

**L A C E Y & J O N E S**  
ATTORNEYS AT LAW  
LIMITED LIABILITY PARTNERSHIP  
SUITE 300  
600 SOUTH ADAMS ROAD  
BIRMINGHAM, MICHIGAN 48009-6827

GERALD M. MARCINKOSKI  
jmarcinkoski@laceyjones.com

DIRECT DIAL (248) 283-0749  
MAIN TELEPHONE (248) 433-1414  
FAX (248) 433-1241

RALPH B. LACEY  
1885-1966  
ROBERT B. LACEY  
1912-1976  
WILLIAM J. JONES  
1908-1991

*Areas of practice include Workers'  
Compensation, Civil Litigation, Labor Law,  
Employment and Commercial Law, and Appeals*

February 1, 2007

Clerk of the Court  
Michigan Supreme Court  
Michigan Hall of Justice  
925 W. Ottawa St.  
Lansing, MI 48915

**VIA FedEx PRIORITY OVERNIGHT**

Re: Freddie Stokes v DaimlerChrysler Corporation  
S.C. No.: 132648  
C.A. No.: 268544  
L.C. No.: WCAC 02-000388  
Our File No.: 601-84506

**Erratum Letter**

Dear Clerk:

On behalf of the defendant, we filed a reply yesterday, February 1, 2007, in relationship to the pending application for leave to appeal in the above-captioned case. There is a printing error in the first sentence of the brief following the argument heading. Specifically, the word "not" was omitted in that sentence.

To cure this problem, enclosed please find an original and seven copies of the corrected page 2 of our reply along with a Proof of Service. We ask that this corrected page replace the page 2 contained in the reply we filed on February 1, 2007. We apologize for this error and thank you for your consideration in this regard.

Very truly yours,

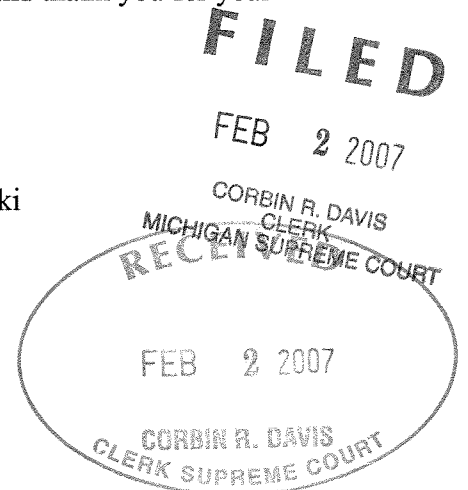
Gerald M. Marcinkoski

GMM/has  
Enclosures

c: Roger R. Kline, Esq.  
Daryl Royal, Esq.

Ann Arbor Office  
Suite 525, City Center Bldg.  
220 East Huron  
Ann Arbor, Michigan 48104  
(734) 761-8358  
Fax: (734) 761-3134

Grand Rapids Office  
3330 Grand Ridge Drive, N.E.  
Suite B  
Grand Rapids, Michigan 49525  
(616) 365-1061  
Fax: (616) 365-1870



132648  
25/2/07

ARGUMENT

FIRST, THE COURT SHOULD ISSUE AN OPINION EXPLICITLY ADOPTING JUDGE SAAD'S DISSSENT AS ITS OWN, AS IT IS NOW OBVIOUS THE COMMISSION MAJORITY WILL PERSIST IN A LEGALLY ERRANT VIEWPOINT EXPRESSED IN ITS *EN BANC* OPINION IN THIS CASE. SECOND, PLAINTIFF ARGUES THIS CASE SHOULD NOT BE REMANDED BECAUSE AT THE PRIOR HEARING THERE WAS AN "ABSENCE OF ANY PROOF THAT PLAINTIFF COULD STILL PERFORM WORK SUITABLE TO HIS QUALIFICATIONS" AND TRAINING. THE "ABSENCE OF ANY PROOF" AT THE PRIOR HEARING WAS DUE TO THE TRIAL MAGISTRATE WRONGFULLY REBUFFING DEFENDANT'S ATTEMPTS TO PROFFER PROOFS ON THE QUESTION. AS JUDGE SAAD IN DISSSENT SAYS, THE ADMINISTRATIVE DECISIONS IN THIS CASE "EFFECTIVELY PREVENTED DEFENDANT FROM PREPARING AND PRESENTING A DEFENSE UNDER *SINGTON*."

**FILED**  
FEB 2 2007  
CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

Defendant contends it was effectively prevented from showing plaintiff's alleged disability, under the first sentence of MCL 418.301(4), is not responsible for his complete loss of wages, under the second sentence of MCL 418.301(4).<sup>1</sup> The extent to which plaintiff's "wage loss" may or may not be attributable to his alleged disability will determine his level of weekly wage loss payments (if any), *e.g.*, the appropriate partial disability rate. *Sington v Chrysler Corp*, 467 Mich 144, 160-161, including n 11; 648 NW2d 624 (2002).<sup>2</sup>

---

<sup>1</sup> MCL 418.301(4) provides: "As used in this chapter, 'disability' means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. The establishment of disability does not create a presumption of wage loss."

<sup>2</sup> The "wage loss" question and the "partial disability" question are "related" as recognized by *Sington* and by the Court of Appeals in this case. *Stokes v DaimlerChrysler Corp*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2006) (CA No. 268544, rel'd October 26, 2006), slip op at p 15; see also, *Riley v Bay Logistics, Inc*, 2004 ACO #24; *Peacock v General Motors Corp*, 2003 ACO #274.

STATE OF MICHIGAN

IN THE SUPREME COURT

ON APPEAL FROM THE WORKERS' COMPENSATION APPELLATE COMMISSION

FREDIE STOKES,

S.C. NO.: 132648

Plaintiff-Appellee,

C.A. NO.: 268544

v

L.C. NO.: WCAC 02-000388

DAIMLERCHRYSLER CORPORATION,  
a Self-Insured,

Defendant-Appellant.

STATE OF MICHIGAN )

) ss

**PROOF OF SERVICE**

COUNTY OF OAKLAND )

HOLLY A. SCHULER, being duly sworn, deposes and says that on the 1<sup>st</sup> day of February, 2007, she served a copy of Corrected Page 2 of Defendant-Appellant's Reply to Plaintiff's Answer to Defendant's Application for Leave to Appeal, upon:

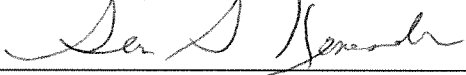
Roger R. Kline, Mancini, Schreuder, Kline & Conrad, P.C., Attorneys for Plaintiff-Appellee, 28225 Mound Road, Warren, MI 48092

Daryl Royal, Attorney of Counsel to Roger R. Kline, 22646 Michigan Avenue, Dearborn, MI 48124

that being their addresses, and depositing same in the United States post office in the City of Birmingham, Michigan, with postage fully prepaid.

  
HOLLY A. SCHULER

Subscribed and Sworn To Before Me  
on this 1<sup>st</sup> day of February, 2007.

  
Sandra S. Komendera, Notary Public  
Macomb County, Michigan  
Acting in Oakland County, Michigan  
My Commission Exp. 08/23/2007

SANDRA S. KOMENDERA  
NOTARY PUBLIC MACOMB CO., MI  
MY COMMISSION EXPIRES Aug 23, 2007  
ACTING IN OAKLAND COUNTY, MI