



Diagnostic services re-visited: Oregon Court of Appeals backtracks on diagnostic services standards in light of *Brown v. SAIF* reversal

By Ned A. Arenberg ■ May 9, 2018

The Oregon Court of Appeals revisited the standard for compensability of diagnostic services in accepted claims in the recent case of *SAIF v. Carlos-Macias*.¹ The court of appeals originally decided the case in 2014, at the same time as *Brown v. SAIF (Brown I)*.² The court held that the compensability of claimant's diagnostic services was not constrained by what conditions the insurer had already accepted. Instead the court held that the claimant's diagnostic services were compensable because they were related to determining the cause or extent of claimant's "compensable injury." The court's argument was based on the original *Brown* decision (*Brown I*) that defined compensability as the "work-related injury incident," not what was accepted under the claim. As we all know at this point, *Brown* was ultimately overturned by the Oregon Supreme Court in *Brown (Brown II)*.³ As a result, the Court of Appeals was forced to revisit *Carlos-Macias*.

In the most recent case, the court of appeals reversed its own decision, essentially returning the diagnostic services analysis to its roots prior to *Brown I*. The court clarified that in accepted claims, diagnostic services are compensable if they are necessary to determine the cause or extent of the already accepted conditions, as opposed to the cause or extent of the injury incident. The court made clear that the purpose of diagnostic services were not to determine the compensability of new or omitted conditions –i.e. to rule in or out conditions that had not been accepted yet. This result was not unexpected, as the court came to similar conclusions in *Garcia-Solis v. Farmers Ins. Co.*⁴

To put the court's ruling into perspective, picture a claim that has already been accepted solely for a lumbar strain. Claimant's attending physician orders an MRI to determine if claimant also sustained a disc herniation. If the medical evidence in that case ultimately establishes that the MRI was not necessary to determine the cause or extent of the accepted lumbar strain, then the diagnostic services would not be compensable until the disc herniation was ultimately deemed compensable; this is especially true if the MRI was only necessary to determine if claimant had a disc herniation. Prior to the reversal of *Brown (Brown I)*, claimants' attorneys could easily argue that the same MRI was needed to determine the extent of the work-related injury incident – i.e. to rule in or out any theorized condition.

In the most recent case, the court of appeals reversed its own decision

Continued



Ned Arenberg is an attorney at Reinisch Wilson Weier PC. He may be reached at 503.452.7289 or NedA@rwwcomplaw.com.

Brown v. SAIF reversal: *SAIF v. Carlos-Macias* (continued)

While there is still a wide net of services that are often compensable on a diagnostic basis, and the analysis is still less than concrete, the *Carlos-Macias* and *Garcia-Solis* decisions provide a much needed framework to help determine what should be authorized on a diagnostic basis.

Should you have any questions about the compensability of proposed diagnostic services in Oregon, Ned Arenberg, or any of the Oregon attorneys at Reinisch Wilson Weier PC are here to assist you. ■

¹ 290 Or App 801, on remand from, *SAIF v. Carlos-Macias*, 362 Or 38 (2017).

² *Brown v. SAIF*, 262 Or App 640 (2014) (Brown I).

³ *Brown v. SAIF*, 361 Or 241 (2017) (Brown II).

⁴ 288 Or App 1 (2017).

Online and printed firm materials are for educational purposes only. Please consult your attorney for legal advice on a specific claim, case or issue.



**Reinisch
Wilson Weier PC**
LAW OFFICES

OREGON: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 • T 503-245-1846 / F 503-452-8066

WASHINGTON: 15395 SE 30th Place, Suite 230, Bellevue, WA 98007 • T 206-622-7940 / F 206-622-5902

www.rwwcomplaw.com

© 2018 Reinisch Wilson Weier PC. All rights reserved.