WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JILLIAN DIFUSCO, *Applicant*

vs.

HANDS ON SPA;
EMPLOYERS COMPENSATION INSURANCE GROUP as administered by EMPLOYERS INSURANCE GROUP, *Defendants*

Adjudication Number: ADJ7445107
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

(En Banc)

We previously granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration (En Banc).[1]

To secure uniformity of decisions in the future, the Chair of the Appeals Board, upon a unanimous vote of its members, assigned this case to the Appeals Board as a whole for an en banc decision.[2] (Lab. Code, § 115.)

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on April 19, 2022, wherein the WCJ found in pertinent part that in response to applicant's discovery request, defendant was only required to comply with WCAB Rule 10390 (Cal. Code Regs., tit. 8, § 10390) and disclose the name of the employer's workers' compensation insurance carrier.

Applicant contends that the WCJ's conclusion that WCAB Rule 10390 only requires that a defendant disclose the name of its insurance carrier was too narrow, and that the en banc

[1] Commissioner Sweeney, who was on the panel that issued the order granting reconsideration, is no longer a member of the Appeals Board. Another panel member has been assigned in her place.

[2] En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and workers' compensation administrative judges. (Cal. Code Regs., tit. 8, § 10325; C*ity of Long Beach v. Workers' Comp. Appeals Bd*. (*Garcia*) (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) This en banc decision is also adopted as a precedent decision pursuant to Government Code section 11425.60(b).

decisions by the Appeals Board in *Coldiron I* and *II*[3] require additional disclosures, including disclosure of a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity liable for compensation.

We received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the WCJ's Report.

Based on our review of the record, and for the reasons discussed below, we hold en banc that:

1. All en banc decisions are binding on panels of the Appeals Board and WCJs, and the binding en banc decisions in *Coldiron I* and *Coldiron II* require disclosure of any entities liable for payment and any insurance policies that impact liability for payment.

2. Only the Appeals Board is statutorily authorized to issue regulations for adjudication for workers' compensation proceedings, and WCAB Rules 10390, 10400 and 10401 require that parties, their representatives, and their insurance companies be fully identified.

3. WCAB Rule 10390 does not supersede the *Coldiron* decisions. Defendants must comply with WCAB Rule 10390 and the disclosure requirements in *Coldiron I* and *II*, regardless of whether there is a third-party administrator.

As our Decision After Reconsideration, we will rescind the WCJ's April 19, 2022 F&O and we will return this matter to the trial level for further proceedings consistent with this decision.

FACTS

Applicant filed an Application for Adjudication of Claim on September 17, 2010, claiming injury to various body parts on July 21, 2008, while she was employed by defendant as a massage therapist.

On December 7, 2012, a WCJ awarded applicant home health care services of four hours, twice per week. Defendant was ordered to employ a nurse case manager to manage home health care services.

On July 31, 2017, a WCJ issued a Findings, Orders and Award, in which the WCJ found that applicant sustained injury arising out of and in the course of employment to various body

[3] *Coldiron v. Compuware Corp* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc) [*Coldiron I*]; *Coldiron v. Compuware Corp*. (2002) 67 Cal.Comp.Cases 1466 (Appeals Board en banc) [*Coldiron II*].

parts; that the injury caused temporary total disability and temporary partial disability for various time periods between 2008 and 2012; that the injury caused permanent partial disability for additional time periods between 2009 and 2014; that the injury caused permanent total disability commencing on September 22, 2013; and that there is need for further medical treatment.

On September 21, 2018, applicant filed a Declaration of Readiness to Proceed (DOR) alleging that the home health care services that applicant had received since 2013 had been discontinued and requesting that the matter be set for expedited hearing to reinstate these services.

On November 5, 2018, the parties appeared for an expedited hearing. They entered into a Stipulation, approved by a WCJ, that applicant would be medically evaluated by agreed medical evaluator (AME) Alexander Angerman, M.D., to determine the appropriate level of home health care services required and to issue a medical report, and that defendant would arrange for home health care services for applicant of at least eight hours per week while the assessment process was pending.

On June 20, 2019, applicant filed a DOR seeking an expedited hearing and alleging that:

> Parties appeared at expedited hearing on 11/05/2018 regarding home health care. Parties stipulated to AME Angerman for the sole purpose of evaluating applicant for determination of hours of home care. AME evaluated applicant and issued reports for 10 hours of home care per day seven days per week. AA wrote to defense asking for implementation of home care per Stip & Order and AME reports AA seeks to enforce Stip & Order entered into at prior hearing. (All capitals in original.)

On July 24, 2019, the parties appeared for an expedited hearing. The parties entered into another Stipulation, approved by the WCJ, that further records would be provided to Dr. Angerman, that Dr. Angerman would be deposed, and that pending the deposition, defendant would provide applicant with four hours per day, seven days per week, of home health care services. The WCJ also ordered that Dr. Angerman provide a "mutually convenient date" for the deposition prior to October 28, 2019.

On February 11, 2020, the parties appeared for a continued mandatory settlement conference (MSC). The parties entered into a Stipulation, approved by the WCJ, that defendant would provide 50 hours per week of home health care services, for three years, absent any change in circumstances.

On December 18, 2020, applicant filed a DOR requesting an expedited hearing and alleging that:

> Applicant is 100% PD due to failed back syndrome after 3 failed surgeries. On Feb 11, 2020, an Order and Stipulation issued compelling defendants to provide 50 hours of home healthcare per week, pursuant to the findings of AME Angerman. Homehealth care agency has not been paid and will stop care if payment is not made. Request to correct sent to insurance carrier but no indication of compliance with order. WCAB assistance requested. (All capitals in original.)

On February 17, 2021, the parties appeared for an expedited hearing. They entered into another Stipulation, approved by a WCJ, that required defendant to pay the outstanding invoices from the home health care services agency. With respect to defendant, the typed caption states "Hands On Spa; Insured by Employers Compensation Insurance Company; Administered by Employers Insurance Group."

That same day, in an email to defendant's attorney, applicant's attorney requested that defendant's attorney provide the following information, pursuant to former WCAB Rule 10550 (Cal. Code Regs., tit. 8, § 10550, now repealed) and the *Coldiron* cases:

> 1. Please identify the limits of the underlying coverage by your client, Employers;
> 2. Please identify any primary or secondary excess carriers on this claim, and the limits of each carrier or company's policy;
> 3. Please identify any other actual or potential payor on this claim, and any stake holder with actual or potential financial responsibility for this claim; and
> 4. Please identify the contact information for each excess carrier or other such stake holder.

(Applicant's Exh. 1.)

On February 18, 2021, in an email to defendant's attorney, applicant's attorney again requested that defendant's attorney provide the information. (Applicant's Exh. 2.)

On February 26, 2021, defendant's attorney responded by way of a letter to applicant's attorney and stated that:

> I would like to also respond to your request for information with respect to the limits of the underlying coverage by employers, primary and secondary excess carrier on this claim, and the limits of each carrier or company's policy, other actual or potential payor on this claim, and any stake holder with actual or potential financial responsibility for this claim, and contact information for each excess carrier or other such stake holder.
>
> Your request for the above information appears to be applicable to personal injury cases where the policy limits and identification of the responsible parties are necessary for ascertaining the payor in the case. While in workers compensation, the Code requires identification of the payor of the benefits, there is no legal authority requiring disclosure of the policy limit, the primary and the secondary

> excess carrier on the claim, the limits of each carrier's policy, or any stake holder with actual or potential financial responsibility for this claim.
>
> The court in *Coldiron v. Compuware Corp.* held that where an employer's liability for workers' compensation benefits is adjusted by a third-party administrator, the administrator must disclose to WCAB, other parties in any proceeding and its own counsel, the identity of its client, whether self-insured employer or insurance carrier. *Coldiron* was codified in CCR §10550 which was amended and replaced by CCR §10390 effective January 1, 2020. The language in the new reg also changed. CCR §10390 requires a party to "identify the insurer and/or employer as the party or parties and not identify a third party administrator as a party. The third party administrator shall be included on the official address record and case caption if identified as such."
>
> The facts in *Coldiron* are not similar to the facts of our case. The issue in *Coldiron* was the correct payor of benefits per the Findings and Award and Decision. Here, applicant was aware of the carrier in the case which was reflected in the Findings and Award and Decision. Further, there was no issue with payment of workers compensation benefits owed to the applicant. As such, your demand has no legal basis.

(Joint Exh. X.)

On May 11, 2021, applicant submitted a letter to the WCJ with an attached DOR. Applicant explained that the DOR could not be filed due to a request for a lien conference in the same case. In the DOR, applicant requested an MSC on the issue of defendant's insurance policy, and alleged that:

> Applicant's counsel has made multiple attempts to obtain information on the insurance policy behind this workers' compensation claim and identity of actual insurer(s). Defendant is legally obligated to disclose under *Coldiron v. Compuware Corp. et al* (2002) (WCAB en banc) 67 CCC 1466. Defense has repeatedly promised to provide this information, only to remain unresponsive after multiple calls and emails. WCAB intervention is requested. Sanctions are requested for employers insurance and its counsel refusing to provide information that the WCAB specifically mandates, thereby, causing applicant's counsel to expend hours in written correspondence and phone calls and now a hearing, to obtain it. (All capitals in original.)

On March 24, 2022, the matter proceeded to trial. The issues for hearing were listed as follows:

> 1) Has defendant by disclosing that the insurance carrier is Employers Compensation Insurance Group materially complied with the *Coldiron* case codified in Regulation 10550 and/or subsequent Regulation 10390.

> 2) Whether defendant to properly comply with *Coldiron* and Regulation 10390 must disclose the following information: (a) Whether the insurance policy includes a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity actually liable for compensation. (b) The underlying coverage. (c) Any primary or secondary excess carriers on this claim and the limits of each carrier or company's policy. (d) Any other actual or potential payor on this claim and any stakeholder with actual or potential financial responsibility for this claim. (e) The contract information for each excess carrier or other such stakeholder.

(Minutes of Hearing, March 24, 2022, at p. 2.)

On April 19, 2022, the Findings of Fact and Order issued. In the accompanying Opinion on Decision, the WCJ described the holdings in the *Coldiron* cases, as well as the history and requirements of WCAB Rules 10550 and 10390. (Opinion, at pp. 2-4.) The WCJ then discussed the WCAB's rule-making authority, its authority to determine the validity of regulations, and its authority to issue en banc opinions. (*Id*. at pp. 5-6.) The WCJ stated, "In other words, en banc decisions are binding unless superceded [*sic*] by new Regulations and/or Codes." (*Id*. at pp. 5-6.) Citing defendant's Points and Authorities, which relied on the "Statement of Specific Purpose and Reasons for Proposed Amendments of § 10390," the WCJ concluded:

> This evidentiary record makes clear that the recently promulgated Regulation § 10390 not only repealed Regulation § 10550, but supercedes [*sic*] *Coldiron.* It is illogical to believe that the Appeals Board instituted Regulation § 10390 to cause a conflict in the law. The Regulation's purpose is to *simplify and clarify* the obligations of defendant to identify the legally responsible entity - not create this current litigation or obfuscate a party's disclosure obligations.
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> * * *
>
> Accordingly, logic follows that Regulation § 10390 supercedes [*sic*] Coldiron in whole or in part.

(*Id*. at p. 6.)

> The WCJ indicated, too, that:
>
> Applicant has made no showing that Employers Compensation Insurance Group is at risk of default or otherwise made an offer of proof that the information requested - above and beyond disclosure of Employers Compensation Insurance Group as the carrier, is warranted for any legitimate litigation or benefits purpose.

(*Id*. at p. 7.)

Applicant timely filed her Petition for Reconsideration in response to the April 19, 2022 F&O.

DISCUSSION

This case involves the legal question of whether defendant was required to comply with applicant's February 17, 2021 discovery request to defendant to identify potential insurance carriers, potential insurance policies and their limits, and other potentially liable persons or entities pursuant to the statutory discovery provisions, WCAB Rule 10390, and our en banc decisions in *Coldiron I* and *II*.

We answer this question in the affirmative. In light of our constitutional mandate to accomplish substantial justice, and our statutory mandate under Labor Code section 5500.3[4] to ensure uniform court procedures, we issue this decision en banc to clarify existing law and to ensure due process and consistency of practice at the trial level.[5]

1. All en banc decisions are binding on panels of the Appeals Board and WCJs, and the binding en banc decisions in *Coldiron I* and *Coldiron II* require disclosure of any entities liable for payment and any insurance policies that impact liability for payment.

The Appeals Board is a constitutional court vested with judicial powers. (§ 111(a); see §§ 52, 5300, 5301, 5302; see also *McHugh v. Santa Monica Rent Control Bd*. (1989) 49 Cal.3d 348, 355-356; *Bankers Indemnity Ins. Co. v. Industrial Acc. Com*. (*Merzoian*) (1935) 4 Cal.2d 89, 97.) For over 100 years, it has been repeatedly held that the Appeals Board (and its predecessor, the Industrial Accident Commission), exercises a portion of the judicial powers of the State of California and is, in legal effect, a court. (*Merzoian*, *supra,* 4 Cal.2d at p. 97; *Western Metal Supply Co. v. Pillsbury* (*Mason*) (1916) 172 Cal. 407, 411-412; *Kaiser Co. v. Industrial Acc. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58-59.)

[4] All section references are to the Labor Code, unless otherwise indicated.

[5] We are aware that holdings in this opinion may appear to be axiomatic for a portion of the workers' compensation community. Our intent here is to promote consistency in the application of our rules and our en banc decisions, and to otherwise provide guidance regarding the fundamental concepts discussed herein.

Sections 111 and 115 grant statutory authority to the Appeals Board to issue en banc decisions.[6] Appeals Board en banc decisions have the same legal effect as published appellate opinions. (*Signature Fruit Co. v. Workers' Comp. Appeals Bd.* (*Ochoa*) (2006) 142 Cal.App.4th 790, 796, fn. 2 [71 Cal.Comp.Cases 1044].)

Specifically, en banc decisions "are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of *stare decisis*." (Cal. Code Regs., tit. 8, § 10325.) The principle of *stare decisis* means that precedent-setting court opinions may only be overruled by the same court, or a higher court. Hence, an Appeals Board en banc opinion must be followed by panels of the Appeals Board and by all WCJs until rescinded, altered, or overruled by the Appeals Board en banc, overruled by a Court of Appeal or the California Supreme Court pursuant to sections 5950 through 5956, or rendered inapplicable by a legislative enactment.

The California Supreme Court explained in *People v. Bouzas* that in interpreting legislation, "repeal by implication is disfavored..." (*People v. Bouzas* (1991) 53 Cal.3d 467, 480, citing *People* v. *Siko* (1988) 45 Cal.3d 820, 824; accord: *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd., supra,* 166 Cal.App.4th at 917 ["we presume that when the Legislature enacts a statute it does not intend to repeal or abrogate any other statute by implication."].) The same principle is applicable here: en banc opinions of the Appeals Board are not repealed "by implication" and thus, an en banc opinion cannot be "superseded" by the enactment of a regulation. Again, we emphasize that an en banc opinion issued by the Appeals Board is binding legal precedent, unaffected by the regulatory process, and continues to be binding legal precedent unless the Appeals Board explicitly rescinds it en banc, it is overruled by a higher Court, or it is rendered no longer applicable by legislative changes.

In our en banc decision in *Coldiron I*, we addressed a situation in which "the third-party administrator failed to disclose the true identity of its client until more than six years after the date of the injury." (*Coldiron I*, *supra*, 67 Cal.Comp.Cases at pp. 290-291.) As a result of this misidentification, an award was issued against defendant, as a permissibly self-insured company, rather than against the insurance company who was actually liable. We held that:

> [W]here an employer's liability for workers' compensation benefits is adjusted by a third-party administrator, the administrator must disclose to the Workers'

[6] Government Code section 11425.60(b) provides additional authority for the WCAB to designate all or part of a decision "that contains a signification legal or policy determination of general application that is likely to recur" as a "precedent decision," and our en banc decisions are routinely adopted as precedent decisions.

> Compensation Appeals Board, to the other parties in any proceeding in which it is a party, and to its own counsel the identity of its client, whether a self-insured employer or insurance carrier. If the client is an insurance carrier, the administrator must disclose whether the policy includes a "high self-insured retention," a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation. Failure of the administrator to disclose the identity of its client may subject it to sanctions pursuant to Labor Code section 5813.

(*Ibid*.)

Coldiron II addressed the question of sanctions for failure to comply with the requirements of *Coldiron I*. (*Coldiron II*, *supra*, 67 Cal.Comp.Cases 1466.) In our en banc decision in *Coldiron II*, we declined to order sanctions, as the case was one of first impression, but reiterated our prior holding and stated that "[t]hese holdings remain in full force and effect, and the third-party administrators (or their counsel and/or representative) who do not comply with these holdings may be subject to sanctions." (*Id*. at p. 1470.)

Coldiron I and *Coldiron II* [collectively *Coldiron*] were decided by the Appeals Board, sitting en banc, and have not been rescinded by the Appeals Board en banc, overturned by a higher court, or subsumed by a subsequent legislative enactment. Thus, *both decisions continue to be binding precedent on panels of the Appeals Board and all WCJs*.

Defendant asserted that *Coldiron* is inapplicable because it was distinguishable on the facts. This argument lacks merit, because *Coldiron's* holdings require disclosure of a high self-insured retention, a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation by a third-party administrator. In context, it is clear that the Appeals Board, in issuing *Coldiron I* en banc was concerned with *disclosure of the entity responsible for payment* in all cases and not just those with a third-party administrator. *Coldiron I* is not factually distinguishable from the present case and thus is applicable here. Consequently, although defendant's disclosure appeared to comply with WCAB Rule 10390, defendant was also required to comply with the more detailed disclosure requirements in *Coldiron I.*

Coldiron I addressed a fact scenario in which the liable party was not adequately identified by the third-party administrator, until years after an award had been issued. We explained that this situation raised numerous questions:

> Defendant's petition raises questions regarding the meaning of "high self-insured retention," whether a "deductible" exists in the context of worker's compensation insurance policies. Is the alleged policy with Reliance an insurance policy that contains limitations which provide for employer primary liability at the outset up

> to a certain amount of liability, with the carrier thereafter responsible, or with potential reinsurance or excess insurance taking over at a different and higher level of liability? Is the employer's liability to the carrier in the form of essentially an indemnification agreement, with the carrier billing the employer directly for sums expended and requesting reimbursement, or some other deductible type approach? There is a question of who is the primary liable entity, the carrier or the employer, or both.

(*Coldiron I*, at p. 293.)

In discussing the necessity for our holding in *Coldiron I*, we stated:

> ***Fundamental to the establishment of workers' compensation liability and the prompt delivery of benefits awarded to eligible injured workers is the designation of the responsible and liable entity. The responsible entity must be divulged at the earliest opportunity, and certainly no later than the commencement of the litigation process and formal proceedings. . . . In this manner, no confusion can result as to the liable entity, against whom an award for benefits will be made. It avoids unnecessary delays in the prompt delivery of benefits awarded.***

(*Id*. at p. 294, emphasis added.)

In *Coldiron I*, the third-party administrator was at fault for the misidentification error, and thus we addressed this problem by requiring that, in all cases in which there is a third-party administrator, the administrator must disclose the identity of their client and the details of the underlying insurance policy, in order to provide the WCJ and all parties accurate information about liability for the claim. It bears repeating that the Appeals Board, in issuing *Coldiron I* en banc was concerned with *disclosure of the entity responsible for payment in all cases, including any limits on liability for payment,* and not just those with a third-party administrator. However, to avoid further confusion, we reiterate that there is *no basis* to limit the disclosure requirements to third-party administrators.

The facts of the current case provide a clear example of why the *Coldiron* disclosure requirements are essential to accomplish our constitutional mandate to achieve substantial justice *in all cases*. Here, an award issued, but the medical expenses for the injured worker's required home health care services went unpaid. Although the reason for the payment problems is not altogether clear, there can be no doubt that applicant is entitled to the information about which entity or entities are liable for payment, as well as the liability details in the underlying insurance policy. The burden to ascertain the identity of the entity liable for payment cannot be placed on

the injured worker; the information is more readily available to a defendant, and the disclosure responsibility must lie with defendant.[7]

2. Only the Appeals Board is statutorily authorized to issue regulations for adjudication of workers' compensation proceedings, and WCAB Rules 10390, 10400 and 10401 require that parties, their representatives, and their insurance companies be fully identified.

In discussing the relevant regulations, we begin by contrasting the effect of a statute in comparison to a regulation. As the Court stated in *Rea v. Workers' Comp. Appeals Bd*. (*Milbauer*) (2005) 127 Cal.App.4th 625, 644 [70 Cal.Comp.Cases 312], " While the WCAB is empowered to enact rules or procedures under the proper circumstances, it may not change legislation that is within the plenary power of the Legislature under article XIV, section 4 of the California Constitution." Thus, the Appeals Board must follow a statute in the Labor Code as written and enacted by the Legislature, unless or until the Legislature changes a statute or a higher court issues an opinion as to its application. In comparison, regulations are enacted by state agencies[8] under statutory authority granted by an enabling statute, to implement and enforce a statute, after public notice and an opportunity for public comment. (See *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568; *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 911, 917 [73 Cal.Comp.Cases 1294].)

Section 5500.3 requires:

> (a) The appeals board shall establish uniform district office procedures, uniform forms, and uniform time of court settings for all district offices of the appeals board. No district office of the appeals board or workers' compensation administrative law judge shall require forms or procedures other than as established by the appeals board. A workers' compensation administrative law judge who violates this section may be subject to disciplinary proceedings.
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> (b) The appeals board shall establish uniform court procedures and uniform forms for all other proceedings of the appeals board.

[7] We note that lien claimants, like applicants, must know the names of liable entities and insurance policy information in order to ensure that a lien claim is paid. That is, lien claimants and applicants are similarly entitled to this information, and similarly unable to access it without disclosure by the defendant.

[8] The Administrative Procedures Act (APA) applies to all state "agencies" (see Gov. Code, § 11500), except as otherwise expressly provided by statute. (Gov. Code, § 11410.20(a); see also, § 11415.10(a).) The WCAB falls within a statutory exclusion because its adjudicative proceedings are expressly governed by the Labor Code and by its own rules of practice and procedures and because it is not bound by any other statutory rules of procedure. (Lab. Code, § 5708; see also § 5307.)

(Lab. Code, § 5500.3.)

Section 5708 authorizes the Appeals Board to promulgate regulations regarding the adjudicatory process, and section 5307 describes the mandatory procedures for adopting, amending or rescinding regulations, including the requirement for a public hearing. (Lab. Code, §§ 5307, 5708.) While a regulation enacted by the Appeals Board may become invalid when an appellate court determines that it contradicts a statute, if the Appeals Board determines that a regulation is no longer valid or is no longer applicable as written, the Appeals Board must follow the same procedures used to enact the regulation, including the public hearing requirement, prior to the amendment or repeal of the regulation. (Lab. Code, § 5307; see *Milbauer*, *supra*, 127 Cal.App.4th 625.)

The WCAB Rules discussed herein serve to ensure that all parties are accurately identified, and as explained above, in comparison to the requirements outlined in *Coldiron*, they are not concerned with which entity could be liable for payment. Under WCAB Rule 10390, which renumbered and simplified former WCAB Rule 10550, all parties must fully disclose their own legal name, the name of their attorney or non-attorney representative, the name of the insurer and employer, and the third-party administrator, while clarifying that the third-party administrator is not a party. WCAB Rule 10400, subdivision (b)(1) requires that all attorney representatives file a notice of representation or opening document that complies with WCAB Rule 10390 and includes "the name of the represented party." (Cal. Code Regs., tit. 8, § 10400(b)(1).) As a matter of course, if an attorney represents multiple parties or entities, all names of each represented party or entity must be disclosed. WCAB Rule 10401 imposes similar requirements on non-attorney representatives. (Cal. Code Regs., tit. 8, § 10401.)

Read together, WCAB Rules 10390, 10400 and 10401 ensure that all parties, representatives and liable entities are fully identified in each case. Compliance with these rules is important to avoid errors such as misidentification of parties, inadvertent omission of parties from pleadings, and incorrect case captions. We observe that information as to the proper defendant is within a defendant's control, and not an applicant's, so that it is incumbent upon a defendant to comply with this responsibility. As outlined in *Coldiron*, and as further required by these rules, full disclosure of the names of each party or entity means that all essential parties are included in

all awards, and so that awards are enforceable, a defendant must necessarily provide accurate information. (See Lab. Code, §§ 5806, 5807.)

3. WCAB Rule 10390 does not supersede the *Coldiron* decisions. Defendants must comply with WCAB Rule 10390 and the disclosure requirements in *Coldiron I* and *II,* regardless of whether there is a third-party administrator.

While WCAB Rule 10390's requirements may appear to be narrower than those established in the *Coldiron* decisions, there is no conflict between the rule and the holdings of *Coldiron I* or *II*. WCAB Rule 10390 was enacted to ensure proper identification of parties. Our intention was that the rule and the *Coldiron* decisions be read together.[9] The purpose of the change was to *expand* defendant's obligation to properly identify third-party administrators, rather than to address the issue of disclosure of insurance carrier and policy information or to otherwise limit defendant's responsibilities. In short, the requirements in *Coldiron I* and *II* do not conflict with those in WCAB Rule 10390 and remain binding authority.[10]

There is simply no valid legal authority for the contention that by enacting a rule, we have superseded one of our en banc decisions by operation of law. This misapprehension confuses the circumstances where the Legislature enacts a change in the Labor Code or a higher court determines that our interpretation of the law is incorrect. Instead, we emphasize that if changes are made to an existing rule, we must follow the procedures of the rulemaking process.

Thus, we make clear now that our *Coldiron I* and *II* holdings apply to all defendants, regardless of whether a third-party administrator was involved in the case. As we stated in *Coldiron I*, "[f]undamental to the establishment of workers' compensation liability and the prompt delivery

[9] When we rescinded WCAB Rule 10550, and renumbered it as WCAB Rule 10390, we stated that the purpose was to "clarify" the rule, while noting that since *Coldiron*, "third party administrators have become more prevalent and continue to be improperly identified as parties." (WCAB Initial Statement of Reasons, Subject Matter of Proposed Regulations: Rules of Practice and Procedure, effective January 1, 2020, at p. 13.) This document may be accessed here: https://www.dir.ca.gov/wcab/WCABProposedRegulations/Rulemaking-August-2019/Rulemaking-August-2019.htm

[10] As described above, in his discussion of *Coldiron I* and WCAB Rule 10390, the WCJ concluded that "it is illogical to believe that the Appeals Board instituted Regulation § 10390 to cause conflict in the law." (Opinion, at p. 6.) While on occasion it may be tempting to speculate about the Appeals Board's intention in enacting a regulation, WCJs and all parties before the Appeals Board must follow the plain language of the regulations as written, and, at the same time, abide by our en banc decisions. Unless otherwise stated, it is presumed that the Appeals Board is aware of the statutory and decisional law, including its own en bancs, when it enacts regulations, and the appropriate time to raise concerns about a particular rule and its impact, whether intended or unintended, is when the Appeals Board is engaged in rule making.

of benefits awarded to eligible injured workers is the designation of the responsible and liable entity" and that "the responsible entity must be divulged at the earliest opportunity, and certainly no later than the commencement of the litigation process and formal proceedings." (*Coldiron I*, *supra*, at p. 294.) In addition to requiring the disclosure of the identity of the liable entity, regardless of whether there is a third-party administrator, "[i]f the client is an insurance carrier," defendant "must disclose whether the policy includes a 'high self-insured retention,' a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation." (*Ibid*.) When an applicant seeks information about the liable entity or the insurance policy provisions, the information should be readily provided.

These disclosure requirements serve to protect all parties. Knowing the identity of each defendant assists applicants in determining whether to resolve their cases and thus ensures a smoother adjudication process. Defendants are required by the Labor Code to pay all compensation that is due. If a dispute arises about who is responsible to pay compensation, an identified defendant may nevertheless be held liable, and sanctions may be imposed until such time as another responsible party is identified. Thus, it serves a defendant's interest to comply with these disclosure requirements, to ensure that they are not held liable for payments that should not be their responsibility, nor sanctioned for conduct for which they were not responsible. The disclosure requirements further serve all parties' interests by facilitating more expeditious proceedings, and by ensuring that each matter is resolved in a way that accomplishes fundamental fairness, due process and substantial justice.

Lastly, the WCJ plays a key role in ensuring compliance with these requirements. The WCJ has a duty to inquire and ensure that the record reflects the correct identity of all parties, at first opportunity, including at the mandatory settlement conference and at trial.[11] Further, to increase the likelihood that the award will be timely paid, by the correct entity, the WCJ must exercise oversight to ensure that at the time an award or decision is issued, if applicant has sought this information, that defendant has disclosed and properly identified all liable entities and the relevant insurance policy details, in compliance with *Coldiron I* and this decision.

[11] Errors in case captions are, at times, a result of naming conventions in the Electronical Adjudication Management System (EAMS). WCJs are nevertheless responsible for ensuring that the legally correct names of parties and liable entities appear in case captions, rather than shortened or otherwise incorrect names found in EAMS.

Our holding herein is consistent with the public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].)[12] We emphasize that in workers' compensation proceedings, the Labor Code makes explicit that the WCJ and the Appeals Board have *greater* discretion with respect to evidentiary matters than courts in civil proceedings, and *not narrower* discretion as defendant appears to believe. Section 5708 mandates that we are not "bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to *ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division*." (Lab. Code, § 5708, emphasis added.) Section 5709 specifically allows informality in our proceedings and ensures that "admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure" will not invalidate an order, decision or award. (Lab. Code, § 5709.)[13]

Unlike a discovery request where the right to privacy or another privilege is implicated, proof of good cause is not required for a routine discovery request such as the one here. Instead, applicant has a right to the insurance coverage information and potentially liable parties purely by way of a discovery request for relevant information, even without the consideration of the specific disclosure requirements detailed herein. That is, even a straightforward application of the principle that parties are entitled to discovery of relevant information should have meant that defendant

[12] The underlying principle of liberal discovery supports our duty to ensure substantial justice and to further develop the record where there is insufficient evidence on an issue. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

[13] Under the Civil Discovery Act, discovery is generally available "regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action. . . ." (Code Civ. Pro., § 2017.101.) Discovery must be provided regarding "the existence and contents of any agreement under which any insurance carrier may be liable," including "the identity of the carrier and the nature and limits of the coverage." (Code Civ. Pro., § 2017.210.)

In civil cases, insurance information is discoverable despite the fact that, upon the conclusion of the civil suit, there is no ongoing need to pay benefits. In contrast, in a workers' compensation matter, liability for payment of compensation to an applicant is an ongoing duty, that often stretches for many years after an underlying award is issued. This means that the ability to identify any parties that may potentially be liable to pay compensation in the future, and the parameters of that liability, is significantly more important in workers' compensation proceedings.

readily provided applicant with the information that she sought without the need of WCAB intervention.[14]

Having established that *Coldiron* is binding authority, and having clarified that its holding is applicable to the facts of this case, even when no third-party administrator is involved, we turn to the question of whether defendant complied with the requirements of *Coldiron*. It appears that it did not. Applicant's attorney made a valid discovery request and demonstrated that detailed information about the liable entities and applicable insurance policies was relevant to payment of compensation to applicant and enforcing the February 11, 2020 order that defendant pay for medical treatment in the form of home health care services.

We rescind the findings here, and upon return, direct defendant to forthwith disclose the information requested by applicant, as required by *Coldiron* and this decision. If defendant fails to do so, applicant may seek sanctions under section 5813, as set forth in *Coldiron II*, and as appropriate, applicant may wish to seek sanctions for defendant's previous failure to do so.

Therefore, we hold en banc that:

1. All en banc decisions are binding on panels of the Appeals Board and the WCJs, and the binding en banc decisions in *Coldiron I* and *Coldiron II* require disclosure of any entities liable for payment and any insurance policies that impact liability for payment.

2. Only the Appeals Board is statutorily authorized to issue regulations for adjudication for workers' compensation proceedings, and WCAB Rules 10390, 10400 and 10401 require that parties, their representatives, and their insurance companies be fully identified.

3. WCAB Rule 10390 does not supersede the *Coldiron* decisions. Defendants must comply with WCAB Rule 10390 and the disclosure requirements in *Coldiron I* and *II*, regardless of whether there is a third-party administrator.

Accordingly, as our Decision After Reconsideration (en banc), we rescind the WCJ's April 19, 2022 F&O and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

[14] While at first blush it appears that the dispute here is solely as to a discovery matter, defendant has refused outright to comply with our binding en banc opinions in *Coldiron I* and *II*. Not only is this refusal unwarranted and not supported by any statutory authority, final decisions of the WCAB may be converted to civil judgments, and without proper identification of the liable party or parties, an award may be rendered unenforceable. (Lab. Code, §§ 5806, 5807.)

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board (en banc), that the Findings of Fact and Order issued by the WCJ on April 19, 2022 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 13, 2025

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

JILLIAN DIFUSCO
ASVAR LAW, PC
MICHAEL SULLIVAN & ASSOCIATES LLP

MB/*ara/abs*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*