

DEPARTMENT OF INSURANCE  
ADMINISTRATIVE HEARING BUREAU  
45 Fremont Street, 22nd Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4102 or (415) 538-4251  
FAX No.: (415) 904-5854

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
 ██████████ CONSTRUCTION, INC., )  
 )  
 )  
 Appellant, ) AHB-WCA-05-62  
 )  
 From a Decision of )  
 )  
 THE WORKERS' COMPENSATION )  
 INSURANCE RATING BUREAU, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

APPEAL INCEPTION NOTICE  
AND ABEYANCE ORDER

NOTICE IS HEREBY GIVEN that the above-entitled appeal is considered submitted pursuant to title 10, California Code of Regulations section 2509.53(b) and that this appeal will be assigned for hearing to Chief Administrative Law Judge ██████████, pursuant to title 10, California Code of Regulations section 2509.53(c). All correspondence henceforth should be addressed to Judge ██████████ at the Administrative Hearing Bureau.

The above-entitled case presents an issue that is common to a number of cases



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**ORDER LIFTING ABEYANCE ORDER AND REMANDING TO THE  
WORKERS' COMPENSATION INSURANCE RATING BUREAU**

An Abeyance Order was issued in this matter on November 30, 2005, pending the issuance of the Insurance Commissioner's Order in *Star Roofing Company, Inc. v. WCIRB*, AHB-WCA-04-49. The Insurance Commissioner's order approving the proposed decision after reconsideration in *Star Roofing* was issued on January 24, 2006. The order designated the *Star Roofing* decision as precedential pursuant to Government Code section 11425.60. Consequently, the holdings in *Star Roofing* can be relied upon by Administrative Law Judges in current cases pending before the Administrative

Hearing Bureau (“AHB”).

The *Star Roofing* appeal raised the following legal issues that are common to those raised in a number of other appeals currently before the Administrative Hearing Bureau:

1. Is the WCIRB required to exclude experience data that was reported by an insolvent insurer, after the date of its alleged widespread failure to report experience data to the WCIRB, when promulgating an employer’s experience modification?
2. When is an insurer insolvent for purposes of applying the provisions of Section III, Rule 3 subdivision (f) and Section V, Rule 7 of the California Workers’ Compensation Experience Rating Plan (“ERP”)?
3. What date triggers the notice requirements of Section III, Rule 3 subdivision (f) and Section V, Rule 7 of the ERP?
4. What experience data does the ERP require the WCIRB to use when calculating an experience modification?
5. Should the WCIRB use the experience data proffered by an employer that is not submitted pursuant to the provisions of the California Workers’ Compensation Unit Statistical Reporting Plan (“USR”)?
6. Do grounds exist to grant Star Roofing Company equitable relief from certain provisions of the ERP?

The Insurance Commissioner’s January 24, 2006, order became effective on February 3, 2006, and directed the WCIRB, in part, to recalculate Star Roofing Company’s 2003 experience modification, and to issue it only if the WCIRB’s calculation produced a credit experience modification.

In accordance with the above, IT IS HEREBY ORDERED that the Abeyance Order issued on November 30, 2005, is lifted and that this appeal is remanded to the WCIRB for further action as specified below:

1. The WCIRB shall rescind appellant's experience modification of 189% effective January 1, 2003, and no experience modification shall be published for the periods at issue in this appeal except as provided under paragraph 2 in this order.

2. The WCIRB shall recalculate appellant's experience modification of 189% effective January 1, 2003, if either of the following two conditions is met:

a. the WCIRB, in its discretion, determines the experience data contained in a unit statistical report that was submitted by appellant's insolvent insurer, and that is needed to calculate the experience modification at issue in this appeal, is reliable; or

b. the WCIRB has appropriately used the experience data contained in a corrected unit statistical report that was submitted by appellant's insolvent insurer, and that is needed to calculate the experience modification at issue in this appeal, to calculate a revised experience modification pursuant to Section V, Rule 6 of the California Worker's Compensation Insurance Experience Rating Plan.

3. The WCIRB shall publish a revised Experience Rating Form containing appellant's recalculated experience modification for the period at issue in this appeal only if the WCIRB's recalculation produces a credit modification. If published, the WCIRB also shall file and serve the revised Experience Rating Form.

4. Alternatively, the WCIRB shall file and serve a notice that no experience modification will be re-issued for the period at issue in this appeal if: (a) the WCIRB

determines that a recalculation of the experience modification at issue is not warranted under paragraph 2, or; (b) the WCIRB's recalculation of the experience modification under paragraph 2 does not produce a credit modification.

5. Within thirty days after the WCIRB's service of the appellant's revised Experience Rating Form or the WCIRB's notice that no experience modification will be re-issued, the appellant shall file and serve a notice of intent to withdraw or pursue its appeal. If the appellant elects to withdraw its appeal or fails to give notice as ordered, the AHB file in this matter will be closed. If the appellant elects to pursue its appeal, the notice of intent shall specifically set forth the grounds for the appeal and the remaining issues to be resolved.

Dated: April 7, 2006

A large, dark, irregular redaction mark covers the signature area, obscuring the name of the Chief Administrative Law Judge.

Chief Administrative Law Judge

May 16, 2006

**By Facsimile and U.S. Mail**

David H. Parker, Esq.  
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[REDACTED]  
President  
[REDACTED]  
Legal Projects Manager

**RE: Appeal of [REDACTED]  
CDI File No. [REDACTED] 2  
Bureau No. 4-38-29-58 F**

Dear Mr. Parker:

The Workers' Compensation Insurance Rating Bureau of California (WCIRB) is in receipt of the California Department of Insurance, Administrative Hearing Bureau (CDI/AHB) Order Lifting Abeyance Order and Remanding to the Workers' Compensation Insurance Rating Bureau (Order) dated April 7, 2006. In its Order, the AHB directed the WCIRB to take further action with respect to the appeal of [REDACTED] in light of the decision in *Star Roofing Company, Inc. v. WCIRB* (AHB-WCA-04-49). Specifically, the WCIRB was directed to (1) rescind Felix Haro's January 19, 2003 experience modification; (2) recalculate Felix Haro's January 19, 2003 experience modification if the experience data contained in Unit Statistical Reports (USR) submitted by Reliance National Indemnity Company (Reliance) and Legion Insurance Company (Legion) are deemed reliable by the WCIRB or were used in another experience modification calculation; and (3) publish a revised experience modification including the Reliance and Legion data only if it is a credit modification.

Pursuant to the Order, the WCIRB rescinded [REDACTED] January 19, 2003 experience modification of 189%. As noted in the WCIRB's responses to Felix Haro's Inquiry and Complaint & Request for Action, in order to recalculate [REDACTED] experience modification, several USRs were required. Specifically, the WCIRB required first level USRs for Reliance policies effective May 1, 1998, April 1, 1999 and April 1, 2000 and a first level USR for Legion's policy effective January 19, 2000. The WCIRB has received all USRs with the exception of the USR for Reliance's policy effective April 1, 2000. This USR was never filed with the WCIRB. In this case, even had the WCIRB been able to utilize the Reliance and Legion data from the filed USRs, inclusion of this data in the calculation of the experience modification produces a debit modification of 137%. Pursuant to the Order, such debit modification may not be issued.

By copy of this letter, the WCIRB is notifying [REDACTED] Fund [REDACTED] that Felix Haro's 189% experience modification has been rescinded and that no experience modification will apply effective January 19, 2003 to January 19, 2004. Therefore, [REDACTED] Fund must endorse its January 19, 2003 policy to delete the 189% experience modification.

It appeals that all substantive issues raised in this appeal have been resolved in [REDACTED] favor. Pursuant to the Order, [REDACTED] must file and serve a notice of intent to withdraw or pursue its appeal within thirty (30) days of service of this notice. A simple statement to the effect that [REDACTED] wishes to withdraw its appeal is sufficient. If [REDACTED] does not wish to withdraw its appeal, [REDACTED] must file and serve a notice that it wishes to continue to pursue its appeal and set forth the issues remaining in dispute and the grounds for the appeal.

David H. Parker, Esq.  
Yohman, Parker, Kern, Nard & Wenzel  
May 16, 2006

If you have any questions or if the WCIRB may be of further assistance, please feel free to contact us.

Sincerely,

  
  
Legal Counsel

SAH:meg  
4382958 060516 Felix Haro-CDI Order