

Income Withholding & Child Support

Its Role In Your Case

BY HAYDEN E. HANNA

Imagine, for a moment, a nightmare for a plaintiff's personal injury attorney.

Working long and hard, she and her firm have invested substantial time and costs on a matter. They have had medical and other liens filed and perfected. And now they have positioned a case for settlement.

After all that, however, and with a growing sense of nausea, they watch the proceeds be whisked away by a withholding order to satisfy a child support debt.

This article aims to remove that potential shock the Arizona practitioner may feel when such a withholding order comes into play in his or her case. The practitioner in areas such as personal injury, workers' compensation and domestic relations need to be aware of how to address the issuance of a limited income withholding order to a defendant or his or her insurer, if applicable, in their clients' personal injury or workers' compensation case or claim.¹

Until recently, Arizona's Department of Child Support Enforcement (DCSE) has had statutory teeth—but no eyes and ears—when it came to collecting against the personal injury and workers' compensation settlements and awards of delinquent child support obligors. The Arizona child support

lien statute's teeth is the limited income withholding order (LIWO)—undoubtedly the most expedient means for child support collection from such settlements. A LIWO is an administrative order, and A.R.S. § 25-505 defines it and the types of nonperiodic or lump-sum payments that may be obtained through the use of one.²

However, the problem with collecting through a LIWO has been that Arizona's DCSE had no way of knowing when a delinquent obligor had a personal injury or workers' compensation case

HAYDEN E. HANNA is a former Assistant Attorney General in the Child Support Enforcement Division. Prior to joining the Arizona Attorney General's Office, he had a solo practice concentrated in the areas of domestic relations, personal injury and criminal defense. He is a former member of the Arizona Trial Lawyers' Association.

The author acknowledges the research assistance by ALLISON ENGLER, a third-year law student at the University of Arizona School of Law.

The personal injury practitioner would be wise to ask potential clients whether he or she is current with child support payments.

pending. Therefore, the agency would not know that a LIWO should be issued.


The solution to this problem came when the State of Rhode Island hosted an innovative program, pursuant to Federal Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The program would become the Child Support Lien Network (CSLN).³ Since its inception, more than 30 states have contracted with the CSLN. It works by receiving monthly updates from a state's child support enforcement agency and then conducting daily electronic matches with a nationwide database of information provided by insurance companies that register with the CSLN. According to the CSLN Web site, participating states pool their delinquent child support obligor information in a network, which is interfaced on a daily basis with participating insurance company files. When it finds a match, the claim information and insurance company contacts are provided to the member state.

In October 2007, Arizona contracted with the CSLN to intercept and collect child support from a child support obligor's personal injury or workers' compensation case or claim settlement. Although the network may provide additional services for some states, Arizona receives information collected daily from insurance companies, including claim numbers and other identifying information. Then, the CSLN issues the notice of claim and the LIWO on behalf of Arizona's DCSE.

Under existing law, it appears that a LIWO for child support would receive payment directly from the insurance company or personal injury case defendant from the child support obligor's settlement before other liens or attorneys' fees would be paid. Thus, that would defeat even perfected medical liens. Unfortunately, it appears that the priority of this lien has not been addressed by Arizona courts, and as of the writing of this article, DCSE (through its parent agency the Arizona Department of Economic Security) had not composed a formal policy relating to priority of collection or CSLN's involvement in the process. However, the unwritten policy, as stated by CSLN's Project Director George French, is not to defeat such valid liens and fees. This position has been echoed by the Arizona Attorney General's Office.

Until the law in this area is fully developed, here are some practice pointers relating to the use by the State of Arizona of LIWOs in collecting child support liens.

- First, if you are handling a dissolution of marriage action or other domestic relations matter involving child support in which the opposing party has a pending personal injury or workers' compensation settlement, it may be prudent to have your client open an IV-D case with DES to establish or enforce child support for the specific purpose of obtaining the issuance of a LIWO to the child support obligors' insurance company.
- Second, the personal injury practitioner would be wise to ask potential clients on an intake sheet or during the initial consultation whether he or she is current with child support payments. If the attorney has reason to believe that there is a child support judgment or any existing arrears, he or she should obtain a child support payment history and confirm the existence of the judgment or a statutory lien. If a child support lien is an issue in the case or claim, the practitioner should—at some point well in advance of settlement, determination or verdict—call the DCSE representative in the venue where the child support lien was entered and the associated Assistant Attorney General to begin negotiating the lien with DCSE, through the Arizona Attorney General's Office, and the child support obligee.

Now that CSLN has entered the picture, attorneys in Arizona undoubtedly will represent a client affected by this collection process. For the child support obligee and his or her domestic relations attorney, CSLN is a wonderful means to collect what might otherwise be an uncollectible judgment or lien. But for the personal injury plaintiffs' or workers' compensation claimant's counsel, it is, if not handled properly, a potential iceberg waiting just below the surface to sink his or her ship. Therefore, prudent counsel should address the lien and possible LIWO at the earliest opportunity in the case. 

endnotes

1. This article is not an official policy statement from the Arizona Department of Child Support Enforcement or the Arizona Attorney General's Office.
2. A copy of DCSE's standard LIWO with accompanying letter can be obtained by a request to your local Assistant Attorney General in the Child Support Enforcement Division.
3. More information on the CSLN: www.childsupportliens.com