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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.:	7143020068
Date of Injury:	07/19/01
Association Name:	Public Agency Compensation Trust
Association Member:	Storey County
Association Administrator:	Public Agency Compensation Trust
Third-Party Administrator:	Alternative Service Concepts
Application Submitted by:	Alternative Service Concepts

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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 that it should deny the applicant's request for reimbursement from the Subsequent Injury Account (the "Account"). The Administrator based the recommendation upon the grounds that the information supplied by the applicant did not satisfy the requirements of NRS 616B.578(1).

The association on behalf of whom the application was submitted for reimbursement is the Public Agency Compensation Trust ("PACT"). The applicant sought reimbursement in the amount of Seventeen Thousand Seven Hundred Twenty-

seven Dollars and 75/cents ($17,727.75). The Administrator verified costs for reimbursement in the amount of Seventeen Thousand Seven Hundred Twenty-seven Dollars and 75/cents ($17,727.75), in the event that the Board approved the application.

On July 22, 2003, the Board conducted a hearing on PACT's application for reimbursement. At the conclusion of the hearing, the Board determined to uphold the recommendation of the Administrator and deny the application for reimbursement on the grounds that the application had not satisfied the requirements of NRS 616B.557(1).

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 22, 2003.

2. The applicant in this matter is PACT. The applicant was notified by mail of the Administrator's decision recommending denial of the application. Notification was mailed to the applicant by the Administrator on April 30, 2003.

3. In a letter dated May 28, 2003, 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 within 30 days of the notice provided the applicant of the Administrator's recommendation.

5. Robert S. Larsen, Esq., Story & Sertic, appeared for the applicant.

6. John 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 attended by telephone from Ely, Nevada, and Vice-Chairman Gordon Hutting attended by telephone from Yerington, Nevada. Member Dennis Barton attended in person with Chairman Iannone at the offices of the DIR, the place where the hearing was noticed to be held.

Vice-Chairman Hutting recused himself from hearing this case on conflict of interests grounds because his employer is a member of PACT.

8. The following were offered into evidence without objection by either party:

Exhibit 1. Administrator's Recommendation to the Board dated July 19, 2003.

Exhibit 2. A Memo to Roger Bremner from Gail McGuire dated July 1, 2003.

Exhibit 3. Pre-hearing Statement with attachments from Robert S. Larsen, Esq., to the Board dated June12, 2003.

Exhibit 4. Letter from Paul H. Aakervik dated January 30, 2003, attached to the Larsen Pre-Hearing Statement.

Exhibit 5. Insurer's Subsequent Injury check list dated July 19, 2001 attached to Larsen Pre-hearing Statement.

Exhibit 6. Recommendation by the Administrator to the Board dated April 30, 2003 attached to Larsen Pre-hearing Statement.

Exhibit 7. Report on Subsequent Injury consideration from Richard O. Kudrewicz with date of dictation of January 24, 2003 attached to the Larsen Pre-hearing Statement.

Exhibit 8. Addendum to Subsequent Injury Report from Richard Kudrewicz, M. D., dated May 23, 2003 attached to Larsen Pre-hearing statement.

Exhibit 9. Letter dated May 5, 2003, from Paul H. Aakervik appealing the Administrator's Recommendation.

Exhibit 10. Memorandum of April 30, 2003.

Exhibit 11. All of the exhibits attached to the DIR's recommendation memorandum dated April 30, 2003.

No other exhibits were offered into evidence by either party.

9. According to the applicant, there is no factual dispute and the applicant references the Administrator's Recommendation for the facts relating to the condition of the injured worker. PACT Pre-Hearing Statement, p. 3;2-3, Ex. 3.

10. From the Administrator's Recommendation, dated April 30, 2003, Exhibit

6, which facts are not in dispute, the injured worker was injured the first time on August 6, 1983, when working for Bonanza Produce Co. His back was injured while lifting 100 pound sacks of potatoes from the ground onto a pallet. *Id.*, at p. 2.

11. On February 14, 1987, while working for Nevada Produce, the injured worker suffered another injury. He slipped and fell at the time, landing on his right knee, and injuring his lower back. He was diagnosed with a herniated nucleous pulpous of the L4-5, to the right. The injured worker was awarded a 17 percent whole person impairment. *Id.*, at p. 2.

12. Then, on July 19, 2001, while working for the Storey County Sheriff's Department as a Deputy Sheriff, the injured worker hurt his lower back when attempting to fasten a loose spare tire in the trunk of his squad car. *Id.*, at p. 2.

13. The injured worker was treated conservatively by Michael Panicari, M.D., and Forest Burke, M.D., and diagnosed with a lumbar sprain and released to light duty on September 25, 2001. Nevertheless, the injured worker did not immediately return to work because the employer was unable to accommodate his limitations. *Id.*, at p. 2.

14. An MRI was conducted on August 6, 2001, and disclosed a disc bulge at L2-3, without spinal stenosis, L3-4 and L4-5, with borderline spinal stenosis, without foraminal narrowing, and central and left sided L5-S1, with borderline spinal stenosis and left neuroforaminal narrowing. *Id.*, at p. 2.

15. On November 15, 2001, an electrodiagnostic test was conducted and the impression was normal. There was no evidence of any focal peripheral neuropathy, lumbar plexopathy or lumbar radiculopathy. A CT discogram was suggested and authorized. The injured employee refused surgical intervention and returned to work full duty with his employer. *Id.*, at p. 2.

16. A permanent partial disability rating was conducted by David Iadeluca, D.C., on March 28, 2002. He gave the injured worker a 5 percent whole person impairment which, when apportioned from the previous 17 percent disability rating for the pre-existing condition, resulted in a 0 percent whole person impairment for the

subsequent injury. *Id.*, at p. 2.

17. The Administrator found that NRS 616B.578(3) through (5) were satisfied by the applicant. The only area of disagreement is the finding that NRS 616B.578(1) was not satisfied. *Id.*, at p. 3.

18. The Administrator also quoted Richard Kudrewicz, M.D., who conducted a record review, regarding the causal connection between the pre-existing condition and the subsequent injury in order to satisfy the combined effects portion of NRS 616B.578(1) as follows: "I **think** there is a relationship in terms of increased cost for the pre-existing pathology i.e., the L-4 L5 level and 50% relates directly to the subsequent injury of 2001, which involved L4-L5 and L5-S1." *Id.*, at p. 3. (Emphasis added).

19. To the extent that any of the following Conclusions of Law also constitute findings of fact or mixed findings of fact and conclusions of law, they are incorporated herein as additional findings of fact of the Board.

CONCLUSIONS OF LAW

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

2. The applicant timely filed an appeal of the preliminary decision of the Board.

3. A quorum of the Board was present allowing the Board to hear this case and render its decision.

4. There are several principles which guide the Board in reaching its decision. Their discussion precedes the Board's analysis and explication 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 accounts 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 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 is an exercise in the interpretation and application of the statutory framework the Board is charged with administering. It is the Board's view that when administering this statutory framework, the starting point for any 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(1) which requires proof by the applicant that the subsequent disability by injury, from the course and scope

of employment, entitles the injured worker to compensation which 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**...." (emphasis added). It is a "but for" test, meaning that but for the combined effects of the preexisting impairment and the subsequent industrial injury, the compensation paid the injured worker would have been substantially less had there only have been the subsequent industrial injury alone.

15. It is not enough, therefore, to prove the existence of a preexisting "permanent physical impairment, *i.e.*, a preexisting condition with a rating of 6 percent or more, to establish eligibility for reimbursement under NRS 6161B.578(1). More is required. An applicant must establish not only the existence of a preexisting permanent physical impairment. The applicant must also be able to show that the preexisting permanent physical impairment had a **combined effect** with the subsequent industrial injury which resulted in the payment of compensation which is **substantially greater** than had there been no preexisting permanent physical impairment.

16. It is the Board's reading, therefore, of NRS 616B.578(1) that if the preexisting permanent physical impairment and the subsequent industrial injury operate in isolation to each other, under NRS 616B.578(1) an applicant has not satisfied the requirements of NRS 616B.578(1) as the statute requires at least some form of the synergy or pathology to exist between the preexisting condition and the subsequent industrial injury.

17. In this case, the presence of a preexisting permanent physical impairment is shown. The injured worker hurt his lower back in 1983 and then, again, on February 14, 1987, when he hurt his lower back and was given a 17% disability rating. The subsequent injury occurred on July 19, 2001, when his back was injured while lifting a spare tire in the trunk of a patrol car. The injured worker received a 5% disability rating which, when apportioned, resulted in a 0% whole man net impairment. As indicated, however, Seventeen Thousand Seven Hundred Twenty-seven Dollars and 75/cents

($17,727.75) in costs were incurred as following of the industrial injury. Staff Report, Ex.6.

18. More than 14 years elapsed between the time of the preexisting condition and the subsequent injury. In the interim, the record is devoid of health complications which might indicate that the injured worker was continuing to experience problems with his back attributable to the 1987 injury. Staff Report, Ex. 6.

19. The applicant, therefore, must establish a nexus between an original injury that occurred more than 14 years prior to the subsequent industrial injury under circumstances where there is no history in the record of on-going problems with his back over the years which could be attributable to the 1987 injury. Staff Report, Ex. 6.

20. To establish this nexus, the applicant relies primarily upon the written reports of Richard O. Kudrewicz, M.D., who rendered an opinion that the compensation paid for this claim was substantially greater than if there had been no original back injury. He issued a supplemental report to make the point that the two injuries, the 1987 injury of 17%, and the 2001 injury, had combined effects which caused the compensation to be as large as it was in this case. See Exs. 7, 8.

21. Dr. Kudrewicz conducted a records review. He did not treat or examine the injured worker. See Exs 7, 8.

22. After completing his review of the record, it is not entirely clear whether he reached the conclusion that the preexisting back injury was a cause of the subsequent injury to aide in his view that the two injuries had combined effects or he took the route that the combined effects were due to functional pathology.

23. Regardless, he stated the following in his supplemental report, see Ex. 8, of May 23, 2003:

> **It is my contention** that in somebody with a normal lumbosacral spine, the simple act of lifting a spare tire out of one's patrol vehicle trunk should not result in clinically significant disc derangement. Report 2, p. 1. (Emphasis added). Ex. 8

24. He continued:

> **It is my contention** that he had abnormality at L4-L5 preexistent and had degenerative disease at multiple levels in his lumbosacral spine preexistent. **It is my contention** that these preexistent difficulties made his risk for subsequent injury substantially greater and clearly increased the overalll cost of the subsequent injury. Report 2, pp. 1,2. (Emphasis added). Ex. 8

25. He also stated:

> **It is also my contention** that this gentleman had significant preexisting disability in his lumbosacral spine, particularly at the L4-L5 level ... [and other conditions] ... which substantially increased the cost of the subsequent injury to something around $8,000.00. Report 2, p. 2. (Emphasis added). Ex. 8

26. Finally, in his May 23, 2003 report, he said:

> **It is therefore my contention** that this gentleman meets both qualifiers for subsequent injury consideration. Report 2, p. 2 (emphasis added). Ex. 8

27. In his initial report, dated January 26, 2003, Dr. Kudrewicz stated on the combined effects resulting in increased costs:

> **I would suggest** that there is approximately 50% responsibility in terms of increased cost for the preexisting pathology, i.e., the L4-L5 level and 50% relates directly to the subsequent injury of 2001, which involved L4-L5 and L4. S1. Report 1, p. 5. (Emphasis added). Ex. 7.

28. Thus, the Board must contend with a report, recommendation, analysis or view expressed by Dr. Kudrewicz offered as an expert witness based upon **contention** and a **suggestion.** At no point in either of his two reports did Dr. Kudrewicz offer an opinion within a reasonable degree of either medical certainty or probability or even likelihood. Rather, the applicant offers contentions and suggestions. Contentions are argument, not opinion backed by the medical warranty, as it were, of an expert in the field of medicine. Suggestions are exactly that, mere suggestions.

29. The question before the Board, therefore, is the degree of medical certainty it can expect and demand of parties offering opinion from health professionals appearing

before the Board either personally, or through written testimony.

30. The additional question before the Board, here, is what weight, if any, should be attributed to arguments or suggestions from a physician in the face of the medical evidence in this case that over 14 years elapsed between the incident causing the preexisting permanent impairment and the subsequent injury when there is nothing in the record to indicate the injured worker was experiencing problems of the lower back during the interim? What might the Board infer from the fact that there was this 14 plus year hiatus, where the injured worker's history was symptom free of any back problems until he was injured on July 19, 2001?

31. As for the opinion testimony of Dr. Kudrewicz, clearly, the burden is upon the applicant to prove by a preponderance of the evidence, *see, McClanahan v. Raley's Inc.*, *supra* at 576, that the substantial increase in compensation was **in fact caused** by the combined effects of the prior and subsequent injuries or impairments. *See, State Industrial Insurance System v. Kelly*, 99 Nev. 774, 775-75, 671 P.2d 29, 30 (1983). When the causal link or nexus is based upon medical opinion testimony, as here, the testifying physician must state his testimony to a degree of reasonable medical probability as to the cause and effect. *Horne v. State Industrial Insurance System*, 113 Nev. 532, 538, 936 P.2d 839 (2001).

32. *Horne*, in turn, cited with approval *Miller v. Staton*, 58 Wash.2d 879, 365 P.2d 333, 337 (1961) wherein the Supreme Court of Washington held that the proof required must give rise to a "degree of proof that the resulting condition was probably caused by the accident, or that the resulting condition more likely than not resulted from the accident, to establish a causal relation." In *Horne,* the Nevada Supreme Court also cited with approval *Carlos v. Cain*, 4 Wash. App. 475, 481 P.2d 945, 947 (1971) affirming a decision that there was no causal connection because the claimant's physician could not say with "'reasonable **medical certainty**' that the condition was caused by claimant's industrial accident...." *Horne v. SIIS, supra* at 538 (Significantly, emphasis in the original by the Nevada Supreme Court).

33. Furthermore, the Nevada Supreme Court characterized the standard requiring medical opinion testimony to be within a reasonable degree of medical probability as consistent with the standard set out in the Washington cases cited above. *Horne v. SIIS, supra* at 538. This would, therefore, include the "reasonable medical certainty" standard of *Carlos*, which the Nevada Supreme Court printed in bold type and cited with approval with emphasis in *Horne*.

34. The Nevada Supreme Court explained further that the Court's view of expert medical testimony in workers compensation cases is "...consistent with the 'tendency to reject mere statements of possibility and to insist on something more definitive.' 2B Arthur Larson & Lex K. Larson, *The Law of Workmen's Compensation,* § 79.54(i) (1996)." *Id.*, at 538.

35. Thus, the Nevada Supreme Court cites with approval cases which reject medical opinion testimony based upon "possibility," or opinion where the physician states that circumstances "might have," "may have," "could have," or "possibly did" **cause something.** *Id.*, at 538. In *Horne*, the claimant sought to establish a causal relationship based upon a letter from a physician where the doctor stated: "It is entirely possible..." *Id.*, at 538. Because this was the only evidence of causal connection, the Nevada Supreme Court affirmed a rejection of the claim on the grounds that the medical opinion testimony did not rise to the level required to establish causation in the workers compensation setting.

36. Applying this body of case law to the opinion testimony of Dr. Kudrewicz, it is a small step to categorize and equate "suggestions" and "argument" or "contentions" with terms like could have, might have, possibly, or possibly did when trying to establish causation. Dr. Kudrewicz did not lay his medical reputation on the line to the quantum or degree that the Board must insist be present when a critical issue like causation is at stake. His testimony which is at best characterized as argument or a suggestion, falls to the level of "mere speculation and belief" and, therefore, does not meet the requisite level of "reasonable medical probability" or "reasonable medical certainty" which the Nevada

Supreme Court requires of physicians giving their opinion within the context or workers compensation cases.

37. As the evidence on causation offered to establish the "combined effects" requirement is the less than adequate opinion of Dr. Kudrewicz, the applicant has failed in its burden of showing that, in fact, there was a causal nexus between the preexisting condition and the subsequent injury which would enable the Board to conclude that there were, in fact, combined effects which resulted in compensation paid the injured worker that was substantially greater than had there been only the subsequent injury alone. The opinion of Dr. Kudrewicz where he offers "argument" and where he "would suggest" that the preexisting condition contributed 50% to the total cost of the subsequent injury may be disregarded by the Board.

38. The Board is left to consider whether the balance of the medical evidence, if any, is sufficient to meet the "combined effects" test of NRS 616B.578(1). This would include any inferences the Board may draw from the fact that over 14 years elapsed between the preexisting injury and the subsequent injury and that the record is devoid of evidence that the injured worker experienced any lower back problems during the interim between injuries.

39. It is, however, neither the Board's obligation to bring forward evidence nor the Administrator's responsibility to bring forth evidence as the burden rests entirely upon the applicant to prove that NRS 616B.578(1) has been satisfied. As the applicant has only offered, however, on the combined effects issue a medical opinion that does not rise to the level of evidence required to supply the proof that combined effects, in fact, exist, the applicant's request for reimbursement must be rejected and the recommendation of the Administrator for denial of the claim for reimbursement must be sustained. There has been a failure of proof to support the requirements of NRS 616.578(1) and, therefore, the Board is unable to approve the application.

DECISION OF THE BOARD

Based upon the Findings of Fact and Conclusions of Law set out above, the Board

makes it's decision as follows:

The determination of the Administrator of the Division of Industrial Relations is affirmed by the Board for the Administration of the Subsequent Injury Account for Self-Insured Employers. The applicant has failed to establish by a preponderance of the evidence that NRS 616B.578(1) was satisfied. Therefore, the application for reimbursement from the Subsequent Injury Account for Self-Insured Employers is hereby denied. The application was denied upon a motion by Joyce Smith, seconded by Dennis Barton, made pursuant to NRS 616B.578(1) for denial of the claim. The vote was 4-0-1, in favor of the motion, with Gordon Hutting abstaining. As a majority of those voting when a quorum of the Board was present voted in favor of the motion, the motion was duly adopted.

Additionally, on October, 23, 2003, the Board, having reviewed this Decision and after due deliberation, upon the motion of Gail Gibson, seconded by Joyce Smith, voted to adopt this Decision, with Findings of Fact and Conclusions of Law, as the Decision of the Board.

The vote was 3-0-1-1, with Gordon Hutting abstaining because his employer is a member of PACT, the applicant and Dennis Barton being absent. As a majority of those voting when a quorum of the Board was present voted in favor of the motion, the motion was duly adopted.

Dated this 19 day of December, 2003.

Richard Iannone, 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: Robert S. Larsen, Esq. STORY & SERTIC 777 Sinclair Street, Suite 201 Reno, NV 89501 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 thisDecember 31, 2003.

Karen Weisbrot

Karen Weisbrot