

SUPPLEMENTAL FILING

Chapter 846, Statutes of 2001
Labor Code Section 3212.11
Claim no. CSM-01-TC-27

**LATE FILING
ITEM 5**

Skin Cancer Presumption for Lifeguards

Test claimant the City of Newport Beach submits the following to update Commission staff on a matter that bears on the resolution of this test claim.

This Commission, at its May hearing, adopted a statement of decision in the matter of Cancer Presumption for Law Enforcement and Firefighters, Chapter 595, Statutes of 1999 and Chapter 887, Statutes of 2000, Labor Code Section 3212.1, Claim no. CSM-01-TC-19. Before the Commission were two issues: the ability of California State Association of Counties -Excess Insurance Authority (CSAC-EIA), a joint powers agency, to bring a test claim and whether the worker's compensation presumption, in light of new law, was a mandate. The Commission found that CSAC-EIA did not have standing to bring a test claim and the presumption did not create a mandate.

On August 27, 2004, an action was filed in Los Angeles Superior Court, case number BS092146, to challenge the findings and decision made by the Commission.


Although this nearly identical test claim is brought by a different party, thus eliminating one issue, the same type of workers' compensation presumption is before the Commission with no indication that the Commission staff will be recommending a different finding. Although it may be tempting to clear the Commission's docket of this and other such test claims (six workers' compensation presumption test claims were originally filed - cancer, low back injury, hepatitis, tuberculosis, meningitis and skin cancer), the result will be a loading of the Commission's litigation calendar and a resulting strain on Commission counsel.

Since the issues of one test claim are common to all, and these issues can be resolved by a single judicial appeal process, test claimant urges the Commission to stay the hearing on this test claim pending review by the courts.

CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Executed this 29th day of November, 2004, at Newport Beach, California, by:



Glen Everroad,
Revenue Manager
City of Newport Beach

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On December 2nd, 2004, I served:

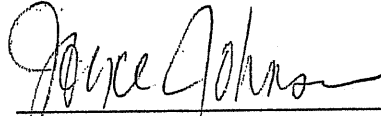
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Skin Cancer Presumption for Lifeguards

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 2nd day of December, 2004, at Sacramento, California.



Joyce Johnson, Declarant

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