



4 of 25 DOCUMENTS

CALIFORNIA COMPENSATION CASES  
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California Insurance Guarantee Association, Petitioner v. Workers' Compensation  
Appeals Board, **Zachary Thomas**, et al., Respondents

Civil No. B205025--

Court of Appeal, Second Appellate District, Division Five

73 Cal. Comp. Cas 1519; 2008 Cal. Wrk. Comp. LEXIS 370

Opinion Filed October 31, 2008

**PUB-STATUS:** [\*\*1]

*Publication Status:* California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**SUBSEQUENT HISTORY:** *Subsequent History:* Opinion Modified by Court of Appeal (No Change in Judgment) November 20, 2008

**PRIOR HISTORY:** *Prior History:* W.C.A.B. No. LAO 0779193--WCJ Susan Hoerchner (annuitant) (LAO); WCAB Panel: Commissioner Caplane, Deputy Commissioners Hannigan, Sullivan (not participating) [*see Thomas v. Contractors Labor Pool, 2007 Cal. Wrk. Comp. P.D. LEXIS 235* (Appeals Board panel decision)]

**DISPOSITION:** *Disposition:* Proceedings to review a decision of the Workers' Compensation Appeals Board. Decision reversed and matter remanded.

**HEADNOTE:** [\*1520]

**California Insurance Guarantee Association--Other Insurance--Evidence--Court of Appeal, reversing decision of WCAB, held that State Compensation Insurance Fund (SCIF) policy constituted "other insurance" under Insurance Code § 1063.1(c)(9), making [\*\*2] SCIF, not California Insurance Guarantee Association (CIGA), liable for applicant's cumulative trauma industrial injuries sustained from 3/99 to 6/99, when Court of Appeal found that applicant's general employer's insurer during this period was now in liquidation with its claims being handled by CIGA, that applicant's special employer's insurer during this period was SCIF, that during present proceedings for workers' compensation benefits SCIF's policy covering special employer could not be found, that relevant terms of insurance policy may be established by secondary evidence such as discovery responses or admissions, that letter to CIGA from Workers' Compensation Insurance Rating Bureau established that SCIF provided insurance coverage to special employer during period of applicant's injuries but did not establish coverage at location where applicant was injured, that CIGA and SCIF stipulated in present proceedings that employers were applicant's general employer and special employer, that SCIF's counsel at trial admitted that SCIF was special employer's insurer, that SCIF did not submit any evidence at trial that special employees were**

**excluded from coverage under its policy with [\*\*3] special employer, that SCIF failed to show that special employees were not intended to be covered by agreement between general and special employers, that SCIF failed to establish endorsement extending coverage to special employers under general employer's policy, and that CIGA was thus not required to produce SCIF's policy to show that special employees were covered or that coverage was not excluded.** [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d §§ 2.84[3][a], 3.142[1], [2][d], [5].]

**COUNSEL:** *Counsel:* For petitioner--Guilford, Steiner, Sarvas & Carbonara, by Richard Guilford, Frank E. Carbonara; Grancell, Lebovitz, Stander, Reubens & **Thomas**, by Nedrudee Liu  
For respondent employee--Hinden & Breslavsky, by Jack Breslavsky, Kelly L. Hinden  
For respondent State Compensation Insurance Fund--State Compensation Insurance Fund, by Robert W. Daneri, Suzanne Ah-Tye, David M. Goi

**OPINIONBY:** *Opinion By:* Kriegler, J.

**OPINION:** The California Insurance Guarantee Association (**CIGA**) n1

-----Footnotes-----

**CIGA** is an unincorporated association of all insurers licensed in California and pays claims of insolvent members, [\*\*4] but only as set forth by *Insurance Code section 1063 et seq. (Isaacson v. California Ins. Guarantee Assn. (1988) 44 Cal.3d 775, 786-787 [750 P.2d 297, 244 Cal. Rptr. 655].)*

-----EndFootnotes-----

petitions for writ of review of the decision of the Workers' Compensation Appeals Board (WCAB). [\*\*1521] The WCAB ruled that **CIGA** was required to produce the insurance policy issued by the State Compensation Insurance Fund (SCIF) covering the industrial injury claim of respondent Zachary **Thomas** in order to establish SCIF's coverage constituted "other insurance," as defined in *Insurance Code section 1063.1*, subdivision (c)(9). n2

-----Footnotes-----

*Insurance Code section 1063.1*, subdivision (c)(9) (section 1063.1(c)(9)) states in part: "'Covered claims' does not include (A) any claim to the extent it is covered by any other insurance of a class covered by this article available to the [\*\*5] claimant or insured . . . ." All further statutory references in this opinion are to the Insurance Code, unless otherwise indicated.

-----EndFootnotes-----

**CIGA** contends the existence of the SCIF policy was proven at trial without production of the policy itself, and unlimited coverage is presumed under section 11650 et seq. According to **CIGA**, once the existence of the SCIF policy was established, the burden shifted to SCIF to show insurance coverage for employees like **Thomas** was excluded by the required form endorsement.

We hold that the existence and relevant terms of the SCIF policy were shown by secondary evidence. In addition, stipulations and judicial admissions at trial by SCIF's counsel established "other insurance" that extended to **Thomas**. We therefore reverse the WCAB's decision that **CIGA**, rather than SCIF, is liable for **Thomas's** claim.

**FACTUAL AND PROCEDURAL BACKGROUND**

**Thomas** sustained injury to his hands, bilateral upper extremities, and neck while working as a laborer and clean up person for Contractors Labor Pool (Labor Pool) from March 1999 to June 1999. Labor Pool supplied **[\*\*6]** workers to contractors, including supplying **Thomas** to Carri Construction, which was insured by SCIF during this period. Labor Pool was insured by Reliance Insurance Company (Reliance), which provided **Thomas** workers' compensation after the \$250,000 deductible was paid. When Reliance went into liquidation, **CIGA** was joined.

**CIGA, Thomas**, and SCIF proceeded to trial on April 18, 2006. The parties stipulated that "Contractors Labor Pool is the general employer and Carri Construction is one of the special employers." n3

-----Footnotes-----

Typically, the general employer supplies the special employee to the special employer, with both employers having control and being jointly and severally liable for workers' compensation. (*Marsh v. Tilley Steel Co. (1980) 26 Cal.3d 486, 494-495 [606 P.2d 355, 162 Cal. Rptr. 320, 45 Cal. Comp. Cases 193]; Kowalski v. Shell Oil Co. (1979) 23 Cal.3d 168, 174-175 [588 P.2d 811, 151 Cal. Rptr. 671, 44 Cal. Comp. Cases 134]; McFarland v. Voorheis-Trindle Co. (1959) 52 Cal.2d 698, 702 [343 P.2d 923, 24 Cal. Comp. Cases 216].*)

**[\*\*7]**

-----EndFootnotes-----

The stipulated issues included whether the SCIF policy was "other insurance" and whether the industrial injury claim by **Thomas** was not covered under section 1063.1(c)(9). "As a further issue, Defendant State Compensation Insurance Fund insuring special employer Carri Construction **[\*1522]** moves for dismissal on the basis that Contractors Labor Pool is the general employer and that **CIGA** is the other coverage based on *Miceli*."n4

-----Footnotes-----

There are three *Miceli* decisions. In *Miceli I*, the general employer's insurer became insolvent and **CIGA** became a party to the action. **CIGA** contended the special employer's insurer provided "other insurance" covering the industrial injury of special employee *Miceli* under section 1063.1(c)(9). The WCAB ruled in bank that the special employer's insurance policy was "other insurance" in part, due to the lack of a form endorsement excluding special employees, and dismissed **CIGA**. (*Miceli v. Jacuzzi, Inc. (2003) 68 Cal.Comp.Cases 434 [Appeals Board **[\*\*8]** en banc opinion].*) In *Miceli II*, another division of this district of the Court of Appeal reversed *Miceli I* and **CIGA's** dismissal, holding that the form endorsement excluding special employees was not required under the circumstances presented and coverage was not intended under the special employer's policy based on the agreements between the parties. (*General Casualty Ins. v. Workers' Comp. Appeals Bd. [(2005)] 131 Cal.App.4th 345 [31 Cal. Rptr. 3d 740, 70 Cal. Comp. Cases 953] [nonpub.]*.) On **CIGA's** petition for review, our Supreme Court ordered *Miceli II* not certified for publication on October 12, 2005. *Miceli III* was filed by the WCAB in bank on May 12, 2006. (*Miceli v. Jacuzzi, Inc. (2006) 71 Cal.Comp.Cases 599, 601 [Appeals Board en banc opinion].*) The WCAB ruled that (1) *Miceli I* had been reversed and was not legal precedent, (2) *Miceli II* had been ordered depublished and could not be cited or relied upon except as law of the case, res judicata, or collateral estoppel, and (3) each of the cases that had been consolidated with *Miceli I* should be decided **[\*\*9]** on its own facts, including the intent of the parties and the various insurance policies involved.

-----EndFootnotes-----

]"

Trial continued on August 9, 2006. The exhibits included a letter to **CIGA** from the Workers' Compensation

Insurance Rating Bureau (WCIRB) indicating that SCIF insured Carri Construction and a Labor Pool printout of the special employers in April and May of 1999. **Thomas** testified that he was paid by Labor Pool and did not know Carri Construction. **Thomas** was told by Labor Pool where to go and was supervised at the job site. **Thomas** used jack hammers on cement, back filled trenches, and demolished interiors of offices and stores, lifting up to 75 to 100 pounds. As a result of the injuries from work, **Thomas** had three carpal tunnel surgeries and five rotator cuff repairs, has permanent disability, and needs medical treatment.

### *The WCAB's Decision*

The workers' compensation administrative law judge (WCJ) found **CIGA** liable and awarded **Thomas** 75 percent permanent disability and future medical care. The WCJ ruled that without the SCIF policy, there was no evidence of "other insurance" [\*\*10] covering special employees like **Thomas** under section 1063.1(c)(9).

**CIGA** petitioned the WCAB for reconsideration. **CIGA** argued that SCIF's counsel advised that the actual policy could not be found; however, the policy's existence was established by the WCIRB letter and is presumed to provide unlimited coverage under section 11650 et seq. The burden then shifted to SCIF to show special employees such as **Thomas** were excluded from coverage by the required form endorsement. [\*1523]

In the report on reconsideration, the WCJ added that the SCIF policy is required to determine insurance coverage under *Palmer v. Truck Ins. Exchange* (1999) 21 Cal.4th 1109, 1115-1117 [988 P.2d 568, 90 Cal. Rptr. 2d 647] (insurance company is only liable for claims covered under the terms of the coverage clause) and *Miceli II*. According to the WCJ, "Presumptions and assumptions are not enough to constitute 'other insurance.'"

The WCAB agreed with the WCJ's decision that there was no evidentiary basis to find that the SCIF policy was "other insurance" under section 1063.1(c)(9) and denied **CIGA** reconsideration. The WCAB [\*\*11] explained that **CIGA** would have met its initial burden by placing the SCIF policy into evidence and showing actual coverage and no form endorsement excluding special employees. At that point, the burden would have shifted to SCIF to show coverage was otherwise excluded. Although **CIGA** asserts that SCIF no longer had the policy for submission into evidence, there is no proof of that assertion in the record. The WCIRB letter is not substantial evidence of "other insurance" because it simply identified SCIF as the workers' compensation insurer for Carri Construction during the period of injury. The letter does not prove that SCIF did not exclude special employees from coverage under *Miceli III* (*Miceli v. Jacuzzi, Inc.* (2006) 71 Cal.Comp.Cases 599, 601).

### *CIGA Petitioned for Writ of Review*

**CIGA** petitioned for writ of review and contended further that the existence of the SCIF policy was established at trial by the WCIRB letter and SCIF's admission to insuring Carri Construction. **CIGA** argued that establishing the existence of the SCIF policy triggered the statutory requirement that "every compensation policy is conclusively [\*\*12] presumed to contain all of the provisions required by this article" under section 11650. The required provisions include that "the insurer will be directly and primarily liable to any proper claimant for payment of any compensation for which the employer is liable" under section 11651. The burden then shifted to SCIF to show special employees like **Thomas** were excluded by the required form endorsement under sections 11657 ("limited workers' compensation policies may be issued insuring either the whole or any part of the liability of any employer for compensation, provided that the policy is previously approved, as to substance and form, by the commissioner") and 11659 ("Such approved form of policy,

limited pursuant to Section 11657, shall not be otherwise limited except by endorsement thereon in accordance with a form prescribed by the commissioner or in accordance with rules adopted by the commissioner. Such endorsement form shall not be subject to Section 11658"), and *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 16 [900 P.2d 619, 44 Cal. Rptr. 2d 370] (when an occurrence is not included within insurance [\*\*13] coverage under the policy, there is no need for a specific exclusion). SCIF failed to present any evidence to meet its burden, and the "Failure to observe the requirements of Sections 11658 and 11659 shall render a policy issued under Section 11657, and not complying therewith, unlimited" under section 11660. [\*\*1524]

**Thomas** answered that **CIGA** did not meet its burden to prove "other insurance" under section 1063.1(c)(9). The WCIRB letter is not substantial evidence of the SCIF policy terms or intent of the parties, and insurance coverage is not established by presumptions under section 11650 et seq. *Miceli III* requires the policy to determine insurance coverage and exclusions, and SCIF's intention to cover special employees like **Thomas**. **CIGA** is also collaterally estopped from litigating that an exclusionary form endorsement is not required or SCIF did not intend to cover special employees like **Thomas**, since the essential facts are the same as in *Miceli II* and **CIGA** was a party.

This court initially denied **CIGA** review. **CIGA** petitioned for review in the Supreme Court. The Supreme Court granted review and ordered this court to vacate the order denying [\*\*14] review and to issue a writ of review.

## DISCUSSION

### *Standard of Review*

A decision by the WCAB that is based on factual findings which are supported by substantial evidence should be affirmed by the reviewing court. (*Labor Code*, § 5952; *LeVesque v. Workmen's Comp. App. Bd.* (1970) 1 Cal.3d 627, 637 [463 P.2d 432, 83 Cal. Rptr. 208, 35 Cal. Comp. Cases 16]; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 233 [20 Cal. Rptr. 2d 26, 58 Cal. Comp. Cases 323] (*Western Growers*).) Substantial evidence generally means evidence that is credible, reasonable, and of solid value, which a reasonable mind might accept as probative on the issues and adequate to support a conclusion. (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 164 [666 P.2d 14, 193 Cal. Rptr. 157, 48 Cal. Comp. Cases 566].) A factual finding, order, decision, or award is not [\*\*15] based on substantial evidence if unreasonable, illogical, arbitrary, improbable, or inequitable considering the entire record and statutory scheme. (*Western Growers, supra*, at p. 233; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 254 [262 Cal. Rptr. 537, 54 Cal. Comp. Cases 349].) The reviewing court may not reweigh evidence or decide disputed facts. (*Western Growers, supra*, at p. 233.)

Interpretation of governing statutes or application of the law to undisputed facts is decided de novo by the reviewing court, although the WCAB's interpretations is entitled to great weight unless clearly erroneous. (*Boehm & Associates v. Workers' Comp. Appeals Bd.* (1999) 76 Cal.App.4th 513, 515-516 [90 Cal. Rptr. 2d 486, 64 Cal. Comp. Cases 1350]; *Ralphs Grocery Co. v. Workers' Comp. Appeals Bd.* (1995) 38 Cal.App.4th 820, 828 [45 Cal. Rptr. 2d 197, 60 Cal. Comp. Cases 840].)

[\*\*16]

### *Secondary Evidence May Establish Relevant Terms of the SCIF Policy*

The WCAB concluded that **CIGA** was required to produce the SCIF policy at trial to establish "other insurance" covered Carri Construction and that there was no form endorsement excluding special employees. This is incorrect. The relevant terms of an insurance policy may be established by secondary evidence such as [\*1525] discovery responses or admissions. (*Travelers Casualty & Surety Co. v. Superior Court* (1998) 63 Cal.App.4th 1440, 1451-1452 [75 Cal. Rptr. 2d 54] (*Travelers Casualty*) [excerpts of general liability policy and insured's implied admission were sufficient to show relevant coverage and pollution exclusion for summary judgment motion]; *Certain Underwriters at Lloyd's of London v. Superior Court* (1997) 56 Cal.App.4th 952, 955, 958-959 [65 Cal. Rptr. 2d 821] (*Certain Underwriters*) [insurer moving for summary judgment where coverage disputed must provide policy absent secondary evidence or admission of relevant terms].)

***Substantial Evidence the SCIF Policy Provided [\*\*17] Insurance Coverage to Carri Construction and No Exclusionary Form Endorsement***

***A. The WCIRB Letter***

**CIGA** contends that the existence of the SCIF policy which provided insurance coverage to Carri Construction was established by the letter from the WCIRB. The WCAB found and **Thomas** argues that the WCIRB letter is not substantial evidence of "other insurance" that covers **Thomas** or that special employees were not excluded.

The WCIRB serves as the rating organization designated by the insurance commissioner to which all workers' compensation insurers must report claims data. (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1500-1501 [11 Cal. Rptr. 3d 207, 68 Cal. Comp. Cases 909].) The WCIRB, which is also composed of members from the insurance industry, typically provides insurance coverage information for a particular employer in workers' compensation. (*Human Engineering Laboratory v. Workers' Comp. Appeals Bd.* (1980) 108 Cal.App.3d 339, 342 [166 Cal. Rptr. 501, 45 Cal. Comp. Cases 691].)

The WCIRB letter indicates that SCIF [\*\*18] provided insurance coverage to Carri Construction at 730 W. Southern Ave., Orange, from October 1, 1998, to October 1, 1999. However, for Carri Construction at 8644 First St., Los Angeles, there was "NO EVIDENCE OF COVERAGE FOR THIS INSURED FOR THE LOCATION & PERIOD OF TIME SPECIFIED." **CIGA** also submitted into evidence the Labor Pool printout of special employers, which indicates that **Thomas** worked for customer Carri Construction, job site, 8644 First St., start date April 13, 1999, and end date April 16, 1999. A workers' compensation policy may exclude insurance coverage for specified locations if proper procedures are followed. (*Fyne v. Industrial Acc. Com.* (1956) 138 Cal.App.2d 467 [292 P.2d 78, 21 Cal. Comp. Cases 13] (*Fyne*) [standard workers' compensation policy covers all employees and is not limited to location or operations shown in declarations without endorsements approved by insurance commissioner under §§ 11657-11660 and *Cal. Code of Regulations, tit. 10, §§ 2252-2268*].) The WCIRB letter did not establish that the SCIF policy [\*\*19] provided insurance coverage for Carri Construction at the location where **Thomas** worked. As a result, the WCAB correctly found that the WCIRB letter is not substantial evidence the SCIF policy is "other insurance" coverage which extended to **Thomas**. [\*1526]

### ***B. The Stipulation to General and Special Employment***

As **CIGA** points out, however, the parties also stipulated that "Contractors Labor Pool is the general employer and Carri Construction is one of the special employers." A stipulation obviates the need for proof and narrows the issues, and may be binding in workers' compensation absent inadvertence, excusable neglect, mistake of fact or law, or fraud. (*County of Sacramento v. Workers' Comp. Appeals Bd.* (2000) 77 Cal.App.4th 1114, 1118-1121 [92 Cal. Rptr. 2d 290, 65 Cal. Comp. Cases 1] [counsel's stipulation to no cumulative injury at mandatory settlement conference is binding]; *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 790-792 [239 Cal. Rptr. 841, 52 Cal. Comp. Cases 419] [WCAB did not abuse discretion in [\*\*20] denying withdrawal from stipulated award based on subsequent opinion of independent medical examiner]; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 864-867 [157 Cal. Rptr. 355, 44 Cal. Comp. Cases 798] [payment of stipulation to temporary total disability indemnity transformed executory agreement into executed contract and enforcement as a formal award].) While a factual stipulation may not be binding on the WCAB under *Labor Code section 5702*, n5

-----Footnotes-----

*Labor Code section 5702* states: "The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy."

-----EndFootnotes-----

the WCAB [\*\*21] and **Thomas** have not indicated any basis for disregarding the stipulation to general and special employment. In effect, the parties stipulated that Labor Pool as the general employer supplied special employee **Thomas** to Carri Construction as one of the special employers. (*Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 494-495 [606 P.2d 355, 162 Cal. Rptr. 320, 45 Cal. Comp. Cases 193] (*Marsh*); *Kowalski v. Shell Oil Co.* (1979) 23 Cal.3d 168, 174-175 [588 P.2d 811, 151 Cal. Rptr. 671, 44 Cal. Comp. Cases 134] (*Kowalski*).

### ***C. Judicial Admissions at Trial by SCIF's Counsel***

As **CIGA** also contends, the record further indicates that SCIF's counsel at trial admitted to SCIF "insuring special employer Carri Construction." Similar to a stipulation, a concession by counsel at trial or judicial admission eliminates the need to prove the fact or issue admitted and is binding on the client absent fraud. (*Horn v. Atchison, T. & S. F. Ry. Co.* (1964) 61 Cal.2d 602, 605-606 [394 P.2d 561, 39 Cal. Rptr. 721, 29 Cal. Comp. Cases 215] [\*\*22] [defense counsel's unequivocal invitation to plaintiff verdict in opening statement was a concession of liability]; *Bank of America v. Lamb Finance Co.* (1956) 145 Cal.App.2d 702, 708 [303 P.2d 86] [no prejudice from denial of jury where defense counsel conceded liability on second day of trial]; *Scafidi v. Western Loan & Bldg. Co.* (1946) 72 Cal.App.2d 550, 561-562 [165 P.2d 260] [plaintiff's counsel's admission in open court eliminated allegation in complaint that an accounting had been requested from defendants].) An express or implied judicial admission may also be secondary and [\*\*1527] substantial evidence of the relevant term of an insurance policy. (*Travelers Casualty, supra*, 63 Cal.App.4th at pp. 1451-1452; *Certain Underwriters, supra*, 56 Cal.App.4th at pp. 955, 958-959.) Since SCIF's counsel stipulated and admitted that SCIF insured Carri Construction as one of the special employers of special employee **Thomas**, **CIGA** was not required to produce the SCIF policy to show special employees were covered [\*\*23] or that coverage was not excluded.

Moreover, SCIF's counsel moved for dismissal at trial based on *Miceli*, a line of cases in which there was no form

endorsement excluding special employees. As a result, there was an implied judicial admission at trial by counsel for SCIF that the SCIF policy did not contain the form endorsement excluding special employees. We conclude that **CIGA** was not required to produce the SCIF policy to show what was impliedly admitted at trial by SCIF's counsel. (*Travelers Casualty, supra*, 63 Cal.App.4th at pp. 1451-1452; *Certain Underwriters, supra*, 56 Cal.App.4th at pp. 955, 958-959.)

In addition, SCIF did not submit any evidence at trial that special employees were otherwise excluded under the *Miceli* cases. SCIF failed to show that special employees were not intended to be covered by an agreement between Labor Pool and Carri Construction, nor did SCIF establish an endorsement extending coverage to special employers under Labor Pool's policy. n6

-----Footnotes-----

While **CIGA** is a party **[\*\*24]** to both this case and the *Miceli* cases, **CIGA** is not collaterally estopped by the *Miceli* decisions because the essential facts are materially different and the issues are not identical. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342 [795 P.2d 1223, 272 Cal. Rptr. 767].)

-----EndFootnotes-----

Since SCIF conceded insuring special employer Carri Construction and that special employees were not excluded by form endorsement or otherwise, we need not decide **CIGA's** contention that the SCIF policy is presumed to provide unlimited coverage and the burden of proof shifted to SCIF under these facts. n7

-----Footnotes-----

We note that there is provision for a limited policy under sections 11650 et seq. (*Travelers Ins. Co. v. Industrial Acc. Com.* (1966) 240 Cal.App.2d 804, 809-810 [50 Cal. Rptr. 114, 31 Cal. Comp. Cases 72]; *Fyne, supra*, 138 Cal.App.2d at pp. 472-473.)

-----EndFootnotes-----

**[\*\*25]**

***The SCIF Policy is "Other Insurance" Under Section 1063.1(c)(9)***

Labor Pool as the general employer and Carri Construction as one of the special employers are jointly and severally liable to **Thomas** for work injury due to the dual employment. (*County of Los Angeles v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 391, 405 [179 Cal. Rptr. 214, 637 P.2d 681, 46 Cal. Comp. Cases 1322]; *Kowalski, supra*, 23 Cal.3d at pp. 174-175; *McFarland v. Voorheis-Trindle Co.* (1959) 52 Cal.2d 698, 702 [343 P.2d 923, 24 Cal. Comp. Cases 216].) Furthermore, the solvent insurer that has coverage for part of the injury period separate from the part of the injury period covered by the insolvent insurer provides "other insurance" because the employers and their insurers are jointly and severally liable to the injured employee for workers' compensation. (*Industrial Indemnity Co. v. Workers' Comp. Appeals Bd.* (1997) 60 Cal.App.4th 548, 556-559 [70 Cal. Rptr. **[\*1528]** 2d 295, 62 Cal. Comp. Cases 166] **[\*\*26]** [workers' compensation insurer covering separate part of injury period than insolvent insurer jointly and severally liable and "other insurance" under *Ins. Code* § 1063.1(c)(9)]; *Denny's Inc. v. Workers' Comp. Appeals Bd.* (2003) 104 Cal.App.4th 1433, 1437-1438 [129 Cal. Rptr. 2d 53, 68 Cal. Comp. Cases 1] [self-insured employer covering 80 percent of injury period provided "other insurance" since jointly and severally liable with insolvent insurer that covered 20 percent].) Since Reliance provided coverage for the entire period of injury and SCIF covered part of the injury

period, SCIF is jointly and severally liable. The SCIF policy provided "other insurance" under section 1063.1(c)(9). SCIF is liable for coverage of **Thomas's** injuries, not **CIGA**.

#### **DISPOSITION**

The WCAB's decision that **CIGA** is liable is reversed, and the matter is remanded for further proceedings consistent with this opinion.

Kriegler, J.

We concur:

Armstrong, Acting P.J.

Mosk, J.