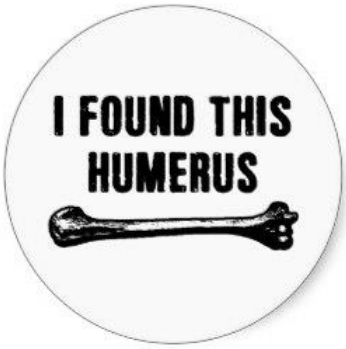
Dr. Garber's
DISPENSARY OF COUGH SYRUP, BUFFALO LOTION, PLEASANT PELLETS, PURGATIVE PECTORAL, SALVE & WORKERS' COMPENSATION CASES



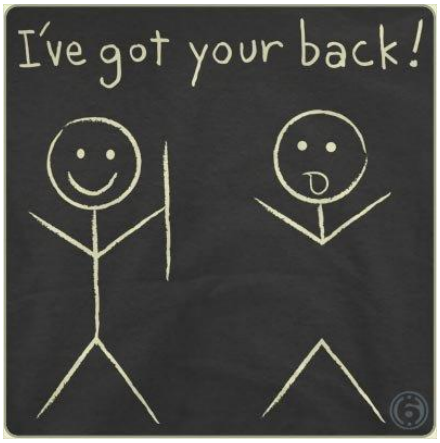
Bradley G. Garber's Board Case Update: 05/28/2015

James L. Wilson, 67 Van Natta 836 (2015)
(ALJ McWilliams)

Claimant requested review of an Order dismissing his request for hearing because he did not attend IME's. The judge found that, under OAR 438-006-0071(1), claimant's failure to attend the IME's resulted in an "unjustified delay" in the hearing of more than 60 days. On that basis, the judge considered claimant to have abandoned his request for hearing and dismissed the hearing request. **Affirmed**

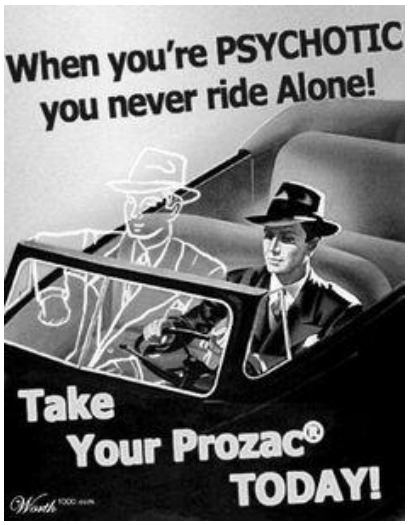
Mark E. Wolkersdorfer, 67 Van Natta 856 (2015)
(ALJ Crumme')

Claimant requested review of an Opinion & Order that upheld SAIF's combined condition denial. In upholding SAIF's "ceases" denial of the combined condition, the ALJ found that the unrebutted opinions of SAIF's experts persuasively established that claimant's "work-related injury" had changed such that it ceased to be the major contributing cause of disability or need for treatment of the combined condition.



On review, and relying on the holding in *Brown v. SAIF*, claimant argued that the medical opinions were couched in terms of the accepted "conditions," rather than the "otherwise compensable injury" or "work-related injury."

Dr. Kitchel and Dr. Lewis opined that claimant's accepted thoracic and lumbar strains were the same as his "accidental work injury." Weighing the severity of claimant's accidental work injury against the severity of his preexisting conditions, they concluded that the "accidental work injury" was no longer the major contributing cause of the disability or need for treatment of the combined condition. Under the circumstances, and in light of the correct terminology, the Board found that SAIF had carried its burden of proof, that claimant's "otherwise compensable injury" (i.e., his work-related injury/incident) "ceased" to be the major contributing cause of his disability/need for treatment. **Affirmed**



TIP: Be sure to couch your questions to your medical experts in terminology that satisfies *Brown*. *See, also, Robert C. Evans, III*, 67 Van Natta 866 (2015)(accepted condition of lumbar strain was the "work-related injury")

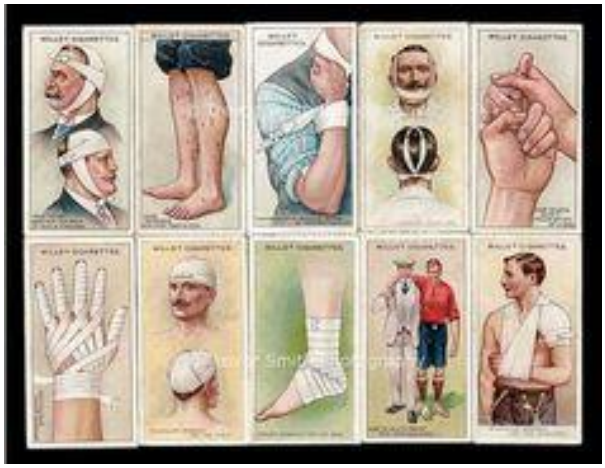
AND…from the Court of Appeals

English v. Liberty Northwest Ins. Corp., 1105186; A153438 (May 13, 2015)

This is one of those *Brown v. SAIF* cases. The issue was whether the board applied an overly restrictive test when it required claimant to prove that the "accepted

conditions" for claimant's 2010 injury were the major contributing cause of the denied conditions. Claimant argued that, under the Court of Appeals decision, in *Brown v. SAIF*, 262 Or App 640 (2014), the correct inquiry is whether the claimed consequential conditions were caused, in major part, by the "compensable injury," and that that term is not limited to the "accepted conditions."

Claimant injured his left knee. The accepted conditions were **left knee medial hamstring strain and/or lateral compartment contusion**. Claimant requested the acceptance of new conditions of "left knee instability, left knee joint effusion, left snapping patella, left bucket handle tear of the medial meniscus, left partial tear of the proximal ACL, and left grade 1 tear/injury of the MCL." In other words…every little thing you can possibly dredge up, out of the medical records. Not surprisingly, LNW denied compensability of these bogus conditions.



After going through some mental gymnastics, the Court concluded, "Thus, the compensability of a consequential condition depends on the condition's relationship to the 'compensable injury,' which is defined in ORS 656.005(7)(a)." In *Brown*, the Court of Appeals reasoned that the "injury-incident-based" definition of "compensable injury" did not make the compensability of an injury dependent on the insurer's acceptance of particular conditions."

Because the Board did not apply the correct legal standard, the Court decided to send it back to the Board for further consideration. **Reversed and remanded**

NEWS FLASH: SAIF argued its appeal of *Brown v. SAIF* at the Oregon Supreme Court, a couple of weeks ago. I predict a reversal. In the meantime, keep all of these cases alive.