



## THE EFFECT OF CHILD SUPPORT LIENS ON YOUR SETTLEMENT

You successfully negotiated the settlement of a workers' compensation settlement with the claimant. Prior to sending the paperwork to defense counsel to request a clincher conference, you receive notice from the South Carolina Department of Social Services (DSS) that the Claimant owes back payment of child support. The letter gives you notice of a lien that attaches to any and all proceeds from your workers' compensation claim with Claimant. After reviewing the letter, you notice the lien amount is greater than the settlement of the proposed workers' compensation claim. You are afraid if you tell Claimant about the lien, it could unravel the proposed settlement. What should you do?

Less than twelve months ago the SCDSS implemented a new process of enforcing back child support owed by Claimants through attachment of workers' compensation claims. Pursuant to South Carolina Code Section 63-17-2740, the carrier may not dispose of, or return any credits, debts or other personal property owned or controlled by, or owed to the obligator which are in your possession or control, up to the amount of the overdue child support obligation stated in the notice. Section 63-17-2320 requires the carrier or client to advise the Child Support Enforcement Division of any credits, debts or personal property owned by or owed to the Claimant that are in possession or control of the carrier including the value and location of such assets. The lien notice letter states the carrier has five days after receiving the notice to send in information regarding credits, debts, and personal property in possession of the carrier that is owed to Claimant to the Child Support Division. Although the Workers' Compensation Commission has yet to publish any formal opinion or directive regarding this issue, our experience, shows the Commissioners will honor the lien notice.

Since the Commission will honor the lien, carriers are required to honor it as well or run the risk of paying the Claimant and paying on the lien twice. The following are practical tips to assist you with the continued successful handling of a workers' compensation claim when notice is given of a DSS lien:

- Immediately send the notice of lien to defense counsel to satisfy the requisite five day confirmation of the lien notice.
- Notify the claimant of the Notice of lien immediately.
- Notify the Commission of the Notice of lien immediately.
- If the claim is set for a clincher conference, place the burden of whether the lien needs to be satisfied squarely before the Commissioner to make the decision. If the Commissioner makes the decision the carrier cannot be looked to for satisfying the lien, the carrier has secured extra protection.
- Notify DSS in writing the lien will only be honored and satisfied in the event the commission approves an award made payable to the Claimant. If an award is never made payable to the Claimant or approved by the Commission, the carrier is under no obligation to satisfy any portion of the lien. This information is critical to put in writing and give notice to DSS as the carrier does not want to obligate themselves to a lien prior to adjudication of the claim before the Commission.



- Sometimes claimants are reluctant to give up money to satisfy back child support payments and often will abandon their workers' compensation claims. By involving the claimant early in the process and notifying them you plan on honoring the lien, Claimant knows up front whether he wishes to abandon his claim or proceed with the hearing. We have found through practice the Claimant will sometimes abandon his claim by failure to appear at the hearing. If Claimant refuses to acknowledge the lien or attend the hearing, a Fourteen Day Order may be requested. Make sure the Order states that if the Claimant fails to respond within fourteen days, showing good cause for failure to attend the hearing, his case will be dismissed with prejudice.
- By involving the Claimant early in the process of notification of the lien, Claimant may be able to renegotiate the lien with DSS. DSS will often negotiate the lien based upon the proposed settlement amount.
- Make sure that any renegotiation of the lien by DSS is confirmed in favor of a new lien notice for the amount that is owed.

These practical tips should assist you in satisfying the obligation to recognize and honor the lien while using this advantage to possibly resolve workers' compensation cases.