WORKERS' COMPENSATION APPEALS BOARD STATE OF CALIFORNIA

BARTOLO TERRONES,

Applicant,

VS.

REMEDY TEMP and RELIANCE NATIONAL INDEMNITY, in liquidation, administered by CIGA; U.S. TILE and LIBERTY MUTUAL INSURANCE COMPANY,

Defendant.

Case No. ADJ423557 (ANA 0341897)

OPINION AND ORDER **DENYING PETITION FOR** REMOVAL

Select Staffing (Select), which identifies itself as a defendant in this matter, has filed a timely, unverified petition for removal, requesting that the Appeals Board rescind the Order dated June 16, 2010, wherein the workers' compensation administrative law judge (WCJ) ordered the depositions of Fred Pachon and the person most knowledgeable pursuant to the Motion to Compel Attendance at a Deposition filed by defendant Liberty Mutual Insurance Company (Liberty Mutual) and ordered that Liberty Mutual is entitled to documents requested in its Notice to Produce, excluding the workers' compensation insurance policies of Select.

Select contends that the depositions are not appropriate because Select is not a party to this action and the Appeals Board lacks jurisdiction to order the deposition of the Select witnesses because Select is not a party. Select also contends that Liberty is not entitled to the Purchase Agreement between defendant Remedy Temp and Select because it contains confidential financial information and is not relevant to the issues in this case. We have received an answer from Liberty Mutual.

Applicant, while employed as a laborer on February 23, 2000, sustained an industrial injury to his back. His general employer was Remedy Temp, a staffing agency. His special employer was U. S. Tile, insured by Liberty Mutual. Remedy was insured by Reliance National Indemnity

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Co., which became insolvent and of which the covered claims are now the responsibility of the California Insurance Guarantee Association (CIGA).¹ Apparently, Remedy Temp has been purchased by Select. Liberty Mutual wishes to explore issues of coverage and insurance related to that purchase.

With regard to the deposition of witnesses who are not employees of a party, Labor Code section 5710(a) provides in relevant part: "The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the matter prescribed by law for like depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. To that end the attendance of witness and the production of evidence may be required." The statute does not limit the Appeals Board's jurisdiction to witnesses who are the employees of parties.

In this case, the deponents ordered to appear at deposition by the WCJ may have information relevant to this matter. The WCJ has jurisdiction to order these depositions. We find no reason to disturb the WCJ's order.

With regard to the Purchase Agreement, the WCJ has jurisdiction to order the production of that document pursuant to section 5710. Any specific claims of privilege may be asserted by Select and adjudicated by the WCJ, if necessary.

Furthermore, on the basis of the information before us, we cannot find that Select will be substantially prejudiced or irreparably harmed by the depositions of its employees and production of documents (see WCAB Rule 10843 (Cal. Code Regs., tit. 8, § 10843)).

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¹ See, generally, Miceli v. Jacuzzi, Inc., et al. (2006) 71 Cal.Comp.Cases 599 (appeals board en banc).

For the foregoing reasons, IT IS ORDERED that the petition for removal filed by Select Staffing is DENIED. WORKERS' COMPENSATION APPEALS BOARD FONSO J. MORESI I CONCUR, DEIDRA E. LOWE DATED AND FILED IN SAN FRANCISCO, CALIFORNIA AUG 3 0 2010 SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD: **BARTOLO TERRONES** FLOYD, SKEREN & KELLY MALMQUIST, FIELDS & CAMASTRA EDWARDS & ASSOCIATES PEARLMAN, BORSKA & WAX

MR/rrm