



California Workers' Compensation Institute

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January 5, 2016

SIGNIFICANT DECISION 16-01

CORNEJO V. YOUNIQUE CAFÉ
OPINION AND DECISION AFTER RECONSIDERATION
(WCAB EN BANC)
CASE No. ADJ9351964, ADJ9351965

FILED: DECEMBER 22, 2015

The registration and bonding requirements of B&P Code sections 22450 and 22455 do not apply to a lien claimant copy service seeking to recover fees that are medical-legal expenses under LC section 4620(a), if the lien claimant is an agent and/or independent contractor of a member of the State Bar at the time the documents are photocopied.

SIGNIFICANCE: The regulations implementing SB 863 included a requirement to register as a professional photocopy service under the Business & Professions (B&P) Code. This decision confirms that the exemption for agents or contractors of an attorney applies to this regulatory requirement.

FACTS: The compromise and release included a provision that defendants would “adjust or litigate all liens.” Two months later Western Imaging Services (WIS) filed a lien for copy services. Applicant's attorney filed a letter stating that WIS was an independent contractor performing photocopy services for the firm.

The WCJ held that defendant was not obligated to pay the claimed copy service fees because WIS was not exempted by B&P Code section 22451(a) from registration and bonding as a professional photocopier at the time it photocopied the documents.

HOLDING: In a unanimous opinion, the WCAB held that the registration and bonding requirements of the B&P Code do not apply to WIS because it was an independent contractor of a member of the State Bar when it photocopied documents in this case. The Board noted that the language of the B&P Code exemption included the broader term ‘agent’ and held that any individual or entity hired by a member of the State Bar to photocopy documents in the possession of a third person acts as an agent of the attorney while doing that and is therefore exempt from the registration and bonding requirement.

The Board specifically found that a member of the State Bar may hire any employee, agent, or independent contractor to photocopy documents on his or her behalf, including a professional corporate entity engaged solely in the business of photocopying records for multiple clients.

DISCUSSION: The copy service fee schedule includes a provision that there will be no payment for copy and related services that are provided by any person or entity which is not a registered professional photocopier [CCR section 9982(d)(2)]. The WCJ's rationale for denying this lien stated that WIS failed to establish that it was an independent contractor and therefore had to be registered and bonded pursuant to the B&P Code. The WCJ noted that the purpose of B&P Code registration was to protect the public and that WIS's argument leaves a victim of a breach of the duty to maintain confidentiality without the remedy from the B&P section 22455 bond. The WCJ also reasoned that if the independent contractor is a corporate entity engaged in the business of photocopying records for multiple clients, then the victim is relegated to seeking damages from the unregistered and un-bonded professional photocopier only.

The Board's opinion provides a way around the regulatory provision precluding payment to any service that is not a registered professional photocopier. It remains to be seen whether the majority of copy services, who are now registered, will discontinue that practice and whether the regulation will have any further effect on payment to unregistered copy services.

MMc/by