

## **ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES: THE HALLOWEEN EDITION**

For past installments of the *George the Bartender* series, please visit our web site at <http://www.kttlaw.us/memos.html>

### **RE: GEORGE THE BARTENDER AND THE HAUNTING OF THE LOS ANGELES WCAB OR HOW JUDGE FRANK IS HELPING TO EXORCISE THE LIEN DEMONS<sup>1</sup>**

#### **FROM THE LOBBY BAR AT THE HYATT:**

As I settled into my usual seat at the Lobby Bar, I felt that all was right with the universe. I had successfully handled my trial calendar for the week, cleaned out my office and as this was Friday there was no more beautiful sight than Kim, the Hyatt's breathtakingly beautiful cocktail waitress, approaching me with my martini in tow.

Alas, this feeling of nirvana was all too fleeting for a chill soon overtook me, one which made the very hairs on the back of my neck stand up. It was as if the cold hand of the Grim Reaper himself was touching my shoulder.

I quickly scanned the bar for the source of my ominous feeling and determined that the disturbance was emanating from the other end of the bar. I noticed two gloomy figures drinking shooters, Mr. Pat Pennipincher, VP in charge of claims for the Integrity Insurance Company, and his noted defense attorney, Frank Falls.

After ordering another round of cocktails for them, I went down to their dark end of the bar curious to know what was a matter. I was extremely shocked at the rather morose faces that greeted me as I knew Frank had recently won some great victories for Mr. Pennipincher and they should have been celebrating rather than sowing the seeds of dread and despair.

After quickly downing his cocktail Mr. Pennipincher, with the help of Frank, filled me on their rather sorrowful state. Mr. Pennipincher had apparently just received an internal audit report from management at Integrity Insurance Company which showed that cases were remaining open for far too long and that litigation expenses were going through the roof.

I asked Mr. Pennipincher how that was possible, as I knew Frank and his attorneys tried to move all cases through the system with lightning speed (going to panel QMEs and not AMEs) and quickly forcing cases to trial and/or settlement.

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<sup>1</sup> For those new patrons to the lobby bar, George the Bartender's workers' compensation case involves an injury to his elbow, lateral epicondylitis (tennis elbow), sustained from the repetitive serving of martinis to me. If there ever was an admitted industrial injury, this is it!

With a look of terror on his face Mr. Pennipincher indicated that is what he thought but all of Frank's cases remained opened well past the Findings and Award and/or settlement date because of lien claims.

I told Frank and Pat that I could not understand this as I knew that Integrity Insurance Company had a killer Medical Provider Network and religiously sent out notices to all of the applicants and their attorneys (in English and Spanish) advising as to the MPN.

I also knew that the Integrity Insurance Company had an extremely well-run Utilization Review Department that would timely deny treatment that was not reasonable and/or necessary pursuant to Labor Code §4600 and the ACOEM Guidelines.

At this point Frank told me that my observation was accurate and most of the lien claims were based on the services that had been denied by Utilization Review and/or by reason of the fact that the medical providers were outside the Integrity Insurance Company's MPN.

### **THE DREADFUL DOUBLE WHAMMY EFFECT OF MEDICAL PROVIDER LIEN CLAIMS**

Frank told me that the Integrity Insurance Company, as well as carriers and employers across the state, was now subject to the "double whammy" theory subscribed to by most lien claimants.

As we know, loyal Lobby Bar patrons, medical providers will file liens whether or not their claims are denied for legitimate reasons. The theory is that even though their liens were denied once (by Utilization Review or because they were outside the MPN), lien claimants know that if they file liens *again* after the case is resolved by settlement or by Findings and Award, most carriers and/or employers will eventually settle lien claims from \$0.50-\$0.60 on the dollar rather than going to the expense of proving up a valid Medical Provider Network or submitting evidence as to the validity of the Utilization Review denials. Hence the name "double whammy."

At this point Larry and Lenny Lien of the infamous 8600 Group burst on the scene along with the ghoulish Dr. Nickelsberg.

I suddenly realized that Larry and Lenny gave me the same chilling feeling that you would expect from encountering Freddy Kruger. I didn't know it, but tonight they were the ones in for a fright. After I bought another round of cocktails, I asked the unholy duo what they felt about the "double whammy" theory and they turned ghastly pale, the color swiftly draining out of their faces.

After taking a moment to collect themselves Larry and Lenny advised me that this theory had worked extremely well for quite some time but dark clouds were gathering for all lien claimants at the Appeals Board District Office in Los Angeles where a monstrous number of liens await adjudication.

### **HAUNTED BY LIENS? WHO YOU GONNA CALL? THE LIEN BUSTER!**

It is well-recognized that there is a lien claim crisis in Southern California and especially at the Los Angeles Appeals Board office, where over 800,000 unresolved liens have been filed. Yes, that's right, 800,000. Let that horrifying number sink in for a second.

Ah, but never fret, loyal Lobby Bar patron, for the Lien Buster is here! Disguised as a mild mannered Presiding Judge for a great metropolitan Appeals Board District Office, Judge Jorja Frank has led us out of lien litigation hell.

Initially, Judge Frank created special lien units for the judges at the Los Angeles Appeals Board office in which judges would rotate through a calendar of lien claim trials.

The basic rules were as follows:

1. The parties to a lien dispute are expected to have completed discovery and exhausted settlement discussions before filing a Declaration of Readiness to Proceed.
2. On the morning of the lien trial, all proposed exhibits must be either in the Electronic Adjudication Management System (EAMS) for electronic filers, or placed in order on the judge's desk before 9:30 a.m.
3. At 9:30 a.m. the judge will call the cases, and review the Stipulations and Issues with the parties and inform the parties in which order the trials will be taken.
4. Proposed exhibits which are not placed before the judge by 9:30 a.m. may be excluded from evidence.
5. For parties who have not appeared, opposing counsel will make one call and if the lien is not resolved by phone before 9:30 a.m., the trial will go forward and the judge will issue a decision resolving all liens of record.
6. Judges at these lien trials will listen to arguments by either party regarding due process. However, in the absence of a showing of due diligence very few lien trials will be continued.
7. The court prefers to receive expert testimony via report rather than oral testimony so parties are encouraged to submit written expert opinion on the value of services.

The above rules have been changed and/or modified over the years but the intent remains the same as to lien trials under Judge Frank's rules.

George the Bartender and the Haunting of the Los Angeles WCAB or How Judge Frank is  
Helping to Exorcise the Lien Demons

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In accordance with Judge Frank's lien procedure, legitimate liens are settled in an expeditious manner and those for which there are bona fide disputes proceed to trial.

Judge Frank's efforts to counter the lien crisis have been recognized and applauded at the highest levels of the DWC Administration. Her rather simple procedure to address a very complex and frightening problem has been exported to other Appeals Board District Offices in Southern California as well. Los Angeles judges versed in Judge Frank's lien procedures assist in training judges from outlying Boards.

**DISCLAIMER:**

All characters at the Lobby Bar aside from George, Kim and I are fictional as is the story line. However, Judge Frank's Herculean efforts and successes at resolving the horrendous lien backlog are factual. She and the DWC Administration deserve our full support and cooperation in addressing this most critical issue.

Happy Halloween and make mine a double, George.

-Joe Truce