Legal Update

Presented by
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SUMMARY OF RECENT APPELLATE COURT CASES

Presented By: Dawn M. Drobnich, MSIA Executive Secretary
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I. Opening remarks

- Spring Conference dates 6/9/15 to 6/11/15, Grand Rapids, Michigan
- Recognition of Leigh Stepaniak, Wayne County Airport Authority

II. Sixth Circuit Court of Appeals

Brown v Ajax Paving, Inc., case no. 11-1391, May 19, 2014

- An employee cannot bring a claim against the employer's insurer, claims administrator, and doctors under the RICO statute

Jackson v Sedgwick Claims, 731 F.3d 556, 558 (6th Cir. 2013)

- No RICO claims allowed for diminution in workers' compensation benefits due to mitigating factors of evidence introduced as non-work related injuries
- Such diminution is not an "injury to business or property" as required for an actionable claim under RICO

III. Michigan Supreme Court

Thomai v MIBA Hydramechanica Corp., et al, 303 Mich App 196 (2013), reversed at 496 Mich 854 (2014)

- MCL 418.131(1) lays out the exclusive remedy provisions of the Workers Disability Compensation Act and the intentional tort exception. The Supreme Court reversed the Court of Appeals finding that there was no evidence on the record to establish the employer

willfully and deliberately disregarded knowledge that an injury was to occur to the plaintiff.

Bagby ex rel Bagby v Detroit Edison Co., Court of Appeals Docket No. 311597

- Waiting for an opinion as the Supreme Court directed the Court of Appeals to grant leave addressing the intentional tort exception. The Court of Appeals will hear arguments in the case on October 14, 2014.

- Plaintiff's theory that the employer intentionally exposed the employee to a "continuously operative dangerous condition" that the employer knew about, and also knew that would lead to injury. A similar theory as in *Thomai*.

Lego v Liss, Court of Appeals Docket No. 312392, Application for Leave to Appeal filed Supreme Court May 7, 2014, Supreme Court Docket No. 149246

- The facts of this case were that a township police officer was injured when he was shot by a state police officer when they were attempting to arrest a violent felon. Defendant (the State of Michigan) who employed the state trooper argued that the township police officer was subject to the exclusive remedy provision of the WDCA because he and the state trooper who shot him were co-employees in a joint venture.

- The Court of Appeals disagreed and held a question of fact existed whether there was truly a "joint venture", and affirmed the trial court's decision to deny the state's claim that the exclusive remedy provision of the WDCA applied. We are waiting to receive an answer as to whether the Supreme Court will hear the claim.

IV. Michigan Court of Appeals

Bessinger v Our Lady of Good Counsel/Roman Catholic Archdiocese of Detroit., Court of Appeals Docket No. 316143

- MCL 418.863 provides circuit courts with jurisdiction to enforce workers' compensation awards where proceedings are final and no appeal remains pending.

- The Court of Appeals in affirming the trial court's decision stated that although there was a 1994 open award of benefits, which the Supreme Court had addressed in a 2008 order, "matters were still pending". The Appellate Commission had remanded the case to the Magistrate on the defendant's petition to stop benefits and further appeals could be taken from the Magistrate's order. The case stands for the proposition that the exclusive primary jurisdiction over workers' compensation matters is in the Workers' Compensation Agency until all issues are adjudicated.

Snider v ALDI, Inc., Court of Appeals Docket No. 315148

- The Court of Appeals affirmed the trial court's judgment in favor of the employer where the former employee alleged retaliatory discharge for filing a claim under the WDCA.

- MCL 418.301(13) prohibits an employer from discharging an employee where the employee filed a complaint or exercises a right afforded by the WDCA.

Younkin v Zimmer, 304 Mich App 719 (2014)

- The Court of Appeals in a 2-1 decision affirmed the trial court's decision to issue a writ of mandamus requiring workers' compensation claims to be heard in the locality where the injury occurred in accordance with MCL 418.851

- The executive director of MAHS sought to close the Flint Agency and have all matters transferred to Dimondale. While the majority opinion in the Court of Appeals held that the efforts on behalf of the State to streamline the hearing process to conserve the State's resources were "without a doubt laudible", those arguments were "insufficient to permit the court to rewrite the statute under the guise of judicial interpretation". The Court of

Appeals indicated that such arguments are "best directed to the branch of government that the people empowered to make the desired change: the legislature".

Barclay v GM, Court of Appeals Docket No. 322722

- The plaintiff has appealed the Appellate Commission's decision requiring Magistrates to apply *Stokes* disability and wage loss analysis to all post injury periods of time, and further to apply partial wage earning capacity analysis to these periods of time as well.

- The Commission in *Barclay* and in many subsequent cases, continues to allow post injury periods to be scrutinized to determine whether the plaintiff has met his or her burden in proving all four steps in the disability and wage loss analysis per *Stokes*.

- This is being required even in post injury periods of time that preceded the *Stokes* decision in 2008

- The Commission has remanded cases for this retroactive, period-by-period analysis without allowing a reopening a proofs for these past periods.

- On appeal, plaintiff argues if it is necessary to prove all four steps of *Stokes* to prove disability and wage loss sufficient to be entitled to total or partial benefits, the Commission's retroactive application without allowing the reopening of proofs, violates due process of law.

- This is an important case, and it will likely be addressed by the Court of Appeals. Thus, for the periods of time where no proofs exist, the position to be taken by employers is to argue that no wage loss benefits are owed.

V. Big workers' compensation settlement of interest

- $2.8 million settlement for woman paralyzed after falling in castle moat in Europe while attending employer conference

VI. Agency matters of importance

- SISF legislation
- Board of Magistrate Rules
- Evidence Based Medicine
- Q&A session Supreme Court Justices