

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Case No. SRO 0088351**

5 **CHERYL COLDIRON,**

6 *Applicant,*

7 **vs.**

8 **COMPUWARE CORPORATION;
9 CALIFORNIA INSURANCE GUARANTEE
10 ASSOCIATION, on behalf of
11 RELIANCE NATIONAL INSURANCE
12 COMPANY, in liquidation, administered by
13 INTERCARE INSURANCE SERVICES;
14 formerly administered by GALLAGHER
15 BASSETT SERVICES, INC.,**

16 *Defendants.*

**OPINION, ORDERS, AND
DECISION AFTER
RECONSIDERATION**

(EN BANC)

17 On November 26, 2001, the Appeals Board granted the petition for reconsideration filed by
18 Compuware Corporation (Compuware) in which defendant Compuware challenged the Findings
19 and Award issued by the workers' compensation administrative law judge (WCJ) on August 31,
20 2001. In that decision, the WCJ followed and adopted the stipulations of parties as true in finding,
21 among other things, that Cheryl Coldiron (applicant), born October 6, 1955, sustained an admitted
22 industrial injury to her neck and back on January 13, 1995 while employed by Compuware,
23 *permissibly self-insured*. The WCJ awarded in applicant's favor and against Compuware various
24 benefits including temporary disability, permanent disability indemnity of \$28,203.00, less
25 specified credit to defendant for applicant's third-party recovery, and further medical treatment.

26 The sole issue raised by Compuware in its petition for reconsideration is the entity against
27 whom the benefits should have been awarded by the WCJ, whether against Compuware or against
Reliance National Insurance Company (Reliance), the latter the employer's insurance carrier.

1 After granting reconsideration, the Appeals Board issued an en banc decision¹ on March
2 20, 2002 (for full text of opinion, see *Coldiron v. Compuware Corporation* (2002) 67 Cal. Comp.
3 Cases 289, Board en banc). We held that where an employer's liability for workers' compensation
4 benefits is adjusted by a third-party administrator, the administrator must disclose to the Workers'
5 Compensation Appeals Board (WCAB), to other parties in any proceeding in which it is a party,
6 and to its own counsel, if any, the identity of its client, whether self-insured employer or insurance
7 carrier. We also held that, if the client is an insurance carrier, the administrator must disclose
8 whether the policy includes a "high self-insured retention," a large deductible, or any other
9 provision that affects the identity of the entity actually liable for the payment of compensation. We
10 further held that failure of the administrator to disclose the identity of its client may subject it to
11 sanctions pursuant to Labor Code section 5813. We also stated that this disclosure should be made
12 no later than at least at the commencement of any litigation in the case.

13 In addition, the Appeals Board issued a Notice of Intention (NIT) to hold a Commissioner's
14 Conference on April 18, 2002, for clarification of the basis for the arrangement between
15 Compuware and Reliance and whether compliance had been met with Insurance Code sections
16 11650 et seq., particularly sections 11657, 11659 and 11660, whether sanctions of \$1,500.00
17 should be imposed against Gallagher Bassett Services, Inc. (Gallagher Bassett) who failed to
18 disclose the identity of Reliance as the insurance carrier for Compuware, and to further answer
19 issues raised in the petition for reconsideration. We note that in its petition for reconsideration,
20 Compuware requested that Reliance be substituted in place of Compuware as the entity against
21 whom the Findings and Award of the WCJ should have been awarded, instead of Compuware as a
22 self-insured entity, adjusted by Gallagher Bassett, based on an alleged excusable error that was
23 brought to the WCJ's attention upon discovery that Reliance was the employer's insurance carrier.

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26 ¹ The Board's en banc decisions under Labor Code section 115 are binding precedent on all
27 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; WCAB/DWC Policy & Procedure Manual, Index No.
6.16.1.]

1 By letter dated March 27, 2002, Commissioner James Cuneo informed the parties as to the
2 purpose of the Commisioner's Conference before him and what documents should be brought to
3 the conference.

4 By letter dated April 4, 2002, the law firm of Finegan, Marks & Hamilton advised the
5 Appeals Board that it would be representing Gallagher Bassett and requested a short continuance.

6 By Notice dated April 10, 2002, a continuance was granted setting the conference for May
7 23, 2002. The Minutes of the conference held on May 23, 2002, reflect appearances by John Bloom
8 for applicant; Anthony Hampton for Gallagher Bassett; Drene Miners as Claims Manager for
9 Gallagher Bassett; John Armanino for Compuware and California Insurance Guarantee Association
10 (CIGA).² Part of the Appeals Board record is a transcript of the proceeding. At the conference, the
11 parties agreed that the applicant was receiving benefits from CIGA and that the Findings and
12 Award had been paid by Reliance. Gallagher Bassett made an Offer of Proof as follows:

13 If called to testify Drene Miners would testify as follows:

- 14 1. Reliance National Insurance Company issued a valid California Workers'
15 compensation policy for Compuware at all times herein relevant.
- 16 2. Reliance National Insurance Company chose Gallagher Bassett as their third party
17 administrator at all times herein relevant.
- 18 3. The Reliance National Insurance Company policy was a Reliance primary insurance
19 fronted program with no self-insured retention.
- 20 4. On the issue of the \$1,500.00 sanctions, counsel for defendant, Mr. Armanino, was
21 first advised of the Reliance policy on September 5, 2001. At all times prior to that date
22 authority had been given to counsel by Compuware attorneys, agents, and employees, as
23 well as Gallagher Bassett employees. At no time did any employee of Reliance Insurance
24 Company participate in those discussions. Upon knowledge of presence of the Reliance
25 policy, defendants moved the court for an Order Amending its prior Pleadings as set forth
26 in the Mandatory Settlement Conference Statement.
- 27 5. Reliance National has paid the Award.

Mr. Hampton also stated that the reason that Gallagher Bassett did not notify counsel or the
WCAB as to the lack of self-insurance, and the presence of insurance, was just due to human error.

² Reliance became insolvent in October of 2001 and CIGA had liability.

1 The conference disposition allowed Mr. Hampton thirty (30) days to send to the Appeals
2 Board and parties copies of the documents he had with him at the conference plus submit
3 argument; Mr. Bloom was allowed thirty (30) days to reply and Mr. Armanino was allowed thirty
4 (30) days to reply to Mr. Bloom. Mr. Armanino was also to send to the Appeals Board anything he
5 had in writing from CIGA that showed that CIGA was making and will make payment of benefits,
6 now that Reliance is insolvent. At the conference, Commissioner Cuneo issued a NIT to join
7 CIGA, administered by Fleming & Associates³ on behalf of Reliance, in liquidation, fifteen (15)
8 days from the date of the conference, absent objection in writing. The parties were also advised
9 that after submission of briefs, the Appeals Board would issue a Notice of Intention to accept in
10 evidence the above Offer of Proof and the exhibits to be submitted by Mr. Hampton.

11 By letter dated June 5, 2002, Mr. Hampton submitted documents pursuant to the
12 Conference Minutes. The documents submitted included copies of the insurance policy issued to
13 Compuware by Reliance for the period May 10, 1993 through April 1, 1994; a renewal notice from
14 April 1, 1994 through May 1, 1995 (we note that the date of injury herein is January 13, 1995); and
15 service instructions for the Compuware account. Mr. Hampton also stated that the policy was a
16 "fronted program" with no self-insured retention and settlement authority was to come from
17 Reliance. The documents reveal that Reliance wrote not only workers' compensation for
18 Compuware in California and New Jersey, but also insured Compuware for property, general
19 liability and auto liability. There is a reference to "Fictitious Multiple SIRs" of \$250,000.00 to be
20 applied to the various policies. The program description was a "RELIANCE GUARANTEED
21 COST PROGRAM-SIR FICTITIOUS @ 250,000. COVERAGES INCLUDE GB, GD, WC, AB,
22 AD, RB, RC." The workers' compensation policy provided for statutory coverage.

23 On August 14, 2002, the Appeals Board issued its Notice of Intention to admit in evidence
24 the Offer of Proof as to testimony as well as the documents attached to Mr. Hampton's June 5,
25 2002 letter. The Appeals Board also gave a Notice of Intention to submit the matter for decision

26 ³ By letter dated May 29, 2002, Mr. Armanino has advised the Appeals Board that Intercare
27 Insurance Services, located at P.O. Box 19544, Irvine, CA 92623, is the official adjusting agency
for CIGA in place of Fleming & Associates.

1 after reconsideration (En Banc), absent written objection and demonstration of good cause to the
2 contrary within fifteen (15) days. There has been no objection filed to either NIT. Therefore, the
3 the Offer of Proof and the documents identified in the Notice are deemed admitted in evidence as
4 WCAB Exhibits A and B, respectively. The matter is also deemed submitted for decision after
5 reconsideration (En Banc).

6 Based on our review of the exhibits submitted, the policy documents do support a finding
7 that Reliance did insure Compuware for California workers' compensation for the statutory
8 amounts without retentions. The endorsement (page 443, copy difficult to read) appears to be the
9 standard California endorsement excluding coverage for certain activities such as injuries by
10 illegally employed minors.⁴ Although the parties have provided no explanation as to the meaning
11 of "primary fronted program," it appears that it was part of a sales program to obtain all of
12 Compuware's insurance business and to allow Compuware to control costs by having approval of
13 benefit expenditures. It also appears that this issue lacks significance at this time since Reliance is
14 in liquidation (as of October 3, 2001) and CIGA has taken over payment of benefits.

15 Accordingly, we will substitute Reliance in place of Compuware in the WCJ's Findings and
16 Award of August 31, 2001. However, we will not dismiss Compuware as a party defendant in
17 order to allow CIGA the opportunity to explore possible coverage omissions affecting potential
18 Compuware liability. We will also join CIGA as a party defendant pursuant to our NIT.

19 In addition, we will not impose sanctions on Gallagher Basset inasmuch as this is the first
20 time that the Appeals Board has addressed the underlying issue presented by this case. But for this
21 being a case of first impression, six years of "human error" would not be acceptable as a defense to
22 the imposition of sanctions.

23 We emphasize, however, that our decision not to impose sanctions in this particular case
24 does not in any way abrogate, diminish, limit or abridge our essential holding that a third party
25 administrator must promptly disclose the identity of its client and, if the client is an insurance

26 ⁴ See Lab. Code § 4557; Insur. Code § 11661.5; Cal. Code Regs. tit. 10, § 2259(d); and generally
27 Hanna, Cal. Law of Emp Inj. and Workers' Comp. 2d, Standard California Amendatory
Endorsement, 2.50[1][b][3].

1 carrier, the administrator must disclose whether the policy includes a "high self-insured retention,"
2 a large deductible, or any other provision that affects the identity of the entity actually liable for
3 compensation. These holdings remain in full force and effect, and the third party administrators (or
4 their counsel and/or representative) who do not comply with these holdings may be subject to
5 sanctions.

6 For the foregoing reasons,

7 **ORDERS**

8 **IT IS ORDERED** that the Offer of Proof as to the testimony of Ms. Drene Miners and the
9 documents attached to the June 5, 2002 letter of Mr. Anthony R. Hampton are admitted in evidence
10 as WCAB Exhibits A and B, respectively.

11 **IT IS FURTHER ORDERED** that the CALIFORNIA INSURANCE GUARANTEE
12 ASSOCIATION (CIGA), on behalf of RELIANCE NATIONAL INSURANCE COMPANY, in
13 liquidation, administered by INTERCARE INSURANCE SERVICES, be and hereby are,
14 **JOINED** as party defendants.

15 **IT IS FURTHER ORDERED** that no sanctions will be imposed against Gallagher Bassett
16 Services.

17 **IT IS FURTHER ORDERED** that as the Decision After Reconsideration of the Workers'
18 Compensation Appeals Board (En Banc), the Findings and Award of the workers' compensation
19 administrative law judge that issued on August 31, 2001 be, and hereby is, **AFFIRMED**, except
20 that Finding of Fact No. 1, subsection "a." and the AWARD are amended to read as follows:

21 **"FINDINGS OF FACT**

22 "1.a. The applicant, Cheryl Coldiron, born October 6, 1955, sustained an admitted injury
23 arising out of and occurring in the course of her employment to her neck and back on January 13,
24 1995 while employed by Compuware Corporation, insured by Reliance National Insurance
25 Company, in liquidation on or about October 3, 2001."

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"AWARD

"AWARD IS MADE in favor of Cheryl Coldiron against California Insurance Guarantee Association on behalf of Reliance National Insurance Company, in liquidation on or about October 3, 2001, administered by Intercare Insurance Services, as follows:

"(a) Temporary disability payable in accordance with Finding of Fact No. 4, less credit for sums paid, including amounts paid by Reliance National Insurance Company;

"(b) Further medical treatment in accordance with Finding of Fact No. 6;

"(c) Reimbursement for self-procured medical treatment in accordance with Findings of Fact Nos. 7 and 8;

"(d) Permanent disability of 37.5 percent, equivalent to 178.50 weeks of disability indemnity payable commencing October 30, 1998, at the rate of \$158.00 per week, in the total amount of \$28,203.00, less attorney fees in the amount of \$7,156.00 to be held in accordance with

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1 Finding of Fact No 9, less \$12,000.00 credit for third party recovery following reduction for
2 employer negligence, less credit for payments made including amounts paid by Reliance National
3 Insurance Company, together with interest as provided by law."

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5 ***WORKERS' COMPENSATION APPEALS BOARD (EN BANC)***

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7 _____
8 *MERLE C. RABINE, Chairman*

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11 *WILLIAM K. O'BRIEN, Commissioner*

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13 _____
14 *JAMES C. CUNEO, Commissioner*

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16 _____
17 *JANICE JAMISON MURRAY, Commissioner*

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19 _____
20 *FRANK M. BRASS, Commissioner*

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

22 ***SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE***
23 ***OFFICIAL ADDRESS RECORD.***

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