

NEW MEXICO

YLAW, P.C. SUCCESSFULLY DEFENDS EMPLOYER IN OCCUPATIONAL DISEASE TRIAL



Partner Megan L. Kuhlmann litigated an occupational disease case before the New Mexico Workers' Compensation Administration on April 26, 2022. Claimant alleged that exposure to road deicing materials at work caused his onset of asthma, an allegation supported by testimony of his treating pulmonologist. Claimant's employer contested the claim on grounds the treating pulmonologist had insufficient foundation for the opinions rendered. Ms. Kuhlmann obtained an Order for Panel Independent Medical Examination (IME) from the Workers Compensation Judge despite the claimant's objection. The IME panel concluded workplace irritants could not be determined to a reasonable degree of medical probability as the cause of the claimant's asthma. Upon cross examination of the treating pulmonologist, Ms. Kuhlmann targeted the foundational gaps in the treating physician's foundation for her causation opinion. Ms. Kuhlmann highlighted on direct examination of the IME Panel anchor physician the thorough analysis conducted by the panel to understand the lack of connection between the claimant's workplace exposures and development of asthma, which the Panel based on supported medical research.

A week after the closure of evidence, the Worker's Compensation Judge requested a post-trial status conference to discuss with the parties his difficulties in rendering a decision, advising that the parties' proposed findings of fact and conclusions of law would likely be the determinative factor. Within four (4) business days of the parties' submissions, the Worker's Compensation Judge entered an Order concluding that the claimant's treating physician was unable to specifically identify the workplace irritant causing the symptoms, that the treating physician failed to investigate the deicing materials or frequency of claimant exposure, and that the treating pulmonologist's testimony overall failed to establish that the workplace exposure was the cause of the claimant's asthma.

This case highlights the importance of challenging the biased opinions of patient-selected treating physicians to the fullest extent available under workers compensation and occupational disease statutes and holding claimants to their burden of proof. Doing so protected Ms. Kuhlmann's client from wrongfully covering lifetime medical and disability benefits.



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