

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARIA HARPER; DANIEL
WININGER,

Appellants,

vs.

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

Respondents.

Case No. 82158

Electronically Filed
Sep 27 2021 02:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from a decision in favor of Respondents
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

APPELLANTS' SUPPLEMENTAL APPENDIX, VOLUME I

JASON R. MAIER, ESQ.
Nevada Bar No. 8557
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MAIER GUTIERREZ & ASSOCIATES
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Telephone: (702) 629-7900
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Attorneys for Appellants

JOHN P. BLUMBERG, ESQ.
California Bar No. 70200
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BLUMBERG LAW CORPORATION
444 West Ocean Boulevard, Suite 1500
Long Beach, California 90802
Telephone: (562) 437-0403
Facsimile: (562) 432-0107
Attorneys for Appellants

Comes now, Appellants, Daria Harper and Daniel Wininger, by and through their attorneys, MAIER GUTIERREZ & ASSOCIATES and BLUMBERG LAW CORPORATION, and submit their Appellants' Supplemental Appendix.

LIST OF EXHIBITS TO BE RELIED UPON

DATE	DESCRIPTION	VOLUME	PAGES
01/25/2021	Applicant's Request for Review and Motion to Hold Proceedings in Abeyance	I	SA000001-000002
01/28/2021	Decision Upon Review by the Arizona Industrial Commission	I	SA000005-000007
09/08/2021	Docket of Case No. 1 CA-IC 21 0010 in Court of Appeals of the State Of Arizona printed September 8, 2021	I	SA000014-000015
01/25/2021	Notice of Review by the Arizona Industrial Commission	I	SA000003-000004
02/24/2021	Special Action – Industrial Commission	I	SA000008-000009
02/25/2021	Writ of Review Issued By the Court of Appeals of the State Of Arizona Case No. 1 CA-IC 21-0010	I	SA000010-000013

CERTIFICATE OF SERVICE

I certify that on the 27th day of September, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' SUPPLEMENTAL APPENDIX, VOLUME I** shall be made in accordance with the Master Service List as follows:

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

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

and

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

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCIATES

SCHIFFMAN LAW OFFICE, P.C.

4506 NORTH 12TH STREET
PHOENIX, ARIZONA 85014
(602) 266-2667

ALAN M. SCHIFFMAN, #004257
Attorney for Plaintiff

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

DARIA HARPER,

Applicant,

vs.

ISLANDER RV RESORT,

Defendant Employer,

**COPPERPOINT GENERAL INSURANCE
CO.,**

Defendant Insurance Carrier.

) ICA Claim No.: 20142520533

) Carrier Claim No.: 14G01532

) Date of Injury: 08/11/2014

) ALJ Case No.: ALJ0004659

) **APPLICANT'S REQUEST FOR REVIEW
and MOTION TO HOLD PROCEEDINGS
IN ABEYANCE**

) **(Assigned to Hon. Kenneth J. Hill)**

Applicant, by and through counsel undersigned, pursuant to the provisions of A.R.S. §23-942(D) and 23-943, requests the presiding judge review the Decision Upon Hearing and Findings and Award for Statutory Lien Pursuant to A.R.S. §23-1023 entered on December 27, 2020. In support of this Request for Review Applicant relies upon all of the memorandum and submissions already on file in this matter. Applicant submits that pursuant to choice of law principles that the ALJ should follow the law of the State of Nevada with respect to whether there is an enforceable lien. Applicant would further advise the ALJ that the issue of whether a workers' compensation carrier lien is enforceable against the settlement of the settlement of a medical malpractice claim is a matter of first impression in Nevada and requests that this matter be held in abeyance until the Nevada courts reach a final determination with respect to this issue. In support of Applicant's request that this matter be held in abeyance pending the outcome of the Nevada proceedings, Applicant attaches a copy of the following documents:

- District Court Clark County, Nevada Order dated 10/26/20;
- Notice of Appeal filed 11/24/2020; and,
- Minute Order – Motion to Certify Order Entered on 10/26/20 as Final Pursuant to NRCP 54(B).

As previously stated, there is a serious risk of inconsistent decisions if this matter proceeds before Nevada renders a final decision with respect of the rights of CopperPoint vis-à-vis Applicant.

RESPECTFULLY SUBMITTED this 25th day of January, 2021.

SCHIFFMAN LAW OFFICE, P.C.



By _____
Alan M. Schiffman, Esq.
4506 North 12th Street
Phoenix, AZ 85014
Attorney for Applicant

ORIGINAL of the foregoing
filed this 25th day of January, 2021 with:

Honorable Kenneth J. Hill
Administrative Law Judge
Industrial Commission of Arizona
800 West Washington
Phoenix, Arizona 85007

A COPY of the foregoing
e-mailed this 25th day of January, 2021 to:

Kirk A. Barberich, Esq.
LUNDMARK, BARBERICH, LaMONT & SLAVIN, P.C.
333 East Osborn Road, Suite 150
Phoenix, AZ 85012
Attorney for Defendants



Debra L. Robinson

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

DARIA HARPER

Applicant(s),

vs.

ISLANDER RV RESORT

Defendant Employer (s),

COPPERPOINT GENERAL INSURANCE CO

Defendant Insurance Carrier(s),

ICA Claim No. 20142520533

Ins. Claim No. 14G01532

Date of Injury: 8/11/2014

ALJ Case No. ALJ0004659

NOTICE OF REVIEW

Pursuant to Arizona Revised Statutes sections 23-942(D) and 23-943(A) and (B) the above named applicant on January 25, 2021, filed with the Industrial Commission a Request for Review of Award entered on December 27, 2020.

The undersigned will review the record of proceedings and any memoranda and response submitted and will enter a Decision Upon Review.

The Industrial Commission of Arizona



Kenneth J. Hill

Administrative Law Judge

Date Signed: Jan 25, 2021

The Industrial Commission complies with the Americans with Disabilities Act of 1990. If you need this document in alternative format, call (602) 542-5241.

THE INDUSTRIAL COMMISSION OF ARIZONA



NOTICE OF SERVICE

The attached NOTICE OF REVIEW was placed in, and is now a part of, the Commission file, and a copy thereof was served upon all parties hereinafter named on 01/26/2021 (1) by depositing copies in the United States Mail in postage-prepaid, sealed envelopes addressed to such parties at the addresses shown below; or (2) if parties have waived service by United States Mail and specifically authorized alternative forms of service, by serving copies in the manners specifically authorized (designated below):

ALAN SCHIFFMAN, ESQ.
4506 N 12TH ST
PHOENIX, AZ 85014
VIA Email Notification(wc-service@schiffmanlaw.com)
ATTORNEY FOR APPLICANT

KIRK BARBERICH, ESQ.
333 E OSBORN RD STE 150
PHOENIX, AZ 85012
VIA Email Notification(e-service-barberich@klblaw.com)
ATTORNEY FOR DEFENDANTS

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

DARIA HARPER

Applicant(s),

vs.

ISLANDER RV RESORT

Defendant Employer (s),

COPPERPOINT GENERAL INSURANCE CO

Defendant Insurance Carrier(s).

ICA Claim No. 20142520533

Ins. Claim No. 14G01532

Date of Injury: 8/11/2014

ALJ Case No. ALJ0004659

DECISION UPON REVIEW AFFIRMING DECISION UPON HEARING AND FINDINGS AND AWARD FOR STATUTORY LIEN PURSUANT TO A.R.S. 23-1023

On December 27, 2020, the undersigned issued the Decision upon Hearing and Findings and Award for Statutory Lien pursuant to A.R.S. § 23-1023. On January 25, 2021, Applicant filed a Request for Review and Motion to Hold Proceedings in Abeyance. Notice of Review was issued on January 25, 2021. Defendants filed their Response to Request for Review on January 27, 2021.

The undersigned, having fully reconsidered the file, records, and all matters hereunto appertaining, now enters Decision upon Review Affirming Decision upon Hearing and Findings and Award for Statutory Lien pursuant to A.R.S. § 23-1023 as follows.

FINDINGS

1. Having fully reconsidered the evidence presented, the file, and all matters pertinent thereto, the Decision upon Hearing and Findings and Award for Statutory Lien pursuant to A.R.S. § 23-1023 entered December 27, 2020, is fully supported by the evidence and the law and is therefore affirmed.

2. Having found that the Decision upon Hearing and Findings and Award for Statutory Lien pursuant to A.R.S. § 23-1023 should be affirmed, and having found therein that the disputes in the present matter are controlled by Arizona workers' compensation laws, there is no reasonable basis to hold this matter in abeyance pending the outcome of further litigation in Nevada.

AWARD

IT IS ORDERED that the Decision upon Hearing and Findings and Award for Statutory Lien pursuant to A.R.S. § 23-1023 entered December, 2020, is hereby **AFFIRMED**.

IT IS FURTHER ORDERED that Applicant's Motion to Hold Proceedings in Abeyance is **DENIED**.

NOTICE: Any party dissatisfied with the Decision Upon Review may apply to the Arizona Court of Appeals, Division One, 1501 W. Washington, Phoenix, Arizona 85007, for a review of the lawfulness of the decision pursuant to the provisions of Arizona Revised Statutes section 12-120.21(B) and 23-951(A). *See also* Arizona Revised Statutes, Vol. 17B, Rule 10, Rules of Procedure for Special Actions. This Decision Upon Review shall be final unless an application is made within **THIRTY (30) DAYS** of the mailing of this Decision to the parties. *See* A.R.S. § 23-943(H).

The Industrial Commission of Arizona



Kenneth J. Hill
Administrative Law Judge

Date Signed: Jan 28, 2021

THE INDUSTRIAL COMMISSION OF ARIZONA



NOTICE OF SERVICE

The attached DECISION UPON REVIEW AFFIRMING DECISION UPON HEARING AND FINDINGS AND AWARD FOR STATUTORY LIEN PURSUANT TO A.R.S. 23-1023 was placed in, and is now a part of, the Commission file, and a copy thereof was served upon all parties hereinafter named on 01/29/2021 (1) by depositing copies in the United States Mail in postage-prepaid, sealed envelopes addressed to such parties at the addresses shown below; or (2) if parties have waived service by United States Mail and specifically authorized alternative forms of service, by serving copies in the manners specifically authorized (designated below):

ALAN SCHIFFMAN, ESQ.
4506 N 12TH ST
PHOENIX, AZ 85014
VIA Email Notification(wc-service@schiffmanlaw.com)
ATTORNEY FOR APPLICANT

KIRK BARBERICH, ESQ.
333 E OSBORN RD STE 150
PHOENIX, AZ 85012
VIA Email Notification(e-service-barberich@klblaw.com)
ATTORNEY FOR DEFENDANTS

SCHIFFMAN LAW OFFICE, P.C.

4506 NORTH 12TH STREET
PHOENIX, ARIZONA 85014
Office: 602-266-2667
Facsimile: 602-266-0141

ALAN M. SCHIFFMAN, #004257
Attorney for Plaintiff

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

DARIA HARPER,

Petitioner Employee,

vs.

INDUSTRIAL COMMISSION OF
ARIZONA,

Real Party in Interest

ISLANDER RV RESORT,

Respondent Employer,

COPPERPOINT GENERAL
INSURANCE COMPANY,

Defendant Carrier.

1 CA-IC:

ICA Claim No.: 20142520533

Carrier Claim No.: 14G01532

Date of Injury: 08/11/20140

**SPECIAL ACTION – INDUSTRIAL
COMMISSION**

Petitioner requests that the Court of Appeals review the Decision Upon Hearing of the Industrial Commission in ICA No. 20142520533 dated December 27, 2020 and the Decision Upon Review Affirming Decision Upon Hearing and Findings and Award for

1 Statutory Lien Pursuant to A.R.S. §23-1023 dated January 28, 2021 and that the Clerk of the
2 Court of Appeals issue a Writ of Review directing the Industrial Commission to certify its
3 records, proceedings and evidence in this matter to the Court of Appeals, consistent with
4 17B A.R.S. Special Actions, Rules of Proc., Rule 10 (c).

5 DATED this 24th day of February, 2021.

6 SCHIFFMAN LAW OFFICE, P.C.

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8
9 By: _____

10 Alan M. Schiffman

11 Attorney for Petitioner Employee
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IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DARIA HARPER,)	Court of Appeals
	)	Division One
Petitioner,	)	No. 1 CA-IC 21-0010
)	
v.	)	ICA Claim
	)	No. 20142-520533
THE INDUSTRIAL COMMISSION OF)	
ARIZONA,	)	Carrier Claim
	)	No. 14G01532
Respondent,)	
)	
ISLANDER RV RESORT,)	
)	
Respondent Employer,)	
)	
COPPERPOINT GENERAL INSURANCE)	
COMPANY,)	
)	
Respondent Carrier.)	
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WRIT OF REVIEW

TO: THE INDUSTRIAL COMMISSION OF ARIZONA

YOU ARE HEREBY DIRECTED to Certify to the Court of Appeals, Division I within ten (10) days from the date hereof all records, proceedings and evidence in the above entitled and numbered cause, to the end that the decision of The Industrial Commission of Arizona in Claim No. 20142-520533 may be reviewed by the Court of Appeals, Division I.

By copy of this Writ, petitioner is reminded that the opening brief is due April 12, 2021, and the respondent employer/carrier is reminded that a filing fee of \$140.00 is due and payable no later than ten working days from the date of this Writ.

Regularly updated information about the status of this case may be viewed by visiting

<http://apps.supremecourt.az.gov/aacc/1ca/1cacase.htm> and clicking on the "Active Industrial Commission cases" from the Court of Appeals Division One menu. A summary of Division One's policies affecting procedural matters not governed by rules of court may be viewed by clicking on the "Policies" link under the "Filer Information" section of the home page menu.

AMY M. WOOD, CLERK

By

jt

Deputy Clerk



IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DARIA HARPER,	)	Court of Appeals
	)	Division One
Petitioner,	)	No. 1 CA-IC 21-0010
)	
v.	)	ICA Claim
	)	No. 20142-520533
THE INDUSTRIAL COMMISSION OF)	
ARIZONA,	)	Carrier Claim
	)	No. 14G01532
Respondent,)	
)	
ISLANDER RV RESORT,)	
)	
Respondent Employer,)	
)	
COPPERPOINT GENERAL INSURANCE)	
COMPANY,)	
)	
Respondent Carrier.)	
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CERTIFICATE OF MAILING
RE: WRIT OF REVIEW

A copy of the above-specified document was sent February 25, 2021 to:

Alan M Schiffman
Schiffman Law Office PC

Kirk A Barberich
Lundmark Barberich La Mont & Slavin PC

Gaetano J Testini, Chief Counsel
Industrial Commission of Arizona
Attorney for: Respondent ICA

Page Two
1 CA-IC 21-0010
20142-520533

Amy M. Wood, Clerk

By jt
Deputy Clerk

The Court of Appeals, Division One offers subscription lists to receive emails regarding new decisions and informational news items. Interested persons can text "COALINFO" to 22828 to sign up for both decisions and news. Individuals wishing to receive only decisions or only news may visit the website: <http://www.azcourts.gov/coal/> and click on "subscribe".

Court of Appeals, Division One
Industrial Commission

1 CA-IC 21-0010

HARPER v. ISLANDER/COPPERPOINT

Appellate Case Information

Case Filed: 24-Feb-2021

Case Closed:

Dept/Composition

Side 1. DARIA HARPER, Petitioner

(Litigant Group) HARPER

- Daria Harper

Attorney for: Petitioner

Alan M Schiffman, Esq. (AZ Bar No. 4257)

Side 2. THE INDUSTRIAL COMMISSION OF ARIZONA,

Respondent,

ISLANDER RV RESORT,

Respondent Employer,

COPPERPOINT GENERAL INSURANCE COMPANY,

Respondent Carrier., Respondent

(Litigant Group) ICA

- Industrial Commission of Arizona

Attorney for: Respondent ICA

Gaetano J Testini, Esq. (AZ Bar No. 20941)

(Litigant Group) ISLANDER/COPPERPOINT

- Islander RV Resort, Respondent Employer

Attorney for: Respondent Employer/Carrier

- Copperpoint General Insurance Company, Respondent Carrier

Kirk A Barberich, Esq. (AZ Bar No. 11386)

PREDECESSOR CASE (S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
ICA 20142-520533					
INSCA 14G01532			Comments: (none)		

OPEN DUE DATE

Reply Brief due

Due By: Tuesday, September 21, 2021

Re: FILED: Respondent Employer's and Carrier's Answering Brief; Certificate of Compliance; Certificate of Service; Certificate of Filing (Respondent)

[1 extension]

15 PROCEEDING ENTRIES

1.	24-Feb-2021	FILED: Special Action - Industrial Commission; Certificate of Service (Petitioner)
2.	25-Feb-2021	FILED: Writ of Review FILED: Certificate of Mailing re: Writ of Review
3.	25-Feb-2021	FILED: Notice of Appearance as Counsel of Record; Certificate of Service (Respondent Employer)
4.	2-Mar-2021	RECEIPT No.: 2021-00258 ; \$280.00, Authorization: Ref1: 60034410809, Applied to: HARPER - Class A Filing Fee (\$280.00) Paid for: Schiffman Law Office PC - By nCourt LLC
5.	4-Mar-2021	RECEIPT No.: 2021-00267 ; \$140.00, Authorization: #62020216525, Applied to: ISLANDER/COPPERPOINT - Class B Filing Fee (\$140.00) Paid for: Lundmark Barberich La Mont & Slavin PC - By nCourt LLC
6.	10-Mar-2021	FILED: Notice of Appearance; Certificate of Service (Respondent)
7.	10-Mar-2021	FILED: e-Record on Appeal: ALJ Hearing File (2 Volumes) Claims File (1 Volume)
8.	7-Apr-2021	FILED: Stipulation For Extension of Time To File Opening Brief; Certificate of Service of Stipulation for Extension of Time to File Opening Brief (Petitioner)
9.	8-Apr-2021	ORDERED: Stipulation For Extension of Time To File Opening Brief (Petitioner) = DENIED. Barbara Vidal Vaught ProTem Judge - Author

[163757]

Court of Appeals, Division One**Industrial Commission****1 CA-IC 21-0010****HARPER v. ISLANDER/COPPERPOINT****15 PROCEEDING ENTRIES**

- | | | |
|-----|-------------|---|
| 10. | 8-Apr-2021 | FILED: Amended Stipulation for Extension of Time to File Opening Brief; Certificate of Service of Amended Stipulation for Extension of Time to File Opening Brief (Petitioner) |
| 11. | 9-Apr-2021 | ORDERED: Amended Stipulation for Extension of Time to File Opening Brief (Petitioner) = GRANTED. Due date EXTENDED from Monday, 04-12-2021 to Wednesday, 05-12-2021. Barbara Vidal Vaught ProTem Judge - Author |
| 12. | 12-May-2021 | FILED: Petitioner's Opening Brief; Certificate of Compliance; Certificate of Service of Opening Brief (Petitioner) |
| 13. | 18-Jun-2021 | FILED: Respondent Employer's and Carrier's Answering Brief; Certificate of Compliance; Certificate of Service; Certificate of Filing (Respondent) |
| 14. | 13-Aug-2021 | FILED: Stipulation for Extension of Time to File Reply Brief; Certificate of Service of Stipulation to Extend Time to File Reply Brief (Petitioner) |
| 15. | 13-Aug-2021 | ORDERED: Stipulation for Extension of Time to File Reply Brief (Petitioner) = GRANTED. Due date EXTENDED from Tuesday, 07-13-2021 to Tuesday, 09-21-2021. Barbara Vidal Vaught ProTem Judge - Author |