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Recent Developments: Waskiewicz v. General Motors: Disability Claim under Workers' Compensation Act Based on Worsening of Condition Previously Claimed Is Precluded if Filed after Passage of Limitations Period

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Waskiewicz v. General Motors

In a split decision, the Court of Appeals of Maryland held in *Waskiewicz v. General Motors Corp.*, 342 Md. 699, 679 A.2d 1094 (1996), that a claim under the Maryland Workers' Compensation Act for an exacerbated condition of an occupational disability was barred because the condition was not new and the statutory time limitations for reopening and modifying the award had expired. In so holding, the court prohibited new claims for aggravated conditions of occupational diseases which had been previously filed.

Robert Waskiewicz ("Waskiewicz") was employed by the General Motors Corporation ("GM") as an assembly line worker for twenty years. His repetitive motion work resulted in carpal tunnel syndrome ("CTS") in both wrists in 1973. He underwent surgery and filed a workers' compensation claim premised on this occupational disease. In 1976, the Workers' Compensation Commission ("Commission") awarded him disability benefits, finding a permanent disability of fifteen per cent loss of use in both hands. Waskiewicz required further treatment including several surgeries for this condition, prompting GM to assign him to a light duty position in 1987.

In 1991, Dr. Dennis Franks, Waskiewicz's physician, recommended to GM certain restraints on Waskiewicz's work duties,

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By E. Shannon-McClellan

including no repetitive motion. GM, however, placed Waskiewicz in a position which required the use of hand tools in a repetitive manner. A medical test performed in February 1992 confirmed that his CTS had worsened. In March 1992, Dr. Franks advised Waskiewicz not to return to work. Waskiewicz underwent surgery in September 1992, and never returned to work. In 1994, Dr. Franks concluded that as a result of the CTS, which at that time had caused a 100% loss of use of both hands, Waskiewicz could not engage in gainful employment.

In August 1992, Waskiewicz filed a claim for compensation for CTS with the Commission. Finding the condition to be an aggravation of an existing disability dating from 1973, and not a new occupational disease, the Commission disallowed Waskiewicz's claim. He appealed, and the Circuit Court for Baltimore City reversed the decision. GM then appealed to the

Court of Special Appeals of Maryland which agreed with the Commission and reversed the trial court's decision. The Court of Appeals of Maryland granted certiorari to decide whether the aggravation of an existing disability could constitute the basis for a new claim within the meaning of Maryland's Workers' Compensation Act ("the Act").

In an opinion by Judge Karwacki, the court began its decision by explaining that the purpose of the Act is to provide compensation to employees who are disabled as a result of occupational diseases. *Waskiewicz*, 342 Md. at 700, 679 A.2d at 1095. Relying on the plain meaning of the statute, the court rejected Waskiewicz's claim that the exacerbation of his CTS, resulting in total disability, was a new occupational disease. *Id.* Interpreted on its face, the statute provides for compensation for both partial and total disability caused by one single event, and not by a "series of exposures to the hazards of the same disease." *Id.* at 706, 679 A.2d at 1098. Moreover, the "last injurious exposure" described in the Act was interpreted by the court to refer to the last exposure which contributed "to the onset of a disability, not its exacerbation." *Id.* at 707, 679 A.2d at 1098. In determining the liability of the employer, the court reasoned that the Act requires identifying the single compensable event, the actual date of

disablement, and noted that a mere exposure does not necessarily deserve compensation. *Id.*

As a result, the court held that the statute bars a worker from maintaining a claim for a permanent total incapacity that was previously compensated as a partial disability. *Id.* at 707, 697 A.2d at 1098. The court rejected Waskiewicz's argument that an employee is entitled to exert a new claim and receive compensation every time he is exposed to the hazards of an occupational disease after the date of disablement. *Id.* Therefore, Waskiewicz could not claim and receive benefits for CTS in 1974, and then claim CTS again in 1992, albeit a worsened condition. *Id.*

Next, the court addressed the legislative intent of the Act, stating that the General Assembly could not have intended for each exposure to a hazard to be a compensable event. *Id.* at 708, 679 A.2d at 1099. Specifically, the Act contains a five year statute of limitations that prevents the Commission from making any modifications after the time limitation has expired. *Id.* at 709, 679 A.2d at 1099. Furthermore, section 9-736 of the Labor & Employment Article of the Annotated Code of Maryland permits the reopening of a claim to address the aggravation of an existing disability and sanctions the resulting modification of an award. *Id.* Waskiewicz, the court continued, must have known that his claim would fail under section 9-736, and therefore "attempt[ed] to distinguish his

particular situation from a simple reopening of an existing claim." *Id.* at 711, 679 A.2d at 1100. Stating that "one of the key virtues . . . is the predictability" of the Act, the court held that it was too late to reopen the claim. *Id.* at 714, 679 A.2d at 1101. Consequently, Waskiewicz's current injury did not warrant recovery. *Id.*

Although the court did recognize the inequity of this no-fault Act, it refused to usurp the General Assembly's authority to expand the scope of the Act, and determined that Waskiewicz's condition, regardless of GM's actions, was ongoing. *Id.* at 715, 679 A.2d at 1102. Therefore, Waskiewicz's last injurious exposure for purposes of filing a claim occurred prior to his filing in 1973. *Id.* Thus, any additional compensation could only have been granted by a reopening of his original claim, which after five years was barred by the statute of limitations. *Id.*

The dissent criticized the majority's analysis on several points, noting that the majority itself had recognized "some seeming unfairness" in its holding. *Id.* at 715, 679 A.2d at 1102. Judge Chasanow rejected the majority's interpretation of the statute, stating that the legislative history of the Act mandates that it should be construed liberally in favor of the employee. *Id.* at 716, 679 A.2d at 1103. Further, the dissent argued that Waskiewicz should be entitled to compensation for the portion of his present disability attributable to the employment hazards that re-

sulted in the acceleration of his CTS. *Id.* at 723, 679 A.2d at 1106.

In *Waskiewicz v. General Motors Corporation*, the Court of Appeals of Maryland held that a workers' compensation claim, based upon a worsened condition for which an award was previously granted, could not be filed as a new claim under the Workers' Compensation Act. Currently, in Maryland, the burden is upon the injured employee to file the original and any other modifying claims within the time permitted by statute or risk not being compensated. Even the court recognized the inequitable outcome certain injured workers experience, yet opined that an interpretation of the statute in favor of the employee would constitute improper judicial activism. As such, the holding limits the liability of employers and insurers at the expense of employees. Accordingly, if injured employees are to obtain equitable relief, that relief must come from the legislature. The harsh and unfair result of this holding morally obligates the General Assembly to amend the provisions of Maryland's Workers' Compensation Act. In the meantime, however, attorneys should advise injured clients to attentively monitor their disabilities, and promptly report any worsening condition.