**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**DANIEL FLORES CAMPOS, *Applicant***

**vs.**

**AMPCO CONTRACTING INC.; SAFEWAY, INC.; permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.; BARRETT BUSINESS SERVICES, INC.; FEDERICO VELARDE, JR., an individual DBA as FV SALVAGE; ACE AMERICAN INSURANCE COMPANY, administered by CORVEL ENTERPRISE COMP, INC.; STATE COMPENSATION INSURANCE FUND; CALVAR CONSTRUCTION, *Defendants***

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**ROMAN HERNANDEZ AGUILAR, *Applicant***

**vs.**

**AMPCO CONTRACTING INC.; SAFEWAY, INC.; permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.; BARRETT BUSINESS SERVICES, INC.; FEDERICO VELARDE, JR., an individual DBA as FV SALVAGE; ACE AMERICAN INSURANCE COMPANY, administered by CORVEL ENTERPRISE COMP, INC.; STATE COMPENSATION INSURANCE FUND; CALVAR CONSTRUCTION, *Defendants***

**Adjudication Numbers: ADJ11934915 (MF); ADJ11733861**
**Van Nuys District Office**

## OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration of the "Findings and Order" (F&O) issued on April 10, 2026, by the workers' compensation arbitrator (WCA), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCA found, in pertinent part, that AMPCO and BBSI entered into an employee service agreement, however, because AMPCO failed to follow the terms of the agreement, BBSI did not employ applicants and thus, no coverage exists against Ace American Insurance Company.

Defendant, AMPCO, contends that the WCA erred because he failed to properly analyze the agreement between AMPCO and BBSI and because AMPCO was a named insured under the provisions of the insurance policy.

We have received an answer from applicant. The WCA filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCA's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will rescind the April 10, 2026 F&O and substitute a new F&O, which finds coverage for AMPCO. [1]

## FACTS

This matter was previously tried on the issue of employment and on March 15, 2022, we issued an Opinion on Decision After Reconsideration, which detailed the underlying facts of the case as follows:

> Based on all the evidence and testimony entered into the record there are certain undisputed facts that emerge.
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> AMPCO hired FV Salvage by a master subcontractor agreement dated 09/03/2018. This is followed by a Statement of Work (SOW) dated 09/04/2018 signed by Reginald Kama, AMPCO project manager for the location of injury, and Frederico Velarde.
>
> FV Salvage aka Frederico Velarde picked up Roman Hernandez Aguilar and Daniel Flores Campos in downtown Los Angeles where they waited at 7th street and Central Avenue waiting for a day labor pickup. The workers were transported by Frederico Velarde to the Arden Way Project being overseen by the general contractor, AMPCO.
>
> On the date of injury 09/28/2018 Frederico Velarde picked the applicants up from 7th street and Central Avenue and drove, them to the Arden Way Demolition project run by AMPCO. The applicants began the rooftop demolition that morning and at approximately 11:00 a.m., a beam in the roof they were working upon broke and the two men fell approximately 30 feet to the floor below sustaining injuries.

[1] The WCA's F&O contained a multitude of additional findings including findings on employment and industrial injury. The sole issue for arbitration was the issue of insurance coverage, and thus, we have rescinded the findings not related to the issue of coverage.

> At the time and date of injury Frederico Velarde, dba FV Salvage, was an unlicensed, uninsured subcontractor. The General Contractor was AMPCO who is a licensed and insured contractor in charge of the Arden Way Project where the accident occurred.

(Opinion and Decision After Reconsideration, March 15, 2022, pp. 3-4.)

Based upon the facts above, the Appeals Board affirmed the WCJ's finding that AMPCO employed the applicants on the date of injury. The issue of coverage was expressly deferred as follows: "Defendants defer coverage questions to arbitration: If AMPCO is determined to be an employer, whether BBSI as a leasing company for AMPCO is an employer and provides workers compensation coverage; whether AMPCO is an additional insured of CalMar, State Compensation Fund and Rockhill." (Minutes of Hearing and Summary of Evidence, August 31, 2020, p. 3, lines 3-5.)

The matter thereafter proceeded to arbitration to determine whether coverage existed.

AMPCO and BBSI entered into an agreement, whereby, in most circumstances, AMPCO was required to perform multiple functions to onboard new employees. (See generally, Exhibit 1, Agreement for Client Services, June 14, 2017.)

Employment was found with AMPCO because it is a licensed general contractor by the California Contractors' State License Board and thus, it becomes the employer by operation of law when an employee of an unlicensed subcontractor is injured. (See generally, Opinion and Decision After Reconsideration, March 15, 2022.)

BBSI's contract with AMPCO contained the following provision under Schedule 31:

> 6, The following provisions are applicable to Clients that are licensed by the California Contractors' State License Board:
>
> **(a) Notwithstanding any other provision of this Agreement**, Barrett agrees to provide workers' compensation coverage through a certificate of self-Insurance or through a qualified insurance carrier for all persons working for Client who may be deemed employees of Barrett or Client as defined by California Workers' Compensation laws.

(Exhibit 1, Agreement for Client Services, Schedule 31.)

The Arbitrator found no coverage based upon the following endorsement's on the ACE policy:

> LIABILITY NOT INSURED: Any liability the labor contractor named in Item 1 of the policy may have, other than with respect to employees provided to the client

shown in Item 1 (following the designation " Leased Coverage For" or "LCF") pursuant to an employee leasing arrangement subject to the *California Workers' Compensation Experience Rating Plan-1995,* Section V , Rule 4, *Application of Experience Modification to Policies Covering Employee Leasing Arrangements.*

LIABILITY NOT INSURED: Any liability the client shown in Item 1 may have, other than with respect to workers provided by the Labor Contractor named in Item 1 of the policy pursuant to an employee leasing arrangement subject to the *California Workers' Compensation Experience Rating Plan-1995,* Section V, Rule 4, *Application of Experience Modification to Policies Covering Employee Leasing Arrangements.*

(Exhibit 2, Ace American Policy, p. 8.)

**DISCUSSION**

Pursuant to Labor Code[2] 3602(d), an employer may obtain workers' compensation coverage by entering into a valid and enforceable agreement with another employer to obtain coverage for employees provided by the other employer. (See e.g. *Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd*. (*Columaria*) (2010) 189 Cal.App. 4th 101.) Section 3602(d) provides:

> (1) For the purposes of this division, including Sections 3700 and 3706, an employer may secure the payment of compensation on employees provided to it by agreement by another employer by entering into a valid and enforceable agreement with that other employer under which the other employer agrees to obtain, and has, in fact, obtained workers' compensation coverage for those employees. In those cases, both employers shall be considered to have secured the payment of compensation within the meaning of this section and Sections 3700 and 3706 if there is a valid and enforceable agreement between the employers to obtain that coverage, and that coverage, as specified in subdivision (a) or (b) of Section 3700, has been in fact obtained, and the coverage remains in effect for the duration of the employment providing legally sufficient coverage to the employee or employees who form the subject matter of the coverage. That agreement shall not be made for the purpose of avoiding an employer's appropriate experience rating as defined in subdivision (c) of Section 11730 of the Insurance Code.
>
> (2) Employers who have complied with this subdivision shall not be subject to civil, criminal, or other penalties for failure to provide workers' compensation coverage or tort liability in the event of employee injury, but may, in the absence of compliance, be subject to all three.

[2] All future references are to the Labor Code unless noted.

Where a general and special employment relationship exists, the injured employee can look to and is entitled to compensation benefits from either or both employers. (*Kowalski v. Shell Oil Co*. (1979) 23 Cal.3d 168, 175; *McFarland v. Voorheis-Trindle Co*. (1959) 52 Cal.2d 698, 702 [24 Cal.Comp.Cases 216, 217]; *National Auto. Ins. Co. v. Industrial Acc. Com*. (*Ivy*) (1943) 23 Cal.2d 215, 219 [8 Cal.Comp.Cases 260, 263]; *Dept. of Water & Power v. Industrial Acc. Com*. (*Winkler*) (1934) 220 Cal. 638, 641.) The liability of general and special employers for compensation benefits is joint and several. (See *Fireman's Fund Indem. Co. v. State Compensation Ins. Fund* (*Smith*) (1949) 93 Cal.App.2d 408 [14 Cal.Comp.Cases 180].) The effect of a valid and enforceable agreement under Labor Code section 3602(d) is that "both employers shall be considered to have secured the payment of compensation." However, even after a general and special employer enter into an agreement under Section 3602(d), the employers remain jointly and severally liable. (*Proulx Manufacturing Company v. Workers' Comp. Appeals Bd*. (*Bahney*) (2010) 75 Cal.Comp.Cases 782 [writ den.].)

Workers' compensation insurance policies in California are subject to regulation by the Department of Insurance. (Ins. Code, §§ 11651, 11657, 11658.) "Every workers' compensation insurer shall adhere to a uniform experience rating plan filed with the commissioner by a rating organization designated by the commissioner and subject to his or her disapproval." (Ins. Code, § 11734(a).) The Insurance Commissioner has adopted a Uniform Statistical Reporting Plan (USRP) and an Experience Rating Plan (ERP) to facilitate reporting of data and assignment of an experience modification to each employer that is experience rated. (Ins. Code, §§ 11734, 11736; *Allied Interstate Inc. v. Sessions Payroll Management Inc*. (2012) 203 Cal.App.4th 808.)

A Professional Employer Organization (PEO) is a general employer and typically is an entity that leases employees to another employer, provides payroll services, and agrees to obtain workers' compensation coverage for joint employers. Pursuant to Labor Code section 3602(d), a PEO must be an employer in order to obtain workers' compensation coverage for joint employees.. A workers' compensation policy only covers employers who are named as insured by the policy.

Insurance policies issued to employers engaged in an employee leasing arrangement must comply with certain requirements found in the ERP, including a requirement that there be a separate policy written to cover the liability of the workers provided to the client by the labor contractor. (10 Cal. Code Regs., § 2353.1; California Workers' Compensation Experience Rating

Plan, effective September 1, 2026, p. 11.) "[S]uch policy may also provide workers' compensation benefits for the client's employees." (*Ibid*.)

Here, the WCA erred in finding no coverage pursuant to the endorsement because the WCA found that applicant was not hired pursuant to the BBSI contract, which in most other cases contained a number of restrictions on employment. However, the WCA overlooked provision 6 in schedule 31, which found all deemed employees of a licensed contractor to be covered, **notwithstanding any other provision of the agreement**. The parties clearly understood that sometimes, such as the case here, a general contractor may become legally liable as an employer, even when there is no formal hiring of the individual. Schedule 31 expressly covers this scenario.

As leased coverage existed pursuant to the contract for all employees deemed to be employees of a general contractor and notwithstanding any other provision of the agreement, the injuries alleged herein are covered under the Ace American Insurance policy.

Accordingly, as our Decision After Reconsideration we rescind the April 10, 2026 F&O and substitute a new F&O, which finds coverage for AMPCO.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on April 10, 2026, is **RESCINDED** with the following **SUBSTITUTED** therefor:

## FINDINGS OF FACT

1. Pursuant to the Agreement for Client Services, leased coverage existed between BBSI and AMPCO, and thus AMPCO is covered by the Ace American Insurance policy for the alleged injuries herein.

## ORDER

IT IS ORDERED that all other issues are deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**/s/ PAUL F. KELLY, COMMISSIONER**

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

**SEPTEMBER 17, 2026**

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

**DANIEL FLORES CAMPOS**
**ROMAN HERNANDEZ AGUILAR**
**MICHAEL BURGIS & ASSOCIATES, P.C.**
**PEARL LEGAL, APC**
**HEYWOOD FRIEDMAN**

**EDL/mt**

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