



Subcontractor Workers' Compensation Success Story - 2017

How a \$19,000 investment returned \$65,775 and lowered an EMR by 20 points!

Our client, a subcontractor, had an employee that was involved in an auto accident and filed a workers' compensation claim. The employee collected \$19,000 for workers' compensation benefits, and he also filed a claim against the negligent driver for the accident. Of course, the workers' compensation insurer had a right of recovery too, so they filed a lien against the employee's future settlement with the responsible party's auto insurer. The employee hired an attorney to help him recover from the auto insurer.

The employee achieved a settlement of \$120,000 from the auto insurer. This amount was on top of the \$19,000 workers' compensation benefits paid to the employee. The recovery efforts of the subcontractor's workers' compensation insurer were stalled by the employee's lawyer. The lawyer was claiming that he was entitled to his fee and costs for legal services to get the auto insurer to pay the \$120,000. He was also asserting employer negligence because the safety equipment on the subcontractor's truck was purportedly defective. His arguments, in part, were to mitigate the lien rights of the workers' compensation insurer. The lien value was reduced off the top by at least 35% (his fee plus prorated costs), making the lien worth about \$10,000 to \$12,000. Moreover, for the lien not to become completely worthless, the workers' compensation insurer still had the burden to defeat the alleged employer negligence to preserve the lien.

In the midst of these problems, we became the new broker for this subcontractor. We were hired to get the lien fully recovered and to lower the client's EMR. Our strategy was aggressive. Since the workers' compensation carrier was at a standstill regarding its lien rights, we suggested that our client buy the lien for its full value from his workers' compensation insurer—in essence, writing a check for \$19,000 to his workers' compensation insurer to get the maximum credit on his EMR calculation. Afterward, the client would use his own attorney to pursue the purchased lien rights, and collect as much of the \$19,000 as could be negotiated.

Unheard of ... why would anybody suggest such a crazy plan?

Workers' compensation liens can be assigned from one party to another in California, so there is no legal prohibition to purchase a lien and assign the lien rights to a new owner—in this instance, our client. The client was in agreement and purchased the lien from his insurer to reduce his EMR. The influence on the EMR was substantial. Since the workers' compensation insurer was now made completely whole for the benefits paid to the client's employee (a full recovery was credited against the claim), the WCIRB recalculated the client's EMR going back three years to the date of claim. The EMR was reduced by 20 points in each year resulting in a total workers' compensation premium savings (from revised audits) of \$16,995 in 2017, \$8,891 in 2016, and \$30,889 in 2015 for a total of \$56,775 in premium savings!

An added benefit was the satisfaction of the disputed lien. The employee's lawyer finally agreed to release \$9,000 back to our client to settle the lien and the matter was closed.

Result: \$56,775 in workers' compensation premium savings, and \$9,000 recovery on the lien, and a lower experience modification to help the client in qualifying for new work.

The story gets better. We noticed this client was not using the best classification for his yard employees. The correct classification code had a base rate 50% lower than the classification that had been used for several years. The result was an additional premium savings of \$28,598.

Things to remember:

1. Sometimes there is an advantage to buying a lien.
2. If employer negligence was determined by a judge, the lien value could have been reduced more.
3. Workers' compensation liens can be assigned from one party to another.
4. Classification codes make a difference.

Please contact Jim Untiedt at 408.418.2734, juntiedt@pentarisk.com; or Greg Roush at 408.418.2736, groush@pentarisk.com to see how we can be of help in lowering your workers' compensation costs to get the best results for your business. Visit our website at <http://pentarisk.com/>.

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