

COMPENSATION NEWS

MONTHLY REPORT

CIGA DOES NOT HAVE LIABILITY FOR TEMPORARY EMPLOYEES

This newsletter deals with an Opinion and Decision After Reconsideration (EN BANC). It is important in that it deals with 540 consolidated cases.

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Jacuzzi had a contract with Remedy Temp, an employee staffing agency, to supply workers to Jacuzzi. The applicant was on the payroll of Remedy Temp, but working at a Jacuzzi job site when he got injured. Remedy Temp was considered the general employer and Jacuzzi the special employer.

Jacuzzi was covered for workers' compensation insurance by American

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Home Assurance (AHA). Remedy Temp had a policy covering the temporary employees with Reliance National Indemnity Company (Reliance). Reliance is now insolvent. Reliance's "covered claims" are adjusted by California Insurance Guaranty Association.

The applicant was on Remedy Temp's payroll at the time of injury. There was a policy between Remedy Temp and Reliance. Jacuzzi was listed as an "alternate employer" under that policy. Therefore, prior to liquidation Reliance would have had liability.

The case came up for trial and the Workers' Compensation Judge (WCJ) dismissed CIGA as a party defendant. The WCJ made five findings. The most significant of which was that where there is "other coverage" CIGA will be dismissed under Labor Code section 1063.1(c)(9). The WCJ rationalized this was not a covered claim that would be covered.

Three petitions for reconsideration were filed which resulted in this decision.

The Workers' Compensation Appeals Board (Board) indicated that when the

"general" employer gives up control to the employer borrowing the employee a "special employment relationship exists. Where you have general and special employment the applicant can collect from either or both employers. Liability is joint and several.

Under Labor Code section 11663 the insurer of the general employer is liable unless the applicant is on the special employer's payroll.

However, here Remedy Temp was insured by Reliance, in liquidation. CIGA is not an insurance company. Therefore, CIGA was dismissed after the Board looked at Labor Code sections 3602 (d), and Insurance Code 1063.1(c)(9) and 11663.

There is currently a stay of proceedings pending appeal, however, applicant's can petition for relief from the stay.

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