INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: W. Joseph Truce

DATE: October 11, 2002

RE: **COURT OF APPEAL HOLDS THAT A STIPULATION AS TO A FACTUAL ISSUE IS LEGALLY BINDING**

The Court of Appeal in a published decision entitled County of Sacramento v. Workers' Compensation Appeals Board, Glennis Weatherall, Jodie Weatherall (Decedent) 65 CCC 1 has held that a stipulation by an attorney representing a party to a workers' compensation case is **legally bound** by said stipulation.

With tongue-in-cheek the Court of Appeal in the Weatherall case set the tone for its opinion in the following opening comments by Justice Morrison:

"The workers' compensation system is designed to assure benefits to injured workers without the need to resort to a lawsuit. Procedural informality which would make the civil practitioners shudder is normal. But even a 'flexible' system must have structure. Here, the Workers' Compensation Appeals Board...Deprived a party of the benefits of a stipulation. We annul the Board's decision and remand the matter..."

A stipulation is an agreement by the parties as to a factual issue. Stipulations are usually entered into as to date of birth, parts of body injured, earnings, etc. at the Mandatory Settlement Conference. I am enclosing page 2 of the Pretrial Conference Statement and you will note that page 2 calls for stipulations as to jurisdictional facts and after page 2 has been signed by both parties, neither party, absent good cause, can later withdraw from said stipulations.

For example, if the defense medical only records injury to the applicant's low back and not any other part of the body and we stipulate that the applicant's entire spine was injured, then we will be legally bound by this stipulation which includes the applicant's entire spine including the applicant's **cervical spine.**

Paragraph #3 calls for a stipulation to the applicant's earnings as of the date of injury. If we simply stipulate to maximum, we will be legally bound by this stipulation. Although the temporary disability rate is only $490 per week **at this time** (predicated on an actual weekly wage of $735), a stipulation that the applicant's earnings are maximum can well be taken as maximum for all purposes and as the new law which is effective January 1, 2003 increases temporary disability over

the next five years to well over $900, then our client could end up paying the higher temporary disability rate as the applicant's temporary disability increases every two years. **Therefore, in stipulating to the applicant's actual weekly wage on page 2 of the Mandatory Settlement Conference Statement we should never stipulate to maximum. With regards to actual weekly earnings, we want to stipulate as to the applicant's actual weekly wage as verified by our client.**

In the **Weatherall** case the applicant's attorney made the following stipulation at the Mandatory Settlement Conference:

> **"No cumulative trauma has been asserted for the March 16, 1991, massive heart attack, which was claimed as a specific injury, nor has a cumulative trauma claim been asserted for the March 27, 1991, death for which an employee's claim for workers' compensation benefits was filed on June 14, 1995."**

At the time of the stipulation the applicant's attorney was preceding on the theory that the death claim was due to a **"specific job event."**

The workers' compensation judge then issued a decision finding that the death of the employee in question was not "due to a specific job event." The applicant's attorney then petitioned for reconsideration requesting the WCJ to find that the applicant's claim also encompassed a cumulative injury claim.

The Board granted reconsideration and observed that the stipulation that there is no cumulative trauma claim "does not appear to be based upon the evidence..."

In granting defendant's Petition for Writ of Review, the court observed as follows:

> **"The effect of the Board's remand was to invite vacation of the stipulation if it was bad for the worker. That is not the appropriate standard by which a stipulation should be set aside. In an ordinary civil case we observed that 'it is within the discretion of the trial court to disregard a stipulation that has been entered into through inadvertence or mistake of fact...The same 'good cause' rule should apply herein..."**

In the **Weatherall** case the applicant's attorney had apparently substituted in for a previous attorney that represented the applicant.

With regards to this issue, the court in Weatherall made the following observation:

> **"When an attorney steps into an existing case he or she has a duty to review what has transpired, whether the client was previously represented by another attorney or was representing herself. The attorney cannot be blamed for mistakes made by others. But the attorney has a duty to identify those mistakes which may be remedied, and the failure to 'clean up' a case may, of itself, be the new attorneys fault. Here, at a crucial point in the case, applicant's attorney entered into a stipulation in open court. In hindsight, it appears to have impaired applicant's case. But a poor outcome is not a principled reason to set aside a stipulation by counsel (emphasis added)..."**

The court went on to observe that the applicant is not without a remedy:

> **"If it appears that the attorney was negligent in the matter the client's remedy is against him personally...The record is devoid of any reason why the client should not be held to the stipulation..."**

In some of our cases the applicant's attorney, who may be handling three or four cases at once at the Board, may stipulate to an actual weekly wage that is below maximum. At Trial the applicant's attorney will attempt to "remedy his mistake" by raising the issue of earnings.

However, under the court's decision in Weatherall the applicant's attorney would be bound by his stipulation.

WJT:dab