

LAW OFFICES

The Whitten Law Firm

A Professional Corporation Providing Legal Services

OFFICES AT SOUTHLAKES, 9422 S. Elwood Avenue, Suite 100, Jenks, OK 74037-2317

www.whittenlaw.com

(918) 664-1015

(918) 627-7896 Fax

CHAD R. WHITTEN

CHERYL S. GAN

JACK HIGGINS

chad@whittenlaw.com

cheryl.gan@whittenlaw.com

jack@whittenlaw.com

August 30, 2016

**To: Oklahoma Legislature**

**Re: Oklahoma Option – Vasquez Case  
“Pound the Table and Yell like Hell!”**

For decades, Oklahoma Workers' Compensation has been synonymous with concepts like fraud, intellectual dishonesty and even contempt. From the outside looking in, Oklahoma's old school workers' compensation system was viewed as having nothing to do with protecting injured workers and everything to do with enriching those who exercised substantial influence over the process. The Oklahoma Workers' Compensation Court was historically run by political-appointees, many of whom had little expertise and most often demonstrated a complete lack of integrity. And so, Oklahoma managed to create an entrenched, decade's long, system run by those intent on handing-out awards that defied common sense, without any regard to law or reason, thereby fostering a gold-rush mentality among workers, lawyers and medical providers.

In 2013, and with the specific intent of creating sweeping reform to this old-school system, the Oklahoma Legislature passed landmark legislation that repealed the Workers' Compensation Act. Oklahoma eliminated the one-sided Workers' Compensation Court and replaced it with an administrative system. This new system allowed employers a choice: to provide injured workers with statutorily mandated benefits under either the new Administrative Workers' Compensation Act *or* to provide the same or better benefits through the Oklahoma Injury Benefit Act, commonly referred to as the Oklahoma Option. Those employers who elect the Oklahoma Option provide benefits under a statutory framework that is fully compliant with The Employee Retirement Income Security Act (ERISA), approved by the Insurance Commissioner and subject to review by the new Workers' Compensation Commission.

In addition to eliminating the one-sided court system, the 2013 Oklahoma reforms also addressed long-standing problems associated with coverage for pre-existing conditions. In the old school system, an Oklahoma worker's non-occupational, pre-existing medical conditions would present no obstacle to obtaining a substantial compensation award. With the 2013 reforms, compensation for preexisting conditions became limited to those accidents that result in an *identifiable and significant aggravation* of the pre-existing condition.

Since passage of these 2013 changes, those against change have worked furiously to attack these new reforms, to include the Oklahoma Option, as unconstitutional. As you know, the most recent challenge to the Oklahoma Option is currently awaiting a decision by the Oklahoma Supreme Court in the case styled Vasquez v. Dillard's. In that case, the trial lawyers and others have generated mountains of paperwork but have carefully avoided any discussion as to whether any on-the-job injury ever occurred. Pulitzer Prize winning Poet, Carl Sandburg summed it up best: "If the facts are against you, argue the law. If the law is against you, argue the facts. If the law and the facts are against you, pound the table and yell like hell!"

I have reviewed the public records in Vasquez. From what I can see, there was never any work-accident because the worker merely experienced pain while carrying shoe-boxes from a retail sales floor to back storage area. The claim was rightfully questioned because the worker had been receiving on-going treatment for the exact same problems in the time immediately preceding the alleged accident. The claim was denied based on a medical opinion from an orthopedic spine surgeon who is a former President of the American Academy of Disability Evaluating Physicians. This orthopedic surgeon could not find any significant aggravation of the pre-existing condition from carrying the shoe boxes. There was no work accident because there was no significant aggravation of the pre-existing condition as required by the 2013 reforms.

The Plan issued Ms. Vasquez a written explanation of the denial of further benefits and advised her of her right to file an appeal, as required by the law and benefit plan documents previously provided to her and approved by the Oklahoma Insurance Department. Ms. Vasquez' attorneys filed an appeal with Dillard's Option Plan and the appeal was considered by a committee of individual plan fiduciaries that – by law – could not have been involved in the initial benefit denial and were required to review the benefits claim from the beginning, giving no deference to the initial benefit denial.

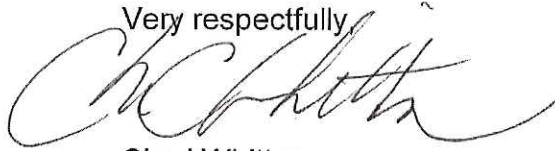
Upon receipt of Ms. Vasquez' appeal, the Dillard's Appeal Committee obtained an independent medical examination from a board-certified family physician who is also an occupational injury specialist, and who was not consulted as part of the initial benefit claim decision. This physician is a Certified Independent Medical Examiner, member of the American College of Occupational and Environmental Medicine, and Fellow in the American Academy of Disability Evaluating Physicians. He has also been active in Oklahoma workers' compensation leadership for many years, including membership on the Physician Advisory Committee to the Workers' Compensation Court and the Oklahoma State Board of Osteopathic Examiners.

The highly-credible, well-credentialed occupational health physician who conducted a review of Ms. Vasquez' medical records and an examination of her found that she had pre-existing and degenerative conditions to her cervical spine that were not aggravated by carrying the shoe boxes. Based upon this report,

the Appeals Committee determined that her medical conditions could not be covered by Dillard's Option Plan.

As a fifth generation Oklahoman, I am thankful for the reforms initiated by the Oklahoma Legislature. We are fortunate to have forward thinking Legislators like you. In last three years, you have accomplished more meaningful workers' compensation reform in Oklahoma than all other reform in the past 30 years, combined. I am hopeful that the Oklahoma Supreme Court will decide the issues based on law rather than political activism. I look forward to continuing to practice law under the 2013 reformed Oklahoma Workers' Compensation System, including both the administrative system and the Oklahoma Option.

Very respectfully

A handwritten signature in cursive script, appearing to read 'Chad Whitten', written in black ink.

Chad Whitten  
FOR THE FIRM