

LOCATION, LOCATION, LOCATION—IT MATTERS IN MORE THAN REAL ESTATE

Trucking & Transportation Practice Group

November 17, 2008

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The nature of the work of an over-the-road truck driver requires traveling between states, and when a work-related injury occurs, issues often arise about the proper jurisdiction for out-of-state and in-state injuries in workers' compensation cases.

In this article, we look specifically at these issues as they relate to the Michigan Worker's Disability Compensation Act (WDCA), MCL 418.101 et seq.

In-State Injuries

In Michigan, the WDCA may apply if the injury occurs in the state and the employer is a covered employer subject to the Act. For example, in *Wallace v Consolidated Freightways*, 199 Mich 141; 500 NW2d 752 (1993), the plaintiff was a resident of Indiana, who was employed by an Indiana corporation. The plaintiff was injured in Michigan, but he initially filed for worker's compensation benefits under Indiana law. After receiving all benefits allowed under the Indiana system, the plaintiff filed a claim in Michigan.

Relying on §111 of the WDCA, the Michigan Court of Appeals held that the plaintiff could bring his claim and the Michigan Bureau had jurisdiction over the claim. MCL 418.111 provides that "[E]very employer, public and private, and every employee, unless herein otherwise specifically provided, shall be subject to the provisions of this Act and shall be bound thereby."

The appellate court dealt with another Indiana claimant in *Alford v Pollution Control Indus*, 222 Mich. App. 693; 565 NW2d 9 (1997). As in *Wallace*, the plaintiff was an Indiana resident, who was hired in Indiana. The plaintiff was working in Michigan on a temporary basis when he was injured. The plaintiff was receiving Indiana benefits, when he decided to apply for Michigan benefits as well. The court took a different tact when confirming jurisdiction.

The appellate court held that §115 of the WDCA, which defines covered employers, must be examined. Under MCL 418.115, the Act applies to a private employer when (1) the employer regularly employs three or more employees at one time, or (2) the employer regularly employs less than three employees, and at least one of them has been regularly employed by that same

employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks.

The Michigan Court of Appeals held that the employer does not have to meet the §115 requirements in Michigan to be subject to the WDCA. The three employees did not need to be working in Michigan for the Act to apply.

These cases show that an out-of-state employer needs to be concerned with liability for an injury in Michigan if the employer meets the requirements of MCL 418.115. The Michigan Worker's Compensation Appeals Board went further in defining the liability of the employer and insurer in such cases.

In *Sieman v Postorino Sanblasting & Painting Co.* 1984 WCABO 515; *on remand* 111 Mich App 710; 314 NW2d 736 (1981), the Appeal Board held that the employee was entitled to Michigan benefits. The board further held that the employer, which was insured under Wisconsin law, was responsible for the difference of benefits owed under Michigan and Wisconsin law. The insurer was only responsible for the payment of the benefits owed under the law of Wisconsin.

Out-of-State Injuries

The law in Michigan had been settled for many years as to when Michigan had jurisdiction over out-of-state injuries. MCL 418.845 provides that the Agency “[s]hall 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 the 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.”

From 1932 until 2007, the Michigan Supreme Court had interpreted and as meaning “or.” In *Roberts v I.X.L. Glass Corp.*, 259 Mich 644; 244 NW 188 (1932), the Michigan Supreme Court held that the injured employee did not have to be a resident of the state as long as the contract of hire was made in the state.

The Michigan Court of Appeals attempted to take the Supreme Court to task by holding that the *Roberts* ruling no longer applied due to amendments to the original Act. *Wolf v Ethyl Corp.*, 124 Mich App 368; 335 NW2d 42 (1983) and *Hall v Chrysler Corp.*, 172 Mich App 670; 432 NW2d 398 (1988), *reconsideration den* 432 Mich 931; 442 NW2d 625 (1989).

Finally, in *Boyd v W. G. Wade Shows*, 443 Mich 515; 505 NW2d 544 (1993), the Supreme Court rejected the attempts to overrule or ignore *Roberts*. The Supreme Court held that the bureau “shall have jurisdiction over extraterritorial injuries without regard to the employee's residence, provided the contract of employment was entered into in this state with a resident employer.” 443 Mich 515, 526. The arguments over §845 seemingly were brought to an end.

In 2007, the Michigan Supreme Court reversed its long standing interpretation of §845 in the case of *Karaczewski v Farbman Stein & Co.*, 478 Mich 28; 732 NW2d 56 (2007). In overruling the *Boyd* interpretation, the Supreme Court found that both elements of §845 must be met: (1) the

injured employee must be a resident of the state and the contract of hire must be made in the state of Michigan.

The court stressed that the *Boyd* decision was contrary to the plain language of the statute. Furthermore, this new interpretation only affects residents of other states, who were injured outside of Michigan. These non-residents could seek worker's compensation benefits from the state in which they resided or suffered injury.

The law in Michigan clearly can have an impact on the injuries sustained by truckers. Michigan continues to support broad based jurisdiction for injuries occurring in the state, whether the injured employee be a resident or not.

On the other hand, the *Karaczewski* decision narrows the scope of the application of the WDCA on out-of-state injuries to residents only who contract for hire within the state. Benefits will be denied to truckers who reach a contract for hire in Michigan, but who are not residents of the state. This new ruling limits the scope and breadth of benefits that may be available to the injured employee.

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