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PROVIDENCE CORP. DEVELOPMENT
DBA: MILLER HEIMAN, INC.;
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and CNA CLAIMSPLUS

Electronically Filed
Jan 21 2022 10:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

PROVIDENCE CORP. DEVELOPMENT
DBA: MILLER HEIMAN, INC.;
GALLAGHER BASSETT SERVICES, INC.;
and CNA CLAIMSPLUS,

CASE NO: CV20-02092
DEPT. NO.: VIII

Appellants,

vs.

KAYCEAN BUMA, as the surviving spouse,
and DELANEY BUMA, as the surviving child
of JASON BUMA (Deceased),

Respondents.

NOTICE OF APPEAL

TO: KAYCEAN BUMA and DELANEY BUMA, Respondents and,

TO: CHARLES DIAZ, ESQ., DIAZ & GALT, counsel of record for Respondents.

NOTICE IS HEREBY GIVEN that Appellants, PROVIDENCE CORP. DEVELOPMENT
DBA: MILLER HEIMAN, INC.; GALLAGHER BASSETT SERVICES, INC.; and CNA
CLAIMSPLUS (hereinafter referred to as "Appellants"), in the above-entitled action, hereby appeal to
the Supreme Court of the State of Nevada from the attached "Decision and Order Granting Petition

1 For Judicial Review” entered in this action on December 23, 2021 which granted Respondents’
2 Petition for Judicial Review and the “Notice of Entry of Order” filed on December 24, 2021.

3 DATED this 12th day of January, 2022.

4 Respectfully submitted,

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By: /s/ L. Michael Friend

8 JOHN P. LAVERY, ESQ.

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16 Attorneys for Appellants

17 PROVIDENCE CORP. DEVELOPMENT

18 DBA: MILLER HEIMAN, INC.;

19 GALLAGHER BASSETT SERVICES, INC.;

20 and CNA CLAIMSPUS
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Index of Documents

Exhibit 1 Notice of Entry of Order, CV20-02092 1-16

1 **CERTIFICATE OF MAILING**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 12th day of
3 January, 2022, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a
4 true copy of the same for mailing, first class mail, as follows:

5 Jason Buma
6 c/o The Estate of Jason Buma
7 1951 Rolling Brook Lane
8 Reno, NV 89519-8342

Michelle L. Morgando, Esq., Sr. Appeals
Officer
NEVADA DEPT. OF ADMINISTRATION
Appeals Division, Appeals Office
2200 South Rancho Drive, Suite 220
Las Vegas, NV 89102

8 Charles Diaz, Esq.
9 DIAZ & GALT
10 443 Marsh Avenue
11 Reno, NV 89509

Laura Freed, Director
DEPARTMENT OF ADMINISTRATION
515 E. Musser Street, Suite 300
Carson City, NV 89701

12 PROVIDENCE CORP. DEVELOPMENT
13 DBA MILLER HEIMAN, INC.
14 Attn: Risk Management
15 10509 Professional Circle
16 Reno, NV 89521

Aaron D. Ford, Nevada Attorney General
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, NV 89701

17 Michelle Ferguson, Workers' Comp Senior
18 Claims Representative
19 GALLAGHER BASSETT SERVICES INC.
20 P.O. Box 2934
21 Clinton, IA 52733

22 CNA ClaimPlus
23 Attn: Betty Diaz
24 PO Box 8317
25 Chicago, IL 60680

26 Sheila Y. Moore, Esq., Appeals Officer
27 NEVADA DEPT. OF ADMINISTRATION
28 Appeals Division, Appeals Office
1050 E. William Street, Ste. 450
Carson City, NV 89701

Keli Taylor

An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

1 **SECOND JUDICIAL DISTRICT COURT**
2 **COUNTY OF WASHOE, STATE OF NEVADA**

3 **AFFIRMATION**
4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document, Notice of Appeal
6 filed in case number: CV20-02092

7
8 ☒ Document does not contain the Social Security number of any person.

9 **- OR -**

10
11 ☐ Document contains the Social Security number of a person as required by:

12 A specific state or federal law, to wit:

13 _____
14 **- or -**

15 ☐ For the administration of a public program

16 **- or -**

17 ☐ For an application for a federal or state grant

18 **- or -**

19 ☐ Confidential Family Court Information Sheet
20 (NRS 125.130, NRS 125.230 and NRS 125B.055)

21
22 Date: 01/12/22

/s/ L. Michael Friend
23 (Signature)

24 L. MICHAEL FRIEND, ESQ.
(Print Name)

25 APPELLANTS
26 (Attorney for)

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“EXHIBIT 1”

CODE: 2540
Charles C. Diaz, Esq.
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443 Marsh Avenue
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Attorney for Petitioner

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

* * * * *

| | |
|---|----------------------|
| KAYCEAN BUMA, as the surviving spouse, and |) Case No CV20-02092 |
| DELANEY BUMA, as the surviving child of JASON |) |
| BUMA (Deceased) |) Dept No 8 |
| Petitioner, |) |
| vs. |) |
| PROVIDENCE CORP. DEVELOPMENT DBA |) |
| MILLER HEIMAN, INC., GALLAGHER BASSETT |) |
| SERVICES, INC., CNA CLAIMSPPLUS, and the |) |
| DEPARTMENT OF ADMINISTRATION |) |
| APPEALS OFFICE, |) |
| Respondents. |) |

NOTICE OF ENTRY OF ORDER

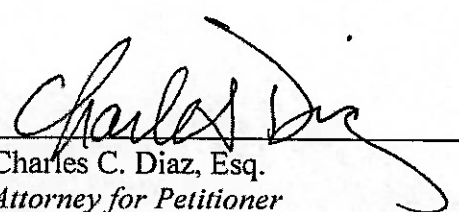
PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on
December 23, 2021. A copy of said document is attached hereto.

AFFIRMATION

The undersigned hereby affirms that this document does not contain the social security
number of any person.

DATED this 24th day of December, 2021.

By:


Charles C. Diaz, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I HEREBY CERTIFY that on this date, I served a true and correct copy of the within **NOTICE OF ENTRY OF ORDER** via U.S. Mail at Reno, Nevada, Facsimile, email as indicated, to the following:

Department of Administration [US MAIL]
Appeals Division
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Clinton, IA 52733

CNA Claimsplus [US MAIL]
P. O. Box 8317
Chicago, IL 60680

THE ESTATE OF JASON BUMA [US MAIL]
1951 Rolling Brook Lane
Reno, NV 89519-8342

DATED this 24 day of December, 2021.


Charles C. Diaz

LIST OF EXHIBITS

Exhibit 1 – Order Granting Petition for Judicial Review..... 1 pg

1
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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 KAYCEAN BUMA, as the surviving spouse,
9 and DELANEY BUMA, as the surviving child
10 of JASON BUMA (Deceased)

Petitioners,

11 vs.

12 PROVIDENCE CORP. DEVELOPMENT DBA
13 MILLER HEIMAN, INC., GALLAGHER
14 BASSETT SERVICES, INC., CNA
15 CLAIMSPLUS, and the DEPARTMENT OF
ADMINISTRATION APPEALS OFFICE,
Respondents.

Case No. CV20-01221

Dept. No. 8

16
17 **DECISION AND ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

18 Petitioners, Kaycean and Delaney Buma, filed a Petition for Judicial Review from the
19 appeals officer's December 2, 2020, Order, denying Petitioners' request for death benefits
20 pursuant to NRS 616C.505. Pursuant to NRS 233B.130, this Court has jurisdiction to adjudicate
21 claimant's Petition for Judicial Review.
22

23 This matter originated with the petitioners' May 11, 2015, request for death benefits after
24 Jason Buma's accidental death on March 29, 2015, while on a business trip. Petitioners timely
25 appealed the insurer's determination denying benefits to the hearing officer who affirmed the
26 insurer's determination. Petitioners appealed to the appeals officer who affirmed the Hearing
27 Officer's decision on February 7, 2017. The petitioners then filed a Petition for Judicial Review
28

1 in the district court. On July 24, 2017, this Court denied said Petition and affirmed the appeals
2 officer's decision. Petitioners then appealed the matter to the Nevada Supreme Court.

3 On December 12, 2019, the Nevada Supreme Court, *en banc*, vacated this Court's decision
4 and remanded the case to the appeals officer for, "the appeals officer to conduct a hearing for
5 additional fact finding, to be guided by the traveling employee rule and its exception for distinct
6 personal errands as set out in this decision." *Buma v. Providence Corp., Dev.*, 135 Nev. Adv. Op.
7 60 (2019)
8

9 In its recent decision in *Buma*, the Court provided a template for analysis of worker's
10 compensation issues pertaining to traveling employees. The Court unanimously accepted
11 Professor Larsens' *Traveling Employee Doctrine* and clearly defined how NRS 616B.612(3)
12 applies to traveling employees, and more specifically to the Petitioners claim for death benefits
13 as a result of Jason Buma's unfortunate accident and death. *Buma at 1-14.*
14

15 The Nevada Supreme Court confirmed that, "NRS 616B.612(3) codifies this majority
16 rule." The *Traveling Employee Doctrine* states that, "traveling employees may generally tend to
17 their reasonable recreational needs during downtime without leaving the course of employment
18 under this standard." *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op. 60, p. 10, 453 P.3d 904,
19 909 (Nev. 2019) citing to *Ball-Foster*, 177 P.3d at 700.
20

21 The Nevada Supreme Court framed the totality of the circumstances of this case,
22 answering all the necessary questions except one, which it distilled and set forth for the appeals
23 officer to answer on remand: "[W]hether Jason's ATV outing *with his business associate/co-*
24 *presenter while on a business trip* amounted to a 'distinct personal departure on a personal
25 errand.'" *Buma at 13. Emphasis included in the Nevada Supreme Court's opinion.*
26
27
28

Upon remand, neither party offered any new evidence and relied on the evidence presented in the prior appeals officer hearing. The parties submitted written closing arguments to the appeals officer in light of the newly adopted “traveling employee doctrine” and the narrow inquiry set by the Court as to whether or not the ATV ride could be considered a “material deviation in time or space from carrying out the trip’s employment-related objectives”. *Buma* at 9.

On remand, the appeals officer held that, *Buma* was tending to his reasonable recreational needs during downtime while riding the ATV and concluded that as a traveling employee, there was necessarily a work connection to the activity. The appeals officer also found that “there was no material deviation in time or space from the place where Jason was staying.” The appeals officer ultimately denied benefits, however, because she found that the activity was not foreseeable, and the record on appeal contained no evidence that the employer knew or should have known that Mr. Buma would embark on an ATV ride.

Petitioners filed a Petition for Judicial Review of the Appeals Officer's decision. After careful consideration of the record, arguments of counsel, and the Nevada Supreme Court's decision in *Buma v. Providence Corp. Dev., supra*, this Court grants the Petition and Orders that Petitioners are entitled to workers' compensation death benefits and interest.

STATEMENT OF FACTS

Jason Buma was in Houston, Texas, on March 29, 2015, to attend an oil and gas convention on behalf of his employer, Miller Heiman, Inc., in the morning on the very next day, March 30. Miller Heiman is a company engaged in sales training to increase productivity. Mr. Buma's responsibilities, as vice-president of the sales division, for Miller Heiman required him to travel all over the country to meet with potential clients, give sales presentations, and oversee training teams.

1 Michael O'Callaghan was an independent contractor for Miller Heiman, and a co-worker
2 of Mr. Buma's. O'Callaghan and Buma had a professional relationship and regularly worked
3 together on behalf of Miller Heiman to get new clients and to work on projects and proposals. On
4 the day in question, Mr. Buma was staying at O'Callaghan's ranch in Texas so they could prepare
5 for their presentation on behalf of Miller Heiman at the oil and gas convention on the morning
6 following.

8 Buma arrived at O'Callaghan's ranch around 3:30 in the afternoon, after traveling all day
9 to get to Houston, Texas. They were planning to go to dinner and prepare for the next day. Before
10 dinner, to unwind a little from the day's travel, the two went for a short ATV ride around the
11 ranch property. A few minutes into the ride, Buma was involved in an accident in which the ATV
12 apparently rolled over, causing his death. Because Buma was in Texas for the convention solely
13 as part of his employment with Miller Heiman, and because Buma was staying at O'Callaghan's
14 ranch for the sole purpose of their preparing for the presentation on behalf of Miller Heiman at
15 the convention the next day, and because the brief ATV ride was not an unreasonable departure
16 – but akin to a vigorous walk around hotel grounds after a long flight – as set forth more fully in
17 this opinion, and in accordance with the Nevada Supreme Court's decision in *Buma v. Providence*
18 *Corp. Dev., supra*, Buma's death is covered under the traveling employee doctrine and the
19 Petitioners are due appropriate benefits.

23 I. DISCUSSION.

24 The Nevada Supreme Court unequivocally narrowed the sole question to be answered on
25 remand in this matter to be: "whether Jason's ATV outing *with his business associate/co-presenter*
26 *while on a business trip* amounted to a 'distinct personal departure on a personal errand.'" *Buma,*
27 *supra.*

1 The Court instructed future decision makers that, “The cases of distinct departures on
2 personal errands tend to involve a personally motivated activity that takes the traveling employee
3 on a *material deviation in time or space* from carrying out the trip's employment-related
4 objectives.” *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op. 60, p. 9, 453 P.3d 904, 909 (Nev.
5 2019) (emphasis added). Jason Buma did not embark on any such *material deviation in time or*
6 *space* from his trip’s employment-related objectives.

8 Repeatedly, the Nevada Supreme Court referred to the test of reasonableness in making
9 this decision. Nothing in the Nevada Supreme Court’s opinion or applicable statute requires that
10 petitioners prove foreseeability in order to prevail. Likewise, Buma was not required to show
11 actual notice, or that the employer knew or should have known he would be riding an ATV on
12 the ranch.

14 **A. Foreseeability is Not a Required Element of the Test.**

15 The Nevada Supreme Court recognized the reasonableness test numerous times in its
16 opinion:
17

18 There is no choice but for traveling employees to face hazards away from home in
19 order to tend to their personal needs, "including sleeping, eating, and seeking fresh
20 air and exercise," and *reasonably entertaining themselves*, on their work trips.

21 *Buma at 7, citing Ball-Foster*, 177 P.3d at 701; *see also 2 Larson's, supra*, § 25.02, at 25-
22 4 n.12(emphasis added).

23 The Court quite clearly laid out the test to “determine whether a traveling employee left
24 the course of employment by distinctly departing on a personal errand.” Notably, the Court did
25 not include foreseeability in its analysis: “the inquiry focuses on whether the employee was (a)
26 tending *reasonably* to the needs of personal comfort, or encountering hazards necessarily
27 incidental to the travel or work; or, alternatively, (b) ‘pursuing . . . strictly personal amusement
28

1 ventures. *Buma* at 9, citing *Ball-Foster*, 177 P.3d at 697 (emphasis added).

2 Following its articulation of the appropriate test, the Nevada Supreme Court clarified that:
3 “traveling employees may generally tend to their *reasonable* recreational needs during downtime
4 without leaving the course of employment under this standard.” *Id.*

5
6 A number of times, the Court returned to this singular test of reasonableness, including its
7 caveat that “recreational activity that is *unreasonable* in light of the total circumstances of the trip
8 may constitute a distinct departure on a personal errand. *Buma* at 11 (emphasis added).

9
10 “We hold that this category-based approach applies to traveling employees, though we
11 clarify that risks necessitated by travel—such as those associated with eating in an airport,
12 sleeping in a hotel, and *reasonably tending to personal comforts*—are deemed employment risks
13 for traveling employees.” *Buma* at 10 (emphasis added).

14
15 At the conclusion of its opinion, the Nevada Supreme Court remanded for the appeals
16 officer to come to a new decision “guided by the traveling employee rule and its exception for
17 distinct personal errands as set out in this opinion.” *Buma* at 14

18
19 Accordingly, the sole test at issue as to the narrow question posed by the Nevada Supreme
20 Court is one of *reasonableness*. The appeals officer erred in inserting foreseeability as a required
21 element, making the decision unsound as a matter of law, and requiring reversal.

22 **B. The Majority of Jurisdictions Use the *Reasonableness* Test.**

23 The only reference to foreseeability in the Nevada Supreme Court opinion in this case is
24 a parenthetical explanation of an Illinois decision, *Bagcraft Corp. v. Indus. Comm’n*, 302
25 Ill.App.3d 334, 235 Ill. Dec. 736, 705 N.E.2d 919, 921 (1998), in which the court noted that the
26 Illinois court, “[applied the] rule covering employees under workers’ compensation throughout
27 their work trips for all reasonable and foreseeable activities).” A survey of Illinois cases on the
28

1 matter shows that this two-pronged test is regularly articulated in that state. *See Wright v.*
2 *Industrial Comm'n*, 62 Ill.2d 65, 338 N.E.2d 379 (1975) and *Insulated Panel Co. v. Industrial*
3 *Comm'n*, 318 Ill. App. 3d 100, 743 N.E.2d 1038, 252 Ill. Dec. 882 (2001). Illinois appears
4 singular in its consistent articulation that foreseeability is a required element in its test.
5

6 It is important, however, to examine how the test is regularly employed in that state,
7 compared to how the appeal officer employed it. In *Wright*, the claimant – who was working on
8 location, out-of-state -- was killed in a head-on collision in his car, six miles from his motel, on a
9 Saturday afternoon. The court found it was not unforeseeable that the decedent, as a traveling
10 employee, would be driving six miles from his motel, even for recreational purposes. There was
11 no evidence the decedent's conduct was unreasonable.
12

13 In *Insulated Panel*, the claimant injured his leg while out hiking, traversing lava rocks,
14 while in Hawaii on a business trip. The lower forum originally found his activity to be
15 unreasonable. The commission and the reviewing court disagreed, finding the activity was
16 reasonable and foreseeable under the traveling employee doctrine. *Id.*, 318 Ill.App.3d at 102.
17

18 The case of *McCann v. Hatchett*, 19 S.W.3d 218 (Tenn. 2000) provides valuable insight
19 into the majority rule test of reasonableness. In *McCann*, the court relied upon 2 Arthur Larson
20 Les K. Larson, Arthur Larson's Workers' Compensation Laws, § 25.00 (1998), in citing the
21 majority rule that, "[a]n employee whose work entails travel away from the employer's premises
22 is generally considered to be within the course of his or her employment continuously during the
23 trip, except when there is a distinct departure on a personal errand." *Id.*, 19 S.W.3d at 221-222.
24

25 The court specifically adopted the majority rule in determining the compensability of
26 injury or death of traveling employees. The court specifically held that "a traveling employee is
27 generally considered to be in the course of his or her employment continuously during the
28

1 duration of the entire trip, except when there is a distinct departure on a personal errand. Thus,
2 under the rule we today adopt, the injury or death of a traveling employee occurring
3 while reasonably engaged in a reasonable recreational or social activity arises out of and in the
4 course of employment.” *Id.*

5
6 The *McCann* court specifically declined to adopt the “reasonable and foreseeable” test,
7 citing the inapplicability of the element of “foreseeability” to workers compensation cases:

8 We decline to adopt the "reasonable and foreseeable" standard used in some
9 jurisdictions. "Foreseeability" is typically a tort law concept; as we have previously
10 stated, "[c]oncepts of 'proximate cause' or 'foreseeability' as utilized in the law of
11 torts do not necessarily govern or define coverage under the workers' compensation
statutes."

12 *McCann*, 19 S.W.3d at 222 n.2, quoting *Jordan v. United Methodist Urban Ministries, Inc.*, 740
13 S.W.2d 411 (Tenn. 1987).

14 As recognized by *McCann* and *Larson's*, the majority of other jurisdictions employ the
15 straight *reasonableness* test. See e.g., *Slaughter v. State Acc. Ins. Fund*, 60 Or. App 610, 654 P.2d
16 1123 (1982). The Claimant was a truck driver, out of town on work. He went to a tavern one
17 evening during a layover and was injured in a fight he did not start. The court held that the injury
18 was compensable because his visit to the tavern was *reasonable* and not a distinct departure on a
19 personal errand. *Id.*, 60 Or. App. at 616.

20
21 The *Slaughter* decision provides additional clarity in analyzing traveling employee cases.
22 It explained that, in looking to whether an activity of a traveling employee is covered, what is
23 referred to in some jurisdictions as the *reasonableness* test is set forth in other jurisdictions as a
24 question of whether the employee made a “distinct departure on a personal errand.” *Id.*, 60 Or.
25 App. at 615-16. As explained elsewhere, in the *Buma* decision, the Nevada Supreme Court
26 expressly used the language of a “distinct departure on a personal errand” in identifying the
27
28

1 dispositive question, as well as repeatedly referring to the question of whether the activity was
2 reasonable. According to Slaughter, the two terms are essentially interchangeable, but they do not
3 include foreseeability.

4
5 In *Epp v. Midwestern Machinery Co.*, 296 Minn. 231, 208 N.W.2d 87 (1973), the deceased
6 employee was a truck driver who arrived at a designated city on a Friday to pick up a load. Since
7 it was not ready, he was instructed to check into a motel and wait until the load was ready. It was
8 not ready on Saturday either so, he was told to stay until Monday. On Sunday morning at 2:30
9 am, the employee was killed while crossing a highway after leaving a nearby tavern. The
10 commission concluded that the employee "to pass some time — during a considerably long
11 waiting period — crossed the road to the tavern and had some drinks until closing time." The
12 court found the employee's activity to be reasonable and affirmed. *Id.*, 296 Minn. At 234.

14 In *Matter of Robards v. N.Y. Div. Elec. Products*, 33 A.D.2d 1067 (N.Y. App. Div. 1970),
15 in which traveling employees were killed in an automobile accident at 11:30 at night, after playing
16 four or five games of pool and drinking four or five beers, the court also employed the
17 reasonableness test in affirming the award. The court articulated the reasonableness test, "Where
18 an employer sends an employee away from home it has been held that the test as to whether
19 specific activities are considered to be within the scope of employment or purely personal
20 activities is the reasonableness of such activities. Such an employee may satisfy physical needs
21 including relaxation" *Id.*, 33 A.D.2d at 1068.

24 The *Robards* court clarified the test, "the rule applied is simply that the employee is not
25 expected to wait immobile but may indulge in any *reasonable* activity at that place, and if he does
26 so the risk inherent in such activity is an incident of his employment." *Id.*, citing *Matter of*
27 *Davis v. Newsweek Mag.*, 305 N.Y. 20, 28; see, also, *Matter of Meredith v. United States Ind.*
28

1 *Chems. Co.*, 14 A.D.2d 955, mot. for lv. to app. den., 11 N.Y.2d 641. Note that none of the cases
2 indicate in any way that the employer needs to be put on specific notice of the activity.

3 In *Thompson v. Keller Foundations, Inc.*, 883 So. 2d 356 (Fla. Dist. Ct. App. 2004), a
4 traveling employee was injured while traveling to dinner after playing pool at a sports bar for an
5 hour. Using the reasonableness test, the court reversed the lower decision, acknowledging the
6 established rule that, "so long as a traveling employee's injury arises out of a risk which is
7 reasonably incidental to the conditions of employment, the injury will be compensable." *Id.*, 883
8 So. 2d at 357. See also *Garver v. Eastern Airlines*, 553 So. 2d 263, 267 (Fla. Dist. Ct. App. 1990).
9

10 And see *Blakeway v. Lefebure Corp.*, 393 So. 2d 928 (La. Ct. App. 1981) (Swimming at
11 motel was reasonable recreation for traveling employee); *CBS Inc. v. Labor & Industry Review*
12 *Commission*, 213 Wis. 2d 285 (Wis. Ct. App. 1997) (Traveling employee covered, because
13 downhill skiing not an unreasonable activity); *Ball-Foster v. Giovanelli*, 128 Wn. App. 846 (Wash.
14 Ct. App. 2005) (traveling employee walking to a park to listen to music on his day off was covered,
15 citing to *Larson's* and the "distinctly personal activity" test); and *Bowser v. N.C. Dep't. of Corr.*,
16 147 N.C. App. 308, 310 (N.C. Ct. App. 2001) (where claimant was injured returning from personal
17 shopping, court found she "was a traveling employee who was engaged in activities which
18 were reasonable under the circumstances").
19

20 Accordingly, as indicated by the Nevada Supreme Court's decision in *Buma*, this court
21 must follow the majority rule, employing the reasonableness test. The appeals officer improperly
22 inserted the element of foreseeability into the analysis, committing reversible error.
23

24 CONCLUSIONS

25 Jason Buma's brief ATV ride, with a co-worker, on the property where he was staying
26 solely for work-related purposes, was not *a material deviation in time or space* from carrying out
27
28

1 the trip's employment-related objectives. See *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op.
2 60, 453 P.3d 904 (Nev. 2019).

3 As set forth extensively in the Court's opinion, the Nevada Supreme Court made it
4 abundantly clear that at the time of his death, Jason Buma was a traveling employee who was at
5 the O'Callaghan's ranch solely for business, that he was preparing with his co-worker for
6 presentations at the oil and gas convention the next morning, that he worked irregular hours,
7 starting his day as early as 6 a.m. and sometimes working as late as 10 p.m., and that he was
8 constantly on call, taking business calls at any hour on weekends, on vacations, and even while
9 hiking. Additionally, the record shows that the ranch in question is just under 75 acres and the
10 common mode of transportation around the ranch is on ATVs. The Court agrees with these
11 conclusions.
12

13
14 The record and the legal authorities lead to the conclusion that Jason Buma was in the
15 course and scope of his employment when injured and that his injury and death arose out of his
16 employment situation at the ranch while on business.
17

18 On remand from the Nevada Supreme Court, the appeals officer erred by misapplying the
19 law. The appeals officer misapplied the law by imposing another layer -- the requirement of
20 *foreseeability* to be demonstrated by the petitioners that Nevada law does not require. This Court
21 finds that not only was this an error of law, but that as a matter of law, any activity in this context
22 that is reasonable, is also inherently and necessarily foreseeable.
23

24 The Court specifically finds that, under the circumstances here on the record before the
25 Court and the record that was before the appeals officer, Jason Buma's activity of riding an ATV
26 with his colleague at the ranch at which he was staying, did not amount to a personal errand such
27 as to be deemed a distinct departure from Mr. Buma's employer's business.
28

1 In coming to this conclusion, the Court considered that the ranch where the injury occurred
2 was not a recreational facility. It was the home of a colleague who was involved in the same types
3 of business, was involved with the presentations Buma was in Houston to deliver and was going
4 to be a co-presenter the following day. In short, the two were at the ranch solely for business
5 purposes. Further, this was not the first time Mr. Buma had visited the ranch before a business
6 presentation with Mr. O'Callaghan. The two planned to travel together to the location of their
7 presentations the following morning.
8

9 The appeals officer found nothing inherently wrong with riding an ATV, and that the ATV
10 ride in question was reasonable. This Court likewise finds that ATV riding is a form of
11 recreational activity that somebody on a business trip might engage in.
12

13 The Court also finds that the activity was not a personal risk. The Court specifically finds
14 that the activity was an employment-related risk. The appeals officer erred as a matter of law by
15 finding otherwise.
16

17 The petition for judicial review brought by Mrs. Buma as the surviving spouse, and her
18 daughter as the surviving child of their late husband and father, Jason, is granted.

19 **IT IS HEREBY ORDERED** that the Decision of the appeals officer is HEREBY
20 REVERSED and that the petitioners' Petition for Judicial Review is hereby GRANTED. The
21 Court further ORDERS that Mr. Buma's death in the course of his business trip is compensable
22 pursuant to NRS 616C.505. Kaycean Buma and Delaney Buma are entitled to workers'
23 compensation death benefits and interest, starting the day of his accident and untimely death. *See*
24 NRS 616C.335.
25

26 Dated this 23 day of December, 2021.

27 

28 BARRY L BRESLOW
District Judge

1310
JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 011131
LEWIS BRISBOIS BISGAARD & SMITH
2300 West Sahara Avenue, Suite 900, Box 28
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Attorneys for Appellants
PROVIDENCE CORP. DEVELOPMENT
DBA: MILLER HEIMAN, INC.;
GALLAGHER BASSETT SERVICES, INC.;
and CNA CLAIMSPLUS

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

PROVIDENCE CORP. DEVELOPMENT
DBA: MILLER HEIMAN, INC.;
GALLAGHER BASSETT SERVICES, INC.;
and CNA CLAIMSPLUS,

CASE NO: CV20-02092

DEPT. NO.: VIII

Appellants,

vs.

KAYCEAN BUMA, as the surviving spouse,
and DELANEY BUMA, as the surviving child
of JASON BUMA (Deceased),

Respondents.

CASE APPEAL STATEMENT

1. Name of appellants filing this case appeal statement:

Providence Corp. Development DBA: Miller Heiman, Inc.; Gallagher Bassett Services, Inc.; and CNA Claimsplus

2. Identify the judge issuing the decision, judgment, or order appealed from:

Hon. Barry L. Breslow, Second Judicial District Court Judge

...

1 3. Identify each appellant and the name and address of counsel for each appellant:

2 John P. Lavery, Esq.
3 L. Michael Friend, Esq.
4 LEWIS BRISBOIS BISGAARD & SMITH LLP
5 2300 West Sahara Avenue, Suite 900, Box 28
6 Las Vegas, NV 89102
7 Attorneys for Appellants
8 Providence Corp. Development DBA: Miller Heiman, Inc.;
9 Gallagher Bassett Services, Inc.;
10 and CNA Claimsplus

11 4. Identify each respondent and the name and address of appellate counsel, if known,
12 for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much
13 and provide the name and address of that respondent's trial counsel): :

14 Charles Diaz, Esq.
15 DIAZ & GALT
16 443 Marsh Avenue
17 Reno, NV 89509
18 (775) 324-6443
19 Attorneys for Respondents
20 KAYCEAN BUMA and DELANEY BUMA

21 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
22 licensed to practice law in Nevada and, if so, whether the district court granted that attorney
23 permission to appear under SCR 42 (attach a copy of any district court order granting such
24 permission):

25 All attorneys identified above are licensed to practice law in Nevada.

26 6. Indicate whether appellant was represented by appointed or retained counsel in the
27 district court:

28 Appellants retained counsel in the District Court.

29 7. Indicate whether appellant is represented by appointed or retained counsel on
30 appeal:

31 Appellants are represented by retained counsel on appeal.

1 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
2 date of entry of the district court order granting such leave:

3 Appellants were not granted leave to proceed in forma pauperis.

4 9. Indicate the date the proceedings commenced in the district court (e.g., date
5 complaint, indictment, information, or petition was filed):

6 The Petition for Judicial Review of the Appeals Officer's Decision of December 2,
7 2020, was filed on December 23, 2020.

8 10. Provide a brief description of the nature of the action and result in the district court,
9 including the type of judgment or order being appealed and the relief granted by the district court:

10 The underlying claim is a workers' compensation claim filed on behalf of
11 decedent/claimant Jason Buma. Mr. Buma was on a business trip when he was killed while riding
12 an ATV on the property of his friend/client where he was staying during the business trip. This
13 issue was previously brought before the Supreme Court, at which time it was remanded for
14 additional fact-finding to determine whether Mr. Buma's actions amounted to a distinct personal
15 departure on a personal errand. Upon remand, the Appeals Officer again concluded Mr. Buma was
16 not within the course and scope of his employment when the fatal accident occurred. Upon judicial
17 review, the District Court determined the Appeals Officer did not use the appropriate legal
18 standard and reversed her decision. Appellants now ask the Supreme Court for review.

19 11. Indicate whether the case has previously been the subject of an appeal to or original
20 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of
21 the prior proceeding:

22 No.

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12. Indicate whether this appeal involves child custody or visitation:

No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement

Yes.

DATED this 12th day of January, 2022.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ L. Michael Friend
JOHN P. LAVERY, ESQ.
Nevada Bar No. 004665
L. MICHAEL FRIEND, ESQ.
Nevada Bar No. 011131
2300 West Sahara Avenue, Suite 900, Box 28
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Attorneys for Appellants
PROVIDENCE CORP. DEVELOPMENT
DBA: MILLER HEIMAN, INC.;
GALLAGHER BASSETT SERVICES, INC.;
and CNA CLAIMSPUS

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CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 12th day of January, 2022, service of the foregoing **CASE APPEAL STATEMENT** was made this date by depositing a true copy of the same for mailing, first class mail, as follows:

Charles Diaz, Esq.
DIAZ & GALT
443 Marsh Avenue
Reno, NV 89509



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

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The undersigned does hereby affirm that the preceding document, Case Appeal Statement filed in case number: CV20-02092

- OR -

- or -

- or -

- or -

Date: 01/12/22

L. MICHAEL FRIEND, ESQ.
(Print Name)

**LEWIS
BRISBOIS
BISGAARD
& SMITH LLP**
ATTORNEYS AT LAW

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA****COUNTY OF WASHOE****Case History - CV20-02092****Case Description: KAYCEAN BUMA VS PROVIDENCE CORP ET AL (D8)****Case Number: CV20-02092 Case Type: WORKER'S COMPENSATION - Initially Filed On: 12/23/2020****Parties**

| <u>Party Type & Name</u> | <u>Party Status</u> |
|--|-------------------------------------|
| JUDG - CONNIE J. STEINHEIMER - D4 | Party ended on: 8/27/2021 8:48:05AM |
| JUDG - BARRY L. BRESLOW - D8 | Active |
| DEFT - DEPARTMENT OF ADMINISTRATION APPEALS DIVISION - @1365960 | Active |
| DEFT - CNA CLAIMSPUS - @1365959 | Active |
| DEFT - PROVIDENCE CORPORATION DEVELOPMENT DBA MILLER HEIMAN, INC. - @1365958 | Active |
| DEFT - GALLAGHER BASSETT SERVICES, INC. - @1305718 | Active |
| ATTY - Charles C. Diaz, Esq. - 3349 | Active |
| ATTY - Joel P. Reeves, Esq. - 13231 | Active |
| ATTY - Daniel L. Schwartz, Esq. - 5125 | Active |
| ATTY - John P. Lavery, Esq. - 4665 | Active |
| PETR - KAYCEAN BUMA - @1365961 | Active |

Disposed Hearings

- 1 Department: D4 -- Event: Request for Submission -- Scheduled Date & Time: 6/29/2021 at 17:01:00
Extra Event Text: APPELLANTS OPENING BRIEF
Event Disposition: S200 - 7/9/2021
- 2 Department: D4 -- Event: ORAL ARGUMENTS -- Scheduled Date & Time: 8/25/2021 at 15:00:00
Extra Event Text: ON PETITION FOR JUDICIAL REVIEW
Event Disposition: D210 - 8/25/2021
- 3 Department: D8 -- Event: Request for Submission -- Scheduled Date & Time: 9/30/2021 at 10:09:00
Extra Event Text: PARTIES STIPULATION TO CONTINUE ORAL ARGUMENT FILED SEPT 29, 2021
Event Disposition: S200 - 9/30/2021
- 4 Department: D8 -- Event: HEARING ON PETITION -- Scheduled Date & Time: 11/8/2021 at 11:00:00
Extra Event Text: PETITION FOR JUDICIAL REVIEW
Event Disposition: D845 - 9/29/2021
- 5 Department: D8 -- Event: HEARING ON PETITION -- Scheduled Date & Time: 11/29/2021 at 14:00:00
Extra Event Text: ZOOM PETITION FOR JUDICIAL REVIEW
Event Disposition: D425 - 11/29/2021

Actions

- | | <u>Filing Date</u> | <u>- Docket Code & Description</u> |
|---|--------------------|--|
| 1 | 12/23/2020 | - \$3550 - \$Pet for Judicial Review Additional Text: Transaction 8217875 - Approved By: CSULEZIC : 12-23-2020:15:17:02 |
| 2 | 12/23/2020 | - PAYRC - **Payment Received Additional Text: A Payment of \$255.00 was made on receipt DCDC667480. |

Report Does Not Contain Sealed Cases or Confidential Information

- 3 12/24/2020 - 2880 - Ord for Briefing Schedule
Additional Text: Transaction 8219097 - Approved By: NOREVIEW : 12-24-2020:13:18:46
- 4 12/24/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8219098 - Approved By: NOREVIEW : 12-24-2020:13:19:46
- 5 12/30/2020 - 2610 - Notice ...
Additional Text: NOTICE OF APPEAL - Transaction 8224006 - Approved By: CSULEZIC : 12-30-2020:12:11:28
- 6 12/30/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8224039 - Approved By: NOREVIEW : 12-30-2020:12:12:19
- 7 1/5/2021 - 2610 - Notice ...
Additional Text: NOTICE OF INTENT TO PARTICIPATE - Transaction 8230097 - Approved By: CSULEZIC : 01-05-2021:09:57:37
- 8 1/5/2021 - \$1560 - \$Def 1st Appearance - CV
Additional Text: PROVIDENCE CORP DEVELOPMENT - Transaction 8230097 - Approved By: CSULEZIC : 01-05-2021:09:57:37
- 9 1/5/2021 - \$DEFT - \$Addl Def/Answer - Prty/Appear
Additional Text: CNA CLAIMPLUS - Transaction 8230097 - Approved By: CSULEZIC : 01-05-2021:09:57:37
- 10 1/5/2021 - \$DEFT - \$Addl Def/Answer - Prty/Appear
Additional Text: GALLAGHER BASSETT SERVICES - Transaction 8230097 - Approved By: CSULEZIC : 01-05-2021:09:57:37
- 11 1/5/2021 - 1817 - Initial Appear. Fee Disclosure
Additional Text: Initial AppearINITIAL APPEARANCE FEE DISCLOSUREance Fee Disclosure - Transaction 8230097 - Approved By: CSULEZIC : 01-05-2021:09:57:37
- 12 1/5/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$268.00 was made on receipt DCDC667779.
- 13 1/5/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8230201 - Approved By: NOREVIEW : 01-05-2021:09:59:56
- 14 1/21/2021 - 3746 - Record on Appeal
Additional Text: Record on Appeal 1-60 - Transaction 8257384 - Approved By: NOREVIEW : 01-21-2021:12:01:56
- 15 1/21/2021 - 3746 - Record on Appeal
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED 1/21/2021 STRIKING THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1)Record on Appeal 61-121 - Transaction 8257384 - Approved By: NOREVIEW : 01-21-2021:12:01:56
- 16 1/21/2021 - 3746 - Record on Appeal
Additional Text: TRANSMITTAL OF RECORD ON APPEAL - Transaction 8257384 - Approved By: NOREVIEW : 01-21-2021:12:01:56
- 17 1/21/2021 - 3746 - Record on Appeal
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED 1/21/2021 STRIKING THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1)Record on Appeal 244-278 - Transaction 8257384 - Approved By: NOREVIEW : 01-21-2021:12:01:56
- 18 1/21/2021 - 3746 - Record on Appeal
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED 1/21/2021 STRIKING THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); Record on Appeal 183-243 - Transaction 8257384 - Approved By: NOREVIEW : 01-21-2021:12:01:56

- 19 1/21/2021 - 3746 - Record on Appeal
Additional Text: "NOTICE ATTACHED - NOTICE OF STRICKEN DOCUMENT FILED 1/21/2021 STRIKING THE RECORD ON APPEAL FOR THE FOLLOWING REASON: DOCUMENT DOES NOT HAVE A DISTRICT COURT CASE NUMBER – WDCR 10(c)(1); DOCUMENT DOES NOT HAVE AN AFFIRMATION – WDCR10(c)(1)Record on Appeal 122-182 - Transaction 8257384 - Approved By: NOREVIEW : 01-21-2021:12:01:56
- 20 1/21/2021 - 1372 - Certification ...
Additional Text: CERTIFICATION OF TRANSMITTAL - Transaction 8257384 - Approved By: NOREVIEW : 01-21-2021:12:01:56
- 21 1/21/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8257390 - Approved By: NOREVIEW : 01-21-2021:12:02:55
- 22 1/21/2021 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT - Transaction 8257786 - Approved By: CSULEZIC : 01-21-2021:14:17:11
- 23 1/21/2021 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT - Transaction 8257786 - Approved By: CSULEZIC : 01-21-2021:14:17:11
- 24 1/21/2021 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT - Transaction 8257786 - Approved By: CSULEZIC : 01-21-2021:14:17:11
- 25 1/21/2021 - 2610 - Notice ...
Additional Text: NOTICE OF STRICKEN DOCUMENT - Transaction 8257786 - Approved By: CSULEZIC : 01-21-2021:14:17:11
- 26 1/21/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8257867 - Approved By: NOREVIEW : 01-21-2021:14:18:06
- 27 3/1/2021 - 4050 - Stipulation ...
Additional Text: Transaction 8318484 - Approved By: NOREVIEW : 03-01-2021:13:10:36
- 28 3/1/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8318495 - Approved By: NOREVIEW : 03-01-2021:13:13:44
- 29 3/9/2021 - 2880 - Ord for Briefing Schedule
Additional Text: AMENDED ORDER FOR BRIEFING SCHEDULE - Transaction 8332098 - Approved By: NOREVIEW : 03-09-2021:09:38:43
- 30 3/9/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8332102 - Approved By: NOREVIEW : 03-09-2021:09:39:33
- 31 4/1/2021 - 2640 - Opening Brief
Additional Text: PETITIONERS OPENING BRIEF PETITION FOR JUDICIAL REVIEW Transaction 8373996 - Approved By: NOREVIEW : 04-01-2021:16:49:47
- 32 4/1/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8373999 - Approved By: NOREVIEW : 04-01-2021:16:50:37
- 33 5/3/2021 - 1170 - Answering Brief
Additional Text: RESPONDENTS' ANSWERING BRIEF - Transaction 8424407 - Approved By: YVILORIA : 05-03-2021:13:53:51
- 34 5/3/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8424476 - Approved By: NOREVIEW : 05-03-2021:13:54:57
- 35 5/24/2021 - 4047 - Stip Extension of Time ...
Additional Text: Transaction 8459987 - Approved By: NOREVIEW : 05-24-2021:11:46:38

- 36 5/24/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8459992 - Approved By: NOREVIEW : 05-24-2021:11:47:36
- 37 5/25/2021 - 2880 - Ord for Briefing Schedule
Additional Text: SECOND AMENDED ORDER FOR BRIEFING SCHEDULE - Transaction 8463154 - Approved By: NOREVIEW : 05-25-2021:14:58:18
- 38 5/25/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8463159 - Approved By: NOREVIEW : 05-25-2021:14:59:19
- 39 6/29/2021 - 3795 - Reply...
Additional Text: PETITIONER'S REPLY BRIEF PETITION FOR JUDICIAL REVIEW - Transaction 8519074 - Approved By: CSULEZIC : 06-30-2021:08:07:50
- 40 6/29/2021 - 3870 - Request
Additional Text: REQUEST FOR ORAL ARGUMENTS - Transaction 8519076 - Approved By: CSULEZIC : 06-30-2021:08:08:22
- 41 6/29/2021 - 3860 - Request for Submission
Additional Text: Request for Submission - Transaction 8519079 - Approved By: NOREVIEW : 06-29-2021:17:05:57
DOCUMENT TITLE: APPELLANTS OPENING BRIEF
PARTY SUBMITTING: CHARLES DIAZ ESQ
DATE SUBMITTED: 6/29/2021
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 42 6/29/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8519080 - Approved By: NOREVIEW : 06-29-2021:17:06:45
- 43 6/30/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8519308 - Approved By: NOREVIEW : 06-30-2021:08:10:49
- 44 6/30/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8519309 - Approved By: NOREVIEW : 06-30-2021:08:10:49
- 45 7/9/2021 - 3347 - Ord to Set
Additional Text: Transaction 8536651 - Approved By: NOREVIEW : 07-09-2021:16:59:35
- 46 7/9/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8536657 - Approved By: NOREVIEW : 07-09-2021:17:00:35
- 47 7/9/2021 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 48 7/23/2021 - 1250E - Application for Setting eFile
Additional Text: ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW - AUGUST 25, 2021 AT 3:00 P.M. (1 HOUR) - Transaction 8558391 - Approved By: NOREVIEW : 07-23-2021:10:18:24
- 49 7/23/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8558395 - Approved By: NOREVIEW : 07-23-2021:10:19:23
- 50 8/16/2021 - 3175 - Ord Re: Hearing Procedure
Additional Text: NOTICE OF AND ORDER FOR AUDIO/VISUAL HEARING - AUGUST 25, 2021 HEARING - Transaction 8596291 - Approved By: NOREVIEW : 08-16-2021:09:17:04
- 51 8/16/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8596294 - Approved By: NOREVIEW : 08-16-2021:09:19:54

- 52 8/27/2021 - 3370 - Order ...
Additional Text: ORDER TRANSFERRING TO DEPT. 8 - Transaction 8617498 - Approved By: NOREVIEW : 08-27-2021:08:20:37
- 53 8/27/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8617507 - Approved By: NOREVIEW : 08-27-2021:08:21:35
- 54 8/27/2021 - 1312 - Case Assignment Notification
Additional Text: CASE TRANSFERRED TO D8 FROM D4 PER ORDER TRANSFERRING FILED 8/27/21 - Transaction 8617590 - Approved By: NOREVIEW : 08-27-2021:08:51:04
- 55 8/27/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8617592 - Approved By: NOREVIEW : 08-27-2021:08:52:03
- 56 8/27/2021 - MIN - ***Minutes
Additional Text: 08/25/2021 ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW - Transaction 8618099 - Approved By: NOREVIEW : 08-27-2021:11:15:49
- 57 8/27/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8618148 - Approved By: NOREVIEW : 08-27-2021:11:30:29
- 58 9/21/2021 - 3242 - Ord Setting Hearing
Additional Text: Transaction 8657657 - Approved By: NOREVIEW : 09-21-2021:13:26:09
- 59 9/21/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8657660 - Approved By: NOREVIEW : 09-21-2021:13:27:10
- 60 9/29/2021 - 4045 - Stipulation to Continuance
Additional Text: Stipulation to Continue Oral Argument - Transaction 8672253 - Approved By: NOREVIEW : 09-29-2021:12:49:34
- 61 9/29/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8672259 - Approved By: NOREVIEW : 09-29-2021:12:50:41
- 62 9/30/2021 - 3860 - Request for Submission
Additional Text: Transaction 8674162 - Approved By: NOREVIEW : 09-30-2021:10:14:51
DOCUMENT TITLE: PARTIES STIPULATION TO CONTINUE ORAL ARGUMENT FILED SEPT 29, 2021
PARTY SUBMITTING: JOHN LAVERY ESQ
DATE SUBMITTED: 9-30-21
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 63 9/30/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8674172 - Approved By: NOREVIEW : 09-30-2021:10:16:24
- 64 9/30/2021 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 65 12/6/2021 - 4185 - Transcript
Additional Text: NOVEMBER 29, 2021 HEARING ON PETITION - Transaction 8783174 - Approved By: NOREVIEW : 12-06-2021:17:03:56
- 66 12/6/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8783177 - Approved By: NOREVIEW : 12-06-2021:17:04:49
- 67 12/23/2021 - F230 - Other Manner of Disposition
No additional text exists for this entry.
- 68 12/23/2021 - 3105 - Ord Granting ...

Additional Text: DECISION AND ORDER GRANTING PETITION FOR JUDICIAL REVIEW Transaction 8812829 - Approved By: NOREVIEW : 12-23-2021:16:32:53

69 12/23/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8812831 - Approved By: NOREVIEW : 12-23-2021:16:33:43

70 12/24/2021 - 2540 - Notice of Entry of Ord

Additional Text: Transaction 8812997 - Approved By: NOREVIEW : 12-24-2021:12:56:19

71 12/24/2021 - NEF - Proof of Electronic Service

Additional Text: Transaction 8812998 - Approved By: NOREVIEW : 12-24-2021:12:57:09

72 1/12/2022 - 1310 - Case Appeal Statement

Additional Text: Transaction 8841537 - Approved By: YVILORIA : 01-13-2022:08:22:45

73 1/12/2022 - 2140 - Mtn Ord Shortening Time

Additional Text: APPELLANTS' REQUEST FOR ORDER SHORTENING TIME ON MOTION FOR STAY - Transaction 8841537 - Approved By: YVILORIA : 01-13-2022:08:22:45

74 1/12/2022 - 2195 - Mtn for Stay ...

Additional Text: APPELLANTS' MOTION FOR STAY PENDING APPEAL TO THE SUPREME COURT OF NEVADA - Transaction 8841537 - Approved By: YVILORIA : 01-13-2022:08:22:45

75 1/12/2022 - 2547 - Notice of Filing Costs/Appeal

Additional Text: NOTICE OF FILING BOND - Transaction 8841537 - Approved By: YVILORIA : 01-13-2022:08:22:45

76 1/12/2022 - \$2515 - \$Notice/Appeal Supreme Court

Additional Text: Transaction 8841537 - Approved By: YVILORIA : 01-13-2022:08:22:45

77 1/13/2022 - PAYRC - **Payment Receipted

Additional Text: A Payment of \$24.00 was made on receipt DCDC685491.

78 1/13/2022 - NEF - Proof of Electronic Service

Additional Text: Transaction 8841846 - Approved By: NOREVIEW : 01-13-2022:08:23:54

79 1/14/2022 - 1350 - Certificate of Clerk

Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8845994 - Approved By: NOREVIEW : 01-14-2022:16:40:16

80 1/14/2022 - 4113 - District Ct Deficiency Notice

Additional Text: NOTICE OF APPEAL FILING FEE (BOND AND SUPREME COURT) - Transaction 8845994 - Approved By: NOREVIEW : 01-14-2022:16:40:16

81 1/14/2022 - NEF - Proof of Electronic Service

Additional Text: Transaction 8845996 - Approved By: NOREVIEW : 01-14-2022:16:41:19

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

| | | |
|--|---|---------------------|
| KAYCEAN BUMA, as the surviving spouse, and DELANEY BUMA, as the surviving child of JASON BUMA (Deceased) Petitioners, |) | Case No. CV20-01221 |
| vs. |) | Dept. No. 8 |
| PROVIDENCE CORP. DEVELOPMENT DBA MILLER HEIMAN, INC., GALLAGHER BASSETT SERVICES, INC., CNA CLAIMSPLUS, and the DEPARTMENT OF ADMINISTRATION APPEALS OFFICE, Respondents. |) | |

DECISION AND ORDER GRANTING PETITION FOR JUDICIAL REVIEW

Petitioners, Kaycean and Delaney Buma, filed a Petition for Judicial Review from the appeals officer's December 2, 2020, Order, denying Petitioners' request for death benefits pursuant to NRS 616C.505. Pursuant to NRS 233B.130, this Court has jurisdiction to adjudicate claimant's Petition for Judicial Review.

This matter originated with the petitioners' May 11, 2015, request for death benefits after Jason Buma's accidental death on March 29, 2015, while on a business trip. Petitioners timely appealed the insurer's determination denying benefits to the hearing officer who affirmed the insurer's determination. Petitioners appealed to the appeals officer who affirmed the Hearing Officer's decision on February 7, 2017. The petitioners then filed a Petition for Judicial Review

1 in the district court. On July 24, 2017, this Court denied said Petition and affirmed the appeals
2 officer's decision. Petitioners then appealed the matter to the Nevada Supreme Court.

3 On December 12, 2019, the Nevada Supreme Court, *en banc*, vacated this Court's decision
4 and remanded the case to the appeals officer for, "the appeals officer to conduct a hearing for
5 additional fact finding, to be guided by the traveling employee rule and its exception for distinct
6 personal errands as set out in this decision." *Buma v. Providence Corp., Dev.*, 135 Nev. Adv. Op.
7 60 (2019)
8

9 In its recent decision in *Buma*, the Court provided a template for analysis of worker's
10 compensation issues pertaining to traveling employees. The Court unanimously accepted
11 Professor Larsens' *Traveling Employee Doctrine* and clearly defined how NRS 616B.612(3)
12 applies to traveling employees, and more specifically to the Petitioners claim for death benefits
13 as a result of Jason Buma's unfortunate accident and death. *Buma at 1-14.*
14

15 The Nevada Supreme Court confirmed that, "NRS 616B.612(3) codifies this majority
16 rule." The *Traveling Employee Doctrine* states that, "traveling employees may generally tend to
17 their reasonable recreational needs during downtime without leaving the course of employment
18 under this standard." *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op. 60, p. 10, 453 P.3d 904,
19 909 (Nev. 2019) citing to *Ball-Foster*, 177 P.3d at 700.
20

21 The Nevada Supreme Court framed the totality of the circumstances of this case,
22 answering all the necessary questions except one, which it distilled and set forth for the appeals
23 officer to answer on remand: "[W]hether Jason's ATV outing *with his business associate/co-*
24 *presenter while on a business trip* amounted to a 'distinct personal departure on a personal
25 errand.'" *Buma at 13. Emphasis included in the Nevada Supreme Court's opinion.*
26
27
28

Upon remand, neither party offered any new evidence and relied on the evidence presented in the prior appeals officer hearing. The parties submitted written closing arguments to the appeals officer in light of the newly adopted “traveling employee doctrine” and the narrow inquiry set by the Court as to whether or not the ATV ride could be considered a “material deviation in time or space from carrying out the trip’s employment-related objectives”. *Buma* at 9.

On remand, the appeals officer held that, *Buma* was tending to his reasonable recreational needs during downtime while riding the ATV and concluded that as a traveling employee, there was necessarily a work connection to the activity. The appeals officer also found that “there was no material deviation in time or space from the place where Jason was staying.” The appeals officer ultimately denied benefits, however, because she found that the activity was not foreseeable, and the record on appeal contained no evidence that the employer knew or should have known that Mr. Buma would embark on an ATV ride.

Petitioners filed a Petition for Judicial Review of the Appeals Officer’s decision. After careful consideration of the record, arguments of counsel, and the Nevada Supreme Court’s decision in *Buma v. Providence Corp. Dev., supra*, this Court grants the Petition and Orders that Petitioners are entitled to workers’ compensation death benefits and interest.

STATEMENT OF FACTS

Jason Buma was in Houston, Texas, on March 29, 2015, to attend an oil and gas convention on behalf of his employer, Miller Heiman, Inc., in the morning on the very next day, March 30. Miller Heiman is a company engaged in sales training to increase productivity. Mr. Buma's responsibilities, as vice-president of the sales division, for Miller Heiman required him to travel all over the country to meet with potential clients, give sales presentations, and oversee training teams.

1 Michael O'Callaghan was an independent contractor for Miller Heiman, and a co-worker
2 of Mr. Buma's. O'Callaghan and Buma had a professional relationship and regularly worked
3 together on behalf of Miller Heiman to get new clients and to work on projects and proposals. On
4 the day in question, Mr. Buma was staying at O'Callaghan's ranch in Texas so they could prepare
5 for their presentation on behalf of Miller Heiman at the oil and gas convention on the morning
6 following.

8 Buma arrived at O'Callaghan's ranch around 3:30 in the afternoon, after traveling all day
9 to get to Houston, Texas. They were planning to go to dinner and prepare for the next day. Before
10 dinner, to unwind a little from the day's travel, the two went for a short ATV ride around the
11 ranch property. A few minutes into the ride, Buma was involved in an accident in which the ATV
12 apparently rolled over, causing his death. Because Buma was in Texas for the convention solely
13 as part of his employment with Miller Heiman, and because Buma was staying at O'Callaghan's
14 ranch for the sole purpose of their preparing for the presentation on behalf of Miller Heiman at
15 the convention the next day, and because the brief ATV ride was not an unreasonable departure
16 – but akin to a vigorous walk around hotel grounds after a long flight – as set forth more fully in
17 this opinion, and in accordance with the Nevada Supreme Court's decision in *Buma v. Providence*
18 *Corp. Dev., supra*, Buma's death is covered under the traveling employee doctrine and the
19 Petitioners are due appropriate benefits.

23 I. DISCUSSION.

24 The Nevada Supreme Court unequivocally narrowed the sole question to be answered on
25 remand in this matter to be: “whether Jason's ATV outing *with his business associate/co-presenter*
26 *while on a business trip* amounted to a ‘distinct personal departure on a personal errand.’” *Buma,*
27 *supra.*
28

1 The Court instructed future decision makers that, “The cases of distinct departures on
2 personal errands tend to involve a personally motivated activity that takes the traveling employee
3 on a *material deviation in time or space* from carrying out the trip's employment-related
4 objectives.” *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op. 60, p. 9, 453 P.3d 904, 909 (Nev.
5 2019) (emphasis added). Jason Buma did not embark on any such *material deviation in time or*
6 *space* from his trip’s employment-related objectives.

8 Repeatedly, the Nevada Supreme Court referred to the test of reasonableness in making
9 this decision. Nothing in the Nevada Supreme Court’s opinion or applicable statute requires that
10 petitioners prove foreseeability in order to prevail. Likewise, Buma was not required to show
11 actual notice, or that the employer knew or should have known he would be riding an ATV on
12 the ranch.

14 **A. Foreseeability is Not a Required Element of the Test.**

15 The Nevada Supreme Court recognized the reasonableness test numerous times in its
16 opinion:
17

18 There is no choice but for traveling employees to face hazards away from home in
19 order to tend to their personal needs, "including sleeping, eating, and seeking fresh
air and exercise," *and reasonably entertaining themselves*, on their work trips.

20 *Buma at 7, citing Ball-Foster*, 177 P.3d at 701; *see also 2 Larson's, supra*, § 25.02, at 25-
21 4 n.12(emphasis added).

23 The Court quite clearly laid out the test to “determine whether a traveling employee left
24 the course of employment by distinctly departing on a personal errand.” Notably, the Court did
25 not include foreseeability in its analysis: “the inquiry focuses on whether the employee was (a)
26 tending *reasonably* to the needs of personal comfort, or encountering hazards necessarily
27 incidental to the travel or work; or, alternatively, (b) ‘pursuing . . . strictly personal amusement
28

1 ventures. *Buma* at 9, citing *Ball-Foster*, 177 P.3d at 697 (emphasis added).

2 Following its articulation of the appropriate test, the Nevada Supreme Court clarified that:
3 “traveling employees may generally tend to their *reasonable* recreational needs during downtime
4 without leaving the course of employment under this standard.” *Id.*

5
6 A number of times, the Court returned to this singular test of reasonableness, including its
7 caveat that “recreational activity that is *unreasonable* in light of the total circumstances of the trip
8 may constitute a distinct departure on a personal errand. *Buma* at 11 (emphasis added).

9 “We hold that this category-based approach applies to traveling employees, though we
10 clarify that risks necessitated by travel—such as those associated with eating in an airport,
11 sleeping in a hotel, *and reasonably tending to personal comforts*—are deemed employment risks
12 for traveling employees.” *Buma* at 10 (emphasis added).

13
14 At the conclusion of its opinion, the Nevada Supreme Court remanded for the appeals
15 officer to come to a new decision “guided by the traveling employee rule and its exception for
16 distinct personal errands as set out in this opinion.” *Buma* at 14

17
18 Accordingly, the sole test at issue as to the narrow question posed by the Nevada Supreme
19 Court is one of *reasonableness*. The appeals officer erred in inserting foreseeability as a required
20 element, making the decision unsound as a matter of law, and requiring reversal.

21 **B. The Majority of Jurisdictions Use the *Reasonableness* Test.**

22
23 The only reference to foreseeability in the Nevada Supreme Court opinion in this case is
24 a parenthetical explanation of an Illinois decision, *Bagcraft Corp. v. Indus. Comm’n*, 302
25 Ill.App.3d 334, 235 Ill. Dec. 736, 705 N.E.2d 919, 921 (1998), in which the court noted that the
26 Illinois court, “([applied the] rule covering employees under workers’ compensation throughout
27 their work trips for all reasonable and foreseeable activities).” A survey of Illinois cases on the
28

1 matter shows that this two-pronged test is regularly articulated in that state. *See Wright v.*
2 *Industrial Comm’n*, 62 Ill.2d 65, 338 N.E.2d 379 (1975) and *Insulated Panel Co. v. Industrial*
3 *Comm’n*, 318 Ill. App. 3d 100, 743 N.E.2d 1038, 252 Ill. Dec. 882 (2001). Illinois appears
4 singular in its consistent articulation that foreseeability is a required element in its test.
5

6 It is important, however, to examine how the test is regularly employed in that state,
7 compared to how the appeal officer employed it. In *Wright*, the claimant – who was working on
8 location, out-of-state -- was killed in a head-on collision in his car, six miles from his motel, on a
9 Saturday afternoon. The court found it was not unforeseeable that the decedent, as a traveling
10 employee, would be driving six miles from his motel, even for recreational purposes. There was
11 no evidence the decedent’s conduct was unreasonable.
12

13 In *Insulated Panel*, the claimant injured his leg while out hiking, traversing lava rocks,
14 while in Hawaii on a business trip. The lower forum originally found his activity to be
15 unreasonable. The commission and the reviewing court disagreed, finding the activity was
16 reasonable and foreseeable under the traveling employee doctrine. *Id.*, 318 Ill.App.3d at 102.
17

18 The case of *McCann v. Hatchett*, 19 S.W.3d 218 (Tenn. 2000) provides valuable insight
19 into the majority rule test of reasonableness. In *McCann*, the court relied upon 2 Arthur Larson
20 Les K. Larson, Arthur Larson's Workers' Compensation Laws, § 25.00 (1998), in citing the
21 majority rule that, "[a]n employee whose work entails travel away from the employer's premises
22 is generally considered to be within the course of his or her employment continuously during the
23 trip, except when there is a distinct departure on a personal errand." *Id.*, 19 S.W.3d at 221-222.
24

25 The court specifically adopted the majority rule in determining the compensability of
26 injury or death of traveling employees. The court specifically held that “a traveling employee is
27 generally considered to be in the course of his or her employment continuously during the
28

1 duration of the entire trip, except when there is a distinct departure on a personal errand. Thus,
2 under the rule we today adopt, the injury or death of a traveling employee occurring
3 while reasonably engaged in a reasonable recreational or social activity arises out of and in the
4 course of employment.” *Id.*

5
6 The *McCann* court specifically declined to adopt the “reasonable and foreseeable” test,
7 citing the inapplicability of the element of “foreseeability” to workers compensation cases:

8 We decline to adopt the "reasonable and foreseeable" standard used in some
9 jurisdictions. "Foreseeability" is typically a tort law concept; as we have previously
10 stated, "[c]oncepts of 'proximate cause' or 'foreseeability' as utilized in the law of
11 torts do not necessarily govern or define coverage under the workers' compensation
statutes."

12 *McCann*, 19 S.W.3d at 222 n.2, quoting *Jordan v. United Methodist Urban Ministries, Inc.*, 740
13 S.W.2d 411 (Tenn. 1987).

14 As recognized by *McCann* and *Larson*’s, the majority of other jurisdictions employ the
15 straight *reasonableness* test. See e.g., *Slaughter v. State Acc. Ins. Fund*, 60 Or. App 610, 654 P.2d
16 1123 (1982). The Claimant was a truck driver, out of town on work. He went to a tavern one
17 evening during a layover and was injured in a fight he did not start. The court held that the injury
18 was compensable because his visit to the tavern was *reasonable* and not a distinct departure on a
19 personal errand. *Id.*, 60 Or. App. at 616.

20
21 The *Slaughter* decision provides additional clarity in analyzing traveling employee cases.
22 It explained that, in looking to whether an activity of a traveling employee is covered, what is
23 referred to in some jurisdictions as the *reasonableness* test is set forth in other jurisdictions as a
24 question of whether the employee made a “distinct departure on a personal errand.” *Id.*, 60 Or.
25 App. at 615-16. As explained elsewhere, in the *Buma* decision, the Nevada Supreme Court
26 expressly used the language of a “distinct departure on a personal errand” in identifying the
27
28

1 dispositive question, as well as repeatedly referring to the question of whether the activity was
2 reasonable. According to Slaughter, the two terms are essentially interchangeable, but they do not
3 include foreseeability.

4
5 In *Epp v. Midwestern Machinery Co.*, 296 Minn. 231, 208 N.W.2d 87 (1973), the deceased
6 employee was a truck driver who arrived at a designated city on a Friday to pick up a load. Since
7 it was not ready, he was instructed to check into a motel and wait until the load was ready. It was
8 not ready on Saturday either so, he was told to stay until Monday. On Sunday morning at 2:30
9 am, the employee was killed while crossing a highway after leaving a nearby tavern. The
10 commission concluded that the employee "to pass some time — during a considerably long
11 waiting period — crossed the road to the tavern and had some drinks until closing time." The
12 court found the employee's activity to be reasonable and affirmed. *Id.*, 296 Minn. At 234.

14 In *Matter of Robards v. N.Y. Div. Elec. Products*, 33 A.D.2d 1067 (N.Y. App. Div. 1970),
15 in which traveling employees were killed in an automobile accident at 11:30 at night, after playing
16 four or five games of pool and drinking four or five beers, the court also employed the
17 reasonableness test in affirming the award. The court articulated the reasonableness test, "Where
18 an employer sends an employee away from home it has been held that the test as to whether
19 specific activities are considered to be within the scope of employment or purely personal
20 activities is the reasonableness of such activities. Such an employee may satisfy physical needs
21 including relaxation" *Id.*, 33 A.D.2d at 1068.

24 The *Robards* court clarified the test, "the rule applied is simply that the employee is not
25 expected to wait immobile but may indulge in any *reasonable* activity at that place, and if he does
26 so the risk inherent in such activity is an incident of his employment." *Id.*, citing *Matter of*
27 *Davis v. Newsweek Mag.*, 305 N.Y. 20, 28; see, also, *Matter of Meredith v. United States Ind.*
28

1 *Chems. Co.*, 14 A.D.2d 955, mot. for lv. to app. den., 11 N.Y.2d 641. Note that none of the cases
2 indicate in any way that the employer needs to be put on specific notice of the activity.

3 In *Thompson v. Keller Foundations, Inc.*, 883 So. 2d 356 (Fla. Dist. Ct. App. 2004), a
4 traveling employee was injured while traveling to dinner after playing pool at a sports bar for an
5 hour. Using the reasonableness test, the court reversed the lower decision, acknowledging the
6 established rule that, “so long as a traveling employee's injury arises out of a risk which is
7 reasonably incidental to the conditions of employment, the injury will be compensable.” *Id.*, 883
8 So. 2d at 357. See also *Garver v. Eastern Airlines*, 553 So. 2d 263, 267 (Fla. Dist. Ct. App. 1990).
9

10 And see *Blakeway v. Lefebure Corp.*, 393 So. 2d 928 (La. Ct. App. 1981) (Swimming at
11 motel was reasonable recreation for traveling employee); *CBS Inc. v. Labor & Industry Review*
12 *Commission*, 213 Wis. 2d 285 (Wis. Ct. App. 1997)(Traveling employee covered, because
13 downhill skiing not an unreasonable activity); *Ball-Foster v. Giovanelli*, 128 Wn. App. 846 (Wash.
14 Ct. App. 2005) (traveling employee walking to a park to listen to music on his day off was covered,
15 citing to *Larson’s* and the “distinctly personal activity” test); and *Bowser v. N.C. Dep’t. of Corr.*,
16 147 N.C. App. 308, 310 (N.C. Ct. App. 2001) (where claimant was injured returning from personal
17 shopping, court found she “was a traveling employee who was engaged in activities which
18 were reasonable under the circumstances”).
19
20

21 Accordingly, as indicated by the Nevada Supreme Court’s decision in *Buma*, this court
22 must follow the majority rule, employing the reasonableness test. The appeals officer improperly
23 inserted the element of foreseeability into the analysis, committing reversible error.
24

25 CONCLUSIONS

26 Jason Buma's brief ATV ride, with a co-worker, on the property where he was staying
27 solely for work-related purposes, was not *a material deviation in time or space* from carrying out
28

1 the trip's employment-related objectives. See *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op.
2 60, 453 P.3d 904 (Nev. 2019).

3 As set forth extensively in the Court's opinion, the Nevada Supreme Court made it
4 abundantly clear that at the time of his death, Jason Buma was a traveling employee who was at
5 the O'Callaghan's ranch solely for business, that he was preparing with his co-worker for
6 presentations at the oil and gas convention the next morning, that he worked irregular hours,
7 starting his day as early as 6 a.m. and sometimes working as late as 10 p.m., and that he was
8 constantly on call, taking business calls at any hour on weekends, on vacations, and even while
9 hiking. Additionally, the record shows that the ranch in question is just under 75 acres and the
10 common mode of transportation around the ranch is on ATVs. The Court agrees with these
11 conclusions.
12

13
14 The record and the legal authorities lead to the conclusion that Jason Buma was in the
15 course and scope of his employment when injured and that his injury and death arose out of his
16 employment situation at the ranch while on business.
17

18 On remand from the Nevada Supreme Court, the appeals officer erred by misapplying the
19 law. The appeals officer misapplied the law by imposing another layer -- the requirement of
20 *foreseeability* to be demonstrated by the petitioners that Nevada law does not require. This Court
21 finds that not only was this an error of law, but that as a matter of law, any activity in this context
22 that is reasonable, is also inherently and necessarily foreseeable.
23

24 The Court specifically finds that, under the circumstances here on the record before the
25 Court and the record that was before the appeals officer, Jason Buma's activity of riding an ATV
26 with his colleague at the ranch at which he was staying, did not amount to a personal errand such
27 as to be deemed a distinct departure from Mr. Buma's employer's business.
28

1 In coming to this conclusion, the Court considered that the ranch where the injury occurred
2 was not a recreational facility. It was the home of a colleague who was involved in the same types
3 of business, was involved with the presentations Buma was in Houston to deliver and was going
4 to be a co-presenter the following day. In short, the two were at the ranch solely for business
5 purposes. Further, this was not the first time Mr. Buma had visited the ranch before a business
6 presentation with Mr. O'Callaghan. The two planned to travel together to the location of their
7 presentations the following morning.

8
9 The appeals officer found nothing inherently wrong with riding an ATV, and that the ATV
10 ride in question was reasonable. This Court likewise finds that ATV riding is a form of
11 recreational activity that somebody on a business trip might engage in.

12
13 The Court also finds that the activity was not a personal risk. The Court specifically finds
14 that the activity was an employment-related risk. The appeals officer erred as a matter of law by
15 finding otherwise.

16
17 The petition for judicial review brought by Mrs. Buma as the surviving spouse, and her
18 daughter as the surviving child of their late husband and father, Jason, is granted.

19 **IT IS HEREBY ORDERED** that the Decision of the appeals officer is HEREBY
20 REVERSED and that the petitioners' Petition for Judicial Review is hereby GRANTED. The
21 Court further ORDERS that Mr. Buma's death in the course of his business trip is compensable
22 pursuant to NRS 616C.505. Kaycean Buma and Delaney Buma are entitled to workers'
23 compensation death benefits and interest, starting the day of his accident and untimely death. *See*
24 NRS 616C.335.

25
26 Dated this 23 day of December, 2021.



27
28 BARRY L BRESLOW
District Judge

CODE: 2540
Charles C. Diaz, Esq.
NV Bar No: 3349
443 Marsh Avenue
Reno, NV 89509
T: 775.324.6443
E: cdiaz@diazgaltlaw.com
Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

* * * * *

| | |
|---|----------------------|
| KAYCEAN BUMA, as the surviving spouse, and |) Case No CV20-02092 |
| DELANEY BUMA, as the surviving child of JASON |) |
| BUMA (Deceased) |) Dept No 8 |
| Petitioner, |) |
| vs. |) |
| PROVIDENCE CORP. DEVELOPMENT DBA |) |
| MILLER HEIMAN, INC., GALLAGHER BASSETT |) |
| SERVICES, INC., CNA CLAIMSPUS, and the |) |
| DEPARTMENT OF ADMINISTRATION |) |
| APPEALS OFFICE, |) |
| Respondents. |) |

NOTICE OF ENTRY OF ORDER

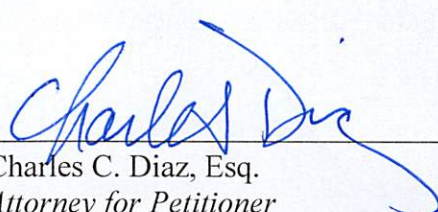
PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter on December 23, 2021. A copy of said document is attached hereto.

AFFIRMATION

The undersigned hereby affirms that this document does not contain the social security number of any person.

DATED this 24th day of December, 2021.

By:


Charles C. Diaz, Esq.
Attorney for Petitioner

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I HEREBY CERTIFY that on this date, I served a true and correct copy of the within **NOTICE OF ENTRY OF ORDER** via U.S. Mail at Reno, Nevada, Facsimile, email as indicated, to the following:

Department of Administration [US MAIL]
Appeals Division
1050 E Williams Street, Suite 450
Carson City, NV 89701

John P. Lavery, Esq. [US MAIL]
Lewis Brisbois Bisgaard & Smith, LLP
2300 W Sahara Ave, Ste 300 Box 28
Las Vegas, NV 89102-4375

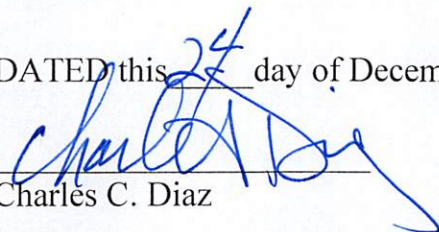
Providence Corp Development [US MAIL]
DBA Miller Heiman Inc.
10509 Professional Circle
Reno, NV 89521

Gallagher Bassett Services, Inc. [US MAIL]
P. O. Box 2934
Clinton, IA 52733

CNA Claimsplus [US MAIL]
P. O. Box 8317
Chicago, IL 60680

THE ESTATE OF JASON BUMA [US MAIL]
1951 Rolling Brook Lane
Reno, NV 89519-8342

DATED this 24 day of December, 2021.


Charles C. Diaz

LIST OF EXHIBITS

Exhibit 1 – Order Granting Petition for Judicial Review..... 1 pg

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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This matter originated with the petitioners' May 11, 2015, request for death benefits after Jason Buma's accidental death on March 29, 2015, while on a business trip. Petitioners timely appealed the insurer's determination denying benefits to the hearing officer who affirmed the insurer's determination. Petitioners appealed to the appeals officer who affirmed the Hearing Officer's decision on February 7, 2017. The petitioners then filed a Petition for Judicial Review

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26
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Upon remand, neither party offered any new evidence and relied on the evidence presented in the prior appeals officer hearing. The parties submitted written closing arguments to the appeals officer in light of the newly adopted “traveling employee doctrine” and the narrow inquiry set by the Court as to whether or not the ATV ride could be considered a “material deviation in time or space from carrying out the trip’s employment-related objectives”. *Buma* at 9.

On remand, the appeals officer held that, *Buma* was tending to his reasonable recreational needs during downtime while riding the ATV and concluded that as a traveling employee, there was necessarily a work connection to the activity. The appeals officer also found that “there was no material deviation in time or space from the place where Jason was staying.” The appeals officer ultimately denied benefits, however, because she found that the activity was not foreseeable, and the record on appeal contained no evidence that the employer knew or should have known that Mr. Buma would embark on an ATV ride.

Petitioners filed a Petition for Judicial Review of the Appeals Officer’s decision. After careful consideration of the record, arguments of counsel, and the Nevada Supreme Court’s decision in *Buma v. Providence Corp. Dev., supra*, this Court grants the Petition and Orders that Petitioners are entitled to workers’ compensation death benefits and interest.

STATEMENT OF FACTS

Jason Buma was in Houston, Texas, on March 29, 2015, to attend an oil and gas convention on behalf of his employer, Miller Heiman, Inc., in the morning on the very next day, March 30. Miller Heiman is a company engaged in sales training to increase productivity. Mr. Buma's responsibilities, as vice-president of the sales division, for Miller Heiman required him to travel all over the country to meet with potential clients, give sales presentations, and oversee training teams.

1 Michael O'Callaghan was an independent contractor for Miller Heiman, and a co-worker
2 of Mr. Buma's. O'Callaghan and Buma had a professional relationship and regularly worked
3 together on behalf of Miller Heiman to get new clients and to work on projects and proposals. On
4 the day in question, Mr. Buma was staying at O'Callaghan's ranch in Texas so they could prepare
5 for their presentation on behalf of Miller Heiman at the oil and gas convention on the morning
6 following.

8 Buma arrived at O'Callaghan's ranch around 3:30 in the afternoon, after traveling all day
9 to get to Houston, Texas. They were planning to go to dinner and prepare for the next day. Before
10 dinner, to unwind a little from the day's travel, the two went for a short ATV ride around the
11 ranch property. A few minutes into the ride, Buma was involved in an accident in which the ATV
12 apparently rolled over, causing his death. Because Buma was in Texas for the convention solely
13 as part of his employment with Miller Heiman, and because Buma was staying at O'Callaghan's
14 ranch for the sole purpose of their preparing for the presentation on behalf of Miller Heiman at
15 the convention the next day, and because the brief ATV ride was not an unreasonable departure
16 – but akin to a vigorous walk around hotel grounds after a long flight – as set forth more fully in
17 this opinion, and in accordance with the Nevada Supreme Court's decision in *Buma v. Providence*
18 *Corp. Dev., supra*, Buma's death is covered under the traveling employee doctrine and the
19 Petitioners are due appropriate benefits.

23 I. DISCUSSION.

24 The Nevada Supreme Court unequivocally narrowed the sole question to be answered on
25 remand in this matter to be: “whether Jason's ATV outing *with his business associate/co-presenter*
26 *while on a business trip* amounted to a ‘distinct personal departure on a personal errand.’” *Buma,*
27 *supra.*
28

1 The Court instructed future decision makers that, “The cases of distinct departures on
2 personal errands tend to involve a personally motivated activity that takes the traveling employee
3 on a *material deviation in time or space* from carrying out the trip's employment-related
4 objectives.” *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op. 60, p. 9, 453 P.3d 904, 909 (Nev.
5 2019) (emphasis added). Jason Buma did not embark on any such *material deviation in time or*
6 *space* from his trip’s employment-related objectives.

8 Repeatedly, the Nevada Supreme Court referred to the test of reasonableness in making
9 this decision. Nothing in the Nevada Supreme Court’s opinion or applicable statute requires that
10 petitioners prove foreseeability in order to prevail. Likewise, Buma was not required to show
11 actual notice, or that the employer knew or should have known he would be riding an ATV on
12 the ranch.

14 **A. Foreseeability is Not a Required Element of the Test.**

15 The Nevada Supreme Court recognized the reasonableness test numerous times in its
16 opinion:

18 There is no choice but for traveling employees to face hazards away from home in
19 order to tend to their personal needs, "including sleeping, eating, and seeking fresh
air and exercise," *and reasonably entertaining themselves*, on their work trips.

20 *Buma at 7, citing Ball-Foster*, 177 P.3d at 701; *see also 2 Larson's, supra*, § 25.02, at 25-
21 4 n.12(emphasis added).

23 The Court quite clearly laid out the test to “determine whether a traveling employee left
24 the course of employment by distinctly departing on a personal errand.” Notably, the Court did
25 not include foreseeability in its analysis: “the inquiry focuses on whether the employee was (a)
26 tending *reasonably* to the needs of personal comfort, or encountering hazards necessarily
27 incidental to the travel or work; or, alternatively, (b) ‘pursuing . . . strictly personal amusement
28

1 ventures. *Buma* at 9, citing *Ball-Foster*, 177 P.3d at 697 (emphasis added).

2 Following its articulation of the appropriate test, the Nevada Supreme Court clarified that:
3 “traveling employees may generally tend to their *reasonable* recreational needs during downtime
4 without leaving the course of employment under this standard.” *Id.*

5
6 A number of times, the Court returned to this singular test of reasonableness, including its
7 caveat that “recreational activity that is *unreasonable* in light of the total circumstances of the trip
8 may constitute a distinct departure on a personal errand. *Buma* at 11 (emphasis added).

9 “We hold that this category-based approach applies to traveling employees, though we
10 clarify that risks necessitated by travel—such as those associated with eating in an airport,
11 sleeping in a hotel, *and reasonably tending to personal comforts*—are deemed employment risks
12 for traveling employees.” *Buma* at 10 (emphasis added).

13
14 At the conclusion of its opinion, the Nevada Supreme Court remanded for the appeals
15 officer to come to a new decision “guided by the traveling employee rule and its exception for
16 distinct personal errands as set out in this opinion.” *Buma* at 14

17
18 Accordingly, the sole test at issue as to the narrow question posed by the Nevada Supreme
19 Court is one of *reasonableness*. The appeals officer erred in inserting foreseeability as a required
20 element, making the decision unsound as a matter of law, and requiring reversal.

21 **B. The Majority of Jurisdictions Use the *Reasonableness* Test.**

22
23 The only reference to foreseeability in the Nevada Supreme Court opinion in this case is
24 a parenthetical explanation of an Illinois decision, *Bagcraft Corp. v. Indus. Comm’n*, 302
25 Ill.App.3d 334, 235 Ill. Dec. 736, 705 N.E.2d 919, 921 (1998), in which the court noted that the
26 Illinois court, “[applied the] rule covering employees under workers’ compensation throughout
27 their work trips for all reasonable and foreseeable activities).” A survey of Illinois cases on the
28

1 matter shows that this two-pronged test is regularly articulated in that state. *See Wright v.*
2 *Industrial Comm’n*, 62 Ill.2d 65, 338 N.E.2d 379 (1975) and *Insulated Panel Co. v. Industrial*
3 *Comm’n*, 318 Ill. App. 3d 100, 743 N.E.2d 1038, 252 Ill. Dec. 882 (2001). Illinois appears
4 singular in its consistent articulation that foreseeability is a required element in its test.
5

6 It is important, however, to examine how the test is regularly employed in that state,
7 compared to how the appeal officer employed it. In *Wright*, the claimant – who was working on
8 location, out-of-state -- was killed in a head-on collision in his car, six miles from his motel, on a
9 Saturday afternoon. The court found it was not unforeseeable that the decedent, as a traveling
10 employee, would be driving six miles from his motel, even for recreational purposes. There was
11 no evidence the decedent’s conduct was unreasonable.
12

13 In *Insulated Panel*, the claimant injured his leg while out hiking, traversing lava rocks,
14 while in Hawaii on a business trip. The lower forum originally found his activity to be
15 unreasonable. The commission and the reviewing court disagreed, finding the activity was
16 reasonable and foreseeable under the traveling employee doctrine. *Id.*, 318 Ill.App.3d at 102.
17

18 The case of *McCann v. Hatchett*, 19 S.W.3d 218 (Tenn. 2000) provides valuable insight
19 into the majority rule test of reasonableness. In *McCann*, the court relied upon 2 Arthur Larson
20 Les K. Larson, Arthur Larson's Workers' Compensation Laws, § 25.00 (1998), in citing the
21 majority rule that, "[a]n employee whose work entails travel away from the employer's premises
22 is generally considered to be within the course of his or her employment continuously during the
23 trip, except when there is a distinct departure on a personal errand." *Id.*, 19 S.W.3d at 221-222.
24

25 The court specifically adopted the majority rule in determining the compensability of
26 injury or death of traveling employees. The court specifically held that “a traveling employee is
27 generally considered to be in the course of his or her employment continuously during the
28

1 duration of the entire trip, except when there is a distinct departure on a personal errand. Thus,
2 under the rule we today adopt, the injury or death of a traveling employee occurring
3 while reasonably engaged in a reasonable recreational or social activity arises out of and in the
4 course of employment.” *Id.*

5
6 The *McCann* court specifically declined to adopt the “reasonable and foreseeable” test,
7 citing the inapplicability of the element of “foreseeability” to workers compensation cases:

8 We decline to adopt the "reasonable and foreseeable" standard used in some
9 jurisdictions. "Foreseeability" is typically a tort law concept; as we have previously
10 stated, "[c]oncepts of 'proximate cause' or 'foreseeability' as utilized in the law of
11 torts do not necessarily govern or define coverage under the workers' compensation
statutes."

12 *McCann*, 19 S.W.3d at 222 n.2, quoting *Jordan v. United Methodist Urban Ministries, Inc.*, 740
13 S.W.2d 411 (Tenn. 1987).

14 As recognized by *McCann* and *Larson's*, the majority of other jurisdictions employ the
15 straight *reasonableness* test. See e.g., *Slaughter v. State Acc. Ins. Fund*, 60 Or. App 610, 654 P.2d
16 1123 (1982). The Claimant was a truck driver, out of town on work. He went to a tavern one
17 evening during a layover and was injured in a fight he did not start. The court held that the injury
18 was compensable because his visit to the tavern was *reasonable* and not a distinct departure on a
19 personal errand. *Id.*, 60 Or. App. at 616.

20
21 The *Slaughter* decision provides additional clarity in analyzing traveling employee cases.
22 It explained that, in looking to whether an activity of a traveling employee is covered, what is
23 referred to in some jurisdictions as the *reasonableness* test is set forth in other jurisdictions as a
24 question of whether the employee made a “distinct departure on a personal errand.” *Id.*, 60 Or.
25 App. at 615-16. As explained elsewhere, in the *Buma* decision, the Nevada Supreme Court
26 expressly used the language of a “distinct departure on a personal errand” in identifying the
27
28

1 dispositive question, as well as repeatedly referring to the question of whether the activity was
2 reasonable. According to Slaughter, the two terms are essentially interchangeable, but they do not
3 include foreseeability.

4 In *Epp v. Midwestern Machinery Co.*, 296 Minn. 231, 208 N.W.2d 87 (1973), the deceased
5 employee was a truck driver who arrived at a designated city on a Friday to pick up a load. Since
6 it was not ready, he was instructed to check into a motel and wait until the load was ready. It was
7 not ready on Saturday either so, he was told to stay until Monday. On Sunday morning at 2:30
8 am, the employee was killed while crossing a highway after leaving a nearby tavern. The
9 commission concluded that the employee "to pass some time — during a considerably long
10 waiting period — crossed the road to the tavern and had some drinks until closing time." The
11 court found the employee's activity to be reasonable and affirmed. *Id.*, 296 Minn. At 234.

12 In *Matter of Robards v. N.Y. Div. Elec. Products*, 33 A.D.2d 1067 (N.Y. App. Div. 1970),
13 in which traveling employees were killed in an automobile accident at 11:30 at night, after playing
14 four or five games of pool and drinking four or five beers, the court also employed the
15 reasonableness test in affirming the award. The court articulated the reasonableness test, "Where
16 an employer sends an employee away from home it has been held that the test as to whether
17 specific activities are considered to be within the scope of employment or purely personal
18 activities is the reasonableness of such activities. Such an employee may satisfy physical needs
19 including relaxation" *Id.*, 33 A.D.2d at 1068.

20 The *Robards* court clarified the test, "the rule applied is simply that the employee is not
21 expected to wait immobile but may indulge in any *reasonable* activity at that place, and if he does
22 so the risk inherent in such activity is an incident of his employment." *Id.*, citing *Matter of*
23 *Davis v. Newsweek Mag.*, 305 N.Y. 20, 28; see, also, *Matter of Meredith v. United States Ind.*

1 *Chems. Co.*, 14 A.D.2d 955, mot. for lv. to app. den., 11 N.Y.2d 641. Note that none of the cases
2 indicate in any way that the employer needs to be put on specific notice of the activity.

3 In *Thompson v. Keller Foundations, Inc.*, 883 So. 2d 356 (Fla. Dist. Ct. App. 2004), a
4 traveling employee was injured while traveling to dinner after playing pool at a sports bar for an
5 hour. Using the reasonableness test, the court reversed the lower decision, acknowledging the
6 established rule that, “so long as a traveling employee's injury arises out of a risk which is
7 reasonably incidental to the conditions of employment, the injury will be compensable.” *Id.*, 883
8 So. 2d at 357. See also *Garver v. Eastern Airlines*, 553 So. 2d 263, 267 (Fla. Dist. Ct. App. 1990).

9 And see *Blakeway v. Lefebure Corp.*, 393 So. 2d 928 (La. Ct. App. 1981) (Swimming at
10 motel was reasonable recreation for traveling employee); *CBS Inc. v. Labor & Industry Review*
11 *Commission*, 213 Wis. 2d 285 (Wis. Ct. App. 1997)(Traveling employee covered, because
12 downhill skiing not an unreasonable activity); *Ball-Foster v. Giovanelli*, 128 Wn. App. 846 (Wash.
13 Ct. App. 2005) (traveling employee walking to a park to listen to music on his day off was covered,
14 citing to *Larson’s* and the “distinctly personal activity” test); and *Bowser v. N.C. Dep’t. of Corr.*,
15 147 N.C. App. 308, 310 (N.C. Ct. App. 2001) (where claimant was injured returning from personal
16 shopping, court found she “was a traveling employee who was engaged in activities which
17 were reasonable under the circumstances”).

18 Accordingly, as indicated by the Nevada Supreme Court’s decision in *Buma*, this court
19 must follow the majority rule, employing the reasonableness test. The appeals officer improperly
20 inserted the element of foreseeability into the analysis, committing reversible error.

21 CONCLUSIONS

22 Jason Buma's brief ATV ride, with a co-worker, on the property where he was staying
23 solely for work-related purposes, was not *a material deviation in time or space* from carrying out
24

1 the trip's employment-related objectives. See *Buma v. Providence Corp. Dev.*, 135 Nev. Adv. Op.
2 60, 453 P.3d 904 (Nev. 2019).

3 As set forth extensively in the Court's opinion, the Nevada Supreme Court made it
4 abundantly clear that at the time of his death, Jason Buma was a traveling employee who was at
5 the O'Callaghan's ranch solely for business, that he was preparing with his co-worker for
6 presentations at the oil and gas convention the next morning, that he worked irregular hours,
7 starting his day as early as 6 a.m. and sometimes working as late as 10 p.m., and that he was
8 constantly on call, taking business calls at any hour on weekends, on vacations, and even while
9 hiking. Additionally, the record shows that the ranch in question is just under 75 acres and the
10 common mode of transportation around the ranch is on ATVs. The Court agrees with these
11 conclusions.
12

13
14 The record and the legal authorities lead to the conclusion that Jason Buma was in the
15 course and scope of his employment when injured and that his injury and death arose out of his
16 employment situation at the ranch while on business.
17

18 On remand from the Nevada Supreme Court, the appeals officer erred by misapplying the
19 law. The appeals officer misapplied the law by imposing another layer -- the requirement of
20 *foreseeability* to be demonstrated by the petitioners that Nevada law does not require. This Court
21 finds that not only was this an error of law, but that as a matter of law, any activity in this context
22 that is reasonable, is also inherently and necessarily foreseeable.
23

24 The Court specifically finds that, under the circumstances here on the record before the
25 Court and the record that was before the appeals officer, Jason Buma's activity of riding an ATV
26 with his colleague at the ranch at which he was staying, did not amount to a personal errand such
27 as to be deemed a distinct departure from Mr. Buma's employer's business.
28

1 In coming to this conclusion, the Court considered that the ranch where the injury occurred
2 was not a recreational facility. It was the home of a colleague who was involved in the same types
3 of business, was involved with the presentations Buma was in Houston to deliver and was going
4 to be a co-presenter the following day. In short, the two were at the ranch solely for business
5 purposes. Further, this was not the first time Mr. Buma had visited the ranch before a business
6 presentation with Mr. O'Callaghan. The two planned to travel together to the location of their
7 presentations the following morning.

8
9 The appeals officer found nothing inherently wrong with riding an ATV, and that the ATV
10 ride in question was reasonable. This Court likewise finds that ATV riding is a form of
11 recreational activity that somebody on a business trip might engage in.

12
13 The Court also finds that the activity was not a personal risk. The Court specifically finds
14 that the activity was an employment-related risk. The appeals officer erred as a matter of law by
15 finding otherwise.

16
17 The petition for judicial review brought by Mrs. Buma as the surviving spouse, and her
18 daughter as the surviving child of their late husband and father, Jason, is granted.

19 **IT IS HEREBY ORDERED** that the Decision of the appeals officer is HEREBY
20 REVERSED and that the petitioners' Petition for Judicial Review is hereby GRANTED. The
21 Court further ORDERS that Mr. Buma's death in the course of his business trip is compensable
22 pursuant to NRS 616C.505. Kaycean Buma and Delaney Buma are entitled to workers'
23 compensation death benefits and interest, starting the day of his accident and untimely death. *See*
24 NRS 616C.335.

25
26 Dated this 23 day of December, 2021.



27
28 BARRY L BRESLOW
District Judge

CASE NO. CV20-02092

**TITLE: STATE VS. KAYCEAN BUMA VS.
PROVIDENCE CORP ET AL**

FILED
Electronically
CV20-02092
2021-08-27 11:15:11 AM
Alicia L. Lerud
Clerk of the Court
Transaction # 8618099

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

APPEARANCE-HEARING

CONT'D TO

08/25/2021

ORAL ARGUMENTS ON PETITION FOR JUDICIAL REVIEW

HONORABLE
CONNIE

Defendants not present nor represented by counsel. Petitioner's counsel Charles Diaz, Esq., present.

STEINHEIMER

DEPT. NO. 4

T. Adrian

(Clerk)

J. Schonlau

(Reporter)

This hearing was held remotely because of the closure of the courthouse at 75 Court Street in Reno, Washoe County, Nevada due to the national and local emergency caused by the COVID-19 pandemic. The Court and all the participants appeared via simultaneous audiovisual transmission. The Court was physically located in Reno, Washoe County, Nevada which was the site of the court session. Counsel acknowledged receipt of Notice that the hearing was taking place pursuant to Nevada Supreme Court Rules-Part 9 relating to simultaneous audiovisual transmissions and all counsel stated they had no objection to going forward in this manner.

3:00 p.m. Court convened.

COURT reviewed the procedural history of the case and noted for the record the absence of the Defendants.

Petitioner's counsel informed the Court that he has not heard from the Defendants with regards to today's hearing.

COURT noted that Department 8 has the factual background of this case, and further that this case should have originally been assigned to Department 8.

COURT ORDERED matter transferred to Department 8. Court informed counsel that a written order would enter transferring this matter to Department 8.

3:03 p.m. Court adjourned.

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

**KAYCEAN BUMA, as the surviving spouse,
and DELANEY BUMA, as the surviving
child of JASON BUMA (Deceased),**

Case No. CV20-02092

Petitioners,

Dept. No. 8

vs.

**PROVIDENCE CORP. DEVELOPMENT DBA
MILLER HEIMAN, INC., GALLAGHER BASSETT
SERVICES, INC., CNA CLAIMSPPLUS, and the
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE,**

Respondents.

/

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 14 day of January, 2022, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 14 day of January, 2022.

Alicia L. Lerud
Clerk of the Court
By /s/Y.Viloria
Y.Viloria
Deputy Clerk

Code 4132

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

**KAYCEAN BUMA, as the surviving spouse,
and DELANEY BUMA, as the surviving
child of JASON BUMA (Deceased),**

Case No. CV20-02092

Dept. No. 8

Petitioners,

vs.

**PROVIDENCE CORP. DEVELOPMENT DBA
MILLER HEIMAN, INC., GALLAGHER BASSETT
SERVICES, INC., CNA CLAIMSPLUS, and the
DEPARTMENT OF ADMINISTRATION
APPEALS OFFICE,**

Respondents.

/

NOTICE OF APPEAL DEFICIENCY

TO: Clerk of the Court, Nevada Supreme Court,
and All Parties or their Respective Counsel Of Record:

On January 12, 2022, Attorney Michael Friend, Esq., for Providence Corp. Development DBA; Miller Heiman, Inc., Gallagher Bassett Services, Inc. and CNA Claimsplus, filed a Notice of Appeal with the Court. Attorney Friend failed to include the Five Hundred Dollar (\$500.00) District Court appeal bond, and the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee.

1 Pursuant to NRAP 3(a)(3), on January 14, 2022, the Notice of Appeal was filed with
2 the Nevada Supreme Court. By copy of this notice Attorney Friend, was apprised of the
3 deficiency by electronic mail.

4 Dated this 14th day of January, 2022.

5
6
7 CERTIFICATE OF SERVICE

8 I certify that I am an employee of the Second Judicial District Court of the State of
9 Nevada, County Of Washoe; that on the 14th day of Janu, 2022, I electronically filed
10 the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

11 I further certify that I transmitted a true and correct copy of the foregoing document
12 by the method(s) noted below:

13 Electronically filed with the Clerk of the Court by using the ECF system which will send
14 a notice of electronic filing to the following:

15 CHARLES DIAZ, ESQ. for KAYCEAN BUMA

16 JOHN LAVERY, ESQ. for GALLAGHER BASSETT SERVICES, INC., CNA
17 CLAIMSPUS, PROVIDENCE CORPORATION DEVELOPMENT DBA MILLER
HEIMAN, INC.

18 Deposited in the Washoe County mailing system for postage and mailing with the
19 United States Postal Service in Reno, Nevada:
20
21

22 By:/s/Y.VILORIA
23 Y.VILORIA
24 Deputy Clerk
25
26
27
28