

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**JOSE LUIS RASCON, *Applicant***

**vs.**

**FUTURE MACHINE PRODUCTS; CALIFORNIA INSURANCE GUARANTEE  
ASSOCIATION for PACIFIC NATIONAL INSURANCE COMPANY, in liquidation,  
*Defendants***

**Adjudication Numbers: ADJ1737668 (RIV0034595) MF;  
ADJ3697324 (LAO0807952)  
Oxnard District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Lien claimant California Physician Network LLC doing business as Aldon Medical Transportation (lien claimant) seeks reconsideration of the Findings and Order issued on September 12, 2023, wherein the workers' compensation administrative law judge (WCJ) found that lien claimant failed to establish that they complied with Labor Code section 4903.05.

Lien claimant contends that resolution of its lien has been delayed, that it was exempt from the lien declaration filing requirement, that it should be inferred the declaration was timely filed, and that the defendant has engaged in frivolous litigation of this lien.

Lien claimant's initial filing is captioned "Petition for Reconsideration and New Discovery" and was filed on September 20, 2023. Lien claimant filed an amended "Petition for Reconsideration and New Discovery" on the same date. Pursuant to WCAB Rule 10964, we accept both pleadings,<sup>1</sup> and have reviewed them herein. (Cal. Code Regs., tit. 8, § 10964.)

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<sup>1</sup> We observe that both of lien claimant's pleadings state, "COMES NOW, DEFENDANT, Future Machine Products, CALIFORNIA (sic) INS GUARANTEE ASSOCIATES (sic) FOR PACIFIC NATIONAL INSURANCE COMPANY, IN LIQUIDATION." (Petition for Reconsideration and New Discovery, September 20, 2023, at p. 1:14.) Inasmuch as both pleadings were, in fact, filed by lien claimant and not by defendant, we remind lien claimant that WCAB Rule 10390 requires that all parties appearing before the WCAB correctly identify themselves. (Cal. Code Regs., tit. 8, § 10390(a).) Future compliance with our Rules is expected.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted to correct a misspelling of lien claimant's name, but otherwise denied on the merits.

We have considered the allegations of the Petition for Reconsideration and the contents of the report 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, which we adopt and incorporate, we will grant reconsideration, amend the WCJ's decision as recommended in the report, and otherwise affirm the decision of September 12, 2023.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of September 12, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of September 12, 2023 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

#### **FINDINGS OF FACT**

...

2. CALIFORNIA PHYSICIAN NETWORK LLC and ALDON MEDICAL TRANSPORTATION established that they complied with Labor Code § 4903.8 as there is no evidence that Labor Code § 4903.8 factually applies to this case.
3. CALIFORNIA PHYSICIAN NETWORK LLC and ALDON MEDICAL TRANSPORTATION failed to establish that they complied with Labor Code § 4903.05.
4. Since CALIFORNIA PHYSICIAN NETWORK LLC and ALDON MEDICAL TRANSPORTATION failed to establish that they complied with Labor Code § 4903.05, they cannot recover on their lien.

**ORDER**

1. IT IS ORDERED THAT CALIFORNIA PHYSICIAN NETWORK LLC and ALDON MEDICAL TRANSPORTATION take nothing on their lien.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 3, 2023**

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

**CALIFORNIA PHYSICIAN NETWORK dba ALDON MEDICAL TRANSPORT  
DENNISE MEJIA, LIEN REPRESENTATIVE  
FLOYD, SKEREN, MANUKIAN & LANGEVIN**

**SAR/abs**

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

# **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

## **I** **INTRODUCTION**

Lien Claimant, CALIFORNIA PHYSICIANS NETWORK and ALDON MEDICAL TRANSPORTATION, by and through their hearing representative, has filed two timely Petitions for Reconsideration challenging the Findings and Award / Order of 12 September 2023 both filed on 20 September 2023. The second Petition appears to be a supplemental petition which adds an additional argument. However, since the two petitions were filed on the same day, the undersigned will treat the two together.

In these Petitions, petitioner argues that the undersigned erred in finding for defendant and denying their lien. Specifically, they make a number of arguments but ultimately, the issue comes down to whether they properly filed the declaration required by Labor Code § 4903.05.

Defendant, the CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (CIGA) for PACIFIC NATIONAL INSURANCE COMPANY, which is in liquidation, has filed an Answer to the Petition for Reconsideration. In it, defendant argues that the failure to file the declaration required by Labor Code § 4903.05 is a complete bar to this lien claimant's recovery in this matter. They also point out that the other arguments made by petitioner were bifurcated and so not addressed in the Findings and Order. Consequently, the defendant argues that these other arguments are therefore irrelevant on reconsideration.

It is recommended that reconsideration be denied.

## **II** **FACTS**

Applicant, JOSE LUIS RASCON, aged 41 on the date of injury while employed by FUTURE MACHINE PRODUCTS, insured by HIGHLAND INSURANCE COMPANY/ PACIFIC NATIONAL INSURANCE COMPANY, in liquidation and administered by CIGA, claims to have sustained injury arising out of and in the course of employment on 22 January 2000 and during the period of continuous trauma from 22 January 1999 to 22 January 2000.

At some point, a dispute arose between the applicant and the defendant as to whether the defendant should provide medical transportation for the applicant. On 14 August 2007 Judge Reny, then of the Los Angeles Board, ordered that medical transportation to all medical appointments related to applicant's case be provided. However, the order also provided, "[a]ll other issues with respect to transportation for purposes other than medical appointments, is deferred for later resolution or adjudication." See Exhibit 16, pp. 10-11. No further orders on this issue were issued or obtained.

ALDON MEDICAL TRANSPORTATION a.k.a. CALIFORNIA PHYSICIANS NETWORK then began providing transportation services but were notified in an objection letter dated 16 April 2008 (Exhibit 16 pp. 15 – 16) that they were not an authorized transportation provider for CIGA and was therefore not authorized to provide transportation services for Mr. Rascon.

In 2012, SB 863 was enacted which included the new Labor Code § 4903.05. Review of the Board file discloses that while ALDON MEDICAL TRANSPORTATION a.k.a. CALIFORNIA PHYSICIANS NETWORK did file the \$100.00 fee and are thus exempt from the \$ 150.00 fee, at no point do they appear to have filed the Declaration under penalty of perjury required by Labor Code § 4903.05. No such document appears anywhere in FileNet.

The lien trial in this matter went forward on 22 August 2023. In the Minutes of Hearing prepared for that date on page two, the matter was clearly set on only two issues: Whether this lien claimant complied with the requirement of Labor Code § 4903.05 in filing a Declaration under penalty of perjury regarding the matters referred to in that statute whether lien claimant complied with the requirement of Labor Code § 4903.8 stating that the lien claim has not been assigned to another party.

After trial the undersigned entered a Findings and Order on 12 September 2023 that determined two facts: (1) That the non-assignment declaration required in Labor Code § 4903.8 is inapplicable to this case as the lien claimant in this case is clearly the original owner of the lien. (2) That lien claimant failed to comply with the requirement of Labor Code § 4903.05 by not filing the required declaration.

Lien claimant then filed her two Petitions for Reconsideration on 20 September 2023.

### **III** **DISCUSSION**

Defendant has already filed an Answer to the Petitions for Reconsideration which does a fine and scholarly job of pointing out that the issue for decision at trial was really very narrow and that the other points brought by lien claimant in her Petition for Reconsideration to note bear on that single issue. Defendant also points out that the other issues were bifurcated, both in the Pre-

Trial Conference Statement of 12 June 2023 and in the Minutes of Hearing at trial of 22 August 2023. Therefore, all the other arguments of lien claimant are not relevant to the point at issue in the trial which was simply whether lien claimant filed the Declaration required by Labor Code § 4903.05.

Be that as it may, the job of a workers compensation judge is to discuss each of lien claimant's arguments. Also, since the Petitions for Reconsideration attempt to discuss issues without context, the undersigned will attempt to explain each of lien claimant's arguments and to explain how each one does nor does not bear on the single issue at hand.

#### **Issue One:**

In its first argument, lien claimant gives a partial procedural history of the case and then asserts that defendant has been dilatory in litigating the lien causing "Defendant to be leverage (sic) and incur enormous legal cost" when "it should have been resolved years ago." Lien claimant also notes that there was an order in place, that of Judge Reny of 14 August 2007.

While the pace of this case is unfortunate, this does not cause lien claimant to win. In this case, the issue was whether there was compliance with Labor Code § 4903.05 and lien claimant has the burden of proof under Labor Code § 3202.5. With respect to the 14 August 2007 Order of Judge Reny, the scope of the order is limited. While it does require defendant to provide transportation, it does not specify who is to provide that transportation. Defendant has a right to choose a provider. There are exceptions to that rule, of course, but lien claimant has not proven that one of these exceptions applies. For instance, there was no evidence that defendant failed offer the transportation through another provider.

**Issue 2:**

In the second argument, lien claimant argues that they are “exempt” from the fee schedule and therefore “exempt” from the requirement of paying a fee and providing a declaration. However, this argument is based on a logical fallacy, that of changing the definition of a term mid-argument. Here, just because a lien is “exempt” from the fee schedule does not mean that they are exempt from an entirely different requirement, that of paying a fee and filing a declaration. Extended to its logical conclusion one could argue that lien claimant is ”exempt” from obtaining a driver's license as well. This is an illogical argument, plain and simple.

**Issue 3:**

Lien claimant correctly points out that the exhibits in this lien trial were improperly uploaded to EAMS. All of the separator sheets are there, however, unfortunately, the computer program and clerk who uploaded them failed to catch the fact that these were several documents and not a single document. Rather than grant another continuance and have the parties upload these documents again, the undersigned identified each of the documents in Exhibits 15, 16 and QQ so as to properly organize the file without delaying the case. See Minutes of Hearing pp. 3 – 5.

In any event, lien claimant argues that because of this issue and because of an alleged and unproven incident involving the received stamp machine at the Los Angeles Board and disputes with two people at the CR Unit at DWC EAMS Headquarters in Oakland regarding the filing of her documents, that she should be “exempt” from the filing fee.

The problem with this argument is two-fold. Here, it is uncontested that lien claimant did pay the filing fee, she just did not file the declaration. The other problem is that these problems involving Exhibits 15, 16 and QQ do not bear on the issue as to whether the declaration was filed. The undersigned has searched not only these three exhibits but the entire FileNet contents twice. There is no evidence of the declaration ever having been filed.

**Issue 4:**

Lien claimant next argues that due to the fact that so many documents have been destroyed, that one can infer that the fee was paid. Again, the fee was paid.

However, if we look at this as a simple error and interpret this to mean that since files were destroyed we can infer that the document existed and was on file.

Again, this does not make logical sense. This inference cannot be made, otherwise one cannot distinguish between documents that were filed and documents where someone merely says (incorrectly) that the documents were filed.

Also, lien claimant also argues that because the lien tab in EAMS does not show the lien as dismissed then they must have filed the fee (or document.) Again, there are logical as well as legal problems with this. Just because a printout of a database query does not show a lien to be dismissed does not mean it was not dismissed. Database queries are not authoritative as to what documents were filed. However if lien claimant can show that she filed the declaration, either by providing the document with a received stamp or by showing that it exists in FileNet, then lien claimant can overcome this hurdle.

Here, the document has not been shown to have been filed or that it ever existed at all.

**Issue 5:**

The lien claimant argues that the undersigned misspelled lien claimant's legal name. The undersigned admits that this is true. It is asked that the Appeals Board grant reconsideration only for the purpose of correcting this error. Lien claimant argues that the misspelling makes the decision invalid. However, this is easily remedied.

**Issue 6:**

Lastly, lien claimant argues that the defendant is guilty of maintaining "frivolous litigations" requiring the imposition of costs and sanctions. The defendant does not appear to have done anything frivolous. To the contrary, defendant took the case to trial and required lien claimant to sustain the burden of proof. Defendant is entitled to do this under Labor Code § 3202.5 just as lien claimant is entitled to attempt to sustain the burden. No sanctionable conduct appears to have occurred in this case by either side.



**IV**  
**RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied except that reconsideration should be granted solely to change all references in the Findings and Order to “ALSON MEDICAL TRANSPORTATION” to ALDON MEDICAL TRANSPORTATION.”

Respectfully submitted,  
**ROGER A. TOLMAN, JR.**  
Workers' Compensation Judge