

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

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Jun 21 2021 03:00 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 VII

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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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DATED this 21st day of June, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES

Heather S. Linn

CLERK OF THE COURT

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

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

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

ORDER

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

COPPERPOINT'S MOTION TO DISMISS.

FACTUAL INFORMATION.

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

20 **SUMMARY OF LEGAL ARGUMENTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(quotations omitted and emphasis added by Copperpoint).

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

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

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

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

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

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

11 **LEGAL ANALYSIS.**

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

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

1 NRS 42.021 reads in pertinent part as follows:

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

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

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

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

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

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

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

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

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

7 Consequently, based upon the foregoing, and other good cause appearing,
8 **IT IS HEREBY ORDERED** that Defendant Copperpoint's Motion to Dismiss
9 is hereby **GRANTED**.

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

11 **FACTUAL INFORMATION**

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

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

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

28 **SUMMARY OF LEGAL ARGUMENTS**

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

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

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

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

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

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

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

1 **LEGAL ANALYSIS**

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

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

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

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

25 **FACTUAL INFORMATION**

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

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

3 4 **SUMMARY OF LEGAL ARGUMENTS**

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

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

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

1 **LEGAL ANALYSIS**

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

9 Based upon the foregoing, and good cause appearing,

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

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

16 **FACTUAL INFORMATION**

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

23 **SUMMARY OF LEGAL ARGUMENTS**

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

27 **LEGAL ANALYSIS**

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

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

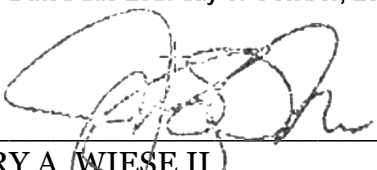
6 The purpose of this statute was to preclude double-dipping in medical
7 malpractice cases. The Defendants would have the “option” to determine whether they
8 wanted to introduce evidence of the amounts payable by insurance carriers or other
9 collateral sources. Although the settlement documents in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

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

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

26 Dated this 25TH day of October, 2020.

Dated this 26th day of October, 2020

27 
28 JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT 25B5 2CE7
ATF8/10/20 25B5
Jerry A. Wiese
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/26/2020

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25 Terry Rodriguez

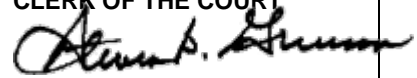
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23		
24		
25		
26		
27		
28		

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

4 David Clark 600 E. Charleston Blvd.
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5 Jason Maier Maier Gutierrez & Associates
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NOAS

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-20-814541-C

Dept. No.: 30

NOTICE OF APPEAL

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

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

6 DATED this 24th day of November, 2020.

7 Respectfully submitted,

8 **BLUMBERG LAW CORPORATION**

9 /s/ John P. Blumberg

10 JOHN P. BLUMBERG, ESQ.

11 California Bar No. 70200

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13 JASON R. MAIER, ESQ.

Nevada Bar No. 8557

14 **MAIER GUTIERREZ & ASSOCIATES**

8816 Spanish Ridge Avenue

15 Las Vegas, Nevada 89148

Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

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

6 Dalton L. Hooks, Jr., Esq.
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10 *Attorneys for Defendants Copperpoint Mutual Insurance Holding Company*
11 *and Copperpoint General Insurance Company*

12 Robert C. McBride, Esq.
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16 Las Vegas, Nevada 89113

17 and

18 James Kjar, Esq.
19 Jon Schwalbach, Esq.
20 KJAR, MCKENNA & STOCKALPER LLP
21 841 Apollo Street, Suite 100
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23 *Attorneys for Defendants Kenneth Marshall Silberberg and*
24 *Law Offices of Marshall Silberberg*

25 David A. Clark, Esq.
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27 9900 Covington Cross Drive, Suite 120
28 Las Vegas, Nevada 89144
Attorneys for defendants Shoop A Professional Law Corporation
and Thomas S. Alch

29 /s/ Natalie Vazquez

30 An Employee of MAIER GUTIERREZ & ASSOCIATES

EXHIBIT 1

EXHIBIT 1

Heather S. Linn

CLERK OF THE COURT

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

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

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

ORDER

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

COPPERPOINT'S MOTION TO DISMISS.

FACTUAL INFORMATION.

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

20 **SUMMARY OF LEGAL ARGUMENTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355–56 (2012)
(quotations omitted and emphasis added by Copperpoint).

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

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

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

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

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

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

11 **LEGAL ANALYSIS.**

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

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

1 NRS 42.021 reads in pertinent part as follows:

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

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

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

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

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

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

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

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

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

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

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

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

11 **FACTUAL INFORMATION**

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

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

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

28 **SUMMARY OF LEGAL ARGUMENTS**

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

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

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

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

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

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

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

1 **LEGAL ANALYSIS**

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

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

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

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

25 **FACTUAL INFORMATION**

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

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

3 4 **SUMMARY OF LEGAL ARGUMENTS**

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

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

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

1 **LEGAL ANALYSIS**

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

9 Based upon the foregoing, and good cause appearing,

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

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

16 **FACTUAL INFORMATION**

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

23 **SUMMARY OF LEGAL ARGUMENTS**

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

27 **LEGAL ANALYSIS**

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

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

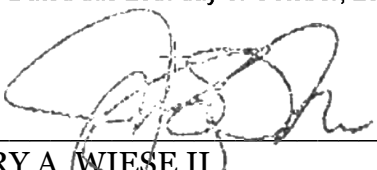
6 The purpose of this statute was to preclude double-dipping in medical
7 malpractice cases. The Defendants would have the “option” to determine whether they
8 wanted to introduce evidence of the amounts payable by insurance carriers or other
9 collateral sources. Although the settlement documents in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

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

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

26 Dated this 25TH day of October, 2020.

Dated this 26th day of October, 2020

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 10/26/2020

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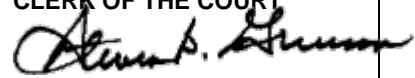
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28		

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

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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
SILVERBERG, P.C., a California corporation;
KENNETH MARSHALL SILVERBERG aka
MARSHALL SILVERBERG aka K.
MARSHALL SILVERBERG, an individual;
THOMAS S. ALCH aka THOMAS STEVEN
ALCH, an individual; SHOOP, A
PROFESSIONAL LAW CORPORATION, a
California corporation; DOES 1-50, inclusive,

Defendants.

Case No.: A-20-814541-C
Dept. No.: 30

**MOTION TO CERTIFY ORDER
ENTERED ON 10/26/20 AS FINAL
PURSUANT TO NRCP 54(B)**

[HEARING REQUESTED]

Plaintiffs Daria Harper and Daniel Winger file this motion to certify order entered on
10/26/20 as final pursuant to NRCP 54(b). This motion is supported by the following memorandum

1 of points and authorities, the papers and pleadings on file, and any oral argument entertained by the
2 Court at the hearing on this motion.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. PROCEDURAL AND FACTUAL HISTORY**

5 **A. PROCEDURAL HISTORY**

6 Plaintiffs filed their Nevada complaint in this action on May 4, 2020.

7 On May 20, 2020, plaintiffs filed a motion for temporary restraining order and preliminary
8 injunction against defendants CopperPoint Mutual Insurance Holding Company and CopperPoint
9 General Insurance Company (collectively, “CopperPoint”), seeking to prevent CopperPoint from
10 ceasing to pay benefits under the applicable workman’s compensation insurance policies. On June 4,
11 2020 CopperPoint answered plaintiffs’ complaint and filed an opposition to the motion for temporary
12 restraining order and preliminary injunction.

13 At the hearing on July 8, 2020, the Court indicated that it was considering the motion for
14 temporary restraining order and preliminary injunction as a motion for preliminary injunction and
15 ultimately denied the motion. On September 25, 2020 the Court entered an order denying plaintiffs’
16 motion for temporary restraining order and preliminary injunction.

17 Defendant Shoop, A Professional Law Corporation (“Shoop”) filed a motion to dismiss on
18 July 20, 2020, and defendant Thomas S. Alch (“Alch”) filed a motion to dismiss or in the alternative
19 motion for summary judgment. On July 24, 2020 the Law Offices of Marshall Silverberg, PC and
20 Kenneth Marshall Silverberg (collectively, “Silverberg”) filed a joinder to the Alch motion to dismiss
21 or in the alternative motion for summary judgment.

22 On August 26, 2020 plaintiffs filed a motion for partial summary judgment, and on September
23 4, 2020, CopperPoint filed a motion to dismiss or in the alternative motion for summary judgment.
24 Ultimately, all of the pending motions were consolidated for hearing on October 28, 2020.

25 On October 26, 2020, prior to the scheduled hearing and noting that pursuant to A.O. 20-1 this
26 matter was determined to be “non-essential,” the Court issued an order deciding all of the pending
27 motions on the papers without oral argument. In the Order entered on October 26, 2020, the Court
28 granted the motion to dismiss filed by the CopperPoint defendants and denied the motion for partial

1 summary judgment filed by plaintiffs. The Court also denied Alch's motion to dismiss or in the
2 alternative motion for summary judgment as well as the Silberberg defendants' joinder to that motion.
3 Finally, the Court continued the hearing on Shoop's motion to dismiss for approximately 120 days to
4 February 24, 2021, to allow plaintiffs to conduct discovery pursuant to NRCP 54(d) and file
5 supplemental briefing.

6 As the case now stands, the CopperPoint defendants have been dismissed from this litigation
7 in their entirety.

8 **B. FACTUAL HISTORY**

9 On or about August 11, 2014, plaintiff Daria Harper, a resident of Arizona, sustained a knee
10 injury in Arizona while in the course and scope of her employment with Islander RV Resort, LLC, a
11 limited liability company domiciled in Arizona. CopperPoint Defendants' Answer ("CopperPoint
12 Answer") at p. 2, lines 6-8; Plaintiffs' Opposition to CopperPoint Defendants Motion to Dismiss or
13 in the Alternative Motion for Summary Judgment ("Opp.") Exh. 1, ¶3; Exh 3; ¶5; and Exh.14.

14 At the time plaintiff Daria Harper was injured, defendant CopperPoint General Insurance
15 Company was the workers' compensation insurer for her employer and is now also known and doing
16 business as CopperPoint Mutual Insurance Holding Company, and is also known as CopperPoint
17 Mutual Insurance Company and/or CopperPoint Insurance Companies (collectively, "CopperPoint").
18 CopperPoint Answer at p. 2, lines 8-17; Opp. Exh.1, ¶3; Exh. 5; and Exh.10.

19 Pursuant to the Arizona Workers' Compensation Act (Arizona Revised Statutes section 23-
20 901, et seq.), CopperPoint was obligated to and did provide, among other things, necessary medical
21 treatment and income disability payments to plaintiff Daria Harper. CopperPoint Answer at p. 2, lines
22 11-13; Opp. Exh 1, ¶3.

23 On or about June 9, 2015, plaintiff Daria Harper required and received medical treatment in
24 Las Vegas, Nevada that was related to her original August 11, 2014 injury and CopperPoint paid her
25 bills. CopperPoint Answer at p. 2, lines 21-23 and p. 3, lines 15-17; Opp. Exh. 1, ¶4.

26 As a result of this medical treatment, (a) plaintiff Daria Harper suffered serious injury resulting
27 in quadriplegia, significant pain, suffering, emotional distress and economic damages for the cost of
28 future care, as well as lost income and earning capacity and (b) plaintiff Daniel Wininger suffered

1 compensable damages by virtue of his marital relationship with plaintiff Daria Harper. CopperPoint
2 Answer p. 2, line 23 to p. 3, line 1; Opp. Exh. 1, ¶4; and Exh. 2, ¶3.

3 On or about June 7, 2016, plaintiff Daria Harper and plaintiff Daniel Wininger, being her
4 husband, filed a complaint in the District Court of Nevada, Clark County as case number A-16-
5 738004-C (“the underlying medical malpractice action, alleging that they sustained damages as a
6 result of the medical negligence of the named health care providers (“health care providers”).
7 CopperPoint Answer at p. 3, l. 19-23; Opp. Exh. 1, ¶5; Exh. ¶4; and Exh. 4.

8 The named defendants in the underlying medical malpractice were (1) Valley Hospital
9 Medical Center, Inc. dba Valley Hospital Medical Center, (2) Valley Health Systems, LLC dba Valley
10 Hospital Medical Center, (3) Jeffrey Davidson, M.D., (4) Cyndi Tran, D.O., (5) Paul Janda, D.O., (6)
11 Elizabeth Phung-Hart, D.O., (7) Andrea Agcaoili, D.O., and (8) Murad Jussa, D.O. All of the
12 individual defendants were licensed by Nevada to provide medical care. Valley Hospital Medical
13 Center, Inc. is a Nevada corporation and Valley Health Systems, LLC is a Delaware corporation. Both
14 have their primary place of business in Nevada and both are doing business as Valley Hospital Medical
15 Center, which is licensed by Nevada to operate a hospital. Opp. Exh.1, ¶5; Exh. 3, ¶s 6-12; Exh. 4;
16 Exhs. 15 to 21; and Exhs. 22 to 28.

17 When the CopperPoint defendants became aware of the above-described underlying medical
18 malpractice action, they (a) asserted, in writing, their right to participate in any settlement thereof, and
19 (b) claimed, in writing, their entitlement to a lien for repayment of financial benefits paid to or on
20 behalf of plaintiff Daria Harper pursuant to Arizona statute A.R.S. § 23-1023. CopperPoint Answer
21 at p. 4, lines 6-9; Exh. 1, ¶6; and Exh. 5.

22 In the underlying medical malpractice action, (a) the medical experts for both plaintiff Daria
23 Harper and the health care providers agreed that she would require 24-hour per day care for the
24 remainder of her life, and (b) the economic expert retained by plaintiffs determined that the present
25 value of the cost of Daria Harper’s required future care was \$14,291,374, and that she incurred past
26 and future earnings losses of \$322,579; and prepared a life care plan to that effect. Opp. Exh.1, ¶7 and
27 Exh. 6.

28 In or about June, 2018, the health care providers and plaintiffs agreed to a total settlement of

1 \$6,250,000, which the health care providers paid soon after settlement agreements were entered into,
2 Opp. Exh. 7, and plaintiffs then caused the medical malpractice action to be dismissed with prejudice.
3 Opp. Exh.1, ¶8; Exh. 3; and Exh.7.

4 On or about July 2, 2018, plaintiffs, through their attorney, notified the CopperPoint
5 defendants that the case had been settled but that, pursuant to NRS 42.021, there was no entitlement
6 to a lien. Opp. Exh.1, ¶9; Exh 3, ¶13; Exh. 8; and Exh. 22 (CopperPoint Defendants' Opposition to
7 Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction filed in this
8 matter on June 3, 2020, at p. 5, lines 8 to 14 and Exh. C).

9 Fifteen months later, on or about October 30, 2019, the CopperPoint defendants served a
10 "Notice of Claim Status" on plaintiff Daria Harper that stated in part:

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

15 • CopperPoint is entitled to accrued interest on the lien from the date settlement
16 proceeds were disbursed.

17 • CopperPoint is entitled to a future credit against Claimant's recovery equal to
18 the amount of money received by the Claimant in the malpractice action after subtracting
19 expenses and attorney fees.

20 • CopperPoint is not required to pay claimant compensation or medical, surgical,
21 or hospital benefits until the claimant's post-settlement accrued entitlement to compensation
22 and medical benefits exceeds the credit amount.

23 • To the extent the settlement in the malpractice action was less than the workers'
24 compensation benefits provided by CopperPoint, Claimant's failure to obtain CopperPoint's
25 prior approval before settling results in forfeiture of her workers' compensation claim.

26 CopperPoint Answer at p. 4, lines 19-21; Opp. Exh. 1, ¶9; and Exh. 9.

27 After the CopperPoint defendants served the above-described Notice of Claim Status, it
28 terminated payments being made for the services of plaintiff Daniel Wininger who was being

1 compensated to provide 24-hour per day care to plaintiff Daria Harper and on April 2, 2020,
2 CopperPoint sent plaintiff Daria Harper the letter notifying her that it would terminate all benefits, in
3 thirty days. CopperPoint Answer at p. 5, lines 1-3; Opp. Exh. 1, ¶10; and Exh. 10.

4 On May 1, 2020, the CopperPoint defendants served its Notice of Claims Status which stated,
5 “Future compensation, medical, surgical, hospital, pharmacy, caretaker & other benefits payable to
6 applicant or behalf of applicant are terminated effective May 2, 2020 until CopperPoint’s current lien
7 of \$3,171,095.00 is fully exhausted.” CopperPoint Answer at p. 5, lines 6-9 and 22-23; Opp. Exh.
8 ¶11; and Exh. 11.

9 II. LEGAL STANDARD

10 NRCP 54 was amended, effective March 1, 2019, and now expressly allows the Court to
11 certify a judgment to allow for an interlocutory appeal if the judgment does not dispose of all claims
12 raised in the case. The Rule now states as follows:

13 When an action presents more than one claim for relief—whether as a
14 claim, counterclaim, crossclaim, or third-party claim—or when multiple
15 parties are involved, *the court may direct entry of a final judgment as*
16 *to one or more, but fewer than all, claims or parties* only if the court
17 expressly determines that there is no just reason for delay. Otherwise,
18 any order or other decision, however designated, that adjudicates fewer
19 than all the claims or the rights and liabilities of fewer than all the parties
20 does not end the action as to any of the claims or parties and may be
21 revised at any time before the entry of a judgment adjudicating all the
22 claims and all the parties’ rights and liabilities.

23 (emphasis added).

24 The following Advisory Committee Note explains the amendments made to NRCP 54(b):

25 **Subsection (b).** From 2004 to 2019, NRCP 54(b) departed from FRCP
26 54(b), only permitting certification of a judgment to allow an
27 interlocutory appeal if it eliminated one or more parties, not one or more
28 claims. The 2019 amendments add the reference to claims back into the
rule, restoring the district court’s authority to direct entry of final
judgment when one or more, but fewer than all, claims are resolved. The
court has discretion in deciding whether to grant Rule 54(b)
certification; given the strong policy against piecemeal review, an order
granting Rule 54(b) certification should detail the facts and reasoning
that make interlocutory review appropriate. An appellate court may
review whether a judgment was properly certified under this rule.

29 As set forth herein, good cause exists to certify the Court’s order entered on 10/26/20 as final
30 pursuant to NRCP 54(b).

1 **III. ARGUMENT**

2 **A. THE COURT SHOULD CERTIFY AS FINAL THE ORDER ENTERED ON 10/26/20 AS FINAL**
3 **PURSUANT TO NRCPP 54(B)**

4 The Court's order entered on 10/26/20 dismissed the CopperPoint defendants from this
5 litigation in their entirety. Therefore, all claims have been adjudicated as against the CopperPoint
6 defendants, and there is no just reason for delay of appellate review.

7 Further, when plaintiffs settled their underlying medical malpractice case, the lien claim of the
8 CopperPoint defendants was not paid. NRS 42.021 is virtually identical to the California statute, and
9 California appellate law holds that the lien preclusion applies to settlements as well as judgments.
10 Moreover, when NRS 42.021 was presented to the voters, its description did not limit the lien
11 preclusion only to trials. The foundational issue, therefore, was whether NRS 42.021 applied to
12 preclude the lien recovery after the settlement.

13 In the order entered on 10/26/20, the Court determined that "while NRS 42.021 would arguably
14 have applied if this case were taken to Trial, there is no suggestion in the statute, nor in any Nevada
15 case law, that it applies to a settlement, and consequently, NRS 42.021 cannot preclude Copperpoint's
16 lien or offset, pursuant to Arizona workers' compensation law." See 10/26/20 order on file herein at
17 8:23-26.

18 Pursuant to the Court's interpretation of NRS 42.021, the Court did not find a conflict of laws.
19 Thus, the issue of whether NRS 42.021 applies to a settlement and, if so, whether it creates a conflict
20 of laws, particularly as it pertains to the dismissed CopperPoint defendants, is now ripe for appellate
21 review. See *Lennox Industries v. Aspen Manufacturing, Inc.*, 2018 WL 1989558, *2 (Nev. April 24,
22 2018) (determining on interlocutory appeal on choice of law regarding whether Nevada or Texas law
23 applied).

24 In fact, the Court's order entered on 10/26/20 will have a significant impact on the ultimate
25 resolution of the remaining legal malpractice claims against the Alch, Shoop and Silberberg
26 defendants. By interpreting NRS 42.021 to not apply to settlements, the Court has essentially found
27 that these remaining defendants' interpretation of NRS 42.021 while litigating the underlying medical
28

malpractice case was wrong as a matter of law, and therefore the remaining defendants are necessarily liable for legal malpractice as a matter of law.

Accordingly, there is no just reason for delay and the public interest of the state of Nevada will be served by certifying the order entered on 10/26/20 as final pursuant to NRCP 54(b) because it will prevent the waste of resources expended by both the parties and the judiciary necessary to adjudicate this case to its conclusion. It will be far more economical and efficient to certify the order entered on 10/26/20 as final for an interlocutory appeal at this early stage and settle these issues of law before significant additional resources are spent litigating this case.

IV. CONCLUSION

For the foregoing reasons, plaintiffs request that the Court grant this motion to certify the Court's order entered on 10/26/20 as final pursuant to NRCP 54(b).

DATED this 24th day of November, 2020.

Respectfully submitted,

BLUMBERG LAW CORPORATION

/s/ John P. Blumberg

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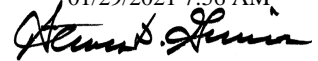
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and Thomas S. Alch*

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CLERK OF THE COURT

LIPSON NEILSON P.C.
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*Attorneys for Defendant Shoop,
A Professional Law Corporation*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No. A-20-814541-C
Dept. 30

Plaintiffs,

**STIPULATION AND ORDER FOR
DISMISSAL OF DEFENDANT, SHOOP,
A PROFESSIONAL LAW
CORPORATION, WITHOUT
PREJUDICE**

v.

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.

IT IS HEREBY STIPULATED, by and between Plaintiffs DARIA HARPER and DANIEL WININGER (collectively, "Plaintiffs") and Defendant SHOOP, A PROFESSIONAL LAW CORPORATION ("Shoop"), by and through their attorneys of record, that Plaintiffs' Complaint against Shoop be dismissed without prejudice, with each party to bear their own attorney's fees and costs.

. . .

IT IS FURTHER STIPULATED that Defendant Shoop's motion to dismiss for lack of personal jurisdiction be DENIED AS MOOT and that the continued hearing on the same scheduled for February 24, 2021, at 9:00 a.m., be VACATED.

IT IS SO STIPULATED.

Dated: January 27, 2021

BLUMBERG LAW CORPORATION

/s/ John P. Blumberg

By:

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

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
jrm@mgalaw.com
Attorneys for Plaintiffs

Dated: January 27, 2021

LIPSON NEILSON P.C.

/s/ David A. Clark

By:

DAVID A. CLARK
Nevada Bar No. 4443
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Las Vegas, Nevada 89144
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Fax: (702) 382-1512
dclark@lipsonneilson.com

Attorneys for Defendant Shoop, A
Professional Law Corporation

ORDER

Dated this 29th day of January, 2021

Based on the foregoing stipulation by and between the parties, and good cause appearing,

IT IS SO ORDERED.

A0A F0E 536A D76F
Jerry A. Wiese
District Court Judge

Prepared and submitted by:

LIPSON NEILSON P.C.

/s/ David A. Clark

By:

DAVID A. CLARK (NV Bar No. 4443)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Defendant Shoop, A Professional Law Corporation

From: David Clark
Sent: Wednesday, January 27, 2021 12:27 PM
To: Debra Marquez
Subject: FW: Shoop adv. Harper and Wininger (A814541)
Attachments: 20201-01-26 Shoop SAO Dismissal - MGA redline 1.27.21.doc

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Sent Out

Debra:

I spoke with the client and they approve the attached SAO to dismiss WITHOUT prejudice.

Please format the attached in final, affix John Blumberg's and my signature and file TODAY.

DAC

From: Jason Maier <jrm@mgalaw.com>
Sent: Wednesday, January 27, 2021 9:02 AM
To: David Clark <DClark@lipsonneilson.com>; Debra Marquez <DMarquez@lipsonneilson.com>
Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>
Subject: RE: Shoop adv. Harper and Wininger (A814541)
Importance: High

David: Attached are our redline edits. If you are ok with all of these edits, you have permission to affix our electronic signature. Thanks.

Jason R. Maier
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
jrm@mgalaw.com | www.mgalaw.com

From: Debra Marquez <DMarquez@lipsonneilson.com>
Sent: Tuesday, January 26, 2021 8:35 AM
To: Advocates <Advocates@blumberglaw.com>
Cc: David Clark <DClark@lipsonneilson.com>
Subject: Shoop adv. Harper and Wininger (A814541)

Good Morning,

Sent on behalf of David A. Clark, please find the attached correspondence for your review. If you accept,

please let us know that we may affix your electronic signature.

Should you have any questions, please contact Mr. Clark directly.

Thank you,

Debra Marquez
Legal Assistant to
David A. Clark, Esq. and Julie A. Funai, Esq.
Las Vegas Office
9900 Covington Cross Drive, Suite 121
Las Vegas, NV 89144-7052
(702) 382-1500 ext. 121
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OFFICES IN NEVADA, MICHIGAN, ARIZONA, and COLORADO

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 1/29/2021

15 Kellie Piet

kpiet@mcbridehall.com

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hshall@mcbridehall.com

17 David Clark

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18 MGA Docketing

docket@mgalaw.com

19 Kimberly Glad

kglad@lipsonneilson.com

20 Susana Nutt

snutt@lipsonneilson.com

21 Debra Marquez

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7	Terry Rodriguez	trodriguez@hmc.law
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17	Penny Williams	pwilliams@mcbridehall.com
18	Melissa Grass	mgrass@copperpoint.com
19	Kelly Lasorsa	klasorsa@blumberglaw.com
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ORDR

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E-mail: jrm@mgalaw.com

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 SILVERBERG, P.C.,
a California corporation; KENNETH
MARSHALL SILVERBERG aka MARSHALL
SILVERBERG aka K. MARSHALL
SILVERBERG, an individual; THOMAS S.
ALCH aka THOMAS STEVEN ALCH, an
individual; SHOOP, A PROFESSIONAL LAW
CORPORATION, a California corporation;
DOES 1-50, inclusive,
Defendants.

Case No.: A-20-814541-C
Dept. No.: XXX

**ORDER GRANTING PLAINTIFFS'
MOTION TO CERTIFY ORDER
ENTERED ON 10/26/20 AS FINAL
PURSUANT TO NRCP 54(B)**

This matter came on before the Court in chambers on December 30, 2020, on the motion to
certify order entered on 10/26/20 as final pursuant to NRCP 54(b) filed by plaintiffs Daria Harper and
Daniel Winger ("Plaintiffs").

1 The Court, having reviewed the pleadings and papers on file herein, and for good cause
2 appearing, makes the following findings of fact and conclusions of law:

3 Plaintiff Daria Harper was injured in a work-related accident while employed in Arizona. Her
4 employer carried workers compensation insurance with Defendant CopperPoint General Insurance
5 Company. Plaintiff Daria Harper sought treatment in Nevada, which was rendered in a negligent
6 manner. Defendant CopperPoint General Insurance Company rendered payment to various Nevada
7 health care providers because the injury-causing treatment was pursuant to a work-related injury, as
8 required under Arizona workers' compensation law. Ultimately, Defendant Copperpoint General
9 Insurance Company paid benefits of \$3,171,095.00.

10 As a result of her treatment, Plaintiff Daria Harper was rendered a quadriplegic. Plaintiffs
11 then filed a medical malpractice suit in Clark County, Nevada. In January of 2016, Defendant
12 Copperpoint General Insurance Company contacted counsel for Plaintiffs in the underlying medical
13 malpractice action to notify counsel of the existence of a valid lien related to the medical malpractice
14 litigation. In March of that year, Plaintiffs' counsel in the underlying medical malpractice litigation
15 replied by requesting documents relevant to the underlying medical malpractice litigation. In June
16 2016, Plaintiffs settled with the Nevada healthcare providers for \$6,250,000.00.

17 On June 22, 2018, Defendant Copperpoint General Insurance Company sent Plaintiffs a letter
18 asking for an update. Counsel for Plaintiffs in the underlying medical malpractice litigation informed
19 Defendant Copperpoint General Insurance Company that the matter was settled and no lien was valid
20 against the settlement because, in his opinion, NRS 42.021 precludes such a lien. Defendant
21 Copperpoint General Insurance Company then sent a notice of claim status, informing Plaintiffs of
22 their belief in the validity of the lien pursuant to Arizona statute A.R.S. 23-1023, and informing
23 Plaintiffs that further medical expenses would not be paid until the funds paid by Defendant
24 Copperpoint General Insurance Company had been recouped as provided by Arizona law. After
25 service of this notice, Defendant Copperpoint General Insurance Company also informed Plaintiff
26 Daria Harper that they would cease providing her any and all benefits in 30 days as provided by
27 Arizona law. One month later, Defendant Copperpoint General Insurance Company sent another
28 letter informing Plaintiff Daria Harper that all benefits were terminated until the lien amount

1 \$3,171,095 was paid pursuant to Arizona law.

2 The Complaint in this case was filed on May 4, 2020, seeking declaratory relief regarding
3 whether Defendant Copperpoint General Insurance Company was entitled to terminate benefits and
4 demand repayment of its lien (whether the lien is valid); seeking injunctive relief to make Defendant
5 Copperpoint General Insurance Company continue to pay workers compensation benefits to Plaintiff
6 Daria Harper (should Defendant Copperpoint General Insurance Company win on the lien issue); and
7 asserting causes of action for legal malpractice and breach of fiduciary duty against Plaintiffs' counsel
8 in the underlying medical malpractice case, Defendants Law Offices of Marshall Silberberg, PC,
9 Kenneth Marshall Silberberg, and Thomas S. Alch aka Thomas Steven Alch, Shoop, a Professional
10 Law Corporation. Plaintiffs also alleged fraud and breach of contract by Defendants Law Offices of
11 Marshall Silberberg, PC, and Kenneth Marshall Silberberg. Plaintiffs also seek punitive damages.

12 On May 20, 2020, Plaintiffs filed an application for TRO and Motion for Preliminary
13 Injunction, in which Plaintiffs sought to: (1) enjoin Defendant Copperpoint from withholding benefits
14 it has been paying to Plaintiff Daria Harper pursuant to the Arizona Workers Compensation Act; (2)
15 enjoin Defendant Copperpoint from seeking an order from the Industrial Commission of Arizona
16 confirming its right to withhold Plaintiff Daria Harper's benefits; (3) to enjoin Defendant Copperpoint
17 from filing any action in Arizona Court pertaining to Plaintiff Daria Harper's workers compensation
18 benefits; and/or (4) compelling Defendant Copperpoint to pay previously-withheld benefits to
19 Plaintiff Daria Harper until after the hearing on Plaintiffs' motion for Preliminary Injunction. Further,
20 Plaintiffs argued that this Court should apply Nevada law to administer workers compensation
21 benefits under Arizona law. Plaintiffs argued that unless Defendant Copperpoint was restrained from
22 withholding benefits, Plaintiffs would suffer irreparable harm because Plaintiff Daria Harper will not
23 be able to pay her medical expenses. Defendant Silberberg filed a Joinder to Plaintiffs' application
24 for TRO on May 27, 2020.

25 Defendant Copperpoint opposed, arguing that Plaintiff was precluded from any further judicial
26 review because Plaintiff elected not to administratively appeal Defendant's determination regarding
27 her claim. Moreover, applying any law other than Arizona law would substantially alter Plaintiff's
28 workers compensation rights. Thus, Defendant Copperpoint argued that this Court should decline to

1 hear this matter given the action pending before the Industrial Commission of Arizona (which was set
2 for hearing on July 7, 2020), or alternatively apply Arizona law, which grants Defendant a lien on
3 Plaintiff's medical malpractice settlement.

4 This Court heard oral argument regarding the Application for TRO and Motion for Preliminary
5 Injunction on July 8, 2020. This Court indicated that there were too many issues raised that would
6 preclude the granting of a preliminary injunction. Additionally, the Court advised that monetary loss
7 was insufficient to establish irreparable harm. Consequently, the Motion for Preliminary Injunction
8 was denied.

9 Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion to Dismiss,
10 or Alternatively, Motion for Summary Judgment. Defendants Law Offices of Marshall Silberberg,
11 PC and Kenneth Marshall Silberberg filed a Joinder to Thomas S. Alch's Motion to Dismiss or
12 Alternatively, Motion for Summary Judgment. Additionally, Defendant Shoop filed a Motion to
13 Dismiss for Lack of Personal Jurisdiction, and Plaintiffs filed a Motion for Partial Summary Judgment.
14 These items were all decided on the papers in an order filed by the Court on October 26, 2020.
15 Defendant Copperpoint's Motion was granted, dismissing Copperpoint from this litigation in their
16 entirety, and Alch's Motion was denied. Shoop's Motion was continued to February 24, 2021, and
17 Plaintiffs' Motion was denied. Plaintiffs filed a Notice of Appeal on November 24, 2020, along with
18 the instant Motion to Certify the October 26, 2020 Order as Final Pursuant to NRCP 54(b). The Case
19 Appeal Statement was filed on December 11, 2020. The \$500 appeal bond was posted on December
20 15, 2020.

21 Plaintiff argues that good cause exists for this Court to certify the order entered on 10/26/20
22 as final pursuant to NRCP 54(b). NRCP 54 expressly allows the Court to certify a judgment to allow
23 for an interlocutory appeal if the judgment does not dispose of all claims raised in the case. Effective
24 March 1, 2019, NRCP 54 states: When an action presents more than one claim for relief whether as
25 a claim, counterclaim, crossclaim, or third-party claim or when multiple parties are involved, the court
26 may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the
27 court expressly determines that there is no just reason for delay. Otherwise, any order or other
28 decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of

1 fewer than all the parties does not end the action as to any of the claims or parties and may be revised
2 at any time before the entry of a judgment adjudicating all the claims and all the parties rights and
3 liabilities. The Court has discretion in deciding whether to grant Rule 54(b) certification. Given the
4 strong policy against piecemeal review, an order granting Rule 54(b) certification should detail the
5 facts and reasoning that make interlocutory review appropriate.

6 In this case, the 10/26/20 order dismissed the Copperpoint defendants from this litigation in
7 their entirety. Therefore, all claims have been adjudicated as against the Copperpoint defendants, and
8 there is no just reason for delay of appellate review. As a threshold matter, the Court considered
9 whether Nevada law or Arizona law must control Copperpoint's lien claim. The Court stated: "this
10 court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona
11 resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies
12 to the industrial injury claim." Thusly, the Court determined, "Copperpoint's claim is correctly based
13 on Arizona law, as that is the law that applies to the industrial injury claim."

14 The Court also considered whether NRS 42.021 applied to preclude the lien recovery after the
15 settlement. In the Court's 10/26/20 order, this Court determined that while NRS 42.021 would
16 arguably have applied if this case were taken to trial, there is no suggestion in the statute, nor in any
17 Nevada case law, that it applies to a settlement, and consequently, NRS 42.021 cannot preclude
18 Copperpoint's lien or offset, pursuant to Arizona workers compensation law. Plaintiff suggests, and
19 the Court agrees, that the Court's order entered on 10/26/20 may have a significant impact on the
20 ultimate resolution of the remaining legal malpractice claims against the Alch, Shoop and Silberberg
21 defendants. Further, certifying the order entered on 10/26/20 as final pursuant to NRCP 54(b) will
22 prevent the waste of resources expended by both the parties and the judiciary necessary to adjudicate
23 this case to its conclusion. The Court also notes that no Oppositions were filed in response to the
24 pending Motion.

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Dated this 6th day of February, 2021

ABB E9A FC6B 1434
Jerry A. Wiese
District Court Judge

DATED this 1st day of February 2021.

McBRIDE HALL

/s/ Robert C. McBride

ROBERT C. MCBRIDE, ESQ.
Nevada Bar No. 7082
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113

JON SCHWALBACH, ESQ.
Nevada Bar No. 280785
KJAR, MCKENNA & STOCKALPER LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
*Attorneys for Defendants Kenneth Marshall
Silberberg and Law Offices of Marshall
Silberberg*

Approved as to form and content,

DATED this day of February 2021.

HOOKS MENG & CLEMENT

Disapproved/Competing Order Submitted

DALTON L. HOOKS, JR. ESQ.
Nevada Bar No. 8121
SAMI RANDOLPH, ESQ.
Nevada Bar No. 7876
2820 W. Charleston Boulevard, Suite C-23
Las Vegas, Nevada 89102
*Attorneys for Defendants Copperpoint
Mutual Insurance Holding Company and
Copperpoint General Insurance Company*

Natalie Vazquez

From: Robert McBride <rcmcbride@mcbridehall.com>
Sent: Monday, February 01, 2021 1:35 PM
To: Jason Maier; dclark@lipsonneilson.com; Heather S. Hall
Cc: Natalie Vazquez; John Blumberg
Subject: Re: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

You have my approval. Thanks.

Robert C. McBride, Esq.
rcmcbride@mcbridehall.com | mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855



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From: Jason Maier <jrm@mgalaw.com>
Date: Monday, February 1, 2021 at 1:07 PM
To: dclark@lipsonneilson.com <dclark@lipsonneilson.com>, Heather S. Hall <hshall@mcbridehall.com>, Robert McBride <rcmcbride@mcbridehall.com>
Cc: Natalie Vazquez <ndv@mgalaw.com>, John Blumberg <jblumberg@blumberglaw.com>
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

David/Robert/Heather: In light of Sami's impasse email, will you please provide us with authority to affix e-signatures so we can get the version we all agreed upon submitted to chambers today? It is imperative that we get this order submitted asap given the NVSC's order to show cause. We will also be sending a cover letter to chambers outlining the disagreements. Thanks.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Tel: 702.629.7900 | Fax: 702.629.7925

jrm@mgalaw.com | www.mgalaw.com

From: Sami Randolph <srandolph@hmc.law>

Sent: Monday, February 01, 2021 10:39 AM

To: Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com; Candace P. Cullina <ccullina@mcbridehall.com>; Terry Rodriguez <trodriguez@hmc.law>

Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

In relation to the objections. We do not intend to continue to argue the basis for the objections. My last email request was the Order be revised to include a direct quote the from the Order of Judge Wiese. The transitional language can be removed. As such, something to the effect of,

The Court stated: “this court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies to the industrial injury claim.” The Court further stated “Copperpoint’s claim is correctly based on Arizona law, as that is the law that applies to the industrial injury claim.”

From: Jason Maier <jrm@mgalaw.com>

Sent: Saturday, January 30, 2021 9:57 AM

To: Sami Randolph <srandolph@hmc.law>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com; Candace P. Cullina <ccullina@mcbridehall.com>; Terry Rodriguez <trodriguez@hmc.law>

Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Importance: High

David/Robert/Heather: Attached is a final modified order per the emails below. Please provide us your permission to affix e-signatures so we can submit to chambers on Monday. Thank you.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Tel: 702.629.7900 | Fax: 702.629.7925

jrm@mgalaw.com | www.mgalaw.com

From: John Blumberg <jblumberg@blumberglaw.com>

Sent: Friday, January 29, 2021 5:02 PM

To: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com

Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph,

I am confirming the reasons why I agreed to accept many, but not all of your requested additions. The additions and one deletion you requested but I rejected are in bold, followed by my reason for the rejection.

“This action stems from an Arizona workers’ compensation case. . .”

Rejection Reason: The action does not stem from an Arizona Case. It stems from a settlement of a med mal case.

You struck the words, “their belief in” in the sentence, “Defendant Copperpoint General Insurance Company then sent a notice of claim status, informing Plaintiffs of their belief in the validity of the lien . . .”

Rejection Reason: Without the three words, it implies the lien was valid. This is contested and there is no question that it was CopperPoint’s belief.

“As a threshold matter, the Court considered whether Nevada law or Arizona law must control Copperpoint’s lien claim. The Court stated: “this court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies to the industrial injury claim.” Thusly, the Court determined, “Copperpoint’s claim is correctly based on Arizona law, as that is the law that applies to the industrial injury claim.” ”

Rejection Reason: It is incorrect that this was “a threshold matter.” Also, this is completely out of the context of the District Court’s findings. While it is correct that the court found, as a general matter that Arizona industrial injury claims in Arizona by Arizona residents are governed by Arizona law, it did not perform a conflicts of law analysis because it did not reach that issue, having found no conflict based on the determine that there was a lien under Nevada law.

I have agreed to all of your other requested changes and will incorporate them into the order I will submit to the court. I don’t understand why you are not willing to consider even one of my objections.

John P. Blumberg

Blumberg Law Corporation

444 W. Ocean Blvd., Suite 1500

Long Beach, CA 90802
(562) 437-0403
(562) 432-0107 (fax)

Board Certified Trial Lawyer
(National Board of Trial Advocacy)
Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Sami Randolph <srandolph@hmc.law>
Sent: Thursday, January 28, 2021 1:54 PM
To: Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

We are agreeable to Ms. Hall's additions. However, permission is not granted to affix my electronic signature to the proposed order given Mr. Blumberg's objections to the inclusion of the language we proposed. In accord with the local rules we will submit an alternative proposed order seeking to include the language from Judge Wiese's ruling found at pg. 5.

From: Jason Maier <jrm@mgalaw.com>
Sent: Wednesday, January 27, 2021 8:25 AM
To: Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Importance: High

Sami/David – given the Nevada Supreme Court's order to show cause regarding this certification order, we need your response to John's 1/21 email this week. We will be submitting a proposed order to chambers by Friday afternoon one way or the other. Thanks.

Jason R. Maier
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
jrm@mgalaw.com | www.mgalaw.com

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Tuesday, January 26, 2021 11:04 AM

To: Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbridehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph/Mr. Clark,

We are agreeable to Ms. Hall's additions attached. Can you please redline any edits and/or advise if we have permission to affix your electronic signature?

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
ndv@mgalaw.com | www.mgalaw.com

From: Heather S. Hall <hshall@mcbridehall.com>
Sent: Monday, January 25, 2021 3:44 PM
To: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbridehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Hi Natalie,

My changes on behalf of Siberberg Defendants are noted on page 4:

Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion to Dismiss, or Alternatively, Motion for Summary Judgment. Defendants Law Offices of Marshall Silberberg, PC and Kenneth Marshall Silberberg filed a Joinder to Thomas S. Alch's Motion to Dismiss or Alternatively, Motion for Summary Judgment.

Heather S. Hall, Esq.
hshall@mcbridehall.com | www.mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855



MCBRIDE HALL
ATTORNEYS AT LAW

NOTICE: THIS MESSAGE IS CONFIDENTIAL, INTENDED FOR THE NAMED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS (I) PROPRIETARY TO THE SENDER, AND/OR, (II) PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE AND FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, PRIVACY STANDARDS IMPOSED PURSUANT TO THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY TELEPHONE AT (702) 792-5855, AND DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM TO DISK. THANK YOU.

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Monday, January 25, 2021 10:06 AM
To: John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert C. McBride <rcmcbride@mcbriehall.com>; Heather S. Hall <hshall@mcbriehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Mr. McBride/Mr. Clark/Ms. Randolph,

I am following up to Mr. Blumberg's email below, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
ndv@mgalaw.com | www.mgalaw.com

From: John Blumberg <jblumberg@blumberglaw.com>
Sent: Thursday, January 21, 2021 9:59 PM
To: Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; rcmcbride@mcbriehall.com; hshall@mcbriehall.com; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Natalie Vazquez <ndv@mgalaw.com>; Jason Maier <jrm@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Dear Counsel,

Attached is CP's redlined additions and deletions to the proposed Order granting plaintiff's motion to certify. I do not agree with those sections that I have highlighted, for the reasons stated in the "comments." I have no objection to the unhighlighted modifications. With regard to the modifications submitted by Silberberg's counsel, I have no objections. Please let me know if we can agree to submit your redlined version (with Silberberg's additions), minus the highlighted sections to which I do not agree.

John P. Blumberg

Blumberg Law Corporation
444 W. Ocean Blvd., Suite 1500
Long Beach, CA 90802
(562) 437-0403
(562) 432-0107 (fax)

Board Certified Trial Lawyer
(National Board of Trial Advocacy)
Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Terry Rodriguez <trodriguez@hmc.law>
Sent: Wednesday, January 6, 2021 7:40 AM
To: Natalie Vazquez <ndv@mgalaw.com>; dclark@lipsonneilson.com; rcmcbride@mcbridehall.com; hshall@mcbridehall.com; mckenna@kmslegal.com; kjar@kmslegal.com; John Blumberg <jblumberg@blumberglaw.com>
Cc: Sami Randolph <srandolph@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Good Morning All:

Attached please find counsel for Copperpoint's proposed changes to the Order Granting Plaintiff's Motion to Certify. Edits are red-lined.

Thank you,

Terry Rodriguez, Legal Secretary
Hooks Meng & Clement, PLLC.
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, NV 89102
Cell (702) 303-2453
Ph. (702) 766-4672
Fax (702) 919-4672
trodriguez@hmc.law
www.HMC.LAW

From: Sami Randolph <srandolph@hmc.law>
Sent: Monday, January 4, 2021 10:41 AM
To: Terry Rodriguez <trodriguez@hmc.law>
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Monday, January 4, 2021 10:05 AM
To: David Clark <DClark@lipsonneilson.com>; Sami Randolph <srandolph@hmc.law>; dalton@hmc.law;

rcmcbride@mcbridehall.com; Heather S. Hall <hshall@mcbridehall.com>; rmckenna@kmslegal.com; James Kjar <kjar@kmslegal.com>; Jon Schwalbach <jschwalbach@kmslegal.com>

Cc: Jason Maier <jrm@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Counsel,

Please see the attached proposed order regarding the above-referenced matter, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

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Tel: 702.629.7900 | Fax: 702.629.7925

ndv@mgalaw.com | www.mgalaw.com

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Natalie Vazquez

From: David Clark <DClark@lipsonneilson.com>
Sent: Monday, February 01, 2021 2:31 PM
To: Natalie Vazquez
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Attachments: ORDR.modified.final.docx
Importance: High

Assuming the attached is the latest iteration, you have my authorization to affix my signature to the attached proposed order.

David A. Clark

Lipson|Neilson

9900 Covington Cross Drive
Suite 120

Las Vegas, Nevada 89144-7052

(702) 382-1500

(702) 382-1512 (fax)

E-Mail: dclark@lipsonneilson.com

Website: www.lipsonneilson.com

OFFICES IN NEVADA, MICHIGAN, and ARIZONA

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Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Importance: High

David/Robert/Heather: In light of Sami's impasse email, will you please provide us with authority to affix e-signatures so we can get the version we all agreed upon submitted to chambers today? It is imperative that we get this order submitted asap given the NVSC's order to show cause. We will also be sending a cover letter to chambers outlining the disagreements. Thanks.

Jason R. Maier

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Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

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Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Importance: High

David/Robert/Heather: Attached is a final modified order per the emails below. Please provide us your permission to affix e-signatures so we can submit to chambers on Monday. Thank you.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

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Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph,

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You struck the words, “their belief in” in the sentence, “Defendant Copperpoint General Insurance Company then sent a notice of claim status, informing Plaintiffs of their belief in the validity of the lien . . .”

Rejection Reason: Without the three words, it implies the lien was valid. This is contested and there is no question that it was CopperPoint’s belief.

“As a threshold matter, the Court considered whether Nevada law or Arizona law must control Copperpoint’s lien claim. The Court stated: “this court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies to the industrial injury claim.” Thusly, the Court determined, “Copperpoint’s claim is correctly based on Arizona law, as that is the law that applies to the industrial injury claim.” ”

Rejection Reason: It is incorrect that this was “a threshold matter.” Also, this is completely out of the context of the District Court’s findings. While it is correct that the court found, as a general matter that Arizona industrial injury claims in Arizona by Arizona residents are governed by Arizona law, it did not perform a conflicts of law analysis because it did not reach that issue, having found no conflict based on the determine that there was a lien under Nevada law.

I have agreed to all of your other requested changes and will incorporate them into the order I will submit to the court. I don’t understand why you are not willing to consider even one of my objections.

John P. Blumberg

Blumberg Law Corporation
444 W. Ocean Blvd., Suite 1500
Long Beach, CA 90802
(562) 437-0403
(562) 432-0107 (fax)

Board Certified Trial Lawyer
(National Board of Trial Advocacy)
Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Sami Randolph <srandolph@hmc.law>
Sent: Thursday, January 28, 2021 1:54 PM
To: Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

We are agreeable to Ms. Hall's additions. However, permission is not granted to affix my electronic signature to the proposed order given Mr. Blumberg's objections to the inclusion of the language we proposed. In accord with the local rules we will submit an alternative proposed order seeking to include the language from Judge Wiese's ruling found at pg. 5.

From: Jason Maier <jrm@mgalaw.com>
Sent: Wednesday, January 27, 2021 8:25 AM
To: Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Importance: High

Sami/David – given the Nevada Supreme Court's order to show cause regarding this certification order, we need your response to John's 1/21 email this week. We will be submitting a proposed order to chambers by Friday afternoon one way or the other. Thanks.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
jrm@mgalaw.com | www.mgalaw.com

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Tuesday, January 26, 2021 11:04 AM
To: Heather S. Hall <hshall@mcbriehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbriehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbriehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph/Mr. Clark,

We are agreeable to Ms. Hall's additions attached. Can you please redline any edits and/or advise if we have permission to affix your electronic signature?

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
ndv@mgalaw.com | www.mgalaw.com

From: Heather S. Hall <hshall@mcbriehall.com>
Sent: Monday, January 25, 2021 3:44 PM
To: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbriehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbriehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Hi Natalie,

My changes on behalf of Siberberg Defendants are noted on page 4:

Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion to Dismiss, or Alternatively, Motion for Summary Judgment. Defendants Law Offices of Marshall Silberberg, PC and Kenneth Marshall Silberberg filed a Joinder to Thomas S. Alch's Motion to Dismiss or Alternatively, Motion for Summary Judgment.

Heather S. Hall, Esq.
hshall@mcbriehall.com | www.mcbriehall.com
8329 West Sunset Road
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MCBRIDE HALL

ATTORNEYS AT LAW

NOTICE: THIS MESSAGE IS CONFIDENTIAL, INTENDED FOR THE NAMED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS (I) PROPRIETARY TO THE SENDER, AND/OR, (II) PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE AND FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, PRIVACY STANDARDS IMPOSED PURSUANT TO THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY TELEPHONE AT (702) 792-5855, AND DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM TO DISK. THANK YOU.

From: Natalie Vazquez <ndv@mgalaw.com>

Sent: Monday, January 25, 2021 10:06 AM

To: John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert C. McBride <rcmcbride@mcbridehall.com>; Heather S. Hall <hshall@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com

Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Mr. McBride/Mr. Clark/Ms. Randolph,

I am following up to Mr. Blumberg's email below, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Tel: 702.629.7900 | Fax: 702.629.7925

ndv@mgalaw.com | www.mgalaw.com

From: John Blumberg <jblumberg@blumberglaw.com>

Sent: Thursday, January 21, 2021 9:59 PM

To: Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; rcmcbride@mcbridehall.com; hshall@mcbridehall.com; mckenna@kmslegal.com; kjar@kmslegal.com

Cc: Sami Randolph <srandolph@hmc.law>; Natalie Vazquez <ndv@mgalaw.com>; Jason Maier <jrm@mgalaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Dear Counsel,

Attached is CP's redlined additions and deletions to the proposed Order granting plaintiff's motion to certify. I do not agree with those sections that I have highlighted, for the reasons stated in the "comments." I have no objection to the unhighlighted modifications. With regard to the modifications submitted by Silberberg's counsel, I have

no objections. Please let me know if we can agree to submit your redlined version (with Silberberg's additions), minus the highlighted sections to which I do not agree.

John P. Blumberg

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Long Beach, CA 90802
(562) 437-0403
(562) 432-0107 (fax)

Board Certified Trial Lawyer
(National Board of Trial Advocacy)
Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Terry Rodriguez <trodriguez@hmc.law>
Sent: Wednesday, January 6, 2021 7:40 AM
To: Natalie Vazquez <ndv@mgalaw.com>; dclark@lipsonneilson.com; rcmcbride@mcbridehall.com; hshall@mcbridehall.com; mckenna@kmslegal.com; kjar@kmslegal.com; John Blumberg <jblumberg@blumberglaw.com>
Cc: Sami Randolph <srandolph@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Good Morning All:

Attached please find counsel for Copperpoint's proposed changes to the Order Granting Plaintiff's Motion to Certify. Edits are red-lined.

Thank you,

Terry Rodriguez, Legal Secretary
Hooks Meng & Clement, PLLC.
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, NV 89102
Cell (702) 303-2453
Ph. (702) 766-4672
Fax (702) 919-4672
trodriguez@hmc.law
www.HMC.LAW

From: Sami Randolph <srandolph@hmc.law>
Sent: Monday, January 4, 2021 10:41 AM
To: Terry Rodriguez <trodriguez@hmc.law>
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Monday, January 4, 2021 10:05 AM
To: David Clark <DClark@lipsonneilson.com>; Sami Randolph <srandolph@hmc.law>; dalton@hmc.law; rcmcbride@mcbriدهall.com; Heather S. Hall <hshall@mcbriدهall.com>; rmckenna@kmslegal.com; James Kjar <kjar@kmslegal.com>; Jon Schwalbach <jschwalbach@kmslegal.com>
Cc: Jason Maier <jrm@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>
Subject: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Counsel,

Please see the attached proposed order regarding the above-referenced matter, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
ndv@mgalaw.com | www.mgalaw.com

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/6/2021

15 Kellie Piet

kpiet@mcbriehall.com

16 Heather Hall

hshall@mcbriehall.com

17 David Clark

dclark@lipsonneilson.com

18 MGA Docketing

docket@mgalaw.com

19 Kimberly Glad

kglad@lipsonneilson.com

20 Susana Nutt

snutt@lipsonneilson.com

21 Debra Marquez

dmarquez@lipsonneilson.com

22 Robert McBride

rcmcbriehall@mcbriehall.com

23 Michelle Newquist

mnewquist@mcbriehall.com

24 Terry Rodriguez

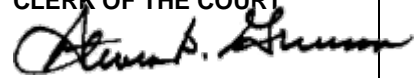
trodriguez@hmc.law

25 Candace Cullina

ccullina@mcbriehall.com

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

JOHN P. BLUMBERG, ESQ.
California Bar No. 70200
(admitted pro hac vice)

BLUMBERG LAW CORPORATION

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JASON R. MAIER, ESQ.

Nevada Bar No. 8557

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Telephone: 702.629.7900
Facsimile: 702.629.7925
E-mail: jrm@mgalaw.com

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.: XXX

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD.

YOU AND EACH OF YOU will please take notice that an **ORDER GRANTING**

1 **PLAINTIFFS' MOTION TO CERTIFY ORDER ENTERED ON 10/26/20 AS FINAL**
2 **PURSUANT TO NRCP 54(B)** was hereby entered on the 6th day of February, 2021. A copy of
3 which is attached hereto.

4 DATED this 8th day of February, 2021.

5 Respectfully submitted,

6 **BLUMBERG LAW CORPORATION**

7 /s/ John P. Blumberg

8 JOHN P. BLUMBERG, ESQ.

9 California Bar No. 70200

(admitted pro hac vice)

444 West Ocean Blvd., Suite 1500

Long Beach, California 90802-4330

10 JASON R. MAIER, ESQ.

11 Nevada Bar No. 8557

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

12 Las Vegas, Nevada 89148

13 *Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **NOTICE OF ENTRY OF ORDER**
3 was electronically filed on the 8th day of February, 2021, and served through the Notice of Electronic
4 Filing automatically generated by the Court's facilities to those parties listed on the Court's Master
5 Service List as follows:

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

12 Robert C. McBride, Esq.
13 Heather S. Hall, Esq.
14 MCBRIDE HALL
15 8329 W. Sunset Road, Suite 260
16 Las Vegas, Nevada 89113

17 and

18 James Kjar, Esq.
19 Jon Schwalbach, Esq.
20 KJAR, MCKENNA & STOCKALPER LLP
21 841 Apollo Street, Suite 100
22 El Segundo, California 90245
23 *Attorneys for Defendants Kenneth Marshall Silberberg and*
24 *Law Offices of Marshall Silberberg*

25 David A. Clark, Esq.
26 LIPSON NEILSON P.C.
27 9900 Covington Cross Drive, Suite 120
28 Las Vegas, Nevada 89144
Attorneys for defendants Shoop A Professional Law Corporation
and Thomas S. Alch

29 /s/ Natalie Vazquez

30 An Employee of MAIER GUTIERREZ & ASSOCIATES

ORDR

JOHN P. BLUMBERG, ESQ.
California Bar No. 70200
(admitted pro hac vice)

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444 West Ocean Blvd., Suite 1500
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Las Vegas, Nevada 89148
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Facsimile: 702.629.7925
E-mail: jrm@mgalaw.com

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 SILVERBERG, P.C.,
a California corporation; KENNETH
MARSHALL SILVERBERG aka MARSHALL
SILVERBERG aka K. MARSHALL
SILVERBERG, an individual; THOMAS S.
ALCH aka THOMAS STEVEN ALCH, an
individual; SHOOP, A PROFESSIONAL LAW
CORPORATION, a California corporation;
DOES 1-50, inclusive,
Defendants.

Case No.: A-20-814541-C
Dept. No.: XXX

**ORDER GRANTING PLAINTIFFS'
MOTION TO CERTIFY ORDER
ENTERED ON 10/26/20 AS FINAL
PURSUANT TO NRCP 54(B)**

This matter came on before the Court in chambers on December 30, 2020, on the motion to
certify order entered on 10/26/20 as final pursuant to NRCP 54(b) filed by plaintiffs Daria Harper and
Daniel Winger ("Plaintiffs").

1 The Court, having reviewed the pleadings and papers on file herein, and for good cause
2 appearing, makes the following findings of fact and conclusions of law:

3 Plaintiff Daria Harper was injured in a work-related accident while employed in Arizona. Her
4 employer carried workers compensation insurance with Defendant CopperPoint General Insurance
5 Company. Plaintiff Daria Harper sought treatment in Nevada, which was rendered in a negligent
6 manner. Defendant CopperPoint General Insurance Company rendered payment to various Nevada
7 health care providers because the injury-causing treatment was pursuant to a work-related injury, as
8 required under Arizona workers' compensation law. Ultimately, Defendant Copperpoint General
9 Insurance Company paid benefits of \$3,171,095.00.

10 As a result of her treatment, Plaintiff Daria Harper was rendered a quadriplegic. Plaintiffs
11 then filed a medical malpractice suit in Clark County, Nevada. In January of 2016, Defendant
12 Copperpoint General Insurance Company contacted counsel for Plaintiffs in the underlying medical
13 malpractice action to notify counsel of the existence of a valid lien related to the medical malpractice
14 litigation. In March of that year, Plaintiffs' counsel in the underlying medical malpractice litigation
15 replied by requesting documents relevant to the underlying medical malpractice litigation. In June
16 2016, Plaintiffs settled with the Nevada healthcare providers for \$6,250,000.00.

17 On June 22, 2018, Defendant Copperpoint General Insurance Company sent Plaintiffs a letter
18 asking for an update. Counsel for Plaintiffs in the underlying medical malpractice litigation informed
19 Defendant Copperpoint General Insurance Company that the matter was settled and no lien was valid
20 against the settlement because, in his opinion, NRS 42.021 precludes such a lien. Defendant
21 Copperpoint General Insurance Company then sent a notice of claim status, informing Plaintiffs of
22 their belief in the validity of the lien pursuant to Arizona statute A.R.S. 23-1023, and informing
23 Plaintiffs that further medical expenses would not be paid until the funds paid by Defendant
24 Copperpoint General Insurance Company had been recouped as provided by Arizona law. After
25 service of this notice, Defendant Copperpoint General Insurance Company also informed Plaintiff
26 Daria Harper that they would cease providing her any and all benefits in 30 days as provided by
27 Arizona law. One month later, Defendant Copperpoint General Insurance Company sent another
28 letter informing Plaintiff Daria Harper that all benefits were terminated until the lien amount

1 \$3,171,095 was paid pursuant to Arizona law.

2 The Complaint in this case was filed on May 4, 2020, seeking declaratory relief regarding
3 whether Defendant Copperpoint General Insurance Company was entitled to terminate benefits and
4 demand repayment of its lien (whether the lien is valid); seeking injunctive relief to make Defendant
5 Copperpoint General Insurance Company continue to pay workers compensation benefits to Plaintiff
6 Daria Harper (should Defendant Copperpoint General Insurance Company win on the lien issue); and
7 asserting causes of action for legal malpractice and breach of fiduciary duty against Plaintiffs' counsel
8 in the underlying medical malpractice case, Defendants Law Offices of Marshall Silberberg, PC,
9 Kenneth Marshall Silberberg, and Thomas S. Alch aka Thomas Steven Alch, Shoop, a Professional
10 Law Corporation. Plaintiffs also alleged fraud and breach of contract by Defendants Law Offices of
11 Marshall Silberberg, PC, and Kenneth Marshall Silberberg. Plaintiffs also seek punitive damages.

12 On May 20, 2020, Plaintiffs filed an application for TRO and Motion for Preliminary
13 Injunction, in which Plaintiffs sought to: (1) enjoin Defendant Copperpoint from withholding benefits
14 it has been paying to Plaintiff Daria Harper pursuant to the Arizona Workers Compensation Act; (2)
15 enjoin Defendant Copperpoint from seeking an order from the Industrial Commission of Arizona
16 confirming its right to withhold Plaintiff Daria Harper's benefits; (3) to enjoin Defendant Copperpoint
17 from filing any action in Arizona Court pertaining to Plaintiff Daria Harper's workers compensation
18 benefits; and/or (4) compelling Defendant Copperpoint to pay previously-withheld benefits to
19 Plaintiff Daria Harper until after the hearing on Plaintiffs' motion for Preliminary Injunction. Further,
20 Plaintiffs argued that this Court should apply Nevada law to administer workers compensation
21 benefits under Arizona law. Plaintiffs argued that unless Defendant Copperpoint was restrained from
22 withholding benefits, Plaintiffs would suffer irreparable harm because Plaintiff Daria Harper will not
23 be able to pay her medical expenses. Defendant Silberberg filed a Joinder to Plaintiffs' application
24 for TRO on May 27, 2020.

25 Defendant Copperpoint opposed, arguing that Plaintiff was precluded from any further judicial
26 review because Plaintiff elected not to administratively appeal Defendant's determination regarding
27 her claim. Moreover, applying any law other than Arizona law would substantially alter Plaintiff's
28 workers compensation rights. Thus, Defendant Copperpoint argued that this Court should decline to

1 hear this matter given the action pending before the Industrial Commission of Arizona (which was set
2 for hearing on July 7, 2020), or alternatively apply Arizona law, which grants Defendant a lien on
3 Plaintiff's medical malpractice settlement.

4 This Court heard oral argument regarding the Application for TRO and Motion for Preliminary
5 Injunction on July 8, 2020. This Court indicated that there were too many issues raised that would
6 preclude the granting of a preliminary injunction. Additionally, the Court advised that monetary loss
7 was insufficient to establish irreparable harm. Consequently, the Motion for Preliminary Injunction
8 was denied.

9 Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion to Dismiss,
10 or Alternatively, Motion for Summary Judgment. Defendants Law Offices of Marshall Silberberg,
11 PC and Kenneth Marshall Silberberg filed a Joinder to Thomas S. Alch's Motion to Dismiss or
12 Alternatively, Motion for Summary Judgment. Additionally, Defendant Shoop filed a Motion to
13 Dismiss for Lack of Personal Jurisdiction, and Plaintiffs filed a Motion for Partial Summary Judgment.
14 These items were all decided on the papers in an order filed by the Court on October 26, 2020.
15 Defendant Copperpoint's Motion was granted, dismissing Copperpoint from this litigation in their
16 entirety, and Alch's Motion was denied. Shoop's Motion was continued to February 24, 2021, and
17 Plaintiffs' Motion was denied. Plaintiffs filed a Notice of Appeal on November 24, 2020, along with
18 the instant Motion to Certify the October 26, 2020 Order as Final Pursuant to NRCP 54(b). The Case
19 Appeal Statement was filed on December 11, 2020. The \$500 appeal bond was posted on December
20 15, 2020.

21 Plaintiff argues that good cause exists for this Court to certify the order entered on 10/26/20
22 as final pursuant to NRCP 54(b). NRCP 54 expressly allows the Court to certify a judgment to allow
23 for an interlocutory appeal if the judgment does not dispose of all claims raised in the case. Effective
24 March 1, 2019, NRCP 54 states: When an action presents more than one claim for relief whether as
25 a claim, counterclaim, crossclaim, or third-party claim or when multiple parties are involved, the court
26 may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the
27 court expressly determines that there is no just reason for delay. Otherwise, any order or other
28 decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of

1 fewer than all the parties does not end the action as to any of the claims or parties and may be revised
2 at any time before the entry of a judgment adjudicating all the claims and all the parties rights and
3 liabilities. The Court has discretion in deciding whether to grant Rule 54(b) certification. Given the
4 strong policy against piecemeal review, an order granting Rule 54(b) certification should detail the
5 facts and reasoning that make interlocutory review appropriate.

6 In this case, the 10/26/20 order dismissed the Copperpoint defendants from this litigation in
7 their entirety. Therefore, all claims have been adjudicated as against the Copperpoint defendants, and
8 there is no just reason for delay of appellate review. As a threshold matter, the Court considered
9 whether Nevada law or Arizona law must control Copperpoint's lien claim. The Court stated: "this
10 court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona
11 resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies
12 to the industrial injury claim." Thusly, the Court determined, "Copperpoint's claim is correctly based
13 on Arizona law, as that is the law that applies to the industrial injury claim."

14 The Court also considered whether NRS 42.021 applied to preclude the lien recovery after the
15 settlement. In the Court's 10/26/20 order, this Court determined that while NRS 42.021 would
16 arguably have applied if this case were taken to trial, there is no suggestion in the statute, nor in any
17 Nevada case law, that it applies to a settlement, and consequently, NRS 42.021 cannot preclude
18 Copperpoint's lien or offset, pursuant to Arizona workers compensation law. Plaintiff suggests, and
19 the Court agrees, that the Court's order entered on 10/26/20 may have a significant impact on the
20 ultimate resolution of the remaining legal malpractice claims against the Alch, Shoop and Silberberg
21 defendants. Further, certifying the order entered on 10/26/20 as final pursuant to NRCP 54(b) will
22 prevent the waste of resources expended by both the parties and the judiciary necessary to adjudicate
23 this case to its conclusion. The Court also notes that no Oppositions were filed in response to the
24 pending Motion.

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Dated this 6th day of February, 2021

ABB E9A FC6B 1434
Jerry A. Wiese
District Court Judge

DATED this 1st day of February 2021.

McBRIDE HALL

/s/ Robert C. McBride

ROBERT C. MCBRIDE, ESQ.
Nevada Bar No. 7082
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113

JON SCHWALBACH, ESQ.
Nevada Bar No. 280785
KJAR, MCKENNA & STOCKALPER LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
*Attorneys for Defendants Kenneth Marshall
Silberberg and Law Offices of Marshall
Silberberg*

Approved as to form and content,

DATED this day of February 2021.

HOOKS MENG & CLEMENT

Disapproved/Competing Order Submitted

DALTON L. HOOKS, JR. ESQ.
Nevada Bar No. 8121
SAMI RANDOLPH, ESQ.
Nevada Bar No. 7876
2820 W. Charleston Boulevard, Suite C-23
Las Vegas, Nevada 89102
*Attorneys for Defendants Copperpoint
Mutual Insurance Holding Company and
Copperpoint General Insurance Company*

Natalie Vazquez

From: Robert McBride <rcmcbride@mcbridehall.com>
Sent: Monday, February 01, 2021 1:35 PM
To: Jason Maier; dclark@lipsonneilson.com; Heather S. Hall
Cc: Natalie Vazquez; John Blumberg
Subject: Re: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

You have my approval. Thanks.

Robert C. McBride, Esq.
rcmcbride@mcbridehall.com | mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855



MCBRIDE HALL
ATTORNEYS AT LAW

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From: Jason Maier <jrm@mgalaw.com>
Date: Monday, February 1, 2021 at 1:07 PM
To: dclark@lipsonneilson.com <dclark@lipsonneilson.com>, Heather S. Hall <hshall@mcbridehall.com>, Robert McBride <rcmcbride@mcbridehall.com>
Cc: Natalie Vazquez <ndv@mgalaw.com>, John Blumberg <jblumberg@blumberglaw.com>
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

David/Robert/Heather: In light of Sami's impasse email, will you please provide us with authority to affix e-signatures so we can get the version we all agreed upon submitted to chambers today? It is imperative that we get this order submitted asap given the NVSC's order to show cause. We will also be sending a cover letter to chambers outlining the disagreements. Thanks.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Tel: 702.629.7900 | Fax: 702.629.7925

jrm@mgalaw.com | www.mgalaw.com

From: Sami Randolph <srandolph@hmc.law>

Sent: Monday, February 01, 2021 10:39 AM

To: Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com; Candace P. Cullina <ccullina@mcbridehall.com>; Terry Rodriguez <trodriquez@hmc.law>

Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

In relation to the objections. We do not intend to continue to argue the basis for the objections. My last email request was the Order be revised to include a direct quote the from the Order of Judge Wiese. The transitional language can be removed. As such, something to the effect of,

The Court stated: “this court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies to the industrial injury claim.” The Court further stated “Copperpoint’s claim is correctly based on Arizona law, as that is the law that applies to the industrial injury claim.”

From: Jason Maier <jrm@mgalaw.com>

Sent: Saturday, January 30, 2021 9:57 AM

To: Sami Randolph <srandolph@hmc.law>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com; Candace P. Cullina <ccullina@mcbridehall.com>; Terry Rodriguez <trodriquez@hmc.law>

Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Importance: High

David/Robert/Heather: Attached is a final modified order per the emails below. Please provide us your permission to affix e-signatures so we can submit to chambers on Monday. Thank you.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Tel: 702.629.7900 | Fax: 702.629.7925

jrm@mgalaw.com | www.mgalaw.com

From: John Blumberg <jblumberg@blumberglaw.com>

Sent: Friday, January 29, 2021 5:02 PM

To: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com

Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph,

I am confirming the reasons why I agreed to accept many, but not all of your requested additions. The additions and one deletion you requested but I rejected are in bold, followed by my reason for the rejection.

“This action stems from an Arizona workers’ compensation case. . .”

Rejection Reason: The action does not stem from an Arizona Case. It stems from a settlement of a med mal case.

You struck the words, “their belief in” in the sentence, “Defendant Copperpoint General Insurance Company then sent a notice of claim status, informing Plaintiffs of their belief in the validity of the lien . . .”

Rejection Reason: Without the three words, it implies the lien was valid. This is contested and there is no question that it was CopperPoint’s belief.

“As a threshold matter, the Court considered whether Nevada law or Arizona law must control Copperpoint’s lien claim. The Court stated: “this court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies to the industrial injury claim.” Thusly, the Court determined, “Copperpoint’s claim is correctly based on Arizona law, as that is the law that applies to the industrial injury claim.” ”

Rejection Reason: It is incorrect that this was “a threshold matter.” Also, this is completely out of the context of the District Court’s findings. While it is correct that the court found, as a general matter that Arizona industrial injury claims in Arizona by Arizona residents are governed by Arizona law, it did not perform a conflicts of law analysis because it did not reach that issue, having found no conflict based on the determine that there was a lien under Nevada law.

I have agreed to all of your other requested changes and will incorporate them into the order I will submit to the court. I don’t understand why you are not willing to consider even one of my objections.

John P. Blumberg

Blumberg Law Corporation

444 W. Ocean Blvd., Suite 1500

Long Beach, CA 90802
(562) 437-0403
(562) 432-0107 (fax)

Board Certified Trial Lawyer
(National Board of Trial Advocacy)
Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Sami Randolph <srandolph@hmc.law>
Sent: Thursday, January 28, 2021 1:54 PM
To: Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

We are agreeable to Ms. Hall's additions. However, permission is not granted to affix my electronic signature to the proposed order given Mr. Blumberg's objections to the inclusion of the language we proposed. In accord with the local rules we will submit an alternative proposed order seeking to include the language from Judge Wiese's ruling found at pg. 5.

From: Jason Maier <jrm@mgalaw.com>
Sent: Wednesday, January 27, 2021 8:25 AM
To: Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Importance: High

Sami/David – given the Nevada Supreme Court's order to show cause regarding this certification order, we need your response to John's 1/21 email this week. We will be submitting a proposed order to chambers by Friday afternoon one way or the other. Thanks.

Jason R. Maier
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
jrm@mgalaw.com | www.mgalaw.com

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Tuesday, January 26, 2021 11:04 AM

To: Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbridehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph/Mr. Clark,

We are agreeable to Ms. Hall's additions attached. Can you please redline any edits and/or advise if we have permission to affix your electronic signature?

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
ndv@mgalaw.com | www.mgalaw.com

From: Heather S. Hall <hshall@mcbridehall.com>
Sent: Monday, January 25, 2021 3:44 PM
To: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbridehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Hi Natalie,

My changes on behalf of Siberberg Defendants are noted on page 4:

Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion to Dismiss, or Alternatively, Motion for Summary Judgment. Defendants Law Offices of Marshall Silberberg, PC and Kenneth Marshall Silberberg filed a Joinder to Thomas S. Alch's Motion to Dismiss or Alternatively, Motion for Summary Judgment.

Heather S. Hall, Esq.
hshall@mcbridehall.com | www.mcbridehall.com
8329 West Sunset Road
Suite 260
Las Vegas, Nevada 89113
Telephone: (702) 792-5855
Facsimile: (702) 796-5855



MCBRIDE HALL
ATTORNEYS AT LAW

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From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Monday, January 25, 2021 10:06 AM
To: John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert C. McBride <rcmcbride@mcbriehall.com>; Heather S. Hall <hshall@mcbriehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Mr. McBride/Mr. Clark/Ms. Randolph,

I am following up to Mr. Blumberg's email below, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
ndv@mgalaw.com | www.mgalaw.com

From: John Blumberg <jblumberg@blumberglaw.com>
Sent: Thursday, January 21, 2021 9:59 PM
To: Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; rcmcbride@mcbriehall.com; hshall@mcbriehall.com; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Natalie Vazquez <ndv@mgalaw.com>; Jason Maier <jrm@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Dear Counsel,

Attached is CP's redlined additions and deletions to the proposed Order granting plaintiff's motion to certify. I do not agree with those sections that I have highlighted, for the reasons stated in the "comments." I have no objection to the unhighlighted modifications. With regard to the modifications submitted by Silberberg's counsel, I have no objections. Please let me know if we can agree to submit your redlined version (with Silberberg's additions), minus the highlighted sections to which I do not agree.

John P. Blumberg

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Long Beach, CA 90802
(562) 437-0403
(562) 432-0107 (fax)

Board Certified Trial Lawyer
(National Board of Trial Advocacy)
Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Terry Rodriguez <trodriguez@hmc.law>
Sent: Wednesday, January 6, 2021 7:40 AM
To: Natalie Vazquez <ndv@mgalaw.com>; dclark@lipsonneilson.com; rcmcbride@mcbridehall.com; hshall@mcbridehall.com; mckenna@kmslegal.com; kjar@kmslegal.com; John Blumberg <jblumberg@blumberglaw.com>
Cc: Sami Randolph <srandolph@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Good Morning All:

Attached please find counsel for Copperpoint's proposed changes to the Order Granting Plaintiff's Motion to Certify. Edits are red-lined.

Thank you,

Terry Rodriguez, Legal Secretary
Hooks Meng & Clement, PLLC.
2820 W. Charleston Blvd., Ste. C-23
Las Vegas, NV 89102
Cell (702) 303-2453
Ph. (702) 766-4672
Fax (702) 919-4672
trodriguez@hmc.law
www.HMC.LAW

From: Sami Randolph <srandolph@hmc.law>
Sent: Monday, January 4, 2021 10:41 AM
To: Terry Rodriguez <trodriguez@hmc.law>
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Monday, January 4, 2021 10:05 AM
To: David Clark <DClark@lipsonneilson.com>; Sami Randolph <srandolph@hmc.law>; dalton@hmc.law;

rcmcbride@mcbridehall.com; Heather S. Hall <hshall@mcbridehall.com>; rmckenna@kmslegal.com; James Kjar <kjar@kmslegal.com>; Jon Schwalbach <jschwalbach@kmslegal.com>

Cc: Jason Maier <jrm@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Counsel,

Please see the attached proposed order regarding the above-referenced matter, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Tel: 702.629.7900 | Fax: 702.629.7925

ndv@mgalaw.com | www.mgalaw.com

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Natalie Vazquez

From: David Clark <DClark@lipsonneilson.com>
Sent: Monday, February 01, 2021 2:31 PM
To: Natalie Vazquez
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Attachments: ORDR.modified.final.docx
Importance: High

Assuming the attached is the latest iteration, you have my authorization to affix my signature to the attached proposed order.

David A. Clark

Lipson|Neilson

9900 Covington Cross Drive
Suite 120

Las Vegas, Nevada 89144-7052

(702) 382-1500

(702) 382-1512 (fax)

E-Mail: dclark@lipsonneilson.com

Website: www.lipsonneilson.com

OFFICES IN NEVADA, MICHIGAN, and ARIZONA

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From: Jason Maier <jrm@mgalaw.com>
Sent: Monday, February 1, 2021 1:07 PM
To: David Clark <DClark@lipsonneilson.com>; Heather S. Hall <hshall@mcbridehall.com>; Robert McBride <rcmcbride@mcbridehall.com>
Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Importance: High

David/Robert/Heather: In light of Sami's impasse email, will you please provide us with authority to affix e-signatures so we can get the version we all agreed upon submitted to chambers today? It is imperative that we get this order submitted asap given the NVSC's order to show cause. We will also be sending a cover letter to chambers outlining the disagreements. Thanks.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES

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jrm@mgalaw.com | www.mgalaw.com

From: Sami Randolph <srandolph@hmc.law>

Sent: Monday, February 01, 2021 10:39 AM

To: Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com; Candace P. Cullina <ccullina@mcbridehall.com>; Terry Rodriguez <trodriquez@hmc.law>

Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

In relation to the objections. We do not intend to continue to argue the basis for the objections. My last email request was the Order be revised to include a direct quote the from the Order of Judge Wiese. The transitional language can be removed. As such, something to the effect of,

The Court stated: “this court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies to the industrial injury claim.” The Court further stated “Copperpoint’s claim is correctly based on Arizona law, as that is the law that applies to the industrial injury claim.”

From: Jason Maier <jrm@mgalaw.com>

Sent: Saturday, January 30, 2021 9:57 AM

To: Sami Randolph <srandolph@hmc.law>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com; Candace P. Cullina <ccullina@mcbridehall.com>; Terry Rodriguez <trodriquez@hmc.law>

Cc: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Importance: High

David/Robert/Heather: Attached is a final modified order per the emails below. Please provide us your permission to affix e-signatures so we can submit to chambers on Monday. Thank you.

Jason R. Maier

MAIER GUTIERREZ & ASSOCIATES

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

From: John Blumberg <jblumberg@blumberglaw.com>
Sent: Friday, January 29, 2021 5:02 PM
To: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph,

I am confirming the reasons why I agreed to accept many, but not all of your requested additions. The additions and one deletion you requested but I rejected are in bold, followed by my reason for the rejection.

“This action stems from an Arizona workers’ compensation case. . .”

Rejection Reason: The action does not stem from an Arizona Case. It stems from a settlement of a med mal case.

You struck the words, “their belief in” in the sentence, “Defendant Copperpoint General Insurance Company then sent a notice of claim status, informing Plaintiffs of their belief in the validity of the lien . . .”

Rejection Reason: Without the three words, it implies the lien was valid. This is contested and there is no question that it was CopperPoint’s belief.

“As a threshold matter, the Court considered whether Nevada law or Arizona law must control Copperpoint’s lien claim. The Court stated: “this court finds and concludes that when an industrial injury claim is brought in Arizona, by an Arizona resident, and is handled and processed according to Arizona laws and statutes, the Arizona law applies to the industrial injury claim.” Thusly, the Court determined, “Copperpoint’s claim is correctly based on Arizona law, as that is the law that applies to the industrial injury claim.” ”

Rejection Reason: It is incorrect that this was “a threshold matter.” Also, this is completely out of the context of the District Court’s findings. While it is correct that the court found, as a general matter that Arizona industrial injury claims in Arizona by Arizona residents are governed by Arizona law, it did not perform a conflicts of law analysis because it did not reach that issue, having found no conflict based on the determine that there was a lien under Nevada law.

I have agreed to all of your other requested changes and will incorporate them into the order I will submit to the court. I don’t understand why you are not willing to consider even one of my objections.

John P. Blumberg

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444 W. Ocean Blvd., Suite 1500
Long Beach, CA 90802
(562) 437-0403
(562) 432-0107 (fax)

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(National Board of Trial Advocacy)
Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Sami Randolph <srandolph@hmc.law>
Sent: Thursday, January 28, 2021 1:54 PM
To: Jason Maier <jrm@mgalaw.com>; Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>; Terry Rodriguez <trodriguez@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

We are agreeable to Ms. Hall's additions. However, permission is not granted to affix my electronic signature to the proposed order given Mr. Blumberg's objections to the inclusion of the language we proposed. In accord with the local rules we will submit an alternative proposed order seeking to include the language from Judge Wiese' ruling found at pg. 5.

From: Jason Maier <jrm@mgalaw.com>
Sent: Wednesday, January 27, 2021 8:25 AM
To: Heather S. Hall <hshall@mcbridehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Candace P. Cullina <ccullina@mcbridehall.com>; Natalie Vazquez <ndv@mgalaw.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.
Importance: High

Sami/David – given the Nevada Supreme Court's order to show cause regarding this certification order, we need your response to John's 1/21 email this week. We will be submitting a proposed order to chambers by Friday afternoon one way or the other. Thanks.

Jason R. Maier

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8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
jrm@mgalaw.com | www.mgalaw.com

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Tuesday, January 26, 2021 11:04 AM
To: Heather S. Hall <hshall@mcbriehall.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbriehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbriehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Ms. Randolph/Mr. Clark,

We are agreeable to Ms. Hall's additions attached. Can you please redline any edits and/or advise if we have permission to affix your electronic signature?

Thank you,

Natalie D. Vazquez | Paralegal
MAIER GUTIERREZ & ASSOCIATES
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148
Tel: 702.629.7900 | Fax: 702.629.7925
ndv@mgalaw.com | www.mgalaw.com

From: Heather S. Hall <hshall@mcbriehall.com>
Sent: Monday, January 25, 2021 3:44 PM
To: Natalie Vazquez <ndv@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert McBride <rcmcbride@mcbriehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com
Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>; Candace P. Cullina <ccullina@mcbriehall.com>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Hi Natalie,

My changes on behalf of Siberberg Defendants are noted on page 4:

Subsequently, Defendants Copperpoint and Thomas S. Alch each filed a Motion to Dismiss, or Alternatively, Motion for Summary Judgment. Defendants Law Offices of Marshall Silberberg, PC and Kenneth Marshall Silberberg filed a Joinder to Thomas S. Alch's Motion to Dismiss or Alternatively, Motion for Summary Judgment.

Heather S. Hall, Esq.
hshall@mcbriehall.com | www.mcbriehall.com
8329 West Sunset Road
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MCBRIDE HALL

ATTORNEYS AT LAW

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From: Natalie Vazquez <ndv@mgalaw.com>

Sent: Monday, January 25, 2021 10:06 AM

To: John Blumberg <jblumberg@blumberglaw.com>; Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; Robert C. McBride <rcmcbride@mcbridehall.com>; Heather S. Hall <hshall@mcbridehall.com>; mckenna@kmslegal.com; kjar@kmslegal.com

Cc: Sami Randolph <srandolph@hmc.law>; Jason Maier <jrm@mgalaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Mr. McBride/Mr. Clark/Ms. Randolph,

I am following up to Mr. Blumberg's email below, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal

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8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

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ndv@mgalaw.com | www.mgalaw.com

From: John Blumberg <jblumberg@blumberglaw.com>

Sent: Thursday, January 21, 2021 9:59 PM

To: Terry Rodriguez <trodriguez@hmc.law>; dclark@lipsonneilson.com; rcmcbride@mcbridehall.com; hshall@mcbridehall.com; mckenna@kmslegal.com; kjar@kmslegal.com

Cc: Sami Randolph <srandolph@hmc.law>; Natalie Vazquez <ndv@mgalaw.com>; Jason Maier <jrm@mgalaw.com>

Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Dear Counsel,

Attached is CP's redlined additions and deletions to the proposed Order granting plaintiff's motion to certify. I do not agree with those sections that I have highlighted, for the reasons stated in the "comments." I have no objection to the unhighlighted modifications. With regard to the modifications submitted by Silberberg's counsel, I have

no objections. Please let me know if we can agree to submit your redlined version (with Silberberg's additions), minus the highlighted sections to which I do not agree.

John P. Blumberg

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Board Certified Medical Malpractice Specialist
(American Board of Professional Liability Attorneys)
Board Certified Legal Malpractice Specialist
(State Bar of California, Board of Legal Specialization)
(American Board of Professional Liability Attorneys)

From: Terry Rodriguez <trodriguez@hmc.law>
Sent: Wednesday, January 6, 2021 7:40 AM
To: Natalie Vazquez <ndv@mgalaw.com>; dclark@lipsonneilson.com; rcmcbride@mcbridehall.com; hshall@mcbridehall.com; mckenna@kmslegal.com; kjar@kmslegal.com; John Blumberg <jblumberg@blumberglaw.com>
Cc: Sami Randolph <srandolph@hmc.law>
Subject: RE: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Good Morning All:

Attached please find counsel for Copperpoint's proposed changes to the Order Granting Plaintiff's Motion to Certify. Edits are red-lined.

Thank you,

Terry Rodriguez, Legal Secretary
Hooks Meng & Clement, PLLC.
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Las Vegas, NV 89102
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From: Sami Randolph <srandolph@hmc.law>
Sent: Monday, January 4, 2021 10:41 AM
To: Terry Rodriguez <trodriguez@hmc.law>
Subject: FW: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

From: Natalie Vazquez <ndv@mgalaw.com>
Sent: Monday, January 4, 2021 10:05 AM
To: David Clark <DClark@lipsonneilson.com>; Sami Randolph <srandolph@hmc.law>; dalton@hmc.law; rcmcbride@mcbriدهall.com; Heather S. Hall <hshall@mcbriدهall.com>; rmckenna@kmslegal.com; James Kjar <kjar@kmslegal.com>; Jon Schwalbach <jschwalbach@kmslegal.com>
Cc: Jason Maier <jrm@mgalaw.com>; John Blumberg <jblumberg@blumberglaw.com>
Subject: [Order granting plaintiffs' motion to certify] Harper, et al. v. Copperpoint Mutual Insurance Holding Company, et al.

Counsel,

Please see the attached proposed order regarding the above-referenced matter, please redline any edits and/or advise if we have permission to affix your electronic signature.

Thank you,

Natalie D. Vazquez | Paralegal
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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Daria Harper, Plaintiff(s)

CASE NO: A-20-814541-C

7 vs.

DEPT. NO. Department 30

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 2/6/2021

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kpiet@mcbridehall.com

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