Zeh Saint-Aubin Spoo
575 Forest Str uite 200
Reno, Nevada 89509
Tel.: (775) 323-5700 FAX: (775) 786-8183

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

***

In re: Subsequent Injury Request for Reimbursement

Claim No.:	5003-0215-01-0036
Date of Injury:	11-16-2001
Association Name:	Nevada Auto Network
Association Member:	Nevada Beverage
Association Administrator:	Pro/Group Management, Inc.
Third-Party Administrator:	Associated Risk Management, Inc.
Application Submitted by:	Pro/Group Management, Inc.
Attorney for Applicant:	Richard S. Staub

/

FINDINGS OF FACT CONCLUSIONS OF LAW AND DETERMINATION OF THE BOARD

This case came before the Board for the Administration of the Subsequent Injury Account for the Associations of Self-Insured Public and Private Employers (the "Board") upon appeal by the applicant of the recommendation of the Administrator ("Administrator") of the Division of Industrial Relations ("DIR") to the Board to deny the applicant's request for reimbursement from the Subsequent Injury Account (the "Account"). The Administrator originally based his recommendation upon the grounds that the information supplied by the applicant did not satisfy the requirements of NRS 616B.578 (3) and (4).

Following the initial denial by the Administrator, the applicant submitted additional information in time for the Administrator's further evaluation before the Board made its decision herein. Based upon the additional information submitted to the Administrator, the Administrator modified his recommendation to the Board and denied the application based upon NRS 616B.578(3), which requires proof that the pre-existing condition result in an impairment of 6% or more based upon a whole person impairment according to the appropriate AMA Guidelines. *See,* NRS 616B.578(3).

The Association for whom the application for reimbursement was submitted is Nevada Auto Network. The amount of reimbursement sought in the application was the sum of Thirty-Sixty Thousand Four Hundred Thirty-Five Dollars and 57/cents ($36,435.57). The Administrator verified costs for reimbursement in the amount of Thirty-Six Thousand Two Hundred Eighty-Seven Dollars and 85/Cents ($36,287.85), in the event that the Board approved the application.

The Board conducted a hearing on Nevada Auto Network's application for reimbursement on July 7, 2004. At the conclusion of the hearing, the Board upheld the recommendation of the Administrator and denied the application for reimbursement on the grounds that the requirements of NRS 616B.578(3) were not satisfied.

The Board's disposition of the case is set out below in its Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

1. This case was heard by the Board on July 7, 2004. The case had been continued from June 3, 2004, at the request of the attorney for the applicant.

2. The applicant in this matter is Nevada Auto Network. The applicant was notified by mail of the Administrator's decision recommending denial of the application. The staff report notifying the applicant of the Administrator's decision is dated May 4, 2004.

3. In a letter dated May 10, 2004, to the Board's attorney, the applicant gave notice that it was appealing the Administrator's recommendation of denial of the application.

4. The letter of the applicant giving notice of the appeal arrived at the office of legal counsel for the Board on May 10, 2004. Notice of the appeal was received in the office of the Board's legal counsel within 10 days of the notice provided the applicant of the Administrator's recommendation.

5. Richard Staub, Attorney at Law, appeared on behalf of the applicant by telephone from Carson City, Nevada.

6. John F. Wiles, Esq., legal counsel to the DIR, appeared on behalf of the Administrator.

7. Chairman Richard Iannone conducted the meeting. Member Joyce Smith attended by telephone from Carson City, Nevada. Member Gail Gibson was present in person with Chairman Iannone at the offices of the DIR, the place where the hearing was noticed to be held. Vice-Chairperson Gordon Hutting and member, Dennis Barton, were absent.

8. Admitted into evidence in this matter without objection were the staff report and exhibits attached to the staff report of the Administrator supplied by the DIR, a hearing statement from the applicant, and a letter dated May 27, 2004, with attachments submitted by the applicant. No other exhibits were offered by either party.

9. The total amount requested for reimbursement for this claim was the sum of Thirty-Six Thousand Four Hundred Thirty-Five Dollars and 57/Cents ($36,435.57). The amount of reimbursement after costs were verified was the sum of Thirty-Six Thousand Two Hundred Eighty-Seven Dollars and 85/Cents ($36,287.85), the amount recommended by the Administrator in the event the recommendation of denial was not accepted by the Board after hearing the case. DIR Staff Report, dated May 4, 2004, p. 1.

10. The applicant at no time during these proceedings objected to the amount of costs verified by the Administrator and, therefore, did not challenge the costs rejected in the Administrator's recommendation to the Board.

11. From the Staff Report of May 4, 2004, the undisputed facts are that the injured worker was first hired by Nevada Beverage on April 16, 1996. The injured worker remained in the employ of Nevada Beverage continuously through the date of the subsequent injury. Nevada Beverage was also the employer at the time of the occurrence of the pre-existing, non-industrial impairment The application for reimbursement was received by the Administrator on April 12, 2004. Staff Report p. 1., dated May 4, 2004 (hereinafter "Report, p. .").

///

12. The subsequent industrial injury happened on November 16, 2001, when the injured worker reached down at work to pick up a case of quarts and felt a sharp, shooting pain in the leg and in the buttock region and lumbar spine. Report, p. 2, C-4, Ex. F to Report.

13. The pre-existing condition dates back to two months prior to a consultation on June 27, 1998, by the injured worker with David Moon, D.O., when the injured worker complained of low back pain that had been going on for about two months.

14. As of November 12, 2001, Godwin Maduka, M.D., PHARM. D., just four days prior to date of the subsequent injury, indicated that the injured worker was still experiencing severe pain in connection with the pre-existing back problem. At this time, Dr. Maduka recommended over the counter Motrin in addition to the medication already prescribed for the injured worker . Dr. Maduka also recommended a re-evaluation by Kenneth Breeden, D.O. Report, p. 2, *see also*, Exhibit E to Report.

15. Pertinent to this case, the injured worker was seen on July 3, 2002, by D. David Ezeanolue, M.D., C.I.M.E.,who diagnosed "industrially related secondary to injury of November 16, 2001, exacerbation of pre-existing lumbosacral spine[,] early degenerative disc disease and chronic low back pain for greater than five years." Report, p. 3.

16. The injured worker was considered stable and ratable. Therefore, on August 14, 2001, William O. Kudrewicz, M.D., was able to conduct a physical examination of the injured worker for the purpose of a PPD (permanent partial disability) evaluation. Dr. Kudrewicz found a 10% whole person impairment (WPI) under DRE category III for the lumbar spine according to the AMA *Guides*, 4th Edition, the edition of the *Guides* in effect at the time of the physical examination conducted by Dr. Kudrewicz.

17. Dr. Kudrewicz apportioned the 10% disability rating, assigning a 5% rating to the prior lumbar condition at DRE category II, leaving a 5% WPI for the industrially related subsequent back injury. Report, p. 4, Exhibit T to Report.

///

18. The third party administrator paid the injured employee, on behalf of the employer, the 5% WPI impairment award made based upon the Kudrewicz PPD evaluation. The third party administrator was in agreement with the Kudrewicz evaluation and allocation of disability ratings between the pre-existing condition and the subsequent back injury, since there is nothing in the record showing Dr. Kudrewicz was challenged by the employer after Dr. Kudrewicz rendered his opinion. Report, p. 5.

19. At the time Dr. Kudrewicz conducted his examination and rendered his opinion the 4th edition of the AMA *Guides* were in effect and adopted by the Administrator. Report, p. 5

20. The award through the evaluation of Dr. Kudrewicz according to the AMA *Guides* 4th Edition, is the official documented pre-existing permanent physical impairment for this claim. Report, p. 5.

21. On October 20, 2003, Colin Soong, MD, conducted a Subsequent Injury Fund Medical Analysis. Using the AMA *Guides*, 5th Edition, he stated that according to the DRE method, lumbosacral category II, a 5-8% WPI is suggested. Additionally, in his opinion, the last descriptor of the worker's degree of pain on the November 12, 2001, reports the injured worker's pain was still severe. Therefore, this would also suggest that the pre-existing condition would reasonably be estimated at 8% according to the 5th Edition. Report, p. 4

22. Using the Range of Motion (ROM) methodology for evaluation under the 5th Edition of the AMA *Guides*, Dr. Soong found at least a 6% pre-existing WPI impairment. Report, p. 4

23. The *AMA Guides to Evaluation of Permanent Impairment,* 5th Edition, second printing, came into use by the Administrator, DIR, on October 1, 2003. Exhibit V, p. 4.

24. The applicant did not quarrel with the manner in which Dr. Kudrewicz applied the 4th Edition of the *Guides*.

///

25. The applicant took umbrage with Dr. Kudrewicz during the hearing, only because his evaluation was based upon the 4th Edition of the *Guides* and not the 5th Edition of the *Guides,* which Dr. Soong utilized, even though the 5th Edition of the *Guides* was not in effect when Dr. Kudrewicz performed his examination of the injured worker and apportioned the disability rating between the pre-existing impairment and the subsequent, work related injury.

26. To the extent that any of the following Conclusions of Law also constitute a finding of fact or mixed finding of fact and conclusion of law, they are incorporated herein.

CONCLUSIONS OF LAW

1. To the extent any of the preceding paragraphs constitute conclusions of law, they are incorporated herein.

2. Since the applicant's appeal, dated May 10, 2004, was received on May 11, 2004, at the office for legal counsel to the Board, it is timely.

3. There being three members of the Board in attendance to hear this matter, none of whom had to recuse themselves, a quorum of the Board was convened and present to hear this case and render a decision of the Board.

4. There are several principles which guide the Board in reaching its decision. Their discussion precedes the Board's analysis and statement of its decision.

5. Due to the absence of case law in Nevada addressing the State's various subsequent injury accounts, the Board must look to other jurisdictions for guidance. There it is revealed that the rationale for creating such funds is three-fold. First, subsequent injury funds have typically been created to help prevent discrimination against disabled persons by easing the impact which the threat of a subsequent injury holds by providing a pooled source of funds to underwrite the cost of the subsequent injury which might occur. Secure in the knowledge that a pooled subsequent injury fund exists, employers are thought to be encouraged to employ or retain in its employ the already disabled/injured worker.

6. Subsequent injury accounts are created to relieve employers from the hardship of liability for those consequences of compensable injury not attributable to the injured worker's current employment.

7. Finally, it is the intent of subsequent injury accounts that "[e]ach employer's premium should reflect his own cost experience in order to reward, and thereby encourage, safety as well as to avoid an unfair burden on other employers." *Jussila v. Department of Labor and Industries*, 370 P.2d 582, 586 (Wash., 1962). *See also, Hernandez v. Gerber Group,* 608 A.2d 87, 89 (Conn., 1992); *Jacques v. H.O. Penn Machinery Co.*, 166 Conn. 352, 356, 349 A.2d 847 (Conn., 1974).

8. The Board considers applications for reimbursement under Nevada's subsequent injury account with these premises in mind and applications are to be approved which promote these salutary purposes.

9. Additionally, the burden of proof is upon the applicant to show entitlement to reimbursement. *See, Franklin v. Victoria Elevator Co.*, 206 N.W.2d 555, 556 (Mn., 1973); *O'Reilly v. Raymond Concrete Piling*, 419 N.Y.S.2d 475, 476 (Ct. of Appeals, N.Y., 1979). The burden is upon the applicant in this case, therefore, to show that the requirements of NRS 616B.578(3) are satisfied by a prepondence of the evidence. *McClanahan v. Raley's Inc.,* 117 Nev. 921, 34 P.2d 573, 576 (2001); *cf.*, NRS 616C.150(1).

10. Quite clearly, the evaluation of an application for reimbursement from the Subsequent Injury Account entails an exercise in the interpretation and application of the statutory framework which the Board is obliged to administer. For the Board, the starting point of the analysis of an application for reimbursement is the text of the statutory framework. *Cf., Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). Where the language of the statute is unambiguous and the words are clear, the Board's inquiry should be limited to the plain meaning of the statutory framework, alone. *See*, *Rubin v. United States*, 449 U.S. 424, 430, 101 S.Ct. 698, 66 L.Ed.2d 633 (1981).

11. Couched in other terms:

> The first and most important step in construing a statute is the statutory language itself. *Chevron USA v. Natural Res. Def. Council*, 467 U.S. 837, 843-44, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). We look to the text of the statute to 'determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.' *Robinson v. Shell Oil Col*, 519 U.S. 337, 340, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997). If from the plain meaning of the statute congressional [and therefore also legislative] intent is clear, that is the end of the matter. *Chevron*, 467 U.S. at 843, 104 S.Ct. 2778. *Royal Foods Co. Inc. v. RJR Holdings Inc., T.G. I. Fridays, etc.*, 252 F. 3d 1102, 1107 (9th Cir., 2001).

12. *Royal* also advises:

> There is a strong presumption that the plain language of the statute expresses congressional [and therefore legislative] intent, which is 'rebutted only in rare and exceptional circumstances, when a contrary legislative intent is clearly expressed.' *Ardestani v. I.N.S.,* 502 U.S. 129, 135-36, 112 S.Ct. 55, 116 L.Ed.2d 496 (1991) (citation omitted); *see also United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989).... *Id.* at 1108.

13. Then, *Royal* concludes:

> Even where the express language of a statute appears unambiguous, a court must look beyond that plain language where a literal interpretation of this language would thwart the purpose of the overall statutory scheme, *United States v. Jersey Shore State Bank*, 781 F.2d 974, 977 (3rd Cir., 1986), *aff'd.*, 479 U.S. 442, 107 S.Ct. 782, 93 L.Ed.2d 800 (1987), would lead to an absurd result, *id.,* or would otherwise produce a result 'demonstrably at odds with the intentions of the drafters,' *Demarest v. Manspeaker*, 498 U.S. 184, 190, 111 S.Ct. 599, 112 L.Ed.2d 608 (1991) (quoting *Griffin v. Oceanic Contractors, Inc.,* 458 U.S. 564, 571, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982). *Id.,* at 1108.

14. This case involves the interpretation of NRS 616B.578(3) which, for purposes of NRS 616B.578(1), defines "permanent physical impairment" as follows:

> As used in this section, "permanent physical impairment" means **any** permanent **condition,** whether congenital or caused by injury or disease, of such seriousness as to constitute **a** hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For purposes of this section, **a condition** is not **a** "permanent physical impairment" unless **it** would support a rating of permanent impairment of 6 percent or more of the whole man

> if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment **as adopted and supplemented by the division [the Administrator herein] pursuant to NRS 616C.110.** (Emphasis added).

15. NRS 616B.578(1) in turn states that an applicant is not eligible for reimbursement unless the injured worker has:

> ...a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his employment which entitles him to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone....

16. NRS 616C.110, which NRS 616B.578(3) directs must be followed for purposes of NRS 616B.578, states:

> 1. [T]he division shall adopt regulations incorporating the American Medical Association's Guides to the Evaluation of Permanent Impairment by reference and may amend those regulations from time to time as it deems necessary. In adopting the Guides to the Evaluation of Permanent Impairment, the division shall **consider** the edition most recently published by the American Medical Association.
>
> 2. If the Guides to the Evaluation of Permanent Impairment adopted by the division contain more than one method of rating an impairment, the **administrator shall designate by regulation the method which must be used to rate an impairment pursuant** to NRS 616C.490.

17. Finally, NAC 616C.476(2) provides in pertinent part as follows:

> A rating physician or chiropractor performing an evaluation of a permanent partial disability that is related to the spine shall use the "Injury Model" [DRE] as described on page 3/94 of the guide, to rate the disability if the condition of the injured worker is listed on Table 70, Spine Impairments Categories...."

18. In the case before the Board, the Administrator had chosen the 4th Edition of the *Guides* when the injured worker was evaluated by Dr. Kudrewicz to determine the extent of the disability rating or impairment for the pre-existing permanent impairment and the subsequent industrial injury. Also, for purposes of the determining eligibility for

subsequent injury account reimbursement purposes, the Administrator, for the Division, decided that the appropriate set of the *Guides* for making eligibility determinations on these facts was the 4th Edition of the *Guides*.

19. Based upon a plain reading of NRS 616B.578(2), and NRS 616C.110, the Legislature gave the Division the authority to choose which set of *Guides* under the AMA shall apply when making this election. The Division is required to **consider** the most recent Edition of the *Guides*. The Division is **not required to adopt** the most recent Edition in each and every case, however, from a plain reading of NRS 616C.110.

20. Here, the Division, through the Administrator, has made its choice on two occasions to apply the 4th Edition of the *Guides* to the situation as it came before the Administrator of the Division. Given the discretion accorded the legislature to the Division over which set of *Guides* should by applied, the Board believes it has no choice but to accept the 4th Edition of the *Guides* as the controlling set of *Guides* for determining eligibility under NRS 616B.578.

21. Other than to offer an opinion from Dr. Soong, based upon the 5th Edition of the *Guides*, the applicant has not shown why the 5th Edition of the *Guides* should apply over the 4th Edition of the *Guides* in this case.

22. Additionally, the applicant has not shown in any respect whether Dr. Kudrewicz misapplied the 4th Edition to the *Guides* to render his opinion that the pre-existing impairment should be assigned a 5% WPI impairment rating. Given the deference that is legislatively to be accorded the Division through the Administrator and given that the applicant has not taken umbrage with the opinion of Dr. Kudrewicz other than to complain that the 5th Edition of the *Guides* should apply here, the Board is compelled to accept the use of the 4th Edition of the *Guides* in this case and, therefore, to conclude that the only evidence properly before it on the question of the whole person impairment rating before the Board is the opinion of Dr. Kudrewicz that the pre-existing impairment is only 5%.

///

23. Furthermore, the decision to use the 4th Edition of the *Guides* in this case on these facts makes sense. If the 5th Edition of the *Guides* were used, we would have the anomalous situation where, for purposes of the award of disability benefits, the award to the injured worker is a 5% disability rating since the total disability is 10% and the pre-existing impairment was given a 5% WPI, based upon the ratings assigned based from the 4th Edition of the *Guides*. For purposes, however, of subsequent injury account eligibility, the total disability rating would still be10% but now, 6% to 8% of the 10% total would be allocated by Dr. Soong to the pre-existing condition, leaving only a 2% to 4% disability rating by apportionment to the subsequent industrially related injury and impairment rating. The employer would have then overpaid the injured worker by 1% to 3% for the subsequent disability rating, if Dr. Soong's numbers for disability rating are used because the payment was based upon a 5% impairment. Correspondingly, the Board would be reimbursing the applicant based upon the disability rating assigned by Dr. Kudrewicz as the Board is obligated to reimburse for the compensation which is "due" and in this case, the compensation which is "due" was premised upon the 4th Edition of the *Guides*. Thus, were the Board to accept the applicant's position, the Board would be reimbursing based upon a 5% disability rating determined with the 4th Edition of the *Guides*, since that is basis for the compensation that was due, while at the same time, Dr. Soong's disability rating for purposes of the subsequent injury account eligibility purposes would have put the rating by the same subsequent injury at 2% to 4%, resulting in an overpayment if the compensation due was paid at the 5% WPI rating.

24. It is well settled that when interpreting statutes and regulations, they are to be interpreted consistently and as an integrated whole. Further, common sense applies and interpretations which result in absurd or conflicting results are to be avoided. *See, Barrick Goldstrike Mine v. Peterson,* 116 Nev 541, 2 P.3d, 850 (2000). By applying these principles to the applicant's argument, it must fail. Clearly the applicant's argument requires the use of two sets of the *Guides* to give the result the applicant desires. First, the 4th Edition has already been applied and cannot be disregarded because the total

amount of disability benefits was determined based upon Dr. Kudrewicz evaluation which assigned a 5% WPI to the subsequent injury. Thus, this is the amount, determined based upon the 4th Edition of the *Guides*, which the applicant wants reimbursed. That is, the WPI determined the compensation paid, which includes the cost of medical care and the compensation paid the injured worker based upon the percent of disability rating. The compensation paid was also calculated, based upon a total disability rating of 10%, which serves to cap the award because looking backwards, Dr. Kudrewicz determined that the total disability suffered by the injured worker was 10%, 50% of which, or 5% of which is allocated to the pre-existing condition and 50% or 5% may then be allocated to the subsequent injury.

25. For purposes, however, of the subsequent injury account analysis, the applicant wants the Board to apply the 5th Edition, which, according to Dr. Soong, would result in a 6% to 8% disability for the pre-existing condition. Since the totality of the disability is still capped at 10%, because the claim is not being reopened based upon the 5th Edition to create an even larger total disability, the allocation then becomes for the subsequent injury, 1% to 3%, or the allocated remainder from the 10% WPI combined disability rating first established by Dr. Kudrewicz when the 6% to 8% WPI for the pre-existing condition is subtracted from the 10% WPI.

26. Thus, using the applicant's theory, the Board would be approving a reimbursement to the employer based upon a 5% disability rating, on the one hand, since that is the amount of compensation being sought in reimbursement as that sum which Dr. Kudrewicz allowed. On the other hand, adopting at the same time, Dr. Soong's 5th Edition assignment of a 6% to 8% disability rating for the pre-existing condition in order to establish subsequent injury eligibility, the Board would be reimbursing based upon a 5% WPI for an injury that would be listed at 1% to 3% for subsequent injury account eligibility purposes. Since the Board may only reimburse for the compensation due, an

///

///

absurdity is the result since payment from the subsequent injury account would be made based upon a 5% WPI, and yet for subsequent injury account eligibility purposes, the same, subsequent injury would be listed at a 1% to 3% WPI disability.

27. The applicant cannot have it both ways, because the Board may reimburse for only the compensation which is due. Under Dr. Soong's subsequent injury account analysis, the only compensation due would be at the maximum, 3% WPI, and at the minimum, 1% WPI. On the other hand, when the disability calculation was actually made and payment disbursed, the payment was based upon a 5% WPI, for the subsequent injury, leaving the pre-existing condition with a 5% WPI. So, either the applicant is eligible and payment for the compensation due to the subsequent injury is 1% to 3%, as that is what Dr. Soong's subsequent injury account analysis yields. Or, reimbursement is for the actual compensation paid, which is the 5% figure which, then, would leave only a 5% disability rating for the pre-existing condition, that is, a WPI which fails to satisfy the 6% requirement of NRS 616B.578(1).

28. This selective path to eligibility cannot be countenanced, however, because the Board only has the authority to reimburse for the compensation that is due. The amount that was due was calculated based upon a WPI of 5%. The Board may look no further and as a result, only another 5% WPI is left to be allocated to the pre-existing condition. Therefore, honoring its duty to compensate for only that which is due, the Board must reject the claim as the 6% requirement of NRS 616B.578(1) is not satisfied if the Board compensates based upon a 5% WPI, which the Board would be required to compensate as this is the percentage of disability for which the self-insured employer provided compensation when the disability was rated for compensation purposes and is, therefore, the amount that is due from the Account if eligibility were to be established.

29. The applicant's claim that the 5th Edition of the *Guides* should be used for determining eligibility for reimbursement from the Account when the amount to be reimbursed was decided under the 4th Edition of the *Guides* is rejected.

///

30. As the applicant offered only the disability impairment rating determined under an inappropriate edition of the *Guides*, the only credible evidence in the record, then, on disability impairment for the pre-existing impairment is the determination by Dr. Kudrewicz that the pre-existing impairment be assigned a 5% WPI disability impairment.

31. The applicant has failed, therefore, in its burden of showing that the requirements of NRS 616B.578(3) have been satisfied. Therefore, the applicant has failed in its burden of satisfying an essential requirement of eligibility for reimbursement from the Subsequent Injury Account.

32. The application for reimbursement submitted from the Subsequent Injury Account is deficient by reason of a failure of proof on the part of the applicant to show that NRS 616B.578(3) has been satisfied.

DECISION

Good cause appearing, the application for reimbursement submitted to the Board in the above-captioned case by Pro/Group Management, Inc., the applicant, is hereby denied. The vote of the Board to reject the application and deny the claim was 3-0, with two Board members being absent. A quorum of the Board was present, however, to render its decision. The application was rejected upon a motion of Joyce Smith, seconded by Gail Gibson, on the 7th day of July, 2004.

Further, on March 8, 2005, with a quorum being present, upon a motion of Gail Gibson, seconded by Joyce Smith, the Board voted 3 in favor and 0 against with 1 abstention(s) thereby approving these Findings of Fact, Conclusions of Law and Decision as the action of the Board.

Dated this 21st day of April, 2005.

By, _____
Richard Iannone, Board Chairperson

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of ZEH SAINT-AUBIN SPOO, and that on this date I served the attached, *Findings of Fact Conclusions of Law And Determination of the Board*, on those parties identified below by:

√	Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the United States Mail, at Reno, Nevada: Richard S. Staub Attorney at Law Post Office Box 392 Carson City, NV 89702 John F. Wiles, Division Counsel Department of Business and Industry Division of Industrial Relations 1301 North Green Valley Parkway, Suite 200 Henderson, NV 89104
	Personal delivery
	Telephonic Facsimile at the following numbers:
	Federal Express or other overnight delivery
	Reno-Carson Messenger Service
√	Certified Mail/Return Receipt Requested

Dated thisApril 21, 2005.

Karen Weisbrot

Karen Weisbrot