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.

Questions of Law Certified by the
United States Court of Appeals for the Seventh Circuit, Case No. 23-2343
On Appeal from the United States District Court for the Central District of Illinois,
Case No. 1:21-cv-10323-JES-JEH, the Honorable James E. Shadid, Judge Presiding

BRIEF OF DEFENDANTS-APPELLANTS

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NATURE OF THE CASE

Plaintiff-Appellee Candice Martin ("Plaintiff"), individually and as executrix of the estate of Rodney Martin ("Decedent"), brought a common law personal injury action against Decedent's former employers Defendants-Appellants Goodrich Corporation ("Goodrich") and PolyOne Corporation ("PolyOne," now known as Avient Corporation) (together, "Defendants") alleging that Decedent developed angiosarcoma, a form a liver cancer, as a result of his occupational exposure to vinyl chloride monomer ("VCM") while working at the former Henry, Illinois manufacturing facility of his former employer, Goodrich. Specifically, Plaintiff alleged that Decedent was exposed to hazardous levels of VCM from the beginning of his employment with Goodrich in 1966 until sometime in early 1974 when Goodrich drastically reduced VCM exposures at its facility. Decedent retired in October 2012. Decedent was diagnosed with angiosarcoma of the liver on December 11, 2019 and passed away on July 9, 2020.

Defendants moved to dismiss the civil action on multiple grounds. The U.S. District Court for the Central District of Illinois denied Defendants' joint motion to dismiss and Defendants moved the district court to certify its order for interlocutory review. The district court granted Defendants' motion and certified certain questions to the U.S. Court of Appeals for the Seventh Circuit. Defendants duly filed a petition for interlocutory appeal that was granted by the Seventh Circuit. Following briefing and oral argument, the Seventh Circuit certified to this Court three questions presented herein.

ISSUES PRESENTED FOR REVIEW

(1) Is 820 ILCS 310/1(f) ("Section 1(f)") a "period of repose or repose provision" for 820 ILCS 310/1.1 ("Exception 1.1") purposes?

(2) If Section 1(f) falls within Exception 1.1, what is its temporal reach—either by its own terms or through 5 ILCS 70/4 ("Section 4")?

(3) Would the application of Exception 1.1 to past conduct offend Illinois's due process guarantee?

STATEMENT OF JURISDICTION

Jurisdiction exists in this Court pursuant to Illinois Supreme Court Rule 20(a). By Final Opinion and Order dated March 6, 2024, the U.S. Court of Appeals for the Seventh Circuit certified to this Court the questions presented for review herein. Certification was accepted by this Court by Order dated March 21, 2024.

STATUTES INVOLVED

820 ILCS 310/5(a) provides, in pertinent part:

Except as provided in Section 1.1 [820 ILCS 310/1.1], there is no common law or statutory right to recover compensation or damages from the employer * * * for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided * * *.

820 ILCS 310/11 provides, in pertinent part:

Except as provided in Section 1.1 [820 ILCS 310/1.1], the compensation herein provided for shall be the full, complete and only measure of the liability of the employer bound by election under this Act * * *.

820 ILCS 310/1.1 provides, in pertinent part:

Subsection (a) of Section 5 and Section 11 [820 ILCS 310/5 and 820 ILCS 310/11] do not 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. As to any such occupational disease, the employee, the employee's heirs, and any person having standing under the law to bring a civil action at law * * * has the nonwaivable right to bring such an action against any employer or employers.

820 ILCS 310/1(f) provides:

No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease, except in cases of occupational disease caused by berylliosis or by the inhalation of silica dust or asbestos dust and, in such cases, within 3 years after the last day of the last exposure to the hazards of such disease and except in the case of occupational disease caused by exposure to radiological materials or equipment, and in such case, within 25 years after the last day of last exposure to the hazards of such disease.

820 ILCS 310/6(c) provides, in pertinent part:

* * * In any case, other than injury or death caused by exposure to radiological materials or equipment or asbestos, unless application for compensation is filed with the Commission within 3 years after the date of the disablement, where no compensation has been paid, or within 2 years after the date of the last payment of compensation, where any has been paid, whichever shall be later, the right to file such application shall be barred. If the occupational disease results in death, application for compensation for death may be filed with the Commission within 3 years after the date of death where no compensation has been paid, or within 3 years after the last payment of compensation, where any has been paid, whichever is later, but not thereafter.

Effective July 1, 1973 in cases of disability caused by coal miners pneumoconiosis unless application for compensation is filed with the Commission within 5 years after the employee was last exposed where no compensation has been paid, or within 5 years after the last payment of compensation where any has been paid, the right to file such application shall be barred.

In cases of disability caused by exposure to radiological materials or equipment or asbestos, unless application for compensation is filed with the Commission within 25 years after the employee was so exposed, the right to file such application shall be barred.

In cases of death occurring within 25 years from the last exposure to radiological material or equipment or asbestos, application for compensation must be filed within 3 years of death where no compensation has been paid, or within 3 years, after the date of the last payment where any has been paid, but not thereafter.

5 ILCS 70/4 provides, in pertinent part:

No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. * * *

STATEMENT OF FACTS

A. Relevant Factual Background.

Plaintiff initiated this lawsuit individually and as Executrix of the Estate of Rodney Martin ("Decedent") under the Illinois Wrongful Death Act (740 ILCS 180/1 *et seq*.) and the Illinois Survival Act (755 ILCS 5/27-6).[1] (A01.) Plaintiff alleges that Decedent developed a form of liver cancer, angiosarcoma, as a result of his occupational exposure to vinyl chloride monomer while employed at the former Henry, Illinois manufacturing facility of his former employer, Goodrich. (A04.) In 1993, Goodrich spun out the Geon Company and transferred certain assets to the Geon Company, including the Henry plant. Thereafter, Geon consolidated with M.A. Hanna Co. in 2000, leading to the formation of Defendant PolyOne Corporation.

Plaintiff alleges that Decedent was exposed occupationally to hazardous levels of VCM from the beginning of his employment with Goodrich in 1966 until sometime in early 1974 when Goodrich drastically reduced VCM exposures at its facility. (A05.) Decedent retired in October 2012. (A04.)

[1] Plaintiff filed her original Complaint on November 4, 2021 alleging: (1) Negligence; (2) Fraud and Fraudulent Concealment; (3) Willful and Wanton Misconduct, Gross Negligence, and Intentional, Knowing, and Reckless Wrong-Doing; and (4) Loss of Consortium. (A235, Dkt. 1.) On January 24, 2021, Defendants jointly moved to dismiss Plaintiff's Complaint, (A236, Dkt. 15-16), which the Court granted on June 15, 2022 (A237, Dkt. 25). The Order dismissed Plaintiff's Complaint without prejudice and with leave to replead on the grounds that Plaintiff failed to allege facts to support her claims. Plaintiff filed an Amended Complaint on July 1, 2022, which is the operative pleading. (*Id.*, Dkt. 26.)

Decedent was diagnosed with angiosarcoma of the liver on December 11, 2019 and passed away on July 9, 2020. (A05.) Because Plaintiff alleges Decedent's disease arose out of and in the course of his employment with Goodrich, the Illinois Workers' Occupational Diseases Act (the "ODA") governs. *See* 820 ILCS 310/1, *et seq*.

B. Plaintiff's Claims and the Relevant Provisions of Illinois's Workers' Occupational Diseases Act.

Plaintiff's multi-count Amended Complaint asserts occupational disease claims based on common law negligence (Count I), fraudulent concealment (Count II), and loss of consortium (Count III) pursuant to 820 ILCS 310/1.1, a recently enacted amendment to the ODA (hereinafter, "Exception 1.1"). Prior to the enactment of Exception 1.1, Plaintiff's potential ODA claims had been barred for more than forty years and Defendants had a vested right in the assurance that no cause of action, whether statutory or common law, could ever accrue with respect to Decedent's alleged occupational exposure.

Specifically, until Exception 1.1, the exclusivity provisions in the ODA prevented Plaintiff from maintaining any civil action against Defendants because an employer's statutory obligation to provide compensation to employees for occupational diseases served as the exclusive remedy if an employee sustained a compensable injury. *See* 820 ILCS 310/5(a), 310/11 (the "Exclusivity Provisions"). Section 1(f) of the ODA likewise barred any claim because Decedent's injury did not manifest within two years after his last exposure to VCM in 1974. *See* 820 ILCS 310/1(f) ("Section 1(f)") ("No

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…"). Together, the Exclusivity Provisions and Section 1(f) operated to prevent Plaintiff from pursuing any administrative or common law claim based on Decedent's occupational VCM exposures after early 1976, two years after the date of Decedent's last claimed exposure. (A05.)

Notwithstanding this longstanding bar, Plaintiff contends that the recently enacted Exception 1.1 permits her to assert civil claims against Defendants. In May 2019, the Illinois legislature enacted Exception 1.1, which provides in relevant part:

> [the Exclusivity Provisions] do not 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. As to any such occupational disease, the employee, the employee's heirs, and any person having standing under the law to bring a civil action at law […] has the nonwaivable right to bring such an action against any employer or employers.

820 ILCS 310/1.1. Under Exception 1.1, an employee or heir may now seek to evade the ODA's Exclusivity Provisions where the complaint alleges (1) an injury or death resulting from an occupational disease; (2) that is compensable under the ODA; and (3) is otherwise barred from recovery by the operation of a period of repose. *Id.*

Plaintiff asserts that Exception 1.1 applies here on the theory that any claims Plaintiff or Decedent may have had under the ODA against Defendants are barred by Section 1(f), operating as a "repose provision," and that she has

a non-waivable right to bring this action. (A05-A08.) Defendants' rights to rely on the intertwined Section 1(f) and Exclusivity Provisions defenses to bar any claims relating to Decedent's occupational exposure, however, vested more than forty years ago.

For Plaintiff to proceed now on her claims, it must be determined that Exception 1.1 applies to strip away Defendants' vested defenses provided by the Exclusivity Provisions and the Section 1(f) bar, reviving claims based on decades-old events, and allow Plaintiff to assert civil claims against Defendants for injuries that manifested after May 2019—*i.e.*, the date of the enactment of Exception 1.1.

C. Relevant Procedural History and Issues Presented for Review.

On August 15, 2022, Defendants jointly moved to dismiss Plaintiff's operative complaint, setting forth several arguments that are now presented to this Court for review. (*See* A64.) *First*, Exception 1.1 does not apply to permit Plaintiff to pursue her civil claims because ODA Section 1(f) is a condition precedent, not a statute of repose. *Second*, even if Section 1(f) is a statute of repose, the repose period in Section 1(f) expired in 1976—"two years after the last day of the last exposure" to VCM. *See* 820 ILCS 310/1(f). When Section 1(f) expired in 1976, Defendants gained a vested property right in asserting the defenses provided by the intertwined statute of repose and Exclusivity Provisions to bar any claims, in any forum, relating to Decedent's occupational VCM exposure. By applying Exception 1.1 to an injury arising from exposures

that occurred almost 50 years ago and furnishing Plaintiff with a cause of action that was otherwise barred from ***ever*** accruing, the new amendment retroactively and unconstitutionally strips Defendants of their vested property rights in defenses to bar the claims in violation of due process. Contrary to Illinois precedent, the District Court concluded that permitting Plaintiff to proceed on her claims would not violate Defendants' due process rights, and denied the joint motion to dismiss. (*See* A69.)

Defendants moved for certification of the order denying Defendants' motion to dismiss, and on May 31, 2023, the District Court granted Defendants' motion, certifying the following questions for interlocutory appellate review: (1) whether Section 1(f) is a statute of repose for purposes of Exception 1.1; and (2) if so, whether applying Exception 1.1 to allow Plaintiff's civil case to proceed would violate Defendants' substantive due process rights under the Illinois Constitution. (*See* A89.) On June 28, 2023, the Seventh Circuit granted Defendants' Petition for Interlocutory Appeal. (*See* A95.)

Following briefing and oral argument, on March 6, 2024, the Seventh Circuit entered an order certifying three questions to this Court. (*See* A96.) On March 21, 2024, this Court accepted the three certified questions posed by the Seventh Circuit and addressed by Defendants herein.

STANDARD OF REVIEW

This Court's standard of review with respect to each of the three certified questions is *de novo*. The first two questions – whether Section 1(f) is a "period of repose or repose provision" for purposes of Exception 1.1 and, if so, what is

the temporal reach of Exception 1.1 by its own terms or under Section 4 – are both questions of statutory interpretation subject to *de novo* review. *Roberts v. Alexandria Transportation, Inc.*, 2021 IL 126249, ¶ 28. The third question – whether application of Exception 1.1 to past conduct in this case would violate Illinois's due process guarantee – is a constitutional question that is also reviewed *de novo. Gregg v. Rauner*, 2018 IL 122802, ¶ 23.

ARGUMENT

I. THE ILLINOIS WORKERS' OCCUPATIONAL DISEASES ACT IS A STATUTORY SCHEME THAT CAREFULLY BALANCES THE RIGHTS OF EMPLOYEES AND EMPLOYERS.

The ODA is a long-standing, comprehensive statutory scheme that reflects the legislative balance between the rights of employees and employers. *See* 820 ILCS 1/1, *et seq.*; *Goodson v. Indus. Comm'n*, 190 Ill. App. 3d 16, 18-19 (1st Dist. 1989). The ODA has long provided for compensation for diseases arising out of employment and was modeled after and designed to complement the Workers' Compensation Act ("WCA"). *See* 820 ILCS 305/1, *et seq.*; *see also Folta v. Ferro Eng'g*, 2015 IL 118070, ¶ 11. Together, the ODA and WCA have historically provided employers and employees with assured rights and protections premised upon a *quid pro quo*. *See Daniels v. Venta Corp.,* 2022 IL App (2d) 210244, ¶ 18 (citing *Meerbrey v. Marshall Field & Co.*, 139 Ill. 2d 455, 462 (1990)).

A. The *Quid Pro Quo* Structure.

Specifically, under the ODA's statutory framework, an employer is obligated to provide compensation to employees for diseases that arise out of

and in the course of the employment. 820 ILCS 310/1(d). Liability without fault is strictly imposed upon the complying employer in an amount set by the statute unless the employee's claim is otherwise barred. *McDonald v. Symphony Bronzeville Park, LLC,* 2022 IL 126511, ¶ 30.

To balance the no-fault liability imposed on the employer, the statutory remedies under the ODA serve as an employee's "***exclusive remedy*** if he sustains a compensable injury." *Id.* (emphasis added); *see also Folta*, 2015 IL 118070, ¶ 12; *Daniels,* 2022 IL App (2d) 210244, ¶ 18 (The ODA "contain[s] an exclusive remedy provision as part of the *quid pro quo*, which balances the sacrifices and gains of employees and employers."). The Exclusivity Provisions of the ODA have long shielded an employer from "any and all other civil liability whatsoever, at common law or otherwise," absent an exception. 820 ILCS 310/11 and 310/5(a); *see McDonald,* 2022 IL 126511, ¶ 32.[2]

Further balancing the ODA's strict imposition of no-fault liability upon employers, the Exclusivity Provisions operate in conjunction with the ODA's condition precedent (Section 1(f)) and statute of repose (820 ILCS 310/6(c)) ("Section 6(c)") to provide a defense against stale claims and thereby curtail any liability in any forum in perpetuity. *See Folta,* 2015 IL 118070, ¶¶ 32-43. Section 1(f) is a condition precedent to recovering compensation, requiring the

[2] The corresponding exclusive remedy provisions in Sections 5 and 11 of the WCA (820 ILCS 305/5(a), 11) have been viewed as analogous for purposes of judicial construction. *Folta*, 2015 IL 118070, ¶ 13. Thus, cases interpreting the exclusive remedy provisions of the WCA also apply in the context of the ODA. *Id.*

claimant to show disablement within two years after the last day of occupational exposure to bring a claim for compensation (*see* 820 ILCS 310/1(f)), while the statute of repose in Section 6(c) bars any right of action if a claim is not filed within three years after the date of disablement (where no compensation has been paid) (820 ILCS 310/6(c)).[3] The condition precedent and statute of repose have long effectuated the legislature's intent to protect an employer against claims too old to be adequately investigated and defended by reasonably limiting the period of potential liability for both disability benefits payable to an employee and death benefits payable to a survivor. *Goodson*, 190 Ill. App. 3d at 19. By establishing a date certain for the termination of a right to compensation or to pursue a claim, this statutory framework crafted by the legislature enables employers to predict, plan for, and insure against their potential future liabilities.

Thus, while the Exclusivity Provisions operate to bar an employee or heir from bringing common law actions for injuries that come within the scope

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[3] Where compensation has been paid, the period of repose is the later of three years after disablement or two years after the date of the last payment of compensation. 820 ILCS 310/6(c). And, while the two- and three-year repose periods are the default, there are different periods for other specific exposures. Specifically, in cases of disability caused by coal miners pneumoconiosis, a compensation claim must be filed within five years after the employee was last exposed where no compensation has been paid, or within five years after the last payment of compensation where any has been paid. *Id.* In cases of disability caused by exposure to radiological materials or equipment or asbestos, a compensation claim must be filed within 25 years after exposure, and in cases of death occurring within 25 years of such exposure, within three years of death where no compensation has been paid, or within three years the last payment. *Id.*

of the ODA, the condition precedent and statute of repose function as an absolute bar to compensation or claims for injuries or diseases falling within the scope of the ODA (1) that failed to develop within two years following the last occupational exposure (820 ILCS 310/1(f)); or (2) for which no claim was filed within three years after the date of disablement (820 ILCS 310/6(c)). These harmonious provisions – the Exclusivity Provisions, Section 1(f), and Section 6(c) – were always intended to provide qualifying employers with a vested defense that prevents employees or heirs from later asserting any claim relating to an occupational disease in any forum (administrative or common law) where disablement does not occur or recovery is not sought within the periods prescribed by the statute. *See Folta,* 2015 IL 118070, ¶ 40.

This construction of the ODA is plainly supported by this Court's decision in *Folta*. *Folta* established that a party's inability to meet the condition precedent and statute of repose does not remove certain latent or "untimely" occupational diseases from the purview of the ODA and permit a party to avoid the operation of the Exclusivity Provisions. *Id.* ¶¶ 40-41. Rather, *all* qualifying diseases are jointly subject to, and barred by, the Exclusivity Provisions ***and*** the condition precedent and statute of repose, which must operate hand-in-glove under the statutory scheme. *Id.* ¶ 41. As this Court explained, given that the ODA "is exclusive with respect to *any* disease contracted or sustained in the course of the employment" and that there is no other right to recover damages from the employer, "it would be a radical

departure to suggest that the exclusivity provisions apply only for certain occupational diseases in which the disability manifests within the time limitation." *Id.* (internal citations omitted). Thus, the Exclusivity Provisions and Section 1(f) must be read and treated together, especially when applied, as here, in defense of a decades-old, stale claim involving an injury that falls directly within the scope of the ODA. Until recently, these defenses were iron-clad unless the employee or heir could prove that the injury (1) was intentional; (2) did not arise from his employment; (3) was not sustained during the course of employment; or (4) was not compensable under the ODA. *Id.* ¶¶ 14-15.[4] These limited exceptions take the injured party out of the employer-employee arrangement and ODA scheme, as the Exclusivity Provisions apply from the time of employment and until and unless one of the exceptions is met.

B. The Legislature's Response to *Folta*.

This Court acknowledged the "harsh" result in *Folta* of the ODA's statute of repose, but statutes of repose by their nature yield "harsh" results in some instances.[5] In response, rather than extending the prescribed time period

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[4] Plaintiff does not allege an injury claim under any of these limited exceptions.

[5] *See, e.g.*, *Orlak v. Loyola Univ. Health Sys.*, 228 Ill. 2d 1, 8, 885 N.E.2d 999, 1003 (2007) (applying the statute of repose for medical malpractice claims despite its "harsh consequences"); *Prospect Dev., LLC v. Kreger*, 2016 IL App (1st) 150433, ¶ 22, 39-40 (applying the statute of repose for legal malpractice action; "While it creates a harsh result, the purpose of the statute of repose is to terminate the possibility of liability after a defined period of time, regardless of a party's lack of knowledge."); *O'Brien v. Scovil*, 332 Ill. App. 3d 1088, 1091 (3d Dist. 2002) (applying the statute of repose for legal malpractice claim; "While we lament that this holding seems harsh, we must point out that we do not make the laws.").

for the condition precedent or statute of repose, on May 17, 2019, the legislature enacted Exception 1.1 (820 ILCS 310/1.1) Exception 1.1 amended the statutory scheme to create a new exception to exclusivity where an employee or heir alleges (1) an injury or death resulting from an occupational disease; (2) that is compensable under the ODA; and (3) is otherwise barred from recovery by the operation of a statute of repose. 820 ILCS 310/1.1; *see also* 2019 Ill. SB 1596.

Plaintiff asserts that Exception 1.1 applies here on the theory that any claims Plaintiff or Decedent may have had under the ODA against Defendants are barred by Section 1(f), operating as a repose provision. (A05-A08). As set forth below, Plaintiff's theory cannot stand because: (1) Section 1(f) is not a repose provision for purposes of Exception 1.1; (2) even if Section 1(f) does constitute a repose provision within the meaning of Exception 1.1, the Illinois Statute on Statutes prohibits this substantive amendment from stripping away Defendants' accrued rights of defense; and (3) regardless of legislative intent, the application of Exception 1.1 to allow Plaintiff's claims to proceed here would violate the Illinois Constitution.

II. RESPONSE TO QUESTION 1: SECTION 1(f) IS NOT A REPOSE PROVISION FOR EXCEPTION 1.1 PURPOSES.

Plaintiff cannot rely on Exception 1.1 to bring her civil action against Defendants because the condition precedent set forth in Section 1(f) of the ODA is not a statute of repose and, therefore, is not implicated by Exception 1.1 and precludes recovery here.

A. The Only Statute of Repose in the ODA is Set Forth in Section 6(c).

The only provision of the ODA that has been explicitly recognized by this Court as a statute of repose is Section 6(c), which provides, in relevant part:

> In any case, other than injury or death caused by exposure to radiological materials or equipment or asbestos, **unless application for compensation is filed with the Commission within 3 years after the date of the disablement, where no compensation has been paid, or within 2 years after the date of the last payment of compensation, where any has been paid, whichever shall be later, the right to file such application shall be barred**. **If the occupational disease results in death, application for compensation for death may be filed with the Commission within 3 years after the date of death where no compensation has been paid**, or within 3 years after the last payment of compensation, where any has been paid, **whichever is later, but not thereafter.**

820 ILCS 310/6(c) (emphasis added). Based on this plain language, this Court held in *Folta* that Section 6(c) "acts as a statute of repose" and "creates an absolute bar on the right to bring a claim under the ODA" after expiration of the applicable repose period "regardless of whether an action has accrued or whether an injury has resulted." 2015 IL 118070 at ¶ 33. After explicitly defining Section 6(c) as a statute of repose, this Court also construed Section 1(f) and did not similarly identify it as a statute of repose, but instead held that Section 1(f) merely "function[s] as a temporal limitation[.]" *Id.* ¶ 42.

Notably, Plaintiff does not argue that the statute of repose in Section 6(c) would have otherwise precluded recovery for Decedent's exposure-related injuries under the ODA to justify bringing an action under Exception 1.1. Indeed, the Amended Complaint fails to mention Section 6(c) at all,

presumably because the applicable three-year repose period **had not expired** when Plaintiff initiated her civil suit in July 2022. Based on the allegations that compensation under the ODA was never pursued and that Decedent became disabled in December 2019 and died in July 2020, the three-year repose period for Plaintiff's claim under Section 6(c) did not expire until July 9, 2023, a year after the Amended Complaint was filed. (A07); *see also* 820 ILCS 310/6(c). Plaintiff thus relies exclusively and improperly on Section 1(f), which is unlike Section 6(c) and is not a statute of repose that may trigger Exception 1.1.

1. Illinois Appellate Courts Distinguish the Condition Precedent in Section 1(f) from the Statute of Repose in Section 6(c).

Although not directly addressed by this Court, *see Folta*, 2015 IL 118070, at ¶¶ 33, 42 (holding that Section 6(c) "acts as a statute of repose" and that Section 1(f) "function[s] as a temporal limitation"), the language and purpose of the repose provision Section 6(c) has been distinguished by Illinois appellate courts from that of Section 1(f), which provides in relevant part:

> No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, **occurs within two years after the last day of the last exposure to the hazards of the disease**, […].

820 ILCS 310/1(f) (emphasis added).

The Fifth District has held in several cases that Section 1(f) differs from Section 6(c) in that it is a condition precedent to recovery under the ODA, not a statute of repose. *See Docksteiner v. Indus. Comm'n (Peabody Coal Co.),* 346

Ill. App. 3d 851, 856 (5th Dist. 2004); *Plasters v. Indus. Comm'n,* 246 Ill. App. 3d 1, 6-8 (5th Dist. 1993) (citing *Goodson*, 190 Ill. App. 3d at 18); *Freeman United Coal Mining Co. v. Indus. Comm'n (Gower*), 263 Ill. App. 3d 478, 486 (5th Dist. 1994).

In *Docksteiner,* claimant sought benefits under the ODA, alleging that he contracted coal workers' pneumoconiosis caused by occupational exposure. 346 Ill. App. 3d at 852. Claimant worked as a coal miner for 25 years and was exposed to coal dust in the course of his employment until the mine closed in 1993. *Id.* In 1997, claimant was diagnosed with coal workers' pneumoconiosis and filed an application for compensation under the ODA. *Id.* 853. The commission denied the application, finding that claimant failed prove disablement as a result of an occupational disease within two years of his last date of exposure in 1993. *Id.* 854.

On appeal, the claimant argued that Section 1(f) should not apply to coal workers' pneumoconiosis because it conflicts with the repose period for claims of disability caused by coal miners' pneumoconiosis set forth in Section 6(c). The appellate court affirmed the commission's decision, explaining that although Sections 1(f) and 6(c) should be read together to effectuate the legislature's intent, the subject matter and nature of each provision is different. *Id.* 856 (citing *Plasters*, 246 Ill. App. 3d at 7-8.). Section 1(f) operates as a condition precedent to compensation that must be met to hold an employer liable under the ODA, whereas Section 6(c) operates as an absolute time bar

that extinguishes the employer's liability upon expiration, regardless of whether an action accrued or a claimant met the condition precedent. *Id.* Section 1(f) thus prescribes the conditions necessary to confer a right to compensation and to impose liability upon an employer under the ODA as a threshold matter.

2. The Statutory Text and Legislative Record Does Not Support Plaintiff's Interpretation of Section 1(f) as a Statute of Repose.

i. Construing Section 1(f) as a Statute of Repose for Purposes of Exception 1.1 Would Destroy the ODA's Balanced Recovery Scheme.

As a practical matter, adopting Plaintiff's interpretation and construing Section 1(f) as a statute of repose for purposes of Exception 1.1 is untenable because it would eviscerate the well-balanced framework of the ODA. A primary rule of statutory interpretation is that a statute must be substantively read as a whole, with all relevant parts considered. *See Sylvester v. Indus. Comm'n,* 197 Ill. 2d 225, 232 (2001). Plaintiff's interpretation of Section 1(f) violates this principle.

Under Plaintiff's theory, an employee or heir who fails to meet the condition precedent in Section 1(f) would be permitted to by-pass the Exclusivity Provisions and pursue tort recovery ***before*** the expiration of Section 6(c)'s repose periods—the true target of Senate Bill 1596 (codified in Exception 1.1). This directly contradicts the ODA's balanced recovery scheme by rendering the repose period in Section 6(c), the condition precedent in

Section 1(f), and the Exclusivity Provisions meaningless, and exposing employers to civil actions with the potential additional burdens of punitive damages[6] and prejudgment interest[7] in ***all*** cases where the condition precedent is not met—i.e., where the disease did not manifest within two years of exposure to VCM or other potential hazards; or more notably, where the disease "caused by berylliosis or by the inhalation of silica dust or asbestos dust" did not manifest "within 3 years after the last day of the last exposure" to such hazards (820 ILCS 310/1(f))—***regardless*** of whether the repose period in Section 6(c) expired. This was certainly not the legislature's intent in passing Exception 1.1.

ii. In Enacting Exception 1.1, the Legislature Was Targeting the 25-Year Repose Period in Section 6(c), Not the Condition Precedent in Section 1(f).

The Illinois Senate and House hearing transcripts, containing the legislative history of Senate Bill 1596, make clear that the focus of Exception 1.1 is to reduce the "harsh" impact of the 25-year statute of repose for asbestos-related diseases. *See* Transcript of Illinois Senate Debate taken March 6, 2019, *e.g.*, at A140 ("Under current law, the repose period is twenty-five years.") and Transcript of Illinois House Debate taken March 14, 2019, *e.g.*, at A169

[6] On August 11, 2023, signed into law Public Act 103-0513, amending the Illinois Wrongful Death Act (740 ILCS 180/1 and 180/2) to allow for the recovery of punitive damages in wrongful death actions.

[7] Effective as of July 1, 2021, 735 ILCS 5/2-1303 now imposes 6% prejudgment interest on damage awards for wrongful death actions.

(Representative Hoffman arguing "Senate Bill 1596 is an initiative that would ensure that individuals who are affected by diseases such as mesothelioma would actually be adequately compensated," as *Folta* "took away" the right to be compensated after the 25 year statute of repose), A172 ("This Bill does not remove these types of injuries from the workers' comp structure. What it does is it says, if you have a latent disease it does not manifest itself until 25 years after it has been exposed or till after the current statute of repose that you then could go to civil court, yet the current statute of limitation would still apply."), A177 (Q: "The statutes of repose for both those Acts, and I'm referring to the Workers' Compensation Act and the Workers' Occupation Disease Act [sic], is 25 years from the date of last exposure, correct? A: "Yes."), and A179 ("This legislation is legislation that is going to allow individuals who…have contracted some type or been in contact with…asbestos or some other type of chemical, and after 25 years, they then discover that they have some type of terrible disease."). This 25-year repose period for asbestos diseases is set out in Section 6(c), ***not*** in Section 1(f). *Compare* 820 ILCS 310/1(f) *with* 310/6(c).

There is no merit to Plaintiff's argument that Exception 1.1's reference to "any period of repose or repose provision" means that Section 6(c) cannot be the only repose provision contemplated. (*See* Brief of Plaintiff-Appellee, 7th Cir. Case No. 23-2343, Doc. 14, at 10 (hereinafter, "Appellee Br.")). The word "any" modifies the term "period of repose," of which there are many within Section 6(c) – the ODA's statute of repose as defined by this Court in *Folta*.

2015 IL 118070, at ¶ 33. There is a five-year period of repose for disabilities caused by coal miners pneumoconiosis; a 25-year period of repose for disability caused by exposure to radiological materials or equipment or asbestos (and an additional three-year period for death caused by such hazards); and the default two- or three-year period of repose for disabling diseases caused by all other occupational hazards. Exception 1.1 plainly excepts any claim barred by any of the periods of repose within Section 6(c), the ODA's *only* statute of repose. 2015 IL 118070, at ¶¶ 33, 42.

For the foregoing reasons, the answer to the first question certified to this Court is "NO." Section 1(f) of the ODA (820 ILCS 310/1(f)) is not a "period of repose or repose provision" for 820 ILCS 310/1.1 purposes. Thus, Exception 1.1 does not apply to this matter.

III. RESPONSE TO QUESTION NO. 2: EXCEPTION 1.1 IS NOT EXPLICIT IN ITS TEMPORAL REACH AND THUS CANNOT APPLY HERE PURSUANT TO THE ILLINOIS STATUTE ON STATUTES.

Even if this Court determines that Section 1(f) of the ODA is a statute of repose, Exception 1.1, a substantive change in law, cannot be applied here under Illinois's Statute on Statutes (5 ILCS 70/4).

A. The Modified *Landgraf* Analysis and Illinois's Statute on Statutes Governs the Temporal Reach of Exception 1.1.

Where, as here, a case implicates a statute enacted after the events giving rise to the litigation and after certain rights have accrued, courts evaluate the reach of the new law in accordance with the standards set forth

by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), as adopted by this Court in *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 36-39 (2001). *See* A106-108; *see also People v. Brown,* 225 Ill. 2d 188, 201 (2007). The *Landgraf* test employs a two-step analysis: (1) if the legislature expressly prescribes the statute's temporal reach, the court is to give effect to that expression of legislative intent, absent a constitutional prohibition; and (2) if there is no express statement about the statute's temporal reach, then the court is to determine whether the new statute would have a retroactive impact. *Commonwealth Edison Co.*, 196 Ill. 2d at 38.

In Illinois, however, courts rarely reach the second step of the *Landgraf* analysis because Section 4 of the Illinois Statute on Statutes (5 ILCS 70/4) (hereinafter, "Section 4") provides the default legislative directive regarding the temporal reach of statutory amendments where it is not otherwise clearly specified by the text of the amendment. *Doe v. Diocese of Dallas,* 234 Ill. 2d 393, 406-407 (2009); *see also Perry v. Dep't of Fin. & Prof'l Regulation*, 2018 IL 122349, ¶¶ 42-43. "Put simply, a substantive statute either proclaims its own retrospective effect, or cedes that power to Section 4." (A108 (citing *Caveney v. Bower*, 207 Ill. 2d 82, 92, 797 N.E.2d 596, 602 (Ill. 2003)).

Section 4 is a general savings clause that provides an outright prohibition on construing a new statute to affect "any right accrued . . . before

the new law takes effect." 5 ILCS 70/4; *People v. Glisson*, 202 Ill. 2d 499, 506-507 (2002). Section 4 provides in relevant part as follows:

> ***No new law shall be construed to repeal a former law***, ***whether such former law is expressly repealed or not, as to*** any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or ***any right accrued***, or claim arising under the former law, ***or in any way whatever to affect*** any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or ***any right accrued***, or claim arising ***before the new law takes effect***, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding.

5 ILCS 70/4 (emphasis added).

Thus, in Illinois, the temporal reach of a statutory amendment is always clearly indicated, either expressly in the text of the statute or by default in Section 4. *Caveney*, 207 Ill. 2d at 92, 94-95; *see also Perry*, 2018 IL 122349, ¶¶ 43-46. A court must apply the statute in accordance with such intent unless to do so would be constitutionally prohibited. *Commonwealth Edison Co.,* 196 Ill. 2d at 38 ("Under the *Landgraf* test, if the legislature has clearly indicated what the temporal reach of an amended statute should be, then, absent a constitutional prohibition, that expression of legislative intent must be given effect.").

B. The Text of Exception 1.1 Does Not Expressly State Its Temporal Reach.

Under the first step of *Landgraf*, a court must first determine whether the text of Exception 1.1, on its face, clearly expresses the legislature's intent that the amendment be applied retrospectively or prospectively. Where

temporal reach is not clearly expressed, the analysis is guided by Section 4. *Perry*, 2018 IL 122349, ¶ 46.

In assessing the temporal reach, "it is not proper to look to the entire statute for legislative intent"; courts are to look at the text of the amendment itself. *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 34. As this Court has observed on numerous occasions, legislators are "undoubtedly aware" of how to clearly indicate the temporal reach of a statute and are more than capable of including unambiguous language in the statute to that effect. *Perry*, 2018 IL 122349, ¶ 66-67 (citing several examples of clear legislative intent including *Lazenby v. Mark's Constr., Inc.*, 236 Ill. 2d 83, 95 (2010) ("[t]his Section applies to all causes of action that have accrued, will accrue, or are currently pending before a court of competent jurisdiction, including courts of review") (quoting 425 ILCS 25/9f)); *Diocese of Dallas*, 234 Ill. 2d at 407 ("[statutory amendment] specifically provides that the 2003 amendment applies to actions pending when the changes took effect on July 24, 2003, as well as to 'actions commenced on or after that date.'") (quoting 735 ILCS 5/13-202.2(e)); and *Commonwealth Edison Co.*, 196 Ill. 2d at 42 (amendments expressly stated that validation of taxes "applies to all cases pending on or after the effective date of this amendatory Act of 1994"; another expressly validated levies adopted "either before, on or after the effective date of [the Act]") (internal quotation marks omitted)).

Here, the Illinois legislature did not include any express language in Exception 1.1 to clearly indicate whether the statute applies to all causes of action and/or defenses that have accrued, will accrue, and/or are currently pending before a court. *See* 820 ILCS 310/1.1. Accordingly, the temporal reach cannot be determined from the text of the statute.

C. Section 4 Prohibits the Application of Exception 1.1 to Affect Defendants' Accrued Rights.

Where, as here, there is nothing in the text of a statutory amendment specifying the amended statute's temporal reach, Section 4 governs. *Caveney*, 207 Ill. 2d at 92-95; *Bank of N.Y. Mellon v. Sperekas*, 2020 IL App (1st) 191168, ¶ 18 ("Courts presume an amendatory act, without a clear indication of legislative intent on its temporal reach, was to have been framed in view of section 4 of our Statute on Statutes.") (internal citation omitted).

Section 4 dictates that a new law cannot be construed in a manner that will "in any way whatever [] affect…any right accrued…before the new law takes effect." 5 ILCS 70/4. Illinois courts applying Section 4 have explained that that procedural changes to statutes may be applied retroactively, while substantive changes are only to be applied prospectively so as not to affect or impair rights that have already accrued. *See People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 20 (citing *Glisson*, 202 Ill. 2d at 506-07); *Sperekas*, 2020 IL App (1st) 191168, ¶ 18.

Under Illinois law, a rule is procedural if it prescribes the method by which a party seeks to enforce a right or obtain relief. *People v. Easton,* 2018

IL 122187, ¶ 15; *see also Sperekas,* 2020 IL App (1st) 191168, ¶ 26. Procedural rules generally involve matters such as pleading, evidence, and practice, and those that direct the course of proceedings before the court. *Id.* Conversely, a substantive change in law establishes, creates, or defines a right that may be redressed under a particular procedure that previously did not exist. *Id.* (citing *Ogdon v. Gianakos*, 415 Ill. 591, 596 (1953)). New procedural ramifications of a substantive amendment do not make the change procedural. *Perry*, 2018 IL 122349, ¶ 69.

Exception 1.1 is a substantive change in Illinois law. The provision does not direct the method or course of a proceeding or action before the court but rather creates and establishes an entirely new "non-waivable right" to bring a civil action—a right that previously never existed. 820 ILCS 310/1.1. More importantly, the amendment is substantive in that it imposes new legal liabilities and consequences on employers for actions and events in the workplace. *See Loch v. Bd. of Educ.,* No. 3:06-cv-17-MJR, 2007 U.S. Dist. LEXIS 75589, at *7-8, 2007 WL 2973849 (S.D. Ill. Oct. 11, 2007) (holding that the statute providing a parent standing under the Individuals with Disabilities Education Act was substantive because it would impermissibly impact defendant's liability or impose new duties on defendant for claims dismissed months prior).

By providing employees and their heirs a new civil cause of action and imposing new civil liabilities upon employers for occupational diseases,

Exception 1.1 substantively changes the ODA, stripping employers like Defendants of their accrued right to invoke any temporal repose and exclusivity defenses provided in 820 ILCS 310/1(f), 5(a) and 11 that vested more than four decades ago. This change, as applied to Defendants, is prohibited under the plain text of Section 4.

Specifically, the Amended Complaint alleges that Decedent was only exposed to VCM while working at Goodrich from 1966 until sometime in early 1974. (A05.) Because disablement (as relevant here) must occur within two years of one's last exposure under Section 1(f), Decedent (or Plaintiff) could only pursue compensation under the ODA if his disablement occurred by early 1976. As alleged, Decedent's disablement did not occur by early 1976, but rather manifested in 2019. (*Id.*) Because Decedent did not meet the condition precedent for compensation under the ODA in Section 1(f), the temporal restriction period expired in early 1976 and Defendants obtained a vested right in asserting Section 1(f) in defense of any ODA claims. For more than 40 years, this defense, operating in conjunction with the Exclusivity Provisions, barred Decedent and his heirs from bringing any claim relating to his occupational disease in any forum against Defendants.

As applied here, Exception 1.1 not only "affects" or interferes with Defendants' vested rights to assert the defenses provided by the Exclusivity Provisions and Section 1(f)—which accrued four decades before the new legislation was enacted—it completely eviscerates the defenses and opens the

door to new and seemingly endless liabilities. Under the present facts, Section 4 prohibits the application of such substantive changes to abrogate Defendants' accrued rights and thus "step[s] in and render[s] Exception 1.1 inapplicable." (A108.)

For the foregoing reasons, in answer to the second question certified to this Court, if Section 1(f) falls within Exception 1.1, then the temporal reach of Exception 1.1 is dictated by Section 4 and, on the facts before the Court, cannot be applied to affect Defendants' already accrued rights and defenses. (*See id.*)

IV. RESPONSE TO QUESTION NO. 3: THE APPLICATION OF EXCEPTION 1.1 IN THIS CASE VIOLATES THE DUE PROCESS GUARANTEES OF THE ILLINOIS CONSTITUTION.

Irrespective of legislative intent, there is a clear mandate from this Court that a new statute cannot apply if its application would violate the Illinois Constitution. *Commonwealth Edison Co.*, 196 Ill. 2d at 38; *see also Galloway v. Diocese of Springfield*, 367 Ill. App. 3d 997, 1000 (5th Dist. 2006) ("*Commonwealth Edison Co.* makes clear that previous decisions that define rights that are 'vested' and thus protected from the impact of statutory change by the due process clause of the Illinois Constitution remain relevant to the extent that they address the issue of constitutionality."); *GMC v. Pappas*, 242 Ill. 2d 163, 187 (2011) (holding that the amendment in statutory procedure "must be prospectively applied absent some constitutional prohibition against doing so.").

Accordingly, even if this Court holds that the legislative intent is clear from the text of the statute and that Exception 1.1 was intended to apply to occupational injuries arising out of decades old conduct and provide individuals otherwise barred by the expiration of a repose period a right to assert new civil claims against their employers, the Illinois Constitution and its due process guarantees nevertheless prohibit the application of Exception 1.1 ***in this case.***[8] Allowing Plaintiff to invoke Exception 1.1 to pursue her civil claims against Defendants would strip Defendants of their vested property right in asserting the statute of repose and exclusivity defenses and unconstitutionally revive claims and liabilities that were extinguished more than 40 years ago.

A. Applying Exception 1.1 Strips Defendants of Their Vested Defenses and Revives a Previously Barred Claim.

A vested right is a "complete and unconditional demand or exemption that may be equated with a property interest" that is protected by the constitution and beyond legislative interference. *Heinrich v. Libertyville High Sch.*, 186 Ill.2d 381, 403-04 (1998); *see also* Ill. Const. Art. 1, § 2; *M.E.H. v. L.H.,* 177 Ill. 2d 207, 218 (1997) (vested rights "cannot be ignored simply because the legislature has subsequently changed its position"). The expiration

[8] To be clear, Defendants are not challenging the constitutionality of Exception 1.1 and its amendment of the ODA on its face. To the contrary, Defendants submit that Exception 1.1, as written, may be constitutional if applied prospectively to claims held by individuals whose right to recovery under the ODA was not yet barred by a statute of repose at the time of enactment—i.e., where the repose period had not already expired and the employer's right to assert the defense had not yet accrued.

of a statute of repose or statute of limitation creates a vested right in a defense that receives the same protection as a vested cause of action. *M.E.H.*, 177 Ill. 2d at 218. For this reason, in Illinois, it is well-settled that "once a claim is time-barred, it cannot be revived through subsequent legislative action without offending the due process protections of our state's constitution." *Diocese of Dallas,* 234 Ill. 2d at 411-12 (citations omitted); *Galloway*, 367 Ill. App. 3d at 998.

Where, as here, a repose or limitations period for a potential claim expires, defendants obtain a vested property right, grounded in the Illinois Constitution's due process clause, to rely on and assert the statute of repose as a defense to liability. *Diocese of Dallas*, 234 Ill. 2d at 409. Thus, where a claim is time-barred by statute, the claim remains time-barred even if the limitation period is subsequently abolished or amended by the legislature. *Id.* These principles date back more than a century and have been consistently upheld by this Court and the Illinois appellate courts. *Id.* (citing *Bd. of Educ. of Normal Sch. Dist. v. Blodgett*, 155 Ill. 441, 446 (1895)); *see also Sepmeyer v. Holman*, 162 Ill. 2d 249, 254 (1994) ("Our cases have been uniform in holding that the legislature lacks the power to reach back and breathe life into a time-barred claim. This line of cases began 100 years ago."); *M.E.H.*, 177 Ill. 2d at 214-15.

1. For More than 100 Years, This Court Has Protected Defendants' Vested Defenses.

In *M.E.H. v. L.H.*, this Court held that where statute of repose was repealed before plaintiffs filed suit, it did not render plaintiffs' claims viable because the applicable repose period expired prior to the statute's repeal and defendant had a vested right to invoke the repose period as a defense. 177 Ill. 2d at 214-15 ("that right cannot be taken away by the legislature without offending the due process protections of our state's constitution").

Similarly, in *Galloway,* the appellate court found the legislature could not revive a time barred claim by repealing the statute of repose where the claimant filed an action in January 2004 based on allegations of sexual abuse that occurred 20 years earlier. 367 Ill. App. 3d at 998. The trial court granted defendant's motion to dismiss on the ground that plaintiff's complaint was barred by the relevant 12-year statute of repose, which was in effect from January 1991 until January 1994. *Id.* Plaintiff appealed, arguing that the statute repealing the repose statute expressly provided that "[t]he changes made by this amendatory Act of 1993 shall apply only to actions commenced on or after the effective date of this amendatory Act of 1993," and that because the action had been filed in 2003, the amendment precluded defendant from relying on the repealed statute of repose. *Id.* 998-99. The court rejected plaintiff's argument, holding that the repeal of the statute of repose "cannot, consistent with due process, operate to revive the plaintiff's claim." *Id.* 1000. "Because the plaintiff's claim was time-barred when the 12-year repose period

took effect, it remain[ed] time-barred even after the repose period was abolished by the legislature." *Id.*

In *Diocese of Dallas,* this Court, confronted with the question of whether an amended statute of limitations could apply to revive a claim that was already time-barred under a prior statute, held that retroactive application of the amended statute violated defendant's vested due process rights. 234 Ill. 2d at 395, 410. The statute at issue went into effect on July 24, 2003, amending the limitation period for sexual abuse claims. *Id.* 401. Four months after the amendment's effective date, plaintiff filed suit, asserting that the new limitations period governed. *Id.* 399. Defendant argued that the limitations period operative when the claim was discovered applied and barred plaintiff from bringing any claim in the future. *Id.* 399-401.

Applying the *Landgraf* test, this Court held that the legislature expressly prescribed the temporal reach of the amendment by specifically stating that the statute applied to actions pending on the statute's effective date, as well as to actions commenced on or after that date, not limiting the temporal reach of the statute to situations where *the events giving rise to the cause of action* took place after the amendment's effective date. *Id.* 405-7. Upon determining that the legislature expressly prescribed the temporal reach of the statute, this Court next considered whether the statute was constitutional. *Id.* 407. Ultimately, it held that the amendment violated the due process clause of the Illinois Constitution because the prior statute barred plaintiff's claim

before the suit was filed, and thus the amended statute could not be applied to revive plaintiff's time-barred claims. *Id.* 407-412. As this Court explained:

> [W]hile *Commonwealth Edison Co.* [] switched the focus of the first step of the retroactivity analysis from 'vested rights' to legislative intent, it did not overrule the long-established rule…that **once a claim is time-barred, it cannot be revived through subsequent legislative action without offending the due process protections of our state's constitution**.

Id. 411-412 (citing *M.E.H.,* 177 Ill. 2d at 214-15).

Likewise, in *Sepmeyer,* this Court held that a statute extending the limitations period for civil wrongful death claims against those convicted of murder or serious felonies could not be applied in a way that effectively revived a claim previously barred by the statute of limitations. 162 Ill. 2d at 253-256. The legislature expressly prescribed the temporal reach of the new statute by specifically stating that it "shall be applied retroactively and shall revive causes of action which otherwise may have been barred under limitation provisions" previously in effect. *Id.* 253. However, because the defendant possessed a defense based on the expiration of the statute of limitations, which was a vested right protected by the Illinois Constitution and beyond legislative interference, this Court held that retroactive application of the statute violated due process and was unconstitutional. *Id.* 253-255.

2. Exception 1.1 Ignores this Court's Century-Old Precedent in Violation of Defendants' Due Process Rights.

In debating and enacting Exception 1.1, the Illinois legislature recognized the constitutional guardrails repeatedly upheld and enforced

through this Court's longstanding precedent. (*See* Transcript of Illinois Senate Debate taken March 6, 2019), *e.g.*, at A136, A138-A139; *see also* Transcript of Illinois House Debate taken March 14, 2019), *e.g.*, at A198 (Rep. Hoffman acknowledging that "there is a legal common law concept it's called vested rights of an extinguished liability that can't be revived").) Notably, during the debate, Senator Barickman stated: "*Doe versus Diocese of Dallas*. That's an Illinois Supreme Court case. I think this legislation flies directly in the face of that court decision." (A136.) And at close of the debate, Senator Barickman urged the Senate to vote no on the bill in light of this Court's precedent, explaining:

> [U]nder Illinois law and under federal law, because of our State and federal constitutions, we all have due process rights. And the proposal that attempts to provide some retroactive recovery to aggrieved parties significantly jeopardizes the due process rights that we all say are important, so important that we put them into our State and federal constitution. This legislation risks those due process rights.

(A138.) The legislature nevertheless chose to ignore this Court's holding in *Diocese of Dallas* and run the risk of violating the due process rights of certain employers, like Defendants, whose defenses vested prior to Exception 1.1's enactment.

For more than 40 years prior to Exception 1.1's effective date, Plaintiff had no right to assert any claim in any venue and Defendants had no potential liabilities relating to Decedent's alleged occupational VCM exposure that ended in the 1970s. This is because the ODA prescribed an exclusive, compensation-based recovery scheme for all injuries falling within its scope

that was strictly conditioned upon meeting the terms of Section 1(f). When Plaintiff failed to meet Section 1(f)'s terms and the repose period expired, Plaintiff lost the *only* right to pursue recovery under the ODA, while Defendants gained a vested right to invoke the statute of repose defense and the exclusivity defense, which, as made clear in *Folta*, applies to ***any*** "compensable" injury—i.e., any injury arising out of and in the course of the employment that does not fall within one of the four common law exceptions—not just the injuries for which a party has an avenue for recovery. *See Folta*, 2015 IL 118070, ¶¶ 14, 23, 36 ("Thus, the fact that through no fault of the employee's own, the right to seek recovery under the acts was extinguished before the claim accrued because of the statute of repose does not mean that the acts have no application or that *Folta* was then free to bring a wrongful death action in circuit court. Rather, where 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.")

If Exception 1.1 is applied here, the claim against Defendants for occupational exposure that was extinguished more than 40 years ago will be revived by removing the statute of repose bar and allowing a cause of action to accrue and Plaintiff to bring this civil action. Such application strips Defendants of their right to assert *either* the statute of repose or the exclusivity defense to avoid liability for decades old exposure and thus directly violates Defendants' due process protections.

B. Plaintiff's Otherwise Stale Cause of Action Could Only Accrue Because Exception 1.1 Strips Defendants of Their Vested Defense Against Liability.

To get around the iron-clad constitutional rule that Defendants' vested defenses against ODA or other liability cannot be stripped and Plaintiff's previously barred claim cannot be revived, Plaintiff puts forth the fundamentally flawed argument that Defendants' right of defense had not vested because Decedent's injury and the coinciding cause of action did not accrue until his diagnosis in December 2019, after the enactment of Exception 1.1. (A05; Appellee Br., at 15.) Plaintiff's contention ignores an important legal reality: Plaintiff's cause of action only exists now ***because*** Exception 1.1 created the new civil cause of action in 2019, by removing not only the exclusivity restraints, but also the repose bar that extinguished any such claim based on Decedent's occupational exposure when his injury did not manifest within two years after the final exposure, meaning that Decedent never obtained a right to any compensation or recovery in the first instance. Indeed, Plaintiff overlooks the very function and purpose of a statute of repose—***to prevent a cause of action from ever accruing***.

Under Illinois law, a statute of repose functions as an absolute bar to an action. *Ferguson v. McKenzie*, 202 Ill. 2d 304, 310-311. Unlike a statute of limitations, which governs the time within which a lawsuit may be brought after a cause of action has accrued, a statute of repose terminates the possibility of liability after a defined period ***regardless of when, or even if,***

an injury occurred or a cause of action would have otherwise accrued. *Folta*, 2015 IL 118070, ¶ 33. Upon expiration of the relevant repose period, "[t]he injured party no longer has a recognized right of action, and the harm that has been done is *damnum absque injura* [sic] — a wrong for which the law affords no redress." *West v. United States*, Civil No. 08-646-GPM, 2010 U.S. Dist. LEXIS 126404, at *13, 2010 WL 4781146 (S.D. Ill. Oct. 25, 2010).

1. Statutes of Repose Serve an Important Policy Function.

While the results of statutes of repose may be perceived as "harsh and unfair," they serve an important purpose. *See Lawler v. Univ. of Chi. Med. Ctr.*, 2017 IL 120745, ¶ 18. As a matter of policy, the Illinois legislature enacts statutes of repose to provide defendants with the ability to predict, plan for, and insure against their potential future liabilities by insulating them from stale claims and indefinite litigation exposure. *West*, 2010 U.S. Dist. LEXIS 126404, at *13. This purpose "stem[s] from a basic equity concept that a time should arrive, at some point, that a party is no longer responsible for a past act." *Ryan v. Commonwealth Edison Co.*, 381 Ill. App. 3d 877, 882 (1st Dist. 2008) (citing W. Prosser et al., Torts ch. 12, at 607 (8th ed. 1988)).

For example, courts in this state have interpreted Illinois's statute of repose for negligent construction claims (735 ILCS 5/13-214), which eliminates the right to bring an action 10 years after real estate improvement regardless of when a defect or injury is discovered, as representing a "legislative balancing act between the rights of persons harmed by allegedly faulty construction and

the rights of those responsible for such construction; after the statutory period has passed, the right to be free of stale claims comes to prevail over the right to prosecute them." *Ryan*, 381 Ill. App. 3d at 883 (internal citations omitted). As another appellate court explained:

> It cannot be gainsaid that imposing finality to the possibility of litigation allows defendants to go about their business, after a definite time, untroubled by the fear of being sued. As with statutes of limitations, statutes of repose represent a pervasive legislative judgment that justice requires an adversary to be put on notice to defend for a specific period of time, after which the right to be free of stale claims in time comes to prevail over the right to prosecute them.

Ocasek v. City of Chicago, 275 Ill. App. 3d 628, 633 (1st Dist. 1995).

The legal malpractice statute of repose (735 ILCS 5/13-214.3(c)) likewise terminates the possibility of liability after six years from the date of the "last act of representation upon which the malpractice is founded," "regardless of whether an action has accrued or whether any injury has resulted." *Koczor v. Melnyk*, 407 Ill. App. 3d 994, 998-99 (1st Dist. 2011). Upon expiration, the statute of repose operates to extinguish a potential plaintiff's recognized right of action to redress any harm that has been done and to terminate a potential defendant's possibility of liability after a defined period of time. *Id.*; *see also Prospect*, 2016 IL App (1st) 150433, ¶¶ 22-40 (finding dismissal of the clients legal malpractice action against the attorney and law firm was proper because the action was barred by the six-year statute of repose and that while creating "a harsh result," the purpose of the statute of repose is to terminate the possibility of liability after a defined period of time); *O'Brien*, 332 Ill. App.

3d at 1091 (3d Dist. 2002) (finding that while the holding may seem "harsh," plaintiff's claim was barred by the statute of repose and that because the statute of repose placed an outer limit on the time in which claims were brought, it was immaterial that the client did not discover her injury before it was barred).

Similarly, the purpose of Illinois's statute of repose governing medical negligence actions (735 ILCS 5/13-215) is to terminate the possibility of stale claims and liability after a defined period and to curtail long tail exposure to medical malpractice claims brought about by the discovery rule. *Lawler*, 2017 IL 120745, ¶ 18; *see also Kollross v. Goldstein,* 2021 IL App (1st) 200008, ¶ 27 (explaining the rationale behind the statute of repose even where a potential plaintiff does not discover her injury during that time period; "[w]hile this may result in harsh consequences, the legislature enacted the statute of repose for the specific purpose of curtailing the 'long tail' exposure to medical malpractice claims brought about by the advent of the discovery rule."); *Hayes v. Wilson,* 283 Ill. App. 3d 1015, 1017-1018 (1st Dist. 1996) (the purpose of a statute of repose is "to terminate the possibility of liability after a defined period of time" so that professionals do not remain exposed to liability indefinitely). The medical malpractice statute of repose was specifically enacted in response to a state insurance crisis resulting from the increasing reluctance of insurance companies to write medical malpractice policies. *Hayes v. Mercy Hosp. & Med. Ctr.*, 136 Ill. 2d 450, 456, 457-58 (1990). By providing a definite period in which

a cause of action must accrue and be asserted, the statute of repose prevents indefinite exposure of medical professionals to stale claims, thereby increasing an insurance company's ability to predict future liabilities. *Id.* 457-458.

The same rationale applies to Section 1(f) of the ODA. Prior to Exception 1.1, a party's right to recovery under the ODA was extinguished, regardless of whether or when any injury manifested or any claim would have otherwise accrued, upon expiration of the repose period. *Folta*, 2015 IL 118070, ¶¶ 32-37. This claim bar acted to protect employers against claims too old to be adequately investigated and defended by terminating the possibility of liability after a defined time-period. *Id.*; *Goodson*, 190 Ill. App. 3d at 18-19. This bar also acts to insulate the ability of employers to obtain insurance for any such claim, which is wholly frustrated here when the conduct occurred decades earlier and arose out of prior employment.

The Tennessee appellate court's analysis in *Wyatt v. A-Best Products Co.* is instructive. 924 S.W.2d 98 (Tenn. Ct. App., Nov. 30, 1995) as modified on reh'g, (Dec. 28, 1995). (*See* A220.) In *Wyatt*, a worker who allegedly sustained asbestos-related injuries brought an action under the Tennessee Products Liability Act (TPLA) against manufacturers of asbestos-containing products under the newly enacted "asbestos exception" to the TPLA's 10-year statute of repose period. 924 S.W.2d at 101-102. On appeal, the defendants argued that they had a vested right in a 10-year statute of repose, which had already expired before the claim accrued. *Id.* 103. The plaintiff asserted that since his

cause of action did not accrue until after the asbestos exception became effective in 1979, that exception should apply to, and save, his action. *Id.* The court rejected plaintiff's argument because the 10-year period set forth in the relevant statute was a statute of repose, and it would not be logical to focus on the date of accrual, since the statute runs from the triggering event without regard to accrual. *Id.* 103-104. The court held that the extinguishment of plaintiff's cause of action upon expiration of the repose period created in defendants a vested right to rest in repose, and as such, the asbestos exception could not retroactively save plaintiff's claim without running afoul of the Tennessee Constitution. *Id.*

2. Exception 1.1 Exposes Defendants to Stale Claims and Limitless Liability.

In the present case, for more than four decades, the temporal repose bar and exclusivity provided Defendants the ability to plan for and predict potential future liabilities. Defendants made business decisions, including insurance coverage, savings funds, and benefit packages in reliance on this legal certainty. As of early 1976, Defendants could rest assured that Section 1(f) and the Exclusivity Provisions operated together to preclude any claim from accruing, regardless of when or whether an occupational disease ever manifested, as the temporal repose period expired and Defendants gained a vested right to invoke the defenses. Contrary to Plaintiff's arguments, by operation of Section 1(f), it is of no consequence that Decedent's injury did not manifest until after the enactment of the Exception 1.1 eliminated the

exclusivity bars and eviscerated the repose bar, because any potential claim, in any forum, arising from Decedent's exposures was forever barred from ***accruing*** after early 1976. As the Seventh Circuit aptly observed, if the Court were to hold otherwise, then Defendants would never vest a right in the statute of repose (*see* A109), and all repose provisions in the ODA would be rendered null and void. *See Hicks v. Industrial Comm'n,* 251 Ill. App. 3d 320, 325 (5th Dist. 1993) (citing *Goodson*, 190 Ill. App. 3d at 18) ("Different sections of the same statute should be considered as *in pari materia* and should be construed so as to avoid an illogical result.")

Accordingly, Exception 1.1 cannot apply in this case without stripping Defendants of their vested property right to assert their accrued temporal repose and exclusivity defenses to liability and newly exposing Defendants to a stale claim that was already forever extinguished in any forum, all in violation of the Illinois Constitution.

For the foregoing reasons, the answer to the third question certified to this Court is "YES." Application of Exception 1.1 to past conduct on the facts of this case would offend Defendants' due process guarantee under the Illinois Constitution.

CONCLUSION

For the foregoing reasons, the Court should answer the three questions certified to it as follows:

(1) No, Section 1(f) of the ODA (820 ILCS 310/1(f)) is not a "period of repose or repose provision" for Exception 1.1 (820 ILCS 310/1.1) purposes.

(2) If Section 1(f) falls within Exception 1.1, then the temporal reach of Exception 1.1 is dictated by Section 4 and, on the facts before the Court, cannot be applied to affect Defendants' already accrued rights and defenses.

(3) Yes, application of Exception 1.1 to past conduct on the facts of this case would offend Illinois's due process guarantee.

Dated: May 30, 2024

Respectfully submitted,

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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 the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and those matters appended to the brief under Rule 342(a) is 45 pages.

/s/ *Emily G. Montion*
Emily G. Montion

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CANDICE MARTIN, Individually And as Executor of the Estate of Rodney Martin, Deceased

Plaintiff,

vs.

Goodrich Corporation, et al.,

Defendants.

Civil Action No. 1:21-cv-1323

Judge Michael M. Mihm

Magistrate Jonathan E. Hawley

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

* *

Plaintiff Candice Martin, Individually and as Executor of the Estate of Rodney Martin, as and for her Amended Complaint against Defendants Goodrich Corporation, fka B.F. Goodrich Company, and PolyOne Corporation, successor-in-interest to The Geon Company and B.F. Goodrich Company, states upon information and belief as follows:

I. PARTIES

1. Plaintiff Candice Martin is the surviving spouse of Rodney Martin, deceased. She and her husband have at all relevant times been citizens and residents of Henry, Illinois.

2. Plaintiff Candice Martin brings this action individually on her own behalf and as Executor of the Estate of Rodney Martin, deceased, asserting claims for wrongful death on behalf of herself and their children pursuant to 740 ILCS 180/1 et seq., and a survival action for injuries and damages incurred by Decedent prior to his death pursuant to 755 ILCS 5/27-6. Candice Martin is the mother and next best friend of Jaqueline Martin, daughter of Rodney

Martin and Candice Martin, who is a developmentally disabled adult. Rodney Martin is also survived by his adult children Melody Tonarelli and Jeff Martin.

3. Starting in April of 1966, Plaintiff's Decedent, Rodney Martin (hereinafter referred to individually as "Decedent") was exposed to vinyl chloride while working as an employee of B.F. Goodrich Company, nka Goodrich Corporation, in the Henry, Illinois plant where vinyl chloride was processed into polyvinyl chloride. Decedent retired in October of 2012.

4. Defendant Goodrich Corporation, formerly known as B.F. Goodrich Company, is incorporated in the State of New York and has its principal place of business in the State of North Carolina.

5. Defendant PolyOne Corporation, successor-in-interest to The Geon Company, the successor-in-interest to B.F. Goodrich Company, is incorporated in the State of Ohio and has its principal place of business in the State of Ohio.

6. In or about 1993, B.F. Goodrich Company spun off its vinyl chloride business, including the Henry plant, to The Geon Company, a former division of the B.F. Goodrich Company. The Geon Company is a successor-in-interest to the B.F. Goodrich Company. The Geon Company, after a merger with M.A. Hanna Co. in 2000, became PolyOne Corporation. PolyOne Corporation is a successor-in-interest to B.F. Goodrich Company and the Geon Company.

7. B.F. Goodrich Company (hereinafter B.F. Goodrich) has changed its name to Goodrich Corporation. Hereinafter, the B.F. Goodrich Company, The Geon Company, and PolyOne Corporation, and Goodrich Corporation are identified collectively as "BFG."

II. JURISDICTION AND VENUE

8. At all relevant times Decedent was employed at the BFG vinyl chloride plant in Henry, Illinois where he was wrongfully exposed to excess amounts of vinyl chloride that proximately caused him to develop angiosarcoma of the liver.

9. This court has subject matter jurisdiction over this matter because much of Defendants' wrongful conduct that proximately caused the injuries to Plaintiff Candice Martin and Decedent occurred within the State of Illinois. This court also has subject matter jurisdiction because Plaintiff's and Decedent's injuries occurred within the State of Illinois.

10. The matter in controversy exceeds $75,000 exclusive of interest and costs and the controversy is between citizens of different states.

11. This court has personal jurisdiction over each of the Defendants because each Defendant committed wrongful acts in this State and are or were at all relevant times doing business in this State that proximately caused the injuries to Plaintiff and Decedent.

12. Venue properly lies in this Court because a substantial amount of the wrongful activities conducted by Defendants that proximately caused the injuries to Plaintiff and Decedent, and gave rise to Plaintiff's claims for relief, occurred within this District in Marshall County, Illinois. At all times relevant to this Complaint, BFG conducted tortious activities and made decisions relating to the manufacture, use, distribution and control of vinyl chloride, including health and safety matters, in Marshall County, Illinois.

III. NATURE OF CLAIMS

13. This action is brought on behalf of all the Decedent's next of kin, including Candice Martin, his surviving spouse, and Jaqueline Martin, Melody Tonarelli and Jeff Martin, their children, to assert all rights and remedies permitted with respect to a wrongful death action.

Plaintiff therefore seeks damages for the pecuniary injuries resulting from the death of Decedent and damages for the grief, sorrow, and mental suffering incurred by Decedent's surviving spouse and next of kin.

14. This action is also brought on behalf of the Estate of Decedent to assert all rights and remedies permitted with respect to a survivorship action for the pain and suffering, medical expenses, loss of enjoyment of life and all other injuries and damages suffered by Decedent prior to his death as a proximate result of Defendants' misconduct.

15. This action is also brought by Plaintiff, individually, for the loss of consortium, support, society, love and affection of her husband prior to his death.

IV. BACKGROUND

16. Decedent was first employed by B.F. Goodrich in its Henry, Illinois plant in April of 1966; he remained an employee of the B.F. Goodrich Company, The Geon Company, and PolyOne Corporation until he retired in October of 2012.

17. During the course of his employment at the Henry plant, Decedent worked at various jobs, including but not limited to bagger, poly building helper (aka poly cleaner), recovery operator, pearl charge operator, losope charge operator, and safety & environmental operator. During his employment from April of 1966 until sometime in 1974 Decedent's jobs involved working with and being exposed to hazardous levels of vinyl chloride monomer (VCM).

18. VCM is a colorless gas and can remain in a gaseous state at room temperature. The odor threshold for VCM is at or above 2,000 ppm. At least prior to 1974, Decedent could often smell vinyl chloride in the ordinary course of his work for B.F. Goodrich.

19. While engaged in the course of his employment with B.F. Goodrich, Decedent was required and caused to work with and in the vicinity of vinyl chloride monomer and vinyl chloride-containing products. (Vinyl chloride monomer and vinyl chloride-containing products may be referred to collectively as "vinyl chloride" or VC throughout this Complaint.)

20. Decedent's exposure to vinyl chloride, from the time he was hired in 1966 until sometime in 1974 when VC exposures were drastically reduced, was the direct and proximate cause of his developing a cancer of the liver known as hepatic angiosarcoma. Decedent was diagnosed with angiosarcoma of the liver on December 11, 2019, as a direct and proximate result of the tortious misconduct of the Defendants; he died on July 9, 2020, from that cancer.

21. Prior to his Decedent incurred substantial medical expenses, suffered severe pain of mind and body, disability, limitation, and loss of the pleasures of life.

22. Decedent was damaged in the following particulars:

(a) Decedent suffered great physical pain, suffering and mental anguish;

(b) Decedent incurred hospital and/or medical and/or pharmaceutical and/or other expenses;

(c) Decedent suffered disability;

(d) Decedent required medical monitoring to aid in monitoring the progression of his illness;

(e) Decedent required domestic health, nursing and hospice care prior to his death;

(f) Prior to contracting angiosarcoma of the liver, Decedent was extremely active and participated in numerous hobbies and activities, all of which he was prevented from engaging prior to his death due to the development of his illness and injuries; and

(g) Decedent was prevented from participating in and enjoying the benefits of a full and complete life as a proximate result of contracting angiosarcoma of the liver.

23. Plaintiff's claims herein against Defendants are based upon the fact that any claims

Decedent and his surviving spouse and heirs might have had under the Illinois Workers' Occupational Disease Act against his employers, B.F. Goodrich Company, nka Goodrich Corporation, and PolyOne Corporation, are barred by the repose provision of that Act.

(a) Section 1(f) of the Illinois Workers' Occupational Disease Act, the repose provision of that Act, provides that "No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease" (with different time periods for berylliosis, silica dust, asbestos dust or radiological materials).

(b) Section 1(d) of the Illinois Occupational Disease Act defines "occupational disease" as "a disease arising out of and in the course of the employment…A disease shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease…An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when, for any length of time however short, he or she is employed in an occupation or process in which the hazard of the disease exists…."

(c) Section 1(e) of the Illinois Occupational Disease Act defines "disablement" as "an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body, or in the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he or she claims compensation."

(d) Mr. Martin suffered an occupational disease within the meaning of the ODA

because he was exposed to vinyl chloride, a known cause of angiosarcoma of the liver, in the course of his employment between 1966 and 1974. Angiosarcoma of the liver was a hazard of the occupation and processes Mr. Martin performed during his employment by B.F. Goodrich. Mr. Martin's medical records indicate that his angiosarcoma of the liver was secondary to vinyl chloride exposure.

(e) Mr. Martin suffered a disablement as defined by the ODA when he developed angiosarcoma of the liver, with the symptoms arising in December of 2019 leading to his being diagnosed on December 12, 2019, involving multiple lesions in the liver and causing him to suffer from debilitating fatigue, extreme pain requiring morphine, loss of appetite, loss of bowel and bladder function, loss of memory, mental comprehension and focus, and the inability to engage in his usual life activities, all of which caused and constituted a permanent impairment of his body, caused by exposure to vinyl chloride during his employment by B.F. Goodrich. He died from that disease on July 9, 2020.

(f) Mr. Martin was last exposed to the hazards of the occupational disease in 1974 and retired from his work at Defendants in October of 2012 so that no further exposures to vinyl chloride, the hazard that caused his angiosarcoma of the liver, were possible after that point in time.

(g) Mr. Martin's disablement and occupational disease occurred more than two years after the last day of the last exposure to the vinyl chloride hazard that caused the angiosarcoma of the liver from which he suffered.

(h) Section 1.1 of the Illinois Occupational Disease Act, adopted as Public Act 101-0006, 820 ILCS 310/1.1, provides that "Subsection (a) of Section 5 and Section 11 [the exclusive

remedy provisions of the Act] do not 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. As to any such occupational disease, the employee, the employee's heirs, and any person having standing under the law to bring a civil action at law, including an action for wrongful death and an action pursuant to Section 27-6 of the Probate Act of 1975, has a nonwaivable right to bring such an action against any employer or employers."

(i) Plaintiff has a nonwaivable right to bring a civil action against Decedent's employer for injury and death resulting from an occupational disease under Public Act 101-0006, 820 ILCS 310/1.1 which became effective on May 17, 2019, before Decedent was diagnosed with angiosarcoma of the liver, and which removed the exclusive remedy provision under the Occupational Disease Act where claims such as those of Plaintiff and Decedent are barred by a repose provision.

PARTICULARIZED ALLEGATIONS

A: Agreement to draft, publish and distribute SD-56 to conceal knowledge about the dangers of vinyl chloride.

24. In or about 1930, Patty and the U.S. Bureau of Mines conducted a study of the acute toxic effects of vinyl chloride on guinea pigs. The study indicated injury to the liver and spleen resulting from VC exposure.

25. The vinyl chloride (VC) and polyvinyl chloride (PVC) industry, through its trade organization, recommended an exposure limit (TLV) of 500 ppm as a time weighted average (TWA), largely as a result of Patty's guinea pig study. B.F. Goodrich and its industry group had no reasonable basis for believing this exposure level was safe for systemic, chronic effects from

long-term exposures. B.F. Goodrich and its industry group recommended and advocated the use of this 500 ppm TWA exposure limit for polyvinyl chloride (PVC) plants and fabrication facilities, including the Henry, Illinois plant where Decedent worked, in spite of their knowledge that there was no scientific evidence supporting 500 ppm as a safe level for chronic injury or liver damage. B.F. Goodrich accepted and recommended the 500 ppm TWA exposure limit based exclusively on the Patty and the U.S. Bureau of Mines guinea pig study.

26. Multiple relatively early studies indicated that VC causes liver injuries to exposed workers. These studies include a 1949 report of liver injury among Russian VC workers; a 1957 Russian study again reporting liver injuries in VC workers; a 1959 Dow Chemical study showing liver damage in animals from exposures to VC as low as 100 ppm and an inability to identify a "no-effect" level (resulting in Dow Chemical adopting a 50 ppm exposure limit for its own plants); and a 1959 Canadian study showing liver injury to animals exposed to VC (resulting in Ontario, Canada lowering the exposure limit from 500 ppm to 50 ppm).

27. In 1953, the Manufacturing Chemists Association (MCA), later named the Chemical Manufacturing Association (CMA), and still later called the American Chemical Council (ACC), the trade association for the American chemical industry at all times relevant to the instant action, along with the active participation of its General Safety Committee, drafted a chemical safety data sheet for VC, known as SD-56. The MCA adopted SD-56 in 1954. B.F. Goodrich participated in the process of drafting, approving, revising, publishing and disseminating SD-56.

28. In spite of the information contained in studies known to B.F. Goodrich and other companies in the MCA, and the absence of test data identifying a safe exposure limit, SD-56 stated that 500 ppm TWA was a safe exposure limit and that the only hazards from VC were fire,

explosion, frostbite burns and a mild general anesthesia.

29. B.F. Goodrich chose to disseminate SD-56 and the information contained therein, and nothing contrary to SD-56, in order to conceal the hazards of vinyl chloride from workers, including Plaintiff's Decedent. B.F. Goodrich agreed with other members of the MCA that they would reject and prevent any changes to SD-56 that might disclose complete and accurate information about vinyl chloride health hazards.

30. SD-56 fraudulently concealed known facts about VC. In spite of B.F. Goodrich's knowledge to the contrary, and its knowledge that it lacked the facts to make such assertions, SD-56, as approved by B.F. Goodrich, stated:

> 8. HEALTH HAZARDS AND THEIR CONTROL
>
> 8.1 Hazards
>
> 8.1.1 GENERAL
> Aside from the risk of fire or explosion, vinyl chloride presents no other very serious problem in general handling. The presently accepted maximum allowable concentration is 500 ppm.
>
> 8.1.2 SYSTEMIC EFFECTS
> In concentrations well above 500 ppm. vinyl chloride acts as a mild general anesthetic.
>
> 8.1.3 LOCAL EFFECTS
> In contact with the skin vinyl chloride *is irritating.* Prolonged contact will result in refrigeration and freezing.
>
> 8.2 Prevention and control
> Vinyl chloride is not a serious industrial hazard provided precautions are taken to avoid leaks or spills which might provide a fire or explosion hazard.

31. SD-56, and the information contained therein, was distributed and disseminated by B.F. Goodrich to employees with the intent that it be relied upon throughout the industry and by workers, including Plaintiff's Decedent, but to disclose only the mild hazards of VC which B.F.

Goodrich wished to disclose.

32. Decedent relied to his detriment upon SD-56 and the information disseminated by B.F. Goodrich similar to that contained in SD-56.

33. B.F. Goodrich used and disseminated SD-56, and the information contained therein, knowing it to be false and fraudulent, and intending it to be used to train its employees, including Plaintiff's Decedent.

34. B.F. Goodrich was one of the companies responsible for drafting SD-56 and disseminated the information contained in SD-56, and no other warning information, to its employees until sometime in 1974.

35. On May 12, 1959, V.K. Rowe of Dow Chemical wrote to B.F. Goodrich's Corporate Industrial Hygienist, W.E. McCormick, regarding vinyl chloride's chronic toxicity and the inadequacy of the then existing exposure standard published by the American Conference of Governmental Industrial Hygienists, stating: "We feel quite confident, however, that 500 ppm is going to produce rather appreciable injury when inhaled seven hours a day, five days a week for an extended period." This information was not provided to Decedent or other employees in the B.F. Goodrich plants. In spite of its knowledge that 500 ppm was not a safe exposure limit, B.F. Goodrich continued to publicly support that limit and disseminated SD-56.

36. On November 24, 1959 Union Carbide acknowledged in inter-company correspondence that the TLV of 500 ppm had been "based largely on single guinea pig inhalation studies by the Bureau of Mines about 25 years ago." The letter also noted that V.K. Rowe had stated that Dow Chemical's inhalation study "has not found a no-effect level. Even 100 ppm produced organ weight changes and gross pathology with micropathology expected. The author

concluded that vinyl chloride monomer is more toxic than has been believed." All of this information had been communicated to B.F. Goodrich which then agreed with others in the MCA that SD-56 would not be changed; and B.F. Goodrich continued to tell workers, including the Plaintiff's Decedent, that exposure to vinyl chloride below 500 ppm was safe; nor did B.F. Goodrich seek to inform Decedent of the toxicity of VC.

37. In 1961 Dr. Torkelson published Dow Chemical's animal study as a scientific article in a technical scientific journal. B.F. Goodrich received a copy of the article but did not distribute the information contained therein to its employees and agreed not to change SD-56. In particular, B.F. Goodrich did not inform Decedent or other employees in its plants of the information reported by Torkelson. B.F. Goodrich continued to assure workers that they could rely on the SD-56 statement that exposures below 500 ppm were safe.

38. In 1963, a Romanian study was published by Dr. Suciu reporting liver damage in workers, including hepatomegaly, caused by VC. The study, which B.F. Goodrich obtained, noted that the liver damage could become chronic. By that time, B.F. Goodrich was conducting liver tests of its own employees found to have liver damage from their workplace VC exposures.

39. In 1963, in response to the Torkelson study, the American Conference of Industrial Hygienists (ACGIH) changed its recommended exposure limit from 500 ppm TWA (time-weighted average) to 500 ppm as a ceiling. This meant that the industrial hygiene community was recommending that worker VC exposures never exceed 500 ppm. This information was not provided to Decedent or other workers being exposed to vinyl chloride, and the MCA and B.F. Goodrich continued to use an exposure limit of 500 ppm TWA.

40. On June 7, 1965, Rex Wilson of B.F. Goodrich wrote to a doctor treating a B.F. Goodrich employee who was suffering from liver damage caused by vinyl chloride exposure. Rex Wilson wrote that VC was recognized in "our experience" as a hepatotoxin (toxic to the liver) and stated that because of this knowledge, B.F. Goodrich conducted liver function tests on exposed workers. Yet neither Rex Wilson nor others in B.F. Goodrich's corporate management communicated this information to Decedent or other employees. A B.F. Goodrich Safety Director, Herman Waltemate, testified that he did not learn that VC was a hepatotoxin until a decade later, i.e., the mid-1970's.

41. On October 13, 1965, William McCormick, a senior corporate officer at B.F. Goodrich, sent to Dr. Kelly of Monsanto a copy of the Romanian study by Dr. Suciu that described the development of liver damage in PVC workers. Mr. McCormick instructed that the paper and its conclusions were to be held in strictest confidence.

42. In 1965, the Province of Ontario, Canada adopted a 50 ppm exposure limit based upon the research conducted by Dow Chemical and Canadian researchers showing pathological effects at 100 ppm of VC exposure.

43. In response to the new Canadian regulations, B.F. Goodrich adopted a 50 ppm exposure limit for VC workers in its Wellington plant in London, Ontario, also requiring the use of air supplied respirators where there was a risk of elevated VC exposures. B.F. Goodrich did not adopt this 50 ppm exposure limit at any of its plants in the U.S., including the Henry, Illinois plant where Decedent worked. Nor did B.F. Goodrich require the use of or provide air supplied respirators in the U.S. plants.

44. On April 6, 1966, B.F. Goodrich's William McCormick wrote an internal memorandum to B.F. Goodrich Vice President Anton Vittone in which he noted that the American Conference of Governmental Industrial Hygienists (ACGIH) was proposing that the 500 ppm TLV for vinyl chloride be reduced to 50 ppm. B.F. Goodrich continued to use SD-56 and to declare that 500 ppm was a safe exposure level. B.F. Goodrich also took steps to ensure ACGIH did not lower the TLV below the 500 ppm as set forth in SD-56.

45. On October 6, 1966, the Manufacturing Chemists Association (MCA) PVC resin producers and the MCA Occupational Health Committee met in Cleveland, Ohio. B.F. Goodrich's participants were W.E. McCormick, Rex H. Wilson, M.D., Wade Miller, Thomas B. Nantz and Anton Vittone. The group discussed acroosteolysis, a disease suffered by VC workers that they said had never been previously observed. B.F. Goodrich's data was presented and it was recognized that there was a definite health problem related to polyvinyl chloride manufacture. B.F. Goodrich requested that participants maintain the secrecy of the problem and the other participants agreed that the information was to be treated as confidential. Any new findings were to be communicated to the MCA or B.F. Goodrich's Dr. Wilson.

46. In a memorandum dated June 21, 1968, B.F. Goodrich's J. DiSalvo acknowledged that exposure of animals to VC at 500 ppm caused liver damage. B.F. Goodrich did not inform Decedent or other employees in its plants of this fact.

47. On January 26-27, 1970, the members of the MCA Safety and Fire Protection Committee met in New York City and discussed revising various chemical safety data sheets. Despite the fact that revisions to SD-56 were being discussed, and that the committee had clear evidence that exposure to VC at 500 ppm was dangerous to workers' health, this group again

refused to revise SD-56 to institute a lower exposure level.

48. At the MCA Safety and Fire Protection Committee (SFPC) meeting on December 14, 1971, in Washington, D.C., the participants again refused to change the 500 ppm exposure limit in SD-56. Representing and acting officially on behalf of B.F. Goodrich was D.L. Dowell.

49. On March 7, 1972, the MCA finally drafted a revised version of SD-56. Despite explicit knowledge to the contrary, SD-56 yet again assured that exposures up to 500 ppm were safe and that this level "provides considerable margin of safety for industrial exposures." B.F. Goodrich knew long before this time that there was no such margin of safety. That same year ACGIH reduced the recommended exposure limit from a ceiling of 500 ppm to a ceiling of 200 ppm. B.F. Goodrich did not communicate this information to Decedent or other plant workers.

50. On May 29, 1973, B.F. Goodrich's Benjamin M.G. Zwicker wrote an internal memorandum to the B.F. Goodrich plant managers entitled "Proposed Information Response to Employee Questions." The draft document he attached to his memorandum, entitled "Human Health Effects of vinyl chloride," falsely states "We know of no serious problems with our employees from the proper use of vinyl chloride in our plants."

51. On May 31, 1973, R.N. Wheeler of Union Carbide sent a confidential memo discussing the plans of The Society of the Plastics Industry (SPI) for approval of the use of PVC for drinking containers and to identify only the hazards identified in SD-56. In addition, the members decided that through the MCA Vinyl Chloride Research Projects Group they would meet with NIOSH, but only disclose the hazards of SD-56 while concealing information they had previously received regarding the carcinogenicity of VC. In discussing these two actions, in which B.F. Goodrich participated, Wheeler admitted in a memorandum that the actions "could be

construed as evidence of an illegal conspiracy."

52. On July 20, 1973, G.E. Best of the MCA wrote to the "management contacts" at companies sponsoring the Vinyl Chloride Research Program and the MCA Technical Task Group on Vinyl Chloride Research regarding the industry meeting with NIOSH on July 17, 1973. He indicated that despite definite knowledge to the contrary, particularly about the carcinogenicity of VC, NIOSH was only given a copy of SD-56, which stated that exposure to vinyl chloride at levels less than 500 ppm was safe. The "management contacts" active at that time who received this information indicating a cover-up of vinyl chloride hazards included B.F. Goodrich's McCormick, Johnson, Zwicker and Dowell.

53. None of the "management contacts" at B.F. Goodrich, or from any other company, took any steps to correct the misinformation provided to NIOSH.

54. On November 28, 1973, the Vinyl Chloride Research Coordinators of the MCA met to review and ratify the false information in SD-56. Participants included M.N. Johnson, M.D. from B.F. Goodrich.

55. On May 24, 1974, the MCA, on behalf of its members, issued a press release containing a chronology of knowledge about vinyl chloride hazards. The chronology issued by the MCA affirmatively misstated the known hazards of exposure to VC and was incomplete and misleading by concealing the historical knowledge and historical research concerning vinyl chloride.

56. At a meeting on December 7, 1974, of the SPI VCM/PVC Producers Group Committee in Washington, D.C., B.F. Goodrich's H.J. Fast, Cleveland Lane and John Nelson, among others, met and ordered the public relations firm of Hill and Knowlton to publish

pamphlets for PVC workers assuring them that they were not being exposed to hazardous levels of vinyl chloride, even though they knew this was inaccurate and had no factual basis.

57. On August 21, 1974, at the Tunney Senate hearings on vinyl chloride, SPI's Ralph Harding, the President of B.F. Goodrich, and Dow Chemical's Technical Specialist Ted Torkelson all testified. Each witness falsely portrayed the historical knowledge as it related to vinyl chloride and vinyl chloride research by concealing the industry's knowledge of the hazards going back to the 1950's.

59. On November 29, 1978, at the request of its members, including B.F. Goodrich, SPI published a booklet to provide to workers entitled, "*PVC, Health and Safety".* The booklet was misleading concerning the present and historical information concerning vinyl chloride and health hazards. It falsely advised workers that the cancer hazard of vinyl chloride in the workplace had been eliminated.

B: Agreement to conduct false and misleading studies for the sole purpose of concealing and misrepresenting the known dangers of exposure to vinyl chloride.

60. B.F. Goodrich knew when it first began manufacturing and working with vinyl chloride that the liver was a target organ damaged by exposure to VC. Studies repeatedly confirmed that the liver was a target organ damaged by vinyl chloride exposure. B.F. Goodrich then learned that VC caused cancers at multiple sites within the human body, including the liver, and also knew that these cancers were caused by exposures that were typical of on-going operations. In spite of this knowledge, B.F. Goodrich continued to adhere to and recommend the TLV of 500 ppm knowing it had no reliable scientific data upon which to base its fraudulent representations that exposures below that level were safe. These fraudulent misrepresentations were continually made in spite of data indicating exposures below 500 ppm caused damage to

the liver and other organs. B.F. Goodrich knew of, and even paid for, studies that clearly indicated that exposures below 500 ppm caused damage to the liver and other organs.

61. At least as early as 1960 or 1961 B.F. Goodrich was testing the liver function of workers because of the company's knowledge of the hepatotoxicity of vinyl chloride. The workers at B.F. Goodrich were not told of the purpose of the examinations or of B.F. Goodrich's knowledge that vinyl chloride was toxic to the liver.

Acroosteolysis Studies

62. In the early 1960's, B.F. Goodrich discovered that some of its VC workers were suffering a hand condition known as acroosteolysis. On November 12, 1964, B.F. Goodrich's Corporate Medical Director, Rex Wilson, wrote to Dr. J. Newman in Avon Lake, Ohio, where a B.F. Goodrich plant was located. Dr. Wilson, digging for information about acroosteolysis, stated that B.F. Goodrich wanted employees examined for "hand disabilities" as quietly as possible. Dr. Wilson also wanted the examinations to occur as rapidly as possible but only incidental to other examinations. Dr. Wilson instructed, "we do not want to have this discussed at all, and I request that you maintain this information in confidence."

63. On February 2, 1965, Robert A. Kehoe of Kettering Laboratory wrote to Monsanto's Medical Director, R. Emmet Kelly, M.D. Kehoe to discuss the B.F. Goodrich hand problem, but instructed: "I shall be entirely willing, and am authorized to give you full information about this verbally, but I am not revealing the locus of the problem in writing at this time, since the people involved are deeply concerned despite the fact that there are very few cases, none of which has resulted in disability. It is difficult not to conclude, on the face of the evidence, poor as it is, that this is an occupational disease."

64. On January 6, 1966, Monsanto's J. V. Wagner wrote an internal memorandum reflecting a conversation with B.F. Goodrich's Harry Warner, Corporate Vice President, in which Warner stated that B.F. Goodrich had first noticed the hand problem in workers several years before and that the problem had been noticed in employees who were not involved in kettle cleaning. Warner also told Wagner about a Belgian doctor who had seen these problems in PVC workers and was about to publish an article. According to Wagner's memo, "Goodrich was concerned enough about the response to such a published article that Mr. Warner attempted to have one of their representatives, who was in Europe, stop by and try to discourage or influence the wording of such an article to be sure that it didn't condemn PVC in general."

65. On January 7, 1966, Dr. Kelly of Monsanto circulated an internal memorandum regarding his meeting with B.F. Goodrich. The memo noted that Monsanto was x-raying people who were working in PVC polymerization. Dr. Kelly stated, "I am sure Dr. Nessell can prepare these people with an adequate story so that no problem will exist." Dr. Kelly also noted that he had to keep in contact with B.F. Goodrich because Dr. Wilson was on his way to Brussels to try to stop the publication of a paper. Dr. Kelly stated, "while this is not completely hush hush, I think discretion should be used to prevent any undue talking, and the name of Goodrich should be kept in the background."

66. On February 11, 1966, B.F. Goodrich's Dr. Rex Wilson wrote a confidential internal company letter to Dr. Creech who cared for employees at the B.F. Goodrich facility located in Louisville, Kentucky. In this correspondence, Wilson asked Dr. Creech to "examine these people and determine whether or not they have any existing symptoms commensurate with Raynaud's disease or scleroderma." Included on the list of B.F. Goodrich employees that Dr.

Wilson informed Dr. Creech to examine was their first acroosteolysis case, which had manifested in 1957. Wilson informed Creech that arrangements for a study by the Kettering Laboratory of Cincinnati, Ohio had been made. The results of Kettering's study have never been released by B.F. Goodrich or any other member of the industry.

67. On December 21, 1966, the MCA Occupational Health Committee met in New York, NY. It was decided that the MCA would enter into a contract with the University of Michigan for an epidemiological study of acroosteolysis. Representing and acting on behalf of B.F. Goodrich were W.E. McCormick and Rex H. Wilson, M.D.

68. On August 21, 1967, B.F. Goodrich published the article "*Occupational Acroosteolysis"* in the *Journal of the American Medical Association*. This article was written by B.F. Goodrich management personnel Dr. Rex Wilson, M.D., William McCormick and Carroll Tatum along with contract physician, Dr. John Creech, M.D. In the article they stated that the cause of acroosteolysis was "not presently known." The article also stated that the syndrome "may" be of occupational origin. Contrary to the article, Wilson and McCormick understood that acroosteolysis was directly related to vinyl chloride exposure. Dr. Creech has admitted that he saw a draft of this paper where it was specifically stated that vinyl chloride was the cause of acroosteolysis but this assertion was deleted from the final published paper. The paper also falsely implied that the complaints began in mid-1964, when in fact they date back to the 1950's.

69. On March 25, 1968, B.F. Goodrich received a proposal from Brooklyn Polytechnic Institute seeking continued support for the vinyl chloride acroosteolysis work it had carried out under the sponsorship of B.F. Goodrich from March 1, 1967, to February 22, 1968. The results of this work by Brooklyn Polytechnic Institute on vinyl chloride and acroosteolysis have never

been published or made available.

70. On June 26, 1968, B.F. Goodrich's W.E. McCormick wrote to B.F. Goodrich company physicians enclosing a memorandum stating that at the request of B.F. Goodrich the Kettering Laboratory had reported that it had reproduced acroosteolysis in hamsters. B.F. Goodrich has never produced a copy of this study, nor was it ever published. The memorandum concluded that there would be no reporting to the State of Kentucky on occupational acroosteolysis without prior consultation with the B.F. Goodrich Medical Director in Ohio. This was done despite the Kentucky law requiring cases of occupational disease to be reported.

71. In February of 1969, B.F. Goodrich and others received a draft of a scientific publication from the University of Michigan that had been commissioned by the MCA and paid for by MCA members, including B.F. Goodrich. The study recommended lowering exposure to vinyl chloride from 500 ppm to 50 ppm and conducting low level monitoring. Recipients included John L. Nelson, William E. McCormick and Rex H. Wilson at B.F. Goodrich.

72. On March 4, 1969, B.F. Goodrich's W.E. McCormick wrote an internal "Company Confidential" memorandum to W.C. Becker, B.F. Goodrich Vice President of External Affairs, entitled "Report of Hand Disability Activities." McCormick noted that the University of Michigan's report had been distributed confidentially to the MCA Task Group for review and recommended that "(1) The association between reactor cleaning and the occurrence of AOL [Acroosteolysis] is sufficiently clear-cut that steps should be taken to minimize the exposure of workers responsible for this operation…Where it is necessary for workers to enter the reactor tanks, sufficient ventilation should be provided to reduce the vinyl chloride concentration to 50 ppm; (2) Because of increasing evidence that the disease AOL may have systemic manifestations

involving bones and possibly other systems, recognized cases should be removed from further exposure and should be examined at intervals to determine whether there is any progression of the disease."

73. On April 30, 1969, the MCA Occupational Health Committee met in Washington, D.C., including B.F. Goodrich's W.E. McCormick, where its members agreed to intentionally perpetrate the fraud that exposure up to 500 PPM was safe by voting to refuse to publish the University of Michigan's report, particularly its recommendations. Instead, the committee voted to accept the report for publication only if the recommendation to lower the TLV to 50 PPM was eliminated. B.F. Goodrich did not tell its employees, including Decedent, that it had rejected the recommendation that exposures be reduced from 500 ppm to 50 ppm.

74. On May 6, 1969, the MCA PVC Resin Producers met in Washington, D.C. In furtherance of their continued plan to perpetrate the fraud that VC exposure up to 500 PPM was harmless, it was unanimously resolved "that the University of Michigan be permitted to publish the scientific facts developed from the study as edited by the MCA members but that the complete document now available to the OHC [Occupational Health Committee] and the sponsoring companies not be released but be held confidential for the sponsors only." Participants at this meeting included William E. McCormick and John L. Nelson from B.F. Goodrich.

75. On April 7, 1970, the MCA Occupational Health Committee met in New York, N.Y. and discussed the editorial changes required by the MCA committee. Thereafter, the published paper failed to contain the key information concerning the health hazards of vinyl chloride. Representing and acting on behalf of B.F. Goodrich was W.E. McCormick (although he was not

physically present at the meeting).

76. In January of 1971, the University of Michigan published its epidemiologic study "Occupational Acroosteolysis." The report that was actually published by the University of Michigan failed to contain the 50 ppm recommendation for vinyl chloride exposure that it had made in its 1969 confidential version. Furthermore, the Michigan article listed 400 ppm as the lower level of odor detection, when the 1969 version sent to the MCA had reported a 4,100 ppm odor level. Workers were deliberately being misled to believe that smelling vinyl chloride meant that they were being exposed to 400 ppm instead of over 4,000 ppm. Also, the confidential 1969 report made a recommendation for low level monitoring for VC, which was absent from the published version. These omissions were made because B.F. Goodrich and its confederates in the industry agreed to keep the damaging data developed by this study from workers, the United States government and the general public.

77. At the Vinyl Chloride Safety Association Meeting on November 10-12, 1971, B.F. Goodrich and others present referred to acroosteolysis (AOL) as bone cancer. These same representatives who described the systemic condition as "bone cancer" when executives met among themselves, agreed that they would describe acroosteolysis in different terms in order to minimize it when speaking to their workers. They recognized that AOL is caused by repeated exposure to low concentrations of vinyl chloride (50 ppm) even though publicly and to workers they refused to admit that vinyl chloride caused AOL.

C: Agreement to enter into a secrecy pact regarding knowledge of the carcinogenicity of VC.

78. On September 11, 1970, the MCA Occupational Health Committee, including W.E. McCormick of B.F. Goodrich, met in Montreal, Canada to address the European researcher P.L.

Viola's recent animal study finding evidence of cancer caused by VC. Meeting attendees agreed this affected both VCM and PVC producers.

79. MCA members, including B.F. Goodrich's W.E. McCormick, recognized that Dr. Viola's work produced cancer tumors from exposures below 5,000 ppm, leading to the conclusion that 100 ppm would not prevent tumors. Defendants agreed to fraudulently conceal this vinyl chloride danger and to give no warnings to workers, including Decedent.

80. On November 16, 1971, the MCA held a vinyl chloride conference in Washington, D.C. where participants noted that publication of Dr. Viola's work finding cancer in vinyl chloride-exposed animals could cause serious problems for the U.S. industry and that publication of the information should be suppressed.

81. On November 23, 1971, Union Carbide's R. N. Wheeler wrote a trip report of his attendance at the November 16, 1971, MCA vinyl chloride conference. He reported that Dr. Viola had found tumors at exposures of less than 5,000 parts per million. Industry representatives specifically recognized that publishing Dr. Viola's work in the U.S. could lead to serious problems with regard to the vinyl chloride monomer and resin industry, so they agreed to keep the information secret.

82. B.F. Goodrich and its confederates recognized that they needed access to the European cancer research but agreed that it should be kept secret and not disclosed to anyone beyond the MCA Vinyl Chloride Task Group.

83. On August 16, 1972, D.M. Powell, on behalf of the European vinyl chloride industry, wrote to MCA's G.E. Best and noted that they had agreed to a secrecy agreement to hold confidential European data regarding carcinogenicity of vinyl chloride.

84. On October 19, 1972, the MCA's Kenneth Johnson wrote to members about the secrecy agreement with European researchers. Mr. Johnson stated that the members of the MCA's task group were the only ones entitled to receive information about the secret European project. The members whose companies had signed the secrecy agreement included W.E. McCormick of B.F. Goodrich.

85. In approximately November of 1972, B.F. Goodrich signed the secrecy agreement pledging to hold secret the results of European animal studies which had found cancer from vinyl chloride exposure. As a result of this agreement, B.F. Goodrich became aware of more research data that clearly showed that vinyl chloride caused angiosarcoma of the liver, a rare form of liver cancer, in animals exposed to less than permissible occupational levels. By this time, B.F. Goodrich already had at least 4 employees who had been diagnosed with this same cancer. B.F. Goodrich management continued to conceal the relationship between vinyl chloride and angiosarcoma of the liver from local plant doctors and its employees, including Decedent.

86. On November 14, 1972, the MCA Technical Task Group on Vinyl Chloride Research met in Washington, D.C. and members were given the secret European information that VCM caused angiosarcoma of the liver in animals exposed to just 250 ppm. Members representing and acting officially on behalf of their employers included W.E. McCormick of B.F. Goodrich.

87. On January 30, 1973, the Federal Government formally requested the submission of unpublished information regarding vinyl chloride hazards. The VCM/PVC industry, including B.F. Goodrich, refused to provide responsive information and plotted on how best to deceive the Government and not reveal the secret European information about the carcinogenicity of VC.

88. On January 30, 1973, the MCA Vinyl Chloride Research Coordinators, including B.F. Goodrich's W.E. McCormick, met in Washington, D.C. where Dr. Torkelson of Dow Chemical, who had previously been dispatched to Europe to view the European studies, reported that the European research finding that vinyl chloride caused cancer was of high quality and that the results were undeniable. Immediately thereafter, in a press release regarding vinyl chloride issued by MCA, the companies deliberately refused to mention the subject of cancer. In addition, at the same meeting, it was recognized that vinyl chloride was a component of aerosols but that industry could not stop selling vinyl chloride for aerosol use without risking disclosure of the cancer problem. The group specifically recognized that aerosols could result in unlimited liability to the U.S. population while liability to workers would be limited by Workman's Compensation.

89. On February 1, 1973, B.F. Goodrich's W.E. McCormick wrote Anton Vittone with copies to J.W. Miller, Jr., Vice President of B.F. Goodrich, Dr. R.W. Strassburg, Dr. Rex H. Wilson, B.F. Goodrich Medical Director and Benjamin M. G. Zwicker, B.F. Goodrich Director. McCormick stated, "I am convinced that if the present European information becomes known to governmental agencies in the United States, and particularly to OCAW, URW and the [illegible] vinyl chloride will be classed as a carcinogen."

90. Despite having substantial information about the carcinogenicity of VC at levels below the 500 ppm TLV, on February 28, 1973, B.F. Goodrich's W.E. McCormick, in furtherance of the company's underlying fraudulent behavior, wrote an internal memorandum to D.L. Dowell, B.F. Goodrich's Manager of Safety. Mr. McCormick stated "the present OSHA level is 500 PPM (ceiling). Regardless of what ACGIH does, we should go with the OSHA

level." At this time, B.F. Goodrich already had the secret European data showing cancer in animals exposed to vinyl chloride at 250 ppm. B.F. Goodrich withheld this information from OSHA, its workers and Decedent.

91. On May 21, 1973, B.F. Goodrich, represented by M.N. Johnson, and other members of the MCA Vinyl Chloride Research Coordinators met to discuss their obligations under the secrecy agreement they had previously signed. They admitted that the actions of the MCA they had authorized could be construed as an illegal conspiracy among industry if information were not made public or at least made available to the government. Nonetheless, the information about vinyl chloride causing cancer continued to be fraudulently concealed.

92. On July 17, 1973, the VC manufacturers met with NIOSH's Director, Marcus Key. Prior to the meeting they had agreed not to disclose their knowledge of the carcinogenicity of vinyl chloride as demonstrated in the European research. At the meeting, the industry representatives presented SD-56 as representing the position of MCA and its members regarding the hazards of vinyl chloride despite their knowledge that vinyl chloride was substantially more hazardous than the information Defendants intentionally included in SD-56.

93. In December of 1973, B.F. Goodrich was informed by one of its contract physicians that three of its employees at the Lexington, KY PVC plant had been diagnosed with angiosarcoma of the liver. On January 23, 1974, B.F. Goodrich issued a press release about the deaths of the three employees in its polyvinyl chloride operations at Louisville who had died from angiosarcoma of the liver. B.F. Goodrich's press release did not mention the European data that B.F. Goodrich had concealed and which had shown several years earlier this very type of cancer in animals exposed to vinyl chloride.

94. On February 15, 1974, OSHA held an informal hearing in which B.F. Goodrich's Anton Vittone was called to testify. Mr. Vittone falsely represented that Viola's work had demonstrated cancers at 30,000 ppm when B.F. Goodrich was well aware that tumors were found at just 250 ppm. Vittone failed to mention that B.F. Goodrich had received secret information concerning the relationship between vinyl chloride and angiosarcoma of the liver in November of 1972, or any of the earlier information that B.F. Goodrich had collected about vinyl chloride causing liver damage.

95. On March 1, 1974, Dr. Maltoni published a report on vinyl chloride and animal testing and revealed his study findings, which demonstrated that vinyl chloride was capable of causing various types of cancer in animals including angiosarcomas. This information had been disclosed to B.F. Goodrich and other signatories to the secrecy agreement in at least November of 1972.

96. On March 16, 1974, Dr. Creech, the local B.F. Goodrich Louisville plant physician who had identified cases of angiosarcoma of the liver, and Dr. Maurice Johnson, Corporate Medical Director of B.F. Goodrich, published a case report on angiosarcoma in the Journal of Occupational Medicine. The article contained an editor's note concerning Dr. Maltoni telling OSHA in 1972 about his finding of angiosarcoma of the liver in animals exposed to vinyl chloride. It was not until he read the editor's note added to his article that Dr. Creech, B.F. Goodrich's Louisville plant physician, first learned of Maltoni's work. Although Dr. Creech had been charged with protecting workers at the B.F. Goodrich's Louisville facility, B.F. Goodrich had not told Dr. Creech of Maltoni's findings. Dr. Creech said he had diagnosed angiosarcoma

in a B.F. Goodrich worker exposed to vinyl chloride years earlier but had not had any reason to suspect that it had been caused by vinyl chloride. B.F. Goodrich had intentionally hidden from its own physicians charged with the care of its workers the information that vinyl chloride had long been linked to angiosarcoma of the liver.

97. On June 5, 1974, industry members, including Maurice Johnson from B.F. Goodrich, met with the European scientist Cesare Maltoni (University Bologna) in New York, N.Y. The meeting was highly confidential and no notes were allowed. The group learned of Maltoni's findings of injuries and tumors at just 50 ppm. B.F. Goodrich did not disclose this information to Decedent or other plant workers.

98. On December 12, 1974, the MCA Technical Task Group on Vinyl Chloride Research met, with M.N. Johnson, M.D. present on behalf of B.F. Goodrich. At this meeting the status of the European secrecy agreement was discussed. It was specifically noted that the agreement remained in effect.

Cancer Studies

99. In response to information obtained from the European vinyl chloride industry in 1970 and thereafter indicating that vinyl chloride was a carcinogen, B.F. Goodrich and its confederates in the industry agreed to keep the European information secret and to conduct their own studies, which they would design and control.

100. On February 20, 1973, B.F. Goodrich's representative, W.E. McCormick, participated in a meeting of the MCA Vinyl Chloride Research Coordinators where it was discussed how industry could best "defocus" potential concern about cancer by performing its own study. A study proposed by Tabershaw Cooper & Associates (TCA) was discussed with the

intent to use it as a smokescreen so the U.S. companies could show "diligence" if ever questioned about their knowledge and actions regarding vinyl chloride and cancer. In a deliberate effort to conceal its knowledge and concern about cancer, the members issued a press release concerning the study where the word "cancer" was not mentioned.

101. On May 8, 1973, the MCA Board of Directors met in New York, N.Y. where they approved the TCA study explaining "the reason for moving quickly on this epidemiologic study is so that the U.S. industry must be prepared to indicate diligence and derive an appropriate handling of any problem that could arise."

102. On June 19, 1973, the MCA signed a contract with Tabershaw Cooper & Associates (TCA) to conduct a cancer epidemiology study. This was within thirty days of a planned industry meeting with NIOSH scheduled for July 17, 1973. MCA issued a press release on June 28, 1973, concerning this study that intentionally did not contain anything to imply the U.S. vinyl producers had any reason to be concerned with occupational cancer, and deliberately directed attention away from any concern about cancer. B.F. Goodrich was one of the companies sponsoring that study.

103. On October 15, 1973, TCA issued a progress report on the epidemiology study which discussed the ways a terminated employee might be followed. Further, TCA stated that several companies had indicated that they did not wish their terminated employees to be contacted directly. This effort to hide the risk of cancer from older ex-employees had the effect of concealing the true extent of the cancer risk of vinyl chloride, because older retired employees were the ones most likely to have cancer.

104. On December 19, 1973, TCA issued another progress report on its epidemiology study reporting that the exposure level determinations for the workers in the studies' cohort was

not accurate. The progress report also indicated that older workers, those most likely to have cancers from work exposures, had been excluded from the study. This not only concealed the cancer risk factor for those workers but also falsely minimized the cancer risk of vinyl chloride.

105. On April 15, 1974, TCA issued the first "final report" of its epidemiology study to MCA. The study reported a measurable excess of digestive cancers, especially of the liver, and other cancers, including respiratory cancers and brain cancers.

106. On May 3, 1974, TCA issued a second "final report" to MCA. The previous TCA final report dated April 15, 1974, was suppressed. On May 4, 1974, TCA submitted a substantially modified third "final report" as MCA had requested. This was the report that the MCA then submitted to OSHA, containing false and misleading information that fraudulently minimized the risk of cancer.

107. On June 25 - 28, 1974, and July 8 - 11, 1974, the MCA submitted information to OSHA. The vinyl manufacturers, including B.F. Goodrich, coordinated by the MCA, submitted substantially false or materially incomplete evidence at the OSHA hearings on the vinyl standard.

108. On July 30, 1974, the MCA Vinyl Chloride Research Coordinators, including a representative of B.F. Goodrich, met in Washington, D.C. The group voted to abandon animal studies which had been designed to find a no effect vinyl chloride exposure level, fearing that the actual results of such studies would show that there was no safe level of exposure.

109. On September 18, 1974, the MCA Vinyl Chloride Research Coordinators, including B.F. Goodrich, met in Washington, D.C. At this meeting it was acknowledged that a significant number of Union Carbide employees at Carbide's South Charleston plant who had vinyl chloride exposure were not included in the TCA study. The intended effect was to exclude older high

exposed workers who were the ones who most likely would suffer from cancer.

110. On August 1, 1974, TCA published its epidemiologic study in the *Journal of Occupational Medicine*. The report that was published was based on the May 4, 1974, third "final" report to the MCA. It failed to address deliberate inaccuracies that were used to conceal the true extent of the vinyl chloride cancer hazard.

111. On January 10, 1975, Union Carbide's R.N. Wheeler wrote to MCA's Milton Freifeld concerning a decision to exclude over a thousand of the most heavily exposed workers from the on-going study of the hazards of vinyl chloride, so as to conceal the hazards of vinyl chloride.

112. On January 13, 1975, Dow Chemical's Torkelson wrote to TCA 's Director of Health and Epidemiological Studies, Gaffey, about newly discovered employee records. At the time of the January 13, 1975, meeting, the group agreed to include only the most recently exposed of the "newly discovered records." This decision excluded the very workers from Union Carbide's facility who were most likely to develop cancer from occupational exposure to vinyl chloride and this deliberately concealed the true extent of the carcinogenicity of vinyl chloride.

113. On May 2, 1975, Dow Chemical's Torkelson wrote to the members of the MCA Technical Task Group on Vinyl Chloride Research to plan how study results would be disclosed so as to minimize concerns about the hazards of vinyl chloride.

114. On May 22, 1975, the MCA Technical Panel on Vinyl Chloride Research (formerly Technical Task Group) met in Washington, D.C. The participants at this meeting, including Dr. M.N. Johnson from B.F. Goodrich, discussed ways in which the study design could be altered to further conceal the hazards of vinyl chloride.

115. On May 30, 1975, TCA submitted a supplemental "final" epidemiological report to MCA. This report showed an increased incidence of brain cancer in the exposed group. This TCA report was never published.

116. On June 3, 1975, B.F. Goodrich's W.J. Wilcox issued a strictly private interoffice memorandum regarding liver scan testing of its management employees who had received significant exposure, which was defined as having formerly received at least 3 years of exposure similar to that of a foreman operator. Wilcox instructed, "Please quietly scan [the liver of] the people in your organization." The purpose of these examinations was not disclosed to workers.

117. In September 1976, Equitable Environmental Health (EEH) (successor to TCA) submitted to MCA a final report on its supplementary epidemiological study of vinyl chloride workers.

118. On October 12, 1976, the MCA Vinyl Chloride Research Coordinators including B.F. Goodrich's M.N. Johnson, met in Washington, D.C. to discuss the "final" report submitted by EEH. The group recommended actions that needed to be taken, including having the project manager write to Equitable to remind them that both Torkelson and he had requested a draft of the report rather than the final version. The group recommended to the panel that this report not be accepted or distributed further until changes had been made. These actions were taken to conceal the hazards of vinyl chloride.

119. October 13, 1976, the MCA Technical Panel on Vinyl Chloride Research, including B.F. Goodrich's M.N. Johnson, met in Washington, D.C. The panel "accepted the research coordinators' recommendation that the report not be distributed to the panel or anyone else until necessary changes were made." In the weeks to come, substantial modifications were made to the EEH report at the request of industry representatives.

120. The MCA Vinyl Chloride Research Coordinators (VCRC), including M.N. Johnson from B.F. Goodrich, met on November 30, 1976, in Washington, DC and agreed that the draft of the epidemiologic study report could not be sent out until the "necessary" changes were made. The "necessary" changes included a re-classification of the populations being studied, which had the result of concealing injuries. These post hoc changes in epidemiologic studies are not permitted by scientists and constitute fraud. The MCA insisted on their changes on December 13, 1976.

121. On August 18, 1977, EEH's Richard Davis wrote to MCA's J.T. Seawell. This correspondence outlined the major changes that the sponsors had dictated.

122. On September 8, 1977, the group that had reviewed the EEH study, including B.F. Goodrich, was aware that the study contained only five cases of angiosarcoma, even though there had been twenty-one cases reported in the United States by that time.

123. On September 28, 1977, Dow Chemical's Torkelson wrote to the EEH with a copy to the MCA listing four pages of changes he and the sponsors wanted in the report.

124. On October 12, 1977, EEH wrote Dow Chemical's Torkelson with a copy to MCA in which EEH stated, "we have edited the final report on the mortality study of vinyl chloride workers in line with the suggestions contained in your letter of September 28." EEH further stated that they thought that the report should then be published in final form. Torkelson then sent this letter from EEH to various sponsors, suggesting that each company be prepared to vote whether to accept the report.

125. On October 20, 1977, Dr. Torkelson of Dow Chemical, acting on behalf of the MCA panel, gave approval for limited distribution of the study contingent upon changes being made as demanded by the MCA.

126. On January 1, 1978, EEH submitted another "final" report to MCA. The MCA then circulated the report to the MCA Vinyl Chloride Research Coordinators and Technical Panel on February 14, 1978. It was specifically stated "all sponsoring companies should take necessary action to ensure that distribution of all previous 'draft final' and products report to be terminated immediately as all reports issued to date are now rendered obsolete by the enclosed document dated January, 1978."

127. On January 3, 1978, the Vinyl Chloride Safety Association met in Valley Forge, Pennsylvania. At this meeting, it was noted that target organs for vinyl chloride are the linings of the small blood vessels and not just specific sites such as the liver and the brain. Representing B.F. Goodrich was Herman Waltemate, a senior safety executive.

128. On January 6, 1978, MCA's J.T. Seawell, the MCA vinyl chloride coordinator, wrote the Vinyl Chloride Research Coordinators and Technical Panel on Vinyl Chloride Research and noted that Dow Chemical's Torkelson had rewritten entire sections of the EEH report, including the discussion and the conclusion. The purpose, and effect, of the rewrite was to conceal and minimize the hazards of vinyl chloride.

129. On March 5, 1979, SPI's John R. Lawrence circulated to the PVC Safety Group a copy of Dow Chemical's position paper concerning recently discovered brain tumors, which was for internal use only and not disclosed to workers.

130. On March 21, 1979, the MCA Vinyl Chloride Research Coordinators, including B.F. Goodrich's M.N. Johnson, met in Washington, D.C. where they recognized that none of the ten brain cancers from Union Carbide's Texas City plant were included in the EEH study. At this meeting, Torkelson presented work from Maltoni in which Maltoni had found brain cancer in animals exposed to vinyl chloride. Additionally, the audit of IBT was discussed. Dr. Busey,

with Experimental Pathology Laboratories, stated that the evidence acquired to date led to the conclusion that an excessive number of animals were thrown away and that there was no apparent attempt made to salvage tissues critical to the investigation. This was done to prevent detection of the cancer in the animals. The actions addressed in this meeting were among the continuing affirmative acts committed to misrepresent and conceal the fact that exposure to VC caused brain cancer.

131. On September 20, 1979, the CMA Vinyl Chloride Research Coordinators, including M.N. Johnson of B.F. Goodrich, met in Washington, D.C. and were given a verbal report of a highly confidential study conducted in England by the Institute for Occupational Medicine on PVC workers at risk for lung problems equivalent to twenty cigarettes per day. Although the Toxic Substance Control Act ("TSCA") Sec. 8(e) requires the reporting of substantially significant adverse health effects, this group failed to pass on the information it received concerning the lung problems. The group also voted that there would be neither additional retrospective auditing nor any effort to summarize the IBT data at that time, the effect of which would be to further conceal the cancers. R. N. Wheeler gave a report on the Texas City brain cancer problem. As it related to brain cancer, Dr. Tamburro (of the University of Louisville), on behalf of Defendant B.F. Goodrich, reported to Dr. Torkelson that the University of Louisville was not studying brain cancer and did not anticipate studying brain cancer.

132. On March 4, 1980, the CMA Vinyl Chloride Project Panel and Research Coordinators met in Washington, D.C. and discussed the January 15, 1980, letter from EEH concerning their study and particularly the excess brain cancer cases in PVC workers. The participants agreed that if the study were carried out the group would further confirm that brain cancer was caused by vinyl chloride exposure. The participants discussed methods in which the

study could be altered to conceal the excess brain cancers found in workers exposed to vinyl chloride.

133. On September 17, 1980, the CMA Vinyl Chloride Research Coordinators, including M.N. Johnson from B.F. Goodrich, met in Washington, D.C. The EHA had evaluated the validity of the underlying database of workers exposed to vinyl chloride and had reported that the integrity of the underlying database was poor. Despite the receipt of a report that detailed the inadequacy of the database, the vinyl panel refused to allow EHA to correct even the most egregious errors in the underlying database, including deficiencies in over 3,000 records that EHA reported had rendered the records not usable. Instead of attempting to remedy the defects in the data, the panel insisted that EHA analyze the deficient data in its unacceptable and unreliable state.

134. On November 14, 1980, the CMA vinyl chloride industry representatives met in Pittsburgh, PA with Maurice N. Johnson participating on behalf of B.F. Goodrich. After discussing the need to correct the flaws in the unreliable database they decided that the "original cohort" should be left "as is" despite their knowledge that these misrepresentations were fraudulent.

135. In October 1981, at the direction of B.F. Goodrich and its confederates, and acting through the MCA Vinyl Panel, industry contractor Clark Cooper published *Epidemiologic Study of Vinyl Chloride Workers: Mortality through December 31, 1972*, which concealed and failed to reveal excess cancers and particularly brain cancers.

136. On May 26, 1982, the CMA Vinyl Chloride Research Coordinators, including B.F. Goodrich's M.N. Johnson, met in Washington, D.C. The group acknowledged that they were not going forward with a case control study of brain cancer. The group was advised that the brain

cancer control study would show that brain cancers were caused by vinyl chloride exposure and therefore, for litigation purposes, it was best not to carry out the planned study.

137. On September 30, 1983, the CMA Vinyl Chloride Research Coordinators, with M.N. Johnson participating on behalf of B.F. Goodrich, met in Washington, D.C. Prior to this meeting, the sponsors of the EHA study reclassified as exposed or not exposed some of the workers that were involved in the previous study. In particular, approximately 800 individuals were now reclassified as not having been exposed to vinyl chloride although this information was not verified. This resulted in the sponsors contracting and paying for the publication of a study in which they had excluded persons from the study by reclassifying them as not exposed without obtaining appropriate data or information, thus intentionally skewing the results.

138. On August 15, 1986, the CMA's Manager of the Vinyl Chloride Panel, Has Shah, sent a draft of the EHA report by Wong to the Vinyl Chloride Panel. On September 8, 1986, the CMA Vinyl Chloride Panel met in Oakland, California and agreed that EHA would need to revise the draft report based on the comments received by the CMA Vinyl Panel. On October 16, 1986, EHA's Dr. Wong wrote Has Shah of CMA that he was submitting the final report. He stated that, "comments from CMA on the draft report have been carefully considered in revising the report."

139. On April 13, 1987, Dr. Doll submitted "*The Effects of Exposure to Vinyl Chloride, an Assessment of the Evidence.*" This analysis was based upon false information provided to Dr. Doll by the CMA, particularly regarding representations by the industry that their cancer studies were comprehensive and valid. CMA intentionally misinformed Doll that the Wong study was a comprehensive and valid study and included all prior cohorts.

140. On April 21, 1987, the CMA's Has Shah wrote to the Vinyl Chloride Panel

members. Shah wrote about the courses of action the panel could take to minimize the reports of cancer from the EHA report. EHA had identified 37 deaths from liver and biliary cancers. Shah noted that only 15 of these 37 were angiosarcomas. Has Shah stated that there were two plausible explanations for this finding: (1) that vinyl chloride caused liver and biliary cancers other than angiosarcoma; or (2) the deaths were actually misdiagnosed angiosarcomas. In response to a proposal for further study the group agreed that there would be "no talking to decedent's families" to get accurate information.

141. On October 20, 1987, ICI's Paddle wrote Dr. Doll enclosing correspondence dated October 9, 1987, noting that one third of the North American angiosarcomas in the angiosarcoma registry did not appear in Dr. Wong's paper. In addition, one third of the North American angiosarcomas identified in Dr. Wong's paper were not present in Dr. Doll's submission. These irregularities served to minimize the disclosure of the toxicity of vinyl chloride.

142. On March 2, 1988, ICI's Bennett wrote to Dr. Doll. Bennett stated there was no need to acknowledge any person or company as having helped in the vinyl chloride review because further study would be done solely to defend against litigation (and disclosure would indicate conflicts of interest).

143. On May 8, 1989, SPI and the Vinyl Institute Health Safety and Environmental Committee met at Pine Mountain, Georgia. W.C. Holbrook, Mike Voisin and Woody Ban participated on behalf of B.F. Goodrich and agreed to terminate the angiosarcoma registry so as to conceal the fact that vinyl chloride was continuing to cause angiosarcoma in PVC fabricators.

144. On January 5, 1990, J.T. Seawell of the CMA (formerly known as the MCA) wrote to the Vinyl Chloride Project Panel and Vinyl Chloride Research Coordinators attaching an excerpt from the *Federal Register* dated December 18, 1979, where OSHA requested additional

information for a reassessment of the known health effects of vinyl chloride. Mr. Seawell stated that the CMA planned to resubmit all research reports that were previously submitted to pertinent government agencies immediately after their acceptance by the Vinyl Chloride Research Coordinators and the Vinyl Chloride Panel. CMA together with its members affirmatively agreed to withhold information that it had previously concealed.

D: Agreement to fraudulently misrepresent the "odor threshold" of vinyl chloride in order to misrepresent exposures to vinyl chloride.

145. An "odor threshold" is the concentration or level of exposure at which a human can smell a chemical. B.F. Goodrich and its industry confederates have made false and contradictory statements to continuously mislead workers, including Decedent, into believing they faced no toxic hazard from VC.

Prior to the mid 1970's, B.F. Goodrich told its employees, including Plaintiff's Decedent, that the fact they smelled VC was no indication of danger.

147. B.F. Goodrich repeatedly informed workers and published documents stating that the odor threshold for vinyl chloride was approximately 250 ppm. Thus, if a worker smelled vinyl chloride, the worker would believe that the exposure was below the 500-ppm exposure limit.

148. B.F. Goodrich repeatedly informed Decedent during the course of his employment prior to 1975 that there was no danger just because he could smell vinyl chloride.

149. In a June 21, 1968, internal B.F. Goodrich memorandum to Fred Krause, J.G. DiSalvo acknowledged that the odor threshold for vinyl chloride was 4,100 ppm.

150. When B.F. Goodrich finally conducted its own tests for the vinyl chloride odor

threshold in 1974, the lowest level at which the most sensitive subject could detect the vinyl chloride was 2,000 ppm.

151. As late as April 1, 1975, a B.F. Goodrich memorandum still informed employees that the odor threshold was 260 ppm, thereby fraudulently concealing the truth. U.S. E.P.A., ATSDR and ACGIH all state that the odor threshold for VC is 3,000 ppm.

B.F. Goodrich Participated in a Civil Conspiracy

152. B.F. Goodrich and its confederates in the VC/PVC industry entered into a conspiracy that by common design and mutual understanding was intended to accomplish unlawful ends and/or to reach lawful ends by unlawful means.

153. The conspiracy was intended to misrepresent and conceal material facts about the nature and extent of the risks of exposure to vinyl chloride and vinyl chloride-containing products from workers, including Decedent.

154. The conspiracy involved the common design and mutual understanding that the co-conspirators would fraudulently misrepresent and/or conceal material facts about the nature and extent of the risks of vinyl chloride from workers, including employees of B.F. Goodrich such as Decedent.

155. B.F. Goodrich and its confederates in the VC/PVC industry conspired to engage in fraudulent conduct by concealing the true dangers of exposures to vinyl chloride at the levels experienced by workers in the course of performing their normal duties, proximately causing the injuries to Decedent.

156. The conspiracy to engage in tortious misconduct included:

a. fraudulently misrepresenting, suppressing and concealing information relating to the hazards of vinyl chloride;

b. consciously, knowingly, intentionally, and willfully disregarding an obvious

and imminent danger of serious injury or death to persons exposed to vinyl chloride, including Decedent;

c. failing and refusing to take precautions to avoid reasonably foreseeable injuries to workers, including Decedent, who would be exposed to VC;

d. intentionally permitting the overexposure of Decedent to vinyl chloride without his informed consent.

e. deliberately concealing information about the carcinogenicity of VC;

f. agreeing to misrepresent that 500 ppm was a safe exposure limit when B.F. Goodrich and its confederates knew that was not true; and

g. agreeing not to study health effects from vinyl chloride exposure in a timely, accurate or complete manner.

157. Decedent was at all relevant times unaware of the true dangers associated with vinyl chloride exposure, was unaware of his actual exposure levels and was unaware of the true nature and extent of the risks associated with working in areas where vinyl chloride was being used.

158. The following overt tortious acts were committed against Decedent by B.F. Goodrich in furtherance of the conspiracy:

a. exposing Decedent to hazardous levels of vinyl chloride without his knowledge or informed consent;

b. failing and refusing to provide adequate industrial hygiene controls and personal protective equipment to reduce or eliminate the dangerous effects of vinyl chloride;

c. failing and refusing to provide adequate warnings regarding the dangers and health effects of exposure to vinyl chloride;

d. failing and refusing to reasonably test or investigate the dangerous propensities associated with vinyl chloride;

e. participating in an industry-wide effort to fail and refuse to reasonably test or investigate the potential adverse health effects posed by the use of vinyl chloride in the work-place, including the concerted effort to misrepresent, misclassify, alter, and suppress epidemiological and toxicological studies, data, and other information concerning the toxicity of vinyl chloride;

f. participating in an industry-wide effort to consciously fail to protect Decedent and other workers whose employment responsibilities exposed them to vinyl chloride, and to fail to warn of potential cancers and other ill health effects associated with exposure to vinyl chloride, including misrepresentation, misclassification, alteration, and suppression of epidemiological and toxicological studies, data, and other information relating to the toxicity of vinyl chloride;

g. participating in an industry-wide effort to improperly influence, manipulate, alter, and misclassify epidemiological and toxicological data and scientific findings as reported by research concerning the health risks of vinyl chloride in the medical and trade literature;

h. participating in an effort to suppress knowledge concerning the toxicity and carcinogenicity of vinyl chloride, keeping true and accurate information from workers exposed to vinyl chloride, the government, and the general public;

i. participating in a concerted effort to continue the manufacture of a hazardous material in an ultrahazardous manner; and

j. falsely stating that 500 ppm was a safe exposure level when this was known not to be true.

159. B.F. Goodrich carried out the conspiracy in part by acting with and through its trade organizations, including the MCA and SPI, as well as with other companies engaged in the production of PVC products.

A: The conspiracy perpetrated the fraud that VC was harmless at exposures below 500 ppm.

160. In 1954, the MCA, along with the active participation of the MCA Vinyl Panel and the MCA OHC, including B.F. Goodrich, published a chemical safety data sheet for vinyl chloride monomer known as SD-56 which stated that the injury hazard of vinyl chloride monomer was from explosion, fire and frostbite burns, that there were no hazards when exposures were below 500 ppm, and that above 500 ppm the only hazard was an anesthetic effect.

161. B.F. Goodrich and its confederates disseminated SD-56 to be used throughout the

vinyl chloride industry and to be relied upon by employers, including B.F. Goodrich, for communication with employees in the industry, including the Plaintiff's Decedent. B.F. Goodrich intended and agreed that the information in SD-56 would be the only information given to employees, including Decedent.

162. Despite having specific knowledge that statements and representations set forth in the SD-56 were false, incomplete and omitted material facts, B.F. Goodrich and its confederates continued to promote SD-56 throughout the 1950s, 1960s and into the 1970s. The specific knowledge that contradicted the representations in SD-56 included, but is not limited to, the following:

a. The earliest studies in the 1930's and 1940's showed liver damage from exposure to vinyl chloride;

b. Reports from Europe in the 1940's, 1950's and 1960's indicated vinyl chloride workers developed liver damage;

c. As early as the 1950's workers exposed to vinyl chloride had idiosyncratic injuries that were peculiar to vinyl chloride exposure;

d. The industry's own experiments on animals showed that animals were injured when exposed to concentrations of vinyl chloride as low as 50 ppm;

e. Studies done in Europe in 1964, 1969 and 1970, and secretly provided to B.F. Goodrich and its confederates showed injuries to workers exposed to vinyl chloride; and

f. By 1965 vinyl chloride was known to B.F. Goodrich to be a hepatotoxin.

163. B.F. Goodrich agreed with numerous other companies in the industry to make and participate in false statements regarding the false and fraudulent SD-56 Chemical Data Sheet.

B: The conspiracy to conduct fraudulent medical examinations, experiments and studies.

164. Beginning in the 1950's and continuing into the 1970's, B.F. Goodrich and its industry confederates conducted medical tests on their own workers, including the Plaintiff's

Decedent, and concealed from the workers the purpose of the testing and the nature of the findings. In addition, B.F. Goodrich and its industry confederates failed to tell employees, including Decedent, about the injuries caused by vinyl chloride found in company examinations, and the causes of the workers' injuries.

165. B.F. Goodrich and its industry confederates agreed to fraudulently conceal and affirmatively misrepresent the results of medical testing on VC workers.

166. In the mid-1960s and continuing through the 1980s, B.F. Goodrich and its industry confederates agreed to assist in the publication of scientific studies that they had designed and altered to conceal the hazards of vinyl chloride.

167. Beginning in the early 1970s, B.F. Goodrich and its industry confederates commissioned and controlled a series of epidemiological studies to fraudulently conceal the extent of cancers caused by vinyl chloride. The initial corruption of the databases was recognized by subsequent contractors hired to perform further analysis or updates of this same cohort. To fraudulently conceal the extent of cancer caused by vinyl chloride, B.F. Goodrich and its industry confederates made sure that certain plants were studied in a way that was inconsistent with how other plants were studied; that persons who were not independent and impartial were allowed to shuffle employees in or out of the cohort or shuffle employees' exposure classifications without any review or factual justification; and that, even in the 1980s, completely non-independent employees like plant managers or personnel officers were allowed to classify members of the cohort one way when they were alive and another way when they were dead. B.F. Goodrich and its industry confederates knew that their scientific studies were, and intended them to be, false and misleading

168. B.F. Goodrich and its industry confederates agreed to conduct fraudulent scientific studies and to manipulate data to minimize and misrepresent the known harm of exposure to vinyl chloride.

C: The conspiracy to enter into a secrecy pact regarding the carcinogenicity of VC.

169. B.F. Goodrich and its industry confederates agreed to conceal their knowledge of the carcinogenicity of vinyl chloride from Decedent, other vinyl chloride workers and fabricators, the United States Government and the public at large.

170. A written "Secrecy Agreement" was entered into among American vinyl chloride producers, including B.F. Goodrich, and the sponsors of the European cancer research, Solvay et Cie, Imperial Chemicals Industries (ICI), and other European vinyl chloride manufacturers.

171. By September 20, 1972, B.F. Goodrich and its industry confederates agreed to the "Secrecy Agreement" which their agent, MCA, had negotiated on their behalf. By the end of 1972, each American vinyl manufacturer who belonged to the MCA vinyl panel had signed a "direct pledge" of secrecy; this included B.F. Goodrich. Additionally, every company that was allowed to participate in any of the meetings in which the secret European findings were discussed also signed or made such a secrecy agreement, including B.F. Goodrich. The companies on the CMA Vinyl Panel who were parties to this particular secrecy agreement included B.F. Goodrich. The vinyl chloride Research Coordinators included representatives from B.F. Goodrich.

172. In furtherance of their conspiracy and fraud, B.F. Goodrich and its industry confederates that signed the secrecy agreement destroyed it to conceal their prior misconduct. Further, as part of a continuing conspiracy, the MCA and its successor organizations have destroyed virtually all copies of the secrecy agreements they solicited.

173. B.F. Goodrich and its industry confederates by agreement concealed their knowledge of the carcinogenicity of vinyl chloride by, among other things:

a. concealing the existence of studies discussed in their own meetings;

b. concealing their knowledge of the Italian studies by Maltoni and Viola showing that vinyl chloride caused cancer in laboratory animals, including angiosarcoma of the liver;

c. concealing from the United States government their knowledge of studies showing vinyl chloride caused cancer (despite requests from OSHA and NIOSH seeking all information about the toxicity of vinyl chloride); and

d. concealing from Plaintiff's Decedent and all other vinyl chloride workers and fabricators the true results of their own studies.

174. The conspiracy among B.F. Goodrich and its industry confederates was intended to misrepresent and conceal material facts about the nature and extent of the risks of exposure to vinyl chloride and vinyl chloride-containing products from Plaintiff's Decedent and all other vinyl chloride workers and fabricators.

175. The conspiracy among B.F. Goodrich and its industry confederates involved the common design, substantial assistance and mutual understanding among all the parties to the conspiracy that B.F. Goodrich and its industry confederates would misrepresent and conceal material facts about the nature and extent of the risks of vinyl chloride and vinyl chloride-containing products from workers, including Decedent and employees of B.F. Goodrich and its industry confederates.

176. B.F. Goodrich and its industry confederates agreed to conceal the carcinogenicity of VC.

D. The effect of B.F. Goodrich's conspiracy was to expose Decedent and other workers to dangerous levels of vinyl chloride without their knowledge or consent.

177. As a direct and proximate result of the overt tortious acts committed by B.F.

Goodrich in furtherance of its conspiracy with industry confederates, Decedent was unaware of the true health risks associated with his exposures to vinyl chloride. B.F. Goodrich knew that Decedent lacked the relevant information about vinyl chloride health hazards and knew that he would be unable to discover the true facts on his own.

178. As a further direct and proximate result of the overt tortious acts committed in furtherance of the conspiracy by B.F. Goodrich, Decedent, during the course and scope of his employment by B.F. Goodrich from April of 1966 until sometime in 1974, was exposed to toxic levels of vinyl chloride, which directly and proximately caused him to develop hepatic angiosarcoma.

179. Each of the foregoing tortious acts were performed by B.F. Goodrich and its industry confederates:

a. in concert with each other;

b. pursuant to a conspiracy;

c. with the knowledge of B.F. Goodrich and its industry confederates that B.F. Goodrich's conduct constituted a breach of duty to Decedent which each entity gave substantial assistance or encouragement to accomplish; and

d. with a common design among B.F. Goodrich and its industry confederates, and with substantial assistance from the other entities, to accomplish the result of harming workers, including Decedent.

180. The tortious misconduct by B.F. Goodrich described above was committed with the malicious motive of endangering lives for the sake of profits.

181. As a direct and proximate result of the overt acts committed by B.F. Goodrich in furtherance of the conspiracy, Decedent developed angiosarcoma of the liver, incurred substantial medical expenses, suffered severe pain of mind and body, disability, limitation, loss

of the pleasure of life and ultimately died from his angiosarcoma of the liver.

182. The tortious misconduct and overt acts of B.F. Goodrich, as set forth above and throughout the Complaint, were the proximate cause of the injuries to Plaintiff and Decedent.

CAUSES OF ACTION

COUNT I
Negligence

183. Plaintiff incorporates by reference all of the allegations of this pleading as if fully rewritten here.

184. B.F. Goodrich and PolyOne Corporation, Decedent's employer from 1966 to 2012, conducted large-scale manufacturing and production activity at the Henry, Illinois, plant, including various operations utilizing significant amounts of vinyl chloride.

185. B.F. Goodrich required Decedent to work with and to be exposed to hazardous and toxic levels of vinyl chloride throughout the course of his employment between April of 1966 and sometime in 1974.

186. At all times relevant to this Complaint, B.F. Goodrich possessed medical and scientific data, along with other knowledge, which clearly established that vinyl chloride and other related chemicals were hazardous to the health and safety of its employees, including Decedent, who were required to work with and around these chemicals.

187. B.F. Goodrich had knowledge of the following facts while Decedent was being exposed to vinyl chloride at BFG Henry, Illinois plant:

a. That B.F. Goodrich did not know what the safe exposure limit was until established by OSHA in 1975, yet told workers that 500 ppm was a safe exposure limit with a significant margin of safety;

b. That from the earliest test data in the 1930's and subsequent data in the 1940's 1950's, and 1960's it was evident vinyl chloride caused damage to the liver;

c. That vinyl chloride is a hepatotoxin;

d. That vinyl chloride is a carcinogen which is capable of causing different types of cancer at different sites of the human body, including angiosarcoma of the liver;

e. That the 500 ppm exposure limit B.F. Goodrich applied to the plant where Decedent worked had not been proven to be safe;

f. That B.F. Goodrich did not know or monitor what Decedent's exposures were at any time prior to 1974;

g. That vinyl chloride workers were substantially certain to contract cancers such as those demonstrated to have occurred in secret animal studies;

h. That the carcinogenicity of vinyl chloride had been demonstrated in numerous animal toxicological studies and bioassays conducted under the auspices of European vinyl chloride and PVC manufacturers which B.F. Goodrich promised to and did keep secret from the U.S. Government, from employees including Decedent, and from the public at large; and,

i. That the United States Governmental agencies regulating exposure of American workers and the American public-at-large were unaware of secret European studies demonstrating the association between exposure to vinyl chloride and the development of cancer.

188. The information regarding the health effects of vinyl chloride which B.F. Goodrich provided to its employees, including Decedent, was incomplete and deliberately misleading regarding the state of the knowledge of the carcinogenic potential of vinyl chloride.

189. The information B.F. Goodrich provided to employees, including Decedent, concerning the health risks associated with exposure to vinyl chloride was false, incomplete, intentionally misleading and cynically reassuring. B.F. Goodrich's employee and public educational efforts were deliberate misinformation campaigns conducted with the intent to hide from employees, including Decedent, the true nature and extent of the risks posed by exposure to vinyl chloride.

190. The information that B.F. Goodrich provided to employees, including Decedent, regarding the nature and extent of exposures to vinyl chloride was false, inaccurate, intentionally misleading and cynically reassuring.

191. B.F. Goodrich knew that the truth that vinyl chloride workers could contract liver injuries and cancer, and the exceedingly high levels of employee exposures to vinyl chloride it was permitting, would be bad for business.

192. B.F. Goodrich negligently withheld and concealed material information about vinyl chloride health hazards from Decedent and his co-workers intending that they should be and remain ignorant of the true facts regarding the dangers of vinyl chloride.

193. While employed and working at the Henry, Illinois plant from April of 1966 until sometime in 1974, Decedent was exposed to excessive levels of vinyl chloride far above those levels that would be safe and were permitted by ACGIH or OSHA standards.

194. B.F. Goodrich knew of Decedent's high levels and doses of vinyl chloride exposures and the fact that the levels of vinyl chloride exposure were far in excess of permissible ACGIH and OSHA levels.

195. B.F. Goodrich knew that Decedent was repeatedly and routinely being exposed to levels of vinyl chloride above the level which B.F. Goodrich professed was the safe exposure limit.

196. At all relevant times B.F. Goodrich had knowledge of the existence of dangerous processes, procedures, instrumentalities or conditions in its Henry, Illinois, plant associated with the use of and exposure to vinyl chloride.

197. B.F. Goodrich knew that Decedent worked in the dangerous conditions, operated the

dangerous processes and instrumentalities, and followed the dangerous procedures of the Henry plant during the years from April of 1966 until sometime in 1974.

198. B.F. Goodrich knew, or in the exercise of ordinary care, should have known, of the unreasonable risk of harm to human health posed by exposure to vinyl chloride.

199. B.F. Goodrich, under the circumstances and with the knowledge set forth above, required employees, including Decedent, to perform dangerous tasks, exposing them to excessive vinyl chloride levels during the years from April of 1966 until sometime in 1974.

200. B.F. Goodrich engaged in conduct that negligently exposed Decedent to dangerous amounts of vinyl chloride without his knowledge or consent during the years from April of 1966 until sometime in 1974, including:

a. failing to exercise reasonable care to protect Decedent from dangerous levels of exposure to vinyl chloride;

b. failing to warn Decedent of the known and reasonably foreseeable danger of contracting liver disease, including angiosarcoma, from exposure to vinyl chloride at the levels B.F. Goodrich permitted in its Henry plant;

b. failing to instruct Decedent in the safe and proper handling of and working with vinyl chloride;

c. failing to provide and require the use of adequate personal protective equipment to reduce to safe levels or eliminate exposures to vinyl chloride;

d. failing to provide adequate engineering controls to reduce to safe levels or eliminate hazardous exposures to vinyl chloride;

e. failing to conduct necessary and appropriate personal and area monitoring to assure safe levels of exposure to vinyl chloride;

f. failing to provide Decedent with a safe place to work;

g. failing to conduct necessary and appropriate tests to determine safe exposure levels for vinyl chloride; and

h. committing such other acts that caused or resulted in Decedent being exposure to

unsafe levels of vinyl chloride.

201. B.F. Goodrich knew or should have known that Decedent and other employees could be injured by their dangerous vinyl chloride exposures. B.F. Goodrich also knew that Decedent and similarly situated employees would not be able to discover the true risks of exposures to vinyl chloride on their own.

202. B.F. Goodrich was aware of animal studies dating back to the 1930's showing liver damage from vinyl chloride exposures.

203. B.F. Goodrich was aware of studies dating back to the 1940's-1960's of vinyl chloride workers found to have liver damage from vinyl chloride exposure.

204. B.F. Goodrich was aware in the 1960's that its own employees who had performed the same tasks as Decedent, under the same or similar conditions, had suffered liver damage from vinyl chloride exposure. As a result, B.F. Goodrich considered vinyl chloride a hepatotoxin from even before the time Plaintiff began working at the Henry plant.

205. B.F. Goodrich was aware by 1959 that exposures to vinyl chloride at a TWA of 500 ppm would cause appreciable injury.

206. B.F. Goodrich knew that it took no measures until 1974 to protect Decedent from vinyl chloride exposures at levels commensurate with or in excess of those found to cause liver damage in B.F. Goodrich employees, animal studies or vinyl chloride worker studies.

207. B.F. Goodrich's corporate environmental health department was responsible for establishing exposure limits for the company, but until 1974 intentionally refused to impose safe exposure limits because of the negative impact they would have on productivity and profits.

208. B.F. Goodrich required Decedent to work with vinyl chloride causing him to

experience dangerous levels of exposure during the years from April of 1966 until sometime in 1974.

209. B.F. Goodrich owed Decedent a duty of care to provide a safe place to work, to maintain the Henry plant in a safe and suitable condition, to not expose him to toxic and hazardous levels of chemicals such as vinyl chloride, to warn him about the dangers of exposure to vinyl chloride, and to train him how to work safely in his job.

210. B.F. Goodrich breached its duty to provide a safe place to work, to warn and its duty of care due to Decedent.

211. As a direct and proximate result of the breaches of duty by B.F. Goodrich, and the unsafe exposures he received during the years from April of 1966 until sometime in 1974, Decedent developed hepatic angiosarcoma, experienced severe pain, suffering, mental anguish and the injuries as set forth above, and then died from this disease.

212. Defendants are liable for negligence as the successors to B.F. Goodrich.

COUNT II
Fraudulent Concealment

213. Plaintiff incorporates by reference all of the allegations of this pleading as if fully written here.

214. B.F. Goodrich, as Mr. Martin's employer, had a duty to provide Mr. Martin with a safe place to work and to warn him of unreasonable risks in the workplace that Mr. Martin was unlikely to and did not become aware of on his own. B.F. Goodrich, through its corporate officers, including Anton Vittone, Rex Wilson, W.E. McCormick, B.M.G. Zwicker and Maurice Johnson, deliberately concealed material facts relating to the hazards of exposure to vinyl chloride, the absence of which was relied upon by Decedent and proximately caused his injuries.

Among the facts these corporate officers were aware of but deliberately concealed from Mr. Martin included that B.F. Goodrich and its officers, agents and employees had never conducted any testing to determine a safe exposure level for vinyl chloride; that prior to 1974 B.F. Goodrich and its officers, agents and employees never conducted personal monitoring of Mr. Martin nor area testing of exposures while Mr. Martin was working to determine Mr. Martin's actual vinyl chloride exposures; that B.F. Goodrich and its officers, agents and employees did not know whether Mr. Martin's exposures were kept below permissible exposure limits or within safe exposure levels; and that B.F. Goodrich's corporate officers knew from the company's own experience that vinyl chloride was toxic to the liver, even at levels experienced by employees in the usual course of their employment. These were facts that, as B.F. Goodrich knew, Mr. Martin was unlikely to, and in fact did not, become aware of on his own.

215. Prior to 1974, B.F. Goodrich and its officers, agents and employees identified above deliberately concealed the hazardous and toxic effects of vinyl chloride from Decedent, who developed an occupational disease as a direct result from relying upon his mistaken belief, induced by B.F. Goodrich's concealment of relevant facts, that his working with and exposure to vinyl chloride was not harmful.

216. B.F. Goodrich and its officers, agents and employees identified above concealed from Decedent the risk of liver damage and cancer through its reliance upon and distribution of SD-56 (of which B.F. Goodrich was a co-author) that stated the only health hazards from exposure to vinyl chloride were fire, explosion, anesthetic effects and frostbite.

217. B.F. Goodrich's corporate officers and employees, including Anton Vittone, Rex Wilson, W.E. McCormick, B.M.G. Zwicker and Maurice Johnson, deliberately concealed from

Mr. Martin, at least prior to 1974, relevant information about the health hazards from exposure to vinyl chloride, which B.F. Goodrich knew Mr. Martin was unlikely to, and in fact did not, become aware of on his own. The information deliberately concealed by B.F. Goodrich corporate officers and employees Anton Vittone, Rex Wilson, W.E. McCormick, B.M.G. Zwicker and Maurice Johnson included, among other things:

a. B.F. Goodrich deliberately concealed from Decedent the facts that there was no scientific evidence to support the statement that 500 ppm was a safe limit; that no studies of the chronic effects from vinyl chloride at or below 500 ppm (or any other level) had been conducted; and that studies showed evidence of liver damage at 500 ppm and below;

b. B.F. Goodrich deliberately concealed from Decedent the fact that the systemic effects of vinyl chloride exposure were not limited to a mild general anesthetic and that the health hazards were not only those caused by fire, explosion or frostbite and further deliberately concealed the fact that it had evidence prior to 1966, when Decedent began working at the Henry plant, of liver damage in both animals and humans from vinyl chloride exposure;

c. B.F. Goodrich deliberately concealed from Decedent the fact that the 500 ppm standard was not based upon studies of chronic effects or effects in humans, but just a single test of the acute effect on guinea pigs, while telling him that 500 ppm was a safe exposure limit with a significant margin of safety;

d. B.F. Goodrich deliberately concealed from Decedent the fact that the odor threshold for VC was over 2,000 ppm, not 260 ppm as represented by B.F. Goodrich to Decedent and other employees, and that any time Decedent could smell vinyl chloride he was experiencing an excessive and unsafe level of exposure;

e. B.F. Goodrich deliberately concealed from Decedent that European studies in 1947, 1959 and 1963 reported liver injuries to workers exposed to vinyl chloride;

f. B.F. Goodrich deliberately concealed from Decedent that in 1959 Dow Chemical researchers found liver damage in animals at exposures of 100 ppm, had not identified a no-effect level, and reported this information to BFG;

g. B.F. Goodrich deliberately concealed from Decedent that in 1959 Dow Chemical told B.F. Goodrich that extended exposure at a TWA of 500 ppm “is going to produce rather appreciable injury;”

h. B.F. Goodrich deliberately concealed from Decedent that Dow Chemical

recommended and Ontario, Canada adopted a 50 ppm exposure limit even though B.F. Goodrich continued to give assurances that 500 ppm was a safe exposure level;

i. B.F. Goodrich deliberately concealed from Decedent that it knew and had experience showing that vinyl chloride was a hepatotoxin;

j. B.F. Goodrich deliberately concealed from Decedent that numerous studies reported that vinyl chloride caused liver injuries in workers;

k. B.F. Goodrich deliberately concealed from Decedent that by 1964 B.F. Goodrich had workers with liver injuries it believed were caused by exposure to vinyl chloride;

l. B.F. Goodrich deliberately concealed from Decedent that it had no knowledge what his exposures to vinyl chloride were or whether they were below the 500 ppm TLV because it did not conduct systematic air-monitoring of vinyl chloride levels prior to 1974;

m. B.F. Goodrich deliberately concealed from Decedent that it had no knowledge of what the safe exposure limit for vinyl chloride actually was; and

n. B.F. Goodrich deliberately concealed from Decedent that his work with and exposure to vinyl chloride was not safe.

218. B.F. Goodrich corporate management, including Anton Vittone, Rex Wilson, W.E. McCormick, B.M.G. Zwicker and Maurice Johnson, intentionally decided not to provide complete, accurate or adequate warnings about the vinyl chloride health hazards to Decedent or other employees, in spite of their knowledge of the true nature and extent of the dangers and their duty to provide complete, accurate and adequate warnings.

219. The B.F. Goodrich corporate management and employees, including those identified above, fraudulently concealed from Decedent material facts about vinyl chloride health hazards. The material facts and information concealed by B.F. Goodrich management and employees included the following:

(a) As early as 1965, Rex Wilson, M.D., B.F. Goodrich's medical director, reported that in the company's experience vinyl chloride was a hepatotoxin (toxic to the liver) and that

liver function testing of employees was performed because of the toxicity of the materials with which they were working. Neither Dr. Wilson nor anyone else in B.F. Goodrich's employ ever disclosed to Decedent that vinyl chloride was known to be toxic to the liver of employees who worked with it.

(b) In 1959 W.E. McCormick, Director of the Department of Industrial Hygiene and Toxicology for B.F. Goodrich, was informed by V.K. Rowe of Dow Chemical that there was no good toxicological data on the chronic toxicity of vinyl chloride and that the 500 ppm exposure limit was based upon acute data by Patty, et al. and thus could not be relied upon when considering chronic exposures. Neither Mr. McCormick nor anyone else in B.F. Goodrich's employ ever disclosed this information to Decedent.

(c) From even before the Henry plant opened, multiple employees in B. F. Goodrich corporate management were aware of the need for a 50 ppm exposure limit to protect workers from chronic exposures to vinyl chloride. For example, W.E. McCormick learned in 1966 that B.F. Goodrich's Welland Plant in Ontario was required to meet a 50 ppm exposure limit based upon an article by two Dow chemical employees entitled "Chronic Inhalation Toxicity of Vinyl Chloride." Mr. McCormick communicated this information to Anton Vittone, President of B.F. Goodrich. Mr. McCormick also learned in 1967 that the Welland Plant was the only B.F. Goodrich vinyl chloride plant using air supplied respirators and had been doing so for about eight years. In 1973 B.M.G. Zwicker informed Mr. Vittone and others in B.F. Goodrich's corporate and plant management that Dow had been recommending a 50 ppm exposure limit for ten years and had been continuously monitoring their exposure areas for that same period of time, though B. F. Goodrich had not been doing so and B.F. Goodrich's plants needed to prepare

for a drastic reduction in the allowable vinyl chloride concentration in work areas. No one in B.F. Goodrich's employ, including Mr. Antone, Mr. McCormick and Mr. Zwicker, ever disclosed this information to Decedent.

(d) As part of an investigation of acroosteolysis, known as the hand problem, B.F. Goodrich corporate management learned that the University of Michigan, which conducted epidemiological and other investigations on behalf of the Manufacturing Chemists Association (MCA), of which B.F. Goodrich was a member, recommended that vinyl chloride exposures be reduced below 50 ppm. In 1969 W.E. McCormick, B.F. Goodrich's representative on various MCA committees, learned of the recommendation to reduce exposures below 50 ppm but voted to have that recommendation eliminated from the University of Michigan report (which then occurred). Neither Mr. McCormick nor anyone else in B.F. Goodrich employ ever disclosed this information to Decedent.

(e) Multiple employees in B.F. Goodrich's corporate and plant management were aware of excessive vinyl chloride exposures in the vinyl chloride plants, including the Henry plant where Mr. Martin worked, above the OSHA 500 ppm exposure limit, above the ACGIH 200 ppm exposure limit and above the 50 ppm exposure limit known to be required to protect workers from chronic exposures to vinyl chloride. This air data was known to M.N. Johnson, M.D., Director of B.F. Goodrich's Department of Environmental Health, W.E. McCormick (who was specifically informed that the Henry Plant had a potential exposure problem) and H. Waltemate, a B.F. Goodrich safety supervisor. Neither Dr. Johnson, Mr. McCormick and Mr. Waltemate, nor anyone else in B.F. Goodrich employ, ever disclosed this information to Decedent.

(f) In 1968 J.G. DiSalvo reported to Fred Krause and others (all B.F. Goodrich employees) that the odor threshold for vinyl chloride was 4100 ppm. (The memorandum also reported on animal studies showing that vinyl chloride was toxic to the liver of test animals.) Neither Mr. DiSalvo nor any of the recipients of the memorandum, nor anyone else in B.F. Goodrich corporate or plant management disclosed to Decedent the true odor threshold for vinyl chloride or told him that if he could smell the vinyl chloride his exposures were above safe levels.

(g) In 1970 W.E. McCormick learned from a European researcher at the 10th International Cancer Congress that vinyl chloride was "highly carcinogenic" to test animals. In September of 1970 Mr. McCormick attended an MCA committee meeting that further discussed the carcinogenicity of vinyl chloride and where it was agreed to place this information in the hands of "responsible executives" in the vinyl chloride and PVC industry who were members of the MCA. In 1972, Mr. McCormick agreed with other members of the MCA Technical Task Group on Vinyl Chloride Research that the members pledge that the European data on the carcinogenicity of vinyl chloride be kept secret. Then, in 1973, Mr. Zwicker proposed to Mr. McCormick and Mr. Vittone that an upcoming epidemiological study being conducted by the MCA due to the potential carcinogenicity of vinyl chloride be described as relating to "general health" to "Avoid triggering problems with our employees by pinpointing the reason for the study." None of this information about the carcinogenicity of vinyl chloride, or the agreement to keep research secret, was communicated by Mr. McCormick, Mr. Zwicker, Mr. Vittone or anyone else at B.F. Goodrich to Mr. Martin.

(h) Knowing by 1970 of the carcinogenic potential of vinyl chloride, and knowing

since at least 1965 that vinyl chloride was toxic to the liver, B.F. Goodrich could have investigated its own records to determine if there were cases of liver cancer among its employees. As Mr. Zwicker knew, since 1939 B.F. Goodrich kept a chronological list showing the dates and reported causes of death for all employees and retirees. Had anyone in B.F. Goodrich management checked that list, they would have found deaths caused by angiosarcoma of the liver from the Louisville plant alone, in 1964, 1968, 1969, 1971, and 1973. Neither Mr. Zwicker nor Mr. Waltemate (who later compiled information about angiosarcoma deaths) ever informed Mr. Martin that B.F. Goodrich had the information and could have discovered liver angiosarcoma deaths long before 1974 had they wanted to do so.

220. During the course of Decedent's employment, corporate management and plant personnel, as set forth above, deliberately failed to provide accurate, complete and adequate warnings to Decedent.

221. Herman Waltemate, a B.F. Goodrich safety supervisor and later Manager of Safety Administration, has stated that B.F. Goodrich did not conduct any research into the potential illnesses caused by vinyl chloride prior to 1974; should have reported to employees on animal studies relating to the carcinogenicity of vinyl chloride; and that B.F. Goodrich did not install and implement area or personal monitoring for vinyl chloride exposures until late 1973 or 1974. None of this information was communicated by Mr. Waltemate or any other B.F. Goodrich corporate or plant manager or employee to Decedent prior to 1974 (if ever).

222. Decedent relied to his detriment upon the representations and concomitant lack of information provided by B.F. Goodrich, which fraudulently concealed the true hazards of working with and being exposed to vinyl chloride, concealing the fact that working with and

being exposed to vinyl chloride was unsafe even at the levels Decedent experienced in his routine work for B.F. Goodrich. In reliance upon his mistaken beliefs about the safety of working with vinyl chloride, deliberately induced by B.F. Goodrich's officers, agents and employees' fraudulent concealments as set forth above, Mr. Martin continued to work with and be exposed to vinyl chloride, not demanding the personal protective gear that would have protected him from the harmful exposures to vinyl chloride.

223. As a direct and proximate result of B.F. Goodrich's fraudulent concealment, Decedent developed angiosarcoma of the liver and suffered serious illness, physical and emotional pain and suffering and emotional distress and the injuries as set forth above, and then died.

224. Defendants are liable as successors to B.F. Goodrich.

Count III
Loss Of Consortium

225. Plaintiff incorporates by reference all of the allegations of this pleading as if fully rewritten here.

226. Candice Martin, surviving spouse of Decedent Rodney Martin, asserts her individual cause of action for loss of consortium prior to the death of her husband proximately caused by the wrongful conduct of B.F. Goodrich as set forth in Counts I and II above. Mrs. Martin's claim is permitted under Section 1.1 of the Illinois Occupational Disease Act, adopted as Public Act 101-0006, 820 ILCS 310/1.1 because of the repose provision set forth in Section 1(f) of the Illinois Workers' Occupational Disease Act, as set forth above in Paragraph 23.

227. Consortium is the mutual right of a husband and wife to that affection, solace, comfort, companionship, society, assistance, and sexual relations necessary to a successful

marriage, for which elements of damage Candice Martin is entitled and herein seeks to recover.

228. As a direct and proximate result of the aforesaid acts of B.F. Goodrich, Candice Martin sustained injuries and damages for her loss of consortium.

229. Defendants are liable as successors to B.F. Goodrich.

WHEREFORE, Plaintiff demands judgment against all Defendants, jointly and severally, for compensatory damages for wrongful death, as a survival action, and for loss of consortium in an amount as yet to be determined but in excess of the jurisdictional requirement for this court, prejudgment and post-judgment interest for all elements of damage that such interest is allowed, and such other and further relief as the Court deems just and equitable.

Respectfully submitted,

/s/Patrick Jennetten

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

/s/Patrick Jennetten

Patrick J. Jennetten, Esq.

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Monday, 15 August, 2022 12:19:08 PM
Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CANDICE MARTIN, Individually and as Executor of the Estate of Rodney Martin, Deceased, Plaintiff, v. **GOODRICH CORPORATION**, et.al. Defendants.	Case No. 1:21-cv-1323 **U.S. District Judge**: Michael M. Mihm **U.S. Magistrate Judge**: Jonathan E. Hawley **DEFENDANT POLYONE CORPORATION'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), Defendant PolyOne Corporation ("PolyOne," now known as Avient Corporation) (the "Defendant") respectfully moves this Court for an Order dismissing Plaintiff Candice Martin's ("Plaintiff") Amended Complaint, with prejudice, for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted.

All claims against PolyOne must be dismissed for the following reasons: **(1)** as to Count I (Negligence), Count II (Fraudulent Concealment), and Count III (Loss of Consortium), this Court lacks personal jurisdiction over PolyOne in this forum; **(2)** as to Counts I and II, based upon Plaintiff's allegations of only pre-1974 harmful conduct, PolyOne, which did not exist at the time, cannot be directly liable for any tort claim by Plaintiff, nor can it be held liable as a successor-in-interest while Goodrich remains a party in this action; and **(3)** as to Count III (Loss of Consortium), because Plaintiff fails to state a cognizable claim in Count I or Count II against PolyOne, the Court must also dismiss Plaintiff's claim for loss of consortium, as it cannot survive in the absence of a valid, pending claim.

A supporting Memorandum and a Proposed Order are attached.

Respectfully submitted,

/s/ *Timothy J. Coughlin*

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Attorneys for PolyOne Corporation (n.k.a Avient Corporation)

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2022, a copy of foregoing *Defendant PolyOne Corporation's Motion to Dismiss and Memorandum of Law in Support of Motion* were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ *Timothy J. Coughlin*

One of the Attorneys for PolyOne Corporation (n.k.a Avient Corporation)

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

CANDICE MARTIN, Individually and as Executor of the Estate of Rodney Martin, Deceased, Plaintiff, v. **GOODRICH CORPORATION**, et.al. Defendants.	Case No. 1:21-cv-1323 **U.S. District Judge**: Michael M. Mihm **U.S. Magistrate Judge**: Jonathan E. Hawley

PROPOSED ORDER GRANTING DEFENDANT POLYONE CORPORATION'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This matter came before the Court on Defendant PolyOne Corporation's ("PolyOne," now known as Avient Corporation) Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), against Plaintiff Candice Martin. Having read and considered the Motion, and the Opposition thereto, it is hereby **ORDERED** that:

The Motion to Dismiss is **GRANTED** with Prejudice.

IT IS SO ORDERED this __ day of _____, 2022.

_____
JUDGE MICHAEL M. MIHM
UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS, PEORIA DIVISION

Prepared and presented by:

/s/ *Timothy J. Coughlin*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

CANDICE MARTIN, individually, and as Executor of the Estate of Rodney Martin, deceased,	)	
Plaintiff,	)	
v.	)	Case No. 21-cv-1323-JES-JEH
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.	)	

ORDER

On April 6, 2023, the Court conducted a video hearing on the Motions to Dismiss of Defendants Goodrich Corporation ("Goodrich") (Doc. 29) and PolyOne Corporation ("PolyOne," n/k/a Avient Corporation) (Doc. 31); Plaintiff's Motions in Oppositions (Doc. 33 and 34), and Defendants' Replies. (Doc. 39 and 40). Attorney Andrew Lipton argued on behalf of Plaintiff with Attorney Timothy Coughlin arguing on behalf of Defendants Goodrich and PolyOne. For the reasons stated herein, the Motions to Dismiss of Defendant Goodrich (Doc. 29) and Defendant PolyOne (Doc. 31) are DENIED.

HISTORY

Plaintiff Candice Martin filed this lawsuit in her individual capacity and as the executor of the estate of her husband, Rodney Martin ("Martin"). Martin worked for Defendant Goodrich from April 1966 until sometime in 2012. The parties do not dispute that during this time, Martin

was exposed to Vinyl Chloride Monomer ("VCM"), an allegedly "known cause of angiosarcoma of the liver." (Doc. 26 at 7). Plaintiff admits that VCM levels were "drastically reduced by early 1974," and appears to limit the alleged exposure to the time "between 1966 and 1974." *Id*. Martin retired in October 2012, was diagnosed with angiosarcoma of the liver on December 11, 2019, and passed away on July 9, 2020. Prior to this, Martin and his wife, the Plaintiff here, filed *Martin, et al v. Goodrich Co., et al*, No. 20-01106, and voluntarily dismissed the action on April 21, 2020. On November 4, 2021, after Martin's death, the Plaintiff filed a complaint and, on July 1, 2022, an amended complaint.

In her Amended Complaint, Plaintiff asserts a civil action under the Illinois Wrongful Death Act, 740 ILCS 180/1 *et seq.*, and the Illinois Survival Act, 755 ILCS 5/27-6, alleging that Martin's occupational exposure to hazardous levels of VCM caused his illness and death. Plaintiff names Goodrich and PolyOne. Plaintiff asserts that PolyOne has liability as Martin's employer, as it was a successor-in-interest to Geon, which was the successor-in-interest to Goodrich.

Goodrich explains its relationship with PolyOne by asserting that in January 1974, Goodrich "announced a potential association between VCM exposure and human liver cancer." In 1993, Goodrich spun off its vinyl chloride division to the Geon Company which, in 2000, consolidated with M.A. Hanna Company to form PolyOne, with its principal place of business in Ohio. Goodrich asserts that PolyOne, now known as Avient, is in the position of a successor-by-consolidation to both Goodrich and Geon.

PolyOne has filed its own Motion to Dismiss (Doc. 31), identifying itself as a successor corporation to Goodrich. It claims that, as a successor corporation, Goodrich's jurisdictional contacts cannot be imputed to PolyOne for purposes of this Court exercising personal

jurisdiction under Fed. R. Civ. P. 12(b)(2). PolyOne also asserts that Plaintiff fails to state upon which relief may be granted under Fed. R. Civ. P. 12(b)(6), as it did not employ Martin and was not in existence in 1966-74 when Martin was exposed to VCM; and that under the terms of an Agreement between Goodrich and Geon, PolyOne is in the position of an insurer of Goodrich. PolyOne asserts that due to its status as an insurer, it is not amenable under Illinois law to a direct action by Plaintiff. PolyOne requests to be dismissed on jurisdictional grounds but, barring that, to be considered as joining in Goodrich's Motion to Dismiss.

The Amended Complaint alleges a Count I claim of negligence; a Count II claim of Fraudulent Concealment; and a Count III claim for Loss of Consortium.

BACKGROUND

Goodrich does not appear to dispute that Martin suffered a disabling disease which would otherwise come within the purview of the Illinois Workers' Occupational Diseases Act ("ODA"), 820 ILCS 310/1 et seq, which provides compensation for diseases arising out of employment. The ODA also provides that it is the exclusive remedy for an employee suffering from a work-related disabling disease, without recourse to civil suit. 820 ILCS 310/5a and 310/11. Plaintiff asserts, however, that a May 17, 2019 amendment to the ODA, 820 ILCS 310/1.1, applies to waive the exclusive remedy provision, allowing this civil suit. (Doc. 33 at 2).

There is an exclusive remedy provision in both the ODA and its companion Illinois Workers' Compensation Act ("Comp Act"), 820 ILCS 305/1 et seq. The Comp Act covers work related injury, while the ODA, "modeled after and designed to complement" the Comp Act, covers work related disease. *Folta v. Ferro Eng'g*, 43 N.E.3d 108, 112-13 (Ill. 2015). The ODA and Comp Act are not fault-based and were enacted to provide prompt relief to those with an employment-related injury or illness. A worker need not prove that the employer was negligent

or otherwise at fault, merely that the condition of ill-being arose in the course and scope of employment. There is a trade-off, however, as the ODA and Comp Act are a worker's sole or "exclusive remedy," without a right to file a civil lawsuit.[1] *Id.* at 112. "The exclusive remedy provision 'is part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts.'" *Meerbrey v. Marshall Field and Co., Inc*., 564 N.E.2d 1222, 1225) (Ill. 1990).

Until recently, a plaintiff could only escape the exclusive remedy provisions of the Acts if the condition of ill-being: (1) was not accidental; (2) did not arise from his employment; (3) was not received during the course of employment; or (4) was not compensable under the act. *Folta*, 43 N.E.3d at 113. Plaintiff does not assert that any of these conditions apply. However, in May 2019, the Illinois Legislature amended the ODA, enacting 820 ILCS 310/1.1 *Permitted Civil Actions*, which created a limited exception to the ODA exclusive remedy provision. Plaintiff asserts that this exception applies, with the result that she is not bound by ODA exclusive remedy and may proceed with her civil case.

The exception, at 820 ILCS 310/1.1 provides in full:

> Subsection (a) of Section 5 and Section 11 do not 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. As to any such occupational disease, the employee, the employee's heirs, and any person having standing under the law to bring a civil action at law, including an action for wrongful death and an action pursuant to

[1]Section 5(a) of the Workers' Occupational Diseases Act provides, in pertinent part, "There is no common law or statutory right to recover compensation or damages from the employer * * * for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided * * *." 820 ILCS 310/5(a).

Section 11 of the Workers' Occupational Diseases Act provides, in pertinent part, "[T]he compensation herein provided for shall be the full, complete and only measure of the liability of the employer bound by election under this Act . . ." 820 ILCS 310/11.

> Section 27-6 of the Probate Act of 1975, has the nonwaivable right to bring such an action against any employer or employers.

Plaintiff claims that there is a repose provision at § 310.1(f), which when coupled with § 310/1.1, operates to waive the ODA exclusive remedy.

Section 310.1(f) states in full:

> (f) No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs to the hazards of the disease, except in cases of occupational disease caused by berylliosis or by the inhalation of silica dust or asbestos dust and, in such cases, within 3 years after the last day of the last exposure to the hazards of such disease and except in the case of occupational disease caused by exposure to radiological materials or equipment, and in such case, within 25 years after the last day of last exposure to the hazards of such disease.

Plaintiff asserts that this repose function of § 310/1(f) has long been recognized by the Illinois courts, citing *Dickerson v. Industrial Comm'n*, 224 Ill. App. 3d 838, 841 (5th Dist. 1991); and *Whitney v. Industrial Comm'n*, 229 Ill. App. 3d 1076, 1078 (3rd Dist. 1992).

In its briefing, Goodrich initially contested that § 1(f) was a repose provision, asserting, that § 6(c) was the applicable repose provisions. At the hearing, however, Goodrich conceded for purposes of that argument that it did not dispute § 1(f) as a repose provision. Goodrich asserts, however, that the language of § 1(f) bars Plaintiff's claim as it was not asserted "within two years after the last day of the last exposure," which occurred in 1974. Goodrich asserted that § 1(f) cannot be applied retroactively to resurrect Plaintiff's claim as Goodrich had a vested right in the repose provision which limited its liability to some time in 1976. It claims that Plaintiff's attempt to "reach back" to the time of the last exposure would violate Illinois state law due process. In other words, that Goodrich was entitled to rely on § 1(f), that it would not be haled into court decades later, on a claim which allegedly lapsed in 1976.

Plaintiff replies that § 1.1 was enacted for the specific purpose of waiving the ODA as an exclusive remedy where as here, the "date of exposure" language would preclude "the recovery of compensation benefits under this Act," leaving a worker with a late presenting disease without recourse. Plaintiff also asserts that Goodrich reads "the recovery of compensation benefits" too broadly, to advocate that § 1(f) not only precludes recovery under the ODA, but precludes all recovery, even a civil tort action.

STANDARD

A Rule 12(b)(2) motion to dismiss challenges whether the Court has jurisdiction over a party. *MG Design Associates v. Costar Realty*, 224 F. Supp. 3d 621, 627 (N.D. Ill. 2016), *on reconsideration in part*, 267 F. Supp. 3d 1000 (N.D. Ill. 2017). When the jurisdictional issue is raised, it is the plaintiff who bears the burden of establishing whether defendant is subject to the court's personal jurisdiction. *See Brook v. McCormley*, 873 F.3d 549, 551–52. (7th Cir. 2017); *Purdue v. Sanofi-Synthelabo*, 338 F.3d 773, 782 (7th Cir. 2003). The Court is to "read the complaint liberally, in its entirety, and with every inference drawn in favor of" the plaintiff. *MG Design Associates*, 224 F. Supp. 3d at 627 (quoting *Cent. States v. Phencorp*, 440 F.3d 870, 878 (7th Cir. 2006)). If the court considers this issue on the pleadings, without evidentiary hearing, the plaintiff need only make out a prima facie case of personal jurisdiction, otherwise, Plaintiff must establish personal jurisdiction by a preponderance of the evidence. *Purdue*, 338 F.3d at 782.

A Rule 12(b)(6) motion to dismiss challenges whether a complaint sufficiently states a claim upon which relief may be granted. The Court is to accept all well-pleaded allegations in a complaint as true, and to draw all permissible inferences in plaintiff's favor. *Bible v. United Student Aid Funds, Inc*., 799 F.3d 633, 639 (7th Cir. 2015). To survive a motion to dismiss, the complaint must describe the claim in sufficient detail to put defendants on notice as to the nature

of the claim and its bases, and it must plausibly suggest that the plaintiff has a right to relief. *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007). A complaint need not allege specific facts, but it may not rest entirely on conclusory statements or empty recitations of the elements of the cause of action. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

Plaintiff has alleged a Count II claim of Fraudulent Concealment which is held to a heightened pleading standard. While Rule 8(a) requires "a short and plain statement of the claim showing that the pleader is entitled to relief," allegations that sound in fraud must satisfy the Rule 9(b) pleading standards. *See Camasta v. Jos. A. Bank Clothiers, Inc*., 761 F.3d 732, 736 (7th Cir. 2014); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co*., 631 F.3d 436, 441 (7th Cir. 2011). Under Rule 9(b), a party must "state with particularity the circumstances constituting fraud or mistake." The pleading "ordinarily must describe the who, what, when, where, and how of the fraud." *Pirelli*, 631 F.3d at 441-42 (quoting *United States ex rel. Lusby v. Rolls-Royce Corp*., 570 F.3d 849, 854 (7th Cir. 2009)).

ANALYSIS

I. DEFENDANT GOODRICH'S MOTION TO DISMISS

COUNT I

As noted, Plaintiff claims that Martin was exposed to excessive VCM levels from 1966 through 1974. Martin was not diagnosed with the allegedly related liver cancer until 2019, long after "two years after the last day of the last exposure" referenced in §1(f). Plaintiff admits that she does not have a viable ODA claim. She claims, however, that the repose provision of §1(f) operates with § 310/1.1, to waive ODA exclusive remedy conferring a "nonwaivable right" to proceed in this civil action. *See* § 1.1.

Plaintiff cites *Folta*, 43 N.E.3d at 110, which concerned a deceased employee who had worked with asbestos for a number of years. The employee was diagnosed with mesothelioma 41 years after the date of last exposure and filed civil suit one month later. In this case, which pre-dated the §1.1 amendment, the plaintiff asserted a right to a civil suit as his ODA claim was time-barred before the disablement became known. Plaintiff asserted one of the previously recognized ODA exceptions, that his condition was not "compensable" under the ODA as there were no benefits available to him. Under this reasoning, the exclusive remedy provision did not apply, and the plaintiff was free to file a civil action.

The *Folta* court disagreed, finding that whether a disablement was "compensable" was not a question of the ability to recover benefits, but a question of whether the disablement "ar[ose]] out of and in the course of the employment." *Id*. at 114-15. The court found that although the claim came under the ODA, it was barred by a subparagraph of 310/6 (c), specific to asbestos claims, which contained "from the date of exposure" repose language. The *Folta* court noted the "harsh result," as the claim was extinguished before it accrued, through no fault of the plaintiff. *Id*. at 117. The court went on to state "given the nature of the injury and the current medical knowledge about asbestos exposure is a question more appropriately addressed to the legislature." *Id.* at 118.

Plaintiff asserts that the Illinois Legislature took up the call by enacting § 310/1.1 to provide relief to claimants who, although suffering from occupationally related disablement, were left without civil or ODA recourse, due to the disease's latent presentation. Plaintiff asserts, while she cannot bring an ODA claim at this stage, she can, due to the enactment of § 1.1, bring a civil action. In other words, while § 1(f) continues to preclude ODA recovery; under § 1.1, it no longer precludes a tort recovery.

Goodrich responds with a due process argument, that while § 1.1 is not facially unconstitutional, applying it to "reach back" to the 1970s would offend Illinois state law due process. Goodrich asserts that § 1.1 represents a substantive change in the law which may only be applied prospectively. Goodrich claims to have had rights under the ODA prior to the amendment, rights which vested at the time the action allegedly accrued in 1974. As a result, Defendant claims that if § 1.1 were applied here, it would divest that right and have the impermissible effect of reviving a time-barred claim. Goodrich cites a series of cases where statutory amendments were not given a retroactive application where it would defeat a statute of limitations defense.

In briefing and oral argument, Goodrich cited Section 4 of the Illinois "Statute on Statutes" (5 ILCS 70/4), which codifies the well-established principle that a substantive amendment is to be applied prospectively, while a procedural amendment may be applied retroactively. (Doc. 30 at 9) (citing *People v. Easton*, 123 N.E.3d 1074, 1078 (2018)). Goodrich asserts that as § 1.1 is substantive, it may not be applied retroactively without evidence of legislative intent. *Landgraf v. Usi Film Products*, 511 U.S. 244, 264 (1994); *Commonwealth Edison Co. v. Will County Collector*, 749 N.E.2d 964, 971 (Ill. 2001). That is, evidence that the Illinois Legislature "specifically articulated" a retroactive application. *Id.*

Goodrich claims that it is well-settled Illinois law that "once a claim is time-barred, it cannot be revived through subsequent legislative action without offending the due process protections of our state's constitution." (Doc. 30 at 11-12). Defendant cites *Doe v. Diocese of Dallas*, 917 N.E.2d 475, 483? (2009) where it was held that defendant had a "vested right" to invoke a statute of limitations bar and "[t]hat right cannot be taken away by the legislature without offending [state] due process . . ." *Id*. at 409. *See also Galloway v. Diocese of*

Springfield, 857 N.E.2d 737, 739 (5th Dist. 2006) ("[T]he right to invoke the statute of repose as a defense to a cause of action cannot be taken away without offending the due process clause of the Illinois Constitution.").

Counsel for Goodrich argued that prior to the enactment of § 1.1, Goodrich had the benefit of the repose provision limiting its liability for occupational disease to two years from last exposure, in this case a date in 1976 or thereabouts. He indicated that corporations regularly make risk assessments, and base financial and administrative decisions on the assessed risk. Counsel argued that opening up an area of risk which Goodrich could not have foreseen and for which it was not prepared, would violate due process. It would also cause confusion as to liability in a corporate climate where companies often acquire, divest, and merge in relation to one another. Counsel noted this case as one example - where Goodrich had divested its poly vinyl chloride ("PVC") division to Geon which had, in turn, divested to PolyOne which is now doing business as Avient. Goodrich argued within this corporate climate, there would be great confusion if repose provisions were substantively amended and retroactively applied, as successor corporations would be unable to identify or prepare for risk.

Plaintiff denies that a retroactive application of the amendment is at issue here. Plaintiff notes that Martin's December 11, 2019 diagnosis of disablement, and July 2020 death, occurred after the May 17, 2019 enactment of the amendment. Plaintiff asserts that the operative date is not the date of last exposure but the date of "injury," citing *Owens Corning Fiberglas Corp. v. Industrial Com.*, 198 Ill. App. 3d 605, 615 (4th Dist. 1990). There, the court considered § 310/7 of the ODA - *Compensation and benefits as provided by the Workers' Compensation Act*, which mandated a parity of benefits under the ODA and Comp Act. Section 310/7 further provides that "the disablement, disfigurement or death of an employee by reason of an occupational disease,

arising out of and in the course of his or her employment, shall be treated as the happening of an accidental injury." In *Owens Corning*, the court determined that the "injury," occurred on the date of disablement or death, not that of last exposure. *Id*. at 615. *See Owens Corning* ("[i]f the legislature had intended the date of last exposure to the hazard of an occupational disease to be the date of injury, it would have so stated, as it used the phrase 'day of last exposure' in other portions of the statute.")

Plaintiff asserts that under § 310/7 and *Owens Corning*, her action accrued on Martin's disablement or death, events which took place after the effective date of the amendment. As a result, Goodrich cannot claim to have had a vested right in § 1(f) as it stood prior to the amendment, when the action accrued after the date of amendment. In addition, Plaintiff denies that applying §1.1 to this case would impermissibly resurrect a time-barred claim, as an ODA claim would not be revived, and the Wrongful Death and Survival actions do not need revival as they were timely filed after Martin's death or disablement.

At the hearing, Plaintiff claimed that if the Court were to find that § 1.1 did not apply to this case, it would render the amendment a nullity. The Court thereafter asked counsel for Goodrich whether Defendant foresaw any set of facts under which § 1.1 would operate to provide civil recourse to a plaintiff foreclosed under the ODA. Mr. Coughlin responded that § 1.1 would provide relief on a prospective basis for claims occurring after May 17, 2019. Counsel gave the example that a worker last exposed in 2020, who exhibited a disablement in 2025, would have relief under § 1.1 as, although an ODA claim would have lapsed within two years of last exposure, he could proceed with a civil action. The same would apply to a worker exposed on April 6, 2023, the date of the hearing. If the workers' disablement manifested in 2028, he would come under § 1.1, exclusive remedy would not apply, and he could sue civilly.

Goodrich asserted that such an application would not violate due process as, after the date of the amendment, an employer would no longer have a vested right in the repose provision.

Plaintiff's counsel countered that in Illinois, one has never had a vested right in the continuation of a remedy or continuation of a law. *See* (Doc. 33 at 15) (citing *Orlicki v. McCarthy*, 4 Ill. 2d 342, 347 (1954) ("No one has a vested right in existing legislation, just a mere expectation it will continue unchanged."). Plaintiff notes that Goodrich has cited cases where a retroactive application of an amendment was disallowed so as to preserve a vested right. Plaintiff claims that these cases are inapposite as this case involves a prospective application, with Plaintiff's civil claims accruing after the date of the amendment. *See Owens Corning*, 198 Ill. App. 3d at 615 (an ODA claim accrues upon disablement or death, not the date of last exposure).

The Court is mindful of the *Folta*, in which the Illinois Supreme Court bemoaned the "harsh result" when it denied civil recourse to a plaintiff with a late onset asbestos-related disablement. The *Folta* court put the issue squarely before the Legislature, which seemed to act by drafting the § 1.1 amendment to provide relief in a case such as this. Section 1.1 was intended to waive exclusive remedy where a repose provision would preclude "compensation benefits under this Act . . ." § 310/1.1. In other words, if a repose provision such as § 1(f) precluded ODA recovery, a worker or his heirs would have a "nonwaivable right" to bring a civil action.

While § 1(f) continues to preclude ODA recovery more than two years after exposure, under § 1.1, it no longer precludes tort recovery. The Court cannot find, as Goodrich suggests, that § 1.1 should be read to foreclose tort claims for occupational exposure before May 17, 2019, as this would inadequately address the prior "harsh result." The Court does not find that allowing

Plaintiff to proceed with her civil case would offend state due process. Goodrich's Motion to Dismiss Count I is DENIED.

COUNT II

Plaintiff has filed a lengthy and detailed amended complaint pleading her Count II claims. Plaintiff asserts a claim of Fraudulent Concealment, asserting that Goodrich corporate officers knew about the hazards of PVC exposure and deliberately concealed it from Martin and other employees. She asserts that Goodrich and its industry group recommended and advocated a 500 ppm VCM exposure limit in the plant where Martin worked, although there was no scientific evidence supporting 500 ppm as a safe level. Plaintiff asserts that Goodrich was reasonably aware that this was not a proven safety level as a 1959 Dow Chemical study showing liver damage in animals with VCM exposure at 100 ppm.

The amended complaint further alleges that in 1953, the Manufacturing Chemists Association, with Goodrich participation, drafted a VCM chemical safety data sheet which fraudulently concealed known facts about VCM. This safety data sheet was distributed by Goodrich to its employees without disclosing all of the safety hazards, with the intent that the employees would rely upon it. Plaintiff alleges that Goodrich disseminated this information knowing it to be false and fraudulent, and intending it to be used to train its employees, including Martin; and that Martin relied on this information to his detriment.

The amended complaint alleges that Goodrich entered into a "secrecy pact" regarding the carcinogenicity of VCM; entered into an agreement to fraudulently misrepresent the "odor threshold" of vinyl chloride so as to misrepresent VCM exposure levels and participated in a civil conspiracy to conduct fraudulent medical examinations, experiments, and studies.

Despite the significant detail in the factual recitation and the claims in Count II, Goodrich claims that Plaintiff has failed to meet the heightened pleading requirements for a fraud claim under Fed. R. Civ. P. 9(b). While Goodrich faults plaintiff for not pleading '"the who, what, when, where and how' of the alleged fraudulent concealment," the Court cannot imagine how the amended complaint could be more detailed. While Defendant asserts that Plaintiff has generally pled against "Goodrich" rather than individual officers or agents, Plaintiff has identified individual Goodrich corporate officers and employees, including Anton Vittone, Rex Wilson, W.E. McCormick, B.M.G. Zwicker and Maurice Johnson. Plaintiff pleads that they deliberately concealed from Martin information about the health hazards of VCM. The Court finds the detailed allegations sufficient under Rule 9(b).

Goodrich makes an additional argument that the Count II fraudulent misrepresentation claims are identical to the Count I negligence claims, with the result that the statute of limitations applicable to the Count I negligence is applicable to the Count II fraud. (Doc. 30 at 17-18) (citing *Pavlik v. Kornhaber,* 326 Ill. App. 3d 731, 748, 761 N.E.2d 175, 260 Ill. Dec. 331 (1st Dist. 2001). While the Court agrees to this point, Goodrich goes on to assert that the Count II claims are subject to the § 1(f) "two years from last exposure" limitation, rendering the fraud claims untimely. The Court has found, however, that the Count I Wrongful Death and Survival Action claims accrued at the time of Martin's diagnosis and death, in 2019 or 2020. *See* § 310/7 and *Owens Corning*. As a result, the Count II fraud claims are not subject to the § 1(f) repose provision, arising at the same time as Count I claims and were timely filed.

DEFENDANT POLYONE'S MOTION TO DISMISS

At the hearing, Mr. Coughlin, on behalf of Goodrich and PolyOne, informed the Court that his argument was confined to the issue of the alleged retroactive application of § 1.1, and the sufficiency of the Count II Fraudulent Concealment claim, but not the jurisdictional issues raised

in PolyOne's briefing. (Tr. at 2). As a result, the Court relies only on the parties' written submissions wherein Defendant PolyOne challenges the Court's personal jurisdiction over it. PolyOne asserts that it is not "at-home" in Illinois and does not have sufficient minimum contacts for purposes of personal jurisdiction. *See* Rule 12(b)(2). PolyOne also claims that Plaintiff fails to state a claim against it under Rule 12(b)(6), as it did not exist at the time of Martin's VCM exposure and that it did not employ Martin. PolyOne also asserts that it was in the position of an insurer of Goodrich, so Plaintiff may not maintain a direct action against it under Illinois law.

As noted, if a Defendant challenges the Court's personal jurisdiction, the burden shifts to Plaintiff to establish that jurisdiction is proper. *Brook*, 873 F.3d at 552. In this case, although there was a hearing, the parties did not offer argument as to the jurisdiction issue. As a result, Plaintiff need only establish a prima facie case as to personal jurisdiction. *Purdue,* 338 F.3d at 782. Determining whether a state has personal jurisdiction over a defendant requires a "a two-step inquiry." The first consideration is whether the law of the forum state provides for in personam jurisdiction under the circumstances. "A district court sitting in diversity has personal jurisdiction over a nonresident defendant only if a court of the state in which it sits would have jurisdiction." *Id.* at 779 (citing *Hyatt Int'l v. Coco,* 302 F.3d 707, 713 (7th Cir. 2002)). The second consideration is whether asserting such jurisdiction would comply with Fourteenth Amendment due process. *Id*. Because "the Illinois long-arm statute permits the exercise of jurisdiction to the full extent permitted by the Fourteenth Amendment's Due Process Clause . . . the state statutory and federal constitutional inquiries merge.'" *Tamburo v. Dworkin*, 601 F.3d 693, 700 (7th Cir. 2010) (citing 735 ILCS 5/2-209).

PolyOne asserts that it is not at-home in Illinois, as it is not incorporated here and does not have its principal place of business here. While PolyOne is registered to do business in Illinois, it denies that it has the requisite "continuous and systematic" contacts here for general, personal jurisdiction to attach. (Doc. 32 at 6). PolyOne also disputes specific personal jurisdiction, asserting that Plaintiff's claims do not arise out of PolyOne's contacts with this forum. Plaintiff's response addresses specific personal jurisdiction only.

As PolyOne notes, specific personal jurisdiction will only attach if there are sufficient minimum contacts between the forum state and the non-resident defendant. PolyOne asserts that Plaintiff has not alleged any specific negligent conduct by PolyOne, claiming that PolyOne did not employ Martin; was not in existence in 1974, when Martin was allegedly exposed; and where it did not carry out any activities in Illinois in 1974 and prior. Due process requires "that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457 (1940)).

As previously noted, the parties disagree on PolyOne's relationship with Goodrich, an issue that goes to the extent of PolyOne's forum contacts and personal jurisdiction. Goodrich claims that PolyOne is its successor-by-consolidation, PolyOne identifies itself as a successor corporation to Goodrich, and Plaintiff identifies it as Goodrich's successor-in-interest. In the case of a successor corporation, the jurisdictional contacts of the predecessor will generally not be imputed to the successor. *See Davila v. Magna Holding Co.*, No. 97-1909, 1998 WL 578032, at *3 (N.D. Ill. Sept. 3, 1998) ("The general rule for successor liability in Illinois is that when one corporation sells its assets to another corporation, the successor corporation does not become

liable for the debts and liabilities of the seller merely by reason of succession."). In the case of a successor-in-interest, however, the jurisdictional contacts of the predecessor are imputed to the successor. *Purdue* at 784.

PolyOne claims that it cannot be a successor-in-interest to Goodrich as Goodrich is still in existence and remains a viable corporation. PolyOne cites *Channel Bio Corp. v. Lewis,* No. 08- 57, 2008 WL 2626568 (S.D. Ill. June 26, 2008) (for the holding "that a corporation is considered a successor-in-interest of another corporation when it merges with that corporation and, as the non-surviving corporation, ceases to exist"). (Doc. 32 at 9). In *Channel*, the court was faced with a merger between two corporations with the result that one ceased to exist. It found "Under Illinois law, when several corporations merge, the separate existence of all non-surviving corporations party to the plan of merger cease." *Id*. at 2 (citing 805 ILCS 5/11.50). *Chanel* does not stand for the proposition that a successor-in-interest relationship can only arise from a merger; or can only arise where only one entity survives.

Plaintiff maintains, however, that even if PolyOne were found to be a successor corporation rather than successor-in-interest, Goodrich's jurisdictional contacts may be imputed to it based on an Agreement between Goodrich and PolyOne's predecessor, Geon. There are several exceptions to the rule that a successor corporation is generally not liable for the actions of its predecessor, including where there is an express or implied agreement by the successor to assume the liabilities of the predecessor. *Davila,* 1998 WL 578032, at *3. Plaintiff asserts that there was an express Agreement between Geon and Goodrich under which Geon, a former division of Goodrich, assumed all liability for Goodrich's PVC business. Plaintiff cites the parties' *Amended and Restated Assumption of Liabilities and Indemnification Agreement Relating to the Goodrich PVC Business*. The Agreement states at page six, "Geon does hereby

assume and agree to pay, perform and discharge: Each and every obligation and liability of Goodrich…Relating to or arising out of the Goodrich PVC Business….". (Doc. 39 at 9).

PolyOne denies that this Agreement is a sufficient basis for this Court's personal jurisdiction, asserting that its successor liability was limited in another portion of the Agreement which states:

> PROVIDED THAT the obligations and liabilities assumed hereby are assumed by Geon only (i) to the extent such obligations and liabilities are not covered under any insurance policy or policies insuring Goodrich (whether or not Geon is also insured thereunder), at any time in effect or (ii) if covered under any such insurance policy or policies . . .

(Doc. 39 at 14). PolyOne does not cite caselaw, however, to support that where a successor corporation has contracted to assume the predecessor's liabilities, a subsequent, limiting provision will serve to defeat personal jurisdiction.

PolyOne additionally argues that the imputation of jurisdictional contacts between successor corporations only applies where "the two corporations are the same entity." (Doc. 39 at 4) (citing *Purdue*, 338 F.3d at 784) (quoting *Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 654 (5th Cir. 2002)). These cases can be distinguished as in *Purdue*, the Defendant was found to be an assignee under a contract, not a successor corporation. In *Patin*, the case with "the same entity" language, the parties had not, as here, entered into a contract under which one assumed the liabilities of the other.

Plaintiff had credibly pled that PolyOne through its predecessor, Geon, entered into an Agreement under which it assumed Goodrich's liabilities as to its PVC business. This PVC business included the Henry, Illinois plant where Martin worked and where he was allegedly exposed. Plaintiff has stated enough to establish a prima facie case as to the Court's personal jurisdiction over PolyOne. *See City of Chicago v. Purdue Pharma L.P.*, No. 14-4361, 2015 WL

2208423, at *7 (N.D. Ill. May 8, 2015) (finding that it was not necessary to "definitively establish" that one corporation was the successor of another for purposes of imputing jurisdiction, as a prima facie showing was enough). Under the circumstances, the Court finds that Goodrich's jurisdictional contacts may be imputed to PolyOne; whether as a successor-in-interest, or as a successor corporation which had contractually assumed Goodrich's PVC liability.

PolyOne also claims that Plaintiff has failed to state a cognizable claim against it under Rule 12(b)(6). PolyOne asserts that it did not employ Martin and was not yet in existence in 1966-74, when Martin was exposed, and therefore has no potential liability for his occupational disease. PolyOne fails to sufficiently establish, however, that 1966-74 is the correct frame of reference where the Court has found that Plaintiff's action accrued in 2019 or 2020, the dates of Martin's diagnosis and death. PolyOne was in existence at this time and had, at least arguably, assumed the PVC related liability of Goodrich, Martin's previous employer.

PolyOne also asserts that under the parties' Agreement, Plaintiff is precluded by Illinois law from bringing a direct claim against it, as it is in the position of an insurer of Goodrich. PolyOne maintains that, while Goodrich might have recourse against it, Plaintiff does not, and may not bring a direct action against it under these facts. (Doc. 39 at 4-5) ("Illinois courts preclude direct actions against an insurer, like PolyOne here, prior to judgment regarding the defendant's liability.") (citing *Gianinni v. Bluthart*, 132 Ill. App. 2d 454, 460, 270 N.E.2d 480, 484 (1971).

At the hearing, the Court noted that Plaintiff had not responded to this particular argument and asked counsel whether Plaintiff contested that PolyOne was an insurer of Goodrich. Counsel answered that PolyOne had a "dual status" as both a successor corporation

and insurer. (Tr. at 26-28). Counsel stated on the record that it was not proceeding against PolyOne in its capacity as an insurer, only in its capacity as a successor to Goodrich. With this understanding, PolyOne's Motion to Dismiss the amended complaint is DENIED in its entirety.

IT IS THEREFORE ORDERED:

Defendant Goodrich's Motion to Dismiss Plaintiff's amended complaint (Doc. 29) is DENIED. Defendant PolyOne's Motion to Dismiss Plaintiff's amended complaint (Doc. 31) is DENIED.

ENTERED this 13th day of April, 2023.

s/James E. Shadid
JAMES E. SHADID
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

CANDICE MARTIN, individually, and as Executor of the Estate of Rodney Martin, deceased, Plaintiff, 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.	)	Case No. 21-cv-1323-JES-JEH

ORDER

This matter is before the Court on the Join Motion of Defendants Goodrich Corporation ("Goodrich") and PolyOne Corporation ("PolyOne," n/k/a Avient Corporation), asking that the Court certify two questions for interlocutory appeal. (Doc. 45). Plaintiff has responded (Doc. 47) and Defendants' request for leave to file a Reply, instanter, is GRANTED (Doc. 49). For the reasons stated herein, Defendants' 28 U.S.C. § 1292(b) Motion for Certification for Interlocutory Appeal and for Stay Pending Review, is GRANTED.

HISTORY

Plaintiff Candice Martin filed this lawsuit in her individual capacity and as the executor of the estate of her husband, Rodney Martin ("Martin"). Martin worked for Defendant Goodrich from April 1966 until some time in 2012. The parties do not dispute that between 1966 and 1974 Martin was exposed to levels of Vinyl Chloride Monomer ("VCM"), an allegedly "known cause

of angiosarcoma of the liver." (Doc 26 at 7). Martin retired in October 2012, was diagnosed with angiosarcoma of the liver on December 11, 2019, and passed away on July 9, 2020. On July 1, 2022, Plaintiff filed an amended complaint under the Illinois Wrongful Death Act, 740 ILCS 180/1 *et seq.*, and the Illinois Survival Act, 755 ILCS 5/27-6, alleging negligence as well as other claims not relevant to this Motion.

Defendants subsequently filed a Motion to Dismiss, asserting that Plaintiff's civil suit was pre-empted by the exclusive remedies provisions of the Illinois Workers' Occupational Diseases Act ("ODA"), 820 ILCS 310/1 et seq.,[1] and that Plaintiff is barred from filing a civil suit. The parties noted that in May 2019, the Illinois Legislature amended the ODA, enacting 820 ILCS 310/1.1 *Permitted Civil Actions*, which provided that ODA exclusive remedy would not apply if "recovery of compensation benefits under this Act would be precluded due to the operation of any period of repose or repose provision." In such a case, a party would have a "nonwaivable right" to bring a civil action against an employer.

Plaintiff asserts that this amendment, coupled with the provision at § 310/1(f), which she identifies as a repose provision, allows her civil filing. Section § 1(f) states in pertinent part, "No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease." Plaintiff asserts that under the terms of the § 1.1 amendment, the applicable repose provision at § 1(f) no longer applies and her civil suit may proceed.

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[1] [1]Section 5(a) of the Workers' Occupational Diseases Act provides, in pertinent part, "There is no common law or statutory right to recover compensation or damages from the employer * * * for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided * * *." 820 ILCS 310/5(a).

Section 11 of the Workers' Occupational Diseases Act provides, in pertinent part, "[T]he compensation herein provided for shall be the full, complete and only measure of the liability of the employer bound by election under this Act . . ." 820 ILCS 310/11.

Defendants contest this, asserting in their briefing, that § 310/6(c), not § 1(f), was the applicable repose provision. Section 6(c) provides, in part, that a claim must be filed "within 3 years after the date of the disablement or the accident . . ." Defendants assert that the disablement or accident occurred by 1974, and Plaintiff was required to file his claim within 3 years of that time, regardless of whether an action had accrued, or an injury had resulted. (Doc. 30 at 18).

Defendants also argued that it would violate Illinois state law due process to allow the § 1.1 amendment to authorize civil proceedings in a time-barred claim. It is Defendants' position that if the amendment were to be applied, it would serve to retroactively defeat Defendants' vested rights in the repose statute and the ODA exclusive remedy provisions. Plaintiff deny this, asserting that § 1.1 was enacted for the specific purpose of waiving exclusive remedy where a statute of repose would operate to leave a worker without recourse in the face of a late presenting disease. Plaintiff also claims that Defendants impermissibly seek to limit the application of § 1.1 to foreclose not ODA liability but all liability, even civil. It is Plaintiff's position that her claim is not barred where she is proceeding not under the ODA, but in a civil action timely filed within two years of Martin's death and diagnosis.

On April 13, 2023, the Court heard oral argument on Defendants' Motion to Dismiss and Plaintiff's objection. At the time of the hearing, Goodrich did not dispute that § 1(f) was a repose provision for purposes of that argument, and the Court did not address it in the Order. Defendants resurrect this argument, however, in their request for interlocutory relief.

Defendants now ask that this Court certify these two issues for appeal under §1292(b), specifically:

"(1) whether 820 ILCS 310/1(f) is a statute of repose; and

(2) if so, whether constitutional due process prohibits applying 820 ILCS 310/1.1 ("the Section 1.1 Exception") to deny Defendants their right to assert statute of repose and exclusivity defenses, which vested in 1976, and allow Plaintiff to assert common law claims against Defendants that had been previously and permanently barred." (Doc. 46 at 1).

STANDARD

Section 1292(b) permits this Court to certify an interlocutory appeal from an order not otherwise appealable when the order "involves a controlling question of law as to which there is a substantial ground for difference of opinion" and "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). As the Supreme Court has explained, these preconditions "are most likely to be satisfied when a . . . ruling involves a new legal question or is of special consequence, and district courts should not hesitate to certify an interlocutory appeal in such cases." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 110–11 (2009); *Ahrenholz v. Bd. of Trs. of Univ. of Ill.*, 219 F.3d 674, 676 (7th Cir. 2000) (referencing "the duty of the district court . . . to allow an immediate appeal to be taken when the statutory criteria are met"). In granting a Section 1292(b) petition the Court must find that the issue: (1) presents a question of law, (2) is controlling, (3) is contestable, and (4) its resolution must promise to speed up the litigation. *Ahrenholz* at 675.

The Seventh Circuit has defined a §1292(b) "question of law" as referring to "a question of the meaning of a statutory or constitutional provision, regulation, or common law doctrine…." *Id.* at 676. The term "question of law" further refers to a pure question of law, rather than an issue that might be free from factual contest. *Id.* at 676-677. The Court finds that the issue of whether § 1(f) is the applicable statute of repose and whether Defendants had vested rights in the ODA prior to its amendment represent questions of law, meeting the first prerequisite.

As to the second and fourth prerequisites, the Court finds that the issues presented are both controlling and that their resolution would speed up the litigation. This is so, as if § 1(f) were found not the relevant statute of repose, Plaintiff's civil action would likely be foreclosed. If § 1(f) were found to be the relevant statute of repose but its application would violate state due process by divesting Defendants of a recognized right, Plaintiff's civil action would be foreclosed.

The Court also finds that the questions for certification are contestable, as there is conflicting authority on the issues. Defendants cite *Folta v. Ferro Eng'g*, 43 N.E.3d 108, 110 (Ill. 2015), in which the Illinois Supreme Court characterized § 1(f), as a "temporal limitation on the availability of compensation benefits," found § 6(c) to be a statute of repose, applied ODA exclusive remedy, and dismissed plaintiff's civil action. However, *Folta* was an asbestos case which dealt with a subpart of § 6(c) which contained repose-like language, as opposed to the general portion of the statute at issue here. In addition, *Folta* predated the § 1.1 amendment. Another case, *Docksteiner v. Indus. Comm'n,* 806 N.E.2d 230, 234 (Ill. App. Ct. 5th Dist. 2004*),* characterized another subpart of § 6(c), not at issue here, as a statute of limitations, and § 1(f) as a "condition precedent to recovery." *Id*. at 234; *but see Dickerson v. Industrial Comm'n*, 224 Ill. App. 3d 838, 841 (5th Dist. 1991); *Whitney v. Industrial Comm'n*, 229 Ill. App. 3d 1076, 1078 (3rd Dist. 1992) (identifying § 1(f) as a statute of repose).

As Defendants note, there is neither an Illinois Supreme Court decision identifying § 1(f) as a statute of repose, nor a decision finding that § 310/1.1 may be applied to occupational disablement where the last date of exposure predated the amendment. As a result, both issues are contestable. As all of the preconditions are satisfied, the Court hereby certifies the issues for interlocutory review under 28 U.S.C. §1292(b).

IT IS THEREFORE ORDERED:

1. Defendants' request for leave to file a Reply, instanter, is GRANTED (Doc. 49);

2. The Court hereby certifies for interlocutory review by the Seventh Circuit:

   (a) whether 820 ILCS 310/1(f) is the applicable statute of repose for purposes of § 310/1.1; and

   (b) whether applying 820 ILCS 310/1.1 to allow Plaintiff's civil case to proceed would violate Illinois' constitutional substantive due process.

3. This case is stayed pending Appellate review.

ENTERED this 31st day of May, 2023.

s/ James E. Shadid
JAMES E. SHADID
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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ORDER

June 28, 2023

Before

AMY J. ST. EVE, *Circuit Judge*
JOHN Z. LEE, *Circuit Judge*
DORIS L. PRYOR, *Circuit Judge*

No. 23-8015	IN RE: GOODRICH CORPORATION and POLYONE CORPORATION, Petitioners
Originating Case Information:	
District Court No: 1:21-cv-01323-JES-JEH Central District of Illinois District Judge James E. Shadid	

The following are before the court:

1. **PETITION FOR INTERLOCUTORY APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS**, filed on June 12, 2023, by counsel for the petitioners.

2. **RESPONSE TO PETITION FOR INTERLOCUTORY APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS**, filed on June 21, 2023, by counsel for the respondent.

IT IS ORDERED that the petition for permission to appeal is **GRANTED**. The petitioners shall pay the required docket fees to the clerk of the district court within fourteen days from the entry of this order pursuant to Federal Rule of Appellate Procedure 5(d)(1). Once the district court notifies this court that the fees have been paid, the appeal will be entered on this court's general docket.

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A True Copy
Teste:
Deputy Clerk
of the United States
Court of Appeals for the
Seventh Circuit

form name: c7_Order_3J (form ID: 177)

Case: 23-2343 Document: 32 Filed: 03/06/2024 Pages: 15

In the

United States Court of Appeals

For the Seventh Circuit

No. 23-2343

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

v.

GOODRICH CORPORATION, formerly known as
B.F. GOODRICH COMPANY and
POLYONE CORPORATION, individually and as
Successor-By-Consolidation to the GEON COMPANY,
now known as AVIENT CORPORATION,
Defendants-Appellants.

Appeal from the United States District Court for the
Central District of Illinois.
No. 1:21-cv-01323-JES-JEH — **James E. Shadid**, *Judge*.

ARGUED FEBRUARY 14, 2024 — DECIDED MARCH 6, 2024

Before SCUDDER, ST. EVE, and LEE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. In Illinois, workers injured on the job obtain compensation through an administrative scheme. The relevant agency holds employers strictly liable for this

administrative remedy, but keeps the claims out of court. Much the same arrangement governs diseases contracted on the job—yet unlike accidents at work, the harm from diseases may not manifest for years or decades after employment terminates. The state legislature tried to account for this difference in 2019, but the scope of that fix is uncertain.

This case asks us to resolve that uncertainty. But rather than risk unsettling Illinois's intricate compensation apparatus, we defer to the experts and certify three related questions to the Illinois Supreme Court.

I. Background

Appellate jurisdiction here rests on 28 U.S.C. § 1292(b), which allows for interlocutory appeals when the district and appellate courts agree—so long as the appeal meets certain criteria. The jurisdictional hook requires that the case present "a controlling question of law," tricky enough to leave "substantial ground for difference of opinion," whose resolution will "materially advance the ultimate termination of the litigation." *Id.* When we take an appeal this way, the district court identifies for us which "controlling question[s] of law" the case presents—but our authority extends past answering those questions. Instead, any "appeal under § 1292(b) brings up the whole certified order," *Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 974 (7th Cir. 2021), often a ruling on a motion to dismiss. *See, e.g.*, *Ashley W. v. Holcomb*, 34 F.4th 588, 591–92 (7th Cir. 2022). That accounts for our authority to "address any issue fairly included within the certified order." *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 205 (1996).

This case satisfies the § 1292(b) criteria: resolving the complicated legal issues may well end the case. We start, then, with the pertinent Illinois law.

A. Legal Background

When Illinois employees contract a disease arising out of or in the course of their employment, they can seek compensation under the Workers' Occupational Diseases Act, 820 ILCS 310/1 *et seq.* (the "ODA"). That law borrows its structure from the Worker's Compensation Act, 820 ILCS 305/1 *et seq*. "In enacting these statutes, the General Assembly established a new framework for recovery to replace the common-law rights and liabilities that previously governed employee injuries." *Folta v. Ferro Eng'g*, 43 N.E.3d 108, 112 (Ill. 2015).

At a basic level, the statutes hold an employer "liable to pay compensation to his own immediate employees" for their injuries, 305/1(a)(3), and diseases, 310/7. To seek their compensation remedy, workers apply to the Illinois Worker's Compensation Commission. In turn, that body awards or denies compensation "upon the facts and circumstances of each particular case." *Folta*, 43 N.E.3d at 118.

The issues here implicate the interplay of four aspects of the ODA: (1) temporal limitations hampering old claims, (2) exclusivity provisions channeling claims into the administrative compensation protocols, (3) age-old exceptions to that exclusivity, and (4) a 2019 statute adding a new exception.

1. Temporal Limitations

A worker who contracts a disease on the job must remain mindful of two deadlines. The first appears at 820 ILCS 310/1(f) ("1(f)"). We discuss this section first because it begins to run before its companion. Its relevant text follows:

> No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease.

Put in plain language, an employee cannot obtain compensation unless she becomes disabled within two years of her last exposure to the hazard.

> The second timing provision appears at 820 ILCS 310/6(c) ("6(c)"). This section provides in relevant part:
>
> In any case, other than injury or death caused by exposure to radiological materials or equipment or asbestos, unless application for compensation is filed with the Commission within 3 years after the date of the disablement, where no compensation has been paid, or within 2 years after the date of the last payment of compensation, where any has been paid, whichever shall be later, the right to file such application shall be barred.

In other words, an employee generally must apply for compensation within three years of becoming disabled. But if her employer pays some compensation, she may file her application up to two years after the last compensation payment.

These two deadlines work differently. For 1(f), the timing of claim filing is immaterial. It requires only that the disablement occurs within two years of exposure; the clock starts with the end of exposure and counts until disablement. Then there is 6(c), which by contrast does focus on the claim's

timing. Starting from the disablement that caps off the 1(f) period, the worker typically has three years to apply for compensation consistent with 6(c)'s mandate. Any application after that date is time-barred.

We pause here to note another distinction between these provisions. Where 6(c) instructs that untimely claims "shall be barred," the sole consequence 1(f) imposes is that "[n]o compensation shall be payable." The statutes impose different ramifications for a missed deadline.

2. Exclusivity Provisions

The ODA contains exclusive remedy provisions that limit the process for most workers to the statute's prescribed channels. Two provisions preclude employees subject to the ODA from seeking compensation outside of the statutory scheme.

For one, "there is no common law or statutory right to recover compensation or damages from the employer" or related entities. 820 ILCS 310/5. Pairing that with the statute's other dictate, that "the compensation herein provided for shall be the full, complete and only measure of the liability of the employer [and those other entities] … in place of any and all other civil liability whatsoever," 820 ILCS 310/11, gives a complete picture of the ODA's exclusivity provisions. *See Folta*, 43 N.E.3d at 112.

Just five years ago, there would have been little more to say. In 2019, however, the Illinois legislature passed a statute providing for an exception to these provisions. Today, both exclusive remedy provisions apply "[e]xcept as provided in Section 1.1," the new amendment making clear that the exclusivity provisions are not absolute. We will address this exception further below.

3. Historical Exclusivity Exceptions

Even before the legislature narrowed the exclusivity provisions, Illinois courts acknowledged certain limits to them. *See Collier v. Wagner Castings Co.*, 408 N.E.2d 198, 202 (Ill. 1980). A plaintiff could avoid the exclusivity provisions by proving any of the following: "(1) that the injury was not accidental; (2) that the injury did not arise from his or her employment; (3) that the injury was not received during the course of employment; or (4) that the injury was not compensable under the Act." *Meerbrey v. Marshall Field & Co., Inc.*, 564 N.E.2d 1222, 1226 (Ill. 1990).

In *Folta*, the Illinois Supreme Court addressed the last exception—the one for injuries "not compensable" under the ODA. 43 N.E.3d at 113. James Folta was a product tester for Ferro Engineering, a position that put him in contact with asbestos throughout his four-year employment. *Id.* at 110. He left the job in 1970. *Id.* Under 6(c), asbestos exposure works a little differently from other hazards. Claimants like Folta have 25 years from their last *exposure*, where others' claims are barred 3 years after *disablement*. Section 6(c) thus barred Folta's claim for compensation from 1995 on, since it stemmed from asbestos exposure. Mr. Folta received his mesothelioma diagnosis in May 2011, though—long after the 25-year asbestos bar descended. *Id.* Even so, he sued Ferro Engineering, and after his death his widow pressed on with the case. *Id.* They submitted that because of 6(c)'s limitation, compensation was not available to Folta. There was never a time when he both knew of the harm and could seek compensation consistent with 6(c).

The *Folta* court stressed that 6(c) is a statute of repose. As such, it effectuates a legislative intent "to provide an absolute

definitive time period within which all occupational disease claims arising from asbestos exposure must be brought." *Id.* at 117. Put another way, the statute's purpose was not to ensure Folta's diligence. Instead, it exalted certainty, aiming "to extinguish the employer's liability." *Id.* That certainty would vanish if plaintiffs like Folta could bring their claims in court after 6(c) barred the ODA's statutory remedy. *Id.* at 117.

Further, the caselaw on the "not compensable" exception had construed it to encompass only those injuries that could not "categorically fit[] within the purview of the Act." *Id.* at 114. Even in cases where 1(f) supplied the temporal bar, the court reasoned that its "temporal limitation on the availability of compensation benefits" did not "remove occupational diseases from the purview of the Act." *Id.* at 118. Same result: the exclusivity provisions apply.

All this added up to a loss for Folta. The court was "cognizant of the harsh result" its interpretation had worked. *Id.* Its hands were tied, though: any call for a change in the law was "more appropriately addressed to the legislature." *Id.*

4. Exception 1.1

The legislature answered the call four years later, in 2019, with 820 ILCS 310/1.1, or "Exception 1.1." That law explains that the exclusivity provisions in the ODA "do not 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." 310/1.1.

So when 6(c)—a "statute of repose" and thus a "period of repose"—bars a claim, *see Folta*, 43 N.E.3d at 117, the

exclusivity provisions fall away. It is less clear how 1(f)'s "temporal limitation" interacts with Exception 1.1. *Id.*

B. Factual Background

That brings us to this case. Rodney Martin was a lot like James Folta—in the late 1960s and early 1970s, he worked with a dangerous material. For Rodney, it was vinyl chloride monomer ("VCM"), a petroleum-derived chemical essential to the production of polyvinyl chloride, more familiar as PVC. VCM is allegedly linked to angiosarcoma of the liver. At all relevant times, Rodney worked for defendant Goodrich Corporation; he started there in 1966 and retired in 2012. Until 1974, his work entailed exposure to VCM, but after that Goodrich abated its use of the chemical.

In 2019 (after Exception 1.1 passed) Rodney's doctors diagnosed him with angiosarcoma of the liver. He passed away in 2020. This suit followed in November 2021.

C. Procedural Background

Rodney's widow, Candice Martin, sued Goodrich and joined PolyOne Corporation—a company that had bought much of Goodrich's PVC business—as a defendant. Her complaint invoked Exception 1.1 to avoid the exclusivity provisions. Later, PolyOne moved to dismiss for lack of personal jurisdiction. For its part, Goodrich moved to dismiss under the exclusivity provisions. It argued 1(f) was not a statute of repose, and that 6(c) did not bar Martin's claim—and thus Exception 1.1 did not apply. In the alternative, it argued that using Exception 1.1 to revive Martin's claim would infringe its due process rights under Illinois's constitution. The district court denied these motions and set the case on track for trial.

Goodrich asked the district court to certify its legal questions to us under 28 U.S.C. § 1292(b). The court agreed to do so, finding two questions that implicate "a controlling question of law" whose resolution would "materially advance the ultimate termination of the litigation" and thus fit the bill for certification. We agreed to take the appeal. The district court's order certified two questions:

1. Whether 820 ILCS 310/1(f) is a statute of repose for purposes of § 310/1.1?
2. Whether applying 820 ILCS 310/1.1 to allow Plaintiff's civil case to proceed would violate Illinois's constitutional substantive due process?

II. Analysis

We think the interconnected statutory provisions in the ODA present three questions. Each gives us pause. Together, they present a roadmap to handling claims for asbestosis, angiosarcoma, and other diseases that manifest only belatedly. Given the number of cases where this roadmap will chart the course for courts and litigants—plus Illinois's policy interests in its contours—we find each question fit for certification.

We reach this conclusion by looking to Illinois's factors for selecting certification-worthy questions. The questions must be potentially "determinative" of the case, and there must be "no controlling precedents" in the Illinois Supreme Court. Ill. Sup. Ct. R. 20(a). And we have our own guiding lights. "Most important[]" among them is that we be "genuinely uncertain about the answer to the state-law question." *Jadair Int'l, Inc. v. Am. Nat'l Prop. & Cas. Co.*, 77 F.4th 546, 557 (7th Cir. 2023) (cleaned up). The next consideration turns on the nature of

the issue: if it is "an important issue of public concern" and "likely to recur," certification is a better bet. *Cutchin v. Robertson*, 986 F.3d 1012, 1028 (7th Cir. 2021). We also check and see if the question might be of interest to the state supreme court—further favoring certification if it's likely "the result of the decision in a particular case will exclusively affect the citizens of that state." *Id.* at 1029.

A. 1(f) and Statutes of Repose

Martin relies on Exception 1.1 to press her claim. To succeed, she must establish that any application for compensation benefits "would be precluded due to the operation of any period of repose or repose provision." 820 ILCS 310/1.1. If there is such a provision here, it is 1(f). No one argues 6(c) bars Martin's claim, which she brought within three years of Rodney's diagnosis. And so we ask if 1(f)—which the Illinois Supreme Court has called a "temporal limitation," *see Folta*, 43 N.E.3d at 118—is a "period of repose or repose provision."

Lacking further guidance from the Illinois Supreme Court, we are mindful that "the rulings of the state intermediate appellate courts must be accorded great weight." *State Farm Mut. Ins. Co. v. Pate*, 275 F.3d 666, 669 (7th Cir. 2001). But they point in both directions. Some recognize, for example, that 1(f) "operates as a statute of repose" (at least in terms of tolling). *Dickerson v. Indus. Comm'n*, 587 N.E.2d 1045, 1047 (Ill. App. Ct. 1991). At the same time, others describe the provision as "a condition precedent to recovery." *Docksteiner v. Indus. Comm'n*, 806 N.E.2d 230, 234 (Ill. App. Ct. 2004). The cases leave us at an impasse.

Other avenues meet their own dead ends. We know that in Illinois, "a statute of repose *extinguishes the action* after a

defined period of time." *Evanston Ins. Co. v. Riseborough*, 5 N.E.3d 158, 164 (Ill. 2014) (emphasis added). The very "right to bring an action is terminated." *Id.* But that does not resolve this case. While 1(f) denies "compensation," one remedy, without explicitly barring an action, no other remedy exists. We cannot discern if the Illinois courts would conclude that barring a sole remedy counts as "extinguish[ing]" an action.

In short, we are uncertain. And the stakes on this question are high, both for this case and other long latency cases. If 1(f) does not fit in the statute, Martin and many others lose. To underscore the magnitude of this question, consider how it came about. The *Folta* court granted discretionary review to establish limits on plaintiffs' recovery, even as it regretted the "harsh result." 43 N.E.3d at 118. The legislature responded with Exception 1.1, and the governor signed on. All three state branches agree: the ODA's interaction with long latency diseases is an important policy question.

So we certify this first question: *Is 1(f) a "period of repose or repose provision" for 310/1.1 purposes?*

B. Retroactivity and Statutory Interpretation

Goodrich identifies another challenge for Martin: Exception 1.1 may not apply here. After all, Rodney's VCM exposure occurred decades before its enactment. In a line culminating in *Perry v. Department of Finance and Professional Regulation*, 106 N.E.3d 1016, 1026 (Ill. 2018), Illinois courts have distilled their process for addressing this sort of retrospectivity argument. There are (nominally) two steps.

1. The "court first determines whether the legislature has expressly prescribed the temporal reach of the new law." *Id.* (cleaned up).

> If it has, the court fills that express prescription.
> 2. If not, "then the court must determine whether applying the statute would have a retroactive impact." *Commonwealth Edison Co. v. Will Cnty. Collector*, 749 N.E.2d 964, 971 (Ill. 2001). It should then read the statute to avoid those impacts.

We say "nominally" two steps because in practice "Illinois courts need not go beyond step one." *Perry*, 106 N.E.3d at 1026. As it happens, "the legislature *always* will have clearly indicated the temporal reach of an amended statute." *Caveney v. Bower*, 797 N.E.2d 596, 603 (Ill. 2003). That is because Section 4 of the Illinois Statute on Statutes essentially provides a backstop. It reads:

> No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding.

5 ILCS 70/4. Put simply, a substantive statute either proclaims its own retrospective effect, or cedes that power to Section 4. *See Caveney*, 797 N.E.2d at 602.

The trouble here is it is unclear if Exception 1.1 controls its own fate. It may reach back: it does command that exclusivity provisions "do not apply" where a statute of repose would otherwise bar the claim. That is categorical language—it might express clear intent. Or it might be that those provisions "do not apply" going forward, but still apply to pre-2019 conduct. Then Section 4 would step in and render Exception 1.1 inapplicable here.

Here too the uncertainty butts up against strong Illinois policy interests. If Exception 1.1 applies only prospectively, all those long latency cases dating to the asbestos era lie outside its bounds. In short, the same policy interests supporting certifying the first question apply with near-equal force here.

With that in mind, we certify a second question: *If 1(f) falls within Exception 1.1, what is its temporal reach—either by its own terms or through Section 4?*

C. Due Process Implications

If Exception 1.1 does apply to this conduct, Goodrich raises another argument, this time under the Illinois Constitution. The company insists that in 1976 it vested a right to be sure Martin would not bring a claim, when 1(f) barred his right to seek compensation and the exclusivity provisions stood in the way of any action in another forum. No doubt: "once a claim is time-barred, it cannot be revived through subsequent legislative action without offending the due process protections of [Illinois's] constitution." *Doe A. v. Diocese of Dallas*, 917 N.E.2d 475, 486 (Ill. 2009). Martin tracks with

that, up to a point. Nevertheless, she resists the conclusion—she claims that Goodrich's right could not vest until Rodney's did, in 2019. By then the legislature had passed Exception 1.1.

This question is no less fraught than the first two. The problem is that 1(f) interacts oddly with the exclusivity provisions. They are separate. It might be, for example, that in 1976 Goodrich vested a right not to pay compensation for Martin's claims, but never vested a right not to face those claims in court. To further complicate the inquiry, there is some authority for Martin's position that Goodrich's rights accrue only when hers do. *See Henrich v. Libertyville High School*, 712 N.E.2d 298, 310 (Ill. 1998) (immunity defense vests "when the cause of action accrued"). But then as we know, a statute of repose nips the cause of action in the bud. It *never* accrues. *See Evanston Ins. Co. v. Riseborough*, 5 N.E.3d 158, 164 (Ill. 2014) ("A plaintiff's right to bring an action is terminated when the event giving rise to the cause of action does not transpire within the period of time specified in the statute of repose."). So, on Martin's theory, it seems Goodrich would never vest a right in the statute of repose.

Yet again, these state law questions are complicated and consequential in equal measure. For just that reason, we certify a third question: *Would the application of Exception 1.1 to past conduct offend Illinois's due process guarantee?*

III. Conclusion

The resolution of these questions could dispose of an untold number of claims. Each claim, in turn, has big stakes for its plaintiff. Illinois's coordinate branches have signaled the importance of these issues—and for all the weight Illinoisans and their government place on these issues, they have zero

effect outside the state. At the end of the day, these are Illinois questions best left to Illinois judges.

Consistent with that respect for institutional expertise, we recognize there may be better ways to frame this case and its questions. For that reason, we invite the Justices of the Illinois Supreme Court to reformulate our questions if they wish. We have no intention to limit the scope of their inquiry—these questions reflect no more than our own understanding. The Clerk of this Court will transmit the briefs and appendices in this case, together with this opinion, to the Illinois Supreme Court. On the request of that Court, the Clerk will transmit all or any part of the record as that Court so desires.

QUESTIONS CERTIFIED.

STATE OF ILLINOIS
101st GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

18th Legislative Day 3/6/2019

STATE OF ILLINOIS
101st GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

18th Legislative Day 3/6/2019

STATE OF ILLINOIS
101st GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

18th Legislative Day 3/6/2019

PRESIDING OFFICER: (SENATOR HARMON)

The regular Session of the 101st General Assembly will please come to order. Will the Members please be at their desks? Will our guests in the galleries please rise? The invocation today will be given by Father Jim Swarthout, the Director of Clergy and Alumni Relations at Rosecrance Behavioral Health in Rockford, Illinois. Father.

FATHER JIM SWARTHOUT:

(Prayer by Father Jim Swarthout)

PRESIDING OFFICER: (SENATOR HARMON)

Please remain standing for the Pledge of Allegiance. Senator Cunningham, will you please lead us?

SENATOR CUNNINGHAM:

(Pledge of Allegiance, led by Senator Cunningham)

PRESIDING OFFICER: (SENATOR HARMON)

Blueroomstream.com requests permission to videotape the proceedings and the Illinois Times requests permission to take photos. Is there any objection? Seeing none, permission is granted. Mr. Secretary, Reading and Approval of the Journal.

SECRETARY ANDERSON:

Senate Journal of Tuesday, March 5th, 2019.

PRESIDING OFFICER: (SENATOR HARMON)

Senator Hunter.

SENATOR HUNTER:

Mr. President, I move to postpone the reading and approval of the Journal just read by the Secretary, pending arrival of the printed transcript.

PRESIDING OFFICER: (SENATOR HARMON)

Senator Hunter moves to postpone the reading and approval of

STATE OF ILLINOIS
101st GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

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the Journal, pending arrival of the printed transcript. There being no objection, so ordered. Mr. Secretary, Resolutions.

SECRETARY ANDERSON:

Senate Resolutions 195 and 196, offered by Senator Morrison and all Members.

They are both death resolutions, Mr. President.

PRESIDING OFFICER: (SENATOR HARMON)

Resolutions Consent Calendar.

SECRETARY ANDERSON:

Senate Joint -- Senate Joint Resolutions 31 and 32, offered by Senator Rezin.

They are substantive.

PRESIDING OFFICER: (SENATOR HARMON)

Mr. Secretary, Committee Reports.

SECRETARY ANDERSON:

Senator Holmes, Chairperson of the Committee on Local Government, reports Senate Bills 40, 196, 1580, and 1871 Do Pass; Senate Bill -- Senate Bills 100 and 1806 Do Pass, as Amended.

Senator Collins, Chairperson of the Committee on Financial Institutions, reports Senate Bills 1387, 1524, 1657, 1787, 1813 Do Pass; and Senate Bill 169 Do Pass, as Amended.

Senator Aquino, Chairperson of the Committee on Government Accountability and Pensions, reports Senate Bills 194, 1265, 1584, 1670, and 1698 Do Pass.

And Senator Tom Cullerton, Chairperson of the Committee on Labor, reports Senate Bills -- Senate Bill 1474 Do Pass, as Amended; and Senate Resolutions 59, 83, and 84 Be Adopted.

PRESIDING OFFICER: (SENATOR HARMON)

Ladies and Gentlemen of the Senate, we are going to be turning

shortly to the Order of 3rd Reading. That is final action. I would ask all Members to be at their desks. We will shortly be turning to 3rd Reading. Senator Cullerton, for what purpose do you rise?

SENATOR T. CULLERTON:

A point of personal privilege, Mr. President.

PRESIDING OFFICER: (SENATOR HARMON)

Please state your point.

SENATOR T. CULLERTON:

Thank you. Ladies and Gentlemen of the Senate, I would like to just take a moment. If you could all help me recognize and welcome, we have the AP Government class from Addison Trail High School in my district and also partially in Senator Harmon -- in Mr. President Harmon's district, right behind me in the gallery. If you could all stand. And if we could welcome Addison Trail High School to the Illinois General Assembly and to the Illinois Senate.

PRESIDING OFFICER: (SENATOR HARMON)

Welcome to the Illinois Senate. Glad to have you here. Senator Crowe, for what purpose do you rise?

SENATOR CROWE:

Thank you. For a point of personal privilege.

PRESIDING OFFICER: (SENATOR HARMON)

Please state your point.

SENATOR CROWE:

Thank you. At this time, I'd like to ask my fellow Senators to help me to welcome Kristopher Mallon to the Senate Floor today. Kristopher is from my district. He is a senior at Roxana High School. This is the high school that I attended, so, of course,

I'm very fond of having Kristopher here with me today. Kristopher intends to go on to community college to study political science and then on to SIUE and eventually law school. He has a great love of politics and hopes to follow in all of our footsteps someday. Thank you for being here, Kristopher.

PRESIDING OFFICER: (SENATOR HARMON)

Kristopher, welcome to the Senate. Senator Murphy, for what purpose do you seek recognition?

SENATOR MURPHY:

Thank you, Mr. President. Point of personal privilege.

PRESIDING OFFICER: (SENATOR HARMON)

Please state your point.

SENATOR MURPHY:

Thank you. Today I'm honored to have with me a young man, William Plizga. William is a sixth grader at Marion Jordan Elementary School. He was able to win the Page for a Day at a WINGS Foundation celebration that his parents attended. William has an older brother and sister. He's involved in a host of activities. He plays the trumpet. He's in the intramurals program. He's thrives in the Battle of Books. So William is going to be a great contributor. And I'd ask you to all join me in welcoming William to the Illinois State Senate.

PRESIDING OFFICER: (SENATOR HARMON)

William, welcome to the Illinois Senate. Senator Hastings, for what purpose do you rise?

SENATOR HASTINGS:

Thank you, Mr. President. Point of personal privilege.

PRESIDING OFFICER: (SENATOR HARMON)

Please state your point.

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SENATOR HASTINGS:

I just wanted to introduce to the Senate my Senator for a Day. His name is Ryder Lipcaman. He's from Pittsfield, Illinois. He attends Pittsfield Community School. He's here with his awesome mom, Kacie. So, Ryder, loves playing golf. He's got a halfway decent handicap. He loves reading and he's a straight A student. And he told me that when he had a B one time, he got really mad and he made it an A. He loves politics. He wants to study the law. He's friends of Tammi Zumwalt, downstairs on the first floor, who -- who's so patient to put up with Senator Sandoval. But this is a great young man. He told me that he loves politics and hopefully one day he can be the President of the United States, and I hope he is 'cause he's a really nice guy. I saw him meet with the whiskey industry today and he did a fine job. So I just want to give him a -- a great Springfield welcome. Thank you, Mr. President.

PRESIDING OFFICER: (SENATOR HARMON)

Welcome to the Illinois Senate. Ladies and Gentlemen of the Senate, the Senate will stand at ease for a few moments to allow the Committee on Assignments to meet. Will all members of the Committee on Assignments please report to the President's Anteroom? Senator Koehler in the Chair. (at ease)

PRESIDING OFFICER: (SENATOR KOEHLER)

Senator Hunter -- Senator Harmon back in the Chair.

PRESIDING OFFICER: (SENATOR HARMON)

Mr. Secretary, Committee Reports.

SECRETARY ANDERSON:

Senator Lightford, Chairperson of the Committee on Assignments, reports the following Legislative Measures have been

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assigned: Refer to Appropriations I Committee - Committee Amendment 1 to Senate Bill 2019 and Committee Amendment 1 to Senate Bill 1154; refer to Criminal Law Committee - Committee Amendment 1 to Senate Bill 1627, Committee Amendment 1 to Senate Bill 1878, and Senate Bill 219; refer to Energy and Public Utilities Committee - Committee Amendment 1 to Senate Bill 129, Committee Amendment 1 to Senate Bill 130, Committee Amendment 1 to Senate Bill 134, Committee Amendment 1 to Senate Bill 135, Committee Amendment 1 to Senate Bill 136, and Committee Amendment 1 to Senate Bill 137; refer to Environment and Conservation Committee - Committee Amendment 1 to Senate Bill 1256; refer to Executive Committee - Committee Amendment 1 to Senate Bill 2083, Committee Amendment 1 to Senate Bill 2090, Senate Bill 1254, and Senate Bill 1267; refer to Financial Institutions Committee - Committee Amendment 1 to Senate Bill 138 and Committee Amendment 1 to Senate Bill 2023; refer to Government Accountability and Pensions Committee - Committee Amendment 1 to Senate Bill 1765 and Committee Amendment 1 to Senate Bill 1236; refer to Insurance Committee - Senate Bill 1598; refer to Judiciary Committee - Committee Amendment 1 to Senate Bill 1628, Committee Amendment 1 to Senate Bill 1712, and Senate Bill 44; refer to Licensed Activities Committee - Committee -- Committee Amendment 1 to Senate Bill 1839; refer to Public Health Committee - Committee Amendment 1 to Senate Bill 109; refer to Revenue Committee - Committee Amendment 1 to Senate Bill 1379; refer to State Government Committee - Committee Amendment 1 to Senate Bill 1918 and Committee Amendment 1 to Senate Bill 2142; refer to Transportation Committee - Committee Amendment 1 to Senate Bill 1200, Committee Amendment 1 to Senate Bill 1862, and Committee Amendment 1 to Senate Bill 1934.

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Signed, Senator Kimberly Lightford, Chairperson.

PRESIDING OFFICER: (SENATOR HARMON)

Senator Crowe, for what purpose do you seek recognition?

SENATOR CROWE:

Thank you. I rise for a point of personal privilege on a very somber note today.

PRESIDING OFFICER: (SENATOR HARMON)

Ladies and Gentlemen of the Senate, if you could give the Senator your attention. Senator Crowe.

SENATOR CROWE:

Thank you. There was a tragedy last night in my district, a house fire that resulted in the loss of life. And I would like to invite the Chamber now to participate in a moment of silence for the sudden passing of Godfrey Fire Captain Jake Ringering. The fire took place yesterday in Bethalto. Jake was born and raised in East Alton and he comes from a family of firefighters. His father was a longtime fire chief in East Alton and his grandfather retired as the fire captain with the East Alton Department where Jake started his career. Jake represented the paid firefighters in the union for the last three years. He is survived by a wife and children. And he will be sincerely missed by our entire district and his family. And I ask you now to please join me in remembering him and his selfless service.

PRESIDING OFFICER: (SENATOR HARMON)

Please rise for a moment of silence. (Moment of silence observed) Senator Koehler, for what purpose do you seek recognition?

SENATOR KOEHLER:

Thank you, Mr. President. For an announcement.

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PRESIDING OFFICER: (SENATOR HARMON)

Please state your announcement.

SENATOR KOEHLER:

Ever since John Sullivan has left the Senate, this distinction has come to me because, I guess, my wife is Nora Sullivan. But I'm announcing the 17th Annual Saint Patrick's Day celebration with the Sullivan Caucus, which shall be Tuesday, March 12th, at the Gin Mill on South Fifth Street from 5 till 9. And there's a whole bunch of Sullivans that will be there and everyone is invited.

PRESIDING OFFICER: (SENATOR HARMON)

Thank you, Senator Sullivan. WCIA requests permission to record audio and video of the proceedings today. Seeing no objection, permission is granted. Ladies and Gentlemen of the Senate, we are going to be turning to 3rd Readings on the regular Calendar. As we are awaiting Members to be at their desks, we're going to turn to the Senate Supplemental Calendar No. 1 in the Order of Senate Bills 2nd Reading. From the top, Senator Anderson, on Senate Bill 40. 2nd Reading. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 40.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senator Van Pelt, for what purpose do you rise?

SENATOR VAN PELT:

For purpose of a introduction.

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PRESIDING OFFICER: (SENATOR HARMON)

Please make your introduction, Senator.

SENATOR VAN PELT:

I have the very fine privilege of having four people here from the Chicago Urban Prep Academy that are part of my district and I'm very excited about them being here. Many of you all may know that they graduate -- they send like over ninety percent -- ninety-nine percent of their students to college. So I want everyone to welcome them and just give 'em a good handclap and let 'em know they're welcome to the Senate.

PRESIDING OFFICER: (SENATOR HARMON)

Welcome to the Illinois State Senate. Let's continue on the Order of 2nd Reading on the Supplemental Calendar. Senate Bill 100. Senator Holmes. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 100.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Local Government adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR HARMON)

Have there been any Floor amendments approved for consideration?

SECRETARY ANDERSON:

Further -- no further amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 169. Senator Mulroe. Senator Mulroe. 2nd Reading. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 169.

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(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Financial Institutions adopted Amendment No. 2.

PRESIDING OFFICER: (SENATOR HARMON)

Have there been any Floor amendments approved for consideration?

SECRETARY ANDERSON:

No further amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 194. Senator Fowler. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 194.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 196. Senator Bush. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 196.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1265. Senator Aquino. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1265.

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(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1387. Senator Morrison. With leave of the Body, we'll return to that order. Senate Bill 1474. Senator Villivalam. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1474.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Labor adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR HARMON)

Have there been any Floor amendments approved for consideration?

SECRETARY ANDERSON:

No further amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1524. Senator Lightford. Senator Lightford. Senate Bill 1580. Senator Curran. Senator Curran. Senate Bill 1584. Senator Aquino. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1584.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1657. Senator Murphy. Mr.

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Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1657.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1670. Senator Martinez. Mr. Secretary, please read the bill. Oop. Hold on. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1670.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1698. Senator Martinez. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1698.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1787. Senator Aquino. Senator Aquino. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1787.

(Secretary reads title of bill)

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2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1806. Senator Righter. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1806.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on Local Government adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR HARMON)

Have there been any Floor amendments approved for consideration?

SECRETARY ANDERSON:

No further amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1813. Senator Mulroe. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1813.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1871. Senator Holmes. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1871.

(Secretary reads title of bill)

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2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Ladies and Gentlemen of the Senate, as we wait for some paperwork for 3rd Readings, we're going to continue on the Order of 2nd Readings but on the regular Calendar. On page 2 of the printed Calendar, we're going to begin with Senate Bill 71. Senator Manar, on 2nd Reading? Senate Bill 90. Senator McConchie. With leave of the Body, we'll turn to Senate Bill 1165. Senator Steans. Senate Bill 1183. Senator Muñoz. Senate Bill 1191. Senator Castro. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1191.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1199. Senator Murphy. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1199.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1221. Senator Jones. Senate Bill 1250. Senator Murphy. Let's skip to Senate Bill 1285. Senator Tracy. Senator Tracy? No. Thank you. Still figuring out where everyone's sitting in the new lineup here. My apologies. Senate

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Bill 1290. Senator Castro. Mr. Secretary, please read the bill.
SECRETARY ANDERSON:
Senate Bill 1290.
(Secretary reads title of bill)
2nd Reading of the bill. No committee or Floor amendments reported.
PRESIDING OFFICER: (SENATOR HARMON)
3rd Reading. Senate Bill 1319. Senator Villivalam. Senate Bill 1332. Senator Castro. Senate Bill 1343. Senator Sandoval. Senate Bill 1371. Senator Rose. Senate Bill 1378. Senator Hutchinson. Mr. Secretary, please read the bill.
SECRETARY ANDERSON:
Senate Bill 1378.
(Secretary reads title of bill)
2nd Reading of the bill. No committee or Floor amendments reported.
PRESIDING OFFICER: (SENATOR HARMON)
3rd Reading. Senate Bill 1429. Senator Villivalam. Senator Villivalam. Senate Bill 1468. Senator Bennett. Mr. Secretary, please read the bill.
SECRETARY ANDERSON:
Senate Bill 1468.
(Secretary reads title of bill)
2nd Reading of the bill. No committee or Floor amendments reported.
PRESIDING OFFICER: (SENATOR HARMON)
3rd Reading. Senate Bill 1498. Senator Bennett. Senate Bill 1504. Senator Mulroe. Mr. Secretary, please read the bill.
SECRETARY ANDERSON:

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Senate Bill 1504.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1518. Senator Tracy. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1518.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1573. Senator Mulroe. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1573.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1660. Senator Schimpf. Senate Bill 1665. Senator Hastings. Senate Bill 1696. Mr. Secretary -- oop. Senate Bill 1696. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1696.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

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PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1739. Senator Mulroe. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1739.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1797. Senator Morrison. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1797.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Top of page 4 of your printed Calendar. Senate Bill 1864. Senator Link. Senate Bill 1889. Senator Murphy. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1889.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1890. Senator Murphy. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

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Senate Bill 1890.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Senate Bill 1937. Senator Manar. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1937.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Ladies and Gentlemen of the Senate, with leave of the Body, we're going to turn to page 6 on your printed Calendar. This is the Order of 3rd Readings. Mr. Secretary, please read the -- ring the bell. Senator Martinez in the Chair.

PRESIDING OFFICER: (SENATOR MARTINEZ)

In the middle of the page -- in the middle of the pamphlet, we have Senate Bill 1596 -- I'm sorry, 1576 -- 1596. Wow! I can't even see. 1571. Senator Harmon. Are you ready to proceed? Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1571 -- excuse me, Senate Bill 1571.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Harmon.

SENATOR HARMON:

Thank you, Madam President, Ladies and Gentlemen of the Senate. There is a provision in the Code of Civil Procedure that allows a party to a medical malpractice action…

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Harmon, let me just -- can we please have it quiet here in the Chamber? Senator Harmon has an important bill.

SENATOR HARMON:

Thank you, Madam President. It's not that important. There is a provision in the Code of Civil Procedure that allows a party to a -- a medical malpractice action to elect to receive -- or make payments in installments instead of in a lump sum. It was part of a 1985 compromise on medical malpractice reform. Since that time, it has rarely, if ever, been used. This bill simply repeals that Section. It came out of Judiciary Committee yesterday unanimously without any opposition. I ask for your Aye votes.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Is there any discussion? Seeing none, the question is, shall Senate Bill 1571 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, we have 57 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 1571, having the constitutional majority, is declared passed. Senator Hunter, for what purpose do you rise?

SENATOR HUNTER:

Madam President, I hit the wrong button. I meant to vote Yes on this button -- on this bill, 1571, and I hit the speaking button instead of the green button. So can you please register me as a Yes, please?

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PRESIDING OFFICER: (SENATOR MARTINEZ)

The -- the record will reflect your intentions. In the middle of the page, we will continue. Senate Bill 1596. Senator Sims. Are you ready to proceed? Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1596.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Thank you, Madam President and Ladies and Gentlemen of the Senate. Senate Bill 1596 is in response to a request by the Illinois Supreme Court in its decision in Folta v. -- versus Ferro Engineering that the Illinois General Assembly address a glaring inequity in our workers' compensation -- in our workers' -- workers' compensation laws for -- it leaves -- which leaves workers who are exposed to asbestos or other cancer-causing materials without the ability to collect for their injuries under the current state of the law. Senate Bill 1596 carves out exceptions in the provisions of the Workers' Compensation Act and the Workers' Occupational Diseases Act where civil action under both Acts is not permissible. The bill provides an employee, their heirs, and any person with standing a nonwaivable right to bring a civil action against any employer or employers where the employee sustained an injury or died and which recovery of compensation benefits under the Act would be precluded due to the current expiration of a statute of limitations or repose. Madam President, let me address a couple of issues quickly that were brought up

during committee and in conversations on this legislation.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Can we please have everyone's attention? Thank you.

SENATOR SIMS:

First, why not simply extend the statute of repose to accommodate this issue? Well, frankly, that is not a -- that's a nonsolution, because the period of repose is tied to the status of the law on the date of the injury or the exposure to the harmful substance. So even if we extended the -- the period of repose today, it would do nothing to assist those currently suffering from these conditions or those who have suffered previously, because there is no retroactivity to the standard of repose. Once the period runs, the ability to recover ends. With that, Madam President, I ask for passage of Senate Bill 1596 and would answer any questions.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Is there any discussion? Senator Harmon, for what purpose do you rise?

SENATOR HARMON:

Thank you, Madam President. Will the sponsor yield?

PRESIDING OFFICER: (SENATOR MARTINEZ)

The sponsor indicates he will yield.

SENATOR HARMON:

Thank -- thank you, Madam President. Senator Sims, we had a fairly lengthy discussion in Judiciary Committee yesterday and you mentioned this in your introduction, but I want to ask you this question to make sure we put a very fine point on it because the debate was at times confusing in the committee. The opponents to the bill suggested in committee that the solution is to simply

extend the statute of repose in the Workers' Compensation Act beyond the current twenty-five years. Would such a proposal revive remedies for the victims your bill is attempting to help?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Senator Harmon, thank you for that question. The answer is no. The period of repose is tied to the status of the law on the date that the injury or exposure occurred. So even if we extended the repose today, the repose that was in effect at the time of the injury or the cause of action accrued -- controls. So there is no retroactivity to the statute of repose. The bill will help people diagnosed immediately, which is the effective date of this legislation.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator -- Senator Barickman, for what purpose do you rise?

SENATOR BARICKMAN:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Sponsor indicates he will yield.

SENATOR BARICKMAN:

Thank you, Madam President. Senator, and I appreciate our conversations since committee. Committee certainly was lengthy and I want to ask you a -- a few questions while we're here on the Floor. You touched on this in your opening comments in response to the prior Senator's questions, but is your intent that this legislation is retroactive?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator -- Senator Sims.

SENATOR SIMS:

Senator, thank you again. Thank you for the question. So, yes, my -- if the question is, is the intent to -- to cover those individuals who are -- who are -- currently been -- been exposed to these carcinogenic materials, then the answer is yes.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Barickman.

SENATOR BARICKMAN:

And I'm going to continue, and we want to make sure we're preserving the record for legislative intent here, just so everyone's clear. But -- so when you say it's retroactive, your intention is that these class of individuals who are currently past the statute of repose would now be able to file suit in court. Correct?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

And, Senator Barickman, if you -- in reading the -- the Supreme Court's decision in Folta, they are -- that is exactly what the Supreme Court's asking for. The Supreme Court is asking us to look at -- to -- to make sure that we are clearing up this glaring inequity, so that's what this legislation is intended to do, to ensure that we are making -- we are providing a path to individuals who are -- would otherwise be unable to recover under the Workers' Compensation or the Workers' -- Workers' -- the Occupational Diseases Act to -- to then give them a path towards recovery.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Barickman.

SENATOR BARICKMAN:

I'm not sure that I agree with the characterization of what the court asked for in Folta, but that's neither here nor there. I think the court - and you and I discussed this briefly - the court and -- you know, last night I read Doe versus Diocese of Dallas. That's an Illinois Supreme Court case. I think this legislation flies directly in the face of that court decision. And again, just to -- for the record, your intent here is to do something contrary to that court decision in Doe versus Diocese of Dallas. Correct?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Senator Barickman, I would -- I would dispute -- I would dispute what the court asked for in Doe, because what the court said in Doe is, it's -- when they look at whether or not a -- a -- the statute constructed by the Legislature, it -- can be applicable retroactively, it looked at the Legislature's motive in -- in enacting the change. Again, here, in Folta, they -- there was a -- there was discussion between not just the majority, the split majority in the Supreme Court case, but also in the dissent as written by Justice Freeman upholding the -- the unanimous appellate court decision that said that this was, in -- in the words of the Supreme Court, "twisted logic". So that's number one. The -- the second consideration was the period of retroactivity. The third was whether the -- parties detrimentally relied on the prior version of the law. Under Folta, the Supreme Court specifically state -- they -- in the -- again, in the words of the Supreme Court, they were "cognizant" that it was a "harsh

result"; that under -- under the -- the -- decision in Folta, that Mr. Folta who -- contracted mesothelioma under "no fault of his own", and that was never -- never in question; that -- that he contracted this -- this disease after working for -- for this company. And as you and I both know, mesothelioma is a latent disease. It does not manifest itself until thirty to fifty years after exposure to asbestos. So in the court's decision in Folta, they -- they acknowledged that there was no possibility for an employee similar to -- to Mr. Folta to recover because, in -- in effect, he died too late.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Barickman.

SENATOR BARICKMAN:

To the bill, if I may.

PRESIDING OFFICER: (SENATOR MARTINEZ)

To the bill.

SENATOR BARICKMAN:

Thank you again, Madam President. And thank you again to the sponsor for his -- his dialogue on this. Look, you know, we -- we've got into the weeds pretty well here on a legal issue which is called statute of repose. Statute of repose really is just nothing more than this notion that at some time the law says very clearly that certain rights may be cut off from an aggrieved party. That's what this statute of repose is about and that's what this issue is about. The sponsor has come forward with a proposal, this legislation, which is a solution to a problem that I believe both sides agree exists. This -- the problem is, this situation, not entirely unique, but rare in its frequency, a situation that came forward where an aggrieved party - everyone agrees - an

aggrieved party was wronged. The -- the system today resulted in an unfair situation for an aggrieved party. There's no dispute over the fact that we should do something about this. The dispute lies in what the proper solution is and the sponsor puts forward a solution that -- that disrupts a very delicate balance that exists today in the workers' comp system. And we've all talked about the workers' comp system ad nauseam in this Body, but this legislation disrupts that system very significantly and disrupts -- disrupts it in a way by moving some of our employee rights out of that system and into the courts. And that -- this proposal, in a much more broad sense, was put forward over the last few years and was dismissed bipartisanly -- or on a bipartisan basis, because together we agreed that that workers' comp system, while not perfect, that workers' comp system does represent the delicate balance that exists between employees, who need an expedited system for seeking -- recovery on workplace injuries, and employers, who need predictability. This proposal threatens that system significantly and that's why this matters. Here's why else it matters. These court cases that Senator Sims and I talked about, these court cases, though we got into the weeds on the legalities of them, here's what those court cases say, those court cases - and this was the Illinois Supreme Court - those court cases say that under Illinois law and under federal law, because of our State and federal constitutions, we all have due process rights. And the proposal put forward that attempts to provide some retroactive recovery to aggrieved parties significantly jeopardizes the due process rights that we all say are important, so important that we put them into our State and federal constitution. This legislation risks those due process rights. The courts -- by the way, both

the federal courts and the State courts. We referenced the -- the State Supreme Court decision. The -- those cases say very clearly that, in Illinois, there is an abundant history that supports the fact that even when a party is aggrieved, the Legislature cannot go back and retroactively change the law for those aggrieved parties. We can move forward prospectively and this side of the aisle would argue that that's what we should be doing here and we should allow for prospective recovery through that workers' comp system. We shouldn't disrupt that system by saying we're going to move a population of people, small population in this instance, but we're going to move that population of people out of the workers' comp system and into the courts. That proposal, again, was dismissed by the Legislature when bantered about over the last few years, because, again, at a bipartisan -- on a bipartisan basis, we came together and said, as flawed as the workers' comp system may be in some people's eyes, it does work well for handling workforce workplace injuries. And again, this proposal suggests that they're going -- that it could -- it will significantly disrupt that and, in doing so, it puts forward something that I believe the courts have already ruled is unconstitutional and a violation of our State and federal due process rights. So for those reasons, I stand in opposition to the bill. Encourage the sponsor to continue to work with us, which we are willing to do, on a solution that can be made within the workers' comp system. Absent that, I'd ask for a No vote on this proposal. Thank you, Madam President.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Crowe, for what purpose do you rise?

SENATOR CROWE:

Thank you, Madam President. Will the sponsor yield?

PRESIDING OFFICER: (SENATOR MARTINEZ)

The sponsor indicates he will.

SENATOR CROWE:

Senator Sims, you stated that it takes thirty to fifty years for a mesothelioma disease to manifest itself. Can you clarify for us, what is the time period for workplace victims to file claims under the Workers' Comp Act?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Under current law, the repose period is twenty-five years. So that's when the -- that's why, under current law, it's so devastating to victims. They're shut out of the possible remedies because they just didn't get sick or die fast enough.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Crowe.

SENATOR CROWE:

Thank you. If I may, what percentage of mesothelioma victims die from their disease?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Unfortunately, Senator, -- a -- mesothelioma diagnosis is fatal. So once you are -- the -- the death rate for mesothelioma is one hundred percent.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Crowe.

SENATOR CROWE:

Thank you.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Holmes, for what purpose do you rise?

SENATOR HOLMES:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR MARTINEZ)

The sponsor indicates he will yield.

SENATOR HOLMES:

Yes. Senator, it -- it -- it has been explained to me, when somebody came to me and they asked me, that you seem to be rushing this bill…

PRESIDING OFFICER: (SENATOR MARTINEZ)

Can we please keep it down in the Chamber? Thank you.

SENATOR HOLMES:

…that you seem to be rushing this bill through, and I just wanted to ask you, what is the reason for the hurry on doing this bill?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

And, Senator, thank you for the question. Thirty, sixty, or ninety days may seem like a short period of time for us, but as I just mentioned, the diagnosis of mesothelioma is a death sentence. So sometimes we are guilty of taking our time for granted, when for those who have been diagnosed with these illnesses, their time is very, very precious. So it's -- for -- for mesothelioma victims, thirty or sixty days may be longer than the -- their life -- their loved one's life expectancy, so I don't take -- we don't -- should not take that for granted.

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PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Holmes.

SENATOR HOLMES:

Yes. And, Senator, did you put an effective date in your bill?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Yes, Senator, we -- we did. Put a -- put an immediate effective date in the bill, because I believe that the General Assembly should act as swiftly as possible. And as we -- this will give us the ability to put -- put into place these changes in the law immediately.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Holmes.

SENATOR HOLMES:

Yes, to the bill. I just want to say that I think this is very important. I'm glad you've had the discussions we've had here. We are addressing what is basically an unfair and arbitrary time frame, and for these victims, this is crucial. So I would urge an Aye vote, please, for the victims' families. Thank you.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any further discussion? Seeing none, Senator Sims, to close.

SENATOR SIMS:

Thank you, Madam President. It's -- again, it's important to know - and I -- I appreciate all of the questions here today - this bill allows us to protect workers who have -- who are currently not protected under the law. This allows us to ensure that we are handling cases the way they were being handled before

the Supreme Court's decision in Folta. If the Workers' Compensation Act, in the words of the court, is a -- the Workers' compensation laws are "humane" laws, we should be ensuring that individuals are given the opportunity to recover for injuries that they have sustained. In Chief Justice -- or in Justice Freeman's dissent, where he relied on several cases, including the unanimous decision of the appellate court, but also a Pennsylvania Supreme Court decision in Tooey versus AK Steel Corporation, he admonished the court for following the twisted logic that would bar the claim because, one, it was unknown at the time of the statute of repose expired and, two, it barred the civil action because of the exclusive remedy provisions of the state's workers' compensation law. This bill is a protection for workers. It is good for our State and I ask for favorable passage.

PRESIDING OFFICER: (SENATOR MARTINEZ)

The question is, shall Senate Bill 1596 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 41 persons voting Aye, 16 voting Nay, 1 voting Present. Senate Bill 1596, having received the required constitutional majority, is declared passed. Senator Sims, you are on a roll. Senate Bill 1610. Senator Sims. Don't sit down. Senator Sims. Senator Sims. You're on a roll. 1610. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 1610.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Well, thank you, Madam President. Senate Bill 1610 amends the Code of -- the Criminal Code to allow a defendant to withdraw their guilty plea within two years of conviction if a judge failed to advise the defendant of a -- that the guilty plea could affect their immigration status. This bill should sound familiar to this Chamber. We passed it out of this Chamber last year, 51 to 0, and our colleagues across the rotunda did not follow suit, but we will continue to work with them. So I ask for -- I ask for a favorable passage and would answer any questions.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any discussion? Senator Righter, for what purpose do you rise?

SENATOR RIGHTER:

Thank you, Madam President. Will the sponsor yield, please?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Sponsor indicate he will.

SENATOR RIGHTER:

Thank you. Senator, I want to make sure -- there has been a little noise in the Chamber, so I want to make sure that I…

PRESIDING OFFICER: (SENATOR MARTINEZ)

Can we please -- can we please keep it down? Thank you.

SENATOR RIGHTER:

You're a jewel, Madam President. Thank you. Senator Sims, I want to make sure that I understand your bill. Your bill, if it were to become law, would allow an individual who is in the country illegally to have their guilty plea withdrawn if the judge did not advise them that their guilty plea could affect their immigration

status. Is that -- is that right?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Senator Righter, under -- again, the -- under current law, judges are -- have been given the instruction to make the admonishment to -- to defendants who come before them. In the vast majority of cases, that's occurring. But there are cases and instances where it has not. And individuals -- we have -- we've seen that individuals have not made these claims or they have not -- they've not -- they've -- they've -- they've accepted pleas without having an indication of how that would -- involve or impact their immigration status. So, this why -- that's why we have this bill in place to allow for individuals to have the full import of the decisions that they make.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Righter.

SENATOR RIGHTER:

Senator, would the -- does the bill also require that, going forward, courts make this admonishment?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

That's already current law, Senator.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Righter.

SENATOR RIGHTER:

So, do you have any idea how many cases we are dealing with, with individuals who entered guilty pleas and then had some kind

of adverse action taken against them because -- because they were in the country in violation of the law? I mean, how many cases are we dealing with, Senator?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

Senator, unfortunately, I don't have that number.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Righter.

SENATOR RIGHTER:

Can -- can you tell me who brought the bill to you and what they said about what -- this is an issue and this is -- this is -- and -- and this is why this is an issue?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

So I -- in talking to members of the Illinois State Bar Association, but also practitioners in immigration law, that's how we -- we got to the -- the bill you have before you.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Righter.

SENATOR RIGHTER:

To the bill, if I might, Madam President.

PRESIDING OFFICER: (SENATOR MARTINEZ)

To the bill.

SENATOR RIGHTER:

Thank you. Thank you, Madam President. Thank you, Senator Sims, for your responses. Ladies and Gentlemen, the issue of if -- of -- of immigration and illegal immigration is a hot-button

topic. The question that you have before you and the question that you will have the opportunity to ask -- answer for your constituents back home is this, is whether or not you voted to unwind two years of guilty pleas because the individual who was pleading guilty, who I'm -- was in the country illegally, suffered some kind of a ramification with regards to their immigration status and was not made aware of it. I stand in respectful opposition to the bill. I do not think that unwinding two years of guilty pleas in this particular context is the appropriate move. Thank you, Madam President.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any further discussion? Senator McClure.

SENATOR McCLURE:

Thank you, Madam President. Will the sponsor yield?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Sponsor indicate he does.

SENATOR McCLURE:

Senator, we had a discussion about this and I -- I actually had some of the concerns that Senator Righter had about this very issue. But, in fact, is it not true that these guilty pleas can be overturned right now based on the -- not getting that admonition, except for the fact that they can do that in an unlimited way?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Sims.

SENATOR SIMS:

And, Senator, you're -- you're -- you're speaking specifically to whether or not you -- you have a -- there's a habeas corpus action that's -- that's instituted, which that could

be done ad infinitum. But this provides certainty to -- to this process. So we are limiting -- limiting it to two years - again, providing certainty to the process.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator McClure.

SENATOR McCLURE:

And so, you know, whether this passes or not, that can still go on an unlimited basis, withdrawing a guilty plea for -- for not getting this admonishment. And so, therefore, that was cleared up to me in committee yesterday and so I would urge my colleagues to vote Yes for this bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any further discussion? Seeing none, Senator Sims, to close.

SENATOR SIMS:

Thank you -- thank you, Madam President and Ladies and Gentlemen of the Senate. Again, this is -- this is a bill that we're -- we're trying to bring -- bring clarity to our process and with -- with -- doing this, we will -- we will do that. So I -- I appreciate the -- the comments. I appreciate the discussion. And I ask for a favorable roll call.

PRESIDING OFFICER: (SENATOR MARTINEZ)

The question is, shall Senate Bill 1610 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 44 Members voting Aye, 14 voting Nay, 0 voting Present. This bill, 16 -- Senate Bill 1610, having received the -- the required constitution -- constitutional majority, is declared passed. The Senate will stand at ease for one moment. Senator McClure is going to be here

at the podium welcoming a group that is here visiting the Capitol.

SENATOR McCLURE:

Thank you, everyone. I would like to welcome the Grant Generals, the 2019 Grant Middle School Boys Basketball IESA 4A State Champions from right here in Springfield. And I have to say that not only are these young men great athletes, but they also are getting a great education, because I'm -- Grant Middle School is my alma mater. So please join me welcoming these boys and their coaches.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Ladies and Gentlemen, we're moving to 3rd Reading. This -- page 4, the top of the page. Senate Bill 10. Senator Manar, are you ready? Moving on, Senator Morrison, on Senate Bill 21. Senator Castro, on Senate Bill 62. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 62.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Castro.

SENATOR CASTRO:

Thank you, Madam President. Senate Bill 62 corrects inconsistent language concerning the effect of an automatic stay under the Bankruptcy Code on a mechanics lien, in respects to the demand and referral program to resolve -- the expired mechanics lien. Senate Bill 61 -- 62 is a trailer to House Bill 5201. It's an initiative of the Illinois State Bar Association. I open it to questions.

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PRESIDING OFFICER: (SENATOR MARTINEZ)

Is there any discussion? Seeing none, the question is, shall -- shall Senate Bill 62 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 62, having received the required constitutional majority, is declared passed. Skipping over 72. How about Senate Bill 83? Senator Holmes. Senator Stadelman, on Senate Bill 87. Senator Weaver, on Senate Bill 91. Senator Link, on Senate Bill 110. Senator Manar, on Senate Bill 115. Senator Barickman, on Senate Bill 117. Moving back to Senate Bill 110. Senator Link, are you ready to proceed? Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 110.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Link.

SENATOR LINK:

Thank you, Madam President. This bill that -- we passed out of here prior -- in the last Session 52 to nothing. It extends the disabled veterans standard homestead exemption to all surviving spouses of qualified disabled veterans or veterans killed in the line of duty. We were able to pass this for the veterans and I think it's extremely important that we pass it for the surviving spouses.

PRESIDING OFFICER: (SENATOR MARTINEZ)

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Any discussion? Seeing none, the question is, shall Senate Bill 110 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 110, having received the required constitutional majority, is declared passed. Senator Tracy, on Senate Bill 131. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 131.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Tracy.

SENATOR TRACY:

Thank you. What this does is amend the Animal Control Act. It passed unanimously, I believe, out of this Chamber last year. It did not have such success in the House and so that's why I bring it forth again. Basically, domestic house cats will be required to be inoculated for rabies, much as we do dogs. And likewise, there's a -- a provision of how we would do feral cats if they're brought in to be inoculated, but it is not mandatory that feral cats or farm cats are part of the inoculation unless they're brought in by somebody to be inoculated. So I would ask for an Aye vote. If you have any questions, I'll be glad to answer them.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any further discussion? Senator Peters, for what purpose do you rise?

SENATOR PETERS:

This is on 1 -- SB 110? I just intended to vote Yes, so…

PRESIDING OFFICER: (SENATOR MARTINEZ)

Can we please put that in the record? Senate Bill 110 be -- Senator Peters was going to vote Yes. Any further discussion on Senate Bill 131? Seeing none, the question is, shall Senate Bill 131 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 59 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 131, having received the required constitutional majority, is declared passed. Going back to the order, we're going to go to Senate Bill 91. Senator Weaver, for what purpose do you rise?

SENATOR WEAVER:

I'd like to present the bill, please. Thank you.

PRESIDING OFFICER: (SENATOR MARTINEZ)

…please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 91.

(Secretary reads title of bill)

3rd Reading of the bill.

SENATOR WEAVER:

This…

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator -- Senator Weaver.

SENATOR WEAVER:

Thank you, Madam Chairperson {sic}. This is a -- was an agreed bill. What it does is it amends the Illinois Income Tax Act. And there's a checkoff system that exists. What this does

is add Ronald McDonald House as one of the checkoffs on to this. Does not cost the State any money. And of course, they're a great cause. I would request an Aye vote and thank Senator Koehler for joining me on this one.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any further discussion? Seeing none, the question is, shall Senate Bill 91 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 56 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 91, having received the required constitutional majority, is declared passed. Moving forward to, Senator Weaver, 156. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 156.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Weaver.

SENATOR WEAVER:

Thank you, Madam Chairwoman.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Madam -- it's -- it…

SENATOR WEAVER:

Yes.

PRESIDING OFFICER: (SENATOR MARTINEZ)

It's Madam President.

SENATOR WEAVER:

Madam President.

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PRESIDING OFFICER: (SENATOR MARTINEZ)

Madam President.

SENATOR WEAVER:

Thank you.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Thank you.

SENATOR WEAVER:

It's a good chance to correct me. I appreciate it. Yeah, I'm really excited about this bill. What it does is it allows inmates, as they're getting ready to re-enter population, access to computers on limited sites. And I ran into this out of the City of Peoria. I was contacted by the re-entry facility there. And here are these guys that can -- want -- want to go get jobs, but they don't have the ability to get on computers to go get those jobs. And today, with today's technology, applications are done online, as well as the search for the job. This was an agreed bill. There's no opposition. Request an Aye vote.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any further discussion? Seeing none, the question is, shall Senate Bill 156 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 59 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 156, having received the required constitutional majority, is declared passed. Moving to the top of page 5. Senate Bill 158. Senator Barickman. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 158.

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(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Barickman.

SENATOR BARICKMAN:

Thank you, Madam President. This is an initiative of the Illinois County Treasurers' Association. Makes amendments to the Property Tax Code. The changes generally seek to address situations where unpaid property taxes on property that contain hazardous substances or underground -- underground storage tanks are caught up in a cycle, where they're sold and re-sold through multiple tax sale cycles. I -- there's no opposition to it. I'd ask for an Aye vote.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any discussion? Seeing none, the question is, shall Senate Bill 158 pass. All those in favor, vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 158, having received the required constitutional majority, is declared passed. Senator Anderson, on Senate Bill 167. Senator Mulroe, on -- we'll go right back. Senator Anderson, are you ready to proceed? Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 167.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Anderson.

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SENATOR ANDERSON:

Thank you, Madam President. Senate Bill 167 is a technical change, talking about teledoc services for dentists and -- and hygienists. I know of no opposition and I would ask for an Aye vote.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any discussion? Seeing none, the question is, shall Senate Bill 167 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, we have 59 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 167, having received the required constitutional majority, is declared passed. Senator Mulroe, on Senate Bill 181. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 181.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Mulroe.

SENATOR MULROE:

Thank you, Madam President, Members of the -- the Body. This bill, it -- it actually clarifies and just cleans up some -- some wording related to summer -- supplementary proceedings, changing that term to actually citation {sic} (citations) to discover assets, which is in practice what it's actually called. I'd ask for your support.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any discussion? Seeing none, the question is, shall Senate

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Bill 181 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 59 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 181, having received the required constitutional majority, is declared passed. Senator Lightford, on Senate Bill 185. Senator Lightford. Senator Fine, on Senate Bill 191. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 191.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Fine, on your first bill in the Senate. Senator Fine.

SENATOR FINE:

First bill in the Senate, where it's much more dignified. Thank you, Madam President. This legislation closes a gap; that parents don't have to give up custody of their child in order for them to be eligible for Family Support Program services or an Individual Care Grant. This way parents will not lose custody of their child in order to provide them with proper mental health treatment.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any discussion? Seeing none, the question is, shall Senate Bill 191 pass. All those in favor, vote Aye. Okay, let's -- late lights. I'm going to go ahead and take it. Senator Bush, what purpose do you rise?

SENATOR BUSH:

Point of personal privilege.

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PRESIDING OFFICER: (SENATOR MARTINEZ)

Please state your business.

SENATOR BUSH:

Since we're not going to rake you over the coals, I'd just like to welcome you to the Senate. Congratulations on your first bill here. You're a wonderful addition and look forward to working with you for many years. Thanks so much.

PRESIDING OFFICER: (SENATOR MARTINEZ)

All right. Thank you very much for that, Senator Bush. The question is, shall Senate -- Senate Bill 191 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 191, having received the required constitutional majority, is declared passed. Senator Lightford, do -- do you wish to go back to 185? Thank you. Senator Hastings, on Senate Bill 195. Senator Bertino-Tarrant, on Senate Bill 209. Senator Murphy, on Senate Bill 220. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 220.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Murphy.

SENATOR MURPHY:

Thank you, Madam President. Senate Bill 220 is -- it's really a simple bill that just requires that condominium owners are notified of -- receive prior notice before fines are enacted. It

has nothing to do with their assessments. Assessments would continue on the regular schedule, but if someone is assessed a fine, that they would have to be notified before any collection activity occurs. So I know of no opposition. I ask for an Aye vote.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any discussion? Senator Rose, for what purpose do you rise? Senator Righter, for what purpose do you rise?

SENATOR RIGHTER:

Thank you, Madam President. Will the sponsor briefly yield?

PRESIDING OFFICER: (SENATOR MARTINEZ)

The sponsor indicates she will.

SENATOR RIGHTER:

Senator Murphy, I want to thank you for taking the time to come over and talk to me a little bit about this bill yesterday. Just to be clear, this would apply to contested fines. In other words, if the -- if the individual is made aware of a violation and is, like, "You're right. I'm going to pay the fine", that -- then the hearing requirement is not triggered. Is that -- is that accurate?

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Murphy.

SENATOR MURPHY:

…a condo owner could pay a fine at any point in time.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any further discussion? Seeing none, the question is, shall -- shall Senate Bill 220 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the

record. On that question, there are 58 Members voting Aye, 1 voting Present, 0 voting Nay. Senate Bill 220, having received the required constitutional majority, is declared passed. Senator Fine, on -- Senator Rose, what purpose do you rise?

SENATOR ROSE:

Thank you, Madam President. Ladies and Gentlemen, I'd like to recognize in the Democrat side in the gallery many of our motorcyclist friends from A.B.A.T.E. They're down here today from all over Illinois, but that group contains quite a few of my constituents and if we could welcome 'em to Springfield. And I hope they enjoy their time while they're here.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Thank you for visiting the Senate. Welcome. Moving on. Senate Bill 20 -- I mean, I'm sorry, Senate Bill 246. Senator Fine. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 246.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senator Fine.

SENATOR FINE:

Thank you, Madam President. Prices for commodities like fuel often fluctuate from week to week and sometimes even day to day. The bid process requires a minimum of ten days and sometimes longer. This legislation is an initiative of the Park Districts and they would like to relieve themselves of the bidding process so that they can bid on fuel and purchase fuel when the prices are low. They're afraid that if they have to wait the ten days, those

prices can go up and it's very hard to bid. There are other items that do not have to follow the bidding process, things like telephone service, telecommunications, and they'd like to add fuel in that process so they can have that flexibility to purchase when the prices are low.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Any discussion? Seeing none, the question is, shall Senate Bill 246 pass. All those in favor will vote Aye. Opposed, Nay. The voting is now open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 58 Members voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 246, having received the required constitutional majority, is declared passed. Hi. We would like to return back to the Supplemental Calendar No. 1. In the middle of the page, we're going to go back to Senator Morrison on Senate Bill 1387. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 1387.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

PRESIDING OFFICER: (SENATOR MARTINEZ)

3rd Reading. Senator Lightford, on Senate Bill 1524. Mr. Secretary, please read the bill.

ACTING SECRETARY KAISER:

Senate Bill 1524.

(Secretary reads title of bill)

2nd Reading of the bill. No committee or Floor amendments reported.

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3rd Reading. The Senate will stand in recess to the call of the Chair. After committee, the Senate will reconvene for further Floor action that does not require any votes. The Senate stands in recess.

(SENATE STANDS IN RECESS/SENATE RECONVENES)

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senate will come to order. Mr. Secretary, Resolutions.

SECRETARY ANDERSON:

Senate Resolutions 197 and 198, offered by Senator Bennett and all Members.

They are both death resolutions, Madam President.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Resolution Consent Calendar.

SECRETARY ANDERSON:

Senate Resolution 199, offered by Senator Koehler.

And Senate Joint Resolution 33, offered by Senator Rezin.

They are both substantive.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Mr. Secretary, Committee Reports.

SECRETARY ANDERSON:

Senator Hastings, Chairperson of the Committee on Executive, reports Senate Bills 2 through 6, Senate Bill 11, Senate Bill 12, Senate Bill 14 through 17, Senate Bill 19, Senate Bill 20, Senate Bill 39, Senate Bills 359 through 784 and Senate Bills 785 through 1105, Senate Bill 1558, Senate Bill 1784, Senate Bill 1827, Senate Bill 1863, and Senate Bill 1917 Do Pass.

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Senator Jones, Chairperson of the Committee on Licensed Activities, reports Senate Bill 1684 Do Pass.

Senator Landek, Chairperson of the Committee on State Government, reports Senate Bills 175, 1339, 1480, 1639, and 1902 Do Pass; Senate Bills 1918 and 2142 Do Pass, as Amended.

Senator Harris, Chairperson of the Committee on Insurance, reports Senate Bill 1557 Do Pass; and Senate Bills 111, 174, and 1377 Do Pass, as Amended.

Senator Hutchinson, Chairperson of the Committee on Revenue, reports Senate Bills 1240, 1456, 1548, 1579, 1689, 1755, 1800, and 1858 Do Pass; Senate Bills 119 and 1379 Do Pass, as Amended; Senate Amendment 1 to Senate Bill 1257 Recommend Do Adopt.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Mr. Secretary, 1st -- Senate Bill 1st Reading.

SECRETARY ANDERSON:

Senate Bill 2239, offered by President Cullerton.

(Secretary reads title of bill)

1st Reading of the bill.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Senate -- Senate Calendar, Supplemental Calendar 3 -- 2 has been distributed. We are going to second page, Senate Bill 2142. Senator Villivalam. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 2142.

(Secretary reads title of bill)

2nd Reading of the bill. The Committee on State Government adopted Amendment No. 1.

PRESIDING OFFICER: (SENATOR MARTINEZ)

Have there been any Floor amendments approved for

consideration?

SECRETARY ANDERSON:

No further amendments reported.

PRESIDING OFFICER: (SENATOR MARTINEZ)

3rd Reading. There being no further business to come before the Senate, the Senate stands adjourned until the hour of 12 noon on the -- on the 7th day of March 2019. The Senate stands adjourned.

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Speaker Turner: "Members are asked to be at their seats. We shall be led in prayer today by Pastor Dustin Leek, who is with the First Christian Church of West Salem. Pastor Leek is the guest of Representative Bailey. Members and guests are asked to refrain from starting their laptops, turn off all cell phones, and rise for the invocation and Pledge of Allegiance."

Pastor Leek: "Will you join me in prayer please? Our kind and gracious heavenly Father, it is a privilege to stand here today and offer prayer and petition on behalf of those seated in this room, those who have been elected by the people they serve. It's not an easy job that they've undertaken. And today I pray for guidance and wisdom and all those talking about in making decisions that affect the citizen of this state. I pray in the midst of disagreement that unity can be found. There is much chaos and pain in this world and I pray for peace and understanding as they simply continue to vote on issues relating to social, financial, education, and decisions that affect people lives. Send your spirit to guide them as they strive to make the best decisions that they can. I pray this morning that party lines would be forgotten and the decisions that are made be the best decisions for the people in Illinois. I pray for egos and personal agendas be put aside. And this place be filled with wisdom, understanding, and productive communication. I also pray for strength upon all those who are tasked with a job of representing the people. Give them strength to endure the ridicule, strength to a stand the weight of their decisions, and strength to continue to do the work they've being called to do. As I stand here today as a Pastor, as a father, as a

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husband, and a invested of a citizen in this great state, I pray for all the families that are represented here and all the other families that call this place home. I pray that we support our leaders in prayer as citizens and do our best to find the good in our fellow man in the way we talk, act, and live. Today as important business is carried out in this place, I pray for wisdom, I pray for unity, strength, and respect to fill the hearts and minds of those tasked with the duty of leading. And I ask all this my personal savior Jesus' name, Amen."

Speaker Turner: "We shall be led in the Pledge of Allegiance today by Representative Zalewski."

Zalewski - et al: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all."

Speaker Turner: "Roll Call for Attendance. Leader Harris is recognized."

Harris: "Mr. Speaker, let the record reflect that Representatives Burke and William are excused today."

Speaker Turner: "Representative Butler is recognized."

Butler: "Thank you, Mr. Speaker. Please let the Journal reflect that Representatives Bennett, Mazzochi, and Severin are excused today."

Speaker Turner: "With 112 Members present, a quorum is established. Mr. Clerk, Committee Reports."

Clerk Hollman: "Committee Reports. Representative Scherer, Chairperson from the Committee on Elementary & Secondary Education: Administration, Licensing & Charter School reports

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the following committee action taken on March 13, 2019: do pass Short Debate is House Bill 2932, House Bill 3053, House Bill 3363. Representative Evans, Chairperson from the Committee on Labor & Commerce reports the following committee action taken on March 13, 2019: do pass Short Debate is House Bill 2275, House Bill 2722, House Bill 3088, House Bill 3405; do pass as amended Short Debate is House Bill 2215; recommends be adopted is House Resolution 72. Representative Kifowit, Chairperson from the Committee on State Government Administration reports the following committee action taken on March 13, 2019: do pass Short Debate is House Bill 1565, House Bill 2399, House Bill 2786, House Bill 2837, House Bill 2940, House Bill 3084, House Bill 3147, House Bill 3555; do pass as amended Short Debate is House Bill 210, House Bill 313; recommends be adopted as amended is House Joint Resolution 7. Representative Harper, Chairperson from the Committee on Economic Opportunity & Equity reports the following committee action taken on March 13, 2019: do pass Short Debate is House Bill 2156; recommends be adopted is Floor Amendment #2 to House Bill 905. Representative Ammons, Chairperson from the Committee on Higher Education reports the following committee action taken on March 13, 2019: do pass Short Debate is House Bill 2237, House Bill 2239. Representative Zalewski, Chairperson from the Committee on Revenue & Finance reports the following committee action taken on March 14, 2019: do pass Short Debate is House Bill 3198; do pass as amended Short Debate is House Bill 1466, House Bill 2682. Representative Yingling, Chairperson from the Committee on Counties & Townships reports the following

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committee action taken on March 14, 2019: do pass Short Debate is House Bill 2525, House Bill 3141. Representative Martwick, Chairperson from the Committee on Personnel & Pensions reports the following committee action taken on March 14, 2019: do pass Short Debate is House Bill 3213; do pass as amended Short Debate is House Bill 2502. Representative Conroy, Chairperson from the Committee on Mental Health reports the following committee action taken on March 14, 2019: do pass Short Debate is House Bill 2845. Representative Conyears-Ervin, Chairperson from the Committee on Child Care Accessibility & Early Childhood Education reports the following committee action taken on March 14, 2019: do pass Short Debate is House Bill 3495, House Bill 3631. Introduction of Resolutions. House Resolutions 191, offered by Leader Durkin. This is referred to the Rules Committee."

Speaker Turner: "Members on page 15 of the Calendar, under Senate Bills on Second Reading, we have Senate Bill 1596, offered by Representative Hoffman. Mr. Clerk, please read the Bill."

Clerk Hollman: "Senate Bill 1596, a Bill for an Act concerning employment. This Bill was read a second time previous day. No Committee Amendments. No Floors Amendments. A judicial note has been requested by the Sponsor, but has not been filed at this time."

Speaker Turner: "Representative Hoffman"

Hoffman: "I would withdraw that note."

Speaker Turner: "Mr. Clerk, Representative Hoffman moves to withdraw the judicial note."

Clerk Hollman: "No further notes."

Speaker Turner: "Third Reading. Mr. Clerk, Senate Bill 1596."

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Clerk Hollman: "Senate Bill 1596, a Bill for an Act concerning employment. Third Reading of this Senate Bill."

Speaker Turner: "Representative Hoffman"

Hoffman: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. Senate Bill 1596 is an initiative that would ensure that individuals who are affected by diseases such as mesothelioma would actually be adequately compensated. Prior to November 2015, when the Supreme Court ruled in a case of *Folta v. Ferra Engineering* where they actually took away the right to be compensated. We were able to after what is called the statute of repose of 25 years to be adequately compensated if they contacted the late disease after the 25 year statute to repose. As you may or may not know, the disease of mesothelioma and some other diseases actually don't manifest themselves until 30 to 50 years many times after they have been contacted… contracted and you have been exposed. Therefore, the effect of the Folta decision was essentially to deny the ability of individuals who were going to be essentially have a death sentence with regards to contacting… contracting mesothelioma and they would not be able to receive that compensation from their employers. I believe that's very clear in the dicta and in the opinion of the Supreme Court that they wanted the Legislature to correct this injustice. They specifically said, in their opinion, we are cognizant of the harsh result of this case. Nevertheless, ultimately, whether a different balance should be struck under the acts given the nature of the injury and the current medical knowledge about asbestos exposure is a question more appropriately addressed to the Legislature. What this Bill

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simply would do is essentially bring us back to the way the law was and the way the courts interpreted common law prior to this 2015 decision. I believe that it is a Bill that is… that provides equity, provides justice to people who contract some of these terrible diseases through no fault of their own. And I ask for 'aye' vote."

Speaker Turner: "For further discussion, the Chair recognizes Representative McDermed."

McDermed: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "Sponsor indicates that he will yield."

McDermed: "This Bill is fast tracked, isn't it Representative? Didn't it just come out the Senate this week?"

Hoffman: "It came out the Senate this week and we are calling it… last week, and we are calling it this week in the Illinois House of Representatives, yes."

McDermed: "And isn't it true that of all work comp Bills that we have here in the 101st in the House, this is the only one not in Labor, but for some reason fast tracked through Jud-Civ?"

Hoffman: "I can just say this, okay. So if you were to contract mesothelioma…"

McDermed: "It's a 'yes' or 'no' question."

Hoffman: "If you we're to contact mesothelioma…"

McDermed: "It's a 'yes' or 'no' question."

Hoffman: "It is not a 'yes' or 'no' question. It is not a 'yes' or 'no' question."

McDermed: "Isn't it the only work comp Bill in Jud-Civ?"

Hoffman: "I don't know that. This did go through the Judicial-Civil."

McDermed: "Is the effective date of this Bill immediate?"

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Hoffman: "Yes, it is and it should be".

McDermed: "Does that mean that we need 71 votes?"

Hoffman: "No."

McDermed: "Why not?"

Hoffman: "Because you don't. It's called Constitution, and you only need 60 votes."

McDermed: "If it's going to be effective immediately?"

Hoffman: "I don't know what kind of Constitution you're reading Representative, but the constitution of the State of Illinois says it takes 60 votes."

McDermed: "Okay. Do you practice in the work comp area, Representative?"

Hoffman: "No, I don't."

McDermed: "Thank you. How long has the work comp… the worker's compensation structure in the State of Illinois been in effect? And by worker's compensation structure I mean the balance… the agreement that labor and management, business owners have had in place, whereby, owners are strictly liable for injuries to workers. How long has that structure been in place?"

Hoffman: "Well, I can say that I believe that this specific statute was passed that this effects in 1936 according to testimony yesterday; however, sometime I believe in the mid-70s or early 70s the current workers' compensation construct was passed. It was under Governor Walker. So, whenever that was."

McDermed: "So, for approaching a century workers and management, workers and business owners in the State of Illinois have operated under a structure, whereby, employers were strictly

liable, and workers could look to owners to compensate them when they were injured on this job in this way."

Hoffman: "No, it's my understanding that our current workers' compensation system where there was strict liability, limits of recovery for work related injuries was passed in the 70s."

McDermed: "Okay. Long enough for people to have relied on it and plan and purchased insurance accordingly. What your Bill in effect does is take this certain type of injury out of the worker's comp structure and put into the Illinois tort liability court arena, is that correct?"

Hoffman: "That is not correct."

McDermed: "Aren't you removing certain types of injuries from coverage and adjudication under the workers' comp structure?"

Hoffman: "This Bill does not remove these types of injures from the workers' comp structure. What it does is it says, if you have a latent disease it does not manifest itself until 25 years after you have been exposed or till after the current statute of repose that you then could go to civil court, yet the current statute of limitation will still apply."

McDermed: "So it is being removed. And isn't it true that…"

Hoffman: "It is not being removed. It is not being removed."

McDermed: "It is not being decided under the workers' compensation structure that employers and employees were entitled to rely on…"

Hoffman: "If within…"

McDermed: "…for the course of the employment…"

Hoffman: "If within the 25 years you discover that you have one of these types of cases, such as Mesothelioma, and it is discovered within the 25-year statute of repose currently, it

would then go before the worker's compensation structure that currently exists."

McDermed: "But the particular kind of cases that we're dealing with here are being move removed from the structure. So, let me ask you this question. We're talking about mesothelioma which is, as of the day were speaking here right now, the only latent disease of which we are currently aware that develops so slowly, but yet, the Bill removes… it doesn't actually limit itself to mesothelioma. It's covering any kind of disease that will reveal itself over time… over a long period of time. Isn't that correct?"

Hoffman: "Currently, I believe, that mesothelioma is basically the disease that we are targeting. However, that is correct."

McDermed: "However, the folks who have prepared this Bill, in other words the Illinois Trial Lawyers, have not seen fit to limit to the one and only condition that we know develop latently like this, but have tried to open it up to as many conditions as they fertile imaginations can create in the future. Isn't that true?"

Hoffman: "Well, I would say that if you're exposed to some of these asbestos or you're exposed to benzene, or you're exposed to radioactive waste, or you're exposed to whatever else is going to be put forward and spewed forward by businesses in the future and that disease lays dormant for over 25 years, you should be able to recover even though… even though it doesn't manifest itself until after 25 years."

McDermed: "And isn't that what the worker's compensation structure is for to deal with any injuries that workers should sustain during their time? And wouldn't a better fix… a fix that

workers and business owners have been relying on for decades, in other words the worker's compensation structure, isn't… wouldn't it be more appropriate to work to amend and fix that structure instead of opening up the entire Illinois tort system to these claims?"

Hoffman: "I would just say that it is my belief that this Bill would bring us back to the way it was under common law prior to November 2015, under the Folta Supreme Court decision."

McDermed: "I have one last question. Isn't it true that this gentleman in particular that was the subject of the case and persons injured by mesothelioma in general recover from more than one person? And isn't true that in this case the gentleman had issue had already recovered from 14 people and is looking to recover from the 15th?"

Hoffman: "I have absolutely, absolutely no idea whether that is the truth. Would there be other defendants? May have this individual… it actually wasn't the individual, just so you know, because Mr. Folta died and he died of mesothelioma. And, Representative, if you don't know anything about asbestos exposure that eventually results in the diagnosis of mesothelioma 100, I'm going to repeat this 100 percent of the individuals who contract mesothelioma die. So this action this action…"

McDermed: "There's no argument about…"

Hoffman: "…this action was not on behalf of Mr. Folta is was brought on behalf of the spouse who was the widow, the widow of Mr. Folta. Now, if you want to deny her recovery and maybe his kid's recovery then vote 'no'. Fine, fine, fine."

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McDermed: "The issue isn't whether there's recovery or there isn't recovery, the issue is whether there is recovery under the tort system, opening up the tort system to claims against employers or whether the worker's compensation structure in the State of Illinois needs to be reformed, which everyone who pays attention to this knows is ripe for reform for many years. To the Bill. And I'd like to move this off of Short Debate, Mr. Chairman."

Speaker Turner: "There's currently no timer, Representative."

McDermed: "I didn't hear you, what?"

Speaker Turner: "There is currently no timer."

McDermed: "Thank you. To the Bill. No one with a heart, no one who's elected to represent their districts here in the Illinois House would argue that someone who suffers injury at work shouldn't be completely compensated. The issue here is not that, the issue is the ability of workers and employers in the State of Illinois to be able to rely on the worker's compensation structure that we have created as they have for decades. To open up the worker's compensation structure and make these type of disputes subject to the tort laws of the State of Illinois is a trial lawyers full employment act, it's one more stake in the heart of business in the State of Illinois, which is just about dead due to the results of the actions of this General Assembly. I would very much urge you to vote 'no'. And let's do what we should have done, what the Illinois Supreme Court told us to do, which is to reform the Worker's Compensation Act and not throw it by the wayside. Thank you. Vote 'no'."

Speaker Turner: "Chair recognizes, Representative Thapedi."

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Thapedi: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "Sponsor indicates that he will yield."

Thapedi: "Leader Hoffman, would you please describe, to the Members of this Body, what happens to a person when they develop mesothelioma?"

Hoffman: "The average life expectancy of an individual who has develop mesothelioma is nine months. And I can tell you having known individuals who have died from this awful disease, it is a very painful, very difficult death."

Thapedi: "And you were asked a question specifically about why this particular Bill was in the Judiciary-Committee rather than the Labor Committee. Do you recall that?"

Hoffman: "Yes."

Thapedi: "But at issue is a Supreme Court decision, correct?"

Hoffman: "That's correct."

Thapedi: "That that's what brought about this Bill. This Bill was brought about specifically because of a 2015 Supreme Court decision that specifically encourage the Legislature to act, and to act immediately, correct?"

Hoffman: "That is correct."

Thapedi: "So, let me walk through the case just to make sure that we're all on the same page with respect to the court's reasoning and how we came to this particular point. It was a 4-2 decision, correct?"

Hoffman: "That's my understanding, yes."

Thapedi: "And at issue was a man who died after being exposed to asbestos at work and developed mesothelioma. The catch is that he did not discover that he had been exposed to asbestos until 41 years after the last exposure, correct?"

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Hoffman: "Yes."

Thapedi: "And then there's no dispute that this was a work related injury, correct?"

Hoffman: "There is no dispute that it happened at work."

Thapedi: "And so, then question then becomes, how can this man and this family receive a right for their wrong, correct?"

Hoffman: "Receive compensation for the wrong. That is correct."

Thapedi: "Absolutely. And so he decided to file suit, right?"

Hoffman: "I believe… I'm not sure if he initiated the suit…"

Thapedi: "Well he…"

Hoffman: "…or his… his survivor spouse."

Thapedi: "It's my understanding from reading the case that he initiated the suit and during the course of litigation he passed away."

Hoffman: "Yes, that is correct. That is correct."

Thapedi: "All right, fair enough. And so because this is a work related injury this Body has already determined, dating back to 1936, that his soul exclusive remedy, again his soul exclusive remedy is under the Workers' Compensation Act and under the Workers' Occupational Diseases Act, correct?"

Hoffman: "Yes."

Thapedi: "All right. And so, then here's the catch again. The statutes of repose for both of those Acts, and I'm referring to the Workers' Compensation Act and Workers' Occupation Disease Act, is 25 years from the date of the last exposure, correct?"

Hoffman: "Yes."

Thapedi: "And that's where I think that we kind of missed the boat yesterday that people were not understanding the concept

and the dynamics of what a statute of repose is. A statute of repose is an absolute unequivocal bar, correct?"

Hoffman: "It totally bars your ability to recover."

Thapedi: "Right. So when we talk about the statute of limitations that's the time period in which you have to initiate the lawsuit, but the statute of repose is the end all be all, if it doesn't get done, if it doesn't get filed within that time period, you are out of luck, correct?"

Hoffman: "Yes. And that was… that was the court's ruling in the Folta decision."

Thapedi: "Exactly. So according to the court this man and his family was barred from recovery under those two Acts because the 25-year period had elapsed because, in fact, he hadn't found out that he had been exposed to asbestos for 41 years after exposure, correct?"

Hoffman: "Hence the injustice of the decision."

Thapedi: "Exactly. But in the injustice in the decision, Justice Theis, also, as you quoted at the beginning, was very specific and you talked about what she said in her opinion, but I want to focus in on one line in particular that she said, and she said, 'It is the province of the Legislature to draw the appropriate balance.' Correct?"

Hoffman: "Yes, that's what she said in her opinion."

Thapedi: "And that what we're doing here today?"

Hoffman: "That's my opinion. Obviously some folks who like to applaud against people receiving justice on the other side of the aisle did not share your opinion and mine, Representative."

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Thapedi: "Well, it's just not my opinion or your opinion, this is the opinion of the Illinois Supreme Court. That the Illinois Supreme Court didn't write that language for kicks and giggles. They wrote that language because in terms of strict statutory construction they followed the law. They recognized it was an extremely harsh result and they implored us to act, correct?"

Hoffman: "Which, under the previous administration, we didn't believe we could act, because of the political bent or the philosophical bent of the previous of administration. But now we believe we can write this injustice, and we are actually doing what the Supreme Court requested us to do, a legislative fix."

Thapedi: "And that's what we're doing. And there was one other issue that arose during committee yesterday that, quite frankly, had me scratching my head and several other Members on the committee scratching their head, a potential allegation that this can somehow be special legislation. Do you recall that?"

Hoffman: "I do."

Thapedi: "What is your response to that?"

Hoffman: "It certainly is not. This legislation is legislation that's going to allow individuals, who are all in the same boat, who have been… have contracted some type or been in contact with some type or either asbestos or some other type of whether it's benzene or some other type of chemical, and after 25 years, they then discover that they have some type of terrible disease. It's not special legislation, it applies

across the board, and it is general legislation to everyone who fits that fact pattern."

Thapedi: "And thank you for that clarification, because I could not understand exactly the basis for that argument. The final point I want to make on this, Representative Hoffman… Leader Hoffman, is that has anyone from the defense bar… has anyone who generally represents companies that are involved in asbestos litigation come to you with a proper solution that would fall in line with the directives of the Illinois Supreme Court?"

Hoffman: "No, not at all. The only… the only, I guess, request or only ideas that put forward would actually deny the ability of these individuals that actually receive just compensation. They would say we would should extend the statute of repose, which you know would essentially deny these folks the ability to receive just compensation because of the concept of vested rights of an extinguish liability, and it's a trap. When they bring forward that type of idea, they actually are trapping us into denying those folks adequate compensation."

Thapedi: "Let me explore that a little bit more. If I'm understanding correctly what the proposal is from the defense bar, if you will, and again most of the defense bar folks know me because I was a defense lawyer for many, many years, in fact defending asbestos cases, but what right is what right. So having said that, what they propose as far as extending the statute of repose, what does that do for people that are currently in the hopper with respect to potential causes of action? Does that help them or does it not provide any support whatsoever?"

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Hoffman: "It would absolutely bar their ability to recover after the 25 years."

Thapedi: "Explain that. Because again, I think that we know, based upon what we heard in committee yesterday that there's going to be more litigation. We know that, so we want to be extremely clear of what we're doing today. And that is responding to the directives of the Illinois Supreme Court to address this very important issue when the Supreme Court… and I know that I'm repeating myself, but I think that I should… the Supreme Court has encouraged us to engage on this issue and make a legislative change now."

Hoffman: "So, the repose period is 25 years currently. That's why this is so devastating to victims. They're shut out from any possible remedies under the current law. A hundred percent of mesothelioma victims pass away, they die of the disease. I indicated to that. And the current status of the law would slams the door of justice to these victims. If you then were to simply extended the statute of repose as they would suggest… as the defense bar would suggest that would indicate they would then bring to defense and indicate that vested right of an extinguished liability has taken place and it can't be revived. It would essentially slam the door of anyone who is currently in the system."

Thapedi: "Thank you, Mr. Speaker. To the Bill. Very briefly, I think Leader Hoffman has laid out the case that we're doing exactly what the Illinois Supreme Court has asked us to do. I don't know how much more clear they could've been in their opinion. It's there, Leader Hoffman read it. I have repeated it. The Illinois Supreme Court has said that its hands were

tied. Its hand were tied, Mr. Speaker, because it was a situation in a scenario in which this Body specially imposed a 25-year statute of repose. The Supreme Court knew it was wrong, we're fixing it today. And I ask for and 'aye' vote."

Speaker Turner: "Chair recognizes Representative Evans."

Evans: "Thank you, Mr. Speaker. Will the Sponsor yield for two questions?"

Speaker Turner: "Sponsor indicates they will yield."

Evans: "Thank you, Mr. Speaker. Sponsor, how long… I really want to speak on the human element, you know. Representative Thapedi has covered the legalese, but the people of Illinois need to understand how important it is for the everyday individual, practically when it come to a disease as life threatening as mesothelioma. My first question is, how long does it take mesothelioma to manifest in a victim? Because you covered it, but I want to make sure, it's crystal clear. How long does it take?"

Hoffman: "It would be… it takes 30 to 50 years for generally the disease to manifest itself."

Evans: "Many years. And second question is, what is the time period for workplace victims to file claim under the Work Comp Act, our current Work Comp Act?"

Hoffman: "Currently, under current law and under the Folta decision the repose period is 25 years. That's why this is so devastating to victims, they're essentially shut out of possible awards, and that's why we need this Bill."

Evans: "And right now you're talking to me, I'm a cancer survivor, but I did not have mesothelioma. So the question is what

percentage of mesothelioma victims survive? And what is the percentage who died from this disease?"

Hoffman: "Zero percentage survive, 100 percent die from disease. And that Bill would address… or this Bill would address the injustices that are currently in place when the door slammed in the face of these victims being adequately compensated."

Evans: "Wow, zero percent. To the Bill. I stand in strong support of this legislation, you know, as research comes and as things change, the legislation should change and take steps to help the people of State of Illinois. So, thank you, Leader Hoffman, for bringing this important piece of legislation forward. And I would've loved for this Bill to come to the Labor Committee. So there's no issues in the Labor Committee, because you are a Member of that committee. And thank you to all the Members who advanced this Bill in committee and look forward to its passage."

Speaker Turner: "Chair recognizes Representative Guzzardi."

Guzzardi: "Thank you, Mr. Speaker. Will the Sponsor yield for two questions?"

Speaker Turner: "Sponsor indicates that he will yield"

Guzzardi: "Thank you. Representative Hoffman, we've heard a little bit of discussion today about the timing on this Bill. It's been said that you're rushing the Bill or moving the process unduly fast. Can you explain to us why it is that you're moving at such speed?"

Hoffman: "Well, whether it's 30, 60, 90 days it all seems like a short period of time to all of us. However, if you contract… contact mesothelioma in the victim's families 30, 60, 90 days may be longer than you actually have left in your life. So,

this should be fast-tracked. I'm proud that it is fast-tracked. They don't have a single second to take for granted, because any day this disease could take their life. And this allows them to receive justice and allows them to receive adequate compensation."

Guzzardi: "Thank you, Leader. And there was a question earlier about the effective date. Is it correct that this Bill has an immediate effective date?"

Hoffman: "Yes, it does. I don't believe that the General Assembly should sit idly by and let this injustice continue. The Supreme Court, way back in November of 2015, in the Folta decision asked us to act legislatively to get rid of this injustice. This does just that. And I know you weren't here, Representative Guzzardi, but it brings to mind what happened way back in 1995 when the other side the aisle controlled this General Assembly. Not only did they, within one month after taking control of the Illinois House, the Illinois Senate, and the Governor's Office, get rid of the Structural Work Act, but they also tried to get rid of the Workers' Compensation Act in that Session as we know it. We here have been working on this since 2015. This is not haste. This is something that should be done now. And I'm proud to fast-track it, and I'm proud that it has an effective date that's immediate."

Guzzardi: "Thank you. To the Bill. I think it's very simple issue, people contract illnesses based on exposure to harmful chemicals of the workplace, and it shouldn't matter whether that disease presents itself tomorrow or presents itself in 50 years, that is a harm that has been done to them because

of their employment and they should be subject to compensation under the Workers' Compensation Law. I think this is a very sensible and good Bill and I'm proud to support it. Thank you."

Speaker Turner: "Chair recognizes Representative Unes."

Unes: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "Sponsor indicates that he will yield"

Unes: "Representative, you and I have worked really well together through the years when we're able to and I have always appreciated your willingness to try to find common ground to try to approve… improve on legislation. And that's why I'm a little bit surprised with this piece of legislation at the rapid speed that it is gone through both the Senate and House. And I heard some of your explanation of why you are very proud to fast-track that and certainly understand your concern, and I, too, share the concern of those suffering from disease and certainly understand that the consequence of that disease might not present themselves as quickly as the statute of repose says. But what would be the downside of having some discussions to try to improve or compromise on this Bill?"

Hoffman: "Let me… let me just agree with your previous comments when you began. I'm proud to have worked with you, Representative, on several initiatives in a bipartisan manner. And I would do that in this case if I didn't believe that we aren't so far apart on this issue. I don't agree with some of the previous statements that this is bad for business, I don't. I don't believe that going back to the way it was prior to the court decision in 2015 is bad for business. Business worked in the State of Illinois under that law and

under that common law for many, many years. I'm just telling you that it's not fair, it’s not fair to a person who is exposed to this deadly, deadly disease or contracts this deadly disease and they can't receive just compensation. This is a way to give them just compensation, while I believe making sure that diseases that manifest themselves early still remain under the Workers' Compensation Act."

Unes: "So, because you feel that we’re too far apart, there’s not the willingness to try to come together, because, Representative, our side of the aisle was told to my understanding that the Trial Lawyers were not willing to negotiate. And that doesn’t seem like the right way to run legislation."

Hoffman: "Well, I can only tell you what yesterday in committee what I heard from the individuals who represent the defense bar. Okay? They would go a different way. They would suggest that we extend what’s called the statute of repose."

Unes: "Right."

Hoffman: "But I already talked about why that is a trap for injured workers, because what that would do, it would essentially indicate that anyone who is currently in the system would be precluded from receiving justice under the current law, and that’s why we did this the way we did it."

Unes: "Representative, to that point though, I mean, there is a way to do this. If we are saying that disease will not present itself, and sometimes does not present itself before the end of the statute of repose, why not just use the legislation to extend the statute of repose? And if you're saying it's up to 50 years, go beyond 50 years and then everything would be

included. It's not that there's individuals that don't have a heart, it's not that there's individuals that don't want to see those suffering from the severe consequences of the disease get help. Let's extend the statute of repose and provide certainty for the insurers, provide certainty for the employers. There are some employers, Representative, that will never have a case of this and their rates are going to be forced to go up if this Bill would pass. There is a better way to do this, by extending the statute of repose that can be done."

Hoffman: "So, I want be clear here. I don't practice in this area of law, okay, but I do know what the status of the law is with regard to the statute of repose. Okay? So, if you were simply to extend the statute of repose as you suggest then individuals who all are ready in the system would be barred, would be barred after the 25-year period, would be barred. And it's a common law theory that would be raised by the defense and I believe in many cases, in most cases would be successful, and that called the vested right of an extinguished liability and it can't be revived. So it's a trap. I don't think it's a trap that we all understand but these individuals would be trapped and unable to be able to receive just compensation as this Bill would allow. And so, I'm not disagreeing with you that that wouldn't make common sense but it doesn't make legal sense because it would precluded the ability to receive just compensation from the employer."

Unes: "To the Bill. Ladies and Gentlemen, please understand when we're talking about a Bill such as this that is so important,

and the Sponsor just made an explanation, that is not my understanding. My understanding is by extending the statute of repose it will help those that have not presented with the effects asbestos yet to get the help. That will correct the problem. The alternative is what this Bill is doing that is going to drive rates up on every employer. Make no mistake, even if an employer has no worker's comp claims, even if an employer does not have an injured employee, their rates going to go up because of this. Not to mention the fact that insurers have no way to decide how to set rates on something like this and there are including those based here in Illinois, including domicile insurance companies based in Illinois could be very well forced out of the market should this Bill pass. There's a way to correct this without going about it this way and the House should pause to make sure its gets it right, because I know that many of you on that side of the aisle that really want to help your friends that are pushing this Bill so hard, you should pause also. Because at some point when we have Bill, after Bill such as this going about it the wrong way, we're going to get to a point where as those very same friends aren't going to have anyone left… there's not going to be anyone left in this state for them to sue. Vote 'no'."

Speaker Turner: "Chair recognizes Representative Ugaste."

Ugaste: "Thank you, Leader. Will the Sponsor yield?"

Speaker Turner: "The Sponsor indicates that he will yield."

Ugaste: "Thank you. Leader Hoffman, we had quite a bit of discussion about this yesterday in committee, so I'll keep it to a few questions. If this Bill, SB1596, passes, will it

provide recovery for those who have incurred such a disease that it is meant to address outside the 25-year period of repose before the actual passage of the Bill or only for those diseases that are contracted after the date of passage?"

Hoffman: "I apologize, Representative, please. We don't have a time limit, but I didn't quite… I couldn't quite hear you."

Ugaste: "Oh, certainly. I'm sorry."

Hoffman: "It's not your fault, there's just…"

Ugaste: "I understand. If this Bill passes, will it provide a recovery mechanism for people who have contracted the disease before the date of passage of the Bill that are currently precluded outside of the statute of repose or only for those who have developed the disease after the date of passage of the Bill?"

Hoffman: "So, the intent is to this Bill, it isn't retroactive in that it doesn't apply to cases currently pending. It allows victims diagnosed after the Bill's effective date, so if you diagnosed after the Bill's effective date to pursue justice for their latent injuries. So, in other words, that your… after the Bill's effective date if you're diagnosed after 25 years. So unfortunately, and some would say that unjustly, Mr. Folta's family would not receive any compensation as a result of this legislation."

Ugaste: "Okay."

Hoffman: "So, Mr. Folta was the individual who was the plaintiff in the lawsuit that resulted in November 2015 Supreme Court decision."

Ugaste: "Correct, I understand. Thank you. I was asking the question because I thought in committee yesterday I heard

something different, but thank you for clarifying that point. What diseases other than mesothelioma will be covered by this?"

Hoffman: "I can only tell you my knowledge, and this is my knowledge and based on testimony that was taken yesterday in Judiciary Committee, that as of right now, my knowledge, is the only diseases currently that manifest themselves after exposure and latent diseases that lie dormant, you know, past the 25-year period and the ones that I heard of mesothelioma."

Ugaste: "Okay. Is it there a potential for others disease to be included though?"

Hoffman: "Yes, there is, if the same fact… the facts warrant themselves, yes."

Ugaste: "And does it also include other potential injuries in that Workers' Compensation Act is being amended as well?"

Hoffman: "No, I don't believe that. So, I'll just read this… and I'm not taking your time, but I want it to be in the record because I wanted the people to understand for the purpose for legislative intent. That the legislation is not intended to apply to victims of occupational disease, who could not recover benefits under the Workers' Compensation Act and Occupational Disease Act, due to the repose provisions within those Acts. It is not intended to allow for additional civil actions in the case of any injury or any disease for which the worker received benefits under the Workers' Compensation Act or the Occupational Disease Act. So, if you've receive compensation previously under those two Acts, you can't then later get a second bite of the apple."

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Ugaste: "So that gets to one of my next questions. It doesn't provide for any type of double recovery then at all. Is that correct?"

Hoffman: "It does not."

Ugaste: "Okay. I have to ask then, again, why this statement about the person bringing the action would have the non-waivable right to bring such an action against any employer or employers?"

Hoffman: "I can just say that if you were to receive compensation under the Workers' Compensation Act or the Occupational Disease Act, you can't then avail yourself of this… the provisions under this Act. There's no double recovery, you get one bit at the apple, and if you receive it under the current statutes, in other words, its prior to the 25… it is diagnosed or manifest itself prior to the 25 years of the statute of repose. And… and you avail yourself and utilize and do it within the current of the statute of limitations, you do not get additional recovery under the provisions of this law."

Ugaste: "Okay. Do you know the reasons for that statement, Speaker? Or is…"

Hoffman: "I don't… I don't, other than what I have said for the purpose of legislative intent."

Ugaste: "Okay. Thank you. As far as the other conditions, the potential conditions, because we already indicated there could possibly be other potential conditions, are they also the ones that could currently be covered under the time periods of the two to three years within the Occupational

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Disease Act or are those not included in this piece of legislation?"

Hoffman: "Well, I would think that… and just so we're clear with regard to the current workers' compensation in the statute of repose that statute of repose simply applies, my understanding, to asbestos and exposure to radiological materials, but having said that if there is some other type of exposure to… it could be benzene or something else that later manifests itself in a diagnoses after the 25 years, and it is not diagnosed prior to the 25 years, then you can avail yourself of the provisions of this law."

Ugaste: "Okay, but it would definitely… it would definitely have to be after the 25-year period not just the 2- to 3-year period, Leader?"

Hoffman: "Yeah… so you still have to comply with the statutes that are currently under the Workers' Compensation Act or the Occupational Disease Act, okay? If you don't comply with those with statute of limitations then you would be precluded. However, if outside the 25 years then you're diagnose or your disease manifests itself, you would then still be under a statutory negligence to your statute of limitations."

Ugaste: "Okay. Thank you. I believe you've answered the question. Has there been any analysis of the cost to the business community of such a change to the statute?"

Hoffman: "The only note that was filed was a state fiscal note. And I basically disagree with the state's fiscal note, however only because it indicates that based on some of the history of workers' compensation claims and this, as you know, that doesn't make any sense under this Bill. But here's what it

reads, however, based on the average cost of workers' compensation claims and the percentage of claims that are denied for a timely filing CMS estimates the proposed legislation could result in the cost increase of $250 thousand annually. I think the logic is flawed, but that's the state cost. I don't believe that there will be a significant cost to businesses in the state, and I don't buy the fact that there would… there will be an increase in the amount that is paid by businesses and insurance as a result of this."

Ugaste: "Do you know as for the cases that's meaning to address immediately if business will have been able to provide themselves with insurance to cover this? Was that available or will they have done that?"

Hoffman: "Generally these are policies that are decades old. So you could have been exposed to asbestos in the 60s… 50s, 60's, 70s, maybe early 80s, it's not near as prevalent today. However, then it doesn't manifest itself for 30 years. So back then most of the insurance policies obviously covered. And what was done prior to Folta in 2015 is coverage… it was being covered. And so, I believe, that's not going to be a problem. I view it as a red herring. That's just my thoughts, you may have different thoughts."

Ugaste: "What would happen to a business who is facing such a claim such as this that doesn't… isn't covered by insurance for it, if you know, Leader?"

Hoffman: "Well, they would be liable."

Ugaste: "Okay. And anything… thank you."

Speaker Turner: "Chair recognizes Representative Welch."

Welch: "Thank you, Mr. Speaker. Will the Sponsor yield?"

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Speaker Turner: "Sponsor indicates he will yield."

Welch: "Jay, I just have a few questions… I will try to be brief because a lot has already been said here this afternoon. You pretty much made it clear that if you go to your doctor and the doctor says you have mesothelioma, he's basically telling you that you have a death sentence. Is that correct?"

Hoffman: "You… a hundred percent of individuals who contract mesothelioma die."

Welch: "And those who have contracted this disease got it because of some toxic substance that they were expose to, correct?"

Hoffman: "Yes, primarily asbestos."

Welch: "And at their place of work?"

Hoffman: "Yes. But not necessarily at their place of work. It could be… you could have been exposed at other places, but primarily it is at your place of work."

Welch: "And… in a hundred percent of these cases, this type of exposure is beyond the control of the people who have contracted the disease."

Hoffman: "Yes."

Welch: "Your Bill…"

Hoffman: "And 90… probably, nearly a hundred percent of the time it was their knowledge to the fact that being exposed to this asbestos was going… could result in later in life contracting of this terrible disease was probably… they probably did not know of that, most did not."

Welch: "Well, that's… that's the exact point here. Most do not know until they've actually been told they actually have the disease and then they have to go back and trace were they may

have come into contact with this. And most of the time they find out it was at a place of employment. Is that correct?"

Hoffman: "Yes."

Welch: "You know, I wasn't going to speak on this Bill, but then earlier in this debate a lot of my colleagues on the other side applauded one of the speakers on the Bill and I couldn't help but note that a large part of that argument was about corporations. Your Bill here today focuses on given victims' rights. Is that correct?"

Hoffman: "Yes."

Welch: "Not the corporation?"

Hoffman: "That's correct."

Welch: "To the Bill, Mr. Speaker. That's it in a nutshell. I don't even understand why this debate has gone on so long. I definitely don't understand why we're clapping and applauding and defending corporations. What we're trying to do here today is very simple and that's give access to the victims, to the victims who are thinking about their families when they're gone. We are fighting for people, not corporations. That's what we're supposed to be doing here today. And that's why I stand here in strong support of Senate Bill 1596. Let's be clear, it's about access to justice. We should pass the policy here today that Illinois Law should provide access to justice for victims. We're not here to fight for these corporations who many times know that their employees are exposed to substances that will later kill them. Your vote here today is for victims or corporations, which side are you going to pick? I implore you to punch that green button and vote for the

victims here today and vote 'yes' on Senate Bill 1596. Thank you, Mr. Speaker."

Speaker Turner: "Chair recognizes Representative Batinick."

Batinick: "Thank you, Mr. Speaker. I'm gonna… I'm gonna to go straight to the Bill, surprisingly. A couple of the things I want to get on the record first. Mesothelioma is an absolute a horrible disease, horrible thing to have happen. And one of the things that is disappointing to me is I searched the Bill and mesothelioma is not in the Bill. And if we're going to try and attack that issue we should specifically state that that is the issue, instead of the open-ended nature that this Bill has. We are all for on this side dealing with this mesothelioma issue. That's are number one. Number two, I have the Supreme Court ruling in my hand here and it actually talks about fixing this issue within the Acts and those Acts are the Workers' Compensation and Occupational Disease Acts, that's where the Supreme Court is telling us to do it. So we don't have mesothelioma in the Bill, and we're not fixing it in a way that the Supreme Court suggested. Lastly, one of the first things I had done was a study on the impact of higher insurance cost on all units of government in the state, and it's already hundreds of millions of dollars. That's hundreds of millions of dollars that isn't going to social services. That's hundreds of millions of dollars that isn't going to educate a small kid, build a road, help with a capital Bill. I mean, there's $300 million which is more than after the supposed tax increase we're going to add to our unfunded pension liability. So, all these small decisions we make have consequences to other needy people as well and other needy

services as well. Because of that reason, because we are not defining mesothelioma in the Bill, I urge a 'no' vote."

Speaker Turner: "Chair recognizes Representative Wheeler."

Wheeler: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "Sponsor indicates that he will yield."

Wheeler: "Jay, listening to this debate, I was obviously not in Jud-Civ, I was waiting for this Bill in Labor, like we usually get together and discuss these things as we have for over the last four years. Help me understand the difference in this, if a person were to contract this horrible disease 24 years after exposure, you believe it should remain in a workers' compensation system?"

Hoffman: "So, are you saying that an individual is exposed and then 25… 24 years later he is diagnosed?"

Wheeler: "Yeah, where ever that trigger is right now is. I'm looking at the difference between the threshold of 25 years and after."

Hoffman: "Yeah. You still would be cover by the workers' compensation system."

Wheeler: "And you believe that's… you shouldn't… why didn't we extend this to 30 or 40 or 50 years? What was that explanation you gave earlier? I want to hear that again, I just didn't understand it quite."

Hoffman: "Well, the current statute and repose is 25 years."

Wheeler: "Right."

Hoffman: "And so, this Bill does not change the statute of repose. And I think in previous debate, with a previous Representative, I indicated why that was impossible to do, because it would preclude certain people from even if they

contracted after 25 years if you change the statute of repose, it would preclude them from receiving compensation under this Bill."

Wheeler: "Very briefly, could you just reiterate that reason so I could hear it so other Members didn't hear that reason."

Hoffman: "As I indicated earlier, there is a legal common law concept it's called the vested rights of an extinguished liability and that can't be revived. So if you're in the system now and you change a statute of repose that means that you live by the old system, and therefore, you will be barred under the old system."

Wheeler: "Okay. So you're saying this is a… legal process that we'd have to fix another way rather just extending it, we'd have to write a whole another Bill that will give them a separate set of coverage then if it were possible to do at all?"

Hoffman: "That's my understanding from testimony yesterday and my understanding of common law."

Wheeler: "Okay, thank you for answering that question. Is there any way we can measure the potential impact on liability insurance for… as you know, I always bring up the small business issue when it comes these kind of legislative initiatives, how we measure what that impact would look like? Because there's clearly concern for the people that reached out to me in the last 24 hours since this went through committee about that specific issue."

Hoffman: "Well, let me just… I think it's difficult to a dollar amount on it, but I can just… if I can walk you through the whole process of an individual who is working for an employer

and it may be in the late 1970s was exposed to asbestos and the employer knew it, okay. So what would happen then, it may lay dormant for 30, 40, 50 years, so the statute of repose passes at 25 years. Under current law as a result of the 2015 decision at Folta, the Supreme Court said, you… good news, you're still subject to the Workers' Compensation action… or Act, but bad news is you can't recover. Okay. So you may be subject to the Act and still have jurisdiction under the Act, but the bad news you can't recover."

Wheeler: "I get the concept, I'm just trying to figure out the impact."

Hoffman: "Under this Bill though, under this Bill…"

Wheeler: "Right."

Hoffman: "…an individual, he would be exposed, 25 years go by. Let's say… its 30 years, under this Bill he can still bring a negligence action, a legal action, against the employer he would not be precluded. Now if someone indicated earlier there may be other defendants that have already been included in the lawsuit, okay. You only recover once for your damages. You don't double recover, it's called contribution. So whatever the employer would be subject to being liable for, you then would have that employer contribute that percentage. They may not be as liable as the manufacture or some the others that were involved in the supple chain who knew. So, I don't believe that this is gonna to have a huge impact on employers, employer's liability insurance, because it didn't have a huge impact prior to 2015 when the law was essentially what we're trying to do now…"

Wheeler: "Okay. Well, that brings me…"

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Hoffman: "And I know that's a long explanation but…"

Wheeler: "It is, and I appreciate your explanation. My question is then, Jay, becomes we aren't limiting it this to asbestos related mesothelioma, which there is a direct cause and effect. We're saying any disease can be discovered at that point, right? So, I mean, there's… there can be additional things come along, other challenges. If you are… I'm a layman, so I'm just, you know, make a guesstimate here. If you are maybe an X-ray tech, work with X-ray machines, and years go by and a cancer develops can that be something would be subjected to this… what we're opening today the door too?"

Hoffman: "I… I'm not a medical expert or a scientific expert, I'm just telling you what was said in committee that basically the only thing right now that has a latency… is a latent disease that has a dormancy period that is actually over 25 years is 30 to 50 years is the onset of mesothelioma. I don't know if you're exposed to, you know, benzene or something else whether that dormancy period exists that long or it's prior to the 25 years, I don't know that."

Wheeler: "Jay, I appreciate the answers to your questions. To the Bill. Ladies and Gentleman, this is a pretty big initiative. The Supreme Court ruling was four years ago, we could have been talking about it together in a collaborative manner for the last four years. I know that we did not, we worked on some other things over the last four years. So consequently we could have been… again, finding a way through this process to give companies… and I'm going to say this about a small business for a second, we are really are dependent upon our insurance companies. And if our insurance companies see a

great threat or even if imagining a threat, there's a chance that are potential premiums will rise, some people may go out of business, some may choose not to cover us. There's a lot of questions I still have about this Bill. I know that the employers have contacted me in the last 24 hours are numerous, and they have many questions about this Bill as well and the potential impact it will have repercussions for a long time to come. This goes back to the point where we are taken a shot without clarity. I wish we'd work together more and work this through more. Please vote 'no'. Thank you."

Speaker Turner: "Chair recognizes Representative Tarver."

Tarver: "Will the Sponsor yield?"

Speaker Tarver: "Sponsor will yield"

Tarver: "Leader Hoffman, may I call you Jay for the next few moments here? A few quick questions for you."

Hoffman: "Yes."

Tarver: "Number one, just as a general matter, is it your understanding when people bring a lawsuit… I mean, there was a lot of conversation about that, you know, an individual may have recover from 14 out of 15 people, but for number 15 this individual would have been presumably without a death sentence. Is that correct? Presumably they would not had a death sentence if it were not for the behavior of the 15th party, is that right?"

Hoffman: "Yes, that's fair. Yes."

Tarver: "So just because 14th…"

Hoffman: "And you would have to prove that, Representative, you know that. You would have to prove causation, you would have to prove that they knew or should have known. So, you still

have to prove the elements necessary to prove that they would receive compensation. So, yes."

Tarver: "And you probably anticipated my next question. So is there anything in the Bill that removes the right for a corporation to have counsel to defend against this?"

Hoffman: "No, no."

Tarver: "Okay. So they still have a right to have a hearing, a trial, or something in some kind of tribunal. Is that correct?"

Hoffman: "Yes, that is correct."

Tarver: "Okay. And this does not change the statute of limitations of two years right now, does it?"

Hoffman: "It does not."

Tarver: "Okay. And this only relevant any instance that someone finds out about this deadly disease after 25 years. Is that correct?"

Hoffman: "After 25 years of exposure, yes."

Tarver: "Okay. So if you find out within the 25 years. Where do you go?"

Hoffman: "You're in the… you would be under the jurisdiction of the Illinois Workers' Compensation Commission."

Tarver: "Okay. I think we already covered it. There is no double recovery. Is that right?"

Hoffman: "That correct."

Tarver: "Okay. And so given that a hundred percent of people would die and typically, I think you said they die within about nine months of the diagnoses. Is that right?"

Hoffman: "That's my understanding that is the average, yes."

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Tarver: "Okay. So in a situation where the individual who… I doubt they come to the doctor excited or come home excited when they tell their family about the fact they have a death sentence, but in that instance unless the case settles let say nine months or less, does the individual who have the death sentence even receives the money?"

Hoffman: "No, he or she does not"

Tarver: "Typically it goes to the family, right?"

Hoffman: "Yes, that is correct."

Tarver: "Because you can't take it with you, right?"

Hoffman: "I wish we could."

Tarver: "Right. There was a lot of conversation, you know, about there's only one disease right now and whether this special legislation. Is it… does it make sense to you that we enumerate the diseases only as after someone dies and then bring it to the Body?"

Hoffman: "Well, we don't know what the future holds and we don't know what type of latent diseases may occur as a result of the exposure to other chemicals that may be taking place or have taken place. So I don't believe it's prudent to simply limit."

Tarver: "So you would agree that one person dying before we bring it to the Body about this latent disease is probably one too many?"

Hoffman: "I would agree with that. And I want to make a point that the defense attorney's representative who testified yesterday Judiciary Committee, Representative, if you may remember, he even testified that he wouldn't limit in this

case to just mesothelioma and that's the defensive attorney saying that."

Tarver: "And when we talk about fast-tracking, there's a process. Is that right? I mean we had a committee meeting yesterday, right?"

Hoffman: "Yes, and we went through the constitutional provisions of having been read three times in each chamber."

Tarver: "And everyone in the committee had an opportunity to ask questions. You remember that right?"

Hoffman: "Yes."

Tarver: "Did Chairman Thapedi cut anybody off yesterday from asking questions?"

Hoffman: "No, he ran excellent committee."

Tarver: "Okay. And so both the proponents and the opponents had an opportunity to ask those questions. Is that right?"

Hoffman: "Yes. It was fair and no one was cut off."

Tarver: "All right. To the Bill. I mean, this is actually very, very straight forward. We're talking about people's lives and the people who were harmed the most are the ones who will never see the recovery. It's the families who are left… left in really in harm's way and they're losing family members, parents more often than not. And to… to deny them the ability to recover because they unfortunately did not know 25 years prior or within the 25-year period that they had a latent disease that was going to kill them is absolutely asinine. I support the Bill, I chief-co it, I appreciate it. Thank you."

Speaker Turner: "Chair recognizes Representative Wehrli."

Wehrli: "Thank you, Mr. Speaker. Should this Bill receive the requisite number of votes I request a Roll Call verification."

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Speaker Turner: "Representative Wehrli has requested a verification. Members are ask to be at their seats upon the vote to vote their own switch. Representative Connor is recognized."

Connor: "Thank you, Mr. Speaker. I rise in support of SB1596 today… to the Bill… because of a personal association with mesothelioma. When I was at the Will County State's Attorney Office, Jimmy Stewart was one of the investigators for the State's Attorney's Office. He was 62 years old; he was a marathon runner. He ate healthy; he exercised every day. And at the age of 62, he came in one day, and I can still remember the conversation, it's fresh in my head, and he sat down and explained to me that he been diagnosed with mesothelioma. Never smoked, had not worked with asbestos as far he can remember. And I asked him, I said, Jimmy, how… I don't get this. You… how did this happen? And he said that after talking to his doctor what he figured out is that when he was in his teens he worked with his dad at his dad's business, and they cleaned out asbestos lined pipes during the summers. So, he didn't spend 30 years in asbestos abatement. All he did was help his dad for two summers cleaning out asbestos-lined pipes, and 40 years later he found out that was going to kill him, and he survived for two years. And I was just reading an article in the *Chicago Tribune* about how right after his death, his last murder case, a case he had championed within our office, there was a conviction in that case, obviously, it was too late for Jim at that point. But the bottom line is, is that his exposure to asbestos was 40 years before he was diagnosed. So, what Leader Hoffman has been talking about,

the fact this is a disease that lays dormant, I can tell you from personal experience that is, in fact, what mesothelioma does. So it is very, very important that people understand the individuals who are involved with this diagnosis. He died at the age 64. He was one of the healthiest people I knew. So, years of his life and his time with his family were wiped out because of asbestos back when he was a teenager. So again, I rise in support of this Bill. I want to thank Leader Hoffman for bringing this forward. This addresses an issue that needs to be addressed because of the specific nature of a disease like mesothelioma that lays dormant for such a long length of time. Thank you, Mr. Speaker."

Speaker Turner: "Representative Hoffman to close."

Hoffman: "Well, thank you, Mr. Speaker, Ladies and Gentlemen of the House. And I thank the Members on the other side of the aisle for a lively debate. I guess I understand where you're coming from, I just whole heartily disagree. As the previous speaker indicated, that's a real life experience, people being exposed to asbestos, 40 years later they contract the terrible disease. They… through no fault of their own are given a death sentence. And under the laws, currently the common laws as a result of this decision, the 2015 decision of Folta, the court has begged us for a solution. They don't believe that their decision based on current law was something that was not harsh, they believed it was harsh, and they indicated in their decision that they believed the results were harsh. And they indicated to us that this question more appropriately needs to be address by the Legislature. I find it ironic that the individuals from the other side of the

aisle are now standing up and beating their chest saying that we shouldn't a causation standard, that we shouldn't have a negligence standard, when for four years there was Bills that are introduced in the workers compensational arena where you wanted to have and get rid of the strict liability and have causation interjected into the strict liability section of the Workers' Compensation Act. We fought that for four years, we fought that for four years. And I find it, I guess, as Representative Welch said, disturbing, disturbing, I get, people have to represent their interest represent businesses, but these folks it's a death sentence, they're dying, they're gonna to die. And to applaud a speech, either side, this is so serious whether it's me speaking or it's individual speaking on behalf of businesses, to applaud when these poor souls have been given a death sentence, through no fault of their own, and all we're saying is one thing, give them and their families a right to justice to recover for the wrongs that have been done them. That's all this Bill does. I believe it does it in a just and equitable manner. And I ask for an 'aye' vote."

Speaker Turner: "Members, a verification has been requested by Representative Wehrli. Please be at your seat to vote your switch. The question is, 'Shall Senate Bill 1596 pass?' All in favor vote 'aye'; all opposed vote 'nay'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. On this measure, there are 70 voting in 'favor', 40 voting 'opposed', and 1 voting 'present'. Representative Wehrli, do wish to persist? He does not. And with 70 Members voting

'yes', 40 voting 'no', 1 voting 'present', Senate Bill 1596, having received a Constitutional Majority, is hereby declared passed. Representative Wehrli, for what reason do you seek recognition?"

Wehrli: "Thank you, Mr. Speaker. Point of personal privileged, if I may?"

Speaker Turner: "Please proceed, Sir."

Wehrli: "Today I rise to congratulate my Springfield Legislative Assistant Lisa Ginos on a retirement. She has served the House Republican Caucus and the people of Illinois for 21 years. She has worked for several different Legislators on this side aisle and today is her last day. She is picking up things out of Illinois and moving to Texas, so effort… many years of hard work here. She's going to move to a state that she finds to be a little bit more friendly to her pursuits and her grandkids also happen to live there. So if we could take a moment and congratulate my Springfield LA, Lisa Ginos, on her retirement today."

Speaker Turner: "Thank you, and congratulations. Representative Mayfield, for what reason do you seek recognition?"

Mayfield: "Personal privilege."

Speaker Turner: "Please proceed, Representative."

Mayfield: "Thank you. I'd like to present to you today, I'd like to talk about Gwendolyn Brooks. She was born in Topeka, Kansas on June 7, 1917 to Keziah Brooks, a school teacher, and David Anderson Brooks, a janitor, who aspired to be a doctor. Brooks and her family moved to Chicago shortly after where they realize young Gwendolyn had talent for reading and writing. At the age of 13, Brooks published the poem, *Eventide,* which

appeared in *American Childhood*, a children's magazine. While in high school, Gwendolyn had composed over 75 poems in outstanding feature poems in the *Chicago Defender*, a local newspaper, catered to the African-American community. The racial prejudice that she experienced while attending three Chicago high schools was used as an inspiration in her works. Once graduated from Wilson Junior College in 1936, she joined the NAACP as the Director of Publicity. She became married in 1939 to Henry Lowington Blakely, Jr. and gave birth to two children Nora and Henry. At this time she finished her first book of poetry, *A Street in Bronzeville*, which focused on the oppressive reality that American… African Americans had to face in the late 1940s. The works was huge success, and it inspired her next poetry book, *Annie Allen,* about an African American who was growing up into womanhood in Chicago. *Annie Allen* won a Pulitzer Prize in 1950. Brooks eventually taught poetry at universities around country, while also continuing to write her own poetry. Some of her major successes at the time included: *The Bean Eaters, In the Mecca, Maud Martha*. Gwendolyn Brooks served as the first African-American poetry consultant for the Library of Congress from 1985 to 1986. She continued to inspire the youth in Chicago to write poetry through writing workshops and poetry contest. She received a lifetime achievement award in 1989 from the National Endowment for the Arts. Mrs. Brooks passed away December 3, 2000 from cancer. She will forever be remembered from her inspiring poems and contributions to African-American history. Thank you."

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Speaker Turner: "Thank you, Representative. Representative Wheeler, for what reason do you seek recognition?"

Wheeler: "Thank you, Mr. Speaker. Point of personal privilege."

Speaker Turner: "Please proceed, Sir."

Wheeler: "I'd like to continue our efforts in the bipartisan matter here on Women's History Month. Today honoring Ruth Hanna McCormick. Ruth Hanna McCormick was a trailblazer for Women in Illinois politics during the first-third of the 20th century. Becoming the first woman elected to Congress in Illinois and the first the woman to win a statewide race in State of Illinois. Her roots and her contributions to the people of Illinois run much deeper than her success at the ballot box however. Ruth Hanna was born on March 27, 1880 in Cleveland, Ohio. She was the third child of businessman and Republican political leader Mark Hanna and Charlotte Augusta Hanna. After high school, Ruth Hanna went to Washington D.C. to work as a secretary for her father, who was serving as a United States Senator from Ohio. Her interests were not limited politics, she was also very interested in agriculture. And she moved to Illinois after she married Medill McCormick in 1903, where she and her husband operated a 1500 acres dairy farm in Byron. She also gained an interest in print media as her husband worked briefly as the publisher of the *Chicago Tribune*. Throughout her life, Ruth Hanna McCormick used her keen political insights to fight for important causes such as woman suffrage and improve working conditions for women. In fact, in 1913, Ruth Hanna McCormick was instrumental in passing a partial suffrage law in Illinois that allowed women to vote in municipal and presidential

elections. She continued to play in a critical a role advocating for women in suffrage until the 19th Amendment was ratified in 1920. Widowed in 1925, she remained active in politics. In 1928, Republican Ruth Hanna McCormick became the first woman elected to congress from Illinois when she won an at large seat for the state. She served in Congress from March 4, 1929 until March 4, 1931. This win also made her the first woman in Illinois to win a statewide race since it was an at-large seat. In 1930, she broadened her interest by purchasing all of the newspapers in Rockford, Illinois. She formed the *Rockford Consolidated Newspapers* which included the *Rockford Register Republic* and the *Rockford Morning Star*. Ruth Hanna McCormick did not seek reelection to second term in Congress, but chose instead to seek in seat in the United States in Senate. In 1930, she became the first woman to be nominated by a major party for the United States Senate when she defeated incumbent Senator Charles Deneen in the Republican Primary. She was, however, unsuccessful in the General Election that year. Upon leaving Congress, she moved to Colorado so she could live near two of three of children who attended school there. In 1932, she remarried this time to former New Mexico Congressman Albert Simms whom she got to know when they sat next to each other in Congress. Eight years after leaving Congress, she became the first woman to manage a presidential campaign when she ran the campaign for presidential hopeful Thomas Dewy. She would continue to blaze a trial for women in political leadership roles and she held several top spots within the Republican National Committee. And after living an extraordinary life, Ruth Hanna McCormick

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Simms died on December 31, 1944 at the age of 64. Upon her death 12 thousand acres from a New Mexico ranch she owned with her husband were donated to the Albuquerque Academy. And in 1974, the school opened a fine arts center named after the couple. The Rockford Chamber of Commerce also posteriorly named Ruth Hanna McCormick Simms to the Northern Illinois Business Hall of Fame. Ruth Hanna McCormick Simms was a key influencer and one of the first pioneers in a movement to provide women with a political voice. Through her advocacy a woman's issue in service as elected member of Congress, she paved the way for future women to hold an elective office in the state. We owe her a debt of gratitude and I'm proud to honor her legacy today as part of Women's History Month. Thank you."

Speaker Turner: "Thank you, Representative. Representative Stuart, for what reason do you seek recognition?"

Stuart: "A point of personal privilege."

Speaker Turner: "Please proceed."

Stuart: "Thank you. I wanted to take just a moment to introduce the Pages that I have today. If you guys will stand up. I have three out four of the Berger siblings from Collinsville, Illinois. And Katlyn is the oldest. She won the opportunity to be a Page here in a school lottery and was kind enough to let her younger siblings join her for the day. So, I think they owe her big time. Katelyn is an avid reader, she's apart of her schools choir, speech, and drama clubs. She's a swimmer and also likes to play volleyball. She wants to be a microbiologist or an actor when she grows up. Next in line is Luke, and Luke is a strong swimmer who likes to play all

sports, especially baseball. He's also part of the school drama club. When he grows up, he would like to be a police man 'cause he is inspired by his grandfather or a professional swimmer. And then Claire likes to do gymnastics and is part of an acrobatics and tumbling team. She loves soccer and also competitive swimming. Claire wants to be either an actor or a teacher when she grows up. I hope she goes to that root because we know we need more teachers. They're joined today by their mother, Michelle Berger, who's up in the gallery. And if we can give them warm Springfield welcome. And Claire says, she wants to do work, so please put her to work. Thank you."

Speaker Turner: "Thank you, and welcome to your Capitol. Chair recognizes Representative Conroy. For what reason do you seek recognition?"

Conroy: "Thank you, Speaker. Point of personal privilege."

Speaker Turner: "Please proceed."

Conroy: "I'd like to take a moment to introduce my Page for the day today. Someone who is very special to me, his name is Stefano Buonsante. He is here today from Elmhurst. He is a four… fifth grader at Lincoln School. Stefano is very talented guy, he not only loves cars he plans to design them. So, look out you guys may all be trying to save your money one day for a very fancy, very fast car. Please help me welcome, Stefano."

Speaker Turner: "Thank you, and welcome to your Capitol. Representative Meyers-Martin, for what reason do you seek recognition?"

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Meyers-Martin: "Thank you, Mr. Speaker. I would like to express my condolences for one of the families in the 38th Representative District."

Speaker turner: "Go right ahead, Representative."

Meyers-Martin: "Thank you. On behalf of the residents of the 38th Legislative District and this General Assembly Body, I want to send my deepest condolences to the family of U.S. Army Captain Antoine Lewis. Captain Lewis was a native of Matteson, Illinois, who died in the Ethiopian airliner crash on Sunday. The Lewis family is an all-American family who prides themselves on helping their fellow neighbors. Captain Lewis was on a vacation traveling to Africa on a volunteer mission. I join Matteson Mayor Sheila Chalmers-Currin in proclaiming that Captain Antoine Lewis was a true American hero who loved his community, and he will be greatly missed."

Speaker Turner: "The Body will take a moment of silence. Thank you, Representative. Representative Parkhurst, for reason do you seek recognition?"

Parkhurst: "Point of personal privilege."

Speaker Turner: "Please proceed, Representative."

Parkhurst: "Tomorrow, March 15, marks the 20th anniversary of the Amtrak train derailment in Bourbonnais, Illinois. Twenty years ago at 9:47 a.m. the south bound City of New Orleans Amtrak train collided with a semi-trailer truck loaded with 18 tons of steel bars. The train derailed killing 11 people and injuring 121 people. In remembrance of the victims and their families, I ask for a moment of silence."

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Speaker Turner: "The Body will take a moment of silence. Thank you, Representative. Representative Hammond, for what reason do you seek recognition?"

Hammond: "Point of personal privilege, Mr. Speaker."

Speaker Turner: "Please proceed."

Hammond: "Thank you. Today is National Agriculture Day, and also continuing our commemoration of Women History month, I would like to take this opportunity to honor Joni Bucher, the president of Illinois Beef Association. Joni is from my district. She's a fourth-generation western Illinois farmer who didn't begin farming until she was in her 40s. She was close to the age of 50 when she started raising cattle, first time after completing a career in the pharmaceutical industry. Joni has two sons, Brandon and Quintin, they help to run the family farm, making it a family affair. They have a cow/calf operation on their farm with a permanent heard of mother cows that number 80 and they produce calves for sale. Joni focuses on raising cattle with the sound health and excellent growth potential. The philosophy is to care for the environment and to do her bit to help feed the world on her 88 acres that she calls her, quote unquote, 'happy place'. Joni should be commended for her hard work and her commitment. Many days she is up before dawn and falls exhausted onto her pillow late in the evening hours, but she is fulfilled, has a sense of accomplishment, because of the legacy that she has with her family and how they are caring for the land and the cattle that they raise. Thank you, Joni, for your passion and your resulting hard work and for what you do for agriculture. It is recognized, admired, and honored."

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Speaker Turner: "Thank you, Representative. Chair recognizes Representative Davis. For what reason do you seek recognition?"

Davis: "Thank you, Mr. Speaker. I'm not introducing a Page or anything like that, and we appreciate the speeches on Women's History Month, but what I am doing is inviting everyone in the General Assembly, as well as anybody still listening, to what will definitely be the best party in Springfield next week, little something that we call Stone Jam. So, for those of you who are familiar and remember the music of the 70s on the disco side and for those who like house music, I encourage you to be there next Tuesday or this Tuesday coming up after 8:00. Now mind you, it's after 8 which means you go do all your other stuff first and then you come party with us at The Gin Mill on South 5th Street. So again, next Tuesday, Tuesday coming up, come to Stone Jam. Go home and change and put on your jeans and your dancing shoes and come hang out with us on Tuesday at Stone Jam. Thank you very much, Mr. Speaker."

Speake Turner: "Thank you, Representative. Representative McCombie, for what reason do you seek recognition?"

McCombie: "Thank you. Speaker. Point of personal privilege. Today… just if I could get everybody's attention. We are thankfully saying… we want to say thank you to Lauren Mesmore. She's of our house staffers who I first met… and some of… we've got a lot of new folks here today… I first met her here in Springfield with a big huge white sign that said Representative Tony McCombie was the first time I ever saw her. And as you know we all have that special person in our life that first… you know, said welcome to Springfield. So,

we just want to say thank you. She's been here for over six years. She's going to be staying in Illinois, going to the University of Illinois Chicago Health Systems. And we just want to wish her thanks and the best of luck in her new position."

Speaker Turner: "Congratulations. Thank you Representative. Mr. Clerk, Agreed Resolutions."

Clerk Hollman: "Agreed Resolutions. House Resolution 188, offered by Representative Tarver. House Resolution 189, offered by Representative Tarver. House Resolution 192, offered by Representative D'Amico. And House Resolution 193, offered by Representative Edly-Allen."

Speaker Turner: "Leader Harris moves for the adoption of the Agreed Resolutions. All in favor say 'aye'; all opposed 'nay'. In the opinion of the Chair, the 'ayes' have it. And the Resolutions are adopted. And now, allowing perfunctory time for the Clerk, Leader Harris moves that the House stand adjourned until Tuesday, March 19, at noon. Tuesday, March 19, at noon. All in favor say 'aye', all in opposed say 'nay'. In the opinion of the Chair, the 'ayes' have it. And the House is adjourned."

Clerk Hollman: "House Perfunctory Session will come to order. Introduction and First Reading of House Bills. House Bill 3809, offered by Representative Skillicorn, a Bill for an Act concerning State government. House Bill 3810, offered by Representative West, a Bill for and Act concerning transportation. First Reading of these House Bills. Introduction and First Reading of Senate Bills. Senate Bills 62, offered by Representative Costa-Howard, a Bill for an Act

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concerning government. Senate Bill 111, offered by Representative Willis, a Bill for an Act concerning regulation. Senate Bill 1289, offered by Representative Kifowit, a Bill for an Act concerning State government. Senate Bill 1480, offered by Representative Morgan, a Bill for an Act concerning employment. Senate Bill 1504, offered by Representative Parkhurst, a Bill for an Act concerning Civil law. Senate Bill 1518, offered by Representative Gong-Gershowitz a Bill for an Act concerning civil law. Senate Bill 1573, offered by Representative Hoffman, a Bill for an Act concerning Public Aid. Senate Bill 1579, offered by Representative Marron, a Bill for an Act concerning revenue. Senate Bill 1584, offered by Representative Davis, a Bill for an Act concerning public employee benefits. Senate Bill 1784, offered by Representative Evans, a bill for an Act concerning government. Senate Bill 1787, offered by Representative Martwick, a Bill for an Act concerning employment. Senate Bill 1797, offered by Representative Morgan, a Bill for an Act concerning children. Senate Bill 1827, offered by Representative Morgan, a Bill for an Act concerning government. First Reading of the Senate Bills. Introduction of Senate Joint Resolution #14, offered by Representative Moeller. This is referred to the Rules Committee. A correction of a Committee Report read on March 14, 2019. Representative Scherer, Chairperson from the Committee on Elementary & Secondary Education: Administration, Licensing & Charter Schools reports the following committee action taken on March 13, 2019: do pass Short Debate is Senate Bill 3053… correction, House Bill 3053, House Bill 3363. There being no

further business, the House Perfunctory Sessions will stand adjourned."

Wyatt v. A-Best Prods. Co.

Court of Appeals of Tennessee

November 30, 1995, FILED

C/A NO. 03A01-9502-CV-00066

Reporter

924 S.W.2d 98 *; 1995 Tenn. App. LEXIS 770 **; CCH Prod. Liab. Rep. P14,433

HERBERT E. WYATT and BRENDA WYATT, his wife, Plaintiffs-Appellants, v. A-BEST PRODUCTS COMPANY, INC., et al., Defendants-Appellees.

Subsequent History: [1]** As Modified on Grant of Rehearing December 28, 1995; Reported at: *1995 Tenn. App. LEXIS 830*. Application for Permission to Appeal Denied May 28, 1996, Reported at: *1996 Tenn. LEXIS 371*.

Prior History: CIRCUIT COURT. KNOX COUNTY. HONORABLE WHEELER A. ROSENBALM, JUDGE.

Disposition: AFFIRMED AND REMANDED

Case Summary

Procedural Posture

Appellant injured sought review of the decision of the Circuit Court of Knox County (Tennessee), which granted appellee manufacturers' motion for summary judgment in the injured's action to recover for asbestos related injuries and held that the injured's action was time-barred by the 10-year statute of repose found at *Tenn. Code Ann. § 29-28-103(a)*, a part of the Tennessee Products Liability Act of 1978 (TPLA).

Overview

The injured worked as a carpenter and claimed employment-related exposure to products containing asbestos that were manufactured and/or sold by the manufacturers. It was undisputed that none of the manufacturers sold or distributed any asbestos-containing products within 10 years of the effective date of the original enactment of the TPLA. However, within one year of the date he discovered that he was suffering from an asbestos-related lung disease, he filed an action. The circuit court held that his action was time-barred. The court affirmed and held that the 10-year period established by *§ 29-28-103(a)* was a statute of repose and thus, barred the injured's action on the date the TPLA became effective. Further, the asbestos exception could not be applied retroactively to revive the injured's already-barred cause of action and the decision to classify asbestos-related claims differently from other latent-injury claims was not so patently arbitrary as lacking any rational basis and thus, did not offend *Tenn. Const. art. XI, § 8*.

Outcome

The court affirmed the grant of summary judgment to the manufacturers on the injured's action for asbestos related injuries.

LexisNexis® Headnotes

Governments > Legislation > Statute of Limitations > Time Limitations

Torts > Products Liability > General Overview

Torts > Procedural Matters > Statute of Limitations > General Overview

Torts > Procedural Matters > Statute of Repose > General Overview

HN1[] **Statute of Limitations, Time Limitations**

Tenn. Code Ann. § 29-28-103(a) provides, in pertinent part, as follows: Any action against a manufacturer or seller of a product for injury to person or property caused by its defective or unreasonably dangerous condition must be brought within the period fixed by *Tenn. Code Ann. §§ 28-3-104*, *28-3-105*, *28-3-202* and *47-2-725*, but notwithstanding any exceptions to these provisions it must be brought within six years of the date of injury, in any event, the action must be brought within 10 years from the date on which the product was first purchased for use or consumption.

Contracts Law > ... > Discharge & Payment > Defenses > Statute of Limitations

Governments > Legislation > Statute of Limitations > General Overview

Governments > Legislation > Statute of Repose

Torts > Procedural Matters > Statute of Limitations > General Overview

Torts > Procedural Matters > Statute of Repose > General Overview

HN2[] Defenses, Statute of Limitations

Courts in Tennessee have consistently pointed out the distinction between a statute of limitations and a statute of repose. The former has been described as affecting only a party's remedy for a cause of action, while the running of a statute of repose has been said to nullify both the remedy and the right. Generally speaking, the critical distinction in classifying a statute as one of repose or one of limitations is the event or occurrence designated as the "triggering event," the event that starts the "clock" running on the time allowed for the filing of suit. In a traditional statute of limitations, the triggering event is typically the accrual of the action, when all the elements of the action, including injury or damages, have coalesced, resulting in a legally cognizable claim. A statute of repose, on the other hand, typically describes the triggering event as something other than accrual, prompting courts to note that such statutes are entirely unrelated to the accrual of any action.

Governments > Legislation > Statute of Limitations > General Overview

Torts > Procedural Matters > Statute of Repose > General Overview

Governments > Legislation > Statute of Repose

HN3[] Legislation, Statute of Limitations

Because a statute of repose sets the triggering event as something other than accrual, it can have the effect of barring a plaintiff's claim before it accrues, most typically before the plaintiff becomes aware of his or her injury.

Governments > Legislation > Statute of Limitations > General Overview

Torts > Products Liability > General Overview

Governments > Legislation > Statute of Repose

Torts > Procedural Matters > Statute of Repose > General Overview

HN4[] Legislation, Statute of Limitations

The 10-year period set forth in *Tenn. Code Ann. § 29-28-103(a)* is properly characterized as a statute of repose. Its triggering event is the date on which the product was first purchased for use or consumption. It starts the "clock" running from that occurrence, and the time is up after 10 years.

Civil Procedure > ... > Statute of Limitations > Tolling of Statute of Limitations > Discovery Rule

Governments > Legislation > Statute of Limitations > Time Limitations

Torts > Procedural Matters > Discovery

Governments > Legislation > Statute of Limitations > General Overview

Torts > Procedural Matters > Statute of Limitations > General Overview

HN5[] Tolling of Statute of Limitations, Discovery Rule

A statute of limitations generally does not start to run until accrual, which, under the discovery rule, does not occur until the plaintiff discovers or should have discovered his or her injury.

Constitutional Law > Congressional Duties & Powers > Contracts Clause > General Overview

Governments > Legislation > Effect & Operation > Prospective Operation

HN6[] Congressional Duties & Powers, Contracts

Clause

Tenn. Const. art. I, § 20 states that no retrospective law, or law impairing the obligations of contracts, shall be made.

Governments > Legislation > Effect & Operation > Prospective Operation

HN7 **Effect & Operation, Prospective Operation**

"Retrospective" laws are generally defined, from a legal standpoint, as those which take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed.

Governments > Legislation > Statute of Limitations > General Overview

Torts > Procedural Matters > Statute of Limitations > General Overview

Governments > Legislation > Effect & Operation > Prospective Operation

HN8 **Legislation, Statute of Limitations**

When a cause of action is barred by a statute of limitation, in force at the time the right to sue arose, and until the time of limitation expired, that the right to rely upon the statute as a defense is a vested right that can not be disturbed by subsequent legislation.

Estate, Gift & Trust Law > Wills > Revocation of Wills > General Overview

Governments > Legislation > Effect & Operation > Retrospective Operation

Civil Procedure > ... > Affirmative Defenses > Statute of Limitations > Revival

Environmental Law > Hazardous Wastes & Toxic Substances > Asbestos > Statute of Limitations

Governments > Legislation > Statute of Limitations > General Overview

Governments > Legislation > Statute of Limitations > Extensions & Revivals

Governments > Legislation > Statute of Repose

Torts > Procedural Matters > Statute of Limitations > General Overview

Torts > Procedural Matters > Statute of Repose > General Overview

HN9 **Wills, Revocation of Wills**

A defendant has a vested right in a statute of limitations defense if the cause of action has accrued and the time allotted has expired. By analogy, a defendant has a vested right in a statute of repose if the triggering event has occurred and the time expired.

Governments > Legislation > Statute of Limitations > Time Limitations

Torts > Products Liability > General Overview

Torts > Procedural Matters > Statute of Limitations > General Overview

HN10 **Statute of Limitations, Time Limitations**

Tenn. Code Ann. § 28-3-104(b), states, for the purpose of this section, in products liability cases: (1) The cause of action for injury to the person shall accrue on the date of the personal injury, not the date of the negligence or the sale of a product; (2) No person shall be deprived of the right to maintain a cause of action until one year from the date of the injury; and (3) Under no circumstances shall the cause of action be barred before the person sustains an injury.

Environmental Law > Hazardous Wastes & Toxic Substances > Asbestos > General Overview

Governments > Legislation > Effect & Operation > Prospective Operation

HN11 **Hazardous Wastes & Toxic Substances, Asbestos**

Tenn. Const. art. XI, § 8 states: The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law

for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed and no such alteration or repeal shall interfere with or divest rights which have become vested.

Constitutional Law > Equal Protection > Nature & Scope of Protection

Constitutional Law > Equal Protection > General Overview

Constitutional Law > State Constitutional Operation

HN12[] Equal Protection, Nature & Scope of Protection

The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore it is purely arbitrary. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. The same rules must apply in disposing of a question arising under *Tenn. Const. art. 1, § 8*.

Constitutional Law > Equal Protection > Nature & Scope of Protection

HN13[] Equal Protection, Nature & Scope of Protection

The touchstone in determining whether the legislature has drawn a proper classification is its reasonableness; and as the above guidelines demonstrate, the legislature is given fairly broad leeway, for when a court determines that a classification is unreasonable, it is substituting its judgment for that of the legislature, and this it should not do unless the classification is clearly arbitrary and has no rational basis.

Constitutional Law > Equal Protection > Nature & Scope of Protection

HN14[] Equal Protection, Nature & Scope of Protection

It is no requirement of equal protection that all evils of the same genus be eradicated or none at all.

Environmental Law > Hazardous Wastes & Toxic Substances > Asbestos > Statute of Limitations

Governments > Legislation > Statute of Limitations > General Overview

Governments > Legislation > Statute of Repose

Torts > Procedural Matters > Statute of Repose > General Overview

Torts > Procedural Matters > Statute of Repose > Products Liability

Torts > Products Liability > General Overview

HN15[] Asbestos, Statute of Limitations

The legislature's remedial action in excepting asbestos-related claims from the Tennessee Products Liability Act's general statute of repose scheme does not offend *Tenn. Const. art. XI, § 8*.

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Judges: Charles D. Susano, Jr., J., CONCUR: Houston M. Goddard, P.J., Herschel P. Franks, J.

Opinion by: Charles D. Susano, Jr.

Opinion

[*101] OPINION

Susano, J.

The complaint in this case seeks damages for lung disease caused by exposure to asbestos. Herbert E. Wyatt (Wyatt) sued numerous manufacturers and sellers of products to which he was allegedly exposed during his working years. His wife, Brenda Wyatt, sued for loss of consortium. The trial judge granted the defendants summary judgment. He held that the Wyatts' action was time-barred by the ten-year statute of repose found at T.C.A. § 29-28-103(a), [1] **[**4]** a part of the Tennessee Products Liability Act of 1978 (TPLA). [2] He also concluded that the 1979 amendment [3] to the TPLA, codified at T.C.A. § 29-28-103(b), [4] the so-called asbestos exception, could not be constitutionally construed to revive the Wyatts' already-barred claims. This latter holding was based on the **[**3]** trial court's determination that the defendants had acquired a vested right in repose as a result of the 1978 enactment of the TPLA, and that this vested right could not be retroactively divested by the asbestos exception. The trial court also struck down the asbestos exception as unconstitutional class legislation in violation of Article XI, Section 8 of the Tennessee Constitution. The Wyatts appeal, raising issues that pose the following questions:

> 1. Did the defendants acquire a right in the bar of the ten-year period of limitations that could not be divested by enactment of the asbestos exception without running afoul of Article I, Section 20, of the Tennessee Constitution?
>
> 2. Is the asbestos exception unconstitutional class legislation in violation of Article XI, Section 8, of the Tennessee Constitution?

I

Wyatt worked as a carpenter from 1951 to 1984. He claims employment-related exposure to products containing asbestos that were manufactured and/or sold by the defendants. Although it is not clear when he was last exposed to asbestos, it is undisputed that none of the defendants sold or distributed any asbestos-containing products relevant to this action within ten years of July 1, 1978, the effective date of the original

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[1] ***HN1***[↑] T.C.A. § 29-28-103(a) provides, in pertinent part, as follows:

> Any action against a manufacturer or seller of a product for injury to person or property caused by its defective or unreasonably dangerous condition must be brought within the period fixed by §§ 28-3-104, 28-3-105, 28-3-202 and 47-2-725, but notwithstanding any exceptions to these provisions it must be brought within six (6) years of the date of injury, in any event, *the action must be brought within ten (10) years from the date on which the product was first purchased for use or consumption . . .*

(Emphasis added.)

[2] Chapter 703, Public Acts of 1978, effective July 1, 1978.

[3] Chapter 162, Public Acts of 1979, effective July 1, 1979.

[4] T.C.A. § 29-28-103(b) provides, in pertinent part, as follows:

> The foregoing limitation of actions [T.C.A. § 29-28-103(a)] shall not apply to any action resulting from exposure to asbestos . . .

enactment of the TPLA.

In 1984, Wyatt opted for early retirement due to health problems, including unexplained shortness of breath. In May, 1989, he was diagnosed with asbestosis. He and **[*102]** his wife filed this action on May 2, 1990, within one year of the date he discovered that he was suffering from an asbestos-related lung disease.

[5]** II

The resolution of this case depends upon the proper interpretation of T.C.A. § 29-28-103(a). That statute provides, in pertinent part, as follows:

> Any action against a manufacturer or seller of a product for injury to person or property caused by its defective or unreasonably dangerous condition must be brought within the period fixed by §§ 28-3-104, 28-3-105, 28-3-202 and 47-2-725, but notwithstanding any exceptions to these provisions it must be brought within six (6) years of the date of injury, *in any event, the action must be brought within ten (10) years from the date on which the product was first purchased for use or consumption.* . .

(Emphasis added). A threshold question in this case is whether the italicized part of the statute is properly characterized as a statute of limitations, or as one of repose. Wyatt argues that it should be classified as a conventional statute of limitations, pointing out that it was a part of a section entitled "Statute of Limitations" when the TPLA was originally enacted by the legislature; [5] and that the 1979 asbestos exception [6] to the TPLA refers to "limitation of actions" but not "repose." We think, however, that **[**6]** the analysis should revolve around the substance of the statutory language, and its logical and intended effect, rather than how it was entitled or labeled.

HN2[↑] Courts in Tennessee have consistently pointed out the distinction between a statute of limitations and a statute of repose. The former has been described as affecting only a party's remedy for a cause of action, while the running of a statute of repose has been said to "nullify both the remedy and the right." Bruce v. Hamilton, 894 S.W.2d 274, 276 (Tenn.App. 1993); Via v. General Elec. Co., 799 F. Supp. 837, 839 (W.D.Tenn. 1992). Generally speaking, the critical distinction in classifying a statute as one of repose or one of limitations is the event or occurrence designated as the "triggering event," i.e., the event that starts the "clock" running on the time allowed for the filing of suit. In a traditional statute of limitations, the triggering event is typically the accrual **[**7]** of the action, i.e., when all the elements of the action, including injury or damages, have coalesced, resulting in a legally cognizable claim. A statute of repose, on the other hand, typically describes the triggering event as something other than accrual, prompting courts to note that such statutes are "entirely unrelated to the accrual of any action. . ." Watts v. Putnam Co., 525 S.W.2d 488, 491 (Tenn. 1975), Cronin v. Howe, 906 S.W.2d 910, 913 (Tenn. 1995).

HN3[↑] Because a statute of repose sets the triggering event as something other than accrual, it can have the effect of barring a plaintiff's claim before it accrues, most typically before the plaintiff becomes aware of his or her injury. *See* Cronin, 906 S.W.2d at 913; Bruce, 894 S.W.2d at 276 ("A statute of repose is a substantive provision because it expressly qualifies the right which the statute creates by barring a right of action even before the injury has occurred if the injury occurs subsequent to the prescribed time period.") This possibility has prompted courts to hold that statutes of repose affect the substantive right of a party to bring suit, as well as the remedy. *Id.*

HN4[↑] The ten-year period set forth **[**8]** in T.C.A. § 29-28-103(a) is properly characterized as a statute of repose. Its triggering event is the "date on which the product was first purchased for use or consumption." It starts the "clock" running from that occurrence, and the time is up after ten years. When the TPLA was originally enacted in 1978, the legislature did not provide an exception or allowance for latent injuries or the like; its use of the words "in any event" underscores the unconditional nature of the ten-year limitation. Further, several courts that have addressed this issue, or issues closely related to it, have interpreted the ten-year **[*103]** period to be a statute of repose. Via, 799 F. Supp. at 839; Jones v. Five Star Engineering, Inc., 717 S.W.2d 882, 883 (Tenn. 1986); Myers v. Hayes Int'l. Corp., 701 F. Supp. 618, 624-25 (M.D. Tenn. 1988); Wayne v. TVA, 730 F.2d 392, 400-01 (5th Cir. 1984). Accordingly, we hold that the ten-year period established by T.C.A. § 29-28-103(a) is a statute of repose.

III

The next issue we must address is the effect of the

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[5] See footnote 2, this opinion.

[6] See footnote 3, this opinion.

TPLA's *enactment* upon Wyatt's cause of action. Wyatt and supporting *amici* strenuously and ably argue that since Wyatt's cause of action **[**9]** did not accrue until after the asbestos exception [7] became effective in 1979, that exception should apply to, and save, his action. They rely upon Tennessee caselaw to the effect that "there is no vested right in a statute of limitation unless and until the cause or action has accrued and expired." *Watts, 525 S.W.2d at 492*. If the ten-year period was a conventional statute of limitations, we would agree, since ***HN5***[↑] a statute of limitations generally does not start to run until accrual, which, under the discovery rule *(see Teeters v. Currey, 518 S.W.2d 512 (Tenn. 1974); McCroskey v. Bryant Air Cond. Co., 524 S.W.2d 487 (Tenn. 1975))*, does not occur until the plaintiff discovers or should have discovered his or her injury.

Since the ten-year period set forth in *T.C.A. § 29-28-103(a)* is a statute of repose, we do not believe it is logical to focus on the date of accrual, since, as noted above, the statute runs from the triggering event without regard to accrual. In the **[**10]** present case, the plain language of *T.C.A. § 29-28-103(a)* requires an interpretation that the ten-year period starts to run from and after the date of the product's original sale for use or consumption. Since it is undisputed that all of the products complained of in this case were sold more than ten years prior to the passage of the 1978 enactment of the TPLA, that act, specifically *T.C.A. § 29-28-103(a)*, barred the Wyatts' causes of action, both the right and the remedy, on July 1, 1978, the date the TPLA became effective. The plain language of the TPLA so dictates, and since it is clear and unambiguous we should look no further for its construction. *Hamblen Co. Ed. Ass'n. v. Hamblen Co. Bd. of Ed., 892 S.W.2d 428, 431-32 (Tenn.App. 1994)*, *Carson Creek Vacation Resorts, Inc. v. State, 865 S.W.2d 1, 2 (Tenn. 1993)*, *Turner v. Harris, 198 Tenn. 654, 281 S.W.2d 661, 665 (Tenn. 1955)*.

The defendants argue that the effect of the extinguishment of Wyatt's cause of action on July 1, 1978, was to create in them a vested right to rest in repose. Therefore, they argue, the asbestos exception of 1979 cannot retroactively save Wyatt's claim without running afoul of *Article I, Section **[**11]** 20 of the Tennessee Constitution*. We agree.

HN6[↑] *Article I, Section 20 of the Tennessee Constitution* states

> that no retrospective law, or law impairing the obligations of contracts, shall be made.

The Tennessee Supreme Court, regarding ***HN7***[↑] "retrospective" laws, has stated that they

> are generally defined, from a legal standpoint, as those which take away or impair vested rights acquired under existing laws or create a new obligation, impose a new duty, or attach a new disability in respect of transactions or considerations already passed.

Morris v. Gross, 572 S.W.2d 902, 907 (Tenn. 1978).

It has long been the law in Tennessee that

> ***HN8***[↑] when a cause of action is barred by a statute of limitation, in force at the time the right to sue arose, and until the time of limitation expired, that the right to rely upon the statute as a defense is a vested right that can not be disturbed by subsequent legislation.

Girdner v. Stephens, 48 Tenn. 280, 286 (Tenn. 1870); *see also Henderson v. Ford, 488 S.W.2d 720, 722 (Tenn. 1972)*; *Collier v. Memphis Light, Gas & Water Div., 657 S.W.2d 771, 775 (Tenn. App. 1983)*; *Morford v. Yong Kyun Cho, 732 S.W.2d **[**12]** 617, 620 (Tenn. App. 1987)*; *Buckner v. GAF Corp., 495 F. Supp. 351, 353 (E.D.Tenn. 1979)*. Thus, it **[*104]** is clear that in Tennessee ***HN9***[↑] a defendant has a vested right in a statute of limitations defense if the cause of action has accrued and the time allotted has expired. By analogy, a defendant has a vested right in a statute of repose if the triggering event has occurred and the time expired. As we have noted, on July 1, 1978, the statute of repose operated to cut off Wyatt's right to pursue his cause of action. To allow the General Assembly to revive it retroactively through the 1979 asbestos exception would be imposing a new duty on defendants "in respect of transactions . . . already passed," in violation of the Tennessee Constitution.

Consequently, we hold that the 1979 asbestos exception cannot be applied retroactively to revive Wyatt's already-barred cause of action. This result is not pleasant, for it means that Wyatt's claim was barred by the TPLA before he could be rationally expected to have been aware that he suffered an injury. [8] However, it is

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[7] See footnote 4, this opinion.

[8] This unpleasant result is perhaps what the federal Sixth Circuit was focusing upon when, in the case of *Murphree v.*

clear that the legislature has the constitutional power to enact statutes of repose which, by definition, have the possible effect **[**13]** of barring a claim before it accrues. *See* Jones, 717 S.W.2d at 883 (upholding constitutionality of TPLA statute of repose); *Harrison v. Schrader, 569 S.W.2d 822 (Tenn. 1978)*; Harmon v. Angus R. Jessup Assoc., Inc., 619 S.W.2d 522 (Tenn. 1981). Further, it is what the clear and unambiguous language of the statute demands. In its 1978 enactment, the legislature could have placed exceptions on the repose statute for products sold prior to a certain date or for latent injury cases or the like, but did not do so. It is not the prerogative of the courts to read into the statute an exception where none exists. The words of the late Justice Joe Henry of the Supreme Court, regarding another statute of repose, are particularly relevant here:

> We do not necessarily agree philosophically with the results we reach. We can only construe the statute as it is, not as we think it ought to be.

Watts, 525 S.W.2d at 494.

[14]** Wyatt argues that a construction such as the one we have applied in this case would create a conflict with HN10[↑] T.C.A. § 28-3-104(b), which states,

> For the purpose of this section, in products liability cases:
>
> (1) The cause of action for injury to the person shall accrue on the date of the personal injury, not the date of the negligence or the sale of a product;
>
> (2) No person shall be deprived of the right to maintain a cause of action until one (1) year from the date of the injury; and
>
> (3) Under no circumstances shall the cause of action be barred before the person sustains an injury.

A cursory comparison of the language quoted above with that of T.C.A. § 29-28-103(a) *("notwithstanding any exceptions to these provisions* [which would include § 28-3-104(b)] . . . *in any event,* the action must be brought within ten (10) years. . ." (emphasis added) provides the answer to that contention--there is no conflict between the two statutes.

IV

Because this case may be subject to further appellate review, we now turn to the second issue in this case: the constitutionality, under Article XI, Section 8 of the Tennessee Constitution, of the asbestos exception **[**15]** itself. That constitutional section provides:

> HN11[↑] The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie, **[*105]** [immunities] or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed and no such alteration or repeal shall interfere with or divest rights which have become vested.

The defendants argue, and the trial court agreed, that the asbestos exception, which states simply that "the foregoing limitation of actions [T.C.A. § 29-28-103(a)] shall not apply to any action resulting from exposure to asbestos," unfairly singles out asbestos producers and sellers by exempting asbestos **[**16]** claims from the statute of repose, while applying the statute to manufacturers of products similar to asbestos.

On this point, the trial court stated the following, which rather succinctly summarizes the defendants' position:

> It does not appear in the legislative history and record furnished to the Court that the legislature gave any consideration to any other product that produced injury only after prolonged exposure or for which there was a period of latency before the onset of symptoms and injury and discovery of whatever disease process may have been caused by exposure to or use of such products. More particularly, nothing has been furnished to the Court . . . that suggests any reason for treating asbestosis or other disease conditions resulting from exposure to asbestos from other diseases that occur only after prolonged exposure to products or which

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Raybestos-Manhattan, Inc., 696 F.2d 459, 462 (6th Cir. 1982) it predicted that "the Tennessee Supreme Court will no longer use the vested rights doctrine to prevent the Tennessee legislature from ameliorating the harshness of a rule that bars a plaintiff's claim before he discovers it." *See also* Clay v. Johns-Manville Sales Corp., 722 F.2d 1289 (6th Cir. 1983); Cathey v. Johns-Manville Sales Corp., 776 F.2d 1565 (6th Cir. 1985). Obviously, to the extent that these cases differ from our present analysis, we express our disagreement with their holdings and predictions.

> manifest an onset of symptoms and injury after a period of latency. . . Frankly, no satisfactory explanation has been given to the Court why the legislature chose to exempt asbestos from the strictures of the Tennessee Products Liability Act, did not include manufacturers and producers and sellers of other products which **[**17]** were thought to have a propensity to cause injury only after prolonged exposure or from which injury became manifested only after a period of latency.

The trial court struck down the asbestos exception as improper class legislation.

V

Tennessee courts have long recognized the similarity between Article XI, Section 8, and the *equal protection clause of the federal Constitution*, and have therefore applied an equal protection analysis to constitutional challenges brought pursuant to Article XI, Section 8. *Motlow v. State, 125 Tenn. 547, 145 S.W. 177, 180 (Tenn. 1912)*; *Estrin v. Moss, 221 Tenn. 657, 430 S.W.2d 345, 348 (Tenn. 1968)*; *King-Bradwall Partnership v. Johnson Controls, Inc., 865 S.W.2d 18, 21 (Tenn. App. 1993)* ("the Supreme Court of Tennessee 'has adopted a virtually identical equal protection standard or analysis under *Article XI, Section 8 of the Tennessee Constitution*.'") The defendants do not argue, nor could they, that infringement of a fundamental right is involved here, or that the legislature has created a classification involving a "suspect" or "protected" class, such as race or national origin. Therefore, the standard to be applied is the familiar **[**18]** "rational basis" standard. *King-Bradwall, 865 S.W.2d at 21*; *City of Memphis v. International Broth. of Elec. Wrkrs. U., 545 S.W.2d 98, 102 (Tenn. 1976)*; *State v. Tester, 879 S.W.2d 823, 828 (Tenn. 1994)*.

The basic analytical principles of our equal protection analysis were set forth over eight decades ago in the landmark case of *Motlow v. State, 125 Tenn. 547, 145 S.W. 177, 180 (Tenn. 1912)*, and they have remained unchanged since then:

> "(1) ***HN12***[] The equal protection clause of the fourteenth amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore it is purely arbitrary. (2) A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. (3) When the classification **[*106]** in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be **[**19]** assumed. (4) One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." The same rules must apply in disposing of a question arising under Article 1, § 8 of our Constitution of 1870. . .

Id., quoting *Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337, 55 L.Ed. 369 (1911)*. ***HN13***[] The touchstone in determining whether the legislature has drawn a proper classification is its reasonableness; and as the above guidelines demonstrate, the legislature is given fairly broad leeway, for when a court determines that a classification is unreasonable, it is substituting its judgment for that of the legislature, and this it should not do unless the classification is clearly arbitrary and has no rational basis.

Applying these principles to the instant case, we cannot say that the General Assembly's decision to classify asbestos-related claims differently from other latent-injury claims is so patently arbitrary as lacking any rational basis. It is perhaps true that the legislature's purpose might have been better or more effectively served by a general exemption for all latent **[**20]** injury claims; however, the Tennessee Supreme Court has noted,

> ". . . the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it. . . .The legislature may select one phase of one field and apply a remedy there, neglecting the others. . . .The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

Swain v. State, 527 S.W.2d 119, 121 (Tenn. 1975), *quoting* *Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955)*. The Supreme Court's oft-quoted statement that ***HN14***[] "it is no requirement of equal protection that all evils of the same genus be eradicated or none at all" is also apposite here. *Railway Express Agency v. People of New York, 336 U.S. 106, 110, 69 S.Ct. 463, 466, 93 L.*

Ed. 533 (1948).

The asbestos exception has already withstood several very similar equal protection challenges. Courts in each case have upheld the exception, finding a rational basis for the classification. Spence v. Miles Laboratories, **[**21]** Inc., 810 F. Supp. 952, 961 (E.D.Tenn. 1992) (upholding exception in face of equal protection challenge that argued AIDS patients and asbestos victims are similarly situated); Wayne v. TVA, 730 F.2d 392, 404 (5th Cir. 1984) (upholding TPLA asbestos exception in face of equal protection challenge arguing exposure to latent-injury-causing phosphate slag similar to asbestos exposure); Kochins v. Linden-Alimak, Inc., 799 F.2d 1128, 1139 (6th Cir. 1986) ("we think the statute's exemption of asbestos-related injuries has a rational basis if only because such injuries often take considerably longer than ten years to manifest themselves.") The court in Pottratz v. Davis, 588 F. Supp. 949 (D.Md. 1984), presented with an equal protection challenge to a similar asbestos exception in an Oregon statute, responded with a very apposite, if somewhat chilling, statement:

> The reasonableness of statutes of limitations as specially applied to asbestos is claims has been repeatedly recognized. [citations omitted] The legislature is entitled to much deference in this matter, and the statute should be presumed to be constitutional. It will simply be noted that among the many factors **[**22]** which place asbestos-related injuries in a class by themselves, it is known that asbestos-related diseases are not dependent upon repeated inhalations or exposures, but upon the presence of the fiber in the lungs from potentially one, initial exposure. [citation omitted] There is usually a long period of latency of up to 30 years before onset of the diseases. . .Over 3000 different products in daily use at one time contained asbestos, including tooth brushes, ironing board covers, brake linings, roofing shingles, fireproofing and insulating material. [citation omitted] With these few factors in **[*107]** mind, it can hardly be said that there is no rational justification for the Oregon legislature's decision to treat asbestos claimants differently from that of other claimants.

588 F. Supp. at 955-56. We agree with and adopt the *Pottratz* court's reasoning on this issue. We hold that HN15[↑] the legislature's remedial action in excepting asbestos-related claims from the TPLA's general statute of repose scheme does not offend Article XI, Section 8 of the Tennessee Constitution.

Our research has uncovered only one case in conflict with this conclusion. The Georgia Supreme Court, faced with the **[**23]** question presently before us in the case of Celotex Corp. v. St. Joseph Hosp., 259 Ga. 108, 376 S.E.2d 880, 882 (Ga. 1989), held a similar Georgia asbestos exception violative of equal protection. However, the sum total of that court's reasoning and discussion on the matter is as follows:

> This act singles out for special treatment property claims against manufacturers and suppliers of asbestos and differentiates them from *all* other claims that might be based upon other hazardous or toxic substances. Because we do not find this separate classification to be reasonable, the statute does not meet constitutional standards.

Id. (emphasis in original) No citation to authority was given in support of this statement. We are not so quick to substitute our judgment for the legislature's on this matter as perhaps was the *Celotex* court.

Because we hold that the appellants' claims are barred by the ten-year statute of repose in the Tennessee Products Liability Act of 1978, we affirm the judgment of the trial court. This case is remanded for the collection of costs assessed below. Costs on this appeal are taxed and assessed against the appellants.

Charles D. Susano, **[**24]** Jr., J.

CONCUR:

Houston M. Goddard, P.J.

Herschel P. Franks, J.

End of Document

Wyatt v. A-Best Prods. Co.

Court of Appeals of Tennessee

December 28, 1995, FILED

C/A NO. 03A01-9502-CV-00066

Reporter
924 S.W.2d 98 *; 1995 Tenn. App. LEXIS 830 **

HERBERT E. WYATT and BRENDA WYATT, his wife, Plaintiffs-Appellants, v. A-BEST PRODUCTS COMPANY, INC., et al., Defendants-Appellees.

Subsequent History: *924 S.W.2d 98 at 107*.

Prior History: [1]** CIRCUIT COURT. KNOX COUNTY. HONORABLE WHEELER A. ROSENBALM, JUDGE.

Original Opinion of November 30, 1995, Reported at: *1995 Tenn. App. LEXIS 770*.

Disposition: ORIGINAL OPINION MODIFIED

Case Summary

Procedural Posture
Appellant injured individuals and two of the amici curiae filed petitions for rehearing of the court's decision to affirm the order of the Circuit Court of Knox County (Tennessee), which granted appellees, manufacturers and distributors, their motions for summary judgment.

Overview
The individuals, in their petition for rehearing, argued that the court failed to take into account a recent decision of the Tennessee Supreme Court wherein the individuals also were the plaintiffs, just as in this action. They also argued that the court was incorrect in stating in its opinion that it was undisputed that none of appellees sold or distributed any asbestos-containing products relevant to this action within the effective date of the original enactment of the TPLA. The court held that the referred to Tennessee Supreme Court decision was not controlling in this case because its focus was on the issue of when a cause of action accrued, a concept that that was immaterial to the issue in this case, the expiration of the statute of repose. The court then concluded that it was incorrect when it stated that the parties were in agreement that all of appellees ceased to manufacture and distribute asbestos-containing products more than 10 years prior to July 1, 1978, the effective date of the TPLA. This was only correct as to one of appellees. Because the record was factually deficient as to the other appellees, this was fatal to their summary judgment motions.

Outcome
The court granted the petitions for rehearing as to all except one of appellees. The court modified its opinion and judgment so that it found and held that only one manufacturer, who did not manufacture and distribute asbestos-containing products more than 10 years prior to the effective date of the TPLA, was entitled to summary judgment. The court vacated the summary judgments as to the other appellees.

LexisNexis® Headnotes

Governments > Legislation > Statute of Repose

Torts > Procedural Matters > Statute of Limitations > General Overview

Governments > Legislation > Statute of Limitations > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

Torts > Procedural Matters > Statute of Repose > General Overview

HN1[] **Legislation, Statute of Repose**

The issue of when a cause of action accrues is a concept that is immaterial to the expiration of a statute of repose.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Movant Persuasion & Proof

HN2[] Summary Judgment, Entitlement as Matter of Law

The moving parties for summary judgment have the burden of persuading the trial court that no genuine and material factual issues exist and that they are, therefore, entitled to judgment as a matter of law. If the record is factually deficient that deficiency is fatal to the moving parties.

Judges: Charles D. Susano, Jr., J. CONCUR: Houston M. Goddard, P.J., Herschel P. Franks, J.

Opinion by: Charles D. Susano, Jr.

Opinion

[*107] OPINION ON PETITION FOR REHEARING

The appellants and two of the *amici* curiae have filed petitions for rehearing. The petitioners make two points. First, they argue that we overlooked the recent Supreme Court decision in the consolidated cases of *Herbert Wyatt, et ux.* [1] v. ACandS, Inc., et al., and *James W. Kyle, et ux., et al. v. ACandS, Inc., et al., 1995 Tenn. LEXIS 717*, Supreme Court No. 03 S01-9412-CV-00120, 1995 WL 694928, Supreme Court at Knoxville (November 27, 1995) (hereinafter referred to as "the Supreme Court's *Wyatt* decision"). They contend that our opinion conflicts with that decision.

[2]** The petitioners' second point is that we were incorrect when we stated in our opinion that "it is undisputed that none of the defendants sold or distributed any asbestos-containing products relevant to this action within ten years of July 1, 1978, the effective date of the original enactment of the TPLA."

We will consider these contentions in the order stated.

The petitioners are incorrect; we did not overlook the Supreme Court's *Wyatt* decision. We were well aware of that decision before we filed our opinion in the instant case. It is our judgment that the Supreme Court's *Wyatt* decision is not controlling on the issues raised in this appeal.

The Supreme Court's *Wyatt* decision addressed two questions, i.e., "what degree of certainty of a medical condition is sufficient to place a plaintiff on notice and trigger the commencement of the statute of limitations," and "whether a tentative, preliminary diagnosis, insufficient by itself to commence the statute, activates a duty to make, with due diligence, further inquiries into the cause of a plaintiff's condition." *1995 Tenn. LEXIS 717*, *7, *8, 1995 WL 694928 at *6. Both of these issues were examined by the Supreme Court in the context of the one-year **[**3]** statute of *limitations* found at *T.C.A. § 28-3-104*. The statute of repose at issue in the instant case was not at issue or even discussed in the Supreme Court's *Wyatt* decision. The Supreme Court's focus was on *HN1*[] the issue of when a cause of action accrues, a concept that is immaterial to the expiration **[*108]** of a statute of repose. The petitioners' argument based on the Supreme Court's *Wyatt* decision is without merit.

Moving to the second point raised by the petitioners, we have again reviewed the record in this case. We have concluded that we were incorrect when we stated, at two places in our opinion [2], that the parties were in agreement that all of the appellees ceased to manufacture and distribute asbestos-containing products more than ten years prior to July 1, 1978, the effective date of the TPLA. There was no such global stipulation. What the trial court did find *and* what is "undisputed" in the record before us is the following, taken verbatim from the trial court's final judgment:

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[1] The plaintiffs in the Supreme Court case are the same as those in the instant case. The former case was pursued on appeal pursuant to the provisions of Tenn. R. Civ. P. 54.02.

[2] At page 3, of the slip opinion we said that

> it is undisputed that none of the defendants sold or distributed any asbestos-containing products relevant to this action within ten years of July 1, 1978, the effective date of the original enactment of the TPLA.

At page 8, we prefaced a statement with the following comment:

> Since it is undisputed that all of the products complained of in this case were sold more than ten years prior to the passage of the 1978 enactment of the TPLA, . . .

> There is no dispute that none of the above defendants sold, distributed or otherwise placed into the stream of commerce any asbestos-containing products relevant to this action **[**4]** *within ten (10)* years of *the filing of this action.*

(Emphasis added). Since the trial judge found the asbestos exception to be unconstitutional, he naturally focused on the TPLA's ten-year statute of repose and the "ten years [immediately preceding] the filing of this action." Our focus was different. Since we found the asbestos exception to be constitutional, we were concerned with the appellees' activities prior to July 1, 1979, the effective date of that exception.

We held in our opinion **[**5]** that the Wyatts' action against *all* of the appellees was barred because we thought that *all* of the appellees ceased to manufacture and distribute asbestos-containing products more than ten years prior to July 1, 1978, the effective date of the TPLA and its ten-year statute of repose. The Wyatts concede that our rationale was correct as to the appellee Owens-Illinois, Inc. This being the case, our original decision with respect to Owens-Illinois, Inc., stands. To the extent that the petitions for rehearing challenge our holding as to Owens-Illinois, Inc., they are DENIED *in toto.*

The Wyatts' petition for rehearing contends that "there is no evidence on the record that Defendant Owens-Corning Fiberglas stopped manufacturing and distributing asbestos material prior to July 1, 1968." While this assertion only involves Owens-Corning Fiberglas, it has prompted us to carefully examine the record before us as *to all of the other defendants who* were awarded summary *judgment.* For ease of reference, the defendants who were granted summary judgment, other than Owens-Illinois, Inc., will be referred to as "the other defendants" or "the other defendants who were granted summary **[**6]** judgment."

Our review of the record fails to disclose undisputed evidence of the type contemplated by Tenn. R. Civ. P. 56.03 reflecting that the other defendants ceased to manufacture and distribute asbestos-containing products more than ten years prior to July 1, 1979, the effective date of the asbestos exception. It may be that some of them did; but the evidence before us does not so indicate at this stage of the proceedings. [3] Since the record before us does not support the other defendants' right to summary judgment (given our ruling with respect to the asbestos exception), those defendants are not entitled to summary judgment. *HN2*[↑] The other defendants, as the moving parties, had the burden of "persuading the court that no genuine and material factual issues exist and that [they **[*109]** are], therefore, entitled to judgment as a matter of law." *Byrd v. Hall, 847 S.W.2d 208, 211 (Tenn. 1993)*. If the record is factually deficient, and we find that it is, that deficiency is fatal to the moving parties, in this case, the other defendants.

[7]** In our original opinion, we indicated on page 12 that we were addressing the constitutionality of the asbestos exception "because this case may be subject to further appellate review." We now realize that our review of this exception was necessary, not because of possible further appellate review, but because a resolution of that issue was essential to our review of the other defendants' entitlement to summary judgment. Had Judge Rosenbalm's constitutional evaluation of the asbestos exception been sustained by us, all of the defendants would have been entitled to summary judgment based on the undisputed proof that none of the defendants placed any asbestos-containing products into the stream of commerce within ten years of the filing of this action; however, under our ruling with respect to the asbestos exception, the other defendants, based on the record before us, are not entitled to the bar of the ten-year statute of repose, and hence are not entitled to judgment in a summary fashion.

For the reasons stated herein, the petitions for rehearing as to the other defendants who were granted summary judgment are GRANTED. We modify our opinion and judgment in this case to delete our **[**8]** statements that it is undisputed that none of the defendants sold or distributed any asbestos-containing products within ten years of July 1, 1978, except to the extent those statements refer to Owens-Illinois, Inc. As previously indicated, those statements are true as to Owens-Illinois, Inc.

We further modify our opinion and judgment so that we now find and hold that only Owens-Illinois, Inc., is entitled to summary judgment. Our decision affirming

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[3] In fact, there are comments in the record made by some defense counsel to the effect that their clients had not been out of the asbestos market for ten years or more when the asbestos exception was enacted. While there are comments of other counsel indicating that their clients had been out of this business for more than ten years prior to the asbestos exception, we do not find a stipulation by the Wyatts to these statements, except as to Owens-Illinois, Inc. Statements of counsel, not stipulated to by the other side, do not qualify for consideration by us under Tenn. R. Civ. P. 56.03.

the trial court's judgment as to that defendant stands. The judgment of the trial court awarding summary judgment to the other defendants is vacated and this case is remanded to the trial court for further proceedings not inconsistent with our original opinion as modified by this opinion.

We further modify our original opinion and judgment regarding the costs on appeal to provide that those costs are taxed one-half to the appellants and one-half to the other defendants.

Except as modified herein, we adhere to our original opinion.

IT IS SO ORDERED.

ENTER:

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

Herschel P. Franks, J.

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TABLE OF CONTENTS TO THE RECORD ON APPEAL

15,19,REFER,STAYED

U.S. District Court
CENTRAL DISTRICT OF ILLINOIS (Peoria)
CIVIL DOCKET FOR CASE #: 1:21−cv−01323−JES−JEH

Martin v. Polyone Corporation et al
Assigned to: Judge James E. Shadid
Referred to: Magistrate Judge Jonathan E. Hawley
Cause: 28:1332 Diversity−Wrongful Death

Date Filed: 11/04/2021
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

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individually and as executor of the estate of Rodney Martin, deceased

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Defendant

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Lucas Brent Young
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Timothy J Coughlin
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/04/2021	1	COMPLAINT against All Defendants (Filing fee $ 402 receipt number AILCDC−3798128.), filed by Candice Martin. (Attachments: # 1 Civil Cover Sheet, # 2 Summons, # 3 Summons, # 4 Certificate of Interest)(Jennetten, Patrick) (Entered:

		11/04/2021)
11/04/2021	2	Summons Issued as to Goodrich Corporation, Polyone Corporation. (JS) (Entered: 11/04/2021)
12/08/2021	3	AFFIDAVIT of Service for Proof of Service served on Polyone Corporation on 11/12/2021, filed by Candice Martin. (Jennetten, Patrick) (Entered: 12/08/2021)
12/09/2021	4	AFFIDAVIT of Service for Summons and Complaint served on C.T. Corporation on 11/12/2021, filed by Candice Martin. (Jennetten, Patrick) (Entered: 12/09/2021)
12/09/2021	5	NOTICE of Appearance of Attorney by Ambrose V McCall on behalf of Goodrich Corporation, Polyone Corporation (McCall, Ambrose) (Entered: 12/09/2021)
12/09/2021	6	NOTICE of Appearance of Attorney by Ambrose V McCall on behalf of Goodrich Corporation, Polyone Corporation (McCall, Ambrose) (Entered: 12/09/2021)
12/09/2021	7	NOTICE of Appearance of Attorney by Ambrose V McCall on behalf of Goodrich Corporation, Polyone Corporation (McCall, Ambrose) (Entered: 12/09/2021)
12/09/2021	8	Unopposed MOTION for Extension of Time to File Answer by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 12/23/2021 (McCall, Ambrose) Modified on 12/9/2021 to correct name of filing(AH). (Entered: 12/09/2021)
12/09/2021	9	NOTICE of Appearance of Attorney by Daniel W McGrath on behalf of Goodrich Corporation, Polyone Corporation (McGrath, Daniel) (Entered: 12/09/2021)
12/13/2021		TEXT ONLY ORDER granting 8 unopposed Motion for Extension of Time to Answer. Defendants Goodrich Corporation and Polyone Corporation shall answer or otherwise plead by 1/24/2022. Entered by Magistrate Judge Jonathan E. Hawley on 12/13/21. (WG) (Entered: 12/13/2021)
12/16/2021	10	NOTICE of Appearance of Attorney by Lucas Brent Young on behalf of Goodrich Corporation, Polyone Corporation (Young, Lucas) (Entered: 12/16/2021)
01/21/2022	11	NOTICE *Of Service of Documents* (Jennetten, Patrick) (Entered: 01/21/2022)
01/24/2022	12	NOTICE of Appearance of Attorney by Andrea B Daloia on behalf of Goodrich Corporation, Polyone Corporation (Daloia, Andrea) (Entered: 01/24/2022)
01/24/2022	13	CERTIFICATE OF INTEREST pursuant to Local Rule 11.3 by Goodrich Corporation. (Daloia, Andrea) (Entered: 01/24/2022)
01/24/2022	14	CERTIFICATE OF INTEREST pursuant to Local Rule 11.3 by Polyone Corporation. (Daloia, Andrea) (Entered: 01/24/2022)
01/24/2022	15	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 2/7/2022 (Daloia, Andrea) (Entered: 01/24/2022)
01/24/2022	16	MEMORANDUM in Support re 15 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendants Goodrich Corporation, Polyone Corporation. (Daloia, Andrea) (Entered: 01/24/2022)
01/24/2022	17	NOTICE of Appearance of Attorney by Timothy J Coughlin on behalf of Goodrich Corporation, Polyone Corporation (Coughlin, Timothy) (Entered: 01/24/2022)
01/25/2022	18	NOTICE of Appearance of Attorney by Herschel L Hobson on behalf of All Plaintiffs (Hobson, Herschel) (Entered: 01/25/2022)
01/25/2022	19	NOTICE of Appearance of Attorney by Andrew Seth Lipton on behalf of All Plaintiffs (Lipton, Andrew) (Entered: 01/25/2022)
02/04/2022	20	MEMORANDUM in Opposition re 15 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Plaintiff Candice Martin. (Jennetten, Patrick) (Entered: 02/04/2022)
02/11/2022	21	MOTION for Leave to File *a Reply Brief in Support of Motion to Dismiss* by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 2/25/2022 (Attachments: # 1 Exhibit 1 − Reply, # 2 Exhibit A to Exhibit 1 − 2020 Complaint, # 3

		Exhibit B to Exhibit 1 − Geon and Goodrich Agreement, # 4 Exhibit C to Exhibit 1 − Orders Dismissing PolyOne, # 5 Proposed Order)(Coughlin, Timothy) (Entered: 02/11/2022)
02/14/2022	22	MOTION for Leave to File *Sur−Reply Memorandum in Response* by Plaintiff Candice Martin. Responses due by 2/28/2022 (Attachments: # 1 Exhibit, # 2 Text of Proposed Order)(Jennetten, Patrick) (Entered: 02/14/2022)
03/09/2022		TEXT ORDER: GRANTING Defendants' 21 Motion for Leave to File Reply Brief in Support of Motion to Dismiss and Plaintiff's 22 Motion for Leave to File Sur−Reply in Response. While the Court will allow these additional responsive pleadings, it notes Defendants 16 Memorandum in Support of Motion to Dismiss and Plaintiff's 20 Memorandum in Opposition violate ILCD−LR 7.1(B)(4)(b) which states "[a] memorandum in support of and in response to a motionmust not exceed 15 pages in length." The Court admonishes the parties to follow this Court's rules for all future filings. Entered by Judge Michael M. Mihm on March 9, 2022. (JS) (Entered: 03/09/2022)
03/09/2022	23	REPLY to Response to Motion re 15 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendants Goodrich Corporation, Polyone Corporation. (JS) (Entered: 03/09/2022)
03/09/2022	24	Plaintiff's SUR−REPLY Memorandum in Opposition to 15 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Plaintiff Candice Martin. (JS) (Entered: 03/09/2022)
06/15/2022	25	ORDER entered by Judge Michael M. Mihm on 6/15/2022. Plaintiff's 1 Complaint is DISMISSED WITHOUT PREJUDICE. The Court will allow Plaintiff twenty−eights days from the date of this Order to file an Amended Complaint in compliance with the terms of this Order. *SEE FULL WRITTEN ORDER.*(JS) (Entered: 06/15/2022)
07/01/2022	26	AMENDED COMPLAINT *and Demand for Jury Trial* against All Defendants, filed by Candice Martin.(Jennetten, Patrick) (Entered: 07/01/2022)
07/01/2022	27	NOTICE *of Service of Documents* (Jennetten, Patrick) (Entered: 07/01/2022)
07/06/2022	28	Consent MOTION for Extension of Time to File Answer *or Otherwise Plead in Response to Plaintiff's Amended Complaint* by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 7/20/2022 (McCall, Ambrose) (Entered: 07/06/2022)
07/07/2022		TEXT ORDER granting 28 Defendants' Unopposed Motion for Extension of Time to Answer or otherwise plead in response to Plaintiff's Amended Complaint. Goodrich Corporation and Polyone Corporation shall file their responsive pleading by 8/15/2022. Entered by Magistrate Judge Jonathan E. Hawley on 7/7/22. (WG) (Entered: 07/07/2022)
08/15/2022	29	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 8/29/2022 (Attachments: # 1 Text of Proposed Order)(Coughlin, Timothy) (Entered: 08/15/2022)
08/15/2022	30	MEMORANDUM in Support re 29 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendants Goodrich Corporation, Polyone Corporation. (Coughlin, Timothy) (Entered: 08/15/2022)
08/15/2022	31	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendant Polyone Corporation. Responses due by 8/29/2022 (Attachments: # 1 Text of Proposed Order)(Coughlin, Timothy) (Entered: 08/15/2022)
08/15/2022	32	MEMORANDUM in Support re 31 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendant Polyone Corporation. (Coughlin, Timothy) (Entered: 08/15/2022)
08/25/2022	33	MEMORANDUM in Opposition re 29 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Plaintiff Candice Martin. (Jennetten, Patrick) (Entered: 08/25/2022)

08/25/2022	34	MEMORANDUM in Opposition re 31 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Plaintiff Candice Martin. (Jennetten, Patrick) (Entered: 08/25/2022)
09/02/2022	35	MOTION for Leave to File *a Reply Brief in Support of Motion to Dismiss Plaintiff's Amended Complaint Instanter* by Defendant Polyone Corporation. Responses due by 9/16/2022 (Attachments: # 1 Proposed Order, # 2 Reply in Support of Motion to Dismiss)(Coughlin, Timothy) (Entered: 09/02/2022)
09/02/2022	36	MOTION for Leave to File *a Reply Brief in Support of Motion to Dismiss Plaintiff's Amended Complaint Instanter* by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 9/16/2022 (Attachments: # 1 Proposed Order, # 2 Reply in Support of Motion to Dismiss)(Coughlin, Timothy) (Entered: 09/02/2022)
09/07/2022	37	MEMORANDUM in Opposition re 36 MOTION for Leave to File *a Reply Brief in Support of Motion to Dismiss Plaintiff's Amended Complaint Instanter* filed by Plaintiff Candice Martin. (Jennetten, Patrick) (Entered: 09/07/2022)
09/07/2022	38	MEMORANDUM in Opposition re 35 MOTION for Leave to File *a Reply Brief in Support of Motion to Dismiss Plaintiff's Amended Complaint Instanter* filed by Plaintiff Candice Martin. (Jennetten, Patrick) (Entered: 09/07/2022)
09/13/2022		TEXT ORDER: GRANTING Defendant PolyOne Corporation's 35 Motion for Leave to File a Reply Instanter and Defendants Goodrich Corporation and PolyOne Corporation's 36 Motion for Leave to File a Reply Instanter. The Court finds that a reply would aid in the resolution of the pending Motions to Dismiss Plaintiff's Amended Complaint. The Court instructs the Clerk to create separate docket entries for Defendant PolyOne Corporation's [35−1] Reply in Support of Motion to Dismiss, and Defendants Goodrich Corporation and PolyOne Corporation's [36−1] Reply in Support of Motion to Dismiss. Entered by Judge Michael M. Mihm on 9/13/2022. (JS) (Entered: 09/13/2022)
09/13/2022	39	REPLY to Response to Motion re 31 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendant Polyone Corporation. (JS) (Entered: 09/13/2022)
09/13/2022	40	REPLY to Response to Motion re 29 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Defendants Goodrich Corporation, Polyone Corporation. (JS) (Entered: 09/13/2022)
09/15/2022		TEXT ONLY ORDER: A Motion Hearing on Defendant's Motions to Dismiss Plaintiff's Amended Complaint 29 and 31 is SET for Wednesday, 11/2/2022 at 1:00 PM via telephone before Judge Michael M. Mihm. The parties are directed to dial 5512851373 and then enter 16057196032#. Entered on 9/14/2022 by Judge Michael M. Mihm. (JS) (Entered: 09/15/2022)
10/20/2022		TEXT ORDER OF RECUSAL entered by Judge Michael M. Mihm on 10/20/2022. Judge Mihm disqualifies and recuses himself from participation in this matter pursuant to 28 U.S.C. 455(a). This matter is referred to Chief Judge Sara Darrow for reassignment. (JS) (Entered: 10/20/2022)
10/20/2022		TEXT ORDER OF REASSIGNMENT entered by Chief Judge Sara Darrow on 10/20/2022. This case and the corresponding hearings are reassigned to Chief Judge Sara Darrow pending reassignment. (JS) (Entered: 10/20/2022)
10/20/2022		Reset Hearings: Motion Hearing set for Wednesday, 11/2/2022 at 1:00 PM via telephone before Chief Judge Sara Darrow. The parties are directed to dial 551−285−1373 and then enter 161 145 37809#. (JS) (Entered: 10/21/2022)
10/26/2022		TEXT ORDER OF REASSIGNMENT. This case and the corresponding hearings are reassigned to Judge James E. Shadid for further proceedings. Motion Hearing is RESET for before Judge James E. Shadid on Wednesday, 11/2/2022 at 1:00 PM via telephone. The parties are directed to dial 551−285−1373 and then enter 160 856 97862#. Entered by Chief Judge Sara Darrow on 10/26/2022. (JS) (Entered: 10/26/2022)
11/01/2022	41	NOTICE of Hearing on Motion [29 & 31] MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM. Motion Hearing reset for 2/24/2023 at 09:00 AM in via video

		conference before Judge James E. Shadid. Instructions to connect to the hearing are attached hereto as the main document.(CG) (Entered: 11/01/2022)
02/13/2023	42	NOTICE of Hearing on Motion 31 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , 29 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM : Motion Hearing reset for 4/6/2023 at 09:00 AM in via video conference before Judge James E. Shadid. Instructions for connecting to hearing are attached hereto as main document hereto.(CG) (Entered: 02/13/2023)
04/06/2023		Minute Entry for proceedings held before Judge James E. Shadid: Parties present via video conference by Attorneys Patrick Jennetten, Andrew Lipton, Herschel Hobson and Tina Bradley for the Plaintiff and Attorney Timothy Coughlin for the Defendants for Motion Hearing held on 4/6/2023 re 29 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM and 31 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM . Argument heard. The Court RESERVES ruling on 29 Motion to Dismiss for Failure to State a Claim and 31 Motion to Dismiss for Failure to State a Claim. Written order to enter. (Court Reporter JJ.) (JS) (Entered: 04/06/2023)
04/13/2023	43	ORDER entered by Judge James E. Shadid on 4/13/2023. Defendant Goodrich's Motion to Dismiss Plaintiff's amended complaint (Doc. 29) is DENIED. Defendant PolyOne's Motion to Dismiss Plaintiffs amended complaint (Doc. 31) is DENIED. *See full written Order.* (JS) (Entered: 04/13/2023)
04/26/2023	44	MOTION for Extension of Time to File Answer by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 5/10/2023 (Attachments: # 1 Exhibit 1)(McCall, Ambrose) (Entered: 04/26/2023)
04/27/2023		TEXT ORDER granting 44 the Defendants' Unopposed Motion for Extension of Time to Answer, Move, or Otherwise Plead in Response to Plaintiff's Amended Complaint. Defendants Goodrich Corporation, f/k/a Goodrich Company and Avient Corporation, f/k/a Polyone Corporation's answer or other responsive pleading is now due by 5/12/2023. Entered by Magistrate Judge Jonathan E. Hawley on 4/27/2023. (KZ) (Entered: 04/27/2023)
05/08/2023	45	MOTION for Certification for Interlocutory Appeal Under 28 U.S.C. § 1292(b) re 43 Order on Motion to Dismiss for Failure to State a Claim,,,,,, , MOTION to Stay *Pending Review* by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 5/22/2023 (Attachments: # 1 Text of Proposed Order)(Coughlin, Timothy) (Entered: 05/08/2023)
05/08/2023	46	MEMORANDUM in Support re 45 MOTION for Certification for Interlocutory Appeal Under 28 U.S.C. § 1292(b) re 43 Order on Motion to Dismiss for Failure to State a Claim,,,,,, MOTION to Stay *Pending Review* filed by Defendants Goodrich Corporation, Polyone Corporation. (Coughlin, Timothy) (Entered: 05/08/2023)
05/12/2023	47	MEMORANDUM in Opposition re 45 MOTION for Certification for Interlocutory Appeal Under 28 U.S.C. § 1292(b) re 43 Order on Motion to Dismiss for Failure to State a Claim,,,,,, MOTION to Stay *Pending Review* filed by Plaintiff Candice Martin. (Jennetten, Patrick) (Entered: 05/12/2023)
05/12/2023	48	MOTION for Extension of Time to File Answer *to Plaintiff's Amended Complaint* by Defendant Goodrich Corporation. Responses due by 5/26/2023 (Attachments: # 1 Exhibit 1)(McCall, Ambrose) (Entered: 05/12/2023)
05/15/2023		TEXT ORDER granting 48 Defendant's unopposed Motion for Extension of the answer date to Plaintiff's Amended Complaint. Dft Goodrich is to file it's responsive pleading to the Amended Complaint within 10 days of the Court ruling on the Defendants' pending Joint Motion for Certification of Interlocutory Appeal and Stay. Entered by Magistrate Judge Jonathan E. Hawley on 5/15/23. (WG) (Entered: 05/15/2023)
05/22/2023	49	MOTION for Leave to File *Reply in Support of Goodrich Corporation's and Polyone Corporation's Joint Motion for Certification for Interlocutory Appeal and For Stay Pending Review Instanter* by Defendants Goodrich Corporation, Polyone Corporation. Responses due by 6/5/2023 (Coughlin, Timothy) (Entered: 05/22/2023)
05/31/2023	50	ORDER entered by Judge James E. Shadid on 5/31/2023. IT IS THEREFORE ORDERED:1. Defendants' request for leave to file a Reply, instanter, is GRANTED

		(Doc. 49); 2. The Court hereby certifies for interlocutory review by the Seventh Circuit: (a) whether 820 ILCS 310/1(f) is the applicable statute of repose for purposes of § 310/1.1; and (b) whether applying 820 ILCS 310/1.1 to allow Plaintiff's civil case to proceed would violate Illinois' constitutional substantive due process. 3. This case is stayed pending Appellate review. See full written Order. (JS) (Entered: 05/31/2023)
06/12/2023	51	NOTICE from Seventh Circuit Court of Appeals of the filing of Petition for Permission to Appeal pursuant to 28 U.S.C. §1292(b). (TK) (Entered: 06/13/2023)
06/28/2023	52	NOTICE of USCA Order. IT IS ORDERED that the petition for permission to appeal is GRANTED. The petitioners shall pay the required docket fees to the clerk of the district court within fourteen days from the entry of this order pursuant to Federal Rule of Appellate Procedure 5(d)(1). Once the district court notifies this court that the fees have been paid, the appeal will be entered on this court's general docket. (JS) (Entered: 06/28/2023)
07/06/2023		Remark: Appeal filing fees $505.00 received pursuant to 52 USCA Order. Receipt (PIA100002670) emailed to 7th Circuit. (VH) (Entered: 07/06/2023)
07/10/2023	53	NOTICE of Docketing re 52 Notice of USCA Order. (JS) (Entered: 07/10/2023)
07/12/2023	54	TRANSCRIPT REQUEST by Goodrich Corporation, Polyone Corporation for proceedings held on April 6, 2023 before Judge James E. Shadid. (Coughlin, Timothy) (Entered: 07/12/2023)
07/14/2023	55	TRANSCRIPT INFORMATION SHEET for proceedings held on 4/6/2023 before Judge James E. Shadid. (JS) (Entered: 07/14/2023)
07/14/2023	56	**+++ SEALED DOCUMENT − ORIGINAL TRANSCRIPT INFORMATION SHEET UNREDACTED** (JS) (Entered: 07/14/2023)
07/26/2023	57	NOTICE OF FILING OFFICIAL TRANSCRIPT of Motion Hearing Proceedings via videoconference held on 4/6/2023, before Judge James E. Shadid. Court Reporter/Transcriber J. Johnson, Telephone number 309−573−0378. Transcript purchased by:Timothy J. Coughlin. **IMPORTANT: The parties have seven (7) business days to file with the Court a Notice of Intent to Request Redaction of this transcript. Within 21 days of the filing of the transcript, a Motion of Requested Redactions shall be e−filed with the Court. Access to this motion will be restricted to the Court and the attorneys of record in the case. If no such Notice and Motion are filed, the transcript may be made remotely, electronically available to the public, without redaction, 90 days from the date initially filed. Any party needing a copy of the transcript to review for redaction purposes may view the transcript at the Clerk's Office public terminal or contact the Court Reporter for purchase. Counsel are strongly urged to share this notice with all clients so that an informed decision about the inclusion of certain materials may be made. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk and Court Reporter will not review each transcript for compliance with this rule.** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/16/2023. Redacted Transcript Deadline set for 8/28/2023. Release of Transcript Restriction set for 10/24/2023. (TK) (Entered: 07/26/2023)
03/14/2024	58	Supreme Court of Illinois Notice: The Clerk of the Supreme Court of Illinois received and filed March 06, 2024 the Order of Certification from the United States Court of Appeals for the Seventh Circuit pursuant to Supreme Court Rule 20, in the captioned cause. This matter will be presented to the Court; thereafter, by order, the Court will issue its decision on answering the question. (MC) (Entered: 03/14/2024)

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois
First Judicial District

CANDICE MARTIN, Individually, and as Executrix of the Estate of Rodney Martin, Deceased,	)	
Plaintiff-Appellee,	)	
v.	)	No. 130509
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.	)	

The undersigned, being first duly sworn, deposes and states that on May 30, 2023, there was electronically filed and served upon the Clerk of the above court the Brief of Defendants-Appellants. On May 30, 2023, service of the Brief will be accomplished electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief of Defendants-Appellants bearing the court's file-stamp will be sent to the above court.

/s/ Emily G. Montion
Emily G. Montion

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Emily G. Montion
Emily G. Montion