

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS

FROM: W. JOSEPH TRUCE

DATE: October 22, 2003

RE: BOARD IMPOSES SANCTIONS ON ATTORNEYS FOR
INSTRUCTING WITNESS NOT TO ANSWER QUESTIONS
AT DEPOSITIONS

In the case of Rivera v. State Comp Insurance Fund (MON 244779), the Appeals Board affirmed a Trial judge's order imposing sanctions on a claims administrator and its attorney "for instructing a witness not to answer 18 questions at a deposition without substantial justification.."

In observing the scope of discovery at a deposition in general, the Board made the following observation:

"Unless otherwise ordered, a party may obtain discovery regarding any non-privileged matter that is relevant or reasonably calculated to lead to the discovery of admissible evidence. For discovery purposes, information is relevant if it reasonably assists the party in evaluating the case, preparing for Trial, or facilitating settlement..."

The defendant in this case was the State Compensation Insurance Fund and the State Fund attorney instructed the deponent (the claims examiner) not to answer 18 questions as posed by the applicant's attorney. The State Fund attorney gave no reason for his objection to 8 of the questions and to the remainder "cited lack of relevancy as a basis for his objection..."

The Board noted that even if a question is "marginally relevant" an instruction not to answer may be improper pursuant to the Court of Appeal decision in Stewart v. Colonial Western Agency, Inc. 2001, 87 Cal. App. 4th 1006.¹

The Board noted that the Court of Appeal in Stewart held as follows:

¹As you will recall, the Stewart case was the subject of one of our previous memos.

MEMO TO ALL ATTORNEYS/CLIENTS

RE: BOARD IMPOSES SANCTIONS

October 22, 2003

Page 2

"Unless otherwise limited by order of the court in accordance with the discovery statutes, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action...If the matter either is itself admissible in evidence or appears reasonably calculated to lead to discovery of admissible evidence..."

The Board in Rivera reached the same conclusion as the court in Stewart and held that it was not the defense attorney's role "to determine whether the questions were relevant" and instruct the deponent not to answer.

In light of the Board's decision in Rivera, the proper procedure would be for the aggrieved party to suspend the deposition and petition the Workers' Compensation Judge for a protective order.

WJT:dab

Attach Rivera case