

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

**NANCI BARAHONA, *Applicant***

**vs.**

**ABM JANITORIAL SERVICES/ABM INDUSTRIES, permissibly self-insured,  
administered by ESIS; KELLERMEYER BERGENSONS SERVICES and ZURICH  
AMERICAN INSURANCE, administered by GALLAGHER BASSETT SERVICES,  
*Defendants***

**Adjudication Numbers: ADJ10444362; ADJ10076527  
Los Angeles District Office**

**OPINION AND DECISION AFTER  
RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Defendant ABM Janitorial Services/ABM Industries seeks reconsideration of the January 25, 2021 Findings and Order (F&O) issued by a workers' compensation arbitrator (WCA), wherein the WCA found, in pertinent part, that: 1) applicant was concurrently employed by ABM from November 1, 2006 through June 6, 2016 and Kellermeyer Bergensons from March 26, 2012 through July 1, 2015; 2) Kellermeyer Bergensons was insured by Zurich Insurance and administered by Gallagher Bassett Services (Kellermeyer) and ABM Janitorial Services/ABM Industries was permissibly self-insured and administered by ESIS (ABM); 3) when an applicant settles against one defendant in a continuous trauma case, the second defendant has no right to contribution against the first defendant, but can take credit and argue apportionment; 4) applicant and Kellermeyer entered into a Compromise and Release Agreement pursuant to Labor Code<sup>1</sup> section 5005 which settled Kellermeyer's portion of the injury, but left open applicant's claim against ABM; 5) Kellermeyer has no contribution rights against ABM; 5) the facts of the case do

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<sup>1</sup> All further statutory references will be to the Labor Code unless otherwise indicated.

not support equitable contribution, and as such, ABM is similarly not entitled to reimbursement/contribution from Kellermeyer; and 5) the Petitions for Contribution/Reimbursement filed by ABM and Kellermeyer against one another are denied and dismissed.

We have not received an Answer from defendant Kellermeyer. The WCA prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations in the Petition for Reconsideration and have reviewed the record in this matter. Based upon the Report, which we adopt and incorporate, and the reasons discussed below, we will affirm the January 25, 2021 F&O.

Section 5500.5(c) addresses the issue of cumulative injury with multiple employers. It provides, in relevant part:

In any case involving a claim of occupational disease or cumulative injury occurring as a result of more than one employment within the appropriate time period set forth in subdivision (a)<sup>2</sup>, the employee making the claim, or his or her dependents, may elect to proceed against any one or more of the employers. Where such an election is made, the employee must successfully prove his or her claim against any one of the employers named, and any award which the appeals board shall issue awarding compensation benefits shall be a joint and several award as against any two or more employers who may be held liable for compensation benefits.

(Lab. Code, § 5500(c).)

Pursuant to section 5500(c), then, an “employee may obtain an award for the entire disability against any one or more of successive employers or successive insurance carriers if the disease and disability were contributed to by the employment furnished by the employer chosen or during the period covered by the insurance even though the particular employment is not the sole cause of the disability.” (*Colonial Ins. Co. v. Industrial Acc. Com.* (1946) 29 Cal.2d 79, 82 [11 Cal.Comp.Cases 226].) An applicant may also choose not to elect against a particular defendant and proceed against all insurers or employers. (*Industrial Indemnity Co. v. Workers’ Comp. Appeals Bd.* (1997) 60 Cal.App.4th 548, 554-556 [62 Cal.Comp.Cases 1661].) However, if an applicant elects to proceed against a single insurer, the insurer is entitled under section 5500.5 to seek contribution for awarded benefits from the remaining insurers in subsequent proceedings.

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<sup>2</sup> Pursuant to section 5500(a), for injuries occurring after January 1, 1981, liability for a cumulative injury is a period of one year.

(See *Schrumpf v. Consolidated Film Industries, Inc.* (1977) 42 Cal.Comp.Cases 602 (Appeals Board en banc).)

In the instant case, applicant made no election and chose instead to proceed against both employers separately. Ultimately, this resulted in two Compromise and Release Agreements. Given that no election was made under section 5500.5(c), it follows that there would be no joint and several liability. As such, defendants would be unable to seek reimbursement and/or contribution from one another.

Defendant ABM argues that under the doctrine of equitable estoppel, they are entitled to contribution from Kellermeyer. Pursuant to *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96], the Workers' Compensation Appeals Board (WCAB) has broad equitable powers with respect to matters within its jurisdiction. In *Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106], the court observed that equitable principles are frequently applied to workers' compensation matters. In that case, the court held that based upon the principles of equitable estoppel, the WCAB erred in permitting the insurance carrier to claim an overpayment of temporary disability against applicant's permanent disability since the carrier unreasonably delayed in filing the medical report used to terminate benefits. (*Id.* at pp. 837-838.) The court noted that in cases wherein equitable estoppel is alleged, the party asserting the doctrine "must have been ignorant of the true facts and must have relied upon the words or conduct of the adverse party to his detriment." (*Id.* at p. 839; citing *Hurwitz v. Workers' Comp. Appeals Bd.* (1979) 97 Cal.App.3d 854.)

Here, we agree with the WCA that defendant ABM "was aware or could have become aware of the Compromise and Release Agreement" between applicant and Kellermeyer through the "use of discovery" as the claim was settled prior to the filing of the Application for Adjudication of Claim against ABM. (Report, p. 12.) Further, ABM was either aware or could have become aware that all rights to contribution were extinguished once Kellermeyer entered into the Compromise and Release Agreement with applicant. (*Id.*) As such, with respect to the doctrine of equitable estoppel, we agree with the WCA that "there is no basis for contribution" as any ignorance on the part of ABM was entirely self-imposed and not due to Kellermeyer's actions. This decision is also in line with prior panel decisions, including *Hustad v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 1009, wherein the WCAB found that the co-defendant in

that case, Republic Indemnity, had no recourse against the other carriers for contribution as it had already settled its own liability with applicant.

Accordingly, we affirm the January 25, 2021 F&O.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration that the Findings and Order issued by the WCA on January 25, 2021 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

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

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**



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

**DECEMBER 20, 2024**

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

**NANCI BARAHONA  
WCD LAW GROUP  
FLOYD SKEREN**

**RL/cs**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.  
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**REPORT AND RECOMMENDATION ON  
RECONSIDERATION**

**I**

**INTRODUCTION**

The above-captioned matter was set for Arbitration before Mark L. Kahn, Arbitrator, on the issue of contribution on December 15, 2020.

On that date, the parties reached Stipulations, Issues and admitted Exhibits into evidence and agreed to submit the matter on the present record.

On January 25, 2021, the Arbitrator Found as follows:

1. The Arbitrator found that the applicant was concurrently employed by ABM Industries and Kellermeyer Bergensons Services. The applicant was employed by ABM Industries from November 1, 2006 through June 6, 2016. The applicant was employed by Kellermeyer Bergensons Services from March 26, 2012 through July 1, 2015.

2. The Arbitrator found that Kellermeyer Bergensons Services was insured by Zurich Insurance, administered by Gallagher Bassett Services, and ABM Industries was permissibly self-insured, administered by ESIS.

3. The Arbitrator found that applicant and defendant, Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, entered into a separate Compromise and Release Agreement only settling the applicant's claimed injury, period of employment and period of continuous trauma against defendant, Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services.

4. The Arbitrator found that Labor Code §5005 allows the employee and any employer to enter into a Compromise and Release Agreement settling all or any part of the employee's claim in cases involving cumulative trauma or occupational disease cases. This ability to settle the claim can include any elected against defendant or any other defendant.

5. The Arbitrator found, in this case, that applicant and defendant agreed to settle only that portion of the applicant's injury involving Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, leaving open the remaining claim against ABM Janitorial, permissibly self-insured, administered by ESIS.

6. The Arbitrator found that when an applicant settles against one defendant in a continuous trauma, as is the case here, the second defendant has no right to contribution against the first defendant, but can take credit and argue apportionment to the prior settlement.

7. The Arbitrator found that Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, resolved all their exposure related to this claim by way of a Compromise and Release Agreement, which was approved on June 2, 2016.

8. The Arbitrator further found that because of the separate Compromise and Release Agreement between applicant and Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, they have no contribution rights against ABM Janitorial, permissibly self-insured, administered by ESIS.

9. The Arbitrator found that the Petition for Contribution filed against ABM Industries, permissibly self-insured, administered by ESIS, against Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, in the sum of \$50,942.50 was denied and dismissed.

10. The Arbitrator found that the Petition for Contribution/Reimbursement filed by Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, against ABM Industries, permissibly self-insured, administered by ESIS, in the amount of \$20,995.46 is denied and dismissed.

11. The Arbitrator found the facts of this case do not support equitable contribution.

12. The Arbitrator found defendant, ABM Industries, permissibly self-insured, administered by ESIS, was not entitled to reimbursement/equitable contribution from co-defendant, Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, in the sum of \$50,942.50.

13. The Arbitrator found the issues of the date of injury, pursuant to Labor Code §5412, and period of liability, pursuant to Labor Code §5500.5, and in the report of Panel Qualified Medical Evaluator, Dr. Dizay, based on substantial medical evidence are moot and need not be decided based on the above findings by the Arbitrator.

On January 25, 2021, the Arbitrator Ordered as follows:

The Petition for Contribution filed against ABM Industries, permissibly self-insured, administered by ESIS, against Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, in the sum of \$50,942.50 was denied and dismissed.

The Petition for Contribution/Reimbursement filed by Kellermeier Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, against ABM Industries, permissibly self-insured, administered by ESIS, in the amount of \$20,995.46 was denied and dismissed.

It is from the above Findings and Order that defendant now files this Petition for Reconsideration on the following grounds:

That defendant, ABM Industries, permissibly self-insured, administered by ESIS, is entitled to reimbursement or equitable contribution from co-defendant, Zurich Insurance, administered by Gallagher Basset Services, in the amount of \$50,942.50.

## **II.**

### **FACTS FOUND BY ARBITRATOR**

1. The applicant was employed by ABM Industries from November 1, 2006 through June 6, 2016.

2. The applicant was employed by Kellermeier Bergensons Services from March 26, 2012 through July 1, 2015.

3. The applicant was concurrently employed by ABM Industries and Kellermeier Bergensons Services.

4. Kellermeier Bergensons Services was insured by Zurich Insurance, administered by Gallagher Bassett Services.

5. ABM Industries was permissibly self-insured, administered by ESIS.

6. On August 18, 2015, the applicant filed an Application for Adjudication of Claim alleging a cumulative trauma injury from March 28, 2012 through August 4, 2015, while employed by Kellermeier Bergensons Services as a janitor, claiming injury to the back, shoulder, arm, right shoulder, right arm, and bilateral upper extremities. The Application was given case number ADJ10076527.

7. Applicant's cumulative trauma claim was resolved by way of a Compromise and Release Agreement on June 6, 2016 for \$17,500 by Kellermeier Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett Services. The Compromise and Release Agreement listed the body parts as upper extremities, arm, back, shoulders, neck, elbows and wrists. The settlement noted the applicant's claim was denied based on a post-termination defense, lack of substantial medical evidence and failure to report the injury. The only employer listed in

the Compromise and Release Agreement was Kellermeyer Bergensons Services. The date of injury was listed as March 28, 2012 through August 4, 2015. The parts of the body injured were back, shoulder, arm and upper extremity.

8. On June 7, 2016, the applicant filed a second and new Application for Adjudication of Claim against ABM Janitorial, alleging a continuous trauma injury from November 1, 2006 through June 6, 2016, alleging injury to her back, shoulders, arms, psyche, lower extremities and sleep. The Application was given case number ADJ10444362.

9. On August 23, 2017, the Employment Development Department filed a lien against Kellermeyer Bergensons Services for payments commencing September 24, 2015.

10. On August 1, 2018, defendant, ABM Janitorial, permissibly self-insured, administered by ESIS, entered into a Compromise and Release Agreement settling applicant's claim from November 1, 2006 through June 7, 2016 for \$60,000. The Compromise and Release listed body parts of arm, back, shoulders, psyche, upper extremities, lower extremities, neck, wrist and sleep. Defendant reserves its right to seek contribution and reimbursement from co-defendant. The Compromise and Release Agreement was approved by the Appeals Board on August 23, 2018.

11. On September 27, 2018, an Order issued allowing the lien of the Employment Development Department in the amount of \$6,000 in full and complete satisfaction of the lien in the amount of \$27,976. The lien was to be paid by Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett. The Order reserved the right of contribution against ESIS.

12. Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, filed a Petition for Contribution/Reimbursement against ABM Janitorial, insured by Ace American Insurance Company, administered by ESIS in the amount of \$20,995.46.

13. On June 12, 2017 and November 14, 2018, ABM Industries, permissibly self-insured, administered by ESIS, filed a Petition for Contribution against Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, in the sum of \$50,942.50.

14. The matter was set for Arbitration before Mark L. Kahn, Arbitrator, on both Petitions for Contribution on December 15, 2020. The parties submitted both matters on the record.

15. On January 25, 2021, the Arbitrator Ordered both Petitions for Contribution denied.



16. It is from this Order that defendant, ABM Industries, permissibly self-insured, administered by ESIS, filed this Petition for Reconsideration on the grounds that defendant, ABM Industries, permissibly self-insured, administered by ESIS, is entitled to reimbursement or equitable contribution from co-defendant, Zurich Insurance, administered by Gallagher Bassett Services, in the amount of \$50,942.50.

17. Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett did not file a Petition for Reconsideration from the Order denying their Petition for Contribution

### III. DISCUSSION

#### 1.

#### **Employment and Insurance Coverage**

The Arbitrator found the facts clearly establish that the applicant was concurrently employed by ABM Industries and Kellermeyer Bergensons Services.

The applicant was employed by ABM Industries from November 1, 2006 through June 6, 2016.

The applicant was employed by Kellermeyer Bergensons Services from March 26, 2012 through July 1, 2015.

Kellermeyer Bergensons Services was insured by Zurich Insurance, administered by Gallagher Bassett Services.

ABM Industries is permissibly self-insured, administered by ESIS.

#### 2.

#### **Application and settlement against Kellermeyer Bergensons Services/Zurich**

On August 18, 2015, the applicant filed an Application for Adjudication of Claim alleging a cumulative trauma injury from March 28, 2012 through August 4, 2015 only against Kellermeyer Bergensons Services claiming injury to the back, shoulder, arm, right shoulder, right arm, and bilateral upper extremities. The Application was given case number ADJ10076527.

Applicant's cumulative trauma claim was resolved by way of a Compromise and Release Agreement on June 6, 2016 for \$17,500 by applicant and Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett Services.

Only one Application number was listed on the Compromise and Release Agreement that of ADJ10076527.

The Application for Adjudication for Claim was filed only against Kellermeyer Bergensons Services.

The Compromise and Release Agreement only listed one employer/defendant, Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services.

The only employer listed in the Application and the Compromise and Release Agreement was Kellermeyer Bergensons Services.

The Compromise and Release Agreement listed injury dates as those only while the applicant was employed by Kellermeyer Bergensons.

The parts of the body injured of back, shoulder, arm, and upper extremity were only those parts listed on the Application for Adjudication of Claim against Kellermeyer Bergensons.

The Application and Compromise and Release Agreement between the applicant and Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, never mentioned ABM Janitorial, permissibly self-insured, administered by ESIS, or refer to any issue of contribution against or involving them.

In the case between applicant and Kellermeyer Bergensons, insured by Zurich Insurance administered by Gallagher Bassett Services, an election was never made by applicant.

### 3.

#### **Application and settlement by ABM Janitorial, permissibly self-insured**

The Appeals Board approved the Compromise and Release Agreement on June 6, 2016, in case ADJ10076527, between the applicant and employer Kellermeyer Bergensons Services. The settlement was only against Kellermeyer Bergensons Services, there was no election and the settlement only settled Kellermeyer Bergensons Services' employment of the continuous trauma injury.

On June 7, 2016, the applicant's attorney filed a second and new Application for Adjudication of Claim against a different employer, ABM Janitorial, alleging a continuous trauma injury from November 1, 2006 through June 6, 2016, claiming injury to applicant's back, shoulders, arms, psyche, lower extremities and sleep. This Application was given a different case number, ADJ10444362.

On August 1, 2018, defendant, ABM Janitorial, permissibly self-insured, administered by ESIS, entered into a Compromise and Release Agreement settling applicant's claim from November 1, 2006 through June 7, 2016 for \$60,000. The Compromise and Release listed body parts of arm, back, shoulders, psyche, upper extremities, lower extremities, neck, wrist and sleep. Defendant reserved its right to seek contribution and reimbursement from co-defendant. The Compromise and Release Agreement was approved by the Appeals Board on August 23, 2018.

The Compromise and Release Agreement was only between the applicant and ABM Janitorial, permissibly self-insured. The settlement settled case number ADJ10444362.

ABM Janitorial was aware of the Application for Adjudication of Claim and the Compromise and Release Agreement in case ADJ10444362 or should have been aware of the Application and settlement by use of discover as they proceeded to litigate their case against the applicant for their portion of the continuous trauma injury.

ABM Janitorial ultimately settled case ADJ10444362 with the applicant.

ABM Janitorial was aware they had credit rights or should have been aware of such credit rights because of the prior Application and settlement in case ADJ10076527 and either those right were taken into account in their settlement of the case or they decided not to apply those credit rights. No evidence was introduced as to how they reached their settlement agreement with the applicant.

ABM Janitorial, as they litigated their case and entered into the settlement agreement with the applicant, was aware or should have been aware that Kellermeyer Bergensons Services had already settled their portion of the continuous trauma claim with the applicant and the only rights ABM Janitorial had regarding case ADJ10076527 was a credit issue in their case with the applicant.

ABM Janitorial knew or should have been known that Kellermeyer Bergensons Services has settled all their rights with the applicant prior to the applicant filing the case against ABM Janitorial, leaving ABM Janitorial with only credit rights for the prior settlement.

#### **4.**

#### **Basis for decision denying both Petitions for Contribution**

Based on these facts, the Arbitrator found that applicant and defendant, Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, entered into a separate Compromise and Release Agreement only settling the applicant's claimed injury, period

of employment and period of continuous trauma against defendant, Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services.

Labor Code §5005 allows the employee and any employer to enter into a Compromise and Release Agreement settling all or any part of the employee's claim in cases involving cumulative trauma or occupational disease cases. This ability to settle the claim can include any elected against defendant or any other defendant.

Although Labor Code §5500.5(c) provides that non-elected defendants may not participate in the litigation, the non-elected defendant may settle their share of liability.

The employee and any employer have the right to enter into a Compromise and Release Agreement settling any part of the employee's claim.

The Compromise and Release Agreement eliminates liability for the employers or insurance carriers that are part of the agreement for the portion or portions of the claim released, but does not bar the employee from recovering from other defendants for the portion of exposure not settled.

In this case, it is the opinion of the Arbitrator, the applicant and defendant agreed to settle only that portion of the applicant's injury involving Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, leaving open the remaining claim against ABM Janitorial, permissibly self-insured, administered by ESIS.

This was evidenced by the applicant's attorney filing a new Application and entering into a separate settlement agreement with ABM Janitorial, permissibly self-insured, administered by ESIS, after the claim against Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, had been resolved by way of a Compromise and Release Agreement.

As set forth above, the law allows for such settlement by separate defendants in a continuous trauma claim and once the Compromise and Release for the separate settlement is approved, it extinguishes all liability of the settling defendant.

In this case, applicant and Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, entered into a separate settlement agreement extinguishing the liability of Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, before the applicant filed the separate new Application against ABM Janitorial, permissibly self-insured, administered by ESIS.

When an applicant settles against one defendant in a continuous trauma, as is the case here, the second defendant has no right to contribution against the first defendant, but can take credit and argue apportionment to the prior settlement.

The non-settled against defendant has credit rights against the applicant based on the separate settlement agreement, but no right of contribution as the settling defendants has extinguished all rights against them by the separately approved settlement.

In the cases of *Big T's Mechanical Repair v. WCAB (Deen)* (66 CCC 62), *Sherbank v. WCAB* (51 CCC 504) (writ denied) and *Jessen v. WCAB* (1981) 46 CCC 1210 (writ denied), the WCJ simply denied applicant all but a pro rata share of medical care.

The settlement between applicant and Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, does not allow for contribution by ABM Janitorial, permissibly self-insured, administered by ESIS, because Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, obligations to the applicant and co-defendant were extinguished by way of the Compromise and Release Agreement.

In addition, Kellermeyer Bergensons, insured by Zurich Insurance, administered by Gallagher Bassett Services, does not have any contribution rights against ABM Janitorial, permissibly self-insured, administered by ESIS, because by entering into a separate settlement only for their liability, they have no rights to proceed against the co-defendant in the subsequently filed action.

Therefore, the Arbitrator found Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, resolved all their exposure related to this claim by way of a Compromise and Release Agreement, which was approved on June 2, 2016.

The Arbitrator further found that because of the separate Compromise and Release Agreement between applicant and Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, they have no contribution rights against ABM Janitorial, permissibly self-insured, administered by ESIS.

Each of the claims was handled and settled separately allowing for no contribution right by either defendant.

The Arbitrator found that the Petition for Contribution filed against ABM Industries, permissibly self-insured, administered by ESIS, against Kellermeyer Bergensons Services, insured

by Zurich Insurance, administered by Gallagher Bassett, in the sum of \$50,942.50 was denied and dismissed.

The Arbitrator found that the Petition for Contribution/Reimbursement filed by Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, against ABM Industries, permissibly self-insured, administered by ESIS, in the amount of \$20,995.46 is denied and dismissed.

The facts found in this case do not support equitable contribution.

Defendant, ABM Industries, permissibly self-insured, administered by ESIS, was aware or could have become aware of the Compromise and Release Agreement entered between applicant and defendant, Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett by use of discovery as that case was settled prior to the Applicant filing in the second Application against ABM Industries.

ABM Industries, permissibly self-insured, administered by ESIS, was aware of the rights of Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, or could have become aware of by use of discovery that all rights were extinguished by the Compromise and Release Agreement between the applicant and Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett.

ABM Industries, permissibly self-insured, administered by ESIS, was aware the law provided for certain credit rights because of the prior Compromise and Release and was aware the law did not allow for contribution.

Therefore, there is no basis for contribution based on equitable estoppel.

The Arbitrator found defendant, ABM Industries, permissibly self-insured, administered by ESIS, is not entitled to reimbursement/equitable contribution from co-defendant, Kellermeyer Bergensons Services, insured by Zurich Insurance, administered by Gallagher Bassett, in the sum of \$50,942.50.

**IV.**

**RECOMMENDATION**

For the foregoing reasons, it is recommended that Reconsideration be denied. 22

DATED: March 1, 2021

Respectfully submitted, ALTMAN & BLITSTEIN  
By: MARK L. KAHN,  
ARBITRATOR