

ADVISORY NO. 446
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TOPIC: TEXAS SUPREME COURT RULING ON SIXTY-DAY DEADLINE

Today, the Texas Supreme Court issued its decision in *State Office of Risk Management v. Lawton* in one of the most significant and anticipated workers' compensation decisions in the last decade.

The question before the court in *Lawton* was whether the sixty-day period for challenging compensability of an injury also applied to a dispute over the extent of an injury, if the basis for that dispute could have been discovered by a reasonable investigation within the waiver period.

A determination of this issue required the court to construe § 409.021(c) of the Texas Labor Code and Rule 124.3(e). Chief Justice Jefferson, writing for the court held that "§ 409.021(c)'s sixty-day deadline applies only to compensability." The court went on to note that nowhere in the text of the rule, the statute, or the Texas Register is there a suggestion that a carrier waives the right to challenge the extent of an injury if the extent of that claim was reasonably discoverable within the period for determining compensability.

The court noted that the Legislature and the Division had created a number of protections dealing with extent-related disputes including expedited proceedings, benefits during appeal, interlocutory orders requiring medical and income benefits and examinations by designated doctors. The court did not mention, but certainly there is also the remedy of compliance violations.

This decision coupled with the *TIG Premier Insurance Company v. Pemberton*, 127 S.W.3d 270 (Tex. App. – Waco 2003, pet. denied), decision should lay to rest any further questions regarding waiver on extent of injury.