

1 WORKERS' COMPENSATION APPEALS BOARD

2 STATE OF CALIFORNIA

3 MONICA DOLLISON,

CASE No. LA 591155

4  
5 *Applicant*

6 vs.

7 FOX TELEVISION; NATIONAL  
8 UNION FIRE INSURANCE COMPANY,

9 *Defendant*

OPINION AND ORDER  
GRANTING RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION

10  
11 Defendant, National Union Fire Insurance Company, seeks  
12 reconsideration of the February 4, 1991 Order vacating the  
13 December 5, 1989 Order Approving Compromise and Release.

14 Defendant contends that good cause was not shown to vacate the  
15 approval order pursuant to Labor Code section 5803; (2) it is not  
16 obligated to provide applicant with a "hold harmless" agreement  
17 as part of a compromise and release; and (3) the lien claims of  
18 Monarch Medical Group and Dr. Darrell Burstein should be  
19 disallowed as unnecessary and unreasonable medical-legal  
20 expenses.

21 Based on our review of the record, and for the reasons stated  
22 herein, we will grant reconsideration, rescind the order vacating  
23 the approval order, and return the matter to the trial level for  
24 further proceedings and decision on lien claims.

25 We agree that there was no good cause demonstrated to rescind  
26 the approval order. Labor Code section 5803 provides, in per-  
27 tinent part:

1 "The appeals board has continuing jurisdiction  
2 over all its orders, decisions, and awards  
3 made and entered under the provisions of this  
4 division, and the decisions and orders of the  
5 rehabilitation unit established under Section  
6 139.5. At any time, upon notice ad after an  
opportunity to be heard is given to the par-  
ties in interest, the appeals board may  
rescind, alter, or amend any order, decision,  
or award, good cause appearing therefor."

7 An Order Approving Compromise and Release may be set aside on a  
8 showing that the agreement was the result of fraud, mistake,  
9 duress, or undue influence. (Silva v. Ind. Acc. Com. (1924) 68  
10 Cal.App. 510 [11 Ind. Acc.Com. 266].) Here, however, there does  
11 not appear to be any fraud or mistake; rather, the parties had  
12 agreed,

13 "All lien claims of record are to be taken off  
14 calendar with all due process rights reserved  
15 to said lien claimants in accordance with  
Permanente Medical Group v. Workers' Comp.  
Appeals Bd. (Williams) (1977) 73 C.A.3d 135."

16 Thus, the issue of the lien claims was deferred in the agreement,  
17 and jurisdiction of the issue was specifically reserved in the  
18 approval order. The order stated, "The Board retains jurisdic-  
19 tion over liens filed to date...."

20 Therefore, no rights of lien claimants have been limited or  
21 extinguished. They maintain their rights to litigate the issue  
22 of whether or not the medical-legal expenses were reasonable and  
23 necessary against defendant, even though applicant has not been  
24 held harmless from liability.

25 Insofar as we are rescinding the order vacating the approval  
26 order, it is unnecessary to address the remaining issues.

27 For the foregoing reasons,

DOLLISON

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IT IS ORDERED defendant's Petition for Reconsideration filed March 1, 1991, be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that the February 4, 1991 Order, be, and the same hereby is, RESCINDED, and the matter RETURNED to the trial level for further proceedings and decision on the lien claims.

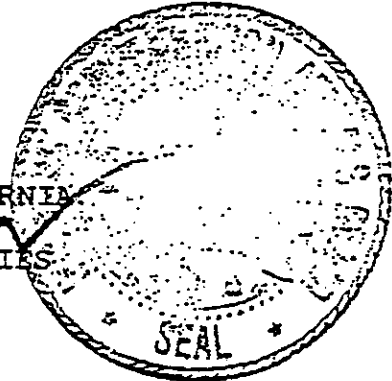
WORKERS' COMPENSATION APPEALS BOARD

I CONCUR,

Arthur J. Costantino

John D. Ols

[Signature]



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA  
APR 30 1991  
SERVICE BY MAIL ON SAID DATE TO ALL PARTIES  
LISTED ON THE OFFICIAL ADDRESS RECORD.

DOLLISON  
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