

TOP VERDICTS OF 2018

The largest and most significant verdicts and appellate reversals in California in 2018

TOP APPELLATE REVERSALS

King et al. v. CompPartners Inc. et al.

A Munger, Tolles & Olson LLP legal team secured a state Supreme Court decision that preempts tort suits against physicians who review workers' compensation claims, a ruling attorneys said forestalled a massive shake-up of the workers' comp system.

The 4th District Court of Appeal had ruled utilization-review doctors have a physician-patient relationship with an injured claimant seeking medical benefits, so they owe them a duty to warn about the medical consequences of their "medical necessity" determinations.

In doing so, the appeals court allowed injured plaintiff Kirk King's failure-to-warn tort claim against workers' compensation service provider CompPartners Inc. and an associated doctor to proceed.

But the state Supreme Court reversed the ruling in an August opinion, determining that "the workers' compensation law provides the exclusive remedy for the employee's injuries." *King et al. v. CompPartners Inc. et al.*, 2018 DJDAR 8464 (California Sup. Ct., filed Aug. 23, 2018).

Fred A. Rowley, Jr., lead appellate counsel for CompPartners, said the Supreme Court's opinion properly maintained the system that guarantees compensation to employees for workplace-related injuries through workers' compensation while foreclosing tort claims for those same injuries.

"What is significant is the court recognized that if you allowed tort suits against utilization-review physicians to go forward when the underlying injuries flowed from the workers' compensation process, it would upset the entire bargain that is the basis for workers' compensation," said Rowley, a Los Angeles-based litigation partner at Munger Tolles and a co-leader of the firm's Appellate Practice group.

He and Munger Tolles partner Jeffrey Y. Wu of Los Angeles said one of the keys to achiev-

CASE INFO

Workers Compensation Act preemption of tort suits

California Supreme Court
Justice Leondra R. Kruger

Appellant's Lawyers: Fred A. Rowley, Jr., Jeffrey Y. Wu, Joshua S. Meltzer, Munger, Tolles & Olson LLP; William D. Naeve, Ellen M. Tipping, Terry L. Kesinger, David A. Winkle, Murchison & Cumming LLP

Appellee's Lawyers: Patricia A. Law, Law Offices of Patricia A. Law; Jonathan A. Falcioni, The Ledger Law Firm; Christopher D. Lockwood, Arias & Lockwood



FRED A. ROWLEY

ing the victory was highlighting that the concept of the workers' compensation system providing the exclusive remedy for employee injuries was rooted in statute.

"We had to persuade the court that this is the way the workers' compensation system ought to work given the way the Legislature designed the system," Rowley said.

He and Wu worked on the case with Munger Tolles associate Joshua S. Meltzer, who is based in San Francisco.

The underlying case involved a plaintiff who suffered a back injury that caused chronic pain, resulting in anxiety and depression. King was prescribed medication to treat the anxiety and depression, though a CompPartners utilization-review doctor later determined the drug was not medically necessary.

King alleged he suffered seizures once workers' compensation coverage for the drug was discontinued.

Patricia A. Law, lead counsel for the plaintiff, credited the Munger Tolles team with great lawyering work on the appeal.

However, she called the Supreme Court's decision a setback for injured workers like King and said it gives utilization-review doctors a "license to harm."

"Over the 26 years I've been practicing, the benefits available to the injured party from workers' compensation pale in comparison to what they used to be," Law said. "I was concerned going into this case at the Supreme Court that the court might make the remedies available for workers even more narrow, and unfortunately that turned out to be the case."

Law, owner of the Law Offices of Patricia A. Law in Rancho Cucamonga, said she took some cold comfort in the fact the court did not also do away with an injured worker's right to sue a treating physician who further injures them.

— Lyle Moran