2006 ACO #288

STATE OF MICHIGAN
WORKERS' COMPENSATION APPELLATE COMMISSION

TIMOTHY DAHLKE,
PLAINTIFF,

V DOCKET #04-0483

LEWIS LOGGING, INCORPORATED,
SELF INSURED,
PARIS SAWMILL, INCORPORATED.
MICHIGAN ASSOCIATION OF TIMBERMEN
(COMPREHENSIVE RISK SERVICES, INCORPORATED),
SILICOSIS, DUST DISEASE AND LOGGING INDUSTRY COMPENSATION FUND.
DEFENDANTS.

APPEAL FROM MAGISTRATE AMBROSE.

DAVID E. HULSWIT, JR., FOR PLAINTIFF,
DONALD N. PAYNE, II, FOR DEFENDANT PARIS SAWMILL, INCORPORATED, AND MICHIGAN ASSOCIATION OF TIMBERMEN (COMPREHENSIVE RISK SERVICES, INCORPORATED,
DENNIS J. RATERINK, FOR DEFENDANT SILICOSIS, DUST DISEASE AND LOGGING INDUSTRY COMPENSATION FUND.

OPINION

GLASER, CHAIRPERSON

Defendants appeal and plaintiff cross appeals the decision of magistrate Christopher P. Ambrose, mailed on November 18, 2004, granting plaintiff an open award on a finding of a total disability resulting from an injury sustained while performing work in the business of logging. He further found that plaintiff's immediate employer (Lewis Logging, Inc.) was uninsured so that Paris Sawmill which contracted with Lewis Logging, Inc. to cut down and deliver trees was liable as plaintiff's statutory employer. We affirm in part and remand for further findings.

The magistrate set forth a complete recitation of the facts in his opinion. We reprint relevant parts of that recitation here for reference:

> The trial in this matter began on June 10, 2004. Continued hearing dates were held on July 13, 2004 and July 14, 2004. Following the close of proofs, a

motion was brought by Plaintiff to reopen the record for the inclusion of additional medical information, as well as to amend the Application to add a claim for total and permanent disability. The court denied both of these requests.

* * *

On the date of injury, January 9, 2001, Mr. Coon was the president and owner of Paris Sawmill located in Paris, Michigan.

Mr. Coon described the nature of his business as buying timber from property owners and then processing lumber. According to Mr. Coon, Paris Sawmill solicits standing timber from landowners and then uses a skidder to pull trees from woodlands to a cutting area. Paris Sawmill had a number of contractors that they used to remove timber from landowners property.

Mr. Coon indicated that prior to cutting timber that he would discuss with property owners cutting down timber. Paris Sawmill would send a representative out to select a certain number of trees and to mark those trees with paint. At that point, Paris Sawmill would hire independent contractors to cut the trees. Lewis Logging was one of the independent contractors hired by Paris Sawmill. There was usually not any paperwork involved. Paris Sawmill would go to the job site with Lewis Logging and show them which trees were to be cut down.

In January 2001, there was an area in Harrison, Michigan, which was to be cut. Mr. Coon had negotiated with the property owners as to the price of the timber. Mr. Coon paid the property owners in advance for the timber. According to Mr. Coon, Lewis Logging was to cut and move the timber to the landing area, where another entity would transport the logs to the sawmill. Once the logs were processed, Lewis Logging would be paid by Paris Sawmill depending on the number of board feet processed.

* * *

On cross-examination, Mr. Coon indicated that he considered Lewis Logging to be an independent contractor for Paris Sawmill. The only log cutter covered by Paris Sawmill's workers' compensation insurance policy was for Mr. Coon's son who cut wood directly for Paris Sawmill. Mr. Coon also testified that Ken Lewis, the owner of Lewis Logging, identified himself as an independent contractor.

Mr. Coon testified that at any given time, Paris Sawmill uses four to eight independent contractors. According to Mr. Coon, he never hired Mr. Dahlke to do anything for Paris Sawmill directly. Lewis Logging supervised Plaintiff. Paris Sawmill never told Mr. Dahlke which trees to cut. Lewis Logging could fire and hire employees. Additionally, any contract for services was directly between Paris Sawmill and Lewis Logging, and Mr. Dahlke was not a party to any contract.

* * *

Kenneth Michael Lewis testified in the matter, and was called by Plaintiff. Kenneth Michael Lewis was present when Plaintiff was injured on January 9, 2001. At that time, Mr. Lewis indicated that Plaintiff was struck by a tree. When Mr. Lewis went over to assist Plaintiff, Plaintiff was calm, but was sweating, shaking and cursing. According to Mr. Lewis, Plaintiff was struck by the tree on his back, his hip, and the left side of his body. His right leg was injured at that time. Mr. Lewis wanted to take Plaintiff back out to the landing area where logs were to be picked up. Plaintiff did not want to ride on the skidder machine, as it was a rough ride. However, Mr. Lewis convinced Plaintiff to ride on the skidder along with him and his father, Ken Lewis, the owner of Lewis Logging.Once they got back to the landing area, Plaintiff got into a pickup truck and was driven to Reed City Hospital.

* * *

Currently, Plaintiff indicated that he has pain for one hour before he is able to get out of bed in the morning. He spends the rest of his day in a seated position, and is not able to stand or sit for prolonged periods of time. Plaintiff cannot stand without assistance, and currently has pain on a level of eight out of ten. Plaintiff currently uses a walker, and takes Hydrocodone for pain relief. He had been on morphine, but is not able to afford it currently.

* * *

Defendant Paris Sawmill called Ken Lewis as a witness. Mr. Lewis indicated that he offered Plaintiff a job riding in a pickup truck with him, which would have required him to measure logs and put lines on wood for someone to chop wood. Mr. Lewis did indicate that this would require him to perform these duties on an uneven surface as well as to bend over, squat and turn.

Richard Newill testified for Paris Sawmill. Richard Newill is a loss control representative for Michigan Association for Timbermen, Self-Insured Fund (MATSIF). Mr. Newill's job is to evaluate and service insured clients in the field. Mr. Newill had a conversation with Mr. Coon regarding the relationship that Paris Sawmill had with Lewis Logging. Mr. Newill told Mr. Coon that if Lewis Logging was not an independent contractor, then he expected to see a premium paid by Lewis Logging for insurance. Both Mr. Lewis and Mr. Coon assured Mr. Newill that there was an independent contractor relationship between Lewis Logging and Paris Sawmill. At that point, Mr. Newill determined that Lewis Logging did not have to pay premiums. Furthermore, upon being cross-examined by the attorney for the Logging Fund, Mr. Newill indicated that the insurance policy for Lewis Logging was terminated in late 2000.

* * *

On rebuttal, Plaintiff testified further, indicating that he is not able to put a shoe on his right leg and foot. The court visualized Plaintiff's right leg. His right foot was bent downward and appeared to be bent in that position permanently. There was also significant atrophy in Plaintiff's right leg when compared with the left leg. Plaintiff testified that he would rather have his right foot cut off as opposed to dealing with the pain that he has. However, he is not able to afford an amputation.

* * *

Defendant Paris Sawmill submitted MATSIF records as defendant Exhibit A. There is a document dated January 25, 2001 signed by Kenneth Lewis indicating that Lewis Logging provided "independent logging" services to Paris Sawmill, during the policy period 2000 to 2001. There is a letter in Exhibit A dated March 28, 2001 from Barbara Bennett, the fund administrator for MATSIF requesting that James Coon of Paris Sawmill supply records indicating the status of the logging sub-contractors, and whether they have insurance or have excluded themselves from insurance. There is also a document that MATSIF received on April 20, 2001 indicating that Lewis Logging had general liability insurance but not workers' compensation insurance at that time.

* * *

Defendant Paris Sawmill presented defendant Exhibit C to the court. There were a number of documents in Exhibit C demonstrating that Lewis Logging received monies from Paris Sawmill for logs cut. There are also copies of checks from Paris Sawmill to Ken Lewis paying money for logs cut down by Lewis Logging. There is also a form dated January 25, 2001 signed by Kenneth Lewis and his son excluding themselves from workers' compensation coverage as of that date.

* * *

Joint Exhibit 3 contains corporate records from Lewis Logging filed with the State of Michigan. There are also various tax records from numerous years relative to the corporate filing on behalf of Lewis Logging. There is also a November 6, 2000 document from the State of Michigan indicating that Lewis Logging, as of that date, was no longer insured by MATSIF due to lack of payment of premium. There are also letters from MATSIF dated July 14, 2000 and September 22, 2000 indicating that membership with the Fund would be cancelled by October 2, 2000 if a premium were not received. There is also a letter dated July 8, 1997 from Lewis Logging to MATSIF indicating that as of July 1, 1997, Plaintiff was no longer an officer and that he would be added to the workers' compensation coverage.

The magistrate then set forth his findings and conclusions along with his analysis of the facts and law used to reach those findings and conclusions. We again reprint relevant parts of those findings and conclusions:

> I find that Plaintiff has proven a work related injury arising out of and in the course of employment. I find that the incident that occurred on January 9, 2001 when a tree fell on Plaintiff caused Plaintiff's back, right hip, right leg and right foot condition including but not limited to a severely fractured right hip and resulting reflex sympathetic dystrophy, also known as complex region pain syndrome. I also find that Plaintiff has established by a preponderance of evidence a work related disability on a continuous basis pursuant to MCL 418.301 (4) relative to these work related conditions.
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> * * *
>
> I further find that Plaintiff is disabled pursuant to Sington v Chrysler Corporation, 467 Mich 144 (2002). In Sington, the Michigan Supreme Court interpreted section 301(4) of the Act, which states that "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 court in Sington held that a person suffers a disability if an injury covered under the Act results in a reduction of that person's maximum reasonable wage earning ability in work suitable to that person's qualifications and training.
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> * * *
>
> Additionally, although the owner of Lewis Logging attempted to argue that Plaintiff refused favored work, I did not find this work to be reasonable favored employment. I find that the job riding along with Mr. Lewis in a pickup truck would be impossible for Plaintiff to perform, since it involves getting out of the truck and moving over uneven surfaces, as well as marking logs and the like. Certainly, given the fact that Plaintiff is confined to a walker, it would be impossible for him to work in a setting involving the falling, cutting and measuring of timber. Even if the job were simply riding in a pickup truck, I find that Plaintiff would be unable to do that given the amount of pain and discomfort that he has on a continuing basis, along with the medication that he is required to take.
>
> * * *
>
> Therefore, I find that Paris Sawmill was engaged in an undertaking of purchasing trees from landowners, and then processing these trees into finished lumber products. Defendant Lewis Logging entered into a contract with Defendant Paris Sawmill for the purpose of executing part of that work undertaken by the principal, namely, sawing down trees and dragging them to an

area in the woods where they would be hauled back to Defendant Paris Sawmill for the furtherance of the undertaking.

The last question to be decided in this matter is whether Defendant Paris Sawmill, as Plaintiff's statutory employer is entitled to reimbursement pursuant to Section 501(4). First of all, I would agree with Defendant Paris Sawmill's interpretation of Bancroft v. Maple Rapids Lumber Mill, 1989 ACO 1071. In that case, it is clear that what is being done at the time of injury, and the relationship of the employee to the employer is determinative to whether the Logging Industry Compensation Fund should have liability. In this particular case, since I have found that Defendant Paris Sawmill is the statutory employer of Plaintiff, it is clear that Plaintiff was performing activities within the logging industry, which would automatically come under the purview of Section 501(4). Although the Logging Fund argues that it is not reimbursing a carrier, but an uninsured employer, this in fact is not the case. The employer that is paying workers' compensation benefits in this case is Defendant Paris Sawmill, who is insured by MATSIF. The Logging Industry Compensation Fund is not reimbursing Lewis Logging, but rather it will be reimbursing MATSIF, a "carrier" under Section 531(1).

Therefore, I find that Defendant Paris Sawmill is the statutory employer of Plaintiff. Furthermore, I am persuaded that Defendant Paris Sawmill is entitled to reimbursement from the Logging Industry Compensation Fund pursuant to Section 531(1).

I further find that Defendant Paris Sawmill shall be responsible for reasonable and necessary medical treatment related to Plaintiff's back, right hip, right leg, and right foot condition including but not limited to reflex sympathetic dystrophy.

Defendants Paris Sawmill, Inc. and Michigan Association of Timbermen, Logging Industry Compensation Fund (Paris), raised three issues for our review. First, Paris questions whether the magistrate correctly found that Paris is a statutory employer, and as such, is entitled to reimbursement pursuant to Section 501(4). However, before addressing this question, we will address Paris' other issues, which are: 1) Whether there is competent, material and substantial evidence to support the magistrate's finding of continuing disability and; 2) Whether the magistrate erred in finding Paris was plaintiff's statutory employer pursuant to Section 171(1).

Disability

Paris argues that there was not sufficient *medical* testimony to support the magistrate's finding of a continuing disability from the January 9, 2000 injury. This defendant asserts that because the medical testimony offered by plaintiff was based on his physical condition as it was in 2001 and 2002, there is no evidence to sustain the magistrate's finding after a trial in 2004.

Plaintiff correctly points out that medical testimony is not required to sustain a finding of disability. Plaintiff's testimony alone can be the competent, material and substantial evidence

necessary for a successful claim. *Sanford v Ryerson & Haynes, Inc*, 396 Mich 630 (1976). While it is true that Dr. Engels had not seen plaintiff since September 24, 2001, and testified that it is possible for the RSD, which he diagnosed, to improve, it is not plaintiff's burden to prove that recovery has not occurred, rather, it is defendant's burden to prove that it has. *White v Michigan Consolidated Gas Co.*, 352 Mich 201 (1958).

Paris also argues that there is not sufficient evidence to sustain the magistrate's finding that plaintiff was unable to perform the reasonable employment offered by Lewis Logging, Inc. (Lewis). The testimony regarding the offered employment differed significantly between plaintiff and his former boss, Kenneth Michael Lewis. Mr. Lewis testified that he offered to pay plaintiff his full wages for simply riding along with him in the truck to keep him awake. He stated that he traveled several hundred miles.[1] Plaintiff, on the other hand, testified that he was advised he would have to mark logs, as well as riding along in the truck. This activity would be impossible for plaintiff to perform, given that he is still in need of a walker.[2] The magistrate accepted plaintiff's description, over that of Mr. Lewis.

We generally defer to the magistrate's determination on credibility, as long as it has support on the record. *Milazzo v Frankenmuth Bavarian Inn*, 2002 ACO #70. We are very cautious as a reviewing body, not to substitute our opinion as to how the facts should be interpreted, for that of the trier of fact. Particularly, as the magistrate has the opportunity to view the witnesses and make determinations as to credibility.

The magistrate found that the offer was not reasonable work, as it would involve getting out of the truck and moving over uneven surfaces, as well as marking logs.[3]

We find the magistrate's conclusions to be well founded and supported by the requisite evidence. We affirm his finding of continuing disability.

Statutory Employer

The Act provides for protection of injured workers who are employed by uninsured employers in several ways, one of which is section 171(1):

> Sec. 171. (1) If any employer subject to the provisions of this act, in this section referred to as the principal, contracts with any other person, in this section referred to as the contractor, who is not subject to this act or who has not complied with the provisions of section 611, and who does not become subject to this act or

[1] Trial transcript July 13, 2004, pp 141-143.

[2] Id pp 208-212.

[3] The magistrate did make note, that even if he had accepted the testimony that the job required only riding in a truck, he would have found plaintiff unable to perform such job because of the amount of pain and discomfort he experiences on a continuing basis, as well as the medication he is required to take.

> comply with the provisions of section 611 prior to the date of the injury or death for which claim is made for the execution by or under the contractor of the whole or any part of any work undertaken by the principle, the principle shall be liable to pay to any person employed in the execution of the work any compensation under this act which he or she would have been liable to pay if that person had been immediately employed by the principal. If compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the person under the employer by whom he or she is immediately employed. A contractor shall be deemed to include subcontractors in all cases where the principal gives permission to work or any part thereof be performed under subcontract.

Paris was found to be such a statutory employer by the magistrate. Paris argues that Lewis was open to the business of others than Paris. It had business cards and produced its own timber on occasion for sale, and cut for other producers. Paris distinguishes between its situation and a contractor building a house. It asserts that the situation in the instant case is an industry standard in which independent contractors are hired to bring wood to the landing, and the wood is purchased from them for the purpose of processing. It argues that the magistrate refused the distinction between services and contracts for goods. "Because the defendant Lewis Logging never owned the logs, the magistrate felt that this was a contract for services and not goods."[4]

In order to establish liability as a statutory principal, there must be a contract between a principal who is covered by the Worker's Disability Compensation Act and a contractor who is not covered by the Act, and the claimant's injury must occur during execution under the contract of work that was undertaken by the principal. *Williams v Lang (After Remand),* 415 Mich. 179, (1982). *Viele v DCMA Intern, Inc,* 211 Mich.App. 458, (1995).

Here we have a contract between Paris Sawmill, Inc. and Lewis Logging Inc. to bring the timber, owned by Paris, out of the woods. It is important to note that Lewis never owned the timber. Paris is a principal covered by the Worker's Disability Compensation Act and Lewis is a contractor who is not covered. Plaintiff's injury occurred during execution under the contract of work undertaken by the principal, that is, to get the timber to the landings.

We believe that the magistrate has properly applied the law to the facts of this case in coming to the ultimate conclusion that Paris is the statutory employer, pursuant to section 171(1).

[4] Defendant Paris Sawmill, Inc. brief rec'd May 5, 2005.

The Fund's Liability

Sections 501(4) and 531 define reimbursement to the logging industry by the state through the Logging Industry Compensation Fund (Fund):

> Sec. 501. (1) A self-insurers' security fund and a second injury fund are created.
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> (2) A silicosis, dust disease, and logging industry compensation fund is created.
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> (3) An uninsured employer's security fund is created. The fund shall succeed to all of the assets, if any, of the former uninsured employer's security account of the workplace health and safety fund created in former section 723.
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> (4) As used in this chapter, "employment in the logging industry" means employment in the logging industry as described in the section in the workmen's compensation and employers liability insurance manual, entitled, "logging or lumbering and drivers code no. 2702," which is filed with and approved by the commissioner of insurance.
>
> Sec. 531. (1) In each case in which a carrier including a self-insurer has paid, or causes to be paid, compensation for disability or death from silicosis or other dust disease, or for disability or death arising out of and in the course of employment in the logging industry, to the employee, the carrier including a self-insurer shall be reimbursed from the silicosis, dust disease, and logging industry compensation fund for all sums paid in excess of $12,500.00 for personal injury dates before July 1, 1985, and for all compensation paid in excess of $25,000.00 or 104 weeks of weekly compensation, whichever is greater, for personal injury dates after June 30, 1985, excluding payments made pursuant to sections 315, 319, 345, and 801(2), (5), and (6) which have been paid by the carrier including a self-insurer as a portion of its liability.
>
> (2) A benefit paid as a result of disability or death caused, contributed to, or aggravated, by previous exposure to polybrominated biphenyl shall entitle a carrier including a self-insurer to reimbursement from the silicosis, dust disease, and logging industry compensation fund pursuant to this act, if the exposure occurred before July 24, 1979, and arose out of and in the course of employment by an employer located in this state engaged in the manufacture of polybrominated biphenyl. To be reimbursable, the disability or death shall have occurred or become known after July 24, 1979.
>
> (3) All of the funds under this chapter shall have a right to commence an action and obtain recovery under section 827.

While not conceding that the magistrate properly found Paris to be a statutory employer pursuant to Section 171, Paris argues that if liable pursuant to that Section, it is entitled to the same protection and benefit that an immediate employer would have under Sections 501(4) and 531. Paris argues that the magistrate properly relied on *Bancroft v Maple Rapids Lumber Co,* 1989 ACO 1071, in finding that " . . . it is clear that what was being done at the time of injury and the relationship with the employee to employer . . . " are determinative as to whether the Fund should have liability.

Paris argues it is irrelevant what its own business is, as the statutory employer stands in the shoes of the immediate employer. Plaintiff was engaged in logging at the time of the injury. It is the work that plaintiff was performing, and not the nature of the business that determines application of 501(4). Further, Paris argues that even though "logging" may not be its sole business or even a major part of its business, it did have its own logging crew and did pay a premium based on 2702 employees, thus making it eligible for reimbursement from the Fund.

In its brief, the Fund argues that the magistrate erred in focusing exclusively on the activity that plaintiff was performing at the time of his injury, as opposed to the industry that employed him. Paris' primary industry is milling, not logging. The Fund acknowledged that plaintiff was in fact engaging in activity at the time of injury within the scope of the statutory definition of "logging".

The Court of Appeals has recently issued a decision in *Jager v Rostagno Trucking Co, Inc*, ____ Mich App ____ (2006), addressing that very issue. In *Jager,* the Court reversed the Workers' Compensation Appellate Commission (WCAC), holding instead that the statute at issue here contains a specific definition of what constitutes employment in the logging industry. "Given the clear language, which is not subject to interpretation, *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2nd 663 (2002), Jager's[5] injuries arose out of and in the course of his employment in the logging industry under MCL 418.531(1) because, when the accident occurred, he was transporting logs to a mill as specified in code no. 2702."

The Fund, in its argument to this Commission, quotes from the Court of Appeals opinion in *Michigan Manufacturers Association v Director of the Workers' Disability Compensation Bureau,* 134 Mich App 723 (1984):

> The logging industry is a viable and important segment of the state's industrial base and the creation of a statutory fund to preserve that industry is a permissible legislative action. The Fund, to which all Michigan employers are required to contribute, but which has the effect of shielding the logging industry from the potentially ruinous compensation rates is rationally related to that legislative objective.[6]

[5] Mr. Jager was injured while employed as a truck driver, working for a trucking company, which transported logs. Mr. Jager's employer's business was concededly not logging.

[6] *Michigan Manufacturers Association, supra* at 735.

In coming to its conclusion the *Jager* Court rejected the argument relied upon by the WCAC, that the Legislature in forming the Fund, intended to protect only one industry, that being the logging industry.

The above quoted language from the *Jager* Court's published opinion is binding on us and gives us the direction and guidance to resolve this question. Clearly, plaintiff here was involved in an activity at the time of his injury which was within the scope of the statutory definition of "logging". The Court has now held that such activity is sufficient to bring this claim within Sections 501(4) and 531. As such, the Fund is liable for reimbursement to Paris, as a statutory employer.

Plaintiff's cross appeal

Plaintiff argues on cross appeal that the magistrate abused his discretion in not allowing an amendment to his application to include a claim for total and permanent disability. Plaintiff argues that there was no prejudice to defendants because he had alleged specific loss of the right leg which falls under the same Section of the Act. The magistrate had denied the post trial motion to amend, citing prejudice to the Second Injury Fund (T & P Provisions).

The Fund replied, asserting that notice to one of the funds is not valid against another. The Fund pointed out that the Logging Industry Compensation Fund and the Second Injury Fund (T & P Provisions) are distinct entities.[7]

The Second Injury Fund (T & P Provisions) was not a party to the instant action. The proofs and defenses are separate and distinct for a claim of specific loss and a claim of total and permanent disability. The Second Injury Fund would have no liability for a specific loss under Section 521, as it does for a total and permanent disability. There would be no reason for the Second Injury Fund to be noticed, to appear or to defend against a claim for a specific loss.

The magistrate did not abuse his discretion in denying plaintiff's untimely motion to amend and add a claim for total and permanent disability.

However, it is clear that plaintiff did allege a specific loss to his right leg. The magistrate did not address that allegation. For that reason, we remand for a finding as to whether, at the time of trial, plaintiff had established a specific loss of his right leg, pursuant to MCL 418.361(2)(k) and *Cain v Waste Management*, 472 Mich 236 (2005).

The magistrate's decision is affirmed as written, however, the matter is remanded for further findings on the issue of specific loss of the right leg.

[7] MCL 418.501.

We do not retain jurisdiction.

Commissioner Will concurs.

Commissioner Pryzybylo concurs in results only.

Martha M. Glaser Chairperson

Rodger G. Will Commissioner

STATE OF MICHIGAN
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DEFENDANTS.

This cause came before the Appellate Commission on a claim for review filed by defendants Paris Sawmill Incorporated, Michigan Association of Timbermen and Silicosis, Dust Disease and Logging Industry Compensation Fund and plaintiff's cross appeal from Magistrate Christopher P. Ambrose's order, mailed November 18, 2004. The Commission has considered the record and counsel's briefs, and believes that the magistrate's order should be remanded. Therefore,

IT IS ORDERED that the magistrate's order is affirmed in part and remanded for further findings on specific loss of plaintiff's right leg. We do not retain jurisdiction.

Martha M. Glaser Chairperson

Rodger G. Will Commissioner

Gregory A. Przybylo Commissioner