

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Larry Spiezio

Opinion No. 17-23WC

v.

State File No. PP-51622

J & J Trucking Co., Inc.

**ORDER ENFORCING LIEN FOR ATTORNEY FEES**

*Background*

On or about November 18, 2021, Claimant engaged the law firm of Larson & Gallivan Law, PLC, to represent him in a workers' compensation claim for injuries related to his employment with Defendant. Claimant and the firm entered into a written fee agreement on November 18, 2021 providing for a one-third contingent fee. Attorney Erin Gallivan is the attorney who provided services to Claimant under the agreement.

Thereafter, Claimant became entitled to permanent partial disability benefits based on a 13 percent whole person impairment related to his knee. This impairment rating entitles him to 52.65 weeks of permanent partial disability benefits. Claimant's current weekly compensation rate is \$1,336.51.<sup>1</sup> He has been receiving permanent partial disability benefits on a weekly basis since approximately December 2022.

On August 4, 2023, Attorney Gallivan filed a request for lien acknowledgement with the Department, including a copy of her contingent fee agreement with Claimant. On August 7, 2023, the Department acknowledged the lien.

On August 30, 2023, Attorney Gallivan submitted a request to enforce the lien in the amount of \$15,049.87 against the tail end of Claimant's permanent partial disability benefits. She calculated the lien amount as follows:

$20 \text{ percent}^2 \times 52.65 \text{ weeks} \times \$1,336.51 \text{ per week} + \$976.42 \text{ in expenses} = \$15,049.87.$

In support of her request, Attorney Gallivan submitted an itemization of the time spent on this claim and an itemization of expenses. I find both the time expended and the expenses advanced to be reasonable. Further, I find that the contingent fee is not excessive, when considered against the factors set forth in Vermont Rule of Professional Conduct 1.5.

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<sup>1</sup> See Form 28 dated July 17, 2023.

<sup>2</sup> Although the fee agreement provides for a one-third contingent fee, the amount that the Department may approve as a lien is limited to 20 percent. See Workers' Compensation Rules 20.1320 and 20.1800.

Relevant Statutory Provision and Workers' Compensation Rules

Section 682 of the Vermont Workers' Compensation Act provides as follows:

. . . [C]laims of attorneys for services rendered an employee in prosecuting a claim under the provisions of this chapter shall be approved by the Commissioner. When so approved they may be enforced against compensation awards in such manner as the Commissioner may direct.

In turn, Workers' Compensation Rule 20.2100 details the manner in which the Commissioner has directed such liens be enforced. The rule provides, in relevant part, as follows:

**20.2100 Enforcement.** An attorney seeking to enforce an acknowledged attorney's lien must file a written request with the Commissioner, with copies to both the injured worker and the employer or insurance carrier, prior to the date that benefits subject to the lien are due and payable. The request must be accompanied by an itemized statement detailing both the work performed and the hours billed, in increments sufficient to discern whether the charges are reasonable.

20.2110 If enforcement of the lien is approved, the Commissioner shall direct the employer or insurance carrier to deduct the amount approved and advance it to the attorney against (a) the end of any permanent disability compensation due; (b) any lump sum payment of retroactive temporary disability benefits and/or (c) any lump sum compromise settlement.

Application of the Statute and Rules to this Enforcement Request

Claimant's counsel is seeking to enforce a lien in the amount of 20 percent of Claimant's permanent partial disability benefits. I find that this request is authorized by 21 V.S.A. § 682 and Workers' Compensation Rules 20.2100 through 20.2110. In particular, counsel has supported her request with an itemization of attorney time and expenses. Further, although her fee agreement permits her to charge Claimant a one-third contingent fee, her lien request is limited to the 20 percent permitted for liens under Workers' Compensation Rules 20.1320 and 20.1800. Accordingly, I find that Claimant's counsel's lien enforcement request is both reasonable and in compliance with the applicable statute and rules.

Defendant has requested that the lien enforcement order also release the carrier from any future claims for the permanent partial disability amounts paid pursuant to the order, including but not limited to penalties, interest and attorney fees incurred by Claimant while represented by Larson & Gallivan. Claimant objects to the inclusion of this provision in the order. Having considered this issue, I conclude that the language proposed by Defendant goes beyond the scope of the enforcement of Claimant's attorney's acknowledged lien, as set forth in Workers' Compensation Rules 20.2100 – 20.2110. Accordingly, I decline to include the requested provision in this order.

Order of Approval

Having found that Claimant's counsel's request to enforce the acknowledged lien complies with 21 V.S.A. § 682 and Workers' Compensation Rules 20.2100 – 20.2110, I hereby **GRANT** the request. Defendant is directed to deduct \$15,049.87 from the tail end of the permanent partial disability benefits payable on account of Claimant's compensable work-related injury and pay them over directly to Larson & Gallivan Law, PLC.

**DATED** at Burlington, Vermont, this 12<sup>th</sup> day of September 2023.

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Beth A. DeBernardi  
Administrative Law Judge