

## **ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES**

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 NO-SHOW LIEN CLAIMANTS OR ON THE LOOKOUT FOR LOOPHOLES (PART 3434 IN A SEEMINGLY NEVER ENDING SERIES)<sup>1</sup>**

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

After a hard day of denying benefits I arrived at the Lobby Bar looking forward to the sight of Kim, the Hyatt's breathtakingly beautiful cocktail waitress, walking toward me with my Beefeater's martini (with two olives of course) in tow.<sup>2</sup>

Everything went accordingly and as I took the first sip from my martini I saw that there were three people down at the other end of the bar in the midst of a lively discussion.

After the second sip of my cocktail I recognized the trio of confederates- Larry and Lenny Lien and Dr. Nickelsberg.

As those most dedicated of loyal Lobby Bar patrons know, Dr. Nickelsberg is the go-to "primary treating physician" for Ron Summers (George the Bartenders workers' comp attorney). Larry and Lenny Lien represent Dr. Nickelsberg as lien claimant down at the Board.<sup>3</sup>

Word around the bar was that Dr. Nickelsberg was trying to devise a strategy to get out of paying the activation fee on his lien claims. The Board had made it clear in several decisions that all lien claimants would be liable for the lien activation fee by the time of a lien conference and also that the lien activation fee must be paid prior to this initial conference.

Judging from the smiles forming on the faces of Dr. Nickelsberg and Larry and Lenny Lien it appeared that they had hit upon a solution.

Ordering a round of drinks from George for the unholy trio, I made my way down to the other end of the bar to learn their unsavory plans.

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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!

<sup>2</sup> A Beefeater's martini, straight up, is best served at 38° Fahrenheit.

<sup>3</sup> Add Ron's other go-to "primary treating physician," Dr. Ratbar, and you have what I like to affectionately refer to as the cartel of chicanery, but I digress.

After exchanging pleasantries and some idle chit chat Larry Lien was the first to recap the meat and potatoes of their previous discussion. Larry said his plan was quite simple: They would just not appear at any lien conferences and therefore the presiding Workers' Compensation Judges (WCJ) would have no other choice but to either continue the cases, take the cases off calendar or issue a Notice of Intention to Dismiss the lien.

I interrupted Larry here to ask him how dismissing a lien would be to his advantage. Larry explained that that if a WCJ issued a notice of intention to dismiss he would simply file an affidavit that they did not receive the notice of hearing.<sup>4</sup> He added I was missing the point, that regardless of the action the WCJ took, ultimately he and his brother could continue negotiating with the defendants fee free.

Lenny then broke in and told me that they would contract with a company in a foreign country to aid in this endeavor. They would employ this company to make phone calls every five minutes to adjusters on the cases where Dr. Nickelsberg had a lien claim. You see loyal Lobby Bar patron, the Lien brothers had discovered this tactic to be quite successful as insurance companies agreed to any offer after a few calls just to allow their adjusters to get back to work.<sup>5</sup>

Having listened carefully to the entirety of this dastardly plan as laid out by the Lien brothers, a big grin began to form on my face.

I took this opportunity to reach into my trusty briefcase and pull out a copy of the decision in *Laeuria Elliott v. National Housing Ministries; State Compensation Insurance Fund* (ADJ525374) filed on June 27, 2013.<sup>6</sup>

In *Elliott* the lien claimants employed the same tactic that the Lien brothers had just described to me, i.e. no-showing at the lien conference.

The defendant in this case contended at the conference that whether or not the lien claimant showed up it was mandatory that these liens be dismissed with prejudice if in fact they failed to pay the lien activation fee.

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<sup>4</sup> It is my understanding that the Postmaster General of the United States has not directed all post offices to stop delivering mail to lien claimants.

<sup>5</sup> Actually this wonderfully draconian plan unveiled by Lenny Lien is fact. Several lien claimants have apparently taken to contracting with firms from foreign countries to make robo-calls at frequent intervals to various insurance companies seeking to negotiate lien claims and in some cases this tactic has proved to be successful. A loathsome profession if I ever saw one, right up there with parking enforcement officers.

<sup>6</sup> Much like Mary Poppins's seemingly bottomless carpetbag (of Disney fame) and Hermione Granger's bottomless handbag (of *Harry Potter* fame), my briefcase possesses magical powers, granting me the ability to pull out any decision at a moment's notice. A copy of *Elliott* is available upon email request.

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The WCJ came up short in this regard as they only issued an Order taking this matter off calendar because the lien claimants did not appear. In response to this, the defendant filed a Petition for Removal arguing that pursuant to the Board's en banc decision in *Eliezer Figueroa v. B.C. Doering Co., Employers Compensation Insurance Co.*(2013), 78 Cal. Comp. Cases 439; 2013 Cal. Wrk. Comp. LEXIS 64, the lien claims should have been dismissed with prejudice.

Sure enough, the Board granted this petition and reversed the WCJ's decision, dismissing the lien claims who had not appeared and had not paid their lien activation fee. The Board stated in relevant part as follows:

Here, it is undisputed that the lien claimants at issue have not paid the lien activation fee. There is no record of payment of the fee in EAMS. None of the lien claimants at issue appeared at the lien conference, so none of them provided proof of payment at the conference. Therefore, we grant defendant's Petition for Removal and dismiss the liens at issue. No notice of intention to dismiss is required.

After summarizing the Board's articulate opinion in *Elliott* for the Lien brothers and Dr. Nickelsberg, their smiles quickly faded away. Their hopes utterly dashed, I returned to my martini.

**Disclaimer:**

All characters at the Lobby Bar aside from George, Kim and I are fictional and the storyline is simply a product of my warped imagination.

However, the strategies employed by certain lien claimants to avoid paying the lien activation fee are not. The Board has made it quite clear that we can request dismissal of any lien claim when the lien claimant has not appeared at a lien conference and that a Notice of Intention to Dismiss is not required.

Make mine a double, George.

-Joe Truce