

ADVISORY NO. 304
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TOPIC: STATUS OF FULTON DECISION

Attached is TWCC Advisory 2001-05 advising that the Commission will continue to enforce the 90-day rule pending appeal of the decision in *Fulton v. Associated Indemnity Corporation*.

TWCC ADVISORY 2001-05

Status of Fulton Decision

On April 12, 2001, the 3rd Court of Appeals in Austin issued a decision in the case of *Fulton v. Associated Indemnity Corporation*, Cause No. 03-00-00449-CV. That Court said: “We declare Rule 130.5 (e) invalid to the extent it prevents a reassessment of MMI (maximum medical improvement) certification because the impairment rating or MMI was not disputed within ninety days.” The Court was considering the Commission’s rule at 28 TEX.ADMIN.CODE §130.5(e) before it was amended, effective March 13, 2000. The Commission understands that the decision has not become final as of this date and that further requests for review of that decision will be made by one or more of the parties to that case.

After consultation with the Office of the Attorney General and in light of §410.205(b) of the Texas Labor Code, the Commission understands that the April 12th decision in the *Fulton* case should not be considered as precedent at least until it becomes final upon completion of the judicial process. In addition, the Commission’s current amended rule, i.e. 28 TEX. ADMIN. CODE §130.5(e) [25 TexReg 2102, 2105 (2000)], remains in effect. That rule may be found at the Commission’s web site at www.twcc.state.tx.us.

Signed this 23rd day of April, 2001

Virginia A. May, Acting Executive Director

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