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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ESTEBAN NAVAREZ, /
AURORA VERGARA,
MARIA NAVARRO,
JOSEFA ALVARADO,
ANTONIO GARCIA,
MARGARITA GARCIA,
URIEL GARCIA,
CELIA SALADONA, -
GILDARDO ROBLES,
FRANCISCO CAMACHO,
YOLANDA ALVAREZ,
EUSTOLIA BENITEZ,
MARIA CAMARENA,
RAMIRO BERNAL,
LOURDES RAMIREZ,
ET. AL.*

Applicant,

vs.

DESIGN FOODS, INC.;
TRAVELERS INSURANCE COMPANY,

Defendants,

Case No. LAO 0631108
LAO 0631106
LBO 0213501
LBO 0211543
NOR 0159868, NOR 0159869
NOR 0159873
NOR 0159865, NOR 0159867
NOR 0159058
LAO 0632157
LAO 0632195
LAO 0632196
LAO 0632197
LAO 0632199
LAO 0632209
LAO 0632210

OPINION AND ORDER GRANTING
PETITION FOR REMOVAL AND NOTICE
OF INTENTION TO TRANSFER CASES
TO THE ANAHEIM OFFICE OF THE
WORKERS' COMPENSATION APPEALS
BOARD

Defendant, Travelers Insurance Company, seeks removal to the Board in the 224 cases of 159 alleged injured workers (Applicants) who filed against Design Foods, Inc., when and after the employer closed its doors and terminated business. Defendant requests removal of all cases to the Board for consolidation and assignment of one judge in one office of the Workers' Compensation Appeals Board; defendant points out that it has denied injury in almost all of the cases and is raising the issue of fraud and conspiracy based on the similarity of claims and the manner in which they arose.

* See attached listings of Claimants/Applicants.

1 Defendant contends that removal and consolidation is necessitated by the
2 following: (1) common questions of law and fact that predominate all of the cases;
3 (2) the convenience of the parties, witnesses, and counsel; (3) the relative
4 development of the actions and the work product of counsel; (4) the efficient
5 utilization of judicial facilities, manpower, and calendars of the court; (5) the
6 disadvantages of duplicative and inconsistent rulings, orders, and judgments;
7 and (6) the likelihood of expenses and inexpeditious dispositions of actions should
8 removal or coordination be denied.

9 Applicant answers that removal and consolidation is not warranted,
10 asserting that defendant's action is a dilatory tactic for the purpose of starving out
11 and delaying benefits to the injured worker, and that Shoemaker v. Myers (1990)
12 [55 Cal. Comp. Cases 494] justifies many of the post-termination claims.

13 After a complete review of the record in the above-entitled matters, and after
14 due consideration given to all of the pleadings, contentions, and answers, the
15 Board will grant removal in order to transfer and reassign the cases as requested.
16 The Board believes that the common issues of fact and law as well as judicial
17 economy and expediency warrant and justify the request. It appears that there
18 are common issues of fact and law involving both on-going discovery and
19 subsequent litigation. They include facts and issues surrounding claims of
20 excessive deposition fees, proper questions during dispositions, fraudulent
21 medical-legal claims and costs, refusals to answer subpoenas, objections to orders
22 compelling attendance and answers, and injury arising out of and occurring in
23 the course of employment. There is also commonality of counsel in almost all of
24 the cases and most likely commonality of defense witnesses. It also appears that
25 one judge in one office will be in a better position to see the total picture and to
26 issue decision regarding the charges of fraud and conspiracy, as well as to
27 provide consistency and judicial economy on all issues. Finally, in light of the fact

1 that the majority if not all of the cases arose out of the plant closure, it appears
2 that efficiency, expediency, judicial economy, and administrative convenience
3 warrant the request.

4 Labor Code section 5310 provides that the Appeals Board may appoint one or
5 more workers' compensation judges in any proceeding as it may deem necessary
6 or advisable, and may refer, remove to it self, or transfer to a workers'
7 compensation judge the proceedings on any claim. Labor Code section 5303 and
8 Workers' Comp. Appeals Bd. Rule 10590 provide that in the Board's discretion,
9 cases may be consolidated for the taking of evidence.

10 Under the circumstances of the cases herein, and as requested by petitioner,
11 the Board believes that the cases should be removed and transferred to one
12 workers' compensation judge to expeditiously, swiftly, and uniformly hear and
13 decide all issues. The Board believes that this will promote the requirement of an
14 unincumbered and expeditious handling of cases.

15 In considering the request, the Board observes that all of the cases to date
16 herein have been filed in one of three offices, Los Angeles, Long Beach, or
17 Norwalk. The Board, however, will exercise its discretion to transfer all cases to
18 the Anaheim Office of the Workers' Compensation Appeals Board. Taking into
19 account the number of cases, the available support staff, and the facilities of the
20 three offices in which the cases have already been filed, the Board believes that for
21 both judicial expediency and administrative convenience, the cases will be more
22 expeditiously resolved in Anaheim.

23 However, because the Board intends to transfer the cases to a fourth office
24 and because defendant has indicated that perhaps not all of the workers are
25 represented by Mr. Imperial, the Board will issue this notice of intention to grant,
26 remove, transfer, and consolidate at the Anaheim Office, allowing fifteen (15)
27 days for the parties to show good cause in writing addressed to the Board at the

1 address set forth below, as to why the matter should not be transferred to
2 Anaheim.

3 In addition, defendant is and will be ordered to serve this decision forthwith
4 on any and all unrepresented applicants and/or applicant's attorneys other than
5 William Imperial, who will be served by the Board.

6 Finally, it is noted that in the caption of this decision, the Board has listed
7 only those cases which have been physically transferred to and are pending before
8 it. The parties will note, however, that the term "et. al." has been added to the list
9 with a footnote, and that the footnote lists all known cases and/or claimants with
10 certain changes footnoted therein. This decision shall pertain to all of the cases
11 listed therein.

12 For the foregoing reasons,

13 **IT IS ORDERED** that defendant's Petition for Removal filed in each of the
14 above-entitled matters, be, and the same hereby is, **GRANTED**.

15 **NOTICE IS HEREBY GIVEN** that the Board will transfer all of the above-
16 entitled matters to the Presiding Judge of the Anaheim Office of the Workers'
17 Compensation Appeals Board for consolidation, assignment, hearing, and
18 decision, unless good cause to the contrary is shown in writing and addressed to
19 the Appeals Board at the address set forth below within fifteen (15) days from the
20 date of service shown herein.

21 **IT IS FURTHER ORDERED** that defendant serve forthwith any and all
22 unrepresented applicants or claimants and serve any and all applicant's
23 attorneys (other than William Imperial, Esq.) with this decision.

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1 IT IS FURTHER ORDERED that pending the issuance of the award,
2 order, or final decision of the Presiding Judge of the Workers' Compensation
3 Appeals Board of the Anaheim Office in above the cases, all further
4 correspondence, objections, motions, requests and communications shall be filed
5 with the Anaheim Office Workers' Compensation Appeals Board, 1661 North
6 Raymond, Anaheim, California 92801.

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8
9 **WORKERS' COMPENSATION APPEALS BOARD**

10 *Jacob Mayrho*
11 _____
12

13 **I CONCUR,**

14 *Diane Marshall*
15 _____

16 *John R. Sullivan*
17 _____

18 **DATED AND FILED IN SAN FRANCISCO, CALIFORNIA**
19 **AUG 2 - 1991**

20 **SERVICE BY MAIL ON SAID DATE TO ALL PARTIES**
21 **LISTED ON THE OFFICIAL ADDRESS RECORD.**



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