

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THE BOARD FOR THE ADMINISTRATION OF THE  
SUBSEQUENT INJURY ACCOUNT  
FOR ASSOCIATIONS OF  
SELF-INSURED PUBLIC OR PRIVATE EMPLOYERS**

\* \* \* \* \*

**In re: Subsequent Injury Request for Reimbursement**

**Claim No.:** NRAD - 13567  
**Date of Injury:** December 29, 2010  
**Association Name:** Nevada Restaurant SIG  
**Association Member:** Slotworld, Inc.  
**Association Administrator:** Safety National Causality Corp.  
**Third-Party Administrator:** York Risk Services Group  
**Submitted By:** Nancy Helmbold, Esq.

---

**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND DECISION OF THE BOARD**

On August 11, 2016, and again on September 8, 2016<sup>1</sup>, this matter came on for hearing before the Board for the Administration of the Subsequent Injury Account (the Account) for Associations of Self-insured Public or Private Employers ("the Board"). The Administrator ("Administrator") of the Division of Industrial Relations ("DIR") recommended that the Board deny the application for reimbursement filed by Nancy Helmbold, Esq., Lewis Brisbois Bisgaard & Smith LLP (Ms. Helmbold). *See*, SR 1.

The Administrator recommended denial because the applicant failed to show by written record that it knew of the preexisting permanent impairment prior to the date of the subsequent

///  
///

---

<sup>1</sup>The transcript (Tr.) for the hearing of August 11, 2016, is designated and 1Tr., and the transcript for the hearing of September 8, 2016, is designated and 2Tr. No court reporter was present to record either of the proceedings. Both proceedings were digitally recorded, and the transcript was produced by a certified transcriptionist. 1Tr., p. 2, 2Tr., p. 2. SR stands for the Administrator's July 12, 2016, Staff Report, followed by the page number from the Staff Report. DIR refers to the page numbers of the exhibits the Division of Industrial Relations attached to the Staff Report (SR).

1 industrial injury as required by the combination of NRS 616B.578(4), quoted in the margin,<sup>2</sup> SR  
2 5-6, and *Holiday Retirement Corporation v. The State of Nevada Division of Industrial*  
3 *Relations*, 128 Nev. 150, 274 P.3d 759, 761 (2012). *Holiday* makes clear that the knowledge  
4 requirement of NRS 616B.578(4) must be satisfied prior to the date of the subsequent injury.

5 The employee was a porter for Slotworld, Inc., (Slotworld). SR 2. She was hired on  
6 August 11, 2003. SR 2. On April 18, 2008, the employee suffered an on-the-job injury. *Ibid.*  
7 After the injury, the employee took some time off and was then placed on light duty for an  
8 unspecified amount of time. *Ibid.* On January 14, 2009, the employee was declared to have  
9 reached maximum medical improvement. *Ibid.* At that time, she had already been released to  
10 full duty without restrictions. *Ibid.* After this injury and the completion of treatment, Slotworld  
11 retained the employee. *Ibid.*

12 The subsequent injury occurred on December 29, 2010, while the employee was at work  
13 performing her duties. SR 2. She sneezed and injured her lower back. *Ibid.* This injury resulted  
14 in a high pain level. The employee's rating was seven out of ten. DIR 21. The initial treatment  
15 was pain medication and an epidural injection. DIR 21, 22. The employee ultimately required  
16 surgery in May of 2012. DIR 28, 29. On September 30, 2013, the employee was rated for a  
17 permanent partial disability (PPD). DIR 43-52. The employee was found to have a 21% whole  
18 person impairment (WPI). DIR 51. The WPI was apportioned allocating 13% to the 2008 injury  
19 and 8% to the 2010 injury. DIR 52.

20 On June 22, 2016, the applicant applied for reimbursement from the Account. DIR 78.  
21 This application listed the date of the employer's knowledge of the preexisting permanent  
22 impairment as April 19, 2012, almost a year and a half after the subsequent injury. *Ibid.* The  
23 application included a letter from the applicant's legal counsel, Nancy Helmbold, Esq., dated  
24 ///

---

25  
26 <sup>2</sup>NRS 616B.578(4). To qualify under this section for reimbursement from the subsequent injury  
27 account for associations of self-insured public or private employers, the association of self-insured public  
28 or private employers must establish by written records that the employer had knowledge of the  
"permanent physical impairment" at the time the employee was hired or that the employee was retained  
in employment after the employer acquired such knowledge.

1 June 21, 2016. *See*, DIR 59-62. In the letter, she argued that Slotworld, the applicant, knew all  
2 along the gravity of the injured worker's back injury.

3 The facts, however, belie the claim as Ms. Helmbold failed to identify any written record  
4 pre-dating the date of the subsequent injury, which revealed that Slotworld had knowledge of a  
5 preexisting permanent physical impairment prior to the date of the subsequent industrial injury.  
6 SR 6. Curiously, Ms. Helmbold admits the employer's first indication that the 2010 subsequent  
7 industrial injury might qualify for Subsequent Injury Account treatment did not occur until April  
8 19, 2012, the date of the Decision and Order for the injured worker's subsequent industrial injury  
9 claim. In fact, one of the problems facing Slotworld in this case is that the original injury was  
10 not rated for the preexisting industrial injury until the application was made for compensation for  
11 the subsequent industrial injury.<sup>3</sup>

12 The simple fact is that Slotworld's documentation does not support the requisite level of  
13 knowledge required by NRS 616B.578(3) and (4). *See*, DIR 2, 3, 17. First, the C-3 form only  
14 told the employer that the employee had strained her back. DIR 1. Second, the C-4 form  
15 provided that the injury occurred while the employee was bending and twisting. DIR 2. In the  
16 third document, Slotworld indicated it was able to accommodate the employee's work  
17 restrictions. DIR 17. Moreover, one of the injured worker's treating physicians, Robin Y.  
18 Tomita, M.D., returned the injured worker to "full duty without any restrictions" as of February  
19 17, 2009. DIR 18. The injured worker had, however, prior to this date, been released to work  
20 full duty as a porter "without any problems." DIR 18.

21 This case also raised a procedural issue because neither the applicant nor the applicant's  
22 legal counsel filed a request for a contested hearing. *See*, NAC 616B.7779(2). The regulations  
23

---

24 <sup>3</sup>As used in this section, "permanent physical impairment" means any permanent condition,  
25 whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or  
26 obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the  
27 purposes of this section, a condition is not a "permanent physical impairment" unless it would support a  
28 rating of permanent impairment of 6 percent or more of the whole person if evaluated according to the  
American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and  
supplemented by the Division pursuant to NRS 616C.110. *See*, NRS 616B.578(3).

1 governing the Associations' Subsequent Injury Account require associations to request in  
2 writing, filed with Board legal counsel, no later than 10 days after service of the Administrator's  
3 recommendation, a hearing before the Board. *See*, NAC 616B.7779(2). Because no request for a  
4 hearing was timely filed with Board legal counsel as required by NAC 616B.7779(2), the Board  
5 was obliged to: "... approve or disapprove, in whole or in part, the recommendation of the  
6 Administrator without allowing additional evidence, testimony, argument or rebuttal to be  
7 presented by the association." NAC 616B.7781(1)(a)(Emphasis added). Consequently, legal  
8 counsel for the applicant, who was, by this time Kim Price, Esq., of Lewis Brisbois Bisgaard &  
9 Smith, LLP, was barred from presenting oral argument or additional evidence, if any were there  
10 to be had, in support of the application during the hearing of August 11, 2016. At the conclusion  
11 of the hearing on this matter, the Board unanimously voted to uphold the Administrator's  
12 recommendation.

13 A second hearing was held on September 8, 2016. The scope of this hearing was limited  
14 to the applicant's procedural request for a rehearing. After listening to the applicant's request,  
15 the Board declined to allow a rehearing on the merits. 2Tr., p. 11;1-8.

#### 16 FINDINGS OF FACT

17 1. The Administrator recommended denial of the claim because the applicant could  
18 not produce documentation of Slotworld's knowledge of a preexisting condition.

19 In the June 21, 2016 letter of application [from Ms. Helmbold,  
20 accompanying the application] not one document is cited that is dated  
21 prior to the date of the subsequent injury that shows that this employer had  
22 knowledge of a permanent physical impairment that would support a  
23 rating of at least 6% [whole person impairment.] *See*, SR 6.

24 2. The Administrator's recommendation was mailed to the applicant on July 12,  
25 2016. *See*, SR 10.

26 3. The Administrator's recommendation expressly informed the applicant that a  
27 request for hearing must be filed within 10 days of the date of the service of the recommendation.  
28 NAC 616B.7779(2), SR 8. Further, this notice warned the applicant of the consequence of a  
failure to give notice of the request for a hearing. "Failure to timely give notice of the request for

///

1 hearing may substantially limit the ability of the association to challenge any decision of the  
2 Board concerning the association's claim." *Id.*, citing NAC 616B.7781(2).

3 4. Additionally, the Administrator's recommendation referred the applicant to NAC  
4 616B 7783(2)(b) regarding the content of its pre-hearing statement. *See*, SR 9.

5 5. On July 19, 2016, Ms. Helmbold executed a Waiver of Hand Delivery and  
6 Certificate of Receipt of Notice of Meeting.

7 6. Despite Ms. Helmbold's waiver, no written request for a hearing was served on  
8 the legal counsel for the Board. 1Tr., p. 4;2-3. Additionally, the applicant failed to provide a  
9 pre-hearing statement. 1Tr., p. 4;6-8.

10 7. Personally present at the August 11, 2016 hearing, were Acting Chairman Emilia  
11 Hooks and Member Rebecca Fountain. Member Joyce Smith attended telephonically. There was  
12 at the time, one vacancy on the Board. Chairman Bryan Wachter arrived at hearing, after  
13 disposition of this matter.

14 8. Also personally present at the hearing in Henderson, Nevada, were Jacque  
15 Everhart (Ms. Everhart), Board Liaison for the Administrator of DIR, Charles R. Zeh, Esq., of  
16 The Law Offices of Charles R. Zeh, Esq., (Mr. Zeh) legal counsel to the Board and Donald C.  
17 Smith, Esq., (Mr. Smith) Senior Division Counsel to the DIR. 1Tr., p. 2. Mr. Price appeared  
18 telephonically on behalf of the applicant. *Ibid.*

19 9. Immediately after the agenda item was called, Mr. Zeh advised the Board that the  
20 case should proceed without allowing the applicant to present witnesses, additional evidence  
21 and/or testimony. 1Tr., p. 4;3-5. The applicant's failure to comply with NAC 616B.7779(2) and  
22 NAC 616B.7783(1)(c) precluded the applicant from making a presentation to the Board. *Id.*

23 10. Jacque Everhart presented the Administrator's recommendation, as follows. 1Tr.,  
24 pp. 5-10.

25 11. On August 11, 2003, the employee was hired by Slotworld as a porter. 1Tr., p.  
26 5;3.

27 12. On April 18, 2008, while working in a confined space, the employee twisted her  
28 back causing a painful injury. 1Tr., p. 5;4-5, DIR 1, 2.

1           13.     The April 21, 2008 C-3 form noted a strain to the employee's back. DIR 1.

2           14.     The C-4 form also dated April 21, 2008, provided that the injury occurred while  
3 the employee was "Bending & Twisting" while "Cleaning Bathroom" [sic]. DIR 2.

4           15.     Carson Tahoe Regional Healthcare's documentation noted lumbar strain and the  
5 employee was taken off work through April 30, 2008. DIR 3-5, 1Tr., p. 5;7-8.

6           16.     On April 21, 2008, the employee was provided with return to work instructions.  
7 DIR 3. She was released for work starting on May 1, 2018 and was told to avoid heavy lifting  
8 and to refrain from taking her pain medications at work. *Id.*

9           17.     On June 30, 2008, Robin Y. Tomita, M.D., evaluated the employee and requested  
10 a magnetic resonance imaging (MRI) and an electrocardiogram of the lumbar spine due to  
11 complaints of continued pain. DIR 14. There is no evidence the applicant/employer was given a  
12 copy of the results of the MRI and EKG.

13           18.     On August 11, 2008, the MRI showed left side L5-S1 disc extrusion impending  
14 on the S1 and the S1 nerve root and a small annular tear to L4-L5. DIR 15. There is no evidence  
15 the applicant/employer was given a copy of this MRI.

16           19.     On September 11, 2008, Slotworld executed a form entitled Notice of Current  
17 Work Restrictions which is on Cannon Cochran Management Services, Inc., (CCMSI) stationary.  
18 DIR 17. The relevant parts of this form letter states:

19           Please find an attached copy of the current work restrictions for the above named  
20 employee. Please complete and sign this form and return....

21           \_\_\_ Yes, we can accommodate these restrictions and have attached a copy of the  
22 modified job offer letter to the employee as required by NRS 616C.475...

23           \_\_\_ Yes, we can accommodate the current work restrictions and they fall under  
24 the modified job offer letter signed by the employee.

25           \_\_\_ No.... we are currently unable to accommodate the modified duty work  
26 restrictions.

27 Slotworld checked the second paragraph, indicating that it could accommodate the employee's  
28 modified work restrictions. *Id.* The record does not, however, contain the aforementioned  
"modified job offer letter." SR 2.

28 ///

1           20.     On February 17, 2009, the employee was declared to have reached maximum  
2 medical improvement. DIR 18. The Note and Orders of Dr. Tomita, M.D., stated the following:

3           [The employee] returns to see me today for a routine follow-up. She was last seen  
4 on 10/20/08, for lumbar herniated disc with degenerative disc disease and mostly  
discogenic pain status post trauma back injury in April 2008.

5           In the interim, **she has been tolerating her return to full duty as a porter**  
6 **without any problems.** (Emphasis added). DIR 18.

7 Therefore, by the time of the employee's release, she was and had been capable of performing  
8 her duties in a manner entirely consistent with her job description.

9           21.     Dr. Tomita's Note and Order also stated: "she [the injured worker] is permanent  
10 and stationary regarding her low back problem and has been **released to full duty without any**  
11 **restrictions.**" DIR 18 (Emphasis added).

12           22.     No permanent partial disability (PPD) analysis of the April 18, 2008 injury was  
13 conducted. SR 2. This was, presumably, because the employee's recovery met with the  
14 functional requirements of her job. DIR 18.

15           23.     On December 29, 2010, while working, the employee sneezed and felt pain in her  
16 back. DIR 19. This innocuous incident resulted in a herniated disc at L5-S1. DIR 23.

17           24.     On or about January 10, 2011, the employee filed a worker's compensation claim  
18 (#10438B500361) for the December 29, 2010 back injury. DIR 60 ¶ 2

19           25.     On March 9, 2011, CCMSI denied coverage for the December 29, 2010, injury,  
20 arguing that it was not work related. *Ibid.* The employee appealed this decision. *Ibid.*

21           26.     In April 2011, the employee sought to reopen her 2008 claim (#08438A294177).  
22 DIR # 60 ¶ 3. This request was denied on May 3, 2011, because the employee's physician could  
23 not establish a worsening of the 2008 injury. *Ibid.*

24           27.     On May 6, 2011, a Hearing Officer with the Division of Industrial Relations  
25 addressed both appeals and reached a split decision. DIR 60 ¶ 4. The Hearing Officer affirmed  
26 the denial of the reopening of the 2008 claim #08438A294177 but reversed the decision to deny  
27 the 2010 claim #10438B500361. *Ibid.* The employee then appealed the Hearing Officer's  
28 decision. *Ibid.*

1           28.     April 16, 2012, the Appeals Officer issued her decision concluding, in part, that  
2 the December 29, 2010, injury aggravated the employee's pre-existing impairment. DIR 75.

3           29.     On April 19, 2012, Slotworld received the Appeals Officer's Decision and Order.  
4 DIR 61.

5           30.     On May 3, 2012, the employee underwent an L5-S1 left side hemilaminotomy,  
6 L5-S1 discectomy and an L5-S1 and S1-S2 foraminotomy. DIR 28.

7           31.     On September 30, 2013, Robert A. Dickman, D.C., performed a PPD evaluation.  
8 DIR 43-52.

9           32.     Dr. Dickman rated the employee as having a 21% whole person impairment  
10 (WPI). DIR 51. Dr. Dickman apportioned 13% WPI to the 2008 injury and 8% to the 2010  
11 claim. *Id.*

12           33.     On December 3, 2013, the employee appealed the closing of her claim with an 8%  
13 WPI. DIR 55. The Hearing Officer remanded the matter to Dr. Dickman to amend his analysis to  
14 take into account the last injurious exposure rule.<sup>4</sup> DIR 56. As stated in the Decision and Order:

15           The hearing officer finds a medical question regarding the 13% apportionment in  
16 consideration of the Last Injurious Exposure Rule and the Appeal's Officer's Order  
17 finding the L5-S1 disc herniating and surgery thereof are compensable under the  
2012 claim.

18           34.     On or about December 4, 2013, the employee was terminated by Slotworld. SR 3.

19           35.     On or about March 13, 2014, the parties stipulated to a lump sum settlement in the  
20 amount of \$12,000. Specific to this inquiry, the stipulation stated, "[t]he Claimant acknowledges  
21 that the apportionment of the PPD award for her second industrial injury... was proper as there  
22 was ample documentation of the pre-existing lumbar condition which was the result of her first  
23 industrial lumbar injury." DIR 57-58.

24           36.     On June 22, 2016, the claim was submitted to the Account. DIR 78. On the  
25 Insurer's Subsequent Injury Checklist (Checklist), Ms. Helmbold stated that April 19, 2012, was  
26

---

27           <sup>4</sup>Liability for an occupational injury or illness falls to the employer who exposed the worker to  
28 the injurious substance just before the onset of the disease or injury. *See*, last-employer rule, Black's Law  
Dictionary 7<sup>th</sup> Edition (1999), p. 887.

1 the date the employer realized that the employee's condition might qualify for subsequent  
2 treatment even though December 29, 2010 was the date of the subsequent injury. *Id.* Thus, the  
3 express language of the Checklist states that the employer was unaware of the existence of a  
4 preexisting permanent physical impairment until after the subsequent injury.

5 37. While this medical history described above explained the nature and degree of the  
6 injured worker's condition, including the minimal lost time at work, none of the medical  
7 reporting of the injured worker's condition reached the employer until long after the subsequent  
8 industrial injury except for the C-3, DIR 1, and the C-4, DIR 2, and the Notice of Current Work  
9 Restrictions, dated 9/11/2008. DIR 17. That is, in the Helmbold letter accompanying the  
10 application which was drafted to support reimbursement, "...not one document is cited that is  
11 dated prior to the date of the subsequent injury that shows this employer had knowledge of a  
12 [preexisting] permanent impairment that would support a rating of at least 6% or more." SR 6.

13 38. In terms of written documentation, the applicant is capable of showing knowledge  
14 of a "strain" related to the "back" that occurred on 4/18/08, with the last day of work after the  
15 injury of 4/20/08, and with a return to work date three days later of 4/23/08. DIR 1.

16 39. The employer/applicant also, according to Dr. Tomita, was witnessing or  
17 physically observing prior to the subsequent industrial injury, a person who had "... **been**  
18 **tolerating her return to full duty.... without any problems.**" DIR 18. (Emphasis  
19 added).

20 40. Further, allegations that the employee was unable to work for extended  
21 time periods are unsupported. Specifically, the employee's Return to Work Instructions  
22 dated April 21, 2008, provided that except for the three days off work mentioned in the  
23 C-4 form, DIR 2, the injured worker was never unable to return to work for a condition  
24 labeled a "lumbar sprain." DIR 3.

25 41. Thus, Slotworld's contemporaneous documents show that its knowledge  
26 was that of an employee suffering from a garden variety back or lumbar sprain that was  
27 more of a nuisance than a serious injury, and further, a condition that, in fact, required

28 ///

1 very little time off from work. That was the state of Slotworld's knowledge as shown by  
2 the written records Slotworld produced pursuant to NRS 616B.578(3) and (4).

3 42. After the conclusion of Ms. Everhart's presentation, Mr. Price requested to be  
4 heard on behalf of the applicant despite the initial discussion of NAC 616B.7781 and NAC  
5 616B.7783. It was, therefore, restated, that because of a failure to timely request a hearing, the  
6 applicant was precluded from being heard and was left to rely upon the record created by the  
7 Administrator in the recommendation. 1Tr., p. 11;11-13.

8 43. Mr. Price protested, saying he had appeared before the Board at least six times and  
9 this had never been required before. 1Tr., p. 11;15-18. It was subsequently established that he  
10 had appeared before the Self-Insured Employer's Subsequent Injury Account Board and the  
11 processes, there, are different. 1Tr., p. 13;17-24. Further, Mr. Price sent an email to Mr. Zeh to  
12 request a hearing on the merits on this matter.

13 44. Member Smith moved to uphold the Administrator's denial of the application.  
14 1Tr., p. 13;4. The motion was seconded by Rebecca Fountain. 1Tr., p. 13;5, Minutes for the  
15 meeting of August 11, 2016, p. 3.

16 45. The motion was unanimously adopted. 1Tr., p. 13;8-9.

17 46. On August 22, 2016, Mr. Zeh wrote to Mr. Price to inform him that the claim,  
18 NRAD-13567, was placed on the agenda for the September 8, 2016, meeting. In an e-mail dated  
19 September 1, 2016, Mr. Zeh wrote to Mr. Price and explained that the scope of the hearing would  
20 be limited to a discussion of why NAC 616B.7781(1)(a) should not have been applied at the  
21 August 11, 2016 meeting.

22 47. On August 23, 2016, Mr. Price executed a Waiver of Hand Delivery and  
23 Certificate of Receipt of Notice of the Board Meeting for the meeting scheduled for September 8,  
24 2016.

25 48. Personally present at the September 8, 2016 hearing, were Chairman Bryan  
26 Wachter, Member Emilia Hooks and Member Rebecca Fountain. Member Joyce Smith attended  
27 telephonically. Also, personally present were Ms. Everhart, Mr. Zeh, Mr. Price and Mr. Smith.  
28 2Tr., p. 2.

1 49. The applicant argued for a rehearing on the merits. 2Tr., pp. 5;12-25, 6;1-16.

2 50. Mr. Price explained that he was concerned that his client's rights may have been  
3 prejudiced. Further, he argued no one would be harmed by allowing a rehearing on the merits.  
4 2Tr., pp. 5;23-25, 6;1-14.

5 51. After the applicant's presentation, Mr. Smith reminded the Board that NAC  
6 616B.7781(1)(a) was the basis of its August 11, 2016 decision to refuse to allow the applicant to  
7 provide input. Mr. Smith then read the relevant section of the regulation into the record:

8 The Board at a regularly scheduled meeting will approve or disapprove in whole  
9 or in part the recommendation of the Administrator **without allowing additional**  
10 **evidence, testimony, argument or rebuttal to be presented by the association.**  
2Tr., pp. 6:23-25, 7;1-4. (Emphasis added).

11 52. After a short discussion of the rationale upon which the regulations were based,  
12 Mr. Zeh reminded the Board that the merits of the application were duly considered and that the  
13 applicant was not denied due process for procedural reasons.

14 The case was decided on the merits. And that's the information the applicant  
15 provided, and so that was part of the record. So I want to make sure that it's clear  
16 that it was not decided on a technicality. There were merits there - just the  
17 [A]dministrator found them lacking and recommended denial. And you [the  
Board] looked at it and decided that... - the [A]dministrator's recommendation  
should be affirmed, and therefore, to deny the claim. 2Tr., pp. 8;25, 9;1-7.

18 53. After further discussion, the Chairman called for a motion to reconsider NRAD-  
19 13567, as requested by the applicant. 2Tr., p. 11;4-5.

20 54. No motion was made and, consequently, the applicant was not granted a  
21 rehearing. 2Tr., p. 11;6.

22 55. To the extent that any of the following conclusions of law constitute findings of  
23 fact or mixed findings of fact and conclusions of law, they are incorporated herein.

#### 24 CONCLUSIONS OF LAW

25 1. To the extent that any of the preceding findings of fact may constitute conclusions  
26 of law, or mixed findings of fact and conclusions of law, these findings of fact and conclusions  
27 of law are incorporated herein.

28 ///

1           2.       The Nevada Supreme Court found that the analog to NRS 616B.578(4) is plain  
2 and unambiguous. *Holiday, supra*, at 761. So, then, is NRS 616B.578(4).

3           3.       When "the language of a statute is plain and unambiguous and its meaning clear  
4 and unmistakable, there is no room for construction and the courts are not permitted to search for  
5 its meaning beyond the statute itself." *Id.*, at 761.

6           4.       It is beyond a cavil that NRS 616B.578(4) requires a contemporaneous written  
7 record showing knowledge by the employer of a preexisting permanent impairment during  
8 employment, prior to the subsequent industrial injury. *Holiday, supra*, at 762.

9           5.       The burden of proof lies with Slotworld to show by contemporaneous written  
10 record, it possessed knowledge of a preexisting permanent impairment during employment and  
11 prior to the subsequent industrial injury. *Holiday, supra*, at 762; *United Exposition Service v.*  
12 *State Industrial Insurance System*, 109 Nev. 421, 424, 851 P.2d 423 (1993) (the burden of proof  
13 lies with Slotworld to prove that each of the criteria of NRS 616B.578 are satisfied).

14          6.       Knowledge of just any preexisting condition will not do. The knowledge must  
15 relate to an impairment which satisfies the test of NRS 616B.578(3). Slotworld must be able to  
16 show by written record, it knew, prior to the subsequent industrial injury, of an impairment that  
17 ultimately is shown to support a rating of 6% or more, according to American Medical  
18 Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented  
19 by the Division of Industrial Relations pursuant to NRS 616C.110. Knowledge of anything less  
20 does not satisfy NRS 616B.578.

21          7.       It is upon this requirement that Slotworld's application founders. Slotworld can  
22 only show knowledge by written record of a "sprain," a "back sprain" and/or a "lumbar sprain"  
23 suffered on April 18, 2008, after which the injured worker remained on the job through April 20,  
24 2008, and then, returned to work, April 23, 2008, after being off work, actually, for only two  
25 days. None of these conditions were shown to be so severe that they would support a rating of  
26 6% or more, WPI.

27          8.       This is corroborated by Dr. Tomita's observation that Slotworld had on its hands an  
28 injured worker who tolerated her return to full duty work as a porter, almost immediately. DIR 18.

1           9.       That is to say, the risk Slotworld faced when returning this injured employee to  
2 work was minimal according to the documentation Slotworld produced describing conditions  
3 prior to the subsequent industrial injury. Slotworld's exposure was only of that which was  
4 associated with a common garden variety back sprain, namely, minimal.

5           10.       As far as Slotworld knew, according to its own documentation, it retained a  
6 worker who was not suffering from a preexisting condition that would support a rating of 6% or  
7 more, whole person impairment. A garden variety back strain does not rise to that level of  
8 exposure.

9           11.       This is clear, also, from Ms. Helmbold's letter, accompanying the application for  
10 reimbursement and arguing for approval of the claim. As found, above, despite her best efforts,  
11 not one of the documents cited by her in support of the justification she offers for claim  
12 acceptance, is dated prior to the date of the subsequent injury.

13           12.       The silence of this letter speaks volumes. If proof by written record existed of  
14 knowledge of a condition so serious it would support a rating of 6% or more, whole person  
15 impairment, it would have been produced and cited. It was not.

16           13.       NRS 616B.578 (3) and (4) unmistakably require no less. The requisite proof  
17 does not exist. The application, the Board finds, fails for the want of proof by written record  
18 that Slotworld had knowledge prior to the subsequent industrial injury of a preexisting  
19 impairment that would support a rating of 6% or more, WPI. A garden variety back sprain fails  
20 to meet that test, and proof of knowledge by written record of a garden variety back sprain is all  
21 Slotworld offers to satisfy NRS 616B.578(4).

22           14.       Therefore, without further analysis, the Board is compelled to find that the claim  
23 for reimbursement is wanting, *i.e.*, the application must be denied as it fails to meet the  
24 requirements of subsection 4 of NRS 616B.578. 1Tr., p. 13;4-13.

25           15.       There remains for discussion the Board's decision during the August 11, 2016,  
26 hearing to deny the applicant's request to present additional evidence, testimony or argument as  
27 the result of the failure to request a hearing in a timely manner according to NAC  
28 616B.7781(1)(a).

1           16.     Ample warning was given Slotworld of the requirement to request a hearing on a  
2 recommendation of denial by the Administrator. The text of the Staff Report warned Slotworld  
3 in unmistakable and clear terms of the existence of regulations applicable to making a  
4 presentation to the Board and provided citations for those requirements. SR 8, 9. Moreover, the  
5 regulations are generally available on the State law library web site. *See*,  
6 [www.leg.state.nv.us/Law1.cfm](http://www.leg.state.nv.us/Law1.cfm).

7           17.     In addition, the enactment of the Regulation, itself, is a legitimate exercise of  
8 Board authority. NRS 616B.572(1) and NRS 616B.575(5) allow for the Board to adopt and  
9 administer regulations for the conduct of procedures before the Board. NAC 616B.7779 and  
10 NAC 616B.7781 plainly fit within the authority granted the Board. It adds no substantive  
11 criterion for deciding applications for reimbursement. They address process and procedure,  
12 only, and no challenge has been levied to the process by which these Regulations were adopted  
13 in the first place. They are a proper exercise of Board regulatory authority.

14           18.     The simple fact of the matter is, Slotworld failed to give notice that it wanted a  
15 contested hearing, and then, to compound matters, failed to file a pre-hearing statement.

16           19.     The impact, however, of these regulations is not as catastrophic on Slotworld as  
17 the impression Slotworld would like to create. The simple fact of the matter is, Slotworld was  
18 free at the outset to submit to the Administrator for review, every document and record it had in  
19 its possession to support its claim. No one has claimed otherwise. Slotworld had, in other  
20 words, the opportunity to submit proof of knowledge by written record to the Administrator and  
21 Board for consideration. Slotworld has not claimed that the Administrator prevented it from  
22 submitting all that Slotworld had to support the claim. Slotworld was, therefore, not denied the  
23 opportunity to convey to the Board through the Administrator each document and record it had  
24 to prove satisfaction with NRS 616B.578(3) and (4).

25           20.     The promulgation of NAC 616B.7779 and NAC 616B.7781 being within the  
26 authority of the Board to enact, *see*, NRS 616B.572(1) and NRS 616B.575(5), and to administer  
27 and there being no showing that Slotworld was otherwise prevented from submitting all the  
28 evidence of compliance with NRS 616B.578 it had in its possession, the Board was clearly

1 within the ambit of its authority to apply NAC 616B.7779 and NAC 616B.7781, to these  
2 proceedings and bar Slotworld from making a presentation at the hearing of August 11, 2016.

3 21. The Board, thus, concludes that the application for reimbursement must be  
4 denied. ITr., p. 13;3-11.

5 **DECISION OF THE BOARD**

6 Accordingly, the Board for the Administration of the Subsequent Injury Account for  
7 Associations of Self-insured Public or Private Employers hereby concludes that the applicant  
8 association failed to establish by a preponderance of the evidence that NRS 616B.578(4), had  
9 been satisfied. The application for reimbursement received on June 22, 2016, is hereby denied  
10 as member Joyce Smith moved to deny the association's application and Rebecca Fountain,  
11 seconded the motion. A quorum was present, and a majority voted in favor of the motion on a  
12 vote of 3-0, with no abstentions.

13 Upon a motion from Rebecca Fountain, seconded by Allen Walker, by a vote of 3-0,  
14 favoring the motion, the Board voted to approve the above Findings of Fact, Conclusions of Law  
15 and Decision as the action of the Board and to authorize the Board Chairman, Bryan Wachter, or  
16 designee, to execute, without further Board review, this Decision on behalf of the Board for the  
17 Administration of the Subsequent Injury Account for Associations of Self-insured Public or  
18 Private Employers. Those voting in favor of the motion either attended the two hearings on the  
19 merits of the claim or had in possession the entire record before the Board upon which the  
20 decision was based. On January 17, 2019, this Decision is, therefore, hereby adopted and  
21 approved as the Decision of the Board.

22 Dated this 25<sup>th</sup> day of July, 2019.

23  
24 By:   
Bryan Wachter, Board Chairman

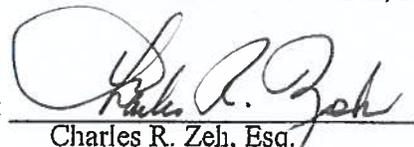
25 ///  
26 ///  
27 ///  
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Dated this 26<sup>th</sup> day of July, 2019.

The Law Offices of Charles R. Zeh, Esq.

By: 

Charles R. Zeh, Esq.  
Nevada State Bar No. 1739  
50 West Liberty Street, Suite 950  
Reno, NV 89501  
Phone: 775.323.5700  
Fax: 775.786.8183  
Email: [crzeh@aol.com](mailto:crzeh@aol.com)

*Attorneys for Board for the Administration  
of the Subsequent Injury Account for  
Associations of Self-insured Public or  
Private Employers*

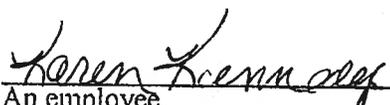
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached, *Findings of Fact, Conclusions of Law and Decision of the Board*, on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, and mailed both standard U.S. mail and certified mail/return receipt requested, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada:  Kim Price, Esq. Lewis Brisbois Bisgaard & Smith LLP 2300 West Sahara Avenue, Suite 300, Box 28 Las Vegas, NV 89102  Donald C. Smith, Division Counsel Department of Business and Industry Division of Industrial Relations 3360 West Sahara Avenue, Suite 250 Las Vegas, NV 89102
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service

Dated this 26<sup>th</sup> day of July, 2019.

  
 An employee  
 The Law Offices of Charles R. Zeh, Esq.

S:\Clients\SIA\Decisions\NRAD-13567\Sintworld decision R 36.wpd

