

To: New Jersey Law Revision Commission
From: Samuel M. Silver
Re: Statute of Limitations for Medical Providers in Workers' Compensation Cases
(*Plastic Surgery Center, PA, v. Malouf Chevrolet-Cadillac, Inc.*)
Date: May 11, 2020

MEMORANDUM

Executive Summary

Since 2012, the Division of Workers' Compensation (the Division) has maintained jurisdiction over all disputed claims brought by medical providers for the payment of services rendered to injured employees.¹ Complaints before the Division are subject to a two-year statute of limitations.² Suits predicated on contracts, however, have traditionally been subject to a six-year statute of limitations.³

Although exclusive jurisdiction for disputed claims by medical providers has been vested with the Division, the legislative history regarding the 2012 Amendment to the Workers' Compensation statutes is silent regarding which statute of limitations applies in these types of actions. The absence of any clear direction on this topic was considered by the Appellate Division in the matter of *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac*.⁴

At the March 19, 2020, Commission meeting, Staff was asked to conduct outreach on this subject matter in order to provide the Commission the information necessary to determine whether the statute should be amended or left alone.⁵ The results of that outreach support proceeding with this project, as explained in more detail below.

Statute

N.J.S. 34:15-51 Claimant required to file petition within two years; contents, minors

Every claimant for compensation under Article 2 of this chapter (R.S. 34:15-7 et seq.) **shall**, unless a settlement is effected or a petition filed under the provisions of R.S. 34:15-50, **submit to the Division of Workers' Compensation a petition filed and verified in a manner prescribed by regulation, within two years after the date on which the accident occurred**, or in case an agreement for compensation has been made between the employer and the claimant, then within two years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by the employer, then within two years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition. A payment, or agreement to pay by the insurance carrier, shall

¹ N.J.S. 34:15-15.

² N.J.S. 34:15-51.

³ N.J.S. 2A:14-1.

⁴ *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 2019 WL 256698 (App. Div. 2019).

⁵ New Jersey Law Revision Commission (2020) 'Statute of Limitations for Medical Providers in Workers' Compensation Cases'. *Minutes of NJLRC meeting 19 Mar. 2020*, Newark, New Jersey.

for the purpose of this section be deemed payment or agreement by the employer. The petition shall state the respective addresses of the petitioner and of the defendant, the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages received at the time of injury, the knowledge of the employer or notice of the occurrence of the accident, and such other facts as may be necessary and proper for the information of the division and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. A paper copy of the petition shall be verified by the oath or affirmation of the petitioner... [Emphasis added].

Background

Historically, a medical provider was entitled to file a collection action for payment of its services in the Superior Court and had no obligation to participate in the patient's pending compensation action.⁶ A lawsuit brought by a medical provider against a patient is generally predicated upon an express or implied contractual arrangement.⁷ Such actions are therefore governed by the statute of limitations set forth in N.J.S. 2A:14-1. This statute provides that "[e]very action at law for...recovery upon a contractual claim or liability, express or implied... shall be commenced within 6 years next after the cause of such action shall have accrued."⁸

In 2012, the Legislature amended N.J.S. 34:15-15 and vested the Division with "exclusive jurisdiction for any disputed medical charge arising from any claim for compensation for a work-related injury or illness...." This statutory modification would sow the seeds for the confrontation between the parties in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.* regarding the statute of limitations in such cases.

• *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*

In *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, a number of medical providers filed petitions for the payment of services rendered to the employees of each employer.⁹ The petitions, filed by these providers, were all filed more than two years from the date of each employee accident but less than six years from the claim's accrual.¹⁰

The compensation judge interpreted the statute of limitations set forth in the Worker's Compensation statute, N.J.S. 34:15-51, to require "every claimant," including medical providers, to file a petition with the Division within two-years from the date of the accident.¹¹ Based upon this reading of the statute, each of the actions by the medical providers was determined to be filed

⁶ *Id.* at *1.

⁷ *Id.*

⁸ N.J.S. 2A:14-1.

⁹ *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 2019 WL 256698 *1 (App. Div. 2019). The five cases on appeal each set forth a common issue. The Appellate Division consolidated these appeals for purposes of addressing the statute of limitations issue. In addition, and in the interest of judicial economy, the specific facts of each case were omitted by the Appellate Division and the overview set forth herein is modeled upon the statement of facts and procedural history fashioned by the appellate panel.

¹⁰ *Id.*

¹¹ *Id.*

beyond the statute of limitations and therefore dismissed.¹² Alleging that the compensation judge misconstrued the statute, each of the medical providers appealed the dismissal of their cases.¹³

Analysis

The New Jersey Appellate Division was asked to determine whether, “through its silence, the Legislature intended... to apply the two-year statute of limitations... contained in the Workers’ Compensation Act [to medical claims]... or whether the Legislature intended to leave things as they were and continue to apply the six-year statute of limitations for suits on contracts.”¹⁴ In the absence of legislative clarity, the Court based its decision upon its interpretation of the workers’ compensation statute.¹⁵

Ultimately, the Appellate Division determined that the six-year statute of limitations applied to these types of claims because the “Legislature did not simply express that the Act’s two-year time bar would apply to medical-provider claims.”¹⁶ The Court expressly rejected the claim that, pursuant to N.J.S. 34:15-51, “every claimant for compensation” is governed by the Act’s two-year statute of limitations. The Court found it to be compelling that “...the Legislature made no alteration to N.J.S. 34:15-51 when it amended N.J.S. 34:15-15.”¹⁷

Finally, the Appellate Division noted, “...we find nothing but legislative silence on the point in controversy...”¹⁸ In the absence of a definitive statement on this subject, the Court rejected the respondent’s arguments, reversed the judgments of the compensation court, and remanded each matter for further proceedings on what it termed “timely claims.”¹⁹

Subsequent History

The employers’ petitions for certification were granted by the New Jersey Supreme Court on May 14, 2019.²⁰ The Court affirmed the judgment of the Appellate Division for the reasons expressed below.²¹ In doing so, the Court noted that in, “the 2012 amendment to N.J.S.[] 34:15-15, the Legislature did not expressly address the statute of limitations” adding that “[t]he Legislature is, of course, free to do so in the future.”²²

Outreach

On April 14, 2020, Staff reached out to a Certified Workers Compensation attorney to discuss whether the statute of limitations should be modified to reflect the decision of the Supreme

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at *2-*3.

¹⁶ *Id.* at *2.

¹⁷ *Id.* at *3.

¹⁸ *Id.* at *4.

¹⁹ *Id.*

²⁰ *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 457 N.J. Super. 565, (App. Div. 2019), *certif. granted*, 238 N.J. 30, (2019) and *certif. granted*, 238 N.J. 31, (2019) and *certif. denied*, 238 N.J. 57 (2019).

²¹ *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*, 2020 WL 521659 *1 (Feb. 03, 2020).

²² *Id.*

Court in *Plastic Surgery Center, PA v. Malouf Chevrolet-Cadillac, Inc.*²³ The next day, Mr. Rubenstein provided a response to the Commission’s inquiry.²⁴

As it happens, Mr. Rubenstein was “...the principal drafter of the recent revision of N.J.S.A. 34:15-15, the medical treatment portion of the Workers’ Compensation Act...”²⁵ Coincidentally, Mr. Rubenstein was working on a treatment of the issue of the medical payments statute of limitations for his book at the time he received Staff’s inquiry.²⁶ His position on the issue of codifying the statute of limitations was unequivocal, “[o]f course, the period of limitations should be covered by the language of the Act itself, instead of by implication from prior case law or by judicial edict in the *Malouf Chevrolet-Cadillac* case.”²⁷

In support of this recommendation, he advised that, “[e]very other limitations period in Workers’ Compensation is statutory, and it follows that the medical claim petitions created by Statute under Section 15 should, [be codified] as well.”²⁸

Conclusion

Staff seeks authorization to conduct additional research and outreach in support of proposing revisions that would clarify the statute of limitations in the workers’ compensation statutes as it applies to disputed medical claims.

²³ E-mail from Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission to Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, (Apr. 14, 2020, 5:10 PM EST) (on file with the NJLRC). Mr. Rubenstein has practiced in the area of workers compensation since 1985, representing both Petitioners and Respondents in every Court in New Jersey. He is the Vice President to the Council of Safety and Health of New Jersey, and the James Coleman Inns of Court. See <https://www.rbrslawnj.com/About/Richard-B-Rubenstein.shtml> (last visited Apr. 22, 2020).

²⁴ E-mail from Richard Rubenstein, Esq., Rothenberg Rubenstein Berliner & Shinrod, LLC, to Samuel M. Silver, Deputy Director, New Jersey Law Revision Commission (Apr. 15, 2020, 8:59 AM EST) (on file with the NJLRC).

²⁵ *Id.*

²⁶ *Id.* See Rubenstein & Lois, LexisNexis Practice Guide New Jersey Workers’ Compensation, 2019 Edition (LexisNexis Matthew Bender).

²⁷ *Id.*

²⁸ *Id.*