

**District Court**  
**Clark County, Nevada**

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Atilano Baez  
1512 N 21 st #7  
Las Vegas Nv 89101  
(702) 639-6968

**FILED**

APR 22 11 46 AM '02

A 449583

**S&C Claims Services, Inc.**  
3380 West Sahara Avenue  
Suite 120  
Las Vegas Nevada 89102  
(702) 873-5115

CLERK

*III*

**Complaint**

The actions of S&C in pushing Grondel to make a medical decision to release claimant to work, Prematurely, also indicate that the employer has no concern for claimant's health and was seeking

( I present copies of the documents like proves of the acts.)

**NRS 616B.528 Restriction of or interference with communication between provider of health care and injured employee prohibited.** An organization for managed care shall not restrict or interfere with any communication between a provider of health care an injured employee regarding any information that the provider of health care determines is relevant to the health care of the injured employee.

(Added to NRS by 1999, 2212)

**NRS 616B.5285 Contracts with providers of health care; prohibited acts.**

An organization for managed care shall not terminate a contract with, demote, refuse to contract with or refuse to compensate a provider of health care solely because the provider, in good faith:

1. Advocates in private or in public or behalf of injured employee;
2. Assists an injured employee in seeking reconsideration of a determination by the organization for managed care to deny coverage for a medical or health care service; or
3. Reports a violation of the law to an appropriate authority.

( Added to NRS by 1999, 2212 )

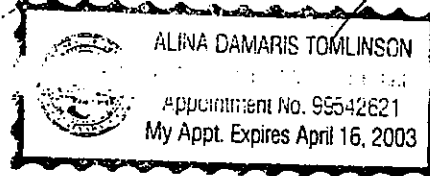
If what was done against me deserves a compensation, that the court of the district determines the quantity of the compensation.

Atilano Baez Mejjia

Subscribed and Sworn

this 22nd day of

April, 2002





S&C Claims Services, Inc.  
380 West Sahara Avenue  
Suite 120  
Las Vegas, Nevada 89102  
(702) 873-5115  
(800) 362-5198  
FAX (702) 876-5584

SUPERIOR & COMPREHENSIVE CLAIMS ADMINISTRATION

Alpine Steel  
Attn: Darlene and Randy

Claims report:

Atilano Baez-per Alpine Steel, Mr. Baez has chosen to refuse modified duty. Dr. Grondel is treating Mr. Baez for a fractured tibia and on September 22, 2000 took him off work. Therefore, by law, we will have to pay compensation from 9/22 forward until Mr. Baez is given some type of release. Melissa will talk to Dr. Grondel and push for a work release with restrictions of some type. Thereafter, if Mr. Baez refuses to perform modified duty, his compensation will be suspended.

Ted Farrell-per Mr. Farrell, he was given full duty release. Dr. Steven Thomas did release Mr. Farrell to full duty as of September 18, 2000. I have enclosed the release for your files. Mr. Farrell will have a permanent partial disability evaluation in the near future to determine percentage of disability for his shoulder. There is some limitation in the range of motion.

John Messing-S&C Claims did not receive the C-4 from UMC Trauma until October 2, 2000. The claim is set up, and Melissa will review and can have a compensation check ready for Mr. Messing by Friday, October 6, 2000. That will be a check for ten days and he will have compensation every two weeks after that. As far as the subrogation aspect, I am told by H.I. Shumake of Risk Services that there were engineering problems and that the general contractor as well as the concrete contractor probably both bear some responsibility. Once a report is completed, we will turn the data over to Dan Schwartz, legal counsel, to determine if subrogation is possible.

David Garcia-as you know, David Garcia has a full duty release as a result of surveillance. We are expecting litigation regarding the full duty release and the closure of the claim without a PPD. So far, no appeal has been filed.

Martin Garcia-Mr. Garcia is treating with Dr. Stewart for fracture of the elbow. Dr. Stewart has given restrictions of no use of the arm. Mr. Garcia was paid compensation until September 19, 2000, when Alpine notified us that they were able to provide modified duty. Dr. Stewart has not rescinded the restricted release at this time and therefore no compensation will be paid, even though Mr. Garcia chooses not to work modified duty.



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SUPERIOR & COMPREHENSIVE CLAIMS ADMINISTRATION

Page two:  
Claims-Alpine Steel

Craig Charles- Mr. Charles will definitely have permanent restrictions from his injury. Mr. Charles will not be eligible for vocational rehabilitation since his residence is out of state. Alpine Steel will be under no obligation to return Mr. Charles to permanent modified work.

Lynn Alsop- Mr. Alsop, as you indicated, has been laid off. Prior to that time, Mr. Alsop had been returned to work full duty. Mr. Alsop then appealed the full duty release, and the hearing officer remanded us to set-up a one time consult with Dr. Canale to determine Mr. Alsop's work restrictions. Dr. Canale saw Mr. Alsop on August 18, 2000 and determined that he should be retrained and could not return to work. We have appealed that determination. In the interim, we were advised by legal counsel, Dan Schwartz, to have a job site analysis done. You need to make sure that a good job site analysis of Mr. Alsop's former job is performed. Please call Robbie at Jean Hanna Clark to schedule, 388-3566. If this analysis shows that Mr. Alsop could perform his regular duties, this claim will be closed for good. There was an appeal date set for October 4, 2000, but I would expect that this date will be continued.

Jill Schreiner  
Operations Manager



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**MOT**  
DANIEL L. SCHWARTZ, ESQ.  
Nevada Bar No. 005125  
SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, NV 89101  
(702) 791-0308  
Attorneys for Respondent  
S & C CLAIMS SERVICES, INC.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ATILANO BAEZ,  
  
Petitioner,  
  
v.  
  
S & C CLAIMS SERVICES, INC.  
  
Respondent.

CASE NO. : A449583  
DEPT. NO. : III  
  
Hearing Date: \_\_\_\_\_  
Hearing Time: \_\_\_\_\_

**MOTION TO DISMISS**

COMES NOW the Respondent, S & C CLAIMS SERVICES, by and through its counsel, DANIEL L. SCHWARTZ, ESQ. and SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON, and moves this Court for an Order dismissing the Petition for Judicial Review filed by ATILANO BAEZ. This Motion is made and based upon the pleadings on file herein and the Points and Authorities attached hereto.

DATED this 22 day of August, 2002.

SANTORO, DRIGGS, WALCH,  
KEARNEY, JOHNSON & THOMPSON,

By: 

DANIEL L. SCHWARTZ, ESQ.  
Nevada Bar No.: 005125  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
(702)791-0308  
Attorneys for Respondent  
S & C CLAIMS SERVICES

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
400 SOUTH FOURTH STREET, THIRD FLOOR, LAS VEGAS, NEVADA 89101  
(702) 791-0308 - FAX (702) 791-1912

**NOTICE OF MOTION**

1  
2 TO: ALL PARTIES and;  
3 TO: THEIR RESPECTIVE COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE that on the \_\_\_\_ day of \_\_\_\_\_, 2002,  
5 the undersigned will bring the foregoing **MOTION TO DISMISS** on for hearing in Department  
6 III of the above-entitled Court.

7 DATED this \_\_\_\_ day of August, 2002.

8 SANTORO, DRIGGS, WALCH,  
9 KEARNEY, JOHNSON & THOMPSON,

10  
11 By:

12 DANIEL L. SCHWARTZ, ESQ.  
13 Nevada Bar No.: 005125  
14 400 South Fourth Street, Third Floor  
15 Las Vegas, Nevada 89101  
16 (702)791-0308  
17 Attorneys for Respondent  
18 S & C CLAIMS SERVICES  
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SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
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1 **POINTS AND AUTHORITIES**

2 On April 22, 2002, the Plaintiff, ATILANO BAEZ, filed the instant Complaint. Mr.  
3 Baez is apparently alleging some type of violation of Nevada Revised Statute 616B.528 and  
4 NRS 616B.5285. This is the improper forum.

5 Plaintiff has filed his Complaint in the instant action seeking some type of  
6 common law relief in a workers' compensation matter. The Nevada legislature specifically  
7 renounced the rights and defenses of employees in actions against employers at common law  
8 in the Nevada Industrial Insurance Act, codified in Chapters 616A to 616D, inclusive, of the  
9 Nevada Revised Statutes. NRS 616A.010 provides, in pertinent part:

10 The legislature hereby determines and declares that:

11 1. The provisions of chapters 616A to 617, inclusive, of NRS must  
12 be interpreted and construed to ensure the quick and efficient  
13 payment of compensation to injured and disabled employees at a  
14 reasonable cost to the employers who are subject to the  
15 provisions of those chapters;

16 2. A claim for compensation filed pursuant to the provisions of  
17 chapter 616A to 616D, inclusive, or chapter 617 of NRS must be  
18 decided on its merit and not according to the principle of common  
19 law that requires statutes governing workers' compensation to be  
20 liberally construed because they are remedial in nature;

21 3. **The provisions of chapter 616A to 617, inclusive, of NRS  
22 are based on a renunciation of the rights and defenses of  
23 employers and employees recognized at common law; and**

24 4. For accomplishment of these purposes, the provisions of  
25 chapters 616A to 617, inclusive, of NRS must not be interpreted  
26 or construed broadly or liberally in favor of an injured or disabled  
27 employee or his dependents, or in such a manner as to favor the  
28 rights and interests of an employer over the rights and interests of  
an injured or disabled employee or his dependents.

29 Nev. Rev. Stat. 616A.010 (2001)(emphasis added).

30 Additionally, NRS 616A.020 provides, in pertinent part:

31 1. The rights and remedies provided in chapters 616A to 616D,  
32 inclusive, of NRS for an employee on account of an injury by  
33 accident sustained arising out of and in the course of  
34 employment shall be exclusive, except as otherwise provided  
35 in this chapter, of all other rights and remedies of the  
36 employee, his personal or legal representatives, dependants  
37 or next of kin, at common law or otherwise, on account of  
38 such injury.

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1 2. The terms, conditions and provisions of chapters 616A to  
2 616D, inclusive, of NRS for the payment of compensation and the  
3 amount thereof for injuries sustained or death resulting from such  
4 injuries **shall be conclusive, compulsory and obligatory upon**  
5 **both employers and employees coming within the provisions**  
6 **of this chapter.**

7 Nev. Rev. Stat. 616A.020 (2001)(emphasis added).

8 The legislature, through the Nevada Industrial Insurance Act, has expressly  
9 prohibited the kinds of common law claims by employees against employers that Plaintiff has  
10 alleged in the Complaint.

11 The Nevada Supreme Court has routinely upheld the Nevada Industrial  
12 Insurance Act as the exclusive remedy for employees' common law claims against employers.  
13 See, Goldstein v. Jensen Pre-Cast, 102 Nev. 630, 729 P.2d 1355 (1986)(holding that the  
14 workers compensation system is uniquely legislative in nature and the balance created by the  
15 legislature should not be disturbed by the courts). The courts have also held that the exclusive  
16 remedy provision of the Nevada Industrial Insurance Act is the employees' only remedy for  
17 injuries suffered in the workplace that are not the result of intentional torts by the employer.  
18 See, Conway v. Circus Circus Casinos, Inc., 116 Nev. Adv. Op. No. 94, 8 P3d 837 (2000). In  
19 upholding the abolition of actions against the state insurance agency, the Supreme Court  
20 held:

21 Just as the legislature under the police power could and did  
22 **abolish the old common law cause of action against the**  
23 **employer** and abolish the latter's defenses and merge both into  
24 a comprehensive statutory system which provided a fixed and  
25 certain indemnity when the Nevada Industrial Insurance Act was  
26 first enacted, so, now, the Legislature can abolish the  
27 independent, original cause of action against the NIC.

28 NIC v. Reese, 93 Nev. 115, 560 P.2d 1352 (1977)(emphasis added).

In this case, the Plaintiff has attempted to fashion common law remedies out of  
an alleged workplace injury. The Nevada Industrial Insurance Act, as codified by NRS 616A-  
617, are very clear that in this situation, the employee's only remedy is to file a claim with the  
legislatively-created agency as provided by statute.



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1 The legislature renounced common law claims of this sort in the Nevada  
2 Industrial Insurance Act, and the Supreme Court has upheld the legislature's right to create  
3 an exclusive remedy for workers' compensation claims. Therefore, this Court does not have  
4 jurisdiction to hear Plaintiff's claims for relief. Additionally, the Plaintiff has not alleged claims  
5 upon which this Court could grant relief, because the Plaintiff has not followed the procedures  
6 mandated by the Nevada Industrial Insurance Act.

7 Finally, Defendant has been forced to incur attorneys' fees and expenses to  
8 defend against this meritless action, and Defendant requests that Plaintiff be required to  
9 reimburse these fees and expenses pursuant to NRS 18.010(2)(b).

10 III.

11 **Conclusion**

12 WHEREFORE, Defendant, by and through their undersigned counsel,  
13 respectfully request that this Court issue an Order granting Defendant's Motion to Dismiss  
14 Plaintiff's Complaint and awarding reasonable attorneys' fees and costs to Defendant for  
15 having to defend against a Complaint that fails to state a claim upon which relief can be  
16 granted.

17 DATED this 21 day of August, 2002.

18 **SANTORO, DRIGGS, WALCH,  
19 KEARNEY, JOHNSON & THOMPSON**

20 

21 DANIEL L. SCHWARTZ, ESQ.  
22 Nevada Bar No. 5125  
23 400 South Fourth Street, Suite 300  
24 Las Vegas, Nevada 89101  
25 Telephone: (702) 791-0308  
26 Facsimile: (702) 791-1912

27 *Attorneys for Defendant*

28 3678.52

**CERTIFICATE OF MAILING**

1  
2 I HEREBY CERTIFY that, on the 24 day of August, 2002 and pursuant to NRCF  
3 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing  
4 **Defendant's Motion to Dismiss Plaintiff's Complaint**, postage prepaid and addressed to:  
5 ATILANO BAEZ  
6 1512 North 21<sup>st</sup> Street #7  
7 Las Vegas, Nevada 89101

8   
9 An employee of Santoro, Driggs, Walch,  
10 Kearney, Johnson & Thompson

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON  
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