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TEXAS INSURANCE LAW NEWSBRIEF



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INSURER DOES NOT WAIVE EXTENT OF INJURY CHALLENGE IF CLAIM WAS REASONABLY DISCOVERABLE WITHIN COMPENSABILITY DETERMINATION PERIOD

Recently, in *McKoy v. City of Fort Worth*, No. 2-09-151-CV, 2009 WL 4114159 (Tex. App.—Fort Worth Nov. 25, 2009), a City employee was initially diagnosed with a work-related sprained right knee. The City received written notice of the injury on November 23, 2005. Under section 409.021(c) of the Labor Code, the City had sixty days to contest the compensability of the injury without waiving that right under Labor Code section 409.021. The City conceded that McKoy's knee injury was compensable and initiated benefit payments to McKoy the first week of December 2005.

On December 20, 2005, McKoy underwent an MRI, which revealed a Baker's cyst, grade III-IV chondromalacia, and bursitis, all involving the sprained right knee. The City received the MRI results on January 20, 2006, and ten days later contested the three new diagnoses, seven days after the sixty-day period had expired.

Citing *State Office of Risk Management v. Lawton*, 256 S.W.3d 436 (Tex. App.—Waco 2008, pet. granted), the court opined that a carrier does not waive the right to challenge the extent of an injury *even though* the extent of that claim was reasonably discoverable within the period for determining compensability. Ultimately, a carrier has up to forty-five days from the date it receives a complete medical bill to dispute whether that treatment was necessary.

Therefore, the City had forty-five days from the time it received further medical documentation to contest the extent of injuries. Because the City acted seven days later, the City did not waive the right to contest the extent of the injury.

ESTATE LACKED STANDING TO CHALLENGE DISTRIBUTION OF LIFE INSURANCE PROCEEDS WHEN NOT A NAMED BENEFICIARY

In *Irwin v. Irwin*, No. 04-08-00554-CV, 2009 WL 4153970 (Tex. App.—San Antonio Nov. 25, 2009), Barbara Jane Irwin and the decedent, Richard Lee Irwin, were married while Richard was employed by the Drug Enforcement Agency (the "DEA"). While employed with the DEA, Richard participated in a life insurance program and designated Barbara as his primary beneficiary and his sons from a prior marriage, Mike and John, as his contingent beneficiaries. Richard retired in 1995, and he elected to receive reduced life insurance coverage. In 2006, Richard and Barbara divorced; their Agreed Divorce Decree awarded Richard all policies insuring his life. During the pendency of the divorce, Richard signed a new will in which he stated he had filed for divorce in April 2005 and it was his "specific intent not to

provide for [Barbara] in this will and to give [his] entire estate ... to [Mike and John]....” Richard died on April 11, 2007, and his beneficiary was at the time of his death was Barbara Irwin. Pursuant to his beneficiary designation, the Office of Personnel Management paid the proceeds of Richard's policy to Barbara.

In July 2007, Mike, as representative of Richard's estate, sued Barbara to recover the proceeds and have her designated a constructive trustee of the proceeds for the benefit of Richard's estate. The appellate court raised the issue of standing *sua sponte* and held that proceeds of an insurance policy are statutorily defined as non-testamentary in nature. Accordingly, the estate was not a designated beneficiary under the insurance policy and had no legal claim to the proceeds of the policy.

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