



ADVISORY NO. 475

TOPIC: SIGNIFICANT LIFETIME INCOME BENEFITS CASE

In a case handled by Flahive, Ogden & Latson, the Texas Supreme Court ruled last Friday that a claimant seeking lifetime income benefits (LIBs) based on a “loss of use” of her hands or her feet must prove injuries to her hands or feet in order to recover benefits. The decision reversed the judgment of the court of appeals and rendered judgment that the insurance carrier was not liable for LIBs. *See Insurance Co. of the State of Pa. v. Muro*, No. 09-0340 (August 26, 2011).

Lifetime Income Benefits are reserved for the most seriously injured employees because those benefits are not subject to the 401-week payment cap. For this reason, the legislature has created a concise list of injuries for which LIBs are payable. Those seven injuries are defined as the:

- (1) total and permanent loss of sight in both eyes;
- (2) loss of both feet at or above the ankle;
- (3) loss of both hands at or above the wrist;
- (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
- (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;
- (6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or
- (7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face.

TEXAS LAB. CODE ANN. § 408.161(a)(1)–(7).

The legislature has also provided that the total and permanent loss of use of a body part is equivalent to the loss of that body part. See TEXAS LAB. CODE ANN. § 408.161(b). The term “loss of use” is not defined by statute. However, for nearly 50 years the Supreme Court of Texas has defined “loss of use” of a body part to require that the body part itself have been injured. *Travelers Ins. Co. v. Seabolt*, 361 S.W.2d 204 (Tex. 1962). The court of appeals, in *Muro*, concluded that the *Seabolt* definition did not require proof of an injury to the hands or feet themselves in order to recover LIBs for their loss of use.

In *Muro*, the Supreme Court reaffirmed the *Seabolt* rule:

The Legislature has limited the award of lifetime income benefits to the specific injuries and body parts enumerated in section 408.161; nothing in the statute authorizes the substitution of other

injuries or body parts for those enumerated. TEX.LAB.CODE § 408.161. The injury to the statutory body part may be direct or indirect . . . but the injury must extend to and impair the statutory body part itself to implicate section 408.161. Because there is no contention here that Muro's feet and right hand ceased to possess "any substantial utility as a member of the body"⁵ and no evidence of injury to these body parts that prevented her from procuring and retaining employment requiring their use, we conclude that Muro is not entitled to the award of lifetime income benefits. *See Seabolt*, 361 S.W.2d at 206.

An employee may recover LIBs based on the loss of use of his hands or feet (at or above the wrist or ankles) in future cases so long as the injury was directly to those body parts or so long as the injury has extended to and affected those body party and the loss of use is total.

If you have questions concerning this ruling, please contact Bobby Stokes or Kevin MacEwan in our office.