

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

YOLANDA SABLAN, *Applicant*

vs.

**COUNTY OF LOS ANGELES;
ACCLAMATION SANTA CLARITA, *Defendants***

Real Parties in Interest:

**Marisa Schermbeck Nelson; South Bay Surgical Spine;
South Bay Surgical and Spine Institute; Accounts Receivable LTD;
Accounts Receivable Acquisitions; and Frontline Medical Associates, Inc.**

**Adjudication Number: SAU2545427
Anaheim District Office**

**OPINION AND ORDER GRANTING PETITION
FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

State Compensation Insurance Fund (SCIF) seeks reconsideration of the Order Appointing New Liaison Counsel (Order) issued by a workers' compensation administrative law judge (WCJ) on August 20, 2024.¹ The WCJ ordered that SCIF be appointed new liaison counsel in this consolidated matter pursuant to California Rule of Court section 3.506 (Cal. Rule of Court, § 3.506), based on the remaining carriers and third party administrators (carriers) and their respective exposure on the remaining liens in this consolidated matter. The WCJ ordered that as liaison counsel, SCIF would coordinate and conduct all discovery, serve all minutes of hearing, communicate status of litigation with other carriers and the Department of Industrial Relations Anti-Fraud Unit (AFU), and create a carriers drafting committee for joint pleadings and discovery. The WCJ also ordered that the services of the liaison counsel should be rendered as economically

¹ The Order is a final order that determines the threshold issue of whether the Appeals Board has jurisdiction to order SCIF to act as liaison counsel. (See *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1080-1081 ("*Maranian*").) Therefore, we treat the petition filed by SCIF as a petition for reconsideration of a final order. (See (Lab. Code, §§ 5900, 5901, 5950; *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1255; *Maranian, supra*, 81 Cal.App.4th at p. 1074.)

as possible, that unnecessary activity be avoided, and that the number of persons attending conferences and depositions and working on briefs and discovery be limited; that the costs and fees associated with liaison counsel's duties be borne equitably among those benefiting; and, that the terms and procedures for payment were to be established by agreement by counsel. The Order also ordered all remaining carriers to attend the next hearing, and that discovery would be monitored by the WCJ who would also approve any requests for discovery if necessary.

SCIF contends that the Order conflicts with Article 14, section 4 of the California Constitution (Cal.Const., Art. XIV § 4) and Insurance Code sections 11770 and 11774 (Ins. Code, §§ 11770, 11774), in that SCIF was purposefully created only to defend against their own claims and therefore has no authority to defend policies other than SCIF's own policies or to represent other carriers in this consolidated proceedings; SCIF's assets are only applicable to the payment of losses against SCIF in its defense of claims against an employer to an employee, and paying SCIF employees to coordinate discovery for other carriers and draft joint pleadings and discovery for other carriers is not included within the constitutional and statutorily created purpose of SCIF; SCIF does not have the constitutional or statutory authority to earn fees on behalf of other carriers or to collect costs and fees from other carriers, and lacks the ability to provide periodic billing for any ongoing litigation of other carriers; and, SCIF lacks the constitutional and statutory authority to control the litigation activity of the other carriers to comply with the Order's demand that liaison services be provided as economically as possible and that all unnecessary activity by all carriers representatives be avoided. In addition, SCIF disputes the WCJ's calculation of its respective exposure to the liens in this consolidated action and objects that it was not provided with the opportunity to review the list of remaining liens in the consolidated action before the Order issued or before the petition for removal was filed.

No answer to the petition was filed. The WCJ filed a Report and Recommendation on Petition for Removal #3 and Labor Code §5909(b) Notice (Report), recommending that the petition be dismissed.

We have reviewed the record in this consolidated matter, the allegations of the petition and the contents of the Report. Based on our review of the record and for the reasons set forth herein, we grant reconsideration. It is our decision after reconsideration to rescind the Order and return this consolidated matter to the trial level for further proceedings consistent with this decision.

Consolidation of cases in workers' compensation is within the sound discretion of the Workers' Compensation Appeals Board (WCAB) in matters involving the same party or parties. (Cal. Code Regs., tit. 8, § 10396.) We concur with the WCJ to appointment of liaison counsel in this consolidated matter as it would be clearly consistent with all the relevant factors that must be considered by the WCAB when exercising its discretion to order consolidation: the existence of "common issues of fact or law"; the complexity of the issues involved"; avoiding delay; "avoidance of duplicate or inconsistent orders"; and, the "efficient utilization of judicial resources." (Cal. Code Regs., tit. 8, § 10396(a)(1)-(5).) In addition, appointment of liaison counsel in a consolidated matter such as this one is also consistent with the mandate that workers' compensation proceedings be administrated "expeditiously" and "inexpensively." (Cal. Const. Art. XIV, § 4.) Moreover, there has already been an effective utilization of appointed liaison counsel in this consolidated matter; now that the liens of prior liaison counsel have been dismissed and/or otherwise resolved, we concur that a new liaison counsel must be chosen.

However, counsel for carriers in this consolidated matter were not consulted in the appointment of new liaison counsel prior to the Order being issued by the WCJ. It appears from the record that SCIF is correct that the carriers were not provided the opportunity to review the list of remaining liens at issue as provided by AFU to the WCJ until *after* the Order issued. Given that the WCJ looked to California Rule of Court 3.506 to fashion the Order appointing new liaison counsel, it is surprising that counsel for carriers were not asked to meet and confer in the selection prior to an appointment. (See Cal. Rules of Court, Rule 3.506(a) ["An assigned judge may at any time request that the parties on each side of the included or coordinated actions select one or more of the attorneys of record on that side for appointment as liaison counsel, and may appoint liaison counsel if the parties are unable to agree."].)

Although we concede that the WCAB is not bound by the California Rules of Court, we agree with subsection (a) of Rule 3.506 that counsel for carriers should have been allowed to meet and confer to attempt selection of a willing liaison counsel before the WCJ issued an order appointing a liaison counsel, *and* that all carriers should have been provided with the updated list of remaining liens prior to that meet and confer in order to facilitate the carriers' discussion.

It is therefore our decision to grant reconsideration in order to rescind the Order and return this consolidated matter to the trial level so that the carriers may review the updated AFU list of remaining liens for errors and/or omissions, and thereafter meet and confer to choose a willing

liaison counsel in this consolidated matter. Should no willing liaison counsel be chosen, then the WCJ may proceed to appoint a liaison counsel.

We note that had we reached the merits of SCIF's petition, but without making any final determination, order, or decision on the merits, we concur with the WCJ that the petition's contentions that SCIF somehow lacks authority to act as any other workers' compensation carrier in these consolidated proceedings are unavailing. (See Ins. Code, § 11778 ["The fund may transact workers' compensation insurance required or authorized by law of this state to the same extent as any other insurer..."]; *Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1513, 1515, fn. 9, 1516 [SCIF is "in its purpose and everyday function...indistinguishable from a private corporation"; Legislature intended SCIF to be self-supporting (Lab. Code, § 11775) and competitive with other insurers].)² SCIF provides no specific exemption in the California Constitution, the Labor Code, or the Insurance Code that would preclude SCIF from acting as liaison counsel in a consolidated workers' compensation proceeding.

Accordingly, it is our decision to grant reconsideration in order to rescind the Order and return this consolidated matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that State Compensation Insurance Fund's Petition for Reconsideration of the Order Appointing New Liaison Counsel issued by a workers' compensation administrative law judge on August 20, 2024 is **GRANTED**.

² See also Ins. Code, § 1875.20 ["Every insurer admitted to do business in this state, except those otherwise exempted in this code, shall provide for the continuous operation of a unit or division to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds."]; Ins. Code, § 1875.21 ["Insurers may maintain the unit or division required by this article using its employees or by contracting with others for that purpose."]; Ins. Code, § 1875.23 ["For purposes of this article, 'unit or division' may include the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. If an insurer creates a distinct unit or division, hires additional employees, or contracts with another entity to fulfill the requirements of this article, the additional cost incurred shall be included as an administrative expense for ratesetting purposes."].

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Order Appointing New Liaison Counsel issued by a workers' compensation administrative law judge on August 20, 2024 is **RESCINDED** and this consolidated matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 18, 2024

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

**YOLANDA SABLAN
FRONTLINE MEDICAL ASSOCIATES, INC.
LAW OFFICES OF GEORGE SHOHEET
MOKRI, VANIS & JONES
MARISSA SCHERMBECK NELSON
SOUTH BAY SURGICAL AND SPINE INSTITUTE
ACCOUNTS RECEIVABLE, LTD.
ACCOUNTS RECEIVABLE ACQUISITION
DIR/ANTI-FRAUD UNIT (OAKLAND)
STATE COMPENSATION INSURANCE FUND**

AJF/abs

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