

## [Two Air Ambulance Suits Grounded in Two Days by Federal and State Courts](#)

Posted on April 11, 2011 by [Larry Golub](#)

Over the course of two days at the end of March, the [Ninth Circuit Court of Appeals](#) and the [Sonoma County Superior Court](#) issued two separate decisions dismissing claims by air ambulance companies that sought to obtain medical provider benefits under workers' compensation without following the dictates of the California workers' compensation system. In both instances, the courts found that they did not have subject matter jurisdiction to consider the claims alleged by the air ambulance companies.

In early 2009, [California Shock Trauma Air Rescue](#) ("CALSTAR") filed two virtually identical actions in federal court in Sacramento against more than 75 workers' compensation insurers and self-insured employers.

CALSTAR's lead lawsuit in the consolidated actions, [California Shock Trauma Air Rescue v. State Compensation Insurance Fund, et al.](#), argued that, as a result of CALSTAR 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.

As reported in this blog, the [federal district court dismissed CALSTAR's lawsuits on July 24, 2009](#), finding, on a number of grounds, that it lacked federal subject matter jurisdiction to consider CALSTAR's claims. CALSTAR appealed the dismissal of its two actions to the Ninth Circuit.

On March 31, 2011, [the Ninth Circuit published its opinion](#) in the two consolidated appeals, affirming the decision of the trial court and concluding that the well-pleaded complaint rule precluded the federal court's exercise of federal subject matter jurisdiction with respect to purely state law claims.

More specifically, the three-judge panel found that CALSTAR's claims did not "arise under" the laws of the United States, and its attempt to obtain a determination as to federal preemption of the Fee Schedule was, at most, in anticipation of its response to the defense that would be posited by the defendants – and this is not adequate to create federal court jurisdiction.

The Ninth Circuit further dismissed CALSTAR's attempt to fall within the case law that allows federal court jurisdiction over state law claims that "implicate significant federal issues," since, once again, CALSTAR could not satisfy the well-pleaded complaint rule, and its state law claims do not turn on a federal issue.

Finally, the Court concluded that the mere fact that CALSTAR had alleged claims for declaratory relief in addition to its state law claims did not allow the "procedural" device of such a declaratory relief claim to confer "arising under" jurisdiction. This is especially true here, since CALSTAR's actions did not sue any state official, which the Supreme Court and other federal circuits had found to be a prerequisite to allowing any such [Supremacy Clause](#) claims to proceed in federal court.

One of the defenses raised by the insurers and self-insured employers in *CALSTAR*, but never addressed by the federal trial and appellate courts was that, even if there were federal subject matter jurisdiction, the air ambulance company's action must still be dismissed because the claims are subject to the exclusive jurisdiction of the [Workers' Compensation Appeals Board](#) ("WCAB") and fall within the exclusive remedies of the [Workers' Compensation Act](#).

The day before the Ninth Circuit issued its decision, a California state trial court in Sonoma County had the occasion to address that precise issue, dismissing claims by another air ambulance company due to the exclusive jurisdiction of the WCAB and the exclusive remedy the Act.

[REACH Air Medical Services LLC](#) sued many of the same defendant insurers and self-insured employers as did CALSTAR, and the defendants demurred to REACH's state court complaint on the grounds of exclusive jurisdiction/exclusive remedy. On March 30, Sonoma County Superior Court Judge Elliot Daum [issued his Order sustaining the demurrers and dismissing the action](#) without leave to amend. If REACH wanted to pursue its claims for additional benefits beyond those paid by the Fee Schedule under worker's compensation, it could only do so within the exclusive remedies provided by the Act and before the exclusive jurisdiction of the WCAB.

One final note. In October 2010, CALSTAR filed its own state court action in Solano County Superior Court against many of the same defendant insurers and self-insured employers. That action seeks further payment of medical provider benefits for services rendered after the time CALSTAR filed its federal court action. The defendants have demurred to that state court complaint, and a [hearing on their demurrers](#) is set for April 21.

[Larry Golub](#) of [Barger & Wolen](#) has represented a number of the defendants in all three lawsuits.