State Bar of Michigan

Workers' Compensation Section Newsletter

Fall/Winter 2017

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From the Chair

By Tim Esper

Hello again. This chairperson job sure keeps me busy. Hardly a day goes by without some Section-related business needing attention. Still, it's a great gig. And there's big news to report: there is a groundswell of support on the Council for dipping into the Section's cookie jar to encourage Section members to attend our major annual events. Please clear your calendars to attend these two meetings:

ANNUAL WINTER MEETING: On **Friday December 8**, join your fellow Section members for a hot buffet breakfast (a first) at 8:00 **at The Inn at St. Johns**, 44045 Five Mile Rd, Plymouth. Since you are coming for breakfast anyway, stay for the morning meeting. To encourage attendance, the section is holding a block of hotel rooms in Livonia and will cover a one-night stay on Thursday, Dec 7, for practitioners who live north of Clare. We hope to have at least a few rooms available at $75 (the State reimbursement rate), at individual member expense for less distant "late deciders" due to weather or other considerations. Our principal speaker will be Kathleen Wyeth, the Accident Fund's Managing Assistant General Counsel--Medicare. Kathleen will be addressing Medicare compliance issues including recent CMS changes regarding conditional payments. Don't miss it!

ANNUAL SUMMER MEETING: **Thursday-Friday, June 14-15**: We are trying out a relatively new place for our annual meeting and going to Hotel Indigo in Traverse City. In an effort to encourage attendance, the Section is covering the cost for attending the meeting, cocktail party and Hall of Fame dinner on Thursday, and breakfast buffet Friday morning for section members and families. On Thursday night, the Section will sponsor a rooftop after-party, which former chairperson Mike Brenton, has graciously agreed to host. The location is just a five minute walk from the hotel. Mike will also host a winery tour Friday afternoon. If there is enough interest, we

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This newsletter is published by the Workers' Compensation Section, State Bar of Michigan

Jayson A. Chizick, Newsletter Editor

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From the Chair Continued from page 1

will arrange a golf game after the business meeting on Friday. For those staying Friday night, we'll pick a local watering hole for yet another Section supported event. Make your reservations early. We have increased the number of rooms held for this year's meeting, but they may go fast. The reservation deadline will be May 16. Further details will be in the Winter Newsletter and by later e-mail blast(s).

OUR BONA FIDES: To continue a theme from my first Newsletter article, I'm taking up another aspect of good faith claims practice. Anyone who attended last year's Winter Meeting may recall that I raised an issue about systematic denials of injury claims on OCIP's and CCIP's (**O**wner or **C**ontractor **C**ontrolled **I**nsurance **P**rograms, which I'll just refer to as OCIP's); more commonly known as wrap up projects. In my opinion, the risk management aspect of these insurance programs results in a pattern of denying claims, not on the merits of a claim, but for purely economic reasons. The cost advantage that comes from having an OCIP is that an owner or contractor controls every aspect of claim management. In my experience with a large OCIP in Detroit, the reach of OCIP loss control functionaries extended to making medical decisions, even countermanding a company nurse's treatment recommendations, all for the purpose of keeping claims costs down, and avoiding "recordable" injuries.

A myriad of problems arise from the fact that most injured workers on OCIP's work for subcontractors, while claims decisions are made by OCIP administrators. A sub with too many comp injuries can be thrown off a project, and even risks losing the opportunity to bid on future OCIP's. The consequence to injured workers is that their own employers are under pressure not to comply with the Act's injury reporting requirements. While some subs might pay an injured employee out of their own pockets until a project ends so as to avoid the risk of losing work on big projects, most do what many OCIP administrators encourage, that is, they don't report an injury at all. In my opinion, this kind of insurance program punishes injured workers, the ones least able to withstand the medical and financial cost, and rewards flagrant noncompliance with the Act, both by subcontractors and OCIP administrators.

How is this related to our *bona fides*? Good faith in workers' compensation practice applies not just to plaintiff and defense attorneys. Every participant in the comp system from employer, to onsite safety/medical decision makers, to comp carriers and TPA's, to the Agency itself all bear a responsibility to foster a fair and just process for administering the Act. When an OCIP insurance program is administered in a way that actively favors claims denials for purely economic reasons, and consciously encourages noncompliance by subcontractors, safety personnel, and OCIP functionaries, I believe that the rules governing how such programs are established and administered need to be changed. Good faith administration of the Act requires that we work together, even if it takes reaching across state agency or departmental boundaries, to address this flaw in insurance regulation. As Section chairperson, I am committed to working with the Agency administration to address this situation. 🛠

From the Editor

By Jayson A. Chizick

Life moves pretty fast. If you don't stop and look around once in a while, you could miss it.

--Ferris Bueller

There, I have finally used the most meaningful piece of advice in film in an article. I am hardly ever accused of lacking in energy and enthusiasm for engagement of the parties and in support of my clients. Some may even recommend that I slow it down here and there. That energy often slows every year by the third week of December when, as I call it, Christmas Magic concludes. The magic of the holiday season typically brings injured workers and adjusters together (through counsel), toward settlement of those cases that are ready for the ultimate conclusion. Magistrates and counsel alike scramble for redemption hearing times. The hustle and bustle of the season keeps us all hopping like kangaroos. When December 22 comes around, I typically look around and wonder where the months of November and December went. Oftentimes the feeling resembles running a marathon with a brick wall of a finish line. I submit that this end of year "magic" says a lot about our practice. Defense and Plaintiff lawyers work out differences in very short order to reach a reasonable conclusion on behalf of their own client. Magistrates extend their time on the bench to accommodate Agency hopping. December is the perfect time to stop and look around and appreciate just how important each participant is to the success of this practice. I intend to shake some extra hands and show more gratitude to those who help improve our practice.

Growing up with a comp lawyer Dad means my boys see the many miles I put on my car and late nights in Clare. The holidays that we have at the end of the year are always a good opportunity to reconnect with family and friends after a busy couple of months. After hitting that December 22 wall, I intend to stop and look around, and perhaps to take stock. I hope to have treated my family, friends and adversaries with the love and respect they all deserve. (I will let you in on my self-reflection in the next newsletter issue.)

Exciting times are ahead in the workers' compensation section. Our Section Meeting is set for December 8, 2017, and further information can be found in this newsletter. You should attend this meeting, if only to hear words of wisdom from our Agency Director and Chief Magistrate. Of course, the keynote speaker is going to be speaking on a topic that is near to every practitioner. Our chairperson has already started active planning for the upcoming annual meeting on June 14-15 in Traverse City, Michigan. The Council has taken steps to make this meeting all the more affordable to section members by making the event free (hotel accommodations not included). What better excuse to attend a section meeting?

May the coming holidays bring to you and yours a peaceful season filled with love and happy memories.

Important Changes Are Coming

The Council directed a committee be formed to assist with the creation of a new Medicare, Medicaid and Friend of the Court form for use in redemptions. Two council members attended several meetings with Director Long, Chief Magistrate Klaeren, Magistrate Timmons and Magistrate Grunewald. After substantial dialogue, the form is nearing a point of revision that it will be ready for membership commentary at the December 8, 2017 Winter Meeting. Please consider attending the meeting, as this will be the best opportunity to discuss the proposed new form.

Do you have something to say about workers' compensation? Would you like to express your opinions on a section-wide basis? In that case, please consider writing a contributing article to this newsletter. While the views and opinions expressed in these pages are reflective of the individual author, their contribution to this newsletter is key to the success of our section. Your words matter, please contribute!

Board of Magistrates Update

By Hon. Lisa Klaeren, Chief Magistrate

As everyone should be aware of by now, Magistrate Tjapkes left the Board of Magistrates on October 13, 2017, following an appointment as a Social Security Disability Administrative Law Judge. The Board of Magistrates' application process was opened up by the Governor's office to fill his position, with the term extended to January 2021 (rather than January 2019). No word has yet been received from the Governor's office that an appointment to this position has been made.

With the holidays coming up, it is anticipated that there will be the usual increase in the number of Redemptions presented to the magistrates for their approval. Therefore, it is a good time to remind everyone to review their Redemption paperwork before they submit it to the magistrate for review. Make sure the names on the Redemption Order match the names on the Agency notices (and if not, correct it with the Agency before the Redemption). Make sure the math calculations are correct. Make sure you have the necessary letters to address the liens. Make sure you have medical reports for the magistrate to review (and keep for the Agency file), and always remember that Medicare's interests must be considered in every Redemption.

State Bar of Michigan Workers' Compensation Section

Winter Meeting

December 8, 2017

8:00 am – 12:00 pm

Breakfast Buffet and Registration will begin at 8:00 am
The Inn at St. Johns, 44045 Five Mile Road,Galilee Room, Plymouth, MI 48170

Agenda

Introduction:	**Chairperson and Moderator: Tim Esper**
9:00 – 10:00 am	**General Business Meeting** Chairperson's Report – Tim Esper Secretary's Report – Andrea Hamm Treasurer's Report – Rosa Bava Director's Report – Mark Long MCAC Chair's Report – George Wyatt, III Chief Magistrate Report – Chief Magistrate Lisa Klaeren
10:00 – 10:15 am	**Break**
10:15 – 11:35 am	**Medicare** Kathleen D. Wyeth, MSCC, CMSP, Managing Assistant General Counsel – Medicare for Accident Fund
11:40 – 12:00 pm	**Appellate Update** Martin Critchell, Conklin Benham, PLC

Caselaw Update

By Martin L. Critchell

Since the last edition of the newsletter, the Michigan Supreme Court did not decide a case affecting workers' compensation.

The Michigan Court of Appeals decided two cases affecting workers' compensation. In *Collins v Detroit Radiator Corp*,[1,2] the Court of Appeals decided that a preemptory disposition of a claim for review by the Michigan Compensation Appellate Commission – dismissal for failing to file transcripts – did not preclude assessing costs or other sanctions. *Collins*.[3] ("obviously, if a claim of review is dismissed for failing to file a transcript under MCL 418.861a(5), it cannot be dismissed a second time based on the conclusion that the claim was vexatious within the meaning of MCL 418.8616. Nevertheless, two additional remedies remain [namely, costs or other discipline], neither of which are foreclosed by the dismissal of Collins' underlying claim…")

The Court of Appeals remanded the case for the Commission to decide if the appeal had been filed by Collins for the purpose of delay or without a reasonable basis to think that there was any merit to an issue instead of deciding that for itself. *Collins*.[4] ("we are not a fact-finding body, and this determination is best left to the [Commission] in the first instance.")

While not binding precedent because the opinion was not released for publication,[5] it may be cited because there is no published authority on the subject,[6] the justiciability of a request for costs or other sanctions under MCL 418.861b(a)-(b) after the peremptory disposition of the appeal under another statute.[7]

In *Neal v Detroit Receiving Hosp*,[8] the Court of Appeals decided that a Medicaid lien could not apply to the entire amount of a judgment or a settlement of a lawsuit for medical malpractice. *Neal*.[9] ("to the extent that MCL 400.106(5) operates to permit recovery of the full amount of a Medicaid lien from a tort judgment or settlement regardless of the allocation of damages [as economic-wages, economic-medical costs, non-economic], it is in direct conflict with, and is preempted by, the federal anti-lien provision, 42 USC 1296p(a)(1) * * * states may ***not*** enact statutory provisions designed to recover medical expenditures from the tort proceeds received by Medicaid recipients that are not designated as payment or reimbursement for medical expenses…")

The Court of Appeals then remanded the case to the trial court that had original subject-matter jurisdiction over the medical malpractice case to determine "a fair and proper allocation of the settlement proceeds among all of [LaDonna Neal's] losses – which is possible," *Neal*,[10] and apply the lien to "the portion of the tort settlement that represents payment for medical expenses." *Neal*.[11] The prior allocation that was denoted in the settlement between Neal and Detroit Receiving Hospital was neither controlling nor relevant on remand. *Neal*. ("we also reject [Neal's] contention that Meridian Health Plan is bound by the allocation of damages made by the settling parties.")

While arising from the settlement of a lawsuit for medical malpractice, the decision affects a settlement for workers' compensation. The kind of lawsuit that was settled in the case of *Neal* had no part in deciding *the* question, the question about the validity of the state statute that purported to apply a Medicaid lien to the entire amount of the recovery whether by judgment or settlement.

Neal is authoritative having been released for publication.[12] There was no request for rehearing or review by the Michigan Supreme Court.

The Michigan Compensation Appellate Commission decided three cases that are noteworthy. In the case of *Dillion v Edward W. Sparrow Hosp Assoc*,[13] an employee of Edward W. Sparrow, Deborah U. Dillion, came to work with her son and daughter. As she was taking her son to tennis lessons and her daughter to an on-site daycare that was subsidized by the hospital, Dillion fell down some stairs and was hurt. *Dillion*.[14] The Commission ruled that the injury(ies) that Dillion sustained were "a personal activity" and were not "in the course of employment" by the hospital. *Dillion*.[15] ("[Dillion's] own testimony established that she was engaged in a personal activity at the time of the fall on the stairs she was taking her son to tennis lessons and daughter to childcare. While these activities were provided on the premises of [the hospital] they were not work-related…")

The Commission recognized the presumption that an injury at the place of employment was presumed to be "in the course of employment" but conclude that the hospital had overcome that presumption given the evidence of what Dillion was doing at the time of the injury. *Dillion*. ("[Dillion] argued that MCL 418.301(3) should be followed [and] overrules the general rule that employees going to and from work are not covered…It is axiomatic that a presumption can be overcome. By its very nature and definition a presumption can be overcome by facts to the contrary.")

Among the issues presented in the case of *Crockett v DaimlerChrysler Corp*[16] was the good faith of Rosemary Crockett in searching for work after sustaining an injury at work for DaimlerChrysler on April 19, 2002. *Crockett*.[17] The Commission reiterated that deciding the good-faith (hyphened

as an adjective[18]) "requires an assessment of the [employee's] diligence and…the scope of [the] search. However, the number of job applications submitted is not the only factor…" *Crockett*.[19] And in that particular case, the Commission said that the difficulty that vocational experts encountered in finding jobs that were actual open warranted the decision by the Workers' Compensation Board of Magistrates (Magistrate Kurtz) that applying for "a small number of jobs" was in good-faith. *Crockett*.[20]

The case of *Sheikh v Pratt & Whitney AutoAir, Inc*,[21, 22] involved the fifteenth application for mediation or hearing filed by Irfan Sheikh following a decision by the Workers' Compensation Board of Magistrates that he had recovered from an injury he had sustained at work for Pratt & Whitney. *Sheikh*.[23] The Commission affirmed the decision by the Board of Magistrates to peremptorily dismiss the application because Sheikh described the same injury and said that he had been looking for work but not that his condition had changed for the worse since the prior decision that he had recovered. *Sheikh*.[24] ("His application included the same date of injury and nature of injury as set out in his previous applications. [Sheikh] also claimed that he had been looking for but had not found a job. The [Board] dismissed [the] case based on res judicata…We agree…In [Sheikh's] 16 applications, subsequent to his initial one, he continues to use the same date of injury and states nothing new about the nature of his injury; i.e., he does not allege any change of condition.")

And the Commission then promised to fine Sheikh if he persisted in filing and appealing a dismissal from a dismissal of another application. *Sheikh*.[25] ("In the order we issued denying [a request for a fine] we cautioned [Sheikh] that if he continues to file claims that fail to articulate any change in condition or other relevant issue…we will subject him to disciplinary action per MCL 418.861b.")

The decision by the Board in the case of *Kelley v Gen Motors LLC*[26,27] is noteworthy because it was the first decision of a so-called "cap" case after the decision by the Supreme Court in *Arbuckle v Gen Motors LLC*.[28] In the case of *Kelley*, the Board as presented with a collective bargaining agreement that limited or "capped" when compensation would be reduced:

Weekly compensation	$310.95
less	
After-tax amount of the difference between the average weekly wage of the employee and all benefits received by the employee including social security disability insurance	$118.70
equals benefit for employee	$192.25

And the Board ruled that social security disability insurance could not be included in the subtrahend – the amount being subtracted from another amount – because of a statute in the workers' compensation act, MCL 418.354(11), and ordered repayment of the $118.70. *Kelley*.[29] ("[General Motors] improperly coordinated [Kelley's] workers' compensation benefits by including [his] [social security disability insurance] benefits in the formula it used [i.e., the collective bargaining agreement.]") The Board did not rule on the availability of the statutory model to reduce the compensation, an amount that had not included the SSDI received by Kelley and that was less than the amount paid under the CBA.

The decision by the Board is not binding under the rule of res judicata.

Endnotes

1 *Collins v Detroit Radiator Corp*, unpublished opinion of the Court of Appeals, issued on September 26, 2017 (Docket no. 333237).

2 Martin L. Critchell represented the amicus curiae in the case.

3 *Collins v Detroit Radiator Corp*, unpublished opinion of the Court of Appeals, issued on September 26, 2017 (Docket no. 333237) at 4.

4 *Id.*, n3, at 4.

5 MCR 7.215(C)(1), first sentence.

6 *Id.*, second sentence.

7 *Id.*, third sentence.

8 *Neal v Detroit Receiving Hosp*, 319 Mich App 557; ___ NW2d ___ (2017).

9 *Id.* at 572.

10 *Id.* at 577.

11 *Id.*

12 MCR 7.215(C)(2), first sentence.

13 *Dillion v Edward W. Sparrow Hosp Assoc*, 2017 Mich ACO 30.

14 *Id.* at 5.

15 *Id.* at 4.

16 *Crockett v DaimlerChrysler Corp*, 2017 Mich ACO 32.

17 *Id.* at 15.

18 *Michigan Appellate Opinion Manual*, at 165.

19 *Crockett v DaimlerChrysler Corp*, 2017 Mich ACO 32 at 15.

20 *Id.* at 16.

21 *Sheikh v Pratt & Whitney AutoAir, Inc*, 2017 Mich ACO 33.

22 Martin L. Critchell represented Pratt & Whitney and its workers' compensation insurer.

23 *Sheikh v Pratt & Whitney AutoAir, Inc*, 2017 Mich ACO 33, at 3.

24 *Id.*

25 *Id.*

26 *Kelley v Gen Motors LLC*, unpublished opinion of the Workers' Compensation Board of Magistrates, issued October 11, 2017 (Docket no. 101117026 (COLOMBO, Magistrate presiding).

27 Martin L. Critchell was second counsel for General Motors.

28 *Arbuckle v Gen Motors LLC*, 499 Mich 521; 885 NW2d 232 (2016).

29 *Kelley v Gen Motors LLC*, unpublished opinion of the Board of Magistrates, issued on October 11, 2017 (Docket no. 101117026) at 6.

Words, Words, Words[1]

By Martin L. Critchell

Three statutes defining *wage earning capacity* were added to the Workers' Disability Compensation Act[2] by 2011 PA 266. MCL 418.301(4)(b), .302, .401(2)(c).

Section 301(4)(b) says,

> "Except as provided in section 302, 'wage earning capacity' means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned. For the purposes of establishing a limitation of wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related personal injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available."

Section 302 says,

> "As used in chapters 3 and 4, 'wage earning capacity' means the wages the employee earns or is capable of earning at a job reasonably available to that employee if the employee is a member of a full-paid fire department of an airport run by a county road commission in counties of 1,000,000 population or more or by a state university or college or of a full-paid fire or police department of a city, township or incorporated village employed and compensated upon a full-time basis, a county sheriff or the deputy of the county sheriff, a member of the state police, a conservation officer, a motor carrier inspector of the Michigan public service commission, or any employee of any authority, district, board, or any other entity created in whole or in part by the authorization of 1 or more cities, counties, villages, or townships, whether created by statute, ordinance, contract, resolution, delegation, or any other mechanism, who is engaged as a police officer, of in firefighting or subject to the hazards thereof. For the purposes of establishing a limitation of wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available."

And § 401(2)(c),

> "Except as provided in Section 302, "wage earning capacity' means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned. For the purposes of establishing a limitation of wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related personal injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available."

These three statutes express one and only one definition of *wage earning capacity*. The text of the main clause in the first sentence of the three statutes is the same. ("'wage earning capacity' means the wages the employee earns or is capable of earning at a job reasonably available to that employee.")

The idea of the main clause in the first sentence of the statutes is not affected by the presence or the absence of the nonrestrictive dependent clause that is denoted by the comma following the main clause[3] in the first sentence of § 301(4)(b) and § 401(2)(c). ("whether or not wages are actually earned.") The nonrestrictive dependent clause expresses the meaning of the antecedent phrase in the main clause that is implicit in its absence given that ***whether or not*** means ***regardless of whether***[4] and ***capable*** means ***having the ability, fitness or quality necessary to do or achieve a specified thing***.[5]

And the idea of the main clause in the first sentence of the statutes is not affected by the presence or the absence of the conditional clause that is denoted by the conjunction *if*[6] following the main clause in the first sentence of § 302 ("if the employee is") because the conditional clause specifies the object in the main clause of the first sentence of § 302 (*employee*) and cannot affect its subject (*wages*).

The second sentence of the statutes expresses the same idea because the text is the same.

And third sentence of the two statutes expresses the same idea because the text is the same.

There is no other statute to consider. There was no fourth statute defining *wage earning capacity* enacted by 2011 PA 266. None of these three statutes has been repealed or amended after enactment of 2011 PA 266.

The idea expressed by these three statutes can be changed only by changing the text of one or another. The meaning of the main clause in the first sentence of § 301(4)(b) changes by striking the comma. ("'wage earning capacity' means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not wages are actually earned.") Striking this comma changes the dependent clause from a nonrestrictive dependent clause denoting some supplemental or parenthetical information about the antecedent-wages the employee is *capable of earning at a job reasonably available to that employee* to restrictive dependent clause providing information that is essential to the meaning of the antecedent[7] and different from §302 that continues to have no dependent clause and different from the first sentence of § 401(2)(b) whose dependent clause would remain nonrestrictive.

The meaning the of the main clause in the first sentence of the statutes changes by striking the conditional clause following the main clause in the first sentence of § 302 and adding the subordinating conjunction as[8] ("'wage earning capacity' means the wages the employee earns or is capable of earning at a job reasonably available to that employee ~~if the employee is~~ ***AS*** a member of a full-paid fire department…") This change would specify the subject in the main clause of the first sentence of § 302 *wages* differently from the subject in the main clause of the first sentence of § 301(4)(b) and § 401(2)(b).

The meaning of the second sentence of the statutes can differ by striking the nonrestrictive dependent clause denoted by the comma following the main clause from one of the two statutes. ("an employee has an affirmative duty to seek work reasonably available to that employee, ~~taking into consideration the limitation from the work-related personal injury or disease~~")

And the meaning of the third sentence in the three statutes changes by adding *not* after the adjective *may* in one of the three statutes. ("A magistrate may **NOT** consider good-faith job search efforts to determine whether jobs are reasonably available.") Then, the statute would require the magistrate to determine that jobs were actually available by excluding any consideration of the idiosyncrasies of an individual employee that the other statute would allow.[9]

The Legislature may differ the text of the statutes in one or another or all of these ways to effect differing ideas. The Workers' Compensation Board of Magistrates, the Michigan Compensation Appellate Commission, Michigan Court of Appeals, and the Michigan Supreme Court cannot.[10] The conditional clause preceding the main clause in the first sentences of § 301(4)(b) and § 401(2)(c) requires the consideration and interpolation of the statutes ("Except as provided in section 302")[11] but is no warrant for striking or adding any text to any statute.[12]

It may seem anomalous to have the same rule for a specific group of people as for all people, but that is no warrant for differing the text of the statutes. The WDCA is replete with identical rules for specific situations as for general circumstances. For example, Section 401(1) and §§ (2)(c)-(d), (3)-(6) repeat § 301(4)-(9). Section 401(2)(b), third sentence, repeats § 301(1), second sentence. Section 401(2)(b), fourth and fifth sentences, repeat § 301(2), first and second sentences. Section 401(9) and (10) repeat § 301(11) and (14).

Endnotes

1 POLONIUS: What do you read, my lord?
HAMLET: Words, words, words.
HAMLET: Act 2, Scene 2, Line 199.

2 Workers' Disability Compensation Act of 1969, MCL 418.101, et seq.

3 *The Chicago Manual of Style* (17th ed) (2017) pp 376.

4 Garner, Garner's Modern American Usage (3rd ed) (Oxford University Press, 2009) pp 857-858.

5 *The Oxford American College Dictionary* (2002).

6 *The Chicago Manual of Style* (17th ed) (2017) pp 288.

7 *Id.* pp 374-375.

8 *Id.* pp. 288.

9 *Michigan Nat'l Bank v Metro Institutional Food Serv, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993).

10 *Lesner v Liquid Disposal, Inc*, 466 Mich 95, 101; 643 NW2d 553 (2002).

11 *Farrington v Total Petroleum, Inc*, 442 Mich 201, 216; 501 NW2d 76 (1993).

12 *Id.*