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PRIORITY

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case Nos. ADJ7739647 (MF); ADJ7739960

DOUGLAS MARTINEZ,

Applicant,

vs.

WESTERN FASHION INC;
ILLINOIS MIDWEST SPRINGFIELD,

Defendants.

**JOINT
FINDINGS OF FACT**

Bradford & Barthel
By Zach Forman, Attorney for Defendant

Wylie Lien Solutions
By Aaron C. Wylie, Hearing Representative for Lien Claimants
Expansion Services, Southbay Neurological Medical, Ahmed Pomona Medical
Group, Margie Moreno Interpreting, Physical Medical Associates

Jeff Keith, Hearing Representative for Lien Claimant
Khalid Nur, M.D.

Alex Kauffman, Hearing Representative for Lien Claimants
Comprehensive OSC, CA Urgent Care Center, ABCDE Transportation,
Moussa Moshfegh, M.D.

Leonard Acevedo, Hearing Representative for Lien Claimants
Optimum Pharmacy, Hospitality Business Solutions, Mumtaz Ali, M.D., Labs for Physicians
Surgeons, ASAP Family Therapy, Priority First

Pinnacle Lien Services
By Vanessa Lopez, Hearing Representative for Lien Claimant
Elite Diagnostics

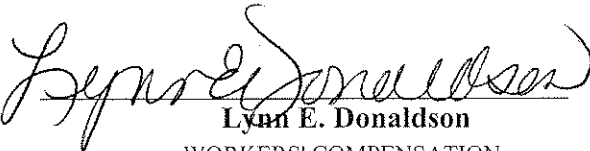
The above entitled matters having settled by way of Compromise & Release and then set on
the issue of liens, the Honorable Lynn E. Donaldson, Workers' Compensation Administrative
Law Judge, now Finds as follows:

FINDINGS OF FACT

1. Douglas Martinez Gochez, born April 22, 1967 claims to have sustained injury while employed as a packer/stocker by Western Fashion insured by Benchmark Insurance Company administered by Illinois Midwest on June 1, 2009 (ADJ7739960) and during the period July 1, 2009 through November 19, 2009 (ADJ7739647) to his back, shoulder, head, headaches, insomnia, stress, psyche and a hernia. Applicant settled these matters by way of Compromise and Release with specific language that the claims were denied and defendant admitted no liability.

2. Considering the facts of these matters, it is concluded that in order for the medical treatment lien claimants to establish their prima facie case, the applicant's testimony was necessary. It was not provided. Therefore, it is found that the medical treatment lien claimants did not meet their burden of proof to prove up their liens and shall take nothing herein.

DATE: April 20, 2012


Lynn E. Donaldson

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Service on the following parties on the above date with the ****Minutes of Hearing and Summary of Evidence** and the Opinion on Decision.

**GEMMA TH KO MD INC	Lien Claimant - Other, 4511 ROSEMEAD BLVD PICO RIVERA CA 90660
**ABCDE TRANSPORTATION LLC	Lien Claimant - Other, PO BOX 5305 BEVERLY HILLS CA 90209
**AHMED POMONA MEDICAL GROUP	Lien Claimant - Other, P.O. BOX 799 POMONA CA 91768
**ASAP FAMILY THERAPY	Lien Claimant - Other, 1535 S D ST 104 SAN BERNARDINO CA 92408
**BRADFORD BARTHEL ONTARIO	Law Firm, 3270 INLAND EMPIRE BLVD STE 200 ONTARIO CA 91764, e-docs@bradfordbarthel.com
**CALIFORNIA URGENT CARE CTRS INC	Lien Claimant - Other, 250 N ROBERTSON BLVD STE 108 BEVERLY HILLS CA 90211

**COMPREHENSIVE OUTPATIENT SURG CTR	Lien Claimant - Other, 250 N ROBERTSON BLVD STE 508 BEVERLY HILLS CA 90211
**ELITE DIAGNOSTICS ANAHEIM	Lien Claimant - Other, PO BOX 27696 ANAHEIM CA 92806
**EXPANSION SERVICES	Lien Claimant - Other, PO BOX 799 POMONA CA 91768
**HOSPITALITY BUSINESS SOLUTIONS	Lien Claimant - Other, PO BOX 11241 MARINA DEL REY CA 90295
ILLINOIS MIDWEST SPRINGFIELD	Insurance Company, PO BOX 13369 SPRINGFIELD IL 62791
**LFPS	Lien Claimant - Other, 1535 S D ST 210 SAN BERNARDINO CA 92408
**MARGIE MORENO INTERPRETING SVCS	Lien Claimant - Other, P.O. BOX 799 POMONA CA 91768
**MOUSSA MOSHFEGH MD	Lien Claimant - Other, 6221 WILSHIRE BLVD STE 404 LOS ANGELES CA 90048
**MUMTAZ ALI MD	Lien Claimant - Other, 1535 S D ST 102 SAN BERNARDINO CA 92408
**OPTIMUM PHARMACY MANAGEMENT	Lien Claimant - Other, 3940 LAUREL CANYON BLVD 909 STUDIO CITY CA 91604
**PHYSICAL MEDICINE ASSOC.	Lien Claimant - Other, P.O. BOX 799 POMONA CA 91768
**PRIORITY FIRST SAN BERNARDINO	Lien Claimant - Other, 245 E REDLANDS BLVD STE K SAN BERNARDINO CA 92408
**SOUTHBAY NEUROLOGICAL	Lien Claimant - Other, P.O. BOX 799 POMONA CA 91768

BY: *W. K. Belhumeur*

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WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:

Lynn E. Donaldson

OPINION ON DECISION

LIEN CLAIMANT BURDEN OF PROOF ON AOE/COE CASES

In cases where the case-in-chief settles via Compromise and Release with a good faith issue as to the industrial relationship of the applicant's injury before the liens are resolved (i.e., such as may be found in a settlement with a *Thomas* finding), and the disputed medical treatment lien claims are subsequently tried, lien claimants step into the shoes of the applicant and must meet their burden of proof and establish a prima facie case of entitlement to workers' compensation benefits in order to collect anything for medical treatment. This burden of proof is based upon a preponderance of the evidence.

In instances where a defendant asserts a good faith defense that would defeat the applicant's claim in its entirety, if successful, it may be necessary for the applicant to testify at the lien trial in order for the lien claimant to carry its burden of proof. Typically, purely medical disputes (where there is no disagreement over what happened to the applicant) and purely legal disputes (where there is no factual dispute only a dispute as to the application of the law to the facts) do not require the applicant's testimony. Factual disputes typically require the applicant's testimony, particularly when there is an issue as to whether the asserted injury occurred in the course of employment. While lien claimants have the right to present witnesses and even may offer the applicant's deposition if they can show that applicant was unavailable to testify, if the nature of the dispute is such that applicant's testimony and a judge's determination that the testimony is credible is necessary for lien claimant to establish a prima facie case, and such testimony is not presented at trial, then the medical treatment lien claimant cannot meet its burden of proof and is not entitled to recover anything on their lien for medical treatment.

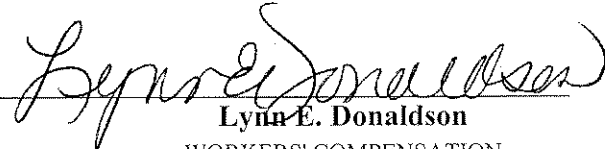
In the instant matter, the applicant was not present at the lien trial and lien claimant(s) did not subpoena the applicant to testify. Injury was denied in this matter with defendant raising the issue that the claims were filed post-termination. (Labor Code Section 3600(a)(10) Defendant raised statute of limitations as the applications were not filed timely with the notice of application issuing on April 12, 2011 and April 13, 2011. The injury dates were as follows: June 1, 2009 and CT July 1, 2009 through November 19, 2009. In addition, defendant raised the issue that the matter settled for a nuisance value of \$5,000.00.

The case resolved by way of Compromise and Release with specific language that the claims

were denied and admitted no liability. The settlement was in the amount of \$5,000.00, which in the circumstances constitutes a nominal or nuisance value settlement under *Hunt v. WCAB Slater* (1994) 59 CCC 636. Considering the facts of this case, it is concluded in order for the medical treatment lien claimants to establish their prima facie case, the applicant's testimony was necessary. It was not provided. Therefore, it is found that the medical treatment lien claimants did not meet their burden of proof and shall take nothing.

Lien claimant's argued at trial that the reports of Dr. Khalid Ahmed, the primary treating physician, could be utilized to prove up injury, although this trier of fact disagrees under this fact pattern. Assuming *arguendo* that it was possible, the lien claimants cannot prevail based on the records offered into evidence. The PTP, Dr. Ahmed, and Margie Moreno Interpreting offered the same reports of Dr. Ahmed at exhibits '62' and '64', reports dated 8/23/11, 7/9/11/, 2/15/ 1/4/11, 11/23/10, 10/25/10, 9/14/10/7/6/10 and 8/16/10. These reports do not address causation; do not contain a medical history, a discussion of any prior injuries, or a review of medical records. Therefore, in addition to the lack of testimony from the applicant to prove up injury AOE/COE, the medical evidence offered is not substantial medical evidence and thus lien claimants did not and could not meet their burden of proof to prove up injury arising out of and in the course of employment to the applicant on June 1, 2009 and during the period July 1, 2009 through November 19, 2009 to his psyche, stress, back, shoulder, head, headaches, insomnia and hernia and therefore shall take nothing.

DATE: April 20, 2012


Lynn E. Donaldson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Service on the following parties on the above date with the ****Minutes of Hearing and Summary of Evidence** and the Findings of Fact.

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