

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Case No. ADJ1857578 (AHM 0089872)**

5 **MIRNA LICEA,**

6 *Applicant,*

7 **vs.**

8 **MINSON CORPORATION; CALIFORNIA**
9 **INSURANCE GUARANTEE ASSOCIATION**
10 **for PHICO INSURANCE COMPANY, in**
11 **liquidation,**

Defendant(s).

**ORDER DENYING
RECONSIDERATION**

12 We have considered the allegations of the Petition for Reconsideration and the contents of
13 the report of the workers' compensation administrative law judge (WCJ) with respect thereto.
14 Based on our review of the record, and for the reasons stated in said report which we adopt and
15 incorporate, we will deny reconsideration.

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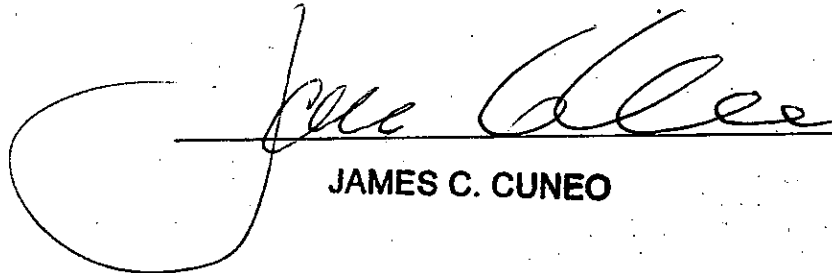
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1 For the foregoing reasons,


2 **IT IS ORDERED** that said Petition for Reconsideration be, and it hereby is, **DENIED.**

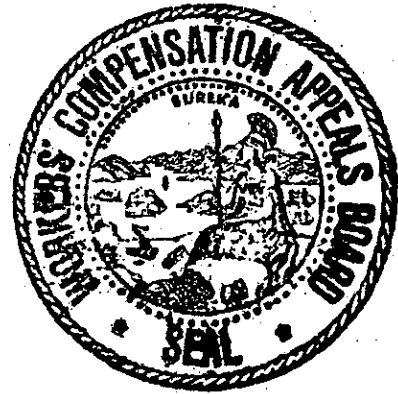
3 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **JAMES C. CUNEO**

8 *I CONCUR,*

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11 **ALFONSO J. MORESI**

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14 **NEIL P. SULLIVAN DEPUTY**



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

17 **JUN 23 2009**

18 **SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT**
19 **THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:**

20 *Floyd Skeren & Kelly*
21 *Alliance Medical Billing and Collections*

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24
25 *bgr*

MIRNA LICEA v. MINSON CORPORATION
CALIFORNIA INSURANCE GUARANTEE
ASSOCIATION (CIGA) for PHICO INSURANCE
COMPANY in liquidation

JUDGE: LINDA DAVIDSON-GUERRA

DATE OF INJURY: DECEMBER 20, 2000

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I.

INTRODUCTION

Missirian Orthopedic Medical Group (Missirian) requests reconsideration of the decision issued May 7, 2009 disallowing their lien. Missirian contends the exclusion under Insurance Code 1063.1(c) (9) does not apply to its lien because their right to reimbursement derives from the employer's rights under the original policy of insurance.

The findings and order issued May 7, 2009 and the petition was filed June 1, 2009 and appears to be untimely. The petition is verified.

II.

FACTS

Applicant, Mirna Licea, while employed as a laborer, by Minson Corporation sustained injury arising out of and in the course of employment to the back, right leg, right ankle, right foot, right wrist, right hand and right hip. At the time of injury the employer's workers compensation carrier was Phico Insurance Company. California

Insurance Guarantee Association (CIGA) assumed the obligations of Phico Insurance which became insolvent. The matter was settled by CIGA via Compromise and Release on May 4, 2006 for the sum of \$70,000.

Missirian Orthopedic provided treatment to Ms. Licea and had claimed charges of \$39,354.07. Missirian assigned its lien to KM Financial Services. Defendant CIGA contends that the claim of KM Financial is not a "covered claim" within the meaning of Insurance Code Section 1063.1(c)(9). Lien claimant KM asserts that Missirian Orthopedics derives its claim from employer Minson Corporation who is an "original claimant" and therefore Insurance Code 1063.1(c) (9) does not apply. The sole issue for determination was whether Insurance Code 1063.1(c) (9) bars payment of KM Financial's claim. Based on due consideration of the statute it was found that KM was barred from recovery based on the specific language of Insurance Code Section 1063.1(c) (9).

Insurance Code 1063.1(c) (9) states,

"Covered claims" does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured nor (ii) any claim by any person other than the original claimant under the insurance policy in his or her own name, his or her assignee as the person entitled thereto under a premium finance agreement as defined in Section 673 and entered into prior to insolvency, his or her executor, administrator, guardian or other personal representative or trustee in bankruptcy and does not include any claim

asserted by an assignee or one claiming by right of subrogation, except as otherwise provided in this chapter."

The Notice of Assignment is undated but indicates that Missirian "hereby assigns all title and hereby transfers, without recourse, to KM Financial Services, Inc. "Assignee" or "Buyer" all rights, title, interest in the attached Medical Account Receivable." KM in turn appointed Alliance Medical Billing and Collection Services as representative in fact for the purposes of securing payment of medical bills. KM offered no evidence to refute this assignment. Thus the asserted claim here is clearly the claim of an assignee.

In *Baxter Healthcare Corp. v. California Insurance Guarantee Assn.* (2000) 85 Cal. App. 4th 306, 314 the Court held,

"The Guarantee Act excludes from coverage claims asserted by an assignee.

That term is not defined or qualified by the Guarantee Act. It must be read in the context of the entire statute and given the meaning it bears in ordinary usage".

I concluded that under *Baxter* the claim of KM is excluded from the Guarantee Act's definition of "covered claims".

KM Financial alternatively characterized its status as a beneficiary under the employer's original workers compensation insurance policy. KM argued that its rights to reimbursement derive from Applicant's entitlement to workers compensation benefits under the employer's (Minson's) original policy with insolvent Phico Insurance. KM contends that as the workers compensation policy was between Phico and Minson,

Minson is an "original claimant" and eligible therefore to be reimbursed by CIGA for provision of workers compensation benefits.

This argument fails however because the statute in its definition of "covered claims" specifically excludes any claim asserted by any person other than the original claimant. Even if Minson is the "original claimant" as asserted by lien claimant, KM/Missirian are not, nor are they beneficiaries of Minson's rights under the original policy. "Covered claims" do not include all claims that would have been covered by the insurer had it not become insolvent. *California Ins. Guarantee Association v Superior Court* (1998) 64 Cal. App. 4th 219, 222 As KM/Missirian is not an "original claimant" it is not entitled to assert a claim against CIGA.

In their petition, KM cites *Richey v Ziegler* (1938) 89 Cal App. 35 for the proposition that a workers compensation claim may be assigned. However, *Richey* relates to the assignment of a judgment entered after a workers compensation award and the prohibition against assignment under 1925 Cal. Stat 4749 and not Insurance Code 1063.1. The case did not involve the assignment of an account receivable as in this case. As set forth in *Baxter, supra* the right to CIGA reimbursement is statutorily limited under Insurance Code 1063.1 and specifically excludes assigned claims.

KM also relies on *Burrow v Pike* (1987) 190 Cal. App.3d 384 which held that the California Department of Transportation's lien for workers compensation benefits was not excluded from the definition of a "covered claim" and found CIGA liable for reimbursement of benefits to an injured worker. However in *Burrow*, CIGA had assumed

the obligations of a third party's liability carrier and the employer failed to file an appropriate claim with CIGA. The Court held that this did not defeat the employer's workers' compensation lien against the plaintiff-employee's cause of action. Burrow at 235. However, the focus of the *Burrow* decision is on the exclusion from coverage involving subrogation. *Burrow, supra, at p. 397, citing Ins. Code, § 1063.1, subd. (c)(5)*. It is therefore not persuasive on the issue of reimbursement of an assignee's medical provider's lien.

KM did not establish any basis for reimbursement under the Guarantee Act and accordingly, its lien in the amount of \$39,354.07 was correctly disallowed.

IV RECOMMENDATION

Based on the foregoing it is respectfully recommended the Petition for Reconsideration be denied.



LINDA DAVIDSON-GUERRA

WORKERS COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all persons
shown on the Official Address
Record on June 15, 2009
By: _____