

1 Reynaldo Q. Gracia (SBN 208192)
2 State Compensation Insurance Fund
3 10105 Pacific Heights Boulevard, Suite 310
4 San Diego, CA 92121-4214

01487660

5 Mailing Address: P.O. Box 65005
6 Pinedale, CA 93650-5005

7 Telephone: 858-334-7800
8 Fax: 858-334-7850

9 Attorney for Defendant
10 State Compensation Insurance Fund

11 WORKERS' COMPENSATION APPEALS BOARD

12 STATE OF CALIFORNIA

13 BONNIE JACKSON,

14 Applicant,

15 v.

16 STANDARD HOMEOPATIC COMPANY;
17 STATE COMPENSATION INSURANCE
18 FUND,

19 Defendants.

Case No. SDO 0345671

PETITION FOR RECONSIDERATION

20 Defendant STATE COMPENSATION INSURANCE FUND, the workers'
21 compensation insurance carrier for STANDARD HOMEOPATIC COMPANY, hereby
22 petitions for reconsideration of the Findings And Order Re Sanctions issued herein on May
23 1, 2007 by the Honorable Nikki S. Udkovich, Workers' Compensation Administrative Law
24 Judge, on the grounds that:

- 25 1. By the order, decision or award made and filed by the Workers' Compensation
26 Administrative Law Judge, the Appeals Board acted without or in excess of its powers;
- 27 2. The evidence does not justify the findings of fact; and
- 28 3. The findings of fact do not support the order, decision or award.

In support of the above, petitioner gives the following details, including a statement
of facts upon which the petitioner relies, and a discussion of the law applicable thereto:

1 the claim adjuster determined that penalty and interest was due and instructed the bill-
2 reviewer to issue additional payment (see Exhibits 6 and 7). Payment did not issue,
3 however, until the date of the conference on March 5, 2007 (see Exhibit 3). SCIF made no
4 appearance at the March 5, 2007 status conference. Lien claimant first served SCIF with
5 his Petition for Late Payment Penalties and Sanctions on March 8, 2007.

6 **ARGUMENT**

7 **SCIF'S FAILURE TO APPEAR AT THE MARCH 5, 2007 STATUS**
8 **CONFERENCE DID NOT CONSTITUTE BAD FAITH ACTION IN**
9 **VIOLATION OF LABOR CODE SECTION 5813.**

10 In her Minutes of Hearing Summary of Evidence Notice of Intention to Submit
11 Pursuant to Rule 10562 on Issue of Sanctions And Order (Summary of Evidence), filed
12 March 29, 2007, Judge Udkovich requested that defendant SCIF provide an objection and
13 declaration responding to same. There was no indication that additional documentary
14 evidence would be accepted into evidence, and therefore the responding declaration and
15 objection did not include the supporting documents. That has been remedied herein.

16 It is defendant's position that SCIF's actions with regards to handling of lien
17 claimant's bill did not constitute bad faith action that was frivolous and solely intended to
18 cause unnecessary delay. As can be seen from the dates of receipt of lien claimant's bills
19 and the corresponding payment record SCIF has resolved all Dr. Blott's bills within the
20 limits set forth by Labor Code section 4622. According to SCIF's date of receipt Dr. Blott's
21 bill for date of service June 13, 2005 was paid within 22 days (and here it is interesting to
22 note that Dr. Blott has alleged that SCIF makes a practice of acting in bad faith (see
23 Summary of Hearing) but conveniently ignores SCIF's timely payment for date of service
24 June 13, 2005), and Dr. Blott's bill for date of service April 28, 2005 was paid within 32
25 days. Both the bill-reviewer and the claim adjuster, in good faith, relied on these dates,
26 which were the result of SCIF's usual and customary business practice of scanning and
27 dating all incoming correspondence, to determine what was due on the bills submitted.
28 Reliance on these dates cannot be construed in this case as bad faith.

1 Admittedly, Dr. Blott contends that his May 25, 2005 self-signed proof of service is
2 the date the bill was actually served on SCIF and therefore there is some issue as to
3 whether penalty and interest were due. Though Judge Udkovich in her Findings and Order
4 Re Sanctions (F&O) filed May 1, 2007 states that, "[i]t was only after SCIF was advised that
5 the matter was set for trial that SCIF took any action to comply with the mandatory
6 language of Labor Code section 4622 concerning interest and penalty," SCIF's ECF claim
7 notes clearly show that the adjuster, again in good faith, attempted to resolve the issue
8 February 9, 2007 approximately a month prior to the status conference set for March 5,
9 2007 by instructing his bill-reviewer to issue payment of the interest and penalty claimed by
10 Dr. Blott. Though SCIF had received notice of the March 5, 2007 hearing, the matter
11 appeared resolved with no issue remaining. It is reasonable to assume that the claim
12 adjuster may have believed that SCIF's appearance at the hearing was not necessary.
13 Given the above, the evidence in this case does not support the findings of fact.

14 **ARGUMENT**

15 **JUDGE UDKOVICH'S ORDER OF SANCTION'S WAS NOT**
16 **SUPPORTED BY THE FACTS OF THE CASE AND WAS ISSUED**
17 **IN EXCESS OF HER POWERS.**

18 Labor Code section 5813 provides in relevant part that, "[t]he workers' compensation
19 referee or appeals board may order a party, the party's attorney, or both, to pay any
20 reasonable expenses, including attorney's fees and costs, incurred by another party as a
21 result of bad-faith actions or tactics that are frivolous or solely intended to cause delay. In
22 addition, a workers' compensation referee or the appeals board, in its sole discretion, may
23 order additionally sanctions not to exceed two thousand five hundred dollars (\$2500) to be
24 transmitted to the General Fund."

25 Judge Udkovich stated in her F&O that Dr. Blott, "requested sanctions in the amount
26 of \$1875.00 for his appearance at the conference on March 5, 2007 and his research and
27 preparation of his petition for sanctions. The court considered Dr. Blott's request and
28 determined a reasonable sanction to be \$500.00." As indicated in my prior Objection and

1 Declaration filed April 13, 2007, SCIF argues that lien claimant is not an attorney, and
2 therefore any order of sanctions related to legal work claimed by applicant is not supported
3 by the statute. Additionally, lien claimant has not provided any evidence of actual costs
4 incurred for prosecuting his lien. As a medical provider, filing and prosecuting liens is
5 simply part of the cost of doing business and not reimbursable under Labor Code section
6 5813. Judge Udkovich stated in her F&O that the, "sanction is imposed...to ultimately
7 secure payment of interest and penalty." Clearly this purpose was achieved March 5,
8 2007, and payment of any sanction would be an undeserved windfall to lien claimant.

9
10 WHEREFORE, Defendant State Compensation Insurance Fund respectfully prays
11 that this Petition for Reconsideration be granted, that the Findings And Order Re Sanctions
12 dated May 1, 2007 be set aside, and that the WCAB make such other and further orders as
13 it deems just and proper.

14 Dated: May 29, 2007

Respectfully submitted,

15 STATE COMPENSATION INSURANCE FUND

16
17 By: 


18 Reynaldo Q. Gracia, Attorney

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VERIFICATION - CCP 446, 2015.5

I am the attorney for State Compensation Insurance Fund in the above-entitled action or proceeding. I have read the foregoing Petition for Reconsideration and know the contents thereof. I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 29, 2007 at San Diego, California.



Reynaldo Q. Gracia

PROOF OF SERVICE BY MAIL - CCP 1031a, 2015.5


I declare that I am employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is: 10105 Pacific Heights Boulevard, Suite 310, San Diego, California 92121-4214. On May 29, 2007, I served the attached Petition for Reconsideration on the interested parties in said cause, by placing a true copy thereof, enclosed in an envelope addressed as follows:

Michael Blott
17586 Via Loma Drive
Poway, CA 92064

Workers' Compensation Appeals Board
7575 Metropolitan Drive, Suite 202
San Diego, CA 92108-4402

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice such envelope would be sealed and deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California 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 the date of deposit for mailing in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 29, 2007, at San Diego, California.



Binh T. Nguyen

**STATE
COMPENSATION
INSURANCE
FUND**

Note Type : Claim Claim No : 01487660
Employee Name : BONNIE JACKSON
Short Description : Claim Bill Note

Note Migrated from ImageLine on 04/20/006 :19:58:20

OK to pay Dr. Michael Blott D.C. - Panel QME 33.

Ok to pay for original report and supplemental that will follow

Exhibit 1

Michael S. Blott, D.C.
Chiropractic Orthopedist
17586 Via Loma Drive
Poway, CA 92064
(858) 487-6940
24 hour fax (610) 535-7514
mblott@san.rr.com

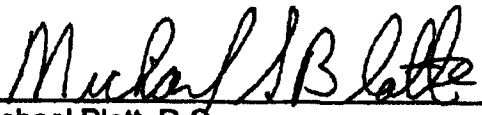
June 13, 2005

State Compensation Insurance Fund
P.O. Box 92622
Los Angeles, CA 90009-2626

RE: **BONNIE JACKSON**
EMPLOYER: Standard Homeopathic Company
CLAIM#: 01487660-2U
SSN: 571-43-2127
DOI: 6-22-04
DOE: 4-28-05
DOS: 6/13/05

**SUPPLEMENTAL QUALIFIED MEDICAL EVALUATION
ML104 - 95**

\$200.00 one records review and report preparation.



Michael Blott, D.C.

TAX ID 568-02-7709

PROOF OF SERVICE BY MAIL

On 6-13-05, I served a copy of the billing for the above referenced and attached report on the above addressed person at the above address by placing a true copy enclosed in a sealed envelope with postage fully prepaid, and deposited in the U.S. Mail. I declared under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

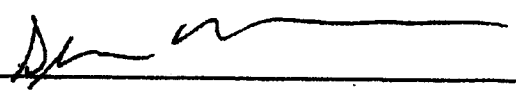


Exhibit 2

Benefits Paid Report

Report Date: 05/25/07 *

Name: **BONNIE JACKSON** Claim Num: **01487660** Date of Injury: **06/22/04**
 Payee Name** Check Num. Payment Dt. Invoice Num. From To Payment Amount

Payment Type: 01 Permanent Disability (PD/LP)								
BONNIE JACKSON	BU837406	07/12/06	GGONZA					\$ 3,500.00
BONNIE JACKSON	JV	07/13/06						\$ 3,500.00-
							Sum:	\$ 0.00

Payment Type: Medical Payments								
BONNIE JACKSON	CU393896	04/26/05	MILEAGE	04/28/05	04/28/05			\$ 3.94
BONNIE JACKSON	JV	07/13/06						\$ 3,500.00
COMPPARTNERS IN	CU223590	11/22/04	63805	10/18/04	10/20/04			\$ 82.95
COMPPARTNERS IN	CU232114	11/30/04	67662	10/26/04	10/27/04			\$ 242.15
JET DELIVERY IN	CU424381	05/26/05	123066	04/27/05	04/27/05			\$ 357.75
MICHAEL C FLINT	CU191314	10/26/04	0	06/25/04	08/20/04			\$ 866.10
MICHAEL C FLINT	CU242344	12/07/04	0	08/23/04	11/02/04			\$ 652.62
MICHAEL C FLINT	CU308417	02/03/05	BONNIE JAC	06/25/04	07/24/04			\$ 209.80
MICHAEL C FLINT	CU308417	02/03/05	INTEREST	06/25/04	07/24/04			\$ 10.84
MICHAEL C FLINT	CU308417	02/03/05	PENALTY	06/25/04	07/24/04			\$ 31.47
MICHAEL S BLOTT	CU459293	07/05/05	NONE	06/13/05	06/13/05			\$ 200.00
MICHAEL S BLOTT	CU564370	10/24/05	00	04/28/05	04/28/05			\$ 750.00
MICHAEL S BLOTT	CU932512	03/05/07	QME	04/28/05	04/28/05			\$ 144.14
US HEALTHWORKS	CU072251	07/27/04	097-032555	06/25/04	06/25/04			\$ 495.13
							Sum:	\$ 7,546.89

* Includes transactions up to 05/25/07 12:00 a.m.

** Sorted by Payee

Exhibit 3

Michael S. Blott, D.C.

Chiropractic Orthopedist
17586 Via Loma Drive
Poway, CA 92064
(858) 487-6940
24 hour fax ~~(630) 325-6294~~ 610 535-7514
mblott@san rr.com

April 28, 2005

9-20-05 called & Faxed.

State Compensation Insurance Fund
P.O. Box 92622
Los Angeles, CA 90009-2626

GEORGE GONZALES

SEP 22 2005

LA. GLENDALE LOC.

please pay ASAP
PAVEL QME-33

RE: **BONNIE JACKSON**
EMPLOYER: Standard Homeopathic Company
CLAIM#: 01487660-2U
SSN: 571-43-2127
DOI: 6-22-04
DOE: 4-28-05

01487660

**QUALIFIED MEDICAL EVALUATION
ML103 - 95**

\$750.00 two hours face to face and issues of apportionment and causation addressed

Michael Blott
Michael Blott, D.C.

TAX ID 568-02-7709

PROOF OF SERVICE BY MAIL

On 5-25-05, I served a copy of the billing for the above referenced and attached report on the above addressed person at the above address by placing a true copy enclosed in a sealed envelope with postage fully prepaid, and deposited in the U.S. Mail. I declared under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Seni n

Michael S. Blott, D.C.

Chiropractic Orthopedist
17586 Via Loma Drive
Poway, CA 92064

(858) 487-6940

24 hour fax (530) 325-6294 610 535-7514
mblott@sanrr.com

01487660

April 28, 2005

State Compensation Insurance Fund
P.O. Box 92622
Los Angeles, CA 90009-2626

9-20-05 called & faxed.
10-26-05 paid 750
NO Penalties Added
15% 112.50
10% 31.64
\$14614 OWED

RE: **BONNIE JACKSON**
EMPLOYER: Standard Homeopathic Company
CLAIM#: 01487660-2U
SSN: 571-43-2127
DOI: 6-22-04
DOE: 4-28-05

**QUALIFIED MEDICAL EVALUATION
ML103 - 95**

\$750.00 two hours face to face and issues of apportionment and causation addressed

Michael Blott

Michael Blott, D.C.

TAX ID 568-02-7709

RECEIVED

MAY 09 2006

**CPC BURBANK LOC.
MAILROOM # 42**

PROOF OF SERVICE BY MAIL

On 5-25-05, I served a copy of the billing for the above referenced and attached report on the above addressed person at the above address by placing a true copy enclosed in a sealed envelope with postage fully prepaid, and deposited in the U.S. Mail. I declared under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Semi

Exhibit 5

**STATE
COMPENSATION
INSURANCE
FUND**

Note Type : Data Claim No : 01487660
Employee Name : BONNIE JACKSON
Short Description :

****Created by Maria Zaldivar on 01/25/2007****
claim status is closed. A \$750 payment was made and they are claiming P&I. P&I
is not payable by ABR. Thank you

**** Appended by RDF0983 on 02/09/2007****
For bill : 1668381
forwarded to wcit to pay P&I

Exhibit 6

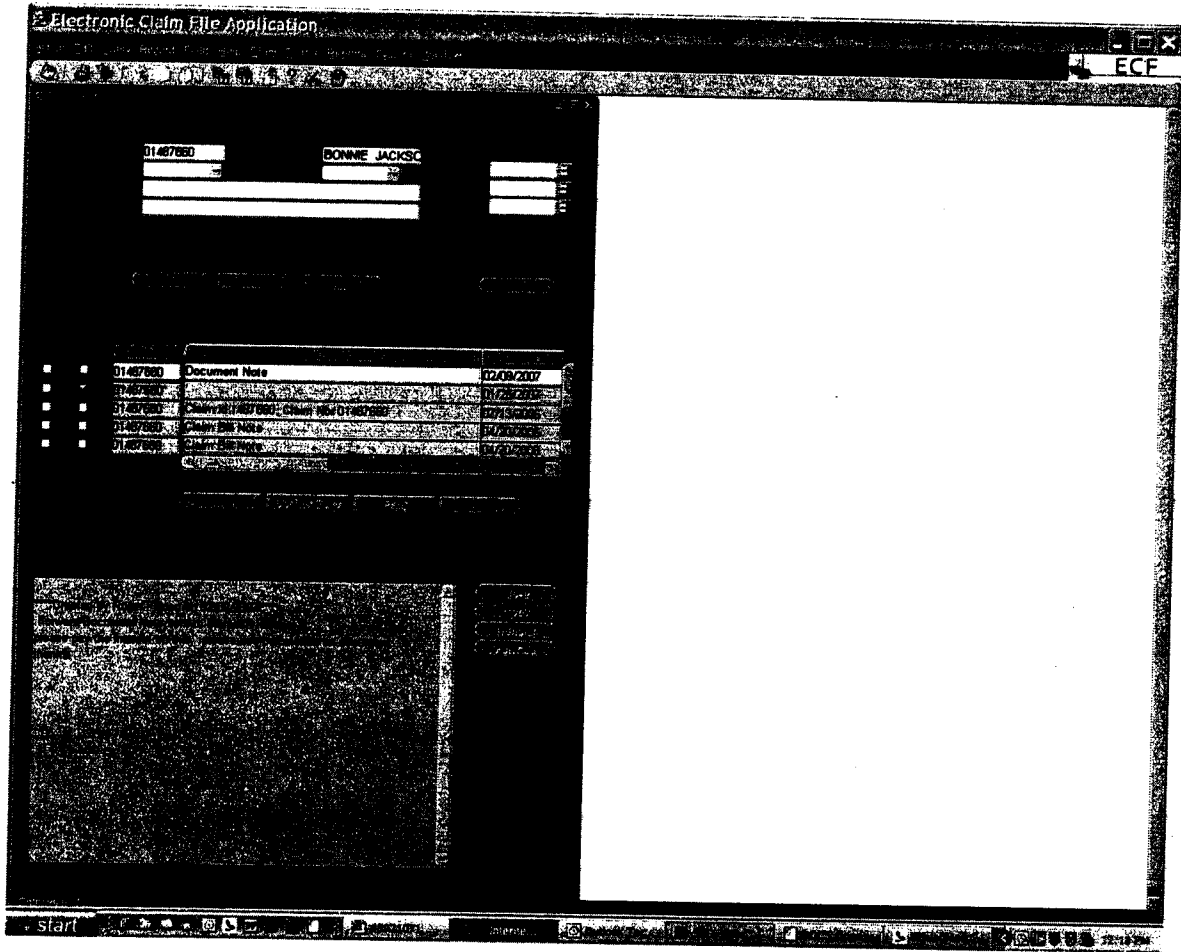


Exhibit 7