

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 LAS VEGAS METROPOLITAN
3 POLICE DEPARTMENT and CCMSI,

4 Appellants,

5 vs.

6 ROBERT HOLLAND,

7 Respondent.

 Electronically Filed
 Jun 22 2022 09:08 a.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

10 CASE NO.: 82843

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12 **RESPONDENT’S ANSWER TO PETITION FOR REVIEW**

13 Comes Now, the Respondent, ROBERT HOLLAND (hereinafter
14 “Respondent” or “Holland”), by and through his attorneys of record, LISA M.
15 ANDERSON, ESQ., and JASON D. MILLS, ESQ., of GGRM LAW FIRM, and
16 submits his Answer to Petition for Review as requested by this Honorable Court
17 on June 14, 2022.

18 This Response conforms with the provisions of Nevada Rule of Appellate
19 Procedure (“NRAP”) 40B, NRAP 32.

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21 **POINTS AND AUTHORITIES**

22 On April 20, 2022, the Court of Appeals of the State of Nevada issued an
23 Order of Affirmance in Case Number 82843-COA, and the Respondent
24 subsequently moved the Court of Appeals for publication of the same. On May 23,
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1 2022, the Appellants’, Las Vegas Metropolitan Police Department and Cannon
2 Cochran Management Services, Inc., (“Appellants’”) filed a Petition for Review
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4 by the Supreme Court of Nevada of the Order of Affirmance. On June 14, 2022
5 this Honorable Court issued its Order Directing Answer to Petition for Review,
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7 and ordered that the Respondent file and serve an answer to the Appellants’
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9 Petition.

10 Pursuant to NRAP 40B(a), the following are factors that will be considered
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12 by the Supreme Court in determining whether to grant or deny a petition for
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14 review:

- 15 (1) Whether the question presented is one of first
16 impression of general statewide significance;
- 17 (2) Whether the decision of the Court of Appeals
18 conflicts with a prior decision of the Court of Appeals,
19 the Supreme Court, or the United States Supreme Court;
20 or
- 21 (3) Whether the case involves fundamental issues of
22 statewide public importance.

23 A. The question presented is not one of first impression.

24 The first factor to be considered under NRAP 40B for a Petition for Review
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26 by the Supreme Court is whether the question presented is one of first impression
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28 of general statewide significance. While the Respondent acknowledges that the
Order of Affirmance issued by the Court of Appeals has statewide significance



1 and is applicable beyond the parties of this case, it does not present a question of
2 first impression.

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4 A case of first impression is “a case that presents the court with an issue of
5 law that has not previously been decided by any controlling legal authority in that
6 jurisdiction.” *See* CASE, Black's Law Dictionary (11th ed. 2019). Rather than
7 posing a question of first impression, the Order of Affirmance provides much
8 needed clarification on existing Nevada Supreme Court case law. Specifically, the
9 Order of Affirmance issued in this matter significantly clarifies a rule of law that
10 was previously announced by the Supreme Court of Nevada in Emps. Ins. Co. of
11 Nevada v. Daniels, 122 Nev. 1009 (2006).

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15 In Daniels, the Court examined the requirements a claimant must meet in
16 order to receive benefits for workers’ compensation under NRS 617.457,
17 specifically addressing the “conclusive firefighters’ presumption” which
18 “excludes firefighters with heart disease from having to prove that the disease
19 arose out of the course of employment.” Daniels at 1015 (2006). In its Order of
20 Affirmance, the Court of Appeals provides an important clarification and
21 elaboration on the Supreme Court’s holding in Daniels regarding an employer’s
22 ability to defend against a claim which satisfies conclusive presumption.
23 Specifically, this Order clarifies that in order to bar a claimant who otherwise
24 qualifies for benefits under NRS 617.457, the employer must show (1) that the
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1 claimant has predisposing conditions, (2) that the claimant was ordered, in writing,
2 to correct these conditions, and (3) that it is the employer, not the claimant, that
3 owns the burden of proof that these corrections are actually within the claimant's
4 ability.
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6 As the Order of Affirmance clarifies a rule of law previously announced by
7 this Honorable Court, the Respondent contends that it cannot, by definition, be
8 deemed a question of first impression.
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11 B. The Order of Affirmance does not conflict with a prior decision of the Court
12 of Appeals, the Supreme Court, or the United States Supreme Court.

13 The Appellants' do not contend, in its Petition, that the Order conflicts with
14 a prior decision of the Court of Appeals, the Supreme Court, or the United States
15 Supreme Court, but as it is a factor to consider, the Respondent will address. As
16 referenced above, the Order of Affirmance significantly clarifies an existing rule
17 of law previously announced by this Court. The Nevada Supreme Court has
18 previously addressed the questions surrounding predisposing conditions and the
19 related burdens of proof under NRS 617.455 and NRS 617.457 in Emps. Ins. Co.
20 of Nevada v. Daniels, 122 Nev. 1009 (2006). Rather than conflicting, the Order of
21 Affirmance clarifies the ruling in Daniels, and therefore prior rulings from
22 Nevada's appellate courts remain intact through the issuance of the underlying
23 Order.
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C. The Order of Affirmance involves fundamental issues of statewide public importance.

The third and final factor identified in NRAP 40(B) is whether the case involves fundamental issues of statewide importance. Regarding this factor, the Respondent acknowledges that this case certainly involves fundamental issues of statewide public importance. NRS 617.455 and NRS 617.455 allow for qualified individuals (police officers, firefighters, corrections officers etc.) to file claims for diseases of the lung and diseases of the heart. Further, these qualified individuals are provided with a statutory carveout from ordinary elements of workers' compensation law in Nevada, specifically the conclusive presumption that these diseases of the lung and heart are directly related to the individual's occupation.

However, there is another portion of both statutes that acknowledges a defense that can be raised to the conclusive presumption, which is found in NRS 617.455(7) and NRS 617.457(11), and this defense was first addressed in Daniels, and later clarified in the underlying Order of Affirmance. Insurers, Third-Party Administrators, and Self-Insured Employers have mischaracterized the holdings in Daniels in order to inappropriately shift the burden of proof regarding correctability back onto first responders across Nevada. The Respondent's case is not unique, as there have been hundreds of police officers, firefighters, and corrections officers who have filed claims under the Heart/Lung statutes in this



1 past year alone. And, as a result, there have been numerous opportunities for
2 insurers across the board to deny liability for these claims based solely on the mere
3 existence of predisposing conditions. Further, the administrative hearings and
4 appeals offices have been interpreting the law in line with this mischaracterization
5 by the defense bar.
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8 Accordingly, this Order of Affirmance certainly involves fundamental
9 issues of statewide public importance and has application far beyond the
10 Respondent, the Las Vegas Metropolitan Police Department, and CCMSI.
11 Therefore, the Respondent acknowledges that the third identified factor for
12 consideration in NRAP 40(B) has been satisfied, however the first two factors of
13 NRAP 40B have not been satisfied and thus, on balance the matter should not be
14 reheard by the entire Court.
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18 Respectfully submitted this 22nd day of June 2022.
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