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S204387 SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

MAY 14 2013

Frank A. McGuire Clerk

Deputy

ELAYNE VALDEZ,

Petitioner and Applicant,

v.

WORKERS' COMPENSATION APPEALS BOARD; WAREHOUSE DEMO SERVICES; ZURICH NORTH AMERICA

Respondents and Defendants.

RESPONSE TO PETITIONER'S MOTION TO STRIKE PORTIONS OF RESPONDENTS' OPENING BRIEF ON THE MERITS

Of a Published Decision by the Court of Appeal
Second Appellate District, Case No. B237147
(W.C.A.B. en banc decisions, Case No. ADJ7048296)

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INTRODUCTION

As part of Valdez's efforts to undermine the Legislature's reforms by creating the Medical Provider Network (MPN) system, she seeks to distract the Court by attacking references to materials to which she is otherwise unable to respond. Her misguided motion to strike attacks three categories of materials: reports and studies which reflect the broader practical and policy implications of a ruling on these issues; amici letters submitted pursuant to California Rule of Court Rule 8.500(g); and portions of the certified record filed by the Workers' Compensation Appeals Board (WCAB) at the Court of Appeal's request. The motion is mistaken on all counts and simply disregards the well established practice of this Court, the rules of court and, inexplicably, the certified record as prepared and submitted by the WCAB. The motion is a mere diversion and should be denied in its entirety.

With regard to the first category, Valdez misunderstands judicial notice, which is a means of resolving factual or legal issues in a case by accepting the truth and accuracy of designated materials, and thus avoids the burden of a formal proof on each point. This process is simply inapplicable to the reports commissioned or conducted by the Department of Industrial Relations regarding workers' compensation. These reports are not referenced for the purpose of resolving a factual dispute regarding Valdez's claim, but in consideration of the larger policy implications of the Court's decision and, further, to provide the Department of Industrial Relations' perspective on how MPNs operate.

In similar fashion, Valdez mistakenly argues that parties may not refer to any materials unless they are in the appellate record or judicially noticed. In fact, courts commonly rely upon and cite to a wide variety of authorities without the need for judicial notice, since the courts do not use the materials to make a factual determination in the case, but rather to better

understand the issues, and the practical implications of their contemplated rulings.

Valdez is likewise misguided in her request to strike any reference to the amici letters filed with the Court in support of granting review. She makes no claim that these letters were not properly submitted and served, or that Defendant misrepresented their contents. Despite the letters' proper submission to the Court, Valdez argues, with little reasoning and no authority or rational basis, to ignore them.

Lastly and most bizarrely, Valdez attacks the certified record itself, essentially arguing that the certified record should be modified to *delete* those portions of the record that the Workers Compensation Judge (WCJ) erroneously *ignored*. However, the Court of Appeal instructed the WCAB to file a certified record of all documents it reviewed in reaching its en banc decisions, and the WCAB complied. In any case, Defendant has challenged the WCJ's error at every stage thereafter, putting these exhibits at issue. Notwithstanding, Valdez argues that the error of the WCJ in deferring the MPN issues should be compounded by barring any reviewing court from considering these documents. There plainly is no basis for deleting portions of the certified record as prepared by the WCAB.

In sum, Valdez cannot respond to the legitimate points Defendant raised in the Opening Brief on the Merits, and, instead, endeavors to avoid their import by having some of Defendant's supporting materials taken out of consideration. These materials will assist the Court in resolving the issues at bar. The motion to strike should be denied.

LEGAL DISCUSSION

I.

THIS COURT CUSTOMARILY CONSIDERS AUTHORITATIVE REPORTS AND STUDIES WHEN CONSIDERING THE POTENTIAL POLICY IMPLICATIONS OF ITS RULINGS.

Judicial notice is a means by which a court can accept "the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Lockley v. Law Office of Cantrell* (2001) 91 Cal.App.4th 875, 882.) It is a convenience that allows courts and parties to forgo the burden of a formal proof on issues which, based on the reliable and authoritative documents listed in Evidence Code sections 451 and 452, should not be controversial. In the same fashion, it also promotes consistency between decisions regarding such issues. However, this process has no application to the studies and reports that are the target of Valdez's motion.

Valdez confuses the nature of judicial notice (which is a means of addressing factual or legal disputes) with a broader consideration of legal and policy issues from available authorities. Each case on which Valdez's motion relies addresses judicial notice in the context of a *specific factual dispute* in the subject case. (E.g., *Lockley v. Law Office of Cantrell* (2001) 91 Cal.App.4th 875, 882-883 [error to take judicial notice of the truth of statements made in separate non-adversarial proceeding to resolve factual disputes in present case]; *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114 [court unwilling to judicially notice the meaning of the subject letter agreement at demurrer stage]; *StorMedia Inc. v. Superior Court* (1999) 20 Cal.4th 449, 456, n.9 [court judicially noticed documents addressing the factual issues because both parties referred to them in their papers and judicial notice was not opposed].)

None analyzes the propriety of citing materials relevant to deciding legal or policy issues.

Also misplaced, and unsupported by the authorities she cites, is Valdez's argument that only documents within the appellate record can be considered for any reason. For example, Valdez cites *Lona v. Citibank, NA.* (2011) 202 Cal.App.4th 89, in which claims of judicial bias against the trial judge were dismissed because there was nothing in the record to support the claim. (*Id.*, at 102; and see Motion at 9.)[1] Similarly, *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, declined to consider assertions about conduct and communications between the parties which were not supported by the record. (*Id.*, at 990 and n. 4.) Neither case stands for the proposition that authoritative practice guides, commentaries, studies or reports cannot be considered when weighing the implications of the Court's decision or to provide additional perspective on the legal principles involved.

In stark contrast to the cases above, the studies and reports which Valdez targets in her motion to strike *do not address any factual dispute* related to her claim; rather, they address the broader issues and legal principles involved in the operation and significance of MPNs. This Court has customarily cited to such outside studies, reports and law review articles when considering the broader policy implications of its rulings, *without any request or grant of judicial notice.* (E.g., *O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 353-354, n 9 [citing numerous commentators, including a RAND study, on the practice of asbestos plaintiff litigants to sue "ever-more peripheral defendants" after the manufacturers went bankrupt.]; *People v. Holt* (1997) 15 Cal.4th 619, 702 ["Recent studies

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[1] At the same time, the *Lona* court referenced different *legal commentaries* regarding the issues being considered without judicial notice. (*Id.*, at 105, 106-107, 113 and 114.)

establish that even college-educated jurors are unable to define mitigation in a legally correct manner."]; *People v. Brown* (1994) 8 Cal.4th 746, 757-758, & n. 5 [relying on law review articles, commentators, and studies on sexual assault; see *id.*, at p. 761: "recent studies demonstrate that the absence of such a prompt complaint is not a reliable indicator that a sexual offense has not occurred,..."]; *People v. Jones* (1990) 51 Cal.3d 294, 315 [citing recent empirical studies regarding reliability of child witnesses]; *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass.* (2013) 55 Cal.4th 1169, 1179-1180 [noting "most commentators" rejected the prior California rule]; and see 2 Cal. Civil Appellate Practice (CEB 3rd ed. 2012), § 22.57, p. 1150 [this Court will frequently look to authoritative commentators to consider a broader context].)[2]

Valdez disregards this Court's common (and justifiable) practice of referring to practice guides, law review articles, legal commentators and authoritative reports and studies necessary for the court to consider the potential effects and merits of its decision – a practice which has nothing to do with judicial notice. More telling, perhaps, is that Valdez has no other response to these reports and the conclusions they reach, but to ask the Court to bury them.

II.

THERE IS NO BASIS TO STRIKE REFERENCE TO AMICI LETTERS SUBMITTED IN COMPLIANCE WITH THE RULES OF COURT.

As the Court is aware, there were 19 amici curiae letters submitted in support of granting review in this matter, most on behalf of governmental agencies. Valdez cites no authority and offers only superficial and unpersuasive reasoning when she argues that these letters, served and

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[2] In similar fashion the CAAA amicus brief to the Court of Appeal cites to commentators and practice guides, as well as a dictionary, without seeking any judicial notice. (CAAA brief at 7, 15 and 18.)

submitted in compliance with California Rules of Court, Rule 8.500(g), nonetheless should be ignored and discarded. The letters, as referred to in the Opening Brief (at pp. 16-17), were not cited as evidence to address any question of fact regarding Valdez's claim. Rather, Defendant referenced them in discussing the broader policy implications of this Court's decision and the prevalent use of MPNs by public entities, as reported by those entities themselves. Indeed, the wide-spread concern about the policy implications of the Court of Appeal's decision, which implicates the continued viability of MPNs, motivated the many amici letters urging review.

Consistent with Defendant's reference to the amicus letters, this Court has previously acknowledged and commented on amicus letters when relevant to the issues. (E.g., *In re Farm Raised Salmon Cases* (2008) 42 Cal. 4th 1077, 1089, n 11 [court refers to an amicus letter as part of chain of discussion in which a specific issue was addressed]; *State Personnel Bd. v. Fair Employment & Housing Com.* (1985) 39 Cal.3d 422, 431, n 10 [court notes it received "numerous letters and briefs amicus curiae" and summarizes their common position on the issues]; *People v. Mooc* (2001) 26 Cal.4th 1216, 1220-1221, n 1 [listing the large number of amici letters and briefs received in support of the petition for review].) In a similar fashion, this Court certainly can and should consider the letters received in this case as statements by outside persons who have a tangible interest in the legal issues being reviewed, and a stake in its outcome, and take into consideration the concerns and statements of these interested persons.

III.

THE INEXPLICABLE ATTEMPT TO STRIKE THE CERTIFIED RECORD SUBMITTED BY THE WCAB MUST BE REJECTED.

On March 19, 2012, the Court of Appeal issued an order which stated, in pertinent part:

> "[The WCAB is] hereby directed to certify and return to this court on or before April 12, 2012, *a full and correct copy of the records and documents reviewed by the Board on the petition for reconsideration* in the matter designated in your files as Elayne Valdez v. Workers' Compensation Appeals Board et al., so that the same may be reviewed by this court." (Ex. A, Court of Appeal Docket, Order 3/19/12.) (Emphasis added.)

In compliance with this instruction, the WCAB filed two certified volumes of record with the court on April 9, 2012. (See, ex. B and Walsh Declaration, ¶ 3.) Subsequently, on April 11, 2012, the WCAB served a copy of this record by email on each of the parties and an amicus. (Ex. C; Walsh Declaration, ¶ 4; and see Reply To WCAB Answer Brief On The Merits at p. 4, n 4.) Defendant cited to this record in subsequent briefs, as did an amicus brief filed with the Court of Appeal. Valdez made no objection at that time to the certified record or any citations to it.[3] There is no basis for striking any portion of the certified record as prepared by the WCAB.

Valdez offers two equally wrongheaded arguments for modifying the certified record by striking portions of it. First, she claims that since the WCJ (improperly) ignored certain portions of the record relating to Defendant's MPN, *no reviewing court can consider them.* Second, since

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[3] Oddly, nine months after it was provided to the parties and after multiple briefs had cited to it, Valdez claimed for the first time that she did not have the WCAB record as part of a request for an extension of time.

Defendant supposedly failed to challenge the WCJ's error in disregarding the MPN issues, they waived any consideration of the related exhibits. (Motion at 14.) Both arguments are nonsense.

The documents in question were identified at trial as Defendant's exhibits B and C. (WCAB Record at 103:19-22, and 121-129.) These documents primarily address Defendant's MPN, including the MPN notices provided to Valdez, the written confirmation she signed acknowledging the MPN, and communications on how to schedule treatment within the MPN and listing her choices for medical care. (*Id.*, and Opening Brief at 3-6.) These documents were not admitted because the WCJ erroneously deferred the so-called "MPN" issues as "not relat[ing] to temporary disability." (WCAB Record 103:7-9; and at 73, 74 and 76.) The WCJ then relied exclusively on the reports of the non-MPN physicians selected by Valdez's counsel to find that Valdez was entitled to temporary disability. (See ex. 6 at 31-32.) In fact, the WCJ should have confirmed that the MPN was properly established and that notice was provided to Valdez, and on that basis excluded those outside medical reports which addressed Valdez's diagnosis and treatment.

The first issue offered by Valdez simply disregards the nature of the Court of Appeal's review. Pursuant to Labor Code section 5950, the Court of Appeal is authorized to review the final decision of the "appeals board ... following reconsideration." Therefore, the relevant judgment is the one entered by the WCAB and the proper appellate record consists of what the *WCAB* considered in making its decision on reconsideration. The WCAB has filed its certified record of those documents. Valdez offers no basis for disputing the record certification by the WCAB.

The waiver argument is similarly unfounded. Valdez erroneously claims that the WCJ made an "evidentiary ruling" regarding the MPN documents. (Motion at 14.) In fact, there was no ruling on the admissibility

of this evidence. Instead, as noted above, the WCJ mistakenly set aside any consideration of MPN issues and the related documents. In doing so, the WCJ *disregarded Defendant's repeated requests to address this issue.* (WCAB Record 103:7-9; and at 73, 74 and 76.) Defendant directly challenged the WCJ's actions in its Petition for Reconsideration to the WCAB, which argued that Valdez's outside doctor reports must be excluded in light of the MPN. (WCAB Record at 139:12-20, 194:18-19, 195:23-196:3.) This argument necessarily challenged the WCJ's error in failing to consider the MPN exhibits and in deferring the MPN issue. As such, these issues were actively pursued at all times by Defendant and, therefore, preserved for appellate review.

With regard to the issue of Defendant's MPN, there was never any dispute that Defendant has an MPN and that Valdez initially treated within it. (E.g., Valdez Ans. Brief at 7-8; Opinion at 2; and see Opening Brief at 4-5.) The potential issues raised, as a matter of course by the applicants' bar, is whether Defendant had properly established the MPN and also satisfied the technical notice requirements for Valdez, since failure to do so would have allowed her to disregard the MPN.[4] Defendant has always acknowledged that the issue of whether the MPN was properly established and noticed was never adjudicated. (E.g., Opening Brief at 4, n. 2; Pet. for Review at 5, n. 2.) Indeed, it is unnecessary to adjudicate this issue to address the meaning and effect of Labor Code section 4616.6. (See, WCAB Record at 195 n. 2.) In this context, it is proper to point out that the evidence shows Valdez was given proper notice of the MPN, should the

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[4] Under SB 863, these loopholes have been closed. As of January 1, 2013, the validity of an MPN is conclusively presumed once approved by the director and the failure to satisfy the notice requirements, by itself, is insufficient to avoid treating within the MPN. so long there was no denial of medical care. (Lab. Code §§ 4616, subd. (b)(1) and 4616.3, subd. (b), respectively.)

issue ever be adjudicated. Making this observation is not grounds to strike a portion of the brief.

CONCLUSION

Apparently concerned that her arguments cannot withstand scrutiny under review, with the complete certified record and consideration of the practical and policy implications of the Court's decision, Valdez has moved to strike materials commonly and properly relied upon by the Court. For the reasons stated, the motion to strike should be denied in its entirety.

DATED: May 8, 2013

Respectfully submitted,

GRANCELL, LEBOVITZ, STANDER, REUBENS and THOMAS

SEDGWICK LLP

By: _____

Christina J. Imre
Michael M. Walsh
Attorneys for Respondent
WAREHOUSE DEMO SERVICES; ZURICH NORTH AMERICA, ADMINISTERED BY ESIS

DECLARATION OF MICHAEL M. WALSH

I, MICHAEL M. WALSH, declare:

1. I am an attorney licensed to practice law in California, and am an associate with the law firm Sedgwick LLP, appellate counsel of record for Defendants and Respondents Warehouse Demo Services and Zurich North America in this matter. I have personal knowledge of the facts stated in this declaration and if called as a witness, could and would competently testify thereto.

2. Attached hereto as exhibit A is a complete and correct copy of the docket for the Court of Appeal in this matter, *Valdez v. Workers' Compensation Appeals Board*, Court of Appeal Case no. B237137, as printed on April 17, 2013.

3. Attached hereto as exhibit B is a complete and correct copy of the Certification for the record filed with the Court of Appeal in this matter by the Workers' Compensation Appeals Board on April 9, 2012. This certification was filed with a two volume certified record in compliance with the order of the Court of Appeal. (See, ex. A.)

4. On April 11, 2012 my office received an electronic copy of the certified record from the WCAB by email, with an index and certification. Given the size of the record, these documents were sent as attachments to two e-mails and the record was divided into three parts. A complete and correct copy of these emails is attached as exhibit C. These emails are addressed to all counsel for the parties and one amicus.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on May 8, 2013, at Los Angeles, California.

Michael M. Walsh

Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

2nd Appellate District

Change court

Court data last updated: 04/17/2013 01:05 PM

Docket (Register of Actions)

Valdez v. Workers' Compensation Appeals Board
Division 7
Case Number B237147

Date	Description	Notes
11/09/2011	Petition for a writ of review filed (WCAB).	
11/28/2011	Filed letter from W.C.A.B. waiving answer.	
12/02/2011	Answer to petition filed by:	
12/02/2011	Certificate of interested entities or persons filed by:	Stewart Reubens for respondents Warehouse Demo Services. Zurich North America. *Original certificate under cover of the original answer.
12/16/2011	Reply filed to:	by petitioner Elayne Valdez.
03/15/2012	Letter sent to:	All counsel and Appeals Board: Pursuant to Government Code section 68081, the court would like the parties and the Workers' Compensation Appeals Board to address the following issue: Is Labor Code section 4616.6 limited to cases where there has been an independent medical review under Labor Code section 4616.4? The parties and the Appeals Board may file briefs of no more than 15 pages limited to this issue on or before April 9, 2012.
03/19/2012	Order filed.	Writ of Review: On December 5, 2011, we received a petition alleging that the Workers' Compensation Appeals Board (Board) exceeded its powers and jurisdiction in that certain proceeding described hereafter. Accordingly, you are hereby directed to certify and return to this court on or before April 12, 2012, a full and correct copy of the records and documents reviewed by the Board on the petition for reconsideration in the matter designated

		in your files as Elayne Valdez v. Workers' Compensation Appeals Board et al., so that the same may be reviewed by this court. Each volume of the return shall contain no more than 300 pages. Respondent Board may appear in these proceedings and file a response to the petition for writ of review. The response shall be filed and served no later than April 12, 2012. Petitioner Elayne Valdez and respondent Warehouse Demo Services, may file and serve a reply within 10 days after service of respondent Board's response. This matter is set for oral argument before this court in its courtroom at 300 South Spring Street, Los Angeles, California 90013, on May 4, 2012, at 10:00 a.m. The court is willing to accept a submission of this case without oral argument. Any party who wishes to waive oral argument should notify the court at the earliest possible time. By order of this court.
04/03/2012	Calendar notice sent. Calendar date:	May 4, 2012 @ 10:00 a.m.
04/09/2012	Response filed:	Appeals Board [Response to the March 15, 2012 letter.]
04/09/2012	Response filed:	Petitioner [Response to the March 15, 2012 letter.]
04/09/2012	Association of attorneys filed for:	Michael M. Walsh and Christina J. Imre of Sedgwick LLP associated in for real parties in interest.
04/09/2012	Response filed:	Respondent Warehouse Demo Services et al. [Response to the March 15, 2012 letter.] Stylized as "Supplemental Brief requested by the Court"
04/09/2012	Supplemental writ record filed	Certified Record from the Workers' Compensation Appeals Board TWO VOLUMES
04/10/2012	Filed proof of service.	For petitioner's April 9, 2012 supplemental brief.
04/09/2012	Application to file amicus curiae brief filed by:	California Applicants' Attorneys Association, as amicus for petitioner Brief submitted under same cover.
04/09/2012	Received:	Motion by amicus California Applicants' Attorneys Association requesting judicial notice of legislative history; two volumes of exhibits filed in support Not filed, as court has not yet ruled on application to file amicus brief.
04/12/2012	Application to	California Workers' Compensation

	file amicus curiae brief filed by:	Institute in support of respondents Warehouse Demo Services, Zurich, N.A., et al.
04/16/2012	Reply filed to:	Petitioner Elayne Valdez's reply to Board's response to Writ of Review
04/17/2012	Order granting motion to file amicus curiae brief.	California Workers' Compensation Institute application for leave to file amicus curiae brief is granted. The amicus brief is deemed filed as of the date of this order. Petitioner may file a response within 10 days of the date of this order.
04/17/2012	Amicus curiae brief filed by:	Amicus curiae for respondent: California Workers' Compensation Institute Attorney: Michael A. Marks California Workers' Compensation Institute
04/17/2012	Note:	No response filed by the Board - was due April 12, 2012.
04/17/2012	Order granting motion to file amicus curiae brief.	California Applicants' Attorneys Association application for leave to file amicus curiae brief is granted. The amicus brief is deemed filed as of the date of this order. Respondent may file a response within 10 days of the date of this order.
04/17/2012	Amicus curiae brief filed by:	Amicus curiae for petitioner: California Applicants' Attorneys Association Attorney: Charles R. Rondeau Attorney: Charles Edward Clark Attorney: Stuart I. Barth California Applicants' Attorneys Association.
04/17/2012	Request for judicial notice filed.	Amicus curiae California Applicants' Attorneys Association request for judicial notice. Two volumes of exhibits in support of request for judicial notice of legislative history.
04/19/2012	Filed change of firm name.	Counsel for petitioner Perona Langer Beck & Lallande now Perona Langer Beck Serbin & Mendoza, A Professional Coporation.
04/23/2012	Reply filed to:	Respondent Warehouse Demo Services' reply to Board's response to Writ of Review
04/23/2012	Motion filed.	CAAA's motion for leave to file reply as to: 1) Rebuttal to WCAB's responding reply to the Court's questions, 2) Response to CWCI's Amicus Brief and 3) Reply to respondent's brief in answer to the Court's question. Responding Reply Brief submitted concurrently with motion.
04/27/2012	Response to amicus curiae brief filed by:	Petitioner: Valdez, Elayne Attorney: Ellen R. Serbin Petitioner Valdez.

04/27/2012	Response to amicus curiae brief filed by:	Respondent: Warehouse Demo Services, Zurich North America Attorney: Christina J. Imre Attorney: Michael M. Walsh Attorney: Stewart Ralph Reubens Respondent Warehouse Demo Services, Zurich North America
04/27/2012	Motion filed.	Amicus Curiae CAAA's motion to allow CAAA permission to orally argue
04/30/2012	Order filed.	Amicus California Applicants' Attorneys Association may argue on May 4, 2012 if petitioner cedes time. The court expects the total time for petitioner and amicus, including rebuttal, not to exceed 15 minutes.
05/01/2012	Order filed.	The motion of amicus curiae, CAAA requesting leave to file the Supplemental Response and Reply Brief submitted with the motion is granted. The combined Rebuttal, Supplemental Response and Reply Brief are deemed filed as of the date of this order.
05/02/2012	Application to file amicus curiae brief filed by:	United Services Plus, Inc. dba Ronco Drugs in support of petitioner.
05/02/2012	Order granting motion to file amicus curiae brief.	United Services Pluc, Inc. dba Ronco Drugs' request for leave to file an amicus curiae brief in support of petitioner is granted. The amicus brief is deemed filed as of the date of this order.
05/02/2012	Amicus curiae brief filed by:	Amicus curiae for petitioner: United Services Plus, Inc. dba Ronco Drugs Attorney: Carl A. Feldman United Services Plus, Inc. dba Ronco Drugs.
05/03/2012	Filed letter from:	Ellen Serbin dated May 3, 2012 re: petitioner cedes 5 minutes of her time for oral argument to Amicus CAAA.
05/04/2012	Errata filed to:	Amicus curiae brief of United Services Plus, Inc. dba Ronco Drugs Corrects one sentence on page 2 in paragraph 3 that was missing the word "denied."
05/04/2012	Cause argued and submitted.	
05/29/2012	Opinion filed.	(Signed Unpublished) The decisions of the WCAB are annulled and the case is remanded for further proceedings consistent with this opinion. 11 pages; ZPW Ordered published June 18, 2012.
06/01/2012	Filed request to publish opinion.	Amicus CAAA
06/04/2012	Filed letter	CAAA, re enclosed amended proof of

	from:	service of request for publication. (Letter submitted separately from amended proof of service.) Letter dated June 1, 2012.
06/04/2012	Filed proof of service.	CAAA's amended proof of service for request for publication showing service of request on the California Supreme Court
06/05/2012	Filed joinder of:	Petitioner, who joins in CAAA's request for publication and sets out her reasons why opinion should be published
06/18/2012	Order granting publication filed.	
07/31/2012	Service copy of petition for review received.	Petitioner : Warehouse Demo Services, Zurich North America, Administerd By Esis
08/17/2012	Record transmitted to Supreme Court.	1x2"
10/11/2012	Record transmitted to Supreme Court.	1x6"
10/10/2012	Petition for review granted in Supreme Court.	S204387 - matter is being briefed. Reply brief due March 19, 2013.
12/31/2012	Received document entitled:	Service copy of word count re: petition filed with Supreme Court.

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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ELAYNE VALDEZ, *Applicant,* vs. WORKERS' COMPENSATION APPEALS BOARD and WAREHOUSE DEMO SERVICES, *Defendants.*	**2nd Civil Case No. B237147** ***(Elayne Valdez v. Workers' Compensation Appeals Bd. and Warehouse Demo Services)*** **WCAB Case No. ADJ7048296** **CERTIFICATION**

I, JAMES T. LOSEE, Assistant Secretary of the Appeals Board, hereby certify that the attached is a full, true and correct copy of the record of proceedings consisting of two volumes had before the Appeals Board in the above-entitled matter involving a claim by Elayne Valdez (WCAB Case No. ADJ7048296.)

ATTEST my hand and the seal of the Workers' Compensation Appeals Board of the State of California.

JAMES T. LOSEE
Assistant Secretary
(415) 703-5028

Dated at San Francisco, California, this 5th day of April, 2012.

JTL/bea

Walsh, Michael

From:	Sullivan, Neil@DIR [NSullivan@dir.ca.gov]
Sent:	Wednesday, April 11, 2012 10:48 AM
To:	Ellen@PLBLaw.com; sreubens@glsbr.net; Walsh, Michael; Imre, Christina; charles@rondeaulawgroup.com
Cc:	Losee, Jim@DIR
Subject:	Elayne Valdez v. WCAB, 2nd Civ. No. B237147 - WCAB's certified record
Attachments:	Valdez Elayne - Certification Index.pdf; Valdez Elayne - Return 1.pdf; Valdez Elayne - Return 2.pdf

Dear Counsel: This is the first of two e-mails by which the WCAB is sending you an electronic copy of the certified record it filed with the Court of Appeal. It is being sent in two e-mails because of limits that the WCAB's server places on attachments.

This first e-mail consists of the certification and index and parts 1 and 2 of the record itself. The second e-mail will include part 3 of the record.

Please reply to this e-mail if you do not receive all of the attachments or if you otherwise have any problems.

PS to Mr. Rondeau: The emails for Mr. Clark and Mr. Barth were not on the State Bar website, so I will leave it to you to forward this to them if you see fit.

Neil P. Sullivan, Deputy Commissioner
Workers' Compensation Appeals Board
(415) 703-5028

Walsh, Michael

From:	Sullivan, Neil@DIR [NSullivan@dir.ca.gov]
Sent:	Wednesday, April 11, 2012 10:51 AM
To:	Ellen@PLBLaw.com; sreubens@glsbr.net; Walsh, Michael; Imre, Christina; charles@rondeaulawgroup.com
Cc:	Losee, Jim@DIR
Subject:	Elayne Valdez v. WCAB, 2nd Civ. No. B237147 - WCAB's certified record (second e-mail)
Attachments:	Valdez Elayne - Return 3.pdf

Please see my prior e-mail. This is a follow-up e-mail containing part 3 of the WCAB's certified record.

Neil P. Sullivan, Deputy Commissioner
Workers' Compensation Appeals Board
(415) 703-5028

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick LLP, 801 South Figueroa Street, 19th Floor, Los Angeles, CA 90017-5556. On May 8, 2013, I served the within document(s):

RESPONSE TO PETITIONER'S MOTION TO STRIKE PORTIONS OF RESPONDENTS' OPENING BRIEF ON THE MERITS

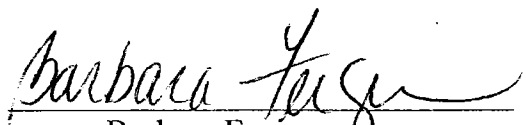
☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.

☑ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 8, 2013, at Los Angeles, California.



Barbara Fergerson

SERVICE LIST

Ellen R. Serbin John Mendoza Perona, Langer, Beck, Serbin & Mendoza 300 East San Antonio Drive Long Beach, California 90807-0948	
Workers' Compensation Appeals Board Respondent P.O. Box 429459 San Francisco, CA 94142-9459 Contact Name: Attn.: James Losee	
Clerk of Court Court of Appeal State of California, Second Appellate District, Division Seven Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013	