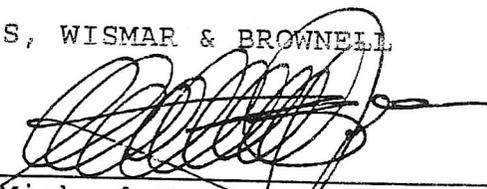


1 3. Wherefore, employer and it's carrier in the workers'
2 compensation claim referenced above hereby Petition for
3 Credit/Offset of it's liability as to any additional compensation
4 benefits payable pursuant to the Labor Code in said net amount of
5 \$128,910.35.

6 Dated: 12/19/98

7
8 Respectfully submitted,

9 JONES, WISMAR & BROWNELL

10 
11 _____
12 By: Michael E. Jones

13
14 IT IS SO ORDERED:

15 Dated:

16
17 _____
18 Judge, Workers' Compensation Appeals Board
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VERIFICATION

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, the undersigned, declare:

I am the Attorney for Defendant of the above-entitled action.

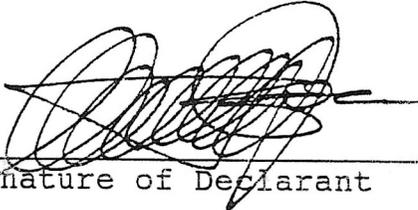
I have read the foregoing:

PETITION FOR CREDIT AND ORDER

and know the contents thereof; and the same is true of my knowledge, except as to the matters which are therein stated upon my information and belief, and to those matters, I believe to be true.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 18, 1998



Signature of Declarant

MICHAEL E. JONES
Type or Print Full Name
of Declarant

1 JONES, WISMAR & BROWNELL
2 By Michael E. Jones, Esq.
3 CA Bar Number 54931
4 3737 Camino del Rio South, Suite 106
5 San Diego, CA 92108
6 (619) 280-3535

7 Attorney for Defendant

8 BEFORE THE WORKERS' COMPENSATION APPEALS BOARD
9 STATE OF CALIFORNIA

10 RICK A. HOLLIFIELD,
11 Applicant.

12 v.

13 KVAAS CONSTRUCTION CO./MWWD,
14 ARGONAUT INSURANCE CO.,
15 Defendants.

)
)CASE NO. SDO 222978
)
)
)POINTS & AUTHORITIES
)IN SUPPORT OF REQUEST
)FOR ORDER FOR CREDIT
)
)
)
)

16
17 COMES NOW DEFENDANT, and submits for consideration and in
18 support of its Request for Order Granting Credit, the following
19 Points and Authorities:

20 1. In Hanna, California Law of Employee Injuries and
21 Workers' Compensation, in Section 31.14[2], it is stated:

22 "The Appeals Board is required to allow the employer a
23 credit against the employers compensation liability for
24 the amount of any third party recovery by the employee
25 for his or her injury, whether by suit or settlement,
26 after the payment of litigation expenses and attorney's
fees".

1 2. Labor Code Section 3861 indicates:

2 "The Appeals Board is empowered to and shall allow, as a
3 credit to the employer to be applied against his
4 liability for compensation, such amount of any recovery
5 by the employee for his injury, whether by settlement or
6 after judgment, as has not theretofor been applied to the
7 payment of expenses or attorney's fees ...".

8 3. In the case of Cochran v. WCAB(1990) 55 ccc 93, the court
9 stated that:

10 " ...Credit for the injured employees net third party
11 recovery is applied against the employer's liability for
12 compensation and that such compensation includes all
13 benefits payable under the Labor Code ...".

14 4. In the case of Foote v. WCAB(1986), it was held that:
15 Defendant was allowed a credit for applicant's third
16 party recovery as against defendant's liability for
17 compensation, which was already due but remained unpaid
18 at the time of the third party settlement, as well as
19 against future compensation".

20 5. In a more recent case, Mares v. WCAB(1995) 60 ccc 1045,
21 the court considered an argument that benefits payable as
22 compensation prior to settlement of a third party action should not
23 be subject to such credit and rejected that notion.

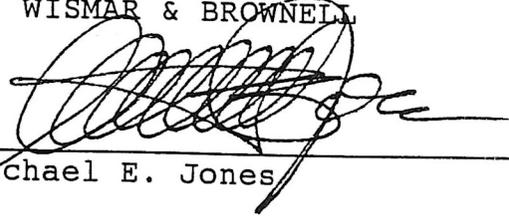
24 WHEREFORE, defendants submit these Points and Authorities for
25 further consideration, urge decision on the pending Order for
26 Credit on the basis of these Authorities.

/ / / / / / / / / / / /

Dated:

Respectfully submitted,

JONES, WISMAR & BROWNELL

A handwritten signature in black ink, appearing to read "Michael E. Jones", is written over a horizontal line. The signature is stylized and somewhat cursive.

By: Michael E. Jones

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PROOF OF SERVICE BY MAIL
1013a, 1015.5, C.C.P.

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of **SAN DIEGO**, state of California. I am over the age of 18 and not a party to the within action. My business address is **3737 Camino del Rio South, Suite 106, San Diego, California 92108**.

On 12/24/98, I served the foregoing document described as PETITION FOR CREDIT AND ORDER, POINTS & AUTHORITIES IN SUPPORT OF REQUEST FOR ORDER FOR CREDIT in this action
[] by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

[X] by placing [] the original [X] a true copy thereof enclosed in sealed envelopes addressed as follows:

[X] BY MAIL
DIANNA CUMPIAN
ARGONAUT INSURANCE CO.
9191 TOWNE CENTRE DR. #375
SAN DIEGO, CA 92122

DEAN GOETZ, ESQ.
ATTY. FOR APPLICANT
603 NO. COAST HWY 101 #H
SOLANA BEACH, CA 92075

MARY P. CLARK
ATTY. FOR [REDACTED]
275 E. DOUGLAS AVE. #104
EL CAJON, CA 92020

[X] I deposited such envelope in the mail at **SAN DIEGO**, California. The envelope was mailed with postage thereon fully prepaid.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Sharon L. Kent
SHARON L. KENT

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No. SD 0222978

ORDER OF CREDIT

RICK A. HOLLIFIELD,

Applicant,

vs.

KVAAS CONSTRUCTION COMPANY,

Defendants.

Petition for credit having been filed on 12-30-98 and,

Good Cause Appearing,

It Is Hereby Ordered that defendant, Argonaut Insurance Company be and hereby is allowed a credit in the net amount of \$128,910.35, unless good cause to the contrary is shown in writing within fifteen (15) days of service hereof.



KEITH F. DIETTERLE
Workers' Compensation Administrative Law Judge

Filed and Served by mail on: 1/23/99
On all parties on the
Official Address Record.
By: C. Luce