

State: CA

Judge Signs Injunction, Dismisses 2 Activation-Fee Claims: WEST [2013-11-15]

A federal judge prohibited the California Division of Workers' Compensation from collecting the \$100 activation fee or dismissing "unactivated" liens until he rules on whether the fee created by Senate Bill 863 violates the equal protection provisions of the U.S. Constitution.

U.S. District Court Judge George H. Wu on Nov. 12 granted a preliminary injunction in *Angelotti Chiropractic v. Baker* that prohibits the division from enforcing the activation-fee language in Senate Bill 863 and codified in Labor Code Section 4903.06.

The injunction will take effect Nov. 19, seven days from the date Wu signed the order.

In addition to issuing the injunction, Wu also dismissed with prejudice the plaintiffs' unconstitutional taking of private property and due-process claims.

However, the judge will allow the plaintiffs to proceed with their claim that forcing individual providers to pay the activation fee while exempting insurance companies, health plans and hospitals violates the equal protection clauses of the 5th and 14th amendments.

The injunction granted by Wu applies to all lien claimants in the state and prohibits the DWC from collecting the \$100 activation fee or requiring claimants to provide proof of paying the fee when filing a declaration of readiness to proceed. Additionally, the division is enjoined from dismissing a lien because the activation fee was not paid prior to the time of a lien conference or prior to Jan. 1, 2014.

SB 863 orders every lien that has not been activated to be dismissed by operation of law at the start of 2014.

DWC spokeswoman Erika Monterroza said Thursday in an email the division will comply with the court's order and "is considering options on whether to appeal."

The plaintiffs in the case are providers of medical and ancillary services who collectively hold more than 33,000 pending liens. Paying the \$100 activation fee on every claim before the end of the year is cost-prohibitive, they say.

In a tentative ruling dated Nov. 4, Wu said he was not convinced that the plaintiffs identified a property interest recognized under California law to support their takings-clause claim.

The judge also said the plaintiffs can't assert a viable due-process claim because they have not been deprived of their liens and are free to decide whether they want to pay the \$100 fee to preserve their claims.

However, Wu said the equal protection claim has merit because he does not see a rational relationship between eliminating the backlog of liens in the system and exempting some types of lien claimants from paying the fee.

The defendants said in their motion to dismiss filed in September that the fee was a “rational response” intended to eliminate the backlog of liens that “threatened the functioning of the entire workers’ compensation system” while also helping to “weed out frivolous lien disputes.”

Wu said in his tentative decision that “the backlog is the backlog,” and that “it makes little sense to clear only part of it.”

If the exempted types of lien claimants are not causing the backlog, Wu said it is possible that other lien claimants who are also not contributing to the backlog are nonetheless being forced to pay the activation fee.

During a hearing on Nov. 7, plaintiffs' attorney Glen Summers said that Kaiser Health System and Anthem Blue Cross are No. 6 and No. 7, respectively, in terms of the most prolific lien filers in the state, yet both are exempted from paying the activation fee.

A status conference in the case has been scheduled on Dec. 23 at 8:30 a.m.

The plaintiffs in the case are Angelotti Chiropractic, Mooney & Shamsbod Chiropractic, Christina Arana & Associates, Joyce Altman Interpreters, Scandoc Imaging, Buena Vista Medical Services and Dr. David H. Payne.

The defendants are Department of Industrial Relations Director Christine Baker, DWC Acting Administrative Director Destie Overpeck and Workers’ Compensation Appeals Board Chairwoman Ronnie Caplane.

The order signed by Wu on Tuesday is [here](#).

Proposed injunction language that was agreed to by both parties can be viewed [here](#).

Source: WorkCompCentral