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WC Appellate Division Decision issued on May 14, 2018 – Statute of Limitations

Statute of Limitations Ten years ago the Law Court ruled in *Wilson v. Bath Iron Works*, 2008 ME 47, 942 A.2d 1237 that the two-year statute of limitations does not begin to run until the employer files a First Report of Injury, regardless of how much time may have passed since the injury occurred. In the years following the employer community invested considerable effort to amend Section 306(1) to reverse the *Wilson* decision, as the effect of that case was to delay the commencement of the statute of limitations until such time as an employer had an obligation to file a First Report. Ultimately, the legislature amended Section 306(1) effective August 30, 2012. The Law Court has never had an opportunity to interpret the language of the amended statute, but in a recent decision the Appellate Division addressed the matter "head on" and ruled how the amended statute is to be applied. In *Bickmore v. Johnson Outdoors*, Me. W.C.B. No. 18-18 (App. Div. 2018) the employee sustained two separate injuries eight years apart while working for the same employer but when different insurers were on the risk. The insurer at the time of the second injury filed a Petition for Award seeking to establish the compensability of the first injury and a corresponding obligation on the part of the first insurer to contribute to benefits owed to the employee. The first insurer had paid medical expenses but was never required to file a First Report. More than six years from the date of the last payment had elapsed before the duty to file a First Report arose. The Division tackled the complex legislative history behind the 2012 amendment to Section 306(1), and it is not necessary to recite the sequence of events in this brief article. Ultimately, the adopted amendment lacked clarity and was susceptible of different interpretations. Indeed, the Division found that it was not clear exactly what the Legislature had intended and that the Legislature had never specifically stated that it was acting to modify *Wilson.* Because the meaning of the statute was found to be ambiguous, the Division analyzed the legislative history and concluded that the Legislature had actually intended to limit the scope of *Wilson*. Specifically, the Division held as follows:

…we conclude that the appropriate interpretation of Section 306(1) as amended is: except as otherwise provided in section 306, a claim is barred two years after the date of injury or, if within that two year period the employee's employer is obligated to file a First Report under Section 303 and fails to do so, two years from the date the employer files the First Report.

Thus, the Division held that if an employer is not required to file a First Report within the two year period immediately following the injury, the statute of limitations bars a claim after that point. The Division then addressed whether the amended version of Section 206(1) could be applied retroactively. The Court found no express or implied legislative intent that the amendment should be given retroactive effect. However, the panel concluded that this finding was not determinative, and that retroactive application must be determined by the timing of two events. Specifically, if the date that an employer becomes obligated to file a First Report of Injury and the date that the employer actually files a First Report of Injury occur after the effective date of the 2012 amendment, the amended version of Section 306(1) will therefore apply to determine whether or not a claim is barred by the statute of limitations. Accordingly, because of the passage of time the first insurer in *Bickmore* had no obligation to file a First Report for the initial injury until long after the amendment took effect, all claims with respect to the initial injury

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were barred by the statute of limitations. This is an extremely important decision and resolves a number of questions that have remained unanswered since the 2012 attempt to modify or reverse the scope of *Wilson*. Carriers and self-insureds can now determine with greater accuracy whether or not the statute of limitations on a particular claim has expired.

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