STATE OF MICHIGAN

IN THE SUPREME COURT

JAMES A. LOOS, JR.

Plaintiff-Appellee,

vs

J.B. SUPPLY COMPANY, INCORPORATED/
J.B. INSTALLED SALES and ACCIDENT
FUND INSURANCE COMPANY OF AMERICA,

Defendants-Appellants.
_____/

Supreme Court:
137987

Court of Appeals:
275704

Lower Court: WCAC
Docket No: 050246

137987

PLAINTIFF'S ANSWER TO DEFENDANTS'
APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

JOHN H. van BENSCHOTEN (P34467)
Attorney for Plaintiff-Appellee
905 North Michigan Avenue
Saginaw, Michigan 48602-4324
(989) 753-2444

DARYL ROYAL (P33161)
Attorney Of Counsel to John H. van Benschoten,
Attorney for Plaintiff-Appellee
22646 Michigan Avenue
Dearborn, Michigan 48124-2116
(313) 730-0055

FILED
FEB 6 2009
CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

TABLE OF CONTENTS

INDEX OF AUTHORITIES CITED ii

COUNTER-STATEMENT OF BASIS OF JURISDICTION iii

STATEMENT OF QUESTIONS PRESENTED iv

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS 1

ARGUMENTS:

I THE CONCLUSION DRAWN BY THE WCAC AND THE COURT OF APPEALS THAT PLAINTIFF WAS AN "EMPLOYEE" WITHIN THE MEANING OF THE WORKER'S DISABILITY COMPENSATION ACT COMPORTED WITH THE ANALYSIS REQUIRED BY STATUTE, AND SHOULD BE AFFIRMED ACCORDINGLY. 5

Standard of Review 5

II THE WCAC'S ANALYSIS WAS ARRIVED AT BY A FACTUAL ANALYSIS COMPORTING WITH THE STATUTE AND SUPPORTED BY COMPETENT EVIDENCE 9

Standard of Review 9

RELIEF 13

INDEX OF AUTHORITIES CITED

ITEM: PAGE:

Cases

Blanzy v *Brigadier General Contractors, Inc*,
40 Mich App 632; 613 NW2d 391 (2000) 7, 11

DiBenedetto v West Shore Hospital,
641 Mich 394; 605 NW2d 300 (2000) 5

Luster v Five Star Carpet Installation, Inc,
239 Mich App 719; 609 NW2d 859 (2000) 7, 11

Mudel v *Great Atlantic & Pacific Tea Co*,
462 Mich 691; 614 NW2d 607 (2000) 9-12

Oxley v Dep't of Military Affairs,
460 Mich 536; 597 NW2d 89 (1999) 5

Statutes

MCL 418.161(1)(n) 6, 11
MCL 418.861a(13) 10
MCL 418.861a(14) . . . . . 10 -12

Other Authorities

Const 1963, Art VI, §28 10

COUNTER-STATEMENT OF BASIS OF JURISDICTION

Plaintiff accepts defendant's statement of the basis for this Court's jurisdiction.

STATEMENT OF QUESTIONS PRESENTED

DOES THE CONCLUSION DRAWN BY THE WCAC AND THE COURT OF APPEALS THAT PLAINTIFF WAS AN "EMPLOYEE" WITHIN THE MEANING OF THE WORKER'S DISABILITY COMPENSATION ACT COMPORT WITH THE ANALYSIS REQUIRED BY STATUTE, AND SHOULD IT BE AFFIRMED ACCORDINGLY?

Plaintiff-Appellee answers "YES."
The WCAC answered "YES."
The Court of Appeals did not answer.

II

WAS THE WCAC'S ANALYSIS ARRIVED AT BY A FACTUAL ANALYSIS COMPORTING WITH THE STATUTE AND SUPPORTED BY COMPETENT EVIDENCE?

Plaintiff-Appellee answers "YES."
The WCAC answered "YES."
The Court of Appeals did not answer.

STATE OF MICHIGAN

IN THE SUPREME COURT

JAMES A. LOOS, JR.

Plaintiff-Appellee,

vs

J.B. SUPPLY COMPANY, INCORPORATED/
J.B. INSTALLED SALES and ACCIDENT
FUND INSURANCE COMPANY OF AMERICA,

Defendants-Appellants.
_____/

Supreme Court:
137987

Court of Appeals:
275704

Lower Court: WCAC
Docket No: 050246

PLAINTIFF'S ANSWER TO DEFENDANTS'
APPLICATION FOR LEAVE TO APPEAL

NOW COMES Plaintiff-Appellee JAMES A. LOOS, JR., by and through his attorneys, and respectfully requests that this Honorable Supreme Court deny defendant's application for leave to appeal, stating as grounds the following:

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

(Numbers in parentheses without further reference shall denote pages of the transcript of proceedings held on May 31, 2004. The medical depositions shall be referred to as follows:

"B" Maynard Buszek, M.D.
"N" Gregory Nowinski, M.D.

"PX" shall refer to plaintiff's exhibits, while "DX" shall refer to defendant's exhibits.)

The proceedings described below were initiated upon the February 23, 2004 filing by plaintiff James A. Loos, Jr., of an application for hearing, alleging that, while working as a roofer, he fell off a roof and severely injured his hip and thumb. The application further alleged an injury date of November 19, 2003.

Plaintiff was born on September 18, 1970 (19). He began working as a roofer at age 16 (22).

During 2003, plaintiff worked for Local Roofing and Mid-Michigan Roofing, jobs he obtained through his union (47-48). Both employers provided him with W-2 forms at the end of the year (48). Plaintiff also worked for another roofing company, Above Board, for about three months during 2003 (48). That employer sent him a Form 1099 at the end of the year (48).

Plaintiff started his job with defendant William Robinson on September 1, 2003 (26,46). He stated that Mr. Robinson "told me that he was going to start working at J.B. [defendant J.B. Supply Company], and he wanted to know if I wanted to work with him" (49). Plaintiff was paid by Mr. Robinson in cash, and no taxes were withheld (49). Plaintiff testified that he was paid "for piecework," explaining that this meant he got paid "by what you do" (30). He got paid at different rates on various jobs (38).

Plaintiff worked under the supervision of Tim from J.B. Supply Company, also known as J.B. Installed Sales (5), who went over every job with him and Mr. Robinson before they started it, often coming to the job himself (26-27,51). At times, Tim would direct plaintiff to do things in a different way than he otherwise would have or was already doing (36-37). In addition, all equipment and materials were provided by J.B. Supply (29-30). If something else was needed, plaintiff would contact Tim to make the necessary arrangements (37). Plaintiff supplied only some hand tools and a tool pouch (29,56-57).

Further testimony came from Deborah Millay, who worked for Vienna Investment, owned by defendant J.B. Supply's owner (61). In her job, she maintained management files for J.B. (62). She testified that, on November 19, 2003, J.B. considered William Robinson to be a subcontractor, rather than an employee (63-64). She noted that Mr. Robinson signed a Sworn Statement for Sole-Proprietors (64-65). A copy of that statement was admitted as a part of DX D, and indicated that Mr. Robinson agreed that, "[i]f it becomes necessary to hire employees to assist me in my work, I will immediately notify JB INSTALLED SALES and I will present them with an insurance certificate showing them that

I have obtained the proper WORKERS COMPENSATION INSURANCE coverage before putting my crew on the job." Mr. Robinson never so notified J.B. (65).

Ms. Millay also confirmed that J.B. did employ an individual named Tim Young, who she stated did some checking on and inspections of jobs (68,71). She was not fully aware of the scope of Mr. Young's job duties (71).

During the time he worked with Mr. Robinson, plaintiff did not hold himself out to the public as being available to do roofing work (32), nor did he maintain a separate business (34). While he previously had a "DBA," he testified that he did not have one during the period he was working with J.B. Supply (36). He was never supervised during this period by anyone from a company other than J.B. Supply (33), and never refused a direction from Tim (33-34). Plaintiff further testified that he had no employees at the time, nor did he supervise anyone else (35).

On November 19, 2003, plaintiff sustained an injury on the job, when he "slipped and fell 15 feet and fell onto a block retaining wall" (23-24). His employment status in the hospital records is listed as "self-employed." However, plaintiff stated, "if I'm self-employed, I get to do whatever I want; whenever I want" (53). Instead, he stated, "...I always got told what to do" (53).

Plaintiff has not worked since his injury (26), and testified that he could not return to work given his injuries (39-41).

At the hearing below, the parties agreed that Robinson Roofing could be dismissed. In a decision mailed on July 14, 2005, Magistrate Christopher Ambrose found that plaintiff had both established the occurrence of an injury on November 19, 2003 and proven his disability as the result of that injury. However, the magistrate denied plaintiff's claim, concluding as follows: "IT IS FURTHER ORDERED that: Plaintiff has failed to prove an employment relationship with Defendant J.B. Installed Sales, and therefore, the Application is dismissed." No findings were made as to plaintiff's average weekly wage or dependents.

Plaintiff filed a timely appeal from this determination with the Workers' Compensation Appellate Commission ["WCAC"]. In an order and opinion dated December 21, 2006, the WCAC reversed the magistrate's order, concluding as follows:

> "Both the magistrate and the defendants focused on the fact that the plaintiff's earnings from Robinson Roofing and Above Board Contracting were reported on 1099 forms. The magistrate assumed that if the plaintiff had 'been an employee of Robinson Roofing, he would have been paid on a W-2' and that Robinson Roofing would have properly reported his earnings to the Social Security Department. In addition, both the defendants and the magistrate placed great weight on the plaintiff's acknowledged statement to the hospital emergency personal that he was 'self-employed.' While these factors are not irrelevant, the statutory language makes it clear that the proper focus is on the plaintiff's actions and not on the parties' labels.
>
> "When we turn to the testimony on the Section 161(1)(n) issues, we find the evidence supports only one conclusion; that Mr. Loos was an employee of the Robinson Roofing at the time of the injury and that none of the statutory exclusions apply." WCAC's Opinion, at 6.

Defendant's application for leave to appeal to the Court of Appeals was denied on August 17, 2007. However, this Supreme Court subsequently remanded this case, "for consideration as on leave granted," in an order dated December 20, 2007.

Thereafter, in an unpublished opinion dated November 20, 2008, the Court of Appeals affirmed the WCAC's opinion. It held that the magistrate improperly focused upon the tax records, whether taxes were withheld, and whether a Form 1099 was issued rather than a W-2, pointing out that these were not the factors deemed dispositive by the relevant statute. Defendant now seeks leave to appeal to this Honorable Court.

ARGUMENT I

THE CONCLUSION DRAWN BY THE WCAC AND THE COURT OF APPEALS THAT PLAINTIFF WAS AN "EMPLOYEE" WITHIN THE MEANING OF THE WORKER'S DISABILITY COMPENSATION ACT COMPORTED WITH THE ANALYSIS REQUIRED BY STATUTE, AND SHOULD BE AFFIRMED ACCORDINGLY.

Standard of Review. Plaintiff agrees with defendant that this Court may reverse the WCAC if it applies erroneous legal reasoning or operates within the wrong legal framework. *DiBenedetto v West Shore Hospital*, 641 Mich 394; 605 NW2d 300 (2000); *Oxley v Dep't of Military Affairs*, 460 Mich 536; 597 NW2d 89 (1999).

The WCAC also properly noted that, as defendant states, the sole issue to be decided was whether plaintiff was an employee of Robinson Roofing, which would impose liability upon defendant J.B. Supply Company as a statutory or "shoot-through" employee:

> "The only relevant inquiry on appeal is whether or not Mr. Loos was an employee of Robinson Roofing at the time of his injury. If Mr. Loos was an employee of Robinson Roofing, his cousin's uninsured business, the principal, J.B. Supply, is liable to pay workers' compensation benefits. MCL 418.171.
>
> "Frequently in construction industry cases, the parties put labels on their relationship, by entering into contracts stating the workers are independent contractors or subcontractors. However, it is the statutory definition of employee, not the parties' labels, which controls. The statute defines an employee as:
>
>> "Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act. MCLA 418.161(1)(n).
>
> "The Act provides three exclusions to the broad definition of an employee. Mr. Loos is not deemed an employee of Robinson Roofing if, in relation to the service provided by Robinson (roofing activities), he did any of the following:
>
> "• Maintained a separate business, or

"• Held himself out to and rendered services to the public, or

"• Was an employer subject to the Act." WCAC's Opinion, at 4-5.

This is the appropriate legal framework.

The statute reprinted in the excerpt above, MCL 418.161(1)(n), focuses on three discrete factors: (1) whether the plaintiff maintains a separate business, (2) whether he holds himself out to and renders service to the public, and (3) whether he is an employer subject to the Worker's Disability Compensation Act. The WCAC properly focused upon these factors, and correctly held that the magistrate did not.

In that regard, the WCAC noted that the *only* testimony in the record as to the potential statutory exclusions noted above came from plaintiff, who stated that none applied:

"The only testimony on the statutory exclusions came from Mr. Loos. The plaintiff denied he maintained a separate roofing business, that he held himself out to the public to render roofing services, or that he had any employees.

"Q During the time this relationship existed between yourself and J.B., were there --did you--were you holding yourself out to the public as doing roofing work?

"A No. We weren't; pretty much full-time for J.B.

* * *

"Q And, I may have covered this; if I did, I apologize. I just want to make sure I, I cover everything. During the time that you were working for J.B. Sales, did you maintain a separate business?

"A No.

"Q Did you hold yourself out to the public as--for doing roofing or construction work?

"A No.

"Q Were you an empl--you, yourself, an employer during that time; did you have any employees working under you?

"A No.

"Q Did you supervise anyone during that time?

"A No, I did not.

* * *

"Q During this period of time, were you working any other jobs, other than jobs for J.B.?

"A No, I was not.

"Q Were you working at any side projects, for anyone other than J.B.?

"A No. [TT, pp 32, 34-35, 36.]

"Mr. Loos' testimony on these issues is the only competent evidence of whether he was or was not an employee of Robinson Roofing." WCAC's Opinion, at 5-6.

The WCAC further noted that there was no relevant testimony from anyone else on the subject:

> "The defendants did not present testimony from William Robinson (Robinson Roofing) or J.B. Supply contesting the plaintiff's testimony. The sole testimony presented by defendants came from a financial record keeper, who confirmed the uncontested fact that J.B. Supply did not directly hire or pay Mr. Loos. There is simply no basis on this record to find anything other than Mr. Loos was an employee of Robinson Roofing at the time of his injury." WCAC's Opinion, at 5-6.

This is the right analysis, consistent with the statutory elements.

Defendant, however, insists that the WCAC must be reversed, claiming that the magistrate properly relied upon tax records and these records have often been found by the Court of Appeals to be an appropriate basis for a finding on the subject. See, *e.g.*, *Blanzy v Brigadier General Contractors, Inc*, 240 Mich App 632; 613 NW2d 391 (2000); *Luster v Five Star Carpet Installation, Inc*, 239 Mich App 719; 609 NW2d 859 (2000). In essence, defendant suggests that the WCAC was *required* to accept these records as controlling.

This is absurd, and completely ignores not only the statutory elements – which do *not* include tax records – but also the reality of those records.

In that regard, it was not plaintiff who reported his income on a Form 1099 as opposed to a W-2. Mr. Robinson did that, opting to pay plaintiff without withholding taxes, and to issue him a Form 1099 instead of a W-2. While plaintiff may indeed have filed tax returns including "non employee compensation," what viable choice did he really have (other than tax evasion)? An examination of the tax records admitted as DX B will demonstrate that the line on the 1040 where wages would be entered requires the attachment of a supporting W-2 form. Because Mr. Robinson did not supply plaintiff with a W-2, he could not take this approach, and was forced to report the income as he did.

Permitting an employer to avoid workers' compensation liability by simply paying wages without withholding taxes, and then issuing a Form 1099 instead of a W-2, sets a dangerous precedent. The very reason the Worker's Disability Compensation Act contains a statutory definition of "employee" is to establish an objective standard and not leave the determination of the relationship in question to the self-serving characterizations of the parties.

The WCAC recognized as much, properly dealing with these forms and other evidence defendant would rely upon as follows:

> "Both the magistrate and the defendants focused on the fact that the plaintiff's earnings from Robinson Roofing and Above Board Contracting were reported on 1099 forms. The magistrate assumed that if the plaintiff had 'been an employee of Robinson Roofing, he would have been paid on a W-2' and that Robinson Roofing would have properly reported his earnings to the Social Security Department. In addition, both the defendants and the magistrate placed great weight on the plaintiff's acknowledged statement to the hospital emergency personal that he was 'self-employed.' While these factors are not irrelevant, the statutory language makes it clear that the proper focus is on the plaintiff's actions and not on the parties' labels." WCAC's Opinion, at 6.

Again, this is an entirely proper approach, as the Court of Appeals held:

> "We agree with the Commission that the focus of the magistrate's analysis was misplaced. For example, the magistrate considered plaintiff's tax records to be 'most relevant.' However, factors such as whether taxes were withheld or whether plaintiff was issued a Form 1099 or a W2 were not incorporated into MCL 418.161(1)(n), and, therefore, reliance on such factors to determine whether plaintiff was an 'employee' was improper. *Hoste, supra*; *Reed, supra*. The statutory factors must be the focus of the analysis. Thus, the Commission did not err when it concluded that the magistrate's analysis was legally flawed." Court of Appeals' Opinion, at 2.

The statute expressly defines an "employee." The fact that a potential employer or employee may try to place a different label upon their relationship than would be dictated by the statutory definition does not control over that definition. While defendant may not deny that this is its argument, it clearly is. Defendant would render controlling Mr. Robinson's view of the relationship (via his agreement with J.B. Supply or the issuance of a 1099), plaintiff's one-time characterization (as "self-employed" in the hospital records), and even a third-party's view (the Social Security records, which only reflect the tax records), whether or not those characterizations are consistent with the statute. This Court, however, cannot so cavalierly ignore the statutory language.

By focusing upon the language of the statute, the WCAC acted in a legally correct fashion. No further review is therefore required, and leave to appeal should be denied accordingly.

ARGUMENT II

THE WCAC'S ANALYSIS WAS ARRIVED AT BY A FACTUAL ANALYSIS COMPORTING WITH THE STATUTE AND SUPPORTED BY COMPETENT EVIDENCE.

Standard of Review. While defendant properly contends that "[t]he Appellate Commission's overreach and misapprehension of its appellate role is a legal error," Defendant's Application, at 13, it should be noted that the Court does not and may not conduct its own competent, material, and substantial evidence review. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 706-707; 614 NW2d 607 (2000). Instead, it must

affirm the WCAC's findings of fact if they are supported by *any* evidence in the record. Const 1963, Art VI, §28; MCL 418.861a(14); *Mudel, supra*, at 706-707.

The WCAC clearly understood the restrictions on its review process, in that it specifically cited the standard it was to apply in that regard:

> "This appeal presents both legal and factual challenges to the magistrate's decision. We review issues of law de novo. The Commission's statutory directive on appeal is to perform a qualitative and quantitative review of the evidence and affirm the findings of fact made by the magistrate when they are supported by competent, material and substantial evidence on the whole record. MCL 418.861a(3) and (13); *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691 (2000)." WCAC's Opinion, at 4.

Consequently, it may not be credibly contended that the WCAC was unaware of or did not properly understand the scope of its review.

Furthermore, it should be recalled that the WCAC has considerable latitude in undertaking its factual review. That tribunal must conduct a qualitative and quantitative analysis of the whole record, MCL 418.861a(13), and may "in some circumstances substitute its own findings of fact for those of the magistrate, if the WCAC accords different weight to the quality or quantity of evidence presented." *Mudel, supra*, at 699-700.

The WCAC did not exceed the scope of its administrative review in finding as it did. Instead, it aptly recognized the magistrate's findings, but noted that they were misplaced:

> "Both the magistrate and the defendants focused on the fact that the plaintiff's earnings from Robinson Roofing and Above Board Contracting were reported on 1099 forms. The magistrate assumed that if the plaintiff had 'been an employee of Robinson Roofing, he would have been paid on a W-2' and that Robinson Roofing would have properly reported his earnings to the Social Security Department. In addition, both the defendants and the magistrate placed great weight on the plaintiff's acknowledged statement to the hospital emergency personal that he was 'self-employed.' While these factors are not irrelevant, the statutory language makes it clear that the proper focus is on the plaintiff's actions and not on the parties' labels." WCAC's Opinion, at 6.

This is not an overstepping of any boundary.

Defendant's argument to the contrary ignores the fact that this Court lacks the authority to second-guess the WCAC as to factual findings. It may *not* step into the shoes of the WCAC and conduct its own substantial evidence review:

> "That the justices of this Court may have come to a different conclusion than the WCAC if we were evaluating a matter de novo, or that we may find the magistrate's conclusion to be better supported than the WCAC's conclusion, is irrelevant. Given the limited scope of judicial review in worker's compensation cases, we may not substitute our own judgment for that of the WCAC by independently reviewing each magistrate's decision to determine whether there is competent, material, and substantial evidence on the whole record supporting the magistrate's findings of fact. If that were the case, then what would be the role of the WCAC as the presumably expert administrative agency in this realm? The courts would routinely be stepping into the WCAC's shoes and conducting an independent review of the entire record, to determine if the magistrate's decision complied with the 'substantial evidence' standard. This cannot be what the Legislature intended when it established a two-tiered reviewing process that principally entrusted factual issues to the WCAC and legal issues to the judiciary." *Mudel, supra*, at 706-707.

The factual review of this Court is limited to determining whether there is *any* evidence in the record to support the WCAC's factual findings (not those of the magistrate). MCL 418.861a(14); *Mudel, supra*. As a result, even as it asks this Court to find that the WCAC exceeded its factfinding powers, defendant requests that the Court exceed its own.

Defendant, however, suggests that, because the Court of Appeals has on occasion held that a claimant's tax records may constitute substantial evidence, see, *e.g.*, *Blanzy v Brigadier General Contractors, Inc*, 240 Mich App 632; 613 NW2d 391 (2000); *Luster v Five Star Carpet Installation, Inc*, 239 Mich App 719; 609 NW2d 859 (2000), the WCAC must *always* accept tax records as conclusive of a workers' compensation claimant's status. This is a blatant attempt to preempt the WCAC's factfinding powers, by mandating that it accept documentary evidence over testimonial evidence. While the WCAC may *choose* to do that, the appellate courts may not *require* that it do so.

The WCAC is the ultimate factfinder, and its conclusions are only subject to reversal on further appeal if they are unsupported by *any* evidence. MCL 418.861a(14); *Mudel, supra*. As a result, the Court of Appeals properly held as follows:

> "The Commission properly refocused the analysis on the statutory factors, and the evidence relevant to those factors. Because the Commission did not misapprehend its administrative appellate role and gave an adequate reason grounded in the record for reversing the magistrate, and because there is evidence in the record to support the Commission's findings, we must affirm. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703-704; 614 NW2d 607 (2000)." Court of Appeals' Opinion, at 2.

The WCAC followed the statutory language to its logical conclusion. It rejected as irrelevant evidence as to the parties' labeling of their relationship, and instead examined the actual relationship itself. Defendant, on the other hand, would have the Court find that the WCAC was required to rely *solely* upon evidence as to the parties' characterization of the relationship, while ignoring what really took place. More importantly, defendant would have the Court force the WCAC to rely not upon plaintiff's own characterization of the relationship (with the single exception of the hospital record), but instead that of William Robinson, who imposed the structure of the relationship upon plaintiff. How can this be automatically binding upon plaintiff and dispositive? Instead, this all should be a part of the factual deliberations – deliberations largely to be left to the WCAC. *Mudel, supra*.

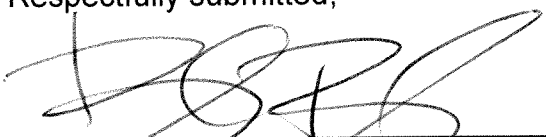
Because there is competent evidence on this record to support the WCAC's finding that plaintiff maintained no separate business, and because there is additionally no evidence, no finding, and no argument that plaintiff held himself out to the public as available to do roofing work or was an employer subject to the act, he is an employee <u>as</u> *a matter of law*, MCL 418.161(1)(n).

Leave to appeal should be denied accordingly.

RELIEF

WHEREFORE Plaintiff-Appellee JAMES A. LOOS, JR. respectfully requests that this Honorable Supreme Court deny defendant's application for leave to appeal. Plaintiff further requests any other relief to which he may be entitled.

Respectfully submitted,



DARYL ROYAL (P33161)
Attorney Of Counsel to John H. van Benschoten,
Attorney for Plaintiff-Appellee
22646 Michigan Avenue
Dearborn, Michigan 48124-2116
(313) 730-0055

JOHN H. van BENSCHOTEN (P34467)
Attorney for Plaintiff-Appellee
905 North Michigan Avenue
Saginaw, Michigan 48602-4324
(989) 753-2444

Dated: February 4, 2009