Fifty shades of Brown: the saga of *Brown v. SAIF* in Oregon

By Courtney C. Kreutz and Kelly J. Niemeyer ■ March 31, 2017

In a sweeping decision three years in the making, the Supreme Court of Oregon has spoken; and for employers and insurers the words are music to their ears: **reversal!**

Brown v. SAIF involved an injured worker who suffered a low back injury in the context of pre-existing degenerative arthritis. The claim initially was accepted by SAIF for a lumbar strain and, at the request of the injured worker, later accepted for a lumbar strain combined with pre-existing lumbar degenerative disc disease and spondylolisthesis. SAIF generated the medical evidence needed to issue a combined condition denial, which the injured worker appealed. The combined condition denial was upheld by the Administrative Law Judge and the Board, but ultimately reversed by the Oregon Court of Appeals.

In a decision that has caused processing nightmares and contradicted well established legal precedent, the Court of Appeals held an "otherwise compensable injury" component of a combined condition is not limited to the specifically accepted condition. Instead, the Court of Appeals held an "otherwise compensable injury" refers to all conditions resulting from the "work injury incident" regardless of the scope of acceptance. The Court of Appeals' decision touched upon every aspect of claim processing – from accepting and subsequently denying combined condition claims, to processing claims to closure (including impairment), to eligibility for vocational assistance. With a sigh of relief, insurers once again have clarity and can process, for instance, an accepted knee strain (considering only the accepted condition) and not worry about other unclaimed conditions lurking that could thwart an otherwise legitimate processing action.

The Supreme Court holds that the phrase "otherwise compensable injury" refers to the particular medical condition that an employer has accepted as compensable, not the "work injury incident"

In *Brown v. SAIF*, 361 Or 241 (2017), the Supreme Court's 43-page decision reversed the Court of Appeals' decision, holding that the phrase "otherwise compensable injury" refers to the particular medical condition that an employer has accepted as compensable, not the "work injury incident" as found by the Court of Appeals. As noted by Jerry Keene, appellate specialist and former Reinisch Wilson Weier shareholder, who submitted an *amici curiae* brief on behalf of Associated Oregon Industries and Oregon Self-Insurers Association, "the Court issued a unanimous opinion that not only reversed the

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Court of Appeals' decision, but also pointedly rejected its interpretation of the relevant statutes and their legislative intent."

The impact is dramatic and immediate. No longer can injured workers rely on the "work injury incident" to secure benefits under the claim. The onus is once again on the injured worker, to the extent he or she disagrees with the scope of acceptance, to file new/omitted medical condition claims while employers and insurers can return to focusing on whether the specifically accepted conditions have ceased to be the major contributing cause of a worker's combined condition when issuing combined condition denials.

The decision also renders administrative rules arguably promulgated prematurely by the Oregon Workers' Compensation Division following the Court of Appeals' controversial decision subject to challenge as being inconsistent with statutory authority as finally determined by the Supreme Court.

The attorneys at Reinisch Wilson Weier PC are busy analyzing the impact the Supreme Court's decision has on those rules to provide guidance for employers and insurers – look for future posts to that effect. In the meantime, contact the attorneys at Reinisch Wilson Weier PC with any immediate questions or concerns.

One caveat worth highlighting – the Supreme Court specifically noted its decision does not address compensability of medical services, an issue that is currently under consideration by the Supreme Court in *SAIF v. Carlos-Macias*, 262 Or App 629, rev pending (2014). As always, the attorneys at Reinisch Wilson Weier PC will provide a detailed analysis of the Supreme Court's decision in SAIF v. Carlos-Macias and its impact on employers and insurers once issued. ■

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