IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
Michael R. Smolenski, Presiding Judge

AUTO-OWNERS INSURANCE COMPANY
Plaintiff-Appellee,

v

Docket No. 119410

AMOCO PRODUCTION COMPANY
Defendant-Appellant.
_____/

BRIEF ON APPEAL - APPELLANT

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STATEMENT OF QUESTION PRESENTED

I

WHETHER THE WORKERS' DISABILITY COMPENSATION ACT OF 1969, MCL 418.101; MSA 17.237(101), et seq., ALLOWS FOR INTEREST ON THE AMOUNT OF MONEY REIMBURSING PREVIOUSLY PAID MEDICAL CARE PROVIDED TO AN EMPLOYEE WHO WAS INJURED BECAUSE OF WORK.

Plaintiff-appellee Auto Owners answers "Yes."

Defendant-appellant Amoco answers "No."

Court of Appeals answered "Yes."

Workers' Compensation Appellate Comm answered "Yes."

Board of Magistrates answered "Yes."

STATEMENT OF FACTS

Leroy Smithingell (Employee) was absent from work between January 30 and May 16, 1994 (12a) and received medical care (10a, 11a) because of an injury to the left hand and back (10a) when knocked against an enclosed bulletin board on a wall (8a, 9a) by a truck left running in the garage at defendant-appellant Amoco Production Company (Employer). (8a) During this absence, the Employer continued to pay the salary of the Employee (13a)[1] and Metropolitan Life Insurance Company (Group Carrier) paid some of the expenses of medical care. (17a) Plaintiff-appellee Auto Owners Insurance Company (Auto "No-Fault" Carrier) paid the Employee wage loss benefits[2] and paid for other medical care[3] because of the insurance the Employee obtained. (14a)

The Auto "No-Fault" Carrier then filed an application for mediation or hearing with the Bureau of Workers' Disability Compensation (Bureau) for repayment of the wage loss and medical expenses paid to the Employee from the Employer. (1a, 3a) The Employee did not seek or receive any workers' disability compensation.

The Board of Magistrates (Board) denied the claim for repayment of weekly compensation but allowed reimbursement for the costs of the medical care paid by the Auto "No-Fault" Carrier subject to cost containment and with ten percent interest. *Auto Owners Ins Co v Amoco Corp*, unpublished order and opinion of the Board of Magistrates, decided on May 30, 1995 (Docket no. 053095003). (18a, 22a)

The Workers' Compensation Appellate Commission (Commission) affirmed. *Smithingell v Amoco Production Co*, 1998 Mich ACO 1117. (23a, 26a-28a)

The Court of Appeals remanded the case to the Commission for reconsideration in light of *Perez v State Farm Mutual Automobile Ins Co*, 418 Mich 634,

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[1] $787.00. (7a)

[2] $669.29 weekly (16a) for sixteen weeks (15a) totaling $10,708.64. (15a)

[3] Totaling $9,636.64. (15a)

650; 344 NW2d 773 (1984), *Luth v Automobile Inter Ins Exchange*, 113 Mich App 289, 294; 317 NW2d 867 (1982), lv. den 417 Mich 867 (1983), and MCL 418.852(1); MSA 17.237(852)(1). *Auto Owners Ins Co v Amoco Production Co*, unpublished order of the Court of Appeals, decided on November 6, 1998 (Docket no. 211679). (29a)

The Commission affirmed on remand. *Smithingell v Amoco Production Co (On Remand)*, 1999 Mich ACO 348. (30a, 33a-34a)

The Court of Appeals again remanded the case to the Commission to determine whether the cost containment rules promulgated by the Bureau limit reimbursement and, if not, establish the amount of reimbursement of the medical costs paid by the Auto "No-Fault" Carrier. *Auto Owners Ins Co v Amoco Production Co (After Remand)*, unpublished order of the Court of Appeals, decided on May 25, 1999 (Docket no. 218310). (35a) In the same order, the Court of Appeals expunged a brief which the Auto "No-Fault" Carrier had filed after the application for leave to appeal declaring that " . . . [the Auto 'No-Fault' Carrier] wrong[ly] noted that the amount of medical benefits paid . . . was $9,636.64. The total amount of medical benefits paid . . . [was] $19,191.81." *Plaintiff-Appellant Auto Owners Insurance Company's Supplemental Brief in support of* ***Application for Leave to Appeal***, 1 (Docket no. 211679). (35a)

The Commission affirmed on second remand. *Smithingell v Amoco Production Co (On Second Remand)*, 1999 Mich ACO 2914. (36a, 39a)

The Court of Appeals then granted leave to appeal from the decision by the Commission on second remand, *Auto Owners Ins Co v Amoco Production Co (After Second Remand)*, unpublished order of the Court of Appeals, decided on April 7, 2000 (Docket no. 223572) (40a), affirmed, *Auto Owners Ins Co v Amoco Production Co*, 245 Mich App 171; 628 NW2d 51 (2001) (41a-45a) and then, denied rehearing. *Auto Owners Ins Co v Amoco Production Co*, unpublished order of the Court of Appeals, decided on May 17, 2001 (Docket no. 223572). (46a)

The Court granted leave to appeal which was requested by the Auto "No-Fault" Carrier, *Auto-Owners Ins Co v Amoco Production Co*, 466 Mich - ; - NW2d - (Docket no. 119403, rel'd April 30, 2002) (47a), and by the Employer, *Auto-Owners Ins Co v Amoco Production Co*, 466 Mich - ; - NW2d - (Docket no. 119410, rel'd April 30, 2002). (48a)

SUMMARY OF ARGUMENT

There is no statute in the Workers' Disability Compensation Act of 1969 (WDCA), MCL 418.101; MSA 17.237(101), et seq., that can apply to allow assessing interest on the amount of medical care or medical rehabilitation which an employer is ordered to reimburse.

ARGUMENT

I

THE WORKERS' DISABILITY COMPENSATION ACT OF 1969, MCL 418.101; MSA 17.237(101), et seq., DOES NOT ALLOW FOR INTEREST ON THE AMOUNT OF MONEY REIMBURSING PREVIOUSLY PAID MEDICAL CARE PROVIDED TO AN EMPLOYEE WHO WAS INJURED BECAUSE OF WORK

A statute in the WDCA describes the remedy after an employee experiences a personal injury arising out of and in the course of employment. MCL 418.301(1); MSA 17.237(301)(1). Section 301(1), first sentence, establishes that the responsibility of an employer is to pay the employee those benefits which are described in the WDCA by stating that, "[a]n employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act."

The many individual statutes in the WDCA that together comprise the *compensation as provided in this act* may be redacted as primary compensation, pendant compensation, or ancillary benefits.

Primary compensation includes the four statutes in the WDCA which describe the redress for a direct consequence of the personal injury experienced by an employee. MCL 418.315(1); MSA 17.237(315)(1). MCL 418.319(1); MSA 17.237(319)(1). MCL 418.351(1); MSA 17.237(351)(1). MCL 418.361(1); MSA 17.237(361)(1).

Section 315(1), first and eighth sentences, and section 319(1), first sentence, together describe medical care as one kind of redress for a personal injury experienced by an employee because of work. Section 315(1), first and eighth sentences, provide that,

> "[t]he employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed.
>
> * * *
>
> The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus, and other appliances necessary to cure, so far as reasonably possible, and relieve from the effects of the injury."

Section 319(1), first sentence, includes medical rehabilitation as compensation for an injured employee by stating that, "[a]n employee who has suffered an injury covered by this act shall be entitled to prompt medical rehabilitation services."

Section 319(1), second sentence, describes vocational rehabilitation as another kind of remedy for the direct consequence of an injury experienced by an employee. Section 319(1), second sentence, states that,

> "[w]hen as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, the employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to useful employment."

A third kind of remedy for a direct consequence of an injury experienced by an employee is described by section 351(1), first and second sentences, and section 361(1),

first and second sentences. In particular, these statutes describe the remedy of a substitute for the loss of earnings while an employee is disabled by a personal injury. Section 351(1), first and second sentences, describes the remedy while an injured employee is totally disabled by stating that,

> "[w]hile the incapacity for work resulting from a personal injury is total, the employer shall pay, or cause to be paid as provided in this section, to the injured employee, a weekly compensation of 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability."

Section 361(1), first and second sentences, describes a similar remedy while an injured employee is only partially disabled by stating that,

> "[w]hile 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% 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 injured employee is able to earn after the personal injury, but not more than the maximum weekly rate of compensation, as determined under section 355. Compensation shall be paid for the duration of the disability."

Primary compensation also includes the two statutes in the WDCA which describe the redress when death is the direct consequence of a personal injury experienced by an employee. MCL 418.321; MSA 17.237(321). MCL 418.345; MSA 17.237(345).

Section 321 describes the remedy of a substitute for the loss of the support to certain survivors when an employee dies because of an injury *arising out of and in the course of employment* by stating that,

> "[i]f death results from the personal injury of an employee, the employer shall pay, or cause to be paid, subject to section 375, in 1 of the methods provided in this section, to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury, a weekly payment equal to 80% of the employee's after-tax average weekly wage, subject to the maximum and minimum rates of compensation under this act, for a period of 500 weeks from the date of death. If at the expiration of the 500-week period any such wholly or partially dependent person is less

> than 21 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation or some portion thereof until the wholly or partially dependent person reaches the age of 21. If the employee leaves dependents only partially dependent upon his or her earnings for support at the time of injury, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as 80% of the amount contributed by the employee to the partial dependents bears to the annual earnings of the deceased at the time of injury."

Section 345 is similar to section 315(1), first sentence, by allowing the costs of the care received by an injured employee before death such as hospice services and adds the cost of a funeral and burial after death. Section 345, first and second sentences, state that, "[i]f death results from the injury, the employer shall pay, or cause to be paid, the reasonable expense of the employee's last sickness, funeral, and burial. The cost of the funeral and burial shall not exceed $6,000.00 or the actual cost, whichever is less."

There are two important features of primary compensation. One is that all of these statutes describe a particular benefit to remedy an immediate consequence of the personal injury which was experienced by the employee such as immediate physical injury which requires medical care, disability which requires vocational rehabilitation, or a substitute for lost earnings or death.

The other important feature is that these primary compensation benefits are not tie-barred to one another. Each primary compensation benefit is available by its own terms and not contingent on the availability of any other. For example, medical care is available whether the injured employee has a disability which allows for a wage loss substitute because section 315(1), first sentence, explicitly requires medical care for an employee who receives a *personal injury arising out of and in the course of employment*. Statutes in the WDCA explicitly allow medical care and vocational rehabilitation described by section 315(1), first and eighth sentences, and section 319(1), second sentence, when the substitute for lost earnings described by section 351(1), first and second sentences,

and section 361(1), first and second sentences, is barred. MCL 418.301(10); MSA 17.237(301)(10). MCL 418.373(2); MSA 17.237(373)(2). For example, section 373(2) explicitly divorces medical care and retiree disability by stating that, "[t]his section shall not be construed as a bar to an employee receiving medical benefits under section 315 upon the establishment of a causal relationship between the . . . work and the need for medical treatment."

Pendant compensation includes the statutes in the WDCA which augments or increases a primary compensation benefit to which the injured employee has an established eligibility. MCL 418.352(1)-(11); MSA 17.237(352)(1)-(11). MCL 418.353(3); MSA 17.237(353)(3). MCL 418.356(1); MSA 17.237(356)(1). MCL 418.521(2); MSA 17.237(521)(2).

Section 352(1) provides for a supplement to the weekly workers' disability compensation which is paid after January 1, 1982, by the terms of either section 351(1), first sentence, or section 321 because the employee had been injured from working sometime between September 1, 1965, and December 31, 1979. Section 352(1) states that,

> "[b]eginning January 1, 1982, an employee receiving or entitled to receive benefits equal to the maximum payable to that employee under section 351 or the dependent of a deceased employee receiving or entitled to receive benefits under section 321 whose benefits are based on a date of personal injury between September 1, 1965, and December 31, 1979, shall be entitled to a supplement to weekly compensation. The supplement shall be computed using the total annual percentage change in the state average weekly wage, rounded to the nearest 1/10 of 1%, as determined under section 355. The supplement shall be computed as a percentage of the weekly compensation rate which the employee or the dependent of a deceased employee is receiving or is entitled to receive on January 1, 1982 had the employee been receiving benefits at that time, rounded to the nearest dollar. The supplement shall not exceed 5% compounded for each calendar year in the adjustment period. The percentage change for purposes of the adjustment shall be computed from the base year through December 31, 1981. A supplement shall not be paid retroactively for any period of disability before January 1, 1982."

The compensation supplement which is described by section 352(1) is not available for weekly workers' disability compensation that is paid by the terms of section 361(1), first sentence. Section 352(9).

Section 353(3) requires the augmentation of the weekly workers' disability compensation which is paid by the terms of either section 351(1), first sentence, or section 361(1), first sentence, when an injured employee has a child while disabled. Section 353(3) states that,

> "[f]or the purposes of sections 351 to 361, dependency shall be determined as follows:
>
> * * *
>
> An increase in payments shall be made for increased numbers of conclusive dependents as defined in this act not so dependent at the time of the injury of an employee."

The augmentation which is allowed by section 353(3) applies only to children who are *conclusive dependents* described by MCL 418.353(1)(a)(ii); MSA 17.237(353)(1)(a)(ii). The employee who marries a wife after an injury cannot have the extant weekly workers' disability compensation increased because MCL 418.353(1)(a)(i); MSA 17.237(353)(1)(a)(i) which also describes a *wife* as a *conclusive dependent* was voided by the decision in *Pike v City of Wyoming*, 431 Mich 589; 433 NW2d 768 (1988).

Section 356(1) allows for an increase in the rate of weekly workers' disability compensation when an injured employee is continuously disabled for two years. Section 356(1) states that,

> "[a]n injured employee who, at the time of the personal injury, is entitled to a rate of compensation less than 50% of the then applicable state average weekly wage as determined for the year in which the injury occurred pursuant to section 355, may be entitled to an increase in benefits after 2 years of continuous disability. After 2 years of continuous disability, the employee may petition for a hearing at which the employee may present evidence, that by virtue of the employee's age, education, training, experience, or other documented evidence which would fairly reflect the employee's earning capacity, the employee's earnings would have been expected to increase.

> Upon presentation of this evidence, a worker's compensation magistrate may order an adjustment of the compensation rate up to 50% of the state average weekly wage for the year in which the employee's injury occurred. The adjustment of compensation, if ordered, shall be effective as of the date of the employee's petition for the hearing. The adjustments provided in this subsection shall be paid by the carrier on a weekly basis. However, the carrier and the self-insurers' security fund shall be entitled to reimbursement for these payments from the second injury fund created in section 501. There shall be only 1 adjustment made for an employee under this subsection."

Section 521(2) provides pendant compensation by establishing an annual increase in the weekly workers' disability compensation when the injured employee experiences one of the conditions which constitute a total and permanent disability by the term of MCL 418.361(3)(a)-(g); MSA 17.237(361)(3)(a)-(g).[4] Section 521(2) states that,

> "[a]ny permanently and totally disabled person as defined in this act, if such total and permanent disability arose out of and in the course of his employment, who, on and after June 25, 1955, is entitled to receive payments of workmen's compensation in amounts per week of less than is presently provided in the workmen's compensation schedule of benefits for permanent and total disability, and for a lesser number of weeks than the duration of such permanent and total disability, after the effective date of any amendatory act by which his disability is defined as permanent and total disability, or by which the weekly benefits for permanent and total disability are increased, *shall receive weekly from the carrier on behalf of the second injury fund differential benefits equal to the difference between what he is now or shall hereafter be entitled to receive from his employer under the provisions of this act as the same*

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[4] "[t]otal and permanent disability, compensation for which is provided in section 351 means:
(a) Total and permanent loss of sight of both eyes.
(b) Loss of both legs or both feet at or above the ankle.
(c) Loss of both arms or both hands at or above the wrist.
(d) Loss of any 2 of the members or faculties in subdivisions (a), (b), or (c).
(e) Permanent and complete paralysis of both legs or both arms or of 1 leg and 1 arm.
(f) Incurable insanity or imbecility.
(g) Permanent and total loss of industrial use of both legs or both hands or both arms or 1 leg and 1 arm; for the purpose of this subdivision such permanency shall be determined not less than 30 days before the expiration of 500 weeks from the date of injury."

> *was in effect at the time of his injury, and the amounts now provided for his permanent and total disability by this or any other amendatory act,* with appropriate application of the provisions of sections 351 to 359. Such payments shall continue after the period for which the person is otherwise entitled to compensation under this act for the duration of the permanent and total disability. Any payments so made by a carrier pursuant to this section shall be reimbursed to the carrier by the second injury fund as provided in this chapter." (emphasis supplied)

The important feature of these four statutes in the WDCA is that each compensation benefit that is described is tie-barred to some primary compensation benefit to which the injured employee has qualified to receive. Section 352(1)-(11), section 353(3), section 356(1), and section 521(2) cannot apply to supplement, increase, or augment the primary compensation when the injured employee has not already qualified for the particular primary compensation benefit which is described in each statute. For example, an injured employee who is totally disabled may not receive the supplement established by section 352(1)-(11) or the increase established by section 353(3) when barred from receiving the primary compensation of the substitute for lost earnings described by section 351(1), first sentence, or section 361(1), first sentence, having refused an offer of reasonable employment, MCL 418.301(5)(a); MSA 17.237(301)(5)(a), or having been jailed. Section 361(1), last sentence.[5]

There are four particular statutes in the WDCA that establish an ancillary benefit. MCL 418.161(1)(l); MSA 17.237(161)(1)(l). MCL 418.801(2), (3), (6); MSA 17.237(801)(2), (3), (6).

Section 801(2) describes a penalty for a delay in the delivery of one kind of the primary compensation. Section 801(2), first sentence, states that,

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[5] ". . . an employer shall not be liable for compensation under section 351, 371(1), or this subsection for such periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime."

> "[i]f *weekly compensation* benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, in cases where there is not an ongoing dispute, $50.00 per day shall be added and paid to the worker for each day over 30 days in which the benefits are not paid." (emphasis supplied)

Section 801(3) also describes a penalty for a delay in the delivery of another primary compensation benefit. While section 801(2), first sentence, applies to the weekly workers' disability compensation for an injured employee who is disabled whether by the terms of section 351(1), first sentence, or section 361(1), first sentence, and for the survivors of an injured employee who dies because of a personal injury arising out of and in the course of employment by the terms of section 321, section 801(3) imposes a penalty for a delay in delivering medical compensation by the terms of section 315(1), first sentence, and section 319(1), first sentence. Section 801(3), first sentence, states that,

> "[i]f *medical bills or travel allowance* are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, in cases where there is no ongoing dispute, $50.00 or the amount of the bill due, whichever is less, shall be added and paid to the worker for each day over 30 days in which the medical bills or travel allowance are not paid." (emphasis supplied)

Section 801(6) describes a penalty for the delay in the delivery of one kind of primary compensation. The sanction described by section 801(6) is interest and the delay is the time between the eligibility of the injured employee to weekly workers' disability compensation and an adjudication of that when a claim is contested by the employer. Section 801(6) states that,

> "[w]hen *weekly compensation* is paid pursuant to an award of a worker's compensation magistrate, an arbitrator, the board, the appellate commission, or a court, interest on the compensation shall be paid at the rate of 10% per annum from the date each payment was due, until paid." (emphasis supplied)

Section 161(1)(l) describes a penalty for an employer when the injured employee was a child who had been illegally hired. Section 161(1)(l), second sentence, states that,

> "[a]ny minor under 18 years of age whose employment at the time of injury shall be shown to be illegal, in the absence of fraudulent use of permits or certificates of age in which case only single compensation shall be paid, shall receive compensation double that provided in this act."

These four statutes in the WDCA share two important features which establish that each is an ancillary compensation benefit. These four statutes address subjects which are profoundly different from the subject of both primary compensation and pendant compensation. Section 161(1)(l), second sentence, concerns the subject of the contract of employment between an employee and employer which is ancillary to a personal injury performing service contemplated by that contract or the consequences of the injury. Section 801(2), first sentence, section 801(3), first sentence, and section 801(6) concern the subject of the delivery of the primary compensation benefits after an adjudication of a contested claim which is plainly ancillary. None of these four statutes address the subject of the remedy for the immediate personal injury or the consequences of the injury per se as the statutes in the WDCA that describe primary compensation and pendant compensation. This is plain from the text of section 161(1)(l), second sentence, section 801(2), first sentence, section 801(3), first sentence, and section 801(6) which measure the remedy by events before the injury such as the contract of employment or after the injury such as the adjudication of a contested claim.

This is also plain from the context of these four statutes which are all located outside of section 301 et seq. which contains all of the statutes describing primary compensation benefits and pendant compensation benefits.

The other important feature is that all four statutes describe a penalty to an employer more than describe some compensation for an injured employee. While the measure for the sanction is different as section 161(1)(l), second sentence, uses the weekly workers' disability compensation for the injured employee who was illegally employed as the standard for a one hundred percent penalty while section 801(2), first sentence,

section 801(3), first sentence, and section 801(6) use the length of the time for delivery as the standard for a daily penalty and for interest, it is plain that all prescribe a penalty for particular conduct which is to be avoided. Courts have always recognized this. *Williams v Adrian Ind, Inc*, 110 Mich App 363, 366-367; 313 NW2d 127 (1981), "[s]ection 161[(1)(l), second sentence] is a punitive measure. Logic also supports this conclusion. If the double award is not punitive, it is difficult to comprehend why minors should receive a twofold award when the regular compensation scheme is designed to adequately compensate." *Townsend v M-R Products, Inc*, 436 Mich 496, 503; 461 NW2d 696 (1990), reh den 437 Mich 1202 (1990) referring to section 801(2) and (3) as "the $1,500 *penalty* provision . . . added in 1977 . . ." (emphasis supplied) The Court has observed that interest was added to the WDCA four years after the enactment of the late payment penalty of section 801(2), first sentence. *Townsend, supra*, 503.

These statutes in the WDCA are all of the statutes which describe a remedy or *compensation* for an employee who receives a personal injury *arising out of and in the course of employment*. Other statutes in the WDCA only describe who is an *employee*, section 161(1); who is an *employer*, MCL 418.115(a)-(e); MSA 17.237(115)(a)-(e); the standards by which to determine whether an injury is one *arising out of and in the course of* employment and eligibility for a benefit, section 301(1); bars, MCL 418.305; MSA 17.237(305); credits, MCL 418.354(1); MSA 17.237(354)(1); and the procedures for presenting and establishing a claim. MCL 418.222(1)-(6); MSA 17.237(222)(1)-(6). MCL 418.851; MSA 17.237(851).

A statute in the WDCA establishes that those statutes which describe the primary compensation, the pendant compensation, and the ancillary compensation are the only statutes and the *only* remedy which is available. MCL 418.131(1); MSA 17.237(131)(1). Section 131(1), first sentence, states that, "[t]he right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal

injury or occupational disease." The exception to this *exclusive remedy* statute for an intentional tort, section 131(1), second sentence, does not apply.

Section 131(1), first sentence, is a statute which operates as the familiar rule announced by the Court in cases such as *Galloway v Holmes*, 1 Doug (Mich) 330 (1844), *Taylor v Michigan Pub Utilities Comm*, 217 Mich 400; 186 NW 485 (1922), *Sebewaing Ind, Inc v Village of Sebewaing*, 337 Mich 530; 60 NW2d 444 (1953), and *Stowers v Wolodzko*, 386 Mich 119; 191 NW2d 355 (1971), that the express mention of one subject in a statute implies the exclusion of all other related subjects.

There is no statute anywhere in the WDCA which allows assessing interest on the amount of the reimbursement for past paid expenses of medical care and medical rehabilitation. Section 315(1), first and eighth sentences, which describe medical care as a primary compensation benefit and section 319(1), first sentence, which establishes medical rehabilitation as a primary compensation benefit do not mention the subject of interest.

The statutes in the WDCA which concern ancillary compensation benefits mention interest on another primary compensation benefit which an employer may be responsible that is the weekly workers' disability compensation available by the terms of section 321 for the survivors of an injured employee who dies or by the terms of section 351(1), first sentence, or section 361(1), first sentence, for an injured employee who is disabled. Section 801(6). Again, section 801(6) applies "when *weekly* compensation is paid . . ." (emphasis supplied)

The term *weekly compensation* in section 801(6) does not include pendant compensation benefits which are paid on a weekly basis such as the compensation supplement available by the terms of section 352(1)-(11) or the differential benefits which are paid by the terms of section 521(2). *Lulgjuraj v Chrysler Corp*, 185 Mich App 539; 463 NW2d 152 (1990). Certainly, medical care and medical rehabilitation are remedies that are

available by the terms of statutes other than section 351(1), first sentence, and section 361(1), first sentence, and that are not tie-barred to *weekly compensation*.

The only methods by which interest could be available by a statute in the WDCA are to expunge the word *weekly* from the phrase *weekly compensation* so that the statute would read "when ~~weekly~~ compensation is paid pursuant to an award . . . interest on the compensation shall be paid at the rate of 10% per annum . . ." or to enact a new statute reading "when medical care or medical rehabilitation is paid pursuant to an award . . . interest shall be paid at the rate of 10% per annum from the date each payment was incurred until actually paid."

The Court cannot expunge the limiting text of *weekly compensation* from section 801(6). *Lesner v Liquid Disposal, Inc*, - Mich - ; - NW2d - (Docket no. 116205, rel'd May 7, 2002). The Court held in *Lesner, supra*, slip op., 6, that, "our duty is to apply the language of the statute as enacted, without addition, *subtraction*, or modification. [citations omitted]." (emphasis supplied)

The Court certainly cannot embellish section 801 by enacting new language to expressly include medical care or medical rehabilitation as a primary compensation benefit which is subject to assessment of interest when awarded. *Lesner, supra*, slip op., 6, 10-11,

> "[w]e may not read anything into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999). In other words, the role of the judiciary is not to engage in legislation. *Tyler v Livonia Public Schools*, 459 Mich 382, 392-393, n 10; 590 NW2d 560 (1999).
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> * * *
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> the Legislature, the policy-making arm of our government, in taking up this matter, is held to have considered this issue and settled on this approach. It is not within our authority to disregard that choice. See, e.g., *Helder, supra* at 99 (when a

> statute is clear on its face, the judicial role is to apply the statute in accord with its plain language, not to articulate its view of 'policy')."

The Court of Appeals has always considered section 801(6) in just this way. *Brown v Eller Outdoor Advertising Co*, 139 Mich App 7; 360 NW2d 322 (1984). *Kosiel v Arrow Liquors Corp (On Remand)*, 211 Mich App 550; 536 NW2d 567 (1995), lv den 452 Mich 853; 549 NW2d 343 (1996). The Court of Appeals held in *Brown, supra*, that interest was not available for medical care stating that,

> "[r]elying on the maxim, *expressio unius est exclusio alterius* (the express mention of one thing in a statute implies the exclusion of other things), *Stowers v Wolodzko*, 386 Mich 119, 133; 191 NW2d 365 (1971), the WCAB has reasoned that the express mention of weekly compensation payments implies the exclusion of other types of benefits. Further evidence of the purposefulness of the exclusion can be found in § 801(2), where the Legislature specifically enumerated the type of benefits (including medical bills) to which a penalty would attach for unjustifiably late payments. We can reasonably assume that the Legislature, in drafting § 801(5), was cognizant of what it had done three subsections above in the penalty provision in § 801(2)."

The Court of Appeals held the same in *Kosiel, supra*, 556, that, "[a] worker's compensation claimant is **not** entitled to interest on reimbursement of medical expenses. *Costa v Chrysler Corp*, 152 Mich App 530, 536; 394 NW2d 6 (1986); *Brown v Eller Outdoor Advertising Co*, 139 Mich App 7; 360 NW2d 322 (1984)."

The only other statute in the WDCA which concerns the subject of interest is MCL 418.852(2); MSA 17.237(852)(2) and that does not apply. Section 852(2) applies when the responsibility for workers' disability compensation assigned to one employer or workers' disability compensation carrier by the Board by the terms of MCL 418.852(1); MSA 17.237(852)(1) and reassigned to another employer or another workers' disability compensation carrier on appeal. Section 852(2) states that, "[i]f a carrier or fund originally determined to be liable pursuant to subsection (1) is subsequently determined to not be

liable or not to the same extent as originally determined, that carrier or fund shall be reimbursed by the liable party or parties with interest at 12% per annum."

The predicate established by the text of section 852(2) of *[i]f a carrier or fund originally determined to be liable pursuant to subsection (1) is subsequently determined to not be liable or not to the same extent as originally determined* . . . did not occur in this case because the responsibility for workers' disability compensation was assigned to the Employer by the Board in *Auto Owners Ins Co v Amoco Corp*, unpublished order of the Board of Magistrates, decided on May 30, 1995 (Docket no. 053095003) as required by section 852(1) but never reassigned to another defendant during the subsequent appeals.

RELIEF

Wherefore, defendant-appellant Amoco Production Company prays that the Supreme Court reverse the opinion of the Court of Appeals.

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