

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

2 LAS VEGAS METROPOLITAN
3 POLICE DEPARTMENT and CCMSI,

4 Appellant,

5 vs.
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7 ROBERT HOLLAND

8 Respondent.
9

CASE NO. : 82843-COA
Electronically Filed
May 03 2022 01:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **INTERESTED/NON-PARTY MOTION FOR PUBLICATION**

11
12 COMES NOW, Interested/non-party, NEVADA JUSTICE
13 ASSOCIATION, pursuant to Nevada Rules of Appellate Procedure (Hereinafter
14 “NRAP”) 36(f), by and through its attorney, CRAIG W. KIDWELL, ESQ. of
15 KIDWELL & GALLAGHER, and respectively moves this Honorable Court for
16 an Order directing that this Court’s Order of Affirmance dated April 20, 2022 be
17 published in the Nevada Reports.
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20 This Motion is based on NRAP 36, the following Points and Authorities,
21 and all documents filed herein to date.
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1 Respectfully submitted this 3 day of May, 2022.

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7 CRAIG W. KIDWELL
8 Nevada Bar No. 6707
9 Attorney for Nevada Justice Association

I.

POINTS AND AUTHORITIES

Interested/non-party, Nevada Justice Association (hereinafter “NJA”), files this Motion for Publication of Order of Affirmance filed on April 20, 2022, for various reasons. This Honorable Court’s holding in this matter should be published as it satisfies a significant question of first impression in Nevada workers’ compensation law, it significantly clarifies a rule of law previously announced by the Nevada Supreme Court and, it involves an issue of great public importance that has broad application in Nevada workers’ compensation case law which extends beyond the parties hereto.

NRAP 36 states in pertinent part:

(f) Motion to Reissue an Order as an Opinion. A motion to reissue an unpublished disposition or order as an opinion to be published in the *Nevada Reports* may be made under the provisions of this subsection by any interested person. With respect to the form of such motions, the provisions of Rule 27(d) apply; in all other respects, such motions must comply with the following:

(1) Time to File. Such a motion shall be filed within 14 days after the filing of the order. Parties may not stipulate to extend this time period, and any motion to extend this time period must be filed before the expiration of the 14-day deadline.

...

(3) Contents. Such a motion must be based on one or more of the criteria for publication set forth in Rule 36(c)(1)(A)-(C). The motion must state concisely and specifically on which criteria it is based and set forth

1 argument in support of such contention. If filed by or on
2 behalf of a nonparty, the motion must also identify the
3 movant and his or her interest in obtaining publication.

4 NRAP 36(2)(f), as cited above, allows “any interested person” to motion
5 this Honorable Court for an order to publish a decision. Pursuant to NRAP
6 36(2)(f)(3), the NJA is an “interested person” in this matter as it is a non-profit
7 educational organization. As a non-profit educational organization consisting of
8 independent lawyers who represent consumers and share the common goal of
9 improving the civil justice system, the NJA is a non-profit educational
10 organization whose charter strives towards three primary goals: 1) to continually
11 provide its membership with up-to-date knowledge and information through
12 continuing legal education programs and Nevada specific publications; 2) to
13 monitor the legislative session in order to ensure that Nevadans’ access to the
14 courts is not diminished, and; 3) to educate the public regarding their individual
15 rights and responsibilities as citizens.
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20 Additionally, the NJA has a keen interest in the development of Nevada
21 law in the areas in which its members practice. One of these important areas is
22 workers’ compensation law. The NJA has an interest in this case because its
23 outcome and decision will have a profound effect on the practice of law in the
24 workers’ compensation arena. Publication of this decision will especially impact
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1 the workers' compensation benefits that are due to clients represented by NJA
2 members and those clients' families.

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4 The NJA requests that this Court grant this Motion. The publication of
5 this Decision would satisfy a significant question of first impression in Nevada
6 Workers' Compensation law and also clarify a rule of law previously announced
7 by the Nevada Supreme Court, specifically in Emps. Ins. Co. of Nev. V. Daniels,
8 122 Nev. 1016, 145 P.3d. 1029 (2006). There the Nevada Supreme Court stated
9 that for an employer to defend a workers' compensation claim for occupationally
10 related heart disease, the employer must do so "by showing that the employee
11 failed to correct a predisposing condition...after being warned to do so in
12 writing." While the Daniels decision held that the employer had the burden to
13 defend a claim for industrial disease using NRS 617.457(11), workers'
14 compensation claims for occupationally related heart disease continued to be
15 denied at high levels solely because of the existence of predisposing conditions.
16 Further, in Footnote 8, this Court cited City of Las Vegas v. Burns, No. 76099-
17 COA, 2019 WL 6003344 (Nev. Ct. App. Nov. 13, 2019), that reversed an
18 Appeals Officer's conclusory determination that a claimant could correct his
19 predisposing conditions simply because his physicians ordered him to diet and
20 exercise. Thus, this Court's holding in this matter clearly articulates and settles
21 existing and future needless appeals as it both settles a question of first
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1 impression (whether an injured worker must prove correction of a predisposing
2 condition after being warned to do so in writing) and clarifies Daniels and Burns
3 holdings. The decision of this Court here is clear, comprehensive, and easily
4 applicable for future precedent in the much-needed published case law of Nevada
5 workers' compensation. As such, the granting of this Motion should not require
6 revisions to the text of the unpublished disposition which would result in
7 discussion of additional issues not included in the original decision. NRAP
8 36(f)(4).
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12 Moreover, publication would serve significant public policy and have
13 broad application to Nevada workers' compensation law. This Court's April 20,
14 2022 Order of Affirmance satisfies a current need for an opinion which clarifies
15 a commonly argued issue. The issues raised here should be published because
16 by doing so, this Honorable Court preserves judicial resources, gives guidance to
17 lower courts, and serves the public policy behind workers' compensation. There
18 are numerous cases currently on appeal before the Department of Administration,
19 District Court and this Honorable Court pertaining to the exact issue of denying
20 the conclusive presumption of claim compensability for diseases of the heart
21 solely because injured workers had predisposing condition that the employer
22 failed to prove by "substantial evidence" in the record were within the injured
23 workers ability to correct.
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1 The issue which was raised here will be litigated in many other cases, again
2 and again, if this well-reasoned Opinion is not published. By granting this
3 Motion, this Court will provide guidance which will prevent unnecessary future
4 appeals regarding the same denial of benefits at issue raised here. As this
5 Honorable Court has consistently held, the Nevada workers' compensation
6 statutes were enacted for the purpose of giving compensation, not for the denial
7 thereof. State Indus. Sys. V. Weaver, 103 Nev. 196, 199-200, 734 P.2d 740
8 (1987). Moreover, this Honorable Court has also held "It is unquestionably the
9 purpose of workers' compensation law to provide economic assistance to persons
10 who suffer disability or death as a result of their employment." Breen v. Caesars
11 Palace, 102 Nev. 79, 83, 715 P.2d 1070, 1072-73 (1986) (quoting State Indus.
12 Ins. Sys. V. Jesch, 101 Nev. 690, 694, 709 P.2d 172, 175 (1985)). This Honorable
13 Court recently held that the Nevada Industrial Insurance Act is a trade off
14 whereby the injured worker loses the right to sue the employer in tort and in
15 return, the injured worker receives the protections of the Nevada Industrial
16 Insurance Act. *See*, Baiguen v. Harrah's, 134 Nev. Adv. Op. 71 (2018).

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22 In addition, in this case, Respondent had to defend his right to workers'
23 compensation benefits by litigation through the administrative courts to this
24 Honorable Court over many years. If this Court publishes this opinion, it will
25 prevent future injured workers from having to travel through the same appeals
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1 process, addressing the same issue repeatedly, and thus also, preserve valuable
2 state resources. This has the additional benefit of serving public policy by
3 ensuring that Nevada injured workers receive their compensation quickly. See,
4 NRS 616A.010(1) which states:

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6 1. The provisions of chapters 616A to 617, inclusive, of
7 NRS must be interpreted and construed **to ensure the quick**
8 **and efficient payment of compensation to employees who**
9 **are injured or disabled** at a reasonable cost to the employers
10 who are subject to the provisions of those chapters;

11 (Emphasis added).

12 Publication of this decision would protect the State of Nevada's resources
13 as a published precedent, would solidify Nevada Law and guide Nevada
14 industrial insurance companies, third-party administrators, their counsel as well
15 as claimants and their counsel.
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17 II.

18 **CONCLUSION**

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20 Based on the above reasons, the NJA contends that this decision is an
21 important legal opinion which warrants publication as set forth in NRAP 36. This
22 Court's opinion addresses a common issue which is litigated and provides clear
23 guidance to lower courts. Finally, this Honorable Court's decision addresses
24 several important public policy issues which are best served by publication.
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26 *////*
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1 Thus, the NJA respectfully requests this Court to grant this Motion.

2 Dated this 3 day of May, 2022.

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CERTIFICATE OF MAILING

Pursuant to N.R.C.P. 5(b), I hereby certify that I am an employee of the law firm
Kidwell & Gallagher, Ltd., and that on this 3rd day of May, 2022, I mailed a true
and correct copy of the above and foregoing *Interested/Non-Party Motion for*
Publication as follows:

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