

**QUESTION 15 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V
OR IN SOFTEST ANSWER SCREEN 15**

Derek is a 55-year-old truck driver. He has his own truck, which has a ramp and lifting device for cargo. Over the years, he has worked for various trucking companies, sometimes as an employee and sometimes as an independent contractor. This year, Derek has been working exclusively for Overland Trucking Company hauling automotive parts throughout Michigan.

One snowy day in February 2014, Derek was delivering cargo to one of Overland's customers when he slipped on the ice as he was descending from the cab of his truck at the loading dock. He severely twisted his knee and an ambulance was called to take him to the hospital. There, Derek was told the fall caused a torn meniscus (torn cartilage) in his knee, for which surgery was necessary. Derek recalled that years earlier his family doctor had told him he had degenerative arthritis in this knee, which would become progressively worse over time.

Derek seeks worker's compensation benefits from Overland. He wants Overland to pay for the knee surgery and pay weekly wage loss benefits covering the time he will lose from work. Overland rejects Derek's requests asserting that: (1) Derek is an independent contractor, not its "employee"; and (2) regardless, given Derek's preexisting degenerative knee condition, Derek's knee problem is not a work-related problem. Overland has begun paying Derek weekly benefits under a non-worker's compensation disability insurance policy it wholly funds.

Answer the following three questions with reference to Michigan worker's compensation law:

1. What test does Michigan's worker's compensation statute refer to for determining whether Derek is an employee of Overland or an independent contractor? (Do not describe the test, just identify it.)

2. Assuming Derek is an employee of Overland, is Derek's injury a compensable worker's compensation injury? Why or why not? What legal criteria resolve this issue? Explain your answer.

3. Assuming Derek can receive weekly worker's compensation benefits, will Overland's payments from its

insurance policy have any effect on Derek's weekly worker's compensation benefits? Explain your answer.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*****
OR IN SOFTEST ANSWER SCREEN 15