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.

BRIEF OF AMICUS CURIAE ILLINOIS DEFENSE COUNSEL IN SUPPORT OF DEFENDANTS/APPELLANTS

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POINTS AND AUTHORITIES

STATEMENT OF INTEREST OF AMICUS CURIAE

The Illinois Defense Counsel (IDC) is made up of about 600 Illinois attorneys who devote a substantial portion of their practice to the representation of business, corporate, insurance, professional, governmental, and other individual defendants in civil litigation. For more than 50 years, it has been the mission of the IDC to ensure civil justice with integrity, civility, and professional competence.

It and its many members believe that they have a constructive role to play in the development of our system of justice and that its interest and those of its many members may be greatly affected by this Court's determination of the important issue which this appeal raises - namely whether the Illinois Legislature's enactment of 820 ILCS 310/1.1 ("Exception 1.1") is a proper exercise of the Legislature's power and the profound impact of such legislation on the citizens of the State of Illinois.

Mindful that it is a privilege and not a right to appear as an amicus curiae before the Supreme Court, the IDC is grateful to do so in this case. Based on the experience of its many members, the IDC respectfully submits that its views may be of some assistance in this Court.

ARGUMENT

I. INTRODUCTION

Since its inception, the Illinois Workers' Occupational Diseases Act (the "ODA") has governed aspects of the relationship between employer and employee. If an employee becomes disabled as a result of a covered exposure to a workplace hazard, the employee may pursue a claim for those injuries under the ODA. The employer is obligated to provide compensation for such injuries, provided that the provisions of the ODA apply to the claim. The exchange of rights and obligations created by the ODA ensures that the

employee is guaranteed to receive compensation for injuries proven to occur as a result of exposure to an occupational hazard. The employer is obligated to pay compensation for any such injuries and, in exchange for those payments, the employer is guaranteed that the compensation payable for those injuries is the only remedy available to the employee. The employee is not required to prove fault or negligence on the part of the employer. The employee must simply show exposure to the workplace hazard at the time the employee worked for the employer, along with a resulting disability.

There are only two timing requirements for the injured employee: 1) that the disability occur within two (2) years of the last exposure and 2) that the employee pursue the claim within two (2) or three (3) years of becoming disabled, depending on whether any compensation had previously been paid. Provided those two requirements are met, compensation is due for injuries proven to have occurred.

For years, employers, and just as importantly, their insurers, have operated under the presumption that claims where the disability falls outside of the two-year window, or the claim is not filed within the three-year window for filing such claims, are not compensable claims under the ODA. Employers are required by law to protect themselves, through insurance, self-insurance, or other means, to provide compensation for compensable injuries under the ODA. Outside of these time frames, employers should have confidence that they do not require insurance or other protections for claims that were otherwise, non-compensable.

As addressed in *Folta v Ferro Engineering*, the ODA currently has different periods of repose related to different types of exposure (i.e. coal miner's pneumoconiosis, radiological materials, asbestos). 820 ILCS 310/6(c). *Folta v. Ferro Eng'g.*, 2015 IL

118070 (Ill. 2015). In *Folta*, this court held that Section 6(c) of the ODA was a period of repose and that the plaintiff's claim was barred as his claim fell outside of the stated repose periods. *Folta*, 2015 IL 118070, ¶33. In response, the Illinois Legislature enacted Exception 1.1. The Seventh Circuit has posed three questions to this court, asking this court to opine on whether Section 1(f) is a period of repose and, if so, what limitations are there are this section.

It is the position of the IDC that the questions posed do not adequately address the full impact of the situation presented by the enactment of Exception 1.1. It is also the position of the IDC that the enactment of Exception 1.1 by the Illinois legislature is unconstitutional in that it violates the Due Process rights of employers and violates the Illinois Constitution's ban on Special Legislation.

II. EXCEPTION 1.1 CANNOT BE READ TO INCLUDE SECTION 1(F) AS A PERIOD OF REPOSE OR REPOSE PROVISION

In order to appreciate what Exception 1.1 accomplishes, it is important to note the impact of the applicability of this exception, not only to the parties in this case, but to all employees and employers in the State of Illinois. As noted above, the rights and obligations of employees and employers are balanced within the requirements of the ODA. In exchange for the right to compensation, employers are assured that the exclusive remedy of the employee will be under the ODA.

The ODA has notable exceptions to this exclusivity. "[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." Id. These exceptions

allow claims to be pursued in other venues based on the nature of the relationship between the employer and the employee. Each of these exceptions describes a situation where the harm that befell the employee is beyond the type of ordinary workplace exposure expected as part of an employment relationship in the ODA: in such instances the legislature logically exempted those harms from the exclusive remedy scheme of the ODA. In essence, if the claim is one where the injury to the employee did not arise out of the employment relationship, the employer does not get the benefit of the exclusive remedy provision.

Exception 1.1, if the Plaintiff's position is adopted, would allow employees to litigate in state courts, claims which are otherwise compensable under the ODA. This would be so even if the employee had met the requirements of the Act's time limitation on disability, but simply chose not to pursue the claim under the ODA.

It is not in dispute that Section 6(c) is a period of repose for purposes of the ODA. The issue presented herein is whether Section 1(f) is to be construed as a period of repose. There are only two potential answers to this question: 1) the legislature did not intend Exception 1.1 to apply to Section 1(f), or 2) the legislature did intend Exception 1.1 to apply to Section 1(f). The only logical conclusion is that the legislature could have only intended that Exception 1.1 would not apply to Section 1(f). The second option leads to absurd results and this Court could not reasonably conclude that an absurd result was the intent of the legislature.

In order for Exception 1.1 to apply, it is axiomatic that the injury for which the suit is brought must have originally been eligible for compensation under the ODA, due to the employee/employer relationship and the nature of the injury claimed by the

employee. If the ODA did not apply in the first place, there is no need to conduct an analysis of Exception 1.1. Accordingly, Exception 1.1 acts to remove the exclusivity protections provided to employers in cases that would otherwise be compensable under the ODA. The removal of those exclusivity protections occurs only when "the recovery of compensation benefits under this Act would be precluded due to the operation of any period of repose or repose provision." 820 ILCS 310/1.1.

If both 1(f) and 6(c) are construed as periods of repose under Exception 1.1, then any employee with an otherwise viable claim under the ODA can simply disregard the time constraints within Section 6(c) and pursue a lawsuit against the employer directly. The time trigger under Section 1(f) of the ODA is the date of last exposure; however, the date of last exposure would not necessarily be the trigger for statute of limitations purposes in state court. Similarly, the time trigger under Section 6(c) of the ODA for filing applications ("date of disablement") would not necessarily be the same trigger for barring any such claims in state court.

If both 1(f) and 6(c) are read as periods of repose, an employee that has incurred a disability as a result of a covered exposure within the two-year time frame of Section 1(f) could choose to file a claim under the ODA or simply choose to not timely file a claim under the ODA and seek the protections of Exception 1.1 to disregard Section 6(c)'s timing requirements. Similarly, an employee that has incurred a disability as a result of a covered exposure, where such disability occurred outside of the two-year time frame of Section 1(f), could then invoke the protections of Exception 1.1 and simply file in state circuit court (or, sometimes, in federal district court).

In essence, any person with an otherwise valid ODA claim could simply choose

to ignore the timing requirements within the ODA and pursue a claim in a trial court, citing to Exception 1.1. The employee would be required to meet certain procedural hurdles, such as the statute of limitations, etc., but the removal of the exclusivity provision would allow such a claim to proceed in a trial court, eviscerating the exclusivity provisions of the ODA.

The stated purpose of the legislation was to allow those persons impacted by the periods of repose within Section 6(c) to still have a remedy. Interpreting Section 1(f) as a period of repose under Exception 1.1 would lead to absurd results that could not be intended by the legislature. Employers in the State of Illinois should have clarity that the ODA applies to claims made by its employees and that the provisions of the ODA are fairly and justly applied.

The issue before this court arises out of a fact pattern with a long latency period between the last exposure to the workplace hazard and the onset of the disability. The Plaintiff argues that Exception 1.1 should be read to apply to Section 1(f). Any such finding by this court would inherently provide relief for this Plaintiff but would also allow for any number of other persons to take advantage of such a finding. As discussed above, a finding that Section 1(f) is a period of repose would allow claims that would otherwise be compensable under the ODA to be pursued in trial courts. It is hard to fathom that the Legislature could have intended such a broad result, but chose this vague and uncertain language to accomplish that result. The legislature could have taken any number of measures that may have specifically addressed the facts presented by this case – namely, a person who sustains a disability after a long latency period that is barred from pursuing a claim due to the restrictions of Section 1(f).

The *Folta* Court took great pains to analyze the interplay of the different timing provisions and the repose periods proscribed within the ODA. In doing so, the court stated,

> To construe the scope of the exclusive remedy provisions to allow for a common-law action under these circumstances would mean that the statute of repose would cease to serve its intended function, to extinguish the employer's liability for a work-related injury at some definite time. Further, this interpretation would directly contradict the plain language of the exclusive remedy provision which provides that the employer's liability is "exclusive and in place of any and all other civil liability whatsoever, at common law or otherwise. *Folta*, at p. 9.

Exception 1.1 does nothing to change the logic of the Folta court expressed above. The Plaintiff's interpretation, though, goes far beyond any reasonable interpretation of Exception 1.1, and indeed is a wholesale evisceration of the careful balancing of employer and employee rights and obligations that is the foundation of the ODA. This Court should not, in the face of the uncertainty here as so carefully explained by the Seventh Circuit, leap to such a drastic conclusion.

III. THE ENACTMENT OF EXCEPTION 1.1 VIOLATES THE CONSTITITUTION'S DUE PROCESS PROTECTIONS AFFORDED TO EMPLOYERS

As amicus, we are cognizant of the issues in the case and do not want to duplicate the arguments of the parties. We fully expect that the parties will argue the Due Process implications of applying Exception 1.1 to Section 1(f). However, we would be remiss if we did not point out that the same Due Process implications arise from applying Exception 1.1 to Section 6(c) in a retroactive fashion. Just as a claim which is not valid under Section 1(f) should not be reinstated by Exception 1.1, a claim which is not valid under Section 6(c) should also not be reinstated by the language in Exception 1.1.

IV. THE ENACTMENT OF EXCEPTION 1.1 VIOLATES THE SPECIAL LEGISLATION CLAUSE OF THE ILLINOIS CONSTITITUION

The special legislation clause of the Illinois Constitution provides "The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const.1970, art. IV, § 13. This Court discussed the nuances of the Special Legislation provision at length in *Best v. Taylor Machine Works*, when striking down a tort reform bill under that provision:

> the prohibition against special legislation is the "one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly." The special legislation clause expressly prohibits the General Assembly from conferring a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated. [. . .] "It is impossible to conceive of a law that has universal impact and affects everyone or everything in the same way. By enacting laws, the legislature can hardly avoid excluding some category of people or objects. In enforcing this prohibition, the courts must decide if the legislature has made a reasonable classification. Differences of opinion are bound to exist in such situations and the ultimate decision must rest with some judgment as to the soundness of the legislature's action." The difficulty is not overcome by merely reiterating that a classification has been made, i.e., that the legislature has in some way classified groups of people. Rather, we must determine whether the classifications created by section 2-1115.1 are based upon reasonable differences in kind or situation, and whether the basis for the classifications is sufficiently related to the evil to be obviated by the statute. We note that the legislature has wide discretion in the exercise of its police power. However, in evaluating a challenged provision the court must consider the natural and reasonable effect of the legislation on the rights affected by the provision.

Best v. Taylor Machine Works, 179 Ill. 2d 367, 391-94 (1997), quoting S. Grove & R. Carlson, *The Legislature*, in Con-Con: Issues for the Illinois Constitutional Convention 106 (1970), other internal citations omitted.

The case of *Skinner v. Anderson*, illustrates how a statute of repose can be violative

of the Special Legislation clause, if it only applies to certain persons. In *Skinner*, the Illinois Supreme Court struck down a prior version of the construction statute of repose, as that version singled out architects and contractors. *Skinner v. Anderson*, 38 Ill. 2d 455, 461 (1967). The *Skinner* Court further held that the legislature's purpose can only be proper if, in enacting a statute, "the benefits conferred upon [architects and contractors] are not denied to others similarly situated." Id.

Cases further analyzing the *Skinner* decision have stated:

> The construction statute of repose thus represents 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 v. Commonwealth Edison Co., 381 Ill. App. 3d 877, 883 (1st Dist. 2008) (internal citations and quotations omitted).

In this case, if the Plaintiff's interpretation of Exception 1.1 is adopted, the legislature has sought to provide a benefit to only a select group of people – those whose claims have been barred by the express terms of the ODA. If a person sustains a disability within the two-year time frame, their claim is governed by one set of rules. If a person sustains a disability outside of the two-year time frame, their claims is governed by a different set of rules. If a person files their claim within the two or three year time frame, their claim is governed by one set of rules. If that person does not file their claim with the two or three year time frame, their claim is governed by a different set of rules. This legislation impermissibly provides a special benefit or exclusive privilege to those individuals that have failed to meet the requirements of the ODA or have failed to timely exercise their rights under the ODA. All employees subject to occupational hazards are

entitled to compensation under the ODA; however, only those individuals that have **not** timely exercised their rights under the ODA receive the benefit of Exception 1.1. Although it is unclear exactly what harm is meant to be obviated by this statute, there can be no argument that it is unreasonable to confer a benefit on someone who failed to exercise their rights under the ODA and deny that same benefit to someone who properly exercised their rights under the ODA.

Consider two employees, both of whom began work on the same day, were exposed to the same workplace hazard, and developed a disability as a result of that exposure. Depending on when that disability occurred in relation to the last exposure, each employee could have completely different rights. One may pursue a claim under the ODA and the other may pursue a claim in the trial courts. The only difference is the status of each person in relation to the timing mandated within the ODA. There is no rational basis for treating these two employees differently or providing a special benefit to just one of the employees.

Conclusion

The Illinois Legislature's enactment of Exception 1.1 cannot be read as the Plaintiff herein insists. Additionally, if Exception 1.1 is read as the Plaintiff requests, Exception 1.1 violates the Due Process rights of all employers in the State of Illinois. Lastly, Exception 1.1 should be stricken as it is in violation of the Special Legislation clause of the Illinois Constitution.

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CERTIFICATE OF COMPLIANCE

EDWARD GRASSE, of GRASSE LEGAL, LLC of Schaumburg, Illinois, as attorney for the Amicus Curiae, Illinois Defense Counsel, hereby certifies that this Brief complies with the length and form requirements of Illinois Supreme Court Rule 341(a)&(b). The length of this Brief, excluding the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is ten (10) pages.

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CERTIFICATE OF SERVICE

Now comes Edward K. Grasse, of Grasse Legal, LLC of Schaumburg, Illinois, and hereby certifies by and pursuant to 735 ILCS 5/1-109 that he caused to be served upon the following named person, a copy of Motion for leave to file BRIEF OF AMICUS CURIAE ILLINOIS DEFENSE COUNSEL, along with the proposed brief, to which this Certificate is attached, said service being made by email transmission from edgrasse@grasselegal.com to the following on this 31st day of May, 2024, at or before 5:00 p.m.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

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