

**ADVISORY NO. 339**  
**###**

**TOPIC:       *DOWNS MOTION FOR REHEARING DENIED***

The Supreme Court has once again stunned the workers' compensation industry today by denying the Continental Casualty's Motion for Rehearing.

Without comment or opinion, the court simply noted that the Motion for Rehearing is denied. We expect a commission response shortly.

Continental's motion for rehearing prompted a flurry of Amicus activity, as well as a request from the court seeking further briefing from the claimant in *Downs*. The high court generally does not require a prevailing party to file a response to motion for rehearing unless the motion for rehearing contains substantive argument of interest to the justices. Nevertheless, the Court refused to rehear the case or withdraw their previous opinion.

Several troubling questions remain that were not addressed by the Court. The opinion does not specifically state that the decision applies retroactively. Further, the opinion does not address the fact that carriers have detrimentally relied on commission rules specifically allowing a full 60 days to dispute an injury. Finally, the opinion does not explain what to do in no loss time claims, claims where benefits have not yet accrued and are therefore not payable within seven days, or death claims involving no beneficiaries.

This disappointing decision will only benefit claimants whose injuries are not otherwise compensable at a very high costs to carriers who relied in good faith upon instructions and procedures required by the commission.

Therefore, and until the case is subsequently overturned at a later date or until the Legislature drafts a remedy, it is important to ensure compliance with *Downs* as it stands, and consistent with advisories issued by the commission and us on the issue.