

## **MEM Wins State Supreme Court Ruling**

**FEB. 3, 2003**-The Missouri Supreme Court recently ruled in favor of MEM in a case that could have had a devastating financial effect on employers throughout the state, according to Patrick McHugh of Herzog, Crebs and McGhee, the attorney representing MEM in the case.

St. Louis Claims Representative Lisa Bottorff handled the case in which employee James Etling, Jr., died in the course of employment in May 2000. Etling had no spouse or other dependents when he died, yet his parents filed a Claim for Compensation, challenging the constitutionality of the workers compensation law, which only allows compensation to dependents.

"Although Etling's parents were not dependent upon him for financial support, they contended it was unconstitutional for the Workers Compensation Act to deny them workers compensation death benefits while, at the same time, bar them from maintaining the civil wrongful death action directly against the employer," McHugh says. "This constitutional challenge was fashioned on a similar New Hampshire case that found this type of statutory scheme denying both death benefits and a civil cause of action to be unconstitutional."

The Division of Workers Compensation and the LIRC denied benefits to Etling's parents. The case was appealed to the Missouri Court of Appeals, who immediately transferred it to the Missouri Supreme Court. Last month, MEM received the court's decision-a ruling in our favor that the employee's family did not appeal.

"Had our Supreme Court followed this minority view, our legislature may have been forced to enact legislation that would have either provided workers compensation death benefits to non-dependent parents, and perhaps non-dependent siblings as well, or allow those heirs not dependent upon the deceased worker for financial support to bring a wrongful death action directly against the employer," McHugh says. "Either scenario would have resulted in increased liability and, in turn, substantial cost to all employers."