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. Arizona corporation; **COPPERPOINT** INSURANCE COMPANY, an Arizona OFFICES LAW corporation: MARSHALL SILVERBERG, P.C KENNETH California corporation; SILVERBERG MARSHALL SILVERBERG aka K. MARSHALL SILVERBERG, MARSHALL individual.

Respondents.

Case No. 82158

Electronically Filed Jun 21 2021 03:01 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 VI

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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	Ι	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

Footnotes

- Section 3333.1 provides in relevant part: "(a) In the event the defendant so elects, in an action for personal injury against a health care provider based upon professional negligence, he may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to the United States Social Security Act, any state or federal income disability or worker's compensation act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services. Where the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount which the plaintiff has paid or contributed to secure his right to any insurance benefits concerning which the defendant has introduced evidence. [¶] (b) No source of collateral benefits introduced pursuant to subdivision (a) shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant." (Italics added.)

 Unless otherwise specified, all section references are to the Civil Code.
- Section 3852 provides in relevant part: "The claim of an employee ... for compensation does not affect his or her claim or right of action for all damages proximately resulting from the injury or death against any person other than the employer. Any employer who pays or becomes obligated to pay compensation, or who pays, or becomes obligated to pay salary in lieu of compensation ... may likewise make a claim or bring an action against the third person. In the latter event, the employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension or other emolument paid to the employee or to his or her dependents...." (Italics added.)
- Defendants had earlier moved for judgment on the pleadings on the basis of section 3333.1, subdivision (b), but the trial court had ruled that that motion was premature because defendants had not yet elected to introduce evidence of the workers' compensation benefits received by Barme, an election which the court held was a prerequisite to the application of section 3333.1. Defendants then filed a document indicating their intention to introduce such evidence in the malpractice action, and moved for summary judgment.
- In its opposition to the summary judgment motion, the city also argued that its action for reimbursement under Labor Code section 3852 was not covered by section 3333.1, subdivision (b) because the suit was not a "subrogation" action within the meaning of the MICRA provision. The city has not renewed this claim on appeal, apparently conceding that section 3333.1, subdivision (b) was intended to bar an employer's action under section 3852.

 That concession appears well-founded. Workers' compensation benefits are one of the collateral source benefits specifically enumerated in section 3333.1, subdivision (a) (see fn. 1, ante), and this court—in describing the employer's remedy under section 3852—has observed that "in granting employers the right to sue third parties, the Legislature simply gave statutory recognition to principles of equitable subrogation." (County of San Diego v. Sanfax Corp. (1977) 19 Cal.3d 862, 876, fn. 7, 140 Cal.Rptr. 638, 568 P.2d 363.) Furthermore, the legislative history of section 3333.1, subdivision (b) indicates quite clearly that this provision was intended to prevail over other statutory subrogation provisions, such as Labor Code section 3852. An earlier draft of subdivision (b) would have preserved a collateral source's subrogation rights when such rights were "expressly provided by statute," but that exception was eliminated before the statute's enactment.
- Earlier drafts of section 3333.1, subdivision (a) required the trier of fact to deduct such collateral source benefits in computing damages, but—as enacted—subdivision (a) simply provides for the admission of evidence of such benefits, apparently leaving to the trier of fact the decision as to how such evidence should affect the assessment of damages.

 The purpose of section 3333.1, subdivision (a) has generally been viewed as an attempt to eliminate the so-called "double recovery" obtained by plaintiffs who have their medical expenses paid by their own health insurance and still obtain damages for such expenses from defendant tortfeasors. (See Keene, *California's Medical Malpractice Crisis* in A Legislator's Guide to the Medical Malpractice Issue (1976) 27, 31. Cf. *Helfend v. Southern Cal. Rapid Transit Dist.* (1970) 2 Cal.3d 1, 84 Cal.Rptr. 173, 465 P.2d 61 [explaining the rationale underlying the traditional "collateral source" rule excluding evidence of such collateral source benefits].) This reasoning does not apply to workers' compensation benefits, because under California law plaintiffs have not been permitted to obtain a double recovery of such benefits. Either the employer has been entitled to obtain reimbursement from the tort recovery (see Lab.Code, § 3850 et seq.) or the tort judgment has been reduced by the applicable workers' compensation benefits obtained by the employee. (See *Witt v. Jackson* (1961) 57 Cal.2d 57, 731, 17 Cal.Rptr. 369, 366 P.2d 641.) Nonetheless, the Legislature specifically included workers' compensation benefits in the collateral source benefits covered by section 3333.1, subdivision (a).

689 P.2d 446, 207 Cal.Rptr. 816, 53 USLW 2274

- Unlike an employer's right to reimbursement for workers' compensation expenditures, the right of reimbursement enjoyed by some of the other collateral sources enumerated in section 3333.1, subdivision (a) may be guaranteed by federal law. Under federal supremacy principles, of course, in such cases MICRA's provisions will have to yield. (See, e.g., *Brown v. Stewart* (1982) 129 Cal.App.3d 331, 341, 181 Cal.Rptr. 112; *id* at pp. 346–347, 181 Cal.Rptr. 112 [conc. opn. of Blease, J.].)
- Although not raised in the trial court, on appeal the city proffers two additional objections to section 3333.1, subdivision (b), contending (1) that it is an impermissible "tax" and (2) that, at least as applied to public employers, it authorizes an unconstitutional "gift of public funds." Both contentions are specious.
 - First, it is difficult to see how section 3333.1, subdivision (b) can be characterized as a tax at all. It does not purport to raise any public revenue, but simply precludes an employer or insurer from passing on some of the expenses which it is obligated to bear to a third party. Since the Legislature has plenary control over obligations imposed under the workers' compensation system, it clearly had the power to determine that in some cases the employer or its insurer was required to forego reimbursement of its statutorily incurred expenses.
 - Second, the provision does not embody an improper "gift of public funds." Not only does the section not authorize any payment of funds from the city to the negligent tortfeasor, but, as discussed above, the shift of costs to the employer clearly serves a "public" purpose (see *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 745–746, 97 Cal.Rptr. 385, 488 P.2d 953)—promoting the availability of adequate medical care and adequate malpractice insurance coverage.
- The preamble to the legislation referred to the health crisis in terms, inter alia, of "severe hardships for the medically indigent, a denial of access for the economically marginal" (Stats.1975–1976, Second Ex. Sess., ch. 2, § 12.5.)
- 2 Through the Roof, Institute for Local Self Government (1976) pages 4–5.
- 3 Ibid., page 12.

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210 Cal.App.3d 499, 258 Cal.Rptr. 376, 54 Cal. Comp. Cases 160

JOHN B. GRAHAM, Petitioner,

WORKERS' COMPENSATION APPEALS BOARD and ORANGE COUNTY TRANSIT DISTRICT,
Respondents

No. E006225. Court of Appeal, Fourth District, Division 2, California. May 12, 1989.

SUMMARY

An employee injured within the scope of his employment applied to the Workers' Compensation Appeals Board for adjudication of his claim for medical treatment and permanent disability benefits. He also sued a physician for negligent treatment of his injuries received in the accident. That action was settled and the trial court found the settlement was entered in good faith and was limited to general damages; the parties stipulated at the settlement conference to dismiss the claims for special damages, on the assumption the employee had received workers' compensation for those. The employer then petitioned for credit, in the amount of the settlement, against the employer's liability for future workers' compensation payments to the employee. The workers' compensation judge allowed the requested credit; the board granted the employee's petition for reconsideration but ruled the employer was entitled to assert a credit against the employee's settlement to the extent that the malpractice had exacerbated the employer's injuries, and remanded the cause to the workers' compensation judge to determine the extent of the employer's credit rights.

The Court of Appeal annulled the order of the Workers' Compensation Appeals Board. The court held that Civ. Code, § 3333.1, abrogating the collateral source rule in medical malpractice cases, prevented the employer from obtaining credit against future benefits it owed the injured employee. It held the parties in the underlying medical malpractice case made an adequate factual record that the employee's settlement was reduced to exclude any recovery for collateral source (i.e., workers' compensation) benefits. (Opinion by Dabney, J., with Campbell, P. J., and McDaniel, J., concurring.) *500

HEADNOTES

Classified to California Digest of Official Reports

(1)
Workers' Compensation § 125--Judicial Review--Jurisdiction-- Appealability of Order.
An order of the Workers' Compensation Appeals Board, remanding a case to the workers' compensation judge for a determination of the extent of the employer's credit rights against its injured employee's recovery in a related medical malpractice action settlement, was appealable even though the case was not final. The order followed the board's granting reconsideration of the judge's allowance of a credit.

[See Cal.Jur.3d, Work Injury Compensation, § 346.]

(2a, 2b, 2c)

Workers' Compensation § 84--Award--Credit for Payments by Third Party Tortfeasor--Settlement of Employee's Medical Malpractice Suit.

Under Civ. Code, § 3333.1, abrogating the collateral source rule in medical malpractice cases, a source of collateral benefits (e.g., an injured person's employer) is prevented not only from obtaining reimbursement from a plaintiff but also from obtaining credit against future benefits it owes the plaintiff. Section 3333.1 thus creates an exception to the credit provisions of Lab. Code, §§ 3858 and 3861 (relating to employer's rights against injured employee's other recovery), whenever an injured employee has demonstrably had such recovery reduced to reflect collateral source (e.g., workers' compensation) contributions. The reduction may have been effected after trial or by settlement.

[See Cal.Jur.3d, Work Injury Compensation, §§ 370, 371.]

(3)
Courts § 40.5--Doctrine of Stare Decisis--Opinions of California Courts of Appeal--Noncitable Decisions.
In litigation before the Court of Appeal, it was improper under Cal. Rules of Court, rules 976(d) and 977(a), for a party to cite an appellate decision that was reported but which had thereafter been granted review by the Supreme Court. Even though the Supreme Court subsequently dismissed review, it did not order the opinion published pursuant to rule 976(d), and it therefore remained

noncitable under rule 977(a).

[See Cal.Jur.3d (Rev), Courts, § 188.]

(⁴)

Statutes § 30--Construction--Language--Literal Interpretation.

Once a particular legislative intent has been ascertained as to a statute it must be given effect even though it may not be consistent with the *501 strict letter of the statute. The courts resist blind obedience to the putative "plain meaning" of a statutory phrase where literal interpretation would defeat the Legislature's central objective.

[See Cal.Jur.3d, Statutes, § 99; Am.Jur.2d, Statutes, § 207, 208.]

(⁵)

Healing Arts and Institutions § 53--Judgment and Damages--Abrogation of Collateral Source Rule--Purpose.

The general purpose of the Medical Injury Compensation Reform Act of 1975 and, in particular of Civ. Code, § 3333.1, abrogating the collateral source rule in medical malpractice cases, is to protect California's health care delivery system by reducing the cost of medical malpractice insurance.

[See Cal.Jur.3d, Healing Arts and Institutions, § 185.]

COUNSEL

Potter & Cohen and Thelma S. Cohen for Petitioner. Smith, Wright & Peterson and Stephen P. Angelides as Amici Curiae on behalf of Petitioner.

Zonni, Ginocchio & Taylor, Leonard J. Silberman and Sharon Bernal for Respondents.

DABNEY, J.

In his petition for writ of review, John B. Graham contends that respondent Workers' Compensation Appeals Board (Board) exceeded its power when it granted the petition of respondent Orange County Transit District (Transit District) for credit against Graham's workers' compensation award for a settlement Graham received in a malpractice action. This case presents an issue of first impression as to how the credit provisions of Labor Code sections 3858 and 3861 should be construed in light of the subsequent enactment of Civil Code section 3333.1 as part of the Medical Injury Compensation Reform Act of 1975 (MICRA). Specifically, we are asked to determine whether Civil Code section 3333.1 overrides the employer's right to credit when an employee settles,

rather than tries, his medical malpractice action, and the settlement excludes workers' compensation benefits. *502

Factual and Procedural Background

In April 1983, Graham, a bus driver employed by the Transit District, was injured in a bus accident in the course of his employment. The Transit District was self-insured for workers' compensation. In July 1983, Graham filed an application with the Board for the adjudication of his claim for medical treatment and permanent disability benefits.

Graham also filed a civil action against Dr. Peter Macs (later amended to the Estate of Macs) seeking damages for medical malpractice in Dr. Macs's treatment of Graham for the injuries he sustained in the bus accident. The medical malpractice action was settled by payment to Graham of \$150,000 less attorney's fees and costs. The trial judge found that the settlement was entered in good faith and was limited to damages for pain and suffering. Graham dismissed his cause of action against Dr. Macs for special damages.

The Transit District then petitioned for credit, in the amount of the settlement, against the Transit District's liability for future workers' compensation payments to Graham. The Transit District alleged that Graham's injuries were proximately caused, in part, by Dr. Macs's negligence. In opposition to the petition for credit, Graham's counsel submitted a declaration which stated that he indicated to the court at the settlement conference that Graham's medical expenses and disability would not be considered in the settlement because the defense would introduce evidence that workers' compensation benefits would pay those damages. The workers' compensation judge allowed the requested credit.

Graham filed a petition for reconsideration with the Board on the ground that the malpractice settlement was not subject to credit. The workers' compensation judge issued a report and recommendation in which he stated that his original decision was in error and that he should have denied the *503 credit. The Board granted reconsideration. In its order, the Board stated that Civil Code section 3333.1 does not preclude the Transit District from asserting a credit against Graham's settlement. However, the Board ruled that because the malpractice did not cause the injury, but only enhanced or exacerbated it, the employer's credit should be limited to the workers' compensation benefits attributable to the exacerbation. Therefore, the Board remanded the cause for the workers'

compensation judge to determine the extent of the Transit District's credit rights.

Discussion

Appellate Jurisdiction

The Board stated in its order on Graham's petition for reconsideration that Civil Code section 3333.1 does not preclude the Transit District from asserting a credit against the settlement Graham obtained in his malpractice action. (1) The Board's determination of this threshold issue is an appealable order, even though the case is not final. (Lab. Code, § 5950; Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (1980) 104 Cal.App.3d 528, 531 [163 Cal.Rptr. 750].)

Statutory Overview

Workers' Compensation Subrogation Statutes. Labor 3850 through 3864 contain a sections comprehensive subrogation scheme which includes both credit provisions² and reimbursement provisions.³ The reimbursement provisions provide several methods for the employer (or its workers' compensation carrier) to recover from a third party tortfeasor workers' compensation benefits which the employer has already paid to the injured employee. (Witt v. Jackson (1961) 57 Cal.2d 57, 69 [17 Cal.Rptr. 369, 366 P.2d 641], modified on other grounds by *504 Rodgers v. Workers' Comp. Appeals Bd. (1984) 36 Cal.3d 330, 340 [204 Cal.Rptr. 403, 682 P.2d 1068] and Associated Construction, & Engineering Co. v. Workers' Comp. Appeals Bd. (1978) 22 Cal.3d 829 [150 Cal.Rptr. 888, 587 P.2d 684].) The credit provisions allow the employer to discontinue workers' compensation benefit payments until the amount of the benefits exceeds the amount of the employee's net recovery from the third party, to the extent the employer became liable for additional workers' compensation payments as a result of the malpractice. (Hodge v. Workers' Comp. Appeals Bd. (1981) 123 Cal. App. 3d 501, 509, 513-515 [176 Cal.Rptr. 675].)

The subrogation provisions prevent a double recovery to an employee who makes both a workers' compensation claim and a claim against a third party tortfeasor and provide for reimbursement to the employer for workers' compensation benefits paid to the employee. (*Van Nuis v. Los Angeles Soap Co.* (1973) 36 Cal.App.3d 222, 229 [111 Cal.Rptr. 398].)

Abrogation of Collateral Source Rule and Employer's Subrogation in MICRA. Under the traditional collateral source rule, a jury may not consider the plaintiff's entitlement to benefits such as medical insurance or disability payments when the jury calculates the plaintiff's damages in a tort action. However, as part of MICRA, the Legislature enacted Civil Code section 3333.1 which abrogated the collateral source rule in medical malpractice actions.⁴

The California Supreme Court has explained: "Under [Civil Code] section 3333.1, subdivision (a), a medical malpractice defendant is permitted to introduce evidence of such collateral source benefits received by or payable to the plaintiff; ... Although section 3333.1, subdivision (a) ... does not specify how the jury should use such evidence, the Legislature apparently assumed that in most cases the jury would set plaintiff's damages at a lower level because of its awareness of plaintiff's 'net' collateral source benefits. [¶] In addition, section 3333.1, subdivision (b) provides that whenever such collateral source evidence is introduced, the source of those benefits is precluded from obtaining subrogation either from the plaintiff or from the medical malpractice defendant." (Fein v. Permanente Medical Group (1985) 38 Cal.3d 137, 164-165 [211 Cal.Rptr. 368, 695 P.2d 665].)

Application of Civil Code Section 3333.1 to an Employer's Claim for Credit. (2a) The Transit District contends that it was entitled to credit *505 against the settlement under Labor Code sections 3858 and 3861. Civil Code section 3333.1, subdivision (b) states: "No source of collateral benefits ... shall recover any amount against the plaintiff" The Transit District argues that the words of the statute indicate only that a source of collateral benefits may not obtain reimbursement from a plaintiff, but does not restrict an employer's right to obtain credit for future benefits.

The resolution of this issue is a matter of first impression in the credit context. However, we find significant guidance in resolving this issue in cases in which California courts have resolved the analogous statutory conflict in the reimbursement context.

In *Miller v. Sciaroni* (1985) 172 Cal.App.3d 306, 311 [218 Cal.Rptr. 219] the trial court sustained a demurrer to the employer's complaint in intervention in which the employer sought to assert a claim for reimbursement under Labor Code section 3852 for workers'

compensation benefits paid to the employee. The Court of Appeal affirmed. It explained, "The purpose underlying subdivision (a) is to preclude the double recovery permitted to plaintiffs by the operation of the collateral source rule, under the assumption that the trier of fact will reduce the damage award by amounts already reimbursed. [Citations.] Such a reduction in fact occurred in the instant case. Presumably the awards reduced under the operation of subdivision (a) would in turn have a favorable impact on medical malpractice insurance rates for health care providers. [Citations.]

"Under subdivision (b) of section 3333.1, the collateral source is barred from subrogating plaintiff's claim against defendant. However, Labor Code section 3852, ... permits employers to subrogate plaintiff's claims against the tortfeasor as to benefits conferred, less any amount attributable to the employer's negligence. ... By necessary implication this conflict in statutes must be resolved in favor of section 3333.1 as the most recently enacted statute. (Fuentes v. Workers' Comp. Appeals Bd. (1976) 16 Cal.3d 1, 7 [...].) Furthermore, 'the legislative history of section 3333.1, subdivision (b) indicates quite clearly that this provision was intended to prevail over other statutory subrogation provisions, such as Labor Code section 3852. An earlier draft of subdivision (b) would have preserved a collateral source's subrogation rights when such rights were "expressly provided by statute," but that exception was eliminated before the statute's enactment.' (Barme v. Wood [(1984) 37 Cal.3d 174, 178, fn. 4 (207 Cal.Rptr. 816, 689 P.2d 446)].) It is clear, then, that where Labor Code section 3852 and Civil Code section 3333.1 are in conflict, the latter must prevail.

"In terms of the overall legislative purpose of reducing the cost of medical malpractice insurance to health care providers so as to minimize adverse *506 impact on potential health care consumers, subdivision (b) functions by redistributing certain costs from the malpractice insurer, who continues to bear the general damage risk, to other third party indemnitors, who thus bear many special damage risks. [Citations.]

"In summary, then, Civil Code section 3333.1 is directed towards reducing defendant's medical malpractice insurance costs by: (1) encouraging lower awards to plaintiffs by admitting evidence of benefits received (subd. (a)); and (2) prohibiting third party insurers from subrogating plaintiff's rights as to benefits received, thus reallocating certain costs from defendant's insurer to other insurance carriers (subd. (b))." (*Miller, supra*, 172 Cal.App.3d at pp. 310-312, fn. omitted.)

The court's analysis in Miller, applying Civil Code

section 3333.1 to an employer's claim for reimbursement, applies equally to an employer's claim for credit. Moreover, the California Supreme Court noted in Fein that the medical malpractice defendant may introduce evidence of benefits received by or payable to the plaintiff, and that the Legislature assumed that the jury would reduce the plaintiff's damages to reflect such benefits. (Fein, supra, 38 Cal.3d at pp. 164-165.) The court explained that Civil Code section 3333.1, subdivision (b) assures that the malpractice plaintiff "... will suffer no 'double deduction' from his tort recovery as a result of his receipt of collateral source benefits; ... [and that] any reduction in malpractice awards that may result from the jury's consideration of the plaintiff's collateral source benefits will inure to [the malpractice defendant] rather than to the benefit of the collateral source." (Id., at p. 165.)

If we construe the statute as the Transit District urges, and allow the employer credit from an already reduced recovery, the injured employee, not the medical malpractice defendant or the employer, would bear the cost of the medical malpractice to the extent of the workers' compensation benefits. In effect, the higher the workers' compensation benefits to which the employee is entitled, the lower his overall recovery. Such a construction of the credit provisions of the Labor Code is inconsistent with article XIV, section 4 of the California Constitution, which declares protection of injured employees through a comprehensive workers' compensation scheme to be the public policy of the State, and with Labor Code section 3202 which requires the workers' compensation statutes to be construed liberally to protect workers' benefits. The Legislature clearly intended a different result in enacting MICRA. Thus, the sensible interpretation of Civil Code 3333.1 is that it includes the employer's credit remedies as well as its reimbursement remedies.

Application of Civil Code Section 3333.1 to Cases Which Are Settled Rather Than Tried. The Transit District next contends that even if *507 Civil Code section 3333.1 applies in general to the credit sections of the Labor Code, it does not apply under the circumstances of this case. The Transit District asserts that under the clear and unambiguous language of the statute, the employer's right to credit is not affected unless there is a trial at which the medical malpractice defendant introduces evidence of workers' compensation benefits. (3)(See fn. 5.) Here, the medical malpractice action was settled rather than tried.5

(2b) Graham counters that the conditions for invoking the statute were met in this case where counsel acknowledged in settlement discussions that Graham was entitled to

workers' compensation benefits and did not include such benefits in computing the settlement. Moreover, the parties stipulated at the settlement conference to dismiss the claims for special damages. The settlement thus did not include any sum for past or future medical costs or economic loss, on the assumption that Graham had been compensated for such loss by his "collateral source," the workers' compensation carrier.

It is a cardinal rule of statutory construction that courts will choose that interpretation which most nearly effectuates the purpose of the Legislature. (Code Civ. Proc., § 1859.) (4) "'Once a particular legislative intent has been ascertained, it must be given effect "even though it may not be consistent with the strict letter of the statute." [Citation.]" (Southland Mechanical Constructors, Corp. v. Nixen (1981) 119 Cal.App.3d 417, 430 [173 Cal.Rptr. 917].) "The courts resist blind obedience to the putative 'plain meaning' of a statutory phrase where literal interpretation would defeat the Legislature's central objective." (Leslie Salt Co. v. San Francisco Bay Conservation etc. Com. (1984) 153 Cal.App.3d 605, 614 [200 Cal.Rptr. 575], fn. omitted.)

Legislative history indicates that MICRA "... was enacted in response to the medical malpractice insurance crisis against a background of legislative and gubernatorial belief that skyrocketing malpractice insurance rates would have a severe detrimental impact on California's health delivery *508 system, particularly as regards medically indigent and low-income California residents. [Citations.] (5) The purpose of the legislation in general, then, and of section 3333.1 in particular, is to protect California's health care delivery system by reducing the cost of medical malpractice insurance." (*Miller v. Sciaroni, supra*, 172 Cal.App.3d at pp. 309-310.)

In Barme v. Wood, supra, 37 Cal.3d 174, the California Supreme Court recognized that the damage-reducing effect of Civil Code section 3333.1 comes into play even if the procedures set forth in the statute are not followed. In Barme, the court upheld a summary judgment on a complaint in intervention filed by the employer seeking credit in an employee's medical malpractice case. There was no trial, no evidence of collateral source benefits was introduced, and a jury never considered the issue. The defendants had merely filed "a document indicating their intention to introduce [evidence of workers' compensation benefits] in the malpractice action." (Id., at p. 178, fn. 3.) Nonetheless, the California Supreme Court upheld the summary judgment, recognizing that the practical effect of section 3333.1 is to reduce the plaintiff's recovery in any medical malpractice case where collateral source benefits are payable, regardless of whether the plaintiff obtains recovery in trial or otherwise.

(2c) If we were to interpret the statute to require a trial before the employer is precluded from seeking credit or reimbursement, plaintiffs would be forced to try their cases unless medical malpractice defendants agreed to settle for sums sufficient to cover employers' costs. The legislative history of MICRA reflects deep concern with the cost of litigation. We cannot construe the collateral source benefit rules in a way that would discourage settlements and thus defeat the major purpose of the legislation.

To harmonize Civil Code section 3333.1 with the Labor Code credit provisions, we interpret section 3333.1 as impliedly creating an exception to the credit provisions whenever an injured party has demonstrably had his recovery reduced to reflect collateral source contributions. A more restrictive construction would shift a portion of the costs of medical malpractice to the injured party, contrary to the purposes of both MICRA and the workers' compensation statutes. In this case, the parties in the underlying medical malpractice case made an adequate factual record that Graham's settlement was reduced to exclude any recovery for collateral source benefits.

Employer's Right to Credit Against Settlement Which Covers Only Pain and Suffering Damages. Because we decide that Civil Code section 3333.1 precludes the employer's claim for credit, we need not consider Graham's additional contention that the employer may not obtain credit for damages *509 limited to pain and suffering which do not duplicate the employee's workers' compensation benefits for medical expenses and disability.

Disposition

The order of the Workers' Compensation Appeals Board is annulled.

Campbell, P. J., and McDaniel, J., concurred.

Respondents' petition for review by the Supreme Court was denied July 20, 1989. Panelli, J., was of the opinion that the petition should be granted. *510

Footnotes

The transcript of the trial court proceedings states: "[Counsel for Graham]: We have settled the claims against Dr. Macs and the estate of Dr. Macs in the amount of \$150,000 new money. We have agreed that plaintiff will dismiss any and all claims for special damages in exchange for joint waiver of cost, waiver of cost from the defense.

"It is understood between the parties that the payment of \$150,000 represents the special or the general damages of pain and suffering by Mr. Graham as a result of the alleged malpractice in the case.

"[Counsel for the Estate of Dr. Macs]: That \$150,000 is being paid to compensate for the general damages and all claims for special damages are being dismissed in exchange for waiver of cost. ... [A]nd there's a stipulation that the settlement is a good faith settlement.

.

"The Court: I do find that the settlement in all respects is a good faith and equitable settlement, and it is approved by the Court. And that settlement is for pain and suffering as well as future pain and suffering as a result of the action filed in this case, and that the settlement is fair in all respects."

Labor Code section 3858 provides: "After payment of litigation expenses and attorneys' fees fixed by the court ... and payment of the employer's lien, the employer shall be relieved from the obligation to pay further compensation to or on behalf of the employee ... up to the entire amount of the balance of the judgment, if satisfied, without any deduction. No satisfaction of such judgment in whole or in part, shall be valid without giving the employer notice and a reasonable opportunity to perfect and satisfy his lien."

Labor Code section 3861 provides: "The appeals board is empowered to and shall allow, as a credit to the employer to be applied against his liability for compensation, such amount of any recovery by the employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys' fees, ... or has not been applied to reimburse the employer."

- The reimbursement sections, which are not at issue in this case, allow the employer to bring an action directly against a third party tortfeasor (Lab. Code, § 3852), intervene in an action brought by the employee (Lab. Code, § 3853) or obtain a lien against a judgment obtained by the employee (Lab. Code, § 3856, subd. (b)).
- 4 Civil Code section 3333.1 states: "(a) In the event the defendant so elects, in an action for personal injury against a health care provider based upon professional negligence, he may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the personal injury pursuant to ... any ... worker's compensation act
 - "(b) No source of collateral benefits introduced pursuant to subdivision (a) shall recover any amount against the plaintiff nor shall it be subrogated to the rights of the plaintiff against a defendant."
- The Transit District primarily relies on *McCall v. WCAB* (Cal.App. H000864). In *McCall*, on facts similar to those in this case, the appellate court ruled that Civil Code section 3333.1 did not bar an employer's claim for credit against the employee's settlement recovery. The Supreme Court granted review of that case in July 1986, but subsequently dismissed review. Under rule 976(d) of the California Rules of Court, "Unless otherwise ordered by the Supreme Court, no opinion superseded by a grant of review ... shall be published. After granting review, after decision, or after dismissal of review and remand as improvidently granted, the Supreme Court may order the opinion of the Court of Appeal published in whole or in part." The Supreme Court did not order publication of the *McCall* case. Rule 977(a) of the California Rules of Court states: "An opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action or proceeding" Thus, it was improper for the Transit District to cite *McCall*, and we do not consider *McCall* in our disposition of this matter.

End of Document

 $\hbox{@ 2020\,Thomson}$ Reuters. No claim to original U.S. Government Works.

ENTITY INFORMATION

Search Date and Time: 7/23/2020 12:18:14 PM

Entity Details

Entity Name:

ISLANDER RV RESORT, L.L.C.

Entity ID:

L07086490

Entity Type:

Domestic LLC

Entity Status:

Active

Formation Date:

12/28/1993

Reason for Status:

In Good Standing

Approval Date:

12/30/1993

Status Date:

Original Incorporation Date:

12/28/1993

Life Period:

11/30/2022

Business Type:

Last Annual Report Filed:

Domicile State:

Arizona

Annual Report Due Date:

Privacy Policy (http://azcc.gov/privacy-policy) | Contact Us (http://azcc.gov/corporations/deporations/contacts)

Original Publish Date:

Statutory Agent Information

Name:

PATRICE S HOLLOWAY

Appointed Status:

Active

Attention:

Address:

751 BEACHCOMBER BLVD , LAKE HAVASU CITY, AZ 86403, USA

Agent Last Updated:

11/8/2019

E-mail:

Attention:

Mailing Address:

County:

Mohave

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Member	R. M. Holloway		751 Beachcomber Blvd., LAKE HAVASU CITY, AZ, 86403, Mohave County, USA		11/8/2019
Member	Patrice S. Holloway		751 Beachcomber Blvd., LAKE HAVASU CITY, AZ, 86403, Mohave County, USA		11/8/2019
Member	Kenneth J. Komick		375 London Bridge Rd., #13, LAKE HAVASU CITY, AZ, 86403, Mohave County, USA		11/8/2019

Privacy Policy, (http://azcc.gov/corporations/corporation-contacts)

Address 🥡

Attention:

Address: 751 BEACHCOMBER BLVD, LAKE HAVASU CITY, AZ, 86403, USA

County: Mohave

Last Updated: 11/8/2019

Entity Principal Office Address

Attention:

Address: 751 Beachcomber Blvd., LAKE HAVASU CITY, AZ, 86403, USA

County: Mohave

Last Updated: 11/8/2019

Return to Search

Return to Results

Document History

Name/Restructuring History

Pending Documents

Microfilm History

Privacy Policy (http://azcc.gov/privacy-policy) | Contact Us (http://azcc.gov/corporations/corporation-contacts)

ENTITY INFORMATION ENTITY INFORMATION Entity Name: VALLEY HOSPITAL MEDICAL CENTER, INC. **Entity Number:** C3301-1979 **Entity Type:** Domestic Corporation (78) **Entity Status:** Active Formation Date: 06/15/1979 **NV Business ID:** NV19791005879 **Termination Date:** Perpetual Annual Report Due Date: 6/30/2021 REGISTERED AGENT INFORMATION

Name of Individual or Legal Entity:

CORPORATION SERVICE COMPANY

Stat	us:			
Activ	/e			
CRA	Agent Entity Type:	or or		
Reg	istered Agent Type:			
Com	mercial Registered Ag	gent		
NV	Business ID:			-
NV2	0101844335			
Offi	ce or Position:			
Juri	sdiction:			
DEL	AWARE			
Stre	et Address:			
112	NORTH CURRY STRI	EET, Carson City, NV, 89703, USA		
Mail	ing Address:			
Indi	vidual with Authority	to Act:		
GEO	ORGE MASSIH			
Fict	itious Website or Dor	nain Name:		
	The state of the s			
OFFICE	R INFORMATION			
Table 1	/ HISTORICAL DATA			
Title	Name	Address	Last Updated	Status
⊃resident	MARVIN PEMBER	367 SOUTH GULPH ROAD, KING OF PRUSSIA, PA, 19406, USA	05/31/2019	Active
Secretary	MATTHEW D KLEIN	367 SOUTH GULPH ROAD, KING OF PRUSSIA, PA, 19406, USA	05/31/2019	Active

Title	Name	Add	iress		Last Updated	Status
Treasurer	CHERYL K RAMAGANO		SOUTH GULPH JSSIA, PA, 19400	ROAD, KING OF 6, USA	05/31/2019	Active
Director	STEVE FILTO		367 SOUTH GULPH ROAD, KING OF PRUSSIA, PA, 19406, USA		05/31/2019	Active
Page 1 of	1, records 1 to 4 c	of 4				
CURRENT	SHARES					
Class/Ser	ies	Туре	Sh	are Number	Value	
		Authorized	200	0	1.00000000000	0
Page 1 of	1, records 1 to 1 c	of 1				
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0						
Total Auth	norized Capital:					
200						
			Filing History	Name History	Mergers/Conve	ersions
	The self-little drop of the	300 II-40 VA II-311	riling history	нате нізтогу	wiergers/Conve	ersi

Return to Search Return to Results

Licensee Search

Fields marked with asterisk (*) are required

Use the search fields below to find licensing and inspection report information about the following licensees: $\frac{1}{2} \int_{\mathbb{R}^{n}} \frac{1}{2} \int_{\mathbb{R}^{n}}$

- Health facilities: includes 40 types of medical, nonmedical and mental health-related business entities FINDAHEALTHFACILITY.NV.GOV
- Child care facilities FINDCHILDCARE.NV.GOV
- Medical Laboratories
- Dietitians
- Environmental Health Section

- Child care staff FINDCHILDCARE.NV.GOV
- Medical Laboratory Personnel
- Music therapists
- · Kitchen, pool, and spa inside Health Facilities

Credential Type

Enter Search Criteria

If you only have a partial name of a facility/personnel or having troubles finding the facility by name, put the % sign before and after the partial wording% and all those with that word will appear, for example, %west%.

Business Unit * | Health Facilities | V | Entity Type | Agency | V |
Facility Name | Valley Hospital Medical (

Facility Name Credential Number

(+) Address Information (+) Additional Information

Reset

Search

Generate Excel

Licensee Log-In

V

Search Results

Name A	Credential Type	Credential Number	Status	Expiration Date	Disciplinary Action	Address	Phone#	First Issue Date	Primary Contact Name	Primary Contact Role	Bed Count	Action
VALLEY HOSPITAL MEDICAL CENTER	HOSPITAL	667- HOS-47	Active	12/31/2020	N/A	620 SHADOW LN LAS VEG AS NV 89106	702-3 88-40 00	12/22/1971	CLAUDE WISE, III	Admini strator	306	View D etall

Aithent Licensing System Version 10.0.173.01 Dated: July 15, 2020 | Copyright © 2020 Aithent Inc.

For more information about licensing, follow the links below:

Bureau of Health Care Quality and Compliance (program info and

Medical
Laboratories
(program info and

Childcare
Licensing
(program info and

Environmental Health Section Dietitians Music Therapists (program info and complaint filing)



NEVADA STATE BOARD OF MEDICAL EXAMINERS

Search

Licensee Details

Person Information

Jeffrey Alan Name: DAVIDSON

500 North

Rainbow Address:

Boulevard. Suite #203

Las Vegas NV 89107

7022591231 Phone:

License Information

License Type:

Medical Doctor

License Number:

7061

Status:

Active

Issue Date: 6/11/1994 Expiration 6/30/2021

Scope of Practice

Scope of Practice: Emergency Medicine

Education & Training

School:

University of Arizona / Tucson, AZ

Medical

Degree\Certificate: Doctor

Degree

Date Enrolled:

Date Graduated:

5/12/1990

Scope of Practice:

School:

Maricopa Medical Center / Phoenix, AZ

Degree\Certificate: Internship

Date Enrolled:

6/23/1990

Date Graduated:

6/30/1991

Scope of Practice: Emergency Medicine

School:

Maricopa Medical Center / Phoenix, AZ

Degree\Certificate: Residency

Date Enrolled:

7/1/1991

Date Graduated:

6/30/1994

Scope of Practice: Emergency Medicine

School:

Emergency Medicine

Degree\Certificate:

American Board

Date Enrolled:

Date Graduated:

6/30/1995

Am Bd

Scope of Practice:

School:

Emergency Medicine

Degree\Certificate:

Recertification

Date Enrolled:

Date Graduated:

12/23/2005

Scope of Practice: Emergency Medicine

School:

Emergency Medicine

Am Bd

Degree\Certificate:

Recertification

Date Enrolled:

Date Graduated:

1/1/2016

Scope of Practice: Emergency Medicine

CURRENT EMPLOYMENT

STATUS/CONDITIONS/RESTRICTIONS ON LICENSE AND MALPRACTICE INFORMATION

PROFESSIONAL LIABILITY CLAIM, SETTLEMENT OR JUDGEMENT OF \$5,000 OR MORE: 1) Date received by the Board: 2/19/2016/ - 3/20/17 Reported by: EmCare Inc./ Western Litigation Date of act/omission:3/11/14 Details: Alleged failure to treat and properly prescribe and administer pain medication to a patient in renal failure. Settlement amount: \$250,000 Court Case Number: A-15-715018-C Total pages:0

Board Actions

NONE

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred. Sometimes insurance companies settle a case without the knowledge and/or agreement of the physician. This database represents information from insurers to date. Please note: All insurers may not have submitted claim information to the Board.

Close Window



Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 24 2020

Licensee Information

License Details

License Number:

License Status:

Effective:

Expires:

D.O. License

DO1934

07/01/2015

12/31/2020

Active

License Type:

Name:

Cyndi Tran

Address:

Desert Neurology 2020 Wellness Way, Suite 202

Las Vegas, NV 89106

(702) 732-2600

Phone: Fax:

School: Touro University College of Osteopathic

Medicine Nevada

Residency: Valley Hospital Medical Center (Residency)

(2011-07-01 to 2015-06-30)

Specialty: AOA - Neurology

License History

License	License Number	License Date	Status	
D.O. License	DO1934	07/01/2015 to 12/31/2020	Active	
SL License SL0822		07/01/2011 to 06/30/2015	Expired	

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-16-738004-C	06/07/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessal reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

For further questions regarding discipline or malpractice information, please contact us at: 702-732-2147

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Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 24 2020

Licensee Information

License Details

License Number:

License Status:

Effective:

Expires:

License Type:

D.O. License

DO1588

01/11/2011

12/31/2020

Active

Name: Address: Paul Harlan Janda

Las Vegas Neurology Center

2020 Wellness Way, Suite 306 Las Vegas, NV 89106

Phone:

(702) 432-2233

Fax: School:

(702) 800-5456 Touro University College of Osteopathic

Medicine California

Residency: Valley Hospital Medical Center (Residency)

(2007-06-24 to 2012-06-30)

Specialty: AOA - Neurology

License History

License	License Number	License Date	Status	
D.O. License	DO1588	01/11/2011 to 12/31/2020	Active	
SL License	SL0516	06/24/2007 to 06/30/2012	Expired	

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-17-759169-C	07/31/2017	Dismissed	Clark County, NV
A-16-738004-C	06/16/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessar reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

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Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 24 2020

Licensee Information

License Details

Name:

Elizabeth Pui Phung-Hart

License Type:

D.O. License

Address:

License Number:

DO2071

Phone:

License Status:

Expired: Elective Non-Renew

Effective:

Expires:

07/01/2016 01/01/2017

Fax: School:

Touro University College of Osteopathic

Medicine Nevada

Residency: Valley Hospital Medical Center (Residency)

(2014-07-01 to 2017-06-30)

Specialty: Internal Medicine

License History

License	License Number	License Date	Status
D.O. License	DO2071	01/01/2017 to 01/01/2017	Elective Non-Renew
D.O. License	DO2071	07/01/2016 to 12/31/2016	Active
SL License	SL1020	07/01/2014 to 06/30/2017	Expired

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-16-738004-C	06/07/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessal reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

For further questions regarding discipline or malpractice information, please contact us at: 702-732-2147

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EXHIBIT 21

EXHIBIT 21



Licensee Information

Nevada State - Board of Osteopathic Medicine Verification as of July, 23 2020

License Details

License Number:

License Status:

Effective:

Expires:

License Type:

Licensee Information

Name:

Andrea Leigh Agcaoili

Address:

1450 Treat Blvd Walnut Creek, CA 94597

Phone:

(925) 296-9720

Fax:

(925) 296-9030

School:

Touro University College of Osteopathic

Medicine Nevada

Residency: Valley Hospital Medical Center (Residency)

(2014-07-01 to 2016-09-30) South Hampton Hospital (Internship) (2013-

07-01 to 2014-06-30)

Specialty: AOA - Family Practice/General Practice/Family Medicine

License History

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License Number

License Date

Status

SL License

SL1012

07/01/2014 to 06/30/2017

Expired

SL License

07/01/2014

06/30/2017

SL1012

Expired

Disciplinary Action

Licensee has no Disciplinary Actions

Other State Disciplinary Actions

Licensee has no Disciplinary Actions Outside of Nevada

Malpractice Claims

Court Case #	Date	Status	Loss Location
A-16-738004-C	06/07/2016	Settled	Clark County, NV

This is a Primary Source Verification.

Please note that the settlement of a medical malpractice action may occur for a variety of reasons that do not necessal reflect negatively on the professional competence or conduct of the provider. Therefore, there may be no disciplinary action appearing for a licensee even though there is a closed malpractice claim on file. A payment in the settlement of medical malpractice does not create a presumption that medical malpractice occurred.

For further questions regarding discipline or malpractice information, please contact us at: 702-732-2147

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EXHIBIT 22

EXHIBIT 22

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then & Lehren ANS 1 JOHN H. COTTON, ESQ. Nevada Bar No. 5268 **CLERK OF THE COURT** E-mail: JHCotton@jhcottonlaw.com 3 ADAM A. SCHNEIDER, ESQ. Nevada Bar No. 10216 4 E-mail: ASchneider@jhcottonlaw.com JOHN H. COTTON & ASSOCIATES, LTD. 5 7900 W. Sahara Avenue, Suite 200 Las Vegas, Nevada 89117 6 Telephone: (702) 832-5909 Facsimile: (702) 832-5910 7 Attorneys for Defendant, Paul Janda, D.O. 8 **DISTRICT COURT** 9 **CLARK COUNTY, NEVADA** 10 DARIA HARPER, DANIEL WININGER, 11 Plaintiffs, Case No.: A-16-738004-C 12 Dept. No.: **XVII** V. 13 VALLEY HOSPITAL MEDICAL CENTER, INC., doing business as VALLEY HOSPITAL 14 MEDICAL CENTER; VALLEY HEALTH SYSTEMS, LLC, doing business as VALLEY DEFENDANT PAUL JANDA, D.O.'S 15 HOSPITAL MEDICAL CENTER; JEFFREY ANSWER TO PLAINTIFF'S DAVIDSON, M.D.; CYNDI TRAN, D.O. PAUL **COMPLAINT** 16 JANDA, D.O.; ELIZABEETH PHUNG-HART, D.O.; ANDREA AGCAOILI, D.O.; MURAD 17 JUSSA, M.D., and, DOES 1 through 250, inclusive, 18 Defendants. 19 20

DEFENDANT JANDA, D.O.'S ANSWER TO PLAINTIFF'S COMPLAINT

Defendant Paul Janda, D.O. (Defendant herein), by and through his attorneys of record the law firm of John H. Cotton & Associates, hereby Answer Plaintiff's Complaint (Complaint herein) as follows:

STATEMENT OF FACTS

Answering Paragraph 1 of Plaintiff's Complaint, Defendant responds he lacks sufficient 1. information and/or knowledge to form a belief about the truth or falsity of the facts alleged

therein and therefore denies them on that basis.

- 2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 3. Answering Paragraph 3 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 4. Answering Paragraph 4 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 5. Answering Paragraph 5 of Plaintiff's Complaint, Defendant admits he was and now is a physician and holds himself out as duly licensed to practice his profession under and by virtue of the laws of the State of Nevada and was and now is engaged in the practice of his profession in the State of Nevada, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remaining facts alleged therein and therefore denies them on that basis.
- 6. Answering Paragraph 6 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 7. Answering Paragraph 7 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 8. Answering Paragraph 8 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.

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9.	Answering Paragraph 9 of Plaintiff's Complaint, Defendant responds he lacks sufficient
inform	nation and/or knowledge to form a belief about the truth or falsity of the facts alleged
thereir	and therefore denies them on that basis.

- 10. Answering Paragraph 10 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 11. Answering Paragraph 11 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant admits the declarations of Drs. Beer and Ritter were attached to the Complaint served upon Defendant, but affirmatively denies all allegations of negligence and wrongdoing continued with those declarations.

I.

PLAINTIFF DARIA HARPER'S CAUSE OF ACTION

- 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant refers to Paragraphs 1 through 13 of this Answer, and by reference, incorporate the same herein as if fully set forth.
- 15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 16. Answering Paragraph 16 of Plaintiff's Complaint, Defendant responds he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged

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therein and therefore denies them on that basis.

- Answering Paragraph 17 of Plaintiff's Complaint, Defendant denies all allegations of 17. negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.
- Answering Paragraph 18 of Plaintiff's Complaint, Defendant responds he lacks sufficient 18. information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.
- Answering Paragraph 20 of Plaintiff's Complaint, Defendant denies all allegations of 20. negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.
- Answering Paragraph 21 of Plaintiff's Complaint, Defendant denies all allegations of 21. negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.
- Answering Paragraph 22 of Plaintiff's Complaint, Defendant denies all allegations of 22. negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

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PLAINTIFF DANIEL WINIGER'S CAUSE OF ACTION

- Answering Paragraph 23 of Plaintiff's Complaint, Defendant refers to Paragraphs 1 23. through 22 of this Answer, and by reference, incorporate the same herein as if fully set forth.
- Answering Paragraph 24 of Plaintiff's Complaint, Defendant responds that he lacks 24. sufficient information and/or knowledge to form a belief about the truth or falsity of the facts alleged therein and therefore denies them on that basis.
- 25. Answering Paragraph 25 of Plaintiff's Complaint, Defendant denies all allegations of negligence and wrongdoing, and he lacks sufficient information and/or knowledge to form a belief about the truth or falsity of the remainder of the facts alleged therein and therefore denies them on that basis.

AFFIRMATIVE DEFENSES

- Defendant performed and fully discharged all medical and legal obligations to Plaintiff, including meeting the requisite standard of care to which Plaintiff was entitled.
- In all of the treatment provided and rendered to Plaintiff by Defendant, the Plaintiff was 2. fully informed of the risks inherent in such medical procedures and the risks inherent in her own failure to comply with instructions, and did voluntarily assume all risks attendant thereto.
- Plaintiff's damages, if any, were caused by the disease process and/or medical condition 3. of Plaintiff and not by any act and/or omission by Defendant.
- Defendant alleges that the Complaint fails to state a compensable claim for relief as against this Defendant.
- 5. This answering Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the

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event further investigation or discovery reveals the applicability of any such defenses, this answering Defendant reserves the right to seek leave of court to amend this Answer to specifically assert any such defenses. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defenses.

- Defendant was required to retain the services of an attorney to defend this action and is 6. entitled to an award of reasonable attorney's fees and costs of suit.
- Plaintiff failed to take reasonable efforts to mitigate damages, if any, and is therefore 7. barred from recovering any damages from this answering Defendant.
- Plaintiff failed to join a party pursuant to N.R.C.P. 19 necessary for the just adjudication 8. of the claims at issue in this action.
- This answering Defendant denies each and every allegation of the Complaint not 9. specifically admitted or otherwise pled herein.
- Defendant asserts that Plaintiff's injuries, if any, were caused by the actions or inactions 10. of persons over whom Defendant had neither control nor right of control and for whom this answering Defendant are not liable or responsible.
- Pursuant to N.R.C.P. 11 and 15, Defendant reserves the right to amend this Answer to 11. include any cross-claims, third-party complaints, or counter cross-claims, and any and all affirmative defenses which have a reasonable basis in both law and fact and which are heretofore unknown.
- 12. Defendant avails to all affirmative defenses as set forth in NRS 41A.035, 41A.045, 41A.100, 11.220, 41A.110, 41.141, 41.503, 41.505, and 42.021.
- 13. Plaintiff is barred from asserting claims against Defendant because the alleged damages were the result of one or more unforeseeable intervening and superceding causes.

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- Defendant asserts that the Complaint should be dismissed on the basis that all treatment 14. that Defendant rendered to Plaintiff was not the proximate cause of any alleged injury sustained by Plaintiff.
- Defendant asserts that the Complaint should be dismissed on the basis that Plaintiff has 15. not complied with NRS 41A.071.
- Defendant asserts that the Complaint is barred by the statute of limitations. 16.
- Defendant alleges that any injuries or damages allegedly sustained or suffered by the 17. Plaintiff at the times and places referred to in the Complaint, were caused, in whole or in part, or were contributed to, by the negligence or fault or want of care of the Plaintiff, and the negligence, fault or want of care on the part of the Plaintiff was greater than that, if any, of these answering Defendants, the existence of which is specifically denied.
- Plaintiff's cause of actions must be dismissed based upon the reasoning of Zohar v. 18. Zbiegien, 130 Nev. Adv. Op. 74, 334 P.3d 402 (2014) wherein no qualified expert affidavit opines on Plaintiff's injuries as attributable to Defendant's alleged negligence.
- Plaintiff's Complaint must be dismissed due to violation of N.R.C.P. 4(i). 19.
- Defendant alleges that the injuries and damages, if any, complained of by the Plaintiff 20. were unforeseeable.
- Plaintiff's Complaint violates the Statute of Frauds. 21.
- Defendant alleges that the injuries and damages, if any, suffered by Plaintiff can and do 22. occur in the absence of negligence.
- Plaintiff's claims are barred by the equitable doctrines of waiver, release, laches, unclean 23. hands, and equitable estoppel, including but not limited to Plaintiff and other third-parties and their agents and employees inspected and approved the work performed by Defendant and agreed and approved that Defendant's work performed was satisfactory.
- Plaintiff received all or effectively all of the benefit of the Defendants' treatment that 24. Plaintiff hoped and intended to receive and to that extent any damages that Plaintiff might be entitled to recover must be correspondingly reduced.

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WHEREFORE, Defendant prays for judgment as follows:

- 1. That Plaintiffs take nothing by way of the Complaint and that the Complaint be dismissed with prejudice;
- 2. That Defendant be awarded the costs and attorneys' fees incurred in defending this action; and
- 3. That the Court award Defendant any other relief it deems appropriate under the circumstances.

Dated this 11th day of October 2016.

JOHN H. COTTON & ASSOCIATES, LTD.

7900 West Sahara Avenue, Suite 200 Las Vegas, Nevada 89117

/s/ Adam Schneider

JOHN H. COTTON, ESQ. ADAM SCHNEIDER, ESQ. Attorneys for Defendant Paul Janda, D.O.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October 2016, I served the foregoing **DEFENDANT PAUL JANDA**, **D.O.'S ANSWER TO PLAINTIFF'S COMPLAINT** by filing a true and correct copy of the same through the Clerk of the Court using the Wiznet Electronic Filing and Service system upon all parties with an email address on record in this action:

Thomas S. Alch, Esq.
LAW OFFICES OF THOMAS S. ALCH
500 N. Rainbow Blvd., Ste. 300
Las Vegas, Nevada 89107
-and100 N. Cresent Dr., Ste. 360
Beverly Hills, California 90210
Attorney for Plaintiffs

ALVERSON TAYLOR MORTENSEN & SANDERS
Brigette Foley bfoley@alversontaylor.com
David J. Mortensen efile@alversontaylor.com
David Mortensen dmortensen@alversontaylor.com
Jared Herling jherling@alversontaylor.com
Tya Frabott tfrabott@alversontaylor.com

CARROLL KELLY TROTTER FRANZEN MCKENNA & PEABODY
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Lori Harrison lharrison@cktfmlaw.com
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DAEHNKE STEVENS LLP

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Katherine Gordon kgordon daehnke stevens.com
Laura Lucero LLucero Daehnke Stevens.com
Linda Rurangirwa LRurangirwa Daehnke Stevens.com
Melissa Gutbrodt MGutbrodt Daehnke Stevens.com
Patricia Daehnke PDaehnke Daehnke Stevens.com

HALL PRANGLE & SCHOONVELD, LLC Contact Email HPS Las Vegas efile@hpslaw.com Tamie Phillips tphillips@hpslaw.com

An Employee of John H. Cotton & Associates, Ltd.

EXHIBIT 23

EXHIBIT 23

then to blue

CLERK OF THE COURT

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

DISTRICT COURT CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

VS.

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

Defendants.

CASE NO.: A-16-738004-C

DEPT. NO.: XVII

ELIZABETH PHUNG-HART, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT

COMES NOW Defendant ELIZABETH PHUNG-HART, D.O. (hereinafter "Dr. Phung-

Hart"), by and through her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE

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

GENERAL ALLEGATIONS

- 1. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs' Complaint, and therefore denies the same.
- 2. In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits she was at all times a physician holding herself out as duly licensed to practice her profession under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that profession in the State of Nevada. The remainder of the allegations contained in this paragraph refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to the truth of such allegations, and therefore denies the same.
- 3. Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no answer or response is necessary, and on that basis, Defendant denies the same.

FIRST CAUSE OF ACTION (Medical Malpractice)

- 4. Answering Defendants repeat and reallege their answers to the allegations contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully set forth herein.
- 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of Plaintiffs' Complaint.
- 6. Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal conclusions to which no answer or response is necessary, and on that basis, Defendant denies the same.

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

SECOND CAUSE OF ACTION (Loss of Consortium)

- Answering Defendants repeat and reallege their answers to the allegations 8. contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully set forth herein.
- Answering Defendant is without sufficient knowledge to form a belief as to the 9. truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies the same.
- Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no 10. answer or response is necessary, and on that basis, Defendant denies the same.

PRAYER FOR RELIEF

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

GENERAL DENIAL

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

7401 WEST CHARLESTON BOULEVARD LAS VEGAS, NEVADA 89117-1401 (702) 384-7000 were contributed to by reason of the negligence or wrongful conduct of Plaintiffs.

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

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NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

<u>FIFTEENTH AFFIRMATIVE DEFENSE</u>

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

SIXTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and, 7401 WEST CHARLESTON BOULEVARD LAS VEGAS, NEVADA 89117-1401 (702) 384-7000 therefore, Defendant reserves the right to amend the Answer, and to allege additional Affirmative Defenses if subsequent investigation so warrants.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

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ALVERSON, TAVLOR, MORTENSEN & SANDERS

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WHEREFORE, Defendant prays for relief as follows:

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

DATED this _____day of October, 2016.

ALVERSON, TAYLOR MORTENSEN & SANDER

#13250

DAVID-I-MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FÓLEY, ESQ.

Nevada Bar No/012965

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

Phone: (702) 384-7000 Facsimile: (702) 385-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANTS

Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

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CERTIFICATE OF SERVICE

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

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

Kenneth M. Webster, Esq.

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

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

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

> An Employee of Alverson, Taylor, Mortensen & Sanders

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

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

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

-()R-

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

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

[Insert specific law]

~{}}*~

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

DATED this _____ day of October, 2016.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

Nevada Bar No. 012965

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401-

(702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O. Andrea Agcaoili, D.O.

Ni\david.grp\CLIENT\\$\2385\\\ \text{Pleadings\Answer to complaint - Phung-Hart.dovx}

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EXHIBIT 24

EXHIBIT 24

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1	ANSC		
	ROBERT C. MCBRIDE, ESQ.	Alun S. Elmin	
2	Nevada Bar No.: 007082		
3	CHELSEA R. HUETH, ESQ.	CLERK OF THE COURT	
4	Nevada Bar No.: 010904 CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY		
5	8329 W. Sunset Road, Suite 260 Las Vegas, Nevada 89113		
6	Telephone No. (702) 792-5855 Facsimile No. (702) 796-5855 E-mail: rcmcbride@cktfmlaw.com		
7 8	E-mail: crhueth@cktfmlaw.com Attorneys for Defendant		
9	Jeffrey Davidson, M.D.		
10	DISTRIC	Γ COURT	
11	CLARK COUN	TTY, NEVADA	
12	DARIA HARPER, DANIEL WININGER,	CASE NO.: A-16-738004-C DEPT: XVII	
13	Plaintiffs,		
14	vs.		
15	VALLEY HOSPITAL MEDICAL CENTER, INC., doing business as VALLEY HOSPITAL		
16	MEDICAL CENTER; VALLEY HEALTH		
17	SYSTEM, LLC, doing business as VALLEY		
18	HOSPITAL MEDICAL CENTER; JEFFREY DAVIDSON, M.D.; CYNDI TRAN, D.O.;		
	PAUL JANDA, D.O.; ELIZABETH PHUNG-		
19	HART, D.O.; ANDREA AGCAOILI, D.O.;		
20	MURAD JUSSA, M.D.; and DOES 1 through 250, inclusive,		
21	Defendants.		
22			
23	DEFENDANT, JEFFRE	EY DAVIDSON, M.D.'S	
24	ANSWER TO PLAIN	TIFFS' COMPLAINT	
25	COMES NOW Defendant, JEFFREY D.	AVIDSON, M.D., by and through his attorneys	
26	of record, ROBERT C. MCBRIDE, ESQ. and CHELSEA R. HUETH, ESQ. of the law firm of		
27	CARROLL, KELLY, TROTTER, FRANZEN,	MCKENNA & PEABODY and hereby submits	
28	his Answer to Plaintiffs' Complaint as follows:		

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MEDICAL MALPRACTICE

LOSS OF CONSORTIUM

- 1. Answering paragraphs 1, 2, 3, 4, 6, 7, 8, 9, and 11, Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in said paragraphs and therefore denies the same.
- 2. Answering paragraph 5, this Answering Defendant admits the allegations as to Jeffrey Davidson, M.D. and as to all remaining allegations, this answering Defendant is without sufficient knowledge and information to formulate a belief as to the truth of the allegations contained therein and, based upon such lack of information and belief, the same are hereby denied.
- 3. Answering paragraphs 10 and 12, this Answering Defendant denies each and every allegation contained therein.
- 4. Answering paragraph 13, this Answering Defendant admits that the expert declarations of David A. Neer, M.D. and Michael Steven Ritter, M.D. are attached to the complaint.

I.

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

- 5. Defendant repeats and re-alleges his answers to Paragraph 1 through 13, inclusive, as if fully set forth herein.
- 6. Answering paragraphs 15, 16, 17, 18, 19, 20, 21, and 22 this Answering Defendant denies each and every allegation contained therein.

TT.

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

7. Defendant repeats and re-alleges his answers to Paragraph 1 through 22, inclusive, as if fully set forth herein.

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TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is void ab initio as it does not include an affidavit which meets with

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiffs have a duty to mitigate her damages and has failed to do

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that if he is found negligent, and Defendant denies all allegations of negligence, that he is not jointly liable and would be only severally liable for the portion of the claim that represents the percentage of negligence attributable to this Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer and, therefore, Defendants reserve the right to amend their Answers to allege additional Affirmative

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant did not violate any statute, ordinance, or regulation referenced in Plaintiffs'

NINETEENTH AFFIRMATIVE DEFENSE

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

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1	WHEREFORE, Defendant prays for relief as follows:
2	1. That Plaintiffs' take nothing by way of the Complaint on file herein.
3	2. For reasonable attorney's fees and costs incurred in defending this litigation.
4	3. For such other and further relief as this Court deems just and proper in the
5	premises.
6	DATED this 12 th day of July, 2016.
7	CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY
8	
9	Hull
10	ROBERT C. MCBRIDE, ESQ. Nevada Bar No.: 007082
11	CHELSEA R. HUETH, ESQ.
12	Nevada Bar No. 10904 8329 W. Sunset Road, Suite 260
13	Las Vegas, Nevada 89113 Attorneys for Defendant
14	Jeffrey Davidson, M.D.
15	
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1	CERTIFICATE OF SERVICE			
2	I HEREBY CERTIFY that on the 12 th day of July, 2016, I served a true and correct copy			
3	of the foregoing DEFENDANT, JEFFREY DAVIDSON, M.D.'S ANSWER TO			
4	PLAINTIFFS' COMPLAINT addressed to the following counsel of record at the following			
5	address(es):			
6				
7 8	oxtimes VIA ELECTRONIC SERVICE: by mandatory electronic service (e-service), proof of eservice attached to any copy filed with the Court; or			
9	☐ VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope with			
10	postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada			
11	□ VIA FACSIMILE: By causing a true copy thereof to be telecopied to the number			
12	indicated on the service list below.			
13				
14	Thomas S. Alch, Esq. Kenneth M. Webster, Esq.			
15	Law Offices of Thomas S. Alch Tyson J. Dobbs, Esq. Kirill V. Mikhaylov, Esq.			
16	Las Vegas, NV 89107 Hall Prangle & Schoonveld, LLC Attorney for Plaintiffs 1160 North Town Center Drive			
17	Suite 200 Las Vegas, NV 89144			
18	Attorneys for Defendant Valley Health System, LLC d/b/a			
19	Valley Hospital Medical Center			
20	James E. Murphy, Esq. Daniel C. Tetreault, Esq.			
21	Laxalt & Nomura, Ltd. 6720 Via Ausi Parkway, Suite 430			
22	Las Vegas, NV 89119 Attorneys for Defendant			
23	Neuromonitoring Associates, Inc.			
24				
25	Am			
2627	An Employee of CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY			

EXHIBIT 25

EXHIBIT 25

1	ANS	Alun D. Column	
$_{2}$	Patricia Egan Daehnke Nevada Bar No. 4976	CLERK OF THE COURT	
3	PDaehnke@DaehnkeStevens.com Katherine J. Gordon		
4	Nevada Bar No. 5813 KGordon@DaehnkeStevens.com		
5	DAEHNKE STEVENS LLP 2300 W. Sahara Avenue, Suite 680 Box 32		
6	Las Vegas, Nevada 89102		
7	(702) 979-2132 Telephone (702) 979-2133 Facsimile		
8	Attorneys for Defendant, MURAD JUSSA, M.D.		
9	DICTDIC	CT COURT	
10			
11	CLARK COU.	NTY, NEVADA	
12	DARIA HARPER, DANIEL WININGER	CASE NO. A-16-738004-C	
13	Plaintiffs,	DEPT. NO. XVII	
14		DEEENDANT MIIDAD HICCA M D 2C	
15	VS. VALLEY HOSPITAL MEDICAL	DEFENDANT MURAD JUSSA, M.D.'S ANSWER TO PLAINTIFFS' COMPLAINT	
16	CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL		
17	CENTER; VALLEY HEALTH SYSTEM, LLC, doing business as VALLEY		
18	HOSPITAL MEDICAL CENTER; JEFFREY DAVIDSON, M.D.; CYNDI		
19	TRAN, D.O.; PAUL JANDA, D.O.; ELIZABETH PHYNG-HART, D.O.;		
20	ANDREA AGCAOILI, D.O.; MURAD JUSSA, M.D., and, DOES 1 through 250,		
21	inclusive,		
22	Defendants.		
23	COMES NOW Defendant, MURAD.	JUSSA, M.D. ("the Answering Defendant")	
24	by and through his attorneys, DAEHNKE STEVENS, LLP and in answer to Plaintiffs'		
25	Complaint on file herein, admits, denies and alleges as follows:		
26	1. Answering Paragraphs 1, 2, 3 and 4 o	f Plaintiffs' Complaint on file herein, the	

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Answering Defendant is without sufficient knowledge or information to form a belief as to

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

- 2. Answering Paragraph 5 of Plaintiffs' Complaint on file herein, the Answering Defendant admits that Murad Jussa, M.D. is duly licensed in Nevada to practice medicine. As to all remaining allegations contained therein, this Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.
- 3. Answering Paragraphs 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs' Complaint on file herein, the Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraphs, and on that basis denies each and every allegation contained therein.
- 4. Answering Paragraph 13 of Plaintiffs' Complaint on file herein, the Answering Defendant admits that the Affidavits of David A. Neer, M.D. and Michael Steven Ritter, M.D. are attached to the Complaint. As to all remaining allegations contained therein, this Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis denies each and every allegation contained therein.

I.

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

- 5. Answering Paragraph 14 of Plaintiffs' Complaint on file herein, the Answering Defendant repeats and realleges each and every response to the allegations in the Complaint and reincorporates those responses by reference, as if the same were fully set forth in detail herein.
- 6. Answering Paragraph 15 of Plaintiffs' Complaint on file herein, the Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of

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

- 7. Answering Paragraphs 16 and 17 of Plaintiffs' Complaint on file herein, the Answering Defendant denies the allegations contained therein.
- 8. Answering Paragraph 18 of Plaintiffs' Complaint on file herein, the Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraphs, and on that basis denies each and every allegation contained therein.
- 9. Answering Paragraphs 19, 20, 21 and 22 of Plaintiffs' Complaint on file herein, the Answering Defendant denies the allegations contained therein.

II.

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

- 10. Answering Paragraph 23 of Plaintiffs' Complaint on file herein, the Answering Defendant repeats and realleges each and every response to the allegations in the Complaint and reincorporates those responses by reference, as if the same were fully set forth in detail herein.
- 11. Answering Paragraph 24 of Plaintiffs' Complaint on file herein, the Answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraphs, and on that basis denies each and every allegation contained therein.
- 12. Answering Paragraph 25 of Plaintiffs' Complaint on file herein, the Answering Defendant denies the allegations contained therein.

AFFIRMATIVE DEFENSES FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

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EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint violates the Statute of Frauds.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

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SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

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TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTEETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

THIRTY-SECOND AFFIRMATIVE DEFENSE

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

THIRTY-THIRD AFFIRMATIVE DEFENSE

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

THIRTY-FOURTH AFFIRMATIVE DEFENSE

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

THIRTY-FIFTH AFFIRMATIVE DEFENSE

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

THIRTY-SIXTH AFFIRMATIVE DEFENSE

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

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

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

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

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

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Defendant reserves the right to amend his Answer to allege additional affirmative defenses
    if subsequent investigation warrants. Additionally, one or more of these affirmative
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    defenses may have been pled for the purposes of non-waiver.
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I. WHEREFORE, the Answering Defendant prays as fol	HOWS:
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- 1. That Plaintiff, Daria Harper, take nothing by reason of her Complaint;
- 2. For all attorney's fees incurred in the defense of Plaintiffs' Complaint against the Answering Defendant;
- 3. For costs and disbursements incurred herein; and
- 4. For such other and further relief as the Court may deem just and proper in these premises.
- II. WHEREFORE, the Answering Defendant prays as follows:
 - 1. That Plaintiff, Daniel Wininger, take nothing by reason of his Complaint;
 - 2. For all attorney's fees incurred in the defense of Plaintiffs' Complaint against the Answering Defendant;
 - 3. For costs and disbursements incurred herein; and
 - 4. For such other and further relief as the Court may deem just and proper in these premises.

DATED: this 13th day of July, 2016.

DAEHNKE STEVENS LLP

PATRICIA EGAN DAEHNKE
Nevada Bar No. 4976
KATHERINE J. GORDON
Nevada Bar No. 5813
2300 W. Sahara Ave., Suite 680 Box 32
Las Vegas, Nevada 89102
Tel. (702) 979-2132
Fax (702) 979-2133

Attorneys for Defendant, MURAD JUSSA, M.D.

CERTIFICATE OF SERVICE I hereby certify that on July 13, 2016, a true and correct copy of 2 DEFENDANT MURAD JUSSA, M.D.'S ANSWER TO PLAINTIFFS' COMPLAINT 3 was served by electronically filing with the Clerk of the Court using the Wiznet Electronic 4 5 Service system and serving all parties with an email-address on record, who have agreed to receive Electronic Service in this action. 6 7 Thomas S. Alch, Esq. David J. Mortensen, Esq. 8 Law Offices of Thomas S. Alch Brigette E. Foley, Esq. 500 N. Rainbow Blvd., Suite 300 Alverson, Taylor, Mortensen & Sanders 9 7401 W Charleston Blvd Las Vegas, NV 89107 Las Vegas NV 89117 10 Attorneys for Plaintiffs 11 Attorneys for Defendants, Cyndi Tran, DO, Elizabeth Phung-Hart, DO and Andrea Agcaoili. DO 12 13 Kenneth M. Webster, Esq. Tyson J. Dobbs, Esq. Kirill V. Mikhaylov, Esq. 14 Hall Prangle & Schoonveld, LLC 1160 N. Town Center Dr., Suite 200 15 Las Vegas, NV 89144 16 Attorneys for Defendants, Valley Hospital Medical Center, Inc. and 17 Vallev Health System. LLC 18 19 20 By /s/ Melissa Gutbrodt 21 Melissa Gutbrodt, an employee of 22 DAEHNKE STEVENS LLP 23 24 25

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EXHIBIT 26

EXHIBIT 26

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

Alm & Elmin

CLERK OF THE COURT

DISTRICT COURT CLARK COUNTY, NEVADA

Plaintiffs,

vs.

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

Defendants.

DARIA HARPER, DANIEL WININGER,

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

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

COMES NOW Defendant CYNDI TRAN, D.O. (hereinafter "Dr. Tran"), by and through

her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE E. FOLEY, ESQ. of

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

GENERAL ALLEGATIONS

- Answering Defendant is without sufficient knowledge to form a belief as to the 1. truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs' Complaint, and therefore denies the same.
- In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits 2. she was at all times a physician holding herself out as duly licensed to practice her profession under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that profession in the State of Nevada. The remainder of the allegations contained in this paragraph refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to the truth of such allegations, and therefore denies the same.
- Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no 3. answer or response is necessary, and on that basis, Defendant denies the same.

FIRST CAUSE OF ACTION (Medical Malpractice)

- Answering Defendants repeat and reallege their answers to the allegations 4. contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully set forth herein.
- 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of Plaintiffs' Complaint.
- Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal 6. conclusions to which no answer or response is necessary, and on that basis, Defendant denies the same.

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

SECOND CAUSE OF ACTION (Loss of Consortium)

- Answering Defendants repeat and reallege their answers to the allegations 8. contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully set forth herein.
- Answering Defendant is without sufficient knowledge to form a belief as to the 9. truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies the same.
- Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no 10. answer or response is necessary, and on that basis, Defendant denies the same.

PRAYER FOR RELIEF

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

GENERAL DENIAL

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

7401 WEST CHARLESTON BOULEVARD
LAS VEGAS, NEVADA 89117-1401

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

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LAS VEGAS, NEVADA 89117-1401

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NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

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LAS VEGAS, NEVADA 89117-1401
(702) 384-7000

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

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ALVERSON, TAYLOR, MORTENSEN & SANDERS

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WHEREFORE, Defendant prays for relief as follows:

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

DATED this ____ day of October, 2016.

ALVERSON, TAYLOR, MORTENSEN & SANDER

DAVID I. MORJĖNSEN, ESQ

Nevada Bar No. 002547

BRIGETTE E. FÓLEY, ESQ.

Nevada Bar No. 012965

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

Phone: (702) 384-7000

Facsimile: (702) 385-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANTS

Cyndi Tran, D.O.

Elizabeth Phung-Hart. D.O.

Andrea Agcaoili, D.O.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that or	n the	19th day of	October,	2016,	the	foregoing
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CYNDI TRAN, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT was served on the

following by Electronic Service to All parties on the Wiznet Service List, addressed as follows:

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

Kenneth M. Webster, Esq.

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

Tyson J. Dobbs, Esq. Kirill V. Mikhaylov, Esq. HALL PRANGLE & SCHOONVELD, LLC 1160 North Town Center Drive, Suite 200 Las Vegas, NV 89144 Phone: (702) 889-6400

Attorneys for Defendant Valley Health System, LLC and Valley Hospital Medical Center, Inc.

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

An Employee of Alverson, Taylor, Mortensen & Sanders

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ALVERSON, TAYLOR, MORTENSEN & SANDERS

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

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

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

-OR-

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

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

[Insert specific law]

~() {'~

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

DATED this _____ day of October, 2016.

ALVERSON, TAYLOR, (*) MORTENSEN & SANDERS

DAVID J. MORFENSEN, ESQ.

Nevada Bap No. 002547

BRIGETTÉ E. FOLEY, ESQ.

Nevada Bar No-012965

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(702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

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EXHIBIT 27

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ANS 1 KENNETH M. WEBSTER, ESQ. Nevada Bar No. 7205 TYSON J. DOBBS, ESQ. 3 Nevada Bar No. 11953 KIRILL V. MIKHAYLOV, ESQ. Nevada Bar No. 13538 HALL PRANGLE & SCHOONVELD, LLC 1160 North Town Center Drive, Ste. 200 Las Vegas, Nevada 89144 Ċ 702-889-6400 - Phone 702-384-6025 - Facsimile efile@hpslaw.com 8 Attorneys for Defendants 9 Valley Hospital Medical Center, Inc. and Valley Health System, LLC, doing business as 10 Valley Hospital Medical Center

CLERK OF THE COURT

DISTRICT COURT CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

VS.

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

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

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

Defendants.

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

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

MEDICAL MALPRACTIVE

LOSS OF CONSORTIUM

- 1. In answering paragraphs 1, 2, 3, 4, 5, 6, 9, 10 and 12 of Plaintiffs' Complaint, these answering Defendants are without sufficient information to form a belief as to the truth of the allegations contained therein and therefore deny the same.
- 2. In answering paragraph 7 of Plaintiffs' Complaint, these answering Defendants admit that Valley Hospital Medical Center, Inc. is a corporation organized and existing in Nevada, with its principal place of business situated in the State of Nevada. Defendants admit that Valley Health System, LLC, doing business as Valley Hospital Medical Center is a Delaware corporation authorized to do business in the State of Nevada, with its principal place of business situated in the State of Nevada. In answering the remaining allegations of said paragraph, these answering Defendants deny each and every allegation contained therein.
- 3. In answering paragraph 8 of Plaintiffs' Complaint, these answering Defendants admit that Valley Health System, LLC owned and operated Valley Hospital Medical Center. These answering defendants deny that Valley Hospital Medical Center, Inc. owned and operated Valley Hospital Medical Center. As to the remaining allegations contained therein, these answering Defendants are without sufficient information to form a belief as to the truth of the remaining allegations and therefore deny the same.
- 4. In answering paragraph 11 of Plaintiffs' Complaint, these answering Defendants admit that Valley Health System, LLC dba Valley Hospital Medical Center was at all times mentioned in the Complaint accredited by the Joint Commission. As to the remaining allegations contained therein, these answering Defendants are without sufficient information to form a belief as to the truth of the remaining allegations and therefore deny the same.
- 5. In answering paragraph 13 of Plaintiffs' Complaint, these answering Defendants admit that declarations are attached to the Complaint. In answering the remaining allegations of

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

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

- In answering paragraph 14 of Plaintiffs' Complaint, these answering Defendants 6. hereby incorporate its answers to paragraphs 1 through 13 as though fully set forth herein.
- In answering paragraphs 15 and 16 of Plaintiffs' Complaint, these answering 7. Defendants are without sufficient information to form a belief as to the truth of the allegations contained therein and therefore deny the same.
- In answering paragraphs 17, 18, 19, 20, 21 and 22 of Plaintiffs' Complaint, these 8. answering Defendants deny each and every allegation contained therein.

11.

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

- In answering paragraph 23 of Plaintiffs' Complaint, these answering Defendants 9. hereby incorporate its answers to paragraphs 1 through 22 as though fully set forth herein.
- 10. In answering paragraph 24 of Plaintiffs' Complaint, these answering Defendants are without sufficient information to form a belief as to the truth of the allegations contained therein and therefore deny the same.
- In answering paragraphs 25 of Plaintiffs' Complaint, these answering Defendants 11. deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES FIRST AFFIRMATIVE DEFENSE

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

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SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIMRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

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

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FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

WHEREFORE, Defendants pray for judgment as follows:

- 1. That Plaintiffs take nothing by virtue of their Complaint;
- 2. For reasonable attorney's fees and costs of suit incurred herein; and
- 3. For such other and further relief as the Court deems just and proper. DATED this ______day of October, 2016.

HALL PRANGLE & SCHOONVELD, LLC

By:

KENNETH M. WEBSTER, ESQ.

Nevada Bar No. 7205

TYSON, J. DOBBS, ESQ.

Nevada Bar No. 11953

KIŖĬĹL V. MIKHAYLOV, ESQ.

Nevada Bar No. 13538

HALL PRANGLE & SCHOONVELD, LLC

1160 North Town Center Drive, Ste. 200

Las Vegas, Nevada 89144

Attorneys for Defendants

Valley Hospital Medical Center, Inc.

and Valley Health System, LLC, doing business as

Valley Hospital Medical Center

. . .

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CERTIFICATE OF SERVICE

1 HEREBY CERTIFY that I am an employee of HALL PRANGLE & SCHOONVELD
LLC; that on the 1 day of October, 2016, I served a true and correct copy of the foregoing
DEFENDANTS VALLEY HOSPITAL MEDICAL CENTER, INC. AND VALLEY
HEALTH SYSTEM, LLC, DOING BUSINESS AS VALLEY HOSPITAL MEDICAL
CENTER'S ANSWER TO PLAINTIFFS' COMPLAINT FOR MEDICAL
MALPRACTICE via the E-Service Master List for the above referenced matter in the Eighth
Judicial District Court e-filing System in accordance with the electronic service requirements of
Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules to the
following:

	Thomas S. Alch, Esq.
I	LAW OFFICES OF THOMAS S. ALCH
5	500 N. Rainbow Blvd., Suite 300
1	Las Vegas, NV 89107
/	Attorneys for Plaintiffs

Patricia Egan Daehnke, Esq.
Katherine J. Gordon, Esq.
DAEHNKE STEVENS, LLP
2300 W. Sahara Ave., Ste. 680, Box 32
Las Vegas, NV 89102
Attorneys for Defendant
Murad Jussa, M.D.

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

David J. Mortensen, Esq.
ALVERSON, TAYLOR, MORTENSEN &
SANDERS
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Attorneys for Defendants
Cyndi Tran, D.O.; Elizabeth Phung-Hart,
D.O.; and Andrea Agcaoili, D.O.

John H. Cotton, Esq.	
Adam A. Schneider, Esq.	
JOHN H. COTTON & ASSOC	CIATES, LTD.
7900 W. Sahara Ave., Suite 20	00
Las Vegas, NV 89117	
Attorneys for Defendant	
Paul Janda, D.O	

An employee of HALL PRANGLE & SCHOONVELD, LLC

4834-2340-4090, v. 1

EXHIBIT 28

EXHIBIT 28

then & Latin

CLERK OF THE COURT

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

DISTRICT COURT CLARK COUNTY, NEVADA

DARIA HARPER, DANIEL WININGER,

Plaintiffs,

VS.

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

Defendants.

DEPT. NO.: XVII

CASE NO.: A-16-738004-C

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

COMES NOW Defendant ANDREA AGCAOILI, D.O. (hereinafter "Dr. Agcaoili"), by

and through her attorneys of record, DAVID J. MORTENSEN, ESQ. and BRIGETTE E.

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

GENERAL ALLEGATIONS

- 1. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11 and 12 of Plaintiffs' Complaint, and therefore denies the same.
- 2. In answering paragraph 5 of Plaintiffs' Complaint, Answering Defendant admits she was at all times a physician holding herself out as duly licensed to practice her profession under and by virtue of the laws of the State of Nevada, and was engaged in the practice of that profession in the State of Nevada. The remainder of the allegations contained in this paragraph refer to other Defendants, which Defendant is without sufficient knowledge to form a belief as to the truth of such allegations, and therefore denies the same.
- 3. Paragraph 13 of Plaintiffs' Complaint calls for a legal conclusion to which no answer or response is necessary, and on that basis, Defendant denies the same.

FIRST CAUSE OF ACTION (Medical Malpractice)

- 4. Answering Defendants repeat and reallege their answers to the allegations contained within paragraphs 1 through 13 of Plaintiffs' Complaint as if the same were more fully set forth herein.
- 5. Answering Defendants deny the allegations contained in paragraphs 15 and 16 of Plaintiffs' Complaint.
- 6. Paragraphs 17, 19, 20, 21, and 22 of Plaintiffs' Complaint calls for legal conclusions to which no answer or response is necessary, and on that basis, Defendant denies the same.

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(702) 384-7000

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

SECOND CAUSE OF ACTION (Loss of Consortium)

- 8. Answering Defendants repeat and reallege their answers to the allegations contained within paragraphs 1 through 22 of Plaintiffs' Complaint as if the same were more fully set forth herein.
- 9. Answering Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 24 of Plaintiffs' Complaint, and therefore denies the same.
- 10. Paragraph 25 of Plaintiffs' Complaint calls for a legal conclusion to which no answer or response is necessary, and on that basis, Defendant denies the same.

PRAYER FOR RELIEF

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

GENERAL DENIAL

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

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ALVERSON, TAYLOR, MORTENSEN & SANDERS

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NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

All possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer and, 7401 WEST CHARLESTON BOULEVARD LAS VEGAS, NEVADA 89117-1401 (702) 384-7000 therefore, Defendant reserves the right to amend the Answer, and to allege additional Affirmative Defenses if subsequent investigation so warrants.

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

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ALVERSON, TAYLOR, MORTENSEN & SANDERS

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WHEREFORE, Defendant prays for relief as follows:

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

DATED this _____ day of October, 2016.

ALVERSON, TAYLOR, MORIENSEN & SANDERS

#1335

DÀVID J. MORTENSEN. ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, E\$Q.

Nevada Bar No. 012965

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

Phone: (702) 384-7000

Facsimile: (702) 385-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANTS

Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Agcaoili, D.O.

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ALVERSON, TAYLOR, MORTENSEN & SANDERS

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of October, 2016, the foregoing ANDREA AGCAOILI, D.O.'S ANSWER TO PLAINTIFFS' COMPLAINT was served on

the following by Electronic Service to All parties on the Wiznet Service List, addressed as

follows:

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

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

Kenneth M. Webster, Esq. Tyson J. Dobbs, Esq. Kirill V. Mikhaylov, Esq. HALL PRANGLE & SCHOONVELD, LLC 1160 North Town Center Drive, Suite 200 Las Vegas, NV 89144

Phone: (702) 889-6400 Attorneys for Defendant Valley Health System, LLC and Valley Hospital Medical Center, Inc.

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

Mortensen & Sanders

ALVERSON, TAYLOR, MORTENSEN & SANDERS LAWYERS THE WEST CHARLESTON BOTTLEYSED

7481 WEST CHARLESTON BOFLEVARD
LAS VEGAS, NEVADA 89117-1403
(782), 384-7080

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

The undersigned does hereby affirm that the preceding ANDREA AGCAOILI, D.O.'S

ANSWER TO PLAINTIFFS' COMPLAINT filed in District Court Case No. A-16-738004-C

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

-OR-

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

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

[Insert specific law]

~01°~

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

DATED this ____ day of October, 2016.

ALVERSON, TAYLOR, MORTENSEN & SANDERS

DAVID J. MORTENSEN, ESQ.

Nevada Bar No. 002547

BRIGETTE E. FOLEY, ESQ.

Nevada Bar No. 01296§

7401 W. Charleston Boulevard

Las Vegas, NV 89117-1401

(702) 384-7000

E-File: efile@alversontaylor.com

Attorneys for DEFENDANT

Cyndi Tran, D.O.

Elizabeth Phung-Hart, D.O.

Andrea Ageaoili, D.O.

N:\dayid.grp\CLIENTS\23850\Pleadings\Answer to complaint - Ageaoili.doex

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

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

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

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

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

EXHIBIT C

EXHIBIT C

July 2, 2018

VIA EMAIL AND U.S. MAIL

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

Re: <u>Daria Harper</u>

Claim No.: 14G01532 DOI: 08/11/2014

Employer: Islander RV Resort LLC

Dear Ms. Fudge:

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

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

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

May 12, 2020 Page 2

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

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

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

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

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immediate	legal actio	m											
mmiculate	legal actic	,,,,											
Please call	to discuss	the	foregoing	Σ.									

I remain,

Very truly yours,

Marshall Silberberg



COPPERPOINT INSURANCE COMPANIES ANNOUNCES ACQUISITION OF ALASKA NATIONAL INSURANCE COMPANY

September 17, 2019

Transaction advances company's geographic expansion and product diversification strategy

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

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

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



distribution partners and their policyholder customers.

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

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

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

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

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

About CopperPoint Insurance Companies

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



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

About Alaska National Insurance Company

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

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Becca Hare

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(3) BACK

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- · Help me find...
 - Self-Insured Workers' Compensation
 - File a Complaint
 - About Us
 - Contact Us
 - Sitemap
 - State of Nevada Links
- Consumers
- · Health Insurance Rates
- Healthcare Reform
- Licensing
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- Captive Insurers
- News & Notices

CopperPoint Insurance Company

Address:

3030 N 3rd St Phoenix, AZ 8-5012

Phone

602-631-2136

URL:

Email:

sbegley@copperpoint.com

NAIC ID:

14216

NEW SEARCH

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

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

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

- ▶ 14 Agency Appointments
- 37 Agent Appointements
- Consumers
- Health Insurance Rates
 Healthcare Reform

- LicensingNews & Notices
- About Us
- Self-Insured
- Contact Us
- ¿2013 Nevada Division of Insurance
 Site Map
 Privacy Policy

- Search

Department of Business and Industry

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tfQ

- Help me find...
 Self-Insured Workers' Compensation
 File a Complaint
 About Us
 Contact Us
 Sitemap
 State of Nevada Links
- Consumers
 Health Insurance Rates
 Healthcare Reform
 Licensing
 Insurers
 Captive Insurers
 News & Notices

CopperPoint General Insurance Company

3030 N 3rd Street Phoenix, AZ 8-5012

Phone

602-631-2136

URL:

Email:

sbegley@copperpoint.com

NAIC ID:

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

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

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

NEW SEARCH

Agency Name	Status	Active Date	Appointment
1792			
Agency Name	Status	Active Date	Appointment
BROWN & BROWN INSURANCE OF NEVADA INC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property
2701			
Agency Name	Status	Active Date	Appointment
CRAGIN & PIKE INC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property
12531			
Agency Name	Status	Active Date	Appointment
CREST INS GROUP LLC	Active	05/14/2020	Casualty
	Active	05/14/2020	Property
2759			
Agency Name	Status	Active Date	Appointment
DIXIE LEAVITT AGENCY	Active	01/01/2019	Casualty
	Active	01/01/2019	Property
12896			
Agency Name	Status	Active Date	Appointment
L/P INSURANCE SERVICES, LLC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property
5743			
Agency Name	Status	Active Date	Appointment
LEAVITT GROUP AGENCY ASSOCIATION, LLC	Active	05/14/2020	Casualty
	Active	05/14/2020	Property
46778			
Agency Name	Status	Active Date	Appointment
LP INS SERVICES LLC	Active	04/09/2020	Casualty
	Active	04/09/2020	Property
7832			
Agency Name	Status	Active Date	Appointment
M & O AGENCIES INCORPORATED (AZ)	Active	02/21/2020	Casualty
	Active	02/21/2020	Property
10707			
Agency Name	Status	Active Date	Appointment
WAFD INSURANCE GROUP, INC	Active	01/01/2019	Casualty
	Active	01/01/2019	Property

²³ Agent Appointements

Agent Name	Status	Active Date	Appointment
59156			
ARCHIE, KERRI A	Active	04/22/2019	Casualty
	Active	04/22/2019	Property
27763			
Agent Name	Status	Active Date	Appointment
BURNS, THOMAS JAMES	Active	09/03/2020	Casualty
	Active	09/03/2020	Property
62327			
Agent Name	Status	Active Date	Appointment
DECKER, KEVIN NEAL	Active	03/25/2019	Casualty
	Active	03/25/2019	Property
794827			
Agent Name	Status	Active Date	Appointment
ENRIQUEZ, REBECCA LUREEN	Active	09/03/2020	Casualty
	Active	09/03/2020	Property
1309483			
Agent Name	Status	Active Date	Appointment
HENRIE, KYLE D	Active	04/01/2019	Casualty
	Active	04/01/2019	Property
751038			
Agent Name	Status	Active Date	Appointment
JACOBS, CHRISTI LEE	Active	01/01/2019	Casualty
	Active	01/01/2019	Property
55549			
Agent Name	Status	Active Date	Appointment
KOLODZIEJ, PAMELA M	Active	01/31/2019	Casualty
	Active	01/31/2019	Property
1147610			
Agent Name	Status	Active Date	Appointment
LEE, AMY EILEEN	Active	01/01/2019	Casualty
			(s) 1 - 15 of 46 Next I

- Consumers
 Health Insurance Rates
 Healthcare Reform
 Licensing
 News & Notices
 About Us
 Self-Insured
 Contact Us

- ¿2013 Nevada Division of Insurance
 Site Map
 Privacy Policy
 Search

9/17/2020 Company Lookup

Department of Business and Industry

Nevada Division of Insurance

tfQ

- Help me find...
 Self-Insured Workers' Compensation
 File a Complaint
 About Us
 Contact Us
 Sitemap
 State of Nevada Links
- Consumers
 Health Insurance Rates
 Healthcare Reform
 Licensing
 Insurers
 Captive Insurers
 News & Notices

Company Lookup

Lookup By	○ AutoComplete ○ Name Search ○ License # ○ Naic Id ②	RETURN
Company Name	copperpoint	
	The Name Search will display a list of Companies based on your input. Use the * as a wild card.	
	COMPANY LOOKUP	

Record Not Found

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

- Consumers
 Health Insurance Rates
 Healthcare Reform
 Licensing
 News & Notices
 About Us
 Self-Insured
 Contact Us

- ¿2013 Nevada Division of Insurance
 Site Map
 Privacy Policy
 Search

13641

1 - 8



CopperPoint | Alaska National | PacificComp

Q Search	A Login ▼	Menu
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Strong History of Insurance Expertise



95 Years of Service

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

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

CopperPoint Timeline: 1925-2020

1925



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



CopperPoint | Alaska National | PacificComp

Q	Search	凸 Login ▼	Menu
2013	CopperPoint. Mutual Insurance Company rinancial Strength	SCF privatized and converted to a mutual insurance company CopperPoint Mutual brand is launched CopperPoint is rated for the first-time and receives AM Bes	
2014	A- Excellent A- Excellent	rating: A- "Excellent" Expansion into Nevada and Colorado via partnership with Argonaut Agency distribution channel created	
2016		Board names new President & CEO Marc Schmittlein CopperPoint introduces Commercial Package and Commercial Auto capabilities	
2017	Pacific Composation insurance company	Acquisition of California-based PacificComp announced and completed	
2018		CopperPoint expands to a six-sta Arizona, California, Colorado, Nev CopperPoint introduces Commer	vada, New Mexico and Utah
	CopperPoint. Insurance Companies	CopperPoint adopts a new Mutua corporate structure	al Holding Company
2019	Alaska National INSURANCE COMPANY SERVICE LEADER IN COMMERCIAL INSURANCE Financial Strength A Excellent	Acquisition of Alaska National Instantonal Instanton) for the members of

2020

https://www.copperpoint.com/our-companies/copperpoint



CopperPoint celebrates 95 years in business

1367



CopperPoint | Alaska National | PacificComp

Q Search

CopperPoint_™ Insurance Companies

f in

y

INSURANCE

CLAIMS

AGENCY/BROKER

POLICYHOLDER

ABOUT

OUR COMPANIES

CopperPoint Insurance Company

Alaska National Insurance Company

Pacific Compensation Insurance Company

Report a Claim Careers Legal & Privacy Contact Español Sitemap 🛆 Employee Login

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2019 ANNUAL REPORT

OUR JOURNEY OF GROWTH



CopperPoint | Alaska National | PacificComp

Contents PRESIDENT & CEO MESSAGE 2 **STRATEGIC GROWTH** 4 **OUR VALUE PROPOSITION** 6 **SERVICE LEADERSHIP** 8 **BUSINESS PARTNERSHIPS** 10 **COMMUNITY GIVING 12 TALENT AND EXPERTISE** 14 **CORPORATE STRUCTURE 16** FINANCIAL OVERVIEW 18 **COMPANY LEADERSHIP 24**

Company Overview

12 LOCAL OFFICES

Anchorage, AK Portland, OR Boise, ID Seattle, WA

Denver, CO South San Francisco, CA

Irvine, CA Tucson, AZ
Las Vegas, NV Walnut Creek, CA
Phoenix, AZ Westlake Village, CA

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

\$4.8 Billion in Assets

\$1.4 Billion in Surplus

\$668 Million in Gross Written Premium

99.4% Combined Ratio

10 State Western Footprint

26 States Licensed

Rated A (Excellent) by AM Best

750 Employees

21 US Ranking in Workers' Compensation

*As of December 31, 2019

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

Our Journey of Expansion, Diversification, Profit & Partnership



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I look forward to continuing our journey of growth together.

Mace E. Schmitt

With sincere appreciation,

Marc E. Schmittlein

President & Chief Executive Officer

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

Strategic Growth 2016-2019

We are on a journey of growth and transformation.

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



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



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

- Marc E. Schmittlein | President & CEO



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

Our Value Proposition

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

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

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

CopperPoint is in a strong position to meet the evolving needs of our agency/brokers and customers. With the 2019 addition of Alaska National to the CopperPoint family, we have an expanded offering of insurance products and a growing footprint in the western United States. We operate in 10 core states with product offerings to serve small, middle, large and risk management accounts. Building on our expertise in workers' compensation, we now offer loss sensitive product capabilities and enhanced property, general liability and commercial auto offerings. Other commercial lines now represent 11% of our premiums.

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



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

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

Our industry leading financial strength and stability allows CopperPoint to scale and grow our organization, while supporting our value proposition. It has empowered our ability to engage with other highquality partners such as PacificComp and Alaska National.

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

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

- Scott Shader | Executive Vice President, Chief Operating Officer

Our Value Proposition Pillars

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

Our Service Leadership

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

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

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

Service Teams

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

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

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





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

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

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

Kerry Cassens

Director, Employee Health, Northern Arizona Healthcare

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

Ken Gerondale

CEO, Construction Machinery Industrial, LLC

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

Tom Chadwell

President & COO, Piercey Management Services, Inc.

Our Business Partnerships

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

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

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

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

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

The Power of our Partnership

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



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



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

Darren Caesar

President, Commercial, HUB International



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

Brad Rucker

Director, The Mahoney Group







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

Kirk Leadbetter

President, MMA Anchorage



Our Community Giving

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

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

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

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

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

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





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

- · Healthy Families
- · Thriving Workforce
- Economic Development

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

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

United Way CopperPoint Cares Campaign Highlights:



\$300,000 raised



87 nonprofits supported



4,000 kits for homeless

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

- Marc E. Schmittlein | President & CEO





Our Talent and Expertise

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

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

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

Employee Feedback

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

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

Growth and Development

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

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

Recognition

Our recognition program celebrates employee achievements, quality service



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

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

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

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

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



Wellness

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

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

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

Corporate Structure

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

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

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

Building our Collective Future

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

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

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

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

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

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

Strength in Numbers

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





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

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

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

- Craig Nodtvedt | Executive Vice President,
President Alaska & Northwest

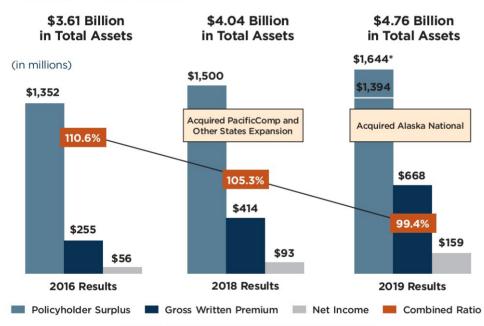
Financial Overview

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

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

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

Financial Performance

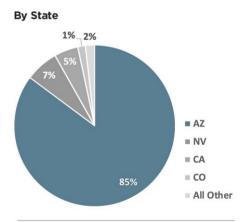


*CopperPoint's surplus, after consideration of non-admitted, acquisition related goodwill, totaled \$1,644 at December 31, 2019.

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

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

2016 CopperPoint \$255M Gross Written Premium



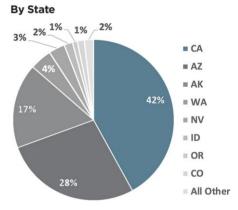


Workers' Compensation 100%

Other Commercial Lines

0% (less than 0.1%)

2019 CopperPoint Family \$668M Gross Written Premium

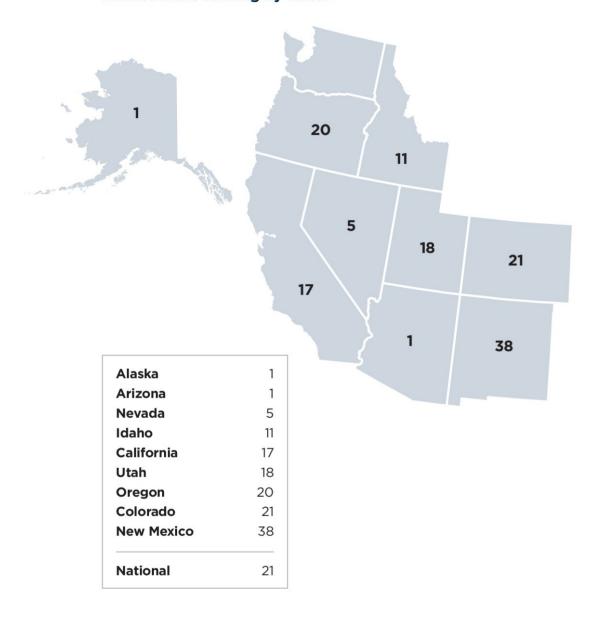


2019 GWP by Line of Business

Workers' Compensation
89%
Other Commercial Lines

11%

CopperPoint family workers' compensation market share ranking by state.



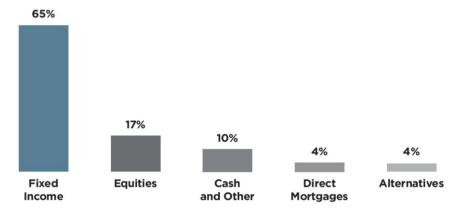
AM Best upgraded the financial strength rating of CopperPoint and its subsidiaries to A (Excellent).

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



Investments

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



Consolidated Financials

CopperPoint Insurance Companies

Consolidated Financial Statements (in thousands, unaudited)

Statements of Admitted Assets, Liabilities and Policyholders' Surplus

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

Insurance Operations 2019* 2018 Net premiums earned \$614,568 \$374,940 Operating Expenses:	Statements of Operations	Year Ended De	Year Ended December 31		
Operating Expenses: Loss incurred 296,114 209,107 Loss adjustment expenses incurred 100,542 55,982 Other underwriting expense incurred 211,432 129,702 Total operating expenses \$608,088 \$394,790 Net underwriting gain (loss) 6,480 (19,850) Investment Income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Insurance Operations	2019*	2018		
Loss incurred 296,114 209,107 Loss adjustment expenses incurred 100,542 55,982 Other underwriting expense incurred 211,432 129,702 Total operating expenses \$608,088 \$394,790 Net underwriting gain (loss) 6,480 (19,850) Investment Income 152,209 114,835 Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Net premiums earned	\$614,568	\$374,940		
Loss incurred 296,114 209,107 Loss adjustment expenses incurred 100,542 55,982 Other underwriting expense incurred 211,432 129,702 Total operating expenses \$608,088 \$394,790 Net underwriting gain (loss) 6,480 (19,850) Investment Income 152,209 114,835 Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094					
Loss adjustment expenses incurred 100,542 55,982 Other underwriting expense incurred 211,432 129,702 Total operating expenses \$608,088 \$394,790 Net underwriting gain (loss) 6,480 (19,850) Investment Income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Operating Expenses:				
Other underwriting expense incurred 211,432 129,702 Total operating expenses \$608,088 \$394,790 Net underwriting gain (loss) 6,480 (19,850) Investment Income Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Loss incurred	296,114	209,107		
Total operating expenses \$608,088 \$394,790 Net underwriting gain (loss) 6,480 (19,850) Investment Income 152,209 114,835 Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Loss adjustment expenses incurred	100,542	55,982		
Net underwriting gain (loss) 6,480 (19,850) Investment Income Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Other underwriting expense incurred	211,432	129,702		
Investment Income Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Total operating expenses	\$608,088	\$394,790		
Investment Income Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094					
Net investment income 152,209 114,835 Net realized investment gains 54,011 18,150 Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Net underwriting gain (loss)	6,480	(19,850)		
Net realized investment gains54,01118,150Net investment gain\$206,220\$132,985Other expense(14,108)(1,896)Net income before policyholders' dividends and federal income tax198,542111,239Provision for policyholders' dividends1,3671,736Federal income tax expense37,75016,094	Investment Income				
Net investment gain \$206,220 \$132,985 Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax 198,542 111,239 Provision for policyholders' dividends 1,367 1,736 Federal income tax expense 37,750 16,094	Net investment income	152,209	114,835		
Other expense (14,108) (1,896) Net income before policyholders' dividends and federal income tax Provision for policyholders' dividends Federal income tax expense 37,750 16,094	Net realized investment gains	54,011	18,150		
Net income before policyholders' dividends and federal income tax198,542111,239Provision for policyholders' dividends1,3671,736Federal income tax expense37,75016,094	Net investment gain	\$206,220	\$132,985		
Net income before policyholders' dividends and federal income tax198,542111,239Provision for policyholders' dividends1,3671,736Federal income tax expense37,75016,094					
and federal income tax Provision for policyholders' dividends Federal income tax expense 198,542 111,239 111,239	Other expense	(14,108)	(1,896)		
Federal income tax expense 37,750 16,094		198,542	111,239		
	Provision for policyholders' dividends	1,367	1,736		
Net income \$159,475 \$93,409	Federal income tax expense	37,750	16,094		
	Net income	\$159,475	\$93,409		

^{*} The financial results of Alaska National are included for the full year of 2019.

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

Company Leadership

Board of Directors

Ken Kirk | Chair

Director since 2011

Stephen Tully | Vice Chair

Director since 2010

Ronnie Lopez

Director since 2009

LoriAnn Lowery-Biggers

Director since 2015

Judith Patrick

Director since 1992

Marc E. Schmittlein

President & CEO

Director since 2017

Donald Smith Jr.

Director since 2010

Mike Tully

Director since 2019

Executive Leadership

Marc E. Schmittlein

President & Chief Executive Officer

Sara Begley

Executive Vice President, General Counsel & Chief Compliance Officer

Ginny Caro

Senior Vice President, Chief Claims Officer

Tom Collins

Senior Vice President, Chief Underwriting Officer

Rachel Davis-Schultz

Executive Vice President, Chief Human Resources Officer

Dana Ferestien

Senior Vice President, Liability Claims & Legal

Michael Goldman

Senior Vice President, Corporate Development Jennifer J. Johnston

Executive Vice President, Chief Marketing and Communications Officer

Mark Joos

Executive Vice President, Chief Financial Officer

Dave Kuhn

Executive Vice President, Enterprise Distribution & Regional President CA

Brad Lontz

Senior Vice President, Chief Information Officer

Craig Nodtvedt

Executive Vice President, President Alaska & Northwest

Bob Roland

Executive Vice President, Chief Administrative Officer & Chief of Staff

Scott Shader

Executive Vice President, Chief Operating Officer



CopperPoint | Alaska National | PacificComp

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

2019 Awards & Recognition

Alaska National Insurance Company

Ranked for the 9th year



Phoenix Chamber of Commerce IMPACT Awards

Community Champion



Interactive Health

One of the Healthiest Companies in America



Senior Leadership Award

Marc Schmittlein, President & CEO



Most Admired Companies

Chief Operating Officer of the Year Finalist

C-Suite Awards



CFO of the Year Awards

Chief Financial Officer of the Year Finalist



Arizona Corporate

Excellence Awards







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







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



EXHIBIT 36

EXHIBIT 36

SEARCH CRITERIA

Entity Name:

copperpoint insurance

Entity Type:

ΑII

Statutory Agent Name:

N/A

Entity Status:

All

Principal Name:

N/A

Name Type:

ΑII

Entity Number:

N/A

Entity County:

ΑII

SEARCH RESULTS

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

Page 1 of 1, records 1 to 3 of 3

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EXHIBIT 37

EXHIBIT 37

Electronically Filed 8/26/2020 1:06 PM Steven D. Grierson CLERK OF THE COURT

1 **MPSJ** JOHN P. BLUMBERG, ESO. 2 California Bar No. 70200 (admitted pro hac vice) 3 **BLUMBERG LAW CORPORATION** 444 West Ocean Blvd., Suite 1500 4 Long Beach, California 90802-4330 Telephone: 562.437.0403 5 Facsimile: 562.432.0107 advocates@blumberglaw.com E-mail: 6 JASON R. MAIER, ESO. 7 Nevada Bar No. 8557 MAIER GUTIERREZ & ASSOCIATES 8 8816 Spanish Ridge Avenue Las Vegas, Nevada 89148 9 Telephone: 702.629.7900 Facsimile: 702.629.7925 10 E-mail: jrm@mgalaw.com Attorneys for Plaintiffs 11

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

VS.

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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 **SILBERBERG** MARSHALL aka MARSHALL SILBERBERG, an individual; THOMAS S. ALCH aka THOMAS STEVEN individual; ALCH, an SHOOP, PROFESSIONAL LAW CORPORATION, a California corporation; DOES 1-50, inclusive,

Defendants.

Case No.: A-20-814541-C

Dept. No.: 30

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

[HEARING REQUESTED]

Plaintiffs, Daria Harper and Daniel Wininger, by and through their attorneys, the law firms

Blumberg Law Corporation and Maier Gutierrez & Associates, hereby file their motion for

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

B. NRS 42.021 APPLIES TO SETTLEMENTS

1. Introduction.

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

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

NRS 42.021, provides as follows:

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

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

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

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

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

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

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

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

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

medical expenses or related costs."6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

California Civil Code section 3333.1 states:

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

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

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

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

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

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

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

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

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

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

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

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COMES NOW, Defendants, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY (COPPERPOINT or COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY or COPPERPOINT GENERAL INSURANCE COMPANY or Defendants), by and through their attorneys of record, the law firm of HOOKS MENG & CLEMENT, and further moves this Court to grant their Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Summary Judgment. This Reply in Support of COPPERPOINT'S Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Summary Judgment is filed pursuant to Rule 2.20 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

This Reply is made and based on the papers and pleadings on file herein as well as the following points and authorities submitted in support hereof, and any oral arguments that may be heard regarding this matter.

Dated this 7th day of October 2020.

HOOKS MENG & CLEMENT By:

Sami Randolph

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

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MEMORANDUM OF POINTS AND AUTHORITIES I. INTRODUCTION

Plaintiffs DARIA HARPER and DANIEL WININGER contend in their Opposition that this Court has subject-matter and personal jurisdiction over COPPERPOINT defendants and thusly, their instant declaratory action is appropriate under NRS 30.040 to determine whether NRS 42.021 bars a workers' compensation lien arising out of an Arizona workers' compensation case administered under Arizona law. Plaintiffs further insist that NRS 42.021 prohibits COPPERPOINT'S lien. Finally, Plaintiffs argue that under a conflict of law analysis, Nevada law must control whether COPPERPOINT's lien rights under an Arizona workers' compensation claim.

To the contrary, this Court lacks subject-matter jurisdiction because apart from the fact that Plaintiffs have failed to adhere to the mandatory workers' compensation administration adjudication process Plaintiffs fail to inform this Court that both Nevada and Arizona law prohibits "any cause of action" against a workers' compensation insurer or third-party administrator by a workers' compensation claimant. Further, Plaintiffs have not established that this Court has personal jurisdiction over Defendant COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY because COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY is an Arizona corporation that has not purposely availed itself to Nevada markets or the protection of Nevada law.

Plaintiffs further err in arguing that NRS 42.021 bars COPPERPOINT'S lien as NRS 616C.215 clearly and unambiguously protects a workers' compensation carrier's lien in "any

¹ NRS 616D.030 states that "No cause of action may be brought or maintained against an insurer or a third-party administrator who violates any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS." Similarly, ARS 23-1022 prohibits a workers' compensation claimant from asserting a cause of action against his or her employer's workers' compensation carrier except in narrowly defined circumstances, none of which apply to the instant case.

trial." Similarly, Plaintiffs' argument that Nevada law takes precedence over Arizona law errs as no conflict of law exists because NRS 616C.215 and ARS 23-1023 both recognize COPPERPOINT'S lien. Further, even if this Court finds a conflict of law exists, Nevada law would not apply because workers' compensation rights are substantive, and Arizona has the most significant relationship to this litigation. As such, Defendant COPPERPOINT hereby files its Reply in Support of its Motion to Dismiss Plaintiffs' Complaint or Alternatively, Motion for Summary Judgment.

II. LAW & ARGUMENT

- I. PLAINTIFFS' CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF MUST BE DISMISSED PURSUANT TO NRCP 12(B)(1), 12(B)(2), AND 12(B)(5).
 - A. Pursuant to NRCP 12(B)(1), this Court Lacks Subject-Matter Jurisdiction.

Plaintiffs argue that neither Arizona nor Nevada workers' compensation law are applicable to HARPER'S workers' compensation claim. *See* Plaintiffs' Opposition at pp. 6, 8. Plaintiffs appear to argue in the alternative that Arizona and Nevada workers' compensation statutes authorize the instant declaratory action against COPPERPOINT. *See* Plaintiffs' Opposition at pg. 7.

Plaintiffs err for two (2) reasons. First, Arizona law precludes any action by a workers' compensation claimant against his or her employer's carrier except in narrowly defined circumstances, none of which apply to the case at bar. Second, should this Court conclude that Nevada law controls the instant matter, the Nevada Supreme Court has already decided that the Nevada Industrial Insurance Act (NIIA) may be applied to a claimant who has received benefits under the law of another state and so too would bar the instant declaratory action. *See Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 357 (2012); *see also* NRS 616D.030.

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1. Under Arizona Law, a Claimant Is ONLY Allowed to Bring a Bad Faith Action Against His or Her Employer's Workers' Compensation Carrier.

As discussed, and further explained in COPPERPOINT'S Motion and discussed infra part D, a conflict of law analysis mandates that Arizona law control HARPER'S Arizona workers' compensation claim. Under Arizona law, ARS 23-1021 establishes that Arizona workers' compensation laws are applicable to claimants who are "injured...by accident arising out of and in the course of [their] employment." ARS 23-1022 prohibits any action against a workers' compensation carrier by a workers' compensation claimant for injuries sustained in "the scope of his employment."

In Franks v. United States Fid. & Guar. Co., the Arizona Court of Appeals explained that only an action against the workers' compensation carrier for the tort of bad faith is not barred by ARS 23-1022 because injury stemming from insurance bad faith cannot "arise" out of the injured worker's employment. See Franks v. United States Fid. & Guar. Co., 149 Ariz. 291, 295 (Ct. App. 1985). In *Franks*, the claimant sustained an industrial injury and filed a complaint alleging that the workers' compensation carrier "intentionally, willfully and wantonly" acted to deny benefits. See id. at 292-293. The Superior Court dismissed the complaint. See id. In reversing the Superior Court, the Arizona Court of Appeals stated that "[t]he Workers' Compensation Act does not bar a common law tort action that is independent of the workers' benefit claim process if the conduct does not fall within the coverage of the Act." See id. at 295. The Arizona Court of Appeals established that ARS 23-1022 does not bar a claimant from bringing an action against his or her employer's workers' compensation carrier, but only for the tort of bad faith. See id.

In Merkens v. Fed. Ins. Co., the Arizona Court of Appeals explained that the claimant must first seek a compensability determination from the Arizona Industrial Commission before proceeding with a bad faith suit. See Merkens v. Fed. Ins. Co., 237 Ariz. 274, 278 (Ct.

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App. 2015). As explained, ARS 23-901 to ARS 23-1104 grant "the [Arizona] Industrial Commission exclusive jurisdiction to determine whether the injured worker is entitled to benefits and the amount of those benefits." Id. To allow otherwise, would permit a claimant to "circumvent the Industrial Commission's exclusive jurisdiction to decide the issue." *Id.*

The instant case does not concern the tort of bad faith. Plaintiffs' Complaint and subsequent papers do not allege that COPPERPOINT acted in bad faith, nor would the evidence show that such conduct occurred. Moreover, the Arizona Industrial Commission has not rendered a compensability determination regarding the instant lien as required before Plaintiffs may proceed in a tort claim for bad faith. Therefore, this Court is without subject-matter jurisdiction over the instant action as it arises outside Arizona's one specific exception to the exclusive remedy doctrine as articulated in ARS 23-1022.

> i. Plaintiffs' Argument that Arizona Law Compensation Claimant to Assert a Cause of Action Against a Workers' Compensation Carrier is Based Upon a Misunderstanding of Case Law.

The cases cited by Plaintiffs do not authorize the workers' compensation claimant to initiate an action in a judicial court against the workers' compensation carrier. The cases cited by Plaintiffs stand for the proposition that the workers' compensation claimant may assert a cause of action against a third-party tortfeasor who caused the industrial injury and not the employer/ carrier. The exclusive remedy doctrine does not bar either the claimant or carrier from asserting a claim against the third-party tortfeasor. See ARS 23-1023; see also NRS 616C.215.

As cited by Plaintiffs, State Comp. Fund v. Fink did not involve the claimant suing the workers' compensation carrier but rather entailed the carrier intervening in the claimant's thirdparty tort claim to protect its lien. See State Comp. Fund v. Fink, 224 Ariz. 611, 612 (Ct. App. 2010). Similarly, State Comp. Fund v. Ireland involved the carrier filing suit against the plaintiff

and defendant in the third-party tort claim due to their refusal to acknowledge the carriers' statutory lien rights. *See State Comp. Fund v. Ireland.*, 174 Ariz. 490, 492 (Ct. App. 1992). *Fink* and *Ireland* illustrate the proposition, ignored by Plaintiffs, that the exclusive remedy doctrine bars only actions commenced by the workers' compensation claimant against the workers' compensation carrier. The exclusive remedy doctrine does not prohibit a worker's compensation carrier from intervening in a claimant's third-party tort claim to protect its lien as seen in *Fink*, nor does it prohibit the carrier from suing the claimant to enforce its lien as shown in *Ireland*.

Plaintiffs' citation to *Stout v. State Compensation Fund* and *Rowland v. Great States Ins.*Co. is yet another attempt to convolute the reality that Arizona's prohibition against a claimant initiating an action against his or her workers' compensation carrier. As discussed *supra* part I-A-1, Arizona *only* allows a claimant to bring an action against his or her workers' compensation carrier concerning bad faith. The *Stout* plaintiffs alleged bad faith against their workers' compensation carrier. *See Stout v. State Comp. Fund*, 197 Ariz. 238, 242 (Ct. App. 2000) (stating that "[Plaintiffs] argue, however, that a workers' compensation carrier does not have the right to unreasonably withhold consent to a third-party settlement, and they assert that the Fund acted unreasonably and in bad faith when it refused to consent to the Stouts' proposed settlement with Luna Tech").

So too did the plaintiff in *Rowland v. Great States Ins. Co.* satisfy ARS 23-1022's exclusive remedy mandate by alleging bad faith against his workers' compensation carrier. *See Rowland v. Great States Ins. Co.*, 199 Ariz. 577, 581 (Ct. App. 2001) (stating that "[w]hen Great States did not promptly do so, Rowland filed this action, alleging claims for bad faith..."). Accordingly, Plaintiffs' argument that "Arizona case law amply demonstrates that the determination of this issue is not exclusively within the jurisdiction of the Arizona Industrial Commission" is without merit.

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ii. Every Notice of Claim Status Issued by COPPERPOINT May Only Be Adjudicated before the Arizona Industrial Commission.

Plaintiffs contend that "the only part of the proceedings subject to the exclusivity doctrine" is the threshold, binary determination of whether HARPER'S "was entitled to benefits and the amount of those benefits." See Plaintiffs' Opposition at pg. 9. Here, Plaintiffs' position is completely unsupported by Arizona law. Indeed, Plaintiffs did not cite to a single source of authority to support the notion that only the binary determination of whether or not HARPER'S suffered a compensable industry is subject to the administrative adjudication process. Quite to the contrary, ARS 23-941 clearly states that a claimant's proper course of action if he or she disagrees with a carrier's notice of claim status is to request a hearing before the Arizona Industrial Commission.

Plaintiffs cited to Merkens v. Fed. Ins. Co. to support their argument that HARPER'S should somehow be exempted from following Arizona's clearly established workers' compensation adjudication process. In *Merkens*, the carrier suspended temporary total disability benefits. See Merkens v. Fed. Ins. Co., 237 Ariz. 274, 277 (Ct. App. 2015). Instead of seeking a compensability determination from the Arizona Industrial Commission that she is entitled to continued temporary total disability benefits, Merkens filed an action in Arizona Superior Court to recover her discontinued temporary total disability benefits. *Id*.

As discussed supra part I-A-1, the Arizona Court of Appeals held that Merkens' civil action was improper in part because she did not receive a compensability determination from the Arizona Industrial Commission indicating whether she is entitled to continued benefits. The issue of whether Merkens was entitled to continued temporary total disability benefits is a different issue as to the threshold determination of whether Merkens was initially entitled to workers' compensation benefits. Here, despite Plaintiff's contention, the jurisdiction of the Arizona

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Industrial Commission is not limited to the "initial determination of whether the worker is entitled to benefits." See Plaintiffs' Opposition at pg. 9.

In this matter, COPPERPOINT'S legally proper course of action has included serving notices of claim status informing her of its lien rights. See Exhibit H; see also Exhibit I. If HARPER disagreed with COPPERPOINT'S lien rights, her correct course of action was to request a hearing before the Arizona Industrial Commission pursuant to ARS 23-941 and as explained in Merkens v. Fed. Ins. Co., 237 Ariz. 274, 277 (Ct. App. 2015). Instead, Plaintiffs have chosen to engage in this blatant attempt at forum shopping and have gone so far to incredulously argue that neither Nevada nor Arizona workers' compensation law have any applicability to her workers' compensation claim. This Court should require that HARPER adhere to the Arizona workers' compensation law under which her claim has been administered by granting COPPERPOINT'S Motion.

2. Should this Court Apply Nevada Law, NRS 616D.030 Prohibits a Workers' Compensation Claimant from Asserting Any Cause of Action Against a Workers' **Compensation Carrier.**

In their reply, Plaintiffs contend that Nevada workers' compensation statutes are inapplicable to the present case because HARPER never filed a claim for compensation under the Nevada Industrial Insurance Act. Plaintiffs' argument is an absurdity and should be disregarded because it leads to the conclusion that HARPER'S workers' compensation claim is not subject to the workers' compensation statutes of any state as Plaintiffs also argue that "Arizona Workers' Compensation Statutes Do Not Apply." See Plaintiffs' Opposition at pg. 8. However, the Nevada Supreme Court considered, and rejected, Plaintiffs' arguments in Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 356 (2012).

In Klinke, Plaintiff/Respondent Klinke filed a complaint against a third-party tortfeasor seeking damages for personal injury. See id. at 353. At the time of her industrial injury, Klinke

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was a resident of California and employed by a California employer. See id. Klinke received workers' compensation benefits in accordance with California law. At trial, "[t]he district court summarily concluded, without citation to legal authority, that NRS 616C.215 did not apply because Klinke had received payments pursuant to California's, rather than Nevada's, workers' compensation scheme. See id.

The Nevada Supreme Court reversed the District Court on appeal, holding that NRS 616C.215 is applicable to any workers' compensation matter brought on for trial in Nevada, not only trials involving claimants who received benefits pursuant to the Nevada Industrial Insurance Act. See id. at 358. The Nevada Supreme Court noted that:

In this case, because the primary purpose of [NRS 616C.215] is to avoid confusing the jury about the payment and nature of workers' compensation benefits, and their relation to the damages awarded, the statute should not be construed so narrowly as to apply only to Nevada workers' compensation benefits, thus defeating the statute's purpose in cases in which those benefits have been paid under another state's laws.

See id. at 357 (quotations omitted).

In their Opposition, Plaintiffs concede that "Plaintiff, an Arizona resident, filed a workers' compensation claim in Arizona, and CopperPoint General Insurance Company paid benefits pursuant to Arizona." See Plaintiffs' Opposition at pg. 7. But nevertheless, the undisputed fact that HARPER'S workers' compensation claim has been administered under and is subject to Arizona law does not bar this Court from applying provisions of the Nevada Industrial Insurance Act. As discussed *infra* part I-A-2-i, this Court is without subject-matter jurisdiction over the instant matter because the Nevada Industrial Insurance Act prohibits a workers' compensation claimant, such as HARPER, from asserting "any cause of action" against a worker' compensation carrier.

> NRS 616D.030 Prohibits a Workers' Compensation Claimant from i. Asserting "Any Cause of Action" Against a Workers' Compensation Carrier.

This Court is without subject-matter jurisdiction because NRS 616D.030 prohibits a workers' compensation claimant, such as HARPER, from asserting "any cause of action" against a workers' compensation carrier such as COPPERPOINT. NRS 616D.030 states that:

- 1. No cause of action may be brought or maintained against an insurer or a third-party administrator who violates any provision of this chapter or chapter 616A, 616B, 616C or 617 of NRS.
- 2. The administrative fines provided for in NRS 616B.318 and 616D.120 are the exclusive remedies for any violation of this chapter or chapter 616A, 616B, 616C or 617 of NRS committed by an insurer or a third-party administrator.

See NRS 616D.030 (2019).

Plaintiffs' assertion that Nevada law controls COPPERPOINT'S workers' compensation lien rights compels an analysis of whether Nevada law permits a workers' compensation claimant like HARPER from seeking declaratory and injunctive relief against a workers' compensation carrier such as COPPERPOINT. To wit, NRS 616D.030 does not allow a workers' compensation claimant to assert "any cause of action" against a workers' compensation carrier for violations of the NIIA.² This is the exact same result attained under ARS 23-1022, except that the Arizona Court of Appeals has determined that a workers' compensation claimant may nonetheless bring a tort claim regarding insurance bad faith. *See Franks v. United States Fid. & Guar. Co.*, 149 Ariz. 291, 295 (Ct. App. 1985). In contrast, the Nevada Supreme Court has ruled that NRS 616D.030 *does not* allow an exception for bad faith suits. *See Madera v. State Indus. Ins. Sys.*, 114 Nev. 253, 260 (1998). As a result, this Court lacks subject-matter jurisdiction over the instant matter

² Plaintiffs argue that the instant declaratory action is proper pursuant to *Nevada Bell v. Hurn*, where the Nevada Supreme Court affirmed the District Court's apportionment of litigation expenses. *See Nev. Bell v. Hurn*, 105 Nev. 211, 213, 774 P.2d 1002, 1003 (1989). However, *Hurn* is unavailing to Plaintiffs because it was decided in 1989, six (6) years before NRS 616D.030's 1995 passage. As a result, *Hurn* is invalid to the extent it conflicts with NRS 616D.030's prohibition on a workers' compensation claimant brining "any cause of action" against his or her workers' compensation carrier.

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because NRS 616D.030 precludes any action by a claimant against a workers' compensation carrier.

ii. Conway v. Circus Circus Only Authorizes Injunctive Relief Against an Employer, not an Insurer Such as COPPERPOINT.

In Conway v. Circus Circus Casinos, Inc., plaintiff alleged to have suffered an injury due to poor air quality in his workplace. See Conway v. Circus Circus Casinos, Inc., 116 Nev. 870, 872 (2000). Plaintiff filed suit against his employer wherein he sought "injunctive relief for failure to provide a safe workplace." See id. The District Court dismissed plaintiff's cause of action for injunctive relief as barred by the NIIA. See id. at 873. On appeal, the Nevada Supreme Court reversed the District Court because the NIIA does not specifically preclude a claim for injunctive relief against an employer to correct unsafe workplace conditions. See id. at 876.

Here, COPPERPOINT GENERAL INSURANCE COMPANY is not HARPER'S employer. See Exhibit H. Islander RV Resort, LLC was HARPER'S employer at the time of her injury.³ See id. In contrast, COPPERPOINT GENERAL INSURANCE COMPANY is Islander RV Resort, LLC's workers' compensation insurer.⁴ See id. Because COPPERPOINT GENERAL INSURANCE COMPANY is not HARPER'S employer, Conway does not authorize "actions for declaratory and injunctive relief" contrary to Plaintiffs' claim. As discussed supra part I-A-2-i, NRS 616D.030 prohibits a workers' compensation claimant such as HARPER'S from asserting "any cause of action" against a workers' compensation insurer such as Defendant COPPERPOINT GENERAL INSURANCE COMPANY. As a result, this Court is without subject-matter jurisdiction and the instant action should be dismissed.

³ NRS 616A.2330(2) (2019) defines "employer" as "[e]very person, firm, voluntary association and private corporation, including any public service corporation, which has in service any person under a contract of hire."

⁴ NRS 616A.270(4) (2019) defines "insurer" to include "a private carrier" such as COPPERPOINT GENERAL INSURANCE HOLDING COMPANY.

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B. This Court Lacks Personal Jurisdiction over COPPERPOINT MUTUAL **INSURANCE HOLDING COMPANY Pursuant to NRCP 12(b)(2).**

Plaintiffs argue that this Court has personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY because it "holds itself out to the public as doing business in Nevada" and "has created ambiguity regarding which CopperPoint entity has terminated Plaintiff's benefits." See Plaintiffs' Opposition at pp. 6, 8. As discussed more fully below, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY does not, in fact, have sufficient contacts with Nevada so as to give rise to general personal jurisdiction and specific Nor have Plaintiffs established that COPPERPOINT GENERAL personal jurisdiction. INSURANCE COMPANY is an alter ego or an agent of COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY as required to establish personal jurisdiction over a foreign holding company in the absence of a direct showing of general personal jurisdiction or specific personal jurisdiction.

1. Plaintiffs Have Not Established that this Court has General Personal Jurisdiction Over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY Because It Has No "Substantial or Continuous and Systematic" Contacts With Nevada.

Plaintiffs correctly cite to *Trump v. Eighth Judicial Dist. Court* to establish that:

This court's opinions have separated the personal jurisdiction due process inquiry into two separate areas: general personal jurisdiction and specific personal jurisdiction. General jurisdiction occurs where a defendant is held to answer in a forum for causes of action unrelated to the defendant's forum activities. General jurisdiction over the defendant is appropriate where the defendant's forum activities are so substantial or continuous and systematic that it may be deemed present in the forum. General jurisdiction will only lie where the level of contact between the defendant and the forum state is high.

See Trump v. Eighth Judicial Dist. Court, 109 Nev. 687, 699 (1993) (citations and quotations omitted).

Here, Plaintiffs have presented not one iota of evidence indicating that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY'S activities in Nevada are "so substantial or

Plaintiffs argue that this Court has general personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY because two of its subsidiaries, COPPERPOINT GENERAL INSURANCE COMPANY and COPPERPOINT INSURANCE COMPANY⁵ are licensed to sell insurance in Nevada. *See* Plaintiffs' Exhibit 32. Plaintiffs have made no showing that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY has any activity in Nevada, much less a "substantial or continuous and systematic" presence needed to give rise to general personal jurisdiction. As explained below business activities of a subsidiary do not automatically establish personal jurisdiction over a foreign holding company such as COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY.

2. Plaintiffs Have Not Established that this Court has Specific Personal Jurisdiction Over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY Because It Has Made No "Purposeful Contact" With Nevada.

In *Trump v. Eighth Judicial Dist. Court*, the Nevada Supreme Court stated that:

Absent general jurisdiction, specific personal jurisdiction over a defendant may be established only where the cause of action arises from the defendant's contacts with the forum. A state may exercise specific personal jurisdiction only where: (1) the defendant purposefully avails himself of the privilege of serving the market in the forum or of enjoying the protection of the laws of the forum, or where the defendant purposefully establishes contacts with the forum state and affirmatively directs conduct toward the forum state, and (2) the cause of action arises from that purposeful contact with the forum or conduct targeting the forum.

See Trump v. Eighth Judicial Dist. Court, 109 Nev. 687, 699–700 (1993). Here, Plaintiffs have presented no evidence indicating that this Court has specific personal jurisdiction over

⁵ CopperPoint Insurance Company is not a party to this action.

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COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY. Plaintiffs cite notices of claim status dated October 30, 2019 and May 1, 2020 issued by COPPERPOINT GENERAL INSURANCE COMPANY to support their position. See Exhibit H; see also Exhibit I. In doing so, Plaintiffs have failed to show that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY "purposefully avails itself of the privilege of serving the market in the forum" or otherwise "purposefully establishes contacts with the forum state" and that "the cause of action arises from that purposeful contact" with Nevada. See Trump v. Eighth Judicial Dist. Court, 109 Nev. 687, 699–700 (1993).

The exhibits cited by Plaintiffs show that COPPERPOINT GENERAL INSURANCE COMPANY and not COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY provided workers' compensation benefits to Plaintiff HARPER. Accordingly, any alleged purposeful contact with Nevada such as payment to Nevada health care providers is attributable not to COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY but rather COPPERPOINT GENERAL INSURANCE COMPANY. As a result, Plaintiffs have produced no evidence indicating that this Court has specific purposeful jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY.

3. COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY Has Not Held Itself Out to the Public as Doing Business in Nevada.

Plaintiffs argue that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY "informs the public on its website of its connection with Nevada." See Plaintiffs' Opposition at pg. 13. However, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY'S 2019 Annual Report clearly and unmistakably distinguishes COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY from its subsidiaries, including COPPERPOINT INSURANCE

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COMPANY which is a subsidiary of COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY that provides workers' compensation insurance in Nevada. See Exhibit 35 at pg. 3.

Further, the fact that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY has obtained licenses for eight of its subsidiaries to sell insurance in Nevada does not provide this Court with general personal jurisdiction. Importantly, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY is not among the CopperPoint entities licensed to sell insurance in Nevada. Accordingly, at no point has COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY held itself out as doing business in Nevada.

4. Plaintiffs Have Not Established that this Court Has Personal Jurisdiction Over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY by Virtue of Its Subsidiaries' Actions in Nevada.

In parts B-4 and B-5 of their Opposition, Plaintiffs essentially argue that ambiguity exists regarding which COPPERPOINT entity owns the workers' compensation lien on Plaintiff HARPER'S settlement and that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY'S subsidiaries exist as alter egos. In Viega GmbH v. Eighth Judicial Dist. Court of the State, the Nevada Supreme Court stated that where a plaintiff seeks to establish personal jurisdiction over a foreign holding company solely on the basis of its subsidiaries, the plaintiff may satisfy the requirements of NRS 14.065 and due process by showing that the subsidiaries were either an alter ego or agents of the foreign holding company. See Viega GmbH v. Eighth Judicial Dist. Court of the State, 130 Nev. 368, 372 (2014). In Viega GmbH, the Nevada Supreme Court declared that:

But corporate entities are presumed separate, and thus, the mere existence of a relationship between parent company and subsidiaries sufficient its is not establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum Subsidiaries' contacts with forum. have parent companies only under narrow exceptions to this general rule, including "alter ego" theory and, at least in cases of specific jurisdiction, the "agency" theory. The alter ego theory allows plaintiffs to pierce the corporate veil to impute a subsidiary's contacts to the

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parent company by showing that the subsidiary and the parent are one and the same. The rationale behind this theory is that the alter ego subsidiary is the same entity as its parent, and thus, the jurisdictional contacts of the subsidiary are also jurisdictional contacts of the parent. Unlike with the alter ego theory, the corporate identity of the parent company is preserved under the agency theory; the parent nevertheless is held for the acts of the [subsidiary] agent because the subsidiary was acting on the parent's behalf.

See Viega GmbH v. Eighth Judicial Dist. Court of the State, 130 Nev. 368, 375-76 (citations and quotations omitted). In LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 904 (2000), the Nevada Supreme Court stated that:

The elements for finding an alter ego, which must be established by a preponderance of the evidence, are:

(1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction [a] fraud or promote injustice.

LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 904 (2000) (citations and quotations omitted).

Here, Plaintiffs have failed to establish that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY'S subsidiaries are influenced and governed by COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY or are otherwise inseparable from each other. In reality, each notice of claim status sent to HARPER regarding her workers' compensation claim clearly identified the lienholder as COPPERPOINT GENERAL INSURANCE COMPANY. See Exhibit G; see also Exhibit H. Additionally, quite apart from the fact that Plaintiffs have shown no evidence of influence or inseparability, the facts of this case do not support a finding of any kind that failure to pierce the corporate veil would sanction a fraud. Plaintiffs' argument here is without merit.

Nor are Plaintiffs able to establish the existence of an agency relationship between COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and its subsidiaries so as to establish personal jurisdiction. In Viega GmbH, the Nevada Supreme Court explained that:

Generally, an agency relationship is formed when one person has the right to control the performance of another. In the corporate context, however, the relationship between a parent company and its wholly owned subsidiary necessarily includes some elements of control.

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When describing such a broad agency relationship between a parent company and its subsidiary, the control at issue must not only be of a degree more pervasive than common features of ownership, [i]t must veer into management by the exercise of control over the I internal affairs of the subsidiary and the determination of how the company will be operated on a day-to-day basis, such that the parent has moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy.

See Viega GmbH v. Eighth Judicial Dist. Court of the State, 130 Nev. 368, 378–79 (2014) (citations and quotations omitted).

In this case, Plaintiffs have done no more than establish mere affiliation between COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and its subsidiaries in Nevada. Pursuant to Viega GmbH, to establish personal jurisdiction under an agency theory, Plaintiffs must show control over the subsidiaries by COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY so as to "in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy." See id. Plaintiffs have produced no evidence whatsoever establishing any degree of control by COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY over its subsidiaries and in no event have established that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY has "in effect taken over performance of the subsidiary's day-to-day operations." As a result, this court lacks personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY.

5. Plaintiffs' Argument that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY Denied the Allegations in Paragraph 2 of Plaintiffs' Complaint Regarding Its Relationship with Subsidiaries is a Complete Misrepresentation of **COPPERPOINT'S Answer.**

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Plaintiffs assert that "CopperPoint Mutual Insurance Holding Company knew whether or not it was also known as and did business as CopperPoint Mutual Insurance Company" and denied the same based on information and belief. *See* Plaintiffs' Opposition at pp. 14–15. Plaintiffs then argue that the allegations in Paragraph 2 of their Complaint should be deemed admitted because COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY allegedly denied the same on the basis of information and belief when, according to Plaintiffs, it knew the nature of its relationship with its subsidiaries.

Plaintiffs rest on a complete misrepresentation of COPPERPOINT'S answer, which admits that COPPERPOINT GENERAL INSURANCE COMPANY provided workers' compensation insurance to HARPER'S employer. The answer further admits that COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY is a holding company that did not provide workers' compensation insurance to HARPER'S employer. The only remaining part of Paragraph 2 of Plaintiffs' Complaint left denied concerned COPPERPOINT'S obligation to HARPER under Arizona workers' compensation law which is a legal conclusion that is currently, and properly, under review by the Arizona Industrial Commission.

6. Plaintiffs Have Not Established A Prima Facie Case Regarding Personal Jurisdiction.

Plaintiffs' establishment of their prima facie case of personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY requires, at a minimum, that they "introduce some evidence and may not simply rely on the allegations of the complaint to establish personal jurisdiction." *See Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 693 (1993). Plaintiffs have introduced no evidence beyond speculation and conjecture which establishes that this Court has personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY. Indeed, Plaintiffs' have cited insufficient evidence to

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support a finding that this Court has personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY under theories of general personal jurisdiction, or specific personal jurisdiction including via alter ego or agency theories. Accordingly, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY should be dismissed as a party to this action.

C. Pursuant to NRCP 12(b)(5), Plaintiffs' Claims Against COPPERPOINT Are Not Cognizable and Should be Dismissed.

As argued above, NRS 616D.030 bars a workers' compensation claimant such as HARPER from asserting "any cause of action" against a carrier such as COPPERPOINT. See supra part I-A. Arizona law similarly does not permit a workers' compensation claimant to file suit against a carrier in the absence of bad faith, which Plaintiffs have at no point alleged is the basis of their action against COPPERPOINT. See supra part I-A-1. This Court should not indulge Plaintiffs' attempt to evade well-settled law requiring delegating workers' compensation cases to an administration adjudication process and not judicial courts.

D. Alternatively, this Court Should Grant COPPERPOINT'S Motion for Partial **Summary Judgment.**

In part B-2 of its Motion, COPPERPOINT explains that under a conflict of law analysis, this Court should apply Arizona law, which undisputedly recognizes COPPERPOINT'S lien. In part B-3 of its Motion, COPPERPOINT explains how NRS 616C.215 protects a workers' compensation carriers lien rights in "any trial" should this Court decide to apply Nevada law. In their Opposition, Plaintiffs continue to ignore the fact that HARPER obtained her surgery in Nevada as a benefit under her Arizona workers' compensation claim and so first argue that no conflict of law applies and thusly, NRS 42.021 would bar COPPERPOINT'S lien. Plaintiffs then assume a conflict of laws exist and argue that Nevada law takes precedence over the Arizona law which thus far has controlled all benefits received under HARPER'S claim. Plaintiffs' argument that Nevada law takes precedence over Arizona law errs as no conflict of law exists because NRS

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616C.215 and ARS 23-1023 both recognize COPPERPOINT'S lien. Further, even if this Court finds a conflict of law exists, Nevada law would not apply because workers' compensation rights are substantive, and Arizona has the most significant relationship to this litigation.

1. NRS 42.021 Is Not Part of the Nevada Workers' Compensation Statutory Scheme nor Does it Change NRS 616C.215.

Without citing any authority, Plaintiffs argue that NRS 42.021 "applies to and is part of Nevada's workers' compensation scheme." See Plaintiffs' Opposition at pg. 20. This argument is refuted by NRS 616A.005, which states that only Chapters 616A through 616D are apart of the Nevada Industrial Insurance Act.

2. Assuming, Arguendo, that this Court Finds NRS 616C.215 Ambiguous, Applying Established Rules of Statutory Interpretation Indicate that NRS 42.021 Does Not Limit or Preclude NRS 616C.215 or COPPERPOINT'S lien.

In Bank of Am., N.A. v. SFR Invs. Pool 1, Ltd. Liab. Co., the Nevada Supreme Court stated that "[I]f a statute is unambiguous, this court does not look beyond its plain language in interpreting it." See Bank of Am., N.A. v. SFR Invs. Pool 1, Ltd. Liab. Co., 427 P.3d 113, 119 (Nev. 2018). First, NRS 616C.215(10) unambiguously states that a workers' compensation carrier has a lien on the proceeds of a workers' compensation claimant's settlement in "any trial." Notably, NRS 616C.215 does not state that the carrier's statutory lien arises in "any trial, except medical malpractice trials." The Nevada Supreme Court confirmed the foregoing subsequent to NRS 42.021's addition to the Nevada Revised Statutes in 2004 when it decided *Tri-County Equip*. & Leasing, LLC v. Klinke, 128 Nev. 352, 354 (2012). In Klinke, the Nevada Supreme Court stated that "NRS 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 id. at 356 (emphasis added). Notably, the Nevada Supreme Court in Klinke did not

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create or otherwise point out an exception for medical malpractice trials, despite the fact that NRS 42.021 was passed by voters in 2004. As a result, NRS 616C.215 unambiguously protects COPPERPOINT'S lien, and further statutory interpretation is unnecessary.

Assuming, arguendo, that this Court finds ambiguity in the relationship between NRS 616C.215 and NRS 42.021, established rules of statutory interpretation nonetheless protect COPPERPOINT'S lien. First, in Hefetz v. Beavor, the Nevada Supreme Court stated that courts should interpret potentially conflicting statutes in harmony with each other so that "no part of the statute is rendered nugatory or turned to mere surplusage." See Hefetz v. Beavor, 397 P.3d 472, 475 (Nev. 2017). Plaintiffs' interpretation of the relationship between NRS 616C.215 and NRS 42.041 results in a de facto repeal of significant provisions of NRS 616C.215 without any legislative intent to achieve the same. In contrast, NRS 616C.215 contains a clear procedure protecting the interests of plaintiffs, defendants, medical providers, and workers' compensation carriers which does not render NRS 42.041 null.

Second, "when a specific statute is in conflict with a general one, the specific statute will take precedence. Still, no statutory language should be rendered mere surplusage if such a consequence can properly be avoided." See Andersen Family Assocs. v. Ricci, 124 Nev. 182, 187-88 (2008). In this matter, NRS 616C.215 is more specific because it applies to a narrower class of plaintiffs: exclusively, people who sustain injuries arising out of and in the course of their employment. See also NRS 616C.150 (2019). In contrast, any member of the public might suffer an injury through medical malpractice and bring an action against negligent medical providers.

The Nevada Supreme Court has confirmed that NRS 616C.215 is more specific than the general collateral source rule articulated in *Proctor v. Castelletti*, 112 Nev. 88, 91 (1996) and thus has applied NRS 616C.215 to workers' compensation matters as opposed to *Proctor*'s general collateral source rule. See, e.g., Poremba v. S. Nev. Paving, 388 P.3d 232, 236 (Nev. 2017); Am.

Moreover, "statutory interpretation should avoid absurd or unreasonable results." *See Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364 (1999). Should this Court rule that NRS 42.021 creates an exception to NRS 616C.215 for workers' compensation claimants who suffer a further industrial injury as the result of medical malpractice, COPPERPOINT'S \$3,171,095 lien will be reduced to zero (0). This Court, in effect, would insert itself in the position of the Arizona Industrial Commission and render a compensability determination stating that HARPER is entitled to the medical benefits paid for by COPPERPOINT and an additional \$3,171,095 cash benefit as part of her workers' compensation claim. Not only is this result absurd, but it is contrary to Nevada law which mandates a fair and balanced interpretation of workers' compensation statutes. *See* NRS 616A.010(4) (2019).

Plaintiffs argue that "is presumed that in enacting a statute the legislature acts with full knowledge of existing statutes relating to the same subject." *See Boulder City v. Gen. Sales Drivers, Local Union No. 14*, 101 Nev. 117 (1985). Plaintiffs err because NRS 42.021 is not included in the NIIA nor does it impact substantive workers' compensation rights much less substantive workers' compensation rights under an Arizona claim. To the extent that NRS 42.021 in any way "relates to the same subject" as NRS 616C.215, the Nevada Supreme Court considered, and rejected, the argument that any other source of law other than NRS 616C.215 should be applied to a workers' compensation matter in *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 357 (2012) (stating that NRS 616C.215 is universally applicable to any

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plaintiff who received workers' compensation benefits). Accordingly, should this Court apply principles statutory interpretation, NRS 616C.215 which of must apply protects COPPERPOINT'S lien.

3. Tri-County Equip. & Leasing, LLC v. Klinke Is Directly Applicable to the Instant Case Because as It Explains that NRS 616C.215 Takes Precedence Over Nevada's General Collateral Source Rule.

Plaintiffs do not directly refute the Nevada Supreme Court's holding in Klinke and instead argue that the Court's holding as to NRS 616C.215's "universal applicability to trials involving a plaintiff receiving workers' compensation payments" is mere dicta. See Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 356 (2012). Plaintiffs correctly cite to Armenta-Carpio v. State to state that "[a] statement in a case is dictum when it is 'unnecessary to a determination of the questions involved." See Armenta-Carpio v. State, 129 Nev. 531, 536 (2013). The issue resolved by the Nevada Supreme Court in Klinke was "whether proof of California workers' compensation payments can be admitted into evidence in a personal injury action in Nevada." See Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 353 (2012). As Justice Gibbons explained in his concurrence, this issue necessitated resolution of "whether Nevada's collateral source rule applies to the payment of California workers' compensation benefits to Klinke and whether it applies to medical provider discounts." See Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 358 (2012). As a result, the Court's holding regarding NRS 616C.215(10)'s primacy in any third-party action stemming from an industrial injury is not dicta but rather authority resolving the question as to whether the general collateral source rule or NRS 616C.215(10) should apply in workers' compensation matters.

As a direct resolution of the question as to whether the general collateral source rule takes precedence over NRS 616C.215(10), Klinke is applicable to this case. The collateral source rule "bars the admission of a collateral source of payment for an injury into evidence for any purpose."

See Proctor v. Castelletti, 112 Nev. 88, 90 (1996). NRS 42.021 is a permutation of the collateral source rule granting the defendant in a medical malpractice action the right, but not the obligation, to introduce certain collateral payments into evidence. As explained in *Klinke*, under the general collateral source rule, evidence of workers' compensation payments would be barred but for NRS 616C.215(10)'s "universal applicability to any trial involving a plaintiff receive workers' compensation payments...." See Tri-County Equip. & Leasing, LLC v. Klinke, 128 Nev. 352, 356 (2012). As has been discussed and explained in detail, there is no indication apart from HARPER'S self-serving attempts to obtain a double recovery of workers' compensation benefits that NRS 42.021 amends NRS 616C.215(10)'s or elements the latter's protection of workers' compensation liens.

4. Under a Conflict of Laws Analysis, Arizona Law Must Apply.

No conflict of law exists because ARS 23-1023 and NRS 616C.215 both recognize and protect COPPERPOINT'S lien. A conflict of law exists where "two or more states have legitimate interests in a particular set of facts in litigation, and the laws of those states differ or would produce different results in the case." *See Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 355 (2012). Assuming, *arguendo*, that NRS 42.021 creates a conflict of law, Arizona law must apply because 1) the effect of NRS 42.021 would be substantive and 2) Arizona bears the most significant relationship to the instant litigation. *See GMC v. Eighth Judicial Dist. Court of Nev.*, 122 Nev. 466, 468 (2006); *see also Restatement 2nd Conflict of Laws*, § 138 (2nd 1988).

i. Workers' Compensation Benefits Are Substantive and Not Procedural or Evidentiary.

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According to the Restatement 2nd Conflict of Laws § 138, where the effect of an evidentiary statute is substantive, "the otherwise applicable law will be applied." The *Restatement 2nd Conflict of Laws*, § 138 states that:

On occasion, a rule phrased in terms of evidence may in fact be a rule of substantive law. In such a case, the otherwise applicable law will be applied. An example is a rule which declares inadmissible in a wrongful death action evidence that the decedent disliked the plaintiff spouse or child. Such a rule provides in effect that damages shall not be reduced by reason of such dislike and is in actuality a rule relating to the measure of damages. Hence the law selected by application of the rule of § 178 should be applied to determine whether damages should be reduced in the event of such dislike. If so, evidence of such dislike will be admissible.

See Restatement 2nd Conflict of Laws, § 138 (2nd 1988) (cited with approval by the Nevada Supreme Court in GMC v. Eighth Judicial Dist. Court of Nev., 122 Nev. 466, 468 (2006)).

Workers' compensation benefits are substantive rights. See Weaver v. State Indus. Ins. Sys., 104 Nev. 305, 306 (1988); see also Dep't of Human Res., Welfare Div. v. Fowler, 109 Nev. 782, 788 (1993). Assuming, arguendo, that this Court rules that Nevada law applies, NRS 42.021 is evidentiary, and that the later has repealed NRS 616C.215, the effect of NRS 42.021 in this case would be substantive because it would directly implicate the nature and amount of HARPER'S workers' compensation benefits under Arizona law. Because NRS 42.021's application would be substantive, this Court must apply Arizona law.

ii. Arizona Bears the Most Significant Relationship to the Instant Litigation as it Relates to COPPERPOINT.

In GMC v. Eighth Judicial Dist. Court of Nev., the Nevada Supreme Court stated that:

the most significant relationship test, as provided in the Restatement (Second) of Conflict of Laws section 145, should govern the choice-of-law analysis in tort actions unless a more specific section of the Second Restatement applies to the particular tort claim.

See GMC v. Eighth Judicial Dist. Court of Nev., 122 Nev. 466, 468 (2006) (emphasis added).

As explained in COPPERPOINT'S Motion, the Restatement 2nd Conflict of Laws § 185 addresses conflicts of law arising out of workers' compensation matters, including as the instant

Plaintiffs do not refute the above analysis. Instead, Plaintiffs argue that this Court should only approach the conflicts of law analysis as to facts central to HARPER'S medical malpractice injury. This argument is utterly divorced from reality and ignores the truth that HARPER'S medical malpractice injury is simply considered an extension of her original industrial injury because the medical malpractice injury occurred during treatment through her industrial injury claim. Since the *Restatement 2nd Conflict of Laws* declares that the local law of the state under which workers' compensation benefits have been awarded controls lien rights, this Court should apply Arizona law.

a. Each Restatement 2nd Conflict of Laws § 6 Principal Weighs in Favor of COPPERPOINT.

In *GMC v. Eighth Judicial Dist. Court of Nev.*, the Nevada Supreme Court explained that the most significant relationship test is based on the *Restatement 2nd Conflict of Laws*' § 6

⁶ As cited by Plaintiffs, *Dictor v. Creative Mgmt. Servs.*, *LLC*, stands for the notion that "A subrogation claim arising from a tort . . . is properly characterized as a tort claim for choice of law purposes." *See Dictor v. Creative Mgmt. Servs.*, *LLC*, 126 Nev. 41, 46 (2010). *Dictor* is not a workers' compensation case nor did address the payment of workers' compensation benefits. Plaintiffs then argue that because *Dictor* cites to *Federated Rural Elec. Ins. Exch. v. R. D. Moody & Assocs.*, 468 F.3d 1322, 1326 (11th Cir. 2006) which, itself, cites to *Swain v. D & R Transp. Co.*, 735 F. Supp. 425, 427 (M.D. Ga. 1990) in stating that "if the plaintiff is eligible for workers' compensation under the law of the state where the tort was committed, the law of that state is applicable even though the plaintiff may have received and accepted workers' compensation in another state." Plaintiffs' argument fails because HARPER is not eligible for Nevada workers' compensation benefits because she irrevocably waived compensation under NRS 616C.200 by filing a claim for compensation under Arizona's statutory scheme.

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principals. See GMC v. Eighth Judicial Dist. Court of Nev., 122 Nev. 466, 474 (2006). These principals include:

- (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
- (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
 - (a) the needs of the interstate and international systems,
 - (b) the relevant policies of the forum,
 - (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
 - (d) the protection of justified expectations,
 - (e) the basic policies underlying the particular field of law,
 - (f) certainty, predictability, and uniformity of result, and
 - (g) ease in the determination and application of the law to be applied.

See GMC v. Eighth Judicial Dist. Court of Nev., 122 Nev. 466, 474 (2006).

As Nevada has no statutory directive regarding the appropriate choice of law when a plaintiff seeks a judicial determination of her workers' compensation carrier's lien rights in a different state from where she received workers' compensation benefits, an analysis of § 6 factors is appropriate. First, interstate comity requires that workers' compensation claimants and carriers adjudicate disputes in the proper administrative setting. Should this Court rule that COPPERPOINT has no lien under NRS 42.021, the Arizona Industrial Commission would not be bound by this Court's ruling and could issue a compensability determination to the contrary.

Importantly, Nevada, as the forum state, has expressed a clear policy *not* to apply Nevada law to foreign state workers' compensation matters. Pursuant to NRS 616C.200, a claimant such as HARPER irrevocably waived all "compensation for the injury or death to which persons would otherwise have been entitled under the laws of [Nevada]" upon commencing proceedings before the Arizona Industrial Commission regarding her industrial injury. As the Nevada Supreme Court explained, "[NRS 616C.200]'s apparent purpose is to compel a claimant to elect between

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proceeding in Nevada or in any other state." See Nev. Indus. Comm'n v. Underwood, 79 Nev. 496, 502 (1963) (discussing NRS 616.530, the predecessor to NRS 616C.200).

HARPER proceeded before the Arizona Industrial Commission regarding her industrial injury in general and the lien giving rise to this action in particular, NRS 616C.200 bars application of the NIIA. Plaintiffs concede that "NRS 42.021 applies to and is part of Nevada's workers' compensation scheme..." See Plaintiffs' Opposition at pg. 20. Under Plaintiffs' line of reasoning, NRS 616C.200 would bar this Court from applying provisions of the NIIA, such as NRS 42.021, to the instant case. In addition, application of Nevada law to HARPER'S workers' compensation case would not protect the interests of Arizona in establishing public policy related to workers' compensation or protect COPPERPOINT'S justified expectations in providing workers' compensation insurance because application of Nevada law in this case might achieve the opposite result as called for under Arizona law should this Court rule that NRS 42.021 creates an exception to NRS 616C.215 in industrial injuries sustained in medical malpractice under a workers' compensation claim. Indeed, Plaintiffs "concede that CopperPoint Defendants' lien claim would be valid [under Arizona law]." See Plaintiffs' Opposition at pg. 20.

Workers' compensation statutory schemes are unique in that matters are generally adjudicated via administrative tribunals. See supra part I-A. Judicial courts are generally only intended to review the decisions of these administrative tribunals for legal error, similar to an appellate court. See supra at part I-A. Such limitations exist because "the statutes normally provide for their enforcement by special administrative tribunals and such tribunals do not consider themselves competent to give relief under any statute but their own." See Restatement 2nd Conflict of Laws, Workmen's Compensation Scope (2nd 1988). Accordingly, this Court's intervention in the instant Arizona workers' compensation matter would determinant uniformity of result under both Arizona and Nevada workers' compensation law.

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III. **CONCLUSION**

This Court lacks subject-matter jurisdiction to adjudicate the instant case pursuant to NRCP 12(b)(1). This Court further lacks personal jurisdiction over COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY pursuant to NRCP 12(b)(2). Moreover, Plaintiffs have failed to state a claim under which this court may grant relief pursuant to NRCP 12(b)(5). Thus, the instant complaint must be dismissed. Alternatively, this Court should grant COPPERPOINT'S Motion for Partial Summary Judgment as no issue of material fact remains and COPPERPOINT is entitled to judgment as a matter of law.

WHEREFORE, Defendants, COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and COPPERPOINT GENERAL INSURANCE COMPANY, respectfully requests that the District Court grant the following relief:

- That the District Court DISMISS Plaintiffs' complaint as to Defendants 1) COPPERPOINT in its entirety.
- 2) Alternatively, that this Court GRANT COPPERPOINT'S Motion for Partial Summary Judgment.

Dated this 7th day October 2020.

Respectfully submitted,

HOOKS MENG & CLEMENT By:

Sami Randolph

DALTON L. HOOKS, JR., ESQ. SAMI RANDOLPH, ESQ. Attorneys for Defendants COPPERPOINT MUTUAL INSURANCE **HOLDING COMPANY and** COPPERPOINT GENERAL INSURANCE **COMPANY**

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CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that on the 7th day of October, 2020, the forgoing

DEFENDANTS COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY and

COPPERPOINT GENERAL INSURANCE COMPANY'S REPLY IN SUPPORT OF

THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT OR ALTERNATIVELY,

6 MOTION FOR PARTIAL SUMMARY JUDGMENT was served on the following by

7 Electronic Service to all parties on the Odyssey Service List. I further certify that I mailed a true

copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at

Las Vegas, Nevada, postage prepaid, as follows:

JASON R. MAIER, ESQ. MAIER GUTIERREZ & ASSOCIATES 8816 SPANISH RIDGE AVENUE LAS VEGAS NV 89148 Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER JOHN P. BLUMBERG, ESQ. **BLUMBERG LAW CORPORATION** 444 W OCEA BLVD., STE 1500 LONG BEACH CA 90802-4330 Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER

JAMES KJAR, ESQ. JON SCHWALBACH, ESQ. KJAR. McKENNA & STOCKALPER LLP 841 APOLLO STREET, SUITE 101

EL SEGUNDO CA 90245

Attorneys for Defendants 16

KENNETH MARSHALL SILBERBERG and

17 LAW OFFICES OF MARSHALL SILBERBERG

THOMAS S. ALCH, ESQ. SHOOP, A PROFESSIONAL LAW CORPORATION 9701 WILSHIRE BLVD., STE 950 **BEVERLY HILLS CA 90212**

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Dated this 7th day of October, 2020

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/s/Terry Rodriguez 23 An Employee of HOOKS MENG & CLEMENT

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EXHIBIT A

EXHIBIT A

Claim//14G01532/Correspondence//321Z232_00DXMSHJQ000VBJ/Subro/321Z22W_00DXG11EF0009C8





3030 N. 3rd St PHOENIX, AZ 85012-3039, 602-631-230d

January 5, 2016

DARIA HARPER #C332 3485 S GAYLORD COURT ENGLEWOOD CO 80113 Claimant:

Daria Harper

Claim No: DOI:

14G01532 08/11/2014

Employer:

Islander RV Resort LLC

Doc Type: .

41200

NOTICE OF INTENTION (Pursuant to ARS 23-1023)

Dear Daria Harper:

Your claim file shows that you may have been injured by the negligence or wrongdoing of another. To help us process your claim, it is important that we know whether you intend to take any action against the person(s) who may have been responsible for your injury.

Please fill in the information on the attached form and return the form.

Sincerely,

Pam Fudge

CC: Islander RV Resort LLC

Enclosure

41-200 06/01/2014

EXHIBIT B

EXHIBIT B





3030 N. 3rd St. Phoenix AZ 85012-3039 602-631-2300

January 5, 2016

The Law Office of Marshall Silberberg 3333 Michelson Drive, Suite 710 Irvine, CA 92612 Claimant: DOI:

Daria Harper 8/11/2014

Claim No.:

14-G01532 /

Employer:

Islander RV Resort

Dear Attorney:

I have been notified that you have been hired by Ms. Harper for a med-malpractice case.

Please note that we have a lien and are requesting you to provide us with a letter of representation and something signed by Ms. Harper that indicates she hired your firm, such as a release.

Please provide us a copy the conformed complaint at your earliest convenience.

I look forward to hearing from your office.

Thank you

Sincerely,

Pam Fudge Recovery Specialist 602-631-2024 602-631-2188

EXHIBIT C

EXHIBIT C

Claim//14G01532/Correspondence//321Z033_00CH3DZQ60003DX/Subro/321Z033_00CGT6QHE000F43

2/25/16

SECOND REQUEST







3030 N. 3rd St. Phoenix AZ 85012-3039 602-631-2300

January 5, 2016

The Law Office of Marshall Silberberg 3333 Michelson Drive, Suite 710 Irvine, CA 92612

Claimant: DOI: Daria Harper

Claim No.:

8/11/2014 14-G01532

Employer:

Islander RV Resort

Dear Attorney:

I have been notified that you have been hired by Ms. Harper for a med-malpractice case.

Please note that we have a lien and are requesting you to provide us with a letter of representation and something signed by Ms. Harper that indicates she hired your firm, such as a release.

Please provide us a copy the conformed complaint at your earliest convenience.

I look forward to hearing from your office.

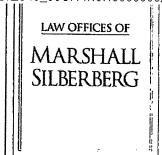
Thank you

Sincerely,

Pam Fudge Recovery Specialist 602-631-2024 602-631-2188

EXHIBIT D

EXHIBIT D





March 22, 2016

Pam Fudge Copper Point Insurance Companies PO Box 33069 Phoenix, AZ 85067-3069

Re:

Daria Harper

Claim No.:

14G01532

DOI:

08/11/2014

Employer:

Islander RV Resort LLC

Dear Ms. Fudge:

Relative to the above, please be advised that our office has been retained to represent the interests of Daria Harper. We are evaluating all potential claims and will timely file a Complaint on Ms. Harper's behalf. We will continue to keep you apprised of all significant developments as they occur.

In the meantime, we would appreciate it if you could forward us a copy of Ms. Harper's CD of medical records from Valley Hospital in Las Vegas.

I remain.

Very truly yours,

Marshall Silberberg

MS/jd

RECEIVED

MAR 2 8 2016

3333 Michelson Drive, Suite 710 | Irvine, CA 92612 | (949) 718-0960 Phone | (949) 266-5811 Lax EGA L

11755 Wilshire Boulevard, Suite 1845 | Los Angeles, CA 90025 | (949) 718-0960 Phone | (949) 266-5811 Fax

EXHIBIT E

EXHIBIT E

Electronically Filed 06/07/2016 12:18:49 PM

1 Thomas S. Alch, Esquire Nevada State Bar No. 6876 2 CLERK OF THE COURT Law Offices of Thomas S, Alch 3 500 N. Rainbow Boulevard, Suite 300 Las Vegas, Nevada 89107 4 Telephone: (702) 740-4140 5 100 N. Crescent Drive, Suite 360 Beverly Hills, California 90210 6 Telephone: (310) 281-8700 7 Attorney for Plaintiffs DARIA HARPER and DANIEL WININGER 8 DISTRICT COURT 9 CLARK COUNTY NEVADA 10 11 DARIA HARPER, DANIEL WININGER, CASE NO A- 16-738004-C 12 Plaintiffs, DEPARTMENT NO. XVI I 13 VS. ARBITRATION EXEMPTION CLAIMED: MEDICAL MALPRACTICE - RULE 3(A)(9) 14 VALLEY HOSPITAL MEDICAL CENTER, INC., doing business as VALLEY 15 HOSPITAL MEDICAL CENTER; VALLEY HEALTH SYSTEM, LLC, doing 16 business as VALLEY HOSPITAL MEDICAL CENTER; JEFFREY 17 DAVIDSON, M.D.; CYNDI TRAN, D.O.; PAUL JANDA, D.O.; ELIZABETH 18 PHUNG-HART, D.O., ANDREA AGCAOILI, D.O., MÚRAD JUSSA, M.D., 19 and, DOES 1 through 250, inclusive, 20 Defendants. 21 22 COMPLAINT FOR MEDICAL MALPRACTICE 23 MEDICAL MALPRACTICE 24 LOSS OF CONSORTIUM 25 Plaintiffs DARIA HARPER and DANIEL WININGER, through Counsel, allege in 26 their Complaint for Medical Malpractice and Loss of Consortium, as follows: 27 $/\!/\!/$ 28

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- 1. The true names, identities or capacities, whether individual, associate, corporate or otherwise of Defendants DOES I through 250, inclusive, are unknown to Plaintiffs who, therefore, sue said Defendants by such fictitious names. When the true names, identities or capacities of such fictitiously-designated Defendants are ascertained, Plaintiffs will ask leave of Court to amend the Complaint to insert said true names, identities and capacities, together with the proper charging allegations.
- 2. Plaintiffs are informed and believe and thereon allege that each of the Defendants sued herein as a DOE is responsible in some manner for the events and happenings herein referred to, thereby legally causing the injuries and damages to the Plaintiffs as herein alleged.
- 3. All of the facts, acts, events and circumstances herein mentioned and described occurred in Clark County, State of Nevada, and all Defendants are residents of Clark County, State of Nevada, doing business in said county, State of Nevada.
- 4. At all times herein mentioned Plaintiffs and each of them, were and currently are residents of Lake Havasu City, state of Arizona.
- 5. At all times herein mentioned, Defendants JEFFREY DAVIDSON, M.D., CYNDI TRAN, D.O., PAUL JANDA, D.O. ELIZABETH PHUNG-HART, D.O., ANDREA AGCAOILI, D.O., MURAD JUSSA, M.D., and DOES I through 50, inclusive, were, and now are, physicians and surgeons, holding themselves out as duly licensed to practice their profession under and by virtue of the laws of the State of Nevada and were, and now are, engaged in the practice of their profession in the State of Nevada.
- 6. At all times herein mentioned, Defendants DOES 51 through 100, inclusive, were, and now are, registered nurses, licensed vocational nurses, practical nurses, physician assistants, aids, technicians, attendants, students or other paramedical personnel, holding themselves out as duly able to practice their profession under and by virtue of the laws of the State of Nevada and were, and now are, engaged in the practice of their profession in the State of Nevada and acting as agents, employees and servants of some or all of the other Defendants within the course and scope of said agency or employment.

- 7. At all times herein mentioned, Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER, and VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 101 through 150, and 151-250, and each of them, were corporations, partnerships, joint ventures, or other entities organized and existing under the laws of the State of Nevada and Delaware, with their principal place of business situated in the State of Nevada.
- 8. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 200, inclusive, were at all times herein mentioned duly organized Nevada corporations or hospitals existing under and by virtue of the laws of the State of Nevada and other States; that said Defendant corporations, hospitals and the remaining Defendants, and each of them, owned, operated, managed and controlled a general hospital facility within Clark County, State of Nevada, held out to the public at large and to the Plaintiffs herein, as properly equipped, fully accredited, competently staffed by qualified and prudent personnel and operating in compliance with the standard of due care maintained in other properly equipped, efficiently operated and administered, accredited hospitals in said community commonly known as VALLEY HOSPITAL MEDICAL CENTER.
- 9. At all times herein mentioned Defendants DOES 201 through 250 were doing business as a district hospital, a hospital operated by a government entity open to the public, or a medical facility operated by a government entity open to the public rendering medical, surgical, hospital, diagnostic, nursing and other care to the general public for compensation.
- 10. All of the acts complained of herein by Plaintiffs against said Defendants were done and performed by said Defendants by and through their duly authorized agents, servants and employees, each of whom and all of whom were at all times mentioned herein acting within the course, purpose, and scope of their said agency, service and employment, and whose conduct was ratified by all Defendants, and each of them. Further, each Defendant ratified and affirmed the conduct of each other Defendant. At all times set forth herein, each of

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

- 11. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL CENTER and DOES 151 through 250, and each of them, at all times herein mentioned were institutions or controlled institutions, duly accredited by the Joint Commission on Hospital Accreditation, and assumed and held themselves out to the public as in compliance with the minimum standards required by said Joint Commission for such accreditation.
- 12. Plaintiffs are informed and believe and upon such information and belief allege that at all times herein mentioned, Defendants and other Defendants named fictitiously, were the agents, servants, employees, joint-venturers, and copartners of their said co-Defendants and, as such, were acting within the course and scope of such agency, service, partnership, venture, and employment at all times herein mentioned; that each and every Defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring of each and every other Defendant, as its agent, servant, employee, joint-venturer and partner. Further, each and every Defendant ratified the conduct of the other Defendants.
- 13. Attached to this complaint are the following expert declarations supporting the allegations of this complaint:
 - (1) David A. Neer, M.D., Neurology specialist;
 - (2) Michael Steven Ritter M.D., Emergency Medicine specialist;

I.

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

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

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- 15. At all times herein mentioned, the Plaintiff, DARIA HARPER, was in the exclusive control of the Defendants, and each of them, and that at no time prior to the events, conduct, activities, care and treatment herein complained of did the Defendants herein, or any of them, obtain knowledgeable, informed consent for said care, treatment or conduct; that prior to the initiation of or performance of said care, treatment, procedure or conduct no opportunity was afforded the Plaintiff or any authorized agent of the Plaintiff to exercise voluntary, knowledgeable and informed consent to said care, treatment, procedure or conduct.
- 16. On or about June 9, 2015 Plaintiff employed Defendants, and each of them, to diagnose and treat her medical condition, and to do all things necessary for her care and treatment, including, but not limited to surgery and hospitalization.
- 17. While Plaintiff DARIA HARPER was under the sole and exclusive care and control of the Defendants, and each of them, Defendants, and each of them negligently, carelessly and unskillfully examined, treated, cared for, diagnosed, operated upon, attended and otherwise handled and controlled the Plaintiff herein, thereby proximately causing injuries and damages to the. Said acts of negligence include, but are not limited to that although the plaintiff was emergently transferred to Valley Hospital Medical Center on June 9, 2015, for an emergency neurosurgical consultation because of weakness and an inability to move, as well as a CT scan that showed a mass compressing her spinal cord, the defendants and each of them negligently delayed the diagnosis and treatment, and surgery was not performed until June 11, 2015. The negligent failure to diagnose and treat Daria Harper's condition caused her permanent paralysis.
- 18. Defendants VALLEY HOSPITAL MEDICAL CENTER, INC., doing business as VALLEY HOSPITAL MEDICAL CENTER and VALLEY HEALTH SYSTEM, LLC., doing business as VALLEY HOSPITAL MEDICAL CENTER, and DOES 101-250, neglected to adequately select a competent medical staff and to periodically review the competency of its medical staff and failed to adequately monitor its staff such that the Plaintiff was caused to, and did suffer damages.

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

- 20. As a further legal result of the negligence of the Defendants, and each of them, and the resulting injuries to the Plaintiff, said Plaintiff was compelled to, and did, incur expenses for medical and surgical attention, hospitalization, nursing, medication and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.
- 21. As a further legal result of the negligence of the Defendants, and each of them, and of the resulting injuries, Plaintiff will be obliged to incur expenses for medical care and hospitalization for an indefinite period in the future and to pay for these expenses in the treatment and relief of injuries for medical and surgical attention, hospitalization, nursing, medication, and incidentals for said Plaintiff in an amount unknown to Plaintiff at present.
- 22. As a further legal result of the negligence of the Defendants, and each of them, Plaintiff will suffer a decreased earning capacity in the future and future earnings to Plaintiff's further damage in a sum unknown at present.

II.

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

- 23. Plaintiff, Daniel Wininger, alleges and incorporates herein all the allegations contained in paragraphs 1 through 22 of this Complaint.
- 24. Plaintiffs, Daria Harper and Daniel Wininger, were legally married at the time of defendants' negligence.

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

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

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

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

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

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

-7-

DATED: June 7, 2016 LAW OFFICES OF THOMAS S. ALCH Thomas S. Alch, Esq.
Nevada State Bar No. 6876
Law Offices of Thomas S. Alch
500 N. Rainbow Boulevard, Suite 300 Las Vegas, Nevada 89107 Telephone: (702) 740-4140 100 N. Crescent Drive, Suite 360 Beverly Hills, California 90210 Telephone: (310) 281-8700 Attorney for Plaintiffs 1.6

-8-

EXHIBIT "A"

AFFIDAVIT OF DAVID NEER, M.D.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

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

- In 1973, I graduated from the University of Illinois College of Medicine in 1969. In 1973, I graduated from the University of Illinois Graduate School, Department of Pharmacology. I completed an internship in Internal Medicine at the University of Illinois Hospital and Veterans Administration Hospital in 1970. I completed a residency in Neurology at Rush-Presbyterian-St. Luke's Medical Center in 1973. I have been an Assistant Professor and Assistant Clinical Professor of Neurology at both Rush Medical College and UCLA Hospitals and Clinics. I was engaged in the private practice of Neurology for 37 years. I have held staff positions as Lakewood Regional Medical Center, UCLA-Harbor General Medical Center, UCLA Hospitals and Clinics, and Long Beach Memorial Medical Center, in California. At those facilities I also held various administrative positions, such as Chief of Staff, Consulting Staff, and member of the Governing Board.
- During the time of the care at issue in this case my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As a neurologist I was involved on a daily basis with critically ill patients and patients with emergent neurological conditions, such as spinal epidural abscesses. As such, I am familiar with the standard of care applicable to hospitals, nursing staff, neurologists, hospitalists, and critical care physicians when faced with a patient with an emergent spinal cord condition. Further, I am familiar with the standard of care applicable to all physicians and healthcare providers in the setting of an emergent spinal cord condition, both in Nevada and nationally. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center with regard to the medical care that the hospitals, their nurses and staff, and the physicians, including, Dr. Cyndi Tran, Dr. Paul Janda, Dr. Andrea Ageaoili, Dr. Elizabeth Phung-Hart and Dr. Murrad Jussa, were required to provide to Daria Harper. Finally, it is

NEER AFFIDAVIT

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

- I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center records, including diagnostic imaging from those facilities, all pertaining to Daria Harper, who was a patient at Havasu Regional Medical Center and Valley Hospital Medical Center on June 8, 2015 to July 15, 2015. Ms. Harper was admitted to each facility with complaints of inability to move her upper and lower extremities.
- Ms. Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015. Thereafter, she was examined by an emergency room physician, who noted that she was unable to move, was not responsive, and had been admitted for further neurology and possible neurosurgical evaluation. The emergency room physician also noted the CT scan from Havasu Regional revealed displacement of the thecal sac of Ms. Harper's spine. Given this information, the standard of care required stat neurology and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine. A breach of the standard of care occurred when no such orders were placed.
- 5. Thereafter, Ms. Harper was evaluated by Dr. Cyndi Tran and Dr. Paul Janda. Both physicians noted that Ms. Harper was unable to move her extremities, with an impaired neurological examination. Further, Dr. Tran and Dr. Janda noted that the CT scan of the spine revealed no acute pathology, fracture, malalignment or soft tissue swelling, which was incorrect and demonstrates that neither physician reviewed the imaging or the report. Based upon this information, the standard of care required that Dr. Tran and Dr. Janda order a stat neurosurgical consultation and a stat MRI of the spine. However, neither physician issued such orders, thereby breaching the standard of care. Further, as stated above, as Dr. Tran was a resident, both Valley Hospital and Dr. Janda are responsible for her breach of the standard of care.
- 6. At or about 12:15 PM, Ms. Harper was evaluated by Dr. Andrea Agcaoili. At or about that time, Dr. Agcaoili issued an order for a stat CT scan of the thorax. Given Ms. Harper's condition, including the emergent findings of the CT scan from Havasu Regional, her inability to move, low tone, and

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

- At or about 12:15 PM, Ms. Harper was also evaluated by Dr. Elizabeth Phung-Hart. Dr. Phung-Hart issued orders for neurological assessments. However, the records do not reveal that Dr. Phung-Hart examined the patient prior to issuing such orders, nor did she review the chart to ensure that Ms. Harper was receiving proper care. Given Ms. Harper's condition, including the emergent findings of the CT scan from Havasu Regional, her inability to move, low tone, and lack of motor response, the standard of care required that Dr. Phung-Hart review the chart and issue stat orders for a neurosurgical consultation and an MRI of the spine. The failure to do so was a breach of the standard of care. Assuming that Dr. Phung-Hart is a resident, both her attending physician, whose identity is unknown at this time, and Valley Hospital are responsible for her breach of the standard of care.
- 8. It was not until the following morning at 7:13 AM that Ms. Harper was next evaluated by a physician. At that time, she was examined by Dr. Agcaoili and Dr. Murrad Jussa. Both physicians noted that Ms. Harper was unable to move her arms and legs, with no motor response, and that overnight she had developed a high fever, which is a sign of infection. Dr. Agcaoili and Dr. Jussa also noted, incorrectly, that a CT scan of Ms. Harper's spine revealed no acute pathology, fracture, malalignment or soft tissue swelling. Dr. Agcaoili's and Dr. Jussa's plan noted weakness in the upper and lower extremities secondary to a "CVA vs spinal lesion vs acute inflammatory demyelination polyradiculoneuropathy (AIDP) vs opiate overdose," with a follow up brain MRI of the spine. However, given those findings the standard of care required that both Dr. Ageaoili and Dr. Jussa order a stat neurosurgical consultation and a stat MRI of the spine. The failure to do so was a breach of the standard of care. Further, as stated above, as Dr. Ageaoili was a resident, both Valley Hospital and Dr. Jussa are responsible for her breach of the standard of care
- Finally, it was not until the evening of June 10, 2015, that Ms. Harper received an MRI of her spine which identified a spinal epidural abscess and prompted notification of neurosurgeon Dr. Gregory Douds. By that time, more than 48 hours had elapsed from the start of Ms. Harper's symptoms. It is my

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

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

FURTHER YOUR AFPIANT SAYETH NAUGHT

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

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

DAVID NEER, MD

NEER AFFIDAVIT

f,q

0807-416-018

David Neer

ed1:80 81 40 nul

EXHIBIT "B"

AFFIDAVIT OF MICHAEL STEVEN RITTER, MD, FAAEM, FACEP

STATE OF CALIFORNIA)
COUNTY OF ORANGE ()

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

- I received my medical degree from the University of California, Irvine, in 1991. I completed a residency in Emergency Medicine at the University of California, Irvine, Medical Center in 1994. Since 1996 I have been an Attending Physician in the emergency department at Mission Hospital and Regional Medical Center & Children's Hospital at Mission, in Mission Viejo, California. From 1999 to 2012; I was the Associate Medical Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. Additionally, since 1998, I have been an Assistant Clinical Professor, Department of Emergency Medicine, at the University of California, Irvine Medical Center. I am currently the Medical Director, Emergency Department, at Mission Hospital and Children's Hospital at Mission. I am Board Certified in Emergency Medicine.
- During the time of the care at issue in this case and currently my area of practice was and is substantially similar to the practice being engaged at the time herein. Based upon my education, training experience and review of the materials set forth below, I am familiar with the standard of care expected of reasonably prudent physicians practicing medicine in the state of Nevada during the time relevant to this lawsuit. We are dealing with a national standard of care. As medical director of the emergency department I am involved on a daily basis with administrative responsibilities at Mission Hospital, which includes review of hospital and nursing protocols and thus, I am also familiar with the standard of care applicable to hospitals, nursing staff and all other health care providers who provide emergency services in the state of Nevada during the time relearnt to this lawsuit. Specifically, I am familiar with the standard of care as it applies to Valley Hospital Medical Center, their nurses and health care providers, including, but not limited to, Dr. Jeffrey Davidson, with regard to the medical care that the hospitals and their nurses and staff were required to provide to Daria Harper. As indicated, the standard of practice is a national standard therefore applies to Las Vegas, Nevada as of June 2015.
 - 3. I have reviewed the Havasu Regional Medical Center and Valley Hospital Medical Center

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

- Ms. Harper presented to Havasu Regional Medical Center on June 8, 2015, with complaints of bilateral lower and upper extremity weakness, with inability to move and low tone. A CT scan performed at 1:44 AM on June 9, 2015, revealed anterior and rightward displacement of the thecal sac, suspicious for either a hematoma or an abscess. Such a finding is an emergent condition. The standard of care in this setting, required that Ms. Harper be transferred on a stat bases to another facility for higher level care.
- . Ms: Harper arrived at Valley Hospital at approximately 6:00 AM on June 9, 2015. Thereafter, she was examined by Dr. Jeffrey Davidson, who noted that she was unable to move, was not responsive, and had been admitted for further neurology and possible neurosurgical evaluation. Dr. Davidson also noted the CT scan from Havasu Regional revealed displacement of the thecal sac of Ms. Harper's spine. Given this information, the standard of care to a reasonable degree of modical certainty required stat neurology and neurosurgical consultations, along with a stat CT scan and/or MRI of the spine. Dr. Davidson breached the standard of care by failing to issue such orders. Plaintiff, Daria Harper, did not exercise any independent choice in the selection of her physicians and other healthcare professionals at the time that she presented with her neurosurgical emergency. Physicians and stuff were selected for her, and, as such, the physicians and staff were acting as agents for Valley Hospital Medical Center.
- By that time Ms. Harper underwent surgery to decompress her spine, more than 48 hours had elapsed from the start of Ms. Harper's symptoms. It is my opinion, to a reasonable degree of medical probability, that by the time Ms. Harper's abscess was identified on MRI and Dr. Douds notified; Ms. Harper's spinal cord was irreparably damaged. It is also my opinion, to a reasonable degree of medical probability, had Ms. Harper received earlier medical treatment, compliant with the standard of care, she would not be paralyzed.
- It is my opinion to a reasonable degree of medical certainty that each of the standard of care violations set forth in this affidavit were substantial factors in causing permanent paralysis and injury to

EXHIBIT F

EXHIBIT F

Claim//14G01532/Correspondence//321Z26T_00EHQREPQ000GV2/Subro/321Z26S_00EGMMN970005S6





Legal Department 3030 N. 3rd Street Phoenix, AZ 85012

June 22, 2018

خزا

LAW OFFICES OF MARSHALL SILBERBERG

3333 MICHELSON DR STE 710

IRVINE CA 92612

F 949-266-5811

Claimant:

Daria Harper

DOI: 08/11/14

Claim No.: 14G01532

Employer: Islander R V Resort L L C

Dear Attorney:

Please provide an update on this case and please remember that pursuant to A.R.S. §23-1023(C), to please keep CopperPoint apprised of the status of the claim and notify us upon any resolution of the claim.

As you are aware, A.R.S. §23-1023(D) provides for a statutory lien and credit for any amounts collected on the third-party claim. Any resolution of the claim for less than the statutory lien requires our written approval. While it is the position of CopperPoint that we are entitled to our full statutory lien and credit, there may be circumstances where CopperPoint will reduce our statutory lien or credit if warranted depending upon the particular facts and circumstances of each claim. Any agreement to reduce or waive our statutory lien or future credit must be acknowledged by CopperPoint in writing. Any alleged oral waiver or reduction of our lien or future credit will not be recognized unless it is acknowledged by us in writing.

We will provide you with our current lien information as you request during your handling of the third-party claim. Once a claim has settled, it is imperative that you notify us for a current lien amount. Please note that until you are in agreement with an offer and have contacted us for approval, the lien is subject to change. Also, please verify all bills are paid "prior to settlement" or they can become the claimant's responsibility.

Sincerely,

Pam Fudge

Pam Fudge Recovery Specialist 602-631-2024 602-631-2188 (fax)

Fudge, Pam

From:

Rightfax E-mail Gateway <sv-rightfaxprd-svc@copperpoint.com>

Sent:

Friday, June 22, 2018 10:58 AM

To:

Fudge, Pam

Subject:

Your fax has been successfully sent to MARSHALL SILBERBERG at 9492665811.

Your fax has been successfully sent to MARSHALL SILBERBERG at 9492665811.

6/22/2018 10:56:46 AM Transmission Record

Sent to 99492665811 with remote ID "19492665811"

Result: (0/339;0/0) Success

Page record: 1 - 2

Elapsed time: 01:25 on channel 8

EXHIBIT G

EXHIBIT G

July 2, 2018

VIA EMAIL AND U.S. MAIL

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

Re:

Daria Harper

Claim No.:

14G01532

DOI:

08/11/2014

Employer:

Islander RV Resort LLC

Dear Ms. Fudge:

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

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

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

May 12, 2020 Page 2

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

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

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

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

Please call to discuss the foregoing.

I remain,

Very truly yours,

Marshall Silberberg

EXHIBIT H

EXHIBIT H

NOTICE OF CLAIM STATUS

1	or Self-Insured Name and Address	ICA Claim	No. 20142520533
CopperPoint Gen P.O. Box 33069	neral Insurance Company / CLAIMS DEPT.	Soc. Sec. N	
Phoenix, AZ 8506	4.		required if correct ICA claim number is provided
Authorized Th	ird Party Administrator (TPA) Name and Address	Carrier Clai	•
		Employer	ISLANDER RV RESORT LLC
	Claimant's Name and Address	Address	LAKE HAVASU CITY, AZ 86403
DARIA HARPER	400		LAKE HAVASU CITY, AZ 86403
3336 DATE PALM LAKE HAVASU C		Date of Inju	ory 08/11/2014
1. Claim is	accented		
2. Claim is	•		
		ne not currently eveto	nined a temporary disability entitlement attributable
to this ir	ijury beyond seven consecutive days.		
4. Enclose	d check for for period of	through	h Seven days deducted if disability is of the wage of based on the following
	atutory minimum or estimated monthly wage pen-		
	rerage monthly wage at time of injury (see attache		
	ommission of Arizona within 30 days.		ect to that determination by the industrial
5. Return to	o light duty effective . Per A. Return to regular duty effective	.R.S. §23-1044(A) ar	nd A.R.S. §23-1062(D) benefits are payable at least
	rry compensation and active medical treatment ter	winstad on	harring to the second
	sulted in no permanent disability.	mmated on	Decause claimant was discharged,
8. Injury re	sulted in permanent disability. Amount of perman be authorized by separate Notice.	nent benefits, if any,	and supportive medical maintenance benefits, if
	to Reopen accepted.		
10. Petition t	o Reopen denied.		
11. Other:	• Pursuant to A.R.S. § 23-1023, CopperPoint Claimant's third-party recovery from a med action (case No. A-16-738004-C) brought in of Clark County, Nevada, in an amount equ	lical malpractice n the District Cour	nt
Mailed on: 10/30/	2019	By: Jeff de Veu	ve
Copy to: Indust	rial Commission of Arizona	(Authorized	d Representative) Tel. #: (602) 631-2966
The insurance carrier	r employer will, upon request, provide claimant a	copy of the medical	report to support Findings 5, 6, 7 or 8.
NOTICE TO CLAIM office of the Industrial Co	ANT: If you do not agree with this NOTICE and wish a	hearing on the matter, y	your written Request for Hearing must be received at either Notice, pursuant to A.R.S. 23-941 and 23-947. IF NO SUCH
AVISO AL RECLAM ser recibida en cualquira	IANTE: SI usted no esta de acuerdo con este AVISO, y de de las oficinas de la Comision Industrial a las direcciones A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA	sea una audiencia en este abain indicadas dentro d	e caso, su peticion por escrito pidiendo una audiencia debera de NOVENTA (90) DIAS despues de la fecha de este AVISO, DEL PERIODO DE NOVENTA (90) DIAS, ESTE AVISO
Office: 800 '	strial Commission of Arizona W Washington Street nix. Arizona 85007-2922	Tucson Office:	Industrial Commission of Arizona 2675 E Broadway Tucson, Arizona 85716-5342
	lox 19070 nix. AZ 85005-9070		

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

Date:

10/30/19

Claimant Name: Daria Harper Claim Number: 14G01532

Continued from page 1

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

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

EXHIBIT I

EXHIBIT I

NOTICE OF CLAIM STATUS

	(or Self-Insured Name and Address		-
		Copp	erPoint General Insurance Company	ICA Claim No	20142520533
			3030 N 3rd St	C - C N	
			Phoenix, AZ 85012	Soc. Sec. No.	
Author	rizec	l Third	Party Administrator (TPA) Name and Address	SSN not requ	ired if correct ICA claim number is provided
				Carrier Claim 1	No. 14G01532
				Employer	Islander RV Resort LLC
		C	aimant's Name and Address Daria Harper	Address	751 Beachcomber Blvd
		(O SCHIFFMAN LAW OFFICE PC		Lake Havasu City, AZ 86403
			4506 N 12TH ST	Date of Injury	08/11/2014
			PHOENIX AZ 85014		00/11/2014
	1.	Claim i	accepted.		
	2.	Claim i	denied.		
$\overline{\Box}$	3.	No tem	porary compensation paid because the claimant has n	ot currently sustained	a tennorary disability entitlement attributable
L		to this i	ijury beyond seven consecutive days.		
	4.	Enclose	d check for for period of	through _	. Seven days deducted if disability is
			14 calendar days. Payment has been made based o		
	Ш	A. St	atutory minimum or estimated monthly wage pendin	g determination of A	verage Monthly Wage within 30 days.
		B. A	verage monthly wage at time of injury (see attached commission of Arizona within 30 days.	calculation), subject t	o final determination by the Industrial
	5. 1	Return t	o light duty effective Per A.R.S	S. §23-1044(A) and A	A.R.S. 823-1062(D) henefits are payable at least
	1	nonthly	Return to regular duty effective		The state of the s
	6.	rempor.	ry compensation and active medical treatment termin	nated on	because claimant was discharged.
	7. 1	njury re	sulted in no permanent disability.		
	8.	lnjury ro any, wil	sulted in permanent disability. Amount of permanen lee authorized by separate Notice.	t benefits, if any, and	supportive medical maintenance benefits, if
П			to Reopen accepted.		
	0. F	etition	o Reopen denied.		,
I			Future compensation, medical, surgical, hospital, ph	narmacy, caretaker &	1
× 1	1. (Other:	other benefits payable to applicant or behalf of appl effective May 2, 2020 until CopperPoint's current li is fully exhausted	icant are terminated	
Mailed	on:	05/	01/2020 By	Jeffrey Deveuve	
Copy to	:	Indus	trial Commission of Arizona	(Authorized Re	epresentative) Tel. #: (602) 631-2300
The insu	ıranc	e carrie	r/employer will, upon request, provide claimant a co	py of the medical rep	ort to support Findings 5, 6, 7 or 8.
NOTICE office of the	E TO	CLAIN dustrial (IANT: If you do not agree with this NOTICE and wish a bea ommission listed below within NINETY (90) DAYS after the di EIVED WITHIN THAT NINETY DAY PERIOD, THIS NOTIC	ring on the matter, your	written Request for Hearing must be received at aither
AVISO A	AL R da en lo con	ECLAN cualquir las leyes	IANTE: Si usted no esta de acuerdo con este AVISO, y desea de las oficinas de la Comision Industrial a las direcciones abaj A.R.S. 23-941 y 23-947. SI DICHA PETICION NO ESTA R	una audiencia en este cas io indicadas dentro de No	OVENTA (90) DIAS desnues de la feche de este AVISO
Phoenix Office:		800	strial Commission of Arizona W Washington Street nix. Arizona 85007-2922	Office:	industrial Commission of Arizona 2675 E Broadway Fucson, Arizona 85716-5342

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

PO Box 19070 Phoenix, AZ 85005-9070

EXHIBIT J

EXHIBIT J





AFFIDAVIT OF PLAINTIFF IN SUPPORT OF TEMPORARY RESTRAINING ORDER.pdf

DocVerify ID:

E8821848-68D7-4E96-AD0F-12E35DA0EE55

Created:

May 19, 2020 13:02:54 -8:00

Pages:

3

Remote Notary:

Yes / State: NV

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Go to <u>very closverify com</u> at any time to verify or validate the authenticity and integrity of this or any other DocVerify VeriVaulted document.

E-Signature Summary

E-Signature 1: Daria Harper (dh)

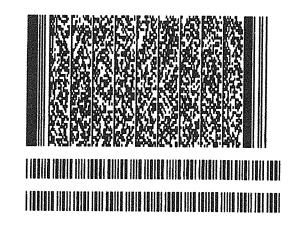
May 19, 2020 15:22:34 -8:00 [9E75F2FD8A58] [47,216,32,12] daria.harper@yahoo.com (Principal) (ID Verified)

E-Signature Notary: Brooke N Kuderer (BNK)

May 19, 2020 15:22:34 -8:00 [EAB029BC9FDA] [70,165.14.10]

brooke.kuderer@gmail.com

I, Brooke N Kuderer, did witness the participants named above electronically sign this document,



DocVerify documents cannot be altered or tampered with in any way once they are protected by the DocVerify VeriVault System. Bost viewed with Adobe Resider of Adobe Acrobat.
All visible electronic signatures contained in this document are symbolic representations of the persons signature, and not intended to be an accurate depletion of the persons actual signature. as defined by various Acre and or Laws



AFFIDAVIT OF PLAINTIFF IN SUPPORT OF TEMPORARY RESTRAINING ORDER

STATE OF NEVADA)
COUNTY OF CLARK) ss.

Daria Harper, being duly sworn, deposes and says that:

- 1. I am a plaintiff in this lawsuit. I am knowledgeable of the facts contained herein and am competent to testify thereto.
- 2. I am over the age of eighteen and I have personal knowledge of all matters set forth herein. If called to do so, I would competently and truthfully testify to all matters set forth herein, except for those matters stated to be based upon information and belief.
- 3. On or about August 11, 2014, I sustained a knee injury while in the course and scope of my employment in the state of Arizona, where I was a resident. My employer was insured by Defendant COPPERPOINT GENERAL INSURANCE COMPANY ("COPPERPOINT") which provided workers' compensation benefits to me.
- 4. On or about June 9, 2015, I required medical treatment in Las Vegas, Nevada that was related to my original August 11, 2014 injury. As a result of this medical treatment, I suffered serious injury resulting in quadriplegia.
- 5. On or about June 7, 2016, my husband, Daniel Wininger, and I filed a complaint in the District Court of Nevada, Clark County, as Case Number A-16-738004-C ("the underlying medical malpractice action"), alleging that we sustained damages as a result of the medical negligence of the named health care providers ("health care providers").
- 6. When COPPERPOINT became aware of the above-described underlying medical malpractice action, it sent a letter to my attorney, claiming a right to participate in any settlement thereof and that it was entitled to a lien for repayment of financial benefits paid to or on my behalf. A true copy of that letter is attached as **Exhibit 2**.
- 7. In the underlying medical malpractice action, (a) my medical experts determined that I would require 24-hour per day care for the remainder of my life, and (b) my economic expert determined that the present value of the cost of my future required future care was \$14,291,374 and

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that I incurred past and future earnings losses of \$322,579. A true copy of Life Care Plan that itemized my care needs is attached as Exhibit 3.

- My husband and I settled with the health care providers for the total sum of 8. \$6,250,000.00. Thereafter, in or about July 2018, the lawsuit was dismissed and the settlement monies were paid by the settling health care providers.
- 9. Based on a letter in my then-attorney's file, it is my information and belief that he informed COPPERPOINT on or about July 2, 2018, that it was not entitled to any lien. A true copy of that letter is attached as Exhibit 4.
- 10. On or about October 30, 2019, COPPERPOINT served me with the "Notice of Claim Status", attached hereto as Exhibit 5 that stated in part that it had a lien from my medical malpractice case, that it was entitled to interest from the date of the settlement, that it was entitled to a future credit against my recovery equal to the amount of money I received in the malpractice action after subtracting expenses and attorney fees, that it was not required to pay me compensation or medical, surgical, or hospital benefits until my post-settlement accrued entitlement to compensation and medical benefits exceeds the credit amount, and that to the extent the settlement in the malpractice action was less than the workers' compensation benefits it provided, my failure to obtain its prior approval before settling results in forfeiture of my workers' compensation claim.
- On April 2, 2020, I was served with a letter from COPPERPOINT, attached as Exhibit 11. 6, notifying me that it would terminate all benefits, in thirty days.
- 12. On May 1, 2020, I was served with a "Notice of Claims Status" by COPPERPOINT, attached as Exhibit 7, which stated, "Future compensation, medical, surgical, hospital, pharmacy, caretaker & other benefits payable to applicant or behalf of applicant are terminated effective May 2, 2020 until CopperPoint's current lien of \$3,171,095.00 is fully exhausted."
- Among the benefits terminated are payments being made for the services of my 13. husband, Daniel Wininger, who was being compensated to provide 24-hour per day care to me.
- The net proceeds from my malpractice case settlement that were not invested in 14. annuities have been largely expended for goods and services that are necessary for my survival. Because COPPERPOINT terminated payments for the care services provided by my husband, our

sole monthly income from annuities is \$8,333, which is greatly exceeded by the monthly expenses for the medical supplies that I require (including bladder supplies, bowel program, personal care and respiratory); medical equipment that I require (including vent, oxygenator condenser and oxygen canisters), my regular appointments with four doctors, therapists and nurses, and my prescription medications. If I do not have these medical supplies and services, my already precarious condition will worsen.

FURTHER AFFIANT SAYETH NAUGHT

DARIA HARPER

SUBSCRIBED and SWORN to before me thi. 19th day of May, 2020.

Brooks Luderer Said County and State

BROOKE N. KUDERER
NOTARY PUBLIC
STATE OF NEVADA
Commission # 17-4021-1
My Appl. Expires December 01, 2021

EXHIBIT K

EXHIBIT K

ENTITY INFORMATION

Search Date and Time: 6/2/2020 4:47:58 PM

Entity Details

Entity Name:

COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY

Entity ID:

1895549

Entity Type:

Domestic Insurer

Entity Status:

Active

Formation Date:

11/7/2018

Reason for Status:

In Good Standing

Approval Date:

11/16/2018

Status Date:

11/16/2018

Original Incorporation Date:

11/7/2018

Life Period:

Perpetual

Business Type:

Last Annual Report Filed:

Domicile State:

Arizona

Annual Report Due Date:

Years Due:

Original Publish Date:

Name:

SARA M BEGLEY

Active 11/16/2018

Appointed Status:

Attention:

Address:

3030 N. 3RD STREET, PHOENIX, AZ 85012, USA

11/16/2018

Agent Last Updated:

E-mail:

Attention:

Mailing Address:

County:

Maricopa

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Director	JUDITH PATRICK		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	STEPHEN TULLY		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	RONNIE LOPEZ		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	KENNETH KIRK		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018
Director	LORI ANN LOWERY BIGGERS		3030 N. 3RD STREET, PHOENIX, AZ, 85012, Maricopa County, USA	8/21/2018	11/16/2018

< Previous ... 1 2 3 ... Next > Page 1 of 3, records 1 to 5 of 11 Go to Page

Address 🚱

Attention:

Address: 3030 N. 3RD STREET, PHOENIX, AZ, 85012, USA

County: Maricopa

Last Updated: 11/16/2018

Entity Principal Office Address

Attention:

Address:

County:

Last Updated:

Back Return to Search

Return to Results

Document History

Name/Restructuring History

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ENTITY INFORMATION

Search Date and Time: 6/2/2020 4:46:34 PM

Entity Details

Entity Name:

COPPERPOINT GENERAL INSURANCE COMPANY

Entity ID:

14897834

Entity Type:

Domestic Insurer

Entity Status:

Active

Formation Date:

11/19/2008

Reason for Status:

In Good Standing

Insurer

Approval Date:

11/24/2008

Status Date:

Original Incorporation Date:

11/19/2008

Life Period:

Perpetual

Business Type:

Last Annual Report Filed:

Domicile State:

Arizona

Annual Report Due Date:

Years Due:

Original Publish Date:

Statutory Agent Information

SARA M BEGLEY

Appointed Status:

Active

Attention:

Name:

Address:

3030 N 3RD STREET, PHOENIX, AZ 85012, USA

Agent Last Updated:

9/11/2014

E-mail:

Attention:

Mailing Address:

County:

Principal Information

Title	Name	Attention	Address	Date of Taking Office	Last Updated
Director	SCOTT SHADER		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/12/2017	7/5/2017
Director	MARK JOOS		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/12/2017	7/5/2017
Director	MARC SCHMITTLEIN		3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016
Director	VIRGINIA ARNETT CARO	3	3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016
Director	SARA BEGLEY	and the second s	3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA	6/1/2016	6/29/2016

Attention:

Address: 3030 NORTH 3RD STREET, PHOENIX, AZ, 85012, USA

County: Maricopa Last Updated:

Entity Principal Office Address

Attention:

Address:

County:

Last Updated:

Back

Return to Search

Return to Results

Document History

Name/Restructuring History

Pending Documents

Microfilm History