

# Workers' Compensation Section Newsletter

Winter 2015



## Contents

|   |    |
|---|----|
| From the Chair  | 1  |
| CMS Issues Final Rule Implementing Conditional Payment Appeals Process for Applicable Plans | 2  |
| A Word from the Editor  | 3  |
| Summer Conference Information   | 5  |
| Board of Magistrates Update – Winter 2015   | 6  |
| Hall of Fame Nominations  | 7  |
| Notice and Order from the Board of Magistrates  | 7  |
| Scenes from the Winter Meeting  | 9  |
| But Did You Know . . .  | 9  |
| What Happens to Bills in Committee  | 11 |
| Member Spotlight  | 12 |
| Kids Chance of Michigan Update  | 13 |
| Caselaw Update  | 13 |

## From the Chair

By William Housefield



It seems like only yesterday that I was complaining about the darkness outside my office window before 5 PM. Now, it is already March and 2015 is racing by as the days become longer and longer. I wanted to catch all of you up on some updated news.

First, at our winter seminar at the Dimondale agency in December, we had between 90 and 100 attendees. We would like to express our gratitude to the Workers' Compensation Agency for making the Dimondale location available at no charge to our Section and helping all of our attendees get through Security rather unscathed. On behalf of the Section, I would also like to thank attorneys Daryl Royal and Marty Critchell for presenting the case law update.

Next, I would like to remind all of our members that there are new administrative hearing rules applicable to the Michigan Administrative Hearing System. Practitioners should review the section dealing specifically with the Worker's Compensation Board of Magistrates. In addition, the magistrates have begun using a Scheduling Order to manage their dockets starting in January 2015.

Please note also that ICLE is again collaborating with the Section to offer a discount on the WCDA of 1969 with the 2011 amendments and the new administrative rules. Remember to tell them that you are a member of the Workers' Compensation Section when ordering an updated book.

Finally, the news all of you have been waiting for, we have elected to return to the Traverse City area for this year's annual meeting. The meeting will be at the Park Place Hotel June 18 & 19, 2015. Please make your plans now to attend this event. There no doubt will be discussions and questions about the new rules and the Scheduling Order. We also expect a very special guest speaker.

As part of the annual meeting, we select two of our members for induction into the Workers' Compensation Hall of Fame. We have received a number of nominations for candidates for this year's induction. However, there is still time to submit the name and qualifications before the final selection. We anticipate

Continued on next page

## Workers' Compensation Law Section Council

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Term Expires 9/30/2016

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**Kevin Elsenheimer**, Director, Michigan Workers' Compensation Agency

**Lisa Klaeren**, Chief Magistrate, Michigan Workers' Compensation Agency

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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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**From the Chair** Continued from page 1

making a selection within the next 60 days. Please look at the qualifications and requirements for nomination included in this Newsletter.

Finally, if you have not already done so, please check out the new SBM Connect website, which has been designed specifically for our section. Discussions, issues, and comments relevant to our practice area can be openly discussed. And as always, the Council is here to serve your interests and we appreciate any issues of concern you may have. ✖

## CMS Issues Final Rule Implementing Conditional Payment Appeals Process for Applicable Plans<sup>1</sup>

On February 26th, 2015, CMS issued a final rule implementing provisions of the Strengthening Medicare and Repaying Taxpayers Act (the SMART Act), establishing a right of appeal and formal Medicare Secondary Payer (MSP) appeals process for applicable plans. The appeals process is for situations when Medicare seeks to recover payments from applicable plans, including liability insurance (including self-insurance), no-fault insurance, and workers' compensation laws or plans.

Some things to note regarding the final rule:

- The applicable plan cannot appeal unless and until an initial demand has been issued.
- Medicare has the right to recover conditional payments from the beneficiary, the primary payer, or any other entity that has the proceeds from payment by the primary plan; therefore, Medicare's decision regarding the entity it is pursuing recovery from will not be subject to appeal.
- The right to appeal is limited to the identified debtor, not a potential identified debtor.
- The SMART Act provision amended only the MSP provisions for Medicare Part A and Part B (section 1862(b) of the Act) and does not apply to Part C or Part D plans pursuing an MSP based recovery.

These regulations will become effective on **April 28, 2015**. The posting is on the Federal Register. ✖

### Endnote

- 1 Courtesy of the Carr Allison Medicare Compliance Group, CMS Issues Final Rule Implementing Conditional Payment Appeals Process for Applicable Plans, <<http://carrallisonmsa.blogspot.com/2015/03/cms-issues-final-rule-implementing.html>> (accessed March 13, 2015).



## A Word from the Editor

By Ella S. Parker

The time is fast approaching for our Annual Meeting. This year we are returning the historic Park Place Hotel in downtown Traverse City. We were last there in 2011 and I still remember how pleasantly surprised I was at the spectacular views from the top of Hotel where we had our dinner. The location was also perfect for walking almost everywhere in the downtown area. We are working on a special guest for our Friday meeting but I will share more of that when we are able. We hope to see a lot of our members there.

I wanted to remind everyone that there will be TWO separate forms to fill out if you plan on attending the Summer Meeting. You will receive the forms in an email blast as they are not ready yet and I wanted to get this Newsletter out without further delay.

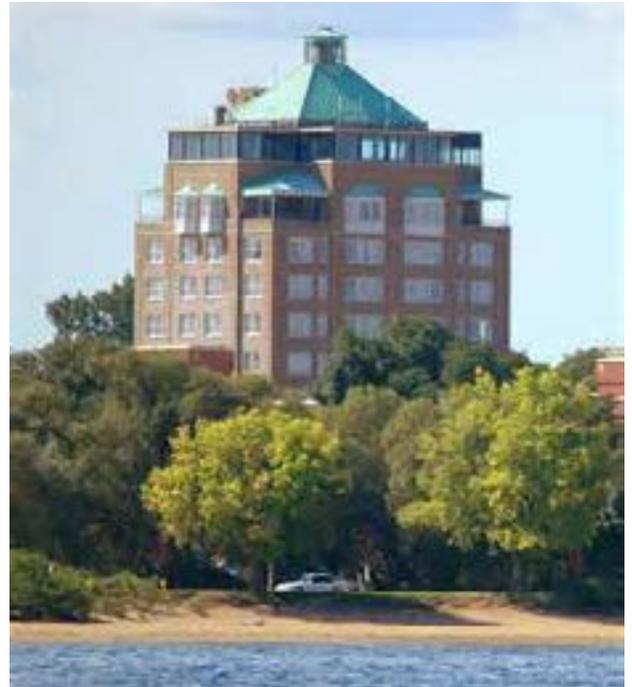
First, there is a reservation form from the Hotel. The form is provided by the Park Place Hotel and must be returned to them. The form can be found on page 5 of this newsletter. Alternatively, you may call the Park Place to make your reservation. The following information is directly from our contract with the hotel:

***“Individuals making their own reservations by telephone should do so by calling 231-946-5000 and asking for the Workers’ Compensation Law Section room block. Our toll-free number does not have access to group information. When reservations are made, we will require a credit card guarantee or cash deposit equal to the room rate and tax for the first night for each reservation. Individual cancellation can be made without penalty up to 24 hours prior to scheduled arrival.”***

We have blocked a limited number in each category. If we blocked more rooms than are booked, your Section would be responsible for the balance between the actual bookings and the guaranteed amount.

The second form you will need to fill out is the actual **MEETING RESERVATION FORM** for you and your guests. You will also be able to register for the Meeting online through the State Bar of Michigan website, *when the form is ready*.

Traverse City has many wonderful activities available for you and your family. We hope to see you there. ✂



*The Park Place Hotel*

Rooms are \$149.95 per night and space is limited. Rooms are available on a first come, first serve basis.

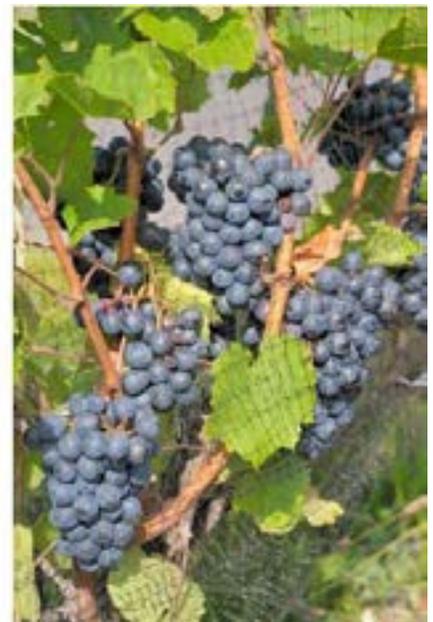


Think Spring!

# Workers' Compensation Section State Bar of Michigan Annual Summer Meeting

June 18-19, 2015

Park Place Hotel • Traverse City, Michigan



## Thursday, June 18

**4:00 pm Council Meeting**

**5:30 pm Welcome Reception followed by  
Dinner & Hall of Fame Induction**

## Friday, June 19

**8:00 – 10:00 am Breakfast**

**9:00 – 12:00 pm Business Meeting**

**12:00 – 6:30 pm Golf or Free Time**

**6:30 – 8:00 pm To be Determined**

## Optional Scheduled Friday Afternoon Events

**Golf:** Contact David DeGraw at 616-446-7200 or [ddegraw@shrr.com](mailto:ddegraw@shrr.com). **Additional activities:** Visit the beach at Grand Traverse Bay, browse the shops in downtown Traverse City, or relax on your own.



## Park Place Hotel

**GROUP NAME: State Bar of MI/Workers' Compensation Law Section**

GROUP CODE: WCLS DATES: June 18-20, 2015

Reservations may be made by utilizing this form or by calling **231-946-5000** and asking for the **Workers' Compensation Law Section** room block. Reservations must be made by **May 18, 2015**. Reservation requests received after this date will be subject to availability, and the group rate is not guaranteed. Subject to availability, the Group Rate will be honored for those who wish to extend their stay.

**Check-In Time: 4:00PM**

**Check-Out Time: 11:00AM**

|   |   |  |
|---|---|--|
| <p><i>Rooms feature either one king or two queen beds, a small refrigerator, microwave and coffee maker and complimentary high-speed wireless internet.</i></p> | <p><b>Group rate \$149.95</b><br/>plus 6% state sales tax and a 5% local assessment per room per night.<br/>(\$166.44)<br/><br/>Rate includes lodging only.</p> | <p><i>Pet-friendly rooms may be available; please inquire when making reservations if you plan to bring a furry friend.<br/><br/>Additional charges may apply.</i></p> |
|---|---|--|

*If you would like a confirmation sent to you via email, please be sure to provide your email address below.*

**Group Code: WCLS**

Arrival Day/Date: \_\_\_\_\_ Departure Day/Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Room Type Request (king bed, two queen beds): \_\_\_\_\_

Conference Attendees sharing same room: \_\_\_\_\_

Special Requests (accessibility, dietary, etc.): \_\_\_\_\_

**All reservation requests must be guaranteed by a credit card (see below)  
or accompanied by a deposit equal to one night's stay per room.  
Reservations may be cancelled without penalty up to 24 hours prior to your arrival date.**

**AUTHORIZATION NOTE:** I authorize and acknowledge that my reservation is guaranteed by my payment card as detailed below. A credit card must be presented at check-in.

Credit card #: \_\_\_\_\_ Expiration Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Billing Zip Code: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and/or Company Name as it appears on card: \_\_\_\_\_

**Mailing/Fax/Email Information:**  
Park Place Hotel  
Attn: Reservations Department  
300 East State Street, Traverse City, MI 49684  
Phone: 231-946-5000 Fax: 231-946-2772  
[reservations@park-place-hotel.com](mailto:reservations@park-place-hotel.com)

# Board of Magistrates Update – Winter 2015

By Chief Magistrate Lisa Klaeren

There have been many changes recently at the Board of Magistrates. This includes Magistrate reappointments, docket assignments, Agency closings (Flint) and new Rules and procedures. Part of the new procedures includes the way redemption files are requested when no application is pending.

Congratulations to Brian Boyle, David Grunewald, Beatrice Logan, Luke McMurray, Lou Ognisanti, Chris Slater, Bob Tjapkes, and myself. Governor Snyder re-appointed all eight Magistrates to new terms expiring January 26, 2019. Governor Snyder re-appointed me as the Chief Magistrate. The remaining seven magistrates' terms do not expire until January 2017; therefore, you can expect some consistency on the Board for the next couple of years.

In conjunction with the Flint closing and the reappointments, we will be reassigning some magistrates. Magistrate McMurray will now be handling files in the Saginaw office, Magistrate Tjapkes will be full time in Dimondale and Magistrate Woons will be moving to the Dimondale office for three weeks a month and will continue her one week per month in the Upper Peninsula. All other magistrates will maintain their current dockets.

The Flint Workers' Compensation Agency will close on February 13, 2015. All files currently at the Flint office will be transferred to the Dimondale Agency effective February 17, 2015. I anticipate that Magistrate Tjapkes will maintain the files assigned to him and Magistrate Woons will assume the files previously assigned to Magistrate McMurray. Magistrate Woons' prior Saginaw cases will be reassigned to Magistrate McMurray. There may be a slight adjustment of some files to accommodate the changing schedules, but any impact should be minimal.

The Board of Magistrate Rules became effective on January 15, 2015. These Rules are part of a larger set of Rules applicable to everyone that is involved in an administrative hearing in the State of Michigan under MAHS. The Rules include a "General" section, applicable to all administrative hearings, and a section specific to the Board of Magistrates in workers' compensation cases.

One of the more significant additions is Board Rule 1307. This Rule provides for scheduling conferences, status conferences and time guidelines for individual cases. This Rule will immediately impact the Workers' Compensation Section, as the Board will soon begin issuing Scheduling Orders on recently filed cases.

In general, magistrates will issue a Scheduling Order at the pre-trial or within 30 days thereafter, at a scheduling conference. *All parties are required to attend the scheduling conference.* The Scheduling Order includes deadlines for the completion of certain activities, with Trial anticipated within 18 months. A copy of the Scheduling Order the magistrates will be using is included in this newsletter. While we intend to enforce the Scheduling Orders, they may be adjusted to meet the demands of the case and/or parties.

The new Rules require a Status Conference within 180 days of the Scheduling Conference. At the Status Conference, the attorneys will update the magistrate on the status of the case and make any necessary adjustments to previously established deadlines.

The rules do not prevent the magistrate and/or the parties from scheduling dates in the interim to monitor the progress of the claim. These control dates will help keep the parties on track and move the claim to Trial in a timely manner.

One other significant change is a procedural change involving requests for redemptions in non-litigated files. Previously an attorney could merely request the file from the Agency, usually by email. Now, an attorney must file a Form C. Effective immediately, if a party would like the Board of Magistrates to review a claim for redemption only, that attorney or party must file a Form C with the Agency. Please check the box "Other" on that document and then add an explanation indicating that the file is being requested for magistrate approval of a redemption.

By requiring the Form C in this situation, it ensures that the filings are proper filings and that the insurance coverage listed at the Agency is accurate. Our goal is to avoid incomplete or inaccurate file information, both of which have created numerous problems in the past. MAHS will work diligently to move these types of claims to the hearing level as quickly as possible.

With all these changes at the Board of Magistrates it is more important than ever that everyone works together to make this transition period as smooth as possible. Our goal is to keep these claims moving through the system as quickly as possible and we believe that these changes will assist all of us in doing so.

## Hall of Fame Nominations

It is that time of year again. It is time to start thinking about summer and the summer meeting. Our Section honors two new inductees as members to the Workers' Compensation Hall of Fame at our annual Spring/Summer Meeting each year. The event is well attended and is an opportunity for us to show our support for those who have influenced our practice and established themselves as proven leaders.

Do you know someone who you think is deserving of this honor? If so, please provide a written recommendation to a member of the Hall of Fame Committee or any member of the Council. The Hall of Fame Committee this year consists of Teresa Martin, Chuck Palmer, Bill Housefield and Chris Rabideau.

Your written recommendation should take into consideration the following requirements and provide an explanation as to how that individual has met the requirements:

- Must have at least 20 years of proven experience in the field of Workers' Compensation Law and be a licensed attorney.
- Possess the highest professional qualifications, ethical standards, character, integrity, professional expertise and leadership.
- Demonstrate a commitment to fostering and furthering the objectives of the Workers' Compensation Section of the State Bar.
- Provide exceptionally high quality professional services to clients, magistrates and the public.
- Provide significant evidence of scholarship, teaching, lecturing and/or distinguished published work in the field of Workers' Compensation.
- Stand out to newer attorneys as model of professionalism in deportment and advocacy; a person who should be emulated.
- Have earned the respect of the bench, opposing counsel and the workers' compensation community.
- Display civility in an adversarial relationship.
- Avoid allowing the ideology differences to affect civility in negotiations, litigation and other aspects of law practice.
- Demonstrate an active interest in resolving issues.
- Have a thirst for knowledge in all areas of the law that affects their representation of their clients in Workers' Compensation and actively participates in the Workers' Compensation Section.
- Have a reputation as an individual with broad knowledge and involvement in all aspects of workers' compensation law.

***Please note that many people may be nominated, but only two will be elected.*** The Committee will narrow down the nominations to the top four candidates. The Council will have the final vote on the two selected and they will advise the candidates of their selection.

## Notice and Order from the Board of Magistrates

By Chief Magistrate Lisa Klaeren

February 12, 2015

The Workers' Compensation Agency is undertaking a major replacement of its data system and the Magistrate docket functions presently in the existing system will be transferred to the Board of Magistrates case management system which will eventually be generating hearing notices as needed. The date for the transfer has not been fixed as of this time. To avoid costly programming of the old data system to accommodate the recent changes in the Administrative Hearing Rules, the existing standard language in the pretrial notices will not be updated. The parties should be aware that their obligations under the new rules may be different than past rule and practice.

**It is hereby ordered** that the language on all acknowledgement and notice of pretrial mailings is deemed to contain the following language: **Failure of either party to appear may result in Board of Magistrates action as provided by R 792.11303.**

/s/ Hon. Lisa Klaeren,  
Chief Magistrate,  
Workers' Compensation Board  
of Magistrates.

BOARD OF MAGISTRATES  
CASE SCHEDULING ORDER No. \_\_\_\_\_

Personal Service  Mailed  
\_\_\_\_\_, \_\_\_\_\_, 2015.

|                   |                    |                    |
|-------------------|--------------------|--------------------|
| Caption:          | Docket No. xxx-xx- | Application Filed: |
| Party/Appearance: | Party/Appearance:  |                    |
| Party/Appearance: | Party/Appearance:  |                    |

On the \_\_\_ day of \_\_\_\_\_, 2015, the parties, through counsel or *pro se*, appeared for the scheduling conference in this case, and after consulting with the parties or their attorneys, reviewing the file, and a careful review of this matter:

**IT IS HEREBY ORDERED:**

|   |
|---|
| All parties/funds shall be joined prior to the status conference (6 months from scheduling order)       |
| Forms 105(A) and (B) shall be exchanged by: 3 months from this scheduling order                         |
| Medical and employment records shall be exchanged or subpoenaed by: 3 months from this scheduling order |
| A Status Conference is scheduled 6 months after this scheduling order: personal attendance is required  |
| Mediation/facilitation shall be conducted within 12 months after this scheduling order                  |
| The proposed Final Disposition Date is: 18 months from this scheduling order                            |

|  |
|--|
| IMEs shall be <b>scheduled</b> by: 6 months from this order; IMEs shall be <b>completed</b> by: 9 months from this order |
| Plaintiff's medical depositions shall be completed by: 14 months from the date of this scheduling order                  |
| Defendant's medical depositions shall be completed by: 15 months from the date of this scheduling order                  |
| Plaintiff's vocational depositions shall be completed by: 16 months from the date of this order                          |
| Defendant's vocational deposition shall be completed by: 17 months from the date of this order                           |

|  |
|--|
| Exhibits shall be exchanged not less than 42 days before trial unless Rule 5 is waived, then not less than 7 days before trial.            |
| Witnesses names shall be exchanged not less than 7 days before trial.  |
| Each party shall submit a proposed stipulation sheet and list issues to be decided not less than 7 days before trial.                      |
| <b>The deadlines set forth in this order are independent deadlines and will be treated as such.</b>  |
| <b>Failure to comply with this order may result in dismissal of application, striking of carrier's response, or rejection of evidence.</b> |
| <b>Disclosures and deadlines may be extended by the Magistrate for good cause.</b>   |

|                       |
|-----------------------|
| <b>Other matters:</b> |
|                       |
|                       |
|                       |

Signed and served this \_\_\_ day of \_\_\_\_\_, 2015 at \_\_\_\_\_, Michigan.

Magistrate:

See reverse for Notes and Reminders

# Scenes from the Winter Meeting

Photos courtesy of Bill Housefield



Tim McDonald, Steve Pollok, Don Waldron and Bill Housefield



Mary Housefield with Monique and Steve Pollok

## But Did You Know . . .

By Martin L. Critchell

Practitioners know that the Worker's Disability Compensation Act of 1969<sup>1</sup> is a resource and may be cited as either the **Worker's Disability Compensation Act** or the **workers' compensation act**.<sup>2</sup> Practitioners know that the opinions of the Michigan supreme court and Michigan compensation appellate commission are a resource and an initial citation of an opinion by the Court must include the official and regional reporter<sup>3</sup> unless unavailable<sup>4</sup> and an initial citation of an opinion from the appellate commission need not include the pound sign.<sup>5</sup> And, of course, practitioners know that the testimony of witnesses is a resource and must be cited "Q." and "A."<sup>6</sup> or with the name or title of other speakers such as "*The Court*:" and "*Mr. Smith (attorney for the defense)*."<sup>7</sup> But did you know . . . information from the Internet is a resource that may be cited as authority in a specific way?

Administrative Order No. 2006-3 I (C)(13) allows presenting information from a website provided that its author, title, Internet address, and the date of access are cited:

"Materials found only on an Internet website should include an author (if available), a title, an Internet address, *and* the date on which the site was accessed.

Examples:

- James Wyman, Florida Law Online <<http://www.gate.net/~wyman/flo.html>> (accessed August 1, 1999).
- Federal Judicial Center, *Federal Judicial Center Publications* <<http://www.fjc.gov/pubs.html>> accessed July 10, 1999)."<sup>8</sup> (original emphasis)

While the examples referenced by the Court are professional, the administrative order is not restricted to the character of the website. An online encyclopedia such as Wikipedia and social media sites as Facebook and Twitter are resources that may be referenced by the citation protocol of AO 2006 – 3 I (C)(13). The Michigan court of appeals referenced testimony and unsworn presentations to a committee of the Michigan House of Representatives in deciding the recent case of *Okrie v Michigan*.<sup>9</sup>

There are two important consequences to this. First, an employee who describes having searched for work on-line to substantiate a claim for wage loss compensation should provide the title, author, Internet address of the cite and the date of access as required by AO 2006-3 I (C)(13) and a general statement of searching "on-line" to look for work should not be accepted.

*Continued on next page*

**But Did You Know ....** Continued from page 8

And second, an employer may present the postings from a social media websites such as Instagram, Facebook, Twitter, and LinkedIn to contradict testimony of a claimant with a simple citation by the terms of AO 2006-3 I (C)(13).

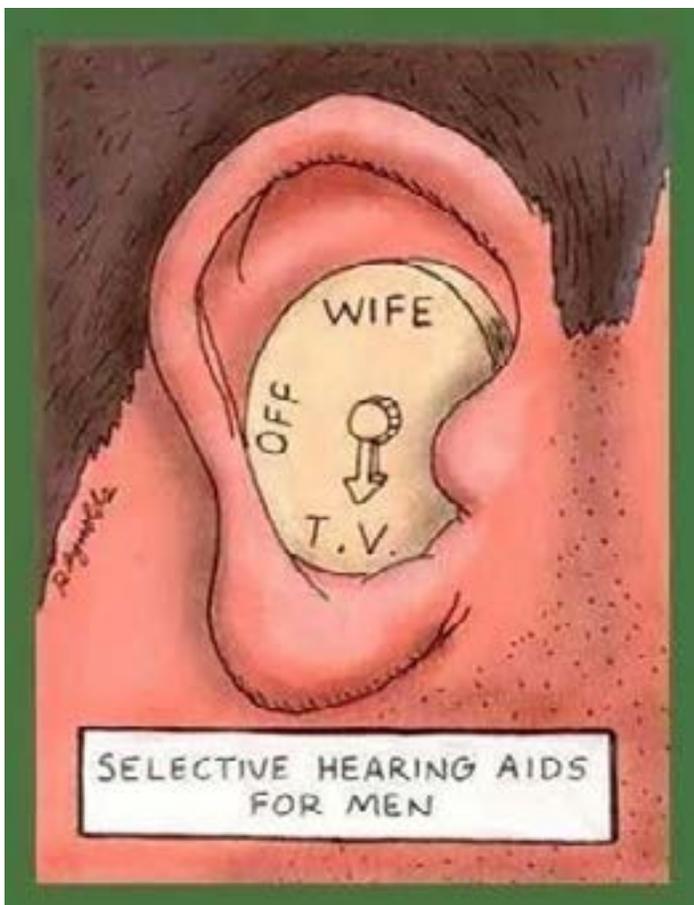
The date of the access to the website is crucial. Web pages can be deliberately altered or changed. For example, a post on a Russian social media site (Vkontakte) that "We just downed a plane, an AN-26 [Antonov 26, a Soviet-built military cargo plane]" with video of the wreckage was deleted within two hours when it turned out that the AN-26 was actually Malaysia Airlines Flight 17 that was shot down over the Ukraine on July 17, 2014. Websites can disappear with the host. Millions of accounts were deleted or vanished when MySpace, GeoCities, and Friendster were sold or reconfigured.

This is not to say that a website, post, or visit can vanish forever. There is a nonprofit library that archives almost everything. The original post on the Russian website bragging about the shoot-down had been archived and was the basis for indictment of the separatists responsible after the expungement on Vkontakte. Anyone can preserve a webpage, at

any time, by going to "archive.org/web," typing the URL, and then clicking "Save Page Now." That way a posting on social media can be preserved despite efforts to delete or alter it. ✂

## Endnotes

- 1 MCL 418.101, *et seq.*
- 2 Administrative Order No. 2006-3 I (B)(2)(a)(7)(2). ("An act may be referred to by an unofficial title even though it has an official title. Worker's Disability Compensation Act/workers' compensation act.")
- 3 AO 2006-3I (A)(1), (4)(o)(1). ("The first time a case is cited in an opinion, either in the body of the test *or* in a footnote, cite *in full* the official reporter of its jurisdiction (where available), and *include the parallel* citation of the regional reporter. *Mayberry v Pryor*, 422 Mich 579; 374 NW2d 683 (1985). \*\*\* When an official and a parallel citation are not yet available, provide blanks in which the information later can be inserted. Example: \_\_\_ Mich \_\_\_ ; \_\_\_ NW2d \_\_\_ (1978).") (original emphasis).
- 4 AO 2006-3 I(C)(3). ("Cite published cases as follows: \*\*\* *A v B*, 1989 Mich ACO I. (Workers' Compensation Appellate Commission Opinions)")
- 5 AO 2006-3 II (E)(8)(a). ("When quoting from trial or other transcripts italicize: a) 'Q.' and 'A.' (Do *not* use: 'Q:' or 'A:>')") (original emphasis)
- 6 AO 2006-3 II (E)(8)(b). ("When quoting from trial or other transcripts italicize: \*\*\* b) Names or titles of the speakers: *The Court : Mr. Smith (attorney for the defense) ...*")
- 7 306 Mich App 445, 449 n5; \_\_\_ NW2d \_\_\_ (2014).
- 8 306 Mich App 445, 449 n5; \_\_\_ NW2d \_\_\_ (2014).
- 9 306 Mich App 445, 449 n5; \_\_\_ NW2d \_\_\_ (2014).



Join the section. It's all it's cracked up to be.  
<http://www.michbar.org/sections>

Done

# What Happens to Bills in Committee

## Government 101

VoteSmart.org



Bill is introduced and given a bill number



Bill is assigned to committee

Sometimes a committee chairman chooses to not hear the bill, effectively "killing it"



Hearings are held where witnesses on both sides of the issue testify about the bill

Bill assigned to a subcommittee

Subcommittee reports to larger committee



Committee votes on the bill



Amendments and revisions are made to the bill

If the bill does not get a majority of votes, it's "dead" and cannot go to the floor



Committee writes a report supporting a bill. Those opposed occasionally write a report against the bill.



Bill leaves committee and is "reported" to the Senate to be put on the calendar



After a bill leaves is reported, it can be debated on the floor and possibly become a law



Sometimes bills are not brought up on the floor and then cannot become law



Ever wondered what happens when a bill goes to committee? VoteSmart's Government 101 makes it easy. See More



48 Likes  
2 Comments

## Member Spotlight

This is the first, of what we hope are many, articles about workers' compensation attorneys who are giving back to their community by volunteering. Murray Gorchow has been a Type I diabetic for 51 years. For the last four years, he participated in the American Diabetes Association's *Tour de Cure*. This year's event will take place on June 6, 2015. I encourage all of you to read the article below to find out why he does what he does and who he is riding in honor of this year.

American Diabetes Association.  
**Tour de Cure**

American Diabetes Association  
1701 North Beauregard Street  
Alexandria, VA 22311  
1-800-DIABETES



[Click here to visit my personal page.](#)

Hello Everyone,

I will be cycling again on June 6, 2015, for my fifth year in the American Diabetes Association's Tour de Cure fundraising event.

In the last four years, with your help, I have raised over \$12,500. In 2014, I achieved my personal lifetime goal of reaching the Michigan Tour de Cure "Hall of Fame" by raising over \$10,000. *For 2015, I am dedicating my fundraising in memory of **Keith Schild**, an attorney and colleague, who passed away last year at all too young an age as a result of diabetes. This year, I will ride in memory of Keith.*

In 2014, I received a "50 YEAR MEDAL" and CERTIFICATE OF ACHIEVEMENT" from the JOSLIN DIABETES CENTER of Boston Massachusetts. I could not have achieved that accomplishment without the help of the American Diabetes Association and its fundraisers and generous contributors over those 50 years. Your support is important to me not just personally as a Type I diabetic for over 51 years now, but our efforts together will help set the pace in the fight against diabetes.

This will be my fourth year on the Organizing Committee for the Michigan *Tour de Cure*. I appreciate any support you can provide. It is easy to make a contribution on line and you get an instant receipt for tax deduction purposes. For those who prefer to send a check, make your check payable to the American Diabetes Association. *Put Tour de Cure--Gorchow in the Memo on your check* and mail it to me today at Murray Gorchow, 5532 Abington Rd., West Bloomfield MI 48322. I will send you a receipt by return mail.

No matter how small or large, your generous gift will help improve the lives of nearly 24 million Americans who suffer from diabetes, a number that is, unfortunately, growing. Our hope is that future generations can live in a world without this disease. Together, we can all make a difference!

Thank you for your contributions to a cause that has made a difference in my life, and the lives of others.

*Murray*

# Kids Chance of Michigan Update

By Murray Feldman

Thanks to all for your continued support. We are thrilled to announce that the Accident Fund of Michigan is our first “corporate sponsor. We continue to ask for your help in finding kids. Go to our website for details regarding any issue or question, or contact me at (248) 591-4954 or at my new email: [mfeldman@murrayfeldman.com](mailto:mfeldman@murrayfeldman.com).

We have several exciting fundraising events scheduled for the spring and summer. Please check our website for upcoming events and opportunities to join in the fun and/or become a sponsor. [www.kidschanceofmi.org](http://www.kidschanceofmi.org). ✂

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## Caselaw Update

By Martin L. Critchell

At the time of this writing, there was only one important decision about the workers' compensation act<sup>1</sup> that was announced by a court and three by the Michigan compensation appellate commission since the last newsletter.

### *Williamson v Gen Motors LLC*<sup>2</sup>

The Michigan supreme court directed the Michigan compensation appellate commission to decide if “[Shawn Williamson’s] loss of wages at the level she had been earning with [General Motors] prior to the onset of her disability was, at least following her recovery from hand surgery, attributable to her voluntary participation in the special attrition program, which severed her right to employment by [GM.]”

This pronouncement emphasizes the distinction between *disability* and *wage loss* that had been described in and example given in deciding the case of *Sington v Chrysler Corp.*<sup>3</sup> Plainly, the distinction between *disability* and *wage loss* made by the example in *Sington* is the law as the Court unanimously and peremptorily decided *Williamson*. The distinction cannot be avoided as an example and not a ruling of law.

This underscores that wage loss compensation is not available with two points – injury from work and limited earning capacity from injury – but only with three – injury from work **and** limited earning capacity from injury *and* loss of wages from the limited earning capacity.

### *Walker v Metropolitan Environmental Services, Inc.*<sup>4</sup>

There are two kinds of orders the workers' compensation board of magistrates may enter. One is an order disposing of all of the claims against all of the parties. This kind of order is known as a final order because there is no remaining controversy that could be the subject of another order. The other

kind of order decides some of the claims or all of the claims against some of the parties, but not all of the claims by all of the parties. This kind of order is known as an interlocutory order because there are issues that remain to be decided. *Worzer v Geraldine*.<sup>5</sup>

The distinction is important because the Michigan compensation appellate commission must review a final order that has been appealed but not an interlocutory order that has been appealed. The appellate commission ruled in the case of *Walker v Metro Environmental Serv, Inc.*<sup>6</sup> that review of an interlocutory order by the board of magistrates was discretionary and not by right. *Walker*.<sup>7</sup> (“[T]he granting of a review of interlocutory appeals [SIC orders] before the Commission, and its predecessor the Workers' Compensation Appellate Commission, is discretionary. [citations omitted]”) And the commission added that the bias is against review of an interlocutory order; there must be some compelling reason for immediate review. *Walker*.<sup>8</sup> (“In general, interlocutory appeals are looked at with disfavor because they tend to delay final disposition ... where there is no compelling reason why awaiting review of the [board of magistrates'] final decision of [SIC after] trial will not provide [an] adequate remedy, such appeals will not ordinarily be entertained.”)

This ruling does not mean that an interlocutory order will never be reviewed. *Green v Ziegelman*.<sup>9</sup> (“party claiming an appeal of right from a final order is free to raise issues on appeal [that are] related to prior orders.”)

This problem can be avoided by the magistrate. The magistrate can state immediately before signing that the order “resolves the last pending claim and closes the case” (making it final) or not (making it interlocutory). The commission has not required or requested such a declaration.

*Head v Chrysler Group LLC*<sup>10</sup>

The workers' compensation board of magistrates entered no fewer than three orders in the dispute between Percy Head and Chrysler. The first was entered on June 15 1989 and allowed Head wage loss compensation after November 24, 1974 and with so-called differential compensation after October 5, 1982. Also, the cost of care by his wife was allowed but with no statement of the amount of time or rate. This order was not appealed. The second order was entered on April 10, 1992 and specified the amount of time of allowable care provided by the spouse (90 minutes daily) and a rate (\$5.00 hourly). This order was not appealed. The third order was entered on August 23, 2012 and increased the amount of allowable care provided by the spouse of time (four hours daily) and the rate (\$15.00 hourly). This order was appealed. *Head v Chrysler Group LLC*.<sup>11</sup>

The Michigan compensation appellate commission rejected the argument by Chrysler that the second order barred changing the amount of allowable time or the rate. *Head*.<sup>12</sup> The commission relied on the decision by the Michigan supreme court that allowed reinstating wage loss compensation after a decision that the injured employee had recovered from a period of disability, *Hlady v Wolverine Bolt Co*.<sup>13</sup> *Head*.<sup>14</sup> This was remarkable for the disregard for a case on-point, *Kosiel v Arrow Liquors Corp*.<sup>15</sup>

Also, absent from the decision is any reference to the last sentence of MCL 418.315 (2) limiting payment to a *health care provider* – this would apply to the spouse of Head – of the lesser of the *usual charge* or the *charge under the rules* [for cost containment].

The noteworthy feature is that the kind of care must be *reasonable* but the dollar amount must be either the *usual charge* or the *cost contained amount*.

*Olivares v Performance Abatement Services*<sup>16</sup>

There were three orders entered by the workers' compensation board of magistrates resolving the dispute between Joseph Olivarez and Performance Abatement Services. The first was entered on December 13, 2000 and allowed Olivares wage loss compensation between May 5 and August 1, 1998 when an offer of reasonable employment (favored work) was refused. This was not appealed. A second order was entered on June 15, 2005 and reinstated wage loss compensation because the earlier offer of work had expired but then stopped wage loss compensation on May 20, 2005 because Olivares recovered from the injury at work and any limitations were from a non-occupational arthritis. This order was appealed but affirmed. The third order was entered by the board of magistrates on September 2, 2014 and dismissed a request by Olivarez to vacate the two earlier orders. Unlike Percy Head,

Olivares did not claim to have had a change in condition. *Olivares*.<sup>17</sup> Olivares appealed this third order to the Michigan compensation appellate commission. *Olivares*.<sup>18</sup>

The commission rejected the argument from Olivares that one or both of the prior orders were void. The commission emphasized that the board of magistrates had subject-matter jurisdiction and personal jurisdiction before the earlier orders were entered saying, "that [Joseph F. Olivares] did not obtain the relief he requested does not make the [earlier] orders and opinions void. {He} had his day in court ..." *Olivares*.<sup>19</sup>

This was quite accurate. An unappealed order can be vacated with the loss of a party before entry, *Walker v US Equip Co*,<sup>20</sup> or because the court could not decide the kind of case. *Joy Two-Bit Corp*.<sup>21</sup> But these are the only grounds to vacate a final order.

The difference between *Olivares* and *Head* was that Joseph Olivares sought to vacate the two earlier orders and did not recognize them as valid while Percy Head recognized the validity of the prior orders and claimed that the facts had changed afterwards, and there had been a change in the condition. ✖

## Endnotes

- 1 MCL 418.101, *et seq.*
- 2 \_\_\_ Mich \_\_\_ ; NW2d \_\_\_ (2014)
- 3 467 Mich 144; 648 NW2d 624 (2002).
- 4 2014 Mich ACO 50.
- 5 268 Mich 286; 256 NW 439 (1934).
- 6 2014 Mich ACO 50.
- 7 *Id.* at 2.
- 8 *Id.*
- 9 282 Mich App 292, 301 n6; 767 NW2d 660 (2009).
- 10 2015 Mich ACO 1.
- 11 *Id.* at 1-2.
- 12 *Id.* at 2.
- 13 393 Mich 368, 375-376; 224 NW2d 856 (1975).
- 14 2015 Mich ACO 1, 2.
- 15 446 Mich 374, 382-384; 521 NW2d 531 (1994).
- 16 2015 Mich ACO 2.
- 17 *Id.* at 23.
- 18 *Id.* at 3.
- 19 *Id.* at ?
- 20 94 Mich App 454; 290 NW2d 36 (1976).
- 21 287 Mich 244; 283 NW 45 (1938).