IN THE
COURT OF APPEALS OF MARYLAND

No. 60
September Term, 2006

PAUL DEL MARR,

Appellant

v.

MONTGOMERY COUNTY, MARYLAND,

Appellee

Certiorari from the Court of Special Appeals

BRIEF OF AMICI CURIAE, MARYLAND DEFENSE COUNSEL, INC. AND MARYLAND SELF-INSURERS' AND EMPLOYERS' COMPENSATION ASSOCIATION

Robert C. Erlandson
Angela Garcia Kozlowski
Lord & Whip, P.A.
36 South Charles Street,
Tenth Floor
Baltimore, Maryland 21201
Attorneys for Amici Curiae,
Maryland Defense Counsel, Inc., and
Maryland Self-Insurers' and Employers'
Compensation Association

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES……..……ii

STATEMENT OF THE CASE……...……1

QUESTION PRESENTED……...……...1

ARGUMENT……...…1

The Workers' Compensation Act is predicated upon a weeks-based system of compensation as held by the Court of Appeals in Ametek. ……1

The Court of Special Appeals' decision in Norris v. United Cerebral Palsy was an incorrect application of the law and has been implicitly overturned by Ametek and by the Court of Special Appeals' decision in the Del Marr case below……...3

The appeal of an initial award and the reopening of an award for worsening of condition represent two very different scenarios, and, contrary to the Petitioner's assertions, the two need not be lumped together for purposes of creating a weeks-based credit rule……5

The Serious Disability Statute, Section 9-630, is instructive as to the weeks-based framework of the Workers' Compensation Act. There is no basis for asserting that the Act has a dollar-based framework contained anywhere within it. Without any statutory language supporting a contrary position, credits for the payment of prior awards should be based upon the weeks previously paid. ……...8

Evidence of unenacted legislation cannot be used to surmise legislative intent except in the rarest of circumstances, as bills fail to be passed into law for numerous reasons unconnected with their substance. ……...10

CONCLUSION……..14

STATEMENT OF TYPE FONT AND TYPE SIZE…….14

CERTIFICATE OF SERVICE……..15

APPENDIX……..Apx. 1 et seq.

TABLE OF AUTHORITIES

Cases — Page

Ametek, Inc. v. O'Connor, 364 Md. 143, 771 A.2d 1072 (2001)……passim

Anne Arundel County v. Tiernev, 132 Md. App. 149, 751 A.2d 35 (2000)…….3

Automotive Trade Ass'n v. Ins. Comm'r, 292 Md. 15, 437 A.2d 199 (1981)……11

Chesapeake Charter, Inc. v. Anne Arundel County Bd. Of Educ., 358 Md. 129, 747 A.2d 625 (2000)……..8

Del Marr v. Montgomery County, 169 Md. App. 187, 900 A.2d 243, cert. granted 2006 Md. LEXIS 622 (Md., Sept. 13, 2006)…….passim

Harris v. Board of Educ., 375 Md. 21, 825 A.2d 365 (2003)…….3

Johnson v. Mayor & City Council of Balt. City, 387 Md. 1, 874 A.2d 439 (2005)……8

Maizel v. Maizel & Shapiro Enter., 25 Md. App. 1, 332 A.2d 261, cert. denied, 275 Md. 753 (1975)……...3,4,9

Moore v. State, 388 Md. 623, 882 A.2d 256 (2005)……..11

Norris v. United Cerebral Palsy of Cent. Md., 86 Md. App. 508, 587 A.2d 557 (1991)……..passim

Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995)……..8

Philip Elecs. N. Am. v. White, 348 Md. 209, 703 A.2d 150 (1997)……..passim

Tucker v. Fireman's Fund Ins. Co., 308 Md. 69, 517 A.2d 730 (1986)……..8

Statutes and Codes

COMAR 14.09.01.07 (2006)……...1
Md. Code Ann., Lab. & Empl. § 9-627(d)(1)(2006)……...2
Md. Code Ann., Lab. & Empl. § 9-627(k) (2006)……..2,12
Md. Code Ann., Lab. & Empl. § 9-628 (2006)……10
Md. Code Ann., Lab. & Empl. § 9-629 (2006)……10,12
Md. Code Ann., Lab. & Empl., § 9-630(d) (2006)…….8.9,10

Md. Code Ann., Lab. & Empl., § 9-729 (2006)……13

Additional Authorities

House Bill 270, 345th Leg., (Md. 1956)……..9
House Bill 239, 379th Leg., (Md. 1987)……..……10
House Bill 384, 420th Leg., (Md. 2005) ……...11
House Bill 454, 420th Leg., (Md. 2005) ……...11
House Bill 461, 420th Leg., (Md. 2005)……..……11
House Bill 489, 420th Leg., (Md. 2005)……..……11
House Bill 515, 420th Leg., (Md. 2005)..……..……11
House Bill 634, 420th Leg., (Md. 2005)...…..……...11
House Bill 635, 420th Leg., (Md. 2005)…...……11
House Bill 636, 420th Leg., (Md. 2005) ...……12
House Bill 668, 420th Leg., (Md. 2005)……12
House Bill 1069, 420th Leg., (Md. 2005)……..12
House Bill 1085, 420th Leg., (Md. 2005)……...……...12
House Bill 1163, 420th Leg., (Md. 2005) ……...……..12
House Bill 1265, 420th Leg., (Md. 2005)…...……...12
House Bill 1289, 420th Leg., (Md. 2005)……..12
House Bill 1460, 420th Leg., (Md. 2005)..……12
Senate Bill 33, 420th Leg., (Md. 2005)…..……12
Senate Bill 34, 420th Leg., (Md. 2005)……...……..12
Senate Bill 46, 420th Leg., (Md. 2005)……...……..12
Senate Bill 128, 420th Leg., (Md. 2005)……...12
Senate Bill 190, 420th Leg., (Md. 2005)……..12
Senate Bill 227, 420th Leg., (Md. 2005)……...12
Senate Bill 264, 420th Leg., (Md. 2005)…...……12
Senate Bill 396, 420th Leg., (Md. 2005)……..12
Senate Bill 490, 420th Leg., (Md. 2005)……...12
Senate Bill 491, 420th Leg., (Md. 2005) ……...……...12
Senate Bill 828, 420th Leg., (Md. 2005)……...12
Senate Bill 856, 420th Leg., (Md. 2005)……...……12

Md. Sen. J. of Procs. 976, 345th Leg., Mar. 18, 1956 (Md. 1956)……...……..9

STATEMENT OF THE CASE

The Maryland Defense Counsel, Inc., and Maryland Self-Insurers' and Employers' Compensation Association, Amici Curiae on behalf of Montgomery County, Maryland, adopt and incorporate the Statement of the Case set forth in the Respondent's brief.

QUESTION PRESENTED

WHETHER THE MARYLAND LEGISLATURE HAS ESTABLISHED A WEEKS-BASED OR DOLLAR-BASED FORMULA FOR CREDITING A PRIOR AWARD UPON REOPENING FOR WORSENING OF CONDITION?

ARGUMENT

The Workers' Compensation Act is predicated upon a weeks-based system of compensation as held by the Court of Appeals in Ametek.

There exists "a clear and unambiguous demonstration of a legislative commitment to the payment of permanent partial disability benefits within a weekly framework." Ametek v. O'Connor, 364 Md. 143, 150, 771 A.2d 1072, 1076 (2001) (citing Philip Electronics N. Am. v. Wright, 348 Md. 209, 218, 703 A.2d 150, 154 (1997); see also Del Marr v. Montgomery County, 169 Md. App. 187, 900 A.2d 243, cert. granted, 2006 Md. LEXIS 622 (Md., Sept. 13, 2006). To that end, a claimant is assigned a compensation rate based upon his or her average weekly wage, computed as an average of the thirteen weeks' wages prior to the injury. COMAR 14.09.01.07(A)(1) (2006). This compensation rate then serves as the basis for a claimant's weekly temporary total disability benefits, if applicable, and for the claimant's permanent partial disability.

Permanent partial disability is broken into two categories: specifically enumerated body parts, known as "scheduled members," and all remaining injuries, known as "other cases." Each scheduled member is assigned a certain number of weeks of disability, from which the claimant's percentage of partial disability is calculated. For example, an arm is worth 300 weeks of disability, a foot is worth 250 weeks of disability, and so on. Md. Code Ann., Lab. & Empl. § 9-627(d)(1) (2006). On the other hand, non-scheduled members, or "other cases" injuries merit permanent partial disability awards up to a maximum of 500 weeks of compensation. Md. Code Ann., Lab. & Empl. § 9-627(k) (2006). It is noteworthy that the Act does not speak in terms of a maximum dollar amount of compensation. The maximum compensation is, instead, derived by multiplying the claimant's own compensation rate by the weeks of compensation he has been awarded.

The Maryland Legislature intended that the permanent partial disability scheme be set up in a weeks-based format, as held by this Court in Ametek and by the Court of Special Appeals below in the instant case. Although the Act was designed "to protect workers and their families from hardships resulting from work-related injuries," Philip Elecs., 348 Md. at 226, 703 A.2d at 158, a court "may not stifle the plain meaning of the Act, or exceed its purposes, so that the injured worker may prevail." Id. at 217, 703 A.2d at 154. Additionally,

> Just as predictability and administrative ease are important from the standpoint of the timing of actions, so too are they important in establishing the rules governing the award of permanent partial disability benefits. It simply will not do to have

> different rules, depending upon whether it is the claimant or the employer to whom the result is inequitable.

Ametek, 364 Md. at 160, 771 A.2d at 1081.

The Court of Special Appeals' decision in Norris v. United Cerebral Palsy was an incorrect application of the law and has been implicitly overturned by Ametek and by the Court of Special Appeals' decision in the Del Marr case below.

"In other areas of the law, where a judicially created standard has not been uniformly followed, has been inconsistently applied, and has treated differently persons who were similarly situated, this Court has not hesitated to change or abandon the standard." Harris v. Board of Educ., 375 Md. 21, 50, 825 A.2d 365, 382 (2003). "For the reasons noted by the Court of Appeals in Ametek, we cannot embrace such inconsistency in interpreting the Act." Del Marr, 169 Md. App. at 206, 900 A.2d at 255.

Prior to the Court of Appeals' decision in Ametek, the two appellate courts in Maryland had heard several cases pertaining to credits on appeal and on reopening in which they had alternately applied either a dollar-based or weeks-based credit. See Philip Elecs., 348 Md. 209, 703 A.2d 150 (1997) (holding weeks-credit applicable to award modified on appeal from 333 weeks [Tier 3] to 200 weeks [Tier 2]); Anne Arundel County v. Tierney, 132 Md. App. 149, 751 A.2d 35 (2000) (holding dollar-credit applicable to reopening from 58 _ weeks [Tier 1] to 75 weeks [Tier 2]); Norris v. United Cerebral Palsy of Central Md., 86 Md. App. 508, 587 A.2d 557 (1991) (holding dollar-credit applicable to reopening from 50 weeks [Tier 1] to 150 weeks [Tier 3]); see also Maizel v. Maizel & Shapiro Enter., 25 Md. App. 1, 332 A.2d 261, cert. denied, 275 Md.

753 (1975) (holding weeks-credit applicable to reopening from standard disability [now Tier 2] rate to serious disability [now Tier 3] rate due to statutory language).

The Ametek Court recognized the differing results that existed from the Philip Electronics v. Wright, Tierney and Norris decisions. In each of these earlier decisions, the court had decided in a manner that favored the Claimant, finding alternately that the Employer should be entitled to a weeks-based credit (Philip Electronics) or a dollar-based credit (Norris, Tierney) depending on which manner of calculation would benefit the Claimant. While the Act's stated purpose is to protect injured workers, these decisions had the effect of making it impossible to create a predictable rule for future cases. As noted by the Court of Special Appeals, the parties in this case do not dispute that reopened awards moving from and to the third tier of compensation are credited based upon the weeks previously awarded. Del Marr, 169 Md. App. at 197, n.9, 900 A.2d at 249, n.9; see also Maizel, 25 Md. App. at 6, 332 A.2d at 264 (finding weeks-based credit for prior award).

It would be illogical to create a separate rule for credits when awards are for less than 250 weeks of compensation than when they are for 250 weeks or more. A weeks-based system for crediting the overpayment or underpayment of an earlier award on reopening is a predictable and logical rule when all awards of compensation are paid in a weekly format. The Ametek Court recognized that this weeks-based format would benefit the Claimant in certain instances and the Employer in others, but it would, at

least, be a clear and comprehensible rule that could be easily applied in all situations. Ametek, 364 Md. at 160, 771 A.2d at 1081.

Additionally, the Petitioner fails to address the situation where the Employer might file issues for reopening because the Claimant's condition has improved since his initial award. This situation may arise in several ways, such as in situations where the employer obtains additional surveillance showing that the Claimant can engage in activities that he could not do before or when the Claimant undergoes additional medical treatment that ameliorates his condition. In such a situation, the Claimant is now less disabled than before his initial permanency award, and his disability award should be reduced. As noted by the Ametek Court, when an award is to be reduced, the Claimant benefits more from a weeks-based credit than from a dollar-based credit, which would force such a claimant to make the opposite argument as the one being advanced by the Petitioner in this case. See Ametek, 364 Md. at 156-57, 771 A.2d at 1080 (noting that parties were advancing opposite positions from Philip Electronics parties). This case-by-case situation was something the Ametek Court sought to avoid by finding a standard weeks-based formula for calculating credits due to an Employer.

The appeal of an initial award and the reopening of an award for worsening of condition represent two very different scenarios, and, contrary to the Petitioner's assertions, the two need not be lumped together for purposes of creating a weeks-based credit rule.

As noted by the Court of Special Appeals below, there are two ways in which an award can be either increased or decreased: via judicial review of the initial award or via

a reopening at a later date. Del Marr, 169 Md. App. at 204-05, 900 A.2d at 254. Although the Petitioner would differ, these two avenues present very different scenarios. When an award is modified via the judicial review process, only one award exists. The modified award has the effect of correcting the initial award, whether it be an increase or decrease, and the legislature has logically amended the Workers' Compensation Act to allow for a dollar-based adjustment in that situation. Clearly, the weeks-based framework does not even come into play. In the appeal process, the judicially-modified award replaces the Commission's award as if it were the initial award. The Claimant is rightfully due the compensation rate and number of weeks of compensation set forth in the modified award, as this is his only final award of compensation for permanent partial disability, once the Commission and subsequent court proceedings have concluded.

In contrast, the reopening of a claim represents the allegation that the Claimant's condition worsened or improved on some date following the date of the initial award. In this situation, the Claimant's condition initially stabilized at a much lower permanent disability level, at which time he received his initial award. The condition then worsened, and the Claimant filed issues with the Workers' Compensation Commission to determine the extent, if any, that his initial permanent condition had deteriorated. If the Commission found that the Claimant's condition had worsened since the initial award, the Claimant would be entitled to an award finding a new level of disability and the Employer would be entitled to a credit for the award already paid. As noted above, the Claimant's initial award would have been stated thus, "… pay to Claimant [compensation

rate] for a period of [number] of weeks." The new award would state the same language, with the compensation rate and number of weeks either increased or decreased.

To allow the Claimant to receive a dollar-based credit in a reopening case would permit the Claimant to receive a windfall for the period when he was less hurt. See Del Marr, 169 Md. App. at 206, 900 A.2d at 255 (concluding such a result would be "illogical"). When a Claimant receives a 10 percent permanent partial disability award under "other cases," equivalent to 50 weeks of compensation, that is subsequently modified on appeal to a 20 percent disability, equivalent to 100 weeks, his condition has not "worsened." His initial disability is 20 percent under "other cases," and he should be compensated for that disability. However, if his initial award was only 10 percent under "other cases," equivalent to 50 weeks of compensation at the lower rate, and he subsequently underwent additional medical procedures, he might be able to raise issues for worsening of condition. Assuming that he then received an award of 20 percent under "other cases," the question becomes whether this Claimant should be compensated for 100 weeks at the second-tier rate, even though his condition was significantly less severe for the first half of that compensatory period. Since the Claimant's condition was fixed at two separate points—first following the initial award and then following the reopened award—his compensation should reflect his status at the times the awards were issued. The Claimant had a period of time where his disability merited an award of 50 weeks of compensation. He should not then be re-compensated for those 50 weeks based upon the compensation rate that he now merits with an award of 100 weeks of compensation.

Instead, he should be compensated at the higher rate only for the condition that has, in fact, worsened.

The Serious Disability Statute, Section 9-630, is instructive as to the weeks-based framework of the Workers' Compensation Act. There is no basis for asserting that the Act has a dollar-based framework contained anywhere within it. Without any statutory language supporting a contrary position, credits for the payment of prior awards should be based upon the weeks previously paid.

Words in a statute should be given their ordinary and common meaning. Johnson v. Mayor & City Council of Balt. City, 387 Md. 1, 11, 874 A.2d 439, 445 (2005) (quoting Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995)). In order to determine the ordinary meaning of a term, the court must also consider the context within which the term exists. Johnson, 387 Md. at 11-12, 874 A.2d at 445. When a statute is clear on its face, the inquiry as to its meaning ends there. Oaks v. Connors, 339 Md. at 35, 660 A.2d at 429. If the statute does not have a clear meaning, or is susceptible of more than one interpretation, the court may turn to the legislative history for guidance. Tucker v. Fireman's Fund Ins. Co., 308 Md. 69, 75, 517 A.2d 730, 732 (1986). However, the court must always be mindful of avoiding any statutory construction that would lead to an absurd or illogical result. Chesapeake Charter, Inc. v. Anne Arundel County Bd. Of Educ., 358 Md. 129, 135, 747 A.2d 625, 628 (2000).

The Maryland Legislature recognized the potential problem of overcompensation for a less-serious injury when enacting Section 36(4) in 1956, otherwise known as the "serious disability" statute, now codified at Maryland Code Annotated, Labor and Employment, Section 9-630. Prior to the enactment of this provision, all compensation

was paid at a single rate. The sponsors of House Bill 270, a bill that would become Section 9-630, recognized that those injuries meriting 250 weeks of disability or more were so disabling that they should be compensated at a higher rate than the standard compensation rate. See H.B. 270, 345th Leg., (Md. 1956). However, the members of the Maryland Senate introduced an amendment to House Bill 270 that would prohibit claimants from getting additional compensation for weeks already paid when an initial award is reopened and serious disability subsequently awarded. Md. Senate Journal of Proc. 976, 345th Leg., Mar. 18, 1956 (Md. 1956). House Bill 270 was duly amended and passed into law. As a result, when an initial permanency award is reopened from the first or second tier and the Claimant receives a new award in excess of 250 weeks, the Claimant receives an award at the serious disability rate only for those weeks that were newly awarded. Md. Code Ann., Lab. & Empl. § 9-630(d); see Maizel v. Maizel & Shapiro Enter., 25 Md. App. 1, 6, 332 A.2d at 264, cert. denied, 275 Md. 753 (1975) (holding that the serious disability statute "does not provide for a re-adjustment of compensation previously paid).

The Petitioner would argue that this statute only applies to cases where an award exists in excess of 250 weeks, but the logic of this is lost. First of all, when Section 9-630(d) was first enacted, there was no need for any such language anywhere else in the statute. There were but two levels of compensation, the standard rate and the new serious disability rate. The reopening language in the new serious disability statute existed to protect against the possibility that claimants would receive a windfall when moving from,

for example, a 45 percent disability, or 245 weeks, to a 50 percent disability, or 250 weeks. Such claimants should only be compensated at the higher rate for the new condition or symptom that caused their otherwise static disabilities to worsen.

In 1987, House Bill 239 was introduced to both chambers of the legislature. H.B 239, 379th Leg., (Md. 1987). House Bill 239 contained a multitude of workers' compensation provisions, including provisions for vocational rehabilitation, requirements for evaluating and treating physicians, and a recommendation to compensate workers at a lower rate for less serious injuries resulting in awards of fewer than 75 weeks of disability. This statute, now codified at Maryland Code Annotated, Labor and Employment, Section 9-628, created a third, albeit lower, level of compensation. Md. Code Ann., Lab. & Empl., § 9-628 (2006). However, no language was ever added to the original compensation statute, now the middle tier, to address the issue of worsening from the first to second tier of compensation, or from less than 75 weeks to more than 75 weeks of compensation.

Evidence of unenacted legislation cannot be used to surmise legislative intent except in the rarest of circumstances, as bills fail to be passed into law for numerous reasons unconnected with their substance.

The Petitioner and the Amicus Curiae, Maryland Trial Lawyers Association, would argue that the Legislature's failure to add language to Section 9-629 to specifically allow for a weeks-based credit is indicative of legislative intent. Furthermore, they appear to be arguing that the 2005 General Assembly's House Bill 635 and Senate Bill 828 are more dispositive of legislative intent than the enacted legislation found in Section

9-630(d). However, it is well settled that "the fact that a bill on a specific subject fails of passage in the General Assembly is a rather weak reed upon which to lean in ascertaining legislative intent." Automotive Trade Ass'n v. Ins. Comm'r, 292 Md. 15, 24, 437 A.2d 199, 203 (1981); compare Moore v. State, 388 Md. 623, 641, 882 A.2d 256, 267 (2005) (finding legislative inaction persuasive only when bills have been repeatedly introduced in the General Assembly and not enacted).

Bills fail for a number of reasons. As the Moore Court noted, it would be quite another matter if the Petitioner could show that bills that were substantively similar to H.B. 635/ S.B. 828 had been repeatedly introduced before the General Assembly in successive years and had failed each time. See Moore, 388 Md. at 641, 882 A.2d at 257. The Court cannot possibly use a single piece of unenacted legislation to discern legislative intent, since this would turn the entire Workers' Compensation Act on its head. In the 2005 General Assembly's regular session alone, fifteen bills pertaining to workers' compensation were placed before the House and twelve such bills were placed before the Senate. See H.B. 384, 420th Leg., (Md. 2005) (evaluation of permanent impairment); H.B. 454, 420th Leg., (Md. 2005) (Act applied to volunteer fire and rescue companies); H.B. 461, 420th Leg., (Md. 2005) (heart disease and hypertension presumption for Montgomery County corrections officers); H.B. 489, 420th Leg., (Md. 2005) (Workers' Compensation Commission decision requirements); H.B. 515, 420th Leg., (Md. 2005), (evaluation of permanent impairments), H.B. 634, 420th Leg., (Md. 2005) (penalties for uninsured employers); H.B. 635, 420th Leg., (Md. 2005) (reopening

credit); H.B. 636, 420th Leg., (Md. 2005) (accidental injury definition); H.B.668, 420th Leg., (Md. 2005) (Commission's jurisdiction pending appeal); H.B.1069, 420th Leg., (Md. 2005) (presumptions); H.B. 1085, 420th Leg., (Md. 2005) (liability of corporate officers of uninsured companies); H.B. 1163, 420th Leg., (Md. 2005) (renaming Subsequent Injury Fund); H.B. 1265, 420th Leg., (Md. 2005) (occupational disease for Anne Arundel County deputy sheriffs); H.B. 1289, 420th Leg., (Md. 2005) (evaluation of permanent impairments by social workers); H.B.1460, 420th Leg., (Md. 2005) (accessibility and standards for medical treatment); see also S.B. 33, 420th Leg., (Md. 2005) (temporary disability compensation for retirees); S.B. 34, 420th Leg., (Md. 2005) (work-study programs); S.B. 46, 420th Leg., (Md. 2005) (unusual activity requirement); S.B. 128, 420th Leg., (Md. 2005) (cancellation or nonrenewal of policies); S.B. 190, 420th Leg., (Md. 2005) (qualifications for Commissioners); S.B. 227, 420th Leg., (Md. 2005) (temporary disability compensation for prisoners); S.B. 264, 420th Leg., (Md. 2005) (evaluation of permanent impairment); S.B. 396, 420th Leg., (Md. 2005) (evaluation of permanent impairment); S.B. 490, 420th Leg., (Md. 2005) (definition of accidental injury); S.B. 491, 420th Leg., (Md. 2005) (presumptions); S.B. 828, 420th Leg., (Md. 2005) (credit for reopening); S.B. 856, 2005 Leg., (Md. 2005) (evaluation of permanent impairment by social workers). Of these, only two House Bills, one Senate Bill, and one cross-filed House-Senate Bill were passed into law. See H.B. 454, 461, H.B. 384/S.B. 264, S.B. 128 (enacted into law following 2005 Session).

It is for good reason that none of these twenty-two unenacted bills can be used to discern the General Assembly's intent, since it is likely that almost any interpretation of a statute could be found within the hundreds and hundreds of discarded bills throughout the General Assembly's history. By adopting the arguments of the Petitioner and the Maryland Trial Lawyers' Association, twenty-two unenacted bills are entitled to the same aura of legislative intent as the four bills that passed. Such speculative treatment is simply not the law of Maryland.

Finally, in the absence of any specific language in Section 9-629 pertaining to reopening, there is no basis for an argument that the "default" credit system should be a dollar-based one. All permanency awards are expressed in terms of a percentage of the maximum of 500 weeks of compensation. Lab. & Empl. § 9-627(k). The awards are then paid out on a weekly basis. Any request to have the award paid out in a single sum must be specifically approved by the Workers' Compensation Commission. Md. Code Ann., Lab. & Empl. § 9-729 (2006). Furthermore, it is impossible to say that a certain disability percentage is worth a specific amount of money because the award represents the individual claimant's own compensation rate multiplied by the number of weeks awarded. It is illogical that the Act should allow a different manner for assessing a credit against a prior award when an award is for more than 74 weeks than when an award is for more than 249 weeks. What is logical, however, is that the method of computing a credit should be the same whether the award is increasing toward the 500-week maximum or decreasing from it. It was this rationale that the Ametek Court used in holding that the

weeks-based compensation system mandated that credits also be computed in terms of weeks, and it was the same reasoning used by the Court of Special Appeals in the instant case.

CONCLUSION

For the reasons stated above, the Amici Curaie, Maryland Defense Counsel, Inc. and Maryland Self-Insurers' and Employers' Compensation Association would respectfully pray that the Court affirm the decision of the Court of Special Appeals in Del Marr v. Montgomery County and find that a weeks-based credit system exists for all reopenings for worsening of condition, regardless of the rate of compensation that is in play.

STATEMENT OF TYPE FONT AND TYPE SIZE

Times New Roman 13 point.

_____
Robert C. Erlandson
Angela Garcia Kozlowski
Lord & Whip, P.A.
Charles Center South
36 S. Charles Street, 10th Floor
Baltimore, Maryland 21201
(410) 539-5881

Attorneys for Maryland Defense Counsel, Inc., and Maryland Self-Insurers' and Employers' Compensation Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of November 2006, a copy of the foregoing motion was mailed postage prepaid to:

Wendy Karpel, Esquire
Montgomery County, Maryland
101 Monroe Street,
Third Floor
Rockville, Maryland 20850

Douglas M. Gross, Esquire
Chirumbole, Gross & Conrad, PC
Suite 340
101 Lakeforest Blvd.
Gaithersburg, Maryland 20877

Michael J. Schreyer, Esquire
Donahue, Seidman & Schreyer, LLC
8 Post Office Road,
Waldorf, Maryland 20602-2709

David Skomba, Esquire
Franklin & Prokopik
Two North Charles Street, Suite 600
Baltimore, Maryland 21201-3723

_____
Robert C. Erlandson

00372458

APPENDIX

TABLE OF CONTENTS

Statutes and Codes

COMAR 14.09.01.07 (2006)……Apx. 1
Md. Code Ann., Lab. & Empl. § 9-627(2006)……Apx. 2,3,4
Md. Code Ann., Lab. & Empl. § 9-628 (2006)……..Apx. 5,6
Md. Code Ann., Lab. & Empl. § 9-629 (2006)……..Apx. 7,8
Md. Code Ann., Lab. & Empl., § 9-630(d) (2006)…….Apx. 8,8A
Md. Code Ann., Lab. & Empl., § 9-729 (2006)……Apx. 9

Additional Authorities

House Bill 270, 345th Leg., (Md. 1956)…… Apx. 10
House Bill 239, 379th Leg., (Md. 1987)……..…… Apx. 11-30
House Bill 384, 420th Leg., (Md. 2005) ……Apx 31,32
House Bill 454, 420th Leg., (Md. 2005) ……...Apx. 33-37
House Bill 461, 420th Leg., (Md. 2005)……..…… Apx. 38-41
House Bill 489, 420th Leg., (Md. 2005)……..……..Apx. 42
House Bill 515, 420th Leg., (Md. 2005)..……..……Apx. 43,44
House Bill 634, 420th Leg., (Md. 2005)...…..……...Apx. 45-48
House Bill 635, 420th Leg., (Md. 2005)…...…….Apx. 49,50
House Bill 636, 420th Leg., (Md. 2005) ...……Apx. 51,52
House Bill 668, 420th Leg., (Md. 2005)……..……..Apx. 53,54
House Bill 1069, 420th Leg., (Md. 2005)…….Apx. 55-58
House Bill 1085, 420th Leg., (Md. 2005)……...……..……Apx. 59-63
House Bill 1163, 420th Leg., (Md. 2005) ……..……...Apx. 64-72
House Bill 1265, 420th Leg., (Md. 2005)…...……..Apx. 73-75
House Bill 1289, 420th Leg., (Md. 2005)……..……...Apx. 76-79
House Bill 1460, 420th Leg., (Md. 2005).……Apx. 80-82
Senate Bill 33, 420th Leg., (Md. 2005)…..……..……Apx. 83,84
Senate Bill 34, 420th Leg., (Md. 2005)……...…….Apx. 85-87
Senate Bill 46, 420th Leg., (Md. 2005)……...…….Apx. 88,89
Senate Bill 128, 420th Leg., (Md. 2005)……..Apx. 90-93
Senate Bill 190, 420th Leg., (Md. 2005)…….Apx. 94,95
Senate Bill 227, 420th Leg., (Md. 2005)……..Apx. 96,97
Senate Bill 264, 420th Leg., (Md. 2005)…...……..…….Apx 98,99
Senate Bill 396, 420th Leg., (Md. 2005)…….Apx. 100,101
Senate Bill 490, 420th Leg., (Md. 2005)…….Apx. 102,103
Senate Bill 491, 420th Leg., (Md. 2005)…...……...……..Apx. 104

Senate Bill 828, 420th Leg., (Md. 2005)…….Apx. 108,109
Senate Bill 856, 420th Leg., (Md. 2005)…….Apx. 110-113

Md. Sen. J. of Procs. 976, 345th Leg., Mar. 18, 1956 (Md. 1956)……...……Apx. 114

IN THE
COURT OF APPEALS OF MARYLAND

No. 60
September Term, 2006

PAUL DEL MARR,

Appellant

v.

MONTGOMERY COUNTY, MARYLAND,

Appellee

Certiorari from the Court of Special Appeals

APPENDIX TO BRIEF OF AMICI CURIAE, MARYLAND DEFENSE COUNSEL, INC. AND MARYLAND SELF-INSURERS' AND EMPLOYERS' COMPENSATION ASSOCIATION

Robert C. Erlandson
Angela Garcia Kozlowski
Lord & Whip, P.A.
36 South Charles Street,
Tenth Floor
Baltimore, Maryland 21201
Attorneys for Amici Curiae,
Maryland Defense Counsel, Inc., and
Maryland Self-Insurers' and Employers'
Compensation Association