



From the President



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The Supreme Court in Casco substantially changed longstanding, commonly held interpretations of Kansas workers compensation law.

As attorneys, we often appear before the court to discuss the legislature's intent behind a particular law. This year, we must appear before the Legislature and discuss the intent of the Kansas Supreme Court. Let me explain.

On March 23, 2007, the Kansas Supreme Court handed down a case called *Casco v. Armour Swift-Eckrich*, 283 Kan. 508 (2007). In a nutshell, this case determined that a worker with an injury to bilateral scheduled body parts must prove that they are "completely and permanently incapable of engaging in any type of substantial and gainful employment" before they may qualify

for a work disability award as opposed to a bodily injury award under the Workers Compensation Act. To make this holding, the Kansas Supreme Court had to explicitly overrule *Honn v. Elliot*, 132 Kan. 454 (1931) and deviate from over 70 years of precedent, eliminating the common interpretation of the law that had been in use since before World War II.

The *Casco* decision shocked workers compensation practitioners because it fundamentally changed the way eligibility for disability benefits is determined and increases the burden on injured workers. The impact of the Court's decision is even more alarming considering how inadequate our workers compensation system has become. This system, intended to protect working people injured on the job, has evolved into a maze of harsh time limits and ridiculously low benefits. At the same time, insurance companies have enjoyed healthy profits and employers have enjoyed low premiums, all to the detriment of working Kansas families.

But perhaps the most devastating impact of the *Casco* decision is the elimination of the incentive for the employer at the time of injury to accommodate the injured worker. The majority of Kansas workers earn their wages with the full use of their hands and legs. Their ability to compete in the open labor market without these attributes and without some minimal assistance is bleak.

The Supreme Court in *Casco* substantially changed longstanding, commonly held interpretations of Kansas work-

ers compensation law. So why did the Court do what it did, and why now? Good question—tougher answer. No one is privy to the discussions between the Supreme Court members. Furthermore, the overruling of *Honn* was neither argued nor briefed by the parties.

The fact is that there is not an obvious explanation for the Supreme Court's decision. And at the end of the day, it doesn't really matter why the Court chose the path it did. We must still fight to protect the Kansas workers—our clients—who are already being hurt by the decision in *Casco*.

So what can we do? The answer is simple: we engage in the democratic process that is part of the foundation of our government. We go to the Legislature and ask them to protect Kansas workers and return the law to the way it has operated for over 70 years. Supporting legislation to return the law to the common understanding shared by workers compensation practitioners for decades will be the KsAJ's top priority in the 2008 legislative session.

As I write this article, the holidays are fast approaching. Christmas time reminds us that the ideal of peace on earth and goodwill toward men is an ideal that must not die. But goodwill is not just charity—it's also justice. And to this end, I know that the members of our great organization will rise to the occasion and seek justice now, not only in the courts but also before the Legislature. For those of us who care about and fight for justice, the time of Christmas giving is only a beginning. ▲