

QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

LNC Inc. is a large Michigan construction company that is particularly conscientious in instructing its employees on safety procedures related to machinery operation. One of these safety procedures is the requirement that all employees flip a well-marked safety switch before using the mechanical wood cutting saw. The safety switch prevents the saw from operating except while an employee is depressing a foot pedal attached to the machine.

Zack, an employee of LNC, is an experienced carpenter who has also worked at other manual jobs during his work life. LNC had thoroughly instructed Zack on the safety procedures to be used when operating its machines. Zack became especially well acquainted with the necessity of engaging the safety switch before using the mechanical woodcutting saw.

One day while working, Zack needed to cut a piece of lumber on the mechanical saw. He negligently, but unintentionally, forgot to flip the safety switch before operating the saw. The saw began operating when Zack depressed the foot pedal. But, because Zack had not engaged the safety switch, the saw continued to operate after Zack released the foot pedal. Unfortunately, Zack's hand was still in the machine when he released the foot pedal and the saw cut his dominant arm, injuring the tendons.

Zack now undeniably cannot return to any manual labor job. He seeks workers' compensation benefits from LNC. LNC has rejected Zack's claim citing two reasons. **Answer the following two questions with reference to Michigan workers' compensation law.**

First, LNC says it took all due precautions and the accident was due solely to Zack's negligence. Discuss and evaluate the merits of this defense. How is a workers' compensation judge likely to rule on this defense, and why? Explain your answer.

Second, LNC says that, although it has no non-manual jobs to offer Zack, Zack is likely to be able to procure an equal paying, non-manual job elsewhere. And, for that reason, LNC maintains no workers' compensation wage loss benefits are payable. Zack responds that he should not be required to seek work at jobs he has never held before. Explain and evaluate LNC's and Zack's positions on this point.

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