



MO Comp News

- Peter Thomas Archer, first grandson, before the election

December 2016

Advice from Grandpa

It has been quite the year. After turning 50 in June of 2015, I went thru the pain of losing my Dad, had a little heart scare that ended up being just a heat stroke, buried a good friend who had battled cancer, and recently had the joy of the birth of my first grandson on October 9th in Phoenix. Did I mention my second son entered the seminary and my daughter Claire announced she was going to join the circus? Ok, I made up the news on Claire. I have been warning contemporaries that turning 50 is huge as you start attending a lot of funerals but you also start attending a lot of weddings as well. Your priorities and perspective change, plain and simple.

Professionally, the firm I started in 1998 is doing great. We are having a great year with a stable and awesome staff with associates Rodney and Tim doing a great job working with Pat, Dennis and me. We have won more cases than we have lost and in the current climate in Missouri, that is saying a lot. More important than the win/loss record at the Division of Worker's Compensation is the gratitude we get from adjusters, employers, and stakeholders in the system for the way we professionally approach our jobs. Our reputation matters as it reflects upon the reputation of the clients we represent, and we get that.

Here is a list of advice this new Grandpa has learned just these past few years provided free of charge and perhaps unfiltered to some extent:

1. Any Claimant in Missouri over the age of fifty who had any type of surgery might be permanently and totally disabled, or at least might be talked into claiming to be so by their Attorney.
2. A bacon cheeseburger and fries, at Five Guys Burger and Fries, is 67 smart point on the Weight Watchers plan. A corollary - WW works well if you do more than go to the meeting and actually do the plan.
3. According to this Commission, payment of medical bills by a self funded group health program might still be a collateral source and the original bills can and will be ordered as compensation payable to the Claimant. Be aware of this exposure for duplicate payment.
4. You can actually hurt yourself playing Frisbee (Disc) golf trying to throw too hard.
5. If you are a Claimant who wants to pursue permanent total disability, stop working for cash as an exotic dancer in East St. Louis or at least make sure your Facebook page is private.
6. Do not get your 2010 Honda Odyssey van repaired after your daughter runs it into your garage. If it is safe to drive, that is all that matter.....in addition to your daughter not getting hurt.
7. Do not set up a private e-mail server if you become the Secretary of State.
8. Do not make lewd and degrading sexual comments ever, especially if you plan on running for president.
9. The payment of unemployment compensation is a total bar to the claim for Temporary Total Disability for the period unemployment compensation benefits are paid. It is not just dollar for dollar offset.
10. The best quote from the Court of Appeals this year in the field of workers' compensation, who actually was quoting the Commission: "The Commission reasoned that to allow recovery where an employee is injured on the employer's property while going to and from lunch, but to disallow it when the employee is injured on the employer's property during lunch would be to **carve out artificial islands of non-compensability** at the workplace, which islands have indistinct geographic and temporal boundaries."

Stupid Defenses and Expense

Mantia v MODOT, Eastern District

Claimant worked for the Missouri Department of Transportation for 20 years. Her job included cleaning up and providing assistance at motor vehicle accidents up to four times a week and later she and her crew were assigned only the worst accidents. Claimant witnessed catastrophic scenes of dismemberment and death. She worked over 1,000 scenes. She developed what all evaluating and treating physicians diagnosed PTSD related to this work.

The Employer chose to defend the claim based upon the argument that all highway workers doing her job are similarly exposed and therefore the exposure was not “extraordinary and unusual” as required in section 287.120.8. Really? In this climate, you take that position with these facts?

The court affirmed the awarding of benefits provided by the commission finding for the first time that section 287.120.8 does not require the “unusual and extraordinary” stress to be determined by comparison with other coworkers similarly situated.

Lisa Cook v MHTC, Southern District

Claimant was a 55 year old secretary who worked for the Missouri Highway and Transportation Commission since 1997 with 90% of work entailing computer work. Employer’s evaluating doctor stated that the claimant’s work was a risk factor for carpal tunnel syndrome but was not the prevailing factor. The claim was defended and tried.

Employer was found liable for 20% PPD of each wrist, for the lost time the Claimant had for the surgeries she underwent and they had to pay to the Claimant the value of the medical expenses. There was insufficient evidence or testimony from the defense that the bills were paid by an Employer self funded group health program.

The case was appealed not only to the Commission but to the Court of Appeals as well. Maximum benefits awarded and maximum legal expenses incurred.

Editor’s Comment- These are the type of cases that I simply do not understand. The Defense Attorneys had to have known that they were trying cases they had no hope in winning for their clients. Did they try them simply for the billing opportunity? Was it their self interest that clouded their advice or was it an obstinate Employer or adjuster? Kicker is the case law precedent the *Mantia* case in particular creates. Psyche cases are now easier.

The Built in deductible of 287.957

Senate bill 700 was not vetoed by Governor Nixon and therefore became law effective 8-28-16. Among some changes to volunteer fire districts made by the senate bill, was a change made to section 287.957 RsMo creating a higher “deductible” for employers who want to pay medical bills directly for a work related injury. The \$1,000 limit that was in the law since 2005, was modified to be based upon an annual calculation. Any Employer can pay for any single injury that involved no compensable lost time with no formal claim for compensation being filed for treatment that costs less than the yearly calculated amount.

Interpreting the new language and the calculation to determine the current deductible limit, **the current cap for 2016 is \$3,200, with it rising to \$3,300 in 2017** with no impact on the Employer’s experience modification.

To be recalled is the obligation to report the injury to the Division of Worker’s Compensation on a Form 1 and the obligation under contract to report the injury to your carrier or third party administrator. Despite the same sounding like a good deal, NCCI changed the amount a medical only gets added into the experience modification formula suggesting it will not make financial sense for most Employers to utilize this provision. It might only make sense in the construction trade where keeping a low “mod” is crucial to bidding certain jobs.

Odds and Ends

- I enjoyed speaking at the **Missouri Self Insured Association** Annual Missouri Workers’ Compensation seminar held in St Louis in September speaking on the “**Pitfalls of Strict Construction**” I received great reviews but must admit that I did hand out Wisconsin beer from New Glarus Brewery during my talk.
- For a 17th year, the **Division of Worker’s Compensation** has asked Attorney Mike Korte and I back to speak at their seminar in June of next year again at the Lake of the Ozarks.
- We have seen some new Administrative Law Judges get appointed as Governor Nixon will be leaving his post. Attorneys **Lorne Baker, Joe Keaveny, and Marvin Teer Jr.**, have already or will shortly be assigned as additional St. Louis Administrative Law Judges.
- With the election results, Missouri work comp reform will be coming. We will see how effective it will be this time around.
- If interested in having me out for some training, case law update or to talk on litigation management, call me at **314-241-2481 ext 101**