

RISK/ALERT

A TEAGUE CAMPBELL DENNIS AND GORHAM PUBLICATION

JUNE 2000

CASE LAW UPDATE

*Court of Appeals Permits Health Insurer
to Intervene And Void
Workers' Compensation Settlement*

On June 20, the Court of Appeals ruled that Blue Cross and Blue Shield (BCBS) was entitled to intervene in a workers' compensation case and to void an approved settlement agreement between the employee and her employer. In *Hansen v. Crystal Ford-Mercury*, plaintiff allegedly twisted her knee at work. The carrier denied her claim and recommended that she submit her medical bills to BCBS, which subsequently paid them.

After learning that plaintiff was contesting the denial, BCBS filed a Form 33, requesting that it be reimbursed for the payments it made. Before hearing, plaintiff and the defendants agreed to settle without an admission of liability and a clincher was submitted to the Commission containing an agreement to pay a lump sum to plaintiff and certain medical expenses, with no reimbursement to BCBS. The deputy commissioner refused to approve the settlement because it did not provide for reimbursement. However, on appeal, the Full Commission approved the settlement, finding that since defendants' liability for medical expenses was legitimately in dispute, it was appropriate to waive application of Commission Rule 502(2)(b), which requires payment of all unpaid medical expenses to the date of the agreement in a denied claim.

BCBS appealed and the Court of Appeals vacated the Full Commission's order of approval, holding that BCBS was a "real party in interest" in the case because it had filed a claim for reimbursement. It also noted that Commission Rule 502(3)(b) requires all parties to sign settlement

agreements before they are considered approved and that was not done.

A large part of the Court's decision was devoted to whether the Commission should encourage settlement of claims or be more concerned with determining their compensability. As justification for its decision to overturn the Commission's order of approval, the Court stated that compromise settlements are not always preferable to litigation of questionable claims, as Commission determinations of compensability ensure that plaintiffs receive neither overpayments nor underpayments of workers' compensation benefits.

The Court of Appeals also noted that a determination of compensability helps protect the rights of the employee's health insurer, whereas if the parties' settlement were upheld in cases like *Hansen*, defendants could avoid costs by denying claims and then entering into clincher agreements which do not reimburse the health insurer, thereby unjustly enriching the former to the detriment of the latter. At the same time said the Court, nothing prohibits employers and employees from working out settlements with health insurers, protecting their rights in the clincher agreement.

It is anticipated that a petition for discretionary review will be filed at the Supreme Court and both the plaintiff and defense bars will submit *amicus curiae* briefs seeking a reversal of the Court of Appeals' decision. In the interim, the *Hansen* decision allows group health insurers to intervene in denied workers' compensation cases to seek reimbursement at the time clincher agreements are submitted for approval. Yet to be determined is whether (1) medical providers have similar rights to intervene and (2) health insurers and medical

providers have the right to intervene *after* a compromise settlement agreement has been approved. The latter would be a serious blow to the finality of settlements and will lead to substantially more litigation. The Court's suggestion that the parties work out a compromise with the health insurer as part of their settlement would dramatically increase the cost of settlements. Presently, expensive litigation of questionable claims is avoided because the employee's medical bills have been paid by health insurance and the employer is willing to make a compromise payment to the worker in order to avoid hearing and defense costs and the risk of an adverse ruling on compensability.

Pending Supreme Court reversal of *Hansen*, risk managers can expect health insurers to aggressively assert reimbursement claims and medical providers to begin requesting hearings to seek payment of their bills in denied cases.

Form 26 Agreement for Partial Disability Benefits Ends Presumption of Ongoing Total Disability Created by Prior Form 21 Agreement

On June 16, the Supreme Court held in *Saunders v. Edenton OB-GYN Center* that although a Form 21 for necessary weeks creates a presumption of temporary total disability, that presumption ends when the parties enter into a subsequent Form 26 for temporary partial benefits.

In *Saunders*, plaintiff went out of work after being injured and the parties executed a Form 21. Later, they executed a Form 26, indicating that plaintiff's weekly earning power had increased from zero to "varies." The agreement was for "necessary" weeks. Plaintiff began receiving temporary partial disability benefits, reached maximum medical improvement and was given a 3% permanent partial disability rating. Thereafter, she quit her job with the defendant employer and worked two subsequent jobs, from which she claims to have resigned because of the recurrence of symptoms from her injury. Plaintiff then filed

a request for hearing, claiming to be permanently and totally disabled.

The deputy commissioner denied temporary total, temporary partial, and permanent total disability benefits, but awarded compensation for the 3% rating. The Full Commission reversed and awarded ongoing temporary total disability from the date plaintiff resigned her employment with the defendant-employer, basing its decision upon a conclusion that the Form 21 agreement created a presumption of continuing disability in plaintiff's favor and finding that defendants had not rebutted that presumption.

The Court of Appeals affirmed the Full Commission, but the Supreme Court reversed, holding that the subsequent Form 26 agreement created a presumption that plaintiff was partially, not totally, disabled. Consequently, the issue for the Full Commission to address on remand is whether plaintiff can rebut that presumption of partial disability through presentation of evidence supporting total disability. Likewise, in order to rebut plaintiff's claim of ongoing partial disability, defendants will have the burden of proving not only that suitable jobs are available, but also that plaintiff is capable of getting one, taking into account both physical and vocational limitations.

This case is potentially significant to risk managers because for the first time, the Supreme Court has closely reviewed those prior appellate decisions which created the presumption of ongoing disability concept applicable to Form 21 agreements. On August 14, Teague, Campbell, Dennis & Gorham will be arguing a case, *Sims v. Charmes/Arby*, before the Court of Appeals involving the related issue of whether a Form 60 creates a similar presumption of disability. Since more and more employers, carriers and servicing agents are using Forms 60 as opposed to Forms 21 to pay temporary total disability benefits, the *Sims* case may have a major impact on future claims handling practices. We will report on the Court's ultimate decision in *Sims* in a future issue of *Risk/Alert*.