

### **EXAMINERS' ANALYSIS OF QUESTION NO. 13**

The fact pattern presented generally follows the facts in *Thomason v Contour Fabricators, Inc*, 255 Mich App 121 (2003), *modified in part and remanded*, 469 Mich 960 (2003). The facts present a close question as to the ultimate answer of whether this type of injury falls within the statute's coverage, as exemplified by the fact that the trial magistrate in *Thomason* found the injury compensable, the Michigan Workers' Compensation Appellate Commission disagreed, 2001 ACO #191, the Michigan Court of Appeals reversed the Appellate Commission and reinstated benefits, and the Michigan Supreme Court affirmed that result but modified the Court of Appeals' decision and remanded to the Commission. Given the closeness of the question, the ultimate answer itself is not important, as opposed to the examinee's knowledge of the correct analysis to be used in arriving at a conclusion.

To be covered by Michigan's workers' compensation statute, an injury must be one "arising out of and in the course of employment." MCL 418.301(1). While this statutory coverage formula was in the past envisioned as perhaps stating only one inquiry, *Simkins v GMC*, 453 Mich 703, 713 n 14 (1996), the more recent view is that this statutory formula contains two components. The injury must be one "arising... in the course of employment" and the injury must be one "arising out of" employment. *Thomason*, 469 Mich 960; *Ruthruff v Tower Holding Corp (on reconsideration)*, 261 Mich App 613 (2004), *remanded* 474 Mich 1100 (2006). The "in the course of" component relates to the time, place, and circumstances of the injury. *Appleford v Kimmel*, 297 Mich 8, 12 (1941); see also, *Hill v Faircloth Manufacturing Co*, 245 Mich App 710 (2001), *review granted*, 465 Mich 949, *vacated*, 466 Mich 893 (2002); *Ledbetter v Michigan Carton Co*, 74 Mich App 330 (1977). Also, there is a statutory presumption that injuries occurring at the work premises during normal work hours are injuries sustained in the course of employment. MCL 418.301(3). "However, not every injury that occurs in the course of a plaintiff's employment is an injury that arises out of his employment." *Hill, supra*; see also, *Ruthruff*, 261 Mich App at 618. The determination of whether an injury "arises out of" employment is typically made by considering whether the injury resulted from a risk of

employment. *Hill, supra.* This can require assessment of whether the employer benefited in some sense from the employee's activity at the time of injury. *Thomason*, 255 Mich App 121. In *Thomason*, the case upon which the question is based, the increased goodwill to the employer from the work force was found to be an employer benefit.

Here, the examinee is expected to: know the "arising out of and in the course of employment" coverage formula; recognize the formula requires a two prong inquiry; conclude the "in the course of employment" prong is satisfied; and, evaluate the risk and/or employer benefit of the employee's activity in addressing the "arising out of" prong.