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WORKERS' COMPENSATION ALERT

TO: **Our Clients and Friends**

FROM: **Bleakley, Cypher, Parent, Warren & Quinn, P.C.**

RE: **Michigan Supreme Court Issues New Decision on July 31, 2010, Related to Jurisdictional Coverage Under the Workers' Disability Compensation Act for Dates of Injury Prior to May 23, 2007; *Bezeau v Palace Sports & Entertainment* (decided July 31, 2010)**

DATE: **August 4, 2010**

The issue of whether the Michigan Workers' Compensation Act confers jurisdiction on out-of-state injuries has been a hot topic button for the Michigan Supreme Court in the last several years. Two decisions have been issued by the Michigan Supreme Court, and an amendment to MCL 418.845 was also enacted by the Legislature.

The Workers' Disability Compensation Act did appear rather straightforward and unambiguous and confers jurisdiction on the Workers' Compensation Agency for out-of-state injuries where (1) the employee was a resident of Michigan when the injury occurs; and (2) the contract of hire was made in Michigan.

Historically, despite the clarity of the Workers' Compensation Act and language of §845, the courts have struggled with the issue of jurisdiction as it applies.

In large part, the courts historically conferred jurisdiction on out-of-state cases where there was either a contract of hire or the employee was a resident, ignoring the dual requirement contained in §845.

In the landmark case of *Karaczewski v Farbman Stein & Company*, 478 Mich 28 (2007), the court determined that both requirements needed to me met; (1) an employee needed to be a resident of Michigan when the injury occurred and (2) that a contract of hire that was entered into in Michigan. When the Supreme Court issued its decision on May 23, 2007, it determined that the decision would apply

retroactively to any and all cases pending, regardless of whether the dates of injury preceded the court's decision date.

In what was deemed a response to *Karaczewski,* the legislature amended §845 and that amendment went into effect on January 13, 2009, which changed the statutory language to afford jurisdiction to any out-of-state injury if **either** the employee was a resident of Michigan at the time of injury **or** a contract of hire was made in the State of Michigan. In light of the legislature's definitive amendment, both requirements are not necessary.

CONCLUSION

The question presented in the Supreme Court's case of *Bezeau v Palace Sports & Entertainment* (decided July 31, 2010), was whether *Karaczewski* applied to dates of injury prior to the court's decision. The court reversed *Karaczewski* on that issue and determined that *Karaczewski* should not have been given retroactive effect, and that *Karaczewski* only applies to dates of injury after its effective decision date. (May 23, 2007).

In short, the *Bezeau* decision has made it clear that for any and all dates of injury prior to May 23, 2007, the Agency has jurisdiction over any out-of-state injury if only one of the above two elements is met.

Any dates of injury after the court's decision in *Karaczewski* on May 23, 2007, until the legislature's amendment on January 13, 2009, require that both elements be met before the Agency has jurisdiction over any out-of-state injury.

Lastly, the court's decision only impacted dates of injury prior to May 23, 2007, and has no impact on the legislatures recent amendment enacted on January 13, 2009.

Essentially, we have a small window of time where dates of injury between May 23, 2007, and January 13, 2009, require an employee to prove that at the time of injury, a contract of hire was made in the State of Michigan **and** the employee was a resident of Michigan. Otherwise, for all time periods the employee need only prove one of those requirements.

If anyone has any questions or concerns regarding the Supreme Court's recent decision in *Bezeau*, or any other issue, please do not hesitate to contact any of the attorneys directly at Bleakley, Cypher, Parent, Warren & Quinn, P.C.