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WORKERS' COMPENSATION ALERT

TO: Our Clients and Friends

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

RE: Court Interpretation of Independent Contractor Issue; Recent Stokes Decision

DATE: December 11, 2013

We at Bleakley, Cypher, Parent, Warren & Quinn would like to update you regarding two recent decisions from the Michigan Court of Appeals that address the employee/independent contractor issue and the application of Stokes to closed period claims.

Prior to the December 2011 amendments to Michigan workers' compensation law, the statute defining "employees" laid out a three-part test to identify whether a claimant was an employee or independent contractor. The three factors were: (1) whether the individual maintains a separate business; (2) whether the individual holds himself out to and renders service to the public; and (3) whether the individual is an employer under workers' compensation law. MCL 418.161(n).

Courts have previously noted that if just one of three above provisions is met, the individual is an independent contractor and therefore not covered by workers' compensation law. However, the Michigan Court of Appeals recently issued an opinion for publication, stating that all three criteria must be met before an individual is considered an independent contractor instead of an employee for workers' compensation purposes. *Auto-Owners Insurance Company v. All Star Lawn Specialists Plus, Inc.* (decided on December 3, 2013).

This new case is adverse to the interests of employers and workers' compensation carriers, as it will make it more difficult to show that a claimant is an independent contractor and therefore not entitled to workers' compensation benefits. It is important to note, however, that the amendments in December 2011 to Michigan's workers' compensation law removed this three-part test and instead adopted a 20-part IRS test for independent contractor analysis. The new 20-part

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test was made effective January 1, 2013. In other words, the three-part test is no longer in effect for injury dates after January 1, 2013, and therefore the Court of Appeals' opinion requiring proof of all three factors has no application to injury dates after January 1, 2013.

STOKES AND CLOSED PERIODS

Just prior to the above decision, the Michigan Court of Appeals addressed another workers' compensation issue of whether the requirements of Stokes (for proving disability) apply to closed period claims and open award claims alike. In *Tatar v. Ryder Integrated Logistics, Inc.* (November 26, 2013), the claimant had returned to work following his injury, such that his claim was only for benefits between the injury date and return to work date. The Court of Appeals clarified that Stokes equally applied to the claimant's claim for a closed period of wage loss benefits, and that there is no distinction between closed and open claims.

This Newsletter is meant to highlight developments in the workers' compensation arena. If you would like to discuss in more detail this issue or any other issue please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.