

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

**Case No. ADJ2052687**

**MARTIN OSORNIO,**

***Applicant,***

**vs.**

**HUGHSON NUT, INC.; WAUSAU;  
UNDERWRITERS INSURANCE  
COMPANY by LIBERTY MUTUAL  
INSURANCE COMPANY,**

***Defendants.***

**FINDINGS OF FACT, ORDER,  
AND OPINION ON DECISION**

The above-entitled matter having been heard by and submitted for decision to Richard Ellis, Workers' Compensation Administrative Law Judge, Findings of Fact, Order, and Opinion on Decision are made as follows:

**STIPULATED FACTS**

1. Martin Osornio, born 11/3/63 while employed on 4/18/05 as a forklift driver/labeler at Livingston, California by Hughson Nut, Inc., sustained injury AOW/COE to the lumbar spine only.
2. At the time of injury the employer's workers' compensation carrier was Wausau Underwriters Insurance Company.
3. The employer has provided some medical treatment.
4. Dr. Jacquelyn Weiss was the AME.
5. The Court will take mandatory judicial notice of the entire court file which includes the 3/28/13 Compromise and Release approved by Judge Sims.

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FINDINGS OF FACT

The stipulations of the parties are accepted as true.


1. It is found that VQ Orthocare did not meet its evidentiary burden and did not prove its lien by a preponderance of the evidence.

ORDER

IT IS ORDERED THAT:

1. It is ordered that VQ Orthocare take nothing further by way of its lien on file herein.

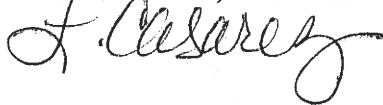
Date: July 9, 2014

  
Richard D. Ellis  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

FILED AND SERVED BY MAIL ON PARTIES AS  
SHOWN ON THE OFFICIAL ADDRESS  
RECORD (EXCLUDING EMPLOYERS).

ON: 07/09/2014

BY: L. CASAREZ



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

OPINION ON DECISION

It is well settled that lien claimants hold the burden of proof to establish reimbursement for medical treatment lien [Labor Code § 3202.5, 5705 and Kunz v. Patterson Floor Coverings Inc. (2002) 67 CCC 1588]. All elements necessary to establish the lien and its reasonableness are required [Tapia v. Skill Master Staffing (2008) 73 CCC 1338]. Unfortunately, lien claimant herein did not meet its burden of proof as noted below.

VQ Orthocare did not file its trial exhibits in accord with the pre-trial order of Geoffrey Sims, Workers' Compensation Administrative Law Judge, requiring the exhibits to be filed and served not later than 20 days pre-trial. Instead the lien claimant's exhibits were filed April 29, 2014, just 9 days before trial. Consequently, none of these exhibits were ordered into evidence nor were they considered by the Judge at trial.

Lien Claimant asserts that is not bound by the AME opinions of Jacquelyn Weiss, M.D. as it did not have the opportunity to participate in the selection of an AME. This position is specious, disingenuous and ridiculous.

Even if exhibits were timely, VQ Orthocare did not sustain its burden per Kunz and Tapia. Applicant was not present nor was he called to testify. It is unconscionable that this lien claimant could possibly imagine the Court would award \$30,861.06 after Defendant had paid \$6,697.73 when the unit and supplies for seven years and five months of service would barely reach the sum of \$1,000.00. In addition, the representative for VQ Orthocare was advised at trial of the risk of sanctions if it insisted on proceeding as the Court believed that under all of the circumstances herein that it was highly unlikely that the lien claimant could prevail. Consequently, a separate order to show cause regarding sanctions will issue in this case.

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

07-09-2014

OFFICIAL ADDRESS RECORD

FINDINGS OF FACT, ORDER AND OPINION ON DECISION served by mail on parties as listed on the OAR (excluding employers) by LC.

Case Number: ADJ2052687

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MARTIN OSORNIO

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✓ VQ ORTHOCARE  
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