State: Calif.
Appeals Court Dismisses Angelotti Challenge to Activation Fee: Top [2015-06-30]

The U.S. 9th Circuit Court of Appeals on Monday upheld the $100 lien-activation fee imposed by Senate Bill 863, lifting an injunction that was imposed 19 months ago that prevented the Division of Workers' Compensation from collecting the fee as required by the bill for liens filed before 2013.

The long-awaited decision in Angelotti Chiropractic v. Baker surprised some industry observers, who thought the appellate court would remand the case to the U.S. District Court for Central California to decide whether exempting some entities from paying the activation fee violated the equal-protection clause of the 5th and 14th amendments.

Senate Bill 863 required lien claimants to pay a $150 filing fee for any new lien filed after Jan. 1, 2013, and to pay a $100 activation fee before a hearing on any lien filed before that date. The bill also required all liens filed before 2013 be activated before Jan. 1, 2014, or they would be dismissed automatically by operation of law.

Plaintiffs in Angelotti, a group of medical and service providers who collectively hold more than 33,000 liens, in July 2013 filed a complaint with the federal court in Los Angeles alleging the activation fee is an improper government taking of private property without just compensation and violates due process by forcing them to pay a fee to access the workers' compensation court system. They also said a provision that exempts insurance companies, health maintenance organizations and employer-sponsored benefit plans from paying the activation fee is arbitrary and violates the equal protections clause.

U.S. District Judge George Wu on Nov. 12, 2013, dismissed the due process and improper takings arguments. The ability to recover by filing a lien is contingent upon an injured worker's ability to recover on his or her claim so the plaintiffs don't have a vested property interest, Wu said.

At the same time, Wu said he found some merit to the equal protections claim and issued an injunction prohibiting the DWC from collecting activation fees or dismissing any liens not activated by Jan. 1, 2014. The DWC stopped collecting activation fees on Nov. 19, 2013.

In December, plaintiffs appealed Wu's decision to dismiss the due process and takings causes of action, while the DWC appealed the injunction and asked that the equal protections argument also be dismissed.

During oral arguments in November, U.S. District Judge Jack Zouhary said Wu never addressed the merits of the equal protections claim outside of the context of issuing the preliminary injunction. He suggested the case should be remanded because it was not a final judgment.

But the court on Monday said Wu abused his discretion by concluding that there existed a serious question about the merits of the equal protections claim, so it vacated the injunction.

"We also reverse the district court's denial of defendants' motion to dismiss the equal protection claim because our ruling on the preliminary injunction necessarily resolves the motion to dismiss," the 9th COA said.

The Angelotti plaintiffs argued that the appellate court should use strict scrutiny as the standard for reviewing the equal protections argument, which would require a showing that SB 863 was narrowly tailored to achieve the compelling governmental interest for exempting some lien claimants from paying the activation fee.

But the appellate court said the activation fee doesn't implicate any fundamental rights and challenges to "economic" legislation such as SB 863 are properly evaluated using the rational basis test. The lower level of scrutiny requires only that a law be rationally related to a legitimate government purpose to pass constitutional muster.

One plausible policy goal of California lawmakers for imposing the activation fee is to help clear the lien backlog by requiring lienholders consider the validity of a claim and whether it is worth paying $100 to prevent its dismissal.

"In turn, the California Legislature's decision to impose the activation fee on entities like plaintiffs, while exempting other entities, is rationally related to the goal of clearing the backlog because the Legislature might have rationally concluded that the nonexempt entities are primarily responsible for the backlog," the appellate court said.

Furthermore, the rational basis level of review places on the plaintiff the burden to negate every conceivable basis that would support the exemption. But the district court did not require the Angelotti plaintiffs to demonstrate they would be able to refute all explanations for the distinction when issuing the injunction.

"Also, the district court's skepticism of the notion that the exempted entities were not major contributors of the backlog ran afoul of the principle that 'a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data,'" the 9th COA said. "In sum, we conclude that the district court abused its discretion in finding that a 'serious question' exists as to the merits of plaintiffs' equal protection claim. In the absence of a 'serious question' going to the merits of this claim, the preliminary injunction must be vacated."

In addition to striking down the remaining cause of action and lifting the injunction, the appellate court also affirmed the lower court decision to dismiss the takings and due process arguments.

The court said plaintiffs weren't required to treat injured workers, but did so of their own volition with the expectation of compensation by filing a lien later.

"Provided that the activation fee is paid, SB 863 does not affect plaintiffs' ability to obtain payment on outstanding liens," the court said.

And the due process argument fails because the activation fee "is more akin to filing fees in conventional litigation" the Supreme Court has already declared constitutional.

Mona Nemat, a partner with Bissman & Nemat, said she did not expect the 9th COA would dismiss the case and lift the injunction. At worst, she said she thought the appellate court would send the case back to the district court.

"I don't think anyone thought it would be this brutal," she said.

Monday's decision requires providers to quickly come up with money to activate their liens. Nemat said she doesn't know how many providers have the financial resources to do that.

"This is a huge blow to the providers who have these liens," she said.

She also said the court's opinion could discourage doctors from treating injured workers when a carrier denies a claim.

Reid Steinfeld, general counsel for collections firm Grant & Weber, called the decision "ridiculous" and said it creates an "unreasonable burden" on providers who will have to pay for the privilege of going to court on billing disputes for services provided prior to 2013. Furthermore, the court failed to set guidelines on how to enforce the provision requiring the dismissal of liens not activated by the start of 2014.

He agreed with Nemat that the court's opinion could discourage doctors from treating injured workers.

"In the Legislature's haste to eliminate lien claimants from the system, they failed to take into consideration that if a professional is unable to get paid a reasonable sum, the professional will just not treat patients in this area," he said.

Michael D. Peabody, a partner with workers' compensation defense firm Bradford and Barthel, said he was happy to see the court apply the rational basis test and determine there was a legitimate reason for lawmakers to enact the activation fee.

"The court said it's typical in litigation to have a filing fee, it meets the rational basis and that's as much analysis as they need to do," he said. "I'm glad to see it apply that test and avoid getting into all the details beyond that."

Peabody said the implication for the decision is that it will give state lawmakers more comfort in knowing they can make additional tweaks to the workers' compensation laws that will survive judicial scrutiny.

Jennifer Vargen, executive vice president of public affairs for amicus curiae State Compensation Insurance Fund, said the appellate court's decision recognizes the authority of the Legislature "to tackle the backlog of liens that have been clogging the workers' compensation system for years." She said it was "gratifying" that the cost-saving provision of SB 863 can now be fully implemented.

The Department of Industrial Relations and Division of Workers' Compensation are also "pleased" with the decision, according to spokesman Peter Melton.

He said the administration does not have any comment right now about what it plans to do to address liens filed before 2013 and not activated before the injunction was issued.

"Counsel for the department is reviewing the decision and DWC expects to provide further comments/guidance to the public within the next 10-15 days," he said in an email.

The Angelotti plaintiffs have 14 days to request a panel rehearing if they think the court overlooked a material point of fact or law or an en banc rehearing if the opinion conflicts with a Supreme Court or other federal appellate court ruling.

Plaintiffs have 90 days to petition the Supreme Court for review.

Glen Summers, an attorney with Bartlit Beck Herman Palenchar & Scott in Denver who represented the Angelotti plaintiffs, did not return an email Monday and his voicemail box was full and not accepting new messages.

The court's decision is here.