

**In the Supreme Court of the State of California**

**REDWOOD FIRE and CASUALTY ) Supreme Court Case No.: S215637**  
**COMPANY administered by )**  
**BERKSHIRE HATHAWAY )**  
**HOMESTATE COMPANIES, )**

**Petitioner, )**

**vs. )**

**WORKERS' COMPENSATION )**  
**APPEALS BOARD OF CALIFORNIA )**  
**and BRANDON CLARK )**  
**DECEASED; JOVELYN CLARK )**  
**(WIDOW); and GUARDIAN AD )**  
**LITEM FOR JOANA CLARK )**  
**(MINOR CHILD); BRITTANY )**  
**CLARK (MINOR CHILD); and )**  
**BENJAMIN CLARK (MINOR )**  
**CHILD), )**

**Respondents, )**

**SUPREME COURT  
FILED**

**FEB 4 2014**

**Frank A. McGuire Clerk**

**Deputy**

Fourth Appellate District Division One, Case No.: D063945

Workers Compensation Appeals Board, Case No.: ADJ7324566

**ANSWER TO PETITION FOR REVIEW**

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Berkshire Hathaway Homestate Companies

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**CERTIFICATE OF INTERESTED PARTIES**  
**California Rule of Court 8.208**

Pursuant to California Rule of Court 8.208, counsel for Petitioner files this Certificate of Interested Parties. Pursuant to rule 8.208(d)(3), counsel knows of no other parties with more than a ten percent interest in Petitioner, nor of any person or entity with an interest in the outcome with the exception of Redwood Fire and Casualty Company administered by Berkshire Hathaway, which the justices should consider as to whether to disqualify themselves.

DATED: January 31, 2014

Respectfully submitted,

**BRADFORD & BARTHEL, LLP**

  
\_\_\_\_\_  
Louis A. Larres  
Attorney for Petitioner

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## INTRODUCTION

Petitioner below petitions this Court for review of the decision of the Court of Appeal, Fourth District, granting Petitioner's petition for writ of review reversing the Workers' Compensation Appeals Board's Order Denying Petition for Reconsideration. Respondent claims that review should be granted to "address an important question of law, and to secure uniformity of decision." (Petition, p. 2). However, this is not the case. There is no need to secure uniformity of decision as Respondent has failed to demonstrate a difference of opinion between two different lower courts. Likewise, the Appellate Court's decision does not address an important question of law that affects a significant segment of society. The Court's use of the term "material factor" in addressing whether an applicant in a workers' compensation case has met his or her burden of proof does not, as Respondent contends, represent a change in the law.

The decision does, as set forth in Petitioner's request for publication, clarify a long-held misconception regarding the correct legal standard of a claimant's burden of proof in a death case. It is for that reason, and that reason alone, the decision should be published.

## STATEMENT OF FACTS

Mr. Brandon Clark, born August 26, 1972, worked as a carpenter for South Coast Framers insured by Berkshire Hathaway. On September 5, 2008 he fell approximately nine feet from the roof he was working on and sustained an admitted injury to his neck, head and chest. Mr. Clark's treating physician for his industrial injury toward the end of his life, was Dr. Robert Scott.

Before this injury occurred Mr. Clark was treating for non-industrial medical issues at Graybill Medical Group and paying through his private insurance. In late January 2009, Valium and Xanax (alprazolam), both in the benzodiazepine class of drug, were prescribed by his private doctor, Dr.

Borecky, due to fears over a pending vasectomy. Dr. Borecky also prescribed Ambien (zolpidem) due to reported problems sleeping. Dr. Borecky's report of January 29, 2009, noted very specifically that "He is having problems sleeping." However, that same report also noted that during these times of sleeping difficulty, "he is not aware of anxiety or obsessive thoughts or pain or urinary urgency."

For the industrial injury of September 5, 2008, and toward the end of his life, Mr. Clark was taking Neurontin (gabapentin) and Amitriptyline. All four of these medications were found in Mr. Clark's blood system at the time of death. Mr. Clark's death occurred on July 20, 2009 and was ruled an accidental overdose of medication. At the time of death he was survived by his wife and three children ages 9, 11 and 13.

A death claim was filed on April 23, 2010. Defendants procured the services of Dr. Daniel Bressler, an internist, to assist in addressing the issue of causation. Dr. Bressler reviewed the reports of Mr. Clark's personal physician, Dr. Borecky as well as the reports of Dr. Scott. After reviewing these records, Dr. Bressler concluded, "The specific combination of medicines he was on, which included Xanax (alprazolam), Ambien (zolpidem), Flexeril, Neurontin, Amitriptyline and Hydrocodone, all separately and in combination had the capacity to induce respiratory depression, and even respiratory arrest." He also noted that Mr. Clark's pulmonary findings were not premorbid.

Mr. Clark's wife, the Applicant, Jovelyn Basila Clark (Respondent), was deposed on September 13, 2010. When asked about sleeping problems and medication Mr. Clark had taken for those problems, the Respondent testified that prior to being prescribed Ambien (zolpidem), Mr. Clark took over-the-counter Tylenol PM. He used Tylenol PM off and on for some time prior to his injury in September 2008.

To resolve the issue of causation, the parties requested a panel Qualified Medical Examiner (QME). Dr. Thomas Bruff, a toxicologist, was selected as the panel QME. Dr. Bruff reported on June 28, 2011. Dr. Bruff reviewed the October 12, 2009, autopsy report that noted elevated levels of Ambien (zolpidem) and Xanax (alprazolam) with the levels of Neurontin (gabapentin) and Amitriptyline within usual therapy range. Amitriptyline was reported at .12 mg/L, Xanax (alprazolam) at .15 mg/L, Ambien (zolpidem) at .48 mg/L, Neurontin (gabapentin) at 1.4 mcg/mL and Acetaminophen at 3.2 mg/L. The doctor also reviewed a June 29, 2009 treatment report from Dr. Scott noting that medications included Amitriptyline and that Mr. Clark was instructed to discontinue its use and replace it with Flexeril. After reviewing the entire medical file including the toxicology and autopsy report, Dr. Bruff concluded on page 13 of his deposition,

It is my opinion that gabapentin did not have a role in this particular case. Amitriptyline was prescribed in such low dose, and blood levels show that the medication was likely taken as prescribed. However, zolpidem and alprazolam was found in excess of what would be normally considered peripheral blood concentrations. Both these medications work in a similar fashion and would be considered at least additive in their effects. It is my opinion in the case of Mr. Clark that it is just this additive effect of zolpidem and alprazolam that caused sedation significant enough to result in the events leading to his death.

For clarity, it is my opinion that Mr. Clark passed away as a result of additive drug interaction between zolpidem and alprazolam. The two additional medications present in the blood stream, gabapentin and amitriptyline, were not high enough to result in any coincident drug interaction. (Id., p. 13).

Dr. Bruff sat for his deposition on March 29, 2012. In his deposition Dr. Bruff testified that the reports of Dr. Bressler did not factor into his final conclusion. The treating reports and the autopsy were the most important evidence reviewed by the doctor. The doctor noted that per the records from Graybill in 2009, Mr. Clark had complaints of difficulty sleeping, but that the reports were silent as to why. The doctor theorized that “it could be because of back pain, could be, you know, stress at home.” The reporting was not detailed enough for him.

On the cause of death, Dr. Bruff acknowledged that Xanax (alprazolam) and Ambien (zolpidem) were contributory but conceded that “it’s difficult to know precisely what the cause of death was because the levels, while elevated, were not super elevated.” As a result, the doctor had to take into consideration the Neurontin (gabapentin) and Amitriptyline, but also not in particularly high doses. Dr. Bruff then noted that Neurontin (gabapentin) could be removed from consideration because there are not many cases of overdosing on the drug even at significantly high levels.

As to Amitriptyline, “that can be additive.” Ambien (zolpidem) and Xanax (alprazolam) were used by Mr. Clark on a daily basis for close to six months. This however, did not seem to be a heavy abuse situation. Mr. Clark's nascent pulmonary edema and bronchial pneumonia, non-industrial conditions, may also have been contributory.

The coroner’s report noted pneumonia as a cause and listed Xanax (alprazolam), Ambien (zolpidem), Neurontin (gabapentin) and Amitriptyline, but these drugs were listed simply because they were found

to be in Mr. Clark's system. According to Dr. Bruff, just because Neurontin (gabapentin) was listed did not mean it was causative. The Amitriptyline was not reported to be found in toxic levels. Dr. Bruff stated that "It is neuropsychiatrically active and may have had a small role at the levels found." This is why the doctor felt that two drugs in the same class should be given more weight than Amitriptyline. Yet, despite this, the doctor could not "absolutely slam the door and say it had no effect." The reported level of Amitriptyline found in Mr. Clark's body was significantly below those levels seen in fatal cases, but above those one would expect to see from taking a 10 milligram tablet.

Dr. Bruff acknowledged the limitations of his field. He stated, "toxicology tries to do single doses whenever possible. Mixtures are very difficult to quantify." When asked whether Amitriptyline could have contributed to death in combination with Xanax (alprazolam) and Ambien (zolpidem) already at significant levels, Dr. Bruff stated, "I mean, it's possible." He added, "Amitriptyline could be an incremental contributor. It's very difficult to know how." He further expressed the view that "alprazolam [Xanax] and zolpidem [Ambien] being in the same class and at a much higher dose were – kind of carried the day." The doctor felt that it would be speculative to specify whether the contribution of Amitriptyline to the cause of death was half a percent, one percent or five percent, because the Xanax (alprazolam) and Ambien (zolpidem) were largely contributory. In the doctor's opinion the Amitriptyline was "way down there." Dr. Bruff felt that it was additive. He admitted that Amitriptyline was at the minimum level of causation and that it has a sedative effect. Although Hydrocodone, or Vicodin, a respiratory depressant, was also found in Mr. Clark's urine, but not his blood, it was not at a high level. Dr. Bruff admitted that Hydrocodone could be in the causative "pie."

Again, Dr. Bruff noted that the Amitriptyline was found to be at the low end of what would be considered therapeutic blood levels. The doctor was unaware of any cases where levels that low could have any real causative effect in causing death. The doctor was also unaware of any studies that demonstrated a contributory effect of small levels of Amitriptyline to death. However, Dr. Bruff stated in that same discussion that "I'm unable to ferret out the exact amount, but its way down there."

When asked specifically about the contribution of Ambien (zolpidem), Dr. Bruff stated that in light of the levels reported in the toxicology reports, Mr. Clark "was probably doubling up. It's speculative on my part because I don't really know what happened." Yet, when asked whether the fact that Ambien (zolpidem) and Xanax (alprazolam) were noted to be above therapeutic levels would indicate that Mr. Clark was taking extra of both medications, Dr. Bruff stated, "That was the conclusion I came to." Dr. Bruff was never asked to comment on the reasons Mr. Clark was taking Ambien (zolpidem) and Xanax (alprazolam). It was his understanding that both medications were prescribed for non-industrial issues. At .48 milligrams, the amount of Ambien (zolpidem) in Mr. Clark's system would have been more than double the normal dosage. Mr. Clark's blood levels were probably actually higher during the night of his death than found during the autopsy.

As for Xanax (alprazolam), Dr. Bruff acknowledged that the levels found (.015 milligrams) in Mr. Clark's system were in a range of one to two orders of magnitude higher than normal and thus at the low end of toxicity. On further examination by Applicant's counsel, Dr. Bruff added that Amitriptyline represented some small percentage of the causation "pie" noting that it was not zero, but certainly not 20 percent either.

Dr. Bruff also expressed disagreement with Dr. Bressler's opinion that the pulmonary findings were strictly postmortem findings. Dr. Bruff felt that there were both pre- and post-mortem changes.

### **PROCEDURAL HISTORY**

The case proceeded to trial before Workers' Compensation Judge (WCJ) Linda Atcherley on December 19, 2002. Stipulations and issues were read into the record with the primary issue, for purposes of this appeal, being injury AOE/COE resulting in the death of Mr. Clark. No testimony was taken although the transcript of Applicant's deposition testimony was submitted by stipulation of the parties.

On January 14, 2013, WCJ Atcherley issued her Findings and Award (and Orders). WCJ Atcherley found that Mr. Clark's death arose out of the admitted industrial injury of September 3, 2008, as a result of medications he was taking for his industrial injury. In her Opinion on Decision, the WCJ discussed the evidence on the issue of causation of death. She first noted that the death was classified as an accident. She acknowledged that the four drugs found in Mr. Clark's system were Ambien (zolpidem), Xanax (alprazolam), Neurontin (gabapentin), and Amitriptyline. She noted the effects of several of the medications and that Xanax (alprazolam) and Ambien (zolpidem) were prescribed by Mr. Clark's non-industrial primary care physicians at Graybill Medical Clinic. She then went on to note that the Neurontin (gabapentin) and Amitriptyline were prescribed by doctors at Concentra for Mr. Clark's industrial injury.

After discussing the chronology of events leading up to Mr. Clark's death, the WCJ noted that the first mention of difficulty sleeping was in the Graybill records in January 2009. The WCJ failed to make any mention of the fact that Mr. Clark was treating there for a pending vasectomy and that Xanax (alprazolam) and Ambien (zolpidem) were first prescribed at that time by Dr. Borecky. The WCJ then referred to the report of the defense

QME report of Dr. Bressler and noted that Dr. Bressler was of the opinion that each drug acted separately and “in combination [having] the capacity to induce respiratory depression and even respiratory distress.” In discussing Dr. Bruff’s reporting and deposition, the WCJ noted that the death was caused by the additive interaction of the non-industrial medications Xanax (alprazolam) and Ambien (zolpidem). The WCJ then isolated and emphasized Dr. Bruff’s comment that Amitriptyline was “part of the causation pie.” She also noted Dr. Bruff’s comment that hydrocodone (Vicodin) represented additional “crumbs” to the causation “pie.”

After citing to case law on the preponderance of the evidence standard and citing to the doctrine of liberal construction, the WCJ focused on Dr. Bruff’s statements concerning Amitriptyline. WCJ Atcherley stated, “[I]t is clear from the Concentra records and the Graybill records that the applicant was suffering from continued or chronic pain from his industrial neck, back and head injury and that he was having difficulty sleeping because of that pain. It is also clear that the doctors prescribed him both the Ambien and the amitriptyline for the inability to sleep.” Noting that Mr. Clark took both the Amitriptyline and Ambien (zolpidem) as prescribed, in addition to the Xanax (alprazolam), Neurontin (gabapentin) and Vicodin, the WCJ found that these drugs were interactive and contributed to his death on an industrial basis.

Petitioners filed a petition for reconsideration on February 8, 2013. WCJ Atcherly issued her Report and Recommendation on Reconsideration recommending that reconsideration be denied. Respondents filed an Answer on February 25, 2013.

The WCAB issued its Order Denying Petition for Reconsideration on April 9, 2013. The WCAB did not issue its own substantive analysis of the issues raised and instead merely adopted and incorporated the WCJ’s Report and Recommendation.

Petitioner filed a timely petition for writ of review with the Court of Appeal, 4<sup>th</sup> District, Division, One. After the case was fully briefed, the Court of Appeal granted Petitioner's writ and issued its decision on December 9, 2013. In its decision, the Court reversed the WCAB's Order Denying Petition for Reconsideration finding Respondent had failed to meet her burden of proof on the threshold issue of causation and as a result instructed the WCAB to enter a new order denying the claim.

### ARGUMENT

#### **I. The Appellate Court's Decision Does not Establish a Separate and Distinct Causation Standard for Death Claims.**

The Court of Appeal correctly held there was insufficient evidence of a causal connection between the medication Mr. Clark was taking for his industrial injury and his subsequent death. In doing so, the Court did not set a new standard for purposes of establishing causation in death cases.

Respondent notes the Court's reliance on *Guerra v. Workers' Compensation Appeals Board* (1985) 168 Cal.App.3d 195, where it was stated, "the causal connection between employment and the injury is sufficient if the employment is a contributing cause of the injury." (*Guerra v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 195, 199 [214 Cal.Rptr. 58].) And while the industrial component need not be the sole cause, it is sufficient if it is a contributing cause. (*Madin v. Industrial Acc. Com.* (1956) 46 Cal.2d 90, 92 [292 P.2d 892].) However, Respondent's focus on the degree of causation is incorrect. Rather, the Court's decision is premised on the fact that Respondent failed to meet her burden of proof.

Although Respondent correctly focuses on the question of causation, Respondent's commentary on the Court's decision buries its discussion of other key standards that factored into the Court's analysis. (Petition, pp. 18-19). It is these additional standards which, when taken together, make it clear that the burden of proof was not met here. The Court stated,

[A]n applicant has the burden of establishing a “reasonable probability of industrial causation” (*McAllister v. Workers' Comp. Appeals Bd.* (1968) 69 Cal. 2d 408, 413 [71 Cal. Rptr. 697, 445 P.2d 313] (*McAllister*)) by a preponderance of the evidence. (§ 3202.5.) “Whether an employee's injury is proximately caused by his employment is a question of fact. [Citation.] Judicial review of the Board's decision on factual matters is limited to determining whether the decision, based on the entire record, is supported by substantial evidence. [Citations.] This standard of review is not met by simply isolating evidence which supports the Board and ignoring other relevant facts of record which rebut or explain that evidence. [Citation.]” (*Guerra, supra*, 168 Cal. App. 3d at p. 199.)

“[I]n relying on the opinion of a particular physician in making its determination, the Board may not isolate a fragmentary portion of the physician's report or testimony and disregard other portions that contradict or nullify the portion relied on; the Board must give fair consideration to all of that physician's findings. [Citation.] ... [I]n evaluating the evidentiary value of medical evidence, a physician's report and testimony must be considered as a whole rather than in segregated parts; and, when so considered, the entire report and testimony must demonstrate the physician's opinion is based upon reasonable medical probability. [Citations.] Hence, the Board may not blindly accept a medical opinion that lacks a solid underlying basis and must carefully judge its weight and credibility. [Citation.]” (*Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal. App. 3d 246, 255 [262 Cal. Rptr. 537] (*Bracken*).)

When one takes into account these additional factors of whether Respondent meet her burden of proof by a preponderance of evidence and whether the Board, in reaching its decision, isolated evidence that was contradicted by other evidence from the same evaluating physician, Dr. Bruff, it is clear that the evidence herein falls far short of this well-established standard. As the Court went on to correctly note,

The WCJ's report, which was adopted by the Board, started with the premise that Dr. Bruff changed his opinion from the time of his report to the time of his deposition. This finding is not supported when viewed in light of the entire record. Dr. Bruff testified that "it's possible" that amitriptyline contributed to Brandon's death and it "could be an incremental contributor." Although Dr. Bruff went on to state that amitriptyline had a "small role" in Brandon's death, he confirmed that he stood by his initial report, which concluded that Brandon's death was the result of an additive drug interaction between zolpidem and alprazolam. This evidence does not establish a change of opinion.

Respondent conveniently omits any discussion of this analysis. Dr. Bruff's use of words like "possible" and "could" note a lack of medical probability and are more consistent with what is merely possible. Thus, Dr. Bruff's testimony did not amount to substantial medical evidence on which a trier-of-fact could reasonably rely. Instead, Respondent asserts that "the WCJ and WCAB made a finding that the Decedent in this matter had industrially-caused chronic pain that led to sleep difficulties, meaning that the Ambien the Decedent took was needed, at least in part, due to his industrial injury." Respondent seeks to have this Court re-weigh the evidence. While Amitriptyline can be prescribed for sleeping difficulties, that is not its primary use. Even if it was prescribed for sleeping problems, there is absolutely no evidence that the sleeping problems were industrial. The WCJ's Opinion on this topic represented a significant stretch of logic to be properly disregarded by the Court of Appeal. The WCJ stated that

"[Mr. Clark] was having difficulty sleeping because of that pain." Yet, there is absolutely no support for this anywhere in the medical record. This was a clear example of the WCJ substituting her judgment for medical evidence that was clearly missing. It also ignored the fact that Mr. Clark had sleeping problems before his injury for which he was taking Tylenol PM. When he was prescribed Ambien (zolpidem) by Dr. Borecky there was no mention of pain as the reason for the prescription. Dr. Bruff stated that "And that he's having trouble sleeping. Didn't say why. It could be because of back pain, could be, you know, stress at home. It didn't seem to be detailed for, so I don't know." Dr. Bruff did not know why Mr. Clark was having sleeping problems. Again, his use of the word "could" in this context is telling. Dr. Bruff did not state his opinion with any degree of reasonable probability. Thus, the WCJ's opinion on this matter was clearly unsupported by the medical record and not binding on the Court of Appeal.

Yet, at the heart of Respondent's argument is that the Court's use of the term "material factor" or "material contribution" creates a new standard. This is patently incorrect. Respondent's analogy to Labor Code section 3208.3 and the specific burden of proof set forth therein is inapposite. Respondent spends several pages discussing the Court's reference to language from the St. Clair's treatise *California Workers' Compensation Law and Practice* and the discussion of the Supreme Court's case in *Pacific Gas and Electric Company v. Industrial Accident Commission (Drew)*, (1961) 56 Cal. 2d 219. Although the phrase "material factor" or "material contribution" does not appear in that case itself, the concept that undergirds the Court's analysis is that the industrial component of the applicant's death in *Drew* was significant enough a factor to be found causative. Here, any notion the industrial medication Mr. Clark was taking was even the slightest bit contributory is speculative and surmise. Respondent's entire argument mischaracterizes the import of the Court's decision. To say that a

medical opinion which does not rise to the level of substantial medical evidence cannot form the basis for an award of death benefits in no way constitutes a new standard.

Likewise, Respondent's claim that no other courts have used similar language in the context of causation is incorrect. In two writ-denied cases, *West v. Workers' Compensation Appeals Board*, (1998) 63 Cal.Comp.Cases 1203, and in *Fickes v. Workers' Compensation Appeals Board*, (1983) 48 Cal.Comp.Cases 484, the WCAB was upheld in denying a claim for industrial death due to the fact that the industrial injury was not a material factor in contributing to the injured workers' deaths. Although the phrase is not defined by the Court, it is clear that by use of the term, the Court is saying the evidence of a causal connection between the industrial medication and Mr. Clark's death was not significant enough to be recognized even as a contributing factor.

Finally, whether Mr. Clark's death was the result of a combination of drugs, one of which, Amitriptyline, was prescribed for Mr. Clark's industrial injury, is irrelevant if the two medications he was taking for his non-industrial medical conditions, were of sufficient strength and dosage in his system to have killed him. We know from Dr. Bruff's testimony that two drugs of the same class of medicines were directly additive. Those two drugs were Ambien and Xanax, which Mr. Clark was taking for his non-industrial medical conditions. These drugs were found in significantly higher levels in Mr. Clark's system so as to make them toxic. It was these two drugs that were "largely contributory" per Dr. Bruff. These two non-industrial medications "carried the day." The level of Xanax itself was within the range of what the research showed as fatal levels. Thus, the two non-industrial medications, even without any alleged combined effects from the industrial medication, were at sufficient levels to cause death.

What relevance then is a contributing factor, if the result would have been the same even absent the contributing factor?

The answer is quite simple. The industrial medication as a causative factor is immaterial when Mr. Clark's untimely demise would have been brought about by the toxic levels of non-industrial medication in his system. And it is speculative to say that the industrial medication is causative. As tragic as the underlying facts of this case are, the Court correctly applied the law in this matter and should be upheld.

**CONCLUSION**

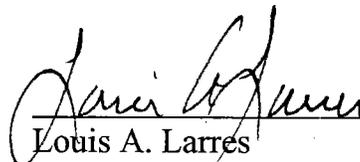
California Rules of Court § 8.500(b)(1) sets forth the standard for Supreme Court review. Here, Respondent claims this case presents an important question of law and is necessary to secure uniformity of decision. Yet, in attempting to fit this case into those standards, Respondent misconstrues the Court's decision. Simply put, the Court clarified quite succinctly the standard an applicant must satisfy in establishing an industrial death claim. Respondent fell short of that standard which is why the Court of Appeal reversed the trial judge's decision. There is no need for uniformity of decision as the Court's decision is consistent with long-established precedent.

Based on the above, Petitioner requests that the Petition for Review be denied.

DATED: January 31, 2014

Respectfully submitted,

**BRADFORD & BARTHEL, LLP**



\_\_\_\_\_  
Louis A. Larres  
Attorney for Petitioner

(VERIFICATION - 446.2015.5 C.C.P).

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am the attorney of record for Petitioner REDWOOD FIRE and CASUALTY COMPANY administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, in the above-entitled action or proceeding: I have read the foregoing ANSWER TO PETITION FOR REVIEW and know the contents thereof; and certify that the same is true to my knowledge, except as to those matters which are therein stated upon my information or belief. And as to those matters I believe it to be true.

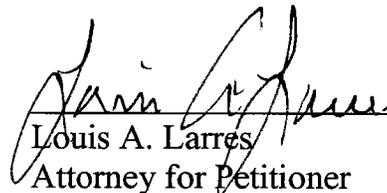
Executed on January 31, 2014, at Fresno, California

I declare under penalty of perjury that the foregoing is true and correct.

DATED: January 31, 2014

Respectfully submitted,

**BRADFORD & BARTHEL, LLP**

  
Louis A. Larres  
Attorney for Petitioner

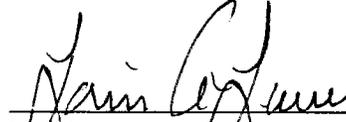
**CERTIFICATE OF WORD COUNT**  
California Rule of Court 8.204(c)(1)

The text of this brief consists of 4189 words as counted by the Microsoft Word computer program used to prepare this brief.

DATED: January 31, 2014

Respectfully submitted,

**BRADFORD & BARTHEL, LLP**



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Louis A. Larres  
Attorney for Petitioner

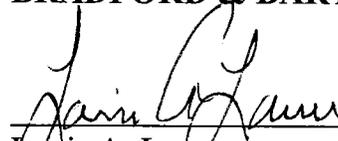
**CERTIFICATE OF RECYCLED PAPER**  
California Rule of Court 1.22(b)

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DATED: January 31, 2014

Respectfully submitted,

**BRADFORD & BARTHEL, LLP**



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Louis A. Larres  
Attorney for Petitioner

**PROOF OF SERVICE**  
(C.C.P Section 1013a, 2015.5)

STATE OF CALIFORNIA        )

) ss.

COUNTY OF FRESNO         )

**RE: Redwood Fire and Casualty Company administered by Berkshire Hathaway Homestate Companies vs. Workers' Compensation Appeals Board of California and Brandon Clark Deceased; Jovelyn Clark (Widow); and Guardian Ad Litem for Joana Clark (Minor Child); Brittany Clark (Minor Child); and Benjamin Clark (Minor Child)**

I, David Tringali, am a citizen of the United States and am employed in the county of the aforesaid; I am over the age of 18 years and not a party to the within action; my business address is 1300 E. Shaw Avenue, Suite 171, Fresno, California 93710.

On January 31, 2014 I served the within document(s) described as:

**ANSWER TO PETITION FOR REVIEW**

on the interested parties in this action as stated below:

Berkshire Hathaway Homestate Companies ~ <i>Petitioner</i> 9095 Rio San Diego, Suite 400 San Diego, California 92111 Post Office Box 881716 San Francisco, California 94188	Workers Compensation Appeals Board Secretary (2 Copies) ~ <i>Respondent</i> 455 Golden Gate Ave, 9th Fl. San Francisco, CA 94102
Court of Appeals 4 <sup>th</sup> District Division 1 750 B Street, Suite 300 San Diego, California 92101	Daniel J. Palasciano, Esq Law Offices of O'Mara & Hampton ~ <i>Respondent/Applicant Attorney</i> 2370 Fifth Avenue San Diego, California 92101

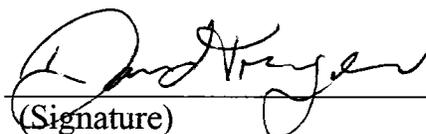
Jovelyn Clark ~ Respondent/Applicant 1230 Topaz Place San Marcos, California 92069	
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- (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Fresno, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I, the undersigned, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 31, 2014, at Fresno, California.

David Tringali  
\_\_\_\_\_  
(Type or print name)

  
\_\_\_\_\_  
(Signature)