State Bar of Michigan

Workers' Compensation Section Newsletter

Spring 2012

Contents

From the Chair

May You Live in Interesting Times

It is said that the ancient Chinese had a curse they directed against people upon whom they wished evil . . ."May you live in interesting times." As I approach the end of my year as chair of the section, I reflect back and fully comprehend the import and reality of that curse. These have been "interesting times."

I have spent over a decade on the council and have enjoyed it very much. However, the last year has been trying, and there are things I would like to have not experienced and events I wish I had not witnessed, but the service to the section as a whole has been a joy.

I recall hearing rumors of proposed changes to the Worker's Disability Compensation Act at a council meeting in April of last year. Those rumors became reality by the time I was elected chairperson of the section in June, and I recall hitting the ground running. My hope and desire was to move as quickly as possible so the section as a whole was able to provide input into any new proposals.

By July, the council met to discuss how we, as a section, could offer our expertise and input into the process. I am very proud of the council members and the section members who sacrificed so much of their time and effort in working toward this goal. These individual members created a proposal to provide to the powers that be. These individuals are truly deserving of our praise and respect. Their efforts make me proud to say: "I am a comp attorney."

I have been a comp attorney for over 30 years. Comp lawyers are, as a whole, the easiest going, friendliest, and most cooperative people you will find in the practice of law. However, I am worried this aspect of our practice may change and we will end up like our brethren in civil practice, who need court rules to force cooperation and civility. Yes, we have our differences and disagreements. We also have outright tantrums (this from one who has thrown a few), but we get over them and get along. I fear that in today's polarized world, we are seeing more animosity and distrust creep into our practice. In my opinion, the most dangerous threat to civility is the unwillingness of some to admire and respect those with whom they disagree.

As we approach the annual meeting, we are now faced with another change—evidence based medicine. I expect the section and the council will rise to the challenge and represent the interests of the entire section in a most laudable fashion. As usual, the question that arises is, "Will anyone listen?"

I have enjoyed the practice and I hope that I can enjoy it for some time to come, "God willing and the creek don't rise." I would just like the practice to be a little less "interesting."

Sincerely, *John M. Sims*

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

Ella S. Parker, 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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Board of Magistrates Update

By Lisa Klaeren, Chief Magistrate

Many of you recently received an e-mail from Mark Long. After reading the e-mail, you may have wondered, "Who is Mark Long?" Mark is the administrator assigned to the Board of Magistrates. He acts as a liaison, so to speak, and has actually been in this position for over 10 years! In his e-mail, he advised everyone that parties to an action should not personally e-mail the magistrate assigned to a particular claim. Mark reminded everyone that any e-mail discussions regarding cases should be conducted through the appropriate assigned support staff.

Dangers inherent in e-mail communications about a case with a magistrate are plentiful, such as ex parte communications and the accidental exchange of inappropriate information. Moreover, e-mails do not equate with a court order or opinion.

Director Kevin Elsenheimer addressed a similar issue in the fall 2011 *Workers' Compensation Section Newsletter*. In that article, he indicated the cultural practice of ex parte communication needs to change. Director Elsenheimer reminded all of us of our obligations under the Michigan Rules of Professional Conduct.

Most of us remember our law school professors discussing ex parte communications. Generally speaking, they are communications with a judge made outside of the presence of *all* the parties. When an e-mail is sent to a magistrate, he has no way of knowing prior to opening it, whether all parties to an action have been notified or copied. Moreover, the magistrate has no way of knowing if the information contained in the e-mail is appropriate information for the magistrate to view. By the time the magistrate is aware that it is an inappropriate communication (by opening the e-mail), it is too late.

Also, when parties respond to an e-mail, they may habitually hit the *Reply to All* button to make sure everyone is provided with their response. The danger here is that an e-mail conversation can continue between the attorneys with the magistrate included in all of the responses. Although this exchange of information may not be intentional, it is still inappropriate to have the magistrate involved, and it may include information of which the magistrate should not be aware that is prejudicial to one side or the other. The casual nature of e-mail can lead to any one of us inadvertently exchanging information which should only be exchanged in an appropriate setting.

The most important reason to prohibit e-mail communications about a case with a magistrate directly is the fact that magistrates speak through their orders and opinions. Needless to say, e-mails are not opinions or orders. The problem with e-mail is that we cannot hit the *Delete* button until it is too late.

If you need to provide information to a magistrate about a case, please contact the assigned support staff by e-mail or by phone. Magistrates have some wonderful support staff who can pass on appropriate information. This helps avoid ex parte or inappropriate communications. All of the offices have voice mail systems. Moreover, messages can be left if the support staff is not available. In the event that no one can be reached at the hearing site, or a message cannot be left, one can always call the main line for the Agency at 1-888-396-5041, and have the necessary information relayed.

Fortunately, Mark Long has indicated we can look forward to another e-mail blast soon with the support staff's contact information for each of the agencies, including e-mail addresses. In the meantime, here is a link to the state's hearing location information located on LARA's website: *http://www.michigan.gov/documents/wca_Hearing_Site_Addresses_80087_7.pdf* ⚒

A Word from the Editor

By Ella S. Parker

On behalf of the council and the section, I would like to extend a sincere thank you to **Tom Ruth** for his work as the editor of this newsletter for the past few years. Tom has done an outstanding job, and his services will be greatly missed.

I am sure some, like I, have taken for granted all that is required to provide the section with an informative newsletter. As I take over the responsibilities, I can only hope that I can do as well as Tom, although I have my doubts. As this is my first time acting as an editor, this should be an interesting learning experience. I will apologize in advance for any grammatical errors I may make or overlook, as I am sure there will be quite a few.

I would also like to invite members of our section to feel free to submit proposed articles for inclusion in the quarterly newsletter. Remember, the purpose of the newsletter is to provide the section with informative articles for all members. Articles may be edited to eliminate any biases or meet space requirements.

I am also open to suggestions regarding constructive recommendations for any changes you would like to see in the format of this newsletter. I, for one, (and maybe the only one), thought a section on upcoming events may be helpful for scheduling purposes. Therefore, I have added one.

We also have many members who are passionate about other causes and may wish to spotlight them with an article. That, too, is open for consideration.

So, as we begin this journey together, please feel free to contact me at *eparker@conklinbenham.com* with your ideas and suggestions.

Again, thank you, Tom. 🛠

Upcoming Events

Date	Event	Contact
June 14, 2012	RABA Cubs Outing	Chris Morris at cmorris@lennonmiller.com
June 21-23, 2012	Workers' Compensation Summer Meeting	eparker@conklinbenham.com or matt@conybearelaw.com
June 29, 2012	Harold Dean Golf Outing	Ray Bohnenstiehl @ (248) 358-5080
October 4, 2012	RABA Golf Outing	TBA
October 19, 2012	National Ass'n Labor Historical Conference	Denice LeVasseur at dlevasseur@levasseurlaw.com

*If anyone has an upcoming event he/she would like to make the section aware of, please e-mail *eparker@conklinbenham.com*

Workers' Compensation Section
State Bar of Michigan
Annual Summer Meeting

June 21-23, 2012

Mission Point Resort • Mackinac Island, Michigan

Thursday, June 21

6:00 pm	Cocktail Party
7:30 pm	Dinner and Hall of Fame Induction Ceremony

Friday, June 22

8:00-11:00 a.m.	Breakfast
9:00-11:30 a.m.	General Business Meeting
6:00-7:30 p.m.	Cocktail Party

Optional Scheduled Friday Afternoon Events

Golf: Contact David DeGraw at 616-446-7200 or ddegraw@shrr.com.

Additional activities: Visit Fort Mackinac, browse the shops on Main Street, bike around the Island, or relax at the Spa.

Arnold Line Ferry will provide discounted ferry tickets and FREE overnight parking.
IDENTIFY OUR GROUP AT THE TICKET WINDOW.

SBM State Bar of Michigan

WORKERS' COMPENSATION LAW SECTION

Registration

Register online at http://e.michbar.org
Registration deadline June 9, 2012

Annual Summer Meeting • June 21-23, 2012

Mission Point Resort • Mackinac Island, Michigan

Agenda

Thursday, June 21

6:00 p.m.	Cocktail party
7:30 p.m.	Dinner and Hall of Fame induction ceremony

Friday, June 22

8:00 -11:00 a.m.	Voucher for Breakfast at Round Island Bar & Grill
9:00 -11:30 a.m.	General business meeting and keynote speaker
12:30 -5:00 p.m.	Golf Outing, Free time
6:00 -7:30 p.m.	Cocktail party
	Dinner on your own – no scheduled section dinner.

Optional Scheduled Friday Afternoon Events

Golf (Must contact David DeGraw at (616) 446-7200 or by e-mail at ddegraw@shrr.com to play.)
Visit Fort Mackinac, browse the shops on Main Street, bike around the Island, or relax at the Spa.

- **Hotel reservations** cannot be made by using this form. To reserve your room, please contact Mission Point Resort directly at (800) 833-7711 . See the attached reservation information and form.
- For additional information about this event contact Ella S. Parker at eparker@conklinbenham.com or Matt Conklin at matt@conybearelaw.com

P #: _____

Name: _____

Adult Guest: _____

Child(ren): _____

Your Firm/Organization: _____

Address: _____

City: _____

Telephone: ( ) _____

Enclosed is check # for $ _____

Please make check payable to State Bar of Michigan

Please bill my: ☐ Visa ☐ MasterCard for $ _____

Card #: _____

Expiration Date: _____

Please print name as it appears on credit card:

_____

Authorized Signature: _____

Cost:

☐ Section member..... $75
(includes all meetings, events and two drink tickets for each cocktail party)

☐ Non-Section member..... $75
(includes all meetings, events and two drink tickets for each cocktail party)

Guests:

☐ accompanying adult..... $50
(includes dinner and two drink tickets for each cocktail party)

☐ child..... $15 x = $ _____
(same as guest) [Child is defined as under 18 years of age.]

Total = $ _____

Mail your check, or credit card information, with the completed registration form to:
State Bar of Michigan
Attn: Seminar Registration
Michael Franck Building
306 Townsend Street
Lansing, MI 48933

Fax (ONLY if paying by credit card) the completed form and credit card information to:
Attn: Seminar Registration at (517) 372-5921

Cancellations: All cancellations must be received at least 48 business hours before the start of the event and registration refunds are subject to a $20 cancellation fee. Cancellations must be received in writing by e-mail (tbellinger@mail.michbar.org), fax (517-372-5921 ATTN: Tina Bellinger), or by U.S. mail (306 Townsend St., Lansing, MI 48933 ATTN: Tina Bellinger.) No refunds will be made for requests received after that time. Refunds will be issued in the same form payment was made. Please allow two weeks for processing. Registrants who cancel will not receive seminar materials.

Mission Point Resort

Mackinac Island, MI
Welcomes
State Bar of Michigan Workers' Compensation Section
Thursday–Saturday
June 21–23, 2012

Garden Queen Rooms
Single/Double Occupancy $145.00

Garden Double Rooms
Single/Double Occupancy $145.00

Straits View Rooms
Single/Double Occupancy $145.00

Lakeside Garden Rooms
Single/Double Occupancy $175.00

Lakeview Rooms
Single/Double Occupancy $175.00

Family Suites
Single/Double Occupancy $225.00

Room rates do not include 6% sales tax, 2% local assessment, 10% resort levy.
A charge of $4.00 per person will apply for luggage transfer from ferry dock to resort and back.

- Reservations must be made by **May 21, 2012**. Reservation requests received after the cut-off date will be based on availability at the hotel's prevailing rates and will be credited to the group's guest room block.
- An advanced deposit of one night's room, luggage transfer, and tax charge is required to confirm your reservation.
- A fee of $20.00 per adult per night will be charged for triple and quad occupancy in Garden, Straits View, Lakeside & Lake View room types.
- In case of cancellation, reservations must be canceled in writing at least 14 days prior to arrival to receive full refund.
- Guest rooms are subject to availability. If room is not available at rate requested, reservations will be made at nearest available rate.
- **Mission Point Resort accepts Visa, MasterCard, American Express, and Discover. PLEASE CALL MISSION POINT DIRECTLY TO MAKE RESERVATIONS AT 1-906-847-3031. ROOMS ARE LIMITED.**

Compromising Conditional Payments

By Chuck Palmer, WC Section Council Secretary

One of the more frustrating things is dealing with a large conditional payment from Medicare in a tough case you want to settle. These are typically aggravation of pre-existing condition cases where there is a big *Rakestraw* issue looming. For older workers already on Medicare, or for workers who are on Social Security disability and Medicare, settling these cases when there is a substantial conditional payment can be a problem.

I discovered regulations which allow Medicare to compromise conditional payments in workers' compensation cases. The regulations do not offer a similar procedure for liability, or third-party cases. This discrepancy is the subject of an appeal of a 6th Circuit case, *Hadden v United States,* 661 F.3d 298 (2011), which has a petition seeking *certiorari* with the U.S. Supreme Court. More on that case in the next newsletter.

The regulations are found at 42 C.F.R. §411.40-47. The Electronic Code of Federal Regulations can be accessed at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tp*l. Section 411.46 deals with lump-sum settlements which include future medical. If the settlement appears to shift the responsibility for future medical to Medicare, then Medicare will not pay for treatment of that condition. §411.46(b)(2). However, if the settlement agreement allocates certain amounts for future medical services, Medicare does not pay for those services until the amount allocated is spent. §411.46(d)(2).

A compromise settlement can result in an apportionment of the conditional payments. If a compromise settlement allocates a portion to medical expenses and gives reasonable recognition of the wage loss element, that apportionment *may* be recognized by Medicare. If the settlement does not allocate any amount to the medical, then the portion considered to be medical payment is determined by calculation of a ratio. The ratio is determined by considering the settlement amount, minus costs, in relation to the total amount that would have been payable if the claim had not been compromised. That ratio is then multiplied by the amount of total medical expenses that had been incurred up to the date of the settlement. That amount is then determined to be the amount paid for medical expenses.

When a compromise settlement also involves conditional payments, the conditional payments owed may also be apportioned. The amount for medical expenses is determined by the method in the above paragraph, using the cost containment rules. The regulations use an example of a total claim worth $24,000, of which $18,000 was medical payments, that is settled for $8,000. Since the settlement was one-third of the total possible award, the amount of the settlement that represents medical payments is $6,000. The Medicare overpayment is therefore $6,000, minus $1,500 in expenses not covered by Medicare, $500 in excess of physicians' fees that were above Medicare "reasonable" charges, and $520 in Medicare Part A deductibles. In the example in the regulations, Medicare is only owed $3,920 ($6,000-($1,500+500+$20)).

If you are compromising your claim, then Medicare must also compromise its conditional payment claim. You may have to appeal the initial conditional payment determination, but it may be well worth the wait for the injured worker. This formula also suggests that plaintiff's counsel may wish to consider making an allocation for future medical payments even in cases where the injured worker is not presently on Medicare, but may become eligible for Medicare sometime in the future.

SBM Practice Managment Resource Center Tip: When Do You Send Out Your Bills?

Billing is probably the least favorite task on an attorney's to-do list. This often leads to an erratic billing "system" with unintended consequences. One factor you may not have considered is when it's best to send out your statements. If you bill once a month, when should the bills be mailed to your clients? Ed Poll, author of *The Business of Law*, recommends that "Billing statements should be mailed so that they reach the client on or before the first day of the month." Since many people pay their bills on or shortly after the first of the month, you want your bill to be on the top of the pile! According to Mr. Poll, "All statements received after about the fifth of the month are usually considered for payment in the following month." Establish a date around the 25th of each month where you reserve time to do your billing. Billing predictability, combined with an end-of-month arrival date, will help reduce the firm's receivables.

Additional resources to help you develop billing policies for your firm:

Winning Alternatives to the Billable Hour, Strategies That Work by James A. Calloway & Mark A Robertson; *How to Draft Bills Clients Rush to Pay* by J. Harris Morgan & Jay G. Foonberg. These books and The Business of Law are available to borrow from the PMRC Lending Library.

But Did You Know...

By Martin L. Critchell

All practitioners know about one statute in the Workers' Compensation Act that describes the average weekly wage from which the rate of compensation is derived: MCL 418.371(2)–(6). And nearly all know about a second statute that describes the average weekly wage for certain public-sector volunteers: MCL 418.161 (1)(d)–(j). But did you know…there is a third statute that describes the average weekly wage? MCL 418.115(d).

The third sentence of § 115(d) describes how to compute the average weekly wage for an employee of an agricultural employer by stating that, "The average weekly wage for such an employee [of an agricultural employer] shall be deemed to be the weeks worked in agricultural employment divided into the total wages which the employee has earned from all agricultural occupations during the 12 calendar months immediately preceding the injury."

This calculation is unique to agricultural employees as the statute indicates "no other definition pertaining to average weekly wage shall be applicable."

What is so surprising is how broadly this statute could apply. The definition of an agricultural employer is found in MCL 418.155(1) and (2). An agricultural employer can include a greenhouse, nursery, ranch, or plantation under § 155(2). And, an agricultural employer can include someone on a farm who is "clearing land of brush and other debris left by a hurricane" under § 155(1)(b). That might not occur very often. Michigan may have blizzards, tornados, and thunderstorms. But, Michigan has not recently experienced a *hurricane* or the effects of a weather related hurricane on any of our *ranches* or *plantations* or farms.

For more information on requirements before this computation can be used, see MCL 418.115(d). 🛠

100 Years Ago

Not only is this the 100-year anniversary of the sinking of the Titanic, this year also marks the 100-year anniversary of the enactment of the Workers' Disability Compensation Act in Michigan.

On Friday, **October 19, 2012**, in partnership with the Department of History at Wayne State University and Wayne State University Law School, the Workers' Compensation Section of the State Bar of Michigan will be presenting a daylong symposium on the past, present, and future of workers' compensation in the postindustrial, "knowledge based" world of employment. Save the date. You will not want to miss this.

We have many prominent and knowledgeable speakers already committed to participating in this event, including Professor Emeritus John F. Burton, formerly of Rutgers and Cornell Universities; H. Allan Hunt, Senior Economist at the W.E. Upjohn Institute for Employment Research; and both the prior and current executive directors of the IAIABC[1]: Greg Krohm and Jennifer Wolfe Horejsh.

Professor Larry Lankton, of Michigan Technological University, has also agreed to present at this event. Professor Lankton is quite knowledgeable about workers' compensation in Michigan and its relationship to the copper and iron mines in the Upper Peninsula. We are hoping to be able to present a documentary film regarding the 1913 fire in an Upper Peninsula mining community. Professor Lankton will be able to separate fact from fiction and may even refer to Woodie Guthrie's song about the fire.

The 100-year history of our law is worth celebrating and studying. Fifty years ago, a conference was held and papers were presented. We are lucky to have a copy of the original document, *Workers' Compensation in Michigan*, dated March 30, 1962. Don Parthum kept the original document and gave it to Don Hannon. We had it scanned and will post it on the section website. This document provides a fascinating insight into the history of the Act, as highlighted below.

Before enactment of the Workers' Disability Compensation Act, courts utilized common law principles to deal with worker injuries. The tort system, with its onerous defenses available to employers, was a complete failure for the then new industrial society. The large number of cases overloaded the courts. Employers spent too much money defending claims and presenting defenses such as contributory negligence, fellow servant rule, and assumption of risk. The money would have been better spent providing medical care and lost wages to injured employees.

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100 Years Ago
Continued from page 8

The long delays caused by the tort system led to antagonism and mistrust between employees and employers. The employees' families were compelled to enter the work force to provide for the family.

In 1911, Michigan passed a law creating a commission of five members to investigate the problem presented by workers' injuries and to recommend legislative action. Two of the five members were to be representatives of employees.

The commission reached four conclusions:

- The law in effect was outdated and change was needed;
- Current remedies were unsatisfactory;
- Greater certainty in specific benefits was necessary; and
- Accidents needed to be prevented.

The commission drafted a law. However, as the bill moved along, a dramatic and unexpected split developed between the two leading labor unions in Michigan: the Michigan Federation of Labor, which endorsed it, and the Detroit Federation of Labor, which opposed its enactment. The division came to a head at a public hearing. At the meeting, all the representatives of the Detroit unions opposed the measure. However, other labor organizations throughout the state were represented and fully endorsed the bill.

The enactment of the workers' compensation law as Act Number 10 of the Public Acts of the first extra session of 1912 was a radical departure in the law. This was a law that provided for liability without fault and eliminated onerous defenses in exchange.

The law was, in theory, optional for both employers and employees. But, in reality, there was no real choice for employers. An employer who opted out of the workers' compensation system still lost its common law defenses of contributory negligence, fellow servant rule, and assumption of risk.

Employees were given a choice and could avoid the limitations of the Act by giving notice of their decision declining coverage. There are no statistics on how many, if any, employees elected not to be subject to the Act. Perhaps there are no such statistics because such employees would likely not keep their job with an employer who chose to be subject to the Act.

So, now that our law has reached the ripe old age of 100, it is time to review and reassess the past, present, and future of workers' compensation in Michigan. Will it sink like the Titanic? Or, will it continue to grow and change to meet an evolving society?

Plan to join us in this most interesting symposium. These presentations will be part of the Department of History's North American Labor History Conference. *http://nalhc.wayne.edu/NALHC/Home.html.* 🛠

This article was prepared by the 100 Year Anniversary of Workers' Compensation Committee, whose members are Denice LeVasseur, Bill Crawforth, Dennis Flynn, and Chris Rabideau.

Endnotes

1 International Association of Industrial Accident Boards and Commissions; www.IAIABC.org

Invite someone to join the section

http://www.michbar.org/sections/pdfs/app_03v2_exst.pdf

Caselaw Update

By Martin L. Critchell

Supreme Court

The Michigan Supreme Court reiterated two statements about disability when issuing an Order in *McMurtrie v Eaton Corp*[1] on December 29, 2011. First, the Supreme Court reiterated *Sington v Chrysler Corp*[2] requires that an employee who has a disability under the first sentence of MCL 418.301(4) does not qualify for compensation unless he also establishes that the disability actually caused the wage loss. ("The WCAC erred in holding that the Workers' Disability Compensation Act does not require a determination that the plaintiff's wage loss is due to his work-related disability. MCL 418.301(4); *Sington v Chrysler Corp*, 467 Mich 144, 648 NW2d 624 (2002); *Kirby v General Motors Corp*, 490 Mich 915, 805 NW2d 440 (2011).")

Second, the Court reiterated the pronouncement in the case of *Lofton v AutoZone, Inc*,[3] that the amount of compensation depends on the extent of disability, not the extent of the wage loss. ("If the [Michigan Compensation Appellate Commission] determines that there is a causal connection between the plaintiff's disability and his wage loss, then the MCAC shall determine the extent of the plaintiff's partial disability and make the commensurate award of wage loss benefits. MCL 418.361(1); *Lofton v AutoZone, Inc*, 482 Mich 1005, 756 NW2d 85 (2008); *Umphrey v General Motors Corp*, 489 Mich 978, 799 NW2d 16 (2011).")

The case was remanded to the Michigan Compensation Appellate Commission (MCAC), as successor to the WCAC.

This disposition is noteworthy because the Court is expressing the understanding that the pronouncements in *Sington* and *Lofton* are authoritative and must be applied under the rule of stare decisis.

On March 21, 2012, the Supreme Court issued an Order in the case of *Morgan v General Motors, LLC,*[4] reversing the Court of Appeals decision. The Court reinstated the former Workers' Compensation Appellate Commission's decision, which held that an injury date that was not alleged in an Application for Benefits could not be utilized as a basis for awarding benefits. In *Morgan*, the claimant alleged a 2005 date of injury. The magistrate entered an award for a 1999 date of injury. The Supreme Court agreed with the WCAC that "the defendant could not possibly have known it was being called upon to defend a date that was in 1999." The Court of Appeals decision was an unpublished decision from July 2011.

Court of Appeals

The Michigan Court of Appeals did not release an opinion concerning workers' compensation since the last update.

Michigan Compensation Appellate Commission

The MCAC issued a number of opinions following the decision by the Supreme Court in *McMurtrie*. *Barclay v Gen Motors Corp*[5] and *Jones v Daimler Chrysler Corp*.[6] are representative of this.

In a case with an interesting twist, the MCAC established the legitimacy of the computer world in workers' compensation cases. The MCAC ruled in the case of *Craver v General Motors Corp*[7] that the computer program maintained by the Workers' Compensation Agency could be used to calculate the amount of compensation with the coordination of other benefits under MCL 418.354(1)(a)–(e) just as well as the codex or "book" released by the Agency. Apparently, the appeal was that only a codex could fulfill the requirement that the director "publish" tables.

Finally, the MCAC ruled that an offer of employment could be presented to an employee during a hearing and considered by the magistrate in his decision. *Wood v Meijer, Inc*.[8] In the case, Meijer offered Danielle R. Wood a job on the first day of trial on October 12, 2005. Her hearing continued on October 25, 2010. *Wood*.[9] When Meijer attempted to present evidence at the continued hearing about the job, the magistrate excluded any consideration of the offer because trial had already started. *Wood*.[10]

The MCAC reversed and returned the case to the magistrate to decide if the offer was a bona fide offer and the legitimacy of any refusal. *Wood*.[11] In addition, the MCAC indicated the wage for the proposed job could be considered in determining the amount of the compensation for partial disability if Wood was able to do the job. *Wood*.[12] ("[Meijer] should be given the opportunity to take the testimony of [Wood] and explore the issue of . . . whether a bona fide offer of reasonable employment was made and unreasonably refused. The magistrate should further explore what effect this evidence might have on the issue of disability . . .") 🛠

Endnotes

1 490 Mich 976; - NW2d - (2011).

2 467 Mich 144; 648 NW2d 624 (2002).

3 482 Mich 1005; 756 NW2d 85 (2008).

4 - Mich - ; - NW2d - (Docket no. 143989)

5 2012 Mich ACO 3 at 4-6.

6 2012 Mich ACO 18 at 4-5.

7 2012 Mich ACO 14.

8 2012 Mich ACO 4.

9 *Id* at 5.

10 *Id*.

11 *Id*.

12 *Id*.