



CHARTERED
ATTORNEYS AT LAW

December 28, 2007

Re: Court of Appeals Case of:
Deguillen v. Schwan's Food Mfg. and Hartford Insurance Co.

TO ALL INTERESTED COMPANIES:

The Kansas Court of Appeals recently decided the above referenced workers compensation claim, reversing the Kansas Board of Appeals decision allowing claimants to essentially use unauthorized medical expense to obtain ratings. In the instant case, the Kansas Court of Appeals held that "in order for an unauthorized medical examination to be eligible for reimbursement . . . no impairment rating based upon such examination may be made a part of the record, upon penalty that the examination expense may not be reimbursed". It further stated that "in order for an unauthorized medical examination to be eligible for reimbursement . . . no impairment rating may be solicited from that physician either as part of the initial engagement or thereafter".

This decision effectively ends the practice of claimant's attorney obtaining an unauthorized medical examination, requesting the same be paid by the respondent as unauthorized medical, and then obtaining a supplemental rating report based upon the prior examination. The Court went on to note that employees are not prohibited from seeking independent advice on work-related injuries, and may seek reimbursement for up to \$500.00 for such advice. In order for the unauthorized medical examination to be eligible for reimbursement, however, the physician consultant can not provide an impairment rating. It should be noted that the actual statute in question, K.S.A. 2006 Sup., 44-510(h)(b)(2), states that any medical rating obtained pursuant to an unauthorized medical examination, paid for by the respondent, shall not be admissible in any claim proceeding under the Workers Compensation Act. The unanswered question then becomes whether the claimant can obtain an unauthorized rating, which is not favorable to them, and request the respondent to reimburse them for such rating.

Pursuant to our usual practice, I have not enclosed a copy of the Kansas Court of Appeals decision. If you would like a hard copy, please contact our office and we will send you one.

Happy Holidays.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug C. Hobbs", written over a white background.

Douglas C. Hobbs
For the Firm

DCH:jlb

WSABEW10 503553 v.1

400 O.W. Garvey Center
200 West Douglas
Wichita, KS 67202
T: 316-269-2100
F: 316-269-2479

WWW.WSABE.COM

Douglas C. Hobbs
Attorney at Law

Direct Dial: 316-219-8311
dch@wsabe.com

Kansas City, MO
By Appointment Only
T: 816-942-8080
F: 913-888-1065

Overland Park, KS
T: 913-888-1000
F: 913-888-1065

Springfield, MO
T: 417-866-2300
F: 417-866-2444