IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

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Clerk of Supreme Court

Case No.: 82158

RESPONDENTS' ANSWERING BRIEF

Dated this 4th day of August 2021.

Respectfully Submitted,
By:

_/s/ Sami Randolph_____
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I.
NRAP 26.1 DISCLOSURE

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARIA HARPER, an individual; and DANIEL WININGER, an individual, Appellants, vs. COPPERPOINT MUTUAL INSURANCE HOLDING COMPANY, an Arizona corporation; COPPERPOINT GENERAL INSURANCE COMPANY, an Arizona corporation; LAW OFFICES OF MARSHALL SILBERBERG, P.C., a California Corporation; KENNETH MARSHALL SILBERBERG aka MARSHALL SILBERBERG aka K. MARSHALL SILBERBERG, an individual, Respondents.	Case No.: 82158

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1, and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal. CopperPoint General Insurance Company is wholly owned by CopperPoint Mutual Insurance Holding Company. CopperPoint Mutual Insurance Holding Company has no parent corporation and no publicly held company owns stock in CopperPoint Mutual Insurance Holding Company.

CopperPoint Mutual Insurance Holding Company and CopperPoint General Insurance Company were represented by HOOKS MENG & CLEMENT in the underlying litigation before the district court and on appeal.

HOOKS MENG & CLEMENT
By:

__/s/ Sami Randolph_____
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IV.
JURISDICTIONAL STATEMENT

The instant appeal is an appeal from the district court's October 26, 2020, order granting CopperPoint Mutual Insurance Holding Company and CopperPoint General Insurance Company's ("Respondents") Motion to Dismiss. [JA1492–JA1508] The district court granted Appellants' Motion to Certify Order Entered on October 26, 2020, as Final pursuant to NRCP 54(b) on February 6, 2021. [JA1546–JA1551] Appellants filed their Notice of Appeal on November 24, 2020. [JA1509–JA1529] This Honorable Court, thereafter, issued an Order, on January 12, 2021, recognizing its jurisdiction over the appeal and reinstating briefing.

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V.
ROUTING STATEMENT

This workers' compensation case is presumptively assigned to the Court of Appeals pursuant to NRAP17(b)(4) [Administrative agency appeals except those involving tax, water, or public utility commission]. This matter involves an appeal from the district court's order granting Respondents' Motion to Dismiss in an Arizona workers' compensation matter. [JA1492–JA1508]

VI.
STATEMENT OF THE ISSUES

1) Whether NRS 42.021 is Applicable to the Instant Case?
2) Whether a Conflict of Laws Exists Between NRS 42.021 and NRS 616C.215, and ARS 23-1023?
3) If a Conflict of Laws Exists, Whether Arizona or Nevada Law Should Apply?
4) Whether the Instant Appeal is Jurisdictionally Proper?

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VII.
STATEMENT OF THE CASE

This action arises out of an industrial injury that occurred in Lake Havasu City, Arizona on or about August 11, 2014. [JA0655] At the time of the industrial injury, Respondent CopperPoint General Insurance Company provided workers' compensation insurance to Appellant Harper's employer. [JA0655]

On or about June 9, 2015, Appellant Harper presented to Valley Hospital Medical Center for emergent treatment related to the August 11, 2014, industrial injury. [JA0661] According to Appellant Harper, as a result of the emergent treatment, she suffered serious injury. [JA0661] According to her affidavit dated May 19, 2020, Appellant Harper received $ 6,250,000.00 in settlement proceeds as a result of this incident. [JA0662]

On June 22, 2018, prior to settlement of the medical malpractice action, Respondents sent Appellants' then-attorney Silberberg a letter asking for an update on the medical malpractice litigation. [JA0649] Silberberg denied that Respondents were entitled to a lien. [JA0652–JA0653] Unable to reach a resolution with the Plaintiffs, on October 30, 2019, Respondents mailed a Notice of Claim Status to Appellant Harper advising her that it has a lien against her medical malpractice settlement and will suspend workers' compensation benefits until Appellant Harper repays Respondents' lien as provided by Arizona law. [JA0655–JA0656]

On May 5, 2020, Appellants filed a complaint in Clark County District Court seeking declaratory and injunctive relief compelling Respondent CopperPoint to reinstate Appellant Harper's workers' compensation benefits. [JA0001–JA0022] On October 26, 2020, the district court granted Respondents' Motion to Dismiss and denied Appellants' Motion for Partial Summary Judgement. [JA1492–JA1508] On December 3, 2020, Appellants filed their Notice of Appeal to the Supreme Court. [JA1509–JA1529] The district court granted Appellants' Motion to Certify Order Entered on October 26, 2020, as Final pursuant to NRCP 54(b) on February 6, 2021. [JA1546–JA1551]

This matter has been concurrently proceeding through the Arizona Industrial Commission (AIC), which is the proper forum to adjudicate disputes arising out of an Arizona workers' compensation claim. On December 27, 2020, the AIC Administrative Law Judge ordered that pursuant to ARS 23-1023, Respondents have a valid and enforceable lien on the proceeds of Appellants' Nevada medical malpractice settlement.

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VIII.
STATEMENT OF FACTS

This litigation arises out of an industrial injury that occurred on or about August 11, 2014. [JA0655] CopperPoint General Insurance Company provided workers' compensation insurance to Appellant Harper's Employer, Islander RV Resort, LLC. [JA0623] Subsequent to her injury, Appellant Harper filed an Arizona workers' compensation claim. [JA0658] Respondents accepted Appellant's claim for workers' compensation benefits. [JA0658] Ultimately, Respondents paid benefits in an amount in excess of $ 3,171,095. [JA0658]

On June 9, 2015, Appellant Harper presented to Valley Hospital Medical Center in Las Vegas, Nevada for an emergency consultation. [JA0632, JA0655] Appellant sustained injury as a result of her medical treatment. [JA0661]

As early as January 5, 2016, Respondents inquired as to whether Appellants intended to pursue litigation related to the claim. [JA0623]

> Your claim file shows that you may have been injured by the negligence of 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.

[JA0623]

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On January 5, 2016, Respondents contacted Silberberg, the attorney retained by Appellants. [JA0625] Respondents stated,

> 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 of the conformed complaint at your earliest convenience.

[JA0625] Respondents sent a second request to Silberberg on or about February 25, 2016. [JA0627]

On March 22, 2016, Silberberg informed Respondents,

> 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.

[JA0629]

On June 7, 2016, Appellants filed a complaint in the Eighth Judicial District Court 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.

[JA0631–JA0647] The parties ultimately reached a settlement, and Appellants dismissed the lawsuit. [JA0662] In an affidavit dated May 19, 2020, Appellant Harper states that she received $ 6,250,000.00 in settlement from the malpractice lawsuit. [JA0662]

On June 22, 2018, Respondents sent Silberberg a letter that stated;

> 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(C), provides for a statutory lien and credit for any amounts collected on the third-party claim. Any resolution of the claim for less than a 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.

[JA0649]

On June 22, 2018, Silberberg acknowledged receipt of the June 22, 2018, letter from Respondent. [JA0652–JA0653] Silberberg stated,

> 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, Ms. 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.

[JA0652–JA0653]

On October 30, 2019, Respondents sent Appellants a Notice of Claim Status. [JA0655–JA0656] In the Notice of Claim Status, Respondents informed Appellants that it has a lien against the medical malpractice settlement in the amount of medical, surgical, and hospital benefits paid by Respondents. [JA0655–JA0656] Respondents further advised Appellants that it is/was not required to pay further medical expenses until it has recouped its lien. [JA0655–JA0656]

On May 20, 2020, Appellants filed an action for declaratory and injunctive relief in Clark County District Court in Las Vegas, Nevada. [JA0001–JA0022] On October 26, 2020, the district court granted Respondents' Motion to Dismiss and denied Appellants' Motion for Partial Summary Judgement. [JA1492–JA1508] On December 3, 2020, Appellants filed their Notice of Appeal to the Supreme Court. [JA1509–JA1529] The district court granted Appellants' Motion to Certify Order Entered on October 26, 2020, as Final pursuant to NRCP 54(b) on February 6, 2021. [JA1546–JA1551]

This matter has been concurrently proceeding through the Arizona Industrial Commission (AIC), which is the proper forum to adjudicate disputes arising out of

an Arizona workers' compensation claim. [SA000001–000006] On December 27, 2020, the AIC Administrative Law Judge ordered that pursuant to ARS 23-1023, Respondents have a valid and enforceable lien on the proceeds of Appellants' Nevada medical malpractice settlement. [SA000001–000006]

IX.
SUMMARY OF THE ARGUMENT

NRS 42.021 does not apply to the instant matter because the statute's plain language establishes that NRS 42.021 only applies to trials, not settlements as occurred here. Moreover, no conflict of laws exists because NRS 42.021 and NRS 616C.215 as well as ARS 23-1023 protect Respondents' lien. Assuming, *arguendo*, that a conflict of laws exists, Arizona law should apply because Arizona has the most significant relationship to the litigation and NRS 42.021 would effect Appellant Harper's substantive rights under her workers' compensation claim. Further, the instant appeal is jurisdictionally defective because Appellants have not adhered to administrative adjudication process as required of workers' compensation matters.

X.
ARGUMENT

A. Standard of Review

This Court reviews the district court's order granting a NRCP 12(b)(5) motion to dismiss *de novo*. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923,

267 P.3d 771, 774 (2011). In reviewing the district court's order, this Court accepts Appellants' factual allegations as true, and the order will be upheld if "it appears beyond a doubt that the plaintiff could prove no set of facts . . . [that] would entitle him [or her] to relief." *Id.*

B. NRS 42.021 Does Not Apply to this Matter Because NRS 42.021's Plain Language Establishes that the Statute Only Applies to Trials, Not Settlements.

In this matter, the relevant statute is NRS 42.021. That statute provides in pertinent part that:

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

NRS 42.021(1)–(2) (2021) (emphasis added). Further, In *Bank of Am., N.A. v. SFR Invs. Pool 1, Ltd. Liab. Co.*, the Nevada Supreme Court stated that where "a statute is unambiguous, this court does not look beyond its plain language in interpreting it." *Bank of Am., N.A. v. SFR Invs. Pool 1, Ltd. Liab. Co.*, 134 Nev. 604, 609, 427 P.3d 113, 119 (2018). Appellants first ask the Court to considered whether NRS 42.021 applies to the medical malpractice claim incurred during treatment under the workers' compensation claim, which did not proceed to trial but rather settled. Appellants' argument is without merit because NRS 42.021's plain language establishes that the statute only applies to trials, not settlements.

First, NRS 42.021(1) states that "if the defendant so elects, **the defendant may introduce evidence**" of collateral payments. NRS 42.021(1) (2021) (emphasis added). Further, upon the defendant's election to introduce such payments into evidence, the plaintiff may introduce evidence of any payments he or she made to secure such coverage. *Id.* Thus, as threshold, NRS 42.021(1)'s plain language establishes that such collateral payments may only be introduced if the defendant first choses to do so, at trial. Appellant's medical malpractice claim did not proceed to trial, but rather settled out of court. Thus, the defendants in that action did not

introduce evidence of Respondents' workers' compensation payments because the case did not proceed to trial.

Second, NRS 42.021(2) provides that only a collateral source introduced "**pursuant to subsection 1**" may not recover any amount against plaintiffs. NRS 42.021(2) (2021) (emphasis added). Here, Respondents' workers' compensation payments were not introduced into evidence as described above because the medical malpractice claim terminated in a settlement. Thus, NRS 42.021's plain language indicates that the statute is not applicable to the instant appeal because the underlying medical malpractice claim settled before trial, thus precluding any application of NRS 42.021.

1. Appellants' Reliance Upon California Law Should Be Disregarded as NRS 616A.010 *Specifically* Forbids Courts from Liberally Construing Workers' Compensation Statutes in Favor of the Injured Worker.

Appellants' argument that NRS 42.021 applies to settlements and is applicable to workers' compensation liens is based on the legally erroneous premise that Nevada courts should liberally construe workers' compensation statutes in favor of the injured worker. Opening Brief at pp. 14–20. Appellants argue that this Court should adopt the California Supreme Court's holdings in *Barme v. Wood*, 37 Cal. 3d 174, 689 P.2d 446 (1984) and *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal. App. 3d 499, 258 Cal. Rptr. 376 (1989) because they erroneously believe that Nevada law mandates a liberal construction of workers' compensation statutes.

In reality, the Nevada Legislature forbid the approach Appellants argue this Court adopt. NRS 616A.010 *specifically* forbids courts from liberally construing workers' compensation statutes in favor of the injured worker. Importantly, in *Law Offices of Barry Levinson, P.C. v. Milko*, the Nevada Supreme Court stated that "under this (the neutrality) rule, we have rejected tests derived from jurisdictions in which liberal construction is the law." *Law Offices of Barry Levinson, P.C. v. Milko,* 124 Nev. 355, 363, 184 P.3d 378, 384 (2008).

Accordingly, pursuant to *Milko*, this Court should reject the California Supreme Court's tests in *Barme v. Wood*, 37 Cal. 3d 174, 689 P.2d 446 (1984) and *Graham v. Workers' Comp. Appeals Bd.*, 210 Cal. App. 3d 499, 258 Cal. Rptr. 376 (1989) because Cal. Lab. Code §3202 requires that California courts liberally construe workers' compensation statutes in favor of the injured worker. Indeed, under *Milko*, any test "derived from jurisdictions in which liberal construction is the law" should be disregarded because adjudication based on liberal construction cannot be reconciled with NRS 616A.010's clear mandate that courts undertake a balanced interpretation of workers' compensation statutes. *Id.* Thus, Appellants' reliance on California law is irrelevant to this Court's determination of whether Respondents' has a valid lien on the proceeds of Appellants' medical malpractice settlement.

. . .

C. No Conflict of Law Exists Because Both Arizona and Nevada Law Protect CopperPoint's Lien.

1. Arizona Law Protects Respondents' Lien.

ARS 23-1023 creates a statutory lien upon the proceeds of a workers' compensation claimant's third-party recovery. ARS 23-1023(D) states that:

> **ARS 23-1023. Liability of third persons to injured employee; election of remedies**
>
> D. If the employee proceeds against the other person, compensation and medical, surgical and hospital benefits shall be paid as provided in this chapter and the insurance carrier or other person liable to pay the claim shall have a lien on the amount actually collectable from the other person to the extent of such compensation and medical, surgical and hospital benefits paid. This lien shall not be subject to a collection fee. The amount actually collectable shall be the total recovery less the reasonable and necessary expenses, including attorney fees, actually expended in securing the recovery. In any action arising out of an aggravation of a previously accepted industrial injury, the lien shall only apply to amounts expended for compensation and treatment of the aggravation. The insurance carrier or person shall contribute only the deficiency between the amount actually collected and the compensation and medical, surgical and hospital benefits provided or estimated by this chapter for the case. Compromise of any claim by the employee or the employee's dependents at an amount less than the compensation and medical, surgical and hospital benefits provided for shall be made only with written approval of the insurance carrier or self-insured employer liable to pay the claim.

ARS 23-1023 (2020). Further, in *State Compensation Fund v. Nelson*, the Arizona Supreme Court explained that:

> According to this statute, the Fund "shall have a lien on the amount actually collectable." The statute describes the "amount actually collectable" as the "total recovery less the reasonable and necessary expenses." The issue, therefore, "resolves into a determination of what

> sums constitute the 'amount actually collectable' or the 'amount actually collected.'" We believe that the "total recovery" refers only to the total sum of money awarded by judgment. It should be noted that the phrase "amount actually collectable" refers to the sum of money the compensation carrier's lien rights can reach, not when the funds can be reached.

State Comp. Fund v. Nelson, 153 Ariz. 450, 453, 737 P.2d 1088, 1091 (1987).

Under ARS 23-1022, Respondents have a valid lien on Appellants' medical malpractice settlement. As the Arizona Supreme Court explained in *State Comp. Fund v. Nelson*, the carrier's lien rights extend to "the amount actually collectible" as subtracting "reasonable and necessary" expenses from the "total recovery" received via judgement. Respondents' interest is protected.

2. Nevada Law Protects Respondents' Lien.

As to Nevada law, NRS 616C.215 grants workers' compensation carriers "a lien upon the total proceeds of any recovery from some person other than the employer, whether the proceeds of such recovery are by way of judgment, settlement, or otherwise." NRS 616C.215(5) (2021). NRS 616C.215 conclusively governs workers' compensation subrogation matters in any action. *Tri-County Equip. & Leasing, LLC v. Klinke*, 128 Nev. 352, 356, 286 P.3d 593, 595 (2012). Indeed, in *Klinke*, this Court determined that NRS 616C.215(10) "creates an exception to the collateral source rule" in workers' compensation matters. *Id.*

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In *Klinke*, the Nevada Supreme Court stated that:

The collateral source doctrine does not change this result. As noted, this court has adopted a per se rule barring the admission of a collateral source of payment for an injury into evidence for any purpose. **Nevada recognizes a limited exception to the collateral source rule for workers' compensation payments.** In Cramer v. Peavy, this court expressly held that NRS 616C.215(10) creates an exception to the collateral source rule. Pursuant to NRS 616C.215(10), "[i]n any trial of an action by the injured employee . . . against a person other than the employer or a person in the same employ, the jury should receive proof of the amount of all payments made or to be made by the insurer or the Administrator [of the Division of Industrial Relations]." The court should then instruct the jury to follow the court's damages instructions without reducing any award by the amount of workers' compensation paid, thus leaving unaltered the general substantive law on calculating damages. The jury-instruction language specifically suggested by the statute reads:

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

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

Id. at 355–56, 286 P.3d at 595–96 (quotations omitted and emphasis added).

Should this Court apply Nevada law, NRS 616C.215 as interpreted by *Klinke* preserves Respondent's lien rights. In *Klinke*, the Nevada Supreme Court stated that NRS 616C.215 creates an exception to the collateral source rule in any workers' compensation matter. *Id.* NRS 616C.215 contains a jury instruction wherein jurors are directed to award damages as warranted without regard for collateral workers' compensation payments. As the jury instruction notes, "the law provides a means by which any compensation benefits will be repaid from your award." NRS 616C.215(5) (2021). Additionally, *Klink* was decided after NRS 42.021's 2004 passage by voters. Thusly, this Court should affirm the district court's order granting Respondent's motion to dismiss.

Importantly, in *Klinke*, this Court considered whether workers' compensation payments rendered under a sister state's workers' compensation scheme are admissible in a Nevada trial for personal injury. *Klinke, supra*, 128 Nev. 352, 353, 286 P.3d 593, 594 (2012). 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." *Id.*

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." *Id.* at 358, 286 P.3d at 597–98. 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 prohibits "the admission of a collateral source of payment for an injury into evidence for any purpose." *Proctor v. Castelletti*, 112 Nev. 88, 90, 911 P.2d 853, 854 (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...." *Klinke, supra*, 128 Nev. 352, 355–56, 286 P.3d at 595–96 (2012). As a result, no conflict of law exists as both Arizona and Nevada law protect Respondents' lien.

3. Established Rules of Statutory Interpretation Indicate that NRS 42.021 Does Not Limit or Preclude NRS 616C.215 or Respondent'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." *Bank of Am., N.A., supra*, 134 Nev. 604, 609, 427 P.3d 113, 119 (2018). To wit, 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." 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." *Klinke, supra,* 128 Nev. 352, 355–56, 286 P.3d 593, 595–96 (2012) (quotations

omitted and emphasis added). Thus, NRS 616C.215 unambiguously protects Respondents' 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 Respondents' 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." *Hefetz v. Beavor*, 133 Nev. 323, 326, 397 P.3d 472, 475 (2017). Appellants' interpretation of the relationship between NRS 616C.215 and NRS 42.041 renders significant provisions of NRS 616C.215 nugatory 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 nugatory.

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." *Andersen Family Assocs. v. Ricci*, 124 Nev. 182, 187–88, 179 P.3d 1201, 1204 (2008). In this matter, NRS 616C.215 is more specific than NRS 42.021 because it applies to a narrower class of plaintiffs: exclusively, people who sustain injuries arising out of and in the

course of their employment. NRS 616C.150 (2021). 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*, as it 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*, 133 Nev. 12, 17, 388 P.3d 232, 237 (2017); *Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1236, 147 P.3d 1120, 1125 (2006); *Harris v. Rio Hotel & Casino, 117 Nev. 482, 483* n. 2., *25 P.3d 206, 207* n. 2 (2001); *Breen v. Caesars Palace*, 102 Nev. 79, 81, 715 P.2d 1070, 1071 (1986) (applying NRS 6516C.215's predecessor statute).

Moreover, "statutory interpretation should avoid absurd or unreasonable results." *Nev. Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (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, Respondents' $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 Appellant is entitled to the medical benefits paid for by Respondents 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. NRS 616A.010(4) (2019).

Additionally, NRS 42.021 is not included in the Nevada Industrial Insurance Act 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*. *Klinke, supra*, 128 Nev. 352, 355–56, 286 P.3d 593, 595–96 (2012) (stating that NRS 616C.215 is universally applicable in a Nevada trial regarding a worker who received workers' compensation benefits under California law). Accordingly, should this Court apply principles of statutory interpretation, NRS 616C.215 should apply which protects Respondents' lien.

4. Nevada Public Policy Disfavors Double Recovery of Workers' Compensation Benefits.

Additionally, this Court has long interpreted workers' compensation statutes so as to forbid a double recovery of workers' compensation benefits. For example, in *Emplrs Ins. Co. v. Chandler,* the Nevada Supreme Court stated that:

> Further, the contemplated purpose of NRS 616C.215 is to make the insurer whole and to prevent an employee from receiving an impermissible double recovery. Defining the term "compensation" in NRS 616C.215 to include medical benefits prevents an employee from receiving a double recovery. Thus, the plain meaning of NRS 616C.215(2)(a) is consistent with the purpose of the statute.

Emplrs Ins. Co. v. Chandler, 117 Nev. 421, 426, 23 P.3d 255, 258 (2001).

Additionally, in *Poremba v. S. Nev. Paving*, the Nevada Supreme Court stated that:

> S&C, however, mischaracterizes double recovery. **Double recovery is characterized based not on the event necessitating the compensation, but on the nature of the compensation provided.** S&C cites to *Tobin v. Department of Labor & Industries*, 145 Wn. App. 607, 187 P.3d 780 (Wash. Ct. App. 2008), for the proposition that a claimant should not receive a double recovery as well. *Tobin*, however, explains that double recovery prevents the claimant from receiving compensation from the insurer and "retain[ing] the portion of damages which would include those same elements.

Poremba v. S. Nev. Paving, 133 Nev. 12, 17, 388 P.3d 232, 237 (2017) (emphasis added).

Applying *Poremba* to the instant case indicates that this Court should hold medical malpractice settlements subject to a workers' compensation carrier's lien rights. In *Poremba*, the claimant suffered an industrial injury when a third-party driver struck the vehicle that he was driving. *Id.* at 14, 388 P.3d at 234. The claimant filed a tort claim against the third-party driver, which settled for $ 63,500. *Id.* The claimant personally received $34,631.51 from the settlement and spent $14,000 on additional medical treatment. *Id.* The claimant eventually attempted to reopen his claim, which the employer's third-party administrator denied on the basis that the

claimant spent the settlement on expenses other than medical treatment. *Id.* The Nevada Department of Administration and the district court affirmed denial of reopening. *Id.*

In analyzing whether the claimant is entitled to further workers' compensation benefits, this Court determined that a workers' compensation carrier's lien extends to all payment sources within NRS 616A.090. *Id.* at 15, 388 P.3d at 235. In doing so, this Court stated that "a worker should not receive funds from two sources to pay for the same expenses." *Id.* at 18, 388 P.3d at 237. Ultimately, the Nevada Supreme Court remanded the matter to the Department of Administration for further fact finding to determine what portion of the settlement was attributed to expenses within the definition of NRS 616A.090. *Id.* at 20, 388 P.3d at 239.

In accordance with *Poremba*, Respondents' lien rights extend, without limitation, to all payment sources within NRS 616A.090's definition of compensation. Any interpretation to the contrary violates this Court's well settled precedent regarding subrogation in the context of workers' compensation claims. As a settlement for medical malpractice which compensates Appellant Harper for her medical expenses and other workers' compensation benefits are within NRS 616A.090's compensation definition, Respondents' lien is valid under Nevada law and the Court should affirm the district court's grant of Respondents' motion to dismiss.

D. Under a Conflict of Law Analysis, Arizona Law Applies.

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." *Klinke*, *supra*, 128 Nev. 352, 355, 286 P.3d 593, 595 (2012). Assuming, *arguendo*, that NRS 42.021 creates a conflict of law, Arizona law should apply because 1) Arizona bears the most significant relationship to the instant litigation and 2) the effect of NRS 42.021 would be substantive. *GMC v. Eighth Judicial Dist. Court of Nev.*, 122 Nev. 466, 468 (2006); *see also Restatement 2nd Conflict of Laws*, § 138 (2nd 1988).

1. Arizona Has the Most Significant Relationship to the Litigation.

In *GMC v. Eighth Judicial Dist. Court of Nev.*, the Nevada Supreme Court adopted the *Restatement (Second) of Conflict of Laws* regarding conflict of laws issues arising in tort. *GMC v. Eighth Judicial Dist. Court of Nev.*, 122 Nev. 466, 474, 134 P.3d 111, 117 (2006). The Court further stated that:

> [T]he 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.**

Id. at 468, 134 P.3d 111 at 113 (emphasis added). Regarding workers' compensation matters, the *Restatement (Second) of Conflict of Laws* states that:

> A peculiarity of the area is that usually relief under a particular statute may be obtained only in the state of its enactment. This is 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.
> . . .

Restat 2d of Conflict of Laws, § 185 (2nd 1988). Further, the Restatement provides that:

> The local law of the state under whose workmen's compensation statute an employee has received an award for an injury determines what interest the person who paid the award has in any recovery for tort or wrongful death that the employee may obtain against a third person on account of the same injury.

Id.

Here, Appellant Harper sustained a compensable industrial injury in Arizona. [JA0655] Respondent accepted her claim under Arizona law. Appellant received an award of compensation under Arizona law, including medical and wage replacement benefits. [JA0658] While a resident of Arizona, Appellant required emergency medical treatment in Nevada for the injuries stemming from her Arizona workers' compensation claim. [JA0632, JA0655]

On October 30, 2019, Respondents mailed a Notice of Claim Status to Appellant advising her that pursuant to ARS 23-1023, she is not entitled to further benefits in light of her refusal to satisfy Respondents'lien. [JA0655]

All worker's compensation benefits received by Appellant Harper have been in accord with Arizona law. [JA0655] Pursuant to the *Restatement (Second) of Conflict of Laws* § 185, the local law of the state where a workers' compensation

claimant received an award determines all subsequent subrogation rights. As such, Arizona law—not Nevada law—should govern Respondents' subrogation rights because Appellant received workers' compensation benefits under Arizona law.

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 principals. *GMC, supra,* 122 Nev. 466, 474, 134 P.3d 111, 116 (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.

Id.

. . .

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. The Arizona Industrial Commission has determined that Respondents' lien is valid. Thus, a contrary ruling from this Court would not further the interest of interstate comity.

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 Appellant 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 this Court has explained, "[NRS 616C.200]'s apparent purpose is to compel a claimant to elect between proceeding in Nevada or in any other state." *Nev. Indus. Comm'n v. Underwood*, 79 Nev. 496, 502, 387 P.2d 663, 666 (1963) (discussing NRS 616.530, the predecessor to NRS 616C.200).

. . .

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As Appellant 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. In addition, application of Nevada law to Appellant's workers' compensation case would not protect the interests of Arizona in establishing public policy related to workers' compensation or protect Respondents' 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.

As discussed and explained *infra*, part E, workers' compensation statutory schemes are unique in that matters are generally adjudicated via administrative tribunals. Judicial courts are generally only intended to review the decisions of these administrative tribunals for legal error, similar to an appellate court. 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." *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.

2. Arizona Law Should Apply Because NRS 42.021 Would Effect Appellant Harper's Substantive Workers' Compensation Rights.

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.

Restatement 2nd Conflict of Laws, § 138 (2nd 1988).

Workers' compensation benefits are substantive rights. *See, e.g.*, *Weaver v. State Indus. Ins. Sys.*, 104 Nev. 305, 306, 756 P.2d 1195, 1196 (1988). Assuming, *arguendo*, that this Court rules that Nevada law applies, the effect of NRS 42.021 in this case would be substantive because it would directly implicate the nature and amount of Respondents' workers' compensation benefits under Arizona law. Because NRS 42.021's application would be substantive, this Court should apply Arizona law.

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3. The Weight of Interstate Authority Favors Application of Arizona Law.

While this Court has never directly addressed a conflict of laws issue arising out of a workers' compensation claim, the weight of interstate authority mirrors the approach adopted by the *Restatement (Second) of Conflict of Laws*. For example, in *Quiles v. Heflin Steel Supply Co.*, the Arizona Court of Appeals ruled that workers' compensation acts are substantive and that the law of the state where the injured worker filed a claim and received benefits should govern all subsequent aspects of claim administration. *Quiles v. Heflin Steel Supply Co.*, 145 Ariz. 73, 78, 699 P.2d 1304, 1309 (Ariz. Ct. App. 1985).

In *Quiles*, the workers' compensation claimant suffered an industrial injury when a Heflin Steel employee improperly unloaded wire from a truck, causing the wire to fall on the claimant. *Id.* at 75, 699 P.2d at 1306. At the time of his injury, the claimant was a resident of California and employed by a California employer. *Id.* at 74, 699 P.2d at 1305. The claimant filed his claim for workers' compensation benefits in California, even though the injury occurred in Arizona. *Id.* at 75, 699 P.2d at 1306. The claimant's workers' compensation carrier expended over $50,000 to provide benefits to the claimant. *Id.*

The carrier filed a lawsuit against Heflin Steel. *Id.* The claimant filed a motion to intervene, which the trial court granted. *Id.* However, the trial court dismissed the claimant's complaint in intervention under the theory that it was barred

by ARS 23-1023 and ARS 12-542. *Id.* The claimant appealed on the basis that California law, as the law of the state where he received workers' compensation benefits, would have allowed his complaint in intervention. *Id.*

In reversing the trial court, the Arizona Court of Appeals held that courts should apply the law of the state where the claimant received benefits in foreign state litigation arising out of workers' compensation matters. *Id.* at 77, 699 P.2d at 1308. The court noted that:

> In the present case we are dealing with a California worker, a California employer, and an application for workers' compensation benefits from California. Under these circumstances we hold the rights as between the worker and the employer and its carrier (or the worker and the carrier) are governed by California law, not by A.R.S. § 23-1023. The carrier commenced this action within one year of the date of injury pursuant to rights given to it under the applicable California statutes.
>
> Arizona has adopted a policy of allowing a worker injured in a multistate context to choose the state in which to seek compensation. A.R.S. § 23-904(B) permits a foreign worker injured in this state to enforce his rights against his employer in this state if they can reasonably be determined by the courts in this state. Quiles sought and received compensation in California. **We hold that workers' compensation rights are substantive not merely procedural and therefore once the worker has exercised his choice of where to seek compensation the compensation scheme of that state shall apply.**

Id. at 78, 699 P.2d at 1309. (citations omitted and emphasis added).

Here, like the claimant in *Quiles* who litigated in a foreign state concerning his workers' compensation benefits, so too Appellant seeks to litigate in a foreign state benefits related to her Arizona worker's compensation claim. Appellant

sustained an industrial injury in Arizona while a resident of Arizona and received workers' compensation benefits under Arizona law. Applying any law other than Arizona law would substantially alter Appellant's workers' compensation rights. Thus, this court should affirm the district court's order of dismissal.

In the context of workers' compensation subrogation matters, the Iowa Supreme Court has expressly ruled that subrogation rights should be determined in accord with the law of the state under which the claimant has received benefits. *Moad v. Dakota Truck Underwriters*, 831 N.W.2d 111, 118 (Iowa Ct. App. 2015). In *Moad*, the claimant suffered an industrial injury. *Id.* at 112. The carrier reported the incident to South Dakota's workers' compensation administrator, who administered all relevant benefits under South Dakota law. *Id.* The claimant's survivors filed an action in Iowa to recover damages on behalf of the deceased. *Id.* The carrier filed a notice asserting its lien rights. *Id.*

Plaintiffs moved to strike the lien on the basis that Iowa law did not permit a lien under such circumstances. *Id.* at 113. The trial court granted Plaintiff's motion to strike, applying Iowa law. *Id.* On appeal, the Iowa Supreme Court reversed the trial court, noting that:

> Based on our review of the applicable provisions of the Restatement (Second) and the conflict of laws caselaw, we conclude there are sound reasons for applying section 185 to this case. Although conflict rules are rarely perfect, section 185 in most cases will provide a clear rule of decision for workers' compensation carriers and claimants alike. Because workers' compensation is designed to be an efficient method

> for dealing with workplace injuries, we view the application of section 185 as superior to the more open-ended considerations of the most-significant-relationship tests.

Id. at 118.

In *Moad*, the Iowa Supreme Court remanded the matter to the trial court to apply § 185 of the *Restatement (Second) of Conflict of Law. Id.* In doing so, the court noted the predictability and efficiency of § 185's application to workers' compensation matters. *Id.* Accordingly, this Court should apply the local law of the state wherein Appellant filed her workers' compensation claim.

E. The Instant Appeal is Jurisdictionally Defective Because Appellants Have Not Exhausted the Workers' Compensation Administrative Review Process.

Additionally, NRCP 12(b)(3) states that "If the court determines at any time that it lacks subject-matter jurisdiction, the court should dismiss the action." Under Nevada law, a motion to dismiss for lack of subject matter jurisdiction is proper when "a lack of jurisdiction over the subject matter appears on the face of the pleading." *Girola v. Roussille*, 81 Nev. 661, 663, 408 P.2d 918, 919 (1965). Where a statute provides an administrative remedy, declaratory relief is inappropriate. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 960, 194 P.3d 96, 102 (2008). In matters of workers' compensation, NRS 616A.020 provides that the "rights and remedies provided in chapters 616A to 616D, inclusive, of NRS" to a claimant who suffers a workplace injury "shall be exclusive." Under Arizona law, ARS 23-1022

provides that the workers' compensation system is an injured worker's exclusive remedy against *both* the employer and the employer's workers' compensation carrier.

As a result, NRS 616A.020 bars an injured worker from filing *any* action in district court regarding his or her workers' compensation claim prior to the conclusion of the Department of Administration's administrative appeals process. Thusly, any claimant may not file an action directly with the district court but should rather request a hearing within (70) days before the Nevada Department of Administration, Hearing Division. NRS 616C.315 (2021).

Under Nevada law, failure to adhere to administrative appeals deadlines renders a claim determination final and non-justiciable. *Reno Sparks Convention Visitors Auth. v. Jackson*, 112 Nev. 62, 66, 910 P.2d 267, 270 (1996) (holding that the timeframe to request a hearing is mandatory and jurisdictional; failure to timely request a hearing strips the Department of Administration of jurisdiction to adjudicate the matter). Any party aggrieved by the Hearing Officer's Decision and Order may request further review by filing an appeal with the Department of Administration, Appeals Division. NRS 616C.345 (2021).

Subsequent review is *only* available by filing a Petition for Judicial Review with the district court. NRS 233B.130 (2021). Under NRS 233B.130, only the Department of Administration's *final* Decision and Order is subject to judicial

review. Pursuant to NRS 233B.135, the district court should confine its review to the administrative record. In regard to the Department of Administration's final decision and order, the district court may only 1) affirm the order or 2) set aside the order in whole or part. NRS 233B.135 (2021).

Accordingly, under Nevada law, the district court and so this Court is without subject-matter jurisdiction to provide declaratory or injunctive relief in the instant case. First, Appellants did not adhere to the administrative appeals process, which strips the Department of Administration and any subsequent judicial court of jurisdiction. *Supra*, *Jackson*, 112 Nev. 62, 66, 910 P.2d 267, 270 (1996) Second, pursuant to NRS 233B.135, in reviewing a workers' compensation administrative decision, the district court is limited to either 1) affirming the order or 2) setting the order aside in whole or part. NRS 233B.135 does not allow the district court to grant any form of declaratory or injunctive relief in a workers' compensation matter.

Similar to Nevada, Arizona's ARS 23-947 establishes the procedure under which a claimant may administratively appeal a determination of the workers' compensation carrier. Under ARS 23-947(A), an aggrieved party should request a hearing before the Arizona Industrial Commission within ninety (90) days of the date the carrier mailed the notice. Failure to request a hearing within the allotted ninety (90) day period results in the decision becoming "final and res judicata" pursuant to ARS 23-947(B).

What's more, Arizona law also establishes the procedure through which a judicial court can review a workers' compensation case. First, the Arizona Industrial Commission will hold a hearing on the matter in accordance with ARS 23-941 if the claimant timely requests a hearing. The administrative law judge will issue a final order resolving all legal and factual issues. Subsequent to the administrative law judge issuing his or her final order, the only avenue to further appeal is for the aggrieved party to file a petition for writ of certiorari with the Arizona Court of Appeals, as established by ARS 23-951.

ARS 23-951 *also* establishes a judicial court's limited role in reviewing a workers' compensation matter. First, the court's only role is limited to (1) whether the administrative law judge acted "without or in excess of its power" and (2) whether the administrative law judge's findings of fact support the order. Second, under ARS 23-951, the court is limited to either (1) affirming or (2) setting aside the award. At no point does ARS 23-951 allow a judicial court to issue a restraining order or preliminary injunction.

As a result, Appellants' argument is a non-starter. Even if the district court retained jurisdiction over an Arizona workers' compensation case, it is limited to either 1) affirming or 2) setting aside the award or order. Accordingly, under Nevada law, dismissal of the matter is proper because Appellants did not proceed through the proper administrative channels.

IV.
CONCLUSION

For the reasons as stated herein, Respondents requests that this Court affirm the district court's order dated October 26, 2020.

Dated this 4th day of August 2021.

HOOKS MENG & CLEMENT
By:

/s/ Sami Randolph

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V.
CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP3 2(1)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Time New Roman 14 point font. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points, and contains 8,431 words.

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Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of August 2021.

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VI.
CERTIFICATE OF SERVICE

The undersigned, an employee of HOOKS, MENG & CLEMENT hereby certifies that on the 4th day of August 2021, a true and correct copy of **RESPONDENTS' ANSWERING BRIEF,** was served on the party set forth below by Notice of Electronic Filing via the CM/ECF system as maintained by the Court Clerk's Office as follows:

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