WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VICTORIA GOMEZ, ***Applicant,*** **vs.** **CASA SANDOVAL; GOLDEN EAGLE INSURANCE COMPANY; CALIFORNIA COMPENSATION (in liquidation); CALIFORNIA INSURANCE GUARANTEE ASSOCIATION; RISK ENTERPRISE MANAGEMENT,** ***Defendants.***	**Case Nos. OAK 234515; OAK 239085; OAK 240882** **OPINION AND DECISION AFTER RECONSIDERATION (EN BANC)**
CAROL NOKES, ***Applicant,*** **vs.** **PLACER SAVINGS BANK; FREMONT COMPENSATION INSURANCE COMPANY; PAULA INSURANCE COMPANY (in liquidation); CALIFORNIA COMPENSATION (in liquidation); CALIFORNIA INSURANCE GUARANTEE ASSOCIATION;** ***Defendants.***	**Case Nos. SAC 289506 SAC 289507** **OPINION AND DECISION AFTER RECONSIDERATION (EN BANC)**

The Workers' Compensation Appeals Board (Appeals Board) granted reconsideration to further study the record in these two cases. Because of the important legal issues presented, as well as to assure uniformity of decision in the future, the Chairman of the Appeals Board, upon a majority vote of its members, consolidated the two cases and reassigned them to the Appeals

Board as a whole for an en banc decision. (Labor Code, §115.)[1] Having completed our deliberations, we hold as follows:

(1) In a single cumulative injury or occupational disease case involving the California Insurance Guarantee Association (CIGA) and another solvent carrier or carriers, CIGA will be relieved of liability pursuant to Insurance Code section 1063.1(c)(9) and *Industrial Indemnity v. Workers' Comp. Appeals Bd. (Garcia)* (1997) 60 Cal.App.4th 548 [62 Cal.Comp.Cases 1661] ("*Garcia*"), *unless* there is a prior approved stipulation, settlement or decision by a workers' compensation administrative law judge (WCJ) or the Appeals Board setting the apportionment of liability, which is binding on the now-insolvent carrier and becomes CIGA's liability;

(2) In successive injury cases, an apportionment of liability must be made by the WCJ or Appeals Board, setting the specific percentage of liability of all carriers, which will likewise set CIGA's liability for any now-insolvent carrier.

(3) Absent extraordinary circumstances, where CIGA is or has become liable for administering an award on behalf of a now-insolvent carrier, CIGA will be relieved of administering that award.

I. BACKGROUND

Gomez v. Casa Sandoval (OAK 234515, 239085, 240882)

On August 18, 1997, the WCJ approved Stipulations with Request for Award and Award, in which it was stipulated that the applicant, while employed by Casa Sandoval, insured by Golden Eagle Insurance Company (Golden Eagle) and California Compensation (Cal Comp), sustained successive injuries, resulting in permanent disability and the need for further medical treatment. The stipulations apportioned liability for permanent disability between the two carriers, but there was no apportionment of liability for the medical treatment award, for which Cal Comp was designated the "banker" with right of contribution against Golden Eagle.

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[1] The Appeals Board's en banc decisions are binding precedent on all Appeals Board panels and WCJs. (*Gee v. Workers' Comp. Appeals Bd*. (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal. Comp. Cases 236, 239, fn. 6]; Cal. Code Regs., tit. 8, §10341.)

In September 2000, Cal Comp became insolvent and CIGA began adjusting its "covered claims." In January 2001, CIGA requested dismissal, asserting that its liability for medical treatment was not a "covered claim" because Golden Eagle provided "other insurance" under Insurance Code section 1063.1(c)(9). Golden Eagle objected, and a hearing was held on March 18, 2002. The Minutes of Hearing (MOH) listed the three cases involving further medical treatment, and the insurance coverage for each injury, as follows:

> "Case OAK 239085 for a specific injury of June 1, 1995. Wherein California Compensation/CIGA is the only defendant.
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> "Case OAK 234515 for cumulative trauma period from August 1988 to December 8, 1995, wherein California Compensation/CIGA is the only defendant.
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> "Case OAK 240882 for cumulative trauma from December 11, 1995 to December 11, 1996 where in California Compensation/CIGA is the defendant from December 11, 1995 until April 30, 1996 and defendant Golden Eagle is the carrier from May 1, 1996 to December 11, 1996."

The matter was submitted on the record. Thereafter, the WCJ issued a decision finding that CIGA, on behalf of the now-insolvent carrier Cal Comp, had a duty to administer the award of medical treatment, and that CIGA's duty took precedence over its right to be dismissed where another solvent carrier, Golden Eagle, was still present in the case.

CIGA sought reconsideration of the WCJ's decision, contending in substance that while Cal Comp was designated the "banker," the approved Stipulations and Award did not apportion liability for medical treatment but reserved Cal Comp's right of contribution against Golden Eagle, who therefore provided "other insurance" under Insurance Code section 1063.1(c)(9), and consequently CIGA had no "covered claim."

Golden Eagle filed an answer, responding that it would violate due process to allow CIGA to be dismissed, and that CIGA remained liable for Cal Comp's stipulation to administer the medical treatment award.

Nokes v. Placer Savings Bank (SAC 289506, 289507)

In this case, it was stipulated that the applicant sustained injury during the period February 19, 1991 through May 18, 1997, with Fremont Compensation Insurance Company

(Fremont) the sole responsible carrier (SAC 289507), and during the period July 28, 1997 through October 6, 1998, with Paula Insurance Company (Paula, now insolvent with its "covered claims" adjusted by CIGA) the sole responsible carrier (SAC 289506). The issue of permanent disability was disputed, and on July 24, 2002, the WCJ issued Findings, Award and Order, finding that the two cumulative trauma injuries became permanent and stationary (P&S) at the same time and resulted in combined permanent disability of 32%, pursuant to *Wilkinson v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 491 [42 Cal. Comp. Cases 406] ("*Wilkinson*").

The WCJ also awarded further medical treatment, ordered Fremont to administer the award, reserved jurisdiction over apportionment of liability, re-joined CIGA, and found that Paula was bound by an earlier stipulation of injury.[2]

Fremont sought reconsideration of the WCJ's decision, contending in substance that the two injuries required separate determinations, that the two injuries did not become P&S at the same time, and that the WCJ erred in applying *Wilkinson* rather than *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1 [41 Cal. Comp. Cases 42] ("*Fuentes*").

Applicant filed an answer.

II. DISCUSSION

CIGA is limited to the payment of "covered claims" as defined in Insurance Code section 1063.1. (*Isaacson v. CIGA* (1988) 44 Cal.3d 775, 786.) Subdivision (c)(9) of section 1063.1 provides that " '[c]overed 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*…" (Emphasis added.)

Here, we analyze whether CIGA has a "covered claim" by reference to three categories. The first category is single cumulative injury or occupational disease cases where multiple employers/carriers are involved. The second category is successive-injury cases. The third

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[2] The parties had stipulated that Fremont had coverage from 2/1/96 to 2/1/97, Cal Comp from 2/1/97 to 2/1/98, and Paula from 2/1/98 to 10/6/98. Cal Comp became insolvent and CIGA was joined. On March 19, 2001, the WCJ dismissed Cal Comp and CIGA, at which point Paula stipulated to the cumulative trauma ending 10/6/98. Subsequently, Paula became insolvent and the WCJ re-joined CIGA in his decision of July 24, 2002.

category is cases in which CIGA is or has become responsible for administering an award, due to a previously-solvent carrier's agreement to accept liability for the award.

A. SINGLE CUMULATIVE INJURY CASES

1. GENERAL RULE: CIGA RELIEVED OF LIABILITY

In a single cumulative injury or occupational disease case where multiple carriers are involved, *Garcia*, *supra,* relieves CIGA of liability. In *Garcia*, CIGA was excused from liability where the applicant elected against three carriers, the award was joint and several against all of them, and each carrier, including CIGA's insolvent carrier, was fully liable for the entire disability during the cumulative injury period. In those circumstances, "other insurance" is available, within the meaning of Insurance Code section 1063.1(c)(9), by virtue of the other solvent carriers having coverage during some portion of the cumulative injury period. Where there has been no apportionment of liability among the carriers in the single cumulative injury, and the insolvency of one of the carriers occurs post-decision, the remaining solvent carrier(s) will be liable for all benefits, and CIGA will be relieved of any liability under the rationale of *Garcia*. (See also *Denny's Inc. v. Workers' Comp. Appeals Bd. (Bachman)* (2003) 104 Cal.App.4th 1433 [68 Cal.Comp.Cases 1].)

2. EXCEPTION: APPORTIONMENT OF LIABILITY ESTABLISHED BEFORE INSOLVENCY

Where the apportionment of liability has been established by a prior Findings and Award, approved Stipulations and Award, or approved Compromise and Release (C&R) involving a single cumulative injury, CIGA is not relieved of liability. This exception will apply where the now-insolvent carrier previously entered into an approved agreement or has become subject to an Appeals Board decision, resulting in a judgment to pay benefits according to whatever apportionment of liability has been established. The exception applies because the decision, or the approved stipulations or C&R, becomes final for purposes of reconsideration, thereby effectuating a legal judgment. (See *Johnson v. Workers' Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 974 [35 Cal. Comp. Cases 362, 368].) Since the apportionment of liability has been reduced to a

final judgment, CIGA remains liable for the now-insolvent carrier's already-established liability. CIGA's liability is a "covered claim" because there is no "other insurance" for the specific portion of liability that was agreed to and undertaken by the carrier, which subsequently became insolvent. Specifically, there is no "other insurance" within the meaning of Insurance Code section 1063.1(c)(9) to pay the benefit or benefits at issue, and the principles of *Garcia* do not apply.

The obligation may also be viewed in terms of enforcing a contract. If the apportionment of liability was fixed by approved stipulation or C&R, CIGA is liable to the extent of the now-insolvent carrier's contractual agreement. There is a liquidated amount of liability, which has been reduced to a judgment based on an approved stipulated or compromised contract, and CIGA remains liable for the obligations specifically apportioned in the approved stipulation or C&R. In situations where CIGA's responsibility for the now-insolvent carrier's liability has been established and has become final, there is no outstanding issue of apportionment of liability or a different source of insurance to satisfy the liability in the context of Insurance Code section 1063.1(c)(9). Where a carrier's portion of liability is established and has become final before that carrier's insolvency, CIGA is liable for that carrier's portion of liability as a "covered claim."

B. SUCCESSIVE INJURY CASES

1. LIABILITY MAY BE APPORTIONED IN SUPPLEMENTAL PROCEEDINGS

Proceedings for apportionment of liability in *single* cumulative injury and occupational disease cases are authorized by Labor Code section 5500.5(e),[3] and apportionment of liability among *successive* injuries has been established by judicial decision. Thus, where separate injuries have combined to cause disability or the need for medical treatment, it has been established that proceedings to determine apportionment of liability may be instituted, similar to the proceedings authorized by Labor Code section 5500.5. (See *Royal Globe Ins. Co. v. Industrial Acc. Com. (Lynch)* (1965) 63 Cal. 2d 60 [30 Cal. Comp. Cases 199]; *Fibreboard Paper Products Corp. v.*

[3] The statute provides in relevant part that the proceedings "shall be limited to a determination of the respective contribution rights, interest or liabilities of all the employers joined in the proceeding, either initially or supplementally; provided, however, if the appeals board finds on supplemental proceedings for the purpose of determining an apportionment of liability or of a right of contribution that an employer previously held liable in fact has no liability, it may dismiss the employer and amend its original award in such manner as may be required."

Industrial Acc. Com. (Beezley) (1965) 63 Cal.2d 65 [30 Cal. Comp. Cases 203]; *Robinson and Lamey v. Workers' Comp. Appeals Bd. (Ybarra)* (1982) 47 Cal. Comp. Cases 1085 [Writ denied].)[4]

Under Labor Code sections 3208.2 and 5303, merger of multiple injuries is prohibited, and separate findings of fact and awards for each separate injury are required.

Labor Code section 3208.2 provides that "[w]hen disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit."

Labor Code section 5303 provides, in relevant part, that "[t]here is but one cause of action for each injury coming within the provisions of this division…no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death."

The requirement of separate findings of fact for each injury supports the conclusion that between or among successive injuries, there is no "other insurance…available to the claimant or insured" under Insurance Code section 1063.1(c)(9). In successive injury cases, the liability is not joint and several among or between carriers, but rather, awards are made for the convenience of the applicant, with a single carrier to provide benefits subject to subsequent apportionment of

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[4] In *Victor Valley Transit Authority v. Workers' Comp. Appeals Bd. (Sophy)* (2000) 83 Cal. App. 4th 1068, 1076 [65 Cal. Comp. Cases 1018, 1024], the Court held that Labor Code section 5500.5 did not confer jurisdiction on the Appeals Board, and the Appeals Board had no inherent power, to resolve a dispute over apportionment of liability between two member cities of a joint powers agency that administered their metropolitan transportation program. The *Sophy* case, however, involved a single injury. The Court, describing the joint powers agency as "the governmental version of a joint venture," treated the agency as a single employer and analogized the dispute between the two cities as one between a general and special employer in a specific injury case. (83 Cal. App. 4th at 1072-1076 [65 Cal. Comp. Cases at 1020-1024].) We believe *Sophy*'s holding is limited to its factual circumstances, and therefore the decision does not limit the Appeals Board's jurisdiction to determine apportionment of liability in multiple-employer/carrier, single cumulative injury cases (*Colonial Ins. Co. v. Industrial Acc. Com. (Pedroza)* (1946) 29 Cal.2d 79 [11 Cal. Comp. Cases 226], Labor Code § 5500.5(e)), or in successive injury cases. (*Fibreboard Paper Products Corp. v. Industrial Acc. Com. (Beezley)* (1965) 63 Cal.2d 65 [30 Cal. Comp. Cases 203].)

liability, as required by Labor Code sections 3208.2 and 5303. The result is no different where CIGA has been joined on behalf of an insolvent carrier.

This approach is required because case law has established that section 3208.2 is concerned with the sharing of loss by employers, and not with the apportionment of benefits between the employer and the injured worker. (*Buhlert Trucking v. Workers' Comp. Appeals Bd. (Gilpin)* (1988) 199 Cal.App.3d 1530 [53 Cal. Comp. Cases 53]; *Zenith Ins. Co. v. Workers' Comp. Appeals Bd. (Thweatt)* (1981) 124 Cal.App.3d 176 [46 Cal.Comp.Cases 1126].)

In *Thweatt,* the Court held that the judicially-formulated rule against apportionment of death benefits, medical benefits and burial expenses between the employee and employer was not abrogated by Labor Code sections 3208.2 and 5303. The Court stated:

> "Although sections 3208.2 and 5303 have a potential effect on the substantive rights of an employee by precluding resurrection of a barred disability claim through the application of the merger doctrine, they are essentially procedural statutes directing the manner in which claims should be filed and requiring that questions of fact and law be separately determined with respect to each injury when there are multiple injuries…the separate determinations of 'questions of fact and law' which section 3208.2 requires to be made as to each injury pertain to 'the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.'…Apportionment of a compensable loss may arise in three principal contexts: Between successive employers or carriers; between an employer and the Subsequent Injury Fund; and between an employer and the employee himself…In the first two situations, the employee receives full benefits and the only question is how the loss will be shared among those liable; in the third situation, apportionment reduces the amount of the award to the employee. The statutory phrase 'apportionment…of liability' signifies a division of the loss among successive employers, not between an employee and the employer…" (124 Cal.App.3d 176, 184-185 [46 Cal.Comp.Cases 1126, 1131-1132], citations, footnotes and italics omitted.)

We therefore conclude that in successive injury cases, if not otherwise stipulated, an apportionment of liability must be made by the WCJ, setting the specific percentage of liability of the carriers, including CIGA's liability for any insolvent carrier. As discussed below, this approach should be taken in successive injury cases where the apportionment of liability occurred prior to the insolvent carrier's liquidation, by way of findings or approved stipulations. However, the same approach should be taken where the apportionment of liability does not occur until after

the finding of successive injuries and after insolvency. This procedure is consistent with the Appeals Board's authority to apportion liability and is mandated by the statutory requirements of Labor Code sections 3208.2 and 5303.

2. APPORTIONMENT OF LIABILITY ESTABLISHED BEFORE INSOLVENCY

Similar to a single cumulative injury case in which the insolvent carrier's portion of liability has been previously determined, CIGA remains liable for the insolvent carrier's already-established liability in successive injury cases where a decision, or approved stipulation or C&R has resulted in specific percentages of liability assigned to each carrier. Again, the apportionment of liability has been fixed by decision or approved agreement of the parties, and the apportionment becomes final for purposes of reconsideration, effectuating a legal judgment. That liability is a "covered claim" because there is no "other insurance" for the specific portion of liability that has been reduced to judgment, consistent with the requirements of Labor Code sections 3208.2 and 5303.

3. NOTE ON THE *GRANADO* PRINCIPLE

We concluded above that specific percentages need to be assigned to each separate injury, with the result that there is no "other insurance…available to the *claimant* or insured" to relieve CIGA of liability under Insurance Code section 1063.1(c)(9).

Under *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647], the injured worker (i.e., the *claimant*) may seek benefits from any carrier who is liable for an injury that contributes to temporary disability or the need for medical treatment, without apportionment *between industrial and non-industrial causes.*

However, *Granado* does not deal with or prohibit *apportionment of liability between employers/carriers,* as mandated by law, which is the issue we have addressed herein. Rather, *Granado* precludes *apportionment of benefits* (temporary disability and medical treatment) *between the employer and the employee*, i.e., between industrial and non-industrial causes. Accordingly, it is our opinion that *Granado* does not apply where CIGA raises Insurance Code section 1063.1(c)(9) in the context of apportioning liability between carriers.

C. ADMINISTRATION OF AWARDS

GENERAL RULE: CIGA EXCUSED FROM ADMINISTRATION

It has been held that "[t]he selection, by the Board, of a certain employer or carrier to administer the award is a matter of discretion." (*General Ins. Co. v. Workers' Comp. Appeals Bd. (Sale)* (1980) 104 Cal.App.3d 278, 286 [45 Cal. Comp. Cases 403, 409].) Thus, the Appeals Board has authority to modify the appointment of an administrator. The exercise of such authority does not constitute a modification of the award, it is simply a modification of the administrator.

The Appeals Board's authority is also available in the context of modifying a stipulation to relieve CIGA of its administrative duties. The number of insolvencies of workers' compensation carriers in California is substantial and growing, and as a result there is an increased burden on CIGA to meet its obligations on "covered claims." Since CIGA is under considerable pressure with the large number of insolvencies that have occurred already and those that may occur in the future, it should be relieved of responsibility for administering workers' compensation awards. Accordingly, we conclude that where CIGA is or has become liable for administering an award, the discretion afforded to the Appeals Board in choosing the administrator allows CIGA to be relieved of responsibility for administration, absent extraordinary circumstances. Therefore, if another solvent carrier has some portion of liability by virtue of a separate and independent injury, that carrier should be required to administer the award subject to an apportionment of liability. CIGA should not be burdened with administration of the award, but will provide reimbursement to the solvent carrier.

III. DISPOSITION IN *GOMEZ* AND *NOKES*

In *Gomez,* Cal Comp/CIGA is solely liable for the specific injury of June 1, 1995 (OAK 239085) and the cumulative trauma from August 1988 to December 8, 1995 (OAK 234515). In the cumulative trauma from December 11, 1995 to December 11, 1996 (OAK 240882), Cal Comp had coverage from December 11, 1995 through April 30, 1996 and Golden Eagle had coverage from May 1, 1996 to December 11, 1996. Pursuant to *Garcia, supra,* CIGA is relieved of liability for any medical treatment attributable to the injury in OAK 240882 because there is "other

insurance," namely Golden Eagle, to cover the claim. In OAK 239085 and OAK 234515, however, the only carrier was Cal Comp, thus no "other insurance" is available. The Stipulations and Award of August 18, 1997 did not specifically apportion liability for medical treatment between the three injuries. While liability cannot be apportioned to CIGA in OAK 240882, any need for medical treatment resulting from the other two injuries will be CIGA's responsibility. However, the specific apportionment of liability between Golden Eagle and CIGA must be made in supplemental proceedings. In the meantime, CIGA is relieved from administering the award. Golden Eagle must take over administration, with right of reimbursement from CIGA pending specific apportionment of liability by the WCJ.

In *Nokes*, the first cumulative injury occurred over the employment period February 19, 1991 through May 18, 1997, and Fremont is the sole liable carrier (SAC 289507). The second cumulative injury occurred over the employment period July 18, 1997 through October 6, 1998, and the now-insolvent carrier Paula, whose "covered claims" are adjusted by CIGA, was the sole liable carrier (SAC 289506).

While Fremont does not dispute that Dr. Goldberg is the treating physician for the first cumulative injury, the treating physician's presumption of correctness under Labor Code section 4062.9 does not apply to Dr. Goldberg because Fremont did not obtain a Qualified Medical Evaluation (QME) in SAC 289507. Dr. Lewis is the treating physician for the second cumulative injury (SAC 289506), and his opinion is entitled to the presumption of correctness because Paula obtained a QME from Dr. Lilla.[5]

Dr. Goldberg performed carpal tunnel release surgeries on each wrist, in May and June 1997. Applicant returned to work on August 4, 1997 (within the second cumulative trauma period), and at trial she testified that her condition worsened at that point. Dr. Goldberg found that her condition became P&S in November 1997. However, applicant returned to Dr. Goldberg in April 1998, and on June 25, 1998 the doctor confirmed that her condition had worsened due to

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[5] Dr. Lilla's report dated April 2, 2001 is not substantial evidence. Though the industrial nature of the injuries was not in dispute, the doctor offered the opinion that applicant's symptoms were not related to her employment.

"her usual and customary job duties, but it should be looked at as probable aggravation of a pre-existing problem." According to Dr. Goldberg's June 25, 1998 report then, both the aggravation (i.e., the second cumulative trauma) and the pre-existing condition (the first cumulative trauma) contributed to the worsening of applicant's condition. In the meantime, applicant had begun treating with Dr. Lewis in October 1998. He performed a left re-release on April 22, 1999 and found that applicant's condition became P&S on October 19, 1999.

As noted above, Dr. Lewis is entitled to the presumption of correctness. His medical opinion, as well as applicant's testimony and Dr. Goldberg's June 25, 1998 report, supports the WCJ's determination that the two cumulative trauma injuries became P&S at the same time. Therefore, we conclude that the WCJ properly applied *Wilkinson* and correctly awarded combined permanent disability of 32%. For the same reason, we reject Fremont's contention that *Fuentes* applies.

With respect to CIGA, the WCJ correctly appointed Fremont as the administrator, deferred its lien, and deferred apportionment of liability. As explained above, if another solvent carrier (Fremont) is liable by reason of a separate and independent injury, that carrier should be required to administer the award subject to apportionment of liability for the injury, as required by Labor Code sections 3208.2 and 5303.

For the foregoing reasons,

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IT IS ORDERED, as the Decision After Reconsideration of the Board (En Banc) in *Gomez v. Casa Sandoval* (OAK 234515, 239085, 240882), that the Finding and Order of May 9, 2002 is **RESCINDED,** and that the following Findings are **SUBSTITUTED** in its place:

FINDINGS

1. Golden Eagle and CIGA share liability for the medical treatment awarded August 18, 1997. The specific apportionment of liability is to be determined by the WCJ in supplemental proceedings, jurisdiction reserved.

2. Golden Eagle is appointed to administer the medical treatment award from this time forward, subject to reimbursement by CIGA according to the specific apportionment of liability determined by the WCJ, pursuant to Finding 1.

3. CIGA's petition to be dismissed pursuant to Insurance Code section 1063.1 is denied.

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IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Board (En Banc) in *Nokes v. Placer Savings Bank* (SAC 289506, 289507), that the Findings, Award and Order of July 24, 2002 is hereby **AFFIRMED.**

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

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MERLE C. RABINE, Chairman

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WILLIAM K. O'BRIEN, Commissioner

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JAMES C. CUNEO, Commissioner

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JANICE JAMISON MURRAY, Commissioner

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FRANK M. BRASS, Commissioner

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A. JOHN SHIMMON, Commissioner

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

5/27/03

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS.

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