

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

JUAN SUAREZ, *Applicant*

vs.

HALEY BROS/TM COBB COMPANY and CALIFORNIA INSURANCE GUARANTEE ASSOCIATION through its servicing facility, SEDGWICK CLAIMSMANAGEMENT SERVICES, for FREMONT INDEMNITY COMPANY, in liquidation, *Defendants*

**Adjudication Numbers: ADJ365717 (STK 0111454), ADJ3469175 (STK 0109844)
Stockton District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board previously granted reconsideration to further study the factual and legal issues in this case. This is our decision after reconsideration.

Defendant, Liberty Mutual Insurance Company, seeks reconsideration of the February 21, 2020 Findings and Orders wherein the workers' compensation administrative law judge (WCJ) found that Liberty Mutual was jointly and severally liable with Unicare for an award of future medical care pursuant to a May 6, 1997 Stipulated Award. Because Unicare is now insolvent and its claims are administered by the California Insurance Guarantee Association (CIGA)¹, the WCJ found that Liberty Mutual is available "other insurance" and ordered that Liberty Mutual take over administration of applicant's medical care and resolve reimbursement and contribution issues with CIGA.

Liberty Mutual contends that the WCJ erred in ordering Liberty Mutual to reimburse CIGA because they settled all liability with applicant and they are not "other insurance" for applicant's claims. Defendant also contends that the public policy encouraging settlements outweighs the public policy to limit CIGA's liability to covered claims. Finally, Liberty Mutual contends that CIGA's petition for reimbursement and change of administrators is barred by the statute of

¹ CIGA is an unincorporated association of insurers licensed in California, which pays claims of insolvent insurers set forth by Insurance Code section 1063 et seq. (*Isacson v. California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775, 786-787.)

limitations or, in the alternative, that the equitable doctrines of waiver, laches, and estoppel should be applied.

Defendant filed an answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied. We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, as our decision after reconsideration, we will rescind the WCJ's February 21, 2020 decision and issue a new decision finding that Liberty Mutual is not available "other insurance" for applicant's claim.

As an initial matter, the petition for reconsideration is timely. To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within 25 days from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1), former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).) A petition for reconsideration of a final decision by a workers' compensation administrative law judge must be filed in the Electronic Adjudication Management System (EAMS) or with the district office having venue. (Cal. Code Regs., tit. 8, former § 10840(a), now § 10940(a) (eff. Jan. 1, 2020).) Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) Section 5315 provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers' compensation administrative law judge. (Lab. Code, § 5315.)

The Division of Workers' Compensation (DWC) closed its district offices for filing as of March 17, 2020 in response to the spread of the novel coronavirus (COVID-19).² In light of the district offices' closure, the Appeals Board issued an en banc decision on March 18, 2020 stating that all filing deadlines are extended to the next day when the district offices reopen for filing. (*In re: COVID-19 State of Emergency En Banc* (2020) 85 Cal.Comp.Cases 296 (Appeals Board en banc).) The district offices reopened for filing on April 13, 2020.³ Therefore, the petition for

² The March 16, 2020 DWC Newslines regarding the closure of district offices may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-18.html>.

³ The April 3, 2020 DWC Newslines regarding reopening the district offices for filing may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-29.html>.

reconsideration is deemed filed on April 13, 2020, and the opinion granting the petition for reconsideration issued within the 60 day period.

FACTS

Applicant sustained a cumulative injury to his low back and neck through September 8, 1993 (ADJ365717) while employed by Haley Brothers insured by Unicare Insurance and a specific injury to his low back and neck on July 27, 1986 (ADJ3469175) while employed at T.M. Cobb Company insured by Liberty Mutual.

The issue submitted at trial was: "Is Liberty Mutual liable for the administration of this claim and possible reimbursement and contribution to the California Insurance Guarantee Association." (January 9, 2020, Minutes of Hearing and Summary of Evidence, p. 2.) The sole exhibit admitted at trial was the May 6, 1997 Stipulations with Request for Award and the associated Award. (Exh. 100.)

The May 6, 1997 Stipulations with Request for Award included the following stipulation:

This settlement is based on the QME Panel report of Dr. Branscum (rated by the DEU at 34%). This settlement resolves and all claims for 'retroactive' benefits to date (TD, VRMA and PD). Liberty Mutual agrees to pay Unicare \$25,000.00 in full satisfaction of contribution issue, in one lump sum, payment resolves any and all future claims for contribution. Defendant Unicare agrees to assume full and sole responsibility for all future payment of benefits and expenses allowed under the Labor Code. Interest is included if payment is made within 25 days. All claims for penalty are resolved by this settlement. (May 6, 1997 Stipulations with Request for Award, ¶ 8.)

The WCJ issued an Award in favor of applicant and against Unicare. (May 6, 1997, Award.) On the Award itself, the WCJ memorialized an additional stipulation: "Liberty Mutual to pay \$25,000 to Unicare in full satisfaction of contribution issue, past and future. Defendant Unicare to assume responsibility for administering these cases." (May 6, 1997, Award, ¶ E.)

ANALYSIS

CIGA's liability is specifically defined in Insurance Code section 1063.1. While section 1063.1, subdivision (c)(1)(vi) defines "covered claims" as "the obligations of an insolvent insurer ... in the case of a policy of workers' compensation insurance, to provide workers' compensation

benefits under the workers' compensation law of this state," subdivision (c)(9) provides, "Covered claims' does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured" Pursuant to Insurance Code section 1063.1, if CIGA alleges that Liberty Mutual is available as "other insurance" for benefits paid by CIGA, then CIGA has standing to file a petition for reimbursement and to request a change of administrator of applicant's medical award.

In order to obtain reimbursement or a change of administrators, CIGA must show that Liberty Mutual is jointly and severally liable for medical treatment. In cases where an applicant sustains successive injuries, insurers or self-insured employers are jointly and severally liable for medical treatment and temporary disability if both injuries contributed to the need for medical treatment or the temporary disability indemnity. (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Hernandez)* (2007) 153 Cal.App.4th 524.) In *Hernandez*, the Court of Appeal explained the significance of joint and several liability for these benefits in cases where an insurer is insolvent and CIGA is administering a claim as follows,

Between workers' compensation insurers who are jointly and severally liable for various nonpermanent disability benefits, there is generally pro rata apportionment for the shared liability. (See generally Lab. Code, §§ 3208.2, 5303, 5500.5.) But, CIGA is not another workers' compensation insurer; it is a fund with responsibilities that are limited by statute in order to insure that the worker is protected. CIGA does not protect insurers....SCIF constitutes solvent 'other' insurance' that must reimburse the CIGA fund for the temporary workers' compensation benefits it paid in this matter. (*Id.* At p. 537.)

Pursuant to the Court of Appeal decision in *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Lopez)* (2016) 245 Cal.App.4th 1021 (81 Cal.Comp.Cases 317), a final award apportioning liability between insurers does not change the joint and several nature of defendants' liability. In *Lopez*, the insurers agreed, in a compromise and release agreement, that the insurers would apportion liability for the remaining liens "52% [Care West] and 48% [Ullico] according to proof *and with rights to contribution and reimbursement between the two being reserved.*" (*Id.* at p. 1029, emphasis in original.) The *Lopez* Court noted that "Care West and Ullico understood their liability remained joint and several even after settlement and apportionment...The contribution

contribution and reimbursement provisions would have been meaningless in the absence of joint and several liability.” (Ibid.)

In contrast, in this case, Unicare Insurance settled its contribution rights as part of the Stipulated Award, and, significantly, the award issued solely against Unicare. Applicant was a signatory to these stipulations, including the stipulation that only Unicare would be liable for benefits. Therefore, after the settlement, Liberty Mutual no longer had any liability for benefits to the applicant and applicant could only obtain medical treatment benefits from Unicare. There cannot be joint and several liability where one party has no liability. Accordingly, we grant reconsideration and find that Liberty Mutual is not liable for applicant’s medical treatment and CIGA is not entitled to reimbursement from them.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the February 20, 2020 Findings and Order is **RESCINDED**, and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Liberty Mutual is not liable to applicant for medical treatment to cure or relieve him from the effects of his industrial injuries.
2. CIGA is not entitled to reimbursement for medical treatment expenses from Liberty Mutual.

ORDER

IT IS ORDERED that CIGA shall continue to administer applicant's medical treatment award.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 8, 2022

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**JUAN SUAREZ
MULLEN & FILIPPI
YEMPUKU WETTERS & MCNAMARA**

MWH/oo

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

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4 **JUAN SUAREZ,**

5 *Applicant,*

6
7 **vs.**

8 **HALEY BROS/TM COBB COMPANY and**
9 **CALIFORNIA INSURANCE GUARANTEE**
10 **ASSOCIATION through its servicing facility,**
11 **SEDGWICJ CLAIMS MANAGEMENT**
12 **SERVICES, for FREMONT INDEMNITY**
13 **COMPANY, in liquidation,**

14 *Defendants.*

Case Nos. **ADJ365717 (STK 0111454)**
ADJ3469175 (STK 0109844)
(Stockton District Office)

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION

15 Reconsideration has been sought with regard to the decision filed on February 21, 2020.

16 Taking into account the statutory time constraints for acting on the petition, and based upon our
17 initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to
18 further study the factual and legal issues in this case. We believe that this action is necessary to give us a
19 complete understanding of the record and to enable us to issue a just and reasoned decision.
20 Reconsideration will be granted for this purpose and for such further proceedings as we may hereafter
21 determine to be appropriate.

22 For the foregoing reasons,

23 **IT IS ORDERED** that Reconsideration is **GRANTED**.

24 **IT IS FURTHER ORDERED** that pending the issuance of a Decision After Reconsideration in
25 the above case, all further correspondence, objections, motions, requests and communications *relating to*
26 *the petition* shall be filed only with the Office of the Commissioners of the Workers' Compensation
27 Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102)
or its Post Office Box address (P.O. Box 429459, San Francisco, CA 94142-9459), and shall not be
submitted to the district office from which the WCJ's decision issued or to any other district office of the

1 Workers' Compensation Appeals Board, and shall not be e-filed in the Electronic Adjudication
2 Management System (EAMS). Any documents relating to the petition for reconsideration lodged in
3 violation of this order shall neither be accepted for filing nor deemed filed.

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1 All trial level documents not related to the petition for reconsideration shall continue to be e-filed
2 through EAMS or, to the extent permitted by the Rules of the Administrative Director, filed in paper form.¹
3 If, however, a proposed settlement is being filed, the petitioner for reconsideration should promptly notify
4 the Appeals Board because a WCJ cannot act on a settlement while a case is pending before the Appeals
5 Board on a grant of reconsideration. (Cal. Code Regs., tit. 8, former § 10859, now § 10961 (eff. Jan. 1,
6 2020).)

7 **WORKERS' COMPENSATION APPEALS BOARD**

8 **JOSÉ H. RAZO**

9 /s/ _____

10
11 **I CONCUR,**

12 **DEIDRA E. LOWE**

13 /s/ _____

14 **MARGUERITE SWEENEY**

15 /s/ _____



16
17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **MAY 26 2020**

19 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
20 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD**

21 **JUAN SUAREZ**
22 **MULLEN & FILIPPI**
23 **YEMPUKU WETTERS & MCNAMARA**

CA

24 **bea**

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27 ¹ Such trial level documents include, but are not limited to, declarations of readiness, lien claims, trial level petitions (e.g., petitions for penalties, deposition attorney's fees), stipulations with request for award, compromise and release agreements, etc.)

**WORKERS' COMPENSATION APPEALS BOARD
OF THE
STATE OF CALIFORNIA**

WCAB Case No.: ADJ3469175; ADJ365717

JUAN SUAREZ

Vs.

**HALEY BROS and CALIFORNIA
INSURANCE GUARANTEE
ASSOCIATION through its servicing
facility, SEDGWICK CLAIMS
MANAGEMENT SERVICES, for
FREMONT INDEMNITY COMPANY,
in liquidation; TM COBB COMPANY
and LIBERTY MUTUAL FIRE
INSURANCE COMPANY**

**Workers' Compensation
Administrative Law Judge:**

JOHN E. DURR

DATES OF INJURY:

September 8, 1993 and July 27, 1986

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

LIBERTY MUTUAL FIRE INSURANCE COMPANY (Liberty Mutual) by and through of their attorney of record, filed an arguably timely and verified Petition for Reconsideration challenging the decision issued by WCJ John Durr alleging that:

1. By the order, decision or award, the Board acted without or in excess of its powers.
2. The evidence does not justify the findings of fact.
3. The findings of fact do not support the order, decision or award.

As the three contentions are without merit, it is recommended that the Petition for Reconsideration be denied.

II FACTS

The first issue to be dealt with, is who were the proper parties and for which date of injury. The Petition for Reconsideration does not address that issue, and arguably further confuses the facts.

The parties stipulated at time of trial that:

1. Juan Suarez, born [redacted], while employed during the period ending on September 8, 1993, as a millwright, in California, by Haley Brothers, suffered an admitted industrial injury.

2. At the time of the injury, the employer's workers' compensation carrier was Liberty Mutual Fire Insurance Company and Unicare.

This is the first issue that needed to be clarified as the Stipulation turned out to be inconsistent with the evidence. The correct employment/injury history is also at odds with the summary of facts as presented in the Petition for Reconsideration, the correct history of employment and coverage is as follows:

1. Juan Suarez, born [redacted], while employed during the period ending on September 8, 1993, as a millwright, in California, by Haley Brothers, insured for workers' compensation by Unicare Insurance suffered an admitted industrial injury to the back (low back and neck), left shoulder and headaches.
2. Juan Suarez, born [redacted] while employed on July 27, 1986, as a millwright, in California, by T.M. Cobb, insured for workers' compensation by Liberty Mutual Insurance suffered an admitted industrial injury to the back (low back and neck), left shoulder and headaches.

In their Petition for Reconsideration defendant Liberty Mutual on page 2, line 13, admits that on May 6, 1997 the parties (Liberty Mutual and Unicare Insurance) entered

into a **JOINT** Stipulation with Request for Award in both cases (emphasis added). This was a Joint Stipulation with Request for Award as to obligations to the applicant.

The Award issued on May 6, 1997 indicates it was against defendant Unicare Insurance Company as they were the party that had agreed to administer pursuant to the contribution/reimbursement language in the stipulation, however, the stipulation also contained obligations relating to Liberty Mutual.

Based on the joint stipulations and award approved by WCJ Levitt: Unicare Insurance would administer the award and that Liberty Mutual would make a one-time payment of \$25,000 to Unicare Insurance to resolve restitution and further contribution; as a full satisfaction of the contribution (restitution) issue as well as all future obligations for contribution.

The applicant did not enter into a Compromise and Release agreement with either of the two carriers for the two separate dates of injury.

Unicare Insurance merged into Fremont Indemnity Group of companies and went into liquidation on July 2, 2003.

The California Insurance Guarantee Association (CIGA), a statutorily created entity that is not an insurance company, has continued to administer and provide benefits to Mr. Suarez subsequent to the liquidation of Unicare Insurance.

On July 21, 2016, the petition was filed on behalf of CIGA titled as a: "PETITION FOR ORDER ASSIGNING NEW CLAIMS ADMINISTRATOR FOR A FINDING OF 'OTHER INSURANCE' UNDER THE INSURANCE CODE, PETITION FOR AN ORDER OF REIMBURSEMENT OF BENEFITS PAID."

The matter went forward at time of trial on January 9, 2020, with no testimony. The matter was submitted at that time only in ADJ3469175, submission was ordered vacated on January 16, 2020 and the matter was resubmitted on February 7, 2020 based on a lack of objection with both ADJ3469175 and ADJ365717 being submitted for decision and consolidated.

A Findings of Fact, Orders and Opinion on Decision issued on February 21, 2020 finding, in part, that there was joint and several liability on the part of both defendants to the applicant for the provision of future medical care. Following the liquidation of Unicare Insurance there remained "other insurance" (Insurance Code §1063.1 (c) (9)) and Liberty Mutual became responsible to the applicant at the time of liquidation.

III DISCUSSION

Liberty Mutual is trying to frame the argument in the context of a contract where they satisfied their obligation to the applicant by making a one-time payment to Unicare Insurance. This is not the issue. The issue is, when Unicare Insurance went into liquidation and became insolvent, did Liberty Mutual become liable to the applicant for the award of further medical care?

The Opinion on Decision went through the single admitted exhibit. That exhibit includes the following relevant sections:

- A. The Minutes of Hearing, which lists both STK109844 (ADJ3469175) and STK111454 (ADJ365717) which indicates that both a representative from Unicare Insurance and from Liberty Mutual were present time of hearing on May 6, 1997 in front of WCJ Sharon Levitt.

B. The Stipulations with Request for Award for both STK109844 (ADJ3469175) and STK111454 (ADJ365717), contain the following information;

1. Juan Suarez born July 27, 1962 while employed within the state of California is a millwright on (1) July 27, 1986 and (2) a cumulative trauma ending on September 7, 1993 by Haley Brothers/TM Cobb Company whose workers' compensation insurance carrier was (1) Liberty Mutual and (2) Unicare Insurance sustained injury arising out of and in the course of employment to his back (low back and neck), left shoulder and headaches. It is also written in the bottom of paragraph one that Unicare Insurance to administer case(s).
2. The injury caused permanent disability of **34:0%**.
4. Applicant agrees to notify Unicare Insurance of a change in treating Dr., if he so chooses to change doctors, before going to a new treater.
5. Medical-Legal expenses are payable by defendant as follows: Defendant Unicare Insurance to pay, litigate, or adjust any outstanding medical-legal expenses except for those incurred by Defendant Liberty Mutual, with WCAB jurisdiction reserved.
6. This settlement is based on the QME panel report of Dr. Branscum, (rated by the DEU at 34%). This settlement resolves any and all claims for retroactive benefits to date (TD, B, RMA and PD). Liberty agrees to pay Unicare Insurance \$25,000 in full satisfaction of contribution [reimbursement] issue in one lump sum; payment also resolves any and all future claims contribution. Defendant Unicare Insurance agrees to assume full and sole responsibility for all future payment of benefits and expenses allowable under the Labor Code.

7. The Stipulations with Request for Award were signed by representatives of both Liberty Mutual and Unicare Insurance.

The Stipulations with Request for Award resolved two cases, two dates of injury with two employers more than 6 years apart. The Stipulation identifies all body parts being injured being the same and the responsibility of both insurers, employers; as such they are joint and severally liable. It is believed only one party was named as it was the understanding that the defendants were resolving the contribution issues between themselves. This does not change the underlying liability to the applicant, which was acknowledged, thereby requiring the need for the contribution agreement.

C. The Award for both STK109844 (ADJ3469175) and STK111454 (ADJ365717)

1. Award is made in favor of Applicant Juan Suarez against Defendant Unicare Insurance Company of:

(E) Further stipulations in accordance with paragraph 8 above. Liberty mutual to pay \$25,000 to Unicare Insurance in full satisfaction of contribution issue, past and future. Unicare Insurance to assume responsibility for administering these cases.

D. Information & Assistance Officer recommendation for both STK109844 (ADJ3469175) and STK111454 (ADJ365717),

1. The permanent disability analysis comments are laid out as follows:

7.	-30%	-31H-	36-33:0	
18.1	-30%	-31H-	38-35:0	35:0
			½ (-2:0)	1:0
				34.0%
				17% for 9/8/93
				17% for 7/27/86

PROCEDURAL ISSUES THAT REQUIRED ACTION PRIOR TO DECISION

Need for ADJ365717 to be added to determination of this case as shown by the above evidence. The two cases are inextricably intertwined. A Notice of Intent to add ADJ3465717 issued on January 16, 2020. No objection being received, the addition was ordered on February 7, 2020.

Additionally, because the 2 cases are inextricably intertwined, it is necessary to consolidate cases. A Notice of Intent to consolidate ADJ3469175 and ADJ365717 issued on January 16, 2020. No objection being received, the cases were consolidated on February 7, 2020. Following the consolidation and addition of the other case, the matter was then submitted for decision.

An issue arises in that there are two separate employers, two separate dates and mechanisms of injury with overlapping body parts.

1. The first injury ADJ365717 was a specific injury of July 27, 1986 for the employer Haley Brothers insured by Liberty Mutual.
2. The second injury ADJ3469175 was for a cumulative trauma ending on September 8, 1993 for the employer T.M. Cobb Company insured by Unicare Insurance, now in liquidation.

Legal Basis for the involvement of CIGA and their role.

The Court of Appeals opined in their discussion portion of their decision in *CIGA v. WCAB (Weitzman)* (2005) 128 Cal. App. 4th 307; 70 Cal. Comp. Cases 556, as follows:

- (1) Where, as here, the facts are undisputed, final responsibility for interpreting a statute rests with the court. (*Moulton v. Workers' Comp. Appeals Bd.* (2000) 84 Cal.App.4th 837, 842 [101 Cal. Rptr. 2d 175].) We apply the usual rules of statutory interpretation. The fundamental rule is to ascertain the intent of the Legislature in order to effectuate the purpose of the law. In doing so, we first look to the words of the statute and try to give effect to the usual, ordinary import of the

language. (California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (2004) 117 Cal.App.4th 350, 355 [12 Cal. Rptr. 3d 12].) It is a settled principle in California law that when statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it. (*Ibid.*)

- (2) CIGA was created by the Legislature to establish a fund from which insureds could obtain financial and legal assistance if their insurers became insolvent. (Isaacson v. California Ins. Guarantee Assn. (1988) 44 Cal.3d 775, 784 [244 Cal. Rptr. 655, 750 P.2d 297].) CIGA “ ‘was created to provide a limited form of protection for insureds and the public, not to provide a fund to protect insurance carriers.’ ... CIGA's role in guaranteeing workers' compensation claims is therefore limited: “CIGA is not, and was not created to act as, an ordinary insurance company. ... It is a statutory entity that depends on the Guarantee Act for its existence and for a definition of the scope of its powers, duties, and protections.” ... “CIGA issues no policies, collects no premiums, makes no profits, and assumes no contractual obligations to the insureds.”... “ CIGA's duties are not co-extensive with the duties owed by the insolvent insurer under its policy.” ’ ” (Denny's Inc. v. Workers' Comp. Appeals Bd. (2003) 104 Cal.App.4th 1433, 1438 [129 Cal. Rptr. 2d 53], citations omitted.
- (3) CIGA's authority and liability are limited to paying “ ‘covered claims.’ ” (Isaacson v. California Ins. Guarantee Assn., *supra*, 44 Cal.3d at p. 786; California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (2003) 112 Cal.App.4th 358, 363–364 [5 Cal. Rptr. 3d 127].) Section 1063.1, subdivision (c)(1) defines “ ‘covered claims’ ” as “the obligations of an insolvent insurer,” including the obligation “to provide workers' compensation benefits under the workers' compensation law of this state.” (*Id.*, subd. (c)(1)(vi).) The statute enumerates in subdivision (c)(3) through (12) specific types of claims that are not “covered claims.”

Analysis:

The Stipulations with Request for Award resolves two cases, two dates of injury with two employers more than 6 years apart. The Award should have been an award against Liberty Mutual and Unicare Insurance as being joint and severally liable. It is believed only one party was named in the award as it was the understanding that the parties were resolving their contribution issues. The parties must have understood their liability remained joint and several. As part of the settlement they addressed contribution issues between them in the Stipulation agreement. The contribution/ reimbursement provisions in the agreement would have been

meaningless in the absence of joint and several liability. *CIGA v WCAB (Lopez)* (2016) 245 Cal. App. 4th 1021; 81 CCC 317

The Stipulations with Request for Award resolves two separate cases with the same body parts. The Stipulations were supported by a consultative rating of 34%: 17% for ADJ3469175 and 17% for ADJ365717 making there a 50/50% liability subject to the restitution/contribution agreement between the two defendants. The agreement in the Stipulations with Request for Award indicate an agreement between Liberty Mutual and Unicare Insurance to resolve contribution. An agreed-upon amount of \$25,000, believed to have been paid, thereby satisfied Liberty Mutual's obligation to Unicare Insurance for contribution and/or reimbursement in ADJ3469175 and ADJ365717.

Both parties were jointly and severally liable to the applicant by virtue resolving their liability by the same set of Stipulations. There was no specific finding as to relative liability, however, reliance can be made regarding the understanding of the parties based on the consultative rating as provided by the Information & Assistance Officer of the Dr. Branscum report of 34% permanent disability with 17% attributable to each date of injury which was the basis of the Stipulations with Request for Award.

Although it was in a decision dealing with joint and several liability relative to Labor Code §5500.5, the Court of Appeal stated that "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 the purposes of Insurance Code §1063.1, subdivision (c)(9), which excludes the benefits from coverage by CIGA." (*Lopez, supra.*)

Liberty Mutual would be entitled to credit for any amounts paid to Unicare Insurance in furtherance of resolving the restitution/contribution claim of CIGA.

IV

RECOMMENDATION

Liberty Mutual by virtue of having entered into stipulations to provide future medical care to the applicant remains liable to the applicant. Liberty Mutual, chose not to resolve their obligation to the applicant via Compromise & Release. Therefore, Liberty Mutual remained as "other insurance" at the time of the insolvency of Unicare Insurance. CIGA is precluded from administering this claim and Liberty Mutual as being joint and severally liable, is obligated to administer the same as to the applicant. They would also be liable for any benefits paid by CIGA after it became, in fact, Liberty Mutual's obligation. Based on the foregoing it is recommended that the Petition for Reconsideration be denied

Respectfully submitted,

4/9/2020

DATE



JOHN E. DURR

Worker's Compensation Judge

Served by mail on all parties listed on the Official Address record on the above date.

BY: 4-14-20