MICHIGAN LAW ON MULTI-STATE WORKERS' COMPENSATION ISSUES

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By:

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In a previous article, we discussed how various states address the pertinent issues that arise when a workers' compensation claim involved more than one jurisdiction.[1] The purpose of this article is to address how the state of Michigan statutes and cases have addressed those issues. This may be of some assistance to attorneys practicing in the state of Michigan or attorneys from other states when their clients' claims might potentially also be filed in this state. That is the purpose of this discussion below.

I. What Are the Requirements For Michigan To Assert Jurisdiction Over A Workers' Compensation Claim?

The Michigan General Statutes address when the Michigan's Workers' Compensation Agency ("WCA") can obtain jurisdiction over employee injuries that occur outside the state. Pursuant to M.C.L.A. § 418.845:

> The worker's compensation agency shall have jurisdiction over all controversies arising out of injuries suffered outside this state if the injured employee is employed by an employer subject to this act and if either the employee is a resident of this state at the time of injury or the contract of hire was made in this state. The employee or his or her dependents shall be entitled to the compensation and other benefits provided by this act.

The current status of the law referenced above reflects recent changes made by the state legislature in 2009. Previously, § 418.845 required the employee to be *both* a

[1] Andrew Reinhardt, Conflicts of Law: Maximizing your recovery when handling Workers' Compensation claims involving multiple jurisdictions, VTLA Journal, Summer 2006.

resident of Michigan at the time of injury *and* be employed under a contract of hire made in the State for the Workers' Compensation Agency ("WCA") to assert jurisdiction. [2] Prior to January 13, 2009, §418.845 provided:

> The bureau shall have jurisdiction over all controversies arising out of injuries suffered outside this state where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state. Such employee or his dependents shall be entitled to the compensation and other benefits provided by this act.

The landmark case *Karaczewski* v *Farbman Stein & Company*, 478 Mich 28; 732 NW2d 56 (2007) upheld this two-part requirement in 2007. In this case an employee, a Florida resident who sustained an injury in Florida, attempted to rely solely upon an employment contract having been entered into in Michigan to establish that the Bureau had jurisdiction. The Supreme Court held that M.C.L.A. § 418.845 required the employee to be *both* a resident of the State and an employee's contract of hire in the State, for the Bureau to assert jurisdiction over an out-of-state injury. The Court also decided that its' holding would apply retroactively to any pending cases, regardless of whether the dates of injury preceded the Court's ruling.

However in *Brewer v. A.D. Transport Express, Inc., No. 139068*, rel'd (5/10/10) the Court recognized the 2009 legislative amendments to M.C.L.A. § 418.845. The Court noted the "potentially enlarged existing rights for Michigan residents injured in

[2] Amended by P.A.2008, No. 499. Imd. Eff. Jan. 13, 2009.

other states under contracts of hire not made in Michigan." By expanding the Workers' Compensation Agency's jurisdiction "to include out-of-state injuries suffered by Michigan employees whose contracts of hire were not made in Michigan, the amendment imposed a new legal burden on out-of-state employers not previously subject to the Agency's jurisdiction."

The Court went on to hold "A claimant injured outside of Michigan need only show *either* that he was a Michigan resident at the time of his injury or that his contract of hire was made in this State" to give the WCA jurisdiction. Importantly, it also ruled that the amended language of M.C.L.A. §418.845 did not apply retroactively, i.e.: before the effective date of the legislative amendment, to cases in which the claimant was injured before the amendment's effective date. The amendment did not contain any language manifesting a legislative intent to apply the standard retroactively. Instead, the legislature provided a specific and future effective date and the amendment did not fall within an exception for remedial or procedural amendments that could apply retroactively.

That same year Supreme Court overruled the retroactive part of its' previous decision in *Karaczewski* in *Bezeau v. Palace Sports & Entertainment,* Inc., 487 Mich 455 (2010) (SC Docket No. 137500, rel'd July 31, 2010). Mr. Bezeau, a professional hockey player for the Detroit Vipers, had a contract of hire made in Michigan. He was injured, however, while he was on loan playing for the Providence Bruins of Rhode Island. While he was no longer a Michigan resident, he filed his workers' compensation claim in Michigan. The Court noted that *Karaczewski's* retroactive effect "was inconsistent with how the statute had been previously applied, and retroactivity disrupted the

administration of justice." In ruling for the plaintiff, Mr. Bezeau, the Court overruled the retroactive part of *Karaczewski* and noted that injuries occurring before *Karaczewski* are not subject to the two-part requirement.

In summary, the *Brewer* Court made it clear that the amendments to M.C.L.A. § 418.845 are not retroactive and only apply to injuries occurring on or after its effective date. Therefore, only on January 13, 2009 and afterwards can the Workers' Compensation Agency ("WCA") assert jurisdiction by meeting only one of the two requirements. Prior to actions occurring before January 13, 2009, both requirements must be met as stipulated in the holding in *Karaczewski.*

II. Will Michigan Allow Simultaneous Or Successive Recoveries For The Same Accident And Injury In Multiple States?

Yes. There is no statutory prohibition against filing a claim in more than one jurisdiction, and the United States Supreme Court recognized in *Thomas v. Wash. Gas Light Co.*, 448 U.S. 261, 279 (1980), that absent such a statute, there is no obstacle to prevent a compensation claimant from filing a claim in any state having jurisdiction.

Furthermore, an employee who receives benefits for injuries in one state is not barred from receiving compensation in Michigan. In *Cline v. Byrne Doors Inc.*, 37 N.W.2d 630, 324 Mich. 540 (1949), the Michigan Supreme Court held that "an order by the Florida industrial commission directing an insurance carrier to furnish medical care under the Florida compensation act to a Michigan resident employee injured in Florida

did not prevent the granting of compensation to employee in Michigan because of the full faith and credit clause of the federal constitution."

However, M.C.L.A. §418.846 does provide a limit to the amount that a claimant may recover for a single injury under two or more separate jurisdictions. M.C.L.A. § 418.846 provides:

> If an employee or the employee's dependents receive worker's compensation benefits from an employer, a carrier, a principal, or a subcontractor under the law of another state for the same personal injury for which benefits are payable under this act, the amount recovered under the law of the other state, whether paid or to be paid in future installments, shall be credited against the benefits payable under this act.

In *Shaw v. Grunwell & Cashero of Milwaukee*. 327 N.W.2d 349; 119 Mich.App. 758 (1982), the claimant was working for a Michigan company when he became disabled after aggravation of a preexisting back injury he sustained while working for a Wisconsin company. The Court held that the workers' compensation award against a Michigan company to claimant had to be reduced by the amount he had received from his Wisconsin employer, which had voluntarily paid benefits and medical expenses according to benefit schedule provided by Wisconsin workers' compensation laws.

III. What Is The Impact In Michigan Of An Acceptance Of Benefits Or Election In Another State?

No case law could be found discussing whether the election of remedies under another state's worker's compensation law bars a claimant from receiving benefits in Michigan. Thus, the impact of acceptance of benefits in another state seems to be, as set forth in answer to Question 2, to reduce the amount of the Michigan compensation award by the amount of compensation benefits awarded in the other jurisdiction.

Law and precedent have established that a claimant can file for compensation in any state. However, compensation limits have been established under M.C.L.A. 418.846 to ensure that there is not a double recovery for employees receiving benefits from more than one state. While the fundamental principle underlying workers' compensation is full compensation for injuries sustained workers' compensation law does not favor double recovery. See: *Stanley v. Hinchliffe & Kenner*, 395 Mich. 645, 657-659, 238 N.W.2d 13 (1976); See also Cline v. Byrne Doors, Inc. (1949) 37 N.W.2d 630, 324 Mich. 540.

IV. How Will Michigan Do A Benefit Comparison To Allow A Maximizing Of Recovery Between States?

There is no case discussing how Michigan conducts a benefits comparison in order to maximize recovery between states. As set forth in the answers to Questions II, pursuant to M.C.L.A. §418.846, a Michigan compensation award may be set off by the amount of the award in another jurisdiction, and the total compensation cannot exceed that which is permitted by Michigan law. Accordingly, if Michigan benefits are more generous than those in another jurisdiction, then a claimant should consider filing in Michigan first. On the other hand, there may be circumstances where filing first in

another state, or simultaneously could also be considered. See sample order for use in your multi-state cases at Exhibit I hereto.