WORKERS' DISABILITY COMPENSATION

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I. INTRODUCTION

Many sections of the Workers' Disability Compensation Act of 1969 (WDCA)[1] contain an exception. The section that requires reducing wage loss compensation by some of the retirement income paid by an employer and at the same time applies to all employees with a disability from an injury at work[2] has an exception for public service employees.[3] Some sections have two exceptions. The section that limits the retroactive wage loss compensation to the two years before an employee filed a claim[4] does not apply when the claim is for wage loss compensation from the Self-Insurers Security Fund[5] or when the claim is for the reinstatement of wage loss compensation that the employer had

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1. MICH. COMP. LAWS ANN. §§ 418.101–418.941 (West 2014).
2. *Id.* § 418.354(1)(a)–(f).
3. *Id.* § 418.354(15).
4. *Id.* § 418.381(2).
5. *Id.* § 418.537(3).

paid for a period of time.[6] One section even has four exceptions. The section that bars an employee from suing an employer for damages from an injury sustained at work[7] does not apply when the employer intentionally injured the employee,[8] when the employer forced the employee to masquerade as an independent contractor,[9] when the employer did not have workers' compensation insurance or the approval by the Director of the Workers' Compensation Agency to self-insure,[10] or when the injury was sustained during social or recreational activity.[11]

Exceptions to particular sections in the WDCA were the subject of all of the legislation and important case law decided between June 30, 2013 and June 30, 2014.

II. HOUSE BILL 5489: A NEW EXCEPTION TO HEARING FROM THE EMPLOYER WHEN AN EMPLOYEE SETTLES

Section 835 in the WDCA allows an employee to resolve a claim to workers' compensation with a lump sum settlement known as a redemption of liability.[12] That same section requires the consent of a magistrate on the Workers' Compensation Board of Magistrates.[13]

Section 836 allows a magistrate to consent and approve a settlement of a claim only with the consent of the employer:

> A redemption agreement shall only be approved by a worker's compensation magistrate if the worker's compensation magistrate finds all of the following:
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> . . . .
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> (b) That the redemption agreement is voluntarily agreed to by all parties. If an employer does not object in writing or in person to

6. *Id.* § 418.833(1).
7. *Id.* § 418.131(1).
8. *Id.*
9. *Id.* § 418.171(4).
10. *Id.* § 418.641(2).
11. *Id.* § 418.301(3).
12. MICH. COMP. LAWS ANN. § 418.835(1). Two decisions by the Michigan Court of Appeals during this time were reversed afterward. Younkin v. Zimmer, 304 Mich. App. 719, 848 N.W.2d 488 (2014), *rev'd*, 497 Mich. 7, 857 N.W.2d 244 (2014); Auto-Owners Ins. Co. v. All Star Lawn Specialists Plus, Inc., 303 Mich. App. 288, 845 N.W.2d 744 (2013), *rev'd*, 497 Mich. 13, 857 N.W.2d 520 (2014).
13. MICH. COMP. LAWS ANN. § 418.835(1).

> the proposed redemption agreement, the employer shall be considered to have agreed to the proposed agreement.[14]

On June 27, 2014, the WDCA was amended to establish an exception to this long-standing requirement that a magistrate could approve a settlement of a claim to workers' compensation only with the consent of the employer.[15] The new exception allows a magistrate to approve a settlement without the consent of the employer in one situation.[16] The employer must have been approved to self-insure its liability for workers' compensation by the Director of the Workers' Compensation Agency in May 1999, filed for bankruptcy in 2005, and become insolvent and unable to pay workers' compensation to eligible employees between May 28, 1999 and October 7, 2009.[17] Specifically, the statute now says:

> Notwithstanding anything else in this section, the trustees may authorize payments from the self-insurers security fund that are requested by a disabled employee or a dependent of a disabled employee, as described in section 331, of any employer that was granted authority by the workers' compensation agency under section 611(1)(a) to operate as a self-insurer for the first time in May of 1999 and filed for bankruptcy in 2005, if the employee is entitled to worker's compensation benefits arising out of employment during the period from May 28, 1999 to October 2009. The self-insurers' security fund may redeem any claim by a former employee against an employer described in this subsection if the claimant voluntarily agrees. No other party may object to that redemption.[18]

It appears that this exception applies to only one employer: Delphi Corporation. To the knowledge of the author, Delphi is the only employer that meets all of the criteria described by the new section 836.

The other amendments to the WDCA that were enacted with Public Act 5489[19] extend the rights and responsibilities of the Self-Insurers Security Fund to the Private Employer Group Self-Insurers' Security Fund that will assume the function of the Self-Insurers' Security Fund on

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14. *Id.* § 418.836(1).

15. 2014 Mich. Pub. Acts 238 (codified as amended at MICH. COMP. LAWS ANN. § 418.537).

16. MICH. COMP. LAWS ANN. § 418.537(5).

17. *Id.*

18. *Id.*

19. *Id.* § 418.537.

January 1, 2020.[20] Of course, the putative change may not actually occur because of events that may intervene in the next five years.[21]

III. *THOMAI V. MIBA HYDRAMECHANICA CORP.*: THE INTENTIONAL TORT EXCEPTION APPLIED

Section 131 of the WDCA bars an employee from suing an employer for damages from an injury sustained at work by limiting the employee to workers' compensation: "The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer."[22] The same section describes an exception for an intentional tort by the employer:

> The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court.[23]

The Michigan Supreme Court explained the meaning of this exception in deciding the case of *Travis v. Dries & Krump Manufacturing Co.*[24] There, the court recognized that the exception supplanted the description of *intent* by the Restatement[25] that had been the standard before enactment of the exception under *Beauchamp v. Dow Chemical Co.*[26] And then the court explained that *intent* to establish an intentional tort under the statute required that "the employer must have had in mind a purpose to bring about given consequences"[27] that could be demonstrated from evidence that the employer actually knew that an injury to the employee was *certain*; probability was not a question.[28]

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20. 2014 Mich. Pub. Acts 229–237.

21. 2014 Mich. Pub. Acts 229.

22. MICH. COMP. LAWS ANN. § 418.131(1).

23. *Id.*

24. 453 Mich. 149, 551 N.W.2d 132 (1996). The author was counsel for amicus curiae Michigan Self-Insurers' Association.

25. RESTATEMENT (SECOND) TORTS § 8A, 15 (1965).

26. 427 Mich. 1, 398 N.W.2d 882 (1986). The author was counsel for amicus curiae Michigan Self-Insurers' Association.

27. *Travis*, 453 Mich. at 171, 551 N.W.2d at 142.

28. *Id.* at 178, 551 N.W.2d at 145.

This ruling was reiterated by the court in deciding the case of *Gray v. Morley*.[29] The court only added that "conduct on the part of [Kevin C. Morley, the employer] was reckless or deliberately indifferent . . . sound in gross negligence and are therefore insufficient to constitute an intentional tort within the meaning of the WDCA."[30] But instead of returning the case to the trial court to assess the record as happened in *Travis*, the court assessed the record for itself and dismissed the lawsuit.[31] The court decided that Morley had been reckless by driving a pick-up truck erratically, knowing Gray was in back, but injury had not been certain to occur because Morley had done this several times before without any injury to anyone.[32]

The court considered the intentional tort exception for the first time since *Gray* in *Thomai v. MIBA Hydramechanica Corp.*[33] As in *Gray*, the court assessed the record for itself and dismissed the lawsuit by Naum Thomai because his employer, MIBA Hydramechanica, did not know that an injury was *certain* to happen from running a machine.[34] The court stated, "There is simply no evidence in the record to establish that [MIBA Hydramechanica] willfully disregarded knowledge that an injury was certain to occur to [Naum Thomai] from his operation of the grooving machine."[35]

The remarkable feature is that the court did not explain or reiterate the existing case law—*Travis* or *Gray*—but simply took it as a given. Neither *Travis* nor *Gray* was cited.[36]

The court did not need to explain or reiterate the case law. There was no dispute that Thomai had slipped on some oil, caught a shirtsleeve on some exposed parts of the machine that he was running, and injured himself.[37] This meant that there had been only a chance of injury because people often go unscathed when slipping. Whether slipping on some oil, water or a newly waxed floor, people may regain their balance or upon falling are only winded or embarrassed. Not everyone is injured from

29. 460 Mich. 738, 596 N.W.2d 922 (1999).

30. *Id.* at 744, 596 N.W.2d at 925.

31. *Id.* at 744–45, 596 N.W.2d at 925–26.

32. *Id.* at 740, 745, 596 N.W.2d at 923–24, 926.

33. 496 Mich. 854, 847 N.W.2d 245 (2014). The author was counsel for amicus curiae Michigan Self-Insurers Association.

34. *Id.*

35. *Id.*

36. *See generally id.*

37. Thomai v. MIBA Hydramechanica Corp., 303 Mich. App. 196, 202, 842 N.W.2d 417, 422 (2013), *rev'd*, 496 Mich. 854, 847 N.W.2d 245 (2014) (reversing the court of appeals and reinstating the circuit court's judgment in favor of defendants).

slipping. And while the likelihood of injury increases because of nearby objects such as a machine, it remains only a chance, not a certainty.

The court denied Thomai access to the machine and personnel at MIBA Hydramechanica that the court of appeals had thought was needed.[38] This was correct, because the machine was *what* had injured Thomai but not *why* he had been injured.[39] The slip in the oil was *why* Thomai had been injured and that was well understood.[40]

IV. *NICHOLS V. HOWMET CORP.*: THE EXCEPTION TO REASSIGNING LIABILITY REITERATED

Before being amended by 2011 Public Act 266,[41] section 301 of the WDCA established an exception to the rule that the liability for wage loss compensation could be reassigned from one employer to another by stating that:

> If disability is established pursuant to subsection (4), entitlement to weekly wage loss benefits shall be determined pursuant to this section and as follows:
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> . . . .
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> If the employee, after having been employed pursuant to this subsection for less than 100 weeks loses his or her job for whatever reason, the employee shall receive compensation based upon his or her wage at the original date of injury.[42]

The Michigan Supreme Court recognized that this language of the statute acted as an exception in ruling that the language was not about the amount of the wage loss compensation as the court of appeals had said, but instead concerned the liability for that compensation between the employers when an employee had been injured.[43] The court said in *Arnold*:

> The Court of Appeals majority said that the subparts of subsection 301(5) deal only with the level of benefits paid, not

38. *Thomai*, 496 Mich. at 854, 847 N.W.2d at 245.

39. *Thomai*, 303 Mich. App at 202, 842 N.W.2d at 422.

40. *See id.*

41. 2011 Mich. Pub. Acts 266 (amending MICH. COMP. LAWS ANN. § 418.301(5)(e) (West 2010)).

42. MICH. COMP. LAWS ANN. § 418.301(5)(e) (West 2010).

43. Arnold v. General Motors Corp., 456 Mich. 682, 575 N.W.2d 540 (1998). The author represented defendant-appellee General Motors Corp.

> whether they are to be paid in a particular circumstance. However, that oversimplifies the analysis of the statute. Section 301(5)(e) designates the "wage at the original date of injury" as the basis for setting benefits. Under the circumstances presented here, we hold that the statute contemplates that the original employer is to pay benefits computed using wages at the time of the original injury.[44]

The Michigan Court of Appeals reiterated this ruling in *Arnold* to decide the case of *Nichols v. Howmet Corp.*[45]

The context of *Nichols* was somewhat different from the immediate situation in the case of *Arnold*. Edwin A. Nichols had two injuries at work, as had Bernetta C. Arnold, but Nichols injured his neck and later injured his back, unlike Arnold who had injured her back twice.[46] This context was not important. What was important was that both Arnold and Nichols were injured at work, resumed another job that accommodated the disability from the injury, and then left the job and all other work within one hundred weeks.[47] The kind of injury that caused Nichols and Arnold to leave work does not distinguish the two cases because the kind of injury is not relevant for purposes of the statute:

> The successive injury rule applies when either (1) the first injury, by itself, did not disable the employee, or (2) the first injury was disabling, but the employee had recovered from it and was no longer disabled when the second disabling injury occurred. Here, there was no evidence that when Nichols suffered his low-back injury in 1998 he was no longer disabled. Thus, the commission correctly determined that the successive injury rule did not apply to the facts in this case.[48]

The court of appeals also denied a claim by Nichols to separate wage loss compensation for the disability from the two different injuries that

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44. *Id.* at 691, 575 N.W.2d at 544–45. The court noted in a footnote, "It would make no sense whatsoever for the subsequent employer, who was paying wages at a lower rate, to be liable for benefits based on the higher wages of the previous employment." *Id.* at 691 n.8.

45. 302 Mich. App. 656, 666, 840 N.W.2d 388, 394 (2013), *vacated in part and appeal denied in part*, 495 Mich. 988, 844 N.W.2d 722 (2014). The author represented defendants-appellees Cordant Technologies and Michigan Property & Casualty Association.

46. *Compare Arnold*, 456 Mich. at 685, 575 N.W.2d at 541–42, *with Nichols*, 302 Mich. App. at 660–62, 840 N.W.2d at 391–92.

47. *Nichols*, 302 Mich. App. at 660–62, 840 N.W.2d at 391–92.

48. *Id.* at 672–73, 840 N.W.2d at 397 (citations omitted).

he sustained at work.[49] The statute was not the basis for this decision. Instead, the court of appeals rejected "stacking" or contemporaneous wage loss compensation because he had only one employer that had only changed its name from Howmet Corporation to Cordant Technologies.[50] The court stated, "Nichols contends that he is entitled to 'stack' full wage-loss benefits from each employment . . . . Because Nichols bases his argument on the faulty premise that he was employed by two different employers, we reject it."[51]

The Michigan Supreme Court affirmed these rulings by the court of appeals and remanded for the consideration of a question that the court of appeals had thought was not preserved for review.[52]

V. *LEWANDOWSKI V. OEM RESOURCING INC.*: AN EXCEPTION TO THE JURISDICTION OF THE APPELLATE COMMISSION RECOGNIZED

Section 847 of the WDCA requires that a magistrate on the Workers' Compensation Board of Magistrates hear and decide any question about workers' compensation that the parties could not resolve through mediation.[53] The decision by the magistrate is subject to direct review by the Michigan Compensation Appellate Commission,[54] with three exceptions. MCL section 418.841(9) bars any review of a decision by a magistrate about a claim to a benefit totaling less than $2,000.[55] MCL section 418.837(2) allows direct review of a decision by a magistrate about the propriety of a lump sum settlement known as an agreement to redeem liability[56] to the Director of the Workers' Compensation Agency instead of the Appellate Commission.[57] And MCL section 418.858(1) allows direct review of a decision about a fee of a lawyer or doctor by the Director, not the Appellate Commission.[58]

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49. *Id.* at 674–75, 840 N.W.2d at 398, *vacated in part and appeal denied in part*, 495 Mich. 988, 844 N.W.2d 722 (2014).

50. *Id.* at 674, 840 N.W.2d at 398.

51. *Id.*

52. Nichols v. Howmet Corp., 495 Mich. 988, 944 N.W.2d 722 (2014). The author represented defendants-appellees Cordant Technologies and Michigan Property & Casualty Association. The court of appeals fulfilled the mandate after June 30, 2014. For the court of appeals decision on remand, see Nichols v. Howmet Corp., 306 Mich. App. 215, 855 N.W.2d 536 (2014).

53. MICH. COMP. LAWS ANN. § 418.847(1)–(3) (West 2014).

54. *Id.* § 418.859a(1).

55. *Id.* § 418.841(9).

56. *Id.* § 418.835(1).

57. *Id.* § 418.837(2).

58. *Id.* § 418.858(1).

The third exception to the direct review of a decision by a magistrate was the subject of *Lewandowski v. OEM Resourcing, Inc.*[59] This occurred because Krzysztof Lewandowski had filed a claim for review with the Appellate Commission after a magistrate decided that OEM Resourcing was not responsible for the fee of a lawyer whom he had hired.[60] The court stated that Lewandowski timely appealed the decision by the magistrate and raised two issues, the second issue being: "The magistrate failed to properly assess [OEM Resourcing's] liability for attorney fees on unpaid medical expenses."[61]

The Appellate Commission recognized the third exception to direct review and dismissed the appeal from that portion of the decision by the magistrate:

> [W]ith regard to [the] second issue, it is not properly before us. MCL 418.858(1) clearly states, in pertinent part:
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> > The payment of fees for all attorneys and physicians for services under this act shall be subject to the approval of a worker's compensation magistrate. In the event of disagreement as to such fees, an interested party may apply to the bureau for a hearing. After an order by the worker's compensation magistrate, review *may be had by the director if a request is filed within 15 days. Thereafter the director's order may be reviewed by the appellate commission on request of an interested party, if a request is filed within 15 days.*
>
> Here there is no evidence in the file that . . . review by the Director [occurred] within the required time. Consequently, we have no jurisdiction to review the attorney fee issue."[62]

This was the first time that the exception to direct review by the Appellate Commission established by MCL section 418.858(1) was recognized. Previously, the Appellate Commission had conducted direct review of a decision by a magistrate resolving a claim that an employer

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59. No. 13-0003, 2014 WL 487052 (Mich. Workers' Comp. App. Comm'n Jan. 31, 2014). The author represented OEM Resourcing and Manufacturing Technology Mutual Insurance Company.

60. *Id.* at *7.

61. *Id.* at *5 (citation omitted).

62. *Id.* at *5–6 (emphasis added).

or workers' compensation insurer was responsible for the fee of the lawyer who had effected the payment of medical bills.[63]

The recognition of the exception to direct review of a decision of a magistrate by the Appellate Commission established by MCL section 418.858(1) has two main consequences. First, the exception is not limited to the disposition of a claim that an employer or compensation insurer is responsible for some or all of the fee of the lawyer effecting the payment of medical bills, as in the case of *Lewandowski*.[64] The exception extends to a decision of a magistrate disposing of the claim to payment of the bill by a doctor.[65] The fee of both lawyers and doctors are included by MCL section 858(1):

> The payment of fees for all attorneys *and physicians for services* under this act shall be subject to the approval of a worker's compensation magistrate. In the event of disagreement as to such fees, an interested party may apply to the bureau for a hearing. After an order by the worker's compensation magistrate, review may be had by the director if a request is filed within 15 days. Thereafter the director's order may be reviewed by the appellate commission on request of an interest party, if a request is filed within 15 days.[66]

But this is the extent of the exception. The Appellate Commission can review a decision by a magistrate about the costs of medical care, such as prescription medicine or transportation to obtain some treatment.[67] And the recognition of the exception requires two independent appeals from a single order entered by a magistrate deciding multiple claims that include the fee of a lawyer or a doctor.[68]

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63. *See, e.g.*, Shattuck v. Aramark Campus, Inc., No. 10-0036, 2011 WL 944451 (Mich. Workers' Comp. App. Comm'n Mar. 14, 2011); Burgard v. Halliday Sand & Gravel, Inc., No. 07-0074, 2008 WL 649819 (Mich. Workers' Comp. App. Comm'n Mar. 5, 2008); Musselman v. Int'l Eng'g & Mfg., Inc., No. 04-0481, 2007 WL 2069813 (Mich. Workers' Comp. App. Comm'n July 10, 2007); Beattie v. Wells Aluminum Co., No. 04-0124, 2005 WL 1651725 (Mich. Workers' Comp. App. Comm'n July 7, 2005).

64. MICH. COMP. LAWS ANN. § 418.858(1) (West 2014).

65. *Id.*

66. *Id.* (emphasis added).

67. *Id.* § 418.859(a).

68. *Id.*

VI. *JACKSON V. SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.* (ON REHEARING): RICO IS NO EXCEPTION

Coca-Cola Enterprises had Clifton E. Jackson examined by Paul Drouillard, M.D.,[69] as allowed by section 385 of the WDCA, which permits periodic examinations after an employee reports sustaining an injury at work.[70] Dr. Drouillard reported that Jackson was not disabled, and Coca-Cola Enterprises suspended the payment of any further wage loss compensation.[71] Jackson then filed an application for mediation or hearing with the Workers' Compensation Board of Magistrates for reinstatement of the wage loss compensation retroactive to the suspension and sued Coca-Cola Enterprises, Sedgwick Claims Management Services (the claims administrator), and Dr. Drouillard for damages under the Racketeering Influenced Corrupt Organizations Act (RICO).[72] Jackson stated that Dr. Drouillard "could be relied upon to lie for defendants and write a report stating a claimant did not have a work related disability regardless of the true facts . . . ."[73] Jackson settled the claims to workers' compensation with a lump sum settlement or agreement to redeem liability that was approved by a magistrate on the Board of Magistrates, but continued with his lawsuit under RICO.[74]

The United States Court of Appeals for the Sixth Circuit dismissed the lawsuit with the ruling that a "loss or diminution of benefits [an injured employee] expects to receive under a workers' compensation scheme does not constitute an injury to 'business or property' under RICO."[75] There were two main reasons for this. One was the difference in the kind of injury described by RICO and by the WDCA. [76] The court of appeals recognized that the only kind of injury described by RICO was an injury to business or property[77] and not a personal injury, the kind of injury described by the WDCA.[78] The other reason was that RICO was not specific enough to warrant supplanting the comprehensive system for the state to police fraud established by the WDCA.[79]

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69. Jackson v. Sedgwick Claims Mgmt. Serv., Inc., 731 F.3d 556, 561 (6th Cir. 2013).
70. *Id.* § 418.385.
71. *Jackson*, 731 F.3d at 561.
72. 18 U.S.C.A § 1962(c) (West 2014).
73. *Jackson*, 731 F.3d at 561.
74. *Id.* at 561–62.
75. *Id.* at 566.
76. *Id.* at 559–63.
77. 18 U.S.C.A. § 1964(c).
78. *Jackson*, 731 F.3d at 565–66.
79. *Id.* at 568–69.

There was disagreement. A concurring judge thought RICO could apply because "the true nature of [Jackson's] claimed injury . . . is a harm to the ability to bring a claim for workers' compensation and have that claim fairly adjudicated."[80] But this disagreement ignored that the medical exam and report precipitated the claim to workers' compensation and had not impeded its filing or its fair adjudication because the lump sum settlement that ended the claim had been approved by a magistrate on the Board of Magistrates after a hearing.[81]

A dissenting judge thought that RICO could apply because an applicant has a property interest when an employer learns of the physical injury to an employee.[82] This was based on section 801 of the WDCA.[83] Section 801 says, "Compensation shall be paid promptly and directly to the person entitled thereto and shall become due and payable on the fourteenth day after the employer has notice or knowledge of the disability or death, on which date all compensation then accrued shall be paid."[84] The problem with the dissent's reasoning is that section 801 does not create a property interest. An employer can dispute entitlement until there is a final adjudication.[85]

The effect of the ruling is that RICO is no exception to the state system for hearing and deciding a claim to workers' compensation established by the WDCA.[86] After deciding *Jackson*, the Sixth Circuit stated in *Brown v. Ajax Paving Industries, Inc.* that:

> States can and do impose liability upon people—employers as well as others—who defraud the workers' compensation system.
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> . . . .
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> Our decision [in *Brown*] does not 'immunize' anyone from these exercises of state power. Our decision means only that federal

80. *Id.* at 573–84 (Moore, J., dissenting).

81. *Id.* at 561 (majority opinion).

82. *Id.* at 578 (Moore, J., dissenting).

83. Nezdropa v. Wayne Cnty., 152 Mich. App. 451, 474, 394 N.W.2d 440, 450–51 (1987) (citing MICH. COMP. LAWS ANN. § 418.801(1) (West 2014)). The author represented defendant-appellant Michigan State Accident Fund in one of the two cases that were consolidated for hearing.

84. MICH. COMP. LAWS ANN. § 418.801(1).

85. Brown v. Ajax Paving Ind., Inc., 752 F.3d 656, 658 (6th Cir. 2014); *see* MICH. COMP. LAWS ANN. § 418.841(1); *see also Nezdropa*, 152 Mich. App. 451, 394 N.W.2d 440.

86. *Brown*, 752 F.3d at 658.

> judges may not use [RICO] to seize this power for themselves. That of course was the whole point of *Jackson*.[87]

VII. CONCLUSION

The amendment to the WDCA and all of the important workers' compensation rulings by courts between June 30, 2013 and June 30, 2014 were about exceptions to the WDCA or some putative exception, as in the case of *Jackson v. Sedgwick Claims Management Services, Inc.* Each exception is specific and inelastic. There is no reason to anticipate that any one of the exceptions will be enlarged, and each exception remains important by describing a specific alternate and informing the section of the WDCA that usually applies. It remains that the exception "proves" the rule.

87. *Id.*