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# MICHIGAN WORKERS' COMPENSATION LEGAL TRENDS

October 2019

## NEW APPELLATE COMMISSIONERS

As addressed in our prior Newsletter, Governor Gretchen Whitmer recently reorganized key departments of the Michigan executive branch, including the Michigan workers' compensation administration. As part of the reorganization, Governor Whitmer abolished the Michigan Compensation Appellate Commission and created the Workers' Disability Compensation Appeals Commission.

The new Workers' Disability Compensation Appeals Commission will exclusively review workers' compensation matters. Prior to the reorganization, a rotating group of commissioners reviewed both unemployment and workers' compensation appeals. The new Commission will consist of three members appointed by the governor, one of whom will be designated as the chairperson. The commissioner positions have now been filled as follows:

**Daryl Royal** – *Chairperson*, term expiring July 31, 2023. Chairperson Royal was a longtime workers' compensation appellate attorney for the Plaintiff's Bar and worked in private practice on behalf of employees and social security disability applicants. Mr. Royal has written numerous articles for legal publications and was a longtime coauthor of "Worker's Compensation in Michigan: Law and Practice" (ICLE) beginning with the fifth edition. This publication is widely regarded as a leading authority on workers' compensation law. Considering Mr. Royal's background, he will likely favor employees on appeals from the Board of Magistrates.

**Granner Ries** – *Commissioner*, term expiring July 31, 2022. Commissioner Ries worked in private practice as a plaintiff's attorney representing employees in workers' compensation matters at trial and on appeal. In addition, Mr. Ries previously spent over ten years on the now-defunct Appellate Commission. His tenure on that Commission was most notable for his role in drafting a 101-page decision in the famous *Stokes vs Daimler Chrysler Corporation* case addressing the definition of disability. The opinion authored by Mr. Ries would have allowed a claimant to establish disability by proving the inability to perform the job that pays at the maximum earning level, instead of proving the inability to perform all jobs within one's qualifications, training, and experience. Further, Mr. Ries held that the burden was on the employer to establish the claimant was not disabled and work was available with the claimant's restrictions and capabilities. Finally, Mr. Ries opined that the claimant had no obligation to look for work or demonstrate wage loss and the employer was not entitled to pretrial discovery. In light of this radical opinion, the Supreme Court issued a rare *stay* on Mr. Ries' opinion, immediately suspending its application to cases. Thereafter, Mr. Ries' opinion was overturned and, to prevent this type of judicial activism from happening again, the Michigan legislature codified the current disability standard we have today. In light of the above, it is presumed that Mr. Ries will favor employees on appeal.

**Duncan McMillan** – *Commissioner*, term expiring July 21, 2021. Commissioner McMillan worked in private practice as an appellate attorney representing employers and previously served on the now-defunct Appellate Commission. Mr.

McMillan's well-deserved reputation as a thoughtful, analytical decision maker will be an asset on the new Commission.

## Contact Us

120 Ionia Avenue SW  
Suite 300  
Grand Rapids, MI 49503  
616/774-2131  
www.bcpwq.com

*This Newsletter is meant to highlight developments in the workers' compensation arena and to elaborate on general concepts. If you would like to discuss in more detail this issue or any other issue please directly contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C.*