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Illinois Ruling on Civil Liability for Employers Confirms Risks to Companies

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Since their inception, the Illinois Workers' Compensation Act (820 ILCS 305/1 et seq.) and Workers' Occupational Diseases Acts (820 ILCS 310/1 et seq.) (the "Acts" or "Act") have offered some certainty and predictability with respect to injuries sustained in the course of employment. The Acts provide a clear framework within which injured employees may pursue claims against their employers and ensures they can receive payment of their medical expenses, lost wages associated with their injuries, and compensation for any permanent disabilities and/or disfigurement sustained, without having to prove fault on behalf of the employer. In exchange, the employer pays for these benefits and enjoys some predictability and limitations on the allowable damages under the Acts, assured that the Acts offer the exclusive remedy against the employer, such that no civil lawsuits, where awards may include pain and suffering and be much higher in value, may be brought against them for the same injury. Generally, an employer would be entitled to the exclusive remedies provided under the Acts, assuming that the injury or disease was accidental, arose during and in the course of employment, and is compensable under the Acts. 820 ILCS 310/5(a), 11 (West 2022); 820 ILCS 305/5(a), 11 (West 2022). So, understandably, when an employer is sued in a civil court for a work-related injury, they may look to the protection of the Acts, to defend the claim and argue for dismissal based on the Acts' exclusivity provisions.

The Acts contain a repose period of 25 years for injury or disability caused by exposure to asbestos. *See* 820 ILCS 310/1(f) and 820 ILCS 305/1(f). Thus, prior to 2019, no claims could be brought under the Acts more than 25 years after the date of last exposure to asbestos. In the 2015 landmark case of *Folta v. Ferro Engineering,* 43 N.E. 108 (Ill. 2015), Mr. Folta claimed his mesothelioma was caused, at least in part, from exposure to asbestos while working for his employer, Ferro Engineering, for whom he last worked in 1970. Mr. Folta was diagnosed with mesothelioma over 40 years later in 2011, and filed a civil lawsuit against Ferro (and others) in state court. Ferro moved to dismiss the civil suit, arguing that Mr. Folta's exclusive remedy was found in the Workers' Occupational Disease Act, and could not be brought as a civil action against it. However, Mr. Folta argued that because more than 25 years had passed since his exposure to asbestos at Ferro, his claim would be barred by the 25-year repose period and is not "compensable" under the Act, leaving him without any remedy if not allowed to proceed in state court. The Illinois Supreme Court affirmed that the Act's 25-year statute of repose acts as a complete bar, and yet still held that the Act provided Mr. Folta's exclusive remedy against his employer. The Court noted the question of "compensability" turned on whether the type of injury sustained would fall within the

scope of the Act, not whether there is an ability or possibility to recover benefits under the Act. Given that Mr. Folta's injury was compensable, the Act provided his exclusive remedy, and his claim under the Act was time-barred by the 25-year statute of repose.

While acknowledging that the outcome may be a harsh result as to the plaintiff, leaving him with no remedy against his employer for his latent disease, the Court in *Folta* noted its job is not to find a compromise, but to interpret the statutes as written, suggesting if a different balance should be struck, it would be the duty of the legislature to do so. And that is what happened in 2019, when the Illinois Senate and House introduced two new statutes carving out exceptions to the exclusive remedy provisions for both the Workers' Compensation and Workers' Occupational Diseases Acts. Under the new statutes, the Acts no longer prohibit workers with latent diseases or injuries from pursuing their claims after the repose period in civil court. The new statute added to the Workers Occupational Disease Act, 820 ILCS 310/1.1, states:

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

When Governor J.B. Pritzker signed the bill into law in May 2019, he issued a statement, indicating the purpose of the revised legislation is to allow workers to "pursue justice," given that in some cases, the 25-year limit is shorter than the medically recognized latency period of some diseases, such as those caused by asbestos exposure. The impact on employers, however, was not addressed. And employers were left with questions, including critically, whether this new change to the law can apply retroactively, when the statute itself is silent as to the temporal scope. Having relied on the provisions of the Acts in place at the time for basic and critical business decisions, including procurement of appropriate insurance and establishment of wages and benefits, employers cannot now go back in time and change those decisions to offset the increased liability which they now face. Further, following *Folta*, employers have a vested defense in the Acts' exclusivity and statute of repose provisions. So, retroactive application of the new statutes could impose new liabilities not previously contemplated and could strip defendant employers of their vested defenses, violating Illinois' due process guarantee. Anticipating plaintiffs' firms would file latent disease claims against employers in civil court going forward, and with decades of case law to support prospective application only, it was just a matter of time before the issue reached further judicial scrutiny.

And that brings us to the Illinois Supreme Court's January 24, 2025 decision in the matter of *Martin v. Goodrich,* 2025 IL 130509*.* Mr. Martin worked for BF Goodrich Company ("Goodrich") from 1966 to 2012, where he was exposed to vinyl chloride monomer and vinyl chloride-containing products until 1974. He was diagnosed with angiosarcoma of the liver, a disease allegedly caused by exposure to those chemicals, in December of 2019, passing away in 2020. His widow filed a civil lawsuit against Goodrich alleging wrongful death as a result of his exposure, invoking the new exception found in section 1.1 of the Act to bring the matter in civil court. In response, Goodrich moved to dismiss the case based on the Act's exclusivity provisions, arguing that section 1.1 did not apply because Section 1(f) was not a statute of repose. Alternatively, Goodrich argued that using the exception to revive Martin's claim would infringe its due process rights under the Illinois Constitution. The district court denied Goodrich's motion, and Goodrich asked the court to certify two questions to the US Court of Appeals for the Seventh Circuit for interlocutory appeal: first, whether section 1(f) is a statue

of repose for purposes of section 1.1, and second, if so, whether applying section 1.1 to Martin's suit would violate Illinois' constitutional due process. Finding the questions impact numerous cases and Illinois' policy interests, the Seventh Circuit certified the questions, and added a third question: if section 1(f) falls within the section 1.1 exception, what is the temporal reach? Answering these questions, the Illinois Supreme Court held that (1) the period referenced in section 1(f) is a period of repose, (2) the exception in section 1.1 applies prospectively pursuant to the Statute on Statutes, and therefore, (3) it does not violate Illinois' due process guarantee.

But what did the Court mean when it held that the exception in section 1.1 applies prospectively? Goodrich argued that prospective application would mean that the exception in section 1.1 does not apply to this case, because the last exposure was in 1976, before the amendment was made, and the defendant had a vested right to assert the statute of repose and exclusivity provisions of the Act, which would prohibit the civil suit. The Court pointed out, however, that the amendment did not revive Mr. Martin's ability to seek compensation under the Act, such that the employer's vested statute of repose defense would apply. Rather, the amendment gave him the ability to seek compensation through a civil suit outside of the Act. So, the question becomes only whether the employer has a vested right to the exclusivity defense, such that applying section 1.1 would violate due process. The Court held that the exclusivity provisions of the Act are an affirmative defense, such that the employer's potential for liability exists unless and until the defense is established. And a party's right to a defense does not accrue until the plaintiff's right to a cause of action accrues. Applying the new statute prospectively, the Court found the cause of action could be filed in civil court, because the relevant time period for considering applicability of the affirmative defense of the Act's exclusivity is when the employee discovers his injury. Since Mr. Martin's cause of action accrued when he was diagnosed in December of 2019, which was after section 1.1 was added, Goodrich did not have a vested exclusivity defense, so Mr. Martin's claim may proceed without violating due process.

While the court did not apply the new statute retroactively, the effect is essentially the same from the employers' perspective, as latent injury claims will be allowed to proceed in civil court, as long as the injuries were discovered after expiration of the repose period and after the new statutes went into effect in May of 2019. This was not the outcome defendant employers were hoping to receive, but it is what the Court decided. So, unless or until the legislative tides change again, Illinois employers should be aware of the potential for civil suits for employees' latent injury or disease claims.

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