ANSWER TO QUESTION NO. 10

With respect to the first question, Claire's preexisting soccer related injury does not act as a bar to workers' compensation benefits because employers take their employees as they are. *E.g., Deziel v Difco Laboratories,* 394 Mich 466, 476 (1975). This is true even if the soccer injury is the primary cause of the problem. Employers can be held responsible for aggravation of preexisting non-work related conditions. *Id.* However, an employer is not liable for a work event that aggravates just the symptoms of a preexisting problem. *Rakestraw v General Dynamics Land Systems, Inc,* 469 Mich 220, 228 (2003). The employer is only responsible if the event aggravates the preexisting condition so as to create a distinct problem "that is medically distinguishable from the preexisting non-work related condition." *Rakestraw,* 469 Mich at 234. "[T]o demonstrate a medically distinguishable change in an underlying condition, a claimant must show that the pathology of that, condition has changed." *Fahr v General Motors Corp,* 478 Mich 922 (2007).

Applying these rules, Claire's preexisting soccer injury is not a bar to recovery. And, her torn ligament would constitute a pathological change, a problem medically distinguishable from her preexisting soccer injury, so as to qualify as a compensable injury for workers' compensation purposes as required by *Rakestraw/Fahr.*

With respect to the second question, the injury must be one "arising out of and in the course of employment" to be covered by the Workers' Disability Compensation Act. MCL 418.301(1). This is a bifurcated requirement. The "arising out of" component is an inquiry into the risk created by the employment. *Pierce v Michigan Home and Training School,* 231 Mich 536, 537-538 (1925); *Hopkins v Michigan Sugar Company,* 184 Mich 87, 90-91 (1915). The "in the course of" component is an inquiry into the time and place of injury. *Id.* Both requirements must be met for there to be workers' compensation coverage. *Ruthruff v Tower Holding Corp (On Reconsideration)* 261 Mich App 613, 618-623 (2004); *Thomason v Contour Fabricators, Inc,* 255 Mich App 121 (2003), *as modified* 469 Mich 960 (2003).

Generally speaking, injuries sustained while going to or coming from work are not compensable. *E.g., Burchett v Delton-Kellogg School,* 378 Mich 231, 235 (1966). But, there is a statutory presumption relating to the "in the course of" component.

The statutory presumption says:

> An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. MCL 418.301(3) (first sentence).

Case law has extended the meaning of "premises" for purposes of this provision to include parking lots owned, leased or maintained by the employer. *Simkins v General Motors Corp (after remand)*, 453 Mich 703, 727 (1996); *Ruthruff, supra.*

Applying these rules, Claire was in the parking lot (on the premises) within a reasonable time before her work hours (20 minutes). Therefore, the statutory presumption applies and the injury occurred "in the course of" her employment. The "arising out of" requirement is also satisfied because it is a risk of employment that employees may stumble on debris on employer premises. Compare, *Dulyea v Shaw Worker Co,* 292 Mich 570 (1940).

The employer should, therefore, pay for the surgery and related medical treatment because Claire has sustained a compensable work related injury that is one "arising out of and in the course of employment." MCL 418.301 (1). Employers are responsible for reasonable and necessary medical care related to work injuries. MCL 414.315(1).