



Oregon Supreme Court reverses *Smothers*

By Karen S. Varney ■ July 21, 2016

You may be wondering what the Oregon Supreme Court has been up to while we await its decision in *Brown v. SAIF*¹ (oral arguments took place in May 2015). The 141-page opinion the Court issued in *Horton v. OSHU*² certainly confirms the justices have been hard at work.

In *Horton*, the Court reversed its 2001 landmark decision, *Smothers v. Gresham Transfer*. In *Smothers*, the Court had concluded the exclusive remedy provision of the workers' compensation law was unconstitutional when a worker's initial injury was denied on a major contributing cause basis, because it denied the claimant any remedy for injury that would have been actionable under the common law of Oregon. Therefore, in *Smothers*, the Court found in some instances an injured worker can sue the employer for a work injury under a negligence cause of action in a civil lawsuit.

Horton overruled *Smothers*. Although the facts in *Horton* do not involve a workers' compensation claim (it involves a medical malpractice claim against OHSU and doctors), it seems to strongly support that workers with denied work injuries will no longer have the constitutional right to sue their employers for negligence in a civil lawsuit.

The attorneys at Reinisch Wilson Weier are always available to answer questions about these opinions or other issues you may have. ■



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¹ *Brown v. SAIF* 262 Or App 640 (2014).

² *Horton v. OHSU* 359 Or. 168 (2016).