

Dillon J. McGuire Quoted in New Jersey Law Journal Article on New Jersey Supreme Court Decision Upholding Medical Marijuana Patient's Right to Reimbursement From Employers For Work-Related Accidents

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In an important victory for the rights of medical marijuana patients, on April 13, 2021, the New Jersey Supreme Court affirmed an Appellate Division ruling, holding that a workers' compensation judge may order employers in the State of New Jersey to reimburse injured employees for the cost of medical marijuana. In *Hager v M & K Construction*, ___ N.J. ___ (2021), Pashman Stein attorneys Alan Silber and Dillon J. McGuire represented several organizations as *amici curiae* before the New Jersey Supreme Court: (1) National Organization for the Reform of Marijuana Laws (NORML); (2) Garden State-NORML (GS-NORML); (3) Coalition For Medical Marijuana-NJ (CMM-NJ); and (4) Doctors For Cannabis Regulation (DFCR).

The Supreme Court's decision in *Hager v M & K Construction* will have far-reaching implications, most importantly by providing employees that are injured at work broader access to medical marijuana in lieu of highly addictive and dangerous prescription opiates.

In its ruling, the Supreme Court emphasized four main points:

- New Jersey's Compassionate Use Medical Marijuana Act (CUMMA) does not exempt employers from its obligation to reimburse injured employees for medical marijuana under the Worker's Compensation Act (WCA), because they are neither a government medical assistance program, nor a private health insurer

- Medical marijuana may be deemed a “reasonable and necessary” modality of treatment under the WCA based upon competent medical testimony
- There is no positive conflict between the Federal Controlled Substances Act (CSA) and CUMMA that would extinguish an employer’s reimbursement obligation under the WCA
- Employers would not be in violation of the CSA by reimbursing an employee for the cost of medical marijuana, because they would lack the specific intent necessary to constitute an “aiding and abetting” or “conspiracy” offense as defined under Federal law

In *Hager v. M&K Construction*, 462 N.J. Super. 146 (App. Div. 2020), the petitioner, Vincent Hager, suffered a work-related back injury. After treating his ailments with surgeries and prescription opiates for years, the efficacy of the drugs diminished, and the side effects of his opiate use became debilitating. Eventually, Hager was referred to a pain management specialist and was prescribed medical marijuana pursuant to CUMMA. Thereafter, Hager filed a Worker’s Compensation claim against M&K.

At the Worker’s Compensation trial, Hager’s doctors confirmed that the use of medical marijuana had in fact alleviated much of Hager’s pain, and opined that marijuana was a safer treatment option than opioids. Ultimately, the judge concluded that Hager suffered a partial total disability, and that his prescription marijuana was reasonable and necessary to treat his chronic back pain. Accordingly, the judge ordered M&K to pay for his monthly medical marijuana prescription.

On appeal, M&K argued, in part, that ordering it to reimburse Hager for medical marijuana would force it to violate the Federal CSA, which does not recognize marijuana as an acceptable form of medical treatment. M&K also argued that Hager did not establish that his use of marijuana was “reasonable and necessary.” The Appellate Division rejected each of M&K’s arguments, finding that there was no conflict between the CSA and CUMMA, and that reimbursing a former employee for the cost of medication would not cause M&K to violate the CSA. Finally, deferring to the lower court’s findings, the appellate panel found that medical marijuana was in fact a reasonable and necessary form of treatment under the WCA.

The New Jersey Supreme Court granted certification on the following question: May a workers’ compensation judge order an employer to reimburse its employee for the cost of the employee’s medical marijuana prescribed for chronic pain following a work-related accident?

The *amicus* brief filed by Alan Silber and Dillon McGuire argued that the Court should affirm the appellate panel’s decision based on three of the four points that the Supreme Court emphasized in its ruling: there is no conflict between the CSA and CUMMA; reimbursing an employee for the costs of medical marijuana does not constitute an “aiding and abetting” offense under federal law; and the use of medical marijuana may be a “reasonable and necessary” form of

treatment under the WCA.

