INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS

FROM: JOE TRUCE

DATE: July 7, 2004

RE: **MURPHY'S LAW OR WHEN EVERYTHING GOES WRONG**

In the case of **Garden Grove Unified School District v. Workers' Compensation Appeals Board, Paula Cervantes, 69 CCC 280 (writ denied)** we have a case in which the defense attorney went **"down for the count."** This reminds me of the old Kingston Trio song, the MTA, in which the introduction goes like this: "This...could happen to you..."

The **Cervantes** case started off innocently enough, as it involved an applicant who sustained an admitted injury to her left hand on March 5, 1997. This original minor injury then radiated to all parts of the applicant's body resulting in claims of urological, internal, and psychiatric systems. To give everyone a flavor of the legitimacy of these claims, the applicant apparently claimed that she suffered severe back pain on March 7, 1997 after stretching in an aerobics class at work. At the Mandatory Settlement Conference the defense attorney offered into evidence sub rosa tapes (presumably inconsistent with the applicant's claims of disability). The Workers' Compensation Judge (WCJ) denied the admission of these videotapes into evidence on the grounds that "despite a Hardesty demand they were not provided to applicant until five days before the MSC..."[1]

At any rate, the applicant's Petition for Removal on the denial of the WCJ to admit the videotapes was denied.

The defense attorney then proceeded to receive the following adverse rulings from Judge Janet Coulter and/or the Board:

1. Denial of the admissibility of the surveillance tapes, as they were not timely served on the applicants' attorney.

2. Exclusion of the defense medical reports as they did not comply with Labor Code §4061 and/or §4062, and were based in part on a review of the inadmissible sub rosa videotapes.

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[1]Although the case does not go into detail, the so-called Hardesty or discovery demand was probably embodied in the applicant's attorney's **form** appearance letter.

3. The defendant was hit for $500 in sanctions "for improperly delaying and denying applicant's claim.

4. Defendant was found liable for a 10% penalty pursuant to Labor Code §5814 for terminating temporary disability benefits without legal or medical basis.

5. Defendant was hit with another 10% penalty for failure to provide medical treatment.

6. Defendant was also hit with a Labor Code §5814 penalty with regards to failure to advance permanent disability.

7. The WCJ concluded that the applicant's injury produced permanent disability of 100%.

8. As the WCAB denied applicant's Petition for Reconsideration and incorporated the WCJ's Report and Recommendation on defendant's petition recommending that said petition be denied, defendant filed a Petition for Writ of Review.

9. To add insult to injury, the Court of Appeal in denying defendant's Petition for Writ of Review granted applicant's request for attorneys fees finding that defendant's Writ was frivolous.

I would assume that any activities by the defense attorney subsequent to the denial of the Petition for Writ of Review were alcohol-related or at least they should have been.

WJT:dab