BLEAKLEY
CYPHER
PARENT
WARREN
& QUINN

ATTORNEYS AT LAW

Thomas H. Cypher
Michael C. Mysliwiec
John A. Quinn
Thomas E. Kent
Michael D. Ward ·
Mark C. White
Roger N. Martin
Douglas J. Klein
Brian R. Fleming
James J. Helminski
Julie A. Jackimowicz
Joshua M. Britten
James A. Crocker
Steven C. Highfield

PARALEGALS
C. Mac Ward
Michele L. Niehof, MSCC
Melissa D. Gritter, MSCC
Heidi L. Lewis

OF COUNSEL
Frederick W. Bleakley, Sr.
Alfred J. Parent
William J. Warren

GRAND RAPIDS OFFICE
120 Ionia Avenue SW
Suite 300
Grand Rapids, Michigan
49503

Phone
616/774-2131

Fax
616/774-7016

www.bcpwq.com

SATELLITE OFFICE
Lansing, Michigan
48864

517/349-4238

·Also Licensed in Illinois

WORKERS' COMPENSATION ALERT

TO: **Our Clients and Friends**

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

RE: **Executive Order reorganizes Workers' Compensation Appellate Commission; recent Court of Appeals' decision clarifies interplay between disability analysis and 100-week rule; and Commission decision allows for reduction of workers' compensation benefits based on federal unemployment benefits**

DATE: **May 18, 2011**

We at Bleakley, Cypher, Parent, Warren & Quinn would like to update you on recent developments in the Workers' Compensation arena, including an Executive Order that implements important changes at the Workers' Compensation appellate level, as well as recent decisions from the Michigan Court of Appeals and Workers' Compensation Appellate Commission.

EXECUTIVE ORDER

On May 17, 2011, Michigan Governor Rick Snyder signed an Executive Order that reorganized the appellate levels of both the Michigan workers' compensation system and the Michigan unemployment benefits system. The Order will become effective on August 1, 2011.

Previously, the Workers' Compensation Appellate Commission was the review body for workers' compensation matters, while the Michigan Employment Security Board of Review was the review body for unemployment matters. Pursuant to this Executive Order, both of these bodies will be abolished. In their place, the Order establishes a new body, the Michigan Compensation Appellate Commission, that will serve as a combined appellate body to hear appeals regarding workers' compensation and unemployment compensation matters.

The newly formed Michigan Compensation Appellate Commission will be comprised of nine commissioners appointed by the Governor, with one member designated as the Chairperson. Matters heard by the Commission will be assigned to three-member panels. The terms of the initial nine commissioners will be staggered,

with three members receiving two-year appointments, three members receiving three-year appointments, and three members receiving four-year appointments. Following the initial appointments, all future appointments will be for four-year terms. Commissioners will be subject to annual reviews, and may be removed or suspended following review.

Until Governor Snyder makes the initial appointments, it is difficult to precisely gauge what impact the Executive Order will have on the workers' compensation appellate system. Procedurally, the Order should not have a significant impact, as it will continue to provide a three-member appellate panel that operates between the Board of Magistrates and the Court of Appeals. However, it can be expected that some of the nine appointees will be unemployment benefits specialists, with varying degrees of workers' compensation experience. Therefore, the new Commission may lack the same level of workers' compensation expertise that is held by the current Workers' Compensation Appellate Commission. We will be sure to update you when appointments are made.

SMITH V. GENERAL MOTORS CORPORATION – Plaintiff Must Establish Disability Before the 100-Week Rule Applies

The Michigan Court of Appeals recently issued a favorable decision for employers and insurance carriers that clarifies what a plaintiff must establish to be able to invoke the 100-week rule.

By statute, a plaintiff must establish that he is disabled to be entitled to workers' compensation benefits. The well-known *Stokes* decision is the benchmark for establishing disability. If a plaintiff can make this showing, he/she must then establish that the work-related disability caused his/her wage loss. Generally, wage loss is an issue in situations where a plaintiff ceases employment or is terminated for reasons unrelated to the injury/disability.

However, there is an exception to the wage loss requirement: If an employee loses his/her job for whatever reasons and can establish that he/she performed "reasonable employment" for less than 100 weeks prior to termination, then that employee is entitled to compensation benefits. This is the so-called 100-week rule.

In *Smith v. General Motors*, the Magistrate awarded the plaintiff an open award of wage loss benefits on the grounds that he had been performing reasonable

employment for fewer than 100 weeks when he was fired. The three-member Commission panel affirmed the Magistrate's award.

General Motors then appealed the case to the Michigan Court of Appeals, and argued that a plaintiff cannot receive wage loss benefits under the 100-week rule without first establishing a disability under *Stokes*. The Court of Appeals agreed, holding that a plaintiff must establish disability as a prerequisite to considering the 100-week rule.

Prior to this opinion, some Magistrates and Commission panels were blurring the distinction between disability and wage loss in cases where the 100-week rule was applicable. Some plaintiffs were being awarded benefits after simply establishing that they satisfied the 100-week rule, without any distinct disability showing. While this opinion is unpublished, it offers precedential guidance to workers' compensation magistrates and commissioners regarding the continued importance and necessity of disability analysis in 100-week cases.

BRYCE V. CHRYSLER GROUP, LLC - Defendants Can Offset Wage Loss Benefits With Supplemental Federal Unemployment Benefits

Defendants are allowed, by statute, to reduce workers' compensation benefits by the full amount of state unemployment benefits received by the plaintiff. In *Bryce v. Chrysler Group, LLC*, the defendant asked the Appellate Commission to also allow for a reduction of weekly wage loss benefits based on the plaintiff's receipt of federal supplemental unemployment benefits.

In another favorable opinion for employers and insurance carriers, the Commission said that defendants can reduce a workers' compensation benefit rate by the extended federal unemployment benefit amount. In so holding, the Commission relied on the statutory provision that allows for coordination of "wage continuation benefits." In this instance, the Commission found that the federal supplemental benefits constituted wage continuation benefits, and therefore were subject to coordination with workers' compensation benefits. From a common sense approach, the court wanted to ensure that plaintiffs do not "double dip" by simultaneously receiving workers' compensation benefits and unemployment benefits.

Before this opinion, employers and carriers could reduce a plaintiff's worker's compensation rate if the plaintiff was receiving state unemployment

benefits. This Commission opinion now suggests that employers and carriers can also reduce a workers' compensation rate if the plaintiff is receiving federal supplemental unemployment benefits after state benefits expire, assuming that the federal benefits are defendant-funded and constitute wage continuation payments.

As always, if you have any questions or concerns, please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.