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**WORKERS' COMPENSATION ALERT**

**TO: Our Clients and Friends**  
**FROM: Bleakley, Cypher, Parent, Warren & Quinn, P.C.**  
**RE: Recent Court Decision Regarding the Definition of Personal Injury:  
Does *Rakestraw* Apply to Pre-existing Work-Related Conditions?**  
**DATE: January 7, 2008**

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First and foremost, we here at Bleakley, Cypher, Parent, Warren , & Quinn would like to wish you all the best for 2008! We look forward to providing you with the best legal service available in the New Year and at this point would like to provide you with an update on the “medically distinguishable” injury standard that was articulated by the Michigan Supreme Court in the landmark case of *Rakestraw v. General Dynamics Land Systems, Inc.*, 469 Mich 220 (2003).

In *Rakestraw* the Supreme Court specifically articulated the legal standard that an employee who suffers from a non-work related, pre-existing condition must show that his work has caused an injury that is “medically distinguishable” from the progression of the underlying pre-existing condition. Much of the controversy following the *Rakestraw* decision surrounded the phrase “medically distinguishable” and what was necessary to demonstrate a medically distinguishable change in the underlying condition. That being said, the Michigan Supreme Court has shown a willingness to clarify its *Rakestraw* decision and the “medically distinguishable” standard.

Recall the Supreme Court issued an order in the case of *Fahr v General Motors Corporation*, Docket No. 133500 (decided June 22, 2007) and specifically indicated that a claimant must show that **the pathology of the condition has changed in order to establish a personal injury or “medically distinguishable” change in an underlying pre-existing condition.** The Supreme Court went on to clarify that although a medical expert need not use the verbiage “change of pathology,” there must be record evidence from which a legitimate inference may be drawn that the plaintiff’s underlying condition has **pathologically changed as a result of the work event or activity.**

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The Supreme Court order in *Fahr* made it clear that a claimant must show a change of pathology such that a magistrate can legitimately infer that the plaintiff's condition was pathologically changed as a result of a work injury.

While the specific facts of *Rakestraw* dealt with application of the "medically distinguishable" standard to a **non-work related** pre-existing condition, the Appellate Commission applied the *Rakestraw* requirement previously in *Zanskas v. National Staff Management*, 2003 ACO #224 to pre-existing **work-related** conditions that were exposed to subsequent work-related aggravation. In other words, the Appellate Commission, post the Supreme Court's decision in *Rakestraw*, has applied, at least on one occasion, the *Rakestraw* requirement to a pre-existing, work-related condition.

### **Does Rakestraw Apply to Pre-existing Work-Related Conditions?**

The issue of whether the *Rakestraw* standard applies to pre-existing work-related conditions has been hotly contested since the Supreme Court's initial decision in *Rakestraw*. Now the Court has issued yet another order in the case of *Simpson v. Borbella Construction & Concrete Supply*, Docket No. 133274 (decided December 7, 2007), which offers much needed clarification as to whether the *Rakestraw* requirement applies to pre-existing, work-related conditions. In *Simpson*, the claimant suffered a work-related injury to his left wrist in 1979 when a heavy chain fell several stories on his left wrist and caused a non-displaced fracture of the lunate bone. The fracture was not treated, causing an interruption in the blood supply to the bone, and the bone developed necrosis. The necrosis led to bone loss and traumatic arthritis in the plaintiff's left wrist. Nonetheless, the plaintiff continued in his iron working occupation through October of 2000. One of the questions posited in the *Simpson* case was whether the claimant needed to satisfy the *Rakestraw* "medically distinguishable" standard to establish an October 2000 last date of work injury in light of the fact that the plaintiff's underlying condition was clearly due to a work-related injury in 1979, versus a pre-existing, non-work related condition.

The Appellate Commission initially determined that the claimant did need to satisfy the *Rakestraw* requirement, i.e. a change in pathology, and that the *Rakestraw* requirement did apply to the establishment of a new injury date when evaluating a pre-existing, **work-related condition**. In doing so, the Appellate Commission determined

that the claimant established a change in pathology, thus meeting the *Rakestraw* burden, and affirmed the magistrate's finding of a new last date of work injury.

The Michigan Court of Appeals disagreed with the Appellate Commission's decision and determined that *Rakestraw* did not apply to pre-existing work-related conditions; rather, *Rakestraw's* standard dealt only with establishment of a personal injury in circumstances dealing with a non-work related condition. The Court of Appeals went on to affirm the grant of benefits.

The Michigan Supreme Court has now provided clarification with its recent order in *Simpson*. The Supreme Court determined that the Court of Appeals erroneously held that *Rakestraw* did not apply to the facts involved in the *Simpson* case. Further, the Supreme Court affirmed the grant of plaintiff's benefits for the reasons articulated by the Workers' Compensation Appellate Commission.

Thus, for all practical purposes, when the Supreme Court accepted the reasoning of the Workers' Compensation Appellate Commission and rejected that of the Court of Appeals, it further clarified that the *Rakestraw* standard, i.e. "medically distinguishable," does apply not only to non-work related pre-existing conditions, but also work related pre-existing conditions.

In summary, based upon the Supreme Court's decision in *Rakestraw* and the court's recent orders in *Fahr* and *Simpson*, when a claimant suffers from a pre-existing condition, whether it is work related or non-work related, he or she must establish by a preponderance of the evidence that the condition is medically distinguishable from the pre-existing condition. In other words, there must be a change in pathology or other record evidence from which a legitimate inference may be drawn that the plaintiff's underlying condition has pathologically changed as a result of the work event or activity.

If you have questions regarding the above cases or any other issues, please feel free to contact any of the attorneys at Bleakley, Cypher, Parent, Warren, & Quinn.