

Federal Court Dismisses Claim by Air Ambulance Company Seeking to Avoid California Workers' Compensation Official Medical Fee Schedule

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Earlier this year, California Shock Trauma Air Rescue (“CALSTAR”), an air ambulance company rendering services primarily in California, filed an action in federal court in Sacramento against more than 75 workers’ compensation insurers and self-insured employers. CALSTAR’s lawsuit, [California Shock Trauma Air Rescue v. State Compensation Insurance Fund, et al.](#), argued that, as a result of it being certified by the Federal Aviation Administration to operate as an air carrier, any claims for payment it submitted to workers’ compensation insurers and self-insured employers in California should not be limited to those amounts set forth in the Official Medical Fee Schedule for ambulance services, [California Code of Regulations, title 8, section 9789.70](#).

Rather, as a federally certified air carrier, CALSTAR asserted that the Fee Schedule is preempted by the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act (“FAA/ADA”). In other words, CALSTAR sought to avoid the limitations on payment that would apply to all other medical providers and even ground-based ambulances set forth in the Fee Schedule. CALSTAR’s complaint alleged causes of action for declaratory relief and a number of state law claims.

The defendants filed motions to dismiss on a variety of grounds. Prominent among the bases for the motions was the claim that the federal court lacked subject matter jurisdiction over CALSTAR’s action. Another basis for the lack of federal court subject matter jurisdiction was that CALSTAR’s claims are subject to California’s exclusive workers’ compensation system and which claims can and should be resolved through lien requests by CALSTAR at the Workers’ Compensation Appeals Board.

In a detailed ruling issued July 24, 2009, the federal court granted the motions to dismiss on the basis that the court lacked subject matter jurisdiction over CALSTAR’s claim. The fact that CALSTAR sought to use a federal statute, the FAA/ADA, to claim that certain state laws were preempted was inadequate to support jurisdiction in the federal courts under well-established case law. The court also observed that CALSTAR had not sued the State challenging its power to enforce the Fee Schedule, but rather only sued third parties (i.e., insurers and self-insured employers) who have neither “the ability to enact or enforce state laws.” In short, CALSTAR was asking the federal court for an advisory opinion as to the preemption of the Fee Schedule, something it lacked the power to do.

Barger & Wolen represented a number of the defendants in the litigation.