

# Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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## **LIEN CLAIMS - TIMELY FILED DECLARATIONS**

A recent WCAB En Banc decision held that lien claimants who filed lien declarations prior to the close of business at 5:00 p.m. on Monday July 3, 2017 for liens filed prior to January 1, 2017 were timely.

By way of history, Senate Bill 1160 amended Labor Code Section 4903.05 to add subsection (c) which is known as the declaration requirement, became effective on January 1, 2017. Labor Code Section 4903.05(c)(1), holds that liens filed on or after January 1, 2017 for medical treatment or medical-legal expenses must be accompanied with a declaration at the time of the filing of the lien. Pursuant to Labor Code Section 4903.05(c)(2), lien claimants who had filed liens prior to January 1, 2017 had until July 1, 2017 to file their declarations. Labor Code Section 4903.05(c)(3) states a failure to file the declaration shall result in the dismissal of the lien with prejudice by operation of law.

As July 1, 2017 fell on a Saturday, many lien claimants filed their declarations on Monday July 3, 2017. In August 2017, the Division of Workers' Compensation (DWC) announced that it was dismissing 292,000 liens pursuant to section 4903.05(c) and posted a searchable database of liens dismissed by operation of law.

In response to having their liens dismissed, multiple lien claimants filed Petitions for Reconsideration challenging the



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action of the DWC in dismissing their liens alleging that their 4903.05 (c) declarations were timely. On October 3, 2017, the DWC reversed the dismissal of all section 4903.05(c) declarations filed between July 1, 2017 and July 3, 2017. The DWC noted that the workers' compensation administrative law judges would adjudicate the timeliness of the liens on a case by case basis.

The Appeals Board issued an En Banc decision, *Jose Guillermina Rodriguez v. Garden Planting Co.*, 82 Cal. Comp. Cas. 1390, on October 26, 2017 addressing the Petitions for Reconsideration filed by the lien claimants. The Appeals Board held that the Petitions for Reconsideration were moot as the DWC removed the notations of dismissal. The Appeals Board did not provide a decision regarding the issue of timeliness of the declarations filed by the lien claimants noting that a party may raise the issue of timeliness and proceed to a hearing on the issue. The Appeals Board also held that lien claimants were not barred from proceeding on their lien without a finding that their declaration was untimely.

On March 22, 2018, the Appeals Board issued an En Banc decision, *Pedro Hernandez v Henkel Loctite Co.; Zurich American Ins. Co.*, 83 Cal. Comp. Cases 698, addressing the timeliness of declarations filed by lien claimants who filed liens prior to January 1, 2017. A workers' compensation administrative law judge (WCJ) issued a Finding of Fact on the issue of whether Monrovia Memorial Hospital was in compliance with Labor Code Section 4903.05. Monrovia Memorial Hospital filed their lien on May 29, 2013. On July 3, 2017 at 8:00 a.m. Monrovia Memorial Medical filed its Supplemental Lien Form and Section 4903.05 (c) Declaration. The WCJ found that the lien claimant was not barred from proceeding with their lien due to a dismissal notation in the Electronic Adjudication Management System (EAMS) pursuant to *Rodriguez*. Additionally, the WCJ found that the lien claimant had until the close of business at 5:00 p.m. on Monday, July 3, 2017 to file a lien declaration pursuant to Labor Code Section 4903.05.

The Appeals Board in *Hernandez* confirmed that the lien claimant's lien falls within the holding of *Rodriguez* as the supplemental lien form and declaration were filed on July 3, 2017. Therefore, the lien claimant was entitled to proceed to

trial. The Appeals Board ruled that the declaration filed by Monrovia Memorial Hospital on July 3, 2017 was timely as July 1, 2017 fell on a Saturday. The Board noted the general long standing rule that when the last day to perform a task required by any workers' compensation statute falls on a weekend or holiday, the task may be performed prior to 5:00 p.m. the next business day.

This decision determines that Labor Code Section 4903.05 (c) declarations for liens filed prior to January 1, 2017 are timely if filed prior to the close of business at 5:00 p.m. on Monday, July 3, 2017. Practitioners should be prepared to present other defenses in order to disqualify the lien or reduce the lien amount.

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