State Bar of Michigan

# Workers' Compensation Section Newsletter

Spring 2006

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### Editor's Note

Murray R. Feldman

At its best, our newsletter provides an opportunity to consider a wide range of opinions and perspectives on topics of interest to all of us. We hope you enjoy the articles by Ed Welch and Jerry Marcinkoski regarding the recent Appellate Commission opinion in *Stokes v Chrysler* on pages 3-8. In the interest of fairness, the order in which these two articles appear was decided by the flip of a coin by the editorial staff. Both articles provide interesting perspectives and food for thought.

# From the Chair: Together We Stand

I recently took a trip to the Upper Peninsula to wander around the Pictured Rocks for a day and then cruise over to Copper Harbor. It was when I reached the bridge and realized we were not even halfway there that the size of our great state hit me. It is commonplace for those of you who practice in the Upper Peninsula to drive for hours to get to a hearing site in Baraga, Escanaba, or Sault Saint Marie. It seems that the pace of life in the UP is different, and the goals and practice of law are also unique and outside the experience of the urban and suburban lawyers of lower Michigan.

While expected things to be a bit different in the UP, I wasn't prepared for was the extreme difference compared to the rest of the state. The practice of workers' compensation tends to be highly regionalized and different. I am told the lawyers on the west side of the state are four times more likely to try their cases than those in other areas of the state. Flint/Saginaw is a world unto itself, with Lansing, Traverse City, and Gaylord each having its own gallery of faces and characters. Other than a few bold defense attorneys, most of us stay pretty much within our own regions and comfort zones.

Last summer, I had the good fortune to discuss workers' compensation issues with a few practitioners from the Upper Peninsula. In the fall, I made the journey down I-96 to talk to those of you in the Grand Rapids area. I have visited Flint/Saginaw on a number of occasions and had the opportunity to talk with lawyers there and also in Lansing. It has become increasingly clear that there are strong common threads that run through our practices, binding us all together in a tight weave. It is precisely these threads that are the basis for my plea to everyone to increase your participation in the section and the evolution of workers' compensation law.

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Murray Feldman, Newsletter Editor

Opinions expressed herein are those of the authors or the editor and do not necessarily reflect the opinions of the section council or the membership.

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**Article submissions are due for:**
Summer issue July 15, 2006

**From the Chair**
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Medicare changes are a common threat in all geographic areas and continue to pose great hardship on both plaintiffs and defendants. Insurance carriers are losing money in increased payouts through unreasonable delays. It wreaks havoc on the lives of claimants through increased costs and uncertainty and drives many of the plaintiff and defense practitioners to throw up their arms in frustration. We must continue to work together to solve this problem.

Medicaid has been an increasing worry since the new legislation was passed last year and, coupled with bureau computer crashes, has been much more difficult to unravel. Friend of the Court liens, Blue Cross issues, and post-settlement hurdles continue to make the practice more challenging and difficult. We all grapple with trial practice, evidentiary presentation, medical depositions and proofs, investigators, vocational rehabilitation, and judicial precedent. We must continue to find ways to pull these threads together and make a tighter weave statewide.

This article is a plea to get involved. I have made and will continue to make concerted efforts to visit hearing sites and establish contacts with the local members of each area's workers' compensation community. Please come to section events if at all possible. Move them up on your priority list from "Maybe I'll go if nothing else is going on" to "I have to make this a priority." We need to talk to each other to better identify common problems and cooperate on strategies to resolve them. We are stronger when we are united and working together to weave a better fabric of practice for us all. Please make an effort to participate. 🛠

*Rick Warsh*

# Governor Makes Workers' Compensation Appointments

### Workers' Compensation Board of Magistrates

Jennifer L. Crawford of Grand Haven, attorney and partner with McCroskey, Feldman, Cochrane & Brock, PLC. Ms. Crawford is appointed to the board for a term expiring January 26, 2007. She succeeds Jack A. Nolish, who has resigned to become director of the Workers' Compensation Agency.

According to reliable information, Magistrate Crawford will be sitting full time at the Flint bureau location and also covering the Traverse City docket, as necessary or as assigned.

### Workers' Compensation Appellate Commission

Donna J. Grit of East Grand Rapids, former member of the Workers' Compensation Board of Magistrates, serving from 1994-2006. Ms. Grit is appointed to represent the general public for a term expiring September 30, 2007. She succeeds James J. Kent, who has resigned to become a magistrate on the Workers' Compensation Board of Magistrates. 🛠

# The Meaning of *Stokes*

By Edward M. Welch

In its recent en banc decision in *Stokes v. DaimlerChrysler Corp.* 2006 ACO No. 24, the Workers' Compensation Appellate Commission dealt extensively with the 1987 definition of disability and the interpretation of it by the supreme court in *Sington v Chrysler Corp*, 467 Mich 144 (2002). Although I disagree with the outcome in some areas, I found the majority opinion by Granner Ries to be very interesting. On its main holdings, it contains a very carefully reasoned, clearly explained analysis. In other areas it is a bit less clear, but it has raised questions that caused me to rethink the way I have looked at things.

Some advocates for employers have characterized *Stokes* as an extreme shift to the left. I disagree with this and think, in fact, that it was rather balanced. It does take away from employers an important discovery tool. From the point of view of workers, however, it seems to unnecessarily concede one of the most important issues in this whole controversy.

The issues discussed in *Stokes* can be broken into three categories. On some points it issued a clear and definitive holding. There were other issues about which it offers guidance even though a resolution of those issues was not necessary in determining the outcome in this case. Finally, there was at least one important issue that *Stokes* raises but does not answer.

### Holdings of *Stokes*

There were a number of areas in which the *Stokes* opinion includes a definitive holding.

**Vocational Interviews.** In *Stokes,* the defendant had asked the magistrate to order the plaintiff to meet with and be interviewed by its vocational consultant. The commission held that the magistrate had no authority to do that.

The defendant had argued that "simple fairness" required employers have an opportunity to obtain vocational information through such an interview. The commission, however, pointed out that simple fairness is not enough to give the magistrate power to force a party to do something if no such grant of authority is found in the statute. In an extensive and careful analysis, the majority opinion points out that there is nothing in the statute that gives a magistrate authority to force a worker to take part in such an interview.

**Sources of Information.** In *Stokes,* the defendant asked for a remand so that it could better prepare its vocational witness to testify concerning the plaintiff. The commission noted that the defendant already had in its possession much information about the plaintiff that it could have given to its expert witness. The commission refused a remand based on its finding that this information was available to the defendant at the time of trial.

A clear lesson from this is that if the employer intends to defend a claim based on issues dealing with the worker's qualifications and training, it must use all the tools available to discover and produce evidence on these points, including any personnel records it may have and the testimony of the worker at trial.

**Total Disability.** Most of the discussion under *Sington* has involved workers who were partially disabled and questions concerning how their benefits are calculated. In *Stokes,* the commission pointed out that there will be some individuals, like Mr. Stokes, who are totally disabled. These will be individuals who have limitations in all jobs suitable to their qualifications and training, not just those jobs that pay at the maximum rate. For these workers, the various issues that arise under section 361(1) concerning the calculation of benefits will not apply.

The commission also pointed out that there will be some cases (perhaps very few) in which there is only one job suitable to the worker's qualifications and training. In those cases, a limitation in that one job will be sufficient to establish disability. This is not a return to the one-job test of *Haske v Transport Leasing*, 455 Mich 628, 566 NW2d 896, 10 MIWCLR 2019 (1997) which was rejected by the court in *Sington*, but an application of *Sington* to a specific factual situation.

### Guidance From *Stokes*

There were a number of areas on which the majority opinion in *Stokes* offers guidance, although a resolution of those issues was not strictly necessary for the outcome in the case, either because of the particular facts of this case or because of other interpretations of the law.

**Other Discovery.** The case of *Boggetta v Burroughs Corp*, 368 Mich 600 (1962) has often been cited as allowing the use of interrogatories under certain circumstances in workers' compensation proceedings. In reaching its conclusion that a magistrate could not order a worker to appear for a vocational evaluation, the commission indicated its view that *Boggetta* no longer controls authority. It pointed out that the holding regarding interrogatories in *Boggetta* was dicta in that case and also noted that the statute upon which that

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holding was based has changed since *Boggetta* was decided.

This holding is likely to be more detrimental to workers than employers. In the past, workers have relied on *Boggetta* more often than employers. Primarily, they have used it to discover the nature of exposures involved in work done by claimants.

**Bifurcated Trials.** Having ruled that a claimant cannot be required to appear for an interview with the employer's vocational expert, the majority conceded that there will be circumstances under which, even though it uses all other reasonable means to gather information, the employer does not have sufficient evidence to present to its vocational expert. The commission indicated that under those situations, the defendant can obtain the necessary information by questioning the plaintiff at the trial. It can then request an adjournment and present the information to its vocational expert. The expert can then testify at a subsequent hearing.

**Burden of Proof.** Since *Sington,* there has been much discussion of how a worker meets his or her burden of proof that the worker has a limitation in all jobs within his or her qualifications and training that pay at the maximum rate. Similarly, there are questions as to what evidence a defendant must present to overcome a prima facie case presented by the plaintiff. In this regard the majority opinion in *Stokes* is much less clear than in other areas. It does, however, include some language that should be helpful.

> We conclude that an employee's qualifications and training represent, in effect, the employee's resume: a listing of the characteristics of the jobs the employee has held and how much they pay and the training that the employee has been provided prior to the work-related injury. Such characteristics of the jobs held, along with an elucidation of any training the employee may have undergone, will enable a determination to be made as to the work that is suitable to the employee's qualifications and training. Further, the qualifications and training will be, initially, whatever plaintiff's testimony describes them to be, and the party wishing to augment the description of the employee's qualification and training has the obligation to present such evidence.… Moreover, plaintiff's testimony may or may not be sufficient to allow for a determination as to what work is suitable to qualifications and training.
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> ****
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> Once the employee has credibly asserted that he cannot return to the job that pays his maximum income and the record fails to demonstrate that there is any other work suitable to his qualifications and training paying a wage equivalent to his maximum income, the employee will have established "a limitation in [his] wage earning capacity in work suitable to his or her qualifications and training." (At 66-67)
>
> Once the employee has denied the existence of "other, equally well-paying work suitable to his qualifications," we believe the obligation to put the facts in the record to demonstrate the contrary of this statement as applied to a particular employee belongs to the employer. That is, if there is other, equally well-paying work suitable to the employee's qualifications and training that the employee is able to perform, the employer must (as in *Sington*) demonstrate its existence. (At 73)

**Partial Disability Rate.** There has been a great deal of debate concerning how benefits are calculated when a worker is partially disabled and entitled to benefits under section 361(1). (See Edward M. Welch, *Workers' Compensation in Michigan: Law and Practice*, §8.2g.) Section 361(1) provides that benefits shall be based on the difference between the employee's average weekly wage before the injury and the average weekly wage which he or she "is able to earn" after the injury. Some, including this author, would interpret *able to earn* to be the same as wages actually earned. Others would interpret *able to earn* to be the same as or similar to the worker's wage earning capacity.

*Stokes* takes the position that *able to earn* is not limited to actual earnings but includes work that was available to the claimant and "represents a meaningful opportunity to earn." The majority goes on to indicate that this will ordinarily, but not always, be limited to work the employee has performed in the past. It emphasized that the claimant must have the "opportunity" to perform this work.

**Vocational Rehabilitation.** The majority also directed some attention to the concept of vocational rehabilitation, an idea that has been somewhat neglected in recent years. It pointed out that when we are talking about workers who seem to have a capacity to work but are not finding a job, the most appropriate approach may be vocational rehabilitation under section 319 of the Act.

**Avoiding Work.** There is much discussion in the *Sington* opinion about the concept of avoiding work, transfer-

able skills, and the question of whether the injury must be the direct cause of the wage loss. The holding on these points is less definitive than on some other issues. I think to a large extent it comes down to this: There is a requirement for a "job search" in the Michigan statute. Accordingly, a worker has no affirmative duty to prove that he or she has been out looking for jobs. The commission warns, however, that claimants will be more persuasive in their arguments for disability if they can show that they have in fact been trying to obtain work and that none is available.

### New Question Raised

In discussing these concepts, the majority opinion in *Stokes* notes "able to earn" in MCL 418.361(1) means something different than "wage earning capacity" in MCL 418.371(1). Nearly all the discussion about the calculation of benefits for a partially disabled worker has centered on the phrase "able to earn" in section 361(1). There has been very little discussion of the sentence "The compensation payable, when added to the employee's wage-earning capacity after the personal injury in the same or other employments, shall not exceed the employee's average weekly earnings at the time of the injury," in section 371(1). Unfortunately, the commission does not really explain what the meaning of these sentences is or how it fits into the scheme of things. It devotes considerable attention to the meaning of "able to earn" in section 361(1) but very little to the meaning of the last sentence of section 371(1). This raises some very interesting questions that are beyond the scope of this article.

### Next Steps

This is certainly not the end of things. There were two strong dissenting opinions in *Stokes*. The defendants have filed an appeal hoping to overturn its holdings. We will need to watch how the commission applies the dicta from *Stokes* to other specific cases as they arise. Finally, we should all give some thought to how section 371(1) fits into all of this. 🛠

# Multiple Friend of the Court Child Support Liens

From Chief Magistrate Gorchow

Recently, the issue of multiple Friend of the Court child support liens has arisen. The following answer was provided to me and is the policy the Magistrates have been instructed to follow:

Staff in my office researched your question regarding how to divide a workers' compensation award when there are multiple child support liens filed against the award of a specific case. Michigan law (MCL 552.625a) requires that all child support liens be given equal priority. This means that all child support liens stand on equal footing regardless of when they were filed.

Because the child support liens have equal priority, the net proceeds of the workers' compensation award should be divided pro-rata. The Office of Child Support suggests the following calculation be used:

Case A is owed N ($5,000)
Case B is owed X ($2,000)
Case C is owed Y ($3,000)
Total owed = T ($10,000)
Total award available for child support payments = A ($8,000)

Case A receives N/T x A (5,000/10,000 x 8,000 = 4,000)
Case B receives X/T x A (2,000/10,000 x 8,000 = 1,600)
Case C receives Y/T x A (3,000/10,000 x 8,000 = 2,400)

Your second question was whether the 50 percent related to the workers' compensation award **as a whole** or 50 percent **for each lien.** Michigan statute provides that 50 percent of the *compensation to a payer* under a workers' compensation order may not be liened against for child support:

MCL 552.625a states in pertinent part:

"A lien under subsection (1) [child support liens] does not arise against any of the following:…(d) Fifty percent of the amount of compensation due to a payer under a workers' compensation order, settlement, redemption order, or voluntary payment."

It is clear that it is 50 percent of the total amount due to the payer, not 50 percent for each lien.

Michael Adrian, Director
Program Development Division
Office of Child Support

# The Remarkable *Stokes* Decision

By Jerry Marcinkoski of Lacey & Jones and Executive Secretary of the Michigan Self Insurers' Association

Suppose you are preparing to hire a new associate attorney for your firm. You interview three candidates, each of whom has recently graduated from law school and just passed the bar exam. While each seems capable and competent, you advise them after the interview that the entry level associate position is not "suitable to his or her qualifications and training."[1] The shocked applicants ask why. You explain the job is unsuitable because they have never performed an associate attorney job previously. Your authority is *Stokes v DaimlerChrysler Corporation*, 2006 ACO #24. *Stokes* holds that the only jobs suitable to a person's qualifications and training are jobs the person had previously performed.[2]

Next, consider that the Workers' Compensation Appellate Commission occasionally *sua sponte* calls for oral argument. There is no provision in the Act nor in the administrative rules providing for oral argument at the Commission. But, the Commission, reasonably so, views oral argument as a means to aid their decisionmaking. And, the Commission clearly views its right to call for an oral argument an implicit procedural power it enjoys.[3] But, per *Stokes*, the Magistrates have no implicit procedural powers. *Stokes* holds that, since the Act and administrative rules do not explicitly allow for any discovery, Magistrates have no power to order it even if it aids their decisionmaking.

The above anomalies illustrate the illogic of the 3-2 *en banc Stokes* decision, which is one of the most remarkable and revolutionary decisions in workers' compensation in recent decades. Not merely remarkable and revolutionary, it is defiant of the Supreme Court as well.

### The WCAC vs. the Supreme Court

The Commission majority makes every effort to resurrect the model for determining disability that had been overruled by the Supreme Court in *Sington v Chrysler Corporation*, 467 Mich 144; 648 NW2d 624 (2002), *i.e.*, the model described in *Haske v Transport Leasing, Inc., Indiana*, 455 Mich 628; 566 NW2d 896 (1997). Recall *Haske* had held that the inability to do any one job suitable to one's qualifications and training (usually the claimant's last job) sufficed to prove disability. *Sington* overruled *Haske*, but the *Stokes* majority resurrects the *Haske* model with the only additional requirement being the claimant add, "I cannot do my last job or any of the jobs I performed before my last job."

Therefore, whereas the Supreme Court said in *Sington* and *Rea v Regency Olds/Mazda/Volvo*, 450 Mich 1201; 536 NW2d 542 (1995), "It is not enough for the claimant claiming partial disability to show an inability to return to the same or similar work," *Stokes* says the inability to do just the jobs previously performed demonstrates "total disability." Whereas the Supreme Court said in *Sington* that the Legislature meant to expand the universe of jobs for measuring disability beyond one's general field, *Stokes* contracts the universe to just the jobs the claimant has done.

Laying aside the propriety of laboring to resurrect overruled case law, do we really want a rule that says everyone's first job (or the first job in any new field) is unsuitable to the person's qualifications and training? The recent law graduates in the hypo above would be surprised to learn what a waste of time, effort, and money their law school education had been.

With respect to discovery, for at least 45 years the workers' compensation system has enjoyed limited discovery – sometimes in the form of plant tours, exchange of oil samples, interrogatories, and vocational consultations. The Supreme Court in *Boggetta v Burroughs Corp*, 368 Mich 600; 118 NW2d 980 (1962) approved the usage of discovery in workers' compensation. Mr. Ed Welch directs readers in his treatise to "[a] good discussion concerning the use of interrogatories and all forms of pretrial discovery proceedings … in *Huber v General Motors Corp*, 1982 WCABO 240." Welch, *Worker's Compensation in Michigan: Law and Practice*, Fourth Edition, §20.24, p 20-25 (2001). In 1982, *Huber* explained, "Pretrial discovery is *well established* in our system." *Huber*, *supra* at 242 (emphasis is mine).

Something considered "well established" by 1982 has now been completely extinguished by the *Stokes* majority. This elimination of discovery cuts both ways. Subsequent to *Stokes*, for example, a deceased employee's spouse must now pursue her death claim without the benefit of any discovery. See *Buchmiller (Deceased) v MeadWestvaco Custom Papers, LLC*, 2006 ACO #46.

Laying aside the refusal to follow *Boggetta* by labeling it *dicta*, do we really want a rule that countenances the Commission having implicit procedural powers, such as oral argument, to aid their decisionmaking, but the Magistrates having no implicit power to aid theirs?

### Beyond "Disability" and "Discovery"

If the resurrection of *Haske* and elimination of discovery were not enough, consider as well the damage

done in the lengthy *Stokes* opinion to other time-honored tenets in workers' compensation law:

- Historically, plaintiffs have borne the burden of proving all necessary elements on disability.[4] Now, *Stokes* says the "burden [is] on the employer to prove … that the employee is able to earn wages in work suitable to his qualifications and training." (Commission's controlling opinion, p 86).

- Historically, to receive wage loss benefits for a disability, plaintiffs must demonstrate a link between the disability and wage loss.[5] By contrast, *Stokes* says, "There is no causation element in the proof of wage loss." (Commission's controlling opinion, p 84), and, "We do not believe that any provision in the Worker's Compensation Act requires an employee to demonstrate that a loss of wages is due to the work-related injury, except for" circumstances not germane to cases such as this. (Commission's controlling opinion, p 69).

- Historically, Michigan has evaluated general disability by the economic impact on the claimant's wage earning capacity.[6] Now, *Stokes* says the idea "that there must be a particular economic consequence to the employee's medical impairment to fund (*sic*, find) disability" is an idea hatched only by *Sington* and "heretofore unknown in Michigan." (Commission's controlling opinion, p 74).

- Historically, the phrase "able to earn" in the partial disability provision of the workers' compensation statute, MCL 418.361(1), has been equated with wage earning capacity by Michigan case law, by Professor Larson, and elsewhere in the United States.[7] Now, "[w]e conclude that 'able to earn' … means something different than 'wage earning capacity.'" (Commission's controlling opinion, p 80).

- Pre-*Sington*, work deemed "suitable to [the claimant's] qualifications and training" under the general disability provision of § 301(4) had not been limited to just the work the claimant had previously performed.[8] Now, it is. Work suitable to one's qualifications and training can no longer include "work the employee has never performed," contrary to "[p]rior administrative opinions." (Commission's controlling opinion, p 73 and p 89, respectively).

One senses some effort to now backpedal and dilute *Stokes*' carnage by its proponents out of fear no doubt of what the courts may do. The Commission has begun, for example, to call *Stokes* merely "a tool" for a *Sington* analysis.[9] There is no covering up, however, the dislocation described above. As a dissenter in *Stokes* says: "The totality of the controlling opinion changes makes defending a disability claim nearly impossible. It casts the burden of proving the earning capacity of almost all jobs on defendants. It then finds discovery outside the authority of the WDCA. … [T]he workers' compensation procedures cannot deprive defendants of the evidence critical to defending disability claims." (*Stokes*, dissenting opinion of Commissioner Przybylo, p 100). Worse yet, *Stokes* appears to be but one facet of a more coordinated effort to recast the workers' compensation system in a manner unfavorable to employers and carriers. Fasten your seatbelts; things are likely to get interesting.

**Endnotes**

1 MCL 418.301(4).

2 Idea for this example was provided by Michael Reinholm of Lacey & Jones.

3 Idea for this example was provided by Martin Critchell of Conklin Benham.

4 *MacDonald v Great Lakes Steel Corp*, 274 Mich 701, 703; 265 NW 776 (1936); *Wiltse v Borden's Farm Products Co*, 328 Mich 257, 264; 43 NW2d 842 (1950); see also, *Pulley v Detroit Engineering & Machine Co*, 378 Mich 418, 427; 145 NW2d 40 (1966); *Brannan v Fisher Body Corp*, 277 Mich 139, 141; 268 NW 839 (1936); *Hood v Wyandotte Oil & Fat Co*, 272 Mich 190; 261 NW 259 (1935); *Woodcock v Dodge Brothers*, 213 Mich 233, 235-236; 181 NW 970 (1921).

5 *Pulley*, *supra* at 427; *Hood*, *supra* at 193-194; *Lauder v Paul M. Wiener Foundry*, 343 Mich 159, 168-169; 72 NW2d 159 (1955). This principle was even recognized by the Supreme Court in *Haske*; that is why *Sington* only overruled *Haske*'s interpretation of § 301(4)'s first sentence – the sentence defining disability. The part of *Haske* not overruled requires "a direct link between wages lost and a work-related injury." *Haske*, 455 Mich at 661; *Sobotka v Chrysler Corp*, 447 Mich 1, 26; 523 NW2d 454 (1994) [Boyle, J., lead opinion]; see also, Justice Markman's lead opinion in *Sweatt v Department of Corrections*, 468 Mich 172, 190, including n 13; 661 NW2d 201 (2003).

6 *Hood*, *supra* at 192-193; *Lauder*, *supra* at 168-169; *Pulley*, *supra* at 426-428; *Sobotka*, *supra* at 23; and, *Sington*, *supra* at 158-159. This is a fundamental tenet in many states. Larson, *The Law of Worker's Compensation*, Vol. 1, § 1.00, p 1-1 and Vol. 1C, § 57.61(a), p 10-389 (1993).

7 *Frammolino v Richmond Products Co*, 79 Mich App 18, 27; 260 NW2d 908 (1977); see also, *Sobotka*, 447 Mich at 21, where Justice Boyle equates the two terms relying on Larson ["According to Professor Larson, the phrase 'able to earn thereafter' is synonymous with the concept of 'wage-earning capacity.'" *Id.* (footnote omitted)].

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# Meet Our New Magistrate

By Magistrate Jan Leventer

I write these remarks while I am drafting my first opinion and order as a Workers' Compensation Magistrate. The trial notes from my first trial are six-plus, single-spaced typed pages. This is not daunting, but the reality of writing a judicial decision gives me pause.

The record is closed only on my first trial; two more trials have begun and are continuing.

No trials occurred for my first six weeks on the job, giving me the opportunity to read the recent WCAC's *Stokes* opinion and to begin reading the "S Files." The "S Files" is the Agency's online compendium of Magistrates' decisions over the past three or four years. I read the Nolish, Gorchow and Harris oeuvres; dabbled in the Cooke, Paige and Wagner opinions; and began the Wolock file.

This is a very good way to start in as a Magistrate - if you have the time. There is a wide variety of styles in the opinions, but there is a remarkable consistency in fact-finding technique. Besides learning about style and fact-finding from my benchified colleagues, I have also learned more than you would ever want to know about multiple employers, multiple carriers, uninsured employers, employer insurance fraud, multiple injuries, multiple medical conditions, and vocational rehabilitation review law.

You may wonder why I am reading Magistrate-level opinions when I could be reading Appellate Commission opinions or reported Michigan court opinions. Or perhaps I should, as suggested to me by WCA Director Jack Nolish in one word: "ReadWelch!" I agree with Jack, but I read that already, and I look forward to reading the '06 supplement. No, I want to see the facts and issues fresh, as they present themselves to the Magistrates in all their confounded persnickety contrariness. I'll continue to read the "S Files" in my spare time, if I see any more of it.

Mediation is another area where I think that reading the "S Files" will be useful. More and more cases are mediated and are successfully resolved. Magistrates are encouraging the parties to mediate cases with Agency mediators and other Magistrates, regardless of location, in order to find a mediator that can help resolve their case.

*Magistrate Jan Leventer*

Lawyers are mediating cases for each other as well. A few hours spent mediating a case saves enormous amounts of trial time and expense and the parties can exercise more control over the outcome than if they went to trial. I find that reading the "S Files" is great background for being a mediator.

That's all for now, folks; see you in court. . . . 🛠

**The Remarkable *Stokes* Decision**
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8 "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, *Lee v Michigan Consolidated Gas Co*, 2003 ACO #243; *Townsend v Development Centers, Inc*, 2003 ACO #236; *Kethman v Lear Seating Corp*, 2003 ACO #205. Qualifications and training were defined in *Sington v Chrysler Corp (On Remand)*, 2003 ACO #92 as follows:

> Neither the statute nor the Court in *Sington* defines "qualifications and training." We believe that "qualifications and training" contemplates formal training, degrees, licenses, work experience, general education, life experiences, as well as physical and mental capabilities, 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.

9 *Lofton v AutoZone, Inc*, 2006 ACO #56.

# Workers' Compensation Appellate Commission

By Martha M. Glaser, Chairperson

The WCAC once again has a full complement of commissioners. We welcomed Donna Grit to the Commission on April 17, 2006. Donna fills the vacancy left by Jim Kent when he resigned to accept an appointment with the Board of Magistrates. Donna had been with the Board of Magistrates for 12 years before accepting her recent appointment to the Commission.

Donna's appointment was one of the last accomplishments of Dave Plawecki, former deputy director of the Department of Labor and Economic Growth. Dave's last day with DLEG was April 15, 2006. He will be missed by many of us who worked closely with him. Dave had served the state in various capacities for 35 years. We understand that he is "gone fishin.'" We wish him well.

The Commission filed its latest set of rules amendments with the Secretary of State on April 19, 2006. We are looking at additional changes. Please watch our website, *www.michigan.gov/wca*, for more information. Also, please do not hesitate to make suggestions for rule amendments. Our next set is scheduled to be submitted by June 8, 2006.

# Director's Message

By Jack A. Nolish, Director, Workers' Compensation Agency

Spring is upon us, and a young director's mind turns to thoughts of social security number disclosure and maybe a golf outing or two.

As of January 2006, there have been some changes in Michigan law (Public Act 454 of 2004, MCL 445.81 et seq) regarding the disclosure of social security numbers (SSN). These changes have been motivated by concerns about identity theft and other privacy issues. The Workers' Compensation Agency has long relied on SSNs for case identification. We do not assign file numbers as one might see in other courts. Our computer system, WORCS, uses SSNs and would require extensive and expensive reprogramming to go to another indexing system.

Even with the changes, we are not required to stop using SSNs in our cases. Rather, we must take reasonable steps to prevent unauthorized access to the numbers. To that end, you will notice that the labels on the front of the new case file jackets do not display the full SSN. Instead, you will see: "XXX-XX-1234." This reduced number will also appear on the bar code label on the back of each file. That label is used by the computer system to track locations of files. Most of you have not paid attention to the label on the back of the file. You will also notice that on existing files, we are "redacting" the first five numbers using felt marker. The Magistrates will be calling cases for the record using the name and only the last four digits of the SSN.

Mailings going out of the Agency will continue to contain SSNs but care will be taken to make sure that the number is not visible through the envelope window. Any correspondence sent to the Agency should also indicate the full SSN. Yes, we have actually found two people with the same name that have the same last four SSN digits.

All applications, pleadings and redemption papers should continue to have the full SSN.

This new level of concern over privacy issues will also have an impact on the way we handle medical and other records received by subpoena. We are in the process of trying to identify the appropriate criteria and process for handling such records. In the coming months, we will be working on rules and procedures for this important concern. There is no doubt that there will be conflicts between our concerns over counsel's convenience and our statutory obligation to protect clients' privacy. I am sure there will be much sprightly conversation regarding this topic.

### Correction

The phone number listed for John Charters in the Winter 2005 newsletter "State Bar of Michigan Workers' Compensation Section Council Member Contact Information" is incorrect. It should be **248-362-4700**.

# Recent Cases

By Jerry Marcinkoski, Lacey & Jones

## Supreme Court

There have been no decisions from the Supreme Court since the last newsletter. However, the Supreme Court has been busy in terms of issuing orders in various workers' compensation cases.

In *James and Auto Owners Insurance Co v Auto Lab Diagnostics & Tune Up Centers and Second Injury Fund*, SC Docket No. 128355, entered February 24, 2006, the Supreme Court issued an order reversing the decision of the Workers' Compensation Appellate Commission. This order was entered after oral argument on the application for leave to appeal.

The issue in *James* was whether an automobile accident injury sustained while en route to a seminar addressing work matters was compensable. The employer encouraged but did not compel the employee's attendance at the seminar. The Magistrate and Workers' Compensation Appellate Commission had found the injury work related. Relying on *Camburn v Northwest School District (After Remand)*, 459 Mich 471; 592 NW2d 46 (1999), the Supreme Court reversed "because, under the undisputed facts, plaintiff's attendance at the seminar was not an incident of his employment." Justices Cavanagh and Kelly would have denied leave. Justice Weaver would have remanded the case to the Court of Appeals for consideration on leave granted and for application of *Camburn* there.

In other developments, the Supreme Court recently granted leave in *Karaczewski v Farbman Stein & Co*, SC Docket No. 129825. *Karaczewski* is a case where the work injury occurred outside of Michigan and, for that reason, triggers MCL 418.845. Section 845 says Michigan has jurisdiction over outstate injuries if the injured employee is a resident of Michigan at the time of the injury and the contract of hire was made in Michigan.

Mr. Karaczewski had been working under a contract of hire made in Michigan in 1984. But, since 1995, he had been a resident of Florida and working for the employer in Florida. He was injured in Florida. He filed for workers' compensation in Michigan, claiming his contract of hire was made here. The Court of Appeals, in an unpublished decision entered October 18, 2005, agreed with plaintiff. The court noted that the Supreme Court eliminated the residency requirement in *Roberts v I. X. L. Glass Corp*, 259 Mich 644; 244 NW 188 (1932) and reaffirmed that view, despite intervening Court of Appeals' case law to the contrary, in *Boyd v W G Wade Shows*, 443 Mich 515; 505 NW2d 544 (1993).

In appealing to the Supreme Court, the employer in *Karaczewski* urged the Court to overrule *Boyd*. In granting leave, the Supreme Court said the parties should include among the issues addressed whether overruling *Boyd* is justified under the standard for applying *stare decisis* discussed in *Robinson v City of Detroit*, 462 Mich 439, 463-468; 613 NW2d 307 (2000).

The Supreme Court has also issued orders remanding four workers' compensation cases. Those cases and their main issues are: *Arant v Peregrine Metalforming, Inc*, SC Docket No. 129717 [remand to the Court of Appeals on issues relating to specific loss, the Commission's standard of review, and the one-year-back rule]; *Mallory v Moca Corp*, SC Docket No. 129871 [reverse and remand to the Magistrate for reconsideration of specific loss claim]; *Gee v Arthur B. Myr Industries, Inc*, SC Docket No. 129940 [remand to the Court of Appeals on attendant care and *res judicata* issues]; *Ruthruff v Tower Holding Corp*, SC Docket No. 129469 [remand to the Court of Appeals on issues involving the arising out of and in the course of requirements and the Commission's appellate role in reviewing the Magistrate's decision and abiding by the Court of Appeals' remand instructions].

Finally, the Supreme Court heard oral argument on the application for leave to appeal in *Paige v City of Sterling Heights*, SC Docket No. 127912. The main issue is the correct understanding of "the proximate cause" requirement in the death claim provision of MCL 418.375(2).

## Court of Appeals

Again, there are no Court of Appeals published decisions to report since our last newsletter. We will report, therefore, on the three unpublished Court of Appeals' decisions released since the last newsletter. All three of these unpublished decisions were decided by the Court of Appeals without oral argument, which is permissible under MCR 7.214(E).

### *Res Judicata*

In *Williamson v City of Livonia and Second Injury Fund*, CA Docket No. 260274, unpublished decision entered April 11, 2006, the Court of Appeals addressed *res judicata* in workers' compensation.

Plaintiff had originally filed a petition seeking benefits for a work-related psychiatric disability. The Magistrate granted plaintiff a closed period of benefits for that condition. That closed award was ultimately affirmed.

Nine days after the trial on plaintiff's psychiatric claim, plaintiff filed another petition against the employer alleging work-related hypertension and "coronary heart disease." The Magistrate denied this claim on the basis of *res judicata*, finding that plaintiff had knowledge of this condition a year before filing his initial petition. The Appellate Commission affirmed.

The Court of Appeals reversed. The court began by noting that the broad form of *res judicata* applies in workers' compensation. The broad application bars claims arising out of the same transaction which plaintiff could have brought but did not. The court then said that, "The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is 'whether the same facts or evidence are essential to the maintenance of the two actions.'" The court explained that if the two actions "rest upon different sets of facts, or if different proofs would be required to sustain the two actions, a judgment in one is no bar to the maintenance of the other."

Applying this test, the court found that plaintiff's second hypertension/heart disease petition would require different evidence than that required to prove plaintiff's psychiatric claim. Consequently, the Court held that *res judicata* was no bar to the second petition and remanded the case to the Magistrate for further proceedings.

### *Rakestraw* Issue

In *Bezeau v Palace Sports & Entertainment, Inc*, CA Docket No. 258350, unpublished decision entered February 28, 2006, the Court addressed a *Rakestraw* issue in the Appellate Commission decision.

Plaintiff played hockey for the Detroit Vipers. During the off-season he worked for his father-in-law's roofing company. In the off season in 2000, he fell from a 45-foot ladder, injuring his groin, low back, and right thigh. He returned to play hockey in the 2000 season and, during the first game of the season, was checked into the boards by an opposing player. Plaintiff's left leg went numb and he had severe discomfort in his groin, leaving him unable to play professional hockey since. Plaintiff sought benefits from Palace Sports, owner of the Detroit Vipers, for an osteitis pubis condition (inflammation of the pubic bones). Plaintiff had a genetic predisposition toward this condition.

The Magistrate denied plaintiff benefits, but in a 2-1 decision, the Appellate Commission reversed. The Commission majority reasoned that the Magistrate improperly viewed the case as turning on the specific event checking incident in 2000, as opposed to cumulative hockey traumas through the years.

On appeal, the Court of Appeals, first addressed the theory upon which plaintiff pursued his claim. Quoting the plaintiff's application and plaintiff's counsel's opening statement before the Magistrate, the court said plaintiff appeared to proceed strictly on the basis of one specific event. The court appeared unsure whether plaintiff preserved a cumulative trauma-type claim.

The court also proceeded to address the following legal question: Did any of plaintiff's hockey-playing activities result in a condition medically distinguishable from his pre-existing, non-work related condition under *Rakestraw v General Dynamics Land Systems*, 469 Mich 220; 666 NW2d 199 (2003). The court said it was not convinced the Commission's decision was proper under *Rakestraw*. Consequently, the Court remanded the case with the following instructions:

> … To the extent plaintiff's disability is the result of the aggravation of the symptoms of non-work related conditions, compensation is not proper. Plaintiff was required to show that his condition was "medically distinguishable" from any preexisting non-work related condition. *Id.* at 222. In other words, if plaintiff's work-related hockey activities did not solely cause his osteitis pubis, then under *Rakestraw*, *supra*, to be entitled to compensation, he was required to prove that, as a result of work-related activities, his current osteitis pubis condition is "medically distinguishable" from the condition as it would have progressed as a result of the non-work related contributing factors. The WCAC did not recognize, or apply, this principle.
>
> The WCAC's decision is vacated, and this matter is remanded for further proceedings consistent with this opinion. The WCAC shall determine whether plaintiff asserted an "aggravation" or "contribution" theory at trial, whether such a theory was properly raised on appeal, and, if so, whether an award of benefits is proper under *Rakestraw*, *supra*. We do not retain jurisdiction.

### Commission's Reversal of Magistrate's Factfinding

*Sahr v Wal-Mart Stores, Inc*, CA Docket No. 262952, unpublished decision of March 28, 2006, is a case remanded to the Court of Appeals by the Supreme Court. In remanding the case, the Supreme Court directed the Court of Appeals to provide an analysis of whether the Appellate Commission had misinterpreted the Magistrate's reading of the medical testimony and improperly substituted its own interpretation for that of the Magistrate in violation of the Commission's standard of review.

Plaintiff, a smoker, had worked at Sam's Club at a job requiring twisting, bending, and occasional heavy lifting. In 1998, she underwent a cage fusion surgery for a herniated disc. She

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returned to work but soon thereafter experienced a recurrence of back pain. In 2001, she underwent a second fusion surgery to stabilize the prior fusion. Afterwards, she never returned to work.

The Magistrate denied benefits for failure to prove a work-related disability. The Magistrate relied upon the testimony of one doctor who articulated the theory that smoking creates a higher incidence of non-union in a fusion. The Workers' Compensation Appellate Commission reversed. The Commission said the Magistrate's fact-finding was unsupported by the requisite evidence.

The Court of Appeals first considered whether the Commission engaged in *de novo* review. It found it did not and, instead, had simply reviewed the whole record as required under MCL 418.861a(13).

Next, the court said the Appellate Commission had not misapprehended its scope of review in reversing the Magistrate. The court said the Commission correctly concluded the Magistrate denied benefits almost exclusively on the smoking theory articulated by one doctor. And, the court said the Commission gave adequate reason for disagreeing with the Magistrate's reliance on that doctor's testimony.

## Workers' Compensation Appellate Commission

### Pre-Existing Cardiovascular Condition Not Subject To § 301(2)

In *Orzel v Pollas Family Market*, 2006 ACO #48, plaintiff suffered from a cardiovascular condition that resulted in venous insufficiency causing, among other things, poor circulation in his legs. Plaintiff claimed a work injury occurred when he was in a meat cooler and he struck his right shin on a metal rack. Later that day, plaintiff noticed a bump on his right leg that became black and blue with no open wound. The injury did not heal, and the next month, plaintiff visited a doctor who had been treating plaintiff for high blood pressure and two prior heart attacks. Plaintiff's shin injury did not heal properly, became ulcerated and infected, and plaintiff ultimately lost his right leg.

The Magistrate awarded plaintiff benefits. The Magistrate applied § 301(2)'s standard that requires "significant" work contribution for "heart and cardiovascular conditions." MCL 418.301(2). The Magistrate found plaintiff's venous insufficiency was a cardiovascular condition requiring application of the "significant manner" standard. Under that standard, the Magistrate found significant work contribution.

On defendant's appeal, the lead opinion was authored by Commissioner Przybylo in dissent. He found that the Magistrate had misapplied the significant manner standard.

The Commission majority (Commissioner Will, with Chairperson Glaser concurring) disagreed. The majority concluded the significant manner standard did not apply, saying:

> Our quarrel with the lead opinion is predicated on the fact that compensation in this case has not been sought for a condition of the aging process, including but not limited to heart and cardiovascular problems. Instead, compensation has been sought because plaintiff received a work-related specific event injury which ultimately resulted in the amputation of plaintiff's right leg. The fact that the injury occurred to a leg affected by a pre-existing cardiovascular condition, in our view, does not call for the utilization of the significant manner test set forth above.

### Dual Employment

In *Aguilera v Classic Convention Services, Inc*, 2006 ACO #42, plaintiff claimed he had "dual employment" under MCL 418.372 at the time of his work injury. Plaintiff worked through a union hall for different companies involved in setting up and tearing down equipment for conventions. Plaintiff performed such a job at Cobo Hall for one employer on April 8, 2002. He had not finished the job. During downtime from that job, he accepted another similar job at Yack Arena in Wyandotte. While working at this second job on April 9, 2002, he was injured. He attempted to return to his first job on April 11, 2002 and worked 3 1/2 days before stopping, saying he could not continue due to his work injury.

The Magistrate had granted plaintiff benefits but did not find dual employment. The majority of the Commission disagreed.

The Commission majority (Chairperson Glaser, joined by Commissioner Ries) said there is no guidance from the courts as to what constitutes "dual employment" or what the phrase "engaged in more than one employment" means in § 372. The Commission concluded that the facts of this case did not present a successive employment situation, but rather dual employment. The majority said plaintiff had a pattern of working for various employers in the same week, if not the same day. Consequently, the Commission majority reversed the finding of dual employment and remanded the case for an average weekly wage determination. The dissenter, Commissioner Przybylo, would have affirmed the Magistrate on

the basis that the Magistrate properly determined plaintiff's employments were sporadic and without any repeating pattern.

### Professional Athletes

In *Raybon v D. P. Fox Football Holdings, LLC/Grand Rapids Rampage*, 2006 ACO #27, plaintiff was a professional football player for the Grand Rapids Rampage. Plaintiff did not work anywhere in the football off season, except one year when he had worked two days. He sought benefits for a work-related left foot plantar fasciitis from the Grand Rapids Rampage. The case raised a number of issues.

The first question was whether plaintiff could collect workers' compensation benefits during the off-season. The Commission held that plaintiff could, citing *Gasparick v Price Construction Co*, 398 Mich 483; 247 NW2d 824 (1976), in contrast to a more recent Commission case that reached a contrary result, *Bednar v Grand Rapids Griffins*, 2001 ACO #241.

The second question was one of first impression: the correct construction of MCL 418.360(1). This provision says a professional athlete who suffers a work-related injury "shall be entitled to weekly benefits only when the person's average weekly wages in all employments at the time of application for benefits, and thereafter, … are less than 200% of the state average weekly wage." This question centered on the correct construction of the words "application for benefits." Does the phrase confine the inquiry to an application for workers' compensation benefits, or does the phrase encompass application for benefits other than workers' compensation? The difference mattered because plaintiff had applied for and received wage continuation and medical benefits at a time when his average weekly wage exceeded the statutory 200% limit.

The Commission held the phrase "application for benefits" contemplates only application for workers' compensation benefits.

The final issue in the case related to calculation of plaintiff's average weekly wage. Defendant argued that if plaintiff is to receive weekly workers' compensation benefits for a full 52 weeks per year, then the average weekly wage at the time of the injury must be calculated on the basis of 52 weeks. The Commission disagreed on the basis that plaintiff had worked less than 39 weeks in the employment in which he was injured.

### *Stokes* Remand

In *Lofton v AutoZone, Inc*, 2006 ACO #56, the Commission split 2-1 in its reasoning, but all Commissioners agreed to remand in light of *Stokes v DaimlerChrysler Corp*, 2006 ACO #24.

This case returned to the Commission after a remand that had required the Magistrate to apply earlier Commission decisions implementing *Sington v Chrysler Corp*, 467 Mich 144; 648 NW2d 624 (2002). After the Magistrate's decision on remand, the Commission issued *Stokes*. When the case returned to the Commission after remand, the Commission remanded a second time for reconsideration in light of *Stokes*.

Commissioner Przybylo authored the lead opinion, saying that in *Stokes* the Commission was "reversing its position on plaintiff's burden of proof and altering its view of wage loss. Because the parties could not anticipate their new obligations under *Stokes*, due process protections require remand to allow a fair opportunity to present proofs to satisfy their burdens."

The controlling opinion of Commissioner Will, with Chairperson Glaser concurring, agreed a remand was appropriate "for a *Sington* analysis utilizing *Stokes* as a tool for such analysis." However, the majority added, "In so doing it is better for all concerned that we do not inadvertently cause the parties to believe that plaintiff does not have to make out a prima facie case with *Sington* in mind." The Commission again retained jurisdiction.

In *Byrd v Caliber Quality, Inc*, 2006 ACO #34, the Commission again split with regard to a *Sington* remand. Magistrate Barney had found plaintiff did not satisfy *Sington*. The Magistrate denied benefits, saying, "It is incumbent upon plaintiff to provide evidence of what work he or she is trained and qualified to do and whether there is a market for such work (i.e., is it 'readily available'), as well as plaintiff's inability to perform such work as a result of an employment-related personal injury or disease. *Stanton v. Great Lakes Employment*, 2002 ACO #251; *Kethman v. Lear Seating Corporation*, 2003 ACO #205."

On appeal, Commissioner Will, with Commissioner Ries concurring, disagreed. The Commission majority said that there was testimony from plaintiff that he could not perform his prior jobs such as a barber or factory assembler and, therefore, the Magistrate should reconsider.

Commissioner Przybylo dissented and would affirm because, "[T]he magistrate found that plaintiff failed to show that he could not perform any job suitable to his qualifications and training because plaintiff failed to show his level of qualification and training."

### Retroactive Social Security Award and Personal Bankruptcy

In *Glaspie v General Motors Corp*, 2006 ACO #53, plaintiff had previously obtained an open award of benefits that was subject to coordination of benefits under MCL 418.354. After the conclusion of that litigation, plaintiff claimed his accrued compensation benefits had been incorrectly calculated. Plaintiff argued the employer should not have coordinated sickness and accident (S&A) and extended dis-

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ability benefits (EDB), which he had received from General Motors' insurer, MetLife, because he had been awarded social security benefits that required him to repay MetLife the S&A and EDB benefits. Plaintiff did not make the repayment, however. He had filed for bankruptcy, and his repayment obligation of S&A and EDB benefits to MetLife was discharged.

The primary question presented on these facts was whether the employer could still coordinate the S&A and EDB benefits. The Magistrate held that coordination was proper. Plaintiff appealed to the Appellate Commission, arguing an employer cannot "coordinate benefits on a debt that has been discharged in bankruptcy."

The Commission disagreed with plaintiff and affirmed the Magistrate. The Commission said the bankruptcy did not change the fact plaintiff had "received" the alternative benefits as required by § 354(1). The Commission indicated its ruling would be different if plaintiff had reimbursed the benefits.

### Ongoing Suspension of Benefits

In *Baugh v Clarion Technologies, Inc*, 2006 ACO #52, plaintiff suffered a wrist injury. Defendant offered her reasonable employment under MCL 418.301(5). Plaintiff returned to the workplace for three days but said that, because of pain, she would not work and would instead accept discipline for not working. The employer sent plaintiff a letter saying that plaintiff was a "no call/no show for three consecutive days" and considered a "voluntary quit." Plaintiff admitted she had no medical excuse for missing work.

The Magistrate had granted plaintiff a closed period of benefits extending through the time plaintiff was ultimately given a full release to return to work. Within that closed period, the Magistrate said the employer was not obliged to pay plaintiff for three missed days of work but must reinstate benefits from the date of the "voluntary quit" because the employer, in effect, rescinded the reasonable employment job.

On appeal, the Commission disagreed that the employer's action constituted a rescission of the reasonable employment offer. The Commission said that "the focus must be on plaintiff's conduct and whether she rescinded her refusal to work." The Commission said plaintiff's reliance upon *Russell v Whirlpool Financial Corp*, 461 Mich 579; 608 NW2d 52 (2000) was misplaced. *Russell* held that an employer cannot rely upon a just cause termination to defeat a claim of weekly workers' compensation benefits. The Commission said that here, however, the employer relied upon plaintiff's refusal to return to work and only later terminated plaintiff's employment. The Commission likened the case to *Russell*'s companion case: *Perez v Keeler Brass Co*, 461 Mich 602; 608 NW2d 45 (2000). *Perez* held that the only party who can end a period of refusing to work is the disabled employee.

# Updated Details Regarding Summer Seminar

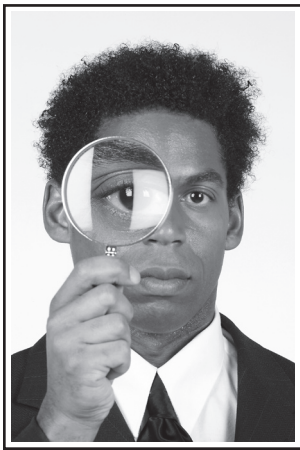
Please join us for this year's annual Spring/Summer Meeting at the Shanty Creek Resort and Club in Bellaire, Michigan, June 22-23. Events include a cocktail party and dinner each night, a golf outing, and the meeting.

To download the meeting and hotel registration forms, visit *http://www.michbar.org/workerscomp/pdfs/program.pdf.* Follow the instructions for completing and returning your registration information.

I look forward to seeing everyone there.

*Richard L. Warsh*

Section Website *http://www.michbar.org/workerscomp/*



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*http://www.michbar.org/workerscomp/newsletter.cfm*

# Spring/Summer Meeting to be held June 22-23, 2006

## Please join us for this year's annual Spring/Summer Meeting at the Shanty Creek Resort & Club in Bellaire, Michigan

We have reserved the Cedar River Village where all rooms are 1 or 2 bedroom suites. Each room has its own fireplace, Jacuzzi tub, mini fridge and private balcony.

(1 bdrm w/2 queen beds, sofa bed in LR – 2 adults - $175 + taxes/night)
(2 bdrm w/1 king, 2 queen beds, sofa bed in LR – 2 to 4 adults - $275 + taxes/night)
(Kids 17 and under stay free in room with adult – Same rates apply two days prior and after meeting)

To book your room go online at *www.shantycreek.com/workerscomp*
Space is limited, so we encourage you to **reserve your room today.**

### Schedule of Events

Thursday, June 22, 2006

| | | |
|---|---|---|
| 6:00 p.m. | Cocktail Party – hors d'oeuvres + two complimentary beverages | $20/person |
| 7:00 p.m. | Dinner on GolfviewPatio (weather permitting) otherwise in Jordan Room | $40/person |
| | **Attend BOTH Cocktail Party & Dinner and pay only** (CHILDREN PAY $20 each) | **$50/person** |

Friday, June 23, 2006

| | | |
|---|---|---|
| 8:00 a.m. | Group Registration for Meeting | **$30/person** |
| | On-Site/Door registration (space permitting) | $50/person |
| 8:30 a.m. | Continental Breakfast (included in meeting fee) | |
| 9:00 – 12 noon | Meeting | |
| 12:20 p.m. | Golf (18 holes + cart) at Cedar River Village Course<br>One of the top public courses in the country--designed by Tom Weiskopf | $100/person |
| 7:00 p.m. | Cocktail Party – hors d'oeuvres + two complimentary beverages | $20/person |
| 8:00 p.m. | Dinner on GolfviewPatio (weather permitting) otherwise in Jordan Room | $40/person |
| | **Attend BOTH Cocktail Party & Dinner and pay only** (CHILDREN PAY $20 each) | **$50/person** |

Section members attending Seminar, cocktail parties and dinners on both Thursday and Friday will be charged $130/person.

Adult Guests attending cocktail parties and dinners on both Thursday and Friday will be charged $100/person.
Children will be charged $20 each per dinner.

Checks for the seminar, golf, dinners & cocktail parties should be made **payable** to **State Bar of Michigan** and **mailed to**: State Bar of Michigan, Attn: Finance, Michael Franck Bldg., 306 Townsend St., Lansing, MI 48933.

**If you plan to play golf,** you must contact Dave DeGraw at (616) 458-3646 before **June 16, 2006**. The outing format will be changed this year and we need to know who is going to play before we arrive.

**Questions regarding the seminar?** Please call Alice at (248) 357-7013

**Make this a family vacation. Surrounding area holds attractions for all ages - Sleeping Bear Dunes, charter fishing, boat rentals, wineries, museums, Grand Traverse Lighthouse, hiking, shopping, golf and much more. Something for everyone!**

# Workers' Compensation Golf Tour

## Upcoming Dates and Events

**Larry K Good Health Day**
(Mt. Clemens WC Open)
May 23, 2006 - Sycamore Hills Golf Course
For more details contact: Bob Orlowski, Jim Schoener, Magistrate John Wierzbicki

**Harold Dean WC Open**
June 30, 2006 – Golden Fox – Plymouth
For more details contact: Ray Bohnenstiehl (248-358-0111) or Murray Feldman (248-205-2719)

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