

RISK/ALERT

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CASE LAW UPDATE

Supreme Court Expands Industrial Commission's Jurisdiction

On May 5, the Supreme Court issued a decision in *Perkins v. Arkansas Trucking Services, Inc.* which expands the definition of principal place of employment for jurisdictional purposes under N.C.G.S. § 97-36. In *Perkins*, claimant was employed as an over-the-road truck driver. He was involved in a motor vehicle accident in South Carolina while in the course and scope of his employment. His employer was an Arkansas company that did not maintain any terminals in North Carolina. It had more than three, but less than ten, truck drivers who resided in North Carolina, including claimant, who was dispatched from his residence by a dispatcher in Georgia. Approximately 18% to 20% of his stops were in North Carolina. In addition, when he was off the road, he kept his employer's vehicle in North Carolina.

The employer accepted liability and commenced payment of workers' compensation benefits under Arkansas law. Claimant subsequently requested a hearing to determine whether North Carolina had jurisdiction over his claim. The deputy commissioner, Full Commission and Court of Appeals all ruled that claimant's principal place of employment was North Carolina and, therefore, the Industrial Commission had jurisdiction.

Defendants' petition for discretionary review was allowed, but the Supreme Court agreed with the Industrial Commission that North Carolina had jurisdiction. It found that under N.C.G.S. § 97-36, North Carolina has jurisdiction

over accidents that occur in other states if (i) the contract of employment was made in North Carolina, (ii) the employer's principal place of business is in North Carolina, or (iii) the employee's principal place of employment is in North Carolina.

The Supreme Court noted that N.C.G.S. § 97-36 does not define "principal place of employment." Therefore, it looked to the ordinary meaning of those words and found that since claimant did not perform the majority of his job duties in any one state, and because a greater number of his employment's "significant contacts" occurred in North Carolina, it affirmed the Commission's finding that claimant's principal place of employment was North Carolina.

Risk Handling Hint: Risk handlers should review every claim in which an injury occurs outside North Carolina in order to confirm that our Industrial Commission has jurisdiction. North Carolina only has jurisdiction over those cases where the contract of employment was made in North Carolina, the employer's principal place of business is in North Carolina or the employee's principal place of employment is here. Even after the holding in *Perkins*, the mere fact that an employee lives in North Carolina is not sufficient to give this state jurisdiction over an out-of-state injury.

Court of Appeals Affirms Award for Damage to Multiple Important Internal Organs

In *Aderholt v. A. M. Castle Co.*, a traveling salesman suffered severe internal injuries when a dangling chain from a passing logging truck crashed through the window of his car and hit him with such force that it mangled his arm, penetrated his chest, punctured his diaphragm and ruptured his stomach.

Claimant developed severe sepsis, required extensive treatment and underwent surgery as a result of which he lost his spleen, most of his pancreas and much of the omentum covering his internal organs. He subsequently lost virtually all use of his left arm and hand, contracted adult respiratory distress syndrome and experienced temporary failure of his kidneys.

Claimant requested a hearing to obtain a ruling regarding the value of the compensation he would receive if he elected benefits for permanent partial disability, organ damage and disfigurement under N.C.G.S. § 97-31, rather than compensation for permanent and total disability under N.C.G.S. § 97-29. The Commission awarded \$20,000 for loss of the pancreas, \$20,000 for loss of the spleen, \$20,000 for each lung, \$15,000 for damage to the abdominal wall, \$10,000 for damage to the omentum, \$12,000 for damage to the intestines, \$5,000 for loss of the stomach, \$15,000 for damage to the reproductive organs and substantial PPD benefits for permanent disability to claimant's back, arms and legs.

The Court of Appeals affirmed that award, finding that all of the organs in question were "important" within the meaning of N.C.G.S. § 97-31(24), that there was competent evidence to support the finding that they were either lost or permanently damaged as a result of the accident, and that the amount to be awarded for each organ was within the discretion of the Commission.

Analysis: Although claimant was found to be permanently and totally disabled and, therefore, entitled to compensation under N.C.G.S. § 97-29, his recovery under N.C.G.S. § 97-31 was potentially much more favorable and, by virtue of the holding in *Whitley v. Columbia Lumber Manufacturing Co.*, claimant was entitled to elect his remedy. The benefits payable under N.C.G.S. § 97-31 are not dependent upon his life expectancy and would be paid to him immediately for the damage to his important organs and over a

set number of weeks for his permanent partial impairment ratings. The unpaid portion of those benefits would also be payable to claimant's estate should he die, unlike N.C.G.S. § 97-29 benefits, which would end on the date of his death.

Risk Handling Hint: This case has received much attention by the plaintiff's bar and it is likely that risk managers and claims adjusters will see more claims involving alleged losses of or damage to important internal organs or parts of the body.

RUMBLINGS AT THE INDUSTRIAL COMMISSION

In early May, the Industrial Commission published final versions of its revised general, rehabilitation and mediation rules. The former include new Rules 901, 902 and 903, authorizing use of check endorsement language and new Form 90, the "Report of Earnings" form discussed in February's *Risk/Alert*. These new rules will make it easier for employers to monitor the earnings of employees receiving weekly compensation checks and to prosecute those who fraudulently continue to receive benefits after they have returned to work. At the same time, Rule 404A has been modified to expand the number of physicians authorized to sign Forms 28U, from "the" to "an" authorized treating physician. For a more in depth analysis of that rule change and others which have been made to the Commission's rehabilitation rules, see the February and March editions of *Risk/Alert*.

Risk Handling Hint: In light of the change which has been made to Rule 404A, risk handlers should consider formally notifying injured workers of those physicians who remain authorized in all cases involving trial returns to work covered by Rule 404A. Should the employee later allege that his return to work was unsuccessful, an argument can then be made that only those physicians on the list forwarded by the employer are qualified to sign a Form 28U, the form which requires employers to immediately reinstate weekly compensation.

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