



California Workers' Compensation Institute

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July 13, 2015

Significant Decision 15-02

**Angelotti Chiropractic v Baker, et al.  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Case No. 13-56996**

**D.C. No. 8:13-cv-01139-GW-JEM**

Filed June 29, 2015

**The lien activation fee, Labor Code section 4903.06(a)(1), added by SB 863, is a constitutional exercise of the Legislature's authority. The preliminary injunction precluding DWC from collecting the lien activation fee has been vacated.**

**SIGNIFICANCE:** The construction and application of the lien activation fee is rationally related to legitimate legislative goals, so the exemptions provided in section 4903.06(b) do not violate due process, equal protection, and are not an unconstitutional taking without just compensation.

**FACTS:** SB 863 established both a lien filing fee for new liens and a lien activation fee for liens that were already in place. Section 4903.06(a)(5) also included a provision that if the filing fees were not paid as of January 1, 2014 the liens would be "dismissed by operation of law." Shortly after these provisions were enacted, a consortium of chiropractors and other lien claimants filed suit to have the lien activation fee declared unconstitutional and to permanently preclude the collection of the fee. The plaintiffs represented roughly 50,000 open liens and argued that the lien activation fee violated constitutional prohibitions under the Takings Clause, Equal Protection, and the Due Process Clauses of the US Constitution.

In November of 2013, the trial court rejected the rational basis asserted by DIR and other amicus curiae participants and imposed a preliminary injunction prohibiting the DIR from enforcing the lien activation fee. That ruling was based on a possible violation of the Equal Protection Clause. No lien activation fee has been required since that time and the statute of limitations contained in section 4903.06(a)(5) has not been enforced. The lower court decision was appealed to the 9<sup>th</sup> Circuit Court of Appeal by DIR.

**HOLDING:** The Court of Appeal vacated the injunction and found the exemptions created by the Legislature for certain institutional medical providers were both rationally related to legitimate policy goals and well within the Legislature's constitutional authority.

**DISCUSSION:** The Court of Appeal noted that a legislative policy may be based on rational speculation unsupported by evidence or empirical data. The court relied on the analysis presented in the CHSWC report as clear evidence that non-exempt entities were the biggest contributors to the lien backlog and this was sufficient to eliminate any chance that the plaintiffs could establish a constitutional violation and carry their burden of proof on the merits.

The Court of Appeal not only vacated the injunction, but also reversed the trial court's denial of defendant's petition to dismiss the equal protection cause of action, which all but eliminates this lawsuit. While the plaintiffs can appeal further to the U.S. Supreme Court, the strength of the Circuit Court's holding and rationale significantly reduces the likelihood that the Supreme Court would grant review.

The more important questions are when will the DWC begin collecting the lien activation fee and, most importantly, how will the statute of limitations contained in section 4903.06(a)(5) be enforced?

On July 7, Chief Judge Newman issues a memo to all judges (see attached) indicating that the injunction will not be lifted until July 20 *or later*. This memo is informational and does not have the force of law, so judges may be faced with enforcement challenges sooner than indicated. Defendants should review the 9<sup>th</sup> Circuit's opinion and determine whether and when to seek enforcement of that decision.

The division is pursuing additional analysis from the AG and Legislature, but has not decided how the deadline contained in section 4903.06(a)(5) should be enforced. This is significant because that is a drop-dead date which is enforced by operation of law – no petition required, the liens are simply unenforceable. Since the statute was enjoined less than 60 days from the deadline, it would seem logical to assert the statute of limitations 60 days from the date that the 9<sup>th</sup> opinion becomes final. Plaintiffs have 90 days to file for review by the Supreme Court. It will be interesting to see if the plaintiffs file for certiorari just to forestall the enforcement of section 4903.06(a)(5).

MMc/by  
Attachment

Hjelle, Robert@DIR

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**From:** Newman, Richard@DIR  
**Sent:** Tuesday, July 07, 2015 1:48 PM  
**To:** DIR DWC Judges including Presiding Judges  
**Cc:** Overpeck, Destie@DIR; Parisotto, George@DIR  
**Subject:** Angelotti and Lien Activation Fees

**Importance:** High

Dear Judges,

It has come to my attention that some of you may be dismissing, or threatening to dismiss, liens at conferences if the activation fee has not been paid. This approach is legally improper, and in any case technically impossible at this time. The ninth circuit's decision in *Angelotti* is expressed in the form of a mandate to the district court to vacate the injunction, which I understand will happen on July 20. So on July 20 or *possibly later*, the district court will vacate the injunction and in some form, dismiss the case. I say "possibly later," because it is not clear the district court judge will issue his order on that date. *Until the order vacating the injunction issues from the district court, the injunction against the enforcement of the lien activation fees is still in effect.* Furthermore, the lien activation mechanism that was set up by DWC/IT, and was deactivated commensurate with the injunction on 11/19/13, will not be reactivated until the injunction is lifted. So even if parties want to pay the lien activation fee, it is currently impossible for them to do it.

Obviously, there are more issues to be resolved concerning how we implement the lien activation fee process once the injunction is lifted, including whether and for how long a grace period for payment is allowed (most likely it will be at least the same number of days as passed from the date of the injunction to January 1, 2014, but it could be longer), and whether we can procure a stipulation, court order, or legislation authorizing the further collection of fees until some specified future date. The AG's office, legislative staff, director's staff and I will be discussing this issue later this week and I will keep you apprised of developments as they occur. In the meantime, keep in mind that the injunction is still in effect and judges do not currently have authority to enforce payment of the lien activation fee.

This issue was discussed at the PJ meeting, but it is not clear whether all of you were informed.

Thanks.

Richard L. Newman  
Chief Judge  
(510) 286-0924