

ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

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**RE: GEORGE THE BARTENDER AND VENUE ABUSE OF THE
 FIRST DEGREE**

FROM THE LOBBY BAR AT THE HYATT:

After a hard day denying benefits, I arrived at the Hyatt Bar seeking quiet, solitude and my Beefeaters martini, straight up, with two olives!

Unfortunately, the quiet was broken by a commotion down at the end of the bar. George the Bartender was trying to console his attorney, Ron Summers, who was irate.

Although Ron had become increasingly despondent since the passage of SB 899, I was surprised to learn that the cause of Ron's grief was not brought on by the new reform law but the venue provisions of Labor Code §5501.5. After I bought Ron a cocktail, he calmed down and told me that he routinely files all of his cases at the Santa Ana office of the Appeals Board on the "walk through" calendar. Ron would line up his cases Monday through Thursday and, in an average week, could handle five to six (and possibly more) cases per day. **Ron confided in me that he had developed a great system for pressuring defendants to settle cases as those defendants that refused to meet Ron's demand and had the audacity to want to engage in meaningful settlement negotiations had their files go to the bottom of Ron's stack and were the last to be served—so much for the age old adage, first come, first served. Ron added that this "wait until your turn" concept worked very well at trial also when defendants arrived at trial with their defense witnesses ready to go as a few continuances works wonders in pushing settlement value up.** I pointed out to Ron that this unfortunately works both ways as some defendants who are unprepared to negotiate a meaningful settlement or go to trial buy into this concept.

Ron had interviewed and signed up an injured worker who both lived and worked at a company in the County of Riverside where the injury occurred. Ron naturally filed the Application for Adjudication of Claim at the Board in Santa Ana (along with his client's venue consent) as Ron has his principal place of business right next to the Santa Ana Board.

Within a week the defense attorney representing the Riverside employer filed an objection to Ron's selected venue with the presiding judge and much to Ron's chagrin the case was transferred to the Appeals Board District Office in Riverside County.

Ron vowed to me that he would appeal this ruling changing venue as he had an **absolute right** to file in the county where he had his principal place of business.

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Keeping a safe distance from Ron, I explained that pursuant to Labor Code §5501.5 Ron simply does not have a case.

I pointed out to Ron that Labor Code §5501.5(c) provides as follows:

“ . . .if the venue site where the application is to be filed is the county where the employee’s attorney maintains his or her principal place of business, the attorney for the employee shall indicate that venue site when forwarding the information request required by §5401.5. The employer shall have 30 days from receipt of the information request form to object to the selected venue site.”¹ Where there is an employer objection to a venue site under paragraph (3) of subdivision (a) then the application shall be filed pursuant to either paragraph (1) or (2) of subdivision (a). . .”

Basically this means that when the applicant’s attorney files in the county where the applicant neither resides or the injury occurred, the employer can then file an objection and the venue will then revert back to the county where the applicant lives or was injured.

I broke the news to Ron (who began drinking rather heavily at this point) that since he filed the Application in a county where his client neither resided nor was injured, venue, as a matter of law, would automatically revert to the county where the applicant lives or was injured since the defendant filed a timely objection.

For years the Appeals Board determined the proper venue for cases before it by issuing its own administrative rules which are referred to as the Rules and Regulations of the Appeals Board.

When I came into the system in 1973, the venue of a case was dictated by the applicant’s residence or zip code area which is the only sensible way to determine venue.

In this way the Administrative Director could make a determination by reason of population density where to place offices of the Board so as to serve injured workers.

However, the venue by zip code did not last very long as the California Applicants’ Attorneys’ Association convinced the Administrative Director during the reign of Governor Jerry Brown to

¹The absolute irony here is that applicants’ attorneys have not been required to fill out an Information Request Form for years.

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decree that applicants would have a free choice of venue, meaning applicants' attorneys could file their cases anywhere in the state of California.

As you might expect applicants' attorneys started filing at what they considered the most liberal Appeals Board offices and the Administration quickly went back to the zip code method of determining venue when they started counting the unmatched mail at the Appeals Board in Van Nuys in "linear feet."

However this created a problem for the applicant's Bars in counties with more than one Appeals Board which basically meant Los Angeles County. Los Angeles has multiple Appeals Board offices and if cases were venued by zip code, then applicant's attorney could not count on having all of his or her cases venued at one Board. Therefore the applicants' attorneys in southern California proposed legislation which would allow an applicant's attorney practicing in a county with more than one Appeals Board to file at any Board he or she desired.

This proposed legislation probably never would have gotten off the ground were it not for the DWC-1 Claim Form and the Margolin Reform Act. For years employers and carriers had complained that the first notice they would receive in a case would be the actual Application. They wanted a "**claim form**" that would give them notice of a pending workers' compensation claim and time to react so as to prevent the filing of an actual Application for Adjudication of Claim taking the case into litigation before the Board.

The employers/carriers got their wish with the Margolin Reform Act effective January 1, 1990, but be careful what you wish for. The claim form did not give any of the identifying information such as the applicant's address, Social Security Number, date of birth, etc., so a proposal was made in 1991 that with the claim form applicants' attorneys would have to serve an Information Request Form and in turn the defendants would have to serve a Response Form.

As representatives for the state-wide Defense Attorney Association we were at one of the first meetings with representatives of carriers and employers in which these forms were discussed and when we observed that the Information Request Form looked a lot like the old Applications and that the Response Form looked like the old Answers, we were told "absolutely not" as the these old litigations tools (the Application and the Answer) were definitely not coming back as the claim form first notice system would be preserved.

In return for allowing the employers/carriers to put through a law requiring the filing of Information Request Forms and Information Response Forms, the applicants' attorneys received the support of the defendants for the passage of Labor Code §5501.5 and this is the venue law that we are all still living with.

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Trying to maintain with a straight face that the Information Request Form was not really an Application for Adjudication reminded me of the old fable “The Emperor’s New Clothes” in which the emperor retained some very sleek tailors who dressed him in imaginary and invisible clothes. The bubble burst when the king went out for a parade and a small boy finally observed that the emperor had no clothes on.

From 1991 through December 31, 1993 we tried to pretend in our industry that the DWC-1 Claim Form was fully clothed with the addition of the Information Request and Information Response Forms until the Legislature finally did away with the “**window period**” and the old Application and Answer were brought back for injuries on or after January 1, 1994.

However, we are still stuck with the illogical reasoning of Labor Code §5501.5 which allows an applicant’s attorney to file a case at the Appeals Board District Office in Van Nuys when his client lives and works in Pomona as this requires both the applicant and the employer defense witnesses to travel to Van Nuys.

Unfortunately TPA’s and carriers do not fully appreciate the absolute power to strike terror into an applicant’s attorney’s heart by the timely filing of an objection to the applicant’s attorney’s choice of venue. As defense attorneys we usually receive our litigation referrals long after the 30 day window to object has passed. However I have received some referrals immediately after the Application is filed and if the case is filed across county lines I file an immediate objection and request for change of venue and to the chagrin of the applicant’s attorney the venue of the case immediately reverts to the county where the applicant resides or was injured. Therefore an applicant’s attorney who files all of his or her cases in Van Nuys is faced with the same choice that Ron has in the above fictional case—travel to a foreign Board to handle one case. It is absolutely amazing how fast these cases settle on a reasonable basis.

DISCLAIMER:

The above represents the historical facts as I remember them and as I am getting on in years I may have forgotten to cross a “t” or dot an “i”. Labor Code §5501.5 is entitled: “Where Application for Adjudication May Be Filed’ and it is clear from the reading that when an applicant’s attorney wants to file across county lines that he must wait at least 30 days to see if the employer objects before he or she files the Application. **This, of course, is the theory.** The reality is that the applicants’ attorneys simply file the Application, the claim form and the consent to venue **without** giving the employers their 30 days to object and then completely ignore the objection.

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It is my understanding that the Appeals Board offices do not screen Applications for compliance with Labor Code §5501.5 thereby forcing employers to not only file objections but also pleadings with the specific Appeals Board requesting that the venue revert back to the county in which the applicant resides and/or the injury occurred. Unfortunately this venue law also creates political power for a large applicants' firm by way of a threat to discontinue filing Applications at a specific Board thereby reducing staff, etc. It is certainly a power that was never intended by the Legislature.

The **“power of venue”** should be wielded by the Board and not the applicants' Bar. This is one man's opinion – Make mine a double, George.

- Joe Truce