

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

2 LAS VEGAS METROPOLITAN
3 POLICE DEPARTMENT; AND
4 CANNON COCHRAN MANAGEMENT
5 SERVICES, INC.,

6 Appellants,

7 v.

8 STATE OF NEVADA DEPARTMENT
9 OF BUSINESS AND INDUSTRY,
10 DIVISION OF INDUSTRIAL
11 RELATIONS; AND STATE OF
12 NEVADA BOARD FOR THE
13 ADMINISTRATION OF THE
14 SUBSEQUENT INJURY ACCOUNT
15 FOR SELF-INSURED EMPLOYERS,

16 Respondents.

Supreme Court Case No.: 83262

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District Court Case No.: A-20-821892-1
Elizabeth A. Brown
Clerk of Supreme Court

17 **APPELLANTS' APPENDIX VOLUME II**

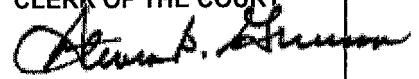
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Transmittal of Administrative Record on Appeal, filed November 9, 2020 ²	I	00154-00157

² The documents contained in the Record on Appeal are indexed individually in alphabetical order. The documents, however, were arranged chronologically in the Record on Appeal which is how they are presented attached hereto.



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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 LAS VEGAS METROPOLITAN POLICE)
14 DEPARTMENT, and CANNON)
15 COCHRAN MANAGEMENT SERVICES,)
16 INC.)

17 Petitioners,)

18 vs.)

19 STATE OF NEVADA BOARD FOR THE)
20 ADMINISTRATION OF THE SUBSEQUENT)
21 INJURY ACCOUNT FOR SELF-INSURED)
22 EMPLOYERS,)

23 Respondents.)

Case No.: A-20-821892-J

Dept. No.: 15

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that an "Order" was entered in the above-captioned matter
25 on June 21, 2021, a true and correct copy of which is attached hereto.

26 DATED this 22nd day of June, 2021.

27 ///

28 ///

Respectfully submitted,

DIVISION OF INDUSTRIAL RELATIONS

By:

Donald C. Smith, Esq.

Jennifer J. Leonescu, Esq.

Christopher A. Eccles, Esq.

3360 W. Sahara Ave., Ste. 250

Las Vegas, NV 89102

Attorneys for Respondent Division of Industrial Relations

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Division of Industrial Relations, and that on this 22nd day of June, 2021, I caused the foregoing document entitled **Notice of Entry of Order** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-02 and the NEFCR.

An employee of the State of Nevada
Division of Industrial Relations

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CLARK COUNTY, NEVADA**LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, and CANNON
COCHRAN MANAGEMENT SERVICES,
INC.

Petitioners,

vs.

STATE OF NEVADA BOARD FOR THE
ADMINISTRATION OF THE SUBSEQUENT
INJURY ACCOUNT FOR SELF-INSURED
EMPLOYERS,

Respondents.

Case No.: A-20-821892-J

Dept. No.: 15

**ORDER GRANTING
RESPONDENT DIVISION OF
INDUSTRIAL RELATIONS'
MOTION TO DISMISS
PETITIONERS' PETITION
FOR JUDICIAL REVIEW**

The matters before the Court are Respondent Nevada Division of Industrial Relations' ("Division") Motion to Dismiss Petitioners' Petition for Judicial Review, and Respondent State of Nevada Board for the Administration of the Subsequent Injury Account for Self-Insured Employers' ("Board") Joinder thereto. The Court, having reviewed the papers and pleadings on file in this matter and having heard the oral arguments of counsel on June 7, 2021, and good cause appearing, hereby rules as follows:

I. FINDINGS

1. Respondent Division moved to dismiss Petitioners' Petition for Judicial Review on two bases: first, Petitioners failed to transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency as required by NRS 233B.131(1)(a), and second, Petitioners failed to timely file their Memorandum of Points and Authorities as required by NRS 233B.133(1).

2. NRS 233B.131(1)(a) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (a) The party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency." (Emphasis added).

3. NRS 233B.131(1)(b) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review." (Emphasis added).

4. Petitioners filed their Petition for Judicial Review on September 24, 2020. Thus, pursuant to the controlling statute, NRS 233B.131(1)(a), Petitioners' deadline to transmit the transcript to the Court was November 9, 2020.

5. It is undisputed that the Petitioners never transmitted the transcript to the Court.

6. It is undisputed that the Petitioners filed their Opening Brief 105 days late and that said Brief lacks citations to the transcript of the administrative proceeding under review.

7. The record of the underlying administrative proceeding is incomplete due to Petitioners' failure to transmit the transcript to the Court.

8. As a result of the incomplete record, and of Petitioners' failure to cite to the transcript in their late-filed Opening Brief, this Court cannot conduct a judicial review based upon the whole record as required by NRS 233B.135.

...

9. On November 9, 2020, the Respondents timely transmitted to the court the remainder of the record pursuant to NRS 233B.131(1)(b).

10. The requirements of NRS 233B.131(1)(a) and (b) are mandatory because the statute employs the word "shall." Thus, the Petitioners' failure to transmit the transcript to the court renders their Petition for Judicial Review subject to dismissal.

11. NRS 233B.131(1)(a) is plain and unambiguous, yet Petitioners failed to comply with their 45-day statutory deadline. Moreover, Petitioners position, in their written Opposition to the Division's Motion to Dismiss, and during the oral argument—that they are not required to transmit the transcript to the court—is contradicted by the plain and unambiguous language of the statute. As of June 7, 2021—the date of the hearing on the Division's Motion to Dismiss—Petitioners were 211 days past their statutory deadline to transmit the transcript to the Court.

12. Good cause for a delay in transmitting the transcript, however, may be shown pursuant to NRS 233B.131 because the statute allows the court to alter the 45-day deadline. Thus, the 45-day deadline is not jurisdictional.

13. Petitioners' argument that Respondents were statutorily required to file the *complete* record of the underlying administrative proceeding is contradicted by the structure and plain and unambiguous language of NRS 233B.131, the controlling statute. Petitioners' position is erroneous as a matter of law. Indeed, the legislative history of the 2015 amendment to NRS 233B.131 shows that the underlying policy for requiring petitioners to transmit the transcript to the court was to decrease the burden on taxpayers.

14. Petitioners have not met their burden to show good cause for their ongoing delay to transmit the transcript to the Court.

15. Mr. Price did not provide the Court with an affidavit or declaration specifying how his medical condition affected his ability to comply with statutory requirements during the intervening 211 days. The Court assumes that he had a serious medical condition but finds the effects of the condition vague.

16. Moreover, two other attorneys from Mr. Price's law firm are listed on the Court's electronic service list for this case.

17. Petitioners bear the burden to show good cause, but they have not met their burden under the *Scrimmer* factors. *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000).

18. Furthermore, Petitioners' extensive unexcused delay is mooted by their position that they are not statutorily required to transmit the transcript to the Court.

II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Respondent Division's Motion to Dismiss Petitioners' Petition for Judicial Review and the Board's Joinder thereto are GRANTED.

DATED this ____ day of _____, 20____ Dated this 21st day of June, 2021

HON. JUDGE JOE HARDY, JR.

Respectfully submitted by:
DIVISION OF INDUSTRIAL RELATIONS

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Jennifer J. Leonescu, Esq.
Christopher A. Eccles, Esq.
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F18 060 65D6 31EC
Joe Hardy
District Court Judge

Approved as to form and content by:
LEWIS BRISBOIS BISGAARD & SMITH

By: _____
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Heather S. Smith

CLERK OF THE COURT

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12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14
15 LAS VEGAS METROPOLITAN POLICE
16 DEPARTMENT; and CANNON COCHRAN
17 MANAGEMENT SERVICES, INC.,

17 Petitioners,

18 v.

19 STATE OF NEVADA BOARD FOR THE
20 ADMINISTRATION OF THE SUBSEQUENT
21 INJURY ACCOUNT FOR SELF-INSURED
22 EMPLOYERS,

22 Respondents.

CASE NO.: A-20-821892-J

DEPT. NO.: 15

HEARING REQUESTED

23 **MOTION FOR RECONSIDERATION OF ORDER GRANTING RESPONDENT**
24 **DIVISION OF INDUSTRIAL RELATIONS' MOTION TO DISMISS PETITIONERS'**
25 **PETITION FOR JUDICIAL REVIEW; AND REQUEST FOR ORDER SHORTENING**
26 **TIME**

26 COME NOW Petitioners, LAS VEGAS METROPOLITAN POLICE DEPARTMENT and
27 CANNON COCHRAN MANAGEMENT SERVICES, INC., (hereinafter referred to as the
28 "Petitioners"), by and through their attorneys, DANIEL L. SCHWARTZ, ESQ., KIM D. PRICE,

LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
ATTORNEYS AT LAW

1 ESQ. and JOEL P. REEVES, ESQ. of LEWIS BRISBOIS BISGAARD & SMITH LLP, and hereby
2 files the instant Motion for Reconsideration of Order Granting Respondent Division of Industrial
3 Relations' Motion to Dismiss Petitioners' Petition for Judicial Review.

4 This Motion and Request for Order Shortening Time is made and based upon the papers and
5 pleading on file herein and any argument of counsel on this matter.

6 DATED this 7 day of July 2021.

7 Respectfully submitted,

8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

9
10
11 By: 

DANIEL L. SCHWARTZ, ESQ.

Nevada Bar No. 005125

KIM D. PRICE, ESQ.

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BISGAARD
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ATTORNEYS AT LAW

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I, JOEL P. REEVES, ESQ., do hereby swear under penalty of perjury that the assertion of this affidavit are true, that:

2. This affidavit is made in support of an ex-parte order shortening time for Motion for Reconsideration of Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review to be heard.

4. The above-named Affiant has good cause to request this Court for an Order Shortening time. The subject Order was filed on June 21, 2021. The Notice of Entry was filed on June 22, 2021. As such, any appeal to the Supreme Court will be due on or about July 22, 2021

6. That the undersigned truly believes that this Court has been improperly persuaded as to what is required in Petitions for Judicial Review and that Your Honor should reconsider the subject June 21, 2021 Order before Petitioners file an appeal to the Supreme Court.

8. Affiant respectfully requests that this matter be set for a hearing with oral argument prior to July 22, 2021.

4 3 2
 2 4 3
 3 2 4

1 9. This request for Order Shortening Time is made in good faith and not for the
2 purpose of undue advantage;

3
4 Further Affiant sayeth naught.

5 DATED this 7 day of July 2021.

6
7 JOEL P. REEVES, ESQ.

8 SUBSCRIBED AND SWORN to before me
9 this 7 day of July 2021

10 NOTARY PUBLIC in and for said
11 County and State



LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
ATTORNEYS AT LAW

1 ORDER SHORTENING TIME

2 GOOD CAUSE APPEARING THEREFOR,

3 IT IS HEREBY ORDERED that the time of hearing of the above-entitled matter be, and the
4 same will be heard, on July 28, 2021 in chambers in Dept. No. 14. ¹⁵

5
6 Dated this 13th day of July, 2021

7 
8
9 DISTRICT COURT JUDGE

10 BD8 12D E5A9 DFAF
11 Joe Hardy
12 District Court Judge

13 Respectfully submitted by:

14
15 LEWIS
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**LEWIS
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& SMITH LLP**
ATTORNEYS AT LAW

This Motion for Reconsideration ensues.

II.

LEGAL ARGUMENT

1. Jurisdiction

NRCP 52(b) provides as follows:

On a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly. The time for filing the motion cannot be extended under Rule 6(b). The motion may accompany a motion for a new trial under Rule 59.

NRCP 59(e) provides that "[a] motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment." Finally, NRCP 60(b) provides as follows:

Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

The timing for filing a motion under NRCP 60(b) is "within a reasonable time--and for reasons (1), (2), and (3) no more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later."

This Motion is timely and warranted, as will be explained below.

2. Petitioners Respectfully Request Reconsideration

In the June 21, 2021, this Court held that it was dismissing Petitioners' appeal because Petitioners did not file the complete Record on Appeal and because Petitioners did not timely file their brief. However, the burden is on the agency rendering the subject Decision to file the complete record on appeal and the Opening Brief is not due until the complete record has been filed by the agency. Further, even if Your Honor considers that Petitioners had a burden to submit a portion of the record,

1 the only portion allegedly missing was the transcript of the hearing and Petitioners have obtained that
2 and attached it hereto. As for the filing of the brief, if Your Honor still finds that it was submitted late,
3 Petitioners pray that this Court excuse that late filing for good cause.

4 a. **The Complete Record Was Not Filed**

5 This Court's ruling hinges on NRS 233B.131 which provides in pertinent part:

6 **NRS 233B.131 Transmittal of record of proceedings to reviewing**
7 **court by party and agency; shortening of or corrections or**
8 **additions to record; additional evidence; modification of findings**
9 **and decision by agency based on additional evidence.**

10 1. Within 45 days after the service of the petition for judicial
11 review or such time as is allowed by the court:

12 (a) The party who filed the petition for judicial review shall
13 transmit to the reviewing court an original or certified copy of the
14 transcript of the evidence resulting in the final decision of the agency.

15 (b) The agency that rendered the decision which is the subject of
16 the petition shall transmit to the reviewing court the original or a
17 certified copy of **the remainder of the record of the proceeding**
18 **under review.**

19 The record may be shortened by stipulation of the parties to the
20 proceedings. A party unreasonably refusing to stipulate to limit the
21 record, as determined by the court, may be assessed by the court any
22 additional costs. The court may require or permit subsequent
23 corrections or additions to the record.

24 Of note, the statute *requires* the agency that rendered the Decision, in this case the Board, to
25 "transmit to the reviewing court the original or a certified copy of **the remainder** of the record of the
26 proceeding under review." (emphasis added) Therefore, if a petitioner files *anything* with the Court
27 relative to the Record on Appeal, it is the Board's obligation to file whatever else was not filed by the
28 petitioner to complete the subject Record on Appeal. If nothing is filed by the petitioner, it is
ultimately the obligation of the agency that rendered the decision to transmit *the entire* record on
appeal.

Further, as the Court's order hinges on the word "transcript," the full statutory citation is that,
prior to the agency filing a complete record, a petitioner shall file a copy of "the transcript **of the**
evidence resulting in the final decision of the agency." There is no separate mandate that the petitioner
file any actual "transcript" of a hearing or anything like that. Further, it cannot be overstated that
although the statute does state that the petitioner shall file a transcript of the evidence, if nothing is
filed, it is ultimately the agency's obligation to submit the *entire* record on appeal.

1 What's more, NRS 233B.133 which deals with briefing in Petitions for Judicial Review even
2 explicitly states that "[a] petitioner or cross-petitioner who is seeking judicial review must serve and
3 file a memorandum of points and authorities within 40 days after the agency gives written notice to
4 the parties that the record of the proceeding under review has been filed with the court."

5 The undersigned's office *only* handles workers' compensation appeals. Indeed, the
6 undersigned/affiant is the primary attorney in this office for appeals and is in District Court on a
7 weekly if not daily basis handling workers' compensation appeals and petitioners never file anything
8 relative to the Record on Appeal in workers' compensation petitions. It is not even just the
9 undersigned's office. All other Petition for Judicial Review that the undersigned and all other
10 attorneys in the undersigned's office have seen, whether it be from a claimant, an administrator, an
11 employer, a seasoned attorney, or a pro se litigant, there have been *zero* petitions where the petitioner
12 actually filed a record on appeal. It is always the agency that files a complete record. Consequently,
13 the undersigned has seen *zero* dismissal for any party failing to file a record. It is always the state
14 agency that must file the complete record. And if for some reason any party, say a pro per claimant,
15 attempted to file something, the rendering agency would *still* transmit the entire record.

16 Under this Court's order, if a pro se litigant had attempted to file the subject appeal and did not
17 submit anything, they would have been tossed out of court because they did not file something which
18 they did not have. Indeed, Petitioners have now been tossed out of court for not filing something they
19 did not have, a transcript of the actual hearing below. This would happen in EVERY SINGLE
20 PETITION if that is the way NRS 233B.131 worked. Under this Court's current order, every single
21 workers' compensation appeal currently pending in the Eighth Judicial District should be dismissed
22 because the petitioners did not file anything relative to the record on appeal. However, that is not what
23 the law requires. The law requires the agency to file the complete record.

24 ...

25 ...

26 ...

27

28

1 If Your Honor needed more proof, Petitioners would direct this Court to the first page of the
2 Record on Appeal that was filed in this matter. On November 9, 2020, the Board filed what it
3 purported to be the *complete* Record on Appeal with this Honorable Court:

4 Pursuant to NRS 233B.131, the STATE OF NEVADA BOARD FOR
5 THE ADMINISTRATION OF THE SUBSEQUENT INJURY
6 ACCOUNT FOR SELF INSURED EMPLOYERS (SIA) now files the
7 entire record of the proceedings under review by this Court as a
8 result of the Petition for Judicial Review pursuant to NRS 233B.130
9 filed by LAS VEGAS METROPOLITAN POLICE DEPARTMENT
10 and CANNON COCHRAN MANAGEMENT SERVICES, INC.,
11 Respondents

12 (emphasis added)

13 There is even a Certification attached thereto which states as follows:

14 I Vanessa Skrinjaric, an employee of the State of Nevada, Division of
15 Industrial Relations, Workers' Compensation Section, hereby certify
16 that the documents submitted herewith comprise the record of the
17 administrative proceeding, which is the subject of Case No. Case No.
18 A-20-821892-J in Department XV of the Eight Judicial District Court,
19 in and for Clark County, Nevada, which are attached hereto as Bates
20 ROA 0001-0132

21 (emphasis added)

22 Note that there is no caveat. There is no certification that this is the complete record save for a
23 transcript. The Board, i.e., the same party who later moved for dismissal because the record was
24 allegedly not complete, clearly states that it has transmitted "the entire record of the proceedings
25 under review." And then indeed, they turn around and ask that Petitioners appeal be dismissed because
26 the complete record was not filed? This is a bait and switch of the highest order, especially coming
27 from a state regulatory agency. This is the first Petition for Judicial Review that the undersigned has
28 seen where the state agency failed to include something in the record and then alleged that the
appealing party had some burden to supplement what the state agency did not submit. Further, the
undersigned would note that, absent an error from the agency, that transcript is contained in every
other Transmittal of Record filed by a state agency that the undersigned has ever seen.

And indeed, Petitioners relied on the agency's statement to their detriment as, apparently, this
record was not the "entire record" as there was a transcript of the actual hearing that was not included
in that Record. (See Dickinson v. Am. Med. Response, 124 Nev. 460, 467, 186 P.3d 878, 883 (2008))

1 “Equitable estoppel may be invoked against a party who claims a statutory right in administrative
2 workers' compensation proceedings, when the invoking party has reasonably relied on the other party's
3 words or conduct to her detriment.”)

4 Although Petitioners are adamant that NRS 233B.131 *requires* the rendering agency to file the
5 complete record, in the interest of an amicable resolution to this matter or a resolution that does not
6 involve Petitioner's appeal getting dismissed, after hearing about the outcome of the June 7, 2021
7 hearing on this matter and the June 21, 2021 Order, the undersigned contacted the DIR about said
8 transcript and the DIR pointed counsel to the court reporter that maintained the transcript. Counsel
9 contacted that court reporter, ordered an expedited transcript, and has attached the same to this Motion
10 for Reconsideration. Should Your Honor grant this Motion for Reconsideration, Petitioner will
11 promptly file this transcript as a supplement to the record already filed should Your Honor desire the
12 same.

13 Again, Petitioners truly believed (apparently to their detriment) that the entire record had been
14 transmitted based on prior experience with Petitions for Judicial Review, the statement on the cover
15 page of the transcript filed with this court, and the relevant law cited above. Given that Petitioners
16 have now obtained said transcript and submitted the same to this Court, Petitioners pray that Your
17 Honor will find that any alleged failure on Petitioner's part to file something with this court was
18 excusable error and that Your Honor reconsider dismissal and allow this case to proceed on the merits.

19 **b. Petitioner's Opening Brief is Technically Not Even Due**

20 Beyond the alleged failure to submit a transcript, Your Honor found that dismissal was
21 appropriate because Petitioner's Opening Brief was late. However, as noted above, NRS 233B.133
22 states that Petitioner's brief is not due until “40 days after the agency gives written notice to the
23 parties that the record of the proceeding under review has been filed with the court.” Here, the agency
24 is contesting that the record has not been filed. As such, Petitioner's brief is not even technically due
25 yet. If it is the agency's certification that the record has been filed which starts the time running to file
26 the briefing and the agency here is contesting that the entire record has not been filed, the time to file a
27 brief has not even begun to run yet. As such, this Court should not dismiss this appeal for any alleged
28 failure to timely file a brief that is not even due.

1 c. **Dismissal for an Alleged Untimely Brief is Too Harsh**

2 If this Court is still of the impression that the subject brief in this matter was untimely,
3 Petitioner must again point out that the handling attorney was dealing with a serious medical condition
4 which hampered his ability to effectively deal with his case load. Petitioners do pray that this Court
5 finds that good cause existed for any late filing of the brief.

6 And indeed, Petitioners pray that this Court reconsider the extremely harsh sanction of
7 dismissal for failure to timely file a brief. The Supreme Court has addressed this topic. In the case of
8 Fitzpatrick v. State, 107 Nev. 486, 488-89, 813 P.2d 1004, 1005-06 (1991), the Court held as follows:

9 if the petition for judicial review is timely filed, NRS 233B.133 allows
10 the district court to accept a tardy memorandum of points and
11 authorities in support of the petition. Accordingly, the district court
12 erred when it concluded it was without jurisdiction to consider the
 merits of Fitzpatrick's claim that he had good cause for filing a tardy
 memorandum of points and authorities in support of the timely filed
 petition for judicial review.

13 Here, the undersigned does pray that Your Honor finds good cause for the late brief given the
14 handling attorney's medical condition.

15 Further, it should be noted that the subject Order stated that Petitioners' Brief did not contain
16 citations to the Record. However, it most certainly did. Although not every single fact was cited,
17 Petitioner absolutely provided citations to the critical portions of the Record. The other uncited facts
18 were provided as background information to provide the Court with more information.

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1 In short, Petitioners respectfully request that this Court reconsider its Order dismissing this
2 case and allow Petitioners to have their day in court.

3 Dated this 7 day of July 2021.

4
5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By

7 DANIEL L. SCHWARTZ, ESQ.

8 Nevada Bar No. 005125

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ATTORNEYS AT LAW

Hearing - 9/26/2018
Contested Claim for Las Vegas Metropolitan Police Department

1 DEPARTMENT OF BUSINESS AND INDUSTRY
2 DIVISION OF INDUSTRIAL RELATIONS
3 WORKERS' COMPENSATION SECTION
4
5 HEARING: SUBSEQUENT INJURY BOARD
6 FOR THE SELF-INSURED EMPLOYERS
7
8 CONTESTED CLAIM
9 FOR LAS VEGAS METROPOLITAN POLICE DEPARTMENT
10
11 September 26, 2018
12 10:00 a.m.
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24
25 Reported by: Teri R. Ward, CCR NO. 839

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Contested Claim for Las Vegas Metropolitan Police Department

1 APPEARANCES:

2 Charles R. Zeh, Esq. Board Counsel
Michele Berrington, Board Member
3 Jacque Everhart, Board Member
Cecilia Meyers, Board Member (Telephonically)
4 Amy Wong, Board Member (Telephonically)
5 Kim D. Price, Esq., Counsel
Donald C. Smith, Esq., Sr. Division Counsel
6 Christopher Eccles, Esq., Division Counsel

7
8 Also present: Vanessa Skrinjaric
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1 MS. BERRINGTON: All right. So we're
2 going to move onto item 7, which is action on the
3 recommendation of the Administrator of the Division
4 of Industrial Relations for denial of the following
5 requests for reimbursement from the Subsequent
6 Injury Account For Self-Insured Employers. The
7 following requests for reimbursement, which the
8 Board will hear de novo, is a contested case, which
9 will be adjudicated pursuant to the Nevada
10 Administrative Procedures Act. Do I have to read
11 the statute.

12 MR. ZEH: Sure.

13 MS. BERRINGTON: NRS 233B.010. Okay.
14 This is a contested hearing before the Board of the
15 Administration of the Subsequent Injury Account for
16 Self-Insured Employers. The hearing will be
17 conducted according to --

18 MR. ZEH: You might want to slow it down
19 just a little bit.

20 MS. BERRINGTON: Sorry, sorry. The
21 hearing will be conducted according to Chapter 233B
22 of the Nevada Revised Statutes. It is also a de
23 novo hearing. This means the parties are starting
24 out here from the beginning. The matter stands as a
25 clean slate before the Board. The Board will

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1 receive the administrator's recommendation, and the
2 applicant will be obliged to present its case from
3 the begin as if the matter had not been considered
4 by the Board before this hearing.

5 This also means that the parties to the
6 hearing will therefore, be given the opportunity to
7 present witnesses, offer documentary evidence,
8 confront and cross-examine witnesses and to present
9 oral arguments to the Board with the applicant
10 required to prove each of the criterion for
11 reimbursement from the Subsequent Injury Account as
12 prescribed by the Nevada Revised Statute and
13 pertinent sections of the Nevada Administrative
14 Code.

15 The parties and the Board may be
16 represented by legal counsel throughout these
17 proceedings. A court reporter will record the
18 proceedings and generate a printed transcript of the
19 matter presently before the Board. As this matter
20 is being recorded by a court reporter, all
21 participants in these proceedings are advised that
22 the court reporter cannot take down more than one
23 person talking at the same time and therefore, the
24 parties are admonished to refrain from talking until
25 the other person is finished with his or her

1 statement.

2 Also, the parties are admonished to

3 speak up so that the court reporter can hear what is
4 being said, and if the person speaking is reading
5 something into the record, please read slowly so
6 that the court reporter can accurately take down
7 what you are saying so that we have a complete and
8 accurate record of the proceedings before the Board
9 today.

10 A relaxed version of the Nevada Rules of
11 Evidence will apply. All evidentiary questions will
12 be addressed to the Chairman of the Board and upon
13 deliberation with the remainder of the Board. The
14 chairperson shall make rulings upon admissibility.

15 After the hearing, a written decision
16 with finding of fact and conclusion of law will be
17 prepared by counsel for the Board in the event of a
18 ruling adverse to the applicant. The written
19 decision will be served upon the parties, and the
20 decision is subject to an appeal to the district
21 court of the state.

22 We are therefore, ready to begin. After
23 the Board and the parties hear a summary of the case
24 from the Division of Industrial Relations and the
25 Board receives the recommendation from the

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1 Administrator of the Division of Industrial
2 Relations regarding claim acceptance, the applicant
3 self-insured employer shall be allowed to proceed
4 first to present its case to the board for claim
5 acceptance.

6 The Administrator of the Division of
7 Industrial Relations shall then be heard regarding
8 the Administrator's recommendation. Since the
9 applicant self-insured employer has the burden of
10 proof by a preponderance of the evidence in this
11 matter, the applicant will be given the opportunity
12 for rebuttal.

13 Additional testimony, discussion and
14 argument may follow. Before we begin, however, does
15 the Board legal counsel have any evidentiary matters
16 to dispose of before we hear from the
17 administrator's liaison to the Board?

18 MR. ZEH: I do, Madam Chair. I have
19 five items that are potentially eligible for
20 admission into the -- in evidence into the record in
21 this matter. The first being a staff report dated
22 April 18, 2018 with 31 pages of attachments and
23 three pages of disallowance.

24 The second is the amended staff report
25 dated April 25, 2018. The third is a letter from my

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1 office to the applicant's counsel dated July 11,
2 2018, advising that the Board had tentatively
3 decided adverse to the applicant on this claim. The
4 fourth is a letter dated August 10, 2018 from
5 counsel for the applicant, Mr. Price, to our office
6 advising that they wanted a hearing to contest the
7 tentative denial of the claim.

8 The timing of the letter and the timing
9 of my notice to the applicant of the adverse -- or
10 tentative adverse decision is such that the
11 application for this hearing was timely. And then
12 last, Exhibit 5, is a packet of material dated
13 September 24, 2018, consisting of 16 pages, and
14 that's from the applicant, and I believe, you're
15 offering -- the applicant will be offering that into
16 evidence.

17 So my question, first of all, would be
18 to Mr. Smith on behalf of the State, do you have any
19 objections to the admission of Exhibits 1 through 5
20 in evidence?

21 MR. SMITH: Not as to 1 through 4. I
22 have an objection, and I can't tell from your
23 recitation whether or not Exhibit 5 includes the SIA
24 subrogation of offset memorandum --

25 MR. ZEH: It does.

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1 MR. SMITH: -- dated September 24, '18.

2 I would object to that document as being admitted

3 because number one, it doesn't accurately set forth
4 the facts in this matter.

5 MR. ZEH: That is the SIA subrogation
6 offset memorandum dated June 22, 20 -- no, that's
7 the date of the -- September 24, 2018.

8 MR. SMITH: Correct.

9 MR. ZEH: And that is --

10 MR. SMITH: What pages, if you know?

11 MR. ZEH: -- three pages, I think.

12 MR. SMITH: What pages is it in Exhibit
13 5? Is it one, two, and three?

14 MR. ZEH: I haven't numbered the pages,
15 but I can. We'll go off the record for a moment.

16 MS. BERRINGTON: Yes, we can go off the
17 record for a moment.

18 (A discussion was held off the
19 record.)

20 MR. ZEH: The Exhibit 5 consists, as I
21 said, of 15 pages -- or 16 pages of material
22 starting with a memo from Don Bateman dated 9/24 to
23 Jacque Everhart. The second page is a letter from
24 Kim Price to Jacque Everhart dated September 24,
25 2018, which I take it also is a cover for the rest

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1 of the material. And pages 3, 4 and 5 are the
2 subrogation offset memorandum to which there's an
3 objection.

4 Page 6 is an impairment committee
5 evaluation dated November 24, 2009 from Rod Perry,
6 DC, Advanced Chiropractic Orthopedics, and that is a
7 document that starts at page 6 and ends at page 14.
8 And page 15 is a letter dated December 28, 2012 from
9 Mr. Slater to Christina Cabrera, and it's a
10 communication regarding the administration of the
11 claim, and then the last page, page 16, is a letter
12 dated January 2, 2013 from Ms. Cabrera to
13 Mr. Slater, and basically, it's a proposal as to how
14 to breakout the settlement of this matter consisting
15 of \$325,000 splitting it three ways. \$83,325 to the
16 claimant; \$83,325 to the attorney for the claimant
17 or injured worker, and \$83,325 to CCMSI, the
18 insurer. Actually, not the insurer. The insurance
19 company.

20 So those are the pages, and those are
21 the pages in order that I received them in in our
22 office, and as I said, there's an objection to pages
23 3, 4 and 5. Before we get into that, I need to tell
24 you that when we're done with this hearing, everyone
25 needs to destroy or turn into me all copies of

1 Exhibit 5 because it's loaded with references to the
2 injured worker, and that's something that's to be
3 kept confidential. And I will ask Mr. Price to send
4 me a copy of that -- of Exhibit 5 redacted. But
5 everything else needs to be destroyed because, as I
6 said, it's replete with references to the injured
7 worker.

8 So we have an objection, and what is the
9 objection again, Mr. Smith, to page 3, 4 and 5 so
10 that we could --

11 MR. SMITH: Number one, it's just kind
12 of argument. It's not necessarily even based on the
13 facts, as I understand them, the way in which this
14 document was done. It's more in terms of a legal
15 argument. I don't believe it's an appropriate thing
16 to be an exhibit.

17 MR. ZEH: Mr. Price.

18 MR. PRICE: Well, I'd like to -- I'm
19 fascinated to explore the factual inaccuracies to
20 find out what's so objectionable about the facts.
21 That was your first objection. I'd like to address
22 that.

23 MS. BERRINGTON: So --

24 MR. SMITH: Madam Chair, if you want, I
25 will gradually respond.

1 MS. BERRINGTON: Well, yes, I would like
2 a response. I just wasn't sure if there was the
3 proper time to do that so --

4 MR. ZEH: He can respond.

5 MS. BERRINGTON: Okay, perfect.

6 MR. SMITH: And specifically, if we look
7 at page 2 in summary of impairment, and we look at
8 the lumbar spine calculation, I believe, that that
9 is done exactly incorrect because there was -- the
10 impairment is found -- at the time of the
11 impairment, the second -- the impairment rating, it
12 is 17 percent whole person then the prior condition
13 for the previous lower back surgery, 10 percent was
14 apportioned out.

15 So rather than it being 27 percent, as
16 you have suggested and calculated, it is, in fact,
17 only 17 at the highest, and 7 for this claim.
18 That's number one.

19 Number two, this is the first time I've
20 ever seen any attempt at apportionment of a
21 subrogation recovery done in this manner. It is --
22 I don't know of any legal support for the argument
23 in the first place. But the factual predicates are
24 wrong in at least one place. And especially with
25 numerous body parts, the amounts would have to be

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1 broken up as to the numerous body parts and then
2 applied to medical indemnity, if that was something
3 the Board would consider. Thank you.

4 MR. ZEH: So are there any --

5 MR. PRICE: Do I get to respond?

6 MR. ZEH: Just let me finish.

7 MR. PRICE: Okay.

8 MR. ZEH: Are there any other objections
9 to any other pages in Exhibit 5?

10 MR. SMITH: No, sir.

11 MR. ZEH: All right. Mr. Price.

12 MR. PRICE: You know, I looked through
13 the NRS, I looked through the NAC. Subrogation's
14 just not -- not discussed. And there's certainly
15 nothing in there that authorizes the DIR to charge
16 us with the entire amount of subrogated funds before
17 we're entitled to any SIA recovery. I checked that.
18 I checked caselaw. I checked NRS. I checked NAC.
19 There's no procedure set out in the statutes that we
20 operate under that say that it's incorrect or not
21 appropriate to apportion this subrogation just the
22 very same way a PPD is apportioned. There's nothing
23 that prohibits that from happening. There's nothing
24 that authorizes the DIR to take the approach that
25 they've taken in this.

1 To that, it would seem like that
2 argument falls on its face because just as there's
3 no statutory authorization for what they're doing,
4 and criticism against me for no statutory
5 authorization for what we're trying to do, kind of
6 balances out.

7 As to the 17 percent or the 7 percent,
8 this is a matter of looking back at the PPD
9 evaluations, and as a result of the January 6, 2008
10 date of injury, claimant was found with a 7 percent
11 knee. That's the only injury that was found in that
12 2008.

13 Now -- and that was for that day of
14 injury. Now, if we look at the lumbar spine on -- I
15 didn't get the numbering down, I apologize. In
16 Dr. Perry's PPD evaluation, which I believe -- I
17 didn't get the numbering on that, I apologize. But
18 it is the third page.

19 MR. ZEH: Well, his report is -- starts
20 at page 10 and concludes on page 14 --

21 MR. PRICE: Thank you.

22 MR. ZEH: -- which would be page 3,
23 according to his report, if we're looking at the
24 same page. Up at the top.

25 MR. PRICE: Yes, on page 13, where he

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1 notes that there was --

2 MR. ZEH: You're on page 4, then?

3 MR. PRICE: Yes, it is the fourth page
4 of Dr. Perry's report.

5 MR. ZEH: Page 4.

6 MR. PRICE: Well, I had it and now I
7 can't find it. Your indulgence.

8 MR. ZEH: Mr. Price, I'm going to make a
9 recommendation to the Chairman, which might expedite
10 this. My recommendation is on the one hand to
11 affirm the objection, but on the other hand to
12 include this document as a memorandum and as part of
13 the record to the file so that it is part of that,
14 which is in front of the Board.

15 It's just a matter of whether it comes
16 in as argument, and I think that everything that
17 Mr. Price is looking at now is going to be part of
18 the evidentiary part of the case in any event.

19 So, I mean, either if the 17 percent and
20 the 27 percent are accurate or not, and that's going
21 to be a function of what is before the Board so --

22 MS. BERRINGTON: So tell me what you
23 were suggesting again, please.

24 MR. ZEH: Uphold the objection in terms
25 of -- on the grounds of a evidentiary objection on

1 the one hand. On the other hand, to include this as
2 a memorandum to the Board as a summary of the
3 position of the applicant, and the applicant will
4 also have the opportunity to prove up all the
5 references to disability, et cetera, that's in the
6 memorandum. Just going to be a part of the trial,
7 as it were.

8 MS. BERRINGTON: Right. I like that
9 suggestion a lot. Do --

10 MR. ZEH: They don't have to agree with
11 it. It's what you want to do it with.

12 MS. BERRINGTON: Correct. So by
13 upholding the objection, it's no -- it doesn't go in
14 the evidentiary, but it becomes part of the
15 memorandum that was submitted to --

16 MR. ZEH: It's part of the record before
17 the Board.

18 MS. BERRINGTON: Before the Board so the
19 Board can still consider it, which I think is the
20 fairest thing because if I recall correctly, I think
21 we had asked for something like this to come
22 through, and as part of the evidentiary evidence may
23 not have been the proper way to do it, but as part
24 of the summary for --

25 MR. ZEH: Right.

1 MS. BERRINGTON: -- the applicant, I
2 think that that would be fine.

3 MR. ZEH: This document is more the
4 nature of a summary of the evidence to be brought to
5 the Board so just make it a part of the record.

6 MS. BERRINGTON: Right. Yeah, I agree
7 with that, and that's exactly what we're going to do
8 at this point is we're going to uphold the objection
9 as placed by Mr. Smith, but we will include this as
10 part of the memorandum and summary for the applicant
11 as part of what we consider before the Board.

12 MR. ZEH: Then the last thing that I
13 would say is does either party have any additional
14 evidence that they want -- documents or records they
15 want to offer for admission into evidence at this
16 time?

17 MR. PRICE: I have nothing more.

18 MR. ZEH: All right. And --

19 MR. SMITH: Mr. Smith. None for the
20 record here.

21 MR. ZEH: That's all I have in terms of
22 the evidentiary part of this matter, other than
23 again, to remind everybody that to not have two
24 people talking at the same time, and speak up when
25 you are talking and it might even be advisable to

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1 identify yourself when you're talking, especially
2 those that are on the phone.

3 MS. BERRINGTON: Perfect. So thank you
4 for that, Mr. Zeh. And with that, we now begin with
5 the Administrator summary and recommendation. So
6 Jacque, if you'd like to proceed, please.

7 MS. EVERHART: Do I have to read this
8 back into the record?

9 MR. ZEH: This is the de novo hearing,
10 yes.

11 MS. EVERHART: Oh, all right. It is the
12 Administrator's recommendation to accept this
13 request pursuant to NRS 616B.557 for the right knee
14 only. The cervical and lumbar spine do not qualify
15 for consideration and were not requested by the
16 insurer.

17 The total amount requested for
18 reimbursement is \$14,008.47. This amount was under
19 by \$13,952.14 in medical expenses. There were
20 amounts --

21 MR. ZEH: You're reading from the
22 amended report, correct?

23 MS. EVERHART: Yes, um-h'm.

24 MR. ZEH: I just wanted to make that
25 clear, that's all.

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1 MS. EVERHART: Yes. These were amounts
2 listed on the paid transaction sheets that were not
3 included on the calculator tapes and some amounts
4 that were, however the amounts that were not
5 requested were not crossed out so all amounts had to
6 be considered.

7 The amount that should have been
8 requested for reimbursement is \$27,960.61. This
9 claim had subrogation recovery that was included in
10 the request. The amount of verified costs is
11 negative \$69,630.88. Since there was subrogation
12 recovery, the amount to be considered is less than
13 the actual amount spent on the claim.

14 Disallowances under this claim are
15 considered against all expenses prior to the
16 reduction of the subrogation recovery, therefore,
17 allowing no reimbursement at this time. An
18 explanation of the disallowance is attached to this
19 letter.

20 This request was received from Kim Price
21 with Lewis Brisbois Bisgaard & Smith LLP on April
22 10, 2018.

23 This employee was hired by the Las Vegas
24 Metropolitan Police Department on July 18, 2006. On
25 September 29, 2006, while he was in the academy,

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1 this gentleman injured his right knee. The C-3 Form
2 listed a right knee strain. The C-4 Form, dated
3 September 29, 2006, listed sprain/strain of the
4 right knee.

5 The insurer submitted several documents
6 to be considered for the requirement of employer
7 knowledge of the pre-existing permanent physical
8 impairment and they are as follows:

9 Occupational Injury/Illness/Exposure
10 Report from the LVMPD dated October 3, 2006 and
11 signed by a supervisor. This report listed the
12 right knee as the injured body part and was received
13 by the employer on October 3, 2006.

14 An LVMPD Officer's Report, dated
15 September 29, 2006, that described the nature of the
16 injury to the right knee. This form was received by
17 the employer on October 3, 2006.

18 An LVMPD Medical Evaluation Form dated
19 October 3, 2006 and received by the employer on
20 October 3, 2006 that noted a meniscal tear to the
21 right knee.

22 This is the extent of the employer's
23 documents concerning this date of injury. The
24 injured employee sought treatment at UMC and was
25 diagnosed with sprain/strain of the right knee and

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1 x-rays were normal. He was taken off work through
2 October 3, 2006 and then released to modified duty.

3 The patient saw Dr. Higgins on October
4 3, 2006. His impression was a bucket handle tear,
5 medial semilunar cartilage and he requested surgery.
6 The patient had partial debridement of the anterior
7 cruciate ligament with partial synovectomy and
8 medial meniscorrhesis on October 4, 2006.

9 In follow-up reports, Dr. Higgins
10 released the patient to full duty on October 23,
11 2006 and noted he was still working through the
12 academy and an ACL repair after he was finished
13 would be considered. The patient attended physical
14 therapy and was given a knee brace. As of February
15 13, 2007, the patient had an ACL deficient knee. He
16 was working in the field and could continue as long
17 as he protected the knee. He was released from
18 care. This is the extent of the medical records for
19 this date of injury. It should be noted the injured
20 employee was not rated.

21 On January 6, 2018, during a foot
22 pursuit, this employee fell into a hole and twisted
23 his right knee. The C-4 Form indicated right knee
24 strain, and the January 7, 2008 C-4 Form also noted
25 right knee strain. The C-4 Form was received by the

1 employer on January 14, 2008.

2 The insurer submitted several documents
3 to be considered for the requirement of employer
4 knowledge of the pre-existing permanent physical
5 impairment and they are as follows:

6 An LVMPD Occupational
7 Injury/Illness/Exposure Report, dated January 6,
8 2008 and signed by a supervisor. The form noted
9 right knee pain with meniscus tear in October 2006
10 and surgery. This form was received by the employer
11 on January 7, 2008.

12 A February 25, 2008 Application For
13 Leave for the right knee and off work status from
14 February 2, 2008 through February 25, 2008. This
15 was sent to the payroll department from a senior
16 LEST with the employer. The form was also copied to
17 the Risk Management Section for the employee's file.
18 Please note this form coincides with the surgical
19 procedure.

20 A June 30, 2008 Application For Leave
21 for the right knee and off work status from June 16,
22 2008 through June 25, 2008. This form was sent to
23 the payroll department from a senior LEST with the
24 employer and also copied to the employee's file.
25 This timeframe also coincides with the surgery date.

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1 A November 24, 2008 PPD evaluation

2 penned by Dr. Perry. The report does not show that
3 it was received by the employer.

4 And a January 11, 2010 PPD offer letter
5 for 7 percent whole person impairment for 2008 right
6 knee injury. This letter was copied to the employer
7 however, there was no indication it was received by
8 the employer.

9 History for this injury was taken from
10 the November 24, 2009 PPD evaluation penned by
11 Dr. Perry. The injured employee had three
12 additional surgeries under this claim and treated
13 with Drs. Patti, Miao and Tingey. The last surgery
14 was done on -- in, sorry, December 2008 with follow
15 up under Dr. Tingey. Reporting under the PPD only
16 goes through September 21, 2009, and the patient
17 continued to follow up. He had been released to
18 full duty, and as of October 27, 2009, the patient
19 had reached MMI and was stable and ratable.

20 Dr. Perry evaluated this injured
21 employee for permanent impairment and found 7
22 percent whole person impairment, and did not
23 apportion for the prior injury or surgery. Please
24 note that the rater was not furnished with any
25 medical reporting prior to the 2008 date of injury,

1 and the patient denied any previous injuries to the
2 right knee.

3 This gentleman continued to work for the
4 LVMPD, and on June 22, 2012, he was involved in a
5 motor vehicle accident and injured his cervical and
6 lumbar spine and right knee. The C-4 Form noted
7 central cord syndrome.

8 Medical reporting was taken from the
9 November 8, 2012 PPD evaluation penned by Dr. Perry.
10 The patient was taken to the hospital via ambulance,
11 treated and released to follow up with Dr. Tingey
12 for his knee and Dr. Flangas for the spine. MRI of
13 the knee was done and the impression was
14 sprain/strain with a history of ACL reconstruction
15 and microfracture.

16 On September 5, 2012, the patient was
17 taken to surgery for the right knee, and underwent
18 arthroscopic chondroplasty, medial femoral condyle
19 with compartment synovectomy. He attended physical
20 therapy, and as of October 18, 2012, Dr. Tingey
21 released him to full duty, and he had reached MMI
22 and was stable and ratable.

23 The injured employee was rated for
24 cervical and lumbar spine as well as the right knee.
25 He was found to have 12 percent whole person

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1 impairment combined for the cervical and lumbar
2 spine and no additional impairment for the right
3 knee.

4 The claim was successfully subrogated,
5 and the insurer received reimbursement in the amount
6 of \$83,325 to be applied to the claim.

7 Medical reporting supports a substantial
8 increase in the cost of this claim for the right
9 knee due to testing, evaluations and additional
10 surgery. NRS 616B.557(1) has been satisfied.

11 This gentleman was rated at 7 percent
12 whole person impairment under his 2008 claim for the
13 right knee. NRS 616B.557(3) has been satisfied.

14 The file contained an LVMPD Medical
15 Evaluation Form, dated October 3, 2006 and received
16 by the employer on October 3, 2006 that noted a
17 meniscal tear to the right knee.

18 Under the 2008 dated injury, the
19 employer submitted an LVMPD Occupational
20 Injury/Illness/Exposure Report dated January 6, 2008
21 and signed by a supervisor. The form noted right
22 knee pain with meniscus tear in October 2006 and
23 surgery. This form was received by the employer on
24 January 7, 2008.

25 There were also two applications for

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1 leave submitted by a senior LEST from the employer
2 to the payroll department for leave time for the
3 February and June 2008 surgery dates. NRS
4 616B.557(4) has opinion satisfied.

5 Subsection 5 does not need to be
6 satisfied in order for this claim to be considered
7 for reimbursement since the date of injury is after
8 the October 1, 2007 change in the requirements of
9 the statute.

10 MS. BERRINGTON: Thank you.

11 MR. ZEH: Mr. Price.

12 MS. BERRINGTON: Mr. Price.

13 MR. PRICE: Based on the application
14 that we submitted, the DIR accepted the claim, and
15 we have no issue with that. The issue comes in with
16 the offset of the entire amount of the subrogation
17 that the employer -- or the CCMSI received for body
18 parts that are not eligible for SIA recovery.

19 In this matter, the right knee is the
20 only body part that's subject to SIA recovery. What
21 we're being asked to do is offset the entire
22 subrogation instead of just offsetting the portion
23 of the subrogation that's focused on the right knee.

24 As Mr. Smith pointed out, there's no
25 regulation or statute that addresses what to do in

1 this situation. And just as there's no authority
2 for the DIR to enforce that we have to satisfy the
3 entire subrogation before we can receive any SIA
4 benefits, there's similarly no authority that says
5 we can't offset the portion of the subrogation that
6 deals only with the SIA eligible body part, which
7 would be the right knee.

8 Now, as I mentioned, I went through the
9 NRS and the NAC and caselaw. The only time there's
10 any subrogation matter that would arguably be
11 influenced by a decision to accept our theory of
12 this is in the annual report of expenditures for
13 clients, which is required in NAC 616B.686. But in
14 there, the employer has -- the third-party
15 administrator or the employer has to report all
16 subrogations and all reimbursements from the SIA.

17 So it would wash between the two because
18 what we didn't -- what was not reported for the
19 right knee portion of the subrogation would be
20 reported for the right knee portion of the SIA. So
21 it comes out a wash so that no one's getting any
22 extra credit, no one's getting shorted that way.

23 Now, if the legislative intent is to
24 encourage people or to encourage employers to hire
25 disabled people, it would seem to me more fair to

1 apply an offset -- or to affect the subrogation to
2 apply only the offset for the right knee and have to
3 satisfy that prior to SIA recovery than to satisfy
4 the entire subrogation, which includes cervical and
5 lumbar, which aren't eligible for SIA recovery.

6 So what we propose is out of that
7 subrogation amount, we can calculate out what
8 portion of that subrogated amount is for cervical,
9 what portion is for lumbar, and what portion is for
10 right knee, and just as we prorate a PPD award,
11 depending on the affected body parts, we do the very
12 same thing with this subrogation amount. We take 7
13 percent for the right knee, apply that to the
14 subrogated amount, whatever that amount proves out
15 to be, that's the amount that we argue we should
16 have to satisfy before we get to the SIA recovery.

17 That seems imminently more fair than
18 having after -- have to receive moneys for cervical
19 and lumbar, which aren't eligible for SIA up to
20 their full amount before we can ever get any SIA
21 recovery.

22 Now, Dr. Perry noted that there was 7
23 percent from his September 29, 2006 injury. The
24 second injury affected the right knee, the lumbar
25 and the cervical. Now, claimant underwent five

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1 right knee surgeries, and they got him back to 0
2 percent. They got him back to 7 percent, I'm sorry,
3 I misspoke.

4 They got him back to MMI stable and
5 ratable, he still had 7 percent. Well, that doesn't
6 mean they didn't spend any money on any surgeries.
7 They didn't spend any money on any treatment to
8 rehabilitate him back to that MMI status. By
9 forcing us to offset the entire subrogation amount,
10 we're not getting any credit at all for the moneys
11 that we paid to get the claimant back to MMI 7
12 percent status that he was prior to the accident.

13 So if you use the same formula that the
14 DIR uses to prorate PPD awards as you do and you
15 apply that very same formula to the subrogation and
16 you offset those amounts, that seems to satisfy --
17 well, that seems to satisfy the obligation to
18 encourage employers to hire disabled people. It
19 seems more fair and equitable because that way my
20 client's not getting punished because we haven't
21 received money for body parts which aren't eligible
22 for SIA recovery anyway.

23 We should only be penalized or only have
24 to offset the amount that is directly attributable
25 to the SIA body part that we're asking recovery for.

1 Since there's some question as to the
2 figures, I'm not going to go into -- I had it all
3 calculated down to the penny. I'm not going to do
4 that until such time as I have a need to do so
5 because I'm just going to argue that we can figure
6 that out once the Board makes a decision to accept
7 the application and to subrogate -- or to apportion
8 the subrogated amount and give us -- and only offset
9 the amount worth -- that the right knee is worth,
10 not the entire whole body impairment that took place
11 and included the cervical and the lumbar.

12 Cervical and the lumbar themselves were
13 a hundred percent. Well, were a hundred percent not
14 eligible for SIA recovery because what information
15 we had shows that he had prior spinal surgery. We
16 didn't request that. We didn't pursue that. What
17 we pursued was a body part that we knew was
18 eligible, and that's the right knee.

19 And again, the most fair and equitable
20 way to address the subrogation is to prorate it,
21 just like we prorate a PPD award and then ask us to
22 offset that amount. Thank you.

23 MS. BERRINGTON: Thank you, Mr. Price.
24 Mr. Smith.

25 MR. SMITH: Thank you, Madam Chair.

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1 With all due respect to Mr. Price, I would tend to
2 disagree with him. I believe, the issue is
3 addressed and, in fact, in the NRSS. And if we look
4 at NRS 616C.215(2)(B), and 2 talks in general about
5 legal liability and --

6 MR. PRICE: Can I have a moment to find
7 that before he launches into his description? I may
8 have that with me. I'd like to read along.

9 MR. ZEH: Sure.

10 MS. BERRINGTON: Sure.

11 MR. PRICE: Or ask Mr. Smith if he can
12 provide me with a copy of it so I can read along.

13 MR. ZEH: What section were you talking
14 about?

15 MR. SMITH: 616C.215.

16 MR. ZEH: Which subsection?

17 MR. SMITH: I'm sorry, Mr. Price, this
18 is an older version. I didn't bring my current one
19 so --

20 MR. PRICE: And you're citing to B?

21 MR. SMITH: C.

22 MR. PRICE: (3)(C)?

23 MR. SMITH: 616C.215(2).

24 MR. PRICE: 2.

25 MR. SMITH: And underneath that subpart

1 G. I'll get there.

2 MR. PRICE: Okay.

3 MR. SMITH: Tell me when you're ready.

4 MR. PRICE: I don't have a --

5 MR. ZEH: Here.

6 MR. PRICE: I don't seem to have a copy
7 of it that I'd like to look at because all I have is
8 Subsection 3, which similarly addresses it. Thank
9 you. I've prepared.

10 MR. SMITH: As I was saying before, this
11 is Don C. Smith, for the record from the Division.
12 Once again, subpart 2 in general deals with legal
13 liability if somebody else or a third party. So
14 this is essentially dealing with third party
15 recovery.

16 When you look at 2B, like in baby, it
17 talks about receiving -- if they've received
18 compensation, then the insurer -- in this case, it
19 would be Metro -- or in the case of claims involving
20 the uninsured employers claims account or a
21 subsequent injury account, which is exactly what we
22 have here, the Administrator -- Administrator being
23 Division of Industrial Relations -- has a right of
24 action against the person so liable to pay damages
25 and is subrogated to the rights of the injured

1 employee or of the employee's dependents to recover
2 therefor.

3 So number one, the Division has some
4 standings and some rights. If you now look at
5 subparagraph number 5 under that statute --

6 MR. PRICE: Okay, um-h'm.

7 MR. SMITH: -- in cases where the
8 insurer or Administrator is subrogated to the rights
9 of the injured employee -- which we've already
10 discussed in subpart 2 -- the insurer or the
11 Administrator -- once again, the Division -- has a
12 lien upon the total proceeds of any recovery from
13 such person, whether the proceeds and such recovery
14 are by way of judgment, settlement or otherwise.

15 So with all respect to Mr. Price's
16 opinion, the Division's opinion is that we're -- the
17 Division, the Administrator, is entitled to offset
18 the total amounts.

19 So if we go through the initial analysis
20 in this claim, the amounts that were not accepted,
21 the subro recovery exceeds the amount that was
22 approved by almost a ratio of 3 to 1 or 4 to 1. So
23 that would be the negative verified cost of 69,000,
24 almost \$70,000. So that's the first argument.

25 I would like to, if we can, go over the

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1 document, which is marked for identification but not
2 an exhibit, which is from pages 3, 4 and 5 of
3 Exhibit No. 5.

4 MR. ZEH: Before you begin, just to be
5 clear, exhibits 1 through 5 are admitted into
6 evidence with the exception of pages 3, 4 and 5 of
7 Exhibit 5. And those are the -- pages 3, 4 and 5 of
8 Exhibit 5 are a part of the record as a memorandum
9 from the applicant setting forth his position in
10 this matter.

11 MS. BERRINGTON: That sounds correct,
12 yes.

13 MR. ZEH: So --

14 MR. SMITH: And I just for the record
15 wanted to refer to them the way in which they had
16 originally been numbered. If we want to establish
17 another exhibit for it, maybe make it Exhibit No. 6,
18 so it's clearly not admitted and it's pages 3, 4 and
19 5 previously proposed in Exhibit 5, that might make
20 it clearer for everyone.

21 MR. ZEH: I think it's clear enough as
22 it is.

23 MR. SMITH: Okay. If we look at the
24 first page of that subrogation offset -- excuse me,
25 the second page, which is page 4 of the record, I

1 had discussed this and mentioned it earlier. The
2 lumbar spine in Mr. Price's calculation he has at 10
3 percent whole impair -- WPI, whole person
4 impairment, for date of incident in '07, and he's
5 got a 17 percent WPI for date of incident 6/22/12.

6 I believe that that information, in
7 fact, comes from page number 13 of Exhibit No. 5,
8 which is the November 8, '12 PPD report from
9 Dr. Perry. And if you look at it, the first
10 paragraph, large paragraph, on page 13 discusses the
11 lumbar spine. And he originally comes out with a
12 total of 17 percent.

13 In the next paragraph, he discusses
14 apportioning it out, in which he states 17 percent
15 of whole person impairment is now apportioned by a
16 DRE category for the prior surgical intervention of
17 10 percent whole person impairment, which is
18 equivalent to 7 percent whole person impairment for
19 the lumbar spine.

20 So -- and if we look at the last
21 sentence in that same paragraph, 7 percent for the
22 lumbar spine would be combined with 5 percent for
23 the cervical spine for a total of 12 percent
24 impairment.

25 So if we look at the memorandum, it

1 would not be 10 for the prior plus 17. It would be
2 10 plus 7, which for a total of 17, not 27. I'm
3 assuming that's a simple math error.

4 I can understand how the confusion can
5 occur, but let's then back up and go to -- get out
6 of the weeds and get into the higher elevations in
7 this argument, which is what is the essential
8 purpose of subsequent injury account reimbursement?

9 It is for additional costs incurred in a
10 second claim, correct? I mean, that's the argument.
11 That's what the recovery is for. The approach
12 suggested by my learned counsel doesn't take that
13 into consideration.

14 He wants to apportion a subrogation
15 recovery by the insurer based on what essentially is
16 the prior underlying injury. That isn't why we're
17 here in the first place.

18 Why we're here is to discuss the
19 additional costs and expenditures that the insurer
20 had to incur because of the subsequent injury, this
21 injury. But the analysis is all based on oh, no,
22 no, let's divide up the subrogation recovery based
23 on the 7 percent prior.

24 So what I suggest is that he's trying to
25 compare apples and oranges. They're two different

1 events. They're two different things. There's a
2 logic -- there's a mistake in the logic in the first
3 place.

4 The better approach, if the Board is
5 inclined to discount the total proceeds argument
6 from 616C.215, as previously discussed, would be
7 that line item calculation of what were, in fact,
8 the additional expenditures on this claim for
9 medical, indemnity -- I'm going to break indemnity
10 in two parts so think of it in terms of TTD and the
11 other part being PPD, permanent partial disability,
12 because as we know, the current PPD on this one does
13 not include anything for the right knee.

14 Once again, if you look at page 13,
15 Exhibit 5, Dr. Perry's PPD report, right knee has
16 full range of motion. There is no ratable
17 impairment on this, and on this is a 0 percent
18 award. There's no discussion about a prior 7.
19 There's no discussion about apportionment. He's
20 saying it's good to go, it's 0.

21 I'm sorry. So in summary, number one,
22 Counsel's argument logically doesn't make sense.
23 He's trying to seek recovery based on a percentage,
24 which was the prior injury, not the current injury.
25 If that method is going to be approved or considered

1 in an apportionment kind of thing of the subrogation
2 proceeds, it shouldn't be done by line items as to
3 medical expenses, TTD, PPD and apportioned done that
4 way as to prior claims.

5 The amounts of the prior claims should
6 be correct as opposed to as discussed here which is
7 the lumbar spine should be at a total of 17 percent,
8 not 27 percent.

9 Number three, the statute we suggest,
10 616C.215, gives the Administrator and the subsequent
11 injury accounts the first crack at any subrogation
12 recovery, and that the whole proceeds should be
13 applied. With that being said, thank you.

14 MS. BERRINGTON: You're welcome.
15 Jacque.

16 MS. EVERHART: I have to correct you
17 just in one little small area.

18 MR. SMITH: I hate when she does that.

19 MS. EVERHART: I'm sorry. If you look
20 at page 13, which is page 4 of Dr. Perry's report,
21 and you go to the second paragraph, it says, 17
22 percent whole person impairment is now apportioned
23 by a DRE category for the prior surgical
24 intervention of 10 percent whole person impairment,
25 which is equivalent to 7 percent whole person

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1 impairment for the lumbar spine. That 7 percent is
2 combined with the 5 percent for the cervical. So
3 actually, the current claim only has 7 percent.

4 So this total should be 7 percent, not
5 17. 10 percent is pre-existing.

6 MR. SMITH: Right, 7 percent for the
7 lumbar spine is the correct. The cervical is not at
8 issue. That was at 5 percent, which is 5 percent,
9 which is 5 percent.

10 MS. EVERHART: Right.

11 MR. SMITH: 7 percent for this claim, 17
12 whole person impairment, 10 percent apportioned out
13 for prior condition. I thought that's what I had
14 said. If I misstated --

15 MS. EVERHART: I thought you said 17.

16 MR. SMITH: Yeah, if I misstated, then I
17 was wrong. And then 0 on the current claim for the
18 right knee.

19 MS. BERRINGTON: Thank you, Jacque.
20 Mr. Smith, do we go back that way?

21 MR. SMITH: Yeah.

22 MS. BERRINGTON: Mr. Price, do you have
23 anything additional?

24 MR. PRICE: Yeah, couple things.
25 Learned counsel pointed to NRS 616C.215(2)(B), which

1 talks about legal liability. There's no mention in
2 there of SIA recovery whatsoever. It creates a
3 legal liability, and they've taken care -- that's
4 been addressed. They took care of that.

5 Also, waves the specter of double
6 recovery. As I mentioned, if that is addressed, we
7 have to do our annual report of claimed
8 expenditures. We have to report how much we
9 received in subrogation and how much we received in
10 SIA.

11 Now, as to the mistake in logic, well,
12 it's 0 percent for his right knee, considering he
13 was already found with 7 percent because you can't
14 -- when you have a right knee menisectomy, you can
15 never be 0 percent again because you've already had
16 surgery in 2007/2008. So it's not 0. It can't be
17 0. So he said it's 0 for this incident. So we're
18 still -- we still have a right knee that's 7
19 percent.

20 As to the statute -- as to, I believe,
21 it was subsection -- NRS 616C.215(5) that he read to
22 us. I believe, it was 5. Well, there's no mention
23 in there of SIA. There's no mention in there of
24 liability for recovery from the second injury
25 account fund. That's talking about recovery from

1 judgments and settlements in the lawsuit -- in the
2 underlying lawsuit that created the subrogation to
3 begin with. That has no application to these
4 proceedings here. That's application and
5 proceedings that took place years ago. That's the
6 legal obligation they're talking about. That's the
7 legal liability that it's talking about. Those have
8 already been addressed and taken care of.

9 As to -- he's saying -- he made a
10 comment in the very closing about who gets first
11 crack at subro recovery. I didn't write fast enough
12 to catch who that was, but again, we're talking --
13 we're not -- we're talking about subrogation
14 recovery focused on what portion of that second
15 injury, which we paid money for to get him back to
16 MMI to where he's still only 7 percent, thank
17 heavens he's not 12 or 24 or something like that,
18 he's still only at 7 percent. We had to pay money
19 to get him there.

20 So why isn't it right to apportion the
21 subrogation to take the 7 percent from that
22 subrogation just like we're doing for the knee and
23 say we have to satisfy that rather than have to
24 satisfy the cervical and the lumbar, which we didn't
25 ask for? They're not eligible.

1 So it seemed like we're taking -- giving
2 a mammoth burden on something that there's no
3 authority for. The statutes that Counsel read don't
4 give authority to do this. And it seems in a most
5 equitable and fair manner intended by the
6 legislature would be to apportion the subrogation,
7 just like this DIR board apportions PPD awards every
8 day, and do the very same thing. There's no double
9 recovery. The legal liability's already addressed
10 and taken care of. It seems that is the most fair
11 and equitable way to approach this. Thank you.

12 MS. BERRINGTON: Mr. Zeh.

13 MR. ZEH: Okay. I just have a couple --
14 maybe a couple questions. Just give me a minute
15 here.

16 MS. BERRINGTON: Okay. Take your time.

17 MR. ZEH: Is it still DIR's position
18 that a negative \$69,630.88 is to be applied before
19 any potential recovery can take place because the
20 full \$83,325 that was recovered by the insured must
21 be --

22 MS. WONG: I'm sorry, Chuck, this is
23 Amy. I can't really hear you, I'm sorry.

24 MR. ZEH: I'm sorry. I'm asking DIR if
25 it's still DIR's position that \$69,630.88 should be

1 applied in the future against any request for
2 reimbursement?

3 MS. BERRINGTON: And you're asking that
4 to Jacque or --

5 MR. ZEH: Whoever wants to speak for
6 DIR.

7 MS. BERRINGTON: Okay.

8 MR. ZEH: I'm trying to find out what is
9 the current position of DIR? Is it that the full
10 \$83,325 has got to be exhausted against future
11 claims before any reimbursement can flow to the
12 self-insured employer?

13 MR. SMITH: I'll answer that. Donald C.
14 Smith, for the record. The answer is yes, but you
15 also need to consider, because the claim is being
16 accepted, there was a large amount of disallowances,
17 which the self-insured employer may now come back in
18 and fill in the gaps. So does it have to be offset
19 against future? Not necessarily. But it sure ought
20 to be offset against this one.

21 MR. ZEH: So the position is the full
22 amount of the money that's received by a virtue of
23 subrogation must be applied in this case?

24 MR. SMITH: Yes, sir.

25 MR. ZEH: And the basis for that is --

1 statutory authority for that is what, 616B.215 --

2 MR. SMITH: 61C.215(5). For

3 clarification, and Counsel, I referred to subsection
4 2 because subsection 5 starts out with the qualifier
5 that in those cases involving subsection 2, which is
6 why I read subsection 2 in the record, then the
7 insurer or the Administrator, i.e., DIR, or in this
8 case because it's subsequent injury account, it has
9 lien against total proceeds --

10 MR. ZEH: Then --

11 MR. SMITH: -- of the recovery.

12 MR. ZEH: -- is it also your position,
13 because I think you had three different positions,
14 if there is to be an apportionment or an allocation,
15 the allocation that's suggested by the applicant is
16 incorrect?

17 MR. SMITH: Correct. Yes, that is an
18 accurate summary of my argument.

19 MR. ZEH: And if the apportionment or
20 allocation from the application -- from the
21 applicant is incorrect, what is the correct dollar
22 amount, if you have one?

23 MR. SMITH: We don't have one. We've
24 never sat down and calculated it because the initial
25 position by the Division is that under these

1 circumstances, they've been reimbursed more than
2 they're qualified to under the subsequent injury
3 account.

4 MR. ZEH: And then, if I could ask
5 Jacque, since it's her recommendation \$69,630.88,
6 can you show us the calculations as to how you
7 arrive at that figure?

8 MS. EVERHART: Yeah, it's in the
9 disallowance sheets under -- I think, that's number
10 2, Exhibit 2.

11 MR. ZEH: Actually, the disallowance
12 sheets are part of Exhibit 1, but --

13 MS. EVERHART: Okay.

14 MR. ZEH: What did you subtract from
15 \$83,325 to get a negative 69,630.88?

16 MS. EVERHART: I didn't subtract
17 anything from 83,000. So the total amount that
18 should have been requested on this claim, based on
19 what was actually submitted in the claim file, was
20 \$111,285.61. From that, you subtract the
21 subrogation amount which is --

22 MR. ZEH: 83,325?

23 MS. EVERHART: Yep. Um-h'm, sorry.
24 That gives you a subtotal of \$27,960.61, and that
25 includes all body parts still. Okay? From that,

1 the disallowance is totaled \$97,591.49. Those
2 disallowances included everything not related to the
3 knee plus disallowances that didn't have supporting
4 documentation.

5 So \$27,960.61 minus \$97,591.49 leaves
6 you with a negative \$69,630.88. Now, the insurer
7 can come back and request reimbursement for those
8 expenditures that are lacking in information.

9 MR. ZEH: Right.

10 MS. EVERHART: They are going to be a
11 very small portion of this dollar amount because
12 there's about \$67,000 disallowed for TTD and PPD for
13 the right knee. So of those expenditures, they may
14 qualify for a little bit more reimbursement,
15 depending on if it comes up past this \$69,000 mark.

16 MR. ZEH: You got the \$27,960.61 -- how
17 did you get that number again, I'm sorry?

18 MS. EVERHART: Total amount of the claim
19 minus the subrogation recovery.

20 MR. ZEH: Um-h'm.

21 MS. EVERHART: That's what should have
22 been requested. Then you go through and look at the
23 file and see what the disallowances are, then you
24 have to subtract it from that.

25 MR. ZEH: And the 97,591.49, that

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1 represented -- that represents what number again?
2 MS. EVERHART: The disallowances.
3 MR. ZEH: Applied to the 111,285.61?
4 MS. EVERHART: Applied to the balance
5 after that total minus the subrogation.
6 MR. ZEH: Okay.
7 MS. BERRINGTON: Can I try?
8 MR. ZEH: Um-h'm.
9 MS. BERRINGTON: Okay. So correct me if
10 I'm wrong, the 111,285.61 is the total amount that
11 was submitted for consideration. So that in theory
12 includes all costs to the claim, not just the knee,
13 correct?
14 MS. EVERHART: Correct.
15 MS. BERRINGTON: Okay. So that's the
16 total cost of the claim.
17 MS. EVERHART: Correct.
18 MS. BERRINGTON: Then you subtract out
19 the subrogation recovery, which leaves 27,960.61 --
20 MS. EVERHART: Correct.
21 MS. BERRINGTON: -- which is referenced
22 in the Administrator's recommendation. Then you
23 subtract out the disallowances, the 97,591.49 from
24 the 27,960 and you get 69,630.88?
25 MR. SMITH: Upside down.

1 MS. BERRINGTON: Upside down. Did you
2 follow that?

3 MR. ZEH: Um-h'm.

4 MS. BERRINGTON: Okay.

5 MR. ZEH: Yes.

6 MS. BERRINGTON: It took me a long time
7 to get that.

8 MR. ZEH: So what's before the Board is
9 either this number or -- which does not take into
10 account any kind of apportionment or allocation of
11 carving out recovery, which might have been related
12 to other problems besides the right knee or not.

13 So that's the question that's one for
14 the Board is do you allocate or not? And then
15 secondly, what's the right number? If you're going
16 to decide to allocate, what's the right number?

17 We have one number from the applicant,
18 and we have no number from the State if we're going
19 to do that kind of apportionment or allocation.

20 MS. BERRINGTON: Okay.

21 MR. ZEH: Unless, Jacque has a number,
22 since she just raised her hand. So if she has a
23 number or if I'm incorrect that there is no -- like
24 I said, there is no number from the state, but if
25 that's what I heard Mr. Smith say, we could find out

1 if the State has a number.

2 MS. BERRINGTON: Does the State have a
3 number?

4 MS. EVERHART: I do not have a number;
5 however, since the issue -- one of the issues before
6 the Board is allocating according to Mr. Price's
7 memorandum, the numbers in his memorandum are
8 incorrect. If you look at page 4 of the exhibit,
9 page 2 of his memorandum, the total combined
10 percentages is not 39 percent. According to the AMA
11 guides, it would be 27 percent.

12 This -- and that's for all body parts.
13 This would then skew all calculations on the
14 following page..

15 So if you are just looking at the
16 percentage for the current claim, which is what I
17 believe that we should only be looking at, because
18 that is the claim that is in question, those numbers
19 are skewed even further and it's only 18 percent,
20 which then also skews the calculations on the back
21 page, as best I could do them on a phone calculator.
22 So I'm not ready to even tell you what those are.
23 Just something for you to think about while you're
24 contemplating which way you want to go.

25 MR. SMITH: One of the possibilities --

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1 this is Don Smith, for the record, and I think
2 Jacque's intimating is the Board could always remand
3 it for DIR to recalculate as well.

4 MS. EVERHART: Yes.

5 MR. SMITH: In which case, we would
6 potentially have more thorough information, maybe a
7 full and complete indication of what the records,
8 bills and clean up on some of the disallowances from
9 the self-insured employer, which would give us a
10 better more accurate picture of what this thing is
11 ultimately going to be. Thank you.

12 MR. ZEH: You might want to see if the
13 other Board members have anything to say.

14 MS. BERRINGTON: I agree. Cecilia, Amy,
15 do you guys have any questions or any comments on
16 this?

17 MS. MEYER: I don't have any.

18 MS. BERRINGTON: Who was that?

19 MR. ZEH: Cecilia.

20 MS. MEYER: That was Cecilia, sorry.

21 MS. WONG: This is Amy. I -- I don't
22 think I have any -- just like with Counsel, I'm
23 mulling it all over.

24 MS. BERRINGTON: This is Michele
25 Berrington. I do have a comment. I think part of

1 what we were missing when we originally reviewed
2 this was the content of 616C.215(2) and (5). I find
3 that to be very helpful in helping to figure out
4 what we need to do with this case. And it would
5 have -- you know, it's a great thing to know when
6 we're looking at subrogation going forward because
7 I'm not sure any of us knew or thought about that
8 statute when we were reviewing this case initially.
9 That's all I have to say on that.

10 And then I'm looking to you, Chuck,
11 because I'm not sure what to do now -- or, I'm
12 sorry, Mr. Zeh, because I'm not sure what to do now.

13 MR. ZEH: Well, I think you have a
14 decision to make here. Is it an all or nothing
15 proposition or is it an apportionment proposition?
16 And if the Board thinks as a matter of law that
17 there is an apportionment issue here, I don't think
18 you have enough information to come up with a
19 realistic number.

20 And so if it's an all or nothing
21 proposition, you can decide that, and it would be a
22 0 because there's no apportionment. If you want to
23 go the apportionment route, then I would agree that
24 the best thing to do would be to remand this because
25 the numbers don't make sense yet, and they're -- and

1 it would also give the applicant a chance to give
2 the DIR more information about some of the
3 disallowances and which would, I think, fortify the
4 dollar amount that ultimately would be more to their
5 benefit. So that's what you have to decide.

6 MS. BERRINGTON: Okay. So that being
7 said, Amy and Cecilia, I can tell you that given the
8 content of 616C.215, I'm inclined to take the
9 administrative recommendation that stands. I don't
10 know if you guys want to chat about that, have any
11 comment about that or what your thoughts are or if
12 you have any other input on that before we consider
13 a motion from the Board on this.

14 MS. WONG: This is Amy. I agree. I
15 don't see anything that talks about apportionment.
16 616C.215(5) talks about the total amount, I believe.
17 I'm reading it right now. I don't see anything
18 about apportioning out. No. The total proceed to
19 be recovered.

20 MR. ZEH: Another thing you might
21 consider is simply to continue this matter to
22 receive a memorandum from your Board counsel that
23 might help clarify things.

24 MS. WONG: Chuck, I can't hear you, I'm
25 so sorry.

1 MR. ZEH: I'm sorry. I'm so used to
2 looking you right in the face that I --

3 MS. WONG: I know.

4 MR. ZEH: What I was saying is the other
5 option would be to continue this matter to give
6 Board counsel a chance to provide you with a
7 memorandum now that we've really, I think, far more
8 congealed the issues here before you make up your
9 mind.

10 MS. BERRINGTON: And if we were to
11 consider that, would this matter continue and then
12 have to go forward with further hearings?

13 MR. ZEH: It would.

14 MS. BERRINGTON: Okay. I was just
15 curious on procedural issues. That's all.

16 MR. ZEH: Yes.

17 MS. BERRINGTON: Yes.

18 MR. ZEH: So we would have a court
19 reporter for this.

20 MS. BERRINGTON: Okay.

21 MS. WONG: This is Amy. I don't think
22 that I would need anything further.

23 MR. ZEH: Okay.

24 MS. BERRINGTON: With that being said,
25 are we in a position to take a motion? I just want

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1 to make sure I'm procedurally correct here.

2 MR. ZEH: I think, we're -- you can ask
3 if either side has anything further to add.

4 MS. BERRINGTON: Okay. Does either side
5 have anything further to add in this matter?

6 MR. PRICE: No, thank you.

7 MR. SMITH: No, Madam Chairman. Don
8 Smith, for the record.

9 MS. BERRINGTON: Okay. Then Board
10 members, I think we're in a position to take a
11 motion on this.

12 MS. WONG: I'll make a motion. I'm just
13 trying to figure out how do I word this because the
14 matter at hand is just approving the way that we
15 ruled in the first place on this claim; is that
16 correct, Chuck?

17 MR. ZEH: Well, we're starting from
18 scratch. It's a de novo hearing.

19 MS. WONG: Okay.

20 MR. ZEH: As I understand it, the
21 recommendation from the DIR remains that there's a
22 negative 69,000, approximately, that has to be
23 overcome before any actual reimbursement back to the
24 self-insured. So that recommendation -- so I think
25 the motion is either to affirm the recommendation or

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1 deny it.

2 MS. WONG: Okay. So I'll move that we
3 approve the Administrator's recommendation to accept
4 the request, pursuant to NRS 616B.557 for the right
5 knee only in the amount of verified cost of negative
6 69,630.88 for Las Vegas Metropolitan Police
7 Department.

8 MS. MEYER: I'll second that motion.
9 Cecilia Meyer.

10 MS. BERRINGTON: All right. So we have
11 a motion. We have a second. All in favor, please
12 aye.

13 MS. WONG: Aye.

14 MS. MEYER: Aye.

15 MS. BERRINGTON: Aye. Motion's
16 approved.

17 MS. WONG: Chuck.

18 MR. ZEH: Yes.

19 MS. WONG: I think, we may have
20 forgotten to do our disclosures.

21 MR. ZEH: Yeah, we need to do that.

22 MS. BERRINGTON: So that's probably on
23 me. I have a hard time remembering disclosures.
24 So, Amy, can we start with you? Did you have any
25 disclosures on this case?

1 MS. WONG: I do. So CCMSI is the
2 third-party administrator for the City of Henderson,
3 and -- or LBVS does represent the City of Henderson
4 on workers' compensation matters, but that would not
5 and did not affect my decision in this matter.

6 MR. ZEH: Wait a second. You're really
7 garbled. Can you repeat your disclosure and go a
8 little slower, Amy?

9 MS. WONG: You got it. CCMSI is the
10 third-party administrator for the City of Henderson
11 and LBVS represents the City of Henderson in some
12 workers' compensation matters, but that would not
13 and did not affect my recommendation in this matter.

14 MS. MEYER: This is Cecilia Meyer with
15 City of Carson City. CCMSI is the third-party
16 administrator for City of Carson City, but that did
17 not and will not affect my decision in this matter.

18 MS. BERRINGTON: And I don't have any
19 disclosures. Michele Berrington.

20 MR. ZEH: So I believe, that concludes
21 the hearing on this matter.

22 MS. BERRINGTON: Agreed.

23 MR. ZEH: Unless anybody has anything
24 further to add at this time, and I'm not seeing
25 anybody.

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1 MR. PRICE: Thank you for your time.

2 MS. WONG: Thank you.

3 MS. MEYER: Thank you.

4 MR. ZEH: Yes, I do need a copy.

5 (The hearing adjourned at 11:32

6 A.M.)

7 * * * * *

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CERTIFICATE OF REPORTER

STATE OF NEVADA)
SS:
COUNTY OF CLARK)

I, Teri R. Ward, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That I reported the proceedings commencing on Wednesday, September 26, 2018, at 10:00 a.m.;

That I thereafter transcribed my said shorthand notes into typewriting; and that the typewritten transcript of said proceedings is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative, employee, or independent contractor of counsel of any of the parties; nor a relative, employee, or independent contractor of the parties involved in said action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this _____ day of _____, 2018.

Teri R. Ward, CCR NO. 839

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Hearing - 9/26/2018
Contested Claim for Las Vegas Metropolitan Police Department

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Las Vegas Metropolitan Police
7 Department, Petitioner(s)

CASE NO: A-20-821892-J

8 vs.

DEPT. NO. Department 15

9 State of Nevada Department of
10 Business & Industry,
11 Respondent(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

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1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
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6 Las Vegas Metropolitan Police
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7 vs.

DEPT. NO. Department 15

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9 State of Nevada Department of
Business & Industry,
10 Respondent(s)

11
12 **AUTOMATED CERTIFICATE OF SERVICE**

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16 Service Date: 7/13/2021

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

July 13, 2021

A-20-821892-J Las Vegas Metropolitan Police Department, Petitioner(s)
vs.
State of Nevada Department of Business & Industry, Respondent(s)

**July 13, 2021 Chambers Minute Order - Striking the Motion for
Reconsideration of Order Granting Respondent
Division of Industrial Relations' Motion to
Dismiss Petitioners' Petition for Judicial Review;
and Request for Order Shortening Time**

HEARD BY: Hardy, Joe

COURTROOM: Chambers

COURT CLERK: Kristin Duncan

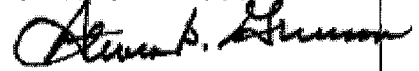
JOURNAL ENTRIES

- FINDING that said document was erroneously filed, COURT ORDERED the Motion for Reconsideration of Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review; and Request for Order Shortening Time, filed on July 12, 2021, was hereby STRICKEN.

PRINT DATE: 07/13/2021

Page 1 of 1

Minutes Date: July 13, 2021



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9 Las Vegas Metropolitan Police
Department and Cannon Cochran
10 Management Services, Inc

11
12
13 **DISTRICT COURT**
CLARK COUNTY, NEVADA

14 LAS VEGAS METROPOLITAN POLICE
15 DEPARTMENT; and CANNON COCHRAN
MANAGEMENT SERVICES, INC.,

CASE NO.: A-20-821892-J

DEPT. NO.: 15

16
17 Petitioners,

18 v.

18 STATE OF NEVADA BOARD FOR THE
ADMINISTRATION OF THE SUBSEQUENT
19 INJURY ACCOUNT FOR SELF-INSURED
EMPLOYERS,

20 Respondents
21

22 **NOTICE OF APPEAL**

23 TO: STATE OF NEVADA BOARD FOR THE ADMINISTRATION OF THE
SUBSEQUENT INJURY ACCOUNT FOR SELF-INSURED EMPLOYERS, Respondent

24 TO: DONALD J. BORDELOVE, ESQ., Respondent's Attorney

25 TO: DIVISION OF INDUSTRIAL RELATIONS, Respondent

26 TO: CHRISTOPHER A. ECCLES, ESQ, Respondent's Attorney

27 ...

28 ...

1 NOTICE IS HEREBY GIVEN that Petitioners, LAS VEGAS METROPOLITAN POLICE
2 DEPARTMENT; and CANNON COCHRAN MANAGEMENT SERVICES, INC, (hereinafter
3 referred to as "Petitioners"), in the above-entitled action, hereby appeal to the Supreme Court of the
4 State of Nevada from the attached "Order" entered in this action on or about June 21, 2021 which
5 denied Petitioners' Petition for Judicial Review and the "Notice of Entry of Order" filed on or about
6 June 22, 2021.
7

8 DATED this 19 day of July 2021.

9 Respectfully submitted,

10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12 By: 

13 DANIEL L. SCHWARTZ, ESQ.

14 KIM D. PRICE, ESQ.

15 JOEL P. REEVES, ESQ.

16 LEWIS BRISBOIS BISGAARD & SMITH, LLP

17 2500 West Sahara Avenue, Suite 900, Box 28

18 Las Vegas, Nevada 89102

19 Attorneys for Petitioners
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on the 19 day of July 2021, service of the foregoing **NOTICE OF APPEAL** was made this date by depositing a true copy of the same for mailing, first class mail, as follows:

LVMPD
Jeff Roch
Director of Risk Management
400 South MLK Blvd.
Las Vegas, Nevada 89106
Petitioner

State of Nevada
Attorney General Aaron Ford
100 North Carson Street
Carson City, Nevada 89701
Attorneys for Respondent

CCMSI
Dusty Marshall
Claims Supervisor
PO Box 35350
Las Vegas, Nevada 89133
Petitioner

Industrial Relations (DIR)
Christopher Eccles, Esq.
3360 West Sahara Avenue, Suite 250
Las Vegas, Nevada 89102

Donald J. Bordelove
Deputy Attorney General
Office of the Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Attorneys for Respondent

Industrial Relations (DIR)
Division Headquarters
400 West King Street, Suite 400
Carson City, Nevada 89703

Department of Business and Industry
Director Terry Reynolds
1830 College Parkway, Suite 100
Carson City, Nevada 897064



An employee of LEWIS BRISBOIS BISGAARD & SMITH LLP

DISTRICT COURT
CLARK COUNTY, NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

NOTICE OF APPEAL

filed in case number: A-20-821892-J

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

- OR -

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

☐ A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

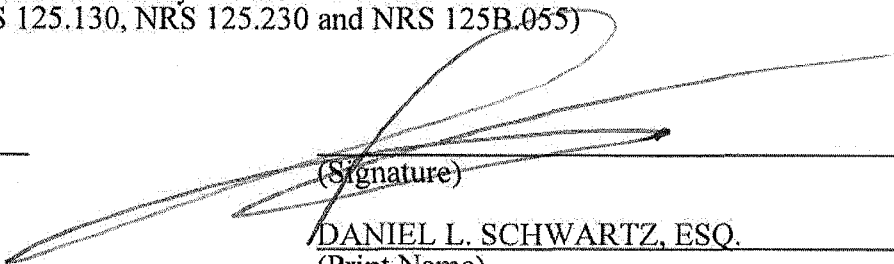
- or -

☐ For an application for a federal or state grant

- or -

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

Date: 7/19/21


(Signature)

DANIEL L. SCHWARTZ, ESQ.
(Print Name)

PETITIONERS
(Attorney for)

Steven D. Grierson

1 **NEOJ**

2 Donald C. Smith, Esq.

3 Nevada Bar No.: 000413

4 Jennifer J. Leonescu

5 Nevada Bar No.: 006036

6 Christopher A. Eccles, Esq.

7 Nevada Bar No.: 009798

8 State of Nevada, Department of Business and Industry

9 Division of Industrial Relations

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12 Phone: (702) 486-9070

13 donalddsmith@dir.nv.gov

14 jleonescu@dir.nv.gov

15 ceccles@dir.nv.gov

16 *Attorneys for Respondent Division of Industrial Relations*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 LAS VEGAS METROPOLITAN POLICE)
14 DEPARTMENT, and CANNON)
15 COCHRAN MANAGEMENT SERVICES,)
16 INC.)

16 Petitioners,

17 vs.)

18 STATE OF NEVADA BOARD FOR THE)
19 ADMINISTRATION OF THE SUBSEQUENT)
20 INJURY ACCOUNT FOR SELF-INSURED)
21 EMPLOYERS,)

20 Respondents.)

Case No.: A-20-821892-J

Dept. No.: 15

NOTICE OF ENTRY OF ORDER

22 PLEASE TAKE NOTICE that an "Order" was entered in the above-captioned matter
23 on June 21, 2021, a true and correct copy of which is attached hereto.

24 DATED this 22nd day of June, 2021.

25 ///

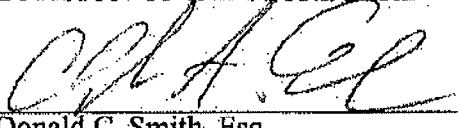
27 ///

STATE OF NEVADA
Division of Industrial Relations - Division Counsel
3360 West Sahara Ave., Suite 250
Las Vegas, Nevada 89102
(702) 486-9080

Respectfully submitted,

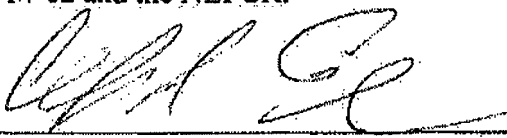
DIVISION OF INDUSTRIAL RELATIONS

By:


Donald C. Smith, Esq.
Jennifer J. Leonescu, Esq.
Christopher A. Eccles, Esq.
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102
Attorneys for Respondent Division of Industrial Relations

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Division of Industrial Relations, and that on this 22nd day of June, 2021, I caused the foregoing document entitled **Notice of Entry of Order** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-02 and the NEFCR.


An employee of the State of Nevada
Division of Industrial Relations

1 **ORDG**2 Donald C. Smith, Esq.
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Nevada Bar No.: 0060364 Christopher A. Eccles, Esq.
Nevada Bar No.: 0097985 State of Nevada, Department of Business and Industry
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8 donalcdsmith@dir.nv.gov9 jleonescu@dir.nv.gov10 ceccles@dir.nv.gov*Attorneys for Respondent Division of Industrial Relations*11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT, and CANNON
15 COCHRAN MANAGEMENT SERVICES,
INC.

16 Petitioners,

17 vs.

18 STATE OF NEVADA BOARD FOR THE
19 ADMINISTRATION OF THE SUBSEQUENT
20 INJURY ACCOUNT FOR SELF-INSURED
EMPLOYERS,

21 Respondents.

Case No.: A-20-821892-J
Dept. No.: 15**ORDER GRANTING
RESPONDENT DIVISION OF
INDUSTRIAL RELATIONS'
MOTION TO DISMISS
PETITIONERS' PETITION
FOR JUDICIAL REVIEW**22 The matters before the Court are Respondent Nevada Division of Industrial
23 Relations' ("Division") Motion to Dismiss Petitioners' Petition for Judicial Review, and
24 Respondent State of Nevada Board for the Administration of the Subsequent Injury Account
25 for Self-Insured Employers' ("Board") Joinder thereto. The Court, having reviewed the papers
26 and pleadings on file in this matter and having heard the oral arguments of counsel on June 7,
27 2021, and good cause appearing, hereby rules as follows:

I. FINDINGS

1. Respondent Division moved to dismiss Petitioners' Petition for Judicial Review on two bases: first, Petitioners failed to transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency as required by NRS 233B.131(1)(a), and second, Petitioners failed to timely file their Memorandum of Points and Authorities as required by NRS 233B.133(1).

2. NRS 233B.131(1)(a) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (a) The party who filed the petition for judicial review shall transmit to the reviewing court an original or certified copy of the transcript of the evidence resulting in the final decision of the agency." (Emphasis added).

3. NRS 233B.131(1)(b) provides that "Within 45 days after the service of the petition for judicial review or such time as is allowed by the court: (b) The agency that rendered the decision which is the subject of the petition shall transmit to the reviewing court the original or a certified copy of the remainder of the record of the proceeding under review." (Emphasis added).

4. Petitioners filed their Petition for Judicial Review on September 24, 2020. Thus, pursuant to the controlling statute, NRS 233B.131(1)(a), Petitioners' deadline to transmit the transcript to the Court was November 9, 2020.

5. It is undisputed that the Petitioners never transmitted the transcript to the Court.

6. It is undisputed that the Petitioners filed their Opening Brief 105 days late and that said Brief lacks citations to the transcript of the administrative proceeding under review.

7. The record of the underlying administrative proceeding is incomplete due to Petitioners' failure to transmit the transcript to the Court.

8. As a result of the incomplete record, and of Petitioners' failure to cite to the transcript in their late-filed Opening Brief, this Court cannot conduct a judicial review based upon the whole record as required by NRS 233B.135.

...

10. The requirements of NRS 233B.131(1)(a) and (b) are mandatory because the statute employs the word "shall." Thus, the Petitioners' failure to transmit the transcript to the court renders their Petition for Judicial Review subject to dismissal.

6 11. NRS 233B.131(1)(a) is plain and unambiguous, yet Petitioners failed to comply
7 with their 45-day statutory deadline. Moreover, Petitioners position, in their written Opposition
8 to the Division's Motion to Dismiss, and during the oral argument—that they are not required
9 to transmit the transcript to the court—is contradicted by the plain and unambiguous language
10 of the statute. As of June 7, 2021—the date of the hearing on the Division's Motion to
11 Dismiss—Petitioners were 211 days past their statutory deadline to transmit the transcript to
12 the Court.

13 12. Good cause for a delay in transmitting the transcript, however, may be shown
14 pursuant to NRS 233B.131 because the statute allows the court to alter the 45-day deadline.
15 Thus, the 45-day deadline is not jurisdictional.

16 13. Petitioners' argument that Respondents were statutorily required to file the
17 *complete* record of the underlying administrative proceeding is contradicted by the structure
18 and plain and unambiguous language of NRS 233B.131, the controlling statute. Petitioners'
19 position is erroneous as a matter of law. Indeed, the legislative history of the 2015 amendment
20 to NRS 233B.131 shows that the underlying policy for requiring petitioners to transmit the
21 transcript to the court was to decrease the burden on taxpayers.

22 14. Petitioners have not met their burden to show good cause for their ongoing delay
23 to transmit the transcript to the Court.

15. Mr. Price did not provide the Court with an affidavit or declaration specifying how his medical condition affected his ability to comply with statutory requirements during the intervening 211 days. The Court assumes that he had a serious medical condition but finds the effects of the condition vague.

STATE OF NEVADA
Division of Industrial Relations - Division Counsel
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16. Moreover, two other attorneys from Mr. Price's law firm are listed on the Court's electronic service list for this case.

17. Petitioners bear the burden to show good cause, but they have not met their burden under the *Scrimmer* factors. *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000).

18. Furthermore, Petitioners' extensive unexcused delay is mooted by their position that they are not statutorily required to transmit the transcript to the Court.

II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Respondent Division's Motion to Dismiss Petitioners' Petition for Judicial Review and the Board's Joinder thereto are GRANTED.

DATED this _____ day of _____, 20____ Dated this 21st day of June, 2021

HON. JUDGE JOE HARDY, JR.

Respectfully submitted by:
DIVISION OF INDUSTRIAL RELATIONS

F18 060 65D6 31EC
Joe Hardy
District Court Judge

Donald C. Smith, Esq.

Jennifer J. Leonescu, Esq.

Christopher A. Eccles, Esq.

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Las Vegas, NV 89102

Attorneys for Respondent Division of Industrial Relations

Approved as to form and content by:
LEWIS BRISBOIS HUSGAARD & SMITH

By:

Kim D. Price, Esq.

Nevada Bar No. 7873

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Las Vegas, NV 89102

Attorneys for Petitioners LVMPD and CCMSI

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Las Vegas Metropolitan Police
7 Department, Petitioner(s)

CASE NO: A-20-821892-J

DEPT. NO. Department 15

8 vs.

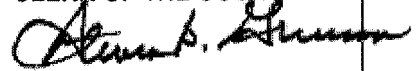
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11 Respondent(s)

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Attorneys for Petitioners
9 Las Vegas Metropolitan Police
Department and Cannon Cochran
10 Management Services, Inc.

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; and CANNON COCHRAN
14 MANAGEMENT SERVICES, INC.,

CASE NO.: A-20-821892-J

DEPT. NO.: 15

15 Petitioners,

16 v.

17 STATE OF NEVADA BOARD FOR THE
ADMINISTRATION OF THE SUBSEQUENT
18 INJURY ACCOUNT FOR SELF-INSURED
EMPLOYERS,

19 Respondents.

20 **CASE APPEAL STATEMENT**

21 1. Name of Petitioners filing this case appeal statement:

22 Las Vegas Metropolitan Police Department and Cannon Cochran Management
23 Services, Inc
24

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

26 Hon. Joe Hardy, District Court Judge
27
28

1 3. Identify all parties to the proceedings in the district court (the use of et al. to denote
2 parties is prohibited):

3 **Las Vegas Metropolitan Police Department, Cannon Cochran Management Services,**
4 **Inc, Division of Industrial Relations, and State Of Nevada Board For The Administration Of**
5 **The Subsequent Injury Account For Self-Insured Employers**

6 4. Identify all parties involved in this appeal (the use of et al. to denote parties is
7 prohibited):

8 **Las Vegas Metropolitan Police Department, Cannon Cochran Management**
9 **Services, Inc, Division of Industrial Relations, and State Of Nevada Board For The**
10 **Administration Of The Subsequent Injury Account For Self-Insured Employers**

11 5. Set forth the name, law firm, address, and telephone number of all counsel on
12 appeal and identify the party or parties whom they represent:

13 **DANIEL L. SCHWARTZ, ESQ.**
14 **KIM D. PRICE, ESQ.**
15 **JOEL P. REEVES, ESQ.**
16 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
17 **2300 W. Sahara Avenue, Suite 900, Box 28**
18 **Las Vegas, Nevada 89102-4375**
19 ***Attorneys for Petitioners***

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22 **CHRISTOPHER A. ECCLES, ESQ.**
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24 **3360 West Sahara Avenue, Suite 250**
25 **Las Vegas, Nevada 89102**
26 ***Attorneys for Respondent***
27 ***Division of Industrial Relations (DIR)***

28 **AARON D. FORD, ESQ.**
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30 **State of Nevada Officer of the Attorney General**
31 **555 E. Washington Ave., #3900**
32 **Las Vegas, Nevada 89101**
33 ***Attorneys for Respondent***
34 ***State Of Nevada Board For The Administration Of The Subsequent Injury Account For***
35 ***Self-Insured Employers***

1 6. Indicate whether Petitioners were represented by appointed or retained counsel in
2 the district court:

3 **Petitioners were represented by retained counsel in the District Court.**

4 7. Indicate whether Respondent was represented by appointed or retained counsel in
5 the district court:

6 **Respondent was represented by retained counsel in the District Court.**

7 8. Indicate whether Petitioners are represented by appointed or retained counsel on
8 appeal:

9 **Petitioners are represented by retained counsel on appeal.**

10 9. Indicate whether Respondent is represented by appointed or retained counsel on
11 appeal:

12 **Respondent is represented by retained counsel on appeal.**

13 10. Indicate whether Petitioners were granted leave to proceed in forma pauperis, and
14 the date of entry of the district court order granting such leave:

15 **Petitioners were not granted leave to proceed in forma pauperis.**

16 11. Indicate whether Respondent was granted leave to proceed in forma pauperis, and
17 the date of entry of the district court order granting such leave:

18 **Respondent was not granted leave to proceed in forma pauperis.**

19 12. Indicate the date the proceedings commenced in the district court (e.g., date
20 complaint, indictment, information, or petition was filed):

21 **The Petition for Judicial Review of the Board for Administration of the Subsequent**
22 **Injury Account for Self-Insured Employers' (hereinafter referred to as "the Board") August**
23 **19, 2020, Findings of Fact, Conclusions of Law, and Determination for Claim Number**
24 **12D34C229979, was filed on September 24, 2020.**

25

26

27

28

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

3 This is a workers' compensation case. The present appeal stems from the Board for
4 Administration of the Subsequent Injury Account for Self-Insured Employers' (hereinafter
5 referred to as "the Board") August 19, 2020, Findings of Fact, Conclusions of Law, and
6 Determination for Claim Number 12D34C229979.

7 On September 21, 2020, the handling attorney for the subject case for Petitioners
8 underwent radical prostatectomy for prostate cancer. Follow-up care impeded counsel's
9 ability to practice law full-time for several weeks following the procedure.

10 On September 24, 2020, Petitioners timely filed the subject Petition for Judicial
11 Review contesting the August 19, 2020 Decision of the Board.

12 On November 9, 2020, the Record on Appeal was filed. On the front page of the
13 Record it states as follows:

14 Pursuant to NRS 233B.131, the STATE OF NEVADA BOARD
15 FOR THE ADMINISTRATION OF THE SUBSEQUENT
16 INJURY ACCOUNT FOR SELF INSURED EMPLOYERS
17 (SIA) now files the entire record of the proceedings under
18 review by this Court as a result of the Petition for Judicial
19 Review pursuant to NRS 233B.130 filed by LAS VEGAS
20 METROPOLITAN POLICE DEPARTMENT and CANNON
21 COCHRAN MANAGEMENT SERVICES, INC., Respondents

22 (emphasis added)

23 On April 5, 2021, Petitioners filed their Opening Brief. Petitioners' Brief contained
24 citations to relevant records in the Record on Appeal.

25 On May 5, 2021, Respondent Division of Industrial Relations filed a Motion to
26 Dismiss and Strike. Petitioners opposed the same.

27 On June 7, 2021, Respondent's Motion came on for hearing and the District Court
28 granted the same based on the assertion that *Petitioners* had failed to file the entire record on
appeal, Petitioners' Opening Brief was late, and Petitioners' Opening Brief did not contain
any citations to the Record on Appeal. On June 21, 2021, the Order commemorating this
Court's ruling was filed. The Notice of Entry was filed on June 22, 2021.

1 14. Indicate whether the case has previously been the subject of an appeal to or original
2 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of
3 the prior proceeding:

4 No.

5 15. Indicate whether this appeal involves child custody or visitation:

6 No.

7
8 16. If this is a civil case, indicate whether this appeal involves the possibility of
9 settlement:

10 No.

11 DATED this 19 day of July 2021.

12 Respectfully submitted,

13 LEWIS BRISBOIS BISGAARD & SMITH LLP

14
15
16 By:

DANIEL L. SCHWARTZ, ESQ.

KIM D. PRICE, ESQ.

JOEL P. REEVES, ESQ.

LEWIS BRISBOIS BISGAARD & SMITH, LLP

2300 West Sahara Avenue, Suite 900, Box 28

Las Vegas, Nevada 89102

Attorneys for Petitioners

DISTRICT COURT
CLARK COUNTY, NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

CASE APPEAL STATEMENT

filed in case number: A-20-821892-J :

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

- OR -

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

☐ A specific state or federal law, to wit:

- or -

☐ For the administration of a public program

- or -

☐ For an application for a federal or state grant

- or -

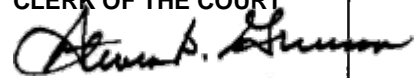
☐ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: 7/19/2021

(Signature)

DANIEL L. SCHWARTZ, ESQ.
(Print Name)

PETITIONERS
(Attorney for)



1 **MDSM**

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18 *Attorneys for Respondent Division of Industrial Relations*

19 **DISTRICT COURT**
20 **CLARK COUNTY, NEVADA**

21 LAS VEGAS METROPOLITAN POLICE)
22 DEPARTMENT, and CANNON)
23 COCHRAN MANAGEMENT SERVICES,)
24 INC.)

25 Petitioners,)

26 vs.)

27 STATE OF NEVADA BOARD FOR THE)
28 ADMINISTRATION OF THE SUBSEQUENT)
INJURY ACCOUNT FOR SELF-INSURED)
EMPLOYERS,)

29 Respondents.)

Case No.: A-20-821892-J

Dept No.: 15

Hearing Not Requested
(Chambers Hearing on July 28, 2021)

30 **RESPONDENT DIVISION OF INDUSTRIAL RELATIONS' MOTION TO DISMISS,**
31 **OR IN THE ALTERNATIVE, OPPOSITION TO PETITIONERS' MOTION FOR**
32 **RECONSIDERATION OF ORDER GRANTING THE DIVISION'S MOTION TO**
33 **DISMISS PETITIONERS' PETITION FOR JUDICIAL REVIEW**

34 COMES NOW Respondent, Division of Industrial Relations ("Division" or "DIR") by
35 and through its undersigned counsel and hereby files the above-captioned Motion to Dismiss,

1 or in the alternative, Opposition to Petitioners' Motion for Reconsideration.

2 Pursuant to Eighth Judicial District Court Rule ("EDCR") 2.20(f) an opposition to a
3 motion that contains a motion related to the same subject matter will be considered a
4 countermotion and will be heard and decided at the same time set for the hearing of the original
5 motion if a hearing was requested, unless the court sets it for hearing at a different time. Here,
6 Petitioners' Motion for Reconsideration requested a hearing, but the Court set the matter for a
7 hearing in chambers. Thus, the Division's Motion to Dismiss the Petitioners' Motion for
8 Reconsideration should also be set for a chambers hearing on July 28, 2021, unless the Court
9 sets it for a different time.

10 **I. THE DIVISION'S MOTION TO DISMISS PETITIONERS' MOTION FOR**
11 **RECONSIDERATION**

12 **A. PRELIMINARY STATEMENT**

13 Up is down and down is up. Petitioners' arguments as so far removed from reality and
14 so lacking in analysis and citations to authorities that they appear to not be made in good faith.
15 Petitioners insist that this Court's ruling is wrong because "...petitioners **never** file anything
16 relative to the Record on Appeal in workers' compensation petitions." Motion for
17 Reconsideration at 9:5-8 (emphasis in original). Petitioners seem to argue that because they
18 never followed the plain and unambiguous mandatory language of NRS 233B.131(1)(a), this
19 Court should not have the gall to make them comply now. If that is how courts applied the law,
20 then the rule of law in our society would be meaningless.

21 In short, this Court should dismiss Petitioners' Motion for Reconsideration because
22 Petitioners have not demonstrated jurisdiction under NRCP 52(b), 59(e), or 60(b), as will be
23 detailed below.

24 **B. STATEMENT OF FACTS**

25 Petitioners filed their Petition for Judicial Review ("PJR") on September 24, 2020.
26 Thus, pursuant to the plain and unambiguous mandatory language of NRS 233B.131(1)(a),
27 Petitioners had a statutory duty to file the original or certified copy of the transcript with the
28

1 court by November 9, 2020.

2 Without excuse, Petitioners have still not filed the transcript—they are about 241 days
3 late and counting. Rather than file the transcript and offer a *mea culpa*, Petitioners have tripled-
4 down on their legally erroneous interpretation and insisted that they have no duty to transmit
5 the transcript to this Court because they have never done so. Motion for Reconsideration at
6 9:5-8.

7 This Court correctly found that the Petitioners did not meet their burden to show good
8 cause for their delay under the *Scrimmer* factors and that their extensive unexcused delay was
9 mooted by their legally erroneous position that they are not statutorily required to transmit the
10 transcript to the Court. Order Granting Division’s Motion to Dismiss at 4:3-7.

11 Nonetheless, in their Motion for Reconsideration, Petitioners filed the affidavit of Mr.
12 Reeves, who did not attend the hearing on the Division’s Motion to Dismiss, and who ostensibly
13 did not bother to obtain the transcript of said hearing to point out to the Court exactly where it
14 allegedly was “improperly persuaded.” Instead, Mr. Reeves’ affidavit merely states: “That the
15 undersigned truly believes that this Court has been improperly persuaded as to what is required
16 in Petitions for Judicial Review...” Affidavit at ¶ 6. Further, the affidavit states: “The
17 undersigned fully recognizes that reconsideration is not to be requested absent extreme
18 circumstances... *Id.* at ¶ 7.

19 District Court Rules (“DCR”) 13(5) provides: “Affidavits shall contain only factual,
20 evidentiary matter, shall conform with the requirements of NRCP 56(e), and shall avoid mere
21 general conclusions or argument. Affidavits substantially defective in these respects may be
22 stricken, wholly or in part.” Here, Mr. Reeves’ affidavit consists of nothing more than mere
23 general conclusions or argument and should be stricken.

24 Moreover, Petitioners’ Motion for Reconsideration should be dismissed because they
25 failed to analyze how this Court has jurisdiction pursuant to NRCP 52(b), 59(e), or 60(b).

26 ///

27 ///

1 C. ARGUMENT

2 1. Petitioners Have Not Shown That This Court Has Jurisdiction to
3 Reconsider Under NRCP 52(b).

4 Petitioners seek to invoke this Court's jurisdiction under NRCP 52(b). Motion for
5 Reconsideration at 7:3-7. Under NRCP 52(a)(6), findings of fact, whether based on oral or
6 other evidence, must not be set aside unless clearly erroneous. Petitioners have not specified
7 which of the Court's eighteen findings they believe are clearly erroneous. Nor have they cited
8 relevant case law pertaining to NRCP 52(b). Instead, Petitioners seek to use their ignorance
9 and/or legally erroneous interpretation of NRS 233B.131(1)(a) as a shield from having their
10 PJR rightfully dismissed.

11 In examining NRCP 52(b), the Nevada Supreme Court has provided:

12
13 The primary purpose of Rule 52(b) is to enable the appellate court
14 to obtain a correct understanding of the factual issues determined
15 by the trial court as a basis for the conclusions of law and judgment
16 entered thereon. A party who failed to prove his strongest case is
17 not entitled to a second opportunity by moving to amend a finding
18 of fact and a conclusion of law.

19 The purpose of 52(b) is to clarify matters for the appellate court's
20 better understanding of the basis of the decision of the trial court.
21 . . . The Rule permits the Court in its discretion to 'amend' findings
22 of fact or to 'make additional findings', thus amplifying and
23 expanding the facts. The Rule does not provide for a reversal of
24 the judgment or for a denial of the facts as found, which is what
25 the plaintiff requests at present." *Matyas v. Feddish*, 4 F.R.D. 385,
26 386 (M.D. Pa. 1945).

27 Rule 52(b) merely provides a method for amplifying and
28 expanding the lower court's findings, and is not intended as a
vehicle for securing a rehearing on the merits. *Noice v. Jorgensen*,
378 P.2d 834 (Colo. 1963); *Minneapolis- Honeywell Reg. Co. v.*
Midwestern Inst., Inc., 188 F.Supp. 248 (N.D. Ill. 1960).

25 *In re Estate of Hermann*, 100 Nev. 1,, 20 n.16, 677 P.2d 594, 606-07 n.16 (1984) (quoting 9
26 Wright & Miller, Federal Practice and Procedure 722, § 2582).

27 Here, Petitioners seek not to persuade this Court that its findings are clearly erroneous.

1 Rather, Petitioners seek special treatment from this Court in that they should not be required to
2 comply with NRS 233B.131(1)(a) in the case at bar because they never have in the past! This
3 Court should not entertain reconsideration. As a matter of fact, to the extent that Petitioners'
4 Motion for Reconsideration raises *new* points or contentions that could have been raised in the
5 hearing on the Division's Motion to Dismiss, those new points or contentions cannot be
6 maintained or considered on rehearing. *Edward J. Achrem, Chtd. v. Expressway Plaza Ltd.*
7 *P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996) (citing *Chowdhry v. NLVH, Inc.*, 111 Nev.
8 560, 562-63, 893 P.2d 385, 387 (1995); *Cannon v. Taylor*, 88 Nev. 89, 92, 493 P.2d 1313, 1314-
9 15 (1972)).

10 **2. Petitioners Have Not Shown That This Court Has Jurisdiction to**
11 **Reconsider Under NRCP 59(e).**

12 In *AA Primo*, the Nevada Supreme Court reversed and remanded a district court order
13 granting the respondent homeowners' motion for summary judgment. *AA Primo Builders, LLC*
14 *v. Washington*, 126 Nev. 578, 580, 245 P.3d 1190, 1191-92 (2010). The Court noted that the
15 formal requirements of NRCP 59(e) are minimal, and that beyond minimal requirements, NRCP
16 59(e) does not impose limits on its scope. *Id.* at 581-82, 245 P.3d at 1192. That said, one of
17 the formal requirements of NRCP 59(e) is that it must state with particularity its grounds. *Id.*
18 (stating that the requirements of NRCP 7(b) must also be satisfied).

19 Here, Petitioners' Motion for Reconsideration does not state with particularity its
20 grounds. It is merely an obstinate rehashing of failed arguments made at the hearing on the
21 Division's Motion to Dismiss, or perhaps new contentions that cannot be maintained because
22 they could have been raised at said hearing. *Achrem*, 112 Nev. at 742, 917 P.2d at 450.

23 Moreover, the *AA Primo* Court noted that it may consult federal law in interpreting
24 NRCP 59(e) because it echoes FRCP 59(e). *AA Primo* at 582, 245 P.3d at 1192. The Ninth
25 Circuit Court of Appeals, analyzing FRCP 59(e), has held that, "A motion for reconsideration
26 under Rule 59(e) 'should not be granted absent highly unusual circumstances, unless the district
27 court is presented with newly discovered evidence, committed *clear error*, or it there is an
28

1 intervening change in the controlling law.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th
2 Cir. 1999) (internal citation omitted). The *McDowell* Court further noted that,
3 “...reconsideration of a judgment after its entry is an extraordinary remedy which should be
4 used sparingly.” *Id.* at 1255 n.1 (quoting 11 Charles Alan Wright et al., Federal Practice and
5 Procedure § 2810.1 (2d ed. 1995)). In *AA Primo*, the Nevada Supreme Court similarly noted
6 that the basic grounds for a Rule 59(e) motion are correcting manifest errors, newly discovered
7 or previously unavailable evidence, the need to prevent manifest injustice, or a change in the
8 controlling law. *AA Primo*, 126 Nev. at 582, 245 P.3d at 1193.

9 Here, the only “highly unusual circumstance” in the Division’s view, is the Petitioners’
10 tripling-down on their legally erroneous position that they are not statutorily required to transmit
11 the transcript to this Court. The only manifest error is not in the Court’s Order Granting the
12 Division’s Motion to Dismiss—the manifest error is Petitioners’ insistence that their legal
13 position is right, and the Court is wrong. Not only is NRS 233B.131(1)(a) plain and
14 unambiguous, so too is the legislative history of the 2015 amendment to NRS 233B.131
15 whereby the legislature received testimony that the underlying policy for requiring petitioners
16 to transmit the transcript to the court was to decrease the burden on taxpayers. Order Granting
17 Division’s Motion to Dismiss at 3:6-12.

18 In sum, Petitioners have not offered newly discovery evidence, nor have they shown
19 that the Court made a manifest error or that the Order will result in manifest injustice. The only
20 relevant change in the law with respect to NRS 233B.131(1)(a) is the 2015 amendment which
21 required petitioners to transmit the transcript. This amendment occurred about six years ago
22 and the Petitioners’ failure to comply with the law for the last six years is not a basis for this
23 Court to grant reconsideration.

24 **3. Petitioners Have Not Shown That This Court Has Jurisdiction to**
25 **Reconsider Under NRCP 60(b).**

26 In *Willard v. Berry-Hinckley Indus.*, the Nevada Supreme Court reversed and remanded
27 a district court’s order denying an NRCP 60(b) motion. *Willard v. Berry-Hinckley Indus.*, 469

1 P.3d 176, 177-78, 2020 LEXIS 53 at **1-2 (2020). The Court held that the district court abused
2 its discretion because it failed to address the *Yochum* factors when deciding the motion. *Id.* (see
3 *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982).

4 Here, Petitioners have not specified which of the six subparagraphs of NRCP 60(b) they
5 believe serve as a basis for this Court to grant relief. Petitioners bear the burden to prove that
6 this Court should grant relief. From the Division's perspective, at the very least, Petitioners
7 should have specified which one or more of the six subparagraphs of NRCP 60(b) they believe
8 serve as a basis for this Court to grant relief. Without specificity, the Division (and perhaps the
9 Court) is left wondering which subparagraph(s) the Petitioners believe invoke(s) this Court's
10 jurisdiction under NRCP 60(b).

11 It seems that we will have to use the process of elimination. Petitioners have not alleged
12 newly discovered evidence under subparagraph two. They have not alleged fraud under
13 subparagraph three. They have not alleged that the judgment is void (subparagraph four), or
14 that the judgment has been satisfied (subparagraph five), or specified why they would fit
15 withing the catch-all provision (subparagraph six). Thus, we are left to ponder subparagraph
16 one: mistake, inadvertence, surprise, or excusable neglect.

17 When evaluating an NRCP 60(b)(1) motion, four factors indicate whether relief is
18 appropriate: (1) a prompt application to remove the judgment; (2), the absence of an intent to
19 delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith.
20 *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656-57, 428 P.3d 255, 257 (2018) (holding that
21 the district court, Joseph Hardy, Jr., Judge, did not err in denying appellant's pro se NRCP 60(b)
22 motion for relief). Indeed, the Court, in stating the purpose of NRCP 60(b) stated as follows:
23 'The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because
24 of excusable neglect or the wrongs of an opposing party.' *Id.* (quoting *Nev. Indus. Dev., Inc. v.*
25 *Benedetti*, 103 Nev. 360, 364, 742 P.2d 802, 805 (1987).

26 Here, Petitioners, in addition to not citing or analyzing the *Yochum* factors, also failed
27 to specify what they claim is their excusable neglect or the wrongs of the Division. Moreover,
28

1 the *Rodriguez v. Fiesta Palms* Court noted, “While the district courts should assist pro se
2 litigants as much as reasonably possible, a pro se litigant cannot use his alleged ignorance as a
3 shield to protect him from the consequences of failing to comply with basic procedural
4 requirements.” *Rodriguez*, 134 Nev. at 659, 428 P.3d at 259 (see *Kahn v. Orme*, 108 Nev. 510,
5 515, 835 P.2d 790, 793 (1992)).

6 If a pro se litigant cannot use his alleged ignorance as a shield, then neither can counsel
7 for Petitioners. Yet, it appears that their argument is that they were ignorant of their statutory
8 duty in NRS 233B.131(1)(a), and that their ignorance of a statute that has been effective since
9 2015 mandates that this Court should not presently apply the plain and unambiguous language
10 of the statute to the Petitioners. This, like Petitioners’ other specious argument about their
11 Opening Brief not being due yet (Motion for Reconsideration at 11:19-28), is nonsense. The
12 Division cited cases in its Motion to Dismiss regarding a petitioner’s duty to transmit the
13 transcript of the underlying proceeding pursuant to NRS 233B.131(1)(a). *Toman v. Nev.*
14 *Transp. Auth.*, Case No.: CV18-00461, 2018 Nev. Dist. LEXIS 974, at *2 (Second Judicial Dist.
15 Ct. of Nev. Sept. 17, 2018); *In re DOT*, Case No. A-19-787004-B *et seq.*, 2020 Nev. Dist.
16 LEXIS 1221, at *1 (Eighth Judicial Dist. Ct. of Nev. Aug. 28, 2020); *Schulz Partners, LLC v.*
17 *State ex re. Bd. of Equalization*, Case No. 53128, 2011 Nev. Unpub. LEXIS 500, at *1 (July 28,
18 2011) (unpublished disposition).

19 In sum, Petitioners failed to show that this Court has jurisdiction under NRCP 60(b)
20 because they failed to allege which subparagraph or subparagraphs of NRCP 60(b) apply, and
21 they failed to cite or analyze the *Yochum* factors, and they cannot use their ignorance as a shield
22 against this Court’s granting of the Division’s Motion to Dismiss.

23 D. CONCLUSION

24 Petitioners’ counsel, who did not attend the hearing on the Division’s Motion to
25 Dismiss, and who did not cite to the transcript of said hearing, has nonetheless signed an
26 affidavit claiming that this court has been improperly persuaded. Mr. Reeves’ Affidavit at ¶ 6.
27 That is an extraordinary claim. Did counsel cite or analyze relevant case law? No. Did counsel
28

1 specify which of the Court's eighteen findings were the result of the alleged improper
2 persuasion? No. Did counsel concede that their legal position (that they do not have a duty to
3 file anything under NRS 233B.131) is untenable? No.

4 Instead, in a display that irony may be dead, they argued that "There is no separate
5 mandate that the petitioner file any actual 'transcript' of a hearing or anything like that." Motion
6 for Reconsideration at 8:25-26. When the applicable statute says: "The party who filed the
7 petition for judicial review **shall** transmit to the reviewing court an original or certified copy of
8 the **transcript** of the evidence resulting in the final decision of the agency" (emphasis added)
9 and counsel brazenly argues that they have no duty to file any actual transcript or anything like
10 that, said argument is not made in good faith.

11 Accordingly, the Division respectfully requests that this Court dismiss Petitioners'
12 Motion for Reconsideration.

13 **II. THE DIVISION'S OPPOSITION TO PETITIONERS' MOTION FOR**
14 **RECONSIDERATION**

15 **A. PRELIMINARY STATEMENT**

16 Petitioners never filed the transcript of the underlying administrative proceeding. It is
17 now about 241 days late. According to them, they do not have to file any transcript, and further,
18 they claim that their Opening Brief is not even due yet. Motion for Reconsideration at 8:23-28,
19 11:20-28. The outlandish claim that their Opening Brief is not even due yet, aside from being
20 specious, would also seem to be contrary to NRCP 1 (stating that the purpose of the rules is to
21 secure a just and speedy determination of every action and proceeding). Finally, they argue
22 that dismissal is too harsh. *Id.* at 12:1-18. Petitioners' counsel "does pray that Your Honor
23 finds good cause for the late brief given the handling attorney's medical condition." *Id.* at
24 12:13-14.

25 As a matter of fact, Mr. Price did mention to the Board, back on November 10, 2020,
26 that he was thankful for the Board's cooperation while he was dealing with prostate cancer.
27 **Exhibit "1"** attached hereto (Transcript Minutes of the Board's November 10, 2020 meeting)

1 at 18:11-18. Indeed, by this date, counsel was apparently ready to proceed with a full hearing
2 on the merits of another claim he submitted to the Board for reimbursement. *Id.* at 18:8. He
3 wanted witnesses sworn in to testify. *Id.* at 19:1-2. When Ms. Skrinjaric, the Division's
4 designee to present the recommendation to the Board, advised that no court reporter was present
5 for this meeting, an indignant Mr. Price stated: "Well, we're going to – well, that's problematic,
6 because we're going to need a transcript." *Id.* at 19:3-7 (emphasis added).

7 Having recognized back in November of 2020 that they were going to need the transcript
8 of an administrative proceeding, why now does Petitioners' counsel come to this Court, seeking
9 extraordinary relief, and claim that Petitioners have no duty to file a transcript? How can they
10 claim to have filed this Motion for Reconsideration in good faith? Reeves' Affidavit at ¶ 9.

11 **B. STATEMENT OF FACTS**

12 A recitation of the relevant facts is provided in section I. B. hereinabove. For brevity,
13 the Division incorporates the facts herein by reference.

14 **C. ARGUMENT**

15 The Division's arguments in favor of its Opposition are basically the same as those
16 stated in section I. C. 1. through 3 hereinabove. For brevity, the Division incorporates those
17 arguments herein by reference.

18 **D. CONCLUSION**

19 Petitioners had the opportunity to argue in their Opposition to the Division's Motion to
20 Dismiss everything that they argued in their Motion for Reconsideration. There are no new
21 facts, no new evidence, no change in controlling law, no demonstration that this Court's Order
22 Granting the Division's Motion to Dismiss was the result of alleged improper persuasion, and
23 no demonstration of manifest injustice.

24 Instead, Petitioners' counsel has shown an uncanny ability to speciously and repeatedly
25 claim that they have no duty to comply with a plain and unambiguous statute, NRS
26 233B.131(1)(a). That this argument is not made in good faith is corroborated by counsels' lack
27 of citations to relevant authorities and lack of analysis of their own claims for this extraordinary
28

1 relief.

2 This Court should deny Petitioners' Motion for Reconsideration. This Court should not
3 allow Petitioners' counsel to use their alleged ignorance of NRS 233B.131 as a shield from
4 complying with its requirements. After all, was Petitioners' counsel ignorant of the requirement
5 to transmit a transcript to this Court when by his own words at an administrative hearing on
6 November 10, 2020, "...we're going to need a transcript." Exhibit "1" at 19:3-7 (emphasis
7 added).

8 **III. RELIEF REQUESTED**

9 The Division respectfully requests as follows:

- 10 (1) That this Court Strike Mr. Reeves' Affidavit in whole, or strike ¶ 6, the second
11 sentence of ¶ 7, and ¶ 9 pursuant to DCR 13(5); and
12 (2) That this Court grant the Respondent Division's Motion to Dismiss Petitioners'
13 above-captioned Motion for Reconsideration; or
14 (3) That this Court deny Petitioners' above-captioned Motion for Reconsideration.

15 DATED this 19th day of July, 20 21.

17 DIVISION OF INDUSTRIAL RELATIONS

18 

19 Donald C. Smith, Esq.

20 Jennifer J. Leonescu, Esq.

21 Christopher A. Eccles, Esq.

22 *Attorneys for Respondent Division of Industrial Relations*

CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I hereby certify that I am an employee of the State of Nevada, Department of Business and Industry, Division of Industrial Relations (DIR), and that on this date, I caused to be served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

Document Served: Respondent Division of Industrial Relations' Motion to Dismiss, or in the Alternative, Opposition to Petitioners' Motion for Reconsideration of Order Granting Respondent Division's Motion to Dismiss Petitioners' Petition for Judicial Review

Person(s) Served: Daniel L. Schwartz, Esq. Joel P. Reeves, Esq. Kim D. Price, Esq. Lewis Brisbois Bisgaard & Smith 2300 W. Sahara Ave. Ste. 300, Box 28 Las Vegas, NV 89102 <i>Counsel for Petitioners LVMPD and CCMSI</i>	U.S. Mail <input type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service <input type="checkbox"/> Facsimile fax number: _____ <input checked="" type="checkbox"/> Electronic Service
Person(s) Served: LVMPD c/o Jeff Roch Director of Risk Mgmt. 400 S. Martin Luther King Blvd. Las Vegas, NV 89106 <i>Petitioner</i>	U.S. Mail <input type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service <input type="checkbox"/> Facsimile fax number: _____
Person(s) Served: CCMSI c/o Dusty Marshall Claims Supervisor P.O. Box 35350 Las Vegas, NV 89133 <i>Petitioner</i>	U.S. Mail <input type="checkbox"/> via State Mail room (regular or certified) circle one <input type="checkbox"/> deposited directly with U.S. Mail Service <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Interdepartmental Mail <input type="checkbox"/> Messenger Service <input type="checkbox"/> Facsimile fax number: _____

STATE OF NEVADA
Division of Industrial Relations - Division Counsel
3360 West Sahara Ave., Suite 250
Las Vegas, Nevada 89102
(702) 486-9080

Person(s) Served:

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Office of the Attorney General
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Las Vegas, NV 89101
*Counsel for Respondent Board for
the Administration of the
Subsequent Injury Account for
Self-Insured Employers*

U.S. Mail

☐ **via State Mail room** (regular or certified) circle one
☐ **deposited directly with U.S. Mail Service**
☐ **Overnight Mail**
☐ **Interdepartmental Mail**
☐ **Messenger Service**
☐ **Facsimile fax number:** _____
☒ **Electronic Service**

DATED this 19th day of July, 2021.



State of Nevada Employee

EXHIBIT “1”

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TRANSCRIPT MINUTES

MEETING OF THE
STATE OF NEVADA
BOARD FOR THE ADMINISTRATION OF THE
SUBSEQUENT INJURY ACCOUNT FOR
SELF-INSURED EMPLOYERS

Tuesday, November 10, 2020
1:00 p.m.

(Due to concerns with COVID-19,
the meeting was conducted via telephone.)

A P P E A R A N C E S

For the Board:

Cecilia Meyer (phone)
Board Chair, Board Member

Suhair Sayegh (phone)
Board Member

Sharolyn Wilson (phone)
Board Member

Donald Bordelove, Esq. (phone)
Deputy Attorney General
Board Counsel

For the Division of Industrial Relations:

Christopher A. Eccles, Esq. (phone)
Counsel for DIR

For the Administrator of the DIR:

Vanessa Skrinjaric (Las Vegas)
Compliance Audit Investigator
Division of Industrial Relations
Workers' Compensation Section

Also Present:

Kim Price, Esq. (phone)
Lewis Brisbois Bisgaard & Smith LLP

Jeff Roach (phone)
LVMPD

Dusty Marshall (phone)
CCMSI

Kasey McCourtney (phone)
CCMSI

I N D E X

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4. Approval of Minutes for October 21, 2020 For Possible Action	7
5. Action on a Recommendation of the Administrator of the Division of Industrial Relations for Denial of the following request(s) for reimbursement from the Subsequent Injury Account for Self-Insured Employers.	
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7		subject to change at any time: December 9,	
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9		March 24, 2021, April 21, 2021, May 19, 2021,	
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1 not.

2 BOARD MEMBER MEYER: Suhair.

3 BOARD MEMBER SAYEGH: I'm sorry. I was just
4 looking at the... I do not at this time.

5 BOARD MEMBER MEYER: I don't have any
6 questions, either. Does someone want to make a motion
7 on this claim?

8 MR. PRICE: We'd like to be heard on the claim.

9 BOARD MEMBER MEYER: I'm so sorry. Go ahead,
10 Mr. Price.

11 MR. PRICE: Certainly. Before I go, before I
12 say anything more, I have to say, try to express how
13 much I appreciate the Board's willingness to indulge and
14 cooperate with me while I've been dealing with prostate
15 cancer. I know that we had to extend a couple or
16 continue a couple of hearings because I was out of the
17 office. And I just wanted to say how much I appreciated
18 the consideration.

19 With me today I have Dusty Marshall and Jeff
20 Roach. Dusty is from CCMSI. She's claims supervisor.
21 And Jeff is the risk manager for LVMPD.

22 I will try to identify, because my voice and
23 Jeff's voice may be similar, I'll try to identify myself
24 when I speak. I think, you should be able to recognize
25 Dusty's voice.

1 At this time, it might be best to go ahead and
2 swear them in as witnesses, please.

3 MS. SKRINJARIC: This is Vanessa. We do not
4 have a court reporter present for this meeting.

5 MR. PRICE: Well, we're going to -- well,
6 that's problematic, because we're going to need a
7 transcript.

8 MS. SKRINJARIC: Well, there will be a
9 transcript only because that's the Board's current
10 procedure. We do a recording, and then there the court
11 reporter transcribes it. But there is no court reporter
12 present to swear this witness in.

13 MR. PRICE: Well, how are we going to swear in
14 the witnesses, then?

15 MR. ECCLES: This is Chris Eccles. I don't
16 think this is the time and place for the actual hearing.
17 I think, this is a time for the Board to make a decision
18 on the Administrator's recommendation. And under NAC
19 616B.7706, if the Board denies the claim or any expenses
20 related to the claim, then the party who is claiming
21 they are aggrieved by that decision can request a
22 hearing within 30 days.

23 So at that subsequent hearing, if there is a
24 request for a hearing, that is the time and place
25 whereby Vanessa Skrinjaric will arrange for a court

1 reporter and for there to be testimony,
2 cross-examination, et cetera, in accordance with the
3 procedural rules of the Board.

4 MR. PRICE: This is Kim. So what you're
5 submitting is that we don't get to say anything today?

6 MS. SKRINJARIC: You wouldn't be swearing any
7 witnesses.

8 MR. PRICE: But if I'm going to have witnesses
9 give testimony, they need to be sworn in. It's the way
10 we've always done it. I've been doing this for six
11 years. Every time there's an SIA Board meeting, we call
12 witnesses, the witnesses are sworn in. Today, for the
13 first time, you're telling me that the initial hearing
14 of an SIA matter, we're not allowed to present evidence
15 or testimony.

16 MS. SKRINJARIC: Mr. Price, if I may, this is
17 Vanessa Skrinjaric. The general procedure before this
18 Board has always been there is an initial reading of the
19 recommendation. The Board votes to either approve or
20 deny. There then is a determination of the Board, which
21 you can then request a hearing. And then, at that time,
22 a court reporter would be scheduled, and you would then
23 have a full-blown hearing.

24 MR. PRICE: Well, then, I guess, it's
25 absolutely pointless for me to show up monthly at these

1 hearings, then, because you're not willing to accept any
2 testimony or take in or review our evidence before you
3 make the decision. So, I guess, you guys should go
4 ahead and make your decision. We'll request a
5 transcript and go forward with an appeal.

6 MS. MCCOURTNEY: I'm sorry. This is Kasey with
7 CCMSI. I disagree with that. I think that you do have
8 the chance to argue your position in regards to this and
9 for the witnesses to provide their additional
10 information to argue your position for the application,
11 so that the Board has additional information to review
12 and make their decision on.

13 MR. ECCLES: And, for the record, again, this
14 is Christopher Eccles, DIR counsel. I feel that what
15 was just said is correct. We're just trying to follow
16 the procedures here.

17 You've got every opportunity to present your
18 side of the case to provide documents to the Board. And
19 I have every opportunity to exercise my rights and
20 cross-examination them and to do any motion that I may
21 want to submit in order to streamline the hearing
22 process.

23 I'm just following the rule in the NAC
24 616B.7706. And that's the way that I've understood this
25 has been carried out by this Board for the past years.

1 MR. PRICE: This is Kim. I don't agree with
2 that forever. Because I've been appearing at these
3 initial SIA hearings for six years. And I've always
4 been given the opportunity to speak my piece, to present
5 evidence, to have you review evidence and our
6 application, and to present witnesses.

7 So if you're changing the rules today, then I
8 welcome the Board to please go ahead and vote on this
9 matter. And we'll take a transcript. And we'll file
10 the appeal as necessary.

11 BOARD MEMBER MEYER: I'm not sure how we should
12 proceed at this point.

13 MR. ECCLES: Maybe -- again, this is Chris
14 Eccles. Maybe Board counsel can jump in here, or
15 someone on the Board can address it. But I've,
16 basically, said, I think, what I need to say. I didn't
17 even know who the applicant's witnesses were or what
18 they're allegedly going to testify to or if they're
19 offering any documents into evidence. We don't have any
20 of that at this point for the Board to even have copies
21 to see this evidence, if there is any, and for me to
22 make any objections to it.

23 So it's not for --

24 MR. PRICE: Well, you do have our entire
25 application.

1 BOARD MEMBER MEYER: Mr. Bordelove, are you
2 present?

3 MR. BORDELOVE: Yeah. This is Donald
4 Bordelove, Board counsel. I'm not really sure where
5 Mr. Price is coming from. If you can look at the
6 agenda, item 5 clearly states action on recommendation
7 of the Administrator of the Division of Industrial
8 Relations.

9 Pursuant to the updated regulations, you can
10 request a -- maybe that's where this confusion is coming
11 from. You can request a hearing within 30 days. And
12 that would be to present witnesses.

13 I believe, it has been Board practice to allow
14 you to make a statement, though, before, before they
15 rule on the recommendation, which you're more than
16 welcome to do. But --

17 MR. PRICE: Well, the Board's heard --

18 MR. BORDELOVE: -- if you went ahead -- I'm not
19 finished. If you went ahead and filed a petition for
20 judicial review after this, arguably, by failing to
21 follow that regulation, you would waive your right to
22 any hearing and any presentations of witnesses, and thus
23 the Board's order would be affirmed on petition for
24 judicial review for complying with the standards
25 thereof. But it's your choice to do what you want.

1 MR. PRICE: Well, if you're going to -- you
2 know, as I said, six years, they've taken testimony from
3 Dusty and Jeff before on the initial hearings. But if
4 you want to --

5 MR. BORDELOVE: Mr. Price --

6 MR. PRICE: If that's the way you want to play,
7 that's fine. I have no objection if you if you want to
8 follow the rules. That's fine. It's just you yanked
9 the rug out from under us after six years of doing it
10 this way. There's --

11 MR. BORDELOVE: You have the right to --

12 MR. PRICE: If the Board wishes to -- I'm not
13 finished, please. I'm not finished, please. But if you
14 want to, if you're going to maintain this position, then
15 I invite the Board to go ahead and vote on the DIR's
16 recommendation. Let's move on to the next agenda item.

17 MR. ECCLES: And, again, I'll just state for
18 the record that as long as you request a hearing, you
19 will have the absolute right to present all witnesses,
20 which will be noticed in advance, properly, and you'll
21 have all the ability to present your testimony. And the
22 Board could, of course, change its decision today,
23 presuming whatever decision that is.

24 But I would advise the Board, if Mr. Price does
25 not want to make a statement, if he does not want to

1 make a statement on the Administrator's recommendation,
2 which is his choice to do, and we should first find out
3 whether he wants to make a statement or not, but if he
4 doesn't want to make a statement, then I would advise
5 the Board to make a motion on the recommendation.

6 Mr. Price, would you like to make a statement
7 before the Board votes on that recommendation?

8 MR. PRICE: Yes, I would.

9 MR. ECCLES: Please proceed.

10 MR. PRICE: All right. At this time, I would
11 like to go ahead and invite my witnesses, Dusty and
12 Jeff, to go ahead and leave the hearing. There's really
13 no reason for them to continue online.

14 MR. ROACH: Thank you. We'll be leaving.
15 Thanks.

16 MS. MARSHALL: Thank you.

17 MS. SKRINJARIC: Thank you.

18 MR. PRICE: Well, our task in front of the
19 Board in submitting an SIA application is to submit
20 documents from which can be reasonably inferred that
21 there is a qualifying impairment and that the written
22 record shows that that existed before the date of the
23 subsequent injury. That's in North Lake Tahoe Fire
24 Protection District case that I know the Board is
25 familiar with.



JOIN
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Attorneys for Respondent
*Board for the Administration of the Subsequent
Injury Account for Self-Insured Employers*

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; and CANNON
COCHRAN MANAGEMENT SERVICE,
INC.,

Petitioners,

vs.

STATE OF NEVADA BOARD FOR THE
ADMINISTRATION OF THE
SUBSEQUENT INJURY ACCOUNT FOR
SELF-INSURED EMPLOYERS,

Respondent.

Case No. A-20-821892-J
Dept. No. 15

**JOINDER TO MOTION TO DISMISS, OR IN THE ALTERNATIVE,
OPPOSITION TO PETITIONERS' MOTION FOR RECONSIDERATION OF
ORDER GRANTING THE DIVISION'S MOTION TO DISMISS PETITION
FOR JUDICIAL REVIEW**

COMES NOW Respondent, the Board for Administration of the Subsequent Injury
Account for Self-Insured Employers, by and through its counsel, and hereby joins

...

1 Respondent's, Division of Industrial Relations, Motion to Dismiss, or in the Alternative,
2 Opposition to Petitioners' Motion for Reconsideration.

3 Dated: July 22, 2021.

4
5 AARON D. FORD
6 Attorney General

7 By: /s/ Donald J. Bordelove
8 Donald J. Bordelove (Bar. No. 12561)
9 Deputy Attorney General
10 *Attorneys for the Board*
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of
3 Nevada, and that on July 22, 2021 I filed the foregoing **JOINDER TO MOTION TO**
4 **DISMISS, OR IN THE ALTERNATIVE, OPPOSITION TO PETITIONERS'**
5 **MOTION FOR RECONSIDERATION OF ORDER GRANTING THE DIVISION'S**
6 **MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW** via this Court's
7 electronic filing system. EFS users will be served electronically via email.

8
9 /s/ Michele Caro

10 An employee of the Office of the Attorney General
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Worker's Compensation
Appeal**

COURT MINUTES

July 28, 2021

A-20-821892-J Las Vegas Metropolitan Police Department, Petitioner(s)
vs.
State of Nevada Department of Business & Industry, Respondent(s)

July 28, 2021 3:00 AM All Pending Motions

HEARD BY: Hardy, Joe **COURTROOM:** Chambers

COURT CLERK: Carina Bracamontez-Munguia/cbm

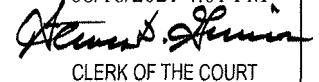
PARTIES None. Minute order only – no hearing held.
PRESENT:

JOURNAL ENTRIES

MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO DISMISS ON ORDER SHORTENING TIME...JOINDER TO MOTION TO DISMISS, OR OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO DISMISS PETITION FOR JUDICIAL REVIEW

COURT ORDERED, Petitioner's Motion for Reconsideration is hereby DENIED. Respondent Division of Industrial Relations counsel is to prepare the written order; submit the order to Petitioner's counsel for review and approval, and then submit the order to DC15inbox@clarkcountycourts.us.

CLERK'S NOTE: The above minute order has been electronically served to parties via e-mail and/or Odyssey File & Serve. // cbm 07-28-2021


CLERK OF THE COURT**ODM**

Donald C. Smith, Esq.

Nevada Bar No.: 000413

Jennifer J. Leonescu, Esq.

Nevada Bar No.: 006036

Christopher A. Eccles, Esq.

Nevada Bar No.: 009798

State of Nevada, Department of Business and Industry

Division of Industrial Relations

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donaldsmith@dir.nv.govjleonescu@dir.nv.govceccles@dir.nv.gov*Attorneys for Respondent Division of Industrial Relations***DISTRICT COURT
CLARK COUNTY, NEVADA**LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, and CANNON
COCHRAN MANAGEMENT SERVICES,
INC.

Petitioners,

vs.

STATE OF NEVADA BOARD FOR THE
ADMINISTRATION OF THE SUBSEQUENT
INJURY ACCOUNT FOR SELF-INSURED
EMPLOYERS,

Respondents.

Case No.: A-20-821892-J

Dept. No.: 15

**ORDER DENYING
PETITIONERS' MOTION FOR
RECONSIDERATION**

The Court set this matter for decision on July 28, 2021 on its Chambers calendar. The Court, having reviewed the papers and pleadings on file in this matter and good cause appearing hereby rules as follows:

I. FINDINGS

1. On June 21, 2021, this Court entered a detailed Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review.

2. Said Order specified that Petitioners did not comply with their statutory duty to transmit the transcript of the Board's administrative hearing to this Court pursuant to NRS 233B.131(1)(a). Petitioners did not meet their burden to show good cause for their delay under *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000), and furthermore, Petitioners' extensive unexcused delay to transmit the transcript is mooted by their erroneous legal position that they are not statutorily required to transmit the transcript to the Court.

3. On June 22, 2021, the Division filed its Notice of Entry of Order.

4. On July 13, 2021, Petitioners filed their Motion for Reconsideration of Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review and Request for Order Shortening Time ("Petitioners' Motion for Reconsideration").

5. Petitioners' Motion for Reconsideration claimed that this Court "has been improperly persuaded as to what is required in Petitions for Judicial Review" (Affidavit in Support of Order Shortening Time at ¶ 6) and insisted that "The law requires the agency to file the complete record." Petitioners' Motion for Reconsideration at 9:23 (emphasis in original). Indeed, Petitioners continue to argue that, "There is no separate mandate that petitioner file any actual 'transcript' of a hearing or anything like that." Petitioners' Motion for Reconsideration at 8:25-26. Petitioners' contentions are unsupported by the plain language of NRS 233B.131(1)(a), the legislative history of the 2015 amendments to said statute, and by case law.

6. Petitioners have not demonstrated that reconsideration is warranted to correct manifest error, or due to newly discovered or previously unavailable evidence, or the need to prevent manifest injustice, or due to a change in the controlling law. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010).

7. Similarly, Petitioners have not analyzed, let alone demonstrated, that reconsideration is warranted under the *Yochum* factors. *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982); *see also Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656-57,

428 P.3d 255, 257 (2018).

8. At the time of this Court's July 28, 2021 chambers hearing on Petitioners' Motion for Reconsideration, Petitioners were about 250 days past their deadline to file the transcript.

9. Petitioners have not demonstrated that reconsideration is warranted.

II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Petitioners' Motion for Reconsideration of Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review is hereby DENIED.

DATED this _____ day of _____, 2021.

Dated this 16th day of August, 2021


HON. JUDGE JOE HARDY, JR.

5AA 724 23CC CCA9
Joe Hardy
District Court Judge

Respectfully submitted by:
DIVISION OF INDUSTRIAL RELATIONS

/s/ Christopher A. Eccles
Donald C. Smith, Esq.
Jennifer J. Leonescu, Esq.
Christopher A. Eccles, Esq.
Division of Industrial Relations
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102
Attorneys for Respondent Division of Industrial Relations

Approved as to form and content by:
LEWIS BRISBOIS BISGAARD & SMITH

By: /s/ Joel P. Reeves
Kim D. Price, Esq.
Nevada Bar No. 7873
2300 W. Sahara Ave., Ste. 900, Box 28
Las Vegas, NV 89102
Attorneys for Petitioners LVMPD and CCMSI

From: [Reeves, Joel](#)
To: [Christopher Eccles](#); [Price, Kim](#); [Schwartz, Daniel](#); [Bateman, Dawn](#); [Platt, Hilton](#)
Cc: [Donald J. Bordelove](#); [Samantha OBrien](#); [Michele L. Caro](#)
Subject: RE: LVMPD, CCMSI v. SIE, DIR - A-20-821892-J - DIR's Order Denying Pets' Mtn for Reconsideration, 8.11.21, follow up 8.16.21
Date: Monday, August 16, 2021 1:35:26 PM
Attachments: [Logo_e6253148-26a1-47a9-b861-6ac0ff0bc3c4.png](#)

Hey Chris,

This is fine. You can e-sign for me.



Joel P. Reeves
Partner
Joel.Reeves@lewisbrisbois.com
T: 702.583.6006 F: 702.366.9563

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From: Christopher Eccles <ceccles@dir.nv.gov>
Sent: Monday, August 16, 2021 1:19 PM
To: Price, Kim <Kim.Price@lewisbrisbois.com>; Reeves, Joel <Joel.Reeves@lewisbrisbois.com>; Schwartz, Daniel <Daniel.Schwartz@lewisbrisbois.com>; Bateman, Dawn <Dawn.Bateman@lewisbrisbois.com>; Platt, Hilton <Hilton.Platt@lewisbrisbois.com>
Cc: Donald J. Bordelove <DBordelove@ag.nv.gov>; Samantha OBrien <samantha.obrien@dir.nv.gov>; Michele L. Caro <MCaro@ag.nv.gov>
Subject: [EXT] RE: LVMPD, CCMSI v. SIE, DIR - A-20-821892-J - DIR's Order Denying Pets' Mtn for Reconsideration, 8.11.21, follow up 8.16.21

Caution:This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello All,

I am following up. Please sign and email back to me or advise of proposed edits.

Thank you,

Christopher A. Eccles, Esq.
Division Counsel
Division of Industrial Relations
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102
Ph. (702) 486-9073
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00385

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Las Vegas Metropolitan Police
7 Department, Petitioner(s)

CASE NO: A-20-821892-J

DEPT. NO. Department 15

8 vs.

9 State of Nevada Department of
10 Business & Industry,
11 Respondent(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order was served via the court's electronic eFile system to all
15 recipients registered for e-Service on the above entitled case as listed below:

16 Service Date: 8/16/2021

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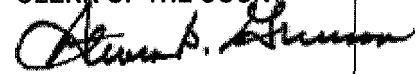
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Kim Price

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1 **NEOJ**

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3 Nevada Bar No.: 000413

4 Jennifer J. Leonescu, Esq.

5 Nevada Bar No.: 006036

6 Christopher A. Eccles, Esq.

7 Nevada Bar No.: 009798

8 State of Nevada, Department of Business and Industry

9 Division of Industrial Relations

10 3360 W. Sahara Ave., Ste. 250

11 Las Vegas, NV 89102

12 Phone: (702) 486-9070

13 donalcdsmith@dir.nv.gov

14 jleonescu@dir.nv.gov

15 ceccles@dir.nv.gov

16 *Attorneys for Respondent Division of Industrial Relations*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **LAS VEGAS METROPOLITAN POLICE**
14 **DEPARTMENT, and CANNON**
15 **COCHRAN MANAGEMENT**
16 **SERVICES,**
17 **INC.**

Case No.: A-20-821892-J

Dept. No.: 15

18 **Petitioners,**

19 **vs.**

20 **STATE OF NEVADA BOARD FOR**
21 **THE ADMINISTRATION OF THE**
22 **SUBSEQUENT INJURY ACCOUNT**
23 **FOR SELF-INSURED EMPLOYERS,**

**NOTICE OF ENTRY OF ORDER
DENYING PETITIONERS' MOTION
FOR RECONSIDERATION**

24 **Respondents.**

25 PLEASE TAKE NOTICE that the Order Denying Petitioner's Motion for
26 Reconsideration was entered in the above-captioned matter on August 16, 2021, a true and
27 correct copy of which is attached hereto.

28 DATED this 17th day of August, 2021.

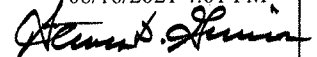
Respectfully submitted,
DIVISION OF INDUSTRIAL RELATIONS

By: /s/ Christopher A. Eccles
Donald C. Smith, Esq.
Jennifer J. Leonescu, Esq.
Christopher A. Eccles, Esq.
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102
Attorneys for Respondent Division of Industrial Relations

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the State of Nevada, Division of Industrial Relations, and that on this 17th day of August, 2021, I caused the foregoing document entitled **Notice of Entry of Order Denying Petitioners' Motion for Reconsideration** to be served upon those persons designated by the parties in the e-service Master List for the above-referenced matter in the Eighth Judicial District Court e-filing System in accordance with the mandatory electronic service requirements of Administrative Order 14-02 and the NEFCR.

/s/ Samantha O'Brien
An employee of the State of Nevada
Division of Industrial Relations



CLERK OF THE COURT

ODM

Donald C. Smith, Esq.

Nevada Bar No.: 000413

Jennifer J. Leonescu, Esq.

Nevada Bar No.: 006036

Christopher A. Eccles, Esq.

Nevada Bar No.: 009798

State of Nevada, Department of Business and Industry

Division of Industrial Relations

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Las Vegas, NV 89102

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donaldcsmith@dir.nv.govjleonescu@dir.nv.govceccles@dir.nv.gov*Attorneys for Respondent Division of Industrial Relations***DISTRICT COURT
CLARK COUNTY, NEVADA**LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, and CANNON
COCHRAN MANAGEMENT SERVICES,
INC.

Petitioners,

vs.

STATE OF NEVADA BOARD FOR THE
ADMINISTRATION OF THE SUBSEQUENT
INJURY ACCOUNT FOR SELF-INSURED
EMPLOYERS,

Respondents.

Case No.: A-20-821892-J

Dept. No.: 15

**ORDER DENYING
PETITIONERS' MOTION FOR
RECONSIDERATION**

The Court set this matter for decision on July 28, 2021 on its Chambers calendar. The Court, having reviewed the papers and pleadings on file in this matter and good cause appearing hereby rules as follows:

I. FINDINGS

1. On June 21, 2021, this Court entered a detailed Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review.

2. Said Order specified that Petitioners did not comply with their statutory duty to transmit the transcript of the Board's administrative hearing to this Court pursuant to NRS 233B.131(1)(a). Petitioners did not meet their burden to show good cause for their delay under *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000), and furthermore, Petitioners' extensive unexcused delay to transmit the transcript is mooted by their erroneous legal position that they are not statutorily required to transmit the transcript to the Court.

3. On June 22, 2021, the Division filed its Notice of Entry of Order.

4. On July 13, 2021, Petitioners filed their Motion for Reconsideration of Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review and Request for Order Shortening Time ("Petitioners' Motion for Reconsideration").

5. Petitioners' Motion for Reconsideration claimed that this Court "has been improperly persuaded as to what is required in Petitions for Judicial Review" (Affidavit in Support of Order Shortening Time at ¶ 6) and insisted that "The law requires the agency to file the complete record." Petitioners' Motion for Reconsideration at 9:23 (emphasis in original). Indeed, Petitioners continue to argue that, "There is no separate mandate that petitioner file any actual 'transcript' of a hearing or anything like that." Petitioners' Motion for Reconsideration at 8:25-26. Petitioners' contentions are unsupported by the plain language of NRS 233B.131(1)(a), the legislative history of the 2015 amendments to said statute, and by case law.

6. Petitioners have not demonstrated that reconsideration is warranted to correct manifest error, or due to newly discovered or previously unavailable evidence, or the need to prevent manifest injustice, or due to a change in the controlling law. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010).

7. Similarly, Petitioners have not analyzed, let alone demonstrated, that reconsideration is warranted under the *Yochum* factors. *Yochum v. Davis*, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982); *see also Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656-57,

428 P.3d 255, 257 (2018).

8. At the time of this Court's July 28, 2021 chambers hearing on Petitioners' Motion for Reconsideration, Petitioners were about 250 days past their deadline to file the transcript.

9. Petitioners have not demonstrated that reconsideration is warranted.


II. ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Petitioners' Motion for Reconsideration of Order Granting Respondent Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review is hereby DENIED.

DATED this _____ day of _____, 2021.

Dated this 16th day of August, 2021


HON. JUDGE JOE HARDY, JR.

5AA 724 23CC CCA9
Joe Hardy
District Court Judge

Respectfully submitted by:
DIVISION OF INDUSTRIAL RELATIONS

/s/ Christopher A. Eccles

Donald C. Smith, Esq.
Jennifer J. Leonescu, Esq.
Christopher A. Eccles, Esq.
Division of Industrial Relations
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102
Attorneys for Respondent Division of Industrial Relations

Approved as to form and content by:
LEWIS BRISBOIS BISGAARD & SMITH

By: /s/ Joel P. Reeves
Kim D. Price, Esq.
Nevada Bar No. 7873
2300 W. Sahara Ave., Ste. 900, Box 28
Las Vegas, NV 89102
Attorneys for Petitioners LVMPD and CCMSI

From: [Reeves, Joel](#)
To: [Christopher Eccles](#); [Price, Kim](#); [Schwartz, Daniel](#); [Bateman, Dawn](#); [Platt, Hilton](#)
Cc: [Donald J. Bordelove](#); [Samantha OBrien](#); [Michele L. Caro](#)
Subject: RE: LVMPD, CCMSI v. SIE, DIR - A-20-821892-J - DIR's Order Denying Pets' Mtn for Reconsideration, 8.11.21, follow up 8.16.21
Date: Monday, August 16, 2021 1:35:26 PM
Attachments: [Logo_e6253148-26a1-47a9-b861-6ac0ff0bc3c4.png](#)

Hey Chris,

This is fine. You can e-sign for me.



Joel P. Reeves
Partner
Joel.Reeves@lewisbrisbois.com
T: 702.583.6006 F: 702.366.9563

2300 West Sahara Avenue
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From: Christopher Eccles <ceccles@dir.nv.gov>
Sent: Monday, August 16, 2021 1:19 PM
To: Price, Kim <Kim.Price@lewisbrisbois.com>; Reeves, Joel <Joel.Reeves@lewisbrisbois.com>; Schwartz, Daniel <Daniel.Schwartz@lewisbrisbois.com>; Bateman, Dawn <Dawn.Bateman@lewisbrisbois.com>; Platt, Hilton <Hilton.Platt@lewisbrisbois.com>
Cc: Donald J. Bordelove <DBordelove@ag.nv.gov>; Samantha OBrien <samantha.obrien@dir.nv.gov>; Michele L. Caro <MCaro@ag.nv.gov>
Subject: [EXT] RE: LVMPD, CCMSI v. SIE, DIR - A-20-821892-J - DIR's Order Denying Pets' Mtn for Reconsideration, 8.11.21, follow up 8.16.21

Caution: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello All,

I am following up. Please sign and email back to me or advise of proposed edits.

Thank you,

Christopher A. Eccles, Esq.
Division Counsel
Division of Industrial Relations
3360 W. Sahara Ave., Ste. 250
Las Vegas, NV 89102
Ph. (702) 486-9073
Fax. (702) 486-8717

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Las Vegas Metropolitan Police
7 Department, Petitioner(s)

CASE NO: A-20-821892-J

DEPT. NO. Department 15

8 vs.

9 State of Nevada Department of
10 Business & Industry,
11 Respondent(s)

12 **AUTOMATED CERTIFICATE OF SERVICE**

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15 recipients registered for e-Service on the above entitled case as listed below:

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Samantha O'Brien

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Elizabeth A. Brown
CLERK OF THE COURT

NO. 83262

FILED

SEP 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *D. Richards*
DEPUTY CLERK

1 ODM

2 Donald C. Smith, Esq.

3 Nevada Bar No.: 000413

4 Jennifer J. Leonescu, Esq.

5 Nevada Bar No.: 006036

6 Christopher A. Eccles, Esq.

7 Nevada Bar No.: 009798

8 State of Nevada, Department of Business and Industry

9 Division of Industrial Relations

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12 Phone: (702) 486-9070

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15 ceccles@dir.nv.gov

16 Attorneys for Respondent Division of Industrial Relations

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 LAS VEGAS METROPOLITAN POLICE)
14 DEPARTMENT, and CANNON)
15 COCHRAN MANAGEMENT SERVICES,)
16 INC.)

17 Petitioners,)

18 vs.)

19 STATE OF NEVADA BOARD FOR THE)
20 ADMINISTRATION OF THE SUBSEQUENT)
21 INJURY ACCOUNT FOR SELF-INSURED)
22 EMPLOYERS,)

23 Respondents.)

Case No.: A-20-821892-J

Dept. No.: 15

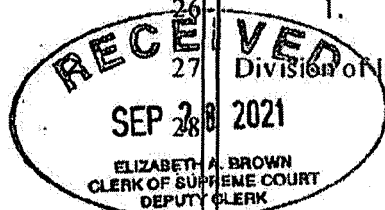
**ORDER DENYING
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25 Court, having reviewed the papers and pleadings on file in this matter and good cause appearing,
26 hereby rules as follows:

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Division of Industrial Relations' Motion to Dismiss Petitioners' Petition for Judicial Review.

STATE OF NEVADA
Division of Industrial Relations - Division Counsel
3360 West Sahara Ave., Suite 250
Las Vegas, Nevada 89102
(702) 486-9080



21-27867
00396

2. Said Order specified that Petitioners did not comply with their statutory duty to transmit the transcript of the Board's administrative hearing to this Court pursuant to NRS 233B.131(1)(a). Petitioners did not meet their burden to show good cause for their delay under *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516-17, 998 P.2d 1190, 1195-96 (2000), and furthermore, Petitioners' extensive unexcused delay to transmit the transcript is mooted by their erroneous legal position that they are not statutorily required to transmit the transcript to the Court.

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II. ORDER

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DATED this _____ day of _____, 2021.

Dated this 16th day of August, 2021


HON. JUDGE JOE HARDY, JR.

5AA 724 23CC CCA9
Joe Hardy
District Court Judge

Respectfully submitted by:
DIVISION OF INDUSTRIAL RELATIONS

/s/ Christopher A. Eccles

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Jennifer J. Leonescu, Esq.
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By: /s/ Joel P. Reeves

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