01/2018 - 06/30/2047	\$29	644
50. IRON	2.0%	04/01/2018 - 06/30/2047	\$24	533
51. MAGNESIUM OXIDE	2.0%	04/01/2018 - 06/30/2047	\$70	1,555
52. VITAMIN D3	2.0%	04/01/2018 - 06/30/2047	\$33	733
53. VITAMIN C	2.0%	04/01/2018 - 06/30/2047	\$33	733
54. HEMORRHOID CREAM	2.0%	04/01/2018 - 06/30/2047	\$170	3,778

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
55. BACTRIM DS	1.0%	04/01/2018 - 06/30/2047	\$7	\$178
56. LEVAQUIN	1.0%	04/01/2019 - 06/30/2047	\$12	293
57. INFLUENZA VACCINE	2.0%	04/01/2018 - 06/30/2047	\$39	867
58. PNEUMOCOCCAL VACCINE	1.0%	04/01/2018 - 06/30/2047	\$23	584
59. COMPLETE BLOOD COUNT	1.0%	04/01/2018 - 06/30/2047	\$64	1,625
60. COMPREHENSIVE METABOLIC PANEL	1.0%	04/01/2018 - 06/30/2047	\$96	2,437
61. URINALYSIS WITH CULTURE AND SENSITIVITY	1.0%	04/01/2018 - 06/30/2047	\$60	1,523
62. DRUG TESTING	1.0%	04/01/2018 - 06/30/2047	\$596	15,132
63. RENAL SCAN PROFESSIONAL FEE	1.0%	04/01/2018 - 06/30/2047	\$132	3,351
FACILITY FEE	0.0%	04/01/2018 - 06/30/2047	\$438	12,812
64. RENAL ULTRASOUND PROFESSIONAL FEE	1.0%	04/01/2018 - 06/30/2047	\$178	4,519
FACILITY FEE	0.0%	04/01/2018 - 06/30/2047	\$455	13,309
65. CERVICAL MRI PROFESSIONAL FEE	1.0%	04/01/2018 - 06/30/2047	\$363	9,216
FACILITY FEE	0.0%	04/01/2018 - 06/30/2047	\$1,840	53,820
66. CHEST X-RAY PROFESSIONAL FEE	1.0%	04/01/2018 - 06/30/2047	\$49	1,244
FACILITY FEE	0.0%	04/01/2018 - 06/30/2047	\$118	3,452
67. ECHOCARDIOGRAM PROFESSIONAL FEE	1.0%	04/01/2018 - 06/30/2047	\$64	1,625
FACILITY FEE	0.0%	04/01/2018 - 06/30/2047	\$207	6,055
68. PULMONARY FUNCTION TEST PROFESSIONAL FEE	1.0%	04/01/2018 - 06/30/2047	\$90	2,285
FACILITY FEE	0.0%	04/01/2018 - 06/30/2047	\$349	10,208

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
69. SLEEP STUDY WITH TITRATION PROFESSIONAL FEE				
	1.0%	04/01/2018 - 06/30/2047	\$564	\$14,319
FACILITY FEE				
	0.0%	04/01/2018 - 06/30/2047	\$2,887	84,445
70. VENOUS DOPPLER PROFESSIONAL FEE				
	1.0%	04/01/2018 - 06/30/2047	\$149	3,783
FACILITY FEE				
	0.0%	04/01/2018 - 06/30/2047	\$661	19,334
71. PERMOBIL F5 CORPUS POWER WHEELCHAIR				
	2.0%	04/01/2018 - 06/30/2047	\$10,614	235,852
72. TILITE AERO Z LIGHTWEIGHT MANUAL WHEELCHAIR				
	2.0%	04/01/2018 - 06/30/2047	\$2,023	44,953
73. POWER WHEELCHAIR BATTERIES				
	2.0%	04/01/2018 - 06/30/2047	\$756	16,799
74. POWER WHEELCHAIR MAINTENANCE				
	2.0%	04/01/2018 - 06/30/2047	\$300	6,666
75. LIGHTWEIGHT MANUAL WHEELCHAIR MAINTENANCE				
	2.0%	04/01/2018 - 06/30/2047	\$120	2,667
76. ROJO QUADTRO SELECT WHEELCHAIR CUSHION				
	2.0%	04/01/2018 - 06/30/2047	\$305	6,777
77. MANUAL WHEELCHAIR VARILITE ICON BACK SEATING SYSTEM				
	2.0%	04/01/2018 - 06/30/2047	\$175	3,889
78. WHEELCHAIR CUSHION COVER				
	2.0%	04/01/2018 - 06/30/2047	\$135	3,000
79. KRISTEN SLIDE IN BASE WHEELCHAIR LAPTOP TRAY				
		ONE TIME COST 04/01/2018	\$823	823
	2.0%	ONE TIME COST 10/01/2025	\$823	709
	2.0%	ONE TIME COST 04/01/2033	\$823	611
	2.0%	ONE TIME COST 10/01/2040	\$823	527
80. WRITING TABLE WITH CUSHION				
	2.0%	04/01/2018 - 06/30/2047	\$58	1,289
81. OVERBED TABLE				
		ONE TIME COST 04/01/2018	\$106	106
	2.0%	ONE TIME COST 04/01/2028	\$106	87
	2.0%	ONE TIME COST 04/01/2038	\$106	71
82. FOLDING RAMP / SUITCASE RAMP - 3 FT				
		ONE TIME COST 04/01/2018	\$139	139
	2.0%	ONE TIME COST 04/01/2028	\$139	114
	2.0%	ONE TIME COST 04/01/2038	\$139	94
83. FOLDING RAMP / SUITCASE RAMP - 6 FT				
		ONE TIME COST 04/01/2018	\$273	273
	2.0%	ONE TIME COST 04/01/2028	\$273	224
	2.0%	ONE TIME COST 04/01/2038	\$273	184

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
84. WHEELCHAIR BACKPACK	2.0%	04/01/2018 - 06/30/2047	\$60	\$1,333
85. LONG TRANSFER BOARD	2.0%	04/01/2018 - 06/30/2047	\$44	978
86. SHORT TRANSFER BOARD	2.0%	04/01/2018 - 06/30/2047	\$14	311
87. RAZ SHOWER COMMODE CHAIR WITH CUSTOM SEAT FRAME	2.0%	04/01/2018 - 06/30/2047	\$1,213	26,954
88. PORTABLE SHOWER CHAIR SYSTEM MULTICHAIR 6000TX TILT				
		ONE TIME COST 04/01/2018	\$7,243	7,243
	2.0%	ONE TIME COST 04/01/2028	\$7,243	5,941
	2.0%	ONE TIME COST 04/01/2038	\$7,243	4,874
89. MULTICHAIR 6000 TX CUSHION	2.0%	04/01/2018 - 06/30/2047	\$42	933
90. ADJUSTABLE SLIDE BAR / SHOWER HEAD				
		ONE TIME COST 04/01/2018	\$218	218
	2.0%	ONE TIME COST 04/01/2024	\$218	194
	2.0%	ONE TIME COST 04/01/2030	\$218	172
	2.0%	ONE TIME COST 04/01/2036	\$218	153
	2.0%	ONE TIME COST 04/01/2042	\$218	136
91. FLEX-A-BED HI-LOW FULLY ELECTRIC HOSPITAL BED				
		ONE TIME COST 04/01/2018	\$6,610	6,610
	2.0%	ONE TIME COST 04/01/2025	\$6,610	5,754
	2.0%	ONE TIME COST 04/01/2032	\$6,610	5,009
	2.0%	ONE TIME COST 04/01/2039	\$6,610	4,361
	2.0%	ONE TIME COST 04/01/2046	\$6,610	3,797
92. VOLKNER EUROPA 1 MATTRESS	2.0%	04/01/2018 - 06/30/2047	\$734	16,310
93. PREVALON TURN AND POSITION SYSTEM	2.0%	04/01/2018 - 06/30/2047	\$321	7,133
94. PREVALON TURNING SYSTEM MICROCLIMATE BODY PADS	2.0%	04/01/2018 - 06/30/2047	\$3,530	78,440
95. ELECTRIC BED MAINTENANCE	2.0%	04/01/2018 - 06/30/2047	\$623	13,844
96. INVACARE RELIANT 450 POWER LIFT				
		ONE TIME COST 04/01/2018	\$3,024	3,024
	2.0%	ONE TIME COST 04/01/2028	\$3,024	2,481
	2.0%	ONE TIME COST 04/01/2038	\$3,024	2,035
97. JOERNS HOYER ADVANCE 340 POWER HOYER LIFT				
		ONE TIME COST 04/01/2018	\$3,464	3,464
	2.0%	ONE TIME COST 04/01/2028	\$3,464	2,842
	2.0%	ONE TIME COST 04/01/2038	\$3,464	2,331

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
98. WHEELCHAIR LIFT SCALE		ONE TIME COST 04/01/2018	\$793	\$793
	2.0%	ONE TIME COST 04/01/2028	\$793	651
	2.0%	ONE TIME COST 04/01/2038	\$793	534
99. LIFT SLINGS	2.0%	04/01/2018 - 06/30/2047	\$596	13,244
100. ADJUSTABLE HEIGHT WORK TABLE		ONE TIME COST 04/01/2018	\$3,159	3,159
	2.0%	ONE TIME COST 04/01/2028	\$3,159	2,591
	2.0%	ONE TIME COST 04/01/2038	\$3,159	2,126
101. PHILIPS RESPIRONICS NON-INVASIVE VENTILATOR / CONTINUOUS POSITIVE AIRWAY PRESSURE	2.0%	04/01/2018 - 06/30/2047	\$16,414	364,733
102. PHILIPS COUGHASSIST		ONE TIME COST 04/01/2018	\$7,300	7,300
	2.0%	ONE TIME COST 10/01/2026	\$7,300	6,169
	2.0%	ONE TIME COST 04/01/2035	\$7,300	5,213
	2.0%	ONE TIME COST 10/01/2043	\$7,300	4,405
103. DEVILBISS PORTABLE SUCTION MACHINE	2.0%	04/01/2018 - 06/30/2047	\$159	3,533
104. DEVILBISS PORTABLE SUCTION MACHINE MAINTENANCE	2.0%	04/01/2018 - 06/30/2047	\$43	955
105. OXYGEN CONCENTRATOR	2.0%	04/01/2018 - 06/30/2047	\$4,000	88,883
106. PORTABLE OXYGEN CONCENTRATOR	2.0%	04/01/2018 - 06/30/2047	\$625	13,888
107. PORTABLE OXYGEN REGULATOR AND BAG	2.0%	ONE TIME COST 04/01/2028	\$110	90
	2.0%	ONE TIME COST 04/01/2038	\$110	74
108. LIFE CARE SOLUTIONS NEBULIZER	2.0%	04/01/2018 - 06/30/2047	\$23	511
109. SPRAGUE RAPPAPORT STETHOSCOPE	2.0%	04/01/2018 - 06/30/2047	\$3	67
110. BLOOD PRESSURE MONITOR	2.0%	04/01/2018 - 06/30/2047	\$14	311
111. PULSE OXIMETER	2.0%	04/01/2018 - 06/30/2047	\$31	689
112. DISPOSABLE PULSE OXIMETER PROBE	2.0%	04/01/2018 - 06/30/2047	\$911	20,243
113. PORTABLE PULSE OXIMETER	2.0%	04/01/2018 - 06/30/2047	\$25	556
114. TRANSCUTANEOUS ELECTRICAL NERVE STIMULATION UNIT	2.0%	04/01/2018 - 06/30/2047	\$123	2,733

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
115. INNOVO ISOOTHE WIRELESS RECHARGEABLE ELECTRONIC PULSE MASSAGER ELECTROTHERAPY DEVICE	2.0%	04/01/2018 - 06/30/2047	\$9	\$200
116. JAECO MULTILINK MOBILE ARM SUPPORT / MECHANICAL ARM	2.0%	ONE TIME COST 04/01/2028	\$4,125	3,384
117. BLADDER SUPPLIES	2.0%	04/01/2018 - 06/30/2047	\$2,576	57,241
118. BOWEL MANAGEMENT SUPPLIES	2.0%	04/01/2018 - 06/30/2047	\$3,367	74,818
119. PERSONAL CARE CLEANING / DISINFECTANT / SANITIZING SUPPLIES	2.0%	04/01/2018 - 06/30/2047	\$1,172	26,043
120. RESPIRATORY SUPPLIES	2.0%	04/01/2018 - 06/30/2047	\$4,855	107,882
121. JOBST KNEE HIGH COMPRESSION STOCKINGS	2.0%	04/01/2018 - 06/30/2047	\$282	6,266
122. TENS UNIT ELECTRODES	2.0%	04/01/2018 - 06/30/2047	\$260	5,777
123. TENS UNIT LEADS	2.0%	04/01/2018 - 06/30/2047	\$50	1,111
124. INNOVO ISOOTHE WIRELESS RECHARGEABLE ELECTRONIC PULSE MASSAGER ELECTROTHERAPY DEVICE PADS	2.0%	04/01/2018 - 06/30/2047	\$9	200
125. ADAPTIVE CLOTHING ALLOWANCE	2.0%	04/01/2018 - 06/30/2047	\$777	17,266
126. INDEPENDENT LIVING AIDS	2.0%	04/01/2018 - 06/30/2047	\$350	7,777
127. BILATERAL ULTRA FLEX ELBOW WRIST HAND ORTHOSIS	2.0%	04/01/2018 - 06/30/2047	\$3,695	82,106
128. LEFT ELBOW DYNASPLINT REPLACEMENT PADS	2.0%	04/01/2018 - 06/30/2047	\$240	5,333
129. PODUS HEEL BOOTS	2.0%	04/01/2018 - 06/30/2047	\$160	3,555
130. OUTPATIENT HOSPITALIZATION FOR URINARY TRACT INFECTIONS				
<i>PROFESSIONAL FEE</i>	1.0%	04/01/2018 - 06/30/2047	\$417	10,587
<i>FACILITY FEE</i>	0.0%	04/01/2018 - 06/30/2047	\$794	23,225

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
131. INPATIENT HOSPITALIZATION FOR UTIS				
<i>PROFESSIONAL FEE</i>				
		ONE TIME COST 04/01/2018	\$2,917	\$2,917
	1.0%	ONE TIME COST 04/01/2025	\$2,917	2,721
	1.0%	ONE TIME COST 04/01/2032	\$2,917	2,538
	1.0%	ONE TIME COST 04/01/2039	\$2,917	2,367
	1.0%	ONE TIME COST 04/01/2046	\$2,917	2,208
<i>FACILITY FEE</i>				
		ONE TIME COST 04/01/2018	\$137,872	137,872
	0.0%	ONE TIME COST 04/01/2025	\$137,872	137,872
	0.0%	ONE TIME COST 04/01/2032	\$137,872	137,872
	0.0%	ONE TIME COST 04/01/2039	\$137,872	137,872
	0.0%	ONE TIME COST 04/01/2046	\$137,872	137,872
132. INPATIENT HOSPITALIZATION FOR DECUBITUS ULCER WITH FLAP				
<i>PROFESSIONAL FEE</i>				
	1.0%	04/01/2018 - 03/31/2028	\$1,147	10,922
<i>FACILITY FEE</i>				
	0.0%	04/01/2018 - 03/31/2028	\$75,714	757,140
133. INPATIENT HOSPITALIZATION FOR PNEUMONIA WITH RESPIRATORY FAILURE				
<i>PROFESSIONAL FEE</i>				
	1.0%	ONE TIME COST 06/01/2030	\$2,917	2,584
	1.0%	ONE TIME COST 06/01/2039	\$2,917	2,363
	1.0%	06/01/2039 - 06/30/2047	\$972	6,118
<i>FACILITY FEE</i>				
	0.0%	ONE TIME COST 06/01/2030	\$122,444	122,444
	0.0%	ONE TIME COST 06/01/2039	\$122,444	122,444
	0.0%	06/01/2039 - 06/30/2047	\$40,815	329,921
134. ATTENDANT				
	1.5%	04/01/2018 - 06/30/2047	\$223,380	5,300,296
	1.5%	04/01/2018 - 06/30/2047	\$18,615	441,691
<i>OFFSET 24 HRS / DAY</i>				
		ONE TIME COST 04/01/2018	(\$8,568)	(8,568)
	1.5%	ONE TIME COST 04/01/2025	(\$8,568)	(7,720)
	1.5%	ONE TIME COST 04/01/2032	(\$8,568)	(6,956)
	1.5%	ONE TIME COST 04/01/2039	(\$8,568)	(6,267)
	1.5%	ONE TIME COST 04/01/2046	(\$8,568)	(5,647)
	1.5%	04/01/2018 - 03/31/2028	(\$3,672)	(34,138)
	1.5%	ONE TIME COST 06/01/2030	(\$8,568)	(7,148)
	1.5%	ONE TIME COST 06/01/2039	(\$8,568)	(6,252)
	1.5%	06/01/2039 - 06/30/2047	(\$2,856)	(15,881)
<i>OFFSET 2 HRS / DAY</i>				
		ONE TIME COST 04/01/2018	(\$714)	(714)
	1.5%	ONE TIME COST 04/01/2025	(\$714)	(643)
	1.5%	ONE TIME COST 04/01/2032	(\$714)	(580)
	1.5%	ONE TIME COST 04/01/2039	(\$714)	(522)
	1.5%	ONE TIME COST 04/01/2046	(\$714)	(471)
	1.5%	04/01/2018 - 03/31/2028	(\$306)	(2,845)
	1.5%	ONE TIME COST 06/01/2030	(\$714)	(596)
	1.5%	ONE TIME COST 06/01/2039	(\$714)	(521)
	1.5%	06/01/2039 - 06/30/2047	(\$238)	(1,323)

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
135. SKILLED NURSING - REGISTERED NURSE				
<i>OFFSET</i>	1.0%	04/01/2018 - 06/30/2047	\$40,150	\$1,019,350
		ONE TIME COST 04/01/2018	(\$1,540)	(1,540)
	1.0%	ONE TIME COST 04/01/2025	(\$1,540)	(1,436)
	1.0%	ONE TIME COST 04/01/2032	(\$1,540)	(1,340)
	1.0%	ONE TIME COST 04/01/2039	(\$1,540)	(1,250)
	1.0%	ONE TIME COST 04/01/2046	(\$1,540)	(1,166)
	1.0%	04/01/2018 - 03/31/2028	(\$660)	(6,285)
	1.0%	ONE TIME COST 06/01/2030	(\$1,540)	(1,364)
	1.0%	ONE TIME COST 06/01/2039	(\$1,540)	(1,248)
	1.0%	06/01/2039 - 06/30/2047	(\$513)	(3,229)
136. CASE MANAGER	1.0%	04/01/2018 - 06/30/2047	\$10,080	255,916
137. HOUSECLEANING	1.5%	04/01/2018 - 06/30/2047	\$6,760	160,399
138. INTERIOR / EXTERIOR HOME MAINTENANCE	1.5%	04/01/2018 - 06/30/2047	\$2,646	62,784
139. IPAD	2.0%	04/01/2018 - 06/30/2047	\$193	4,289
140. IPAD SHATTERPROOF COVER	2.0%	04/01/2018 - 06/30/2047	\$80	1,778
141. IPAD DATA PLAN	2.0%	04/01/2018 - 06/30/2047	\$270	6,000
142. DRAGON NATURALLY SPEAKING SOFTWARE UPDATES	2.0%	04/01/2018 - 06/30/2047	\$100	2,222
143. LARGE FOAM THERAPEUTIC WEDGE		ONE TIME COST 04/01/2018	\$87	87
	2.0%	ONE TIME COST 04/01/2028	\$87	71
	2.0%	ONE TIME COST 04/01/2038	\$87	59
144. EASTSTAND EVOLV STANDING FRAME	2.0%	04/01/2018 - 06/30/2047	\$1,815	40,331
145. STANDING FRAME MAINTENANCE	2.0%	04/01/2018 - 06/30/2047	\$360	8,000
146. HAND SKATE ROLLER EXERCISER	2.0%	04/01/2018 - 06/30/2047	\$34	756
147. ADJUSTABLE PLATFORM MAT				
	2.0%	ONE TIME COST 06/01/2027	\$5,655	4,716
	2.0%	ONE TIME COST 06/01/2037	\$5,655	3,869
148. MAT PLATFORM REPLACEMENT MAT	2.0%	06/01/2022 - 06/30/2047	\$127	2,314
149. HEAD FLOAT	2.0%	04/01/2018 - 06/30/2047	\$43	955

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
150. SECTIONAL RAFT	2.0%	04/01/2018 - 06/30/2047	\$87	\$1,933
151. POWER POOL LIFT		ONE TIME COST 04/01/2018	\$7,782	7,782
	2.0%	ONE TIME COST 04/01/2028	\$7,782	6,384
	2.0%	ONE TIME COST 04/01/2038	\$7,782	5,237
152. POWER POOL LIFT SLINGS	2.0%	04/01/2018 - 06/30/2047	\$325	7,222
153. RT300-SLSA FUNCTIONAL ELECTRICAL STIMULATION		ONE TIME COST 04/01/2018	\$25,530	25,530
	2.0%	ONE TIME COST 10/01/2026	\$25,530	21,574
	2.0%	ONE TIME COST 04/01/2035	\$25,530	18,233
	2.0%	ONE TIME COST 10/01/2043	\$25,530	15,407
154. FES ELECTRODES	2.0%	04/01/2018 - 06/30/2047	\$618	13,732
155. FES REPLACEMENT STIMULATION CABLE	2.0%	04/01/2019 - 06/30/2047	\$293	6,220
156. BIONESS H200 WIRELESS	2.0%	04/01/2018 - 06/30/2047	\$2,107	46,819
157. BIONESS ELECTRODES	2.0%	04/01/2018 - 06/30/2047	\$1,820	40,442
158. BIONESS BATTERY REPLACEMENT	2.0%	04/01/2018 - 06/30/2047	\$250	5,555
159. ACTION TRACKER		ONE TIME COST 04/01/2018	\$12,713	12,713
	2.0%	ONE TIME COST 04/01/2028	\$12,713	10,429
	2.0%	ONE TIME COST 04/01/2038	\$12,713	8,555
160. TRACKCHAIR RECHARGEABLE BATTERIES	2.0%	ONE TIME COST 06/01/2027	\$200	167
	2.0%	ONE TIME COST 06/01/2037	\$200	137
161. WHEELCHAIR ACCESSIBLE 4-WHEEL DRIVE VAN		ONE TIME COST 04/01/2018	\$51,209	51,209
	2.0%	ONE TIME COST 04/01/2024	\$51,209	45,470
	2.0%	ONE TIME COST 04/01/2030	\$51,209	40,378
	2.0%	ONE TIME COST 04/01/2036	\$51,209	35,853
	2.0%	ONE TIME COST 04/01/2042	\$51,209	31,838
162. WHEELCHAIR ACCESSIBLE VAN EQUIPMENT MAINTENANCE	2.0%	04/01/2018 - 06/30/2047	\$250	5,555
163. TRAVEL TO ENGLEWOOD, COLORADO	2.0%	04/01/2018 - 06/30/2047	\$3,254	72,307
164. TRAVEL TO PHOENIX, ARIZONA	2.0%	04/01/2018 - 06/30/2047	\$2,016	44,797

DESCRIPTION	NET DISCOUNT RATE	TIME PERIOD	ANNUAL AMOUNT	PRESENT VALUE
165. HOME MODIFICATIONS		ONE TIME COST 04/01/2018	\$81,080	\$81,080
	2.0%	ONE TIME COST 10/01/2032	\$81,080	60,840
166. GULDMANN CEILING LIFT SYSTEM		ONE TIME COST 04/01/2018	\$10,500	10,500
	2.0%	ONE TIME COST 04/01/2025	\$10,500	9,140
	2.0%	ONE TIME COST 04/01/2032	\$10,500	7,957
	2.0%	ONE TIME COST 04/01/2039	\$10,500	6,928
	2.0%	ONE TIME COST 04/01/2046	\$10,500	6,031
167. CEILING LIFT SLINGS	2.0%	04/01/2018 - 06/30/2047	\$271	6,022
168. CEILING LIFT BATTERIES		ONE TIME COST 04/01/2018	\$300	300
	2.0%	ONE TIME COST 04/01/2024	\$300	266
	2.0%	ONE TIME COST 04/01/2030	\$300	237
	2.0%	ONE TIME COST 04/01/2036	\$300	210
	2.0%	ONE TIME COST 04/01/2042	\$300	187
169. 60 HX AIR-COOLED GENERATOR	2.0%	ONE TIME COST 06/01/2027	\$2,890	2,410
	2.0%	ONE TIME COST 06/01/2037	\$2,890	1,977
170. GENERAC GENERATOR		ONE TIME COST 04/01/2018	\$995	995
	2.0%	ONE TIME COST 04/01/2028	\$995	816
	2.0%	ONE TIME COST 04/01/2038	\$995	670
171. 200 GALLON PROPANE TANK	2.0%	04/01/2018 - 06/30/2047	\$232	5,155
				PRESENT VALUE
				\$14,282,286

FOOTNOTE:

¹ THE NET DISCOUNT RATE IS THE ANTICIPATED SPREAD BETWEEN THE RATE OF RETURN ON INVESTMENTS AND THE RATE OF INCREASE IN CARE COSTS AND SERVICES. THE RATE OF RETURN ON INVESTMENTS IS BASED UPON A MIX OF SHORT AND MEDIUM-TERM U.S. GOVERNMENT SECURITIES. RATES OF RETURN ARE REPORTED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. THE INCREASE IN THE COST OF MEDICAL CARE SERVICES AND COMMODITIES IS BASED ON THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, MEDICAL CARE COMMODITIES AND SERVICES INDEXES. THE INCREASE IN THE COST OF NON-MEDICAL SERVICES IS BASED ON THE HOURLY COMPENSATION SERIES PUBLISHED BY THE U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

EXHIBIT 7

EXHIBIT 7

**RELEASE
AND
SETTLEMENT AGREEMENT**

WHEREAS, DARIA HARPER, individually and DANIEL WININGER, individually (hereinafter identified as "PLAINTIFFS"), have alleged claims against [REDACTED]

[REDACTED] (hereinafter referred to as "DEFENDANTS"), for damages allegedly sustained by PLAINTIFFS on or about June 9, 2015, which is the subject matter of Case Number A-16-738004-C in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark.

WHEREAS, DEFENDANTS herein deny all liability whatsoever for any damages resulting from any allegations from the above incident against them or any of their employees or agents; and

WHEREAS, the parties are desirous of resolving the aforementioned claim;

NOW, therefore,

In and For Consideration of [REDACTED] to be paid to "LAW OFFICES OF MARSHALL SILBERBERG, LAW OFFICES OF THOMAS ALCH, DARIA HARPER and DANIEL WININGER," constituting payment for pain, suffering, disfigurement and past and future medical care needs allegedly caused by DEFENDANTS, in exchange for dismissal with prejudice of Case Number A-16-738004-C, PLAINTIFFS agree to assume responsibility for and to satisfy and discharge all applicable and legally enforceable liens, conditional payments, claims, bills and expenses arising from all medical, psychological, rehabilitative, hospital, skilled nursing, hospice, institutional or other care and treatment, benefits and related services, supplies, drugs, medication, durable medical equipment, and/or prostheses provided to PLAINTIFFS related to the disputed claims from the settlement funds, and to fully defend, indemnify and hold DEFENDANTS harmless from any and all such liens, conditional payments, claims, bills, costs, expenses, damages, recoveries and deficiencies including interest, penalties and reasonable attorney's fees that PLAINTIFFS may incur or which may arise, or relate to any subsequent litigation or liability of DEFENDANTS, or on account of any actions, claims or demands by lien holders including but not limited to Worker's Compensation, Medicare and/or Medicaid payments or conditional payments, liens and/or subrogation interests, if any. PLAINTIFFS further agree to and will instruct their attorneys to satisfy all applicable Worker's Compensation, State and Federal obligations from the settlement proceeds, including but not limited to those associated with Medicare and Medicaid, and not to withdraw that instruction for any reason, and further to authorize and/or permit their attorneys to take whatever steps are necessary to satisfy these obligations without interference, and assist counsel to the extent possible and necessary in their attempts to comply with this requirement. PLAINTIFFS specifically agree to assume responsibility for and to discharge any liens, subrogated or assigned claims, and/or conditional payments, bills or expenses paid by any governmental entity, governmental agency, governmental provider, third party insurance carrier or any other person or entity related to disputed claims, including but not limited to Medicare Secondary Payer claims for reimbursement

of conditional payments by Medicare, and to defend, indemnify and hold harmless DEFENDANTS from any and all liability or causes of action arising out of same, if any such obligation exists. Also, PLAINTIFFS agree to waive any actions or future claims against DEFENDANTS available under Medicare, Medicaid, and/or the SCHIP Extension Act of 2007 and their related amendments.

1. **RELEASE.** PLAINTIFFS do hereby forever discharge and release DEFENDANTS, their past and present employer(s), past and present affiliates, past and present partners, past and present employees, past and present parent companies, past and present joint venturers, predecessors, attorney(s), agents, successors and assigns (identified hereafter as "RELEASEES") from any and actions or causes of actions, suits, claims, counterclaims, contracts, promises, liabilities, debts, damages, sums of money, accounts and demands whatsoever which PLAINTIFFS now or have ever had against DEFENDANTS, their past and present employer(s), past and present affiliates, past and present partners, past and present employees, past and present parent companies, past and present joint venturers, predecessors, attorney(s), agents, successors and assigns for any and all claims for damages alleged regarding the above incident and any claim, litigation cause of action or controversy asserted against his past and present employer(s), past and present affiliates, past and present partners, past and present employees, past and present parent companies, past and present joint venturers, predecessors, attorney(s), agents, successors and assigns, arising from payments made for or concerning damages in the form of personal injury pain and suffering alleged as a result of the incident which is the subject of the aforementioned claim.
2. **INDEMNITY AND HOLD HARMLESS.** Except as stated above, PLAINTIFFS do hereby agree to hold harmless and indemnify RELEASEES against all loss, damage, and tax incurred in the future as a result of any claims, litigation or controversy concerning any claim resulting from the aforementioned events, which are described more fully in pleadings filed in Case Number A-16-738004-C in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark. PLAINTIFFS agree to hold RELEASEES harmless and to indemnify RELEASEES, for any claims arising from payments made to PLAINTIFFS for damages alleged as a result of the allegations of the above aforementioned events which are the subject of this dispute, which are described more fully in pleadings filed in Case Number A-16-738004-C in the District Court, Clark County Nevada. PLAINTIFFS do hereby agree to hold harmless and indemnify RELEASEES for and against all liens including any action by any current or prior counsel for PLAINTIFFS, Medicare or Medicaid by reason of the foregoing matter.
3. **GOVERNING LAW.** This agreement shall be interpreted under the laws of the State of Nevada and shall be binding on the parties hereto, their successors, assigns, heirs, and personal representatives.
4. **SETTLEMENT AND COMPROMISE.** It is further agreed and understood by PLAINTIFFS, that this agreement and release does not amount to an admission of any kind

of fault or liability on the part of RELEASEES, that this agreement represents a full and good faith compromise and settlement of any and all claims PLAINTIFFS now have, or ever had against RELEASEES as a result of any allegations regarding the above events; and this Agreement and Release is fully binding upon PLAINTIFFS and is fully binding upon RELEASEES.

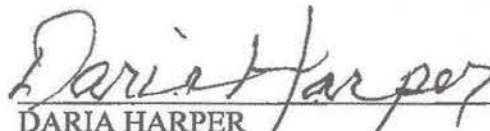
5. **SEVERABILITY.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
6. **COUNTERPARTS.** It is further agreed by all parties that this settlement Agreement and Release may be executed in counterparts and will have the same force and effect and be fully binding as though the document was executed simultaneously in one physical location.
7. **ENTIRE AGREEMENT.** The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Settlement Agreement and Release contains the entire agreement between the parties hereto, and that the terms of his Release are contractual and not a mere recital.
8. **GOOD FAITH.** PLAINTIFFS and DEFENDANTS hereby agree that the above terms and conditions constitute a complete settlement of all claims resulting from the aforementioned events, and dismissal of all claims as against DEFENDANTS and/or RELEASEES, with prejudice, was arrived at through arms-length negotiations, and entered into in good faith and is therefore a reasonable and good faith sum in settlement and release of all PLAINTIFFS' claims against DEFENDANTS and/or RELEASEES.
9. **CLASSIFICATION OF SETTLEMENT FUNDS.** All sums set forth herein constitute damages on account of physical injuries within the meaning of Section 104(a)(2) of the IRC of 1986, as amended.
10. **COLLATERAL SOURCE EVIDENCE.** Pursuant to NRS 42.021, and as allowed by the Court in the above described action, Defendants introduced evidence of Plaintiffs' health insurance for payment of Plaintiffs' past medical expenses. Defendants intended to argue that Plaintiffs were not entitled to an award of past medical payments by reason of the payment by Plaintiffs' insurer. The parties agree and acknowledge by reason of the admission of collateral source evidence, there was a substantial likelihood the jury would not have awarded any damages for past medical expenses or related costs.
11. **CONFIDENTIALITY.** PLAINTIFFS do hereby agree not to disclose that this matter was settled, the amount of this settlement, the approximate amount of the settlement or any offer or counter-offer made between the parties, to any person(s), entity (ies), on any form of social media, or to any media or media representative. Nothing in this agreement shall

in any way limit PLAINTIFFS' ability to cooperate with, provide information or provide testimony in connection with any proceeding before the Nevada Board of Medical Examiners or to any governmental agency.

12. **MEDICARE.** The PLAINTIFFS declare and expressly warrant that they are not Medicare eligible nor within thirty (30) months of becoming Medicare eligible; is not 65 years of age or older; is not suffering from end stage renal failure or amyotrophic lateral sclerosis; has not received Social Security benefits for 24 months or longer; and has not applied for Social Security benefits, and/or has not been denied Social Security disability benefits and appealing the denial. Relying on these representations, no Medicare Set Aside Allocation ("MSA") is being established. In the event that any of the above information provided by PLAINTIFFS is false or in any way incorrect, PLAINTIFFS shall be solely liable for any and all actions, cause of actions, penalties, claims, costs, services, compensation or the like resulting from these inaccuracies. PLAINTIFFS acknowledge that Medicare may require PLAINTIFFS to exhaust the entire settlement proceeds on Medicare covered expenses should they become Medicare eligible within thirty (30) months. PLAINTIFFS specifically waive any claims for damages against DEFENDANTS and/or RELEASEES, including a private cause of action provided in the MSP, 42 U.S.C. Section 1395(b)(3)(A), should Medicare deny coverage for any reason, including the failure to establish a set aside allocation to protect Medicare's interest. PLAINTIFFS, upon advice of counsel, and in accord with the release, agree that any and all applicable medical and other liens related to this litigation are to be paid out of the settlement proceeds, and that Medicare and any other liens related to this litigation are to be paid out of the settlement proceeds, and that Medicare and any other lien claims are the sole responsibility of PLAINTIFFS, with nothing further to be sought from DEFENDANTS and/or RELEASEES. In the event that this information is false or in any way incorrect, PLAINTIFFS expressly warrant and agree that said liens will be their sole responsibility and will be paid from these settlement proceeds with nothing further to be sought from DEFENDANTS and/or RELEASEES.

WHEREFORE, PLAINTIFFS, DARIA HARPER, individually and DANIEL WININGER, individually, hereto set their hand and seal this

10 day of May 2018.


DARIA HARPER


DANIEL WININGER

ACKNOWLEDGMENT

ARIZONA)
STATE OF NEVADA)
MOHAVE) ss:
COUNTY OF CLARK)

On the 10th day of May, 2018, before me the undersigned, a Notary Public, personally appeared DARIA HARPER, known to me to be the person(s) who executed the foregoing settlement agreement and general release and acknowledged that he/she has done so as his/her free act and deed.

IN TESTIMONY WHEREOF, I have here into set my hand and affix my official seal the day and year last above written.



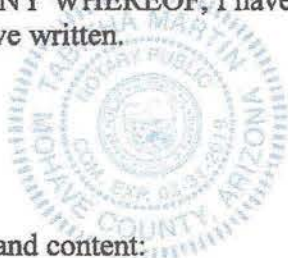
Tabitha Martin
NOTARY PUBLIC

ACKNOWLEDGMENT

ARIZONA)
STATE OF NEVADA)
MOHAVE) ss:
COUNTY OF CLARK)

On the 10th day of May, 2018, before me the undersigned, a Notary Public, personally appeared DANIEL WININGER, known to me to be the person(s) who executed the foregoing settlement agreement and general release and acknowledged that he/she has done so as his/her free act and deed.

IN TESTIMONY WHEREOF, I have here into set my hand and affix my official seal the day and year last above written.



Tabitha Martin
NOTARY PUBLIC

Approved as to form and content:

Daria Harper
DARIA HARPER

Daniel Wininger
DANIEL WININGER

Thomas S. Alch

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd, Suite 300
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

EXHIBIT 8

EXHIBIT 8

July 2, 2018

VIA EMAIL AND U.S. MAIL

Pam Fudge
Recovery Specialist
Legal Department
CopperPoint Insurance Companies
3030 N. 3rd Street
Phoenix, AZ 85012-3039
FAX – (602)631-2188

Re: Daria Harper
Claim No.: 14G01532
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Dear Ms. Fudge:

I received your letter dated June 22, 2018, regarding your request for an update and your claim to a lien in this matter. As of this time, Mrs. Harper's case has settled. You were not made aware of the settlement because CopperPoint is not entitled to a lien, as will be explained in more detail below.

As I understand it, CopperPoint claims it is entitled to a lien based upon A.R.S. § 23-1023(D). Mrs. Harper's case was never filed in Arizona, it was filed, litigated, and resolved in Nevada as that is where the injury occurred. Hence, Arizona law has no application or enforceability in Nevada. Therefore, the aforementioned code section does not permit a lien in another state, which is a position supported by the Nevada courts and case law.

As for Nevada law, that State does not permit Workers' Compensation to assert a lien in a medical malpractice case. NRS § 42.021 sets forth "**In an action for injury or death against a provider of health care based upon professional negligence**, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state or federal income disability or **worker's compensation** act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has

May 12, 2020
Page 2

paid or contributed to secure the plaintiff's right to any insurance benefits concerning which the defendant has introduced evidence.”

Section 42.021, goes on to state, specifically in subsection (2), that “a source of collateral benefits introduced pursuant to subsection (1) **may not....(a) Recover any amount against the plaintiff.**” (I have attached a copy of this statute for your convenience). Quite clearly, this means that in the State of Nevada, any workers compensation insurance company may not recover any amount against a plaintiff. This also means that any such insurance company may not place a lien on any proceeds of a settlement.

Here, there is no dispute that Mrs. Harper suffered an injury in the State of Nevada as a result of medical malpractice. For this reason, Mrs. Harper's case was filed in Nevada, governed by Nevada law, thereby implicating the statute cited above, along with the protections that preclude CopperPoint having a lien on any proceeds. Nevada law is identical to California law, and Courts in both states do not permits liens, such as the one to which you claim to be entitled.

Moving forward, it is my expectation, and that of my client, that CopperPoint will continue to provide for Mrs. Harper's care. Should CopperPoint at any point in time intentionally, or otherwise, withhold any medical care to which Mrs. Harper is entitled, our office will take immediate legal action.

Please call to discuss the foregoing.

I remain,

Very truly yours,

Marshall Silberberg

EXHIBIT 9

EXHIBIT 9

NOTICE OF CLAIM STATUS

Carrier or Self-Insured Name and Address CopperPoint General Insurance Company / CLAIMS DEPT. P.O. Box 33069 Phoenix, AZ 85067-3069	ICA Claim No. <u>20142520533</u> Soc. Sec. No. <u>###/##/####</u> SSN not required if correct ICA claim number is provided
Authorized Third Party Administrator (TPA) Name and Address	Carrier Claim No. <u>14G01532</u> Employer <u>ISLANDER RV RESORT LLC</u>
Claimant's Name and Address DARIA HARPER 3336 DATE PALM DR. LAKE HAVASU CITY, AZ 86404	Address <u>LAKE HAVASU CITY, AZ 86403</u> <u>LAKE HAVASU CITY, AZ 86403</u> Date of Injury <u>08/11/2014</u>

- 1. Claim is accepted.
- 2. Claim is denied.
- 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- 4. Enclosed check for _____ for period of _____ through _____. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 2/3 percent of the wage of _____ based on the following:
 - A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
 - B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- 5. Return to light duty effective _____. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective _____.
- 6. Temporary compensation and active medical treatment terminated on _____ because claimant was discharged.
- 7. Injury resulted in no permanent disability.
- 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- 9. Petition to Reopen accepted.
- 10. Petition to Reopen denied.
- 11. Other:

• Pursuant to A.R.S. § 23-1023, CopperPoint has a lien against Claimant's third-party recovery from a medical malpractice action (case No. A-16-738004-C) brought in the District Court of Clark County, Nevada, in an amount equal to compensation

Mailed on: 10/30/2019 By: Jeff de Veuve

Copy to: Industrial Commission of Arizona (Authorized Representative) Tel. #: (602) 631-2966

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su peticion por escrito pidlendo una audiencia debera ser recibida en cualquiera de las oficinas de la Comision Industrial a las direcciones abajo indicadas dentro de NOVENTA (90) DIAS despues de la fecha de este AVISO, de acuerdo con las leyes A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA RECIBIDA DENTRO DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO SERA CONSIDERADO FINAL.

Phoenix Office: Industrial Commission of Arizona
 800 W Washington Street
 Phoenix, Arizona 85007-2922

PO Box 19070
 Phoenix, AZ 85005-9070

Tucson Office: Industrial Commission of Arizona
 2675 E Broadway
 Tucson, Arizona 85716-5342

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

Date: 10/30/19
Claimant Name: Daria Harper
Claim Number: 14G01532

11. Continued from page 1

- and medical, surgical, and hospital benefits paid by CopperPoint.
- CopperPoint is entitled to accrued interest on the lien from the date settlement proceeds were disbursed.
- CopperPoint is entitled to a future credit against Claimant's recovery equal to the amount of money received by the Claimant in the malpractice action after subtracting expenses and attorney fees.
- CopperPoint is not required to pay claimant compensation or medical, surgical, or hospital benefits until the claimant's post-settlement accrued entitlement to compensation and medical benefits exceeds the credit amount.
- To the extent the settlement in the malpractice action was less than the workers' compensation benefits provided by CopperPoint, Claimant's failure to obtain CopperPoint's prior approval before settling results in forfeiture of her workers' compensation claim.

CC: Marshall Silberberg
William Stephens Collins
LAW OFFICES OF MARSHALL
SILBERBERG
3333 Michelson Drive, Suite 710
Irvine, CA 92612

EXHIBIT 10

EXHIBIT 10



April 2, 2020

VIA CERTIFIED AND U.S. MAIL

Ms. Daria Harper
3336 Date Palm Drive
Lake Havasu, AZ 86404

Re: Daria Harper
Claim No.: 14G01532
DOI: 08/11/2014
Employer: Islander RV Resort LLC

Dear Ms. Harper:

We are writing to you with regard to the status of your workers' compensation claim and **CopperPoint Mutual Insurance Company's ("CopperPoint") lien rights**. As you already know, you settled your medical malpractice action (Case No. A-16-738004-C in the District Court of Clark County, Nevada) without CopperPoint's consent, as is required by Arizona law. You also have not resolved CopperPoint's lien for the worker's compensation benefits paid to you. As you are also well aware, CopperPoint has tried to work toward a resolution of these matters for over a year through your counsel but to no avail. As a result, there are presently pending proceedings before the Arizona Industrial Commission pertaining to CopperPoint's lien.

Throughout the last several years, and despite the lack of cooperation on your behalf in seeking resolution of the lien, CopperPoint has continued to pay to you a full range of workers compensation benefits which to date amounts to millions of dollars. CopperPoint has tried repeatedly to work with you on resolving the lien, even though you did: a) not bother to inform CopperPoint of the settlements when they were reached, b) failed to obtain CopperPoint's consent to the settlements as required by law, and c) continually refused to provide the amounts of the settlements. In fact, the amounts paid appear to exceed the amount of funds received by you personally in the settlement of your litigation.

CopperPoint is entitled to interest on the lien amount since the date of your medical malpractice settlements in 2018. Further, CopperPoint is entitled to a credit against future workers compensation payments to you equal to the amount of money you received in the medical malpractice settlements less appropriate expenses and attorneys' fees.

CopperPoint has been very accommodating in seeking a resolution of the lien issue for so long. This is especially true given the medical malpractice settlements were effectively and intentionally kept secret from CopperPoint. Moreover, when CopperPoint learned on its own of the settlements, information concerning the amount and terms of the settlements were still withheld and no attempt to resolve the lien was made on your behalf. As of this letter, we are approximately five months since the filing of CopperPoint's Notice of Claim Status and there still has been no

action by you to address CopperPoint's outstanding lien. Nevertheless, CopperPoint continued to pay full workers compensation payments to you even though it was not legally required. However, this benevolent conduct by CopperPoint cannot continue indefinitely.

Therefore, please be informed:

COPPERPOINT WILL TERMINATE PAYMENT OF YOUR WORKERS' COMPENSATION BENEFITS EFFECTIVE THIRTY DAYS FROM THE DATE OF THIS LETTER.

No further benefits will be paid until your post-settlement accrued entitlement to compensation and medical benefits exceeds CopperPoint's credit for its lien. It is anticipated this may result in no further benefits becoming payable in the future.¹

If you have any questions, please feel free to contact us.

Very truly yours,

COPPERPOINT MUTUAL INSURANCE COMPANY


By
Ginny Arnett Caro

cc: Adam Palmer, Esq.

¹ Moreover, to the extent the settlement in your malpractice action was less than the workers' compensation benefits provided by CopperPoint, your failure to obtain CopperPoint's prior approval before settling the malpractice claim results in a forfeiture of your workers' compensation claim.

EXHIBIT 11

EXHIBIT 11

NOTICE OF CLAIM STATUS

Carrier or Self-Insured Name and Address CopperPoint General Insurance Company 3030 N 3rd St Phoenix, AZ 85012	ICA Claim No. <u>20142520533</u> Soc. Sec. No. _____ SSN not required if correct ICA claim number is provided
Authorized Third Party Administrator (TPA) Name and Address	Carrier Claim No. <u>14G01532</u> Employer <u>Islander RV Resort LLC</u>
Claimant's Name and Address Daria Harper C/O SCHIFFMAN LAW OFFICE PC 4506 N 12TH ST PHOENIX AZ 85014	Address <u>751 Beachcomber Blvd</u> <u>Lake Havasu City, AZ 86403</u> Date of Injury <u>08/11/2014</u>

- 1. Claim is accepted.
- 2. Claim is denied.
- 3. No temporary compensation paid because the claimant has not currently sustained a temporary disability entitlement attributable to this injury beyond seven consecutive days.
- 4. Enclosed check for _____ for period of _____ through _____. Seven days deducted if disability is less than 14 calendar days. Payment has been made based on 66 2/3 percent of the wage of _____ based on the following:
 - A. Statutory minimum or estimated monthly wage pending determination of Average Monthly Wage within 30 days.
 - B. Average monthly wage at time of injury (see attached calculation), subject to final determination by the Industrial Commission of Arizona within 30 days.
- 5. Return to light duty effective _____. Per A.R.S. §23-1044(A) and A.R.S. §23-1062(D) benefits are payable at least monthly. Return to regular duty effective _____.
- 6. Temporary compensation and active medical treatment terminated on _____ because claimant was discharged.
- 7. Injury resulted in no permanent disability.
- 8. Injury resulted in permanent disability. Amount of permanent benefits, if any, and supportive medical maintenance benefits, if any, will be authorized by separate Notice.
- 9. Petition to Reopen accepted.
- 10. Petition to Reopen denied.
- 11. Other:

Future compensation, medical, surgical, hospital, pharmacy, caretaker & other benefits payable to applicant or behalf of applicant are terminated effective May 2, 2020 until CopperPoint's current lien of \$3,171,095.00 is fully exhausted

Mailed on: 05/01/2020 By: Jeffrey Deveuve

Copy to: Industrial Commission of Arizona (Authorized Representative) Tel. #: (602) 631-2300

The insurance carrier/employer will, upon request, provide claimant a copy of the medical report to support Findings 5, 6, 7 or 8.

NOTICE TO CLAIMANT: If you do not agree with this NOTICE and wish a hearing on the matter, your written Request for Hearing must be received at either office of the Industrial Commission listed below within NINETY (90) DAYS after the date of mailing of this Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH APPLICATION IS RECEIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTICE IS FINAL.

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Phoenix Office: Industrial Commission of Arizona 800 W Washington Street Phoenix, Arizona 85007-2922	Tucson Office: Industrial Commission of Arizona 2675 E Broadway Tucson, Arizona 85716-5342	
PO Box 19070 Phoenix, AZ 85005-9070		

THIS FORM APPROVED BY THE INDUSTRIAL COMMISSION OF ARIZONA FOR CARRIER USE

EXHIBIT 2

EXHIBIT 2

1 **DECLARATION OF PLAINTIFF DANIEL WININGER IN SUPPORT OF**
2 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

3 I, DANIEL WININGER, declare:

4 1. I am a plaintiff in this lawsuit. I am knowledgeable of the facts contained herein and
5 am competent to testify thereto.

6 2. I am over the age of eighteen and I have personal knowledge of all matters set forth
7 herein. If called to do so, I would competently and truthfully testify to all matters set forth herein,
8 except for those matters stated to be based upon information and belief.

9 3. As a result of the medical treatment that my wife Daria Harper received in 2015 in Las
10 Vegas, Nevada she suffered serious injury resulting in quadriplegia, etc. and I suffered compensable
11 damages by virtue of my marital relationship with my wife.

12 4. On or about June 7, 2016, my wife and I filed a complaint in the District Court of
13 Nevada, Clark County as case number A-16-738004-C (“the underlying medical malpractice action”),
14 alleging that we sustained damages as a result of the medical negligence of the following named
15 defendants: (1) Valley Hospital Medical Center, Inc. dba Valley Hospital Medical Center, (2) Valley
16 Health Systems, LLC dba Valley Hospital Medical Center, (3) Jeffrey Davidson, M.D., (4) Cyndi
17 Tran, D.O., (5) Paul Janda, D.O., (6) Elizabeth Phung-Hart, D.O., (7) Andrea Agcaoili, D.O., and (8)
18 Murad Jussa, D.O. A copy of the complaint is attached as **Exhibit 4**.

19 5. My wife and I settled the underlying medical malpractice action for the total sum of
20 \$6,250,000. A partially redacted copy of one of the three settlement agreements is attached as **Exhibit**

21 **7**. Thereafter, in or about July 2018, the \$6,250,000 was paid and the defendants were dismissed.

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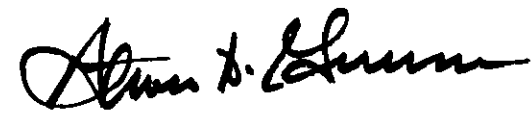
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EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

1 Thomas S. Alch, Esquire
2 Nevada State Bar No. 6876
3 Law Offices of Thomas S. Alch
4 500 N. Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Telephone: (702) 740-4140

5 100 N. Crescent Drive, Suite 360
6 Beverly Hills, California 90210
Telephone: (310) 281-8700

7 Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER

8 **DISTRICT COURT**

9 **CLARK COUNTY NEVADA**

11 DARIA HARPER, DANIEL WININGER,
12 Plaintiffs,

13 vs.

14 VALLEY HOSPITAL MEDICAL
15 CENTER, INC., doing business as VALLEY
HOSPITAL MEDICAL CENTER;
16 VALLEY HEALTH SYSTEM, LLC, doing
business as VALLEY HOSPITAL
17 MEDICAL CENTER; JEFFREY
DAVIDSON, M.D.; CYNDI TRAN, D.O.;
18 PAUL JANDA, D.O.; ELIZABETH
PHUNG-HART, D.O.; ANDREA
19 AGCAOILI, D.O.; MURAD JUSSA, M.D.,
and, DOES 1 through 250, inclusive,

20 Defendants.

CASE NO. A- 16 - 738004 - C

DEPARTMENT NO. XVI I

ARBITRATION EXEMPTION CLAIMED:
MEDICAL MALPRACTICE - RULE 3(A)(9)

22 **COMPLAINT FOR MEDICAL MALPRACTICE**

23 **MEDICAL MALPRACTICE**

24 **LOSS OF CONSORTIUM**

25 Plaintiffs DARIA HARPER and DANIEL WININGER, through Counsel, allege in
26 their Complaint for Medical Malpractice and Loss of Consortium, as follows:

27 ///

1 1. The true names, identities or capacities, whether individual, associate,
2 corporate or otherwise of Defendants DOES 1 through 250, inclusive, are unknown to
3 Plaintiffs who, therefore, sue said Defendants by such fictitious names. When the true names,
4 identities or capacities of such fictitiously-designated Defendants are ascertained, Plaintiffs
5 will ask leave of Court to amend the Complaint to insert said true names, identities and
6 capacities, together with the proper charging allegations.

7 2. Plaintiffs are informed and believe and thereon allege that each of the
8 Defendants sued herein as a DOE is responsible in some manner for the events and
9 happenings herein referred to, thereby legally causing the injuries and damages to the
10 Plaintiffs as herein alleged.

11 3. All of the facts, acts, events and circumstances herein mentioned and described
12 occurred in Clark County, State of Nevada, and all Defendants are residents of Clark County,
13 State of Nevada, doing business in said county, State of Nevada.

14 4. At all times herein mentioned Plaintiffs and each of them, were and currently
15 are residents of Lake Havasu City, state of Arizona.

16 5. At all times herein mentioned, Defendants JEFFREY DAVIDSON, M.D.,
17 CYNDI TRAN, D.O., PAUL JANDA, D.O. ELIZABETH PHUNG-HART, D.O., ANDREA
18 AGCAOILI, D.O., MURAD JUSSA, M.D., and DOES 1 through 50, inclusive, were, and now
19 are, physicians and surgeons, holding themselves out as duly licensed to practice their
20 profession under and by virtue of the laws of the State of Nevada and were, and now are,
21 engaged in the practice of their profession in the State of Nevada.

22 6. At all times herein mentioned, Defendants DOES 51 through 100, inclusive,
23 were, and now are, registered nurses, licensed vocational nurses, practical nurses, physician
24 assistants, aids, technicians, attendants, students or other paramedical personnel, holding
25 themselves out as duly able to practice their profession under and by virtue of the laws of the
26 State of Nevada and were, and now are, engaged in the practice of their profession in the State
27 of Nevada and acting as agents, employees and servants of some or all of the other Defendants
28 within the course and scope of said agency or employment.

1 7. At all times herein mentioned, Defendants VALLEY HOSPITAL MEDICAL
2 CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER, and
3 VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL
4 CENTER and DOES 101 through 150, and 151-250, and each of them, were corporations,
5 partnerships, joint ventures, or other entities organized and existing under the laws of the State
6 of Nevada and Delaware, with their principal place of business situated in the State of Nevada.

7 8. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
8 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
9 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 200,
10 inclusive, were at all times herein mentioned duly organized Nevada corporations or hospitals
11 existing under and by virtue of the laws of the State of Nevada and other States; that said
12 Defendant corporations, hospitals and the remaining Defendants, and each of them, owned,
13 operated, managed and controlled a general hospital facility within Clark County, State of
14 Nevada, held out to the public at large and to the Plaintiffs herein, as properly equipped, fully
15 accredited, competently staffed by qualified and prudent personnel and operating in
16 compliance with the standard of due care maintained in other properly equipped, efficiently
17 operated and administered, accredited hospitals in said community commonly known as
18 VALLEY HOSPITAL MEDICAL CENTER.

19 9. At all times herein mentioned Defendants DOES 201 through 250 were doing
20 business as a district hospital, a hospital operated by a government entity open to the public, or
21 a medical facility operated by a government entity open to the public rendering medical,
22 surgical, hospital, diagnostic, nursing and other care to the general public for compensation.

23 10. All of the acts complained of herein by Plaintiffs against said Defendants were
24 done and performed by said Defendants by and through their duly authorized agents, servants
25 and employees, each of whom and all of whom were at all times mentioned herein acting
26 within the course, purpose, and scope of their said agency, service and employment, and
27 whose conduct was ratified by all Defendants, and each of them. Further, each Defendant
28 ratified and affirmed the conduct of each other Defendant. At all times set forth herein, each of

1 the Defendants were acting as the agents, servants, and employees of the other Defendants.

2 11. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
3 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
4 doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 250,
5 and each of them, at all times herein mentioned were institutions or controlled institutions,
6 duly accredited by the Joint Commission on Hospital Accreditation, and assumed and held
7 themselves out to the public as in compliance with the minimum standards required by said
8 Joint Commission for such accreditation.

9 12. Plaintiffs are informed and believe and upon such information and belief allege
10 that at all times herein mentioned, Defendants and other Defendants named fictitiously, were
11 the agents, servants, employees, joint-venturers, and copartners of their said co-Defendants
12 and, as such, were acting within the course and scope of such agency, service, partnership,
13 venture, and employment at all times herein mentioned; that each and every Defendant, as
14 aforesaid, when acting as a principal, was negligent in the selection and hiring of each and
15 every other Defendant, as its agent, servant, employee, joint-venturer and partner. Further,
16 each and every Defendant ratified the conduct of the other Defendants.

17 13. Attached to this complaint are the following expert declarations supporting the
18 allegations of this complaint:

19 (1) David A. Neer, M.D., Neurology specialist;

20 (2) Michael Steven Ritter M.D., Emergency Medicine specialist;

21 **I.**

22 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR**
23 **MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF**
24 **THEM AS FOLLOWS:**

25 14. Plaintiff DARIA HARPER repeats and repleads each and every allegation
26 contained in all prior paragraphs and incorporates the same herein by reference as to
27 Defendants and each of them.

28 ///

1 15. At all times herein mentioned, the Plaintiff, DARIA HARPER, was in the
2 exclusive control of the Defendants, and each of them, and that at no time prior to the events,
3 conduct, activities, care and treatment herein complained of did the Defendants herein, or any
4 of them, obtain knowledgeable, informed consent for said care, treatment or conduct; that
5 prior to the initiation of or performance of said care, treatment, procedure or conduct no
6 opportunity was afforded the Plaintiff or any authorized agent of the Plaintiff to exercise
7 voluntary, knowledgeable and informed consent to said care, treatment, procedure or conduct.

8 16. On or about June 9, 2015 Plaintiff employed Defendants, and each of them, to
9 diagnose and treat her medical condition, and to do all things necessary for her care and
10 treatment, including, but not limited to surgery and hospitalization.

11 17. While Plaintiff DARIA HARPER was under the sole and exclusive care and
12 control of the Defendants, and each of them, Defendants, and each of them negligently,
13 carelessly and unskillfully examined, treated, cared for, diagnosed, operated upon, attended
14 and otherwise handled and controlled the Plaintiff herein, thereby proximately causing
15 injuries and damages to the. Said acts of negligence include, but are not limited to that
16 although the plaintiff was emergently transferred to Valley Hospital Medical Center on June 9,
17 2015, for an emergency neurosurgical consultation because of weakness and an inability to
18 move, as well as a CT scan that showed a mass compressing her spinal cord, the defendants
19 and each of them negligently delayed the diagnosis and treatment, and surgery was not
20 performed until June 11, 2015. The negligent failure to diagnose and treat Daria Harper's
21 condition caused her permanent paralysis.

22 18. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business
23 as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC.,
24 doing business as VALLEY HOSPITAL MEDICAL CENTER, and DOES 101-250, neglected
25 to adequately select a competent medical staff and to periodically review the competency of its
26 medical staff and failed to adequately monitor its staff such that the Plaintiff was caused to,
27 and did suffer damages.

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1 25. As a direct and legal result of the defendants', and each of them, negligence,
2 carelessness, and unskillfulness, plaintiff, Daniel Wininger, has and will continue to be
3 deprived of the consortium of his wife, Daria Harper, all to his general and special damages,
4 including pain, suffering, mental, physical and emotional distress. (Please see Expert
5 Affidavits of Michael Ritter, MD, and David Neer, MD, attached hereto as Exhibit 1 and
6 incorporated fully herein.)

7 WHEREFORE, Plaintiffs pray for damages against the
8 Defendants, and each of them, as follows:

9 I. FOR THE CAUSE OF ACTION FOR MEDICAL MALPRACTICE FOR
10 PLAINTIFF DARIA HARPER:

- 11 1. General damages, according to proof and exceeding \$10,000.
- 12 2. Past and future medical expenses, according to proof;
- 13 3. For loss of future earnings and earning capacity,
14 according to proof;
- 15 4. Costs of suit incurred herein, and
- 16 5. For such other and further relief as to the Court appears just and proper.

17 II. FOR THE CAUSE OF ACTION FOR LOSS OF CONSORTIUM FOR
18 PLAINTIFF DANIEL WININGER

- 19 1. General damages, according to proof and exceeding \$10,000.
- 20 2. Past and future medical expenses, according to proof;
- 21 3. For loss of future earnings and earning capacity,
22 according to proof;
- 23 4. Costs of suit incurred herein, and
- 24 5. For such other and further relief as to the Court appears just and proper.

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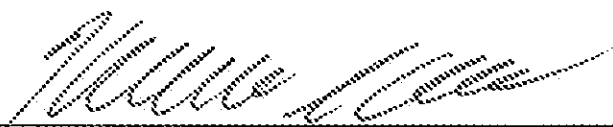
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DATED: June 7, 2016

LAW OFFICES OF THOMAS S. ALCH

By: 

Thomas S. Alch, Esq.
Nevada State Bar No. 6876
Law Offices of Thomas S. Alch
500 N. Rainbow Boulevard, Suite 300
Las Vegas, Nevada 89107
Telephone: (702) 740-4140

100 N. Crescent Drive, Suite 360
Beverly Hills, California 90210
Telephone: (310) 281-8700
Attorney for Plaintiffs

EXHIBIT "A"

AFFIDAVIT OF DAVID NEER, M.D.

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

DAVID NEER, M.D., being duly sworn, deposes and says:

1. I received my medical degree from the University of Illinois College of Medicine in 1969. In 1973, I graduated from the University of Illinois Graduate School, Department of Pharmacology. I completed an internship in Internal Medicine at the University of Illinois Hospital and Veterans Administration Hospital in 1970. I completed a residency in Neurology at Rush-Presbyterian-St. Luke's Medical Center in 1973. I have been an Assistant Professor and Assistant Clinical Professor of Neurology at both Rush Medical College and UCLA Hospitals and Clinics. I was engaged in the private practice of Neurology for 37 years. I have held staff positions as Lakewood Regional Medical Center, UCLA-Harbor General Medical Center, UCLA Hospitals and Clinics, and Long Beach Memorial Medical Center, in California. At those facilities I also held various administrative positions, such as Chief of Staff, Consulting Staff, and member of the Governing Board.

2. During the time of the care at issue in this case my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As a neurologist I was involved on a daily basis with critically ill patients and patients with emergent neurological conditions, such as spinal epidural abscesses. As such, I am familiar with the standard of care applicable to hospitals, nursing staff, neurologists, hospitalists, and critical care physicians when faced with a patient with an emergent spinal cord condition. Further, I am familiar with the standard of care applicable to all physicians and healthcare providers in the setting of an emergent spinal cord condition, both in Nevada and nationally. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center with regard to the medical care that the hospitals, their nurses and staff, and the physicians, including, Dr. Cyndi Tran, Dr. Paul Janda, Dr. Andrea Agcaoili, Dr. Elizabeth Phung-Hart and Dr. Murrad Jussa, were required to provide to Daria Harper. Finally, it is

1 my understanding that the multiple residents who examined Ms. Harper were employees of Valley
2 Hospital, with the attending physicians and hospital both bearing responsibility for their actions and
3 inactions. Finally, as indicated above, the standard of practice in this context is a national standard, and
4 therefore applies to Las Vegas, Nevada as of June 2015.

5 3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center
6 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
7 patient at Havasu Regional Medical Center and Valley Hospital Medical Center on June 8, 2015 to July
8 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
9 lower extremities.

10 4. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
11 Thereafter, she was examined by an emergency room physician, who noted that she was unable to move,
12 was not responsive, and had been admitted for further neurology and possible neurosurgical evaluation.
13 The emergency room physician also noted the CT scan from Havasu Regional revealed displacement of
14 the thecal sac of Ms. Harper's spine. Given this information, the standard of care required stat neurology
15 and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine. A breach of the
16 standard of care occurred when no such orders were placed.

17 5. Thereafter, Ms. Harper was evaluated by Dr. Cyndi Tran and Dr. Paul Janda. Both
18 physicians noted that Ms. Harper was unable to move her extremities, with an impaired neurological
19 examination. Further, Dr. Tran and Dr. Janda noted that the CT scan of the spine revealed no acute
20 pathology, fracture, malalignment or soft tissue swelling, which was incorrect and demonstrates that
21 neither physician reviewed the imaging or the report. Based upon this information, the standard of care
22 required that Dr. Tran and Dr. Janda order a stat neurosurgical consultation and a stat MRI of the spine.
23 However, neither physician issued such orders, thereby breaching the standard of care. Further, as stated
24 above, as Dr. Tran was a resident, both Valley Hospital and Dr. Janda are responsible for her breach of the
25 standard of care.

26 6. At or about 12:15 PM, Ms. Harper was evaluated by Dr. Andrea Agcaoili. At or about that
27 time, Dr. Agcaoili issued an order for a stat CT scan of the thorax. Given Ms. Harper's condition,
28 including the emergent findings of the CT scan from Havasu Regional, her inability to move, low tone, and

1 lack of motor response, the standard of care required that Dr. Agcaoili review the chart and issue stat orders
2 for a neurosurgical consultation and an MRI of the spine. Dr. Agcaoili's failure to properly assess the
3 patient, review the chart, and ensure that Ms. Harper was receiving treatment, which would have prompted
4 the aforementioned orders, was a breach of the standard of care. As stated above, as Dr. Agcaoili was a
5 resident, both Valley Hospital and Dr. Murrad Jussa are responsible for her breach of the standard of care.

6 7. At or about 12:15 PM, Ms. Harper was also evaluated by Dr. Elizabeth Phung-Hart. Dr.
7 Phung-Hart issued orders for neurological assessments. However, the records do not reveal that Dr.
8 Phung-Hart examined the patient prior to issuing such orders, nor did she review the chart to ensure that
9 Ms. Harper was receiving proper care. Given Ms. Harper's condition, including the emergent findings of
10 the CT scan from Havasu Regional, her inability to move, low tone, and lack of motor response, the
11 standard of care required that Dr. Phung-Hart review the chart and issue stat orders for a neurosurgical
12 consultation and an MRI of the spine. The failure to do so was a breach of the standard of care. Assuming
13 that Dr. Phung-Hart is a resident, both her attending physician, whose identity is unknown at this time, and
14 Valley Hospital are responsible for her breach of the standard of care.

15 8. It was not until the following morning at 7:13 AM that Ms. Harper was next evaluated by
16 a physician. At that time, she was examined by Dr. Agcaoili and Dr. Murrad Jussa. Both physicians noted
17 that Ms. Harper was unable to move her arms and legs, with no motor response, and that overnight she had
18 developed a high fever, which is a sign of infection. Dr. Agcaoili and Dr. Jussa also noted, incorrectly, that
19 a CT scan of Ms. Harper's spine revealed no acute pathology, fracture, malalignment or soft tissue
20 swelling. Dr. Agcaoili's and Dr. Jussa's plan noted weakness in the upper and lower extremities secondary
21 to a "CVA vs spinal lesion vs acute inflammatory demyelination polyradiculoneuropathy (AIDP) vs opiate
22 overdose," with a follow up brain MRI of the spine. However, given those findings the standard of care
23 required that both Dr. Agcaoili and Dr. Jussa order a stat neurosurgical consultation and a stat MRI of the
24 spine. The failure to do so was a breach of the standard of care. Further, as stated above, as Dr. Agcaoili
25 was a resident, both Valley Hospital and Dr. Jussa are responsible for her breach of the standard of care

26 9. Finally, it was not until the evening of June 10, 2015, that Ms. Harper received an MRI of
27 her spine which identified a spinal epidural abscess and prompted notification of neurosurgeon Dr. Gregory
28 Douds. By that time, more than 48 hours had elapsed from the start of Ms. Harper's symptoms. It is my

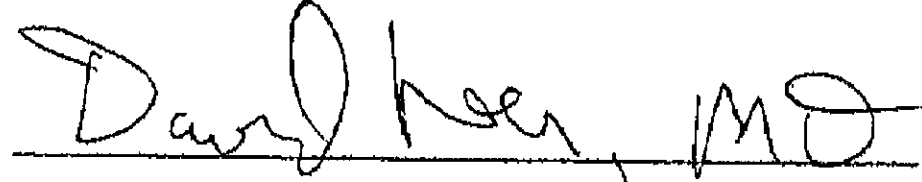
1 opinion, to a reasonable degree of medical probability, that by the time Ms. Harper's abscess was identified
 2 on MRI and Dr. Douds notified, Ms. Harper's spinal cord was irreparably damaged. It is also my opinion,
 3 to a reasonable degree of medical probability, had Ms. Harper received earlier medical treatment,
 4 compliant with the standard of care, she would not be paralyzed.

5 10. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
 6 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to
 7 Daria Harper, as well as her husband's loss of consortium.

8 FURTHER YOUR AFFIANT SAYETH NAUGHT

9 I declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true
 10 and correct.

11 Executed this 3 day of June, 2016, at Santa Monica, California.

12 

13
 14 DAVID NEER, MD

EXHIBIT “B”

1 **AFFIDAVIT OF MICHAEL STEVEN RITTER, MD, FAAEM, FACEP**

2 STATE OF CALIFORNIA)

3 COUNTY OF ORANGE)

4
5 MICHAEL STEVEN RITTER, MD, FAAEM, FACEP, being duly sworn, deposes and says:

6 1. I received my medical degree from the University of California, Irvine, in 1991. I
7 completed a residency in Emergency Medicine at the University of California, Irvine, Medical Center in
8 1994. Since 1996 I have been an Attending Physician in the emergency department at Mission Hospital
9 and Regional Medical Center & Children's Hospital at Mission, in Mission Viejo, California. From 1999
10 to 2012, I was the Associate Medical Director, Emergency Department, at Mission Hospital and Children's
11 Hospital at Mission. Additionally, since 1998, I have been an Assistant Clinical Professor, Department of
12 Emergency Medicine, at the University of California, Irvine Medical Center. I am currently the Medical
13 Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. I am Board
14 Certified in Emergency Medicine.

15 2. During the time of the care at issue in this case and currently my area of practice was and
16 is substantially similar to the practice being engaged at the time herein. Based upon my education, training
17 experience and review of the materials set forth below, I am familiar with the standard of care expected
18 of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to
19 this lawsuit. We are dealing with a national standard of care. As medical director of the emergency
20 department I am involved on a daily basis with administrative responsibilities at Mission Hospital, which
21 includes review of hospital and nursing protocols and thus, I am also familiar with the standard of care
22 applicable to hospitals, nursing staff and all other health care providers who provide emergency services
23 in the state of Nevada during the time relevant to this lawsuit. Specifically, I am familiar with the standard
24 of care as it applies to Valley Hospital Medical Center, their nurses and health care providers, including,
25 but not limited to, Dr. Jeffrey Davidson, with regard to the medical care that the hospitals and their nurses
26 and staff were required to provide to Daria Harper. As indicated, the standard of practice is a national
27 standard therefore applies to Las Vegas, Nevada as of June 2015.

28 3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center

1 records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a
2 patient at Havasu Regional Medical Center and Valley Hospital Medical Center from June 8, 2015 to July
3 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and
4 lower extremities.

5 4. Ms. Harper presented to Havasu Regional Medical Center on June 8, 2015, with complaints
6 of bilateral lower and upper extremity weakness, with inability to move and low tone. A CT scan
7 performed at 1:44 AM on June 9, 2015, revealed anterior and rightward displacement of the thecal sac,
8 suspicious for either a hematoma or an abscess. Such a finding is an emergent condition. The standard
9 of care in this setting, required that Ms. Harper be transferred on a stat bases to another facility for higher
10 level care.

11 5. Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015.
12 Thereafter, she was examined by Dr. Jeffrey Davidson, who noted that she was unable to move, was not
13 responsive, and had been admitted for further neurology and possible neurosurgical evaluation. Dr.
14 Davidson also noted the CT scan from Havasu Regional revealed displacement of the thecal sac of Ms.
15 Harper's spine. Given this information, the standard of care to a reasonable degree of medical certainty
16 required stat neurology and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine.
17 Dr. Davidson breached the standard of care by failing to issue such orders. Plaintiff, Daria Harper, did not
18 exercise any independent choice in the selection of her physicians and other healthcare professionals at the
19 time that she presented with her neurosurgical emergency. Physicians and staff were selected for her and,
20 as such, the physicians and staff were acting as agents for Valley Hospital Medical Center.

21 6. By that time Ms. Harper underwent surgery to decompress her spine, more than 48 hours
22 had elapsed from the start of Ms. Harper's symptoms. It is my opinion, to a reasonable degree of medical
23 probability, that by the time Ms. Harper's abscess was identified on MRI and Dr. Douds notified, Ms.
24 Harper's spinal cord was irreparably damaged. It is also my opinion, to a reasonable degree of medical
25 probability, had Ms. Harper received earlier medical treatment, compliant with the standard of care, she
26 would not be paralyzed.

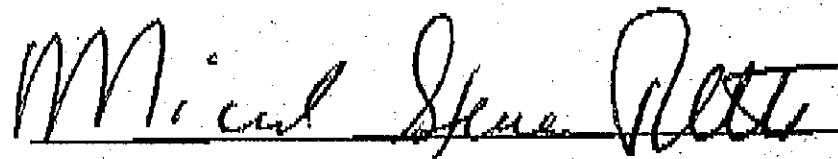
27 7. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
28 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to

1 Daria Harper, as well as her husband's loss of consortium.

2 FURTHER YOUR AFFIANT SAYETH NAUGHT

3 I declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true
4 and correct.

5 Executed this 3rd day of June, 2016, at Orange County, California.

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7

8 MICHAEL STEVEN RITTER, MD, FAAEM, FACEP

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EXHIBIT 7

EXHIBIT 7

**RELEASE
AND
SETTLEMENT AGREEMENT**

WHEREAS, DARIA HARPER, individually and DANIEL WININGER, individually (hereinafter identified as "PLAINTIFFS"), have alleged claims against [REDACTED]

[REDACTED] (hereinafter referred to as "DEFENDANTS"), for damages allegedly sustained by PLAINTIFFS on or about June 9, 2015, which is the subject matter of Case Number A-16-738004-C in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark.

WHEREAS, DEFENDANTS herein deny all liability whatsoever for any damages resulting from any allegations from the above incident against them or any of their employees or agents; and

WHEREAS, the parties are desirous of resolving the aforementioned claim;

NOW, therefore,

In and For Consideration of [REDACTED] to be paid to "LAW OFFICES OF MARSHALL SILBERBERG, LAW OFFICES OF THOMAS ALCH, DARIA HARPER and DANIEL WININGER," constituting payment for pain, suffering, disfigurement and past and future medical care needs allegedly caused by DEFENDANTS, in exchange for dismissal with prejudice of Case Number A-16-738004-C, PLAINTIFFS agree to assume responsibility for and to satisfy and discharge all applicable and legally enforceable liens, conditional payments, claims, bills and expenses arising from all medical, psychological, rehabilitative, hospital, skilled nursing, hospice, institutional or other care and treatment, benefits and related services, supplies, drugs, medication, durable medical equipment, and/or prostheses provided to PLAINTIFFS related to the disputed claims from the settlement funds, and to fully defend, indemnify and hold DEFENDANTS harmless from any and all such liens, conditional payments, claims, bills, costs, expenses, damages, recoveries and deficiencies including interest, penalties and reasonable attorney's fees that PLAINTIFFS may incur or which may arise, or relate to any subsequent litigation or liability of DEFENDANTS, or on account of any actions, claims or demands by lien holders including but not limited to Worker's Compensation, Medicare and/or Medicaid payments or conditional payments, liens and/or subrogation interests, if any. PLAINTIFFS further agree to and will instruct their attorneys to satisfy all applicable Worker's Compensation, State and Federal obligations from the settlement proceeds, including but not limited to those associated with Medicare and Medicaid, and not to withdraw that instruction for any reason, and further to authorize and/or permit their attorneys to take whatever steps are necessary to satisfy these obligations without interference, and assist counsel to the extent possible and necessary in their attempts to comply with this requirement. PLAINTIFFS specifically agree to assume responsibility for and to discharge any liens, subrogated or assigned claims, and/or conditional payments, bills or expenses paid by any governmental entity, governmental agency, governmental provider, third party insurance carrier or any other person or entity related to disputed claims, including but not limited to Medicare Secondary Payer claims for reimbursement

of conditional payments by Medicare, and to defend, indemnify and hold harmless DEFENDANTS from any and all liability or causes of action arising out of same, if any such obligation exists. Also, PLAINTIFFS agree to waive any actions or future claims against DEFENDANTS available under Medicare, Medicaid, and/or the SCHIP Extension Act of 2007 and their related amendments.

1. **RELEASE.** PLAINTIFFS do hereby forever discharge and release DEFENDANTS, their past and present employer(s), past and present affiliates, past and present partners, past and present employees, past and present parent companies, past and present joint venturers, predecessors, attorney(s), agents, successors and assigns (identified hereafter as "RELEASEES") from any and all actions or causes of actions, suits, claims, counterclaims, contracts, promises, liabilities, debts, damages, sums of money, accounts and demands whatsoever which PLAINTIFFS now or have ever had against DEFENDANTS, their past and present employer(s), past and present affiliates, past and present partners, past and present employees, past and present parent companies, past and present joint venturers, predecessors, attorney(s), agents, successors and assigns for any and all claims for damages alleged regarding the above incident and any claim, litigation cause of action or controversy asserted against his past and present employer(s), past and present affiliates, past and present partners, past and present employees, past and present parent companies, past and present joint venturers, predecessors, attorney(s), agents, successors and assigns, arising from payments made for or concerning damages in the form of personal injury pain and suffering alleged as a result of the incident which is the subject of the aforementioned claim.
2. **INDEMNITY AND HOLD HARMLESS.** Except as stated above, PLAINTIFFS do hereby agree to hold harmless and indemnify RELEASEES against all loss, damage, and tax incurred in the future as a result of any claims, litigation or controversy concerning any claim resulting from the aforementioned events, which are described more fully in pleadings filed in Case Number A-16-738004-C in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark. PLAINTIFFS agree to hold RELEASEES harmless and to indemnify RELEASEES, for any claims arising from payments made to PLAINTIFFS for damages alleged as a result of the allegations of the above aforementioned events which are the subject of this dispute, which are described more fully in pleadings filed in Case Number A-16-738004-C in the District Court, Clark County Nevada. PLAINTIFFS do hereby agree to hold harmless and indemnify RELEASEES for and against all liens including any action by any current or prior counsel for PLAINTIFFS, Medicare or Medicaid by reason of the foregoing matter.
3. **GOVERNING LAW.** This agreement shall be interpreted under the laws of the State of Nevada and shall be binding on the parties hereto, their successors, assigns, heirs, and personal representatives.
4. **SETTLEMENT AND COMPROMISE.** It is further agreed and understood by PLAINTIFFS, that this agreement and release does not amount to an admission of any kind

of fault or liability on the part of RELEASEES, that this agreement represents a full and good faith compromise and settlement of any and all claims PLAINTIFFS now have, or ever had against RELEASEES as a result of any allegations regarding the above events; and this Agreement and Release is fully binding upon PLAINTIFFS and is fully binding upon RELEASEES.

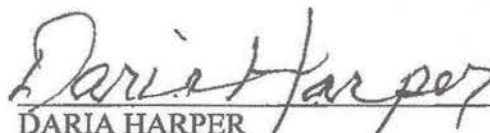
5. **SEVERABILITY.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
6. **COUNTERPARTS.** It is further agreed by all parties that this settlement Agreement and Release may be executed in counterparts and will have the same force and effect and be fully binding as though the document was executed simultaneously in one physical location.
7. **ENTIRE AGREEMENT.** The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Settlement Agreement and Release contains the entire agreement between the parties hereto, and that the terms of his Release are contractual and not a mere recital.
8. **GOOD FAITH.** PLAINTIFFS and DEFENDANTS hereby agree that the above terms and conditions constitute a complete settlement of all claims resulting from the aforementioned events, and dismissal of all claims as against DEFENDANTS and/or RELEASEES, with prejudice, was arrived at through arms-length negotiations, and entered into in good faith and is therefore a reasonable and good faith sum in settlement and release of all PLAINTIFFS' claims against DEFENDANTS and/or RELEASEES.
9. **CLASSIFICATION OF SETTLEMENT FUNDS.** All sums set forth herein constitute damages on account of physical injuries within the meaning of Section 104(a)(2) of the IRC of 1986, as amended.
10. **COLLATERAL SOURCE EVIDENCE.** Pursuant to NRS 42.021, and as allowed by the Court in the above described action, Defendants introduced evidence of Plaintiffs' health insurance for payment of Plaintiffs' past medical expenses. Defendants intended to argue that Plaintiffs were not entitled to an award of past medical payments by reason of the payment by Plaintiffs' insurer. The parties agree and acknowledge by reason of the admission of collateral source evidence, there was a substantial likelihood the jury would not have awarded any damages for past medical expenses or related costs.
11. **CONFIDENTIALITY.** PLAINTIFFS do hereby agree not to disclose that this matter was settled, the amount of this settlement, the approximate amount of the settlement or any offer or counter-offer made between the parties, to any person(s), entity (ies), on any form of social media, or to any media or media representative. Nothing in this agreement shall

in any way limit PLAINTIFFS' ability to cooperate with, provide information or provide testimony in connection with any proceeding before the Nevada Board of Medical Examiners or to any governmental agency.

12. **MEDICARE.** The PLAINTIFFS declare and expressly warrant that they are not Medicare eligible nor within thirty (30) months of becoming Medicare eligible; is not 65 years of age or older; is not suffering from end stage renal failure or amyotrophic lateral sclerosis; has not received Social Security benefits for 24 months or longer; and has not applied for Social Security benefits, and/or has not been denied Social Security disability benefits and appealing the denial. Relying on these representations, no Medicare Set Aside Allocation ("MSA") is being established. In the event that any of the above information provided by PLAINTIFFS is false or in any way incorrect, PLAINTIFFS shall be solely liable for any and all actions, cause of actions, penalties, claims, costs, services, compensation or the like resulting from these inaccuracies. PLAINTIFFS acknowledge that Medicare may require PLAINTIFFS to exhaust the entire settlement proceeds on Medicare covered expenses should they become Medicare eligible within thirty (30) months. PLAINTIFFS specifically waive any claims for damages against DEFENDANTS and/or RELEASEES, including a private cause of action provided in the MSP, 42 U.S.C. Section 1395(b)(3)(A), should Medicare deny coverage for any reason, including the failure to establish a set aside allocation to protect Medicare's interest. PLAINTIFFS, upon advice of counsel, and in accord with the release, agree that any and all applicable medical and other liens related to this litigation are to be paid out of the settlement proceeds, and that Medicare and any other liens related to this litigation are to be paid out of the settlement proceeds, and that Medicare and any other lien claims are the sole responsibility of PLAINTIFFS, with nothing further to be sought from DEFENDANTS and/or RELEASEES. In the event that this information is false or in any way incorrect, PLAINTIFFS expressly warrant and agree that said liens will be their sole responsibility and will be paid from these settlement proceeds with nothing further to be sought from DEFENDANTS and/or RELEASEES.

WHEREFORE, PLAINTIFFS, DARIA HARPER, individually and DANIEL WININGER, individually, hereto set their hand and seal this

10 day of May 2018.


DARIA HARPER


DANIEL WININGER

ACKNOWLEDGMENT

ARIZONA
STATE OF NEVADA)
MOHAVE) ss:
COUNTY OF CLARK)

On the 10th day of May, 2018, before me the undersigned, a Notary Public, personally appeared DARIA HARPER, known to me to be the person(s) who executed the foregoing settlement agreement and general release and acknowledged that he/she has done so as his/her free act and deed.

IN TESTIMONY WHEREOF, I have here into set my hand and affix my official seal the day and year last above written.



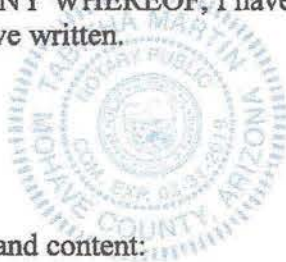
Tabitha Martin
NOTARY PUBLIC

ACKNOWLEDGMENT

ARIZONA
STATE OF ~~NEVADA~~)
MOHAVE) ss:
COUNTY OF ~~CLARK~~)

On the 10th day of May, 2018, before me the undersigned, a Notary Public, personally appeared DANIEL WININGER, known to me to be the person(s) who executed the foregoing settlement agreement and general release and acknowledged that he/she has done so as his/her free act and deed.

IN TESTIMONY WHEREOF, I have here into set my hand and affix my official seal the day and year last above written.



Tabitha Martin
NOTARY PUBLIC

Approved as to form and content:

Daria Harper
DARIA HARPER

Daniel Wininger
DANIEL WININGER

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd, Suite 300
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

EXHIBIT 3

EXHIBIT 3

DECLARATION OF JOHN P. BLUMBERG IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT

I, JOHN P. BLUMBERG, declare that I represent plaintiffs Daria Harper and Daniel Wininger and, based on my personal knowledge, can and would testify to the truth of the following facts:

1. I am an attorney duly licensed to practice law in California and admitted *pro hac vice* to represent plaintiffs in this lawsuit. I am knowledgeable of the facts contained herein and am competent to testify thereto.

2. I am over the age of eighteen and I have personal knowledge of all matters set forth herein. If called to do so, I would competently and truthfully testify to all matters set forth herein.

3. Attached as **Exhibit 12** is a true copy of *Barme v. Wood*, 37 Cal.3d 174, 207 Cal.Rptr. 816, 689 P.2d 446 (1984).

4. Attached as **Exhibit 13** is a true copy of *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal.App.3d 499, 258 Cal.Rptr. 376 (1989).

5. Attached as **Exhibit 14** is a true copy of the Arizona Corporation Commission's website declaring that Islander RV Resort, L.L.C. is an Arizona limited liability corporation.

6. Attached as **Exhibit 15** is a true copy of a page from the website of the Nevada Secretary of State declaring that Valley Hospital Medical Center, Inc. is a Nevada corporation.

7. Attached as **Exhibit 16** is a true copy of a page from the website of the Nevada Department of Public and Behavioral Health/Department of Health and Human Services declaring that Valley Hospital Medical Center was a Nevada-licensed hospital while Daria Harper was treated in Nevada in 2015.

8. Attached as **Exhibit 17** is a true copy of a page from the Nevada State Board of Medical Examiners website declaring that Jeffery Davidson was licensed by Nevada while Daria Harper was treated in Nevada in 2015.

9. Attached as **Exhibit 18** is a true copy of a page from the Nevada State Board of Osteopathic Medicine website declaring that Cyndi Tran was licensed by Nevada while Daria Harper was treated in Nevada in 2015.

10. Attached as **Exhibit 19** is a true copy of a page from the Nevada State Board of

1 Osteopathic Medicine website declaring that Paul H. Janda was licensed by Nevada while Daria
2 Harper was treated in Nevada in 2015.

3 11. Attached as **Exhibit 20** is a true copy of a page from the Nevada State Board of
4 Osteopathic Medicine website declaring that Elizabeth P. Phung-Hart was licensed by Nevada while
5 Daria Harper was treated in Nevada in 2015.

6 12. Attached as **Exhibit 21** is a true copy of a page from the Nevada State Board of
7 Osteopathic Medicine website declaring that Andrea L. Agcaoili was licensed by Nevada while Daria
8 Harper was treated in Nevada in 2015.

9 13. Attached as **Exhibits 22 to 28** are the Answers of the defendants named in District
10 Court of Nevada, Clark County as case number A-16-738004-C with pertinent admissions of licensed
11 by Nevada and residency highlighted.

12 14. Attached as **Exhibit 29** are true copies of pages 1 and 5 and the attached exhibit C of
13 CopperPoint's Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary
14 Injunction filed in the above-entitled matter on June 3, 2020, with the pertinent admission by
15 Copperpoint regarding the attached thereto letter dated July 2, 2018 highlighted.

16 15. Attached as **Exhibit 30** is a true copy of a news release from CopperPoint that is
17 located on its website.

18 16. Attached as **Exhibit 31** is a true copy of a page from the website of the Nevada Division
19 of Insurance listing CopperPoint Insurance Company as a licensee authorized to sell workers'
20 compensation insurance since August 14, 2018.

21 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
22 true and correct.


23 DATED this 26th day of August, 2020.

24 /s/ John P. Blumberg
25 JOHN P. BLUMBERG, ESQ.

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EXHIBIT 12

EXHIBIT 12

 KeyCite Yellow Flag - Negative Treatment
Distinguished by [Photias v. Doerfler](#), Cal.App. 2 Dist., May 22, 1996

37 Cal.3d 174

Supreme Court of California.

Warren H. BARME, Jr., et al., Plaintiffs,
v.
Gayanne WOOD et al., Defendants and
Respondents;
City of Huntington Park, Intervener and
Appellant.

L.A. 31484.

Nov. 8, 1984.

Synopsis

By his wife and conservator, city police officer who suffered brain damage in course of open heart surgery brought medical malpractice action. The city, a self-insured workers' compensation carrier, filed complaint in intervention, seeking to recover from medical malpractice defendants expenses it incurred in providing workers' compensation benefits to officer. The Superior Court, Los Angeles County, Rosemary M. Dunbar, J., awarded defendants summary judgment against city, and city appealed. The Supreme Court, Kaus, J., held that statute which precludes a "collateral source" which has provided medical expenses or other benefits to a medical malpractice plaintiff from obtaining reimbursement of those expenses from medical malpractice defendant does not violate due process or equal protection.

Affirmed.

Mosk, J., dissented with opinion in which Bird, C.J., concurred.

Opinion, 122 Cal.App.3d 395, 176 Cal.Rptr. 42, vacated.

West Headnotes (3)

[1] **Workers' Compensation**  Right of Action of Employee or Representative Generally





An employer's right to seek reimbursement from a third party for workers' compensation benefits that employer is legally obligated to provide is of statutory origin and is properly subject to legislative regulation or abolition. [West's Ann.Cal.Labor Code § 3852.](#)

2 Cases that cite this headnote

[2] **Constitutional Law**  Professional Malpractice
Subrogation  Nature and Theory of Right

Statute which precludes a "collateral source" which has provided medical expenses or other benefits to a plaintiff in a medical malpractice case from obtaining reimbursement of those expenses from medical malpractice defendant does not violate due process, since statute is rationally related to legitimate public interest in reducing cost of medical malpractice insurance. [U.S.C.A. Const.Amend. 14](#); [West's Ann.Cal.Civ.Code § 3333.1\(b\).](#)

31 Cases that cite this headnote

[3] **Constitutional Law**  Medical Malpractice
Constitutional Law  Workers' Compensation and Employers' Liability
Payment  Statutory Provisions
Subrogation  Nature and Theory of Right

Statute precluding a "collateral source" which has provided medical expenses or other benefits to a plaintiff in a medical malpractice case from obtaining reimbursement of such expenses from medical malpractice defendant does not violate equal protection, on theory that it affords medical malpractice defendants benefits not afforded to other tort defendants and imposes a burden on employers who provide workers' compensation benefits to victims of medical malpractice that is not imposed on employers in other situations, since legislature could properly limit statute's application to medical malpractice actions. [U.S.C.A. Const.Amend. 14](#); [West's](#)

[Ann.Cal.Civ.Code § 3333.1\(b\)](#).

12 Cases that cite this headnote

Attorneys and Law Firms

***817 *176 **447 Kegel, Tobin & Hamrick, Kegel & Tobin, Clinton M. Hodges and David E. Lister, Los Angeles, for intervener and appellant.

Burke, Williams & Sorensen and Brian A. Pierik, Los Angeles, as amici curiae on behalf of intervener and appellant.

Shield & Smith, Los Angeles, Home & Clifford, North Hollywood, Ball, Hunt, Hart, Brown & Baerwitz, Beverly Hills, Horvitz & Greines, Horvitz & Levy, Ellis J. Horvitz, Encino, Irving H. Greines, Beverly Hills, S. Thomas Todd, Kent L. Richland and John L. Klein, Encino, for defendants and respondents.

Latham & Watkins, Bryant C. Danner, Donald P. Newell, Joseph A. Wheelock, Jr., Los Angeles, and Milton A. Miller, Newport Beach, as amici curiae on behalf of defendants and respondents.

Opinion

KAUS, Justice.

In our recent decision in *American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 204 Cal.Rptr. 671, 683 P.2d 670, *177 we reviewed a wide-ranging constitutional challenge to one provision of the Medical Injury Compensation Reform Act of 1975 (MICRA), a section which authorized the periodic payment of damages in medical malpractice actions. (Code Civ.Proc., § 667.7.) We concluded that the provision was constitutional. In this case, we face a somewhat similar challenge to another provision of MICRA, Civil Code section 3333.1, subdivision (b),¹ which precludes a so-called “collateral source” which has provided medical expenses or other benefits to the plaintiff in a medical malpractice case from obtaining reimbursement of those expenses from a medical malpractice defendant. As in *American Bank*, we conclude that the Legislature acted within its constitutional authority in enacting the provision in question.

I

In November 1977, plaintiff Warren H. Barme, Jr., a police officer employed by the City of Huntington Beach, suffered a [heart attack](#) while on duty. Shortly thereafter, he underwent [open heart surgery](#) at St. Francis Hospital of Lynwood; during the surgery, he sustained brain damage. In April 1978, Barme and his wife brought this action against the hospital as well as a number of doctors and a nurse involved in his treatment, alleging that the brain damage was caused by their negligence.

In September 1978, the City of Huntington Beach, a self-insured workers’ compensation carrier, filed a complaint in intervention, seeking to recover from defendants ***818 **448 the expenses it had incurred, and was continuing to incur, in providing workers’ compensation benefits to Barme. (Lab.Code, § 3852.)² The complaint alleged that as of September 1978, the city had *178 paid approximately \$79,000 in such benefits; the total amount of benefits was expected to exceed \$150,000. The city asserted that these expenditures were proximately caused by defendants’ negligence.

In August 1979, defendants moved for summary judgment with respect to the city’s complaint in intervention, maintaining that recovery by the city was barred under [section 3333.1, subdivision \(b\)](#).³ The city opposed the motion primarily on the ground that [section 3333.1, subdivision \(b\)](#) was unconstitutional under equal protection and due process principles.⁴ The trial court disagreed and granted summary judgment in favor of defendants. The city appeals.

II

In *American Bank*, we summarized the medical malpractice insurance “crisis” which gave rise to the MICRA legislation. “The problem which was the immediate impetus to the enactment of MICRA arose when the insurance companies which issued virtually all of the medical malpractice insurance policies in California determined that the costs of affording such coverage were so high that they would no longer continue to provide such coverage as they had in the past. Some of the insurers withdrew from the medical malpractice field

entirely, while others raised the premiums which they charged to doctors and hospitals to what were frequently referred to as ‘skyrocketing’ rates. As a consequence, many doctors decided either to stop *179 providing medical care with respect to certain high risk procedures or treatment, to terminate their practice in this state altogether, or to ‘go bare,’ i.e., to practice without malpractice insurance. The result was that in parts of the state medical care was not fully available, and patients who were treated by uninsured doctors faced the prospect of obtaining only unenforceable judgments if they ***819 **449 should suffer serious injury as a result of malpractice.” (36 Cal.3d at p. 371, 204 Cal.Rptr. 671, 683 P.2d 670.)

We explained that MICRA “attacked the problem on several fronts. In broad outline, the act (1) attempted to reduce the incidence and severity of medical malpractice injuries by strengthening governmental oversight of the education, licensing and discipline of physicians and health care providers, (2) sought to curtail unwarranted insurance premium increases by authorizing alternative insurance coverage programs and by establishing new procedures to review substantial rate increases, and (3) attempted to reduce the cost and increase the efficiency of medical malpractice litigation by revising a number of legal rules applicable to such litigation.” (*Id.* at pp. 363–364, 204 Cal.Rptr. 671, 683 P.2d 670.)

The collateral source provision before us—like the periodic payment of damages provision at issue in *American Bank* —is one of the provisions of MICRA which was intended to reduce the cost of medical malpractice insurance. Section 3333.1, subdivision (a) —which is not at issue here—authorizes a defendant in a medical malpractice action to introduce evidence of a variety of “collateral source” benefits—including health insurance, disability insurance or worker’s compensation benefits. Apparently, the Legislature’s assumption was that the trier of fact would take the plaintiff’s receipt of such benefits into account by reducing damages.⁵ Section 3333.1, subdivision (b) —the provision challenged here—provides, in turn, that *180 “[n]o source of collateral benefits introduced pursuant to subdivision (a) shall recover any amount against the plaintiff nor shall it be subrogated to the rights of a plaintiff against a defendant.” The city apparently concedes that this provision was intended to eliminate the right it would otherwise have under Labor Code section 3852 to seek reimbursement from a medical malpractice defendant. It argues, however, that section 3333.1, subdivision (b) is unconstitutional, violating its rights to both due process and equal protection. Neither contention has merit.

A

^[1] The city acknowledges that an employer’s right to seek reimbursement from a third party for workers’ compensation benefits that the employer is legally obligated to provide is of statutory origin and is properly subject to legislative regulation or abolition.⁶ The city contends, however, that the due process clause prohibits the **450 Legislature from *arbitrarily* eliminating ***820 this right, and maintains that section 3333.1, subdivision (b) is arbitrary because it bears no rational relation to a legitimate public purpose.

^[2] We cannot agree. As we explained in *American Bank*, the Legislature could properly determine, in light of the facts before it, that the public interest of the state would be served by the adoption of measures which reduced the cost of medical malpractice insurance. “By reducing such costs, the Legislature hoped (1) to restore insurance premiums to a level doctors and hospitals could afford, thereby inducing them to resume providing medical care to all segments of the community, and (2) to insure that insurance would in fact be available as a protection for patients injured through medical malpractice.” (36 Cal.3d at p. 372, 204 Cal.Rptr. 671, 683 P.2d 670.) The retention of adequate medical care and the preservation of adequate insurance coverage are clearly legitimate public interests.

It is just as clear that section 3333.1, subdivision (b) is rationally related to the objective of reducing the cost of medical malpractice insurance. By prohibiting “collateral sources” from obtaining reimbursement from medical malpractice defendants or their insurers, the section obviously reduces the potential liability of such defendants. (See *California Physicians’ Service v. Superior Court* (1980) 102 Cal.App.3d 91, 97, 162 Cal.Rptr. 266.) The Legislature could rationally conclude that this would lead to lower malpractice insurance premiums.

*181 Although the city points out that any savings in malpractice premiums is likely to be offset by higher premiums for workers’ compensation, health and disability insurance and the like, that circumstance does not undermine the rationality of the legislation. Assuming that section 3333.1, subdivision (b) would not reduce the total costs caused by malpractice, the Legislature could have determined that by redistributing the financial impact of malpractice among the different types of

insurers involved in the health field, the costs would be spread over a wider base, alleviating the immediate problems posed by a growing cadre of uninsured doctors and a potential shortage of medical care.

The city also contends that the legislation is arbitrary because it shifts some of the cost of medical malpractice from *negligent* health care providers to *innocent*—i.e., nonnegligent—employers or insurers. In the first place, to put the matter in perspective, it must be remembered that by and large the insurers who are burdened by the provision have been paid a fee or premium to provide the health or other benefits covered by their policies; employers, like the city in this case, who have chosen to be self-insured presumably have decided that it is in their self-interest to do so in order to save the insurance premium they would otherwise incur. Because the injury in this case arose well after the enactment of MICRA, we can only assume that the city—and other insurers—took into account the elimination of the right to reimbursement in making the relevant economic decisions. In this context, the asserted “innocence” of the employer or insurer has little meaning.

Furthermore, the due process clause does not demand that the Legislature invariably allocate liability on a negligence or fault basis. The Legislature may well have determined that only by shifting some of the costs of malpractice from a negligent defendant to the victim’s own “first party” insurers, would the victim retain a realistic opportunity to obtain any damages from malpractice insurance. Insistence on having malpractice defendants and their insurers bear all of the loss might have meant that no malpractice insurance would have been offered or that many doctors would have practiced uninsured. Rather than reducing the malpractice victim’s recovery beyond that mandated by other MICRA provisions (see, e.g. § 3333.2, subd. (b) [limiting recovery for noneconomic losses to \$250,000]), the Legislature may have decided that it was preferable to require the victim’s health or workers’ compensation **451 insurer to absorb some of the loss. Policy ***821 judgments of this nature are clearly within the legislative prerogative.

B

¹³¹ The city alternatively argues that [section 3333.1, subdivision \(b\)](#) denies equal protection, affording medical malpractice defendants benefits *182 not afforded to other tort defendants and imposing a burden on employers who provide benefits to victims of medical malpractice

that is not imposed on employers in other situations. We rejected a similar argument in *American Bank*, explaining that the statutory changes were limited to medical malpractice actions because that was the area in which the crisis which precipitated the legislation arose. (36 Cal.3d at pp. 370–373, 204 Cal.Rptr. 671, 683 P.2d 670.) Since, as we have just discussed, the provisions of [section 3333.1, subdivision \(b\)](#) were clearly intended to alleviate those same problems, the Legislature did not violate equal protection principles in limiting the section’s application to medical malpractice actions.⁷

The judgment is affirmed.

BROUSSARD, REYNOSO, GRODIN and LUCAS, JJ.

MOSK, Justice, dissenting.

I dissent.

In *American Bank & Trust Co. v. Community Hospital* (1984) 36 Cal.3d 359, 204 Cal.Rptr. 671, 683 P.2d 670, a slim majority of this court approved the shifting of a substantial part of the burden of damages from the tortfeasor to the innocent victim. The purported reason was the desire to reduce premiums for medical insurance and by that means to lower medical and hospital costs.¹ In my dissent in that case I pointed out how vain that purpose had then proved to be. The passage of time has further vindicated my views. In the nine years since adoption of the so-called Medical Injury Compensation Reform Act of 1975, medical and hospital costs have continued to rise astronomically. The only “reform” has been to magnanimously bestow on health providers a generous insulation from much of the responsibility for their more egregious negligence.

*183 Now the majority compound their error by permitting yet another shift of the burdens of malpractice, this time from the medical malpractice defendant to the plaintiff’s employer or workers’ compensation carrier. Why the plaintiff’s employer or compensation carrier should bear any of the responsibility for the defendant’s malpractice defies rational explanation. Once again the only purpose suggested by the majority is a hoped-for reduction in medical malpractice insurance premiums. That the result will be an increase in workers’ compensation insurance premiums appears to be ignored.

As between the two, which should logically shoulder the burden: the carrier of the tortfeasor or the carrier of ****452** the innocent employer? The answer is obvious.

****822** One of the effects of [Civil Code section 3333.1](#) is the shift of the burden of medical malpractice, and the associated insurance costs, to collateral sources. Whether insured or not, the cities that bear this added burden suffer a decrease in revenues, since there is no way in which they can recover their workers' compensation and other expenditures caused by the negligence of the health care provider. For cities that are self-insured, as Huntington Park in the instant case, the effect is a direct reduction in revenues. For cities that are insured by the State Compensation Insurance Fund, the effect is indirect, but no less costly, in that they must pay higher premiums for their workers' compensation insurance.

Local governments have been facing serious problems with rising workers' compensation costs. In 1976, the Institute for Local Government published the result of a two-year study of workers' compensation in the public sector in California. The institute noted that workers' compensation laws and regulations are not "visible public issues" which are the subject of media reporting, but that the costs "are rising at alarming rates in local government" and that "workers' compensation has become an issue of serious concern to public administrators."² From fiscal year 1968–1969 to 1972–1973, workers' compensation costs increased by 154 percent. In that same period, the increase was even higher for police (261 percent) and fire (279 percent) employees.³

The Workmen's Compensation Study Commission was established in 1963 by [Labor Code sections 6200–6240](#) to study the workers' compensation system and advise the Governor and the Legislature of its findings. The commission report in 1965 found that benefits for employees of insured employers increased from 1953 to 1962 by 195 percent. Medical benefits over the same period rose 137.9 percent while indemnity benefits increased ***184** by 232.2 percent. The foregoing statistics illustrate that the trend of workers' compensation costs was steadily, and rapidly, increasing in the years prior to 1975 when the Legislature enacted [Civil Code section 3333.1](#), which improvidently added another burden.

The attempt by respondents to isolate medical malpractice insurance as the only coverage that has experienced large cost increases is not justified by the facts. Admittedly there is some indication that medical malpractice insurance premiums were increasing prior to 1975 when [section 3333.1](#) was adopted. However, to shift the burden of those rising costs to employers, including cities which

themselves have experienced rising costs for workers' compensation, is not a rational approach to achieve the purported goal of better health care for the residents of California. Indeed, from a public policy aspect, it is counterproductive.

In *Li v. Yellow Cab Company* (1975) 13 Cal.3d 804, 811, 119 Cal.Rptr. 858, 532 P.2d 1226, this court made it clear that we must maintain "a system in which liability is based on fault, the extent of fault should govern the extent of liability" We further declared that contributory negligence must be replaced "by a system under which liability for damage will be borne by those whose negligence caused it in direct proportion to their respective fault." (Id. at p. 813, 119 Cal.Rptr. 858, 532 P.2d 1226.)

If an employer contributed in any way to the injury of the employee, the recovery by the employer in his employee's suit against a third party tortfeasor will be reduced accordingly. (*Associated Construction & Engineering Co. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 829, 846–847, 150 Cal.Rptr. 888, 587 P.2d 684.) But if the employer is entirely free of negligence that caused the employee's injury, as he would generally be in a medical malpractice case, there is a clear violation of the employer's due process rights by shifting the burden from the tortfeasor to him or his carrier.

****453** [Section 3333.1](#) must fall for two elementary reasons. First, it creates an invidious classification, i.e., medical malpractice tortfeasors ****823** are permitted to pass on much of the burdens of their negligence to innocent third parties, unlike all other tortfeasors. There is no logical way to distinguish between a medical doctor who negligently severs a victim's artery during surgery and a motorist who negligently severs a victim's artery in an automobile accident. Under even the modest rational relationship test, this discriminatory classification serves no valid state purpose and is therefore untenable. Second, the code section as applied here deprives the innocent employer or his carrier of their property without any semblance of due process.

***185** I would reverse the judgment.

BIRD, C.J., concurs.

All Citations

37 Cal.3d 174, 689 P.2d 446, 207 Cal.Rptr. 816, 53 USLW 2274

Footnotes

- 1 [Section 3333.1](#) provides in relevant part: “(a) In the event the defendant so elects, in an action for personal injury against a health care provider based upon professional negligence, he may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to the United States Social Security Act, any state or federal income disability or worker’s compensation act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services. Where the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount which the plaintiff has paid or contributed to secure his right to any insurance benefits concerning which the defendant has introduced evidence. [¶] (b) *No source of collateral benefits introduced pursuant to subdivision (a) shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.*” (Italics added.)
Unless otherwise specified, all section references are to the Civil Code.
- 2 [Section 3852](#) provides in relevant part: “The claim of an employee ... for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the employer. *Any employer who pays or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation ... may likewise make a claim or bring an action against the third person.* In the latter event, the employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension or other emolument paid to the employee or to his or her dependents....” (Italics added.)
- 3 Defendants had earlier moved for judgment on the pleadings on the basis of [section 3333.1, subdivision \(b\)](#), but the trial court had ruled that that motion was premature because defendants had not yet elected to introduce evidence of the workers’ compensation benefits received by Barme, an election which the court held was a prerequisite to the application of [section 3333.1](#). Defendants then filed a document indicating their intention to introduce such evidence in the malpractice action, and moved for summary judgment.
- 4 In its opposition to the summary judgment motion, the city also argued that its action for reimbursement under [Labor Code section 3852](#) was not covered by [section 3333.1, subdivision \(b\)](#) because the suit was not a “subrogation” action within the meaning of the MICRA provision. The city has not renewed this claim on appeal, apparently conceding that [section 3333.1, subdivision \(b\)](#) was intended to bar an employer’s action under [section 3852](#). That concession appears well-founded. Workers’ compensation benefits are one of the collateral source benefits specifically enumerated in [section 3333.1, subdivision \(a\)](#) (see fn. 1, *ante*), and this court—in describing the employer’s remedy under [section 3852](#)—has observed that “in granting employers the right to sue third parties, the Legislature simply gave statutory recognition to principles of equitable subrogation.” (*County of San Diego v. Sanfax Corp.* (1977) 19 Cal.3d 862, 876, fn. 7, 140 Cal.Rptr. 638, 568 P.2d 363.) Furthermore, the legislative history of [section 3333.1, subdivision \(b\)](#) indicates quite clearly that this provision was intended to prevail over other statutory subrogation provisions, such as [Labor Code section 3852](#). An earlier draft of subdivision (b) would have preserved a collateral source’s subrogation rights when such rights were “expressly provided by statute,” but that exception was eliminated before the statute’s enactment.
- 5 Earlier drafts of [section 3333.1, subdivision \(a\)](#) required the trier of fact to deduct such collateral source benefits in computing damages, but—as enacted—subdivision (a) simply provides for the admission of evidence of such benefits, apparently leaving to the trier of fact the decision as to how such evidence should affect the assessment of damages. The purpose of [section 3333.1, subdivision \(a\)](#) has generally been viewed as an attempt to eliminate the so-called “double recovery” obtained by plaintiffs who have their medical expenses paid by their own health insurance and still obtain damages for such expenses from defendant tortfeasors. (See Keene, *California’s Medical Malpractice Crisis in A Legislator’s Guide to the Medical Malpractice Issue* (1976) 27, 31. Cf. *Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 84 Cal.Rptr. 173, 465 P.2d 61 [explaining the rationale underlying the traditional “collateral source” rule excluding evidence of such collateral source benefits].) This reasoning does not apply to workers’ compensation benefits, because under California law plaintiffs have not been permitted to obtain a double recovery of such benefits. Either the employer has been entitled to obtain reimbursement from the tort recovery (see [Lab.Code, § 3850](#) et seq.) or the tort judgment has been reduced by the applicable workers’ compensation benefits obtained by the employee. (See *Witt v. Jackson* (1961) 57 Cal.2d 57, 731, 17 Cal.Rptr. 369, 366 P.2d 641.) Nonetheless, the Legislature specifically included workers’ compensation benefits in the collateral source benefits covered by [section 3333.1, subdivision \(a\)](#).

- 6 Unlike an employer's right to reimbursement for workers' compensation expenditures, the right of reimbursement enjoyed by some of the other collateral sources enumerated in [section 3333.1, subdivision \(a\)](#) may be guaranteed by federal law. Under federal supremacy principles, of course, in such cases MICRA's provisions will have to yield. (See, e.g., [Brown v. Stewart \(1982\) 129 Cal.App.3d 331, 341, 181 Cal.Rptr. 112](#); *id* at pp. 346–347, [181 Cal.Rptr. 112](#) [conc. opn. of Blease, J.])
- 7 Although not raised in the trial court, on appeal the city proffers two additional objections to [section 3333.1, subdivision \(b\)](#), contending (1) that it is an impermissible "tax" and (2) that, at least as applied to public employers, it authorizes an unconstitutional "gift of public funds." Both contentions are specious.
- First, it is difficult to see how [section 3333.1, subdivision \(b\)](#) can be characterized as a tax at all. It does not purport to raise any public revenue, but simply precludes an employer or insurer from passing on some of the expenses which it is obligated to bear to a third party. Since the Legislature has plenary control over obligations imposed under the workers' compensation system, it clearly had the power to determine that in some cases the employer or its insurer was required to forego reimbursement of its statutorily incurred expenses.
- Second, the provision does not embody an improper "gift of public funds." Not only does the section not authorize any payment of funds from the city to the negligent tortfeasor, but, as discussed above, the shift of costs to the employer clearly serves a "public" purpose (see [County of Alameda v. Carleson \(1971\) 5 Cal.3d 730, 745–746, 97 Cal.Rptr. 385, 488 P.2d 953](#))—promoting the availability of adequate medical care and adequate malpractice insurance coverage.
- 1 The preamble to the legislation referred to the health crisis in terms, inter alia, of "severe hardships for the medically indigent, a denial of access for the economically marginal" (Stats.1975–1976, Second Ex. Sess., ch. 2, § 12.5.)
- 2 *Through the Roof*, Institute for Local Self Government (1976) pages 4–5.
- 3 [Ibid., page 12.](#)

EXHIBIT 13

EXHIBIT 13

210 Cal.App.3d 499, 258 Cal.Rptr. 376, 54 Cal.
Comp. Cases 160

JOHN B. GRAHAM, Petitioner,

v.

WORKERS' COMPENSATION APPEALS BOARD
and ORANGE COUNTY TRANSIT DISTRICT,
Respondents

No. E006225.

Court of Appeal, Fourth District, Division 2,
California.
May 12, 1989.

SUMMARY

An employee injured within the scope of his employment applied to the Workers' Compensation Appeals Board for adjudication of his claim for medical treatment and permanent disability benefits. He also sued a physician for negligent treatment of his injuries received in the accident. That action was settled and the trial court found the settlement was entered in good faith and was limited to general damages; the parties stipulated at the settlement conference to dismiss the claims for special damages, on the assumption the employee had received workers' compensation for those. The employer then petitioned for credit, in the amount of the settlement, against the employer's liability for future workers' compensation payments to the employee. The workers' compensation judge allowed the requested credit; the board granted the employee's petition for reconsideration but ruled the employer was entitled to assert a credit against the employee's settlement to the extent that the malpractice had exacerbated the employer's injuries, and remanded the cause to the workers' compensation judge to determine the extent of the employer's credit rights.

The Court of Appeal annulled the order of the Workers' Compensation Appeals Board. The court held that [Civ. Code, § 3333.1](#), abrogating the collateral source rule in medical malpractice cases, prevented the employer from obtaining credit against future benefits it owed the injured employee. It held the parties in the underlying medical malpractice case made an adequate factual record that the employee's settlement was reduced to exclude any recovery for collateral source (i.e., workers' compensation) benefits. (Opinion by Dabney, J., with Campbell, P. J., and McDaniel, J., concurring.) *500

HEADNOTES

Classified to California Digest of Official Reports

(¹)
Workers' Compensation § 125--Judicial Review--Jurisdiction--Appealability of Order.
An order of the Workers' Compensation Appeals Board, remanding a case to the workers' compensation judge for a determination of the extent of the employer's credit rights against its injured employee's recovery in a related medical malpractice action settlement, was appealable even though the case was not final. The order followed the board's granting reconsideration of the judge's allowance of a credit.

[See [Cal.Jur.3d, Work Injury Compensation, § 346.](#)]

(^{2a, 2b, 2c})
Workers' Compensation § 84--Award--Credit for Payments by Third Party Tortfeasor--Settlement of Employee's Medical Malpractice Suit.
Under [Civ. Code, § 3333.1](#), abrogating the collateral source rule in medical malpractice cases, a source of collateral benefits (e.g., an injured person's employer) is prevented not only from obtaining reimbursement from a plaintiff but also from obtaining credit against future benefits it owes the plaintiff. [Section 3333.1](#) thus creates an exception to the credit provisions of [Lab. Code, §§ 3858 and 3861](#) (relating to employer's rights against injured employee's other recovery), whenever an injured employee has demonstrably had such recovery reduced to reflect collateral source (e.g., workers' compensation) contributions. The reduction may have been effected after trial or by settlement.

[See [Cal.Jur.3d, Work Injury Compensation, §§ 370, 371.](#)]

(³)
Courts § 40.5--Doctrine of Stare Decisis--Opinions of California Courts of Appeal--Noncitable Decisions.
In litigation before the Court of Appeal, it was improper under Cal. Rules of Court, [rules 976\(d\)](#) and [977\(a\)](#), for a party to cite an appellate decision that was reported but which had thereafter been granted review by the Supreme Court. Even though the Supreme Court subsequently dismissed review, it did not order the opinion published pursuant to [rule 976\(d\)](#), and it therefore remained

noncitable under rule 977(a).

[See [Cal.Jur.3d \(Rev\)](#), Courts, § 188.]

(4)

Statutes § 30--Construction--Language--Literal Interpretation.

Once a particular legislative intent has been ascertained as to a statute it must be given effect even though it may not be consistent with the *501 strict letter of the statute. The courts resist blind obedience to the putative “plain meaning” of a statutory phrase where literal interpretation would defeat the Legislature’s central objective.

[See [Cal.Jur.3d](#), Statutes, § 99; [Am.Jur.2d](#), Statutes, § 207, 208.]

(5)

Healing Arts and Institutions § 53--Judgment and Damages--Abrogation of Collateral Source Rule--Purpose.

The general purpose of the Medical Injury Compensation Reform Act of 1975 and, in particular of [Civ. Code, § 3333.1](#), abrogating the collateral source rule in medical malpractice cases, is to protect California’s health care delivery system by reducing the cost of medical malpractice insurance.

[See [Cal.Jur.3d](#), [Healing Arts and Institutions](#), § 185.]

COUNSEL

Potter & Cohen and Thelma S. Cohen for Petitioner.
Smith, Wright & Peterson and Stephen P. Angelides as Amici Curiae on behalf of Petitioner.
Zonni, Ginocchio & Taylor, Leonard J. Silberman and Sharon Bernal for Respondents.

DABNEY, J.

In his petition for writ of review, John B. Graham contends that respondent Workers’ Compensation Appeals Board (Board) exceeded its power when it granted the petition of respondent Orange County Transit District (Transit District) for credit against Graham’s workers’ compensation award for a settlement Graham received in a malpractice action. This case presents an issue of first impression as to how the credit provisions of [Labor Code sections 3858 and 3861](#) should be construed in light of the subsequent enactment of [Civil Code section 3333.1](#) as part of the Medical Injury Compensation Reform Act of 1975 (MICRA). Specifically, we are asked to determine whether [Civil Code section 3333.1](#) overrides the employer’s right to credit when an employee settles,

rather than tries, his medical malpractice action, and the settlement excludes workers’ compensation benefits. *502

Factual and Procedural Background

In April 1983, Graham, a bus driver employed by the Transit District, was injured in a bus accident in the course of his employment. The Transit District was self-insured for workers’ compensation. In July 1983, Graham filed an application with the Board for the adjudication of his claim for medical treatment and permanent disability benefits.

Graham also filed a civil action against Dr. Peter Macs (later amended to the Estate of Macs) seeking damages for medical malpractice in Dr. Macs’s treatment of Graham for the injuries he sustained in the bus accident. The medical malpractice action was settled by payment to Graham of \$150,000 less attorney’s fees and costs. The trial judge found that the settlement was entered in good faith and was limited to damages for pain and suffering. Graham dismissed his cause of action against Dr. Macs for special damages.

The Transit District then petitioned for credit, in the amount of the settlement, against the Transit District’s liability for future workers’ compensation payments to Graham. The Transit District alleged that Graham’s injuries were proximately caused, in part, by Dr. Macs’s negligence. In opposition to the petition for credit, Graham’s counsel submitted a declaration which stated that he indicated to the court at the settlement conference that Graham’s medical expenses and disability would not be considered in the settlement because the defense would introduce evidence that workers’ compensation benefits would pay those damages.¹ The workers’ compensation judge allowed the requested credit.

Graham filed a petition for reconsideration with the Board on the ground that the malpractice settlement was not subject to credit. The workers’ compensation judge issued a report and recommendation in which he stated that his original decision was in error and that he should have denied the *503 credit. The Board granted reconsideration. In its order, the Board stated that [Civil Code section 3333.1](#) does not preclude the Transit District from asserting a credit against Graham’s settlement. However, the Board ruled that because the malpractice did not cause the injury, but only enhanced or exacerbated it, the employer’s credit should be limited to the workers’ compensation benefits attributable to the exacerbation. Therefore, the Board remanded the cause for the workers’

compensation judge to determine the extent of the Transit District's credit rights.

Discussion

Appellate Jurisdiction

The Board stated in its order on Graham's petition for reconsideration that [Civil Code section 3333.1](#) does not preclude the Transit District from asserting a credit against the settlement Graham obtained in his malpractice action. ⁽¹⁾ The Board's determination of this threshold issue is an appealable order, even though the case is not final. ([Lab. Code, § 5950](#); [Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.](#) (1980) 104 Cal.App.3d 528, 531 [163 Cal.Rptr. 750].)

Statutory Overview

Workers' Compensation Subrogation Statutes. [Labor Code sections 3850](#) through [3864](#) contain a comprehensive subrogation scheme which includes both credit provisions² and reimbursement provisions.³ The reimbursement provisions provide several methods for the employer (or its workers' compensation carrier) to recover from a third party tortfeasor workers' compensation benefits which the employer has already paid to the injured employee. ([Witt v. Jackson](#) (1961) 57 Cal.2d 57, 69 [17 Cal.Rptr. 369, 366 P.2d 641], modified on other grounds by [*504 Rodgers v. Workers' Comp. Appeals Bd.](#) (1984) 36 Cal.3d 330, 340 [204 Cal.Rptr. 403, 682 P.2d 1068] and [Associated Construction, & Engineering Co. v. Workers' Comp. Appeals Bd.](#) (1978) 22 Cal.3d 829 [150 Cal.Rptr. 888, 587 P.2d 684].) The credit provisions allow the employer to discontinue workers' compensation benefit payments until the amount of the benefits exceeds the amount of the employee's net recovery from the third party, to the extent the employer became liable for additional workers' compensation payments as a result of the malpractice. ([Hodge v. Workers' Comp. Appeals Bd.](#) (1981) 123 Cal.App.3d 501, 509, 513-515 [176 Cal.Rptr. 675].)

The subrogation provisions prevent a double recovery to an employee who makes both a workers' compensation claim and a claim against a third party tortfeasor and provide for reimbursement to the employer for workers'

compensation benefits paid to the employee. ([Van Nuis v. Los Angeles Soap Co.](#) (1973) 36 Cal.App.3d 222, 229 [111 Cal.Rptr. 398].)

Abrogation of Collateral Source Rule and Employer's Subrogation in MICRA. Under the traditional collateral source rule, a jury may not consider the plaintiff's entitlement to benefits such as medical insurance or disability payments when the jury calculates the plaintiff's damages in a tort action. However, as part of MICRA, the Legislature enacted [Civil Code section 3333.1](#) which abrogated the collateral source rule in medical malpractice actions.⁴

The California Supreme Court has explained: "Under [[Civil Code](#)] [section 3333.1](#), subdivision (a), a medical malpractice defendant is permitted to introduce evidence of such collateral source benefits received by or payable to the plaintiff; ... Although [section 3333.1](#), subdivision (a) ... does not specify how the jury should use such evidence, the Legislature apparently assumed that in most cases the jury would set plaintiff's damages at a lower level because of its awareness of plaintiff's 'net' collateral source benefits. [¶] In addition, [section 3333.1](#), subdivision (b) provides that whenever such collateral source evidence is introduced, the source of those benefits is precluded from obtaining subrogation either from the plaintiff or from the medical malpractice defendant." ([Fein v. Permanente Medical Group](#) (1985) 38 Cal.3d 137, 164-165 [211 Cal.Rptr. 368, 695 P.2d 665].)

Application of Civil Code Section 3333.1 to an Employer's Claim for Credit. ^(2a) The Transit District contends that it was entitled to credit [*505](#) against the settlement under [Labor Code sections 3858](#) and [3861](#). [Civil Code section 3333.1](#), subdivision (b) states: "No source of collateral benefits ... shall recover any amount against the plaintiff" The Transit District argues that the words of the statute indicate only that a source of collateral benefits may not obtain reimbursement from a plaintiff, but does not restrict an employer's right to obtain credit for future benefits.

The resolution of this issue is a matter of first impression in the credit context. However, we find significant guidance in resolving this issue in cases in which California courts have resolved the analogous statutory conflict in the reimbursement context.

In [Miller v. Sciaroni](#) (1985) 172 Cal.App.3d 306, 311 [218 Cal.Rptr. 219] the trial court sustained a demurrer to the employer's complaint in intervention in which the employer sought to assert a claim for reimbursement under [Labor Code section 3852](#) for workers'

compensation benefits paid to the employee. The Court of Appeal affirmed. It explained, "The purpose underlying subdivision (a) is to preclude the double recovery permitted to plaintiffs by the operation of the collateral source rule, under the assumption that the trier of fact will reduce the damage award by amounts already reimbursed. [Citations.] Such a reduction in fact occurred in the instant case. Presumably the awards reduced under the operation of subdivision (a) would in turn have a favorable impact on medical malpractice insurance rates for health care providers. [Citations.]

"Under subdivision (b) of [section 3333.1](#), the collateral source is barred from subrogating plaintiff's claim against defendant. However, [Labor Code section 3852](#), ... permits employers to subrogate plaintiff's claims against the tortfeasor as to benefits conferred, less any amount attributable to the employer's negligence. ... By necessary implication this conflict in statutes must be resolved in favor of [section 3333.1](#) as the most recently enacted statute. (*Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 7 [...].) Furthermore, 'the legislative history of [section 3333.1](#), subdivision (b) indicates quite clearly that this provision was intended to prevail over other statutory subrogation provisions, such as [Labor Code section 3852](#). An earlier draft of subdivision (b) would have preserved a collateral source's subrogation rights when such rights were "expressly provided by statute," but that exception was eliminated before the statute's enactment.' (*Barme v. Wood* [(1984) 37 Cal.3d 174, 178, fn. 4 (207 Cal.Rptr. 816, 689 P.2d 446)].) It is clear, then, that where [Labor Code section 3852](#) and [Civil Code section 3333.1](#) are in conflict, the latter must prevail.

"In terms of the overall legislative purpose of reducing the cost of medical malpractice insurance to health care providers so as to minimize adverse *506 impact on potential health care consumers, subdivision (b) functions by redistributing certain costs from the malpractice insurer, who continues to bear the general damage risk, to other third party indemnitors, who thus bear many special damage risks. [Citations.]

"In summary, then, [Civil Code section 3333.1](#) is directed towards reducing defendant's medical malpractice insurance costs by: (1) encouraging lower awards to plaintiffs by admitting evidence of benefits received (subd. (a)); and (2) prohibiting third party insurers from subrogating plaintiff's rights as to benefits received, thus reallocating certain costs from defendant's insurer to other insurance carriers (subd. (b))." (*Miller, supra*, 172 Cal.App.3d at pp. 310-312, fn. omitted.)

The court's analysis in *Miller*, applying [Civil Code](#)

[section 3333.1](#) to an employer's claim for reimbursement, applies equally to an employer's claim for credit. Moreover, the California Supreme Court noted in *Fein* that the medical malpractice defendant may introduce evidence of benefits *received by or payable to* the plaintiff, and that the Legislature assumed that the jury would reduce the plaintiff's damages to reflect such benefits. (*Fein, supra*, 38 Cal.3d at pp. 164-165.) The court explained that [Civil Code section 3333.1](#), subdivision (b) assures that the malpractice plaintiff "... will suffer no 'double deduction' from his tort recovery as a result of his receipt of collateral source benefits; ... [and that] any reduction in malpractice awards that may result from the jury's consideration of the plaintiff's collateral source benefits will inure to [the malpractice defendant] rather than to the benefit of the collateral source." (*Id.*, at p. 165.)

If we construe the statute as the Transit District urges, and allow the employer credit from an already reduced recovery, the injured employee, not the medical malpractice defendant or the employer, would bear the cost of the medical malpractice to the extent of the workers' compensation benefits. In effect, the higher the workers' compensation benefits to which the employee is entitled, the lower his overall recovery. Such a construction of the credit provisions of the Labor Code is inconsistent with [article XIV, section 4 of the California Constitution](#), which declares protection of injured employees through a comprehensive workers' compensation scheme to be the public policy of the State, and with [Labor Code section 3202](#) which requires the workers' compensation statutes to be construed liberally to protect workers' benefits. The Legislature clearly intended a different result in enacting MICRA. Thus, the sensible interpretation of [Civil Code section 3333.1](#) is that it includes the employer's credit remedies as well as its reimbursement remedies.

Application of Civil Code Section 3333.1 to Cases Which Are Settled Rather Than Tried. The Transit District next contends that even if *507 [Civil Code section 3333.1](#) applies in general to the credit sections of the Labor Code, it does not apply under the circumstances of this case. The Transit District asserts that under the clear and unambiguous language of the statute, the employer's right to credit is not affected unless there is a trial at which the medical malpractice defendant introduces evidence of workers' compensation benefits. ⁽³⁾(See **fn. 5**.) Here, the medical malpractice action was settled rather than tried.⁵

^(2b) Graham counters that the conditions for invoking the statute were met in this case where counsel acknowledged in settlement discussions that Graham was entitled to

workers' compensation benefits and did not include such benefits in computing the settlement. Moreover, the parties stipulated at the settlement conference to dismiss the claims for special damages. The settlement thus did not include any sum for past or future medical costs or economic loss, on the assumption that Graham had been compensated for such loss by his "collateral source," the workers' compensation carrier.

It is a cardinal rule of statutory construction that courts will choose that interpretation which most nearly effectuates the purpose of the Legislature. (Code Civ. Proc., § 1859.) (4) "Once a particular legislative intent has been ascertained, it must be given effect "even though it may not be consistent with the strict letter of the statute." [Citation.]" (Southland Mechanical Constructors, Corp. v. Nixen (1981) 119 Cal.App.3d 417, 430 [173 Cal.Rptr. 917].) "The courts resist blind obedience to the putative 'plain meaning' of a statutory phrase where literal interpretation would defeat the Legislature's central objective." (Leslie Salt Co. v. San Francisco Bay Conservation etc. Com. (1984) 153 Cal.App.3d 605, 614 [200 Cal.Rptr. 575], fn. omitted.)

Legislative history indicates that MICRA "... was enacted in response to the medical malpractice insurance crisis against a background of legislative and gubernatorial belief that skyrocketing malpractice insurance rates would have a severe detrimental impact on California's health delivery *508 system, particularly as regards medically indigent and low-income California residents. [Citations.] (5) The purpose of the legislation in general, then, and of section 3333.1 in particular, is to protect California's health care delivery system by reducing the cost of medical malpractice insurance." (Miller v. Sciaroni, supra, 172 Cal.App.3d at pp. 309-310.)

In *Barme v. Wood*, supra, 37 Cal.3d 174, the California Supreme Court recognized that the damage-reducing effect of Civil Code section 3333.1 comes into play even if the procedures set forth in the statute are not followed. In *Barme*, the court upheld a summary judgment on a complaint in intervention filed by the employer seeking credit in an employee's medical malpractice case. There was no trial, no evidence of collateral source benefits was introduced, and a jury never considered the issue. The defendants had merely filed "a document indicating their intention to introduce [evidence of workers' compensation benefits] in the malpractice action." (*Id.*, at p. 178, fn. 3.) Nonetheless, the California Supreme Court upheld the summary judgment, recognizing that the practical effect of section 3333.1 is to reduce the plaintiff's recovery in any medical malpractice case where collateral source benefits are payable, regardless of

whether the plaintiff obtains recovery in trial or otherwise.

(2c) If we were to interpret the statute to require a trial before the employer is precluded from seeking credit or reimbursement, plaintiffs would be forced to try their cases unless medical malpractice defendants agreed to settle for sums sufficient to cover employers' costs. The legislative history of MICRA reflects deep concern with the cost of litigation. We cannot construe the collateral source benefit rules in a way that would discourage settlements and thus defeat the major purpose of the legislation.

To harmonize Civil Code section 3333.1 with the Labor Code credit provisions, we interpret section 3333.1 as impliedly creating an exception to the credit provisions whenever an injured party has demonstrably had his recovery reduced to reflect collateral source contributions. A more restrictive construction would shift a portion of the costs of medical malpractice to the injured party, contrary to the purposes of both MICRA and the workers' compensation statutes. In this case, the parties in the underlying medical malpractice case made an adequate factual record that Graham's settlement was reduced to exclude any recovery for collateral source benefits.

Employer's Right to Credit Against Settlement Which Covers Only Pain and Suffering Damages. Because we decide that Civil Code section 3333.1 precludes the employer's claim for credit, we need not consider Graham's additional contention that the employer may not obtain credit for damages *509 limited to pain and suffering which do not duplicate the employee's workers' compensation benefits for medical expenses and disability.

Disposition

The order of the Workers' Compensation Appeals Board is annulled.

Campbell, P. J., and McDaniel, J., concurred.

Respondents' petition for review by the Supreme Court was denied July 20, 1989. Panelli, J., was of the opinion that the petition should be granted. *510

Footnotes

- 1 The transcript of the trial court proceedings states: “[Counsel for Graham]: We have settled the claims against Dr. Macs and the estate of Dr. Macs in the amount of \$150,000 new money. We have agreed that plaintiff will dismiss any and all claims for special damages in exchange for joint waiver of cost, waiver of cost from the defense.
“It is understood between the parties that the payment of \$150,000 represents the special or the general damages of pain and suffering by Mr. Graham as a result of the alleged malpractice in the case.
“[Counsel for the Estate of Dr. Macs]: That \$150,000 is being paid to compensate for the general damages and all claims for special damages are being dismissed in exchange for waiver of cost. ... [A]nd there’s a stipulation that the settlement is a good faith settlement.
“
.....
“The Court: I do find that the settlement in all respects is a good faith and equitable settlement, and it is approved by the Court. And that settlement is for pain and suffering as well as future pain and suffering as a result of the action filed in this case, and that the settlement is fair in all respects.”
- 2 [Labor Code section 3858](#) provides: “After payment of litigation expenses and attorneys’ fees fixed by the court ... and payment of the employer’s lien, the employer shall be relieved from the obligation to pay further compensation to or on behalf of the employee ... up to the entire amount of the balance of the judgment, if satisfied, without any deduction. No satisfaction of such judgment in whole or in part, shall be valid without giving the employer notice and a reasonable opportunity to perfect and satisfy his lien.”
[Labor Code section 3861](#) provides: “The appeals board is empowered to and shall allow, as a credit to the employer to be applied against his liability for compensation, such amount of any recovery by the employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys’ fees, ... or has not been applied to reimburse the employer.”
- 3 The reimbursement sections, which are not at issue in this case, allow the employer to bring an action directly against a third party tortfeasor ([Lab. Code, § 3852](#)), intervene in an action brought by the employee ([Lab. Code, § 3853](#)) or obtain a lien against a judgment obtained by the employee ([Lab. Code, § 3856](#), subd. (b)).
- 4 [Civil Code section 3333.1](#) states: “(a) In the event the defendant so elects, in an action for personal injury against a health care provider based upon professional negligence, he may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to ... any ... worker’s compensation act
“(b) No source of collateral benefits introduced pursuant to subdivision (a) shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant.”
- 5 The Transit District primarily relies on *McCall v. WCAB* (Cal.App. H000864). In *McCall*, on facts similar to those in this case, the appellate court ruled that [Civil Code section 3333.1](#) did not bar an employer’s claim for credit against the employee’s settlement recovery. The Supreme Court granted review of that case in July 1986, but subsequently dismissed review. Under [rule 976\(d\) of the California Rules of Court](#), “Unless otherwise ordered by the Supreme Court, no opinion superseded by a grant of review ... shall be published. After granting review, after decision, or after dismissal of review and remand as improvidently granted, the Supreme Court may order the opinion of the Court of Appeal published in whole or in part.” The Supreme Court did not order publication of the *McCall* case. [Rule 977\(a\) of the California Rules of Court](#) states: “An opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action or proceeding” Thus, it was improper for the Transit District to cite *McCall*, and we do not consider *McCall* in our disposition of this matter.

EXHIBIT 14

EXHIBIT 14

ENTITY INFORMATION

Search Date and Time: 7/23/2020 12:18:14 PM

Entity Details

ISLANDER RV RESORT, L.L.C.	Entity Name:
L07086490	Entity ID:
Domestic LLC	Entity Type:
Active	Entity Status:
12/28/1993	Formation Date:
In Good Standing	Reason for Status:
12/30/1993	Approval Date:
	Status Date:
12/28/1993	Original Incorporation Date:
11/30/2022	Life Period:
	Business Type:
	Last Annual Report Filed:
Arizona	Domicile State:
	Annual Report Due Date:

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Statutory Agent Information

Name:
 PATRICE S HOLLOWAY

Appointed Status:
 Active

Attention:

Address:
 751 BEACHCOMBER BLVD , LAKE HAVASU CITY, AZ 86403, USA

Agent Last Updated:
 11/8/2019

E-mail:


Attention:

Mailing Address:

County:
 Mohave

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Member	R. M. Holloway		751 Beachcomber Blvd., LAKE HAVASU CITY, AZ, 86403, Mohave County, USA		11/8/2019
Member	Patrice S. Holloway		751 Beachcomber Blvd., LAKE HAVASU CITY, AZ, 86403, Mohave County, USA		11/8/2019
Member	Kenneth J. Komick		375 London Bridge Rd., #13, LAKE HAVASU CITY, AZ, 86403, Mohave County, USA		11/8/2019

Address 

Attention:

Address: 751 BEACHCOMBER BLVD, LAKE HAVASU CITY, AZ, 86403, USA

County: Mohave

Last Updated: 11/8/2019

Entity Principal Office Address

Attention:

Address: 751 Beachcomber Blvd., LAKE HAVASU CITY, AZ, 86403, USA

County: Mohave

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