

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. SD 0189249

ISABEL VILLAROS,

Applicant

v.

UNISYS CORPORATION, Permissibly
Self-Insured,

Defendants.

ORDER QUASHING
SUBPOENA DUCES TECUM

IT APPEARING that the subpoena duces tecum dated November 4, 1994, is overly broad and is improper in form, and

GOOD CAUSE APPEARING:

IT IS ORDERED that the subpoena duces tecum dated October 19, 1994, and filed November 4, 1994, be, and hereby is, quashed.

Filed and Served by mail on: 1/5/95

On all parties on the
Official Address Record.

By: *E. Abano*
E. Abano

J.P. McHenry

J.P. McHENRY
WORKERS' COMPENSATION JUDGE

1 KEGEL, TOBIN & TRUCE
2 FREDERICK R. STEVENS, ESQ.
3 6 Hutton Centre Drive
4 Suite 400
5 Santa Ana, California 92707
6 (714) 979-1918

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9 Attorneys for Defendant,
10 COMCO MANAGEMENT, INC.

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BEFORE THE WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA

11 ISABEL VILLAROS,
12 Applicant,
13 vs.
14 UNISYS CORPORATION,
15 Defendants.

WCAB NO.: SDO
NOTICE OF MOTION AND MOTION TO
QUASH SUBPOENA DUCES TECUM

17 COMES NOW the defendant, UNISYS CORPORATION, through its
18 counsel, KEGEL, TOBIN & TRUCE, and hereby moves that the Subpoena
19 Duces Tecum requesting the production of certain manufacturer's
20 literature by the Custodian of Records of Unisys Corporation at
21 P.O. Box 82105, San Diego, California 92138-2105, be quashed on the
22 grounds that:

23 1. The Subpoena is void on its face in that there is no
24 indication who the requestor, "Coast Copy & Subpoena Service,
25 Nayfack & Mueller" represents.

26 2. Service of the Subpoena is invalid in that the Proof of
27 Service is not endorsed.

28 3. Service of the Subpoena is invalid in that it was not

1 personally served on the Custodian of Records.

2 4. The request is unreasonable and oppressive.

3 5. The requested materials are not properly identified and
4 is vague and over broad.

5 This Motion is based on the Declaration of Frederick R.
6 Stevens and the Memorandum of Points and Authorities served and
7 filed herewith, on the records and files herein, and on such
8 evidence as may be presented at a hearing on the Motion.


9 Dated: November 2, 1994

Respectfully submitted,

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KEGEL, TOBIN & TRUCE

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BY: FREDERICK R. STEVENS

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DECLARATION OF FREDERICK R. STEVENS

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3 1. I am the attorney of record herein for the defendant,
4 UNISYS CORPORATION.

5 2. On or about November 1, 1994, I received a copy of the
6 Subpoena Duces Tecum of Coast Copy & Subpoena Service, Nayfack &
7 Mueller, requesting certain manufacturer's literature from the
8 defendant's custodian of records. (The Subpoena Duces Tecum and
9 Proof of Service are attached hereto as Exhibit A.)

10 3. The Declaration for Subpoena Duces Tecum does not
11 indicate who the requester, "Coast Copy & Subpoena Service, Nayfack
12 and Mueller" represents.

13 4. The Proof of Service is blank.


14 5. Defendant submits that the facts as stated in paragraphs
15 3, 4, and 5 of this Declaration establish that the subpoena is void
16 on its face and, in addition, should be quashed by reason of
17 invalid service.

18 6. Defendant also submits that the applicant's request for
19 information is unreasonable and oppressive.

20 7. The subpoena is invalid on the grounds that it lacks
21 specificity, is over broad and vague.

22 I declare under penalty of perjury under the laws of the State
23 of California that the foregoing is true and correct to the best of
24 my knowledge and belief.

25 Dated this 2nd day of November in Santa Ana, California.

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FREDERICK R. STEVENS, ESQ.

1 MEMORANDUM OF POINTS AND AUTHORITIES
2 IN SUPPORT OF DEFENDANT'S MOTION TO
3 QUASH SUBPOENA DUCES TECUM

4 I

5 THE APPLICANT HAS NOT DEMONSTRATED GOOD CAUSE FOR
6 PRODUCTION OF RECORDS AS REQUIRED BY C.C.P. SECTION 1985

7 The Appeals Board may issue subpoenas duces tecum on a showing
8 required by California Code of Civil Procedure Section 1985.
9 (Labor Code Section 130). C.C.P. Section 1985 requires that a
10 subpoena duces tecum should be in the form of an affidavit showing
11 good cause for the production of the items described. C.C.P.
12 Section 1985 further provides that an attorney at law "who is the
13 attorney of record in an action" may sign and issue a subpoena
14 duces tecum.

15 The Declaration for Subpoena Duces Tecum in the instant action
16 does not indicate who the Requestor, "Coast Copy & Subpoena
17 Service, Nayfack & Mueller," represents or that this Law Office has
18 any relationship to this action. Accordingly, Defendant submits
19 that Applicant has not demonstrated good cause for the production
20 of records by Defendant and the Subpoena Duces Tecum should,
21 therefore, be quashed.

22 II

23 SERVICE OF THE SUBPOENA DUCES TECUM IS INVALID
24 FOR FAILURE TO COMPLY WITH THE SERVICE
25 REQUIREMENTS OF THE CALIFORNIA ADMINISTRATIVE
26 CODE AND CALIFORNIA CODE OF CIVIL PROCEDURE

27 Proof of Service by parties, which is required to be submitted
28 with each document filed with the Appeals Board, may be made by
affidavit of service, written statement endorsed upon the document
served and signed by the party making the statement, or letter of

1 transmittal. 8 Cal. Admin. Code Sections 10324, 10514. In each
2 case, the proof of service must set forth whether service was made
3 personally or by mail, the date of service, and the place of
4 personal service or the address to which the mailing was made. 8
5 Cal. Admin. Code Section 10514. Service of subpoenas must be made
6 in the usual manner required in civil cases by personally
7 delivering a copy to the person to be served. California Code of
8 Civil Procedure Section 1987(a).

9 In the instant matter, the "Proof of Service" attached to the
10 Subpoena is blank. The subpoena was, in addition, mailed to
11 Defendant's Custodian of Records and not served upon the Custodian
12 personally. Applicant's Subpoena Duces Tecum should, therefore, be
13 quashed.

14 III

15 DISCOVERY IS IMPROPER WHEN THE REQUEST
16 IS UNDULY BURDENSOME, OR OPPRESSIVE

17 The department wherein the applicant, ISABEL VILLAROS, was
18 employed, known as the "fab department" has closed and been
19 dismantled. All of the equipment has been disposed of. The
20 equipment has been sold to various parties located at various
21 locations within the country. Obtaining "any and all
22 manufacturer's literature pertaining to the function and components
23 of the Perkin-Elmer 500 Series Photo Lithography Equipment Machine
24 and Nikon Alligner Stepper and photo resist chemicals" would
25 require a Herculean effort to search all records to locate the
26 purchasers and location of each piece of equipment and/or chemical,
27 and contact each of the individuals to obtain copies of the
28 requested literature.

It is unknown the magnitude of the requested literature,

1 however, the effort to locate, reproduce, and supply said
2 literature to the requesting individual amounts to an unduly
3 burdensome and oppressive task. This is especially true in light
4 of the fact that the requestor may contact the manufacturers of
5 this equipment directly to obtain copies from the originating
6 source.

7 Where the production of documents sought is burdensome,
8 oppressive, and expensive, and the effect of the burden is
9 incommensurate with the results sought, discovery is improper.
10 West Pico Furniture Company v. Superior Court (1961) 56 Cal. 2d
11 407, 15 Cal Rptr. 119, 364 P. 2d 303.

12 Moreover, defendant submits that the requestor's request for
13 documentation with respect to "photo resist chemicals" is vague and
14 over broad. The lack of specificity would require defendant to go
15 on a search of any and all chemicals utilized in the photo resist
16 process which conceivably could run into the thousands.

17 IV

18 For the foregoing reasons, defendant respectfully requests
19 that the subpoena duces tecum attached hereto as Exhibit A be
20 quashed.

21 Dated: November 2, 1994

Respectfully submitted,

22 KEGEL, TOBIN & TRUCE

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24 BY: (FREDERICK R. STEVENS