

Order

**Michigan Supreme Court
Lansing, Michigan**

September 19, 2008

Clifford W. Taylor,
Chief Justice

136561 & (19)

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PATRICK MALLOY,
Plaintiff-Appellee,
Cross-Appellee,

v

SC: 136561
COA: 280855
WCAC: 06-000212

DSI ACOUSTICAL COMPANY and
MICHIGAN INSURANCE COMPANY,
Defendants-Appellees,
Cross-Appellants,

and

CENTRAL INTERIORS, INC. and
CINCINNATI INSURANCE COMPANY,
Defendants-Appellants,
Cross-Appellees,

and

W&G, L.L.C., and AMERICAN GUARANTEE
& LIABILITY INSURANCE COMPANY;
MATRIX CONSTRUCTION SERVICES,
L.L.C., and ACCIDENT FUND INSURANCE
COMPANY OF AMERICA,
Defendants-Appellees,
Cross-Appellees.

On order of the Court, the application for leave to appeal the April 30, 2008 order of the Court of Appeals and the application for leave to appeal as cross-appellants are considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we

VACATE the order of the Court of Appeals and we REMAND this case to that court for plenary consideration. In particular, we DIRECT the Court of Appeals to consider whether, contrary to the WCAC's finding, the testimony of Dr. John A. Sauchak, as found by the magistrate, supports a specific event injury on October 11, 2003. We also DIRECT the Court of Appeals to consider whether the WCAC misapplied its standard of review, MCR 418.861a(3), by neglecting to address the other evidence in the record that was utilized by the magistrate to find an October 11, 2003 injury date. See *Mudel v Great Atlantic & Pacific Tea Company*, 462 Mich 691, 703-704 (2000). Finally, we DIRECT the Court of Appeals to consider the arguments raised by the cross-appellants in this Court and this Court's decision in *Stokes v Chrysler LLC*, 481 Mich 266 (2008).

WEAVER, J. (*dissenting.*)

I dissent from the order vacating the order of the Court of Appeals and remanding this case to the Court of Appeals for consideration of the arguments raised by the cross-appellants in this Court and this Court's decision in *Stokes v Chrysler LLC*, 481 Mich 266 (2008).

Because I dissented from the majority opinion in this Court's decision in *Stokes v Chrysler LLC*, 481 Mich at 320 (Weaver, J., *dissenting*), I would grant leave to appeal in this case to consider whether a majority of this Court reached the correct decision in *Stokes*.

CAVANAGH and KELLY, JJ., join the statement of WEAVER, J.



0916

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 19, 2008

Corbin R. Davis

Clerk