

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 02:58 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 V

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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 NRCP 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 NRCP 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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and

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*Attorneys for Defendants Kenneth Marshall Silverberg and
Law Offices of Marshall Silverberg*

DATED this 21st day of June, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES

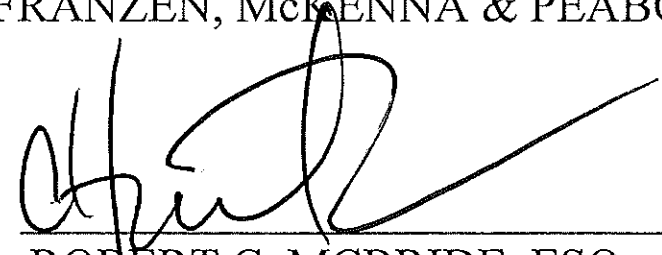
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WHEREFORE, Defendant prays for relief as follows:

1. That Plaintiffs' take nothing by way of the Complaint on file herein.
2. For reasonable attorney's fees and costs incurred in defending this litigation.
3. For such other and further relief as this Court deems just and proper in the premises.

DATED this 12th day of July, 2016.

CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY



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Attorneys for Defendant
Jeffrey Davidson, M.D.

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 12th day of July, 2016, I served a true and correct copy
3 of the foregoing **DEFENDANT, JEFFREY DAVIDSON, M.D.'S ANSWER TO**
4 **PLAINTIFFS' COMPLAINT** addressed to the following counsel of record at the following
5 address(es):
6

7 ☒ ***VIA ELECTRONIC SERVICE: by mandatory electronic service (e-service), proof of e-***
8 ***service attached to any copy filed with the Court; or***

9 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
10 postage thereon fully prepaid, addressed as indicated on the service list below in the
United States mail at Las Vegas, Nevada

11 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
12 indicated on the service list below.

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14 Thomas S. Alch, Esq.
15 Law Offices of Thomas S. Alch
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16 Las Vegas, NV 89107
Attorney for Plaintiffs

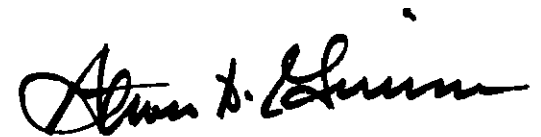
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23 *Neuromonitoring Associates, Inc.*

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27 An Employee of CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY
28

EXHIBIT 25

EXHIBIT 25



CLERK OF THE COURT

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8 Attorneys for Defendant,
MURAD JUSSA, M.D.

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 **DARIA HARPER, DANIEL WININGER**

13 Plaintiffs,

14 vs.

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

Defendants.

CASE NO. A-16-738004-C
DEPT. NO. XVII

DEFENDANT MURAD JUSSA, M.D.'S
ANSWER TO PLAINTIFFS'
COMPLAINT

23 COMES NOW Defendant, MURAD JUSSA, M.D. ("the Answering Defendant")
24 by and through his attorneys, DAEHNKE STEVENS, LLP and in answer to Plaintiffs'
25 Complaint on file herein, admits, denies and alleges as follows:

26 1. Answering Paragraphs 1, 2, 3 and 4 of Plaintiffs' Complaint on file herein, the
27 Answering Defendant is without sufficient knowledge or information to form a belief as to
28

1 the truth of the allegations contained in said paragraphs, and on that basis denies each and
2 every allegation contained therein.

3 2. Answering Paragraph 5 of Plaintiffs' Complaint on file herein, the Answering
4 Defendant admits that Murad Jussa, M.D. is duly licensed in Nevada to practice medicine.

5 As to all remaining allegations contained therein, this Answering Defendant is without
6 sufficient knowledge or information to form a belief as to the truth of the allegations
7 contained in said paragraph, and on that basis denies each and every allegation contained
8 therein.

9 3. Answering Paragraphs 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs' Complaint on file
10 herein, the Answering Defendant is without sufficient knowledge or information to form a
11 belief as to the truth of the allegations contained in said paragraphs, and on that basis
12 denies each and every allegation contained therein.

13 4. Answering Paragraph 13 of Plaintiffs' Complaint on file herein, the Answering
14 Defendant admits that the Affidavits of David A. Neer, M.D. and Michael Steven Ritter,
15 M.D. are attached to the Complaint. As to all remaining allegations contained therein, this
16 Answering Defendant is without sufficient knowledge or information to form a belief as to
17 the truth of the allegations contained in said paragraph, and on that basis denies each and
18 every allegation contained therein.

19 **I.**

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

23 5. Answering Paragraph 14 of Plaintiffs' Complaint on file herein, the Answering
24 Defendant repeats and realleges each and every response to the allegations in the
25 Complaint and reincorporates those responses by reference, as if the same were fully set
26 forth in detail herein.

27 6. Answering Paragraph 15 of Plaintiffs' Complaint on file herein, the Answering
28 Defendant is without sufficient knowledge or information to form a belief as to the truth of

1 the allegations contained in said paragraphs, and on that basis denies each and every
2 allegation contained therein.

3 7. Answering Paragraphs 16 and 17 of Plaintiffs' Complaint on file herein, the
4 Answering Defendant denies the allegations contained therein.

5 8. Answering Paragraph 18 of Plaintiffs' Complaint on file herein, the Answering
6 Defendant is without sufficient knowledge or information to form a belief as to the truth of
7 the allegations contained in said paragraphs, and on that basis denies each and every
8 allegation contained therein.

9 9. Answering Paragraphs 19, 20, 21 and 22 of Plaintiffs' Complaint on file herein, the
10 Answering Defendant denies the allegations contained therein.

11 II.

12 PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION 13 FOR LOSS OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF 14 THEM AS FOLLOWS:

15 10. Answering Paragraph 23 of Plaintiffs' Complaint on file herein, the Answering
16 Defendant repeats and realleges each and every response to the allegations in the
17 Complaint and reincorporates those responses by reference, as if the same were fully set
18 forth in detail herein.

19 11. Answering Paragraph 24 of Plaintiffs' Complaint on file herein, the Answering
20 Defendant is without sufficient knowledge or information to form a belief as to the truth of
21 the allegations contained in said paragraphs, and on that basis denies each and every
22 allegation contained therein.

23 12. Answering Paragraph 25 of Plaintiffs' Complaint on file herein, the Answering
24 Defendant denies the allegations contained therein.

25 AFFIRMATIVE DEFENSES

26 FIRST AFFIRMATIVE DEFENSE

27 Plaintiffs' Complaint fails to state a claim against this Answering Defendant upon
28 which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

The Answering Defendant alleges that in all medical care rendered to Plaintiff, Daria Harper, this Answering Defendant possessed and exercised that degree of skill and learning ordinarily possessed and exercised by members of the medical profession in good standing practicing in similar localities and that at all times the Answering Defendant used reasonable care and diligence in the exercise of this skill and application of this learning, and at all times acted in accordance with his best medical judgment.

THIRD AFFIRMATIVE DEFENSE

The Answering Defendant alleges that any injuries or damages allegedly sustained or suffered by Plaintiff, Daria Harper, at the times and places referred to in the Complaint, were caused, in whole or in part, or were contributed to, by the negligence or fault or want of care of Plaintiff, and that the negligence, fault or want of care on the part of Plaintiff was greater than that, if any, of the Answering Defendant, the existence of which is specifically denied.

FOURTH AFFIRMATIVE DEFENSE

The Answering Defendant alleges that he made, consistent with good medical practice, a full and complete disclosure to Plaintiff, Daria Harper, of all material facts known to him or reasonably believed by him to be true concerning Plaintiff's physical condition and the appropriate alternative procedures available for treatment of such condition. Further, each and every service rendered to Plaintiff by the Answering Defendant was expressly and impliedly consented to and authorized by Plaintiff, on the basis of said full and complete disclosure.

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff, Daria Harper, assumed the risks of the procedures performed.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were caused by and due to an unavoidable condition or occurrence.

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EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to mitigate their damages, if any, in spite of a duty to do so.

NINTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, alleged by Plaintiffs were caused by the actions or inactions of third parties over whom the Answering Defendant has no liability, responsibility or control.

TENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, complained of by Plaintiffs were unforeseeable.

ELEVENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, complained of by Plaintiffs were caused by forces of nature over which the Answering Defendant had no responsibility, liability or control.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint violates the Statute of Frauds.

THIRTEENTH AFFIRMATIVE DEFENSE

Pursuant to Nevada law, Defendants named in the Complaint cannot be jointly liable and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, which represents the percentage attributed to the Answering Defendant.

FOURTEENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, suffered by Plaintiffs were caused by new, independent, intervening and superseding causes and not by the Answering Defendant's alleged negligence or other actionable conduct, the existence of which is specifically denied.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, are subject to the limitations and protections as set forth in Chapter 41A of the Nevada Revised Statutes including, without limitation, several liability and limits on noneconomic damages.

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SIXTEENTH AFFIRMATIVE DEFENSE

It has been necessary to employ the services of an attorney to defend this action and a reasonable sum should be allowed this Answering Defendant for attorney’s fees, together with his costs expended in this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

The injuries and damages, if any, suffered by Plaintiffs can and do occur in the absence of negligence.

EIGHTEENTH AFFIRMATIVE DEFENSE

Should liability be found against the Answering Defendant—which is expressly denied—and damages assessed, the proportionate degree of negligence, fault, and/or legal responsibility of each and every person or entity (whether such other person or entity were served or not served in this matter, and/or other persons or entities not presently parties to this action) must be determined and prorated, and any judgment which may be rendered against the Answering Defendant must be reduced by the degree of negligence, fault and/or other legal responsibility found to exist as to the other parties, persons or entities.

NINETEENTH AFFIRMATIVE DEFENSE

No contractual guarantees or warranties were in existence and there is no privity of contract between Plaintiffs and the Answering Defendant.

TWENTETH AFFIRMATIVE DEFENSE

The Answering Defendant is entitled to assert all available defenses to contract, the existence of which is specifically denied.

TWENTY-FIRST AFFIRMATIVE DEFENSE

This Answering Defendant asserts all defenses available to him in law and equity, including without limitation, and all available defenses pursuant to Nevada Rule of Civil Procedure 12.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs’ non-economic damages, if any, may not exceed \$350,000 pursuant to NRS 41A.035; the Answering Defendant is otherwise entitled to all protections, benefits, and set offs available to Answering Defendant in medical malpractice actions under Nevada Revised Statute Chapters 41A and 42.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiffs have been reimbursed from any source for any special damages claimed to have been sustained as a result of the incidents alleged in Plaintiffs’ Complaint, the Answering Defendant may elect to offer those amounts into evidence and, if the Answering Defendant so elects, Plaintiffs’ special damages shall be reduced by those amounts pursuant to Nevada Revised Statute 42.021.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs are entitled to recover any future damages from the Answering Defendant, the Answering Defendant may satisfy that amount through payments pursuant to Nevada Revised Statute 42.021.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

At all times mentioned herein, the Answering Defendant acted reasonably, in good faith, and within the applicable standard of care with regard to the acts and transactions which are the subject of the Complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The complained of acts of this Answering Defendant were justified under the circumstances.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

The injuries suffered by Plaintiff, Daria Harper, if any, as set forth in the Complaint, were caused by a pre-existing condition.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

The Answering Defendant is entitled to a conclusive presumption of informed consent pursuant to NRS 41A.110.

TWENTY-NINTH AFFIRMATIVE DEFENSE

The expert affidavits attached to Plaintiffs’ Complaint do not comply with NRS 41A.071 in that they fail to demonstrate that the Answering Defendant breached the standard of care in Plaintiffs’ case, and fail to demonstrate an alleged causal link between the Answering Defendant’s treatment of Plaintiff, Daria Harper, and Plaintiffs’ alleged injuries and damages.

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THIRTEETH AFFIRMATIVE DEFENSE

The expert affidavits attached to Plaintiffs’ Complaint do not comply with NRS 41A.071 in that they fail to support the allegations contained in the Complaint.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs’ Complaint fails to comply with NRS 41A.100 as Plaintiffs have failed to provide expert medical testimony to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of this case and to prove causation of the alleged personal injury.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The Answering Defendant has fully performed his duties owed to Plaintiffs and Plaintiffs are, therefore, estopped to assert any claim against him.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering any special damages herein as a result of the failure to comply with the provisions of NRCPP 9(g).

THIRTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs approved and ratified the alleged acts of the Answering Defendant for which Plaintiffs now complain.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have not suffered any compensable injury as a result of the Answering Defendant’s alleged actions and, as a result, are not entitled to an award against them.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs failed to allege facts in support of any award of pre-judgment or post-judgment interest.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs’ causes of action are duplicative and are, therefore, an improper attempt to seek relief to which Plaintiffs are not entitled as such would constitute a double recovery.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Pursuant to Nevada Rule of Civil Procedure 11, all possible affirmative defenses may not have been alleged as sufficient facts were not available, after reasonable inquiry, upon the filing of the Answering Defendant’s Answer and therefore the Answering

1 Defendant reserves the right to amend his Answer to allege additional affirmative defenses
2 if subsequent investigation warrants. Additionally, one or more of these affirmative
3 defenses may have been pled for the purposes of non-waiver.

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- I. WHEREFORE, the Answering Defendant prays as follows:
- 1. That Plaintiff, Daria Harper, take nothing by reason of her Complaint;
 - 2. For all attorney’s fees incurred in the defense of Plaintiffs’ Complaint against the Answering Defendant;
 - 3. For costs and disbursements incurred herein; and
 - 4. For such other and further relief as the Court may deem just and proper in these premises.
- II. WHEREFORE, the Answering Defendant prays as follows:
- 1. That Plaintiff, Daniel Wininger, take nothing by reason of his Complaint;
 - 2. For all attorney’s fees incurred in the defense of Plaintiffs’ Complaint against the Answering Defendant;
 - 3. For costs and disbursements incurred herein; and
 - 4. For such other and further relief as the Court may deem just and proper in these premises.

DATED: this 13th day of July, 2016.

DAEHNKE STEVENS LLP

By /s/ Patricia Egan Daehnke
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Attorneys for Defendant,
MURAD JUSSA, M.D.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 13, 2016, a true and correct copy of
3 DEFENDANT MURAD JUSSA, M.D.'S ANSWER TO PLAINTIFFS' COMPLAINT
4 was served by electronically filing with the Clerk of the Court using the Wiznet Electronic
5 Service system and serving all parties with an email-address on record, who have agreed to
6 receive Electronic Service in this action.

7
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Brigette E. Foley, Esq.
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12 *Attorneys for Defendants,*
Cyndi Tran, DO, Elizabeth Phung-Hart,
DO and Andrea Agcaoili. DO

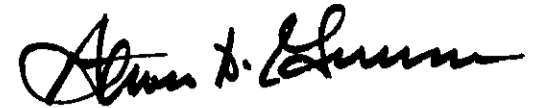
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16 *Attorneys for Defendants,*
17 Valley Hospital Medical Center, Inc. and
Valley Health System. LLC

18
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21 By /s/ Melissa Gutbrodt
22 Melissa Gutbrodt, an employee of
23 DAEHNKE STEVENS LLP
24
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EXHIBIT 26

EXHIBIT 26



CLERK OF THE COURT

ANS
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BRIGETTE E. FOLEY, ESQ.
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DISTRICT COURT
CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-738004-C
DEPT. NO.: XVII

CYNDI TRAN, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT

COMES NOW Defendant CYNDI TRAN, D.O. (hereinafter "Dr. Tran"), by and through
her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE E. FOLEY, ESQ. of

1 the law firm of ALVERSON, TAYLOR, MORTENSEN & SANDERS, and hereby answers
2 Plaintiffs' Complaint, as follows:

3 **GENERAL ALLEGATIONS**

4 1. Answering Defendant is without sufficient knowledge to form a belief as to the
5 truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs'
6 Complaint, and therefore denies the same.

7
8 2. In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits
9 she was at all times a physician holding herself out as duly licensed to practice her profession
10 under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that
11 profession in the State of Nevada. The remainder of the allegations contained in this paragraph
12 refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to
13 the truth of such allegations, and therefore denies the same.

14
15 3. Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no
16 answer or response is necessary, and on that basis, Defendant denies the same.

17 **FIRST CAUSE OF ACTION**
18 **(Medical Malpractice)**

19 4. Answering Defendants repeat and reallege their answers to the allegations
20 contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully
21 set forth herein.

22 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of
23 Plaintiffs' Complaint.

24 6. Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal
25 conclusions to which no answer or response is necessary, and on that basis, Defendant denies the
26 same.
27

1 7. Answering Defendant is without sufficient knowledge to form a belief as to the
2 truth of the allegations contained in paragraph 18 of Plaintiffs' Complaint, and therefore denies
3 the same.

4 **SECOND CAUSE OF ACTION**
5 **(Loss of Consortium)**

6 8. Answering Defendants repeat and reallege their answers to the allegations
7 contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully
8 set forth herein.

9 9. Answering Defendant is without sufficient knowledge to form a belief as to the
10 truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies
11 the same.

12 10. Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no
13 answer or response is necessary, and on that basis, Defendant denies the same.

14 **PRAYER FOR RELIEF**

15 Answering Defendant denies that Plaintiffs are entitled to any of the requested relief as
16 contained within their Complaint.

17 **GENERAL DENIAL**

18 Answering Defendant denies each and every allegation contained in Plaintiffs' Complaint
19 that is not specifically admitted to be true.

20 **FIRST AFFIRMATIVE DEFENSE**

21 Defendant alleges that Plaintiffs' Complaint on file herein fails to state a claim upon
22 which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiffs' damages, if any, were caused in whole or in part, or
25

1 were contributed to by reason of the negligence or wrongful conduct of Plaintiffs.

2 **THIRD AFFIRMATIVE DEFENSE**

3 All risks and dangers involved in the factual situation described in the Complaint were
4 open, obvious, and known to Plaintiffs and said Plaintiffs voluntarily assumed said risks and
5 dangers.
6

7 **FOURTH AFFIRMATIVE DEFENSE**

8 The incident alleged in Plaintiffs' Complaint and the resulting damages, if any, to
9 Plaintiffs were proximately caused or contributed to by Plaintiffs' own negligence, and such
10 negligence was greater than the alleged negligence of Defendant.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Defendant alleges that the occurrence referred to in the Complaint, and all injuries and
13 damages, if any, resulting there from were caused by the acts or omissions of a third party over
14 whom Defendant had no control.
15

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Defendant has fully performed and discharged all obligations owed to Plaintiffs,
18 including meeting the requisite standard of care to which Plaintiffs were entitled.
19

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiffs were
22 suffering from a medical condition(s) that Defendant did not cause, nor was Defendant
23 responsible for said medical condition(s).

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 If Plaintiffs have sustained any injuries or damages, such were the result of intervening
26 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by
27 Defendant, and for which Defendant is not liable.
28

NINTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering any special damages herein as a result of the failure to comply with the provisions of NRCP 9(g).

TENTH AFFIRMATIVE DEFENSE

Defendant alleges that, pursuant to Nevada law, Defendants would not be jointly liable, and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, that represents the percentage attributable to Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are governed and/or barred pursuant to NRS Chapters 1, 40, 41, and 41A, and by the provisions of Question 3 passed by the People of the State of Nevada on November 2, 2004.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is void *ab initio* as it does not include an affidavit which meets with requirements of N.R.S. 41A.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs had a duty to mitigate their damages and failed to do so.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statutes of limitations and/or repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action is barred and/or diminished by the doctrines of waiver, laches, estoppels, and/or unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and,

1 therefore, Defendant reserves the right to amend the Answer, and to allege additional
2 Affirmative Defenses if subsequent investigation so warrants.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiffs'
5 Amended Complaint.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7
8 It been necessary for this Defendant to employ the services of an attorney to defend this
9 action and a reasonable sum should be allowed to Defendant for attorney's fees, together with
10 costs of suit incurred herein.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Defendant hereby incorporates by reference those affirmative defenses enumerated in
13 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
14 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
15 right to seek leave of Court to amend the Answer to specifically assert the same. Such defenses
16 are herein incorporated by reference for the specific purpose of not waiving the same.
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23

24 / / /

25 / / /

26 / / /

27 / / /

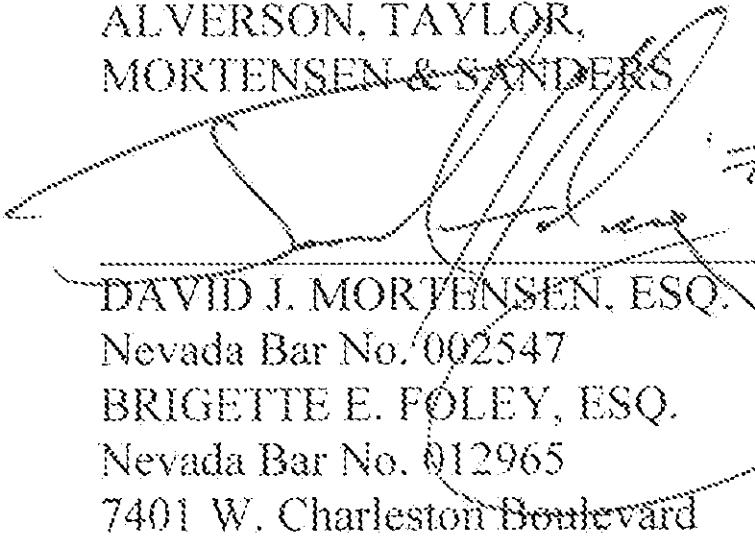
28

1 WHEREFORE, Defendant prays for relief as follows:

- 2 1. That Plaintiffs take nothing by way of their Complaint on file herein.
- 3 2. For reasonable attorney's fees and costs incurred in defending this litigation.
- 4 3. For such other and further relief as this Court deems just and proper.
- 5

6 DATED this 19 day of October, 2016.

7 ALVERSON, TAYLOR,
8 MORTENSEN & SANDERS

9  #13350
10 DAVID J. MORTENSEN, ESQ.

11 Nevada Bar No. 002547

12 BRIGETTE E. FOLEY, ESQ.

13 Nevada Bar No. 012965

14 7401 W. Charleston Boulevard

15 Las Vegas, NV 89117-1401

16 Phone: (702) 384-7000

17 Facsimile: (702) 385-7000

18 E-File: efile@alversontaylor.com

19 Attorneys for DEFENDANTS

20 Cyndi Tran, D.O.

21 Elizabeth Phung-Hart, D.O.

22 Andrea Agcaoili, D.O.

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on the 19th day of October, 2016, the foregoing
CYNDI TRAN, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT was served on the
following by Electronic Service to All parties on the Wiznet Service List, addressed as follows:

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd, Suite 300
Las Vegas, Nevada 89107
Phone: (702) 740-4140
Attorney for Plaintiffs

Patricia Daehnke, Esq.
DAEHNKE STEVENS LLP
2300 W. Sahara Ave
Suite 680 Box 32
Las Vegas, NV 89102
Phone: (702) 979-2132
Attorney for Jussa Murad, M.D.

Kenneth M. Webster, Esq.
Tyson J. Dobbs, Esq.
Kirill V. Mikhaylov, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Phone: (702) 889-6400
*Attorneys for Defendant Valley Health System,
LLC and Valley Hospital Medical Center, Inc.*

Robert C. McBride, Esq.
Chelsea R. Hueth, Esq.
CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
Phone: (702) 792-5855
Attorneys for Jeffrey Davidson, M.D.


An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **CYNDI TRAN, D.O.'S**
ANSWER TO PLAINTIFFS' COMPLAINT filed in District Court Case No. A-16-738004-C

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for
a federal or state grant.

DATED this 19 day of October, 2016.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

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Attorneys for DEFENDANT

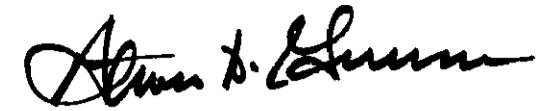
Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

EXHIBIT 27

EXHIBIT 27



CLERK OF THE COURT

ANS
KENNETH M. WEBSTER, ESQ.
Nevada Bar No. 7205
TYSON J. DOBBS, ESQ.
Nevada Bar No. 11953
KIRILL V. MIKHAYLOV, ESQ.
Nevada Bar No. 13538
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702-889-6400 -- Phone
702-384-6025 -- Facsimile
efile@hpslaw.com
Attorneys for Defendants
Valley Hospital Medical Center, Inc.
and Valley Health System, LLC, doing business as
Valley Hospital Medical Center

DISTRICT COURT
CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-16-738004-C
DEPT NO. XVII

**DEFENDANTS VALLEY HOSPITAL
MEDICAL CENTER, INC. AND
VALLEY HEALTH SYSTEM, LLC,
DOING BUSINESS AS VALLEY
HOSPITAL MEDICAL CENTER'S
ANSWER TO PLAINTIFFS'
COMPLAINT FOR MEDICAL
MALPRACTICE**

COMES NOW, Defendants, VALLEY HOSPITAL MEDICAL CENTER, INC., doing
business as VALLEY HOSPITAL MEDICAL CENTER, and VALLEY HEALTH SYSTEM,
LLC, doing business as VALLEY HOSPITAL MEDICAL CENTER (collectively
"Defendants"), by and through their attorneys of record, the law firm of Hall Prangle &

HALL PRANGLE & SCHOONVELD, LLC
1160 NORTH TOWN CENTER DRIVE, STE. 200
LAS VEGAS, NEVADA 89144
TELEPHONE: 702-889-6400 FACSIMILE: 702-384-6025

Schoonveld, LLC, and hereby provides its Answer to Plaintiffs' Complaint for Medical Malpractice as follows:

MEDICAL MALPRACTICE

LOSS OF CONSORTIUM

1. In answering paragraphs 1, 2, 3, 4, 5, 6, 9, 10 and 12 of Plaintiffs' Complaint, these answering Defendants are without sufficient information to form a belief as to the truth of the allegations contained therein and therefore deny the same.

2. In answering paragraph 7 of Plaintiffs' Complaint, these answering Defendants admit that Valley Hospital Medical Center, Inc. is a corporation organized and existing in Nevada, with its principal place of business situated in the State of Nevada. Defendants admit that Valley Health System, LLC, doing business as Valley Hospital Medical Center is a Delaware corporation authorized to do business in the State of Nevada, with its principal place of business situated in the State of Nevada. In answering the remaining allegations of said paragraph, these answering Defendants deny each and every allegation contained therein.

3. In answering paragraph 8 of Plaintiffs' Complaint, these answering Defendants admit that Valley Health System, LLC owned and operated Valley Hospital Medical Center. These answering defendants deny that Valley Hospital Medical Center, Inc. owned and operated Valley Hospital Medical Center. As to the remaining allegations contained therein, these answering Defendants are without sufficient information to form a belief as to the truth of the remaining allegations and therefore deny the same.

4. In answering paragraph 11 of Plaintiffs' Complaint, these answering Defendants admit that Valley Health System, LLC dba Valley Hospital Medical Center was at all times mentioned in the Complaint accredited by the Joint Commission. As to the remaining allegations contained therein, these answering Defendants are without sufficient information to form a belief as to the truth of the remaining allegations and therefore deny the same.

5. In answering paragraph 13 of Plaintiffs' Complaint, these answering Defendants admit that declarations are attached to the Complaint. In answering the remaining allegations of

1 said paragraph, these answering Defendants are without sufficient information to form a belief as
2 to the truth of the remaining allegations and therefore deny the same.

3 I.

4 **PLAINTIFF DARIA HARPER ALLEGES FOR A CAUSE OF ACTION FOR**
5 **MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF THEM**
6 **AS FOLLOWS:**

7 6. In answering paragraph 14 of Plaintiffs' Complaint, these answering Defendants
8 hereby incorporate its answers to paragraphs 1 through 13 as though fully set forth herein.

9 7. In answering paragraphs 15 and 16 of Plaintiffs' Complaint, these answering
10 Defendants are without sufficient information to form a belief as to the truth of the allegations
11 contained therein and therefore deny the same.

12 8. In answering paragraphs 17, 18, 19, 20, 21 and 22 of Plaintiffs' Complaint, these
13 answering Defendants deny each and every allegation contained therein.

14 II.

15 **PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION FOR**
16 **LOSS OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF THEM AS**
17 **FOLLOWS:**

18 9. In answering paragraph 23 of Plaintiffs' Complaint, these answering Defendants
19 hereby incorporate its answers to paragraphs 1 through 22 as though fully set forth herein.

20 10. In answering paragraph 24 of Plaintiffs' Complaint, these answering Defendants
21 are without sufficient information to form a belief as to the truth of the allegations contained
22 therein and therefore deny the same.

23 11. In answering paragraphs 25 of Plaintiffs' Complaint, these answering Defendants
24 deny each and every allegation contained therein.

25 **AFFIRMATIVE DEFENSES**

26 **FIRST AFFIRMATIVE DEFENSE**

27 Plaintiffs' Complaint on file herein fails to state a claim against these Defendants upon
28 which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The injuries, if any, complained of by Plaintiffs in the Complaint were proximately caused by the acts or omissions of unknown third parties or other persons over whom these Defendants exercised no control and over who these Defendants have no right or duty to control, nor ever has had a right or duty to exercise control.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs did not exercise ordinary care, caution or prudence in the conduct of their affairs relating to the allegations of the Complaint herein for damages in order to avoid the injuries or damages of which Plaintiffs complained and said injuries or damages, if any, were directly and proximately contributed to or caused by the fault, carelessness and negligence of the Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

The risks and consequences, if any, attendant to the recommendations and treatment proposed by these Defendants were fully explained to the Plaintiffs who freely consented to such treatment and thereby assumed risks involved in such matter.

FIFTH AFFIRMATIVE DEFENSE

The damages, if any, alleged by Plaintiffs were not the result of any acts of omission, or commission, or negligence, but were the results of known risks which were consented to by the Plaintiffs, such risks being inherent in the nature of the care rendered and such risks were assumed by the Plaintiffs when they consented to treatment.

SIXTH AFFIRMATIVE DEFENSE

In all medical attention rendered by these Defendants to Plaintiffs, these Defendants possessed and exercised that degree of skill and learning ordinarily possessed and exercised by the members of its profession in good standing, practicing in similar localities, and that at all times these Defendants used reasonable care and diligence in the exercise of its skills and the application of its learning, and at all times acted according to their best judgment; that the medical treatment administered by these Defendants were the usual and customary treatment for the physical condition and symptoms exhibited by Plaintiffs, and that at no time were these

1 Defendants guilty of negligence or improper treatment; that, on the contrary, these Defendants
2 did perform each and every act of such treatment in a proper and efficient manner and in a
3 manner most thoroughly approved and followed by the medical profession generally and under
4 the circumstances and conditions as they existed when such medical attention was rendered.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 The injuries complained of in the Complaint, if any, were not the result of willful,
7 malicious or deliberate conduct on the part of these answering Defendants.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 That it has been necessary for the Defendants to employ the services of an attorney to
10 defend this action and a reasonable sum should be allowed Defendants for attorneys' fees,
11 together with costs of suit incurred herein.

12 **NINTH AFFIRMATIVE DEFENSE**

13 Each Defendant is liable for only that portion of the Plaintiffs' claims that represents the
14 percentage of negligence, if any, attributed to it.

15 **TENTH AFFIRMATIVE DEFENSE**

16 Plaintiffs have failed to plead any acts or omissions of these answering Defendants
17 sufficient to constitute punitive damages.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Plaintiffs failed to file their Complaint before the running of the applicable statute of
20 limitation, thereby barring their claims for relief.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complaint, and each claim asserted therein and the relief sought, is barred by
23 the statute of frauds.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 Pursuant to N.R.C.P. 11, as amended, all possible Affirmative Defenses may not have
26 been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
27 the filing of Defendants' Answer, and therefore, Defendants reserve the right to amend its
28 Answer to allege additional Affirmative Defenses if subsequent investigation warrants.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants assert that the Complaint should be dismissed on the basis that Plaintiffs have not complied with NRS 41A.071.

WHEREFORE, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by virtue of their Complaint;
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

DATED this 1st day of October, 2016.

HALL PRANGLE & SCHOONVELD, LLC

By: 

KENNETH M. WEBSTER, ESQ.

Nevada Bar No. 7205

TYSON J. DOBBS, ESQ.

Nevada Bar No. 11953

KIRILL V. MIKHAYLOV, ESQ.

Nevada Bar No. 13538

HALL PRANGLE & SCHOONVELD, LLC

1160 North Town Center Drive, Ste. 200

Las Vegas, Nevada 89144

Attorneys for Defendants

Valley Hospital Medical Center, Inc.

and Valley Health System, LLC, doing business as

Valley Hospital Medical Center

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD, LLC; that on the 11 day of October, 2016, I served a true and correct copy of the foregoing DEFENDANTS VALLEY HOSPITAL MEDICAL CENTER, INC. AND VALLEY HEALTH SYSTEM, LLC, DOING BUSINESS AS VALLEY HOSPITAL MEDICAL CENTER'S ANSWER TO PLAINTIFFS' COMPLAINT FOR MEDICAL MALPRACTICE via the E-Service Master List for the above referenced matter in the Eighth Judicial District Court e-filing System in accordance with the electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules to the following:

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

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Katherine J. Gordon, Esq.
DAEHNKE STEVENS, LLP
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*Attorneys for Defendant
Murad Jussa, M.D.*

Robert C. McBride, Esq.
Chelsea R. Hueth, Esq.
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MCKENNA & PEABODY
8329 W. Sunset Rd., Ste. 260
Las Vegas, NV 89113
*Attorneys for Defendants
Steven B. Harter, M.D.; Woemen's Specialty
Care, P.C.; and Wellhealth Quality Care*

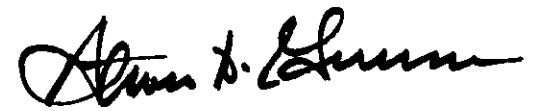
David J. Mortensen, Esq.
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SANDERS
7401 W. Charleston Blvd.
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D.O.; and Andrea Agcaoili, D.O.*

John H. Cotton, Esq.
Adam A. Schneider, Esq.
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Las Vegas, NV 89117
*Attorneys for Defendant
Paul Janda, D.O.*


An employee of HALL PRANGLE & SCHOONVELD, LLC

EXHIBIT 28

EXHIBIT 28



CLERK OF THE COURT

1 **ANS**
2 **DAVID J. MORTENSEN, ESQ.**
3 Nevada Bar No. 002547
4 **BRIGETTE E. FOLEY, ESQ.**
5 Nevada Bar No. 012965
6 **ALVERSON, TAYLOR,**
7 **MORTENSEN & SANDERS**
8 7401 West Charleston Boulevard
9 Las Vegas, NV 89117-1401
10 Phone: (702) 384-7000
11 Facsimile: (702) 385-7000
12 **efile@alversontaylor.com**
13 **Attorneys for DEFENDANTS**
14 Cyndi Tran, D.O.
15 Elizabeth Phung-Hart, D.O.
16 Andrea Agcaoili, D.O.

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **DARIA HARPER, DANIEL WININGER,**

14 **Plaintiffs,**

15 **vs.**

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

27 **Defendants.**

CASE NO.: A-16-738004-C
DEPT. NO.: XVII

28 **ANDREA AGCAOILI, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT**

29 COMES NOW Defendant ANDREA AGCAOILI, D.O. (hereinafter "Dr. Agcaoili"), by
30 and through her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE E.

1 FOLEY, ESQ. of the law firm of ALVERSON, TAYLOR, MORTENSEN & SANDERS, and
2 hereby answers Plaintiffs' Complaint, as follows:

3 **GENERAL ALLEGATIONS**

4 1. Answering Defendant is without sufficient knowledge to form a belief as to the
5 truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs'
6 Complaint, and therefore denies the same.

7
8 2. In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits
9 she was at all times a physician holding herself out as duly licensed to practice her profession
10 under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that
11 profession in the State of Nevada. The remainder of the allegations contained in this paragraph
12 refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to
13 the truth of such allegations, and therefore denies the same.

14
15 3. Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no
16 answer or response is necessary, and on that basis, Defendant denies the same.

17 **FIRST CAUSE OF ACTION**
18 **(Medical Malpractice)**

19 4. Answering Defendants repeat and reallege their answers to the allegations
20 contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully
21 set forth herein.

22 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of
23 Plaintiffs' Complaint.

24 6. Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal
25 conclusions to which no answer or response is necessary, and on that basis, Defendant denies the
26 same.
27
28

1 7. Answering Defendant is without sufficient knowledge to form a belief as to the
2 truth of the allegations contained in paragraph 18 of Plaintiffs' Complaint, and therefore denies
3 the same.

4 **SECOND CAUSE OF ACTION**
5 **(Loss of Consortium)**

6 8. Answering Defendants repeat and reallege their answers to the allegations
7 contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully
8 set forth herein.

9 9. Answering Defendant is without sufficient knowledge to form a belief as to the
10 truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies
11 the same.

12 10. Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no
13 answer or response is necessary, and on that basis, Defendant denies the same.

14 **PRAYER FOR RELIEF**

15 Answering Defendant denies that Plaintiffs are entitled to any of the requested relief as
16 contained within their Complaint.

17 **GENERAL DENIAL**

18 Answering Defendant denies each and every allegation contained in Plaintiffs' Complaint
19 that is not specifically admitted to be true.

20 **FIRST AFFIRMATIVE DEFENSE**

21 Defendant alleges that Plaintiffs' Complaint on file herein fails to state a claim upon
22 which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiffs' damages, if any, were caused in whole or in part, or
25
26
27
28

1 were contributed to by reason of the negligence or wrongful conduct of Plaintiffs.

2 **THIRD AFFIRMATIVE DEFENSE**

3 All risks and dangers involved in the factual situation described in the Complaint were
4 open, obvious, and known to Plaintiffs and said Plaintiffs voluntarily assumed said risks and
5 dangers.
6

7 **FOURTH AFFIRMATIVE DEFENSE**

8 The incident alleged in Plaintiffs' Complaint and the resulting damages, if any, to
9 Plaintiffs were proximately caused or contributed to by Plaintiffs' own negligence, and such
10 negligence was greater than the alleged negligence of Defendant.

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Defendant alleges that the occurrence referred to in the Complaint, and all injuries and
13 damages, if any, resulting there from were caused by the acts or omissions of a third party over
14 whom Defendant had no control.
15

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Defendant has fully performed and discharged all obligations owed to Plaintiffs,
18 including meeting the requisite standard of care to which Plaintiffs were entitled.
19

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that at all times mentioned in Plaintiffs' Complaint, Plaintiffs were
22 suffering from a medical condition(s) that Defendant did not cause, nor was Defendant
23 responsible for said medical condition(s).

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 If Plaintiffs have sustained any injuries or damages, such were the result of intervening
26 and/or superseding events, factors, occurrences, or conditions, which were in no way caused by
27 Defendant, and for which Defendant is not liable.
28

NINTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovering any special damages herein as a result of the failure to comply with the provisions of NRCP 9(g).

TENTH AFFIRMATIVE DEFENSE

Defendant alleges that, pursuant to Nevada law, Defendants would not be jointly liable, and that if liability is imposed, such liability would be several for that portion of Plaintiffs' damages, if any, that represents the percentage attributable to Defendants.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are governed and/or barred pursuant to NRS Chapters 1, 40, 41, and 41A, and by the provisions of Question 3 passed by the People of the State of Nevada on November 2, 2004.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Complaint is void *ab initio* as it does not include an affidavit which meets with requirements of N.R.S. 41A.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs had a duty to mitigate their damages and failed to do so.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statutes of limitations and/or repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' action is barred and/or diminished by the doctrines of waiver, laches, estoppels, and/or unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and,

1 therefore, Defendant reserves the right to amend the Answer, and to allege additional
2 Affirmative Defenses if subsequent investigation so warrants.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiffs'
5 Amended Complaint.

6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7
8 It been necessary for this Defendant to employ the services of an attorney to defend this
9 action and a reasonable sum should be allowed to Defendant for attorney's fees, together with
10 costs of suit incurred herein.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Defendant hereby incorporates by reference those affirmative defenses enumerated in
13 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
14 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
15 right to seek leave of Court to amend the Answer to specifically assert the same. Such defenses
16 are herein incorporated by reference for the specific purpose of not waiving the same.
17
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23

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28

CERTIFICATE OF SERVICE

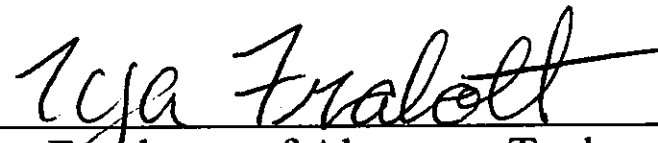
The undersigned hereby certifies that on the 19th day of October, 2016, the foregoing
ANDREA AGCAOILI, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT was served on
the following by Electronic Service to All parties on the Wiznet Service List, addressed as
follows:

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd, Suite 300
Las Vegas, Nevada 89107
Phone: (702) 740-4140
Attorney for Plaintiffs

Patricia Daehnke, Esq.
DAEHNKE STEVENS LLP
2300 W. Sahara Ave
Suite 680 Box 32
Las Vegas, NV 89102
Phone: (702) 979-2132
Attorney for Jussa Murad, M.D.

Kenneth M. Webster, Esq.
Tyson J. Dobbs, Esq.
Kirill V. Mikhaylov, Esq.
HALL PRANGLE & SCHOONVELD, LLC
1160 North Town Center Drive, Suite 200
Las Vegas, NV 89144
Phone: (702) 889-6400
*Attorneys for Defendant Valley Health System,
LLC and Valley Hospital Medical Center, Inc.*

Robert C. McBride, Esq.
Chelsea R. Hueth, Esq.
CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY
8329 W. Sunset Road, Suite 260
Las Vegas, NV 89113
Phone: (702) 792-5855
Attorneys for Jeffrey Davidson, M.D.


An Employee of Alverson, Taylor,
Mortensen & Sanders

AFFIRMATION
Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **ANDREA AGCAOILI, D.O.'S**
ANSWER TO PLAINTIFFS' COMPLAINT filed in District Court Case No. A-16-738004-C

X Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

[Insert specific law]

-or-

B. For the administration of a public program or for an application for
a federal or state grant.

DATED this 19 day of October, 2016.

ALVERSON, TAYLOR
MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

Nevada Bar No. 012965

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

(702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

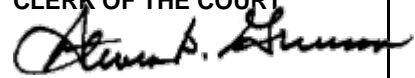
Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

EXHIBIT 29

EXHIBIT 29



OPPS

DALTON L. HOOKS, JR., ESQ., Nevada Bar No. 8121

SAMI RANDOLPH, ESQ., Nevada Bar No. 7876

HOOKS MENG & CLEMENT

2820 W. Charleston Boulevard, Ste. C-23

Las Vegas, NV 89102

Telephone No. (702) 766-4672

Facsimile No. (702) 919-4672

Attorneys for Defendants

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and

COPPERPOINT GENERAL INSURANCE COMPANY

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.: XXX

**COPPERPOINT MUTUAL INSURANCE
HOLDING COMPANY and
COPPERPOINT GENERAL INSURANCE
COMPANY'S OPPOSITION TO
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION**

Hearing date: July 1, 2020

Hearing time: 9:00 a.m.

...

...

1 Plaintiffs when the Complaint was filed on June 7, 2016. *See Exhibit E.* The Complaint was
2 filed against Valley Hospital Medical Center, Inc., Valley Health System, LLC., Jeffrey
3 Davidson, M.D., Cyndi Tran, D.O., Paul Janda, D.O., Elizabeth Phung-Hart, D.O., Andrea
4 Agcaoili, D.O., Murad Jussa, M.D., and Does I through 250. *See Exhibit E.* The parties
5 ultimately settled, and Plaintiffs dismissed the lawsuit in July 2018. *See Exhibit E.* According to
6 her affidavit dated May 19, 2020, Plaintiff Harper received \$ 6,250,000.00 in settlement funds.
7 *See Exhibit D.*

8 On June 22, 2018, prior to settlement of the medical malpractice action CopperPoint sent
9 Plaintiffs' then-attorney Defendant Marshall Silberberg a letter asking for an update on the
10 medical malpractice litigation. *See Exhibit C.* Defendant Silberberg denied that CopperPoint
11 was entitled to a lien. *See Exhibit C.*

12 CopperPoint attempted to negotiate a resolution to its lien issue with the Plaintiffs and
13 their counsel. Unable to reach a resolution with the Plaintiffs, on October 30, 2019, CopperPoint
14 mailed a Notice of Claim Status to the Plaintiff. *See Exhibit A.*

15 In the October 30, 2019, Notice of Claim Status, CopperPoint informed Plaintiff Harper
16 that it has a lien against her medical malpractice settlement in the amount of medical, surgical,
17 and hospital benefits paid by CopperPoint. *See Exhibit A.* Further, CopperPoint advised
18 Plaintiff Harper that CopperPoint was not required to pay further medical expenses until it has
19 recouped its lien. *See Exhibit A.*

20 Another Notice of Claim Status was sent by CopperPoint to Plaintiff Harper on May 1,
21 2020. *See Exhibit B.* In the Notice of Claim Status dated May 1, 2020, Plaintiff was advised
22 benefits were terminated effective May 2, 2020 until CopperPoint's current lien of \$3,171,095.00
23 is fully exhausted. *See Exhibit B.* Matters related to the administration of and the payment of
24

EXHIBIT C

EXHIBIT C

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 30

EXHIBIT 30



COPPERPOINT INSURANCE COMPANIES ANNOUNCES ACQUISITION OF ALASKA NATIONAL INSURANCE COMPANY

September 17, 2019

Transaction advances company's geographic expansion and product diversification strategy

PHOENIX – CopperPoint Insurance Companies, a western-based regional commercial insurance company, today announced an agreement to acquire Alaska National Corporation and its wholly owned subsidiary Alaska National Insurance Company (ANIC), an Alaska domiciled workers' compensation and commercial insurance carrier. As of mid-year, Alaska National Insurance Company has a statutory surplus of approximately \$550 million. In 2018, the company had gross written premium of \$250 million and the combined companies will represent approximately \$650 million in premium and an asset base of nearly \$4.8 billion.

"It's an exciting time in our nearly 95-year history as we look forward to welcoming Alaska National and their 250 employees into the CopperPoint Family of Insurance Companies," said Marc Schmittlein, President and CEO of CopperPoint Insurance Companies. "We have been on a journey of transformation as we continue our geographic and product diversification strategy with the vision of becoming the leading regional commercial insurance company for the western United States."

Alaska National brings a proven track record of strong underwriting discipline and exemplary service as evidenced by the company's inclusion in the Property-Casualty Ward's 50[®] Companies for each of the past nine years. Alaska National is licensed in 26 states, opening opportunities for CopperPoint to continue its diversification strategy. CopperPoint's headquarters will remain in Phoenix, Arizona, while Alaska National will continue operating under its company name and will remain domiciled and home-based in Anchorage, Alaska. The



distribution partners and their policyholder customers.

"For nearly 40 years, our company has focused on building personal relationships and developing customized solutions designed to achieve safer futures and better outcomes for our customers," said Craig Nodtvedt, CEO of Alaska National. "CopperPoint is an ideal strategic partner and strong cultural fit for us. Both of our companies are deeply committed to employee excellence and to delivering best in class service to all of our stakeholders. We especially like that Alaska National will become part of CopperPoint's mutual holding company structure where we can maintain our long-term view of the business allowing us to concentrate first on the needs of our customers."

"Alaska National helps us significantly expand our portfolio of insurance products and geography, enabling us to better meet the evolving needs of our brokers, agents and customers," Marc Schmittlein continued. "They are highly respected in the industry, recognized for their stellar service, exceptional financial performance, and talented employees. We are excited and confident about the future."

CopperPoint privatized from the state of Arizona and converted to a mutual insurance company in 2013. Subsequently, CopperPoint introduced additional commercial insurance products, including commercial package, auto and umbrella in Arizona. In 2017, the company acquired Pacific Compensation Insurance Company, a California domiciled company, expanding into the California market. In 2018, CopperPoint further expanded and began to offer products under the CopperPoint brand in Colorado, Nevada, New Mexico and Utah. Earlier in 2019, CopperPoint adopted a new mutual insurance holding company corporate structure to support the continued growth of the company.

The transaction is expected to close once customary regulatory reviews and approvals are received.

Waller Helms Advisors and Locke Lord LLP served as advisors to CopperPoint Insurance Companies. Macquarie Capital and Debevoise & Plimpton LLP served as advisors to Alaska National Corporation.

About CopperPoint Insurance Companies

Founded in 1925, CopperPoint Insurance Companies, www.copperpoint.com, is a leading provider of workers' compensation and commercial insurance solutions. With an expanded line of insurance products and a growing six state footprint in the western United States,



Insurance Companies, California based Pacific Compensation Insurance Company, and other CopperPoint insurance entities. All companies are rated A- (Excellent) by A.M. Best.

About Alaska National Insurance Company

Founded in 1980, Alaska National Insurance Company, www.alaskanational.com, is a leading commercial insurance provider in the western United States. Operating in four regions — Alaska, Pacific Northwest, Inland Northwest and California — the company focuses on workers' compensation, commercial property and auto, general liability, inland marine, umbrella, crime and other commercial insurance services. The company is rated A (Excellent) by A.M. Best. In 2019, Alaska National Insurance Company was again named to the **Property-Casualty Ward's 50[®] Companies** list of top performers, an honor it has earned across nine consecutive years.

CONTACT:

Meredith Topalanchik

mtopalanchik@gscommunications.com

917.595.3036

Becca Hare

bhare@gscommunications.com

917.595.3054

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EXHIBIT 31

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CopperPoint Insurance Company

Address:

3030 N 3rd St
Phoenix, AZ 8-5012

Phone

602-631-2136

URL:**Email:**

sbegley@copperpoint.com

NAIC ID:

14216

[NEW SEARCH](#)

Company Type	License #	Original Issue Date	Status	Status Date	Domicile State
Property and Casualty Insurer	147558	08/14/2018	Active	08/14/2018	Arizona

Authorized Line	Status	Effective Date	Reinsurer
Workers Compensation - Property and Casualty Insurer	Approved	08/14/2018	No
Casualty	Approved	08/14/2018	No
Property	Approved	08/14/2018	No

Authorized Line	Status	Effective Date	Reinsurer
Surety	Approved	08/14/2018	No

▶ 14 Agency Appointments

▶ 37 Agent Appointements

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CopperPoint General Insurance Company

NEW SEARCH

Address:

3030 N 3rd Street
Phoenix, AZ 8-5012

Phone

602-631-2136

URL:

Email:

sbegley@copperpoint.com

NAIC ID:

Company Type	License #	Original Issue Date	Status	Status Date	Domicile State
Property and Casualty Insurer	147790	08/14/2018	Active	08/14/2018	Arizona

Authorized Line	Status	Effective Date	Reinsurer
Surety	Approved	08/14/2018	No
Property	Approved	08/14/2018	No
Casualty	Approved	08/14/2018	No
Workers Compensation - Property and Casualty Insurer	Approved	08/14/2018	No

12 Agency Appointments

Agency Name	Status	Active Date	Appointment
4593			
AMERICAN INSURANCE & INVESTMENT CORP (UT)	Active	02/01/2019	Casualty
	Active	02/01/2019	Property
4840			
Agency Name	Status	Active Date	Appointment
ASSURANCE LTD	Active	01/01/2019	Casualty
	Active	01/01/2019	Property
142538			
Agency Name	Status	Active Date	Appointment
ASSUREDPARTNERS OF NEVADA, LLC	Active	03/15/2019	Casualty
	Active	03/15/2019	Property

Agency Name	Status	Active Date	Appointment
-------------	--------	-------------	-------------

11792

Agency Name	Status	Active Date	Appointment
BROWN & BROWN INSURANCE OF NEVADA INC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property

2701

Agency Name	Status	Active Date	Appointment
CRAGIN & PIKE INC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property

112531

Agency Name	Status	Active Date	Appointment
CREST INS GROUP LLC	Active	05/14/2020	Casualty
	Active	05/14/2020	Property

2759

Agency Name	Status	Active Date	Appointment
DIXIE LEAVITT AGENCY	Active	01/01/2019	Casualty
	Active	01/01/2019	Property

112896

Agency Name	Status	Active Date	Appointment
L/P INSURANCE SERVICES, LLC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property

15743

Agency Name	Status	Active Date	Appointment
LEAVITT GROUP AGENCY ASSOCIATION, LLC	Active	05/14/2020	Casualty
	Active	05/14/2020	Property

146778

Agency Name	Status	Active Date	Appointment
LP INS SERVICES LLC	Active	04/09/2020	Casualty
	Active	04/09/2020	Property

7832

Agency Name	Status	Active Date	Appointment
M & O AGENCIES INCORPORATED (AZ)	Active	02/21/2020	Casualty
	Active	02/21/2020	Property

10707

Agency Name	Status	Active Date	Appointment
WAFD INSURANCE GROUP, INC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property

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23 Agent Appointments

Agent Name	Status	Active Date	Appointment
59156			
ARCHIE, KERRI A	Active	04/22/2019	Casualty
	Active	04/22/2019	Property
27763			
Agent Name	Status	Active Date	Appointment
BURNS, THOMAS JAMES	Active	09/03/2020	Casualty
	Active	09/03/2020	Property
62327			
Agent Name	Status	Active Date	Appointment
DECKER, KEVIN NEAL	Active	03/25/2019	Casualty
	Active	03/25/2019	Property
794827			
Agent Name	Status	Active Date	Appointment
ENRIQUEZ, REBECCA LUREEN	Active	09/03/2020	Casualty
	Active	09/03/2020	Property
1309483			
Agent Name	Status	Active Date	Appointment
HENRIE, KYLE D	Active	04/01/2019	Casualty
	Active	04/01/2019	Property
751038			
Agent Name	Status	Active Date	Appointment
JACOBS, CHRISTI LEE	Active	01/01/2019	Casualty
	Active	01/01/2019	Property
55549			
Agent Name	Status	Active Date	Appointment
KOLODZIEJ, PAMELA M	Active	01/31/2019	Casualty
	Active	01/31/2019	Property
1147610			
Agent Name	Status	Active Date	Appointment
LEE, AMY EILEEN	Active	01/01/2019	Casualty

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Company Lookup

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RETURN

Company Name

The Name Search will display a list of Companies based on your input.
Use the * as a wild card.

COMPANY LOOKUP

Record Not Found

Company Name	City, State	Status
COPPERPOINT INSURANCE COMPANY	Phoenix, AZ	Active
COPPERPOINT INDEMNITY INSURANCE COMPANY	Phoenix, AZ	Active
COPPERPOINT AMERICAN INSURANCE COMPANY	Phoenix, AZ	Active
COPPERPOINT CASUALTY INSURANCE COMPANY	Phoenix, AZ	Active
COPPERPOINT WESTERN INSURANCE COMPANY	Phoenix, AZ	Active
COPPERPOINT NATIONAL INSURANCE COMPANY	Phoenix, AZ	Active
COPPERPOINT PREMIER INSURANCE COMPANY	Phoenix, AZ	Active
COPPERPOINT GENERAL INSURANCE COMPANY	Phoenix, AZ	Active

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EXHIBIT 34

EXHIBIT 34



CopperPoint | Alaska National | PacificComp

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Strong History of Insurance Expertise



95 Years of Service

CopperPoint Insurance Company was founded in 1925 in Phoenix, AZ, as the State Compensation Fund. We've been serving our customers with specialized workers' compensation insurance expertise and best-in-class service ever since.

Today, the CopperPoint Family of Insurance Companies include CopperPoint, Alaska National and PacificComp. All companies are rated A (Excellent) by AM Best.

CopperPoint Timeline: 1925-2020

1925

Company founded as the State Compensation Fund (SCF) in Phoenix, AZ



CopperPoint | Alaska National | PacificComp

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2013



SCF privatized and converted to a mutual insurance company

CopperPoint Mutual brand is launched

CopperPoint is rated for the first-time and receives AM Best rating: A- "Excellent"

2014



Expansion into Nevada and Colorado via partnership with Argonaut

Agency distribution channel created

2016



Board names new President & CEO Marc Schmittlein

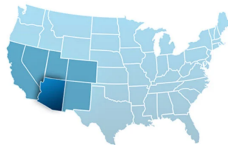
CopperPoint introduces Commercial Package and Commercial Auto capabilities

2017



Acquisition of California-based PacificComp announced and completed

2018



CopperPoint expands to a six-state footprint including Arizona, California, Colorado, Nevada, New Mexico and Utah

CopperPoint introduces Commercial Umbrella capabilities

2019



CopperPoint adopts a new Mutual Holding Company corporate structure

Acquisition of Alaska National Insurance Company announced and completed



AM Best Upgrade to A (Excellent) for the members of CopperPoint Insurance Group and affirmed Alaska National as A (Excellent)

2020



CopperPoint celebrates 95 years in business



CopperPoint | Alaska National | PacificComp

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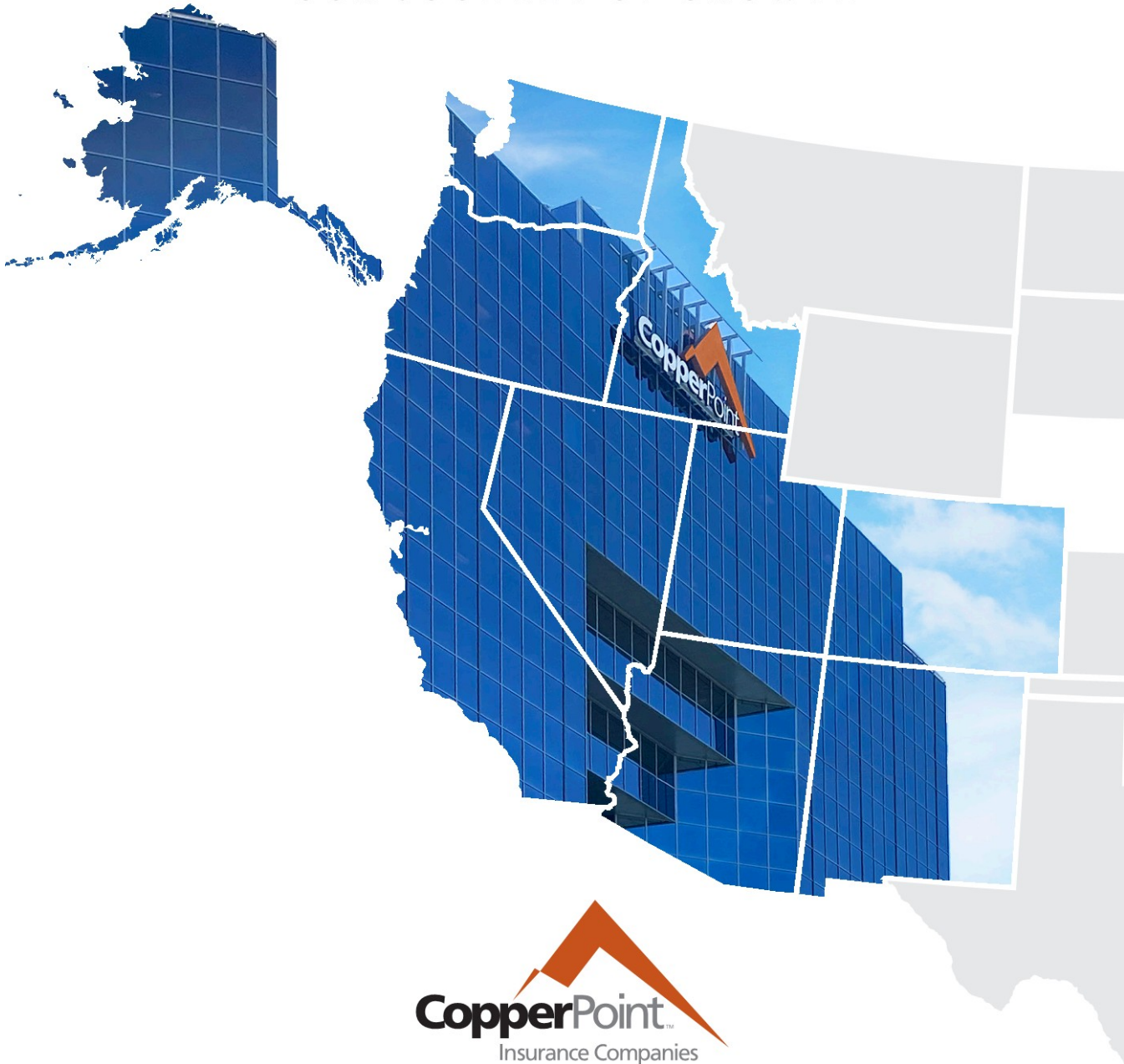
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EXHIBIT 35

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2019 ANNUAL REPORT

OUR JOURNEY OF GROWTH



CopperPoint
Insurance Companies

CopperPoint | Alaska National | PacificComp

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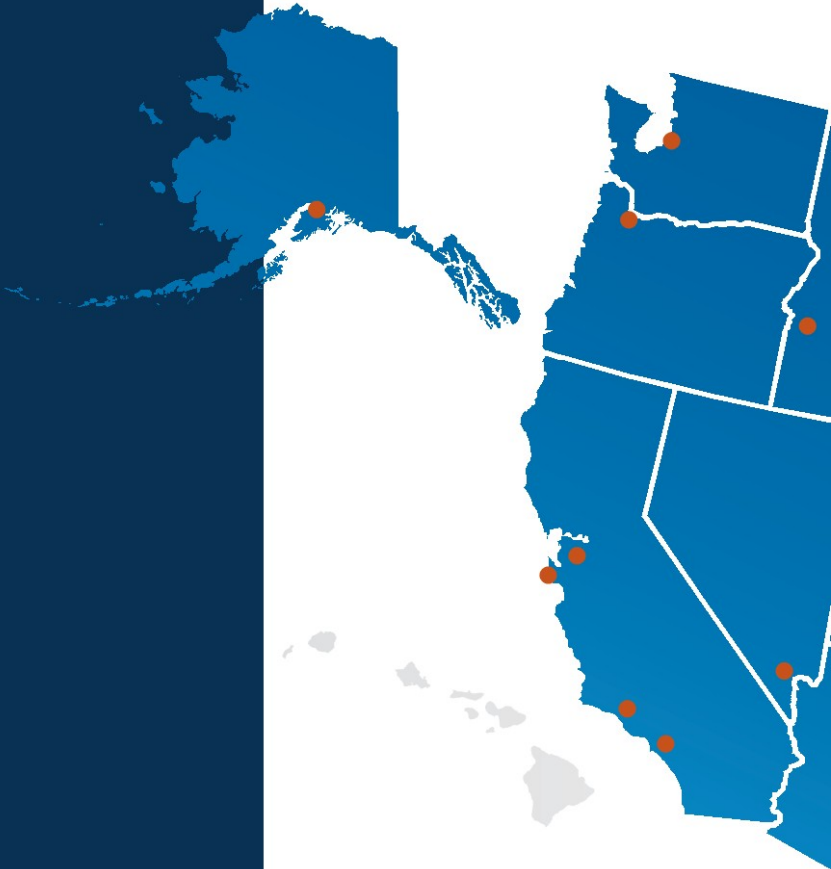
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Company Overview



12 LOCAL OFFICES

- | | |
|---------------|-------------------------|
| Anchorage, AK | Portland, OR |
| Boise, ID | Seattle, WA |
| Denver, CO | South San Francisco, CA |
| Irvine, CA | Tucson, AZ |
| Las Vegas, NV | Walnut Creek, CA |
| Phoenix, AZ | Westlake Village, CA |

We are a western-based super regional commercial insurance company and a leading provider of workers' compensation and commercial insurance solutions.

\$4.8 Billion in Assets

\$1.4 Billion in Surplus

\$668 Million in Gross Written Premium

99.4% Combined Ratio

10 State Western Footprint

26 States Licensed

Rated A (Excellent) by AM Best

750 Employees

21 US Ranking in Workers' Compensation

*As of December 31, 2019

CopperPoint Mutual Insurance Holding Company is the corporate parent of CopperPoint Insurance Company (CopperPoint), Pacific Compensation Insurance Company (PacificComp) and Alaska National Insurance Company (Alaska National).

OUR JOURNEY OF GROWTH 1

Our Journey of Expansion, Diversification, Profit & Partnership



As I write my annual letter, I want to acknowledge the COVID-19 pandemic that has impacted our world. It is my hope that we have “flattened the curve,” new infections are trending downward, and a vaccine is on the horizon.

During these extremely trying times, I am very proud of the CopperPoint Family of Insurance Companies’ response and commitment to take care of our employees, business partners, customers and communities. CopperPoint is responding to help nonprofits serving children, families and seniors facing immediate needs. We are a company that is financially strong and stable and can weather the challenges ahead as we’re built and run for the long-term.

In 2019, CopperPoint Insurance Companies put in place several strategic growth enablers to transform our company and position us for the future as we continue to lay the foundation for our growth and success.

We were thrilled to welcome Alaska National Insurance Company to the CopperPoint Family of Insurance Companies. Alaska National is an ideal strategic fit as it advances our geographic and product diversification strategy, expands our western states footprint and brings two organizations together who share similar cultures and core values based on local, personalized service, strong relationships and an entrepreneurial spirit.

Most importantly, we are excited about the leadership and expertise of Alaska

National’s 250 employees and bringing our collective talents together. As I like to say, adding Alaska National to the CopperPoint family means that “one plus one equals much more than two.” I truly believe we are stronger together.

Our year culminated in an AM Best upgrade to A (Excellent) for CopperPoint and PacificComp, while also affirming an A (Excellent) rating for Alaska National. The official recognition of our financial strength and stability from AM Best is confirmation of our strong performance, robust balance sheet, geographic diversification and product strength. I am very proud of our financial performance reflected in the AM Best rating across all of our operating companies.

Growing the CopperPoint family has been our strategy since we set in motion a new vision for growth and diversification. We are building on the success of PacificComp, a California-based workers’ compensation

specialist we acquired in 2017. We now operate across a 10-state western footprint and are uniquely positioned to continue our journey to become the leading super regional commercial insurance company headquartered in the western United States.

This remarkable growth, organically and through acquisitions, has advanced CopperPoint from a single state, single line commercial insurance company in 2016 into a multi-state, multi-line company, with the opportunity for further expansion into 26 licensed states. Coupled with our continued investments in people and customer-focused technology, CopperPoint is in an extremely strong position to meet the evolving needs of our agency/brokers and customers.

At CopperPoint, we rely on a limited distribution agency/broker model built around quality partnerships and our core value proposition of a strong and personal service model for our policyholders. Alaska National fills out the large account segment with loss sensitive products and a risk management centric service model.

Our success in 2019 would not be possible without the grit, determination and passion of our employees who leaned into change and accepted the possibility of what we are creating, together. I want to thank all our talented and hardworking employees who demonstrate daily our core values of being principled, committed, human, inventive and hardworking.

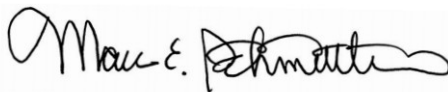
I also want to thank our Board of Directors for their valued leadership in supporting our strategic vision and serving as the bellwether for our growth plans. The roadmap we are executing would not be possible without their full support.

Thank you to our valued policyholders, customers, agency/broker partners and employees across our family for your trust and confidence and for making 2019 such an incredible year.

My final wish is for our great country to work together to rebound and face the challenges of COVID-19 united in the prospect of a brighter future.

I look forward to continuing our journey of growth together.

With sincere appreciation,



Marc E. Schmittlein

President & Chief Executive Officer

"We are proud of what we achieved in 2019 through our focus on outstanding service, quality partnerships, our communities, talent and expertise."

Strategic Growth 2016-2019

We are on a journey of growth and transformation.

In 2016, we were a single state, single product insurance company. Today, we are a western-based super regional commercial insurance company. Our success has been achieved through several major strategic growth enablers.



- When CopperPoint privatized to a mutual insurance company, the organization needed a visionary leader to transform the company from a state fund to a regional commercial insurance company.
- Marc Schmittlein joined CopperPoint as President and CEO to guide the company through a multi-year strategic roadmap and set in motion a new vision for growth and diversification.
- A five-year strategic plan that focused on technology infrastructure, talent, growth and diversification was approved by CopperPoint's Board of Directors.
- We welcomed PacificComp, a California-based workers' compensation carrier, as our first strategic acquisition. It was a foundational element of our growth and diversification strategy, adding a new state and a California-based team and expertise.



“Our winning formula for successful, strategic growth has been realized through M&A activity and organic expansion, both of which has led to our transformation as a company.”

– Marc E. Schmittlein | President & CEO



- We expanded to other states as part of our growth strategy. By the end of 2018, we had a six-state footprint, in large part due to the “Other States Expansion” initiative which added Colorado, Nevada, New Mexico and Utah to Arizona and California.
- We adopted a mutual holding company structure which provides organizational flexibility while preserving our tradition of mutuality.
- We welcomed Alaska National Insurance Company to the CopperPoint family. Alaska National brings a proven track record of strong underwriting discipline and exemplary service and has been recognized on Property-Casualty Ward’s 50® Companies for the past nine years.
- With the addition of Alaska National, we expanded our portfolio of insurance products and geography into 10 western states, supported by local presence in 12 offices. We are also licensed in 26 states.
- AM Best upgraded the Financial Strength Rating of CopperPoint and its subsidiaries to A (Excellent). The Financial Strength Rating of Alaska National Insurance Company was affirmed at A (Excellent).

Our Value Proposition

CopperPoint is a western-based super regional insurance company and a leading provider of workers' compensation and commercial insurance solutions.

We are unique in our approach, growth and success. Our value proposition defines and distinguishes us in the marketplace. Our differentiation is based on four core pillars:

- **Service Leadership**
- **Business Partnerships**
- **Community Giving**
- **Talent and Expertise**

CopperPoint is in a strong position to meet the evolving needs of our agency/brokers and customers. With the 2019 addition of Alaska National to the CopperPoint family,

we have an expanded offering of insurance products and a growing footprint in the western United States. We operate in 10 core states with product offerings to serve small, middle, large and risk management accounts. Building on our expertise in workers' compensation, we now offer loss sensitive product capabilities and enhanced property, general liability and commercial auto offerings. Other commercial lines now represent 11% of our premiums.

We have developed deep underwriting, claims and loss control expertise in several industries. Our agency/broker partners and insureds view us as a trustworthy partner and knowledgeable expert in their industry. We have relationships with agency/brokers who value our local, personalized way of doing business, our broad industry expertise and our highly engaged employees working with policyholders to reduce their insurance costs.



This agent and customer first strategy has generated strong account retention and improved loss ratios in support of organic growth.

We are well positioned financially. CopperPoint has \$4.8 billion in total assets and an enterprise surplus of \$1.4 billion. All companies are rated A (Excellent) by AM Best.

Our industry leading financial strength and stability allows CopperPoint to scale and grow our organization, while supporting our value proposition. It has empowered

our ability to engage with other high-quality partners such as PacificComp and Alaska National.

Our balance sheet also supports our strategic investments in technology to support our service leadership and ensure a positive customer experience for claimants, policyholders and agents. The strategy and investments we're making are part of our digital transformation to support our growing company.

"We are not building technology to replace people; we are building technology to enable people and support the human experience."

– **Scott Shader** | Executive Vice President, Chief Operating Officer

Our Value Proposition Pillars

- **Service Leadership**
- **Business Partnerships**
- **Community Giving**
- **Talent and Expertise**

Our Service Leadership

We are a different kind of insurance company. Our commitment to local, personalized service and deep, lasting relationships with our valued agency/brokers and customers is what sets us apart.

We approach our service solutions through local teams of experienced employees who have the knowledge and jurisdictional expertise to produce better insurance outcomes. Our service offerings are customized by the size of customer allowing us the flexibility to match risk to service solutions. Our goal is to ensure that injured workers receive exceptional, attentive and compassionate care.

We work in close partnership with our agency/brokers to develop lasting relationships and personalized solutions for each unique customer need. We have 12 offices across our western-based footprint. Our service teams are closely aligned and communicate, collaborate and coordinate service plans locally, for each customer, from small business to large accounts.

Service Teams

We offer outstanding service in claims, managed care, loss control and underwriting expertise, and our services are anchored in knowing our customers and their industries.

Our highly trained claims professionals manage claims for the best possible outcomes and devote the time needed to handle claims promptly, efficiently and effectively. Our in-house expertise is unparalleled: claims leadership averages over 20 years of experience and our adjusters average over 15 years of experience backed by litigation management, predictive analytics, back-to-work programs and a zero tolerance for fraud.

Our loss control team works to help prevent and mitigate claims, as the best claim is one that never occurs. Underwriting understands that every business is unique and so are their





insurance needs. Our underwriting specialists concentrate on understanding our clients' business and risk profiles, and we work to match them with the right insurance risk solution.

As we continue to grow, we focus on relationships, being local, providing quality care and timely access and effective solutions. Delivering the best outcomes for our customers is the heart of how we do business. This is how we differentiate ourselves in the marketplace and continue to be in the best position to meet the evolving needs of our agency/broker partners and our customers.

"We have been a CopperPoint customer for over 15 years and have built an enduring and collaborative partnership. They understand our business and utilize their knowledge and experience to help us create a safer working environment. We've seen remarkable improvements in our core safety measures and believe it's attributable to the strong safety culture we've established together."

Kerry Cassens

Director, Employee Health, Northern Arizona Healthcare

"Alaska National has for many years shown itself to be a trusted resource and valued partner in CMI's commitment to operate a safe and healthy workplace for our many valued Alaska employees. We look forward to continuing this productive partnership into the future, and to achieving positive outcomes together."

Ken Gerondale

CEO, Construction Machinery Industrial, LLC

"Our focus is to create a culture and work environment that our employees value, so they can best service our customers. Pacific Compensation Insurance Company has enhanced our employee safety at our franchised dealer locations in CA, AZ and CO. We greatly value our partnership with them."

Tom Chadwell

President & COO, Piercey Management Services, Inc.

Our Business Partnerships

The power of mutually aligned partnerships has been the foundation of our success for decades.

We have built strong relationships with selected agency/broker partners in the industry who value best in class services, a strong balance sheet, and engaged, empathetic and knowledgeable employees. Together, we work with customers who value the right coverage, services, and stability for long-term success.

As a relationship-based company, we work with like-minded agency partners to help businesses manage risk. All companies in the CopperPoint family form partnerships through a limited distribution model. These unique partnerships with top-tier agents allow us to deliver our high-touch, personalized service model locally, a hallmark of our business strategy.

We go deeper by partnering with our agency/brokers to offer dedicated expertise and tailored services to customers in our industry verticals, including those requiring risk management services. A consistent underwriting appetite and pricing stability gives our partners confidence to place their business with us.

As we continue our journey of growth, our partnerships will remain a priority, ensuring our relationship way of doing business continues with local agents, local services and local insureds in all customer segments, small, medium and large.

The Power of our Partnership

Our business approach, rooted in deep relationships, results in high customer retention levels and long-term success. Knowing our customers and offering a real, personal and lasting relationship results in mutual success and stability. Our business partners tell us this sets us apart from our competitors.



Mutual Benefits of Limited Distribution

- Limited Distribution Model Unique to the Industry
- Agency Input to Influence Corporate Strategies
- Tailored Strategies and Services by Agency Partner
- Invested in Mutual Success
- Predictable, Stable, Long-Term Underwriting Philosophy



"Our success in the western region and California operations is driven by partnerships with insurance companies who are aligned with our local values of financial strength, providing a consistent underwriting appetite, in house claim and loss control expertise. This enables our insureds and customers to drive down their total cost of risk. PacificComp is an important partner who consistently meets these critical criteria."

Darren Caesar

President, Commercial, HUB International



"The Mahoney Group takes pride in being a leading insurance organization that delivers comprehensive insurance and risk management products and services. Partnering with an insurance carrier like CopperPoint aligns with our vision of service excellence, stability and world class underwriting, claim and loss control expertise. CopperPoint offers all this and more."

Brad Rucker

Director, The Mahoney Group



"Our MMA Anchorage team of experienced insurance professionals thrives due to our close partnership with Alaska National Insurance Company. Our values are strongly aligned as we deliver highly customized, local and comprehensive coverage and service solutions to the growing and diverse Alaska business community. We value our partnership and look forward to continuing our mutual success."

Kirk Leadbetter

President, MMA Anchorage



Our Community Giving

Community giving is the heart of our company. Our employees and agency/broker partners make it a priority to give back to the communities we call home.

In 2019, CopperPoint supported communities across our growing western footprint through enterprise, regional/local and agency partnership programs. We believe that making a difference in the local neighborhoods where we live and work is our greatest impact.

Our community giving pillars include two categories, enterprise and local.

Enterprise giving includes broad program support of both resources and volunteering across CopperPoint's multi-state footprint. United Way was our first enterprise program. Starting in Arizona, the program now includes our entire family of companies. We are proud of the \$300,000 we raised in 2019 to help

United Way build a better quality of life by promoting education, income and health in communities where we live and work.

Local giving is led by CopperPoint's community ambassadors in each CopperPoint office. The company supports local charities such as St. Mary's Food Bank, Boys & Girls Clubs, Cystic Fibrosis Foundation, Ronald McDonald House Charities, UMOM, Food Share, Juvenile Diabetes Research Foundation (JDRF), and many more.



53 agency and broker
community giving partnerships

310 nonprofit and
civic organizations

\$1.6 million
annual giving budget

3,200 employee
volunteer hours



Our community giving is centered on three pillars that focus our impact on the interests of our employees and customers and align with our business strategies:

- **Healthy Families**
- **Thriving Workforce**
- **Economic Development**

Employees are empowered to make a difference through volunteerism, corporate matching, board service, program sponsorships and in-kind contributions.

Our collaborative effort with our agency/brokers expands our impact in our communities and is a valued benefit of doing business with us. We have significantly increased our corporate social responsibility partnership with our agency/brokers year over year.

United Way CopperPoint Cares

Campaign Highlights:



\$300,000 raised



87 nonprofits supported



4,000 kits for homeless

"As our family of companies has grown, so has our community giving spirit. We look forward to continuing to expand our impact efforts throughout our entire enterprise in 2020."

– **Marc E. Schmittlein** | President & CEO



Our Talent and Expertise

Our vision and growth are enabled by a talented team of 750 employees. When we focus on our people and talent, we can accomplish great things.

In 2019, our focus on our people was stronger than ever. We welcomed Alaska National to our family, adding the expertise and talent of 250 employees. All of our companies are deeply committed to employee excellence, and our new colleagues make us an even stronger insurance company. We look forward to integrating our new team members into our broader family.

We made significant progress in several strategic areas including employee feedback, employee growth and development, recognition and wellness.

Employee Feedback

In 2019, we launched a new internal survey process to enable a regular cadence of gathering employee feedback. Our survey statistics were quite impressive compared to industry benchmarks. With a 76% response rate, 85% of our employees indicated they are proud to work at CopperPoint and 80% would recommend us as a great place to work. Equally as exciting is that 86% of employees believe our company will be successful in the future.

We gathered this feedback to take action. Divisional and enterprise project teams were created to analyze results, make recommendations and share best practices. And we're responding to the feedback; one of our enterprise policies has already been adjusted.

Growth and Development

We believe in developing our people talent and focus on promoting from within while supplementing with great external talent. We promoted internal talent at a rate of almost double the prior year – with 65 internal promotions. Additionally, we hired some great external talent with 76 new team members joining the CopperPoint family.

We also continue to invest in tools to help grow our talent internally.

Recognition

Our recognition program celebrates employee achievements, quality service



and employee excellence. By giving recognition to employees who bring CopperPoint's values to life, we build a positive and engaging culture that values great work.

Employees and leaders are encouraged to recognize and celebrate the achievements of their co-workers through the Shine program. Employees proudly acknowledged the great work of one another more than 4,500 times.

Each quarter, we gather for a Celebrate Our Shining Stars event to recognize the exceptional contribution of individuals and teams. The awards include a Special Achievement Award, Milestone Moments Award and Values in Action Award. Last year, 70 exceptional employees were recognized.

The highest honor is the annual President's Award and Key Contributor Award. The President's Award is presented to an exceptional leader who leads by example with the mission in mind. Their expertise and innovation are demonstrated by their determination to ensure CopperPoint is a high performing organization. In 2019, four leaders received the President's Award.

The Key Contributor Award recognizes individuals who are outstanding contributors and are well respected by their team members. They role model dedication, competency, exceptional performance and excellence. In 2019, seven employees received the Key Contributor Award.



Wellness

CopperPoint's award-winning employee wellness program is designed to encourage engagement in healthy habits and cultivate a strong, healthy and well-balanced work environment.

Program activities include educational and physical activities that are designed to improve the mental and physical well-being of all employees. We offer a monthly empower hour, daily fitness and stress reduction classes and quarterly health challenges. CopperPoint also offers free annual health evaluations, flu shots, mammogram and prostate screening as well as annual incentives.

Our employees embrace these programs to focus on their personal health goals. Over 70% of our employees participated in activities to improve their health, leading to CopperPoint being named one of the Healthiest Companies in America, an award presented by Interactive Health.

Corporate Structure

The power of partnership across the CopperPoint family is supported by a corporate structure that benefits all companies.

Through the execution of organic efforts and M&A partnerships, the CopperPoint Family of Insurance Companies is growing, and we are stronger together than ever before.

The concept is simple – together we can do more than any one of our companies could do on its own. We chart our collective future, together.

Building our Collective Future

We have three great brands in the CopperPoint family today, and continue to build, as our journey of diversification and expansion continues.

As our family grows, each company's brand reputation, products and services, collaborative culture, operating results and employee talent and expertise are all accretive to the CopperPoint family.

Our mutual holding company structure gives us the flexibility to support our growth plans while preserving our tradition of mutuality.

Our use of shared services, which are managed and staffed by leaders from all member companies, provide our stakeholders with best in class service capabilities. This model benefits all companies that are a part of our family.

When we grow, we determine what is best for our future by bringing teams and employees from both companies together to work side-by-side. We incorporate best practices from each organization and implement systems, processes and shared services where it makes sense.

This thoughtful, transparent and measured approach ensures that the integration of companies represent the best of all companies.

Strength in Numbers

Our strength in numbers enable us to scale as we grow. Working as one, the CopperPoint Family of Insurance Companies can do more together than we could each do individually.

1+1 = much more than 2!



"It is very exciting when you bring companies together. Initially, the goal is to get to know one another and become partners. As progress is made, we share approaches, processes and systems as we understand each other's best practices, gaps and opportunities. The goal is always to determine the best solution for the CopperPoint family."

– **Bob Roland** | Executive Vice President,
Chief Administrative Officer & Chief of Staff

CopperPoint is an ideal strategic partner and strong cultural fit for Alaska National. Both of our companies are deeply committed to employee excellence and to delivering best in class service to all of our customers. The CopperPoint integration process is both welcoming and engaging, supporting efforts to maintain a long-term view of business strategies as we also explore many new opportunities. As part of the CopperPoint family, Alaska National and our employees will continue to build forward into an exciting future."

– **Craig Nodtvedt** | Executive Vice President,
President Alaska & Northwest

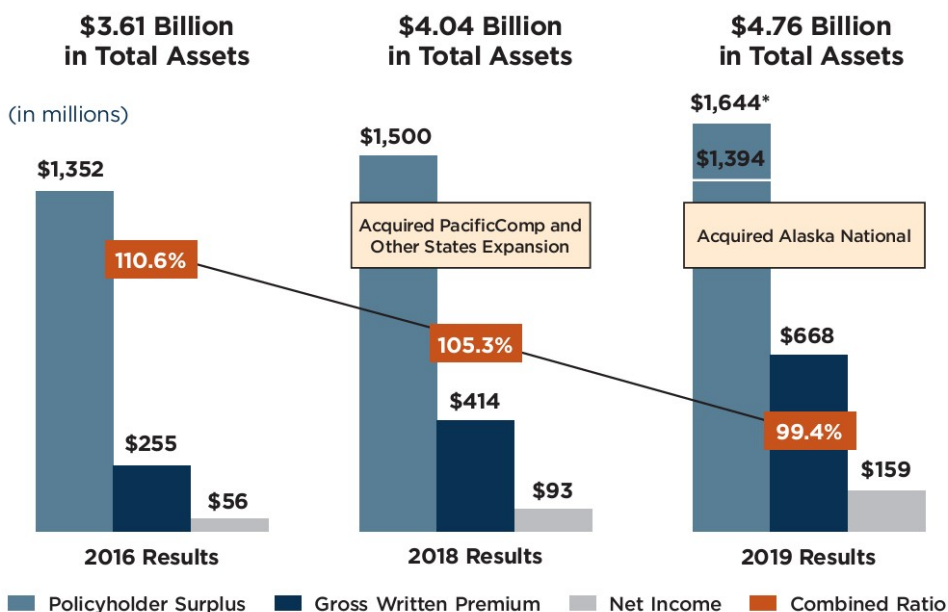
Financial Overview

CopperPoint's strong financial position supports continued growth and diversification.

During the past three years, CopperPoint has delivered on its strategy of becoming a super regional property and casualty insurance company while building upon its financial strength.

- Capital and surplus totaled \$1.4 billion at December 31, 2019 supporting a premium to surplus ratio significantly better than industry averages.
- Total assets of nearly \$4.8 billion have increased over 30% during this period.
- Gross written premiums totaled nearly \$700 million in 2019 and greatly expanded CopperPoint's product and geographic diversification.
- CopperPoint's combined ratio of 99.4% in 2019 demonstrates its consistently improving operating performance.

Financial Performance



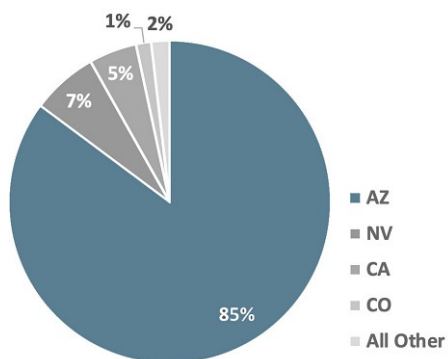
*CopperPoint's surplus, after consideration of non-admitted, acquisition related goodwill, totaled \$1,644 at December 31, 2019.

Geographic and product diversification significantly expanded CopperPoint's business profile.

- CopperPoint has significantly increased its geographic footprint and delivered on its vision to become a super regional, commercial insurance company.
- The acquisition of Pacific Compensation Insurance Company in 2017 allowed CopperPoint to expand its writing capabilities of workers' compensation insurance to California.
- During 2018, CopperPoint expanded its writing capabilities into Colorado, Nevada, New Mexico and Utah.
- Most recently CopperPoint's acquisition of Alaska National Insurance Company in 2019 expanded its presence in 26 states with significant growth in Alaska, California, Idaho, Oregon and Washington.
- The acquisition of Alaska National expanded CopperPoint's product diversification in both workers' compensation and other commercial lines.

2016 CopperPoint \$255M Gross Written Premium

By State



2016 GWP by Line of Business

Workers' Compensation

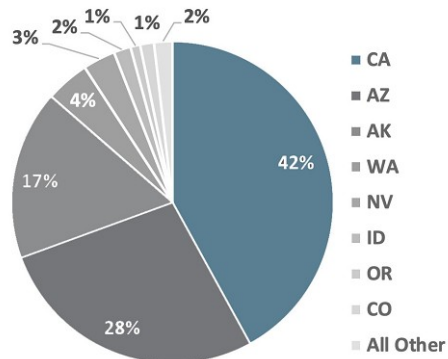


Other Commercial Lines

0% (less than 0.1%)

2019 CopperPoint Family \$668M Gross Written Premium

By State



2019 GWP by Line of Business

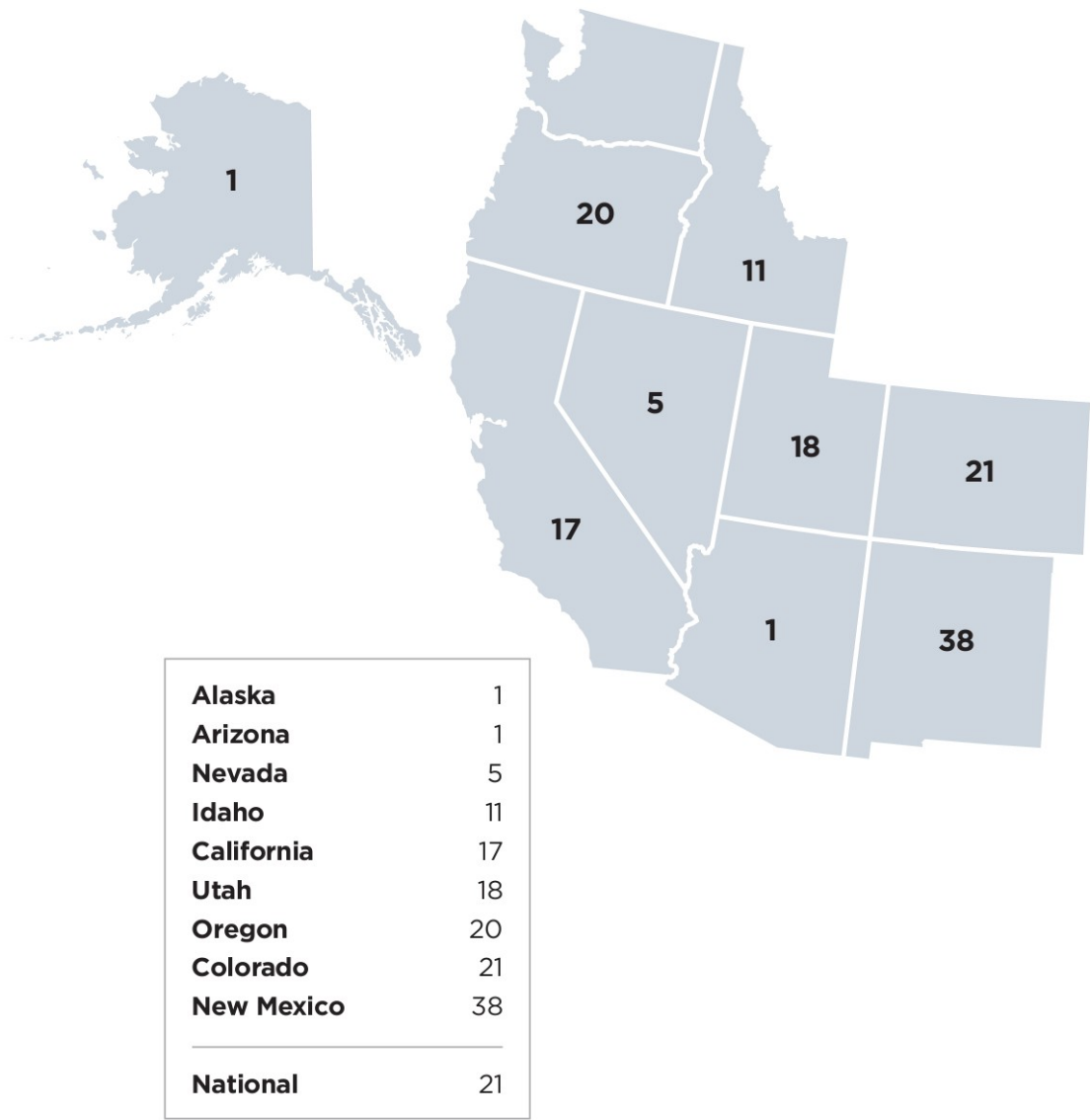
Workers' Compensation



Other Commercial Lines

11%

CopperPoint family workers' compensation market share ranking by state.



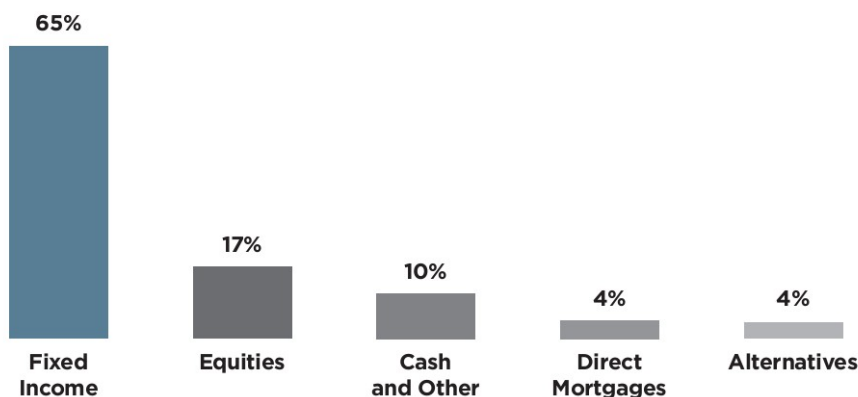
AM Best upgraded the financial strength rating of CopperPoint and its subsidiaries to A (Excellent).

- Additionally, the Financial Strength Rating of Alaska National Insurance Company was affirmed at A (Excellent).
- The rating reflects CopperPoint's balance sheet strength, which AM Best categorizes as "strongest," and is reflected in its Best Capital Adequacy Ratio (BCAR) which is in the top quartile of all A rated entities.
- The rating also reflects CopperPoint's strong operating performance and expanded business profile.



Investments

- CopperPoint's investment objectives are to protect policyholders by maintaining sufficient funds to meet policyholder obligations, optimize investment income, and generate long-term surplus growth.
- Total invested assets were \$4.4 billion at December 31, 2019. During 2019, net investment gains totaled nearly \$210 million, a significant increase from 2018.
- CopperPoint achieves its investment objectives while maintaining a well-diversified, conservatively managed portfolio.
- CopperPoint is further strengthened by its strong liquidity position enabling it to provide additional policyholder protection and leverage opportunities as they arise.



Consolidated Financials

CopperPoint Insurance Companies

Consolidated Financial Statements (in thousands, unaudited)

Statements of Admitted Assets, Liabilities and Policyholders' Surplus

	December 31	
	2019*	2018
Admitted Assets		
Investments		
Bonds	\$2,827,454	\$2,769,113
Equity securities	612,602	414,812
Goodwill	154,058	54,966
Mortgages	167,225	179,546
Real estate, net	30,859	29,623
Cash, short-term investments and other invested assets	587,953	325,347
Total cash and invested assets	\$4,380,151	\$3,773,407
Other Assets		
Premiums and considerations due	175,990	95,888
Accrued investment income	21,371	20,664
Net tax assets	21,223	19,058
Other assets	162,974	129,045
Total admitted assets	\$4,761,709	\$4,038,062
Liabilities and Policyholders' Surplus		
Liability for losses and loss adjustment expenses	\$2,649,854	\$2,289,691
Unearned premium reserve	200,089	99,140
Borrowed money	300,726	-
Policyholders' dividends (declared but unpaid)	318	333
Provision for reinsurance	95	2,035
Other liabilities	216,008	146,789
Total liabilities	\$3,367,090	\$2,537,988
Policyholders' surplus	1,394,619	1,500,074
Total liabilities and policyholders' surplus	\$4,761,709	\$4,038,062

Statements of Operations

Year Ended December 31

Insurance Operations**2019*****2018**

Net premiums earned	\$614,568	\$374,940
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Operating Expenses:

Loss incurred	296,114	209,107
Loss adjustment expenses incurred	100,542	55,982
Other underwriting expense incurred	211,432	129,702

Total operating expenses	\$608,088	\$394,790
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Net underwriting gain (loss)	6,480	(19,850)
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Investment Income

Net investment income	152,209	114,835
Net realized investment gains	54,011	18,150

Net investment gain	\$206,220	\$132,985
----------------------------	------------------	------------------

Other expense	(14,108)	(1,896)
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Net income before policyholders' dividends and federal income tax	198,542	111,239
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Provision for policyholders' dividends	1,367	1,736
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Federal income tax expense	37,750	16,094
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Net income	\$159,475	\$93,409
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* The financial results of Alaska National are included for the full year of 2019.

* In 2019, CopperPoint reported significant net realized investment gains in conjunction with its acquisition of Alaska National and rebalancing the consolidated investment portfolio.

OUR JOURNEY OF GROWTH 23

Company Leadership

Board of Directors

Ken Kirk | *Chair*

Director since 2011

Stephen Tully | *Vice Chair*

Director since 2010

Ronnie Lopez

Director since 2009

LoriAnn Lowery-Biggers

Director since 2015

Judith Patrick

Director since 1992

Marc E. Schmittlein

President & CEO

Director since 2017

Donald Smith Jr.

Director since 2010

Mike Tully

Director since 2019

Executive Leadership

Marc E. Schmittlein

President & Chief Executive Officer

Sara Begley

Executive Vice President, General
Counsel & Chief Compliance Officer

Ginny Caro

Senior Vice President,
Chief Claims Officer

Tom Collins

Senior Vice President,
Chief Underwriting Officer

Rachel Davis-Schultz

Executive Vice President,
Chief Human Resources Officer

Dana Ferestien

Senior Vice President,
Liability Claims & Legal

Michael Goldman

Senior Vice President,
Corporate Development

Jennifer J. Johnston

Executive Vice President, Chief Marketing
and Communications Officer

Mark Joos

Executive Vice President,
Chief Financial Officer

Dave Kuhn

Executive Vice President, Enterprise
Distribution & Regional President CA

Brad Lontz

Senior Vice President,
Chief Information Officer

Craig Nodtvedt

Executive Vice President,
President Alaska & Northwest

Bob Roland

Executive Vice President, Chief
Administrative Officer & Chief of Staff

Scott Shader

Executive Vice President,
Chief Operating Officer



CopperPoint | Alaska National | PacificComp

Thank you to our Board of Directors for
your strategic vision, our agents and brokers for your
partnership, our policyholders for your trust and
confidence and to all employees in our family for
making this such a remarkable year.

2019 Awards & Recognition

Alaska National Insurance Company

Ranked for the 9th year



Phoenix Chamber of Commerce

IMPACT Awards

Community Champion



Interactive Health

One of the Healthiest Companies in America



Senior Leadership Award

Marc Schmittlein, President & CEO



Most Admired Companies



C-Suite Awards

Chief Operating Officer of the Year Finalist



CFO of the Year Awards

Chief Financial Officer of the Year Finalist



Arizona Corporate

Excellence Awards

11th Largest Private Company



3030 North 3rd Street | Phoenix AZ 85012
602.631.2300 | 800.231.1363
copperpoint.com | alaskanational.com | pacificcomp.com



All companies are rated A (Excellent) by AM Best.

EXHIBIT 36

EXHIBIT 36

SEARCH CRITERIA

Entity Name:

copperpoint insurance

Entity Type:

All

Statutory Agent Name:

N/A

Entity Status:

All

Principal Name:

N/A

Name Type:

All

Entity Number:

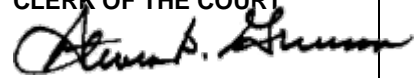
N/A

Entity County:

All

SEARCH RESULTS

Entity ID	Entity Name	Entity Type	Entity County	Agent Name	Agent Type	Entity Status
17243561	COPPERPOINT INSURANCE COMPANY (/BusinessSearch/BusinessInfo?entityNumber=17243561)	Domestic Insurer	Maricopa	SARA M BEGLEY	Statutory Agent	Active
N21810676	COPPERPOINT INSURANCE COMPANY (/BusinessSearch/BusinessInfo?entityNumber=N21810676)	Name Reservation				Inactive
17243561	COPPERPOINT MUTUAL INSURANCE COMPANY (/BusinessSearch/BusinessInfo?entityNumber=17243561)	Domestic Insurer	Maricopa	SARA M BEGLEY	Statutory Agent	Active



RPLY

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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

**PLAINTIFFS' REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Hearing Date: September 29, 2020
Hearing Time: 10:30 a.m.

Plaintiffs, DARIA HARPER and DANIEL WININGER, by and through their attorneys,
BLUMBERG LAW CORPORATION by John P. Blumberg, Esq., and MAIER GUTIERREZ & ASSOCIATES by

1 Jason R. Maier, Esq., submit their reply to the opposition of defendants, COPPERPOINT MUTUAL
2 INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE
3 COMPANY, to plaintiffs' motion for partial summary judgment.

4 **SUMMARY OF REPLY**

5 NRS §616C.215 provides that in personal injury cases, a workers' compensation insurer has a
6 lien on third party recovery. NRS §42.021, enacted after §616C.215, specifically provides that in a
7 medical malpractice case, no insurer has a lien.

8 Ignoring well-established principles of statutory construction, CopperPoint Defendants'
9 primary argument is that NRS §42.021 is of no effect if there is a workers' compensation lien. To
10 accept this argument, the Court would have to rule that when a subsequent statute is enacted that
11 applies to a specific kind of case, it is inferior to a prior statute dealing with general subject matter.

12 CopperPoint Defendants then argue that the law of Arizona, which mandates a lien, must take
13 precedence over Nevada law which forbids a lien. However, CopperPoint Defendants do not dispute
14 that NRS §42.021 is an evidentiary statute which the Nevada Supreme Court has held requires
15 application of Nevada law.

16 **I. TO THE EXTENT THAT NRS 616C.215(10) CONFLICTS WITH NRS 42.021, THE**
17 **LATTER GOVERNS THIS MATTER**

18 The Nevada case that resulted in a settlement paid to plaintiffs was for medical malpractice.
19 CopperPoint Defendants¹ contend that they are entitled to a lien because NRS 616C.215(10) governs
20 its lien rights. In doing so, they essentially ignore NRS 42.021. *See* Opposition to Motion at p. 6, line
21 18 to p. 11, line 11, containing only perfunctory mention of NRS 42.021. NRS 42.021 governs lien
22 rights in medical malpractice cases.

23 NRS 616C.215(10), which is part of the Nevada statutory scheme governing worker's
24 compensation, states:

25 "10. In any trial of an action by the injured employee, or in the case of his or her death
26

27
28 ¹ When both CopperPoint entities are jointly referred to, they are described as "CopperPoint Defendants."

1 by the dependents of the employee, against a person other than the employer or a person
2 in the same employ, the jury must receive proof of the amount of all payments made or
3 to be made by the insurer or the Administrator. The court shall instruct the jury
4 substantially as follows:

5 “Payment of workmen’s compensation benefits by the insurer, or in the case of claims
6 involving the Uninsured Employers’ Claim Account or a subsequent injury account the
7 Administrator, is based upon the fact that a compensable industrial accident occurred,
8 and does not depend upon blame or fault. If the plaintiff does not obtain a judgment in
9 his or her favor in this case, the plaintiff is not required to repay his or her employer, the
10 insurer or the Administrator any amount paid to the plaintiff or paid on the behalf of the
11 plaintiff by the plaintiff’s employer, the insurer or the Administrator.

12 “If you decide that the plaintiff is entitled to judgment against the defendant, you shall
13 find damages for the plaintiff in accordance with the court’s instructions on damages and
14 return your verdict in the plaintiff’s favor in the amount so found without deducting the
15 amount of any compensation benefits paid to or for the plaintiff. The law provides a
16 means by which any compensation benefits will be repaid from your award.”

17 Accordingly, *if* NRS 616C.215(10) applied to this matter, CopperPoint Defendants would
18 have a lien.

19 NRS 616C.215(10) was enacted before 1999. *See, e.g.*, Laws 1999, c. 91, §36. But NRS
20 42.021 became law in 2004. It was enacted after being presented to Nevada voters by ballot initiative.
21 (Secretary of State, Statewide Ballot Questions 16 (2004),
22 <https://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2004.pdf>.) *McCrosky v.*
23 *Carson Tahoe Reg’l Med. Ctr.*, 133 Nev. 930, 936, 408 P.3d 149, 155 (2017). NRS 42.021, with the
24 sections pertinent to this action, states:

25 **“1. In an action for injury or death against a provider of health care based**
26 **upon professional negligence, if the defendant so elects, the defendant may**
27 **introduce evidence of any amount payable as a benefit to the plaintiff as a result of**
28 **the injury or death pursuant to the United States Social Security Act, any state or**

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

9 **“2. A source of collateral benefits introduced pursuant to subsection 1 may**
10 **not: “(a) Recover any amount against the plaintiff; or (b) Be subrogated to the rights**
11 **of the plaintiff against a defendant.**

12 “3. In an action for injury or death against a provider of health care based upon
13 professional negligence, a district court shall, at the request of either party, enter a
14 judgment ordering that money damages or its equivalent for future damages of the
15 judgment creditor be paid in whole or in part by periodic payments rather than by a lump-
16 sum payment if the award equals or exceeds \$50,000 in future damages.

17 “4. In entering a judgment ordering the payment of future damages by periodic
18 payments pursuant to subsection 3, the court shall make a specific finding as to the dollar
19 amount of periodic payments that will compensate the judgment creditor for such future
20 damages. As a condition to authorizing periodic payments of future damages, the court
21 shall require a judgment debtor who is not adequately insured to post security adequate
22 to assure full payment of such damages awarded by the judgment. Upon termination of
23 periodic payments of future damages, the court shall order the return of this security, or
24 so much as remains, to the judgment debtor.”

25 Accordingly, NRS 42.021 was intended to modify NRS 616C.215(10) with regard to medical
26 malpractice third-party actions by an employee who has collected workers' compensation benefits.
27 Unlike NRS 616C.215(10), NRS 42.021 precludes an employer or workers' compensation carrier
28 which has provided the injured employee benefits from recovering any portion of those benefits by

1 lien, subrogation or otherwise. Accordingly, there is no conflict, but to the extent that NRS
2 616C.215(10) conflicts with NRS 42.021, the latter governs this matter under established rules of
3 statutory construction.

4 First, “[i]t is a long-standing rule of statutory construction that where a specific and general
5 statute conflict, ‘the specific statute will take precedence.’ *Andersen Family Assocs. v. State Eng’r*,
6 124 Nev. 182, 187, 179 P.3d 1201, 1204 (2008).” *Cnty. of Clark v. Howard Hughes Co.*, 129 Nev.
7 410, 412, 305 P.3d 896, 897 (2013); *see also Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989
8 P.2d 870, 877 (1999). NRS 616.215C.215(10) applies to all types of third-party cases where the
9 injured employee has collected workers’ compensation but NRS 42.021 applies only to one type of
10 third party case, *i.e.*, where the employee who has collected workers’ compensation benefits maintains
11 a third-party claim against a health care provider for medical malpractice. Thus, NRS 42.021 is more
12 specific than NRS 616C.215(10) and governs situations such as presented by this matter where the
13 underlying third-party case was for medical malpractice.

14 Applying the above-discussed rule “is also consistent with other rules of statutory
15 construction. For example, whenever possible, a court will interpret a rule or statute in harmony with
16 other rules or statutes. (Citations omitted.) In addition, statutory interpretation should avoid absurd
17 results or unreasonable results. (Citations omitted.)” *Nevada Power Co., supra*, 115 Nev. 353, 364-
18 65, 989 P.2d 870, 877. A “statutory construction that renders language meaningless or superfluous”
19 should be avoided. *Williams v. State Dep’t of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017).
20 Therefore, not giving effect to NRS 42.021 when a third-party case alleges medical malpractice would
21 render the language therein that it applies to workers’ compensation cases meaningless and
22 superfluous. NRS 42.021 should be interpreted in harmony with NRS 616C.215(10).

23 Further, when a statute is passed, the court “presumes that it does so ‘with full knowledge of
24 existing statutes relating to the same subject.’ *City of Boulder v. General Sales Drivers*, 101 Nev. 117,
25 118-19, 694 P.2d 498, 500 (1985).” *Nevada Power Co., supra*, 115 Nev. 353, 364-65, 989 P.2d 870,
26 877. Clearly, NRS 42.021 was enacted as an exception to NRS 616C.215(10) that applies when the
27 third-party case is for medical malpractice.

28 CopperPoint Defendants avoid any discussion of statutory interpretation and rely solely on

1 *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 286 P.3d 593 (2012). But that case is
2 inapposite because the plaintiff-employee’s injury was not caused by medical malpractice and,
3 therefore, the case made no mention of NRS 42.021.

4 *Tri-County Equip. & Leasing, LLC, supra*, 128 Nev. 352, 286 P.3d 593, involved a vehicular
5 accident in Nevada. *Id.* at 353, 286 P.3d at 594. “At the time of the accident, Klinke was a California
6 resident acting in the course and scope of her employment with her California employer. For her
7 injuries, Klinke received California workers’ compensation benefits through her employer.” *Id.*
8 Klinke then “filed a complaint in a Nevada district court for personal injury. . . .” *Id.* The Nevada
9 Supreme Court succinctly set forth the issue it was deciding: “In this appeal, we consider whether
10 proof of California workers’ compensation payments can be admitted into evidence in a personal
11 injury action in Nevada. . . . Applying Nevada law [NRS 616C.215(10)], we conclude. . . .” *Id.*
12 Relying on the following sentence, CopperPoint Defendants argue that the court must apply NRS
13 616C.215(10) – rather than NRS 42.021:

14 “NRS 616C.215(10)’s application to ‘any trial’ gives the statute universal applicability
15 to trials involving a plaintiff receiving workers’ compensation payments, at least when
16 the plaintiff is required to first use any recovery to reimburse the insurer for amounts
17 paid.” *Id.* at 356, 286 P.3d at 596.

18 CopperPoint Defendants ignore the sentence’s modifying emphasized phrase:

19 “NRS 616C.215(10)’s application to ‘any trial’ gives the statute universal applicability
20 to trials involving a plaintiff receiving workers’ compensation payments, **at least when**
21 **the plaintiff is required to first use any recovery to reimburse the insurer for**
22 **amounts paid.**” *Id.* at 356, 286 P.3d at 596 (Emphasis added.).

23 Under NRS 42.021, a plaintiff pursuing a medical malpractice action is not required to use any
24 recovery to reimburse the insurer that provided him or her with workers’ compensation benefits.
25 Thus, the sentence does not support CopperPoint Defendants’ contention. Second, if the quoted
26 sentence – or any other language from *Tri-County Equip. & Leasing, LLC, supra*, 128 Nev. 352, 286
27 P.3d 593 – could be deemed to potentially apply in this matter, it would be dicta and of no precedential
28 effect. “[A] decision is only authority for what is actually decided upon a given state of facts.” *Stephoe*

1 *Live Stock Co. v. Gully*, 53 Nev. 163, 295 P. 772, 774 (1931). As aptly stated: “The exact question
2 under consideration in the case at bar was not before the court in that [prior] case. . . .” *Jensen v.*
3 *Pradere*, 39 Nev. 466, 159 P. 54, 55 (1916). Language in a case that “went beyond answering the
4 limited question before the court . . . was dicta.” *Armenta-Carpio v. State*, 129 Nev. 534, 535, 306
5 P.3d 395, 398 (2013). “It is therefore of no value as precedent on this point.” *Stanley v. A. Levy & J.*
6 *Zentner Co.*, 60 Nev. 432, 112 P.2d 1047, 1054 (1941). As stated, the question answered in *Tri-*
7 *County Equip. & Leasing, LLC, supra*, 128 Nev. 352, 286 P.3d 593, was whether NRS 616C.215(10)
8 applied when worker’s compensation benefits under another state’s workers’ compensation scheme
9 were paid to the plaintiff in a third-party personal injury case. The issue presented in the case at bar
10 involves medical malpractice, not personal injury. Because medical malpractice cases were not an
11 issue in *Tri-County Equip. & Leasing, LLC, supra*, the Supreme Court did not address NRS 42.021
12 and the case has no precedential value. Therefore, NRS 42.021 – the statute which bars a workers’
13 compensation carrier, among others, from claiming a lien in medical malpractice actions, applies;
14 NRS 625C.215(10), the more general statute does not.

15 **II. THE LAWS OF NEVADA AND ARIZONA CONFLICT**

16 CopperPoint Defendants further argue that NRS 616C.215(10) applies because NRS 42.021
17 does not apply to settlement of third-party claims for medical malpractice. *See* Opposition to Motion
18 at p. 11, line 12. Plaintiffs do not dispute that if NRS 42.021 does not apply to medical malpractice
19 settlements, then CopperPoint Defendants would have a lien on the settlement proceeds that were
20 generated in the underlying case either under Arizona law or NRS 616C.215(10). *See, e.g.*, Plaintiffs’
21 Motion for Partial Summary Judgment at p. 9, fn. 4 and p. 10, fn. 5.² But plaintiffs contend that NRS
22 42.021 does apply to settlements of medical malpractice actions. Therefore, the first issue, discussed
23 in this point II, is whether NRS 42.021 applies to the settlement of a medical malpractice action. If
24 so, the law of Arizona and Nevada would be in conflict and the issue would be whether NRS 42.021
25 is evidentiary. If evidentiary, Nevada law applies. If not evidentiary, the final issue is whether, under
26

27 ² Nevertheless, CopperPoint Defendants devote a separate point to arguing that under Arizona
28 law, it has a lien. *See* Opposition to p. 17, line 15 to p.8, line 20.

1 a conflict of laws analysis, NRS 42.021 applies to plaintiff's underlying medical malpractice matter.³

2 This second point is discussed in point III, *infra*.

3 CopperPoint Defendants contend that plaintiffs' argument that NRS 42.021 applies to
4 settlement agreements is based on a broad and liberal interpretation which is precluded by the
5 neutrality rule set forth in NRS 616A.010. Enacted by the Legislature in 1993, NRS 616A.010
6 (substituted in 1995 recodification as for NRS 616616.012) requires the interpretation of workers'
7 compensation laws according to their plain meaning. *Law Offices of Barry Levinson, P.C. v. Milko*,
8 124 Nev. 355, 184 P.3d 378 (2008), 184 P.3d at 384; *Banegas v. SIIS*, 117 Nev. 222, 231, 19 P.3d
9 245, 251 (2001). Nevertheless, the law remains that "the subject matter of [a] statute and the policy
10 to be effectuated may be used in statutory construction." *Id.* at 231, 19 P.3d at 251.

11 CopperPoint Defendants' analysis errs for five reasons. First, the Nevada workers'
12 compensation statutes pertain only to injured workers who seek workers' compensation pursuant to
13 Nevada law. Plaintiff Daria Harper has never sought or received workers' compensation benefits
14 pursuant to Nevada law and does not now seek such relief. Second, even if the Nevada workers'
15 compensation statutes applied, its provisions regarding no "broad and liberal interpretation" do not
16 apply to NRS 42.021. Third, NRS 42.021 does not exempt workers' compensation from its lien
17 preclusion requirements. Fourth, the voter initiative by which NRS 42.021 was enacted specifically
18 provided that no source of collateral benefits, including workers' compensation, would have a lien on
19 a plaintiff's financial recovery in a medical malpractice case. And fifth, the language of NRS 42.021
20 was taken from California law, and at the time of its enactment, California appellate courts had held
21 (and still hold) that workers' compensation carriers have no right to a lien or credit from a medical
22 malpractice settlement. Each point is discussed separately below.

23 **A. Nevada Workers' Compensation Statutes Pertain Only to Injured Workers Who**
24 **Seek Workers' Compensation Pursuant to Nevada law**

25 NRS 616A.010 states:

27
28 ³ Although there are two plaintiffs, "Plaintiff" refers to Daria Harper.

1 “The Legislature hereby determines and declares that:

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

6 “2. A *claim for compensation filed pursuant to the provisions of chapters 616A*
7 *to 616D*, inclusive, or chapter 617 of NRS must be decided on its merit and not according
8 to the principle of common law that requires statutes governing workers' compensation
9 to be liberally construed because they are remedial in nature;

10 “3. The provisions of chapters 616A to 617, inclusive, of NRS are based on a
11 renunciation of the rights and defenses of employers and employees recognized at
12 common law; and

13 “4. For the accomplishment of these purposes, *the provisions of chapters 616A to*
14 *617*, inclusive, of NRS must not be interpreted or construed broadly or liberally in favor
15 of an employee who is injured or disabled or the dependents of the employee, or in such
16 a manner as to favor the rights and interests of an employer over the rights and interests
17 of an employee who is injured or disabled or his or her dependents.” (Italics added.)

18 By its express language, the statute’s application is limited to chapters 616A to 617 of the
19 NRS.

20 In its opposition, CopperPoint Defendants ignore the above-italicized portions. Sections 1 and
21 2 specifically pertain to injured workers seeking workers’ compensation benefits under chapters 616A
22 to 617 and sections 3 and 4 reiterate how those chapters are to be interpreted. But plaintiff Daria
23 Harper never sought workers’ compensation benefits under Nevada law and, in fact, would be
24 precluded from receiving workers’ compensation in Nevada because she elected to receive them in
25 Arizona. *Nevada Indus. Commission v. Underwood*, 79 Nev. 496, 387 P.2d 663 (1963). CopperPoint
26 Defendants’ argument that there is no conflict between the workers’ compensation laws of Nevada
27 and Arizona ignores the conflict created by NRS 42.021 which modified the application of NRS
28 616C.215(10). For this reason, CopperPoint Defendants’ argument fails.

1 **B. Even If the Nevada Workers’ Compensation Statutes Applied, Its Provisions**
2 **Regarding No “Broad and Liberal Interpretation” Do Not Apply to NRS 42.021**

3 Under section 4 of NRS 616A.010, the preclusion of broad or liberal construction in favor of
4 an employee applies only the provisions of chapter 616A to 617. NRS 42.021 is not part of chapters
5 616A to 617. (NRS 42.021 is in chapter 42 of Title 3. NRS 616A to 617 are in chapters 616A to 617
6 of Title 53.) And neither the underlying medical malpractice action nor this pending action is a “claim
7 for compensation filed pursuant to the provisions of chapters 616A to 616D.” Therefore, CopperPoint
8 Defendants’ argument that there cannot be broad or liberal construction must fail.

9 **C. NRS 42.021 Does Not Exempt Workers’ Compensation From Its Lien Preclusion**
10 **Requirements**

11 NRS 42.021 states in pertinent part:

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

23 “2. A source of collateral benefits introduced pursuant to subsection 1 may not:
24 (a) Recover any amount against the plaintiff; or (b) Be subrogated to the rights of the
25 plaintiff against a defendant.”

26 “[S]ection 2 protects plaintiffs by prohibiting collateral sources from recovering against
27 prevailing plaintiffs.” *McCrosky v. Carson Tahoe Reg’l Med. Ctr.*, 133 Nev. 930, 937, 408 P.3d 149,
28 155 (2017). Thus, NRS 42.021 applies to a class of plaintiffs that is broader than just employees and

precludes the imposition of liens any source of collateral benefits, and not just workers' compensation carriers. It would be an impractical and unprecedented anomaly to interpret the statute's applicability in one manner if a workers' compensation insurer's lien was involved and another way to the myriad other entities that provide health benefits or income-disability coverage to a plaintiff who is the victim of medical malpractice.

D. The Voter Initiative by Which NRS 42.021 Was Enacted, Specifically Provided That No Source of Collateral Benefits, Including Workers' Compensation, Would Have a Lien on a Plaintiff's Financial Recovery in a Medical Malpractice Case

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

The ballot question put to Nevada voters stated, in part, that the initiative would "prohibit third parties who provided benefits as a result of medical malpractice from recovering such benefits from a negligent provider of health care...." The Secretary of State's explanation stated, in part: "If passed, the proposal would not change the reduction of the injured person's damages, but the third parties would no longer be permitted to recover from the wrongdoer the expenses they have paid on behalf

1 of a medical malpractice victim.” Accordingly, the ballot material indicated that third parties (such
2 as CopperPoint Defendants) who provided benefits as a result of medical malpractice (such as to
3 plaintiff Daria Harper) would no longer be permitted to recover such benefits. There was no mention
4 that the proposal was limited to situations where collateral source evidence was introduced at trial
5 and, therefore, there was no consideration by the voters that it would not apply to medical malpractice
6 settlements.

7 “[T]he Nevada Supreme Court has yet to establish [other] rules specifically for ascertaining
8 the intent behind initiative-created state statutes.” *McDonnell, supra*, 13 Nev. L.J. 983, 1007. “Where
9 Nevada law is lacking, its courts have looked to the law of other jurisdictions, particularly California.”
10 *Crockett & Myers, Ltd. v. Napier, & Kirby, LLP*, 583 F.3d 1232, 1237 (9th Cir. 2009) quoting *Mort*
11 *v. United States*, 86 F.3d 890, 893 (9th Cir. 1996); *see also, McDonnell, supra*, 13 Nev. L.J. 589,
12 1018-1019, citing *Commercial Standard Ins. Co. v. Tab Contr., Inc.*, 94 Nev. 536, 583 P.2d 449, 451
13 (1978). And, as set forth in greater detail below, the guidance provided by the Nevada Supreme Court
14 is that where California and Nevada “statutes are similar in purpose and language ... we look to
15 California law for guidance on this issue.” *Shapiro v. Welt* 133 Nev. 35, 39, 389 P.3d 262, 268 (2017).

16 **E. The Language of NRS 42.021 Was Taken from California Law, and at the Time**
17 **of Its Enactment, California Appellate Courts Had Held (and Still Hold) that**
18 **Workers’ Compensation Carriers Have No Right to a Lien or Credit From a**
19 **Medical Malpractice Settlement**

20 As discussed in point D, above, the materials provided to voters regarding the scope and extent
21 of an initiative did not exclude settlements of medical malpractice cases from the effect of the
22 proposed statute. But to the extent that further interpretation of statutes and initiatives might be
23 necessary, Nevada courts look to California where, as here, there are no Nevada decisions on point.
24 In California, it is established that the entity enacting a statute, whether the state legislature or the
25 voters through the initiative process, is deemed to be aware of existing laws and judicial construction
26 in effect when enacted. *People v. Perez*, 4 Cal.5th 1055, 1067-1068, 416 P.3d 42, 61 (2018); *People*
27 *v. Gonzales*, 2 Cal.5th 858, 869, 216 Cal.Rptr.3d 285, 293, 392 P.3d 437, 445 (2017); *Hill v. NCAA*,
28 7 Cal.4th 1, 23, 26 Cal.Rptr.2d 834, 847, 865 P.2d 633, 646 (1994); *In re Lance W.* 37 Cal.3d 873,

1 890, fn. 11, 210 Cal.Rptr. 631, 642, fn. 11, 694 P.2d 744, 755, fn. 11 (1985).

2 The language of section 2 of NRS 42.021 is nearly identical to subdivision (b) of California's
3 Civil Code § 3333.1. (The difference being syntax, not substance.) Section 3333.1 was enacted in
4 1975. As discussed in the moving papers, section 3333.1 was interpreted by the California Supreme
5 Court in *Barne v. Wood*, 37 Cal.3d 174, 207 Cal.Rptr. 816, 689 P.2d 446 (1984) and by the California
6 Court of Appeal in *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal.App.3d 499, 258 Cal.Rptr. 376
7 (1988) to preclude the enforcement of a lien if the prosecution of the medical malpractice action
8 resolves by settlement before trial. And in *Graham*, the Court of Appeal held that the statute also
9 precluded a workers' compensation insurance carrier from claiming a credit against future benefit
10 payment obligations.

11 No Nevada appellate court has addressed whether a provider of collateral benefits (such as
12 CopperPoint Defendants) is similarly barred if the underlying medical malpractice claim is resolved
13 by settlement rather than by trial. However, as stated by the Nevada Supreme Court, to create
14 predictability, courts will fill gaps in the law. *Rivero v. Rivero*, 125 Nev. 410, 426, 216 P.3d 213, 225
15 (2009). And to do so, they will "look to decisions construing statutes worded similarly." *Massey v.*
16 *Litton*, 99 Nev. 723, 726, 669 P.2d 248, 250 (1983); see also *Cheung v. Eighth Dist. Court ex rel. Cty*
17 *of Clark*, 121 Nev. 867, 879-880, 124 P.3d 550, 559 (2005) ("When a . . . statute is taken from another
18 state, we look to the construction given that provision by the originating state when construing the
19 Nevada equivalent decision.") (adopting California law).

20 Indeed, when Nevada adopts a statute of another state, it is presumed that the judicial decisions
21 of that state that have, at that time, interpreted its "scope and extent" are also adopted. *Ex parte Skaug*,
22 63 Nev. 101, 107-108, 164 P.2d 743, 746 (1945) (adopting California law); *Ex Parte Sullivan*, 65
23 Nev. 128, 137, 189 P.2d 338, 342 (1948). To do otherwise is to indulge in judicial legislation which
24 is not permitted. *Ex Parte Skaug, supra*, at 108, 164 P.2d at 746. Just as this doctrine of statutory
25 interpretation is applied to laws passed by the initiative process in California, it should be similarly
26 applied in Nevada. It is for the Legislature (or the voters through the initiative process) to amend the
27 statute at such time as either may see fit to change its scope and extent. (*Id.*) Therefore, when Nevada
28 adopted California's Civil Code section 3333.1, it adopted the scope and extent of that statute as set

1 forth in *Barme, supra*, 37 Cal.3d 174, 207 Cal.Rptr. 816 and *Graham, supra*, 210 Cal.App.3d 499,
2 258 Cal.Rptr. 376 , *i.e.*, that NRS 42.021 bars the providers of collateral benefits in a malpractice
3 action that is settled from asserting a lien to or credit for any of the proceeds generated by the
4 settlement.

5 **F. Summary of Point II**

6 CopperPoint Defendants have incorrectly argued that because the workers' compensation lien
7 statutes of Nevada and Arizona are identical, there is no conflict. However, as discussed above,
8 CopperPoint Defendants compared the wrong Nevada statute to Arizona's laws. A conflict of laws
9 exists between Nevada and Arizona because of Nevada's NRS 42.021 which precludes liens and
10 credits in medical malpractice cases, and Arizona's ARS § 12-565C, which permits statutory liens
11 (such as A.R.S. § 23-1023 for workers' compensation) in medical malpractice cases.

12 **III. A CONFLICT OF LAWS ANALYSIS REQUIRES THAT NEVADA LAW APPLIES** 13 **TO THIS CASE**

14 Plaintiffs began the conflict of laws analysis in their moving papers by pointing out that the
15 Nevada Supreme Court has expressly held that it will apply Nevada law when a conflict of laws
16 involves an evidentiary rule. *See Tri-County Equipment Leasing, supra*, 128 Nev. 352, 355, fn. 3,
17 286 P.3d 593, 595, fn.3: "if a conflict existed, Nevada law would apply because the statutory provision
18 at issue, NRS 616C.215(10), is an evidentiary rule. *See Cramer v. Peavy*, 116 Nev. 575, 580, 3 P.3d
19 665, 669 (2000) (explaining that NRS 616C.215(10) relates to what a jury can consider); *see also*
20 Restatement (Second) of Conflict of Laws § 138 (1971) ('The local law of the forum determines the
21 admissibility of evidence.')." As plaintiffs asserted in their moving papers, NRS 42.021 is also an
22 evidentiary rule because it relates to what a jury can consider. If, therefore, NRS 42.021 is an
23 evidentiary rule, then no further analysis is required; the law of Nevada applies. CopperPoint
24 Defendants have conceded the point that NRS 42.021 is evidentiary and not substantive in its
25 opposition: "NRS § 42.021 must be read as merely evidentiary. . . ." CopperPoint Defendants' Motion
26 to Dismiss or Alternatively, for Summary Judgment (filed September 4, 2020) at p. 25, lines 18-19;
27 CopperPoint Defendants' Opposition to Plaintiffs' Application for Injunctive Relief (filed June 3,
28 2020) at p. 22, lines 20-21.

1 But even if CopperPoint Defendants had not conceded the point, Plaintiffs' moving papers
2 analyzed why Nevada law applies even if NRS 42.021 was deemed a substantive, rather than
3 evidentiary, rule. Ignoring its concession that NRS 42.021 is evidentiary, which requires application
4 of Nevada law, CopperPoint Defendants cite two out-of-state opinions, and argue that section 185 of
5 the Restatement (Second) of Conflict of Laws should govern. But, as pointed out in Plaintiffs' moving
6 papers, the Nevada Supreme Court has indicated otherwise.

7 In *General Motors Corp. v. District Court*, 122 Nev. 466, 134 P.3d 111 (2006), the Nevada
8 Supreme Court adopted the Restatement (Second) of Conflict of Laws and concluded: "We now hold
9 that in Nevada, section 145 of the Second Restatement governs choice-of-law issues in tort actions
10 *unless the Second Restatement contains a section that specifically addresses a particular tort*.
11 Because section 146 governs choice-of-law issues in personal injury claims, we apply the most
12 significant relationship test set forth in section 146 to this case." (Italics added.) (*Id.* at 122 Nev. 466,
13 478.) Section 185 of the Restatement does not address a particular tort. The sections that address
14 particular torts are set forth in sections 146 to 155: section 146 governs personal injury, section 147
15 governs injuries to tangible things, section 148 governs fraud and misrepresentation, section 149
16 governs defamation, section 150 governs multistate defamation, section 151 governs injurious
17 falsehoods, section 152 governs right of privacy, section 153 governs multistate invasion of privacy,
18 section 154 governs interference with marital relationship, section 155 governs and malicious
19 prosecution and abuse of process (155). Thus, in a conflict of law analysis, Nevada deems a
20 subrogation claim that derives from a tort to be a tort claim. *Dictor v. Creative Management Services,*
21 *LLC*, 126 Nev. 41, 46, 223 P.3d 332, 335 (2010). In so holding, *Dictor* quoted from *Federated Rural*
22 *Elec. v. R.D. Moody & Associates*, 468 F.3d 1322, 1326 (11th Cir. 2006): "A subrogation claim arising
23 from a tort . . . is properly characterized as a tort claim for choice of law purposes.... *Swain v. D &*
24 *R Transp. Co.*, 735 F.Supp. 425, 427-28 (M.D.Ga. 1990)." In *Swain*, the claim was by a workers'
25 compensation carrier seeking subrogation of the benefits it had paid. Accordingly, Nevada deems a
26 subrogation claim, including one by a workers' compensation carrier, to be a tort claim in a conflicts
27 of law analysis. Contrary to CopperPoint Defendants' argument, section 185 is not applicable and
28 under section 186, Nevada law applies.

1 **IV. THIS COURT HAS SUBJECT MATTER JURISDICTION BECAUSE ARIZONA**
2 **LAW DOES NOT REQUIRE THAT THIS TYPE OF ACTION FOR DECLARATORY**
3 **RELIEF MUST BE LITIGATED ADMINISTRATIVELY IN THE ARIZONA**
4 **INDUSTRIAL COMMISSION**

5 CopperPoint Defendants’ final argument is that the provisions of Arizona law governing
6 workers’ compensation actions preclude this action.⁴ The law is otherwise. First, as discussed, *supra*,
7 a conflict of laws analysis gives precedence to Nevada to make the determinations sought in the
8 complaint. Second, Arizona judicial courts do not have the limited jurisdiction that CopperPoint
9 Defendants claim. Although the Arizona Industrial Commission does have exclusive jurisdiction over
10 the initial determination of whether a worker is entitled to benefits, the Superior Court has jurisdiction
11 over lien claims. *See, e.g., Merkens v. Federal Ins. Co.*, 237 Ariz. 274, 349 P.3d 1111 (App. 2015),
12 explaining that “the Industrial Commission has the exclusive jurisdiction to determine whether the
13 injured worker is entitled to benefits and the amount of those benefits.” *Id.* at 278, 349 P.3d at 1115.
14 However, the court recognized that the plaintiff could bring a bad faith claim outside of the Industrial
15 Commission process regarding the handling of her claim.

16 In the present case, CopperPoint Defendants concede that the Arizona Industrial Commission
17 already determined that Plaintiff Daria Harper was entitled to benefits and the amount of those
18 benefits. (Indeed, that is why CopperPoint Defendants now seek a lien and credit against future
19 benefit payments.) Thus, the only part of the proceedings subject to the exclusivity provision has
20 already been completed. Copperpoint Defendants argue that only the Arizona Industrial Commission,
21 and not this court, has jurisdiction to determine whether its workers’ compensation lien applies to
22 Plaintiff’s settlement of her third-party action. Arizona case law amply demonstrates that the
23 determination of this issue is not exclusively within the jurisdiction of the Arizona Industrial
24 Commission, and CopperPoint Defendants are acutely aware of these decisions.

25 Copperpoint Defendants cannot deny their knowledge of *State Comp. Fund of Ariz. v. Fink*
26

27 ⁴ The last point in CopperPoint Defendants’ Opposition to Plaintiffs’ Motion for Partial
28 Summary Judgment is that if Arizona law is applied, then they have a lien. As discussed previously,
plaintiffs dispute that Arizona law applies but agree if Arizona law applies, there would be a lien.

1 (*Fink*), 224 Ariz. 611, 233 P.3d 1190 (App. 2010), *State Compensation Fund v. Ireland (Ireland)* 174
2 Ariz. 490, 851 P.2d 115 (App. 1992), and *Stout v. State Compensation Fund (Stout)*, 197 Ariz. 238,
3 243, 3 P.3d 1158, 1163 (App. 2000.) The *Fink* and *Ireland* cases were prosecuted in the Arizona trial
4 court by CopperPoint Mutual Insurance Company, albeit under its former name, State Compensation
5 Fund (hereinafter SCF),⁵ seeking a determination of its lien rights with respect to a third-party action
6 by an injured employee. *Stout* affirmed Superior Court rulings relating to workers' compensation lien
7 rights under A.R.S. § 23–1023(C).

8 In *Fink*, *supra*, 224 Ariz. 611, 233 P.2d 1190, 1191, SCF/CopperPoint was allowed to
9 intervene in a third-party action to enforce its substantive lien rights. In *Ireland*, *supra*, 174 Ariz. 490,
10 496, 851 P.2d 115, 120, SCF/CopperPoint was allowed to file and prosecute a Superior Court lawsuit
11 against an employee and her attorney to challenge the amount of attorney fees that had been excluded
12 from its lien. And in *Stout*, *supra*, 197 Ariz. 238, 3 P.3d 1158, the Court of Appeals of Arizona
13 affirmed a Superior Court judgment that determined the nature and extent of the SCF/CopperPoint
14 lien, including whether third party recoveries by spouse and child of the deceased employee were
15 subject to the lien.

16 Another case (not involving SCF/CopperPoint) is *Rowland v. Great States Ins. Co.*, 199 Ariz.
17 577, 584, 20 P.3d 1158, 1165 (App. 2001) where the Court of Appeals reviewed a Superior Court
18 case and held that a workers' compensation lien could not include independent medical examination
19 expenses. Accordingly, it is a blatant misrepresentation by the CopperPoint Defendants that courts
20 do not have authority over lien issues arising from workers' compensation actions. And, just as
21 Arizona permits determination of lien rights in Superior Court actions, the Nevada District Court has
22 jurisdiction to determine whether NRS 42.021 precludes any claim to a lien by CopperPoint
23 Defendants. (*See, e.g., Nevada Bell v. Hurn*, 105 Nev. 211, 774 P.2d 1002 (1989) [determining the
24 scope or entitlement to a lien].)

25
26
27 ⁵ According to the Arizona Secretary of State's website: "The State Compensation Fund
28 continued until January 1, 2013 when it was privatized and replaced by a successor mutual insurer
corporation that assumed all liabilities and assets of the SCF. The successor was Copper Point Mutual
Insurance Company. See Laws 2010, Chapter 268 and Laws 2011, Chapter 157."
https://azlibrary.gov/sla/agency_histories/state-compensation-fund.

1 **V. CONCLUSION**

2 There are no material facts in controversy. NRS 42.021 is the applicable statute which
3 CopperPoint Defendants concede is evidentiary and, therefore, it must apply in any conflict of laws
4 analysis. But even if it is considered substantive, a conflict of laws analysis requires that it take
5 precedence over the contrary Arizona statute. For the reasons discussed herein, the Court should grant
6 this motion and deny CopperPoint Defendants' motion for dismissal or summary judgment.

7 DATED this 22nd day of September, 2020.

8 Respectfully submitted,

9 **BLUMBERG LAW CORPORATION**

10 /s/ John P. Blumberg

11 JOHN P. BLUMBERG, ESQ.

12 California Bar No. 70200

13 *(admitted pro hac vice)*

14 444 West Ocean Blvd., Suite 1500

15 Long Beach, California 90802-4330

16 JASON R. MAIER, ESQ.

17 Nevada Bar No. 8557

18 **MAIER GUTIERREZ & ASSOCIATES**

19 8816 Spanish Ridge Avenue

20 Las Vegas, Nevada 89148

21 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **PLAINTIFFS' REPLY IN SUPPORT**
3 **OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** was electronically filed
4 on the 22nd day of September, 2020, and served through the Notice of Electronic Filing
5 automatically generated by the Court's facilities to those parties listed on the Court's Master Service
6 List as follows:

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

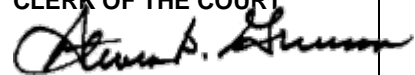
11 Robert C. McBride, Esq.
Heather S. Hall, Esq.
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12 8329 W. Sunset Road, Suite 260
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13 and

14 James Kjar, Esq.
15 Jon Schwalbach, Esq.
KJAR, MCKENNA & STOCKALPER LLP
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El Segundo, California 90245
17 *Attorneys for Defendants Kenneth Marshall Silberberg and*
18 *Law Offices of Marshall Silberberg*

19 David A. Clark, Esq.
LIPSON NEILSON P.C.
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Las Vegas, Nevada 89144
21 *Attorneys for defendants Shoop A Professional Law Corporation*
and Thomas S. Alch

22 /s/ Natalie Vazquez
23 An Employee of MAIER GUTIERREZ & ASSOCIATES
24
25
26
27
28



ERR

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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

**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**

Plaintiffs file this errata to their Opposition to the Motion of CopperPoint Mutual Insurance

///

1 Holding Company and CopperPoint General Insurance Company to Dismiss or, alternatively, for
2 Summary Judgment:

3 1. The reference to Exhibit “29” at page 23, lines 4 to 8 is incorrect and should be Exhibit
4 “37”;

5 2. Because the attached exhibits were not in numerical order, contained duplicates, and
6 omitted Exhibit “37”, a complete set of the exhibits, in numerical order and without duplicates, is
7 attached.

8 DATED this 25th day of September, 2020.

9 Respectfully submitted,

10 **BLUMBERG LAW CORPORATION**

11 /s/ John P. Blumberg

12 JOHN P. BLUMBERG, ESQ.

13 California Bar No. 70200

14 (admitted pro hac vice)

444 West Ocean Blvd., Suite 1500

Long Beach, California 90802-4330

15 JASON R. MAIER, ESQ.

16 Nevada Bar No. 8557

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

17 Las Vegas, Nevada 89148

Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **ERRATA TO PLAINTIFFS'**
3 **OPPOSITION TO DEFENDANT COPPERPOINT MUTUAL INSURANCE HOLDING**
4 **COMPANY AND COPPERPOINT GENERAL INSURANCE COMPANY'S MOTION TO**
5 **DISMISS PLAINTIFFS' COMPLAINT OR, ALTERNATIVELY, MOTION FOR**
6 **SUMMARY JUDGMENT** was electronically filed on the 25th day of September, 2020, and served
7 through the Notice of Electronic Filing automatically generated by the Court's facilities to those
8 parties listed on the Court's Master Service List, as follows:

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

13 Robert C. McBride, Esq.
Heather S. Hall, Esq.
14 MCBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113

15 and

16 James Kjar, Esq.
17 Jon Schwalbach, Esq.
KJAR, MCKENNA & STOCKALPER LLP
18 841 Apollo Street, Suite 100
El Segundo, California 90245
19 *Attorneys for Defendants Kenneth Marshall Silberberg and*
20 *Law Offices of Marshall Silberberg*

21 David A. Clark, Esq.
LIPSON NEILSON P.C.
22 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
23 *Attorneys for defendants Shoop A Professional Law Corporation*
and Thomas S. Alch

24 /s/ Natalie Vazquez
25 An Employee of MAIER GUTIERREZ & ASSOCIATES
26
27
28

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.

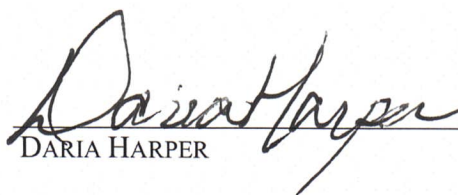
26 
27 DARIA HARPER
28

EXHIBIT 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.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 6. I became my wife's full-time caregiver and, until approximately April 1, 2020, I
2 received money that was paid by COPPERPOINT for the caregiving services that provided.
3 COPPERPOINT has ceased paying for my caregiving services.

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

6 DATED this 25 day of August, 2020.

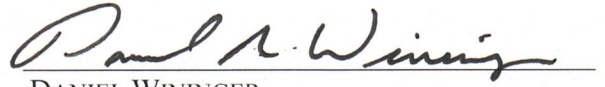
7 
8 DANIEL WININGER

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 17. Attached as **Exhibit 32** is a true and correct copy of a webpage from the Nevada
22 Division of Insurance attesting that CopperPoint General Insurance Company does business in
23 Nevada.

24 18. Attached as **Exhibit 33** are true and correct copies of are additional pages from the
25 Nevada Division of Insurance attesting that seven other CopperPoint entities also do business in
26 Nevada, including Copperpoint Premier Insurance Company, Copperpoint Insurance Company,
27 Copperpoint Western Insurance Company, Copperpoint Indemnity Insurance Company, Copperpoint
28 National Insurance Company, Copperpoint American Insurance Company, and Copperpoint Casualty

1 Insurance Company.

2 19. Attached as **Exhibit 34** is a true and correct copy of CopperPoint's webpage timeline.

3 20. Attached as **Exhibit 35** is a true and correct copy of CopperPoint's 2019 Annual
4 Report.

5 21. Attached as **Exhibit 36** is a copy of the Arizona Corporation Commissioner's
6 website's disclosure that "CopperPoint Insurance Company" and "CopperPoint Mutual Insurance
7 Company" are the same entity, sharing an entity identification of 17243561.

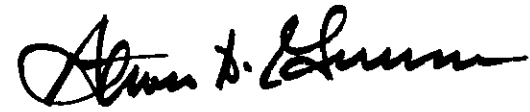
8 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
9 true and correct.

10 DATED this 18th day of September, 2020.

11 /s/ John P. Blumberg
12 JOHN P. BLUMBERG, ESQ.
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EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

Thomas S. Alch, Esquire
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 DARIA HARPER and DANIEL WININGER

DISTRICT COURT

CLARK COUNTY NEVADA

DARIA HARPER, DANIEL WININGER,
Plaintiffs,

vs.

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

Defendants.

CASE NO A- 16 - 738004 - C

DEPARTMENT NO. XVI I

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

COMPLAINT FOR MEDICAL MALPRACTICE

MEDICAL MALPRACTICE

LOSS OF CONSORTIUM

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

///

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 ///

19. As a legal result of the negligence of the Defendants, and each of them, the Plaintiff was injured in health, strength and activity, sustaining severe shock, and injury to the body, all of which said injuries have caused and continue to cause Plaintiff great physical, emotional, and nervous pain and suffering, and which said injuries Plaintiff is informed and believes, and thereon alleges, will result in loss of earnings, permanent disability, loss of enjoyment of life, and impairment of earning capacity all to Plaintiff's damage, exceeding \$10,000 and the minimum jurisdictional limit of the Court.

20. As a further legal result of the negligence of the Defendants, and each of them, and the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did, incur expenses for medical and surgical attention, hospitalization, nursing, medication and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

21. As a further legal result of the negligence of the Defendants, and each of them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical care and hospitalization for an indefinite period in the future and to pay for these expenses in the treatment and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.

22. As a further legal result of the negligence of the Defendants, and each of them, Plaintiff will suffer a decreased earning capacity in the future and future earnings to Plaintiff's further damage in a sum unknown at present.

II.

**PLAINTIFF DANIEL WININGER ALLEGES FOR A CAUSE OF ACTION
FOR LOSS OF CONSORTIUM AGAINST DEFENDANTS AND EACH OF
THEM AS FOLLOWS:**

23. Plaintiff, Daniel Wininger, alleges and incorporates herein all the allegations contained in paragraphs 1 through 22 of this Complaint.

24. Plaintiffs, Daria Harper and Daniel Wininger, were legally married at the time of defendants' negligence.

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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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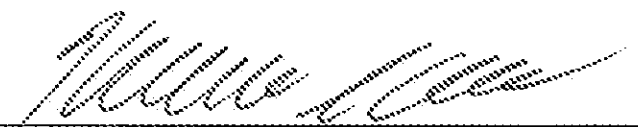
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DATED: June 7, 2016

LAW OFFICES OF THOMAS S. ALCH

By: 

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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.

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14 DAVID NEER, MD
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EXHIBIT “B”

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

2 STATE OF CALIFORNIA)

3 COUNTY OF ORANGE)

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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.

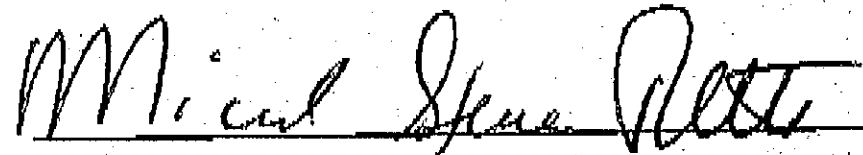
27 7. It is my opinion to a reasonable degree of medical certainty that each of the standard of care
28 violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to

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
<p>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).</p> <p>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.</p> <p>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.</p>						

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

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

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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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

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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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.

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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
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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Primary Disability: SCI - C4 ASIA C Quadriplegia

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

MEDICAL CARE

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
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 multifactoril 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

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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
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
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*

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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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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
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MEDICATIONS – CONTINUED*

DOB: June 9, 1970
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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
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MEDICATIONS – CONTINUED*

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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
Date Prepared: February 9, 2018
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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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*

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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

Growth Trend to Be Determined by Economist.

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LIFE CARE PLAN

DARIA HARPER-WININGER

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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
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 <u>\$1,840/facility fee</u> \$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 <u>\$118/facility fee</u> \$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 <u>\$1,035/facility fee</u> \$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 <u>\$349/facility fee</u> \$439/each Medical Fees 2017 75% adjusted to Arizona	Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

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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 <u>\$2,887/facility fee</u> \$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 <u>\$661/facility fee</u> \$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
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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
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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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

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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
Rojo Quadtro 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

Growth Trend to Be Determined by Economist.

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LIFE CARE PLAN

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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
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

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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
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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
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

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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

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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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LIFE CARE PLAN

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Primary Disability: SCI - C4 ASIA C Quadriplegia

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

Growth Trend to Be Determined by Economist.

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LIFE CARE PLAN

DARIA HARPER-WININGER

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Primary Disability: SCI - C4 ASIA C Quadriplegia

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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LIFE CARE PLAN

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Primary Disability: SCI - C4 ASIA C Quadriplegia

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 – 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).						
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

Growth Trend to Be Determined by Economist.

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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
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
Innovo 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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LIFE CARE PLAN

DARIA HARPER-WININGER

SUPPLIES

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

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LIFE CARE PLAN
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SUPPLIES - CONTINUED

DOB: June 9, 1970
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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
<p>*Bowel management supplies and frequencies listed below are based on Ms. Harper-Wininger's current needs and include:</p> <p>Barrier Protectant Cream to prevent/treat skin irritation: \$7.79-\$11.31 @ 1 tube/month = \$93-\$136/year</p> <p>Odor Antagonist Spray to remove smell from rooms during/after bowel program: 2 bottles/month \$9.83/bottle = \$236/year</p> <p>Antiseptic No-Rinse Cleaning Foam for perianal care: 2 bottles/month @ \$19.79/bottle = \$475/year</p> <p>McKesson Underpads 30 x 30 for perianal care and bowel program: 4 pads/day @ \$0.59/pad = \$861/year</p> <p>Disposable Baby Wipes: 1 container/3 days @ \$2.49-\$3.00/container = \$303-\$365/year</p> <p>Halyard Purple Nitrile Powder-Free Exam Gloves for perianal care, bowel pogrom, cleaning catheter changing and flushing, etc.: 2 boxes/month @ \$23.53/box = \$565/year</p> <p>Halyard Grey Nitrile Powder-Free Exam Gloves for perianal care, bowel pogrom, cleaning catheter changing and flushing, etc.: 2 boxes/month @ 25.13/box = \$603/year</p> <p>McKesson Lubricating Jelly 3 g packets: 2-3 packets/day @ \$0.19/packet = \$139-\$208/year</p> <p>Kimberly Clark Scottfold Disposable Towels for bowel program cleanup. 1 case/6 mos. 25 towels/case @ \$2.61/case = \$5/year</p>						

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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
<p>* Personal Care Cleaning/Disinfectant/Sanitizing supplies and frequencies listed below are based on Ms. Harper-Wininger's current needs and include:</p> <p>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</p>						

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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
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
Innovo iSoothe Wireless Rechargeable Electronic Pulse Massager (TENS) Electrotherapy Device – Pads (2)	Beginning 47 1/2018 Ending 77 2047	2 pads/yr.	Maintain Innovo TENS unit.	Per Unit \$4.60 Per Year \$9		Greg Vigna, MD, JD, CLCP

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LIFE CARE PLAN

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ADAPTIVE AIDS

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

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Primary Disability: SCI - C4 ASIA C Quadriplegia

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 <u>\$1,587/facility fee</u> \$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 <u>\$137.872/facility fee</u> \$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>						

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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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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
<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 (\$8,746/day) from the following hospitals:</p> <p>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</p>						

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LIFE CARE PLAN
DARIA HARPER-WININGER
HOME CARE

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
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

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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

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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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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

DARIA HARPER-WININGER

DOB: June 9, 1970

DOL: June 9, 2015

Date Prepared: February 9, 2018

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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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

Growth Trend to Be Determined by Economist.

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LIFE CARE PLAN

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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
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
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
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
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
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
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) <u>\$1,222/meals and incidentals (9 days for 2 people)</u> \$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

DOB: June 9, 1970

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Primary Disability: SCI - C4 ASIA C Quadriplegia

HOME MODIFICATIONS - CONTINUED

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

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HOME MODIFICATIONS - CONTINUED

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
COMPLICATIONS

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

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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Primary Disability: SCI - C4 ASIA C Quadriplegia

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

PAGE 2

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 07/01/2018 - 06/30/2047	\$7,128 \$2,376	7,128 59,730
14. SEXUAL THERAPY	1.0%	04/01/2018 - 03/31/2028	\$398	3,790
15. FAMILY COUNSELING AND EDUCATION	1.0%	ONE TIME COST 04/01/2018 07/01/2018 - 06/30/2047	\$2,388 \$2,388	2,388 60,031
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				
FACILITY 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				
FACILITY 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				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$10,614	235,852
72. TILITE AERO Z LIGHTWEIGHT MANUAL WHEELCHAIR				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$2,023	44,953
73. POWER WHEELCHAIR BATTERIES				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$756	16,799
74. POWER WHEELCHAIR MAINTENANCE				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$300	6,666
75. LIGHTWEIGHT MANUAL WHEELCHAIR MAINTENANCE				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$120	2,667
76. ROJO QUADTRO SELECT WHEELCHAIR CUSHION				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$305	6,777
77. MANUAL WHEELCHAIR VARILITE ICON BACK SEATING SYSTEM				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$175	3,889
78. WHEELCHAIR CUSHION COVER				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$135	3,000
79. KRISTEN SLIDE IN BASE WHEELCHAIR LAPTOP TRAY				
FACILITY FEE	2.0%	ONE TIME COST 04/01/2018	\$823	823
FACILITY FEE	2.0%	ONE TIME COST 10/01/2025	\$823	709
FACILITY FEE	2.0%	ONE TIME COST 04/01/2033	\$823	611
FACILITY FEE	2.0%	ONE TIME COST 10/01/2040	\$823	527
80. WRITING TABLE WITH CUSHION				
FACILITY FEE	2.0%	04/01/2018 - 06/30/2047	\$58	1,289
81. OVERBED TABLE				
FACILITY FEE	2.0%	ONE TIME COST 04/01/2018	\$106	106
FACILITY FEE	2.0%	ONE TIME COST 04/01/2028	\$106	87
FACILITY FEE	2.0%	ONE TIME COST 04/01/2038	\$106	71
82. FOLDING RAMP / SUITCASE RAMP - 3 FT				
FACILITY FEE	2.0%	ONE TIME COST 04/01/2018	\$139	139
FACILITY FEE	2.0%	ONE TIME COST 04/01/2028	\$139	114
FACILITY FEE	2.0%	ONE TIME COST 04/01/2038	\$139	94
83. FOLDING RAMP / SUITCASE RAMP - 6 FT				
FACILITY FEE	2.0%	ONE TIME COST 04/01/2018	\$273	273
FACILITY FEE	2.0%	ONE TIME COST 04/01/2028	\$273	224
FACILITY FEE	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.

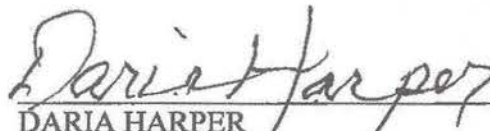
5. **SEVERABILITY.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
6. **COUNTERPARTS.** It is further agreed by all parties that this settlement 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, 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. 20142520533
Authorized Third Party Administrator (TPA) Name and Address	Soc. Sec. No. ###/###/#### SSN not required if correct ICA claim number is provided
Claimant's Name and Address DARIA HARPER 3336 DATE PALM DR. LAKE HAVASU CITY, AZ 86404	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 debiera 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

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

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. 20142520533
Authorized Third Party Administrator (TPA) Name and Address	Soc. Sec. No. <u>SSN not required if correct ICA claim number is provided</u>
Claimant's Name and Address Daria Harper C/O SCHIFFMAN LAW OFFICE PC 4506 N 12TH ST PHOENIX AZ 85014	Carrier Claim No. 14G01532
	Employer Islander RV Resort LLC
	Address 751 Beachcomber Blvd 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:

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 Deveau

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.

AVISO AL RECLAMANTE: Si usted no esta de acuerdo con este AVISO, y desea una audiencia en este caso, su petición por escrito pidlendo una audiencia debiera 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

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 intervenor and appellant.

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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

[3] 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