

TIME RECEIVED  
March 30, 2011 10:54:58 AM PDT

FROM FAX NUMBER  
0000000000

DURATION  
166

PAGES  
5

STATUS  
Received

03/30/2011 10:24 0000000000

0000000000 00

PAGE 01/05

1 HON. ELLIOT LEE DAUM  
2 JUDGE OF THE SONOMA COUNTY  
3 SUPERIOR COURT - Courtroom 16  
4 3035 Cleveland Avenue, Suite 200  
5 Santa Rosa, CA 95403  
6 (707) 521-6729

**ENDORSED  
FILED  
MAR 30 2011**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

7  
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

9 REACH AIR MEDICAL SERVICES,

10 Plaintiff,

11 v.

12 STATE COMPENSATION INSURANCE  
13 FUND, et al.,

14 Defendants.

Case No. SCV-248535

ORDER AFTER SUBMISSION ON:

1) DEMURRER OF WAUSAU BUSINESS  
INSURANCE COMPANY, SAFECO  
INSURANCE COMPANY OF AMERICA  
AND ARCH INSURANCE COMPANY TO  
FIRST AMENDED COMPLAINT

2) DEMURRER OF MUNICIPAL  
POOLING AUTHORITY, NORTHERN  
CALIFORNIA CITIES SELF INSURANCE  
FUND, COUNTY OF IMPERIAL, PUBLIC  
AGENCY RISK SHARING AUTHORITY  
OF CALIFORNIA, CITY OF LODI,  
COUNTY OF EL DORADO, COUNTY OF  
SOLANO, CSAC EXCESS INSURANCE  
AUTHORITY, COUNTY OF YUBA,  
COUNTY OF LAKE, CITY OF ALBANY,  
FIRE AGENCIES SELF INSURANCE  
SYSTEM, COUNTY OF ALAMEDA,  
COUNTY OF SONOMA, COUNTY OF  
NAPA, COUNTY OF MARIN, COUNTY  
OF CONTRA COSTS AND SPECIAL  
DISTRICT RISK MANAGEMENT  
AUTHORITY TO FIRST AMENDED  
COMPLAINT

3) DEMURRER OF MAJESTIC  
INSURANCE COMPANY TO FIRST  
AMENDED COMPLAINT

AND NUMEROUS JOINDERS IN  
DEMURRERS TO FIRST AMENDED  
COMPLAINT

DATE: MARCH 23, 2011  
TIME: 3:00 P.M.  
DEPT: 16

1           The Court adopts its tentative ruling sustaining the demurrers without leave to  
2 amend. The Court modifies the last paragraph of the tentative ruling as set forth below:

3           The demurrers of Defendants Wausau Business Insurance Company, Safeco  
4 Insurance Company of America, Arch Insurance Company, Municipal Pooling Authority,  
5 Northern California Cities Self Insurance Fund (NCCSIF), County of Imperial, Public  
6 Agency Risk Sharing Authority of California (PARSAC), City of Lodi, County of El  
7 Dorado, County of Solano, CSAC Excess Insurance Authority, County of Yuba, County  
8 of Lake, City of Albany, Fire Agencies Self Insurance System, County of Alameda,  
9 County of Sonoma, County of Napa, County of Marin, County of Contra Costa, Special  
10 District Risk Management Authority (The "Eighteen Public Entity Defendants"), and  
11 Majestic Insurance Company are sustained without leave to amend.  
12

13  
14           Workers' compensation is the exclusive remedy and the Workers' Compensation  
15 Appeals Board possesses exclusive jurisdiction. The Workers' Compensation Appeals  
16 Board can and does decide issues of federal preemption. But even if the Workers'  
17 Compensation Appeals Board could not decide preemption issues that does not mean  
18 the Superior Court has jurisdiction to do so. The California Supreme Court's decision in  
19 *Greener v. Workers' Compensation Appeals Board* (1993) 6 Cal.4th 1028, upon which  
20 Plaintiff relies, confirms that Plaintiff must pursue its remedies at the Workers'  
21 Compensation Appeals Board, even if doing so would be futile. Plaintiff can thereafter  
22 seek review of the Workers' Compensation Appeals Board's decision by filing a petition  
23 for writ of mandate directly with the Court of Appeal or Supreme Court. Plaintiff cannot,  
24 however, seek relief in this court. The Workers' Compensation Appeals Board is  
25 singularly authorized and qualified to evaluate the merits of Plaintiff's claim.  
26

27           Second, Labor Code §5955 mandates dismissal because it prohibits the Superior  
28 Court from restraining or enjoining the Workers' Compensation Appeals Board or

1 interfering with the performance of its duties. Here, Plaintiff asks the court to declare a  
2 workers' compensation statute unenforceable and determine whether it is entitled to any  
3 additional amounts of workers' compensation benefits. To perform these acts, this  
4 Court would have to impermissibly usurp the Workers' Compensation Appeals Board's  
5 powers.  
6

7 The fact that the Superior Court has original jurisdiction over a declaratory relief  
8 claim is irrelevant. This Court's original jurisdiction over a declaratory relief claim does  
9 not mean that Plaintiff can use such a claim to circumvent the Workers' Compensation  
10 Appeals Board's exclusive jurisdiction or the Act's exclusive remedy provisions. *Greener*  
11 held that the Superior Court lacked jurisdiction to decide a declaratory relief claim, even  
12 though it has original jurisdiction over such claims. The same is true here.  
13

14 Concerning the Eighteen Public Entity Defendants, Plaintiff has failed to allege  
15 facts demonstrating it timely filed a government claim before filing this lawsuit and has  
16 failed to demonstrate that its compliance with the Government Claims Act is excused.  
17 Accordingly, the First Amended Complaint does not state facts sufficient to constitute a  
18 cause of action for its claims of quantum meruit, unjust enrichment and money due on  
19 an open book account in Counts One through Eight and the Eighteen Public Entity  
20 Defendants' demurrer to all counts is sustained without leave to amend.  
21

22 The defendants' demurrers in joinder are sustained without leave to amend.

23 DATED: March 30, 2011

24 

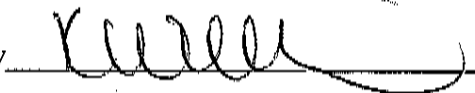
25 ELLIOT LEE DAUM  
26 Judge of the Superior Court  
27  
28

SCV-248535

## PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Drive, Room 107-J, Santa Rosa, CA 95403; that I am not a party to this cause; that I am over the age of 18 years; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of the foregoing attached papers in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: March 30, 2011

JOSÉ OCTAVIO GUILLÉN  
COURT EXECUTIVE OFFICERby 

Deputy Clerk

## --ADDRESSEES--

BOXLEY, NORMAN  
FLOYD SKEREN & KELLY LLP  
81 N MENTOR AVE  
PASADENA, CA 91106FALZETTA, FRANK  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
333 S HOPE ST 43RD FL  
LOS ANGELES, CA 90071-1422FISCHER, JOHN E  
PO BOX 1319  
SACRAMENTO, CA 95812-1319FRANKEL, STEVEN H  
SNR DENTON US LLP  
525 MARKET ST 26TH FL  
SAN FRANCISCO, CA 94105FREITAS, DAVID P  
STATE COMPENSATION INSURANCE FUND  
1275 MARKET ST 3RD FL  
SAN FRANCISCO, CA 94103-1410GARSON, EDWARD P  
WILSON ELSER MOSKOWITZ ELELMAN & DICKER  
525 MARKET ST 17TH FL  
SAN FRANCISCO, CA 94105-2725GOLUB, LARRY  
BARGER & WOLEN LLP  
633 W FIFTH ST 47TH FL  
LOS ANGELES, CA 90071GROTCH, RICHARD G  
CODDINGTON HICKS & DANFORTH  
555 TWIN DOLPHIN DR STE 300  
REDWOOD CITY, CA 94065-2133HAGAN, PATRICK J  
DILLINGHAM & MURPHY LLP  
225 BUSH ST FL 6  
SAN FRANCISCO, CA 94104-4207HSU, LINDA WENDELL  
SELMAN BREITMAN  
33 NEW MONTGOMERY, SIXTH FL  
SAN FRANCISCO, CA 94105KENNEDY, DANIELLE T  
DEWEY & LEOEUF LLP  
1950 UNIVERSITY AVE STE 500  
EAST PALO ALTO, CA 94303-2225KIM, LAURA K  
MUSICK, PEELER & GARRETT LLP  
1 WILSHIRE BLVD STE 2000  
LOS ANGELES, CA 90017-3383

KING, ANDREW  
SEDGWICK DETERT MORAN & ARNOLD LLP  
ONE MARKET PL STEUART TWR 8TH FL  
SAN FRANCISCO, CA 94105

KNEZOVICH, JAMES B  
LAUGHLIN FALBO LEVY & MORESI  
106 K ST FL 2  
SACRAMENTO, CA 95814-3213

KURTZ, RONALD  
LOCKE LORD BISSELL & LIDDELL LLP  
300 S GRAND AVE # 2600  
LOS ANGELES, CA 90071

MCCARTHY, DANIEL B  
11455 EL CAMINO REAL  
SAN DIEGO, CA 92130-2045

MCGREEVY, RICHARD E  
LEACH & MCGREEVY  
2833 LAGUNA ST  
SAN FRANCISCO, CA 94123

MCLEAN, MICHAEL D  
ADELSON, TESTAN, BRUNDO & JIMENEZ  
1851 E FIRST ST # 100  
SANTA ANA, CA 92705

OSTBERG, ERICA L  
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN  
PO BOX 12488  
OAKLAND, CA 94604-2488

POTT, MICHAEL  
PORTER SCOTT APC  
350 UNIVERSITY AVE # 200  
SACRAMENTO, CA 95825

ROMERO, ROBERT J  
HINSHAW & CULBERTSON  
1 CALIFORNIA ST STE 1800  
SAN FRANCISCO, CA 94111-5419

SALVAS, ADAM R  
SEEGER SALVAS LLP  
455 MARKET ST STE 1530  
SAN FRANCISCO, CA 94105

SIEGEL, STEVEN M  
SIEGEL, MORENO & STETTLER, APC  
1011 CAMINO DEL RIO S STE 600  
SAN DIEGO, CA 92108

SPIELFOGEL, DANIEL J  
LAW OFFICES OF DANIEL J SPIELFOGEL  
2660 TOWNSGATE RD # 600  
WESTLAKE VILLAGE, CA 91361

SAFEWAY, INC  
5918 STONERIDGE MALL RD  
PLEASANTON, CA 94588-3229