

PROFESSIONAL LIABILITY UPDATE

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ATTORNEY'S FEES LIENS

California Law

By Anna Kapetanakos and Jennifer A. Becker

A contractual lien for attorney's fees has priority over a subsequently filed judgment lien.

Pangborn Plumbing Corporation v. Carruthers & Skiffington, et al. (2002)
97 Cal.App.4th 1039

American Benefit Plan Administrators ("ABP") obtained a \$35,000 judgment against Pangborn for failing to fund his employees' benefit plan. In a separate action ("Accounting Litigation"), Pangborn's surety company, Insurance Company of the West ("ICW"), sued Pangborn. Pangborn cross-complained against ICW, his accountants Carruthers & Skiffington ("C&S"), and two principals of C&S.

Pangborn retained the law firm of Westrup, Klick & Associates ("WKA") to represent him in the accounting litigation, and entered into a contract that provided for a lien for attorney's fees to be paid out of any recovery. Subsequently ABP gave notice under Code of Civil Procedure §708.410 that it was asserting a judgment lien against any recovery.

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Pangborn settled with C&S who paid the settlement proceeds to WKA to hold in trust. ABP filed a motion to set aside the settlement under C.C.P. §708.410 because the settlement proceeds had been paid out without any notice and without APB's consent. Pangborn opposed ABP's motion arguing that the obligation for attorney's fees had not stabilized since there was more legal work required in the accounting litigation. He further argued that WKA had a superior lien over proceeds from the accounting litigation, which would consume the remaining funds. The trial court affirmed the settlement as fair and reasonable but ordered WKA to pay ABP's judgment lien with the trust account funds.

The Court of Appeal disagreed with the trial court finding that the law firm's

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contractual lien for attorney's fees did not have priority over ABP's judgment lien.

Relying on *Cetenko v. United California Bank* (1982) 30 Cal.3d 528, the Court found that public policy favored giving attorneys' contractual liens for legal services priority over judgment creditors' liens. The Court reasoned that when the provider of services, such as a doctor or a lawyer, has entered into a contract for a lien on any recovery his or her efforts may secure, equity and public policy requires such lien to have priority. Only if an attorney does not enter into an agreement for a contractual lien until after the action has commenced, and after a judgment creditor has given notice under §§708.410 and 708.420, does a judgment creditor's lien have priority. In addition, an attorney's contractual lien for fees does not displace a creditor's recorded security interest in real property that is the subject of litigation.

The Court disagreed with ABP's argument that its judgment lien should be given priority because it represented money owed by Pangborn to his employees for unpaid benefits. The statutes relied upon by ABP recognize priorities in situations where a claimant's labor, skills, and materials result in the creation of a fund. ABP's employee benefit claim did not create the settlement funds paid by C&S. Those settlement funds represented compensation for C&S's tortious conduct, not the uncompensated labor of Pangborn's employees.

The attorney's lien also protected unearned fees. Without this protection, few attorneys would take the risk of a contingent fee because they could not be assured that they would be paid in full from all potential proceeds.

Comment: Careful drafting of liens within fee contracts prior to the commencement of litigation protects attorneys' fees against claims by a client's other creditors.

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