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WEEKLY

Work comp judgment sets stage for settlement



Mark Cantor

By DAVID BAUGHER
Special to Missouri Lawyers Media

A woman injured while lifting boxes will receive more than \$1 million in workers compensation due to the combination of a favorable judgment and eventual settlement.

“In March of 2007, she picked up a box and turned and felt immediate low back pain,” said Mark Cantor of Cantor & Burger, which represented plaintiff Paula Judd in her case against BBC Industries. “The initial impression was that she had a sprain [or] strain but because of her intractable back pain she ended up having a lumbar laminectomy. Then there were disputes as to some of these bills and who would pay what.”

In December 2008, the case went before an administrative law judge of the Division of Worker’s Compensation for a hardship hearing. The division gave Judd a partial award of almost \$15,000 in past medical aid, past due temporary total disability payments and attorney’s fees. The judge also found that she was entitled to an indeterminate amount of future disability compensation. Cantor said temporary disability payments ultimately totaled more than \$77,000.

Later, a settlement was reached that brought in more than \$414,000 in medical benefits, \$170,000 in permanent partial disability and more than \$350,000 in future medical funds.

“What the early award did was establish us as winning those issues,” Cantor said.

According to court documents, the patient was

treated by a Dr. Lukasz Curylo, who diagnosed her with a disc herniation/protrusion. In October 2007, he performed surgery, noting moderate to good results by May of the following year when he declared to her to have reached “maximum medical improvement” or MMI. He noted, however, that she would continue to need treatment for pain. Her employer then terminated benefits.

Another physician, Barry Feinberg, saw Judd during that summer and said she had not attained MMI and recommended physical therapy and injection therapy to deal with musculoskeletal problems. Feinberg said the claimant was unable to return to work and was still suffering significant pain due to post-laminectomy syndrome.

A September examination by a third doctor, John Graham, recommended she be weaned off pain killers, at which point she would be at MMI and able to handle light duty.

Ultimately, the judge in the case agreed with Feinberg, finding his assessment to be the most convincing and directing the employer to provide his course of treatment rather than Graham’s. The court also ruled that the plaintiff had not reached MMI when benefits were terminated and she was entitled to ongoing temporary payments until she attained that status.

The court also ruled that the employer was responsible for past and future medical care, which Cantor said set the stage for the later settlement.

John D. Dietrick, of Holtkamp, Liese, Schultz & Hilliker, which represented the defendant, declined to comment on the case. mo

■ \$1,016,944 Judgment and Settlement

WORKERS’ COMPENSATION

- **Breakdown:** \$414,634 in medical benefits recovered; \$170,000 in permanent partial disability; \$350,476 in future medical funds, \$77,874 in temporary total disability payments; \$3,959 in attorney’s fees and costs.
- **Venue:** Missouri Division of Workers’ Compensation
- **Case Number/Date:** 07-027977/Jan. 3, 2014
- **Administrative law judge:** Vicky Ruth
- **Plaintiff’s experts:** Dr. Barry Feinberg, Frontenac (pain management); James Israel, St. Louis (vocational rehabilitation)
- **Defendant’s experts:** Dr. John Graham, St. Louis (pain management)
- **Insurer:** New Hampshire Insurance Co.
- **Caption:** Paula Judd v. BBC Industries
- **Plaintiff’s attorneys:** Mark A. Cantor, Cantor & Burger, St. Louis
- **Defendant’s attorneys:** John D. Dietrick, Holtkamp, Liese, Schultz & Hilliker, St. Louis