WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARIA GUADALUPE REYES VENEGAS, ***Applicant***

vs.

SUPREME VALLEY AG, INC.;
MEADOWBROOK INSURANCE LAS VEGAS, ***Defendants***

Adjudication Number: ADJ7660609
Bakersfield District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, which are both adopted and incorporated herein, we will affirm the WCJ's May 24, 2021 decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 24, 2021 Findings of Fact, and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 20, 2021

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

WESTERN IMAGING
ROSENBERG YUDIN & PEATMAN

PAG/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
CS

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

RECOMMENDATION: **DENY**

INTRODUCTION

Trial on a non-IBR Dispute Resolution Petition was held on March 5, 2021. The matter was thereafter submitted on April 5, 2021 to Workers' Compensation Judge Christopher M. Brown. A Ruling on Evidence, Findings of Fact, Order; Opinion on Decision was issued on May 24, 2021. Petitioner filed a timely, sufficiently served and verified Petition for Reconsideration on June 18, 2021. Petitioner asserts Labor Code § 5903 as the legal basis for its Petition and the arguments are consistent with Labor Code §§ 5903 (a) and (c).

Specifically, Petitioner argues it proved by a preponderance of the evidence the reasonable value of the services it provided as required by labor Code § 4622(f) and that the services listed in its invoices were actually performed, reasonable and necessary as required by Labor Code § 4621.

PETITIONER DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THE REASONABLE VALUE OF THE SERVICES IT PROVIDED

Petitioner bears the burden of proving by a preponderance of the evidence the reasonable value of the services provided. Finding of Fact Number 5 states:

> Petitioner was not shown to have established the reasonable value of the services identified in invoices 86411-1, 86411-2, 86411-3, 86411-4, 86411-5, 86411-6, 86411-7, 86411-8, 86411-9, 86411-10, 86411-11, 86411-12, 86411-13, 86411-14, 86411-15, 86411-16, 86411-17, 86411-18, 86411-19 or 86411-20. (FOF Number 5)

The WCJ evaluated the evidence submitted by both parties to reach this finding. Petitioner conceded that the invoice amounts on their own do not establish the reasonable value of the services provided at the time they were provided. Petitioner asserted that 72% of the invoice amounts reflects the reasonable value of services provided. (Petitioner's Ex. 9) Defendant filed its original objection letters issued with partial payments that assert what it believes is the reasonable value of the services provided. (Defendant's Exs. A, B, C, D & E) Defendant also filed Explanations of Review for Petitioners invoices. (Defendant's Exs. F) The EORs were not viewed as having probative value as they all reduced the value of the services provided to zero. (OOD Page 7)

Petitioner bears the burden of proving by a preponderance of the evidence the reasonable value of the services provided pursuant to Labor Code § 4622(f). Each party provided documents they claim to establish the truth of the matter asserted. These are at their heart hearsay declarations being offered to prove the truth of the matter asserted. While hearsay is admissible in Workers'

Compensation proceedings it is generally given little weight unless it is an expert opinion provided by a medical examiner. In this case there are two hearsay claims asserting the reasonable value of the services provided and the WCJ determined petitioner's claim did not outweigh Defendant's claim. Therefore, Petitioner did not prove by a preponderance of the evidence the reasonable value of the services provided.

PETITIONER DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT IT ACTUALLY PERFORMED ALL OF THE SERVICES LISTED IN INVOICES 86411-1, 86411-12 AND 86411-13

Petitioner bears the burden of proving by a preponderance of the evidence that it actually performed the services identified in its invoices. Finding of Fact Number 2 states:

> Petitioner was not shown to have actually provided the services identified in invoices 86411-1, 86411-12 and 86411-13. (FOF Number 2)

Just as the amount charged in an invoice does not establish that it is the reasonable value of the service, listing a charge in an invoice does not prove that it was actually performed. Petitioner did not file documentation to support the charges listed in invoices 86411-1, 86411-12 and 86411-13. Invoice 86411-1 is not supported by a copy of the subpoena and it does not indicate any records were obtained.

Invoice 86411-12 regards an EDEX search and includes a charge for a phone call. There is no documentation indicating when or why a call was made, who was called or how long the call lasted. Invoice 86411-13 also charges for a call without indicating when or why the call was made, who was called or how long the call lasted. It fails to specify what clerical services were performed with the Secretary of State. The California Secretary of State provides many services. There is no evidence indicating which service was requested or how it would relate to this case. It is not possible to establish if the calls were actually made from the invoices.

Petitioner did not file any documentation other than the request from Applicant's Attorney and Invoices 86411-1, 86411-12 and 86411-13. Petitioner did not provide any testimony to support these invoices. The WCJ's Findings of Fact cannot be based on speculation and assumptions. Therefore, Petitioner did not prove by a preponderance of the evidence it actually provided the services identified in Invoices 86411-1, 86411-12 and 86411-13.

PETITIONER DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT PRODUCTION OF SECOND COPIES OF SOME OF THE SUBPOENAED RECORDS WAS REASONABLE OR NECESSARY

The WCJ applied the doctrine of liberal discovery and determined that services requested by Applicant's Attorney were reasonable and necessary. The Order Referral forms submitted by Petitioner include a request for both a paper and a CD copy. There is no evidence that Applicant's Attorney requested the second set of records listed in Invoices 86411-3, 86411-4, 86411-5, 86411-6, 86411-7, 86411-9, 86411-10, 86411-11, 86411-14, 86411-15, 86411-16, 86411-18, 86411-19 and 86411-20. (Petitioner's Exs. 2, 3, 4, 5 & 7) The line item charges for the second set of records

does not establish who requested them, when they were requested, why they were requested, when they were produced or how they delivered. Therefore, Petitioner did not prove by a preponderance of the evidence that this expense was reasonable and necessary.

CONCLUSION

Petitioner bears the burden of proving by a preponderance of the evidence what the reasonable value of the services it provided was at the time it provided the services. Defendant and Petitioner both filed documents they asserted establish the reasonable value of the services provided. The WCJ determined the probative value of the documents submitted by Petitioner did not outweigh the probative value of the documents submitted by Defendant. Therefore, Petitioner did not prove by a preponderance of the evidence the reasonable value of the services it provided.

Just as an invoice on its own does not establish the value of the service, an invoice on its own does not establish the services listed were actually provided. The WCJ determined that invoices unsupported by additional documentation or testimony do not prove by a preponderance of the evidence the services were actually performed.

The WCJ determined services requested by Applicant's Attorney were necessary. There is no evidence Applicant's Attorney, or anyone else, requested a second set of the records for Invoices 86411-3, 86411-4, 86411-5, 86411-6, 86411-7, 86411-9, 86411-10, 86411-11, 86411-14, 86411-15, 86411-16, 86411-18, 86411-19 and 86411-20. Therefore, Petitioner did not prove by a preponderance of the evidence that producing a second copies of the subpoenaed records services was reasonable or necessary.

DATE: JUNE 28, 2021

Christopher Brown
Workers' Compensation
Administrative Law Judge

OPINION ON DECISION

BURDEN OF PROOF

The party holding the affirmative on an issue bears the burden of proving it by a preponderance of the evidence. When a medical-legal service provider files a request for non-IBR dispute resolution it holds the affirmative on its right to compensation. The Court identified the evidentiary burden faced by medical-legal service providers that filed a Lien Claim in *Ashley Colamonico v Secure Transportation*, 84 Cal. Comp. Cases 1059; 2019 Cal. Wrk. Comp. LEXIS 111. *Colamonico* is an en banc decision that serves as controlling precedent.

In *Colamonico* the Board determined that:

> Section 4622 provides the framework for reimbursement of medical-legal expenses. Subsection
>
> (f) of the statute, however, specifically states that "[t]his section is not applicable unless there has been compliance with Sections 4620 and 4621." (§ 4622(f).)
>
> Section 4620(a) defines a medical-legal expense as a cost or expense that a party incurs "for the purpose of proving or disproving a contested claim." (§ 4620(a).) Copy service fees are considered medical-legal expenses under section 4620(a). (*Cornejo v. Younique Cafe, Inc.* (2015) 81 Cal.Comp.Cases 48, 55 [2015 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc); *Martinez v. Terrazas* (2013) 78 Cal.Comp.Cases 444, 449 [2013 Cal. Wrk. Comp. LEXIS 69] (Appeals Board en banc).) Lien claimant's initial burden in proving entitlement to reimbursement for a medical-legal expense is to show that a "contested claim" existed at the time the service was performed. Subsection (b) sets forth the parameters for determining whether a contested claim existed. (§ 4620(b).) Essentially, there is a contested claim when: 1) the employer knows or reasonably should know of an employee's claim for workers' compensation benefits; and 2) the employer denies the employee's claim outright or fails to act within a reasonable time regarding the claim. (§ 4620(b).) …
>
> A lien claimant holds the burden of proof to establish all elements necessary to establish its entitlement to payment for a medical-legal expense. (See §§ 3205.5, 5705; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, 1115 [2012 Cal. Wrk. Comp. LEXIS 160] (Appeals Board en banc).) Thus, a lien claimant is required to establish that: 1) a contested claim existed at the time the expenses were incurred; 2) the expenses were incurred for the purpose of proving or disproving the contested claim; and 3) the expenses were reasonable and necessary at the time they were incurred. (§§ 4620, 4621, 4622(f); *American Psychometric Consultants Inc. v. Workers' Comp. Appeals Bd.* (*Hurtado*) (1995) 36 Cal.App.4th 1626 [60 Cal.Comp.Cases 559].) Once a lien claimant has established these three elements, it then may proceed to

> address the reasonable value of its service under section 4622. In sum, sections 4620 and 4621 pertain to a medical-legal provider's service, and section 4622 pertains to the reasonable value of the service. (*Ashley Colamonico v Secure Transportation*, (2019) 84 Cal. Comp. Cases 1059 et seq.)

While the *en banc* decision in *Colamonico* specifically related to lien claims for medical-legal services it also applies to Petitions for non-IBR Dispute Resolution regarding medical-legal services.

Defendant holds the affirmative on the issues Petitioner's right to pursue recovery being barred by Election of Remedies, Statute of Limitations or on an equitable basis such as Unclean Hands, Estoppel or Laches.

PETITIONER PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT DEFENDANT DID NOT ISSUE TIMELY EXPLANATIONS OF REVIEW IN COMPLIANCE WITH LABOR CODE SECTIONS 4603.3 AND 4622(c) AND REGULATION 10786

A defendant is deemed to have waive all objections to a medical-legal provider's billing other than compliance with Labor Code sections 4620 and 4621 if a provider submits a properly documented billing and the defendant fails within sixty (60) days thereafter to issue an objection that complies with Labor Code Section 4603.3.[1] Labor Code Section 4603.3 requires an Explanation of Review include a statement of items or procedures billed with the amount the provider requested as payment, the amount paid, the basis for the adjustment, change or denial of each item, a request for additional information is any is required the reason for the denial if other than a fee dispute and information on who the provider should contact regarding disputes over the billing.[2] Petitioner submitted invoices to Defendant between April 26, 2013 and February 11, 2014. (Petitioner's Ex. 7) Defendant issued written objections to all of Petitioner's invoices and there was no fee schedule for the services provided by Petitioner at the time the objections were issued. (Defendant's Exs. A, B, C & D) These Objection letters fail to comply with Labor Code Section 4603.3(a)(1) & (3). Defendant had CareWorks prepare and issue a set of Explanations of Review in February, 2019. (Defendant's Ex. F) The EORs issued in February of 2019 were clearly not served within sixty days of the invoices issued by Petitioner. Therefore, Defendant has waived all objections other than those found in Labor Code Sections 4620 and 4621.

PETITIONER PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT A CONTESTED CLAIM EXISTED AT THE TIME IT PROVIDED MEDICAL-LEGAL SERVICES

Applicant filed an Amended Application for Adjudication of Claim on April 4, 2011. (Court Ex. 1) Defendant filed an Answer to the Amended Application on April 14, 2011.

[1] Title 8 CCR Section 19786(e)

[2] Labor Code Section 4603.3

Defendant denies liability for injury AOE/COE and nature and extent of the amended body parts of hips, right shoulder, sleep disorder and psyche. Defendant also denied liability for self-procured medical care, future medical care, medical-legal costs, periods of disability and permanent disability/apportionment. (Petitioner's Ex. 11) Defendant stipulated that issues of permanent disability, apportionment, future medical treatment and self-procured medical treatment existed at the time the case resolved. (Petitioner's Ex. 13) The court record also establishes the parties engaged in substantial medical-legal discovery with Dr. David Fisher to resolve the disputed issues. (Petitioner's Ex. 12, Court Exs. 2, 3, 4 & 5) Therefore, Petitioner proved by a preponderance of the evidence that a contested claim as defined by Labor Code Section 4620 existed when it provided services.

PETITIONER PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT SOME OF THE MEDICAL-LEGAL SERVICES IT PROVIDED WERE NECESSARY AS REQUIRED BY LABOR CODE SECTION 4621(a)

Petitioner bears the burden of proving by a preponderance of the evidence that the medical-legal services it provided were necessary, actually performed and what the reasonable value of those services were. Petitioner has established that a contested claim existed at the time it issued the subpoenas. The Court has established that Applicant's Attorneys are given great latitude in determining what records should be subpoenaed and a request for records will act as evidence the subpoenas were necessary. Petitioner has filed four exhibits it asserts establish the necessity for the records.

The first Order Referral Form is dated April 23, 2013 and no locations are actually listed on the form. Petitioner has attached what appears to be a note to file prepared by Applicant's Attorney on February 7, 2012 instructing his staff to file an Amended Application for Adjudication of Claim and listing sources of records to be subpoenaed. (Petitioner's Ex. 2) The second Order Referral Form is dated April 25, 2013 and list sources of records as Star Insurance Company, Supreme Valley Ag Inc. and Dr. Nahyoung Eoh, DC and also lists EDEX and Secretary of State. (Petitioner's Ex. 3) The third Order Referral Form is dated June 14, 2013 and lists sources of records as Kern Radiology, Rising Medical Solutions, Southern California Orthopedic, Quest Imaging, Post Surgical Rehab Specialists, Vernon Sorenson MD Inc. (Petitioner's Ex. 4) The fourth Order Referral Form is dated July 9, 2013 and list source of records as Flores Chiropractic. (Petitioner's Ex. 5) Defendant objected to the admission of these documents into evidence. These Order Referral Forms appear to be standard business documents used by Petitioner and Defendant's Objection is overruled.

There is no clear Order Referral Form requesting records identified from San Joaquin Community Hospital, Terry Medical Clinic, Pain Institute of Central California, (Bone) & Joint Center/Thomas Ferro, Memorial Urgent Care, St. John's Regional Medical Center, Dr. Antonia Chalmers or Lamont Physical Therapy. The note to file attached to Petitioner's Exhibit 2 does not establish those records were requested by Applicant's Attorney because the many of the same records were expressly included in the Order Referral Forms filed as Petitioner's Exhibits 3, 4 and 5. Additionally, Petitioner did not establish that the Applicant's Attorney's Note to File dated February 7, 2012 was attached to the Order Referral Form filed as Petitioner's Exhibit 2.

However, Defendant's initial Objection letters to Petitioner's invoices help establish which subpoenas were necessary. Defendant made partial payment on all medical-legal services Petitioner provided accept the subpoenas issued to Star Insurance Company and Rising Medical Solutions and the clerical services provided in regard to EDEX and the California Secretary of State locations. The request for Star Insurance Company, EDEX and Secretary of State were included in the April 25, 2013 Order Referral Form. (Petitioner's Ex. 3) Rising Medical Solutions was included in the June 14, 2013 Order Referral Form. (Petitioner's Ex. 5) Defendant issued partial payments for the remaining invoices on April 29, 2014. Defendant only objected to the amount being billed when it issued the partial payments on the remaining invoices. (Defendant's Ex. B) The Order Referral Forms dated April 25, 2013, June 14, 2013 and July 9, 2013 combined with the Objection Letters with partial payments issued by Defendant on April 29, 2014 prove by a preponderance of the evidence that the medical-legal services provided by Petitioner were necessary pursuant to Labor Code Section 4621(a).

PETITIONER PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT IT ACTUALLY PERFOREMED THE SERVICES RELATED TO INVOICES 86411-2, 86411-3, 86411-4, 86411-5, 86411-7, 86411-8, 86411-9, 86411-10, 86411-11, 86411-14, 86411-15, 86411-16, 86411-17, 86411-18, 86411-19 AND 86411-20 AS REQUIRED BY LABOR CODE SECTION 4621(a)

Petitioner bears the burden of proving by a preponderance of the evidence that it actually performed the medical-legal services for which it submitted bills. Petitioner filed in evidence copies of the subpoenas it issued to Quest Imaging Medical Associates (6-18-13), Vernon Sorenson MD/Urgent Care (1-6-14), Flores Chiropractic (7-9-13), Supreme Valley Ag Inc. (4-25-13), San Joaquin Hospital (4-25-13), Terry Medical Clinic (4-25-13), Bone & Joint Center (4-25-13), Memorial Urgent Care (4-25-13), St. Johns Regional Medical Center (4-25-13), Dr. Antonia Chalmers (4-25-13), Lamont Physical Therapy (4-25-13), Kern Radiology Medical Group (6-18-13), Rising Medical Solutions Inc. (6-14-13), Southern California Orthopedic Institute (6-18-13), Post Surgical Rehab Specialists (6-14-13), Dr. Nayoung Eoh DC (7-3-13). (Petitioner's Ex. 6) These subpoenas serve as evidence that Petitioner actually performed medical legal services regarding these seventeen locations.

Petitioner did not file a subpoena for records from Star Insurance Company or other documentation supporting its invoice numbered 86411-1. The failure to file this one subpoena that should be in the possession and control of Petitioner while it has filed seventeen other subpoenas raises the question of why they failed to file it. The invoice contains a charge for subpoena preparation that is not supported by what should be readily available documentation. Invoice number 86411-12 regarding EDEX has a charge for a phone call that is unexplained as EDEX is the Division of Workers' Compensation electronic data exchange system. Invoice number 86411-13 contains charges for a phone call and research that are not explained.

Petitioner did not file documentation regarding EDEX or the Secretary of State. Petitioner's invoices are the only follow up documentation regarding services at Star Insurance Company, EDEX and Secretary of State. Petitioner did not prove by a preponderance of the evidence that it actually performed the services listed on its invoices for Star Insurance Company, EDEX and

Secretary of State. Therefore, the invoices numbered 86411-1 (Star Insurance Co.), 86411-12 (EDEX) and 86411-13 (Secretary of State) are denied in their entirety.

PETITIONER DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THE REASONABLE VALUE OF THE SERVICES IT PROVIDED AS REQUIRED BY LABOR CODE SECTIO 4622(f)

Petitioner bears the burden of proving by a preponderance of the evidence the reasonable value of the medical-legal services it performed. Labor Code § 4622(f) states there is no presumption that Petitioner is entitled to payment.[3] The amount charged by Petitioner in its invoices is not presumed to be the reasonable value. Petitioner's Points and Authorities asserts that it is entitled to the fee that it usually accepts as payment in full. (Pet. P&A Page 18 Lines 1 – 5) Labor Code Section 4621(a) states the reasonableness of the expense is determined with respect to the time when the expenses were incurred. (LC § 4621(a)) Petitioner provided an analysis of the amount it usually received from Defendant on bill submitted between the years of 2009 and 2015. The information regarding the years of 2009 through 2012, 2014 and 2015 is no relevant to the time when Petitioner provided services in 2013. In 2013 Petition received 72.24% from Defendant on the bills it received. (Petitioner's Ex. 9)[4] Petitioner's analysis does not establish that the bills reviewed were generated in a geographically relevant area. It also fails to indicate what Petitioner received from any source other than Defendant. Using sample sizes of one provider and one consumer does not provide sufficient data to establish a market analysis.

Defendant asserted that the amounts billed are excessive in the Objection Letters it issued with partial payments filed. (Defendant's Exs. A & B) However, they do not establish a valid market analysis in a geographically relevant area. Defendant's untimely Explanations of Review for invoices numbered 86411-1, 86411-2, 86411-3, 86411-5, 86411-6, 86411-7, 86411-8, 86411-9, 86411-10, 86411-11, 86411-12, 86411-14, 86411-15, 86411-16, 86411-17, 86411-18, 86411-19, 86411-20 are not viewed as having probative value on the reasonable value of the medical-legal services provided as they all reduce the services to zero value.

The analysis provided by Petitioner only considers what it received from the Defendant in the relevant year and does not indicate if the analysis applies to a geographically relevant area. The analysis does not indicate what it received from other sources paying its bills and it does not indicate a reasonable value for the individual services provided. The Fee Breakdown Sheet provided by Petitioner indicates multiple line entries may cover the same services. The "Field Labor" charge appears duplicative of the "Pages Scanned". The "Base Fee" services appear in

[3] Nothing contained in this section shall be construed to create a rebuttable presumption of entitlement to payment of an expense upon receipt by the employer of the required reports and documents. This section is not applicable unless there has been compliance with Sections 4620 and 4621. (Labor Code § 4622(f))

[4] Defendant objected to admission of Petitioner's Exhibit 9 asserting they did not have an opportunity to cross examine the preparer of the document. The WCJ takes not that the document was originally filed on April 27, 2020 when the parties were set for a Lien Trial. The Lien Trail was Ordered Taken Off Calendar on October 23, 2020 when Petitioner withdrew its lien and elected to proceed with a Petition for non-IBR Dispute Resolution and the matter was continued to a MSC on the non-IBR Petition. Discovery was not closed until the non-IBR Petition was set for trial on December 8, 2020 where Petitioner and Defendant made a joint request to proceed to Trial. Therefore, Defendant's Objection to Petitioner's Exhibit 9 is Overruled

other items billed as additional services. Several of the items listed on the invoices are not included in the Fee Break Down List. (Petitioner's Ex. 8) The invoices contain mileage charges that do not indicate the miles traveled or the amount charged per mile. The invoices contain charges for both handling and shipping and handling that appear duplicative.

Several of Petitioner's invoices contain charges for a second set of records. There is no evidence indicating Applicant's Attorney requested the second set of records, and no explanation why they were only provided on some subpoenas. Petitioner did not prove the charges for the second set of records in invoices numbered 86411-3, 86411-4, 86411-5, 86411-6, 86411-7, 86411-9, 86411-10, 86411-11, 86411-14, 86411-15, 86411-16, 86411-18, 86411-19 and 86411-20 were reasonable and necessary. Petitioner's charging for services that were not requested and charging for services that are not described with adequate detail prevent the WCJ from determining the reasonable value of the services Petitioner provided without speculation. The WCJ is not permitted to determine the reasonable value of the services provided via speculation.

There is no explanation given as to why and how Petitioner's charges $0.64 to scan a page and $0.64 to print a page. Petitioner provided insufficient information regarding the market of photo copy services with a geographically relevant area during 2013 to determine the reasonable value of these services.

The record in this case consists of Petitioner's assertion that 72.24% of its invoice amount should be used to determine reasonable value and Defendant's assertion that the amounts paid with the Objection Letters issued is the reasonable value. There is no actual analysis of the photo copy subpoena service industry market rate within a geographically relevant area for 2013 for each line item listed in the invoices. Petitioner provided insufficient information of the supply and demand for this service to project a market rate. No witness was produced by Petitioner to explain the reasonable value of each line item in the invoices. Therefore, Petitioner has not proved by a preponderance of the evidence the reasonable value of the services provided in regard to any of the subpoenas. In the absence of Petitioner proving by a preponderance of the evidence the reasonable value of its services as required by *Colamonico* its Petition for non-IBR Dispute Resolution must be denied. All other issues become moot.

PETITIONER'S CLAIM IS NOT BARRED BY ELECTION OF REMEDY AS THE LIEN CLAIM WAS WITHDRAWN BEFORE FINAL ADJUDICATION ON THE MERITS

Petitioner originally filed a Lien for medical-legal expenses on August 20, 2015. Petitioner's last invoice is dated February 11, 2014. The Lien Claim was barred by the 18 month Statute of Limitation for medical-legal lien claims. Petitioner filed the Petition for Determination of Medical-Legal Expense Dispute on October 15, 2020. Petitioner withdrew the Lien Claim on October 23, 2020 before the matter proceeded to Trial. A Mandatory Settlement Conference on the Petition was held on December 8, 2020 and the matter was set for Trial. Trial of the non-IBR dispute resolution was held on January 20, 2021. Petitioner did not litigate its Lien Claim to a final resolution. Therefore, Election of Remedies does not apply because Western Imaging withdrew its Lien Claim and did not proceed with the Lien Trial.

PETITIONER'S CLAIM IS NOT BARRED BY THE EQUITABLE DOCTRINES OF UNCLEAN HANDS, ESTOPPEL OR LATCHES

A claim can be barred if a party unreasonably delays in bringing the issue forward to the adverse party's detriment. In this case Petitioner issued invoices to the Defendant in a timely manner. (Petitioner's Ex. 7) Defendant's Objection Letters issued in 2014 state, "All liens and outstanding payments will be addressed when the claim settles." (Defendant's Exs. A, B, C & D) The claim resolved by Compromise and Release on January 18, 2019. (Court Ex. 6) A Lien Conference was held on June 21, 2019 and the matter was taken off calendar for further discovery. Petitioner was entitled to rely on Defendant's representation that disputes over outstanding payments would be deferred and is not responsible for the delay before January 18, 2019.

The parties were engaged in good faith discovery efforts after the claim resolved and Defendant was aware of Petitioners dispute the whole time. Subsequent delays occurred in 2020 due to the Emergency Orders issued in response to COVID-19 that limited lien proceedings. Petitioner is not responsible for these delays. Therefore, Petitioner's claim is not barred by the equitable doctrines of latches or unclean hands.

WESTERN IMAGINGING'S PETITION FOR DETERMINATION OF MEDICAL-LEGAL EXPENSE IS NOT BARRED BY A STATUTE OF LIMITATION

There is no direct code section enacting a Statute of Limitations for Petitions for non- IBR Dispute Resolution. Regulation 10786 expressly states that Defendant's failure to issue a timely Explanation of Review that complies with Labor Code § 4603.3 waives all defenses other than compliance with Labor Code §§ 4620 and 4621. Defendant asserted the limitation in Labor Code §4903.5 should apply. Application of a defense other than one found in Labor Code §§ 4620 and 4621 would be improper given Defendant's failure to issue a timely and proper EOR and Defendant's Objection letters deferring the issue until the claim resolved.

Defendant has asserted the California Contract Law two (2) or four (4) year Statute of Limitations should apply. While this time limit may apply the WCJ takes note of Defendant's Objection letter delaying resolution of the issue until the claim is resolved. (Defendant's Exs. A, B, C & D) The Order Approving the Compromise and Release was issued on January 18, 2019. (Court Ex. 6) Therefore, the statutory time limit would have been tolled until January 18, 2019. This Petition for non-IBR Dispute Resolution was filed on October 15, 2020 which is within two years of the claim resolving.

CONCLUSION

Defendant did not issue timely Explanations of review that complied with Labor Code § 4603.3 in regard to the twenty (20) invoices filed by Petitioner. Therefore, Defendant is limited to asserting defenses found in Labor Code §§ 4620 and 4621.

The Amended Application for Adjudication of Claim and Defendant's Answer to the Amended Application combined with the ongoing reports from the PQME established by a preponderance of the evidence that a contested claim as defined by Labor Code § 4620 existed at the time Petitioner provided medical-legal services.

Petitioner did not list as an exhibit or file a subpoena issued to Star Insurance Company or provided any evidence beyond its invoice that it actually provided services regarding invoice 86411-1. Petitioner also failed to provide any evidence that services were actually performed in regard to EDEX or the Secretary of State. Therefore, Petitioner failed to prove by a preponderance of the evidence that services were actually performed in regard to invoice numbers 86411-1, 86411-12 and 86411-13. Petitioner also failed to prove by a preponderance of the evidence the reasonable value of the services it listed on invoices numbered 86411-1, 86411-12 and 86411-13.

Petitioner did file seventeen subpoenas that proved by a preponderance of the evidence that some services were actually performed in regard to invoices numbered 86411-2, 86411-3, 86411-4, 86411-5, 864115, 86411-7, 86411-8, 86411-9, 86411-10, 86411-11, 86411-14, 86411-15, 86411-16, 86411-17, 86411-18, 86411-19 and 86411-20.

Petitioner did not prove by a preponderance of the evidence the reasonable value of the services listed in any of the invoices. They have asserted that 72.24% of the amount charged is a reasonable value. Petitioner filed an analysis of bills it has negotiated with Defendant which did not address the reasonable value of each item listed in the invoices. The descriptions of the line items listed in the Fee Break Down List are over lapping and duplicative. The WCJ determined that speculation would be required to determine the reasonable value of the services actually provided by Petitioner.

Petitioner did not prove by a preponderance of the evidence that Applicant's Attorney actually requested second copies of records on any of the subpoenas. These fees are all unnecessary. Providing duplicate copies that were not requested unreasonably increases each invoice.

Petitioner's failure to prove the reasonable value of the medical-legal services it provided in 2013 means it did not meet its burden of proving its claim by a preponderance of the evidence as required by Labor Code § 4621(a) and the Petition is denied. All other issues are moot.