



CHARTERED
ATTORNEYS AT LAW

June 21, 2011

TO ALL INTERESTED COMPANIES

Re: Work Comp Update for Missouri

Dear Friends:

A brand new Missouri WC appellate case, from Western District Court of Appeals, has cast doubt on decades of case law and “practice” about issues of medical causation, by saying that there is no need for “prevailing factor” causation analysis about medical care in compensable cases. The case is [Tillotson v. St. Joseph Med Center](#), handed down June 14, 2011, as WC72948. It is not known yet whether this case will be appealed up to the Missouri Supreme Court.

The holding by the WD panel was that even though the 2005 amendments to the WC law required that work be the “prevailing factor” in causing the resulting medical condition and disability (section 287.020.3), there is nothing in the medical benefits section (287.140) requiring any “prevailing factor analysis.” Therefore, once there is finding that the work accident was the prevailing factor in causing an injury (under 287.020), the obligation exists for the Employer/Insurer to provide medical care “as may reasonably be required....to cure and relieve the effects of the injury” (under 287.140).

This decision is based on difference of medical opinions about whether a work accident, which caused a lateral meniscus tear in a nurse’s knee, required the Employer/Insurer to provide a Total Knee Replacement. Two orthopedic surgeons opined that the nurse had pre-existing degenerative arthritis in her knee, that the normal treatment for meniscus tear was arthroscopic surgery, but that this type of surgery was not recommended for arthritis patients (which would be aggravated/worsened by the surgery), so that the recommended treatment in such situations was a Total Knee Replacement (TKR for short) to relieve the pain. One surgeon said both the pre-existing arthritis and meniscus tear were contributing to the nurse’s pain,

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and that the TKR would relieve that pain. Another surgeon agreed with that, but stated that the pre-existing arthritis was "...the major prevailing factor for the need for this surgery."

Based on that opinion, the E/I that had authorized knee treatment to that point, declined to authorize TKR surgery, for a pre-existing condition. The nurse undertook the TKR on her own, recovered, and returned to work. The nurse filed her WC Claim, obtained an opinion from an occupational doctor to effect that the acute meniscus tear, coupled with the arthritis, necessitated the TKR because the arthroscopy could not be effective to relieve the effects of the acute injury. Therefore, the occ-doc stated, the meniscus tear was the "prevailing factor" in causing the need for the TKR.

As you can see, all of these doctors were addressing the issue of medical causation using a "prevailing factor" analysis, which has been the practice for decades, even with the pre-2005 law using the phrase "contributing factor" as part of the analysis. At Trial, the ALJ found the occ-doc opinions on causation not credible because Dr. Koprivica "...does not possess the expertise necessary to offer credible conclusive opinions regarding the cause of precise orthopedic conditions." The ALJ found that the meniscus tear was the injury from work, which did not require the TKR, because the TKR was required only because of the pre-existing arthritis. The ALJ denied recovery for medical costs of the TKR, TTD during recovery from the TKR, PPD resulting from the TKR, and future medical.

On appeal, the Labor and Relations Commission (in 2-1 decision) affirmed and adopted the Judge's opinion as its own.

Claimant appealed again, to the Western District. In a circuitous bit of legal analysis, this WD panel determined that the LIRC had erred in its interpretation of the law (the ONLY way the WD panel could get around the credibility findings) by finding that the accident was not the prevailing factor in requiring the TKR. The WD panel said the error was that 287.140 guarantees medical care to cure and relieve the effects of a compensable injury, "...and does not require a finding that a work place accident was the prevailing factor in causing the need for particular medical treatment." (Of course, this panel ignores the facts that all the physicians were expressing medical opinions in that exact analysis, which has been the practice of attorneys, and medical practitioners, for years and years.)

The WD panel said the LIRC and the Judge had "...erroneously extended the prevailing factor test added to section 287.030(1)'s definition of 'injury' into section 287.140.1's description of the standard for determining required medical care."

The WD panel stated that once a compensable injury has been determined as having arisen out of, and in the course of, work activity, the E/I is then obligated under 287.140 to provide medical treatment that is "reasonably required" to cure and relieve the effects of the compensable injury. Of course, the panel offers no help in determining what "reasonably required" really means; it

simply cited prior cases (about future medical care) that as long as the care “flows from” the accident, through evidence of medical causation opinion, it must be provided. To this writer, “reasonably required” is a nebulous, murky minefield compared to the statutory definition of “prevailing factor” as the primary factor, e.g., the largest of all the factors considered in causation. The holding is that the nurse is entitled to the disputed TTD, the costs of the TKR, future medical and PPD (to be determined on remand to the LIRC).

In my opinion, if this appellate analysis is allowed to stand as case law, it makes it nearly impossible for any Employer/Insurer to determine how to handle medical care where a pre-existing condition exists for that body part. For years, medical opinions have been requested to determine/apportion in some way whether the acute injury, or pre-existing condition, was the factor (“contributing factor” prior to 2005, “prevailing factor” since 2005) in necessitating the specific medical care. Decisions on care were then based on those medical opinions, with the idea that workers with personal medical problems remain responsible for those personal problems, while the WC system cures the acute injury to try to put the worker back at his personal “baseline” condition. Under this WD legal opinion, such opinions have no place; instead = no matter how much a pre-existing condition played a part in the need for such care = if there is any appropriate medical care “reasonably required” to cure/relieve “the effects” of the acute injury, the E/I is obligated to provide that care. This type of legal reasoning ignores actual “medical causation” opinions from medical practitioners, and increases the financial obligations on Employers/Insurers across the state.

Very truly yours,

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