

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

**MATT NOKES, *Applicant***

**vs.**

**JOILET JACKHAMMERS; LIBERTY MUTUAL INSURANCE COMPANY;  
SCHAUMBERG FLYERS; UNITED STATES FIDELITY AND GUARANTY  
INSURANCE COMPANY; CLEVELAND INDIANS, Permissibly Self-Insured, *Defendants***

**Adjudication Number: ADJ9145976  
Santa Ana District Office**

**OPINION AND DECISION AFTER  
RECONSIDERATION**

The Appeals Board previously granted reconsideration to further consider the factual and legal issues in this case. This is our Decision After Reconsideration.<sup>1</sup>

Defendant, the Cleveland Indians seeks reconsideration of the August 1, 2019, Findings and Order wherein the workers' compensation arbitrator found that policies issued by Liberty Mutual Insurance Company and United States Fidelity and Guarantee Insurance Company (USF&G) did not provide coverage in California for applicant's employers, the Schaumberg Flyers and the Joilet Jackhammers.

Defendant contends that the arbitrator erred in finding that USF & G did not cover employees of the Schaumberg Flyers outside the State of Illinois, arguing that the arbitrator did not provide a reason for finding that the USF&G policy did not provide coverage and that the USF&G policy is materially different from the Liberty Mutual policy.

The arbitrator prepared a Report and Recommendation on Petition for Reconsideration recommending that the petition be denied. We have reviewed the Report and the record in this matter. For the reasons discussed below, we will amend the August 1, 2019, Findings and Order to defer the issue of whether the USF&G policy provided coverage for injuries that occurred

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<sup>1</sup> Commissioner Lowe, who previously served as a panelist in this matter is no longer a member of the Appeals Board. Another panel member was assigned in her place.

outside of the State of Illinois and return this matter to the arbitrator for further proceedings and a new decision on the remaining issue.

## FACTS

At the arbitration, the parties submitted two key issues for decision:

1. Whether or not the Schaumberg Flyers were insured for workers' compensation liability in the State of California by USF & G during the time the injured worker Matt Nokes was associated with the Schaumberg Flyers? (Arbitration Transcript, p. 7.)
2. Whether or not the Joilet Jackhammers were insured for workers' compensation liability in the State of California by Liberty Mutual during the time injured worker Matt Nokes was associated with the Joilet Jackhammers? (Arbitration Transcript, pp. 7-8.)

Both the Liberty Mutual and USF&G policies used a standard form policy that has been approved by the National Council on Compensation Insurance (NCCI). Part Three, subsection A of the standard NCCI policy states:

### How This Insurance Applies

- A
1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
  2. If you begin work in any one of those states after the effective date of this policy and are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
  3. We will reimburse you for the benefits required by the workers' compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
  4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

Item 3C of the USF&G policy states:

Part Three of the policy applies to the states, if any, listed here: All states except states designated in Item 3.A of the information page, ND, OH, WA, WV, WY and NONE.

Item 3C of the Liberty Mutual policy states:

Part Three of the policy applies to the states, if any, listed here: REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT WC 00 03 26A

The Residual Market Limited Other States Insurance Endorsement replaces Part Three-Other States Insurance with new language. Notably, the endorsement requires that all conditions must be met before Liberty Mutual will provide coverage.

In his Report, the arbitrator explained as follows:

I may have somewhat cavalierly indicated that ‘similar language’ found in the USF&G policy did not impose upon USF &G the affirmative obligation to cover Nokes in California for the Schaumburg Flyers. I apologize for not further expressing my thought process. If one merely relies upon Part III(a) of the Information Page and the USF & G policy for the Schaumburg Flyers, clarity is required. I did not properly provide that clarity. Qualifying language in the USF&G policy does [not]<sup>2</sup> permit coverage where the injured worker did not ‘begin work’ in Illinois and there is no other available coverage within California. However, the parties stipulated that Nokes played no baseball games ever within the State of California. The USF & G policy does have qualifying language which the Cleveland Indians do not reference in their ‘Petition.’ The net effect of the USF & G policy is not unlike the Liberty Mutual Policy, neither policy covers this claim since the provisions of the policy to invoke coverage for this claim have not been satisfied by Nokes. Both policies for Joilet and Schaumburg do limit extraterritorial coverage by way of their endorsements or actual contractual for [sic.] provisions. Most insurance policies have conditions for coverage and the Liberty Mutual Policy, and the USF &G policy do provide conditions which were not met in regards to this case and, thus my ‘Findings and Order’ appears correct and supported by substantial evidence and insurance coverage contractual evidence. (Report, pp. 2-3.)

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<sup>2</sup> Without an additional “not,” this sentence would have the opposite meaning of the arbitrator’s intended meaning. The policy affirmatively provides coverage for employees who begin work in Illinois and continue work in a listed state.

## ANALYSIS

The Cleveland Indians did not seek reconsideration of the arbitrator's Finding that the Liberty Mutual policy did not provide coverage for applicant's injury. Therefore, we will not disturb that finding.

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." (*TRB Investments, supra* at 27.)

Workers' compensation insurance policies are regulated by each state. For example, workers' compensation insurance policies providing coverage in California are subject to regulation by the California Department of Insurance. (Ins. Code §§ 11651, 11657, 11658.) Because each state has the ability to regulate the content of workers' compensation policies, most insurers use a standard workers' compensation policy form authored by the National Council on Compensation Insurance (NCCI) that is approved in all states. The insurer can amend the standard policy to comply with state law or to change the terms of the policy by attaching endorsements. The NCCI policy is approved for use in California and has long been in general use in this state. In this case, both the Liberty Mutual and the USF&G policies were written using the standard workers' compensation policy.

In his Report, the arbitrator stated: "Both policies...limit extraterritorial coverage by way of their endorsements or actual contractual for [sic.] provisions." (Report, p. 3.) The Liberty Mutual policy excised Part Three of the standard policy and replaced it with language that specifically required that all conditions be satisfied for the policy to provide coverage

Despite an extensive discussion of Item 3C of the USF&G policy in the Petition for Reconsideration, the arbitrator did not attempt to analyze whether the language of 3C includes or excludes California. While the arbitrator is correct that "most insurance policies have conditions for coverage," it is essential to analyze the exact words of the particular policy at issue. As mentioned above, the extension of coverage to other states found in Part Three of the standard policy provides that workers' compensation coverage is provided for other states listed in 3C. Thus, before proceeding with further analysis, the arbitrator should determine whether California

is listed in 3C. If California is not listed in 3C, the extension of coverage to California does not apply. If California is included, the arbitrator must analyze whether there are conditions for coverage that are not met, and, if so, whether those failure to mee those conditions results in the policy not providing coverage.

When a case is submitted for decision, it is the responsibility of the parties and the WCJ or arbitrator to ensure that, at a minimum, the record contains a list of issues submitted for decision, stipulations of the parties (if any), and admitted evidence. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 477 [Appeals Board en banc].) The WCJ or arbitrator is also required to prepare "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Labor Code § 5313) A full and complete record allows for a meaningful right of reconsideration. (*Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 22 Cal.Comp.Cases 350.)

In this case, the arbitrator has not provided an adequate basis for his conclusion that there is no coverage for a California workers' compensation claim. Therefore, we will return this matter to the arbitrator to adequately explain his reasons.

For the foregoing reasons,

As our Decision After Reconsideration, **IT IS ORDERED** that the August 1, 2019, Findings and Order is **AFFIRMED, EXCEPT** Finding of Fact No. 6 and the Order are **AMENDED** as follows:

**FINDINGS OF FACT**

6. The issue of whether the United States Fidelity and Guarantee Company policy issued to the Schaumburg Flyers provided coverage for out of state injuries is deferred with jurisdiction reserved with the arbitrator.

**ORDER**

It is ordered that Liberty Mutual Insurance Company is dismissed as a party-defendant in this matter.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**October 25, 2022**

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

**MATT NOKES  
PRO ATHLETE LAW SAN DIEGO  
CLYDE & CO US, LLP  
LAW OFFICES OF OWENS O. MILLER  
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK  
HANNA, BROPHY, MacLEAN, McALEER & JENSEN  
SEYFARTH SHAW, LLP  
G. RONALD FEENBERG, ESQ./ROSE, KLEIN & MARIAS LLP (ARBITRATOR)**

**MWH/mc**

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