



LAW OFFICES
of
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CASES & COMMENTS ON WORKERS' COMPENSATION

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FROM EAMS TO LIENS...SOME THINGS YOU SHOULD KNOW

EAMS 'WENT LIVE'

Or did it? Well, perhaps partly. To paraphrase one of our favorite lines from "The Princess Bride," there's live, and there's *mostly* live. In point of fact, use of the new electronic OCR forms is not yet legally mandatory, but the WCAB is asking everyone to voluntarily use them as well as the proposed procedures for filing the forms and other documents. The Rules and Regulations are expected to be approved by the Office of Administrative Law by 10/25/08, at which point you will be required to use them and follow the new rules if you want anything to get into a WCAB file (including evidence and settlements).

EAMS "went live" on August 25th, and the WCAB staff and judges are attempting to work with the system at this time with varying degrees of success, depending on which WCAB office we look at, and even which judge. As predicted in our last newsletter, things have slowed way down at the local boards while they take the giant leap into the world of technology. One local Board has asked parties not to file ANY documents at

the MSC or before, but rather to bring them to trial (at which point they would presumably have to be scanned before the case could be tried). Another local Board is refusing to accept documents until after trial. Yet another Board is insisting on having the documents filed at the MSC. Another local Board is attempting to embrace the system with vigor, but our associates report that it took one of the most computer savvy judges there 25 minutes to enter a simple disposition into the system. Still another local WCAB office has reportedly invented its own form for filing so-called "legacy" documents.

While EAMS was created to help eliminate the paper chase at the WCAB, it has created additional complexity, paper and time for the outside users of the system including your counsel and claims departments. We now have more forms, new jargon, and different procedures at each WCAB office to navigate. And the "paperless system" requires more paper than ever to properly get evidence filed.

Are you EAMS compliant? Need some input?

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We are happy to provide assistance and training for our clients. Now is the time to learn, because by the expected date of October 25th, errors will no longer be “harmless.”

TAKING ON THE LIENS?

We encourage our clients to engage in reasonable and practical methods to keep costs down in litigated cases. While we and other defense counsel stand ready and able to take on lien litigation, one of the most common techniques many claims departments employ is to handle lien negotiations “in house” when the case in chief is resolved with the injured worker. Your counsel is required to address all lien claims of record prior to submitting a settlement for approval, but as you may know, not all liens can be successfully resolved with the case in chief. Here are a couple of tips to help you work with counsel in the most cost efficient manner:

First, as you receive bills and liens during the life of the underlying case, send them to your counsel along with your objection, EOB or payment information. That way, when the attorney is required to contact the lien claimants prior to getting the settlement approved, the attorney has information to help negotiate the liens and perhaps resolve them. Many clients just send the objection letters, which delays the settlement process.

Second, when the decision is made to handle any remaining liens in the claims department, you and your counsel should execute a Substitution of Attorneys in favor of your company *in pro per*, or a Dismissal of Attorney form.

Section 10774 of the Rules of Practice and Procedure for the WCAB requires compliance with Code of Civil Procedure, Sections 284, 285 and 286. A review of the CCP Code Sections

and the case annotations for them suggest that the Substitution is not only for the benefit of your counsel, but also for your benefit. Without the formal filing and service of a Substitution of Attorneys, a lien claimant can avoid making service of documents on you. If they continue to serve or contact your counsel, you may end up with unnecessary costs as your counsel will have to review and respond in some way to the communication. In addition, your counsel is not relieved of the duty to appear at forthcoming lien conferences or hearings unless the signed substitution or dismissal has been filed with the WCAB.

EMERGING EDD PROBLEM

Speaking of liens, our associates report an emerging problem with Employment Development Department. EDD is making off with settlement money otherwise payable to the injured worker, thus making settlements close to impossible in many instances.

We have discovered several cases where EDD has continued payment of State Disability Benefits at the injured worker’s temporary disability rate, even after the applicant has been declared Permanent and Stationary (or MMI) by the treating physician or Qualified or Agreed Medical Examiner. EDD may also continue payments of State Disability when the 104 week limit on temporary disability has been reached pursuant to LC 4656(c) and Permanent Disability advances are begun. If the defendant is paying PD advances, EDD will deduct the PD rate from the TTD rate and pay the balance to the applicant on a continuing biweekly basis.

In many cases there is not a return to work offer and the PD rate is increased by 15%. When the carrier increases the PD rate by 15%, EDD may

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not change the amount it is deducting from their TTD rate, resulting in an overpayment.

In one case EDD was deducting \$230 each week. Once the defendant started paying the increased rate, there was a duplication of \$34.50 per week. On a case with only \$5,000 in PD to begin with, these duplications added up fast, and EDD wanted the money back from the applicant.

When questioned, two EDD representatives did not know anything about this problem. Apparently, their procedures have not caught up. One representative argued that the adjuster should have informed EDD that she was increasing the PD rate. While there might not be a legal obligation to do so, we think this is good advice from a practical standpoint if any informal resolution of the case is desired, which means just about every case.

EDEX AND EAMS

According to a recent article in WorkCompCentral, users of the Electronic Data Exchange (EDEX) system say key information has been largely unavailable to them since the state launched its electronic case management system, forcing lien claimants to file paper liens and blocking access to important information.

WCC reports that some vendors who offer EDEX services to lien filers and other clients say they have received no hearing dates or case updates from the Division of Workers' Compensation since the new Electronic Adjudication Management System (EAMS) went live.

Our own recent experiences suggest there are some serious problems with EDEX since EAMS went live. Tina Washburn, of our Orange office, reports that she requested an updated EDEX report on a case and when the report arrived, it failed to contain key information that had been part of a pre-EAMS EDEX report on the same

case. Most notably, the new report failed to disclose prior filings which would be the potential basis of an apportionment issue.

Unless and until these issues are addressed we recommend that EDEX information, while still helpful, should be verified through other means when determining the existence of liens of record at settlement, or the existence of prior or concurrent case filings for an injured worker.

Need Assistance with Training?

McDermott & Clawson, LLP is happy to assist with the training needs of your organization. Our education committee has extensive experience in providing seminars and discussions on Workers' Compensation topics of concern to adjusters and employers, including EAMS. We have worked with numerous carriers, third party administrators, and brokers to provide educational assistance, and would be happy to discuss your needs. Call or email [Howard Stevens](#) at (714) 288- 1700 or feel free to speak with any of our attorneys for further information.

Legal Briefs is a publication of [McDermott & Clawson, LLP](#). [Howard Stevens](#) (Orange office), Editor

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