

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

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The Missouri Supreme Court recently issued an opinion in *Miller v. Missouri Highway and Transportation Commission*. 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. Even so, 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."

This was 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 its opinion affirming the ALJ and The Commission, The Supreme Court concluded that "An injury will not be deemed to arise out of employment if it merely happened to occur while working but work was not a prevailing factor and the risk involved – here, walking – is one to which the worker would have been exposed equally in normal non-employment life." While this decision is fairly new and its impact has yet to be felt, we are optimistic that this opinion will help employers and insurers better understand the 2005 Amendments and what effect it will have on their liability.

For questions, please contact your Evans & Dixon attorney.

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