

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

MINAS GHARAKHANIAN, *Applicant*

vs.

**COOL AIR SUPPLY; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION for
ULICO CASUALTY COMPANY in liquidation; ZURICH AMERICAN INSURANCE
COMPANY, *Defendants***

**Adjudication Number: ADJ8706846
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

On April 15, 2020, the Appeals Board granted reconsideration to further consider the factual and legal issues. This is our Decision After Reconsideration.

Defendant the California Insurance Guarantee Association (CIGA) seeks reconsideration of the January 21, 2020 Findings and Order¹ wherein the workers' compensation arbitrator found that Zurich American Insurance Company only provided coverage for applicant's employer Cool Air Supply on May 14, 2012 at a particular job site (Citrus Continuation High School) and did not provide coverage for applicant's injury in ADJ8706846 which occurred at a different job site in Fullerton, California on that date.

CIGA contends that the workers' compensation arbitrator erred in finding that a Zurich Insurance policy did not provide workers' compensation insurance coverage for the Fullerton location of Cool Air Supply, arguing that Zurich did not produce any direct evidence that it had site-specific coverage on May 14, 2012. CIGA also seeks costs and sanctions related to newly discovered documents that Zurich attached to a post arbitration brief.

We have considered the Petition for Reconsideration, and we have reviewed the record in this matter. Zurich filed an Answer. The arbitrator has filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied. For the reasons

¹ Although the arbitrator titled the decision as a "Findings and Award," there was no award of benefits. Therefore, we will refer to it as a Findings and Order.

discussed below, we will rescind the Findings and Order and issue a new finding that the Zurich policy provided workers' compensation coverage for Cool Air Supply and the policy was not site specific. We decline to award costs and sanctions for the documents improperly attached to the arbitration brief.

FACTS

The essential facts are not in dispute. Applicant was injured in Fullerton California while employed by Cool Air Supply on May 14, 2012. Ullico Casualty Company insured the employer on that date and provided benefits in this case. Ullico became insolvent and CIGA took over administration of applicant's claim. Zurich also provided workers' compensation coverage for Cool Air Supply on May 14, 2012. (Exh. A, Exh.6, March 1, 2012, Workers' Compensation and Employers Liability Policy, WC 450435-02, Information Page.) Policy WC 450435-02 did not include language limiting coverage to a particular job site.

At the Arbitration Hearing on October 11, 2019, the parties entered exhibits into evidence and oral testimony was taken by the arbitrator. (October 11, 2019, Arbitration Transcript.)

Zurich claims that it did not provide coverage for applicant's injury because its coverage was limited to a specific construction site, Citrus Continuation High School. The arbitrator inferred from the fact that Cool Air Supply had two workers' compensation policies and from the fact that Zurich's policy referenced another policy that the Cool Air Supply policy was a wrap up policy that was limited to a specific construction site. In the Report, the arbitrator explained the basis for his conclusion that the policy was limited as follows:

It was found there was dual coverage by the WCIRB for both CIGA and Zurich to have coverage for Cool Air Supply. It was found there would be no logical reason for Cool Air Supply to have two current overall workers' compensation policies.

When understanding this position, one must understand the parameters of the statewide education wrap up program. This is an owner-controlled insurance program mandated when there are specific construction projects. This statewide education wrap-up program policy is mandated for the Citrus Continuation High School construction. It was found that Zurich exhibit E indicated the location of the statewide educational wrap-up policy deemed as Citrus Continuation High School for Cool Air Supply as their sole location for coverage. (Report, p. 2.)

Exhibit E is a project payroll audit for the Fontana Unified School District for a “SEWUP” project workers’ compensation policy WC4560435-00 referencing Cool Air Supply as the employer being audited.

ANALYSIS

Liability for workers’ compensation benefits exists “against an employer for any injury sustained out of and in the course of the employment.” (Lab. Code, § 3600.) Every private employer in California is required to “secure the payment of compensation” by purchasing workers’ compensation insurance or by securing a certificate of consent to self-insure from the Director of Industrial Relations. (Lab. Code, § 3700.) “In California, workers’ compensation insurance (or an adequate substitute) is mandatory, and the Insurance Commissioner is charged with closely scrutinizing insurance plans to protect both workers and their employers.” (*Nielsen Contracting, Inc. v. Applied Underwriters, Inc.* (2018) 22 Cal.App.5th 1096, 1118ar.)

All workers’ compensation policies must “contain a clause to the effect that the insurer will be directly and primarily liable to any proper claimant for payment of...compensation subject to the provisions, conditions and limitations of the policy.” (Ins. Code, § 11651.) Workers’ compensation insurance policies in California are subject to regulation by the Department of Insurance and are conclusively presumed to contain certain required provisions. (Ins. Code, §§ 11650, 11651, 11657, 11658.) A standard workers' compensation policy without any limiting endorsements covers all employees of the employer. (Ins. Code, § 11660; *Fyne v. Industrial Acc. Com.* (1956) 138 Cal.App.2d 467, 469–474 [21 Cal. Comp. Cases 13].)

The law is well-settled that “[i]nterpretation of an insurance policy is a question of law and follows the general rules of contract interpretation.” (*TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal. 4th 19, 27.) “A contract must be so interpreted so as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” (Civ. Code § 1636.) “Such intent is to be inferred, if possible, solely from the written provisions of the contract.” (*Deere & Co. v. Allstate Ins. Co.* (2019) 32 Cal.App.5th 499, 513 citing *Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390.)

In *Travelers Property Casualty Co. v. Workers' Comp. Appeals Bd. (Mastache)* (2020) 40 Cal.App.5th 728 [84 Cal.Comp.Cases 883], the Court of Appeal reversed the Appeals Board and found that because there was a valid limiting and restricting endorsement on an insurance policy

issued to the applicant's special employer (Jesse Lord's Bakery), the policy did not provide "other insurance" after the insurer of the general employer (StaffChex) was liquidated. Accordingly, the California Insurance Guarantee Association (CIGA) remained liable for applicant's benefits.

In *Mastache*, at the time the Jesse Lord Bakery policy was written, the Insurance Commissioner had approved the language in the endorsement Travelers attached to the Jesse Lord policy. A separate regulation required a "written affirmation of other coverage" by the insured when an insurer issued a policy using an endorsement such as the approved standard endorsement used by Travelers. The Court construed several contracts, including an agreement between Jesse Lord Bakery and Staffchex as evidence of compliance with the required written affirmation of other coverage.

The Court stated:

Obviously, StaffChex and Jessie Lord needed to comply with existing laws and regulations, which they did first by agreeing to specific provisions in the contract between them and then **by including the required limiting endorsement in the contract** between Jessie Lord and its workers' compensation carrier, Travelers. At this point, a third sophisticated party, Travelers, entered the picture who appreciated the need for the limiting endorsement, having obtained approval of that very form from the Insurance Commissioner. Thus, a three-sided relationship was put into place, the sole purpose of which was to comply with existing statutes and regulations that were designed to ensure that there was workers' compensation insurance coverage for injured workers under an employment scheme where the worker was technically employed by one employer while working for another. (*Mastache, supra*, 40 Cal.App.5th 728, 738.) (Emphasis Added)

In this case, unlike *Mastache, supra*, the insurance contract does not include language limiting the policy. Because there is no limitation in the policy, to find that the policy was limited, we would have to draw an inference of the parties' intent entirely from documents outside the contract.

Applicant's employer had two workers' compensation policies in effect on the date applicant was injured. Zurich asks us to infer that the policy must have been limited because employers do not generally have two policies. Zurich also provided some evidence the Zurich Cool Air Supply policy was part of a "wrap up" policy for a particular school construction project. (Exh. E.)

While a typical employer will have a single workers' compensation policy covering all employees, some employers in the construction industry may have multiple workers' compensation policies. Certain large construction projects, including school construction projects, may require that all contractors working on a particular project obtain workers' compensation and liability coverage through a "wrap up" policy. (Gov. Code §4420.5; Ins. Code 11580.4.) A "wrap up" policy is typically limited in time and scope to the particular project. The Insurance Commissioner has approved limiting and restricting endorsements that may be used to limit coverage to a particular project or job site.² If this policy was part of a wrap-up, the policy should have been limited to a specific job site. However, Zurich has presented no evidence that the policy was limited. Without an approved limiting and restricting endorsement, we are compelled to find that the policy is unlimited.

CIGA's liability is specifically defined in Insurance Code section 1063.1 as "covered claims." (Ins. Code, § 1063.1.) In the case of a policy of workers' compensation insurance, CIGA must cover the obligations of an insolvent insurer "to provide benefits under the workers' compensation law." (Ins. Code § 1063.1(c)(1)(F).) "[C]overed claims" under section 1063.1 "are not coextensive with an insolvent insurer's obligations under its policies." (*Industrial Indemnity Co. v. Workers' Comp. Appeals Bd. (Garcia)* (1997) 60 Cal.App.4th 548, 557 [62 Cal.Comp.Cases 1661].) Insurance Code section 1063.1(c)(5)(A) states: "'Covered claims' does not include an obligation to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter." (Ins. Code, § 1063.1 (c)(5)(A).

In this case, because the Zurich policy is unlimited, it is "other insurance." However, because the sole issue raised at the arbitration was insurance coverage, we will find that Zurich provided coverage and defer any remaining issues to the arbitrator.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 21, 2020 Findings and Order is **RESCINDED** and the following is **SUBSTITUTED** in its place:

² At the time this policy was written, a California Approved Form 10 could be used to limit coverage to a particular job site. (Former Cal. Code Regs., title 10, §2264 [Repealed effective April 1, 2016].)

FINDINGS OF FACT

1. Zurich American Insurance Company workers' compensation policy WC4560435-02 covered all employees of Cool Air Supply on May 14, 2012.

2. Zurich American Insurance Company workers' compensation policy WC4560435-02 was not limited to a particular job site or construction project.

ORDER

IT IS ORDERED that all other issues are deferred with jurisdiction reserved with the arbitrator in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 18, 2022

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

**LAUGHLIN FALBO LEVY & MORESI
MARK POLAN
MAVREDAKIS CRANERT LAW FIRM
MINAS GHARAKHANIAN**

MWH/oo

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
CS