A MUST READ!
Missouri Supreme Court Set to Hear Accident Case Under New Law

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The Missouri Court of Appeals Eastern District recently issued an opinion in Miller v. Missouri Highway and Transportation Commission on February 17, 2009. The Workers' Compensation case, originally tried by Robert E. Bidstrup from our St. Louis office, involved a claimant who had claimed a work related knee injury when he felt a pop in his knee while walking briskly at work headed to a truck hauling asphalt. The employer argued under the 2005 Amendments to the Missouri Workers' Compensation Act, the claimant's knee injury did not arise out of and in the course and scope of his employment because the act of walking was a hazard he was equally exposed to outside his employment and was not a hazard related to his employment. Both Administrative Law Judge Harris and the Commission agreed with the Employer's position and denied benefits to the claimant.

The claimant appealed the Commission's decision to the Court of Appeals this past year arguing walking was, in fact, related to his employment because he was required by his employer to walk to the truck. In response, the Employer argued the claimant was equally exposed to walking outside his employment. In addition, the Employer highlighted that this case was factually similar to the three cases, Kasl, Bennet and Drewes, abrogated by the Missouri Legislature in the 2005 Amendments and the Legislature intended cases, like the one at hand, to be non-compensable. In Bennet, the case most similar to Miller, a nurse aid was walking around the foot of a patient's bed when she felt a pop. She felt another pop in her knee while walking up a flight of stairs at work. On appeal, the court concluded that Bennet's injuries were compensable under the Statute because walking was integral to her job and she was engaged in activities incidental to her employment at the time she felt the pop.

In the case at hand, the Eastern District agreed with the Employer concluding the facts of Miller were indistinguishable from Kasl, Bennet and Drewes. The Court went on to explain "we assume the legislature intended to exclude cases where the injury is from a hazard or risk unrelated to the worker's employment to which the worker is equally exposed outside of employment from workers' compensation coverage." In conclusion, the Court opined the claimant failed to prove a work injury arising out of his employment because "he did not prove brisk walking was a hazard or risk related to his employment, to which he was not equally exposed outside of work."

Ultimately, the Eastern District did not issue a final opinion in Miller, but instead the Court transferred it to the Missouri Supreme Court "because of the general interest and importance of the issues presented." While the transfer to the Supreme Court leaves the Eastern District's opinion without any precedential

value, the Supreme Court will now have an opportunity to review the facts of the case and provide their own interpretation of some of the most significant changes found in the 2005 Amendments.

This is the first case to reach the Supreme Court which specifically deals with the changes to the definition of accident and "arising out of" and "in the course of employment" found within the 2005 Amendments. In fact, there are no other Appellate level opinions addressing these specific changes. The ultimate decision of the Missouri Supreme Court will have a tremendous impact on these types of cases and how we approach the defense of them. As always, we will keep you updated on the progress and outcome of this case.

For questions, please contact your Evans & Dixon attorney.