

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

KLEIN, ISAK

Employee/Petitioner

Case# 04WC003879

08WC002037

PRECISION CABINETS, EMPLOYER'S
CONSORTIUM INC & TRAVELERS INSURANCE
GROUP

Employer/Respondent

101WCC0400

On 05/06/2008, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 1.74% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

FOOTE MEYERS MIELKE & FLOWERS
8 N. FIRST STREET
SUITE 2
EVEVA, IL 60134

1770 ASSISTANT ATTORNEY GENERAL
ROBERT DELANEY
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JOHN MACIOROWSKI & FRIEDMAN
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EMPLOYER'S CONSORTIUM, INC
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ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

101WCC0400

Isak Klein

Employee/Petitioner

Case # 04 WC 03879

v.

W/08WC02037Precision Cabinets, Employer's Consortium, Inc. and Travelers Insurance Group,

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable J. Kinnaman, arbitrator of the Commission, in the city of Geneva, IL, on March 25, 2008. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- G. What were the petitioner's earnings?
- H. What was the petitioner's age at the time of the accident?
- I. What was the petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to petitioner reasonable and necessary?
- K. What amount of compensation is due for temporary total disability?
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon the respondent?
- N. Is the respondent due any credit?
- O. Other coverage by Travelers

FINDINGS

10IWCC0400

- On Jan. 10, 2003, the respondent Precision Cabinets was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship did exist between the petitioner and respondents Precision Cabinets and Employers Consortium, Inc.
- On this date, the petitioner did sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident was given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 44,616.00; the average weekly wage was \$ 858.00.
- At the time of injury, the petitioner was 56 years of age, married with 0 children under 18.
- Necessary medical services have not been provided by the respondent.
- To date, \$ 92,587.00 has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- The respondent shall pay the petitioner temporary total disability benefits of \$ 572.00/week for 62-4/7 weeks, from 1/13/03 through 2/17/03 and 12/13/03 through 12/8/04, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$ 572.00/week for a further period of life, as provided in Section 8(f) of the Act, because the injuries sustained caused his permanent, total disability.
- The respondent shall pay the petitioner compensation that has accrued from 1/10/03 through 3/25/08, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall pay the further sum of \$ 5,586.34 for necessary medical services, as provided in Section 8(a) of the Act.
- The respondent shall pay \$ 0 in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ 0 in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ 0 in attorneys' fees, as provided in Section 16 of the Act.

See also 08WC02037.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of 1.74 % shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Maureen A. Feliciano
Signature of arbitrator

May 2, 2008
Date

MAY 6 2008

Petitioner testified that on January 10, 2003 (04WC03879), he was working at Precision Cabinets (Precision) as a cabinet maker. He received his weekly wage payment from Employers Consortium, Inc. (ECI), PX5. He was making cabinets out of plywood and particle board. That day he was attempting to move a sheet of plywood to a panel saw. As he did, he felt immediate pain in his lower back. He told his boss, Dave Matti, completed working the day, and sought treatment from neurosurgeon Dr. Benjamin LeCompte.

When he saw Petitioner on Jan. 23, 2003, the doctor noted the accident of Jan. 10, 2003. Dr. LeCompte thought Petitioner had spinal stenosis at L3/4 and L5/S1 with a herniated disc on the right at L5/S1 based on an MRI done Jan. 28, 2003. Petitioner improved and the doctor released him to light duty work on February 17, 2003. (Rx 2). He testified that his duties didn't change much; they said light duty but he really did his regular job. He remained symptomatic, was taking pain medication and underwent a series of epidural steroid injections at the L3-4 level in March and April 2003. However by Sept. 10, 2003, Dr. LeCompte noted Petitioner was "having some regression", complaining of right leg and buttock pain. He had positive right leg raising and right femoral stretch signs as well as some loss of right plantar flexion. Dr. LeCompte indicated he and Petitioner discussed surgery but Petitioner hesitated because he was both diabetic and post-bypass surgery. Petitioner was to seek surgical clearance from his cardiologist but indicated he wanted to hold off on surgery until after the first of the year if possible. On September 25, 2003, Dr. LeCompte stated in his note that although he does have spinal stenosis, he is a "bad risk" for surgery. An EMG on Oct. 15, 2003 to determine whether there was diabetic neuropathy versus radiculopathy was read as essentially normal. PX12.

Petitioner continued to work, including overtime. On December 12, 2003 (08WC02037), he was attempting to lift a base cabinet into a truck. As he did, he felt severe back pain. He testified that this pain was much worse than previously. Before this date, he was able to walk, drive, and work. However, after December 12, 2003, he was unable to perform any of those activities.

He returned to Dr. LeCompte. In his December 18, 2003 note, the doctor reviewed his prior treatment, noting Petitioner had improved following his epidurals so that surgery was not recommended at that time. Dr. LeCompte's examination of Dec. 18, 2003 showed no "real change in his neurologic function" with the straight leg raising test positive on the right at 30 degrees. However, Petitioner definitely had an exacerbation of his pain. The doctor requested clearance from Petitioner's cardiologist, a myelogram and post-myelogram CT scan. He was cleared for surgery in January, 2004. PX12. However, Petitioner requested a second opinion from Dr. Leonard Cerullo who found multiple disc degenerative disease and a herniated disc at L5-S1. He related a history of an initial injury on January 10, 2003, after which Petitioner developed right leg pain and the December 13 (sic), 2003 reinjury of his back at work resulting in recurrence of his pain, which was even more severe, numbness of the lateral toes of the right foot and weakness of the plantar flexion of the right foot; Petitioner had been totally incapacitated since the onset of his symptoms. RX24.

Petitioner was examined on Feb. 3, 2004 by Dr. Savino. He recommended a myelogram/CT to determine whether surgery should be at the right S1 nerve root or should also address Petitioner's spinal stenosis. He thought Dr. LeCompte's treatment to date had been appropriate, that Petitioner was unable to work, was not at MMI and needed further treatment. Regarding whether Petitioner's condition was related to his (unspecified) work accident, Dr. Savino wrote: "Yes, he has a recurrence of an injury that occurred back in January." PX8. The myelogram/CT done Feb. 12, 2004, showed both stenosis at L3/4 and L4/5, distortion/displacement of the anterolateral right dural sac and proximal right S1 nerve root sheath at L5/S1 and an osteophyte at that same level. PX11.

Petitioner underwent surgery on March 9, 2004 during which a calcified disc was partially removed. However, Petitioner did not improve and on April 5, 2004, Dr. LeCompte documented neurological changes based on an EMG and recommended a second surgery. It was done April 12, 2004. The operative report in PX11 is incomplete, but it appears the surgery was a decompression at L5/S1. Post operatively, Petitioner's back pain continued but his leg pain improved. He was on Neurontin for the pain. He developed symptoms of depression and was referred for a psychiatric evaluation according to Dr. LeCompte's Sept. 23, 2004 note. As of Dec. 8, 2004, Dr. LeCompte recommended a work up for possible fusion surgery and referred Petitioner to Dr. Rabinowitz. He noted Petitioner would probably not be able to return to his usual job as a cabinet maker. The doctor thought Petitioner could do a light or sedentary job but first his daily standard of life had to be improved. PX11.

Petitioner was seen by Dr. Ghanayem on Feb. 9, 2005. He found decreased sensation in the L5 dermatome bilaterally and buttock pain with the tension sign, bilaterally. He thought Petitioner had ongoing lumbar stenosis and that the prior two surgeries had not addressed all of the neurologic compression. His bladder function was worse, post-surgery. Dr. Ghanayem thought Petitioner was a candidate for further surgery, and was disabled from work. Regarding causal connection he wrote: "It would appear that symptoms that started from his January 2003 injury, and then the subsequent re-injury in December of 2003 of back and leg pain would indicate that the condition for which he underwent surgery would be related to the work injury." PX9.

In a Vocational Assessment Report dated Feb. 26, 2007, Vocational Consultant Thomas Gusloff noted Petitioner was a 60 year old cabinet maker with a high school level education in Romania. He spoke and read, but could not write, English. He was capable of less than a sedentary level of physical demand. No doctor had released him to work at any level. He used a cane and sometimes a walker for stability. He could not drive. He had additional health concerns including obesity, diabetes and a heart condition which contributed to his overall disability. Further training to improve his English and computer skills was not feasible given Petitioner's age. Mr. Gusloff concluded Petitioner was precluded from any gainful employment. PX6.

Petitioner testified he has been released to work or returned to work since his surgeries. He has chosen not to have the cage-in fusion recommended by Dr. LaCompte. A demand for vocational rehabilitation was made, but it was not offered. He has been on Social Security Disability since 2005. He hasn't driven a car since Dec. 2003. He has trouble

sleeping due to pain. When he wakes he takes a shower, with his wife's help. She also helps him dress. He has breakfast and takes his medication and then lies down. He can stand for less than five minutes. He uses a cane to walk. He is taking Vicodin #3, four times a day and Tylenol.

Petitioner was examined by Dr. Trotter at the request of Travelers for the Dec. 13, 2003 date of injury (08WC02037) on March 10, 2003. Dr. Trotter found a negative straight leg raising test, decreased sensation in the L5 dermatomes bilaterally, minimal ability to stand on his toes and feet and mild paraspinal spasm. He thought Petitioner was not capable of either full or light duty, but declared him "fully permanently disabled". Dr. Trotter concluded Petitioner was a candidate for fusion surgery, but noted it would be at very high risk due to his other physical issues and therefore would not be appropriate. He thought Petitioner should continue to take Neurontin. He also suggested a spinal cord stimulator, a yearly series of epidural steroid injections and home exercises as future treatment options. Petitioner was at MMI. Regarding causal connection, Dr. Trotter opined Petitioner appeared to have a "limited exacerbation" of his pre-existing disc herniation at L5/S1 on Dec. 13, 2003. He thought this aggravation was also superimposed on pre-existing severe multi-level spinal stenosis and DDD. RX16&32.

Edward Boltz is president and share holder of Prime Meridian Insurance Group, a commercial insurance business. Precision, a maker of cabinets for the medical profession, was a client of his for 14 years. ECI is a professional employment organization (PEO) which bundles a number of human resources services together for small employers. These included human resources management, workers' compensation coverage, and health insurance. When he read ECI's brochure, Mr. Boltz thought it might be a new product he could offer to clients. Between Precision and ECI, ECI was responsible for workers' compensation claims and there was an agreement to that effect.

Connie SanFillipo was vice president of sales for ECI from 1998 to 2004. She made presentations regarding the PEO services provided by ECI to prospective clients. She met Dave and Lynn Matti when she made presentations to them on Dec. 16, and Dec. 22, 1999. RX14 is a copy of the general ECI brochure. At some point ECI entered into a contract with Precision. ECI became employer of record of Precision's employees for purposes of workers' compensation. ECI obtained the insurance. ECI had a contract with Precision for the period from Jan. 2003 through Dec. 2003.

Lynn Matti does all the paperwork for Precision, including bookkeeping and record keeping. Her husband, Dave Matti, is Precision's president. Edward Boltz told her about ECI when Precision was looking to out source administrative functions. Connie SanFillipo came and met with them. Among the functions ECI was responsible for was workers' compensation. RX14 is a copy of the brochure Ms. SanFillipo gave her. Precision and ECI had a contract. Precision paid a fee for the contract amount covering ECI's services. Precision's only responsibility for workers' compensation claims was to report the claim.

Karen Nolan is vice president of operations for Cory and Associates (Cory), a commercial insurance agency representing a variety of insurance companies. In addition,

Cory was authorized by the State of Illinois to issue policies from Travelers Insurance to clients in the assigned risk pool. ECI is an employee leasing company. Andrew Cory is a principal in both Cory and Associates and ECI. RX3 is a letter dated Jan. 20, 2000 from Ms. Nolan on ECI letterhead to Lynn Matti explaining the procedure for reporting work accidents. The letter advised that a form was to be completed and faxed or mailed to Karen Nolan within three days of the accident. Ms. Nolan never saw an agreement between ECI and Precision, but believes there was one. She testified she thought the insurance company was responsible for paying workers compensation claims. If Precision had a claim, they would fill out the paperwork and give it to ECI which would forward it to the insurance company. RX4 is a certificate of insurance. The producer was Cory & Associates; the insured was Employer's Consortium, Inc.; the certificate holder was Precision Cabinets, 1189 Lyon Rd., Batavia, IL 60510; the insurance was for worker's compensation and employer's liability; the policy was effective beginning 9/29/02, expiring 9/29/03. On cross examination, Ms. Nolan testified that Travelers never objected whenever she forwarded along a workers' compensation claim whether from Cory or ECI. The ECI policy for 2002-3 was through the assigned risk pool. Travelers was the service provider, as determined by lottery. Neither Cory nor Travelers had a say as to the assignment. She knows Precision was brought within the ECI policy but doesn't know when. RX4 confirms that ECI had a policy through Travelers. As part of her duties for Cory, Ms. Nolan sent changes to Travelers. She would usually wait 30 days to receive and endorsement and if she didn't she would fax or call. The endorsement confirmed the requested change. Coverage was for all employees and rates were set based on audits to determine when people became employees.

PX7 is a copy of an affidavit by FBI Special Agent Patrick J. Moran dated Dec. 12, 2006 as part of a criminal complaint captioned United States of America v. Allen Hilly, U.S. Dist. Ct., Dist. of New Jersey, Magistrate No. 06-4076. In Attachment B, Special Agent Moran alleges that Allen Hilly, "the managing partner/director of Professional Employer's Holding LLC, which owns and operates a number of subsidiaries including but not limit to ...Employers Consortium Inc. ("ECI") had defrauded clients by diverting payroll taxes and workers' compensation premiums.

Lynn Mattie testified that she knew Petitioner was hurt in Jan. 2003. She dealt with ECI regarding his injury. She called the person who did the payroll, who then took it to ECI. After Petitioner's second accident she followed the same procedure: she told Mary Hlady, her payroll contact at ECI that Monday. She was never told to report directly to Travelers. She received RX9, a letter dated July 19, 2006 on Travelers letterhead from Ann Taylor of its workers compensation unit providing a 24 hour toll free number to report claims directly to a Travelers' customer service representative. The letter came after Petitioner's two accidents. There was no conversation about reporting to Travelers earlier; everything was through ECI.

Dave Mattie testified that he had a conversation with Travelers after both of Petitioner's accidents. He knows he spoke to Dawn Stewart. He spoke to another party as well, but can't remember the name. After the first accident happened, he expected a call from Travelers and got one. It was pretty short. It was about the claim and whether it happened and other questions about it. There was no indication that Travelers would not pay. After

the second accident it was the same thing. In roughly Dec. 2003 or Jan. 2004 he got a call from Dawn. He explained that situation and that Petitioner was not working. He answered all her questions. There were probably two to three more phone calls about the same claim. Dawn called back again, but he doesn't recall when. The others who called asked the same questions. On cross examination Mr. Mattie testified that he is sure he talked to Dawn within 30 days of the Dec. 2003 accident and as far as the Jan. 2003 accident, he's sure it was a representative of Travelers.

Dawn Stewart began working in Travelers' investigative claim unit on either March 23 or March 24, 2003. When a claim comes into Travelers' system, by fax or phone, it is assigned to a claim representative. If there are any flags, it comes to the investigative unit. She calls the insured and the employee or his/her attorney within 24 hours of when a claim is assigned to her. She must have a medical authorization form in order to act on a claim. The claim for Petitioner's Dec. 2003 accident was entered into the system in Jan. 2008 when Travelers got his application for adjustment of claim. Stewart asked that it be entered and then she investigated. There was no claim in the system for the Jan. 2003 accident. When she got the application for the Dec. 2003 accident, she called and left a message for Lynn Matti. She made three calls within 24 hours. She also called Mr. Meilke, who was listed as attorney on the application. She had no knowledge of the Dec. 2003 accident before Jan. 28, 2008. She did not talk to Ms. Mattie before then regarding the Dec. 2003 accident. In January 2008 Ms. Stewart asked Ms. Matti about the claim. Ms. Matti indicated the claim was reported to ECI, Chris DeMarco, who said she would take care of everything. Ms. Stewart did not speak to DeMarco. She asked Ms. Matti for an accident report but didn't get one. She never got one for ECI for the Dec. 2003 accident. They did have one for the Jan. 2003 accident. On cross examination, Ms. Stewart said they got notice of the Jan. 2003 accident from ECI in 2006. It was in the file materials. She did not bring her claim file with her to the hearing. The Jan. 2003 claim was reassigned to Stewart in Oct. or Nov. 2006. Before that, Ms. Taylor worked on it. Part of the investigation is to get medical records. She got them and they are in the file, including Dr. LaCompte's records, and Dr. Ghanayem's report. She scheduled an examination with Dr. Trotter in March 2008. Stewart was not the only adjuster for these claims; there was one other. She never had a conversation with Dave Matti.

Andrea Shopher is a senior account manager/underwriter for Travelers' property casualty affiliates. She deals only with assigned risk policies, reviewing records kept by Travelers; she has dealt with Precision Cabinets. Travelers receives assigned risk applications from NCCI and issues policies and also makes changes to policies such as additions and deletions to existing policies. Travelers does not solicit assigned risk policies. There is an automatic electronic feed to NCCI. There is also an electronic policy warehouse which provides on line storage. This allows review of records kept within the ordinary course of business. Files also may be printed out. When a filing is processed to NCCI, if it generates an additional premium, it will be billed. Either the producer or the insured can generate a change request. When the producer generates a change request, it goes into electronic filing. After Travelers processes a change request, notice of the change goes to the producer, in this case ECI and Precision, and to NCCI. Ms. Shopher does not do audits, but reviews the results. She reviewed the audit for Precision for 2002-2003. The

audit is done to insure proper billing and service for a policy. Travelers is a servicing carrier in Illinois and in 2002-2003 was the serving carrier for ECI. RX4 is a certificate of insurance. The certificate holder is Precision; the insured was ECI. It shows an issue date of 9/22/03 for the 9/29/02 to 9/29/03 policy, # UB-801X352-4-02. As an underwriter tracking policy changes, she sees the results in terms of certificates and premiums. An endorsement is an addition or deletion to a policy. RX4 is proof of coverage for ECI but not for Precision because it is listed a certificate holder. She reviewed change documents for the ECI policy for 9/29/02 through 9/29/03 as well as endorsement requests, audit results, certificates of insurance and the certified ECI policy for 2002-2003. The file includes a change document adding Precision to the policy effective 8/29/03. On cross examination, Ms. Shopper testified Travelers maintains an underwriting file which would have change requests, correspondence with the producer and the insured, a certificate of insurance and documentation notes. She did not bring the file to the hearing. She did not know there was a subpoena. PX14. She didn't know whether there was an audit file. She didn't know when an audit was done for ECI. She was not part of the process for making policy changes. She reviewed the underwriting file but not information such as the number of employees, their names, location or risk class. She reviewed the audit result showing policy effective dates and name of client. She did not know what Travelers did to confirm the audit results. Looking at RX31, she identified it as the policy for 9/29/02 through 9/29/03 and agreed there was a policy for ECI for that period. Looking at RX17a, the date is 1/10/03. It shows Travelers Indemnity Co. There's a policy number which corresponds to the policy at RX31. Looking at the document she saw Precision Cabinets with a street address and business name. Travelers gives this information to NCCI. Corey is the producer listed on the policy and has the ability to issue a certificate of insurance. Workers' compensation policy premiums are calculated based on payroll, risk calculations and loss ratings. An audit is a protection for the insurance company. It shows what the payroll was per classification per client. The carrier looks at payroll and what kind of work each employee is doing so they can be put in the correct category of risk and so the underwriting can be done. If the payroll has not been correctly reported by the insured PEO, the carrier can still change the proper premium. If the payroll has not been correctly reported, the carrier can go back and change the premium. Assigned risk premiums are generally at a higher rate. As an underwriter, Ms. Shopper determines what will be charged. On re-direct examination, she compared PX2 and RX17a. RX17a gives the effective date of the policy while PX2 gives the change effective date. It confirms her opinion that Precision was added on Aug. 29, 2003.

PX2 consists of the certified Policy and Coverage Provider records of the Illinois Workers' Compensation Commission showing Policy number 6BKUB801X352402 with effective dates of 9/29/02-9/29/03 for ECI under FEIN #363891980. Travelers Indemnity Co. is named as the coverage provider. Page 1 of PX2 is the same in all substantive respects as RX17; they were printed on different dates. Attached to PX2 is a list of names and addresses including "Employer's Consortium Inc and 1189 Lyon Rd. Precision Cabinets Inc., Batavia IL 60510. The fourth page of PX2, under the heading "UNLINKED AND/OR DELETED NAMES" Shows ECI under FEIN # 363891980 effective 9/29/02 and expiring 8/29/03. The last page of PX2 is titled "Canc/Reinst/Non-Renew" for this policy. It shows "CANCELLATION" effective 9/29/02". It further

shows "REINSTATEMENT" effective 1/15/03. No testimony was offered about this last page. Commission records reflect that Precision Cabinets had workers' compensation coverage in effect on Jan. 10, 2003 (04WC03879) through West Bend Insurance.

PX3 includes the following unpaid medical bills: \$1,550.00 Medical Center Anesthesia and \$4,036.34, Third Party Solutions (pharmacy bills). The total is \$5,586.34.

The Arbitrator concludes:

1. On Jan. 10, 2003 and Dec. 13, 2003, Respondent Precision Cabinets was operating under and subject to the Illinois Workers' Compensation Act. This is based on Petitioner's testimony that Precision was in the business of making cabinets and to do so used saws and other tools. 820 ILCS 305/3.
2. On Jan. 10, 2003 and Dec. 13, 2003, Respondent Employer's Consortium, Inc. was an employee leasing company and was a Lessor within the meaning of the Employee Leasing Company Act, 215 ILCS 113/15, based on the testimony of Edward Bolz, Lynn Matti and Connie DiFillipo as well as RX14 and RX23.
3. On Jan. 10, 2003 and Dec. 13, 2003, Respondents Precision Cabinets and ECI had a borrowing-loaning relationship within the meaning of sec. 1(a) 4 of the Illinois Workers' Compensation Act. The parties entered into a contract by which ECI took over administration of various human relations functions, including paying wages (RX1) and providing workers' compensation insurance coverage (RX3&4). The contract is not in evidence, but Edward Bolz, Lynn Mattie and Karen Nolan all testified to its existence. ECI was the loaning employer and Precision Cabinets was the borrowing employer.
4. On Jan. 10, 2003, Precision Cabinets had workers compensation coverage through West Bend Mutual Ins. Co. based on ARBX1 and the records of the Illinois Workers' Compensation Commission.
5. On Jan. 10, 2003, ECI had no workers compensation coverage in effect. This is based on PX2, the records of the Illinois Workers' Compensation Commission showing the policy, #6BKUB801X352402, was cancelled effective Sept. 29, 2002 and was not reinstated until Jan. 15, 2003. Travelers Insurance issued this policy based on an assignment through the assigned risk pool. RX35, the Illinois Workers Compensation Insurance Plan, Sec. III.2 provides that following cancellation of an assigned risk policy, any insured employer must reestablish eligibility or demonstrate entitlement to coverage through the plan before any further assignment can be made. Thus, there is no coverage during a lapse period. Although there is evidence in the record showing Travelers coverage on Jan. 10, 2003, the Arbitrator finds the Commission's own records most reliable. Respondent Travelers Insurance further argues that there was no coverage for Precision until Aug. 29, 2003 when it was added to the list of locations covered by policy #6BKUB801X352402. It is not necessary to address this argument as PX2 shows that policy was not in effect on Jan. 10, 2003.
6. On Jan. 10, 2003 (04WC03879), Petitioner sustained a compensable work accident. This is based on his credible testimony, Dr. LeCompte's office visit note of Jan. 23, 2003 (PX12) and the stipulation of Precision Cabinets, ARBX1.

7. Petitioner gave timely notice of his accident to Dave Matti based on his credible testimony and the stipulation of Precision Cabinets on ARBX1.
8. As a result of his Jan. 10, 2003 accident, Petitioner sustained a herniated disc at L5/S1 and an aggravation of his pre-existing degenerative disc disease. As a result he underwent treatment with Dr. LeCompte, initially including epidural steroid injections and medication. Although he was light duty restrictions were in effect, Petitioner continued to do his regular work. Surgery was discussed in Sept. 2003 when Petitioner's condition regressed after initial improvement. However, Dr. LeCompte did not make a strong surgical recommendation, noting Petitioner wanted to delay that option. On Dec. 13, 2003 (08WC02037), Petitioner sustained a temporary exacerbation of his low back condition when he lifted a cabinet at work. But this incident was not an intervening accident breaking the chain of causal connection. This is based on Petitioner's testimony that his pain was so much worse after the Dec. 13, 2003 lifting incident that he could no longer drive or work. However, his diagnosis did not change, nor did the neurological findings in Dr. LeCompte's office records. Drs. LeCompte, Savino, Cerullo, Ghanayem and Trotter all noted the initial accident and described the Dec. 13, 2003 incident as a recurrence or exacerbation when asked for a causal connection opinion. No doctor opined the Dec. 13, 2003 incident broke the chain of causal connection from a medical perspective.
9. In 04WC03879, Petitioner was temporarily totally disabled from Jan. 13, 2003 through Feb. 17, 2003, based on the parties' stipulation on ARBX1, and again from Dec. 13, 2003, the date of the second incident, through Dec. 8, 2004, when he last saw Dr. LeCompte. The doctor referred Petitioner to another doctor for a possible fusion surgery, but Petitioner had no further medical treatment after that date and was at MMI.
10. Petitioner became permanently totally disabled on Dec. 9, 2004 (04WC03879). No doctor released Petitioner to any kind of work. Dr. LeCompte suggested he might be capable of some very sedentary job if he improved with further treatment, but this suggestion was speculative at best. Drs. Ghanayem and Trotter thought Petitioner was incapable of work. In addition to this medical evidence of permanent, total disability, PX6 establishes that he is not employable and not a candidate for vocational rehabilitation. There is no evidence to the contrary.
11. In 04WC03879, Petitioner is entitled to medical expenses of \$5,586.34. This is based on the causal connection finding and PX3.
12. Petitioner failed to prove he is entitled to penalties pursuant to sec. 19(l) or 19(k) or attorneys' fees pursuant to sec. 16 of the Act. Petitioner sought penalties only from Travelers. Having found no insurance coverage by Travelers on Jan. 10, 2003 and no intervening accident on Dec. 13, 2003, the Arbitrator finds no basis to assess penalties. The Arbitrator further notes Travelers raised other defenses to liability which were not addressed in this decision due to the conclusions regarding coverage(04WC03879) and accident(08WC02037).

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*2010 Ill. Wrk. Comp. LEXIS 481, **

ISAK KLEIN, PETITIONER, v. **PRECISION** CABINETS, EMPLOYER'S CONSORTIUM, INC., AND TRAVELERS INSURANCE, RESPONDENTS.

NOS: 04WC 03879, 08WC 02037

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF KANE

2010 Ill. Wrk. Comp. LEXIS 481

May 21, 2010

CORE TERMS: coverage, surgery, workers' compensation, endorsement, pain, arbitrator, effective date, effective, premium, insured, doctor, audit, cabinet, payroll, causal connection, assigned risk, cancellation, borrowing, printout, carrier, leased, stenosis, producer, notice, employee leasing, notice of cancellation, certificate of insurance, recommended, cancelled, improved

JUDGES: Barbara A. Sherman; Kevin W. Lamborn

OPINION: [*1]

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent **Precision** Cabinets and Respondent Travelers Insurance herein and notice having been given to all parties, the Commission, after having considered the issues of causal connection and coverage on January 10, 2003, and having been advised of the facts and law, hereby modifies the Arbitrator's decision with respect to coverage on January 10, 2003, and otherwise affirms and adopts the Arbitrator's decision, which is attached hereto and made a part hereof.

There is no dispute that Employer's Consortium, Inc. ("ECI") is the loaning employer and **Precision** Cabinets ("**Precision**") is the borrowing employer in this case. The Arbitrator found that ECI did not have workers' compensation coverage on January 10, 2003. In so finding, the Arbitrator opted to rely on the Commission's own records, noting that she found the Commission's records "most reliable." The Commission disagrees, and finds that ECI had workers' compensation coverage through Travelers Insurance on January 10, 2003.

Petitioner's Exhibit 2 is comprised of several printouts from the Web site of the National Council on Compensation [*2] Insurance, Inc. ("NCCI"), certified by the Commission. The first page of this exhibit, "Policy and Cov Provider," shows that the policy effective date was September 29, 2002, and the policy expiration date was September 29, 2003. On page two of this exhibit, "Active Linked Names and Addresses," **Precision** is listed on the bottom of this page, with an effective date of August 29, 2003, the same effective date noted for other employers. When a search was done based on ECI's FEIN number, 363891980, which matches ECI's FEIN number on page two of the exhibit, it was shown that the effective date of ECI's policy was September 29, 2002, to August 29, 2003. We find that this exhibit supports our conclusion that ECI was covered by Travelers on January 10, 2003.

The one page of Petitioner's Exhibit 2 that the Arbitrator relied on to find that ECI's policy was "cancelled effective Sept. 29, 2002 and was not reinstated until Jan. 15, 2003" is the last page of this exhibit, a printout titled "Canc/Reinst/Non-Renew." The Commission notes that no one testified as to how the NCCI printout should be read or interpreted. We examine this printout in conjunction with Respondent's Exhibit 31, and, we find [*3] that only when doing so can we determine how to read and interpret the NCCI printout in Petitioner's Exhibit 2. In Respondent's Exhibit 31, there is a "Notice of Cancellation -- For Nonpayment of Premium" that was sent from Travelers to ECI, for the policy with an effective date of September 29, 2002, and an expiration date of September 29, 2003. The notice of cancellation indicated that the effective date of cancellation was January 15, 2003. Thus, the Commission finds that the effective date of January 15, 2003, indicated in the NCCI printout does not represent the effective date of the reinstatement; instead, January 15, 2003, is the effective date of the cancellation. Following the January 15, 2003, cancellation, the policy was reinstated on February 12, 2003, as shown in Travelers's documents in Respondent's Exhibit 31. And it appears that the NCCI received the notice of reinstatement on February 13, 2003, as shown in the NCCI printout in Petitioner's Exhibit 2. We find that the evidence shows that ECI's policy was cancelled effective January 15, 2003, and was reinstated on February 12, 2003, and that ECI was insured by Travelers on January 10, 2003.

The Commission also notes [*4] that simply because a notice of cancellation was issued by Travelers does not mean that the policy was cancelled. It appears from the record that so long as premium payments were made before the effective date of the cancellation, the policy was never cancelled. For example, in Respondent's Exhibit 31, a notice of cancellation was issued on September 3, 2003, with an effective date of September 18, 2003. Before the effective cancellation date, a notice of reinstatement was sent out on September 12, 2003, which indicated that the notice of cancellation originally sent was withdrawn, and the policy that was previously issued remains in full force as of the original date of issue.

In addition to documentary evidence, there is testimony and Travelers's handling of the claim that supports our finding that ECI had coverage through Travelers on January 10, 2003. Andrea Shopper, a senior account manager for Travelers, testified that the certificate of insurance for the period of September 29, 2002, to September 29, 2003, for ECI is proof of coverage for ECI but not for **Precision**. Karen Noland from Cory & Associates, testified that the certificate confirms that ECI had a policy with Travelers [*5] from September 29, 2002, to September 29, 2003, but that it was not "proof of insurance." Ms. Noland testified that she typed out an email dated November 14, 2007, to Dave, presumably Dave Matti, indicating that she spoke with Jenny Jobst at Travelers, and that Ms. Jobst indicated that the Travelers policy was in effect for the September 29, 2002, to September 29, 2003, policy period.

The Commission concludes that ECI was covered by Travelers on January 10, 2003. As indicated above, there is no dispute that ECI was the loaning employer and **Precision** was the borrowing employer in this case. Under the Illinois Workers' Compensation Act (WCA), Section 1(a)(4), ECI is liable for Petitioner's injuries. Section 1(a)(4) provides as follows:

Where an employer operating under and subject to the provisions of this Act loans

an employee to another such employer and such loaned employee sustained a compensable accidental injury in the employment of such borrowing employer and where such borrowing employer does not provide or pay the benefits or payments due such injured employee, such loaning employer is liable to provide or pay all benefits or payments due such employee under this Act and [*6] as to such employee the liability of such loaning and borrowing employers is joint and several,

...

820 ILCS 305/1(a)(4). ECI and **Precision** are jointly and severally liable for Petitioner's work related injuries.

In Travelers's brief, it argues that the applicable statute in this case is the Employee Leasing Company Act ("ELCA"), 215 ILCS 113/1, et seq. Travelers contends that "Section 30 of the ELCA expressly requires the addition of borrowing employers such as **Precision** 'by endorsement', prior to the borrower or lender becoming entitled to coverage." Travelers contends further that "[u]nder the terms of the endorsement, neither **Precision** nor ECI was covered for liabilities arising from ECI's leasing to **Precision** until **Precision** was added by endorsement as an insured."

The Commission rejects Travelers's position. The purpose of the ELCA is to ensure that leasing employers provide workers' compensation insurance for all of its employees and that proper premiums are paid.

For the purpose of ensuring that an employer that leases some or all of its workers properly obtains workers' compensation [*7] insurance coverage for all of its employees, including those leased from another entity, and that premium is paid commensurate with exposure and anticipated claim experience, this Act is required to regulate employee leasing companies.

215 ILCS 113/5.

Section 4(a)(3) of the WCA provides, in pertinent part, that an employer subject to the WCA may do the following:

[i]nsure his entire liability to pay ... [the compensation provided for in this Act] in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured: . . . Any provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same . . . shall be wholly void.

820 ILCS 305/4(a)(3) (emphasis added). We find that Travelers's reliance on Section 30 of the ELCA to support its argument that ECI's failure to obtain or provide an [*8] endorsement identifying **Precision** as a lessee excludes coverage for ECI's employees leased to **Precision** before the August 29, 2003, endorsement, is misplaced.

Section 30 of the ELCA, titled "Responsibility for policy issuance and continuance," reads as follows:

(a) When a workers' compensation policy written to cover leased employees is issued to the lessor as the named insured, the lessee shall be identified thereon by the attachment of an appropriate endorsement indicating that the policy provides coverage for leased employees. The endorsement shall, at a minimum, provide for the following:

(1) Coverage under the endorsement shall be limited to the named insured's employees leased to the lessees ...

215 ILCS 113/30(a). Under Section 4(a)(3) of the WCA, it is clear that once it has been determined that ECI had workers' compensation insurance through a policy provided by Travelers, all employees of ECI during the effective dates of the policy are covered by that policy, regardless of any provisions, endorsements, or lack thereof, attempting to limit or modify the liability of Travelers. It is also clear that the intent of the ELCA [*9] is that leased employees be covered by workers' compensation insurance, consistent with our rejection of Travelers's argument here. While ECI's failure to obtain an endorsement in a timely manner identifying **Precision** as a lessee may have thwarted the ELCA's intent that premium commensurate with exposure be paid, it does not result in a lack of coverage for any of ECI's employees during the period the policy was in effect.

Subsequent to oral arguments before the Commission, which were held on April 1, 2009, Travelers filed a motion on April 7, 2009, that was titled "Motion For Commission To Take Judicial Notice Of Proceedings Involving ECI And To Spread ECI Bankruptcy And Liquidation Proceedings Of Record." Travelers's motion was presented before Commissioner Sherman on May 7, 2009. Travelers argues in its motion that the Commission should take judicial notice of legal records from courts and the Division of Insurance.

Petitioner and **Precision** filed a memorandum in opposition to Travelers's motion. Both Petitioner and **Precision** argue that Travelers's presentation of these records is untimely, as the Commission is without authority to accept new evidence on review. The Commission's [*10] rules provide as follows:

In all cases on review under Section 19(b) of the Act in which the first hearing of record before the Arbitrator is commenced after December 18, 1989, no additional evidence shall be introduced by the parties before the Commission.

50 Ill. Adm. Code 7040.40(b). We find that the issue before us is not whether we can take judicial notice of these documents; rather, the issue is whether we can take additional evidence on review. Under the Commission's rules, we are not permitted to accept additional evidence on review.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision, filed on May 6, 2008, is modified as stated herein with respect to coverage on January 10, 2003, and otherwise affirmed and adopted.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$ 75,000.00. The probable cost of the record to be filed as return to Summons is the sum of \$ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATE: MAY 21 2010 [*11]

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **J. Kinnaman**, arbitrator of the Commission, in the city of **Geneva, IL.**, on **March 25, 2008**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- E. Was timely notice of the accident given to the respondent?
- F. Is the petitioner's present condition of ill-being causally related to the injury?
- J. Were the medical services that were provided to petitioner reasonable and necessary?
- K. What amount of compensation is due for temporary total disability?
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed [*12] upon the respondent?
- O. Other **coverage by Travelers**

FINDINGS

- . On **Jan. 10, 2003**, the respondent **Precision Cabinets was** operating under and subject to the provisions of the Act.
- . On this date, an employee-employer relationship **did** exist between the petitioner and respondents **Precision Cabinets and Employers Consortium, Inc.**
- . On this date, the petitioner **did** sustain injuries that arose out of and in the course of employment.
- . Timely notice of this accident **was** given to the respondent.
- . In the year preceding the injury, the petitioner earned \$ **44,616.00**; the average weekly wage was \$ **858.00**.
- . At the time of injury, the petitioner was **56** years of age, **married** with **0** children under 18.
- . Necessary medical services **have not** been provided by the respondent.
- . To date, \$ **92,587.00**. has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- . The respondent shall pay the petitioner temporary total disability benefits of \$ **572.00/week** for **62-4/7** weeks, from **1/13/03** through **2/17/03** and **12/13/03** through **12/8/04**, which is the period of temporary total disability [*13] for which compensation is payable.
- . The respondent shall pay the petitioner the sum of \$ **572.00/week** for a further period of life, as provided in Section **8(f)** of the Act, because the injuries sustained caused **his permanent total disability**.
- . The respondent shall pay the petitioner compensation that has accrued from **1/10/03**

through **3/25/08**, and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of \$ **5,586.34** for necessary medical services, as provided in Section 8(a) of the Act.

. The respondent shall pay \$ **0** in penalties, as provided in Section 19(k) of the Act.

. The respondent shall pay \$ **0** in penalties, as provided in Section 19(l) of the Act.

. The respondent shall pay \$ **0** in attorneys' fees, as provided in Section 16 of the Act.

See also 08WC02037.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest [***14**] of 1.74% shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of arbitrator

May 2, 2008

Date

MAY 6 2008

Petitioner testified that on January 10, 2003 (04WC03879), he was working at **Precision Cabinets (Precision)** as a cabinet maker. He received his weekly wage payment from Employers Consortium, Inc. (ECI). PX5. He was making cabinets out of plywood and particle board. That day he was attempting to move a sheet of plywood to a panel saw. As he did, he felt immediate pain in his lower back. He told his boss, Dave Matti, completed working the day, and sought treatment from neurosurgeon Dr. Benjamin LeCompte.

When he saw Petitioner on Jan. 23, 2003, the doctor noted the accident of Jan. 10, 2003. Dr. LeCompte thought Petitioner had spinal stenosis at L3/4 and L5/S1 with a herniated disc on the right at L5/S1 based on an MRI done Jan. 28, 2003. Petitioner improved and the doctor released him to light duty work on February 17, 2003. (Rx 2). He testified that his duties didn't change much; they said light duty but he really did his [***15**] regular job. He remained symptomatic, was taking pain medication and underwent a series of epidural steroid injections at the L3-4 level in March and April 2003. However by Sept. 10, 2003, Dr. LeCompte noted Petitioner was "having some regression", complaining of right leg and buttock pain. He had positive right leg raising and right femoral stretch signs as well as some loss of right plantar flexion. Dr. LeCompte indicated he and Petitioner discussed surgery but Petitioner hesitated because he was both diabetic and post-bypass surgery. Petitioner was to seek surgical clearance from his cardiologist but indicated he wanted to hold off on surgery until after the first of the year if possible. On September 25, 2003, Dr. LeCompte stated in his note that although he does have spinal stenosis, he is a "bad risk" for surgery. An EMG on Oct. 15, 2003 to determine whether there was diabetic neuropathy versus radiculopathy was read as essentially normal. PX12.

Petitioner continued to work, including overtime. On December 12, 2003 (08WC02037), he was attempting to lift a base cabinet into a truck. As he did, he felt severe back pain. He testified that this pain was much worse than previously. [***16**] Before this date, he was able to walk,

drive, and work. However, after December 12, 2003, he was unable to perform any of those activities.

He returned to Dr. LeCompte. In his December 18, 2003 note, the doctor reviewed his prior treatment, noting Petitioner had improved following his epidurals so that surgery was not recommended at that time. Dr. LeCompte's examination of Dec. 18, 2003 showed no "real change in his neurologic function" with the straight leg raising test positive on the right at 30 degrees. However, Petitioner definitely had an exacerbation of his pain. The doctor requested clearance from Petitioner's cardiologist, a myelogram and post-myelogram CT scan. He was cleared for surgery in January, 2004. PX12. However, Petitioner requested a second opinion from Dr. Leonard Cerullo who found multiple disc degenerative disease and a herniated disc at L5-S 1. He related a history of an initial injury on January 10, 2003, after which Petitioner developed right leg pain and the December 13 (sic), 2003 reinjury of his back at work resulting in recurrence of his pain, which was even more severe, numbness of the lateral toes of the right foot and weakness of the plantar flexion **[*17]** of the right foot; Petitioner had been totally incapacitated since the onset of his symptoms. RX24.

Petitioner was examined on Feb. 3, 2004 by Dr. Savino. He recommended a myelogram/CT to determine whether surgery should be at the right S1 nerve root or should also address Petitioner's spinal stenosis. He thought Dr. LeCompte's treatment to date had been appropriate, that Petitioner was unable to work, was not at MMI and needed further treatment. Regarding whether Petitioner's condition was related to his (unspecified) work accident, Dr. Savino wrote: "Yes, he has a recurrence of an injury that occurred back in January." PX8. The myelogram/CT done Feb. 12, 2004, showed both stenosis at L3/4 and L4/5, distortion/displacement of the anterolateral right dural sac and proximal right S1 nerve root sheath at L5/S1 and an osteophyte at that same level. PX11.

Petitioner underwent surgery on March 9, 2004 during which a calcified disc was partially removed. However, Petitioner did not improve and on April 5, 2004, Dr. LeCompte documented neurological changes based on an EMG and recommended a second surgery. It was done April 12, 2004. The operative report in PX11 is incomplete, but it appears **[*18]** the surgery was a decompression at L5/S1. Post operatively, Petitioner's back pain continued but his leg pain improved. He was on Neurontin for the pain. He developed symptoms of depression and was referred for a psychiatric evaluation according to Dr. LeCompte's Sept. 23, 2004 note. As of Dec. 8, 2004, Dr. LeCompte recommended a work up for possible fusion surgery and referred Petitioner to Dr. Rabinowitz. He noted Petitioner would probably not be able to return to his usual job as a cabinet maker. The doctor thought Petitioner could do a light or sedentary job but first his daily standard of life had to be improved. PX11.

Petitioner was seen by Dr. Ghanayem on Feb. 9, 2005. He found decreased sensation in the L5 dermatome bilaterally and buttock pain with the tension sign, bilaterally. He thought Petitioner had ongoing lumbar stenosis and that the prior two surgeries had not addressed all of the neurologic compression. His bladder function was worse, post-surgery: Dr. Ghanayem thought Petitioner was a candidate for further surgery, and was disabled from work. Regarding causal connection he wrote: "It would appear that symptoms that started from his January 2003 injury, and then **[*19]** the subsequent re-injury in December of 2003 of back and leg pain would indicate that the condition for which he underwent surgery would be related to the work injury." PX9.

In a Vocational Assessment Report dated Feb. 26, 2007, Vocational Consultant Thomas Gusloff noted Petitioner was a 60 year old cabinet maker with a high school level education in Romania. He spoke and read, but could not write, English. He was capable of less than a sedentary level of physical demand. No doctor had released him to work at any level. Hus used a cane and sometimes a walker for stability. He could not drive. He had additional health concerns including obesity, diabetes and a heart condition which contributed to his overall disability. Further training to improve his English and computer skills was not feasible given Petitioner's age. Mr. Gusloff concluded Petitioner was precluded from any gainful employment. PX6.

Petitioner testified he has been released to work or returned to work since his surgeries. He has chosen not to have the cage-in fusion recommended by Dr. LaCompte. A demand for vocational rehabilitation was made, but it was not offered. He has been on Social Security Disability since [*20] 2005. He hasn't driven a car since Dec. 2003. He has trouble sleeping due to pain. When he wakes he takes a shower, with his wife's help. She also helps him dress. He has breakfast and takes his medication and then lies down. He can stand for less than five minutes. He uses a cane to walk. He is taking Vicodin # 3, four times a day and Tylenol.

Petitioner was examined by Dr. Trotter at the request of Travelers for the Dec. 13, 2003 date of injury (08WC02037) on March 10, 2003. Dr. Trotter found a negative straight leg raising test, decreased sensation in the L5 dermatomes bilaterally, minimal ability to stand on his toes and feet and mild paraspinal spasm. He thought Petitioner was not capable of either full or light duty, but declared him "fully permanently disabled". Dr. Trotter concluded Petitioner was a candidate for fusion surgery, but noted it would be at very high risk due to his other physical issues and therefore would not be appropriate. He thought Petitioner should continue to take Neurontin. He also suggested a spinal cord stimulator, a yearly series of epidural steroid injections and home exercises as future treatment options. Petitioner was at MMI. Regarding causal connection, [*21] Dr. Trotter opined Petitioner appeared to have a "limited exacerbation" of his pre-existing disc herniation at L5/S1 on Dec. 13, 2003. He thought this aggravation was also superimposed on pre-existing severe multi-level spinal stenosis and DDD. RX16&32.

Edward Boltz is president and share holder of Prime Meridian Insurance Group, a commercial insurance business. **Precision**, a maker of cabinets for the medical profession, was a client of his for 14 years. ECI is a professional employment organization (PEO) which bundles a number of human resources services together for small employers. These included human resources management, workers' compensation coverage, and health insurance. When he read ECI's brochure, Mr. Boltz thought it might be a new product he could offer to clients. Between **Precision** and ECI, ECI was responsible for workers' compensation claims and there was an agreement to that effect.

Connie SanFillipo was vice president of sales for ECI from 1998 to 2004. She made presentations regarding the PEO services provided by ECI to prospective clients. She met Dave and Lynn Matti when she made presentations to them on Dec. 16, and Dec. 22, 1999. RX14 is a copy of the general [*22] ECI brochure. At some point ECI entered into a contract with **Precision**. ECI became employer of record of **Precision's** employees for purposes of workers' compensation. ECI obtained the insurance. ECI had a contract with **Precision** for the period from Jan. 2003 through Dec. 2003.

Lynn Matti does all the paperwork for **Precision**, including bookkeeping and record keeping. He husband, Dave Matti, is **Precision's** president. Edward Boltz told her about ECI when **Precision** was looking to outsource administrative functions. Connie SanFillipo came and met with them. Among the functions ECI was responsible for was workers' compensation. RX14 is a copy of the brochure Ms. SanFillipo gave her. **Precision** and ECI had a contract. **Precision** paid a fee for the contract amount covering ECI's services. **Precision's** only responsibility for workers' compensation claims was to report the claim.

Karen Nolan is vice president of operations for Cory and Associates (Cory), a commercial insurance agency representing a variety of insurance companies. In addition, Cory was authorized by the State of Illinois to issue policies from Travelers Insurance to clients in the assigned risk pool. ECI is an employee leasing [*23] company. Andrew Cory is a principal in both Cory and Associates and ECI. RX3 is a letter dated Jan. 20, 2000 from Ms. Nolan on ECI letterhead to Lynn Matti explaining the procedure for reporting work accidents. The letter advised that a form was to be completed and faxed or mailed to Karen Nolan within three days of the accident. Ms. Nolan never saw an agreement between ECI and **Precision**, but believes there was one. She testified she thought the insurance company was responsible for paying

workers compensation claims; If **Precision** had a claim, they would fill out the paperwork and give it to ECI which would forward it to the insurance company. RX4 is a certificate of insurance. The producer was Cory & Associates; the insured was Employer's Consortium, Inc.; the certificate holder was **Precision** Cabinets, 1189 Lyon Rd., Batavia, IL 60510; the insurance was for worker's compensation and employer's liability; the policy was effective beginning 9/29/02, expiring 9/29/03. On cross examination, Ms. Nolan testified that Travelers never objected whenever she forwarded along a workers' compensation claim whether from Cory or ECI. The ECI policy for 2002-3 was through the assigned risk pool. **[*24]** Travelers was the service provider, as determined by lottery. Neither Cory nor Travelers had a say as to the assignment. She knows **Precision** was brought within the ECI policy but doesn't know when. RX4 confirms that ECI had a policy through Travelers. As part of her duties for Cory, Ms. Nolan sent changes to Travelers. She would usually wait 30 days to receive and endorsement and if she didn't she would fax or call. The endorsement confirmed the requested change. Coverage was for all employees and rates were set based on audits to determine when people became employees.

PX7 is a copy of an affidavit by FBI Special Agent Patrick J. Moran dated Dec. 12, 2006 as part of a criminal complaint captioned United States of America v. Allen Hilly, U.S. Dist. Ct., Dist. of New Jersey, Magistrate No. 06-4076. In Attachment B, Special Agent Moran alleges that Allen Hilly, "the managing partner/director of Professional Employer's Holding LLC, which owns and operates a number of subsidiaries including but not limit to ...Employers Consortium Inc. ("ECI") had defrauded clients by diverting payroll taxes and workers' compensation premiums.

Lynn Mattie testified that she knew Petitioner was hurt **[*25]** in Jan. 2003. She dealt with ECI regarding his injury. She called the person who did the payroll, who then took it to ECI. After Petitioner's second accident she followed the same procedure: she told Mary Hlady, her payroll contact at ECI that Monday. She was never told to report directly to Travelers. She received RX9, a letter dated July 19, 2006 on Travelers letterhead from Ann Taylor of its workers compensation unit providing a 24 hour toll free number to report claims directly to a Travelers' customer service representative. The letter came after Petitioner's two accidents. There was no conversation about reporting to Travelers earlier; everything was through ECI.

Dave Mattie testified that he had a conversation with Travelers after both of Petitioner's accidents. He knows he spoke to Dawn Stewart. He spoke to another party as well, but can't remember the name. After the first accident happened, he expected a call from Travelers and got one. It was pretty short. It was about the claim and whether it happened and other questions about it. There was no indication that Travelers would not pay. After the second accident it was the same thing. In roughly Dec. 2003 or Jan. 2004 he **[*26]** got a call from Dawn. He explained that situation and that Petitioner was not working. He answered all her questions. There were probably two to three more phone calls about the same claim. Dawn called back again, but he doesn't recall when. The others who called asked the same questions. On cross examination Mr. Mattie testified that he is sure he talked to Dawn within 30 days of the Dec. 2003 accident and as far as the Jan. 2003 accident, he's sure it was a representative of Travelers.

Dawn Stewart began working in Travelers' investigative claim unit on either March 23 or March 24, 2003. When a claim comes into Travelers' system, by fax or phone, it is assigned to a claim representative. If there are any flags, it comes to the investigative unit. She calls the insured and the employee or his/her attorney within 24 hours of when a claim is assigned to her. She must have a medical authorization form in order to act on a claim. The claim for Petitioner's Dec. 2003 accident was entered into the system in Jan. 2008 when Travelers got his application for adjustment of claim. Stewart asked that it be entered and then she investigated. There was no claim in the system for the Jan. 2003 **[*27]** accident. When she got the application for the Dec. 2003 accident, she called and left a message for Lynn Matti. She made three calls within 24 hours. She also called Mr. Meilke, who was listed as attorney on the application. She had no knowledge of the Dec. 2003 accident before Jan. 28, 2008. She did not talk to Ms. Mattie before then regarding the Dec. 2003 accident. In January 2008 Ms. Stewart asked Ms. Matti about the

claim. Ms. Matti indicated the claim was reported to ECI, Chris DeMarco, who said she would take care of everything. Ms. Stewart did not speak to DeMarco. She asked Ms. Matti for an accident report but didn't get one. She never got one for ECI for the Dec. 2003 accident. They did have one for the Jan. 2003 accident. On cross examination, Ms. Stewart said they got notice of the Jan. 2003 accident from ECI in 2006. It was in the file materials. She did not bring her claim file with her to the hearing. The Jan. 2003 claim was reassigned to Stewart in Oct. or Nov. 2006. Before that, Ms. Taylor worked on it. Part of the investigation is to get medical records. She got them and they are in the file, including Dr. LaCompte's records, and Dr. Ghanayem's report. She scheduled [*28] an examination with Dr. Trotter in March 2008. Stewart was not the only adjuster for these claims; there was one other. She never had a conversation with Dave Matti.

Andrea Shopher is a senior account manager/underwriter for Travelers' property casualty affiliates. She deals only with assigned risk policies, reviewing records kept by Travelers; she has dealt with **Precision** Cabinets. Travelers receives assigned risk applications from NCCI and issues policies and also makes changes to policies such as additions and deletions to existing policies. Travelers does not solicit assigned risk policies. There is an automatic electronic feed to NCCI. There is also an electronic policy warehouse which provides on line storage. This allows review of records kept within the ordinary course of business. Files also may be printed out. When a filing is processed to NCCI, if it generates an additional premium, it will be billed. Either the producer or the insured can generate a change request. When the producer generates a change request, it goes into electronic filing. After Travelers processes a change request, notice of the change goes to the producer, in this case ECI and **Precision**, and to NCCI. [*29] Ms. Shopher does not do audits, but reviews the results. She reviewed the audit for **Precision** for 2002-2003. The audit is done to insure proper billing and service for a policy. Travelers is a servicing carrier in Illinois and in 2002-2003 was the serving carrier for ECI. RX4 is a certificate of insurance. The certificate holder is **Precision**; the insured was ECI. It shows an issue date of 9/22/03 for the 9/29/02 to 9/29/03 policy, # UB-801X352-4-02. As an underwriter tracking policy changes, she sees the results in terms of certificates and premiums. An endorsement is an addition or deletion to a policy. RX4 is proof of coverage for ECI but not for **Precision** because it is listed a certificate holder. She reviewed change documents for the ECI policy for 9/29/02 through 9/29/03 as well as endorsement requests, audit results, certificates of insurance and the certified ECI policy for 2002-2003. The file includes a change document adding **Precision** to the policy effective 8/29/03. On cross examination, Ms. Shopher testified Travelers maintains an underwriting file which would have change requests, correspondence with the producer and the insured, a certificate of insurance and documentation [*30] notes. She did not bring the file to the hearing. She did not know there was a subpoena. PX14. She didn't know whether there was an audit file. She didn't know when an audit was done for ECI. She was not part of the process for making policy changes. She reviewed the underwriting file but not information such as the number of employees, their names, location or risk class. She reviewed the audit result showing policy effective dates and name of client. She did not know what Travelers did to confirm the audit results. Looking at RX31, she identified it as the policy for 9/29/02 through 9/29/03 and agreed there was a policy for ECI for that period. Looking at RX17a, the date is 1/10/03. It shows Travelers Indemnity Co. There's a policy number which corresponds to the policy at RX31. Looking at the document she saw **Precision** Cabinets with a street address and business name. Travelers gives this information to NCCI. Corey is the producer listed on the policy and has the ability to issue a certificate of insurance. Workers' compensation policy premiums are calculated based on payroll, risk calculations and loss ratings. An audit is a protection for the insurance company. It shows what [*31] the payroll was per classification per client. The carrier looks at payroll and what kind of work each employee is doing so they can be put in the correct category of risk and so the underwriting can be done. If the payroll has not been correctly reported by the insured PEO, the carrier can still change the proper premium. If the payroll has not been correctly reported, the carrier can go back and change the premium. Assigned risk premiums are generally at a higher rate. As an underwriter, Ms. Shopher determines what will be charged. On re-direct examination, she compared PX2 and RX17a. RX17a gives the effective date of the policy while PX2 gives the change effective date. It confirms her opinion that **Precision** was

added on Aug. 29, 2003.

PX2 consists of the certified Policy and Coverage Provider records of the Illinois Workers' Compensation Commission showing Policy number 6BKUB801X352402 with effective dates of 9/29/02-9/29/03 for ECI under FEIN # 363891980. Travelers Indemnity Co. is named as the coverage provider. Page 1 of PX2 is the same in all substantive respects as RX17; they were printed on different dates. Attached to PX2 is a list of names and addresses including "Employer's [*32] Consortium Inc and 11189 Lyon Rd. **Precision** Cabinets Inc., Batavia IL 60510. The fourth page of PX2, under the heading "UNLINKED AND/OR DELETED NAMES" Shows ECI under FEIN # 363891980 effective 9/29/02 and expiring 8/29/03. The last page of PX2 is titled "Canc/Reinst/Non-Renew" for this policy. It shows "CANCELLATION" effective 9/29/02". It further shows "REINSTATEMENT" effective 1/15/03. No testimony was offered about this last page. Commission records reflect that **Precision** Cabinets had workers' compensation coverage in effect on Jan. 10, 2003 (04WC03879) through West Bend Insurance.

PX3 includes the following unpaid medical bills: \$ 1,550.00 Medical Center Anesthesia and \$ 4,036.34, Third Party Solutions (pharmacy bills). The total is \$ 5,586.34.

The Arbitrator concludes:

1. On Jan. 10, 2003 and Dec. 13, 2003, Respondent **Precision** Cabinets was operating under and subject to the Illinois Workers' Compensation Act. This is based on Petitioner's testimony that **Precision** was in the business of making cabinets and to do so used saws and other tools. 820 ILCS 305/3.
2. On Jan. 10, 2003 and Dec. 13, 2003, Respondent Employer's Consortium, [*33] Inc. was an employee leasing company and was a Lessor within the meaning of the Employee Leasing Company Act, 215 ILCS 113/15, based on the testimony of Edward Bolz, Lynn Matti and Connie DiFillipo as well as RX14 and RX23.
3. On Jan. 10, 2003 and Dec. 13, 2003, Respondents **Precision** Cabinets and ECI had a borrowing-lending relationship within the meaning of sec. 1(a) 4 of the Illinois Workers' Compensation Act. The parties entered into a contract by which ECI took over administration of various human relations functions, including paying wages (RX1) and providing workers' compensation insurance coverage (RX3&4). The contract is not in evidence, but Edward Bolz, Lynn Mattie and Karen Nolan all testified to its existence. ECI was the loaning employer and **Precision** Cabinets was the borrowing employer.
4. On Jan. 10, 2003, **Precision** Cabinets had workers compensation coverage through West Bend Mutual Ins. Co. based on ARBX1 and the records of the Illinois Workers' Compensation Commission.
5. On Jan. 10, 2003, ECI had no workers compensation coverage in effect. This is based on PX2, the records of the Illinois Workers' Compensation Commission showing [*34] the policy, # 6BKUB801X352402, was cancelled effective Sept. 29, 2002 and was not reinstated until Jan. 15, 2003. Travelers Insurance issued this policy based on an assignment through the assigned risk pool. RX35, the Illinois Workers Compensation Insurance Plan, Sec. III.2 provides that following cancellation of an assigned risk policy, any insured employer must reestablish eligibility or demonstrate entitlement to coverage through the plan before any further assignment can be made. Thus, there is no coverage during a lapse period. Although there is evidence in the record showing Travelers coverage on Jan. 10, 2003, the Arbitrator finds the Commission's own records most reliable. Respondent Travelers Insurance further argues that there was no coverage for **Precision** until Aug. 29, 2003 when it was added to the list of locations covered by policy # 6BKUB801X352402. It is not necessary to address this argument as PX2 shows that policy was not in effect on Jan. 10, 2003.
6. On Jan. 10, 2003 (04WC03879), Petitioner sustained a compensable work accident. This is based on his credible testimony, Dr. LeCompte's office visit note of

Jan. 23, 2003 (PX12) and the stipulation of **Precision Cabinets**, [*35] ARBX1.

7. Petitioner gave timely notice of his accident to Dave Matti based on his credible testimony and the stipulation of **Precision Cabinets** on ARBX1.

8. As a result of his Jan. 10, 2003 accident, Petitioner sustained a herniated disc at L5/S1 and an aggravation of his pre-existing degenerative disc disease. As a result he underwent treatment with Dr. LeCompte, initially including epidural steroid injections and medication. Although he was light duty restrictions were in effect, Petitioner continued to do his regular work. Surgery was discussed in Sept. 2003 when Petitioner's condition regressed after initial improvement. However, Dr. LeCompte did not make a strong surgical recommendation, noting Petitioner wanted to delay that option. On Dec. 13, 2003 (08WC02037), Petitioner sustained a temporary exacerbation of his low back condition when he lifted a cabinet at work. But this incident was not an intervening accident breaking the chain of causal connection. This is based on Petitioner's testimony that his pain was so much worse after the Dec. 13, 2003 lifting incident that he could no longer drive or work. However, his diagnosis did not change, nor did the neurological findings [*36] in Dr. LeCompte's office records. Drs. LeCompte, Savino, Cerullo, Ghanayem and Trotter all noted the initial accident and described the Dec. 13, 2003 incident as a recurrence or exacerbation when asked for a causal connection opinion. No doctor opined the Dec. 13, 2003 incident broke the chain of causal connection from a medical perspective.

9. In 04WC03879, Petitioner was temporarily totally disabled from Jan. 13, 2003 through Feb. 17, 2003, based on the parties' stipulation on ARBX1, and again from Dec. 13, 2003, the date of the second incident, through Dec. 8, 2004, when he last saw Dr. LeCompte. The doctor referred Petitioner to another doctor for a possible fusion surgery, but Petitioner had no further medical treatment after that date and was at MMI.

10. Petitioner became permanently totally disabled on Dec. 9, 2004 (04WC03879). No doctor released Petitioner to any kind of work. Dr. LeCompte suggested he might be capable of some very sedentary job if he improved with further treatment, but this suggestion was speculative at best. Drs. Ghanayem and Trotter thought Petitioner was incapable of work. In addition to this medical evidence of permanent, total disability, PX6 establishes [*37] that he is not employable and not a candidate for vocational rehabilitation. There is no evidence to the contrary.

11. In 04WC03879, Petitioner is entitled to medical expenses of \$ 5,586.34. This is based on the causal connection finding and PX3.

12. Petitioner failed to prove he is entitled to penalties pursuant to sec. 19(l) or 19 (k) or attorneys' fees pursuant to sec. 16 of the Act. Petitioner sought penalties only from Travelers. Having found no insurance coverage by Travelers on Jan. 10, 2003 and no intervening accident on Dec. 13, 2003, the Arbitrator finds no basis to assess penalties. The Arbitrator further notes Travelers raised other defenses to liability which were not addressed in this decision due to the conclusions regarding coverage(04WC03879) and accident(08WC02037).

CONCURBY: JAMES F. DEMUNNO

CONCUR: SPECIAL CONCURRING OPINION


This case was scheduled for Oral Arguments on April 1, 2009, before a three member panel of the Commission including members Barbara A. Sherman, Paul W. Rink and Kevin W. Lamborn, at which time Oral Arguments were either heard, waived or denied. Subsequent to Oral Arguments and prior to the departure of member Paul W. Rink on February 26, 2010, a majority [*38] of the panel members had reached agreement as to the results set forth in this decision and opinion, as evidenced by the internal Decision worksheet initialed by the entire


three member panel, but no formal written decision was signed and issued prior to member Paul W. Rink's departure.

Although I was not a member of the panel in question at the time of Oral Arguments were heard, waived or denied, and I did not participate in the agreement reached by the majority in this case, I have reviewed the Decision worksheet showing how member Paul W. Rink voted in this case, as well as the provisions of the Supreme Court in *Zeigler v. Industrial Commission*, 51 Ill.2d 342, 281 N.E.2d 342 (1972), which authorizes signature of a Decision by a member of the Commission who did not participate in the Decision. Accordingly, I am signing this Decision in order that it may issue.


Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI > Administrative Proceedings > Claims > Filing Requirements 

Workers' Compensation & SSDI > Administrative Proceedings > Claims > Time Limitations > Notice Periods 

Workers' Compensation & SSDI > Coverage > Employment Relationships > Borrowed Employees 

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions** 

Terms: **isak and klein and precision** (Suggest Terms for My Search)

View: Full

Date/Time: Wednesday, May 9, 2012 - 8:00 AM EDT

In

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**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

TRAVELERS INSURANCE,)
)
Plaintiff-Appellant,)
)
 v.) **Case No. 10 MR 288**
)
ILLINOIS WORKERS' COMPENSATION)
COMMISSION, ISAK KLEIN, PRECISION)
CABINETS, EMPLOYER'S CONSORTIUM,)
INC., AND ALEXI GIANNOULIAS STATE)
TREASURER AND EX-OFFICIO)
CUSTODIAN OF THE RATE ADJUSTMENT)
FUND,)
)
Defendants-Appellees.)

Dorothy S. ...
 Clerk of the Circuit Court
 Kane County, IL

FEB 18 2011

FILED **55**
 ENTERED

ORDER

This cause comes on for decision on the Appellant-Travelers Insurance request that the Circuit Court reverse the decision of the Illinois Workers Compensation Commission. The Commission held that a policy issued by Travelers to ECI covered the injury sustained by Isak Klein on January 10, 2003.

It is not contested that:

1. Isak Klein was an employee of ECI.
2. That on January 10, 2003, Mr. Klein had been leased to Precision Cabinets.
3. That Travelers Insurance had issued a workers compensation insurance policy to ECI which was in effect on January 10, 2003.

4. Precision Cabinets was not endorsed as an insured on the Travelers policy until August 29, 2003.

Counsel has argued whether this Court is bound by the applicable provisions of the *Workers Compensation Act* ("WCA") or the *Employee Leasing Company Act* ("ELCA"). Clearly the provisions of each Act, as it relates to workers compensation insurance coverage are not consistent or compatible.

Travelers argues for the Court to rely on the ELCA while Precision Cabinets and Mr. Klein insist that the WCA must be applied.

The Court has read the applicable statutes as well as the case law cited by the parties in their Briefs.

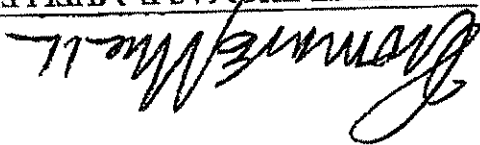
Section 113/30 of the ELCA provides, in part:

When a workers' compensation policy written to cover leased employees is issued to the lessor as the named insured, the lessees shall be identified thereon by the attachment of an appropriate endorsement indicating that the policy provides coverage for leased employees.

Herein the insurer is Travelers, the leased employer is Mr. Klein, the lessor is ECI and the lessee is Precision Cabinets.

The cited section further provides for the calculation of the premium due the insurer. Obviously the premium charged to ECI, the lessor, increases as the lessor adds additional endorsements to the policy identifying new lessees. In this case, Mr. Klein has been leased to Precision Cabinets on or before January 10, 2003, the date he was injured. Notwithstanding that fact, his employer, ECI, failed to have an endorsement added to its workers compensation policy with Travelers until 8½ months after Mr. Klein's accident.

JUDGE THOMAS E. MUELLER



DATE: 2-18-2011
Cabinets insurer and/or to ECI for his recovery.

The Commission's decision appears to overlook the financial realities of what ECI did herein. To hold Travelers for coverage of Mr. Klein's injury notwithstanding the fact that Travelers did not receive premiums for Mr. Klein, or any other employees leased to Precision Cabinets, until August 29, 2003 is simply wrong and ignores the intent of Section 113/30 of the ELCA. Accordingly, the Commission's decision is overturned as this Court finds that Travelers owes no coverage based on the clear language of the ELCA. Mr. Klein must look to Precision

ELCA.

ILLINOIS OFFICIAL REPORTS

Appellate Court

Travelers Insurance v. Precision Cabinets, Inc., 2012 IL App (2d) 110258WC

Appellate Court
Caption

TRAVELERS INSURANCE, Plaintiff-Appellee and Cross-Appellant, v. PRECISION CABINETS, INC., Defendant-Appellant and Cross-Appellee (Illinois Workers' Compensation Commission; Isak Klein; Employers Consortium, Inc.; and Alexi Giannoulis, State Treasurer and *ex officio* Custodian of the Rate Adjustment Fund, Defendants-Appellees).

District & No.

Second District
Docket No. 2-11-0258WC

Filed

March 16, 2012

Held

(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)

Where claimant suffered a back injury arising out of and in the course of his employment, the appellate court reinstated the Workers' Compensation Commission's decision finding that claimant's lending employer had workers' compensation insurance coverage through plaintiff at the time of claimant's injury and that claimant's lending employer and his borrowing employer were "jointly and severally liable" for his injuries, even though the borrowing employer was not endorsed as an insured on the lending employer's policy until several months after the date claimant was injured, since section 4(a)(3) of the Workers' Compensation Act requires an employer to insure its entire workers' compensation liability with some insurance carrier authorized to do such business in Illinois and the lending employer's failure to secure an endorsement adding the borrowing employer to the lender's policy until after claimant's injury was ineffective to withdraw claimant from the operation of the Act.

| | |
|-----------------------|---|
| Decision Under Review | Appeal from the Circuit Court of Kane County, No. 10-MR-288; the Hon. Thomas E. Mueller, Judge, presiding. |
| Judgment | Circuit court judgment reversed; Commission decision reinstated. |
| Counsel on Appeal | Paul W. Pasche, of Brady, Connolly & Masuda, P.C., of Chicago, for appellant. Richard T. Valentino and Michael Resis, both of SmithAmundsen LLC, of Chicago, for appellee. |
| Panel | JUSTICE McCULLOUGH delivered the judgment of the court, with opinion. Justices Hoffman, Hudson, Holdridge, and Stewart concurred in the judgment and opinion. |

OPINION

- ¶ 1 On January 27, 2004, the claimant, Isak Klein, filed an application for adjustment of claim (No. 04WC03879) pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2002)), seeking benefits from the employer, Precision Cabinets, Inc. (Precision), for injuries suffered on January 10, 2003. On January 16, 2008, the claimant filed an application for adjustment of claim (No. 08WC02037) pursuant to the Act (820 ILCS 305/1 through 30 (West 2006)), seeking benefits from Precision for injuries suffered on December 13, 2003.
- ¶ 2 Following a consolidated hearing, an arbitrator found that the claimant proved he sustained injuries arising out of and in the course of his employment with Precision on January 10, 2003. The arbitrator awarded the claimant temporary total disability (TTD) benefits in the amount of \$572 per week for a period of 62 4/7 weeks; permanent total disability (PTD) benefits in the amount of \$572 per week "for a further period of life"; and medical expenses in the amount of \$5,586.34.
- ¶ 3 The arbitrator found the December 13, 2003, accident "a temporary exacerbation" of the injuries suffered on January 10, 2003, and "not an intervening accident breaking the chain of causal connection." Therefore, the arbitrator did not award the claimant additional benefits.

¶ 4 Further, the arbitrator found a borrowing/lending employer relationship between Precision, the borrowing employer, and Employers Consortium, Inc. (ECI), the lending employer. Precision contracted with ECI for outsourced employee-related services to Precision, including workers' compensation coverage. Based on her examination of Workers' Compensation Commission (Commission) records, the arbitrator determined that on January 10, 2003, Precision had workers' compensation coverage through West Bend Mutual Insurance Company and ECI had no workers' compensation coverage.

¶ 5 On review, the Commission modified the arbitrator's decision specific to workers' compensation coverage. The Commission found that ECI had workers' compensation coverage through Travelers Insurance (Travelers) on January 10, 2003, and further that "all employees of ECI during the effective dates of the policy are covered by that policy, regardless of any provisions, endorsements, or lack thereof, attempting to limit or modify the liability of Travelers." The Commission found ECI and Precision "jointly and severally liable for Petitioner's work related injuries."

¶ 6 Further, the Commission denied Travelers' "Motion For Commission To Take Judicial Notice Of Proceedings Involving ECI And To Spread ECI Bankruptcy And Liquidation Proceedings Of Record," stating that the Commission was not permitted to accept additional evidence on review. In all other respects, the Commission affirmed and adopted the arbitrator's decision.

¶ 7 The circuit court reversed that portion of the Commission's decision concerning workers' compensation coverage, finding that "Precision was not endorsed as an insured on the Travelers policy until August 29, 2003," and therefore "Travelers owes no coverage."

¶ 8 Precision appeals, arguing that the Commission's finding that "all employees of ECI during the effective dates of the [Travelers'] policy are covered by that policy, regardless of any provisions, endorsements, or lack thereof, attempting to limit or modify the liability of Travelers" was not contrary to law. Travelers cross-appeals, arguing that the Commission erred in denying Travelers' "Motion For Commission To Take Judicial Notice Of Proceedings Involving ECI And To Spread ECI Bankruptcy And Liquidation Proceedings Of Record." For the reasons that follow, we reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 9 The parties do not dispute the fact that the claimant suffered an injury arising out of and in the course of his employment on January 10, 2003, nor do the parties contest the nature and extent of the claimant's injuries or his period of disability. Consequently, we will present only those facts necessary to an analysis of the issues.

¶ 10 The 61-year-old claimant testified that he began work for Precision in 1999, as a cabinet-maker. On January 10, 2003, the claimant sustained back injuries while moving a piece of plywood.

¶ 11 Precision entered into a contract with ECI to provide outsourced employee-related services to Precision. ECI assumed responsibility for the payment of wages to be paid to leased employees; the payment of payroll taxes on leased employees; and the payment for workers' compensation insurance. Connie SanFillipo, a vice-president of ECI, testified that she presented the opportunity for ECI services to Precision on December 16, 1999, and on

December 22, 1999. No individual testified establishing when Precision entered into a contract with ECI to provide employee-related services, including workers' compensation coverage. A letter welcoming Precision to ECI's "Workers Compensation Claims Handling Unit" is dated January 20, 2000. We note that the contract entered into by ECI and Precision has not been made a part of the record before this court.

¶ 12 After Precision entered into this contract, ECI treated the claimant as a leased employee by directly paying the claimant's wages.

¶ 13 Pursuant to the contract, ECI secured a workers' compensation insurance policy from Travelers by application to the Illinois Workers' Compensation Insurance Assigned Risk Plan. ECI was the named insured under the policy. The policy period was from September 29, 2002, to September 29, 2003. The policy included four endorsements providing workers' compensation coverage to leased workers provided by ECI to the endorsed ECI clients. The endorsements did not include Precision. ECI did not secure an endorsement adding Precision to the policy until August 29, 2003.

¶ 14 The policy states that Travelers "will pay promptly when due the benefits required of [ECI] by the workers compensation law," and further states that "[t]erms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law."

¶ 15 Following the arbitration hearing, the arbitrator found a borrowing/lending employer relationship between Precision, the borrowing employer, and ECI, the lending employer. Precision contracted with ECI for outsourced employee-related services to Precision, including workers' compensation coverage. Based on her examination of Commission records, the arbitrator determined that on January 10, 2003, Precision had workers' compensation coverage through West Bend Mutual Insurance Company and ECI had no workers' compensation coverage.

¶ 16 The parties filed petitions for review of the arbitrator's decision before the Commission. The Commission modified the arbitrator's decision specific to workers' compensation coverage. The Commission did not find Commission records reliable. Based on records secured from the National Council on Compensation Insurance, Inc., the Commission found that ECI had workers' compensation coverage through Travelers on January 10, 2003. Citing section 1(a)(4) of the Act (820 ILCS 305/1(a)(4) (West 2002)), the Commission found ECI and Precision "jointly and severally liable for Petitioner's work related injuries."

¶ 17 Further, the Commission found that "all employees of ECI during the effective dates of the [Travelers] policy are covered by that policy, regardless of any provisions, endorsements, or lack thereof, attempting to limit or modify the liability of Travelers." In support of this conclusion, the Commission stated:

"Under Section 4(a)(3) of the [Act], it is clear that once it has been determined that ECI had workers' compensation insurance through a policy provided by Travelers, all employees of ECI during the effective dates of the policy are covered by that policy, regardless of any provisions, endorsements, or lack thereof, attempting to limit or modify the liability of Travelers. It is also clear that the intent of the [Employee Leasing Company Act (215 ILCS 113/1 through 99 (West 2002))] is that leased employees be

covered by workers' compensation insurance, consistent with our rejection of Travelers' argument here. While ECI's failure to obtain an endorsement in a timely manner identifying Precision as a lessee may have thwarted the [Employee Leasing Company Act's] intent that premium commensurate with exposure be paid, it does not result in a lack of coverage for any of ECI's employees during the period the policy was in effect."

¶ 18 Finally, the Commission denied Travelers' "Motion For Commission To Take Judicial Notice Of Proceedings Involving ECI And To Spread ECI Bankruptcy And Liquidation Proceedings Of Record," stating that the Commission was not permitted to accept additional evidence on review. In all other respects, the Commission affirmed and adopted the arbitrator's decision.

¶ 19 Thereafter, Travelers filed a petition seeking judicial review in the circuit court of Kane County. The circuit court reversed that portion of the Commission's decision concerning workers' compensation coverage, finding that "Precision was not endorsed as an insured on the Travelers policy until August 29, 2003," and therefore "Travelers owes no coverage."

¶ 20 Precision now appeals the circuit court's decision, and Travelers cross-appeals.

¶ 21 Travelers argues that Precision was not named as an additional insured on ECI's insurance policy until August 29, 2003, and therefore the Travelers policy did not cover the claimant on the date of injury, January 10, 2003.

¶ 22 A reviewing court may overturn a Commission decision only if it finds that the decision was contrary to law or that the fact determinations made in rendering the decision were against the manifest weight of the evidence. *Hamilton v. Industrial Comm'n*, 203 Ill. 2d 250, 254, 785 N.E.2d 839, 841 (2003). In this appeal, the parties do not dispute the Commission's fact determinations. The issue before us is one of pure statutory interpretation, and our review proceeds *de novo*. *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232, 756 N.E.2d 822, 827 (2001).

¶ 23 The fundamental rule of statutory interpretation is to ascertain and effectuate the legislature's intent. *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 503-04, 732 N.E.2d 528, 535 (2000). Because statutory language, given its plain and ordinary meaning, is the best indication of this intent, we turn to the Act. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 342, 770 N.E.2d 177, 189 (2002).

¶ 24 Section 4(a)(3) of the Act requires that an employer:

"Insure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured: Provided, however, that any employer may insure his or her compensation liability with 2 or more insurance carriers or may insure a part and qualify under subsection 1, 2, or 4 for the remainder of his or her liability to pay such compensation, subject to the following two provisions:

Firstly, the entire compensation liability of the employer to employees working at or from one location shall be insured in one such insurance carrier or shall be self-insured, and

Secondly, the employer shall submit evidence satisfactorily to the Commission that his or her entire liability for the compensation provided for in this Act will be secured. Any provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void.” 820 ILCS 305/4(a)(3) (West 2002).

¶ 25 In this workers’ compensation case, pursuant to the contract entered into between ECI and Precision, ECI purchased from Travelers a workers’ compensation insurance policy. The policy period was from September 29, 2002, to September 29, 2003. Section 4(a)(3) of the Act required that the policy “cover all the employees and the entire compensation liability” of ECI.

¶ 26 Travelers argues that ECI’s failure to secure the endorsement adding Precision to the Travelers policy until August 29, 2003, barred Precision from coverage under the Travelers policy on January 10, 2003. Travelers admits that the policy period was from September 29, 2002, to September 29, 2003. In support of its argument, Travelers relies on section 30 of the Employee Leasing Company Act (215 ILCS 113/30 (West 2002)). Section 30 is titled “Responsibility for policy issuance and continuance” and states that “[w]hen a workers’ compensation policy written to cover leased employees is issued to the lessor as the named insured, the lessee shall be identified thereon by the attachment of an appropriate endorsement indicating that the policy provides coverage for leased employees.” 215 ILCS 113/30 (West 2002). Contrary to Travelers’ statement that the Employee Leasing Company Act applies to “*all lessors and lessees* conducting business *** after the effective date of the [Employee Leasing Company Act], January 1, 1998,” the Employee Leasing Company Act states at section 10 that the Employee Leasing Company Act “applies to *all lessors and insurers* conducting business in this State.” (Emphases added.) 215 ILCS 113/10 (West 2002).

¶ 27 In ascertaining legislative intent, a court must consider the entire statute, giving effect to the evil to be remedied and the purpose to be achieved. *City of Springfield v. Board of Election Commissioners*, 105 Ill. 2d 336, 341, 473 N.E.2d 1313, 1315 (1985). We presume that the General Assembly did not intend absurdity, inconvenience, or injustice. *Sylvester*, 197 Ill. 2d at 232, 756 N.E.2d at 827. The Act is to be interpreted liberally to effectuate its purpose of providing financial protection for interruption or termination of a worker’s earning power. *Sylvester*, 197 Ill. 2d at 232, 756 N.E.2d at 827.

¶ 28 Following these principles, we find that Travelers’ argument is refuted by the plain language of section 4(a)(3) of the Act. 820 ILCS 305/4(a)(3) (West 2002). Section 4(a)(3) requires that “[e]very policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured.” 820 ILCS 305/4(a)(3) (West 2002). Further, “[a]ny provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void.” 820 ILCS 305/4(a)(3) (West 2002).

¶ 29 Our result is supported by the stated purpose of the Employee Leasing Company Act, to

ensure that “an employer that leases some or all of its workers properly obtains workers’ compensation insurance coverage for all of its employees, including those leased from another entity, and that premium is paid commensurate with exposure and anticipated claim experience.” 215 ILCS 113/5 (West 2002).

¶ 30 The claimant filed his applications for adjustment of claims pursuant to the Act, and the provisions of the Act apply automatically. In further support, the policy states that Travelers “will pay promptly when due the benefits required of [ECI] by the workers compensation law,” and that “[t]erms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.”

¶ 31 In this workers’ compensation case, by choosing to purchase workers’ compensation coverage, ECI purchased it for all of its employees including the claimant. ECI’s failure to secure an endorsement adding Precision to the Travelers policy until August 29, 2003, was ineffective to withdraw the claimant from the operation of the Act. The claimant was still under the protection of the Act at the time of his injury.

¶ 32 Travelers next argues that the Commission and the circuit court erred in denying Travelers’ “Motion For Commission To Take Judicial Notice Of Proceedings Involving ECI And To Spread ECI Bankruptcy And Liquidation Proceedings Of Record.”

¶ 33 In a workers’ compensation proceeding, the Commission, an administrative agency, is the ultimate decision-maker. *Roberson v. Industrial Comm’n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). Accordingly, this court reviews the decision of the Commission, not the decision of the circuit court. *Dodaro v. Illinois Workers’ Compensation Comm’n*, 403 Ill. App. 3d 538, 543-44, 950 N.E.2d 256, 260-61 (2010).

¶ 34 Following argument before the Commission on April 1, 2009, Travelers filed its motion on April 7, 2009. The commissioner described the motion as a “two or three inch bound document with it’s [sic] attachments.” The motion and attachments begin at page 1,590 of the record, and conclude at page 2,023 of the record. The Commission denied the motion on May 21, 2010, stating that the Commission was not permitted to accept additional evidence on review. See 820 ILCS 305/19(e) (West 2002).

¶ 35 The Act specifically provides: “In all cases in which the hearing before the arbitrator is held after December 18, 1989, no additional evidence shall be introduced by the parties before the Commission on review of the decision of the Arbitrator.” 820 ILCS 305/19(e) (West 2002). The Commission did not err in declining to take judicial notice of extraneous matters.

¶ 36 Finally, Travelers asks this court to take judicial notice of “the consent order between ECI and the DOI, entered on March 18, 2005.” Section 3-110 of the Administrative Review Law (735 ILCS 5/3-110 (West 2002)) provides, in part, that “[n]o new or additional evidence in support of or in opposition to any finding, order, determination[,] or decision of the administrative agency shall be heard by the [reviewing] court.” However, notwithstanding section 3-110, documents containing readily verifiable facts may be judicially noticed if taking judicial notice will “aid in the efficient disposition of a case.” *Muller v. Zollar*, 267 Ill. App. 3d 339, 341, 642 N.E.2d 860, 862 (1994).

¶ 37 The document at issue is titled a stipulation and consent order, entered by the Department

of Financial and Professional Regulation, Division of Insurance, on March 18, 2005. We note that the order was entered approximately three years before the arbitration hearing in this workers' compensation case. Further, we do not find the order relevant to the claimant's workers' compensation proceeding and decline to take judicial notice of the document.

¶ 38 In this workers' compensation case, the claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits from Precision for injuries the claimant suffered on January 10, 2003. The Commission found that the claimant proved he sustained injuries arising out of and in the course of his employment with Precision on January 10, 2003. The Commission awarded the claimant TTD benefits in the amount of \$572 per week for a period of 62 4/7 weeks; PTD benefits in the amount of \$572 per week "for a further period of life"; and medical expenses in the amount of \$5,586.34. The parties do not dispute that the claimant qualifies for compensation benefits under the provisions of the Act and, further, do not dispute the Commission's finding that ECI and Precision are "jointly and severally liable for Petitioner's work related injuries." The law is settled under the Act that the employer and the insurance carrier are directly liable for the payment of workers' compensation to employees. See 820 ILCS 305/4(g) (West 2002) ("In the event the employer does not pay the compensation for which he or she is liable, then an insurance company, association or insurer which may have insured such employer against such liability shall become primarily liable to pay to the employee *** the compensation required by the provisions of this Act to be paid by such employer.").

¶ 39 Circuit court judgment reversed; Commission decision reinstated.