2016 Annual Child Support Training Conference & Expo

Piecing it all Together

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CHILD SUPPORT DIRECTORS ASSOCIATION OF CALIFORNIA
Workers Compensation and Personal Injury: Maximize Collections

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Overview of the WCAB System

LIFE CYCLE OF A WORKERS’ COMPENSATION CASE

Injury → Medical Treatment → unable to return → Total Temporary Disability (TTD) → Charged against settlement → Permanent Disability (PD) → Charged against settlement → Settlement

Return to work

CCP 704.160 Not charged against settlement

LC 1903(e)
Overview of the WCAB System

The Workers’ Compensation system is an Administrative Law System which provides medical treatment and compensation for employees injured while working “on the job”.

Many observers of the system say it favors workers at the expense of their employers.

It is an excellent source of periodic and lump-sum payments of child support to LCSAs.
Overview of the WCAB System

You must gain an understanding of what you are dealing with here – it is **NOT** based on the Superior Court system.

For example, the applicant’s attorney receives only 15% of the settlement as their fee, so actions are usually resolved promptly, but on a “quantity” basis.
When child support liens are settled, you must *make it easy to get paid*.

Liens are frequently settled at hearings and trials, and the litigants are required to make a telephone call to the LCSAs to resolve them. Accordingly, you must have someone ready to speak to them with knowledge of the case, and settlement authority.

*MAKE IT EASY TO GET PAID!*
Overview of the WCAB System

Let’s start with the basics –

1 - A worker is injured while working “on the job”
   It must have a “nexus” to the job to be compensable.

2 - The worker hires an attorney who specializes in WCAB issues and files an “Application for Adjudication”. If a “nexus” is shown between the injury and the job, the claim is usually “accepted” and the worker is sent for medical treatment.
If the “nexus” cannot be shown, the claim will be initially “denied”. No medical treatment nor compensation will be offered to the worker.

Claims like these are sometimes settled for nuisance value. Or, the applicant handles the case on his or her own. Infrequently, “denied” claims settle for compensation.
Overview of the WCAB System

Once the Claim for Adjudication is opened, the Department of Workers’ Compensation [DWC] sends a list of new claims to the State DCSS. A “match-up” occurs.

Then, the LCSA with participant managing responsibility [PMR] gets a list of tasks for obligors with open claims from the DWC.

*Your Agency has it’s first opportunity to collect money!*
Overview of the WCAB System

LCSA IMPACT POINT – Number One!

Once your LCSA receives the list of open claims, it takes **TWO** significant steps:

1. It issues an Income Withholding Order [IWO] to the employee’s insurer to collect from TDD benefits being paid.

   YOUR AGENCY STARTS RECEIVING TEMPORARY DISABILITY DEDUCTIONS [TDD]!
The second step the LCSA takes is:

2 – It files a child support lien with the local Board.

This lien serves as a reminder for the litigants to pay a portion of the settlement to the LCSA when the case resolves.

The child support lien will be periodically updated and mailed out to the litigants since it will likely increase over time – monthly obligations and interest accrual.
Overview of the WCAB System

Your LCAS is authorized by California State Law to deduct 25% of the Temporary Disability benefits to pay child support.

CODE OF CIVIL PROCEDURE
SECTION 704.160

These deductions are *not* charged as advances against the eventual settlement.
Overview of the WCAB System

The worker is receiving medical treatment . . .
He or she is receiving TDD payments . . .
Your agency is getting 25% of these benefits by Income Withholding Order

HELPFUL PRACTICE POINTER
Once your agency is aware the obligor is on TDD benefits contact them and attempt to get a modification of child support filed.
Eventually, this blissful period comes to an end when the medical provider for the applicant declares them.

**PERMANENT AND STATIONARY**

This means that the worker’s injury and overall health has stabilized to the point where no further improvement is anticipated.
EVERYTHING CHANGES NOW!
Overview of the WCAB System

THREE MAJOR DEVELOPMENTS HAPPEN!

1 – The injured worker no longer receives TDD benefits – they now receive Permanent Disability Advances, or “PDAs”

This is a bad development for your agency since PDAs ARE charged against the eventual settlement received by the worker.
2 - Your agency’s Income Withholding Order is no longer honored by the insurer once PDAs are being received.

Generally speaking, since there is no statutory authority to authorize the deduction of PDAs, insurers will not honor IWOs against PDAs.
Overview of WCAB System

3 – As PDAs are paid out, the available pool of compensation is slowly paid out, month after month, until …

**THERE ISN’T ANY MONEY, ANY MORE.**

It should be noted that a WCAB case – “Truck Insurance” (1997) 62 Cal.Comp.Cases 240 – says insurers must reserve out sufficient money to pay your agency’s lien. See also, Code of Civil Procedure Section 491.460(c). Still, mistakes are made and all the money is sometimes paid out.
Overview of the WCAB System

LCSA IMPACT POINT – Number Two!

Settlement of the Lien

Assuming any money IS left, your agency will seek to satisfy the child support lien.

Labor Code Section 4903(e)
Overview of the WCAB System

Two ways to settle the case:

1 – By lump-sum settlement, called the **COMPROMISE & RELEASE AGREEMENT**

2 – By periodic payment, over the years, called the **FINDINGS & AWARD**

In this format the applicant reserves their future medical treatment.
In general terms, settlement of the child support lien will depend upon the amount of compensation available in the case. In each case the same analysis is conducted:

What is the gross settlement?
How much is deducted for attorney fees?
How much was deducted for PDAs?
What is the amount the applicant receives?
Overview of the WCAB System

Each LCSA will decide what guidelines to establish to settle their child support liens.

Many Counties employ the following guideline which has worked well at WCAB Boards throughout California.
Overview of the WCAB System

Once you know how much the applicant will receive, you can make your demand on the child support lien. If our lien can be paid from this amount and still give the applicant that much or more, request that the full lien amount be paid.

Example: Settlement - $100,000
Attorney fees [15%] - $85,000 left
Less PDAs - $30,000 - $55,000 left
Applicant receives $55,000.

If your agency lien is $12,000, request that the entire $12,000 child support lien be paid. Applicant gets remaining $43,000.00.
This time assume the child support lien is $60,000.00

Settlement is $100,000
Attorney fees is $15,000 – leaves $85,000
PDAs are $30,000 – leaves $55,000
Applicant receives $55,000

In this instance your agency would request a 50-50% split with the applicant. Applicant and your agency would both receive shares of $27,5000.
THE “TOP TEN” STEPS TO AN EFFECTIVE WCAB UNIT

1 – Establish a dedicated WCAB telephone number at your agency to settle liens and to provide accurate liens balances.

2 – Staff this telephone number during all business hours with “live” workers.
“PIECING IT ALL TOGETHER”
WCAB STYLE

3 – Train your staff to settle child support liens.

4 – Give your staff members on the telephone line settlement authority.

5 – Train staff members to be “Hearing Representatives” to expand coverage of hearings.

6 – Ask other LCSAs to make appearances for you in outlying areas.
7 – Use the “Court Call” system to make appearances, where permitted, to expand coverage in outlying areas.

8 – Update and mail out Amended Liens frequently to keep fresh information in front of the litigants.

9 – Telephone the litigants before and after hearings, to determine the results which took place at hearings you cannot attend.
10 – Use the newly-created Petition to Withhold Child Support from Permanent Disability Benefits Motion.

Use these ten suggestions and you will have no trouble recouping the maximum amount of recoverable Workers’ Compensation collections available.
PETITION FOR ORDER TO WITHHOLD FROM PERMANENT DISABILITY ADVANCES FOR CHILD SUPPORT
PETITION FOR ORDER TO WITHHOLD

WHY?
PETITION FOR ORDER TO WITHHOLD

WHAT?
PETITION FOR ORDER TO WITHHOLD

❖ WHEN?
PETITION FOR ORDER TO WITHHOLD

♥ HOW?
PETITION FOR ORDER TO WITHHOLD

CHALLENGE
PETITION FOR ORDER TO WITHHOLD

FUN
The Personal Injury Procedures Guide is a comprehensive written handbook issued for DCSS professionals in August 2015.

It is a compilation of the best practices for maximizing collections from personal injury claims.

The most updated version can be found at California Central.
What is a “Personal Injury”?

Personal Injury defined:

Personal injury is a legal term for damage to a person’s body, mind or emotions, but not to a person’s property.

See DCSS Personal Injury Guide
Types of Personal Injury

Use your imagination:

Auto accidents, slip and falls, assault claims, medical malpractice, asbestos, product defects, accidents on cruise ships, defamation, intentional infliction of emotion distress, negligent infliction of emotional distress, a large pig falls on you at the county fair...
Life of a Personal Injury Claim

- Incident causing loss
- Incurring of damages
- Claim to insurance company
- Determination of liability
- Filing of lawsuit in civil court
- Settlement negotiations
- Trial or Settlement.
Personal Injury Lien Collection: The Basics

Five Step Process:

1. Obtain Personal Injury Claim Information
2. Add or Revise Insurance information
3. Generate an IWO
4. Make Claim/Lien Determination
5. File a “Notice of Lien”
Lien Collection Process

**Personal Injury IWO/Lien Collection Process**

1. Obtain insurance claim information
2. Perform research to ensure information is complete and valid
3. Add insurance information if not in ICESS
4. Manually generate Personal Injury (IWO) IWO (E5-ENP-014) for up to 100% net settlement collection, printed locally

**DCSS and/or LCSA**
- Employment Task E1002, E1005
- NCP Task E1002, E1003, E1005
- CCSN or DCSS Match

**LCSA**
- During case review, LCSA discovers personal injury claim and/or IWO in CSE
- Perform research

**Notes**
- DCSS Only: Notify LCSA if payment is being attached by insurance company, however, DCSS does not notify if claim denied, closed or medical-only.
- CSE form set change effective 1/21/34 includes DCSS OORR insurance company response (ICR) form W/ IWO

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Finding Out About Personal Injury Claims

Working the Case:

- NCP tells you
- CP tells you
- Performing case tasks – Early Intervention
- Employer tells you
- Office of Child Support Enforcement (OCSE)
- Check CSE Participant Enforcement Insurance Claim List (Updated by DCSS)
- Check Child Support Lien Network (CSLN)
California Insurance Intercept Program (CIIP)

The California Insurance Intercept was an electronic interface that provided data matching processes and reports used to intercept personal injury and workers’ compensation claims for child support obligations.

Now it is the umbrella name for the program that started our working relationship with OCSE, CSLN and DIR for the collections of insurance benefits.
What is CSLN?

Child Support Lien Network (CSLN)

A nationwide database housing information on millions of delinquent NCPs

CSE and CSLN interface and match delinquent NCPs with insurance claim information

Issues automatic IWO outside of CSE

To view: https://childsupportliens.com/extranet/
Welcome to the Child Support Lien Network

Established in 1999, the Child Support Lien Network (CSLN) houses a database of 3.6 million delinquent child support obligors owing over $90 billion in past-due support updated on a monthly basis by participating states. The database is used to intercept insurance settlements to pay delinquent child support obligations owed to children and families.


Additional States may join CSLN through the execution of an interstate agreement with Rhode Island.

In the News:
- CSLN Quarterly Newsletters
- Need A New Collections Source? Try Life Insurance
- More
- Maximize Your Collections with CSLN Real Property!
- More
- Rhode Island Secures Long-Overdue Child Support Payments
- More
- 7th Annual CSLN Partnership Awards Honor Outstanding Members
- More

View Statistical Map
- Register
- Log-In
- Like
- Follow @RCSLN

JOIN CSLN

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The URL for the CSLN website is: https://www.childsupportliens.com/extranet/

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The Next Step

Step 2: Add or Revise Insurance Information.

- Date of Loss
- Attorneys
- Insurance Company, claim number, adjuster name
- Civil Suit filed yet?
- Settlement status

Update NCP’s Insurance Claim Detail page in CSE
Generate Income Withholding Order

• Manual generation of IWO on all of NCP’s active cases. Use FS-ENF-014

• Wage Assignment detail page: Select “Personal Injury” type and request “100%” maximum

• Always monitor and task for follow up

• Next: Determine if Lien is also now appropriate
California Family Code Section 17523 authorizes the child support lien

California Code of Civil Procedure Section 491.410 authorizes the filing of the lien in civil case

The “Notice of Lien” puts court and litigants on notice of the child support obligation
Notice of Lien

Generate "Notice of Lien" on the "Legal Activities" page. (FS-EJ-124 – full civil suit package)

Needed information:

• Full court caption and docket number
• Date of Entry of Judgment
• Name and address of each attorney
• Copy of formal child support order
• A certified, updated audit
Recovery

Amount paid through a lawsuit or insurance settlement to compensate for damages.

Net Settlement

Amount remaining from a total gross settlement after attorneys’ fees/costs and medical liens are deducted.
Basis of Settlement

• Liability and Damages

• Priority of Liens

• Where does Child Support fit in?
  (After attorney fees and medical providers)

Demand 100% of the Net Settlement

Settlement proceeds are not subject to restrictions on garnishment contained in federal law. *(15 US Code section 1673(b)(1)(A))*

Federal law classifies insurance settlements as assets subject to seizure for arrears. *(42 US Code section 666(c)(1)(G)(i)(ll))*
Points to Remember:

- NCP and attorney have every incentive to reach settlement
- Medical liens and attorney fees have legal protection in front of child support
- Before settlement, require attorney to provide disbursement statement to confirm ‘net’ settlement
Cash the Check

- Request payment be made to SDU:
  
  CA SDU  
  P.O. Box 989067  
  West Sacramento CA 95798  
  Tax ID No. 68-0446735

- Designate LCSA employee to sign ‘two party check’.

- Account hold to be sure money is properly allocated.
ANY QUESTIONS?
Please be sure to complete the session evaluation.
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Piecing it all Together

www.csdaca.org

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