

TENTATIVE RULING

On May 1, 2024, plaintiff Christopher Meza filed a complaint against defendants DAC Services (erroneously sued as Four C's Service, Inc.) for personal injuries incurred while he was working on a construction project for which DAC Services was responsible. On January 15, 2026, Federal Insurance Company filed a Notice of Lien claiming first lien in the amount of \$198,231.98 on proceeds of any judgment in favor of Christopher Meza for amounts paid to date in workers' compensation and related benefits. No trial date has been set.

On February 6, 2026, Federal Insurance Company filed a motion for leave to file a complaint in intervention pursuant to Labor Code section 3853. No opposition has been filed.

Where an employee brings an action for damages proximately caused by a third person, an employer who pays or becomes obligated to pay compensation, or salary in lieu of compensation, may likewise make a claim or bring an action against the third person. (Labor Code § 3852.) "[T]he employer may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension, or other emolument paid to the employee or to his or her dependents." (*Id.*) "A workers' compensation carrier is authorized to attempt recovery of benefits paid either through the maintenance of an independent action (Labor Code § 3852), intervention in the employee's action (Labor Code § 3853), or assertion of lien rights in the employee's recovery (Lab. Code, § 3856(b).)" (*Catello v. I.T.T. General Controls* (1984) 152 Cal.App.3d 1009, 1015, fn. 7.)

Section 3853 gives the employer, which by statute includes the workers' compensation insurer, an "unconditional" right to intervene in an employee's action against a third-party tortfeasor "at any time before trial on the facts." On the other hand, Code of Civil Procedure section 387 provides the authorization and procedure for intervention in general and provides that an application may be granted "upon timely application." When Code of Civil Procedure section 387 applies, the trial court must make the initial determination whether the application is timely. (*Lohnes v. Astron Computer Products* (2001) 94 Cal.App.4th 1150, 1153; *Mar v. Sakti Internat. Corp.* (1992) 9 Cal.App.4th 1780, 1783.) The *Mar* court interpreted the meaning of these two statutes as applied to cases under section 3853 and concluded that the timeliness standard enunciated in section 3853 was incorporated into subdivision (b) of section 387, which "constitutes the governing rule of decision." (*Id.* at 1785—"Any other result would turn the plain language of section 3853—"at any time before trial on the facts"—into meaningless surplusage.")

Nevertheless, other courts have suggested that even where "a party may assert it holds [an] unconditional right to intervention, that right is not absolute. A court must initially determine whether the petition is timely." (*Lohnes v. Astron Computer Products*

(2001) 94 Cal.App.4th 1150, 1153.) “[I]t is the general rule that a right to intervene should be asserted within a Reasonable time and that the intervener must not be guilty of an Unreasonable delay after knowledge of the suit.” (*Sanders v. Pacific Gas & Elec. Co.* (1975) 53 Cal.App.3d 661, 668 [emphasis in original].) In other words, even where an unconditional right to intervene exists, the application must not be unreasonably delayed. “Timeliness is ... one of the prerequisites for granting an application to intervene.” (*Northern Cal. Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90, 109.)

Here, Federal Insurance Company seeks to intervene under section 3853 as a lien claimant against the employee’s recovery in an action against the third party (DAC Service Inc.). As noted above, this action was filed on May 1, 2024, and the application to intervene was not filed until January 16, 2026, some 20 months later. While Federal Insurance Company has a statutory right to intervene, the court must nevertheless resolve whether the application is unreasonably delayed.

As a predicate observation, the statutory scheme makes it clear that the plaintiff employee was required to provide notice to the “employer” of the lawsuit, and to provide the court with proof of service of this notice. (§ 3853; see *O’Dell, supra*, 10 Cal.App.4th at p. 654.) As noted, the statutory definition of “employer” includes the workers’ compensation insurer. (§§ 3850, subd. (b); 3211.) There is no proof of service in the register of actions indicating plaintiff served on the insurer the complaint by certified mail or through personal service. Such notice must be formal, not informal. (*O-Dell, supra*, 10 Cal.App.4th at p. 656.) The plaintiff’s failure to provide such notice clearly factors into the timeliness of the present motion, an omission inuring to the insurer’s benefit.

In any event, no opposition to the motion has been filed, despite timely service of the present motion electronically on both parties. There is no basis to conclude the motion was untimely, based on notice, and certainly no prejudice has been established. No due process rights have been violated, and under the circumstances, there is no likelihood that any party is hampered or precluded from discovery or harmed by the intervention.

The court grants plaintiff’s motion to file a complaint in intervention pursuant to section 3853 and Code of Civil Procedure section 387. Federal Insurance Company is directed to file and serve its complaint in intervention.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)