

WORKERS' COMPENSATION CLIENT NEWSLETTER

IN THIS NEWSLETTER

- **Case Law Update**
- **Magistrate Appointments**
- **Michigan Workers' Compensation Appellate Commission Appointments**
- **Cost of Workers' Compensation Lower in Michigan than in Most Other States**
- **Procedural Change for Redemption Requests: Filing a Form C**

For questions regarding the above information or any workers' compensation issue in the State of Michigan, do not hesitate to call any of the attorneys at Giarmarco, Mullins and Horton, P.C., who regularly practice in the workers' compensation area:

Tim Mullins (248) 457-7020
tmullins@gmhlaw.com
Adam Levitsky (248) 457-7029
alevitsky@gmhlaw.com
Marsha Woods (248) 457-7040
mwoods@gmhlaw.com
John Miller (248) 457-7188
jmiller@gmhlaw.com
Travis Mihelick (248) 457-7123
tmihelick@gmhlaw.com

Case Law Update

Knee Replacement is Not Necessarily a Specific Loss

In *Pudvan v. Midland Congeneration Venture*, the Workers' Compensation Appellate Commission ruled that Pudvan did not meet the burden of proof to show that he lost the usefulness of his leg prior to surgery as is required to show a specific loss. Pudvan injured his knee on the job on August 27, 2010 and subsequently had knee joint replacement surgery on April 11, 2011. The injury took place when the *Trammel v. Consumers Energy Co.* "uncorrected" standard applied. Pudvan could work without a cane or a brace and drive a car immediately after the injury. Since Pudvan could use his leg following the injury, the Commission found that the injury was not the equivalent of the physical loss of his leg, and denied Pudvan's claims for specific loss benefits.

Independent Contractor or Employee? Worker is Not an Employee if he/she Maintains a Separate Business Providing the Same Service

In *Moore v. Nola's Const.* the Michigan Court of Appeals held, in an unpublished decision, that the plaintiff was not an employee within the meaning of the Workers' Disability Compensation Act and MCL 418.161(1) because he maintained his own roofing business and instead he was an independent contractor. In 2005, the Michigan Supreme Court in *Reed v. Yackell*, held that an individual cannot recover workers' compensation benefits when he or she maintains a separate business in the same service that provides the same service that was provided to the employer. An individual that maintains such a separate business is considered an independent contractor rather than an employee because the claimant cannot satisfy all three criteria. MCL 418.161(1)(n). The Court of Appeals explained that because Moore maintained a separate business that provided roofing services and obtained his own workers' compensation insurance for his own employees, Moore did not meet the definition of employee set out in the Workers' Compensation Act and MCL 418.161(1).

Injury While Driving on the Job Does Not Necessarily “Arise Out of Employment”

In *Salenbien v. Arrow Uniform Rental Ltd. P’ship*, the Michigan Workers’ Compensation Appellate Commission reversed the decision of the Magistrate and found that Jason Salenbien did not meet his burden to show that his injury “arose out of” his employment at Arrow. The Michigan Workers’ Compensation Appellate Commission ruled that the location of departure and intended destination might be determinative on the issue of “in the course of employment;” however, it is not determinative on the issue of “arising out of employment”. Here, the facts showed Salenbien drove to meet a client and subsequently crashed after leaving the meeting. Salenbien had no recollection of the events before the crash; thus, he could not prove that the accident met the four factors defining “arising out of employment” for automobile accidents set out in the *Stark* and *Forgach* cases, which laid out the law in Michigan on this issue. The four factors are: (1) whether the employer paid for or furnished employee transportation; (2) whether the injury occurred during or between working hours; (3) whether the employer derived a special benefit from the employee’s activities at the time of the injury; and (4) whether the employment subjected the employee to excessive exposure to traffic risks. Since Salenbien had the affirmative obligation to prove by a preponderance of the evidence that the injury was both in the course of and arose out of his employment at Arrow, his failure to meet his burden of proof was fatal to his case.

Michigan Workers’ Compensation Practitioner Update

In the past few months there have been many changes in the practice of workers’ compensation law in Michigan. The changes include Scheduling Orders, Magistrate and Appellate Commission appointments, and newly instituted rules and procedures.

New Scheduling Order Requirements

One of the most significant and impactful changes in Michigan workers’ compensation practice is the institution of Board Rule 1307. The Rule imposes regulations regarding scheduling conferences, status conferences and time guidelines for individual cases. As such, a Scheduling Order and scheduling conference attended by all parties is now required in each workers’ compensation case.

The new Scheduling Order has requirements for completing certain actions within a specified amount of time. For example, all parties or funds must be joined within six months after the Scheduling Order, a status conference should occur within six months of the Scheduling Order, and all medical and vocational depositions must be completed months before trial. Most importantly, final disposition should occur within 18 months of the Scheduling Order. Failing to comply with the order may result in dismissal of the application, striking of carrier’s response or rejection of evidence. Practically speaking this should push cases to conclusion about four to five months quicker than previously.

WORKERS’ COMPENSATION

We’ll Walk You Through The Process

The workers’ compensation process can be quite complex. Since each case is unique, it’s often difficult to know which step to take next. At Giarmarco, Mullins & Horton, our approach is aggressive — we seek to resolve your workers’ compensation issues in a way that makes sense for your organization. Our attorneys handle all levels of litigation, from trial through all appeals, including the Supreme Court of the State of Michigan.

Magistrate Appointments

Governor Snyder reappointed eight Magistrates to new terms that run until January 26, 2019: Brian Boyle, David Grunewald, Beatrice Logan, Luke McMurray, Louis Ognisanti, Chris Slater, Robert Tjapkes, and Lisa Klaeren. The remaining Magistrates are on terms set to expire in January 2017 so there will be no new appointments in the near future.

Michigan Workers' Compensation Appellate Commission Appointments

Governor Snyder reappointed Garry Goolsby and appointed Rachel Lipinski to the Michigan Workers' Compensation Appellate Commission. The Commission reviews appeals of decisions involving workers' compensation matters.

Cost of Workers' Compensation Lower in Michigan than in Most Other States

The Workers' Compensation Research Institute (WCRI) recently released a study which demonstrated that Michigan's workers' compensation system gave Michigan a competitive advantage over other states in attracting business. In comparing 17 states, WCRI found that costs per claim were lower in Michigan than in the other states. The average claim size in Michigan fell over a three-year period spanning 2008 through 2011.

In 2011, the average claim was four percent smaller than it was in 2008, the largest decrease of any state compared in the study. The average state's costs increased about eight percent over the same time period.

Between 2008 and 2011 benefit delivery expenses per claim decreased five percent, indemnity benefits per claim decreased twelve percent and average medical payments per claim rose nine percent. In Michigan, all three of the cost components studied were below those of the median state.

In 2011, Michigan enacted Public Act 266 with the goal of reducing workers' compensation costs in the state. This legislation implemented prior Michigan Supreme Court rulings related to disability and post-injury wage-earning capacity for injuries occurring on or after December 19, 2011. The Supreme Court decisions likely had a dramatic effect on reducing costs prior to the enactment.

The WCRI is an independent, not-for-profit research organization providing high-quality, objective information about public policy issues involving workers' compensation systems.

GMH GIARMARCO, MULLINS & HORTON, P.C. ATTORNEYS AND COUNSELORS AT LAW

Giarmarco, Mullins & Horton, P.C. provides unparalleled legal representation because our attorneys take the time to understand what matters most to you. Whether we're representing an individual or a Fortune 500 company, meeting your needs is personal.

You can depend on us to listen and respect your input. You can have confidence in our seasoned team of highly talented lawyers. You can trust in our proven experience in just about every legal specialty. You can rely on us to get results.

If personal service and superior results matter to you, call us today and let us know how we can help.

Procedural Change for Redemption Requests: Filing a Form C

Previously, when requesting a ðle for redemption purposes only in a non-litigated matter, an attorney could simply request the ðle from the State of Michigan Workers' Compensation Agency by email. Now, an attorney must ðle a Form C indicating that the ðle is needed for redemption review.

The goal of the regulation is to ensure accurate and complete ðle information, which has been a problem in the past. The regulation will also make it easier to expedite the hearing process for redemptions.

This newsletter is provided as in informational courtesy. The information is of a general nature and should not be acted upon without further details and legal guidance. The information contained in this newsletter does not provide legal advice. For legal advice, please contact one of the workers' compensation attorneys at Giarmarco, Mullins and Horton, P.C. © 2015

GMH GIARMARCO, MULLINS & HORTON, P.C.
ATTORNEYS AND COUNSELORS AT LAW

Tenth Floor Columbia Center
101 West Big Beaver Road
Troy, Michigan 48084-5280

First class Presorted U.S. postage PAID Royal Oak, MI Permit No. 467
