

Progress for Oklahoma

An Update on the Oklahoma Workers' Compensation Reforms

March 1, 2016

On February 26, 2016, the Oklahoma Workers' Compensation Commission issued an order in *Vasquez v. Dillard's, Inc.*, Commission File No.: CM-2014-11060L, declaring Section 203 of the Oklahoma Employee Injury Benefit Act (the "Option") unconstitutional. The Commission did so on the basis that Section 203 is a special law, denies equal protection, and denies access to the courts. While the ruling was limited to Section 203, the Commission held that it rendered the rest of the Option inoperable.

Initially, there are a couple of things to note about this case. First and most noteworthy, as discussed below, it is questionable if the Commission even has the authority to rule on constitutional challenges. Second, even if the Commission does have the authority, its ruling is limited to the parties involved in the specific case before it. It does not have the authority to strike down the statute on "a statewide basis." Section 203 requires benefit plans to provide certain benefits that at least mirror the Administrative Act in form, duration, and amount. As referenced in the Commission's Order, Dillard's plan does not cover harm caused by asbestos exposure whereas the Administrative Act does (it is noteworthy that Vasquez' injury was not related to asbestos exposure); as such, the Commission's ruling should have focused on whether Dillard's plan complied with Section 203 and if it did not, the Commission could have found the Plan inadequate. But to the contrary, the ruling overstepped and determined Section 203 permits variation of benefits and is therefore unconstitutional.

Aside from the Commission's constitutional analysis, we do not believe the Commission has the authority to rule on the constitutionality of the Option or any other provision in Title 85.A. In *Dow Jones & Co., Inc. v. State ex rel. Oklahoma Tax Com'n*, 787 P.2d 843 (Okla. 1990), the Oklahoma Supreme Court held that an administrative agency, such as the Commission, is "powerless to strike down a statute for constitutional repugnancy." *Id.* at 845. The Court goes on to define the judicial power of an agency as only that "which is necessary to support their exercise of adjudicative authority in individual proceedings brought before them." *Id.* The Commission's actions in *Vasquez* clearly violate the limitations placed on it in *Dow Jones*. So it would appear that unless the Court revises its holding in *Dow Jones & Co.*, the Commission acted beyond its authority.

Nonetheless, this decision understandably creates uncertainty and confusion for employers participating in the Option. While each impacted member will need to consult with its counsel about how to proceed, keep in mind that this decision only affects *Vasquez* and *Dillard's*. Under Oklahoma law, an agency's decision only applies to the parties to the action. In addition, participating employers have 90 days from any final decision declaring the Option or any part of the Option unconstitutional to comply with the Administrative Act.

We anticipate this decision will be appealed to the Oklahoma Supreme Court. At that time, we will be in contact about how the OIBC can support a reversal of this decision.

OIBC Membership Meeting Being Planned

We are in the process of scheduling a membership meeting of the Oklahoma Injury Benefit Coalition to discuss the Commission's ruling and provide updates on our visits with legislative leaders on our strategy to move forward. Information on the time of the meeting will be provided shortly.