



CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC

May 29, 2012

Our law firm strives to keep our readers up-to-date on decisions that impact workers' compensation carriers. A recent decision out of Corpus Christi - Edinburg Court of Appeals came to a surprising conclusion. In *Commerce & Industry Insurance Company v. Kimberly Ferguson-Stewart, et al.*, the court found that a claimant's death from an overdose of prescription medicine was compensable. Please note that the court of appeals came to this conclusion based on a jury charge that was bad for the insurance carrier.



Bruce Stewart, the claimant, was injured on May 25, 2004 when he was struck in the shoulder and neck area by a bolt weighing several pounds. Stewart was prescribed hydrocodone by his treating doctor, John Bergeron, MD, and died from a hydrocodone overdose on October 3, 2004. Stewart's widow, Kimberly Ferguson-Stewart, sought death benefits from the workers' compensation carrier. The Division found that his death was not compensable. After appealing to District Court, a trial jury found that his death was compensable because it resulted from treatment for the 2004 compensable injury.

The workers' compensation carrier appealed the trial court judgment. The court of appeals reviewed the jury charge. The charge instructed that "a claimant's death does not result from medical treatment instituted to relieve the effects of his compensable injury if the death results solely from a claimant intentionally or knowingly failing to comply with his doctor's instructions."

Ferguson-Stewart argued that the side effects of the medication caused Stewart to overdose. Lay testimony was presented which showed that Stewart was groggy and confused in the day before his death. A forensic toxicologist testified that one of the side effects of hydrocodone is confusion. Other testimony established that it could be possible for a person to become confused due to medication and take more than was prescribed because they forgot that they took their last dose. The court found that expert testimony was not required to establish the "side effects" theory and that the lay testimony presented was sufficient to support the jury's verdict.

While this is a very interesting decision, it is important to note that it was based upon what the court thought was an incorrect jury instruction.

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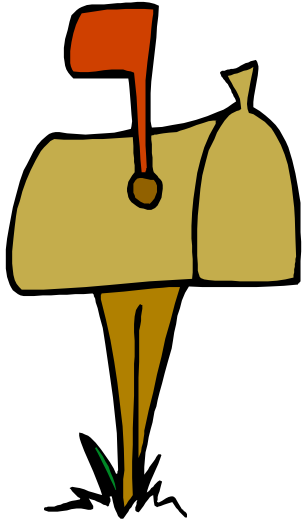
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