EXHIBIT 6
DATE 3-21-07
SB 426

TESTIMONY OF ATTORNEY NORM NEWHALL IN SUPPORT OF SB 426

It's not often that claimant's attorneys and medical providers are aligned on an issue, but this is a "no brainer". Example: a person is injured in a work related accident and incurs significant medical expense; the worker files a work comp claim; the work comp insurer denies the claim and refuses to pay the medical bills; the claimant hires an attorney and the attorney fights the denial; and the insurer, as a result of the attorney's efforts, ends up accepting the claim and agrees to pay the medical bills. Under the *Lockhart* decision of the Supreme Court, the attorney is entitled to be paid for his efforts and has a first lien on the medical payments to the provider. Thus, the provider not only gets paid at the work comp rate, but gets dinged for the attorney fees. Attorneys acknowledge that this is not fair to the provider. Likewise it is not fair to the attorney or the claimant if the attorney cannot get paid for the services rendered in obtaining acceptance of the claim and thereby creating the circumstance whereby the provider gets any payment at all. Clearly the one who should pay the attorney fees is the insurer who created the need for the attorney by wrongfully refusing to pay in the first place.

This is not a small issue. Presently I've got a check on my desk in excess of $5000 representing "Lockhart" fees which were effectively paid by the provider because of the insurer's refusal to pay medical benefits. The work comp insurer's initial refusal to pay often creates a complex mess of transactions that has to be unwound with considerable time and effort. If some of the expenses have been paid by health insurance, then the payments must be recouped from the provider and returned to the health insurer. Then the bills must be re-submitted by the provider to the work comp carrier, who must then issue payment to the provider *after* deducting the attorney fees. The provider understandably feels cheated. Not understanding why he has not been paid in full, the provider blames the claimant (patient) and even though he is not permitted by law to do so, the provider continues to bill the claimant for the underpayment and may even refuse to treat the claimant further. Obviously the claimant has done nothing wrong and can't understand why the provider is reluctant to treat him further.

Another scenario arises when the claimant has paid some or all of the medical bills himself because the insurer refuses to pay (often the claimant has no choice because the provider after learning that the work comp carrier will not pay for the treatment, refuses to provide treatment unless it is paid for in advance). Then the claimant, who is often out of work and in dire financial condition, ends up paying the attorney fees on medical expenses which should have been paid by the work comp insurer in the first place.

All of the above drives a wedge between the patient and his provider *as a result of the wrongful conduct of the work comp insurer.* It is no wonder medical providers, and doctors in particular, refuse to get involved in work comp claims. Since work comp benefits are mostly "doctor driven", perhaps this is the result some work comp carriers want to achieve. But it is not right.

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