C O N T E N T S

BEFORE THE ILLINOIS WORKERS’ COMPENSATION COMMISSION WORKERS’ COMPENSATION REFORM
• At the Commission Level
• At the Arbitration Level
• Utilization Review
• TTD and PPD Rates
• Impairment Ratings v. Permanent Partial Disability Findings

CASE DECISIONS

IN THE APPELLATE COURT OF ILLINOIS, NON-WORKERS’ COMPENSATION DIVISION
• Workers’ Compensation Act is Exclusive Remedy for a Bank Teller Injured During an Armed Bank Robbery - Employee is Not Entitled to Claim Intentional Tort
• Petitioner Slipped and Fell While Leaving Work. Petitioner’s Tort Action Filed Against the Owners of the Building Were Properly Dismissed Since the Building Owners Were Also the Owners of the Employer
• Exclusive Remedy Provisions of Act Held Applicable to Employee Leasing Company Even Though Company Failed to Register Under the Employee Leasing Company Act
• Court Holds Summary Judgment Proper in Favor of the Employer as Workers’ Compensation is Exclusive Remedy Involving Co-Employee Shooting

IN THE APPELLATE COURT OF ILLINOIS, WORKERS’ COMPENSATION DIVISION
• Employer is Denied Credit for Employees’ Normal Retirement Benefits as Against An Award of Wage Differential Benefits - Employees’ Voluntary Decision to Take Retirement Benefits Did not Preclude a Wage Differential Award
• Trial Court Lacked Subject Matter Jurisdiction to Confirm Commission’s Decision - Commission’s Decision Was not Final Because All Three Commissioners Issued Different Decisions
• Court Finds Truck Driver to Be an Employee and Rejects Respondent’s Claim of Independent Contractor
• Petitioner’s Appeal Dismissed for Non-Timely Filing - The Mailbox Rule Does Not Apply to Circuit Court Appeals
• Award of Maintenance Benefits and Vocational Rehabilitation Upheld - Employer Denied Right to Demand an FCE
• Court Calculates Average Weekly Wage - Court Includes Mandatory Overtime Hours and Production Bonuses in the Average Weekly Wage Calculation
• Court finds Union Workers to Be a Traveling Employee Even Though He Voluntarily Bid on a Temporary Position Outside His Geographic Region - Case is Going to the Supreme Court
• Section 19(g) Action Granted in Favor of Petitioner Despite Respondent’s Overpayment of Compensation Benefits
• Court Dismisses Appeal Finding Commission’s Decision Was Interlocutory in That it Remanded the Case to the Arbitrator for Ruling as to the Need for Vocational Rehabilitation

GREAT DECISIONS AROUND THE OFFICE

CONCLUSION

OFFICE and PERSONAL

In 2011 the Illinois Workers’ Compensation Act underwent some dramatic changes and employers became cautiously optimistic. In 2012 we waited to see how the changes would help us. We especially wanted to see how changes in the downstate arbitration assignments would create more fairness. We wanted to see how the Commission would interpret the somewhat discretionary statutory changes which were intended to benefit employers. So far we have been sadly disappointed. The Chairman of the Commission essentially gave no direction to the hearing officers as to how to interpret the statute. Resistance to any changes from past practice has been strong. Employer complaints made it to the Governor and have finally lead to a change at the top. 2013 could be a better year.
BEFORE THE ILLINOIS WORKERS’ COMPENSATION COMMISSION

Finally, there have been changes made recently at the Illinois Workers' Compensation Commission at the Commission level. These changes were long in the making as many of the Commissioners terms had expired. Commissioners are appointed by the Governor and approved by the Senate. They serve until their terms are expired but can continue to serve until they are replaced. Until recently, the Chairman of the IWCC was Mitchell Weiss and the Commissioners were as follows:

   Employee Commissioners:  Charles Tyrrell, Charles DeVriendt, David Gore  
   Public Commissioners:  Daniel Donohoo, Yolaine Dauphin, Michael Latz  
   Employer Commissioners:  Kevin Lamborn, Ruth White, Mario Basurto

However, as of March 25, 2013 – Chairman Weisz and Commissioner Dauphin were terminated.

Commissioner Latz was elevated from being a Commissioner to becoming Chairman of the Commission.

The Commissioners serve in three panels. Currently,  
Panel A consists of Commissioners Tyrrell, Donohoo and Lamborn.  
Panel B consists of Commissioners DeVriendt, (open position) and White.  
Panel C consists of Commissioners Gore, (open position) and Basurto.

Of the three panels, Panel B has proven the most employee oriented panel. Panel B and in particular Commissioner Dauphin had reversed many favorable arbitration decisions for employers and ruled in favor of employees. She was very petitioner oriented and her appointment as a “public” Commissioner was unfair.

Despite the open positions, the Commission panels will continue to do business as usual. Current sitting Commissioners will fill in for open positions at oral arguments until new Commissioners are appointed.

The appointment of Chairman Latz is favorable for employers compared to former Chairman Weisz whose background was as a petitioner’s attorney for his entire career. His policies strongly favored employee claims. Employers continue to fight for more fair Commissioners, but so far their complaints to the Governor have fallen on deaf ears. Hopefully, the new public Commissioners will be fair.
At the Arbitration Level

Prior to the changes at the Commission level, there had been numerous changes at the arbitration level. Certain arbitrators were terminated and others were reassigned. Arbitrator Neal, one of the finest hearing officers at the Commission, passed away after a hard fought battle with breast cancer.

Instead of the Governor replacing the open arbitration positions, the Commission has simply functioned with fewer arbitrators. For the past several months, we have had a series of open arbitration positions which have been temporarily filled by other arbitrators on a month to month basis. The Chairman has finally decided that the open arbitration positions were not going to be refilled at any time soon. Therefore, those positions have been eliminated and all the cases reassigned. The Chicago trial calls previously assigned to Arbitrators Doherty and Zanotti have been eliminated completely. Their cases have been reassigned and those two arbitrators have been moved to downstate positions permanently. Currently, the list of Chicago arbitrators is as follows:

1. Carolyn Doherty (also Wheaton)
2. Peter O’Malley (also Wheaton)
3. Svetlana Kelmanson
4. Brian Cronin
5. Barbara Flores
6. Kurt Carlson (also Wheaton)
7. Milton Black
8. Robert Williams
9. Molly Mason
10. David Kane
11. Lynette Thompson-Smith
12. Deborah Simpson

The current downstate arbitrators by their grouping of locations are as follows:

1. Collinsville/Herrin/Mt. Vernon – Arbitrators William Gallagher, Joshua Luskin, Gerald Granada
2. Urbana/Springfield/Quincy – Arbitrators Brandon Zanotti, Nancy Lindsay, Douglas McCarthy
3. Bloomington/Peoria/Rock Island – Arbitrators JoAnn Fratianni, Stephen Mathis, Maureen Pulia
5. Rockford/Waukegan/Woodstock – Arbitrators Edward Lee, Anthony Erbacci, Douglas Holland
6. Wheaton – Arbitrators Carolyn Doherty, Peter O’Malley, Kurt Carlson (the Wheaton arbitrators spend one month in Wheaton and two months in Chicago)
Pursuant to the changes in the Act in 2011, the downstate arbitrators can only be in a location for three years. Therefore, at the end of 2013, we expect wholesale changes in the downstate arbitration assignments. We anticipate some significant movement among the arbitrators with many of the arbitrators being required to travel extensively. Arbitrators Luskin and Granada who both live in the Chicago area but are handling far downstate calls are very likely to be moved to Chicago or at least northern Illinois.

There are certainly fewer cases being filed at the Commission, but the decrease in the number of arbitrators hearing cases in Chicago is remarkable. This is the fewest number of arbitrators that have been hearing cases in Chicago in many years. It certainly places increased pressure on those arbitrators in terms of scheduling hearings and hearing complicated cases. It certainly makes scheduling witnesses a significant challenge.

Our firm handles cases in Chicago and every downstate venue. Attached to this newsletter is a list of downstate assignments and the attorneys who primarily handles cases in those venues. Please feel free to contact me or the listed attorneys for any downstate questions or assignments.

Utilization Review

One of the newer provisions in the Act allows for employers to have utilization review performed to help manage medical costs. Utilization review has been in the statute now for several years but it was not until 2011 that the statute was changed to attempt to give more teeth to utilization review reports. The Commission is still not obligated to rely on utilization review reports in determining the reasonableness and necessity of medical treatment, but at least they have to consider the reports. Further, an employer is given a rebuttable presumption against Section 19(k) penalties if they have made a medical decision based on a utilization review report. Further, the new statute from 2011 gave employers the right to depose out of state witnesses who author utilization review reports.

Surprisingly, the Illinois Department of Insurance issued a memorandum December 20, 2012 prohibiting employers from utilizing utilization review services that were not performed in the State of Illinois. That requirement seemed eminently unreasonable.

Fortunately, a revised memo was issued by the Department of Insurance January 18, 2013. That memo still prohibits utilization review by providers that are outside the country. However, it does not prohibit using a utilization review company who is located outside the State of Illinois.

TTD and PPD Rates

The state average weekly wage continues to rise and therefore, the Maximum TTD and PPD rates continue to unreasonably escalate. Effective 1/15/2013 the state’s AWW increased to $990.02. This increased the maximum TTD rate to $1,320.03 for the period 1/15/2013 to 7/13/2013. The maximum PPD rate effective for dates of accident after
7/1/2012 increased to $712.55. Correspondingly, the minimum PTD and amputation rate was increased to $495.01.

The TTD and PPD minimums remain the same as there has not been any increase in the state’s minimum wage. I have attached a Table of Rates to this newsletter as a reference guide. Please print it and save it for reference.

**Impairment Ratings v. Permanent Partial Disability Findings**

One of the most significant changes in the Act in 2011 involved the addition of Section 8.1b introducing AMA guidelines to the evaluation of permanent partial disability. The purpose of this section was to inject objectivity based on medical science into the awards of permanent partial disability. For years, employers have been at the mercy of the Commission to subjectively determine PPD. PPD awards have been purely at the discretion of the Commission without any serious review by the courts.

The requirement that the Commission consider AMA guidelines in assessing permanent partial disability had been discussed for years but never implemented. AMA guidelines are not new. They have been around for years – the current edition was published in 2008 and it is the SIXTH edition. Employers were thrilled because they knew that the AMA guides for evaluating permanent impairment were objectively based rather than subjectively based. Employers knew that applications of AMA guidelines should result in significantly lower impairment ratings than what the Commission routinely awards for permanent partial disability.

The statutory changes did not require the Commission to award permanent disability solely based on the impairment rating but the statutory changes clearly indicated that the impairment rating should be the **primary factor** in evaluating permanent disability.

Claimants’ attorneys have strongly fought the application of impairment ratings to permanent disability evaluations. It has been argued that impairment rating does not equal the disability rating and that disability ratings should be significant higher than impairment ratings. That argument is purely a semantic one. The whole point of the impairment rating is to establish a disability rating. The impairment rating takes into consideration subjective complaints and objective findings. Therefore, it is extremely sensible and reasonable for the Commission find a claimant’s permanent disability rating to be equal to his impairment rating. Both ratings are set forth as a % of loss of use of a member or loss of use of the man as a whole.

The prior Chairman of the Commission issued no directions to the Commissioners or arbitrators as to how to interpret impairment ratings and apply them to case decisions. Remarkably, there have been very few decisions from the arbitrators and the Commission interpreting impairment rating and applying them to case decisions. None of the case decisions that have been issued have been very favorable. The case decisions that have been issued have essentially ignored the impairment ratings and arbitrators have awarded almost the same permanent partial disability as before the change in the statute. It is
almost as if no hearing officer wants to be the first one to limit PPD to the impairment rating.

This is not a fight that employers can easily give up. We cannot expect that the statute is going to be changed. We need to continue to fight for decisions which apply the impairment ratings strictly to permanent partial disability awards. We must ignore petitioner attorney arguments that the impairment rating is simply a minor factor in determining permanent partial disability. The impairment rating should be the primary factor at least in determining permanent partial disability and not the other around.

This is an issue that is worth fighting. For any case with an accident date after September 1, 2011, employers should obtain impairment ratings and use the impairment ratings in trying or settling cases. If employers ignore impairment ratings and simply pay settlements based on old Commission decisions, we will lose our leverage and the impairment ratings will become inconsequential.

We have had several case involving pro se settlements where offers have been made consistent with the impairment ratings and those settlements have been approved by several arbitrators. Absent significant other factors, it is well worth taking a tough position on this issue. We continue to have to fight to press the position that the impairment rating should be the primary if not the sole determinant of permanent partial disability.

CASE DECISIONS

IN THE APPELLATE COURT OF ILLINOIS, NON-WORKERS’ COMPENSATION DIVISION

Workers’ Compensation Act is Exclusive Remedy for a Bank Teller Injured During an Armed Bank Robbery – Employee is Not Entitled to Claim Intentional Tort


Plaintiff was employed by defendant as a bank teller at the Lindenhurst Branch. On December 2, 2009, a cash truck delivered fresh currency to the branch. Just before closing masked robbers took over the bank and stole its cash. One robber struck petitioner in the head and threatened her with further injury. Plaintiff claimed that she suffered serious orthopedic, neurologic and psychiatric problems.

The defendant accepted liability for the plaintiff’s injuries and paid compensation benefits. However, even though petitioner was being paid workers’ compensation benefits, she also filed a civil lawsuit against the defendant alleging intentional tort. She alleged that the defendant had been robbed previously in 2006 and 2008. She alleged that prior to the 2009 robbery she had complained to management that the branch lacked a security guard and lacked bullet proof glass. She complained that tellers should not have
cash drawers open at teller stations and the bank should not keep its vault open during the business day. Plaintiff alleged that the defendant’s actions knowingly, willfully and purposefully failed with obvious intent and outrageous conduct to provide adequate bank security to prevent bank robberies.

The defendant moved to dismiss the complaint on the basis that the complaint was barred by the exclusive remedy provisions of the Workers' Compensation Act. The Circuit Court agreed and dismissed the complaint.

Plaintiff appealed to the Appellate Court but the Appellate Court in a unanimous decision affirmed the dismissal by the trial court. The court held “Once an employee has collected compensation on the basis that his or her injuries were compensable under the Act, the employee cannot then allege that those injuries fell outside the Act’s provisions. See Collier v. Wagner Castings Company, 81 Ill. 2d 229 (1980). Accordingly, we conclude that, once plaintiff applied for an accepted workers’ compensation benefits, she was barred from pursuing an intentional tort action against defendants.”

The court considered plaintiff’s argument that the defendant’s refusal to increase security measures after her request and two prior robberies constituted the intentional act of “inviting” another robbery. The bank claimed that its actions did not justify a conclusion of an intentional injury. They argued that the actions of third parties – the robbers – were not authorized or intended by the defendant in any way.

The court ruled in favor of the bank. The court found that intentional tort actions are not permitted in cases where claimants file for and receive workers’ compensation benefits. Therefore, she was barred from further recovery.

Comment: I expect the bank was surprised when they were first served with notice of this lawsuit. The bank had already suffered the loss from the robbery. The bank had been paying for workers’ compensation benefits for the claimant. To add insult to injury, now the plaintiff was claiming that in addition to her workers’ compensation benefits, she should also get civil damages including compensatory and punitive damages. This is the exact type of lawsuit that is intended to be barred by the exclusive remedy provisions of the Workers' Compensation Act. The court was clearly correct in dismissing this complaint and affirming the decision of the trial court. A claimant cannot file for and receive workers’ compensation and then turn around and seek civil damages pleading that her injuries were the result of an intentional tort instead.

**Petitioner Slipped and Fell While Leaving Work. Petitioner’s Tort Action Filed Against the Owners of the Building Were Properly Dismissed Since the Building Owners Were Also the Owners of the Employer.**

*Carolyn Hilgart v. 2010 Middle Drive Partnership, Steven Leturno and Daniel Lisowski, 2012 Ill. App. 110 943 (filed October 17, 2012).*
Petitioner was employed by respondent, AIT Worldwide Logistics, Inc. a company owned by defendants Leturno and Lisowski. She worked in a building owned by 2010 Middle Drive Partnership. This partnership was owned by defendants Leturno and Lisowski.

While leaving work on January 31, 2007, petitioner fell on the staircase leading to the parking lot. She received workers’ compensation benefits from AIT. In addition, she filed a negligence lawsuit against the Middle Drive Partnership, the building owner along with the owners of the partnership Leturno and Lisowski.

The defendants moved for summary judgment on the basis that the claim was barred by the exclusive remedy of the Workers' Compensation Act. Plaintiff claimed that the suit was not barred because her employer was a different legal entity and the partnership owners could be sued under the Dual Capacity Doctrine.

The trial court ruled in the defendant’s favor and the Appellate Court affirmed. The Appellate Court noted that petitioner was employed by AIT and AIT was owned by Leturno and Lisowski. Leturno and Lisowski were individual partners of the partnership that owned AIT, they were shareholders at AIT and they served as AIT’s president and vice president. Consequently, Leturno and Lisowski were immune from the negligence action.

Further, the court ruled that plaintiff could not establish liability under the Dual Capacity Doctrine. The court explained that liability under the Dual Capacity Doctrine was extremely limited. The court noted “Under the Dual Capacity or Dual Persona Doctrine, one who is protected by the exclusive remedy provision of the Act may become liable in tort if he operates in a second capacity that creates obligations independent of those imposed upon him as an employer. A plaintiff must establish that: (1) the second capacity generates obligations unrelated to those flowing from the first, that of the employer; and (2) the employer was acting as a distinct legal persona of the employer.”

In this case, there was no basis for a dual capacity argument. The court noted that as plaintiff’s employer, the defendants were obligated to provide petitioner with a safe place to work. Similarly, this is the same duty that a land owner has to provide safe premises. Therefore, the Dual Capacity Doctrine did not apply to the individual defendants and the immunity provisions of the Workers' Compensation Act did apply.

Comment: The appellate court (as it should) narrowly construed the Dual Capacity Doctrine. An employer who is also a land owner does not occupy two different positions. An employer has the obligation to provide a safe place to work and a land owner has the obligation to provide a safe environment as well. Where the employer and land owner are essentially the same owners, they are both protected by the exclusive remedy provisions of the Workers' Compensation Act. Workers’ compensation benefits are available but civil damages are not.


Boos Company manufactures wood products. Westaff is a temporary employment agency that assigned temporary employees to Boos Company. Westaff supplied workers’ compensation insurance to its employees. On October 7, 2007, Westaff assigned petitioner to work as a temporary employee at Boos Company. A month later, on November 7, 2007, petitioner caught his hand in a machine and suffered a severe right hand injury. Two years later, petitioner settled with Westaff for a lump sum of $92,500.00.

However, despite receiving the WC settlement, petitioner also filed a negligence action against the defendants claiming faulty machinery and inadequate training. The defendants moved to dismiss based on the exclusive remedy. Petitioner argued that Westaff had failed to register with the Department of Insurance as an employee leasing company in violation of Section 20 of the Employee Leasing Company Act. Therefore, petitioner argued that it was not entitled to the exclusive remedy provisions of the Workers’ Compensation Act.

The trial court ruled in favor of the defendants and dismissed the civil claim. Petitioner appealed to the Appellate Court and the Appellate Court also affirmed.

The Appellate Court noted that this was a case of first impression. No case law was identified by petitioner to support his contention that a staffing company should be barred from using the exclusive remedy as a defense simply because they failed to register with the Department of Insurance.

The court analyzed the Employee Leasing Company Act and noted that the only remedy for a violation to register is to deny or revoke registration of the company. There is nothing in the Employee Leasing Company Act which states that an employer who fails to register therefore waives its rights to the exclusive remedy provisions of the Workers’ Compensation Act.

In this case, petitioner filed for and received workers’ compensation benefits including a large settlement. Westaff had WC insurance and petitioner’s WC rights were fully protected. The court found it would be extremely unjust to allow petitioner to have this workers’ compensation settlement and then seek a civil judgment as well.

Comment: Petitioner in this case was seeking double recovery from his employer. Petitioner received full workers’ compensation benefits as well as his settlement and then filed a civil lawsuit while his settlement contracts were in the process of being approved by the IWCC. Petitioner was clearly seeking a double recovery without any legal justification.
An analysis of the Workers' Compensation Act shows that an employer can waive its exclusive remedy rights if it fails to purchase insurance to cover its employees. Consequently, the legislature has considered circumstances where employers should be considered to have waived the exclusive remedy. This is not one of those circumstances.

**Court Holds Summary Judgment Proper in Favor of Employer as Workers’ Compensation is Exclusive Remedy Involving Co-Employee Shooting.**

*Alma Rodriguez, Administrator of Estate of Jose Rodriguez v. Frankie’s Beef/Pasta, 2012 Ill. App. 113155 (filed August 14, 2012).*

Plaintiff and a co-employee, Edan Maya, were both employed by Frankie’s as restaurant workers. Maya had taken a few months off work to visit Mexico. While he was gone, Rodriguez was promoted and given the position of fry cook.

On September 15, 2005, the two men got into an altercation at work arguing over who was the better fry cook. The employer’s president witnessed the altercation and sent the men home to cool off. The following day, Maya came to work with a gun and shot and killed Rodriguez.

Rodriguez’s estate then filed a civil lawsuit against the employer claiming entitlement to civil damages and the employer moved for summary judgment claiming that the suit was barred by the exclusive remedy. The Trial Court agreed and granted the employer summary judgment and the Appellate Court affirmed.

The Appellate Court affirmed and ruled that the exclusive remedy provisions of the Workers' Compensation Act prohibited the civil suit. The Appellate Court ruled that the shooting was accidental because it was unforeseen from the standpoint of the employer. The court stated “An accidental injury in the employment context includes ‘injuries inflicted intentionally upon and employee by a co-employee since such injuries are unexpected and unforeseeable from an injured employee’s point of view. Such injuries are also accidental from the employer’s point of view, at least where the employer did not direct or expressly authorize the co-employee to commit the assault.”

In this case, the employer knew that the employees had an altercation but there was no evidence that the employer had any reason to believe that Maya was going to return to work the next day and shoot Rodriguez. Therefore, liability as against the employer was limited to benefits under the Workers' Compensation Act.

Plaintiff alternatively argued that the case was not compensable because Rodriguez, the victim was the aggressor in the altercation. The court noted that when the party seeking compensation was the aggressor, the party’s acts are not within the scope of employment and not compensable. Importantly, for us to cite in future cases, the court stated “The law generally defines ‘initial aggressor’ in the context to the Act as the ‘employee who
makes the first physical contact.” There was no evidence here that Rodriguez made the first physical contact.

Comment: The facts of this case give no reason to indicate that plaintiff would be successful in the civil suit. Plaintiff’s benefits had to be limited solely to the Workers' Compensation Act. Cases like this have a better chance of success if the plaintiff can prove that the employer knew that the shooter was a dangerous person or had a significant past criminal record or had some reason to believe that the individual was a violent person. There was no simply evidence that any of those facts existed and therefore there was no justification whatsoever for the civil suit.

IN THE APPELLATE COURT OF ILLINOIS, WORKERS’ COMPENSATION DIVISION

Employer is Denied Credit for Employees’ Normal Retirement Benefits as Against An Award of Wage Differential Benefits – Employees’ Voluntary Decision to Take Retirement Benefits Did Not Preclude a Wage Differential Award.


Petitioner was employed by respondent as a journeyman electrician and suffered a work injury to his left shoulder. Following the accident, he was unable to return to work as an electrician and he was assigned vocational rehabilitation. He eventually was found employment and returned to work as a school bus driver at a rate of $12.50 an hour working 20 hours per week. His job as an electrician would have been paying him $37.80 per hour.

Petitioner testified that at age 62 he was entitled to file for his regular retirement benefits and did so. Petitioner testified that he was planning to wait until age 65 to retire but instead took his retirement early.

Petitioner was awarded a year of TTD and wage differential benefits at a rate of $840.65 per week. Respondent claimed entitlement to credit for petitioner’s retirement pension benefits. The Commission granted the pension credit at a rate of $432.00 per week.

Petitioner appealed to the Circuit Court overturn the credit for the retirement benefits and the Circuit Court reversed the employer’s credit. The Circuit Court ruled that the Act does not allow an employer credit for pension benefits.

Respondent appealed to the Appellate Court and the Appellate Court affirmed denying credit to the employer. The court interpreted Section 8(j) of the statute and found that there was no provision in Section 8(j) which justified an employer being entitled to a credit for regular pension benefits.
The court cited definitively to the cases of *Tee-Pak, Inc. v. Industrial Commission*, 141 Ill. App. 3d 520, 490 N.E. 2d 170 (1986) and *Elgin Board of Education School District U-46 v. IWCC*, 409 Ill. App. 3d 943, 949 N.E. 2d 198 (2011). These cases stand for the proposition that the employer receives no credit for benefits which would have been paid irrespective of the occurrence of a workers’ compensation accident. The court reviewed the statutory language in the Act. The court reviewed the benefits petitioner was receiving for his retirement. The court ruled “Here, the parties do not dispute that the pension payments, unlike those in *Tee-Pak* and *Elgin*, are the result of normal pension retirement benefits, wholly unrelated to the claimants’ workers’ compensation accident. Accordingly, under the rule in *Tee-Pak* and *Elgin*, those payments cannot entitle Wood Dale (respondent) to a credit against its liability under the Act.”

Further, the court rejected respondent’s argument that claimant was not entitled to wage differential benefits because he voluntarily retired. The court found that voluntary retirement does not preclude a wage differential award provided that a claimant establishes a loss of earning potential. The court held “A claimant’s voluntary decision to remove himself from the workforce does not preclude a wage differential award. Instead, a wage differential award is determined by comparing the claimant’s prior earning capacity to the amount he ‘is earning or is able to earn in some suitable employment or business after the accident.’”

**Comment:** This court decision is not surprising. Respondent’s arguments were well justified. It is unfair that a claimant can pursue a large wage differential award and still take his full retirement. Nevertheless, the precedents established by the court in prior case decisions made this result inevitable. It would have required a marked change from the court to avoid this result.

Further, prior case decisions had never supported an employer’s right to take a credit for pension benefits as against wage differential benefits. The Commission’s award of the credit was surprising. The Appellate Court’s reversal is not.

**Trial Court Lacked Subject Matter Jurisdiction to Confirm Commission’s Decision – Commission’s Decision Was Not Final Because All Three Commissioners Issued Different Decisions.**


Petitioner filed a claim against respondent claiming her ten year employment as a building service worker caused her carpal tunnel syndrome. The employer disputed the claim and alleged that her condition was the result of a systemic disease unrelated to employment.

Further, petitioner claimed she was permanently and totally disabled. In response, respondent claimed that petitioner was offered an alternate job but she rejected it. Therefore, any award should be limited to TTD and PPD.
After a hearing of all of the conflicting and contradictory evidence, an arbitrator awarded petitioner TTD for approximately three and a half years plus PPD for 25% loss of use of the right hand and 22.5% loss of use of the left hand. Both parties appealed.

On appeal, two Commissioners agreed that petitioner’s case was compensable. Petitioner was awarded 90 weeks of TTD. One Commissioner ruled that petitioner was permanently and totally disabled. The concurring Commissioner awarded petitioner only TTD and PPD benefits. Yet, a third dissenting Commissioner found that petitioner did not sustain an accident and was not entitled to any benefits at all.

Both parties appealed to the Circuit Court and the Circuit Court confirmed the decision of the IWCC. Both parties appealed to the Appellate Court and the Appellate Court reversed and remanded. The Appellate Court found that the Circuit Court did not have subject matter jurisdiction because there was no majority decision issued by the Commission. Essentially, there were three different decisions from three different Commissioners. The court held “In light of the fact that a majority of the Commissioners did not approve the PPD award, the decision issued by the Commission is not final because it does not dispose of the claimant’s request for permanent disability benefits in accordance with the unambiguous language of Section 19(e).”

The Circuit Court’s decision was vacated. The matter was remanded back to the Commission for issuance of a majority decision.

Comment: The Commission should have realized that it was not issuing a decision at all. Instead, three different Commissioners issued three different decisions. No one decision could take prominence over either of the other two. Two Commissioners agreed that the case was compensable but they did not agree on what petitioner’s award should be. The Appellate Court was quite correct in remanding the case back to the Commission. The Commission decision is comprised of a three Commissioner panel and two of the three must agree on a decision in order for the decision to become final and enforceable.

**Court Finds Truck Driver to Be an Employee and Rejects Respondent’s Claim of Independent Contractor.**


This claim involves a Polish immigrant who drove a truck for respondent. He was hired as a truck driver in June, 2007 and signed a Master Independent Contractor’s Agreement. He drove a truck for respondent from June, 2007 until his accident in March, 2009. However, he did take off work from respondent from October, 2008 through February, 2009 because he went to Europe to visit his family. The claimant disavowed the Independent Contractor Agreement claiming he did not know what he was signing because he did not speak or write English. He claims he drove a truck that was owned by
respondent. He claimed that he drove routes based on instructions by respondent’s dispatchers.

A representative from respondent testified that respondent employed both employee drivers and independent contractors. She testified that petitioner chose when starting employment to be an independent contractor rather than an employee. She testified independent contractors could take off when they wanted. She testified that independent contractors were allowed to use trucks on a first come basis. She testified that contract drivers were allowed to choose their own routes. She testified that employee drivers were required to accept loads offered by respondent but contractors could refuse loads.

After a hearing, the arbitrator ruled the case compensable and found petitioner to be an employee. After appeals, the IWCC and the Circuit Court affirmed. Respondent appealed to the Appellate Court and the Appellate Court affirmed also.

The Appellate Court ruled that the issue of whether or not petitioner was an independent contractor was a question of fact for the Commission. The court enumerated the important factors in determining the employment relationship. The court held “The single most important factor is whether the purported employer has a right to control the actions of the employee. Also, of great significance is the nature of the work performed by the alleged employee in relation to the general business of the employer. Additional factors to consider are the method of payment, the right to discharge, the skill the work requires, which party provides the needed instrumentalities, and whether income tax has been withheld. Finally, a factor of lesser weight is the label the parties place on their relationship.”

The respondent properly argued that it did not control the claimant’s work. Respondent noted that many aspects of the petitioner’s work duties were mandated by federal regulation rather than employer regulation. This included the claimant’s duty to conduct pretrip inspections and to maintain logs of his trips. Respondent pointed with authority to the Independent Contractor Agreement which clearly set forth petitioner’s position is that of an independent contractor. Respondent pointed out that many aspects of petitioner’s testimony had been directly refuted by its own witness.

Nevertheless, the court ruled in favor of petitioner. The court found that petitioner proved that he was an employee. The court left it up to the Commission to accept and adopt the testimony of petitioner and ignore the testimony of respondent’s witness.

The court emphasized the fact that petitioner was required to start each of his trips at respondent’s facilities and the fact that he drove the respondent’s trucks. Petitioner did not drive a truck that he owned. Instead, he drove a truck owned by the employer. Moreover, the court noted importantly that the nature of the claimant’s work was the precise type of work the respondent was in the business to provide. Consequently, the court felt well justified in ruling petitioner was an employee rather than an independent contractor.
Comment: Many trucking companies prefer to hire independent contractors rather than driver employees. However, all trucking companies recognize now the extreme difficulty in getting the Commission to adopt the designation of a driver as an independent contractor versus an employee. This is extremely frustrating for trucking companies who really wish to retain independent contractor employees. This was a good case for the employer. They did everything right in terms of drafting an Independent Contractor Agreement and treating petitioner as an independent contractor. In this case, respondent hired both contractors and employee drivers. In this case, petitioner chose to become an independent contractor rather than an employee driver.

However, once he was injured, he then sought benefits as if he had been an employee driver all the time. The Commission’s ruling in favor of the employee and against respondent makes a mockery of the employer’s efforts to deal with its drivers on two separate bases. The claimant here got himself all the tax advantages of being treated as an independent contractor and then all the workers’ compensation benefits of being an employee driver. This is discouraging to all trucking companies who try to distinguish between the two types of drivers.

Petitioner’s Appeal Dismissed for Non-Timely Filing – The Mailbox Rule Does Not Apply to Circuit Court Appeals.


This case was handled by our office. Attorneys Daniel Egan and Jeffrey Rusin combined for a victory for the respondent. The case involves an alleged accident date of July 21, 2004. Following a hearing, the arbitrator issued a decision denying benefits. The arbitrator found that petitioner failed to prove that he sustained an accident and failed to prove causal connection. Petitioner appealed to the Commission and the Commission affirmed. The Commission’s decision was issued and received by petitioner’s attorney on April 20, 2009.

Petitioner decided to appeal to the Circuit Court. Petitioner’s attorney drafted appeal documents and mailed them to the Circuit Clerk. They were received by the Circuit Clerk through the mail on May 14, 2009; 24 days after petitioner’s attorney’s received the decision from the Commission.

We filed a motion to dismiss on the basis that the statute requires any appeals be filed within 20 days. Petitioner responded claiming that the appeal was timely because the appeal documents were mailed to the Circuit Clerk on May 4, 2009, less than 20 days after the receipt of the decision from the Commission.

We argued that it was irrelevant as to when the documents were mailed since the statute required filing of the documents within 20 days, not mailing the documents to the Circuit Clerk within 20 days.
Petitioner argued that the “mailbox rule” applies to Commission appeals. The petitioner cited to Supreme Court cases which indicate that the mailbox rule applies to the filing of a notice of appeal from a decision of the Circuit Court to the Appellate Court.

The Appellate Court in a three to two decision rejected petitioner’s argument and concluded that the Workers' Compensation Act does not contain a mailbox rule. The Workers' Compensation Act requires the filing of an appeal strictly within 20 days from the date of receipt of the Commission’s decision. The failure to file the appeal in the Circuit Court during that 20 day period renders the appeal meaningless because of no subject matter jurisdiction.

Comment: This was an excellent decision for us. Congratulations to Attorneys Egan and Rusin who combined for an excellent result on behalf of the employer. Past case decisions have held employers to a very high standard with respect to any Circuit Court appeals. It is only fair that employees should be held to the same high standard. The time frame for appealing from a Commission decision to the Circuit Court is very short. Consequently, a decision has to be made early as to whether or not an appeal is going to be filed. It is especially problematic for employers who are usually required to file an appeal bond as well as the multiple other appeal documents required for a workers’ compensation appeal. This decision does place more stringent requirements on both parties to make sure appeal documents are timely and properly filed.

Award of Maintenance Benefits and Vocational Rehabilitation Upheld – Employer Denied Right to Demand an FCE.


This long and complicated case involved a 56 year old claimant who is a union laborer living in Highland, Indiana. Prior to working as a laborer, he had been a truck driver but did not have a current CDL. On February 1, 2006, he was pushing a wheelbarrow that started to tip and he twisted his right knee. He underwent two knee arthroscopies but continued to have pain complaints. In October, 2006, he was offered light duty at the employer’s offices in Northbrook, Illinois (about a 55 – 60 mile drive each way). Petitioner worked light duty for a few days but then complained that his knee hurt more because it took him two hours to drive to the employer’s offices each way. He complained of increased pain and his treating doctor placed him on a one hour a day driving restriction.

After several courses of physical therapy, he had an FCE May 16, 2007 which placed him in light to medium physical demand level work. Work hardening was suggested but it increased petitioner’s symptoms. Dr. Tonino, a respected orthopedic surgeon, examined petitioner and released him for light-medium work but did not place any driving restrictions on him. The employer then again tried to bring him back to work to light duty but petitioner again complained of increased right knee pain because of driving.
The case was initially tried over the issue of petitioner’s return to work and TTD. Petitioner was awarded two years of TTD and respondent paid the first award.

Petitioner’s attorney hired a vocational rehabilitation consultant, Thomas Grzesik. Grzesik suggested petitioner get his GED and CDL. (It is hard to understand why petitioner was being pushed to get a CDL if he had a one hour driving restriction.)

Thereafter, petitioner started to receive medical treatment again. He had another knee surgery including a partial knee replacement. He recovered and was again released for light to medium physical demand level work. An FCE was done May 27, 2009. The new treating doctor stated petitioner was capable of being a truck driver if he drove an automatic tractor-trailer. Not surprisingly, such a position was never obtained for petitioner.

On February 8, 2010, petitioner was reexamined by Dr. Tonino. Dr. Tonino felt petitioner was at MMI. He again imposed no driving restrictions. He recommended a new FCE. Petitioner refused the new FCE.

After a second 19(b) hearing, petitioner was awarded maintenance benefits for the entire disputed period of time. He was awarded vocational rehabilitation expenses for his work with Mr. Grzesik and the arbitrator denied the employer’s request for a new FCE.

The employer had hired a vocational consultant but petitioner refused to meet with him. The employer’s vocational consultant drafted a vocational rehabilitation plan. He made some suggestions to improve petitioner’s employability but also suggested petitioner return to work as a CDL licensed truck driver.

The employer appealed and the Commission affirmed. The employer appealed to the Circuit Court and the Circuit Court also confirmed.

The employer appealed to the Appellate Court and the Appellate Court unanimously affirmed and soundly rejected all of the employer’s arguments. The court noted “In challenging the award of vocational rehabilitation benefits based on the plan devised and implemented by Grzesik, Olson contends that the Commission erred in its assessment of the evidence, the credibility of the witnesses, and the way to be accorded their testimony. Thus, Olson essentially is asking us to reweigh the evidence that we presented at the hearing. However, as noted above, it was within the province of the Commission to judge the credibility of the witnesses, resolve conflicting testimony and draw reasonable inferences from the evidence presented.”

The remainder of the court’s decision completely rejects all of the respondent’s arguments. The court noted that conflicting vocational rehabilitation testimony was presented, but importantly, the difference between the two different vocational specialists’ recommendations was not that great.
More importantly, the court soundly rejects the employer’s demand for a functional capacity evaluation. The court analyzes an employer’s right to a medical examination and limits it to the parameters set forth specifically in Section 12. The court ruled that the employer has a right to an examination by a physician. The court states that the employer does not have a right under Section 12 for an examination by a physical therapist.

The court held “neither Section 12 nor Section 19(c) of the Act provides statutory authority for the assertion that either the employer or the Commission may require a claimant to submit to an evaluation by a physical therapist. Accordingly, we reject Olson’s contention that the Commission erred in refusing to order the claimant to submit to the FCE recommended by Dr. Tonino.”

Comment: This is truly a terrible decision for employers from the Appellate Court. Based on the facts as recited by the court, the case did not merit an appeal to the Appellate Court. The case involved some disputed facts and a difficult vocational rehabilitation case. The Commission’s determination of the facts in favor of the employee clearly was not going to be reversed at the Appellate Court level. Certainly, the recommendation that a claimant who is only allowed to drive one hour a day should be rehabilitated to becoming a truck driver does not make a lot of sense. The primary reason stated for petitioner not being able to get back to being a truck driver was no insurance company would insure him for liability coverage. Even the restriction that petitioner be limited to an automatic transmission truck does not make a lot of sense since his injury was to his right knee. It certainly would make sense that he could drive a manual transmission truck than use the clutch with his uninjured left leg.

This Appellate Court decision also stands for the conclusion that an employer cannot require an FCE as part of an IME. That is a bad precedent to establish. Many IME doctors strongly recommend FCEs to get a better prognostication as to a person’s true ability to return to work in addition to their physical examination. We may try to challenge this ruling in the future but first we will need to get a Commission decision in our favor. We will have to find a case where an FCE is more than recommended, but instead is an integral part of the IME doctor’s opinion. Employers need every tool in their arsenal. We cannot give up on certain important tools and strategies.

Court Calculates Average Weekly Wage – Court Includes Mandatory Overtime Hours and Production Bonuses in the Average Weekly Wage Calculation.

Arcelor Mittal Steel v. IWCC and Robert Common, 2011 Ill. App. 102180 WC

This case was litigated and appealed primarily over the issue of the average weekly wage calculation. Petitioner suffered an injury to his right arm on November 29, 2007. He was off work about six months and was awarded 27.5% loss of use of his right arm.

Petitioner claimed that in calculating his average weekly wage the employer was required to include mandatory overtime hours and production bonuses. Several witnesses testified at trial. Petitioner was employed as a mechanical maintenance technician at a steel mill.
His employment was covered by union contract. The union contract allowed for the employer to require mandatory overtime. It also allowed for additional compensation for a production bonus plan that included a production component and a safety component.

A significant amount of evidence was offered as to overtime hours. Overall, the evidence showed that overtime could be mandatory and could be voluntary. Petitioner’s overtime hours apparently varied from week to week and were based on whether or not the plant was undergoing outages or relines. Petitioner’s mandatory overtime would be scheduled the week before. Instead of an eight hour day, petitioner would be required to work a 12 hour day.

After a hearing the arbitrator included petitioner’s mandatory overtime hours and production bonus in the average weekly wage calculation. The Commission affirmed and the employer appealed to the Circuit Court and the Appellate Court.

The Appellate Court affirmed the Commission’s ruling on the average weekly wage calculation. The Appellate Court considered Section 10 of the Act to finding how wages are calculated. Although the Act states that wages include all earnings “excluding overtime and bonus,” this section of the Act does not really mean exclusion of all overtime and all bonuses. Based on past case decisions, the court ruled that mandatory and consistent overtime hours should be included in the wage calculation. In this case, the court included all of the mandatory overtime hours petitioner worked that were scheduled. The Commission had not included petitioner’s voluntary overtime hours. Therefore, the court only included mandatory overtime hours at the straight time rate.

Further, the court also included the employee’s production bonus. The court ruled that production bonuses that are part of the collective bargaining agreement must be included in the average weekly wage calculation. The court noted a distinction between incentive based pay which an employee receives in consideration for specific work performed as a matter of contractual right and a bonus which an employee receives for no consideration or in consideration of overall performance at the sole discretion of the employer. Consequently, end of the year bonuses and occasional bonuses are excluded under the court’s interpretation of the Act, but not production bonuses or incentive paid bonuses.

Comment: There is nothing surprising in this decision. This was a valiant effort by the employer to try to get the court to limit the inclusion of overtime hours and production bonuses. However, the court refused to restrict its interpretation of the Act when it comes to the inclusion of overtime hours and production bonuses.

This decision does not change any existing case law. It does not expand the definition of when overtime hours should be included in the average weekly wage calculation. Overtime hours still should be included in the average weekly wage calculation only when the overtime hours are consistent and when they are mandatory. It is especially likely when the overtime hours are both mandatory and scheduled by the employer as opposed to random, mandatory overtime which is unscheduled.
Court Finds Union Worker to Be a Traveling Employee Even Though He Voluntarily Bid on a Temporary Position Outside His Geographic Region – Case is Going to the Supreme Court.


Petitioner is a 50 year old pipefitter who lives in Springfield, Illinois and was a member of the Pipefitters' Union Local in Springfield, Illinois.

Respondent is a contractor that was hired to perform maintenance and repair work at a nuclear power plant in Cordova, Illinois which is approximately 250 miles from Springfield. The Local Plumbers’ Union is Local 25 in Rock Island, Illinois. Respondent contacted Local 25 in Rock Island and requested manpower for a temporary assignment at the Cordova plant. The Local filled all the available positions and more employees were needed.

Local 25 (not the employer) contacted other nearby plumber unions to see if any of their employees wanted to work at the job site. Petitioner was contacted by the Local 137 business agent and petitioner and a co-employee decided to accept the position to work at the Cordova plant.

The two men decided to stay at a local hotel rather than drive back and forth to work from home. This was a personal decision. The employer paid no mileage or travel time.

On March 24, 2006, petitioner was driving to the plant from his hotel and was involved in a motor vehicle accident. Petitioner claimed his motor vehicle accident was compensable because he was a traveling employee. Respondent disputed liability for the claim on the basis that traveling back and forth to work is not compensable. Respondent disputed that petitioner was a traveling employee. Respondent did not require petitioner to travel. Instead, petitioner was only assigned work at the Cordova plant. It was petitioner’s decision to accept the job at the Cordova plant. Respondent did not actively recruit petitioner to work at the Cordova plant. Respondent only put in a request to the local union for available plumbers.

The case was tried before an arbitrator and the arbitrator correctly denied benefits. The arbitrator found that petitioner’s motor vehicle accident did not arise out of and in the course of his employment.

Petitioner appealed and the Commission in a split two to one decision reversed. The Commission found that petitioner was a traveling employee and therefore his case was compensable because he was entitled to compensation for accidents while traveling to and from work. The employer appealed and the Circuit Court of Cinnamon County reversed reinstating the denial of benefits.
Petitioner appealed and the Appellate Court in a split three - two decision reversed. The majority held that petitioner was a traveling employee because he was hired by respondent and the work he was assigned to do was in Cordova, Illinois, more than 200 miles from his home. Therefore, the case was found compensable.

A two member dissent authored a lengthy opinion that was far more convincing than the simple majority decision. The dissent clearly analyzed the facts of the case and found that petitioner was not a traveling employee. He was simply an employee who accepted a job to work at a single location that was not close to his home. Clearly, the majority decision is erroneous.

Respondent has appealed this decision and the case has been certified as an important one and it will be heard by the Supreme Court.

Comment: This is a terrible decision from the Appellate Court. It really defies the common sense of the realities of union employment. There is simply no way that petitioner can or should be considered a traveling employee. The employer did not require petitioner to travel. The employer did not actively recruit petitioner to travel from Springfield, Illinois. There is no reason why petitioner should be treated any differently than any local plumber. A local plumber who decided to accept the job assignment in Cordova would not be compensated for any accidents which occurred while he was traveling from his home to the worksite. There is no reason that petitioner should be compensated more than a local employee. Petitioner could have decided to drive back and forth to work every day. He decided to stay in a local hotel. The employer did not require this. This case definitely merits an appeal to the Supreme Court and, hopefully, the Supreme Court will correct this travesty of justice.

Section 19(g) Action Granted in Favor of Petitioner Despite Respondent’s Overpayment of Compensation Benefits.


Petitioner filed two applications against respondent for two separate work-related accidents. The cases were consolidated and tried together. The arbitrator awarded TTD, penalties and attorney’s fees totaling approximately $23,000.00. Credit was given for compensation paid totaling approximately $27,000.00. The facts surrounding the case are not stated well in the decision, but it appears the employer terminated TTD in February, 2003, but TTD was awarded by the arbitrator through October, 2003.

Respondent appealed and the Commission affirmed but actually increased the credit to over $32,000.00. Petitioner demanded payment of the awards and respondent refused to pay claiming they had already overpaid the benefits.

Petitioner then filed a Section 19(g) action demanding payment of all benefits and obtained a judgment from the Circuit Court. The Circuit Court judgment was $23,000.00
in benefits plus attorney’s fees of $43,000.00, costs of approximately $5,000.00 and interest of almost $14,000.00.

Home Depot appealed but the Appellate Court affirmed.

The Appellate Court summarized and analyzed an employer’s rights under Section 19(g). The court noted that case law shows that if an employer overpays benefits to an employee, it cannot simply use Section 19(g) as an avenue to enforce the overpayment credit. Instead, an employer who overpays benefits must file a common law action against the employee in order to recover the overpaid benefits.

The court ruled that even though there had been an overpayment here, the employer could not claim the overpayment as against the pending award. The court stated that the employer might be entitled to the overpayment benefit at some later juncture, but for now they had to pay the Commission’s decision. Consequently, pursuant to this 19(g) action, the employer was required to pay not only the $23,000.00 award, but also attorney’s fees, costs and interest totaling over $65,000.00.

Comment: This decision appears to be extraordinarily unfair from an employer’s standpoint. The facts of the case are not sufficiently described in this decision. As best I can tell, the Commission issued two decisions in this matter. It appears there has been an overpayment in the first case and an underpayment in the second case. It appears the employer tried to use the overpayment in the first case as against its liability in the second case and this position was soundly rejected by the Trial Court and the Appellate Court.

The direction for employers here is to make sure that credits are properly applied to each case specifically and between multiple cases. That seems like an extremely unfair result especially wherein the court rejects a specific finding by the Commission awarding a credit. It is bad enough that the court would deny the credit, but then to award penalties, attorney’s fees and interest of $65,000.00 on a $22,000.00 award is adding enormous insult to injury.

Frankly, it has never made sense that an employer cannot enforce an overpayment decision against a claimant. Case decisions dating back 20 years state that an employee can use Section 19(g) to enforce a Commission’s decision, but an employer cannot use Section 19(g) to enforce a Commission’s decision. There is an inequity there that is totally unjustified. Here, the court wants the employer to pay more than what it owes to petitioner and then file a lawsuit against petitioner to recoup its overpayment. That is simply unfair.

Court Dismisses Appeal Finding Commission’s Decision Was Interlocutory in That it Remanded the Case to the Arbitrator for Ruling as to the Need for Vocational Rehabilitation.

Petitioner filed a claim against respondent alleging an accident date of May 16, 2005. Petitioner was working for respondent operating a catering truck. The employer disputed an employer/employee relationship and claimed petitioner was an independent contractor. After a hearing before the arbitrator wherein petitioner claimed $141,000.00 in medical bills and 52 weeks of TTD, the arbitrator found that petitioner was not entitled to any benefits because she was an independent contractor.

Petitioner appealed and, in a two to one decision, the Commission reversed. The Commission awarded the medical bills and TTD. The Commission noted that petitioner’s treating doctor recommended an FCE and the IME doctor indicated petitioner would likely need rehabilitation to return to work. Therefore, the Commission remanded the case to the arbitrator to determine the need for vocational rehabilitation and/or maintenance, medical treatment and PPD.

Respondent appealed to the Circuit Court and the Circuit Court reversed remanding the case to the Commission ruling that the Commission did not give sufficient explanation as to the basis for its reversal on credibility grounds.

Respondent appealed to the Appellate Court and the Appellate Court reversed. The Appellate Court found that the Trial Court did not have jurisdiction to hear the appeal because the Commission’s decision was interlocutory and not final.

The court referenced the case of *Thomas v. Industrial Commission*, 78 Ill. Dec. 2d 327, 399 N.E. 2d 1322 (1980). In that case, the Supreme Court found that 19(b) decisions could be appealed even though issues of permanent partial disability had yet to be determined. Cases could be appealed as to the issues of accident, causation and TTD. In this case, the Commission had remanded the case on the issue of vocational rehabilitation, but referenced the *Thomas* decision.

This court ruled that the Commission’s decision referencing the *Thomas* case was insufficient to make its order final and appealable. The court stated “Here, the Commission having determined that the claim is compensable, not only awarded TTD and medical bills, but also remanded to the arbitrator for a determination of vocational rehabilitation benefits. It has long been held that a remand for a determination of vocational rehabilitation benefits renders the remand order interlocutory and not appealable.”

The court summarizes a series of Appellate Court decisions which stand for the proposition that a Commission’s order of remand for a definitive vocational rehabilitation program is not a final order and therefore not appealable. The Appellate Court reversed the Trial Court ruling and remanded the case all the way back to the arbitrator to hold a further hearing and ruling on the issue of a vocational rehabilitation plan.

**Comment:** This ruling documents a complex and bizarre series of decisions. It is clear the Commission should never have reversed the arbitrator’s decision. Moreover, once the
Commission reversed the decision of the arbitrator, it should have entered a final decision or else ruled in the employer’s favor that petitioner was in a permanent condition. Instead, the Commission entered a decision that purported to be a final decision, but in fact was not.

It is really difficult for employers to determine after receiving a Commission’s decision whether or not the decision is interlocutory or final for the purposes of appeal. In this case, the Commission placed language in its decision specifically stating that it was a final and appealable order. Therefore, the employer spent many hours in appealing an erroneous decision only to reach the Appellate Court and have the Appellate Court rule that the decision was not even final.

The employer now has to go back before the arbitrator and relitigate the issue of vocational rehabilitation. The employer then has to appeal that decision back to the Commission, back to the Circuit Court and back to the Appellate Court to get a final ruling on the issue of employer/employee relationship. This is a frustrating and expensive process that could have been avoided if the Commission had issued a proper decision in the first instance.

Obviously, the decision of the arbitrator finding that there was no employment relationship was correct. If the Commission was going to reverse that decision, at least they could have issued a final order and avoided protracted and expensive litigation.

GREAT DECISIONS AROUND THE OFFICE

Ted Powers obtained an excellent decision in a very complicated case on behalf of CCMSI and Dayton Freight Lines in the case of John Mitchell v. Dayton Freight Lines and Harbor Freight, 02 WC 49143, 02 WC 26244 and 11 WC 9262. The case involved a complex set of facts and medical treatment. Petitioner filed two claims against Dayton Freight Lines for accidents of August 29, 2001 and April 4, 2003. He suffered admitted back and neck injuries while working as a truck driver. He underwent extensive medical treatment for his back and neck which included multiple surgeries. He had a lumbar microdiscectomy at L3-L4 on June 11, 2002. He had a cervical fusion performed in July, 2004 at C6-C7. Thereafter, he continued to receive extensive follow up care primarily for pain management. He wanted a lumbar fusion surgery but that was denied. He went through a long course of vocational rehabilitation. He worked for a while as a real estate broker. He eventually got a job as a part time retail clerk at Harbor Freight in August, 2010. He was continuing to treat intermittently.

While working at Harbor Freight on December 30, 2010, he reported a significant increase in back pain while moving hydraulic floor jacks. He again began an extensive course of treatment. This time his primary treating physician was Dr. Zindrick. Dr. Zindrick thought petitioner might have a new disc herniation. He wanted to perform a fusion. He wanted to fuse petitioner from L2 to L5.
Harbor Freight argued that petitioner did not suffer a significant new injury. They argued that petitioner’s accident of December 30, 2010 was only a temporary aggravation of a preexisting condition. We argued that the new accident caused an aggravation and significant changes in petitioner’s underlying condition.

After years of litigation, multiple IMEs and evidence depositions, we convinced the arbitrator to rule in our favor. The arbitrator found that petitioner did suffer a new injury and that his current condition of ill-being was caused by his work injury at Harbor Freight. Harbor Freight was directed to authorize the fusion surgery being recommended by Dr. Zindrick and not our client.

Dan Egan obtained an excellent decision for State Farm Insurance in the case of Rocio Perez v. TFN, Inc./Wendy’s, 07 WC 40315, 12 IWCC 483. This case also involved a difficult causation issue. Petitioner claimed that she slipped and fell at work June 19, 2007 and injured her left knee. We admitted that petitioner suffered a work injury but we argued that her condition of ill-being was the result of a preexisting condition. We proved that prior to the work injury petitioner had suffered a home injury. She twisted her left knee May 20, 2007, a month earlier, while playing soccer at a park with her family. She was diagnosed with a torn ACL. Surgery was recommended.

Petitioner then slipped and fell on June 19, 2007. She was again diagnosed with an ACL tear. However, a meniscus tear was also suspected. She had surgery. Petitioner argued that the work injury caused the lateral meniscus tear and demanded payment of TTD and benefits. Nevertheless, we argued and proved through our IME doctor, Dr. Jay Levin, that petitioner’s condition of ill-being was a preexisting one. After examining petitioner and performing a medical record review, Dr. Levin concluded that petitioner’s home injury was the cause of her underlying condition and the need for surgery. The arbitrator ruled in our favor but petitioner appealed. The Commission affirmed in a unanimous ruling. The Commission found that petitioner’s home injury was the cause of the need for her surgery. Benefits were therefore denied in their entirety for petitioner’s surgery.

I scored a win from the Commission on behalf of CCMSI and Illinois Public Risk Fund in the case of Radames Rodriguez v. Village of Norridge, 07 WC 55555, 12 IWCC 190. This case involved a police officer who claimed an injury November 29, 2007. Petitioner claimed that he injured his shoulder as the result of holding a radar gun in an extended position. We disputed liability. We claimed that holding a radar gun was not very heavy. We proved that petitioner’s gun only weighed one to two pounds and he did not have to hold it for longs periods of time. We proved that petitioner had preexisting shoulder problems. We claimed that petitioner’s preexisting problems were the cause of his current condition. After a trial before the arbitrator, we obtained a favorable decision but petitioner appealed to the Commission. The Commission affirmed and adopted the decision of the arbitrator. Compensation was denied in its entirety. Fortunately, we had the Chief of Police testify. It is always favorable to try a case for a police department and have the Chief testify. Police chiefs generally make excellent witnesses at trial.
Randy Stark scored a great decision for Gallagher Bassett in the case of Gino Edwards v. Gunite, 10 WC 47281. This case involved an admitted accident on November 15, 2010. Petitioner fell about four feet while working and injured his low back and right hip. We argued that the injury was minor and petitioner was not entitled to hardly any compensation. We proved that petitioner had a history of low back injuries. We proved that his physical findings following this accident were fairly minimal. We pointed out that petitioner continued to treat after the accident but that his physical findings were not consistent with any serious injury.

Moreover, we proved that petitioner had some intervening accidents. We proved that he was involved in a motor vehicle accident in May, 2011 and a slip and fall at home on February 15, 2011. We claimed that these intervening accidents were the cause of his current ill-being, if any. We arranged for an IME with Dr. Soriano who supported our position. Petitioner was seeking an award of TTD and PPD in excess of $49,000.00. The arbitrator instead awarded 1% loss of use of the man as a whole, or only $1,800.00.

I obtained an excellent decision from the Circuit Court of Cook County on behalf of the Illinois Public Risk Fund and CCMSI in the case of James Portincaso v. Village of Alsip Police Department, 11 WC 11713, 12 IWCC 239; 2012 L 50479 on January 15, 2013.

Petitioner was employed by the respondent as a police officer. He claimed that he was injured December 11, 2010 while making an arrest. The case was a complex one. There was no dispute that petitioner made an arrest on December 11, 2010. It was disputed whether or not petitioner suffered an injury while making the arrest. Petitioner made the arrest with another officer. The suspect did resist arrest and petitioner and the fellow officer had to wrestle him to the ground. Petitioner claimed that the suspect’s father and brother jumped on him and he injured his back.

We claimed that petitioner did not suffer a back injury during the arrest. We proved a long history of prior back problems including prior back surgery. We proved that petitioner did not initially report any injury associated with this incident. We proved a significant gap between the date of the accident and petitioner’s onset of significant symptoms. We demonstrated multiple inconsistent histories given by petitioner to various medical providers. We presented several witnesses including petitioner’s fellow officer, his sergeant, his lieutenant and secretary to the Chief.

Further, we arranged for an IME with Dr. Avi Bernstein who also concluded that petitioner’s condition of ill-being is a personal one and not related to his activities during the arrest. The arbitrator ruled in our favor and denied compensation. Petitioner appealed to the Illinois Workers' Compensation Commission and the Commission issued a unanimous decision affirming the arbitrator and denying compensation in its entirety. Petitioner appealed to the Circuit Court and Circuit Judge Robert Lopez Cepero ruled in our favor.

Mark Rusin scored a great decision for Farmers Insurance from the arbitrator in the case of Jose Casimiro v. Midwest Carpentry, 04 WC 33413. This case involved an old
accident of March 29, 2004. Petitioner suffered an injury to his back on that date carrying a generator. Respondent accepted liability in this matter and paid for petitioner’s initial treatment including an L3 through S1 spinal fusion. Postsurgery, petitioner improved. He underwent an FCE in October, 2005. We contended that the FCE showed poor effort. We contended petitioner was at MMI and was not entitled to further treatment or TTD. Petitioner, on the other hand, contended that he never really recovered. He demanded further medical treatment and TTD restarting in 2008 up through the time of trial July 19, 2012.

The arbitrator ruled in our favor. The arbitrator awarded TTD through December 25, 2005. Maintenance was awarded through March 26, 2006. However, all compensation benefits thereafter were denied. We were granted credit for compensation previously paid. We currently have an overpayment credit of over $50,000.00.

I also scored a win at the Commission level in a totally disputed case on behalf of the Illinois Public Risk Fund in the case of Keith Kaschub v. Darien-Woodridge Fire Protection District, 08 WC 49489, 12 IWCC 232. The claimant was employed as a firefighter and sustained an injury while at work on February 8, 2008. Petitioner claimed that he tripped and fell over some furniture in the common room of the firehouse. We contended that petitioner’s injury was the result of horseplay. We presented witnesses who testified that immediately prior to petitioner’s trip and fall that petitioner had given a big bear hug to a co-employee. The co-employee did not expect the bear hug and twisted to get free. As the co-employee twisted to get free, both he and petitioner fell to the ground. At that juncture, petitioner’s leg was under him and he suffered a severe fracture to his ankle.

The arbitrator ruled in our favor and found that petitioner’s accident did not arise out of his employment. Petitioner appealed to the Commission and the Commission in a unanimous decision affirmed the decision of the arbitrator. Compensation was denied in its entirety.

Sarah Tripp in our Carbondale office successfully obtained a no accident decision from the arbitrator on behalf of AIG Insurance in the case of Tina Robinson v. Regions Financial Corporation, 11 WC 3793. Petitioner was claiming repetitive trauma as a result of working as a bank teller counting money and working on the computer. We contended that petitioner’s work duties were intermittent and not repetitive. The case was strengthened by our cross-examination of petitioner’s treating physician who admitted he did not know petitioner’s precise job duties and could not explain why petitioner’s symptoms did not improve once she stopped working. The arbitrator rejected the opinions of petitioner’s treating physicians and instead relied on our expert, Dr. Rotman, who concluded that petitioner’s condition was not work-related. The claim for compensation was denied in its entirety.

I obtained a no accident finding from the arbitrator on behalf of Dayton Freight Lines and CCMSI in the case of Maurice Adams v. Dayton Freight Lines, Inc., 12 WC 37184.
Petitioner worked for the employer as a freight handler. He claimed that he twisted his knee while crouching to unload a package in a trailer. However, petitioner’s trial testimony was inconsistent with what he told his supervisor immediately after the accident. Further, it was inconsistent with petitioner’s recorded statement to the carrier and the medical records.

Petitioner prior to trial had only stated that he was walking in the trailer when his knee popped. He suffered a patellar tendon rupture and required surgery. We disputed the case on the basis that petitioner did not suffer an accident since he was not injured as a result of any increased risk. We admitted the accident was in the course of employment but we disputed that it arose out of the employment. The arbitrator discounted petitioner’s self serving testimony and relied on the testimony of our witnesses, the adjuster’s recorded statement and the medical records. The case was found not compensable and no benefits were awarded.

Sarah Tripp scored a favorable decision from the arbitrator on behalf Am Trust Insurance in the case of Adam Hahn v. Terrace Fence, 11 WC 37675. Petitioner suffered an undisputed accident. He claimed that he was continually disabled and he wanted authorization for surgery. We proved that petitioner’s demand for surgery was premised really only on subjective complaints and not objective evidence. We relied on an IME report from Dr. Wayne. The arbitrator adopted this report instead of petitioner’s treating doctor’s report.

We were helped by some excellent surveillance footage of petitioner spending three days in a row at a restaurant called Grumpy’s Smokehouse. Petitioner denied performing any work duties there, but surveillance showing him wearing an employee T-shirt and entering and exiting through the rear employee entrance certainly made his testimony incredible. TTD was terminated with the surveillance films and the prescription for a decompression and fusion surgery in the spine was rejected. Petitioner is likely Grumpy now.

CONCLUSION

Employers and carriers alike continue to be frustrated by the Illinois Workers' Compensation system. The legislature spend a lot of time agonizing about the Workers' Compensation Act and the administration of workers’ compensation claims before enacting the substantial changes which went into effect in 2011 but primarily affected dates of accident after September 1, 2011. In view of all the effort that went into the 2011 legislation, WC reform is unlikely to generate much interest in the legislature for some time.

The most key provision in the 2011 statutory changes was a 30% reduction in the Medical Fee Schedule. The reduction in the Medical Fee Schedule took September 1, 2011 and certainly helped employers control medical costs. However, despite the 30% reduction, which was effective September 1, 2011, the 30% decrease has been diminished by annual increases to the Fee Schedule. Effective January, 2012 the medical fee
schedule increased by 3.77%. Effective January, 2013 the Medical Fee Schedule increased by 1.69%.

The other major medical provision in the 2011 Act created the ability of employers to have a Preferred Provider Program. The Preferred Provider Program would limit an employee’s choice of medical providers and would eliminate the employee’s free choice of two different doctors and their referrals down to one free choice of doctor at most. Unfortunately, no employers to my knowledge have truly taken benefit of this provision of the Act. Final administrative rules concerning PPPs were issued by the Department of Insurance on March 15, 2013. Perhaps this will encourage employers to finally set up a valid PPP. See Illinois Register, Volume 37, Issue 11, page 2895.

Finally, the last major change in the Act to benefit employers was the application of AMA guidelines to permanent partial disability ratings. Section 8.1b of the Act entitled AMA Guides was added. That section states that permanent partial disability shall be established using multiple criteria including 1. A permanent impairment rating pursuant to the AMA guidelines, 2. The occupation of the employee, 3. The age of the employee, 4. The future earning capacity of the employee and 5. The treating medical records.

The Act states “No single enumerated factor shall be the sole determinate of disability. In determining the level of disability, the relevance and weight of any factor is used in addition to the level of impairment as reported by the physician must be explained in a written order.”

My reading of the Act indicates that the impairment rating should be the paramount factor in determining permanent partial disability. If it is not the primary factor, the Commission is obligated to explain why it is not. So far, we have not seen good decisions from the Commission to support that interpretation. The Commission has still relied much too often on past Commission decisions in determining permanent partial disability rather than the objective, medical justified impairment rating.

Employers should continue to fight this issue. This is an important provision of the Act that merits litigation to the courts before accepting any excessive Commission decision of permanent partial disability. Employers should not waive their right to get an impairment rating and should reasonably rely on the impairment rating to be the determiner of permanent partial disability especially where the other criteria identified in the Act does not serve to increase any reasonable interpretation of the disability rating.

We have to view the new appointments at the Commission favorably. The appointment of Commissioner Latz as Chairman should be a favorable development. The replacement of Commissioner Dauphin should be favorable as well since, although she was serving as a public Commissioner, her decisions were extremely employee oriented. The new Chairman certainly cannot control the decisions of the Commissioners, but he can give them direction to apply the law fairly rather than simply rely on past, out of date decisions based on the pre 2011 statute.
OFFICE and PERSONAL

We have welcomed several new attorneys in our office. In our workers’ compensation department, we have recently added Thomas Crowley, Jennifer Jones and Christopher Jarchow. In our civil department, we recently welcomed Brett Levin. Please check out our firm website for more details about them.

We plan to work diligently to keep our website updated with case decisions from the Courts and the Commission – as well as new and important articles on recent developments on case law and case administration. Please visit it whenever you may have questions on current issues and as always call or e-mail me as needed.

Unfortunately, some lower back issues limited my race schedule last year. Despite undergoing five back surgeries in the last 12 months, I still managed to squeeze in four half Ironman competitions and one full distance (140.6 miles) Ironman. My half IM races took me to New Orleans, LA, Boulder, CO, Muncie, IN and Benton Harbor, MI.

I finished the season with a full distance Ironman race in November in Panama City Beach, Florida. Despite being 9 weeks post surgery, I set a new personal record at 11 hours 46 minutes, an improvement over 2010 Ironman Lake Placid time of 12 hours 17 minutes. Unfortunately, the performance did not earn me a trip back to the Ironman World Championships in Kona, Hawaii. My sights are to return to the locale of the “Miracle on Ice” and compete at Ironman Lake Placid July 28, 2013. Hopefully, by then spring will have actually turned into summer and it will not be snowing in Chicago or in upstate New York.
DOWNSTATE ASSIGNMENTS

To Our Clients:  

3-1-2013

Our workers’ compensation practice is state wide and we attend every arbitration call monthly. The following is a listing of all the Downstate arbitration calls and the names of the attorneys primarily assigned to each arbitration call. We would be pleased to accept assignments at any of the listed hearing locations. In the event you need representation at a specific hearing location, please contact Michael E. Rusin at 312-454-5119 (merusin@rusinlaw.com) or the listed attorney directly.

Cases handled by Mark Cosimini and Terry Schroeder are based in our Champaign office. Cases handled by Tom Margolis and Sarah Tripp are based in our Carbondale office.

<table>
<thead>
<tr>
<th>Location</th>
<th>Assigned Attorneys</th>
<th>Location</th>
<th>Assigned Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bloomington</td>
<td>Mark Cosimini/Terry Schroeder, Tom Margolis/Ted Powers</td>
<td>Peoria</td>
<td>John Maciorowski/Kisa Sthankiya</td>
</tr>
<tr>
<td></td>
<td>Sarah Tripp/Kimberly Vaughn</td>
<td>Quincy</td>
<td>Daniel Egan/Terry Schroeder</td>
</tr>
<tr>
<td>Collinsville</td>
<td>Michael Rusin/Daniel Arkin, Jeffrey Powell/Heather Boyer, Vanessa Reedy</td>
<td>Rockford</td>
<td>Randy Stark/Jigar Desai, Chris Jarchow</td>
</tr>
<tr>
<td>Geneva</td>
<td>Tom Margolis/Sarah Tripp, Lindsay Beach</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Joe Basile/Kimberly Emerson, Kisa Sthankiya/Jennifer Jones</td>
<td>Urbana</td>
<td>Mark Cosimini/Terry Schroeder</td>
</tr>
<tr>
<td>New Lenox</td>
<td>Dan Arkin/Thomas Crowley, Jigar Desai</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tom Margolis/Sarah Tripp, Terry Schroeder</td>
<td>Waukegan</td>
<td>Steve Friedman/Kimberly Vaughn, Greg Rode</td>
</tr>
<tr>
<td>Rock Island</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mt. Vernon</td>
<td></td>
<td>Wheaton</td>
<td>Dan Arkin/Michael Rusin, Greg Rode/Jennifer Rizk, Jeffrey Rusin/Michael Moore</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ottawa</td>
<td>Mark Rusin/Michael Rusin, Thomas Crowley</td>
<td>Woodstock</td>
<td>Daniel Egan/Lindsay Beach, Kimberly Emerson</td>
</tr>
</tbody>
</table>

W:\DOCS\9999\0200\01353882.DOC
### Temporary Total Disability (TTD) and Death Benefit Rates

**TTD and Death Rate = AWW x 66 2/3 %**

<table>
<thead>
<tr>
<th>Minimum TTD</th>
<th>Before 2/1/06</th>
<th>2/1/06 – 6/30/07</th>
<th>7/1/07 – 6/30/08</th>
<th>7/1/08 – 6/30/09</th>
<th>7/1/09 – 7/15/10</th>
<th>7/15/10 – 7/14/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>100.90</td>
<td>173.32</td>
<td>200.00</td>
<td>206.67</td>
<td>213.33</td>
<td>220.00</td>
</tr>
<tr>
<td>Married, 0 children or Single with 1 child</td>
<td>105.50</td>
<td>199.32</td>
<td>230.00</td>
<td>237.67</td>
<td>245.33</td>
<td>253.00</td>
</tr>
<tr>
<td>M w/ 1 or S w/ 2</td>
<td>108.30</td>
<td>225.32</td>
<td>260.00</td>
<td>268.67</td>
<td>277.33</td>
<td>286.00</td>
</tr>
<tr>
<td>M w/ 2 or S w/ 3</td>
<td>113.40</td>
<td>251.32</td>
<td>290.00</td>
<td>299.67</td>
<td>309.33</td>
<td>319.00</td>
</tr>
<tr>
<td>M w/ 3 or S w/ 4</td>
<td>117.40</td>
<td>260.00 (max)</td>
<td>300.00 (max)</td>
<td>310.00 (max)</td>
<td>320.00 (max)</td>
<td>330.00</td>
</tr>
<tr>
<td>M w/ 4 or S w/ 5</td>
<td>124.30</td>
<td>260.00</td>
<td>300.00</td>
<td>310.00</td>
<td>320.00</td>
<td>330.00</td>
</tr>
</tbody>
</table>

* The TTD rate shall not exceed an employee's average weekly wage. The compensation rate is to be 100% of employee’s AWW or minimum, whichever is less.

### Maximums for TTD and Death and Minimums for Death, PTD and Member Amputations

The TTD maximum and death benefit maximum is set at 133 1/3 % of the state's average weekly wage. The death benefit, permanent total disability (PTD) and member amputation rate minimum is set at 50% of the state average weekly wage. The maximums and the death benefit minimum change two times a year on January 15 and July 15. The member amputation minimum applies to accident dates after 2/1/06.

### Wage Differential Claims

The Max Wage Differential Rate for dates of accident after 2/1/06 is the State AWW in effect on the date of accident. Wage Differential Benefits for dates of accident on and after 9/1/11 end at age 67 or last a maximum of five years from the date of a final decision.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>TTD Maximum Rate</th>
<th>Minimum Death, PTD &amp; Amputation Rate</th>
<th>State AWW</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/15/03 to 1/14/04</td>
<td>1012.01</td>
<td>379.51</td>
<td>759.01</td>
</tr>
<tr>
<td>1/15/04 to 7/14/04</td>
<td>1019.73</td>
<td>382.40</td>
<td>764.80</td>
</tr>
<tr>
<td>7/15/04 to 1/14/05</td>
<td>1034.56</td>
<td>387.96</td>
<td>775.92</td>
</tr>
<tr>
<td>1/15/05 to 7/14/05</td>
<td>1051.99</td>
<td>394.50</td>
<td>788.99</td>
</tr>
<tr>
<td>7/15/05 to 1/14/06</td>
<td>1078.31</td>
<td>404.37</td>
<td>808.73</td>
</tr>
<tr>
<td>1/15/06 to 7/14/06</td>
<td>1096.27</td>
<td>411.10</td>
<td>822.20</td>
</tr>
<tr>
<td>7/15/06 to 1/14/07</td>
<td>1120.87</td>
<td>420.33</td>
<td>840.65</td>
</tr>
<tr>
<td>1/15/07 to 7/14/07</td>
<td>1148.51</td>
<td>430.69</td>
<td>861.38</td>
</tr>
<tr>
<td>7/15/07 to 1/14/08</td>
<td>1164.37</td>
<td>436.64</td>
<td>873.28</td>
</tr>
<tr>
<td>1/15/08 to 7/14/08</td>
<td>1178.49</td>
<td>441.93</td>
<td>883.86</td>
</tr>
<tr>
<td>7/15/08 to 1/14/09</td>
<td>1216.75</td>
<td>456.28</td>
<td>912.56</td>
</tr>
<tr>
<td>1/15/09 to 7/14/09</td>
<td>1231.41</td>
<td>461.78</td>
<td>923.56</td>
</tr>
<tr>
<td>7/15/09 to 1/14/10</td>
<td>1243.00</td>
<td>466.13</td>
<td>932.25</td>
</tr>
<tr>
<td>1/15/10 to 7/14/10</td>
<td>1243.00</td>
<td>466.13</td>
<td>922.45</td>
</tr>
<tr>
<td>7/15/10 to 1/14/11</td>
<td>1243.00</td>
<td>466.13</td>
<td>925.08</td>
</tr>
<tr>
<td>1/10/11 to 7/14/11</td>
<td>1243.00</td>
<td>466.13</td>
<td>930.39</td>
</tr>
<tr>
<td>7/15/11 to 1/14/12</td>
<td>1261.41</td>
<td>473.03</td>
<td>946.06</td>
</tr>
<tr>
<td>1/15/12 to 7/14/12</td>
<td>1288.96</td>
<td>483.36</td>
<td>966.72</td>
</tr>
<tr>
<td>7/15/12 to 1/14/13</td>
<td>1295.47</td>
<td>485.80</td>
<td>971.60</td>
</tr>
<tr>
<td>1/15/13 to 7/14/13</td>
<td>1320.03</td>
<td>495.01</td>
<td>990.02</td>
</tr>
</tbody>
</table>
Permanent Partial Disability

PPD rate = AWW x 60%

<table>
<thead>
<tr>
<th>Minimum PPD Rates*</th>
<th>Before 2/1/06 – 6/30/07</th>
<th>7/1/07 – 6/30/08</th>
<th>7/1/08 – 6/30/09</th>
<th>7/1/09 – 7/15/10</th>
<th>7/15/10 – 7/14/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>80.90</td>
<td>173.32</td>
<td>200.00</td>
<td>206.67</td>
<td>213.33</td>
</tr>
<tr>
<td>Married, 0 children or Single with 1 child</td>
<td>83.20</td>
<td>199.32</td>
<td>230.00</td>
<td>237.67</td>
<td>245.33</td>
</tr>
<tr>
<td>M w/ 1 or S w/ 2</td>
<td>86.10</td>
<td>225.32</td>
<td>260.00</td>
<td>268.67</td>
<td>277.33</td>
</tr>
<tr>
<td>M w/ 2 or S w/ 3</td>
<td>88.90</td>
<td>251.32</td>
<td>290.00</td>
<td>299.67</td>
<td>309.33</td>
</tr>
<tr>
<td>M w/ 3 or S w/ 4</td>
<td>91.80</td>
<td>260.00 (max)</td>
<td>300.00 (max)</td>
<td>310.00 (max)</td>
<td>320.00 (max)</td>
</tr>
<tr>
<td>M w/ 4 or S w/ 5</td>
<td>96.90</td>
<td>260.00</td>
<td>300.00</td>
<td>310.00</td>
<td>320.00</td>
</tr>
</tbody>
</table>

* The PPD rate shall not exceed an employee's average weekly wage. The compensation rate is to be 100% of employee's average weekly wage or minimum, whichever is less.

** Maximum PPD rates**

The PPD maximum increases annually effective July 1 in the same proportionate increase as the state average weekly wage. Although by statute, the PPD maximum increases on 7/1, the new rate does not go into effect until published by the Commission in the following December.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Rate</th>
<th>Time Period</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/91 - 6/30/92</td>
<td>353.88</td>
<td>7/1/02 - 6/30/03</td>
<td>542.17</td>
</tr>
<tr>
<td>7/1/92 - 6/30/93</td>
<td>371.36</td>
<td>7/1/03 - 6/30/04</td>
<td>550.47</td>
</tr>
<tr>
<td>7/1/93 - 6/30/94</td>
<td>384.73</td>
<td>7/1/04 - 6/30/05</td>
<td>567.87</td>
</tr>
<tr>
<td>7/1/94 - 6/30/95</td>
<td>396.89</td>
<td>7/1/05 - 6/30/06</td>
<td>591.77</td>
</tr>
<tr>
<td>7/1/95 - 6/30/96</td>
<td>410.43</td>
<td>7/1/06 - 6/30/07</td>
<td>619.97</td>
</tr>
<tr>
<td>7/1/96 - 6/30/97</td>
<td>421.59</td>
<td>7/1/07 - 6/30/08</td>
<td>636.15</td>
</tr>
<tr>
<td>7/1/97 - 6/30/98</td>
<td>439.89</td>
<td>7/1/08 - 6/30/10</td>
<td>664.72</td>
</tr>
<tr>
<td>7/1/98 - 6/30/99</td>
<td>465.67</td>
<td>7/1/09 - 6/30/11</td>
<td>695.78</td>
</tr>
<tr>
<td>7/1/99 - 6/30/00</td>
<td>485.65</td>
<td>7/1/10 - 6/30/11</td>
<td>712.55</td>
</tr>
<tr>
<td>7/1/00 - 6/30/01</td>
<td>516.15</td>
<td>7/1/11 – 6/30/12</td>
<td>730.64</td>
</tr>
<tr>
<td>7/1/01 - 6/30/02</td>
<td>534.16</td>
<td>7/1/12 – 6/30/13</td>
<td>750.72</td>
</tr>
</tbody>
</table>

- The PPD maximum for cases involving amputation of a member or enucleation of an eye is increased to the TTD maximum, however; the PPD rate in such cases is still calculated as 60% of the employee's AWW.

Schedule of Losses

<table>
<thead>
<tr>
<th>§8(d)(2) - Man as a whole</th>
<th>500 weeks</th>
<th>§8(e)</th>
<th>Arm</th>
<th>235</th>
<th>Hand</th>
<th>190</th>
<th>Thumb</th>
<th>70</th>
<th>Index finger</th>
<th>40</th>
<th>Middle finger</th>
<th>35</th>
<th>Ring finger</th>
<th>25</th>
<th>Little finger</th>
<th>20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 7/20/05 or 11/16/05-1/31/06</td>
<td>500 weeks</td>
<td>Leg</td>
<td>200 weeks</td>
<td>215</td>
<td>Foot</td>
<td>155</td>
<td>Great toe</td>
<td>35</td>
<td>Other toes</td>
<td>12</td>
<td>Ear</td>
<td>150</td>
<td>Hearing</td>
<td>50</td>
<td>54</td>
<td>Total deafness</td>
</tr>
<tr>
<td>After 2/1/06 and after</td>
<td></td>
<td>Eye</td>
<td>150</td>
<td>162</td>
<td>Other toes</td>
<td>12</td>
<td>13</td>
<td>Index finger</td>
<td>40</td>
<td>Middle finger</td>
<td>35</td>
<td>Ring finger</td>
<td>25</td>
<td>Little finger</td>
<td>20</td>
<td>§8(c) Disfigurement</td>
</tr>
</tbody>
</table>

Fingers and Toes - Loss of all or part of distal phalanx (bony loss) equals 50% loss. Loss beyond distal phalanx equals 100% loss. Amputation of or loss of use of 4 fingers equals 100% loss of hand.

Drafted by Michael E. Rusin – merusin@rusinlaw.com – 312-454-5119