

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Case No. POM 248928**

5 **MARK MICELI, et al.,**

6 *Applicant,*

7
8 **vs.**

9 **JACUZZI, INC., REMEDY TEMP, INC.,**
10 **AMERICAN HOME ASSURANCE CO.,**
11 **RELIANCE NATIONAL INDEMNITY CO.**
(In Liquidation), CALIFORNIA INSURANCE
12 **GUARANTEE ASSOCIATION,**

13 *Defendants.*

14 **OPINION AND DECISION**
15 **AFTER RECONSIDERATION**
16 **(EN BANC)**

17 **INTRODUCTION**

18 Jacuzzi, Inc. (Jacuzzi) contracted with Remedy Temp, Inc. (Remedy Temp), a temporary
19 staffing agency, to supply temporary employees to Jacuzzi. Temporary employee Mark Miceli
20 was on Remedy Temp's payroll and working at a Jacuzzi jobsite when he sustained an industrial
21 injury. Per stipulation, Remedy Temp was Miceli's general employer and Jacuzzi was his special
22 employer. The legal nature of this relationship is discussed later in this opinion.

23 At the time of injury, Jacuzzi had a workers' compensation policy with American Home
24 Assurance Company (AHA). Remedy Temp had a workers' compensation policy covering
25 temporary employees with the now-insolvent carrier Reliance National Indemnity Company
26 (Reliance), whose "covered claims" are adjusted by the California Insurance Guarantee
27 Association (CIGA) per Insurance Code section 1063 *et seq.* The Reliance policy contained an
alternate employer endorsement, which included Jacuzzi as an alternate employer.¹

¹ The endorsement relates to Labor Code section 3602(d). This statute, and all relevant statutes referenced in the "Introduction" and "Background" herein, are set forth in the "Discussion" section of this opinion.

1 Miceli filed a workers' compensation claim against Remedy Temp. After Reliance's
2 insolvency, CIGA entered the case and asserted that Miceli's claim was not a "covered claim"
3 because Jacuzzi's policy with AHA constituted "other insurance" within the meaning of
4 Insurance Code section 1063.1(c)(9). The workers' compensation administrative law judge
5 (WCJ) agreed, and issued a decision dismissing CIGA as a party defendant and imposing liability
6 on AHA.

7 Thereafter, the Workers' Compensation Appeals Board (Appeals Board) granted
8 reconsideration to further study the matter. Because of the important legal issue presented, and
9 in order to secure uniformity of decision in the future, the Chairman of the Appeals Board, upon
10 a majority vote of its members, reassigned this case to the Appeals Board as a whole for an en
11 banc decision. (Labor Code, §115.)² We conclude that where the workers' compensation carrier
12 for the general employer has become insolvent, and where there are no specific exclusions from
13 the workers' compensation policy of the special employer, the policy provided by the insurer of
14 the special employer constitutes "other insurance...available to the claimant or insured" within
15 the meaning of Insurance Code section 1063.1(c)(9). Because there is "other insurance,"
16 workers' compensation claims filed by temporary employees of the special employer are not
17 "covered claims" for which CIGA has liability. Therefore, in this case, the WCJ properly
18 imposed liability on American Home Assurance and dismissed CIGA as a party defendant, and
19 accordingly we will affirm his decision.

20 BACKGROUND

21 This case is the representative case for some 540 consolidated cases involving the general
22 employer, Remedy Temp, and various special employers to whom Remedy Temp supplied
23 temporary employees.³ The essential facts were stipulated at the hearing of September 20, 2002.

24 ² The Appeals Board's en banc decisions are binding precedent on all Board panels and WCJs. (*Gee v. Workers'*
25 *Compensation 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.)

26 ³ On May 14, 2002, Regional Manager Mark L. Kahn ordered that "all pending WCAB Applications and all
27 Applications hereafter filed, in which Remedy Temp Inc., is a defendant employer and the date of alleged injury
occurs between July 22, 1997 and April 1, 2001, are hereby consolidated and stayed for all purposes except that this
Order shall not stay the rights or obligations of the parties pertaining to medical issues under Labor Code Sections

1 The applicant, Mark Miceli, sustained industrial injury to his left minor ring finger on
2 March 1, 2000, while employed as a shipper/receiver by Remedy Temp as the general employer
3 and Jacuzzi as the special employer. Pursuant to Remedy Temp's contract with Jacuzzi to
4 provide employees to help meet Jacuzzi's temporary staffing needs, Miceli was on Remedy
5 Temp's payroll, not on Jacuzzi's payroll. At the time of injury, the workers' compensation
6 insurance carrier for Remedy Temp was Reliance, which went into liquidation on October 3,
7 2001. As noted above, Reliance's "covered claims" are now adjusted by CIGA.

8 Jacuzzi was included as an "alternate employer" in the "alternate employer endorsement"
9 contained within the policy between Remedy Temp and Reliance. The endorsement stated, in
10 relevant part, that it applied to bodily injury to Remedy Temp's "employees while in the course
11 of special or temporary employment by the alternate employer...as though the alternate employer
12 is insured." Jacuzzi also had a workers' compensation policy provided by AHA, to cover
13 employees on Jacuzzi's payroll.

14 The WCJ framed the issue as follows:

15 "...[W]here applicant, Mark Miceli was injured while employed by general
16 employer, Remedy Temp, Inc., then insured by [Reliance], and was also employed
17 by special employer, Jacuzzi, Inc., who was insured by [Reliance] under the
18 alternate employer endorsement, as well as by [AHA], which party defendant, or
19 defendants, is, or are, liable for payment of the applicant's workers' compensation
20 benefits where [Reliance] has become insolvent. Is [CIGA], in place of
21 [Reliance] liable, or is [AHA] liable?"

22 In addition, the WCJ was to determine the applicability of Insurance Code sections
23 1063.1(c)(9) and 11663, as well as Labor Code section 3602(d).

24 In the Findings and Order of October 31, 2002, the WCJ dismissed CIGA as a party
25 defendant, without prejudice, based on the following findings:

26 "1. Insurance Code §11663 does not disturb the joint and several liability of
27 Remedy Temp as the general employer and Jacuzzi, Inc., as the special employer.
This code section applies only as between insurance carriers. Here, there is only
one insurance carrier. Therefore, Insurance Code §11663 is inapplicable."

4060, 4061, 4600, 4600.4, 4601 and 4603...[and] these consolidated cases are assigned to the Honorable Robert T. Hjellev for decision; THIS ORDER shall not consolidate nor stay any WCAB proceedings in which the alleged special employer was individually insured pursuant to Labor Code §3700 by an insolvent carrier only."

1 “2. The service agreement pursuant to Labor Code §3602(d) as between Remedy
2 Temp and Jacuzzi, Inc. does not extinguish their joint and several liability as to
the injured employee. [CIGA] is not a party to the service agreement.”

3 “3. The alternate employer endorsement between Reliance and Jacuzzi, Inc. does
4 not extinguish the joint and several liability of Jacuzzi, Inc. to the injured
employee. CIGA is not a party to the agreement.”

5 “4. Jacuzzi, Inc. and Remedy Temp have joint and several liability for the
6 compensation benefits to the injured employee. At the time of injury, Jacuzzi had
7 dual insurance coverage with Reliance and with [AHA]. Where Reliance has
8 become bankrupt, liability for this claim falls to [AHA]. [AHA] is liable for
workers’ compensation benefits payable to Mark Miceli.”

9 “5. Where there is “other coverage” as specified by Insurance Code
§1063.1(c)(9), as to CIGA, this is not a covered claim.”

10 Jacuzzi, Remedy Temp and AHA each filed a petition for reconsideration of the WCJ’s
11 decision.⁴

12 Jacuzzi contended in substance that (1) Insurance Code section 11663 does apply; (2) the
13 AHA policy is not “other insurance” under Insurance Code section 1063.1(c)(9); (3) the AHA
14 policy does not cover Jacuzzi’s temporary employees; (4) Reliance’s insolvency makes CIGA
15 liable for Miceli’s benefits as a “covered claim;” and (5) it violates Labor Code section 3602(d)
16 to find that AHA insured Miceli on the theory of joint and several liability between the general
17 and special employer.

18 Remedy Temp contended in substance that (1) the Remedy Temp-Jacuzzi contract proves
19 their intent to secure workers’ compensation coverage through Reliance, not AHA; (2) Reliance
20 and therefore CIGA is liable for Miceli’s claim by virtue of the alternate employer endorsement
21 in Remedy Temp’s policy with Reliance; and (3) the WCJ’s decision will devastate Remedy
22 Temp’s business and the temporary staffing industry.

23 AHA contended in substance that (1) CIGA is an “insurer” for insolvency under
24 Insurance Code section 11663; (2) even under a theory of joint and several liability, Reliance

25 _____
26 ⁴ General Casualty Insurance/Regent Insurance and Paulson Manufacturing/ Zenith Insurance Company also filed
27 petitions for reconsideration. Paulson/Zenith do not identify their standing in this litigation. General Casualty/Regent
state that they “provided workers’ compensation insurance to E-Toys, a special employer of Remedy Temp
employees[,]” but it is unclear whether any of the cases identified in their petition are among the consolidated cases. In
any event, these petitioners’ contentions are similar to those of Jacuzzi, Remedy Temp, and AHA.

1 insured Jacuzzi for Miceli's claim by operation of Labor Code section 3602(d); and (3) Miceli's
2 claim and similar claims in the consolidated litigation are "covered claims" for which CIGA is
3 liable under Insurance Code section 1063.1.

4 CIGA filed an answer to each petition for reconsideration. Jacuzzi filed a supplemental
5 petition, alleging that CIGA misrepresented Jacuzzi's contentions. We have considered the
6 supplemental petition and CIGA's answers.

7 DISCUSSION

8 "When an employer -- the 'general' employer -- lends an employee to another employer
9 and relinquishes to a borrowing employer all right of control over the employee's activities, a
10 'special employment' relationship arises between the borrowing employer and the employee."
11 (*Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 492 [45 Cal. Comp. Cases 193, 195].)

12 Where a general and special employment relationship exists, the injured employee can
13 look to and is entitled to compensation benefits from either or both employers. (*Kowalski v. Shell*
14 *Oil Co.* (1979) 23 Cal.3d 168, 175 [44 Cal. Comp. Cases 134, 138]; *McFarland v. Voorheis-*
15 *Trindle Co.* (1959) 52 Cal.2d 698, 702 [24 Cal. Comp. Cases 216, 217]; *National Auto. Ins. Co.*
16 *v. Industrial Acc. Com. (Ivy)* (1943) 23 Cal.2d 215, 219 [8 Cal. Comp. Cases 260, 263]; *Dept. of*
17 *Water & Power v. Industrial Acc. Com. (Winkler)* (1934) 220 Cal. 638, 641 [20 IAC 233, 235].)
18 Thus, as a general rule, the liability of general and special employers for compensation benefits is
19 joint and several. (1 *California Workers' Compensation Practice* (4th ed., Cont. Ed. Bar 2000) §
20 2.82.)

21 Under Insurance Code section 11663, however, the insurer of the general employer is
22 liable for all compensation unless the employee was on the special employer's payroll at the time
23 of injury:

24 "As between insurers of general and special employers, one which insures the
25 liability of the general employer is liable for the entire cost of compensation
26 payable on account of injury occurring in the course of and arising out of general
27 and special employments unless the special employer had the employee on his or
her payroll at the time of injury, in which case the insurer of the special employer
is solely liable..."

///

1 In this case, the general employer, Remedy Temp, was insured by Reliance, and the
2 special employer, Jacuzzi, was insured by AHA. The applicant, Miceli, was on Remedy Temp’s
3 payroll at the time of injury. There is no question that liability would rest with Reliance under
4 Insurance Code section 11663 if Reliance had remained solvent. However, the statute applies
5 “between *insurers* of general and special employers,” and case law indicates that CIGA is not an
6 “insurer” within the meaning of the statute.

7 CIGA is not an insurance company, its duties are not co-extensive with the insolvent
8 insurer’s obligations, and it does not stand in the shoes of the insolvent insurer. (*Isaacson v.*
9 *California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775, 786; *Baxter Healthcare Corp. v.*
10 *California Ins. Guarantee Assn.* (2000) 85 Cal.App.4th 306, 309-310; *American Nat. Ins. Co. v.*
11 *Low* (2000) 84 Cal.App.4th 914, 920; *Mercury Ins. Co. v. Enterprise Rent-A-Car Co. of Los*
12 *Angeles* (2000) 80 Cal.App.4th 41, 51; *Industrial Indemnity Co. v. Workers’ Comp. Appeals Bd.*
13 *(Garcia)* (1997) 60 Cal.App.4th 548, 556 [62 Cal. Comp. Cases 1661, 1666-1667]; *California*
14 *Ins. Guarantee Assn. v. Workers’ Comp. Appeals Bd. (Conces)* (1992) 10 Cal.App.4th 988, 996-
15 997 [57 Cal. Comp. Cases 660, 664-666].)

16 Recently, in *Denny’s Inc. v. Workers’ Comp. Appeals Bd. (Bachman)* (2003) 104
17 Cal.App.4th 1433, 1438 [68 Cal. Comp. Cases 1, 4], the Court reiterated that CIGA is *not* an
18 ordinary insurance company:

19 “ ‘CIGA is not, and was not created to act as, an ordinary insurance company.
20 [Citation.] It is a statutory entity that depends on the Guarantee Act for its
21 existence and for a definition of the scope of its powers, duties, and protections.’
22 [Citation.] ‘CIGA issues no policies, collects no premiums, makes no profits, and
23 assumes no contractual obligations to the insureds.’ [Citation.] ‘CIGA’s duties
24 are not co-extensive with the duties owed by the insolvent insurer under its
25 policy.’ [Citation.] Instead, CIGA’s authority and liability in discharging ‘its
26 statutorily circumscribed duties’ are limited to paying the amount of ‘covered
27 claims.’ [Citations.] CIGA ‘is authorized by statute to pay only “covered claims”
of an insolvent insurer, those determined by the Legislature to be in keeping with
the goal of providing protection for the insured public. [Citation.]’ [Citation.]
CIGA has the statutory authority to ‘deny a noncovered claim.’ [Citation.]

“ ‘Since “covered claims” are not coextensive with an insolvent insurer’s
obligations under its policies, CIGA cannot and does not “stand in the shoes’ of
the insolvent insurer for all purposes.” [Citation.] Indeed, CIGA is “expressly

1 forbidden” to do so except where the claim at issue is a “covered claim.”
2 [Citation.] It necessarily follows that CIGA’s first duty is to determine whether a
3 claim placed before it is a “covered claim.” [Citation.] ‘It is unequivocally clear
4 the scope of CIGA’s rights and duties turns on the definition of “covered claim.”’
5 [Citation.]” (Quoting *Industrial Indemnity v. Workers’ Comp. Appeals Bd.*
6 (*Garcia*) (1997) 60 Cal.App.4th 548, 556-557 [62 Cal. Comp. Cases 1661, 1666-
7 1667].)⁵

8 These principles make it clear that CIGA is not an “insurer” in the ordinary sense.
9 Rather, CIGA’s liability is specifically defined in Insurance Code section 1063.1. In particular,
10 the statute defines what are covered claims and what are not covered claims. While section
11 1063.1, subdivision (c)(1)(vi) defines “covered claims” as “the obligations of an insolvent
12 insurer ... in the case of a policy of workers’ compensation insurance, to provide workers’
13 compensation benefits under the workers’ compensation law of this state,” subdivisions (c)(3)
14 through (c)(13) exclude specific obligations from CIGA’s insolvency insurance coverage.
15 Among the latter provisions, subdivision (c)(9) provides that “[c]overed claims’ does not
16 include ... any claim to the extent it is covered by any other insurance of a class covered by this
17 article available to the claimant or insured ...”⁶

18 We note that “[c]ases interpreting this language have established that where an insured
19 has overlapping insurance policies and one insurer becomes insolvent, the other insurer, even if
20 only a secondary or excess insurer, is responsible for paying the claim. In other words, CIGA is
21 an insurer of last resort and does not assume responsibility for claims where there is any other
22 insurance available. [Citation.] ‘The legislative intent was to create a protection for the public
23 against insolvent insurers *when no secondary insurer is available.*” (*Bachman, supra*, 104
24 Cal.App.4th at p. 1439 [68 Cal. Comp. Cases at p. 5], quoting *R.J. Reynolds Co. v. California Ins.*
25 *Guarantee Assn.* (1991) 235 Cal.App.3d 595, 600 (emphasis in original); see also *Garcia, supra*,
26 60 Cal.App.4th at p. 557 [62 Cal. Comp. Cases 1661, 1667].) “Accordingly, CIGA may not
27 guarantee a disability claim when a solvent workers’ compensation insurer is otherwise jointly

25 ⁵ *Bachman* and *Garcia* did not involve general and special employers. But they correctly describe the legal nature
26 and legal principles applicable to CIGA.

27 ⁶ Subdivision (g) of section 1063.1 defines “claimant” as “any insured making a first party claim or *any person*
instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.”
(Italics added.) In this case, injured worker Miceli is a “claimant” within the meaning of section 1063.1.

1 and severally liable for the claim.” (*Bachman, supra*, 104 Cal.App.4th at p. 1439 [68 Cal. Comp.
2 Cases at p. 5].)

3 Since CIGA is not an “insurer” within the meaning of Insurance Code section 11663, the
4 statute does not resolve the question of CIGA’s liability in this case, and the analysis must go
5 farther. We turn to Labor Code section 3602(d), which provides as follows:

6 “For the purposes of this division, including Sections 3700 and 3706, an employer
7 may secure the payment of compensation on employees provided to it by
8 agreement by another employer by entering into a valid and enforceable
9 agreement with that other employer under which the other employer agrees to
10 obtain, and has, in fact, obtained workers' compensation coverage for those
11 employees. In those cases, both employers shall be considered to have secured the
12 payment of compensation within the meaning of this section and Sections 3700
13 and 3706 if there is a valid and enforceable agreement between the employers to
14 obtain that coverage, and that coverage, as specified in subdivision (a) or (b) of
15 Section 3700, has been in fact obtained, and the coverage remains in effect for the
16 duration of the employment providing legally sufficient coverage to the employee
17 or employees who form the subject matter of the coverage. That agreement shall
18 not be made for the purpose of avoiding an employer's appropriate experience
19 rating as defined in subdivision (c) of Section 11730 of the Insurance Code.

20 “Employers who have complied with this subdivision shall not be subject to civil,
21 criminal, or other penalties for failure to provide workers' compensation coverage
22 or tort liability in the event of employee injury, but may, in the absence of
23 compliance, be subject to all three.”

24 The statute is permissive. It does not change the requirement of Labor Code section 3700
25 that every employer must secure the payment of compensation by being insured against liability
26 by one or more insurers authorized to write compensation insurance in this state. Section
27 3602(d) merely allows an employer an additional way to obtain that coverage. Furthermore, the
language of the statute does not suggest it was intended to have any effect on issues of general
and special employment where the insurer of the general employer becomes insolvent and is
replaced by CIGA. The second paragraph of the statute is key and describes the reason for its
enactment. Labor Code section 3602(d) was created to shield special employers from civil,
criminal, or other penalties for failure to provide workers' compensation coverage. It does not
resolve the question of CIGA’s liability where the general employer’s insurer becomes insolvent.

In this case, special employer Jacuzzi contracted with general employer Remedy Temp to
supply Jacuzzi with temporary employees and to obtain workers’ compensation coverage for
them. Remedy Temp obtained workers’ compensation coverage for the temporary employees

1 through Reliance. The Reliance policy also contained an alternate employer endorsement, which
2 included Jacuzzi as an alternate employer. Under Labor Code section 3602(d), this endorsement
3 protected Jacuzzi from civil, criminal, or other penalties for failure to provide workers'
4 compensation coverage.

5 As noted above, there is no question that Reliance would have been liable for paying
6 Miceli's benefits if it had not become insolvent. But Labor Code section 3602(d) does not
7 resolve the issue of whether "other insurance" exists to relieve CIGA of liability for claims that
8 would have been Reliance's responsibility absent its insolvency. Jacuzzi's assertion that the
9 statute creates joint and several liability of the general and special employers to obtain workers'
10 compensation insurance sidesteps the issue of joint and several liability of the general and special
11 employer for an injured worker's compensation benefits.

12 In fact, case law describing CIGA as an insurer of *last resort* and avoiding its liability
13 where there is *any other insurance* requires analysis of whether the workers' compensation
14 insurance policy provided by AHA to Jacuzzi for its permanent full-time employees is broad
15 enough to include all Jacuzzi employees, including the temporary employees supplied by
16 Remedy Temp. If the AHA policy is "available" to Miceli within the meaning of Insurance Code
17 section 1063.1(c)(9), then there is no "covered claim," and CIGA is properly relieved of liability
18 in this case.

19 We note that the AHA policy covers Jacuzzi Whirlpool Bath, which has nearly
20 \$16,000,000.00 in payroll for "plastics goods mfg.-N.O.C." Thus, the policy indicates that
21 Jacuzzi employs a substantial number of permanent full-time employees whose workers'
22 compensation claims would be covered by AHA. After reviewing the policy in its entirety,
23 however, we find nothing in it that explicitly excludes from coverage temporary employees such
24 as Miceli.

25 Jacuzzi's petition (pp. 16-17) correctly points out that the AHA policy does not require
26 premiums for "all other persons engaged in work that could make us liable under Part One
27 (Workers Compensation Insurance) of this policy...if you give us proof that the employers of
these persons lawfully secured their workers compensation obligations."

In other words, AHA did not collect premiums from Jacuzzi for the employees supplied
by Remedy Temp, and it is fair to say that Jacuzzi, AHA, Remedy Temp and Reliance did not
expect that the AHA policy would cover the temporary employees supplied to Jacuzzi by

1 Remedy Temp.⁷ Nevertheless, the AHA policy contains no explicit exclusion of the temporary
2 employees, and the fact that AHA collected no premium for them does not prevent AHA from
3 becoming liable for their workers' compensation benefits. (See Insurance Code, §11654;
4 *American Motorists Ins. Co. v. Industrial Acc. Com. (Suytar)* (1937) 8 Cal.2d 585, 587-588 [2
5 Cal. Comp. Cases 116, 117-118]; *Fyne v. Industrial Acc. Com. (Robinson)* (1956) 138
6 Cal.App.2d 467 [21 Cal. Comp. Cases 13].)

7 More importantly, the appellate courts have emphasized that CIGA is an insolvency
8 insurer of *last resort* and is not liable where there is *any other insurance*. We therefore conclude
9 that the AHA policy constitutes "other insurance," within the meaning of Insurance Code section
10 1063.1(c)(9), for purposes of covering the workers' compensation claims of Jacuzzi's temporary
11 employees. Consequently, the workers' compensation claims for which Reliance otherwise
12 would have been liable by operation of Insurance Code section 11663 are not "covered claims,"
13 and CIGA is relieved of liability in this case. With regard to the petitioners' contention that
14 Insurance Code section 11663 and Labor Code section 3602(d) are incorporated into every
15 insurance policy, the same principle applies to the law governing CIGA's liability, i.e. Insurance
16 Code section 1063 *et seq.*⁸

17 In response to the petitioners' contentions that their business structures and insurance
18 arrangements are authorized by law, and that an adverse decision will invalidate that law and
19 permit CIGA to rewrite insurance policies, we acknowledge that there is no fault or bad faith
20 here. Jacuzzi and Remedy Temp did everything they could, including the "alternate employer
21 endorsement," to ensure that the temporary employees supplied by Remedy Temp had workers'
22 compensation coverage. But the unfortunate fact of Reliance's insolvency remains, and CIGA is
23 mandated by law to pay only "covered claims" and avoid those that are not. Remedy Temp's
24 claim that the temporary staffing industry will be devastated is better addressed to the
25 Legislature.

26 ///

27 ⁷ Jacuzzi refers to the deposition and declaration of Vincent Catapano, Regional Underwriting Manger for AIG Risk Management, as proof that AHA did not intend to provide coverage for Remedy Temp employees because it collected no premiums for them. Yet, no solvent insurer ever intends to cover claims that would have been covered by another insurer who subsequently becomes insolvent. Catapano's opinion is not persuasive evidence of how to deal with CIGA's liability in this case.

⁸ Petitioners also argue that the legal positions of the parties should be analyzed at a point in time prior to the insolvent insurer's liquidation. The argument is not persuasive because CIGA's liability never becomes an issue until after an insolvency occurs.

1 Our conclusion that the AHA policy constitutes “other insurance” does not invalidate
2 Insurance Code section 11663 or Labor Code section 3602(d) as far as solvent insurers are
3 concerned. Yet, to ignore the AHA policy as “other insurance...available to the claimant or
4 insured” under these circumstances would be to invalidate the statutory scheme and case law
5 governing CIGA. “In sum, the Legislature did not intend CIGA to defray or diminish the
6 responsibility of other carriers. Instead, the Legislature intended CIGA to benefit claimants
7 otherwise unable to obtain insurance in payment of their claims.” (*Garcia, supra*, 60
8 Cal.App.4th at p. 559 [62 Cal. Comp. Cases at p. 1669].)

9 With respect to the Regional Manager’s stay of May 14, 2002 (footnote 3, *infra*), which
10 precludes litigation of additional cases involving CIGA’s liability in this situation, we conclude
11 that the stay should remain in place pending finality of this decision. In the meantime, CIGA
12 and/or solvent insurers of special employers are encouraged to furnish benefits in undisputed
13 cases, subject to reimbursement by the appropriate party after finality of this decision. Finally,
14 we approve the stay’s provision that “an applicant may seek relief from the Stay Order by filing
15 with the [assigned WCJ]...a verified Petition...[proving] a significant hardship...[W]here
16 GOOD CAUSE has been shown, the [WCJ] may grant relief to the applicant to proceed against
17 only [CIGA].”

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Appeals Board (En Banc), that the Findings and Order of October 31, 2002 is hereby **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

/s/ Merle C. Rabine
MERLE C. RABINE, Chairman

/s/ William K. O'Brien
WILLIAM K. O'BRIEN, Commissioner

/s/ James C. Cuneo
JAMES C. CUNEO, Commissioner

/s/ Janice Jamison Murray
JANICE JAMISON MURRAY, Commissioner

/s/ Frank M. Brass
FRANK M. BRASS, Commissioner

/s/ A. John Shimmon
A. JOHN SHIMMON, Commissioner

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

3/28/03

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

tab