

INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: August 14, 2006

RE: George and the Interpreter Bonanza

FROM THE LOBBY BAR AT THE HYATT:

George the bartender was absentmindedly mixing my first martini of thenight when I noted that he had forgotten the bartender's first motto "shaken and not stirred." George kept muttering: "it's just not right." I knew if I wanted a George perfect martini I was going to have to talk George down from his depression. George explained to me that his attorney had demanded that a Spanish interpreter accompany on each of his treatment visits for his carpal tunnel syndrome. Thirstily I observed that George did not speak Spanish so the question was WHY! George finally admitted: "I never should have mentioned to my attorney that I had just come back from a very nice vacation in Cabo San Lucas in Mexico because he immediately told me I needed a Spanish interpreter not only for my hearings before the WCAB but for all my medical treatment sessions." George then told me that his attorney said it was okay because the insurance company for the Hyatt would pay for the bills of the interpreters "It's just not right muttered George." Hoping to get my martini I explained to George that whether or not insurance carriers or employers are liable for interpretation expenses at a treatment examination has still not been determined. Recently, a Workers Compensation Judge (WCJ) at the Appeals Board District Office in Santa Monica held that such charges are neither authorized by statute or case law. The case is Michelle Chang v. Manna Cake & Bakery, MON 0285988. In **Chang** lien claimant, LA Language, filed a lien claim totaling \$11,550 for its services at all 31 treatment sessions for the applicant. As Mr. Chang spoke Korean it was necessary for the lien claimant to provide a Korean interpreter to interpret for Mr. Chang not only at the medical visits and depositions but also at the Appeals Board. Because Korean was claimed by lien claimant to be an exotic language lien claimant charged \$350 per office visit. The defendant did pay for each visit but a reduced rate which was deemed to be reasonable by the claims administrator. The case went to trial and lien claimant alleged it was due a total of \$7,350 which was the difference between the amount charged (11,550) and the amount voluntarily paid (\$4,200). At trial defendant contended and the WCJ so ruled that interpreters cannot be reimbursed or file a lien for interpreting services provided in a treatment session. In his Opinion on Decision the WCJ noted that LC Section 4600 only provides for reimbursement for med/legal examinations and appearances before the Appeals Board and not treatment sessions. Lien Claimant, LA Language, filed a Petition for Reconsideration which was denied by the WCAB on 7/11/06. However, the WCAB dodged the threshold question

of whether translation services at a treatment visit are reimbursable but predicated its denial on the fact that the lien claimant had not sustained its burden of proof that they were entitled to payment over and above the \$4,200 that was voluntarily paid. With tongue in cheek the WCAB implied that the charges of LA Language were egregious in that the actual interpreter, John Cho, testified at trial that he was paid only \$140 per visit by LA Language whereby LA Language charged defendants over 100% of that charge or \$350. The WCAB pointed out that Administrative Rule 9795.3 (b) (2) states that interpreter fees "shall be billed and paid at the rate of \$11.25 per quarter hour...with a minimum payment of 2 hours, or at the market rate, whichever is greater." The interpreter shall establish the market rate for the interpreter by submitting documentation to the claims administrator, including a list of recent similar services paid." In its denial of the Petition for Reconsideration the WCAB noted that lien claimant did not sustain its burden of proof pursuant to Administrative Rule 9795.3 (b) (2) and therefore was only entitled to be reimbursed at the rate of \$45 per hour. The WCAB also indicated that lien claimant should have itemized the number of hours spent by their interpreter spent at each doctors appointment as the Board expressed **great doubt** that the interpreter spent exactly the same amount of time at each of the 31 visits. **Although the Chang case is not an en banc decision and binding on all WCJs it can be introduced as evidence pursuant to the provision of LC Section 5703(g) which provides as follows: "The Appeals may receive as evidence...and uses proof of any fact in dispute,...(g)... prior decisions of the Appeals Board upon similar issues..."**

Make mine a double, George