

**WORKERS' COMPENSATION COURT OF APPEALS HOLDS MEDICAL PROVIDER IS ENTITLED TO FULL REIMBURSEMENT
WHERE PARTIES FAILED TO GIVE TIMELY NOTICE OF THE RIGHT TO INTERVENE**

On July 8, 2013, the Minnesota Workers' Compensation Court of Appeals ("WCCA") found a medical provider was entitled to full reimbursement from the employer, even though the compensation judge found the surgery unreasonable and unnecessary, because the medical provider did not receive notice of its right to intervene.

In Gamble v. Twin Cities Concrete Products, the employee underwent a fusion surgery for which the self-insured employer denied payment, arguing it was not reasonable or necessary. No. WC12-5518 (W.C.C.A. Jul. 8, 2013). The employer asserted it was not aware of the medical provider's potential intervention interest until the day prior to the hearing. The intervenor did not receive timely notice of its right to intervene, and the hearing proceeded the next day. The judge found the fusion surgery the employee obtained was causally related to the admitted work injury, but that it was not reasonable or necessary.

The intervenor received a copy of the findings and order and moved for a hearing. A full evidentiary hearing was held, and the judge again found the surgery not reasonable or necessary and found the medical provider was not entitled to payment of its balance. The WCCA reversed, holding that in examining whether an intervenor was precluded from exercising its intervention rights, the ultimate compensability of the treatment at issue is irrelevant. The judge erred by using his ultimate decision that the surgery was unreasonable and unnecessary to excuse the intervenor's exclusion from the hearing. The WCCA awarded the intervenor full reimbursement.

The WCCA held intervenors have a right to participate in hearings. This case has already affected several cases at the Office of Administrative Hearings. In a case where an intervenor was not provided notice prior to the hearing, or where sixty days has not passed since the intervenor received notice, a continuance will likely be granted. If intervenors are not notified in a timely manner, it may be in the employer and insurer's best interest to request a continuance to avoid a potential award of full reimbursement should a court find the intervenor's interest was not protected. However, as continuances are granted, the court's ability to efficiently manage its caseload is affected, resulting in delays for all parties. This case is currently on appeal to the Minnesota Supreme Court. We are monitoring this and other workers' compensation cases and will promptly notify you of any substantial changes in Minnesota workers' compensation law.