

High Court Affirms Schmaltz

The Michigan Supreme Court held that a worker who returns to work at lower pay cannot recalculate his AWW to include the cost of discontinued fringe benefits (previously irrelevant because of the 2/3 SAWW cap). This case and others from the Supreme Court, Court of Appeals and Appellate Commission are reported and analyzed by Jerry Marcinkoski beginning on page 2.

Section Mourns Loss of Busch, Carey, Severyn, Piatt and Foster

Gary Busch of metro Detroit, Thomas Carey and Robert Piatt of Kalamazoo, Thomas Severyn of Flint, and Andrew Foster of Detroit passed away since our last edition was published. Many of you remember Gary's band playing at our section spring seminar a few years back. Often times people save all the nice words until after the recipient of these fine words has passed on. In Gary's case, his friends honored him in life last fall with a well-attended celebration of his life. A copy of the eulogy from Gary's funeral is contained within.

Tom Carey, larger than life in both physical stature and personality, enjoyed traveling and talking about his travels. His partner, Doug Kirk, wrote a wonderful tribute featured later in this volume.

All of these members of the "Comp. Community" will be dearly missed. We invite all of you to share your thoughts of any members who have left this life.

Governor Granholm Appoints Magistrates and Appellate Commissioners

Governor Jennifer Granholm appointed or re-appointed six magistrates and five appellate commissioners. Congratulations to Magistrates: Ambrose, Barney, Jarvis, Kozielski-Wolock, Nolish and Reinhardt, as well as to Commissioners: Glaser, Kent, Leslie, Reamon and Will. The assignments for the new appointees are:

NEW MAGISTRATE	DOCKET ASSIGNMENT
Chris Ambrose	Saginaw/Johnson docket (4 weeks)
Jack Nolish	Detroit/Burden docket (4 weeks)
Paul Reinhardt	Saginaw/Vacant docket (3 weeks) Ann Arbor/Vacant docket (1 week)
Rosemary Wolock	Mt. Clemens/Rabaut docket (4 weeks)

We Are Back to Two Evenings of Partying at the Spring Seminar: June 17-19 At Boyne Highlands

The Spring Seminar set for June 17-19 at Boyne Highlands will feature cocktail parties on both Thursday and Friday nights. Thanks to other cost-saving measures, the council found sufficient funds to reinstate the popular two evenings of comraderie. A registration form is printed elsewhere in this issue. The agenda is still in progress. More information will be mailed later. John Combs will be chairing the Meeting. For more information you can e-mail John at: JCombs@HickeyCombs.com.

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RECENT COURT DECISIONS

By Jerry Marcinkoski, Lacey & Jones

SUPREME COURT

The Supreme Court has issued one workers' compensation opinion and another important order in a workers' compensation case, since our last newsletter. The Supreme Court's opinion relates to calculating an employee's average weekly wage. The Supreme Court's order relates to the "arising out of and in the course of employment" requirements.

Average Weekly Wage

The Supreme Court addressed the question of whether a disabled employee's average weekly wage at the time of injury can be recalculated to include discontinued fringe benefits when the employee returns to a post-injury lower paying job. The case is *Schmaltz v Troy Metal Concepts, Inc*, 469 Mich 467; 673 NW2d 95 (2003).

The Act defines what constitutes an "average weekly wage" in § 371(2). The point of controversy in *Schmaltz* was that sentence in § 371(2) addressing discontinued fringe benefits. The sentence says: "Any fringe or other benefit which does not continue during the disability shall be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit rate which is greater than 2/3 of the state average weekly wage at the time of injury."

This issue arose because plaintiff's cash average weekly wage at the time of injury far exceeded two-thirds of the state average weekly wage. Therefore, the statute precluded inclusion of his discontinued fringe benefits in calculating his average weekly wage at the time of injury.

However, plaintiff subsequently found new employment at wages less than he earned for defendant. He argued that since his partial benefit rate fell below two-thirds of the state average weekly wage at the time of his injury, his discontinued fringe benefits should now be included in his average weekly wage (to the extent such inclusion raised his weekly benefit amount to two-thirds of the state average weekly wage at the time of injury).

The Magistrate and Worker's Compensation Appellate Commission rejected plaintiff's argument. The Supreme Court affirmed those decisions. The Supreme Court said that because plaintiff's weekly wage at the time of injury, exclusive of fringe benefits, resulted in a full benefit rate exceeding two-thirds of the state average weekly wage, plaintiff's fringe benefits could not later be included in the calculation of his average weekly wage. The Court said the mere fact plaintiff was entitled to receive a differential weekly amount less than the full weekly amount he had previously received did not change matters because plaintiff's "average weekly wage was fixed at the time of injury and may not be recalculated."

Arising Out Of And In The Course Of Employment

In *Thomason v Contour Fabricators, Inc*, 469 Mich 953; 671 NW2d 41 (2003), the Supreme Court entered an order bearing on interpretation of the phrase "arising out of and in the course of employment."

The employee had suffered an injury while undergoing a blood test on the employer's premises. The blood test was a requirement for gaining additional health insurance funded by the employer. The Court of Appeals had resolved the case by construing the "arising out of and in the course of employment" phrase as if the phrase stated one requirement not two. Under such reasoning, the Court of Appeals held plaintiff was entitled to an award.

The Supreme Court in an order said the phrase describes two requirements not one. The Supreme Court affirmed the award, nevertheless, saying on the facts of this case plaintiff's injury meets both requirements.

Other Cases Before The Supreme Court Pending Unresolved

The Supreme Court has agreed to hear the illegal alien cases of *Sanchez v Eagle Alloy, Inc/Vasquez v Eagle Alloy, Inc*. In granting leave, the Supreme Court ordered the following issues should be briefed: (1) whether the illegal aliens worked pursuant to a valid "contract of hire"; (2) whether the word "aliens" as used in the Act includes "illegal" aliens; (3) whether the plaintiffs are barred from benefits for being "unable to obtain or perform work because of ... commission of a crime" within the meaning of § 361(1); and (4) whether the Court of Appeals was correct in saying the plaintiffs should receive workers' compensation benefits until the date when the defendant discovered their status as undocumented aliens. The case is set for oral argument in April 2004.

The case of *VanDrie v Steelcase, Inc*, which has been pending on leave granted before the Supreme Court and ready for oral argument, is being settled. It involves operation of the "reasonable employment" provisions of § 301(5)-(9).

COURT OF APPEALS

Vocational Handicapped Provisions

In *Bailey v Oakwood Hospital & Medical Center*, 259 Mich App 298; 674 NW2d 160 (2003), the Court of Appeals held the employer is responsible for continuing weekly workers' compensation benefits to a certified vocationally handicapped person, under Chapter 9, where the employer did not timely notify the Second Injury Fund as required by statute.

WORKERS' COMPENSATION APPELLATE COMMISSION

Plaintiff was certified as a vocationally handicapped person at the time of her hire by the employer. She suffered work-related bilateral carpal tunnel syndrome and ultimately stopped working. The employer voluntarily paid workers' compensation benefits for approximately four years until it stopped payment alleging work avoidance. Plaintiff filed her application for mediation or hearing seeking an open award. At some undetermined point thereafter, the employer discovered plaintiff's vocationally handicapped certificate and joined the Fund seeking reimbursement for benefits it had paid beyond one year, per § 921. The Fund moved to dismiss because it had not received timely notice as outlined in § 925. The Magistrate agreed with the Fund. The Commission reversed, however, saying that, while *Robinson v General Motors Corporation*, 242 Mich App 331; 619 NW2d 411 (2000), requires dismissal of the Fund, Section 921 still relieves the employer of liability after 52 weeks.

The Court of Appeals reversed the Commission. The Court said the Fund should be dismissed because the notice requirements are mandatory, as indicated in *Robinson*. And, the Court said the employer's failure to provide the Fund with notice does not relieve the employer of liability to plaintiff. Consequently, the employer's liability does not end after 52 weeks. The case was then remanded to the Commission to address the work avoidance question.

T&P And Specific Loss

The Court of Appeals had occasion to decide once again the case *Cain v Waste Management Inc*, 259 Mich App 350; ___ NW2d ___ (2003), after the case had been remanded to the Commission by the Supreme Court. In this case, the plaintiff suffered a work injury resulting in the amputation of one leg and injury to the other leg not requiring amputation. You might recall that in 2002 the Supreme Court had issued a decision in this case reversing a total and permanent (T&P) award for loss of industrial use of both legs under § 361(3)(g). The Supreme Court remanded the case to the Commission to determine whether plaintiff met the criteria for proving the specific loss of the non-amputated leg. The Commission concluded plaintiff met that criteria. The Commission then added plaintiff was now T&P under a different category of the T&P provision, the provision providing for the loss of both legs under § 361(3)(b).

The Court of Appeals in a 2-1 decision affirmed the Commission. The Court said plaintiff met the criteria for proving loss of both legs because he had one amputated leg plus he suffered the "specific loss" of his other, non-amputated leg with reference to *Pipe v Leese Tool & Die Company*, 410 Mich 510 (1981). The Court rejected the Fund's primary argument that T&P benefits for the loss of both legs where there has not been a double amputation should follow only under the "loss of industrial" use category of T&P. The case also raises the question of whether *Pipe* remains good law. *Pipe* says the way to determine "specific loss" is to inquire whether the employee has lost the primary service of the body member in industry, as opposed to determining only whether the member has been amputated.

En Banc Decision From The Commission On *Sington*

In *Peacock v General Motors Corporation*, 2003 ACO #274, the Commission issued an *en banc* decision describing the procedure to be followed in workers' compensation trials involving disability as outlined in *Sington v Chrysler Corporation*, 467 Mich 144; 648 NW2d 624 (2002). The significant portion of the *Peacock* decision is as follows:

Every trial under *Sington* will proceed with the plaintiff carrying the burden of proof on three elements. The first two elements concern disability. Initially, plaintiff must prove a limitation in his wage earning capacity in work suitable to his qualifications and training. If the plaintiff can prove a limitation in wage earning capacity, he must also prove, second, that the limitation resulted from a workplace injury. Finally, if the plaintiff successfully proves disability, he must prove wage loss to allow proper calculation of wage loss benefits.

To prove the first element, a limitation in his wage earning capacity in work suitable to his qualifications and training, plaintiff must first establish his qualifications and training. At trial, defendant may present evidence in addition to those qualifications and training plaintiff already communicated at the time of his application. Defendant will offer a list of potential jobs suitable to plaintiff's qualifications and training evidencing potential maximum earning capacity. In order to show that jobs suitable to his qualifications and training do not evidence maximum earning capacity, plaintiff must show either that he cannot physically do the job, or that he cannot make maximum wages at that job, or that the job is not available. After plaintiff proves the limitation, he must prove the second element, that the limitation resulted from the workplace injury. Plaintiff must, third, show wage loss. Finally, defendant may respond by showing that plaintiff has not suffered any wage loss or that plaintiff has suffered only limited wage loss or that it's not work related.

Discovery In *Sington* Cases

In *Nessel v Schenck Pegasus Corporation*, 2003 ACO #272, the Commission addressed the question of pretrial discovery in workers' compensation as it relates to "disability" and *Sington*.

In *Nessel*, the employer wanted the Magistrate to compel the employee to meet with the employer's vocational expert for the purpose of a wage earning capacity evaluation relating to *Sington*. The Magistrate refused to compel plaintiff to meet with the expert. The Commission reversed and remanded the case. Saying pretrial exchange of information is necessary for the efficient operation of trial post-*Sington*, the Commission summarized its holding as follows:

To the extent that an employee or employer has control over information, efficient administration of worker's compensation hearings dictates that it be exchanged prior to the hearing rather than during the hearing. Waiting until the hearing,

whether after direct or cross-examination of witnesses, would create undesirable bifurcation of proceedings and delays in final resolution.

We recognize that it would be possible to deny any pre-trial access to information required by *Sington*, and to continue worker's compensation as the last vestige of the common law trial by surprise. Such an approach would not advance the cause of making process and proceedings "as summary as reasonably may be" as required by MCL 418.853. Denying pre-trial access to this information would necessitate adjournment of proceedings after direct or cross-examination or in some cases after the lay proofs were initially completed, in order to provide the parties with the opportunity to evaluate the information and to prepare any defense or rebuttal based on the evidence of plaintiff's ability to perform work after injury.

We emphasize that access to information required by *Sington* does not flow exclusively from the employee to the employer. To the extent that defendants have or develop information showing or tending to show the employee's qualifications and training as well as availability of jobs, that information should be subject to discovery by the employee in order to prevent delay in the event those proofs are presented at trial. If the employer adduces evidence that certain jobs are available, the employee will want the opportunity to investigate these jobs to determine whether he or she is qualified and able to perform them, and to apply for these jobs in order to test their availability if that course is appropriate. To be sure, an employee need not do any of these things in response to an employer's proofs, but to do so is to imperil the claim. As a result, disclosure of such information prior to presentation of proofs may be required under the appropriate circumstances.

As a result, the Commission ruled:

... it is error [for] a magistrate confronted with the question and information pursuant to *Sington* to categorically deny requests for information on the grounds that this information is not subject to pre-trial production.

The Commission said there should be "an evidentiary hearing on the record regarding the question of compelling discovery". Employers can "present reasons justifying the nature of extent of discovery requested" and employees can present "any counter bill in consideration". The magistrate is then to "provide written reasons explaining the decision" granting or denying the "request to discover."

The Parameters Of "Qualifications and Training"

The Commission undertook in the following cases the task of defining what constitutes "work suitable to [the employee's] qualifications and training" under § 301(4), first sentence.

In *Sington v Chrysler Corporation (On Remand)*, 2003 ACO #92, the Commission said: "We believe that 'qualifications and training' contemplates formal training, degrees, licenses, work experience, general education, life experiences, as well as physical and mental abilities, that would allow the worker to gain and maintain a regular job having ordinary conditions of permanency. Non-renewable expired licenses or obsolete qualifications and training should be excluded." The Commission has also said: "We believe that 'qualifications and training' contemplates a range of work that may exceed an individual's actual work history." *Thomas v USF Holland, Inc*, 2003 ACO #206; see also, *Townsend v Development Centers, Inc*, 2003 ACO #236 and *Lee v Michigan Consolidated Gas Company*, 2003 ACO #243.

A Tribute to a Friend: Gary Busch

In his book, *Tuesdays with Morrie*, Mitch Albom shares with his reading audience the life lessons imparted to him by his beloved Brandeis University professor, Morrie Schwartz. In one of those lessons, Morrie tells Mitch: "The way you get meaning into your life is to devote yourself to loving others, devote yourself to your community around you, and devote yourself to creating something that gives you purpose and meaning." I don't know if my good friend Gary Busch ever read *Tuesdays with Morrie*, but he certainly lived his life in harmony with this very meaningful advice.

There is no question but that Gary devoted himself to loving others. Jennifer and Eric were Gary's shining stars and no one could have loved his children more. We all knew how deeply devoted Gary was to Jennifer and Eric and how much he loved them. He told them and everyone. He showed them and everyone. From the yearly vacations at Cedar Point and other places that Eric and Jennifer selected, to just hanging out at his house in pajamas all day, watching DVDs, and listening to and playing music, Gary's days revolved around his children. Even when he

was not with them, he was never too busy to talk to or listen to them. He was so proud of the people they were becoming and he loved how much Jennifer and Eric loved each other. He knew they would always look after each other.

Gary's love extended beyond Jennifer and Eric. Look out into this room.

Everyone is here because this man touched some part of your life in some way. Maybe he even pissed you off at some time or another, because Gary could do that; he liked things done his way. Yet, people were drawn to him. There are people present today who have known Gary since he was really small. Others met him at UM, in law school, through Ellen, his kids, his profession, or his music. Regardless of when you came into Gary's life, you remained a part of it. He never threw people away. [or anything else for that matter!] He devoted himself to loving others.

Gary devoted himself to his community, both through his work and he practiced workers compensation and social security

disability law with David Grant for about 22 years. Jeff Kirshner later joined their practice. This practice was devoted to men and women no longer able to work, either temporarily or permanently, because of an injury or disability. Gary was a passionate advocate, a “mouthpiece” for these folks.

To him, they were not just another case; they were human beings for whom he had great compassion and empathy. Each client felt that they were important to Gary. I know this not because we ever worked together, but because I had met some of these folks after Gary had represented them and they told me. I know this because I was at Gary’s house during the weeks that he struggled to complete his life’s journey and they called wanting to know how Gary was and if it would be ok to pray for him. My guess is the Bureau will never be the same!

Gary also devoted himself to others through his music. Not long after The Willies came to be, they established a non-profit foundation and dedicated money from the sale of their first CD and live performances to charitable organizations. Every year The Willies put on a benefit performance for Common Ground/Sanctuary, donating the proceeds from the event. The Willies also donated their time for several years to performing at Temple Israel during the week that the homeless were housed there.

The homeless could not believe that The Willies were there just for them. It was one more way that Gary was able to devote himself to the community surrounding him. Lastly, Gary devoted himself to creating something that gave him purpose and meaning...his music. Although I assumed that Gary had been playing guitar forever, I learned recently from his friend Aaron Landy that Gary actually started playing during his sophomore year at Michigan in Couzens Hall. Apparently Gary picked up the guitar one day and told Aaron he was going to be a “guitarist.” Aaron told him he wouldn’t last playing for more than six months. I guess Gary took that as a bet or a challenge. We all know that Gary didn’t like to lose...at anything. So thank you Aaron.

Gary loved music. He loved to listen to it, but mostly he loved to play and create it. As a result of this great love, Gary, along with John Potter and Neil Goodman formed The Willies ten years ago, while up north for a weekend. From Friday night basement jams to 40th birthday parties to weddings to gigs at Legs Inn and Fifth Avenue Novi and Downtown, The Willies played and The Willies created. One could always count on Gary to come up with the next gig! Despite being a very private person in so many ways, Gary loved center stage—he loved performing to the band’s faithful fans who could always be counted on to fill up the dance floor, even when there wasn’t one. Gary loved The Willies. John and Neil were Gary’s extended family. Just a couple of weeks ago The Willies got together to play music. Despite his obvious pain, Gary was smiling! One of Gary’s goals upon learning of his illness was to return to the studio and record a second CD. This the band did. Barring one cover song, the music on this soon to be released CD is all original, composed,

created and played by The Willies, along with Jim Robb and Russell “Mambo” Locano, two musicians who have often -added their talent to the band. The Willettes, Sherrie Lendo and Bert Richards, two long time friends of Gary’s who often sang back up with the band, also helped make the CD a reality. Even Jennifer and Eric have cameo musical appearances on the disc.

Gary also created through his photography. Many years ago Gary became involved with the Detroit Blues Society, often helping musicians with his legal expertise. One thing led to another and soon Gary was taking a yearly trek to Memphis, Tennessee to attend the Memphis in May Blues Festival and the W.C. Handy Awards ceremony. There he befriended the many people involved with the Festival, including blues icons like Dr. John, Taj Mahal, Bonnie Raitt, Hubert Sumlin and Ruth Brown. He eventually became an official photographer for the event. Photography became a hobby and evolved into an art. His portfolio of pictures taken in Memphis over the years is truly amazing; many of them rival those of professional photographers.

Through his music and photography Gary left: a legacy for his kids and all those whose lives he touched. Both of these creative endeavors gave his life purpose and meaning.

Gary lived a shortened, but full life. He also lived a contented life. Although stricken by a horrific disease, he continued to live fully, complaining not at all. He set goals for himself for the time he had left and he achieved each one. Even in his last days on earth, he brought people together who had never met each other and now will be friends. While surrounded by many of those closest to him, and caring medical personnel Gary lived out his life, dying only when he was ready.

If the purpose of death is to teach us something, I hope we can all learn the lesson of a meaningful life as imparted by Mitch Albom’s beloved Morrie Schwartz and lived by our beloved Gary Busch.

Workers’ Compensation Section Newsletter

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Tim McAree, Newsletter Editor

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Governor Granholm appoints members to the Board of Magistrates and the Appellate Commission

Appointments to the Workers' Compensation Board of Magistrates include:

Christopher Ambrose of East Lansing, associate attorney at Sachs, Waldman, P.C. Mr. Ambrose is appointed for a term expiring January 26, 2007. He succeeds Cynthia Johnson whose term has expired.

Jack Nolish of Huntington Woods, attorney at Meklir, Nolish, Friedman and Associates, P.C. Mr. Nolish is appointed for a term expiring January 26, 2007. He succeeds Jerome Solomon whose term has expired.

Paul Reinhardt of East Grand Rapids, attorney at Reinhardt and Company, Attorneys and Counselors. Mr. Reinhardt is appointed for a term expiring January 26, 2007. He succeeds Richard Hedstrom whose term has expired.

Rosemary Kozielski Wolock of Royal Oak, attorney in private practice. Ms. Wolock is appointed for a term expiring January 26, 2007. She succeeds John Rabaut whose term has expired.

Michael Barney of Dearborn Heights is reappointed for a term expiring January 26, 2007.

Valencia Jarvis, of Southfield, is reappointed for a term expiring January 26, 2007.

Workers' Compensation Appellate Commission appointments are:

Martha Glaser of Farmington Hills, attorney, Martha M. Glaser Law Office. Ms. Glaser is appointed for a term expiring September 30, 2006.

James Kent of East Lansing. Mr. Kent is appointed for a term expiring September 30, 2007. Mr. Kent also served on the former appellate commission.

Richard Leslie of Whitmore Lake. Mr. Leslie is appointed for a term expiring September 30, 2005. Mr. Leslie also served on the former appellate commission.

William Reamon, Jr., of Grand Rapids, attorney at Reamon, Fotieo, Szczytko & Fedewa, P.C. Mr. Reamon is appointed for a term expiring September 30, 2005.

Rodger Will of Grosse Ile, attorney at Kelman, Loria, Will, Harvey & Thompson in Wayne County. Mr. Will is appointed for a term expiring September 30, 2006.

All of the above appointments are subject to the advice and consent of the Senate.

YTD Statistics per Magistrate

	Open	Closed	Denied	Misc	Total
Average	9.87	5.48	9.45	5.03	29.84
Baril	15	3	11	3	32
Barney	12	8	16	4	40
Block	26	25	19	10	80
Brakora	0	0	4	1	5
Brennan	9	7	6	4	26
Burden	1	1	0	0	2
Cooke	6	2	6	4	18
Cope	8	2	14	2	26
Day	18	5	21	12	56
Frankland	14	13	6	7	40
Grattan	1	1	7	6	15
Grit	11	4	11	13	39
Guyton	10	5	7	8	30
Harris	39	5	15	10	69
Hedstrom	4	1	0	1	6
Jarvis	9	4	4	5	22
Johnson	9	7	12	3	31
Kielton	16	1	6	4	27
Leslie	0	0	1	0	1
MacLean	0	4	3	7	14
Malewska	1	0	0	0	1
Oldstrom	1	0	0	0	1
Paige	22	9	18	3	52
Quist	16	15	26	13	70
Rabaut	7	1	6	3	17
Sloss	10	9	15	7	41
Smith	7	8	14	4	33
Solomon	6	5	4	6	21
Wagner	14	13	22	9	58
Wierzbicki	3	8	10	2	23
Zettel	11	4	9	5	29
Total	306	170	293	156	925

Seminar at Sea



Fred and Anne Bleakley



Podien, Combs and Joyce



Bleakley and Hickey



Craig's Notes

Notes From Craig Petersen

Request By E-mail

In order to improve customer service when ordering bureau files for redemption purposes, you can now do it by e-mail. Please e-mail Sue Jones at sjones@michigan.gov with the claimant file information. You may give her the pertinent information within the e-mail itself, and will not have to send an attachment with it. You may still fax your request to Sue at 517/ 322-6012.

However, if you e-mail or fax your request to Sue, please do not send a hard copy by U.S. Mail. This creates more work and confusion for staff.

If you have any questions, please contact Sue at 517/322-6206.

2004 Rate Calculation Program

The 2004 Rate Calculation Program is now on our website and available for downloading. Please go to the Workers' Compensation Agency's homepage at www.michigan.gov/wca and click on the 2004 Calculation Program under WCA Quicklinks on the right-hand side of the page.

Tom Severyn

It is with great sadness that I must inform you of the passing of Attorney Tom Severyn with the law firm of Hanba & Lazar. Tom passed away last night leaving two young children. Funeral arrangements are pending and will be distributed by Sue Bickel once this information is available.

Tom will be missed by all that knew him.

Past Chair Gathering

Please make a note that the Past Chairperson dinner will be held on Thursday, May 20 in Lansing at the University Club at MSU. An informal golf scramble will be held also during the afternoon. More details to come soon. Craig.

Health Care Rules Changed

The 2004 Health Care Services Rules were filed with the office of the Secretary of State on 2/12/2004 and are effective February 20, 2004. The table below lists the rules that were changed this year. For 2004, CPT® has deleted the starred designation for the minor surgical procedures, therefore the manual no longer notes starred surgical procedures or the initial exam 99025, previously billed with the minor starred surgical procedures. Use the minor E/M service as appropriate.

SUMMARY OF RULE CHANGES FOR 2004

R418.10106	Language for paying reasonable and necessary in sub (2)
R418.10107	Updates to 2004 CPT® and other source documents
R418.10109	Updates time span defining usual and customary
R418.10202	Language to prevent billing review of x-rays separate from E-M
R418.10214	Places the fees for L codes in R 418.101504.
R418.10901	Corrects typo in (3). Adds language re: payment to radiologists.
R418.101002	Sets conversion factor at \$47.77 for 2004 effective with date of rules
R418.101017	Technical change to delete Table 10924 as rule 924 deleted in 2003.
R418.101101	Corrected procedures in table 10916 to read 90801-90815 (not 990815).
R418.10922	Hospital ratios now will be published with effective date of these rules
R418.101504	Removes deleted codes from the L-Code procedures.

Boyne Registration-pdf
need to scan in

Tom Carey Remembered

By Doug Kirk

Tom Carey was a big man. Gruff. Loud. He was my boss, and when I began working for him over twenty years ago, I was scared of him. But I was even more grateful that he and Bill Risdon weren't too interested in working after lunchtime anymore, and needed someone to write briefs and do depositions.

Tom looked the same at age 50, when I met him, as he did when he was diagnosed with cancer at 70. Same prematurely wrinkled skin. Same sad eyes; and the same white hair. I know what happened to his hair, and you would too if you were ever his passenger. I rode with Tom once, and as I stepped wobbily from the car at the end of the trip I swore never again. I mentioned my hair-raising ride to his old partner Sid Durham, who advised that he had long ago quit riding with Tom because Tom "drove by Braille."

Next time I insisted on driving, and though Tom never said so, I think he took umbrage. As he chain-smoked down I-94, I nearly put the car in the ditch when his cigarette ash ignited the file under his legs.

It took a while before I figured out Tom never read the IME depositions where I'd struggle to get the likes of Drs. Bates, Friedman, Andre, Patullo, Agar, Wolfe, Kelly, Fefferman and Doshi to make concessions they were being paid not to make. Later on I wondered if he read the depositions of the treating doctors I graduated to either.

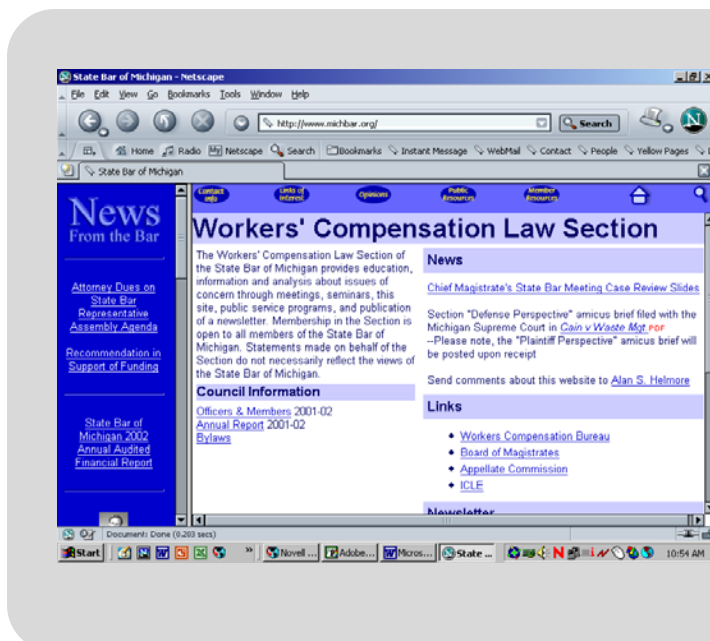
Finally I figured out that all Tom really cared about was the people he represented. He cared a lot more about their stories than what the doctors had to say. If opposing counsel didn't see things Tom's way, he'd end negotiations intoning "Good thing we have judges," then declare that, at least in administrative matters like comp, the trial should be "a race to the proofs" and that no trial should take more than a leisurely afternoon. Appeals went to "the Court of Next Guess."

Tom had a lot of courtroom stories, many from his days as a Special Assistant Attorney General, when he litigated the value of dozens of tracts of land as a condemnation specialist in eminent domain cases to allow the construction of I-69 and I-94. In fact Tom liked stories a lot, and would go on and on, especially if it involved history, fly-fishing or fly-tying, which were his greatest loves in life.

Tom was one of the original members of the Rat's Ass Bar Association, which long ago immortalized him by annually awarding the Whispering Tom Carey Award to the lawyer with the loudest voice in court. As long as he practiced, Tom won his own award, and no one ever criticized the judging, either. Tom's voice was unfazed by mere walls and easily drowned out any other conversation within spitting distance. Maybe it was a natural talent, or maybe it came from raising six children.

A life-long card-carrying Democrat who knew and worked for many local elected representatives, Tom recognized the political compromise inherent in worker's compensation and was appalled at the erosion of worker's rights he saw the last 12 years he practiced. He also spent several weeks in Mississippi in 1963 helping register Black voters at a time when racial tensions were high enough that doing so was not exactly the safest of undertakings.

You pay a lot of dues when you practice law over forty years. And forty years of practice also takes a toll on a soul. These things add up, and they surely did so for Tom. But as rough as he was around the edges, he never lost that which I eventually came to see made him a great man—his humanity. The heart and the soul are what set people apart from the other creatures on this planet, and Tom's were right there, in spades, just beneath that crude exterior he erected for camouflage. Only those of us who looked beneath the surface can say they actually knew Tom Carey.



For back issues of this newsletter, check out our Section Webpage at www.michbar.org!

2004 Maximum Weekly Benefit Rate

The Office of Labor Market Information has reported the state average weekly wage as of June 30, 2003 to be \$744.49. In accordance with Section 418.355 of the Workers' Disability Compensation Act, the 2004 maximum weekly benefit based on 90% of the state average weekly wage is \$671.00.

**Workers' Compensation Section
Annual Meeting**

Our Annual Meeting is tentatively scheduled for October 1, 2004 from 8:30 a.m. to noon at the Lansing Center/Radisson Hotel.

**Wanted: New Editor for
Progressive Newsletter**

After five years on the job, your editor is seeking someone to take and carry the torch. As editor, you will find that much of the work is done for you. People like Jerry Marcinkoski write case summaries. People like Craig Petersen send information about the Bureau, as well as on a vast assortment of subjects. Other members write wonderful tributes to fallen comrades or send in pictures from seminars. Finally, there is the terrific staff at the State Bar of Michigan, who take the stories and directions from the editor and turn them into a professional newsletter, mailing them to the membership. Your current editor will work with you on your first edition and will provide all guidance requested. Lastly, the section owns a computer and printer, which you will be able to use. Please call Tim McAree at 616-866-2944 or e-mail to: tmcaree@msn.com.

STATE BAR OF MICHIGAN
WORKERS' COMPENSATION SECTION
WINTER & SPRING SEMINAR/ MEETING QUESTIONNAIRE

In an effort to encourage greater participation in the winter and spring section seminar/meetings, members of the section are asked to complete and submit the following questionnaire to:

ALAN S. HELMORE
Workers' Comp Section, Vice-chair
Sullivan, Ward, Asher, & Patton P.C.
1000 Macabees Center
Southfield, MI 48075-1000

Fax: (248) 746-2760
email: ahelmore@SWAPPC.com
Direct Dial Tel #: (248) 746-2744

1. Winter Seminar (Usually 7-10 days scheduled late February - early March)

Location: (Please list 1st through 3rd preferences)

- Eastern Caribbean Princess Line Cruse Puerto Vallarta
- Mayan Riviera (all inclusive) St. Thomas, VI
- Mayan Riviera (Air/hotel only package) Aruba
- Dominican Republic Melia Carribe Resort (All inclusive)

Maximum cost you would be willing to pay:

- \$1,200 - \$1,500/person \$1,600 - \$1,900/person
- \$2,000 - \$2,500/person

Recommended length of trip (including travel)

- 5 days 7days 10 days 14 days 17days

2. Spring Seminar (3 days usually scheduled in June after school breaks for summer)

- Soaring Eagle Resort - Mt. Pleasant, MI Mackinac Island, MI
- Shanty Creek Resort - Bel Air, MI Cedar Point - Sandusky, Ohio

3. General for both seminar/meetings items of interest (Please indicate 1st to 5th in order of importance)

	Winter	Spring		Winter	Spring
Group sponsored activity	<input type="checkbox"/>	<input type="checkbox"/>	Group dinners	<input type="checkbox"/>	<input type="checkbox"/>
Group cocktail parties	<input type="checkbox"/>	<input type="checkbox"/>	Shopping	<input type="checkbox"/>	<input type="checkbox"/>
Golf	<input type="checkbox"/>	<input type="checkbox"/>	Sightseeing	<input type="checkbox"/>	<input type="checkbox"/>
Family activity	<input type="checkbox"/>	<input type="checkbox"/>	All inclusive pricing	<input type="checkbox"/>	<input type="checkbox"/>
Good restaurants	<input type="checkbox"/>	<input type="checkbox"/>	Beaches	<input type="checkbox"/>	<input type="checkbox"/>
Cultural activities (museums, ancient ruins, concerts, etc.)	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

4. Would you be interested in a January or March skiing/section meeting in Beaver Creek, Colorado?

- Yes in January in March No

Comments: _____

Section Council Members 2003-2004

Chairperson:	Michael J. Flynn <i>McCroskey, Feldman, Cochrane & Brock</i> , Muskegon (231) 726-4861; Fax (231) 725-8144	Ex-Officio Charles Gilfeather, <i>Braun, Kendrick & Finkbeiner</i> (517) 753-3461; Fax (517) 753-3951
Vice-Chairperson:	Alan S. Helmore <i>Sullivan, Ward, Bone, Tyler & Asher</i> , Southfield (248) 746-2744; Fax (248) 746-2760	Board of Magistrates Liaison Crary E. Grattan, <i>WC Board of Magistrates</i> (517) 241-9385; Fax (517) 241-9379
Secretary:	Richard L. Warsh Southfield (248) 357-7013; Fax (248) 357-2997	Appellate Commission Richard Leslie, <i>MI WC Appellate Commission</i>
Treasurer:	Leonard M. Hickey, <i>Hickey Combs, PLC</i> Grand Rapids (616) 364-2550 Fax (616) 364-2551	Commissioner Liaison Ronald D. Keefe, <i>Kendricks, Bordeau, et al</i> (906) 226-2543; Fax (906) 226-2819

Term Expires 2004

Tim McAree, <i>Timothy McAree P.C.</i> , Rockford	(616) 866-2944;	Fax (616) 866-5377
Richard M. Skutt, <i>Glotta Skutt & Associates, P.C.</i> , Detroit	(313) 963-1320;	Fax (313) 963-1325

Term Expires 2005

Joel L. Alpert, <i>Alpert & Alpert</i> , Southfield	(248) 354-6400;	Fax (248) 357-2997
Lisa A. Klaeren, <i>Law Offices of David Collette</i> , Kalamazoo	(269) 544-0584;	Fax (269) 544-2107
Gerald M. Marcinkoski, <i>Lacey & Jones, LLP</i> , Birmingham	(248) 433-1414;	Fax (248) 433-1241
Paula S. Olivarez, <i>McCroskey Feldman Cochrane & Brock</i> , Battle Creek	(269) 968-2215;	Fax (269) 965-7157

Term Expires 2006

John Sims, <i>John M. Sims P.C.</i> , Marshall	(269) 789-9535	Fax (269) 789-9537
Debra Strain, <i>Plunkett & Cooney, PC</i> , Mount Clemens	(586) 466-7608;	Fax (586) 465-0448



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