Fall 2003

Workers Compensation Section Newsletter

State Bar of Michigan Workers Compensation Section

New Officers Elected At 2003 Annual Meeting

Chairperson:	Mike Flynn	Muskegon
Vice-Chairperson:	Alan Helmore	Southfield
Secretary:	Richard Warsh	Southfield
Treasurer:	Leonard M. Hickey	Grand Rapids

See back page for 2003-2004 Council Members

Spring Seminar June 17-19 At Boyne Highlands

The Spring Seminar is June 17-19 at Boyne Highlands. All of the arrangements have been made and we are looking for a good turnout. Mark your calendars now. More information will be mailed as we get closer to Spring. John Combs will be chairing the Meeting. For more information you can email John at: *JComb@HickeyCombs.com* .

Symptoms, Schmymptoms!

Impact of Rakestraw Debated

Martin Critchell and John Braden, the attorneys who argued the *Rakestraw* case before the Michigan Supreme Court presented a point/counterpoint presentation at the Section's annual meeting. Critchell maintained that the opinion requires plaintiff's now prove pathological damage in order to even establish that a personal injury has occurred. Braden believes the scope of the opinion is much narrower. He feels the case only applies where there is a pre-existing condition and a subsequent insidious onset of symptoms. Other factors limiting the scope are the nature of the post-work condition and the nature of medical proofs. In other words, if medical proofs establish a work-related mechanism for change in the nature of or level of symptoms, plaintiff's burden is likely met. The Council appreciated Appellate Commissioner Leslie sharing his opinions, which were much in line to those of Braden than to those of Critchell. Many members expressed relief that there is still plenty of room to argue this issue. Jerry Marcinkoski offers his take on Rakestraw and many other cases elsewhere in this issue.

Ryan, Rapaport, Dean: will be Long-Remembered

James D. Ryan of Kalamazoo and Roger A. Rapaport of Lansing died last April, leaving palpable "holes" in the bureaus where they regularly practiced. Harold Dean of West Bloomfield died last June after a nine-year struggle with leukemia. A self-described "modern Robin Hood", Dean ran the popular Workers Comp Open Golf Tournament for many years. All three will be greatly missed by the members who knew them. Jim's partner, Chris Morris, has published a tribute to him in this newsletter. As always, tributes to any of our fallen members should be e-mailed to the editor for inclusion in future editions.

In this Issue:

RECENT COURT DECISIONS

By Jerry Marcinkoski, Lacey & Jones, LLP

Since our last newsletter, the Michigan Supreme Court has released a number of important decisions, all summarized below. By contrast, the Michigan Court of Appeals has issued but one published workers' compensation case (as of this writing). The Worker's Compensation Appellate Commission has issued a number of important decisions as well.

SUPREME COURT

Aggravation of Symptoms Alone Insufficient to Prove "Personal Injury"

In *Rakestraw v General Dynamics Land Systems*, ____ Mich ____; 666 NW2d 199 (2003), the Supreme Court held that aggravation of just the symptoms of a pre-existing condition does not constitute a "personal injury." Instead, the employee must prove he or she has sustained a problem that is medically distinguishable from the pre-existing condition.

The holding of the Court was expressed as follows:

> We hold that a claimant attempting to establish a compensable, work-related injury must prove that the injury is medically distinguishable from a preexisting nonwork-related condition in order to establish the existence of a "personal injury" under § 301(1).

The facts of the case were that plaintiff had suffered a herniated cervical disc before working for the employer. The disc herniation required two surgeries. Approximately four years after the last surgery, plaintiff was hired by the employer. Plaintiff was asymptomatic at the time of hire. His claim was work caused neck pain to return and to increase.

The Magistrate found, "The medical proofs would not sustain a finding of a change in pathology related to any work injury or work activities." The Magistrate did award benefits, however, solely on the basis that work aggravated the symptoms of the pre-existing condition. On appeal to the Worker's Compensation Appellate Commission, the Commission affirmed but suggested that Court of Appeals case law on this point and Supreme Court precedent, as expressed in such cases as *Kostamo* and *Miklik*, were not consistent. The Court of Appeals denied the employer's application for leave to appeal. The Supreme Court granted leave and made the holding quoted above. The Supreme Court then remanded the case to the Commission for further proceedings consistent with the Supreme Court's opinion.

The most significant passages in *Rakestraw* explaining the Supreme Court's view are the following two:

> Where a claimant experiences symptoms that are consistent with the progression of a preexisting condition, the burden rests on the claimant to differentiate between the preexisting condition, which is *not* compensable, and the work-related injury, which *is* compensable. Where evidence of a medically distinguishable injury is offered, the differentiation is easily made and causation is established. However, where the symptoms complained of are *equally* attributable to the progression of a preexisting condition or a work-related injury, a plaintiff will fail to meet his burden of proving by a preponderance of the evidence that the injury arose "out of and in the course of employment"; stated otherwise, plaintiff will have failed to establish causation. Therefore, as a practical consideration, a claimant must prove that the injury claimed is distinct from the preexisting condition in order to establish "a personal injury arising out of and in the course of employment" under § 301(1).
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> * * *
>
> Thus, several cases from this Court have articulated the principle that, where an employee claims to have suffered an injury whose symptoms are consistent with a preexisting condition, the claimant must establish the existence of a work-related injury that extends "beyond the manifestation of symptoms" of the underlying preexisting condition.

The Court's ruling was 4-3.

Injury Due to "Intentional and Wilful Misconduct"

In *Daniel v Department of Corrections*, 468 Mich 34; 658 NW2d 144 (2003), the Supreme Court held the employee was barred from collecting benefits because his injury occurred "by reason of his intentional and wilful misconduct" under MCL 418.305. This section of the Act says, "If the employee is injured by reason of his intentional and wilful misconduct, he shall not receive compensation under the provisions of this act."

The employee worked as a probation officer for the Department of Corrections. As such, he interacted with attorneys in court. Four female defense attorneys alleged he sexually harassed them by, for example, repeatedly and crudely propositioning them for sex. Disciplinary proceedings resulted from the charges. Plaintiff was briefly suspended without pay. He returned to work afterwards, but felt depressed by the results of the disciplinary proceeding, as well as consequential stresses at the workplace.

The Magistrate granted plaintiff a closed period of benefits for a mental disability. The Magistrate said, "While [i]t is difficult to have much sympathy for this claimant, … compensation, like the rain, falls on the just and unjust alike."

On the employer's appeal, the Worker's Compensation Appellate Commission reversed the award. The Commission reasoned § 305 "puts up an umbrella to prevent compensation from falling on this particular 'unjust' claimant." The Commission concluded plaintiff was aware of the employer's rules prohibiting such conduct and consistently engaged in them anyway over a long period of time. The Commission said § 305 precluded any award of benefits.

The Court of Appeals, in a 2-1 decision, reversed the Commission and reinstated the Magistrate's award. The Court of Appeals concluded the mental injury did not occur "by reason of" the employee's misconduct, but instead "by reason of" the disciplinary proceedings. And, the Court of Appeals said plaintiff's conduct, while "voluntary, crude, and unprofessional," did not rise to the "intentional and wilful misconduct" standard contemplated by the statute. Finally, the Court of Appeals said plaintiff's history of sexual harassment indicates the sexual harassment rules were not being strictly enforced by the employer, which detracts from characterizing the harassment as "misconduct."

The Supreme Court disagreed with the Court of Appeals on all points and reinstated the denial of benefits. The Supreme Court quoted with approval the dissenter at the Court of Appeals, saying: "'[I]t cannot be disputed that [plaintiff's] misconduct was the starting point for the resultant disciplinary proceedings that ultimately caused his injury. … [T]he disciplinary proceedings, from which plaintiff's mental disability arose, flowed directly and predictably from plaintiff's misconduct".

The Supreme Court also said the Court of Appeals erred by not considering plaintiff's behavior "intentional and wilful misconduct." The Court said the Commission had characterized it "intentional and wilful misconduct" and that characterization was supported by the record. Finally, the Supreme Court said the record did not indicate the employer had historically failed to enforce sexual harassment rules.

Suspension of Benefits Under § 361(1) for Inability to Obtain or Perform Work Because of Imprisonment or Commission of a Crime

In *Sweatt v Department of Corrections*, 468 Mich 172; 661 NW2d 201 (2003), the Supreme Court was deeply divided, a 3-1-3 decision, with four Justices agreeing on the following resolution of the case:

> Accordingly, we reverse the judgment of the Court of Appeals and remand this case to the magistrate to determine to what extent, if any, plaintiff's loss of wage-earning capacity is because of a work-related injury, and, to what extent, if any, plaintiff's loss of wage-earning capacity is because of the "commission of a crime."[13]

[13] The dissent repeatedly states that the magistrate has already determined that plaintiff is disabled. However, the magistrate originally found plaintiff to be disabled as defined in *Haske v Transport Leasing, Inc*, 455 Mich 628, 634; 566 NW2d 896 (1997). This Court has since overruled *Haske*. See *Sington*, *supra* at 161. Accordingly, on remand, the magistrate is to determine whether plaintiff is disabled as defined in *Sington*, *supra* at 158. That is, if the magistrate determines that plaintiff's loss of wage-earning capacity is wholly attributable to his "commission of a crime," the magistrate must conclude that plaintiff is not disabled because, under *Sington*, *supra* at 158, there must be a link between the work-related injury and the loss of wage-earning capacity. If the magistrate, however, determines that plaintiff's loss of wage-earning capacity is wholly attributable to his work-related injury, the magistrate must conclude that plaintiff is disabled and entitled to benefits. Finally, if the magistrate determines that plaintiff's loss of wage-earning capacity is partly attributable to his work-related injury and partly attributable to his "commission of a crime," the magistrate must conclude that plaintiff is disabled and entitled to benefits for the portion of his loss of wage-earning capacity that is attributable to his work-related injury, but is not entitled to benefits for the portion of his loss of wage-earning capacity that is attributable to his "commission of a crime."

> The dissent states that it is inappropriate to remand this case for a redetermination of disability under *Sington* because defendant has never contested plaintiff's disability. *Post* at 4 n 2. Although defendant has not specifically contested plaintiff's disability, defendant has specifically contested its duty to pay plaintiff differential benefits in light of plaintiff's "commission of a crime." As explained above, if plaintiff's loss of wage-earning capacity is wholly attributable to his "commission of a crime," plaintiff is not disabled under *Sington*. In other words, whether defendant must pay plaintiff differential benefits in light of plaintiff's "commission of a crime," and whether plaintiff is disabled, are two interrelated questions that must be addressed on remand. *Sweatt*, *supra* at 190-191.

The case had been tried prior to *Sington* and had resulted in the finding that the employee was compensably disabled by a knee injury. He received full weekly workers' compensation benefits until he was imprisoned for delivery of heroin. Upon his imprisonment, weekly benefits were suspended under Section 361(1)'s last sentence. This sentence says: " … an employer shall not be liable for compensation under section 351 [total disability], 371(1), or this [partial disability] subsection for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime."

After his release from prison, the employee worked for an employer and plaintiff's average weekly wage then was less than he had been earning at the time of his work injury. Therefore, plaintiff sought a reinstatement of partial weekly compensation benefits.

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Per the above ruling, the case was remanded to determine whether plaintiff's wage earning capacity has been adversely affected by the work injury or by his criminal record, or by a combination of the two. The Court held the answer to these questions is relevant to the disability determination under § 301(4) and *Sington*, as well to the suspension determination under § 361(1).

Purchase of a New Van Not the Employer's Responsibility

In *Weakland v Toledo Engineering Company*, 467 Mich 344; 656 NW2d 175 (2003), the Supreme Court held the provision of the Act, MCL 418.315(1), requiring the employer to supply injured employees with "appliances" to alleviate the effects of the work injury does not require the employer to buy an injured employee a new van, as opposed to paying only for modifications to a van.

This plaintiff suffered a work-related injury and his condition worsened to the point where he needed assistive devices, including a motorized cart and a van customized to transport the cart.

The legal issue presented was: Is the employer liable for the entire cost of the customized van or is the employer only liable for the cost of the modifications necessary to adapt a normal van to accommodate the employee's condition?

The Court of Appeals in a prior case, *Wilmers v Gateway Transportation Co (On Remand)*, 227 Mich App 339; 575 NW2d 796 (1998), had held that the employer is responsible for the cost of the entire van.

The Supreme Court in *Weakland* overruled *Wilmers*. The Court said Section 315(1) recites the types of items the employer is responsible for, such as crutches, artificial limbs, hearing aids, and "other appliances necessary to cure … and relieve from the effects of the injury." The Supreme Court said *Wilmers* was incorrect in considering a van an "appliance". The Supreme Court said a van is not an artificial adaptive aid, like the other items listed in the statute, and is instead simply a means of transportation. The only "appliance" aspect of the van is the vehicular modification to it. It is only the cost of that modification that is the employer's financial responsibility.

Section 222

The Supreme Court in *McComber v McGuire Steel Erection, Inc*, ____ Mich ____; 659 NW2d 231 (2003), reinstated the Worker's Compensation Appellate Commission's dismissal of the employee's petition for benefits because the employee wilfully failed to disclose on his petition that he had employment subsequent to his work injury.

This ruling by the Supreme Court came in an order, rather than a full-blown opinion. The history of the case was that the employee filed an application for benefits at the Bureau but did not disclose on the petition that he had worked for another employer after his alleged work injury, despite that question being posed on the application form. The Worker's Compensation Appellate Commission held plaintiff's application must be dismissed pursuant to MCL 418.222(6), which says the "willful failure of a party to comply with this section shall prohibit that party from proceeding under this act."

The Court of Appeals reversed the Commission on the basis that plaintiff's omission was not wilful.

The Supreme Court, in turn, reversed the Court of Appeals and reinstated the Commission's ruling on the basis there was evidence to support the Commission's factual determination that "plaintiff's failure to disclose employment subsequent to the injury on his petition for benefits" was wilful not merely inadvertent. The Supreme Court said the Court of Appeals exceeded the limited scope of judicial review by not deferring to the Commission's factfinding as required by statute and case law.

Reimbursement to No-Fault Carrier

In *Auto-Owners Insurance Company v Amoco Production Co*, 468 Mich 53; 658 NW2d 460 (2003), the work injury was an automobile accident injury. The auto no-fault insurer paid the employee's medical bills. The no-fault carrier then pursued the employer for reimbursement of the medical bills on the basis the injury was work-related and, as a result, the employer should have paid the medical bills. The no-fault carrier sought reimbursement of the medical expenses in full. The employer countered that its reimbursement responsibility was limited by workers' compensation's cost containment rules.

The Supreme Court held the doctrine of equitable subrogation applies and the no-fault carrier, standing in the shoes of the employee, is entitled to full reimbursement without cost containment limits because the employee would be entitled to full reimbursement as well.

In resolving a different issue relating to interest payable on the medical reimbursement, the Court noted the Magistrate had awarded interest and no appeal or cross appeal on that issue was preserved. Therefore, even though the Court expressed "concerns" on the award of interest, the Court refused to reverse that ruling because the issue had not been properly preserved.

Barnowsky Dismissed

A final case where the Supreme Court had granted leave was *Barnowsky v General Motors*. The Supreme Court, following oral argument, issued an order in *Barnowsky* dismissing the case on the basis the Court was no longer convinced the issues warranted the Court's consideration. The issues in the case related to the effect of *res judicata* on medical expense rulings and MCL 418.315(1)'s language regarding "reasonable and necessary" medical treatment.

COURT OF APPEALS

Injury Sustained While on Employer Premises Compensable

In *Thomason v Contour Fabricators, Inc*, 255 Mich App 121; 662 NW2d 51 (2003), plaintiff suffered a disabling nerve injury when blood was drawn from her arm during a medical

examination at her place of employment. The examination was required if plaintiff wanted additional life insurance benefits through her employer.

The Worker's Compensation Appellate Commission denied benefits on the basis that, while plaintiff's injury occurred in the course of employment, the injury did not arise out of employment because there was no benefit to the employer.

The Court of Appeals reversed. The Court held the Commission erred in denying benefits because the plaintiff was not obliged to show a benefit to the employer for an on-premises injury. And, the Court held that, even if a "benefit-to-the-employer" requirement existed, there was a benefit to the employer, namely: increased employee goodwill by providing employees with additional benefits.

This case was appealed to the Supreme Court by the employer and, as of this writing, it pends there on the employer's application for leave to appeal.

WORKER'S COMPENSATION APPELLATE COMMISSION

En Banc Opinion on Application of the "Significant Manner" Standard in Multiple Employer Cases

In *Elliott v Peterson American Corporation*, 2003 ACO #118, the Commission issued a 5-2 *en banc* decision relating to application of the "significant manner" work relationship standard that applies to "conditions of the aging process" in MCL 418.301(2).

Plaintiff claimed a work-related hip disability. The Magistrate found the employee's condition to be a "condition of the aging process" and denied benefits on the basis that plaintiff's employment with her last employer had not aggravated the condition "in a significant manner" under § 301(2). The majority of the Commission reversed and remanded for a supplemental decision.

The majority opinion, authored by Chairperson Leslie, undertook a historical analysis of whether the word "employment" in § 301(2) required the Magistrate to assess *all* of plainitff's employments, including work for a predecessor employer, or whether the Magistrate's assessment should be confined to the one employer against whom plaintiff filed his claim? The Commission concluded that the Magistrate must consider all of the employee's employment, including work for prior employers, in making the two determinations: (1) does plaintiff suffer from a condition of the aging process?; and, (2) did employment – all employment – contribute in a significant manner to plaintiff's condition?

The dissent, authored by Commissioner Przybylo, emphasized the singular word "employment" in § 301(2), as contrasted with the word "employments" used in other sections of the Act. The dissent would hold that the Magistrate correctly evaluated the case with reference only to plaintiff's work for the named defendant in this matter.

Major Commission Decision on *Sington*

In *Kallas v Eagle Alloy, Inc*, 2003 ACO #51, the Commission issued a major decision with respect to implementing *Sington v Chrysler Corporation*, 467 Mich 144; 648 NW2d 624 (2002). First, the Commission addressed whether *Sington*'s disability test is retroactive. Second, the Commission set forth a detailed road map for resolution of the disablity question at the trial level.

With respect to the retroactivity issue, the employee's counsel argued *Sington* should not apply to cases tried before its release. The Commission reviewed the general rules with respect to application of a new case's interpretation of a statute. Focusing on the three-part test to determine retroactivity articulated in *Sellers v Hauch*, 183 Mich App 1 (1980), the Commission resolved the retroactivity question as follows:

> Thus, after weighing the factors as directed by *Sellers*, we conclude, that, for any post 1987 case pending at the Board of Magistrates or for which a claim has not yet been made, *Sington* applies. Likewise, for any case already adjudicated and still pending on appeal, *Sington* applies (so long as the parties have in some manner expressly raised the application of a *Sington* type question on appeal). In many cases, such as the one at hand, because of the sea change from *Haske* to *Sington*, the necessary findings were not made below, and the record is not complete. In such cases, we have no option but to remand for new findings concerning disability consistent with *Sington*.

Thereafter, the Commission set forth a road map for trial Magistrates to follow in making the *Sington* disability inquiry, including the inquiry (if necessary) into whether the employee is partially disabled. The Commission summarized these points as follows:

> … [I]f the magistrate finds plaintiff is unable to perform all jobs reasonably available to him which paid a wage equal to his maximum wage earned in the past, because of a work-related injury, plaintiff has established the threshold disability as required by *Sington*. After such a finding, the magistrate must then determine the amount of his wage loss. Utilizing principles such as those enumerated in the pre-*Haske*, *Sobotka/Braddock* line of cases, the magistrate should determine if any real job in the real world exists that pays less than the maximum and is reasonably available to plaintiff, and the impact such a job may have on plaintiff's wage loss.

This case involved an employee who had a work injury resulting in a right thumb amputation (for which he had previously been paid specific loss benefits). The case was remanded to the Magistrate for a determination of whether the employee meets the general standard of disability as

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expressed in *Sington*, and – if so – what is his weekly rate in light of the partial disability provision.

Shifting Burdens of Proof

In *Stanton v Great Lakes Employment*, 2003 ACO #129, the case returned to the Commission following a *Sington* remand. On remand, the employee described the severity of his injury and a search for work that was unfruitful. The employer did not submit any rebuttal proofs.

The Commission affirmed the Magistrate's award saying: "We are satisfied that the severity of plaintiff's injury, coupled with his unfruitful job search, yields a *prima facie* case of disability. The burden of going forward shifted to defendants. Plaintiff's proofs must be met with evidence that there are actual jobs available, within plaintiff's post-injury qualifications and training, that equal his pre-injury maximum ability to earn."

Discovery

In *Johnson v All Star Sports Bar*, 2003 ACO #25, the employer filed an interlocutory appeal from a Magistrate's decision denying its request to compel the employee, prior to the taking of lay testimony, to answer interrogatories relating to his place of employment. Plaintiff resisted the appeal on the basis it was interlocutory and resisted on a substantive basis as well.

The Commission first ruled it would entertain the interlocutory appeal citing "the compelling need for interrogatories". The Commission rejected the employee's argument that interrogatories are only proper in death cases. Substantively, the Commission remanded the case for further proceedings directing the Magistrate to determine "whether defendants' assertion of need for interrogatories prior to the taking of lay testimony is now sufficient to justify compelling plaintiff to provide answers".

Retiree Definition of Disability

In *Wisniewski v General Motors Corporation*, 2003 ACO #53, the Commission said the Court of Appeals' interpretation of the phrase "terminates active employment" in the retiree case of *Mason v Chrsyler Corp*, 201 Mich App 17 (1993), was incorrect and conflicted with other pronouncements from the Court of Appeals.

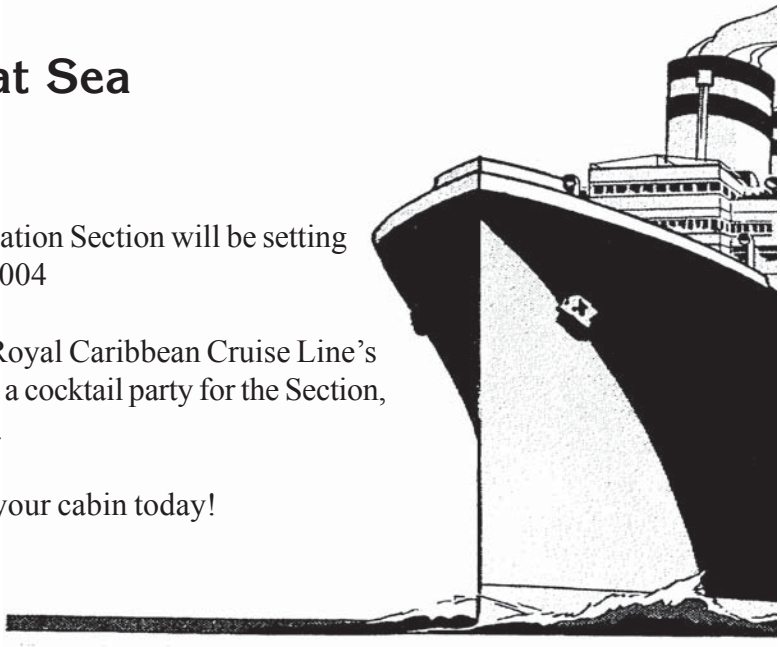
The retiree standard of disability applies to those employees receiving non-disability pensions who "terminate[] active employment". MCL 418.371(1). In *Mason*, the employee performed a restricted job because of a work injury, stopped such work for a non-occupational medical leave of absence, and then retired. The *Mason* Court held the retiree standard applied.

The focal point in *Wisniewski* was whether, in light of *Mason*, plaintiff "terminate[d] active employment" when he stopped working. Plaintiff had been laid off for approximately a year due to a plant closing before retiring. He was required to occasionally attend sessions during his layoff at a "Jobs Bank", but the program did not involve any work. Plaintiff was no longer going to the Jobs Bank when he officially retired.

The Magistrate denied plaintiff's claim after finding he terminated active employment and, thus, subject to the retiree standard.

The Commission reversed. The Commission declined to follow *Mason v Chrysler Corp*, 201 Mich App 17 (1993). The Commission held plaintiff did not terminate active employment within the meaning of § 373(1). Therefore, the Commission said the retiree standard does not apply. The case was remanded for application of the usual definition of disability.

Seminar at Sea



The State Bar of Michigan Worker's Compensation Section will be setting sail for the Western Caribbean on February 28, 2004

Join the Section as we spend seven nights on Royal Caribbean Cruise Line's Explorer of the Seas. Royal Caribbean will provide a cocktail party for the Section, as well as a welcome bottle of wine in each cabin.

Call Mary Anderson at Pro Travel to reserve your cabin today!
(231-733-8359 or 800-968-6348)

Pictures from the 2003 Annual Meeting

Mike Flynn & Charlie Gilfeather with gavel exchange

Deb Strain & Dick Wood

Jennifer Crawford & Tim McAree

Richard Warsh & Len Hickey

Craig's Notes

The following was compiled by the editor from e-mail messages received from: Craig Petersen

St. Joseph, Kalamazoo & Grand Rapids Trial Dockets

TO: All Interested Litigants

FROM: Rick Grattan, Chief Magistrate
Craig Petersen, Deputy Director

Due to Magistrate Kielton being off work for an indefinite period of time and the lack of staff to cover his trial docket, the bureau has decided to temporarily close the St. Joseph hearing site and consolidate this trial docket with Kalamazoo effective the week of September 22, 2003. However, in-person mediation conferences will continue at the St. Joseph location.

Magistrate Quist will assume the Kalamazoo docket full-time and take over the St. Joseph and Kielton-Kalamazoo dockets. St. Joseph cases will remain scheduled on the dates already assigned, and notices will be mailed to all litigants of record advising them of the hearing site location change.

Magistrate Grit will assume the Quist-Grand Rapids docket, and Magistrate Block will handle any conflicts from the Quist docket.

Conflicts with assigned dates or magistrates should be brought to the magistrate's attention as soon as possible for resolution.

If you have any questions, please contact us.

Liquidation of Legion Insurance Company

TO: All Interested Litigants

FROM: Craig R. Petersen, Deputy Director

On July 28, 2003, a liquidation order was issued in Pennsylvania regarding Legion Insurance Company. This has triggered the Michigan Property & Casualty Guaranty Association (MPCGA) to assume liability for these claims.

The MPCGA has contracted with the Accident Fund Insurance Company of America to handle all workers' compensation claims in Michigan. The contact information is:

TPA Operations
Accident Fund Insurance Company of America
232 S. Capitol Avenue
P.O. Box 40790
Lansing, MI 48901-7990
Voice: 517-367-1895
Fax: 517-367-2954

The MPCGA is in the process of receiving the claim files from the third party administrators who handled the claims for Legion. The MPCGA and the Accident Fund are requesting that contested claims be adjourned for 90 days in order to allow the staff to review and set up the files for proper handling.

If you have any questions, please contact me.

Bob Goulet Passes

Dear Attorneys:

Bob Goulet passed away this past March. Bob was in private practice until he went to work for the Accident Fund around the mid 80s. While working there, the state then took over the Accident Fund and Bob became the attorney in charge of the handling of the state claims. He did work out of the AG's office during that time.

Craig

Medicare Update

Dear Customers:

In the past few weeks, I have received updated information from Medicare regarding their interests and how to contact them. If you have a question about past medical benefits that have been paid by Medicare, then you need to contact the following agency:

United Government Services
Attention: Medicare Secondary Payer Unit
P.O. Box 3014
Milwaukee, WI 53201-3014
Voice: (414) 226-5455 [The menu will advise you which staff person to contact within their office.]

Regarding potential future medical benefits to be paid on behalf of Medicare, you need to still contact the regional office of Medicare in Chicago. The contact person is Sharon Johnson at (312) 353-9332. Their address is:

Department of Health & Human Services
Centers for Medicare & Medicaid Services
233 North Michigan Ave., Suite 600
Chicago, Illinois 60601-5519

I also have, in pdf format, a copy of a letter received from the Chicago regional office regarding their criteria for considering whether a Medicare set-aside arrangement will be needed on a particular claim. In addition, I have attached in Word format the Medicare set-aside agreement form for your use on future claims.

If you have any questions, please contact me.

Craig

Medicaid

Dear Attorneys & Customers:

The Michigan Department of Community Health, Medicaid contact person is Pat Morscheck. Her contact information is the following:

Pat Morscheck
Michigan Department of Community Health
Revenue & Reimbursement Division
P.O. Box 30435
Lansing, MI 48909

Voice: 517-335-8340
Fax #: 517-346-9864
E-Mail: morscheckp@michigan.gov

Pat has asked me to inform you to only use one means to contact her regarding medical treatment paid for by Medicaid, and plan on a 30-day turnaround. If you're on a deadline (rare occasion), then please indicate in your communication that this is a RUSH request, and she will attempt to accommodate your request.

I hope this helps you. Thanks.

Craig

Annual Fall Seminar

Dear Attorneys:

The W.C. Section annual Fall seminar will be held during the morning on Friday, October 24th at the Cadillac Place Building in Detroit. The chair of this event is Mark Robins with Plunkett & Cooney law firm, and he is working on developing a program and speakers.

Thanks.

Craig

Liquidation of Fremont Indemnity Company

TO: All Interested Litigants

FROM: Craig R. Petersen, Deputy Director

On July 2, 2003, a liquidation order was issued in California regarding Fremont Indemnity Company. This has triggered the Michigan Property & Casualty Guaranty Association (MPCGA) to assume liability for these claims.

The MPCGA has contracted with the Accident Fund Insurance Company of America to handle all workers' compensation claims in Michigan. The contact information is:

TPA Operations
Accident Fund Insurance Company of America
232 S. Capitol Avenue
P.O. Box 40790
Lansing, MI 48901-7990
Voice: 517-367-1895
Fax: 517-367-2954

The MPCGA is in the process of receiving the claim files from the third party administrators who handled the claims for Fremont. The MPCGA and the Accident Fund are requesting that contested claims be adjourned for 90 days in order to allow the staff to review and set up the files for proper handling.

If you have any questions, please contact me.

Liquidation of Home Insurance Company

TO: All Interested Litigants

FROM: Craig R. Petersen, Deputy Director

On June 13, 2003 a liquidation order was issued in New Hampshire regarding Home Insurance Company. This has triggered the Michigan Property & Casualty Guaranty Association (MPCGA) to assume liability for these claims.

The MPCGA will handle claims internally for all workers' compensation claims in Michigan. The contact information is:

Josie Rea
MPCGA
P.O. Box 531266
Livonia, MI 48153-1266
Voice: 734-543-1547, ext 10

The MPCGA is in the process of receiving the claim files from the third party administrators who handled the claims for

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Home. The MPCGA is requesting that contested claims be adjourned for 90 days in order to allow the staff to review and set up the files for proper handling.

If you have any questions, please contact me.

Dear Customers:

The bureau hired a legal secretary for our Kalamazoo office. Molly Glamzi commenced her employment at our Kalamazoo office on Monday, March 31st. Molly comes to the bureau with over 12 years of workers' compensation experience. Please join me in welcoming Molly to our Kalamazoo office!

Thanks.

Craig

Important Announcement From the U.S. Department of Energy

Energy Employees Occupational Illness Compensation Program

During October 2000, Congress enacted historic legislation to provide a new entitlement program for workers who developed cancer and lung disease as a result of exposure to radiation, beryllium or silica in the nuclear weapons complex.

Under the legislation several thousand workers (or their survivors) will be eligible to receive $150,000 plus prospective medical payments. The workers will also be able to apply for lost wage payments through state workers' compensation programs.

The legislation will also improve the benefits of uranium miners and millers with cancer and lung disease covered under the Radiation Exposure Compensation Act (RECA). These workers will now be eligible to receive the same $150,000 payment - an increase of $50,000 from legislation passed earlier this year - and will now be eligible for the first time for prospective medical payments.

The Congressional Budget Office estimates that, under the new program, DOE workers will receive $1.4 billion in benefits over the next 10 years, and uranium miners and millers will receive an additional $450 million. Funding for both would be mandatory rather than appropriated.

In Michigan, the Department of Energy has identified the following Michigan based employers and locations that might have employees that may qualify for benefits under this program.

Employer	Location
AC Spark Plug	Flint
Baker-Perkins Co.	Saginaw
Bridgeport Brass Co.	Adrian
Brush Beryllium Co.	Detroit
Carboloy Co.	Detroit
Extruded Metals Co.	Grand Rapids
Gerity-Michigan Corp.	Adrian
Mitts & Merrel Co.	Saginaw
Oliver Corp.	Battle Creek
Revere Copper & Brass.	Detroit
Speedring Systems, Inc.	Detroit
Star Cutter Corp.	Farmington
University of Michigan	Ann Arbor
Wolverine Tube Division	Detroit

For more information regarding this program, please visit the Department of Energy website at *www.eh.doe.gov/advocacy,* or DOE workers and survivors can apply for assistance through the department's Toll Free Hotline at 1-877-447-9756.

Letters To The Editor

Dear Section members:

We have finally gotten around to posting a paper on Medicare and Workers' Compensation on our website *http://www.lir.msu.edu/wcc/*.

Ed Welch
Workers' Compensation Center
Michigan State University
welche@msu.edu
517 432-7727

Workers Compensation Section Newsletter

Published quarterly by the Workers Compensation Section, State Bar of Michigan

Mike Flynn, Chairperson

Tim McAree, 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.

Material for publication should be sent to the editor at:
6189 Archer NE
Rockford, MI 49341
tmcaree@msn.com
Phone: (616) 866-2944 Fax: (616) 866-5377

Tribute to Jim Ryan

Jim Ryan was my mentor. In the days and weeks since his death I have discovered that he was a mentor to countless attorneys and claims people throughout the Michigan workers compensation system. The usual story went like this: On my first day down at the Bureau I ran into Jim and he kind of took me under his wing. Through the years he showed a lot of people the ropes.

After a couple of years in the prosecutor's office for Kalamazoo County, Jim left for private practice and entered into the field of workers' compensation. From 1968 until he died in April 2003 Jim lived and breathed the Michigan workers' compensation system. He brought to the system a sense of humor and a wonderful sense of right and wrong. Jim's style and approach were always succinct and to the point.

Some of the things I learned from Jim Ryan are: there are no big deals in life or in comp court; unfair tactics and small-minded tactics are a two-way street that has no end and don't get too excited about anything because it's only money and it's somebody else's. Some of the other things I learned from Jim were: never forget your VanDorpel Rights; the place where we all work is known as a comp shop; inevitably each of us will have the experience of attending a bend-over deposition on behalf of our clients. He frequently paraphrased Orson Wells and the Gallo Brothers: he would, settle no case before its time. In his one and only application of constitutional law principles in the workers' compensation practice Jim would frequently seek adjournments on the basis that the case was not ripe His had a happy demeanor around the office and I miss hearing the echoes down the hallway of those times when Jim would be reviewing voluminous medical records and upon coming across a surgery that was totally unnecessary except to line the pockets of the treating physician he was known to shout, boat payment!

Jim had a series of lectures on the workers' compensation system and about the third encounter I had with Jim I was trying to sort through a multiple defendant situation. He asked me, do you remember LIFO and FIFO from law school? I thought about it and tried to explain something from accounting for lawyers but he quickly interrupted me. No, no, no LIFO stands for last injury fork over, and FIFO stands for first injury fork over. If you are not LIFO or FIFO you are in the rocking chair.

Jim Ryan personified the side of our practice that we all hope never changes, that of collegial respect based on an understanding that each of us will probably be grabbing the short end of the stick at some point in our careers, and we hope that the opposing counsel will be as gracious and generous when that happens to us as Jim Ryan so often was. He always afforded opposing counsel every opportunity that he could to allow them to be the best lawyer for their client that they possible could be. On the other hand, he always stood by his motto that the defense never rests and we stipulate to nothing.

The attorney conference room was really the place where Jim Ryan held court. With his passing, the attorney conference rooms in Western Michigan all seem a little bit empty.

Written by Attorney Christopher D. Morris

June, 2003

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Workers Compensation Section
State Bar of Michigan
Michael Franck Building
306 Townsend Street
Lansing, MI 48933

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First-Class Mail
U.S. Postage Paid
Lansing, MI 48933
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