

## **SIGNIFICANT PANEL DECISION ON LIEN CLAIMS AND STAY ORDERS: How Far Does the Stay Order Reach?**

### *Villanueva v. Teva Foods; Travelers Insurance Company*

**March 12, 2019**

On Friday March 8, the Workers' Compensation Appeals Board issued a significant panel decision concerning stays on lien claims. In 2016, the legislature passed Labor Code §4615, declaring an automatic stay of liens filed by companies that were "controlled" by criminally charged providers. The question then becomes what constitutes "control"?

Under Labor Code §139.21(a)(3), an entity is "controlled" by an individual if that individual is an officer or director, or a shareholder owning 10% or more of the company. In the significant panel decision of *Villanueva*, the WCAB expanded the definition of control to a provider holding a de facto ownership of the entity or de facto control consistent with the rights and duties of an officer or director of the entity.

In *Villanueva*, the WCAB concluded that even though the entity in question, Firstline Health, listed other individuals as the owners of the entity on corporate documents, the criminally indicted provider, Dr. Munir Uwaydah, was in fact in complete control of Firstline Health.

As part of Dr. Uwaydah's criminal plea agreement, he provided a declaration, which stated among many things, that Firstline was not a corporation or partnership. It was simply his business and that he exclusively controlled all aspects of Firstline's finances. Additionally, the declaration stated that Dr. Uwaydah owned and controlled many companies and properties even though other individuals were listed as the owners or that they were supposedly corporations with managing board members. The declaration goes on to state that this was done intentionally so that Dr. Uwaydah could hide his ownership and control. From this declaration, the WCAB concluded that Dr. Uwaydah held a de facto ownership and control of Firstline.

Firstline sought reconsideration arguing that the declaration was a part of a plea arrangement in the criminal case and that the allegations were unproven. After reviewing the record including the recommendations of the WCJ, the WCAB held that declarations signed under penalty of perjury can be admissible as **prima facie** evidence of the argument being asserted.

However, the declaration was only served on Firstline the day before trial. Therefore, the WCAB further held that the lien claimant in *Villanueva* was denied a fair hearing and the opportunity to rebut the declaration.

The WCAB ended up granting reconsideration, and rescinding the Findings and Award to afford the lien claimant due process of law to attempt rebuttal. At the same time, the WCAB agreed that the defendant established prima facie grounds that Firstline's liens in these cases are subject to a §4615 stay.

The Appeals Board designated this as a significant panel decision, and while not binding precedent, it means that it is the intent of the commissioners that this decision be distributed. The definition of "control" is now expanded beyond the plain meaning of Labor Code §139.21. The WCAB clearly indicated that they will look at more than just whether the physician is an officer or director, or whether he/she is simply a shareholder with 10% or more interest in the company. Just keep in mind that defendants have the burden of proof to establish the basis of the stay in the first place. Keep digging!

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