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Recent Developments: Mayor of Baltimore v. Schwing: Workers' Compensation Claim for Aggravation of a Preexisting Disease Based on New Workplace Exposures May Be Allowed beyond the Five-Year Modification Period

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Mayor of Baltimore v. Schwing

Overturning *Waskiewicz v. General Motors Corp.*, 342 Md. 699, 679 A.2d 1094 (1996), the Court of Appeals of Maryland held that a claim under the Maryland Workers' Compensation Act arising from a previously existing condition was not barred by the five-year statutory period for reopening and modifying the award when such a claim was based on a new exposure to a workplace hazard, and not due solely to the natural progression of a previously existing disease. *Mayor of Baltimore v. Schwing*, 351 Md. 178, 717 A.2d 919 (1998). Specifically, the court held that a claim based partly on new workplace exposures and partly on natural progression may be filed under both the workers' compensation occupational disease statute and modification statute. As a point of clarification, the court held that when the aggravation is due solely to a new disability arising from a new exposure, the claimant's remedy is governed exclusively by the occupational disease statute. An aggravation of a disease based on a natural progression is, however, governed exclusively by the modification statute. In reaching this holding, the court of appeals reversed its prior decision, and reasserted the notion that the Maryland's Workers' Compensation Act should be construed in favor of the injured

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By John R. Muckelbauer

employee.

The statutes under Maryland's Workers' Compensation Act ("the Act") of particular concern here are sections 9-711 and 9-736 of the Labor and Employment Article of the Annotated Code of Maryland. Under section 9-711, if an employee suffers a work related disability, he or she must file a claim with the Workers' Compensation Commission ("Commission") within two years of the disablement or when the employee attains actual knowledge that the event which caused the disability was work related. Under section 9-736, if an employee seeks to reopen or modify a previous award, the employee must file within five years of the last compensation payment.

In December 1982, Baltimore City Firefighter Joseph Schwing ("Schwing") suffered a mild heart attack. After a period of recovery, Schwing resumed his duties as a firefighter. In May 1983, Schwing filed a claim for workers' compensation benefits ("Claim A") with the Commission. However, as a result of a contract between the city and his union, Schwing was provided full pay and benefits for the entire period of missed work including coverage of his medical bills. No further proceedings occurred with respect to this claim and no benefits were paid through the actions of the Commission. Although his heart condition was monitored and treated, Schwing was able to resume his normal duties.

In 1993, Schwing suffered a second heart attack. A subsequent examination revealed serious heart disease requiring quadruple bypass surgery. Surgery was performed and Schwing remained off work from December 9, 1993 through February 24, 1994. During this recovery period, Schwing received full salary and all medical expenses were covered. In March 1994, Schwing filed a second claim ("Claim B") seeking compensation for the cardiovascular condition, claimed as an occupational disease. The city argued that the second heart attack was merely a worsening of the condition which began in 1982, and that the city was only

responsible for continuing medical care based on Claim A. Agreeing with the state, the Commission concluded that the 1993 heart attack was the result of the same cardiovascular disease that disabled Schwing in 1982. In so concluding, the Commission determined that Claim B was beyond the two-year statute of limitations for such claims.

Schwing appealed the Commission's decision to the Circuit Court for Baltimore City. He claimed that since he was able to continue his employment following the first heart attack, no prior disablement existed. As such, Schwing argued he was not barred by the two-year statute of limitations under section 9-711. The circuit court held that there was a disablement in 1982 and that Claim B was barred because it was not filed within two years of the initial disablement. However, the circuit court raised, *sua sponte*, the issue of Claim A and held that since it was timely filed in 1983, and no award was ever paid, it was not barred. As such, the circuit court remanded the case to the Commission to determine the benefits under Claim A to which Schwing may have been entitled. Both parties appealed to the Court of Special Appeals of Maryland. While the appeals were pending, the circuit court, contrary to its earlier ruling, filed a "Memorandum Opinion Addendum" and determined that Claim B was timely filed.

The court of special appeals determined that the circuit court

did not have jurisdiction to consider Claim A and limited its decision to only Claim B. The court did note, however, that Schwing had suffered an earlier temporary total disability resulting from the heart attack in 1982 for which no compensation payments were made. The court analyzed the intent of Maryland's occupational disease statute and held that two or more separate compensable disabilities may result from the same occupational disease. In so holding, the court determined that Claim B was a new disability that was not barred by the five-year limitations period. The Court of Appeals of Maryland granted certiorari to determine whether a claim for the aggravation of an earlier occupational disease based upon new injurious exposures was barred by the statute of limitations under the Act.

While the court of special appeals attempted to distinguish the facts at bar from those presented in earlier cases, the court of appeals began its analysis by squarely addressing and revisiting its decision in *Waskiewicz*. *Schwing*, 351 Md. at 194, 717 A.2d at 927. The court noted that *Waskiewicz* barred an employee, who had previously claimed and received compensation, from submitting a subsequent claim for the same condition beyond the statutory period, regardless of whether the new claim was a result of a new work-related exposure. *Id.* at 196, 717 A.2d at 927-28. The court explained that its

decision in *Waskiewicz* was simply wrong and that the "true answer" to this issue was found in the *Waskiewicz* dissent. *Id.* at 197, 717 A.2d at 928. The court, in discussing the *Waskiewicz* dissent, noted that its earlier decision was not only unsupported by other jurisdictions, it was contrary to the laws of many other states. *Id.* By citing an abundance of persuasive authority, the Court of Appeals of Maryland drew support for its position that the holding under *Waskiewicz* was overly harsh to employees. *Id.* at 197-201, 717 A.2d at 928-30.

The court of appeals expanded the argument by discussing the ambiguity of the legislation. *Id.* at 203, 717 A.2d at 931. The court, in support of the intermediate appellate court's analysis, found no reasonable basis to conclude that the General Assembly intended to bar an employee with an occupational disability "from recovering compensation for a subsequent disability caused by a subsequent exposure." *Id.* Such a holding, the court determined, would not only be contrary to the law of most other jurisdictions, it would be inimical to the "Legislature's mandate" of viewing workers' compensation claims "liberally in favor of claimants." *Id.* at 196, 717 A.2d at 928.

In analyzing this case, the court compared the plain language argument adopted in *Waskiewicz* with the argument supporting statutory construction. *Id.* at 202-03, 717 A.2d at 931. In the end, the court relied principally on

public policy to support statutory construction. *Id.* at 203, 717 A.2d at 931. The court explained that it has been a long held policy in Maryland for employees “disabled by a compensable occupational disease” or injury, to be “eligible for vocational rehabilitation services.” *Id.* at 203-04, 717 A.2d at 931. The court determined that it would be inconsistent with such a practice to bar a worker’s compensation claim based on the worsening of a previously claimed condition when the subsequent claim is not a result of the natural progression of the condition. *Id.* at 206-07, 717 A.2d at 933. In so determining, the court held that a new claim under the Act arising from a previously existing condition is not barred by the five-year statutory time limitation for reopening and modifying the award, provided the claim is the result of exposure to a new workplace hazard and is not due solely to the natural progression of the previously existing condition. *Id.* at 205-06, 717 A.2d at 932-33.

Concurring with the majority’s judgment, Judge Raker, joined by Judge Rodowsky, would affirm the court of special appeals, yet leave intact the holding of *Waskiewicz*. *Id.* at 208, 717 A.2d at 933-34. Judge Raker explained that the doctrine of stare decisis is such a fundamental principle that prior holdings should be disturbed only as a last resort, and that the facts at bar could be distinguished from *Waskiewicz*. *Id.* at 209, 717 A.2d at 934. As such, Judge Raker suggested that the court of appeals

should refrain from judicial activism and stated that if the legislature wanted to change the law, it would have done so. *Id.* at 215-16, 717 A.2d at 937-38.

In *Mayor of Baltimore v. Schwing*, the Court of Appeals of Maryland lifted from the claimant the burden of filing an original or modifying claim within certain inequitable statutorily prescribed periods when the claimant has been exposed to additional workplace hazards. This case demonstrates the flexibility inherent in the judicial process, and provides a good example of when such flexibility should manifest. Although the courts should refrain from judicial activism, allowing unjust decisions based on what may reasonably be perceived as an oversight by the legislature would be a dereliction of duty. Considering the current composition of the court of appeals, such a holding will predictably remain the law in Maryland for many years to come. Less predictable, however, will be the response of the General Assembly.