LAW OFFICES OF DABBAH & HADDAD

A PROFESSIONAL CORPORATION

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June 13, 2017

Via Electronic Submission
City of Carson
701 East Carson Street
Carson, California 90745

Re: Request for Proposal No. P17-11 –
Workers' Compensation Defense Attorney

Gentlepeople,

Thank you for the opportunity to submit the enclosed proposal to serve as workers' compensation defense counsel for the City of Carson.

My partner and I founded Dabbah | Haddad, APC 17 years ago as an alternative to the big firm model, where individualized attention and file continuity is often lacking. Our boutique firm offers an efficient, collaborative approach to management and resolution of workers' compensation claims that is sure to make a significant difference in reducing the City of Carson's open inventory.

Enclosed, please find our proposal, attorney biographies and writing samples for your review and consideration.

Should you wish to discuss the proposal in person, we are at your disposal. We look forward to serving the City of Carson.

Very truly yours,

Law Offices of Dabbah & Haddad

By:

Gary Dean Dabbah, Esq.
E-mail: gdd@dhapc.com

GDD;jt

DABBAH | HADDAD, APC
PROPOSAL FOR SERVICES

Workers' Compensation Defense Attorney RFP No. P17-11

OVERVIEW

DABBAH | HADDAD, APC is pleased to submit this proposal to serve as workers' compensation defense counsel for the City of Carson.

FIRM DESCRIPTION

Gary Dean Dabbah, Esq. and Fareed M. Haddad, Esq. founded DABBAH | HADDAD, APC to aggressively defend the litany of workers' compensation cases before the Workers' Compensation Appeals Board and at all levels of review. In January, 2016, the firm was proud to add a third partner, Mr. Munir D. Suleiman, Esq.

The firm has a long history of public entity service, including providing exemplary representation to California cities, municipalities and school districts. DABBAH | HADDAD, APC has proudly served the City and County of Los Angeles, Lynwood Unified School District, the City of Lynwood, Montebello Unified School District, Compton Unified School District and more. We also defend claims for discrimination under Labor Code Section 132a and claims for Serious & Willful Misconduct.

The firm was founded in 2000, and both original partners have practiced Workers' Compensation law for over thirty years. Enclosed, please find our firm resume and attorney biographies. We also offer our clients on-site meetings, lectures, training seminars, and law-updates.

DABBAH | HADDAD, APC melds the legal and technological know-how of a large firm, with the personalized service that only a boutique firm can provide. We aggressively defend workers' compensation claims while balancing the litigation costs to the client versus the probable outcome.

At DABBAH | HADDAD, APC, prompt and direct communication is foremost. Whether by e-mail, phone, or by U.S. mail, clients are kept continually informed. Incoming new files are immediately reviewed, and a plan of action is articulated. The City Risk Manager and/or his/her designee will be updated at regular intervals as to the progress of the claims. This direct service approach is accomplished through dedication to detail, along with key investments in technology.

CLIENT LIST

1. **Lynwood Unified School District**
    - Phone: (310) 603-1426.
    - Address: 11321 Bullis Road, Lynwood, CA 90262.
    - Contact: Nancy Hipolito, Director of Human Resources.
    - Years of service: 14.

2. **Montebello Unified School District**
    - Phone: (323) 887-7900.
    - Address: 123 S. Montebello Boulevard, Montebello, CA 90640.
    - Contact: Barbara Williams, Risk Management.
    - Years of service: 8.

3. **Compton Unified School District**
    - Phone: (310) 639-4321.
    - Address: 501 S. Santa Fe Ave., Compton, CA 90221.
    - Contact: Harvey Irvin, Director of Risk Management
    - Years of service: 5.

4. **City of Lynwood**
    - Phone: (310) 603-0220.
    - Address: 11330 Bullis Road, Lynwood, CA 90262.
    - Contact: Treasure Ortiz, Human Resources Director.
    - Years of service: 3.

5. **Hacienda La Puente Unified School District**
    - Phone: (626) 933-3899.
    - Address: 15959 E. Gale Ave., City of Industry, CA 91745.
    - Contact: Jill Rojas, Assistant Superintendent, Human Resources.
    - Years of service: 2.

6. **Care West Insurance Company**
    - Phone: (209) 236-7444.
    - Address: 642 Galaxy Way, Modesto, CA 95356.
    - Contact: Jenifer Snell, Claims Supervisor.
    - Years of service: 6.

7. **California Restaurant Mutual Benefit Corporation**
    - Phone: (619) 881-5533.
    - Address: 430 N. Vineyard Ave., #102, Ontario, CA 91764.
    - Contact: Sandy Hodge, Workers' Compensation Claims Manager.
    - Years of service: 5.

8. **California Contractor's Network, Inc.**
    - Phone: (619) 744-5089.
    - Address: 701 B Street, Suite 2100, San Diego, CA 92101.
    - Contact: Bettina Hood, Workers' Compensation Claims Manager.
    - Years of service: 5.

9. **Athens Administrators, Inc.**
    - Phone: (925) 826-1132.
    - Address: P.O. Box 696, Concord, CA 94522.
    - Contact: Jessica Mackey, Claims Supervisor.
    - Years of service: 4.

10. **Intercare Insurance Company**
    - Phone: (818) 459-8215.
    - Address: P.O. Box 7111, Pasadena, CA 91109.
    - Contact: Mariam Abeshyan, Claims Supervisor.
    - Years of service: 8.

Turnover Percentages

DABBAH | HADDAD, APC prides itself in the extremely low turnover rates for its attorneys, paralegals and office staff. Many of our employees have been with us since the firm's inception. Several of our employees have been with us more than 10 years. The firm invests substantial resources into its personnel and prefers to promote from within.

This philosophy is best evidenced by the firm's newest partner, Munir D. Suleiman, Esq., who served in every position from file room mail attendant to legal assistant (while attending University and Law School), to associate attorney and then equity partner. The firm's dedication to the betterment of its employees' lives fosters unbridled loyalty and a family atmosphere amongst its employees.

- 2017 turnover percentage: 0%.
- 2016 turnover percentage: 4% (1 person out of 25).
    - *In 2016, one of our paralegals left to attend UCLA Law School on a full-time basis.*
- 2015 turnover percentage: 4% (1 person out of 25).
    - *In 2015, one of our legal assistants left to attend Nursing School on a full-time basis.*

MECHANISMS FOR KEEPING CURRENT

DABBAH | HADDAD, APC invests substantial time and resources to keep on top of the latest developments in workers' compensation legislation (statutes and regulations), case law and news. The firm keeps current using the following:

- Monthly review of all WCAB panel decisions.
- Weekly discussions and review of all new case law, statutes and regulations.
- Monthly training sessions for all attorneys.
- Regular review of workers' compensation newswires including the Department of Industrial Relations, LexisNexis, and WorkCompCentral.
- Regular review of the suspended physician list for liens.
- Semi-annual attendance at workers' compensation specific conventions for continuing education.

LITIGATED CLAIM PHILOSOPHY

The firm's litigation philosophy is simple. We strive to resolve claims efficiently and as cost-effectively as possible. DABBAH | HADDAD, APC is able to move claims quickly because of its significant litigation experience and because of critical investments in technology, which ensure timely communication and efficient claim management. In turn, our clients experience reduced litigation costs, contained exposure and reduced administrative fees.

PERFORMANCE STANDARD

The DABBAH | HADDAD, APC performance standard exceeds the highest performance standards in the industry. We read all the panel decisions issued by the WCAB every month. We have trained several WCAB Judges, many of whom are still on the bench. Since the firm has access to the latest information, it is able to ensure the plans of action applied to each case are in compliance with all the current law, new law and updates to case law as changes and updates take place. To assure that its high quality standards of communication are followed, DABBAH | HADDAD, APC spends extended periods of time training its new associates as to the intricacies of workers' compensation laws, and the partners review all associate communications to ensure that the information conveyed is concise, accurate and directive.

DEADLINE PROCEDURES

DABBAH | HADDAD, APC utilizes a multilayer calendar system to ensure important deadlines are not missed. Our system utilizes the most up-to-date technology as well as multiple stop-gaps to ensure all deadlines are calendared, that progress towards project completion is monitored and that all deadlines are met. DABBAH | HADDAD, APC also incorporates a multilayer file diary approach to ensure all claims are kept current and that the client is never struggling to get status updates.

HEARING REPORT TURNAROUND

The firm prides itself in prompt hearing report turnaround. Hearing reports are oftentimes submitted the same day as the hearing or deposition, time permitting. The firm policy is to have all hearing reports submitted within 48 hours of the hearing, and deposition reports submitted within 5 days of the deposition. Orders approving Compromise & Release, Awards and anything else with a payment timetable are submitted the same day.

CALENDAR CONFLICTS

Calendar conflicts are few and far between because we have several attorneys available to appear on the City's behalf. If there is a true calendar conflict, the first step is to see whether opposing counsel will agree to have the matter heard in the alternate session (A.M. or P.M.), depending upon the time of the conflict. If not, we will rework the other calendar items to ensure the City's claims are not delayed.

ATTORNEYS

Enclosed, please find the attorney biographies for your review and consideration. Each of the attorneys has substantial experience in handling city, municipality and school district claims.

Public Retirement System

Cities may provide retirement plans for their employees by charter or ordinance in accordance with Government Code section 45300 et sq., or they may contract with the state system (PERS). A city that contracts with the state is bound by the provisions of state law designating coverage and classification of employees where the provisions do not require specific elections of terms by the contracting entity. Depending upon the

contractual provisions, the retirement system may supplement, take credit or otherwise offset workers' compensation benefits, when disability retirement is granted. Resignation would impede the employee's ability to draw retirement benefits requiring special attention and detail when drafting separation agreements between the City and its employees. As a general rule, receipt of retirement benefits and workers' compensation for the same injury does not constitute double recovery under the compensation law. However, the conditions of a retirement plan may provide that a disability retirement shall be reduced to the extent of workers' compensation benefits received for the same injury. No such reduction is permissible for compensation payments received before the effective date of the disability retirement. The Public Employees' Retirement System is required by statute to submit industrial causation questions to the WCAB, and, while it is a proceeding separate from that for compensation benefits, rarely would the cases be decided differently. The WCAB determines causation while PERS determines whether the disability is sufficient to warrant disability retirement. Where the employer is a local agency that contracts with PERS (like a city), the local agency makes the decision which is then adopted by PERS. This decision, if not appealed by the employee becomes final. The superior court does not have jurisdiction to review Appeals Board decisions when Board jurisdiction has been invoked per the Government Code. Rather, the appeal must be taken via petition for writ of review to the court of appeal or the Supreme Court.

Social Security System

The Social Security Act provides that an individual insured under social security who has not attained the age of 65 and is disabled is entitled to disability insurance benefits for each month beginning with the first month after the waiting period. The disability benefit is equal to the primary insurance amount as though the applicant had attained the age of 62. The applicant must be fully insured or insured for disability through the program. The term "disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or is expected to last for a continuous period of not less than 1 year. There is a reduction in the disability benefit due to receipt of workers' compensation, provided such receipts exceed the higher of 80% of the applicant's "average current earnings" or the total of the disability benefits. The offset also applies to commutation of periodic payments. There is no offset for future medical expenses. Supplemental orders are oftentimes necessary to distinguish commuted periodic payments from the monies paid for future medical care. Special Needs Trusts are also used in some circumstances where the applicant is receiving Social Security Disability, Supplemental Security Income, or both. In sum, claims where Social Security

Disability or SSI benefits are at issue do not have remain in a state of inertia. Instead, the defense attorney should use every available tool to promptly resolve the claim.

Medicare

Medicare insurance is a federally funded medical insurance program for the elderly and disabled. When preparing a Compromise & Release, the parties must consider "Medicare's interests" in evaluating whether a Medicare Set-Aside must be included in the settlement. The most recent Centers for Medicare & Medicaid Services (CMS) bulletin indicates that while there are no statutory or regulatory provisions requiring a Medicare Set-Aside to be submitted to CMS, submission is a *recommended* process. If the City chooses to submit a set-aside for review, the established policies are:

- If the claimant is a Medicare beneficiary and the total settlement is greater than $25,000.00, the set-aside should be submitted.
- Additionally, if the claimant has a reasonable expectation of Medicare enrollment within 30 months of the settlement date and the anticipated settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than $250,000.00, the set-aside should be submitted.

DABBAH | HADDAD, APC ensures that the City's interests are protected by including the Medicare Set-Aside as a line item deduction in the Compromise & Release, as well as ensuring detailed addenda are included to spell out the claimant's responsibilities and to ensure the City's liability for the Medicare Set-Aside is removed from the claim.

Medical Provider Network

Medical Provider Networks (MPNs) were created in 2004 by SB899 to give employers more extensive control over medical treatment. Insurers or employers are permitted to establish MPNs to provide medical treatment for their injured employees. The system was recently overhauled in 2013 by way of SB863, providing applicant's expeditious access to treatment, but ensuring employers maintain more control over this treatment. It is critically important to maintain MPN control. DABBAH | HADDAD, APC takes aggressive steps to establish and maintain MPN control, thereby reducing costs by reducing or completely eliminating the proliferation of liens in each case.

Utilization Review

Utilization review is the process by which prospective, retrospective or concurrent decisions are made for the provision of medical treatment. A licensed physician is permitted to modify, delay, deny or authorize request for authorization for medical treatment. The process is conducted by the contracted utilization review provider who receives the requests for authorization, timely reviews, responds and/or requests additional information in order to make the timely determination. The process greatly reduces the cost of liens and the provision of medical treatment, as unnecessary treatment is denied, and generally upheld by the third-party review entity Maximus, by way of Independent Medical Review. DABBAH | HADDAD, APC utilizes timely utilization review decisions to combat expedited trials on the provision of medical treatment and to contest the necessity of medical treatment when it comes time to resolve or try the liens of record.

Attorney Caseloads

DABBAH | HADDAD, APC prides itself in keeping caseloads low in order to ensure maximum results for our clients. The following are our current caseloads for each attorney:

- Gary Dean Dabbah, Esq. (managing partner) – 67 files.
- Fareed M. Haddad, Esq. (partner) – 64 files.
- Munir D. Suleiman, Esq. (partner) – 73 files.
- Michelle Lin, Esq. (associate) – 49 files.
- Joseph Esquibias-Engel, Esq. (associate) – 47 files.
- Vano Vladi, Esq. (associate) – 43 files.
- Jasjit Arora, Esq. (associate) – 37 files.
- Elias Aydin, Esq. (associate) – 34 files.
- Sona Arakelyan, Esq. (associate) – 31 files.

CONCLUSION

We look forward to serving the City of Carson. We are confident that we can exceed the City's expectations in the defense of the City's workers' compensation claims.

If you have questions on this proposal, feel free to contact Gary Dean Dabbah, Esq. at your convenience by email at gdd@dhapc.com or by phone at (626)431-2950.

Thank you for your consideration.

CITY OF CARSON
AFFIDAVIT OF NON-COLLUSION

The undersigned, as Proposer, declares that this proposal is made without collusion with any other person, firm or corporation and that the only person or parties interested are the principals as named herein. Having carefully examined the Request for Proposal for Workers' Compensation Defense Attorney, the Terms and Conditions, we do hereby propose and agree in event of acceptance hereof, to enter into the required agreement with the City of Carson.

Dated this 13th day of June 2017,

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

DABBAH | HADDAD, APC

By: _____
Gary Dean Dabbah, Esq.,
Managing Partner

FIRM RESUME & BIOGRAPHIES

STATE BAR NUMBERS

YEARS OF EXPERIENCE

- **Gary Dean Dabbah, Esq.** SBN: 128584.
  - Workers' Compensation Experience: 30 years.

- **Fareed M. Haddad, Esq.** SBN: 98101.
  - Workers' Compensation Experience: 36 years.

- **Munir D. Suleiman, Esq.** SBN: 280149.
  - Workers' Compensation Experience: 16 years. (*6 as attorney, 11 as hearing representative/paralegal*).

- **Michelle Lin, Esq.** SBN: 282678.
  - Workers' Compensation Experience: 5 years.

- **Joseph C. Esquibias-Engel, Esq.** SBN: 299395.
  - Workers' Compensation Experience: 3 years.

- **Vano Vladi, Esq.** SBN: 305262.
  - Workers' Compensation Experience: 2 years.

- **Jasjit S. Arora, Esq.** SBN: 311435.
  - Workers' Compensation Experience: 1 year.

- **Elias Aydin, Esq.** SBN 311438.
  - Workers' Compensation Experience: 1 year.

- **Sona Arakelyan, Esq.** SBN: 314697.
  - Workers' Compensation Experience: 1 year.

Biographies, including education and experience for each attorney, are enclosed.

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100 WEST BROADWAY, SUITE 990
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FAX: (626) 431-2941

INTRODUCTION

OUR ATTORNEYS OFFER EXTENSIVE EXPERIENCE IN THE DEFENSE OF CALIFORNIA WORKERS' COMPENSATION CLAIMS AND DISABILITY DISCRIMINATION RELATED ISSUES. WE HAVE REPRESENTED A MULTITUDE OF INSURANCE CARRIERS AND THIRD-PARTY ADMINISTRATORS AS WELL AS SELF-INSURED AND ADMINISTERED EMPLOYERS DOING BUSINESS IN SOUTHERN CALIFORNIA. ADDITIONALLY, MANY OF THE EMPLOYERS SERVICED OVER THE YEARS HAVE BEEN OF THE FORTUNE 500 VARIETY.

IN CREATING THE LAW OFFICES OF DABBAH & HADDAD, THE DESIRE WAS TO OFFER CLIENTS THE SPECIAL ATTENTION THAT CAN BE FOUND IN A SMALLER, MORE FOCUSED LAW OFFICE. THE MISSION STATEMENT IS SIMPLE: TO PROVIDE QUALITY SERVICES RENDERED IN A COURTEOUS AND TIMELY FASHION.

THE OFFICES ARE TECHNOLOGICALLY EQUIPPED TO PROVIDE CLIENTS WITH IMMEDIATE ANSWERS. THE STAFF IS DEDICATED AND CONSCIENTIOUS. THE LAW OFFICES OF DABBAH & HADDAD, SERVICE ALL WORKERS' COMPENSATION APPEALS BOARDS IN THE GREATER LOS ANGELES AND ORANGE COUNTY BASIN, AS WELL AS VENUES RANGING FROM SAN DIEGO TO SAN BERNARDINO, BAKERSFIELD TO POMONA, AND VENTURA TO GROVER BEACH.

AREAS OF PRACTICE

THE LAW OFFICES OF DABBAH & HADDAD, PROVIDE REPRESENTATION IN CLAIMS INVOLVING INDUSTRIAL INJURIES, DISABILITY DISCRIMINATION, AS WELL AS ALLEGED EMPLOYER MISCONDUCT.

FIRM FOCUS

- **COST MANAGEMENT:**

  WE UNDERSTAND THE IMPORTANCE OF COST CONTROL IN MANAGING WORKERS' COMPENSATION CASES. WE ARE COMMITTED TO THE MOST PRACTICAL, COST EFFECTIVE APPROACH TO CLAIMS RESOLUTION. EMPLOYERS/CARRIERS ARE ASSISTED IN MANAGING THE FINANCIAL IMPACT OF JOB-RELATED INJURIES THROUGH APPROPRIATE CLAIMS RESOLUTION AS WELL AS LOSS PREVENTION CONSULTATIONS.

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- **CLIENT RELATIONS:**

  WE OFFER IN-PERSON FILE REVIEWS AT THE REQUEST OF THE CLIENT. PERIODIC STATUS REPORTS AND TIMELY CLIENT CONTACTS ASSIST WITH PROMPT AND INFORMED DECISIONS. ADDITIONALLY, ELECTRONIC MAIL OPTIONS ARE OFFERED TO CLIENTS IN ORDER TO ENSURE IMMEDIATE ANSWERS. OUR SUPPORT STAFF IS EFFICIENT AND THE WORK PRODUCT, PROFESSIONAL AND ACCURATE.

- **EDUCATIONAL SEMINARS:**

  WE DO OFFER EDUCATIONAL DISCUSSIONS ON TROUBLESOME TOPICS OF WORKERS' COMPENSATION LAW, WHICH ASSISTS CLIENTS IN MAKING INFORMED DECISIONS.

- **SPECIAL APPEARANCES:**

  OCCASIONALLY, THE NEED MAY ARISE TO REFER CASES OUT FOR EITHER A ONE-TIME-ONLY APPEARANCE OR A LEGAL CONSULTATION. WE ARE EQUIPPED TO HANDLE BOTH NEEDS IN A PROMPT AND TIMELY FASHION.

- **TELEPHONIC CONSULTATIONS:**

  WE ENCOURAGE CLIENTS TO FEEL FREE TO CONTACT US FOR A LEGAL OPINION AND/OR ASSISTANCE ON MATTERS BEING HANDLED ON A STRICTLY IN-HOUSE BASIS.

- **CLAIMS INVOLVING SPECIAL INVESTIGATIVE UNIT (SIU):**

  OUR ATTORNEYS HAVE EXTENSIVE EXPERIENCE AND EXPERTISE IN DEFENDING AND UNDERSTANDING THE ISSUES OF CASES FALLING WITHIN THE SPECIAL INVESTIGATIVE UNIT (SIU). WE HAVE SUCCESSFULLY DEFENDED MANY CLAIMS IN THIS AREA AND ARE FULLY AWARE OF THE SPECIAL INQUIRIES ONE MUST UNDERTAKE TO ADEQUATELY DEFENSE THESE MATTERS.

GARY DEAN DABBAH

GARY DEAN DABBAH, FOUNDER OF DABBAH & HADDAD, APC, HAS FOCUSED HIS ENTIRE LEGAL CAREER ON WORKERS' COMPENSATION LAW AND RELATED EMPLOYMENT ISSUES. HE IS RECOGNIZED AS ONE OF THE LEADING ATTORNEYS IN HIS FIELD. ON MANY OCCASIONS, HE HAS PRESENTED TOPICS TO CLAIM DEPARTMENT HEADS AND EMPLOYERS RELATING TO DIFFICULT AND TROUBLESOME LEGAL ISSUES UNIQUE TO THIS FIELD. HE IS A MEMBER OF THE WORKERS' COMPENSATION DEFENSE ATTORNEYS ASSOCIATION.

MOST RECENTLY, GARY DEAN DABBAH WAS A PARTNER IN THE LAW FIRM OF SAMUELSEN, GONZALEZ, VALENZUELA & SORKOW. HE HAS THE DISTINCTION OF HAVING WON PARTNERSHIP WITHIN SIX MONTHS OF HIS EMPLOYMENT. THE FIRM SPECIALIZED IN WORKERS' COMPENSATION DEFENSE. MR. DABBAH'S MANAGEMENT OF CLAIMS INCLUDED TRIALS, LITIGATION, SETTLEMENT NEGOTIATIONS, DEPOSITIONS, AND ANALYSIS OF MEDICAL REPORTS AND RECORDS. HE HAD EXTENSIVE INTERACTION WITH SENIOR EXECUTIVE AND ASSOCIATE ATTORNEYS. HE EXHIBITED A STRONG FOCUS ON BUSINESS DEVELOPMENT WITH THE PRIMARY GOAL OF ENSURING AND MAINTAINING CLIENT SATISFACTION WITH WORK PRODUCT AND RELATED SERVICES.

FROM JULY OF 1987 THROUGH JUNE OF 1997, GARY DEAN DABBAH WAS AN ATTORNEY IN THE LAW FIRM OF ZONNI, GINOCCHIO AND TAYLOR. HE WAS NAMED PARTNER IN 1989 AND THEN TO THE FIRM'S BOARD OF DIRECTORS IN MARCH OF 1995. IN ADDITION TO HIS MANAGEMENT OF THE LEGAL DEFENSE, HIS RESPONSIBILITIES INCLUDED ALL ASPECTS OF HIRING AND SUPERVISING UP TO 50 ATTORNEYS AS WELL AS THE SUPPORT STAFF AND RELATED PERSONNEL. THE FIRM'S SPECIALTY WAS WORKERS' COMPENSATION DEFENSE.

MR. DABBAH RECEIVED HIS BACHELOR OF ARTS DEGREE FROM THE UNIVERSITY OF CALIFORNIA AT LOS ANGELES IN 1982. HE RECEIVED HIS JURIS DOCTOR FROM WHITTIER COLLEGE SCHOOL OF LAW IN DECEMBER OF 1986. IN THE SUMMER OF 1986, HE STUDIED INTERNATIONAL LAW AT CAMBRIDGE UNIVERSITY, ENGLAND. HE WORKED AS A STUDENT INTERN FOR THE LOS ANGELES DISTRICT ATTORNEY'S OFFICE, DOWNTOWN CRIMINAL COURTS DIVISION. HE WAS ADMITTED TO PRACTICE IN 1987.

MR. DABBAH IS ACTIVE IN FUNDRAISING FOR CHILDREN WITH SPECIAL NEEDS. HE IS ALSO AN ACTIVE MEMBER OF BOTH STATE AND FEDERAL EDUCATIONAL/SUPPORT GROUPS OF PARENTS OF EXCEPTIONAL CHILDREN. HE IS TRILINGUAL AND HAS TWO CHILDREN. HE ENJOYS MUSIC AND PRACTICING THE MARTIAL ARTS.

FAREED M. HADDAD

FAREED M. HADDAD HAS BEEN A WORKERS' COMPENSATION DEFENSE ATTORNEY SINCE 1981. JUDGES, COLLEAGUES AND PEERS HOLD HIM IN HIGH ESTEEM. MR. HADDAD MOST RECENTLY WAS A CO-MANAGING PARTNER AT THE LAW FIRM OF SAMUELSEN, GONZALEZ, VALENZUELA & SORKOW, WHERE HE WORKED FOR NINE YEARS, AND REPRESENTED VARIOUS INSURANCE CARRIERS, PUBLIC ENTITIES, AND SELF-INSURED EMPLOYERS. HE HANDLED A COMPLEX CASELOAD. HE WAS ALWAYS COGNIZANT OF THE IMPORTANCE OF EXPEDITIOUS, PROACTIVE AND PROFESSIONAL REPRESENTATION OF CLIENTS. WHILE ALWAYS REALIZING THAT A PROMPT RESOLUTION OF CASES WAS IMPORTANT, HE TOOK NUMEROUS CASES TO TRIAL, RESULTING IN FAVORABLE DECISIONS. IN A MEMORABLE CASE, HE RECEIVED A "TAKE NOTHING" JUDGMENT AFTER A 13-DAY TRIAL WHERE THE APPLICANT TURNED DOWN A SUBSTANTIAL SETTLEMENT OFFER. HE HAD ALWAYS AVAILED HIMSELF TO CASE HANDLERS, SUPERVISORS, CLAIMS MANAGERS AND EMPLOYERS TO PROVIDE LEGAL ADVICE OR TO GIVE FORMAL LECTURES.

MR. HADDAD WORKED AS HOUSE COUNCIL FOR FREMONT COMPENSATION INSURANCE COMPANY BETWEEN 1984 AND 1991. FOR THE LAST THREE YEARS AT FREMONT, HE WAS MANAGING ATTORNEY OF THE WORKERS' COMPENSATION AND SUBROGATION DEPARTMENTS. IN THAT CAPACITY, HE HANDLED A LARGE AND VARIED CASELOAD AND ALSO MANAGED NINE ATTORNEYS. HE INTERACTED WITH EMPLOYERS AND BROKERS ON A REGULAR BASIS. MR. HADDAD STARTED HIS EMPLOYMENT IN THIS FIELD AT THE STATE COMPENSATION INSURANCE FUND WHERE HE WORKED THREE YEARS, FIRST IN SACRAMENTO AND THEN IN LOS ANGELES. HE HAS REPRESENTED EMPLOYERS ON SERIOUS AND WILLFUL CLAIMS AS WELL AS THOSE PERTAINING TO DISCRIMINATORY CONDUCT UNDER LABOR CODE SECTION 132A. HE HAS SERVED AS A PRO TEM JUDGE IN THE LOS ANGELES, NORWALK, AND SANTA MONICA WORKERS' COMPENSATION APPEALS BOARDS.

FAREED M. HADDAD RECEIVED HIS BACHELOR OF ARTS DEGREE, SUMMA CUM LAUDE, AT CALIFORNIA STATE UNIVERSITY, FRESNO. HE RECEIVED HIS MASTERS DEGREE, WITH HONORS, AT THE UNIVERSITY OF CALIFORNIA, SANTA BARBARA, WHERE HE ALSO COMPLETED ALL COURSEWORK TOWARDS A PH.D., BEFORE GOING TO LAW SCHOOL IN 1977. MR. HADDAD RECEIVED HIS JURIS DOCTOR FROM THE UNIVERSITY OF PACIFIC, MCGEORGE SCHOOL OF LAW IN 1980 WHERE HE RANKED SECOND IN THE SCHOOL'S ORAL ARGUMENT COMPETITION. MR. HADDAD WAS ADMITTED TO PRACTICE IN CALIFORNIA IN 1981.

MR. HADDAD ENJOYS READING AND PLAYING CHESS, AND FOR THE LATTER OF THESE ACTIVITIES, HE HAS WON NUMEROUS TROPHIES. HE HAS BEEN MARRIED FOR MORE THAN 25 YEARS AND HAS TWO CHILDREN, WHO ARE ALSO FLOURISHING ACADEMICALLY.

MUNIR D. SULEIMAN

MUNIR D. SULEIMAN IS A PARTNER WITH THE LAW OFFICES OF DABBAH & HADDAD, APC. MR. SULEIMAN STARTED WITH DABBAH & HADDAD OVER A DECADE AGO, AS A TEENAGE MAILROOM CLERK. OVER THE YEARS, HE WORKED HIS WAY THROUGH THE RANKS, EVENTUALLY PROGRESSING TO HEARING REPRESENTATIVE AND PARALEGAL. WHILE WORKING FULL TIME, HE ATTENDED UCLA WHERE HE STUDIED PHILOSOPHY. HE CONTINUED TO WORK FULL TIME APPEARING AT THE WORKERS' COMPENSATION APPEALS BOARD DURING THE DAY AND ATTENDING GLENDALE UNIVERSITY COLLEGE OF LAW AT NIGHT. IN LAW SCHOOL, MR. SULEIMAN ALSO EXCELLED RECEIVING AWARDS IN SEVERAL SUBJECTS INCLUDING, LEGAL WRITING, PROFESSIONAL RESPONSIBILITY, CIVIL PROCEDURE, REAL PROPERTY, AND CONFLICTS OF LAWS. HIS SCHOLARSHIP RESULTED IN AN INVITATION TO JOIN THE SCHOOL'S LAW REVIEW COMMITTEE. MR. SULEIMAN GRADUATED LAW SCHOOL IN MAY, 2011, AND BECAME A MEMBER OF THE CALIFORNIA STATE AND CENTRAL DISTRICT FEDERAL BAR ON DECEMBER 1, 2011. THROUGHOUT HIS TENURE, MR. SULEIMAN HAS WORKED WITH INSURANCE CARRIERS, ADJUSTERS AND SELF-INSURED EMPLOYERS TO BRING ABOUT EFFICIENT RESOLUTIONS TO THEIR WORKERS' COMPENSATION CLAIMS. MR. SULEIMAN DEFENDS WORKERS' COMPENSATION CLAIMS AT ALL LEVELS OF REVIEW INCLUDING THE CALIFORNIA SUPREME COURT.

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MICHELLE EARNED HER BACHELOR OF ARTS DEGREE IN POLITICAL SCIENCE, WHILE MINORING IN FRENCH AND INTERNATIONAL STUDIES, FROM THE UNIVERSITY OF WASHINGTON. AS A DISTINGUISHED UNDERGRADUATE, MICHELLE WAS NOT ONLY A MEMBER OF THE PHI ETA SIGMA HONOR SOCIETY, BUT ALSO SELECTED TO THE DEAN'S HONOR LIST. THEREAFTER, MICHELLE COMPLETED HER JURIS DOCTOR DEGREE AT LOYOLA LAW SCHOOL LOS ANGELES, WHERE SHE SERVED AS A BOARD MEMBER ON PHI ALPHA DELTA, A PROFESSIONAL SERVICE ORGANIZATION. MICHELLE IS A MEMBER OF THE CALIFORNIA STATE BAR ASSOCIATION, AND IS ADMITTED TO PRACTICE BEFORE THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

MICHELLE CURRENTLY SITS ON THE COMMUNITY ADVISORY BOARD OF KCET, WHERE SHE ACTIVELY PARTAKES IN REPRESENTING THE VOICE OF BOTH THE TAIWANESE AND LEGAL COMMUNITIES. IN HER SPARE TIME SHE ENJOYS COOKING, PLAYING SCRABBLE, CYCLING AND TRAVELING. SHE SPEAKS TAIWANESE, CHINESE, AND CONVERSATIONAL FRENCH.

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ASSOCIATE ATTORNEY, JOSEPH ESQUIBIAS-ENGEL STARTED AS A PARALEGAL AT THE LAW OFFICES OF DABBAH & HADDAD, APC. IN NOVEMBER 2014, AND WAS ADMITTED TO THE CALIFORNIA STATE BAR AS A LICENSED ATTORNEY ON DECEMBER 1, 2014, THREE WEEKS BEFORE ADMITTANCE TO THE CALIFORNIA STATE BAR. MR. ESQUIBIAS-ENGEL WAS ADMITTED TO LAW SCHOOL IN 2011 WITH A SCHOLARSHIP FOR ACADEMIC MERIT AND PROFESSIONAL DEVELOPMENT. HE EXCELLED AT LEGAL WRITING, FAMILY LAW, CONSTITUTIONAL LAW, SERVED AS A DIRECTOR OF THE LOCAL FEDERALIST SOCIETY CHAPTER, AND WAS THE MANAGING EDITOR OF A DIGITAL LEGAL-NEWS AND LIFESTYLE MAGAZINE. AT THE LAW OFFICES OF DABBAH & HADDAD, MR. ESQUIBIAS-ENGEL TAKES A PARTICULAR INTEREST IN WORKING WITH INSURANCE ADJUSTERS AND EMPLOYERS TO SECURE SWIFT CONCLUSIONS IN WORKERS' COMPENSATION CASES.

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HAVING SPENT MOST OF HIS CHILDHOOD AND TEENAGE YEARS OUTSIDE OF UNITED STATES, MR. VLADI IS FLUENT IN ARMENIAN AND RUSSIAN. HE HAS ALSO DEVELOPED HIS TALENT IN THE FINE ARTS, HAVING RECEIVED EXTENSIVE TRAINING IN DRAWING, PAINTING AND SCULPTING SINCE THE AGE OF 6 UNTIL THE BEGINNING OF HIS UNDERGRADUATE CLASSES. HIS HOBBIES INCLUDE RUNNING, CARS, TRAVELLING, 3D VIDEO ANIMATION AND CHARACTER DESIGN.

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MR. AYDIN WAS BORN AND RAISED IN GERMANY AND MOVED TO GLENDALE, CALIFORNIA WITH HIS FAMILY AT THE AGE OF SEVEN. HE HAS LIVED IN GLENDALE, CALIFORNIA FOR 21 YEARS AND SPEAKS MULTIPLE LANGUAGES INCLUDING GERMAN AND ARAMAIC. SOME OF HIS MANY HOBBIES INCLUDE PLAYING BASKETBALL, RUNNING, SNOWBOARDING, READING, AND TRAVELING.

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WRITING SAMPLES

IN THE

Supreme Court

OF THE STATE OF CALIFORNIA

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION,

Petitioner,

vs.

WORKERS' COMPENSATION APPEALS BOARD, et al.,

Respondents.

PETITION FOR REVIEW

AFTER A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE
[2d Civil No. B263869]

LAW OFFICES OF DABBAH & HADDAD, APC

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PETITION FOR REVIEW

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Pursuant to California *Rules of Court, 8.500*, Care West Insurance Company respectfully petitions for review following the published decision of the Second Appellate District, Division One, filed March 22, 2016. A copy of the opinion authored by Justice Chaney, in which Presiding Justice Rothschild and Justice Johnson concurred, is attached as the Addendum to this Petition. Review is necessary to settle an important issue of law under *Rule of Court 8.500(b)(1)*.

I.

ISSUE PRESENTED

Did the court of appeal err in deciding that the California Insurance Guarantee Association ("CIGA") is relieved of liability despite a pre-insolvency final judgment specifically apportioning liability for the outstanding lien claims between the defendants?

II.

WHY REVIEW SHOULD BE GRANTED

The issue of pre-insolvency apportionment of liability and CIGA's liability for the same as a "covered claim" is one of state-wide importance. Apportionment of liability between defendants is a routine aspect of

workers' compensation litigation throughout the state, and is accomplished either by way of stipulation within the settlement documents or by way of arbitration pursuant to *Labor Code* section 5275. If the Court of Appeal decision remains in effect, the end result is the unraveling of both final-judgment stipulations and arbitration decisions apportioning liability between defendants. The Court of Appeal in reversing the Workers' Compensation Appeals Board calls into question not only the extent of joint and several liability in workers' compensation claims, but more importantly, the sanctity of final judgments and final arbitration decisions. The Court of Appeal decision is inapposite to the longstanding rule of apportionment between workers' compensation insurers in California (*Fireman's Fund Indem. Co. v. Ind. Acc. Com.* (1952) 39 Cal.2d 831, at 835; *City of Torrance v. Workers' Comp. Appeals Bd.* (1982) 32 Cal.3d 371; *California Union Ins. Co. v. Landmark Ins. Co.* (1983) 145 Cal.App.3d 462 at 478; Labor Code §5500.5) and this Court's criticism of joint and several characterization of liability once several insurers have been found liable to indemnify the insured for all or some portion of a continuing injury. (*Montrose Chemical Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645 at 681, fn. 19.)

Care West Insurance Company respectfully requests that this Petition for Review be granted.

III.

SUMMARY OF MATERIAL FACTS

The applicant filed two cumulative trauma claims alleging injury from December 15, 2006 through March 31, 2008, and March 15, 2009 through February 1, 2010.

Zurich, administered by Matrix, provided coverage for the first cumulative trauma injury. Care West, administered by Pegasus Risk Management, provided coverage for the period March 15, 2009 through August 31, 2009. Ullico, now in liquidation, administered by Patriot Risk Services, provided coverage for the period September 1, 2009 through February 1, 2010.

The cases were jointly settled by way of a $15,000.00 compromise & release on March 14, 2012.

The parties stipulated in paragraph eight of the March 14, 2012 compromise and release that Care West would pay $7,800.00 (52%) to the applicant and Patriot Risk Services, on behalf of Ullico, would pay $7,200.00, less attorney fees (48% for the second CT).

Zurich had coverage for the first cumulative trauma. Matrix paid $5000.00, with $2500.00 paid to Care West and $2500.00 paid to Ullico as and for full and final satisfaction of all claims for contribution and reimbursement. Nothing was paid by Matrix to the applicant.

Care West and Ullico further stipulated in paragraph 8 to share med-legal liability equally and treatment charges proportionally, with Care West having 52% and Patriot on behalf of Ullico having 48% liability for all outstanding treatment charges. These agreements were approved by the WCJ and no party contested the Judge's order.

Ullico became insolvent on May 30, 2013 and CIGA became responsible for administering Ullico's claims.

CIGA filed a petition for dismissal as party defendant on June 10, 2014 arguing it had no liability for the outstanding lien claims pursuant to *Insurance Code* section 1063.1, subdivision (c)(9), which prohibits CIGA from paying any "claim to the extent it is covered by any other insurance." CIGA argued that Care West was "other insurance" and 100 percent liable for any outstanding liens despite the stipulation between the parties apportioning liability.

Care West objected to CIGA's petition arguing that the apportionment of liability limited Care West's liability to 50 percent of any remaining medical-legal charges and 52 percent of any remaining medical treatment charges.

The workers' compensation judge ("WCJ") denied CIGA's petition finding that the 2012 approval of the compromise & release operated as a final judgment which was now binding on CIGA.

CIGA petitioned the Workers' Compensation Appeals Board ("Appeals Board") for reconsideration, arguing that even a final judgment against a then solvent insurer is subject to the exclusions provided by the Insurance Code. The WCJ recommended denial of the petition.

The Appeals Board denied reconsideration, holding "insurers are not jointly and severally liable where they have entered into a stipulation as to apportionment of liability between them."

The Court of Appeal summarily denied CIGA's writ petition, but this Court granted review and remanded the case to the Court of Appeal with directions to grant the petition. The Court of Appeal granted review and ordered the Appeals Board to answer the petition. The Appeals Board answered by stating that the approved compromise and release was a final judgment that may not be relitigated. The Appeals Board further stated there was no longer joint and several liability after the stipulation apportioning liability between the defendants became final.

The Court of Appeal annulled the Appeal's Board's order denying CIGA's petition for reconsideration holding that the judgment merely apportioned liability and did not change the joint and several nature of the now-apportioned liability.

IV.

ARGUMENT

A. The Court of Appeal ignored the several liability permitted by Labor Code section 5005.

As noted by the Appeals Board, the applicant is permitted to settle her right to future medical care by way of compromise and release. (*Price v. Workers' Comp. Appeals Bd.* (1992) 10 Cal.App.4th 959, 966.) A compromise and release agreement is a contract and its interpretation is governed by the same principles as those governing contracts. (*Burbank Studios v. Workers' Comp. Appeals Bd.* (*Yount*) (1982) 134 Cal.App.3d 929, 935.) All cumulative trauma compromise and release settlement agreements must comply with *Labor Code* section 5005, which provides, inter alia, as follows:

> "In any case involving a claim of...cumulative injury...the employee and any employer, or any insurance carrier for any employer, may enter into a compromise and release agreement settling either all or any part of the employee's claim, including a part of his claim against any employer. Such compromise and release agreement, upon approval by the appeals board or a referee, shall be a total release at to such employer or insurance carrier for the portion or portions of the claim released, but shall not constitute a bar to recovery from any one or all of the remaining employers or insurance

> carriers for the periods of exposure not so released.
>
> In any case where a compromise and release agreement of a portion of a claim has been made and approved, the employee may elect to proceed as provided in Section 5500.5 against any one or more of the remaining employers, or against an employer for that portion of his exposure not so release[.] [I]n any such proceeding after election following compromise and release, that portion of liability attributable to the portion or portions of the exposure so released shall be assessed and deducted from the liability of the remaining defendant or defendants[.] [However,] any such defendant shall receive no credit for any moneys paid by way of compromise and release in excess of the liability actually assessed against the released employments and the employee shall not receive any further benefits from the released employments for any liability assessed to them above what was paid by way of compromise and release."

Pursuant to Labor Code section 5005, the employee may settle her entire claim or portions of her claim with the various employers or insurance carriers. As this section allows for a partial settlement of exposure, as to the portion not settled, the applicant is free to pursue all rights against the insurer or employer who has not settled. If only a portion is settled by way of compromise and release, that settlement shall be "a **total release** as to such employer or insurance carrier for that portion or portions released." (*Ibid*). That being the case, then Labor Code section 5005 necessarily would allow for several liability.

Consistent with the foregoing, the party settling also has the power to determine its liability as to future issues that may arise post-settlement, such as administration of future medical care and the percentages of liability.

In the instant case, all three insurers wished to resolve the pending claims by way of compromise and release. Further, all participants stipulated to their respective liabilities to the applicant. After the insurers agreed to apportion their liability, there was no joint and several liability owed to the applicant.

This Court has refused to find joint and several liability where their individual liabilities have been set. (*Aerojet-General Corp v. Transport Indemnity Co.* (1997) 17 Cal.4th 38, 57, 948 P.2d 909, 919 at fn.10.) By way of analogy, in the instant case, liability had been set clearly and unambiguously by the parties to the settlement agreement.

B. Apportionment of liability has long been the rule in California.

In *Fireman's Fund Indem. Co. v. Industrial Acci. Co.* (1952) 39 Cal.2d 835, this Court noted that the finding of joint and several liability was correct "so far as the employee is concerned, was appropriate, however, once the employee's claim has been resolved, there is no longer joint and several liability, rather individual liability that must be apportioned by way of supplemental proceedings.

This Court made it quite clear that the finding of joint and several liability was appropriate as to the employee so as to simplify and expedite the litigation process, but not as between insurers that can allocate their respective liabilities in subsequent litigation. The legislature codified the process by which insurers may apportion their respective liabilities in *Labor Code* section 5500.5(e). Here, the parties bypassed the supplemental proceedings by agreeing to a specific apportionment of liability. Thus, there is no longer joint and several liability once the insurers stipulated to their respective liabilities and discharged their duties to the applicant.

C. The settlement agreement between the parties was a final judgment.

There was here a final compromise and release. The parties had apportioned their liability within this settlement agreement. An approved compromise and release is a final judgment. (Lab. Code sections 5000, 5001, 5002.) As the Appeals Board noted, "where the WCAB has issued a final decision determining division of liability for medical treatment, the decision may not be relitigated." (*State Farm General Insurance Co. v. Workers' Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258.) CIGA steps into the shoes of the insolvent carrier and must discharge "covered claims" pursuant to Insurance Code section 1063.1. The final decision in *Lutz* took place after CIGA became a party. The *Lutz* court found that CIGA must honor its own stipulations as to future medical care. By way of

analogy, CIGA must abide by the stipulation terms inherited from the previously-solvent carrier. Here, the final decision took place before CIGA became a party. Relitigation as to the parties' respective liabilities would undermine the finality of compromise and release settlements.

V.

CONCLUSION

The parties who settled the applicant's claims by way of a joint compromise and release had a reasonable expectation as to the finality of the terms, and the responsibilities outlined within the settlement documents, consistent with the mandates of *Labor Code* section 5005. As is the case with any compromise and release, the parties considered the expediency of settlement, and weighed the financial hazards of further litigation. This process forms the core root of any settlement and serves as a bedrock for defendants to have security that the decision to settle is justified. To allow for anything less would be to undermine the very foundation of arms-length negotiation. There was no mystery to the process in this case, everyone understood that to which they obligated themselves. CIGA steps into the shoes of the defunct carrier who at the time of solvency engaged in arms-length negotiation. The Court of Appeal decision undermines a long standing and effective practice, a methodology of claims resolution upon which all parties rely. The Court of Appeal decision, rather than upholding

settlement agreements negotiated with equal bargaining power opens potential floodgates for CIGA to probe all previous settlements with similar features, where they might not otherwise have had such inclination. Moreover, the Court of Appeal's decision serves as a reasonable deterrent to defendants in settling, as the decision implies that their agreements may not be honored. This, in turn, is contrary to the public policy of encouraging parties to early settlement without needlessly bogging down an already taxed court system. It is with all of the aforementioned in mind that the Court of Appeal decision should be vacated.

WHEREFORE, Care West Insurance Company respectfully requests that its Petition for Review be granted.

Dated: March 30, 2015.

Respectfully submitted,

DABBAH & HADDAD, APC

Gary Dean Dabbah, Esq.
Munir D. Suleiman, Esq.

By: _____
MUNIR D. SULEIMAN

Attorneys for Respondent
CARE WEST INSURANCE COMPANY

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d) of the California Rules of Court, the enclosed Petition for Review has been produced using 13-point type including footnotes and contains 2,237 words. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: March 30, 2016.

Respectfully Submitted,

DABBAH & HADDAD, APC

By: _____
MUNIR D. SULEIMAN

Attorneys for Respondent
CARE WEST INSURANCE COMPANY

ADDENDUM

Filed 3/22/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, Petitioner, v. WORKERS' COMPENSATION APPEALS BOARD et al., Respondents.	B263869 (W.C.A.B. Nos. ADJ7167413, ADJ7167333)

PROCEEDINGS to review a decision of the Workers' Compensation Appeals Board. Order annulled.

Guilford Sarvas & Carbonara, Frank E. Carbonara, Richard E. Guilford; Benthale, McKibbin & McKnight, Robert A. Mata for Petitioner.

Anne Schmitz, James T. Losee, Margaret W. Hosel for Respondent Workers' Compensation Appeals Board.

Two insurers, Care West Pegasus Modesto (Care West) and Ullico Casualty Company (Ullico), were jointly and severally liable for claims arising from an employee's workplace injury. In a compromise and release agreement, they settled the employee's claims and apportioned between themselves roughly 50/50 liability for any remaining third party charges.[1] When Ullico became insolvent and was liquidated, responsibility for third party claims against it was assumed by the California Insurance Guarantee Association (CIGA), which the Legislature established in 1969 to protect against loss to insureds "arising from the failure of an insolvent insurer to discharge its obligations under its insurance policies." (Ins. Code, §§ 119.5, 1063, et seq.; *Isaacson v. California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775, 784.)

CIGA moved to be dismissed from the instant workers' compensation cases on the ground that it was authorized to pay only "covered claims," from which the Legislature expressly excluded any "claim to the extent it is covered by any other insurance." (Ins. Code, §§ 1063.1, subd. (c)(9), 1063.2, subd. (a).) CIGA argued Care West's policy constituted "other insurance" that covered third party claims. The Workers' Compensation Appeals Board (the Appeals Board) denied CIGA's motion on the ground that the Care West/Ullico agreement limited Care West's liability to roughly half of any third party claims, thereby rendering Care West's insurance unavailable as to the remaining half.

CIGA petitioned for a writ of review, contending the CareWest/Ullico agreement did nothing to change the "several" nature of Care West's obligation, under which Care West was liable for 100 percent of the lien claims, with contribution rights against Ullico's estate, not CIGA. We summarily denied the petition, but the Supreme Court granted review and remanded the case to us with directions to hear the matter on the

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[1] In workers' compensation cases, insurers may settle an employee's personal claims before adjusting lienholder claims. (See Cal. Const., art. XIV, § 4 [injured employee entitled to resolution of compensation claims "expeditiously, inexpensively, and without incumbrance"].)

merits. We thereafter invited the Appeals Board to respond to CIGA's petition, which it has done.

We now conclude the Care West/Ullico compromise and release agreement did not relieve Care West of its several liability for third party claims. We therefore annul the Appeals Board's decision.

BACKGROUND

Rosa Lopez filed an application for workers' compensation benefits for a cumulative injury sustained while she was employed as a grocery clerk by Superior Center Concepts, which was insured during the period of injury under successive policies issued by Care West and Ullico.[2] Various medical providers filed lien claims in the action. On March 9, 2012, Lopez resolved her workers' compensation claim by entering into a compromise and release agreement with Care West and Ullico for $15,000. No lien claimant participated in the settlement.

In the compromise and release agreement the insurers stipulated they would "pay, adjust, or litigate all liens of record," would "share equally for liability for med-legal charges," and would allocate 52 percent of liability for the treatment charges to Care West and 48 percent to Ullico, "according to proof and with rights to contribution and reimbursement between the two being reserved." The settlement has been fully executed except as to third party lien claims.

On March 14, 2012, the workers' compensation administrative law judge (WCJ) approved the compromise and release, including the insurers' stipulation apportioning liability, and issued an award in Lopez's favor for $15,000.

Ullico became insolvent and was liquidated on May 30, 2013, after which CIGA assumed liability for its "covered claims" pursuant to Insurance Code section 1063.1.

On June 10, 2014, CIGA filed a petition for dismissal from the workers' compensation cases, arguing all lien claims were excluded from CIGA's mandate by

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[2] Lopez filed a second application for benefits for a different cumulative injury sustained when her employer was insured by Zurich Insurance. Zurich Insurance settled all claims relating to that injury and is not part of this appeal.

Insurance Code section 1063.1, subdivision (c)(9), which prohibits CIGA from paying any "claim to the extent it is covered by any other insurance." CIGA argued that because Care West was jointly and severally liable for claims arising from Lopez's injury, its policy constituted "other insurance" that covered 100 percent of any outstanding claims notwithstanding the insurers' compromise and release agreement apportioning liability.

Care West objected to CIGA's petition, arguing the insurers' apportionment of liability limited Care West's liability to 50 percent of any remaining legal-medical charges and 52 percent of any remaining medical charges. Therefore, Care West argued, CIGA was liable for 50 percent of any outstanding legal-medical charges and 48 percent of any outstanding medical lien claims.

The WCJ denied CIGA's petition, finding that its 2012 approval of the compromise and release agreement operated as a final judgment apportioning liability between the insurers and was now binding on CIGA as Ullico's successor.

CIGA petitioned for reconsideration from the Appeals Board, contending even a final judgment against an insolvent insurer is subject to the Insurance Code's exclusions from CIGA's "covered claims." The WCJ recommended denial of the petition.

The Appeals Board denied reconsideration, holding "insurers are not jointly and severally liable where they have entered into a stipulation as to apportionment of liability between them." "In essence," the Appeals Board held, "after the stipulation, liability [was] no longer joint and several, but [was] rather divided between the insurers in accordance with the stipulation," and "where the [Appeals Board] has issued a final decision determining apportionment of liability between insurers, the decision is *res judicata* and may not be re-litigated."

As noted, we summarily denied CIGA's subsequent writ petition, but the Supreme Court granted review and remanded the case to us with directions to grant the petition. We did so, and directed the Appeals Board to answer the petition. In its answer, the Appeals Board contends the approved compromise and release was a final judgment that may not be relitigated, and after entry of that judgment Care West's and Ullico's liability was no longer joint and several.

DISCUSSION

The facts are undisputed, as is most of the law. The issue is whether the insurers' agreement apportioning liability, and the WCJ's approval of that agreement, rendered the insurers' liability no longer joint and several. We conclude it did not.

Section 4 of article XIV of the California Constitution empowers the Legislature to "create[] and enforce a complete system of workers' compensation" by placing a liability on employers "to compensate . . . their workers for injury or disability . . . incurred or sustained . . . in the course of their employment, irrespective of the fault of any party." "A complete system of workers' compensation includes . . . full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury." (Cal. Const., art. XIV, § 4.) Labor Code section 4600 implements this direction by providing that an employer is liable for medical expenses that are "reasonably required to cure or relieve the injured worker from the effects of his or her injury." (Lab. Code, § 4600, subd. (a).)

The obligation imposed upon an employer by Labor Code section 4600 is joint and several. (*Buhlert Trucking v. Workers' Comp. Appeals Bd.* (1988) 199 Cal.App.3d 1530, 1534.) If two or more insurers provide workers' compensation coverage during the statutory period of liability for a cumulative injury, they are jointly and severally liable for claims arising from that injury. (Lab Code, § 5500.5, subd. (c); *Royal Globe Ins. Co. v. Industrial Accident Com.* (1965) 63 Cal.2d 60, 62, fn. 1; *Colonial Ins. Co. v. Industrial Accident Com.* (1946) 29 Cal.2d 79, 82; see *General Accident Ins. Co. v. Workers' Comp. Appeals Bd.* (*Loterstein*) (1996) 47 Cal.App.4th 1141, 1148.)

When two or more insurers are jointly and severally liable for workers' compensation benefits and one of them becomes insolvent, the policy issued by the solvent insurer constitutes "other insurance" for purposes of Insurance Code section 1063.1, subdivision (c)(9), which excludes the benefits from coverage by CIGA. (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (*Hernandez*) (2007) 153 Cal.App.4th 524, 537; *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (*Weitzman*) (2005) 128 Cal.App.4th 307, 317-318.)

Here, it is undisputed Care West and Ullico were jointly and severally liable for lien claims relating to Lopez's injury. Therefore, Care West's insurance constitutes "other insurance" for purposes of CIGA's mandated statutes, and lien claims relating to Lopez's injury cannot be covered claims.

The Appeals Board argues the insurers' apportionment of liability between themselves effectively terminated joint and several liability and converted each insurer's obligation to an individual one. The argument reflects a basic misunderstanding of the nature of "several" liability, which is not, strictly speaking, a rule of liability at all—it is a rule of joinder. As we will explain, several liability has nothing to do with, and cannot be changed by, apportionment of an obligation between promissors.

"At common law, when multiple parties promised the same performance, they were presumed to be jointly obligated absent a clear indication otherwise. [Citation.] Parties who are jointly liable are each responsible for their share of a total obligation. When enforcement was sought, the common law rule required that *all* jointly liable parties be joined in a single suit that would determine the total amount of their shared liability. [Citations.] This joinder requirement sometimes made enforcement difficult, if not impossible. [Citation.] [¶] California and nearly all other states have passed statutes to ameliorate the harshness of the common law's compulsory joinder rule. [Citation.] The typical solution was to convert 'joint' obligations into '"joint and several"' obligations. [Citation.] A joint and several contract is considered to be a contract that is made both separately with each promisor and jointly with all the promisors. [Citation.] Parties to a joint and several contract are thus bound jointly, so that they are liable for the entire obligation, and severally, so that each may be sued separately for the entire loss. [Citation.] The change to joint and several liability allowed individual promisors to be sued for enforcement of a contract without joining all copromisors." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 820.)

The several nature of an obligation is thus a policy-driven procedural rule intended to facilitate a claimant's recovery from multiple obligors. The rule contemplates that a promisee should not bear the burden of apportioning liability among promisors and

should recover on an obligation without undue hindrance. A copromisor who is jointly and severally liable with another but has been made to pay 100 percent of an obligation may seek contribution from the other promisor.

As discussed above, the rule of joint and several liability applies in the workers' compensation context, and serves the goal of resolving injured employees' claims "expeditiously, inexpensively, and without incumbrance." (Cal. Const., art. XIV, § 4.) "In any case involving a claim of . . . cumulative injury occurring as a result of more than one employment . . . , the employee making the claim . . . may elect to proceed against any one or more of the employers. Where such an election is made, the employee must successfully prove his or her claim against any one of the employers named, and any award which the appeals board shall issue awarding compensation benefits shall be a joint and several award as against any two or more employers who may be held liable for compensation benefits." (Lab. Code, § 5500.5, subd. (c).) This rule applies to workers' compensation insurers as well as employers. (*Loterstein*, *supra*, 47 Cal.App.4th at p. 1148.) An insurer that has been held liable for a workers' compensation award may then institute proceedings "for the purpose of determining an apportionment of liability or right of contribution." (Lab. Code, § 5500.5, subd. (e).) Copromisors may also, as was done here, apportion liability while settling the employee's claim but before paying third party claims. But determination of a promisor's share of a liability does nothing to change the several nature of it.

In sum, several liability in the workers' compensation context is a procedural right that promotes the public policy favoring expeditious and inexpensive resolution of workers' compensation claims by enabling a claimant to obtain compensation without having to join multiple co-obligors. The several liability scheme contemplates that co-obligors will apportion liability between themselves, a matter in which the worker and lien claimant have no interest. Whether that apportionment happens as part of litigation or settlement, or before or after payment of a claim, is of no moment to the worker or lien claimant and can have no effect on obligations owed them.

Here, Care West and Ullico understood their liability remained joint and several even after settlement and apportionment, as in the compromise and release agreement they stipulated to apportion liability "52% [Care West] and 48% [Ullico] according to proof *and with rights to contribution and reimbursement between the two being reserved.*" (Italics added.) The contribution and reimbursement provisions would have been meaningless in the absence of joint and several liability.

We agree with the Appeals Board that the compromise and release approved by the WCJ in 2012 was a judgment having the same force and effect as an award made after a hearing. (*Johnson v. Workers' Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 973; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Lutz*) (2013) 218 Cal.App.4th 258, 269; 2 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (rev. 2d ed.) § 29.04[4], pp. 29-30.) But the judgment merely apportioned liability; it did not change the joint and several nature of the now-apportioned liability.

DISPOSITION

The Appeals Board's order denying CIGA's petition for reconsideration is annulled and the matter is remanded to the Appeals Board with directions to enter an order dismissing CIGA from these proceedings. CIGA shall recover its costs in pursuing this petition.

TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

PROOF OF SERVICE BY MAIL

In Re: PETITION FOR REVIEW; No. . . . .
Caption: CIGA vs. W.C.A.B.\ Care West Insurance Company; Rosa Lopez
Filed: IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
(Constructively filed on this date pursuant to CRC R. 8.25(b)(3)(B).)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of or employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 200 Del Mar Blvd., Suite 216, Pasadena, California 91105. On this date, I served the persons interested in said action by placing one copy of the above-entitled document in sealed envelopes with first-class postage fully prepaid in the United States post office mailbox at Pasadena, California, addressed as follows:

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FOR: HON. JOSEPH BEWICK
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Care West Claims Unit
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I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on March 31, 2016, at Pasadena, California.

E. Gonzales

2d Civil No.
B263869

IN THE
Court of Appeal
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION,
Petitioner,
vs.
WORKERS' COMPENSATION APPEALS BOARD;
CARE WEST AND PEGASUS RISK MANAGEMENT;
SUPERIOR CENTER CONCEPTS INC.; and ROSA LOPEZ,
Respondents.

W.C.A.B. Nos. ADJ7167333; ADJ7167413

ANSWER TO PETITION FOR WRIT OF REVIEW

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE	Court of Appeal Case Number: B263869
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Munir D. Suleiman (SBN 280149) DABBAH & HADDAD, APC 100 W Broadway Ste 990 Glendale, CA 91210 TELEPHONE NO.: 626-431-2950 FAX NO. (Optional): E-MAIL ADDRESS (Optional): mds@dhapc.com ATTORNEY FOR (Name): CARE WEST INSURANCE COMPANY	Superior Court Case Number: ADJ7167413; 7167333
APPELLANT/PETITIONER: CIGA	FOR COURT USE ONLY
RESPONDENT/REAL PARTY IN INTEREST: CARE WEST	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): CARE WEST INSURANCE COMPANY

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest *(Explain):*
(1)		
(2)		
(3)		
(4)		
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 06/19/2015

Munir D. Suleiman ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, Petitioner, vs. WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, CARE WEST and PEGASUS RISK MANAGEMENT; SUPERIOR CENTER CONCEPTS, INC.; and ROSA LOPEZ, Respondents.	**2nd Civil No. B263869** WCAB CASE NUMBERS ADJ7167413; ADJ7167333 Honorable Joseph Bewick Workers' Compensation Judge

ANSWER TO PETITION FOR WRIT OF REVIEW

AND ARGUMENTS IN SUPPORT THEREOF

LAW OFFICES OF DABBAH & HADDAD, APC

MUNIR D. SULEIMAN, BAR NO. 280149

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Attorneys for Respondent
CARE WEST INSURANCE COMPANY

I.

ANSWER TO PETITION FOR WRIT OF REVIEW

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE:

Respondent, Care West Insurance Company ("Care West"), respectfully submits its opposition to the petition for writ of review ("Petition") filed by Petitioner, California Insurance Guarantee Association ("CIGA"), from the Opinion and Order Denying Petition for Reconsideration ("Opinion and Order") filed by the Workers' Compensation Appeals Board ("WCAB" or "Board") on March 24, 2015 (Pet. Exh. 1, 1)[1] in *Rosa Lopez vs. Superior Grocers*; *Patriot Risk; CIGA* (ADJ7167333; ADJ 7167413).

1.

Petitioner seeks review of the Board's Opinion and Order. Petitioner argues, essentially, that the board erred in finding CIGA responsible for 48% of the outstanding liens in the instant matter. Respondent, Care West, disputes all CIGA's allegations of error in support of its petition for writ of review.

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[1] Respondent Care West will refer to the record by reference to exhibits attached to the CIGA petition, including the exhibit number and sequential page numbers, unless otherwise specified.

2.

Ms. Lopez alleged two cumulative trauma injuries while working for her employer, Super Center Concepts DBA Superior Grocers. (Pet. Exh. 2, 5). The first cumulative trauma is alleged to have occurred during the period December 15, 2006 through March 31, 2008 (Pet. Exh. 4, 22). The second cumulative trauma is alleged to have occurred during the period March 15, 2009 through February 1, 2010 (Pet. Exh. 4, 21).

Zurich American Insurance provided coverage for the period December 13, 2006 through August 31, 2007 (Pet. Exh. 4, 23). Care West provided coverage for the period March 15, 2009 through August 31, 2009 (Pet. Exh. 4, 23). Ullico[2] administered by Patriot Risk Services, now insolvent, provided coverage for the period September 1, 2009 through March 15, 2010 (Pet. Exh. 4, 23). The parties settled both claims by way of a $15,000.00 Joint Compromise and Release on March 9, 2012 (Pet. Exh. 4, 19) before Ullico's insolvency.

3.

In paragraph eight of the Board approved compromise and release agreement, Ullico and Care West stipulated to the following relative to resolution of the liens:

---

[2] Ullico was declared insolvent on May 30, 2013.

"DEFENDANTS WILL PAY, ADJUST, OR LITIGATE ALL LIENS OF RECORD. CARE WEST AND PATRIOT WILL SHARE EQUALLY FOR LIABILITY FOR MED-LEGAL CHARGES. *LIABILITY FOR THE TREATMENT CHARGES* WILL BE 52% CARE WEST AND 48% TO PATRIOT ACCORDING TO PROOF WITH RIGHTS TO CONTRIBUTION AND REIMBURSEMENT BETWEEN THE TWO BEING RESERVED." (Pet. Exh. 4, 23. Italics supplied)

The applicant was paid in accordance with the compromise and release agreement.

4.

CIGA petitioned for dismissal as a party Defendant on May 16, 2014 (Pet. Exh. 7). Care West objected to CIGA's petition for dismissal on June 12, 2014 (Pet. Exh. 8). The matter was set for trial.

5.

At trial, Care West argued that CIGA is not relieved of liability where there has been a final apportionment of liability in an approved compromise and release[3] (Pet. Exh. 2, 6). On January 2, 2015, the Workers Compensation Judge ("WCJ") found the stipulation relative to lien liability binding on CIGA, and that none of CIGA's arguments overcame the en banc WCAB decision in *Gomez*.

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[3] *Gomez v. Casa Sandoval* et al. (2003) 68 Cal. Comp. Cases 753 *consolidated* with *Nokes v. Placer Savings Bank, et al.* (en banc)

6.

CIGA filed a petition for reconsideration (Pet. Exh. 5, 28) arguing that Care West constituted "other insurance" pursuant to *Insurance Code §10631* and that they were not bound by the pre-liquidation agreement. Care West timely Answered the Petition for Reconsideration (Pet. Exh. 9, 98), arguing that CIGA is not relieved of liability , and that *Gomez* remains the law relative to the issue presented by this claim.

7.

On February 6, 2015, the WCJ issued his Report and Recommendation on Petition for Reconsideration (Pet. Exh. 10, 106) in which the WCJ recommended the Board deny CIGA's petition for reconsideration.

8.

On March 24, 2015, the WCAB issued its Opinion and Order (Pet. Exh. 1) in which the Board denied CIGA's petition for reconsideration. The WCAB concluded that insurers are not jointly and severally liable where they previously entered into a stipulation apportioning liability between them. The WCAB further concluded that where there has been a final approved pre-liquidation agreement between the insurers, the decision is

res judicata and may not be relitigated[4]. (Pet. Exh. 1, 2). The WCAB concluded that after the stipulation, liability is no longer joint and several, but is rather divided between the insurers in accordance with the stipulation. (Pet. Exh. 1, 3). The Board denied CIGA's petition for reconsideration. (Pet. Exh. 1, 4)

9.

The WCAB's Opinion and Order is legally correct. The board complied with its judicial duty and correctly applied the law to the facts. Petitioner has failed to establish any reversible error. Petitioner has further failed to establish any grounds for review as specified by *Labor Code §5952.*

10.

Care West's arguments are made part of this Answer.

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[4] *State Farm General Insurance Co. v. Workers Comp. Appeals Bd. (Lutz)* (2013) 218 Cal. App. 4th 258 [78 Cal.Comp.Cases. 758].

WHEREFORE, Respondent Care West prays that CIGA's petition for writ of review be denied; that respondent recover costs in connection with this writ proceeding; and for such other and further relief as may be appropriate and just.

DATED: June 19, 2015.

Respectfully submitted,

DABBAH & HADDAD
A Professional Corporation

BY: _____
MUNIR D. SULEIMAN
Attorneys for Respondent
Care West Insurance Company

II.

VERIFICATION

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Under penalty of perjury, I declare the truth of the following:

- The foregoing is true and correct of my own personal knowledge, except for those matters stated therein on information and belief;
- That the matters so stated are believed by me to be true and correct; and
- That I make this verification because the facts set forth in said document are within my knowledge and because, as attorney for the respondent herein, I am more familiar with such facts than are the officers of Care West Insurance Company.

DATED: June 19, 2015 in Glendale, California.

DABBAH & HADDAD
A Professional Corporation

BY: _____
MUNIR D. SULEIMAN

Attorneys for Respondent
Care West Insurance Company

III.

CARE WEST'S STATEMENT OF THE ISSUE

Whether the WCAB correctly found CIGA liable for 48% of the outstanding liens in accordance with the pre-liquidation apportionment of liability made final by way of the March 14, 2012 Order Approving Compromise & Release?

IV.

STATEMENT OF FACTS

Care West adopts and incorporates the statement of facts and procedural history set forth in CIGA's Petition for Writ of Review, except for petitioner's argumentative statements therein.

Care West now answers CIGA's petition for writ of review.

V.

WHY REVIEW SHOULD BE DENIED

In the instant matter, the WCJ found CIGA liable for 48% of the outstanding liens pursuant to the pre-liquidation stipulation of liability made final by way of the March 14, 2012 Order Approving Compromise & Release. The WCJ recommended denial of CIGA's petition for reconsideration. The WCAB panel unanimously denied CIGA's petition for reconsideration. The WCAB correctly decided the issues presented by this claim. CIGA's challenge of the Board's proper finding of fact rests upon an

argument of joint and several liability and inapplicable decisional authorities.

The WCJ and the WCAB have already founds CIGA's arguments meritless. The Board correctly concluded that there is no joint and several liability where there has been a pre-liquidation apportionment of liability. The WCAB further correctly found *Weitzman*[5] inapplicable to the instant matter.

CIGA has failed to establish any reversible error. CIGA's contentions are incorrect. CIGA's petition for writ of review should be denied.

VI.

ARGUMENT

A. Insurers that stipulate to their proportional liability are not jointly and severally liable for compensation.

The Merriam-Webster definition of "apportion" *means to divide and share out according to a plan.* Labor Code §5500.5(e) sets forth the plan by which insurers may apply to apportion their share of liability. Specifically, Labor Code §5500.5(e) sets forth a one-year statute of limitations within which a party may petition the WCAB for the purpose of determining

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[5] *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Weitzman)* (2005) 128 Cal.App.4th 307

apportionment of liability. There is nothing within the Labor Code that prohibits the parties from stipulating to an apportionment of their respective liability. Indeed, it is a common practice amongst insurers to agree to a specific apportionment of liability in an effort to streamline the settlement and claim management process. In other words, when the parties stipulate to their share of the Labor Code §5500.5 liability period, proceedings pursuant to Labor Code §5500.5(e) become unnecessary.

If there is no apportionment of liability, the insurers remain jointly and several liable[6]. The plain meaning of "apportion" is to *divide and share out according to a plan.* In this case, the parties divided their liability with Care West stipulating to 52% and Ullico stipulating to 48% liability for the remaining outstanding liens. Thus, there can be no joint and several liability where there has been a final apportionment of liability between the carriers.

B. The lien claims are claims for payment of "compensation."

Care West agrees that the lien claims are claims for payment of "compensation" pursuant to Labor Code §§ 3600, 3207, 4600 and 4621[7]. The question here is to what extent each party owes such "compensation"?

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[6] *Palo Verde Unified School Dist. v. Workers' Compensation Appeals Board (Friel)*, 76 Cal. Comp. Cases 48, 50 2010.

[7] *Avalon Bay Foods v. Workers' Comp. Appeals Bd.* (1998) 18 Cal. 4th 1665, 1173, fn. 3

As set forth above, there is no joint and several liability where there has been a final apportionment of liability. Care West contends, therefore, that each party must pay the lien claims pursuant, and in proportion, to the stipulation of liability made final by way of the March 14, 2012 Order Approving Compromise & Release.

C. Care West is not "other insurance" because Care West is not jointly and severally liable pursuant to Labor Code §5500.5

CIGA's argument is that Care West is jointly and severally liable for the benefits owed to the applicant. Based on this argument, CIGA contends that Care West is "other insurance" and it is, therefore, relieved of liability. This is a logical fallacy. As set forth above, Care West is not jointly and severally liable because the parties stipulated to their respective shares of liability. The apportioned liability must be treated as a "covered claim" because there is no "other insurance" for the specific portion of liability that has been reduced to judgment.[8]

If Ullico was solvent, there would be no joint and several argument. Each party would pay the liens in proportion to the approved stipulation and the claim would be closed. Here, CIGA must treat the 48% of the

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[8] *Gomez v. Casa Sandoval* et al. (2003) 68 Cal. Comp. Cases 753 *consolidated* with *Nokes v. Placer Savings Bank, et al.* (en banc)

outstanding liens stipulated to as a "covered claim" because there is no "other insurance" available.

CIGA is bound by the stipulation in paragraph 8 of the March 14, 2012 Compromise & Release. Where apportionment of liability has been established by a prior approved Compromise & Release involving a single cumulative trauma injury, CIGA is not relieved of liability[9].

D. The decisional authorities, *Allen* and *Lutz*, were correctly cited by the Board in its opinion and Order.

The policy considerations laid out in *Allen*[10] and *Lutz*[11] were properly cited by the WCAB. The Workers' Compensation system must be expeditious and inexpensive[12]. Settlements must be encouraged[13]. The importance of there being an end to litigation and a finality to judgments are of great significance[14]. The current litigation is neither expeditious nor

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[9] *Ibid.*

[10] *Fireman's Fund Insurance Co. v. Workers' Comp. Appeals Bd. (Allen)* 2010 181 Cal. App. 4th 752

[11] *State Farm General Insurance Co. v. Workers Comp. Appeals Bd. (Lutz)* (2013) 218 Cal. App. 4th.

[12] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*

inexpensive. The WCAB properly cited the above decisions to articulate the importance of the finality of the stipulation and the public policy considerations put in place to ensure a predictable, expeditious and inexpensive Workers' Compensation system, even when dealing with CIGA.

E. The WCJ properly relied on the Board's *Gomez/Nokes* en banc decision.

CIGA cites *Weitzman*[15] as "discrediting" *Gomez/Nokes*[16]. *Weitzman* held that *Gomez/Nokes* was incorrectly decided relative to a finding of apportionment of liability and right of contribution *after* CIGA had been joined as a party to the litigation. This is factually distinguishable from the present matter.

In *Weitzman*, CIGA entered an appearance on behalf of CalComp in 2000, and on behalf of Legion on April 25, 2003. The WCAB issued its Findings and Award and Order granting the petition to reopen on October

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[15] *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Weitzman)* (2005) 128 Cal.App.4th 307

[16] *Gomez v. Casa Sandoval* et al. (2003) 68 Cal. Comp. Cases 753 *consolidated* with *Nokes v. Placer Savings Bank, et al.* (en banc)

3, 2003. Therefore, CIGA was a party in interest before the WCAB issued its Findings and Award.

This is substantially different from the instant matter. Here, the Order Approving C&R issued March 14, 2012, which was more than a year before Ullico's insolvency. Therefore, CIGA was not a party in interest at the time the WCAB issued the Order Approving. More, the Order incorporated stipulations that apportioned liability between Ullico and Care West. This, again, is factually distinguishable from the *Weitzman* matter, wherein no such stipulations were made.

Therefore, *Weitzman* did not discredit *Gomez/Nokes* relative to the issues presented herein. Rather, we have a situation wherein *Gomez/Nokes* is clearly applicable. In this case, there is a final Order apportioning liability before Ullico's insolvency. Thus, CIGA must treat their portion of the liability as a "covered claim."

VII.

CONCLUSION

The WCAB and WCJ correctly concluded that CIGA must pay 48% of the outstanding liens pursuant to the final pre-liquidation stipulation between insurers. The WCAB properly denied CIGA's petition for reconsideration. CIGA must treat the 48% lien liability as a "covered claim."

The WCAB decision is correct. CIGA's arguments fail to properly interpret Labor Code §5500.5 and the controlling decisional authorities. CIGA's arguments do not establish reversible error by the WCAB. The petition for writ of review must be denied.

WHEREFORE, Care West prays that the petition for writ of review be denied and for all other relief this Court deems just and proper.

DATED: June 19, 2015.

Respectfully submitted,

DABBAH & HADDAD
A Professional Corporation

BY: _____
MUNIR D. SULEIMAN
Attorneys for Respondent
Care West Insurance Company

VIII.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to the California Rules of Court, the enclosed Answer to Petition for Writ of Review was produced using 13-point type including footnotes and contains 2,617 words. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: June 19, 2015.

DABBAH & HADDAD
A Professional Corporation

BY: _____
MUNIR D. SULEIMAN
Attorneys for Respondent
Care West Insurance Company

PROOF OF SERVICE BY MAIL

In Re: ANSWER TO PETITION FOR WRIT OF REVIEW; 2d Civil No. B263869
Caption: CIGA vs. W.C.A.B.\ Care West and Pegasus Risk Management; Rosa Lopez
Filed: IN THE COURT OF APPEAL, Second Appellate District, Division 1
(Dispatched by courier for filing on this date.)

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of or employed in the County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 200 Del Mar Blvd., Suite 216, Pasadena, California 91105. On this date, I served the persons interested in said action by placing one copy of the above-entitled document in sealed envelopes with first-class postage fully prepaid in the United States post office mailbox at Pasadena, California, addressed as follows:

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WORKERS' COMP. APPEALS BOARD
FOR: HON. JOSEPH BEWICK
320 W 4th Street, 9th Floor
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Care West Claims Unit
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ATTN: TERRA LAMBERT
PO Box 5038
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WORKERS' COMP. APPEALS BOARD
ATTN: WRIT SECRETARY
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I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed on June 19, 2015, at Pasadena, California.

E. Gonzales

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): GARY DEAN DABBAH (SBN 128584) DABBAH & HADDAD, APC 100 W. BROADWAY STE 990 GLENDALE, CA 91210 TELEPHONE NO.: 626-431-2950 FAX NO. (Optional): 626-431-2941 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): SAFETY NATIONAL INSURANCE CO.	Superior Court Case Number: ADJ3921694 FOR COURT USE ONLY
APPELLANT/PETITIONER: SAFETY NATIONAL INSURANCE CO. RESPONDENT/REAL PARTY IN INTEREST: WCAB; AV HOSPITAL/ALPHA FND	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): SAFETY NATIONAL INSURANCE CO.

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest (*Explain*):
(1)		
(2)		
(3)		
(4)		
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: APRIL 6, 2016

GARY DEAN DABBAH ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2009]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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EXHIBIT 3 **94**

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IN THE
COURT OF APPEAL
OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

SAFETY NATIONAL INSURANCE COMPANY, Petitioner, vs. WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, and ANTELOPE VALLEY HOSPITAL, psi, Administered by ALPHA FUND, LORI RUSSELL, Respondents.	WCAB No. ADJ3921694 Gilbert Katen, WCJ Retired Arbitrator

PETITION FOR WRIT OF REVIEW

To the Honorable Presiding Justice and the Honorable Associate Justices of the Court of Appeal of the State of California, Second Appellate District, from petitioner Safety National Insurance Company, one of the Workers' Compensation insurers for the employer herein, Antelope Valley Hospital:

Petitioner files this verified and timely petition under *Labor Code* Section 5950. Petitioner respectfully requests this Honorable Court to grant a Writ of Review from the Opinion and Order Denying Reconsideration issued by the Workers' Compensation Appeals Board ("Appeals Board") on February 23, 2016. Petitioner alleges:

I

Petitioner, Safety National Insurance Company ("SNIC") was at relevant times one of the workers' compensation insurance carriers for the employer herein, Antelope Valley Hospital. SNIC headquarters is located in St. Louis, Missouri. SNIC's third party administrator, Intercare Holdings Insurance Services, Inc. ("Intercare"), is located in Glendale, California, which is in Los Angeles County. The underlying claim was filed with the Van Nuys Workers' Compensation Appeal's Board. All counsel for the parties have their respective offices in Los Angeles County. The petitioner "resides" within the Second Appellate District for purposes of seeking a Writ of Review pursuant to *Labor Code* section 5950.

II

Additional material facts and the procedural history are set forth in the accompanying Points and Authorities.

III

Under *Labor Code* section 5952, petitioner requests this Court to issue a Writ of Review on the following grounds:

- The WCAB acted without or in excess of its powers;
- The WCAB's Order Denying the Petition for Reconsideration was unreasonable;
- The WCAB's Order Denying the Petition for Reconsideration is not supported by substantial evidence.
- The Findings of Fact do not support the order, decision, or award under review.

IV

Petitioner believes that the central questions raised by this petition are questions of law.

V

The enclosed points and authorities are made part of this petition by reference.

VI

This petition has been filed within the statutory period of 45 days after filing of the WCAB's decision. The 45th day from the WCAB's Order Granting Reconsideration is Friday, April 8, 2016.

VII

Petitioner has no right to appeal from the WCAB's decision and has no plain, speedy, or adequate remedy other than by Writ of Review.

VIII

The parties interested and whose rights this petition would affect are petitioner and the named respondents. Petitioner and the named respondents are all of the relevant parties to the proceeding. The injured worker's rights are not affected by this petition and she is not, therefore, named herein.

IX

The documents listed in the Table of Contents are hereby referred to and incorporated by reference as though set forth at length herein.

PRAYER

Wherefore, petitioner respectfully prays that:

- A Writ of Review issue from this Court to the WCAB, commanding it to fully certify to this Court, at a specified time and place, the records and proceedings in this case, so that this Court may inquire into them and determine the lawfulness of the Order Denying Reconsideration dated April 23, 2016.
- The records and proceeding in this case be fully heard and considered by this Court and that the Order Denying Reconsideration dated April 23, 2016 be annulled, vacated, and set aside; and
- Petitioner be granted such other and further relief as is appropriate and just.

DATED: April 6, 2016.

DABBAH & HADDAD
A Professional Corporation

BY: _____
GARY DEAN DABBAH
Attorneys for Petitioner
SAFETY NATIONAL INSURANCE Co.

VERIFICATION

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

Under penalty of perjury, I declare the truth of the following:

- The foregoing is true and correct of my own personal knowledge, except for those matters stated therein on information and belief;
- That the matters so stated are believed by me to be true and correct; and,
- That I make this verification because the facts set forth in said document are within my knowledge and because, as attorney for the petitioner herein, I am more familiar with such facts than are the officers of Safety National Insurance Company.

DATED: April 6, 2016 in Glendale, California.

DABBAH & HADDAD
A Professional Corporation

BY: 
GARY DEAN DABBAH
Attorneys for Petitioner
SAFETY NATIONAL INSURANCE Co.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This case merits the Court's attention.

This case presents questions of law concerning the obligation and duty of the trial judge to conform the pleadings to the evidence and abide by the anti-merger statutes. SNIC avers that the Appeals Board erred in finding that there existed only one date of injury, and that SNIC was solely liable in this case.

QUESTIONS PRESENTED

1. Did the Appeals Board err in failing to develop the record?

2. Did the Appeals Board err in finding a single cumulative trauma injury?

3. Did the Appeals Board err in failing to consider the anti-merger provisions of *Labor Code* section 3208.2?

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The applicant, Lori Russell, worked as a nurse manager for Antelope Valley Hospital located in Lancaster California. The injury filed by the claimant was pled as a specific injury of November 27, 2000. Later, the injury was amended to a cumulative trauma to the lumbar spine.

Antelope Valley Hospital was insured for workers' compensation purposes by SNIC and administered by Intercare from September 1, 2000 through September 1, 2001, and became permissibly self insured, and administered by Alpha Fund, it's third-party administrator from September 1, 2002 onward.

In his report of November 7, 2001, Doctor Lameer, applicant's primary treating physician, declared the applicant **permanent and stationary** regarding the injury of November 27, 2000 (Exhibit 1, page 6). He referenced that the applicant returned to her usual and customary occupation. He did not cite any work restrictions. He did not recite any permanent disability either.

In his report of October 13, 2009, the agreed medical examiner ("AME"), Dr. Sohn, noted how the applicant lost no time from work until March 23, 2001 and remained off-work until April 16, 2001 (Exhibit 2, page 11). He further noted she returned to full duty on May 21, 2001 (Exhibit 2, page 11).

The next time she received treatment was November 11, 2002 per the reporting of Dr. Lameer (Exhibit 3, page 20).

In his report of September 22, 2003, Dr. Mouradian, consulting orthopedic surgeon, stated the applicant did not fit the profile for a spinal fusion owing to the relative lack of objective disability (she continued to work at a high level as a hospital administrator) (Exhibit 4, page 22).

Dr. Lameer, once again, declared the applicant permanent and stationary on March 25, 2004, with limitation to sedentary occupation (Exhibit 5, pages 25-26).

Dr. Mouradian reevaluated the applicant on October 10, 2006 (Exhibit 6, page 27). He noted Dr. Lameer declared the applicant permanent and stationary in March, 2004. He noted further, she was still symptomatic but doing fairly well. Moreover, she continued to do well until May or June of 2006, at which time she noticed worsening pain in the low back and numbness and swelling in her left lower extremity (Exhibit 6, page 28).

Dr. Lameer offered an April 11, 2007 report noting the applicant is now progressively getting worse (Exhibit 7, page 34). She is unable to perform her regular duties and has trouble with activities of daily living. He indicated she will require surgery.

Dr. Mouradian submitted a May 7, 2008 report noting the applicant did not receive authorization for surgery and had been off-work the prior 18 months and was receiving treatment from Dr. Lameer (Exhibit 8, page 39). He indicated the applicant was still temporarily totally disabled (Exhibit 8, page 40).

Applicant underwent lumbar spine surgery at St. John's Health Center through Dr. Regan on February 26, 2010 (Exhibit 9, page 41).

The scope of the applicant's injury expands per the report of Moses J. Fallas, M.D. dated May 13, 2011, as she suffered an incisional hernia from her spinal access during the spinal fusion surgery (Exhibit 10, page 43).

Ultimately, on October 30, 2013, the applicant settled her claim by way of Stipulations with Request for Award for 62% permanent disability (Exhibit 11, page 44). The Stipulations with Request for Award indicate the injury was a cumulative trauma for the timeframe of 05/18/87 through 02/28/07 (Exhibit 11, page 48). Both defendants participated in the settlement. Responsibilities between the defendants were outlined in paragraph 9 of the Stipulated Award, indicating amongst other things, that defendant Intercare would continue to administer medical benefits subject to the right of contribution against Alpha Fund/Antelope Valley Hospital (Exhibit 11, page 50).

The settlement also indicated a dispute existed as to the date of injury pursuant to *Labor Code* section 5412, and both defendants reserved their rights to seek contribution and arbitrate the date of injury (Exhibit 11, page 50).

SNIC/Intercare filed a petition for contribution from Antelope Valley Hospital/Alpha Fund. Conversely, Antelope Valley Hospital/Alpha Fund filed a petition for contribution from SNIC/Intercare.

The defendants proceeded to arbitration on December 4, 2015, before retired Workers' Compensation Judge Gilbert Katen. The arbitrator found, amongst other things, the date of injury to be March 24, 2001. He based this upon *Labor Code* section 5412, which determines the date of injury as the concurrence of disability and knowledge (Exhibit 12, page 55). The arbitrator denied SNIC's petition for contribution and granted Antelope Valley Hospital's $56,749.25 petition for contribution (Exhibit 12, page 59).

SNIC filed a Petition for Reconsideration on December 31, 2015 (Exhibit 13, page 61). The Worker's Compensation Appeals Board issued an order Denying Petition for Reconsideration on February 23, 2016 (Exhibit 14, page 70). The Appeals Board incorporated the arbitrator's report and Recommendation on Petition for Reconsideration (Exhibit 15, page 71). Defendant, SNIC/Intercare seeks relief from the order Denying Petition for Reconsideration.

ARGUMENT

I. The Appeals Board is not limited by the pleadings of the parties.

The parties entered into Stipulations with Request for Award leaving the determination of the date of injury to the trier of fact. The issue of how many cumulative trauma injuries an applicant has suffered is a question of fact for the WCAB. (*Aetna Casualty & Surety Co. v. Workmen's Comp.*

Appeals Bd. (1973) 35 Cal.App.3d 329, 341 ("*Coltharp*"). The Appeals Board, therefore, is not bound by the alleged pleadings. The Appeals Board may further develop the record where there is a complete absence of, or insufficient medical evidence, relative to an issue (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122). The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp.* 26 Appeals Bd. (2000) 79 Cal.App.4th 396, 403.) In accordance with that mandate, "it is well established that the WCJ or the Board may not leave matters undeveloped" within its specialized knowledge (*Id.* at p., 404).

The fact there is only one claim form does not absolve the trier of fact from developing the record. It was error of the Appeals Board to adopt the Arbitrator's Recommendation on Reconsideration wherein he notes the parties changed the date of injury from that of a specific to a cumulative trauma injury.

Petitioner contends the commentary is clearly not responsive to that which was required to be developed and the arbitrator's decision implies a belief that somehow he was shackled and limited by the bare pleadings, and that the inherent confinement prevented and/or absolved him of his duties to develop the record. The facts do not support the arbitrator's decision that there was only a single cumulative trauma injury.

The Appeals Board further demonstrates the deferential tone to that which was proffered by the parties in the following excerpt: "If SNIC or the workers' very capable counsel actually believed there were two different injuries at play, then one of them could have filed an Application and a Claim Form for the perceived additional injury. Such an Application would have given the board jurisdiction under *Labor Code* section 5500 to find such an injury, if there were evidence to support it." (Exhibit 15, page 75). Here again, this is a misperception of the court's role, assuming it was powerless to interpret the facts in any way other than to confine itself to the notion of one single cumulative trauma. Further, the comment that more than one pleading could have been filed also stems from a misunderstanding of the practical realities of this case. Namely, neither side would have had a motivation to do so. In the case of the applicant, a finding of one date of injury is more lucrative than having the award parsed out over two or more claims per *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535. Insofar as Petitioner is concerned, it had a reasonable expectation that the cumulative trauma would have been through the last date of employment in accordance with the AME opinion and the dictates of *Labor Code* section 5500.5.

In any event, for the Appeals Board to speculate as to what might have been the thought process of the parties to this claim is clearly irrelevant and should not absolve it of its duty to take the facts and decide

them in accordance to what the record actually shows, and to develop the record in accordance with those facts, correctly applying the law.

The Appeals Board claimed to lack jurisdiction per *Labor Code* section 5500; however, that specific statute does not detail jurisdictional limitations.

The Court of Appeal in *Coltharp* (*Ibid*), did not limit itself to the pleadings. To the contrary, it found two cumulative traumas. Thus, the Appeals Board is incorrect to conclude that it was without jurisdiction to find more than one date of injury.

II. The facts support a finding of three cumulative trauma injuries.

Applicant's entire period of employment by Antelope Valley Hospital was 1987 through March 1, 2007. The applicant sustained industrial injury to the lumbar spine on a cumulative trauma basis, during some part or parts of that period of employment. Applicant was on temporary total disability for the period March 24, 2001 through April 15, 2001, when she returned to work 4 hours per day until May 21, 2001 (Exhibit 2, page 11). At that point, she returned to regular duties (Exhibit 2, page 11). On November 7, 2001, applicant's primary treating physician declared her permanent and stationary and released her to full duty without restrictions (Exhibit 1, page 6). Thereafter, the Applicant did not treat for a period of one year. Applicant performed her regular job duties as a hospital administrator until

given sedentary work limitations by Dr. Lameer on March 25, 2004. Applicant worked with this sedentary work restriction until her last day of work on March 1, 2007.

Labor Code section 3208.1 provides that a cumulative trauma industrial injury occurs whenever the repetitive physically traumatic (or repetitive mentally traumatic) activities of the employee's occupation cause any disability and/or need for medical treatment. Section 3208.1 further provides that the date of a cumulative injury shall be determined under *Labor Code* section 5412.

Labor Code section 5412 provides that the date of injury for a cumulative trauma is that date when the employee both suffered disability and knew, or should have known, that disability was industrially caused. There is no disability under section 5412 until there has been either compensable temporary disability or permanent disability. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2004) 119 Cal.App.4th 998, 1003 ("*Rodarte*"); *Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 474.)

The issue of how many cumulative trauma injuries an applicant has suffered is a question of fact for the WCAB. (*Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd.* (1973) 35 Cal.App.3d 329, 341 ("*Coltharp*")). In *Coltharp*, The Court of Appeals decided the applicant sustained two separate cumulative injuries, one before and one after the

initial period of disability and need for treatment. The Court reasoned that to conclude otherwise would have violated the anti-merger provisions of section 3208.2 and 5303. By contrast, in *Western Growers Ins. Co v. Workers' Comp. Appeals Bd.* (1993) 16. Cal.App.4th 227, 234-235 ("*Austin*"), the Court found unlike *Coltharp,* Applicant sustained one continuous compensable injury because his two periods of temporary disability were linked by the continued need for medical treatment and the two periods were, therefore, not "distinct."

The facts in this case clearly show an initial injury, with medical treatment and disability as of March 24, 2001. The record is devoid of proof of any medical treatment for the period November 7, 2001 through November 11, 2002. This signifies a distinct break in medical treatment for a period of more than one year.

Additionally, applicant treated from November 11, 2002 through March 25, 2004, when Dr. Lameer, once again, declared her permanent and stationary, with a disability limiting her to sedentary work (Exhibit 5, page 26). Dr. Mouradian reevaluated the applicant on October 10, 2006. He noted Dr. Lameer declared the applicant permanent and stationary in March, 2004. He noted further, she was still symptomatic but doing fairly well. Moreover, she continued to do well until May or June of 2006, at which time she noticed worsening pain in the low back and numbness and swelling in her left lower extremity (Exhibit 6, pp. 27-31). This signifies

yet another at least two-year distinct break in the applicant's medical treatment, and a progressive worsening of her condition, after the distinct breaks in treatment.

The facts in this case are in line with *Coltharp* as opposed to *Austin*. The Appeals Board's opinion that once the original injury was amended to reflect a cumulative trauma (making it impossible to consider more than one injury), is misguided and not in accordance with the law.

III. The Appeals Board had the duty to conform the pleadings to the proof.

Pursuant to *Labor Code* section 5702 the Appeals Board has the power to make further investigation necessary to enable it to determine the matter in controversy. According to Title 8, *California Code of Regulations* section 10492, pleadings may be amended by the Worker's Compensation Appeals Board to conform to proof. Moreover, pursuant to *Labor Code* section 133, the Appeals Board has the power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under the code. This broad empowerment should have led the Appeals Board to recognize there was more than one date of injury (as defined in *Labor Code* sections 5402 and 5412) and, therefore, it had no reason or justification to limit itself to the pleadings submitted by the parties. The failure to exercise its power in conforming the pleadings to the

proof led to the uneven and inaccurate conclusion that there was only one date of injury.

The Appeals Board had the discretion to conform the pleadings to the evidence. Substantial evidence to support the decision is measured on the basis of the entire record rather than by simply isolating evidence which supports the Appeals Board and ignores other relevant facts of record which rebut or explain the evidence. If the evidence relied upon and the reasons stated for the decision do not support the same, the decision must be annulled. In the instant case, the appeals board ignored the actual facts of applicant's work pattern, her subsequent return to work, extended periods of time off work (after being back at work for extended periods of time, and importantly), a clear worsening of the condition, is entirely suggestive of more than one date of injury pursuant to *Coltharp* (*Ibid.*).

The Appeals Board shackled itself to the fact there was only one date of injury pled and saw its duty as simply establishing when the single date of injury occurred, consistent with *Austin* (*Ibid.*). The Appeals Board disregarded the facts of this case which point to three separate cumulative trauma injuries.

CONCLUSION

The law is clear. Where there are distinct periods of treatment during the course of the applicant's tenure of employment, *Coltharp* must be considered. In this case, Applicant first suffered disability and knew her disability was industrial on March 23, 2001. She remained off work until April 16, 2001. She returned to full duty on May 21, 2001. Her primary treating physician declared her **permanent and stationary** on November 7, 2001. Applicant had no documented medical treatment for a period of one year. She returned to active treatment on November 11, 2002. The applicant was then declared **permanent and stationary again** on March 25, 2004, with a **sedentary work limitation**. She continued working until March 1, 2007, when she was taken off-work unable to perform her modified job duties. Thereafter, she underwent surgery ending up with a disability adjudged to be 62 percent. Therefore, the Appeals Board should have found the applicant to have suffered three separate and distinct cumulative trauma injuries as follows: 1. 1987 through March 23, 2001; 2. April 16, 2001 through March 25, 2004; and, March 26, 2004 through March 1, 2007. It is not relevant whether the parties pled three injuries, it was incumbent upon the Appeals Board to develop the record in accordance with *Coltharp*.

WHEREFORE, SNIC prays that this Honorable Court grant review and annul the order denying the Petition for Reconsideration.

DATED: April 6, 2016 in Glendale, California.

DABBAH & HADDAD
A Professional Corporation

BY: _____
GARY DEAN DABBAH
Attorneys for Petitioner
SAFETY NATIONAL INSURANCE Co.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to the California Rules of Court, the enclosed Petition for Writ of Review was produced using 13-point type including footnotes and contains 3606 words. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: April 6, 2016 in Glendale, California.

DABBAH & HADDAD
A Professional Corporation

BY: _____
GARY DEAN DABBAH
Attorneys for Petitioner
SAFETY NATIONAL INSURANCE Co