No. 130509

IN THE SUPREME COURT OF ILLINOIS

CANDICE MARTIN, individually and as Executrix of the Estate of Rodney Martin, deceased,

Plaintiff-Appellee,

v.

GOODRICH CORPORATION, f/k/a B.F. GOODRICH COMPANY, and POLYONE CORPORATION, Individually and as Successor-By-Consolidation to THE GEON COMPANY, n/k/a AVIENT CORPORATION,

Defendants-Appellants.

On Certified Questions from the United States Court of Appeals for the Seventh Circuit, Case No. 23-2343.

BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE ILLINOIS CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANTS-APPELLANTS

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INTEREST OF *AMICI CURIAE*

Amici are the Chamber of Commerce of the United States of America ("U.S. Chamber") and the Illinois Chamber of Commerce ("Illinois Chamber"). They are the voices of the business community in Illinois and across the country, and, accordingly, have a strong interest in this case because reviving time-barred claims violates their members' due process rights. *Amici* are concerned that allowing 820 ILCS 310/1.1 to apply retroactively would impair the rights of their members, undermine the Illinois workers' compensation system, and create a path for reviving other types of time-barred claims.

The U.S. Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent its members' interests in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The Illinois Chamber has more than 1,800 members in virtually every industry. It advocates on behalf of its members to achieve an optimal business environment that enhances job creation and economic growth. It also regularly files *amicus curiae* briefs in cases before this Court that, like this one, raise issues of importance to the State's business community. The Court has acknowledged the value of the Illinois Chamber's perspective in

explaining the impact of rulings on the Illinois business community by granting the Chamber leave to file *amicus* briefs in many other cases.

INTRODUCTION

The U.S. Court of Appeals for the Seventh Circuit certified questions to this Court to determine whether an occupational disease claim clearly extinguished under the Illinois Workers' Occupational Diseases Act ("ODA") in 1976 can be revived today. A straight-forward application of the ODA, the terms of the legislation the General Assembly enacted in 2019 to narrow the exclusivity of the ODA, and the due process right this Court has recognized that prevents defendants from facing extinguished claims all dictate that the answer to this central question is "no." These claims cannot be revived.

Here, it is uncontroverted that Mr. Martin alleged exposure to a toxic chemical, vinyl chloride monomer (VCM), at Defendants' worksite only from 1966 to 1974. Because Mr. Martin was an employee of Defendants, the ODA governs any claim related to these workplace exposures and resulting diseases. *See Folta v. Ferro Engineering*, 2015 IL 118070, ¶ 36. ("[W]here the injury is the type of work-related injury within the purview of the acts, the employer's liability is governed exclusively by the provisions of those acts."). The ODA states that "[n]o compensation shall be payable for or on account of any occupational disease unless disablement . . . occurs within two years after the last day of the last exposure." 820 ILCS 310/1(f) ("Section 1(f)"). Thus, Plaintiff's ability to have a compensable claim from Mr. Martin's VCM

exposures against Defendants ended in 1976, and Plaintiff does not allege a disablement until 2019. Thus, the claims can never become compensable.

Nevertheless, Plaintiff filed the claims at bar, asserting the Illinois General Assembly revived them and allowed them to be filed in court when it amended the ODA in 2019. These amendments created a new exception to the ODA's exclusivity provisions, stating the exclusivity provisions no longer apply "to any injury or death resulting from an occupational disease as to which the recovery of compensation benefits under this Act would be precluded due to the operation of any period of repose or repose provision." 820 ILCS 310/1.1 ("Section 1.1 exception"). In these narrow circumstances, a person with standing to bring the claim would have a right of action in court against the employer. *See id.* Plaintiff argues that because Mr. Martin's disease was not *diagnosed* until after these enactments went into effect, the new exceptions can be applied to her claims. However, the 2019 amendments do not change the fact that all claims related to Mr. Martin's exposures raised in this litigation were extinguished in 1976 and legislation enacted afterwards cannot revive them. Defendants have long had a vested right to be free from any claims over Mr. Martin's exposures, both under the ODA and in the tort system. *See Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393 (2009).

Amici respectfully request that this Court hold that the Section 1.1 provision does not apply retroactively. The General Assembly can change substantive law only for future conduct—not retroactively. Here, the ability

for Plaintiff to be compensated based on Mr. Martin's allegations over occupational diseases ended. That fact cannot be overcome.

I. The Legislature's 2019 Amendment to Establish an Exception to the Occupational Disease Act's Exclusivity Provision Does Not Revive Plaintiff's Extinguished Claims

The ODA, with the Workers' Compensation Act, has long provided a grand bargain to protect Illinois workers. "In exchange for a system of no-fault liability upon the employer, the employee is subject to statutory limitations on the recovery for injuries and occupational diseases arising out of and in the course of employment." *Folta*, 2015 IL 118070, ¶ 12; *Goodson v. Industrial Comm'n*, 190 Ill. App. 3d 16, 18-19 (1989); *see also* 820 ILCS 310/1 *et seq*. This regime "replace[d] the common-law rights and liabilities that previously governed" employee diseases and injuries. *Folta*, 2015 IL 118070, ¶ 11. Thus, the ODA provides the exclusive remedy in situations like the one here, when an employee alleges a workplace disease. *See id*. (exclusivity is "part of this *quid pro quo*"). "There is no common law or [other] statutory right to recover compensation from the employer." 820 ILCS 310/5(a).

The General Assembly enacted Section 1(f) as part of the ODA's grand bargain, to require disablement within two years after the last day of the last exposure for the claim to be compensable. *See* 820 ILCS 310/1(f).[1] In *Folta*, this Court explained that, in providing both the temporal limitation for a

[1] Section 1(f) establishes exceptions for specific disease types, none of which are applicable in this case.

claim to be compensable in Section 1(f) and the repose period for barring claims in Section 6(c), "the General Assembly intended to provide an absolute definitive time period within which all occupational disease claims" must be brought, and the ODA applies the applicable time restrictions "regardless of whether an action has accrued or whether an injury has resulted" from the exposure. 2015 IL 118070, ¶ 33 (quoting *Ferguson v. McKenzie*, 202 Ill. 2d 304, 311 (2001)). The Court stated it was fully "cognizant of the harsh result" these limitations would impose on some employees, but that these limitations were necessary parts of the ODA's compromise for no-fault compensation. *Id.* at ¶ 43. "[W]hether a different balance should be struck," the Court continued, "is a question more appropriately addressed to the legislature." *Id.*

In 2019, the General Assembly responded to this Court's invitation in *Folta* by amending the ODA's Exclusivity Provisions, establishing an exception for claims barred as a result of "the operation of any period of repose or repose provision." 820 ILCS 310/1.1 ("Section 1.1 exception"). "In those limited situations, the employee, his or her heirs and any person with standing would have a right to bring an action in the courts for the disease." *Id.* These amendments do not revive Plaintiff's claim for at least two reasons.

First, Illinois law states that a statute that alters substantive rights and responsibilities—which includes the Section 1.1 exception because it creates a new right of action—cannot be applied to past conduct unless the statute expressly states the General Assembly's intent that the law be

applied retroactively. The 2019 legislation creating the Section 1.1 exception states no such thing. In these situations, the default rule, which provides that a new statute can be applied only to conduct that occurs after it takes effect, governs the legislation. *See* 5 ILCS 70/4; *Caveney v. Bower*, 207 Ill. 2d 82, 94 (2003) (stating the substantive statute either asserts its own retroactive effect, or cedes that power to Section 4). For this reason, the Section 1.1 exception does not have any impact on the claims at bar.

Second, setting aside questions of statutory interpretation, as discussed in detail below, allowing a 2019 statute to revive a claim that became non-compensable 45 years earlier violates Defendants' due process rights. In Illinois, this Court has made clear that once a claim such as the one at bar has been extinguished, "it cannot be revived through subsequent legislative action without offending the due process protections of [the Illinois] constitution." *Doe A.*, 234 Ill. 2d at 411-12. The Court's jurisprudence has been "*uniform* in holding that the legislature lacks the power to reach back and breathe life" into such a claim. *Sepmeyer v. Holman*, 162 Ill. 2d 249, 254 (1994) (emphasis added). Once a claim expires under any temporal limitation, "the defendant has a vested right to invoke the bar of the limitations period as a defense to a cause of action." *M.E.H. v. L.H.*, 177 Ill. 2d 207, 214 (1997). That right "cannot be taken away by the legislature without offending" due process rights. *Id.* at 214-15. "If the claims were time-barred under the old law, they remained time-barred." *Id.*

Here, it is undisputed Mr. Martin's last alleged exposure to VCM at Defendants' worksite occurred in 1974. Under Section 1(f), the claim became non-compensable in 1976 because disease did not manifest within two years. The Section 1.1 exception does not and cannot revive this claim now.

II. The Court Should Answer the Certified Questions in Ways that Support, Not Undermine, Temporal Limitations

Temporal limitations for bringing claims, which include statutes of limitations, statutes of repose, and conditions that must be met within a specified time for a claim to be compensable, are enacted to promote the prompt and fair adjudication of claims. These laws are important because some limitations period is needed to balance an individual's ability to bring a lawsuit with the ability to mount a fair defense and protect courts from stale or fraudulent claims. *See Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 266 (2001) (noting that limitations periods "represent society's recognition that predictability and finality are desirable, even indispensable, elements of the orderly administration of justice."). Indeed, most civil claims are subject to a finite time in which they can be filed. These limitations are essential elements of a fair and well-ordered civil justice system.

All of these types of limitations "reflect the legislative conclusion that a point in time arrives beyond which a potential defendant should be immune from liability for past conduct." 51 Am. Jur. 2d Limitation of Actions § 4 (2024). They "rest upon the premise that 'the right to be free of stale claims in time comes to prevail over the right to prosecute them.'" *Golla v. General*

Motors Corp., 167 Ill. 2d 353, 369 (1995) (quoting *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 21 U.S. 342, 349 (1944)); *accord Burnett v. New York Cent. R.R. Co.*, 380 U.S. 424, 428 (1965) (time limitations are "designed to assure fairness to defendants"). Thus, time limitations provide "security and stability . . . vital to the welfare of society." *Wood v. Carpenter*, 101 U.S. 135, 139 (1879).

There is no magic number as to what constitutes a fair length of time to bring a particular type of claim. Many claims, by their very nature, assert severe injuries and diseases, including diseases with long latency periods such as the claim at bar. Legislatures set the limitations periods for different types of claims based on the nature of the evidence and the public policies the legislature sought to achieve. Here, the General Assembly decided that a two-year limitations period would be imposed from when the employee was last exposed to a hazardous substance to when the disease manifests itself in order for the resulting claim to be compensable. It chose not to include other factors, including latency periods and discovery of injuries, that could extend this limitation. Rather, it determined that finality was important to the trade-offs of the no-fault compensation system the ODA established.

As a practical matter, organizations gauge their liability exposure and make financial and document retention decisions based on existing law. Before the Section 1.1. exception was enacted in 2019, employers would have no reason to purchase insurance outside of workers' compensation that would

cover civil claims brought by their employees for workplace diseases. And, any insurance that might cover such claims would not have envisioned the amount of liability associated with latent disease cases by employees.

Also, the limitation in Section 1(f) allows ODA claims to be evaluated when the best evidence is available, namely "before memories have faded, witnesses have died or disappeared, and evidence has been lost." *Portwood v. Ford Motor Co.*, 183 Ill. 2d 459, 463 (1998). In these stale cases, which can present difficult and emotional situations, juries may fill these factual voids with hindsight bias, which is the "human tendency to look back upon past events and view them as being expected or obvious" even though they may not be. Michael A. Haskel, *A Proposal for Addressing the Effects of Hindsight and Positive Outcome Biases in Medical Malpractice Cases*, 42 Tort & Ins. Prac. L.J. 895, 905 (2007). It leads those who know the outcome to view the case accordingly. *See* Baruch Fischhoff, *Hindsight ≠ Foresight: The Effect of Outcome Knowledge on Judgment Under Uncertainty*, 1 J. Experimental Psych.: Hum. Perception & Performance 288 (1975).

If the Court were to allow Plaintiff's time-barred claim, employers would be forced to mount a defense to claims for which relevant records or evidence may have been discarded years ago in reliance of Section 1(f) and for which defense witnesses may no longer be alive or available to rebut the claims. Such a result may facilitate compensation, but not justice.

III. Reviving Plaintiff's Claims Would Violate Due Process By Impairing Defendants' Vested Rights

The Court should resist any invitation to interpret the Section 1.1 exception as allowing the claims here. This Court has consistently held that the Illinois Constitution bars reviving extinguished claims. *See Doe A.*, 234 Ill. 2d at 409 (noting these principles "date back more than a century") (citing *Board of Educ. of Normal Sch. Dist. v. Blodgett*, 155 Ill. 441, 446 (1895)). In doing so, this Court has explained that reviving stale claims violates a defendant's due process rights given the finality of the expired limitations period. *See id.* "[O]nce a claim is time-barred," this Court has held, "it cannot be revived through subsequent legislative action." *Id.* at 411.

Illinois law in this area is in accord with the "great preponderance" of state appellate courts around the nation. *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996).[2] These states generally apply a vested-rights analysis that is

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[2] As several state high courts have recognized, the majority rule among jurisdictions is that a legislature cannot adopt retroactive laws that revive a time-barred claim. *See Johnson v. Garlock, Inc.*, 682 So. 2d 25, 28 (Ala. 1996) ("The weight of American authority holds that the bar does create a vested right in the defense."); *Johnson v. Lilly*, 823 S.W.2d 883, 885 (Ark. 1992) ("[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred."); *Frideres v. Schiltz*, 540 N.W.2d 261, 266-67 (Iowa 1995) ("[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action."); *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 816-17 (Me. 1980) ("The authorities from other jurisdictions are generally in accord with our conclusion" that there is a substantive right in a statutory limitation after the prescribed time has completely run and barred the action); *Doe v. Roman*

consistent with Illinois law, whether they do so through applying due process safeguards, a remedies clause, a specific state constitutional provision prohibiting retroactive legislation, or another state constitutional provision.[3] Courts have applied these constitutional principles to reject the legislative revival of time-barred claims in a wide range of cases—from workers' compensation claims, as here, to negligence claims and product liability actions, among others.

For example, the Colorado Supreme Court, in *Aurora Pub. Sch. v. A.S.,* 531 P.3d 1036 (Colo. 2023), recently denied such a claim, stating "the prohibition on retrospective legislation prevents the legislature from

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Catholic Diocese, 862 S.W.2d 338, 341-42 (Mo. 1993) (constitutional prohibition of legislative revival of a time-barred claim "appears to be the majority view among jurisdictions with constitutional provisions"); *State of Minnesota ex rel. Hove v. Doese*, 501 N.W.2d 366, 369-71 (S.D. 1993) ("Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.").

[3] *See, e.g.*, *Garlock*, 682 So. 2d at 27-28; *Johnson*, 823 S.W.2d at 885; *Wiley v. Roof*, 641 So. 2d 66, 68-69 (Fla. 1994); *Frideres*, 540 N.W.2d at 266-67; *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W.3d 850, 854-55 (Ky. 2003); *Hall v. Hall*, 516 So. 2d 119, 120 (La. 1987); *Dobson,* 415 A.2d at 816-17; *Doe*, 862 S.W.2d at 341-42; *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771, 773-75 (Neb. 1991); *Gould v. Concord Hosp.*, 493 A.2d 1193, 1195-96 (N.H. 1985); *Wright v. Keiser*, 568 P.2d 1262, 1267 (Okla. 1977); *Lewis v. Pennsylvania R. Co.*, 69 A. 821, 822-23 (Pa. 1908); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Doese*, 501 N.W.2d at 369-71; *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696-97 (Tenn. 1974); *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999); *Starnes v. Cayouette*, 419 S.E.2d 669, 674-75 (Va. 1992); *Society Ins. v. Labor & Indus. Review Comm'n*, 786 N.W.2d 385, 399-402 (Wis. 2010).

changing the rules after the fact because to do so would be unjust." *Id.* at 1047. While the court was sympathetic to the legislature's desire to "right the wrongs of past decades," it recognized there is no "public policy exception" to the constitutional prohibition on reviving time-barred claims. *Id.* at 1049. The Utah Supreme Court, in *Mitchell v. Roberts*, 469 P.3d 901 (Utah 2020), applied similar reasoning to invalidate a law reviving time-barred claims. There too, the court "appreciated the moral impulse" underlying the claims-revival provision, but it maintained that the issue was "not a matter of policy" but one of basic protection for defendants. *Id.* at 914. The court unanimously held that the principle that the legislature "vitiates a 'vested' right" in violation of due process by retroactively reviving a time-barred claim is "well-rooted," "confirmed by the extensive historical material," and has been repeatedly reaffirmed for "over a century." *Id.* at 903, 904, 913.

Here, Plaintiff has made several arguments for why the Court should revive this claim—from statutory interpretation to distinguishing between ODA claims and tort claims—but all of them are attempts to circumvent the ODA's clear history and the well-accepted constitutional due process rights of defendants. These safeguards require legislatures to act prospectively, not retrospectively, when substantive rights are implicated. If the Court creates an exception here, it will open a new, unwise path for efforts to allow retroactive liability for other types of claims.

Amici have observed several such recent attempts. States have considered legislation that would have retroactively expanded a state's statute of limitations for product liability claims from six to fifteen years, *see* LD 250 (Maine 2019) (reported "ought not to pass"), revived time-barred asbestos claims during a two-year window, *see* S.B. 623 (Or. 2011) (did not pass committee), revived claims by water suppliers related to contaminants, *see* S. 8763A (N.Y. 2022), and revived time-barred actions under the state's unfair competition law over climate change, *see* S.B. 1161 (Cal. 2016) (reported favorably from committee, but did not receive floor vote).

Should this Court interpret the Section 1.1 exception to allow Plaintiff's claim, doing so may encourage the Illinois General Assembly to try reviving other types of stale claims. Individuals and businesses in Illinois would face a risk of indefinite liability, long after the claims were extinguished and they made decisions, such as disposing of records that could have exculpated them from liability, in reliance on the law. Liability in these cases will be driven by sympathy and bias, rather than law and evidence.

CONCLUSION

For the foregoing reasons, the Court should answer the certified questions in ways that reject any application of the Section 1.1 exception to Plaintiff's claims. The application of this exception to past conduct on the facts of this case would offend Illinois's due process guarantee.

Dated: May 30, 2024

Respectfully submitted,

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA and THE ILLINOIS CHAMBER OF COMMERCE

By: */s/ Matthew C. Wolfe*

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 3502 words.

Dated: May 30, 2024 */s/ Matthew C. Wolfe*