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LOFTON REVISITED and THE APPLICATION OF STOKES

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On October 1, 2008, the Michigan Supreme Court remanded *Lofton v Autozone, Inc.* to the Board of Magistrates for reconsideration in light of *Stokes v Chrysler, LLC*, 481 Mich 266 (2008). Specifically, the Magistrate was directed to determine whether the Plaintiff was disabled under MCL 418.301(4) but if the limitation of wage-earning capacity was found to be partial, the Magistrate was to compute wage loss benefits under MCL 418.361(1) based upon what the Plaintiff remained capable of earning.

After applying the requirements of *Stokes* to the facts at hand, the Magistrate concluded that the Plaintiff was partially disabled. The real question to be answered was whether or not a finding of partial disability precluded entitlement to full workers' compensation benefits as defendants had argued and suggested by the Supreme Court in its remand order. Of note is the fact that the Michigan Supreme Court retained jurisdiction.

MCL 418.361(1) provides as follows:

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“While the incapacity for work resulting from a personal injury is partial, the employer shall pay, or cause to be paid to the injured employee weekly compensation equal to 80 percent of the difference between the injured employee’s after-tax average weekly wage before the personal injury and the after-tax average weekly wage which the employee is able to earn after the personal injury”

It seems clear that any actual post-injury employment for which the Claimant has documented wages would be subject to differential computation pursuant to Section 361(1). However, the Magistrate determined that she was unable to compute wage loss benefits under Section 361(1) because there was no evidence that Plaintiff remained capable of earning anything. First, the Magistrate determined there was no evidence that there was work available to Plaintiff which was suitable to his qualifications and training and that paid his maximum wage pursuant to *Stokes and Sington v Chrysler Corp.*, 467 Mich 144 (2002). Both medical and lay testimony established that the Plaintiff could not return to his job at Autozone and no other jobs that he performed in the past equaled or surpassed those wages. In addition, the Magistrate determined that Plaintiff had not worked for monetary compensation since his injury and, therefore, there was no wage to offset.

As indicated previously, the Michigan Supreme Court retained jurisdiction. The political composition of the Court has changed since the remand order and it is uncertain what precedential effect *Lofton* may have. In fact, with the Supreme Court having retained jurisdiction, not only is the viability of *Lofton* in question, but the entire *Stokes* analysis as well. The *Lofton* case may very well be the vehicle by which the current makeup of the Michigan Supreme Court materially modifies *Stokes*.

Should you have any questions, the Workers’ Compensation Department of Garan, Lucow, Miller, P.C. is available to assist.

SPRING BREAKFAST SEMINAR

The Grand Rapids office of Garan Lucow Miller P.C. is pleased to present its Annual Spring Breakfast Seminar on April 16, 2009 at the Frederik Meijer Gardens and Sculpture Park, located at 1000 East Beltline, NE in Grand Rapids {(616) 957-1580}. The day will begin with a continental breakfast from 8:00 - 8:25 am, followed by the seminar. Comprehensive written materials will be distributed to all program attendees. After the seminar, feel free to enjoy all of the open indoor garden areas as our guest!

If you are able to attend this complimentary annual event, please register via e-mail to: lbeatty@garanlucow.com or phone Lynn Beatty at (616) 742-5500 or (800) 494-6312 for reservations. **A complete agenda of seminar topics will be published here shortly.** We look forward to seeing you!

FALL BREAKFAST SEMINAR

Mark your calendar for the Firm's Fall Breakfast Seminar which will be held at the Troy Marriott Hotel on Tuesday, October 27, 2009. **Watch Law Fax for further details.**

BUCKEYE SEMINAR **MARCH 26, 2009** GREATER COLUMBUS CONVENTION CENTER 400 North High Street | Columbus | Ohio

- 8:30 - 9:00 a.m. CONTINENTAL BREAKFAST / REGISTRATION
- 9:00 - 9:10 a.m. WELCOME AND INTRODUCTION
Speaker: **SUSAN M. WILLIAMS**
- 9:10 - 10:00 a.m. **A NEW SUPREME COURT - WHAT THE FUTURE MAY HOLD?**
Speaker: **DANIEL S. SAYLOR**
- 10:00 - 10:45 a.m. **UPDATES IN NO-FAULT LAW**
Speaker: **SUSAN M. WILLIAMS**
- 10:45 - 11:00 a.m. BREAK
- 11:00 - 11:45 a.m. **RECOUPMENT OF BENEFITS UNDER THE WORKERS' COMPENSATION ACT**
Speaker: **MICHAEL J. DEPOLO**
- 11:45 - 1:00 p.m. LUNCH ON YOUR OWN
- 1:00 - 2:00 p.m. **CURRENT STATE OF THE LAW FOR 3RD PARTY LIABILITY / SIBF**
Speaker: **BETH A. ANDREWS**
- 2:00 - 2:30 p.m. **THE CHANGING FACE OF MEDICAID**
Speaker: **ROBERT L. GOLDENBOGEN**
- 2:30 - 3:00 p.m. QUESTION AND ANSWER SESSION
RETURN EVALUATION FORMS

The Buckeye Seminar, presented by Garan Luow Miller P.C., will be held on March 26, 2009, at the Greater Columbus Convention Center located at 400 North High Street in Columbus, Ohio. The day will begin with a continental breakfast from 8:30 a.m. - 9:00 a.m., followed by the seminar. Comprehensive written materials will be distributed to all program attendees. To register, contact Eileen Carty at ecarty@garanluow.com.

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