

# LEGAL ALERT

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## ***STOKES V CHRYSLER, LLC* : SUPREME COURT SETS GUIDELINES FOR WORKERS' COMPENSATION DISABILITY PROOFS**

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In 2002, the Michigan Supreme Court issued its decision in Sington v Chrysler Corporation in which the Supreme Court interpreted the meaning of "disability" under Section 301(4) of the Act. The Court held that, in order to establish disability, a claimant had to prove that his work related injury resulted in a reduction of the claimant's maximum wage-earning capacity in work suitable to his qualifications and training. The Court specifically indicated that, if the claimant could not perform the job in which he was injured, but remained able to perform other suitable work that paid as much or more than the claimant earned in the "injury" employment, the claimant would not be disabled under Section 301(4) of the Act.

Since the issuance of the Sington decision, lower courts and administrative tribunals have inconsistently applied the Sington standard for establishing disability. In the recent case of Stokes v Chrysler, LLC, the Supreme Court provided further guidance concerning the proofs necessary to establish disability, under Sington. The Court, in addressing the claimant's burden of proof, set forth a four-step test to establish disability:

- 1) The claimant must disclose his qualifications and training, including education, skills, and experience;

- 2) The claimant must consider other jobs that pay the maximum pre-injury wage to which the claimant's qualifications and training translate. These jobs include jobs that the plaintiff may never have performed in the past;
- 3) The claimant must show that the work-related injury precludes the performance of any jobs identified within his or her qualifications and training; and
- 4) If there are suitable jobs in the marketplace which the claimant is capable of performing, the claimant must show that he or she cannot obtain any of those jobs. The Court explained that the unavailability of those suitable jobs may be shown either by vocational expert testimony, or by testimony from the claimant that he had made efforts to secure employment, but those efforts were unsuccessful.

The Court went on to explain that, once the claimant had satisfied this four-step test, the employer would then be provided with the opportunity to present evidence that would refute the existence of the plaintiff's claimed disability. The Court indicated that the employer would be entitled to discovery before the hearing to enable it to show the existence of actual jobs that fit

within the claimant's qualifications, training, and applicable work restrictions. As part of this discovery, the Court further indicated that an employer could hire a vocational expert, and that expert would be permitted to interview the plaintiff. Under the Court's rationale, it is likely that other discovery, such as interrogatories and subpoenas, would be permissible.

The Stokes decision provides additional guidance as to the type of proofs necessary for a claimant to establish disability, and an employer's right to discovery of evidence refuting the plaintiff's claimed disability. However, the actual impact and

applicability of Stokes, in both litigated and non-litigated claims, will need to be considered on a case-by-case basis.

Should you have any questions regarding the Stokes decision and its potential impact upon any litigated or non-litigated claims you may have, please do not hesitate to contact a member of Smith Haughey Rice & Roegge's Workers' Compensation Practice Group.

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