



DIR *Issue Brief* on Comp Liens Has Shortcomings

On Friday afternoon, August 19, 2016, the Department of Industrial Relations released an *Issue Brief: Issues and Impact of Lien Filing in California Workers' Compensation System*.¹ The timing of the *Brief* was designed to bolster support for passage of Senate Bill 1160 that was amended the day before. The *Brief*, which relies on data from the state's Electronic Adjudication Management System (EAMS)¹, seeks to demonstrate that workers' compensation fraud is rampant, particularly in southern California, and that draconian restrictions on the filing of liens are the only way to combat this nefarious behavior. Unfortunately, the *Brief* omits other critical data that are necessary to put fraudulent misconduct in the proper perspective. It also fails to address unmistakable negative consequences of SB 1160.

Public Access to Relevant, Accurate Data

Over the past three and a half decades, CSIMS has conducted or commissioned research on many issues in the California workers' compensation system. As part of our ongoing mission, from time to time, we purchase data from the EAMS system; the same data DIR used for its recent report. Using the heading from page 3 in the DIR report, CSIMS will provide additional information to clarify further "The Power of Data."

Up to 83% of Liens are Not Fraudulent

In Table 1 on Page 8 of the *Issue Brief*, DIR notes that between 2011 and 2015, 579,787 liens were filed having a total value of slightly more than \$4 billion. Of these, roughly \$600 million, or 17%, were filed by indicted or convicted providers². While these statistics are startling, DIR's statistics also mean that up to 83% of the lien filings were not made by convicted or accused providers, and there is no way for anyone to predict otherwise with any certainty. In its present form, SB 1160 will significantly impact all liens, whether or not they're fraudulent or valid.

¹The accuracy of this database is subject to question. Data sets CSIMS received from the State of California have contained some obvious data entry errors. For example, one lien in the system was for \$100 trillion.

²Although indicted or convicted providers filed \$600 million in liens, there is no proof that all of their liens were for fraudulent services.

Why Valid Liens Must Be Protected

Liens have been a part of California's workers' compensation system for more than a century. See Ch. 176, Stats 1913, Sec. 29 (b) (Senate Bill 905 - Boynton). The purpose of such liens is to provide injured workers with a pathway to access medical care for work-related injuries when their employer does not provide the needed care, and to similarly create a means by which providers of such self-procured care can obtain payment for their services. Fortunately for injured workers, there are physicians and other providers who are willing to provide goods and services when the liability for payment is in dispute. If legislation such as SB 1160 significantly hinders or prevents the filing of a lien, injured workers will lose that valuable safety net. In some cases, the costs of treatment will be shifted to county hospitals, private hospital emergency departments, and private health insurance programs; but even in those situations, some services such as physical therapy, necessary medications, interpretation, durable medical equipment and the like will not be provided. The typical high-deductible policy available under the Affordable Care Act is not a viable alternative.

Fraud, not Injured Workers and Necessary Medical Care, Must Be Eradicated

The *Issue Brief* notes that fraudulent lien activity is "especially prevalent in 'denied claims' . . ." No one disputes that liens are prevalent in denied claims; but that does not mean that liens equate to fraud. We agree that all fraud must be rooted out and eradicated, but the law should not punish the innocent because, in DIR's words, of the "nefarious behavior of a few providers." [emp. added]

Crucial New EAMS Information on Denied Claims

A statistically significant CSIMS study of post-SB 863 EAMS data and DWC litigated case closing orders was just completed. See attached Appendix. In 2013, 139,136 workers claiming occupational injuries filed an Application for Adjudication of Claim. As of August 9 of this year, approximately 30,200 of these injured workers' litigated cases had settled with at least one non-EDD lien and a Compromise and Release with judicially approved documents finding that "injury AOE/COE" was a serious issue. This is a fairly good indicator of the number of "injury denied" cases that existed. Of these, approximately 24,000 cases - nearly 80% - settled for \$10,000 or more. This \$10,000 threshold is a reasonable estimate of the "nuisance value" of a workers' compensation case, so a plausible argument could be made that at least 75% of all "injury denied" cases ultimately turn out to be legitimate, accepted occupational injuries. As drafted, the amendments to Section 4903.05 in SB 1160 could preclude the filing of many liens in these legitimate "injury denied" cases. Furthermore, once a denied claim becomes admitted, the bill contains no mechanism for satisfying bills for services that were provided during the denial period.

Moreover, certain classes of workers will be disproportionately impacted by the anti-lien provisions of SB 1160. These include low-income, part-time, and undocumented workers who do not have (or soon lose) any private health insurance to pay for treatment once the employer denies the injury. Further detailed analysis of the EAMS data revealed that 65.1% of these questionably "injury denied" claims were filed by Latino workers. This is in stark contrast to the 35.6% Latino population of the California workplace.

Claim Denied; Justice Denied; SB 1160 Will Wipe Out \$\$\$ Billions of Legitimate Liens

The most egregious part of SB 1160 is the proposed amendment to Labor Code Section 4903.05 that would mandate the filing of a declaration of eligibility for all existing and future liens. The new language in the section limits lien filings to six situations, none of which adequately address cases involving "injury denied" claims.

An unintended (we hope) consequence of this legislation is that it may encourage payor misconduct by promoting breaches of duty in the payment of legitimate bills when liability is in dispute. In 2015, some breach of duty in payors' bill payment processes occurred more than 268,000 times. A recent study by a major billing organization found that only four of the 18 largest payors, on average, manage to complete a second bill review within the statutory 15 days. Another breach of duty, the non-response or untimely response to a billing invoice in an injury-denied case, precludes going to independent bill review (IBR), making the filing of a lien the provider's only alternative in many cases. Not only will some claimants be unable to satisfy one of the six lien qualification situations, they may be unable to produce necessary documentation because their access will be barred by Labor Code Section 4903.6(d) and they may not have standing to request an order from the WCAB. As drafted, this section promotes abuse by insurers and third party administrators.

The retroactive application of the declaration mandate will effectively wipe out billions of dollars of current liens on July 1, 2017. These represent services and goods that were provided in good faith in full compliance with existing law. The language of the bill is worse than unconscionable!

Rather than attacking fraud with surgical precision such as proposed in Assembly Bill 1244 (Gray), SB 1160 seeks to abolish the lien system that has provided a valuable safety net to hundreds of thousands of injured workers in California for more than a century. CSIMS categorically condemns fraud and abuse, but in its zeal to destroy this cancer, the legislation "throws the baby out with the bath water." It is a denial of medical treatment for those who deserve it, and a denial of fairness and justice for those who provide it.

Please note the attached Appendix for additional statistical data and analysis.

©CSIMS

August 23, 2016

Injured Workers Filing DWC Applications for Adjudication of Claim in 2013

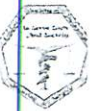
	Total IWs	% Total IWs	Lien and C&R ¹	% Lien and C&R ²
Injured Workers (Non-Latino)	74,301	53.4%	11,428	34.9%
Injured Workers (Latino)	64,835	46.6%	21,291	65.1%
Total Injured Workers	139,136	100.0%	32,719	100.0%

Data Source: Electronic Adjudication Management System

Latino Workforce Statistics and Surname Source: United States Census Bureau

¹ Number of 2013 injured workers with both (1) at least one non-EDD lien and (2) an Order Approving Compromise and Release on one or more of their cases.

² Although 65.1% of the claims with both liens and C&R settlement payments were filed by Latino injured workers, Latinos comprise approximately 35.6% of the California workforce. This raises serious questions about the disproportionate incidence of their "injury denied" claims compared to those of the non-Latino workforce population. Further, a CSIMS study of DWC litigated case settlement documents shows that over 90% of claims which evidence both liens and C&Rs involve a documented, serious dispute between employee and employer regarding injury AOE/COE.



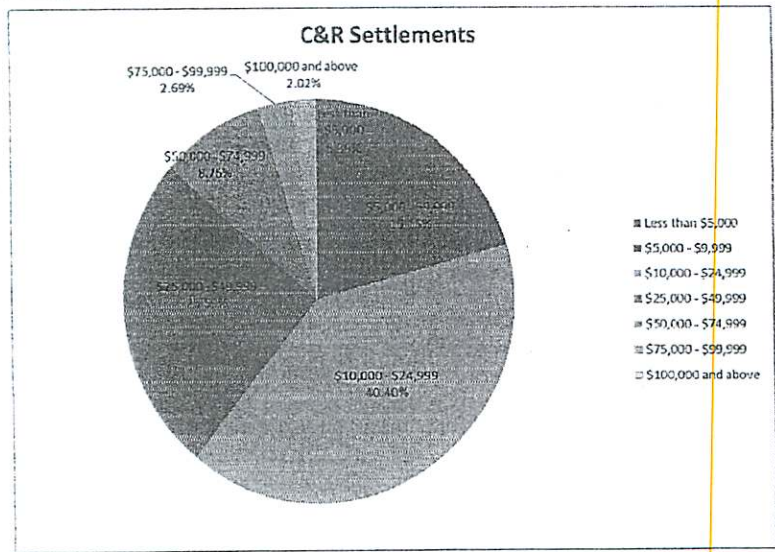
C&R Closing Orders with "Injury AOE/COE" identified as serious issue

	Count	Percentage	95% Confidence Level
Less than \$5,000	16	5.39%	+/- 2.56%
\$5,000 - \$9,999	45	15.15%	+/- 4.06%
\$10,000 - \$24,999	120	40.40%	+/- 5.56%
\$25,000 - \$49,999	76	25.59%	+/- 4.94%
\$50,000 - \$74,999	26	8.75%	+/- 3.2%
\$75,000 - \$99,999	8	2.69%	+/- 1.83%
\$100,000 and above	6	2.02%	+/- 1.59%
Total	297		

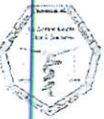
AOE/COE (Y)	274	92.3%	+/- 3.02%
AOE/COE (N)	23	7.7%	+/- 3.02%
Total	297		

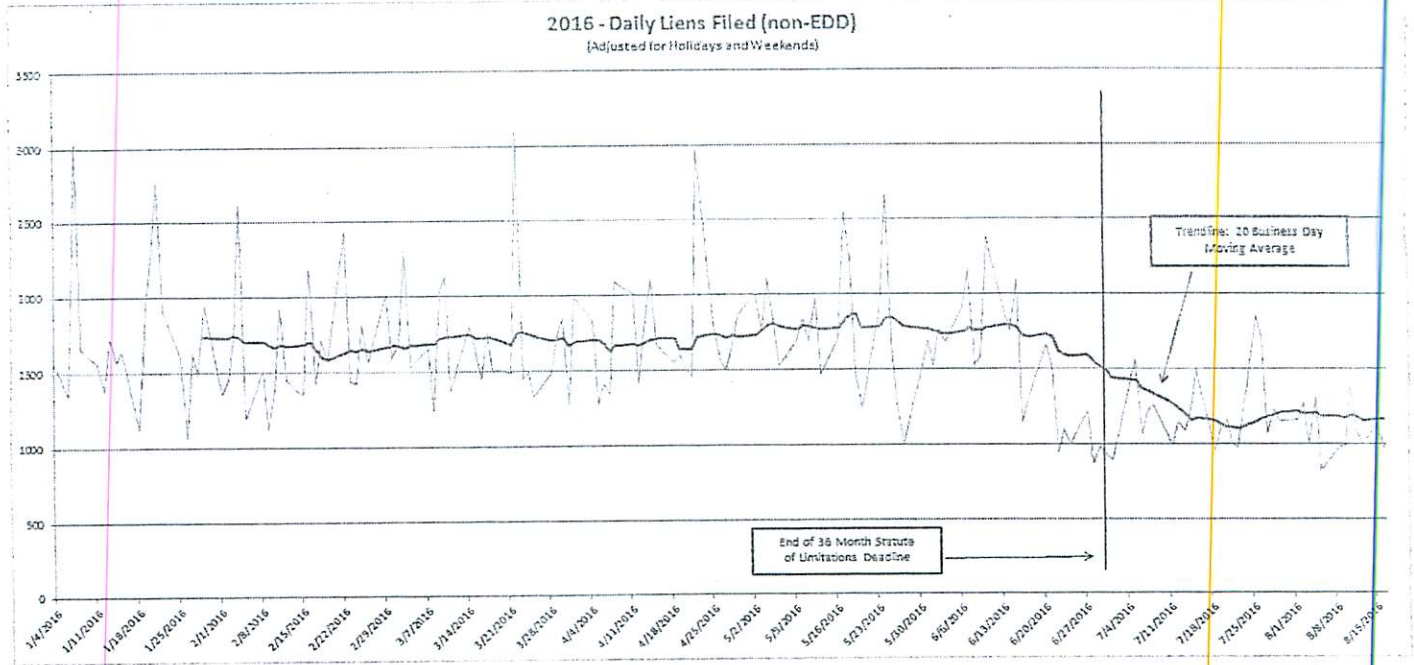
Settlements

Mean	\$	26,402
Median	\$	20,000
Standard Deviation	\$	23,562
Min	\$	300
Max	\$	170,000
1st Quartile	\$	10,000
2nd Quartile	\$	20,000
3rd Quartile	\$	35,000
4th Quartile	\$	170,000



Data Source: CSIMS C&R Survey





Note:

This chart tracks the change of lien filing volume related to the June 30, 2016 deadline for the 36 months statute of limitations limit mandated by SB 863 reforms. Lien filing has dropped by about 10,000 per month (500 per business day).

Data Source: Electronic Adjudication Management System



August 23, 2016

Mr. Carlyle R. Brakensiek, MBA, JD

I have spent time to review the data analysis performed on data from California litigated Worker's Compensation cases opened in 2013. The purpose of my review was to perform the following tasks:

1. Satisfy that the data which were the subject of the analysis accurately described the population of existing cases, liens and Compromise and Release settlement documents.
2. Satisfy that the sample drawn for the analysis met the statistical requirements of a valid random sample, and
3. Satisfy that the computations performed on the selected sample were the correct computations and were accurately performed.

After a careful review of the data analysis, I can attest that the data analysis successfully met all the statistical and mathematical processes and accurately represents the population characteristics of the existing cases, liens and Compromise and Release settlement documents for litigated cases opened in 2013.



Dr. Bill Bleuel