

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS
FROM: W. JOSEPH TRUCE
DATE: October 22, 2003
RE: "WHAT IS A GOOD FAITH EFFORT TO RESOLVE LIEN CLAIMS?"

In the case of Pedroza v. Kelly Services (LA773580)¹ the Board granted defendant's Petition for Removal from a Workers' Compensation judge who had refused to approve a Compromise and Release Agreement as "the WCJ did not believe that the parties had made a good faith attempt to contact the lien claimants and resolve the liens..."

In overruling the Workers' Compensation judge, the Board held that a good faith attempt to settle liens "requires at least one contact with each lien claimant by telephone or letter" and noted that the defendant in this case had complied with new WCAB rule 10888, which requires the party to make a good faith attempt to contact lien claimants and resolve the lien claims before a C&R may be ordered approved. WCAB rule 10888 defines a good faith attempt as "at least one contact with each lien claimant by telephone or letter..."

In this particular case, the defendant had offered lien claimants 10 cents on the dollar and the Workers' Compensation judge did not consider this a good faith effort to resolve the lien claims. The Board disagreed and stated as follows:

"Once defendant has established it has made a good faith effort to resolve the liens the rule contemplates that the WCJ shall then consider the Compromise and Release Agreement on its merits without prior consideration of the liens..."

WJT:dab
Attach Pedroza

¹The Board's panel decision in Pedroza is cited at 31 CWCR 245. In Griffith v. WCAB (1989) 209 Cal. App. 3rd 1260; 54 CCC 145, the court held that a panel decision reported in the Workers' Compensation Reporter (CWCR) is a properly citeable authority, especially as an indication of contemporaneous interpretation and application of workers' compensation laws.