

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **JEANNIE KARAISKOS,**

5  
6 *Applicant,*

7 **vs.**

8 **METAGENICS, INC.; CALIFORNIA**  
9 **COMPENSATION INSURANCE CO., In**  
10 **Liquidation; CALIFORNIA INSURANCE**  
11 **GUARANTEE ASSOCIATION; and RISK**  
12 **ENTERPRISE MANAGEMENT LTD.**  
(Servicing Facility),

*Defendant(s).*

**Case No. AHM 70712**

**OPINION AND DECISION  
AFTER RECONSIDERATION  
(EN BANC)**

13  
14 **EFRAIN VIVEROS,**

15 *Applicant,*

16 **vs.**

17 **NORTH RANCH COUNTRY CLUB;**  
18 **CALIFORNIA COMPENSATION**  
19 **INSURANCE CO., In Liquidation; and**  
20 **CALIFORNIA INSURANCE GUARANTEE**  
21 **ASSOCIATION,**

*Defendants,*

**Case No. VEN 102712**

**OPINION AND DECISION  
AFTER RECONSIDERATION  
(EN BANC)**

22 **INTRODUCTION**

23 The California Insurance Guarantee Association (CIGA) is limited to payment of  
24 “covered claims” as defined in Insurance Code section 1063.1, which include workers’  
25 compensation benefits pursuant to subsection (c)(1)(vi) of the statute. However, subsection  
26 (c)(4) provides that “ ‘covered claims’ [do] not include...any obligations to any state...” In these  
27 two cases, the Employment Development Department (EDD), an agency of the State of

1 California, filed liens for Unemployment Compensation Disability (UCD) benefits paid to the  
2 applicants while their workers' compensation claims were pending. (This discussion and  
3 decision are limited to UCD liens and do not involve Unemployment Compensation (UC) liens.  
4 Any reference in this opinion to "EDD's lien" refers to UCD benefits and not to UC benefits.) In  
5 both cases, the same workers' compensation carrier (California Compensation, hereinafter "Cal  
6 Comp") became insolvent and its "covered claims" were taken over by CIGA.

7 In *Karaiskos v. Metagenics, Inc.* (AHM 0070712), the applicant's claim was settled by  
8 Compromise and Release (C&R) with the carrier left to litigate EDD's lien. After the carrier's  
9 insolvency, the workers' compensation administrative law judge (WCJ) made a tentative finding  
10 that CIGA may be liable for EDD's lien, and CIGA sought reconsideration. A panel of the  
11 Workers' Compensation Appeals Board (Board) reversed the WCJ and found that EDD's lien  
12 was an obligation to the state, precluded by Insurance Code section 1063.1(c)(4). Then EDD  
13 sought reconsideration of the Board's decision.

14 In *Viveros v. North Ranch Country Club* (VEN 102712), the WCJ awarded compensation  
15 to the applicant after trial but disallowed EDD's lien pursuant to Insurance Code section  
16 1063.1(c)(4). EDD petitioned for reconsideration of the WCJ's decision.

17 Reconsideration was granted in both cases to study the record concerning CIGA's  
18 potential liability for EDD's liens.

19 Subsequently, because of the important legal issue presented as well as to assure  
20 uniformity of decision in the future, the Chairman of the Board, upon a majority vote of its  
21 members, consolidated these two cases and reassigned them to the Board as a whole for an en  
22 banc decision. (Labor Code, §115.)<sup>1</sup>

23 We conclude that EDD's liens for UCD benefits are not obligations to the state and  
24 therefore are "covered claims" under Insurance Code section 1063.1(c)(1)(vi) for which CIGA  
25 may be liable. When the Board finds CIGA or its insolvent carrier liable for compensation

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26 <sup>1</sup> The Board's en banc decisions are binding precedent on all Board panels and WCJs. (*Gee v. Workers' Comp.*  
27 *Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236, 239, fn. 6]; WCAB/DWC Policy &  
Procedure Manual, Index No. 6.16.1.)

1 against which an EDD lien may be allowed, whether by Findings & Award, Stipulations &  
2 Award, or Order Approving Compromise & Release (OACR), the EDD lien is, in essence, an  
3 “obligation” to the injured worker and not to the “state.” Therefore, Insurance Code section  
4 1063.1(c)(4) does not exclude EDD’s liens from the definition of “covered claims.”

### 5 **BACKGROUND**

#### 6 *Karaiskos v. Metagenics, Inc. (AHM 0070712)*

7 The applicant, Jeannie Karaiskos, filed an application for adjudication of claim alleging  
8 injury on October 5, 1998 to her upper back, neck and shoulder. The application named  
9 Metagenics, Inc. as the employer, insured by Cal Comp. EDD filed a lien in the total amount of  
10 \$2,104.13, representing UCD benefits paid to the applicant during the period November 5, 1998  
11 through February 15, 1999. The applicant and Cal Comp entered into a Compromise and  
12 Release (C&R), agreeing to settle the matter for the lump sum of \$5000.00. EDD’s lien was  
13 listed in an addendum to the C&R, which stated that the lien was “to be negotiated and adjusted  
14 by the defendants outside of the C&R with jurisdiction reserved to the WCAB.”

15 On September 11, 2000, the WCJ issued an Order Approving Compromise and Release.  
16 On September 26, 2000, the Superior National Insurance Group, including Cal Comp (party to  
17 the C&R) was judicially declared insolvent, and CIGA became responsible for Cal Comp’s  
18 “covered claims.” (Insurance Code §§ 1063 *et seq.*)

19 The matter proceeded to a lien trial on January 30, 2001. The parties deferred the issue of  
20 industrial injury and litigated the question of whether CIGA could be held liable for EDD’s lien.  
21 On March 13, 2001, the WCJ found in relevant part that CIGA “may be” required to make  
22 payment to the EDD. The WCJ stated in her Opinion on Decision:

23 “[The WCJ] agrees with the [EDD] that regardless of how the  
24 Courts have ruled on the issues involving subrogation, the lien of  
25 the [EDD] is of a different nature. As argued by the [EDD], this is  
26 actually money that is reimbursed into the account held by a  
27 particular applicant. The [EDD] makes payments to the applicant  
when the defendant does not pay benefits to an injured worker.  
When moneys are reimbursed to the [EDD], these are then put

1 back into the applicant's account from which he or she may draw  
2 at a later date. The [WCJ] agrees that to not allow the applicant to  
3 recover that money that may be paid for future benefits would be  
4 contrary to the express purpose of the creation of CIGA which  
5 was to protect claimants from an insolvent insurance carrier."

6 CIGA sought reconsideration and removal in response to the WCJ's decision, contending  
7 that the duties and obligations of CIGA are imposed by statute not by contract, that CIGA does not  
8 stand in the shoes of the insolvent insurer, that CIGA is permitted to pay only statutorily-defined  
9 "covered claims," that the definition of covered claims is governed by statute, that the State, i.e.,  
10 EDD, is not presenting a claim for compensation benefits, that an obligation to the State is not a  
11 statutorily-defined covered claim, that the State cannot protect an applicant who has knowingly  
12 waived EDD reimbursement rights, that *Burrow v. Pike* (1987) 190 Cal.App.3d 384 does not  
13 apply, that the State, as a governmental insurer, does not have a covered claim, and that since the  
14 State is not the original claimant, it does not have a statutorily-defined covered claim.

15 In a decision dated June 4, 2001, the Board panel then assigned to the matter noted that the  
16 finding CIGA "may be" required to make payment was not a final order. CIGA's petition for  
17 reconsideration was dismissed, and the panel considered the petition for removal on its merits.

18 The panel noted that while subsection (c)(1) of Insurance Code section 1063.1 included  
19 workers' compensation benefits, subsections (3), (4), (5), and (9) indicated that certain obligations  
20 were not covered, including disability insurance, obligations to a state or federal government,  
21 claims asserted by an assignee or by right of subrogation, and obligations of insurers. The panel  
22 also discussed *Burrow v. Pike* (1987) 190 Cal.App.3d 384 and *CIGA v. Argonaut Insurance Co.*  
23 (*McNabb*) (1991) 227 Cal.App.3d 624 [56 Cal.Comp.Cases 104]. The panel found the latter case  
24 more persuasive, and concluded that CIGA was not liable for EDD's lien because EDD is part of  
25 the state government, and its lien was excluded from the definition of covered claims under  
26 Insurance Code section 1063.1(c)(4).

27 EDD timely sought reconsideration of the panel's decision, contending that Insurance Code  
section 1063.1(c)(4) does not apply to EDD's lien, that the injured worker could be deprived of

1 future EDD benefits if the lien was not reimbursed by CIGA, that EDD is not an “insurer,” and that  
2 EDD is not subject to the Insurance Code. CIGA filed an answer.<sup>2</sup> As noted above,  
3 reconsideration was granted in order to allow sufficient opportunity to further study the factual and  
4 legal issues, and it was subsequently determined that an en banc decision would be appropriate on  
5 this issue.

6 Thereafter, the parties were provided an opportunity to file supplemental briefs addressing  
7 the issue of whether or not injured workers’ EDD accounts are specifically reimbursed when a lien  
8 is allowed by the Board and paid by a defendant. The parties were asked to address the issue of  
9 how EDD lien reimbursements are credited to claimants’ EDD “accounts,” and how payment of  
10 benefits affects injured workers’ entitlement to additional benefits.

11 CIGA and EDD filed supplemental briefs. EDD’s brief included attachments in the form of  
12 redacted computer print-outs and excerpts from its “Determinations and Procedures Manual”  
13 (DPM), demonstrating its claims management practices. CIGA filed a Motion to Strike EDD’s  
14 Supplemental Brief, asserting that EDD violated CIGA’s due process rights by referring to  
15 documents that were not open to CIGA’s full inspection. EDD filed a response with a longer but  
16 still redacted version of its DPM, relevant to “overpayments.” The response alleged that the  
17 redactions consisted of sensitive information, because they referred to commands that are used in  
18 EDD’s computer database.

19 CIGA’s Motion to Strike is denied. We agree that EDD’s attachments and DPM contain  
20 proprietary computer information and as such are entitled to protection against unlimited public  
21 disclosure. There is no denial of due process because all relevant documents were served on  
22 CIGA, which had ample opportunity to inspect and rebut them.

23 *Viveros v. North Ranch Country Club (VEN 102712)*

24 The applicant, Efrain Viveros, filed an application for adjudication of claim alleging  
25 injury to his back on June 22, 1996. EDD filed a lien in the total amount of \$8,632.00 for UCD

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26 <sup>2</sup> CIGA’s answer pointed out that EDD’s petition was unverified (Labor Code § 5902), but EDD subsequently filed a  
27 verification, curing the defect. (See *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 [Significant Panel  
Decision].)

1 benefits provided to the applicant from July 9, 1996 through July 15, 1997. The case proceeded  
2 to trial on January 25, 2001, when defense counsel raised the issue of “[t]he non-liability of Cal  
3 Comp as an insurance company in liquidation for payment to EDD for any payments made by  
4 EDD pursuant to the Insurance Code – I believe it’s 10362.1 [sic] – and there’s a subdivision  
5 which provides that a liquidated insurance company does not make payments to the state or  
6 federal agency.” (Minutes of Hearing [MOH] pp. 5:28-6:5.) On April 27, 2001, the WCJ issued  
7 a decision finding that the applicant sustained an industrial injury to his back on June 22, 1996  
8 while employed “as a golf car attendant, by North Ranch Country Club, whose workers’  
9 compensation insurance carrier was [Cal Comp], in liquidation, CIGA[,]”<sup>3</sup> that the injury caused  
10 temporary disability from June 22, 1996 to present and continuing, and that “the [EDD] is not  
11 entitled to reimbursement.”

12 EDD timely sought reconsideration of the WCJ’s decision, contending that it has the right  
13 to recover its lien claim against Cal Comp, and that a new trial was necessary because the issue  
14 of Insurance Code section 1063.1 as a bar to EDD’s lien had not been not raised until the day of  
15 trial. On July 19, 2001, reconsideration was granted to allow sufficient opportunity to further  
16 study the factual and legal issues. As in *Karaiskos*, it was subsequently determined that an en  
17 banc decision would be appropriate, and the parties were provided an opportunity to file  
18 supplemental briefs. Only EDD filed a supplemental brief.

## 19 DISCUSSION

### 20 I. CIGA’s Function

21 In *Carver v. Workers’ Comp. Appeals. Bd.* (1990) 217 Cal.App.3d 1539, 1545 [55  
22 Cal.Comp.Cases 36, 39], the Court of Appeal described CIGA’s function as follows:

23 “CIGA was created in 1969 to protect policyholders and claimants under policies  
24 of insurance issued by insurers who later become insolvent. (§ 1063, subd. (a).) It  
25 provides insolvency insurance to protect the public from insurers who cannot pay  
26 claims by requiring mandatory membership of insurers primarily in the workers’

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27 <sup>3</sup> As noted in the *Karaiskos* case, Cal Comp was declared insolvent on September 26, 2000, and CIGA became responsible for its “covered claims.”

1 compensation, automobile, and other property and casualty lines of insurance. (§  
2 1063, subd. (a).)”

3 While CIGA is in the business of protecting policyholders, claimants, and the public from  
4 the effects of insolvent insurers, it is limited to the payment of “covered claims” as defined in  
5 Insurance Code section 1063.1. (*Isaacson v. CIGA* (1988) 44 Cal.3d 775, 786.) Insurance Code  
6 section 1063.1(c)(1)(vi) provides that in the case of a policy of workers’ compensation insurance,  
7 “covered claims” mean “the obligations of an insolvent insurer...to provide workers’  
8 compensation benefits under the workers’ compensation law of this state.”<sup>4</sup>

9 At issue here is whether the liens of the EDD are “obligations” of CIGA in the context of  
10 subsection (c)(4) of section 1063.1. The full text of the subsection reads as follows:

11 “ ‘Covered claims’ does not include any obligations of the insolvent insurer  
12 arising out of any reinsurance contracts, nor any obligations incurred after the  
13 expiration date of the insurance policy or after the insurance policy has been  
14 replaced by the insured or canceled at the insured's request, or after the insurance  
15 policy has been canceled by the association as provided in this chapter, or after the  
16 insurance policy has been canceled by the liquidator, nor *any obligations to any  
17 state or to the federal government.*” (Italics added.)

## 18 II. EDD is a “State” Agency.

19 Government Code section 12800 provides that the California Health and Human Services  
20 is an agency of California State Government. Section 12803(a) of the Government Code  
21 provides that the EDD is a department of the Health and Human Services Agency. (See also  
22 Unemployment Insurance Code § 301.) The Employment Development Department is a “state”  
23 agency for purposes of construing Insurance Code section 1063.1(c)(4).

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26 <sup>4</sup> In *CIGA v. Workers’ Comp. Appeals. Bd. (Jenkins)* (1992) 10 Cal.App.4th 988, 1000 [57 Cal.Comp.Cases 660,  
27 669], the Court of Appeal stated that “the Insurance Code provisions defining covered claims...must be construed in  
light of the constitutional declaration that it is the public policy of this state that there be adequate insurance coverage  
against liability for workers' compensation. (Cal. Const., art. XIV, § 4.) In enacting the Guarantee Act, the Legislature  
indicated it was mindful of the importance of workers' compensation benefits by expressly excluding such benefits  
from the monetary limitations of coverage [set forth in what is now subdivision (c)(7) of section 1063.]” (Footnote in  
original omitted.)

1 III. How EDD benefits are funded; the nature of EDD Liens.

2 Unemployment compensation (UC) benefits are funded by employer contributions.  
3 (Unemployment Insurance Code § 976.) However, UCD benefits are funded by employee  
4 contributions. (Unemployment Insurance Code §§ 134.5, 984, 3001, 3004, and 3008). Benefits  
5 provided under the Unemployment Insurance Act constitute property rights for purposes of  
6 judicial review. (*Bilyeu v. Unemployment Ins. Appeals Bd.* (1982) 130 Cal.App.3d 657, 661,  
7 citing *Interstate Brands v. Unemployment Ins. Appeals Bd.* (1980) 26 Cal.3d 770, 775-776.)

8 Unemployment Insurance Code section 3001 provides that “[t]he Unemployment  
9 Compensation Disability Fund is continued in existence as a special fund in the State Treasury,  
10 separate and apart from all other public money or funds of this State. The money and assets of  
11 this fund shall be held in trust by the State Treasurer and administered under the direction of the  
12 director exclusively, for the purpose of this part.” Money in the Disability Fund is continuously  
13 appropriated for the purpose of providing disability benefits. (Unemployment Insurance Code §  
14 3012(a).)

15 Unemployment Insurance Code section 2629.1(e) provides in relevant part that “[a]n  
16 employer or insurance carrier who subsequently assumes liability or is determined to be liable for  
17 reimbursement to [EDD] for [UCD] benefits which [EDD] has paid in lieu of other benefits shall  
18 be assessed for this liability by [EDD]...All funds received by [EDD] pursuant to this section  
19 shall be deposited in the Disability Fund.”

20 When a defendant does not pay indemnity benefits to an injured worker while the  
21 workers’ compensation claim is being disputed, the worker may apply to the EDD for UCD  
22 benefits.<sup>5</sup> By law, and assuming the UCD claim is otherwise valid per EDD requirements, the  
23 EDD must pay UCD benefits within 14 days, whether or not the injury is industrially-related.  
24 (Unemployment Insurance Code §§ 2701.5, 2629.1(b).) In order to obtain reimbursement, EDD

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25 <sup>5</sup> The purpose of disability compensation is “to compensate in part for the wage loss sustained by individuals  
26 unemployed because of sickness or injury and to reduce to a minimum the suffering caused by unemployment resulting  
27 therefrom[;]” the provisions governing disability compensation “shall be construed liberally in aid of its declared  
purpose to mitigate the evils and burdens which fall on the unemployed and disabled worker and his family.”  
(Unemployment Insurance Code § 2601.)



1 is permitted to file a lien in the workers' compensation action. (Labor Code § 4904,  
2 Unemployment Insurance Code § 2629.)

3 A lien is a claim for payment of a debt secured by the potential proceeds of the  
4 applicant's claim. The proceeds of a settlement by C&R are "compensation," which is subject to  
5 lien. (*Garcia v. Industrial Acc. Com.* (1953) 41 Cal.2d 689 [18 Cal.Comp.Cases 290].) The  
6 allowance of certain debts against the claimed entitlement facilitates prompt provision of benefits  
7 to injured workers with legitimate claims that are disputed or neglected by the employer or  
8 insurance carrier. (See 2 *California Workers' Compensation Practice* (4th ed., Cont. Ed. Bar  
9 2000) §§ 15.1-15.2.)

10 Workers' compensation liens are limited to those authorized by statute. Under Labor  
11 Code section 4903(f), the WCAB "may" allow a lien for UCD benefits paid by EDD. Though  
12 the word "may" is permissive, a lien can be denied only on proper grounds. (2 *California  
13 Workers' Compensation Practice* (4th ed., Cont. Ed. Bar 2000) § 15.88, citing *Garcia v.  
14 Industrial Acc. Com. (Santiago)* (1958) 162 Cal.App.2d 761 [23 Cal.Comp.Cases 149].)

15 Liens for UCD benefits are allowed "in the amount of benefits which [the Board] finds  
16 were paid for the same day or days of disability for which an award of compensation for any  
17 permanent disability indemnity resulting solely from the same injury or illness or temporary  
18 disability indemnity, or both, is made and for which the employer has not reimbursed [EDD]  
19 pursuant to Section 2629.1 of the Unemployment Insurance Code." (Labor Code § 4904.)

#### 20 21 IV. How EDD Administers UCD claims.

22 As shown below, EDD pays UCD benefits to an eligible disabled claimant as long as  
23 there are funds in the claimant's "claim balance." When a claimant exhausts the "maximum  
24 amount of benefits," no further UCD benefits are payable even if the claimant continues to be  
25 disabled. But if money is reimbursed by a defendant based on the allowance of an EDD lien, that  
26 restored amount is added to the "claim balance," and additional UCD benefits may be paid, up to  
27 that balance, if the claimant is disabled and otherwise eligible.

1           When an injured worker makes a claim for UCD benefits, EDD determines the “disability  
2 base period,” the “maximum amount of benefits” payable during the disability benefit period,  
3 and the worker’s “weekly benefit amount.” (See Unemployment Insurance Code §§ 2610, 2653,  
4 2655.) For a particular claim, the maximum benefit amount does not change after the claim is  
5 established. UCD benefits are paid out of the maximum benefit amount, leaving a “claim  
6 balance” that is reduced as additional UCD payments are made. The “weekly benefit amount” is  
7 calculated by reference to the quarter of the worker’s “disability base period” in which wages  
8 were the highest. (Unemployment Insurance Code §§ 2610, 2655.) Pursuant to Unemployment  
9 Insurance Code section 2777, the “disability base period” excludes those quarters during which  
10 the claimant was industrially disabled for 60 days or more, for which is substituted an equal  
11 number of quarters immediately preceding the commencement of his or her industrial disability.

12           EDD’s procedures for handling reimbursement of its liens are set forth in its DPM,  
13 sections 709.1 through 709.14. In EDD parlance, reimbursements of its liens by workers’  
14 compensation carriers are called “third party overpayments” because the carrier is a party other  
15 than the claimant. (DPM § 709.1.) When EDD receives payment on a lien, a “third party  
16 overpayment” is established on the claimant’s account, which enables EDD to accept money for  
17 that claim. A third party overpayment is established when EDD settles its lien with the defendant  
18 or when the WCAB awards reimbursement to EDD. (DPM § 709.2.) EDD maintains various  
19 computer codes in its automated benefit system for different types of “third party overpayments.”  
20 For instance, Code 11 is used for the majority of third party overpayments and applies when  
21 reimbursement for UCD benefits is negotiated or the WCAB awards EDD reimbursement  
22 without interest. The amount of reimbursement received is restored to the injured worker’s  
23 “claim balance.”<sup>6</sup> (DPM § 709.3.) If UCD benefits were exhausted prior to a reimbursement of  
24 the worker’s “claim balance” and the worker remained disabled, then EDD mails to the worker a

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26 <sup>6</sup> For purposes of illustration, EDD’s supplemental brief mentions an example in which the claimant’s maximum  
27 benefit amount is \$17,000.00. Assuming EDD pays \$17,000.00 in benefits, the claimant’s “claim balance” becomes  
zero. If EDD files a lien claim for \$17,000.00 and is reimbursed in the amount of \$8,500.00, the “claim balance” is  
partially “restored” leaving \$8,500.00 available for further benefits.

1 “Notice of Potential Entitlement to Further Benefits” (form “DE 2578F”). The notice is sent  
2 “because the claim balance has been restored,” and the worker “is potentially eligible for  
3 additional benefits.” (DPM § 709.10(2)(e).) Thus, form DE 2578F advises the worker that EDD  
4 has been reimbursed for benefits advanced under the Unemployment Insurance Code, and the  
5 worker may be eligible for additional UCD benefits.

6 In summary, the injured worker’s “claim balance” (i.e. UCD account) is restored when an  
7 EDD lien is reimbursed by a defendant for contemporaneous periods of industrial disability per  
8 Labor Code section 4904. Because the worker’s “claim balance” with EDD has been restored,  
9 additional UCD benefits may be available for subsequent disabilities.

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11 V. Insurance Code section 1063.1(c)(4) does not relieve CIGA of liability for EDD liens  
12 because the liens are obligations to injured workers, not to the State.

13 Insurance Code section 1063.1(c)(4) provides that CIGA’s liability for “covered claims”  
14 does not include “any obligations to any state.” Yet when EDD, a state agency, is reimbursed  
15 pursuant to its lien, the reimbursement is for benefits the Board has found to be the liability of  
16 the defendant. In a particular case, the lien represents UCD benefits paid by EDD from the  
17 injured worker’s “claim balance,” funded by the worker’s contributions and depleted pending  
18 adjudication or settlement of the worker’s compensation claim. The carrier’s reimbursement of  
19 the lien results in restoration of the “claim balance,” which then becomes available for additional  
20 UCD benefits. Restoration of the “claim balance” returns the injured worker to the position he or  
21 she would have occupied as a UCD claimant had the defendant paid benefits in the first instance.  
22 Thus, the reimbursement of an EDD lien is payment of workers’ compensation benefits, and  
23 CIGA’s obligation is to the injured worker rather than EDD. Therefore, Insurance Code section  
24 1063.1(c)(4) does not relieve CIGA of liability for the lien.

25 This conclusion is consistent with EDD’s overall funding scheme. Unemployment  
26 Insurance Code section 3012(a) provides that all money in the Disability Fund is continuously  
27 appropriated for the purpose of providing disability benefits. Unemployment Insurance Code

1 section 2629.1(e) provides that all lien funds received by the EDD are deposited in the Disability  
2 Fund. Subdivision (f) of the statute provides that “[t]he employer shall reimburse [EDD] in  
3 accordance with subdivision (e) within 60 days of either voluntarily accepting liability for other  
4 benefits or after a final award, order, or decision of the [WCAB].” When the defendant is liable  
5 for reimbursement, it is restoring benefits derived from the employee’s contributions to the  
6 Disability Fund. Therefore, CIGA’s duty to reimburse EDD liens on behalf of the insolvent  
7 workers’ compensation carrier may properly be described as an obligation to the injured worker,  
8 not to EDD. Since the obligation is to the injured worker and not to the “state,” the exclusion in  
9 Insurance Code section 1063.1(c)(4) does not relieve CIGA from liability for EDD’s liens, which  
10 constitute “covered claims” under subsection (c)(1)(vi) of the statute.

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12 VI. Discussion of *Burrow v. Pike* (1987) 190 Cal.App.3d 384 and *CIGA v. Argonaut*  
13 *Insurance Co. (McNabb)* (1991) 227 Cal.App.3d 624 [56 Cal.Comp.Cases 104].

14 In *Burrow v. Pike* (1987) 190 Cal.App.3d 384, an employee of the California State  
15 Department of Transportation (DOT) was hit by a truck and sued the third party, whose insurer  
16 became insolvent, followed by CIGA’s administration of its “covered claims.” The DOT filed a  
17 lien in the third party civil case for reimbursement of the workers’ compensation benefits that DOT  
18 paid to its injured employee. Based on a stipulated credit as to the value of the workers’  
19 compensation benefits, the trial judge “extinguished” DOT’s lien. The DOT appealed, in response  
20 to which CIGA contended that the DOT’s lien was not a “covered claim” because it was an  
21 obligation owed to the state and it was asserted by subrogation. (At the time, these two exclusions  
22 were set forth in Insurance Code section 1063.1, subsections (c)(3) and (c)(7)(b), respectively.)  
23 The Court of Appeal reversed the trial judge and rejected CIGA’s contentions based on the  
24 following public policy rationale:

25 “In light of the obvious social importance of the policies which underlie the  
26 statutory provisions for reimbursement of workers' compensation benefits, even if  
27 characterized as subrogation, there is certainly a clear legislative policy militating  
in favor of reimbursement whenever possible. That policy distinguishes this  
'subrogation' from the more traditional concept common in the insurance

1 industry. This is not a case of one insurance company recouping its losses at the  
2 expense of fellow members of the industry. It is evident that permitting  
3 reimbursement for workers' compensation benefits even though the tortfeasor's  
4 liability insurer may have become insolvent will further the purpose for which  
CIGA was created, i.e., protection of the injured public, not other insurance  
companies, from insolvencies in the industry...

5 “If the Legislature determines that exclusion of subrogated claims from covered  
6 claims in the CIGA legislation should include claims for reimbursement of  
7 workers' compensation benefits, the Legislature may incorporate such a provision  
8 into Insurance Code section 1063.1. Until...the Legislature does so, we believe  
9 the policy which justifies reimbursement of workers' compensation benefits for  
10 the good of employer and employee alike outweighs the policy underlying the  
11 statutory exclusions on which defendants rely, i.e., that neither solvent insurance  
12 companies nor state agencies should be allowed to recoup their losses, occasioned  
13 when a member insurer becomes insolvent, from those funds earmarked to pay  
14 claims of injured individuals otherwise unable to recover from the insolvent  
15 member.” (190 Cal.App.3d at pp. 399-400.)

16 For reasons similar to the reasons stated by the Court above, we reject the contentions made  
17 by CIGA in its prior petition for reconsideration/removal in *Karaiskos* that EDD’s lien is not a  
18 “covered claim” because it is an obligation arising from disability insurance excluded by  
19 subsection (c)(3)(i) of Insurance Code section 1063.1, because it is a claim by a governmental  
20 insurer excluded by subsection (c)(5) of the statute, and because it is a subrogation claim excluded  
21 by subsection (c)(9)(ii) of the statute. Here, as in *Burrow*, CIGA’s reimbursement of EDD is not a  
22 case of one insurance company recouping its losses at the expense of fellow members of the  
23 industry. EDD is not a “member insurer” of CIGA. (See Insurance Code §§ 1063(a), 1063.1(a).)  
24 Moreover, as noted above, the reimbursement of EDD’s lien is payment of workers’ compensation  
25 to the applicant and to the applicant’s account.

26 The policy considerations that prevailed in *Burrow* were rejected in *CIGA v. Argonaut*  
27 *Insurance Co. (McNabb)* (1991) 227 Cal.App.3d 624 [56 Cal.Comp.Cases 104], but we find the  
latter case distinguishable for the reasons stated below. In *McNabb*, the injured employee filed a  
workers’ compensation claim against his employer in addition to a third party action for injury  
sustained in a car accident. Argonaut provided workers’ compensation benefits to the injured  
employee. The third party’s insurer was Cal Farm, which became insolvent, followed by CIGA’s

1 administration of its “covered claims.” Argonaut filed a lien in the third party case for the  
2 workers’ compensation benefits it had paid. The third party case was settled, and Argonaut  
3 claimed reimbursement from CIGA. CIGA asserted that Argonaut’s lien was not a “covered  
4 claim” because it was made by right of subrogation and it was an obligation to another insurer.  
5 The Court of Appeal held that Insurance Code section 1063.1 (as then written) did not permit  
6 reimbursement of Argonaut’s lien because subsection (c)(4) excluded obligations to insurers and  
7 subsection (c)(9)(ii) excluded claims made by right of subrogation.

8 *McNabb* is distinguishable, however, because there the statutory exclusions involved  
9 obligations to insurers and claims made by right of subrogation, while in the present cases EDD’s  
10 liens are claims against the applicants’ recoveries, not against CIGA. Though EDD is charged with  
11 providing social benefits to employees, it does not collect premiums from insureds, it does not pay  
12 premiums to CIGA, and it is not a “member insurer.” (Insurance Code §§ 1063(a), 1063.1(a).)  
13 EDD’s claim is by way of lien, not by right of contribution, indemnity or subrogation. Benefits  
14 paid by EDD comprise a lien against compensation in an applicant’s workers’ compensation case.  
15 An applicant is allowed to proceed against CIGA when a workers’ compensation carrier becomes  
16 insolvent, but any recovery is subject to EDD’s lien. If an applicant recovers on the workers’  
17 compensation claim, EDD’s lien attaches to that recovery. If an applicant does not recover, then  
18 EDD does not recover, and the applicant is not obligated to reimburse EDD.

19 In dicta, the *McNabb* Court stated that it did not find a difference whether the method for  
20 recovery is by intervention or by lien and that its analysis would not differ depending on whether  
21 the party seeking reimbursement was an insurer or the state, because both are excluded from  
22 “covered claims.” (227 Cal.App.3d at p. 633, fn. 7 [56 Cal.Comp.Cases at p. 112, fn. 7].) We  
23 follow *Burrow*, however, because it is the only appellate decision that specifically addresses  
24 whether the lien of a state agency is an ‘obligation to a state’ excluded from the definition of  
25 “covered claims” by Insurance Code section 1063.1(c)(4).<sup>7</sup>

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26 <sup>7</sup> In *County of Orange v. FST Sand & Gravel, Inc.* (1998) 63 Cal.App.4th 353, the Court held that although an  
27 insolvent insurer’s obligations to “any state or to the federal government” are excluded under section 1063.1(c)(4),  
obligations to local governmental bodies are not. In *North Orange Comm. Coll. Dist. v. CM School Supply Co.* (1998)

1 VII. Summary and Disposition

2 CIGA is liable only for “covered claims,” which do not include “any obligations to any  
3 state.” (Insurance Code section 1063.1(c)(4).) But where EDD has paid UCD benefits to an  
4 injured worker and CIGA or its insolvent carrier is subsequently found liable for compensation,  
5 whether by adjudication or approved settlement, we conclude that EDD is entitled to  
6 reimbursement from CIGA as a lien against the injured worker’s compensation. This conclusion is  
7 based on the nature of a workers’ compensation lien and the nature of EDD’s funding and claims  
8 administration.

9 Liens filed by the EDD represent benefits paid on account of an industrial injury. “Covered  
10 claims” include “the obligations of an insolvent insurer...in the case of a policy of workers’  
11 compensation insurance, to provide workers’ compensation benefits under the workers’  
12 compensation law of this state.” (Insurance Code section 1063.1(c)(1)(vi).) Although EDD is an  
13 agency of the “state” within the meaning of Insurance Code section 1063.1(c)(4), it is essentially  
14 advancing workers’ compensation benefits on behalf of the defendant. When EDD’s lien is  
15 allowed, the benefits advanced by EDD are within the definition of covered claims as set forth in  
16 Insurance Code section 1063.1(c)(1)(vi). CIGA’s obligation to reimburse EDD’s UCD liens is not  
17 an ‘obligation to the state,’ but rather a benefit provided under the workers’ compensation law and  
18 a proper obligation of a covered claim for which CIGA is responsible.

19 When the Board allows a lien against CIGA for UCD benefits paid by EDD, the injured  
20 worker has a property interest because reimbursement will restore the worker’s “claim balance”  
21 should the worker become disabled in the future. On the other hand, if the worker’s “claim  
22 balance” with EDD is not restored and the worker suffers a subsequent disability, further UCD  
23 benefits may not be available because the “claim balance” will have been exhausted following  
24 CIGA’s failure to satisfy its liability. We see no justification for allowing CIGA to reduce the  
25 liability it otherwise would incur, on grounds that EDD rather than the insolvent carrier provided

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26  
27 63 Cal.App.4th 362, the same holding was applied to a local community college district. The two cases are not  
germane here, as EDD is an agency of the “state.”

1 compensation. If that were the case, CIGA would have a significant incentive to reduce its liability  
2 by forcing injured workers to seek benefits from EDD. Insurance Code section 1063.1(c)(4) does  
3 not require such a result.

4 The *Karaiskos* case was settled by OACR. Insurance Code section 1063.1(c)(4) does not  
5 except EDD's lien from the definition of "covered claims." Therefore, if EDD can prove the  
6 applicant sustained an industrial injury, its lien is a "covered claim" for which CIGA is liable.  
7 However, the issue of industrial causation and the nature and extent of injury have yet to be  
8 litigated. We will amend the WCJ's decision in *Karaiskos* to provide that EDD's lien is not barred  
9 by Insurance Code section 1063.1(c)(4), and return the matter to the trial level for further  
10 proceedings and new decision by the WCJ on the issue of industrial injury and, if appropriate, the  
11 extent of reimbursement to EDD.

12 In *Viveros*, the matter proceeded to trial and the WCJ awarded compensation, but he  
13 disallowed EDD's lien. The only issue raised upon reconsideration was whether CIGA is liable for  
14 EDD's lien. We hold that it is, and we will amend the WCJ's decision to reverse his disallowance  
15 of EDD's lien. The extent of reimbursement is to be adjusted by the parties consistent with Labor  
16 Code section 4904.

17 For the foregoing reasons,

18 **IT IS ORDERED**, that as the Decision After Reconsideration of the Board (En Banc) in  
19 *Karaiskos v. Metagenics, Inc.* (AHM 0070712), the "Opinion and Order Dismissing Petition for  
20 Reconsideration, Granting Petition for Removal, and Decision After Removal" of June 4, 2001 is  
21 **RESCINDED**, and the Findings and Order issued by the WCJ on March 13, 2001 is  
22 **REINSTATED AND AFFIRMED**, except that Finding no. 4 is **AMENDED** to read as follows:

23 "4. Insurance Code section 1063.1(c)(4) does not bar EDD from pursuing its lien  
24 against CIGA. The issues of industrial injury and the extent of EDD's recovery (if any) are  
25 deferred pending further proceedings and determination by the WCJ, jurisdiction reserved."

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27 ///



1 **IT IS FURTHER ORDERED**, that as the Decision After Reconsideration of the Board  
2 (En Banc) in *Viveros v. North Ranch Country Club* (VEN 102712), the Findings and Award issued  
3 by the WCJ on April 26, 2001 is **AFFIRMED**, except that Finding no. 10 is **AMENDED** to read  
4 as follows:

5 “10. The lien of the Employment Development Department is hereby allowed and shall  
6 be adjusted by the parties consistent with Labor Code section 4904, with jurisdiction reserved  
7 absent adjustment.”

8 ***WORKERS' COMPENSATION APPEALS BOARD (EN BANC)***

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11 ***MERLE C. RABINE, Chairman***

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14 ***COLLEEN S. CASEY, Commissioner***

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17 ***JAMES C. CUNEO, Commissioner***

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20 ***WILLIAM K. O'BRIEN, Commissioner***

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23 ***FRANK M. BRASS, Commissioner***

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26 ***JANICE J. MURRAY, Commissioner***

27  
28 ***DATED AND FILED IN SAN FRANCISCO, CALIFORNIA***

29 ***7/15/02***

30 ***SERVICE BY MAIL ON SAID DATE TO ALL PARTIES SHOWN ON THE OFFICIAL ADDRESS RECORD***  
31 ***EXCEPT THE LIEN CLAIMANTS.***

32 ***tab***