

1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**
3

4 **JOSE PEDRO SOTO,**

5 *Applicant,*

6 vs.

7 **MARATHON INDUSTRIES, INC.;**
8 **HARTFORD INSURANCE CO. OF THE**
9 **MIDWEST, Administered by AMERICAN ALL**
10 **RISK LOSS ADMINISTRATION,**

11 *Defendants.*

Case Nos. ADJ7407927; ADJ7407928
(Van Nuys District Office)

OPINION AND ORDERS
GRANTING PETITIONS FOR
REMOVAL AND DECISIONS
AFTER REMOVAL

12 Defendant has filed two timely, verified petitions for removal. In the first, defendant requests that
13 the Appeals Board rescind the Order Rescinding dated January 16, 2013, wherein the workers'
14 compensation administrative law judge (WCJ) rescinded, pursuant to WCAB Rule 10859 (Cal. Code
15 Regs., tit. 8, § 10859), the Orders Dismissing Liens of Pacific Orthopedic and Rehabilitation, Vanguard
16 Psychiatric, National Duramed, LA Mediwave, Inc., Westside Wilshire Medical Center, Orthopedic
17 Rehabilitation of San Fernando Valley, Marina Russman, M.D., Jam Medical Equipment, Healthcare
18 Interpreting, and Global Interpreting (LCs) dated January 10, 2013. Defendant contends that the liens
19 were properly dismissed pursuant to Labor Code section 4903.06(a)(4) because lien activation fees were
20 not paid timely,¹ and that the Orders should not have been rescinded. We have not received an answer
21 from LCs.

22 In the second, defendant requests that the Appeals Board rescind the Order Rescinding dated
23 January 29, 2013, wherein the WCJ rescinded the Order Dismissing Lien of Legal Document
24 Management (LDM) dated January 10, 2013. Defendant contends that the lien was properly dismissed
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27 ¹ Unless otherwise specified, all statutory references are to the Labor Code.

1 because LDM did not pay the lien activation fee, and the Order should not have been rescinded. We
2 have not received an answer from LDM.

3 Applicant, while employed as a welder on May 10, 2010, and from May 10, 2009, through May
4 21, 2010, claimed to have sustained industrial injuries to his back. He settled his cases by Compromise
5 and Release approved by Order Approving Compromise and Release dated September 6, 2012. On
6 November 29, 2012, defendant filed a Declaration of Readiness to Proceed requesting a lien conference.
7 At the lien conference on January 10, 2013, which had been scheduled for 8:30 a.m., the WCJ issued the
8 Orders Dismissing the liens of the above-identified lien claimants.

9 LCs filed a Petition for Reconsideration through their representative, Qualified Billing and
10 Collection, LLC. LCs contended that they had paid the lien activation fee timely. LCs attached notices
11 from EAMS demonstrating acceptance of the lien activation fees between 10:56 a.m. and 11:06 a.m. The
12 notices stated: "Please allow a minimum of two (2) hours for your payment to be reflected in the Public
13 Search tool." In response, the WCJ rescinded the orders dismissing the liens pursuant to WCAB Rule
14 10859.

15 LDM also filed a Petition for Reconsideration. LDM contended that it had not filed a lien and
16 that it had not yet incurred liability for the lien activation fee. In response, the WCJ rescinded the order
17 dismissing LDM's lien pursuant to WCAB Rule 10859.

18 Section 4903.06(a)(4), effective January 1, 2013, provides: "All lien claimants that did not file
19 the declaration or readiness to proceed and that remain a lien claimant at the time of a lien conference
20 shall submit proof of payment of the activation fee at the lien conference. If the fee has not been paid or
21 no proof of payment is available, the lien shall be dismissed with prejudice."

22 Administrative Director Rule 10208(a), operative January 1, 2013, provides in relevant part: "No
23 lien claimant that is required to pay an activation fee shall file a declaration or readiness or participate in
24 any lien conference including obtaining an order allowing its lien in whole or in part, without submitting
25 written proof of prior timely payment of the fee, or without electronic proof of timely payment of the fee
26 that is available to the judge and parties at the conference. 'Prior timely payment' means payment of the
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1 activation fee (1) prior to the filing of a declaration filing a declaration of readiness, or (2) prior to an
2 appearance at a lien conference by a lien claimant of record that did not file the declaration of readiness.”

3 As to LCs, the lien conference was scheduled for 8:30 a.m. LCs have demonstrated that the
4 activation fees were paid between 10:56 and 11:06 a.m. Pursuant to Rule 10208(a), payments of the fees
5 were not “prior timely payments.” In order to have been “prior timely payments,” the payments would
6 have had to be made prior to 8:30 a.m. on the date of the lien conference.² Therefore, the liens were
7 properly dismissed at the lien conference on January 10, 2013.

8 As to LDM, LDM contended that it had not filed a lien because its lien was not reflected in
9 EAMS in ADJ7407927. However, the filing of the lien is recorded in ADJ7407928, which records that
10 the lien of LDM Copy Service was filed on November 14, 2011, and that its status is “inactive.” In its
11 petition for reconsideration, LDM admits that it has not paid the lien activation fee. Therefore, its lien
12 was properly dismissed at the lien conference on January 10, 2013.

13 For the foregoing reasons,

14 **IT IS ORDERED** that the petitions for removal filed by defendant are **GRANTED**.

15 **IT IS FURTHER ORDERED**, as the Decision After Removal of the Workers’ Compensation
16 Appeals Board, that the Order Rescinding dated January 16, 2013, is **RESCINDED** and that the Orders
17 Dismissing Liens of Pacific Orthopedic and Rehabilitation, Vanguard Psychiatric, National Duramed,
18 LA Mediwave, Inc., Westside Wilshire Medical Center, Orthopedic Rehabilitation of San Fernando
19 Valley, Marina Russman, M.D., Jan Medical Equipment, Healthcare Interpreting, and Global Interpreting
20 dated January 10, 2013, are **REINSTATED**.

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25 ² Because of the apparent delay in the appearance of proof of payment on the “public search tool,” there
26 may be cases where a lien claimant has made a “prior timely payment” but “proof of payment” as
27 required by section 4903.06(a)(4) is not available in EAMS at the commencement of the lien conference.
This is not one of those cases, and we do not decide that issue here.

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IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the Order Rescinding dated January 29, 2013, is **RESCINDED** and that the Order Dismissing Lien of Legal Document Management dated January 10, 2013, is **REINSTATED**.

WORKERS' COMPENSATION APPEALS BOARD

Alfonso J. Moresi

ALFONSO J. MORESI

I CONCUR,

Deidra E. Lowe

DEIDRA E. LOWE



Marguerite Sweeney

MARGUERITE SWEENEY

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAR 12 2013

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED ON THE FOLLOWING PAGE AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

MR/ara

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SERVICE LIST

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- ABC INTERNATIONAL
- ABCDE TRANSPORTATION LLC
- ALEX BERLIN
- CALIFORNIA IMAGING
- COMPREHENSIVE OUTPATIENT SURGERY CENTER
- DIETZ, GILMOR & CHAZEN
- DNM PHARMACY
- GLOBAL INTERPRETING
- HEALTH CARE INTERPRETING
- JAM MEDICAL EQUIPMENT
- JOSE PEDRO SOTO
- LA MED WAVE INC. (2 ADDRESSES)
- LDM COPY SERVICE
- LEGAL DOCUMENT MANAGEMENT
- MARINA RUSSMAN, M.D.
- NATIONAL DURAMED
- NATIONWIDE INTERPRETING
- ORTHO REHAB ASSOCIATION OF SFV (2 ADDRESSES)
- PACIFIC ORTHO AND REHAB
- PREMIUM INTERPRETING
- PRIMARY CARE MANAGEMENT SERVICE
- QUALIFIED BILLING AND COLLECTION
- SERGE OBUKHOFF, M.D.
- STATE OF CALIFORNIA, EMPLOYMENT DEVELOPMENT DEPT.
- TECHNICAL SURGERY SUPPORT INC.
- TOBIN LUCKS
- VANGUARD PSYCH
- WESTSIDE
- ZA MANAGEMENT

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

WCAB CASE NUMBER ADJ7407927; ADJ7407928

JOSE PEDRO SOTO,

-vs-

MARATHON INDUSTRIES, INC.;
HARTFORD INSURANCE CO.
OF THE MIDWEST ADMINISTERED
BY AMERICAN ALL RISK LOSS
ADMINISTRATION,

JUDGE: JOHN C. GUTIERREZ

DATE: February 8, 2013

REPORT AND RECOMMENDATION ON
DEFENDANT'S PETITION FOR REMOVAL

It is recommended that the Petition for Removal filed on behalf of Marathon Industries, Inc.; insured by Hartford Insurance Co. of the Midwest administered and adjusted by American All Risk Loss Administration by and through their respective counsel (hereinafter Petitioner) be denied:

INTRODUCTION

Petitioner filed a timely Petition for Removal asserting prejudice and irreparable harm from an Order Rescinding Dismissals of Lien Claims With Prejudice that was issued on January 16, 2013 following a duly noticed and scheduled lien conference on January 10, 2013; whereupon Orders Dismissing Liens With Prejudice were issued and a trial was set on the remaining unresolved liens who had paid their activation fee. Pursuant to the Order Dismissing the affected lien claimants filed a Petition for Reconsideration on January 14, 2013 asserting payment of the activation fee on the day of the conference, and in regards to these liens a lien conference has been scheduled. Petitioner contends that the time of payment of the activation fee is a determinative factor in the issuance of an Order Dismissing Liens at a lien conference. The lien conference on January 10, 2013 was scheduled for 8:30 am, Petitioner contends that the lien claimants electronically paid their activation fees late on January 10, 2013 after 8:30am.

DISCUSSION

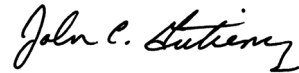
Petitioner correctly cites Labor Code Section 4903.06(a)(4) requiring proof of payment of the activation fee at a lien conference, and cites regulation Section 10208(a) as a basis for arguing that the activation fee was not paid timely. The controlling statute is Labor Code Section 4903.06(a)(4) and it does not require that the activation fee be paid prior to appearing at a lien conference and before 8:30 on the day of the conference. Section 4903.06(a)(4) only requires that lien claimants pay the activation fee of \$100 and show proof of payment of the activation fee at the lien conference. According to Section 4903.06(a)(4) lien claimants have complied with this Section by paying the activation fee and showing proof of electronic payment on January 10, 2013.

RECOMMENDATION

For the foregoing reasons it is recommended that the Petition for Removal filed on behalf of Petitioner be denied and that the matter proceed pursuant to the scheduled lien conference.

///

DATE: February 8, 2013



John C. Gutierrez
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

**Filed and Served by mail on counsel
and parties as shown below.**

Date: February 8, 2013



By: Louisa Padlan

SERVICE:

ABC INTERNATIONAL VAN NUYS, Email
ABCDE TRANSPORTATION LLC, US Mail
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